

COMMONWEALTH OF MASSACHUSETTS

SUPREME JUDICIAL COURT

SUFFOLK COUNTY

NO. SJC-11764

KEVIN BRIDGEMAN, & others

V.

DISTRICT ATTORNEY FOR THE SUFFOLK DISTRICT,  
& another

---

JOINT RECORD APPENDIX OF THE PETITIONERS AND  
THE COMMITTEE FOR PUBLIC COUNSEL SERVICES

---

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November, 2014.

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SUPREME JUDICIAL COURT  
FOR SUFFOLK COUNTY  
Docket Sheet

10/22/2014  
11:18 am

**SJ-2014-0005**  
**KEVIN BRIDGEMAN, YASIR CREACH and MIGUEL CUEVAS vs.**  
**DISTRICT ATTORNEY FOR SUFFOLK COUNTY and DISTRICT**  
**ATTORNEY FOR ESSEX COUNTY**

CASE HEADER			
Entered	01/09/2014	Docket Type	SJC Single Justice
Case Status	Reserved & reported to FC	Status Date	10/21/2014
Case Nature	211.3 - Superintendence c 211 s 3	Sub-Nature	sentred - Challenge to sentence reduction
Justice	Botsford, J.	Under Advisement	10/03/2014
Clerk	GS	Public	Yes
Disposition	Reserved and Reported to Full Court	Disposition Date	10/21/2014
Other Court Information			
Lower Court	Trial Court	Pet Role LCt	Not applicable
Case Type	CR	TC Not App Dt	
Trial Court	Suffolk Superior Court (ssuffo)		
TC Number	SUCR2005-10537; BOSTON MUNICIPAL COURT NO. 0501-CR-0142; ESSEX SUPERIOR COURT NO: ESCR2007-1535		
TC Ruling Dt		TC Dispo	
COURT EVENT	DATE	EVENT STATUS	SCH DATE
2113hrq - PETITION UNDER c. 211, sec. 3	07/17/2014	Hearing held (held)	07/17/2014
2113hrq - PETITION UNDER c. 211, sec. 3	08/01/2014	Hearing held (held)	08/01/2014
2113hrq - PETITION UNDER c. 211, sec. 3	10/03/2014	Hearing held (held)	10/03/2014

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**DISTRICT ATTORNEY FOR SUFFOLK COUNTY and DISTRICT**  
**ATTORNEY FOR ESSEX COUNTY**

INVOLVED PARTY	ATTORNEY APPEARANCE
<b>Kevin Bridgeman</b> Petitioner Active 01/09/2014	<b>Matthew Segal</b> Esquire American Civil Liberties Union of Massachusetts 211 Congress Street Boston, MA 02110 Phone: 617-482-3170 654489 Active 01/09/2014 Entitled, eMail Only (APC) <b>Daniel N. Marx</b> Esquire Foley Hoag LLP 155 Seaport Boulevard Boston, MA 02210 Phone: 617-832-1202 674523 Active 03/07/2014 Entitled, eMail Allowed <b>Shrutih Ramlochan-Tewarie</b> Esquire Seaport West 155 Seaport Boulevard Boston, MA 02210 Phone: 617-832-1723 685467 Active 07/15/2014 Entitled, eMail Declined <b>Carlton Williams</b> Esquire American Civil Liberties Union 211 Congress Street Boston, MA 02110 Phone: 617-482-3170 600973 Active 07/15/2014 Entitled, eMail Declined <b>Daniel Louis McFadden</b> Esquire Foley Hoag LLP Seaport West 155 Seaport Boulevard Boston, MA 02210-2600 Phone: 617-832-1293 676612 Active 07/15/2014 Entitled, eMail Declined

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**SJ-2014-0005**  
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**DISTRICT ATTORNEY FOR SUFFOLK COUNTY and DISTRICT**  
**ATTORNEY FOR ESSEX COUNTY**

INVOLVED PARTY	ATTORNEY APPEARANCE
<b>Yasir Creach`</b> Petitioner Active 01/09/2014	<b>Matthew Segal</b> Esquire See Above 654489 Active 01/09/2014 <b>Daniel N. Marx</b> Esquire See Above 674523 Active 03/07/2014 <b>Shrutih Ramlochan-Tewarie</b> Esquire See Above 685467 Active 07/15/2014 Entitled, eMail Declined <b>Carlton Williams</b> Esquire See Above 600973 Active 07/15/2014 Entitled, eMail Declined <b>Daniel Louis McFadden</b> Esquire See Above 676612 Active 07/15/2014 Entitled, eMail Declined
<b>Miguel Cuevas</b> Petitioner Active 01/09/2014	<b>Matthew Segal</b> Esquire See Above 654489 Active 01/09/2014 <b>Daniel N. Marx</b> Esquire See Above 674523 Active 03/07/2014 <b>Shrutih Ramlochan-Tewarie</b> Esquire See Above 685467 Active 07/15/2014 Entitled, eMail Declined <b>Carlton Williams</b> Esquire See Above 600973 Active 07/15/2014 Entitled, eMail Declined <b>Daniel Louis McFadden</b> Esquire See Above 676612 Active 07/15/2014 Entitled, eMail Declined

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**KEVIN BRIDGEMAN, YASIR CREACH and MIGUEL CUEVAS vs.**  
**DISTRICT ATTORNEY FOR SUFFOLK COUNTY and DISTRICT**  
**ATTORNEY FOR ESSEX COUNTY**

INVOLVED PARTY	ATTORNEY APPEARANCE
<b>District Attorney for Suffolk County</b> Respondent Active 01/09/2014	<b>John P. Zanini</b> Assistant District Attorney Office of the District Attorney/Suffolk Appellate Unit Chief One Bulfinch Place Boston, MA 02114 Phone: 617-619-4070, Fax: 617-619-4069 563839 Active 01/09/2014 Entitled, eMail Only (APC) <b>Vincent J. DeMore</b> Assistant District Attorney Office of the District Attorney/Suffolk One Bulfinch Place Boston, MA 02114 Phone: 617-619-4126 671136 Active 06/03/2014 Entitled, eMail Only (APC)
<b>District Attorney for Essex County</b> Respondent Active 01/09/2014	<b>Elin H. Graydon</b> Assistant District Attorney Office of the District Attorney/Essex 10 Federal Street Salem, MA 01970 Phone: 978-745-6610 x5014, Fax: 978-744-9470 208140 Active 01/09/2014 Entitled, eMail Only (APC) <b>Quentin Weld</b> Assistant District Attorney Office of the District Attorney/Essex Ten Federal Street Salem, MA 01970 Phone: 978-745-6610 683830 Active 06/03/2014 Entitled, eMail Only (APC)
<b>Committee for Public Counsel Services</b> Intervener Public Counsel Division 44 Bromfield Street Boston, MA 02108 Phone: 617-482-6212 Active 05/28/2014	<b>Benjamin H. Keehn</b> Committee for Public Counsel Services Committee for Public Counsel Services Public Defender Division 44 Bromfield Street Boston, MA 02108-4909 Phone: 617-988-8392, Fax: 617-988-8485 542006 Active 05/28/2014 Entitled, eMail Only (APC) <b>Anthony J. Benedetti</b> Committee for Public Counsel Services Committee for Public Counsel Services 44 Bromfield Street Boston, MA 02108 Phone: 617-988-8305 564057 Active 05/28/2014 Entitled, eMail Allowed <b>Nancy J. Caplan</b> Committee for Public Counsel Services Committee for Public Counsel Services 7 Palmer Street Roxbury, MA 02119 Phone: 617-413-0930, Fax: 617-988-8484 072750 Active 05/28/2014 Entitled, eMail Declined

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Commonwealth of Massachusetts  
SUPREME JUDICIAL COURT  
FOR SUFFOLK COUNTY  
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**SJ-2014-0005**  
**KEVIN BRIDGEMAN, YASIR CREACH and MIGUEL CUEVAS vs.**  
**DISTRICT ATTORNEY FOR SUFFOLK COUNTY and DISTRICT**  
**ATTORNEY FOR ESSEX COUNTY**

INVOLVED PARTY	ATTORNEY APPEARANCE
<b>Emma A. Andersson</b> Out-of-state attorney American Civil Liberties Union 125 Broad Street, 18th Floor New York, NY 10004 Phone: 212-284-7365 Active 07/15/2014 Entitled, eMail Declined	
<b>Suffolk Superior Court Dept.</b> (Lower Court: criminal) Clerk for Criminal Business 3 Pemberton Square, Room 1403 Boston, MA 02108 Phone: 617-788-8160 Active 10/07/2014 Entitled,	
<b>Boston Municipal Court - Central</b> (Lower Court: criminal) Clerk - Criminal Business 24 New Chardon Street, 6th Floor Boston, MA 02114 Phone: 617-788-8600 Active 10/07/2014 Entitled,	
<b>Essex Superior Court</b> (Lower Court: criminal) Clerk for Criminal Business 56 Federal Street Salem, MA 01970 Phone: 978-744-5500 Active 10/07/2014 Entitled,	
<b>Clerk - SJC for the Commonwealth</b> (Lower Court: civil or general) 1400 John Adams Courthouse One Pemberton Square, Suite 1400 Boston, MA 02108 Active 10/21/2014 Entitled,	



Commonwealth of Massachusetts  
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**SJ-2014-0005**  
**KEVIN BRIDGEMAN, YASIR CREACH and MIGUEL CUEVAS vs.**  
**DISTRICT ATTORNEY FOR SUFFOLK COUNTY and DISTRICT**  
**ATTORNEY FOR ESSEX COUNTY**

DATE	P#	ENTRY
01/09/2014		Case entered.
01/09/2014		Filing fee paid. (\$315)
01/09/2014	1	Petition under c. 211, s. 3, filed by Atty Matthew Segal with Certificate of Service. (See R& R, p. no. 25)
01/09/2014	2	Memorandum in support of P#1 filed by Atty Matthew Segal with certificate of service.
01/09/2014	3	Record Appendix for Petitioners Bridgeman, Creach and Cuevas filed with Certificate of Service.
01/09/2014	4	CD containing documents described at pge-x- of the Record Appendix filed by Atty Matthew Segal.
01/09/2014	5	Letter to Supreme Judicial Court from Atty Caroline Donovan saying..."Petitioners respectfully request that their petition be referred to Justice Botsford, who has continuing jurisdiction over Hinton Lab matters---the subject-matter of this petition---by virtue of the ruling in Commonwealth v. Charles, 466 Mass. 63(2013). In the alternative, Petitioners respectfully request that the petition be reserved and reported to the Full Court..."
03/07/2014	6	Letter with attachments to Maura S. Doyle, Clerk from Atty Daniel Marx saying "Pursuant to Mass. R. App. P. 16 (l), we write on behalf of Petitioners in the above-referenced matter to address a recent decision of the Supreme Judicial Court, which is highly significant to the pending Petition. The new decision was rendered on March 5, 2014, in Commonwealth v. Scott, No. SJC-11465. A copy of the opinion is attached to this letter.... In sum, Scott and its companion cases decide one of the important legal issues that the above-referenced Petition raises (specifically, whether Dookhan defendants satisfy the first prong of the Ferrara analysis), but they left unanswered the related questions that the Petition presents. ... filed.
05/27/2014	7	MOTION to Intervene, filed by Attorney Anthony J. Benedetti, with Attachments. (See R&R, p. no. 25)
05/27/2014	8	Affidavit of Nancy J. Caplan In Support Motion to Intervene Nancy J. Caplan, CPCs with attachments filed.
05/27/2014	9	Certificate of service of papers 7 and 8 filed by Benjamin H. Keehn, CPSC
06/03/2014	10	Verified Opposition To Petition Seeking Relief Pursuant To Gen. Laws c. 211, § 3 with Verifications and Certificate of Service filed by ADA Quinton Weld and ADA Vicent DeMore.
07/09/2014		Hearing scheduled for 07/17/2014.
07/09/2014	11	Notice to Counsel/Parties: The Court, Botsford, J., has Scheduled this matter for a hearing on THURSDAY, JULY 17, 2014 @ 10:00 A.M. at the Supreme Judicial Court for Suffolk County, Courtroom Two, John Adams Courthouse, One Pemberton Square, Boston, Massachusetts.
07/10/2014	12	Opposition to CPCs Motion to Intervene in Petition Seeking Relief Pursuant to G.L. c. 211, §3 filed by ADA's Quentin R. Weld, and Vincent DeMore, with attached Supplemental Record Appendix.
07/15/2014	13	Reply To Verified Opposition To Petition Seeking Relief Pursuant To Gen. Laws C. 211, §3, And Response To Motion To Intervene By The Committee For Public Counsel Services with Certificate of Service and Exhibit 1 filed by Atty's Matthew Segal, Emma Andersson, Daniel Marx and Shrutih Ramlochan-Tewarie.
07/17/2014		Hearing held before Botsford, J.
07/17/2014	14	Reply Of The Committee For Public Counsel Services To Respondents' Opposition To Motion To Intervene with Certificate of Service filed by Atty Benjamin Keehn.
07/31/2014		Hearing scheduled for 08/01/2014.
08/01/2014		Hearing held before Botsford, J.

Commonwealth of Massachusetts  
SUPREME JUDICIAL COURT  
FOR SUFFOLK COUNTY  
Docket Sheet

10/22/2014  
11:18 am

**SJ-2014-0005**  
**KEVIN BRIDGEMAN, YASIR CREACH and MIGUEL CUEVAS vs.**  
**DISTRICT ATTORNEY FOR SUFFOLK COUNTY and DISTRICT**  
**ATTORNEY FOR ESSEX COUNTY**

DATE	P#	ENTRY
09/08/2014	15	Letter to George Slyva, Assistant Clerk from Atty Benjamin Keehn saying ... "as discussed at the hearing held on August 1, 2014, the Suffolk County District Attorney's Office and Essex County District Attorney's Office will provide CPCS, by the end of the day tomorrow (September 9, 2014), with the docket numbers associated with these counties' entries on the Meier list of Dookhan-involved samples. Accordingly, we suggest that the parties are ready, either later this week or anytime next week, for the meeting that you proposed with Trial Court IT personnel to discuss the production of the dispositional information and defendant's dates of birth associated with the docket numbers to be provided by the District Attorney's offices." filed.
09/19/2014	16	Copy of Joint Motion Of The District Attorney For The Eastern District And The Committee For Public Counsel Services, Requesting (1) An Order Authorizing The Disclosure Of Personal Identifying Information, And (2) A Protective Order Restricting That Disclosure with Proposed Orders & Certificate of Service filed by ADA Quentin Weld and Atty Benjamin Keehn. (See Order, p. no. 23)
09/22/2014		Hearing held before Botsford, J.
09/26/2014	17	Letter to George Slyva, Assistant Clerk from Atty Benjamin Keehn saying ... "At the Conclusion of the hearing held in the above-captioned matter before Justice Botsford on Monday, September 22, 2014, there was a discussion of the likely reservation and report of the questions raised by the petitioners in their petition for relief. Undersigned counsel is uncertain whether the single justice intends to issue a reservation and report prior to any follow-up hearing. Accordingly, CPCS submits this letter to make clear that it is seeking that the following issues set out in its motion to intervene (at pp. 2-3) be reported to the full bench: ... filed.
10/02/2014		Telephone hearing scheduled 10/3/2014 @ 2:00 pm (Botsford, J.)
10/03/2014	18	Status Report from the District Attorney For The Eastern District with Verification and Certificate of Service filed by Assistant District Attorney Quentin R. Weld.
10/03/2014		Hearing held before Botsford, J.
10/07/2014	19	MOTION To Supplement The Record filed by Atty Benjamin H. Keehn. (See R&R, p.no. 25)
10/07/2014	20	Affidavit Of Counsel In Support Of Motion To Supplement The Record filed by Atty Benjamin Keehn.
10/07/2014	21	Transcript of Proceedings with attachments received from Suffolk Superior Court Docket No. SUCR2009-10595 (Hearing) Dated May 6, 2014 before Special Magistrate Donovan filed.
10/07/2014	22	Certificate of Service of paper #'s 19-21 filed by Atty Benjamin Keehn.
10/06/2014	23	Protective Order Restricting Disclosure of Personal Identifying Information, as on file. (Botsford, J.)..."It is hereby ordered that any personal identifying information of so-called Dookhan defendants, including but not limited to their dates of birth and social security numbers, as provided to CPCS by the District Attorney for the Eastern District on a Combined Essex Meier List, shall be subject to the following conditions: 1. No such information shall, at any time and under any circumstances, leave the custody of CPCS without written permission of the Court and for good cause shown, with the exception that attorneys in the Bar Advocate Program who believe they may have represented a so-called Dookhan defendant, or who might at a later date represent such a defendant, may access the Combined Essex Meier List for the sole purpose of identifying such defendants. Bar advocates may only gain such access subject to a signed non-disclosure agreement; 2. No such information shall be duplicated without written permission of the Court and for good cause shown, with the exception of minimal duplication within CPCS to facilitate its notification effort; 3. No such information shall be disseminated via electronic communication such as email; CPCS may use such information to identify and locate individuals using internet-based search platforms and state-operated databases such as the Registry of Motor Vehicles, with the condition that the information entered pursuant to such searches does not identify the individual to be located as a criminal defendant; 4. In the event that such information is disclosed or displayed to any individual assisting in CPCS's notification effort, such individual shall be prohibited from further disclosing or disseminating any such information to any person not directly involved in CPCS's notification effort..."

Commonwealth of Massachusetts  
SUPREME JUDICIAL COURT  
FOR SUFFOLK COUNTY  
Docket Sheet

10/22/2014  
11:18 am

SJ-2014-0005

KEVIN BRIDGEMAN, YASIR CREACH and MIGUEL CUEVAS vs.  
DISTRICT ATTORNEY FOR SUFFOLK COUNTY and DISTRICT  
ATTORNEY FOR ESSEX COUNTY

DATE	P#	ENTRY
10/08/2014	24	Notice to counsel/parties, regarding paper #23 filed.
10/21/2014	25	Reservation and Report: ... as on file, (Botsford, J.) ... "Order: Accordingly, I hereby reserve and report to the full court the entire matter that is presently before me, namely: the petition pursuant to G. L. c. 211, § 3, and the two specific claims for relief that it raises; the motion to intervene filed by CPCS, and the specific issues that CPCS has identified in its letter dated September 26, 2014, that it wishes to raise before the full court; and the motion to supplement the record filed by CPCS on October 7, 2014. The reservation and report is based on all of the pleadings, motions, and other materials that have been filed before me in this case to date. In this way, the record before the full court will consist of everything that is now before me, as is. Finally, given the unique circumstances of the controversy created by Dookhan's work at the Hinton laboratory and its far-reaching impacts on Dookhan defendants, their attorney's, prosecutors, the Trial Court, and the administration of the criminal justice system in the Commonwealth, I ask the full court, when deciding the case, to consider whether it might be fruitful for the court to undertake to examine the possibility of a more systematic approach to addressing the impacts of the controversy than the individualized, case-specific remedy that the court envisioned in Scott; and if so, what the process for such an examination might be. I am not suggesting that the court will be able to produce in this case the heretofore elusive "global remedy." I am only suggesting that all concerned might benefit from the court's consideration of the feasibility of exploring that possibility, and any guidance the court can give and any process it might be able to supply at this time in furtherance of that end. Briefing. The petitioners and CPCS shall file their briefs first. CPCS's brief shall address the motion to intervene, any arguments it wishes to make as an intervener on the claims made in the petition, and its arguments on the additional issues identified in its September 26 letter. The district attorney's shall then file their briefs, and the petitioners and CPCS will have an opportunity to file reply briefs. The parties are to work out the precise dates for the briefing schedule with the clerk of the full court. The case will be tentatively scheduled for the full court's January, 2015 sitting."
10/21/2014	26	Notice of assembly of the record.
10/21/2014	27	Notice to counsel/parties, regarding paper #'s 26 & 27 filed.

COMMONWEALTH OF MASSACHUSETTS

KEVIN BRIDGEMAN,  
YASIR CREACH, and  
MIGUEL CUEVAS,

Petitioners,

v.

DISTRICT ATTORNEY FOR SUFFOLK  
COUNTY and  
DISTRICT ATTORNEY FOR ESSEX  
COUNTY,

Respondents.

SUPREME JUDICIAL COURT FOR  
SUFFOLK COUNTY  
DOCKET NO.:

PETITION SEEKING RELIEF PURSUANT TO GEN. LAWS C.211, §3

QUESTIONS PRESENTED

In light of the unprecedented crisis at the William A. Hinton State Laboratory Institute, which has violated the due process and common law rights of more than 40,000 defendants ("Dookhan defendants"), this Court should exercise its authority under G.L. c.211, §3, to address the following questions:

1. Whether, to vindicate the rights of Dookhan defendants, to eliminate the apprehension of vindictive prosecution from chilling their exercise of post-conviction rights and to restore the integrity of the criminal justice system, due process and common law principles require a clear, prophylactic rule that Dookhan defendants who seek post-conviction relief cannot be subjected to more severe punishment as a result of the reinstatement of previously dismissed charges, any prosecution of new charges based on the same conduct, or the imposition of increased sentences?

2. Whether inordinate and prejudicial delay in providing post-conviction relief to Dookhan defendants violates due process, where it has already been more than two years since managers in the Hinton Lab learned of serious misconduct by chemist Annie Dookhan, yet the vast majority of Dookhan defendants have not even been assigned counsel, much less been



provided discovery, had their convictions reviewed, or received any relief whatsoever?

**RELIEF SOUGHT**

Petitioners request that this petition be referred to Justice Botsford, who has continuing jurisdiction over Hinton Lab matters by virtue of the rulings in Commonwealth v. Charles, 466 Mass. 63, 89 (2013), or else that this petition be reserved and reported to the full Court. Petitioners seek the following relief:

1. This Court should establish a clear, prophylactic rule that defendants who seek post-conviction relief based upon Dookhan's outrageous misconduct in the Hinton Lab cannot be convicted of more serious offenses than those underlying their tainted convictions, or be sentenced to longer prison terms than were previously imposed.

2. This Court should order that prosecutors have 90 days to notify individual defendants, or their counsel, whether they intend to re-prosecute them, and further that:

a. If notice is not provided within 90 days, the underlying convictions will be vacated with prejudice; or

b. If timely notice of re-prosecution is provided, prosecutors will have six months to bring such cases to trial or to conclude them with guilty pleas.

**BRIEF STATEMENT OF GROUNDS FOR RELIEF**

The grounds for the requested relief are explained fully in the accompanying Memorandum in Support. Briefly, however, petitioners request this relief to remedy Dookhan's unprecedented fraud at the Hinton Lab, which reportedly affected at least 40,323 defendants who have been convicted of state drug offenses in the Commonwealth.

Long after lab managers discovered misconduct by Dookhan in June 2011, many Dookhan Defendants fear that if they pursue justice and challenge their tainted drug convictions by withdrawing their guilty pleas or moving for new trials, they could face even harsher punishments than they initially received. Worse yet, such challenges have been inordinately and prejudicially delayed by factors well beyond the control of these defendants.

The combination of fear, which chills the exercise of post-conviction rights, and delay, which frustrates the ability to obtain post-conviction relief, has deprived Dookhan defendants – including petitioners Kevin Bridgeman, Yasir Creach and Miguel Cuevas – of their due process and common law rights to meaningful post-conviction proceedings and relief. Through this petition, they seek to vindicate their rights and restore the integrity of the criminal justice system.

## PROCEDURAL HISTORY

### I. THE PETITIONERS.

Due to the fear of harsher punishment, the uncertainty regarding the post-conviction process, and the inordinate and prejudicial delays in that process, petitioners have received no relief to date: one petitioner, Miguel Cuevas, filed a new trial motion, but he is still waiting for basic discovery regarding his convictions, and two petitioners, Kevin Bridgeman and Yasir Creach, have opted not to challenge their convictions until this Court clarifies how such challenges will be resolved.

#### A. KEVIN BRIDGEMAN.

Petitioner Kevin Bridgeman was the defendant in two "Dookhan" cases. Bridgeman is disabled and collects Social Security Disability Insurance Benefits. Affidavit of Kevin Bridgeman ("Bridgeman Aff.") at R. 1, ¶ 2.<sup>1</sup> He is a longstanding volunteer for a non-profit organization supporting the formerly incarcerated. Id. at R. 1, ¶ 5.

In October 2005, Bridgeman pleaded guilty to possession with intent to distribute cocaine, distribution of cocaine, and non-drug offenses. Id. at R. 2, ¶ 8. The court sentenced Bridgeman to two to three years' incarceration and three years' probation, and he has completed that sentence. Id. at R. 3, ¶

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<sup>1</sup> "R. \_\_\_" refers to a citation in the Record Appendix to this petition.



9; R. 336. In April 2008, Bridgeman again pleaded guilty to possession with intent to distribute cocaine and distribution of cocaine. See Bridgeman Aff. at R. 3, ¶ 12. This time, the court imposed a sentence of three to five years' incarceration. Id. at R.2, ¶ 13. In both cases, the grand jury that indicted Bridgeman reviewed drug certificates that Dookhan signed. See R. 358, 385-386. In the face of those certificates, and in exchange for the dismissal of more serious charges that carried mandatory minimum sentences, Bridgeman twice waived his right to a jury trial. See Bridgeman Aff. at R.4, ¶¶ 15-16.

In both cases, however, Bridgeman likely would have sought to negotiate different plea agreements, or would have gone to trial, if had he known about Dookhan's outrageous misconduct. See id.; see also Affidavit of Joseph Griffin ("Griffin Aff.") at R. 17, ¶ 12; Affidavit of Paul Carrigan ("Carrigan Aff.") at R. 21, ¶¶ 13-15. Now, however, given the considerable uncertainty concerning what may happen if he challenges his tainted convictions, Bridgeman is unsure how to proceed:

I am concerned that if I seek to withdraw my guilty plea or otherwise vacate my conviction on the basis of Ms. Dookhan's misconduct, I could be prosecuted for the serious charges which the Commonwealth moved to dismiss and be sentenced to a longer prison term.

Bridgeman Aff. at R. 4, ¶ 17. As a result, he has yet to seek any post-conviction relief.

**B. YASIR CREACH.**

In April 2005, petitioner Yasir Creach pleaded guilty to possession of cocaine, and the court sentenced him to one year's imprisonment. See Affidavit of Yasir Creach ("Creach Aff.") at R. 7, ¶ 4. Creach decided to forego his right to a jury trial, in part, because the Commonwealth produced a drug certificate, signed by Dookhan, that reported the samples in his case had tested positive as cocaine. Id. at R. 4, ¶ 5; R. 434-435.

If Creach had known about Dookhan's extensive fraud, he likely would have consulted with his attorney about the issue and attempted, at the very least, to negotiate a more favorable plea agreement. Creach Aff. at R. 7, ¶¶ 7-8; see also Affidavit of Amy Joe Freedman ("Freedman Aff.") at R. 24, ¶ 8. Creach has yet to file a Rule 30 motion.

**C. MIGUEL CUEVAS.**

In January 2009, petitioner Miguel Cuevas pleaded guilty to distribution of cocaine and heroin, and the court sentenced him to four-and-a-half to five years in prison. See Affidavit of Miguel Cuevas ("Cuevas Aff.") at R. 10, ¶¶ 6-7; R. 445. Cuevas completed his sentence, and he now works full time as a

warehouse employee for a major department store, and is active in community and charitable events. Cuevas Aff. at R. 9, ¶¶ 2-3.

Cuevas would have sought to negotiate a more favorable plea agreement or gone to trial, if he had known of Dookhan's misconduct. Id. at R. 10-11, ¶¶ 9-11; see also Affidavit of Lawrence McGuire ("McGuire Aff.") at R. 26, ¶ 15-18. In fact, in October 2012, Cuevas moved for a new trial and for discovery regarding the Hinton Lab. See Cuevas Aff. at R. 11, ¶ 12; R. 446. The Commonwealth was ordered to respond to the discovery motion by February 13, 2014; no date has been set for a hearing on the new trial motion. See R. 446.

In sum, years ago, petitioners were convicted based upon Dookhan's fraud in the Hinton Lab. All three of them would have made different decisions, if they had known of Dookhan's extensive and egregious misconduct. In addition, petitioners would have received different advice from their trial counsel, who were also unaware of the misconduct and mismanagement in the Hinton Lab, despite their demands for all exculpatory discovery (including impeachment materials) from the Commonwealth. See Griffin Aff. at R. 14-15, ¶¶ 3-5, R. 17, ¶ 12; Carrigan Aff. at R. 19-20, ¶¶ 5-6, R. 21, ¶¶ 13-15; Freedman Aff. at R. 24, ¶¶ 5-6, 8; McGuire Aff. at R. 27, ¶¶ 5-6, R.29, 15-18. Now, Bridgeman and Creach fear more severe punishments if they

challenge their tainted convictions. And Cuevas, who has moved for a new trial, must wait six months simply to find out whether he will receive discovery concerning the Hinton Lab. In this way, petitioners and the other Dookhan defendants have suffered - and will continue to suffer - violations of their due process and common law rights through no fault of their own. Without the requested remedy from this Court, they have no meaningful relief in sight.

## **II. THE HINTON LAB LITIGATION BEFORE THIS COURT.**

Despite extensive litigation before this Court, there has been no comprehensive remedy for the vast injustice arising from Dookhan's misconduct. An overview of this litigation, including earlier efforts to seek a remedy, appears below.

### **A. THE COMMONWEALTH'S EMERGENCY PETITIONS AGAINST SHUBAR CHARLES, HECTOR MILETTE AND THE SUPERIOR COURT.**

The initial litigation before this Court involved a trio of emergency petitions by the Commonwealth, not by Dookhan defendants. These petitions presented only narrow procedural questions, and they did not address the broader substantive issue: How to vindicate the due process and common law rights of Dookhan defendants and restore the integrity of the criminal justice system?

The Commonwealth's first petition argued that neither Superior Court Justices nor Special Magistrates in the drug lab

sessions could stay sentences in cases with pending new trial motions. See Commonwealth's Petition at 12-18, Commonwealth v. Charles, SJ-2013-0066 (filed Feb. 14, 2013) (Botsford, J.). Shubar Charles opposed the petition, arguing that such stays were lawful. He also asked the Single Justice to report to the full Court the question whether, under G.L. c.211, §3, the Court "should direct and endorse a range of equitable judicial remedies designed to protect the due process rights of affected defendants, to restore the integrity of the affected judicial system, and to ensure the public's confidence therein." Opposition to Commonwealth's Petition by Charles at 3, Charles, SJ-2013-0066. Noting that defendants "fac[ed] long waits to obtain counsel, file motions, and obtain merits hearings," Charles argued that delays yielded "new constitutional violations on top of those that have already occurred." Id. at 35.

The Commonwealth's second petition challenged the authority of Special Magistrates to reconsider orders by Superior Court Justices concerning stays. See Commonwealth's Petition at 11-17, Commonwealth v. Milette, SJC-2013-0083 (filed Feb. 20, 2013) (Botsford, J.). Hector Milette opposed the petition and, like Charles, asked the Single Justice to address a broader question: "whether this Court should exercise its own authority to specify

a range of equitable remedies, including presumptive stays of sentences, governing the Hinton Lab litigation[.]” Opposition to Commonwealth’s Petition by Milette at 5, Milette, SJC-2013-008. Milette reasoned that, given the “protracted and uncertain litigation in the lower courts,” this Court’s intervention was “necessary to safeguard the due process rights of defendants and to restore the integrity of the criminal justice system.” Id. at 3, 14-16.

The Commonwealth’s third petition challenged the authority of Special Magistrates to accept guilty pleas in the drug lab sessions. See Commonwealth’s Petition at 7-13, Dist. Att’y v. Sup. Ct. (filed Mar. 1, 2013) (Botsford, J.). The Superior Court opposed the petition and defended the plea process.

In Charles, Milette and Superior Court, Justice Botsford reported only the narrow questions framed by the Commonwealth concerning (1) staying sentences, (2) reconsidering such orders, and (3) accepting pleas. Justice Botsford declined, however, to report the broader issues raised by Charles and Milette. She reasoned that, while it might be “appropriate ... at some point” to address “the systemic impact of the alleged misconduct at the laboratory,” it was “premature” at that time. Reservation and Rep. at 4, Commonwealth v. Charles, 466 Mass. 63 (2013).



The Committee for Public Counsel Services ("CPCS") had moved to intervene in Charles and Milette. On behalf of tens of thousands of defendants affected by the Hinton Lab crisis, CPCS sought "the fair resolution of a large number of cases, while avoiding inefficient and costly case-by-case litigation." Mot. to Intervene by CPCS at 10, Commonwealth v. Charles, SJ-2013-0066, Commonwealth v. Milette, SJ-2013-0083. In light of her ruling that a broader remedy was "premature," Justice Botsford denied, without prejudice, CPCS's motion to intervene. Reservation and Rep. at 4.

The Court issued its full opinion in all three cases on July 22, 2013. See Commonwealth v. Charles, 466 Mass. 63 (2013). Although it decided only the narrow issues raised by the Commonwealth,<sup>2</sup> the Court nonetheless recognized the paramount issues of justice and fairness. Because the "burden of [a] 'systemic lapse' in [the] administration of justice 'is not to be borne by defendants,'" this Court concluded:

Given the ongoing investigation of misconduct at the Hinton drug lab and the uncertainty about when such investigation will be completed, the interest of justice is not served by the continued imprisonment

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<sup>2</sup> In Charles, the Court held that Superior Court Justices, but not Special Magistrates, may stay sentences when Dookhan defendants move for new trials. Id. at 79. In Milette, the Court held that Special Magistrates cannot reconsider (and allow) motions for stays after Superior Court Justices have denied those motions. Id. at 83. Finally, in Superior Court, the Court held that the special procedure by which defendants plead guilty before Special Magistrates, subject to review and acceptance by Superior Court Justices, "passes legal muster." Id. at 89.

of a defendant who may be entitled to a new trial.

Id. at 74-75, quoting Lavallee v. Justices in the Hampden Sup. Ct., 442 Mass. 228, 246 (2004). Now, more than two years after fraud by Dookhan was discovered in June 2011, petitioners Bridgeman, Creach and Cuevas submit that it is no longer "premature" for this Court to squarely address this ongoing "systemic lapse" in the criminal justice system.

**B. THE COMMONWEALTH'S APPEALS FROM ORDERS ALLOWING NEW TRIAL MOTIONS.**

The second wave of litigation to reach this Court resulted from appeals by the Commonwealth (and, in one instance, a defendant) from orders on new trial motions. In fact, even before issuing its opinion in Charles, this Court granted direct review in six drug lab appeals.<sup>3</sup>

Many of the defendants in these pending appeals have encouraged this Court to exercise its superintendence powers pursuant to G.L. c.211, §3, and fashion an appropriate remedy

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<sup>3</sup> In four cases, the Commonwealth appealed from orders allowing motions to withdraw guilty pleas to various drug charges. See Commonwealth v. Davila, SJC-11473; Commonwealth v. Bjork, SJC-11464; Commonwealth v. Scott, SJC-11465; Commonwealth v. Torres, SJC-11466. In one case, the Commonwealth appealed from an order dismissing without prejudice the drug charges against the defendant. See Commonwealth v. Gardner, SJC-11470. And in one case, the defendant, who is currently facing deportation due to his drug convictions, appealed from an order denying his motion to withdraw his guilty plea. See Commonwealth v. Rodriguez, SJC-11462. In the trial court, all six defendants argued that, when they pleaded guilty, they had relied on the drug certifications for which Dookhan was the "primary" or "secondary" chemist, but that due her misconduct, those certifications could not be considered reliable evidence.



for all Dookhan defendants. See, e.g., Brief for Scott at 45-47, Commonwealth v. Scott, SJC-11465 (asking this Court to order the trial courts to "allow Rule 30 motions" for all Dookhan defendants); Brief for Rodriguez at 24-29, Commonwealth v. Rodriguez, SJC-11462 (asking this Court to vacate convictions for all Dookhan defendants and, in the event of any retrial, require the Commonwealth to "show beyond a reasonable doubt that Dookhan did not tamper with the sample or destroy its chain of custody").

In these appeals, CPCS again submitted an amicus brief proposing a "comprehensive remedy." As it had done in Charles and Milette, CPCS emphasized "the magnitude of the problem" and argued that "no proper solution can be found in our usual case-by-case approach to providing relief, which, in this situation, is actually an obstacle to a solution." Brief for CPCS as Amici Curiae at 5, 26, Rodriguez, SJC-11462-SJC 11466. To avoid the massive burden and undue delay of any case-by-case approach, CPCS proposed that this Court "either dismiss all Dookhan cases with prejudice or provide the Commonwealth with a limited opportunity for reprosecution and then dismiss all remaining cases after one year." Id. at 27. CPCS contended that dismissal of all tainted convictions would be "proportionate" to the "sweeping misconduct" and a "practical" solution to the

otherwise "insurmountable problem" of reviewing tens of thousands of individual challenges. Id. at 35, 37.

At an October 10, 2013 hearing, oral argument focused on the particular circumstances of the six defendants, with this Court expressing interest in whether the defendants needed to establish, by affidavit, that they would not have pleaded guilty but for the drug certifications by Dookhan. Meanwhile, the Commonwealth urged this Court not to depart from the typical case-by-case approach, claiming that Rule 30 offers adequate relief to all Dookhan defendants. These appeals remain pending.



#### CONCLUSION

For the foregoing reasons, and for the reasons explained in the accompanying Memorandum in Support, Petitioners respectfully request that this Court provide the relief outlined above.

Respectfully submitted,

KEVIN BRIDGEMAN,  
YASIR CREACH, and  
MIGUEL CUEVAS,

by their Attorneys

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Dated: January 9, 2014.

CERTIFICATE OF SERVICE

I, Shrutih V. Ramlochan-Tewarie, an attorney for petitioners, hereby certify that on January 9, 2014, I served the foregoing by causing copies to be mailed, by Federal Express, to the following:

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Dated: January 9, 2014.

COMMONWEALTH OF MASSACHUSETTS

KEVIN BRIDGEMAN,  
YASIR CREACH, and  
MIGUEL CUEVAS,

Petitioners,

v.

DISTRICT ATTORNEY FOR SUFFOLK  
COUNTY and  
DISTRICT ATTORNEY FOR ESSEX  
COUNTY,

Respondents.

SUPREME JUDICIAL COURT FOR  
SUFFOLK COUNTY  
DOCKET NO.:

MEMORANDUM IN SUPPORT OF PETITION SEEKING RELIEF  
PURSUANT TO GEN. LAWS C.211, §3

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### QUESTIONS PRESENTED

In light of the unprecedented crisis at the William A. Hinton State Laboratory Institute, which has violated the due process and common law rights of more than 40,000 defendants ("Dookhan defendants"), this Court should exercise its authority under G.L. c.211, §3, to address the following questions:

1. Whether, to vindicate the rights of Dookhan defendants, to eliminate the apprehension of vindictive prosecution from chilling their exercise of post-conviction rights and to restore the integrity of the criminal justice system, due process and common law principles require a clear, prophylactic rule that Dookhan defendants who seek post-conviction relief cannot be subjected to more severe punishment as a result of the reinstatement of previously dismissed charges, any prosecution of new charges based on the same conduct, or the imposition of increased sentences?

2. Whether inordinate and prejudicial delay in providing post-conviction relief to Dookhan defendants violates due process, where it has already been more than two years since managers in the Hinton Lab learned of serious misconduct by chemist Annie Dookhan, yet the vast majority of Dookhan defendants have not even been assigned counsel, much less been provided discovery, had their convictions reviewed, or received any relief whatsoever?

## INTRODUCTION

For almost a decade, chemist Annie Dookhan perpetrated an extensive and unprecedented fraud at the Hinton Lab. Her outrageous misconduct, which was exacerbated by the chronic mismanagement of the lab, reportedly affected at least 40,323 defendants who have been convicted of state drug offenses in the Commonwealth.

Now, long after lab managers discovered misconduct by Dookhan in June 2011, many Dookhan defendants fear that, if they pursue justice and challenge their tainted drug convictions, either by withdrawing their guilty pleas or moving for new trials, they could be subjected to even harsher punishments than they initially received. Worse yet, such challenges have been inordinately and prejudicially delayed by factors well beyond the control of these defendants.

The combination of fear, which chills the exercise of post-conviction rights, and delay, which frustrates the ability to obtain post-conviction relief, has deprived petitioners Kevin Bridgeman, Yasir Creach and Miguel Cuevas – as well as tens of thousands of other Dookhan defendants – of their due process and common law rights to meaningful post-conviction proceedings and relief. Through this petition, they seek to vindicate their rights and restore the integrity of the criminal justice system.

The scandal at the Hinton Lab is, by now, well known. Serving as an employee of the Commonwealth and member of the "prosecution team," Dookhan failed adequately to test an untold number of alleged drug samples. In many cases, Dookhan falsely certified that she had performed the required tests and also that samples, in fact, tested positive for illegal drugs. For that reason, the convictions of tens of thousands of defendants for state drug offenses appear to have been obtained by fraud.

That this egregious misconduct occurred is undisputed; that it affects at least 40,323 defendants has been established; and that this scandal involves the unprecedented violation of the due process and common law rights of these Dookhan defendants is without refutation. As this Court has already recognized:

It is undisputed that the allegations of serious and far-reaching misconduct by Dookhan at the Hinton drug lab have raised significant concerns about the administration of justice in criminal cases where a defendant has been convicted of a drug offense and the drugs at issue were analyzed at that facility.

Commonwealth v. Charles, 466 Mass. 63, 89 (2013) (noting that "thousands of cases may have been compromised").

It is less well known, however, that little progress has been made toward remedying this vast injustice. The Committee for Public Counsel Services ("CPCS") has been able to assign counsel to approximately 8,700 defendants, a small fraction of

the 40,323 defendants identified to date. See Affidavit of Anthony Benedetti ("Benedetti Aff.") at R. 271, ¶ 12; R. 272, ¶ 16. This effort has been exceedingly difficult because, remarkably, in January 2014, there is still no list of case numbers associated with all of the 40,323 Dookhan defendants. See Affidavit of Nancy Caplan ("Caplan Aff.") at R. 241, ¶ 36. Meanwhile, many defendants are afraid to seek post-conviction relief. Despite having colorable claims, they fear that challenges to their convictions may trigger vindictive prosecutions; for example, prosecutors might reinstate previously dismissed charges that carry mandatory minimum sentences. See Affidavit of Veronica White ("White Aff.") at R. 323, ¶ 15; Caplan Aff. at R. 236-238, ¶¶ 18-22. In addition, inordinate and prejudicial delays have stymied those defendants who, despite the risks and uncertainty, are willing to proceed in court. See Affidavit of Miguel Cuevas ("Cuevas Aff.") at R. 11, ¶ 13; White Aff. at R. 319-321, ¶¶ 8-11. Thus, many Dookhan defendants do not know how to challenge their tainted convictions, how long those proceedings will take, and whether those proceedings will ultimately help or hurt them. Adding further insult to the injuries suffered by Dookhan defendants is the simple fact that the Commonwealth is at fault and bears the burden of remedying this "systemic lapse." Charles, 466 Mass. at 75, quoting Lavallee v. Justices in the Hamden Super. Ct., 442 Mass. 228, 246 (2004).



This petition seeks a remedy. Petitioners were convicted of drug offenses only after Dookhan certified that the substances allegedly in their possession were illegal drugs. They seek two rulings concerning their tainted convictions. First, because the fear of harsher punishment chills the exercise of post-conviction rights, this Court should rule that Dookhan defendants who seek post-conviction relief cannot be penalized with outcomes that are worse - in terms of the seriousness of the offenses charged or the length of the sentences imposed - than the original outcomes of their cases. Second, because justice has been unduly delayed, with no end in sight, this Court should vacate all tainted convictions and afford prosecutors only a time-limited opportunity to re-prosecute any Dookhan defendants. Shielding defendants from more severe punishment will allow them to challenge their convictions without any fear of vindictive prosecution, and setting clear deadlines to resolve these cases will ensure that the burden falls squarely where it belongs: on the Commonwealth.

Petitioners make this request knowing that it is not the first proposal to this Court by Dookhan defendants, and their counsel, for a comprehensive remedy. See Pet. at 8-13. A similar call for a combination of dismissals and deadlines, advanced in a CPCS amicus brief, is pending before this Court. See Brief of CPCS as Amici Curiae, Commonwealth v. Rodriguez, et al., Nos.

SJC-11462 to 11466 (argued Oct. 10, 2013). But a comprehensive remedy, particularly one that addresses the fear of vindictive prosecution that chills the exercise of post-conviction rights, is by no means promised in Rodriguez.

Therefore, petitioners request that this petition be referred to Justice Botsford, who has continuing jurisdiction over Hinton Lab matters by virtue of the rulings in Charles, or else that this petition be reserved and reported to the full Court. Ultimately, petitioners seek the following relief:

1. This Court should establish a clear, prophylactic rule that defendants who seek post-conviction relief based upon Doo-khan's outrageous misconduct in the Hinton Lab cannot be convicted of more serious offenses than those underlying their tainted convictions, or be sentenced to longer prison terms than were previously imposed.

2. This Court should order that prosecutors have 90 days to notify individual defendants, or their counsel, whether they intend to re-prosecute them, and further that:

- a. If notice is not provided within 90 days, the underlying convictions will be vacated with prejudice; or

- b. If timely notice of re-prosecution is provided, prosecutors will have six months to bring such cases to trial or to conclude them with guilty pleas.



STATEMENT OF FACTS

I. ANNIE DOOKHAN'S OUTRAGEOUS MISCONDUCT IN THE HINTON LAB.

The facts concerning Dookhan's fraud have been recounted in other cases, are described in greater detail in the affidavits accompanying this petition, and require little further elaboration here. See, e.g., Affidavit of Kevin Bridgeman ("Bridgeman Aff."); Affidavit of Yasir Creach ("Creach Aff."); Cuevas Aff.; Caplan Aff.; Benedetti Aff.; Affidavit of Anne Goldbach ("Goldbach Aff."); Affidavit of Thomas Workman ("Workman Aff."); Affidavit of Joanna Sandman ("Sandman Aff."); White Aff..

Among other acts of misconduct, Dookhan, a chemist in the Hinton Lab, an employee of the Commonwealth, and a member of the "prosecution team," repeatedly and deliberately falsified test results, tampered with evidence, and forged the signatures of her colleagues, including an evidence officer. See Goldbach Aff. at R. 55, ¶ 59; see also Goldbach Aff., Att. C at R. 89 (Executive Summary highlighting "the damage that can potentially be done by a rogue employee who can maliciously manipulate the testing and documentation process to minimize the chance of discovery").

This fraud lasted seemingly from November 2003, when Dookhan was hired, until June 2011, when she was caught improperly checking out samples and forging records to cover her tracks. Through her entire tenure, Dookhan consistently reported "testing" a volume of samples that was at least 50% higher than the second

most productive chemist. See Workman Aff. at R. 295, ¶¶ 30-33; Goldbach Aff. at R. 52, ¶ 45; Goldbach Aff., Att. C at R. 85. For example, during her first two years at the Hinton Lab, Dookhan often reported testing more than 1000 samples per month. See Workman Aff. at R. 295, ¶ 32. Even after the Supreme Court ruled, in Melendez-Diaz v. Massachusetts, 557 U.S. 305 (2009), that chemists had to take time off from their lab work to be available for testimony in court, Dookhan claimed to have continued testing a similarly extraordinary volume of samples. See id. at R. 295-297, ¶¶ 34-42.

Yet Dookhan was not fired, and her blatant misconduct was not publicly disclosed for over a year after the events of June 2011. See Goldbach Aff., Att. C at R. 86-87. Until December 2011, Dookhan's misconduct was not formally investigated at all. Id. Subsequently, from December 2011 to February 2012, the Department of Public Health ("DPH") reviewed only the June 2011 incident. See id. Dookhan was then permitted to resign in March 2012. See id. at R. 88. Responsibility for the Hinton Lab was later transferred to the State Police, which undertook a broader review of Dookhan's misconduct. See id. at R. 80. The Hinton Lab was finally shut down on August 30, 2012, and Dookhan's misconduct was disclosed to the public.

Discovery in ongoing litigation and the prosecution of Dookhan have yielded additional, troubling revelations regarding what transpired in the Hinton Lab, including the following:

- Dookhan postdated entries in the evidence log book, including not only her own initials but also the forged initials of an evidence officer. See Goldbach Aff. at R. 49-50, ¶ 39.
- Dookhan improperly loaded and ran her own samples on the Gas Chromatograph/Mass Spectrometer, misusing the machine critical to accurate testing and deviating from the two-chemist system. See id. at R. 52, ¶¶ 43-44.
- In violation of lab protocols, Dookhan left samples on her bench top work space, and she submitted multiple racks of sample vials to the confirmatory chemists. See id. at R. 52, ¶ 44.
- Dookhan improperly expedited the testing of specific samples at the request of assistant district attorneys. See id. at R. 53, ¶ 49.
- As her email messages demonstrate, Dookhan acted as a partisan member of the prosecution team, not a neutral expert witness. See id. at R. 59, ¶ 73; see also, e.g., Goldbach Aff., Att. I at R. 165 ("We are more than willing to provide discovery packets to the ADAs as long as it will help in getting a plea or stipulation."), R. 174 ("Tell the defendant, he is getting an extra 5 years for p-off the chemist."), R. 156 ("[The defendant] needs to be locked up and throw away the key"), R. 162 ("Defaulted [the defendant] . . . must be in the Dominican republic on the beach with my other default defendants")
- Dookhan reported sample weights that were, on average, three times higher than those reported by other chemists suggesting further fraud or incompetence. See Workman Aff. at R. 299, ¶ 49; Goldbach Aff. at R. 52, ¶ 45.

Dookhan pleaded guilty to several crimes on November 22, 2013, and she was sentenced to three to five years' imprisonment. In connection with her plea, the Commonwealth acknowledged some, but not all, of Dookhan's misconduct. The Commonwealth's sentencing memorandum noted that the initial DPH investigation determined that Dookhan "regularly failed to follow proper protocols for signing out drug samples from the evidence room, and in fact tampered with evidence by forging the initials of an evidence officer to cover-up her misconduct." R. 699 (Com. Sent. Mem.). It further noted that the later State Police investigation discovered that Dookhan had "dry labbed" samples, "the practice of merely visually identifying samples instead of performing the required chemical test on them to determine if the sample was in fact a controlled substance." Id.<sup>1</sup> In urging the trial judge to impose a sentence of five to seven years in state prison, the Commonwealth stated:

[Dookhan] ensured that samples would test positive for controlled substances thus eviscerating both the integrity of the lab's internal testing processes, and the concomitant fact finding process that was a jury's to perform.

Id. at 702. It also stated that the scandal has already cost "hundreds of millions of dollars." Id. at 703.

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<sup>1</sup> In addition to her misconduct in the Hinton Lab, Dookhan also repeatedly gave false testimony, as an expert witness, about her qualifications. See R. 701-702.

Of course, the true damage that Dookhan has caused cannot be quantified in dollars, as the Commonwealth has acknowledged:

The gravity of the present case cannot be overstated. [Dookhan]'s actions not only affected the particular individuals named in the indictments but also the entire criminal justice system in Massachusetts. Her malfeasance has not only potentially affected every drug sample that [Dookhan] is believed to have handled at the Hinton Lab, but her misconduct has helped to engender public mistrust in the criminal justice system by impugning the role of the government witness in a criminal trial and undermining the integrity of evidence admitted at those trials.

Id. at 702-703. The trial judge who sentenced Dookhan also noted the "catastrophic" consequences of her behavior, finding that "innocent persons were incarcerated" and "the integrity of the justice system has been shaken to the core." R. 707 (Sent. Dec.).

The strain on the criminal justice system has been felt by the courts, District Attorneys' Offices and, most particularly, CPCS, which is responsible for representing thousands of Dookhan defendants. According to its Chief Counsel, Anthony Benedetti, the case-by-case approach to this crisis has been "impeding [CPCS's] ability to carry out its core mandate." Benedetti Aff. at R. 268-69, ¶¶ 4-5, 19. That approach, Benedetti warns, would require CPCS "to obtain millions of additional dollars in funding" while "fail[ing] to deliver justice to many thousands of

indigent defendants whose rights have been violated." Id. at R. 271-272, ¶ 15. Simply providing attorneys to the affected defendants, Benedetti observes, "would take months if not years" and "cause incalculable damage to CPCS, its clients, and Massachusetts' criminal justice system." Id. at R. 274, ¶ 23.

## II. INORDINATE AND PREJUDICIAL DELAYS IN ADDRESSING THE CRISIS.

Justice for Dookhan defendants has been substantially delayed, first by failing to disclose Dookhan's misconduct to the public until August 2012, and now by other factors. Four deserve special mention here.

First, poor recordkeeping at the Hinton Lab has obscured vital information. In September 2012, Governor Deval Patrick created a Task Force to identify the defendants associated with drug certificates that Dookhan signed as the primary or secondary chemist. Relying upon a database from the Hinton Lab, the Task Force initially disclosed a list of approximately 37,500 names. To generate a more thorough list, the Task Force had to conduct a file-by-file review. Nearly a year later, in August 2013, the Task Force issued its Final Report, identifying 40,323 defendants "whose drug cases potentially may have been affected by the alleged conduct of Ms. Dookhan." Caplan Aff., Att. A at R. 249. Even then, however, the Task Force was unable to identify birthdates, social security numbers, or docket numbers as-



sociated with those defendants. See id. at R. 241, ¶ 36. Due to this lack of identifying information, lawyers have been appointed for only 8,700 Dookhan defendants, not all 40,323 of them. See Benedetti Aff. at R. 271, ¶ 12.

Second, given the magnitude of the misconduct and mismanagement in the Hinton Lab, the official investigation is not yet complete. In November 2012, Governor Patrick directed Inspector General Glenn Cunha to determine "whether the lab's failures [were] limited to Dookhan and her supervisors and managers." R. 710. That investigation remains ongoing, with its report expected in January 2014. In the meantime, Dookhan defendants who wish to challenge their convictions must make do with piecemeal discovery. See Caplan Aff. at R. 233-234, ¶¶ 7-10. For example, before June 2013 defendants litigating new trial motions were unable to get documents from the Hinton Lab associated with the analyses of their specific samples. See id. at R. 234, ¶ 11; White Aff. at R. 322-323, ¶ 14. Other documents, such as Hinton Lab training materials, have also been difficult to acquire. Caplan Aff. at R. 235, ¶ 13. In addition, defendants must contend with prosecutorial practices that have varied widely from county to county and even within counties over time. See id.; Sandman Aff. at R. 313-314, ¶¶ 10-11, 13.

Third, the criminal defense system cannot handle the outsized demands of this extraordinary crisis. At least 40,323 de-

defendants might need counsel, but no more than 300 qualified defense attorneys are willing to handle post-conviction cases at the low hourly rates that CPCS is authorized to pay. See Benedetti Aff. at R. 274, ¶¶ 22-23. Moreover, defense attorneys willing to represent Dookhan defendants are hamstrung by the unavailability of police reports and drug receipts necessary to identify the specific cases associated with the names in the Meier Report. See Caplan Aff. at R. 244, ¶ 45.

Fourth, and finally, Dookhan defendants are concerned about their exposure to longer sentences and more serious charges, including those the Commonwealth voluntarily dismissed, if they challenge their convictions based upon Dookhan's misconduct. See White Aff. at R. 323, ¶ 15 (detailing clients' concerns that if their convictions are vacated, "the Commonwealth will pursue their cases with heightened vigor and that they will be punished for 'fighting the system.'"); Caplan Aff. at R. 238, ¶¶ 18-22. In this regard, the recent case of Angel Rodriguez is a cautionary tale. Rodriguez was indicted for trafficking cocaine over 100 grams but, in 2008, pleaded guilty to a reduced charge of trafficking over 28 grams and received a sentence of five to seven years. R. 722-723. Following the revelations about the Hinton Lab, Rodriguez successfully moved to vacate his guilty plea. R. 724. In response, the prosecution reinstated the original 100-gram charge, a jury convicted Rodriguez, and the



court sentenced him to eight years and one day, a longer sentence than it had originally imposed. R. 725-27. Petitioners and other Dookhan defendants are well-aware of Rodriguez's fate, which received media attention. R. 729, 731-32; Cuevas Aff. at R. 11, ¶ 13; Caplan Aff. at R. 238-239, ¶¶ 23-27. Indeed, as discussed below, petitioner Kevin Bridgeman has avoided filing a Rule 30 motion because he fears vindictive prosecution. See Bridgeman Aff. at R. 4, ¶ 17; Pet. at 6; Caplan Aff. at R. 237, ¶ 21.

#### ARGUMENT

Years ago, petitioners were convicted based upon Dookhan's fraud in the Hinton Lab, and all three of them would have made different decisions (and would have received different advice from their counsel), if they had known of Dookhan's extensive and egregious misconduct. In this way, petitioners and the other Dookhan defendants have suffered – and will continue to suffer – violations of their due process and common law rights through no fault of their own. Without the requested remedy from this Court, they have no meaningful relief in sight.

Responsibility for this unprecedented crisis lies entirely with the Commonwealth, not the defendants. This petition requests a comprehensive remedy that vindicates the rights of the petitioners, and all other Dookhan defendants, and that also

puts the burden of resolving this vast injustice on the Commonwealth.

I. DUE PROCESS AND COMMON LAW PRINCIPLES DO NOT PERMIT SUBJECTING DOOKHAN DEFENDANTS WHO SEEK POST-CONVICTION RELIEF TO MORE SEVERE PUNISHMENT.

Many Dookhan defendants, including petitioners Bridgeman, Creach and Cuevas, fear that challenging their tainted convictions will make matters worse. They worry that, if they win new trials, they will face more severe penalties if convicted again, either of the charges to which they previously pleaded guilty or of additional charges that prosecutors voluntarily dismissed.

Such pyrrhic victories would not do justice and cannot be justified. No Dookhan defendants should be subjected to more severe penalties, whether due to reinstating more serious charges or resentencing, than those that the Commonwealth was willing to accept before Dookhan's misconduct came to light. A contrary result — one that would impose even more incarceration on Dookhan defendants who successfully challenge their tainted convictions — would undermine their due process and common law rights to meaningful post-conviction proceedings and relief.

A. DUE PROCESS AND COMMON LAW PRINCIPLES PROHIBIT OUTCOMES THAT WOULD DISCOURAGE DEFENDANTS FROM CHALLENGING THEIR TAINTED CONVICTIONS.

The Hinton Lab litigation resembles other contexts in which courts have consistently barred prosecutors from seeking, or

judges from imposing, harsher punishments on defendants who successfully challenge their convictions.

One relevant context involves defendants who were convicted at trial. In North Carolina v. Pearce, 395 U.S. 711 (1969), the Supreme Court held that, when defendants successfully appeal from convictions, trial courts may not impose longer sentences after retrials, because it is "patently unconstitutional" to "penaliz[e]" defendants for exercising their rights. Id. at 724. Moreover, "the very threat" of longer sentences following retrials "serve[s] to 'chill the exercise of basic constitutional rights.'" Id. (quoting United States v. Jackson, 390 U.S. 570, 582 (1968)). Due process requires that defendants "be freed of apprehension" about any potential penalties for seeking post-conviction relief. Id. at 725.

To eliminate the "apprehension" of vindictiveness, the Supreme Court held, in Pearce, that defendants who prevail on appeal may not be subjected to stiffer sentences after retrials. This rule protects defendants who assert their post-conviction rights, and it also "prevent[s] chilling the exercise of such rights by other defendants who must make their choices under similar circumstances in the future." United States v. DeMarco, 550 F.2d 1224, 1227 (9th Cir. 1977).

In Commonwealth v. Hyatt, 419 Mass. 815 (1995), this Court adopted a similar rule as "a common law principle." Id. at 823.

Hyatt had received concurrent sentences after being convicted of rape and armed robbery, but following his successful appeal, he was again convicted and sentenced by a new judge to consecutive sentences. See id. at 816. Applying the rule of Pearce, this Court vacated Hyatt's sentence and remanded for resentencing:

That rule, easy of application, effectively safeguards a successful appellant upon retrial from the possibility, however slight, of retaliatory vindictiveness following reconviction, and protects a convicted defendant's right to an appeal from any chilling effect emanating from the possibility that an enhanced second sentence might result from a retrial on the same facts.

Id. at 823, quoting State v. Violette, 576 A.2d 1359, 1361 (Me. 1990) (McCusick, C.J.). Like the Supreme Court, this Court was concerned with "any chilling effect" on defendants who fear that more severe punishment may follow successful post-conviction challenges.

In Blackledge v. Perry, 417 U.S. 21 (1974), the Supreme Court extended the "presumption of vindictiveness" from the sentencing context to the charging decision. The Court held that a defendant must be permitted to pursue post-conviction relief "without apprehension that the State will retaliate by substituting a more serious charge for the original one." Id. at 28. This Court has recognized that the "essential underpinnings" of Pearce and Perry are "found ... in a rule deterring abuse of the

criminal process by 'vindictive' behavior by the judges or prosecutors." Commonwealth v. Tirrell, 382 Mass. 502, 508 (1981).

"'Vindictiveness,' under Pearce and Perry, does not require actual retaliatory motivation, but only a reasonable appearance of the same; nor does it require a showing of bad faith or malice on the part of the judge or prosecutor." Id. at 508 n.8.<sup>2</sup> The paramount concern is any potential chilling effect on defendants, not the bad faith of prosecutors. A defendant "should not have to fear even the possibility that his exercise of his right to appeal will result in the imposition of a direct penalty for doing so." Marano v. United States, 374 F.2d 583, 585 (1st Cir. 1967). That principle requires the same rule in the Hinton Lab context.

**B. DOOKHAN DEFENDANTS WHO WITHDRAW THEIR PLEAS SHOULD NOT FACE MORE SERIOUS CHARGES OR LONGER SENTENCES.**

Pearce, Perry and Hyatt apply straightforwardly to protect Dookhan defendants who were convicted at trial, and the principle underlying these cases applies equally to defendants who wish to challenge their guilty pleas. Those defendants now face the possibility that withdrawing their pleas could, paradoxically, yield harsher penalties if prosecutors pursue previously

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<sup>2</sup> In Hyatt, the record did not suggest that "the judge was in fact vindictive," but it also did not explain the harsher, second sentence, and thus, it failed to overcome the "presumption of vindictiveness." 419 Mass. at 821. Similarly, in Perry, the presumption of vindictiveness applied even though there was "no evidence" that the prosecutor acted in "bad faith or maliciously." 417 U.S. at 28.

dismissed charges or if they are convicted at trial and sentenced to longer prison terms. As explained below, these harsher outcomes should be barred for the same reason that similarly unfair results were not permitted in Pearce, Perry and Hyatt: they cause defendants to fear potential vindictiveness, which in turn chills the exercise of their post-conviction rights. That result would be especially troubling here, because the Commonwealth bears complete responsibility for Dookhan's outrageous misconduct.

1. The potential to suffer harsher punishment, after seeking post-conviction relief, causes Dookhan defendants to fear prosecutorial vindictiveness.

The Supreme Court has explained why any apprehension of vindictiveness in the post-conviction process must be eliminated: "[T]he fear of such vindictiveness may unconstitutionally deter a defendant's exercise of the right to appeal or collaterally attack his first conviction." Pearce, 395 U.S. at 725. In holding that "it would be a flagrant violation of the Fourteenth Amendment" for a state to "punish[] the defendant for having succeeded in getting his original conviction set aside," the Supreme Court has not distinguished between different procedural avenues for vacating "[an] original conviction." Id. at 722.

For Dookhan defendants, the primary means to set aside their tainted convictions are motions for new trial under Mass. R. Crim. P. 30. In each of these cases, it has been revealed



that the original convictions or initial plea bargains may have rested on the fraud committed by Dookhan, an employee of the Commonwealth and member of the prosecution team. Because that revelation is uniformly unfavorable for the prosecution, there is no reason, other than "punishing the defendant for his having succeeded in getting his original conviction set aside," Pearce, 395 U.S. at 722, why any of these defendants should now face worse outcomes. Thus, this Court should establish a clear, prophylactic rule to eliminate any fear of vindictive prosecution that chills the exercise of critical post-conviction rights.

True, in Alabama v. Smith, 490 U.S. 794 (1989), the Supreme Court held that a presumption of vindictiveness does not arise "when the first sentence was based upon a guilty plea, and the second sentence follows a trial." Id. at 795. But Smith focused narrowly on judicial vindictiveness; this case involves the potential for prosecutorial vindictiveness. See Turner v. Tennessee, 940 F.2d 1000, 1002 (6th Cir. 1991) ("The Court in Alabama v. Smith simply did not speak to prosecutorial conduct."). The Supreme Court's observation that, during trial, a judge "may gather a fuller appreciation of the nature and extent of the crimes charged" and "insights into [the defendant's] moral character and suitability for rehabilitation," does not apply

to a prosecutor. Id. at 1001-02 (quoting Smith, 490 U.S. at 801).

[T]he prosecution can be expected to operate in the context of roughly the same sentencing considerations . . . and any unexplained changes in the sentence is therefore subject to a presumption of vindictiveness.

Turner, 940 F.2d at 1002, quoting Smith, 490 U.S. at 802. Here, the Commonwealth will not gain any new information or insights by trying Dookhan defendants who previously pleaded guilty.

A far more likely scenario is that the prospect of harsher punishment will unconstitutionally chill the exercise of Rule 30 rights by defendants, like petitioners, who have already served their sentences. These defendants cannot get any relief by tendering new pleas, such as the "time served" plea agreements offered to the defendants in Charles and Milette. Instead, Dookhan defendants who have already served their time can seek justice only by having their tainted convictions vacated. But if such defendants are told that they may be tried, convicted and sentenced to even more time in prison, only "the most hardy defendants" will seek justice. Perry, 417 U.S. at 28. That result would be worse than unconstitutional; it would allow prosecutors to reap the rewards of Dookhan's misconduct by intimidating defendants who have already served tainted sentences.



For much the same reason, prosecutors should not be permitted to revive charges that they voluntarily dismissed in connection with prior pleas by Dookhan defendants. Because prosecutors were willing to drop those charges when Dookhan's misconduct was not known, there is no reason – other than to punish defendants for challenging tainted convictions – for prosecutors to pursue those charges now. See United States v. Kupa, No. 11-cr-345, 2013 U.S. Dist. Lexis 146922, at \*7-8 (E.D.N.Y. Oct. 9, 2013) ("To coerce guilty pleas, . . . prosecutors routinely threaten ultra-harsh, enhanced mandatory sentences that no one – not even the prosecutors themselves – think are appropriate."); see also "An Offer You Can't Refuse," Human Rights Watch Report (Dec. 5, 2013) (detailing the pressures faced by defendants to plead guilty when prosecutors threaten harsh sentences based on mandatory minimums).

In this regard, the recent decision in United States v. LaDeau, 734 F.3d 561 (6th Cir. 2013), is instructive. After LaDeau successfully moved to suppress critical evidence, without which the prosecution could not prove he had possessed child pornography, the prosecution obtained a superseding indictment, alleging that he conspired to receive child pornography, a more serious charge that triggered a minimum mandatory sentence. LaDeau moved to dismiss the superseding indictment as a viola-

tion of his due process rights. Analyzing that claim, the appeals courts explained:

[T]he Blackledge rule is a prophylactic one; it safeguards a defendant's due process rights by eliminating apprehension of prosecutorial retaliation where circumstances reasonably indicate retaliation, even if there is no direct evidence that the prosecutor was in fact improperly motivated.

Id. at 566. Despite the pre-trial setting, in which prosecutors have broad discretion over charging decisions, the court applied the presumption of vindictiveness for two reasons. First, there was no reason to believe that the prosecution's view of the case had "changed significantly," because the evidence against LaDeau was unchanged. Id. at 568. Second, after critical evidence was suppressed, the prosecution was "saddled with the prospect of restarting [the] prosecution from scratch," Id. at 569.

The same is true here. From the prosecution's perspective, Dookhan's misconduct did not strengthen the Commonwealth's cases against petitioners or any other defendants; to the contrary, it clearly weakened them. Moreover, as a result of successful new trial motions and withdrawn guilty pleas, District Attorneys may have to "restart ... prosecution[s] from square one in order to prevent [defendants] from 'going free.'" Id. at 570.

When the prosecution is forced to do over what it thought it had already done correctly, or where duplicative expenditures of prosecutorial resources are required, the prosecution's stake in discouraging the de-

defendant's exercise of a right may be "considerable."

Id. (internal citations and quotation marks omitted). That considerable stake drives the fear of vindictiveness and, in turn, chills the exercise of post-conviction rights.

2. The extraordinary magnitude of the Hinton Lab crisis presents special concerns about protecting the post-conviction rights of Dookhan defendants.

The analysis above would warrant applying Pearce, Perry and Hyatt to the Hinton Lab context even if petitioners Bridgeman, Creach and Cuevas were the only defendants with tainted convictions. But, of course, they are only three people among tens of thousands of Dookhan defendants. The tremendous magnitude of this crisis presents additional concerns about the potential for prosecutorial vindictiveness and, thus, amplified reasons to follow Pearce, Perry and Hyatt.

"It is beyond dispute that a defendant's decision whether to plead guilty or proceed to trial is a critical stage in a criminal proceeding for which he is constitutionally entitled to the effective assistance of counsel." Commonwealth v. Mahar, 442 Mass. 11, 14 (2004); see Lafler v. Cooper, 132 S. Ct. 1376 (2012); Missouri v. Frye, 132 S. Ct. 1399 (2012). "Because plea bargaining requires defendant to waive fundamental constitutional rights," courts have consistently held prosecutors "to the most meticulous standards of both promise and performance" in

plea bargaining. United States v. Velez Carrero, 77 F.3d 11, 11 (1st Cir. 1996) (quotations omitted). By entering plea agreements with Dookhan defendants, while a member of the prosecution team was willfully tampering with key evidence, the Commonwealth "undermined the whole system of trust upon which plea negotiations must be based." United States v. Dicus, 579 F. Supp. 2d 1142, 1158 (N.D. Iowa 2008). It breached the implicit representation that the prosecution's evidence was not the result of fraud. As this Court held in Charles, Dookhan's outrageous misconduct "raises significant questions regarding the veracity of the drug analysis, which purportedly served as the as the basis for [the defendant's] guilty plea." 466 Mass. at 74.

If prosecutors have ever had a "considerable stake" in discouraging defendants from seeking post-conviction relief, it is in cases arising from the Hinton Lab. Noting the "exceptional circumstances" of this scandal, this Court has recognized the danger that the criminal justice system may be buried under "an anticipated avalanche of cases." Id. at 90. Even if re-prosecuting tens of thousands of cases were possible – and it is not – doing so would "require increased expenditures of prosecutorial resources" and "may even result in ... formerly convicted defendant[s] going free." Perry, 417 U.S. at 27-28. Those concerns can motivate the prosecution to "up[] the ante," thereby discouraging defendants from seeking post-conviction relief.

Id. Beyond forestalling an "avalanche" of retrials, prosecutors may also wish to discourage further discovery by defendants into the shocking disarray at the Hinton Lab. Thus, this Court should establish a clear, prophylactic rule that Dookhan defendants will not face more serious charges or longer sentences (for the same underlying conduct) if they successfully challenge their tainted convictions.

**II. DUE PROCESS GUARANTEES MEANINGFUL POST-CONVICTION RELIEF FOR DOOKHAN DEFENDANTS WITHOUT INORDINATE AND PREJUDICIAL DELAY.**

The longer that the Hinton Lab crisis continues without a comprehensive remedy, the more uncertain becomes the position of the petitioners and the other Dookhan defendants. Although the crisis has been festering for more than two years, the vast majority of Dookhan defendants have still not had their day in court, much less any post-conviction relief. That inordinate and prejudicial delay violates due process, particularly because the defendants are not to blame for it.

**A. UNDUE DELAY IN POST-CONVICTION PROCEEDINGS VIOLATES DUE PROCESS.**

It is fundamentally unfair, in violation of due process, for petitioners and the other Dookhan defendants to be forced - through no fault of their own - to wait indefinitely for meaningful post-conviction relief from their tainted convictions.

"[I]nordinate and prejudicial delay" in the appellate process "may rise to the level of constitutional error," because such delay violates the right of due process guaranteed by the Fifth Amendment and Article 12. In re Williams, 378 Mass. 623, 625 (1979), quoting Commonwealth v. Swenson, 368 Mass. 268, 279-280 (1975); see Commonwealth v. Weichel, 403 Mass. 103, 109 (1988); see also State v. Bianco, 511 A.2d 600, 607-608 (N.J. 1986) (recognizing a defendant's due process right against undue delay in the appellate process, because "justice is denied if it is delayed").

Fundamental fairness requires an expedient process for reviewing criminal convictions, and providing post-conviction relief, because "an appeal that is inordinately delayed is as much a 'meaningless ritual' as an appeal that is adjudicated without the benefit of effective counsel or a transcript of the trial court proceedings." Harris v. Champion, 15 F.3d 1538, 1558 (10th Cir. 1994), quoting Douglas v. California, 372 U.S. 353, 358 (1963); see generally Mathews v. Eldridge, 424 U.S. 319, 333 (1976) ("The fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner." (internal quotation marks omitted)). This is particularly true when, during the period of delay, defendants remain incarcerated or suffer other collateral consequences of their criminal convictions. See White Aff. At R. 324, ¶ 17.



Courts have applied the same due process analysis to delays concerning new trial motions.

[T]he interests protected by preventing unreasonable delay from arrest through sentencing and throughout the appellate process are also endangered by delay in deciding a motion for a new trial based on newly discovered evidence. Faded memories or misplaced evidence may impair a defendant's ability to adequately defend himself if he is granted a new trial. See Barker v. Wingo, 407 U.S. 514, 526 (1972). Delay may also produce anxiety or drain a defendant's financial resources. Moore v. Arizona, 414 U.S. 25, 27 (1973). Because of these similarities, we see no reason to exempt a motion for a new trial based on newly discovered evidence from protection against unreasonable delay.

United States v. Yehling, 456 F.3d 1236, 1243 (10th Cir. 2006).

Here, this Court must consider whether inordinate and prejudicial delays in resolving new trial motions for tens of thousands of Dookhan defendants, including petitioners, violates their due process rights to fundamental fairness.

**B. THE DELAY IN PROVIDING RELIEF TO DOOKHAN DEFENDANTS HAS BEEN - AND CONTINUES TO BE - INORDINATE.**

Outrageous misconduct in the Hinton Lab has been known to public officials for more than two years, yet Dookhan defendants still face substantial uncertainty about how to obtain meaningful post-conviction relief and how long proceedings may take. The causes of this inordinate, and ongoing, delay include the following:



- For almost 10 years, from 2003 until 2011, Dookhan committed extensive fraud in the Hinton Lab, including "dry labbing," tampering with samples and committing forgery. Throughout this period, she operated without meaningful oversight or controls, and she also claimed to have tested an impossibly high volume of samples.
- Dookhan's outrageous misconduct was not disclosed to the public from June 2011 through August 2012, during which time DPH conducted its limited, internal investigation.
- As it has turned out, the misconduct and dysfunction in the Hinton Lab were so grave that the Inspector General's investigation, which began in November 2012, will not conclude until late January 2014 at the earliest.
- Due to these massive problems in the Hinton Lab, a list of "Dookhan" defendants was not disclosed until in August 2013, in connection with the Meier Report. Even then, the list did not include birthdates, social security numbers, or docket numbers, which remain unavailable today.
- Presently, there are no more than 300 qualified defense lawyers willing to handle Hinton Lab cases at CPCS's compensation rates. As a result, lawyers have been appointed for only 8,700 of the 40,323 Dookhan defendants.
- Defendants who have moved for new trials have been confronted with substantial obstacles in getting important discovery, and they have also faced widely disparate approaches by courts and prosecutors.

The delay suffered by the Dookhan defendants undermines the integrity of the criminal justice system in the Commonwealth. In sharp contrast, when an examiner at a Texas drug lab faked test results of a Xanax pill, his actions were quickly noticed, double-checked, and reported to the Department of Public Safety

("DPS"). In just 18 days, DPS alerted the Texas Rangers, the Inspector General, the Forensic Science Commission, the lab's accrediting body, prosecuting attorneys and law enforcement agencies.<sup>3</sup> Why should Dookhan defendants bear the burden of a broken system that took roughly 14 months, rather than 18 days, to make the same progress? Similarly, in Texas, it took less than three months to circulate a list of every potentially tainted case (there were 4,944) and piece of evidence (there were 9,462).<sup>4</sup> Why should Dookhan defendants wait for justice simply because, to this day, the Commonwealth has been unable to identify all of the affected cases?

This dreadful situation is entirely the consequence of state misconduct, and as the Attorney General observed on behalf of the Superior Court, "the delays in resolving defendants' new trial motions are largely beyond defendants' control." Brief of Justices of Superior Court at 28-29 n.18, Dist. Att'y v. Sup. Ct., SJC-11410. Due process does not permit Dookhan defendants to be made to wait for years while the criminal justice system stumbles toward a solution to the massive fraud that has been perpetrated against them.

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<sup>3</sup> See Texas Forensic Science Comm'n, "Report of the Texas Forensic Science Commission," Texas Dep't of Public Safety Houston Regional Crime Laboratory Self-Disclosure at 6-10 (Apr. 5, 2013), available at <http://www.fsc.state.tx.us/documents/FINAL-DPSHoustonReport041713.pdf>.

<sup>4</sup> Id. at 9.

Moreover, there is no end in sight to this crisis. There is no efficient and reliable process, nor any deadlines, in place for identifying all of the Dookhan defendants, assigning counsel for them, and ruling on their new trial motions, let alone affording them new – and fair – trials on the charges against them. As a result, "[t]he pace of relief [has been] incredibly slow." White Aff. at R. 321, ¶ 11.

The courts, too, have seen their dockets swell with Dookhan defendants. As this Court noted in Charles, it "plac[ed] an enormous burden on the Superior Court" merely to decide about 600 motions to stay sentences (representing only 1.2% of the more than 40,000 cases identified in the Meier Report). 466 Mass. at 65. Stubbornly continuing to adjudicate these cases one-by-one, as the Commonwealth has proposed, would necessarily take many years, even if the courts were willing to accept massive delays in all other matters. It is not just the length of time that makes the delay undue and inordinate, but also the uncertainty surrounding the wait, which is indefinite.

**C. THE ONGOING DELAY IN PROVIDING A REMEDY FOR THE HINTON LAB CRISIS IS ALSO PREJUDICIAL.**

To state the obvious, for defendants who are currently serving sentences based on tainted convictions, delay "work[s] an irreparable unjust loss of liberty," in the event that their convictions are vacated. Williams, 378 Mass. at 626. That is

because, "[t]he conviction may be reversible, but the time spent in prison is not." Commonwealth v. Levin, 7 Mass. App. Ct. 501, 513 (1979). As this Court held, "the interest of justice is not served by the continued imprisonment of a defendant who may be entitled to a new trial." Charles, 466 Mass. at 74.

For defendants who are not in custody, including those who have already completed terms of imprisonment, delay may nevertheless "entail anxiety, forfeiture of opportunity, and damage to reputation, among other conceivable injuries." Williams, 378 Mass. at 626. Delay also prolongs the collateral consequences for defendants of their tainted convictions, and it squanders limited resources and court time with protracted litigation.

For all defendants, whether currently incarcerated or not, delay risks prejudice through the disappearance of witnesses, the fading of memories, and the loss of other relevant evidence, in the event that retrials prove necessary. See id. at 626. This risk is particularly pronounced for Dookhan defendants because the samples in their cases may be missing or contaminated. Thus, any future re-prosecution could depend on the testimony of live witnesses or other alternative evidence. As time passes, the ability to verify that evidence diminishes.

Beyond the defendants themselves, "the legal system" and "society at large" share a compelling interest "in the expedition of appeals, especially criminal appeals." Id. This Court

has suggested that, in certain cases, "very lengthy unjustified delay" in the appellate process might warrant "dismissal of the charges on that basis itself." Id. at 628 n.8.

The experience of petitioner Miguel Cuevas exemplifies the slow pace of progress to a remedy for Dookhan defendants. After learning of Dookhan's misconduct and obtaining counsel, Cuevas filed three motions on October 18, 2012: to vacate his guilty plea, to stay his sentence, and to obtain discovery. See R. 607-29, 633-34, 630-32. The discovery matter will not be heard until February 13, 2014, and there is no date for a hearing on the merits of his post-conviction claim. Id. Put simply, there is no end in sight. The unacceptable delay in these proceedings is not the fault of Cuevas and should not be borne by him; rather, it is the Commonwealth's burden. Thus, Cuevas and other Dookhan defendant should not have to wait indefinitely for meaningful relief from their tainted convictions.

**D. A COMPREHENSIVE REMEDY IS REQUIRED TO VINDICATE THE RIGHTS OF DOOKHAN DEFENDANTS, DESPITE THE LIMITED AVAILABLE RESOURCES.**

Just as surely as the present delays violate due process, they require a comprehensive remedy. Without such a remedy, the burden of this "'systemic lapse'" will continue "'to be borne by defendants,'" a result this Court has concluded is unacceptable. Charles, 466 Mass. at 74-75, citing Lavallee, 442 Mass. at 246.

In Lavallee, the petitioners were indigent criminal defendants who had no counsel due to a shortage of attorneys in the Hampden County bar advocates program. See id. at 229. At bottom, the problem resulted from the lack of resources in the court system, which deprived the petitioners of their right to counsel. See id. at 232. Faced with various proposed remedies, from increasing the funds allocated for CPCS to conscripting private counsel, this Court emphasized that "[t]he petitioners cannot be required to wait on their right to counsel while the State solves its administrative problems," id. at 240, because "[t]he continuation of what is now an unconstitutional state of affairs cannot be tolerated," id. at 245.

In the end, this Court concluded, "the burden of a systemic lapse" in failing to provide adequate resources for indigent criminal defense "is not to be borne by defendants," rather "[t]he duty to provide such counsel falls squarely on government," Id. at 246. Thus, this Court set two "clear deadlines": if counsel was not promptly assigned, after seven days, defendants had to be released (if held on bail or in preventive detention), and after 45 days, the criminal cases had to be dismissed without prejudice. Id. at 246.

We intend that these procedures be implemented in a manner that provides prompt relief to those defendants whose right to counsel . . . must be secured in order to proceed with the case or continue to hold a



defendant. That deadline provides certainty to the defendants who are suffering a violation of their rights, and also provides all concerned with an opportunity of known duration to make all reasonable efforts to cure this violation in the most direct and effective way, i.e., to secure counsel for the defendant.

Id. at 249. That same goal — setting “clear deadlines” to “provide[] certainty” to defendants and ensure “prompt relief” from any constitutional violations — should inform this Court’s decision on this petition and an appropriate remedy for petitioners and the other Dookhan defendants.

The due process violations at issue in this petition are even more pressing than those presented by Lavallee. There, the problem was an unfortunate lack of resources. Nevertheless, “the ultimate responsibility for such circumstances must rest with the government rather than the defendant.” Barker, 407 U.S. at 531. Here, the crisis is the result of the egregious fraud by Dookhan and the mismanagement of the Hinton Lab. Thus, all the more so, the responsibility to provide justice must be borne by the Commonwealth.

With unlimited resources, the criminal justice system might deal with the Dookhan defendants on a case-by-case basis within a reasonable period of time, as due process requires. But this Court is well aware that resources are already severely constrained. That unfortunate reality does not, and cannot, excuse



the ongoing violations of due process. "Inadequate resources can never be an adequate justification for the state's depriving any person of his [or her] constitutional rights." Hamilton v. Love, 328 F. Supp. 1182, 1194 (E.D. Ark. 1971); see Harris, 15 F.3d at 1562-63 (in context of undue delay in the appellate process, holding that the "lack of funding" was not "an acceptable excuse for delay") (collecting cases). This Court should "not tolerate ... unnecessary infractions of citizens' liberty where the sole justification amounts to little more than the State's inability" to afford defendants post-conviction relief in "an efficient and expeditious fashion." McCarthy v. Manson, 554 F. Supp. 1275, 1300 (D. Conn. 1981). Rather, this Court should now provide a comprehensive remedy for the Hinton Lab crisis, which has resulted from Dookhan's outrageous misconduct, and in fashioning that remedy, "the decisive factor must be the vindication of the petitioners' constitutional rights." Gaines v. Manson, 481 A.2d 1084, 1096 (Conn. 1984).

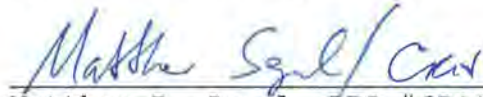
#### CONCLUSION

For the foregoing reasons, petitioners respectfully request that this Court provide the comprehensive remedy outlined above to address the Hinton Lab crisis, which has violated the due process and common law rights of petitioners and tens of thousands of other Dookhan defendants.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Shrutih V. Ramlochan-Tewarie, an attorney for petitioners, hereby certify that on January 9, 2014, I served the foregoing by causing copies to be mailed, by Federal Express, to the following:

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COMMONWEALTH OF MASSACHUSETTS

KEVIN BRIDGEMAN,  
YASIR CREACH, and  
MIGUEL CUEVAS,

Petitioners,

v.

DISTRICT ATTORNEY FOR SUFFOLK  
COUNTY and  
DISTRICT ATTORNEY FOR ESSEX  
COUNTY,

Respondents.

SUPREME JUDICIAL COURT FOR  
SUFFOLK COUNTY  
DOCKET NO.:

**RECORD APPENDIX FOR PETITIONERS  
BRIDGEMAN, CREACH, and CUEVAS**

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**Provided via CD to the Court:**

- Disclosure 2, "AGO State Lab Investigation"
- Disclosure 3, including Hinton Laboratory Drug Lab Internal Inquiry
- Disclosure 9, March 18, 2013 J. Verner letter, with reports and photographs



COMMONWEALTH OF MASSACHUSETTS  
SUPREME JUDICIAL COURT

DOCKET NO.:

KEVIN BRIDGEMAN, et al.,

Petitioners,

v.

DISTRICT ATTORNEY for Suffolk  
and County, et al.,

Respondents.

DECLARATION OF KEVIN BRIDGEMAN

I, Kevin Bridgeman, hereby depose and swear as follows:

1. I am a resident of Boston, Massachusetts.
2. I am a disabled person collecting Social Security Disability Insurance benefits.
3. Prior to my disability, in 2004, I worked as cook at Jules Catering of Boston for.
4. I attended Newbury College from 1989 until 1989.
5. Since 1996, I have been a member and volunteer with Span, Inc. working to support formerly incarcerated people.

2005 Charges

6. In April, 2005, I was arrested by the Boston Police Department near the Wang Theatre. The police alleged that I sold an undercover officer two rocks of a substance resembling crack cocaine. They alleged that they recovered additional rocks from my person upon arrest. They also alleged that I struggled with and struck one of the plainclothes officers who attempted to restrain me.
7. In June, 2005, the grand jury returned indictments for possession of cocaine with intent to distribute (second offense), possession of cocaine with intent to distribute within 1,000 feet of a school, distribution of cocaine (second offense), distribution of cocaine within 1,000 feet of a school, assault on a police officer, and resisting arrest.
8. In October, 2005, I pled guilty to possession of a Class B controlled substance with intent to distribute (first offense), distribution of a Class B controlled substance (first offense), assault on a police officer, and resisting arrest. The remaining charges were dismissed on motion of the Commonwealth.

9. I was sentenced to two to three years' incarceration and three years' probation for the remaining charges. I have completed this sentence.

2007 Charges

10. In July, 2007, I was arrested by the Boston Police at the Boston Public Gardens. The police alleged that I sold an undercover officer two rocks of a substance resembling crack cocaine. They alleged that they recovered additional rocks from my person upon arrest.
11. In September, 2007, the grand jury returned indictments for possession of cocaine with intent to distribute (second offense), possession of cocaine with intent to distribute within 1,000 feet of a public park, and distribution of cocaine (second offense).
12. In April, 2008, I pled guilty to possession of cocaine with intent to distribute and distribution of cocaine, both without a mandatory minimum for second offense. The remaining charge was dismissed on motion of the Commonwealth.
13. I was sentenced to three to five years' incarceration. I have completed this sentence.

Annie Dookhan

14. When I pled guilty to these charges, I was not aware that one of the chemists who tested the alleged drug samples in these cases, Annie Dookhan, had systematically failed to follow the required testing procedures, failed to provide truthful drug certifications and testimony, and had, in some cases, altered test results to manufacture positive results.
15. Had I known about the misconduct in the drug lab prior to my pleas, I would certainly have consulted with my attorney concerning whether pleas were appropriate.
16. Had I know about the misconduct in the drug lab prior to my plea, it is reasonably probable that I would have gone to trial or tried to negotiate a different agreement with the Commonwealth. It is also reasonably probable that I would have sought dismissal of the indictments because the tainted drug certifications were presented to the grand jury.
17. I am concerned that if I seek to withdraw my guilty plea or otherwise vacate my conviction on the basis of Ms. Dookhan's misconduct, I could be prosecuted for the serious charges which the Commonwealth moved to dismiss and be sentenced to a longer prison term.

Sworn to this 30 day of December 2013 under the pains and penalties of perjury.

/s/ Kevin Bridgeman  
Kevin Bridgeman

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COMMONWEALTH OF MASSACHUSETTS  
SUPREME JUDICIAL COURT

DOCKET NO.:

YASIR CREACH and others,  
  
Petitioners,  
  
v.  
  
DISTRICT ATTORNEYS for Suffolk  
and Essex Counties,  
  
Respondents.

**DECLARATION OF YASIR CREACH**

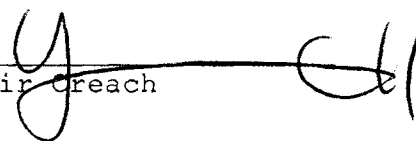
I, Yasir Creach, hereby depose and swear as follows:

1. I am a resident of Boston, Massachusetts.
2. On January 7, 2005, I was arrested and charged with trespassing and possession of a substance alleged to be crack cocaine.
3. According to a drug certificate produced to me by the Commonwealth, Assistant Analysts Annie Dookhan and Daniela Frasca swore on February 2, 2005, that the substance submitted by police in connection with my case was examined and found to be cocaine.

4. On April 20, 2005, I pled guilty to possession of a Class B substance and was sentenced to one year in the House of Correction, concurrent with a sentence in a separate case.
5. When I pled guilty, I based my decision in part on my understanding that the Commonwealth had tested an alleged drug sample in my case and gotten a positive result.
6. When I pled guilty, I was not aware that one of the chemists assigned to test the alleged drug sample in my case, Annie Dookhan, had systematically failed to follow the required testing procedures, failed to provide truthful drug certifications and testimony, and had, in some cases, altered test results to manufacture positive results.
7. Had I known about the misconduct in the drug lab prior to my guilty plea, I would certainly have consulted with my attorney concerning whether a plea was appropriate.
8. Had I known about the misconduct in the drug lab prior to my guilty plea, it is reasonably probable that I would have gone to trial or tried to negotiate a different agreement with the Commonwealth.



Sworn to this 30<sup>th</sup> day of December 2013 under the pains and penalties of perjury.

/s/   
Yasir Greach

COMMONWEALTH OF MASSACHUSETTS  
SUPREME JUDICIAL COURT

DOCKET NO.:

KEVIN BRIDGEMAN, et al.,  
Petitioners,  
v.  
DISTRICT ATTORNEY for Suffolk  
and County, et al.,  
Respondents.

DECLARATION OF MIGUEL CUEVAS

I, Miguel Cuevas, hereby depose and swear as follows:

1. I am a resident of Salem, Massachusetts.
2. I work full time as warehouse employee for Kohl's Department Stores.
3. I am active in my community and regularly take part in charitable events, such as this year's Komen Race for the Cure.
4. In June, 2007, I was arrested by the Salem Police Department. The police alleged that, on three occasions in January, 2007, I sold plastic bags containing a white powder resembling cocaine within

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1,000 feet of a school. The police additionally alleged that on one of those occasions, I also sold a plastic bag of brown powder resembling heroin within 1,000 feet of a school.

5. In October, 2007, the grand jury returned indictments alleging three counts of distribution of cocaine (second offense) and one count of distribution of heroin (second offense).
6. In January, 2009, I pled guilty to three counts of cocaine distribution and one count of heroin distribution. The Commonwealth did not prosecute those portions of the charges alleging a second offense enhancement.
7. I was sentenced to four and a half to five years' incarceration. That sentence is completed.
8. When I pled guilty to these charges, I was not aware that one of the chemists who tested the alleged drug samples in my case, Annie Dookhan, had systematically failed to follow the required testing procedures, failed to provide truthful drug certifications and testimony, and had, in some cases, altered test results to manufacture positive results.
9. When I pled guilty, I was not aware that another of the chemists who tested the alleged drug samples in my

case, Kate Corbett, had falsely testified concerning her credentials in state and federal court.

10. Had I known about the misconduct in the drug lab prior to my pleas, I would certainly have consulted with my attorney concerning whether pleas were appropriate.
11. Had I know about the misconduct in the drug lab prior to my plea, it is reasonably probable that I would have gone to trial or tried to negotiate a different agreement with the Commonwealth. It is also reasonably probable that I would have sought dismissal of the indictments because the tainted drug certifications were presented to the grand jury.
12. In October, 2012, my counsel filed on my behalf a motion to withdraw my guilty pleas based on misconduct in the drug lab. That motion remains pending.
13. I am concerned that even if I successfully withdraw my guilty plea or otherwise vacate my conviction, I could be prosecuted for the serious charges which the Commonwealth declined to pursue and be sentenced to a longer prison term. For example, I am aware that another defendant in Essex County successfully withdrew his plea to a based on misconduct in the drug lab, but was re-prosecuted for more serious charges and sentenced to additional time in prison.

Sworn to this 31 day of December 2013 under the pains and penalties of perjury.

/s/   
Miguel Cuevas

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COMMONWEALTH OF MASSACHUSETTS  
SUPREME JUDICIAL COURT

DOCKET NO.:

KEVIN BRIDGEMAN, et al.,  
Petitioners,  
v.  
DISTRICT ATTORNEY for Suffolk  
County, et al.,  
Respondents.

**AFFIDAVIT OF JOSEPH GRIFFIN**

I, Joseph Griffin, state as follows:

1. I am an attorney licensed to practice law in the Commonwealth of Massachusetts.
2. I was appointed to represent Kevin Bridgeman, in Suffolk Superior Court, on June 7, 2005. Mr. Bridgeman had been indicted for the following: (1) possession with intent to distribute a class B controlled substance, second and subsequent offense under M.G.L. c. 94C, § 32A(b); (2) controlled substance violation within 1,000 feet of a secondary school under M.G.L. c. 94C, § 32J; (3) distribution of

a class B controlled substance, second and subsequent offense under M.G.L. c. 94C, § 32A(b); (4) controlled substance violation within 1,000 feet of a secondary school under M.G.L. c. 94C, § 32J; (5) assault and battery on a police officer under M.G.L. c. 265, § 13D; and, (6) resisting arrest under M.G.L. c. 268, § 32B. He pled not guilty to all charges.

3. In July 2005, the Commonwealth filed its Certificate of Discovery Compliance, and sent me a copy. As part of this discovery, I received minutes from the arresting officers' grand jury testimony, as well as the drug analysis certificates for Mr. Bridgeman's case.
4. The drug analysis certificates indicate that the items seized from Mr. Bridgeman in connection with this matter, were received in the lab on April 14, 2005 and analyzed on May 5, 2005. The drug analysis certificates were sworn to on May 10, 2005, and show that Annie Dookhan was the primary chemist who analyzed substances submitted by the police in connection with Mr. Bridgeman's case. According to the drug certificates, the two substances submitted for testing were examined and found to be cocaine.



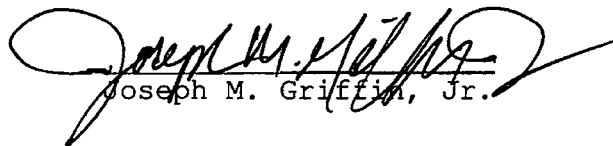
5. The grand jury minutes indicated that the grand jury heard testimony from the arresting officers in Mr. Bridgeman's case on May 31, 2005. The prosecutor introduced the drug analysis certificates into evidence at the grand jury, and one of the officers testified that, based on the drug certificates, the drugs were analyzed at the Hinton Lab and found to be cocaine.
6. After receiving the aforementioned discovery, I reviewed the same independently and with Mr. Bridgeman, providing him with copies of all discovery in my possession. Also, as is my practice, I reviewed the elements of each and every offense for which Mr. Bridgeman had been indicted, as well as the maximum penalties for each.
7. After the steps taken in ¶6, and with Mr. Bridgeman's imprimatur, I entered into plea negotiations with the District Attorney's Office. On October 4, 2005, after a lobby conference with the Honorable Justice Carol Ball, I represented Mr. Bridgeman when he pled guilty to possession of a class B controlled substance with intent to distribute, distribution of a class B controlled substance, assault and battery on a police officer, and resisting arrest.

8. As part of the plea, the Commonwealth dismissed those portions of the charges alleging second and subsequent offenses. The Commonwealth also dismissed the school zone charges.
9. Mr. Bridgeman received a sentence of to two to three years' incarceration and three years' probation to begin, "from and after" his period of incarceration.
10. At the time of his plea, I reviewed the discovery with Mr. Bridgeman, as well as the elements required to prove each offense, the drug analysis certificates, and the fact that the Commonwealth was making charge concessions, which resulted in the removal of any mandatory minimum sentences.
11. At the time Mr. Bridgeman entered his plea of guilty in the above matter, I had neither been made aware, nor had it been disclosed to me, that Annie Dookhan, one of the chemists in Mr. Bridgeman's case, had engaged in significant misconduct at the Hinton Lab. None of the specific details, such as: that Ms. Dookhan had batched samples prior to testing, "dry labbed" samples, taken possession of evidence outside the chain of custody, forged other chemists' initials, manipulated tests to obtain positive results, and presented false testimony concerning her work and

credentials, had been made known to me at the time of Mr. Bridgeman's plea.

12. If I had been advised about the improprieties at the Hinton Lab, especially those involving Ms. Dookhan, I would have brought them to the attention of Mr. Bridgeman. Furthermore, I would have demanded further discovery from the Commonwealth, sought judicial review and/or taken a myriad of other steps to address this issue.

Sworn to this 4<sup>th</sup> day of January 2014 under the pains and penalties of perjury.

  
Joseph M. Griffin, Jr.

COMMONWEALTH OF MASSACHUSETTS  
SUPREME JUDICIAL COURT

DOCKET NO.:

KEVIN BRIDGEMAN, et al.,  
  
Petitioners,  
  
v.  
  
DISTRICT ATTORNEYS for Suffolk  
County, et al.,  
  
Respondents.

**AFFIDAVIT OF PAUL CARRIGAN**

I, Paul Carrigan, state as follows:

1. I am an attorney licensed to practice law in the Commonwealth of Massachusetts.
2. On December 6, 2007, I was appointed counsel for Kevin Bridgeman. Mr. Bridgeman was charged in Suffolk Superior Court on the following: (1.) possession with intent to distribute a class B controlled substance, second and subsequent offense under G.L. c. 94C, § 32A(b); (2.) controlled substance violation within 100 feet of a public park under G.L. c. 94C, § 32J; and, 3.) distribution of a class B controlled substance,

second and subsequent offense under G.L. c. 94C, § 32A(b). He pled not guilty to these charges.

3. Before my appointment as counsel, the Commonwealth provided its Notice of Discovery on November 26, 2007. I was ultimately provided with the listed discovery materials, which included the grand jury minutes and the drug analysis certificates in Mr. Bridgeman's case.
4. The two drug certificates were dated August 16, 2007. In both Assistant Analysts Daniel Renczkowski and Annie Dookhan swore that the substances submitted by police in connection with Mr. Bridgeman's case were examined and found to be cocaine.
5. The grand jury minutes indicated that, on September 24, 2007, the grand jury heard testimony by an undercover officer who participated in Mr. Bridgeman's arrest. The officer testified that the substances confiscated from Mr. Bridgeman were sent to the state lab for analysis. The prosecutor also introduced as exhibits the two drug certificates, and this same officer testified that the drug certificates showed the drugs were analyzed and tested positive for cocaine.

6. I filed various discovery motions on Mr. Bridgeman's behalf. They included a Motion for Exculpatory Evidence on March 24, 2008, which sought all evidence that might exculpate Mr. Bridgeman, assist in presenting a defense or confronting witnesses at trial, or might otherwise assure him the effective assistance of counsel and a fair trial under the Massachusetts and United States constitutions.
7. During this same time period, I was also engaged in plea negotiations with the District Attorney's Office.
8. On April 17, 2008, Mr. Bridgeman pled guilty to charges (1) and (3), for possession with the intent to distribute and the distribution of a class B controlled substance, both second and subsequent offenses. On April 28, 2008, those charges were amended under M.G.L. c. 94C § 32A(a), which relieved Mr. Bridgeman of a mandatory term of imprisonment.
9. Mr. Bridgeman was sentenced to three to five years of incarceration to be served concurrently with a sentence he was then serving.
10. I advised Mr. Bridgeman that he should consider accepting this plea because he might otherwise face up to 10 year terms for each second and subsequent offense. In addition, the controlled substance

violation within 100 feet of a public park carried a mandatory minimum two-year term of incarceration.

11. When I advised Mr. Bridgeman in relation to this plea deal, I was not aware of the misconduct at the Hinton Drug Lab and the numerous improprieties by Annie Dookhan, including her practice of "dry labbing" samples, combining multiple samples prior to sampling, taking possession of evidence without documenting her possession, or more generally, her complete inability to follow proper protocols for the handling and testing of evidence. I did not know that she had provided false testimony concerning results that she had manipulated, or that she had also testified falsely as to her credentials.
12. Operating without full information, I could not have a truly informed discussion with my client.
13. Had I known of any of these improprieties, I would have advised Mr. Bridgeman differently.
14. I would have sought to dismiss the indictments, because the prosecutor presented the drug certificates to the grand jury.
15. I would have advised my client that he should pursue a more favorable plea agreement with the Commonwealth, and that he should consider the possibility of



proceeding to trial, given the strength of this  
exculpatory and impeachment evidence.

Sworn to this 19th day of December 2013 under the pains and  
penalties of perjury.

  
Paul Carrigan

COMMONWEALTH OF MASSACHUSETTS  
SUPREME JUDICIAL COURT

DOCKET NO.:

YASIR CREACH, et al.,

Petitioners,

v.

DISTRICT ATTORNEYS for Suffolk  
County, et al.,

Respondents.

AFFIDAVIT OF AMY JO FREEDMAN


I, Amy Jo Freedman, state as follows:

1. I am an adult over the age of eighteen and I am a resident of the Commonwealth of Massachusetts.
2. In 2005, I was an attorney licensed to practice law in the Commonwealth of Massachusetts.
3. In 2005, I represented Yasir Creach on charges of trespass and possession of a class B substance.
4. On April 20, 2005, I was plea counsel to Mr. Creach when he pled guilty to possession of a Class B substance. As a result of his plea, Mr. Creach was

sentenced to one year in the House of Correction,  
concurrent with a sentence in a separate case.

5. As part of the evidence in that case, the Commonwealth produced a drug certificate dated February 2, 2005 in which Assistant Analysts Annie Dookhan and Daniela Frasca swore that the substance submitted by police in connection with Mr. Creach's case was examined and found to be cocaine.
6. At that time, I was not aware of improprieties at the Hinton Lab involving Annie Dookhan. For example, I did not know that she had corrupted samples to assure they tested positive, nor was I aware that she had failed to follow protocols for proper testing and had provided false statements and testimony.
7. Because I did not have complete information concerning Annie Dookhan, one of the analysts who had tested the sample in Mr. Creach's case, I could not have a fully informed discussion with my client concerning the options available to him.
8. Had I known of the improprieties involving Annie Dookhan, I would have discussed with my client the option of proceeding to trial or securing a more favorable plea with the Commonwealth.

Sworn to this \_\_\_\_\_ day of December 2013 under the pains and penalties of perjury.

  
Amy Jo Freedman

COMMONWEALTH OF MASSACHUSETTS  
SUPREME JUDICIAL COURT

DOCKET NO.:

KEVIN BRIDGEMAN, et al.,  
Petitioners,  
v.  
DISTRICT ATTORNEY for Suffolk  
County, et al.,  
Respondents.

AFFIDAVIT OF LAWRENCE J. MCGUIRE

I, Lawrence McGuire, state as follows:

1. I am an attorney licensed to practice law in the Commonwealth of Massachusetts.
2. I represented Miguel Cuevas beginning in July 2008, on charges in which the Commonwealth obtained indictments in October 2007. Before I became Mr. Cuevas's lawyer, his case was transferred from Salem District Court to Essex Superior Court.
3. Mr. Cuevas was charged in Essex Superior Court with three counts of distribution of a class B controlled substance, second and subsequent offenses under G.L.

c. 94C, § 32A(d), and one count of distribution of a class A controlled substance, second and subsequent offense under G.L. c. 94C, § 32A(b). He pled not guilty to these charges.

4. During discovery, I received drug certificates from the Hinton Lab dated September 14, 2007. The certificates represented that Annie Dookhan and Kate Corbett performed the drug analyses, as, respectively, primary and secondary chemist. They swore that three substances submitted by the police in Mr. Cuevas's case were cocaine and one substance was heroin.
5. On August 4, 2008, I filed various discovery motions on behalf of Mr. Cuevas, including a Motion for Discovery Concerning Laboratory Testing and a Motion for Reports Concerning Chain of Custody Evidence.
6. The Motion for Discovery Concerning Laboratory Testing requested that the Commonwealth disclose the manner in which substances were tested and weighed, the specific tests performed, the testing chemists' notes and reports relating to the substances submitted in Mr. Cuevas's case, the chemists' curriculum vitae, and whether the Commonwealth possessed the drug certificates when it presented its case to the grand jury.

7. During this time period, I was also involved in plea negotiations with the District Attorney's Office.
8. On January 30, 2009, I represented Mr. Cuevas when he pled guilty to three charges of distribution of a class B controlled substance and one charge of distribution of a class A controlled substance.
9. In exchange for his plea, the Commonwealth dismissed those portions of charges alleging a second and subsequent offense, which carried mandatory-minimum sentences.
10. Mr. Cuevas was sentenced to four-and-a-half to five years of incarceration, with reductions for time served and the opportunity for good time credits.
11. I advised Mr. Cuevas that he should consider this plea deal because it avoided the mandatory-minimum sentences that accompanied the second and subsequent offense charges.
12. At the time I advised Mr. Cuevas, I did not know that the primary chemist in his case, Annie Dookhan, had engaged in a litany of misconduct relating to the proper testing and analysis of substances submitted to the Hinton Lab. In particular, I was unaware that she grouped samples prior to testing, "dry labbed" samples, accessed evidence outside the chain of

custody, forged the initials of other chemists, manipulated testing to obtain positive results, and gave false testimony regarding her work and credentials.

13. At the time I advised Mr. Cuevas, I also did not know that the secondary chemist in his case, Kate Corbett, had falsely represented her credentials when testifying in court.
14. Without knowledge of these facts, I could not have a fully informed discussion with my client prior to his plea.
15. I would have advised Mr. Cuevas differently had I known of these improprieties.
16. I would have sought to dismiss the indictments, given the reasonable probability that the grand jury was presented or told about the drug certificates.
17. I would have advised my client to pursue a more favorable plea agreement with the Commonwealth, given the strength of this exculpatory and impeachment evidence.
18. For the same reasons, I would have advised my client to consider proceeding to trial.



