

COMMONWEALTH OF MASSACHUSETTS

SUPREME JUDICIAL COURT

SUFFOLK, ss.

NO. SJ-2014-0005

KEVIN BRIDGEMAN,
and others

v.

DISTRICT ATTORNEY FOR THE SUFFOLK DISTRICT,
and others

MOTION TO MODIFY IMPOUNDMENT ORDER

The Committee for Public Counsel Services (CPCS) requests that the "Amended Impoundment Order" entered on April 22, 2016 (paper no. 100), be modified so that each of the offices of the District Attorneys who are not a party to this case is permitted to access county-specific data from the statewide "caseparty" Excel file identifying all cases defendants brought under G.L. c.94C from 2003 to 2012 (the "94C data").^{1/} This expanded access may assist non-party District Attorneys in identifying cases tainted by misconduct at the Amherst lab.

1. The 94C data has enabled the respondent District Attorneys to identify more than 24,000 Dookhan cases. The data could be equally useful to prosecutors seeking to fulfill their constitutional "obligation" of

^{1/}The non-party District Attorneys are David F. Capeless (Berkshire County), Joseph D. Early, Jr. (Worcester County), and David E. Sullivan (Northwestern District).

identifying tainted Amherst lab cases and "disclos[ing]" that "exculpatory evidence" to defendants. Commonwealth v. Cotto, 471 Mass. 97, 112 (2015), citing Commonwealth v. Ware, 471 Mass. 85, 95 (2015). Accordingly, the offices of the non-party District Attorneys should be permitted to access the 94C data pertaining to their respective districts.

2. Insuring that every District Attorney's office has immediate access to the 94C data is also appropriate in light of the petitioners' and CPCS's pending request that this Court report the question whether all cases involving misconduct by Annie Dookhan should be dismissed or subjected to a court-ordered deadline. See "Request for Reservation and Report Regarding Comprehensive Remedy for Dookhan Defendants (paper no. 120; filed May 20, 2016). CPCS believes that the sheer volume of tainted Amherst lab cases underscores the urgency of a comprehensive remedy for the 24,000 Dookhan cases.

Former Amherst Lab chemist Sonja Farak committed serious misconduct over the course of eight years (from late 2004 until her arrest in January 2013), compromising many thousands of cases, including cases handled by other chemists. See Office of the Attorney General, Investigative Report Pursuant to Commonwealth v. Cotto, 471 Mass. 97 (2015), 8-20 (April 1, 2016)

(Cotto report) (Attachment G). In addition, from at least 2008 until 2012, the Amherst lab tested suspected drugs by comparing their chemical makeup against "standards" which the lab's administrator had himself manufactured by "skimm[ing]" from "police-submitted samples." Cotto Report at 4. See also id. at 24-28. This deviation from acceptable drug testing practice puts the integrity of virtually every Amherst Lab test result generated during these years into question.

The astonishing scope of the Amherst Lab scandal makes it impossible to maintain the fiction that a case-by-case approach will provide justice to Dookhan defendants within any reasonable period of time. At the same time, identification of tainted Amherst lab cases should proceed as quickly as possible.

3. Making the 94C data immediately available to all District Attorneys is also appropriate because there are worrying signs that ongoing delays in identifying Amherst lab cases will be cited by the respondent District Attorneys as grounds to deny comprehensive relief to the Dookhan defendants. For example, in recent hearings in this case, counsel for some of the respondents suggested that it is too early to say whether the Amherst lab scandal bears on CPCS's capacity to assure post-conviction representation for Dookhan defendants. In light of this argument, CPCS seeks to

ensure that District Attorneys are not encumbered in identifying Amherst lab defendants.

4. Of course, if it is really true that the project of identifying Amherst lab cases is still in its early stages, that fact cannot be attributed to the present impoundment of 94C data. The scope of the Amherst lab fiasco has been widely known since the summer of 2015. See Evan Allen and John Ellement, State chemist may have affected more drug cases than previously known, Boston Globe (July 2, 2015). Moreover, the Commonwealth's response to the Amherst lab scandal belies any suggestion that prosecutors have only recently been put on notice of their duty to identify the many cases tainted by the misconduct which took place there.

• On January 19, 2013, the State police arrested Farak and seized documents from her car, including a "ServiceNet Diary Card" indicating that her misconduct began no later than 2011. Affidavit of Nancy J. Caplan, ¶¶3-6. In February 2013, through an e-mail entitled "FARAK admissions," a State police sergeant sent this ServiceNet Diary Card and several other documents to prosecutors in the office of the Attorney General (OAG), together with a concession that these documents contained "admissions of drug use." Id. at ¶¶6-7; Attachment A.

- Nevertheless, for all of 2013, this key evidence was not provided to defense attorneys representing defendants who had been convicted in cases involving Farak. Instead, the OAG incorrectly asserted that all documents had "already been disclosed," that any withheld documents (including the ServiceNet Diary Card) were "irrelevant," and that defense requests for these documents were a "fishing expedition." Caplan Affidavit at ¶¶10-12. These incorrect statements kept probative evidence from defense counsel and led a Superior Court judge considering consolidated new trial motions involving the scope of Farak's misconduct (Kinder, J.) to find, mistakenly, that the misconduct had begun in 2012. See Cotto, 471 Mass. at 101 & n.7, 111 & n.13.

- The ServiceNet Diary Card and other withheld documents seized from Farak's car were not viewed by any defense attorney (other than the attorney for Farak) until attorney Luke Ryan viewed them on October 30, 2014. On November 1, 2014, Attorney Ryan wrote to AAG Patrick Devlin to explain that his review had uncovered highly exculpatory evidence which had not previously been disclosed to defense counsel. Attachment B.

- On November 13, 2014, the OAG sent 289 pages of additional discovery consisting of copies of the papers found in Farak's car to all district attorneys.

- In March 2015, relying on the ServiceNet Diary Card and other belatedly disclosed evidence from Farak's car, defense attorneys obtained privileged mental health records demonstrating that Farak had been stealing, making, and using drugs and drug standards from 2004 until she was removed from her position in January 2013.

- On April 8, 2015, when Cotto and Ware were released, the Court stated that the Commonwealth had yet to ascertain the "magnitude and implications" of the Amherst Lab scandal, 471 Mass. at 95, and pointedly reminded prosecutors of their "duty to learn of and disclose to a defendant any exculpatory evidence that is held by agents of the prosecution team." Id. at 112.

- On May 12, 2015, Judge Kinder allowed the Commonwealth's motion to modify a protective order to permit copies of Farak's treatment records to be disclosed "to all Massachusetts District Attorneys and their representatives."

- Throughout these events, the petitioners and CPCS have emphasized in this litigation the responsibility of District Attorneys to identify and notify wrongfully convicted defendants. In addition, following the Cotto and Ware decisions, representatives from the ACLU of Massachusetts, CPCS, and the defense bar engaged the OAG in discussions about the need to identify and notify Amherst lab defendants.

- On September 25, 2015, the ACLU of Massachusetts, CPCS, the Massachusetts Bar Association, and the Massachusetts Association of Criminal Defense Lawyers wrote to Deputy Attorney General Colin Owyang concerning a possible discussion with District Attorneys about identifying and notifying Amherst lab defendants. This letter emphasized the obligation of prosecutors to undertake identification and notification, and expressed the hope that cases could be dismissed. Attachment D.

- On November 5, 2015, AAG Thomas Caldwell filed pleadings stating that Farak "began using controlled substances regularly in the last quarter of 2004," and "was under the influence of controlled substances during the vast majority of her working hours from the last quarter of 2004 to her removal from the lab on January 18, 2013." Attachment E.

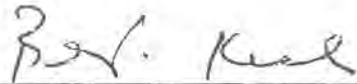
- On November 6, 2015, AAG Caldwell informed defense counsel that he had "already reached out" to provide the District Attorneys with the information contained in his November 5 submission. Attachment F.

If, despite all of these events, the identification of Amherst lab defendants is far from complete, that delay would be yet another reason to order a comprehensive remedy in this case. In any event, insofar as the 94C data has helped the respondents identify people who were convicted with Dookhan-tainted evidence, that data should also be made available to help prosecutors

identify the many thousands of defendants who may have
been harmed by the Amherst lab fiasco.

Respectfully submitted,

COMMITTEE FOR PUBLIC COUNSEL SERVICES



Benjamin H. Keehn

BBO #542006

Committee for Public Counsel Services

Public Defender Division

44 Bromfield Street

Boston, MA 02108

(617) 482-6212

bkeehn@publiccounsel.net

Dated: May 31, 2016.

COMMONWEALTH OF MASSACHUSETTS

SUPREME JUDICIAL COURT

SUFFOLK, ss.

NO. SJ-2014-0005

KEVIN BRIDGEMAN,
and others

v.

DISTRICT ATTORNEY FOR THE SUFFOLK DISTRICT,
and others.

AFFIDAVIT OF NANCY J. CAPLAN
IN SUPPORT OF MOTION TO MODIFY IMPOUNDMENT ORDER

1. I am the Attorney-in-Charge of the Committee for Public Counsel Services' Drug Lab Crisis Litigation Unit (DLCLU), which was created in April of 2013 to handle indigent defense matters arising out of the shutdown of the Hinton drug lab and associated wrongdoing by chemist Annie Dookhan.

2. Through my work with the DLCLU, I have become familiar with events following the arrest of state chemist Sonja Farak, including events that have impeded for a period of years the ability of thousands of defendants to pursue relief from convictions that may have been tainted by her misconduct.

3. Farak was first employed as a state chemist at the Hinton drug lab, and then, for a period of about eight years (from late 2004 until January 2013), at the DPH Amherst drug lab. She was arrested by the

Massachusetts State police on January 19, 2013, based on evidence found at her Amherst lab workstation and in her car indicating that she had tampered with samples of suspected drugs submitted to the lab for analysis.

4. A search of Farak's car also yielded substance abuse treatment materials, including a "ServiceNet Diary Card" reflecting drug theft and use by Farak dating back to December, 2011.

5. On February 14, 2013, Sergeant Joseph Ballou of the State police sent an e-mail with the subject heading "FARAK admissions" to AAG Anne Kaczmarek, who had been assigned to prosecute Farak, and AAG John Verner, who was the chief of the criminal bureau of the office of the Attorney General (OAG). The Ballou e-mail stated, "Here are those forms with the admissions of drug use I was talking about," and had eleven pages of documents attached to it. Attachment A.

6. The "forms" attached to Sergeant Ballou's e-mail included the ServiceNet Diary Card reflecting Farak's drug use in December 2011 and other substance abuse treatment records.

7. Nevertheless, State troopers described this evidence as "assorted lab paperwork" in the sworn return filed with the District Court that had issued the search warrant and in the investigative report

which purported to reflect a complete and accurate inventory of the evidence they had seized.

8. The OAG did not present any evidence of the substance abuse treatment materials found in Farak's car to the grand jury investigating her misconduct in 2013.

9. And when, in March 2013, the OAG prepared a packet of investigative materials from the Farak case, which it provided to district attorneys throughout the state "[p]ursuant to this Office's continuing obligation to provide potentially exculpatory information to the District Attorneys," neither the December 2011 ServiceNet Diary Card or other substance abuse treatment records seized from Farak's car were included.

10. In August and September of 2013, defense attorneys preparing for a consolidated multi-defendant new trial motion hearing before Judge Kinder in Hampden Superior Court -- at which the focus of inquiry was to be the timing and scope of Farak's misconduct -- sought access to the evidence seized from Farak's car. They also sought evidence of third parties with knowledge of Farak's illegal behavior.

11. The OAG successfully opposed defense efforts to access the car evidence, making statements that were not accurate. For example, on September 16, 2013, AAG

Kris Foster stated in a letter to Judge Kinder that all documents in Sergeant Ballou's possession had "already been disclosed" to defense attorneys. And on September 17, 2013, AAG Foster claimed in an e-mail to defense attorney Luke Ryan that evidence seized from Farak's car was "irrelevant to any case" other than the Commonwealth's case against Farak. But, in fact, paperwork from Farak's car, including the December 2011 ServiceNet Diary Card, had not been disclosed to the defense and was highly relevant to whether Farak's misconduct was limited to a few months in 2012.

12. Similarly, in a Superior Court filing dated October 1, 2013, AAG Foster asserted that a request by defense attorneys to subpoena AAG Kaczmarek and Farak-related documents in her possession -- which of course included the December 2011 ServiceNet Diary Card -- amounted to a "fishing expedition."

13. Consequently, the consolidated hearing before Judge Kinder took place in September and October 2013, with defendants left unaware of the true nature of the "paperwork" seized from Farak's car, or the existence of the December 2011 ServiceNet Diary Card. The Commonwealth argued that there was no evidence to indicate that Farak's misconduct had started before July, 2012, and Judge Kinder so found. Defendants who pleaded guilty before that date were denied relief.

14. After Farak pleaded guilty in January 2014, Attorney Ryan, who had been involved in the consolidated hearing before Judge Kinder, was granted leave to view the evidence seized from Farak's car in a Hampshire County drug case in which the substances had been submitted to the Amherst lab prior to Farak's arrest.

15. Attorney Ryan examined this evidence on October 30, 2014.

16. Thereafter, on November 13, 2014, the OAG issued a 289-page discovery disclosure to District Attorneys across the Commonwealth, consisting of copies of the substance abuse treatment materials and other exculpatory papers seized from Farak's car one year and ten months earlier.

17. Defense attorneys were thereafter granted access to Farak's mental health treatment records from providers linked to the treatment records seized from Farak's car and in the custody of the Hampden County Sheriff's Department, which then had custody of Farak.

18. The records were produced in March, 2015, subject to a protective order. The records made clear that Farak stole, consumed, and tampered with all manner of drug evidence and lab standards while working at the Amherst lab, and that she did so not for six months but for her entire eight-year tenure at the lab.

19. On May 13, 2015, the protective order was modified on the motion of ADA Jane Montori of the Hampden County District Attorney's office and with the assent of the defendants so that the records could be provided to other district attorneys offices.

20. Meanwhile, on April 8, 2015, the Supreme Judicial Court decided Cotto and Commonwealth v. Ware, 471 Mass. 85 (2015), noting that the Commonwealth had yet to ascertain the "magnitude and implications" of the Amherst Lab scandal, id. at 95, reminding prosecutors of their "duty to learn of and disclose to a defendant any exculpatory evidence that is held by agents of the prosecution team," Cotto, 471 Mass. at 112, and ordering the Commonwealth to notify Judge Kinder by May 8, 2015, whether it intended to "thoroughly investigate the timing and scope of Farak's misconduct at the Amherst drug lab in order to remove the cloud that has been cast over the integrity of the work performed at that facility, which has serious implications for the entire criminal justice system." Id. at 115.

21. On April 23, 2015, representatives from the criminal defense bar and civil rights organizations met with Deputy Attorney General Colin Owyang and Criminal Bureau Chief Kimberly West to discuss how the OAG might respond to the Court's exhortation in Cotto for a

thorough investigation into the timing and scope of Farak's misconduct.

22. In other discussions with representatives of the OAG, citing delays in identifying and notifying defendants affected by the Hinton Lab scandal, defense organizations also emphasized the need to identify and notify defendants affected by Farak's misconduct. Deputy AG Owyang subsequently indicated that he might convene a meeting with District Attorneys to discuss how the injustices caused by Farak's misconduct could best be remedied.

23. On April 28, 2015, the OAG advised Judge Kinder that it would indeed conduct the Cotto-prescribed investigation.

24. On June 4, 2015, defense attorneys Luke Ryan and Rebecca Jacobstein wrote to ADA Montori, copying the district attorneys of the ten other counties, urging her to join their motion to entirely vacate the protective order still in place relative to the treatment records produced in March. The attorneys stated, "We believe that any prosecutor presently in possession of the records has an ethical and constitutional duty to seek the removal of any impediment currently preventing the disclosure of this evidence to post-conviction defendants." Attachment C.

25. Judge Kinder vacated the protective order on June 16, 2015, and the true scope of Farak's misconduct was soon thereafter reported in the media. See Evan Allen and John Ellement, State chemist may have affected more drug cases than previously known, Boston Globe (July 2, 2015).

26. On August 13, 2015, AAG Thomas Caldwell, who had been assigned to lead the investigation, advised Judge Kinder that he was disseminating the Farak treatment records to state and federal law enforcement agencies.

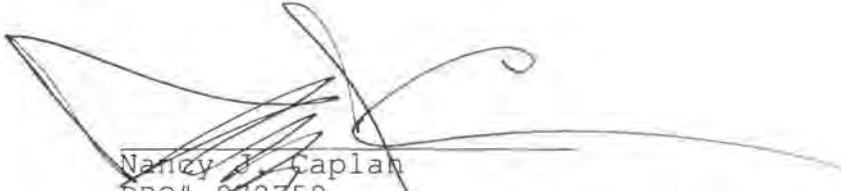
27. On September 25, 2015, attorneys from the MBA, MACDL, ACLUM, and CPCS wrote to Deputy AG Owyang offering to participate in the discussion with district attorneys that he had said he might convene. The organizations emphasized the obligation of prosecutors to identify and notify affected defendants, as well as the wisdom of "developing alternatives to costly case-by-case litigation." Attachment D.

28. On November 5, 2015, AAG Caldwell filed papers in Hampden County Superior Court in which he affirmed that Farak began using controlled substances regularly in the last quarter of 2004 and that she was under the influence of controlled substances during the vast majority of the hours that she worked at the Amherst lab from that time until her removal from the

lab on January 18, 2013. Attachment E. The following day, AAG Caldwell informed Attorney Jacobstein that he had shared this information with the District Attorneys. Attachment F.

29. The OAG's report of its investigation into the timing and scope of Farak's misconduct was filed with the Hampden Superior Court on April 1, 2016. Attachment G. An impoundment order initially in place relative to that report was vacated on May 3, 2016.

SIGNED UNDER THE PAINS AND PENALTIES OF PERJURY
THIS 31st DAY OF MAY 2016.



Nancy J. Caplan
BBO# 072750
Committee for Public Counsel Services
Drug Lab Crisis Litigation Unit
Roxbury, MA 02119
(617) 445-7581

COMMONWEALTH OF MASSACHUSETTS

SUPREME JUDICIAL COURT

SUFFOLK, ss.

NO. SJ-2014-0005

KEVIN BRIDGEMAN,
and others

v.

DISTRICT ATTORNEY FOR THE SUFFOLK DISTRICT,
and others

MOTION TO MODIFY IMPOUNDMENT ORDER

List of Attachments

- A. E-mail from Joseph Ballou to Anne Kaczmarek, and attachments (Feb. 14, 2013).
- B. Letter from Attorney Luke Ryan to AAG Patrick Devlin (Nov. 1, 2014).
- C. Letter from Attorneys Rebecca Jacobstein and Luke Ryan to ADA Jane Montori (June 4, 2015).
- D. Letter from Attorneys Matthew R. Segal, Randy Gioia, Michael S. Hussey, and Robert W. Harnais to Deputy Attorney General Colin Owyang (Sept. 25, 2015).
- E. In the Matter of a Grand Jury Investigation, Commonwealth's Response to June 1, 2015, Scheduling Order (Nov. 5, 2015).
- F. E-mails to and from AAG Thomas Caldwell and Attorney Rebecca Jacobstein (Nov. 6, 2015).
- G. Office of the Attorney General, Investigative Report Pursuant to Commonwealth v. Cotto, 471 Mass. 97 (2015) (Apr. 1, 2016).

Attachment A

Litalien, Paul (POL)

From: Ballou, Joseph (AGO)
Sent: Thursday, February 14, 2013 3:31 PM
To: Kaczmarek, Anne (AGO)
Cc: Irwin, Robert (AGO); Verner, John (AGO)
Subject: FARAK Admissions
Attachments: Articles and Notes.pdf; Emotion Regulation Homework.pdf; Positive Morphine Test.pdf; Emotion Regulation Worksheet.pdf

Anne,

Here are those forms with the admissions of drug use I was talking about. There are also news articles with handwritten comments about other officials being caught with drugs. All of these were found in her car inside of the lab manila envelopes.

Joe

Powered by **Berkshires.com**

Home | [Berkshires](#) | [Berkshire Chamber](#) | [Berkshire Community College](#) | [City of Pittsfield](#)

Pittsfield
.com

News | Education | Arts | Obituaries | Events | Green | Park Square Soapbox | Sports | Dining | Real Estate | [Send feedback to info@pittsfield.com](#)

Capeless Statement on Steroid Probe

Staff Reports

06:51 PM / Tuesday, March 29, 2011

Like

0

0

Important 0 Interesting 0 Funny 0 Awesome 0 Inspiring 0 Ridiculous 0



DA David F. Capeless

PITTSFIELD, Mass. — The articles, rumors and blogs about the investigation into the use of steroids by local law enforcement officers has prompted the district attorney to address the ongoing investigation through a statement released on Tuesday afternoon.

District Attorney David F. Capeless revealed the name of the state trooper implicated in the probe, Daniel Gale, and confirmed that Pittsfield Police Officer David Kirchner was removed as a member of the Berkshire County Drug Task Force.

Indications that the investigation was undertaken by authorities outside the county were confirmed in Capeless' statement. The district attorney says the allegations of steroid use were brought to his attention after a "local police department was contacted by a federal agency." Capeless does not state which police department or which agency (the U.S. Postal Service has told local media that there is an investigation but not into who or what).

The probe was first revealed by postings on the discussion site Topix and on a blog run by former county resident GM Heller and Daniel Valenti's PlanetValenti.com.

The Berkshire Eagle

has followed up with two articles that revealed Kirchner's involvement and that of a then unnamed state trooper from the Russell barracks in Hampden County.

Capeless said he had decided to make the following limited public statement about the investigation:

"Over the past week, the public has been exposed to rumors, in addition to hard information, regarding steroids and their sale and use here in Berkshire County. Ordinarily, it is the firm policy of my office not to confirm ongoing investigations, much less to divulge their specifics, in order to maintain the integrity and effectiveness of our investigative efforts. However, exceptions need to be made when either public safety or public confidence is being jeopardized by a lack of information.

"In this case, I have decided to make a limited public statement, divulging only that information necessary to adequately explain the circumstances, since there remains an ongoing criminal investigation.