Sworn to this 30<sup>th</sup> day of December 2013 under the pains and penalties of perjury.

  
Lawrence J. McGuire

COMMONWEALTH OF MASSACHUSETTS  
SUPREME JUDICIAL COURT

DOCKET NO.:

KEVIN BRIDGEMAN, et al.,  
  
Petitioners,  
  
v.  
  
DISTRICT ATTORNEY for Suffolk  
County, et al.,  
  
Respondents.

**AFFIDAVIT OF ANNE GOLDBACH**

I, Anne Goldbach, state as follows:

1. I am an attorney licensed to practice law in the Commonwealth of Massachusetts.

2. I am the Director of Forensic Services at the Committee for Public Counsel Services (CPCS) and I have held this position since 1997.

3. In that capacity, I have been involved in the review and analysis of information and data, and

in the coordination CPCS's institutional response to the misconduct at the Drug Lab in the William A. Hinton State Laboratory Institute ("Hinton Lab").

4. I am submitting this affidavit to set forth information regarding:

a) the two-chemist analysis system that was used at the Hinton Lab and the importance of each chemist's function in drug analysis;

b) Annie Dookhan's work and misconduct as Gas Chromatography-Mass Spectrometry (GC/MS) Chemist in the Hinton Lab;

c) other misconduct and deficiencies at the Hinton Lab as revealed in discovery by the Massachusetts Attorney General's Office provided to my office;

d) the nature of some of the e-mails involving Ms. Dookhan and members of law enforcement as revealed in discovery by the Massachusetts Attorney General's Office, and

e) the lack of accreditation of the Hinton Lab and its failure to conform to basic industry standards for a forensic laboratory.

The Two-Chemist System at the Hinton Lab

5. Discovery documents regarding the Hinton Lab have been provided to my office by the Attorney General's Office and through the District Attorney's offices in a series of numbered disclosures. To date, there have been sixteen (16) numbered disclosures.

6. Discovery documents indicate that, on March 30, 2004, the Hinton Lab instituted a two-chemist system for the forensic analysis of controlled substances. A review of the discovery shows that the Hinton Lab referred to the first chemist as the "primary chemist" and the second chemist as the "confirmatory chemist."

7. On June 28, 2013, our office received discovery disclosure #12, which contained a two-page document entitled "Corrective Action Report Form", and "recorded by" Charles Salemi, Department Supervisor, dated March 18, 2004. The signature of Mr. Salemi as

well as those of the Quality Assurance ("QA") Director, State Lab Director, Program Director, and QA Program Manager appear at the bottom of the first page and are dated on various days in April 2004. The second page indicates that that it was "recorded by" Charles Salemi on July 30, 2004 and the signatures of the same individuals appear at the bottom of this second page, with various dates in September 2004. A copy of the "Corrective Action Report Form" is appended hereto as Attachment A.

8. This "Corrective Action Report Form" describes an incident in which a chemist had tested a controlled substance and determined that it was heroin, but had mistakenly written down in the drug certificate that the substance was cocaine.

9. In paragraph 2, Mr. Salemi wrote: "The chemist did not catch this mistake because they [sic] had done both the preliminary and confirmatory tests themselves[sic]. This could have been avoided by having one chemist do the preliminary work and another chemist do the confirmatory testing. This would

involve two chemists checking the results before a certificate is signed."

10. In paragraph 4 of the "Corrective Action Report Form", Mr. Salemi wrote: "All powder and substance samples are now done by two different chemists. One (primary) chemist performs all preliminary tests for example: color, net weights, crystals, and preliminary instrumental tests. The second chemist will perform the confirmatory GC/MS testing." This document states that the change was implemented on March 29, 2004.

11. Discovery documents regarding the Hinton Lab provide information regarding the responsibilities and functions of the two chemists in the drug testing procedures.

12. This two-chemist system is described in documents received in disclosure number three. Within disclosure #3 is a confidential memorandum dated February 29, 2012 from Steven Chilian, Deputy General Counsel at the Department of Public Health to John Auerbach, Commissioner of Public Health, Mr. Chilian

noted the following: "The primary chemist who is assigned the sample performs the preliminary test(s). A separate chemist performs the confirmation test(s). The evidence envelopes are kept in the custody of the primary chemist in the chemist's lab evidence locker (a locked cabinet) while waiting testing. The results of the analysis are provided to the requesting law enforcement agency in the form of a certificate of analysis that certifies what the samples contained and its net weight. The certificate is signed by both chemists." A copy of the memorandum is appended hereto as Attachment B.

13. Within discovery disclosure #3 released on November 13, 2012, is the "Hinton Laboratory Drug Lab Internal Inquiry, Executive Summary." A copy of the "Executive Summary" is appended hereto as Attachment C, and is cited herein by page number as "(ES \_\_\_\_)."

14. The Executive Summary contains a section on "Testing Protocols" which describes the types of testing done on drug evidence samples that were processed at the Hinton Lab.

15. The Executive Summary also contains a section on "Forensic Laboratory Workflow" which describes the manner in which drug evidence samples were processed at the Hinton Lab.

16. These two sections of the Executive Summary describe the types of tests used for forensic drug analysis and the roles of the first and second chemist in the Hinton Lab testing procedures.

17. The Executive Summary describes "three testing methods categories commonly used in the Forensic Lab for analyses of specimens, with workflow designed to include preliminary and confirmatory identification."

18. The Executive Summary states that "[a]s specified within the *SWGDRUG* [Scientific Working Group for the Analysis of Seized Drugs] standards, there are three testing methods categories commonly used in the Forensic Lab for analyses of specimens, with workflow designed to include preliminary and confirmatory identification" and refers to drug testing methods used by the Hinton Lab as Categories A, B, and C.



19. The Executive Summary states: "Category B and C tests provide the initial (*Primary*) test in the Drug Lab workflow. These include color tests, microcrystalline analyses, and ultraviolet visualization. They have only moderate discriminatory power, and are not associated with data that can be memorialized with an instrument-generated paper or computer trail and reviewed. These simple bench top tests have no associated documentation beyond a chemists' [sic] findings. Documentation of Category C tests includes a reviewable work card, but accuracy can only be directly confirmed through repeating the test."

20. The Executive Summary indicates that the "chemist assigned a sample for testing was defined as the *Primary*."

21. As noted in the Executive Summary, it was the primary chemist's responsibility to conduct the "presumptive tests" in Categories B and C which screen for controlled substances, and to provide Category A specimen vials to be passed on to the secondary or confirmatory chemist.

22. The limitations of presumptive drug analysis are described in JaVed I. Khan et al., Principles of Forensic Chemistry 79 (Springer 2012: "Chemical-screening tests are presumptive tests commonly used to initiate the process of substance identification. These simple reactions cannot identify the substance without uncertainty; however they do provide preliminary confirmation of the presence of either a particular functional group or a generic molecular structure. Chemical-screening tests produce a distinct color when the reagents are mixed with compounds containing a specific functional group. Although not highly specific, these preliminary tests will determine which subsequent method is best suited to identify the substance.").

23. The limitations are further described in Anthony C. Moffat et al., *Clarke's Analysis of Drugs and Poisons: In Pharmaceuticals, Body Fluids and Postmortem Material* 194 (4th ed. 2011) ("Colour/spot tests provide a valuable indication of the content of any particular item tested, but it must be stressed that positive results to colour tests are only

presumptive indications of the possible presence of the drug. Colour tests have the advantage that they can be used as field tests by unskilled operators, with the obvious need for follow-on analysis in the laboratory.").

24. "Nonspecific tests . . . can lead to false positive results, a finding of one drug's presence when in fact another drug is present." P. Giannelli & E. Imwinkelried, *Scientific Evidence*, sec. 23-2(B) (1986) at 934. "One of the most popular types of nonspecific tests for drugs is the color change test." Id. at 935.

25. The Executive Summary indicates that Category A tests used "sophisticated instrumentation such as Mass Spectrometry, Infrared Spectroscopy, and Gas Chromatography, have high discriminatory power, and are used as confirmatory tests. They produce instrument-generated documentation of test results that may be reviewed by a second chemist or a lab supervisor to further ensure accuracy."

26. Within the documents described and provided in discovery disclosure #10, or "Commonwealth Notice of Discovery, June 27, 2013," is an undated document titled "Overview", and another document called "Boston Drug Laboratory GC/MS Protocol," with a date of July 17, 2007, at the bottom of each page. The Overview is appended hereto as Attachment D, and the Boston Drug Laboratory GC/MS Protocol as Attachment E.

27. The document called "Overview" is a 19 page document that describes how GC/MS works, and begins by noting: "GC/MS is the primary form of spectrometry employed by the Drug Laboratory to structurally identify controlled substances."

28. This document also addresses what chemists must do to schedule the use of the GC/MS instrument; how they are to handle and process received samples; how they are to prepare the instrumentation and run quality control checks; how to run samples on the instrumentation and to insure quality control; how to analyze samples; how to file paperwork for results, backup data and retrieve data; and more.

29. This document reveals the extent to which the GC/MS instrument is dependent on human calibration and maintenance and is, thus, vulnerable to human error, neglect and tampering, which can compromise the accuracy of test results.

30. This document notes that the GC/MS instrument is sensitive and requires regular, intensive maintenance to function properly and produce accurate test results. To set-up and execute each GC/MS run, the assigned "secondary" chemist must complete multiple tasks to maximize the reliability of the results, including:

- a) Inspect the samples and document problems.
- b) Empty and rinse bottles and refill with fresh solvent.
- c) Check, empty and wash all waste vessels and lines.
- d) Replace injection seal (called the septa) and lubricate the syringe's solvent.

e) Run the "Tuning" test, which establishes that the GC/MS machine is working properly.

f) Prepare fresh "blank" samples, "standard" samples and a "quality control ("QC") mix", as needed.

g) Prepare the form detailing the sample sequence for the run, with blanks and standards (the "QC mix" is the first standard), where appropriate, and enter the sequence into the instrument.

h) Place the samples, blanks and standards in the instrument carousel in the order that corresponds to the order in the sample sequence form and the sequence entered into the instrument.

i) The results of the first GC/MS analyses of blanks and standards should be verified to determine whether the instrument is operating properly. The GC/MS instrument should be further checked multiple times during the run to assure proper operation.

j) Compare data from each unknown sample to a known standard to determine if there is a match.

31. The document entitled "Boston Drug Laboratory GC/MS Protocol" states that "the principles introduced in this SOP [Standard Operating Procedure] will apply to all forensic items confirmed via GC/MS, both routine and specialty drug submissions" and indicates that it is a "Standard Operating Procedure (SOP) for the Drug Analysis Gas Chromatography-Mass Spectrometry (CD-MS) Laboratory."

32. This 19 page document addresses the function of GC/MS, the objective of the SOP, sample submission requirements and procedures, equipment maintenance and calibration, batch setup procedures, instrument and method quality control, acceptance criteria for data analysis, reporting results, data backup, data retrieval and retention. The document states that all chemists and supervisors are responsible for performing the SOP each time they use GC/MS.

33. Similar to the Overview document, this SOP enumerates the various responsibilities of the chemists working on GC/MS.

34. The function and importance of GC/MS are explained in Richard Saferstein, Ph.D., *Criminalistics, an Introduction to Forensic Science*, 138-141 (10<sup>th</sup> ed. Prentice Hall) (2011) (Stating that mass spectrometry "is one of the most important tools in a crime laboratory. Its ability to separate the components of a complex mixture is unsurpassed.... The separation of a mixture's components is first accomplished on the gas chromatograph. A direct connection between the GC column and the mass spectrometer then allows each component to flow into the spectrometer.... The unique feature of mass spectrometry is that under carefully controlled conditions, no two substances produce the same fragmentation pattern.... the technique thus provides a specific means for identifying a chemical structure.").

35. According to the National Academy of Sciences Report "Strengthening Forensic Science in the



United States, A Path Forward", 134-135, available at <https://www.ncjrs.gov/pdffiles1/nij/grants/228091.pdf>,

"Most controlled substances are subjected first to a field test for presumptive identification. This is followed by gas chromatography-mass spectrometry (GC-MS), in which chromatography separates the drug from any diluents or excipients, and then mass spectrometry is used to identify the drug. This is the near universal test for identifying unknown substances. Marijuana is an exception, because it is identified normally through a sequence of tests...."

36. GC/MS is often considered the "gold standard" for the identification of controlled substances. The significance of GC/MS testing of controlled substances has been described in a federally-funded report, Patrick S. Callery et al., Enhanced Forensic Mass Spectrometry Methods, 6, available at <https://www.ncjrs.gov/pdffiles1/nij/grants/225532.pdf>, : "Forensic mass spectrometry provides a basis for high quality analyses of evidence. In many cases, mass spectrometry provides the gold standard for chemical

identification. Identification of controlled substances prior to, or after ingestion, almost always requires mass spectrometric methods. The MS instrument of choice has been a quadrupole mass spectrometer (MS) interfaced with a gas chromatograph (GC). Millions of forensic cases involving controlled substances have been identified and quantified by GC-MS. GC-MS is reliable, highly sensitive, and well-established in the literature. Good libraries of standards are available, lower cost, ease of operation, and acceptability in the courtroom are additional advantages."

37. In sum, the discovery shows that as of March 30, 2004 at the Hinton Lab, the drug testing procedure was a two-chemist system. The first chemist was the custodial chemist and sometimes called the primary chemist. This chemist conducted nonspecific, presumptive tests to determine the potential presence of controlled substances. When these screening tests produced positive results, the first chemist prepared and provided vials containing a small amount of the evidence samples to the second chemist, sometimes

called the confirmatory chemist. These presumptive tests were used to determine the methods best suited for identification of the substances. The secondary chemist used the GC/MS instrument to actually identify the specific chemical composition of the substances.

Annie Dookhan as GC/MS Chemist

38. Discovery produced in various disclosures regarding the Hinton Lab indicates that as a GC/MS chemist, Annie Dookhan failed to follow procedures required for analysis, and that she created fraudulent documentation. This discovery includes:

a) Report of Det. Lt. Irwin on Interview of Daniel Renczowski, August 21, 2012, appended hereto as Attachment F - forgery of Hinton Lab chemist Nicole Medina's signature on a GCMS tune sheet;

b) Det. Lt. Irwin Interview of Hinton Lab GCMS Supervisor Peter Piro, August 27, 2012, appended hereto as Attachment G - forgery of Dan Renczowski's initials on a control sheet, and

falsification of a Quality Control Daily Injector Test on GC/MS;

c) Det. Lt. Irwin Interview of Nicole Medina, August 28, 2012, appended hereto as Attachment H - forgery of chemist Nicole Medina's signature on a GCMS tune sheet;

d) Grand Jury testimony in Commonwealth v. John Doe, November 19, 2012 - testimony of Hinton Lab chemist Kate Corbett regarding fabrication of gas chromatograph quantification results by Annie Dookhan.

39. The Executive Summary indicates that even though there were safeguards in place at the Hinton Lab, Ms. Dookhan's wrongdoing "demonstrate[s] the damage that can potentially be done by a rogue employee who can maliciously manipulate the testing and documentation process to minimize the chance of discovery - as may well have been the case in this instance. Certain conditions at the Forensic Drug Laboratory might have enhanced this vulnerability. For example, there were numerous instances when chemists

worked alone rather than as teams or side-by-side."  
(ES 10).

Other Misconduct and Deficiencies at the Hinton Lab

40. The following is based upon my review of information contained in two discovery packets produced by the Office of the Attorney General pertaining to its investigation of Annie Dookhan's misconduct and the Hinton Lab failures. Disclosure #2 consists of a Bates-stamped 101-page PDF entitled "AGO State Lab Investigation," and which will be cited herein by page and paragraph number as "(SLI \_\_/\_\_).". Disclosure #3 consists of a 446-page PDF, which includes the Executive Summary. A CD-ROM containing both discovery packets will be provided to the Court.

41. On August 28, 2012, Dookhan admitted to a number of misdeeds in the following statement she made to Detective Lieutenant Robert M. Irwin (SLI 77/2):

I, Annie Dookhan, had taken out  
samples of safe [sic] and tested  
them without being signed out as  
proper procedure. I also went in

the Evidence Log book and postdated and filled the log book in. I signed my initials and an Evidence Officer's initials in the book. That was my mistake and I can't deny that. I also batched, put similar samples together, and tested some and not others; I "dry labbed." I have been doing it for 2-3 years. At times, a few, I had to add a sample that came back from Mass Spec to make it what I said it was. I would get the sample from a known sample. I would try to clean it, the original, up first but if it didn't I would need to take something, drugs, from another case. I intentionally turned a negative sample into a positive a few times.

42. Dookhan forged the initials or signatures of other chemists (SLI 5/2; 8/14; 15/9; 22/4; 29/14; 40/3; 45/2; 72/4) and evidence officers (SLI 22/6; 37/6; 72/3), including on Quality Assurance and Quality Control (QA/QC) documents (SLI 22/5).

43. She ignored lab procedures by loading and running her own samples on the Gas Chromatograph/Mass Spectrometer (GC/MS) when she was functioning as the preliminary chemist (SLI 6/3; 46/3).

44. Dookhan failed to properly run QC/QA test samples (SLI 22/5), instead purposefully making up test result numbers on the "Quality Control Daily Injector Test on the GC/MS" (SLI 8/13; 22/5).

45. Dookhan maintained a level of production of test results that concerned supervisors and co-workers (SLI 19/4; 21/1; 35/7; 45/2), often analyzing more samples in a week than they did in a month (SLI 19/4; 35/7).

46. Dookhan submitted multiple racks of sample vials to the confirmatory chemists (SLI 22/2), and left many samples out on her bench top (SLI 73/8-9).

47. Dookhan exhibited a pattern of failing basic laboratory procedures (SLI 22/2), including documentation issues (SLI 7/11), failing to calibrate balances (SLI 31/2; 23/9; 42/4), and having a workspace filled with numerous vials, leaving them vulnerable to cross-contamination (SLI 7/12; 22/2; 73/8).

48. Dookhan was also allowed to access the evidence office computers to enter and look up data (SLI 12/5; 23/6; 32/8; 34/2; 38/12; 46/4; 72/6; 90/2), even after she was suspended from lab duties (SLI 46/5; 72/6).

49. Dookhan engaged in the practice of "dry labbing," looking at samples instead of testing them with presumptive testing (SLI 24/16; 73/7; 73/10; 77/2).

50. During preliminary analyses of drugs, Dookhan failed to use proper methods of inspecting slides prepared for a microscope (SLI 19/5; 32/6; 21/1; 42/2). This resulted in an unknown number of samples coming back from the confirmatory chemist as heroin when she had supposedly tested it and found them to be cocaine and vice versa (SLI 7/8; 23/8; 23/11). She would then alter these samples, so that a second confirmatory test conformed to her initial "identification" of the drugs (SLI 6/5; 6/6; 7/9; 23/10; 73/9).



51. Dookhan was contacted directly by assistant district attorneys about specific samples to potentially analyze them more quickly, and potentially out of order (SLI 29/11; 24/14; 32/4; 37/3; 40/5; 42/5; 72/6).

52. Dookhan looked up data for assistant district attorneys who had called her directly, bypassing the proper protocol of going through the Evidence Office (SLI 24/14; 72/6).

53. Dookhan accessed the lab numerous times while suspended from lab duties (SLI 23/12; 35/6; 40/5; 46/5; 86/3).

54. Dookhan's key opened the evidence safe (SLI 16/17; 32/7; 50/5), and she may have known the code (SLI 32/8; 42/3). Despite policy, she may have been receiving evidence (SLI 32/8) and may have been trusted with the ability to open and close the lab (SLI 32/7; 42/4).

55. Dookhan's false claim to have a Master's Degree (SLI 71/1) was discovered around June 2010, but no action was taken (SLI 30/15). In October, 2011 chemist Lisa Glazer noted that Dookhan had added additional classes to her curriculum vitae, and Dookhan claimed she had gotten a grant from the Department of Justice for the classes. Chemist Glazer felt that Dookhan had lied about the classes and the grant (SLI 35/4).

56. Dookhan trained one of the new chemists at the lab, but would leave the trainee alone to test samples, and failed to accurately record powder sheets to properly reflect the work roles and responsibilities of the chemist in training and Dookhan as the certified chemist (SLI 31/2; 31/3).

57. Many issues with Dookhan were allowed to continue for years. Numerous lab personnel expressed concerns with Dookhan's workload and documentation errors (SLI 8/13; 15/9; 15/10; 19/4; 21/1; 22/5; 45/2; 73/7), forgeries (SLI 5/2; 7/6; 8/14; 15/9, 22/4; 40/3; 45/2; 72/4), and questionable test results (SLI 7/8; 23/8; 23/11).

58. When lab supervisor Piro reported numerous concerns regarding Dookhan's conduct at the lab to his superior, Charles Salemi (lab supervisor II), Salemi only conducted an audit of paperwork for every tenth sample and no actual re-testing was performed (SLI 14/5; 14/6; 22/3).

59. Around June of 2011, after two chemists reported that Dookhan had forged their initials, Dookhan was assigned to a special project of writing or updating the lab's Standard Operating Procedures (SOPs), even after her suspension for not following procedure (SLI 15/9; 35/6; 55/3; 59/3; 86/3).

60. The laboratory evidence room and evidence safe were accessible to chemists (SLI 28/7; 37/9; 12/4). The procedures to restrict access were ignored and circumvented (SLI 16/15; 37/9, 38/11; 39/2). The safe was found open and unattended (SLI 28/6; 38/11), was left propped open when it was "busy" (SLI 28/6), and was accessible by codes and keys that had not been changed in over a decade (SLI 28/3).

61. There were insufficient safeguards on access to the evidence room, and to the evidence safe, which could be accessed by means of a key or a palm reader. After the 2011 incident, it was discovered that an unknown number of chemists' lab keys opened the evidence safe (SLI 12/4; 37/8; 38/12; 46/6; ES 10) and the palm reader system did not record entries or have a means to flag inappropriate entrance (ES 10).

62. The lab supervisors and superiors who learned of the June 2011 breach by Dookhan failed to promptly notify the SLIH Commissioner, the Quincy Police Department, and the Norfolk County District Attorney's office (SLI 15/8; ES 13).

63. The method of samples being checked in and out suffered from lack of oversight, as whole sets of drug samples could be pulled by Dookhan without anyone noticing (SLI 28/7; 36/3; 36/4; 73/8).

64. The evidence officers who were in charge of security of the evidence safe had an apparent pattern of laxity when it came to tracking samples and access to the evidence room and safe, computer terminals (SLI 32/8; 38/12; 42/3; 46/4; 90/2; 90/3), and written logbooks (SLI 25/2; 25/3).

65. The lab followed SWGDRUG guidelines from 2004, but those standards are general and lack specific detail as to the policies, procedures and protocols that should be followed at the lab (ES 10).

66. Unlike other labs at the Hinton facility, the drug lab had no surveillance cameras and no mechanism to detect, monitor and report adverse events and poor quality events (ES 11).

67. There was a lack of supervision and oversight at the lab: Director Nassif did not meet with lab supervisor Salemi on a regular basis, and had difficulties meeting with staff (ES 11).

68. On March 18, 2013, John Verner, Chief of the Criminal Bureau of the Attorney General's office issued a letter to Norfolk District Attorney Michael Morrissey. This letter accompanied numerous photographs and reports regarding the Hinton Lab. This letter with photographs and report is included on the CD provided to the Court.

69. These photographs and reports were generated during the Inspector General's investigation of the Hinton Lab, which included physical access to the Hinton Lab on various dates between January 18, 2013 and March 11, 2013.

70. These reports detail the discovery of various drug samples, green vegetable matter, controlled substances and other items. These items were discovered approximately six to seven months after the Hinton Lab had been shuttered. These items, discovered during the Inspector General's investigation, were in various unsecured locations at the Hinton Lab including the floor, in desks, in drawers, in a drying hood cabinet, taped to a lab bench and in a freezer.

E-mails

71. The following is from e-mails which CPCS received from the Office of the Attorney General, and which document electronic communications to and from Dookhan and various assistant district attorneys, other Hinton Lab personnel, and law enforcement agents. These e-mails were redacted to eliminate names of defendants and other protected information. Copies of selected e-mails, including those excerpted in ¶¶ 74-80, 82-85, and 87-95 below, are appended hereto as Attachment I to this affidavit, and will be cited by page number as

"(Attachment I \_\_ )." An electronic copy of additional redacted e-mails will be provided to the Court.

73. This selection of e-mails demonstrates Dookhan's opinions and attitude regarding defendants in drug cases, the types of contacts she had with members of the law enforcement community, her view of her role in the prosecution of defendants charged with drug offenses, and the views of assistant district attorneys regarding her role in the prosecution of drug cases:

74. In an e-mail dated June 10, 2009, 9:02 AM, Dookhan faxed some drug certificates to an assistant United States Attorney. He replied, "Annie—thanks. Sorry to be so bothersome lately. But the summer approaches and we need to take some of these guys off." Dookhan sent back, "No problem. I have the same attitude... get them off the streets" (Attachment I 1).

75. In an e-mail dated October 2nd, 2009, 3:36 PM, Dookhan sent 43 prosecutors files containing questions for prosecutors to ask chemists, stating, "I would like to thank everyone for their cooperation and patience since the Melendez-Diaz decision. I have attached some predicate questions for drug analysis to this e-mail. Please distribute to your colleagues" (Attachment I 2).

76. In an e-mail dated November 15, 2010, 5:06 AM, in the course of her lengthy e-mail correspondence with a Norfolk County assistant district attorney, Dookhan states, "And to top it all of [sic], on the week of halloween, the defendant (a real winner) was charged with rape/sexual assault on a minor. Now, that hit my heart closely and for that he needs to be locked up and throw away the key. I had the pleasure of spending some time with the young lady and she is a sweetheart. So very young to have to go threw [sic] this ordeal, not just physically but mentally. Needless to say, def. will be making a lot of friends in the federal pen, named John. Haha" (Attachment I 8).

77. In an e-mail dated February 09, 2011 8:51 PM, in the course of an e-mail conversation with a Norfolk County assistant district attorney, Dookhan stated, "Defaulted. . . He must be in the Dominican republic on the beach with my other default defendants. Let me know if you need anything in the future" (Attachment I 14).

78. Some of Dookhan's involvement with law enforcement may have preceded the analysis of drug samples.

79. For example, in an e-mail dated November 20, 2010 8:00 PM, an assistant district attorney from Norfolk County asked, ". . . I have grand jury this Tuesday, and if they are not ready, I will get another date for presentment. B10- 50969, 50938 TO

50968." Dookhan replied, "No prob. If they are not completed, I will have them assign to me" (Attachment I 6).

80. In an e-mail dated October 06, 2010 8:14 PM, Dookhan stated, "If you have to bring in samples for some reason just shoot me an e-mail or text/call my cell [cell phone number provided] and we can make the arrangements. I will have those samples specifically assign to me" (Attachment I 4).

81. In some e-mails, Dookhan counseled the prosecutors about testimony and strategy.

82. For example, in an e-mail dated March 24, 2011 8:28 PM, in an exchange with a prosecutor about preparing for trial, Dookhan wrote, "I will review your questions over the weekend and get back to you. Definitely, keep the expert testimony section, it will build credibility. I would stay away from questions regarding accreditation, and publications." Later on (March 26, 2011 2:17 PM), after the court date had been cancelled, Dookhan wrote "Thanks for the heads up . . . Tell the defendant, he is getting an extra 5 years for p-off the chemist. :)." The assistant district attorney replied, "Haha. Sounds about right" (Attachment I 26).

83. In an e-mail to a prosecutor dated April 22, 2011 12:14 PM, Dookhan wrote, "See attachment for an updated version



of the predicate questions: I change the wording of question /35 and eliminated what was question / 37. I edited these to avoid potential problems from the d/c. [defense counsel]" (Attachment I 30).

84. In an e-mail dated September 02, 2011 9:53:46 AM, "I received this e-mail [from defense counsel] in regards to a case with you. I just wanted to know if it was OK with you to respond to his e-mail/request." The prosecutor replied, "Hi Annie! Witnesses 'belong' to neither side, so you are free to meet with him. Of course, you are not obligated to, and given the demands on your schedule, it would seem reasonable to save your testimony for the stand! (I understand he has engaged his own expert in this case). Does that make sense?" (Attachment I 34).

85. In an e-mail dated February 24, 2011 1:07:00 PM, Dookhan sent an e-mail to a Suffolk County prosecutor regarding the reweighing or retesting of drug evidence by an "independent chemist" sought by the defense: "The only suggestions I have: (1) for d/c [defense counsel] to provide transportation for the independent chemist to come to Boston and obtain the sample or (2) have one of our local independent chemists come to the lab and obtain the sample and then mail it to NMS Labs. Therefore

all responsibility falls on d/c and it will cost more money.  
Haha" (Attachment I 16).

86. The following excerpts are communications from prosecutors to Dookhan about defendants and defense counsel.

87. In e-mail dated March 03, 2011 2:40:07 PM, from an assistant district attorney: "I am prosecuting a gun and drug case in Fall River District Court that is scheduled for trial on March 17. The defendant is held in custody on a dangerousness hearing and the case is three months old. I sent a priority cert request by fax (to the 617-983-6210 number) for the drugs but I wanted to e-mail you as well. Could you possibly help facilitate the testing? I know you probably get a lot of these requests. If I can't get the case tried by the 17th, technically, the court could release the defendant on bail" (Attachment I 18).

88. In e-mail dated February 08, 2011 3:42:19 PM, from an assistant district attorney: "bad news -- I have been trying extremely hard to plea this case out -- it's a VERY solid case for us but Attorney Neil Madden hasn't been doing a good job conveying that to his client. We are offering 4 years and the Defendant would get a mandatory 12 if he is found guilty. ridiculous" (Attachment I 13).

89. In e-mail dated July 21, 2010 4:03 PM from an assistant district attorney: "One of my favorite police officers was injured as a result of this drug dealers attempted escape, so I wan't [sic] to make extra sure all my ducks are quacking." (Attachment G 118). Also from this assistant district attorney, March 10, 2011 2:36:49 PM, "OH KIDS: This jack @ss has until March 28th 2011 to change his plea. Otherwise, he can go meet [redacted] in prison following our last guilty verdict (Annie and Della). Det. Billy Ward (my favorite detective) was out of work injured because of this incident for over a month. . . so I have a personal vendetta against him! I'll keep you posted!!!!" (Attachment I 24).

90. In e-mail dated February 28, 2011 2:06 PM, from an assistant district attorney: "Thank you Annie. I will discourage defendants from requesting documents other than the drug cert. in the future." To which she replied, "No worries. We are more than willing to provide discovery packets to the ADAs as long as it will help in getting a plea or stipulation" (Attachment I 17).

91. In e-mail dated March 22, 2011 10:33:08 AM, from an assistant district attorney, "If defense counsel know the chemists are available 9 out of 10 times it will be a plea. Judge's [sic] appear to be on our side and kind of hint at

defense counsel that if they require the chemists to come in it may be a heavier sentence for defendants" (Attachment I 25).

92. In e-mail dated August 24, 2010 1:38 PM from an assistant district attorney, "I am pursuing a pharmacy burglar and had a couple of questions about some different types of pills - specifically, do you know the standard weights per pill for the particular pills ('methadone 10 mg' for example), and would you classify them as 'derivatives of opium.' I am interested in pursuing this guy for trafficking as well as for burglary - he would face a much stronger penalty" (Attachment I 3).

93. In e-mail dated March 04, 2011 12:19:26 PM, from an assistant district attorney: "DREAM TEAM!!!!!! It is time to kick some more buttocks!!!!" (Attachment I 21).

94. In e-mail dated October 04, 2011 3:20:00 PM, from an assistant district attorney, referring to scheduling, "Won't be a prob. My bet. . . you all show and the defense stipulates. But b/c they are the defense they won't stipulate until you show. . . Great business we all work in huh?" To which, Dookhan replied, "Story of our lives. . . Tell him it will be and [sic] extra 10 years, if I have to drive to Brockton and he stipulates. Haha" (Attachment I 36).

95. In e-mail dated January 18, 2012 1:12:09 AM, from an assistant district attorney: "Your [sic] the best. Fortunately, I scared [redacted] into pleading out to guilty 1 yr. HOC suspended for 2 years. . . . Thought you'd love to know Defense attorneys get very concerned when the commonwealth has certs and lab packets. . ." (Attachment I 40).

Lack of Accreditation of the Hinton Lab

96. The following information provides background regarding the Hinton Lab's inadequate management and operations as compared to standards promulgated by the relevant scientific community.

97. The Executive Summary prepared by the Massachusetts Department of Public Health reported that the Hinton Lab was not accredited and lacked the resources to support the application for accreditation (ES 3).

98. The policies and procedures in the Hinton Lab were developed from the 2004 recommendations of the Scientific Working Group for the Analysis of Seized Drugs (SWGDRUG) (ES 2).

99. The Executive Summary states that "[e]ven if the Forensic Drug Lab fully complied with the SWGDRUG guidelines, these guidelines were vague and inadequate for guaranteeing the

type of integrity needed to deliver high quality forensic drug analyses" (ES 2).

100. The Executive Summary notes that SWGDRUG standards provide minimum guidelines offering direction to the development of forensic laboratory policies and procedures, but lack specificity in expected action steps (ES 10).

101. While SWGDRUG had updated its guidelines in 2011, the Hinton Lab did not update its Standard Operating Procedures (SOP's) to conform to the revised guidelines (ES 2).

102. The Executive Summary states that "[t]here has [sic] no process for routine review and revision of the 2004 SOP's nor periodic written documentation of compliance" (ES 3).

103. The Executive Summary indicates that there are varying acceptable national standards to guide the work of forensic laboratories, and that the Massachusetts Executive Office of Public Safety and Security is in the process of attaining International Organization for Standardization (ISO) accreditation (ES 3).

104. The accreditation sought is pursuant to ISO 17025, a copy of which is appended as Attachment J to this affidavit. See also, French and Electric Blue, "Crime Lab: Past, Present, and Future," March 2013 at 6 (discussing Massachusetts State

Police Forensic Services Group's "commitment to professional excellence in forensic testing" and its pending "appli[cation] for the rigorous accreditation standard ISO 17025) (copy appended hereto as Attachment K).

105. From my experience as Director of Forensic Services, I am aware that ISO 17025 covers a range of requirements to establish the competency of a testing and calibration lab. Management, record keeping, document control, monitoring, prevention, quality assurance, and technical requirements of the lab are all covered.


106. The Executive Summary indicates that ISO accreditation has training, personnel, equipment and instrumentation requirements that exceed those of SWGDRUG.

107. The Executive Summary states that "[t]hese accreditation requirements also include a series of Quality Manual and Management System policies and procedures and substantial informatics system enhancements associated with meeting the ISO standards in order to capture more detailed data on testing, technician activities, reagents used, equipment maintenance, as well as additional information technology systems specific for document management and control" (ES 3).

108. The Executive Summary notes that there are expenses connected to the accreditation process, enrollment in proficiency testing programs and equipment calibration, maintenance and replacement (ES 3).

109. The Executive Summary reiterates that the Hinton Lab lacked the resources to fulfill the standards required by "specialized drug laboratory certification" (ES 3).

SIGNED UNDER THE PAINS AND PENALTIES OF PERJURY THIS C<sup>th</sup> DAY OF JANUARY 2014.

  
Anne Goldbach  
Director of Forensic Services  
Committee for Public Counsel Services



# **GOLDBACH ATTACHMENT A**

## CORRECTIVE ACTION REPORT FORM

ID #DR-04-001

Event Date: 03/18/2004

Dept. Drug Laboratory

### 1. Identification of nonconformity or quality problem:

A completed sample was returned to the laboratory by the police department so that an independent chemist could do fingerprinting of the packages. Before fingerprinting was done, the independent chemist noted that our certificate stated that the sample contained cocaine, yet the packaging was similar to known heroin samples. I observed the packets and agreed that these types of packets usually contain heroin.

Recorded by: C Salemi

Date: 03/18/2004

Department: Drug Laboratory

### 2. Investigation:

I asked the chemist who analyzed the sample to check their notes. The chemist's notes and the analytical data showed that the substance was heroin. The chemist mistakenly had written cocaine as the result on the laboratory control card. The card was sent to the Evidence Office, which generated a certificate with cocaine as the result. The chemist checked the card against the certificate and signed the certificate indicating that cocaine was present.

The chemist did not catch this mistake because they had done both the preliminary and confirmatory tests themselves. This could have been avoided by having one chemist do the preliminary work and another chemist do the confirmatory testing. This would involve two chemists checking the results before a certificate is signed.

Recorded by: C. Salemi

Date: 03/18/2004

Department: Drug Laboratory

### 3. Corrective action plan:

The laboratory control card and certificate were corrected on March 31, 2004. The sample, laboratory control card and corrected certificate were returned to the Evidence Office on March 31, 2004. This corrected certificate and sample will be returned to the police department with other completed samples.

Beginning 03/29/2004, all powder samples will be done by two chemists. If in the event of a "rush" sample, one chemist may do both the preliminary and confirmatory testing, but a senior level chemist must check and initialize the results, before a certificate is generated.

These procedures were addressed at a lab meeting on March 30, 2004. The minutes will be kept on file in the laboratory. The laboratory supervisor will audit compliance by reviewing a random number of laboratory control cards monthly and verify that two signatures are on the laboratory control cards and certificates.

Recorded by:

Date:

Department:

Charles B. Salemi  
Laboratory Supervisor

4/7/04  
Date

Adam Starnes  
Program Director

4/7/04  
Date

Hanny George PhD  
Quality Assurance Director

4/14/04  
Date

4/14/04  
QA Receipt Date

Ralph T. ...  
State Laboratory Director

4/15/04  
Date

P. DiNatale  
QA Program Manager

4/15/04  
Date

## CORRECTIVE ACTION REPORT FORM

ID# DR-04-001

Event Date: 03/18/2004

Dept. Drug Laboratory

### 4. Implementation of Changes:

All powder and substance samples are now done by two different chemists. One (primary) chemist performs all preliminary tests for example: color, net weights, crystals, and preliminary instrumental tests. The second chemist will perform the confirmatory GC/MS testing. This change was implemented on March 29, 2004. It was communicated to the staff at a laboratory meeting held on March 30, 2004. Minutes of this staff meeting are on file in the laboratory.

Recorded by: C. Salemi

Date: 7/30/2004

Department: Drug Laboratory

### 5. Follow-up and Outcomes:

Two chemists now testing powder samples now provides a means for the double checking of analytical results. This will provide an excellent way to insure that proper results are reported for all unknown powder samples. Monthly audits were conducted on May 21<sup>st</sup>, June 24<sup>th</sup>, and July 26<sup>th</sup> of 2004. Each audit consisted of 25 random samples. The compliance rate for each audit was 100%.

Recorded by: C. Salemi

Date: 7/30/04

Department: Drug Laboratory

Department Supervisor

Charles B. Salemi Date: 9/15/04

Program Director:

Allen C. Thomas Date: 9/16/04

Quality Assurance Director:

Harvey Kory PhD Date: 9/20/04

State Laboratory Director

Ralph T. Jones Date: 9/21/04

LWQIC Presentation and Review Date

10/7/04

QA Program Manager

P. D. Natale

Date

9/20/04

# **GOLDBACH ATTACHMENT B**



The Commonwealth of Massachusetts  
Executive Office of Health and Human Services  
Department of Public Health  
250 Washington Street, Boston, MA 02108-4619  
Office of General Counsel  
(617) 624-5200.

DEVAL L. PATRICK  
GOVERNOR

TIMOTHY P. MURRAY  
LIEUTENANT GOVERNOR

JUDYANN BIGBY, MD  
SECRETARY

JOHN AUERBACH  
COMMISSIONER

TO: John Auerbach, Commissioner, MDPH  
FROM: Steven Chilian, *De*puty General Counsel  
RE: Investigation - Lab Breach in Protocols  
DATE: February 29, 2012

**CONFIDENTIAL MEMORANDUM**

On December 1, the Department of Public Health (MDPH) became aware of an alleged irregularity in the Lab's protocols for documenting the transfer of samples submitted for forensic analysis for criminal proceedings. The Department has conducted an investigation to determine the validity of this allegation.

**I. INVESTIGATION PROCESS**

A. Persons Interviewed: The following persons were interviewed by me as part of this investigation and the information provided by them is incorporated herein. Union protocols were observed for all interviews. Their statements or interview summaries are attached as exhibits to this report.

1. Linda Han, Lab Director (Boston)
2. Julianne Nassif, Program Manager (Boston)
3. Charles Salemi, Lab Supervisor II (Boston)
4. Shirley Sprague, Administrative Assistant II (Boston)
5. Elizabeth O'Brien, Laboratory Supervisor I (Boston)
6. Gloria Philips, Administrative Assistant I (Boston)

7. Annie Dookhan, Chemist II (Boston)

B. Documents: Documents reviewed during this investigation include, but are not limited to, the following:

1. Relevant Statutes (M.G.L. chapter 111, sections 12 and 13)
2. Policies and Procedures – Drug Analysis Laboratories – Updated 9/24/2004
3. Copy of the relevant log book pages
4. Time Logs for Lab employees for period of June 14 to June 25

## II. ALLEGATION INVESTIGATED

Whether the transfer of a number of samples from the evidence office to the Lab for testing was properly assigned and recorded in accordance with Lab protocols.

## III. FINDINGS:

A. The MDPH Drug Forensic Lab (Lab) is authorized pursuant to M.G.L. Chapter 111, sections 12 and 13 to provide chemical analysis to police authorities for the purpose of enforcement of law.

B. Annie Dookhan (AD) is a Chemist II whose duties at the Lab at the time of the alleged event were to analyze samples submitted to the Lab for forensic testing. AD has held this position for eight years. During her tenure as chemist she has had an exemplary record of performance and was highly regarded by her peers for her work ethic and professionalism. She has no record of any disciplinary actions. [REDACTED]

C. The Lab's protocols for handling samples requires that all samples received by the Lab for testing be given a unique sample identifier called an evidence control number (control number). The Lab uses this number to track the case samples as they undergo the testing process. All transfers of samples to and from the evidence office are required to be entered into the Lab's computer tracking system by an evidence officer and manually recorded in the office log book (log book). The log book contains a list of all samples (by sample control number) received at the Lab for testing. The evidence officer is required to record his/her initials, the date of the transfer and the initials of the person accepting receipt of the sample(s). The person receiving the sample is required in the presence of the evidence officer to record his/her initials signifying his/her receipt.

D. The Lab became aware of a potential breach in its protocol on June 16, 2011 by evidence officer, Shirley Sprague (SS). The discovery was made by SS while entering information into

the Lab's computer from a number of evidence control cards.<sup>1</sup> When SS scanned the evidence envelope's bar code into the computer, the information displayed on the computer for that case did not show the sample(s) for that case as having been assigned to the chemist identified on the control card. SS had to manually input the chemist's name into the computer. This is not a necessary step when the samples are properly scanned out to the chemist by the evidence officer. SS repeated this process for a number of samples. SS also examined the log book. There were no entries to the right of the control numbers for these samples recording their transfer from the evidence office to the chemist for testing. SS contacted her supervisor, Elizabeth O'Brien (EO), by telephone to alert her of this irregularity. The primary chemist listed on the control cards as having custody of these samples was AD.

- E. EO met with SS in the evidence office that same day, June 16<sup>th</sup>, and confirmed SS's findings, i.e., there was no record of the transfer of these samples to AD in either the Lab's computer tracking system or the log book.<sup>2</sup> On June 20<sup>th</sup>, EO met with Charles Salemi (CS), Supervising Chemist for the Analysis Section, and Julie Nassif (JN), the Lab's Director of the Division of Analytic Chemistry, to brief them about the discovery. EO brought the log book to the meeting to show both JN and CS. At the time of this meeting, there were no entries in the log book documenting the transfer of the samples from an evidence officer to AD.
- F. When the log book was re-examined again on June 21, there were now entries recording their transfer from Gloria Philips (GP) to AD on June 14. A review of GP's time logs showed GP to be on leave from June 15 until June 27. Therefore, GP was unable to have made these entries.
- G. GP maintains that she was on leave between June 15 and June 27 and therefore unable to have written the entries on the 21<sup>st</sup>. Her time sheets confirm her absence from work during this period. GP was also asked to review the log book, specifically the transfers purportedly

---

<sup>1</sup> All samples are transferred in evidence envelopes that are bar coded with each sample's unique identification (control) number and are accompanied with a control card that contains the test result, the date the sample was received by the lab, the date analyzed, test result and the initials of the chemists that performed the test(s). The primary chemist who is assigned the sample performs the preliminary test(s). A separate chemist performs the confirmation test(s). The evidence envelopes are kept in the custody of the primary chemist in the chemist's lab evidence locker (a locked cabinet) while waiting testing. The results of the analysis are provided to the requesting law enforcement agency in the form of a certificate of analysis that certifies what the samples contained and its net weight. The certificate is signed by both chemists.

<sup>2</sup> The samples in question totaled 90.

made by her to AD on June 14. GP stated that the initials purporting to be hers had been written by someone else.

- H. The log book is kept in the evidence room. AD, as do all Lab staff, have access to the evidence room via a palm reader. The evidence room is normally staffed by two evidence officers. The number of evidence officers working on the 20<sup>th</sup> of June was one and the number working on June 21<sup>st</sup> was two, with one evidence officer working a half-day. The short staffing provided a greater opportunity to enter the evidence office without being observed.
- I. AD verified her initials in the log book, but indicated that she may have initialed her receipt "after the fact". That is, although the log book shows that the date of her receipt was June 14, 2011, she likely initialed her receipt for them on a later date. She acknowledged that she had seen the entry by GP but denied that it was written by her. She had no explanation as to who may have made the entry.
- J. AD was temporarily removed from her testing duties on or about June 21 and assigned other administrative duties. AD was placed on administrative leave on February 21, 2012.
- K. AD has not testified in any cases involving the 90 samples. The certificate of analysis (certificate) routinely produced by the Lab for each of the tested samples and signed by AD certified what the sample was found to contain and its net weight.
- L. The Commissioner's office first became aware of this incident on December 1, as a result of inquiries made by the Lab to Human Resources concerning the possible reassignment of AD in early December. The Lab's failure to report this incident to Central Office was based on the Lab's lack of appreciation for its potential legal significance and their opinion that the integrity of the test results had not been affected. There is no evidence to suggest that the integrity of the results were impacted by the documentation issue with the log book.
- M. The Lab has taken a number of steps to minimize any reoccurrence of this nature. The Lab has revised its protocol for handling test samples, to include a protocol for reporting discrepancies and has instituted a new policy that limits access to the evidence office to evidence officers only with all transfers of samples to chemists for testing conducted through the evidence office service window. Finally the Lab is also looking at the cost feasibility of adding new security measures such as surveillance cameras.



### III CONCLUSIONS

Based on a preponderance of the evidence collected during the course of this investigation through interviews and review of documentation, it can be concluded that AD failed to follow Lab protocols for the transfer and documentation of samples for testing, and subsequently created a false record of said transfers. The facts support that the log book was examined by three persons after June 16 and prior to June 21, each of whom stated that there were no written entries next to the sample control numbers for the identified samples that documented their transfer for testing to AD. When the log book was re-examined again on June 21, the previously blank pages for these samples were "filled in". The log book now showed them as having been transferred from GP to AD on June 14. GP could not have written these entries as she was on leave from June 15<sup>th</sup> through the 27<sup>th</sup> and, as noted in the findings section, was emphatic after having reviewed the log book that the entries were not in her hand writing. Finally, visual inspection of the log entries supports that the entries for GP and AD were likely written by the same person. While AD did not claim responsibility for writing GP's initials she did verify that the initials signifying her receipt of the samples was in her handwriting and acknowledged that their handwriting is similar. If you eliminate GP as authoring the log entries, the only person with both motive and opportunity to have completed them is AD. The most likely scenario as supported by the evidence is that AD retrieved the samples from the evidence office for testing without following Lab protocols and later compounded this error by creating false documentation of the transfer after the fact.

# **GOLDBACH ATTACHMENT C**

HINTON LABORATORY DRUG LAB INTERNAL INQUIRY  
CONFIDENTIAL DOCUMENT - FOR POLICY DEVELOPMENT AND ATTORNEY-CLIENT COMMUNICATION ONLY

EXECUTIVE SUMMARY

For several decades the William A. Hinton State Laboratory Institute (Hinton Lab) has operated one of the three Forensic Drug Laboratories within the Commonwealth (the other two were operated by public safety entities). A longtime chemist within the Forensic Drug Lab (Drug Lab), Annie Dookhan (Dookhan), has recently acknowledged malfeasance with regard to the handling of an unknown number of drug analysis cases. The Attorney General and Executive Office of Public Safety and Security (EOPSS) are conducting an ongoing investigation, which led to closure of the Drug Lab on Thursday August 30, 2012.

In June 2011, Dookhan violated laboratory protocols and forged documentation regarding the chain of custody of 90 drug samples, all stemming from Norfolk County. Documentation irregularities were identified quickly and Dookhan (who denied any wrongdoing) was removed from testing duties. In December 2011, the MDPH Commissioner's Office learned of these events and directed Deputy General Counsel Steve Chilian (Chilian), to conduct a focused investigation of the incident. The investigation was conducted from December 2011 to February 2012, and found that evidence suggested Dookhan had in fact breached documentation protocols. Lab staff asserted that they had no questions concerning the quality and accuracy of Dookhan's work. Chilian was not asked to independently assess the accuracy of the pertinent test results. Based upon these findings, the Department began the process of terminating the employment of Dookhan. Beginning in late January 2012, MDPH, EOHHS, and the Governor's Legal Office notified the Norfolk County District Attorney, the District of Massachusetts U.S. Attorney, and other pertinent stakeholders of the 90 cases in which documentation was inappropriate. On March 9, 2012, Dookhan resigned from MDPH and the parties agreed to a neutral separation in lieu of a protracted termination process.

In July 2012, the MDPH Forensic Drug Laboratory was transferred to the Executive Office of Public Safety and Security, which together with the Attorney General, conducted a thorough investigation of Dookhan's work. Numerous additional alleged wrongdoings were identified through this investigation. In light of these findings, MDPH has conducted a comprehensive internal analysis of the policies, procedures, leadership, and infrastructure at the Forensic Drug Lab that surrounded these events. MDPH identified key potential root causes and steps that could have been taken to prevent malfeasance, notification of protocol breaches, quality assurance, and quality control processes, as well as compliance with national standards and guidelines.

The following report details these findings and describes key operational elements of the Drug Laboratory as it operated under MDPH oversight and control.

THE HINTON STATE LABORATORY INSTITUTE

*Background*

The William A. Hinton State Laboratory Institute (Hinton Lab) principally houses two bureaus within the Department of Public Health (MDPH), whose missions are disease prevention and surveillance in Massachusetts, the Bureaus of Laboratory Sciences and of Infectious Disease Prevention and Response. Additionally, the Hinton Lab encompasses elements of the MDPH's Drug Control and Food Protection programs, the State Racing Commission Laboratory (Office of Consumer Affairs and Business Regulation), the New England Newborn Screening Program (operated for MDPH by University of Massachusetts Medical School), the National Laboratory Training Program, and the University of

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Massachusetts Biologics Laboratories.

The Bureau of Laboratory Sciences (Bureau) provides high quality testing services, facilitates training of laboratory personnel in new testing technologies, promptly investigates and identifies emerging disease outbreaks, and provides expertise to public and private organizations to improve health status. A nationwide system of state-based laboratories complements the clinical laboratory services included in clinical practice and supports prompt diagnosis of diseases, whether of epidemic proportion or rare disease events. The Bureau is critical to identifying new and emerging problems through disease surveillance and control.

The Bureau is under the supervision of Dr. Linda Han (Bureau Director since June 2010) and is composed of 17 laboratories (prior to the FY13 transfer of the Forensic Drug Laboratory this number was 18) organized in four divisions: Analytical Chemistry, Molecular Diagnostics and Virology, Microbiology, and Central Services.<sup>1</sup> In the last decade MDPH has faced challenges in recruitment and retention of a Bureau Director of Laboratory Sciences because of the limitations on salary levels and the breadth of professional expertise required to oversee the diverse and continually evolving work. In recent years, the Hinton Laboratory has responded to issues as varied as the H1N1 influenza outbreak, mosquito-borne illnesses such as Eastern Equine Encephalitis and West Nile Virus, food-borne illness outbreaks, lead paint poisoning among children and the many demands related to threat of bioterrorism particularly after September 11. In the last six years, there have been three Laboratory Sciences Bureau Directors. One Bureau Director was identified after a lengthy national search, and two of whom were long-term MDPH employees who agreed to assume the role with reluctance (including Han).

Until recently, pursuant to M.G.L. c.111, §12-13, the MDPH was required, upon request from law enforcement authorities, to perform chemical analyses of drugs. Encompassing one of three laboratories in the Commonwealth assessing seized drugs, the Analytical Chemistry Division's Forensic Drug Laboratory (Drug Lab) was responsible for a large proportion of seized drug analyses requested by local and state police as well as federal law enforcement agencies operating in Massachusetts. From January 2003 until assumption of responsibility by the Executive Office of Public Safety, State Police Crime Laboratory/Forensic Services Group (FSG) at the beginning of fiscal year 2013 pursuant to Chapter 139 of the Acts of 2012, the MDPH conducted 355,276 analyses of seized drugs, averaging over 37,000 each year.

*MDPH Standards of Practice as Compared with National Forensic Lab Guidelines*

Policies and procedures in the forensic drug lab were developed from the recommendations of the *Scientific Working Group for the Analysis of Seized Drugs (SWGDRUG)*. *SWGDRUG* standards provide minimum guidelines offering direction to the development of forensic laboratory policies and procedures, but lack specificity in expected action steps. *SWGDRUG* guidelines were most recently updated in July 2011. Even if the Forensic Drug Lab fully complied with the *SWGDRUG* guidelines, these guidelines were vague and inadequate for guaranteeing the type of integrity needed to deliver high quality forensic drug analyses.

MDPH Standard Operating Procedures (SOPs) for the Forensic Drug Lab were most recently revised in 2004, and are consistent with the generalized guidance of *SWGDRUG* methods of analysis and drug identification.<sup>2</sup> MDPH SOPs do not include comprehensive quality assurance and quality control policies and procedures as recommended in the updated (2011) *SWGDRUG* guidelines. Julie Nassif, Division Director of Analytical Chemistry (Nassif) and Han report that routine quality control

<sup>1</sup> See appended organizational chart current in June 2011

<sup>2</sup> See appended MDPH Forensic Lab Standard Operating Procedures

HINTON LABORATORY DRUG LAB INTERNAL INQUIRY

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mechanisms were in-place at the Lab, including performance of test controls, maintenance of reagent preparation records and processes to eliminate expired products, regimented standardization, calibration, and maintenance of equipment, and maintenance of workflow logs, and review of a variety of other test-related documents and records. There has no process for routine review and revision of the 2004 SOPs nor periodic written documentation of compliance.

As consistent with a component of the *SWGDRUG* educational standards, extensive initial training was provided to all chemists as a prerequisite to testing. Training was based upon SOPs and included all aspects of workflow, including bench tests, instrument analyses, and documentation, and technician competency was documented by supervisor observation and proficiency testing via blinded analysis of previously tested samples.

There are varying acceptable national standards to guide the work of forensic laboratories. EOPSS is in the process of attaining International Organization for Standardization (ISO) accreditation, which has training, personnel, equipment and instrumentation requirements that exceed those of *SWGDRUG*. These accreditation requirements also include a series of Quality Manual and Management System policies and procedures and substantial informatics system enhancements associated with meeting the ISO standards in order to capture more detailed data on testing, technician activities, reagents used, equipment maintenance, as well as additional information technology systems specific for document management and control. There are also significant expenses associated with the accreditation process itself, with enrollment in suitable proficiency testing programs applicable to laboratory testing activities, and with instrument calibration, maintenance, and replacement. MDPH did not have the resources to support these significant investments and this contributed to the decision to pursue EOPSS to transition the Forensic Drug Laboratory to public safety.

Prior to 2007, a Bureau-wide quality assurance and quality control (QA/QC) unit staffed by three full-time employees who provided targeted oversight of quality programming for the 18 laboratories. QA/QC processes included review of laboratory SOPs and compliance documents. Each laboratory appointed representatives to participate in unit activities. Due to significant budgetary restrictions in fiscal year 2008, the Bureau eliminated the centralized QA/QC function, instead decentralizing quality control data reviews to laboratory technical supervisors at the division level. Division Directors received ongoing monthly reports on QA/QC concerns and submitted reports through the chain of command for review and approval by the Bureau Director. Documentation redundancies were developed to ensure that potential gaps would be identified, including parallel paper-based and computerized log-books. Elements of this QA/QC system pertaining to chain of custody led to early identification of issues surrounding the Dookhan case.

The core functions of a forensic laboratory are distinctive from those of a traditional public health laboratory, where the focus is on surveillance and direct intervention to ensure individual and population health. For example, the Forensic Drug Lab requires technical expertise in standards of chain of custody and criminal law. In addition, unlike the traditional public health facilities at the Hinton Lab, there was no outside organizational oversight of QA/QC practices in the Forensic Drug Lab beyond that provided through accreditation processes. As noted elsewhere in this report, the forensic drug laboratories overseen by EOPS have begun the process of seeking specialized drug laboratory external certification but the MDPH forensic laboratory lacked the resources to fulfill this standard.

### *Testing Protocols*

HINTON LABORATORY DRUG LAB INTERNAL INQUIRY  
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As specified within the *SWGDRUG* standards, there are three testing methods categories commonly used in the Forensic Lab for analyses of specimens, with workflow designed to include preliminary and confirmatory identification.

**Category B and C** tests provide the initial (*Primary*) test in the Drug Lab workflow. These include color tests, microcrystalline analyses, and ultraviolet visualization. They have only moderate discriminatory power, and are not associated with data that can be memorialized with a instrument-generated paper or computer trail and reviewed. These simple bench top tests have no associated documentation beyond a chemists' findings. Documentation of Category C tests includes a reviewable work card, but accuracy can only be directly confirmed through repeating the test.

**Category A** tests utilize sophisticated instrumentation such as Mass Spectrometry, Infrared Spectroscopy, and Gas Chromatography, have high discriminatory power, and are used as confirmatory tests. They produce instrument-generated documentation of test results that may be reviewed by a second chemist or a lab supervisor to further ensure accuracy.

*Forensic Laboratory Workflow*<sup>3</sup>

Seized drugs for testing arrived at the Forensic Drug Lab contained in sealed and initialed evidence bags delivered through a chain of custody transfer from a law enforcement officer to an Evidence Officer (EO) at the Lab. The EO weighed the evidence bag with contents and recorded its gross weight on an evidence receipt. The EO then assigned an evidence control number to the sample evidence bag, and recorded the control number on the evidence receipt. Sample evidence bags were placed in a bar-coded manila envelope (Evidence Envelope) for processing and stored in the Evidence Room (safe). An evidence receipt was provided to law enforcement officer. By protocol, the Evidence Room was to be locked at all times with access by a key or palm reader – both EOs and chemists had access to the Evidence Room, although by protocol, access was to be restricted when EOs were not present. The Evidence Room was secured and alarmed at close of business and per Nassif, override codes were not provided to chemists.

Upon submission of a sample, an EO completed a Control Card and transferred duplicate data to a redundant computerized database for tracking samples throughout the testing process. The control card was placed in the Evidence Envelope and immediately placed into the evidence safe until assigned for testing. Testing assignments were made by the EOs. All assignment information was entered into the computerized database with the name of the assigned chemist and at which time the chemists were notified to pick up samples.

The EO was required to record his/her initials and the date of the transfer. The person receiving the sample was required in the presence of the Evidence Officer to record his/her initials thereby signifying receipt. Transfer of custody of samples required both physical handoff as well as computer entry by the EO – the computerized database was password protected, and chemists were not granted access.

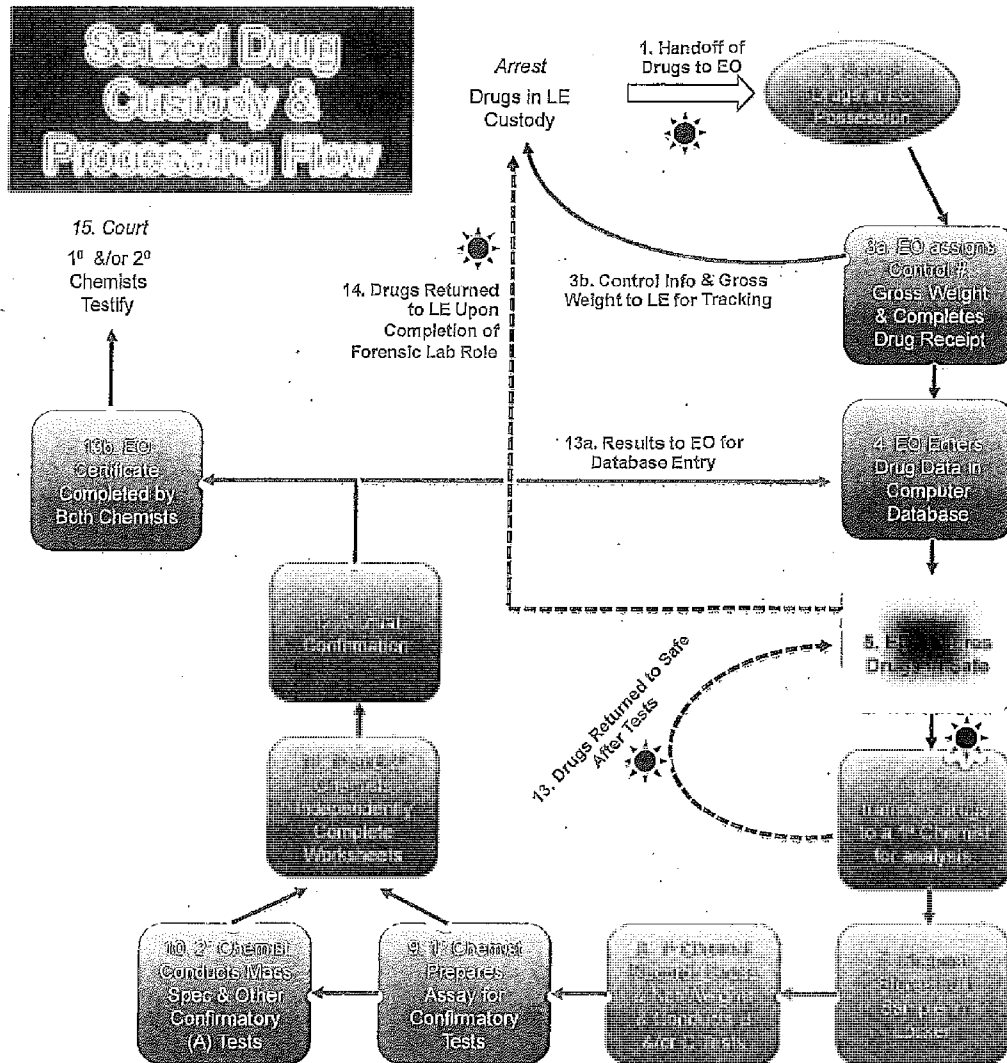
The chemist assigned a sample for testing was defined as the *Primary*. That individual was responsible for conducting Category C analyses, as well as for preparing samples for confirmatory Category A tests. The *Primary* completed the Drug Powder Analysis Form (*Powder Sheet*) which included the samples' control number, the requesting agency, the initials of the analyst performing the test, the number of samples, a physical description of the sample, its gross and net weights, the number and types of test(s)

<sup>3</sup> See attached annotated floor plan of the Forensic Drug Lab. (included at the end of this document for now)

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performed, the test results and the dates of testing. The prepared Category A sample specimens (prepared vials) were transferred to the confirmation (*Secondary*) chemist with the Drug Lab/Mass Spectrometry Control Sheet documenting the transfer.



EO = Evidence Officer  
LE = Law Enforcement

☼ - Chain of Custody

The *Secondary* chemist completed the confirmatory test, filled out the Control Sheet and returned it to the primary chemist for mutual confirmation, in which the two chemists conferred to ensure aligned results. The *Primary* placed both the Powder and Control Sheets in the evidence envelope and returned

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the complete sample to the Evidence Officer for storage in the Lab safe. Chemists controlled the full evidence sample during the entire testing process. Each chemist had his or her own locker (47"x20"x28") to hold evidence envelopes during the testing process. Chemists received trays with multiple evidence envelopes for testing – the number of samples allocated on a daily basis varied among chemists. The EO entered final results into the computer database and prepared a certificate for notarized signature by the both chemists. Pursuant to the U.S. Supreme Court decision in *Melendez-Diaz v. Massachusetts* in 2009, the *Primary* chemist was often called upon as a witness upon introduction of a certificate of analysis as material evidence.

## CHRONOLOGY AND NARRATIVE OF KEY EVENTS

### *Annie Dookhan Employment History*

Dookhan was first hired in November 2003 by the MDPH/Hinton State Laboratory Institute as a Chemist 1 in the Forensic Drug Lab. Dookhan reported to Chuck Salemi (Salemi) who was the Lab Supervisor for the Drug Lab for the duration of Dookhan's employment with the MDPH (November 2003 – March 2012). In 2005, Dookhan was re-classified from a Chemist 1 to Chemist 2 based on her successful performance up until that point in time.<sup>4</sup> As a Chemist 2, the workload and tests Dookhan conducted involved increasingly complex drug cases. Throughout her employment, Dookhan was considered a high performer by her supervisors and a valuable asset to the team. As the Drug Lab continued to experience significant back-logs due to budget reductions, Dookhan's supervisor often acknowledged what was described as a strong work ethic and drive to test samples were welcomed by her supervisors.

A review of the volume of sample assignment by chemists shows that between 2004 and 2011, Dookhan was consistently assigned (and presumably tested) more samples at the drug lab than any other chemist, exceeding her peers by as much as 50% more than as the second highest chemist.<sup>5</sup>

### *Timeline and Action Steps*

In June 2011, Elizabeth O'Brien (O'Brien), Lab Supervisor I, and Shirley Sprague (Sprague), Evidence Officer, became aware of a potential breach in documentation protocols for processing drug samples.<sup>6</sup> On June 16, 2011, these staff discovered that transfers of approximately 90 samples from the evidence safe to the chemist who analyzed them (Dookhan) were not documented in accordance with the Drug Lab's SOPs. The discovery was made by Sprague while entering test results for samples into the computer database. As she entered results, the database indicated that the sample had not yet been assigned to a chemist. At that time, Sprague examined the physical log book and determined that there was no indication of a chain of custody transfer for these samples. Sprague's supervisor, O'Brien, confirmed her findings and notified Nassif of the breach. O'Brien, Nassif, and Salemi subsequently met as a group to determine next steps. No copy was made of the page from the physical log book that had missing initials/signatures. On June 20, what had previously been confirmed as blank entries in the log book were discovered to have been subsequently completed, documenting transfer of samples from

<sup>4</sup> Employee Performance Review Forms (EPRS) were only included in the personnel file for 2004-2007. Incomplete performance review documentation is unfortunately, not an unusual or unique situation.

Please refer to chart below displaying the testing trends of AD compared against 2<sup>nd</sup> highest chemist's test, total FTEs, total annual tests, and mean chemist testing patterns.

<sup>6</sup> Please refer to MDPH Investigation Summary, February 29, 2012, for specific details regarding witness statements and timeline of events from June 2011 breach.



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Evidence Officer Gloria Phillips (Phillips) to Dookhan on June 14, 2011. A review of Phillips' time logs indicated that she was on leave on the day in question, and therefore, was not present to make corrective entries. O'Brien, Nassif, and Salemi confronted Dookhan on June 20 about the missing initials/signatures and then finding this information completed after that discovery. Dookhan denied falsifying entries to the log, though it remained the opinion of her supervisors and the Evidence Officer that Dookhan had both violated proper protocol for release of samples and retroactively falsified log entries.

Salemi and Nassif agreed that the best course of action involved removing Dookhan from testing duties and re-assigning her to desk duties effective June 21, 2011. Dookhan's physical workspace was moved outside the Forensic Drug Lab. According to Nassif, Dookhan's access to the Drug Lab was not immediately revoked. Dookhan's access to the Evidence Room was later restricted (*DPH to confirm date w/Salemi*).

In addition to reassigning her to work outside the laboratory, Salemi and Nassif changed Dookhan's reporting relationship from Salemi to the Division Director. Nassif met with Han about the situation within several days of discovering the breach in documentation. The breach and the re-assignment in duties and supervision were not reported to the EOHHS Human Resources. After internally reviewing the matter, Nassif and Salemi interpreted the irregularity as an isolated documentation failure, and concluded that the integrity of the test results was not compromised. Neither Nassif nor Han notified the Commissioner's Office, Office of the General Counsel, or EOHHS HR about the situation with Dookhan, and the test results were reported to the relevant enforcement authorities.

A total of 90 samples were identified as those that had been removed by Dookhan from the Evidence Room without proper protocol. All were from Norfolk County, including 84 from Quincy and six from Wellesley. Between the time of her removal from testing duties and departure from the MDPH, Dookhan did not testify in court on any of the cases involving these samples. She was summoned to appear at one case in Quincy (Hawker) on December 18, 2011, but the case did not go forward.<sup>7</sup>

During this same time period, MDPH began working directly with the Executive Office of Health and Human Services (EOHHS) and the Executive Office of Public Safety and Security (EOPSS) on a plan that would involve transferring the drug lab operations and personnel to EOPSS as of July 1, 2013 (FY13). It was during these planning meetings that EOHHS HR/Labor learned of issues with Dookhan from Nassif. As staff on the proposed transfer list were reviewed, Dookhan was identified as someone who would not be part of the transfer. Nassif shared information about the breach at that time, and the EOHHS HR/Labor staff immediately notified Monica Valdes Lupi (Valdes Lupi), MDPH Deputy Commissioner about the situation in early December 2011.

Nassif stated that the breach and re-assignment were not issues that she felt rose to the level of notifying HR/Labor or the Commissioner's Office. At the time of the incident, she felt that it was an isolated event with a high-achieving chemist who had been working too hard and experiencing a lot of personal challenges. In a separate interview, Han relayed that while she did not personally know Dookhan, she understood from Nassif that Dookhan was considered a valued employee who may have erred because she was performing a high volume of tests and spending much of her time at the lab.

*Formal Investigation of Annie Dookhan in December 2011*

<sup>7</sup> See appended summary of cases and pertinent discovery motions. MDPH is in process of verifying information regarding Dookhan's appearances in court.

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Valdes Lupi notified MDPH Commissioner Auerbach about the breach and recommended that they launch a formal investigation recognizing the potentially significant impacts of the breach in protocols that occurred in the Lab. The Commissioner's Office assigned Steve Chilian (Chilian), Deputy General Counsel at the MDPH, to conduct the investigation solely on the allegation of whether the transfer of numerous samples from the evidence office to the lab for testing was properly assigned and recorded in accordance with drug lab protocols. By design, the investigation was focused on the documentation incident, with targeted interviewing of key staff and without a more extensive examination of policies and procedures within the Drug Lab or of the integrity of the QA/QC systems.

Key staff, including Han, Nassif, Salemi, O'Brien, and Dookhan were interviewed on December 21-22, 2011. Draft versions of the investigation report were reviewed in consultation with the Commissioner's Office, EOHHS HR, and other state attorneys over the next several weeks. Additionally, an outreach plan was submitted to EOHHS on January 13, 2012, which provided details regarding proposed communication with stakeholders. The outreach plan was finalized on or about February 15, 2012. A final version of the report was submitted to key staff in these offices on February 29, 2012 as appended.

The investigation conducted was focused on the specific question of sample transfer and documentation inconsistencies. At the time, this approach was taken because it was reported to the Commissioner's Office and Chilian that "the chemist had been conducting forensic drug analysis for over eight years and during that time had been a stellar, reliable employee with a reputation for diligent work, long hours and most significantly, the accurate and efficient analysis of samples. All the samples were tested and no samples were missing. [REDACTED]

[REDACTED] Lab supervisors believed that the analysis of the samples, without following appropriate protocol, was simply a result of the chemist's desire to reduce the backlog of requests for testing. There was no question concerning any other motive."

The investigation's conclusions noted that "based upon a preponderance of the evidence collected during the course of this investigation through interviews and review of documentation, it can be concluded that Dookhan failed to follow Lab protocols for the transfer and documentation of samples for testing, and subsequently created a false record of said transfers." The investigation noted that Han and Nassif had not reported this incident to DPH Commissioner or General Counsel because they did not appreciate its potential legal significance and because of their opinion that the test results had not been affected. The conclusion of Lab leadership that the samples had been accurately tested was based upon a number of factors, including the standing and work history of Dookhan. The chemist had been conducting forensic drug analyses for the MDPH for more than eight years at that time, and had a reputation for diligent, accurate, and efficient work.

#### *Notification of Legal Community*

Beginning on January 31, 2012, the Governor's Legal Counsel notified Norfolk County District Attorney Michael Morrissey and the United States Attorney General Carmen Ortiz, as well as the Massachusetts District Attorneys Association. MDPH General Counsel followed up with the Norfolk County District Attorney's Office and the U.S. Attorney General's Office, Massachusetts District, and retests of samples were conducted when requested.

In February 1, 2012, recognizing the potential breadth of legal impact of the violations of chain of custody, Bureau leadership sent a letter to the Norfolk County District Attorney detailing the irregularities. The MDPH notified the Norfolk County District Attorney that there was no evidence that

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the chain of custody infractions had an impact on the integrity of the samples or of the accuracy of the sample analysis.<sup>8</sup>

In early February 2012, MDPH General Counsel Donna Levin (Levin) communicated with Jean Marie Carroll, the Deputy District Attorney (Carroll) in the Norfolk DA's Office where the cases involving the 90 samples were at issue. Carroll indicated on February 14, 2012 that given the information relayed to her about the breach in protocol, Dookhan would not be called to testify in these cases or any cases in Norfolk County. Levin and Carroll discussed requests for retesting of samples for cases going to trial and retesting was done as requested. Levin also spoke with Attorney Jim Lang (Lang) in the United States District Attorney's Office about a federal case involving Dookhan but unrelated to the 90 samples. Lang requested retesting of pertinent samples, which was completed as bid.

Chilian advised Han and Nassif that Dookhan should not testify on the cases involving any of the 90 samples and to advise the Legal Office if she was subpoenaed. MDPH's understanding is that Dookhan did not testify in any of these cases. MDPH has reviewed a log of Dookhan's time spent in court on various cases unrelated to the 90 samples. However, this document does not indicate whether a given trial went forward or whether Dookhan testified. MDPH Office of the General Counsel is conferring with the AGO to determine if and when Dookhan has testified in any case since June 2011.

On February 21, 2012, Han sent a follow up letter to the Norfolk County District Attorney with additional details on the results of the investigation. The February 21 letter was disseminated to all County District Attorneys offices in the Commonwealth.

#### *Departure of Dookhan*

While the investigation report and outreach plan were being vetted, and upon confirmation that a significant breach of protocol by Dookhan occurred, the MDPH began proceedings to end her employment. Effective February 21, 2012, pending a Show Cause Hearing, the MDPH placed Dookhan on a paid administrative leave of absence. Dookhan's MOSES union attorney accompanied and consulted her in meetings with EOHHS HR/Labor regarding the terms of her resignation. Factoring in the desire to end Dookhan's employment in a timely way without a lengthy union challenge and her prior positive work record, MDPH agreed to a separation. In consultation among the Bureau, the Commissioner's Office, General Counsel and EOHHS HR/Labor, and in the interest of avoiding a prolonged termination process with uncertain outcome, the MDPH elected to accept Dookhan's resignation on March 8, 2012. The parties agreed to a separation agreement effective March 9, 2012.<sup>9</sup>

#### ROOT CAUSE AND GAPS ANALYSIS

On August 31, 2012, the MDPH convened a team of senior leaders from across the Secretariat and the Agency to complete a review of circumstances that surrounded the improprieties at the Drug Lab involving Dookhan.<sup>10</sup> This Team conducted interviews of key Bureau of Laboratory Sciences leadership, including Han, Nassif, and a former Acting Bureau Director (Dr. Alfred DeMaria). The Team reviewed policies and procedures and assessed compliance with optimal laboratory standards. The Team developed a comprehensive process mapping tool to understand key problems and vulnerabilities

<sup>8</sup> Please see letters to Norfolk County District Attorney Michael Morrissey attached, dated February 1 and February 21, 2012.

<sup>9</sup> Please refer to copy of settlement agreement in AD personnel file for terms/conditions, as well as her letter of resignation.

<sup>10</sup> Team members included: Commissioner John Auerbach; Deputy Commissioner Monica Valdes Lupi; General Counsel Donna Levin; Iyah Romm, Director of Policy and Strategic Planning, Bureau of Health Care Safety and Quality; James Montgomery-Hyde, EOHHS HR Director; Dr. Al DeMaria, Chief Medical Officer, Bureau of Infectious Disease Prevention and Response.

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that may have contributed to unidentified irregularities. Additionally, the Team has developed an understanding of possible root causes and potential quality assurance and quality control gaps.

As stated above, the Forensic Drug Laboratory utilized the *SWGDRUG* standards to guide its work. However, while *SWGDRUG* provides some minimum generalized direction, it lacks specificity in expected action steps. For example, the standards require that protocols exist to insure the integrity and security of the evidential material but do not detail what policies, procedures, or protocols should include. Therefore, in considering the deficiencies of the forensic drug laboratory, our analysis includes both comparisons with *SWGDRUG* minimum standards, as well as a higher level of expectation of performance of the agency.

*The Inherent Dangers within Laboratory Settings*

Within the Forensic Drug Laboratory, as in many other laboratories, there are staff who work somewhat independently at the laboratory bench-top. Often without a supervisor within the immediate vicinity, staff are trusted to carry out a number of key tasks such as weighing drug samples, performing certain chemical tests, and describing the observable physical characteristics of a sample. There are safeguards that are put in place to limit the likelihood of malfeasance or poor quality work. These include: 1) careful review by a supervisor of the required written documentation of essential sample characteristics by the chemist for each test performed, and 2) periodic random re-testing of the chemists' results by a supervisor. At the Forensic Drug Laboratory, these measures and others were taken yet they failed to identify the alleged wrongdoing of Dookhan. These events demonstrate the damage that can potentially be done by a rogue employee who can maliciously manipulate the testing and documentation process to minimize the chance of discovery – as may well have been the case in this instance. Certain conditions at the Forensic Drug Laboratory might have enhanced this vulnerability. For example, there were numerous instances when chemists worked alone rather than as teams or side-by-side.

*Systems and Infrastructure*

In addition to the inherent vulnerabilities potentially associated with a skilled but rogue employee, it is also clear that there were weaknesses in the Forensic Drug Lab, which could and should have been addressed:

- **Insufficient Safeguards on Access to the Evidence Room and Safe:** In its initial investigation from December 2011 – February 2012, MDPH identified that insufficient standards were in place regarding access to drug samples. Prior to changes in protocol initiated subsequent to the Dookhan protocol breach, access to the Evidence Room was gained either through a keyed lock or through a palm reader. Chemists and Evidence Officers both had key and palm access. After close of business, an alarm in the Evidence Room was activated and only the Lab Supervisor and Division Director had the override codes. By policy, chemists were not allowed to enter the Evidence Room without an EO present. However, the palm reader system did not record a log of entries or a mechanism to flag inappropriate entrance. Upon investigation of Dookhan in June 2011, the Lab Supervisor (Salemi) noted that the Evidence Room keys he had provided to the chemists also opened the evidence safe. Upon discovery, Salemi replaced the lock to the evidence safe. Salemi noted at the time of his interview in December 2011 that he did not believe that chemists were aware that their keys also opened the safe.

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In light of recent information regarding Dookhan's admission of malfeasance, it appears that she had access to areas of the lab without authorization, and she took samples without following the required documentation protocols.

- **Absence of Camera Surveillance:** The evidence regarding efficacy of surveillance cameras in the prevention of tampering is equivocal. Nonetheless, surveillance cameras may have been a tool to deter grossly inappropriate or negligent activities, including entering restricted space without authorization. However, cameras would have been less effective for ensuring that tests were being conducted appropriately at the bench. Surveillance cameras may be beneficial for retrospective review after identification of irregularities or potential malfeasance, and for monitoring activities of chemists and EOs who work after normal business hours. Several other laboratories at the Hinton facility have surveillance cameras often as a requirement of federal or laboratory accreditation. Examples include bioterrorism, viral isolation, and tuberculosis.
- **Absence of a Mechanism to Detect or Monitor Adverse and Poor Quality Events:** As a component of QA/QC, there must be a mechanism that detects unusual or unacceptable occurrences related to quality. One routine method of tracking such events in a laboratory setting is through the use of a discrepancy or adverse events log. A discrepancy in this setting refers to instances in which the results of two (or more) chemists are discordant. At the Drug Lab, samples inconclusive for reasons of discord are returned to the *Primary* chemist who is principally responsible for resolving the cause of the discrepancy. This process is referred to as a "return." Anecdotally, co-workers noted that there was an increase in the number of returns associated with Dookhan beginning in January 2011, but due to the lack of a centralized process for tracking these instances, this allegation cannot be confirmed.<sup>11</sup> Returns are an important indicator of a potential lapse in test quality, but the Drug Lab did not have a written mechanism in place to capture and monitor these data routinely. Unlike the Forensic Drug Lab, virtually all of the other 17 laboratories at the Hinton Lab maintained a form of discrepancy or adverse events log. Maintenance of such a log as well as ongoing tracking of volume of routine concerns or issues should have been a standard practice in the Forensic Drug Lab. *SWGDRUG* quality control and quality assurance standards require a process to identify and monitor such occurrences but do not specify a preferred method.

*Management, Supervision, and Expertise*

- **Lack of Close Supervision and Oversight:** While well trained in chemical analytic work and laboratory oversight, Nassif did not have experience with the Forensic Lab prior to the Lab's transfer to her Division. Nassif relied heavily on Salemi, the Drug Lab Supervisor, for subject matter expertise. Nassif met with Salemi on an *ad hoc* basis, not during regularly scheduled meetings. Initially Nassif chaired a monthly meeting of all Lab staff. Yet, after the *Melendez-Diaz* decision in 2009, Nassif reported that she found it increasingly difficult to meet with staff because of their increasing commitments requiring their participation in court proceedings.

The lack of careful review and oversight is clearest with regard to the insufficient attention to Dookhan's unusually high volume of testing. From January 1, 2004, through December 31, 2011, Dookhan was assigned 25.3% of all analyses in the Drug Lab and completed 21.8% of all

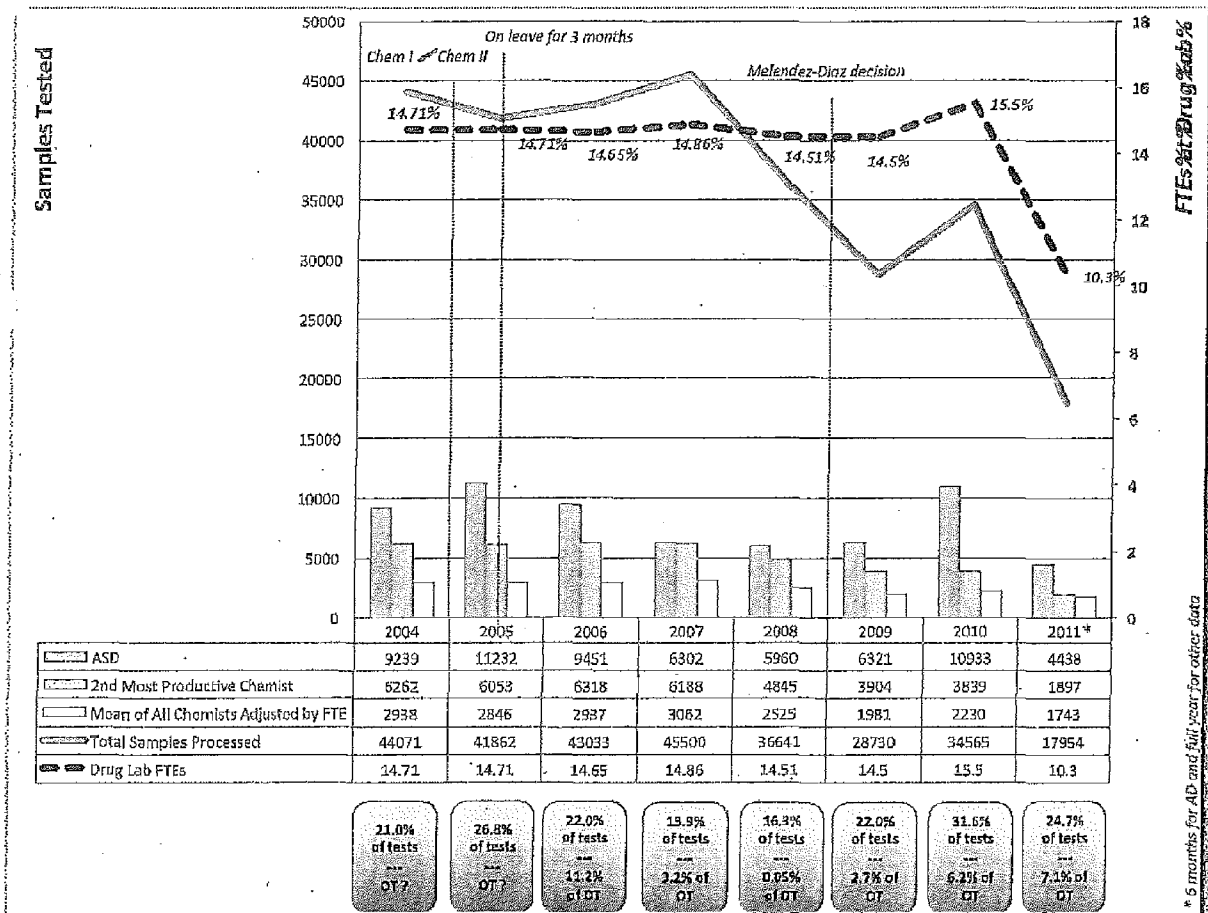
<sup>11</sup> See memorandum attached to Major James M. Connolly, FSG from Dr. Guy Vallaro, FSG dated July 19, 2012 in which Dr. Vallaro describes a series of conversations with Michael Lawler (Chemist 3), Peter Piro (Laboratory Supervisor 1), Ken Gagnon (Laboratory Supervisor 3), and Charles Salemi (Laboratory Supervisor 2) after assuming leadership of the Lab.

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tests conducted by staff. The *Melendez-Diaz* decision in 2009 significantly hindered the overall volume of testing at the Lab because chemists spent more time in court. Despite the significant decrease in overall testing from 2008 to 2009 (a reduction of more than 16,000 samples), Dookhan's productivity remained relatively stable, decreasing by only 305 tests assigned. In 2008, Dookhan completed 16.3% of all tests in the Lab, 22.0% of the total in 2009, 31.6% of the total in 2010, as well as 24.7% of the annual total in 2011 despite only testing from January 1 to June 21. These indications should have prompted closer attention to her work.

During interviews on September 4, 2012, Valdes Lupi and Montgomery-Hyde were told by Nassif that there were concerns that Dookhan's productivity seemed unusually high. Nassif noted that as a result, Salemi conducted a limited audit of Dookhan's work (*date*), which revealed no technical inconsistencies or other quality-related problems. Nassif reported that this audit consisted of repeating the primary and confirmatory tests for selected samples previously tested by Dookhan. MDPH and EOPSS are collaborating to identify written confirmation of this audit. No subsequent audits targeted Dookhan differentially from other chemists.



Dookhan's consistently high testing volumes should have been a clear indication that a more thorough analysis and review of her work was needed.

- **Lack of Specialized Quality Control Oversight:** In 2007, as resources decreased, the centralized Hinton Laboratory QA/QC oversight team was phased out. While at the time prioritizing the retention of front-line staff and assigning the quality control monitoring to each individual laboratory seemed the optimal decision, processes for ensuring quality and validity of

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work were not sufficiently maintained in the Forensic Drug Laboratory. MDPH is in the process of locating and subsequently reviewing the oversight team's audits of the Drug Lab.

- **Poor Judgment Regarding the Response to the Violation of Mandated Protocols:** The June 2011 irregularities involving chain of custody should have been reported to the Commissioner's Office and the Office of the General Counsel immediately upon identification at the Forensic Drug Laboratory. Han acknowledges that she and Nassif did not recognize the significance of the breach and its impact on court cases. Han and Nassif received a cautionary letter in March 2012 disciplining them for this lack of disclosure, and were reprimanded for their failure to disclose the breach in a timely manner. Nassif was placed on administrative leave effective August 30, 2012.

The DPH Central Office responded appropriately in December 2011, by conducting an investigation of the June breach, notifying the Norfolk County District Attorney's Office regarding the 90 cases and beginning the process to terminate Dookhan. However, the scope of its investigation was too narrow. A broader, more thorough investigation of the operations of the Forensic Laboratory was indicated. Had a more comprehensive investigation been conducted, the issues uncovered by the EOPSS/AGO investigation might have been detected earlier.

#### PROACTIVE REVIEW OF QA/QC IN OTHER HINTON LAB FUNCTIONS

In recognition of the need for proactive assessment of quality assurance and quality control practices throughout the Hinton Lab, the MDPH has engaged the services of the Association of Public Health Laboratories and the Centers for Diseases Control and Prevention to conduct a multi-day, on-site audit of all 17 remaining public health laboratories. In addition, most of the 17 laboratories are certified by federal oversight agencies, which regularly audit and assess the quality of their work. DPH will request that each of these oversight agencies return to the Hinton Lab to reassess the quality of services provided. These multiple external expert evaluations will include the review of policies, procedures, protocols and staffing ratios and will assess compliance with national and international standards.

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# **GOLDBACH ATTACHMENT D**

## OVERVIEW

- Gas Liquid Chromatography/Mass Spectrometry Principles
- Operator Scheduling
- Receiving Samples
- Instrument Preparation and Tuning/Instrument Quality Control
- Running Samples/Method Quality Control
- Analysis of Results
- Reporting Results
- Filing Paperwork, Data Backup And Data Retrieval
- Laboratory Expectation of the Analyst

## GAS LIQUID CHROMATOGRAPHY/MASS SPECTROMETRY (GLC/MS) PRINCIPLES

GLC/MS is the primary form of spectrometry employed by the Drug Laboratory to structurally identify controlled substances. Unlike other true forms of spectroscopy that are non-destructive in nature, mass spectrometry does not rely on the selective absorption of electromagnetic radiation. Rather, its spectrum is largely determined by the energetics of unimolecular reactions. Structural information comes from moderately predictable fragmentation patterns, the ions of which can be related back to the compounds original structure.

GLC/MS (referred to as GC/MS hereafter) is a two-stage instrument. The GC portion separates the individual components of a mixture. A vaporized sample will undergo a process of dissolving in the stationary liquid phase and then reevaporizing into the mobile gas stream. Dissimilar distribution coefficients in the two phases are the driving force for GLC separation. Retention times are affected by the compound's boiling point (low boilers have higher vapor pressures and travel through the column faster than high boilers), column temperature, the carrier gas flow rate, stationary phase selection (polarity), and column size (inner diameter, film thickness and length).

The chromatographic peaks are detected via an electron impact-mass selective detector (EI-MSD). EI-MSD's essentially perform three basic functions: ionization in the source body, mass separation in the quadrupole and ion detection by an electron multiplier. All three functions are performed under vacuum conditions as components elute from the column (10-5 torr accomplished with a mechanical pump or roughing pump in series to a high vacuum pump). Low operating pressures are necessary for an adequate mean free path (an ion's average distance traveled between collisions). Ions must be able to travel from their point of origin to the detector without colliding with air, non ionized/ionized molecules or the instrument. Collisions mean an ion may not be detected at all (scattered or neutralized) or incorrectly identified because of intermolecular reactions.

Electron impact (ionization) is the method by which ions are formed and MSD, as the name implies, selectively measures the abundance of each ion one mass at a time. The ion source is where electrons from a heated filament bombard eluting components. Ion source filaments emit electrons of a certain energy level (70 eV for "classical" spectra) using a specific emission current that determines the number of electrons used for ionization. Ionization removes one valence shell electron from the analyte molecule, creating a positively charged ionic species known as the parent compound or molecular ion ( $M^+$ ). (As the electron passes close to the molecule, the negative charge of the electron repels and distorts the electron cloud surrounding the molecule. This distortion transfers kinetic energy from the fast moving electron to the electron cloud of the molecule. If this process transfers enough energy, the molecule will eject a valence electron and form a radical cation.) The molecular ion is the compound's nominal mass, measured in unified atomic mass units (u), with the most common isotopes represented in nature. Even though 70eV is used to form the molecular ion (ionizing approximately 0.01 % of the sample), only a small portion of that energy is transferred to the

molecule to create a positive ion radical (cation-radical). These ions exist in an excited energy state and are very reactive as they try to find a lower energy state. (Electron capture, creating a negative ion radical (anion-radical), does not occur to a significant extent since bombarding electrons have an excessive amount of translational energy to be captured.) Once a compound enters the ion source (See Figure 1) and becomes ionized, it typically fragments into other cations, neutral species and radicals (species with no charge but with an unpaired electron). Each ion has a particular ratio of mass to charge, or  $m/z$  value. For most ions the charge is 1 and the mass to charge ratio ( $m/z$ ) is simply the mass of the ion. Charged species are then pushed out of the source into the quadrupole by the repeller in conjunction with voltages applied to the ion focus lens and entrance lens. (The repeller possesses a positive voltage that repels cations out of the source, affecting the number of ions leaving the source and their velocity. If the voltage is set too high, too many ions at too high a velocity will leave the ion source. This may result in precursors or poor mass filtering, peak splitting and poor low mass resolution. If the repeller is set too low, too few ions will leave the source, resulting in poor sensitivity and poor high mass response).

A quadrupole mass filter consists of four poles, or rods. In cross-section of a quadrupole, the four rods are arranged at the corners of a square. The four poles were formally Molybdenum rods milled to a hyperbolic shape. The 5973 MSD uses a glass monolith with a hyperbolic cross-section that is coated with a thin layer of gold to create an electrically conductive surface. Diametrically charged rods work in tandem as a set. One set has a positive DC voltage applied to it ("positive rods"). The other set has a negative DC voltage of the same value ("negative rods"). In addition, all four rods have a superimposed RF voltage of alternating polarity, with the RF voltage 180 degrees out of phase for each set of rods. The  $m/z$  value transmitted by the quadrupole is determined by the electric field produced by the DC and AC voltages. If the mass of the ion is too low, the ion is pulled off axis toward the positive rods and never passes out the exit of the quadrupole mass filter. If the mass of the ion is too high, the oscillations toward the negative rods increase until the ion hits a negative rod or is ejected from the side of the mass filter. Only if the ion has a particular mass will its oscillations be stable in the mass filter and only this mass will exit the end of the mass filter to be detected by the electron multiplier. The mass spectrum is scanned by varying the amplitude of the DC potential ( $U$ ) and radio frequency potential ( $V$ ), while keeping the RF frequency and  $U/V$  ratio constant. Tuning the MSD optimizes the  $U/V$  ratio and the calculated result is saved in the tune report file. The concepts of  $amu$  gain and offset are represented in Figure 2, otherwise known as the Mathieu Stability Diagram. It is a plot of DC voltage versus RF voltage and defines an ions stable trajectory in the quadrupole. The slope ( $U/V$ ) mathematically represents  $amu$  gain and  $amu$  offset is the DC intercept on the y-axis. Increasing/decreasing the  $amu$  offset will have an equal effect across the entire mass range. Increasing/decreasing the  $amu$  gain will have an effect on low mass but a much, much greater effect on high mass. The determined values for  $amu$  gain/offset effect abundance and resolution by determining the cut-off for peak width

Positively charged ions exiting the quadrupole are focused through a detector-focusing lens. Ions are subsequently deflected into the electron multiplier, located off-axis to the analyzer, either by an X-ray lens or a High Energy Dynode (HED). Both function to accelerate ions into the multiplier and to reduce the number of stray particles entering the detector. In the 5973, a HED (at -10,000 volts) attracts positively charged ions exiting the quadrupole, generating electrons that are attracted to the more positive electron multiplier

(relative to the HED at -3,000 volts). The X-ray lens focuses positive ions into the electron multiplier. In either case, incoming ions hit the surface of the electron multiplier, liberating more electrons with every impact from the surface as they cascade down the horn. Every ionic particle that leaves the ion analyzer and enters the ion detector contains a given amount of electricity (10-19 coulomb per singly charged particle). As the number of ions arriving at the detector at a given moment increases, the amplified output of the detector increases proportionally. The electron multiplier performs signal amplification on the order of 10E5. At the end of the horn, the current generated by the electrons is carried out to a signal conditioning circuit. See Figure 3

Prior to every new run, the operator will tune the MSD. The tuning algorithm optimizes the performance of the MSD by maximizing sensitivity while maintaining acceptable resolution and accurate mass assignment. Stated differently, tuning will primarily perform four basic functions; to set voltages on ion source elements, to set amu gain and offset for correct peak widths, to set EM voltage, and to set the mass axis for proper mass assignment. Standard spectra tune is a tuning process that ensures a standard response over the full mass range. The tuning compound PFTBA (Perfluorotributylamine) produces a characteristic spectra that has mass 69 as the base peak and the relative abundances of mass 219 set between 30 and 99 % and mass 502 greater than 1%. Standard Spectra Tune optimizes ion source components only to maximize the abundance of mass 502. Standard Spectra Autotune (5971) is also referred to as Standard Spectra Target Tune (5973) since the relative target abundances of mass 50,131,219,414, and 502 are set at 1,55,45,3.5 and 2.5. That is, the 5973 MSD performs a target tune using standard spectra targets. Historically these targets have been used to duplicate spectral results from magnetic-sector instruments used in the 1970's when most of the commercial libraries were created.

### OPERATOR SCHEDULING

When an operator is assigned to work in the GC/MS laboratory, work is assigned on a first come, first serve basis. Operators with early morning schedules should assume they are responsible for setting up runs if samples allow. Partially full runs should be setup in anticipation of forthcoming samples. Likewise, those working later shifts are responsible for setting up runs of leftover samples and late arriving samples. Efficiency issues arise when one shift leaves work for the next shift, especially during the end of the month with respect to last minute submissions.

Operators and team leaders are assigned to a given instrument and are collectively responsible for its use. They are responsible for making arrangements with other operators of that instrument if they knowingly are not able to come to work or if special scheduling problems conflict with their ability to perform GC/MS duties. Bring any situation that is out of the ordinary to the MS Supervisor.

Scheduling also depends on how the instruments are functioning. If maintenance or repairs are required, operators will be relieved of their duties until their system is up and running. Operators needing to borrow another instrument should make arrangements in advance with the appropriate operator.

### RECEIVING SAMPLES

Samples are submitted to the GC/MS laboratory on a Drug Lab GC/MS control sheet along with their respective cards. The GC/MS staff is responsible for noting on the control sheet the day samples are received along with their initials acknowledging receipt. Samples are then separated into three separate categories: cocaine samples, heroin samples and all other samples. Analysts submitting samples to the all other category should make an effort to cluster as many like samples as possible on one GC/MS control sheet.

The physical characteristics of submissions need to be examined and operators should return samples that are not suitable for autosampling. An excessive amount of powder in a vial greatly increases the probability of getting a blocked needle. For example, an excess of 2-3 mm of powder should be discouraged as it greatly increases the probability of false negatives. The operator should question samples with negative results, in view of positive preliminary results. Is the sample really negative or did an autosampling malfunction occur? Such samples can be quickly screened under Top in the single injection mode or simply placed on a different run sequence after filtering. Solid materials, in excess of 3 mm, in either a residue or standard vial possess the possibility of damaging the syringe and causing a system fault that terminates the run.

Analysts/teams that work in the GC/MS laboratory must place their samples in chronological order and never give their samples special preference. Samples should not normally be taken out of order. One notable exception is at the end of the month for significantly older samples. Larger multiples should also be put aside during this time in favor of single samples to maximize the number of tested cases.

Certain compounds need to be submitted in the base form for chromatographic reasons. Analysis of these samples in their salt form gives split/non-symmetrical peaks and prevents the operator from getting an accurate retention time. The following samples should be returned to the primary chemist if not submitted in the base form: MDMA, methamphetamine, amphetamine, 1-benzylpiperazine, and phentermine.

### INSTRUMENT PREPARATION AND TUNING/INSTRUMENT QUALITY CONTROL

- The Auto-Liquid Sampler (ALS) rinse bottles must be emptied, washed out and refilled with the appropriate solvent. Waste bottles should be emptied and washed out.
- The injector septum must be replaced on every new run. Exercise extreme care not to strip the septum nut and split/splitless insert weldment. The first few turns should go on smoothly. If an excessive amount of resistance is encountered, back off the septum nut and restart the process.
- Printer paper must be replaced before every new run.

- The needle plunger should be lubricated with methanol daily and periodically cleaned with Kimwipes.
- Carefully install tower over the injection port. Make sure it is properly aligned and that the tower door is closed.
- On the day a sequence is initiated, perform PFTBA (perfluorotributylamine) Standard Spectra Tune in the following way.
  - ❑ On the 5973, go to View under instrument control (TuneMS under Top on the 5971) and hit Manual Tune. Go to File and Load Tune Values if the appropriate tune file is not already loaded.
  - ❑ Go to Execute and hit Spectrum Scan to quickly check for air leaks. If an air leak is not present, go to the following step.
  - ❑ Go to Tune and hit Standard Spectra Tune (standard spectra autotune on the 5971).
  - ❑ If the tune results are satisfactory, go to File and Save Tune Values. Save tunes in either the "Stune.u" (5973 MSD) file or "Atune.u" (5971 MSD) file.

Make sure the following parameters are within specified tolerance levels or set properly: mass assignment, unit mass resolution, peak widths, mass 69 abundance and relative abundance of 219 and 502, isotope ratios, foreline pressure, source and quadrupole temperatures. Readings outside the established range should be reported to the MS Supervisor. Peaks in the profile scan should be symmetrical. Air leaks can also be detected in the spectrum scan portion of the tune. Note day-to-day trends in the electron multiplier voltage and lens voltages. Report any significant increase/decrease to the MS Supervisor. Higher tune voltages may indicate the need for a source cleaning or a problematic electron multiplier.

#### 5973/5971 Relative Ratios for Prominent Masses

	5973	5971
m/z 69	base peak (100%)	base peak (100%)
70/69	> 0.5 but < 1.6 %	0.54- 1.6 %
219/69	> 40% but < 85 %	> 30 %
220/219	> 3.2 but < 5.4 %	3.2- 5.4 %
502/69	> 2.0 % but < 5.0 %	> 1 %
503/502	> 7.9 but < 12.3 %	7.9- 12.3 %

Source temperature: 230 C	Determined by the transfer line temperature setting and convection efficiency.
Quadrupole temperature: 150 C	Automatically set
Foreline Pressure: 40-60 mTorr	

- Mass 69 abundance: > 200,00 but < 400,000
- Mass peak width (PW50) should be 0.55 + 0.1 (default) for the 5973 and 0.50 + 0.1 for the 5971 MSD.
- Mass assignment can vary by  $\pm 0.1$  amu on each tuning mass and isotope mass.
- Note isotope ratio tolerances above. Isotope ratios for 70/69, 220/219 and 503/502 should be close to 1, 4, and 10. The 69 fragment ions have one carbon atom, the 219's have four and the 502's have nine. The natural abundance of C13 is 1.1%, which

explains the observed isotope abundance (1,4, and 10%) one mass unit away (due to the extra neutron of C13). Proper isotope ratios can be used to indirectly assess unit mass resolution.

- Agilent guarantees that their quadrupole mass analyzer will achieve unit mass resolution throughout the mass range. Unit mass resolution is achieved because peak widths are kept fairly constant throughout the mass range. The analyst can use two additional criteria (aside from isotope ratios) to assess unit mass resolution. The first criterion uses a 50% valley separating peaks one mass unit apart, in conjunction with peak width or Full Width at Half Maximum (FWHM). The second criterion experimentally measures delta M using the isotope apex of each tuning mass. In the first criterion, if the height of the valley is above half height or 50%, masses are not resolved since there is no peak separation at FWHM. Using the manufacturer's defined range for peak width (FWHM) ensures unit resolution. Unit resolution means two adjacent peaks in a mass spectrum are resolved sufficiently so that the peak height of either peak is not appreciably affected by overlap. In the profile scan of the tune (the top portion showing an extracted ion chromatogram) check that adjacent isotopes are resolved. Historically, the height of the valley between isotope peaks is around 5% or less relative to the larger peak (25% or less relative to the smaller isotope peak). In the second criterion, the laboratory measures unit mass resolution (delta M, the amount of separation between two ions of similar mass). For low resolution quadrupoles unit resolution allows the instrument to discriminate between peaks 1 mass unit apart. On the bottom part of the tune that shows a full spectrum scan, isotopic masses should be one mass unit apart. If unit mass resolution is not achieved, notify the supervisor for corrective measures. Peak width and target abundance may need to be adjusted for a satisfactory tune or a source cleaning may be necessary.
- Air leaks above 5% should be reported. On the 5971 MSD, an air and water check will give relative abundance for water (mass 18), nitrogen (mass 28), oxygen (mass 32), and carbon dioxide (mass 44). The 5973 MSD will give the relative abundance of water and nitrogen. Oxygen and carbon dioxide can be approximated from the graphical output. If an air leak is present, the ration of m/z 28 to m/z 32 will be about 5:1. See Figure 4 for a list of contaminants and their possible source of origin.
- Electron multiplier voltage (EMV) should be less than 2500. 3000 is the upper maximum. Notify the supervisor if the EMV is above 2500.
- At the present, the relative target abundance (on the 5973 MSD) for mass 50,131,219,414, and 502 are set at 1,55,45,3.5, and 2.5. The 5971 MSD does not give operators access to these parameters.
- The full spectrum scan should contain < 200 peaks (typically 90-150). Report tunes with an uncharacteristically high number of peaks.
- Operators on the 5973 may perform a system verification tune if questions arise about the status of the MSD. This evaluation allows the analyst to check the MSD doing a maximum sensitivity tune (maximizes the abundance of tuning mass 69,219 and 502) not a standard spectra tune. It will not verify if the last standard spectra tune passed all Drug Laboratory standards but it is a good starting point as a diagnostic tool.
- Individuals who make use of the equipment are responsible for determining whether or not the instrument has been qualified for operation. Instrument



quality control (MSD tune) and method quality control (blanks and standards) are the determining factors for use.

### RUNNING SAMPLES/METHOD QUALITY CONTROL

Quality control for the GC/MS laboratory goes beyond tuning the detector. Operators must insure carry-over does not exist between samples or between a standard and sample. This is accomplished by running blanks (the solvent that the sample is dissolved in) between all vials, both standards and samples. For blanks with carry-over above column bleed levels, the following sample should be re-analyzed. After time, fresh blanks need to be prepared due to material leaching out of the cap's septum. The origin of these peaks can be explained and are not considered to be of any significance. By the same token, standards should be recapped after one or two uses if they are to be reused for weeks and months at a time. Some samples/blanks may have peaks that come from late eluters. As long as the origin of these peaks can be explained and they're not a controlled substance, then repeating these samples is not necessary. However, a controlled substance must be analyzed using the appropriate method if it is to be reported.

Samples are always bracketed by standards. Bracketing standards are used after every tenth sample when possible. Plus or minus a few samples is acceptable. This ensures the instrument is operating properly at the beginning, middle and end of the sequence with respect to retention time and spectrum. If the instrument malfunctions at the very end of a sequence, the majority of the samples can be analyzed up to the last satisfactory standard. If one of the standards in the middle does not come out correctly (i.e. temporarily plugged needle), the operator can use the next standard as a bracketing standard assuming nothing else is out of the ordinary. Running standards is also crucial for new compounds. For example, it may be possible to run a known standard and get no spectral match if the compound breaks apart in the injection port or if the compound reacts with the solvent. In the latter case, using a different solvent may be necessary.

The batch sheet is filled out using blanks after every sample and standard. In the case of a multiple, a blank must be inserted after every fifth sample vial. (If the square root sampling of a case is not an even multiple of five, blanks can be inserted more or less to evenly divide the case). There are times when double blanking may be useful. For example, carry-over may be more likely to occur at the beginning of a sequence or when a sample is known to be very concentrated. A typical sequence may look as follows.

Line	Type	Vial	Data File	Method	Sample Name
1	Sample	1	100101	DRUGS	BLANK
2	Sample	2	100102	DRUGS	BLANK
3	Sample	3	100103	DRUGS	STANDARD
4	Sample	4	100104	DRUGS	BLANK
5	Sample	5	100105	DRUGS	SAMPLE 1
6	Sample	6	100106	DRUGS	BLANK
7	Sample	7	100107	DRUGS	SAMPLE 2

8	Sample	8	100108	DRUGS	BLANK
9	Sample	9	100109	DRUGS	SAMPLE 3-1
10	Sample	10	100110	DRUGS	SAMPLE 3-2
11	Sample	11	100111	DRUGS	SAMPLE 3-3
12	Sample	12	100112	DRUGS	BLANK
13	Sample	13	100113	DRUGS	SAMPLE 3-4
14	Sample	14	100114	DRUGS	SAMPLE 3-5
15	Sample	15	100115	DRUGS	SAMPLE 3-6
16	Sample	16	100116	DRUGS	BLANK
17	Sample	17	100117	DRUGS	SAMPLE 4
18	Sample	18	100118	DRUGS	BLANK
19	Sample	19	100119	DRUGS	SAMPLE 5
20	Sample	20	100120	DRUGS	BLANK
21	Sample	21	100121	DRUGS	STANDARD
22	Sample	22	100122	DRUGS	BLANK

#### Miscellaneous Instructions

Care should be taken not to divide the same defendant's samples among different operators. This will reduce the loss of personnel to the laboratory in the event of a subpoena. Significantly older samples only take priority at the end of the month. Operators should check that the laboratory numbers on the GC/MS control sheet match the numbers on the vials and card. Lastly, check the GC/MS control sheet for special instructions that advise the operator to use a specific method. Standards, samples and blanks should be analyzed using the same method. The only exception is for very weak samples, in which case a modified method incorporating a lower split ratio or higher electron multiplier voltage is used with all other parameters remaining constant.

After the sequence for the batch sheet is determined, operators need to note the setup date, the setup analyst, the data file range of numbers to be used (numerically incremented with each sequence), and the sequence name for the run. The sequence name is the day of the run preceded by the instrument's assigned letter (i.e. E102402.s for system 5). Data files are organized using the date with underscores (i.e. 10\_24\_02). The sequence file name and the organizing data file name must share the same date.

The sequence is then typed into the instrument under TOP and saved. On the 5973, hit View under Instrument Control and select Top. In Top (5973 and 5971) select Sequence and load. Load the Default.m sequence and make the necessary modifications that describe the order of injection, what the data corresponds to (its laboratory number), where the data should be stored and the method for acquisition/integration. Once the sequence has been typed in, select OK to exit and return back to TOP. Then select SEQUENCE and SAVE to save the changes made to default.m. It's very important not to save the new sequence as default since default is a starting template for all future sequences. Input the correct sequence name and hit OK. Sequence files are saved either with a C, D, or E prefix, followed by the date and dot S (i.e. C030102.S, D092502.S, and E101902.S). The instrument automatically inserts the dot S.

Sequences are saved in the directory under `hpcchem/1/sequences/`. Then select SEQUENCE under TOP and LOAD AND RUN SEQUENCE. Highlight Full Method, choose overwrite on/off (This will allow the operator to restart the instrument if a file is created. A file is created if the sequence downloads parameters for that sample, even if the no data acquisition occurred.), type in the operator's initials, and input in the correct Data File Directory Name. Data files for that sequence must be organized as a whole using the date in the following format: 03\_01\_01. For the 5973 MSD the complete data file directory extension should look something like `D:\system4 (system5)\03_01_01\185236.d`. For the 5971 MSD, the extension is `C:\hpcchem\1\data\03_01_01\185236.d`. (Sequence files end in dot S, data files in dot D, method in dot M, and tune files in dot U). Hit OK and under TOP select SEQUENCE and SAVE to re-save the sequence. Print sequence by selecting SEQUENCE, PRINT SEQUENCE, and BRIEF FORMAT for the 5973. For the 5971, select SEQUENCE and PRINT BRIEF FORMAT. Double-check all data entry work. Make sure the vials in the tray are in the correct position and correctly labeled. The sequence can be started under TOP by selecting SEQUENCE and RUN.

After the sequence is started, it is the operator's responsibility to make sure the first blank and standard come out satisfactorily. A multitude of malfunctions could occur at the beginning of a sequence and the operator should check the instrument repeatedly throughout the day if possible. If the system malfunctions at the beginning of a sequence, resume the instrument if possible. Otherwise, notify the MS Supervisor. If the problem is not addressed until the next day, re-tune the MSD. Make appropriate changes to the sequence file name and the data file path. If the system malfunctions at the end of the sequence, restart the instrument to finish the sequence. If the instrument is inoperable, samples can be analyzed up to the last completed standard.

### ANALYSIS OF RESULTS

Operators are expected to analyze data results by comparing an unknown with known authentic standards present in every run. A positive identification is made when the unknown and standard have consistent retention times (with + 2.5 %) and mass spectral (acquired in full spectrum scan mode) fragmentation patterns. For unknown samples a minimum of two tests are required for a positive confirmation.

The GC/MS laboratory custom report macro employs a PBM (Probability Based Matching) search algorithm developed at Cornell University by Professor Fred McLafferty. Match quality, as seen on every report, is only used as an interpretative guide to the unknown's identity and is not the determining factor for a positive identification. Confirmations are always made by the analyst not the instrument. Far too many factors affect match quality and no search strategy or routine can compensate for these variables. User created libraries greatly improve match quality but ultimately all confirmations are based on comparisons with known standards.

As mentioned earlier, carryover of the controlled compound of interest is not acceptable before an unknown. Carryover after a multiple and before a standard is not allowed since carryover in this position indicates it was possible to have carryover during the multiple.

Occasionally an unknown may have a peak of interest that does not integrate. If the abundance level of the TIC is below 100000, no report will be printed for this peak. It is the responsibility of the operator to handle this situation and not ignore the peak. One approach to this problem involves using data analysis to manually analyze and print the results. The report format will be slightly different but is perfectly legitimate. (Operators should not manually change the integration threshold for that method without supervision.) If manual integration does not give a satisfactory spectrum, the sample will need to be re-analyzed. The operator has the option of re-analyzing the sample on a more sensitive method or, if necessary, it can be returned to the primary chemist for concentration and then re-analyzed on the same or more sensitive method.

In the event GC/MS results are out of character with preliminary results, consult the primary chemist. A second analysis may be necessary to rule out initial inconsistencies that may exist.

Data analysis will integrate peaks of the total ion chromatogram using an apex minus start of peak subtraction technique. This is particularly useful for weak samples to remove background ions. However, some samples may need manual integration if chromatographic fronting exists since baseline subtraction could remove ions of interest. Manual integration may also be necessary for poorly resolved peaks that share common ions.

### REPORTING RESULTS

Reporting results consists of filling out the GC/MS control sheet and the sample card assigned to every case. On the top of the control sheet, next to date analyzed, the operator needs to place the date the run was analyzed (the day the chemist sits down and reviews the results) and the sequence file name for retrieval purposes. If a sample needs to be returned for crystal tests or quantitation, the date analyzed for the control sheet remains the GC/MS analysis date. (The submitting analyst will write on the front of the card the analysis date/results the day he/she finally completes the analysis of the crystal tests or quantitation.) Fill out the remainder of the sheet by noting the retention time of the standard (under MS comments), the operator initials (under MS BY), the retention time of the unknown and the match quality (under RT/MQ), and lastly the findings under results.

Under the comment section of the GC/MS control sheet, analysts may note any other controlled substance of a lower class. These findings do not get reported without a standard but making note of them can be helpful. If more than one controlled substance of an equal class is present, the stronger or more prominent peak is usually identified. Occasionally more than one controlled substance is reported if it is thought to be a concern, in which case the appropriate standards are used (i.e. mixtures of ketamine, MDMA, PCP and methamphetamine).

The front of the sample card is filled out by noting the date analyzed (upper right hand corner), the number of tests performed by the GC/MS lab (gas chromatography counts as one test and mass spectrometry as another) and the finding. On the back of the card the operator notes if the GC/MS was positive/negative and the sequence file name. One must also write in the results and the analysis date here if the finding/analysis date is not reported

on the front. For example, the card needs to be returned for crystal tests or THC quantitation.

### FILING PAPERWORK, DATA BACKUP AND DATA RETRIEVAL

Completed cards are returned to the evidence office for certificate generation. Two copies of digital data should exist at all times, one on the acquiring instrument and one on the stand-alone Dell. Data backup should be performed as soon as possible. Hitting the data backup icon on the 5973 instruments and the compact disc icon on the 5971 performs data backup of the completed sequence. Before initiating data backup, the operator should be certain transcriptional errors do not exist. Proofreading, double-checking, etc should be performed before the sequence is initiated and at the very least when the run is completed. Correcting transcriptional errors after data is acquired is quite involved and should not be performed by operators. Address the issue with the MS Supervisor or simply make personal notations on all applicable paperwork. At the end of every month, the GC/MS Laboratory will store all analytical results on recordable compact discs (CD-R). Two CD-R copies are created: a backup copy and an archive copy. Duplication is necessary throughout the process for unforeseen problems.

A hardcopy of all analytical results is also saved. One copy of the tune report stays in the GC/MS Laboratory in a tune report binder located next to every instrument. A second copy of the tune report stays with the instrument hardcopy. The analyzing chemist, for court discovery motions, can keep a third copy. One copy of the sequence batch sheet should stay in the GC/MS Laboratory and the analyzing chemist should keep a second copy. Three copies of the GC/MS control sheet need to be saved: one for the analyzing chemist, one for the GC/MS Laboratory and one for the submitting chemist.

Data can be retrieved from the hardcopies or from the backup/archive compact discs. Electronic retrieval is only possible from the 5973 instrument (systems 4,5,6) under Data Analysis. Go to File, Load Data File, select the appropriate drive for reading compact discs (E:\), select the correct system, select the correct Data File Directory Name and the correct data file. Once the data file is loaded, print by going to Macro and Library Search Macro. For discovery motions supply all bracketing standards, the sample and blanks. Blanks should include those preceding the unknown and the bracketing standards.

### LABORATORY EXPECTATION OF ANALYSTS

The above training instructions may not handle every possible working situation. Any doubts or questions should be taken to a team leader or supervisor. Doing so is in everyone's best interest. Operators should understand it is a requirement of the job and an expectation of the laboratory.

INSTRUMENTATION-MODELS AND SERIAL NUMBERS

SYSTEM	GC MODEL/SERIAL#	MSD MODEL/SERIAL#
3	5890A/3310A48324	5971A/3306A04519
4	6890(G1530A)/US00025670	5973(G1098A)/US82311442
5	6890(G1530A)/US00026238	5973(1098A)/US82311436
6	6890N(G1530N)/CN10244001	5973NETWORK(G2577A)/US21843303

SYSTEM	TOWER/SERIAL#	TRAY/SERIAL#
3	18593B/3534A43820	18596B/3506A33978
4	G2613A/US90204388	G2614A/US85203036
5	G2613A/US90204391	G2614A/US90203072
6	G2613A/CN30429193	G2614A/CN30423007

SYSTEM	PRINTER MODEL/SERIAL #
3	HP LASERJET 4/JPBH024544
4	HP LASERJET 4000/USMC071174
5	HP LASERJET 4000/USMC023436
6	HP LASERJET 4000/USMC071005

**INSTRUMENT PARAMETERS-ACQUISITION AND INTEGRATION**

Method: Drugs.m

**INLET**

Mode: split  
Split ratio: 50:1 to 85:1, instrument dependent  
Gas type: Helium  
Temperature: 250° C  
Injector  
Injection Volume: 1uL  
Sample Washes: 3  
Sample Pumps: 3  
Post Injection Solvent A Washes: 2  
Post Injection Solvent B Washes: 2

**OVEN**

Column: HP-5MS 30 m X 0.25 mm X 0.25 um  
5% Phenyl Methyl siloxane  
Maximum Temperature: 325° C  
Constant Flow: 1 mL/min  
Temperature Program  
Initial Temperature: 170°C  
Initial Time: 0.00 min  
Ramp Rate: 25° C/min  
Final Temp: 290° C  
Final Time: 3.60 min  
Run Time: 8.40 min  
Equilibration Time: 0.50 min

**DETECTOR**

Transfer Line: 300° C  
Acquisition: Scan Mode  
EM Offset: -100 V  
Solvent Delay: 1.50 min  
Low Mass: 40  
High Mass: 500  
Threshold: 50  
Sample #: 2  
A/D Samples: 4  
Source Temperature: 230° C  
Quadrupole Temperature: 150° C

## INTEGRATION

RTE Integrator  
Apex-start of Peak  
Minimum peak area: 100,000  
Search Strategy:  
U+A 2  
Flag Threshold 3  
Tilting On  
Minimum Purity 50

## TERMS AND DEFINITIONS

Atomic number: The number of protons in an atom of an element.

Average mass: Calculated mass of an ion based on the atomic weight of the elements.

Mass number: The sum of the total number of protons and neutrons in an atom, molecule, ion or radical. It is the nucleon number with the symbol  $m$ . This number is an integer and can be used interchangeably with  $m/z$  values in unit resolution mass spectra where the charge number of the ion is one.

Monoisotopic mass: The exact mass of the most abundant naturally occurring stable isotope of an element. The calculated exact mass is the mass determined by summing the mass of the individual isotopes that compose a single ion, radical or molecule based on a single mass unit being equal to 1/12 the mass of the most abundant naturally occurring stable isotope of carbon. If the mass is calculated with the exact mass value of the most abundant naturally occurring stable isotope of each element in the ion, radical, or molecule, then the calculated exact mass is the same as the monoisotopic mass.

Nominal Mass: The integer mass of the most abundant naturally occurring stable isotope of an element.

TIC: Total ion current. The total ion chromatogram should be called the reconstructed total-ion-current chromatogram.



Common contaminants		
Ions (m/z)	Compound	Possible source
18, 28, 32, 44 or 14, 16	H <sub>2</sub> O, N <sub>2</sub> , O <sub>2</sub> , CO <sub>2</sub> or N, O	Residual air and water, air leaks, outgassing from Vespel ferrules
31, 51, 69, 100, 119, 131, 169, 181, 214, 219, 264, 376, 414, 426, 464, 502, 576, 614	PFTBA and related ions	PFTBA (tuning compound)
31	Methanol	Cleaning solvent
43, 58	Acetone	Cleaning solvent
78	Benzene	Cleaning solvent
91, 92	Toluene or xylene	Cleaning solvent
105, 106	Xylene	Cleaning solvent
191, 193	Trichloroethane	Cleaning solvent
69	Foreline pump oil or PFTBA	Foreline pump oil vapor or calibration valve leak
73, 147, 207, 221, 261, 285, 355, 429	Dimethylpolysiloxane	Septum bleed or methyl silicone column bleed
77, 94, 115, 141, 168, 170, 262, 354, 446	Diffusion pump fluid and related ions	Diffusion pump fluid
149	Plasticizer (phthalates)	Vacuum seals (O-rings) damaged by high temperatures, vinyl gloves
Peaks spaced 14 amu apart	Hydrocarbons	Fingerprints, foreline pump oil

FIGURE 4

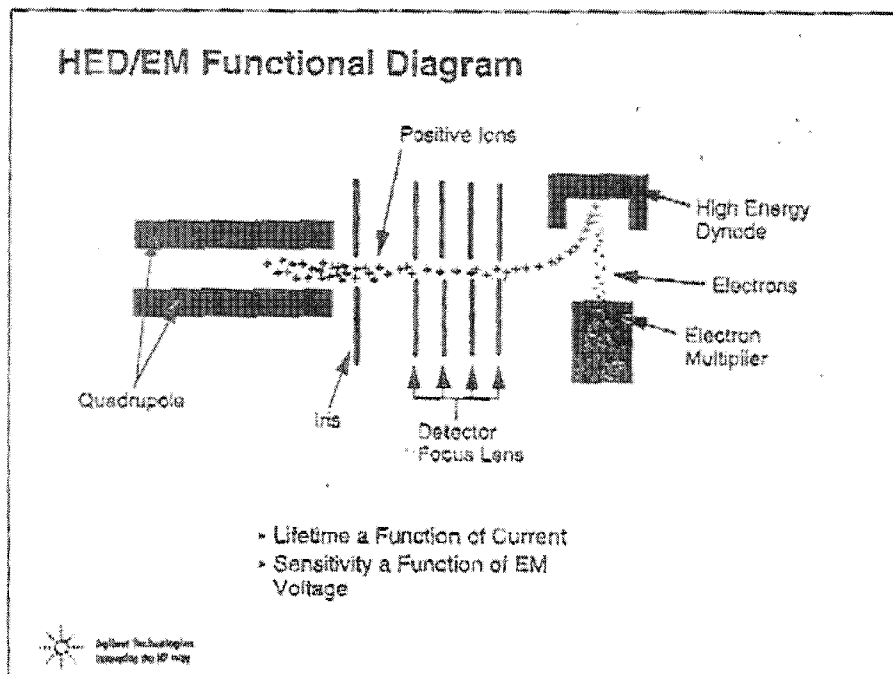


FIGURE 3

## Mathieu Stability Diagram

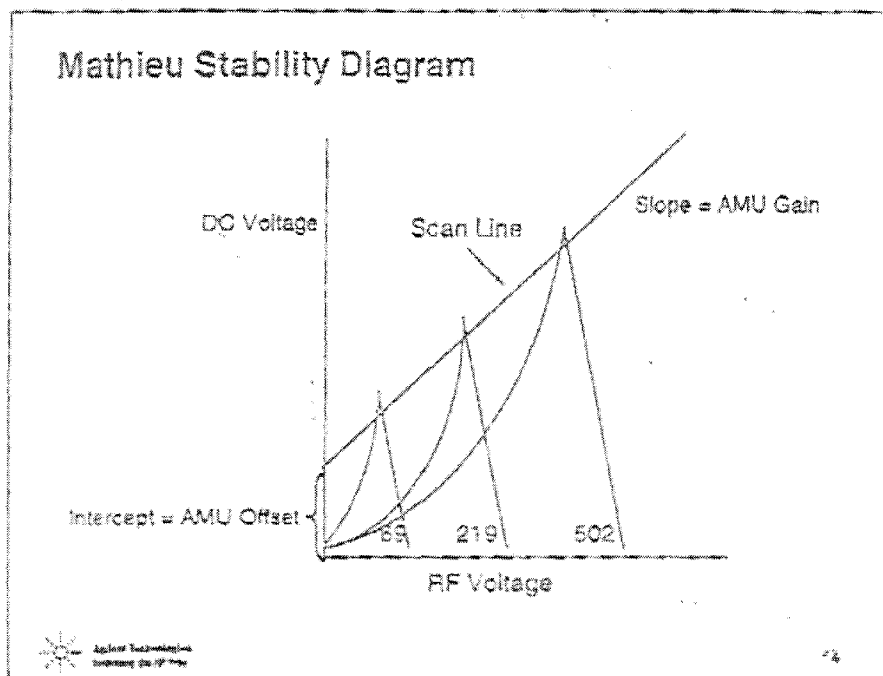


Figure 2

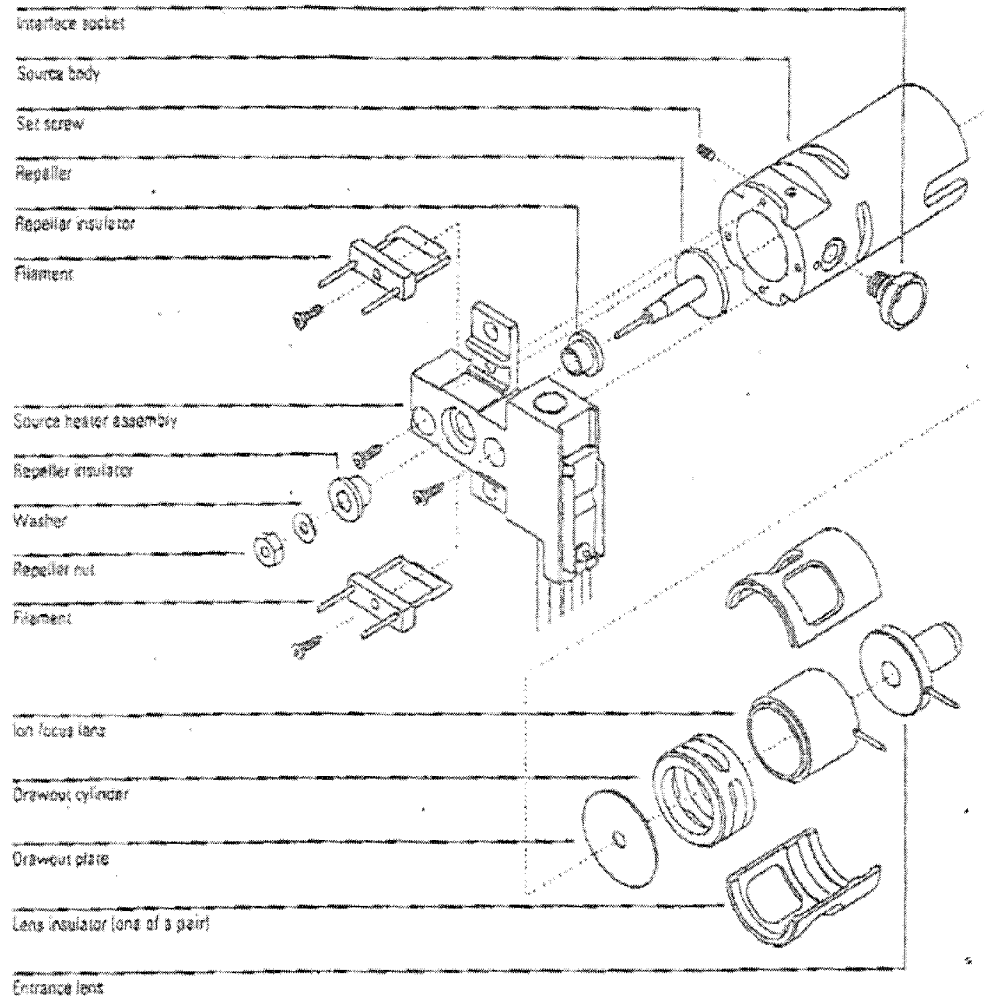


Figure 1

# **GOLDBACH ATTACHMENT E**

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## 1. Introduction

This document is a Standard Operating Procedure (SOP) for the Drug Analysis Gas Chromatography-Mass Spectrometry (GC-MS) Laboratory. The principles introduced in this SOP will apply to all forensic items confirmed via GC/MS, both routine and specialty drug submissions.

GC-MS is the primary instrument used to structurally identify controlled substances submitted to the laboratory. GC/MS is a separation and identification technique used to analyze volatile compounds. Components of a mixture are volatilized in a heated injector and subsequently separated in a capillary column coated with a thin film of liquid. A vaporized sample will dissolve in the stationary liquid phase and then re-vaporize in the mobile gas stream as it travels through the column. Dissimilar distribution coefficients in the two phases are the driving force for GC separation. Retention is mainly influenced by a compounds boiling point or vapor pressure, oven temperature, carrier gas flow rate, polarity of the column, column film thickness, column diameter and length. Components elute into an electron impact-mass selective detector (EI-MSD). The mass spectrometer performs three basic functions: ionization in the source body, mass separation in the quadrupole and ion detection by an electron multiplier. All three functions are performed under vacuum conditions as components elute from the column. Low operating pressures are necessary for an adequate mean free path-an ion's average distance traveled between collisions. Ions must be able to travel from their point of origin to the detector without colliding with air, non-ionized molecules or the instrument. Collisions mean an ion may not be detected at all (scattered or neutralized) or incorrectly identified because of intermolecular reactions.

**Ionization-** A heated filament on the ion source bombards eluting compounds with electrons. Ionization removes an valence shell electron from the analyte molecule, creating a positively charged ionic species known as the parent compound or molecular ion ( $M^+$ ). As the electron passes close to the molecule, the negative charge of the electron repels and distorts the electron cloud surrounding the molecule. This distortion transfers kinetic energy from the moving electron to the electron cloud of the molecule. If enough energy is transferred, a valence electron will be ejected to form a cation radical. These ions exist in an excited energy state and fragment into other cations, neutral species and radicals-species with no charge but with an unpaired electron.

**Mass Separation-** Separation occurs in a quadrupole mass filter consisting of four poles, or rods. In cross-section of a quadrupole, the four poles are arranged at the corners of a square. Diametrically charged rods work in tandem as a set. One set has a positive DC voltage applied to it. The other set has a negative DC voltage of the same value. In addition, all four rods have a superimposed RF voltage of alternating polarity, with the RF voltage 180 degrees out of phase for each rod. The  $m/z$  value transmitted through the quadrupole is determined by the electric field produced by the DC and RF voltages. Only if the ion has a particular  $m/z$  will its

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oscillation be stable in the mass filter and only this  $m/z$  will exit the end of the mass filter to be detected by the electron multiplier. The mass spectrum is scanned by varying the amplitude of the DC potential (U) and radio frequency potential (V), while keeping the RF frequency and U/V ratio constant. Tuning the MSD optimizes the U/V ratio and the calculated result is saved in the tune report file. The concepts of amu gain and offset are represented in Attachment 1, otherwise known as the Mathieu Stability Diagram. It is a plot of DC voltage versus RF voltage and defines an ions stable trajectory in the quadrupole. The slope (U/V) mathematically represents amu gain and amu offset is the DC intercept on the y-axis. Increasing/decreasing the amu offset will have an equal effect on sensitivity across the entire mass range. Increasing/decreasing the amu gain will have an effect on low mass but a much greater effect on high mass. The determined values for amu gain/offset effect abundance and resolution by determining the cut-off for peak width

**Detection-** In the 5973/5975, positively charged ions exiting the quadrupole are focused through a detector-focusing lens (See Attachment 2). Ions are subsequently deflected into the electron multiplier, located off-axis to the analyzer, by a High Energy Dynode (HED). The HED functions to accelerate ions into the multiplier and reduce the number of stray particles entering the detector. The HED (at -10,000 volts) attracts positively charged ions exiting the quadrupole, generating electrons that are attracted to the more positive electron multiplier (-3000 volts). The electrons hitting the surface of the electron multiplier liberate more electrons with every impact as they cascade down the horn. Every ionic particle that leaves the mass analyzer and enters the ion detector contains a given amount of electricity (10<sup>-19</sup> coulomb per singly charged particle). As the number of ions arriving at the detector per unit time increases the amplified output of the detector increases proportionally. The electron multiplier amplifies the signal on the order of 10E5. At the end of the horn, the current generated by the electrons is carried out to a signal conditioning circuit.

The GC-MS chromatogram displays the total ion current (TIC) over time. Each peak in the TIC is the summation of all the ions specific to that molecule's fragmentation pattern. An identical fragmentation pattern can be reproduced from one instrument to another using similar experimental condition.

## 2. Objective

The objective of this SOP is to ensure operators handle submissions in a routine and predictable manner. The analytical data from the Drug Analysis GC/MS Laboratory can be used in criminal prosecutions. All samples will be analyzed in a manner consistent with forensic standards. Many elements of this protocol are designed to eliminate any appearance of doubt that could arise from the Laboratories analytical results.

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### 3. Scope

All GC/MS operators will need to comply with the procedures set forth in this SOP. The GC/MS Laboratory will use standard forms and consistent guidelines to confirm all submissions. The following topics will be covered in this SOP: sample submission requirements and procedures, equipment maintenance and calibration, batch setup procedures, instrument and method QC, acceptance criteria for data analysis, reporting results, data backup, data retrieval and retention.

### 4. Responsibilities

- Chemist I, II, III and Supervisors are responsible for performing this SOP.
- The Chief of Laboratory will ensure compliance with this SOP.
- Senior Chemists/Laboratory Supervisor will monitor compliance with this SOP.
- The GC/MS Supervisor will oversee training of staff for GC/MS procedures.

### 5. Related Documents

Training Guidelines for New Chemists  
Commonwealth of Massachusetts  
Department of Public Health  
Drug Analysis Laboratory  
Jamaica Plain, Ma 02130

### 6. Definitions

**Abundance-** Describes the number of ions in the mass spectrometer.

**Mass spectrometer-** Instruments that bring a focused beam of ions to a fixed collector, where the ion current is detected electrically. These instruments measure the abundance of ions based on their m/z values.

**TIC-** Total Ion Current, synonymous with total ion abundance.

**Molecular Ion-** The removal of one valence shell electron from a compound to form a radical cation, also known as the parent ion.

**Base Peak-** The most intense peak in a displayed mass spectrum. Other peaks are normalized relative to the base peak.

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**Standard Spectra Tune-** Tuning optimizes the performance of the MSD by maximizing sensitivity while maintaining acceptable resolution and accurate mass assignment. Standard spectra tune is a tuning algorithm that ensures a standard response over the full mass range. The tuning compound PFTBA (Perfluorotributylamine) produces a characteristic spectrum that has mass 69 as the base peak and sets the relative abundances of mass 219 between 30 and 99 % and mass 502 greater than 1%. Standard Spectra Tune optimizes ion source components only to maximize the abundance of mass 502. Standard Spectra Autotune (5971) is also referred to as a Standard Spectra Target Tune on the 5973/5975 since the relative target abundances of mass 50,131,219,414, and 502 are set at 1, 55, 45, 3.5 and 2.5. That is, the 5973/5975 MSD performs a target tune using standard spectra targets. Historically these targets have been used to duplicate spectral results from magnetic-sector instruments when most commercial libraries were created.

**Carryover-** A retained analyte in a GC's injection/ALS system that is detected in a blank. Carryover may originate from the syringe, the injector's liner, the gold seal, the head of the column, or a contaminated blank. Carryover will have the same retention time for that analyte if it were normally injected. The TIC will have the ions for that analyte with varying degrees of intensity due to concentration. QC blanks may have other peaks due to late eluters, analytes that originated in the previous injection but did not elute before the end of the method's run time. Ghost peaks are a form of carryover that have uncharacteristic retention times for an analyte. Ghost peaks typically originate in a contaminated carrier line or split line and their retention times can not be predicted.

## 7. Equipment, Supplies and Reagents

### Instruments

SYSTEM	GC MODEL/SERIAL#	MSD MODEL/SERIAL#
3	5890A/3310A48324	5971A/3306A04519
4	6890(G1530A)/US00025670	5973(G1098A)/US82311442
5	6890(G1530A)/US00026238	5973(1098A)/US82311436
6	6890N(G1530N)/CN10244001	5973NETWORK(G2577A)/US21843303
7	6890N(G1530N)/CN10628091	5975INERT/US61623624

SYSTEM	TOWER/SERIAL#	TRAY/SERIAL#
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3	18593B/3534A43820	18596B/3506A33978
4	G2613A/US90204388	G2614A/US85203036
5	G2613A/US90204391	G2614A/US90203072
6	G2613A/CN30429193	G2614A/CN30423007
7	G2913A/CN62433761	G2614A/CN62640171

**SYSTEM PRINTER MODEL/SERIAL #**

3	HP LASERJET 4/JPBH024544
4	HP LASERJET 4000/USMC071174
5	HP LASERJET 4000/USMC023436
6	HP LASERJET 4000/USMC071005
7	HP LASERJET 2420D/CNGJD23741

**SYSTEM COMPUTER MODEL/SERIAL NUMBER**

4	Kayak XA 6/US83853841
5	Kayak XA 6/US83853197
6	HP Vectra VL420dt/us22109330
7	HP Compaq DC 7600/MXL6240TYF 1 <sup>st</sup> computer 9/08/2006 /2UA6500K75 2 <sup>nd</sup> computer 5/01/2006

**Related Equipment**

Agilent/HP Helium Multi-Stage Regulator 5183-4644  
Supelco High Capacity Carrier Gas Purifier (oxygen and water) 2-3800-U  
Powerware Prestige 3000 UPS  
RadioShack OHM Meter

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Commercial and Agilent Toolbox  
Dell OptiPlex GX1 Computer networked to Instrumentation  
Inlet Septum Remover  
Gasmat Gas Flow Meter for 5971  
Sanyo Air Conditioning Unit-Room temperature maintained at 70 degrees Fahrenheit

### Consumable Supplies

Supelco OMI-2 Indicating Purifier and tube holder, 23906 and 23921  
Sony 80 MB CD-R  
Helium-Ultra High Purity  
Supelco Split/Spitless Glass Liners, 4mm ID with deactivated glass wool, 2-048625  
Therm-O-Ring 1/4" Seals, liner o-ring, 21004-4-U  
Supelco Gold plated Inlet Seals with nickel washer for Agilent, 23319-U  
Supelco Thermogreen LB-2 Septa, 10mm, 23156  
Supelco Injector Column Nut, 24833-4  
Supelco MSD Column Nut, 28034-U  
Agilent Ferrule, 0.5 mm ID Graphite (short), 5080-8853  
Agilent GC/MS Ferrule, 0.4mm ID hole, graphite/vespel, 5062-3508  
HP-5MS Capillary Column, 0.25um (film) X 0.25mm (ID) X 30m (length)  
Agilent 10 uL syringe (straight and tapered needle), 9301-0725 and 5181-3360  
Inland 45 Vacuum pump fluid  
Micogrit, Type WCA, size 15  
Fisherbrand Cotton Tipped Applicators, 6"  
Kimble 11 mm vial caps, PFTE/Rubber  
11 mm vial crimper  
Kimble glass vials  
Residue vials  
9" Pasteur Capillary Pipets  
See Attachment 2 for a complete list of Standards  
Sony CD-R, 700 MB with jewel case  
Office Duster

### Reagents

Methanol- J.T. Baker, 9070-05, A.C.S. Reagent Grade, 4L  
Chloroform- J.T. Baker, 9180-05, A.C.S. Reagent Grade, 4L  
Acetone- Fisher, A9284, GC Resolv, 4L

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## 8. Safety

- Chemists will wear personal protective equipment (PPE) when in the laboratory.
- Care should be taken when changing the injector septum. The septum nut is very hot and can cause burns. The GC/MS instrument has many heated zones: the injector, oven, transfer line, source and quadrupole. Routine maintenance requires that these heated zones be cooled prior to handling.
- Always transport helium cylinders secured to a cart. During transport, cylinders must always be capped to protect the shutoff regulator and ensure personal safety.
- Protective eyewear is required when performing maintenance on capillary columns.
- When replacing rough pump fluid, wear appropriate personal protective equipment (PPE): a lab coat, gloves and safety glasses. Used rough pump oil is considered hazardous waste. It will be safely stored until disposed of by the UMASS Environmental Health and Safety Department.
- Use fume hoods when working with solvents.

## 9. Sample Submission Requirements

An aliquot of a sample is placed in a vial, either standard or residue sized, dissolved in a solvent, and submitted by the primary chemist to the GC/MS laboratory. All submitted vials will be listed on a Drug Laboratory GC/MS Control Sheet (Attachment #3) along with their respective cards. The GC/MS staff will note on the control sheet the day a sample is received along with their initials. All numbered vials are matched against the control sheet and cards prior to acknowledging receipt. If any errors are noted, the entire submission will be returned to the submitting chemist for correction. Samples are also checked for GC/MS suitability. Samples with an excessive amount of particulate matter will be returned. Vials should typically be at least half full and caps should be firmly crimped to avoid evaporation.

Samples are then separated into their suspected drug type using separate vial racks: cocaine, heroin, pharmaceuticals, specialties (i.e. LSD, MDMA, THC, Psilocybin) and unknowns. Analysts submitting pharmaceutical samples should make an effort to cluster as many similar samples as possible on one GC/MS control sheet. First hand knowledge about a samples concentration or cleanliness should be noted on the control sheet by the primary chemist. The GC/MS operator will then choose the appropriate method/QC precautions (blanks) for the item being analyzed.

## 10. Equipment Maintenance and Calibration/Instrument Quality Control

- ♦ The Auto-Liquid Sampler (ALS) rinse bottles must be emptied, washed out and refilled with the appropriate solvent. Waste bottles should be emptied and washed out.

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- The injector septum must be replaced on every new run or after approximately 100 injections. Printer paper should be refilled before every new run.
- Injector cleaning and source cleaning procedures can be found on CD. See HP 5973 MSD Disk Reference Collection 1-3 for details.
- On the day a sequence is initiated, perform a PFTBA (perfluorotributylamine) spectrum scan. Check for air leaks. If no air leak is present, perform a Standard Spectra Tune. Tune the instrument on the method that will be used during the sequence. For sequences using multiple methods, load the method with the lowest starting oven temperature and tune on that method.

Make sure the following parameters are within specified tolerance levels or set properly: mass assignment, unit mass resolution, peak widths, mass 69 abundance, the relative abundance of 219 and 502, isotope ratios, foreline pressure, source and quadrupole temperatures, electron energy, number of peaks in spectrum scan, air leaks, and relative target abundances of 50,69, 131, 219, 414, and 502. Readings outside the established range should be reported to the MS Supervisor. Note day-to-day trends in the electron multiplier voltage and lens voltages. Report any significant increase/decrease to the MS Supervisor. On the 5973 save tune files to Stune.u and Atune.u on the 5971.

**5973/5971 Relative Ratios for Prominent Masses**

	5973/5975	5971
m/z 69	base peak (100%)	base peak (100%)
70/69	> 0.5 but < 1.6 %	0.54- 1.6 %
219/69	> 40% but < 85 %	> 30 %
220/219	> 3.2 but < 5.4 %	3.2- 5.4 %
502/69	> 2.0 % but < 5.0 %	> 1 %
503/502	> 7.9 but < 12.3 %	7.9- 12.3 %
Source temperature: 230 C	---	Determined by the transfer line temperature setting and convection efficiency.
Quadrupole temperature: 150 C	---	Automatically set

- Foreline Pressure: 40-60 mTorr typical. Dependent on the condition of the rough pump. The foreline pressure is adequate under 100 mTorr. The critical foreline pressure is 400 mTorr, above which the diffusion pump and the heated zones turn off. At 300 mTorr, the diffusion pump will turn on during pump down. The MSD manifold vacuum pressure (high vacuum pressure) should be  $5 \times 10^{-5}$  torr or lower.
- Electron Energy: 70 eV (69.9 eV)
- Mass 69 abundance: > 200,00 but < 400,000
- Mass peak width (PW50) should be  $0.55 \pm 0.1$  (default) for the 5973/5975 and  $0.50 \pm 0.1$  for the 5971 MSD.

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- Mass assignment is determined on the top portion of the tune. The Drug Laboratory allows masses to vary by  $\pm 0.1$  amu on each tuning mass and isotope mass. Agilent allows  $\pm 0.2$  m/z for 69,219, and 502 on the top and  $\pm 0.1$  m/z on the bottom.
- Note isotope ratio tolerances above. Isotope ratios for 70/69, 220/219 and 503/502 should be close to the theoretical values of 1.08, 4.32, and 10.09. The 69 fragment ions have one carbon atom, the 219's have four and the 502's have nine. The natural abundance of C13 is 1.1%, which explains the observed isotope abundance (1, 4, and 10%) one mass unit away (due to the extra neutron of C13 and N15). Proper isotope ratios can be used to indirectly assess unit mass resolution as can the visual appearance of the profile scan.
- Agilent guarantees that their quadrupole mass analyzer will achieve unit mass resolution throughout the mass range. Unit mass resolution is achieved because peak widths are kept fairly constant throughout the mass range. Using the manufacturer's defined range for peak width (Full Width at Half Maximum-FWHM) ensures unit resolution. Unit resolution means two adjacent peaks in a mass spectrum are resolved sufficiently so that the peak height of either peak is not appreciably affected by overlap. In the profile scan of the tune (the top portion showing an extracted ion chromatogram) check that adjacent isotopes are resolved. Historically, the height of the valley between isotope peaks is around 5% or less relative to the larger peak (25% or less relative to the smaller isotope peak). On the bottom part of the tune that shows a full spectrum scan, isotopic masses should also be one mass unit apart  $\pm 0.2$  u (unified atomic mass units). If unit mass resolution is not achieved, retune or notify the supervisor for corrective measures.
- Air leaks above 5% should be reported. Office Duster can be used to determine the source of the leak by acquiring spectrum scans under Diagnostics/Vacuum Control. On the 5971 MSD, an air and water check will give relative abundance for water (mass 18), nitrogen (mass 28), oxygen (mass 32), and carbon dioxide (mass 44). The 5973 MSD will give the relative abundance of water and nitrogen. Oxygen and carbon dioxide can be approximated from the graphical output. If an air leak is present, the ratio of m/z 28 to m/z 32 will be about 5:1.
- Electron multiplier voltage (EMV) should be less than 2500. 3000 is the upper maximum. Notify the supervisor if the EMV is above 2500.
- The relative target abundance (on the 5973 MSD) for mass 50,131,219,414, and 502 are set at 1,55,45,3.5, and 2.5. The 5971 MSD does not give operators access to these parameters.
- The full spectrum scan should contain < 200 peaks (typically 80-150). Report tunes with an uncharacteristically high number of peaks. See Attachment 4 for a list of contaminants and their possible source of origin.
- Operators on the 5973/5975 may perform a system verification tune if questions arise about the status of the MSD. This evaluation allows the analyst to check the MSD doing a maximum sensitivity tune (maximizes the abundance of tuning mass 69,219 and 502) not a standard spectra tune. It will not verify if the last standard spectra tune passed all Drug Laboratory standards but it is a good starting point as a diagnostic tool.

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- Individuals who make use of the equipment are responsible for determining whether or not the instrument has been qualified for operation. Instrument quality control (MSD tune, injector/column QC) and method quality control (blanks and standards) are the determining factors for use.

#### GC/MS Standard Spectra Autotune (Target Tune) Checklist

Correct Mass assignment in profile scan and spectrum scan  
Peak widths  
EMVolts  
Source Temperature  
Quadrupole Temperature  
Foreline Pressure (5971, 5973) or High Vacuum Pressure (5975) and Turbo Speed  
Electron Energy  
Number of peaks in spectrum scan  
Unit mass resolution  
Isotope Ratio (Resolution of profile scan should corroborate isotope ratios)  
Mass 69 abundance  
Relative abundance of 219  
Relative abundance of 302  
Air leaks  
Target Abundance (1.0, 100.0, 55.0, 45.0, 3.5, 2.5)

#### **11. Batch Setup-Procedures and Method Quality Control**

Samples are always bracketed by standards. Bracketing standards are used after every tenth item when possible. Plus or minus a few vials is acceptable. This ensures the instrument is operating properly at the beginning, middle and end of the sequence with respect to retention time and spectrum. If the instrument malfunctions at the very end of a sequence, the majority of the samples can be analyzed up to the last satisfactory bracketing standard.

Operators must insure carry-over does not exist between items or between a standard and item. This is accomplished by running blanks (the solvent that the sample is dissolved in) between all vials, both standards and items. Fresh blanks should be made up with every new run to avoid septum leaching. Two full blanks typically will suffice for a full tray of samples. The first blank will be used for the first half of the run and the second blank will be used for the second half of the run. Standards should be recapped after one or two uses to prevent septum contamination. If a standard completely breaks down or if breakdown products account for more than 30% of the standard's area, the qualitative standards should be discarded.

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Exceptions include standards known to be thermally unstable or a mixture of cis/trans isomers. Reactive solvents will only be used if no other solvent is suitable.

The Drug Laboratory Batch Sequence Sheet (Attachment 5) is filled out using blanks after every sample and standard. In the case of a multiple, a blank must be inserted after every fifth specimen vial. If a submission is not an even multiple of five, blanks can be inserted more or less to evenly divide the case. For example, a case with eight specimens can be divided up four and four. There are times when double blanking may be useful. For example, carry-over may be more likely to occur at the beginning of a sequence or when a sample is known to be very concentrated. Double blanking for pharmaceutical drugs is highly recommended, as are drugs that originate from natural products (i.e., psilocybin mushrooms).

A QC standard mix comprised of cocaine and codeine is placed at the beginning of every sequence. The acquisition method must always be DRUGS.M. It will be used to monitor the status of the column and the general cleanliness of the injector. The retention time ratio of codeine/cocaine is determined to assure the column is capable of separating components of a mixture. The abundance of each peak can be used to gain insight to problems that may exist with the injector and even with the column/source.

After the sequence for the batch sheet is determined, operators need to fill out the top of the form by noting the setup date, the setup analyst, the data file range of numbers to be used, and the sequence name for the run. The sequence name is the day of the run preceded by the instrument's assigned letter (i.e. E102402.s for system 5). When the sequence is typed into Chemstation, individual numerical data files are organized in the Window's Directory using the date with underscores (i.e. 10\_24\_02 may have data files 1-90). The sequence file name and the organizing data file name should share the same date. This date should also match the date on the tune. The sequence is saved and a hard copy is printed.

After the sequence is started, it is the operator's responsibility to make sure the first blank and QC Standard Mix test satisfactorily. Operators need to complete the GC/MS Daily Injector/Column Check (Attachment 6) sheet prior to continuing with the sequence. If the laboratory's QC parameters fail, the run should be aborted or reported to a supervisor. A multitude of malfunctions could also occur at the beginning of a sequence and the operator should check the instrument repeatedly throughout the day. If the system malfunctions at the beginning of a sequence, resume the instrument if possible. Otherwise, notify the MS Supervisor. If the problem is not addressed until the next day, re-tune the MSD. Make appropriate changes to the sequence file name, the data file path and to the data file book. If the system malfunctions at the end of the sequence, restart the instrument to finish the sequence. Retune instrument if the malfunction occurred over the weekend and save it with the original tune. If the instrument is inoperable, samples can be analyzed up to the last completed bracketing standard. For QC reasons, operators should save hand written sequence sheet even if a sequence is completely aborted and no analytical data is used for confirmatory work.

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Operators should also add a simple note explaining what happened to the samples of an aborted run. For example, samples could be placed on a different sequence or put back on the shelf.

*Miscellaneous*

*-Care should be taken not to avoid dividing a case's samples among different operators. This will minimize the possibility of several chemists having to appear in court.*

*- Operators should re-check that the laboratory numbers on the GC/MS control sheet match the numbers on the vials and card.*

*-Check the GC/MS control sheet for special instructions advising the operator to use a specific method. Standards, samples and blanks should be analyzed using the same method. For very weak samples, a modified method incorporating a lower split ratio or higher electron multiplier voltage may be used with all other parameters remaining constant.*

*-The GC/MS Laboratory will routinely confirm the highest class drug in a sample.*

*-Available methods-See Attachment 7 for Method Parameters*

Alcohol.m  
Clonaz.m  
Drugs.m  
Genscn.m  
Ghb.m  
Lsd.m  
Mdma.m  
Mush.m  
Nitrites.m  
Screen.m  
Speed.m  
Thc.m  
Thc\_Mod.m  
Viagra.m  
Weak.m  
WClonaz.m  
WGenscn.m  
WGhb.m  
WMdma.m  
WScreen.m  
WSpeed.m

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## 12. Analytical Interpretation

Operators are expected to analyze data results by comparing the sample data to an authentic standard. A positive identification is made when the unknown and standards have consistent retention times (within +/- 1.5 % of the standard) and mass spectral fragmentation patterns (acquired in full spectrum scan mode). For the retention time test to be considered positive, a peak is considered a peak when the signal to noise ratio is at least 3:1.

**Positive Confirmation-Match quality**, as seen on every report, is only used as an interpretative guide to an unknown's identity and is not the determining factor for a positive identification. **All confirmations are always made by the analyst not the instrument.** Identification is based on corroborating results which include retention time, unique ions (ion clusters), ion abundance, literature reference comparison and probability based matching scores.

**Minimum Acceptance Criteria for Mass Spectral Confirmation-** A critical responsibility of every operator is to determine when the analyte concentration is strong enough to positively confirm its presence in a sample. Concentration plays a crucial role in qualitative identification. It not only determines relative abundance but also which ion masses are present or absent. The end result of all GC/MS data, whether it is a standard or a sample, must be to yield a searchable spectrum. The operator does not rely on the instrument for the answer to this question via match quality. Match quality alone can lead to misidentification as well as under-identification. Instead, the operator must rely on an accepted spectrum from a published reference book or library. The minimum abundance required for a particular analyte is achieved when it can be matched to a reference spectrum. This rule will apply to sample confirmation work and QC work performed by the laboratory. To obtain the necessary detail in a spectrum, the operator has many options available. A sample can be physically concentrated or it can be run on a more sensitive method. No general tolerance level for relative abundance will be stated. The exact definition of standard spectra tune is quite broad and not all reference spectra were acquired on the same type of mass spectrometer. (Some spectra were also obtained using direct insert probes at high temperatures.) Relative abundance will be left to the operator's discretion when a reference spectrum is being compared to a standard or sample. However, for a standard and sample being analyzed on the same instrument the relative abundances should mirror one another. Significant differences in concentration may need to be corrected if the relative abundance pattern is not consistent with the standard. Items can be physically concentrated/diluted and standards can be run on more sensitive methods.

**Carryover-** No carryover of the controlled target compound is allowed in the blank before a sample. Carryover is present when it is visible above the general noise level. When a defined

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peak begins to appear in a blank at a compound's retention time, even under 2X the noise level, the operator must check if this is carryover. If ions of the target compound are present, carryover is present. Carryover after a multiple requires that the multiple be repeated and also the next sample (if one is present). Carryover after a multiple raises the possibility that carryover occurred during the multiple. Ghost peaks, when identical to the target compound, are not allowed. Please bring ghost peaks to the attention of the GC/MS Supervisor. A late eluter, such as noscapine in heroin, is acceptable if it can be explained.

Occasionally an unknown may have a peak of interest that does not integrate. If the peak area of the TIC is below 100000, no report will be printed for this peak. One approach to non-integrated peaks involves using data analysis to manually analyze and print the results. Another approach is to lower the method's integration area threshold. If the analyte in question is too weak (does not meet minimum spectral requirements), the sample will need to be re-analyzed. The operator has the option of re-analyzing the sample on a more sensitive GC-MS method or, if necessary, it can be returned to the primary chemist for concentration. It then can be re-analyzed on the same or more sensitive method depending on the situation. When screening an unknown, all non-integrated peaks must be checked for controlled substances.

In the event GC/MS results are out of character with preliminary results, consult the primary chemist. A second analysis may be necessary to rule out initial inconsistencies that may exist. All negative samples should also be returned to the primary analyst if additional testing is required.

**Use of Background Subtraction**-Just like relatively constant noise from column bleed can be removed from a peak, background subtraction can be used when compounds elute in close proximity to one another. When compounds are separated by some amount of time, operators can successfully subtract unwanted ions. However, operators will not find this technique of assistance when compounds co-elute at the exact same moment in time. If co-eluting peaks share common ions, background subtraction will be problematic and confirmations may not be possible.

**Fronting**- The reported mass spectrum for each peak is generated using an apex minus start of peak background subtraction technique. For peaks that front, the true spectrum is not represented in the report and the operator should manually integrate these peaks. For weak samples, the operator can subtract ions at the end of the peak to remove background noise.

**Identification of Unknowns**- Unknown items are to be analyzed using the screen method. When screening unknowns all integrated and non-integrated peaks must be checked for controlled substances. Screen is designed for early and late eluters. The only exception to date is Sildenafil (Viagra). It will appear in the following blank so operators must end all unknown runs with a blank. The chromatography for screening may not be optimized for every drug but the spectral results should be adequate for identification. Once an unknown is preliminarily identified, confirmation is performed with bracketing standards using an appropriate method

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determined by QC. Tailored methods exist to improve chromatography and shorten run times when possible.

Once the common name for a compound is determined, the GC/MS operator must determine if it is a controlled substance. The operator will use a combination of resources to determine the legal status of a drug including the Physicians' Desk Reference, Massachusetts General Law, Chapter 94, Section 31 for the Controlled Substance Act and Attachment 8, the Microgram Bulletin, Volume XXXVIII, No. 5, May 2005 which summarizes the 59 controlled steroids in the Anabolic Steroid Control Act of 2004, Public Law 108-358.

*The above training instructions may not handle every possible working situation. Any doubts or questions should be taken to a senior chemist or supervisor. It is a requirement of the job and an expectation of the laboratory*

### 13. Limitations of GC/MS

- Compounds must be volatilized by the GC
- Sensitive to active sites -Affects sensitivity and carryover
- Thermal Breakdown
- Chemical reaction with the solvent in the injection port.
- Will not determine salt forms or distinguish between enantiomers
- Identification of unknowns limited by libraries and reference books
- Library match quality not always accurate
- Operators unfamiliar with the GC-MS analysis of a certain drug should check the standard QC folder for the proper method of analysis.

### 14. Test Reporting

All results will be reported on the GC/MS Control Sheet and the sample card assigned to every case. On the top of the control sheet, next to date analyzed, the operator needs to place the date the run was analyzed (the day the chemist sits down and reviews the results) and the sequence file name for retrieval purposes. If a sample needs to be returned to the primary chemist for additional testing, the date analyzed for the control sheet remains the GC/MS analysis date.

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The primary chemist will write on the front of the card their analysis date for when he/she completes the analysis. Fill out the remainder of the sheet by noting the retention times of the bracketing standards (under MS comments), the operator initials (under MS BY), the retention time of the unknown and the match quality (under RT/MQ), and lastly the findings under results.

Under the comment section of the GC/MS control sheet, GC/MS analysts may also note any other controlled substance of a similar or lower class. These findings will not be reported on the certificate but making note of them can be helpful. If more than one controlled substance of an equal class is present, the stronger or more prominent peak is usually identified. Occasionally more than one controlled substance is reported, in which case the appropriate standards are used (i.e. mixtures of ketamine and ecstasy or methamphetamine).

The front of the sample card is filled out noting the date analyzed (upper right hand corner), the number of tests/initials performed by the GC/MS operator (gas chromatography counts as one test and mass spectrometry as another) and the finding. The operator should place a red dot next to his/her initials as the secondary chemist. On the back of the card the operator notes if the GC/MS was positive/negative and the sequence file name. One must also write in the results and the analysis date here if the finding/analysis date is not reported on the front. For example, the card needs to be returned for crystal tests, THC quantification or ketamine salt form determination.

Completed cards are returned to the evidence office to generate certificates. All GC-MS hardcopies of all analytical data are saved. The original copy of the tune report stays in the GC/MS Laboratory for QC purposes. A second copy of the tune report stays with the instrument hardcopy. A copy of the sequence batch sheet stays in the GC/MS Laboratory. Two copies of the GC/MS control sheet need to be saved: one for the GC/MS Laboratory and one for the primary chemist. Data can be retrieved from the hardcopies or from the backup/archive compact discs.

## 15. Data Storage and Retrieval

Two copies of digital data should exist at all times, one on the acquiring instrument and one on the stand-alone (Dell) computer. Data backup should be performed as soon as the run is complete or immediately after it is analyzed. Hitting the data backup icon on the 5973 instruments or the compact disc icon on the 5971 performs data backup of the completed sequence. Before initiating data backup, the operator should be certain transcriptional errors do not exist. Proofreading, double-checking, etc should be performed before the sequence is initiated and at the very least when the run is completed. Address transcriptional errors with the MS Supervisor or simply make personal notations on all applicable paperwork. At the end of every month, the GC/MS Laboratory will store all analytical results on recordable compact discs (CD-R). Two CD-R copies are created: a

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backup copy and an archive copy. Raw data on the stand-alone computer is erased after duplicate CDs are created.

Data can be retrieved from the hardcopies or from the backup/archive compact discs. Electronic retrieval is only possible from the 5973 instruments (systems 4, 5, and 6) under Data Analysis. Not all the instruments have the same libraries. Therefore, reprocessing should be performed on the instrument the data was acquired on with the proper acquisition method loaded. The only way to get a duplicate copy from system 3 is from the hardcopy. Otherwise, the raw data can be reprocessed on one of the 5973 instruments but the match qualities may be slightly different. For discovery motions, supply bracketing standards, the item(s) and blanks. Blanks should include those preceding the unknown and the bracketing standards.

## 16. Record Retention

GC-MS hardcopies, the backup CD and the archive CD are to be safely stored for a period of 15 years from the date of analysis. The equipment and software needed to open the raw data files also needs to be kept for the same period of time. In the event of fire, CD copies should be stored in separate locations.

## 16. Compliance Monitoring

Monthly QC sample audits will examine GC-MS results to ensure this SOP is being followed. The GC/MS Supervisor will perform the audit.

## 17. References

Hewlett Packard  
HP GC-MSD Chemstation and Instrument Operation- Student Manual  
Volume 1 and Volume 2  
G1701BA Version B.01.00  
Course Number H4043A

HP 5973 MSD Reference Collection  
Disc 1/3  
Reversion C.00.00  
February 1998

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Hewlett Packard  
Hp 5973 Mass Selective Detector Hardware Manual, Manual Part # G1099-90001  
First Edition, 8/96

Hewlett Packard  
HP 5971A MSD Hardware Manual, Manual Part # 05971-90019  
Third Edition  
Copyright 1991

Hewlett Packard  
HP G1034C  
MS ChemStation Software User's Guide, Manual Part #G1034-90043  
Copyright 1993  
First Edition

Mass Spectrometry Desk Reference  
First Edition  
O. David Sparkman  
Global View Publishing  
Copyright 2000

Analytical Chemistry  
Fourth Edition  
Gary D. Christian  
Copyright 1986 by John Wiley & Sons, Inc.

Introduction to Organic Laboratory Techniques- A Contemporary Approach  
Pavia, Lampman and Kriz- Western Washington University  
Second Edition  
CBS College Publishing  
Copyright 1982

## 18. Attachments

Attachment 1-The Mathieu Stability Diagram  
Attachment 2-Drug Laboratory GC-MS Standards  
Attachment 3-Drug Laboratory GC-MS Control Sheet  
Attachment 4-Common Contaminants  
Attachment 5-Drug Laboratory Batch Sequence Sheet  
Attachment 6-GC-MS Daily Injector/Column Check  
Attachment 7-GC-MS Methods

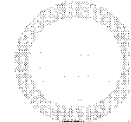
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# **GOLDBACH ATTACHMENT F**



AGO State Lab  
Investigation  
000005

**Massachusetts State Police**  
**Office of the Attorney General**  
**One Ashburton Place, Room 1910**  
**Boston, MA 02108**

**To:** Lieutenant Colonel Francis J. Matthews *FJM 9-15-12*  
Commanding, Division of Investigative Services

**From:** Detective Lieutenant Robert M. Irwin  
Commanding, MSP-AGO Detective Unit

**Subject:** Interview of: Daniel Renczowski  
August 21, 2012 at 0945 hours



Interview conducted on August 21, 2012, at approximately 0945 hours. Interview conducted by Detective Captain Joseph Mason, Detective Lieutenant Robert Irwin and MOSES Attorney Paul Donahue.

**Case #:** 2012-034-2589-0052

1. Dan Renczowski advised he has been with the lab since October 2005. He is a Chemist II and he has his paperwork in to be a Chemist III. Renczowski's responsibilities are analysis, backup to the mass/spec supervisor Peter Piro, mentoring chemists, and he's the backup safety officer. He also is responsible for the ordering of lab inventory.
2. Renczowski advised that he has worked with Annie Dookhan for almost seven years. He took over on quality control work and Dookhan trained him. Dan believed that Dookhan was a good trainer. However, sometime in April or May of 2011, Dan advised that Dookhan improperly put Renczowski's initials on a document called a control sheet. The initials indicated that Renczowski had taken custody of the vials that went to the mass/spec department and Renczowski's initials would have meant that everything on the control sheet was correct.

Renczowski advised that his initials at that point would have been in administrative review and what Annie Dookhan had written down was correct. Renczowski had not seen the document and did not initial it. He stated it was falsified and forged by Dookhan.

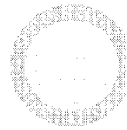
3. Dan advised Dookhan had brought vials into the mass/spec and put them on the machine and set them up to run overnight. She would then ask Peter Piro to analyze them the next day. Dan advised that at the time it was okay to do that, but it was changed later. Dan advised that Dookhan was the primary chemist on the run. Peter Piro, the mass/spec supervisor, noticed a mistake on a form and he saw Renczowski's initials on it and called Renczowski in. He states that they looked at the form and realized it wasn't Renczowski's handwriting. Piro was surprised that Renczowski would let the mistake get by him. At that point they realized Renczowski had not initialed the form. Dan states that Piro then called Dookhan in as she was the primary chemist. Dookhan came in and it was Peter Piro, Renczowski, and Annie Dookhan. Piro confronted Dookhan with what Renczowski said about the initials and Renczowski added that the handwriting was Dookhan's, and that she had written Renczowski's initials. Dookhan said she made a mistake and she took the form back. Dan advised that Peter Piro also gave her the vials back.
4. Dan advised that Dookhan did a new sheet and had Renczowski sign the samples in to the mass/spec the proper way. The samples were analyzed at a later date. Renczowski does not recall which samples they were. Renczowski advised Peter Piro that he was upset that Dookhan had signed his initials. Piro said to take it to Chuck Salemi, which Renczowski did. Dan states that Chuck Salemi said he would take care of it. Dan has no documentation of the event that he is aware of. Shortly after this, Dan advised that Piro sent a memo out about samples being put on the mass/spec machine by primary chemists. The samples were to be put on by the secondary chemist.
5. Dan states that there were several instances where Dookhan would bring in a sample to the mass/spec as one narcotic and the sample would read out as a different narcotic on the mass/spec instrument. Renczowski did a discovery package on a case that Dookhan believed to be marijuana. Dan advised that Dookhan had sent the vials into the mass/spec and said that both samples were Delta 9 THC which would confirm as marijuana. Delta 9 THC is the active chemical in marijuana. Renczowski did the analysis on the mass/spec, assuming they were THC. The first vial wasn't straight THC. It was co-alluding with morphine and also codeine present. The second vial was negative or there was a very trace amount of THC in the second vial but nothing he could confirm. Dan advises this would be unusual and was happening at an increasing frequency with Annie Dookhan's case.
6. Renczowski advised that he sent the samples back to Dookhan. Dookhan sent the samples in to the mass/spec again and Renczowski advises that they came back as an almost perfect standard for THC. Dan states the procedure in place then was that the samples were returned to the primary chemist for them to figure it out. The chemist was supposed reanalyze the samples. Renczowski spoke with

Dookhan and advised her how the samples originally came out. Renczowski was not sure what Dookhan wanted to do with them. Dookhan advised Dan that she would take care of it. Dan states that at some point Dookhan resubmitted the vials with the same lab number. Dan states that the specter did not look anything like the first two vials run with the same lab number. The new vials looked like typical marijuana samples. No morphine or codeine. Renczowski did not realize the samples were from the same lab number. Dookhan had given a new control sheet and it did not have Renczowski's handwritten notes on it, but on the back of the control card Renczowski had written on the back of the card the original run and the results with the morphine and codeine.

7. Renczowski brought the issue to Peter Piro's attention and he is not sure what Piro did. Renczowski advises that he will get us the discovery package on that case. Renczowski advises that after the marijuana control sheet incident nothing else happened with Dookhan because Salemi told him to bring it to him.
8. Dan advises that there have been inconsistencies in the past with Dookhan's cocaine and heroin samples submitted to the mass/spec. Dookhan would submit a cocaine sample and it would come back heroin or vice versa. Dan believes the time in which the cocaine and heroin samples were not coming out right was around 2010 or so. Renczowski thought it was an honest mistake. He feels it happened about five times that Dookhan got cocaine and heroin wrong. He advises that she also got prescription drugs wrong once or twice. Renczowski advises there are no similar occurrences with other chemists.
9. Renczowski recalls that before the control sheet issue Dookhan had submitted cocaine that came back as nothing at all, after the vials went through the mass/spec. Renczowski ran it twice and it came back nothing. The samples were then returned to Dookhan and Renczowski is not sure what happened with the case. Renczowski explained that the chemists assign a 6-digit number to the samples that go into mass/spec. Those are kept in the data file of the machine and it also has the date. The run number has the date and instrument name. In an effort to see if investigators could find the case Renczowski refers to earlier in this paragraph, Renczowski advised that we could go through the control sheets or control cards to try and find the sample numbers.
10. Dan advised that there are no reports or statistics that he is aware of on chemists that submit samples as being one drug and then coming back as another.
11. Renczowski would check Dookhan's vials into the mass/spec. Renczowski would point out mistakes that Dookhan would change right on the spot. Renczowski would ask Dookhan how she would know that's the right lab number and Dookhan would say, I know and she would not check any paperwork.
12. According to Dan, Dookhan had some questionable lab habits. Dookhan would have many mass/spec vials open to the air and uncapped. The vials were next to each other on the rack. There is a potential for cross contamination. Also the

room was dry and there was a lot of static electricity which could affect the sample.

13. Dan states that the QC Mix was done to make sure the mass/spec machine is running properly. Renczowski went back after the June 2011 incident and checked QC Mixes of Dookhan and some appeared blank. Renczowski makes a QC Mix in a large flask he puts it in vials and they run before the samples to make sure the machine is running correct. When Dookhan ran the QC Mix there was no peak, but Dookhan filled out the form saying that the numbers on the QC run were correct. Dan advised there was actually no data showing the the data that Dookhan claimed. Dan states a chemist is supposed to run two blanks, then a CQ Mix prior to any run. Piro kept a file on Dookhan in regards to a QC Mix which he found after the June 2011 incident. Dan states that Piro was going back and doing an investigation on Dookhan's QC Mix. According to Dan Dookhan was approved to run the mass/spec instrument.
14. Renczowski recalls an incident involving another forgery by Annie Dookhan. Nicole Medina was given a copy of a tune sheet by Renczowski, which contained the alleged forgery. The original tune sheet just had Dookhan's initials. The second one had both Annie Dookhan and Nicole Medina's initials. According to dan the two copies are supposed to be the same and there is supposed to be a copy left at the machine and another copy left in records. Dan advised that other chemists made paperwork mistakes. They inverted numbers but none to the extent of Dookhan and none stating that a sample was one thing and it was actually another or nothing at all.
15. Dan states that prior to June 2011, all the chemists had access to the evidence office using the palm reader. If no one was in the evidence office a chemist could use the palm reader unless the door was dead bolted or alarmed. There were times that Dan was in the evidence office to ask a question and realize no one was there and he would walk out. Renczowski did not think it was appropriate to be in the evidence room without anybody in there. He does not remember the evidence locker safe being opened with no Evidence Officer there. He did not know the code to the evidence safe. Dan states that Betsy, Shirley and Gloria are the only ones that Renczowski has seen open the safe door. Renczowski has never tried opening the door to the evidence room with his key. Renczowski has been in the evidence room or side room, Room # 355 and when an Evidence Officer advised that they were going to the bathroom and leaving Renczowski alone. However, when this occurred the safe door would be closed. Dan states that when an Evidence Officer is in the evidence room the safe door was open on a routine basis. Someone acted as the Evidence Officer if the regular evidence officer could be there. Dan states that if there was no back up then the evidence room would be closed.
16. Renczowski never discussed the evidence log book or anything to do with it with Dookhan. Resubmittals used to run through Julie Nassif, who would approve or not approve whether there is a retest. Then the retest would go to Betsy O'Brien for assignment.



AGO State Lab  
Investigation  
000009

Respectfully submitted,

*Robert M. Irwin #1230*

Robert M. Irwin  
Detective Lieutenant, #1230  
Massachusetts State Police  
Office of the Attorney General

# **GOLDBACH ATTACHMENT G**



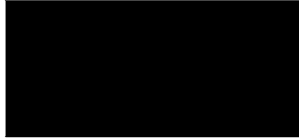
**Massachusetts State Police**  
**Office of the Attorney General**  
**One Ashburton Place, Room 1910**  
**Boston, MA 02108**

AGO State Lab  
Investigation  
000021

**To:** Lieutenant Colonel Francis J. Matthews *JM 9-15-12*  
Commanding, Division of Investigative Services

**From:** Detective Lieutenant Robert M. Irwin  
Commanding, MSP-AGO Detective Unit

**Subject:** Interview of: Peter Piro  
August 27, 2012 at 10:30a



Interview conducted on August 27, 2012, at approximately 10:30a.  
Interview conducted by Detective Captain Joseph Mason, Detective  
Lieutenant Robert Irwin and MOSES Attorney Kleine.

**Case #:** 2012-034-2589-0052

1. Peter Piro advised that he has been at the JP Drug Lab since December 1991 and that his current title is Lab Supervisor I. He supervises the GC/MS Lab. He also conducts training, quality control, and outside purchases. Piro advised that initially he thought Annie Dookhan was a hard worker and diligent. But there came a time that Piro noticed some red flags. Piro advised that he noticed Dookhan's sample numbers were unusually high. Piro noticed that around 2007 or 2008 is when he started noticing Dookhan's numbers were high. Peter Piro spoke with Elizabeth O'Brien, who was Annie Dookhan's immediate supervisor at that time (2008-2009). In 2009, Chuck Salemi became Dookhan's immediate supervisor. Peter Piro didn't get the feedback that he expected from Elizabeth O'Brien so he went to his superior, Chuck Salemi. Piro spoke with Chuck Salemi about his concerns of Dookhan's numbers being so high. His concerns were that she might not be doing all the tests she should be performing. According to Piro when performing a cocaine test you're supposed to perform a micro-crystal test. According to Piro he never saw Dookhan in front of a microscope. This made him suspicious, but was not proof of any improprieties.



2. Piro advised that Dookhan would bring in racks and racks of vials to the mass/spec day after day. Piro doesn't believe Dookhan could do those numbers correctly. He also noticed that Dookhan was not always at her bench. Piro states that Dookhan also had other responsibilities at the lab such as making up standards. He states that she didn't do those in a timely fashion, so that duty was taken away from her. Dookhan was supposed to review documents for quality control and when they got to Piro the documents would have mistakes.
3. Peter Piro reported all of these concerns to Chuck Salemi. As a result, Chuck did an audit of Dookhan's paperwork only. Salemi told Piro that he had also e-mailed Julie Nassif about Dookhan. Chuck Salemi told him that it wasn't his (Salemi's) place to discipline Dookhan and that it was up to Julie Nassif. Piro advised that disaster struck in the spring of 2011. He stated that it was almost like Dookhan wanted to get caught.
4. Piro advised that prior to the June 2011 incident, Dan Renczowski reported to Peter Piro that Dookhan had forged his (Dan's) initials on a control sheet. Dookhan was the primary chemist and was only supposed to fill out her portion of the sheet. However Piro advised that she filled in Renczowski's portion and signed his initials. Piro confronted Dookhan with the control sheet. She did not respond, but took it back and resubmitted it correctly.
5. Another impropriety Piro discovered involving Dookhan concerned the falsification of a quality assurance test. The test is known as a Quality Control Daily Injector Test on the GC/MS. Piro advised the test is done prior to a run of samples on the GC/MS to insure the instrument is working properly. Piro discovered that prior to a particular run Dookhan failed to properly inject a QC mixture, therefore the results came out as a blank. Piro states that Dookhan then made up test numbers that were within the acceptable range. Peter Piro has a copy of that GC/MS daily injector column check sheet. Piro spoke with Dookhan about it. He advised that she didn't say anything when Piro showed her the made-up numbers. This caused Piro to pull the raw data and he saw the numbers were blank on the run that Dookhan had done. Piro went to Chuck Salemi about the made-up numbers and the forging of the initials. Piro felt that it was over the top what Dookhan was doing.
6. After the incident in the evidence office in June 2011, Julie Nassif told Peter Piro that it didn't really matter about the forgeries and made up data because Annie Dookhan was in enough trouble for what she did in the evidence office in regards to the evidence log book. Peter Piro advised that he didn't agree and felt it should be looked at in its entirety. Peter Piro is worried about being asked questions by a Defense Attorney and didn't want to perjure himself. Julie Nassif advised him, "Don't perjure yourself." Piro advised that there were no admissions made by Annie Dookhan to Peter Piro about the testing of the samples. Peter Piro was surprised that Elizabeth O'Brien

AGO State Lab  
Investigation

gave Annie Dookhan access to the database. Peter Piro was not sure if it ~~000023~~ a read-only privilege.

7. Piro states that Dookhan started to have trouble with her cocaine and heroin samples being wrong when they went through the mass/spec. A few ended up being both a cocaine and heroin mix called a speedball. Piro advised that a chemist is supposed to run a cocaine and heroin bracketing standard on that type of sample. Peter Piro thought that Annie Dookhan had higher than average samples that were bracketed as such. Piro thought that this allowed Dookhan to cover both instead of doing the presumptive tests.
8. Piro thought that Dookhan had a higher than average amount of samples that she said were cocaine that turned out to be heroin. He states that if a chemist is "dry labbing" and just looking at samples and not doing the color test, that is where they get the samples wrong. Peter Piro does not have any firsthand knowledge that Dookhan was "dry-labbing" just his suspicions.
9. Piro advised that on one occasion he came in on a Saturday on overtime. Annie Dookhan was also working that day. Piro observed Dookhan arrive at work and commence to measuring samples without doing a balance check on her scale. Piro stated that he had enough of Dookhan. He went over and put the weights a chemist uses for balancing their scale in front of her. They stared at each other and Piro felt that Dookhan got the message that she needed to make sure her scale was correct.
10. Piro related an incident when Dan Renczkowski performed a GC/MS test on a sample that Dookhan had sent in as THC (marijuana). Renczkowski gave the samples back to Annie Dookhan because it did not come back correctly in the mass/spec. When it came back to the mass/spec again, it came back as THC (marijuana).
11. Piro advised that Dookhan had a few too many cocaines that turned out to be heroin for Peter Piro's satisfaction. He states she would say it was cocaine and the mass/spec would determine it to be heroin. Piro reported these instances verbally to Chuck Salemi shortly after each occurred.
12. Piro states that it took six months for the DPH lawyers to do their investigation after the incident in June of 2011. The chemists were all wondering why Annie Dookhan was able to stay in the lab. Though she was not doing samples, she was still in the lab.
13. Piro states that Dookhan occasionally assisted in the evidence room. Piro never saw the safe door open when there wasn't an Evidence Officer in the room. Piro did not know the code to the evidence safe. Piro heard later, after the June 2011 incident that his key opened the safe door, but it wasn't supposed to work on the safe door. He never saw Dookhan use a code or key to open the safe door.

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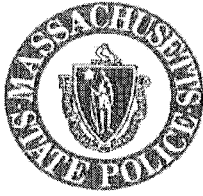
14. Piro advised that Dookhan had relationships with ADA's so she would pull sample numbers for them. Piro states that Shirley Sprague finally said, "No, no taking samples out of order." Piro recalls that ADA's were calling Dookhan direct and not the evidence office as was the proper procedure.
15. Piro alluded to a gender discrimination complaint by some of the female employees at the lab and Michael Lawler. It was a discrimination complaint brought by females in the chem lab who felt they weren't being treated fairly by the lab and Salemi. Piro feels that after that discrimination complaint, Salemi felt that he could not discipline the people that worked for him.
16. Piro advised that the mass/spec results not agreeing with the custodial chemist's initial finding happened very infrequently. Usually it was due to an administrative error. If that was the case, the sample would be given back to the chemist to correct. Piro advised that when heroin was switched to the plastic bags from the glassine bags (glassine bags are the waxed paper type packaging) there was a higher instance of Dookhan getting cocaine samples back from the mass/spec that were actually heroin. The suspicion Piro had is that Dookhan would "dry lab." According to Piro, Dookhan would look at the sample and think it is cocaine and not heroin due to the packaging.

Respectfully submitted,

 #230

Robert M. Irwin  
Detective Lieutenant, #1230  
Massachusetts State Police  
Office of the Attorney General

# **GOLDBACH ATTACHMENT H**



**Massachusetts State Police**  
**Office of the Attorney General**  
**One Ashburton Place, Room 1910**  
**Boston, MA 02108**

AGO State Lab  
Investigation  
000039

**To:** Lieutenant Colonel Francis J. Matthews *JM 9-15-12*  
Commanding, Division of Investigative Services

**From:** Detective Lieutenant Robert M. Irwin  
Commanding, MSP-AGO Detective Unit

**Subject:** Interview of: Nicole Medina  
August 28, 2012 at 1230 hours



Interview conducted on August 28, 2012, at approximately 1230 hours. Interview conducted by Detective Captain Joseph Mason, Detective Lieutenant Robert Irwin and MOSES Attorney Paul Donahue.

**Case #:** 2012-034-2589-0052

1. Nicole Medina advised she is a Chemist II and has been with the lab since November 2004, she analyzes drugs. Nicole advised that she has worked with Annie Dookhan and that they were co-workers. Annie Dookhan worked in a different area than Nicole. They did not do work together but there might have been one or two occasions when they prepared a re-agent together. Nicole would joke with Annie about her being the "super woman" of the lab.
2. According to Nicole, the chemists were allowed to go in the evidence room until a few months ago. Nicole Medina never wanted to and never went into the evidence safe. Nicole did not know the combination for the safe and never tried her key on the safe. Nicole advises the safe door has been open when she has been in the evidence room in the past, but that there was always an evidence officer present. Nicole states that there might have been a few times the evidence officer left Nicole alone in the evidence room when the evidence office would go to the bathroom, but that the evidence officer would always lock the safe. Nicole states she has never talked to any chemists who got their own samples out of the safe. Nicole does not know of anyone who tested her key on the evidence safe door.

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3. Nicole stated that the mass/spec tune test, which makes sure the instrument is running properly is supposed to be signed off by two chemists. Nicole advised that Annie Dookhan would set the machine up and then they were both supposed to initial the tune test sheet. Nicole stated that she learned Annie Dookhan signed her (Nicole's) initials on the sheet without her knowledge. Nicole's initials were put down on the sheet as doing the review. Nicole advises that she did not initial the form. Nicole believes this happened sometime around the end or middle of June 2011. Nicole states that when two chemists' initials are on the original, a copy is made and one copy goes into the file/records room and the other copy goes in a file next to the instrument. Nicole found one copy of a tune test dated June 10, 2011 in the binder next to the mass/spec instrument and it had the initials ASD (Annie S Dookhan) and the date. It also had the initials NEM (Nicole E Medina) and the date. Nicole advises that it is not her handwriting and she did not initial the sheet. Nicole went and found the copy filed in the records room and that copy only had ASD and the date. Nicole states that she has no idea why the two copies are different or why her initials were used. She just happened to find the document. She had heard of similar issues with Dookhan and the forging of initials so she might have been on a heightened state of alert to see if Dookhan had forged her initials. Nicole provided us with a copy of this tune test.
4. Nicole advised that she went on maternity leave between November 21, 2010 and she was back to work on May 25, 2011. Nicole was just getting back up to speed from maternity leave in June of 2011. That is when Peter Piro was at DEA School and not at the lab. Nicole advised that Annie Dookhan tried to pressure Nicole to analyze her mass/spec submissions. Nicole would not do it because Peter wanted to recertify Nicole when he got back from the DEA school.
5. Nicole recalls that on an unknown date, after Dookhan was removed from lab after the June 2011 incident, she observed Dookhan in the mass/spec lab. Nicole advised that even though Dookhan was supposed to be prohibited from entering the mass/spec lab she still would go in. Nicole believes that around the early fall of 2011, Nicole found Dookhan in the mass/spec room, at the computer, with the door shut and the lights off. Nicole asked Dookhan what she was doing and Dookhan said the bright lights bothered her and she didn't want them on. Nicole reported this to Peter Piro. Nicole also adds that Annie Dookhan sometimes got requests direct from ADAs to do discovery.

Respectfully submitted,

 #1230

Robert M. Irwin  
Detective Lieutenant, #1230  
Massachusetts State Police  
Office of the Attorney General

# **GOLDBACH ATTACHMENT I**

**From:** Khan, Annie (DPH)  
**To:** "Wortmann, John (USAMA)"  
**Subject:** RE: [REDACTED]  
**Date:** Wednesday, June 10, 2009 9:02:33 AM

No problem. I have the same attitude. . get them off the streets.

-Annie

**From:** Wortmann, John (USAMA) [mailto:John.Wortmann@usdoj.gov]  
**Sent:** Wednesday, June 10, 2009 8:59 AM  
**To:** Khan, Annie (DPH)  
**Subject:** RE: [REDACTED]

Annie—thanks. Sorry to be so bothersome lately. But the Summer approaches and we need to take some of these guys off.

**From:** Khan, Annie (DPH) [mailto:Annie.Khan@state.ma.us]  
**Sent:** Wednesday, June 10, 2009 8:57 AM  
**To:** Wortmann, John (USAMA)  
**Subject:** [REDACTED]

Hi John,

I just faxed over the certificates for:

Lab # B09-06723 & B09-06724 [REDACTED]

Lab # B09-07416 & B09-07417 [REDACTED]

Thanks,

Annie Dookhan  
617-983-6631



**From:** MacKinlay, Glenn (USAMA)  
**To:** Khan, Annie (DPH)  
**Subject:** RE: Predicate Court Questions (Drug Lab)  
**Date:** Friday, October 02, 2009 3:49:05 PM

Thanks for doing this Annie. We would love to have the IR questions, if it is not too much work.

**From:** Khan, Annie (DPH) [mailto:Annie.Khan@state.ma.us]  
**Sent:** Friday, October 02, 2009 3:36 PM  
**To:** Sullivan, Suzanne (USAMA); Wortmann, John (USAMA); Richardson, Robert (USAMA); Bucci, Jeremy (SUF); Green, Matthew (PLY); Papachristos, George (NFK); Fregault, Garrett (BRI); Solet, David (NOR); Brennan, John (EAS); Shea, Bryan (CPI); Boivin, Mark (BRI); MacKinlay, Glenn (USAMA); Fisher, Robert (USAMA)  
**Cc:** Strojny, Aaron (BRI); Gibson, Moya (NOR); Kidd, Robert (BRI); Fahy, Brian (SUF); Snook, Jennifer (NOR); Swadling, Mark (SUF); Nash, Amy (NOR); Barnes, Brendan (PLY); Hyde, Barrett (SUF); Haywood, Montez (SUF); Dolhun, Susan (EAS); LaMacchia, Brian (NOR); Brandt, Nicholas (SUF); Gyebe, Yaw (SUF); Clayton, David (NOR); Young, Christian (SUF); Friedholm, Greg (EAS); Buxton, Kristen (EAS); Lally, Adam (NFK); Cannon, Doug (NOR); Muche, Clint (EAS); Zaganjori, Samir (NOR); Ham, Catherine (PLY); Abely, William (NOR); Allain, Nicole (NOR); Healy, Jessica (PLY); Le, Cam (NFK); Rutley, Jonathan (NFK); Flynn, Maryclare (BRI)  
**Subject:** Predicate Court Questions (Drug Lab)

Hi,

I would like to thank everyone for their cooperation and patience since the Melendez-Diaz decision.

I have attached some predicate questions for drug analysis to this email. Please distribute to your colleagues.

General Questions

General Questions with GC/MS confirmatory testing (#17-34).

AUSA: If you need predicate questions for the Infra Red (IR) analysis, let me know. I will put together some basic questions.

If anyone needs clarification on the roles of the chemists, chain of custody, discovery packet or anything else pertaining to drug analysis, feel free to contact me.

I will be out of the Lab from October 3<sup>rd</sup> to 10<sup>th</sup>. I will be checking my emails and work cell.

Once again, thank you to everyone.

Thanks,  
Annie Khan Dookhan  
Chemist  
Drug Analysis Laboratory  
617-983-6631 (work)  
617-983-6625 (fax)  
781-367-4152 (w. cell)

**From:** Solet, David (NOR)  
**To:** Khan, Annie (DPH)  
**Subject:** RE: Pharmaceutical Questions  
**Date:** Tuesday, August 24, 2010 4:47:54 PM

Sending over now. Thanks Annie.

---

**From:** Khan, Annie (DPH)  
**Sent:** Tuesday, August 24, 2010 1:55 PM  
**To:** Solet, David (NOR)  
**Subject:** RE: Pharmaceutical Questions

Fax is fine, writ to my ATTN. See below for fax #.

As for methadone, it is non-opium derivative, class B (meaning made from synthetic opioid). I do not believe there is any Trafficking status for methadone.

Let me make a call to S/A Kramer for the DEA, once I see the questions.

Thx

Annie  
Drug Analysis Lab  
617-983-6631 (work)  
617-983-6625 (fax)

---

**From:** Solet, David (NOR)  
**Sent:** Tuesday, August 24, 2010 1:38 PM  
**To:** Khan, Annie (DPH)  
**Subject:** Pharmaceutical Questions

Hi Annie –

I am pursuing a pharmacy burglar and had a couple of questions about some different types of pills – specifically, do you know the standard weights per pill for the particular pills (“methadone 10 mg” for example), and would you classify them as “derivatives of opium.” I am interested in pursuing this guy for trafficking as well as for burglary – he would face a much stronger penalty.

Can I fax you a list of the pills in question? If so, what is the best fax number?

Dave

**From:** [McManus, Stephen C.](#)  
**To:** ["Annie.Khan@state.ma.us"](mailto:Annie.Khan@state.ma.us)  
**Subject:** Re: Sample Completed  
**Date:** Thursday, October 07, 2010 4:56:10 PM

Hi Annie, I'm sorry I didn't get back to you sooner...  
Can you give me a call when you return from your vacation?

Thanks again,  
Steve

----- Original Message -----

From: Khan, Annie (DPH) <[Annie.Khan@state.ma.us](mailto:Annie.Khan@state.ma.us)>  
To: Bucci, Jeremy (SUF) <[Jeremy.Bucci@state.ma.us](mailto:Jeremy.Bucci@state.ma.us)>  
Cc: McManus, Stephen C.  
Sent: Wed Oct 06 20:14:17 2010  
Subject: Sample Completed

Hey Guys,

The sample is completed and will be ready to be picked up on Thurs AM. I will try my best to have a copy of the discovery packet ready with the sample before I leave on vaca. The Certificate will read: The substances contained were Cocaine Base (Crack). I had some ATF samples to analyze so I did an IR Spec to differentiate between Cocaine Hydrochloride and Cocaine Base (Crack).

Steve: If you have to bring in samples for some reason just shoot me an email or text/call my cell (781-367-4152) and we can make the arrangements. I will have those samples specifically assign to me.

Thanks as always.

Annie  
Drug Analysis Lab  
617-983-6631 (work)  
617-983-6625 (fax)

---

From: Bucci, Jeremy (SUF)  
Sent: Wednesday, October 06, 2010 3:40 PM  
To: Khan, Annie (DPH)  
Subject: RE: Info

[stephen.mcmanus@ic.fbi.gov](mailto:stephen.mcmanus@ic.fbi.gov) <<mailto:stephen.mcmanus@ic.fbi.gov>>

can you give McManus the discovery packet on that sample too so that I don't have to ask Bukuras to go pick it up?

Thanks!

Jeremy Bucci  
Chief of Narcotics and Asset Forfeiture Unit  
Suffolk County District Attorney's Office  
1 Bulfinch Place  
Boston, MA 02114  
(617) 619-4127 (o)  
(617) 523-5962 (f)  
[jeremy.bucci@state.ma.us](mailto:jeremy.bucci@state.ma.us) <<mailto:jeremy.bucci@state.ma.us>>

---

From: Khan, Annie (DPH)  
Sent: Wednesday, October 06, 2010 3:31 PM  
To: Bucci, Jeremy (SUF)  
Subject: Info

Jeremy,

Can you forward me Det. Steve McManus's email address? I would like to give him a heads up that the sample is completed.

I will fax over the Cert for FBI sample to you tomorrow and return the sample back to the safe.

Thanks.

Annie  
Drug Analysis Lab  
617-983-6631 (work)  
617-983-6625 (fax)

**From:** Papachristos, George (NFK)  
**To:** Khan, Annie (DPH)  
**Subject:** RE: RX Question  
**Date:** Saturday, November 20, 2010 8:02:00 PM

Thank you!

George N. Papachristos  
Assistant District Attorney  
Norfolk County District Attorney  
45 Shawmut Road  
Canton, MA 02021  
781-830 4800 ext. 369  
fax: 781-830-4801  
cell: 781-974-6823

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-----Original Message-----

From: Khan, Annie (DPH)  
Sent: Saturday, November 20, 2010 8:00 PM  
To: Papachristos, George (NFK)  
Subject: RE: RX Question

No prob.

If they are not completed, I will have them assign to me. I need get samples anyways.

I'll keep u posted.

AK

---

From: Papachristos, George (NFK)  
Sent: Saturday, November 20, 2010 7:39 PM  
To: Khan, Annie (DPH)  
Subject: RE: RX Question

That's AWESOME!!!!!!!!!!!!!!!!!!!!!!

I have grand jury this Tuesday, and if they are not ready, I will get another date for presentment.

B10- 50969  
50938 TO 50968

I know those are a lot! I just wanted to see the status.

Thank you,  
Thank you,

Thank you!

George N. Papachristos  
Assistant District Attorney  
Norfolk County District Attorney  
45 Shawmut Road  
Canton, MA 02021  
781-830 4800 ext. 369  
fax: 781-830-4801  
cell: 781-974-6823

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-----Original Message-----

From: Khan, Annie (DPH)  
Sent: Saturday, November 20, 2010 7:33 PM  
To: Papachristos, George (NFK)  
Subject: RE: RX Question

What are the Lab #?

I will get an update on Monday AM for you.

AK

---

From: Papachristos, George (NFK)  
Sent: Saturday, November 20, 2010 5:31 PM  
To: Khan, Annie (DPH)  
Subject: RE: RX Question

Haha!

You're the best!

I'm sending a fax cover to Shirley this weekend to get an update for some drug certs!

Talk to you!

George N. Papachristos  
Assistant District Attorney  
Norfolk County District Attorney  
45 Shawmut Road  
Canton, MA 02021  
781-830 4800 ext. 369  
fax: 781-830-4801  
cell: 781-974-6823

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-----Original Message-----

From: Khan, Annie (DPH)  
Sent: Monday, November 15, 2010 5:06 AM  
To: Papachristos, George (NFK)  
Subject: RE: RX Question

You're the best!!

Hey, stop & breathe.

Oh please, no apologies needed. You are wicked busy and I hated to bother you. This is what I get for taking work with me on my vaca.

Anyways, as for the case, with a lot of coordination, tremendous am't of work and late nights/mornings, we have success. Dave Solet charged him with trafficking Class B and armed robbery. Jeremy Bucci has him in custody for Class A narcotic and SZ violation. Steve Butts charge with Class B and possession of firearm. Chris Bator and I did a lot of work and bumped it federally b/c involved the postal service and homeland security. Bucci was more than happy to hand over the files to me.

And to top it all of, on the week of halloween, the defendant (a real winner) was charged with rape/sexual assault on a minor. Now, that hit my heart closely and for that he needs to be locked up and throw away the key. I had the pleasure of spending some time with the young lady and she is a sweetheart. So very young to have to go threw this ordeal, not just physically but mentally.

Needless to say, def. will be making a lot of friends in the federal pen, named John. haha

Thanks for getting back to me. Happy Monday!!!

Hope all is well. Would you relax,pleaseeeeeeeeeee!

AK

---

From: Papachristos, George (NFK)  
Sent: Sunday, November 14, 2010 6:35 PM  
To: Khan, Annie (DPH)  
Subject: RE: RX Question

Annie.....!

Sorry.....

I had 8 back to back fatals that I had to respond to over the last couple of weeks along with 2 jury trial in Superior Court, and I haven't had the chance to even breathe!!!!!!!!!!

Hmm...let me see, for that specific set of facts (stoughton robbery where D stole drugs) I would think Armed Robbery, or Unarmed Robbery depending on whether he threatened a clerk; if he broke in: It would be B & E intent to commit a felony, (either night or day); larceny from a building, and possibly malicious damage if he broke things in order to get in (that can be charged along with the B & E but cannot be a concurrent conviction with that charge).

Hmm,....

As far as other stuff; tough to tell without more facts.

I know I am WAY TOO late in answering your email, I am very sorry!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!

GP

George N. Papachristos  
Assistant District Attorney  
Norfolk County District Attorney  
45 Shawmut Road  
Canton, MA 02021  
781-830 4800 ext. 369  
fax: 781-830-4801  
cell: 781-974-6823

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---

From: Khan, Annie (DPH)  
Sent: Saturday, October 16, 2010 3:47 PM  
To: Papachristos, George (NFK)  
Subject: RX Question

Georgeeee!!

I know you are wicked busy. No rush.  
I have a question about charges for pills and steroids.

The case involves Suffolk, Middlesex and Bristol counties. I am trying to bump it to Federal court b/c def. may have robbed several pharmacies out of state. Trying to figure out the possible charges, other than SZ violation, possession and intent to distribute.

I did a case involving a Stoughton pharmacy robbery earlier this year and it was about 1000 grams of oxycodone or Class B drugs. What would be the possible charges for the def.?

Thank you SOO much!!! Greatly appreciated!!!!

AK

Granada, Spain



**From:** Khan, Annie (DPH)  
**To:** "wbward13@verizon.net"  
**Cc:** briancoen@hotmail.com  
**Subject:** RE: RE: Just a note  
**Date:** Monday, December 13, 2010 1:42:00 PM

You guys are like a married couple. ☺

Yeah, the drug lab and food, there are never any leftovers. I saved you guys some tiramisu. . . if you come by before the end of the week it will be here.

Enjoy the rest of the day.

Annie

---

**From:** wbward13@verizon.net [mailto:wbward13@verizon.net]  
**Sent:** Monday, December 13, 2010 12:24 PM  
**To:** Khan, Annie (DPH)  
**Cc:** briancoen@hotmail.com  
**Subject:** Re: RE: Just a note

Annie,  
Unfortunately I won't be able to stop by on Monday I have evidence up to me ears and Brian is enjoying his day off taking a walk on Wollaston Beach. I will be there on Tuesday and maybe I could search the floor and find some crumbs. I hope you guys have a good day.

Thanks again for the invite.  
Billy

P.S. I hope you enjoyed the emails, both Brian and I very much enjoy fighting with each other. At the end of the day he is truly the best friend a guy could have.

Dec 13, 2010 06:40:15 AM, Annie.Khan@state.ma.us wrote:

Haha.

Hopefully, Billy comes by. Maybe he will bring you a piece.

Thx

Annie

---

**From:** BRIAN COEN [mailto:briancoen@hotmail.com]  
**Sent:** Sunday, December 12, 2010 8:19 PM  
**To:** annie khan; billy ward  
**Subject:** RE: Just a note

Annie,

Thanks for the kind words. Billy and I are still friends. Actually, I'm thinking of reconsidering my retirement from the evidence position, especially if there is cheesecake and desserts involved. Unfortunately I can't make it tomorrow but thanks for the invite. Hope to see you before the holidays. Talk with you soon. Billy, prepare everything and

I'll bring the evidence this week. :-)

Regards,

Brian

> From: Annie.Khan@state.ma.us  
> To: wbward13@verizon.net; briancoen@hotmail.com  
> Date: Sat, 11 Dec 2010 21:31:01 -0500  
> Subject: RE: RE: Just a note  
>  
> Hey Guys,  
>  
> Sorry, I was in court most of the day Thursday and Friday. (It sucked!!)  
>  
> I sense a little tension between you. Go have some drinks or lots of chocolate. haha  
>  
> Brian, I am sorry to hear that you have left the evidence officer's position. On behalf of myself and the evidence office staff (Betsy & Shirley), it has been a pleasure working with you. I wish you all the best. Feel free to drop by the Lab and say Hi.  
>  
> Billy, it is always nice to speak with you and I will see when you come by the Lab. I will still give you a hard time. We'll have some laughs.  
>  
> I hope you guys can drop by the Lab on Monday for some cheesecake/desserts.  
>  
> Happy Holidays & a Prosperous New Year!!  
>  
>  
> Annie

> \_\_\_\_\_  
> From: wbward13@verizon.net [wbward13@verizon.net]  
> Sent: Friday, December 10, 2010 3:08 PM  
> To: briancoen@hotmail.com  
> Cc: Khan, Annie (DPH)  
> Subject: Re: RE: Just a note  
>  
> Annie,  
>  
> Brian is off his Meds. he has been drooling on himself all day and is having a hard time speaking today. I told his mother I would keep an eye on him but it has not been easy. Please pray for Brian.

> \_\_\_\_\_  
> Dec 10, 2010 01:36:22 PM, briancoen@hotmail.com wrote:  
> Annie,  
>  
> I'm sorry Billy is so upset. I'm not going to use harsh words towards him and I'm sorry you have been put in the middle. Sometimes when Billy doesn't take his medication he gets a little....well lets just say sensitive. Go easy on him when he is at the lab. If you come across some extra pink or blue tablets please offer them to Billy. Billy, it has been a wonderful experience working the evidence with you. You have come a long way and I'm proud of you even if your Mom isn't. Merry Christmas!

> \_\_\_\_\_  
> Regards,  
>  
> Brian

>  
>  
>  
>  
>  
>  
>  
> Annie,  
>  
> Just to clarify some of Brian's points. I was a police officer when little Brian was still in high school trying to kiss his first girlfriend. I have more time at lunch than Brian has on the job. There is no "I" in team but there sure is in Brian. Lately he has been a complaining little bitch. I am looking for a replacement. I don't expect much because Brian did so little even if the new person is a complete lazy idiot he or she will be an upgrade.  
>  
>  
>  
> Dec 10, 2010 07:30:15 AM, briancoen@hotmail.com wrote:  
> Annie,  
>  
> I think I could make a final appearance on the 13th. Billy forgets that I have encouraged him and have provided emotional support for him when he starts to cry and complain about all the evidence he must process. Annie, have you ever felt unappreciated? After all these years this is what I get. Billy, you must realize you are the junior man, the guy with the least seniority, the rookie! Suck it up, do your job and stop complaining. Annie, we may be looking to replace a drug unit member with someone with a little more tenacity. Interested?  
>  
> Happy Holidays,  
>  
> Brian  
>  
>  
> \_\_\_\_\_  
> Date: Thu, 9 Dec 2010 14:47:21 -0600  
> From: wbward13@verizon.net  
> To: Annie.Khan@state.ma.us; briancoen@hotmail.com  
> Subject: Re: Just a note  
>  
> Annie,  
> Thanks for the invite I would love to stop by. Unfortunately Brian has QUIT the assistant evidence officer position due to the fact that he has not touched a piece of evidence for the last six months. Its probably better that he quit because I was just about to fire his ASS!!  
>  
> Thanks Again,  
> Billy  
>  
>  
> Dec 7, 2010 07:38:08 PM, Annie.Khan@state.ma.us wrote:  
> Hey,  
>  
> If you and Brian are planning on coming to the Lab, I would recommend both of you coming on Monday Dec 13th. The drug lab is having its annual holiday party. I owe you guys Tiramisu cheesecake, as an appreciation.  
>  
> PS: You can go to the gym afterward. Haha  
>  
>  
> Annie  
> Drug Analysis Lab

**From:** Devlin, Patrick K (SUF)  
**To:** Khan, Annie (DPH); Feiden, Stacey (DPH); Medina, Nicole (DPH); Renczkowski, Daniel (DPH)  
**Subject:** [REDACTED]  
**Date:** Tuesday, February 08, 2011 3:42:19 PM

Hey Guys,

bad news -- I have been trying extremely hard to plea this case out -- it's a VERY solid case for us but Attorney Neil Madden hasn't been doing a good job conveying that to his client. We are offering 4 years and the Defendant would get a mandatory 12 if he is found guilty. ridiculous.

As of now I'm going to need you guys next wednesday on an on call basis -- I anticipate calling you either Thursday or Friday. I will know much better on Tuesday/ Wednesday.

Sorry again!!!!!!

Patrick (cell 781-632-8995)

Patrick K. Devlin  
Assistant District Attorney  
Suffolk County District Attorney's Office  
One Bulfinch Place, Suite 300  
Boston, MA 02114  
617-619-4296  
617-619-4323(f)

**From:** Hill, Farah (NFK)  
**To:** Khan, Annie (DPH)  
**Subject:** RE: [REDACTED], Docket No. [REDACTED]  
**Date:** Friday, February 11, 2011 8:26:58 AM

Haha! My thoughts exactly!

-----Original Message-----

**From:** Khan, Annie (DPH)  
**Sent:** Wednesday, February 09, 2011 8:51 PM  
**To:** Hill, Farah (NFK)  
**Subject:** RE: [REDACTED], Docket No. [REDACTED]

Defaulted . . . He must be in the Dominican republic on the beach with my other default defendants.

Let me know if you need anything in the future.

Annie

---

**From:** Hill, Farah (NFK)  
**Sent:** Wednesday, February 09, 2011 4:37 PM  
**To:** Khan, Annie (DPH)  
**Subject:** RE: [REDACTED], Docket No. [REDACTED]

Just got out of court! Sorry...the defendant didn't even show up! Figures! I will let you know if he comes in and is placed back on the trial list...thanks for being on-call.  
Farah

-----Original Message-----

**From:** Khan, Annie (DPH)  
**Sent:** Tuesday, February 08, 2011 6:50 PM  
**To:** Hill, Farah (NFK)  
**Subject:** RE: [REDACTED], Docket No. [REDACTED]

It's been a while.

Thanks for the info. As for my schedule, I will be in Middlesex Superior around noon, but my testimony should be quick. I am suppose to head to Fall River Superior for 2 PM, but I am trying to see if they can get me on Thursday AM instead.

For now put me On Call, and I will update you in the AM. We usually ask for an hour lead time. If needed and I can not make it tomorrow, can you get me on Thursday?

My cell# 781-367-4152, call or text me if you need anything.

Annie

---

**From:** Hill, Farah (NFK)  
**Sent:** Tuesday, February 08, 2011 4:08 PM  
**To:** Khan, Annie (DPH)  
**Subject:** RE: [REDACTED], Docket No. [REDACTED]

Hi Annie,  
I am new to this court...just looked at the file and it is scheduled for Bench Trial. What does your day look like? Can you be on-call? How long would it take for you to get down here if we needed you?  
Thanks,

Farah

---

From: Khan, Annie (DPH)  
Sent: Tuesday, February 08, 2011 2:03 PM  
To: Powers, Kevin (NFK)  
Cc: Hill, Farah (NFK)  
Subject: RE: [REDACTED], Docket No. [REDACTED]

Out of curiosity, I have a summons for [REDACTED] (Stoughton District) for 2/9.

Would you happen to know the status of this case? And the Lab #/s for this case.

Greatly appreciate any help.

Annie

---

From: Powers, Kevin (NFK)  
Sent: Tuesday, February 08, 2011 1:52 PM  
To: Khan, Annie (DPH)  
Cc: Hill, Farah (NFK)  
Subject: RE: [REDACTED], Docket No. [REDACTED]

That should be great--thank you!

---

From: Khan, Annie (DPH)  
Sent: Tuesday, February 08, 2011 1:48 PM  
To: Powers, Kevin (NFK)  
Cc: Hill, Farah (NFK)  
Subject: RE: [REDACTED], Docket No. [REDACTED] Hi,

I will send the discovery packet for the above case by next week. If you need it sooner, let me know.

Thanks.

Annie  
Drug Analysis Lab  
617-983-6631 (work)  
617-983-6625 (fax)

---

From: Powers, Kevin (NFK)  
Sent: Tuesday, February 08, 2011 1:46 PM  
To: Khan, Annie (DPH); Renczkowski, Daniel (DPH)  
Subject: [REDACTED], Docket No. [REDACTED]

Mr. Renczkowski and Ms. Dookhan:

I am an Assistant District Attorney working on [REDACTED], Docket No. [REDACTED]. Our office is in receipt of your drug cert for this matter, which is numbered B10-07948.

Please kindly send your drug analysis notes to the following address at your earliest convenience:

ADA Farrah Hill  
Norfolk District Attorney's Office  
Stoughton District Court  
1288 Central Street  
Stoughton, MA 02072

Thank you very much for your assistance in this matter.

**From:** Khan, Annie (DPH)  
**To:** Callahan, Allison (SUF)  
**Subject:** RE:  
**Date:** Thursday, February 24, 2011 1:07:00 PM

Unfortunately, yes.

I had a case with Lauren Greene (Brendan Murphy in regards to re-weighing for 2005 case.

**Reweighing Process:**

It is a simple process, once the sample is back at the lab. Have the Boston DCU bring the sample back to the lab with a copy of the motion for independent weighing or a letter that states that an independent chemist will be coming to re-weigh the samples. The sample will be assigned a Lab # with the letter R for resubmittal.

At anytime, the defense chemist can contact the custodial chemist at the lab (617-983-6622) and they can schedule a date and time. Both the independent chemist and the custodial chemist will conduct the re-weighing of the sample (just to maintain the integrity of the sample).

I have an ongoing case with Greg Henning that is asking for independent testing. Unfortunately, there aren't a lot of Labs or chemists in Mass that do independent weighing. We are having problems with d/c because we have to maintain chain of custody.

Retesting by independent chemist issues: (retesting at the lab, try to avoid and can be address to the Lab Supervisor, Chuck)

Who will be obtaining the sample? We do not want to be responsible for removing any sample and shipping it to the NJ Lab. Because defense counsel can always use that against us due the small amount of sample.

Usually the independent chemist (with the proper docs) would open the sample in the presence of the custodial chemist and obtain the necessary amount. Then the sample is seal by the custodial chemist and return to the DCU.

The only suggestions I have:

- (1) for d/c to provide transportation for the independent chemist to come to Boston and obtain the sample or
- (2) have one of our local independent chemists come to the lab and obtain the sample and then mail it to NMS Labs.

Therefore all responsibility falls on d/c and it will cost more money. Haha

Not sure if this helps.

Annie

**From:** Callahan, Allison (SUF)  
**Sent:** Thursday, February 24, 2011 12:48 PM  
**To:** Khan, Annie (DPH)  
**Subject:**

Annie,

Have you had a lot of attorneys asking that drugs be retested as a result of Melendez-Diaz retrials? I have an attorney who I think is going to ask that the drugs be reweighed and retested. Thanks.  
Allison

**From:** Donovan, Mark (BRI)  
**To:** Khan, Annie (DPH)  
**Subject:** RE: [REDACTED]  
**Date:** Tuesday, March 01, 2011 1:54:40 PM

---

Just curious.  
Why do you want us to summons both chemist?  
Do we only need one for trial?