"Several weeks ago, a local police department was contacted by a federal agency to alert them that an investigation into the importation of steroids had uncovered deliveries into their town. A joint investigation was undertaken which resulted in the seizure of steroids and the execution of a search warrant. An examination of recovered materials revealed that two law enforcement officers, Pittsfield Police Officer David Kirchner (a member of the Berkshire County Drug Task Force) and state police Sergeant Daniel Gale (then assigned to the Russell barracks in Hampden County), had apparently been the recipients of steroid deliveries. So far, no information has been uncovered which would indicate involvement in anything other than personal use of steroids by those two, or that any other officers were involved.

"When the information about the two officers was discovered, the local investigating officer, a member of the Berkshire County Drug Task Force, notified his supervisors in the Task Force, who immediately notified me. Since Kirchner was, at the time, a member of the Task Force, it was agreed that we would seek assistance from outside the county in continuing the investigation. State police investigators normally assigned to other units in other jurisdictions were dispatched and are presently engaged in furthering that investigation. Colonel Marian McGovern, the head of the State Police, and Pittsfield Police Chief Michael Wynn were informed of the situation, and each has initiated administrative proceedings while the criminal investigation is underway. Kirchner was immediately removed from the Task Force.

"I take very seriously any allegation that a law enforcement officer has breached the public trust by engaging in criminal activity, and I take just as seriously the reputation of all of the rest of us in law enforcement who honor that trust and continue to guard the public with integrity. No arrests have been made and any decision regarding criminal charges relating to these circumstances will be made with a very clear eye towards those two principles but only upon completion of the ongoing investigation."

More Featured Stories

Most Read | Most Comments | All Items | Blogroll

Pittsfield's Public's Pub Owners Fined For >>

County Qualifies for FEMA Funding >>

New Executive Director Appointed for >>

Berkshire Community College President >>

Legislators Host Wind Siting Hearing At >>

FEMA Opens Disaster Recovery Centers in >>

Senate Candidate Kinszel Pittsfield's >>

Now Powering Pittsfield Seeks to Reduce >>

FREE No Obligation Price Quote

SOUTH SHORE FUEL

Business Name	Hours & Location	Website
Adirondack Payroll		Expert Specialties
Berkshire Bank		Compliance Audit Assistant
Berkshire Communications Inc.		Answering Service Operator
Berkshire Life Insurance Company of America		Deputy (JHEI)
BFAIR		Pittsfield Petal Juts

GO TO: Post your resume Post a job listing View All Listings

And Kirchner seemed like such a good guy - I do feel bad for his 15 yo. daughter. (Thank you I'm not a law enforcement officer)

P.S. Most of the cases he's been a part of have been dismissed for exactly this reason.



Pittsfield pharmacist Nicole Bombardier sentenced to 3 years for stealing 200+ OxyContin pills intended for prescriptions

Published: Tuesday, October 25, 2011, 6:08 PM Updated: Tuesday, October 25, 2011, 11:23 PM



By Patrick Johnson, The Republican

SPRINGFIELD - A former Pittsfield pharmacist was sentenced to three years in prison Monday and ordered to pay \$15,500 in fines and restitution after she pleaded guilty to stealing oxycodone tablets from her employer.

Nicole Bombardier, 31, of Cheshire, pleaded guilty to a single count of tampering with consumer products in March of last year.

The prosecution charged that between May and September of 2008, Bombardier, a pharmacist at Price Chopper in Pittsfield, stole at least 239 OxyContin tablets from the store's inventory. She replaced the stolen pills with other medications for the treatment of high blood pressure.

At least one person who had a prescription for OxyContin filled at the pharmacy unknowingly received blood-pressure medication, and as a result ended up in the hospital twice for what was described as a serious bodily injury.

Judge Michael A. Ponsor ordered Bombardier to serve three years in prison and then serve two years of supervised release. She was also fined \$12,500, and ordered to pay \$3,000 in restitution to the pharmacy and to the customer that was hospitalized from switched medication.

© 2011 masslive.com. All rights reserved.



don't miss
TODAY's deal from AT&T

START SAVING

SFGate.com | ARTICLE COLLECTIONS

You are here: SFGate Home » Collections

Sponsored Links

Money Market Rates

Get The Best Money Market Rates With Exclusive Online Offers.
(firstcountbank.com)

Top Money Market Accounts

Find the Highest Yields in the US. Compare Minimums & Features.
(PIMA Bankrate.com)

Top Anti Aging up to -57%

Top Anti Aging at bargain prices. Compare offers and save up to 57%!
(www.news72.com/Anti-Aging)

RELATED ARTICLES

- State won't charge ex-drug lab tech Deborah Madden
January 1, 2011
- Judge closed of bias in drug lab dispute
August 6, 2010
- Dennis Cyrus gets tie in Pogo Street Mob killings
November 20, 2010

SF, POLICE DEPARTMENT

Feds indict former SFPD drug-lab technician

December 02, 2011 | Henry K. Lee, Chronicle Staff Writer

A former civilian technician at the San Francisco Police Department's crime laboratory was indicted by a federal grand jury Thursday on charges she skimmed cocaine from the lab.

Deborah Madden, 61, of San Mateo was charged with a felony count of acquiring a controlled substance by subterfuge in the indictment handed up by a grand jury in San Francisco.

Madden obtained cocaine by "misrepresentation, fraud, forgery, deception and subterfuge" from October to December 2009, the indictment said.

Madden is to be arraigned in U.S. District Court in San Francisco on Wednesday.

Her attorney, Paul DeMeester said, "The first question that comes to mind is, where is the federal jurisdiction? In other words, what is the federal crime? The Constitution limits the power of the federal government. This is reaching."

Recommend

0

0



Former longtime San Francisco lab technician Deborah Madden appears for her arraignment for drug possession in a South San Francisco, Calif., courtroom, Monday, April 5, 2010. The San Francisco police crime lab was shut March 9, 2010 amid allegations in December that Madden stole cocaine evidence. Madden was in court on Monday on an unrelated charge to the lab scandal.
Credit: Paul S. Johnson

Sponsored Links

Lab Technician

Search 1000s of jobs. Top employers. Local & national. Apply now.
(www.JobsOnline.net)

Stock Alert: "VELA"

"The World's Most Undervalued 4G Company." - Tobin Smith, Fox Business
(www.telecominvesting.com/VELA)

The Next Internet Boom

Stock Investment With 1,000% Potential Gains
(www.stockauthority.com)

advertisement | your ad here

FREE SHIPPING DURING THE ONE DAY SALE



1 macy's ONE DAY SALE

MORNING SPECIAL \$99.99
Select Women's Designer
Dress & Wedding Gowns
Reg. \$235-\$385

ROLL OVER TO SHOP NOW >

The federal case comes nearly a year after state prosecutors said there was insufficient evidence to show that Madden was stealing drugs she was supposed to be testing.

The allegations rocked the Police Department and led to the closure of its drug lab and prosecutors' dismissal of hundreds of drug cases.

Madden left the department in late 2009 just as lab supervisors began to suspect she was stealing drugs. In June, she pleaded guilty to an unrelated felony cocaine possession charge in San Mateo County.

E-mail Henry K. Lee at hlee@sfchronicle.com.

Sponsored Links

HEARST newspapers © 2011 Hearst Communications. [Investment Banking](#) Ad Conditions
[Looking For Investment Banking?](#) [Find It Nearby With Local.com!](#)
[Index by Keyword](#) | [Find \(Education\)](#) | [Privacy Policy](#) | [About Our Ads](#)

Mortgage Rates Hit 2.50%

If you owe under \$729k you may qualify for 3.01% APR Govt Refi Plans.
([www.SeeRefinanceRates.com](#))

Now: Top Anti Aging -63%

Compare prices now and save up to 63% on quality Anti Aging bargains!
([www.Anti-Aging.best-deal.com](#))

EMOTION REGULATION Worksheet
OBSERVE AND DESCRIBE EMOTIONS

DIRECTIONS: Write as much as you can about each as soon after "event" as possible. Write on back for more room.

Vulnerability Factors: What made me more vulnerable? - tired this morning (though enough sleep)
- urges to use before hand

Emotion Name(s): Shame

Intensity: (0-10) $6\frac{1}{2}$

Prompting Event: For my emotion (what, who where, when?)

told Jim earlier in week I put DEA application in, but I didn't
(figured I would later/soon) - Today found out I need his signature on it -
he knows/will know I lied

Interpretations: What are my Thoughts, Judgments, Beliefs, Assumptions, Appraisals of the situation?

- He will know I lied - judge me
- wondering if I can even have boss over him sign it
- have to wait until at least tomorrow to tell/face him = build up
anxiety

Face and Body Changes: What am I feeling in my face and body?

- res. lossiness in hands/arms
- slight headache - head going in circles how to "fix" situation

Body Language: What is my facial expression, body posture and gestures?

- clenched jaw
- slouched a bit
- passing around a little

Action Urge: What do I feel like doing or saying?

- Asking Becky who she had sign it
- Use those 12 urgent samples to analyze out of next 15)
- make up lie

What I Did or Said:

- call Anna - commit to not using
- asked Becky - she thinks Jim signed her stuff

After Effects: What is my state of mind, other emotions, actions or thoughts?

Action of Emotions: Communicate?, Organize?, Give Information?

- Motivate/tell me to get my act in gear (both here and in
life) = take charge, don't procrastinate

	Tues
Sad	3 1/2
isolation/anger	3 1/2
anxious	2 1/2
pleasantry/emotion	1
shame	3 1/2
Kill	1
hurt	2
all days	0/4
outburst	4 yrs. (densest/trauma)
avoid	5 yrs

Tues	Wed	Th	F	S	S	M
2 1/2	1 1/2	2 1/2	1 1/2	2	1	2

in 2 glasses - 1 change, 1 hotel

T. work, cable guy, Tx; home bus relayed then when I left - argued w/ Nikki RE Smart TV) - offered to let her watch X-Files, try to do DB Thawwork; bed early

F.P.	x
OMA	x
Sas	x
Denim	
wave	x
OA	x
luc	x
Acet	x
cap	x
sub	x
swell	x

Acet	x
Cont	x
PA	x
Thurs	x
Alas	x
O+B	x
RA	x
T+M	x
Will	x

- COPY OF YELLOW POST: IT
ATTACHED TO FRONT OF
NEXT PAGE

#618

Positive
morphine
test

Unknown:
Farah SS:037-56-9138

41135099 AREA/ROUTE/STOP: XXXXXXXX
 WORK CONNECTION/HOLYOKE
 DRS BOMBARDIER & ADAMO
 575 DEECH ST
 HOLYOKE, MA 01040

LABORATORY REPORT



Quest
 Diagnostics

PATIENT NAME 812482642		PATIENT ID KIVLE...		ROOM NO.	LOC	CCX	PHYSICIAN
PAGE 1	REQUISITION NO. 4464330	ACCESSION NO. 206058Y	LAB REF.	COLLECTION DATE & TIME 81262011 09:00AM	LOG IN DATE 81282011	FAV DATE 81292011	TIME 12:08AM

REMARKS: Client Site Location:

REASON FOR TEST: POST ACCIDENT

DONOR ID VERIFIED: PHOTO I.D.

REPORT STATUS	TEST	RESULT		UNITS	REFERENCE RANGE	SITE CODE
		IN RANGE	OUT OF RANGE			
FINAL	EMPLOYER WESTFIELD OTHER ID NO DONOR PHONE 313-5157 REPORT FOR:					
	WORK CONNECTION/HOLYOKE DRS BOMBARDIER & ADAMO 575 DEECH ST HOLYOKE, MA 01040			41135099		
	*** POSITIVE/ABNORMAL REPORT ***					
	Tests Ordered: 45190N (SAP 18-50+MDMA/60M/T)					
	Integrity Checks			Acceptable Range		
	CREATININE	121.4 ng/dL		>= 20 ng/dL		
	pH	5.9		4.5-8.9		
	OXIDIZING ADULTERANTS	Negative				
	Substance Abuse Panel			Initial Test Level	MS Confirm Test Level	
	AMPHETAMINES	Negative		500 ng/mL	250 ng/mL	
	BARBITURATES	Negative		300 ng/mL	200 ng/mL	
	BENZODIAZEPINES	Negative		300 ng/mL	200 ng/mL	
	COCAINE METABOLITES	Negative		150 ng/mL	100 ng/mL	
	MARIJUANA METABOLITES	Negative		50 ng/mL	15 ng/mL	
	METHADONE	Negative		300 ng/mL	200 ng/mL	
	METHAQUALONE	Negative		300 ng/mL	200 ng/mL	
	MDA-ANALOGUES	Negative		500 ng/mL	250 ng/mL	
	OPIATES			2000 ng/mL		
	CODEINE	Negative			2000 ng/mL	
	MORPHINE	POSITIVE			2000 ng/mL	
	6-MONOACETYLMORPHINE	Negative		10 ng/mL	10 ng/mL	
	PHENCYCLIDINE	Negative		25 ng/mL	25 ng/mL	
	PROPOXYPHENE	Negative		300 ng/mL	200 ng/mL	
	Quantitative Results					
	MORPHINE	7102 ng/mL				
	>> REPORT CONTINUED ON NEXT PAGE <<					

EMOTION REGULATION Worksheet
OBSERVE AND DESCRIBE EMOTIONS

DIRECTIONS: Write as much as you can about each as soon after "event" as possible. Write on back for more room.

Vulnerability Factors: What made me more vulnerable?

last night w/ Molly
Shawn (+ Becky) not taking today off.

Emotion Name(s): (Pre-) Shame

Intensity: (0-10) 7

Prompting Event: For my emotion (what, who where, when?)

got 'good' sample @ work & having urges to use
(+ knowing that I will be the only one here after lunch)

Interpretations: What are my Thoughts, Judgments, Beliefs, Assumptions, Appraisals of the situation?

I'm a bad person for having urges
" " " " " not wanting to try to stop them
It doesn't matter - I won't get caught

I know I should
call Anna, but I
don't want to.

Know I'll feel worse when/if I use

I can lie on my homework

Face and Body Changes: What am I feeling in my face and body?

hungry (!?)
head is spinning 1000/h
little tightness across shoulder

Body Language: What is my facial expression, body posture and gestures?

can't sit still - hands to my head temples
clenched jaw

Action Urge: What do I feel like doing or saying?

hurry up & prepare fuse (my mind says to get it out of way, but
→ give in and go w/ urge I don't think that will be the end of it)

What I Did or Said:

After Effects: What is my state of mind, other emotions, actions or thoughts?

Action of Emotions: Communicate?, Organize?, Give Information?

ServiceNet Diary Card

Name: _____

Week of: _____

Observe and Describe Emotions: Today I felt (0-5):	12-26 --Mon	12-27 --Tues	12-28 Wed	12-29 --Thurs	12-30 --Fri	12-31 --Sat	1-1 --Sun
sadness	3 1/2	2 1/2	2 1/2	3	3	2 1/2	
frustration/anger	4 1/2	4 1/2	4 1/2	4 1/2	4 1/2	4 1/2	
anxiety	2 1/2	2	2 1/2		3	2	
"pleasant" emotion	1	2	1 1/2		2 1/2	1	
shame	3	2	3 1/2	4	4	3	
Target Behaviors: Today I felt an urge to (0-5):							
Kill myself	0	0	0			2	
Injure myself	0	0	1			3	
Drink or take drugs	3 1/2	1 1/2	1 1/2	1 1/2	1 1/2	4 1/2	
Binge, purge or not eat	3 1/2					4 1/2	
outburst	5 yes	4 yes	3 1/2 little		2	5 yes	
avoid	5 yes	4 yes	4 1/2 yes			3	

Write "Yes" in the box next to the number if you acted on an urge.

What did you do today?

Monday: go home - expect to have relaxing day w/ Nikki, but went downhill fast, bed by 6pm

Tuesday: with Nikki (about everything) - get mad about computer people for chocolate (broken sp. lid), so blow it off

Wednesday: leave work 11:30 to get X-mas stuff done (shirts), definitely moments throughout day where I thought I sounded stupid or did something stupid; DBT group: "throw the shirt to the curb"

Thursday: tried to resist using @ work, but ended up failing. (I know I should have called, but had thoughts about how I felt last time I called) I thought B. I'm up to midnight

Friday: go to NY in afternoon, @ work use w/out debating doing it - My thought about it's identity risk (i.e. wavering back & forth about whether I want to use)

Saturday: home from NY - mad about missing part of Pats game (out of 3 reasons, 2 are Nikki's, but main one is not) - had 2 ciders during game when mad, but decided not to drink 3rd

Sunday: press X-mas in RI

Nikki drinkn gaw way home from RI

Notes:

Wed: kept thinking that most
things I said to others
sounded stupid, or the "where
the hell did that come from"
feeling (work, @ doggy
day care, a little @ DBT group)

SKILLS	M	T	W	Th	F	Sa	Su
Formal Practice M		X	X	X	X	X	X
One Mindful Activity	X	X	X	X	X	X	
Stops & Slickers				X	X		
DEAR MAN IE			X	X			
GIVE							
FAST							
Observe & Describe ER							
Feel Emotion as a Wave	X	X	X	X		X	
Mindfulness of Body Sensations					X	X	
Opposite Action	X	X	X	X	X		X
Problem Solving	X	X	X			X	X
Values		X	X	X		X	
Accumulate Positives	X	X	X	X	X	X	X
Build Mastery			X	X		X	X
Cope Ahead	X	X	X	X	X	X	
Treat Physical Illness	X				X		
Balanced Eating			X			X	X
Avoid Mood-Altering Substances	X	X	X				
Balanced Sleep	X	X	X	X	X	X	
Exercise							X
Avoid Avoiding			X	X	X	X	
Activities DT			X	X		X	X
Contributions		X				X	
Comparisons	X		X	X	X		
Opposite Emotions							
Pushing Away	X		X	X		X	
Thoughts		X					
Sensations							
Self Soothe (the five senses)		X	X		X		
Temperature							
Intense Exercise							
Progressive Relaxation / Paul					X		
Imagery							
Meaning					X		
Prayer							
Relaxation		X	X				
One Thing in the Moment		X		X			X
Brief Vacation					X		
Encouragement	X		X	X			
Pros & Cons							X
Observe the Breath		X					
Half-Smile	X		X				
Awareness				X			X
Radical Acceptance	X	X	X	X	X	X	X
Turning the Mind		X	X	X	X	X	
Willingness	X	X	X	X	X	X	X

Attachment B



Sasson Turnbull Ryan & Hoose

Experience. Dedication. Integrity.

100 Main Street, 3rd Floor | Northampton, MA 01060 | www.strhlaw.com
TEL 413-586-4800 | FAX 413-582-6419 | EMAIL info@strhlaw.com

Howard S. Sasson
Cynthia J. Turnbull
Luke Ryan
David P. Hoose

November 1, 2014

Patrick Devlin
Assistant Attorney General
One Ashburton Place, 19th Floor
Boston, MA 02108
patrick.k.devlin@state.ma.us

VIA E-MAIL AND U.S. MAIL

Re: Newly Discovered Evidence

Dear Attorney Devlin:

My purpose in writing today is to bring to your attention certain evidence I discovered during the inspection that took place at your office on October 30, 2014, in accordance with the protective order I executed in the pending Hampshire County Superior Court case of Commonwealth v. Wayne Burston, Indictment No. 13-113.¹ Because you did not participate in the litigation that took place in Hampden County Superior Court last fall, the significance of what I found may not be immediately apparent to you. Accordingly, before discussing this evidence, I am going to provide the following summary of the circumstances surrounding Ms. Farak's arrest and the litigation it spawned in other criminal cases.

Sonja Farak was one of four chemists who worked analyzing unknown substances at a forensic laboratory in Amherst. On January 17, 2013, an evidence officer named Sharon Salem discovered that two samples entrusted to Farak, A12-04793 and A12-04791, were not in the main evidence vault where they were supposed to be. The following morning, another supervisor named James Hanchett discovered a sandwich bag containing cocaine at Farak's workstation, as well as counterfeit cocaine and the two missing samples that inspired Salem's original search.

The condition of the K-pac bags containing A12-04793 and A12-04791 proved to be a source of great concern. Hanchett later explained that these bags would have had to have been heat-sealed when they were returned to the main evidence vault. However, on the morning of January 18, 2013, they were not only unsealed; they had not been cut open. This led Hanchett to conclude

¹ A copy of that protective order is attached to this correspondence as Exhibit A.

that Farak had cut open the original bags and removed the contents, then put other substances into a new bags she created to take the place of the original ones. According to Hanchett, if Salem had not happened to check the main evidence safe that day, Farak could have sealed the replacement K-pac bags for A12-04791 and A12-04793, returned them to the vault, and her tampering would have gone undetected. As much as it pained him to admit, Hanchett conceded that Farak could have been doing this sort of thing for years.

When Farak's malfeasance came to light, it had serious implications for hundreds, if not thousands, of criminal cases in which she had purportedly done analytic testing. Many, but not all, of these cases that were pending at the time of her arrest were dismissed. *See, e.g., "Arrest of chemist Sonja Farak results in dismissals of drug cases against 14 people in Hampden County"* http://www.masslive.com/news/index.ssf/2013/02/so_far_14_defendants_arrested.html (Feb. 21, 2013). In addition, these allegations of evidence tampering called into question the integrity of convictions in many other cases where Farak had either testified at trial and/or signed her name to so-called "drug certs," attesting that samples assigned to her for testing contained controlled substances.

At the time, I happened to represent defendants in both camps.

Commonwealth v. Rolando Penate, Hampden County Indictment No. 12-083, was a pending case where my client was charged with multiple counts of distribution of heroin and possession of heroin and cocaine with the intent to distribute. Discovery in that case indicated that the substances at issue were assigned to Farak for testing on December 20, 2011, and January 4, 2012.

Commonwealth v. Rafael Rodriguez, Hampden County Indictment No. 10-1181, was a post-conviction case where my client had pled guilty on September 9, 2011, to possessing cocaine with the intent to distribute and received an agreed upon sentence to state prison of four to five years.

Eventually, it became clear that the Hampden County District Attorney's office remained committed to prosecuting Mr. Penate and keeping Mr. Rodriguez in state prison. In both cases, prosecutors took the position that there was no evidence suggesting that Farak was engaging in misconduct either at the time the substances in question were at the Amherst Laboratory or when Mr. Rodriguez tendered his plea.

I subsequently filed a motion to dismiss the charges against Mr. Penate and a motion to withdraw Mr. Rodriguez's plea. Judge Mary-Lou Rup decided that Mr. Penate was entitled to an evidentiary hearing. Judge Jeffrey Kinder reached the same conclusion in Mr. Rodriguez's case and decided, for reasons of judicial economy, to consolidate his hearing with hearings for fourteen other post-conviction defendants.

In advance of the consolidated post-conviction hearing that began on September 9, 2013, the Hampden County District Attorney's office provided defense counsel with certain discovery, including police reports and the grand jury minutes related to Farak's prosecution. First

Assistant Frank Flannery was assigned to Mr. Rodríguez's case, and I quickly learned from my conversations with him that he was essentially acting as a conduit in providing defense counsel with whatever discovery he received from your office.

As you may know, on the day Farak was arrested her car was impounded and investigators obtained a warrant to search it. In a report memorializing that search, Trooper Randy Thomas indicated that among the items seized was "assorted lab paperwork."² Photographs were taken of Farak's car at the time of the search, but few captured the contents of this paperwork and no reports were authored detailing what exactly these papers contained.

During the grand jury proceedings that culminated in Farak's indictment, the only papers from her car that your office offered as exhibits were news articles concerning chemists and/or law enforcement officers who had been caught mishandling drug evidence. One of these articles appeared on-line at Pittsfield.com and was printed on September 20, 2011.³ This article reported that an investigation into the illegal possession of steroids led to the removal of a Pittsfield Narcotics Officer named David Kirchner from the Berkshire County Drug Task Force. The bottom right-hand corner of the article contained the following handwritten correspondence:

- And Kirchner seemed like such a good guy. I do feel bad for his 5 y.o. daughter,
- (Thank god I'm not a law enforcement officer)
- p.s. Most of the cases he's been a part of have been dismissed for exactly this reason.

This piece of paper constituted the most compelling piece of evidence disclosed to defense counsel insofar as it undercut an official version of events that depicted Farak as a model employee with "meticulous . . . work habits" up until "the last few weeks prior to *the incident*."⁴ That being said, the value of the document to defendants like Rolando Penate and Rafael Rodríguez depended on a factfinder making a number of crucial inferences.

First, one had to infer that Farak was responsible for printing the article and/or received it shortly after it was printed. Second, one had to infer that Farak's possession of the article reflected her interest in what might happen to her should she be caught doing something similar. Finally, one had to infer that Farak had such an interest because she was in the process of doing something similar at the time she printed and/or received the article.

² A copy of this report is attached as Exhibit B to this letter.

³ A copy of this article is attached as Exhibit C.

⁴ In fact, lead Farak investigator Sgt. Joseph Ballou went so far as to tell grand jurors that when he met Farak for the first time the summer before (during the Dookhan investigation), he found her to be "somewhat pretty," at least in contrast to her "drawn and pale" appearance on the day of her arrest.

Due, in part, to my concern that a factfinder might not draw all these inferences, I filed motions seeking documentary evidence in the possession of your office and/or the State Police. Among other things, I sought any evidence suggesting that a third party had knowledge of Farak's alleged malfeasance prior to her arrest. In response to this request, your office took the position that:

The AGO has turned over all grand jury minutes, exhibits, and police reports in its possession to the District Attorney's office. Based on these records, to which the defendant has access, *there is no reason to believe that a third party had knowledge of Farak's alleged malfeasance prior to her arrest.*

Several days before the consolidated post-conviction evidentiary hearing began, First Assistant Flannery agreed to arrange for me and two other defense attorneys to view the evidence in your office's possession. Much to our surprise, he subsequently informed us that your office was unwilling to permit this inspection to occur.

During Sergeant Ballou's testimony at that hearing, we had the following exchange:

Q. Sir, we've been talking quite a bit now about the evidence that was in Ms. Farak's car, correct?

A. Yes.

Q. And what we've been talking about is how you described that evidence in various reports you wrote, correct?

A. Yes.

Q. And we've been looking at photographs of this particular evidence?

A. Yes.

Q. And the reason we're doing that is because this evidence no longer exists, right?

A. No. It still exists.

Q. Oh, where is it?

A. It's in a drug storage locker -- I mean, excuse me, evidence storage locker.

Q. And can you tell me why none of the counsel for none of the defendants have been permitted to look at any of this evidence?

MR. FLANNERY: Objection.

THE COURT: Sustained.

Q. (By Mr. Ryan) Well, there's this physical evidence that we've been discussing from the car, correct?

A. Yes.

Q. And you would agree that your reports regarding what was in the car are summary notes?

A. Summary, yes.

Q. You didn't write paragraph after paragraph about what assorted lab paperwork was found, right?

A. As you mentioned, we also took pretty detailed photos, yes.

Q. Well, how many photos did you take?

A. I didn't take any. This was from -- the crime scene services took these.

Q. And whatever is in that book, is that a fair representation of how many photographs were taken?

A. From the car, sir, yes; vehicle search warrant, yes.

Q. A couple dozen?

A. Yes.

Q. And about how many items of evidentiary interest were there?

MR. FLANNERY: Objection, Your Honor. This is not to the scope of the direct.

THE COURT: Sustained as to what has evidentiary interest.

Q. (By Mr. Ryan) Well, you did an evidence log, correct?

A. Yes.

Q. And that had some 67 items on it?

A. Yes.

Q. And a number of those items were from the car?

A. Yes. That included all of the evidence seized in the case.

Q. Did you photograph every piece of evidence that was seized from the automobile?

A. As I said, I didn't photograph anything. But yeah, crime scene services photographed the evidence as we seized it, yes.

Q. Did anybody make a video recording of the execution of the search warrant?

A. There's no video, no.

At the conclusion of the hearing on September 9, 2013, I informed the Court that your office had refused to permit me to inspect the physical evidence and conveyed my opinion that neither Sgt. Ballou's testimony nor the photographic evidence in existence served as an adequate substitute for such an inspection. Judge Kinder encouraged the parties to "work through some agreement about viewing, physically, the evidence" and placed the onus on the defense to file a motion if no such agreement could be reached.

As you know, subsequent discussions did not produce an agreement. Your office took the position that "viewing the seized evidence [was] irrelevant to any case other than Farak's." I then filed a motion to inspect in Mr. Penate's case, which Judge Kinder denied due to the pendency of the criminal charges against Farak and the existence of the aforementioned photographs.

Judge Kinder went on to deny both Mr. Penate's motion to dismiss and Mr. Rodriguez's motion to withdraw his guilty plea. In his decisions, Judge Kinder found that while Farak's conduct was "deplorable," it "postdate[d] the testing in th[ese] cases." With respect to the aforementioned news articles, Judge Kinder drew the inference that Farak was responsible for downloading and printing them, but refused to infer that "she was engaged in criminal conduct at that time." In his view, defense counsel could not point to any persuasive evidence of tampering that took place prior to July, 2012.

Mr. Penate's case proceeded to trial before Judge Tina Page. After the Commonwealth rested, I attempted to show that the samples in question could have been tampered with due to the poor oversight that existed at the Amherst lab. Judge Page sustained Commonwealth objections to this line of questioning based on the absence of any concrete proof that Farak was tampering with evidence in December, 2011 or January, 2012. Mr. Penate was ultimately convicted of one count of distributing a Class A substance and sentenced to 5.5 – 7 years in state prison.

As for Mr. Rodriguez, he and several other post-conviction defendants appealed Judge Kinder decisions denying their motions to withdraw their pleas.⁵ Recently, the Supreme Judicial Court granted an application for direct appellate review in one of these cases, *see Commonwealth v. Erick Cotto, Jr.*, SJC-11761, and invited Mr. Rodriguez to submit an amicus brief. Oral argument in Mr. Cotto's case has been scheduled for December 4, 2014.⁶ This past Thursday, the Justices issued an announcement seeking additional amicus briefs on the following issue:

Where a defendant pleaded guilty to a drug offense and thereafter sought to withdraw his plea on the basis of evidence that had surfaced concerning misconduct in other cases by the analyst at the Amherst drug laboratory who had tested the substances in this case, whether the judge erred in denying the motion because the defendant had failed to establish that any misconduct by the analyst had occurred prior to the date of the defendant's plea, or whether the defendant is entitled to a conclusive presumption that egregious misconduct occurred in his case in the same manner as a defendant seeking to withdraw a guilty plea on the basis of misconduct at the Hinton drug laboratory pursuant to this court's decision in *Commonwealth v. Scott*, 467 Mass. 336 (2014).

* * * * *

All of this brings me to what I discovered yesterday. In the box containing items seized from Farak's vehicle was an evidence bag containing the aforementioned articles, along with other

⁵ I have continued to represent Mr. Rodriguez and filed an appellate brief on his behalf on August 1, 2014.

⁶ The *Cotto* case has been joined for argument with *Commonwealth v. Ware*, SJC-11708. In *Ware*, the Justices issued the following announcement seeking amicus briefs on this issue:

Whether the defendant, who pleaded guilty in 2011 to multiple drug-related offenses, was erroneously denied postconviction discovery under Mass. R. Crim. P. 30 (c) (4), specifically, comprehensive retesting of numerous drug samples that had previously been tested by Sonja Farak, a chemist at the State drug lab in Amherst who subsequently pleaded guilty to tampering with evidence at the lab, to determine whether Farak was engaged in such misconduct at the time the substances in his case were tested.

papers Trooper Thomas had described as “assorted lab paperwork.” A review of these other papers revealed the following.

Two papers have this type-written heading:

EMOTION REGULATION Worksheet
OBSERVE AND DESCRIBE EMOTIONS

***DIRECTIONS:** Write as much as you can about each as soon as after “event” as possible. Write on back for more room.*

Below this heading are boxes for the following categories:

- **Vulnerability Factors:** What me more vulnerable?
- **Emotion Name(s):** **Intensity:** (0-10) ____
- **Prompting Event:** For my emotion (what, who, where, when?)
- **Interpretations:** What are my Thoughts, Judgments, Beliefs, Assumptions, Appraisals of the situation?
- **Face and Body Changes:** What am I feeling in my face and body?
- **Body Language:** What is my facial expression, body posture and gestures?
- **Action Urge:** What do I feel like doing or saying?
- **What I Did or Said:**
- **After Effects:** What is my state of mind, other emotions, actions or thoughts?
- **Function of Emotions:** Communicate? Organize? Give Information?

One of these worksheets contains these (and other) handwritten notes:

Vulnerability Factors:

last night w/Molly
Sharon (+ Becky) not taking today off

Emotion Name(s): (Pre-) Shame

Intensity: (0-10) 7

Prompting Event:

got a ‘good’ sample @ work & having urges to use
(& knowing that I will be the only one here after lunch)

Interpretations:

I’m a bad person for having urges	I know I should
I’m a bad person for not wanting to stop them	call Anna, but I
It doesn’t matter – I won’t get caught	don’t want to.
Know I’ll feel worse when/if I use	I can lie on my homework

Action Urge:

hurry up & prepare/use (my mind says to get it out of way, but
I don't think that will be the end of it.)
› give in and go w/urge

The other worksheet contains these (and other) handwritten notes:

Vulnerability Factors: - tired this morning (though enough sleep)
- urges to use beforehand

Emotion Name(s): Shame Intensity: (0-10) 6 ½

Prompting Event:
told Jim earlier in week I put DEA application in, but I didn't
(figured I would later/soon). Today found out I need his signature on it =
he knows/will know I lied)

Interpretations:
- He will know I lied – judge me
- wondering if I can ~~sen~~ have boss over him sign it
- have to wait until at least tomorrow to tell/face him = build up
anxiety

Action Urge:
Asking Becky who she had sign it
Use (have 12 urge-ful samples to analyze out of next 13)
- make up lie

What I Did or Said: call Anna – commit to not using
asked Becky – she thinks Jim signed her stuff

With respect to the names referenced in these worksheets, I believe that “Sharon” is Evidence Officer Sharon Salem, “Jim” is Supervisor James Hanchett, and “Becky” is the other chemist at the lab, Rebecca Pontes. As for “Anna,” on another piece of scrap paper I found these handwritten notes:

Anna Kogan MSW LICSW
256 N. Pleasant St
Suite 6
Am 01002
413-944-0965

do you EAP
accept

Based on these notes, I believe that the "Anna" referred to in the worksheets is an Amherst therapist who lists "addiction" as one of the "issues" for which she provides treatment. See http://therapists.psychologytoday.com/rms/name/Anna_Kogan_MSW,LICSW_Amherst_Massachusetts_72054 (last visited Nov. 1, 2014).⁷ I do not know whether the reference to "Molly" is to a person or the recreational drug.

As for the reference to "homework," another page I came across has, in the top left-hand corner, the following handwritten heading: "Homework 11-16-11." Below that is handwriting describing a specific "Problem/Solution." It would appear that Farak had an appointment the following day with a "prescriber." This appointment seems to have served as a source of anxiety for Farak because while she intended to disclose an intention to stop taking one medication, she was so invested in staying on a second medication she was prepared to "lie about certain things to possibly help prevent being taken off [this] med."

Also included in these papers described by Trooper Thomas as "assorted lab paperwork" are two "ServiceNet Diary Cards," which contain the following pertinent boxes:

Name: _____

Week of: _____

Observe and Describe Emotions: Today I felt (0-5):	----- ---Mon	----- ---Tues	----- ---Wed	----- ---Thurs	----- ---Fri	----- ---Sat	----- ---Sun
Target Behaviors: Today I felt an urge to (0-5):							
Kill myself							
Injure myself							
Drink or take drugs							
Binge, purge or not eat							

Write "Yes" in the box next to the number if you acted on an urge.

On the line next to "Name" on one diary card is the handwritten name "Sonja." The "Drink or take drugs" box indicates that Sonja experienced an urge to take drugs that rated a "4" on Thursday and succumbed to that urge. This "ServiceNet Diary Card" does not contain any dates.

The other "ServiceNet Diary Card" has the following handwritten dates at the top of the form:

⁷ Based on these notes, I believe I have the requisite good faith basis to seek records pertaining to Farak's treatment that are in the possession of Ms. Kogan and intend to file a motion pursuant to *Commonwealth v. Dwyer*, 448 Mass. 122 (2006), on Monday.

Observe and Describe Emotions: Today I felt (0-5):	12-26 ----- ---Mon	12-20 ----- ---Tues	12-21 ----- ---Wed	12-22 ----- ---Thurs	12-23 ----- ---Fri	12-24 ----- ---Sat	12-25 ----- ---Sun
---	--------------------------	---------------------------	--------------------------	----------------------------	--------------------------	--------------------------	--------------------------

No year can be found on this document. However, a look at past calendars reveals that "12-26" fell on a Monday in 2011.⁸ Accordingly, it would appear that this document memorializes actions Farak took during the week of December 20, 2011, i.e. more than six months before Judge Kinder found that there was any evidence that she engaged in criminal behavior. On December 22, 2011, the very same day a sample assigned to Farak in the Penate case supposedly went back to the main vault, she admitted to taking drugs. This Diary Card indicates that Farak also took drugs on December 23 and December 26, 2011.

It would be difficult to overstate the significance of these documents. In terms of establishing misconduct on the part of Farak prior to July, 2012, they constitute much stronger evidence than the notes on the aforementioned articles as they do not depend on a fact finder drawing inferences favorable to the defense.

Whether law enforcement officials overlooked these papers or intentionally suppressed them is a question for another day. For the time being, I believe that two things must take place immediately.

First, your office should assent to the emergency motion to amend the protective order in Mr. Burston's case, which I intend to file on Monday. This motion will request the removal of the condition that I not reveal the results of my inspection to other defense attorneys handling Amherst Lab cases. As the attorney of record for Rafael Rodriguez, I believe I have an ethical obligation to advise counsel for the defendants in the Cotto and Ware cases that new, exculpatory evidence exists calling in question the factual basis of the paradigm Judge Kinder adopted in adjudicating Amherst Lab cases.

Second, your office should provide copies of the papers in question to each and every defendant who moved for post-conviction relief based on misconduct on the part of Farak.

I understand that you did not become involved in this litigation until recently and want to be clear that to the extent this letter – and prior pleadings I have filed – paints your office in an unfavorable light, I am not suggesting that you have engaged in any misconduct. I appreciate the professionalism you exhibited in arranging the inspection that occurred on Thursday and trust that you will discharge the responsibilities you now have as the recipient of this letter in the same conscientious manner.

If you would like to discuss this matter, I can be reached at the number above. Inasmuch as I would like to give you and your office time to formulate a position with respect to my motion to

⁸ In 2012, December 26th fell on a Wednesday.

amend, looming deadlines in the Cotto and Watts cases leave me little choice but to ask the Hampshire Superior Court to schedule a hearing on this motion as soon as possible.

Sincerely,

A handwritten signature in black ink, appearing to be "Luke Ryan", written over the printed name.

Luke Ryan

Enc.

Cc: Steven Gagne
First Assistant
Northwestern District Attorney
One Gleason Plaza
Northampton, MA 01060
steven.e.gagne@state.ma.us

Jane Davidson Montori
Office of the Hampden County District Attorney
Hall of Justice
50 State Street
Springfield, MA 01102-0559
[Fax] 413.731.9019



COMMONWEALTH OF MASSACHUSETTS
SUPERIOR COURT

Hampshire, ss.

HSCR2013-113

COMMONWEALTH

v.

WAYNE BURSTON

ASSENTED-TO MOTION TO INSPECT PHYSICAL EVIDENCE

The defendant, Wayne Burston, and non-party Attorney General's Office respectfully request that this Court grant the defendant's motion to inspect physical evidence pursuant to Mass. R. Crim. P 17(a)(2) with the following terms:

1. Within a reasonable time and on an agreed-upon date, the defendant may have access to the physical evidence pertaining to the prosecution of Sonja Farak that is in the care, custody, and control of the Attorney General's Office while under the supervision of the Massachusetts State Police, and may conduct a visual inspection of said physical evidence;
2. The defendant may take photographs, video recordings, measurements, notes, and/or drawings of said physical evidence;
3. The defendant may not remove said evidence from the Attorney General's Office nor may he conduct testing on said evidence; and
4. The defendant may not share the results of his inspection with other defense attorneys handling cases involving the Amherst laboratory, including but not

limited to, photographs, video recordings, measurements, notes, and drawings
made during the inspection.

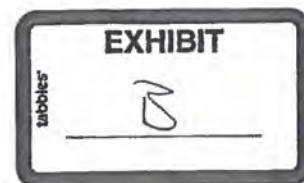
Accordingly, the defendant and the Attorney General's Office respectfully request the Court to
allow the defendant's motion with the above terms.

Respectfully Submitted,

Luke Ryan, Esq.
Sasson Turnbull Ryan & Hoose
100 Main Street, 3rd Floor
Northampton, Mass. 01060
(413) 586-4800

Kris C. Foster
Assistant Attorney General
Massachusetts Attorney General's Office
One Ashburton Place
Boston, Mass. 02108
(617) 963-2833

Patrick K. Devlin
Assistant Attorney General
Massachusetts Attorney General's Office
One Ashburton Place
Boston, Mass. 02108
(617) 963-2957



*The Commonwealth of Massachusetts
Massachusetts State Police
Office of the Attorney General - West
1350 Main Street, Fourth Floor
Springfield, Massachusetts 01103*

January 24, 2013

To: Detective Lieutenant Robert M. Irwin
SPDU AG, Commanding

From: Trooper Randy Thomas #2935
SPDU AG West

Subject: 13-034-4804-1003
Search warrant execution
Vehicle of Sonja FARAK

1. On 01-19-13 at 0323 hours, a search warrant was executed on a vehicle owned by Sonja FARAK of 37 Laurel Park in Northampton. The search was of a 2002 Volkswagen Golf, color black, VIN: 9BWGK61J524069609, and bearing MA registration 80WJ06 registered to Sonja J. FARAK. The search was conducted at the State Police Barracks in Northampton at 555 North King St. in Northampton where the vehicle had been secured the previous day. The search was conducted by Detective Lieutenant Robert Irwin, Sergeant Joseph Ballou and I, Trooper Randy Thomas, all assigned to the State Police Detective Unit of the Attorney General's Office. Trooper Christopher Dolan from the State Police Crime Scene Services Section photographed the vehicle and evidence before and during the search.

2. The search commenced at 0323 hours. The following items were found in the vehicle and were secured and seized into evidence:

- 1 1 manila envelope "A08-02990 + 0289" containing evidence bag & unknown paper
- 2 1 envelope "For Jim Hanchett"
- 3 1 Zip lock baggie containing (34) white capsules
- 4 Assorted lab paperwork
- 5 Assorted lab paperwork

BUREAU OF INVESTIGATIVE SERVICE
MASS. STATE POLICE
Year/Dist/Crime/Case
13-034-4804-1003
Serial # 001
Capt. JB Supervisor

13-034-4804-1003

Search warrant execution

Vehicle of Sonja FARAK

- 6 Envelope "A11-03020 -> A1103022, 2-29-12 SFD V. Dimitry Bogo" containing lab paperwork
- 7 2 manila envelopes "A12-01204" and "A11-04545 -> A11-04546"
- 8 Assorted lab paperwork
- 9 1 Zip lock bag containing white powder substance
- 10 1 Zip lock bag containing (10) assorted pills
- 11 1 Envelope "A11-01848-01849" "To Joseph Wentworth Northampton District ADA Michael Russo" containing assorted lab paperwork & positive morphine test
- 12 1 Manila envelope "A10-04462" "To do" containing paperwork and multiple clear plastic bags (some cut open).
- 13 1 large Manila mailing envelope with Hinton State Lab return address containing 3 clear plastic bags (all cut open) & 1 knife
- 14 1 Manila mailing envelope labeled 'return to sender' contains assorted lab paper work
- 15 1 Manila envelope "A09-01405" containing assorted lab paperwork
- 16 1 CVS pill bottle containing (19) orange pills & 1 CVS empty pill bottle labeled "Sonja Farak"
- 17 1 Clear glass beaker
- 18 Metal mesh, 1 metal rod, clear plastic baggie containing dark colored substance, wax paper containing white chunk substance, and 1 clear, knotted, plastic baggie containing white chunk substance (That bag was inside of 2 outer baggies.)
- 19 1 CVS pill bottle labeled "Sonja Farak" "IC LAMOTRIGINE 150 MG" containing (41.5) white pills & 1 CVS pill bottle labeled "Sonja Farak" "IC ESCITALOPRAM 20 MG" containing (55) white pills

13-034-4804-1003
Search warrant execution
Vehicle of Sonja FARAK

20 1 MA DOT Certificate of Registration for MA Reg 80WJ06, 2002
Volkswagen Golf, Black to Sonja Farak

3. The search of the vehicle was completed at 0456 hours. A copy of the search warrant was left in the vehicle.

4. The car was re-secured at the Northampton Barracks and the evidence was transported by Sergeant Ballou and Trooper Thomas to the Attorney General's Office at 1350 Main St. 4th Floor in Springfield where it was secured.