-----Original Message-----  
**From:** Khan, Annie (DPH)  
**Sent:** Monday, February 28, 2011 9:25 PM  
**To:** Donovan, Mark (BRI)  
**Subject:** [REDACTED]

No worries.

We are more than willing to provide discovery packets to the ADAs as long as it will help in getting a plea or stipulation.

We are trying to persuade the ADAs from each county to always summons both chemists for their case. This will help us maintain an open line of communication within the Drug Lab and the attorneys.

If you need anything in the future, please feel free to contact me.

Annie  
Drug Analysis Lab  
617-983-6631 (work)  
617-983-6625 (fax)

---

**From:** Donovan, Mark (BRI)  
**Sent:** Monday, February 28, 2011 2:06 PM  
**To:** Khan, Annie (DPH)  
**Subject:** [REDACTED]

Thank you Annie.

I will discourage defendants from requesting documents other than the drug cert. in the future.  
Thank you again,  
Mark

-----Original Message-----  
**From:** Khan, Annie (DPH)  
**Sent:** Saturday, February 26, 2011 4:27 PM  
**To:** Donovan, Mark (BRI)  
**Subject:** FW: [REDACTED]

Hi,

Please see attachment for the discovery packet.

Let me know if you need anything else.

Thanks

Annie  
Drug Analysis Lab  
617-983-6631 (work)



**From:** Zuanich, Brian (BRI)  
**To:** Khan, Annie (DPH)  
**Subject:** [REDACTED] (drug case)  
**Date:** Thursday, March 03, 2011 2:40:07 PM

Annie,

I am prosecuting a gun and drug case in Fall River District Court that is scheduled for trial on March 17. The defendant is held in custody on a dangerousness hearing and the case is three months old.

I sent a priority cert request by fax (to the 617-983-6210 number) for the drugs but I wanted to email you as well. Could you possibly help facilitate the testing? I know you probably get a lot of these requests. If I can't get the case tried by the 17th, technically, the court could release the defendant on bail. That's why I'm asking, so I can summons the appropriate chemist!

The Lab Numbers are B11-50009, 50010, 50011, and 50012.

Thanks!  
Brian Zuanich

Brian Zuanich  
Assistant District Attorney  
Bristol County District Attorney's Office  
218 South Main Street, Suite 101  
Fall River, MA 02721  
Tel: (508) 350-7057 (direct)  
Fax: (508) 673-1429

-----Original Message-----

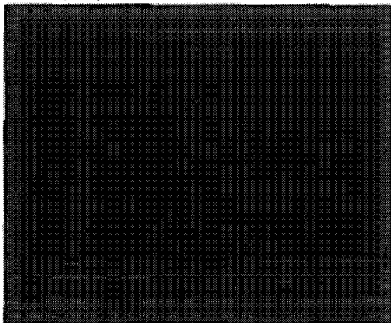
**From:** Khan, Annie (DPH)  
**Sent:** Tuesday, April 27, 2010 6:27 PM  
**To:** Zuanich, Brian (BRI)  
**Subject:** RE: [REDACTED] (drug case) (jury trial: Thursday, April 29)

Hi Brian,

I did receive the summons for this case. On Call is fine with me. I am needed in Suffolk Superior at 9 AM for a Trafficking case, which starts tomorrow. I should be back at the Lab by 11:00am. Hopefully, this helps.

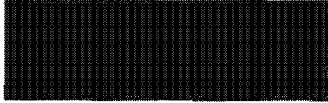
Thanks.

04/26/2010



Suffolk Superior (ADA Greg Henning) – stipulate  
Brockton Superior (ADA Shelby Smith)- cont  
Middlesex Superior (ADA Kevin Curtin) -cont  
Middlesex Superior (ADA Sean Casey)  
Middlesex Superior (ADA Jim Mulcahy)  
Essex Superior (ADA Marcia Slingerland)- cont  
BMC (ADA Vince DeMore)- cont  
BMC (ADA Vince DeMore) - cont  
Cambridge District (ADA Megan Williams)  
Brockton District (ADA Mike Sheehan) - cont  
Lawrence District (ADA Greg Johnson)  
Lowell District (ADA Daniel Harren)-cont

04/27/2010



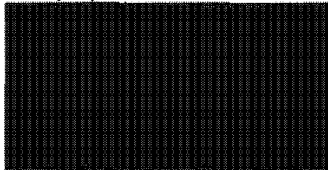
Norfolk Superior (ADA George Papachristos)  
West Roxbury District (ADA Chris Meade)-cont  
Lawrence District (ADA Michelle Defeo) - plea

04/28/2010



Suffolk Superior (ADA Dana Peirce) -- testify 4/29  
Roxbury District (ADA Rebecca Chernin)

04/29/2010



Middlesex Superior (ADA Jen Snook) -plea  
New Bedford District (ADA Matt Sylvia)  
West Roxbury District (ADA Samantha Kingsbury)  
Marlborough District (ADA Elissa Torto) - cont  
Malden District (ADA Ben Ostrander)-cont  
Lynn District (ADA Susan Dolhun)

04/30/2010



BMC (ADA Jen O'Keeffe)

Annie  
Drug Analysis Lab  
617-983-6631 (work)  
617-983-6625 (fax)

---

From: Zuanich, Brian (BRI)  
Sent: Tuesday, April 27, 2010 6:03 PM  
To: Khan, Annie (DPH)  
Subject: [REDACTED] (drug case) (jury trial: Thursday, April 29)

Annie,

I am prosecuting a drug case in New Bedford District Court this Thursday for which I mailed you a summons. I just wanted to double-check the lab had received it and, if so, whether you would be able to be on call.

Let me know if you have any questions. I will be out of the office tomorrow (Wednesday) but you can always leave a message with the office.

Thanks,  
Brian

Brian Zuanich  
Assistant District Attorney  
Bristol County District Attorney's Office  
888 Purchase Street  
New Bedford, MA 02740  
Tel: (508) 961-1978  
Fax: (508) 991-7641

-----Original Message-----

From: Khan, Annie (DPH)  
Sent: Sunday, April 11, 2010 8:51 AM  
To: Slingerland, Marcia (EAS); Barnes, Brendan (PLY); Young, Christian (SUF); Cronin, John (NOR); Seed, John (SUF); Golding, Heather (SUF); Groff, Michelle (CPI); Hyde, Barrett (SUF); Zuanich, Brian (BRI); Sahrbeck, Jonathan (NOR)  
Subject: Drug Lab: Court Schedule 04/12/2010

Hi Everyone,  
I have received summons from each of you and I am just trying to get a status update on my cases for next week. I will try my best to accommodate.  
If you have any questions, please do not hesitate to contact me. Thank you for your cooperation and patience.

Have a good weekend.

SEE ATTACHMENT FOR COURT SCHEDULE.

Annie  
Drug Analysis Lab  
617-983-6631 (work)  
617-983-6625 (fax)

**From:** Payton, Debra (NEK)  
**To:** Saunders, Della (DPH); Khan, Annie (DPH)  
**Subject:** trial summons [REDACTED] B09-13180, B09-13179, B09-13181  
**Date:** Friday, March 04, 2011 12:19:26 PM  
**Attachments:** trial summons Chemist Annie Khan.doc  
trial summons Chemist Della Saunders.doc

DREAM TEAM!!!!!!

It is time to kick some more buttocks!!!!

I am beginning a trial on April 12, 2011. Your testimony will be needed on April 14, 2011 or April 15, 2011. Please let me know if you can squeeze me in. I DONT NEED PREDICATE QUESTIONS!!!!!!!!!! YOU LADIES ROCK!!!

Let me know!!

THANK YOU!!  
Debi Payton

**From:** Payton, Debra (NFK)  
**To:** Renczkowski, Daniel (DPH); Khan, Annie (DPH)  
**Subject:** RE: [REDACTED] B09-11093 and B09-11094  
**Date:** Thursday, March 10, 2011 2:11:34 PM

Good grief....The above case is scheduled to begin Monday May 16, 2011. I am desperately playing catch up and I cannot remember if I sent you two darlings summons....So I am about to send them again. Any chance you could fit me in the week of the 16th, say the 19th or 20th?

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**From:** Renczkowski, Daniel (DPH)  
**Sent:** Thursday, September 23, 2010 7:43 AM  
**To:** Payton, Debra (NFK)  
**Subject:** RE: [REDACTED] B09-11093 and B09-11094

Hi Debi. That is shocking. I am so surprised that the defense is playing games. That never happens. I unfortunately do not have any vacations scheduled in the upcoming months. However, I will be out of the lab October 8th, 21st, and 29th and will be unavailable to testify on those specific days. Otherwise, my schedule is wide open. Hope that helps.

Daniel Renczkowski  
Forensic Drug Laboratory  
William A Hinton State Laboratory Institute  
Massachusetts Department of Public Health  
305 South Street Boston, MA 02130  
voice 617-983-6630 fax 617-983-6625  
[daniel.renczkowski@state.ma.us](mailto:daniel.renczkowski@state.ma.us)

**From:** Payton, Debra (NFK)  
**Sent:** Wednesday, September 22, 2010 4:45 PM  
**To:** Renczkowski, Daniel (DPH); Khan, Annie (DPH)  
**Subject:** CW v. [REDACTED] B09-11093 and B09-11094

Darling Chemists:

This is the trial scheduled to begin at Norfolk Superior October 4th 2010. This past Monday, the defendant (shockingly) filed last minute notifications of defense experts. I wrote motions in limine to exclude the witnesses. Judge Sanders ruled that the defendant must move for a continuance if he intends to provide me with MANDATORY discovery pertaining to his "experts". If he does not plan on calling his "experts" we will begin trial on 10/4. I am scheduled to be in front of Judge Sanders on the 27th at 2pm to address this issue.

If the trial gets continued I will let you know ASAP. Could you let me know what (if any) weeks you will be away or on vacation incase I have to reschedule the trial. (YOU BOTH NEED A VACATION....and please TAKE ME!!!)

THANK YOU,  
Payton

p.s. FYI...the defense experts include a medical doctor to claim that the defendant is drug dependant and also a crash reconstruction expert. He is NOT challenging your work.

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**From:** Payton, Debra (NFK)  
**Sent:** Wednesday, July 21, 2010 4:03 PM  
**To:** O'Brien, Elisabeth (DPH)  
**Cc:** Renczkowski, Daniel (DPH); Khan, Annie (DPH)  
**Subject:** summons TRIAL chemists Dookhan.doc

Dear Ms. O'Brien:

[REDACTED] is scheduled to begin trial on October 4, 2010. The lab numbers are B09-11093 and B09-11094. Chemist testimony will be necessary later in the week. Could you please let me know how your calendar is looking for the week of October 4, 2010.

In addition, may I please have the drug packets for B09-11093 and B09-11094.

My office address is Debi Payton, Norfolk County District Attorney's Office, 45 Shawmut Road, Canton, MA 02021.

One of my favorite police officers was injured as a result of this drug dealers attempted escape, so I wan't to make extra sure all my ducks are quacking.

THANK YOU!!!!  
Debi Payton  
781-858-3118

**From:** Payton, Debra (NEK)  
**To:** Renczkowski, Daniel (DPH); Khan, Annie (DPH)  
**Subject:** summons TRIAL chemists Renczkowski.doc  
**Date:** Thursday, March 10, 2011 2:36:49 PM  
**Attachments:** summons TRIAL chemists Dookhan.doc  
summons TRIAL chemists Renczkowski.doc

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OH KIDS:

This jack @ss has until March 28th 2011 to change his plea. Otherwise, he can go meet [REDACTED] in prison following our last guilty verdict (Annie and Della). Det. Billy Ward (my favorite detective) was out of work injured because of this incident for over a month...so I have a personal vendetta against him!

I'll keep you posted!!!!

**From:** Ribeiro, Frank (PLY)  
**To:** Khan, Annie (DPH)  
**Subject:** RE [REDACTED]  
**Date:** Tuesday, March 22, 2011 10:33:08 AM

If defense counsel know the chemists are available 9 out of 10 times it will be a plea. Judge's appear to be on our side and kind of hint at defense counsel that if they require the chemists to come in it may be a heavier sentence for defendants. Let me know when I can bug you for a few minutes on the phone.

Frank

-----Original Message-----

**From:** Khan, Annie (DPH)  
**Sent:** Tuesday, March 22, 2011 10:28 AM  
**To:** Ribeiro, Frank (PLY)  
**Subject:** RE: [REDACTED]

Yep . . But I would prefer both to plea or stipulate. :)

Annie

-----Original Message-----

**From:** Ribeiro, Frank (PLY)  
**Sent:** Tuesday, March 22, 2011 10:21 AM  
**To:** Khan, Annie (DPH)  
**Subject:** RE: [REDACTED]

Thanks Annie. You're the best. Can I call you on that and another case? I know you've answered the same question before regarding you testifying to Stacey's initial testing.

Frank Ribeiro

-----Original Message-----

**From:** Khan, Annie (DPH)  
**Sent:** Tuesday, March 22, 2011 10:18 AM  
**To:** Ribeiro, Frank (PLY)  
**Subject:** FW: [REDACTED]

Hi,

Please see attachment for the discovery packet.

Let me know if you need anything else.

Thanks.

Annie  
Drug Analysis Lab  
617-983-6631 (work)  
617-983-6625 (fax)



**From:** Griffith, Sean (NOR)  
**To:** Khan, Annie (DPH)  
**Subject:** RE: [REDACTED] - canceled  
**Date:** Monday, March 28, 2011 8:34:43 AM

Haha. Sounds about right.

-----Original Message-----

**From:** Khan, Annie (DPH)  
**Sent:** Saturday, March 26, 2011 2:17 PM  
**To:** Griffith, Sean (NOR)  
**Subject:** RE: [REDACTED] - canceled

Thanks for the heads up . . . Tell the defendant, he is getting an extra 5 years for p-off the chemist. :)

Annie  
Drug Analysis Lab  
617-983-6631 (work)  
617-983-6625 (fax)

-----Original Message-----

**From:** Griffith, Sean (NOR)  
**Sent:** Friday, March 25, 2011 4:54 PM  
**To:** Khan, Annie (DPH)  
**Subject:** [REDACTED] - canceled

Hey Annie – this case is cursed. It got bumped to April 25th. I'll send out summons Monday. Classic. Hope you have a nice weekend. - Sean

-----Original Message-----

**From:** Khan, Annie (DPH)  
**Sent:** Thursday, March 24, 2011 8:28 PM  
**To:** Griffith, Sean (NOR)  
**Subject:** RE: Drug Lab: Court Schedule

I testified for Dave Solet and Jim Mulcahy a couple of times. They may be able to help as well.

I am also a confirmatory chemist. I can state that confirmatory testing is reviewable data and anyone trained in GC/MS can review and interpret the data.

I have attached a set of predicate questions with my answers that we created enlight of Melendez-Diaz. It may help or not. I will review your questions over the weekend and get back to you.

Definitely, keep the expert testimony section, it will build credibility. I would stay away from questions regarding accreditation, and publications.

Thanks

Annie

---

**From:** Griffith, Sean (NOR)  
**Sent:** Thursday, March 24, 2011 4:37 PM  
**To:** Khan, Annie (DPH)  
**Subject:** RE: Drug Lab: Court Schedule

Hey Annie. We're still on for Monday AM. Because Kate is out... do you mind reviewing her notes so

you can testify to her findings and form your own opinion based on her results? If the judge doesn't let us do that... you can instead testify to what the chemists in the lab do for routine samples. I'll see if I can forward you some predicate questions to look over beforehand. Thanks!! - Sean

---

From: Khan, Annie (DPH)  
Sent: Monday, March 21, 2011 12:38 PM  
To: Griffith, Sean (NOR)  
Subject: RE: Drug Lab: Court Schedule

Monday AM works with me. No worries, we can figure it out.

Annie  
Drug Analysis Lab  
617-983-6631 (work)  
617-983-6625 (fax)

---

From: Griffith, Sean (NOR)  
Sent: Monday, March 21, 2011 11:41 AM  
To: Khan, Annie (DPH)  
Subject: RE: Drug Lab: Court Schedule

Hi Annie - DC says it's a trial as of now for [REDACTED] 3/25. Assuming he doesn't take a plea in the last second... I could probably call you to testify 3/28 or 3/29. Does one work better for you? Thanks! - Sean

---

From: Khan, Annie (DPH)  
Sent: Saturday, March 19, 2011 4:19 PM  
To: Lord, Spencer (SUF); Stancato, Sarah (SUF); Zuanich, Brian (BRI); McCray, Keith (NFK); Sheehan, Michael (EAS); O'Keeffe, Jennifer (SUF); Kenny, Timothy (PLY); Evans, Anna (NOR); Pearson, Mark (NFK); Adeduntan, Rilwan (SUF); Sherwood, Gretchen (SUF); Cox, Brendan (SUF); Laine, Esther (SUF); Griffith, Sean (NOR)  
Subject: Drug Lab: Court Schedule

Hi Everyone,

I have received summons from each of you and I am checking the status of your cases for next week. I will try my best to accommodate.  
If you have any questions, please do not hesitate to contact me. Thank you for your cooperation and patience.

Have a nice weekend.

03/21/2011 (Please note: I will need to be out of court by 3:00pm due prior commitments, but with sufficient notice I can adjust my schedule)



BMC (ADA Spencer Lord)  
BMC (Sarah Stancato)  
Plymouth District  
Fall River District (ADA Brian Zuanich)  
Falmouth District (ADA Joe Kennedy)

03/22/2011



Norfolk Superior (ADA Keith McCray)  
Salem Superior (ADA Mike Sheehan)

03/23/2011



BMC (ADA Jen O'Keeffe)  
Hingham District

[REDACTED]

Brockton District (ADA Tim Kenny)  
Malden District (ADA Anna Evans)

03/24/2011

[REDACTED]

Quincy District (ADA Mark Pearson)  
Dorchester District (ADA Rilwan Adeduntan)  
Dorchester District (ADA Gretchen Sherwood)  
Dorchester District (ADA Brendan Cox)  
BMC (ADA Spencer Lord)  
Roxbury District  
Roxbury District (ADA Esther Laine)

03/25/2011

[REDACTED]

Middlesex Superior (ADA Sean Griffith)  
Plymouth District

Annie  
Drug Analysis Lab  
617-983-6631 (work)  
617-983-6625 (fax)

**From:** [Khan, Annie \(DPH\)](#)  
**To:** [Kowalski, Craig \(NFK\)](#)  
**Subject:** RE: Predicate questions with answers  
**Date:** Friday, April 22, 2011 1:43:00 PM

Haha. What kind of class is "Dynamic Earth"? Just Kidding

Chemistry is fun . . we get to make things explode. Esp. with Drug lab . . we got the good stuff.

12b. 100+ times and Courts: Federal- Boston & Worcester; Essex, Norfolk, Suffolk, Plymouth, Middlesex, Bristol & Barnstable Superior; various District courts.

Keep me posted.

Annie

-----Original Message-----

**From:** Kowalski, Craig (NFK)  
**Sent:** Friday, April 22, 2011 1:13 PM  
**To:** Khan, Annie (DPH)  
**Subject:** RE: Predicate questions with answers

Good changes.

I added a 12a and 12b:

12) Approximately how many times have you had occasion to test for a controlled substance? 10s of thousands

12a) Have you testified in court before regarding analyses you have conducted? Yes.

12b) How many times and in what courts?

I don't know your answer to 12b, but I'm assuming it's good.

As for using the second chemist, as a layperson it seems like everything is covered in your testimony (or at least enough for the certifications to come in and to prove that the substances are coke, heroin and OC). I'll play it by ear. If the defense atty for some reason knows what he's doing (but I don't think he does) and makes things difficult I'll call Dan and ask Dan what he did.

Thanks again for all your help. Scientific things are not my strong suit. I took "Dynamic Earth" in college to fulfill my science requirements rather than chemistry, physics or biology.

Craig

Craig F. Kowalski  
Assistant District Attorney  
Norfolk District Attorney's Office  
45 Shawmut Road  
Canton, MA 02021  
(781) 830-4800, extension 282

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-----Original Message-----

From: Khan, Annie (DPH)  
Sent: Friday, April 22, 2011 12:14 PM  
To: Kowalski, Craig (NFK)  
Subject: RE: Predicate questions with answers

Welcome. Bad habit of writing in red when I do corrective action on chemist's work for QC/QA.

See attachment for an updated version of the predicate questions: I change the wording of question # 35 and eliminated what was question # 37. I edited these to avoid potential problems from the d/c.

Dan was the confirmatory chemist. His role was to compare the unknown sample to a known standard. We perform confirmatory test because we require reviewable data. I can state that because I am trained in GC/MS (confirmatory test), I can review the documents form my opinion to those findings. It has worked in my previous cases.

We leave that decision up to the ADA, if d/c and the judge has no objections, I can testify to everything. You call the shots. I would suggest to have me testify to everything and see how it goes. But I will still bring Dan just incase. Worst case, he is not needed and I buy him donuts. Haha.

Have a nice weekend as well.

Annie

-----Original Message-----

From: Kowalski, Craig (NFK)  
Sent: Friday, April 22, 2011 9:00 AM  
To: Khan, Annie (DPH)  
Subject: RE: Predicate questions with answers

Annie,

Well! Thank you, thank you, thank you! I wish every witness would do the same and send me back their answers in red.

After reading through that, do I really need Dan? Can you explain to me his role?

Have a great weekend and see you next week. I'll contact you after I get started on Tuesday to confirm the Thursday at 9 time.

Best, Craig

Craig F. Kowalski  
Assistant District Attorney  
Norfolk District Attorney's Office  
45 Shawmut Road  
Canton, MA 02021  
(781) 830-4800, extension 282

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-----Original Message-----

From: Khan, Annie (DPH)  
Sent: Thursday, April 21, 2011 10:49 PM  
To: Kowalski, Craig (NFK)  
Subject: Predicate questions with answers

See attachment for the predicate question with my answers.

Avoid questions that deal with: accreditation, publications and external training.

Additional questions that may help build credibility(at least in my experience):

Have you ever testified before?

If so, approximately how many times and which courts?

Hope this helps. Let me know if I need to clarify or expand on any particular topics.

PS: Debi and George knows how to find me.

Annie

**From:** Khan, Annie (DPH)  
**To:** Finigan, Thomas (NFK)  
**Subject:** RE: Question  
**Date:** Tuesday, August 09, 2011 7:01:00 AM

---

Thanks Tom. Much appreciated.

The Feds resubmitted a couple of samples to me to be re-analyzed b/c the other chemists were no longer available. Judge Wolf had no issues with me testifying since I had completed the other 6 samples related to the case.

Suffolk is trying to avoid re-submitting samples to us, so a lot of those cases are being continued. Like Norfolk, Cape & Islands, Essex and Plymouth have motions to allow substitute chemist. Bristol and Middlesex have had no concerns, yet!!

Spoke with the AG, my interpretation is that we can offer a substitute chemist as long as all the documentation and analysis of the sample/s is reviewed by qualified chemist. Then that reviewer can testify, if needed.

Unfortunately, there are only 3 chemists (Chief of lab, MS Supervisor and myself) that have knowledge on how to perform all analysis for any potential narcotic. My goal is to finish the writing the criteria for the comprehensive review and the protocols from chain of custody to all drug testing done in the lab. And eventually train the entire lab on these procedures.

I have to submit some protocols and entire comprehensive review guidelines to the AG at the end of the month. I'll keep you posted.

Annie

---

**From:** Finigan, Thomas (NFK)  
**Sent:** Monday, August 08, 2011 4:57 PM  
**To:** Khan, Annie (DPH)  
**Subject:** RE: Question

Annie, I've checked around—it looks like we have not yet had to resort to calling a substitute chemist. We have a standard motion seeking the court's approval to allow it, but it hasn't been put to the test! How have other counties made out?

---

**From:** Khan, Annie (DPH)  
**Sent:** Friday, July 29, 2011 1:55 PM  
**To:** Finigan, Thomas (NFK)  
**Subject:** Question

Hi Tom,

Sorry to bother you. But I have a question in regards to the Bullcoming Decision for the US Supreme Court.

I have a meeting with AG's office next month to discuss my stand point on the Bullcoming Decision and what are my recommendations/solutions to address this matter.

I am currently in the process of writing the protocols for the Chemical Terrorism and Drug Analysis Lab due to the Bullcoming Decision. I have been contacted by a few of your colleagues in other Superior courts on how to address the issue of substitute chemist. I was curious if you or your colleagues at Norfolk have been impacted by this decision, yet?

Thanks to Mr. Melendez-Diaz and Mr. Bullcoming, they have made life a little more difficult for all of us.

Any help or suggestion would be much appreciated. Have a nice weekend.

Thanks.

Annie

Chemical Terrorism Lab

Drug Analysis Lab

617-983-6622 (work)

617-983-6625 (fax)

781-367-4152 (cell)



**From:** Finigan, Thomas (NFK)  
**To:** Khan, Annie (DPH)  
**Subject:** RE: [REDACTED]  
**Date:** Friday, September 02, 2011 9:53:46 AM

Hi Annie! Witnesses "belong" to neither side, so you are free to meet with him. Of course, you are not obligated to, and given the demands on your schedule, it would seem reasonable to save your testimony for the stand! (I understand he has engaged his own expert in this case). Does that make sense?.

**From:** Khan, Annie (DPH)  
**Sent:** Thursday, September 01, 2011 8:40 AM  
**To:** Finigan, Thomas (NFK)  
**Subject:** FW: [REDACTED]

Hi Tom,

I received this email in regards to a case with you. (see below)

I just wanted to know if it was OK with you to respond to his email/request. (I will CC you in my response.)

Let me know.

Annie

Sent from iPhone

**From:** Asha White [mailto:azwlaw@gmail.com]  
**Sent:** Tuesday, August 30, 2011 8:13 PM  
**To:** Khan, Annie (DPH)  
**Subject:** [REDACTED]

Hi, my name is Asha White and I represent a defendant named [REDACTED] in Norfolk Superior Court. According to the discovery I have received from the commonwealth, you were the chemist that tested the substances that form the basis of the complaint against [REDACTED] (I attached two documents so you can track down the case I am speaking of). I am writing to see if there is any possibility that I could have a meeting with you in order to be better prepared for the upcoming trial. The weights and results of the testing of the substances are a very important issue in this case, so I was hoping I could speak with you in order to familiarize myself with the process. Please email or call me at your earliest convenience.

--

Asha White

The Law Office of Asha Z. White  
875 Massachusetts Ave.  
Cambridge, MA. 02139  
Phone: 857-492-1540  
Fax: 857-241-3093  
Email: [azwlaw@gmail.com](mailto:azwlaw@gmail.com)

**From:** Khan, Annie (DPH)  
**To:** Weiner, Caleb (BRI)  
**Cc:** Piro, Peter (DPH)  
**Subject:** RE: [REDACTED] rpt. [REDACTED]  
**Date:** Friday, September 30, 2011 12:22:00 PM

Hi,

I have a few other cases that week, but we can coordinate as the date approaches.

Thanks  
Annie

**From:** Weiner, Caleb (BRI)  
**Sent:** Thursday, September 29, 2011 6:11 PM  
**To:** paul.oliveira@newbedfordpd.com  
**Cc:** 'evan.bielski@newbedfordpd.com'; 'troy.spirlet@newbedfordpd.com';  
'justin.kagan@newbedfordpd.com'; kelly.almeida@newbedfordpd.com; Sylva, John (POL);  
'daniel.amaral@newbedfordpd.com'; 'victor.mendes@newbedfordpd.com';  
'stanley.chabarek@newbedfordpd.com'; Khan, Annie (DPH); Piro, Peter (DPH)  
**Subject:** [REDACTED] rpt. [REDACTED]

All:

This trial has been moved to November 2, 2011. As you can see, there are a lot of witnesses needed to prove the case. It is going to be a trial – the Defendant was made a very advantageous offer and he turned it down. Given the complexity of the case in terms of the number of witnesses, and given that I do not want any of you to have to wait around to testify – please confirm that you are available on November 2 and/or November 3 at your earliest convenience. If an essential witness is unavailable, I want to move the case as soon as possible. Moving it again from 11.2.11 is not my preference, but I will work with you to coordinate schedules.

You can reach me here or on my cell, 978 494 2918.

Thank you,

Caleb Weiner, ADA

Caleb Weiner  
Assistant District Attorney  
Bristol County District Attorney's Office  
888 Purchase Street  
Fourth Floor  
New Bedford, Massachusetts 02740  
Phone: (508) 997-0711 x1958  
Fax: (508) 991-7641

**From:** Khan, Annie (DPH)  
**To:** Maguire, Peter (PLY)  
**Subject:** RE: [REDACTED]  
**Date:** Tuesday, October 04, 2011 3:20:00 PM

Story of our lives . . .

Tell him it will be and extra 10 years, if I have to drive to Brockton and he stipulates. Haha

Keep me posted.

Annie

---

**From:** Maguire, Peter (PLY)  
**Sent:** Tuesday, October 04, 2011 3:18 PM  
**To:** Khan, Annie (DPH)  
**Subject:** RE: [REDACTED]

Won't be a prob. My bet... you all show and the defense stipulates. But b/c they are the defense they won't stipulate until you show...

Great business we all work in huh?

---

**From:** Khan, Annie (DPH)  
**Sent:** Tuesday, October 04, 2011 3:14 PM  
**To:** Maguire, Peter (PLY)  
**Subject:** RE: [REDACTED]

Hey,

Both Dannie and I have summons for this case. I am scheduled to be in Middlesex Superior in the AM Thursday.

Annie  
Drug Analysis Lab  
617-983-6622 (work)  
617-983-6625 (fax)

---

**From:** Maguire, Peter (PLY)  
**Sent:** Tuesday, October 04, 2011 2:52 PM  
**To:** Khan, Annie (DPH)  
**Subject:** [REDACTED]

Hi Annie,

Just making sure you got the summons for [REDACTED] for tomorrow at Brockton Superior? I summonsed Daniela Fresca as well.

--Peter Maguire  
508 894 2527

**From:** Khan, Annie (DPH)  
**To:** Callahan, Allison (SUF)  
**Subject:** Pictures from Bucci's Farewell Party  
**Date:** Friday, October 21, 2011 5:16:58 PM

---

Allison,

Sorry to bother you.

By any chance, do you have the pictures from Bucci's farewell party? If so, could you forward them to me.

Thanks. Have a nice weekend.

Annie  
Drug Analysis Lab  
617-983-6622 (work)  
617-983-6625 (fax)

**From:** Callahan, Allison (SUF)  
**To:** Khan, Annie (DPH)  
**Subject:** RE: Expedited Certs  
**Date:** Friday, October 28, 2011 9:32:48 AM

Good morning Annie,

Just checking in about a case involving [REDACTED] for which I faxed over an expedited cert request. The grand jury that heard the evidence is finishing testimony next week and the case is about four months old (I faxed the request last week as it hadn't been done earlier. Is there a way to tell how long the analysis will take? I really just need the weight of the pills. The analysis numbers are B11-08166 through B11-08171. Thank you!

Allison

-----Original Message-----

**From:** Khan, Annie (DPH)  
**Sent:** Friday, October 07, 2011 10:04 PM  
**To:** Callahan, Allison (SUF)  
**Subject:** RE: Expedited Certs

We do not have a formal request form for expedited samples. You can just fax over a letter indicating the Lab#/s and date needed to the Evidence Office @ 617-983-6625 and they will assign them to a chemist/s.

Have a great long weekend.

Annie  
Drug Analysis Lab  
617-983-6622 (work)  
617-983-6625 (fax)

---

**From:** Callahan, Allison (SUF)  
**Sent:** Friday, October 07, 2011 1:20 PM  
**To:** Khan, Annie (DPH)  
**Subject:** Expedited Certs

Annie,

Do you have an expedited drug cert request form that I can fill out and send back to you? I have a case with 2 1/2 kilos that I need expedited. Thank you!

Allison

**From:** Payton, Debra (NFK)  
**To:** Khan, Annie (DPH)  
**Subject:** RE: B11-04278 and B11-04279 [REDACTED]  
**Date:** Friday, January 13, 2012 4:57:59 PM

And that is why you are my favorite!

Sent from my Windows Phone

**From:** Khan, Annie (DPH)  
**Sent:** Friday, January 13, 2012 1:33 PM  
**To:** Payton, Debra (NFK)  
**Subject:** RE: B11-04278 and B11-04279 [REDACTED]

I will send the discovery packet next week.

Have a nice weekend.

Annie

**From:** Payton, Debra (NFK)  
**Sent:** Friday, January 13, 2012 12:55 PM  
**To:** Khan, Annie (DPH); Piro, Peter (DPH)  
**Subject:** B11-04278 and B11-04279 [REDACTED]

Dear Brilliant ones:

HUGE CRUNCH TIME!! I know you are really backed up at this particular time. I tried to get a continuance for trial but I could not. I heard that the certs are now in the custody of QPD. I have the above mentioned case scheduled to begin TRIAL on February 22, 2012. PLEASE tell me that you will be available to testify on February 24, February 27<sup>th</sup> or February 28 or February 29<sup>th</sup>? Your choice of course!!!

Please let me know as soon as you can. These are VERY bad guys and the judge almost released them from custody yesterday. Also, PLEASE send me the lab packets at your earliest convenience. THANK YOU MILLIONS!

Debi Payton  
Norfolk District Attorney's Office  
45 Shawmut Road  
Canton, MA 02021  
781-858-3118

**From:** Martin, Laura (NFK)  
**To:** Khan, Annie (DPH)  
**Subject:** RE: [REDACTED]  
**Date:** Wednesday, January 18, 2012 1:12:09 AM

Annie:

Thanks for the speedy reply. Your the best. Fortunately, i scared [REDACTED] into pleading out to guilty 1 yr. HOC suspended for 2 years.... Thought you'd love to know Defense attorneys get very concerned when the commonwealth has certs and lab packets....

Thanks again:  
Laura

---

**From:** Khan, Annie (DPH)  
**Sent:** Friday, January 13, 2012 10:33 AM  
**To:** Martin, Laura (NFK)  
**Subject:** FW: [REDACTED]

Hi,

Please see attachment for the discovery packet.

Let me know if you need anything else pertaining to this case.

Have a nice weekend.

Thanks,

Annie  
Drug Analysis Lab  
617-983-6622 (work)  
617-983-6625 (fax)

**From:** Glazer, Lisa (DPH)  
**To:** Higgins, Joseph (PLY)  
**Cc:** Khan, Annie (DPH)  
**Subject:** RE: [REDACTED]  
**Date:** Thursday, February 23, 2012 7:19:29 AM

Good Morning Joe,

As of right now I'm scheduled to testify in Norfolk Superior court on Tuesday. I'm not sure what time, but hopefully this conflict will help you out with the judge. I do have a summons for a trial in Suffolk superior court for the day before so there is a chance that I might need to testify there too on Tuesday. I also have summonses for several district courts on Tuesday.

Thanks,

Lisa Glazer  
Chemist II  
Department of Public Health Drug Analysis Laboratory  
305 South Street  
Jamaica Plain, MA 02130  
Office: 617-983-6632  
Fax: 617-983-6625

**From:** Higgins, Joseph (PLY)  
**Sent:** Wednesday, February 22, 2012 4:02 PM  
**To:** Glazer, Lisa (DPH); Khan, Annie (DPH)  
**Subject:** [REDACTED]

Hi Lisa and Annie,

This case is currently scheduled for trial on Tuesday 2/28 in Plymouth District Court. I was wondering what your schedules are looking like for that day---Do you have to be in other courts? (I am trying to have the case continued so that I can have a little more time to get up to speed on it, as it was just reassigned to me last week. I obviously need to provide the court with a reason for my continuance request, and I figured that either one of you having a conflict would go over better than me saying I just need a little more time). Please let me know.

Thank you in advance,

Joe Higgins



# **GOLDBACH ATTACHMENT J**

# INTERNATIONAL STANDARD

# ISO/IEC 17025

Second edition  
2005-05-15

---

## General requirements for the competence of testing and calibration laboratories

*Exigences générales concernant la compétence des laboratoires  
d'étalonnages et d'essais*

---

Reference number  
ISO/IEC 17025:2005(E)



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ISO/IEC 17025:2005(E)

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Published in Switzerland

ISO 17025:2005(E) is a standard of the International Organization for Standardization (ISO) and is published under the name of the International Organization for Standardization (ISO).

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ISO 17025:2005(E) is a technical specification for the calibration of measuring equipment and the testing of measuring equipment.

ISO/IEC 17025:2005(E)

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ISO 17025:2005(E) is a technical specification for conformity assessment bodies providing independent technical services to organizations. It is based on the principles of the ISO 9001:2000 standard.

## Foreword

ISO (the International Organization for Standardization) and IEC (the International Electrotechnical Commission) form the specialized system for worldwide standardization. National bodies that are members of ISO or IEC participate in the development of International Standards through technical committees established by the respective organization to deal with particular fields of technical activity. ISO and IEC technical committees collaborate in fields of mutual interest. Other international organizations, governmental and non-governmental, in liaison with ISO and IEC, also take part in the work. In the field of conformity assessment, the ISO Committee on conformity assessment (CASCO) is responsible for the development of International Standards and Guides.

International Standards are drafted in accordance with the rules given in the ISO/IEC Directives, Part 2.

Draft International Standards are circulated to the national bodies for voting. Publication as an International Standard requires approval by at least 75 % of the national bodies casting a vote.

Attention is drawn to the possibility that some of the elements of this document may be the subject of patent rights. ISO shall not be held responsible for identifying any or all such patent rights.

ISO/IEC 17025 was prepared by the *ISO Committee on conformity assessment (CASCO)*.

It was circulated for voting to the national bodies of both ISO and IEC, and was approved by both organizations.

This second edition cancels and replaces the first edition (ISO/IEC 17025:1999), which has been technically revised.

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This International Standard is published under the joint ISO/IEC arrangement.  
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## ISO/IEC 17025:2005(E)

### Introduction

The first edition (1999) of this International Standard was produced as the result of extensive experience in the implementation of ISO/IEC Guide 25 and EN 45001, both of which it replaced. It contained all of the requirements that testing and calibration laboratories have to meet if they wish to demonstrate that they operate a management system, are technically competent, and are able to generate technically valid results.

The first edition referred to ISO 9001:1994 and ISO 9002:1994. These standards have been superseded by ISO 9001:2000, which made an alignment of ISO/IEC 17025 necessary. In this second edition, clauses have been amended or added only when considered necessary in the light of ISO 9001:2000.

Accreditation bodies that recognize the competence of testing and calibration laboratories should use this International Standard as the basis for their accreditation. Clause 4 specifies the requirements for sound management. Clause 5 specifies the requirements for technical competence for the type of tests and/or calibrations the laboratory undertakes.

Growth in the use of management systems generally has increased the need to ensure that laboratories which form part of larger organizations or offer other services can operate to a quality management system that is seen as compliant with ISO 9001 as well as with this International Standard. Care has been taken, therefore, to incorporate all those requirements of ISO 9001 that are relevant to the scope of testing and calibration services that are covered by the laboratory's management system.

Testing and calibration laboratories that comply with this International Standard will therefore also operate in accordance with ISO 9001.

Conformity of the quality management system within which the laboratory operates to the requirements of ISO 9001 does not of itself demonstrate the competence of the laboratory to produce technically valid data and results. Nor does demonstrated conformity to this International Standard imply conformity of the quality management system within which the laboratory operates to all the requirements of ISO 9001.

The acceptance of testing and calibration results between countries should be facilitated if laboratories comply with this International Standard and if they obtain accreditation from bodies which have entered into mutual recognition agreements with equivalent bodies in other countries using this International Standard.

The use of this International Standard will facilitate cooperation between laboratories and other bodies, and assist in the exchange of information and experience, and in the harmonization of standards and procedures.

ISO 17025:2005(E) is a technical specification for the competence of testing and calibration laboratories. It is intended to be used by laboratories and accreditation bodies.

## General requirements for the competence of testing and calibration laboratories

### 1 Scope

1.1 This International Standard specifies the general requirements for the competence to carry out tests and/or calibrations, including sampling. It covers testing and calibration performed using standard methods, non-standard methods, and laboratory-developed methods.

1.2 This International Standard is applicable to all organizations performing tests and/or calibrations. These include, for example, first-, second- and third-party laboratories, and laboratories where testing and/or calibration forms part of inspection and product certification.

This International Standard is applicable to all laboratories regardless of the number of personnel or the extent of the scope of testing and/or calibration activities. When a laboratory does not undertake one or more of the activities covered by this International Standard, such as sampling and the design/development of new methods, the requirements of those clauses do not apply.

1.3 The notes given provide clarification of the text, examples and guidance. They do not contain requirements and do not form an integral part of this International Standard.

1.4 This International Standard is for use by laboratories in developing their management system for quality, administrative and technical operations. Laboratory customers, regulatory authorities and accreditation bodies may also use it in confirming or recognizing the competence of laboratories. This International Standard is not intended to be used as the basis for certification of laboratories.

NOTE 1 The term 'management system' in this International Standard means the quality, administrative and technical systems that govern the operations of a laboratory.

NOTE 2 Certification of a management system is sometimes also called registration.

1.5 Compliance with regulatory and safety requirements on the operation of laboratories is not covered by this International Standard.

1.6 If testing and calibration laboratories comply with the requirements of this International Standard, they will operate a quality management system for their testing and calibration activities that also meets the principles of ISO 9001. Annex A provides nominal cross-references between this International Standard and ISO 9001. This International Standard covers technical competence requirements that are not covered by ISO 9001.

NOTE 1 It might be necessary to explain or interpret certain requirements in this International Standard to ensure that the requirements are applied in a consistent manner. Guidance for establishing applications for specific fields, especially for accreditation bodies (see ISO/IEC 17011) is given in Annex B.

NOTE 2 If a laboratory wishes accreditation for part or all of its testing and calibration activities, it should select an accreditation body that operates in accordance with ISO/IEC 17011.

ISO 17025:2005 (E) is a technical specification for the competence of testing and calibration laboratories. It is intended to be used by laboratories, accreditation bodies, regulatory authorities and customers.



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## 2 Normative references

The following referenced documents are indispensable for the application of this document. For dated references, only the edition cited applies. For undated references, the latest edition of the referenced document (including any amendments) applies.

ISO/IEC 17000, *Conformity assessment — Vocabulary and general principles*

VIM, *International vocabulary of basic and general terms in metrology*, issued by BIPM, IEC, IFCC, ISO, IUPAC, IUPAP and OIML

NOTE Further related standards, guides, etc. on subjects included in this International Standard are given in the Bibliography.

## 3 Terms and definitions

For the purposes of this document, the relevant terms and definitions given in ISO/IEC 17000 and VIM apply.

NOTE General definitions related to quality are given in ISO 9000, whereas ISO/IEC 17000 gives definitions specifically related to certification and laboratory accreditation. Where different definitions are given in ISO 9000, the definitions in ISO/IEC 17000 and VIM are preferred.

## 4 Management requirements

### 4.1 Organization

**4.1.1** The laboratory or the organization of which it is part shall be an entity that can be held legally responsible.

**4.1.2** It is the responsibility of the laboratory to carry out its testing and calibration activities in such a way as to meet the requirements of this International Standard and to satisfy the needs of the customer, the regulatory authorities or organizations providing recognition.

**4.1.3** The management system shall cover work carried out in the laboratory's permanent facilities, at sites away from its permanent facilities, or in associated temporary or mobile facilities.

**4.1.4** If the laboratory is part of an organization performing activities other than testing and/or calibration, the responsibilities of key personnel in the organization that have an involvement or influence on the testing and/or calibration activities of the laboratory shall be defined in order to identify potential conflicts of interest.

NOTE 1 Where a laboratory is part of a larger organization, the organizational arrangements should be such that departments having conflicting interests, such as production, commercial marketing or financing do not adversely influence the laboratory's compliance with the requirements of this International Standard.

NOTE 2 If the laboratory wishes to be recognized as a third-party laboratory, it should be able to demonstrate that it is impartial and that it and its personnel are free from any undue commercial, financial and other pressures which might influence their technical judgement. The third-party testing or calibration laboratory should not engage in any activities that may endanger the trust in its independence of judgement and integrity in relation to its testing or calibration activities.

**4.1.5** The laboratory shall

- a) have managerial and technical personnel who, irrespective of other responsibilities, have the authority and resources needed to carry out their duties, including the implementation, maintenance and improvement of the management system, and to identify the occurrence of departures from the management system or from the procedures for performing tests and/or calibrations, and to initiate actions to prevent or minimize such departures (see also 5.2);

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- b) have arrangements to ensure that its management and personnel are free from any undue internal and external commercial, financial and other pressures and influences that may adversely affect the quality of their work;
- c) have policies and procedures to ensure the protection of its customers' confidential information and proprietary rights, including procedures for protecting the electronic storage and transmission of results;
- d) have policies and procedures to avoid involvement in any activities that would diminish confidence in its competence, impartiality, judgement or operational integrity;
- e) define the organization and management structure of the laboratory, its place in any parent organization, and the relationships between quality management, technical operations and support services;
- f) specify the responsibility, authority and interrelationships of all personnel who manage, perform or verify work affecting the quality of the tests and/or calibrations;
- g) provide adequate supervision of testing and calibration staff, including trainees, by persons familiar with methods and procedures, purpose of each test and/or calibration, and with the assessment of the test or calibration results;
- h) have technical management which has overall responsibility for the technical operations and the provision of the resources needed to ensure the required quality of laboratory operations;
- i) appoint a member of staff as quality manager (however named) who, irrespective of other duties and responsibilities, shall have defined responsibility and authority for ensuring that the management system related to quality is implemented and followed at all times; the quality manager shall have direct access to the highest level of management at which decisions are made on laboratory policy or resources;
- j) appoint deputies for key managerial personnel (see Note);
- k) ensure that its personnel are aware of the relevance and importance of their activities and how they contribute to the achievement of the objectives of the management system.

NOTE Individuals may have more than one function and it may be impractical to appoint deputies for every function.

**4.1.6** Top management shall ensure that appropriate communication processes are established within the laboratory and that communication takes place regarding the effectiveness of the management system.

## **4.2 Management system**

**4.2.1** The laboratory shall establish, implement and maintain a management system appropriate to the scope of its activities. The laboratory shall document its policies, systems, programmes, procedures and instructions to the extent necessary to assure the quality of the test and/or calibration results. The system's documentation shall be communicated to, understood by, available to, and implemented by the appropriate personnel.

**4.2.2** The laboratory's management system policies related to quality, including a quality policy statement, shall be defined in a quality manual (however named). The overall objectives shall be established, and shall be reviewed during management review. The quality policy statement shall be issued under the authority of top management. It shall include at least the following:

- a) the laboratory management's commitment to good professional practice and to the quality of its testing and calibration in servicing its customers;
- b) the management's statement of the laboratory's standard of service;
- c) the purpose of the management system related to quality;

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- d) a requirement that all personnel concerned with testing and calibration activities within the laboratory familiarize themselves with the quality documentation and implement the policies and procedures in their work; and
- e) the laboratory management's commitment to comply with this International Standard and to continually improve the effectiveness of the management system.

NOTE The quality policy statement should be concise and may include the requirement that tests and/or calibrations shall always be carried out in accordance with stated methods and customers' requirements. When the test and/or calibration laboratory is part of a larger organization, some quality policy elements may be in other documents.

**4.2.3** Top management shall provide evidence of commitment to the development and implementation of the management system and to continually improving its effectiveness.

**4.2.4** Top management shall communicate to the organization the importance of meeting customer requirements as well as statutory and regulatory requirements.

**4.2.5** The quality manual shall include or make reference to the supporting procedures including technical procedures. It shall outline the structure of the documentation used in the management system.

**4.2.6** The roles and responsibilities of technical management and the quality manager, including their responsibility for ensuring compliance with this International Standard, shall be defined in the quality manual.

**4.2.7** Top management shall ensure that the integrity of the management system is maintained when changes to the management system are planned and implemented.

### **4.3 Document control**

#### **4.3.1 General**

The laboratory shall establish and maintain procedures to control all documents that form part of its management system (internally generated or from external sources), such as regulations, standards, other normative documents, test and/or calibration methods, as well as drawings, software, specifications, instructions and manuals.

NOTE 1 In this context "document" could be policy statements, procedures, specifications, calibration tables, charts, text books, posters, notices, memoranda, software, drawings, plans, etc. These may be on various media, whether hard copy or electronic, and they may be digital, analog, photographic or written.

NOTE 2 The control of data related to testing and calibration is covered in 5.4.7. The control of records is covered in 4.13.

#### **4.3.2 Document approval and issue**

**4.3.2.1** All documents issued to personnel in the laboratory as part of the management system shall be reviewed and approved for use by authorized personnel prior to issue. A master list or an equivalent document control procedure identifying the current revision status and distribution of documents in the management system shall be established and shall be readily available to preclude the use of invalid and/or obsolete documents.

**4.3.2.2** The procedure(s) adopted shall ensure that:

- a) authorized editions of appropriate documents are available at all locations where operations essential to the effective functioning of the laboratory are performed;
- b) documents are periodically reviewed and, where necessary, revised to ensure continuing suitability and compliance with applicable requirements;

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- c) invalid or obsolete documents are promptly removed from all points of issue or use, or otherwise assured against unintended use;
- d) obsolete documents retained for either legal or knowledge preservation purposes are suitably marked.

**4.3.2.3** Management system documents generated by the laboratory shall be uniquely identified. Such identification shall include the date of issue and/or revision identification, page numbering, the total number of pages or a mark to signify the end of the document, and the issuing authority(ies).

#### **4.3.3 Document changes**

**4.3.3.1** Changes to documents shall be reviewed and approved by the same function that performed the original review unless specifically designated otherwise. The designated personnel shall have access to pertinent background information upon which to base their review and approval.

**4.3.3.2** Where practicable, the altered or new text shall be identified in the document or the appropriate attachments.

**4.3.3.3** If the laboratory's document control system allows for the amendment of documents by hand pending the re-issue of the documents, the procedures and authorities for such amendments shall be defined. Amendments shall be clearly marked, initialled and dated. A revised document shall be formally re-issued as soon as practicable.

**4.3.3.4** Procedures shall be established to describe how changes in documents maintained in computerized systems are made and controlled.

#### **4.4 Review of requests, tenders and contracts**

**4.4.1** The laboratory shall establish and maintain procedures for the review of requests, tenders and contracts. The policies and procedures for these reviews leading to a contract for testing and/or calibration shall ensure that:

- a) the requirements, including the methods to be used, are adequately defined, documented and understood (see 5.4.2);
- b) the laboratory has the capability and resources to meet the requirements;
- c) the appropriate test and/or calibration method is selected and is capable of meeting the customers' requirements (see 5.4.2).

Any differences between the request or tender and the contract shall be resolved before any work commences. Each contract shall be acceptable both to the laboratory and the customer.

**NOTE 1** The request, tender and contract review should be conducted in a practical and efficient manner, and the effect of financial, legal and time schedule aspects should be taken into account. For internal customers, reviews of requests, tenders and contracts can be performed in a simplified way.

**NOTE 2** The review of capability should establish that the laboratory possesses the necessary physical, personnel and information resources, and that the laboratory's personnel have the skills and expertise necessary for the performance of the tests and/or calibrations in question. The review may also encompass results of earlier participation in interlaboratory comparisons or proficiency testing and/or the running of trial test or calibration programmes using samples or items of known value in order to determine uncertainties of measurement, limits of detection, confidence limits, etc.

**NOTE 3** A contract may be any written or oral agreement to provide a customer with testing and/or calibration services.

**4.4.2** Records of reviews, including any significant changes, shall be maintained. Records shall also be maintained of pertinent discussions with a customer relating to the customer's requirements or the results of the work during the period of execution of the contract.

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**NOTE** For review of routine and other simple tasks, the date and the identification (e.g. the initials) of the person in the laboratory responsible for carrying out the contracted work are considered adequate. For repetitive routine tasks, the review need be made only at the initial enquiry stage or on granting of the contract for on-going routine work performed under a general agreement with the customer, provided that the customer's requirements remain unchanged. For new, complex or advanced testing and/or calibration tasks, a more comprehensive record should be maintained.

**4.4.3** The review shall also cover any work that is subcontracted by the laboratory.

**4.4.4** The customer shall be informed of any deviation from the contract.

**4.4.5** If a contract needs to be amended after work has commenced, the same contract review process shall be repeated and any amendments shall be communicated to all affected personnel.

### 4.5 Subcontracting of tests and calibrations

**4.5.1** When a laboratory subcontracts work, whether because of unforeseen reasons (e.g. workload, need for further expertise or temporary incapacity) or on a continuing basis (e.g. through permanent subcontracting, agency or franchising arrangements), this work shall be placed with a competent subcontractor. A competent subcontractor is one that, for example, complies with this International Standard for the work in question.

**4.5.2** The laboratory shall advise the customer of the arrangement in writing and, when appropriate, gain the approval of the customer, preferably in writing.

**4.5.3** The laboratory is responsible to the customer for the subcontractor's work, except in the case where the customer or a regulatory authority specifies which subcontractor is to be used.

**4.5.4** The laboratory shall maintain a register of all subcontractors that it uses for tests and/or calibrations and a record of the evidence of compliance with this International Standard for the work in question.

### 4.6 Purchasing services and supplies

**4.6.1** The laboratory shall have a policy and procedure(s) for the selection and purchasing of services and supplies it uses that affect the quality of the tests and/or calibrations. Procedures shall exist for the purchase, reception and storage of reagents and laboratory consumable materials relevant for the tests and calibrations.

**4.6.2** The laboratory shall ensure that purchased supplies and reagents and consumable materials that affect the quality of tests and/or calibrations are not used until they have been inspected or otherwise verified as complying with standard specifications or requirements defined in the methods for the tests and/or calibrations concerned. These services and supplies used shall comply with specified requirements. Records of actions taken to check compliance shall be maintained.

**4.6.3** Purchasing documents for items affecting the quality of laboratory output shall contain data describing the services and supplies ordered. These purchasing documents shall be reviewed and approved for technical content prior to release.

**NOTE** The description may include type, class, grade, precise identification, specifications, drawings, inspection instructions, other technical data including approval of test results, the quality required and the management system standard under which they were made.

**4.6.4** The laboratory shall evaluate suppliers of critical consumables, supplies and services which affect the quality of testing and calibration, and shall maintain records of these evaluations and list those approved.

### 4.7 Service to the customer

**4.7.1** The laboratory shall be willing to cooperate with customers or their representatives in clarifying the customer's request and in monitoring the laboratory's performance in relation to the work performed, provided that the laboratory ensures confidentiality to other customers.

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NOTE 1 Such cooperation may include:

- a) providing the customer or the customer's representative reasonable access to relevant areas of the laboratory for the witnessing of tests and/or calibrations performed for the customer;
- b) preparation, packaging, and dispatch of test and/or calibration items needed by the customer for verification purposes.

NOTE 2 Customers value the maintenance of good communication, advice and guidance in technical matters, and opinions and interpretations based on results. Communication with the customer, especially in large assignments, should be maintained throughout the work. The laboratory should inform the customer of any delays or major deviations in the performance of the tests and/or calibrations.

**4.7.2** The laboratory shall seek feedback, both positive and negative, from its customers. The feedback shall be used and analysed to improve the management system, testing and calibration activities and customer service.

NOTE Examples of the types of feedback include customer satisfaction surveys and review of test or calibration reports with customers.

#### **4.8 Complaints**

The laboratory shall have a policy and procedure for the resolution of complaints received from customers or other parties. Records shall be maintained of all complaints and of the investigations and corrective actions taken by the laboratory (see also 4.11).

#### **4.9 Control of nonconforming testing and/or calibration work**

**4.9.1** The laboratory shall have a policy and procedures that shall be implemented when any aspect of its testing and/or calibration work, or the results of this work, do not conform to its own procedures or the agreed requirements of the customer. The policy and procedures shall ensure that:

- a) the responsibilities and authorities for the management of nonconforming work are designated and actions (including halting of work and withholding of test reports and calibration certificates, as necessary) are defined and taken when nonconforming work is identified;
- b) an evaluation of the significance of the nonconforming work is made;
- c) correction is taken immediately, together with any decision about the acceptability of the nonconforming work;
- d) where necessary, the customer is notified and work is recalled;
- e) the responsibility for authorizing the resumption of work is defined.

NOTE Identification of nonconforming work or problems with the management system or with testing and/or calibration activities can occur at various places within the management system and technical operations. Examples are customer complaints, quality control, instrument calibration, checking of consumable materials, staff observations or supervision, test report and calibration certificate checking, management reviews and internal or external audits.

**4.9.2** Where the evaluation indicates that the nonconforming work could recur or that there is doubt about the compliance of the laboratory's operations with its own policies and procedures, the corrective action procedures given in 4.11 shall be promptly followed.

#### **4.10 Improvement**

The laboratory shall continually improve the effectiveness of its management system through the use of the quality policy, quality objectives, audit results, analysis of data, corrective and preventive actions and management review.

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## 4.11 Corrective action

### 4.11.1 General

The laboratory shall establish a policy and a procedure and shall designate appropriate authorities for implementing corrective action when nonconforming work or departures from the policies and procedures in the management system or technical operations have been identified.

**NOTE** A problem with the management system or with the technical operations of the laboratory may be identified through a variety of activities, such as control of nonconforming work, internal or external audits, management reviews, feedback from customers and from staff observations.

### 4.11.2 Cause analysis

The procedure for corrective action shall start with an investigation to determine the root cause(s) of the problem.

**NOTE** Cause analysis is the key and sometimes the most difficult part in the corrective action procedure. Often the root cause is not obvious and thus a careful analysis of all potential causes of the problem is required. Potential causes could include customer requirements, the samples, sample specifications, methods and procedures, staff skills and training, consumables, or equipment and its calibration.

### 4.11.3 Selection and implementation of corrective actions

Where corrective action is needed, the laboratory shall identify potential corrective actions. It shall select and implement the action(s) most likely to eliminate the problem and to prevent recurrence.

Corrective actions shall be to a degree appropriate to the magnitude and the risk of the problem.

The laboratory shall document and implement any required changes resulting from corrective action investigations.

### 4.11.4 Monitoring of corrective actions

The laboratory shall monitor the results to ensure that the corrective actions taken have been effective.

### 4.11.5 Additional audits

Where the identification of nonconformities or departures casts doubts on the laboratory's compliance with its own policies and procedures, or on its compliance with this International Standard, the laboratory shall ensure that the appropriate areas of activity are audited in accordance with 4.14 as soon as possible.

**NOTE** Such additional audits often follow the implementation of the corrective actions to confirm their effectiveness. An additional audit should be necessary only when a serious issue or risk to the business is identified.

## 4.12 Preventive action

**4.12.1** Needed improvements and potential sources of nonconformities, either technical or concerning the management system, shall be identified. When improvement opportunities are identified or if preventive action is required, action plans shall be developed, implemented and monitored to reduce the likelihood of the occurrence of such nonconformities and to take advantage of the opportunities for improvement.

**4.12.2** Procedures for preventive actions shall include the initiation of such actions and the application of controls to ensure that they are effective.

**NOTE 1** Preventive action is a pro-active process to identify opportunities for improvement rather than a reaction to the identification of problems or complaints.

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NOTE 2 Apart from the review of the operational procedures, the preventive action might involve analysis of data, including trend and risk analyses and proficiency-testing results.

#### 4.13 Control of records

##### 4.13.1 General

**4.13.1.1** The laboratory shall establish and maintain procedures for identification, collection, indexing, access, filing, storage, maintenance and disposal of quality and technical records. Quality records shall include reports from internal audits and management reviews as well as records of corrective and preventive actions.

**4.13.1.2** All records shall be legible and shall be stored and retained in such a way that they are readily retrievable in facilities that provide a suitable environment to prevent damage or deterioration and to prevent loss. Retention times of records shall be established.

NOTE Records may be in any media, such as hard copy or electronic media.

**4.13.1.3** All records shall be held secure and in confidence.

**4.13.1.4** The laboratory shall have procedures to protect and back-up records stored electronically and to prevent unauthorized access to or amendment of these records.

##### 4.13.2 Technical records

**4.13.2.1** The laboratory shall retain records of original observations, derived data and sufficient information to establish an audit trail, calibration records, staff records and a copy of each test report or calibration certificate issued, for a defined period. The records for each test or calibration shall contain sufficient information to facilitate, if possible, identification of factors affecting the uncertainty and to enable the test or calibration to be repeated under conditions as close as possible to the original. The records shall include the identity of personnel responsible for the sampling, performance of each test and/or calibration and checking of results.

NOTE 1 In certain fields it may be impossible or impractical to retain records of all original observations.

NOTE 2 Technical records are accumulations of data (see 5.4.7) and information which result from carrying out tests and/or calibrations and which indicate whether specified quality or process parameters are achieved. They may include forms, contracts, work sheets, work books, check sheets, work notes, control graphs, external and internal test reports and calibration certificates, customers' notes, papers and feedback.

**4.13.2.2** Observations, data and calculations shall be recorded at the time they are made and shall be identifiable to the specific task.

**4.13.2.3** When mistakes occur in records, each mistake shall be crossed out, not erased, made illegible or deleted, and the correct value entered alongside. All such alterations to records shall be signed or initialled by the person making the correction. In the case of records stored electronically, equivalent measures shall be taken to avoid loss or change of original data.

#### 4.14 Internal audits

**4.14.1** The laboratory shall periodically, and in accordance with a predetermined schedule and procedure, conduct internal audits of its activities to verify that its operations continue to comply with the requirements of the management system and this International Standard. The internal audit programme shall address all elements of the management system, including the testing and/or calibration activities. It is the responsibility of the quality manager to plan and organize audits as required by the schedule and requested by management. Such audits shall be carried out by trained and qualified personnel who are, wherever resources permit, independent of the activity to be audited.

NOTE The cycle for internal auditing should normally be completed in one year.



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**4.14.2** When audit findings cast doubt on the effectiveness of the operations or on the correctness or validity of the laboratory's test or calibration results, the laboratory shall take timely corrective action, and shall notify customers in writing if investigations show that the laboratory results may have been affected.

**4.14.3** The area of activity audited, the audit findings and corrective actions that arise from them shall be recorded.

**4.14.4** Follow-up audit activities shall verify and record the implementation and effectiveness of the corrective action taken.

### 4.15 Management reviews

**4.15.1** In accordance with a predetermined schedule and procedure, the laboratory's top management shall periodically conduct a review of the laboratory's management system and testing and/or calibration activities to ensure their continuing suitability and effectiveness, and to introduce necessary changes or improvements. The review shall take account of:

- the suitability of policies and procedures;
- reports from managerial and supervisory personnel;
- the outcome of recent internal audits;
- corrective and preventive actions;
- assessments by external bodies;
- the results of interlaboratory comparisons or proficiency tests;
- changes in the volume and type of the work;
- customer feedback;
- complaints;
- recommendations for improvement;
- other relevant factors, such as quality control activities, resources and staff training.

NOTE 1 A typical period for conducting a management review is once every 12 months.

NOTE 2 Results should feed into the laboratory planning system and should include the goals, objectives and action plans for the coming year.

NOTE 3 A management review includes consideration of related subjects at regular management meetings.

**4.15.2** Findings from management reviews and the actions that arise from them shall be recorded. The management shall ensure that those actions are carried out within an appropriate and agreed timescale.

## 5 Technical requirements

### 5.1 General

**5.1.1** Many factors determine the correctness and reliability of the tests and/or calibrations performed by a laboratory. These factors include contributions from:

- human factors (5.2);

1. The laboratory shall ensure that the laboratory's management system and testing and/or calibration activities are planned and controlled in accordance with the requirements of the standard.

- accommodation and environmental conditions (5.3);
- test and calibration methods and method validation (5.4);
- equipment (5.5);
- measurement traceability (5.6);
- sampling (5.7);
- the handling of test and calibration items (5.8).

**5.1.2** The extent to which the factors contribute to the total uncertainty of measurement differs considerably between (types of) tests and between (types of) calibrations. The laboratory shall take account of these factors in developing test and calibration methods and procedures, in the training and qualification of personnel, and in the selection and calibration of the equipment it uses.

## **5.2 Personnel**

**5.2.1** The laboratory management shall ensure the competence of all who operate specific equipment, perform tests and/or calibrations, evaluate results, and sign test reports and calibration certificates. When using staff who are undergoing training, appropriate supervision shall be provided. Personnel performing specific tasks shall be qualified on the basis of appropriate education, training, experience and/or demonstrated skills, as required.

**NOTE 1** In some technical areas (e.g. non-destructive testing) it may be required that the personnel performing certain tasks hold personnel certification. The laboratory is responsible for fulfilling specified personnel certification requirements. The requirements for personnel certification might be regulatory, included in the standards for the specific technical field, or required by the customer.

**NOTE 2** The personnel responsible for the opinions and interpretation included in test reports should, in addition to the appropriate qualifications, training, experience and satisfactory knowledge of the testing carried out, also have:

- relevant knowledge of the technology used for the manufacturing of the items, materials, products, etc. tested, or the way they are used or intended to be used, and of the defects or degradations which may occur during or in service;
- knowledge of the general requirements expressed in the legislation and standards; and
- an understanding of the significance of deviations found with regard to the normal use of the items, materials, products, etc. concerned.

**5.2.2** The management of the laboratory shall formulate the goals with respect to the education, training and skills of the laboratory personnel. The laboratory shall have a policy and procedures for identifying training needs and providing training of personnel. The training programme shall be relevant to the present and anticipated tasks of the laboratory. The effectiveness of the training actions taken shall be evaluated.

**5.2.3** The laboratory shall use personnel who are employed by, or under contract to, the laboratory. Where contracted and additional technical and key support personnel are used, the laboratory shall ensure that such personnel are supervised and competent and that they work in accordance with the laboratory's management system.

**5.2.4** The laboratory shall maintain current job descriptions for managerial, technical and key support personnel involved in tests and/or calibrations.

**NOTE** Job descriptions can be defined in many ways. As a minimum, the following should be defined:

- the responsibilities with respect to performing tests and/or calibrations;
- the responsibilities with respect to the planning of tests and/or calibrations and evaluation of results;
- the responsibilities for reporting opinions and interpretations;
- the responsibilities with respect to method modification and development and validation of new methods;

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5.2.4.1 Job descriptions for managerial, technical and key support personnel  
5.2.4.2 Job descriptions for managerial, technical and key support personnel

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- expertise and experience required;
- qualifications and training programmes;
- managerial duties.

**5.2.5** The management shall authorize specific personnel to perform particular types of sampling, test and/or calibration, to issue test reports and calibration certificates, to give opinions and interpretations and to operate particular types of equipment. The laboratory shall maintain records of the relevant authorization(s), competence, educational and professional qualifications, training, skills and experience of all technical personnel, including contracted personnel. This information shall be readily available and shall include the date on which authorization and/or competence is confirmed.

### 5.3 Accommodation and environmental conditions

**5.3.1** Laboratory facilities for testing and/or calibration, including but not limited to energy sources, lighting and environmental conditions, shall be such as to facilitate correct performance of the tests and/or calibrations.

The laboratory shall ensure that the environmental conditions do not invalidate the results or adversely affect the required quality of any measurement. Particular care shall be taken when sampling and tests and/or calibrations are undertaken at sites other than a permanent laboratory facility. The technical requirements for accommodation and environmental conditions that can affect the results of tests and calibrations shall be documented.

**5.3.2** The laboratory shall monitor, control and record environmental conditions as required by the relevant specifications, methods and procedures or where they influence the quality of the results. Due attention shall be paid, for example, to biological sterility, dust, electromagnetic disturbances, radiation, humidity, electrical supply, temperature, and sound and vibration levels, as appropriate to the technical activities concerned. Tests and calibrations shall be stopped when the environmental conditions jeopardize the results of the tests and/or calibrations.

**5.3.3** There shall be effective separation between neighbouring areas in which there are incompatible activities. Measures shall be taken to prevent cross-contamination.

**5.3.4** Access to and use of areas affecting the quality of the tests and/or calibrations shall be controlled. The laboratory shall determine the extent of control based on its particular circumstances.

**5.3.5** Measures shall be taken to ensure good housekeeping in the laboratory. Special procedures shall be prepared where necessary.

### 5.4 Test and calibration methods and method validation

#### 5.4.1 General

The laboratory shall use appropriate methods and procedures for all tests and/or calibrations within its scope. These include sampling, handling, transport, storage and preparation of items to be tested and/or calibrated, and, where appropriate, an estimation of the measurement uncertainty as well as statistical techniques for analysis of test and/or calibration data.

The laboratory shall have instructions on the use and operation of all relevant equipment, and on the handling and preparation of items for testing and/or calibration, or both, where the absence of such instructions could jeopardize the results of tests and/or calibrations. All instructions, standards, manuals and reference data relevant to the work of the laboratory shall be kept up to date and shall be made readily available to personnel (see 4.3). Deviation from test and calibration methods shall occur only if the deviation has been documented, technically justified, authorized, and accepted by the customer.

**NOTE** International, regional or national standards or other recognized specifications that contain sufficient and concise information on how to perform the tests and/or calibrations do not need to be supplemented or rewritten as internal procedures if these standards are written in a way that they can be used as published by the operating staff in a laboratory. It may be necessary to provide additional documentation for optional steps in the method or additional details.

#### 5.4.2 Selection of methods

The laboratory shall use test and/or calibration methods, including methods for sampling, which meet the needs of the customer and which are appropriate for the tests and/or calibrations it undertakes. Methods published in international, regional or national standards shall preferably be used. The laboratory shall ensure that it uses the latest valid edition of a standard unless it is not appropriate or possible to do so. When necessary, the standard shall be supplemented with additional details to ensure consistent application.

When the customer does not specify the method to be used, the laboratory shall select appropriate methods that have been published either in international, regional or national standards, or by reputable technical organizations, or in relevant scientific texts or journals, or as specified by the manufacturer of the equipment. Laboratory-developed methods or methods adopted by the laboratory may also be used if they are appropriate for the intended use and if they are validated. The customer shall be informed as to the method chosen. The laboratory shall confirm that it can properly operate standard methods before introducing the tests or calibrations. If the standard method changes, the confirmation shall be repeated.

The laboratory shall inform the customer when the method proposed by the customer is considered to be inappropriate or out of date.

#### 5.4.3 Laboratory-developed methods

The introduction of test and calibration methods developed by the laboratory for its own use shall be a planned activity and shall be assigned to qualified personnel equipped with adequate resources.

Plans shall be updated as development proceeds and effective communication amongst all personnel involved shall be ensured.

#### 5.4.4 Non-standard methods

When it is necessary to use methods not covered by standard methods, these shall be subject to agreement with the customer and shall include a clear specification of the customer's requirements and the purpose of the test and/or calibration. The method developed shall have been validated appropriately before use.

NOTE For new test and/or calibration methods, procedures should be developed prior to the tests and/or calibrations being performed and should contain at least the following information:

- a) appropriate identification;
- b) scope;
- c) description of the type of item to be tested or calibrated;
- d) parameters or quantities and ranges to be determined;
- e) apparatus and equipment, including technical performance requirements;
- f) reference standards and reference materials required;
- g) environmental conditions required and any stabilization period needed;
- h) description of the procedure, including
  - affixing of identification marks, handling, transporting, storing and preparation of items,
  - checks to be made before the work is started,
  - checks that the equipment is working properly and, where required, calibration and adjustment of the equipment before each use,
  - the method of recording the observations and results,
  - any safety measures to be observed;
- i) criteria and/or requirements for approval/rejection;
- j) data to be recorded and method of analysis and presentation;
- k) the uncertainty or the procedure for estimating uncertainty.

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**5.4.5 Validation of methods**

**5.4.5.1** Validation is the confirmation by examination and the provision of objective evidence that the particular requirements for a specific intended use are fulfilled.

**5.4.5.2** The laboratory shall validate non-standard methods, laboratory-designed/developed methods, standard methods used outside their intended scope, and amplifications and modifications of standard methods to confirm that the methods are fit for the intended use. The validation shall be as extensive as is necessary to meet the needs of the given application or field of application. The laboratory shall record the results obtained, the procedure used for the validation, and a statement as to whether the method is fit for the intended use.

NOTE 1 Validation may include procedures for sampling, handling and transportation.

NOTE 2 The techniques used for the determination of the performance of a method should be one of, or a combination of, the following:

- calibration using reference standards or reference materials;
- comparison of results achieved with other methods;
- interlaboratory comparisons;
- systematic assessment of the factors influencing the result;
- assessment of the uncertainty of the results based on scientific understanding of the theoretical principles of the method and practical experience.

NOTE 3 When some changes are made in the validated non-standard methods, the influence of such changes should be documented and, if appropriate, a new validation should be carried out.

**5.4.5.3** The range and accuracy of the values obtainable from validated methods (e.g. the uncertainty of the results, detection limit, selectivity of the method, linearity, limit of repeatability and/or reproducibility, robustness against external influences and/or cross-sensitivity against interference from the matrix of the sample/test object), as assessed for the intended use, shall be relevant to the customers' needs.

NOTE 1 Validation includes specification of the requirements, determination of the characteristics of the methods, a check that the requirements can be fulfilled by using the method, and a statement on the validity.

NOTE 2 As method-development proceeds, regular review should be carried out to verify that the needs of the customer are still being fulfilled. Any change in requirements requiring modifications to the development plan should be approved and authorized.

NOTE 3 Validation is always a balance between costs, risks and technical possibilities. There are many cases in which the range and uncertainty of the values (e.g. accuracy, detection limit, selectivity, linearity, repeatability, reproducibility, robustness and cross-sensitivity) can only be given in a simplified way due to lack of information.

**5.4.6 Estimation of uncertainty of measurement**

**5.4.6.1** A calibration laboratory, or a testing laboratory performing its own calibrations, shall have and shall apply a procedure to estimate the uncertainty of measurement for all calibrations and types of calibrations.

**5.4.6.2** Testing laboratories shall have and shall apply procedures for estimating uncertainty of measurement. In certain cases the nature of the test method may preclude rigorous, metrologically and statistically valid, calculation of uncertainty of measurement. In these cases the laboratory shall at least attempt to identify all the components of uncertainty and make a reasonable estimation, and shall ensure that the form of reporting of the result does not give a wrong impression of the uncertainty. Reasonable estimation shall be based on knowledge of the performance of the method and on the measurement scope and shall make use of, for example, previous experience and validation data.

NOTE 1 The degree of rigor needed in an estimation of uncertainty of measurement depends on factors such as:

- the requirements of the test method;

1. the range and uncertainty of the method  
2. the range and uncertainty of the measurement  
3. the range and uncertainty of the measurement  
4. the range and uncertainty of the measurement

- the requirements of the customer;
- the existence of narrow limits on which decisions on conformity to a specification are based.

NOTE 2 In those cases where a well-recognized test method specifies limits to the values of the major sources of uncertainty of measurement and specifies the form of presentation of calculated results, the laboratory is considered to have satisfied this clause by following the test method and reporting instructions (see 5.10).

**5.4.6.3** When estimating the uncertainty of measurement, all uncertainty components which are of importance in the given situation shall be taken into account using appropriate methods of analysis.

NOTE 1 Sources contributing to the uncertainty include, but are not necessarily limited to, the reference standards and reference materials used, methods and equipment used, environmental conditions, properties and condition of the item being tested or calibrated, and the operator.

NOTE 2 The predicted long-term behaviour of the tested and/or calibrated item is not normally taken into account when estimating the measurement uncertainty.

NOTE 3 For further information, see ISO 5725 and the Guide to the Expression of Uncertainty in Measurement (see Bibliography).

#### **5.4.7 Control of data**

**5.4.7.1** Calculations and data transfers shall be subject to appropriate checks in a systematic manner.

**5.4.7.2** When computers or automated equipment are used for the acquisition, processing, recording, reporting, storage or retrieval of test or calibration data, the laboratory shall ensure that:

- a) computer software developed by the user is documented in sufficient detail and is suitably validated as being adequate for use;
- b) procedures are established and implemented for protecting the data; such procedures shall include, but not be limited to, integrity and confidentiality of data entry or collection, data storage, data transmission and data processing;
- c) computers and automated equipment are maintained to ensure proper functioning and are provided with the environmental and operating conditions necessary to maintain the integrity of test and calibration data.

NOTE Commercial off-the-shelf software (e.g. wordprocessing, database and statistical programmes) in general use within their designed application range may be considered to be sufficiently validated. However, laboratory software configuration/modifications should be validated as in 5.4.7.2 a).

### **5.5 Equipment**

**5.5.1** The laboratory shall be furnished with all items of sampling, measurement and test equipment required for the correct performance of the tests and/or calibrations (including sampling, preparation of test and/or calibration items, processing and analysis of test and/or calibration data). In those cases where the laboratory needs to use equipment outside its permanent control, it shall ensure that the requirements of this International Standard are met.

**5.5.2** Equipment and its software used for testing, calibration and sampling shall be capable of achieving the accuracy required and shall comply with specifications relevant to the tests and/or calibrations concerned. Calibration programmes shall be established for key quantities or values of the instruments where these properties have a significant effect on the results. Before being placed into service, equipment (including that used for sampling) shall be calibrated or checked to establish that it meets the laboratory's specification requirements and complies with the relevant standard specifications. It shall be checked and/or calibrated before use (see 5.6).

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**5.5.3** Equipment shall be operated by authorized personnel. Up-to-date instructions on the use and maintenance of equipment (including any relevant manuals provided by the manufacturer of the equipment) shall be readily available for use by the appropriate laboratory personnel.

**5.5.4** Each item of equipment and its software used for testing and calibration and significant to the result shall, when practicable, be uniquely identified.

**5.5.5** Records shall be maintained of each item of equipment and its software significant to the tests and/or calibrations performed. The records shall include at least the following:

- a) the identity of the item of equipment and its software;
- b) the manufacturer's name, type identification, and serial number or other unique identification;
- c) checks that equipment complies with the specification (see 5.5.2);
- d) the current location, where appropriate;
- e) the manufacturer's instructions, if available, or reference to their location;
- f) dates, results and copies of reports and certificates of all calibrations, adjustments, acceptance criteria, and the due date of next calibration;
- g) the maintenance plan, where appropriate, and maintenance carried out to date;
- h) any damage, malfunction, modification or repair to the equipment.

**5.5.6** The laboratory shall have procedures for safe handling, transport, storage, use and planned maintenance of measuring equipment to ensure proper functioning and in order to prevent contamination or deterioration.

**NOTE** Additional procedures may be necessary when measuring equipment is used outside the permanent laboratory for tests, calibrations or sampling.

**5.5.7** Equipment that has been subjected to overloading or mishandling, gives suspect results, or has been shown to be defective or outside specified limits, shall be taken out of service. It shall be isolated to prevent its use or clearly labelled or marked as being out of service until it has been repaired and shown by calibration or test to perform correctly. The laboratory shall examine the effect of the defect or departure from specified limits on previous tests and/or calibrations and shall institute the "Control of nonconforming work" procedure (see 4.9).

**5.5.8** Whenever practicable, all equipment under the control of the laboratory and requiring calibration shall be labelled, coded or otherwise identified to indicate the status of calibration, including the date when last calibrated and the date or expiration criteria when recalibration is due.

**5.5.9** When, for whatever reason, equipment goes outside the direct control of the laboratory, the laboratory shall ensure that the function and calibration status of the equipment are checked and shown to be satisfactory before the equipment is returned to service.

**5.5.10** When intermediate checks are needed to maintain confidence in the calibration status of the equipment, these checks shall be carried out according to a defined procedure.

**5.5.11** Where calibrations give rise to a set of correction factors, the laboratory shall have procedures to ensure that copies (e.g. in computer software) are correctly updated.

**5.5.12** Test and calibration equipment, including both hardware and software, shall be safeguarded from adjustments which would invalidate the test and/or calibration results.

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## 5.6 Measurement traceability

### 5.6.1 General

All equipment used for tests and/or calibrations, including equipment for subsidiary measurements (e.g. for environmental conditions) having a significant effect on the accuracy or validity of the result of the test, calibration or sampling shall be calibrated before being put into service. The laboratory shall have an established programme and procedure for the calibration of its equipment.

**NOTE** Such a programme should include a system for selecting, using, calibrating, checking, controlling and maintaining measurement standards, reference materials used as measurement standards, and measuring and test equipment used to perform tests and calibrations.

### 5.6.2 Specific requirements

#### 5.6.2.1 Calibration

**5.6.2.1.1** For calibration laboratories, the programme for calibration of equipment shall be designed and operated so as to ensure that calibrations and measurements made by the laboratory are traceable to the International System of Units (SI) (*Système international d'unités*).

A calibration laboratory establishes traceability of its own measurement standards and measuring instruments to the SI by means of an unbroken chain of calibrations or comparisons linking them to relevant primary standards of the SI units of measurement. The link to SI units may be achieved by reference to national measurement standards. National measurement standards may be primary standards, which are primary realizations of the SI units or agreed representations of SI units based on fundamental physical constants, or they may be secondary standards which are standards calibrated by another national metrology institute. When using external calibration services, traceability of measurement shall be assured by the use of calibration services from laboratories that can demonstrate competence, measurement capability and traceability. The calibration certificates issued by these laboratories shall contain the measurement results, including the measurement uncertainty and/or a statement of compliance with an identified metrological specification (see also 5.10.4.2).

**NOTE 1** Calibration laboratories fulfilling the requirements of this International Standard are considered to be competent. A calibration certificate bearing an accreditation body logo from a calibration laboratory accredited to this International Standard, for the calibration concerned, is sufficient evidence of traceability of the calibration data reported.

**NOTE 2** Traceability to SI units of measurement may be achieved by reference to an appropriate primary standard (see VIM:1993, 6.4) or by reference to a natural constant, the value of which in terms of the relevant SI unit is known and recommended by the General Conference of Weights and Measures (CGPM) and the International Committee for Weights and Measures (CIPM).

**NOTE 3** Calibration laboratories that maintain their own primary standard or representation of SI units based on fundamental physical constants can claim traceability to the SI system only after these standards have been compared, directly or indirectly, with other similar standards of a national metrology institute.

**NOTE 4** The term "identified metrological specification" means that it must be clear from the calibration certificate which specification the measurements have been compared with, by including the specification or by giving an unambiguous reference to the specification.

**NOTE 5** When the terms "international standard" or "national standard" are used in connection with traceability, it is assumed that these standards fulfil the properties of primary standards for the realization of SI units.

**NOTE 6** Traceability to national measurement standards does not necessarily require the use of the national metrology institute of the country in which the laboratory is located.

**NOTE 7** If a calibration laboratory wishes or needs to obtain traceability from a national metrology institute other than in its own country, this laboratory should select a national metrology institute that actively participates in the activities of BIPM either directly or through regional groups.

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NOTE 8 The unbroken chain of calibrations or comparisons may be achieved in several steps carried out by different laboratories that can demonstrate traceability.

**5.6.2.1.2** There are certain calibrations that currently cannot be strictly made in SI units. In these cases calibration shall provide confidence in measurements by establishing traceability to appropriate measurement standards such as:

- the use of certified reference materials provided by a competent supplier to give a reliable physical or chemical characterization of a material;
- the use of specified methods and/or consensus standards that are clearly described and agreed by all parties concerned.

Participation in a suitable programme of interlaboratory comparisons is required where possible.

**5.6.2.2 Testing**

**5.6.2.2.1** For testing laboratories, the requirements given in 5.6.2.1 apply for measuring and test equipment with measuring functions used, unless it has been established that the associated contribution from the calibration contributes little to the total uncertainty of the test result. When this situation arises, the laboratory shall ensure that the equipment used can provide the uncertainty of measurement needed.

NOTE The extent to which the requirements in 5.6.2.1 should be followed depends on the relative contribution of the calibration uncertainty to the total uncertainty. If calibration is the dominant factor, the requirements should be strictly followed.

**5.6.2.2.2** Where traceability of measurements to SI units is not possible and/or not relevant, the same requirements for traceability to, for example, certified reference materials, agreed methods and/or consensus standards, are required as for calibration laboratories (see 5.6.2.1.2).

**5.6.3 Reference standards and reference materials**

**5.6.3.1 Reference standards**

The laboratory shall have a programme and procedure for the calibration of its reference standards. Reference standards shall be calibrated by a body that can provide traceability as described in 5.6.2.1. Such reference standards of measurement held by the laboratory shall be used for calibration only and for no other purpose, unless it can be shown that their performance as reference standards would not be invalidated. Reference standards shall be calibrated before and after any adjustment.

**5.6.3.2 Reference materials**

Reference materials shall, where possible, be traceable to SI units of measurement, or to certified reference materials. Internal reference materials shall be checked as far as is technically and economically practicable.

**5.6.3.3 Intermediate checks**

Checks needed to maintain confidence in the calibration status of reference, primary, transfer or working standards and reference materials shall be carried out according to defined procedures and schedules.

**5.6.3.4 Transport and storage**

The laboratory shall have procedures for safe handling, transport, storage and use of reference standards and reference materials in order to prevent contamination or deterioration and in order to protect their integrity.

NOTE Additional procedures may be necessary when reference standards and reference materials are used outside the permanent laboratory for tests, calibrations or sampling.

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## 5.7 Sampling

**5.7.1** The laboratory shall have a sampling plan and procedures for sampling when it carries out sampling of substances, materials or products for subsequent testing or calibration. The sampling plan as well as the sampling procedure shall be available at the location where sampling is undertaken. Sampling plans shall, whenever reasonable, be based on appropriate statistical methods. The sampling process shall address the factors to be controlled to ensure the validity of the test and calibration results.

**NOTE 1** Sampling is a defined procedure whereby a part of a substance, material or product is taken to provide for testing or calibration of a representative sample of the whole. Sampling may also be required by the appropriate specification for which the substance, material or product is to be tested or calibrated. In certain cases (e.g. forensic analysis), the sample may not be representative but is determined by availability.

**NOTE 2** Sampling procedures should describe the selection, sampling plan, withdrawal and preparation of a sample or samples from a substance, material or product to yield the required information.

**5.7.2** Where the customer requires deviations, additions or exclusions from the documented sampling procedure, these shall be recorded in detail with the appropriate sampling data and shall be included in all documents containing test and/or calibration results, and shall be communicated to the appropriate personnel.

**5.7.3** The laboratory shall have procedures for recording relevant data and operations relating to sampling that forms part of the testing or calibration that is undertaken. These records shall include the sampling procedure used, the identification of the sampler, environmental conditions (if relevant) and diagrams or other equivalent means to identify the sampling location as necessary and, if appropriate, the statistics the sampling procedures are based upon.

## 5.8 Handling of test and calibration items

**5.8.1** The laboratory shall have procedures for the transportation, receipt, handling, protection, storage, retention and/or disposal of test and/or calibration items, including all provisions necessary to protect the integrity of the test or calibration item, and to protect the interests of the laboratory and the customer.

**5.8.2** The laboratory shall have a system for identifying test and/or calibration items. The identification shall be retained throughout the life of the item in the laboratory. The system shall be designed and operated so as to ensure that items cannot be confused physically or when referred to in records or other documents. The system shall, if appropriate, accommodate a sub-division of groups of items and the transfer of items within and from the laboratory.

**5.8.3** Upon receipt of the test or calibration item, abnormalities or departures from normal or specified conditions, as described in the test or calibration method, shall be recorded. When there is doubt as to the suitability of an item for test or calibration, or when an item does not conform to the description provided, or the test or calibration required is not specified in sufficient detail, the laboratory shall consult the customer for further instructions before proceeding and shall record the discussion.

**5.8.4** The laboratory shall have procedures and appropriate facilities for avoiding deterioration, loss or damage to the test or calibration item during storage, handling and preparation. Handling instructions provided with the item shall be followed. When items have to be stored or conditioned under specified environmental conditions, these conditions shall be maintained, monitored and recorded. Where a test or calibration item or a portion of an item is to be held secure, the laboratory shall have arrangements for storage and security that protect the condition and integrity of the secured items or portions concerned.

**NOTE 1** Where test items are to be returned into service after testing, special care is required to ensure that they are not damaged or injured during the handling, testing or storing/waiting processes.

**NOTE 2** A sampling procedure and information on storage and transport of samples, including information on sampling factors influencing the test or calibration result, should be provided to those responsible for taking and transporting the samples.

**NOTE 3** Reasons for keeping a test or calibration item secure can be for reasons of record, safety or value, or to enable complementary tests and/or calibrations to be performed later.

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## 5.9 Assuring the quality of test and calibration results

**5.9.1** The laboratory shall have quality control procedures for monitoring the validity of tests and calibrations undertaken. The resulting data shall be recorded in such a way that trends are detectable and, where practicable, statistical techniques shall be applied to the reviewing of the results. This monitoring shall be planned and reviewed and may include, but not be limited to, the following:

- a) regular use of certified reference materials and/or internal quality control using secondary reference materials;
- b) participation in interlaboratory comparison or proficiency-testing programmes;
- c) replicate tests or calibrations using the same or different methods;
- d) retesting or recalibration of retained items;
- e) correlation of results for different characteristics of an item.

**NOTE** The selected methods should be appropriate for the type and volume of the work undertaken.

**5.9.2** Quality control data shall be analysed and, where they are found to be outside pre-defined criteria, planned action shall be taken to correct the problem and to prevent incorrect results from being reported.

## 5.10 Reporting the results

### 5.10.1 General

The results of each test, calibration, or series of tests or calibrations carried out by the laboratory shall be reported accurately, clearly, unambiguously and objectively, and in accordance with any specific instructions in the test or calibration methods.

The results shall be reported, usually in a test report or a calibration certificate (see Note 1), and shall include all the information requested by the customer and necessary for the interpretation of the test or calibration results and all information required by the method used. This information is normally that required by 5.10.2, and 5.10.3 or 5.10.4.

In the case of tests or calibrations performed for internal customers, or in the case of a written agreement with the customer, the results may be reported in a simplified way. Any information listed in 5.10.2 to 5.10.4 which is not reported to the customer shall be readily available in the laboratory which carried out the tests and/or calibrations.

**NOTE 1** Test reports and calibration certificates are sometimes called test certificates and calibration reports, respectively.

**NOTE 2** The test reports or calibration certificates may be issued as hard copy or by electronic data transfer provided that the requirements of this International Standard are met.

### 5.10.2 Test reports and calibration certificates

Each test report or calibration certificate shall include at least the following information, unless the laboratory has valid reasons for not doing so:

- a) a title (e.g. "Test Report" or "Calibration Certificate");
- b) the name and address of the laboratory, and the location where the tests and/or calibrations were carried out, if different from the address of the laboratory;

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- c) unique identification of the test report or calibration certificate (such as the serial number), and on each page an identification in order to ensure that the page is recognized as a part of the test report or calibration certificate, and a clear identification of the end of the test report or calibration certificate;
- d) the name and address of the customer;
- e) identification of the method used;
- f) a description of, the condition of, and unambiguous identification of the item(s) tested or calibrated;
- g) the date of receipt of the test or calibration item(s) where this is critical to the validity and application of the results, and the date(s) of performance of the test or calibration;
- h) reference to the sampling plan and procedures used by the laboratory or other bodies where these are relevant to the validity or application of the results;
- i) the test or calibration results with, where appropriate, the units of measurement;
- j) the name(s), function(s) and signature(s) or equivalent identification of person(s) authorizing the test report or calibration certificate;
- k) where relevant, a statement to the effect that the results relate only to the items tested or calibrated.

NOTE 1 Hard copies of test reports and calibration certificates should also include the page number and total number of pages.

NOTE 2 It is recommended that laboratories include a statement specifying that the test report or calibration certificate shall not be reproduced except in full, without written approval of the laboratory.

### 5.10.3 Test reports

**5.10.3.1** In addition to the requirements listed in 5.10.2, test reports shall, where necessary for the interpretation of the test results, include the following:

- a) deviations from, additions to, or exclusions from the test method, and information on specific test conditions, such as environmental conditions;
- b) where relevant, a statement of compliance/non-compliance with requirements and/or specifications;
- c) where applicable, a statement on the estimated uncertainty of measurement; information on uncertainty is needed in test reports when it is relevant to the validity or application of the test results, when a customer's instruction so requires, or when the uncertainty affects compliance to a specification limit;
- d) where appropriate and needed, opinions and interpretations (see 5.10.5);
- e) additional information which may be required by specific methods, customers or groups of customers.

**5.10.3.2** In addition to the requirements listed in 5.10.2 and 5.10.3.1, test reports containing the results of sampling shall include the following, where necessary for the interpretation of test results:

- a) the date of sampling;
- b) unambiguous identification of the substance, material or product sampled (including the name of the manufacturer, the model or type of designation and serial numbers as appropriate);
- c) the location of sampling, including any diagrams, sketches or photographs;
- d) a reference to the sampling plan and procedures used;

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- e) details of any environmental conditions during sampling that may affect the interpretation of the test results;
- f) any standard or other specification for the sampling method or procedure, and deviations, additions to or exclusions from the specification concerned.

### 5.10.4 Calibration certificates

**5.10.4.1** In addition to the requirements listed in 5.10.2, calibration certificates shall include the following, where necessary for the interpretation of calibration results:

- a) the conditions (e.g. environmental) under which the calibrations were made that have an influence on the measurement results;
- b) the uncertainty of measurement and/or a statement of compliance with an identified metrological specification or clauses thereof;
- c) evidence that the measurements are traceable (see Note 2 in 5.6.2.1.1).

**5.10.4.2** The calibration certificate shall relate only to quantities and the results of functional tests. If a statement of compliance with a specification is made, this shall identify which clauses of the specification are met or not met.

When a statement of compliance with a specification is made omitting the measurement results and associated uncertainties, the laboratory shall record those results and maintain them for possible future reference.

When statements of compliance are made, the uncertainty of measurement shall be taken into account.

**5.10.4.3** When an instrument for calibration has been adjusted or repaired, the calibration results before and after adjustment or repair, if available, shall be reported.

**5.10.4.4** A calibration certificate (or calibration label) shall not contain any recommendation on the calibration interval except where this has been agreed with the customer. This requirement may be superseded by legal regulations.

### 5.10.5 Opinions and interpretations

When opinions and interpretations are included, the laboratory shall document the basis upon which the opinions and interpretations have been made. Opinions and interpretations shall be clearly marked as such in a test report.

**NOTE 1** Opinions and interpretations should not be confused with inspections and product certifications as intended in ISO/IEC 17020 and ISO/IEC Guide 65.

**NOTE 2** Opinions and interpretations included in a test report may comprise, but not be limited to, the following:

- an opinion on the statement of compliance/noncompliance of the results with requirements;
- fulfilment of contractual requirements;
- recommendations on how to use the results;
- guidance to be used for improvements.

**NOTE 3** In many cases it might be appropriate to communicate the opinions and interpretations by direct dialogue with the customer. Such dialogue should be written down.

ISO 17025:2005 (E) is a technical specification for the calibration of measuring equipment and the operation of calibration laboratories. It is intended to be used in conjunction with ISO 9001:2000.

#### **5.10.6 Testing and calibration results obtained from subcontractors**

When the test report contains results of tests performed by subcontractors, these results shall be clearly identified. The subcontractor shall report the results in writing or electronically.

When a calibration has been subcontracted, the laboratory performing the work shall issue the calibration certificate to the contracting laboratory.

#### **5.10.7 Electronic transmission of results**

In the case of transmission of test or calibration results by telephone, telex, facsimile or other electronic or electromagnetic means, the requirements of this International Standard shall be met (see also 5.4.7).

#### **5.10.8 Format of reports and certificates**

The format shall be designed to accommodate each type of test or calibration carried out and to minimize the possibility of misunderstanding or misuse.

NOTE 1 Attention should be given to the lay-out of the test report or calibration certificate, especially with regard to the presentation of the test or calibration data and ease of assimilation by the reader.

NOTE 2 The headings should be standardized as far as possible.

#### **5.10.9 Amendments to test reports and calibration certificates**

Material amendments to a test report or calibration certificate after issue shall be made only in the form of a further document, or data transfer, which includes the statement:

“Supplement to Test Report [or Calibration Certificate], serial number... [or as otherwise identified]”,

or an equivalent form of wording.

Such amendments shall meet all the requirements of this International Standard.

When it is necessary to issue a complete new test report or calibration certificate, this shall be uniquely identified and shall contain a reference to the original that it replaces.

## Annex A (informative)

### Nominal cross-references to ISO 9001:2000

Table A.1 — Nominal cross-references to ISO 9001:2000

ISO 9001:2000	ISO/IEC 17025
Clause 1	Clause 1
Clause 2	Clause 2
Clause 3	Clause 3
4.1	4.1, 4.1.1, 4.1.2, 4.1.3, 4.1.4, 4.1.5, 4.2, 4.2.1, 4.2.2, 4.2.3, 4.2.4
4.2.1	4.2.2, 4.2.3, 4.3.1
4.2.2	4.2.2, 4.2.3, 4.2.4
4.2.3	4.3
4.2.4	4.3.1, 4.12
5.1	4.2.2, 4.2.3
5.1 a)	4.1.2, 4.1.6
5.1 b)	4.2.2
5.1 c)	4.2.2
5.1 d)	4.15
5.1 e)	4.1.5
5.2	4.4.1
5.3	4.2.2
5.3 a)	4.2.2
5.3 b)	4.2.3
5.3 c)	4.2.2
5.3 d)	4.2.2
5.3 e)	4.2.2
5.4.1	4.2.2 c)
5.4.2	4.2.1
5.4.2 a)	4.2.1
5.4.2 b)	4.2.1
5.5.1	4.1.5 a), f), h)
5.5.2	4.1.5 i)
5.5.2 a)	4.1.5 i)
5.5.2 b)	4.11.1
5.5.2 c)	4.2.4
5.5.3	4.1.6
5.6.1	4.15
5.6.2	4.15
5.6.3	4.15

This document is a normative part of the ISO/IEC 17025:2005 standard.  
It contains information that is not part of the standard.  
It is not to be used for conformity assessment purposes.

ISO 9001:2000	ISO/IEC 17025
6.1 a)	4.10
6.1 b)	4.4.1, 4.7, 5.4.2, 5.4.3, 5.4.4, 5.10.1
6.2.1	5.2.1
6.2.2 a)	5.2.2, 5.5.3
6.2.2 b)	5.2.1, 5.2.2
6.2.2 c)	5.2.2
6.2.2 d)	4.1.5 k)
6.2.2 e)	5.2.5
6.3.1 a)	4.1.3, 4.12.1.2, 4.12.1.3, 5.3
6.3.1 b)	4.12.1.4, 5.4.7.2, 5.5, 5.6
6.3.1 c)	4.6, 5.5.6, 5.6.3.4, 5.8, 5.10
6.4	5.3.1, 5.3.2, 5.3.3, 5.3.4, 5.3.5
7.1	5.1
7.1 a)	4.2.2
7.1 b)	4.1.5 a), 4.2.1, 4.2.3
7.1 c)	5.4, 5.9
7.1 d)	4.1, 5.4, 5.9
7.2.1	4.4.1, 4.4.2, 4.4.3, 4.4.4, 4.4.5, 5.4, 5.9, 5.10
7.2.2	4.4.1, 4.4.2, 4.4.3, 4.4.4, 4.4.5, 5.4, 5.9, 5.10
7.2.3	4.4.2, 4.4.4, 4.5, 4.7, 4.8
7.3	5, 5.4, 5.9
7.4.1	4.6.1, 4.6.2, 4.6.4
7.4.2	4.6.3
7.4.3	4.6.2
7.5.1	5.1, 5.2, 5.4, 5.5, 5.6, 5.7, 5.8, 5.9
7.5.2	5.2.5, 5.4.2, 5.4.5
7.5.3	5.8.2
7.5.4	4.1.5 c), 5.8
7.5.5	4.6.1, 4.12, 5.8, 5.10
7.6	5.4, 5.5
8.1	4.10, 5.4, 5.9
8.2.1	4.10
8.2.2	4.11.5, 4.14
8.2.3	4.11.5, 4.14, 5.9
8.2.4	4.5, 4.6, 4.9, 5.5.2, 5.5.9, 5.8, 5.8.3, 5.8.4, 5.9
8.3	4.9
8.4	4.10, 5.9
8.5.1	4.10, 4.12
8.5.2	4.11, 4.12
8.5.3	4.9, 4.11, 4.12

ISO/IEC 17025 covers several technical competence requirements that are not covered by ISO 9001:2000.



## **Annex B** **(informative)**

### **Guidelines for establishing applications for specific fields**

**B.1** The requirements specified in this International Standard are stated in general terms and, while they are applicable to all test and calibration laboratories, explanations might be needed. Such explanations on applications are herein referred to as applications. Applications should not include additional general requirements not included in this International Standard.

**B.2** Applications can be thought of as an elaboration of the generally stated criteria (requirements) of this International Standard for specified fields of test and calibration, test technologies, products, materials or specific tests or calibrations. Accordingly, applications should be established by persons having appropriate technical knowledge and experience, and should address items that are essential or most important for the proper conduct of a test or calibration.

**B.3** Depending on the application at hand, it may be necessary to establish applications for the technical requirements of this International Standard. Establishing applications may be accomplished by simply providing detail or adding extra information to the already generally stated requirements in each of the clauses (e.g. specific limitations to the temperature and humidity in the laboratory).

In some cases the applications will be quite limited, applying only to a given test or calibration method or to a group of calibration or test methods. In other cases the applications may be quite broad, applying to the testing or calibration of various products or items or to entire fields of testing or calibration.

**B.4** If the applications apply to a group of test or calibration methods in an entire technical field, common wording should be used for all of the methods.

Alternatively, it may be necessary to develop a separate document of applications to supplement this International Standard for specific types or groups of tests or calibrations, products, materials or technical fields of tests or calibrations. Such a document should provide only the necessary supplementary information, while maintaining this International Standard as the governing document through reference. Applications which are too specific should be avoided in order to limit the proliferation of detailed documents.

**B.5** The guidance in this annex should be used by accreditation bodies and other types of evaluation bodies when they develop applications for their own purposes (e.g. accreditation in specific areas).

## Bibliography

- [1] ISO 5725-1, *Accuracy (trueness and precision) of measurement methods and results — Part 1: General principles and definitions*
- [2] ISO 5725-2, *Accuracy (trueness and precision) of measurement methods and results — Part 2: Basic method for the determination of repeatability and reproducibility of a standard measurement method*
- [3] ISO 5725-3, *Accuracy (trueness and precision) of measurement methods and results — Part 3: Intermediate measures of the precision of a standard measurement method*
- [4] ISO 5725-4, *Accuracy (trueness and precision) of measurement methods and results — Part 4: Basic methods for the determination of the trueness of a standard measurement method*
- [5] ISO 5725-6, *Accuracy (trueness and precision) of measurement methods and results — Part 6: Use in practice of accuracy values*
- [6] ISO 9000:—<sup>1)</sup>, *Quality management systems — Fundamentals and vocabulary*
- [7] ISO 9001:2000, *Quality management systems — Requirements*
- [8] ISO/IEC 90003, *Software engineering — Guidelines for the application of ISO 9001:2000 to computer software*
- [9] ISO 10012:2003, *Measurement management systems — Requirements for measurement processes and measuring equipment*
- [10] ISO/IEC 17011, *Conformity assessment — General requirements for accreditation bodies accrediting conformity assessment bodies*
- [11] ISO/IEC 17020, *General criteria for the operation of various types of bodies performing inspection*
- [12] ISO 19011, *Guidelines for quality and/or environmental management systems auditing*
- [13] ISO Guide 30, *Terms and definitions used in connection with reference materials*
- [14] ISO Guide 31, *Reference materials — Contents of certificates and labels*
- [15] ISO Guide 32, *Calibration in analytical chemistry and use of certified reference materials*
- [16] ISO Guide 33, *Uses of certified reference materials*
- [17] ISO Guide 34, *General requirements for the competence of reference material producers*
- [18] ISO Guide 35, *Certification of reference materials — General and statistical principles*
- [19] ISO/IEC Guide 43-1, *Proficiency testing by interlaboratory comparisons — Part 1: Development and operation of proficiency testing schemes*
- [20] ISO/IEC Guide 43-2, *Proficiency testing by interlaboratory comparisons — Part 2: Selection and use of proficiency testing schemes by laboratory accreditation bodies*

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1) To be published. (Revision of ISO 9000:2000)

1. This document is a technical specification for the use of reference materials in the field of analytical chemistry.  
2. It is intended for use by laboratories and reference material producers.  
3. It is not intended for use by other interested parties.