Respectfully submitted,

 # 2435

Randy Thomas
Trooper, Massachusetts State Police
Office of the Attorney General

powered by iBerkshires.com

Berkshires Berkshire Chamber Berkshire Community College City of Pittsfield

Pittsfield.com



News Education Arts Observer Events Green Park Square Soapbox Sports Dining Real Estate

Send feedback to info@pittsfield.com

Capeless Statement on Steroid Probe

Staff Reports,
08:51 PM / Tuesday, March 29, 2011

Important 0 Interesting 0 Funny 0 Anonymous 0 Informing 0 Rude/Offensive 0



DA David F. Capeless

PITTSFIELD, Mass. — The articles, rumors and blogs about the investigation into the use of steroids by local law enforcement officers has prompted the district attorney to address the ongoing investigation through a statement released on Tuesday afternoon.

District Attorney David F. Capeless revealed the name of the state trooper implicated in the probe, Daniel Gale, and confirmed that Pittsfield Police Officer David Kirchner was removed as a member of the Berkshire County Drug Task Force.

Indications that the investigation was undertaken by authorities outside the county were confirmed in Capeless' statement. The district attorney says the allegations of steroid use were brought to his attention after a "local police department was contacted by a federal agency." Capeless does not state which police department or which agency (the U.S. Postal Service has told local media that there is an investigation but not into who or what).

The probe was first revealed by postings on the discussion site Topix and on a blog run by former county resident GM Heller and Daniel Valenti's PlanetValenti.com.

The Berkshire Eagle

has followed up with two articles that revealed Kirchner's involvement and that of a then unnamed state trooper from the Russell barracks in Hampden County.

Capeless said he had decided to make the following limited public statement about the investigation:

"Over the past week, the public has been exposed to rumors, in addition to hard information, regarding steroids and their sale and use here in Berkshire County. Ordinarily, it is the firm policy of my office not to confirm ongoing investigations, much less to divulge their specifics, in order to maintain the integrity and effectiveness of our investigative efforts. However, exceptions need to be made when either public safety or public confidence is being jeopardized by a lack of information.

"In this case, I have decided to make a limited public statement, divulging only that information necessary to adequately explain the circumstances, since there remains an ongoing criminal investigation.

"Several weeks ago, a local police department was contacted by a federal agency to alert them that an investigation into the importation of steroids had uncovered deliveries into their town. A joint investigation was undertaken which resulted in the seizure of steroids and the execution of a search warrant. An examination of recovered materials revealed that two law enforcement officers, Pittsfield Police Officer David Kirchner (a member of the Berkshire County Drug Task Force) and state police Sergeant Daniel Gale (then assigned to the Russell barracks in Hampden County), had apparently been the recipients of steroid deliveries. So far, no information has been uncovered which would indicate involvement in anything other than personal use of steroids by these two, or that any other officers were involved.

"When the information about the two officers was discovered, the local investigating officer, a member of the Berkshire County Drug Task Force, notified his supervisors in the Task Force, who immediately notified me. Since Kirchner was, at the time, a member of the Task Force, it was agreed that we would seek assistance from outside the county in continuing the investigation. State police investigators normally assigned to other units in other jurisdictions were dispatched and are presently engaged in furthering that investigation. Colonel Marian McGovern, the head of the State Police, and Pittsfield Police Chief Michael Wynn were informed of the situation, and each has initiated administrative proceedings while the criminal investigation is underway. Kirchner was immediately removed from the Task Force.

"I take very seriously any allegation that a law enforcement officer has breached the public trust by engaging in criminal activity, and I take just as seriously the reputation of all of the rest of us in law enforcement who honor that trust and continue to guard the public with integrity. No arrests have been made and any decision regarding criminal charges relating to these circumstances will be made with a very clear eye towards those two principles but only upon completion of the ongoing investigation."

More Featured Stories

View Read Most Comments All News Blogroll

Pittsfield's Patrick's Pub Owners Fined For >>
County Qualifies for FEMA Funding >>
New Executive Director Appointed for >>
Berkshire Community College President >>
Legislators Hear Wind Farm Hearing At >>
FEMA Decries Disaster Recovery Centers >>
Senate Candidate Rhoads: Pittsfield >>
New Powering Pittsfield Seeks to Reduce >>

E No Obliga ice Quot

SOUTH SHORE FUEL

click here

Partners	Home & Office	Weddings
Advanced Support	Paroli Services	
Berkshire Bank	Providence Real Estate	
Berkshire Community College, Inc.	Answering Service	
Berkshire County Insurance Company of America	Development	
DEALS	Pittsfield Police	
GO For Post your resume / Post a Job listing		
View All Listings		

And Kirchner
Seemed like such a
good guy - I do feel
bad for his 6 yo. daughter.
(Thank god I'm not a law enforcement
officer)
P.s. Most of the cases he's
been a part of have been dismissed
for exactly this reason.

Attachment C

June 4, 2015

Jane Davidson Montori
Assistant District Attorney
50 State Street
Springfield, MA 01102-0559
[Fax] (413) 731-9019

VIA FAX & U.S. MAIL

Re: Commonwealth v. Erick Cotto, HDCR2007-00770
Commonwealth v. Jermaine Watt, HDCR2009-01068; HDCR2009-01069
Commonwealth v. Rafael Rodriguez, HDCR2010-01181

Dear Attorney Montori:

On Monday, both before and during the status conference, you indicated that your office will take no position on our motion to reconsider Judge Kinder's previous denial of the motion to vacate the protective order. Our purpose in writing today is to formally request that your office reconsider its position and either join our motion or file your own motion to vacate the protective order.

The presumptively privileged records at issue arrived in the Clerk's office in March. You signed a protective order to view them in April and, on May 13, 2015, you obtained permission to share copies of them with all of the District Attorneys and their representatives. As you know, the contents of these records are highly exculpatory to post-conviction defendants throughout the state who may now have viable motions for relief pursuant to Rule 30 of the Massachusetts Rules of Criminal Procedure.

Under the circumstances, we believe that any prosecutor presently in possession of the records has an ethical and constitutional duty to seek the removal of any impediment currently preventing the disclosure of this evidence to post-conviction defendants. We would also note that the day after Sonja Farak's arrest, the District Attorneys of Massachusetts publicly pledged to take such action when their association issued this statement:

As a result of information received last Friday, State Police detectives assigned to Northwestern District Attorney's office responded to the state drug testing facility in Amherst to investigate allegations involving a chemist employed there. Friday evening, the District Attorney's Office turned the investigation over to the Attorney General's Office, which subsequently conducted a further investigation that has resulted in the chemist's arrest. The evidence suggests that this chemist, Sonja Farak, stole illicit drugs that had already been tested. The continuing investigation and prosecution of this matter will be undertaken by Attorney General Martha Coakley's office. Farak had been employed as a chemist with the Department of Public Health until responsibility for testing of drug evidence was transferred to State Police this past summer.


While at this point evidence indicates that the chemist stole already tested illegal drugs, *the state's District Attorneys will nonetheless undertake internal case reviews to determine which, if any, of their prosecutions involved Farak as a chemist, to assess the impact of her actions on any cases.* As with cases affected by the arrest and indictment of former Department of Public Health chemist Annie Dookhan, the state's district attorneys will also work with other affected agencies to share information on Farak's cases. Finally, while it is too early to say what effect this incident will have on cases in which Farak was involved, *the state's District Attorneys remain committed to ensuring that the rights of all defendants are properly respected and the public safety preserved, and therefore will remain proactive in identifying cases, notifying defense counsel and bringing them before the court.*

"Statement from Massachusetts District Attorneys" (Jan. 20, 2013) (emphasis added), <http://northwesterndistrictattorney.org/news/statement-da-sullivan-amherst-drug-lab-allegations> (last visited June 3, 2015).

We appreciate your thoughtful attention to this matter and look forward to your response.

Sincerely,

Rebecca Jacobstein

Rebecca Jacobstein 

Luke Ryan



Cc: Anthony D. Gulluni
Hampden County District Attorney
50 State Street
Springfield, MA 01002-0559
[Fax] (413) 781-4745

David Sullivan
Northwestern District Attorney
One Gleason Plaza
Northampton, MA 01060
[Fax] (413) 584-3635

Marian T. Ryan
Middlesex County District Attorney
15 Commonwealth Avenue
Woburn, MA 01801
[Fax] (781) 897-8301

Michael Morrissey
Norfolk County District Attorney
45 Shawmut Rd.
Canton, MA 02021
[Fax] (781) 830-4801

David Capeless
Berkshire County District Attorney
7 North Street
P.O. Box 1969
Pittsfield, MA 01202
[Fax] (413) 499-6349

Thomas M. Quinn
Bristol County District Attorney
P.O. Box 973
888 Purchase Street
New Bedford, MA 02741
[Fax] (508) 997-0396

Jonathan W. Blodgett
Essex County District Attorney
Ten Federal Street
Salem, MA 01970
[Fax] (978) 741-4971

Michael O'Keefe
District Attorney of the Cape & the Islands
P.O.Box 455
3231 Main Street
Barnstable, MA 02630
[Fax] (508) 362-8221

Timothy J. Cruz
Plymouth County District Attorney
32 Belmont Street
Brockton, MA 02303
[Fax] (508) 586-3578

Daniel F. Conley
Suffolk County District Attorney
One Bulfinch Place
Boston, MA 02114
[Fax] (617) 619-4009

Joseph D. Early, Jr.
Worcester County District Attorney
225 Main Street, Room G-301
Worcester, MA 01608
[Fax] (508) 831-9899

Attachment D

September 25, 2015

Via Email

Colin Owyang
Deputy Attorney General
1 Ashburton Place
Boston, MA 02108
Colin.Owyang@MassMail.State.MA.US

Re: The Amherst Lab Scandal

Dear Mr. Owyang:

We write to thank you for meeting with us about the misconduct at the Amherst State Lab, and to suggest how the resulting injustices might be repaired. We understand that you might convene a discussion of Farak matters among defense advocates and prosecutors, and we are eager to join it. Together, we can work toward solutions that will respect constitutional rights, save taxpayer dollars, and restore the justice system's integrity.

The discussion, in our view, should focus on three issues: (1) identifying affected cases; (2) notifying defendants of their post-conviction rights; and (3) developing alternatives to costly and counterproductive case-by-case litigation.

These issues are acutely important due to the magnitude of the Farak scandal, but not only for that reason. They are also important because the Commonwealth has just spent the last three years, during the Annie Dookhan scandal, confronting these issues in precisely the wrong way. To our knowledge, no district attorney has acknowledged an obligation to identify, let alone notify, Dookhan's victims. And although the defense community has been calling for a comprehensive approach to the Dookhan litigation since at least October 2012, prosecutors have largely favored a case-by-case approach that figures to exacerbate injustice and drag on for years.

We hope that prosecutors will take a fresh look at these issues, especially now that the Farak scandal appears to be much larger than initially believed.

Identification

It is decidedly the responsibility of prosecutors to identify each defendant, starting with those in custody, who has a conviction associated with Farak's misconduct. Farak was a member of the prosecution team, and so it is the prosecution's job to identify her victims. This allocation of burdens is not just fair; it is practical. If

prosecutors are not required to remedy scandals like this one, they will lack the proper incentive to prevent future misconduct by members of their team.

The Supreme Judicial Court's recent cases remove all doubt that prosecutors must identify victims of the Dookhan and Farak scandals. These cases emphasize that the remedy for these scandals must "inure to defendants." *Commonwealth v. Scott*, 467 Mass. 336, 352 (2014). To that end, the Court has stated that the provision of identifying information—which prosecutors undertook in the Dookhan context only in response to litigation—implicates the legal and ethical obligations of prosecutors to disclose "all evidence or information" known to the government that "tends to negate the guilt of the accused or mitigate the offense." *Bridgeman v. District Attorney*, 471 Mass. 465, 480-81 (citing Mass. R. Prof. C. 3.8(d)).

Likewise, in the Farak context, the Court has recognized the Commonwealth's "duty to conduct a thorough investigation to determine the nature and extent of [Farak's] misconduct, and its effect both on pending cases and on cases in which defendants already had been convicted of crimes involving controlled substances that Farak had analyzed." *Commonwealth v. Ware*, 471 Mass. 85, 95 (2015).

We therefore expect that prosecutors will now both accept and discharge their responsibility to identify potentially tainted cases.

Notice

In the spirit of cooperation and the interests of justice, we hope to work with prosecutors toward an efficient and effective plan for notifying all affected defendants about their post-conviction rights. Working together will ensure that defendants' rights are respected and that attorney efforts are not unduly duplicated.

That cooperative spirit, however, does not reflect a view that prosecutors' obligations with respect to notice are weaker than their obligations with respect to identification. To the contrary, the law is clear that your office's present investigation of the Farak scandal "is premised on 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) (internal quotation marks omitted; emphasis added).

Thus, the duty of disclosure—i.e., notice—resides with the Commonwealth. And "[i]t is incumbent on the Commonwealth to perform this duty in a timely fashion." *Id.*

Prosecutor-driven notice also appears to be the norm outside of Massachusetts. For example, the U.S. Department of Justice's Office of the Inspector General has called for the DOJ and FBI to ensure "maximum and effective" and "case-specific" notice to

defendants with potentially tainted convictions.¹ Similarly, state prosecutors appear to have implemented case-specific notice in numerous criminal justice scandals.²

Yet, so far as we know, no district attorney has committed to maximum, effective, and case-specific notice in either the Dookhan or Farak scandals. We hope to work with prosecutors to chart a new and better course.

Resolution

No matter who identifies and notifies defendants, all stakeholders should seek to remedy the injustice caused by Farak's misconduct. And if that misconduct had tainted just a handful of cases, then a case-by-case approach might succeed.

But the Dookhan experience has proved that, when egregious government conduct taints large numbers of cases, a case-by-case approach simply worsens injustice. In September 2015, more than four years after lab managers learned of Dookhan's misconduct, there is still no complete list of her cases, no plan for notifying defendants, and scarcely any resources available to litigate the thousands of cases that could arise if defendants are actually notified of their rights.

Meanwhile, there is a growing consensus that drug addiction should be addressed as a public-health problem. Attorney General Healey has stated that precious taxpayer dollars must be devoted to "prevention, intervention, and treatment programs," as well as "investing in supervision and reentry services."³ To her credit, she has also acknowledged that "we cannot incarcerate our way out of this public health crisis."⁴

Nor can we *re-prosecute* and *re-incarcerate* our way out of this crisis. Given the lessons of the Dookhan scandal, and the Commonwealth's need to devote scarce resources to public health rather than incarceration, defense attorneys and prosecutors should seek to minimize relitigation of Farak cases—particularly

¹ U.S. Dep't of Justice, Office of the Inspector General, *An Assessment of the 1996 Department of Justice Task Force Review of the FBI Laboratory* at 82-83 (July 2014).

² See, e.g., Jennifer McMenamin, *Perjury fears through cases into turmoil*, Baltimore Sun, Apr. 22, 2007 (72 letters sent regarding ballistics evidence); John Schreiber, *Audit Finds O.C. Crime Lab Botched Some DUI Blood Tests*, Los Alamitos-Seal Beach Patch, Nov. 7, 2013 (900 letters sent regarding blood testing); Jaxon Van Derbeken, *S.F. Judge Breal steps aside on drug cases*, SFGate, June 30, 2010 (1700 letters sent regarding a drug lab scandal).

³ Letter from the Hon. Maura Healey to the Hon. William Brownsburger and the Hon. John Fernandes at 1, *Re: S.64/H.1429, An Act to increase neighborhood safety and opportunity* (June 8, 2015).

⁴ *Id.* at 3; see also Massachusetts OxyContin and Heroin Commission, *Recommendations of the OxyContin and Heroin Commission*, at 5 (2009) (finding that the Commonwealth had made "not a dent" in drug use).

Mr. Colin Owyang
September 25, 2015
Page 4

because, as with the Dookhan scandal, most of Farak's victims have likely served their sentences of incarceration.

We therefore hope that a meeting among criminal justice stakeholders will identify categories of cases in which prosecutors would be willing to agree to post-conviction relief and to dismiss the underlying charge. These categories might be expanded depending on the outcome of the ongoing investigation into allegations of Farak-related discovery violations. But, setting aside those allegations for the moment, key categories might include:

- possession cases;
- cases in which the defendant has served at least 50% of the sentence of incarceration; and
- cases in which there has been no admission or judicial finding of unlawful firearm possession or violence.

Thank you in advance for your consideration. We look forward to a productive discussion of these issues.

Sincerely,

/s/ Matthew R. Segal
Matthew R. Segal
Legal Director
American Civil Liberties Union
Foundation of Massachusetts
211 Congress Street
Boston, MA 02110
617-482-3170

/s/ Randy Gioia
Randy Gioia
Deputy Chief Counsel
Public Defender Division
Committee for Public Counsel Services
44 Bromfield Street
Boston, MA 02108
617-482-6212

/s/ Michael S. Hussey
Michael S. Hussey
President
Massachusetts Association of Criminal
Defense Lawyers
340 Main Street, Room 724
Worcester, MA 01609
508-443-5453

/s/ Robert W. Harnais
Robert W. Harnais
President
Massachusetts Bar Association
20 West Street
Boston, MA 02111
617-338-0500

Attachment E

COMMONWEALTH OF MASSACHUSETTS

HAMPDEN and HAMPSHIRE, ss.

SUPERIOR COURT DEPARTMENT

IN THE MATTER OF A GRAND JURY INVESTIGATION

COMMONWEALTH'S RESPONSE TO JUNE 1, 2015 SCHEDULING ORDER

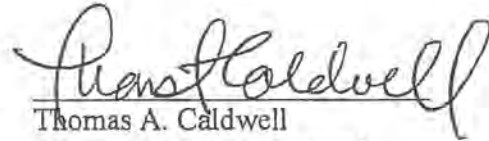
The Attorney General's Office has begun an investigation into the "timing and scope" of former state laboratory chemist Sonja Farak's misconduct, as requested by the Supreme Judicial Court in *Commonwealth v. Cotto*, 471 Mass. 97 (2015). The Attorney General's Office has already committed to providing this Court with relevant information during the course of that investigation and a full assessment of the timing and scope of Farak's wrongdoing upon its conclusion.

The Commonwealth reports to this Honorable Court the following summary: (1) Ms. Farak began using controlled substances regularly in the last quarter of 2004; (2) Ms. Farak was under the influence of controlled substances during a vast majority of her working hours from the last quarter of 2004 to her removal from the lab on January 18, 2013; (3) Ms. Farak began stealing from police submitted samples in the last quarter of 2009 until her removal from the lab on January 18, 2013. She began regularly taking from samples in the first quarter of 2011. The majority of samples tampered with were powder and base cocaine. In addition, there was evidence of tampering with hallucinogens, specifically lysergic acid diethylamide (LSD). There has been no evidence found at this point that there was any tampering that included heroin or opioids. Furthermore, please see attached appendices in support of the above responses to the scheduling order.

Respectfully submitted
For the Commonwealth,

MAURA HEALEY
ATTORNEY GENERAL
By Her Assistant,

DATED: November 5, 2015

A handwritten signature in black ink, appearing to read "Thomas A. Caldwell". The signature is fluid and cursive, with the first name "Thomas" and last name "Caldwell" clearly distinguishable.

Thomas A. Caldwell
Assistant Attorney General
One Ashburton Place
Boston, MA 02108
(617) 727-2200
BBO# 651977

Attachment F

Rebecca Jacobstein

From: Caldwell, Thomas (AGO) <thomas.caldwell@state.ma.us>
Sent: Friday, November 06, 2015 11:52 AM
To: Rebecca Jacobstein
Subject: RE: Quincy case

Rebecca:

I have already reached out. No problem.

From: Rebecca Jacobstein [<mailto:rjacobstein@publiccounsel.net>]
Sent: Friday, November 06, 2015 9:23 AM
To: Caldwell, Thomas (AGO)
Subject: Quincy case

Hi Tom,

I have a status hearing coming up later this month on my Farak case out of Quincy. Have you sent your response to the June scheduling order to the DA's offices and if not, can you send it to this ADA so we are on the same page?

Thanks
Rebecca

Rebecca Jacobstein
CPCS - Appeals Unit
44 Bromfield Street
Boston, MA 02108
617.910.5726

Attachment G

Office of the Attorney General
Commonwealth of Massachusetts



Maura Healey
Attorney General

Investigative Report Pursuant to
Commonwealth v. Cotto, 471 Mass. 97 (2015)

April 1, 2016

I. Introduction

In April 2015, the Massachusetts Supreme Judicial Court (“SJC”) published its decision in *Commonwealth v. Cotto*, 471 Mass. 97 (2015), finding that it was “imperative that the Commonwealth thoroughly investigate the timing and scope of [Sonja] Farak’s misconduct at the Amherst drug lab in order to remove the cloud that ha[d] been cast over the integrity of the work performed at that facility.” The Massachusetts Attorney General’s Office (“AGO”) undertook an investigation on behalf of the Commonwealth following the issuance of the SJC’s opinion. As part of the investigation, the AGO convened two grand juries and called as witnesses Sonja Farak (“Farak”) and three other chemists who worked in the state drug laboratories in Amherst (“Amherst Lab”) and elsewhere, and Nancy Brooks, a Massachusetts State Police (“MSP”) chemist who presently works for the two MSP drug labs which are accredited.¹ In addition, AGO investigators interviewed Annie Dookhan, a former state chemist at the state’s Hinton Lab in Jamaica Plain² who in 2013 was convicted on charges of misleading investigators, filing false reports, and tampering with drug evidence. This report is a summary of the AGO’s investigation.

II. Background Leading Up to the Investigation.

Farak was a chemist employed by the Massachusetts Department of Public Health (“DPH”) from July 2003 to July 2012 and by the MSP from July 2012 to January 2013. During the first year of her employment, she worked at the Hinton Lab in Jamaica Plain.

¹ For information about the accreditation process and the two accredited MSP drug labs, see pp. 41-43, *infra*.

² Hinton Lab was one of eighteen different public laboratories run by the Department of Public Health (“DPH”) until then-Governor Patrick closed the Hinton Lab in 2012 (1 at 13). Hereafter, references to a volume of the transcript of the grand jury proceedings will be made as (Volume at Page).

Subsequently, she worked at the Amherst Lab. Her responsibilities involved testing, for authenticity, various controlled substances submitted by law enforcement agencies throughout the Commonwealth. Additionally, she was required to testify in court as to her test results, which served as evidence in criminal cases. On January 17, 2013, Sharon Salem ("Salem"), a chemist and evidence officer at the Amherst Lab, noticed some discrepancies in drug samples previously tested by Farak, including that two samples were missing. The following day, Salem notified her supervisor, James Hanchett ("Hanchett"), and they subsequently discovered various unlabeled drugs and paraphernalia at Farak's work station. They also located the evidence bags associated with the two missing samples. When they retested the samples, they noted that one of them did not contain a controlled substance, despite the fact that Farak had previously reported that sample as having tested positive for a controlled substance. Based on this finding, Hanchett and Salem suspected that Farak had removed some or all of the controlled substance and substituted counterfeit drugs in its place. Hanchett and Salem brought their suspicions to the MSP. Pursuant to further investigation, the MSP discovered that more drugs were missing and that Farak appeared to have replaced them with counterfeit drugs.

On January 18, 2013, the MSP ordered the Amherst Lab to close due to its suspicion that Farak had tampered with police-submitted drug evidence during the course of her employment.

On January 19, 2013, MSP investigators executed a warrant to search Farak's car. They found various materials from the Amherst Lab as well as what appeared to be Class A and B substances. Farak was arrested later that evening. A Special Statewide Grand

Jury in Suffolk County indicted Farak on April 1, 2013, and she was subsequently convicted in Hampshire Superior Court on January 6, 2014, of Tampering with Evidence, in violation of M.G.L. c. 268 § 13E; Larceny of Controlled Substances from a Dispensary, in violation of M.G.L. c. 94C§ 37; and Unlawful Possession of a Controlled Substance, in violation of M.G.L. c. 94C § 34.

Erick Cotto ("Cotto") is a defendant whose conviction, upon a plea of guilty in Hampden County Superior Court in 2009, was based in part on an assumption that a drug certificate authored by Farak in his case was truthful and accurate. Cotto filed a motion to withdraw his guilty plea pursuant to Mass.R.Crim.P. 30(b) shortly after Farak was indicted. In April 2015, the SJC issued its decision in Cotto's case, exercising its superintendence power to fashion a "workable approach" for giving defendants, in cases in which Farak had tested alleged controlled substances, identified them as controlled substances, and signed the certificates of drug analysis, "an opportunity to discover whether, in fact, their cases were affected by [Farak's] misconduct." The Court found it imperative for the Commonwealth to investigate the timing and scope of Farak's misconduct and it directed the Commonwealth, within one month of the issuance of its opinion, to notify the judge below whether it intended to undertake such an investigation. In response to the Court's ruling, the AGO informed the Hampden County Superior Court in June 2015 that pursuant to *Cotto*, it would undertake an investigation as to the timing and scope of Farak's alleged misconduct.

III. Summary of the Post-Cotto Investigation

In September 2015, the AGO opened a grand jury investigation in Hampshire County, where the Amherst Lab was located. Farak testified at the grand jury on three

separate dates. Farak testified about her extensive drug use; her siphoning of drugs from the Lab's standards which were used to test drug samples, from police-submitted samples of drugs which were intended to be tested for evidentiary purposes in pending criminal cases, and from other chemists' samples; and her manufacturing in the Lab of crack cocaine for her own personal use.

In November 2015, the AGO opened up a grand jury investigation in Suffolk County, the location of the DPH, which was the agency that oversaw the Amherst Lab for the majority of the time that Farak had worked there, until the MSP took over its operation in the summer of 2012. Three chemists from the Amherst Lab testified in the grand jury: Hanchett; Salem; and Rebecca Pontes ("Pontes").

Hanchett, the supervisor of the Amherst Lab, testified that he did not know that Farak was stealing from the standards or the police-submitted samples. However, he noticed towards the end of Farak's tenure that her production had dropped and her habits were deteriorating. Hanchett also testified to the general DPH management of the Amherst Lab, including the lack of funds to buy standards for testing. Owing to lack of funds, Hanchett skimmed from the police-submitted samples to manufacture standards for the chemists' analytical use in the Lab. Although no one at the DPH directed him to do this, he thought that management knew that he was manufacturing standards.

Salem and Pontes, both chemists at the Amherst Lab during the same period of time, testified that they did not notice that Farak was ingesting narcotics. Both, however, knew that Hanchett was skimming off the police-submitted samples in order to create standards. Brooks, currently a chemist with the MSP, testified that manufacturing standards in a lab is not an acceptable practice.

During the course of the AGO investigation, the transcripts of the grand jury testimony were provided to defense counsel.

Lastly, the AGO interviewed Dookhan regarding her observations of Farak while they both worked at the Hinton Lab in 2003-2004. Dookhan testified that she and Farak were not close and only worked together for about six months. Both held positions as Chemist I and were assigned easier preliminary testing of drugs. Dookhan did not observe Farak use drugs and Farak never appeared to be under the influence of drugs.

IV. Details of the Investigation

The following sections provide the details of the investigation into the timing and scope of Farak's misconduct, as gleaned from the grand jury testimony and interview with Dookhan. These sections essentially outline, in a comprehensive fashion, what each of the five witnesses stated.

A. Sonja Farak, Chemist, Department of Public Health and Massachusetts State Police

1. Background Information

Farak, currently 37, resides in Northampton, Massachusetts (1 at 6). She is a graduate of Worcester Polytechnic Institute and received a degree in Biochemistry (1 at 10). In January 2002, she was hired by the DPH and began working in the Human Immunodeficiency Virus Testing Laboratory at the Hinton Lab. At the time, the Hinton Lab housed eighteen different DPH public laboratories prior to the closing of the drug lab in 2012 (1 at 13).³ Later, in May 2003, Farak applied for and obtained the position of

³The departments within the building include the disease-testing and former drug-testing labs; the DPH's Food Protection Program; the University of Massachusetts's New England Newborn Screening Program; the

Chemist I. The duties and responsibilities of a Chemist I in the DPH's drug testing laboratories were to perform chemical identifications of drugs, using standard operating procedures; to determine violations of narcotics and harmful drug laws; to operate and maintain complex chemical instrumentation and microscopes and interpret data from those instruments (Infrared, Ultra Violet, Gas Chromatograph/Mass Spectrometer); to carry out drug analysis; to give expert testimony in a court of law on matters relating to drug analysis; to work with evidence technicians in providing for security and integrity of samples, and in issuing reports pertinent to the analysis of such samples; to prepare and maintain records of test data; to maintain an inventory of laboratory supplies and chemicals; and to make recommendations to supervisors regarding methods and procedures to improve the quality of work.⁴ Farak was initially assigned to conduct what were considered simpler tests, for example on vegetable matter and small powder samples.⁵ Because of this assignment, she could analyze the samples more quickly and complete a higher number of tests than the more experienced chemists who were testing larger submissions (1 at 22, 2; 3 at 27-28; 4 at 79; 5 at 33, 72-73).

In 2004, Farak moved to the Amherst Lab and later, in June 2005, Farak applied for and obtained the position of Chemist II. As a Chemist II, Farak was assigned additional responsibilities such as analyzing larger and more complex samples at the Lab and repairing equipment at the Lab.

Infectious Disease Bureau; the State Racing Commission Laboratory; the National Laboratory Training Network; and the University of Massachusetts's Biologic Laboratories.

⁴ This Statement of Duties for a DPH Drug Chemist was taken from the personnel file of Sonja Farak (GJ, Exh. 19).

⁵ Until it can be confirmed scientifically, cannabis is frequently referred to as vegetable matter (1 at 19).

Prior to securing employment with the DPH and while attending graduate school at Temple University (in Philadelphia, Pennsylvania),⁶ Farak had become a recreational drug user. (1 at 55-56). She used cocaine, marihuana, and ecstasy (1 at 55-56; 2 at 13). She admitted to using heroin one time and “was nervous and sick and hated every minute of it [and had] no desire to use [it] again” (1 at 56-57).

After working at the Amherst Lab for approximately one year, Farak began to consume laboratory reference standards at the Lab itself (1 at 59). “Standards” or “primary standards”⁷ are known substances that a laboratory purchases from a drug or chemical company for use in the laboratory. The Amherst Lab used standards to set up the reference libraries on the Gas Chromatograph/Mass Spectrometer machines (“GC/MS”).⁸ A license from the federal Drug Enforcement Agency is required for the drug testing laboratories in Massachusetts to order these “standards” or “primary standards.” The individual lab supervisors apply for these licenses yearly. Hanchett, the supervisor of the Amherst Lab, was responsible for ordering, receiving, and inventorying the standards when he became Lab supervisor, shortly after Farak’s tenure began at the Amherst Lab.

⁶ Farak claimed that she had never used any controlled substances before her enrollment in graduate school (1 at 55).

⁷ There were two types of “standards” at the Amherst Lab: primary standards, as mentioned here, and secondary standards or working standards, which will be discussed later in this report.

⁸ Gas Chromatography/Mass Spectrometry (GC/MS) is an analytical technique in which a Gas Chromatograph is used along with a Mass Spectrometer. The chemist injects a sample onto a heated column of a Gas Chromatograph. As the sample travels through the column, the compounds within the sample will separate and then elute from the column at different times (referred to as the “retention time”) based upon the molecular properties of its compounds. As these compounds elute from the column, they enter the Mass Spectrometer (MS) downstream. These compounds are ionized and fragmentation occurs. The resulting fragments have a molecular weight that is based on the chemical composition of the compound. The MS will sort these ions based on their mass (“weight”) and the distribution of ions is represented in the form of a mass spectrum which may be unique to that compound (similar to that of a “fingerprint”). The mass spectrum may thus illustrate the chemical composition of a sample, indicating the substance’s identity. Mass spectrums may also be compared to those of known reference materials for conclusive identification (1 at 70-71).

According to Hanchett, Lab employees tested all substances except THC⁹ using the standards (4 at 33). Therefore, the Amherst Lab kept on hand up to two hundred different types of standards, including heroin, cocaine, methamphetamine, oxycodone, and LSD, among others (4 at 33, 35-36).

2. Farak Begins to Ingest Lab's Drug Standards

Farak began to consume the Amherst Lab's standards on a fairly regular basis beginning in late 2004 or early 2005 (1 at 57-58). The first standard she admitted to using was the methamphetamine standard,¹⁰ which was the largest or most voluminous standard at the Amherst Lab. The methamphetamine standard was a base sample, meaning its form was oil base and it was not cut or diluted with any other substance, essentially making the standard the purest form of a controlled substance (1 at 50). Farak testified that her primary reason for first using the drug was "curiosity." She indicated that she had researched the drug in the past and "when she read about it," she concluded, "that's the one I am going to try if I am going to try it." Farak enjoyed what she called the "positive side effects" of the drug: it lasted a long time and was an "energy boost" (1 at 58). According to Farak, the "high" from the drug lasted approximately 8 to 10 hours. In addition, the drug gave her the desired effects that she had discovered in

⁹ THC is the principal psychoactive constituent of cannabis. Drug Enforcement Agency, *Drugs of Abuse*, A DEA Resource Guide, 2015 Edition), http://www.dea.gov/pr/multimedia-library/publications/drug_of_abuse.pdf#page=72 (last visited March 31, 2016).

¹⁰ Amphetamines, methamphetamine, and phentermine are similar to cocaine, but the stimulant onset is slower and the duration is longer. These drugs are stimulants that speed up the body's system. Many are legally prescribed and used to treat attention-deficit hyperactivity disorder (ADHD). Methamphetamine remains in the central nervous system longer, and a larger percentage of the drug remains unchanged in the body, producing prolonged stimulant effects. Such effects include: euphoria; increased alertness and excitation; restlessness; irritability; and anxiety. Chronic abuse produces a psychosis that resembles schizophrenia and is characterized by: paranoia; picking at the skin; preoccupation with one's own thoughts; and auditory and visual hallucinations. Violent and erratic behavior is frequently seen among chronic abusers of amphetamines and methamphetamine. [http://www.dea.gov/pr/multimedia-library/publications/drug_of_abuse.pdf#page=46, 50-51](http://www.dea.gov/pr/multimedia-library/publications/drug_of_abuse.pdf#page=46,50-51) (last visited March 31, 2016).

her research: "I felt amazing. It gave me energy. I felt more alert. I did not wish it but it gave me the pep I was looking for." Farak maintained that her work was not affected at the Lab but that the methamphetamine made her "more alert and more let's get this done sort of thing." She insisted that she "analyzed everything according to procedures"¹¹ and that she did all the testing required, in fact "double-check[ing] her work."

In early 2005, Farak began to consume methamphetamine every morning and, over the course of the next four years, increased her usage to multiple times a day. Farak admitted in her testimony that, aside from a few days or a week of sobriety, she was under the influence of methamphetamine at the Lab nearly every day during that four-year period, and that not taking the drug resulted in severe lethargy, irritability, and lack of production and focus, to the point where she would have to call out sick (1 at 60-65).

By the beginning of 2009, Farak had nearly exhausted the Lab's entire methamphetamine standard. As a result, she sought out similar standards that would both give her the same desired effect and help with her withdrawal symptoms. She discovered that the Lab also had bottles of amphetamine and phentermine. These two substances, like methamphetamine, gave Farak the stimulant effect that she was seeking. While the "high" did not last as long, the effects of increased energy, alertness, and focus were achievable. Throughout 2009, Farak continued to abuse these substances during work hours while she was testing alleged narcotics. She maintained that her productivity

¹¹ Stimulants are frequently taken to: produce a sense of exhilaration, enhance self-esteem, improve mental and physical performance, increase activity, reduce appetite, extend wakefulness for prolonged periods, and "get high." http://www.dea.gov/pr/multimedia-library/publications/drug_of_abuse.pdf#page=44-45 (last visited March 31, 2016).

and accuracy in her testing still did not suffer (1 at 66-71), and that none of her fellow employees or superiors at the lab or the DPH ever commented on, or expressed concern about, her behaviors at the Amherst Lab (1 at 71-72). This assertion is supported by the testimony of her fellow employees at the Hinton and Amherst Labs (1 at 70-72; 4 at 102-10; 4 at 41-43; 4 at 104-105). Farak did, however, seek out substance abuse counseling of her own accord in January 2009, when attempts at self-control were not successful (1 at 73-74).

Farak's personal use of standards was not restricted to amphetamines. She testified that by 2009, she also began using other standards at the Amherst Lab including ketamine,¹² MDMA,¹³ MDEA,¹⁴ and LSD (including police-submitted evidence samples)¹⁵

¹² Ketamine's effects are rapid and often occur within a few minutes of taking the drug, though taking it orally results in a slightly slower onset of the effects. Users have reported flashbacks several weeks after using ketamine. Ketamine may also cause agitation, depression, cognitive difficulties, unconsciousness, and amnesia. A couple of minutes after taking the drug, the user may experience an increase in heart rate and blood pressure that gradually decreases over the next ten to twenty minutes. Ketamine can make users unresponsive to stimuli. When in this state, users experience: involuntarily rapid eye movement; dilated pupils; salivation; tear secretions; and stiffening of the muscles. This drug can also cause nausea. http://www.dea.gov/pr/multimedia-library/publications/drug_of_abuse.pdf#page=66-67 (last visited March 31, 2016).

¹³ MDMA causes changes in perception, euphoria, increased sensitivity to touch, energy, sensual and sexual arousal, a need to be touched, and a need for stimulation. Some unwanted psychological effects include: confusion; anxiety; depression; paranoia; sleep problems; and drug craving. All these effects usually occur within 30 to 45 minutes of swallowing the drug and usually last four to six hours, but they may occur or last weeks after ingestion. Users of MDMA experience many of the same effects and face many of the same risks as users of other stimulants such as cocaine and amphetamines. These effects include increased motor activity, alertness, heart rate, and blood pressure. Drug Enforcement Agency, *Drugs of Abuse, A DEA Resource Guide*, 2015 Edition, http://www.dea.gov/pr/multimedia-library/publications/drug_of_abuse.pdf#page=62-63 (last visited March 31, 2016).

¹⁴ MDEA is related to MDA, MDMA, amphetamine, and methamphetamine. Drug laws call MDEA a hallucinogen, but it has stimulant effects also. Those dual properties put it in the entactogen pharmacological group, a type of drug with both stimulant and hallucinogenic qualities. Effects are similar to MDA and MDMA. Richard Lawrence Miller, *The Encyclopedia of Addictive Drugs*, pg. 252 (2002).

¹⁵ LSD users may experience visual changes with extreme changes in mood. While hallucinating, the user may suffer impaired depth and time perception accompanied by distorted perception of the shape and size of objects, movements, colors, sound, touch and the user's own body image. The ability to make sound judgments and see common dangers is impaired, making the user susceptible to personal injury. It is possible for users to suffer acute anxiety and depression after an LSD "trip" and flashbacks have been reported days, and even months, after taking the last dose. The physical effects include: dilated pupils, higher body temperature, increased heart rate and blood pressure, sweating, loss of appetite,

while working. Frequently, Farak would use these standards in conjunction with the various amphetamine standards that she was using at the Lab. Farak also testified that she began to use the cocaine standard¹⁶ at the same time that she was using the amphetamine standards because the phentermine standard was not giving her a stimulant effect comparable to the previous standards that she had used (1 at 80, 85). Farak testified she did not use the cocaine standard daily, however, because given the higher frequency with which the cocaine standard was used as compared to the amphetamine standards, she was concerned she might get caught (1 at 77-78).

3. Farak's Use of Police-Submitted Evidence

Farak testified that she decided to begin using drugs from the police-submitted samples at the Amherst Lab as a direct result of the diminishing volume of standards at the Lab (1 at 65-68, 77-78, 84-85; 4 at 33-35, 110-11). At first, in early 2009,¹⁷ Farak took for her personal use a relatively small amount from police-submitted samples—what she termed “acceptable loss.” Acceptable loss, according to Farak, was approximately five percent of the sample that would take into account the testing and moisture loss due to

sleeplessness, dry mouth and tremors. Drug Enforcement Agency, *Drugs of Abuse, A DEA Resource Guide*, 2015 Edition, http://www.dea.gov/pr/multimedia-library/publications/drug_of_abuse.pdf#page=68 (last visited March 31, 2016).

¹⁶ The intensity of cocaine's euphoric effects depends on how quickly the drug reaches the brain, which, in turn, depends on the dose and method of abuse. Following smoking or intravenous injection, cocaine reaches the brain in seconds, with a rapid buildup in levels. This effect results in a rapid-onset, intense euphoric effect known as a “rush.” By contrast, the euphoria caused by snorting cocaine is less intense and does not happen as quickly due to the slower build-up of the drug in the brain. Users can snort or inject powdered cocaine into the veins after dissolving it in water. Cocaine base (crack) is smoked. Other effects include: increased alertness and excitation; restlessness; irritability; and anxiety. Tolerance to cocaine's effects develops rapidly, causing users to take higher and higher doses. Taking high doses of cocaine or prolonged use, known as bingeing, usually causes paranoia. The crash that follows euphoria is characterized by mental and physical exhaustion, sleep, and depression lasting several days. Following the crash, users experience a craving to use cocaine again. Physiological effects of cocaine include: increased blood pressure and heart rate; dilated pupils; insomnia; and loss of appetite. http://www.dea.gov/pr/multimedia-library/publications/drug_of_abuse.pdf#page=47-48 (last visited March 31, 2016).

¹⁷ In other testimony, Farak admitted that she was abusing standards every day during working hours at the Amherst Lab.

evaporation in storage (1 at 92). Farak admitted that at the end of 2009, she tampered with police-submitted evidence for her own personal use. She testified that the first sample she tampered with was in a case involving the United States Postal Service, although she could not remember the specific name of the defendant. She took a few grams from a cocaine sample that had been submitted and used the cocaine both at the Lab and also at home. The reason she took from that particular sample was that it registered positive for cocaine. Although using the cocaine resulted in the desired effect that she was seeking, she did notice there was a difference between the effects she achieved from the cocaine sample the police had submitted versus the effect she had achieved from the cocaine standard from the Lab. The cocaine sample did not give her the "initial buzz" that the cocaine standard did.

Farak testified that throughout 2010, she was still using the standards heavily and performing work while under the influence of a variety of narcotics (1 at 96). However, she was receiving help for her drug addiction, switched programs to have more intense therapy (1 at 93), and managed to abstain from siphoning from police-submitted samples, with the exception of LSD, for most of the year (1 at 96). Farak maintained that no one, not fellow employees nor defense counsel, had ever questioned her analyses up to that point and never while working at both the Hinton and Amherst Labs, despite the fact that she was under the influence both at work and while testifying in court (1 at 113-114).

Farak admitted that in early 2011, she frequently siphoned from powder cocaine samples submitted by police departments to the Amherst Lab and, as a result of that frequency, by the middle of 2011, her drug use increased. She also continued to consume the standards available to her at the Lab (1 at 135). By the fall of 2011, Farak had

exhausted the methamphetamine, amphetamine, and ketamine standards. Although the cocaine standard was not entirely depleted at that point, it was substantially diminished. She grew concerned due to a decrease of cocaine samples coming into the Amherst Lab for testing and she was worried she would not have a source to feed her habit (1 at 137-139). As a result, by the fall of 2011, Farak had begun taking from samples and standards of base (crack) cocaine at the Lab. From that point on, she admitted, she became heavily addicted to base cocaine. This addiction resulted in her using base cocaine during work hours not only throughout the building in which the Lab was housed at UMass, but also in the Lab itself, including at her workstation. She also used drugs when no one was present or even while her fellow employees were at the Lab. Farak admitted to being totally controlled by her addiction at that time, but still maintained that there were no inaccuracies in her testing (1 at 122-126, 142-143). She conceded, however, that during this time period, if anyone had retested the weights of the samples, they would weigh less than the submitted weight (1 at 126-127).