ISO/IEC 17025:2005(E)

- [21] ISO/IEC Guide 58:1993, *Calibration and testing laboratory accreditation systems — General requirements for operation and recognition*
- [22] ISO/IEC Guide 65, *General requirements for bodies operating product certification systems*
- [23] GUM, *Guide to the Expression of Uncertainty in Measurement*, issued by BIPM, IEC, IFCC, ISO, IUPAC, IUPAP and OIML
- [24] Information and documents on laboratory accreditation can be found on the ILAC (International Laboratory Accreditation Cooperation): [www.ilac.org](http://www.ilac.org)

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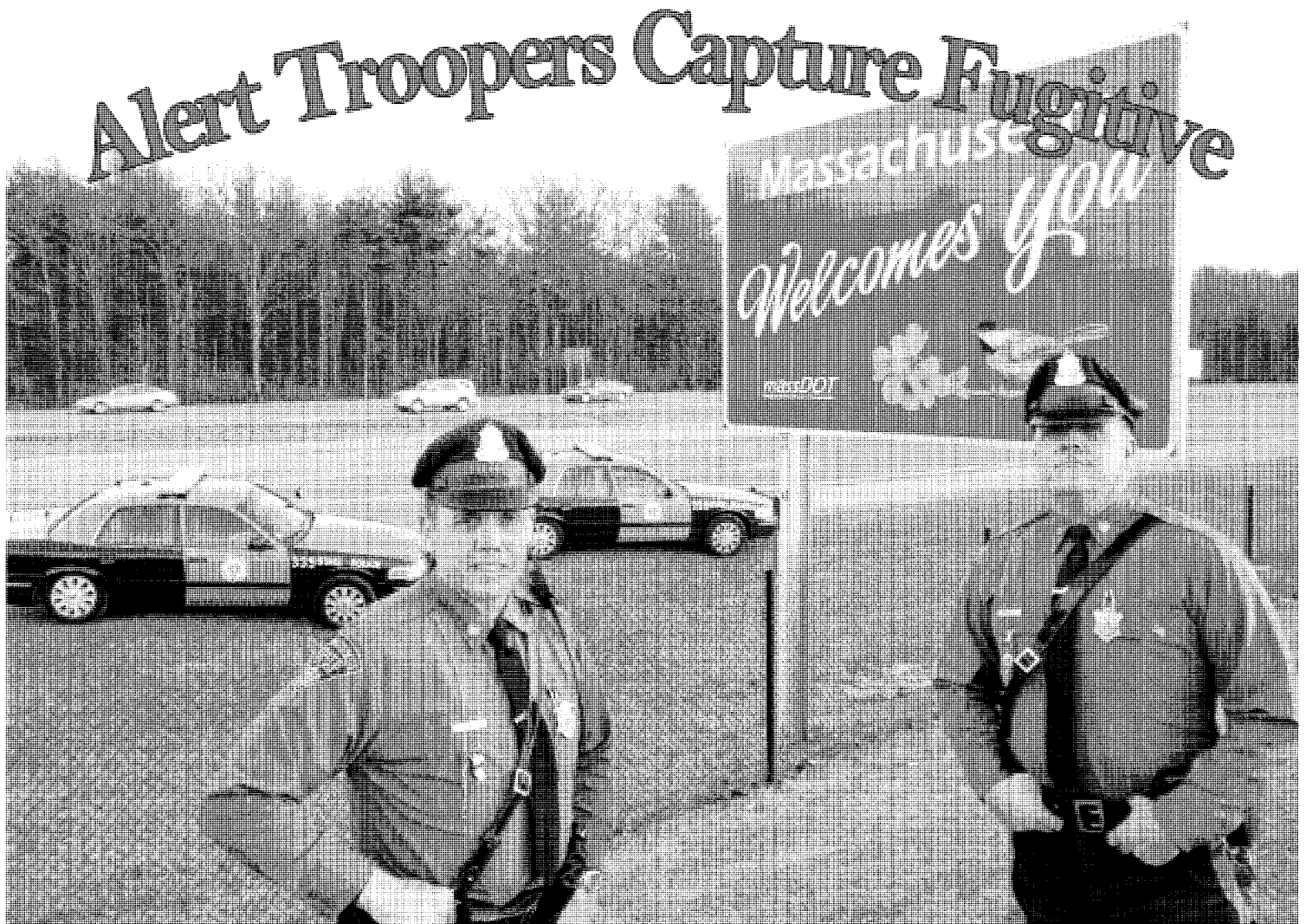
# **GOLDBACH ATTACHMENT K**

From the members of the nation's oldest and proudest

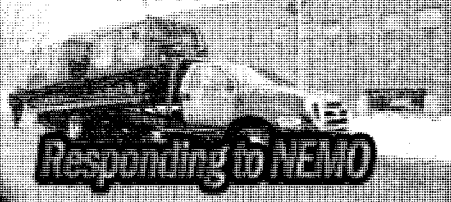
March, 2013



# French & Electric BLUE



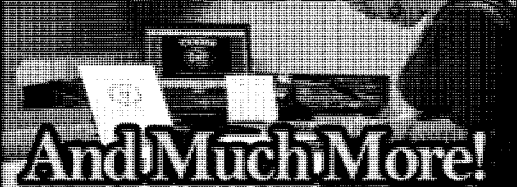
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MSP Academy



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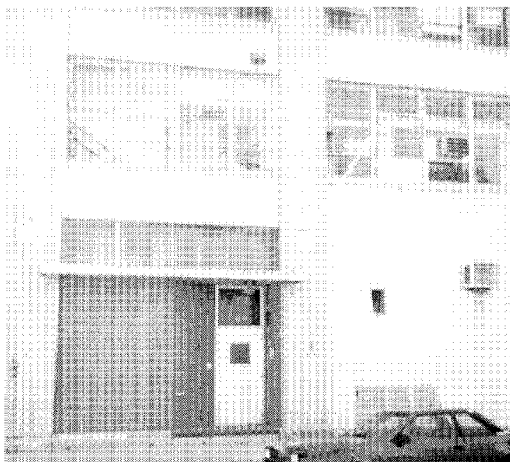
<http://www.mass.gov/eopss/agencies/msp>

# CRIME LAB: PAST, PRESENT, AND FUTURE

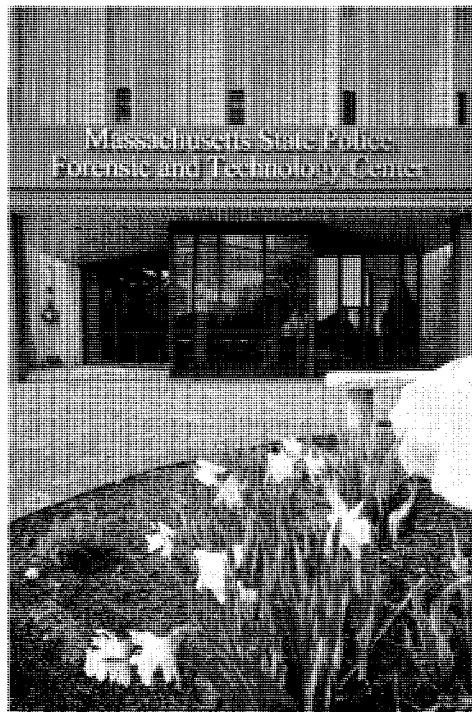
The Massachusetts State Police (MSP) offered forensic services to its stakeholders as far back as 1921. In 1925, the Crime Laboratory was formally created and moved into a facility at the Commonwealth Pier in Boston. At that time, the Crime Laboratory was known as the Department of Public Safety Bureau of Expert Assistants. In 1953, the lab moved to 1010 Commonwealth Avenue in Boston, which was also the location of GHQ for many years. Then as now, the state crime lab was managed and overseen by the MSP. The main focus of forensics included chemical analysis for blood identification and grouping; fire, bomb, and explosives analysis; hair and fiber analysis; drug, poison and illegal liquor analysis; and photography, fingerprint, and ballistics. In those days, the lab handled approximately 200-300 cases a year compared to approximately 25,000 handled today.

In 1991, the Department consolidated its forensic services and the lab became known as the Massachusetts State Police Crime Lab. In 1994, the lab moved from 1010 to a converted elementary school and firefighters' academy at 59 Horse Pond Road in Sudbury. The Sudbury Lab consists of approximately 22,000 square feet.

During this time, the Crime Laboratory made dramatic strides to further professionalize the services provided by obtaining accreditation. In 2002, the DNA analysis and drug testing units were accredited by the American Society of Crime



1010 Commonwealth Avenue



Crime Lab, Maynard Facility

Laboratory Directors/Laboratory Accreditation Board (ASCLD/LAB). With this success came more demand for services, particularly in DNA testing and analysis. Consequently, more space was needed for a growing system.

In 2005 the Department acquired an additional 12,000 square feet of lab space at 142 North Road in North Sudbury. In 2006, the Department of State Police Forensic and Technology Center opened at 124 Acton Street in Maynard. The MSP Crime Lab consolidated with Crime Scene Services, Firearms Identification, and Digital Evidence/Multi-Media. Since that time, all of the Department's forensic entities have been known as the Forensic Services Group.

The Maynard facility is comprised of approximately 68,000 square feet and is the main administrative and laboratory facility of the MSP Forensic Services Group. In the near future the Maynard facility will expand by another 25,000 square feet to include a 4,270 square foot academically-themed training and conference room. This room will feature stadium seating for



approximately eighty individuals and will provide enhanced audio and visual training tools.

In 2006, the MSP Forensic Services Group established satellite labs in Boston, Springfield, Lakeville, Bourne, and Danvers in order to better meet statewide needs.

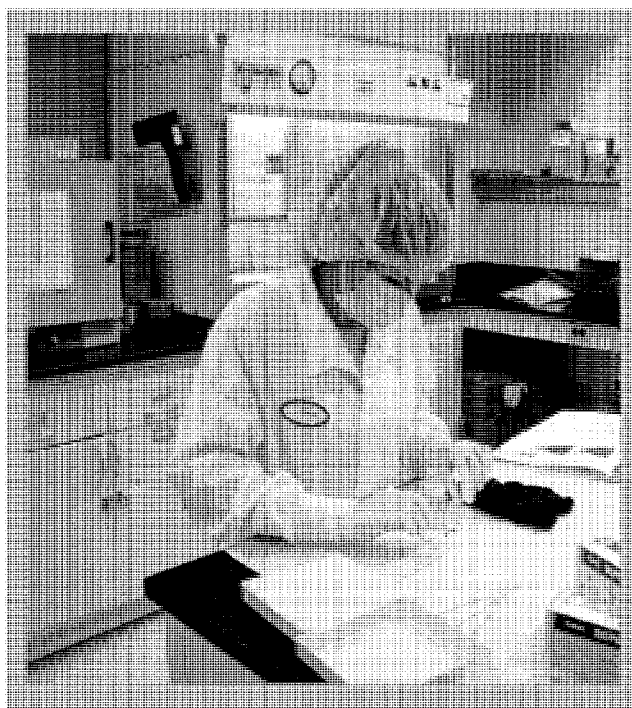
To further the laboratory's pursuit of excellence, the MSP Forensic Services Group received accreditation from ASCLD/LAB in all disciplines, (except the Office of Alcohol Testing) in 2009.

On July 1, 2012 the State Legislature transferred the controlled substance laboratories previously controlled and operated by the Department of Public Health (DPH) to the Department of State Police Crime Laboratory. At that time, the MSP inherited the two drug labs (Jamaica Plain and Amherst) that were previously managed and overseen by the DPH. This legislative action transferred all of the previous DPH employees and cases to the MSP.

During the transition process, Major James Connolly, Commanding Officer of the MSP Forensic Services Group, became aware of a serious breach of protocol by a former DPH employee in an evidence room at the Jamaica Plain lab. In addition, the employee's co-workers expressed concern that she was involved in other types of inappropriate lab practices.

The Massachusetts State Police immediately began an investigation into the matter. Detective Captain Joseph Mason, Commanding Officer of the Forensic Services System, and Detective Lieutenant Robert Irwin, Commanding Officer of the Attorney General's State Police Detective Unit (SPDU), spearheaded the Department's efforts. The result of their investigation has been well documented and publicized. The former Department of Public Health lab analyst in question, Annie Dookhan, has been charged with various criminal violations as a result of her alleged misconduct. Furthermore, the Jamaica Plain lab was ordered closed by Governor Patrick in August.

On January 18, 2013, Sonja Farak, another former employee of the Department of Public Health laboratory system, was arrested and charged with illegally possessing cocaine and heroin with the intent to distribute. Farak, who worked at the DPH lab in Amherst as a drug analyst, was arrested as the result



of an investigation conducted by the Hampshire-Franklin SPDU and the Attorney General's SPDU.

The Massachusetts State Police's firm handling of these cases illustrates the Department's commitment to integrity, maintaining public trust, and preserving justice -- we hold these as our highest priorities. These cases also demonstrate the need for the strict lab practices that are inherent in an accredited lab such as ours.

As of this writing, 235 members of the Department are assigned to the Forensic Services Group. The Forensic Services Group is organized as follows: Forensic Biology, including DNA and the DNA CODIS databank, Criminalistics, and Bomb, Arson, and Trace; Forensic Chemistry to include Drug Analysis, Toxicology Analysis and the Office of Alcohol Testing; and the Forensic Services System to include Crime Scene Services, Firearm Identification, Digital Evidence and Multi-Media, and CODIS Collection and Investigations. The system is continuing its commitment to professional excellence in forensic testing and has applied for the rigorous accreditation standard ISO 17025. A system wide inspection by this group will be conducted in June, 2013.

COMMONWEALTH OF MASSACHUSETTS

KEVIN BRIDGEMAN, et al.,

Petitioners,

v.

DISTRICT ATTORNEY for Suffolk  
County, et al.,

Defendants.

SUPREME JUDICIAL COURT FOR  
SUFFOLK COUNTY  
DOCKET NO.:

AFFIDAVIT OF NANCY J. CAPLAN

Now comes Nancy J. Caplan and states upon information and  
belief that:

1. I am the Attorney in Charge of the Committee for  
Public Counsel Services' Drug Lab Crisis Litigation Unit  
(CPCS/DLCLU), created in April of 2013 to handle indigent  
defense matters arising out of the shutdown of the Department of  
Health's Hinton Drug Lab and the associated allegations of  
wrongdoing by chemist Annie Dookhan.

2. This affidavit is based upon my personal knowledge and  
information gleaned from communication with the attorneys I

supervise, communications with other CPCS staff attorneys and bar advocates, and my review of pleadings and decisions in post-conviction proceedings initiated as a result of the Dookhan misconduct and the shutdown of the Hinton Drug Lab.

3. The attorneys of the DLCLU, myself and two staff attorneys, have been representing indigent defendants convicted in drug cases where the alleged narcotics were tested by Annie Dookhan or where the alleged narcotics were tested at the Hinton Drug Lab during Dookhan's 2003 - 2012 tenure. On behalf of these individuals, we have been seeking relief from convictions based upon evidence tainted by Dookhan's misconduct and the mismanagement of the Hinton Drug Lab.

4. DLCLU attorneys also provide advice and training to CPCS staff attorneys and bar advocates handling so-called "lab cases."

5. DLCLU attorneys, along with one staff investigator, are also working on identifying, locating and counseling indigent defendants convicted in Dookhan cases, who have not yet received the advice of counsel, about the possibility of seeking relief from their tainted convictions.

6. Our work spans the eight counties affected by the Hinton failure, but it is concentrated in Suffolk, Plymouth, Essex, Middlesex and Norfolk Counties.

7. Prosecutorial approaches to the litigation of lab cases have varied from county to county. In Middlesex County, for a period of time (fall 2012 to mid-spring 2013) the District Attorney's Office agreed to motions to vacate guilty pleas in drug cases where Annie Dookhan was one of the analyzing chemists and, thereafter, filed nolle prosequis relative to all drug counts. Since the spring of this year, the Middlesex District Attorney's Office's has filed oppositions to lab case new trial motions, pressing courts to continue or refrain from acting on the motions until the Supreme Judicial Court decides the Bjork suite of cases.

8. Prosecutors' approaches to lab case stays and bails have varied considerably. In Essex County, substantial bails were often requested by prosecutors and imposed in lab cases, leaving persons with meritorious new trial motions in custody pending resolution of those motions. In Suffolk County, bail amounts requested by prosecutors have tended to be more nominal.

9. In Suffolk County, prosecutors have generally been willing to agree to "re-plea" deals, for less incarceration than that imposed originally, in cases where Annie Dookhan was the primary or the secondary chemist in the analysis of the alleged narcotics. Plymouth County operated similarly until May of this year, when an individual was arrested on murder charges after

having been released from prison upon the vacating of his Dookhan-analysis based drug conviction and the dismissal of charges (due to the destruction of the alleged narcotics). Since that time, reasonable deals have been extremely hard to come by and have been limited to, generally, cases in which Dookhan acted as the primary chemist.

10. Significant aspects of the new trial motion process have varied between counties due to variances in prosecutorial practice. In Essex, Plymouth and Middlesex Counties, defendants are generally able to submit into evidence, at new trial motion evidentiary hearings, their own affidavits and affidavits of plea counsel, without objection by the Commonwealth. In Suffolk County, prosecutors have indicated that they will not agree to the admission of such affidavits, except under unusual circumstances (e.g. defendant in Federal custody).

11. The availability of discovery has changed over time. Prior to June, 2013, defendants litigating new trial motions were unable to get the Hinton Lab documents uniquely associated with the analyses of the alleged narcotics in their cases. Starting in June, 2013, prosecutors have become increasingly able to provide such documents within a reasonable time frame.

12. Discovery not tagged to particular sample numbers, yet significant to the litigation of lab case new trial motions, has

been much more difficult to obtain. The provision of discovery relating to quality control/quality assurance measures called for relative to lab instruments, standards and re-agents, for example, has been spotty, at best.

13. Defendants have also had difficulties obtaining *definitive sets* of "training materials" and lab operation protocols and policies for any particular time frame. These problems seem to arise, in part, out of the fact that the scanning of Hinton Drug Lab records (performed by the Inspector General's Office) was geared to find and produce case-specific testing documents, to be searched for by sample number. While a "key word" search is also available, categorical searches for materials in the above-described areas have not produced results that can be relied upon as complete or comprehensive - the Commonwealth has assiduously refrained from assuring defense attorneys in lab cases that what has been provided represents a "complete set."

14. The scanned data from Hinton is problematic in other ways. I have been told that handwritten documents (reagent logbooks, for example) were not amenable to optical character recognition (OCR) processes so they are not searchable.

15. I have also been advised that documents with GC/MS graphs are only searchable by sample number even though the

initials of the GC/MS operator appear in text at the top of the page. (GC/MS "graphs" are the actual data output of GC/MS analysis. See affidavit of Anne Goldbach at paragraphs 34 - 36 regarding the nature and significance of GC/MS testing in general and paragraphs 26 - 33 regarding GC/MS processes at Hinton.)

16. I have discovered several instances where Dookhan set up and executed GC/MS runs but did not appear on the certificates of analysis as the secondary chemist. CPCS has asked for disclosure of all instances in which Dookhan played this significant role. Because of the limitations of the scanned Hinton data described above, obtaining this information is likely to prove extremely difficult.

17. CPCS has attempted to obtain materials, such as those described above, broadly relevant to the litigation of lab case new trial motions. To date, there has been no mechanism for accomplishing this goal. Very recently, the possibility of progress along these lines has arisen but production of needed materials will be challenged by the difficulties and limitations of the scanned data.

18. We encounter many defendants who would like to seek relief from drug convictions tainted by Dookhan's misconduct and the mismanagement of the Hinton Drug Lab. We evaluate the merits

of each defendant's new trial motion and assess the risk for each defendant in the "re-opening" of his case should his plea be vacated.

19. Many defendants received charge concessions in exchange for their guilty pleas. Quite often, these charge concessions involved the dismissal of counts carrying mandatory periods of incarceration, school zone violations for example. In other cases, charge concessions involved the elimination of sentencing enhancements carrying mandatory prison sentences (e.g. subsequent offender) and/or the reduction of a drug trafficking count to a lower level trafficking offense or to a drug offense with no mandatory.

20. Many defendants seeking relief in this area have finished their prison sentences and/or completed their periods of probation.

21. Based on concerns about how courts might interpret the law, we must advise defendants who wish to proceed with lab case new trial motions, that a successful new trial motion could result in the re-activation of all counts as originally charged. On hearing this, many defendants, fearing further or increased incarceration, decide not to pursue seek relief from their tainted drug convictions.



22. Many of the defendants who so decide are suffering from the collateral consequences of the tainted convictions (e.g. in the areas of housing and employment). They decide they will continue to suffer these collateral consequences rather than risk further incarceration.

23. The fears that motivate defendants to withdraw or refrain from filing lab case new trial motions were realized in the Essex County case of Commonwealth v. Angel Rodriguez (ESCR07-0875).

24. Mr. Rodriguez was indicted in 2007 for trafficking in cocaine over 100 grams. In early 2008 he pleaded guilty to a reduced charge of trafficking in cocaine over 28 grams, receiving a state prison sentence of 5 to 7 years.

25. In October of 2012, after the revelations of Annie Dookhan's misconduct and the mismanagement of the Hinton Drug Lab, Mr. Rodriguez filed a motion to vacate his 2008 guilty plea (Dookhan had been involved in the analysis of the alleged narcotics in his case). In May of 2013, his motion was allowed. In November of 2013, Mr. Rodriguez went to trial before a jury on the indictment as originally charged: trafficking in cocaine over 100 grams. He was convicted and sentenced to 8 years to 8 years and 1 day in state prison.

26. The conviction and sentencing of Mr. Rodriguez, after what was probably the first trial of a defendant whose plea was vacated due to the Dookhan misconduct, received media attention. Defendants in Essex County and beyond have heard about what happened to Mr. Rodriguez. Attorneys representing defendants in lab cases use the Rodriguez case as an illustration of the risks inherent in the litigation of a new trial motion, particularly in cases where charge concessions made in connection with the original guilty plea resulted in the elimination of some or all mandatory prison sentences.

27. The example of Angel Rodriguez adds to the fears of defendants who might file lab case new trial motions, that their pursuit of relief from a conviction tainted by government misconduct might result in the imposition of even harsher punishment than that previously imposed.

28. CPCS staff have been engaged in the process of attempting to identify and locate indigent defendants convicted in drug cases in which Annie Dookhan was involved in the analysis of the alleged drugs.

29. In September, 2012 a Task Force established by Governor Patrick was established to identify all persons "affected by the alleged conduct of Chemist Annie Dookhan at the Hinton Drug Laboratory. . . from 2003 to the present." Attorney

David Meier was appointed to lead the Task Force. (*The Identification of Individuals Potentially Affected by the Alleged Conduct of Chemist Annie Dookhan at the Hinton Drug Laboratory, Final Report to Governor Deval Patrick, David E. Meier, Special Counsel to the Governor's Office, August 2013,*) (Meier Report, p. 2).

30. The purpose of the Task Force, as stated by Meier in his Final Report, was to "ensure that prosecutors, defense attorneys and judges were provided with as much information as possible about the identity of those individuals potentially affected, so as to enable them to respond appropriately to the alleged misconduct from their respective positions within the criminal justice system." (Meier Report, p. 2.)

31. In September, 2012, Meier's group generated, from Hinton data, a list of about 37,500 individuals whose samples of alleged narcotics had been tested by Dookhan, as primary or secondary chemist, between 2003 and 2012.

32. This list was provided to CPCS and CPCS then began the process of identifying and locating past and present clients who might have claims for relief.

33. Shortcomings in the "manner in which information and data were recorded and maintained at the Hinton Laboratory" necessitated that additional measures be taken towards the goal

of "accurately identify[ing] by true full name as many of the individuals on the list as possible." (Meier Report, p. 5.)

34. In August, 2013, Meier issued a revised, updated list of 40,323 individuals whose samples of alleged narcotics had been tested by Dookhan, as primary or secondary chemist, between 2003 and 2012 (Meier list). Meier indicates, in the report which accompanies the list, that he was able to amplify the September lists through a "by-hand, file-by-file review of individual [Hinton Drug] laboratory documents." (Meier Report, p. 9.)

35. This list was provided to CPCS and other criminal justice entities. With this updated list, CPCS has continued its efforts to identify and locate past and present clients who might have claims for relief from convictions based upon evidence tainted by Dookhan's misconduct and the mismanagement of the Hinton Drug Lab.

36. Since the Meier list is based solely upon Hinton Lab data, it lacks information that is highly significant to the process CPCS must undertake. The list contains no birthdates or social security numbers for the 40,323 names it reflects. Where common names are involved, some names are misspelled, or compound names incorrectly noted, in the absence of more precise identifiers accurate identification is compromised.

37. Drug Receipts - forms filled out by police officers upon the submission of substances to the lab - attached to the Meier list as PDF's, provide addresses for some of the names on the list. The Drug Receipt form most commonly used outside of Boston did not call for addresses. The Boston Police Department form *did* call for addresses but some versions of this form suffer from the fact that they contained only two lines for defendants, causing the list to be under-inclusive in some cases involving more than two defendants.

38. Many of the addresses reflected in the drug receipts are, by definition, as much as ten years old and, as such, are of limited utility in locating individuals in a low-income population in which few own their own homes and many make frequent moves. The old addresses are also of limited utility in accurately identifying individuals, compared with the more precise identifiers of birthdates and social security numbers.

39. Defendants' birthdates and social security numbers are typically part of police incident reports and/or booking sheets. These documents were not part of the Hinton Lab files reviewed by Meier's group and thus the information they contain is not part of the Meier list. The drug receipts attached to the Meier list as PDF's, however, provide police reference numbers - police department case numbers - thus providing a link between

the Hinton Drug Lab case (sample) numbers and the number for the police reports associated with those samples.

40. The Meier list does not contain docket numbers or dispositional information. Where CPCS must focus its "identify and locate" efforts on indigent defendants *convicted* in Dookhan-involved drug cases, the list provides no ready means of determining which list entries represent convictions.

41. As a result, CPCS staff must obtain docket numbers by attempting to match Meier list names with internal data. Given the difficulties with names described above, and the lack of more precise identifiers, this matching process is inexact.

42. Assuming docket numbers are obtained, CPCS staff must obtain dispositional information. In cases originally handled by CPCS staff attorneys, internal dispositional data is accessible. In cases originally handled by private counsel assigned through bar advocate programs - and these represent the lion's share of the cases associated with the 40,323 names on the Meier list - dispositional information must be sought from the courts.

43. Superior Court dispositional data can be efficiently obtained via the AOTC's on-line information system. Accurate District Court dispositional information, on the other hand, can now only be obtained from the individual courts' clerk's offices. CPCS requests for docket information in thousands of

cases threaten to further strain under-staffed district court clerk's offices. (N.B. District court cases represent the lion's share of the cases associated with the 40,323 names on the Meier list.)

44. Assuming CPCS staff are able to identify and locate individuals with potential claims for relief from drug convictions and ascertain that they wish to speak to counsel, attorneys will be assigned. Where assigned counsel did not handle the underlying case, s/he will have to assemble a file of documents essential to advising the client relative to the merits of a possible new trial motion, such as police reports and certificates of [drug] analysis.


45. As indicated above, police incident reports, unlike drug receipts, were *not* part of the Hinton Drug Lab files and are *not* attached to the Meier list as PDF's.

46. Certificates of analysis of the alleged controlled substances (the so-called "drug certs"), reflecting the results of the analysis, the names of the two chemists and the role played by each (primary or secondary chemist), were *not part of the Hinton Drug Lab file*. As such, the certificates are *not* attached to the Meier list as PDF's.

47. Counsel assembling files for purposes of advising clients as to the merits of possible new trial motions will have

to seek these essential documents from District Attorney's offices, which will, in turn, have to request the documents from the appropriate police departments. Alternatively, defense counsel will have to obtain certificates via FOIA requests directed to police departments.

SIGNED UNDER THE PAINS AND PENALTIES OF PERJURY THIS 6<sup>th</sup>  
DAY OF JANUARY 2014.



Nancy J. Caplan  
Committee for Public Counsel Services  
7 Palmer Street  
Roxbury, MA 02119  
(617) 445-7581



# **CAPLAN ATTACHMENT A**

**THE IDENTIFICATION OF INDIVIDUALS POTENTIALLY  
AFFECTED BY THE ALLEGED CONDUCT OF CHEMIST ANNIE  
DOOKHAN AT THE HINTON DRUG LABORATORY**

**FINAL REPORT TO GOVERNOR DEVAL PATRICK**

**David E. Meier  
Special Counsel to the Governor's Office  
August 2013**

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### **Overview**

In September, 2012, Governor Deval Patrick established a Task Force whose goal was to identify all of the individuals who potentially could have been affected by the alleged conduct of Chemist Annie Dookhan at the Hinton Drug Laboratory in Jamaica Plain, MA, from 2003 to the present. The primary purpose of the Task Force was to ensure that prosecutors, defense attorneys, and judges were provided with as much information as possible about the identity of those individuals potentially affected, so as to enable them to respond appropriately to the alleged misconduct from their respective positions within the criminal justice system. The objective was to make all reasonable efforts to identify each and every one of the individuals who, depending upon the facts of his or her case and the applicable law, could seek their day in court; the objective was not to pass judgment or make factual or legal determinations about any particular defendant or any particular case. In short, the goal was to ensure that the criminal justice system and all potentially impacted defendants were afforded the opportunity to achieve fundamental fairness or, simply stated, to get it right.

In September, 2012, based upon the database then maintained at the Hinton Laboratory, we generated a list of approximately 37,500 individuals whose drug samples had been tested in some manner by Ms. Dookhan during her work as a chemist at the laboratory from 2003 to 2012. The list included the names of individuals whose drug samples had been tested by Ms. Dookhan as a "primary" chemist or a "secondary" (confirmatory) chemist. The list was based upon the database then maintained at the laboratory and contained entries for every drug sample tested by Ms. Dookhan from 2003, when she was first employed, to the present. Based upon the total number of drug samples contained in the laboratory data base that were associated with testing

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performed by Ms. Dookhan (close to 70,000 samples), laboratory officials estimated that the total number of individuals whose cases were associated with Ms. Dookhan was approximately 34,000-35,000. Based upon our subsequent review and analysis of the list and the laboratory database, we determined that the actual number of names of individuals contained on the list generated in September, 2012, was 37,554.

At the outset of our work, the overriding priority was to identify as expeditiously as possible those individuals who at the time were potentially most adversely affected by the alleged conduct of Ms. Dookhan: individuals who were then incarcerated (or in custody) on a drug case in which Ms. Dookhan had performed drug testing. These individuals may have been incarcerated while serving a prison or jail sentence in a state or federal correctional facility, held on bail while awaiting trial on a pending case, or in custody for other reasons (e.g., parole detainers, probation violations, immigration matters, or juveniles committed to the Department of Youth Services). Within 45 days, we had identified a total of approximately 2,000 individuals who were then incarcerated on a drug case or a drug-related case in which Ms. Dookhan had performed drug testing from 2003 to the present.

From late last year through mid-2013, we worked through three (3) basic phases to attempt to identify every individual who potentially may have been impacted by the alleged conduct of Ms. Dookhan. As of August, 2013, upon the completion of Phase I, Phase II, and Phase III of our review, we have identified a total of 40,323 individuals whose drug cases potentially may have been affected by the alleged conduct of Ms. Dookhan. Law enforcement officers recovered drug samples from these 40,323 individuals in eight counties: Barnstable, Bristol, Dukes, Essex, Middlesex, Norfolk, Plymouth, and Suffolk (as well as a one-time instance in Worcester). As outlined below,

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most, if not all, of the additional 2,769 individuals who have been identified since September, 2012 are associated with individuals who or cases which were previously identified and contained on the original list generated in September, 2012.

Our review, analysis, and identification of potentially impacted individuals is now essentially complete. Thus far, over 2,600 court hearings have been held statewide in the Superior Court on Dookhan-related cases or Dookhan-related issues. The prosecution of Ms. Dookhan by the Attorney General's Office for certain alleged crimes is ongoing. Likewise, the wider investigation into the practices, procedures, and overall reliability of drug testing at the Hinton Laboratory by the Inspector General's Office is also ongoing.

### **Summary of Our Three-Phase Review and Analysis**

#### **Phase I**

From September - December, 2012, we focused our efforts on coordinating with the District Attorneys, the Committee for Public Counsel Services, the private defense bar, the United States Attorney's Office, the Federal Defender's Office, the Superior Court, the District Court, the Boston Municipal Court, the Juvenile Court, and various other agencies within the criminal justice system to exchange information and data regarding those individuals who potentially may have been impacted by the alleged conduct of Ms. Dookhan. A list of the agencies and offices with which we consulted and coordinated is attached as Exhibit A. Throughout our work, each of these agencies and offices shared information and resources with us on an ongoing basis and were fully supportive of our efforts in every way.

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The foundation for the sharing of information was a master list (or spreadsheet) of approximately 37,500 names of individuals upon whose drug samples Ms. Dookhan allegedly had worked as a "primary" chemist or a "secondary" (confirmatory) chemist from 2003 to the present. The original master list was generated by the Department of Public Health's Information Technology Department in late August and early September, 2012, and was based upon the available personal identifying information and other data contained within the Hinton Laboratory data base.

The master list was provided (or made available electronically with CORI-protected safeguards) to the District Attorneys, the Committee for Public Counsel Services, the private defense bar, and other appropriate agencies during the first week of September, 2012. Due to various shortcomings in the manner in which the information and data were recorded and maintained at the Hinton Laboratory, throughout September, October, and November, 2012, information technology specialists, law enforcement investigators, and others from the Massachusetts State Police and the Executive Office of Public Safety and Security undertook a wide range of investigative and technological efforts to refine or revise the personal identifying information and other data within the master list so as to enhance our ability to accurately identify by true full name as many of the individuals on the list as possible. The cooperation of the various agencies and offices set forth in Exhibit A were extraordinary during this effort.

In order to most effectively coordinate the response of the criminal justice system to the alleged conduct of Ms. Dookhan, starting immediately upon the creation of the Task Force in September, 2012, we held joint meetings with the District Attorneys, the Committee for Public Counsel, the private defense bar, the United States

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Attorney's Office, and the Federal Defender's Office, as well as representatives of numerous other criminal justice agencies and offices. On an ongoing basis, we distributed specific, individualized "priority lists" reflecting the names and personal identifying information of those individuals on the master list of approximately 37,500 names who at the time were in the most severely-impacted categories: individuals in state or federal custody while serving a prison or jail sentence, individuals in state or federal custody while being held on bail awaiting trial, individuals within the custody or authority of the Department of Youth Services, individuals on parole, individuals on probation, and individuals who had a prior or predicate Superior Court drug conviction.

During the same time period, we met and communicated regularly with the Chief Justice of the Superior Court, the Chief Justice of the District Court, the Chief Justice of the Boston Municipal Court, and the Chief Justice of the Juvenile Court, as well as those judges overseeing the special "drug lab sessions" in each of the affected counties. Our purpose in doing so was to ensure that we were coordinating our efforts with those of the Trial Court, in order to most effectively and expeditiously identify all of the individuals in the priority categories, determine their corresponding criminal cases, indictments, and docket numbers, and afford them (and their counsel) an opportunity to request a court hearing wherever appropriate.

At the joint criminal justice meetings, in addition to the review and distribution of the priority category lists, prosecutors, defense counsel, and representatives of the various other agencies discussed certain Dookhan-related legal, practical, and ethical issues that were then arising within the court system on a frequent basis: requests for the discovery of potentially exculpatory information relating to the Hinton Laboratory in general (e.g., evidence logs, internal procedures, protocols, quality assurance materials,

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training materials, and internal investigation reports that were within the possession of the Department of Public Health, the Attorney General's Office, or the Inspector General's Office); requests for the discovery of potentially exculpatory information relating in particular to the investigation and prosecution of Ms. Dookhan herself (e.g., Massachusetts State Police investigative reports, witness statements, and transcripts of grand jury testimony that were within the possession of the Attorney General's Office); requests for the discovery of potentially exculpatory information relating to specific individual cases and specific individual drug samples on which Ms. Dookhan had performed tests (e.g., handwritten laboratory notes (or "powder sheets"), evidence control cards, chain of custody records, mass spectrometry data, and other materials relating to specific individual cases that were within the possession of the Department of Public Health, the Attorney General's Office, or the Inspector General's Office); requests to generate and distribute a master list of the names of all of the individuals whose drug samples had been tested at the Hinton Laboratory, whether by Ms. Dookhan or any other chemist; and various legal, practical, and ethical concerns surrounding the assignment of counsel, adequate and sufficient access to inmates and clients, the transportation of defendants to and from correctional facilities, courthouse and courtroom security, audio-video conferencing of court hearings, and other real life, practical considerations related to the ongoing response by the criminal justice system. For all of the criminal justice agencies at the meetings, however, the overriding focus was on continuing our joint efforts to enhance the accuracy of the information related to each of the names on the master list.

As of December, 2012, we had specifically identified, designated, and provided relevant information to prosecutors and defense attorneys about approximately 10,000



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potentially impacted individuals who fell within the various "priority categories": individuals in state or federal custody while serving a prison or jail sentence, individuals in state or federal custody while being held on bail awaiting trial, individuals within the custody or authority of the Department of Youth Services, individuals on parole, individuals on probation, and individuals who had a prior or predicate Superior Court drug conviction or a prior Juvenile Court delinquency finding.

The majority of the remaining 27,500 names were (and remain) those of individuals who from 2003 to the present have been charged with lesser drug offenses (e.g., first offense possession offenses) that have been prosecuted and resolved in the District Court or the Boston Municipal Court. We fully recognize and appreciate the potential impact that a prior guilty finding, "continuance without a finding", period of probation, fine, or other routine disposition on a first-offense District Court drug case might have on an individual's criminal history, future employment, educational opportunities, public housing qualifications, or other daily pursuits.

Working in conjunction with the Committee for Public Counsel Services, the Superior Court, and the Probation Department, as of December, 2012, most, if not all, of the identified 10,000 individuals who so qualified had been assigned counsel for purposes of reviewing their case and potentially seeking some form of court hearing. Working in conjunction with prosecutors, defense attorneys, judges, and court personnel, as of December, 2012, most, if not all, of the 2,000 individuals incarcerated in prisons or county jails (those in the highest priority category) on Dookhan-related cases had been brought before a court or otherwise afforded some form of Dookhan-related factual and legal review.

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## **Phase II**

Beginning in January of this year, we focused our efforts on improving and enhancing the accuracy and personal identifying information of the approximately 37,500 names on the master list by reviewing actual laboratory files, evidence submission forms, drug receipts, evidence control cards, and other laboratory documents then in the possession of the Hinton Laboratory, the Massachusetts State Police, the Attorney General's Office, and/or the Inspector General's Office. As a supplement to the information technology or computer-based review and analysis undertaken in Phase I of the names and information contained in the Hinton Laboratory data base itself, the Phase II review involved a by-hand, file-by-file review of individual laboratory documents.

The goal of the file-by-file review was to improve the accuracy of the master list by (i) manually updating, revising, or verifying the personal identifying information associated with the existing names (by including, wherever appropriate, additional data such as dates of birth, first names, middle names, last names, properly-spelled names, and police departments), as well as by (ii) creating new entries for the names and personal identifying information of (a) those individuals whose drug samples were associated with Ms. Dookhan but whose names were not previously contained in the laboratory data base (and therefore were not previously on the master list), (b) those individuals whose names were previously contained in the data base but within a single entry that contained multiple names or defendants and lacked sufficient personal identifying information, and (c) those individuals who were previously described generically within the laboratory data base (and therefore generically on the master list) as "multiple suspects", "multiple defendants", "co-defendants", "et al", or "etc."

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As of April, 2013, we had reviewed by hand certain laboratory documents and records from the years 2012, 2011, and 2010. For 2012, the review generated no "new" or additional individuals whose drug samples were associated with Ms. Dookhan as the primary or secondary chemist. For 2011, the review generated 673 new or additional entries of individuals whose drug samples were associated with Ms. Dookhan as the primary chemist and 192 new or additional entries of individuals whose drug samples were associated with Ms. Dookhan as the secondary chemist. The majority of these new or additional entries were for individuals whose names were previously contained in the laboratory data base but within a single entry that contained multiple names or defendants and lacked sufficient personal identifying information. For 2011, the file by file review also enabled us to update, revise, or verify the names and personal identifying information of 2,068 previously-identified individuals whose drug samples were associated with Ms. Dookhan as the primary or secondary chemist.

For 2010, the review generated 1,369 new or additional entries of individuals whose drug samples were associated with Ms. Dookhan as the primary chemist and 1,066 new or additional entries of individuals whose drug samples were associated with Ms. Dookhan as the secondary chemist. Again, the majority of these new entries were for individuals whose names were previously contained in the laboratory data base but within a single entry that contained multiple names or defendants and lacked sufficient personal identifying information. For 2011, the file by file review enabled us to update, revise, or verify the names and personal identifying information of 6,411 previously-identified individuals whose drug samples were associated with Ms. Dookhan as the primary or secondary chemist.

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Independent of our efforts during Phase II of our review, in early 2013, Navigant -- the outside document storage vendor contracted by the Inspector General's Office in connection with that Office's ongoing overall review of the Hinton Laboratory -- began the electronic collection, scanning, and storage of all documents and records generated at the laboratory from as far back as 1998, including those from 2012, 2011, and 2010 that we were then reviewing by hand. Given the nature, extent, and volume of the documents and records (as well as the various locations where they were then maintained, stored, or archived), the electronic collection, scanning, and storage process continued for several months. So too did our file-by-file review.

As of May of this year, as a result of the ongoing document collection and storage, we not only had the capability of accessing, reviewing, and analyzing electronically all of the data and information that the law enforcement investigators and information technology specialists from the State Police and the Executive Office of Public Safety and Security had researched and refined during Phase I of our efforts, but also all of the substantial additional data and information that were contained in the evidence submission forms, drug receipts, evidence control cards, chain of custody records, and other actual laboratory documents that formed the basis of our file-by-file review during Phase II of our review.

### **Phase III**

Accordingly, in order to provide the criminal justice system with the most accurate information available to us regarding the identity of each and every individual who potentially could have been affected by the alleged conduct of Ms. Dookhan, throughout June and July we researched and analyzed all of the data, laboratory

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records, and related information that to date had been electronically collected and stored. In all, during Phase II and Phase III of the review, some 1.5 million hardcopy laboratory documents, comprising more than 3.5 million hardcopy pages, as well as another 3.5 million documents from electronic sources, were collected, stored, researched, and analyzed.

Based on the research and analysis conducted in Phase II and Phase III of our review, we have now generated a revised, updated, and comprehensive list of 40,323 names of individuals upon whose drug samples Ms. Dookhan performed testing as a primary chemist or a secondary (confirmatory) chemist from 2003 to the present. This new master list reflects our best efforts to identify each and every individual who potentially may have been impacted by the alleged conduct of Ms. Dookhan. A sample, illustrative version of the revised and updated master list (the original of which is CORI-protected) is attached as Exhibit B. Again, our primary purpose in creating the new master list is to ensure that prosecutors, defense attorneys, and judges (as well as all others within the system) are provided with as much information as possible about the identity of those individuals potentially affected, so as to enable each of the agencies and offices to respond appropriately to the alleged misconduct from their respective positions within the criminal justice system.

The new master list is in a format designed to be user-friendly. It contains the basic, necessary information that will enable the District Attorneys, law enforcement agencies, the Committee for Public Counsel Services, the private defense bar, and any other appropriate agencies to most accurately identify those individuals who potentially may have been impacted by Ms. Dookhan. The list is organized by county, and for most of the 40,323 names, includes individual entries reflecting the corresponding town, the

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corresponding law enforcement agency, the name of the police officer who submitted the drug sample to the laboratory, the date the drug sample was submitted, the internal Hinton Laboratory sample number, the results of the drug testing, and the drug submission (or drug receipt) form. The drug submission form contains additional confidential law enforcement data and information which should enable the District Attorneys and/or the respective law enforcement agencies to locate the applicable police reports, arrest/booking records, and any other related materials.

In addition, by utilizing the specific internal Hinton Laboratory sample (or case) number that corresponds to each individual on the list, prosecutors and defense attorneys will soon be able to request access to copies of all of the relevant discovery material from the laboratory that relates to any specific individual defendant, individual case, or individual drug test.

As noted above, the new list contains 40,323 names. It is based, in part, upon a systematic review and analysis -- initially by hand and then electronically -- of some 3.5 million actual laboratory documents, including those related to over 86,000 drug samples associated with Ms. Dookhan. The original list, generated in September, 2012, contained 37,554 names. It was based upon the available personal identifying information and other data contained within the Hinton Laboratory database. The 2,769 additional names that we have identified are the result of our research and analysis during Phase II and Phase III of our review. As outlined above, most, if not all, of these additional names are the result of our research and analysis of previous multiple defendant (or "et al") drug samples and drug tests; most, if not all, of these additional names are associated with a name or an individual or a case that was contained on the original list generated in September, 2012.

**Endnote**

In the coming days, we intend to meet with the District Attorneys, the Committee for Public Counsel Services, the Chief Justices of the respective courts, the Massachusetts Bar Association, the Boston Bar Association, and any other appropriate agencies and offices to discuss and distribute the new master list.

One final note: This Report is meant to summarize for the Governor in a general way the nature, extent, and course of the research and analysis that was performed by the Task Force during the three phases of our review. It is neither intended nor designed to describe in detail our work over the past 10 months. Indeed, in the end, it is the revised and updated master list of names and related information that is our true report to the Governor and, perhaps more importantly, to the criminal justice system.

# **Exhibit A**



**Agencies and Organizations Within the Criminal Justice System with Which  
the Task Force Consulted and Coordinated**

1. Department of Public Health Hinton Drug Laboratory
2. District Attorneys' Offices
3. United States Attorney's Office
4. Attorney General's Office
5. Committee for Public Counsel Services
6. Federal Defender's Office
7. Federal Criminal Justice Act Panel
8. Private Defense Bar
9. Bar Advocate Programs
10. Massachusetts Bar Association
11. Boston Bar Association
12. Chief Justice of the Superior Court + Superior Court Judges
13. Chief Justice of the District Court + District Court Judges
14. Chief Justice of the Boston Municipal Court + Boston Municipal Court Judges
15. Chief Justice of the Juvenile Court + Juvenile Court Judges
16. Massachusetts State Police
17. Local Police Departments
18. Executive Office of Public Safety and Security
19. Department of Corrections
20. Sheriffs' Departments/County Houses of Corrections/County Jails

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21. Department of Youth Services
22. Massachusetts Parole Board
23. Massachusetts Probation Department
24. United States Marshal's Office
25. Federal Bureau of Prisons
26. Department of Homeland Security/Immigration and Customs Enforcement
27. United States Probation Office
28. United States Pretrial Services Office
29. Superior Court Clerk's Offices
30. District Court and Boston Municipal Court Clerk's Offices

# Exhibit B

HINTON DRUG LAB REVIEW

\*\*ILLUSTRATIVE AID: ALL NAMES ARE FABRICATED FOR SAMPLE PURPOSES ONLY\*\*

Submitting Agency (Normalized)	Submitting Agency (As Entered at Lab)	Town (Normalized)	County (Normalized)
BREWSTER PD	Brewster Police Dept.	Brewster	Barnstable
BREWSTER PD	Brewster Police Dept.	Brewster	Barnstable
BREWSTER PD	Brewster Police Dept.	Brewster	Barnstable
BREWSTER PD	Brewster Police Dept.	Brewster	Barnstable
BREWSTER PD	Brewster Police Dept.	Brewster	Barnstable
HYANNIS PD	Hyannis Police Dept.	Hyannis	Barnstable
HYANNIS PD	Hyannis Drug Police	Hyannis	Barnstable
HYANNIS PD	Hyannis Police Dept.	Hyannis	Barnstable
HYANNIS PD	Hyannis Police Dept.	Hyannis	Barnstable
HYANNIS PD	Hyannis Police Dept.	Hyannis	Barnstable
SALEM PD	Salem Police Dept.	Salem	Essex
SALEM PD	Salem Police Dept.	Salem	Essex
SALEM PD	Salem Police Dept.	Salem	Essex
SALEM PD	Salem Police	Salem	Essex
SALEM PD	Salem Police Dept.	Salem	Essex
SALEM PD	Salem Police Dept.	Salem	Essex
SALEM PD	SALEM Police Dept.	Salem	Essex
SALEM PD	Salem Police Dept.	Salem	Essex
SALEM PD	Salem Police	Salem	Essex
SALEM PD	Salem Police	Salem	Essex
SALEM PD	Salem Police Dept.	Salem	Essex
QUINCY PD	Quincy Police Dept.	Quincy	Norfolk
QUINCY PD	Quincy Police	Quincy	Norfolk
QUINCY PD	QUINCY PD DEPT.	Quincy	Norfolk
QUINCY PD	Quincy Police Dept.	Quincy	Norfolk
QUINCY PD	Quincy Police Dept.	Quincy	Norfolk
QUINCY PD	Quincy Police Dept.	Quincy	Norfolk
QUINCY PD	Quincy Police	Quincy	Norfolk
QUINCY PD	Quincy Police Dept.	Quincy	Norfolk
QUINCY PD	Quincy Police Dept.	Quincy	Norfolk
QUINCY PD	Quincy Police Dept.	Quincy	Norfolk
QUINCY PD	Quincy Police Dept.	Quincy	Norfolk

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HINTON DRUG LAB REVIEW

**\*\*ILLUSTRATIVE AID: ALL NAMES ARE FABRICATED FOR SAMPLE PURPOSES ONLY\*\***

Defendant(s) (As Entered at Lab)	Submitting Officer (As Entered at Lab)	Date Submitted to Lab	Lab Sample #	Results (As Entered at Lab)	Individual Defendant (As Entered at Lab)
SMITH, RICHARD	Sergeant JOHN JONES	1/25/2011	A00-12345	HEROIN	SMITH, RICHARD
JOHNSON, JAMES	Sergeant JOHN JONES	1/25/2011	A12-67890	COCAINE	JOHNSON, JAMES
WILLIAMS, ROBERT	Sergeant JOHN JONES	1/25/2011	A34-98765	MARIJUANA	WILLIAMS, ROBERT
BROWN, WILLIAM	Sgt JOHN JONES	1/25/2011	A56-43456	COCAINE	BROWN, WILLIAM
DAVIS, MARY	Sergeant JOHN JONES	1/25/2011	A78-23156	OXYCODONE	DAVIS, MARY
ADAMS, PHIL	Detective MICHAEL HALL	6/18/2007	A90-68754	OXYCODONE	ADAMS, PHIL
WILSON, CHARLES	Det. MICHAEL HALL	6/18/2007	A11-89765	COCAINE	WILSON, CHARLES
WHITE, JOSEPH	Detective MICHAEL HALL	6/18/2007	A23-13232	ALPRAZOLAM	WHITE, JOSEPH
HARRIS, PAUL	Detective MICHAEL HALL	6/18/2007	A46-76954	HYDROMORPHONE	HARRIS, PAUL
HARRIS, PAUL	Det. MICHAEL HALL	6/18/2007	A90-14231	HYDROMORPHONE	HARRIS, PAUL
THOMAS, JASON	Sergeant SARAH SMITH	2/11/2005	A31-00876	COCAINE	THOMAS, JASON
ROBINSON, ANTHONY	Sergeant SARAH SMITH	2/11/2005	A54-13987	MARIJUANA	ROBINSON, ANTHONY
ALLEN, MARY	Sergeant SARAH SMITH	2/11/2005	A64-10098	MARIJUANA	ALLEN, MARY
GREEN, PATRICIA	Sergeant SARAH SMITH	2/11/2005	A79-36532	COCAINE	GREEN, PATRICIA
KING, MARIA	Sergeant SARAH SMITH	2/11/2005	A23-76981	OXYCODONE	KING, MARIA
SCOTT, PAUL	Sgt. SARAH SMITH	2/11/2005	A97-22164	AMPHETAMINE	SCOTT, PAUL
HALL, STEVEN	Sergeant SARAH SMITH	2/11/2005	A98-80198	COCAINE	HALL, STEVEN
YOUNG, KEVIN	Sergeant JAMES MILLER	4/19/2004	A87-35211	HYDROCODONE-C	YOUNG, KEVIN
CLARK, PAUL	Sergeant JAMES MILLER	4/19/2004	A67-99543	COCAINE	CLARK, PAUL
ADAMS, SUSAN	Sergeant JAMES MILLER	4/19/2004	A54-42390	MARIJUANA	ADAMS, SUSAN
ADAMS, SUSAN	Sergeant JAMES MILLER	4/19/2004	A32-13654	MARIJUANA	ADAMS, SUSAN
LEWIS ET AL	Detective BRIAN ADAMS	11/17/2010	A21-24407	MARIJUANA	LEWIS, DONALD
LEWIS ET AL	Detective BRIAN ADAMS	11/17/2010	A21-24407	MARIJUANA	LEE, LINDA
LEWIS ET AL	Det BRIAN ADAMS	11/17/2010	A21-24407	MARIJUANA	HILL, CHARLES
BAKER, DANIEL	Detective BRIAN ADAMS	11/17/2010	A42-21345	MARIJUANA	BAKER, DANIEL
ROBERTS, SANDRA	Detective BRIAN ADAMS	11/17/2010	A31-22202	MARIJUANA	ROBERTS, SANDRA
NELSON, ELIZABETH	Detective BRIAN ADAMS	11/17/2010	A45-22209	COCAINE	NELSON, ELIZABETH
TURNER, RICHARD	Detective BRIAN ADAMS	11/17/2010	A35-24610	COCAINE	TURNER, RICHARD
PARKER, LAURA	Sgt. THOMAS RAY	6/5/2010	A57-02472	COCAINE	PARKER, LAURA
CAMPBELL, CHARLES	Sergeant THOMAS RAY	6/5/2010	A43-24611	OXYCODONE	CAMPBELL, CHARLES
EVANS, MICHELLE	Sergeant THOMAS RAY	6/5/2010	A02-10985	OXYCODONE	EVANS, MICHELLE
GEORGE, ETHEL	Sergeant THOMAS RAY	6/5/2010	A56-02458	OXYCODONE	GEORGE, ETHEL

R 266

HINTON DRUG LAB REVIEW

**\*\*ILLUSTRATIVE AID: ALL NAMES ARE FABRICATED FOR SAMPLE PURPOSES ONLY\*\***

Drug Submission Form (Click for Drug Receipt)
<a href="#">MSPON00062917.pdf</a>
<a href="#">MSPON00062918.pdf</a>
<a href="#">MSPON00062918.pdf</a>
<a href="#">MSPON00062918.pdf</a>
<a href="#">MSPON00062919.pdf</a>
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<a href="#">MSPON00062929.pdf</a>
<a href="#">MSPON00062930.pdf</a>
<a href="#">MSPON00062931.pdf</a>
<a href="#">MSPON00062942.pdf</a>
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R 267

COMMONWEALTH OF MASSACHUSETTS

SUPREME JUDICIAL COURT

SUFFOLK, ss.

NO. SJ-2013-

PETITIONERS

v.

COMMONWEALTH

AFFIDAVIT OF ANTHONY J. BENEDETTI

I, Anthony J. Benedetti, state as follows;

1. I am the Chief Counsel of the Committee for Public Counsel Services (CPCS).

2. "In June, 2011, allegations of misconduct at the William A. Hinton State Laboratory Institute in Jamaica Plain . . . [first] surfaced regarding work performed by Annie Dookhan . . . ." Commonwealth v. Charles, 466 Mass. 63, 64 (2013).

3. Over the ensuing two and one-half years, CPCS's ability to carry out its core mandate has been affected by the criminal justice system's case-by-case response to the "burgeoning crisis." Id. at 89.

4. I am submitting this affidavit in support of the petitioners in this case to ensure that this Court is aware

of how the case-by-case approach is impeding this agency's ability to carry out its core statutory mandate: to "establish, supervise and maintain a system for the appointment or assignment of counsel at any stage of a proceeding, either criminal or noncriminal in nature," for all indigent persons entitled to counsel in this Commonwealth. G.L. c.211D, §5.

5. By way of background, on March 12, 2013, CPCS sought to intervene in the Charles and Milette cases then before the single justice (Botsford, J.) to:

protect its clients' due process rights to the just and timely resolution of the many thousands of previously-adjudicated cases tainted by systemic malfeasance at the Hinton Drug Lab . . . , to protect its clients from the devastating fiscal and human costs attendant to the case by case approach to the resolution of those cases . . . , and to advocate for remedies that will restore the integrity of the criminal justice system.

Commonwealth v. Charles, SJ-2013-0066 & Commonwealth v. Milette, SJ-2013-0086 (Committee for Public Counsel Services' Motion to Intervene at 1) (March 12, 2013).

6. A copy of my affidavit in support of CPCS's motion to intervene is attached hereto and is incorporated by reference herein.



7. Charles and Milette asked the single justice to report the following question to the full Court:

Where ongoing disputes in litigation caused by corrupt practices in the Hinton Lab have compounded the injustices of that scandal, whether this Court, pursuant to its extraordinary powers and superintendence capacity, should direct and endorse a range of equitable judicial remedies designed to protect the due process rights of affected, to restore the integrity of the affected judicial system, and to ensure the public's confidence therein.

Commonwealth v. Charles, SJ-2013-0066, Commonwealth v. Milette, SJ-2013-0086, & Commonwealth v. Superior Court, SJ-2013-0092 (Reservation and Report at 4) (March 22, 2013).

8. The single justice denied CPCS's motion to intervene, "without prejudice to renewal," and declined to report to the full Court questions pertaining to the "systemic impact" of the Hinton Lab fiasco, on the rationale that such efforts at reaching a "global solution" to the problem were "premature." Id. "The work of David Meier . . . is not yet complete. Nor is the investigation of the Inspector General complete." Ibid.

9. The single justice nonetheless "retain[ed] . . . jurisdiction so that the individual defendants and CPCS

will have an opportunity to renew their motions before me at an appropriate time." Id.

10. On August 20, 2013, Attorney Meier released the results of his investigation, which concluded that the "criminal cases of 40,323 people may have been tainted." David Abel, John R. Ellement, and Martin Finucane, "Annie Dookhan, Alleged Rogue State Chemist, May Have Affected 40,323 People's Cases, Review Finds," Boston Globe, August 20, 2013.

11. We still await the Investigator General's report.

12. As of this date, CPCS has assigned counsel in approximately 8,700 previously litigated cases impacted by the Hinton Lab fiasco. This number includes cases that have been assigned to private counsel through bar advocate programs and Public Defender Division staff counsel.

13. In my view, now is the appropriate time for this Court to frame an appropriate global response to the Hinton Lab fiasco.

14. The Charles and Milette cases have been resolved. For this reason, CPCS is unsure whether Justice Botsford retains jurisdiction to consider a renewed motion to intervene in those cases.

15. Notwithstanding this uncertainty as to the

appropriate procedural vehicle, I am more convinced than ever that anything other than a global resolution of the Hinton Lab crisis will fail to deliver justice to many thousands of indigent defendants whose rights have been violated and will require CPCS to obtain millions of additional dollars in funding targeted to the DPH Lab fiasco.

16. For the reasons discussed in the affidavit of Attorney Nancy Caplan, CPCS believes that the Meier report undercounts the number of tainted cases. Moreover, the Meier report does not even purport to count all Hinton Lab cases that may have been tainted by the systemic incompetence and malfeasance which infected the lab during the years that Annie Dookhan worked there, regardless whether Ms. Dookhan handled the case personally. CPCS estimates that there are approximately 190,000 such cases.

17. Whether or not the Meier number ultimately proves to be accurate, the Attorney General's office has plausibly estimated that the fiasco has already resulted in the expenditure by the Commonwealth of "hundreds of millions of dollars." Commonwealth v. Annie Dookhan, SUCR2012-11155 (Commonwealth's sentencing memorandum, filed October 17, 2013).

18. Although CPCS and the District Attorneys

received some supplemental funds for Hinton Lab-related expenditures last fiscal year, those funds represent only a small fraction of what the growing crisis will likely cost the agency in the future.

19. Moreover, the time that CPCS Public Defender Division staff attorneys and support staff expend to provide counsel in previously-litigated Hinton Lab cases is time that is diverted from other cases. This redistribution of staff time is an unquantifiable impediment to our ability to carry out our core mission.

20. Similarly, CPCS's two-attorney Forensic Services Unit has devoted countless hours on Dookhan-related matters since news regarding the crisis broke. That work has been essential to CPCS's efforts to vindicate the rights of clients whose due process rights have been violated. But, the development of substantive forensic resources needed by all of CPCS's clients have had to be put on hold as the Forensic Unit's time has been increasingly monopolized by Hinton Lab-related matters.

21. CPCS's core function is to provide counsel at the pre-trial and trial level. But the indigent defendants whose due process rights have been violated by the Hinton Lab fiasco require the assistance of post-conviction counsel. Such representation is specialized,


time-consuming, and expensive. Moreover, post-conviction work is not the kind of representation that most public defenders and bar advocates have been trained to provide.

22. There are no more than 300 qualified attorneys in Massachusetts who are willing to handle post-conviction cases at the low hourly rates that CPCS is authorized to pay. Unless there is a global resolution of the Hinton Lab cases, CPCS will need to recruit, train, and provide support to a small army of newly-qualified post-conviction attorneys to represent each of the tens of thousands of Hinton Lab clients whose cases have been affected.

23. Such an effort would take months if not years, cost millions of dollars, and cause incalculable damage to CPCS, its clients, and Massachusetts' criminal justice system.

SIGNED UNDER THE PAINS AND PENALTIES OF PERJURY THIS

6<sup>th</sup> DAY OF JANUARY 2014.



---

Anthony J. Benedetti  
Chief Counsel  
Committee for Public Counsel Services  
44 Bromfield Street  
Boston, MA 02108  
(617) 482-6212

## **BENEDETTI ATTACHMENT A**

COMMONWEALTH OF MASSACHUSETTS

SUPREME JUDICIAL COURT

ESSEX, ss.

NOS. SJ-2013-0066 &  
SJ-2013-0083

COMMONWEALTH

v.

SHUBAR CHARLES

&

COMMONWEALTH

v.

HECTOR MILETTE

AFFIDAVIT OF ANTHONY J. BENEDETTI IN SUPPORT OF COMMITTEE  
FOR PUBLIC COUNSEL SERVICES'  
MOTION TO INTERVENE

I, Anthony J. Benedetti, state as follows;

1. I am the Chief Counsel of the Committee for Public Counsel Services (CPCS).
2. The facts set forth in this motion to intervene are true and accurate to the best of my knowledge, information, and belief.
3. Attached to this affidavit and incorporated by reference herein is a copy of my testimony on December 12, 2012, before the House Committee on Post Audit and Oversight, the Joint Committee on Public Health, and the Joint Committee on Public Health and Homeland Security, which Committees were charged with launching the Legislature's investigation into the Hinton Lab fiasco (Attachment A).
4. Also attached is a copy of a letter to Speaker DeLeo, dated November 8, 2012, and accompanying outline and spreadsheet pertaining to CPCS's initial

assessments of the nature and costs related to the potential universe of Hinton Lab cases, which were also submitted to the Committees on December 12, 2012, testimony (Attachment B).

**Summary**

5. For present purposes, I draw the Court's attention to the following points:

(a) The Commonwealth has acknowledged that Annie Dookhan's hands were directly involved in at least 34,000 Hinton Lab cases.

(b) CPCS estimates that there may be as many as 190,000 previously-adjudicated cases tainted by the Hinton Lab scandal. This number includes, in addition to the cases that Annie Dookhan personally touched, all other cases that emanated from the Hinton Lab during Dookhan's tenure;

(c) At this point, the number of cases that will actually be re-litigated is unknown and within the sole discretion of the District Attorneys.

(d) CPCS must provide counsel to every poor person whose basic right to a fair and reliable adjudication of the charges has been sabotaged by malfeasance and incompetence at the Hinton Lab, whether that number is large or small.

(e) Given fiscal and human resource realities, it is a given that every second and every dollar that CPCS spends providing counsel in previously-litigated Hinton Lab cases is time and money taken away from other compelling needs, including (but not limited to) providing counsel to children and parents in emergency care and protection matters, to mentally ill persons in involuntary commitment cases, to juveniles facing commitment to DYS, and to defendants facing the loss of liberty and a plethora of "collateral consequences" to criminal conviction.

(f) When I testified before the Legislature in December, I was still hopeful that the justice system would come together to repair the extraordinary harm inflicted on the people of Massachusetts by virtue of this fiasco, if only because it was clear to so many that the systemic costs of case-by-case re-litigation would be



disastrous.

(g) Regrettably, that hopefulness has evaporated, as the system has failed even to identify many thousands whose rights have been violated, as critical discovery of drug certificates has been thwarted, and as the determination of District Attorneys to handle individual cases as if this were "business as usual" has hardened.

(h) CPCS therefore seeks to intervene in order to advocate for specific ways in which this Court can and should exercise its superintendence and equitable authority to preserve the due process rights of those who will otherwise have to wait years to receive justice and to limit the otherwise incalculable costs to the Commonwealth that will be incurred in identifying, prosecuting, defending, and resolving many thousands of tainted Hinton Lab cases, all of which have already been once litigated and adjudicated.

**Difficulties identifying affected clients**

6. Following exposure of the Hinton Lab failure, CPCS staff attorneys and bar advocates who had represented indigent defendants in drug cases during Dookhan's tenure -- 2003 through 2012 -- have attempted to determine which of those clients might be entitled to relief, so that they might endeavor to counsel those clients. But the task of such identifying clients has proven to be extremely difficult.

7. In September of 2012, CPCS was provided a copy of an electronic database from the Hinton Lab which purported to contain information identifying approximately 34,000 defendants in all cases handled by Annie Dookhan.

8. The information in that database included a name (sometimes an alias, nickname, or merely a notation stating "unknown"), a town or county, and a date or year that the sample was delivered to the lab.

9. The DPH database did not include docket numbers or dates of birth. Nor did it even incorporate the putative names of all defendants in a given case; in cases involving co-defendants, many defendants' names did not appear at all.

10. Because the date a sample was delivered to the Hinton Lab may have been months either before or after the date of arraignment of a CPCS client, the Private Counsel Division of CPCS (which was responsible for assigning counsel in over ninety percent of these cases) developed a formula for matching the data in the DPH database with CPCS' private counsel electronic billing data, so that all available data points could be used to identify affected clients.

11. Using this information, CPCS was able to identify about 5,600 clients out of the 34,000 "Dookhan cases" provided by DPH, i.e., under seventeen percent.

12. CPCS reopened and assigned counsel in each of these cases.

13. It should be noted that a great deal of information that might be helpful in identifying defendants impacted by the Hinton Lab scandal is CORI-protected. Although CPCS staff attorneys may legally access such data, assigned private attorneys must first obtain special CORI clearance in order to use such information to identify former clients in need of relief.

14. In an effort to identify additional injured clients, CPCS set up a free telephone hotline for prisoners and other former clients to call to request counsel if they believed their cases had been tainted by Hinton Lab misconduct.

15. The hotline was staffed with temporary employees of the Private Counsel Division, and temporary lawyers were contracted to oversee the services in these additional cases.

17. As of this date, CPCS has assigned counsel in approximately 8,000 previously-litigated cases impacted by the Hinton Lab fiasco. This number includes cases that have been assigned within the Public Defender Division.

16. The Public Defender Division of CPCS similarly sought to identify affected clients, initially by generating a list of all drug cases handled by staff attorneys during Dookhan's tenure.

17. But because the Public Defender Division's case management system is based on a single "lead charge" entry, the lists generated failed to capture any

case in which a drug count was not the lead charge.

18. Spreadsheets prepared from the DPH database, purporting to list cases in which Dookhan was involved in the analysis of alleged drugs as a primary or secondary chemist, were made available to all Public Defender Division staff attorneys.

19. These spreadsheets proved to be highly problematic, for many of the reasons identified above: The identifying information in the DPH database from which the spreadsheets were generated did not include identifying information other than a name and a lab case number, so attorneys could not make reliable determinations regarding clients with common names. And where, as noted above, the spreadsheets did not include all co-defendant names in a given case, many defendants' names did not appear at all.

20. The DPH data proved to be unreliable in other ways. Defendants in some cases where it was known that Dookhan was involved in the analysis of the alleged drugs were, inexplicably, not included on the lists, even where there were no co-defendants. In other instances, the data appeared over-inclusive, including names of defendants in cases where all certificates of analysis had been obtained and indicated that Dookhan was neither the primary nor secondary chemist.

21. With no definitive, reliable list of cases in which Dookhan was directly involved in the analysis of the alleged drugs, staff attorneys were left to piece together their own lists through inefficient and time-consuming means.

22. On the private side, CPCS created and provided to each bar advocate receiving assignments in one of the affected counties a list of all Superior Court cases involving G.L. c.94C charges to which the bar advocate was assigned from 2003 through 2012, and has requested that attorneys seek to identify impacted clients.

23. However, CPCS has no legal authority to compensate bar advocates for the time required to retrieve and comb through closed files in an effort to identify clients harmed by the Hinton Lab misconduct.

**Difficulties obtaining discovery of certificates of analysis**

24. The task with which all CPCS attorneys, private and public, were faced involved a manual search of closed case files. These files typically had to be brought back to offices from storage facilities.

25. In the first instance, attorneys searched for the DPH certificates of analysis, which are supposed to include the names of the primary and secondary chemists involved in the analysis of the alleged drugs. See, e.g., Exhibit "G" to Request to Reserve and Report.

26. For a variety of reasons, many closed files did not contain drug lab certificates. Therefore, in many instances, attorneys have sought to obtain copies of the certificates from the Commonwealth.

27. Attorneys have found it extremely difficult and, in many cases, impossible to get copies of certificates of analysis from the Commonwealth.

28. In Suffolk County, from which the lion's share of Hinton Lab cases during Dookhan's tenure originated, the District Attorney's office has only been able to provide certificates in the most active cases, i.e., cases involving incarcerated defendants where there is reason to believe that Dookhan was directly involved in the analysis of the alleged drugs.

29. Attorneys have also endeavored to counsel indigent clients in other circumstances, e.g., those on probation or parole, and those suffering significant, often devastating, collateral consequences arising out of drug convictions.

30. Copies of the drug certificates are essential in order to assess these cases and counsel these clients.

31. The District Attorney's office has not been able to perform the work needed to produce drug certificates in what they see, correctly, as a vast number of cases.

32. The problem is exacerbated by the fact that the certificates of analysis, where copies cannot be found either by defense attorneys in their closed files or by

prosecutors in their closed files, must be obtained from the local police department that performed the underlying investigation.

33. Incredibly, copies of certificates of analysis are not part of the files maintained by the Department of Public Health. Rather, they are stored with the alleged drugs themselves in local police department evidence rooms or storage facilities.

34. CPCS is aware of only a handful of cases in which attorneys have managed to persuade officials in local police departments to produce drug certificates in Hinton Lab cases.

35. Nor are discovery motions a solution, because certificates must be sought not in pending cases but in previously-litigated cases in which clients' rights may have been violated as a result of the Hinton Lab failure. Certificates are necessary in these many cases so clients may be properly counseled regarding the potential merits of a motion for new trial in light of the Hinton Lab failure.

36. While broad-based production of certificates of analysis would go a long way towards enabling attorneys to identify clients with possible Hinton Lab failure claims, the certificates alone often will not suffice. The certificates frequently list only one of multiple co-defendants and do not include police case numbers. Drug receipts, which include lab case numbers, and police case numbers, are necessary to connect drug certificates to the appropriate police reports which reflect the names and identifying information of all defendants.

37. Materials from the Hinton Lab, including the drug receipts and other documentation pertaining to chain of custody and the analyses of the substances themselves, have been inaccessible to the indigent defense bar. These materials would indicate -- or purport to indicate -- which lab personnel handled the substances and which were involved in the analyses thereof.

38. These materials are, so far as CPCS has been able to determine, stored at four different places. The "work materials" of Dookhan herself are in the custody of the Attorney General -- these materials were taken from the Hinton Lab

in connection with the Attorney General's investigation and prosecution of Dookhan. It is not known to CPCS what documents are encompassed in "work materials" nor is it clear how it was determined what "work materials" were attributable to Dookhan. (The most recent installment of discovery provided to CPCS staff attorneys litigating pending Hinton Lab cases includes grand jury minutes and exhibits in the criminal cases now pending against Dookhan, which include work materials in fewer than 20 of the Hinton Lab cases in which Dookhan was involved.)

39. Hinton Lab documents relating to the analyses of alleged drugs during a portion of Dookhan's tenure, (2010 through the summer of 2012), are at the Massachusetts State Police Lab in Sudbury.

40. Upon information and belief, most other Hinton Lab materials remains at the lab itself. The Inspector General's Office, in connection with its investigation of the Hinton Lab failure, is reportedly scanning many thousands of pages of documents from the Hinton Lab's files. (The number 8,000,000 has been cited.) It appears that the scanned documents will be subjected to an optical character recognition process to convert the scanned documents into a searchable form.

41. CPCS has been advised that these materials will not be accessible to it for an estimated four to six months.

42. Some Hinton Lab materials from the Dookhan era may be stored in archives.

#### **Problems with Hinton Lab litigation**

43. The above-described problems accessing materials necessary to identify clients who may have claims of relief extend to the litigation of the cases of clients in which motions for a new trial or motions for a stay of sentence have been filed.

44. Some, but not all, courts in counties affected by the Hinton Lab failure are entertaining post-conviction discovery motions. When motions are heard for

the discovery of, e.g., documents relating to chain of custody and the documentation underlying the analyses of the alleged drugs, prosecutors are advising courts that these materials are not in their custody or control.

45. In these circumstances and in circumstances where judges or special magistrates are unwilling to entertain discovery motions, defense attorneys must file motions under Rule 17 for orders directed at third parties.

46. These Rule 17 motions, directed at the State Police and the Executive Office of Public Safety, the Department of Public Health, the Inspector General's Office and the Attorney General's Office, entail work for these entities, and, as such, result in extensive delay.

47. None of these entities appear to be equipped to respond to a myriad of requests for discovery materials. At the State Police Lab in Sudbury, for example, which has been tasked with taking over the work previously performed at the Hinton Lab, "seven chemists . . . are struggling to keep up with a backlog of drug samples that mushroomed from 400 to 14,000 in the seven months since [the Dookhan scandal arose.]" See Attachment F to this affidavit.

48. The backlog in Sudbury bodes ill for the case-by-case litigation of cases arising out of the Hinton Lab failure going forward.

49. Some District Attorneys in the eight affected counties, including Suffolk, have indicated that they may seek to have the alleged drugs re-tested in cases where defendants are granted new trials, in spite of the issues raised by the nature and scope of Dookhan's misconduct and systemic failures in the management of the Hinton Lab.

**The failure of the system's efforts to insure that "no one falls through the cracks"**

50. While early pronouncements and efforts by Commonwealth officials and appointees promised an efficient solution to the problem of identifying all defendants impacted by the Hinton Lab failure, such a solution has not materialized.

51. On August 30, 2012, according to the Boston Herald, the Commonwealth's 11 District Attorneys released a joint statement requesting a list of the criminal cases identified as part of the State Police audit of the Hinton Lab, and stating that they would "take the appropriate action necessary to ensure that justice is done."

52. Governor Patrick stated in a September 11, 2012, letter responding to the concerns of the District Attorneys, "To get the job done right, prosecutors and defense attorneys will have to work together with staff from the Departments of Correction, Parole, Probation, Youth Services and the Trial Court to assure that the list [of affected defendants] is comprehensive." Patrick added, "We will assist in these efforts by creating a central office with a dedicated team for that task or, if you have other ideas, we are open to those." Boston Herald, September 12, 2012

53. In early September, the press reported that lists of cases of defendants whose cases "might be affected" by the lab failure were sent to the District Attorneys across the Commonwealth. According to a report in the Boston Globe, the State Police stated that they were "contacting other agencies -- including the state Trial Court, the Department of Corrections and the Parole Department, seeking to cross - reference information about defendants with drug case information, so that defendants might be contacted by counsel.

54. On September 12, 2012, Governor Patrick met with CPCS staff along with Secretary of Health and Human Services Secretary JudyAnn Bigby and Department of Public Safety and Security Secretary Mary Elizabeth Heffernan. The agenda was to move forward in collecting information related to the drug lab and to encourage cooperation between the District Attorney, the defense bar, and the judicial system.

55. On September 20, 2012, the Governor announced the appointment of former prosecutor David Meier to lead a team to "review thousands of criminal cases potentially tainted by the mishandling of drug evidence at the Hinton Lab."



(Boston Globe, September 20, 2012). Patrick stated, at a press conference with Meier, "The job of the office is to make sure no one falls through the cracks."  
(Boston Glove, September 21, 2012.)

56. Meier's job also involved the creation of a centralized "war room" to encourage discussion as to how best to secure the needed identifying information, and to disburse the information to the District Attorneys and the defense bar as the information became available.

57. The initial "war room" meetings involved all of the stakeholders; representatives from CPCS, the District Attorneys, the State Police, and Secretary Heffernan as well as members of the EEOPS senior staff. Attorney Meier provided lists of cases extrapolated from the computer database of the Hinton lab and other state agency databases.

58. It soon became apparent that the manner in which data was stored for DPH lab drug test processing did not include the information needed for identifying the defendants. Recognizing this problem, Attorney Meier encouraged CPCS and the District Attorneys to begin reviewing their case files in order to identify affected defendant. Several District Attorney offices reported reviewing these files, other offices stated that they were overwhelmed with the work involved in preparing for hearings on motion to stay the sentences of those incarcerated on so-called "Dookhan cases," and could not then undertake the task of reviewing files to identify affected defendants. Both District Attorney representatives and CPCS highlighted the need for additional resources to undertake this task.

59. Meier also provided lists of those presently serving sentences in the Department of Correction, the Houses of Correction, and those presently committed to the Department of Youth Services to facilitate preparation of counsel for the stay hearings to take place in special Hinton Drug Lab sessions created by the trial court.

60. Attendance at the Meier "war room" meetings began to fall off as the

difficulties inherent in the task of reliably identifying all affected defendants became apparent. There has not been a "war room" meeting since November 15, 2012.

61. Information provided by Meier at a meeting with Superior Court Chief Justice Rouse on February 28, 2013, indicates that prospects for the imminent production of information that would reliably identify all of the defendants whose cases were handled by Annie Dookhan are grim.

62. Meier reported at that meeting that his ongoing review of the paper files from the Hinton lab is not revealing sufficient data in most cases to identify defendants whose cases were handled by Dookhan.

### **CONCLUSION**

63. To date, CPCS has assigned counsel in approximately 8,000 Hinton Lab cases, a small fraction of the number of persons whose due process rights have been violated by the fiasco.

64. If the trench warfare approach to the resolution of these cases is not averted, litigation of these cases will continue for many years at an incalculable cost to the people directly affected by the fiasco and the citizens of the Commonwealth.

65. The District Attorney for Middlesex County has recently rescinded the laudable policy that had guided his office's initial response to the Hinton Lab fiasco of assenting to (most) new trial motions and filing a nol prosequi in those cases in which it could be confirmed through discovery of all of the necessary drug lab papers that suspected contraband had been tested by Annie Dookhan.

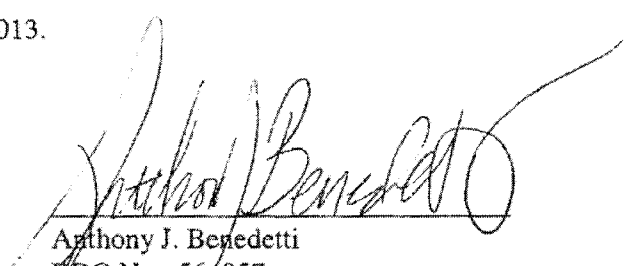
66. For an example of the nol prosequi obtained by the few lucky defendants in Middlesex County Hinton Lab cases, see Attachment D to this affidavit.

67. The concluding paragraph of Middlesex County's now unobtainable nol pros provides a fitting summary of the reasons this systemic issue requires the immediate exercise of this Court's superintendent and equitable powers:

The Commonwealth's filing of this Nolle Prosequi is due to these documented shortcomings and failures, at the DPH JP Hinton Lab, and by those responsible for the supervision and management of that Lab. These documented shortcoming and failures have compromised the MDA's ability to prosecute this case legally and factually, and raises issues of fundamental fairness in the pursuit of justice. Therefore, because the MDAO, on behalf of the public and consistent with our role and responsibility, needs to rely on evidence that is free from taint and that satisfies the required burdens of proof and persuasion, in a way that would be sufficient to obtain and sustain a criminal conviction beyond a reasonable doubt, we find that it is necessary to end this prosecution in a manner consistent with the law.

For the foregoing reasons, in the interest of justice, the Commonwealth will not further prosecute this case.

SIGNED UNDER THE PAINS AND PENALTIES OF PERJURY THIS  
12<sup>th</sup> DAY OF MARCH 2013.



Anthony J. Benedetti  
BBO No: 564057  
Chief Counsel  
Committee for Public Counsel Services  
44 Bromfield Street  
Boston, MA 02108  
(617) 482-6212

COMMONWEALTH OF MASSACHUSETTS  
SUPREME JUDICIAL COURT

DOCKET NO.:

KEVIN BRIDGEMAN et al.,

Petitioners,

v.

DISTRICT ATTORNEY FOR SUFFOLK  
COUNTY et al.,

Respondents.

Affidavit of Thomas E. Workman Jr.

I, Thomas E Workman Jr., state as follows:

1. I am an attorney, licensed to practice in the Commonwealth of Massachusetts, with an office at 120 Ingell Street, Taunton, Massachusetts 02780. I operate a solo practice of law and have handled many cases involving drug offenses.

2. I am also trained in computer forensics and have served as an expert witness in that area.

3. I am submitting this affidavit to bring my knowledge of criminal defense law and my computer forensic experience to bear on issues relating to misconduct in the Drug Lab at the William A. Hinton State Laboratory Institute in Jamaica Plain ("Hinton Lab"). This affidavit addresses the following subjects:

- a. the unusually high volume of drug samples that Annie Dookhan tested throughout her tenure in the Hinton Lab;
- b. evidence that the backlog of samples at the lab fell, rather than rose, in the wake of the Supreme Court's decision in Melendez-Diaz v. Massachusetts, 557 U.S. 305 (2009);
- c. the apparent miscalculation of drug weights by Ms. Dookhan;
- d. Ms. Dookhan's issuance of drug certifications for substances that were not illegal drugs;
- e. the limitations of the report by Attorney David Meier ("Meier Report"); and
- f. The historical failure of the Hinton Laboratory to insure that analysts actually were awarded the Science degrees that they represented as a requisite for hiring or promotion.

**Relevant Education and Experience**

4. I hold both a Bachelor of Science (BS) and a Master of Science (MS) degree from the University of Texas at Austin.

5. I know that a BA degree is not equivalent to a BS degree, nor is an MA degree equivalent to a MS degree. The

subject studied does not alone determine whether a BS or an MS degree will be awarded.

6. I previously held the position of Quality Manager for Hewlett Packard's Computer business, and in that capacity I established quality procedures for a multi-billion dollar part of HP's business.

7. I have represented over 1,500 clients as a criminal defense attorney and Bar Advocate in Bristol and Plymouth Counties.

8. Although I no longer accept appointed cases as an attorney for indigent clients, I maintain a database of the docket numbers associated with each case that I have handled as a criminal defense lawyer, as well as the applicable statute for each count of each criminal complaint.

9. Based on my review of that database, I believe that my appointed clients account for approximately 200 counts for which drug samples would have been submitted to a laboratory.

10. Consequently, I may have represented clients whose drug charges were improperly handled by the Hinton Lab.

11. I presently spend a majority of my time assisting courts with technical issues that relate to forensic issues. I have testified by affidavit or in person as an expert over 600 times in 25 states and Canada.

12. This work relies on experience I gained before attending law school, when I spent a significant portion of my

career managing manufacturing functions for companies like Hewlett Packard, also serving as a Quality Manager.

13. I have been responsible for the collection and analysis of data in order to improve the yield and quality of manufacturing processes. The data collected by the Hinton Lab is similar to the types of data that I have collected and analyzed in my professional work.

14. I served on the Institute of Electronic and Electrical Engineers Computer Standards committee, which was responsible for selecting what standards should be established, and how those standards were developed. I was co-chair of the committee that wrote the standard on measuring software reliability.

15. As a Quality Manager, I have managed the process for constructing and implementing standards that insure quality and correctness, and by which processes are designed to improve the functions of measuring and reporting. This experience permits me to study and comment on the documented processes used at the Hinton Lab.

16. As a Quality Manager, I also had experience with measurement equipment and techniques similar to those used in the Hinton Lab to evaluate suspected drugs.

17. I have also taught Scientific Evidence as an adjunct professor at the University of Massachusetts Law School, Dartmouth. My course includes a module on drug testing, and I have taught specifically about the problems at the Hinton Lab.

**Analysis of Data Regarding the Hinton Lab**

18. I have conducted a forensic analysis of certain available data relating to the Hinton Lab during Ms. Dookhan's tenure. This data has come from multiple sources.

19. One source of data is discovery that state prosecutors have turned over to defense attorneys who are working on drug lab cases.

20. Another source of data is a compact disk prepared by the Executive Office of Public Safety and Security ("EOPSS") and made available to defense lawyers. The EOPSS Disk contains data relating to tens of thousands of samples for which Ms. Dookhan was either the "primary" or "secondary" chemist.

21. I am familiar with the process of assigning a primary chemist and a secondary chemist in the analysis process.

22. The primary chemist is responsible for establishing the weight of the sample, and for performing a preliminary analysis of the sample.

23. If the primary chemist determines that the substance is illegal to possess, the secondary chemist tests the sample using a confirmatory testing process. A confirmatory process is by definition a more precise process with few false positive results. The dual column Gas Chromatograph is an accepted confirmatory testing instrument for the analysis of drug samples.

24. Because I handled drug-related matters as a defense attorney between 2003 and 2012, I requested and obtained a copy of the EOPPS Disk.



25. The data on the EOPPS Disk reveals information about the functioning and failures of the Hinton Lab.

26. The EOPPS Disk also contains criminal offender record information ("CORI"). A non-disclosure form that I signed in order to obtain the EOPSS Disk purports to limit the dissemination or reproduction of "information contained" on the disk.

27. Thus, instead of reproducing data contained on the EOPSS Disk, this affidavit presents information generated by my analysis of the information contained on the EOPSS Disk.

28. The analysis in this affidavit, in my view and after consulting advice of counsel, does not constitute CORI information.<sup>1</sup> Accordingly, I believe that neither the CORI law nor the EOPSS non-disclosure agreement limits my ability to present this Court with my independent, statistical analysis of data from the EOPSS Disk.

29. My analysis of this data leads to several conclusions.

---

<sup>1</sup> Criminal offender record information is "records and data in any communicable form compiled by a Massachusetts criminal justice agency which concern an identifiable individual." G.L. c. 6, s. 167. CORI does not include "statistical and analytical reports and files in which individuals are not directly or indirectly identifiable."

**During Her Entire Tenure in the Hinton Lab, Ms. Dookhan  
Tested an Unusually High Volume of Samples**

30. The data show that Ms. Dookhan claimed to have performed a high volume of tests very early on in her tenure at the Hinton Lab.

31. To assess Ms. Dookhan's volume of testing, I created a "scatter chart" of testing data appearing in discovery supplied by the Suffolk District Attorney's Office.

32. This scatter chart shows that, from late 2003 to early 2006, Ms. Dookhan often claimed to have tested over 1000 samples per month. In September of 2004 alone, for example, she reportedly tested over 1300 samples. Relatedly, the data do not support a claim that Ms. Dookhan's misconduct began during her last years at the Hinton Lab, rather than at the outset of her tenure.

33. Although Ms. Dookhan's reported rate of testing was high in late 2009 and in 2010, her rate was no higher than it had been from 2004 to early 2006, suggesting that she engaged in the same misconduct during the entire time when she worked in the Hinton Lab.

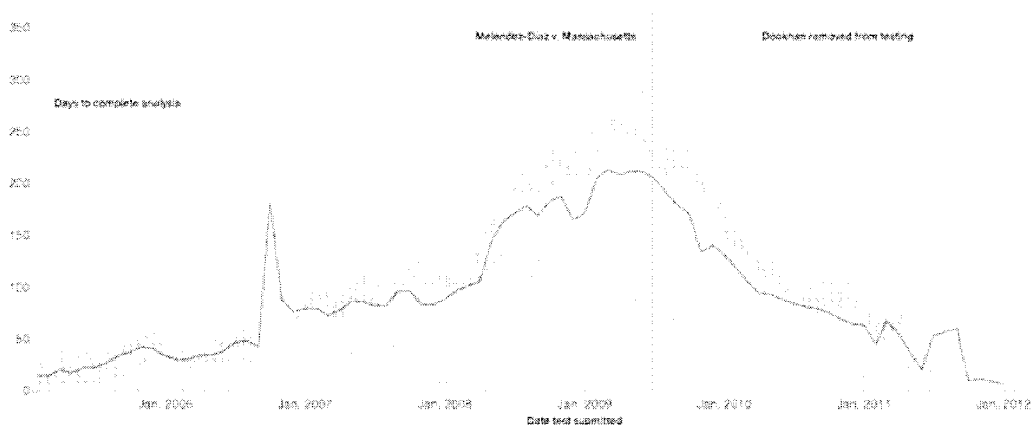
**The Data Do Not Support the Claim that Ms. Dookhan Engaged in  
Misconduct only after Melendez-Diaz**

34. Moreover, the data tend to refute the claim that Ms. Dookhan might have initiated her misconduct in response to a supposed backlog of work created by the U.S. Supreme Court's decision in Melendez-Diaz v. Massachusetts, 557 U.S. 305 (2009).

35. To assess this "backlog" claim, I created a scatter chart designed to depict the magnitude of the Hinton Lab's backlog over time. The scatter chart shows, for each drug sample on the EOPSS Disk, the length of time between when it arrived at the Hinton Lab and when a drug certification was issued.

36. In charting that data, I learned that the average "wait time" between the arrival of a sample and the issuance of a drug certification actually fell following the Melendez-Diaz decision. Specifically, wait times fell from roughly 8 months in January 2010 to about 2 months in April 2011.

37. I discussed this method of analysis with the technical staff of WBUR. WBUR independently obtained the EOPS data and constructed a similar graph. I have compared my graph to WBUR's graph, and they show the same information. The WBUR graph is available on the WBUR website, at this address: <http://badchemistry.wbur.org/2013/05/15/annie-dookhan-drug-testing-productivity> and the graph is reproduced here from the WBUR website:



38. Thus, at least for the samples tested by Annie Dookhan, the backlog at the Hinton Lab, as measured by the improved time to evaluate a sample measured from the date the lab received the sample, appeared to be falling steadily for the two years prior to when her misconduct became publicly known.

39. For that reason, a rising backlog in the wake of Melendez-Diaz cannot explain Ms. Dookhan's misconduct, because it appears there was not a rising backlog in the wake of Melendez-Diaz.

40. In addition to communicating the trend of time required to complete an analysis of a sample, the chart also disclosed that samples are not processed in the order that they are received.

41. In addition to those samples processed with a formal expedite request, many samples were processed before it was their turn, without any formal expedite.

42. Handling samples out of turn suggests either a poor method of selecting the next sample to analyze, or an interference with the proper order of analysis, such as a chemist doing a favor for law enforcement officers.

**Ms. Dookhan Appears To Have Consistently Miscalculated the Weight of Drug Samples that She Tested**

43. The data from the Hinton Lab raise a serious question about the accuracy of drug weights in cases where Ms. Dookhan served as the primary chemist and weighed the samples.

44. The EOPSS Disk makes it possible to compare samples weighed by Annie Dookhan against samples not weighed by Ms. Dookhan, because it includes samples for which she was the primary chemist (who weighs the sample) and samples for which she was the secondary chemist (who does not weigh the sample).

45. Relying on this information, I calculated the average weight of the drug samples weighed by Ms. Dookhan (samples for which she was the primary chemist) for each month where the Hinton laboratory provided data on the weights of samples evaluated. Likewise, I calculated the average weight of the drug samples weighed by other chemists (samples for which Ms. Dookhan was the secondary chemist) for each month where the weights of samples were provided in the data. I then charted the results (attached hereto as Exhibit A).

46. As Exhibit A shows, in 32 of the 41 months from April 2008 through July 2011, the average weight of samples tested by Ms. Dookhan was higher than the average weight of samples tested by other chemists.

47. This result is not what random chance would predict. If drug samples were randomly assigned and accurately weighed, there would be no reason to expect that drug samples weighed by Ms. Dookhan would be consistently heavier than samples weighed by other lab personnel.

48. Yet that is what happened; in 32 out of 41 months, Dookhan's samples were heavier, and by an amount that cannot be explained by chance. That outcome is like conducting a series of

coin flips every month for 41 months, and getting an average of three times as many heads in 32 of those months. The probability of that happening is very small.

49. The average weight for samples measured by Dookhan were approximately 3 times that of samples measured by other chemists.

50. Both the magnitude of the different average weight of drug samples, and the frequency that samples were measured to be higher, are of concern.

51. I have reviewed state police interviews of Dookhan and others in the Hinton Laboratory that suggested that Dookhan did not calibrate her weighing scales as required by procedures in the laboratory. In my opinion, this deficiency would not account for the differences in weights of samples observed.

52. The State Police interviews disclose that Dookhan had discussions with prosecutors regarding the weights associated with a drug sample that would result in a longer sentence. If Dookhan "put her thumb" on the scales in order to produce higher sample weights, or simply wrote down weights that were more than what her scale indicated, without any video evidence of the weighing protocol, there would be no way to confirm that this was the reason for the heavier weights.

53. If an assumption was made that the samples were not contaminated by the mixing of different samples together, a process that Dookhan admitted to state police that she had practiced, then a re-weighing of samples that Dookhan weighed

could be performed to estimate both the extent of the samples that were reported with weights that were over-reported by Dookhan, as well as the amount of over-statement that was entered for weights by Dookhan.

54. These results strongly suggest that either the assignment of samples to Ms. Dookhan as the first chemist was not random, or else that her weight measurements were not accurate. If the samples were randomly assigned, then Dookhan tended to over-report the accurate weight of the samples she analyzed.

**Ms. Dookhan Appears to Have Issued Drug Certifications for Substances that Were Not Illegal Drugs**

55. Ms. Dookhan issued numerous drug certifications for substances that are not illegal drugs.

56. For example, over 100 of the certifications reported on the EOPSS Disk are for Ibuprofen. Approximately half of the Ibuprofen samples resulted in a drug certification that reported the Ibuprofen to be a class E drug, the other half reported that the sample was not an illegal sample. The number of Ibuprofen samples, and the size of the tablet dispensed, can be viewed on the WBUR website, badchemistry.com. The result, "illegal" or "not illegal" can only be observed by examining the state EOPS CDROM data.

57. Dookhan also issued a drug certificate for a class E drug that she determined was Sodium Chloride, the chemical name for common table salt.

58. There are significant disparities among district attorneys' offices when it comes to expediting samples.

59. For example, the Suffolk County District Attorney's Office formally expedited about 20% of its samples, compared to Bristol County where only about 4% of the samples were formally expedited.

60. Since the percentage of samples is very different, and not the absolute number of samples, it is likely that the service provided by the Hinton laboratory is different depending upon how far you are from the laboratory, and how much personal contact you have with members of that county's law enforcement/prosecutorial personnel.

**The Meier Report Is an Important First Step But Does Not Solve  
All of the Problems Due to Ms. Dookhan's Misconduct**

61. I have reviewed attorney David E. Meier's August 2013 report entitled, "The Identification of Individuals Potentially Affected by the Alleged Conduct of Chemist Annie Dookhan at the Hinton Drug Laboratory: Final Report to Governor Deval Patrick".

62. From my perspective as an attorney and a forensic analyst, it is important to understand the limitations of the Meier Report.

63. The Meier Report explains (at p.12) that it is an attempt to identify the "names of individuals upon whose drug samples Ms. Dookhan performed testing as a primary chemist or a secondary (confirmatory) chemist from 2003 to the present."



64. To that end, the Meier Report states (at p.12) that attorney Meier's team generated a "master list" of 40,323 names.

65. According to the Report (at p. 12), "[t]he list is organized by county, and for most of the 40,323 names, includes individual entries reflecting the corresponding town, the corresponding law enforcement agency, the name of the police officer who submitted the drug sample to the laboratory, the date the drug sample was submitted, the internal Hinton Laboratory sample number, the results of the drug testing, and the drug submission (or drug receipt) form."

66. The Meier Report's "master list" is not, and does not contain, a list of case names or docket numbers.

67. In fact, the Meier Report does not describe any comprehensive effort - for example, by using the "Massachusetts Courts" web site ([www.mass.gov/courts](http://www.mass.gov/courts)) - to identify the relevant docket numbers, counts, and defense attorneys associated with the 40,323 names in the "master list."

68. Yet, unless such information is obtained, the "master list" is not by itself particularly useful to defense attorneys seeking to vindicate the rights of their clients or former clients.

69. A name alone provides incomplete and sometimes misleading information about a case. For example, the name associated with a drug sample can be an alias or a common name

(i.e., "Jim Smith") that cannot easily be used to identify the relevant defendant.

70. Likewise, only the specific docket number assigned to a defendant's case can be used to ascertain crucial information about that case, such as the county, the criminal charges, the evidence, the disposition, and the defense attorney.

71. The Meier Report is a first step towards identifying the specific cases affected by Ms. Dookhan's misconduct. From my perspective as a defense attorney and forensic computer analyst, the list simply does not indicate how many or precisely which cases were affected by Ms. Dookhan's conduct.

72. To its credit, the Meier Report appears to acknowledge these limitations. Rather than promising that the "master list" alone will enable defendants and their attorneys to identify specific cases affected by Ms. Dookhan's misconduct, the Meier Report states (at p.13) that the list "should enable the District Attorneys and/or the respective law enforcement agencies to locate the applicable police reports, arrest/booking records, and any other related materials."

73. Thus, even assuming the "master list" is both complete and completely accurate, its value expressly hinges on the willingness of prosecutors and police officers to supply additional documents.

74. It is unclear, however, whether the "master list" is in fact complete and accurate.

75. For example, it has been alleged that Ms. Dookhan forged the initials or signatures of lab personnel. If there are samples for which Ms. Dookhan served as the primary or secondary chemist, but for which she signed someone else's name, then those samples might not appear on the "master list."

76. Similarly, unlike a scientific or forensic report, the Meier Report does not describe the methodology used to identify names and check for accuracy.

77. Nor was the Meier team's work subjected to public hearings or auditing. Thus, so far as I am aware, there is no systematic means of independently checking the Meier Report for completeness or accuracy.

78. Indeed, I am personally confronted with the limitations of the Meier Report. I represented as a bar advocate, in Plymouth and Bristol Counties, cases in which drug samples likely would have been processed by the Hinton Lab.

79. Specifically, approximately 200 counts that I handled were drug-related, for which I would expect that there would be a drug sample. I maintained a database of all of the docket numbers and counts for clients whom I represented.

80. Yet, for two reasons, I am unable to utilize the Meier Report to identify which of my former clients are associated with samples on which Ms. Dookhan worked.

81. First, although an illustrative sample of the "master list" is attached as Exhibit B to the Meier Report, the actual

"master list" has not been provided to private defense counsel like me. I have never seen it, and I have not been informed if or how I might obtain a copy.

82. Second, even if I had the "master list" in hand, it apparently would not list docket numbers that I could match up against the docket numbers of my former clients' cases. Thus, to learn whether my former clients are on the "master list," I would need to conduct time-consuming research and investigation. Thus, from a forensic standpoint, the Meier Report does not provide sufficient information about the cases implicated by Ms. Dookhan's misconduct.

83. As soon as docket numbers are assigned to each of the samples in the Hinton laboratory database, the MASSCOURTS database used to manage the court system in Massachusetts can easily associate the name of a defense attorney, as well as the BBO number of that attorney, for every defendant deemed aggrieved by Dookhan's malfeasance.

84. The inability of associating docket numbers with drug lab samples is not a deficiency of the Meier report or process, but rather is the direct result of this information not being captured and recorded in either the Court databases, nor in the crime lab databases that have been disclosed to me.

**Failure of the Labs to Provide Scientists to Analyze Drugs**

85. Ms. Dookhan pled guilty to a charge arising from allegations that she falsely represented to courts that she had been awarded a Master of Science degree in Chemistry.

86. Kate Corbett was recently investigated, as a result of a process to reinstate three analysis who formerly worked at the Hinton crime laboratory.

87. Based on a review of Ms. Corbett's college transcript, the State Police determined that Ms. Corbett was never awarded a BS degree in Chemistry.

88. When a document is produced by a Crime Laboratory as to the weight and makeup of a sample that is analyzed by a crime lab employee, there is a representation that the person is qualified to make the analysis and report the results.

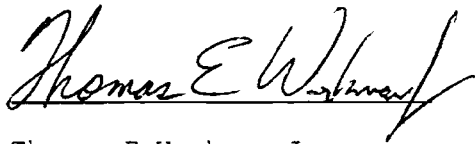
89. Indeed, Ms. Corbett stated to the State Police that she did not disclose that her degree was a BA in Sociology, because she did not think that relevant to her work in the crime laboratory.

90. Ms. Corbett is correct in understanding that many Judges and Juries would be reluctant to convict a defendant charged with a drug related charge, if they knew that the tests had been carried out by a person with a Bachelor of Arts in Sociology.

91. The information relating to Ms. Corbett suggested that her review was part of three individuals undergoing confirmation of degrees. If this is the total investigation, then two out of four analysts, or half, have been confirmed to have claimed false degrees.

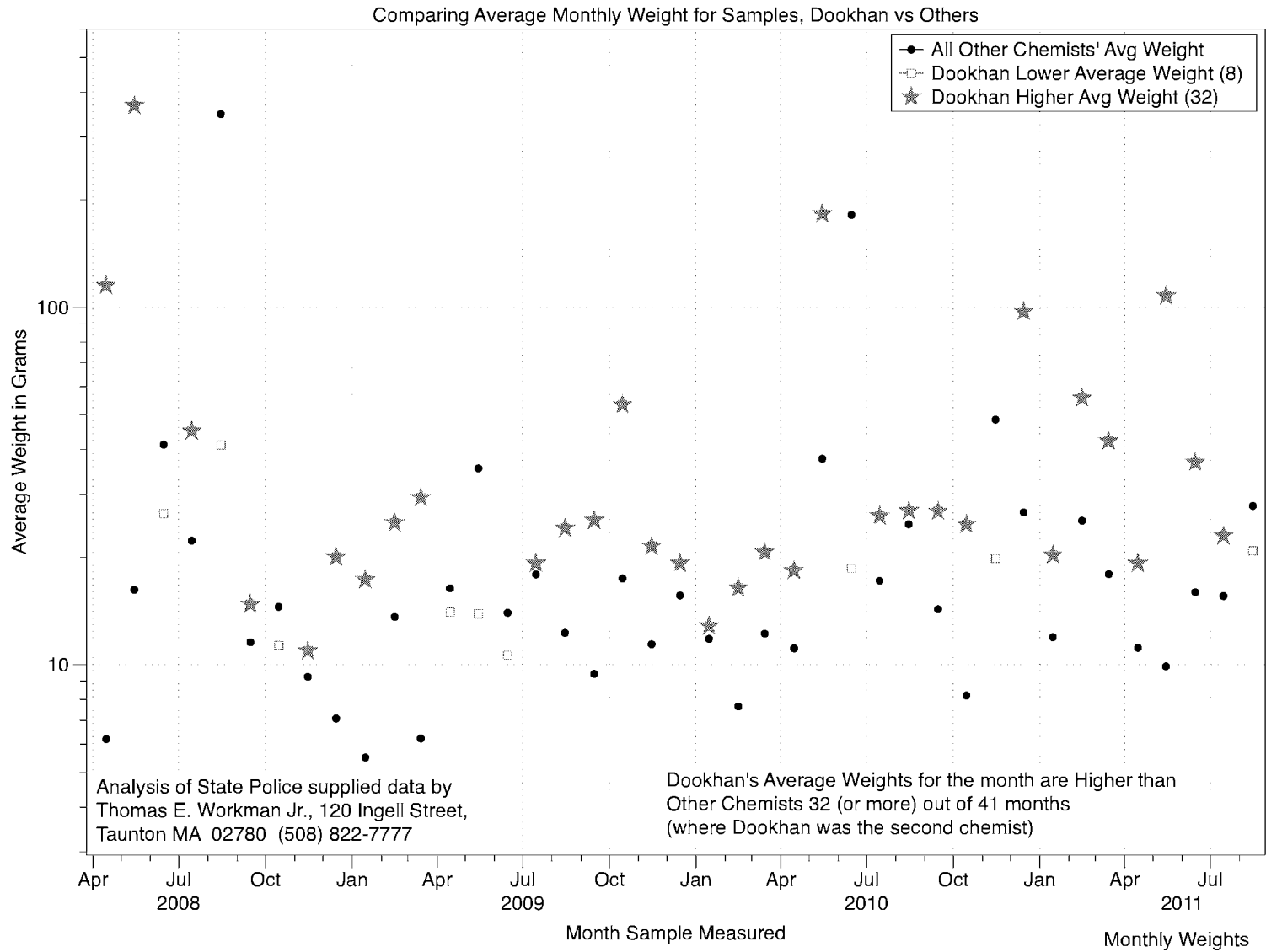
92. It is unknown whether the degrees claimed by all of the "scientists" who analyze forensic evidence have been rigorously confirmed. We do know that Corbett's was not confirmed until just this past month.

Signed under the pains and penalties of perjury this 3<sup>rd</sup> day  
of January, 2014,

A handwritten signature in cursive script, reading "Thomas E. Workman Jr.", written in dark ink.

Thomas E Workman Jr.

EXHIBIT A





COMMONWEALTH OF MASSACHUSETTS  
SUPREME JUDICIAL COURT

DOCKET NO.:

KEVIN BRIDGEMAN, et al.,

Petitioners,

v.

DISTRICT ATTORNEY for Suffolk  
County, et al.,

Respondents.

AFFIDAVIT OF JOANNA SANDMAN

I, Joanna Sandman, state as follows:

1. I am an attorney licensed to practice law in the Commonwealth of Massachusetts.
2. Since 2008, I have been an attorney with the Committee for Public Counsel Services (CPCS). During my first two years with CPCS, I worked in the Boston District Court office and handled cases out of the Boston Municipal Court Central Division and the Chelsea District Court. During the next two years, I worked in the Norfolk Superior Court office and handled Superior Court charges originating in the Quincy

District Court, Dedham District Court, and Brookline District Court, and followed these cases to Norfolk Superior Court. For the past year and a half, I have been working in the Boston Superior Court office, where I handle Superior Court charges originating in the Dorchester and Central Divisions of the Boston Municipal Court, as well as Chelsea District Court, and follow these cases to Suffolk Superior Court. In the course of my practice, I have handled approximately seventy drug cases, including charges of possession, possession with intent to distribute, distribution, and trafficking.

3. In the spring of 2012, I became aware that Annie Dookhan had mishandled evidence in 90 cases at the Hinton Lab. At this time, I was working in the Norfolk Superior Court office, and the Norfolk District Attorney's Office provided information relating to Annie Dookhan to me.
4. In August 2012, when Annie Dookhan's malfeasance was more fully reported, I became aware that these 90 cases were just a small piece of much larger failures at the Hinton Lab.
5. Since then, I have worked to identify clients who had cases handled by Annie Dookhan. To do so, I relied in

part on a list provided to CPCS. I also reviewed my case files. Because I had obtained some of my clients' drug certificates during discovery, I was able to check those on which Annie Dookhan was either the primary or the secondary analyst. I also reached out to contacts in the Suffolk County District Attorney's Office and the Norfolk County District Attorney's Office to obtain drug certificates on clients who I represented on drug matters, but did not have the drug certificates for.

6. I ultimately identified five clients who had pled guilty and were then serving sentences in cases in which Annie Dookhan was either the primary or secondary analyst.
7. While I have been able to determine that Annie Dookhan was not the chemist in at least some of the drug cases I worked on, I have not been able to identify and act on behalf of all my past clients who were affected by Annie Dookhan.
8. Specifically, I have made attempts to contact those clients who have completed their sentences to inform them of the failures at the Hinton Lab and to determine whether they would like to challenge their

convictions, but have not been able to track down all of them.

9. Further, I have not yet obtained a copy of the drug certificates in all of the drug cases I worked on, and I continue to await the Inspector General's report to see if this list identifies misconduct or negligence affecting additional clients.
10. I represented one client in Suffolk County who has served his sentence but sought assistance vacating his plea. The Suffolk County District Attorney's Office opposed every request I made, including opposing the motion to vacate, and refusing to work out any agreed resolution for any defendants, including my client, who had completed their sentences.
11. In all of the five cases in which Annie Dookhan was the primary or secondary chemist and the clients were currently serving sentences, the charges were in Norfolk County. The Norfolk County District Attorney's Office approached these cases very differently than did Suffolk County, and appointed one person, Suzanne O'Neill, to handle most of the Dookhan cases. For the most part, the Commonwealth agreed to the motions to vacate, but the outcome following the motions to vacate varied. Some cases were "nolle

crossed." The Commonwealth was willing to resolve others only for time served or, in the alternative, by putting the case back on the trial list.

12. For my clients who accepted pleas to time served, there have been collateral consequences to these pleas. In particular, I have clients who cannot obtain drivers licenses until a statutorily-prescribed period of time has run from the plea date. For some clients, this has adversely affected their ability to find and maintain employment.
13. Given the differences in the treatment of cases between counties, it seems unlikely that post-conviction challenges raised by defendants in cases handled by Annie Dookhan are being treated consistently throughout the state. To the contrary, it appears that the outcome can vary considerably depending on the county in which the case originated, and which assistant district attorney is assigned to the case.
14. Further, because these cases are new and novel, it has taken me longer to get up to speed on procedure and law, and I did not know how to obtain this information or how to educate myself on best practices for

handling these cases. This has made handling Dookhan cases particularly burdensome.

Sworn to this 30<sup>th</sup> day of December 2013 under the pains and penalties of perjury.

  
Joanna Sandman

COMMONWEALTH OF MASSACHUSETTS  
SUPREME JUDICIAL COURT

DOCKET NO.:

KEVIN BRIDGEMAN, et al.,  
Petitioners,  
v.  
DISTRICT ATTORNEYS for Suffolk  
County, et al.,  
Respondents.

AFFIDAVIT OF VERONICA WHITE

I, Veronica White, state as follows:

1. I am an attorney licensed to practice law in the Commonwealth of Massachusetts.
2. I am the Chief Executive Officer of White & Associates, P.C. in Boston, Massachusetts. My practice focuses on criminal defense. I have been practicing criminal defense for nearly 15 years, and during that time have represented dozens of clients charged with various drug offenses in both the District Courts and Superior Court in Suffolk County

and other Superior and District Courts in Plymouth, Essex, Middlesex and Worcester Counties.

3. Given the overlap between my criminal defense work and Annie Dookhan's tenure at the Hinton Lab, many of my clients have potential challenges to their convictions. I am currently representing several clients in post-conviction cases who have constitutional claims arising from evidence testing that took place in the Hinton Lab, in cases in which Annie Dookhan was the primary or secondary chemist and in cases in which testing was performed by other chemists at the Hinton Lab during the period that Annie Dookhan was committing misconduct.
4. I learned of the misconduct at the Hinton Lab in a piecemeal fashion: I first learned of possible problems with Annie Dookhan in June, 2012 as part of discovery requests that I made in an open case. At that point, I was specifically informed that the misconduct was limited to 90 cases in Norfolk County. By September, 2012, I was aware that the misconduct was far-reaching. I learned of the true severity of Annie Dookhan's misconduct through the media initially, and then gained more information from discovery in various open and post-conviction cases.



5. Notably, one client accepted a plea deal just before the extent of the Dookhan scandal became public, a plea I am now seeking to vacate. Prior to the same client going ahead with the plea colloquy on this case, I was never informed by the Suffolk County District Attorney's office that the Massachusetts State Police had taken over the Hinton Lab and had already begun the process of interviewing chemists from the Hinton Lab.
6. Consequently, I was later surprised to read, in a letter from the Attorney General's Office dated September 20, 2012, the assertion that during the investigation in the Hinton Lab, the Attorney General's Office "identified serious concerns about the integrity of the cases that the chemist analyzed and **immediately shared that information with appropriate stakeholders.**" (Review Letter is attached hereto).
7. I used various methods to locate and identify potential former clients who may have had evidence tested in the Hinton Laboratory and/or tested by Annie Dookhan. I went to my storage facility and manually searched through the paper files of all my private and appointed cases from 2003 onward for any client whose

file contained drug certificates. I then checked those certificates to see if they indicated that Annie Dookhan or another chemist at the Hinton Lab performed the analysis. I also checked the database provided to defense counsel of cases tested by Annie Dookhan. Additionally, some former clients contacted me directly or contacted CPCS, which then reached out to me through Suffolk Lawyers for Justice. Finally, some new clients sought to retain me in a private capacity to represent them in post-conviction proceedings, and I have also been appointed to represent several clients who have potential post-conviction Hinton Lab issues. I cannot be sure that I have identified all potentially affected clients, and I am not sure I will ever have full confidence, given the breadth of the undertaking.

8. I have faced multiple problems in litigating these cases. In all of the cases, the discovery produced is voluminous, poorly organized, and very difficult to review. There is no central database for the documents provided, no table of contents for much of the discovery, and no coherent bates numbering across the provided documents. Further, discovery is often produced in a piecemeal and incomplete fashion, making

it extremely difficult to determine what has and has not been provided.

9. Additionally, in the vast majority of cases where I have filed Rule 17 motions for discovery, courts have been extremely hesitant to grant relief for failure to comply with court orders, and the government has been less than candid regarding the existence, accessibility, and timeline for production of discovery under Rule 17. Indeed, in one case the Commonwealth issued a Nolle Prosequi on the same date that they were compelled to produce discovery and answer to a previously filed Rule 17 discovery motion(See Redacted Nolle Prosequi, attached hereto).
10. By way of additional example, I represented one client in post-conviction proceedings who was tried and convicted in Suffolk County, in whose case Annie Dookhan was the primary chemist. I have filed various motions for post-conviction discovery, including an allowed Rule 17 motion in which the Department of Public Health was ordered to produce audits and performance evaluations of Annie Dookhan, Quality Control and Quality Assurance documents from the Laboratory, and other documentation. While some have

been produced, much of this ordered discovery is still outstanding.

11. The pace of relief is incredibly slow. I represented another client whose drug certificate of analysis indicated that the evidence in his case had allegedly been tested by Annie Dookhan as the primary chemist and Daniel Renczkowski as the secondary chemist. However the drug file demonstrated that all GCMS tests were done by a user logged in with Annie Dookhan's computer identification, leading us to deduct that Annie Dookhan had served as both the primary and secondary chemist on the case. My client's attempts to obtain an expedited bail hearing upon learning of this information was stifled by the Commonwealth's refusal to agree upon a court date for a bail hearing. That client eventually accepted a plea deal of time served against my advice, because the lack of relief was so severe that he simply wanted to end the ordeal of his prosecution.
12. There has also been no uniform action by the various District Attorney's Offices across the Commonwealth regarding these cases. I represented a defendant in a drug case in Middlesex County which arose from testing at the Hinton Lab, but not involving Annie Dookhan as

a primary or secondary chemist. That case was dismissed by the prosecution because the Middlesex District Attorney's office's "ability to prosecute this case legally and factually has been compromised and the alleged failures and misconduct raise issues of fundamental fairness in the pursuit of justice." The Middlesex DA office further stated in its Nolle Prosequi: "The MDAO, on behalf of the public and consistent with our role and responsibility must rely on evidence that is free from taint and that satisfies the required burdens of proof and persuasion, in a way that would be sufficient to obtain and sustain a criminal conviction beyond a reasonable doubt and therefore, we find that it is necessary to end this prosecution in a matter consistent with the law."

(Redacted Nolle Prosequi is attached hereto).

13. Meanwhile, in Suffolk County, I have been fought tooth and nail in every single Annie Dookhan case, where prosecutors have opposed all my efforts to secure relief, seemingly as a matter of course.
14. Further, courts have asked the impossible of my clients. In Suffolk County, I have had several motions to vacate guilty pleas denied in cases where Dookhan performed the testing because the court found that I

was unable to actually show that there had been misconduct in that specific case. This seems an impossible burden to place on defendants, because the lab has been sealed off and the defense bar has no means to access records or evidence that might demonstrate which specific cases Dookhan committed misconduct--if such evidence even exists, which seems unlikely. Further, these rulings have been made without ever holding an evidentiary hearing that might have allowed examination of witnesses who could shed more light on specific instances of misconduct or, conversely, who could testify to the opaque processes in place at the Hinton Lab that make demonstrating misconduct in a specific case difficult, if not impossible.

15. Several clients have expressed concern that if their convictions are vacated, the Commonwealth will pursue their cases with heightened vigor and that they will essentially be punished for "fighting the system." These clients are worried that if they try to fight their conviction and their convictions are overturned, they may be saddled with high mandatory minimums if reconvicted. I cannot assure clients that this will not happen.

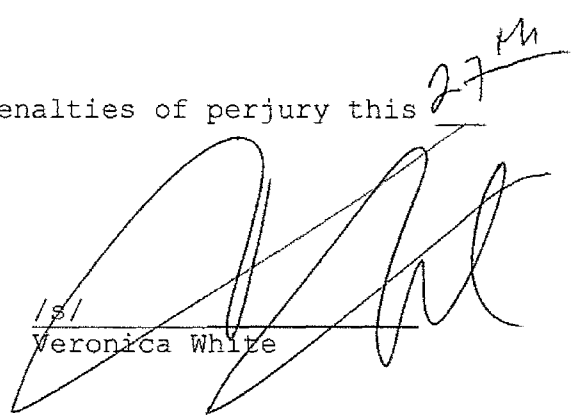
16. While awaiting resolution of their Hinton Lab cases, many of my clients are still incarcerated, and have been jailed for extended periods of time on the basis of this tainted and unreliable evidence. I also have clients facing serious immigration issues requiring rapid filing of motions to vacate or motions for a new trial in order to prevent potential deportation. During the pendency of their proceedings, these clients remain in immigration limbo and remain in constant fear of deportation.
17. My clients have faced significant collateral consequences due to the delay and generally poor handling of these cases. One client has lost several jobs after he was forced to wear a GPS bracelet as a condition of his release. He was constantly contacted, both by phone and in person, by the GPS monitoring office when, during the normal course of his employment, he would lose the GPS signal upon entering food freezers, or, during transit to work, he would lose signal when the T was underground. This same client was also removed from his home and incarcerated over night by the police who had unreliable information that my client had violated the conditions of the GPS monitoring when in fact that

client had abided by the conditions and his GPS monitor was in place. The Court refused to grant my client relief from the GPS monitoring conditions despite these complications. Several clients have expressed to me that they have trouble sleeping, feel anxiety and uneasiness, and have experienced heightened headaches when having to live their lives with the GPS monitoring device on their ankle day-in and day-out.

18. I have another client who is facing deportation to Nigeria as a result of a Dookhan conviction. He faces very real risks in Nigeria, where, because of a property dispute, he believes he will be a target. These risks range from significant additional jail time to death, given the state of unrest and the extent of civilian killings.

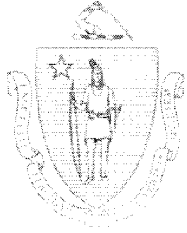
Signed under the pains and penalties of perjury this <sup>27<sup>th</sup></sup>  
day of December, 2013.

/s/  
Veronica White





# **WHITE ATTACHMENT A**



MARTHA COAKLEY  
ATTORNEY GENERAL

THE COMMONWEALTH OF MASSACHUSETTS  
OFFICE OF THE ATTORNEY GENERAL

ONE ASHBURTON PLACE  
BOSTON, MASSACHUSETTS 02108

(617) 727-2200  
[www.mass.gov/ago](http://www.mass.gov/ago)

September 20, 2012

Joseph Early, Esq.  
District Attorney Worcester County  
President Massachusetts District Attorneys Association  
c/o Massachusetts District Attorneys Association  
One Bullfinch Place, Suite 202  
Boston, Ma. 02114

Anthony J. Benedetti, Esq.  
Chief Counsel  
Committee for Public Counsel Services  
44 Bromfield Street  
Boston, Ma. 02108

**RE: Attorney General's review of drug analysis conducted at the Hinton  
Laboratory in Jamaica Plain**

Dear District Attorney Early & Chief Counsel Benedetti,

This July, the Attorney General's office began a criminal investigation into the actions of a particular chemist in the drug analysis unit of the Hinton Laboratory in Jamaica Plain. During this investigation, we identified serious concerns about the integrity of the cases that the chemist analyzed and immediately shared that information with appropriate stakeholders. We have received cooperation from current and former employees of the laboratory and at this time we do not have reason to believe other chemists were involved in similar alleged misconduct. Our criminal investigation into the actions of the individual chemist continues.

At the request of the Administration, the Attorney General has agreed to also conduct a broader review of the drug analysis unit at the Hinton Laboratory. Our review is focused on whether any failures at the laboratory impacted the reliability of the results on cases beyond those handled directly by the chemist.

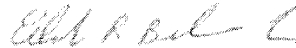
The review will be led by Helene Kazanjian, Chief of the civil Trial Division at the Attorney General's office and a former federal prosecutor. We also intend to retain independent forensic experts to conduct an assessment of the reliability of the testing results.

We know these issues are critically important for the criminal justice system to address, especially for those persons previously charged and convicted of crimes, in part, based on scientific

results from the Hinton Laboratory. We intend to move as quickly as possible and have already begun the process.

We will share the results of this review with stakeholders in the criminal justice system – including prosecutors, the defense bar, and the courts – so that any appropriate action can be taken in the interests of justice.

Sincerely,



Edward R. Bedrosian Jr.  
First Assistant Attorney General

cc: Mark Reilly, Governor's Legal Counsel  
Max Stern, Esq.  
Jack Pirozollo, First Assistant United States Attorney  
Mary Beth Heffernan, Secretary, Executive Office of Public Safety and Security  
Dr. JudyAnn Bigby, Secretary, Executive Office of Health and Human Services  
Massachusetts District Attorneys Association  
Joe Dorant, Massachusetts Organization of State Engineers and Scientists

# **WHITE ATTACHMENT B**

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, ss.

MALDEN DISTRICT COURT  
DOCKET NO.

COMMONWEALTH

v.

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NOLLE PROSEQUI

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Now comes the Commonwealth in the above-entitled matter and states the following:

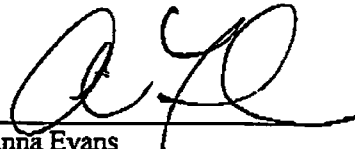
1. The defendant is charged with Distribution of a Class A substance and a School Zone violation.
2. The alleged controlled substance was submitted for analysis to the William A. Hinton State Laboratory ("Hinton Laboratory") in Jamaica Plain, MA during the years 2003-2012.
3. On August 30, 2012, the Massachusetts Executive Office of Public Safety closed the Hinton Laboratory.
4. Since then, the Office of the Attorney General, in conjunction with the Massachusetts State Police, has been conducting a criminal investigation into allegations of malfeasance by former chemist Annie Khan Dookhan in the course of her employment at the Hinton Laboratory, spanning the years 2003-2012. The alleged malfeasance involves thousands of potentially tainted drug samples.
5. On December 17, 2012, Ms. Dookhan was indicted in Suffolk Superior Court in a 15-count indictment alleging numerous crimes, including perjury, witness intimidation, tampering with evidence, and misleading the Court. In addition, Ms. Dookhan has been indicted for other offenses in other counties.
6. On November 5, 2012, the Massachusetts Inspector General began an investigation into the internal operations of the Hinton Laboratory. That investigation is ongoing.
7. As a result of these investigations, the Middlesex District Attorney's Office ("MDAO") has received documents which chronicle the alleged criminal conduct by Annie Dookhan and the shortcomings and failures at the Hinton Laboratory.

The Commonwealth's filing of this Nolle Prosequi is due to Annie Dookhan's alleged criminal misconduct and the documented evidence of the shortcomings and failures at the Hinton Laboratory. The MDAO's ability to prosecute this case legally and factually has been compromised and the alleged failures and misconduct raise issues of fundamental fairness in the pursuit of justice. The MDAO, on behalf of the public and consistent with our role and responsibility, must rely on evidence that is free from taint and that satisfies the required burdens of proof and persuasion, in a way that would be sufficient to obtain and sustain a criminal conviction beyond a reasonable doubt and, therefore, we find that it is necessary to end this prosecution in a manner consistent with the law.

For the foregoing reasons, in the interest of justice, the Commonwealth will not further prosecute this case.

Respectfully submitted  
For the Commonwealth,

MARIAN T. RYAN  
DISTRICT ATTORNEY

By:   
Anna Evans  
Assistant District Attorney  
14 Summer Street  
Malden, MA 02148

DATED: 2013

# **PETITIONER KEVIN BRIDGEMAN**

Commonwealth of Massachusetts  
SUFFOLK SUPERIOR COURT  
Case Summary  
Criminal Docket

DPH-00020-FY13

**Commonwealth v Bridgeman, Kevin**

Details for Docket: SUCR2005-10357

**Case Information**

<b>Docket Number:</b>	SUCR2005-10357	<b>Caption:</b>	Commonwealth v Bridgeman, Kevin
<b>Entry Date:</b>	06/02/2005	<b>Case Status:</b>	Magistrate Ctrm 705
<b>Status Date:</b>	10/04/2005	<b>Session:</b>	Disposed (sentenced)
<b>Lead Case:</b>	NA	<b>Deadline Status:</b>	Active since
<b>Trial Deadline:</b>	06/28/2005	<b>Jury Trial:</b>	NO

**Parties Involved**

2 Parties Involved in Docket: SUCR2005-10357

<b>Party Involved:</b>		<b>Role:</b>	Defendant
<b>Last Name:</b>	Bridgeman	<b>First Name:</b>	Kevin
<b>Address:</b>		<b>Address:</b>	
<b>City:</b>		<b>State:</b>	MA
<b>Zip Code:</b>		<b>Zip Ext:</b>	
<b>Telephone:</b>			

<b>Party Involved:</b>		<b>Role:</b>	Plaintiff
<b>Last Name:</b>	Commonwealth	<b>First Name:</b>	
<b>Address:</b>		<b>Address:</b>	
<b>City:</b>		<b>State:</b>	
<b>Zip Code:</b>		<b>Zip Ext:</b>	
<b>Telephone:</b>			

**Attorneys Involved**

3 Attorneys Involved for Docket: SUCR2005-10357

**Attorney**



**Involved:**

**Last Name:** Griffin  
**Address:** 15 Court Square  
**City:** Boston  
**Zip Code:** 02108  
**Telephone:** 617-742-1663  
**Fascimile:** 617-723-2190

**Firm Name:**

**First Name:** Joseph M  
**Address:** Suite 240  
**State:** MA  
**Zip Ext:**  
**Tel Ext:**  
**Representing:** Bridgeman, Kevin (Defendant)

**Attorney  
Involved:**

**Last Name:** Belezos  
**Address:** 540 Gallivan Boulevard  
**City:** Dorchester Center  
**Zip Code:** 02124  
**Telephone:** 617-288-5900  
**Fascimile:** 617-288-5902

**Firm Name:**

**First Name:** Christopher P  
**Address:** Suite Four  
**State:** MA  
**Zip Ext:**  
**Tel Ext:**  
**Representing:** Bridgeman, Kevin (Defendant)

**Attorney  
Involved:**

**Last Name:** Garry  
**Address:** 1 Bulfinch Place  
**City:** Boston  
**Zip Code:** 02114  
**Telephone:** 617-619-4000  
**Fascimile:** 617-619-4210

**Firm Name:**

**First Name:** Stacie  
**Address:** 3rd floor  
**State:** MA  
**Zip Ext:** 2997  
**Tel Ext:**  
**Representing:** Commonwealth, (Plaintiff)

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**Calendar Events**

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8 Calendar Events for Docket: SUCR2005-10357

No.	Event Date:	Event Time:	Calendar Event:	SES:	Event Status:
1	06/07/2005	09:30	Arraignment	CM	Event held as scheduled
2	06/16/2005	09:30	Conference: Status Review	CM	Event not held--joint request
3	06/28/2005	09:30	Hearing: Misc Matters	CM	Event held as scheduled
4	07/12/2005	09:30	Conference: Pre-Trial	CM	Event held as scheduled
5	08/11/2005	09:30	Hearing: Non-eviden-Discovery	CM	Event held as scheduled
6	10/04/2005	09:30	Hearing: Plea Change	1	Event held as scheduled
7	12/02/2005	09:00	Conference: Final Pre-Trial	5	Event canceled not re-scheduled
8	12/13/2005	09:00	TRIAL: by jury	5	Event canceled not re-scheduled

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## Full Docket Entries

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93 Docket Entries for Docket: SUCR2005-10357

Entry Date:	Paper No:	Docket Entry:
06/02/2005	1	Indictment returned
06/02/2005	2	Motion by Commonwealth for arrest warrant to issue; filed & allowed ;
06/02/2005	2	Locke, J.
06/02/2005		Warrant on indictment issued
06/02/2005		Warrant was entered onto the Warrant Management System June 02, 2005
06/07/2005		Defendant brought into court.
06/07/2005		Warrant canceled on the Warrant Management System June 07, 2005
06/07/2005		Appointment of Counsel Christopher P Belezos, pursuant to Rule 53 for Arraignment only
06/07/2005		Appointment of Counsel Joseph M Griffin Jr, pursuant to Rule 53 Case in Chief (Nac #C3919739-5 sent on 6/8/2005)
06/07/2005		Deft arraigned before Court
06/07/2005		Deft waives reading of indictments
06/07/2005		RE Offense 1:Plea of not guilty
06/07/2005		RE Offense 2:Plea of not guilty
06/07/2005		RE Offense 3:Plea of not guilty
06/07/2005		RE Offense 4:Plea of not guilty
06/07/2005		RE Offense 5:Plea of not guilty
06/07/2005		RE Offense 6:Plea of not guilty
06/07/2005		Bail set: \$100,000.00 With Surety or \$10,000.00 Cash Without Prejudice. Bail Warning Read. Mittimus Issued.
06/07/2005		Deft notified of right to request drug exam
06/07/2005		Continued until June 16, 2005 for Status re: Bail and Setting of Tracking Order by agreement. Wilson, MAG - C. Bartoloni, ADA - C. Belezos, Attorney - ERD.
06/16/2005		Defendant brought into court. Continued to 6/28/05 for Setting of Tracking Order and Bail Hearing. Wong, Mag - C. Bartoloni for S. Garry, ADA - ERD
06/28/2005		Defendant brought into court. Parties not reporting.
06/28/2005		Continued to July 12, 2005 for hearing on PTC.
06/28/2005		Assigned to Track "A", see scheduling order
06/28/2005		Case Tracking scheduling order (Gary D Wilson, Magistrate) mailed June 28, 2005
06/28/2005		Continued to December 02, 2005 for hearing on Final Pre-Trial Hearing.
06/28/2005		Continued to December 13, 2005 for hearing on Presumptive Trial Date.
06/28/2005		Gary D Wilson, Magistrate - G. Brooks, ADA - ERD
07/12/2005		Defendant brought into court
07/12/2005	3	Pre-trial conference report filed

07/12/2005		Continued to 8/11/2005 for hearing on non-evidentiary motions &
07/12/2005		status re: discovery. Connie S Wong, Magistrate - M. Zanini for S.
07/12/2005		Garry, ADA - ERD - J. Griffin, Attorney
07/12/2005	4	Commonwealth files certificate of discovery compliance.
08/11/2005		Defendant not present. Continued until 10/4/2005 by agreement for pre
08/11/2005		trial hearing in the 1st criminal session. (Jail List) Wilson, MAG -
08/11/2005		S. Garry, ADA - ERD - J. Griffin, Attorney
10/04/2005		Defendant brought into court. Deft offers to plead guilty to so much
10/04/2005		of offense #001 as alleges: Possession with intent to Distribute
10/04/2005		Class B Cont. Substance, First Offense, per MGL Ch. 94C Sec 32A(a),
10/04/2005		so much of offense #003 as alleges: Unlawful Distribution of Class B
10/04/2005		Controlled Substance, First Offense, per MGL Chap 94C Sec 32A(a) and
10/04/2005		offenses #005 and #006 as charged.
10/04/2005		After hearing Court accepts deft's offer. Deft pleads guilty as
10/04/2005		enumerated above.
10/04/2005		RE Offense 1:Guilty plea
10/04/2005		RE Offense 3:Guilty plea
10/04/2005		RE Offense 5:Guilty plea
10/04/2005		RE Offense 6:Guilty plea
10/04/2005		Defendant warned per Chapter 278, Sec 29D of alien status
10/04/2005	5	Waiver of defendants' rights, filed. Commonwealth moves for
10/04/2005	5	sentencing.
10/04/2005		Defendant sentenced as to offense #001 - M.C.I. Cedar Junction - Max:
10/04/2005		Three (3) years - Min: Two (2) years. Mittimus issued.
10/04/2005		Defendant sentenced as to offenses #003, #005 and #006 - Three (3)
10/04/2005		years probation from and after release as to offense #001.
10/04/2005		Defendant is subject to the following special conditions: drug
10/04/2005		treatment and testing as deemed necessary by Probation Dept.
10/04/2005		Victim-witness fee assessed: \$90.00
10/04/2005		Drug fee assessed: \$150.00
10/04/2005		Defendant warned per Chapter 22E Sec. 3 of DNA
10/04/2005		Defendant warned of potential loss of license.
10/04/2005		Abstract sent to RMV
10/04/2005		Probation supervision fee or community service alternative.
10/04/2005		Notified of right of appeal under Rule 64
10/04/2005		Sentence credit given as per 279:33A: One Hundred Seventy Nine (179)
10/04/2005		Days.
10/04/2005		RE Offense 2:Dismissed per oral motion of the Commonwealth; deft
10/04/2005		assenting thereto.
10/04/2005		RE Offense 4:Dismissed per oral motion of the Commonwealth; deft
10/04/2005		assenting thereto.
10/04/2005		Commonwealth's oral motion to dismiss second and subsequent portion
10/04/2005		

10/04/2005		of offenses #001 and #003 is made and allowed. Deft assenting thereto. Ball, J - S. Garry, ADA - V. Carreira, Court Reporter - J.
10/04/2005		Griffin, Attorney
11/16/2005		Drug fee paid as assessed in the amount of \$150.00.
11/16/2005		Victim-witness fee paid as assessed in the amount of \$90.00.
08/06/2007		Certified copy of record sent to Middlesex County Superior Court per request of Chief Probation Officer Joyce Coleman re: probation
08/06/2007		transfer
11/15/2012	6	Deft files Motion to be declared indigent
11/15/2012	7	Deft files Motion to be declared indigent (original filed in
11/15/2012	7	SUCR2007-10959)
03/08/2013		Deft files Motion to be Declared Indigent ( P#17 filed and allowed in
03/08/2013		case no. 07-10959; parties notified on same)

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## Charges

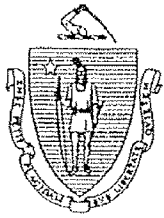
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6 Charges for Docket: SUCR2005-10357

No.	Charge Description:	Indictment:	Status:
1	DRUG, POSSESS TO DISTRIB CLASS B, SUBSQ. c94C s32A(b) (a)		Guilty plea
2	DRUG VIOLATION NEAR SCHOOL/PARK c94C s32J		Dismissed
3	DRUG, DISTRIBUTE CLASS B, SUBSQ. OFF. c94C s32A(b) (a)		Guilty plea
4	DRUG VIOLATION NEAR SCHOOL/PARK c94C s32J		Dismissed
5	A&B ON-POLICE OFFICER c265 s13D		Guilty plea
6	RESIST ARREST c268 s32B		Guilty plea

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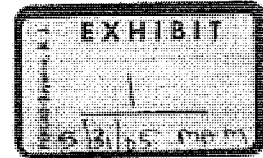
Mitt Romney  
Governor

Kerry Healey, Lt. Governor

Ronald Preston, Secretary

Paul J. Cote Jr., Commissioner

The Commonwealth of Massachusetts  
Executive Office of Health and Human Services  
Department of Public Health  
State Laboratory Institute  
305 South Street  
Boston, MA 02130  
617-983-6622



DATE RECEIVED: 04/14/2005  
DATE ANALYZED: 05/05/2005

NO. 744162

I hereby certify that the substance  
Contained in 22 plastic bags

MARKED: 744162

Submitted by P.O. WM. DONNELLY of the BOSTON POLICE DEPT.

Has been examined with the following results:

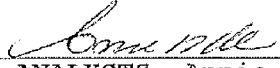
The substance was found to contain:


Cocaine, a derivative of Coca leaves, as defined in Chapter 94 C,  
Controlled Substance Act, Section 31, Class B.

The identification of the contents of the 22 plastic bags  
was determined by analysis of a representative sample of 5 plastic bags.  
The net weight of the 22 plastic bags was derived from the  
average weight of the sampled plastic bags.

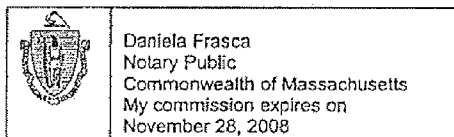
NET WEIGHT: 2.23 grams


DEFENDANT: BRIDGEMAN, KEVIN

  
ASSISTANT ANALYSTS Annie Dookhan

  
Della Saunders

On this date May 10, 2005 before me, the undersigned notary public, personally appeared the above signed subscriber(s), having proved to me through Department of Public Health documentation to be the person(s) whose name(s) is/are signed on this certificate and to be (an) assistant analyst(s) of the Department of Public Health, and who swore to me that the contents of this document are truthful and accurate to the best of his/her/their knowledge and belief.



  
Daniela Frasca, NOTARY PUBLIC  
My commission expires on November 28, 2008

Chapter 111, Section 13 of the General Laws

This certificate shall be sworn to before a Justice of the Peace or Notary Public, and the jurat shall contain a statement that the subscriber is the analyst or assistant analyst of the department. When properly executed, it shall be prima facie evidence of the composition, quality, and the net weight of the narcotic or other drug, poison, medicine, or chemical analyzed, and the court shall take judicial notice of the signature of the analyst or assistant analyst, and of the fact that he/she is such.



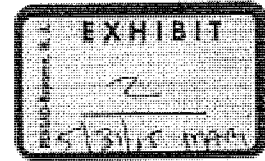
Mitt Romney  
Governor

Kerry Healey, Lt. Governor

Ronald Preston, Secretary

Paul J. Cote Jr., Commissioner

The Commonwealth of Massachusetts  
Executive Office of Health and Human Services  
Department of Public Health  
State Laboratory Institute  
305 South Street  
Boston, MA 02130  
617-983-6622



DATE RECEIVED: 04/14/2005  
DATE ANALYZED: 05/05/2005

NO. 744161

I hereby certify that the substance  
Contained in 2 plastic bags

MARKED: 744161

Submitted by P.O. WM. DONNELLY of the BOSTON POLICE DEPT.

Has been examined with the following results:

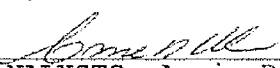
The substance was found to contain:

Cocaine, a derivative of Coca leaves, as defined in Chapter 94 C,  
Controlled Substance Act, Section 31, Class B.

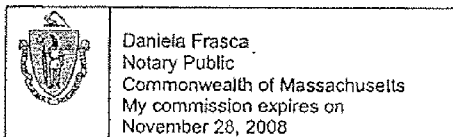
2 similar items were received and 1 was randomly selected  
and analyzed.

NET WEIGHT: 0.10 grams (analyzed item only)

DEFENDANT: BRIDGEMAN, KEVIN

  
ASSISTANT ANALYSTS Annie Dookhan Della Saunders

On this date May 10, 2005 before me, the undersigned notary public, personally appeared the above signed subscriber(s), having proved to me through Department of Public Health documentation to be the person(s) whose name(s) is/are signed on this certificate and to be (an) assistant analyst(s) of the Department of Public Health, and who swore to me that the contents of this document are truthful and accurate to the best of his/her/their knowledge and belief.



  
Daniela Frasca, NOTARY PUBLIC  
My commission expires on November 28, 2008

Chapter 111, Section 13 of the General Laws

This certificate shall be sworn to before a Justice of the Peace or Notary Public, and the jurat shall contain a statement that the subscriber is the analyst or assistant analyst of the department. When properly executed, it shall be prima facie evidence of the composition, quality, and the net weight of the narcotic or other drug, poison, medicine, or chemical analyzed, and the court shall take judicial notice of the signature of the analyst or assistant analyst, and of the fact that he/she is such.

95-10357-001

Possession of Class B Controlled Substance with Intent to Distribute  
C. 94C, §32

INDICTMENT

*Commonwealth of Massachusetts*

---

SUFFOLK, SS.

At the SUPERIOR COURT DEPARTMENT OF THE TRIAL COURT FOR CRIMINAL BUSINESS,  
begun and holden at the CITY OF BOSTON, within and for the County of Suffolk, on the first Monday of May in the  
year of our Lord two thousand and five.

THE JURORS for the COMMONWEALTH OF MASSACHUSETTS on their oath present that

**KEVIN BRIDGEMAN,**

on April 8, 2005, did unlawfully, knowingly and intentionally possess with intent to distribute a certain controlled  
substance, to wit: cocaine, a Class B controlled substance under the provisions of G.L. c. 94C, § 31.

INDICTMENT

Possession of Class B Controlled Substance with Intent to Distribute  
C. 94C, §32  
Second Offense

- 2 -

THE JURORS for the COMMONWEALTH OF MASSACHUSETTS on their oath present that

**KEVIN BRIDGEMAN,**

on December 8, 1999, prior to the commission of the offense heretofore described in this indictment was convicted in the Boston Municipal Court of the offense of Possession of a Class B controlled substance with intent to distribute, Docket # 9901CR5088.

And on December 6, 2000 was convicted in Boston Municipal Court of the offense of Distribution of a Class B controlled substance, Docket # 0001CR5054, and this is therefore a second and subsequent such offense.

A TRUE BILL

  
Assistant District Attorney

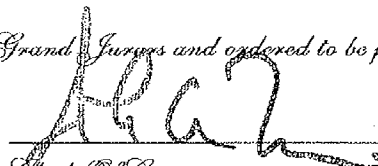
  
Foreman of the Grand Jury

Superior Court Department - Criminal Business

May, Sitting, 2005

JUN 02 2005

Returned into said Superior Court by the Grand Jurors and ordered to be filed.

  
Clerk Of Court



05-10351-002

Possession of Class B Controlled Substance with Intent to Distribute in a School Zone  
INDICTMENT C. 94C, §32J

*Commonwealth of Massachusetts*

SUFFOLK, SS.

At the SUPERIOR COURT DEPARTMENT OF THE TRIAL COURT FOR CRIMINAL BUSINESS,

begun and holden at the CITY OF BOSTON, within and for the County of Suffolk, on the first Monday of May in the  
year of our Lord two thousand and five.

THE JURORS for the COMMONWEALTH OF MASSACHUSETTS on their oath present that

**KEVIN BRIDGEMAN,**

on April 8, 2005, within one thousand feet of the real property comprising the University High School, a public  
secondary school of the City of Boston, did unlawfully, knowingly, and intentionally possess with intent to distribute a  
certain controlled substance, to wit: cocaine, a Class B controlled substance under the provisions of G.L. c. 94C, § 31.

A TRUE BILL

*Stacie Gamy*  
Assistant District Attorney

*[Signature]*  
Foreman of the Grand Jury

*Superior Court Department - Criminal Business*

*May, Sitting, 2005*

**JUN 02 2005**

*Returned into said Superior Court by the Grand Jurors and ordered to be filed.*

*[Signature]*  
Clerk Of Court

85-10357-003

Unlawful Distribution of Class B Controlled Substance  
C. 94C, §32A(c)

INDICTMENT

*Commonwealth of Massachusetts*

SUFFOLK, SS.

At the SUPERIOR COURT DEPARTMENT OF THE TRIAL COURT FOR CRIMINAL BUSINESS,  
begun and holden at the CITY OF BOSTON, within and for the County of Suffolk, on the first Monday of May in the  
year of our Lord two thousand and five..

THE JURORS for the COMMONWEALTH OF MASSACHUSETTS on their oath present that

**KEVIN BRIDGEMAN,**

on April 8, 2005, did unlawfully, knowingly and intentionally distribute to Officer Walsh a certain controlled substance,  
to wit: cocaine, a Class B controlled substance under the provisions of G.L. c. 94C, § 31.

INDICTMENT

Unlawful Distribution of Class B Controlled Substance  
C. 94C, §32A(d)  
Second Offense

- 2 -

THE JURORS for the COMMONWEALTH OF MASSACHUSETTS on their oath present that

**KEVIN BRIDGEMAN,**

on December 8, 1999, prior to the commission of the offense heretofore described in this indictment was convicted in the Boston Municipal Court of the offense of Possession of a Class B controlled substance with intent to distribute, Docket # 9901CR5088.

And on December 6, 2000 was convicted in Boston Municipal Court of the offense of Distribution of a Class B controlled substance, Docket # 0001CR5054, and this is therefore a second and subsequent such offense.

A TRUE BILL

  
Assistant District Attorney

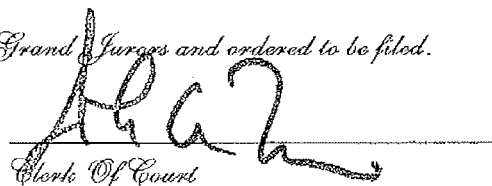
  
Foreman of the Grand Jury

Superior Court Department - Criminal Business

May, Sitting, 2005

JUN 02 2005

Returned into said Superior Court by the Grand Jurors and ordered to be filed.

  
Clerk Of Court

75-10307-0007

Unlawful Distribution of Class B Controlled Substance in a School Zone  
C. 94C, §32J

INDICTMENT

*Commonwealth of Massachusetts*

SUFFOLK, SS.

At the SUPERIOR COURT DEPARTMENT OF THE TRIAL COURT FOR CRIMINAL BUSINESS,  
begun and holden at the CITY OF BOSTON, within and for the County of Suffolk, on the first Monday of May in the  
year of our Lord two thousand and five.

THE JURORS for the COMMONWEALTH OF MASSACHUSETTS on their oath present that

**KEVIN BRIDGEMAN,**

on April 8, 2005, within one thousand feet of the real property comprising the University High School, a secondary school, did unlawfully, knowingly, and intentionally distribute a certain controlled substance, to wit: cocaine, a Class B controlled substance under the provisions of G.L. c. 94C, § 31.

A TRUE BILL

*Stacie Gamy*  
Assistant District Attorney

*James G. Smith*  
Foreman of the Grand Jury

*Superior Court Department - Criminal Business*

*May, Sitting, 2005*

**JUN 02 2005**

*Returned into said Superior Court by the Grand Jurors and ordered to be filed.*

*Ala2*  
Clerk Of Court

05-10357-000

INDICTMENT

Assault and Battery on a Police Officer  
C. 265, §13D

*Commonwealth of Massachusetts*

SUFFOLK, SS.

At the SUPERIOR COURT DEPARTMENT OF THE TRIAL COURT FOR CRIMINAL BUSINESS,  
begun and holden at the CITY OF BOSTON, within and for the County of Suffolk, on the first Monday of May in the  
year of our Lord two thousand and five.

THE JURORS for the COMMONWEALTH OF MASSACHUSETTS on their oath present that

**KEVIN BRIDGEMAN,**

on April 8, 2005, did assault and beat P.O. McHale, who was a police officer of Boston, and who also was engaged in the  
lawful discharge of his duties as such officer, as said KEVIN BRIDGEMAN well knew.

A TRUE BILL

*Stacie Gamy*  
Assistant District Attorney

*James G. Sullivan*  
Foreman of the Grand Jury

*Superior Court Department - Criminal Business*

*May, Sitting, 2005*

**JUN 02 2005**

*Returned into said Superior Court by the Grand Jurors and ordered to be filed.*

*Ala2*  
Clerk Of Court

05-10357-004

INDICTMENT

Resisting Arrest  
C. 268, §32B

*Commonwealth of Massachusetts*

SUFFOLK, SS.

At the SUPERIOR COURT DEPARTMENT OF THE TRIAL COURT FOR CRIMINAL BUSINESS,  
begun and holden at the CITY OF BOSTON, within and for the County of Suffolk, on the first Monday of May in the  
year of our Lord two thousand and five.

THE JURORS for the COMMONWEALTH OF MASSACHUSETTS on their oath present that

**KEVIN BRIDGEMAN,**

on April 8, 2005, did knowingly prevent or attempt to prevent a police officer, acting under official authority from  
effecting an arrest or the actor, or another by use or threat of use of physical force of violence against the officer or  
another, or through use of any other means which creates a substantial risk of causing bodily injury to such police officer  
or another, in violation of G.L. c. 268 §32B.

A TRUE BILL

*Stacie Gamy*  
Assistant District Attorney

*James G. Sullivan*  
Foreman of the Grand Jury

*Superior Court Department - Criminal Business*

*May, Sitting, 2005*

**JUN 02 2005**

*Returned into said Superior Court by the Grand Jurors and ordered to be filed.*

*Ala2*  
Clerk Of Court

COMMONWEALTH OF MASSACHUSETTS

SS.

Superior Court Department  
Indictment No(s).

05-10357

Commonwealth

*Kevin Bridgen*

PRETRIAL CONFERENCE REPORT

A pretrial conference was held on 7-12-05 between the Assistant District Attorney and Counsel for the Defendant with the following results:

A. Procedure:

1. ☒ The Defendant is presently in custody at Nashua St.  
☐ The Defendant is *not* presently in custody.
2. A writ of habeas corpus to \_\_\_\_\_ will be necessary to bring the Defendant into court.
3. The case \_\_\_\_\_ is likely \_\_\_\_\_ is not likely to be disposed of without a trial. (Not binding)
3. This case will be a ☒ jury trial \_\_\_\_\_ jury waived. (Not binding)
4. The proposed trial date is 12/13/05
5. The probable length of the trial will be 2 days.
6. A N/A language interpreter will be necessary.

B. Mandatory Discovery for the Defendant pursuant to Rule 14(a)(1)(A)(i)-(ix):

1. The Commonwealth *has disclosed, or has permitted* the defense to discover, inspect and copy, the following items and information which are relevant to the case and are in the possession, custody or control of the prosecutor, persons under the prosecutor's direction and control, or persons who have participated in investigating or evaluating the case and either regularly report to the prosecutor's office or have done so in the case:

☒ written or recorded statements, and the substance of any oral statements, made by the defendant or co-defendant;

☒ grand jury minutes, and the written or recorded statements of person(s) who testified before the grand jury;

☒ any facts of an exculpatory nature;

☒ the names, addresses, and dates of birth of the Commonwealth's prospective witnesses other than law enforcement witnesses;

- ☒ the names and business addresses of prospective law enforcement witnesses;
- ☒ the identity, ~~current curriculum vitae and list of publications~~ of each intended expert witness, and all reports prepared by the expert witness(es) that pertain to the case; *C will call police officers as drug experts*
- ☒ all material and relevant police reports, photographs, tangible objects, all intended exhibits, reports of physical examinations of any person or of scientific tests or experiments, and statements of persons the Commonwealth intends to call as witnesses;
- ☒ a summary of identification procedures, and all statements made in the presence of or by an identifying witness that are relevant to the issue of identity or to the fairness or accuracy of the identification procedures;
- ☒ disclosure of all promises, rewards or inducements made to witnesses the Commonwealth intends to present at trial;
- ☒ a statement disclosing whether wire or oral communications of the defendant have been intercepted; whether wire or oral communications relevant or material to the case have been intercepted; and whether any percipient witness is a government informant whose identity and/or location is claimed to be privileged from disclosure and service of relevant documents pursuant to G.L. c. 272, § 99(O); and
- Other: \_\_\_\_\_
2. \_\_\_\_\_ Notice of the existence, location, and identity of any persons possessing items described under Rule 14(a)(1)(A)(i)-(ix), not within the possession, custody or control of the prosecution, persons under its discretion and control, or persons who have participated in investigating or evaluating the case and either regularly report to the prosecutor's office or have done so in the case (Rule 14(a)(1)(D));
3. The Commonwealth agrees to provide the Defendant on or about \_\_\_\_\_ date with the following discovery materials which have not yet been provided:
- \_\_\_\_\_

C. Reciprocal discovery for the Prosecution pursuant to Rule 14(a)(1)(B).

1. The Defendant shall disclose to the prosecution and permit the Commonwealth to discover, inspect, and copy by 3 WKS b4 trial (date) any material and relevant evidence discoverable under (a)(1)(A)(vi), (vii) and (ix) which the defendant intends to use at trial, including the names, addresses, dates of birth, and statements of those persons whom the defendant intends to use as witnesses at trial;
2. \_\_\_\_\_ Other: \_\_\_\_\_

D. Notice of Alibi pursuant to Rule 14(b)(1).

1. The Defendant agrees to serve upon the prosecutor a written notice, signed by the defendant, of his or her intention to offer a defense of alibi on or before 3 WKS b4 trial (Date). The notice by the defendant shall state the specific place or places at which the defendant claims to have been at the time of the alleged offense and the names and addresses of the witnesses upon whom the defense intends to rely to establish the alibi.



2. Within seven days of the service of the defendant's notice of alibi, the Commonwealth agrees to serve upon the defendant a written notice stating the names and addresses of witnesses upon whom the prosecutor intends to rely to establish the defendant's presence at the scene of the alleged offense and any other witnesses to be relied on to rebut the testimony of any of the defendant's alibi witnesses.

E. Notice of Defenses pursuant to Rule 14(b)(2) & Rule 14(b)(3).

1. The Defendant agrees to notify the Commonwealth on or before 3 wks. b4 trial of his/her intention to:

- a. Rely upon the *defense of lack of criminal responsibility* because of mental disease or defect at the time of the alleged crime by providing the Commonwealth with a written notice including the names and addresses of expert witnesses whom the defendant expects to call, and whether those expert witnesses intend to rely in whole or in part on statements of the defendant as to his or her mental condition at the time of the alleged crime or criminal responsibility for the alleged crime.
- b. Rely upon a *defense based upon a license, claim of authority or ownership, or exemption*, by notifying the prosecutor in writing of such intention.

F. Other agreements reached by the parties:

None

G. Matters upon which the parties could not agree and which are to be subject of pretrial motions include:

H. Stipulations of fact:

None

M. Z...

Assistant District Attorney

Joseph M. ...  
Attorney for the Defendant

7/12/05

Date

Defendant (if required by Mass. R. Crim.P. II(a)(2)(A))



Juvenile Unit  
One Bulfinch Place  
Boston, MA 02114-2997

Telephone: (617) 619-4230  
Fax: (617) 619-4222

*The Commonwealth of Massachusetts*

DISTRICT ATTORNEY OF SUFFOLK COUNTY  
DANIEL F. CONLEY

Joseph M. Griffin, Jr.  
101 Tremont Street, Suite 800  
Boston, MA 02108

12 July 2005

Dear Attorney Griffin,

Concerning the matter of Commonwealth v. Kevin Bridgeman, Docket SUCR2005-10357, I have filed the Commonwealth's Certificate of Discovery Compliance with the Clerk and have enclosed a copy of it for your records.

Sincerely,

A handwritten signature in dark ink, appearing to read "M. Zanini", written over a horizontal line.

Mark D. Zanini  
Assistant District Attorney

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT  
DOCKET No. 2003-10820

COMMONWEALTH

v.

KEVIN BRIDGEMAN

COMMONWEALTH'S CERTIFICATE OF DISCOVERY COMPLIANCE

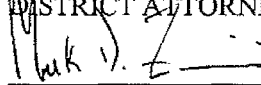
Now comes the Commonwealth in the above-captioned case and hereby states  
that it has provided the following material to defense counsel:

- Grand Jury Minutes of Officer Walsh and Sgt. Fitzpatrick, 5/31/05, 22 pages
- Analysis from Massachusetts State Laboratory No. 744162, 5/5/05, 1 page
- Analysis from Massachusetts State Laboratory No. 744161, 5/5/05, 1 page
- Xeroxed copies of twenty dollar bills, 4/8/05, 1 page
- Diagram of measurement to University High School, 1 page
- Boston Police Department Seized Money Form, 1 page
- Boston Police Incident Report, 4/8/05, 2 pages
- Application for Complaint, 4/8/05, 3 pages
- Boston Police Department Arrest Booking Form, 4/8/05, 1 page

Respectfully Submitted  
For the Commonwealth

DANIEL F. CONLEY  
DISTRICT ATTORNEY

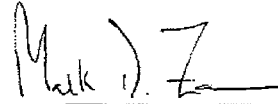
By:

  
Mark D. Zanini  
Assistant District Attorney  
BBO # 557673  
One Bulfinch Place  
Boston, MA 02114

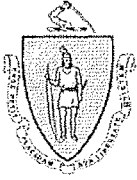
**CERTIFICATE OF SERVICE**

I, Mark D. Zanini, hereby state under the pains and penalties of perjury that I caused one copy of this Certificate of Discovery Compliance to be delivered by U.S. Mail, postage prepaid, to Joseph M. Griffin, counsel for the defendant, on this 12th day of July, 2005 at the address below:

101 Tremont Street, Suite 800  
Boston, MA 02108

A handwritten signature in black ink, appearing to read "Mark D. Zanini", written over a horizontal line.

Mark D. Zanini  
Assistant District Attorney



Juvenile Unit  
One Bulfinch Place  
Boston, MA 02114-2997

Telephone: (617) 619-4230  
Fax: (617) 619-4222

*The Commonwealth of Massachusetts*

DISTRICT ATTORNEY OF SUFFOLK COUNTY  
DANIEL F. CONLEY

Joseph M. Griffin, Jr.  
101 Tremont Street, Suite 800  
Boston, MA 02108

12 July 2005

Dear Attorney Griffin,

Concerning the matter of Commonwealth v. Kevin Bridgeman, Docket SUCR2005-10357, I have enclosed the following for purposes of discovery:

1. Grand Jury Minutes of Officer Greg T. Walsh and Sergeant James Fitzpatrick  
Date: May 31, 2005 Pages: 22
2. Analysis from Massachusetts State Laboratory No. 744162  
Date: May 5, 2005 Pages: 1
3. Analysis from Massachusetts State Laboratory No. 744161  
Date: May 5, 2005 Pages: 1
4. Xeroxed copies of twenty dollar bills  
Date: April 8, 2005 Pages: 1
5. Diagram of measurement to University High School  
Pages: 1
6. Boston Police Department Seized Money Form  
Pages: 1

Please feel free to contact me with any questions or concerns. I may be reached at (617) 619-4229.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark D. Zanini".

Mark D. Zanini  
Assistant District Attorney

Page 1

Number of Pages: 22

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.                      SUPERIOR COURT

SUFFOLK COUNTY  
GRAND JURY  
RE: KEVIN BRIDGEMAN

Presented By: STACIE GARRY, ESQ.  
Assistant District Attorney

Also Present: LINDA POULOS, ESQ.  
Assistant District Attorney

Tuesday, May 31, 2005  
Boston, Massachusetts

MYRIAM A. MARACAS, PROFESSIONAL COURT  
REPORTER

SOUND DEPOSITION SERVICES  
(888) 297-6863

Page 2

I N D E X

Testimony of:	Direct	Cross
Greg T. Walsh		
(by Ms. Garry)	3	
James Fitzpatrick		
(by Ms. Garry)	7	

E X H I B I T S

No.	Description	Page
1	Analysis sheet.	13
2	Analysis sheet.	14
3	Xeroxed copies of bills.	16
4	Diagram.	18

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Page 3

MS. GARRY: Good morning, ladies and gentlemen. My name is Stacie Garry. I would like to begin an investigation into the facts and circumstances surrounding an alleged drug transaction that occurred on April 8th of 2005 in the City of Boston. I'll be calling Officer Walsh.

GREG T. WALSH, SWORN

Q. (By Ms. Garry) Good morning, Officer Walsh. Can you state your name, spelling your last name for the grand jurors.

A. Good morning. Greg T. Walsh, W A L S H.

Q. And, Officer Walsh, how are you employed?

A. As a Boston police officer.

Q. Are you in a certain unit with the Boston Police?

A. Yes.

Q. In what unit is that?

A. Drug Control Unit.

Q. And how long have you been with the Drug Control Unit?

A. About five years.

Q. Officer Walsh, calling your attention specifically to April 8th, 2005, were you

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Page 4

working on that day?

A. Yes, I was.

Q. And what shift were you working that day?

A. Early morning shift.

Q. Calling your attention specifically to, again, that day, April 8th at 6:50 in the morning, what were you doing at that time?

A. We were down the theater district, Chinatown area. I was acting in an undercover capacity to try to purchase drugs.

Q. And what did you do next when you were in the Chinatown area?

A. Well, I was actually going to the border of the Chinatown area. Almost across the street from the Wang Center, Dominic's Restaurant. I was standing on the side of Dominic's Restaurant, where I actually met up with a male dressed in females' clothing. After a conversation with her, him, I was approached by an individual who we later arrested. His name was Kevin Bridgeman.

Q. Officer, can you describe Mr. Bridgeman to the grand jurors?

A. Yes. Black male. I believe he's in his

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Page 5

1 30s. 6'1", maybe 210 to 215 pounds.  
2 Q. And as you approached Mr. Bridgeman, what  
3 did you notice about him?  
4 A. That he was selling drugs. He sold drugs to  
5 the transvestite who I was standing with.  
6 Q. And after he sold drugs to that person, what  
7 did you do next?  
8 A. I was supplied with \$40 of Boston Police buy  
9 money, which was given to me by Sergeant  
10 Fitzpatrick to purchase any drugs that I  
11 might have the opportunity to purchase. I  
12 then informed Mr. Bridgeman that I would  
13 like two, referring to two rocks of crack  
14 cocaine. At the point when I asked him the  
15 two, he had a large quantity of crack  
16 cocaine in his hands. I asked him for two.  
17 He handed me two. And in exchange, I gave  
18 Mr. Bridgeman \$40 BPD, Boston Police  
19 Department buy money.  
20 Q. Officer Walsh, can you explain to the grand  
21 jurors how buy money works?  
22 A. Yes. With our unit, Sergeant Fitzpatrick is  
23 my boss, would take money out of like a --  
24 we have a bank, like a reserve, and we'll

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Page 6

1 take the money. I'm going to be sent out to  
2 photocopy the money prior to the sale and  
3 give it to me; and when we arrest the  
4 alleged dealer later on, most of the time,  
5 the dealer would have that money on him if  
6 they don't hand it off.  
7 Q. Officer Walsh, after you asked for two 20s,  
8 what happened next?  
9 A. Mr. Bridgeman handed me two off-white pieces  
10 of crack cocaine.  
11 Q. And then what did you do next?  
12 A. I took the drugs. I handed him the \$40  
13 Boston Police buy money and left the area.  
14 Q. Officer Walsh, is there a process of the  
15 Boston Police Department when drugs are  
16 recovered?  
17 A. Yes.  
18 Q. And what is that?  
19 A. There are a couple of forms that we fill  
20 out. We stick the drugs in an envelope,  
21 seal the envelope, and the east district has  
22 a safe, drop safe, that we deposit the  
23 envelope in. Drugs are then sent to the  
24 State Drug Lab for analysis.

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Page 7

1 Q. What did you do with the drugs that you  
2 purchased that evening, Officer?  
3 A. I handed them to Sergeant Fitzpatrick.  
4 Q. For what purpose?  
5 A. For them to be further analyzed in the State  
6 Drug Lab.  
7 Q. Officer Walsh, did you have any further role  
8 in what happened that evening?  
9 A. No. I left the area, and members of my unit  
10 moved in to arrest Mr. Bridgeman.  
11 MS. GARRY: Do the grand jurors  
12 have any questions for this witness?  
13 [No response]  
14 MS. GARRY: Seeing that there are  
15 no questions, thank you, Officer Walsh.  
16 THE WITNESS: Thank you.  
17 JAMES FITZPATRICK, SWORN  
18 Q. (By Ms. Garry) Sergeant Fitzpatrick, can  
19 you state your name, spelling your last name  
20 for the record.  
21 A. My name is Boston Police Sergeant James  
22 Fitzpatrick, F I T Z P A T R I C K.  
23 Q. And in what capacity do you work at the  
24 Boston Police?

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Page 8

1 A. I'm supervisor for the citywide Drug Control  
2 Unit day squad.  
3 Q. And calling your attention specifically,  
4 Sergeant Fitzpatrick, to April 8th of 2005,  
5 were you working that morning?  
6 A. Yes.  
7 Q. Where were you working that morning?  
8 A. We were down in the theater district,  
9 Chinatown area.  
10 Q. And what were you doing in that area?  
11 A. Conducting a buy bust drug investigation in  
12 conjunction with the ongoing operation known  
13 as Hydra.  
14 Q. And can you explain the buy bust operation  
15 to the grand jurors?  
16 A. Yes. A buy bust drug investigation is when  
17 an undercover officer is deployed to a  
18 certain area that we have several complaints  
19 about, or we have received information on.  
20 They would go down there with the specific  
21 purpose to purchase drugs from a dealer, at  
22 which time once the transaction is  
23 completed, we move in and, in effect, arrest  
24 the dealer.

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Page 9

1 Q. Calling your attention, again, to April 8th.  
2 Sergeant, around 6:15 that morning, were you  
3 involved in an arrest of a dealer that  
4 morning?

5 A. Yes.

6 Q. And in what capacity were you involved?

7 A. I was assisting another officer with placing  
8 the individual into custody.

9 Q. And what happened before you placed that  
10 individual into custody?

11 A. I observed -- I engaged this individual in  
12 an attempt to assist Officer McHale, who's  
13 assigned to my squad, placed him into  
14 custody, at which time I observed him  
15 struggling with Officer McHale. I attempted  
16 to come over to the individual. I then  
17 explained to him once again after Officer  
18 McHale had done that, that we were Boston  
19 Police officers. We were in plainclothes.  
20 "You're under arrest," at which time he  
21 struggled with myself and Officer McHale;  
22 and I observed him during this struggle  
23 strike Officer McHale in the face. He then  
24 was able to get out of an outer piece of

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Page 10

1 clothing he had on. He fled on foot down  
2 towards Stuart Street by South Charles  
3 Street, at which time I observed Officer  
4 McHale once again catch up to him. They  
5 struggled, fell to the ground, at which time  
6 Officer McHale was struck once again by this  
7 individual. We requested more assistance,  
8 several -- another officer from my unit,  
9 Detective Guy, as well as two EMTs came to  
10 our aid and assisted us with that and placed  
11 him into custody.

12 Q. Once you placed him into custody, what  
13 happened next?

14 A. At that point, we then recovered 22  
15 additional items of small, tan rock-like  
16 substances which we believed at that time to  
17 be crack cocaine.

18 Q. And you said additional items of crack  
19 cocaine. Were you told by an officer that  
20 something had happened?

21 A. Yes. Prior to all of that, I received  
22 information -- prior to even Officer McHale  
23 approaching this individual, I received  
24 information from Officer Walsh that he

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Page 11

1 completed a successful drug transaction with  
2 the accused.

3 Q. And it was the same person that Officer  
4 Walsh completed a transaction with that was  
5 struggling with Officer McHale?

6 A. Yes.

7 Q. When you say, "struggling with Officer  
8 McHale," can you explain to the grand jurors  
9 what you mean?

10 A. It was a physical confrontation. Officer  
11 McHale was attempting to have the individual  
12 place -- it was a physical altercation which  
13 Officer McHale was trying to have the  
14 individual place his arms behind his back.  
15 The individual refused to comply with any of  
16 his commands. They began to struggle  
17 physically with one another. And at that  
18 point, I was trying to come down and help  
19 Officer McHale place him into custody.

20 Q. Sergeant Fitzpatrick, you stated that  
21 Officer McHale was struck by this  
22 individual. How was he struck?

23 A. He was struck with a hand. I believe there  
24 was a clenched fist to his face, his face

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1 area.

2 Q. At some point, did you get the identity of  
3 the person that was struggling with the  
4 officer?

5 A. Yes.

6 Q. And who was that?

7 A. Kevin Bridgeman.

8 Q. And can you just describe Mr. Bridgeman to  
9 the grand jurors?

10 A. Kevin Bridgeman is a black male, over six  
11 feet tall, dark complexion, a muscular  
12 build.

13 Q. And you stated earlier that you recovered  
14 items from Mr. Bridgeman?

15 A. Yes.

16 Q. What did you recover?

17 A. 22 small rock-like substances which we  
18 believed to be crack cocaine.

19 Q. And, Officer, what do you do with drugs that  
20 you recover from defendants?

21 A. They are placed into evidence, logged in,  
22 and then they are sent to the State Drug  
23 Analysis Laboratory.

24 Q. Officer, I'm going to show you an exhibit

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1 that will be marked as Grand Jury Exhibit  
2 No. 1.  
3 (Document marked as Exhibit 1 for  
4 identification)  
5 Q. Do you recognize that?  
6 A. Yes.  
7 Q. And what do you recognize it to be?  
8 A. This is an analysis sheet from the  
9 Massachusetts State Laboratory.  
10 Q. And what's the result of that analysis?  
11 A. It's marked No. 744162, and it states that  
12 22 plastic bags were submitted by Officer  
13 Donnelly, the Boston Police Department.  
14 The substance was found to contain a cocaine  
15 derivative of coca leaves, as defined in  
16 Chapter 94C, Controlled Substance Act,  
17 Section 31, Class B.  
18 Q. And, Officer, is that the analysis of the 22  
19 plastic bags that you recovered?  
20 A. It goes on to further state -- yes, it is,  
21 but it goes on to further state that the  
22 identification of the contents of the 22  
23 plastic bags was determined by analysis of a  
24 representative sample of the five plastic

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1 bags. The net weight of the 22 plastic bags  
2 was derived from the average weight of the  
3 sample plastic bags.  
4 Q. And, Officer, were drugs recovered from  
5 anybody else other than the Defendant that  
6 evening?  
7 A. Yes.  
8 Q. And who that morning -- I apologize. Who  
9 were they recovered from?  
10 A. Officer Walsh.  
11 Q. And I'm going to show you what's going to be  
12 marked Grand Jury Exhibit No. 2.  
13 (Document marked as Exhibit 2 for  
14 identification)  
15 Q. Do you recognize that?  
16 A. Yes, I do.  
17 Q. And is that the -- what do you recognize  
18 that to be?  
19 A. This is an analysis sheet from the Mass.  
20 State Laboratory.  
21 Q. And is that analysis of the bags that were  
22 recovered from Officer Walsh that morning?  
23 A. Yes.  
24 Q. And, Officer, you stated earlier that you

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1 gave Officer Walsh buy money?  
2 A. Yes.  
3 Q. Going back to Mr. Bridgeman, was something  
4 recovered, anything else recovered from Mr.  
5 Bridgeman?  
6 A. Yes.  
7 Q. And what was that?  
8 A. The two \$20 that I had Xeroxed prior to  
9 Officer Walsh being deployed of the BPD buy  
10 money.  
11 Q. Officer, did you do something with that  
12 money after it was recovered?  
13 A. Yes.  
14 Q. And what is that?  
15 A. I checked the serial numbers on the bills  
16 that were recovered from the persons being  
17 arrested with the Xeroxed copies that I  
18 have.  
19 Q. And when do you make the Xerox copies?  
20 A. I make the Xerox copies prior to us going  
21 out onto the investigation.  
22 Q. And, Officer, I'm going to show you what is  
23 going to be marked Grand Jury Exhibit No. 3.  
24

SOUND DEPOSITION SERVICES  
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Page 16

1 (Document marked as Exhibit 3 for  
2 identification)  
3 Q. Do you recognize that?  
4 A. Yes.  
5 Q. And what do you recognize that to be?  
6 A. These are Xeroxed copies of the bills that I  
7 had copied that morning before Officer Walsh  
8 was deployed in the area.  
9 Q. The bills that were recovered from Mr.  
10 Bridgeman on April 8th, do those match that  
11 photocopy?  
12 A. Yes.  
13 Q. How do you know that's the same -- how do  
14 you match that photocopy to Mr. Bridgeman's  
15 money recovered from Mr. Bridgeman?  
16 A. I'll observe the bills that are recovered  
17 from Mr. Bridgeman and I will then know  
18 certainly the denomination of the bills, as  
19 well as the serial numbers, and that's how  
20 they match up.  
21 Q. And, Sergeant Fitzpatrick, going back to  
22 where Mr. Bridgeman was arrested or where  
23 you attempted to originally arrest Mr.  
24 Bridgeman, where was that?

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1 A. We attempted to arrest him in front of 255  
2 Tremont Street.  
3 Q. And is there anything about 255 Tremont  
4 Street that would matter to the Boston  
5 Police Department?  
6 A. Yes.  
7 Q. And what is that?  
8 A. It's within 1,000 feet of a school zone.  
9 Q. And, Officer, what school is that within  
10 1,000 feet of?  
11 A. The University High School.  
12 Q. And when you make an arrest that you believe  
13 to be within 1,000 feet of a school zone,  
14 how do you determine whether it is that  
15 distance or not?  
16 A. It is measured off with a point where the  
17 arrest takes place. Actually, where the  
18 deal occurred. I'm sorry. Where the deal  
19 occurred. It's measured from there to the  
20 front door of the school of the property.  
21 Q. And is there a printout of that measurement  
22 done?  
23 A. Yes.  
24 Q. Officer, I'm going to show you what's going

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1 to be marked Grand Jury Exhibit No. 4.  
2 (Document marked as Exhibit 4 for  
3 identification)  
4 Q. Do you recognize that?  
5 A. Yes, I do.  
6 Q. What do you recognize that to be?  
7 A. This is the diagram of the measurement that  
8 was done by Detective Lynch per my request.  
9 Detective Lynch is assigned to District A1,  
10 Drug Control Unit.  
11 Q. What does that document show?  
12 A. It shows that the incident involving Officer  
13 Walsh and Mr. Bridgeman occurred within 899  
14 feet, four inches, of the University High  
15 School.  
16 Q. Do you know the address of the University  
17 High School?  
18 A. Yes. No. 178 Tremont Street.  
19 Q. Thank you.  
20 MS. GARRY: Does the Grand Jury  
21 have any questions for the Sergeant?  
22 (No response)  
23 Q. Seeing none, thank you, Sergeant  
24 Fitzpatrick. Thank you very much.

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1 MS. GARRY: Based on the  
2 testimony you've heard and the evidence that  
3 you've received during the course of the  
4 investigation, I would ask that you consider  
5 the following charges against Kevin  
6 Bridgeman: Resisting arrest, assault and  
7 battery on a police officer, distribution of  
8 a Class B in a school zone, and possession  
9 with intent to distribute Class B in a  
10 school zone.  
11 (Pause)  
12 GREG T. WALSH, RESUMED  
13 Q. (By Ms. Garry) Good morning, again, Officer  
14 Walsh. I'm just going to remind you that  
15 you are under oath in front of these grand  
16 jurors. I'm informed that the Grand Jury  
17 has returned true bills against Kevin  
18 Bridgeman on distribution of Class B in a  
19 school zone, distribution, possession with  
20 intent to distribute Class B, possession  
21 with intent to distribute Class B in a  
22 school zone, assault and battery on a police  
23 officer, and resisting arrest. Do you have  
24 any further information on Kevin Bridgeman

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Page 20

1 related to a conviction for a similar  
2 offense?  
3 A. Yes.  
4 Q. Officer Walsh, was Mr. Bridgeman convicted  
5 on October 5th of 2000 in the -- December  
6 6th of 2000 in the Boston Municipal Court of  
7 distribution with a Class B substance?  
8 A. Yes, he was.  
9 Q. And, Officer Walsh, was Mr. Bridgeman  
10 convicted on December 8th of 19 -- I  
11 apologize. Going back to the last one. Did  
12 Mr. Bridgeman receive a 2 1/2-year  
13 commitment on December 6th of 2000?  
14 A. Yes, I believe he did.  
15 Q. And, Officer Walsh, on December 8th of 1999,  
16 was Mr. Bridgeman convicted of possession to  
17 distribute Class B out of the Boston  
18 Municipal Court?  
19 A. Yes, I believe he was.  
20 Q. And as a result of that conviction, did he  
21 serve a one-year commitment in the House of  
22 Corrections?  
23 A. I believe so.  
24 Q. Thank you, Officer Walsh. And the docket

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1 number on the conviction of possession to  
2 distribute Class B of December 8th, 1999, in  
3 Docket 9901CR5088C; and on the December 6th,  
4 2000, case out of the Boston Municipal Court  
5 is Docket 0001CR5045A. Thank you, Officer.

6 THE WITNESS: Thank you.

7 MS. GARRY: Based on the testimony  
8 you've heard and the evidence you've  
9 received during the course of the further  
10 course of the investigation, I would ask you  
11 to consider the charge of distribution of  
12 Class B, subsequent, and possession with  
13 intent to distribute a Class B substance on  
14 Kevin Bridgeman. I thank you all for your  
15 patience very much.  
16  
17  
18  
19  
20  
21  
22  
23  
24

SOUND DEPOSITION SERVICES  
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Page 22

1 C E R T I F I C A T E

2  
3 I, Myriam A. Maracas, Registered  
4 Professional Reporter, do hereby certify  
5 that the foregoing transcript is a true and  
6 accurate transcription of my stenographic  
7 notes taken on May 31, 2005.  
8  
9

10 Myriam A. Maracas  
11 Registered Professional  
12 Reporter  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24

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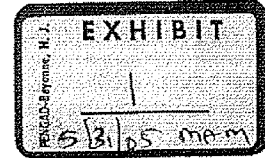
Mitt Romney  
Governor

Kerry Healey, Lt. Governor

Ronald Preston, Secretary

Paul J. Cote Jr., Commissioner

The Commonwealth of Massachusetts  
Executive Office of Health and Human Services  
Department of Public Health  
State Laboratory Institute  
305 South Street  
Boston, MA 02130  
617-983-6622



DATE RECEIVED: 04/14/2005  
DATE ANALYZED: 05/05/2005

NO. 744162

I hereby certify that the substance  
Contained in 22 plastic bags

MARKED: 744162

Submitted by P.O. WM. DONNELLY of the BOSTON POLICE DEPT.

Has been examined with the following results:

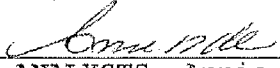
The substance was found to contain:

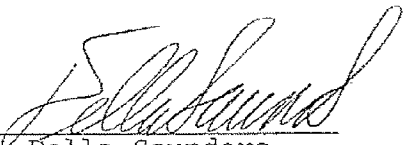
Cocaine, a derivative of Coca leaves, as defined in Chapter 94 C,  
Controlled Substance Act, Section 31, Class B.

The identification of the contents of the 22 plastic bags  
was determined by analysis of a representative sample of 5 plastic bags.  
The net weight of the 22 plastic bags was derived from the  
average weight of the sampled plastic bags.

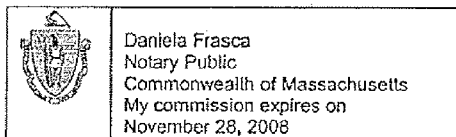
NET WEIGHT: 2.23 grams

DEFENDANT: BRIDGEMAN, KEVIN

  
ASSISTANT ANALYSTS Annie Dookhan

  
Della Saunders

On this date May 10, 2005 before me, the undersigned notary public, personally appeared the above signed subscriber(s), having proved to me through Department of Public Health documentation to be the person(s) whose name(s) is/are signed on this certificate and to be (an) assistant analyst(s) of the Department of Public Health, and who swore to me that the contents of this document are truthful and accurate to the best of his/her/their knowledge and belief.



  
Daniela Frasca, NOTARY PUBLIC  
My commission expires on November 28, 2008

Chapter 111, Section 13 of the General Laws

This certificate shall be sworn to before a Justice of the Peace or Notary Public, and the jurat shall contain a statement that the subscriber is the analyst or assistant analyst of the department. When properly executed, it shall be prima facie evidence of the composition, quality, and the net weight of the narcotic or other drug, poison, medicine, or chemical analyzed, and the court shall take judicial notice of the signature of the analyst or assistant analyst, and of the fact that he/she is such.



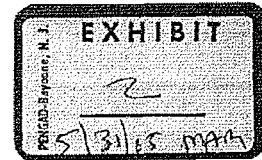
Mitt Romney  
Governor

Kerry Healey, Lt. Governor

Ronald Preston, Secretary

Paul J. Cote Jr., Commissioner

The Commonwealth of Massachusetts  
Executive Office of Health and Human Services  
Department of Public Health  
State Laboratory Institute  
305 South Street  
Boston, MA 02130  
617-983-6622



DATE RECEIVED: 04/14/2005

DATE ANALYZED: 05/05/2005

NO. 744161

I hereby certify that the substance  
Contained in 2 plastic bags

MARKED: 744161

Submitted by P.O. WM. DONNELLY of the BOSTON POLICE DEPT.

Has been examined with the following results:

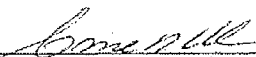
The substance was found to contain:

Cocaine, a derivative of Coca leaves, as defined in Chapter 94 C,  
Controlled Substance Act, Section 31, Class B.

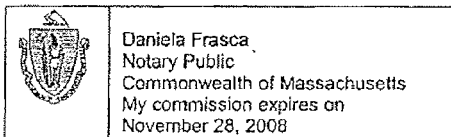
2 similar items were received and 1 was randomly selected  
and analyzed.


NET WEIGHT: 0.10 grams (analyzed item only)

DEFENDANT: BRIDGEMAN, KEVIN

  
ASSISTANT ANALYSTS Annie Dookhan Della Saunders

On this date May 10, 2005 before me, the undersigned notary public, personally appeared the above signed subscriber(s), having proved to me through Department of Public Health documentation to be the person(s) whose name(s) is/are signed on this certificate and to be (an) assistant analyst(s) of the Department of Public Health, and who swore to me that the contents of this document are truthful and accurate to the best of his/her/their knowledge and belief.

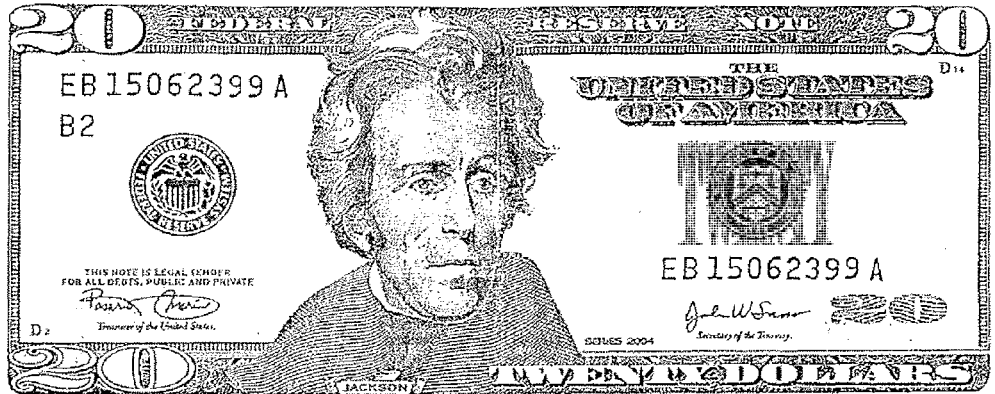
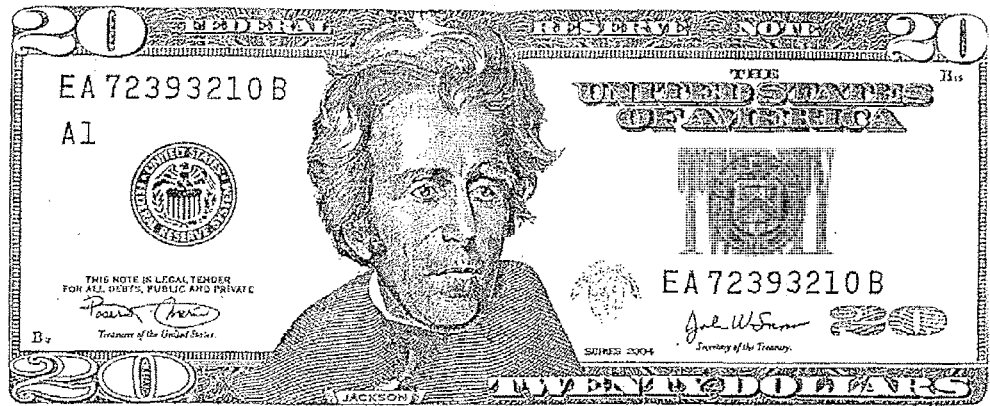


  
Daniela Frasca, NOTARY PUBLIC  
My commission expires on November 28, 2008

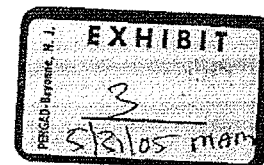
Chapter 111, Section 13 of the General Laws

This certificate shall be sworn to before a Justice of the Peace or Notary Public, and the jurat shall contain a statement that the subscriber is the analyst or assistant analyst of the department. When properly executed, it shall be prima facie evidence of the composition, quality, and the net weight of the narcotic or other drug, poison, medicine, or chemical analyzed, and the court shall take judicial notice of the signature of the analyst or assistant analyst, and of the fact that he/she is such.

U/C Buy  
(U/C P.O. WALSH)  
4/8/05  
CC# 050176474  
*[Signature]*  
RECOVERED



RECOVERED



P.02/02

617 343 5359

A-1 DRUG CONTROL UNIT

MAY-26-2005 17:38

COMMONWEALTH VS. CC # 050176474  
MEASUREMENT COMPLETED 5/26/05 BY DET. T. LYNCH OF THE A-1 DRUG CONTROL  
UNIT USING A DEPARTMENT ISSUED ROLATAPE MEASURE MASTER SYSTEMS ROLLER,  
MODEL # MM - 30. DISTANCE: 899' 4"

BOYLSTON ST.

MASSACHUSETTS TRANSPORTATION BUILDING

7-11

STUART ST.

11' 4"  
630'  
112'  
+ 146'  
899' 4"

PARKING LOT

DOMINIC'S PIZZA

DOMINIC'S  
LOUNGE

146'

UNIVERSITY  
HIGH SCHOOL

SIDEWALK  
11' 4"

630'

LAGRANGE ST.

S

T.

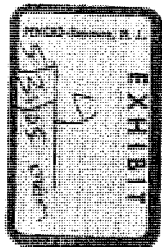
112'

WILBUR  
THEATRE

WANG  
CENTER

TOTAL P.02

R 364





**Boston Police**  
DEPARTMENT

# Seized Money Form (Drug Case Only)

Arresting Officer: PO. Clifton McHale  
I.D. 11646 Area/Unit: CW/DCU  
Amount Seized: \$62.00

Date of Arrest: 4/8/05  
C.C. Number: 050176474  
Court of Jurisdiction: BMC  
Booking Number: 05-0070210

Was money seized Pursuant to Ch. 94C-47? Yes ☒ No ☐

If answer above is "NO" State reason for seizure (safekeeping, evidence, etc.)

Defendant: Kevin Bridgeman Date of Birth: \_\_\_\_\_  
Address: \_\_\_\_\_

**Printed Names and Signatures of Officers Verifying Amount Seized at Booking:**

Arresting Officer: Clifton McHale I.D.#: 11904 Area/Unit: A-1/CW/DCU  
Superior Officer: James Fitzpatrick I.D.#: 9017 Area/Unit: A-1/CW/DCU

**Printed Names and Signatures of Officers Verifying Amount received at D.C.U. Headquarters:**

Financial Evidence Officer: \_\_\_\_\_ I.D.#: \_\_\_\_\_ Area/Unit: \_\_\_\_\_  
D.C.U. Superior Officer: \_\_\_\_\_ I.D.#: \_\_\_\_\_ Area/Unit: \_\_\_\_\_

The section below is to be used to record the possession sequence, location of the money, and the final disposition.

Location	Date In	Received By	Date out	Released To	Disposition/Status

Person Receiving on Final Disposition: \_\_\_\_\_  
F.M. Code: \_\_\_\_\_

(In Final Court Disposition where money is ordered forfeited to the Boston Police Department, it shall be delivered to the Chief, Bureau of Investigative Services.)

Remarks: (3) - \$20's / (2) - \$1's

Original - Clerk, B.A.S. or Financial Evidence Officer  
Copy - Financial evidence Officer/Copy - Filed at District/Unit/Copy - Arresting Officer



COMMONWEALTH OF MASSACHUSETTS

Sullivan

, ss.

SUPERIOR COURT

Indictment Nos.

2605 - 10357

COMMONWEALTH

vs.

Kevin Bridgeman

WAIVER OF DEFENDANT'S RIGHTS

I have discussed the above case(s) and my constitutional and other rights with my attorney. I understand that by entering my plea of guilty I will be giving up my right to a trial by a jury or to a trial before a judge; to confront, cross-examine, and compel the attendance of witnesses; to present evidence in my defense; to remain silent and refuse to be a witness against myself by asserting my privilege against self-incrimination; all with the assistance of my defense attorney, and to be presumed innocent until proven guilty beyond a reasonable doubt.

I have been advised by my attorney of the nature of the charge or charges to which I am entering my guilty plea. I also have been advised by my attorney of the nature and range of the possible sentence or sentences. I have been advised of the recommendation on sentencing to be made by the Prosecution.

My guilty plea is not the result of force, threats, assurance or promises. I have decided to plead guilty voluntarily and freely, rather than at the direction of or because of the recommendation of any other person.

I am satisfied that my defense attorney has represented me in an effective and in a competent manner. I have had enough time to speak with him or her regarding any possible defenses I may have to the above charges.

I am not now on or under the influence of any drug, medication, liquor or other intoxicant or depressant, which would impair my ability to fully understand the constitutional and statutory rights that I am waiving when I plead guilty.

RENUNCIA DEL ACUSADO A SUS DERECHOS

Yo, he discutido el(los) caso(s) arriba mencionado(s), así como mis derechos constitucionales y demás derechos con mi abogado. Entiendo que al someter una alegación de culpabilidad renuncio a mi derecho de que mi juicio se ventile ante un jurado o ante un juez; a carearme con los testigos; contra-interrogarlos y obtener la comparecencia compulsoria de los mismos; a presentar pruebas en mi propia defensa; a permanecer en silencio y rehusar testificar en mi contra, haciendo valer así mi derecho a no incriminarme; y de hacer todo esto con la asistencia de mi abogado y a gozar de la presunción de inocencia hasta que quede comprobada mi culpabilidad fuera de toda duda razonable.

Mi abogado(a) me ha informado de la naturaleza del cargo (o cargos) ante los cuales alego mi culpabilidad. Mi abogado me ha informado cuál (cuáles) es (son) el alcance de la posible sentencia o sentencias. También he sido informado de la recomendación de sentencia que hará la Fiscalía.

Mi declaración de culpabilidad no es resultado de fuerza, amenaza, garantía o promesas. He decidido declararme culpable libre y voluntariamente y no bajo la directiva o debido a la recomendación de alguna otra persona.

Estoy satisfecho(a) con que mi abogado(a) me ha representado de forma efectiva y capaz. He tenido tiempo suficiente para discutir con él(ella) cualesquiera defensas a las cuales yo hubiese podido recurrir en los cargos ya mencionados.

En este momento no estoy bajo la influencia de ninguna droga, medicamento, licor u otra sustancia intoxicante o depresiva, que me impida tener la capacidad de entender a cabalidad los derechos constitucionales y legales a los cuales renuncio mediante mi alegación de culpabilidad.

I have been advised by Judge Bell and I understand that if I am not a citizen of the United States, a conviction in the above case(s) could result in my deportation or exclusion from admission to the United States under federal immigration law and that I may be rejected as an applicant for citizenship in the United States.

I understand that I give up the right to any and all defenses, and objections which I could assert to the above case(s). I also understand that I give up my right to appeal the Court's denial of any motions to dismiss or to suppress or to the Court's acceptance of my plea of guilty to the above offenses and imposition of sentence upon me.

10/4/05

Date/Fecha

Tal y como me informase el/la Hon. Juez

entiendo que si no soy ciudadano de los Estados Unidos, el que se me condene del(de los) cargo(s) arriba mencionados podría resultar en mi deportación o en el que se me excluya de ser admitido(a) a los Estados Unidos bajo las leyes federales de inmigración o en el que se me denegue la naturalización conforme a las leyes de los Estados Unidos y que mi solicitud a la ciudadanía de los Estados Unidos puede ser rechazad(a) ciudadano en los Estados Unidos.

Entiendo que estoy renunciando al derecho de presentar cualquier defensa u objeciones que podría hacer valer a mi favor en el(los) caso(s) arriba mencionado(s). Entiendo además que renuncio a mi derecho a apelar la denegación de un Tribunal de cualesquiera mociones para desestimar o suprimir o el que un Tribunal acepte mi alegación de culpabilidad ante los cargos arriba mencionados y la imposición de una sentencia sobre mi persona.

Kevin Benjamin

Print Name of Defendant

Nombre del Acusado (letra de molde)

[Signature]

Signature of Defendant

Firma del Acusado

DEFENSE ATTORNEYS'S APPROVAL

I have discussed this case and the plea recommendation with my client in detail and have advised the defendant of all matters within the scope of Massachusetts Rules of Criminal Procedure Rule 12, including, the constitutional and other rights of the accused, the factual basis for and the nature of the offense or offenses to which the guilty plea will be entered, possible defenses, and the consequences of the guilty plea. After explaining the above to the defendant, I am satisfied that the defendant has understood my explanation. Moreover, I am satisfied that the defendant is not under the influence of any drug, medication, liquor or other intoxicant which can impair the defendant's ability to fully understand all the constitutional, statutory and/or other rights the defendant would waive when we discussed the consequences of a plea of guilty to the above indictment(s).

I represent to the Court that the Defendant has signed this document in my presence.

10/4/05

Date

[Signature]  
Attorney for Defendant

638248

BBO No.

Commonwealth of Massachusetts  
SUFFOLK SUPERIOR COURT  
Case Summary  
Criminal Docket

DTH-00019-7/13

Commonwealth v Bridgeman, Kevin

Details for Docket: SUCR2007-10959

Case Information

Docket Number:	SUCR2007-10959	Caption:	Commonwealth v Bridgeman, Kevin
Entry Date:	09/24/2007	Case Status:	Criminal 1 Ctrm 704
Status Date:	04/17/2008	Session:	Disposed (sentenced)
Lead Case:	NA	Deadline Status:	
Trial Deadline:		Jury Trial:	NO

Parties Involved

2 Parties Involved in Docket: SUCR2007-10959

Party Involved:		Role:	Defendant
Last Name:	Bridgeman	First Name:	Kevin
Address:		Address:	
City:		State:	MA
Zip Code:		Zip Ext:	
Telephone:			

Party Involved:		Role:	Plaintiff
Last Name:	Commonwealth	First Name:	
Address:		Address:	
City:		State:	
Zip Code:		Zip Ext:	
Telephone:			

Attorneys Involved

3 Attorneys Involved for Docket: SUCR2007-10959

Attorney

[http://www.ma-trialcourts.org/tcic/fc/?app\\_ctx=print\\_docket](http://www.ma-trialcourts.org/tcic/fc/?app_ctx=print_docket)

4/2/2013

**Involved:**

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**Firm Name:**

**First Name:** Paul H  
**Address:**  
**State:** MA  
**Zip Ext:**  
**Tel Ext:**  
**Representing:** Bridgeman, Kevin (Defendant)

**Attorney  
Involved:**

**Last Name:** O'Brien  
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**Attorney  
Involved:**

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**First Name:** Frank J  
**Address:** Suite 202  
**State:** MA  
**Zip Ext:**  
**Tel Ext:**  
**Representing:** Bridgeman, Kevin (Defendant)

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**Calendar Events**

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9 Calendar Events for Docket: SUCR2007-10959

No.	Event Date:	Event Time:	Calendar Event:	SES:	Event Status:
1	11/26/2007	09:30	Arraignment	CM	Event rescheduled by court order
2	12/06/2007	09:30	Arraignment	CM	Event continues over multiple days
3	01/28/2008	09:30	Conference: Pre-Trial	CM	Event held as scheduled
4	03/24/2008	09:30	Status: Filing deadline	CM	Event held as scheduled
5	04/07/2008	09:30	Conference: Lobby	1	Event not held--joint request
6	04/17/2008	09:30	Hearing: Plea Change	1	Event held as scheduled
7	04/28/2008	09:30	Hearing: Misc Matters	1	Event held as scheduled
8	06/05/2008	09:00	Conference: Final Pre-Trial	5	Event canceled not re-scheduled
9	06/12/2008	09:00	TRIAL: by jury	5	Event canceled not re-scheduled

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## Full Docket Entries

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92 Docket Entries for Docket: SUCR2007-10959

Entry Date:	Paper No:	Docket Entry:
09/24/2007	1	Indictment returned
09/24/2007	2	MOTION by Commonwealth for arrest warrant to issue; filed & allowed
09/24/2007	2	(Giles, J)
09/24/2007		Warrant on indictment issued
09/24/2007		Warrant was entered onto the Warrant Management System 9/24/2007
11/19/2007		Defendant not present, hearing continued until 11/26/2007 re:
11/19/2007		arraignment. Wilson, Mag - G. Brooks for P. O'Brien, ADA -
11/19/2007		ERD/Belanger - P. Carrigan, Attorney
11/26/2007		Defendant not present, hearing continued until 12/6/2007 re:
11/26/2007		arraignment.
11/26/2007	3	Commonwealth files notice of discovery.
11/26/2007	4	Commonwealth files statement of case.
11/26/2007	5	Commonwealth files list of potential witnesses.
11/26/2007		Continued to 12/6/2007 for hearing on arraignment. (Gary D Wilson,
11/26/2007		Magistrate) - J. Magrisso, ADA - ERD
12/06/2007		Defendant brought into court on warrant. Warrant Recalled.
12/06/2007		Appointment of Counsel Frank J Santisi, pursuant to Rule 53 -
12/06/2007		arraignment only.
12/06/2007		Appointment of Counsel Paul H Carrigan, pursuant to Rule 53 -
12/06/2007		case-in-chief.
12/06/2007		Deft arraigned before Court
12/06/2007		Deft waives reading of indictment
12/06/2007		RE Offense 1:Plea of not guilty
12/06/2007		RE Offense 2:Plea of not guilty
12/06/2007		RE Offense 3:Plea of not guilty
12/06/2007		Deft notified of right to request drug exam
12/06/2007		Bail set: \$100,000.00 Surety or \$10,000.00 Cash w/o/p. Bail warning
12/06/2007		read. Mittimus issued.
12/06/2007		Continued to 1/28/2008 for hearing on PTC (Gary D Wilson, Maglstrate)
12/06/2007		- C. Bartoloni for P. O'Brien, ADA - ERD - F. Santisi, Attorney
12/06/2007		Warrant canceled on the Warrant Management System 12/6/2007
01/28/2008		Defendant not present
01/28/2008	6	Pre-trial conference report filed
01/28/2008		Continued to 3/24/08 by agreement for the filing of motions
01/28/2008		Continued to 4/7/08 for hearing re: lobby conference by agreement.
01/28/2008		Continued to 6/5/08 for FPTH in 5th Session
01/28/2008		Continued to 6/12/08 for PTD in 5th Session by agreement.

01/28/2008		Case Tracking scheduling order (Gary D Wilson, Magistrate) mailed
01/28/2008		1/28/2008 - P. O'Brien, ADA - ERD - P. Carrigan, Atty
03/24/2008		Defendant not in court.
03/24/2008	7	Deft files: Motion for specific discovery
03/24/2008	8	Deft files: Motion for Bill of Particulars with an affidavit in
03/24/2008	8	support thereof
03/24/2008	9	Deft files: Motion for access to view monitoring device with
03/24/2008	9	affidavit in support thereof
03/24/2008	10	Deft files: Motion to suppress evidence illegally seized with an
03/24/2008	10	unsigned affidavit in support thereof
03/24/2008	11	Deft files: Motion for exculpatory evidence with an affidavit in
03/24/2008	11	support thereof
03/24/2008	12	Deft files: Motion for specific discovery, training materials, etc.
03/24/2008	12	with an affidavit in support thereof
03/24/2008	13	Deft files: Motion for access to view evidence with an affidavit in
03/24/2008	13	support thereof. Case has 4/7/08 hearing date for Lobby Conference
03/24/2008	13	(J. Session) Wilson, MAG - C. Bartoloni for P.O. Brien - ERD,
03/24/2008	13	Belanger, C.R. - P. Carrigan, Attorney
04/07/2008		Defendant not present, continued until 4/17/2008 by agreement for
04/07/2008		hearing re: plea. Ball J - P. O'Brien, ADA - ERD - P. Carrington,
04/07/2008		attorney
04/17/2008		Defendant brought into court. Defendant offers to plead guilty. After
04/17/2008		hearing, Court accepts defendant's offer. Defendant pleads guilty as
04/17/2008		charge to #001 and #003 2nd offense
04/17/2008	14	Waiver of defendants' rights filed
04/17/2008		RE Offense 1:Guilty plea
04/17/2008		RE Offense 3:Guilty plea
04/17/2008		Defendant warned per Chapter 278, Sec 29D of alien status
04/17/2008		Defendant warned per Chapter 22E Sec. 3 of DNA - Commonwealth moves
04/17/2008		for sentencing.
04/17/2008		Defendant sentenced as to #001 - MCI Cedar Junction not more than
04/17/2008		five (5) years not less than three (3) years concurrent with sentence
04/17/2008		now serving @ MCI Concord. Nunc Pro Tunc to 7/26/07.
04/17/2008		Defendant sentenced as to #003 - MCI Cedar Junction not more than
04/17/2008		five (5) years not less than three (3) years concurrent with #001 and
04/17/2008		concurrent with sentence now serving @ MCI concord. Nunc Pro tunc to
04/17/2008		7/26/07
04/17/2008		Victim witness fee of \$90.00 and drug fee waived by Court
04/17/2008		Notified of right of appeal under Rule 64
04/17/2008		Upon oral motion of the Commonwealth #002 is dismissed, defendant
04/17/2008		assenting thereto.
04/17/2008		RE Offense 2:Dismissed - Ball J - P. O'Brien, ADA - ERD - P.
04/17/2008		

		Carrigan, Attorney
04/23/2008		Defendant not present, continued until 4/28/2008 by agreement re:
04/23/2008		resentencing. Conolly J - P.O'Brien, ADA - ERD
04/28/2008		Defendant brought into court. Hearing re: amending of offenses #001
04/28/2008		and #003 - After hearing at request of Commonwealth offenses #001 and
04/28/2008		#003 each amended to read " pursuant to MGL ch 94C sec 32A(a)" and
04/28/2008		Second offense portion MGL Ch 94C sec 32A(b). Ball J - P. O'Brien,
04/28/2008		ADA - ERD - p. Carrigan, attorney
11/15/2012	15	Deft files Motion to be declared indigent
11/15/2012	16	Deft files Motion to be declared indigent
03/08/2013	17	Deft files Motion to be Declared Indigent
03/08/2013		MOTION (P#17) allowed. McIntyre, J (P. O'Brien, ADA and deft pro se
03/08/2013		notified)

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## Charges

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3 Charges for Docket: SUCR2007-10959

No.	Charge Description:	Indictment:	Status:
1	DRUG, DISTRIBUTE CLASS B, SUBSQ.OFF. c94C s32A(b)		Guilty plea
2	DRUG VIOLATION NEAR SCHOOL/PARK c94C s32J		Dismissed
3	DRUG, DISTRIBUTE CLASS B, SUBSQ.OFF. c94C s32A(b)		Guilty plea

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AUG.24.2007 7:51AM

DRUG ANALYSIS LAB

NO.549

P.2/3



The Commonwealth of Massachusetts  
Executive Office of Health and Human Services  
Department of Public Health  
State Laboratory Institute  
305 South Street, Jamaica Plain, MA 02130  
617-983-6622

DEVAL L. PATRICK  
GOVERNOR

TIMOTHY P. MURRAY  
LIEUTENANT GOVERNOR

JUDYANN BIGBY, MD  
SECRETARY

JOHN AUERSBACH  
COMMISSIONER

DATE RECEIVED: 07/31/2007

DATE ANALYZED: 08/14/2007

NO. 821288

I hereby certify that the substance  
Contained in 2 plastic bags

MARKED: 821288

Submitted by P.O. CRAIG SMALLS of the BOSTON POLICE DEPT.

Has been examined with the following results:


The substance was found to contain:


Cocaine, a derivative of Coca leaves, as defined in Chapter 94 C,  
Controlled Substance Act, Section 31, Class B.

2 items were received and 1 was selected and analyzed.

NET WEIGHT: 0.12 grams (analyzed item only)

DEFENDANT: BRIDGEMAN, KEVIN

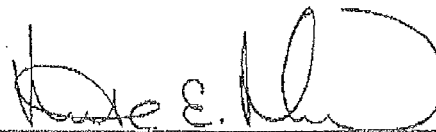
  
ASSISTANT ANALYSTS Daniel Renczkowski

  
Annie Dookhan

On this day, August 16, 2007, before me, the undersigned notary public, personally appeared the above signed subscriber(s), having proved to me through Department of Public Health documentation to be the person(s) whose name(s) is/are signed on this certificate and to be (an) assistant analyst(s) of the Department of Public Health, and who swore to me that the contents of this document are truthful and accurate to the best of his/her/their knowledge and belief.



Nicole E. Medina  
Notary Public  
Commonwealth of Massachusetts  
My commission expires on  
August 23, 2013



Nicole E. Medina, NOTARY PUBLIC  
My commission expires on August 23, 2013

Chapter 111, Section 13 of the General Laws

This certificate shall be sworn to before a Justice of the Peace or Notary Public, and the Jurat shall contain a statement that the subscriber is the analyst or assistant analyst of the department. When properly executed, it shall be prima facie evidence of the composition, quality, and the net weight of the narcotic or other drug, poison, medicine, or chemical analyzed, and the court shall take judicial notice of the signature of the analyst or assistant analyst, and of the fact that he/she is such.



AUG.24.2007 7:51AM

DRUG ANALYSIS LAB

NO.549 P.3/3



The Commonwealth of Massachusetts  
Executive Office of Health and Human Services  
Department of Public Health  
State Laboratory Institute  
305 South Street, Jamaica Plain, MA 02130  
617-983-6622

DEVAL L. PATRICK  
GOVERNOR

TIMOTHY P. MURRAY  
LIEUTENANT GOVERNOR

JUDYANN BIGBY, MD  
SECRETARY

JOHN AUERSBACH  
COMMISSIONER

DATE RECEIVED: 07/31/2007

DATE ANALYZED: 08/14/2007

NO. 821289

I hereby certify that the substance  
Contained in 10 plastic bags

MARKED: 821289

Submitted by P.O. CRAIG SMALLS of the BOSTON POLICE DEPT.

Has been examined with the following results:


The substance was found to contain:

Cocaine, a derivative of Coca leaves, as defined in Chapter 94 C,  
Controlled Substance Act, Section 31, Class B.

10 items were received and 1 was selected and analyzed.

NET WEIGHT: 0.15 grams (analyzed item only)

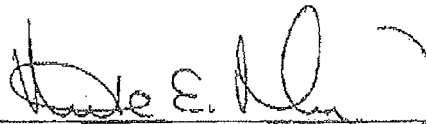
DEFENDANT: BRIDGEMAN, KEVIN

  
ASSISTANT ANALYSTS Daniel Renczkowski Annie Dookhan

On this day, August 16, 2007, before me, the undersigned notary public, personally appeared the above signed subscriber(s), having proved to me through Department of Public Health documentation to be the person(s) whose name(s) is/are signed on this certificate and to be (an) assistant analyst(s) of the Department of Public Health, and who swore to me that the contents of this document are truthful and accurate to the best of his/her/their knowledge and belief.



Nicole E. Medina  
Notary Public  
Commonwealth of Massachusetts  
My commission expires on  
August 23, 2013



Nicole E. Medina, NOTARY PUBLIC  
My commission expires on August 23, 2013

Chapter 111, Section 13 of the General Laws

This certificate shall be sworn to before a Justice of the Peace or Notary Public, and the jurat shall contain a statement that the subscriber is the analyst or assistant analyst of the department. When properly executed, it shall be prima facie evidence of the composition, quality, and the net weight of the narcotic or other drug, poison, medicine, or chemical analyzed, and the court shall take judicial notice of the signature of the analyst or assistant analyst, and of the fact that he/she is such.

 FILE 1

No. of Pages: 17

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

SUPERIOR COURT

SUFFOLK COUNTY

GRAND JURY

RÈ: KEVIN BRIDGEMAN

Presented By: PHILIP O'BRIEN, ESQ.

Assistant District Attorney

Also Present: LINDA POULOS, ESQ.

Assistant District Attorney

---

Monday, September 24, 2007

Boston, Massachusetts

KAREN CASSOLA NORMAN, PROFESSIONAL COURT REPORTER

\*\*\*\*\*COMPUTER AIDED TRANSCRIPTION\*\*\*\*\*

2

I-N-D-E-X

WITNESS

PAGE

Peter Chu

3, 14

GRAND JURY EXHIBITS

NUMBER

PAGE

1 Copy of Boston Police Department Buy Money

6

2 Copy of a Certificate of Analysis

11

3 Copy of a Certificate of Analysis

11

1 MR. O'BRIEN: Good morning, ladies and  
2 gentlemen. My name is Philip O'Brien. I'd like to  
3 begin an investigation into the facts and  
4 circumstances surrounding an alleged distribution of  
5 Class B in a park zone, possession with intent to  
6 distribute Class B in a park zone.

7 The Commonwealth calls Officer Peter Chu.

8  
9 PETER CHU, SWORN.

10  
11 Q (By Mr. O'Brien) Would you please introduce yourself  
12 to the Grand Jury.

13 A Hi. My name is Peter Chu and my last name is spelled  
14 C-H-U.

15 Q And what is your occupation?

16 A I'm a police officer for the City of Boston.

17 Q And how long have you been a Boston Police officer?

18 A Approximately thirteen years now.

19 Q And where are you currently assigned?

20 A Currently assigned to the Drug Control Unit.

21 Q In Area A-1?

22 A Correct.

23 Q And how long you been a Drug Control Unit officer?

24 A Approximately ten years.

1 Q And were you working on July 26th of 2007?

2 A Yes, I was.

3 Q If I may draw your attention to approximately 6:30 in

4 the evening. Were you working, on that day, at that

5 hour?

6 A Yes, I was. I was working in an undercover capacity.

7 My role was to attempt to purchase drugs in the

8 Boston Common area.

9 Q And what other officers were working with you?

10 A Sergeant Detective Dwan, who is my immediate

11 supervisor, Officer Ryle, Officer Mahoney, and we had

12 Officer Green and Bates, from the Anti-Crime Unit.

13 Q And where were you focusing your investigation on

14 July 26th, 2007?

15 A The Boston Commons.

16 Q And where, in particular, were you at the beginning

17 of this investigation?

18 A I was deployed in the area and I was hanging around

19 inside the Boston Common opposite the Loews Theatre.

20 Q Would you describe the Boston Common to the Grand

21 Jury.

22 A It's a public park. It's got a baseball field. I

23 believe it's one of -- considered one of the first

24 national parks. We've had a lot of complaints and a

1 lot of drug activity in that area. We've conducted  
2 numerous investigations in that area and arrested  
3 probably hundreds of individuals for selling crack  
4 cocaine in the area.

5 Q And is it maintained by the City of Boston?

6 A Yes, it is.

7 Q And in addition to the Boston Police, who else  
8 patrols there?

9 A You've got the park rangers, who are also in there,  
10 that patrol it and like he said -- like he said, it's  
11 maintained by the City of Boston Public Works keep it  
12 up.

13 Q Now, as you were inside the park, did you see other  
14 people going in and out of the park?

15 A Yes.

16 Q And what, in particular, would you tell the Grand  
17 Jury what you did?

18 A I walked up to a white male, unknown white male, had  
19 conversation with him. He was sitting on a bench. I  
20 informed him that I was interested in purchasing  
21 crack cocaine.

22 Q And now prior to your entry into the -- in the public  
23 garden, what did you have with you?

24 A I was provided with U.S. currency, Boston Police buy

1 money.

2 (Grand Jury Exhibit Number 1 marked; Copy  
3 of Boston Police Department Buy Money)

4 Q And I'm showing what's been marked as Grand Jury  
5 Exhibit Number 1 for September 24, 2007, which is --  
6 notes the CC number and undercover Officer Chin and  
7 the target of the investigation.

8 Is that a photocopy of the particular buy money  
9 that you had with you when you went into the public  
10 garden?

11 A Yes, sir.

12 Q And was this money later obtained from Kevin  
13 Bridgeman?

14 A Yes, it was recovered from him.

15 Q And did you have any other items with you?

16 A I was carrying a KEL set device, which is a  
17 monitoring device, where the other officers and  
18 surveillance officers could hear my conversation.

19 Q And any other items?

20 A I was carrying a homemade crack pipe.

21 Q And what was your purpose in carrying the homemade  
22 crack pipe?

23 A Because I've been -- I've made numerous undercover  
24 purchases, and many times they'll ask me if I have a

1 straight shooter, which is a homemade crack pipe, so  
2 I just learned from experience, so, I just carry it  
3 with me, because I get questioned a lot.

4 Q And will you tell the Grand Jury, when you first  
5 spoke to an individual as you entered the park, would  
6 you give the specifics of that conversation and what  
7 you did afterwards?

8 A I just informed the white male -- I had a short  
9 conversation with him, initially. I told him I was  
10 looking for crack cocaine. He told me to wait, wait  
11 for -- wait for somebody named Pork Chop and that he  
12 had the good stuff. At that point, we waited for a  
13 while. Another black male joined in on the  
14 conversation. He also expressed interest and we just  
15 all sat there for about ten minutes, just having  
16 conversation. And about approximately ten minutes  
17 later, I observed a black male later identified as  
18 Kevin Bridgeman.

19 Q And did you engage in conversation with Mr.  
20 Bridgeman?

21 A Not at first. No, we observed him. The white male  
22 yelled out to him. Yelled out, "Pork Chop". And at  
23 that point, Mr. Bridgeman approached us and the white  
24 male had informed Mr. Bridgeman that we were all



1           interested in purchasing crack cocaine, and during  
2           that conversation Mr. Bridgeman looked over at me.  
3           He says, "I don't know you." I then said, "I'm  
4           Chino. They know me." And the unknown white male  
5           and the unknown black male actually vouched for me.  
6       Q     Now, did you know the unknown black male or the  
7           unknown white male?  
8       A     No. Just from the ten minute conversation I had with  
9           them.  
10      Q     And what did Pork Chop respond after that response?  
11      A     He, at that point, asked me if I had a straight  
12           shooter, which is a crack pipe. I displayed that  
13           homemade crack pipe to him and at that point he was  
14           satisfied. Then he stated to all of us that he  
15           wasn't going to do it in the Boston Commons, because  
16           it was too hot, he didn't want to get arrested, and  
17           we were going to do this in the public gardens. So,  
18           at that point, we all proceeded to walk to the public  
19           gardens.  
20      Q     And is the public -- would you describe the public  
21           gardens to the Grand Jury?  
22      A     Yes. It's just another public park, that's  
23           maintained by the City of Boston and patrolled by  
24           Boston Police, also park rangers. There's a little

1           -- a little pond in there and I guess it's a public  
2           park, directly across the street from Boston Common.

3       Q     And so as you cross the street from the Boston Common  
4           to the public gardens, where did you go?

5       A     During the walk, we were joined in by an unknown  
6           black female and we all entered the public gardens.  
7           At that point, once we were inside, we all huddled  
8           around Mr. Bridgeman. He reached into his budge  
9           area, underneath in his underwear -- in his budge  
10          area and removed the plastic bag.

11       Q     I'm sorry, in his what area?

12       A     His budge area, right in his groin area.

13       Q     And what did he do?

14       A     He removed a plastic bag, containing several rocks of  
15          crack cocaine, tore it open, handed one to the  
16          unknown white male in exchange for currency and at  
17          that point, I said, "Give me two." He handed me two  
18          beige rocks, believed to be crack cocaine and I  
19          handed him the \$40.

20       Q     And that was the \$40 marked money that you had been  
21          provided by Sergeant Detective Dwan before you began  
22          this investigation; correct?

23       A     That's correct.

24       Q     And what happened after you gave him the money?

10

1       A     After I gave him the money, I just turned around and  
2             walked away from the group.  
3       Q     He gave you -- what did he give you?  
4       A     He gave me two bags of crack cocaine.  
5       Q     And how were they packaged?  
6       A     They were in a plastic bag.  
7       Q     And what did you do next?  
8       A     At that point, I walked away from the group, signaled  
9             to all the surveillance officers that the drug deal  
10            was completed and then the other officers moved in.  
11       Q     And that was -- you had to come out of the park;  
12             correct?  
13       A     Yes. I came out of the park, signaled to them.  
14       Q     And what happened after the other officers came in?  
15       A     They went into the public gardens, stopped Mr.  
16             Bridgeman. I informed the officers that Mr.  
17             Bridgeman was, in fact, the individual that sold me  
18             the drugs.  
19       Q     And was Mr. Bridgeman subsequently searched?  
20       A     Yes, he was.  
21       Q     And, again, the \$40 was found on him?  
22       A     Yes. Officer Ryle recovered \$40 from him, seized his  
23             cell phone and several latex gloves and additional  
24             money. I believe it was \$122 currency.