One specific date that Farak mentioned in her testimony was January 9, 2012. She testified that on that day, she performed some tests in the morning and “pulled some reports off the machine” (1 at 149-152), and later, consumed a police-submitted sample that was a liquid form of LSD (including crack cocaine, which she was using on a daily basis). She was “very impaired” and could not operate an automobile, perform any tests, or attend a therapy appointment. Farak claimed that she did not perform any tests, however, Farak’s lab notebook and endorsed certificates of analysis for approximately

eleven drug samples suggest that she, in fact, ran several tests on the GC/MS and otherwise performed drug testing that day and night on a variety of drug samples.¹⁸

Farak's use of drugs at the Amherst Lab and at home continued in early 2012. Farak's attempts at sobriety failed and she admitted that her theft and consumption of police-submitted samples began to rapidly increase by April 2012 (1 at 128-129). She recalled a specific instance of tampering, which occurred at the end of 2012, involving a sample that the City of Chicopee Police Department had submitted. She estimated that the sample was one kilogram of powder cocaine, and that she took approximately 100 grams from the sample and used it to manufacture base cocaine--at this point, Farak's drug of choice -- at the Amherst Lab (1 at 145-148).

Farak testified that generally, she made efforts to take drugs from police-submitted samples assigned to herself for analysis rather than samples submitted to other chemists because of "how it would look" (1 at 159). But early in the summer of 2012 Farak began stealing from other chemists' samples too, specifically those of Hanchett and of her fellow Chemist II, Pontes.

With regard to Hanchett's samples, Farak would take empty evidence bags Hanchett had initialed and left on his desk, wait until she came across a sample of his that she wanted to consume, open the bag containing the sample, manipulate the drugs in the sample, and then repackage the remaining contents in one of Hanchett's previously initialed bags (1 at 155-158). Farak indicated that she manipulated approximately one

¹⁸ This evidence was originally provided by the Hampden County District Attorney's Office pursuant to Motions for Post Conviction Relief (Mass.R.Crim.P. 30) that were heard in Hampshire Superior Court beginning in September 2013. It was subsequently provided by the MSP in November 2015 in an AGO review of documents from the Amherst Lab.

half dozen of Hanchett's samples, all base (crack) cocaine. For example, she tampered with one sample submitted by the Northampton Police Department that was approximately 3.5 grams, taking from the sample, but not replacing what she took with either actual or counterfeit cocaine. Similarly, she tampered with a 24.5-gram sample of base cocaine that had been submitted by the Pittsfield Police Department (1 at 154-157), continually accessing the sample during both work hours and at night and repackaging it with one of Hanchett's pre-initialed evidence bags.¹⁹

With regard to samples belonging to Pontes, Farak admitted to taking one of the samples Pontes had already analyzed, and resealing it (1 at 155). Farak maintained that she had only tampered with one of Pontes's samples, admitting that the reason she was only able to steal one pre-initialed bag from Pontes's workstation was that Pontes very rarely, if at all, pre-initialed her bags (1 at 155-156). Farak recalled that the sample was approximately 73 to 74 grams of cocaine, she took about 30 grams of it, and she replaced what she had taken with a counterfeit substance (1 at 155-156). Farak also admitted to practicing Pontes's initials, but she did not think that she was able to "believabl[y]" replicate Pontes's initials and so, she did not end up forging her initials on an actual sample (1 at 156).

Farak testified that fellow employees and law enforcement agents never questioned Farak about any of these aforementioned samples nor commented to her about any discrepancies concerning the integrity of the evidence. As to these samples, she removed the narcotics after the police-submitted samples were analyzed so that any

¹⁹ Farak did not believe that she had ever forged Hanchett's initials and had only used his pre-initialed bags to manipulate samples (1 at 159).

certificates originally generated were still accurate (1 at 157-158). Farak admitted that if these samples were re-tested, they most likely would have come back as counterfeit substances (1 at 169).²⁰ In conjunction with this scheme, she would frequently go back into the drug vault, take from cocaine samples that she already had tested, ingest the cocaine, and then reseal the evidence bags. In some instances, Farak would go into the safe and take out samples that had not yet been tested and take from them. She manipulated those samples in the drug vault to ensure that she would receive the same samples to test so that her fellow chemists and law enforcement officers would not notice that their weights were inaccurate (1 at 160-161).

4. Manufacturing Base (Crack) Cocaine

Farak manufactured crack cocaine at the Amherst Lab. She started engaging in this activity because of a lack of crack cocaine samples coming into the Lab. During mid to late 2012, she would enter the Lab after hours or when she was working overtime, remove powdered cocaine from samples, and cook it to produce crack. Specifically, Farak would dissolve the powdered cocaine in water, add baking soda, and heat up the mixture so that the moisture would dissipate and form crack. She then dried the substance by bringing it to the part of the Lab that contained the fume hood and placing it in drawers under the hood. Farak did not engage in this process to produce small batches --she only manufactured crack "maybe three or four times" (1 at 146) -- when there was a big enough submission of powdered cocaine to "make a quantity worth [her] time" (1 at 146-

²⁰ Farak was using counterfeit substances to mask her theft of standards and police-submitted samples at the lab. If the drugs were powdered substances, she would sometimes replace what she stole with baking powder/baking soda or sodium sulfate; if base (crack) cocaine, she would use soap chips, candle wax, and hardened modeling clay; if a clear liquid, she would use water (1 at 66-65, 85, 153).

148, 152-153). Farak also admitted to smoking crack throughout the entire day: "smoking at work, smoking at the lab, smoking at home . . . smoking and driving." All told, she estimated that she was smoking crack ten to twelve times a day (1 at 144). Farak testified that the other Lab employees never discovered what she was doing (1 at 144-145).

5. Manipulation of Computer Inventory

In her testimony, Farak admitted to manipulating the computer inventory used to track drugs in the Amherst Lab. She testified that, at certain points, she would check the computer evidence inventory to learn which samples were in the safe and which ones might be assigned to her in the future (1 at 136-137, 143, 161). Her manipulation of the inventory tended to focus on the samples to which she expected she would be assigned. On some occasions, when the opportunity arose, she would record the original gross weight as she received it from the evidence officer and take an amount from that sample for her personal use, but record the weight in her own lab notebook as the original weight. On other occasions, she would indicate in her lab notebook that the weight of the sample when she received it for testing was less than the weight recorded in the computer inventory. This enabled her to conceal her theft from the samples as a mere discrepancy and/or an acceptable loss. In addition, she sometimes accessed the computer system and simply changed the gross weights on the drug receipts, as had been recorded by the evidence officer. Then, if the sample was assigned to another chemist, the weight listed in the inventory would be the same as the sample's actual weight, so that the chemist analyzing the drugs would not know the difference. If that situation presented itself, she would always go back to the evidence computer and change the weight back to its original weight from its submission so no one would know there had

been tampering. Farak indicated that she would do her best to manipulate the order of the samples to make sure that she would be assigned the samples that she wanted. However, there were occasions when the expected samples did not actually get assigned to her and she would take the precautions she described in her testimony. (1 at 162-166).

6. Springfield Police Department Drug Evidence

According to Farak, the Springfield Police Department frequently submitted drug samples she was “interested” in taking. The drug samples submitted by the SPD presented her with a unique opportunity for tampering because the SPD’s method of submission was different than the method used by other departments which submitted drugs to the Lab.²¹ Every Wednesday, an SPD detective would bring in “a lot” of submissions in open evidence bags. When the bags arrived at the Lab, they would be heat sealed with the Lab’s heat sealer, before being formally submitted to the Lab and placed in the vault for analysis. Frequently, Farak would target these evidence bags for drugs for her own use, either because the seal of the bag was weak, or by purposefully reducing the temperature of the heat sealer in the evidence room so that the bags were easier to open without causing damage to the bag. Farak would then access the SPD

²¹ Kevin M. Burnham, a former narcotics evidence officer at the Springfield Police Department, has been charged by the AGO for the alleged theft of nearly \$400,000 from the evidence room. Burnham was arraigned in Hampden County Superior Court on the charges of Larceny Over \$250 (6 counts), in violation of M.G.L. c. 266 § 30, and Larceny Under \$250 (1 count), in violation of M.G.L. c. 266 § 30. Burnham was the narcotics evidence officer at the Springfield Police Department from approximately 1984 until his retirement on July 25, 2014. Burnham oversaw the storage and safekeeping of drugs, drug paraphernalia, and cash seized in drug cases. Burnham was also in charge of the disbursement of money when a case ended. The AGO investigation revealed that between December 2009 and July 2014, Burnham allegedly stole cash, totaling almost \$400,000, from evidence envelopes in more than 170 drug cases. The investigation also uncovered more than 160 empty evidence envelopes in which seized money should have been found. Press Release, Office of the Attorney General, Former Springfield Police Officer Arraigned for Allegedly Stealing Nearly \$400,000 from Evidence Room (January 11, 2016) (on file with AGO).

samples at a later time. This method was Farak's preferred method of taking drugs from the SPD samples because she did not have to worry about damaging the evidence bag - - she could pull the bag open, remove the drugs, and then heat seal it again over the original seal mark (1 at 166-168; 2 at 102).

7. Farak's Interaction with Law Enforcement, October 2012

Farak's taking of standards and samples for her personal use continued into 2012. In the wake of the misconduct of a DPH Chemist, Dookhan, at the Hinton Laboratory, the MSP assumed control of the Amherst Lab on July 1, 2012 (3 at 27, 55). Then-Governor Deval Patrick ordered the Hinton Lab to be closed on August 30, 2012 (1 at 183).²² During this time, Farak was using crack cocaine heavily—multiple times per day while at the Lab and at home (1 at 148,159,174-175,185). In October 2012, the MSP inspected the Amherst Lab in order to assess the work of the Lab and move the Lab toward being fully accredited (1 at 185; 5 at 26). Members of the MSP interviewed Farak and the other chemists during their visit. During the recent AGO investigation, Farak testified that she smoked crack cocaine on the morning of the MSP inspection and then also at lunchtime, prior to her 1 p.m. interview. According to Farak, during the course of the fifteen to twenty minute interview, there were no suspicions ever raised about her use of drugs (1 at 185-187).

Farak had another close interaction with the MSP on January 18, 2013. Farak was scheduled to testify in a criminal trial at the Hampden County Courthouse. She indicated that she had a "pretty fair amount of crack in her car." Taking advantage of the

²² Glenn A. Cunha, Office of the Inspector General, Comm. of MA, Investigation of the Drug Laboratory at the William A. Hinton State Lab Institute 2002-2012, 1 (March 4, 2014).

opportunity during the lunch break, she went out to her car, ate lunch, and “got pretty high.” However, when MSP members spoke to her in the Hampden County Courthouse about the trial for which she was scheduled to testify, the police never suspected her of being under the influence nor made any comment about her appearance or demeanor (1 at 188-189).

8. Lab Personnel Discover Something is Wrong and Alerts Police; Farak is Arrested

On January 17, 2013, Chemist and Lab evidence officer Salem discovered that drug samples from two different SPD cases were missing.²³ The first sample had been assigned to Farak for testing. Farak had tested the sample on January 4, 2013 and had issued a certificate of analysis. However, there were no drugs. The second sample had also been assigned to Farak for testing. Farak had not yet issued the certificate of analysis. Salem looked through the rest of the SPD batch from the relevant date but did not find the drugs. Before Salem went home for the day, she looked through the other batches in the evidence safe but did not find the two missing samples. The next morning, Farak left the Lab around 8:00 a.m. to go to the Springfield District Court to testify at a trial. While Farak was gone, Salem, who had arrived at work around 8:30 a.m., told her supervisor, Hanchett, about the missing samples. Hanchett and Salem looked for the missing samples in other places in the Lab, including in the temporary safe where Farak and her

²³ Salem testified to the procedures that were in place in the Lab during the relevant time frame. When a police department brought drugs to the Lab to be tested, the samples were batched according to the department and date on which the samples were brought in. The samples were not returned to the submitting department until all of the samples in the batch were tested and a drug certificate was generated for each sample. Salem testified that consistent with the requirements of her job as the evidence officer, she normally collected all of the drug certificates for a batch, verified that they matched the appropriate drug samples, and then prepared the batch to be picked up by the submitting department (4 at 118-119).

colleague Pontes stored the samples that they were processing. Hanchett also checked the data from the mass/spec to confirm whether Farak had completed the analyses of both of the missing samples. Hanchett found that Farak, in fact, had tested both samples and that they were both positive for cocaine (4 at 98-99).

Hanchett went to Farak's work station to look for the samples. When he pulled open the first cabinet, Hanchett discovered a white plastic bin with a plastic bag of cocaine, chunks of waxy-like substance in a saucer, white chunks in another saucer, a pestle, and drug paraphernalia. Hanchett continued to look for the missing samples in Farak's workstation, where he found a manila envelope containing the packaging for the two missing samples. The samples were properly labeled with the appropriate sample number, but the heat-sealed packaging had been sliced open and the contents in the bags looked strange to him. Upon visual inspection of the bags, Hanchett noted that one sample appeared to be a half and half mixture of two different substances, and the other did not appear to be cocaine at all.

Hanchett called Major James Connolly of the MSP to notify him of what he had discovered. The Amherst Lab was immediately shut down, and Major Connolly and his team went to the Lab to investigate further. Once there, they instructed Hanchett to perform a preliminary drug analysis on the two drug samples and the bag of cocaine that had been found in the plastic bin. Hanchett then performed a more complete analysis of the samples (5 at 51). With regard to one of the samples, Farak had concluded in her lab notebook that the substance was cocaine in free-base form and had not noted any significant impurities in her analysis. However, upon re-testing, both samples were found not to be cocaine. (5 at 50-51).

As the investigation unfolded, it appeared that Farak had tampered with additional samples. Farak's car was located at the Hampden County Courthouse and, pursuant to a warrant, searched in the early morning of January 19, 2013. Several items were seized from the car, including controlled substances.

Farak was arrested later that day and was subsequently indicted by a Special Suffolk County Statewide Grand Jury on April 1, 2013. On January 6, 2014, Farak pleaded guilty to four counts of Tampering with Evidence, in violation of M.G.L. c. 268 § 13 E; four counts of Larceny of Controlled Substances from a Dispensary, in violation of M.G.L. c. 94C § 37; and two counts of Unlawful Possession of a Controlled Substance (Class B), in violation of M.G.L. c. 94C § 34. The Court, Mary-Lou Rup, J., sentenced her to a term of 2-½ years in the House of Correction, eighteen months to be served and the balance to be suspended for five years.

V. Testimony of Other Witnesses

In addition to Farak, other Amherst Lab employees testified before the grand jury. Each witness testified to his or her individual observations of Farak as well as various practices and procedures at the Amherst Lab. In addition, a witness from an MSP drug lab testified in regard to her observations of the Amherst Lab.

A. Testimony of Amherst Lab Supervisor, James Hanchett

1. Hanchett's Testimony about Farak

Hanchett testified that he worked alongside Farak after she transferred from the Hinton to the Amherst Lab in 2004. At that time, Hanchett was a senior chemist with a supervisory role over the less experienced chemists (although not yet the Lab's supervisor), so he was actively testing drugs in the Lab and sat approximately twelve feet

away from Farak. Hanchett described Farak as a “meticulous” employee and “dedicated to her work.” She handled all the evidence well. Everything was always “packaged neatly, [and] marked and labeled neatly.” She kept her workstation meticulous, she was “a smart girl [and] . . . a trusted employee,” and she “did a great job.” He explained that no police officer or Assistant District Attorney had ever complained about Farak’s work (4 at 86-87, 104).

Although Farak did some of the testing slightly differently than he and the other Amherst chemists, Hanchett did not see a need to offer her any additional training because she had been fully trained at the Hinton Lab. In any event, as her time at the Lab continued, Farak began to adopt the Amherst Lab’s methods, with the exception of how she kept her personal notes (4 at 75,78, 80-81).

Hanchett never noticed anything different about Farak until the last few months of her employment at the Lab (4 at 77-78). He testified that starting in the late summer or early fall of 2012, Farak’s production “dropped,” and he noticed other changes in her work, as well. “The condition of her laboratory bench was . . . [had been] very meticulous [but] it was . . . getting messy, . . . stacks of paper [were] not being filed properly[,] . . . [and he] could see something deteriorating in her habits.” (4 at 83). In addition, her physical appearance was “deteriorating” and “the way she was dressing . . . [was as though] she was letting herself go” (4 at 92). He “noticed [like] near the end [of her employment] she seemed to be awful nosey [sic] about what was coming in. She wanted to know large samples that were brought in . . . trafficking cases” (4 at 105). Hanchett would keep track of the number of samples that each chemist tested and the type of samples that they were testing on a monthly basis. These records were kept in-house at

the Amherst Lab and the overall testing numbers, but not each individual chemist's work, was reported to Hinton. Hanchett began to review all of Farak's output at the Lab and referred to Lab records to show her that her work was deteriorating in comparison to her output during prior months and years (4 at 84-85).

2. Hanchett Becomes Lab Supervisor in the Amherst Lab; Typical Procedures

In June 2008, Allan Stevenson ("Stevenson")²⁴ retired from his position as lab supervisor and Hanchett was promoted to Chemist III and the main supervisor of the Amherst Lab (4 at 11). Hanchett then undertook several new responsibilities. He was responsible for making sure all substances were analyzed properly, seeing that chemists followed certain drug protocols that were in place at the Amherst Lab, and ensuring that the Lab was adequately staffed during working hours. In addition, he was responsible for the maintenance of the drug testing instruments (GC/MS), this last responsibility occupying about 25% of his time (4 at 11-12).

There was an extremely high backlog of cases at the Hinton Lab and so once a month, Hanchett would drive from the Amherst Lab to the Hinton Lab and bring about two to three hundred drug samples, a majority of which had been submitted by various eastern counties of the Commonwealth, back to the Amherst Lab so that the Amherst Lab could conduct testing and help alleviate the Hinton Lab's backlog. There was a backlog at the Amherst Lab, too, but it was not as bad as the Hinton Lab's (4 at 13).

Upon arrival at the Hinton Lab, Hanchett would meet with the assigned evidence officer, who would give him a list of samples that he would bring back with him to the

²⁴ Stevenson, age 69, was interviewed by AGO investigators. Stevenson said Farak was well-qualified, there were no problems with her work and no one complained about her. He added that she was quiet and kept to herself.

Amherst Lab for testing. Hanchett would then go through each sample by hand to make sure that the samples that he had in his possession corresponded with the list that he had received. The Hinton Lab evidence officer would then “scan” all the samples to record which samples were leaving the Hinton Lab and being transferred into the possession of Hanchett, who, in turn, would sign a form acknowledging his receipt of them. Upon arrival at the Amherst Lab, personnel would enter the samples into the computer inventory and place the drugs in the vault for assignment to the individual chemists. Testing of the Hinton “overflow” had occurred for approximately fifteen to twenty years and was usually done during chemists’ overtime when the DPH budget allowed (4 at 14-16).

3. Hanchett’s Testimony about Laboratory Standards

Drug testing laboratories use drug “standards” in the GC/MS while testing to confirm whether the drug sample is a controlled substance under M.G.L. c. 94C.²⁵ Hanchett testified that a “primary standard is something purchased from a drug or chemical company [and that has] been certified as to what it is.” In other words, the primary standard was essentially a “known” substance that would be tested against the “unknown” police-submitted samples. Types of “standards” that the Lab would order for this purpose included heroin, cocaine, methamphetamine, oxycodone, and “just about everything.” The GC/MS instruments in the Lab each maintained an internal library that would record its analysis of the standard. That information would be retained within the instrument for future reference during substance analysis (4 at 33, 35, 60-61).

²⁵ Chapter 94C of the General Laws is the “Controlled Substances Act” of the Commonwealth of Massachusetts. This chapter sets out the applicable definitions, classifications, and criminal penalties for the possession, distribution and trafficking of prohibited (controlled) substances.

Hanchett, by then the supervisor of the Amherst Lab, was responsible for ordering all of the standards for the Lab. Before him, that responsibility had been Stevenson's (the previous supervisor's). A Drug Enforcement Agency ("DEA") license authorized the Lab to purchase these drugs from various companies. Hanchett testified that the Lab had approximately two hundred standards. There was never a regular audit of the standards at the Amherst Lab until the MSP took over the Lab in July 2012. Shortly thereafter, Hanchett prepared a new DEA license application to purchase standards, and was notified that certain regulations required the performance of two inventories a year and that the standards had to be stored in a drug vault. Prior to July 2012, however, the Lab had stored the standards in an unlocked metal file cabinet and refrigerator. The standards were refrigerated because they had a limited shelf life (4 at 38, 50). The refrigerator could not be locked, and it stored approximately 20 standards.

Before July 2012, everyone had access to these standards, according to Hanchett. The storage cabinet was located on the far side of the laboratory, away and not readily visible from the testing benches. Although the cabinet was locked, the key was accessible by all Lab employees. The standards were in both liquid and powder form, but Hanchett estimated that approximately 95% of them were in powder form (4 at 32-37). The price of standards varied based upon the state-authorized vendor and the laboratory. Frequently, there were budget problems at the Amherst Lab and the DPH would resist requests to order certain supplies, including standards (4 at 23, 35).

In those instances, Hanchett explained, it was necessary to "make . . . new standards" (4 at 38). Frequently, he would make "secondary standards" when the Lab ran out of the primary standard that had been purchased from an outside vendor (4

at47). He manufactured these secondary standards by taking an "excess sample from a large trafficking case." He would complete an "extraction process where he would take the excess sample, mix it with hydrochloric acid and chloroform extract to get rid of the contaminants . . . back extract it to purify it up and then crystallize it out" (4 at 48). The goal of that process would be to remove all adulterants or "cutting agents" from the police-submitted sample in order to produce the purest form of the drug for use as a standard. Hanchett would always run this "secondary standard" through the machines to confirm that the new standard was in the purest form possible. He admitted that sometimes there were "co-contaminates [that they] couldn't get rid of all the time but it wasn't a problem because it never interfered with the sample itself." He was confident that these secondary standards were almost as good, or the same as, the primary standards (4 at 49).