11

1 Q And were other drugs seized from Mr. Bridgeman?

2 A Yes. They recovered an additional ten bags of crack .  
3 cocaine.

4 Q And where was that recovered from?

5 A From his buttocks area.

6 Q And was the packaging in those for the second group  
7 of drugs that were seized from Mr. Bridgeman, was  
8 that consistent with the -- the two that you had been  
9 sold?

10 A Yes, similar in size and shape and the way it was  
11 packaged.

12 Q And what was done with the drugs that were seized,  
13 both the two that were served to you, as well as the  
14 other items that were seized from Mr. Bridgeman?

15 A They were eventually sent to the state lab and  
16 analyzed.

17 (Grand Jury Exhibit Number 2 marked; Copy  
18 of Certificate of Analysis)

19 (Grand Jury Exhibit Number 3 marked; Copy  
20 of Certificate of Analysis)

21 Q And I'm showing you what's been marked as Grand Jury  
22 Exhibit Number 2 and 3 for today's date, September  
23 24, 2007. Do you recognize those documents?

24 A Yes, I do.

1 Q And what do you recognize those documents to be?

2 A These are analyses forms from the state lab. And  
3 these were, the drugs that I purchased and the drugs  
4 that the officers recovered were, in fact, analyzed,  
5 tested and found to contain cocaine.

6 Q And in regards to the ten items that were in the bag  
7 received or obtained from Boston Police when Mr.  
8 Bridgeman was arrested, do you have information in  
9 regards to the results of the analysis for those  
10 drugs?

11 A Yes. The analysis form is marked number 821289.  
12 Those were the ten bags recovered and they were  
13 analyzed. One was analyzed and it shows that it  
14 contained cocaine.

15 Q They were positive for Class B, cocaine?

16 A Correct.

17 Q And were they in rock form?

18 A Yes, they were.

19 Q And the drugs that you were sold, again, referring to  
20 the Cert Number on Grand Jury Exhibit Number 2, what  
21 is the Cert Number?

22 A 821288.

23 Q And that was also analyzed and found positive for  
24 cocaine, which is a Class B substance?

1 A That's correct.

2 MR. O'BRIEN: Do any of the Grand Jurors  
3 have any questions of this witness?

4 Yes, sir?

5 JUROR: And this transaction that you do  
6 with them, have they ever asked you if you wanted to  
7 try it, you know, to, you know, like sometimes people  
8 test -- taste cocaine, sometimes they smoke a joint  
9 with them. Do they ask you to buy or declare his  
10 situation?

11 A Yes, I've been asked on numerous occasions and many  
12 times I'll say, "Yes, sure, I'll smoke it with you",  
13 whatever. And then once I give them the money, they  
14 forget about it. There were incidents where they  
15 want me to take a hit, then I'll walk away from them,  
16 but, yes.

17 MR. O'BRIEN: Any other questions?

18 JUROR: Does loose powder cocaine and crack  
19 cocaine carry different charges?

20 A No. It's both Class B substance, but they're just in  
21 a different form. Crack cocaine is ingested by --  
22 they smoke it. Powder cocaine is usually snorted and  
23 sometimes even injected. But actually crack cocaine  
24 is the highest, more intense, versus powder cocaine.

14

1 JUROR: Were you not afraid of your cover  
2 being blown?

3 A I've been doing this for ten years, now, so, yeah, my  
4 cover has blown in the past. But, yes, I'm always  
5 leery about it, yeah

6 MR. O'BRIEN: Any other questions?

7 JURORS: (No further questions.)

8 MR. O'BRIEN: Thank you, sir.

9 A Thank you.

10 (Witness Excused)

11 MR. O'BRIEN: Ladies and gentlemen, based on  
12 the evidence you've heard during the course of this  
13 investigation, the testimony you've received, I'd ask  
14 you to return a true bill against Kevin Bridgeman for  
15 the July 26, 2007 distribution of Class B and  
16 possession with intent to distribute Class B. I'd  
17 also ask you to -- I'm sorry, in a park.

18 (Vote)

19 MR. O'BRIEN: The Commonwealth recalls  
20 Officer Peter Chu.

21

22 PETER CHU, RECALLED.

23

24 Q (By Mr. O'Brien) Officer Chu, I understand that the

15

1 Grand Jury has returned a true bill against Kevin  
2 Bridgeman. Have you had an opportunity to review Mr.  
3 Bridgeman's biographical information?

4 A Yes, sir.

5 Q And do you have additional information to report to  
6 the Grand Jury?

7 A Yes. That he was also convicted of possession to  
8 distribute Class B.

9 Q And I'm sorry, does that information include that on  
10 Docket 2005-10357, you've had an opportunity also to  
11 review the certified copy of conviction, and that Mr.  
12 Bridgeman was convicted in the Suffolk Superior Court  
13 for distribution of Class B, on that docket?

14 A Correct.

15 MR. O'BRIEN: Do any of the Grand Jurors  
16 have any questions of this witness?

17 JURORS: (No questions.)

18 MR. O'BRIEN: Thank you, sir.

19 A Thank you.

20 (Witness Excused)

21 MR. O'BRIEN: Ladies and gentlemen, based on  
22 the testimony you've heard, I'd ask you to return a  
23 second and subsequent enhancement to the prior true  
24 bill that was previously before you.



16

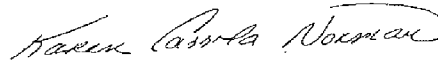
(Vote)

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C E R T I F I C A T E

I, KAREN CASSOLA NORMAN, a Court Reporter and  
Notary Public in and for the Commonwealth of  
Massachusetts, do hereby certify that the foregoing  
Record, Pages 1 to 16, inclusive, is a true and  
accurate transcription of my Voice Recording to the  
best of my knowledge, skill and ability.

IN WITNESS WHEREOF, I have hereunto set my hand  
and Notarial Seal this 16<sup>th</sup> day of November, 2007.



---

KAREN CASSOLA NORMAN,  
Notary Public

My Commission expires May 2, 2014.

*Suffolk 10989-001* Possession of Class B Controlled Substance with Intent to Distribute  
INDICTMENT C. 94C, §32A(c)

*Commonwealth of Massachusetts*

SUFFOLK, SS.

At the SUPERIOR COURT DEPARTMENT OF THE TRIAL COURT FOR CRIMINAL BUSINESS,

begun and holden at the CITY OF BOSTON, within and for the County of Suffolk, on the first Monday of September in

the year of our Lord two thousand and seven

THE JURORS for the COMMONWEALTH OF MASSACHUSETTS on their oath present that

**KEVIN BRIDGEMAN,**

on July 26, 2007, did unlawfully, knowingly and intentionally possess with intent to distribute a certain controlled substance, to wit: cocaine, a Class B controlled substance under the provisions of G.L. c. 94C, § 31.

INDICTMENT

Possession of Class B Controlled Substance with Intent to Distribute  
C. 94C, §32A(d)  
Second Offense

- 2 -

THE JURORS for the COMMONWEALTH OF MASSACHUSETTS on their oath present that

**KEVIN BRIDGEMAN,**

on October 4, 2005, prior to the commission of the offense heretofore described in this indictment was convicted in the Suffolk Superior Court of the offense of Distribution of Class B Controlled Substance, Docket # SUCR2005-10357, and this is therefore a second and subsequent such offense.

A TRUE BILL

  
Assistant District Attorney

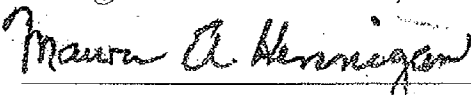
  
Foreman of the Grand Jury

Superior Court Department - Criminal Business

September, Sitting, 2007

SEP 24 2007

Returned into said Superior Court by the Grand Jurors and ordered to be filed.

  
Clerk Of Court

*Superior-10959*  
INDICTMENT

*-2007*  
Possession of Class B Controlled Substance with Intent to Distribute in a Park Zone  
C. 94C, §32J

*Commonwealth of Massachusetts*

SUFFOLK, SS.

At the SUPERIOR COURT DEPARTMENT OF THE TRIAL COURT FOR CRIMINAL BUSINESS,  
begun and holden at the CITY OF BOSTON, within and for the County of Suffolk, on the first Monday of September in the year  
of our Lord two thousand and seven.

THE JURORS for the COMMONWEALTH OF MASSACHUSETTS on their oath present that

**KEVIN BRIDGEMAN,**

on July 26, 2007, within one hundred feet of the real property comprising the Public Gardens School, a public park, did  
unlawfully, knowingly, and intentionally possess with intent to distribute a certain controlled substance, to wit: cocaine, a  
Class B controlled substance under the provisions of G.L. c. 94C, § 31.

A TRUE BILL

*Philip J. Allen*  
Assistant District Attorney

*Aussie Robinson*  
Foreman of the Grand Jury

*Superior Court Department - Criminal Business*

*September, Felling, 2007*

**SEP 24 2007**

*Returned into said Superior Court by the Grand Jurors and ordered to be filed.*

*Maura A. Hennigan*  
Clerk Of Court

INDICTMENT

Unlawful Distribution of Class B Controlled Substance  
C. 94C, §32A(c)

*Commonwealth of Massachusetts*

SUFFOLK, SS.

At the SUPERIOR COURT DEPARTMENT OF THE TRIAL COURT FOR CRIMINAL BUSINESS,  
begun and holden at the CITY OF BOSTON, within and for the County of Suffolk, on the first Monday of September in the year  
of our Lord two thousand.

THE JURORS for the COMMONWEALTH OF MASSACHUSETTS on their oath present that

**KEVIN BRIDGEMAN,**

on July 26, 2007, did unlawfully, knowingly and intentionally distribute to Peter Chu a certain controlled substance, to  
wit: cocaine, a Class B controlled substance under the provisions of G.L. c. 94C, § 31.

INDICTMENT

Unlawful Distribution of Class B Controlled Substance  
C. 94C, §32A(d)  
Second Offense

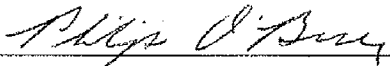
- 2 -


THE JURORS for the COMMONWEALTH OF MASSACHUSETTS on their oath present that

**KEVIN BRIDGEMAN,**

on October 4, 2005, prior to the commission of the offense heretofore described in this indictment was convicted in the Suffolk Superior Court of the offense of Distribution of Class B Controlled Substance, Docket # SUCR2005-10357, and this is therefore a second and subsequent such offense.

A TRUE BILL

  
Assistant District Attorney

  
Foreman of the Grand Jury

Superior Court Department - Criminal Business

September, Sitting, 2007

SEP 24 2007

Returned into said Superior Court by the Grand Jurors and ordered to be filed.

  
Clerk Of Court

3

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT DEPARTMENT  
INDICTMENT SUCR 2007-10959

COMMONWEALTH  
v.

KEVIN BRIDGEMAN

---

COMMONWEALTH'S NOTICE OF DISCOVERY

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Now comes the Commonwealth in the above-captioned matters and respectfully states that it has this date provided counsel for the defendant with the following discovery material:

- (1) Copy of the Commonwealth's Statement of the case.
- (2) Copy of the Boston Police Incident Report, cc #070411149.
- (3) Copy of the Booking Sheet.
- (4) Copy of the defendant's Board of Probation Record.
- (5) Copy of the Buy Money.
- (6) Copy of the Certificate of Analysis.
- (7) Copy of the Grand Jury Minutes for September 24, 2007 (17 pages).
- (8) Copy of the Commonwealth's Witness List.
- (9) Copy of the Defendant's Certified Copy of Conviction, SUCR2005-10357.

Respectfully Submitted,  
For the Commonwealth  
DANIEL F. CONLEY,  
DISTRICT ATTORNEY

By: *Philip B. O'Brien*  
Philip B. O'Brien  
Assistant District Attorney  
For the Suffolk District  
Boston, MA 02114  
(617) 619-4216

Dated: November 26, 2007

*Filed  
11-26-07*



4

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT DEPARTMENT  
INDICTMENT SUCR 2007-10959

COMMONWEALTH

v.

KEVIN BRIDGEMAN

---

COMMONWEALTH'S STATEMENT OF THE CASE

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On July 26, 2007 at 6:30 pm the Area A-1 DCU was operating in the Public Gardens. An undercover officer was directed to a man called "Pork Chop" inside the Park. Bridgeman distributed two rocks of crack cocaine to the undercover in exchange for \$40 in buy money. The defendant was stopped and arrested after the sale. He had the buy money in his right pocket with \$122 in U.S. currency in his other pockets. During a pat frisk officers felt a large bulge in Bridgeman's buttocks area. A large bag was retrieved from Bridgeman's pants containing ten individually wrapped rocks of crack cocaine. The defendant was convicted in Suffolk Superior Court on October 4, 2005 for possession with intent to distribute class B.

Respectfully Submitted,  
For the Commonwealth  
DANIEL F. CONLEY,  
DISTRICT ATTORNEY

By:



Philip E. O'Brien  
Assistant District Attorney  
For the Suffolk District  
Boston, MA 02114  
(617) 619-4216

Dated: November 23, 2007

*Filed  
11-26-07*

SUFFOLK, ss.                      COMMONWEALTH OF MASSACHUSETTS  
   SUPERIOR COURT DEPARTMENT  
   INDICTMENT SUCR 2007-10959

COMMONWEALTH  
v.

KEVIN BRIDGEMAN

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COMMONWEALTH'S LIST OF POTENTIAL WITNESSES


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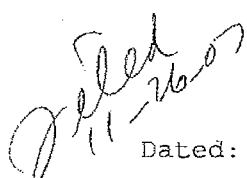
The Commonwealth's List of witnesses expected to testify at trial are:

1. Witness:        Sgt. Det. William Dwan,  
                      Boston Police Department, Area A-1.
2. Witness:        Officer Peter Chu  
                      Boston Police Department, Area A-1.
3. Witness:        Officer Steven Green  
                      Boston Police Department, Area A-1.
4. Witness:        Officer John Ryle  
                      Boston Police Department, Area A-1.
5. Witness:        Det. Tim Lynch  
                      Boston Police Department, Area A-1.
6. Witness:        Officer John Bates  
                      Boston Police Department, Area A-1.

Respectfully Submitted,  
For the Commonwealth  
DANIEL F. CONLEY,  
DISTRICT ATTORNEY

By:

  
Philip B. O'Brien  
Suffolk County Assistant  
District Attorney  
One Bulfinch Place  
Boston, MA 02114

  
Dated: 11/26/07

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the above Commonwealth's Notice of Discovery was served upon the attorneys of record for these matters, Attorney Paul Carrigan by HAND on November 26, 2007.

By:



Philip B. O'Brien  
B.B.O. 635781  
Assistant District Attorney  
For the Suffolk District  
Boston, MA 02114  
(617) 619-4216

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, s.s.

Superior Court Department  
Indictment No.(s) 07-10959

Commonwealth

v.

Kevin Bridgeman

PRE-TRIAL CONFERENCE REPORT

A pre-trial conference was held on \_\_\_\_\_ between the Assistant District Attorney and Counsel for the Defendant with the following results:

A. Procedure:

1. ☒ The Defendant is presently in custody at MEI Concord.  
\_\_\_\_\_ The Defendant is not presently in custody.
2. A writ of habeas corpus to MEI Concord will be necessary to bring the Defendant into Court.
3. The case \_\_\_\_\_ is likely ☒ is not likely to be disposed of without a trial. (Not binding)  
The case will be a ☒ jury trial \_\_\_\_\_ jury waived. (Not binding)
4. The proposed trial date is \_\_\_\_\_.
5. The probable length of the trial will be 2 days.
6. A NA language interpreter will be necessary.

B. Mandatory Discovery for the Defendant pursuant to Rule 14(a)(1)(A)(1)-(1x):

1. The Commonwealth has disclosed, or has permitted the defense to discover, inspect and copy, the following items and information which are relevant to the case and are in the possession, custody or control of the prosecutor, persons under the prosecutor's direction and control, or persons who have participated in investigating or evaluating the case and either regularly report to the prosecutor's office or have done so in the case:

\_\_\_\_\_ written or recorded statements, and the substance or any oral statements, made by the defendant or co-defendant;

\_\_\_\_\_ grand jury minutes, and the written or recorded statements of person(s) who testified before the grand jury;

\_\_\_\_\_ any facts of an exculpatory nature;

\_\_\_\_\_ the names, address, and dates of birth of the Commonwealth's prospective witnesses other than law enforcement witnesses;

*Filed 1/28/08*

BRIDGEMAN

- 2 -

- \_\_\_\_\_ the names and business addresses of prospective law enforcement witnesses;
- \_\_\_\_\_ the identity, current curriculum vitae and list of publications of each intended expert witness and all reports prepared by the expert witness(es) that pertain to the case;
- \_\_\_\_\_ all material and relevant police reports, photographs, tangible objects and all intended exhibits, reports of physical examinations of any person or of scientific tests or experiments, and statements of persons the Commonwealth intends to call as witnesses;
- \_\_\_\_\_ a summary of identification procedures, and all statements made in the presence of or by an identifying witness that are relevant to the issue of identify or to the fairness or accuracy of of the identification procedures;
- \_\_\_\_\_ disclosure of all promises, rewards or inducements made to witnesses the Commonwealth intends to present at the trial;
- \_\_\_\_\_ a statement disclosing whether wire or oral communications of the defendant have been intercepted; whether wire or oral communications relevant or material to the case have been intercepted; and whether any percipient witness is government informant whose identity and/or location is claimed to be privileged from disclosure and service or relevant documents pursuant to G.L. c. 272, sec. 99(O); and
- ✓ \_\_\_\_\_ Other \_\_\_\_\_
2. \_\_\_\_\_ Notice of the existence, location, and identity of any persons possessing items described under Rule 14(a)(1)(A)(i)-(ix), not within the possession, custody or control of the prosecution, persons under its discretion and control, or persons who have participated in investigating or evaluating the case and either regularly report to the prosecutor's office or have done so in the case (Rule 14(a)(1)(D));
3. \_\_\_\_\_ The Commonwealth agrees to provide the Defendant on or about \_\_\_\_\_ date with the following discovery materials which have not yet been provided:

**C. Reciprocal discovery for the Prosecution pursuant to Rule 14(a)(1)(B).**

1. The Defendant shall disclose to the prosecution and permit the Commonwealth to discover, inspect, and copy by \_\_\_\_\_ (date) any material and relevant evidence to discoverable under (a)(1)(A)(vi), (vii) and (ix) which the defendant intends to use at trial, including the names, addresses, dates of birth, and statements of those persons whom the defendant intends to use as witnesses at trial,
2. \_\_\_\_\_ Other: \_\_\_\_\_

**D. Notice of Alibi pursuant to Rule 14(b)(1).**

1. The Defendant agrees to serve upon the prosecutor a written notice, signed by the defendant, of his or her intention to offer a defense of alibi on or before \_\_\_\_\_ (Date). The notice by the defendant shall state the specific place or places at which the defendant claims to have been at the time of the alleged offense and the names and addresses of the witnesses upon whom the defense intends to rely to establish the alibi.

Bridgeman

2. Within seven days of the service of the defendant's notice of alibi, the Commonwealth agrees to serve upon the defendant a written notice stating the names and addresses of witnesses upon whom the prosecutor intends to rely to establish the defendant's presence at the scene of the alleged offense any other witnesses to be relied on to rebut the testimony of any of the defendant's alibi witnesses.

E. Notice of Defense pursuant to Rule 14(b)(2) and Rule 14(b)(3).

1. The Defendant agrees to notify the Commonwealth on or before 5/15/08 of his/her intention to:

- A. Rely upon the *defense of lack of criminal responsibility* because of mental disease or defect at the time of the alleged crime by providing the Commonwealth with a written notice including the names and addresses of expert witnesses whom the defendant expects to call and whether those expert witnesses intend to rely in whole or in part on statements of the defendant as to his or her mental condition at the time of the alleged crime or criminal responsibility for the alleged crime.
- B. Rely upon a *defense based upon a license, claim of authority or ownership, or exemption*, by notifying the prosecutor in writing of such intention.

F. Other agreements reached by the parties:

None

G. Matters upon which the parties could not agree and which are to be subject of pre-trial motions include:

To Be Determined  
Motions in Limine

H. Stipulations of fact:

None

Philip A. Quinn  
Assistant District Attorney

Paul H. Canino  
Attorney for the Defendant

1/28/08  
Date

Defendant  
(if required by Mass. R. Crim. P. 11(a)(2)(A))

7

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT  
NO: 07-10959

COMMONWEALTH )  
 )  
V. )  
 )  
KEVIN BRIDGEMAN )

MOTION FOR SPECIFIC DISCOVERY

Now comes the Defendant in the above captioned matter and hereby moves this Honorable Court to order the Commonwealth to provide the following specific discovery:

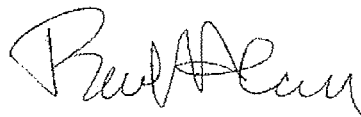
1. All verbal, non-verbal, written or recorded statements of the Defendant within the possession, custody or control of the prosecutor or persons under his or her direction and control, including but not limited to:
  - a. Duplicates of any cassette tapes or video tapes of the Defendant's statements;
  - b. Any non-verbal statements of the Defendant during any questioning; and,
  - c. Any statements of the Defendant not yet reduced to writing;
2. Any and all photographs or recordings of any kind taken or used in the above captioned matter, including, but not limited to, photographs or recordings taken to memorialize the drug operation, a scene or condition. Photographs or recordings are to be produced by way of copies, duplicates if available, and access to view the originals;
3. Any and all documents provided to or used by each and every officer involved in the undercover drug operation in the Boston Common / Public Gardens area on the day in question regarding said operation, in preparation for said operation, and/or resulting from said operation;
4. Any and all documents relating to the alleged "buy money" or proof thereof, including documentation of said money prior to the use of said money by the undercover officer in the above captioned matter;
5. Information regarding, including any and all documentation of, the specific role and exact location of each and every member of the undercover drug operation from one hour prior to the undercover officer's contact with Mr. Bridgeman until one hour after his arrest;
6. Documentation of the statement contained in the Incident Report regarding "hundreds of drug arrests in this area in the past" and of the statement of Officer Chu before the Grand Jury regarding arresting "hundreds of individuals for selling crack cocaine in the area".

In support hereof, the Defendant states that said specific discovery is relevant to the above captioned matter and necessary for a complete and adequate representation of the

3/24/08  
Filed

Defendant. Wherefore, the Defendant in the above captioned matter respectfully requests that this Honorable Court exercise its discretion and order the Commonwealth to provide said specific discovery.

Respectfully Submitted,  
Kevin Bridgeman,  
By his Attorney,



Paul H. Carrigan, Esq.  
15 Court Square, Suite 730  
Boston, Massachusetts 02108  
Telephone No: (617) 367-9554  
BBO No: 075780

CERTIFICATE OF SERVICE

I, Paul H. Carrigan, hereby certify that I delivered a true copy of this motion to the Assistant District Attorney by hand / first class mail, postage prepaid on this 24<sup>th</sup> day of March, 2008.



8

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT  
NO: 07-10959

COMMONWEALTH )  
 )  
V. )  
 )  
KEVIN BRIDGEMAN )

MOTION FOR BILL OF PARTICULARS

Now comes Kevin Bridgeman, the Defendant in the above captioned matter, and moves that this Honorable Court order the Commonwealth to furnish him with the following particulars:

1. The time(s) of the alleged crime;
2. *The place(s) of the alleged crime, including but not limited to the specific locations in both the Boston Common and in the Public Gardens that each and every element of the undercover drug operation involving the Defendant occurred, including a description with sufficient detail so that defense counsel or his agent may locate and observe said locations;*
3. The manner in which the alleged crime was allegedly committed; and,
4. The means employed to commit the alleged offense.

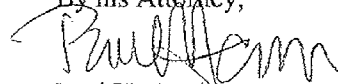
In support hereof, the defense states that this information is necessary to protect Mr. Bridgeman's rights to exculpatory evidence, to present a defense, to the effective assistance of counsel, to confront the witnesses against him, and to a fair trial as guaranteed by Articles Twelve and Fourteen of the Declaration of Rights of the Massachusetts Constitution and the Fifth, Sixth, and Fourteenth Amendments of the United States Constitution. In further support hereof, the defense cites Chapter 277, section 38 of the Massachusetts General Laws, *Commonwealth v. Williams*, 23 Mass. App. Ct. 716, 720-21, (1987), *Commonwealth v. Robinson*, 24 Mass. App. Ct. 680 (1987), *Commonwealth v. Monitaino*, 409 Mass. 500-12 (1991), quoting *United States v. Cruikshank*, 92 U.S. 542, 558 (1875), ("A crime is made up of acts and intent; and these must be set forth in the indictment with reasonable particularity of time, place, and circumstances").

WHEREFORE, Kevin Bridgeman, the Defendant in the above captioned matter, respectfully requests that this Motion for Bill of Particulars be allowed for the foregoing reasons.

Respectfully Submitted,

Kevin Bridgeman,

By his Attorney,



Paul H. Carrigan, Esq.

15 Court Sq., Suite 730

Boston, Massachusetts 02108

Telephone No: (617) 367-9554

BBO No: 075780

3/24/08  
Filed

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT  
NO: 07-10959

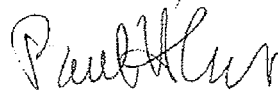
COMMONWEALTH )  
 )  
V. )  
 )  
KEVIN BRIDGEMAN )

AFFIDAVIT IN SUPPORT OF  
MOTION FOR BILL OF PARTICULARS

I, Paul H. Carrigan, hereby states to the best of my information and belief:

1. I am an attorney duly appointed by the Court to represent Kevin Bridgeman in the above captioned matter;
2. The crime alleged in the above captioned matter was part of an undercover drug operation in the Boston Common. The undercover police officer's alleged interactions with Mr. Bridgeman began at some location in the Boston Common, continued through the Common, across a street, into the Public Gardens, and allegedly concluded at some location within the Public Gardens. I require specific information regarding the exact location of each and every element of the time the undercover officer allegedly spent with Mr. Bridgeman in order to fully and adequately defend him in this matter;
3. This information is necessary to protect Mr. Bridgeman's rights to exculpatory evidence, to present a defense, to the effective assistance of counsel, to confront the witnesses against him, and to a fair trial as guaranteed by Articles Twelve and Fourteen of the Declaration of Rights of the Massachusetts Constitution and the Fifth, Sixth, and Fourteenth Amendments of the United States Constitution; and,
4. It is in the interests of fairness and justice that this motion be allowed.

Signed under the penalties of perjury this 24th day of March, 2008.

  
Paul H. Carrigan, Esq.

CERTIFICATE OF SERVICE

I, \_\_\_\_\_ hereby certify that I forwarded a true copy of this motion and affidavit to the Assistant District Attorney at Suffolk Superior Court by hand / first class mail, postage prepaid on this 24th day of March, 2008.



9

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT

NO: 07-10959

COMMONWEALTH )  
 )  
V. )  
 )  
KEVIN BRIDGEMAN )

MOTION FOR ACCESS TO VIEW MONITORING DEVICE

Now comes Kevin Bridgeman, the Defendant in the above captioned matter, and moves this Honorable Court to order access for defense counsel or his agent to the KEL set monitoring device used by the undercover officers during the drug operation which resulted in the arrest of Mr. Bridgeman.

In support hereof, the defense states counsel must have access to the monitoring device used by the undercover police officers in this matter in order to adequately and completely evaluate and prepare its case. Mr. Bridgeman's rights to exculpatory evidence, to confront the witnesses against him, to effective assistance of counsel, and to a fair trial as guaranteed by Article Twelve of the Declaration of Rights of the Massachusetts Constitution and the Sixth Amendment of the United States Constitution require that this motion be allowed. It is further in the interests of fairness and justice that this motion be allowed.

WHEREFORE, Kevin Bridgeman, the Defendant in the above captioned matter, respectfully requests that this Honorable Court order access the KEL set monitoring device used by the undercover officers during the drug operation which resulted in the arrest of Mr. Bridgeman.

Respectfully Submitted,  
Kevin Bridgeman,  
By his Attorney,

*Paul H. Carrigan*

Paul H. Carrigan, Esq.  
15 Court Sq., Suite 730  
Boston, Massachusetts 02108  
Telephone No: (617) 367-9554  
BBO No: 075780

3/24/08  
Filed

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT  
NO: 07-10959

COMMONWEALTH )  
 )  
V. )  
 )  
KEVIN BRIDGEMAN )

AFFIDAVIT IN SUPPORT OF  
MOTION FOR ACCESS TO MONITORING DEVICE

I, Paul H. Carrigan, hereby state to the best of my information and belief:

1. I am an attorney duly appointed by the Court to represent Kevin Bridgeman in the above captioned matter;
2. Myself or my agent must have access to the monitoring device used by the undercover police officers in this matter in order to adequately and completely evaluate and prepare this case;
3. Mr. Bridgeman's rights to exculpatory evidence, to confront the witnesses against him, to effective assistance of counsel, and to a fair trial as guaranteed by Article Twelve of the Declaration of Rights of the Massachusetts Constitution and the Sixth Amendment of the United States Constitution require that this motion be allowed; and,
4. It is further in the interests of fairness and justice that this motion be allowed.

Signed under the penalties of perjury this 24<sup>th</sup> day of March, 2008.

Paul H. Carrigan, Esq.

CERTIFICATE OF SERVICE

I, Paul H. Carrigan, hereby certify that I forwarded a true copy of this motion and affidavit to the Assistant District Attorney by hand / first class mail, postage prepaid on this 24<sup>th</sup> day of March, 2008.

Paul H. Carrigan

10

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT

NO: 07-10959

COMMONWEALTH )  
 )  
V. )  
 )  
KEVIN BRIDGEMAN )

MOTION TO SUPPRESS EVIDENCE ILLEGALLY SEIZED

Now comes Kevin Bridgeman, the Defendant in the above captioned matter, and complains that he was the victim of an unlawful search and seizure by police officers for the City of Boston and moves that this Honorable Court order that any and all property seized after the illegal search of his person and seizure, including but not limited to a plastic bag containing 10 individually wrapped plastic bags of beige rocks believed to be crack cocaine, be suppressed as evidence.

Said unlawful arrest and unlawful search occurred on July 26, 2007 at approximately 6:30 pm in the Public Gardens of the City of Boston. The search of Mr. Bridgeman's person and seizure was illegal because:

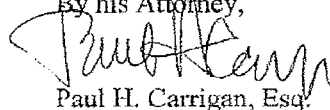
1. There was no probable cause for the search of his person;
2. The search of the defendant was an illegal search of his person;
3. There were no exigent circumstances justifying the search of his person;
4. The defendant did not consent to the search;
5. The scope of the search exceeded a constitutional Terry frisk; and,
6. There was no warrant justifying the search.

WHEREFORE, Kevin Bridgeman, the Defendant in the above captioned matter, says that the aforementioned evidence was obtained in violation of his right to be secure from unreasonable searches and seizures as guaranteed by Article Fourteen of the Declaration of Rights of the Massachusetts Constitution and the Fourth Amendment of the United States Constitution.

Respectfully Submitted,

Kevin Bridgeman,

By his Attorney,



Paul H. Carrigan, Esq.

15 Court Sq., Suite 730

Boston, Massachusetts 02108

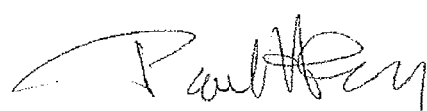
Telephone No: (617) 367-9554

BBO No: 075780

CERTIFICATE OF SERVICE

I, Paul H. Carrigan, hereby certify that I forwarded a true copy of this motion and affidavit to the Assistant District Attorney at Suffolk Superior Court by hand / first class mail, postage prepaid on this 24<sup>th</sup> day of March, 2008.

3/24/08  
Filed



COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT

NO: 07-10959

COMMONWEALTH )  
 )  
V. )  
 )  
KEVIN BRIDGEMAN )

AFFIDAVIT IN SUPPORT OF  
MOTION TO SUPPRESS EVIDENCE ILLEGALLY SEIZED

I, Kevin Bridgeman, hereby state to the best of my information and belief:

1. I am the Defendant in the above captioned matter;
2. On July 26, 2007 at about 6:30 pm in the Public Gardens in the City of Boston I was subjected to an illegal search of his person and seizure;
3. There was no probable cause for the search of his person;
4. The search of was an illegal search of his person;
5. There were no exigent circumstances justifying the search of his person;
6. I did not consent to the search;
7. The scope of the search exceeded a constitutional Terry frisk;
8. There was no warrant justifying the search;
9. The actions of the Boston police officers violated my right to be secure from unreasonable searches and seizures as guaranteed by Article Fourteen of the Declaration of Rights of the Massachusetts Constitution and the Fourth Amendment of the United States Constitution; and,
10. It is in the interests of fairness and justice that this motion be granted.

Signed under the penalties of perjury, this                      day of                      , 2008.

\_\_\_\_\_  
Kevin Bridgeman

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT  
NO: 0710959

COMMONWEALTH )  
 )  
V. )  
 )  
KEVIN BRIDGEMAN )

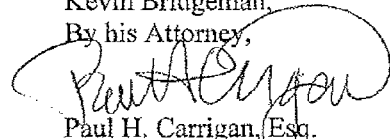
MOTION FOR EXCULPATORY EVIDENCE

Now comes Kevin Bridgeman, the Defendant in the above captioned matter, and respectfully requests that this Honorable Court order the Commonwealth or its agents, servants, or employees to provide the defense with any and all exculpatory evidence in its possession, custody and control.

In support hereof, the Defendant states that the defense must receive any and all exculpatory evidence in order to adequately and completely prepare and present a defense in the above captioned matter. The defense must be given exculpatory evidence in order to protect Mr. Bridgeman's rights to exculpatory evidence, to present a defense, to confront the witnesses against him, to the effective assistance of counsel, and to a fair trial as guaranteed by Article Twelve of the Declaration of Rights of the Massachusetts Constitution and the Sixth Amendment of the United States Constitution. It is further in the interests of fairness and justice that this motion be allowed.

WHEREFORE, Kevin Bridgeman, the Defendant in the above captioned matter, respectfully requests that this Honorable Court order the Commonwealth, its agents, servants, or employees to provide the defense with any and all exculpatory evidence in its possession, custody, and control.

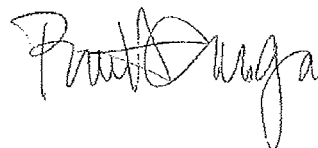
Respectfully Submitted,  
Kevin Bridgeman,  
By his Attorney,



Paul H. Carrigan, Esq.  
15 Court Sq., Suite 730  
Boston, Massachusetts 02108  
Telephone No: (617) 367-9554  
BBO No: 075780

CERTIFICATE OF SERVICE

I, Paul H. Carrigan, hereby certify that I forwarded a true copy of this motion and affidavit to the Assistant District Attorney by hand / first class mail, postage prepaid on this 24th day of March, 2008.



3/24/08  
Filed

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT

NO: 07-10959


COMMONWEALTH )  
 )  
V. )  
 )  
KEVIN BRIDGEMAN )

AFFIDAVIT IN SUPPORT OF  
MOTION FOR EXCULPATORY EVIDENCE

I, Paul H. Carrigan, hereby state to the best of my information and belief:

1. I am an Attorney duly appointed by the Court to represent Kevin Bridgeman in the above captioned matter;
2. According to discovery, at least three persons are charged with the offenses complained of in the above captioned matter. Evidence tending to show that the other perpetrators and/or not Mr. Bridgeman committed the alleged offenses would be exculpatory in nature and required by the defense. Any other information tending to be exculpatory in nature is also required by the defense in order to evaluate and prepare their case;
3. This information is necessary to protect Mr. Bridgeman's rights to exculpatory evidence, to present a defense, to confront the witnesses against him, to the effective assistance of counsel, and to a fair trial as guaranteed by Article Twelve of the Declaration of Rights of the Massachusetts Constitution and the Sixth Amendment of the United States Constitution; and,
4. It is further in the interests of fairness and justice that this information be provided to the defense.

Signed under the penalties of perjury this 24<sup>th</sup> day of March, 2008.

  
Paul H. Carrigan



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COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT  
NO: 07-10959

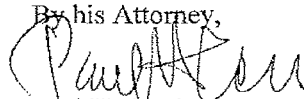
COMMONWEALTH )  
 )  
V. )  
 )  
KEVIN BRIDGEMAN )

MOTION FOR SPECIFIC DISCOVERY  
(Training Materials, Etc.)

Now comes Kevin Bridgeman, the Defendant in the above captioned matter, and hereby moves this Honorable Court order the Commonwealth to provide the following specific discovery:

1. A copy of any and all rules, protocols, standards, guidelines, directives and/or policies of the Boston Police Department that are recommended, required, offered and/or available to the police officers of the Boston Police Department with regards to drug dealers, drug dealing, undercover drug operations, the difference between the dealing and the personal use of drugs, and/or facts that show that a suspect is a drug dealer;
2. A copy of any and all documents, books, texts, training manuals, and/or similar materials that are recommended, required, offered and/or available to the police officers involved in the above captioned matter with regards to drug dealers, drug dealing, undercover drug operations, the difference between the dealing and the personal use of drugs, and/or facts that show that a suspect is a drug dealer; and,
3. A copy of any and all certificates, certifications, and/or proofs of completion of training programs by the officers involved in the above captioned matter of programs regarding drug dealers, drug dealing, undercover drug operations, the difference between the dealing and the personal use of drugs, and/or facts that show that a suspect is a drug dealer;

Respectfully Submitted,  
Kevin Bridgeman,  
By his Attorney,




Paul H. Carrigan, Esq.  
15 Court Sq., Suite 730  
Boston, Massachusetts 02108  
Telephone No: (617) 367-9554  
BBO No: 075780

CERTIFICATE OF SERVICE

I, Paul H. Carrigan, hereby certify that I delivered a true copy of this motion and affidavit to the Assistant District Attorney by hand / first class mail, postage prepaid on this 24th day of March, 2008.

3/24/08  
Filed



COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT

NO: 07-10959

COMMONWEALTH )

V. )

KEVIN BRIDGEMAN )

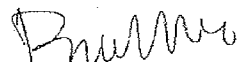
AFFIDAVIT IN SUPPORT OF  
MOTION FOR SPECIFIC DISCOVERY

(Training Materials, Etc.)

I, Paul H. Carrigan, hereby state to the best of my information and belief:

1. I am an attorney duly appointed by the court to represent the Defendant in the above captioned matter;
2. Any and all documents regarding drug dealing that were somehow used by the police officers involved in the above captioned matter directly affect their conduct and the determination made by said police officers that the Defendant was dealing drugs;
3. Any such requested documents are necessary for the defense to review in preparation for cross-examination and in building their defense. Said documents may also be exculpatory in nature;
4. Such documents are necessary to protect the Defendant's rights to exculpatory evidence, to present a defense, to the effective assistance of counsel, to confront the witnesses against him, and to a fair trial as guaranteed by Article Twelve of the Declaration of Rights of the Massachusetts Constitution and the Sixth and Fourteenth Amendments of the United States Constitution; and,
5. If is further in the interests of fairness and justice that this Honorable Court exercise its discretion and allow this motion.

Signed under the penalties of perjury this 24<sup>th</sup> day of May, 2008.

  
Paul H. Carrigan, Esq.

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COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT  
NO: 07-10959

COMMONWEALTH )  
 )  
V. )  
 )  
KEVIN BRIDGEMAN )

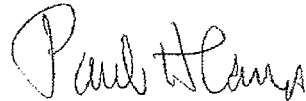
MOTION FOR ACCESS TO VIEW EVIDENCE

Now comes Kevin Bridgeman, the Defendant in the above captioned matter, and moves this Honorable Court to order access for defense counsel or his agent to any and all physical evidence in the possession of the Commonwealth or its agents, servants and employees.

In support hereof, the defense states counsel must have access to any and all physical evidence to adequately and completely evaluate and prepare its case. Mr. Bridgeman's rights to exculpatory evidence, to confront the witnesses against him, to effective assistance of counsel, and to a fair trial as guaranteed by Article Twelve of the Declaration of Rights of the Massachusetts Constitution and the Sixth Amendment of the United States Constitution require that this motion be allowed. It is further in the interests of fairness and justice that this motion be allowed.

WHEREFORE, Kevin Bridgeman, the Defendant in the above captioned matter, respectfully requests that this Honorable Court order access to any and all physical evidence in the possession of the Commonwealth or its agents, servants and employees.

Respectfully Submitted,  
Kevin Bridgeman,  
By his Attorney,



Paul H. Carrigan, Esq.  
15 Court Sq., Suite 730  
Boston, Massachusetts 02108  
Telephone No: (617) 367-9554  
BBO No: 075780

3/24/08  
Filed

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT  
NO: 07-10959

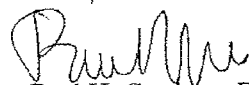
COMMONWEALTH )  
 )  
V. )  
 )  
KEVIN BRIDGEMAN )

AFFIDAVIT IN SUPPORT OF  
MOTION FOR ACCESS TO EVIDENCE

I, Paul H. Carrigan, hereby state to the best of my information and belief:

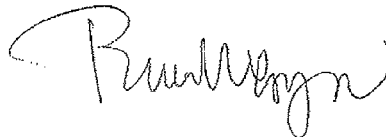
1. I am an attorney duly appointed by the Court to represent Kevin Bridgeman in the above captioned matter;
2. Myself or my agent must have access to any and all physical evidence in the possession of the Commonwealth, its agents, servants or employees to adequately and completely evaluate and prepare this case;
3. Mr. Bridgeman's rights to exculpatory evidence, to confront the witnesses against him, to effective assistance of counsel, and to a fair trial as guaranteed by Article Twelve of the Declaration of Rights of the Massachusetts Constitution and the Sixth Amendment of the United States Constitution require that this motion be allowed; and,
4. It is further in the interests of fairness and justice that this motion be allowed.

Signed under the penalties of perjury this 24<sup>th</sup> day of March, 2008.

  
Paul H. Carrigan, Esq.

CERTIFICATE OF SERVICE

I, Paul H. Carrigan, hereby certify that I forwarded a true copy of this motion and affidavit to the Assistant District Attorney by hand / first class mail, postage prepaid on this 24<sup>th</sup> day of March, 2008.



COMMONWEALTH OF MASSACHUSETTS

Suffolk

ss.

SUPERIOR COURT

Indictment Nos.

07CR 10959

COMMONWEALTH

vs.

KEVIN BRIDGEMAN

WAIVER OF DEFENDANT'S RIGHTS

I have discussed the above case(s) and my constitutional and other rights with my attorney. I understand that by entering my plea of guilty I will be giving up my right to a trial by a jury or to a trial before a judge; to confront, cross-examine, and compel the attendance of witnesses; to present evidence in my defense; to remain silent and refuse to be a witness against myself by asserting my privilege against self-incrimination; all with the assistance of my defense attorney; and to be presumed innocent until proven guilty beyond a reasonable doubt.

I have been advised by my attorney of the nature of the charge or charges to which I am entering my guilty plea. I also have been advised by my attorney of the nature and range of the possible sentence or sentences. I have been advised of the recommendation on sentencing to be made by the Prosecution.

My guilty plea is not the result of force, threats, assurance or promises. I have decided to plead guilty voluntarily and freely, rather than at the direction of or because of the recommendation of any other person.

I am satisfied that my defense attorney has represented me in an effective and in a competent manner. I have had enough time to speak with him or her regarding any possible defenses I may have to the above charges.

I am not now on or under the influence of any drug, medication, liquor or other intoxicant or depressant, which would impair my ability to fully understand the constitutional and statutory rights that I am waiving when I plead guilty.

RENUNCIA DEL ACUSADO A SUS DERECHOS

Yo, he discutido el(los) caso(s) arriba mencionado(s), así como mis derechos constitucionales y demás derechos con mi abogado. Entiendo que al someter una alegación de culpabilidad renuncio a mi derecho de que mi juicio se ventile ante un jurado o ante un juez; a carearme con los testigos; contra-interrogarlos y obtener la comparecencia compulsoria de los mismos; a presentar pruebas en mi propia defensa; a permanecer en silencio y rehusar testificar en mi contra, haciendo valer así mi derecho a no incriminarme; y de hacer todo esto con la asistencia de mi abogado y a gozar de la presunción de inocencia hasta que quede comprobada mi culpabilidad fuera de toda duda razonable.

Mi abogado(a) me ha informado de la naturaleza del cargo (o cargos) ante los cuales alego mi culpabilidad. Mi abogado me ha informado cuál (cuáles) es (son) el alcance de la posible sentencia o sentencias. También he sido informado de la recomendación de sentencia que hará la Fiscalía.

Mi declaración de culpabilidad no es resultado de fuerza, amenaza, garantía o promesas. He decidido declararme culpable libre y voluntariamente y no bajo la directiva o debido a la recomendación de alguna otra persona.

Estoy satisfecho(a) con que mi abogado(a) me ha representado de forma efectiva y capaz. He tenido tiempo suficiente para discutir con él(ella) cualesquiera defensas a las cuales yo hubiese podido recurrir en los cargos ya mencionados.

En este momento no estoy bajo la influencia de ninguna droga, medicamento, licor u otra sustancia intoxicante o depresiva, que me impida tener la capacidad de entender a cabalidad los derechos constitucionales y legales a los cuales renuncio mediante mi alegación de culpabilidad.

And 4/17/08

I have been advised by Judge Ball and I understand that if I am not a citizen of the United States, a conviction in the above case(s) could result in my deportation or exclusion from admission to the United States under federal immigration law and that I may be rejected as an applicant for citizenship in the United States.

I understand that I give up the right to any and all defenses, and objections, which I could assert to the above case(s). I also understand that I give up my right to appeal the Court's denial of any motions to dismiss or to suppress or to the Court's acceptance of my plea of guilty to the above offenses and imposition of sentence upon me.

4/17/08  
Date/Fecha

DEFENSE ATTORNEYS'S APPROVAL

I have discussed this case and the plea recommendation with my client in detail and have advised the defendant of all matters within the scope of Massachusetts Rules of Criminal Procedure Rule 12, including: the constitutional and other rights of the accused; the factual basis for and the nature of the offense or offenses to which the guilty plea will be entered; possible defenses; and the consequences of the guilty plea. After explaining the above to the defendant, I am satisfied that the defendant has understood my explanation. Moreover, I am satisfied that the defendant is not under the influence of any drug, medication, liquor or other intoxicant which can impair the defendant's ability to fully understand all the constitutional, statutory and/or other rights the defendant would waive when we discussed the consequences of a plea of guilty to the above indictment(s).

I represent to the Court that the Defendant has signed this document in my presence.

4/17/08  
Date

Paul H. Camargo  
Attorney for Defendant

075780  
BBO No.

Tal y como me informase el/la Hon. Juez

entiendo que si no soy ciudadano de los Estados Unidos, el que se me condene del(de los) cargo(s) arriba mencionados podría resultar en mi deportación o en el que se me excluya de ser admitido(a) a los Estados Unidos bajo las leyes federales de inmigración o en el que se me denegue la naturalización conforme a las leyes de los Estados Unidos y que mi solicitud a la ciudadanía de los Estados Unidos puede ser rechazada(a) ciudadano en los Estados Unidos.

Entiendo que estoy renunciando al derecho de presentar cualquier defensa u objeciones que podría hacer valer a mi favor en el(los) caso(s) arriba mencionado(s). Entiendo además que renuncio a mi derecho a apelar la denegación de un Tribunal de cualesquiera mociones para desestimar o suprimir o el que un Tribunal acepte mi alegación de culpabilidad ante los cargos arriba mencionados y la imposición de una sentencia sobre mi persona.

Kevin Bridgeman  
Print Name of Defendant  
Nombre del Acusado (letra de molde)

X Kevin Bridgeman  
Signature of Defendant  
Firma del Acusado

11/12/2012

[Date]

Clerk of Court – Criminal Business

SUFFOLK SUPERIOR [name of court]

3 PEMBERTON SQUARE [street address]

BOSTON, MA 02108

[City]

[State]

[Zip code]

RE: Commonwealth v. KEVIN BRIDGEMAN [print name of defendant]

Docket No(s). 0710959, 0510357 [print docket number or numbers]

Dear Sir/Madam:

Please find enclosed for filing the Defendant's Motion to Be Declared Indigent, with Affidavit of Indigency.

Please bring this motion to the attention of the court for action. After the court acts, please forward a copy of the motion to:

Attorney: Carol Beck  
44 Bromfield Street  
Boston, MA 02108

Thank you for your attention to this matter.

Yours Truly,

Kevin Bridgeman

[Sign your name]

KEVIN BRIDGEMAN, pro se

Phone number: \_\_\_\_\_

[print or type your name]

[print or type your mailing address]

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COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.  
[County]

SUFFOLK SUPERIOR COURT  
[name of court]

DOCKET NO. 0710959, 0510357

COMMONWEALTH

v.  
KEVIN BRIDGEMAN  
[name of defendant]

*Allaved*  
*Francis M. DeLoe*  
3-8-2013

DEFENDANT'S MOTION TO BE DECLARED INDIGENT

Now comes the defendant, pro se, in the above-entitled matter and moves this Honorable Court, pursuant to M.G.L. c.211D and Supreme Judicial Court Rule 3:10 to declare the defendant indigent.

As reasons for the foregoing request, the defendant states:

1. The defendant is now indigent, without funds to retain an attorney to pursue post-conviction remedies. Although not incarcerated, the defendant is unable to seek post-conviction relief without a determination of indigency.
2. A party's indigency status may be reviewed at any time if information regarding a change in financial circumstances becomes available to a probation officer or other appropriate court employee, through the court's verification system, or from some other source, including the party. Supreme Judicial Court Rule 3:10, Section 7.
3. It appears likely that drug testing in my case was compromised by the involvement of Hinton Laboratory Chemist Annie Dookhan, either as an identified testing chemist, or as a result of other serious misconduct. Ms. Dookhan has been accused by law enforcement officials of intentionally contaminating drug evidence to ensure positive tests, inflating drug sample weights, falsifying drug analysis findings, inaccurately recalibrating instruments, and fraudulently altering chain of custody



documents during a time period relevant to this case. As a consequence of the Attorney General's investigation, two other laboratory supervisors have been suspended, and the drug laboratory in Jamaica Plain has been completely closed down.

4. The defendant has been informed by CPCS that it will screen his case for a possible post-conviction motion if his indigency is determined by the court.

In support of this motion, the defendant has attached an Affidavit of Indigency.

Respectfully submitted,

Date: 11-12-12

Kevin Bridgen

[sign name here]

KEVIN Bridgen

pro se

[print name]

\_\_\_\_\_  
[mailing address]  
\_\_\_\_\_  
\_\_\_\_\_

Commonwealth of Massachusetts

## AFFIDAVIT OF INDIGENCY

AND REQUEST FOR WAIVER, SUBSTITUTION

OR STATE PAYMENT OF FEES & COSTS

(Note: If you are currently confined in a prison or jail and are not seeking immediate release under G.L. c. 248 §1, but you are suing correctional staff and wish to request court payment of "normal" fees (for initial filing and service), do not use this form. Obtain separate forms from the clerk.)

SUFFOLK SUPERIOR

Court

Case Name and Number (if known)

Name of applicant KEVIN BRIDGEMAN

Address

(Street and number)

(City or town)

(State and Zip)

**SECTION 1:** Under the provisions of General Laws, Chapter 261, Sections 27A-27G, I swear (or affirm) as follows:

**I AM INDIGENT** in that (check only one):

- ☒ (A) I receive public assistance under Transitional Aid to Families with Dependent Children (TAFDC), Emergency Aid to Elderly, Disabled or Children (EAEDC), Supplemental Security Income (SSI), Medicaid (MassHealth) or Massachusetts Veterans Benefits Programs; (circle form of public assistance received); or
- ☐ (B) My income, less taxes deducted from my pay, is \$ \_\_\_\_\_ per week/month/year (circle period that applies), for a household of \_\_\_\_\_ persons, consisting of myself and \_\_\_\_\_ dependents; which income is at or below the court system's poverty level; (Note: The court system's poverty levels for households of various sizes must be posted in this courthouse. If you cannot find it, ask the clerk. The court system's poverty level is updated each year.) (List any other available household income for the circled period on this line: \_\_\_\_\_) or
- ☐ (C) I am unable to pay the fees and costs of this proceeding, or I am unable to do so without depriving myself or my dependents of the necessities of life, including food, shelter and clothing.

IF YOU CHECKED (C), YOU MUST ALSO COMPLETE THE SUPPLEMENT TO THE AFFIDAVIT OF INDIGENCY.

**SECTION 2:** (Note: In completing this form, please be as specific as possible as to fees and costs known at the time of filing this request. A supplementary request may be filed at a later time, if necessary.)

I request that the following **NORMAL FEES AND COSTS** be waived (not charged) by the court, or paid by the state, or that the court order that a document, service or object be substituted at no cost (or a lower cost, paid for by the state): (Check all that apply and, in any "\$ \_\_\_\_\_" blank, indicate your best guess as to the cost, if known.)

- ☒ Filing fee and any surcharge. \$ 275
- ☒ Filing fee and any surcharge for appeal. \$ 275
- ☒ Fees or costs for serving court summons, witness subpoenas or other court papers. \$ 250

- ☐ Other fees or costs of \$ \_\_\_\_\_ for (specify): \_\_\_\_\_
- \_\_\_\_\_
- ☐ Substitution (specify): \_\_\_\_\_
- \_\_\_\_\_

**SECTION 3:** I request that the following **EXTRA FEES AND COSTS** either be waived (not charged), substituted or paid for by the state:

- ☐ Cost, \$ \_\_\_\_\_, of expert services for testing, examination, testimony or other assistance  
(specify): \_\_\_\_\_
- ☐ Cost, \$ \_\_\_\_\_, of taking and/or transcribing a deposition of (specify name of person): \_\_\_\_\_
- \_\_\_\_\_
- ☐ Cassette copies of tape recording of trial or other proceeding, needed to prepare appeal for applicant **not** represented by Committee for Public Counsel Services (CPCS-public defender).
- ☐ Appeal bond
- ☐ Cost, \$ \_\_\_\_\_, of preparing written transcript of trial or other proceeding
- ☐ Other fees and costs, \$ \_\_\_\_\_, for (specify) \_\_\_\_\_
- \_\_\_\_\_
- ☐ Substitution (specify) : \_\_\_\_\_
- \_\_\_\_\_

Date signed	Signed under the penalties of perjury
11-12-12	x <i>Mervin Budenz</i>
By order of the Supreme Judicial Court, all information in this affidavit is <b>CONFIDENTIAL</b> . Except by special order of a court, it shall not be disclosed to anyone other than authorized court personnel, the applicant, applicant's counsel or anyone authorized in writing by the applicant.	
This form prescribed by the Chief Justice of the SJC pursuant to G.L. c. 261, § 27B. Promulgated March , 2003	

# **PETITIONER YASIR CREACH**

BOSTON MUNICIPAL COURT DEPARTMENT  
FOR CRIMINAL BUSINESS

NAME: Yasin Crecan

DOCKET # 0201CR142

OFFENSE: Trespassing

APR 20 2005

Defendant in Custody

APR 20 2005

WARRANT TO Arrest

WITNESS

Fredman

APR 20 2005

APR

Abu

Grisson

Default taken  
of no see

FORFEITURE OF BAIL WAIVED BY COURT  
COLLOQUY HELD  
ALIEN WARNING GIVEN

Count 1

FOUND GUILTY

WARRANT TO Arrest

30 Days

Concurrent with 0201CR2586 Deemed  
Served

THE COURT ORDERS THAT THE DEFENDANT  
IS DEEMED TO HAVE SERVED 60 DAYS  
CONFINEMENT PRIOR TO THIS SENTENCE.

Count 2

FOUND GUILTY

WARRANT TO Arrest

1 year

Concurrent with 0201CR2586

R.M.V. NOTIFIED

All Fees Waived

M. M. M. M. M.

Flaherty

BOSTON MUNICIPAL COURT DEPARTMENT  
FOR CRIMINAL BUSINESS

NAME:

Yasir Greach

DOCKET #

GS 192

OFFENSE:

Trespass  
Possession of Class A

MAR 23 2005

ATTORNEY

Fallon

APPEAR

9948

1006-

ADA

RECEIVED

18 PTC 7/14/00 Cariffia

APPEAR

11 PTH 4/19

\$ 250. cash to April 14

Rem 18

Judge Quebr

March 24 2005 Received from Suffolk Superior Court  
a Notice in Order of Detention for Service of Bail  
the detention was denied without prejudice and

the judge was denied a page 238 of book  
11 1/2 2005 RAR

APR 14 2005

SKB

Defendant's 1/1/01

ATTORNEY

Fallon

WAC 250

ADA Eisenstadt

PO Loran

DEFENDANT

Defendant ordered Contention

Warrant Notice Issued

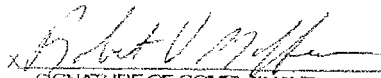
WAC 250 Warrant Management System Def. and

For te

THB

Warrant returned Warrant Management System

<b>APPLICATION FOR COMPLAINT</b>		<b>NUMBER</b>		Trial Court of Massachusetts Boston Municipal Court Department Boston Municipal Court Criminal Division, 11th Floor room 1105 90 Dorchester Street Boston, MA 02109	
<input checked="" type="checkbox"/> <b>ARREST</b>		<input type="checkbox"/> <b>HEARING</b>		<input type="checkbox"/> <b>SUMMONS</b>	
The within named complainant requests that a complaint issue against the within named defendant, charging said defendant with the offense(s) listed below.					
<b>DATE OF APPLICATION</b> 01/07/2005		<b>DATE OF OFFENSE</b> 01/07/2005		<b>PLACE OF OFFENSE</b> 61 Beach St	
<b>NAME, ADDRESS AND ZIP CODE OF COMPLAINANT</b>  MAFFEO, ROBERT / 06659				<b>NO.</b>	
<b>NAME, ADDRESS AND ZIP CODE OF DEFENDANT</b>  CREACH, YASIR <i>K. Turner 1/14/05</i>				<b>OFFENSE</b>	
				1 TRESPASS c286 s120 286 120	
				2 DRUG, POSSESS CLASS B c94C s34 094C034 C	
				3	
				4	
IF ADDITIONAL OFFENSES CHECK HERE AND ATTACH					
<b>DEFENDANT IDENTIFICATION INFORMATION - Complete data below if known.</b>					
<b>C.C. #</b> 050011770	<b>DATE OF BIRTH</b>	<b>SEX</b> M	<b>RACE</b> W	<b>HEIGHT</b> 5' 11"	<b>WEIGHT</b> 210 lbs
				<b>EYES</b> HAZ	<b>HAIR</b> BRO
<b>COURT USE ONLY</b>	A hearing upon this complaint application will be held at the Boston Municipal Court, Rm. 1105 on			<b>DATE OF HEARING</b> At	<b>TIME OF HEARING</b>
					<b>COURT USE ONLY</b>
<b>CASE PARTICULARS - BE SPECIFIC</b>					
<b>No.</b>	<b>NAME OF VICTIM</b> Owner of property, person assaulted, etc.	<b>DESCRIPTION OF PROPERTY</b> Goods stolen, what destroyed, etc.		<b>VALUE OF PROPERTY</b> Over or under \$250.	
1	COMM. OF MASS.,	The posted alley beside 61 Beach Street, Boston			
2	COMM. OF MASS.,	Two (2) Pieces of a substance		Believed to be "Crack" Cocaine	
3					
4					
<b>OTHER REMARKS:</b> ABOUT 19:45 MEMBERS OF THE A-1 DRUG CONTROL UNIT WERE CONDUCTING A DRUG INVESTIGATION IN THE CHINATOWN AREA. THIS AREA IS KNOWN TO THE OFFICERS FOR EXTENSIVE DRUG ACTIVITY. WHILE OFFICERS CHU, PIRRELLO AND WILLIAMSON WHO WERE WORKING IN AN UNDERCOVER CAPACITY WERE MAKING OBSERVATIONS OF THE ACTIVITY ON BEACH ST. OFFICERS OBSERVED A HISPANIC MALE LATER IDENTIFIED AS YASIR CREACH STANDING AT THE CORNER OF BEACH ST AND HUDSON ST. HE APPEARED AS THOUGH HE WAS LOOKING FOR SOMEONE AS HE PEERED UP AND DOWN BEACH ST. SEVERAL MINUTES LATER A BLACK MALE LATER IDENTIFIED AS DAVID JOHNSON WALKED TO BEACH ST AND HUDSON ST. JOHNSON AND CREACH ENGAGED IN A BRIEF CONVERSATION. THEY THEN WALKED TO THE MOUTH OF AN ALLEY NEXT TO 61 BEACH ST AND CONTINUED THEIR CONVERSATION. MOMENTS LATER JOHNSON OPENED THE GATE TO THE ALLEY AND THEY BOTH ENTERED THE ALLEY. OFFICERS OBSERVED A SIGN WHICH WAS CLEARLY DISPLAYED "NO TRESPASSING POLICE TAKE NOTICE." AT THIS POINT OFFICERS					
IF PROCESS IS ORDERED, THIS APPLICATION MUST BE PRESENTED AT ONCE TO PLEADING CLERK AT ROOM 1105.					
<b>NAMES OF WITNESSES</b>		<b>Resog. to S.C.</b>	<b>Give place of business or employment, if in Boston, otherwise, residence</b>		<b>ST. NO.</b>
SGT. DET. MAFFEO, ROBERT			Sudbury St., A-1 Drug Control Unit, Boston, MA, 02114		40
P.O. CHU, PETER			A-1 D.C.U., MA <i>Jan 10 2005</i>		
P.O. WILLIAMSON, CARLTON			A-1 D.C.U., MA <i>Mark J. Williamson</i>		
State if defendant is arrested: Yes		Date of Arrest: 01/07/2005 <i>Yasir Creach</i>			
FOR ADDITIONAL REMARKS OR WITNESSES-USE REVERSE OF ORIGINAL AND CHECK HERE <input checked="" type="checkbox"/>					

<b>APPLICATION FOR COMPLAINT</b>		NUMBER		Trial Court of Massachusetts Boston Municipal Court Department	
<input checked="" type="checkbox"/> <b>ARREST</b> <input type="checkbox"/> <b>HEARING</b> <input type="checkbox"/> <b>SUMMONS</b> <input type="checkbox"/> <b>WARRANT</b>		<small>The within named complainant requests that a complaint issue against the within named defendant, charging said defendant with the offense(s) listed below.</small>		Boston Municipal Court Criminal Division, 11th Floor room 1105 90 Devonshire Street Boston, MA 02109	
DATE OF APPLICATION 01/07/2005	DATE OF OFFENSE 01/07/2005	PLACE OF OFFENSE 61 Beach St			
NAME, ADDRESS AND ZIP CODE OF COMPLAINANT  MAFFEO, ROBERT / 00659					
NAME, ADDRESS AND ZIP CODE OF DEFENDANT  CREACH, YASIR					
<b>OTHER REMARKS:</b> CHU, PIRRELLO AND WILLIAMSON HAD DECIDED TO ENTER THE ALLEY TO CONDUCT AN INQUIRY. AS THE OFFICERS APPROACHED THEM, THEY OBSERVED CREACH SMOKING FROM A GLASS TUBE. OFFICERS ANNOUNCED THEIR OFFICE AND OFFICER CHU REMOVED THE GLASS TUBE FROM CREACH'S HAND WHICH WAS MODIFIED INTO A CRACK PIPE. OFFICER CHU RECOVERED 1 PIECE OF BEIGE ROCK BELIEVED TO BE CRACK COCAINE FROM THE PIPE. SIMULTANEOUSLY OFFICER WILLIAMSON OBSERVED JOHNSON DISCARD AN ITEM TO THE GROUND. OFFICER WILLIAMSON RECOVERED THAT ITEM WHICH WAS 1 P/B OF BEIGE ROCK BELIEVED TO BE CRACK COCAINE. CREACH AND JOHNSON WERE PLACED UNDER ARREST. JOHNSON INFORMED OFFICER WILLIAMSON HE HAD ONE MORE IN HIS LEFT POCKET. OFFICER WILLIAMSON RECOVERED 1 MORE P/B OF BEIGE ROCK BELIEVED TO BE CRACK COCAINE. THE EVIDENCE WAS TURNED OVER TO SGT DET MAFFEO AND THE DRUGS WERE LOGGED INTO BOOK #46 PAGE #43.					
 SIGNATURE OF COMPLAINANT					
IF PROCESS IS ORDERED, THIS APPLICATION MUST BE PRESENTED AT ONCE TO PLEADING CLERK AT ROOM 1105.					
NAMES OF WITNESSES		Recog. to S.C.	Give place of business or employment, if in Boston, otherwise, residence		ST. NO.
P.O. PIRRELLO, RONALD			A-1 D.C.U., MA		
DET. LYNCH, TIMOTHY			A-1 D.C.U., MA		
FOR ADDITIONAL REMARKS OR WITNESSES-USE REVERSE OF ORIGINAL AND CHECK HERE					





**Boston Police Department  
Arrest Booking Form**

Report Date: 01/07/2005 21:09  
Booking Status: Verified  
Printed By: Lynch, Timothy E

District: 01 UCR Code: 1849

Court of Appearance: Boston Municipal Court

Master Name: CREACH, Yasir

Age: 23

Location of Arrest: 61 Beach St. Boston

Booking Name: CREACH, Yasir

Alias: CREACH, Yasir Santiago

Address:



**Charges:**

Possession of Class B Drugs (94C-34)  
Trespassing (286-120)

Booking #: 05-00058-10		Incident #: 050011770		CR Number: 003685-89	
Booking Date: 01/07/2005 20:41		Arrest Date: 01/07/2005 19:45		RA Number:	
Sex: Male		Height: 5'11		Occupation: Unemployed	
Race: White Hispanic		Weight: 210 lbs		Employer/School:	
Date of Birth:		Build: Medium		Emp/School Addr: MA US	
Place of Birth:		Eyes Color: Hazel		Social Sec. Number:	
Marital Status: Single		Hair Color: Dk Brown		Operators License:	
Mother's Name:		Complexion: Medium		State: MA	
Father's Name:					
Phone Used: Yes		Scars/Marks/Tattoos:			
Examined at Hospital: No		Clothing Desc: red sweatshirt, jeans, blue shirt			
Breathalyzer Used: No					
Examined by EMS: No					
Arresting Officer: BPD 06659		Moffet, Robert		Cell Number: 2	
Booking Officer: BPD 08646		Parolin, Barbara E.		Partner's #: 10605	
Informed of Rights: BPD 08646		Parolin, Barbara E.		Unit #: V955	
Placed in Cell By: BPD 08646		Parolin, Barbara E.		Trans Unit #: A202F	
Searched By: BPD 10605		Williamson, Carlton A			
Cautions:		Booking Comments:		Visible Injuries: none	
Person Notified:		JUVENILE INFORMATION			
Address:		Relationship:		Phone:	
Notified By:		Juv. Prob. Officer:		Notified Date/Time:	
Bail Set By:		I Selected the Bail Comm.			
Bailed By:					
Amount:					
BOP Check:		BPD 08646 Parolin, Barbara E.			
Suicide Check:					
BOP Warrant:					
BOP Court:					

<b>CRIMINAL COMPLAINT</b>	DOCKET NUMBER 0501CR000142	Trial Court of Massachusetts Boston Municipal Court Department
DEFENDANT NAME YASIR CREACH	PAGE 1	

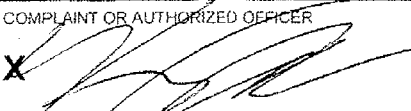

DEFENDANT NAME AND ADDRESS YASIR CREACH				TO ANY JUSTICE OR CLERK-MAGISTRATE OF THE BOSTON MUNICIPAL COURT DEPARTMENT  The within named and undersigned complainant, on behalf of the Commonwealth, on oath complains that on the date and at the location stated herein the defendant did commit the offense(s) listed below in the City of Boston and within the judicial district of the Boston Municipal Court Department.  BOSTON MUNICIPAL COURT CRIMINAL DIVISION 11 <sup>TH</sup> FLOOR, ROOM 1105 90 DEVONSHIRE STREET BOSTON, MA 02109
BIRTH DATE	GENDER MALE	RACE WHITE	HEIGHT 5'11"	
PCF NUMBER	WEIGHT 210	EYES HAZEL	HAIR BROWN	
POLICE DEPARTMENT BOSTON P.D. AREA A-1		OFFICER ID 06659	CC NUMBER 050011770	
COMPLAINT DATE 01/10/2005		COMPLAINANT ROBERT MAFFEO		
OFFENSE DATE 01/07/2005		PLACE OF OFFENSE 61 BEACH ST		

**1      266:120      TRESPASS C266 S120**

DID WITHOUT RIGHT ENTER OR REMAIN IN OR UPON THE DWELLING HOUSE, BUILDING, BOAT, IMPROVED OR ENCLOSED LAND, WHARF OR PIER OF ANOTHER, AFTER HAVING BEEN FORBIDDEN TO DO SO BY THE PERSON WHO HAD THE LAWFUL CONTROL OF SUCH PREMISES, EITHER DIRECTLY OR BY NOTICE POSTED THEREON, OR IN VIOLATION OF A COURT ORDER PURSUANT TO G.L. C.208, S.34B OR G.L. C.209A, S.S. 3-4, IN VIOLATION OF G.L. C.266, S.120. (PENALTY: NOT MORE THAN 30 DAYS; OR NOT MORE THAN \$100; OR BOTH; G.L. C.90, S.24A REQUIRES THAT ANY CONVICTION INVOLVING THE USE OF A MOTOR VEHICLE MUST BE REPORTED TO THE REGISTRAR OF MOTOR VEHICLES.)

**2      094C:034:C      DRUG, POSSESS CLASS B C94C S34**

NOT BEING AUTHORIZED BY LAW, DID KNOWINGLY OR INTENTIONALLY POSSESS A CONTROLLED SUBSTANCE IN CLASS B OF G.L. C.94C, S.31, TO WIT: "CRACK" COCAINE, IN VIOLATION OF G.L. C.94C, S.34. (PENALTY: IMPRISONMENT NOT MORE THAN 1 YEAR; OR NOT MORE THAN \$1000; OR BOTH.)

COMPLAINT OR AUTHORIZED OFFICER 	SWORN TO BEFORE CLERK-MAGISTRATE/ASST. CLERK 	ON (DATE) 1/10/05	ADDITIONAL COUNTS ATTACHED
CHIEF JUSTICE Hon. Charles R. Johnson	COURT ADDRESS BOSTON MUNICIPAL COURT CRIMINAL DIVISION 11TH FLOOR, ROOM 1105, 90 DEVONSHIRE STREET, BOSTON, MA 02109		

☐ ORIGINAL ☒ SUPPLEMENTARY

R 432

09:24 PM

WRIGHT V. MATTHEW

*Robert M. Miller*

10-50

NOV-26-2012 11:51

P.02



Mitt Romney  
Governor

The Commonwealth of Massachusetts  
Executive Office of Health and Human Services  
Department of Public Health  
State Laboratory Institute, 305 South Street  
Boston, MA 02130  
617-983-6622

Kerry Healey, Lt. Governor

Ronald Preston, Secretary

Christine Ferguson  
Commissioner

DATE RECEIVED: 01/11/2005  
DATE ANALYZED: 01/28/2005

NO. 694147

I hereby certify that the LOOSE SUBSTANCE  
Contained in 1 plastic bag MARKED: 694147  
Submitted by P.O. WM. DONNELLY of the BOSTON POLICE DEPT.

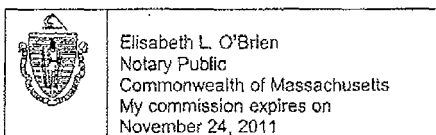
Has been examined with the following results:  
The LOOSE SUBSTANCE was found to contain:  
Cocaine, a derivative of Coca leaves, as defined in Chapter 94 C,  
Controlled Substance Act, Section 31, Class B.


NET WEIGHT: 0.03 grams

DEFENDANT: CREACH, YASIR & JOHNSON, DAVID

ASSISTANT ANALYSTS  Daniela Frasca  Annie Dookhan

On this 2<sup>nd</sup> day of February 2005, before me, the undersigned notary public, personally appeared the above signed subscriber(s), having proved to me through Department of Public Health documentation to be the person(s) whose name(s) is/are signed on this certificate and to be (an) assistant analyst(s) of the Department of Public Health, and who swore to me that the contents of this document are truthful and accurate to the best of his/her/their knowledge and belief.



  
Elisabeth L. O'Brien, NOTARY PUBLIC  
My commission expires on November 24, 2011

Chapter 111, Section 13 of the General Laws

This certificate shall be sworn to before a Justice of the Peace or Notary Public, and the jurat shall contain a statement that the subscriber is the analyst or assistant analyst of the department. When properly executed, it shall be prima facie evidence of the composition, quality, and the net weight of the narcotic or other drug, poison, medicine, or chemical analyzed, and the court shall take judicial notice of the signature of the analyst or assistant analyst, and of the fact that he/she is such.

NDU-26-2012 11:51

P.03



Mitt Romney  
Governor

The Commonwealth of Massachusetts  
Executive Office of Health and Human Services  
Department of Public Health  
State Laboratory Institute, 305 South Street  
Boston, MA 02130  
617-983-6622

Kerry Healey, Lt. Governor

Ronald Preston, Secretary

Christine Ferguson  
Commissioner

DATE RECEIVED: 01/11/2005  
DATE ANALYZED: 01/28/2005

NO. 694148

I hereby certify that the substance  
Contained in 2 plastic bags MARKED: 694148  
Submitted by P.O. WM. DONNELLY of the BOSTON POLICE DEPT.



Has been examined with the following results:

The substance was found to contain:  
Cocaine, a derivative of Coca leaves, as defined in Chapter 94 C,  
Controlled Substance Act, Section 31, Class B.

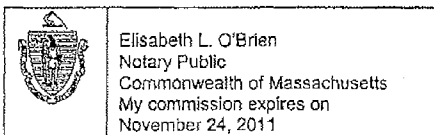
2 similar items were received and 1 was randomly selected  
and analyzed.

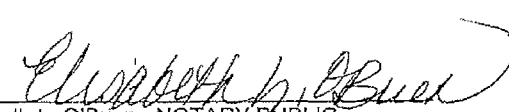
NET WEIGHT: 0.12 grams (analyzed item only)

DEFENDANT: CREACH, YASIR & JOHNSON, DAVID

ASSISTANT ANALYSTS  Daniela Frasca  Annie Dookhan

On this 2<sup>nd</sup> day of February 2005, before me, the undersigned notary public, personally appeared the above signed subscriber(s), having proved to me through Department of Public Health documentation to be the person(s) whose name(s) is/are signed on this certificate and to be (an) assistant analyst(s) of the Department of Public Health, and who swore to me that the contents of this document are truthful and accurate to the best of his/her/their knowledge and belief.



  
Elisabeth L. O'Brien, NOTARY PUBLIC  
My commission expires on November 24, 2011

Chapter 111, Section 13 of the General Laws

This certificate shall be sworn to before a Justice of the Peace or Notary Public, and the jurat shall contain a statement that the subscriber is the analyst or assistant analyst of the department. When properly executed, it shall be prima facie evidence of the composition, quality, and the net weight of the narcotic or other drug, poison, medicine, or chemical analyzed, and the court shall take judicial notice of the signature of the analyst or assistant analyst, and of the fact that he/she is such.

TOTAL P.03

<b>NOTICE OF ASSIGNMENT OF COUNSEL</b>		ASSIGNMENT NUMBER <b>C4007244-3</b>	<b>COMMONWEALTH OF MASSACHUSETTS</b>	
DATE OF ASSIGNMENT <b>2.24.05</b>		NAME OF ASSIGNING JUDGE <b>MZAGHER</b>		COURT DIVISION <b>#559</b> BOSTON MUNICIPAL COURT CRIMINAL DIVISION 1105 JOHN W. MCCORMACK POST OFFICE & COURTHOUSE 30 DEVONSHIRE STREET BOSTON, MA 02109
NAME OF PERSON FOR WHOM COUNSEL ASSIGNED <b>YASIR CRZACH</b>				
<input type="checkbox"/> Juvenile (J) <input type="checkbox"/> Adult (A)    Language if not English: _____				
DOCKET NO.	CRIMINAL CASES—ENTER OFFENSE CODE OR CHAPTER & SECTION WITH CHARGE			
A <b>0501 CR</b>	OFFENSE CODE	CHAPTER	SECTION	CHARGE
B <b>142</b>		<b>266</b>	<b>120</b>	<b>TRESPASS</b>
C		<b>94C</b>	<b>31</b>	<b>BOSS CIB</b>
D				
E				
F				
NEXT COURT DATE <b>3/23/05</b>		INCARCERATION STATUS <input type="checkbox"/> Released <input checked="" type="checkbox"/> Not Released Bail \$ <b>250</b> No Bail _____ <input type="checkbox"/> Serving Other Sentence <input type="checkbox"/> Committed <input type="checkbox"/> Not Applicable		
FOR: <input type="checkbox"/> Bench or Jury Trial (T) <input type="checkbox"/> Probable Cause (C)		<input type="checkbox"/> Pre-Trial (P) <input checked="" type="checkbox"/> Other (O)		
NON-CRIMINAL CASES <input type="checkbox"/> 1001 c.119, §§23(C), 29 <input type="checkbox"/> 1008 CHINS (c.119, §39F) <input type="checkbox"/> 1002 c.210, §3D PW v. JKB <input type="checkbox"/> 1009 Rogers <input type="checkbox"/> 1003 Civil Commit c.123, §7, 8 <input type="checkbox"/> 1010 Spring/Saikewicz <input type="checkbox"/> 1017 Writ of Apprehension c.123, §12(a) <input type="checkbox"/> 1011 Probate Crim. Contempt <input type="checkbox"/> 1018 Commitment of Alcoholics c.123, §35 <input type="checkbox"/> 1012 Housing Contempt <input type="checkbox"/> 1019 Commitment/Endorsement of Monthly Returned Persons c.201, §6A <input type="checkbox"/> 1013 Foster Care Review <input type="checkbox"/> 1004 Commitment Review <input type="checkbox"/> 1014 Elderly Abuse <input type="checkbox"/> 1005 c.112, §12S <input type="checkbox"/> 1015 c.201, §5, 14 Guardianship <input type="checkbox"/> 1026 Commitment Appeal c.123, §8(a) <input type="checkbox"/> 1016 C&P (c.119, §§24, 29) <input type="checkbox"/> 1007 SDP Review (c.123A, §9) <input type="checkbox"/> 1020 Disabled Persons (c.19C, §7) Petition for Protective Services				
THIS FORM IS NOT FOR GUARDIAN AD LITEM ASSIGNMENTS				
POST-TRIAL CRIMINAL CASES ONLY PURPOSE OF ASSIGNMENT <input type="checkbox"/> Appeals Court or SJC (A) <input type="checkbox"/> Revise and Revoke (R) <input type="checkbox"/> Sentence Appeal (S) <input type="checkbox"/> New Trial Motion (N) <input type="checkbox"/> Probation Surrender (P) <input type="checkbox"/> Other (O)				
<b>INDIGENCY DETERMINATION</b> The court has found the above-named person <input type="checkbox"/> Indigent    or <input type="checkbox"/> Indigent but able to contribute \$ _____ The attorney or organization listed below is assigned to represent this person in this action.				
CHECK ONE OF THE FOLLOWING:				
<input type="checkbox"/> Public Defender Division  Local Office # _____ (See reverse side for address and telephone number.)		<input checked="" type="checkbox"/> Private Counsel Attorney PLEASE PRINT <b>BBO# 637092</b> <b>REQUIRED</b> NAME <b>1652 WETHERING</b> FIRST <b>1730</b> MIDDLE <b>MASS</b> LAST <b>AVE #593</b> STREET <b>Cambridge</b> CITY <b>Ma 02140</b> STATE <b>617</b> ZIP <b>354 7160</b> TELEPHONE CRIMINAL CASE INFORMATION CONTACT: BAR ADVOCATE PROGRAM NO. _____ (SEE REVERSE SIDE FOR ADDRESS AND TELEPHONE NUMBER.)		
<input type="checkbox"/> Student Attorney under Rule 3:03  Name of Program _____ <input type="checkbox"/> Attorney to be named by CPCS for Appeals Court/SJC/Murder Cases/ Rule 30 Motions/SDP Send to: CPCS 44 Bromfield Street, Boston, MA 02108		<input type="checkbox"/> Assignment For Purpose of Bail Hearing, Bail Review or Arraignment Only  AUTHORIZED SIGNATURE _____ PRINT NAME _____		
<b>INSTRUCTIONS TO THE COURT</b>				
1. Forward white copy to Committee for Public Counsel Services, 44 Bromfield Street, Boston, MA 02108 2. Retain green copy for court file. 3. Remaining copies are color coded as follows: pink—client, blue—bar advocate program, goldenrod—attorney.				

**BostonPolice**

CC # 060063159  
BOOK # 118  
PAGE # 311

②

DRUG RECEIPT

District/Unit Boston Police Dept. - YUSF

Destruction # \_\_\_\_\_

Name & Rank of Submitting Officer \_\_\_\_\_

ID # \_\_\_\_\_

DEFENDANT'S NAME	ADDRESS # STREET	CITY	STATE
YASIR CREACH			

DRUGS-IMPLEMENTS-AND/OR PARAPHERNALIA	GROSS QUANTITY	ANALYSIS NUMBER
WHITE POWDER (COCAINE) <del>INSIDE</del> INSIDE ONE DOLLAR BILL	1 PK 4.98g	764921

Received by \_\_\_\_\_

ID# \_\_\_\_\_

2-8-06

BPD FORM 1753

DRUG CONTROL UNIT

06-0565  
5/04





**BOSTON MUNICIPAL COURT DEPARTMENT  
COMMONWEALTH OF MASSACHUSETTS**

OFFICE OF THE CLERK/MAGISTRATE FOR  
CRIMINAL BUSINESS

1105 U.S. POST OFFICE AND COURTHOUSE  
90 DEVONSHIRE STREET, BOSTON, MASSACHUSETTS 02109

TELEPHONE # (617) 788-8600

FAX # (617) 788-8465

Daniel J. Hogan  
Clerk Magistrate

**TENDER OF PLEA OR ADMISSION TO SUFFICIENT FACTS  
WAIVER OF RIGHTS**

Defendant: Yusef, Yusef

Docket Number: 036100017118

**SECTION I TENDER OF PLEA**

Defendant in this case hereby tenders the following: ☒ PLEA OF GUILTY ☐ ADMISSION TO FACTS SUFFICIENT  
OR A FINDING OF GUILTY conditioned on the dispositional terms indicated below. (Include all proposed terms: guilty finding, finding of  
sufficient facts, continued without finding, dismissal, fine, costs, probation period and supervision terms, restitution amount including the  
identification of the recipient of restitution, and any sentence of incarceration, split sentence or suspended sentence, etc. Number each count and  
specify terms for each count separately.)

**DEFENDANT'S DISPOSITIONAL TERMS**

(Check "yes" if Prosecution agrees - Check "no" if Prosecution disagrees)

COUNT A: 2 years 10 months  
3 years 10 months YES ☒ NO ☐

COUNT B: 3 years 10 months  
4 years 10 months YES ☒ NO ☐

COUNT C: 5 years 10 months  
6 years 10 months YES ☐ NO ☐

**PROSECUTOR'S RECOMMENDATION**

(Required if prosecutor disagrees with terms)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Signature of Defense Counsel

Date

Signature of Prosecutor

Date

**SECTION II PLEA OR ADMISSION ACCEPTED BY THE COURT**

The Court ☒ ACCEPTS the tendered Plea or Admission on the defendant's terms set forth in Section I, and will impose sentence in  
accordance with said terms, subject to submission of defendant's written WAIVER (see Section IV on reverse of this form), completion of the  
required oral COLLOQUY, a determination that there is a FACTUAL BASIS for the Plea or Admission, and notice of ALIEN RIGHTS.

**SECTION III PLEA OR ADMISSION REJECTED BY THE COURT**

The Court ☐ REJECTS the defendant's dispositional terms set forth above and, in accordance with Mass. R. Crim. P. 12 (c)(6) has set  
forth to the defendant the dispositional terms it would find acceptable, which are:

**DEFENDANT'S DECISION IF COURT REJECTS TENDERED PLEA OR ADMISSION:**

Defendant WITHDRAWS the tendered Plea or Admission.

Defendant ACCEPTS terms set forth by the Court.

Signature of Defense Counsel (if rejection decision made)

Date

Judge

Date

SECTION IV DEFENDANT'S WAIVER OF RIGHTS (G.L. c.263, s.6)  
ALIEN RIGHTS NOTICE (G.L. C.278, S.29)

I, the undersigned defendant understand and acknowledge that I am voluntarily giving up my right to be tried by a jury or a judge without jury on these charges.

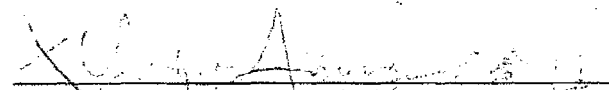
I have discussed my Constitutional and other rights with my attorney. I understand that the jury would consist of six jurors chosen at random from the community, and that I could participate in selecting those jurors, who would determine unanimously whether I am guilty or not guilty. I understand that by entering my plea of guilty or admission, I will also be giving up my right to confront, cross examine, and compel the attendance of witnesses; to present evidence in my defense; to remain silent and to refuse to testify or provide evidence against myself by asserting my privilege against self-incrimination, all with the assistance of my defense attorney; and to be presumed innocent until proven guilty by the prosecution beyond a reasonable doubt.

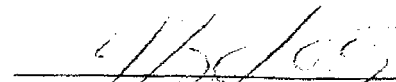
I am aware of the nature and elements of the charge or charges to which I am entering my guilty plea or admission. I am also aware of the nature and range of the possible sentence or sentences.

My guilty plea or admission to sufficient facts is not the result of force or threats. It is not the result of assurances or promises. I have decided to plead guilty, or admit to sufficient facts, knowingly, voluntarily and freely.

I am not under the influence of any drug, medication, liquor or other substance that would impair my ability to understand fully the constitutional and statutory rights that I am waiving.

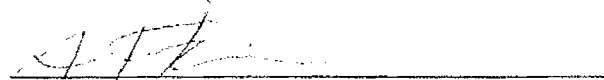
I understand that if I am not a citizen of the United States, conviction of this offense or admission to sufficient facts to warrant a finding guilty of this offense, may have the consequences of deportation, exclusion from admission to the United States, or denial of naturalization pursuant to the laws of the United States.

  
\_\_\_\_\_  
Signature of Defendant

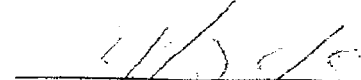
  
\_\_\_\_\_  
Date

SECTION V DEFENSE COUNSEL'S CERTIFICATE (G.L. c.218, s.26a)

As required by G.L. c.218 s.26a, I certify that as legal counsel to the defendant in this case, I have explained to the defendant the above-stated provisions of law regarding the defendant's waiver of jury trial and other rights so as to enable the defendant to tender a plea of guilty or admission knowingly, intelligently and voluntarily.

  
\_\_\_\_\_  
Signature of Defense Counsel

  
\_\_\_\_\_  
B.B.O. No.

  
\_\_\_\_\_  
Date

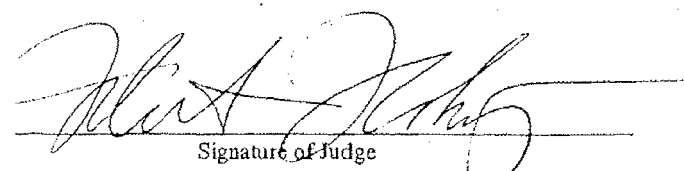
SECTION VI JUDGE'S CERTIFICATION

I, THE UNDERSIGNED Justice of the Municipal Court of Boston, addressed the defendant directly in open court. I made appropriate inquiry into the education and background of the defendant and am satisfied that the defendant fully understands all of the rights as set forth in Section IV of the form, and

that the defendant is not under the influence of any drug, medication, liquor or other substance that would impair his or her ability to fully understand those rights. I find, after a colloquy with the defendant, that the defendant has knowingly, intelligently and voluntarily waived all of these rights as explained during these proceedings and set forth in this form.

After a hearing, I have found a factual basis for the charge(s) to which the defendant is pleading guilty or admitting to sufficient facts and have found that these facts as related by the prosecution and admitted to by the defendant would support a conviction on the charges to which plea or admission is made.

I further certify that the defendant was informed and advised that if the defendant is not a citizen of the United States, a conviction of the offense with which the defendant is charged may have the consequences of deportation, exclusion from admission to the United States, or denial of naturalization, pursuant to the laws of the United States.

  
\_\_\_\_\_  
Signature of Judge

  
\_\_\_\_\_  
Date

# **PETITIONER MIGUEL CUEVAS**

Commonwealth of Massachusetts  
ESSEX SUPERIOR COURT  
Case Summary  
Criminal Docket

Commonwealth v Cuevas, Miguel

Details for Docket: ESCR2007-01535

Case Information

Docket Number:	ESCR2007-01535	Caption:	Commonwealth v Cuevas, Miguel
Entry Date:	10/05/2007	Case Status:	CtRm D - 4th Floor - 56 Federal St.
Status Date:	10/18/2012	Session:	Disp (post sentence -Drug Lab)
Lead Case:	NA	Deadline Status:	Active since
Trial Deadline:	08/04/2008	Jury Trial:	NO

Parties Involved

3 Parties Involved in Docket: ESCR2007-01535

Party  
Involved:  
Last Name:  
Address:  
City:  
Zip Code:  
Telephone:

Cuevas

Role:  
First Name:  
Address:  
State:  
Zip Ext:

Defendant

Miguel

Party  
Involved:  
Last Name:  
Address:  
City:  
Zip Code:  
Telephone:

Commonwealth

Role:  
First Name:  
Address:  
State:  
Zip Ext:

Plaintiff

Party  
Involved:  
Last Name:  
Address:  
City:  
Zip Code:  
Telephone:

-----

Role:  
First Name:  
Address:  
State:  
Zip Ext:

Surety

## Attorneys Involved

9 Attorneys Involved for Docket: ESCR2007-01535

**Attorney Involved:**  
**Last Name:** Buszuwski  
**Address:** 21 McGrath Highway  
**City:** Somerville  
**Zip Code:** 02143  
**Telephone:** 617-623-0591  
**Fascimile:** 617-623-0936

**Firm Name:** COMM09  
**First Name:** Julie  
**Address:**  
**State:** MA  
**Zip Ext:**  
**Tel Ext:**  
**Representing:** Cuevas, Miguel (Defendant)

**Attorney Involved:**  
**Last Name:** Hopwood  
**Address:** Ten Federal Street  
**City:** Salem  
**Zip Code:** 01970  
**Telephone:** 978-745-6610  
**Fascimile:** 978-741-4971

**Firm Name:** ESSE02  
**First Name:** Karen  
**Address:**  
**State:** MA  
**Zip Ext:**  
**Tel Ext:** 5078  
**Representing:** Commonwealth, (Plaintiff)

**Attorney Involved:**  
**Last Name:** McGuire  
**Address:** 10 Federal Street  
**City:** Salem  
**Zip Code:** 01970  
**Telephone:** 978-740-6633  
**Fascimile:** 978-740-6644

**Firm Name:** ANDR12  
**First Name:** Lawrence J  
**Address:** Suite 420  
**State:** MA  
**Zip Ext:**  
**Tel Ext:**  
**Representing:** Cuevas, Miguel (Defendant)

**Attorney Involved:**  
**Last Name:** Zerola  
**Address:** 101 Tremont Street  
**City:** Boston  
**Zip Code:** 02108  
**Telephone:** 617-654-9300  
**Fascimile:**

**Firm Name:**  
**First Name:** Gary  
**Address:** Suite 1010  
**State:** MA  
**Zip Ext:**  
**Tel Ext:**  
**Representing:** Cuevas, Miguel (Defendant)

**Attorney Involved:**  
**Last Name:** Whitehill  
**Address:** 1 Salem Green  
**City:** Salem  
**Zip Code:** 01970  
**Telephone:** 978-825-2020

**Firm Name:** MA150  
**First Name:** Rebecca E  
**Address:** Suite 408  
**State:** MA  
**Zip Ext:** 3724  
**Tel Ext:**

**Fascimile:** 978-741-8567

**Representing:** Cuevas, Miguel (Defendant)

**Attorney  
Involved:**

**Firm Name:** MA130

**Last Name:** Cuipyo

**First Name:** Donna M

**Address:** One Congress Street

**Address:** Suite 102

**City:** Boston

**State:** MA

**Zip Code:** 02114

**Zip Ext:**

**Telephone:** 617-209-5500

**Tel Ext:**

**Fascimile:** 617-523-0354

**Representing:** Cuevas, Miguel (Defendant)

**Attorney  
Involved:**

**Firm Name:** ESSE02

**Last Name:** Strasnick

**First Name:** Jessica M

**Address:** 10 Federal Street

**Address:**

**City:** Salem

**State:** MA

**Zip Code:** 01970

**Zip Ext:**

**Telephone:** 978-745-6610

**Tel Ext:** 5082

**Fascimile:** 978-741-4971

**Representing:** Commonwealth, (Plaintiff)

**Attorney  
Involved:**

**Firm Name:** MA130

**Last Name:** Caplan

**First Name:** Nancy J

**Address:** 44 Bromfield Street

**Address:** #2

**City:** Boston

**State:** MA

**Zip Code:** 02108

**Zip Ext:**

**Telephone:** 617-209-5500

**Tel Ext:**

**Fascimile:** 617-523-0354

**Representing:** Cuevas, Miguel (Defendant)

**Attorney  
Involved:**

**Firm Name:** ESSE02

**Last Name:** Logan

**First Name:** Ashlee

**Address:** 10 Federal Street

**Address:**

**City:** Salem

**State:** MA

**Zip Code:** 01970

**Zip Ext:**

**Telephone:** 978-745-6610

**Tel Ext:**

**Fascimile:** 978-741-4971

**Representing:** Commonwealth, (Plaintiff)

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## Calendar Events

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31 Calendar Events for Docket: ESCR2007-01535

No.	Event Date:	Event Time:	Calendar Event:	SES:	Event Status:
1	11/09/2007	09:00	Arraignment	1	Event not held--joint request
2	11/28/2007	09:00	Arraignment	1	Event held as scheduled

3	01/14/2008	09:00	Conference: Pre-Trial	1	Defendant did not appear/default
4	01/28/2008	09:00	Conference: Status Review	1	Event held as scheduled
5	02/28/2008	09:00	Hearing: Fugitive/ Bail Forfeit	1	Event held as scheduled
6	05/19/2008	09:00	Conference: Status Review	1	Event held as scheduled
7	06/04/2008	09:00	Hearing: Bail	1	Event not held--joint request
8	06/17/2008	09:00	Hearing: Bail	1	Event not held--joint request
9	07/15/2008	09:00	Hearing: Appointment Counsel	1	Event held as scheduled
10	08/04/2008	09:00	Hearing: Discovery Motions	1	Event held as scheduled
11	09/03/2008	09:00	Hearing: Compliance	1	Event held as scheduled
12	09/24/2008	09:00	Hearing: Compliance	1	Event not held--joint request
13	10/15/2008	09:00	Hearing: Compliance	1	Event not held--joint request
14	11/04/2008	09:00	Hearing: Compliance	1	Event not held--joint request
15	11/18/2008	09:00	Hearing: Filing of Motion to Suppress	1	Event not held--joint request
16	11/25/2008	09:00	Status: Review by Session	1	Event held as scheduled
17	12/09/2008	09:00	Hearing: Evidentiary-suppression	1	Event not held--joint request
18	01/30/2009	09:00	Hearing: Evidentiary-suppression	1	Event moved to another session
19	01/30/2009	09:00	Hearing: Plea Change	2	Event held as scheduled
20	11/07/2012	09:30	Drug Lab: Hearing Stay Sentence	2	Event rescheduled by court prior to date
21	11/09/2012	09:30	Drug Lab: Hearing Stay Sentence	2	Event not held--req of Defendant
22	12/10/2012	10:00	Drug Lab: Status	2	Event held as scheduled
23	02/05/2013	14:00	Drug Lab: Status	4	Event held as scheduled
24	03/14/2013	10:00	Drug Lab: Status	4	Event held as scheduled
25	04/29/2013	10:00	Drug Lab: Status	4	Event held as scheduled
26	06/13/2013	10:00	Drug Lab: Status	4	Event held as scheduled
27	08/08/2013	10:00	Drug Lab: Status	4	Event held as scheduled
28	10/03/2013	10:00	Drug Lab: Status	4	Event held as scheduled
29	11/14/2013	10:00	Drug Lab: Discovery Motions	4	Event held as scheduled
30	12/19/2013	10:00	Drug Lab: Status	4	Event held as scheduled
31	02/13/2014	09:00	Drug Lab: Status	4	

## Full Docket Entries

94 Docket Entries for Docket: ESCR2007-01535

Entry Date:	Paper No:	Docket Entry:
10/05/2007	1	Indictment returned
10/10/2007	2	Case Tracking scheduling order ([case:judge]) mailed [date:date]
10/22/2007		Summons for arraignment issued ret 10/22/07
11/09/2007		Summons for arraignment issued ret 11/9/07
11/28/2007		Deft arraigned before Court
11/28/2007		Appearance of Commonwealth's Atty: Karen Hopwood
11/28/2007		Committee for Public Counsel Services appointed, pursuant to Rule 53
11/28/2007	3	Appearance of Deft's Atty: Julie Buszuwski

11/28/2007		Deft waives reading of indictment
11/28/2007		RE Offense 1:Plea of not guilty
11/28/2007		RE Offense 2:Plea of not guilty
11/28/2007		RE Offense 3:Plea of not guilty
11/28/2007		RE Offense 4:Plea of not guilty
11/28/2007		Legal counsel fee assessed in the amount of \$150.00 (David Lowy, Justice)
11/28/2007	4	Bail set: \$40,000.00/\$4,000.00 Surety/Cash. (Rup, J.)
11/28/2007	5	Salem District Court Notified Bail.
11/28/2007		Pre-trial hearing conditions of probation included; 1) Continue living at 11 1/2 Rice Street Salem. 2) 3X week report to Salem probation in person. 3) No illegal drugs 4) Random screens 5) Do not apply for passport.
11/28/2007		Assigned to Track "A", see scheduling order
12/17/2007		VTP warrant issued
01/14/2008		VTP warrant issued
01/15/2008	6	Cash Bail Received from Salem Superior Court (\$4,000)
01/28/2008	7	Order of notice to show cause forfeiture of bail sent to Mary Peguero
02/28/2008		No One Appears Bail ordered forfeited K. Taylor Notified ([Kern, J.]
05/19/2008	8	VTP warrant recalled notice of recall
05/19/2008	9	Bail: Defendant held without bail (Lowy, J)
06/20/2008	10	Motion for Funds for Spanish Speaking Investigator Allowed (Lowy, J.)
07/15/2008	11	Committee for Public Counsel Services appointed, pursuant to Rule 53
07/15/2008	11	Larry Maguire
08/04/2008		Tracking deadlines Active since return date
08/04/2008	12	Case Tracking scheduling order (Howard Whitehead, Justice) mailed 8/4/2008
08/04/2008	12	
08/04/2008	13	Motion for automatic discovery: disclosure of identification
08/04/2008	13	procedures filed in court
08/04/2008	14	Motion for discovery concerning laboratory testing filed in court
08/04/2008	15	Motion for reports concerning chain of custody of evidence filed in court
08/04/2008	15	
11/18/2008	16	Defendant's MOTION to suppress Identification
01/30/2009		RE Offense 1:Guilty plea (lesser offense) (Dist. of Cocaine)
01/30/2009		RE Offense 2:Guilty plea (lesser offense) (Dist. of Cocaine)
01/30/2009		RE Offense 3:Guilty plea (lesser offense) (Dist. of Cocaine)
01/30/2009		RE Offense 4:Guilty plea (lesser offense) (Dist. of Heroin)
01/30/2009	17	Waiver of defendants' rights
01/30/2009	18	Defendant sentenced to on indictment # ESCR2007-1535 001, Defendant sentenced to Four and One Half (4 1/2) years to Five (5) years committed to Massachusetts Correctional Institution, Cedar Junction.
01/30/2009	18	Defendant deemed to have 273 jail credit days. (David Lowy, Justice)
01/30/2009	19	Defendant sentenced to on indictment # ESCR2007-1535 002, Defendant sentenced to Four and One Half (4 1/2) years to Five (5) years concurrent with ESCR2007-1535 001, committed to Massachusetts Correctional Institution, Cedar Junction. Defendant deemed to have 273 jail credit days. (David Lowy, Justice)
01/30/2009	19	
01/30/2009	19	
01/30/2009	19	
01/30/2009	19	



	20	Defendant sentenced to on indictment # ESCR2007-1535 003, Defendant
01/30/2009	20	sentenced to Four and One Half (4 1/2) years to Five (5) years
01/30/2009	20	concurrent with ESCR2007-1535 001, committed to Massachusetts
01/30/2009	20	Correctional Institution, Cedar Junction. Defendant deemed to have
01/30/2009	20	273 jail credit days. (David Lowy, Justice)
01/30/2009	21	Defendant sentenced to on indictment # ESCR2007-1535 004, Defendant
01/30/2009	21	sentenced to Four and One Half (4 1/2) years to Five (5) years
01/30/2009	21	concurrent with ESCR2007-1535 001, committed to Massachusetts
01/30/2009	21	Correctional Institution, Cedar Junction. Defendant deemed to have
01/30/2009	21	273 jail credit days. (David Lowy, Justice)
01/30/2009	22	Sentence stayed until 2/4/2009 (David Lowy, Justice)
01/30/2009	23	Victim-witness/Mandatory Drug Assessment fee assessed: \$90.00/\$150.00
01/30/2009	23	(David Lowy, Justice)
01/30/2009	24	Abstract sent to RMV
02/18/2009	25	Defendant files MOTION to revise and revoke sentence
04/27/2009	26	Deft files motion for jail credits and issuance of a corrected
04/27/2009	26	mittimus, Denied, proper credit was given. (Lowy, J.)
09/28/2012	27	Deft files motion to be declared indigent. (Copy to Lowy, J.)
10/18/2012	28	Defendant's Motion To Vacate Guilty Plea (Drug Lab)
10/18/2012	29	Defendant's Motion for Discovery (Drug Lab)
10/18/2012	30	Defendant's Motion to Stay Sentence (Drug Lab)
10/22/2012		MOTION (P#27, to be declared indigent.) allowed (David Lowy,
10/22/2012		Justice). Copies mailed 10/22/2012
10/22/2012		N.A.C. form forwarded to Boston.
11/09/2012		Appearance of Commonwealth's Atty: Jessica M Strasnick
11/09/2012		Appearance of Deft's Atty: Donna M Cuipyllo
11/09/2012	31	Commonwealth's Opposition to the Defendant's Motion to Stay Execution
11/09/2012	31	of Sentence Filed
11/09/2012		Motion Withdrawn by Counsel in Open Court (Lowy, J.) (Motion #29)
06/13/2013		Attorney Cirprolo reports that matter referred to CPCS drug lab unit
08/08/2013		Appearance of Deft's Atty: Nancy J Caplan
10/03/2013	32	MOTION by Deft: for Discovery RE: Examination - Testing of Alleged
10/03/2013	32	narcotics filed in open court and to be argued 11/14/13
12/19/2013		MOTION (P#32) After oral argument, the ADA (Ashlee Logan) is ordered
12/19/2013		to respond to this motion for discovery item by item, as to whether
12/19/2013		produced already, not available, newly ordered and soon available,
12/19/2013		not producable by law, etc. This written response is due to defense
12/19/2013		attorney by 2/13/14. (John Cratsley, Special Judicial Magistrate).
12/19/2013		Copies mailed 12/19/2013

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## Charges

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4 Charges for Docket: ESCR2007-01535

No.	Charge Description:	Indictment:	Status:
1	COCAINE, DISTRIBUTE, SUBSQ.OFF. c94C s32A(d)		Guilty plea (lesser offense)
2	COCAINE, DISTRIBUTE, SUBSQ.OFF. c94C s32A(d)		Guilty plea (lesser offense)

3  
4

COCAINE, DISTRIBUTE, SUBSQ.OFF. c94C s32A(d)  
DRUG, DISTRIBUTE CLASS A, SUBSQ.OFF. c94C s32(b)

Guilty plea (lesser offense)  
Guilty plea (lesser offense)

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COMMONWEALTH OF MASSACHUSETTS  
ESSEX COUNTY  
SUPERIOR CRIMINAL COURT

CASE INITIATION SHEET AND/OR REQUEST FOR WARRANT  
(CIRCLE WHICHEVER IS APPROPRIATE)

DOCKET #: ESCR2007-1535-001-004

DEFENDANT NAME: (Last) Cuevas (First) Miguel  
AKA(s):  
STREET ADDRESS:  
CITY, STATE, ZIP:  
SSN #: 020-66-2209 PCF #: DOB:  
SEX: Male RACE: HEIGHT: 5.11 WEIGHT: 200  
EYE COLOR: Brown HAIR COLOR: Black  
MOTHER'S MAIDEN NAME: FATHER'S NAME:  
OFFENSE: Distribution of Cocaine, 2nd or Subsequent  
CHAPTER/SECTION: 94C/32A DATE OF OFFENSE: 1/5/07, 1/8/07, 1/10/07  
PLACE OF OFFENSE: Salem  
POLICE DEPARTMENT: Salem  
ATTY FOR THE COMMONWEALTH: Karen Hopwood BBO #: 655885  
ATTY FOR THE DEFENDANT: BBO #:

WRITE IN THIS AREA ONLY IF WARRANT REQUESTED

TYPE OF WARRANT: INDICTMENT WARRANT ( ) DEFAULT WARRANT ( ) PROBATION  
WARRANT ( )

PERSON REQUESTING WARRANT: \_\_\_\_\_

POLICE DEPARTMENT: \_\_\_\_\_ DATE WARRANT ISSUED: \_\_\_\_\_

EXTRADITION LIMITS: NEW ENGLAND / NEW YORK

\*\*\*\*\*TO BE FILLED BY CLERKS OFFICE\*\*\*\*\*

DATE WARRANT ENTERED: 12/17/07

WARRANT ENTERED BY: George Hodyson

WARRANT COMPUTER NO.: 0227CR001535

k:\crim\grndjuy\case\init\att\onsheet

SEP. 12, 2007 3:01PM DRUG ANALYSIS LAB

NO. 748 P. 3/5



DEVAL L. PATRICK  
GOVERNOR  
TIMOTHY P. MURRAY  
LIEUTENANT GOVERNOR  
JUDYANN BIGOY, MD  
SECRETARY  
JOHN AUERBACH  
COMMISSIONER

The Commonwealth of Massachusetts  
Executive Office of Health and Human Services  
Department of Public Health  
State Laboratory Institute  
305 South Street  
Boston, MA 02130  
617-983-6622

DATE RECEIVED: 08/09/2007  
DATE ANALYZED: 09/13/2007

NO. 821976

I hereby certify that the substance  
Contained in 1 plastic bag  
Submitted by P.O. N. O'DONNELL of the SALEM POLICE DEPT. MARKED: 821976

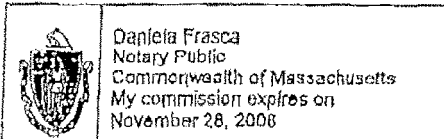
Has been examined with the following results:  
The substance was found to contain:  
Cocaine, a derivative of Coca leaves, as defined in Chapter 94 C,  
Controlled Substance Act, Section 31, Class B.