Hanchett would make only small amounts of these "secondary standards," however, because they were not as stable as the standards purchased from various outside vendors and laboratories, and they always needed to be stored in the refrigerator. The other Lab employees were aware that Hanchett was manufacturing the secondary standards but they did not do so themselves (4 at 48-54, 111). Sometimes, the other chemists at the Lab would alert Hanchett when the secondary standard was "breaking down" or was "running out," and he would then take it upon himself to make more (4 at 112). He would "put aside two to three hundred milligrams of heroin or cocaine [from police-submitted samples] . . . and ke[ep] it in the refrigerator . . . sealed in plastic. [He] had a backlog of it so [he] would be ready to go if [he] needed to make the next standard" (4 at 112-113). If he was planning in advance to make the secondary

standard, he would leave it out “on top of [his] bench sealed in a plastic container.” He took this step so that the substance would “come to room temperature and [be] a little easier to weigh” (4 at 113).

In his testimony, Hanchett maintained that, when he joined the Lab in 1977, the creation and use of these so-called secondary standards was a regular and accepted practice. He believed that the Hinton Lab was producing secondary standards as well. He testified that, at some point, he had even made a heroin standard for the Hinton Lab (4 at 54). He had never had a particular conversation with anyone at the Hinton Lab about the use of secondary standards, but he assumed that the supervisor of the Hinton and Amherst Labs, Julianne Nassif (“Nassif”), was aware of the practice: “I’m sure she [knew], yes. . . I, you know, sometimes we told her we couldn’t, you know, couldn’t purchase drugs so used secondary standards.” In describing her reaction, Hanchett said she conveyed her acceptance of the practice. (4 at 55).

4. Hanchett’s Testimony about the Amherst Lab’s Protocols and Security

The Amherst Lab was not an accredited forensic laboratory under the DPH (4 at 29). It was not until the MSP took over the Amherst Lab in July 2012 that the Lab began to move toward full-accreditation (4 at 108-109). Although Hanchett had made attempts to seek accreditation for the Amherst Lab earlier, he was told by the DPH that there was not enough money in the budget to carry out the process (4 at 29). Although Hanchett did attempt to follow the standards set forth by the Scientific Working Group for the Analysis of Seized Drugs (“SWGDRUG”),²⁶ he admitted in his testimony that the Lab did

²⁶ SWGDRUG works to improve the quality of the forensic examination of seized drugs and to respond to the needs of the forensic community by supporting the development of internationally accepted minimum

not meet the SWGDRUG criteria in areas such as its paperwork maintenance or processing, and its storage and receipt of various substances. He acknowledged that the Lab was “weak” in some of these areas but said that the Lab “just didn’t have the manpower or the time to handle it all, or the money to” satisfy all of the SWGDRUG requirements (4 at 29-30).

Hanchett also testified regarding “blanks.” “Blanks” are solvents that the Lab ran through the GC/MS in order to clean out any traces of containments or remaining drug residue after a test had been performed. Failure to take this step would frequently result in “carry over”²⁷ from the previous test(s), which would have to be distinguished by the individual chemist (4 at 114). After the MSP assumed control of the Amherst Lab, the MSP required that a blank be run after every sample was tested (4 at 108). The previous procedure at the Amherst Lab had been to run a blank after every five to ten samples that were tested, but it was largely left to the discretion of the individual chemist doing the test (4 at 74).

Hanchett testified that the Lab did have a model Standard Operating Procedure (“SOP”) in place. It was developed in the mid-1980s by a professor from Northeastern University who went to both the Amherst and Hinton Laboratories to set up procedures for analyzing drugs. The Amherst Lab “more or less followed the[] procedures that [were] recommended.” Those procedures included a preliminary test and a confirmational test . . . [and] put[ting] it all into documentation” (4 at 30-31). Hanchett

standards, identifying best practices within the international community, and providing resources to help laboratories meet these standards. <http://www.swgdrug.org/>.

²⁷ “Carry over” is residue from a previous test that remains in the GC/MS unless a “blank” is run through to “clean” the machine(s) and not allow it to affect the results on a subsequent test.

recalled that since he had begun working at the Lab in 1977, the Northeastern professor had been the only individual who had visited the lab to set any type of policy or procedure for analyzing suspected narcotics (4 at 31). Hanchett indicated that the Amherst (and Hinton) Labs were in "deplorable condition." He said, "It was not a good environment to be working under. Equipment hoods were broken, not fixed, [and] not replaced . . . [The DPH] just let it go for so long . . . they didn't have the money" (4 at 28).

Security at the Amherst Lab was non-existent, and Hanchett indicated that he had voiced concerns to the DPH about this lack of security (4 at 24-25). In fact, the building that housed the Lab (the Morrill Building) also contained an "auditorium that was used by UMass students that was on the next floor. So between the main office and the laboratory was a corridor that everyone had access to" (4 at 25). Access to the Lab was possible by use of a key or a swipe card that was given to each employee. Employees could use the key or swipe card interchangeably and the swipe card did not keep a record of the employees who entered or their entry times (5 at 17). Further, there were no cameras located in the Lab (4 at 90). Every chemist had access twenty-four hours a day and seven days a week. Every chemist also had access to all the work stations, the work station safe (where the Lab kept samples overnight if they were still being tested), the drug vault, the standards cabinet, the standards refrigerator, and the computer inventory system. Hanchett stated that the Lab employees were forbidden from doing any type of testing when there was only one person at the Lab, but that it was possible to break that rule when "nobody's there" to enforce it or report the misconduct (4 at 90-91). The offices of both Hanchett and Salem were located across the hall from the Lab and there was no way they could monitor the testing (4 at 91). Hanchett admitted that although

the chemists were not supposed to assign samples to themselves for testing, the practice was possible due to the unfettered access all employees had to the different areas of the Lab (4 at 104-105).

5. Hanchett's Testimony about the Testing of Class E Substances at the Amherst Labs

Hanchett testified to the manner in which chemists at the Hinton and Amherst Labs would test and classify substances that were believed to fall within the definition of a Class E substance as set forth in M.G.L. c. 94C § 32, namely substances in pill form.²⁸ He explained that the Lab did not perform a chemical analysis of most Class E substances. Instead, any analysis was simply done visually (4 at 63). Essentially, the chemists identified the samples by relying on the colors and markings on the individual pills and comparing those to their desk reference materials. Hanchett explained that where the chemist was not able to identify the pill by any individual markings, the pill would be run through the Gas Chromatograph and if that produced a result, the pill would then be run through the Mass Spectrometer and compared to that machine's library of substances. Hanchett testified that this procedure usually would be adequate to determine the chemical make-up of the individual pill (4 at 64).

²⁸ State law defines a Class E substance as "(a) Any compound, mixture, or preparation containing any of the following limited quantities of narcotic drugs, which shall include one or more non-narcotic active medicinal ingredients in sufficient proportion to confer upon the compound, mixture, or preparation valuable medicinal qualities other than those possessed by the narcotic drug alone: (1) Not more than 200 milligrams of codeine per 100 milliliters or per 100 grams; (2) Not more than 100 milligrams of dihydrocodeine per 100 milliliters or per 100 grams; (3) Not more than 100 milligrams of ethylmorphine per 100 milliliters or per 100 grams; (4) Not more than 2.5 milligrams of diphenoxylate and not less than 25 micrograms of atropine sulfate per dosage unit; (5) Not more than 100 milligrams of opium per 100 milliliters or per 100 grams; (b) Prescription drugs other than those included in Classes A, B, C, D, and subsection (a) of this Class." M.G. L. c. 94C § 31 (2016).

Hanchett also indicated that there would be frequent discussions between chemists at both the Hinton and Amherst Labs if an unknown pill was submitted to the Lab. Oftentimes, chemists would classify a pill as a Class E drug based simply upon those conversations (as opposed to any actual testing), or based upon a belief that the pill may have been, or was, a “prescribed” drug under Chapter 94C § 32(1)(d).²⁹ Hanchett testified that listing all of the Class E drugs covered by the statute would have been impossible; he estimated that there may be at least 10,000 Class E drugs in existence (4 at 67).

In addition, Hanchett noted that “it took a lot longer to analyze Class E drugs because [there were usually] a lot of them,” because they were “not easy to test,” and because they required “more complicated tests.” At the same time, however, there were countervailing “time constraints.” So, visual identifications were “just easier.” Possibly for those reasons, Hanchett testified, someone “up top” in the Lab—though not Hanchett himself—had “decided that . . . [the chemists] were going to analyze Class Es by visual examination only” (4 at 63-66).

B. Testimony of Sharon Salem, Chemist and Evidence Officer

Salem, who had worked at the Amherst Lab for 25 years, is currently employed by the MSP in the Criminalistics and Crime Scene Units, based in Springfield, Massachusetts. She holds a bachelor’s degree in chemistry from the University at Massachusetts, Amherst. She began her career in the DPH as a chemist assigned to the Amherst Lab (5 at 8). At the time of the closing of the Amherst Lab, her title was Forensic Chemist III and she was the evidence officer for the Lab. In that capacity, she did not analyze any

²⁹ The Lab utilized the Physician Desk Reference (“PDR”) to identify pills in the Lab. If a pill was listed as a prescribed drug in the PDR it meant that at “one time or another it was controlled under the Federal DEA Act . . . [and therefore would be] considered a Class E” (4 at 66).

substances. She held the position of evidence officer for approximately seven years and continued in that role after the MSP took over the Amherst Lab in July 2012 (5 at 5-6).

1. Salem's Duties Regarding Police-Submitted Samples

Salem testified that as police officers brought evidence to the Lab, she would log the evidence into the evidence computer. In making these entries, she would "rely on what the police were telling [her] for the most part." She would "eyeball" the sample "but for the most part [she] had to take their word" for it (5 at 15). Salem further indicated that in her experience as an evidence officer, there were never any large discrepancies between the quantity that the police reported as coming in and the quantity that the chemists ultimately determined (5 at 16).

Salem testified that she sometimes also picked up samples of suspected narcotics from the Hinton Lab and transported them back to the Amherst Lab for testing. According to Salem, the Hinton Lab frequently gave the Amherst Lab more simple cases to test and stayed away from the more difficult or "trafficking" cases. According to Salem, the Hinton Lab made this choice so that the Amherst Lab "could do more of them" (5 at 33).

2. Salem's Duties Regarding Security at the Lab

As for security, Salem indicated that Lab employees could access the Lab and the drug vault by either a key or swipe card given to them. She indicated that the key could bypass the swipe card and vice versa. Furthermore, any employee could access the Lab and all secured areas within the Lab, day or night, without being detected (5 at 43-44). Salem had never seen any type of log recording the names of those who had entered the Lab but she noted that the University of Massachusetts was the entity that was

responsible for the “alarm system and the card swipes” (5 at 17). Adding to what Salem saw as a lack of security, was what she also believed to be a lack of oversight by the DPH in regard to the Amherst Lab. She was of the view that there was never a requirement to submit reports of any type to the DPH regarding the work at the Amherst Lab. Furthermore, in the course of Salem’s employment, supervisors from the DPH would visit the Amherst Lab infrequently. Salem recalled that they had visited only “once or twice” in her years at the lab (5 at 60).

Salem testified that chemists at the Amherst Lab could assign samples to themselves but it was “frowned upon” (5 at 20). Every chemist had access to the computer inventory system and, as Salem admitted, someone could manipulate the drug inventory on the computer system (5 at 63). Frequently, Farak or Pontes would approach either Hanchett or Salem for the assignment of samples. Occasionally, according to Salem, Hanchett would assign samples to himself because he was in the Lab before anyone else (5 at 21). Salem stated that if a batch of samples was assigned to a particular chemist and that chemist was unable to finish the testing, the protocol was to store the samples in a shared safe at the work stations. Both Farak and Pontes had access to that safe, which was secured only by an “old-fashioned combination lock” (5 at 22-23).

3. Salem’s Testimony Regarding Standards at the Lab

Salem testified that everyone also had access to the standards at the Amherst Lab and that the Lab stored the standards in a locker that was out of view from the chemists’ workstations (5 at 25). She also noted that “working standards” were kept in a refrigerator in the Lab (5 at 26).

Salem described working standards or secondary standards as those that were “made from samples that were submitted by police departments.” Typically, “any leftover sample would be utilized to be made into a standard” (5 at 27). She further indicated that only Hanchett would make the secondary or working standards and the Lab would usually store them in the refrigerator (5 at 27-28). Salem stated that after a formal MSP audit, the use of “secondary standards” stopped (5 at 37). At a certain point, Salem stated, Hanchett noticed that some of the standards that had been acquired from outside labs were at lower levels than “he thought they should be” (5 at 33). Hanchett was concerned about this discrepancy and first brought it to the attention of Salem. He confronted both Farak and Pontes about the issue. They denied any knowledge of the problem and Hanchett did not pursue the matter further. Salem stated that Hanchett was concerned about “wrongdoing” but did not have any proof that misconduct had occurred. This incident occurred “sometime after the state police audit of [the] lab in October of 2012, but before the DEA came to inspect [the Lab] for [its] licensure under the State Police” (5 at 34).

4. Salem’s Testimony Regarding Evidence Bags

Salem also testified about the chemists’ initializing of evidence bags. When she was analyzing drugs prior to becoming the evidence officer at the Amherst Lab, her own practice was to initial the bags only after they were sealed (5 at 54). Salem was not aware of the specific practices of the other chemists at the Lab, or whether any other chemist would initial a bag before or after the substance to be placed in the bag had been analyzed. She conceded the possibility that some of the chemists may have been

initialing empty evidence bags so that when they finished their analysis, they could seal right through the initials,³⁰ but she was not certain.

5. Salem's Testimony About the Testing of Class Es

Salem indicated that the certification of Class E substances was done visually using the PDRs. If the substance remained unknown after visual inspection, it would be run through the GC/MS in an attempt to discover its properties. Salem was not sure whether the individual chemists had any particular practices as to how they would test Class E drugs. She acknowledged that a substance could be classified as a Class E drug by mistake, but did not believe that a lab employee would deliberately misclassify a substance (5 at 56-57).

6. Salem's Testimony about Accreditation

Salem testified that the Amherst Lab was not accredited. Although there had been some discussion about having the Lab accredited, the funding was never in place to take the steps needed to do so and the DPH "never made it a priority." One of the Lab's shortcomings, for accreditation purposes, was that the DPH never had any formal, written policies or procedures in place (5 at 30). Salem testified that there were no set drug protocols at the Amherst Lab and that any policy or procedure was conveyed or learned "by word of mouth" (5 at 9). "[A]n accredited lab," Salem explained, "follows a strict guideline as to what is standard practice, what [an analyst's] paperwork w[ould] show, [and] what testing [would be] done on a particular item" In an accredited lab, "everyone [would be] on the same page and doing the same type of testing and working

³⁰ Salem was the only chemist from the Lab that mentioned this practice.

towards the same goal.” In short, “[a]ccreditation standardizes all the practices” (5 at 30).³¹

7. Salem’s Testimony Regarding her Observations about Farak

Salem testified that she did not notice any problems with Farak until the last few months that Farak worked in the Lab. She noticed that Farak was losing weight, was “moody,” and was leaving the Lab more frequently during the day, but she did not observe any other “dramatic changes.” She did not note how frequently Farak was not present in the Lab. Salem stated that there was positive feedback about Farak’s testimony from various Assistant District Attorneys and nothing negative (5 at 42-43).

C. Testimony of Rebecca Pontes, Chemist

Pontes had worked at the Amherst Lab for eight and one half (8-½) years. She is currently employed by the MSP in the Criminalistics Unit in Springfield. She holds a bachelor’s degree in biology from the University at Massachusetts, Dartmouth. She began her career in the DPH as a chemist assigned to the Amherst Lab. At the time of the closing of the Lab, her title was Forensic Chemist II and she was one of the main chemists analyzing substances that police submitted to the lab. She continued in that role after the MSP took over the Amherst Lab in July 2012 (5 at 65-66).

1. Pontes’s Testimony about Drug Testing

When Pontes arrived at the Amherst Lab in May 2004, she was trained by Hanchett. She described the training as “individualized on-the-job training.” She had

³¹ In addition, the policies and procedures at the Amherst Lab differed somewhat from those followed at the Hinton Lab (5 at 31). Salem testified that the testing at the Hinton Lab “was a lot more complicated,” referring to the two-chemist system that was in place (5 at 32). The two-chemist system required the first chemist to do preliminary testing without the use of any machinery. The second chemist would perform all the confirmatory testing on the GC/MS. This requirement became more difficult after chemists became required to testify in court as to their work, and as a result, the Hinton Lab ceased that procedure.

previously worked at an environmental lab (a company named Rhode Island Analytical), where she used instrumentation similar to that at the Amherst Lab to test environmental samples. Hanchett walked Pontes through the steps of receiving the samples, weighing them, sampling them, and running them on the GC/MS (5 at 70-71). At the beginning of her employment, she was only allowed to test vegetable matter until she was deemed to be "proficient," a designation that allowed her to test powders and other substances (5 at 71-72). Pontes stated that it was possible to complete many marihuana tests on an average work day, at least in part because those tests were simple. By contrast, with powdered samples, (*e.g.*, cocaine), the weighing, sampling and actual testing would take a lot longer, "from half an hour to forty minutes" (5 at 72-73). Pontes stated that Farak and she did the vast majority of the testing at the Lab. Hanchett did test some substances, but only the larger and more complicated ones (5 at 73-74). Pontes testified that Salem was the evidence officer at the Amherst Lab and assigned the samples to each chemist for testing (5 at 76).

2. Pontes's Testimony about Security at the Lab

Pontes testified that, for the majority of the time she was at the Lab, employees accessed the Lab by key or swipe card and only one of the two had to be used. Pontes did not know if there was a mechanism by which entry into the Lab was tracked. She added that there was an alarm system in the Lab that was set at night and which had to be disarmed with a security code in the morning. Employees were able to enter the Lab at any time of the day or night, twenty-four hours a day (5 at 77-78). The drug locker or vault that contained all the police-submitted drug samples was in an area near Hanchett and Salem's offices, across the hallway from the Lab. Employees could access the drug

vault in this area by using the same swipe card or key that employees also used to gain access to the Lab area (5 at 78). There was no written or spoken policy concerning who could or could not enter the safe (5 at 79). There was also another safe located in the Lab itself. It was used for overnight storage of any samples that the chemists had not finished testing. That safe was located along a wall in the middle of the Lab and had a dial combination to secure it at night. All employees at the Lab had the combination to the safe (5 at 81-82). Pontes testified that she never left an open bag in the “overnight” safe. Instead, she used the safe for samples that she had not yet opened or that she had “completed” and had “sealed up already” (5 at 82). Pontes also noted that there was a computer in the evidence room, and that everyone had access to it through the entry of a single pass code that was the same for every employee. She indicated that someone could possibly change the weights of the submitted samples in the evidence computer (5 at 100).

3. Pontes’s Testimony about Standards

Pontes indicated that the Lab used both primary and secondary or “prepared standards.” The primary standards were “known manufactured, known standards that [the Lab] would get from a manufacturer and ke[ep] in a locked storage area” (5 at 85). A chemist would use these standards as a benchmark “to test against unknown substances” (5 at 85). They were in both powder and liquid form. Pontes did not recall how many such standards were on hand at the Amherst Lab (5 at 85). These primary standards were kept along with the “prepared standards” in a refrigerator in the Lab that was closest to Hanchett’s work station. (5 at 85-86).

Pontes explained that a “prepared standard” is “a standard that was [a powder that is] diluted in liquid form to be used on the instrumentation.” Hanchett made these prepared standards at his workstation in the Amherst Lab (5 at 86-87). Hanchett would make these prepared standards by using a small sample from known substances that the police had submitted for testing (5 at 89). Pontes testified that if she noticed a prepared standard running low in the refrigerator, she would tell Hanchett (5 at 88). She recalled Hanchett confronting her and Farak about missing standards at the Amherst Lab - - he expressed concern about these missing standards and wondered what could have happened to them. He also asked Pontes if she was making her own standards. Both chemists denied going into the standards cabinet and refrigerator and Pontes denied ever making her own standards. She was trying to “wrap her brain” around how standards could go missing (5 at 110-111).

4. Pontes’s Testimony about Evidence Bags

Pontes testified that she never pre-initialed her bags before completing her analysis on the substances. She would always reseal the evidence bag with the police-submitted sample, and then initial and date the bag (5 at 82-83). She further indicated that the Lab required all the chemists to date and initial the evidence bags. She observed Farak adhere to this procedure and did not recall if she ever observed her pre-initial evidence bags (5 at 83). Pontes described the evidence bags or “KPAC” bags as “heavy plastic type bags that you would . . . heat seal” (5 at 83).³²

In addition, Pontes would occasionally act as the evidence officer for the Amherst Lab. She recalled that some police departments would deliver samples to the Lab in open

³² KPAC is a brand that is frequently used in the food and drug industry for packaging.

evidence bags. She remembered that the police departments from East Longmeadow and Springfield followed this practice, and that the bags from Springfield, in particular, had to be resealed at the Lab (5 at 98-99).

5. Pontes's Testimony about Lab Protocol

Pontes testified that when she first started working at the Amherst Lab, part of her training involved writing notes based upon her observations of Hanchett's analysis of the substances. Because she had experience (from her prior employment) writing standard operating procedures, Hanchett had asked her to "write an SOP³³ for each controlled substance that [the Lab] came across" (5 at 103), although there may have been some informal or unwritten SOPs already in place at the time Pontes started working at the Amherst Lab. However, Pontes believed that the SOPs that she drafted were very close in their terms to those that would be found in an accredited laboratory (5 at 103). She indicated that the policies set forth by SWGDRUG were available to her at the Lab for her review, if necessary (5 at 104).

6. Class E Substances

Pontes testified to the classifications of certain types of substances at the Lab, specifically Class E drugs. She indicated that Class E drugs were identified by visual inspection only (5 at 112). The substances "would come in as tablets and they would have identifying marks on them" (5 at 113). A chemist would identify a given pill by consulting a reference guide. On the infrequent occasions when a police department submitted a pill or substance that was not in the reference guide, the chemist would run the substance through the GC/MS (5 at 113). Pontes recalled one specific drug named

³³ SOP or standard operating procedure.

"BZP."³⁴ She recalled that BZP was a federally controlled substance but not controlled under the state drug laws. "It could have been classified at a Class E . . . or reported that it was not classified with a note that it was federally controlled. The Lab had no policies set in place concerning the classification of BZP." However, Pontes was certain that she had a discussion with Hanchett regarding that issue (5 at 114-115).

7. Pontes's Testimony Regarding Her Observations of Farak

Pontes testified that she worked alongside Farak daily for over eight years. Pontes maintained that she did not find anything unusual about Farak's demeanor or physical appearance. Although Pontes considered Farak to be "odd," "there wasn't anything that stood out." She thought Farak was odd because Farak would finish Pontes's sentences and was just "quirky" (5 at 95). Pontes indicated that towards the last few months of Farak's employment, Farak was leaving the Lab frequently for long periods of time. However, Pontes would never question Farak about where she went. Pontes assumed that "she may have gotten a coffee or went to the bathroom" (5 at 96). Pontes recalled that no member of law enforcement had ever made a comment to her regarding Farak's work (5 at 105).

She described Farak's work as "very good," noting that "[h]er notes [were] very neat and methodical, [and] she kept everything organized as far as her case files went" (5 at 96). Pontes said that Farak's workstation was "neat" but her desk area was "a little messier" (5 at 97). Occasionally, Farak would show interest in the types of samples or the quantity of samples that Pontes was testing (5 at 96-97).

³⁴ "BZP" is discussed at length in the testimony of MSP Crime Laboratory Manager of Forensic Chemistry, Brooks.

D. Testimony of Nancy Wong Brooks, Massachusetts State Police

Brooks is employed at the MSP Crime Laboratory and is the Manager of the Forensic Chemistry Section, overseeing several units: the Drug Identification Unit; the Office of Alcohol Testing; and the Post-Mortem Toxicology Unit. Before managing the aforementioned divisions, she was the Supervisor of the Drug Identification Division of the MSP, located in Sudbury, Massachusetts. She received a Bachelor of Science degree in Chemistry from the University of Wisconsin, Madison. She is a member of the Clandestine Laboratory of Investigating Chemists and a member of the New England Association of Forensic Scientists. In addition, she has been qualified as an expert in the state of Wisconsin and testified in the states of New Hampshire, Vermont, and Massachusetts. In her 20 years as a bench chemist, she has examined over 30,000 samples and authored 10,000 reports. She currently oversees all forensic units located at the MSP drug labs in Sudbury, Maynard, and Springfield, Massachusetts (6 at 4-8).

1. Brooks's Testimony Regarding the Amherst Lab

The MSP had recently taken over control of the Amherst Lab from the DPH on July 1, 2012 when Brooks first had the opportunity to visit the Amherst Lab in October 2012. The purposes of her visit were to conduct a cursory audit or site assessment of the Lab; to review protocols; to evaluate some of the case work that the chemists performed; to evaluate the instrumentation in the Lab; and to discover what would "need to be obtained in order for [the Lab] to become accredited . . . [because the Lab] w[as] not accredited at that time" (6 at 26-28).

Brooks testified that there were a lot of steps that the Lab needed to take to become accredited (6 at 28). There were few written protocols in place at the time (6 at

27). She was of the opinion that the Lab's GC/MS instrument "was of an older generation. Some of it was at least five years old. The laboratory itself was definitely reminiscent of an academic laboratory" (6 at 28). Brooks added that "as a former chemistry major, [she] didn't see too much difference between when [she] was in a chemistry lab twenty years ago and in the Amherst lab" (6 at 29). Brooks noted, for example, that there were deficiencies such as "hoods being out of order at the time" (6 at 28).³⁵ She indicated that there were two safes in the Amherst Lab: one for temporary storage and another larger, secured evidence storage room safe in the administrative area of the Lab (6 at 30).

2. Brooks's Testimony about Accreditation

Brooks stated that a lab becomes accredited through a multi-step process. The lab first submits an application to an accrediting body for forensic drug laboratories, the American Society of Crime Laboratory Directors Accreditation Board, also known as ASCLD/LAB³⁶ (6 at 8-9). The ASCLD/LAB reviews the submitted application along with the submitting lab's written drug protocols. Members of ASCLD/LAB do an on-site review of the lab, including a review of protocols and case files and they make a site facility assessment. The members seek to determine whether the lab has adequate space to perform analytical examinations; mechanisms for tracking evidence throughout the

³⁵ A "hood" is used during chemical extractions for safety reasons. The hood ventilates the area where the extraction is occurring so that any fumes or dust are carried out. The extraction would take place under the protection of safety glass. Examples of typical extractions include taking components out of tablet or the evaporation of a substance using a heating element (6 at 29).

³⁶ ASCLD/LAB offers accreditation programs in which any crime laboratory (including crime scene and computer forensics programs) or forensic science breath alcohol calibration program providing covered services may participate in order to demonstrate that their technical operations and overall management system meet ISO/IEC 17025:2005 requirements and applicable ASCLD/LAB-*International* supplemental requirements. American Society of Crime Laboratory Directors/Laboratory Accreditation Board (ASCLD/LAB): <http://www.ascld-lab.org/how-to-become-accredited/> (last visited March 31, 2016).

laboratory; and a safe environment for analysts to work. In addition, they review lab protocols to ensure that the methods being used, as well as the conclusions being formed by the analysts, are scientifically sound; inspect the instrumentation and assess how well it has been maintained; and review security protocols.

A lab seeking accreditation must also have a DEA license in order to handle and acquire controlled substances for testing. Aside from that license, the lab should also have a DPH registration (6 at 8-10).

The ASCLD/LAB offers two different types of accreditation programs: the ASCLD/LAB Legacy Program and the ASCLD/LAB International Accreditation under the ISO 17025 Supplemental Guidelines³⁷ (6 at 8-10). Brooks indicated that the “International Supplements were far more comprehensive. Under the original Legacy Program there were one-hundred and fifty (150) criteria that were reviewed for a lab. Under the International Program Supplemental, [a lab is] reviewed on . . . approximately four-hundred (400) criteria . . . all of which [the lab] must pass” (6 at 11).

3. Brooks’s Testimony about the Massachusetts State Police Laboratories in Sudbury and Springfield

The two MSP drug labs, located in Sudbury and Springfield have been accredited since 2002. The labs first were accredited under the ASCLD/LAB Legacy Program. The ASCLD/LAB subsequently awarded the labs the International Accreditation under the ISO 17025 Guidelines, both described above (6 at 10). Brooks explained the general layouts of the two labs and their features. In the Sudbury lab, there are approximately ten to

³⁷ American Society of Crime Laboratory Directors/Laboratory Accreditation Board (ASCLD/LAB) <http://www.ascl-d-lab.org/international-testing-program/> (last visited March 31, 2016).

twelve chemists and four supervisors. In the Springfield lab, there are two chemists, with an additional one in training and one supervisor.

When evidence is brought into the Sudbury or Springfield drug lab for testing, the individual or entity that seeks the testing must complete certain paperwork. Evidence control personnel will receive both the paperwork and the substance, and log the sample into the lab's Laboratory Information Management System. The system records the name of the submitting agency, any agency case numbers, and any subject names. The evidence officer also will record the gross weight of the sample and its packaging. The evidence officer does not "inventory" the samples because the bags are not opened. Instead, the officer visually verifies that the substance described by the agency "is pretty much consistent with what the [officer] see[s] in [the] sealed plastic bag" (6 at 16). The sample is then assigned a unique laboratory case number and a bar code is placed on the evidence bag. The purpose of that procedure is to track evidence throughout the laboratory (6 at 15). Each analyst has his or her own personal bar code so that the lab can track the progression of the sample from the submitting agency to the chemist and back to the vault (6 at 15). Every time a sample moves from one location to another, a lab worker must scan the sample. The lab retains electronic records regarding this movement (6 at 20).

Samples are stored in a drug vault. In the Sudbury lab, the drug vault is located in a secure area within the evidence control unit and there is a safe within the vault where the substances are actually kept. In the Springfield lab, the vault is secured within the laboratory. Both labs follow the exact same procedures for the storage, handling, and testing of all police submitted samples. Evidence control personnel at the lab must

retrieve any item that is ready for testing (6 at 13). If, for any reason, evidence personnel are not available to retrieve evidence from the vault, an analyst with authorization will enter the vault along with the primary chemist to remove the evidence bin using his/her swipe card. This procedure is known as “dual entry” and an electronic record is kept as to that entry and as to all other entries (6 at 31).

In the Sudbury lab, the samples are assigned and prioritized for testing based upon how soon the results of the tests are needed in court (6 at 15). When the lab assigns samples to a chemist for testing, the samples are taken from the vault and delivered to that chemist in a locked storage bin. The analyst compares the gross weight of the item to the gross weight recorded by the evidence room personnel. If there is a discrepancy, the lab will investigate (6 at 16). However, if there are no discrepancies, the analyst will open up the sample and begin the analysis. The analyst will then conduct a full inventory of the sample and weigh it to ensure that the same sample is in an identical form to when the lab received it from the submitting department or agency. The analyst then follows the testing protocol that corresponds to the nature of the item: powders, pills, vegetable matter, *et cetera* (6 at 17). The MSP drug lab chemists use various testing methods in order to identify potential controlled substances. Ultraviolet Visible Spectroscopy³⁸ is used as a screening tool for the substance. The labs also have Fourier Transform Infrared Spectroscopy (“FTIR”)³⁹ and the GC/MS. After the analyst finishes all

³⁸ The chemist performs this test by taking a small amount of a powder or tablet, dissolving it in an acidic solution and placing it under a beam of ultraviolet radiation. Depending on the components in the sample, a chemist may be able to identify what compounds are present. This method is used as a screening tool only (6 at 21).

³⁹ “FTIR (or IR, for short) provides an alternate technique to mass spectroscopy for the identification of organic compounds. Recent improvements in the hyphenated technique, Gas Chromatography/Infrared Spectroscopy (GC/IR) may provide a simple alternative or supplemental approach to GC/MS for the

tests on a sample and has completed an analysis and formed a conclusion as to what that substance is, the findings are reviewed by a fellow chemist to ensure that the conclusion formed was scientifically supported (6 at 24).

4. Brooks's Testimony about Standards

Brooks testified that a standard is a substance "of a known origin or identity that . . . [an analyst uses] for comparative purposes" (6 at 24). Standards "maybe used for creating a spectrum in the FTIR library or they may be used to create a sample for the GC/MS" (6 at 33). Essentially, the standard is the known substance that the analyst tests against the substance that law enforcement submits to the drug testing lab (6 at 24). At the MSP drug labs, the standards are stored in a vault (6 at 13).

Brooks indicated that, in all drug testing laboratories, in order to procure standards from an authorized laboratory, the lab's DEA registration number assigned to the forensic laboratory must be produced. This registration number is located on the lab's DEA license, a credential that is applied for each year (6 at 12). These standards would be ordered by monitors in the unit who fill out the necessary forms, but a supervisor or manager must approve the purchase (6 at 13).

Brooks testified that there was sometimes difficulty ordering standards from the various labs that are authorized to produce and deliver them to the testing laboratories. This difficulty was due to some drugs being so "new" that some of the manufacturers had

identification of certain compounds. Routine analysis of drug mixtures by forensic labs can benefit from having the availability of the tandem analysis GC/IR as well as the customary method by GC/MS. As the complexity of the drug samples increases, there will be an ever increasing need to improve the analytical capabilities of the forensic laboratory to allow a positive identification of samples which may only differ by a small molecular change in structure. The GC/IR is another useful tool to allow a forensic drug chemist to make this difficult identification." Forensic Drug Identification by Gas Chromatography – Infrared Spectroscopy: Robert Shipman, Trisha Conti, Tara Tighe, Eric Buel (June 2013) <https://www.ncjrs.gov/pdffiles1/nij/grants/242698.pdf> (last visited March 31, 2016).

not yet begun the process of manufacturing standards. Since an accredited laboratory can only test with known standards, the inability to get standards for new drugs poses a problem (6 at 42).

Brooks did state, however, that she “occasionally had heard of laboratories using samples [that the labs themselves had created] from police-submitted evidence . . . as quality control samples or potential reference materials” (6 at 36). She noted that labs had utilized such samples “probably going back twenty (20) years . . . if labs weren’t able to procure a traceable reference material” (6 at 36). For a lab to produce its own standards, lab personnel would take a portion of a police-submitted sample and subject it to tests and procedures to ensure both that it had an adequate level of purity and that its properties adequately matched a known standard” (6 at 37).

5. Brooks’s Testimony about Class E Substances

Brooks testified concerning the protocol at the MSP drug labs for the identification of Class E substances. If a police department submitted a pill to the lab for testing and the pill had “specific markings,” those markings would be compared to the reference materials at the lab and the analysts would report that substance as a “particular known drug.” If, on the other hand, a police department submitted a pill that did not have any identifying features, the lab would conduct a chemical analysis and then compare the results to the same reference material so that the analyst would be able to identify the pill (6 at 37).

Brooks was familiar with the drug "BZP."⁴⁰ "BZP" was the acronym for "benzylpiperazine" (6 at 48). She noted, "[i]t is a stimulant/hallucinogenic substance. It is federally scheduled one⁴¹ in the United States, I believe" (6 at 48).⁴² Brooks reported that the MSP drug labs' policy regarding BZP is that if a substance were identified as BZP, it would be reported as such, but there would be no "reference to any federal or Massachusetts control status" and it would not be reported as a Class E substance (6 at 48). Prior policy had indicated that "if something was federally scheduled, however not listed under Mass General Laws, Chapter 94C, Section 31, [the MSP drug labs] would refer to it as a Class E substance" (6 at 48-49). Brooks indicated that she was aware that this practice was also in place at the Hinton and Amherst Labs.

E. Interview of Annie Dookhan, Chemist, Hinton State Laboratory

On March 3, 2016, Dookhan, accompanied by counsel and pursuant to a proffer agreement, spoke to an Assistant Attorney General and two members of the MSP assigned to the AGO's Criminal Bureau.

Dookhan started as a Chemist I for the DPH at the Hinton Lab in 2003. Throughout her tenure there, Charles Salemi was the head of the Lab; Peter Piro was the head of the

⁴⁰ "Both animal studies and human clinical studies have demonstrated that the pharmacological effects of BZP are qualitatively similar to those of amphetamine. BZP has been reported as being similar to amphetamine in its effects on chemical transmission in brain . . . Subjective effects of BZP were amphetamine-like . . . BZP acts as a stimulant in humans and produces euphoria and cardiovascular effects, namely increases in heart rate and systolic blood pressure. BZP is about 10 to 20 times less potent than amphetamine in producing these effects." Drug Enforcement Administration, Office of Diversion Control, Drug & Chemical Evaluation Section (N-BENZYLPIPERAZINE), March 2014, http://www.dea/diversion.usdoj.gov/drug_chem_info/bzp.pdf.

⁴¹ Schedule I drugs, substances, or chemicals are defined as drugs with no currently accepted medical use and a high potential for abuse. Schedule I drugs are the most dangerous drugs of all the drug schedules with potentially severe psychological or physical dependence. Drug Enforcement Agency, U.S. Department of Justice, <http://www.dea.gov/druginfo/ds.shtml> (last visited March 31, 2016).

⁴² BZP was temporarily placed into schedule I of the CSA on September 20, 2002. (67 FR 59161) On March 18, 2004, the DEA published a Final Rule in the Federal Register permanently placing BZP in schedule I. *Id.*

GC/MS portion of the Lab; and Nassif was the Director of Chemistry for both the Hinton and Amherst Labs.

Dookhan told the interviewers that, as a Chemist I at the Hinton Lab, she was at first assigned marihuana samples to test. She described this type of testing as “easy” and powder samples as more difficult because they involved more steps and machinery. The marihuana tests only required one step (a simple color test) whereas the tests for other substances at the lab required multiple steps. “Trafficking” type cases were left to the more senior chemists at the Hinton Lab, usually a Chemist III.

The interviewers asked Dookhan about her observations and working relationship with Farak at the Hinton Lab. Dookhan said that she and Farak probably worked together for about six months, but they did not really have a close relationship at the Lab. They both held the position of Chemist I at the lab, so they were only doing the easier preliminary testing. Dookhan said she believed that Farak mostly tested marihuana samples at that time. Dookhan said she would occasionally shadow Farak and observe her substance analysis when a senior chemist was not available. Dookhan told interviewers that she did not notice anything unusual about Farak’s work or person. She stated that she thought Farak was “thorough” and that she was “productive” in her work, but she added that she only had the opportunity to shadow her on rare occasions. Dookhan said that Farak usually dealt with her team leader, Della Saunders, regarding work issues Farak may have experienced. According to Dookhan, any relationship between Saunders and Farak was limited to work issues.

Dookhan added that Farak was very quiet. According to Dookhan, she would sit down, do her work, and ask Dookhan questions, if she had any. There was never any talk

between the two about the recreational use of drugs. Dookhan stated that she never believed that Farak was under the influence of narcotics while working at the Hinton Lab, nor that Farak would ever have used any drugs, but Dookhan did not really socialize with Farak, either inside or outside of work.

Dookhan told interviewers that after Farak left the Hinton Lab to work at the Amherst Lab, the work communication between Dookhan and Farak continued. Dookhan would, on occasion, contact Farak or Hanchett at the Amherst Lab and ask one or the other how they would test certain drugs or if they were having a difficult time analyzing a particular substance. Supervisors would encourage reaching out to the Amherst Lab as a way of sharing information between the labs. Dookhan never had the opportunity to travel to the Amherst Lab, but she did meet both Hanchett and Salem when they came to the Hinton Lab to pick up Hinton samples for testing at the Amherst Lab.

Dookhan told interviewers about the standards used at the Hinton Lab. She indicated that she did not have direct access to the standards at the Hinton Lab - - that the standards were already checked out and placed in the MS/GC by the operator. Dookhan believed that either Charles Salemi or Peter Piro was responsible for ordering standards and she denied observing anyone at the Hinton Lab using, discussing, or manufacturing secondary standards.

As for Class E substances, Dookhan indicated that a substance would be identified a Class E substance if it was federally scheduled and could not be found in the PDR or lab-approved literature. The Hinton Lab made those decisions after consultation with other chemists and approval from the supervisors at the Lab.

“Dry-labbing” is identifying a drug sample as a narcotic by looking at it instead of testing it. Asked by the interviewers about “dry-labbing,” Dookhan said that she was the only person “dry-labbing” at the Hinton Lab and she did it alone. There were never any conversations about “dry-labbing” nor did she suspect anyone else did it. She and Farak never discussed “dry-labbing” during their time together at the Lab.

Concerning the lab policies at the Hinton Lab versus those at the Amherst Lab, Dookhan thought that the fact that the two labs did not follow the same protocols was strange. When the Hinton Lab was in the process of rewriting its own protocols and received a copy of the protocols being used at the Amherst Lab, Dookhan questioned why both labs did not use the same procedures. She heard that the reason was possibly that the Amherst Lab was a much smaller lab and did not have certain equipment. After hearing that explanation, Dookhan stopped raising the issue.

VI. Final Comments

The AGO has performed the investigation for which it assumed responsibility, that is, to investigate the timing and scope of Farak's misconduct at the Amherst drug lab.⁴³ *Cotto*, 471 Mass. at 115. The results of the Commonwealth's investigation⁴⁴ are now provided to the Court so that the Court can determine how to proceed in the matters before it. *Cotto*, 471 at 115 ("The results of the Commonwealth's investigation . . . will dictate how the judge shall proceed, and we leave that matter to the judge's discretion.")

Respectfully submitted
For the Commonwealth,

MAURA HEALEY
ATTORNEY GENERAL
By Her Assistant,

/s/ Thomas A Caldwell
Thomas A. Caldwell
Assistant Attorney General
1 Ashburton Place
Boston, MA 02108
(617) 727-2200
BBO# 651977

DATED: April 1, 2016

⁴³ The AGO has provided the facts gleaned from its investigation without evaluation, without any determination about the credibility of any of the witnesses, and without the drawing of any conclusions.

⁴⁴ The AGO is in the process of a review of recently received documents provided by the DPH pursuant to a court order. These documents include communications which contain potentially privileged information which a team of non-criminal AAsG are reviewing and will then report back to the investigation team. Upon completion of this review, the AGO will provide a supplemental report regarding the results, if necessary.

CERTIFICATE OF SERVICE

I, Benjamin H. Keehn, counsel for the Committee for Public Counsel Services, certify that on this 31st day of May, 2015, I caused a true copy of the foregoing motion, affidavit, and attachments to be served by electronic mail and first-class mail, postage prepaid on 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
Suffolk County District Attorney's Office
One Bulfinch Place
Boston, Massachusetts 02114

ADA Brian S. Glenny
Barnstable County District Attorney's Office
3231 Main Street
Barnstable, MA 02630

Daniel N. Marx
BBO #674523
Foley Hoag LLP
155 Seaport Boulevard
Boston, MA 02210

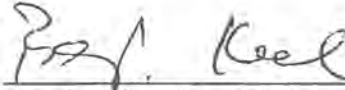
ADA Gail McKenna
Plymouth County District Attorney's Office
32 Belmont Street
Brockton, MA 02301

ADA Susanne M. O'Neil
Norfolk County District Attorney's Office
45 Shawmut Road
Canton, MA 02021

ADA Karen O'Sullivan
Bristol County District Attorney's Office
P.O. Box 973
88 Purchase Street
New Bedford, MA 02740

Matthew R. Segal
American Civil Liberties Union
of Massachusetts
211 Congress Street
Boston, MA 02110

ADA Quentin R. Weld
Essex County District Attorney's Office
10 Federal Street
Salem, Massachusetts 01970



Benjamin H. Keehn
BBO #542006
COMMITTEE FOR PUBLIC COUNSEL SERVICES
Public Counsel Division
44 Bromfield Street
Boston, Massachusetts 02108
(617) 482-6212
bkeehn@publiccounsel.net