NET WEIGHT: 0.53 grams

DEFENDANT: CUEVAS, MIGUEL

ASSISTANT ANALYSTS Annie Dookhan Kate Corbett

On this day 14<sup>th</sup> day of September 2007, before me, the undersigned notary public, personally appeared the above signed subscriber(s), having proved to me through Department of Public Health documentation to be the person(s) whose name(s) is/are signed on this certificate and to be (an) assistant analyst(s) of the Department of Public Health, and who swore to me that the contents of this document are truthful and accurate to the best of his/her/their knowledge and belief.



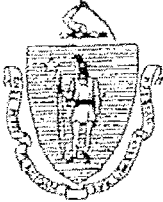
Daniela Frasca, NOTARY PUBLIC  
My commission expires on November 28, 2008

Chapter 111, Section 13 of the General Laws

This certificate shall be sworn to before a Justice of the Peace or Notary Public, and the jurat shall contain a statement that the substance analyzed is for the purpose of determining the presence of any drug, poison, medicine, or chemical analyzed, and the court shall take judicial notice of the signature of the analyst or assistant analyst and of the fact that he/she is such.

SEP. 18. 2007 3:01PM DRUG ANALYSIS LAB

NO. 748 P. 2/5



DEVAL L. PATRICK  
GOVERNOR

TIMOTHY P. MURRAY,  
LIEUTENANT GOVERNOR

JUDYANN BIGBY, MD  
SECRETARY

JOHN AUERBACH  
COMMISSIONER

The Commonwealth of Massachusetts  
Executive Office of Health and Human Services  
Department of Public Health  
State Laboratory Institute  
305 South Street  
Boston, MA 02130  
617-983-6622

DATE RECEIVED: 08/09/2007  
DATE ANALYZED: 09/12/2007

NO. 821975

I hereby certify that the substance  
Contained in 1 plastic bag  
Submitted by P.O. N. O'DONNELL of the SALEM POLICE DEPT.

MARKED: 821975

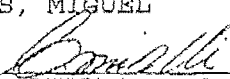
Has been examined with the following results:

The substance was found to contain:

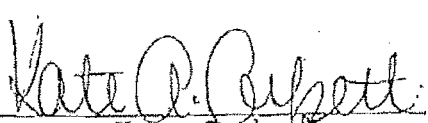
Heroin, (diacetylmorphine) as defined in Chapter 94 C, Controlled  
Substance Act, Section 31, Class A.

NET WEIGHT: 0.40 grams

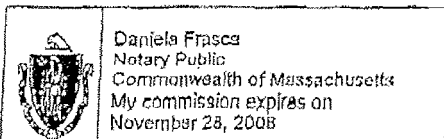
DEFENDANT: CUEVAS, MIGUEL

  
ASSISTANT ANALYSTS

Annie Dookhan

  
Kate Corbett

On this day 14<sup>th</sup> day of September 2007, before me, the undersigned notary public, personally appeared the above signed subscriber(s), having proved to me through Department of Public Health documentation to be the person(s) whose name(s) is/are signed on this certificate and to be (an) assistant analyst(s) of the Department of Public Health, and who swore to me that the contents of this document are truthful and accurate to the best of his/her/their knowledge and belief.



  
Daniela Frasca, NOTARY PUBLIC  
My commission expires on November 28, 2008

Chapter 111, Section 13 of the General Laws

This certificate shall be sworn to before a Justice of the Peace or Notary Public, and the jurat shall contain a statement that the subscriber is the analyst or assistant analyst of the department. When properly executed, it shall be prima facie evidence of the composition, quality, and the net weight of the narcotic or other drug, poison, medicine, or chemical analyzed, and the court shall take judicial notice of the signature of the analyst or assistant analyst.

SEP 18 2007 3:01PM DRUG ANALYSIS LAB



DEVAL L. PATRICK  
GOVERNOR

TIMOTHY D. MURRAY  
LIEUTENANT GOVERNOR

JUDYANN BIGBY, MD  
SECRETARY

JOHN AUERBACH  
COMMISSIONER

The Commonwealth of Massachusetts  
Executive Office of Health and Human Services  
Department of Public Health  
State Laboratory Institute, 305 South Street  
Boston, MA 02130  
617-983-6622

DATE RECEIVED: 08/09/2007  
DATE ANALYZED: 09/17/2007

NO. 821977

I hereby certify that the substance  
Contained in 1 plastic bag  
Submitted by P.O. N. O'DONNELL of the SALEM POLICE DEPT.

MARKED: 621977

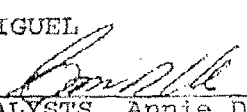
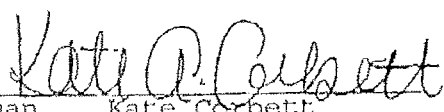
Has been examined with the following results:

The substance was found to contain:

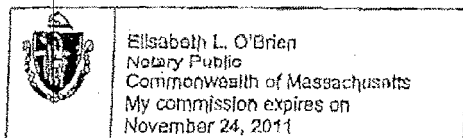
Cocaine, a derivative of Coca leaves, as defined in Chapter 94 C,  
Controlled Substance Act, Section 31, Class B.

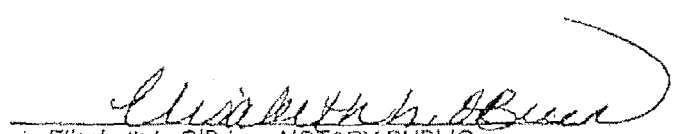
NET WEIGHT: 0.54 grams

DEFENDANT: CUEVAS, MIGUEL

   
ASSISTANT ANALYSTS Annie Dookhan Kate Corbett

On this September 18, 2007, before me, the undersigned notary public, personally appeared the above signed subscriber(s), having proved to me through Department of Public Health documentation to be the person(s) whose name(s) is/are signed on this certificate and to be (an) assistant analyst(s) of the Department of Public Health, and who swore to me that the contents of this document are truthful and accurate to the best of his/her/their knowledge and belief.



  
Elisabeth L. O'Brien, NOTARY PUBLIC  
My commission expires on November 24, 2011

Chapter 111, Section 13 of the General Laws

This certificate shall be sworn to before a Justice of the Peace or Notary Public, and the jurat shall contain a statement that the subscriber is the analyst or assistant analyst of the department. When properly executed, it shall be prima facie evidence of the composition, quality, and the net weight of the substance, and of the fact that he/she is such.



The Commonwealth of Massachusetts  
Executive Office of Health and Human Services  
Department of Public Health  
State Laboratory Institute, 305 South Street  
Boston, MA 02130  
617-983-6622

DEVAL L. PATRICK  
GOVERNOR

TIMOTHY P. MURRAY  
LIEUTENANT GOVERNOR

JUDYANN DIGBY, MD  
SECRETARY

JOHN AUERBACH  
COMMISSIONER

DATE RECEIVED: 08/09/2007  
DATE ANALYZED: 09/14/2007

NO. 821978

I hereby certify that the substance  
Contained in 1 plastic bag  
Submitted by P.O. N. O'DONNELL of the SALEM POLICE DEPT.

MARKED: 821978

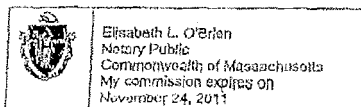
Has been examined with the following results:  
The substance was found to contain:  
Cocaine, a derivative of Coca leaves, as defined in Chapter 94 C,  
Controlled Substance Act, Section 31, Class B.

NET WEIGHT: 0.15 grams

DEFENDANT: CUEVAS, MIGUEL

ASSISTANT ANALYSTS: Annie Dookhan Kate Corbett

On this September 17, 2007, before me, the undersigned notary public, personally appeared the above signed subscriber(s), having proved to me through Department of Public Health documentation to be the person(s) whose name(s) is/are signed on this certificate and to be (an) assistant analyst(s) of the Department of Public Health, and who swore to me that the contents of this document are truthful and accurate to the best of his/her/their knowledge and belief.



Elisabeth L. O'Brien, NOTARY PUBLIC  
My commission expires on November 24, 2011

Chapter 111, Section 13 of the General Laws

This certificate shall be sworn to before a Justice of the Peace or Notary Public, and the jurat shall contain a statement that the subscriber is the analyst or assistant analyst of the department. When properly executed, it shall be prima facie evidence of the composition, quality, and the net weight of the narcotic or other drug, poison, medicine, or chemical analyzed, and the court shall take judicial notice of the signature of the analyst or assistant analyst, and of the fact that he/she is such.

No. of Pages: 23

COMMONWEALTH OF MASSACHUSETTS  
ESSEX, SS SUPERIOR COURT

ESSEX COUNTY

GRAND JURY

RE: MIGUEL CUEVAS

Presented By: KAREN H. HOPWOOD, ESQ.

Assistant District Attorney

Friday, October 5, 2007

Salem, Massachusetts

BRENDA M. NADEAU, PCR, P.O. BOX 916, GEORGETOWN, MA 01833

BMN

978-352-3314

BMN

\*\*\*\*\*COMPUTER AIDED TRANSCRIPTION\*\*\*\*\*



I N D E X

WITNESS

PAGE

STEVEN BONA

4, 21

E X H I B I T S

NUMBER

PAGE

1 Certificate of Analysis

17

2 Certificate of Analysis

18

3 Certificate of Analysis

18

4 Certificate of Analysis

18

1 MS. HOPWOOD: Good morning, ladies and  
2 gentlemen of the grand jury. My name is Karen Hopwood.  
3 I'm an Assistant District Attorney in Essex County. I  
4 have for your consideration, today, the following letters  
5 of presentment, which if voted upon favorably, would read  
6 as follows: That Miguel Cuevas, of Salem, in the County  
7 of Essex, on the fifth day of January, in the year 2007,  
8 at Salem, in the County of Essex, aforesaid, did  
9 unlawfully distribute cocaine, a derivative of coca  
10 leaves, a controlled substance in Class B of General Laws  
11 Chapter 94C, Section 31.

12 And that Miguel Cuevas, of Salem, in the County  
13 of Essex, on the eighth day of January, in the year 2007,  
14 at Salem, in the County of Essex, aforesaid, did  
15 unlawfully distribute cocaine, a derivative of coca  
16 leaves, a controlled substance in Class B of General Laws  
17 Chapter 94C, Section 31.

18 That Miguel Cuevas, of Salem, in the County of  
19 Essex, on the tenth day of January, in the year 2007, at  
20 Salem, in the County of Essex, aforesaid, did unlawfully  
21 distribute cocaine, a derivative of coca leaves, a  
22 controlled substance in Class B of General Laws Chapter  
23 94C, Section 31.

24 That Miguel Cuevas, of Salem, in the County of

1 Essex, on the tenth day of January, in the year 2007, at  
2 Salem, in the County of Essex, aforesaid, did unlawfully  
3 distribute a controlled substance in Class A of General  
4 Laws, Chapter 94C, Section 31; to wit, heroin.

5 I have one witness for you.

6  
7 STEVEN BONA, SWORN

8  
9 DIRECT EXAMINATION

10  
11 Q (By Ms. Hopwood) Could you please state your name and  
12 spell your name for the record?

13 A Steven Bona. Last name is -- B-O-N-A.

14 Q Who are you employed by?

15 A Salem Police Department.

16 Q For how long?

17 A Approximately, eighteen years.

18 Q And what is your current assignment?

19 A I'm a sergeant assigned to the detective division.

20 Q And what are your duties in the detective division?

21 A We have general duties. You know, we solve most of the  
22 major crimes, robberies, drugs, sexual assaults, et  
23 cetera.

24 Q And are you involved in narcotics investigations within

1 the City of Salem?

2 A Yes, I am.

3 Q Could you describe, briefly, what level of narcotics  
4 investigations you handle?

5 A Any range, from the street level, forty dollar bag deals,  
6 to kilos, you know, sellers, dealers, buyers.

7 Q Do you have an opportunity to work with confidential  
8 informants?

9 A Yes, we do.

10 Q Do you also have opportunities in which you participate  
11 in an undercover capacity?

12 A Yes.

13 Q Do you, yourself, do undercover work?

14 A Not any more.

15 Q And do you supervise or are you involved in the  
16 surveillance work that goes on?

17 A Yes.

18 Q Were you involved -- in the first week of January 2007,  
19 did you have an opportunity to speak to a confidential  
20 informant that was known to you, that told you about an  
21 Hispanic male named Miguel Cuevas, who was selling  
22 cocaine in and around the Point area of Salem?

23 A Yes, I did.

24 Q And did that person provide you the direct connect

1 number, the Nextel number for this person known as Miguel  
2 Cuevas?

3 A Yes, he did.

4 Q And did that person provide to you that purchases of  
5 cocaine could be made from this Miguel Cuevas?

6 A Yes.

7 Q Could you describe, where is the Point area in Salem?

8 A It runs along Lafayette Street, from, roughly, Derby  
9 Street up to about Leach Street, that general area in  
10 there.

11 Q Could you describe the relevance of the Point area?

12 A It's a largely Hispanic area, a lot of quality of issues  
13 down there, including drug deals.

14 Q And on January 5, 2007, did you have an opportunity to  
15 meet with Officer Rowe of the Essex County Sheriff's  
16 Department?

17 A Yes, I did.

18 Q And what is Officer Rowe's first name?

19 A Kerry.

20 Q And when you met with her, was it discussed her doing an  
21 undercover, what you call an undercover buy?

22 A Yes, it was.

23 Q Could you describe, just generally, what an undercover  
24 buy is?

1 A An undercover buy is a person comes in dressed just like  
2 a regular civilian, and would come in with the intent or  
3 purpose to buy drugs from an alleged drug dealer.

4 Q And it would be a law enforcement agent that's dressed in  
5 an undercover capacity?

6 A Yes.

7 Q And on January fifth, when you met with Officer Rowe, did  
8 you provide the direct connect number that you had been  
9 provided with from your confidential informant?

10 A Yes, I did.

11 Q Did she make an attempt to contact that direct connect  
12 number?

13 A Yes, she did.

14 Q Did a male party respond at the other end?

15 A Yes.

16 Q Did the male party give a name?

17 A He said his name was John.

18 Q Did Officer Rowe speak with the person who called himself  
19 John to make arrangements to purchase some cocaine?

20 A Yes, she did.

21 Q And did John tell Officer Rowe to meet him on Ward  
22 Street, around the corner from Lonnie?

23 A Yes, she did.

24 Q What is Lonnie?

1 A It's a bar on the corner of Lafayette and Ward Street,  
2 and it's -- the name has changed now, to Casablanca.

3 Q Was Officer Rowe given forty dollars of money that had  
4 been logged?

5 A Yes.

6 Q From the Salem Police Department?

7 A Yes.

8 Q And when -- once Officer Rowe went to leave, did you set  
9 up surveillance?

10 A Yes, yes, we did.

11 Q And were you and Detective Jennings involved in the  
12 surveillance?

13 A Yes, we were.

14 Q Could you describe what you observed?

15 A We dropped Officer Rowe off right in that general area,  
16 parked our car. We watched her walk down Ward Street.  
17 About three doors down, we started moving our car. We  
18 went around the block. We came up Ward Street just as  
19 she was meeting with an Hispanic male.

20 Q And was that just a few doors down from Lonnie's?

21 A Yes, it was.

22 Q And what did you observe at that point?

23 A We observed her meet with an Hispanic male, who we  
24 recognized him to be Miguel Cuevas. We saw a hand to

1 hand sale take place. We saw them part ways.

2 Q And then, did Officer Rowe meet back with you?

3 A Yes, she did.

4 Q And did she then provide you with a twist of a white  
5 chunk powder that you believed to be cocaine?

6 A Yes, she did.

7 Q Did she tell you that the male who had gone by the name  
8 of John, handed her that twist of suspected cocaine after  
9 she had handed him the forty dollars of currency that you  
10 had provided to her?

11 A Yes, she did.

12 Q And was that twist then placed into evidence?

13 A Yes, it was.

14 Q Did you then have an opportunity to show Officer Rowe a  
15 photograph?

16 A Yes, I did.

17 Q And was she able to identify that photograph as the  
18 person that she had purchased the suspected cocaine from?

19 A She said that was the person that just sold her the  
20 cocaine.

21 Q And who was that a photograph of?

22 A Miguel Cuevas.

23 Q Date of birth 8/16/85?

24 A Correct, yes.



- 1 Q And on January 8, 2007, did Officer Rowe, and then also  
2 Officer Doyle, come to the Salem Police Department?
- 3 A Yes, they did.
- 4 Q Where is Officer Doyle from?
- 5 A She works for the Swampscott Police Department.
- 6 Q What is her name?
- 7 A Candace.
- 8 Q And did the two of them come to work in an undercover  
9 capacity?
- 10 A Yes, they did.
- 11 Q Could you describe what happened at that point?
- 12 A They reported to the police station, and Officer Rowe,  
13 again dialed that direct connect number, and the party  
14 now identified as Miguel Cuevas, asked -- you know, they  
15 arranged to purchase some cocaine. He asked them to meet  
16 them down by his street, at the corner of Bridge and Rice  
17 Street, where he would be waiting for them.
- 18 Q Did she recognize the voice as the same voice from the  
19 previous transaction?
- 20 A Yes, she did.
- 21 Q And did he specifically ask to come by my house to pick  
22 him up, so that they can go and get it?
- 23 A Yes.
- 24 Q So, did you, at that point, provide Officers Rowe and

1 Doyle a surveillance motor vehicle?

2 A Yes, we did.

3 Q And did you conduct surveillance of them?

4 A Yes, we did.

5 Q Along with Detective Jennings, again?

6 A Yes.

7 Q And could you describe what you observed?

8 A We observed them to pull up to the corner of Bridge and

9 Rice Street. We saw that they pulled over to the side of

10 the street. An Hispanic male got out, got in the

11 vehicle.

12 Q Did you recognize that person?

13 A Yes, we did.

14 Q Was it the same person who Officer Rowe had met with

15 before?

16 A Yes, it was.

17 Q And the same person that you recognized as being Miguel

18 Cuevas?

19 A Correct, yes.

20 Q And he got into the vehicle that they were in?

21 A Yes.

22 Q Did they then drive?

23 A Yes. They drove down Bridge Street towards downtown

24 Salem, taking a left onto Winter Street, down Hawthorne

1 Boulevard, onto Congress Street, and they took a right up  
2 Palmer Street.

3 Q Did they stop just past 22 Palmer Street?

4 A Yes, they did.

5 Q Did the person identified as Miguel Cuevas get out of the  
6 motor vehicle at that point?

7 A Yes, he did.

8 Q Walk onto Harrison Avenue and was out of sight?

9 A Yes.

10 Q Did he return about three minutes later?

11 A Yes, he did.

12 Q Get back into the motor vehicle?

13 A Yes.

14 Q And at that point -- the motor vehicle, driven by Officer  
15 Rowe and Officer Doyle?

16 A Yes.

17 Q And where did they go to at that point?

18 A They dropped him off, right by Lonnie's, again, at  
19 Lafayette and Ward Street, they dropped Miguel Cuevas  
20 off.

21 Q Did you then meet back with Officer Rowe and Officer  
22 Doyle at the Salem Police Station?

23 A Yes, we did.

24 Q Did Officer Rowe then provide to you another twist of

1 what was believed to be cocaine?

2 A Yes.

3 Q And was that placed into evidence?

4 A Yes, it was.

5 Q Did Officer Rowe also describe to you that Miguel Cuevas  
6 would not introduce them to the party that he had gotten  
7 it from, just told them to call when they needed  
8 something?

9 A Yes, that's correct.

10 Q And on January 10, 2007, did Officer Rowe and Officer  
11 Doyle, again, report to the Salem Police Department to  
12 continue their work in an undercover capacity?

13 A Yes, they did.

14 Q And related to this investigation?

15 A Yes.

16 Q And did they, at about seven p.m., call the direct  
17 connect number that they had and speak, again, to the  
18 party who had identified himself as John and they  
19 recognized to be Miguel Cuevas?

20 A Yes, they did.

21 Q Were arrangements made, again, for Officer Doyle and  
22 Officer Rowe to pick that person up at that same spot  
23 where they had picked him up on January eighth?

24 A Yes.

1 Q Again, that was the corner of Rice and Bridge Street; is  
2 that correct?

3 A Yes.

4 Q Was surveillance, again, set up?

5 A Yes, it was.

6 Q And were they, again, provided with a motor vehicle?

7 A Yes.

8 Q Did they proceed to that area?

9 A Yes, they did.

10 Q Could you describe your observations of what you saw?

11 A We saw it go back to the same general area, again, pull  
12 up on Palmer Street, again, and pulled over to the curb.  
13 We then saw the Spanish male, Miguel Cuevas, get out of  
14 the vehicle and he walked into Theo's Market. He was in  
15 there for a real brief period of time, came back out, got  
16 back in the motor vehicle. The motor vehicle then went  
17 up Palmer Street to Lafayette, took a left onto  
18 Lafayette, left onto Levitt, and pulled over and parked  
19 onto Levitt Street.

20 Q And at that point, did Miguel Cuevas exit the vehicle?

21 A Yes, he did.

22 Q Strike that. Actually, just to back you up for a moment,  
23 when you saw a male get into the vehicle, did you  
24 recognize that male?

- 1 A The same male, Miguel Cuevas, got back in, yes.
- 2 Q Was that the same male that exited the vehicle and then
- 3 returned to the vehicle after going into the market?
- 4 A Yes, it was.
- 5 Q And then, you saw that male get out of the vehicle,
- 6 again?
- 7 A Yes. They had parked by 17 Levitt Street. He got out of
- 8 the vehicle and walked up Levitt Street towards
- 9 Lafayette.
- 10 Q Did Officers Rowe and Doyle then meet you, again, back at
- 11 the Salem Police Station?
- 12 A Yes. After the male had taken a right onto Harrison
- 13 Avenue, out of sight, again, a few minutes later, came
- 14 back out of Harrison Avenue and got back into the motor
- 15 vehicle, and then, he -- he got back into the motor
- 16 vehicle. They drove him back to Bridge and Rice Street,
- 17 again, where they dropped him off.
- 18 Q And at that point, did they, Officer Rowe and Officer
- 19 Doyle, then meet you back at the Salem Police Station?
- 20 A Yes, they did.
- 21 Q When you arrived back there, did Officer Rowe provide you
- 22 with one twist that contained a brown powder that you
- 23 believed to be heroin?
- 24 A Correct, yes.

1 Q Did she also provide you with another twist of a white  
2 chunk powder that you believed to be cocaine?

3 A Yes, she did.

4 Q Did she provide to you that they had asked the male  
5 identified as Miguel Cuevas if he could get heroin as  
6 well as cocaine, that he told them that he would try,  
7 then Officer Rowe handed him forty dollars from the Salem  
8 Police money for the heroin, and Officer Doyle handed him  
9 fifty dollars from the money for the cocaine, that he was  
10 able to get both for them on Harrison Avenue, but again,  
11 would not tell them or introduce them to the party that  
12 he got it from; is that correct?

13 A Correct. Officer Doyle handed him the fifty dollars for  
14 the cocaine, as well as Officer Rowe, yes.

15 Q Were those items also put into evidence?

16 A Yes, they were.

17 Q And were they, subsequently, submitted to the state  
18 laboratory for testing?

19 A Yes, they were.

20 Q And was the substance that you had believed to be heroin  
21 examined at the state laboratory and found to contain  
22 heroin?

23 A Yes, it was.

24 Q And is that certification number 821975?

1 A Yes, it is.

2 MS. HOPWOOD: I'd ask if that could be marked  
3 as Exhibit One, please?

4 (Exhibit No. 1, marked; Certificate of  
5 Analysis.)

6 Q And the other three twists of what you suspected to be  
7 cocaine were also submitted to the state laboratory,  
8 related to the other purchases, correct, from the fifth,  
9 the eighth and the tenth?

10 A That's correct, yes.

11 Q Were those also submitted?

12 A Yes, they were.

13 Q Did you have an opportunity to review the state  
14 certification related to those three twists?

15 A Yes, I have.

16 Q Does certification number 821976 certify that that  
17 substance was found to contain cocaine?

18 A Yes.

19 Q And does certification 821977 certify that that substance  
20 was found to contain cocaine?

21 A Yes.

22 Q And does certification 821978 certify that that substance  
23 was found to contain cocaine?

24 A Yes.



1 MS. HOPWOOD: I'd ask that these be marked as  
2 Exhibits Two, Three and Four.

3 (Exhibit No. 2, marked; Certificate of  
4 Analysis.)

5 (Exhibit No. 3, marked; Certificate of  
6 Analysis.)

7 (Exhibit No. 4, marked; Certificate of  
8 Analysis.)

9 MS. HOPWOOD: I have no further questions for  
10 this witness. Do any of the grand jurors have any  
11 questions?

12 Q If you could wait outside?

13 THE FOREPERSON: All those in favor of allowing  
14 the Assistant District Attorney to remain while we  
15 deliberate, please raise your hand?

16 The Assistant District Attorney may remain.

17 (Whereupon, the court reporter exited the room  
18 and subsequently returned.)

19 MS. HOPWOOD: The grand jurors having returned  
20 true bills, I have for your further consideration that  
21 Miguel Cuevas, of Salem, in the County of Essex, on the  
22 fifth day of January, in the year 2007, at Salem, in the  
23 County of Essex, aforesaid, defendant having been  
24 previously convicted of manufacturing, distributing,

1 dispensing or possessing with intent to manufacture,  
2 distribute or dispense a controlled substance as defined  
3 by Section 31 of General Laws Chapter 94C, under this or  
4 any prior law of the Commonwealth or of any offense of  
5 any other jurisdiction, federal, state or territorial,  
6 which is the same as or necessarily includes the elements  
7 of said offense.

8 Further, Miguel Cuevas, of Salem, in the County  
9 of Essex, on the eighth day of January, in the year 2007,  
10 at Salem, in the County of Essex, aforesaid, said  
11 defendant having been previously convicted of  
12 manufacturing, distributing, dispensing or possessing  
13 with intent to manufacture, distribute or dispense a  
14 controlled substance as defined by Section 31 of General  
15 Laws Chapter 94C, under this or any prior law of the  
16 Commonwealth or of any offense of any other jurisdiction,  
17 federal, state or territorial, which is the same as or  
18 necessarily includes the elements of said offense.

19 That Miguel Cuevas, of Salem, in the County of  
20 Essex, on the tenth day of January, in the year 2007, at  
21 Salem, in the County of Essex, aforesaid, said defendant  
22 having been previously convicted of manufacturing,  
23 distributing, dispensing or possessing with intent to  
24 manufacture, distribute or dispense a controlled

1 substance as defined by Section 31 of General Laws  
2 Chapter 94C, under this or any prior law of the  
3 Commonwealth or of any other offense of any other  
4 jurisdiction, federal, state or territorial, which is the  
5 same as or necessarily includes the elements of said  
6 offense.

7 And that Miguel Cuevas, of Salem, in the County  
8 of Essex, on the tenth day of January, in the year 2007,  
9 at Salem, in the County of Essex, aforesaid, said  
10 defendant having been previously convicted of  
11 manufacturing, distributing, dispensing or possessing  
12 with intent to manufacture, distribute or dispense a  
13 controlled substance as defined by Section 31 of General  
14 Laws Chapter 94C, under this or any prior law of the  
15 Commonwealth or of any offense of any other jurisdiction,  
16 federal, state or territorial, which is the same as or  
17 necessarily includes the elements of said offense.

18 That last presentment is related to the heroin.  
19 The other three -- the one prior to that, is related to  
20 the cocaine on January tenth, and the other two are  
21 related to the other cocaine as the dates -- date is on  
22 the indictment. Just for the tenth, I want to be sure  
23 that you understood that one was for the heroin and one  
24 was for the cocaine.

STEVEN BONA, RECALLED

DIRECT EXAMINATION, RESUMED

Q (By Ms. Hopwood) I just want to remind you that you're still under oath?

A Yes.

Q Sergeant Bona, have you had an opportunity to review the Board of Probation record of Miguel Cuevas?

A Yes.

Q And is that the same Miguel Cuevas that was convicted of possession to distribute Class B out of -- on docket 0336CR3522, in 2003?

A Yes.

Q And is that the same Miguel Cuevas who was convicted of distribution of Class B, docket 0336CR3625, from 2003?

A Yes, it is.

MS. HOPWOOD: I have no further questions for this witness. Do any of the grand jurors have any questions for the witness?

Q Thank you.

A Thank you.

THE FOREPERSON: All those in favor of allowing the Assistant District Attorney to remain while we

1 deliberate, please raise your hand?

2 The Assistant District Attorney may remain.

3 (Whereupon, the hearing concluded.)  
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C E R T I F I C A T E

I, Brenda M. Nadeau, a Notary Public in and for the Commonwealth of Massachusetts, do hereby certify that the foregoing record, Pages 1 to 22, inclusive, is a true and accurate transcript of my System Tapes to the best of my knowledge, skill and ability.

In Witness Whereof, I have hereunto set my hand and Notarial Seal this 12<sup>th</sup> day of October, 2007.



Brenda M. Nadeau

Notary Public

My Commission expires: July 17, 2009

COMMONWEALTH OF MASSACHUSETTS

Essex, to wit:

At the SUPERIOR COURT begun and holden at Salem, within and for said County of Essex, on the first Monday of **October** in the year of our Lord two thousand seven.

THE JURORS for the Commonwealth of Massachusetts upon their oath present, that

**MIGUEL CUEVAS**

of **Salem**, in said County of Essex, on the **fifth** day of **January**, in the year of our Lord two thousand seven, at **Salem** in the County of Essex aforesaid

did unlawfully distribute cocaine, a derivative of coca leaves a controlled substance in Class B of G.L. chapter 94C, section 31,

against the peace of the Commonwealth aforesaid, and contrary to the form of the statute in such case made and provided.

(Second Page)

And the jurors aforesaid, upon their oath aforesaid, do further present, that

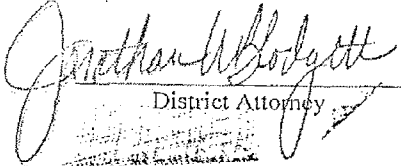
MIGUEL CUEVAS

of Salem, in said County of Essex, on the **eighth** day of **January**, in the year of our Lord two thousand seven, at Salem in the County of Essex aforesaid


said defendant having been previously convicted of manufacturing, distributing, dispensing, or possessing with intent to manufacture, distribute or dispense a controlled substance as defined by section 31, of G.L. chapter 94C, under this or any prior law of the Commonwealth or of any offense of any other jurisdiction, federal, state or territorial, which is the same as or necessarily includes the elements of said offense,

The Commonwealth hereby  
files a PNP as to so much of  
this indictment alleging more than  
Distribution of Class B - Cocaine.  
X [Signature]

against the peace of the Commonwealth aforesaid, and contrary to the form of the statute in such case made and provided.

  
District Attorney

A TRUE BILL

  
Foreperson of the Grand Jury



COMMONWEALTH OF MASSACHUSETTS

Essex, to wit:

At the SUPERIOR COURT begun and holden at Salem, within and for said County of Essex, on the first Monday of **October** in the year of our Lord two thousand seven.

THE JURORS for the Commonwealth of Massachusetts upon their oath present, that

**MIGUEL CUEVAS**

of **Salem**, in said County of Essex, on the **eighth** day of **January**, in the year of our Lord two thousand seven, at **Salem** in the County of Essex aforesaid

did unlawfully distribute cocaine, a derivative of coca leaves a controlled substance in Class B of G.L. chapter 94C, section 31,

against the peace of the Commonwealth aforesaid, and contrary to the form of the statute in such case made and provided.

(Second Page)

And the jurors aforesaid, upon their oath aforesaid, do further present, that

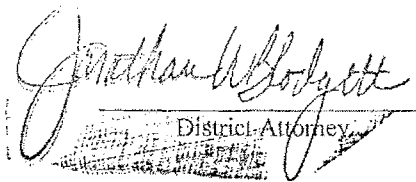
**MIGUEL CUEVAS**

of **Salem**, in said County of Essex, on the **fifth** day of **January**, in the year of our Lord two thousand seven, at **Salem** in the County of Essex aforesaid


said defendant having been previously convicted of manufacturing, distributing, dispensing, or possessing with intent to manufacture, distribute or dispense a controlled substance as defined by section 31, of G.L. chapter 94C, under this or any prior law of the Commonwealth or of any offense of any other jurisdiction, federal, state or territorial, which is the same as or necessarily includes the elements of said offense,

The Commonwealth hereby files  
a PNP as to so much of this  
Indictment alleging more than  
Distribution of Class B-Cocaine.  
K. [Signature]

against the peace of the Commonwealth aforesaid, and contrary to the form of the statute in such case made and provided.

  
District Attorney

A TRUE BILL

  
Foreperson of the Grand Jury

ESSEX, ss. On this \_\_\_\_\_ day of \_\_\_\_\_ in the year two thousand seven, this indictment was returned to and presented to the Said Superior Court, by the Grand Jury, and order to be filed.

ATTEST:

DIRECT  
SALEM

ESCR2007-

01535

001

Commonwealth of Massachusetts

VERSUS

MIGUEL CUEVAS

Superior Court      October      Term, 2007

Distribution of Cocaine,  
Second or Subsequent Offense

94C/32A

Essex, ss. OCT 5 2007,  
Returned to and presented in said  
Superior Court, by the Grand Jury  
and ordered to be filed.

Attest.

*Thomas A. Russell*  
CLERK

R 480

COMMONWEALTH OF MASSACHUSETTS

Essex, to wit:

At the SUPERIOR COURT begun and holden at Salem, within and for said County of Essex, on the first Monday of **October** in the year of our Lord two thousand seven.

THE JURORS for the Commonwealth of Massachusetts upon their oath present, that

**MIGUEL CUEVAS**

of **Salem**, in said County of Essex, on the **tenth** day of **January**, in the year of our Lord two thousand seven, at **Salem** in the County of Essex aforesaid

did unlawfully distribute cocaine, a derivative of coca leaves a controlled substance in Class B of G.L. chapter 94C, section 31,

against the peace of the Commonwealth aforesaid, and contrary to the form of the statute in such case made and provided.

(Second Page)

And the jurors aforesaid, upon their oath aforesaid, do further present, that

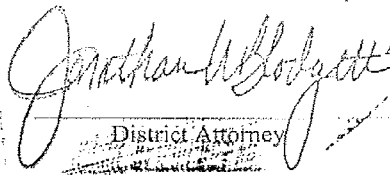
MIGUEL CUEVAS

of Salem, in said County of Essex, on the tenth day of January, in the year of our Lord two thousand seven, at Salem in the County of Essex aforesaid

said defendant having been previously convicted of manufacturing, distributing, dispensing, or possessing with intent to manufacture, distribute or dispense a controlled substance as defined by section 31, of G.L. chapter 94C, under this or any prior law of the Commonwealth or of any offense of any other jurisdiction, federal, state or territorial, which is the same as or necessarily includes the elements of said offense,

The Commonwealth hereby files  
a PNP as to so much of this  
indictment alleging more than  
Distribution of Cocaine - class B.  
K. L. M.

against the peace of the Commonwealth aforesaid, and contrary to the form of the statute in such case made and provided.

 A TRUE BILL  
District Attorney Foreperson of the Grand Jury

ESSEX, ss. On this \_\_\_\_\_ day of \_\_\_\_\_ in the year two thousand  
seven, this indictment was returned to and presented to the Said Superior Court, by  
the Grand Jury, and order to be filed.

ATTEST:

DIRECT  
SALEM

ESCR2007- 01535 003

Commonwealth of Massachusetts

VERSUS

MIGUEL CUEVAS

Superior Court      October      Term, 2007

Distribution of Cocaine,  
Second or Subsequent Offense

94C/32A

Essex, ss. OCT 5 2007  
Returned to and presented in said  
Superior Court, by the Grand Jury  
and ordered to be filed.  
Attest.

  
CLERK

R 483

COMMONWEALTH OF MASSACHUSETTS

Essex, to wit:

At the SUPERIOR COURT begun and holden at Salem, within and for said County of Essex, on the first Monday of **October** in the year of our Lord two thousand seven.

THE JURORS for the Commonwealth of Massachusetts upon their oath present, that

**MIGUEL CUEVAS**

of **Salem**, in said County of Essex, on the **tenth** day of **January**, in the year of our Lord two thousand seven, at **Salem** in the County of Essex aforesaid

did unlawfully distribute a controlled substance in Class A of G.L. chapter 94C, section 31, to wit: heroin,

against the peace of the Commonwealth aforesaid, and contrary to the form of the statute in such case made and provided.

(Second Page)

And the jurors aforesaid, upon their oath aforesaid, do further present, that

**MIGUEL CUEVAS**

of **Salem**, in said County of Essex, on the **tenth** day of **January**, in the year of our Lord two thousand seven, at **Salem** in the County of Essex aforesaid

said defendant having been previously convicted of manufacturing, distributing, dispensing, or possessing with intent to manufacture, distribute or dispense a controlled substance as defined by section 31, of G.L. chapter 94C, under this or any prior law of the Commonwealth or of any offense of any other jurisdiction, federal, state or territorial, which is the same as or necessarily includes the elements of said offense,

*The Commonwealth hereby files a  
Partial Notice to Plead as to so much of  
this indictment alleging more than  
Distribution of Heroin - Class A.*

*K. H.*

against the peace of the Commonwealth aforesaid, and contrary to the form of the statute in such case made and provided.

*Jonathan W. Blodgett*

A TRUE BILL

District Attorney

*[Signature]*  
Foreperson of the Grand Jury



ESSEX, ss. On this \_\_\_\_\_ day of \_\_\_\_\_ in the year two thousand seven, this indictment was returned to and presented to the Said Superior Court, by the Grand Jury, and order to be filed.

ATTEST:

DIRECT  
SALEM

ESCR2007-

01535

004

Commonwealth of Massachusetts

VERSUS

MIGUEL CUEVAS

Superior Court      October      Term, 2007

Distribution of Heroin,  
Second or Subsequent Offense

94C/32

Essex ss. OCT - 5 2007

Returned and presented in said  
Superior Court, by the Grand Jury  
and ordered to be filed.

Attest.

*Sharon A. Marshall*  
CLERK

R 486

COMMONWEALTH OF MASSACHUSETTS

ESSEX, ss.

Superior Court Department  
Criminal No.: ESCR2007-1535-001-004

COMMONWEALTH

vs.

MIGUEL CUEVAS  
DEFENDANT

---

In the above enter the appearance of the undersigned for the COMMONWEALTH.

Name of Attorney: Karen H. Hopwood  
Address: Office of the Eastern District Attorney  
Ten Federal Street  
Salem, MA 01970  
Telephone: (978) 745-6610 ext. 5078  
BBO#: 655885

---


(DO NOT WRITE BELOW THIS LINE)

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FILED: \_\_\_\_\_

11, 28, 07

ATTEST: \_\_\_\_\_

  
Assistant Clerk

This appearance subject to Rule 7 of the Massachusetts Rules of Criminal Procedure.

ktrack:grandjury/noticeofappearance



Commonwealth of Massachusetts  
Essex Superior Court  
Superior Court House  
34 Federal Street  
Salem, MA 01970

5

TO: Clerk/Magistrate  
District Court Department  
Salem District Court  
65 Washington ST.  
Salem, MA 01970

ORDER FOR THE TRANSMITTAL OF BAIL

RE: Miguel Cuevas  
Superior Court DOCKET#: ESCR2007-01535

Dear Clerk/Magistrate:

Following Indictment on the above named defendant appeared before this court on was 11/28/2007 and was arraigned on charges of:

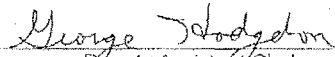
01/05/2007 COCAINE, DISTRIBUTE, SUBSQ.OFF. c94C s32A(d)  
01/08/2007 COCAINE, DISTRIBUTE, SUBSQ.OFF. c94C s32A(d)  
01/10/2007 COCAINE, DISTRIBUTE, SUBSQ.OFF. c94C s32A(d)  
01/10/2007 DRUG, DISTRIBUTE CLASS A, SUBSQ.OFF. c94C s32(b)

It having been represented to this Court at the time of his arraignment that the defendant was admitted to bail on all or some of these identical offenses pending in the District Court Department, Lynn Division. Prior to the time of the probable cause hearing this Court imposed the same bail and accepted the same surety or sureties as that of the corresponding District Court Department complaints superseded by the indictments.

Upon dismissal of the complaints in the District Court Department, the Clerk is instructed to transmit the recognizance on all cases, the affidavit of surety, bond or cash as the case may be to the Clerk of Courts Superior Court Department, this all being agreeable with the defendant and surety or sureties.

Dated at Salem, Massachusetts this 29th day of November, 2007.

By the Court (David Lowy, Justice)

  
Deputy Assistant Clerk

Entered: 11/29/2007

01/15/2008 11:03 FAX 9785259989

SALEM\_DIST.

12002/002

Commonwealth of Massachusetts

Essex Superior Court  
Superior Court House  
34 Federal Street  
Salem, MA 10970

TO: Clerk/Magistrate  
District Court Department  
Salem District Court  
65 Washington St  
Salem, MA 01970

ORDER FOR THE TRANSMITTAL OF BAIL

RE: Miguel Cuevas  
Superior Court DOCKET#: ESCR2007-01535

Dear Clerk/Magistrate:

Following Indictment on the above named defendant appeared before this court on was 11/28/2007 and was arraigned on charges of:

01/05/2007 COCAINE, DISTRIBUTE, SUBSQ.OFF. c94C s32A(d)  
01/08/2007 COCAINE, DISTRIBUTE, SUBSQ.OFF. c94C s32A(d)  
01/10/2007 COCAINE, DISTRIBUTE, SUBSQ.OFF. c94C s32A(d)  
01/10/2007 DRUG, DISTRIBUTE CLASS A, SUBSQ.OFF. c94C s32(b)

It having been represented to this Court at the time of his arraignment that the defendant was admitted to bail on all or some of these identical offenses pending in the District Court Department, Lynn Division. Prior to the time of the probable cause hearing this Court imposed the same bail and accepted the same surety or sureties as that of the corresponding District Court Department complaints superseded by the indictments.

Upon dismissal of the complaints in the District Court Department, the Clerk is instructed to transmit the recognizance on all cases, the affidavit of surety, bond or cash as the case may be to the Clerk of Courts Superior Court Department, this all being agreeable with the defendant and surety or sureties.

Dated at Salem, Massachusetts this 29th day of November, 2007.

By the Court (David Lowy, Justice)

Entered: 11/29/2007

*George Hodgson*  
Deputy Assistant Clerk

COMMONWEALTH OF MASSACHUSETTS

ESSEX, SS

SUPERIOR COURT DEPARTMENT  
INDICTMENT NO(s): ESCR2007-1535-001-004

COMMONWEALTH

v.

MIGUEL CUEVAS  
Defendant

**DISCOVERY INDEX**

1. Salem District Court Complaint No. 0736CR1716, dated 6/6/07, 2 pages;
2. Salem District Court Application for Complaint, dated 5/30/07, 3 pages;
3. Salem Police Department Report No. D006487, 5/22/07, 4 pages;
4. Salem Police Department Report of Detective. Stephen Bona, 1/5/07, 1 page;
5. Salem Police Department Booking Report, dated 6/9/07, 3 pages;
6. Dept. of Public Health, Drug Certificate No. 821975, dated 9/12/07, 1 page;
7. Dept. of Public Health, Drug Certificate No. 821976, dated 9/13/07, 1 page;
8. Dept. of Public Health, Drug Certificate No. 821977, dated 9/17/07, 1 page;
9. Dept. of Public Health, Drug Certificate No. 821978, dated 9/14/07, 1 page;
10. Grand Jury Indictment No. ESCR2007-1535-001, dated 10/5/07, 2 pages;
11. Grand Jury Indictment No. ESCR2007-1535-002, dated 10/5/07, 2 pages;
12. Grand Jury Indictment No. ESCR2007-1535-003, dated 10/5/07, 2 pages;
13. Grand Jury Indictment No. ESCR2007-1535-004, dated 10/5/07, 2 pages;
14. Grand Jury Minutes, dated 10/5/07, 23 pages.

Respectfully submitted,  
For the Commonwealth  
JONATHAN W. BLODGETT  
DISTRICT ATTORNEY



Karen H. Hopwood  
Assistant District Attorney  
10 Federal Street  
Salem, MA 01970  
(978) 745-6610 ext. 5078  
BBO#: 655885

Date: 11/28/07

RECOGNIZANCE (Pledge to Appear)		COMMONWEALTH OF MASSACHUSETTS		CASE NUMBER 0736CR1716	
DEFENDANT'S NAME AND ADDRESS (Include any alias) Miguel Cuevas		NAME AND ADDRESS OF COURT Salem District Court 65 Washington St. Salem, MA. 01970		THE DEFENDANT MUST APPEAR AT THIS COURT ADDRESS ON THE DATE AND TIME SPECIFIED HEREIN	
TERMS OF RELEASE <input type="checkbox"/> PERSONAL RECOGNIZANCE (Promise to Appear) \$ <input checked="" type="checkbox"/> BAIL <input checked="" type="checkbox"/> CASH AS SURETY \$4,000 <input type="checkbox"/> BOND AS SURETY \$ <input type="checkbox"/> OTHER SURETY \$ (Please Specify)		DATE AND TIME OF APPEARANCE 8/11/07 AT 9:00 DATE TIME X: A.M. <input type="checkbox"/> P.M. <input checked="" type="checkbox"/>			
SOCIAL SECURITY NUMBER	DATE OF BIRTH 8/16/85	ARREST ON WARRANT <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO		OFFENSE(S) Drug violation near park school	
SURETY/SURETIES NAME AND ADDRESS		I, as defendant, charged by complaint with the crime(s) listed above, understand that I am being released from the terms of release specified. I will personally appear before the above named court at the time and date specified, and I will appear for any continuance until the final decree, sentence or order, and I will depart without leave. Further, I will appear before any court to which the charges may be referred, or to any sitting of the Superior Court to which I may be bound over or indicted to answer to which I will appear for any continuance until the final decree, sentence or order, and I will abide by it without leave.			
07/13/07 000000		I acknowledge that if I fail without sufficient excuse to appear in accordance with the foregoing promise, jointly and severally if a surety has been required, to the Commonwealth of Massachusetts specified in the			
07361716 #		SIGNED (DEFENDANT) X Miguel Cuevas		DATE 7/12/07	
BAIL 4000.00		I and acknowledge that if the above named defendant fails to appear and abide by all orders of the court, jointly and severally, with the defendant to the Commonwealth of Massachusetts for the dollar amount specified in the terms of the release.			
SUBTOTAL 4000.00		SIGNED (SURETY) X			
TOTAL 4000.00		A. RELEASE AUTHORIZED FROM Salem Sup Ct		BAIL FEE RECEIVED \$ 0.00	
CHECK 4000.00		B. JURISDICTION OF MAGISTRATE (Complete when appearance is being required outside of your jurisdiction)		DATE AND TIME SIGNED 7/12/07 3:45 P.M.	
CHANGE .00		1. Clerk-Magistrate 2. Assistant Clerk 3. Bail Commissioner 4. the defendant having been			
1. HITS		NOTICE TO DEFENDANT & SURETY			
CLERK X 0951		I understand that until the Legal Counsel Fee is satisfied in accordance with G.L. c. 211D, § 2(1/2), a penalty for failure to appear in court after release on bail or recognizance may be punished by a fine of \$10,000 or by imprisonment for a year, or both, in the case of a misdemeanor, and by a fine of \$50,000 or imprisonment for five years, or both, in the case of a felony.			
K24 00000 12:03		A defendant who is charged with another crime while on release on bail or recognizance may have the terms of this release revoked, and the defendant may be held without bail for a period not to exceed 60 days.			
RECEIPT-RECORD OF PAYMENT OF CASH BAIL <input type="checkbox"/> NOT APPLICABLE					
DATE 7/12/07	RECEIVED FROM SURETY (NAME AND ADDRESS)	DEFENDANT Miguel Cuevas	AMOUNT \$4,000.00		
		CASE NUMBER 0736CR1716	DISTRICT COURT Salem		
RECEIVED BY <i>Richard Deschamps</i>					

CRIMINAL DOCKET		DOCKET NUMBER	NO. OF COUNTS	Trial Court of Massachusetts District Court Department	
DEFENDANT NAME AND ADDRESS Miguel A Cuevas		DOB 06/06/2007	GENDER Male	COURT NAME & ADDRESS Salem District Court 65 Washington Street Salem, MA 01970	
		DATE COMPLAINT ISSUED 06/06/2007	INTERPRETER REQUIRED		<b>WARRANT</b>
		PRECOMPLAINT ARREST DATE			
FIRST FIVE OFFENSE COUNTS					
COUNT	CODIC	OFFENSE DESCRIPTION	DEFENSE DATE		
1	94C/32A/E	DRUG, DISTRIBUTE CLASS B c94C §32A(a)	01/09/2007		
2	94C/32A/E	DRUG, DISTRIBUTE CLASS B c94C §32A(a)	01/08/2007		
3	94C/32A/E	DRUG, DISTRIBUTE CLASS B c94C §32A(a)	01/10/2007		
4	94C/32A	DRUG, DISTRIBUTE CLASS A c94C §32(a)	01/10/2007		
5	94C/32J	DRUG VIOLATION NEAR SCHOOL/PARK (94C 732J)	0951X000007/13/07BAI10105/2007 4000.00		
DEFENSE ATTORNEY G. ZEROLA 11-2-07 W. WILKINSON		OFFENSE CITY/TOWN Salem	POLICE DEPARTMENT Salem PD		
DATE & JUDGE 6-11-07 J. Wilkinson		DOCKET ENTRY	DATE & JUDGE	FEES IMPOSED	
		<input type="checkbox"/> Attorney appointed (SJC R. 3.10) <input type="checkbox"/> Atty. Denied & Delt. Advised per 211 D. 34 <input type="checkbox"/> Waiver of Counsel found after colloquy		Counsel Fee (211D § 2A(2)) <input type="checkbox"/> WAIVED	
		Terms of release set: <input type="checkbox"/> PR <input checked="" type="checkbox"/> Bail <input type="checkbox"/> Safe Docket for special condition <input type="checkbox"/> Held (276 §52A)		Counsel Contribution (211D § 2) <input type="checkbox"/> WAIVED	
		Arraigned and advised: <input checked="" type="checkbox"/> Potential of bail revocation (276 §56) <input type="checkbox"/> Right to trial in review (276 §58) <input type="checkbox"/> Right to drug exam (111E § 10)		Default Warrant Fee (276 § 39(1)) <input type="checkbox"/> WAIVED	
		Advised of right to jury trial <input type="checkbox"/> Waiver of jury found after colloquy <input type="checkbox"/> Does not waive		Default Warrant Arrest Fee (276 § 38 (2)) <input type="checkbox"/> WAIVED	
		Advised of trial rights as per on (Dist. Ct. Supp. R. 4)		Probation Supervision Fee (276 § 87A) <input type="checkbox"/> WAIVED	
		Advised of right of appeal to Appeals Ct. (M.R. Crim P.R. 28)		Bail Order Forfeited	
SCHEDULING HISTORY					
NO.	SCHEDULED DATE	EVENT	RESULT	JUDGE	TAPE START/STOP
1	6-29-07	PTIT	<input checked="" type="checkbox"/> Held <input type="checkbox"/> Cont'd	J. Wilkinson	
2	8-1-07	DCC	<input type="checkbox"/> Held <input type="checkbox"/> Cont'd		
3	10-1-07	DCC	<input type="checkbox"/> Held <input type="checkbox"/> Cont'd		
4	11-2-07	DLI	<input type="checkbox"/> Held <input checked="" type="checkbox"/> Cont'd		
5	11-29-07	SRE	<input checked="" type="checkbox"/> Held <input type="checkbox"/> Cont'd		
6			<input type="checkbox"/> Held <input type="checkbox"/> Cont'd		
7			<input type="checkbox"/> Held <input type="checkbox"/> Cont'd		
8			<input type="checkbox"/> Held <input type="checkbox"/> Cont'd		
9			<input type="checkbox"/> Held <input type="checkbox"/> Cont'd		
10			<input type="checkbox"/> Held <input type="checkbox"/> Cont'd		
APPROVED ABBREVIATIONS ARR = Arraignment PTIT = Probable Cause Trial DCC = Discovery Conference & Jury Selection DTR = Bench Trial JTR = Jury Trial PCH = Probable Cause Hearing MOT = Motion Hearing SRE = Status Review SRP = Status Review of Payment PAT = First Appearance in any session DCR = Denial of Release CWF = Continuance without finding scheduled to terminate PRG = Probation scheduled to terminate DPIA = Defendant failed to appear & was defaulted WAR = Waiver of Arrest WARD = Waiver of Arrest & Release WIT = Waiver of Arrest & Release & Trial PRG = Probation scheduled to terminate					
A TRUE COPY ATTEST:		CLERK-MAGISTRATE / ASST. CLERK		TOTAL NO. OF PAGES	ON (DATE)
		X			

DocketPrint Version: 06/06/2007 10:35:15

W-2007-01189



CRIMINAL DOCKET - OFFENSES		DEFENDANT NAME	DOCKET NUMBER
		Miguel A Cuevas	0736CR001716
COUNT / OFFENSE		DISPOSITION DATE AND JUDGE	
1 DRUG, DISTRIBUTE CLASS B c94C §32A(a)		Per	
DISPOSITION METHOD	FIN/ASSESSMENT	STRIKE	COSTS
<input type="checkbox"/> Guilty Plea or <input type="checkbox"/> Admission to Sufficient Facts accepted after colloquy and 278 §29D warning	HEAD INJURY ASMT	RESTITUTION	WV ASSESSMENT
<input type="checkbox"/> Bench Trial	BATTERER'S FEE		
<input type="checkbox"/> Jury Trial	OTHER		
<input checked="" type="checkbox"/> Dismissed upon:	SENTENCE OR OTHER DISPOSITION		
<input checked="" type="checkbox"/> Request of Commonwealth <input type="checkbox"/> Request of Victim	<input type="checkbox"/> Sufficient facts found but continued without a finding until:		
<input type="checkbox"/> Request of Defendant <input type="checkbox"/> Failure to prosecute	<input type="checkbox"/> Defendant placed on probation until:		
<input type="checkbox"/> Other:	<input type="checkbox"/> Risk/Need or OUI <input type="checkbox"/> Administrative Supervision		
<input type="checkbox"/> Filed with Defendant's consent	<input type="checkbox"/> Defendant placed on pretrial probation (276 §87) until:		
<input type="checkbox"/> Nolle Prosequi	<input type="checkbox"/> To be dismissed if court costs / restitution paid by:		
<input type="checkbox"/> Decriminalized (277 §70 C)			
FINDINGS	FINAL DISPOSITION		
<input type="checkbox"/> Guilty <input type="checkbox"/> Not Guilty	JUDGE		
<input type="checkbox"/> Responsible <input type="checkbox"/> Not Responsible	DATE		
<input type="checkbox"/> Probable Cause <input type="checkbox"/> No Probable Cause			
COUNT / OFFENSE		DISPOSITION DATE AND JUDGE	
2 DRUG, DISTRIBUTE CLASS B c94C §32A(a)		11/1	
DISPOSITION METHOD	FIN/ASSESSMENT	STRIKE	COSTS
<input type="checkbox"/> Guilty Plea or <input type="checkbox"/> Admission to Sufficient Facts accepted after colloquy and 278 §29D warning	HEAD INJURY ASMT	RESTITUTION	WV ASSESSMENT
<input type="checkbox"/> Bench Trial	BATTERER'S FEE		
<input type="checkbox"/> Jury Trial	OTHER		
<input checked="" type="checkbox"/> Dismissed upon:	SENTENCE OR OTHER DISPOSITION		
<input checked="" type="checkbox"/> Request of Commonwealth <input type="checkbox"/> Request of Victim	<input type="checkbox"/> Sufficient facts found but continued without a finding until:		
<input type="checkbox"/> Request of Defendant <input type="checkbox"/> Failure to prosecute	<input type="checkbox"/> Defendant placed on probation until:		
<input type="checkbox"/> Other:	<input type="checkbox"/> Risk/Need or OUI <input type="checkbox"/> Administrative Supervision		
<input type="checkbox"/> Filed with Defendant's consent	<input type="checkbox"/> Defendant placed on pretrial probation (276 §87) until:		
<input type="checkbox"/> Nolle Prosequi	<input type="checkbox"/> To be dismissed if court costs / restitution paid by:		
<input type="checkbox"/> Decriminalized (277 §70 C)			
FINDINGS	FINAL DISPOSITION		
<input type="checkbox"/> Guilty <input type="checkbox"/> Not Guilty	JUDGE		
<input type="checkbox"/> Responsible <input type="checkbox"/> Not Responsible	DATE		
<input type="checkbox"/> Probable Cause <input type="checkbox"/> No Probable Cause			
COUNT / OFFENSE		DISPOSITION DATE AND JUDGE	
3 DRUG, DISTRIBUTE CLASS B c94C §32A(a)		11/1	
DISPOSITION METHOD	FIN/ASSESSMENT	STRIKE	COSTS
<input type="checkbox"/> Guilty Plea or <input type="checkbox"/> Admission to Sufficient Facts accepted after colloquy and 278 §29D warning	HEAD INJURY ASMT	RESTITUTION	WV ASSESSMENT
<input type="checkbox"/> Bench Trial	BATTERER'S FEE		
<input type="checkbox"/> Jury Trial	OTHER		
<input checked="" type="checkbox"/> Dismissed upon:	SENTENCE OR OTHER DISPOSITION		
<input checked="" type="checkbox"/> Request of Commonwealth <input type="checkbox"/> Request of Victim	<input type="checkbox"/> Sufficient facts found but continued without a finding until:		
<input type="checkbox"/> Request of Defendant <input type="checkbox"/> Failure to prosecute	<input type="checkbox"/> Defendant placed on probation until:		
<input type="checkbox"/> Other:	<input type="checkbox"/> Risk/Need or OUI <input type="checkbox"/> Administrative Supervision		
<input type="checkbox"/> Filed with Defendant's consent	<input type="checkbox"/> Defendant placed on pretrial probation (276 §87) until:		
<input type="checkbox"/> Nolle Prosequi	<input type="checkbox"/> To be dismissed if court costs / restitution paid by:		
<input type="checkbox"/> Decriminalized (277 §70 C)			
FINDINGS	FINAL DISPOSITION		
<input type="checkbox"/> Guilty <input type="checkbox"/> Not Guilty	JUDGE		
<input type="checkbox"/> Responsible <input type="checkbox"/> Not Responsible	DATE		
<input type="checkbox"/> Probable Cause <input type="checkbox"/> No Probable Cause			

CaseTime 6/6/2023 01:26:20Z 10.33.33

Version 2.0 - 11/25

<b>CRIMINAL DOCKET - OFFENSES</b>		DEFENDANT NAME <b>Miguel A Cuevas</b>		CASE NUMBER <b>0736CR001716</b>	
COUNT / OFFENSE <b>4 DRUG, DISTRIBUTE CLASS A c94C §32(a)</b>		DISPOSITION DATE AND JUDGE <b>11/11</b>			
<b>DISPOSITION METHOD</b> <input type="checkbox"/> Guilty Plea or <input type="checkbox"/> Admission to Sufficient Facts accepted after colloquy and 278 §29D warning <input type="checkbox"/> Bench Trial <input type="checkbox"/> Jury Trial <input checked="" type="checkbox"/> Dismissed upon: <input type="checkbox"/> Request of Commonwealth <input type="checkbox"/> Request of Victim <input type="checkbox"/> Request of Defendant <input type="checkbox"/> Failure to prosecute <input type="checkbox"/> Other: <input type="checkbox"/> Filed with Defendant's consent <input type="checkbox"/> Nolle Prosequi <input type="checkbox"/> Decriminalized (277 §70 C)		<b>FINE/ASSESSMENT</b> <input type="checkbox"/> HEAD INJURY ASMT <input type="checkbox"/> RESTITUTION <input type="checkbox"/> VAW ASSESSMENT		<b>COSTS</b> <input type="checkbox"/> OUI §24D FEE <input type="checkbox"/> BATTERER'S FEE <input type="checkbox"/> OTHER	
		<b>SENTENCE OR OTHER DISPOSITION</b> <input type="checkbox"/> Sufficient facts found but continued without a finding until: <input type="checkbox"/> Defendant placed on probation until: <input type="checkbox"/> Risk/Need or OUI <input type="checkbox"/> Administrative Supervision <input type="checkbox"/> Defendant placed on pretrial probation (276 §87) until: <input type="checkbox"/> To be dismissed if court costs / restitution paid by:			
<b>FINDING</b> <input type="checkbox"/> Guilty <input type="checkbox"/> Not Guilty <input type="checkbox"/> Responsible <input type="checkbox"/> Not Responsible <input type="checkbox"/> Probable Cause <input type="checkbox"/> No Probable Cause		<b>FINAL DISPOSITION</b> <input type="checkbox"/> Dismissed on recommendation of Probation Dept. <input type="checkbox"/> Probation terminated: defendant discharged <input type="checkbox"/> Sentence or disposition revoked (see cont'd page)		<b>JUDGE</b>  <b>DATE</b>	
COUNT / OFFENSE <b>5 DRUG VIOLATION NEAR SCHOOL/PARK c94C 732J</b>		DISPOSITION DATE AND JUDGE <b>11/11</b>			
<b>DISPOSITION METHOD</b> <input type="checkbox"/> Guilty Plea or <input type="checkbox"/> Admission to Sufficient Facts accepted after colloquy and 278 §29D warning <input type="checkbox"/> Bench Trial <input type="checkbox"/> Jury Trial <input checked="" type="checkbox"/> Dismissed upon: <input type="checkbox"/> Request of Commonwealth <input type="checkbox"/> Request of Victim <input type="checkbox"/> Request of Defendant <input type="checkbox"/> Failure to prosecute <input type="checkbox"/> Other: <input type="checkbox"/> Filed with Defendant's consent <input type="checkbox"/> Nolle Prosequi <input type="checkbox"/> Decriminalized (277 §70 C)		<b>FINE/ASSESSMENT</b> <input type="checkbox"/> HEAD INJURY ASMT <input type="checkbox"/> RESTITUTION <input type="checkbox"/> VAW ASSESSMENT		<b>COSTS</b> <input type="checkbox"/> OUI §24D FEE <input type="checkbox"/> BATTERER'S FEE <input type="checkbox"/> OTHER	
		<b>SENTENCE OR OTHER DISPOSITION</b> <input type="checkbox"/> Sufficient facts found but continued without a finding until: <input type="checkbox"/> Defendant placed on probation until: <input type="checkbox"/> Risk/Need or OUI <input type="checkbox"/> Administrative Supervision <input type="checkbox"/> Defendant placed on pretrial probation (276 §87) until: <input type="checkbox"/> To be dismissed if court costs / restitution paid by:			
<b>FINDING</b> <input type="checkbox"/> Guilty <input type="checkbox"/> Not Guilty <input type="checkbox"/> Responsible <input type="checkbox"/> Not Responsible <input type="checkbox"/> Probable Cause <input type="checkbox"/> No Probable Cause		<b>FINAL DISPOSITION</b> <input type="checkbox"/> Dismissed on recommendation of Probation Dept. <input type="checkbox"/> Probation terminated: defendant discharged <input type="checkbox"/> Sentence or disposition revoked (see cont'd page)		<b>JUDGE</b>  <b>DATE</b>	
COUNT / OFFENSE <b>6 DRUG VIOLATION NEAR SCHOOL/PARK c94C 732J</b>		DISPOSITION DATE AND JUDGE <b>11/11</b>			
<b>DISPOSITION METHOD</b> <input type="checkbox"/> Guilty Plea or <input type="checkbox"/> Admission to Sufficient Facts accepted after colloquy and 278 §29D warning <input type="checkbox"/> Bench Trial <input type="checkbox"/> Jury Trial <input checked="" type="checkbox"/> Dismissed upon: <input type="checkbox"/> Request of Commonwealth <input type="checkbox"/> Request of Victim <input type="checkbox"/> Request of Defendant <input type="checkbox"/> Failure to prosecute <input type="checkbox"/> Other: <input type="checkbox"/> Filed with Defendant's consent <input type="checkbox"/> Nolle Prosequi <input type="checkbox"/> Decriminalized (277 §70 C)		<b>FINE/ASSESSMENT</b> <input type="checkbox"/> HEAD INJURY ASMT <input type="checkbox"/> RESTITUTION <input type="checkbox"/> VAW ASSESSMENT		<b>COSTS</b> <input type="checkbox"/> OUI §24D FEE <input type="checkbox"/> BATTERER'S FEE <input type="checkbox"/> OTHER	
		<b>SENTENCE OR OTHER DISPOSITION</b> <input type="checkbox"/> Sufficient facts found but continued without a finding until: <input type="checkbox"/> Defendant placed on probation until: <input type="checkbox"/> Risk/Need or OUI <input type="checkbox"/> Administrative Supervision <input type="checkbox"/> Defendant placed on pretrial probation (276 §87) until: <input type="checkbox"/> To be dismissed if court costs / restitution paid by:			
<b>FINDING</b> <input type="checkbox"/> Guilty <input type="checkbox"/> Not Guilty <input type="checkbox"/> Responsible <input type="checkbox"/> Not Responsible <input type="checkbox"/> Probable Cause <input type="checkbox"/> No Probable Cause		<b>FINAL DISPOSITION</b> <input type="checkbox"/> Dismissed on recommendation of Probation Dept. <input type="checkbox"/> Probation terminated: defendant discharged <input type="checkbox"/> Sentence or disposition revoked (see cont'd page)		<b>JUDGE</b>  <b>DATE</b>	



Commonwealth of Massachusetts  
County of Essex  
The Superior Court

CRIMINAL DOCKET# ESCR2007-01535

RE: Commonwealth v Cuevas, Miguel

TO:

---

ORDER OF NOTICE TO SHOW CAUSE  
FORFEITURE OF BAIL

WE COMMAND YOU, that you appear before our Superior Court, at the Court House at Salem in the County of Essex in CtRm 1 (Salem), CtRm 1 (Salem) session without jury of our said Court,

on: 02/28/2008


at: 09:00 AM

to show cause why bail should not be forfeited in Commonwealth v Cuevas, Miguel case # ESCR2007-01535

The amount of bail you posted in this case is \$4,000.00 and the same is subject to forfeiture on that day to the Commonwealth. You are advised to bring this ORDER with you.

Witness, Barbara J. Rouse, Esquire, Chief Justice of the Superior Court at Salem this 28th day of January in the year of our Lord 2008.

Thomas H. Driscoll Jr.  
Clerk of the Courts

<b>NOTICE OF RECALL OF WARRANT</b>		<b>POLICE DEPARTMENT SALEM PD</b>	<b>Trial Court of Massachusetts Essex Superior Court</b> 
NAME OF DEFENDANT CUEVAS, MIGUEL		DEF. DOB	COURT Essex Superior Court 34 Federal Street Salem, MA 01970
DOCKET NUMBER 0777CR001535	DATE WARRANT ISSUED 12/17/2007	DATE WARRANT RECALLED 05/19/2008	REASON FOR RECALL <input type="checkbox"/> Case has been disposed of <input type="checkbox"/> Default removed and case continued to _____ <input type="checkbox"/> Other

TO THE DEFENDANT NAMED ABOVE:


You are hereby notified that the court has recalled, without service, and cancelled the warrant(s) against you that are listed above.

This recall notice applies ONLY to the warrant(s) listed above which were issued and recalled on the date(s) listed above. It does NOT apply to any subsequent warrant(s) issued under the same case docket number(s).

**KEEP THIS NOTICE ON YOUR PERSON AS EVIDENCE OF THE RECALL** in the event that a law enforcement officer questions you about the above warrant(s).

If your case has not been fully disposed of and you have been released on bail or personal recognizance, your wilful failure to appear may result in the issuance of an additional criminal complaint punishable by up to one year imprisonment or up to a \$1,000 fine or both. See General Laws chapter 276, section 82A.

\_\_\_\_\_  
DATE

  
\_\_\_\_\_  
AUTHORIZED COURT SIGNATURE

9

COMMONWEALTH OF MASSACHUSETTS

ESSEX, ss.

To the Sheriff of the County of Essex, his Deputies, or any Officer authorized to serve criminal process in the Commonwealth, and the Superintendent of either of the Jails in said County,

GREETING:

These are to command you, the said Sheriffs and Officers, in the name of the Commonwealth of Massachusetts, forthwith to convey and deliver into the custody of the said Superintendent the body of

*Miguel Cuevas*

who this day has been brought before the Superior Court, for the transaction of criminal business, holden within and for said County, to answer to an indictment found against him by the Grand Inquest for the body of said County, wherein he is charged with the crime of

*DIST. of COCAINE (2nd Subs)*

alleged to have been committed in said County; and who, having been ordered by said Court to

\*\* recognize in the sum of *Held w/out* dollars,

with sufficient surety in a like sum, for his personal appearance before said Court, during the present sitting, and at any subsequent time to which said indictment may be continued, unless previously surrendered or discharged, and so from time to time until the final decree, sentence or order of the Court thereon, and to abide such final sentence, order or decree, and not depart without leave, has refused to comply with said order to recognize.

You, the said Superintendent, are hereby required to receive him into your custody in the said Jail, and him there safely keep until he recognize as aforesaid, or be otherwise discharged by due order of law.

WITNESS,

*Barbara J. Rouse*

Esquire, Chief Justice of our Superior Court, the *19th* day of *May* 2008, in the year of our Lord.

*James E. Rouse*  
Assistant Clerk.

\*\* OR CASH

1M-D 123

*Copy sent  
to C.P.S.  
May 1 6/2008  
Motion Allowed  
At this Court  
Court Clerk*

*10*

COMMONWEALTH OF MASSACHUSETTS

ESSEX, ss.

SUPERIOR COURT DEPARTMENT  
ESSEX DIVISION  
NOS: ESCR2007-1535

COMMONWEALTH

v.

MIGUEL CUEVAS

MOTION FOR FUNDS FOR SPANISH SPEAKING INVESTIGATOR

The defendant respectfully moves, pursuant to G.L. c.261 s. 27C and Article 12 of the Massachusetts Declaration of Rights, for a sum not to exceed seven hundred (\$700.00) so that he can retain an investigator fluent in Spanish.

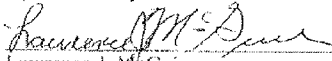
As reasons therefor, the defendant states that:

1. He has been found indigent by a Justice of this Court and the Committee for Public Counsel Services has been appointed to represent him.
2. He and some witnesses speak Spanish.
3. The defense will retain an investigator who speaks Spanish and charges sixty dollars an hour. This is the same rate that he charges private clients. The investigation will consist of locating and interviewing witnesses. It is more efficient and thrifter to retain a Spanish speaking investigator than to secure an interpreter to accompany our investigator in her attempts to locate and interview the witnesses.

5. The service requested is "reasonably necessary to ensure [the defendant] as effective a [defense] as he would have if he were financially able to pay", C.L. c.261 s.27C.
6. The service requested is necessary to guarantee the defendant's rights to due process and effective assistance of counsel under the Fifth, Sixth and Fourteenth Amendments to the United States Constitution.
7. The service requested is necessary to guarantee the defendant's right to be fully heard in his defense and to be effectively represented by counsel under Article 12 of the Massachusetts Declaration of Rights.
8. The service requested is required by Canons 6 and 7 of the Canons of Ethics, Guideline 4.1 of the Performance Guidelines of the Committee for Public Counsel Services and Guideline 4.1 of the Performance Guidelines of the National Legal Aid and Defender Association.

MIGUEL CUEVAS

By his attorney



Lawrence J. McGuire

BBO No. 335080

Committee for Public Counsel Services

One Salem Green Suite 408

Salem, Massachusetts 01970

978-744-9113



COMMONWEALTH OF MASSACHUSETTS	
ESSEX, SS	SUPERIOR COURT DEPARTMENT CRIMINAL No. CR ESSEX/2015/23
COMMONWEALTH	
vs. Miguel Cuevas Defendant	
In the above case, the appearance of the undersigned for the DEFENDANT COMMONWEALTH	
NAME OF ATTORNEY	James J. McGuire
ADDRESS	Court Reporter Council Services One Salem Court, Suite 400 Salem, Massachusetts 01970
TEL. NO.	978-744-1113
FAX NO.	978-744-1113
DO NOT WRITE BELOW THIS LINE	
FILED	
ATTEST	
Assistant Clerk	
This appearance subject to Rule 7 of the Massachusetts Rules of Criminal Procedure.	

*(Signature)*

Commonwealth of Massachusetts  
County of  
The Superior Court

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RE: Commonwealth v. Miguel Cuevas

CRIMINAL DOCKET#

07-1535

TO: ADA Karen Hognood  
ASST. Attorney General

*(Circled)* Track 'A'

**SCHEDULING ORDER**  
CASE TRACKING DESTINATION  
(Presumptive Track Termination Date)

You are hereby notified that this case has been designated to proceed in accordance with the time frame of Track Superior Court Standing Order 2-86 (Amended)

COURT HEARING/EVENT	EVENT DATE
1. Arraignment Date: <u>11/20/07</u>	
<b>TO BE DETERMINED AT ARRAIGNMENT</b>	
2. Automatic Discovery by prosecution ( ) Received ( ) Not Received ( ) Partially Received	Due by: _____ Balance Due by: _____
3. Prosecutor's Certificate of Compliance due by:	_____
4. Pre-Trial conference: Habe requested: Yes No	_____
5. Contested Discovery Motions to be filed by: Hearing date:	<u>12/15/08</u> <u>12/22/08</u> <u>1/5/09</u>
6. Pre-Trial Hearing: (Conference report must be filed on this date. Habe MUST issue)	<u>2/28/08</u>
<b>TO BE DETERMINED AT PRE-TRIAL HEARING</b>	
7. Evidentiary/Dispositive motions to be filed by:	<u>12/15/08</u> <u>12/22/08</u> <u>1/5/09</u>
8. Final Pretrial Conference: (Rule 36 issues will be reviewed, if necessary)	_____
9. Plea Date (if applicable)	_____
10. Trial Date: (Courtroom to be assigned)	<u>5/28/08</u>

The prosecuting attorney and defense counsel shall confer prior to the scheduled pretrial hearing in order to conference the case and prepare a written Pretrial Conference Report in accordance with Standing Order 2-86 (V). Counsel shall also prepare a Final Pretrial Memorandum in accordance with Standing Order 2-86 (X) which shall be submitted to the Court at or before the scheduled Final Pretrial Hearing.

Dated: 8/4/08

By the Court, ( *(Signature)* Justice)

cc: file copy

8/4/08 Tracking order not made at  
until today. (D was in default after  
arraignment)

Clerk/Magistrate

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COMMONWEALTH OF MASSACHUSETTS

ESSEX, ss.

SUPERIOR COURT DEPARTMENT  
ESSEX DIVISION  
NOS: ESCR2007-1535

COMMONWEALTH

v.

MIGUEL CUEVAS

MOTION FOR AUTOMATIC DISCOVERY:  
DISCLOSURE OF IDENTIFICATION PROCEDURES

The defendant respectfully moves that this Honorable Court, pursuant to Massachusetts Rules of Criminal Procedure, Rule 14(a)(1)(A)(viii), direct the Commonwealth to disclose the procedures by which any identification of the defendant was attempted or made.

The defendant specifically moves for the following information:

1. The manner and means of the identification procedures (photographic, lineup, show-up, voice or otherwise).
2. The time and place where the identification procedures were conducted.
3. The names and current addresses of any witness who made or attempted to make an identification.
4. The names and current addresses of all persons present at the identification procedures.
5. All statements made by the witnesses and persons present at the time of the identification procedures.

FILED IN COURT  
ASST. CLERK  
8/4/08

6. The names and addresses of any witness, including but not limited to undercover officer Rowe, who gave a description of the person who sold the controlled substances, the description which was given, to whom it was given and the time and place at which it was given.

7. Whether any person identified someone other than the defendant as the person who sold the controlled substances, and if so, the circumstances under which that identification was made.

8. Whether any person identified someone other than the defendant as resembling the person who sold the controlled substances, and if so, the circumstances under which it occurred

The defendant further moves for a copy of the identification protocol issued by the office of the District Attorney for Eastern District to the law enforcement agencies in Essex County, including the date on which the protocol became effective and whether the protocol was used in the investigation of this case.

As reasons for these requests the defendant states that:

1. He is accused of selling controlled substances to an undercover law enforcement officer on three separate dates, January 5, 8 and 10, 2007.
2. He was not arrested after the last of alleged sales.
3. The police did not get complaints against the defendant until May 30, 2007.
4. One of the officers involved in the investigation, Detective Steven Bona, intimates in his report that he had known the defendant before January, 2007. However it is unclear how he knew the defendant or for how long. No other police officer appears to

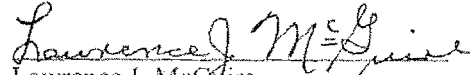
have known the defendant before January, 2007. The discovery does not indicate how or if the undercover officer identified the defendant.

5. The four month gap between the alleged criminal activity and the complaint application raises the possibility that the wrong man may have been charged.

6. The information requested is necessary to vindicate the defendant's rights to due process and a fair trial under the Fifth, Sixth and Fourteenth Amendments to the United States Constitution and Article 12 of the Massachusetts Declaration of Rights.

MIGUEL CUEVAS

By his attorney



Lawrence J. McQuire

BBO No. 335080

Committee for Public Counsel Services

One Salem Green Suite 408

Salem, Massachusetts 01970

978-744-9113

COMMONWEALTH OF MASSACHUSETTS

ESSEX, SS.

SUPERIOR COURT DEPARTMENT  
ESSEX DIVISION  
NOS: ESCR2007-1535

COMMONWEALTH

V.

MIGUEL CUEVAS

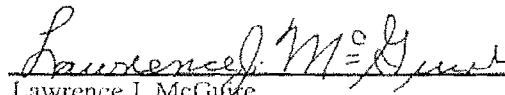
MOTION FOR DISCOVERY CONCERNING LABORATORY TESTING

The defendant respectfully moves that this Honorable Court pursuant to Massachusetts Rules of Criminal Procedure, Rule 14(a)(1)(A)(vi) instruct the Commonwealth to disclose:

1. The manner in which the substances alleged to be contraband were tested and weighed.
2. The tests used by the laboratory to determine what the substances were.
3. All notes, handwritten or otherwise, made by the chemist and other laboratory personnel during the testing, regarding the procedures performed.
4. All drug analysis reports completed by the chemists.
5. The *curriculum vitae* of the chemist who performed the analysis.
6. Whether the drug analysis report was in the hands of the prosecutor on the day that the case was presented to the Grand Jury.

7. If the drug analysis was not in the prosecutor's hands on the day the case was presented to the Grand Jury, what evidence was presented to prove that the material was a controlled substance.

MIGUEL CUEVAS  
By his attorney

  
\_\_\_\_\_  
Lawrence J. McGuire

BBO No: 335080  
Committee for Public Counsel Services  
One Salem Green Suite 408  
Salem, Massachusetts 01970  
978 744-9113

15

Whitman J. S. 1  
FILED IN CC  
ASST. C. J. [Signature]

COMMONWEALTH OF MASSACHUSETTS

ESSEX, ss:

SUPERIOR COURT DEPARTMENT  
ESSEX DIVISION  
NO. ESCR2007-1535

COMMONWEALTH

v.

MIGUEL CUEVAS

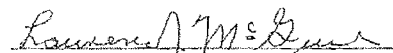
MOTION FOR REPORTS CONCERNING CHAIN OF CUSTODY OF EVIDENCE

Now comes the Defendant in the above-entitled matter and moves this Honorable Court to order the Commonwealth to provide him with a copy of any and all internal chain of custody reports governing any and all physical evidence seized or to be used at trial in these matters.

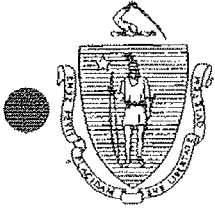
In support therefore, that defendant states that weaknesses in the chain of custody have a definite bearing on the overall weight of evidence admitted. Commonwealth v. Colon, 33 Mass. App. Ct. 304 (1992), as does the adequacy of safeguards used to protect and secure evidence as it moves from one place or one person to another. United States v. Ladd, 885 F2d. 954 (1<sup>st</sup> Cir. 1989).



MIGUEL CUEVAS  
By his attorney:

A handwritten signature in cursive script, appearing to read "Lawrence J. McQuire", written over a horizontal line.

Lawrence J. McQuire  
Board of Bar Overseers Number 335080  
Committee for Public Counsel Services  
One Salem Green, Suite 408  
Salem, Massachusetts 01970  
(978) 744-9113



The Commonwealth of Massachusetts  
Executive Office of Health and Human Services  
Department of Public Health  
William A. Hinton State Laboratory Institute  
305 South Street, Jamaica Plain, MA 02130

DEVAL L. PATRICK  
GOVERNOR

TIMOTHY P. MURRAY  
LIEUTENANT GOVERNOR

JUDYANN BIGBY, MD  
SECRETARY

JOHN AUERBACH  
COMMISSIONER

8/25/2008

Gretchen Turner  
Administrative Assistant  
Essex County District Attorney's Office  
Salem, MA. 01970

Dear Ms. Turner:

Enclosed is the information you requested in regards to analysis numbers 821975, 821976, 821977 and 821978. Included are copies of the following:

- 1) CV's for chemists Annie Dookhan, and Kate Corbett
- 2) Laboratory Receipt
- 3) Laboratory Control Cards with chemists hand notations
- 4) Laboratory Analysis Forms with Annie Dookhan's hand notations
- 5) Gas Chromatography/Mass Spectrum (GC/MS) analytical data

Preliminary testing of these items was performed by Annie Dookhan. The GC/MS testing was done by Kate Corbett.

If you have any questions about this material, please call me at 617 983-6629.

Sincerely,

A handwritten signature in cursive script that reads "Charles B. Salemi".

Charles Salemi  
Laboratory Supervisor  
Department of Public Health  
Drug Analysis Laboratory  
305 South Street  
Jamaica Plain, MA 02130

Cc:asd,kac

AUG. 21. 2008 12:39PM



JONATHAN W. BLODGETT  
District Attorney

ESSEX DA MAIN OFFICE  
THE COMMONWEALTH OF MASSACHUSETTS  
OFFICE OF THE  
DISTRICT ATTORNEY FOR THE ESSEX DISTRICT  
SALEM NEWBURYPORT LAWRENCE

Ten Federal Street  
Salem, Massachusetts 01970

NO. 7314 P. 2

TELEPHONE  
VOICE (978)745-6610  
FAX (978)741-4971  
TTY (978)741-3163

August 21, 2008

Department of Public Health/State Lab  
305 South Street  
Boston, MA 02130

Attn: Shirley

Shirley,

Per our conversation, please forward this request to the proper person.

Please provide the following information by Wednesday, August 27<sup>th</sup> 2008:

1. Please provide the entire case file on the below referenced certifications;

- 821975
- 821976
- 821977
- 821978

(Please include the manner of testing and weighing, tests used, notes and analysis.)

2. The CV of the analyst who actually preformed the analysis.

3. Chain of custody reports from the lab related to the above referenced drugs.

Thank You,

A handwritten signature in cursive script, appearing to read "Gretchen L. Turner".

Gretchen L. Turner,  
Administrative Assistant

①

## Curriculum Vitae

Annie Khan (Dookhan)

### Education:

University of Massachusetts, Boston, Ma., Master of Science in Chemistry, (present)  
University of Massachusetts, Boston, Ma., Bachelor of Science in Biochemistry, 2001

### Experience:

2003 - present

Chemist II, Massachusetts Department of Public Health, Drug Analysis Laboratory

\*Completed six-week training course conducted by senior staff within the Department of Public Health, Drug Analysis Laboratory.

\*Appointed Assistant Analyst by Assistant Commissioner of Public Health, January 2004.

\*Responsible for the identification of drugs to determine violations of harmful and narcotic drug laws.

\*Trained in the use of complex analytical instrumentation, microscopes and balances for the purpose of drug analysis.

\*Quality Control (QC) and routine maintenance of GC instrument.

2001 - 2003

QC Analyst II, UMMS-Massachusetts Biologic Laboratory, QC Material Control

\*Completed proficiency training conducted by a member of the staff within the Massachusetts Biologic Laboratory, Quality Control and Quality Assurance Department.

\*Routine QC testing of products for the FDA.

\*Trained in the use of complex analytical instrumentation, and balances for the purpose of QC analysis for product and validation projects.

\*Writing, revising and reviewing Standard Operating Procedures (SOPs).

\*Calibration, preventive maintenance, QC and QA of analytical instrumentation.

\*Complete testing of chemicals for Vendor Validation Project for the FDA.

\*Method Development for creating new techniques for the QC Department.

\*Compendial testing and interpretation of the USP, ACS, FCC, AOAC, Merck Index, PDR, etc.

### Additional Training:

GLP/GMP course with Massachusetts Biologic Laboratory.

QC/QA training according to FDA Codes and Regulations.

GC course with Agilent Technologies and Restek.

HPLC course with Waters Cooperation.

FTIR course with Spectros.

TOC training with Massachusetts Biologic Laboratory and Sievers.

### Association:

American Chemical Society (ACS)

R 514

Curriculum Vitae

Kate A. Corbett

Education

Bachelor of Science Degree, CHEMISTRY May 2003  
MERRIMACK COLLEGE  
Coursework included: Organic Chemistry, Inorganic Chemistry, Quantitative Analysis, Instrumental Analysis, Physical Chemistry, Physics, Calculus

Employment

Chemist II State Laboratory Institute (March 2008-Present)  
Massachusetts Department of Public Health  
Drug Analysis Laboratory

- Responsible for the identification of substance and trafficking substances to determine violation of the Massachusetts drug laws
- Responsible for the identification of pharmaceuticals to determine violation of the Massachusetts drug laws
- Operate analytical instrumentation, microscopes and balances for forensic drug analysis

Chemist I State Laboratory Institute (2005-March 2008)  
Massachusetts Department of Public Health  
Drug Analysis Laboratory

- Responsible for the identification of substance to determine violation of the Massachusetts drug laws
- Operate analytical instrumentation for the purpose of performing forensic drug analysis
- Successfully completed an eight week training course in the analysis of drugs conducted by senior staff of the Department of Public Health, Drug Analysis Laboratory
- Appointed an assistant analyst for the Department of Public Health, Drug Analysis Laboratory in 2005.

Research Associate (September 2003 - August 2005)  
SENSOR TECHNOLOGIES, INC - Shrewsbury, MA

- Prepared chemistries used in making sensor beads
- Generated and examined sensors employing fluorescence spectroscopy
- Performed protein, dye and sugar assays using UV/VIS spectrophotometry
- Carried out titrations on ricin using fluorescence correlation spectroscopy
- Statistical analysis of experimental data

Intern (March 2003 - August 2003)  
MASSACHUSETTS STATE POLICE CRIME LABORATORY - Sudbury, MA

- Assisted in the gathering of case files to fulfill the National Institute of Justice's No Suspect Backlog Reduction Grant
- Observed in the Evidence, Criminalistics, DNA, Drug, Trace, Toxicology, and Bomb/Arson Units



③

PRELIM: Heroin

NO. 821975

DATE ANALYZED: 9/12/07

CITY: SALEM

DEF: CUEVAS, MIGUEL

AM'T: SUB: SUB CONT: 1 PB

#TESTED:

DATE REC: 08/09/2007 FROM: P.O. N. O'DONNELL

GROSS WT: 5.43

# TESTS: 4 ASD

NET WEIGHT: 0.40

• 2KAC

QUANT:

FINDINGS: ~~✓~~ Heroin

PRELIM: Cocaine

NO. 821976

DATE ANALYZED: 9/13/07

CITY: SALEM

DEF: CUEVAS, MIGUEL

AM'T: SUB: SUB CONT: 1 PB

#TESTED:

DATE REC: 08/09/2007 FROM: P.O. N. O'DONNELL

GROSS WT: 5.43

# TESTS: 6 ASD

NET WEIGHT: 0.53

• 2KAC

QUANT:

FINDINGS: Cocaine

3

PRELIM: Cocaine (C)

NO. 821978

DATE ANALYZED: 9/14/07

CITY: SALEM

DEF: CUEVAS, MIGUEL

AM'T: SUB: SUB CONT: 1 PB

#TESTED:

DATE REC: 08/09/2007 FROM: P.O. N. O'DONNELL

GROSS WT: 5.03

# TESTS: BASO  
• 2KAC

NET WEIGHT: 0.15

FINDINGS: Cocaine

QUANT:

PRELIM: cocaine

NO. 821977

DATE ANALYZED: 9/17/07

CITY: SALEM

DEF: CUEVAS, MIGUEL

AM'T: SUB: SUB CONT: 1 PB

#TESTED:

DATE REC: 08/09/2007 FROM: P.O. N. O'DONNELL

GROSS WT: 5.58

# TESTS: BASO  
• 2KAC

NET WEIGHT: 0.34

FINDINGS: Cocaine

QUANT:



4

DRUG POWDER ANALYSIS FORM

SAMPLE # 821975 AGENCY Salem ANALYST ADJ

No. of samples tested:            Evidence Wt.           

PHYSICAL DESCRIPTION:

Beige powdered substance  
in 1 pb  
double bagged

Gross Wt ( 1 ): 0.6560

Gross Wt ( ):           

Pkg. Wt:           

Net Wt: 0.4044

PRELIMINARY TESTS

Spot Tests

Cobalt  
Thiocyanate (+)

Marquis +

Froehde's +

Mecke's +

Microcrystalline Tests

Gold  
Chloride           

TLTA ( )           

OTHER TESTS

PRELIMINARY TEST RESULTS

RESULTS Heroin

DATE 09-05-07

GC/MS CONFIRMATORY TEST

RESULTS Heroin

MS  
OPERATOR ICAC

DATE 9-12-07

Revised 7/2005

DRUG POWDER ANALYSIS FORM

SAMPLE # 821976 AGENCY Silver ANALYST ASD

No. of samples tested:           

Evidence Wt.           

PHYSICAL DESCRIPTION:

white powdered substance  
in 1 ps

Gross Wt ( 1 ): 0.5854

Gross Wt (    ):           

Pkg. Wt:           

Net Wt: 0.5398

PRELIMINARY TESTS

Spot Tests

Cobalt  
Thiocyanate (+)

Marquis -

Froehde's -

Mecke's -

Microcrystalline Tests

Gold  
Chloride +

TLTA (+)

OTHER TESTS

PRELIMINARY TEST RESULTS

RESULTS cocaine

DATE 09-05-07

GC/MS CONFIRMATORY TEST

RESULTS cocaine

MS  
OPERATOR KAC

DATE 9-13-07

Revised 7/2005

DRUG POWDER ANALYSIS FORM

SAMPLE # 821977 AGENCY Salem ANALYST ASD

No. of samples tested:           

Evidence Wt.           

PHYSICAL DESCRIPTION:

white powdered substance  
in pb  
double bagged

Gross Wt ( 1 ): 0.7725

Gross Wt ( ):           

Pkg. Wt:           

Net Wt: 0.5445

PRELIMINARY TESTS

Spot Tests

Cobalt  
Thiocyanate (+)

Marquis -

Froehde's -

Mecke's -

Microcrystalline Tests

Gold  
Chloride +

TLTA (+)

OTHER TESTS

PRELIMINARY TEST RESULTS

RESULTS Cocaine

DATE 09-05-07

GC/MS CONFIRMATORY TEST

RESULTS Cocaine

MS  
OPERATOR KAC

DATE 09-17-07

Revised 7/2005



Area Percent / Library Search Report

GC/MS

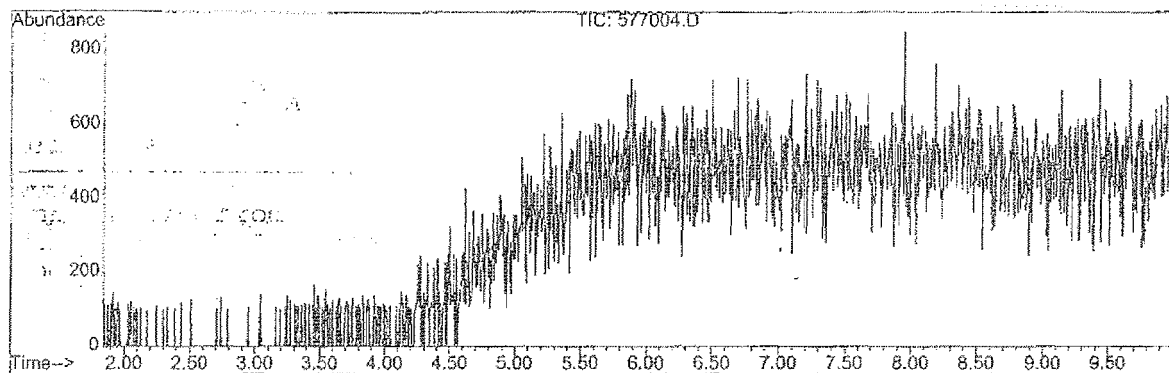
DATA

39 Pgs

5

Information from Data File:

File Name : E:\SYSTEM4\09\_11\_07\577004.D  
Operator : KAC  
Date Acquired : 11 Sep 2007 10:58  
Sample Name : BLANK  
Submitted by :  
Vial Number : 1  
AcquisitionMeth: DRUGS  
Integrator : RTE

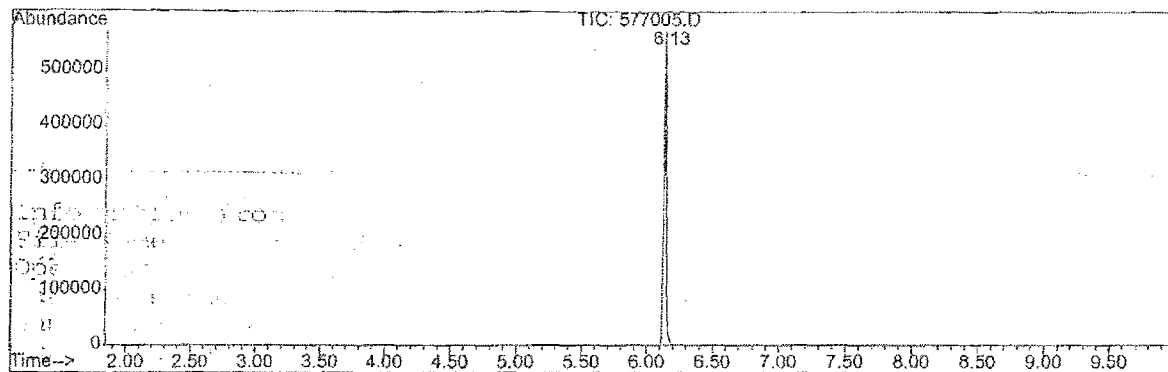


Ret. Time	Area	Area %	Ratio %
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\*\*\*NO INTEGRATED PEAKS\*\*\*

Area Percent / Library Search Report

Information from Data File:  
File Name : E:\SYSTEM4\09\_11\_07\577005.D  
Operator : KAC  
Date Acquired : 11 Sep 2007 11:11  
Sample Name : HEROIN STD  
Submitted by :  
Vial Number : 5  
AcquisitionMeth: DRUGS  
Integrator : RTE



Ret. Time	Area	Area %	Ratio %
6.133	754471	100.00	100.00

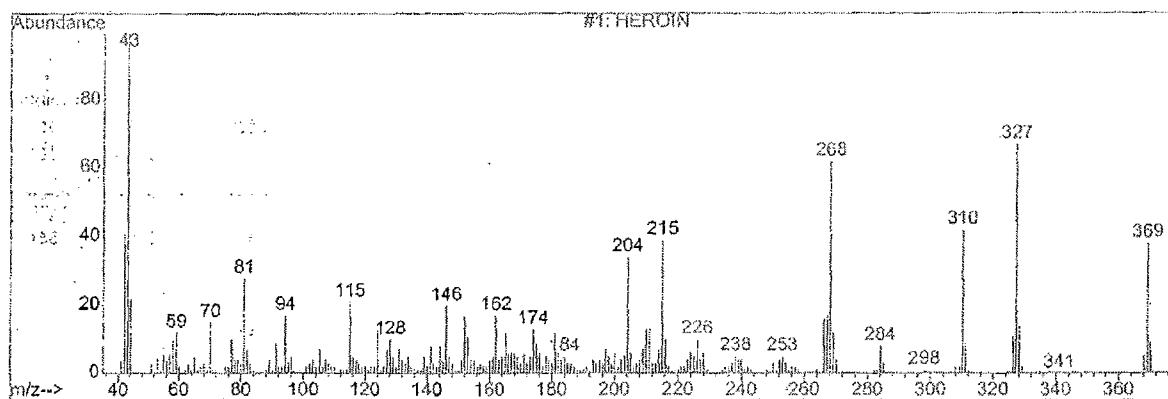
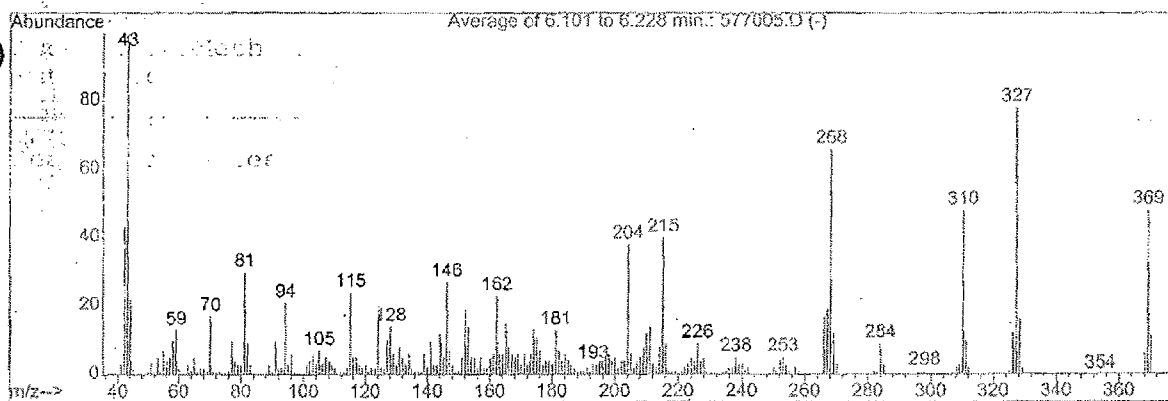
Area Percent / Library Search Report

Information from Data File:

File Name : E:\SYSTEM4\09\_11\_07\577005.D  
Operator : KAC  
Date Acquired : 11 Sep 2007 11:11  
Sample Name : HEROIN STD  
Submitted by :  
Vial Number : 5  
AcquisitionMeth: DRUGS  
Integrator : RTE

Search Libraries: C:\DATABASE\SLI.L Minimum Quality: 90  
C:\DATABASE\PMW\_TOX2.L Minimum Quality: 90  
C:\DATABASE\NIST98.L

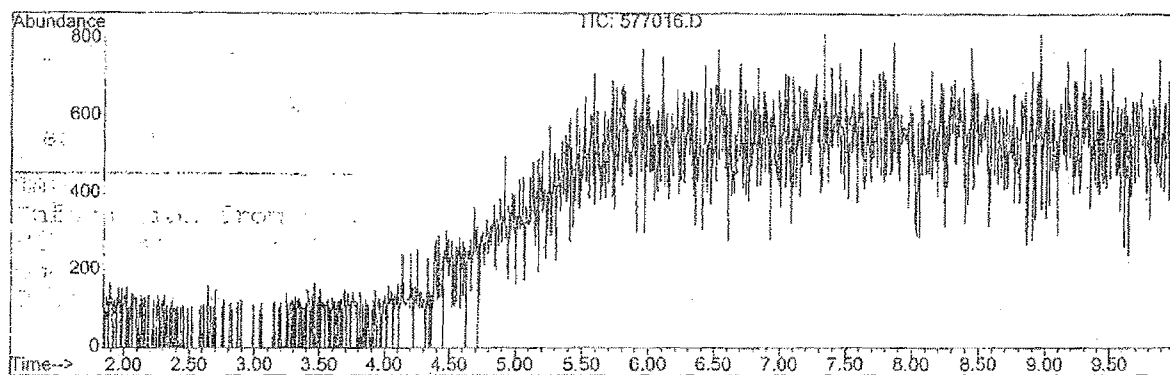
PK#	RT	Library/ID	CAS#	Qual
1	6.13	C:\DATABASE\SLI.L HEROIN	000561-27-3	99



Area Percent / Library Search Report

Information from Data File:

File Name : E:\SYSTEM4\09\_11\_07\577016.D  
Operator : KAC  
Date Acquired : 11 Sep 2007 13:44  
Sample Name : BLANK  
Submitted by : ASD  
Vial Number : 1  
AcquisitionMeth: DRUGS  
Integrator : RTE



Ret. Time	Area	Area %	Ratio %
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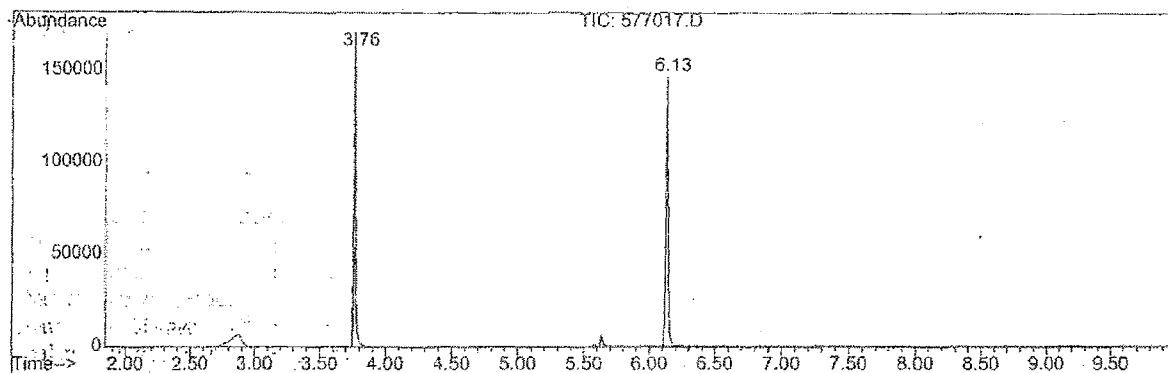
\*\*\*NO INTEGRATED PEAKS\*\*\*



Area Percent / Library Search Report

Information from Data File:

File Name : E:\SYSTEM4\09\_11\_07\577017.D  
Operator : KAC  
Date Acquired : 11 Sep 2007 13:58  
Sample Name : 821975  
Submitted by : ASD  
Vial Number : 17  
AcquisitionMeth: DRUGS  
Integrator : RTE



Acq. Method: DRUGS

Ret. Time	Area	Area %	Ratio %
3.763	158009	46.30	86.21
6.127	183277	53.70	100.00

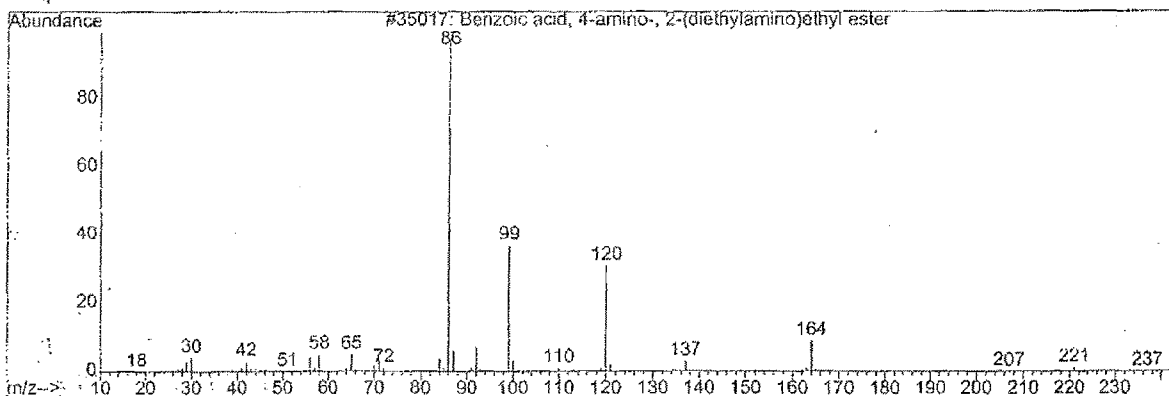
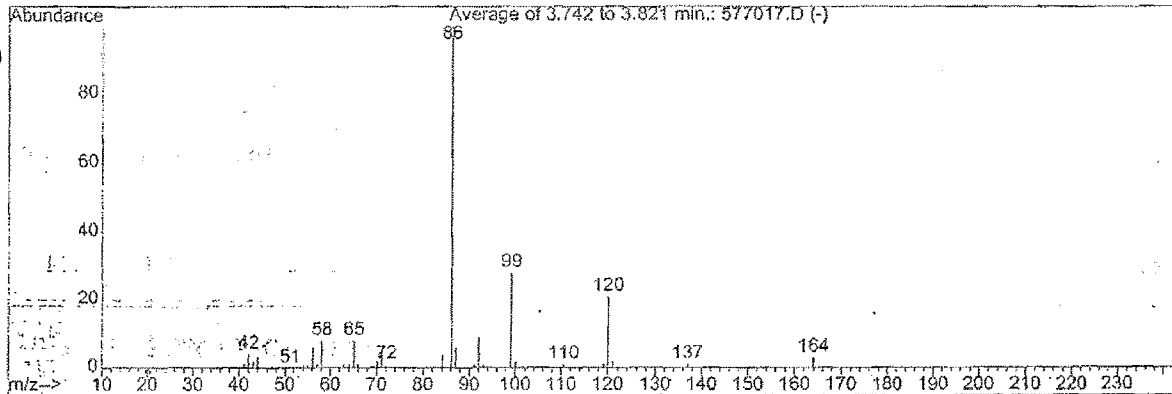
Area Percent / Library Search Report

Information from Data File:

File Name : E:\SYSTEM4\09\_11\_07\577017.D  
 Operator : KAC  
 Date Acquired : 11 Sep 2007 13:58  
 Sample Name : 821975  
 Submitted by : ASD  
 Vial Number : 17  
 AcquisitionMeth: DRUGS  
 Integrator : RTE

Search Libraries: C:\DATABASE\SLI.L Minimum Quality: 90  
 C:\DATABASE\PMW\_TOX2.L Minimum Quality: 90  
 C:\DATABASE\NIST98.L

PK#	RT	Library/ID	CAS#	Qual
1	3.742	Benzoic acid, 4-amino-, 2-(diethyla	000059-46-1	90
		Benzamide, 4-amino-N-[2-(diethylami	000051-06-9	72
		3-Aminobenzoic acid, 2-diethylamino	1000193-23-3	72



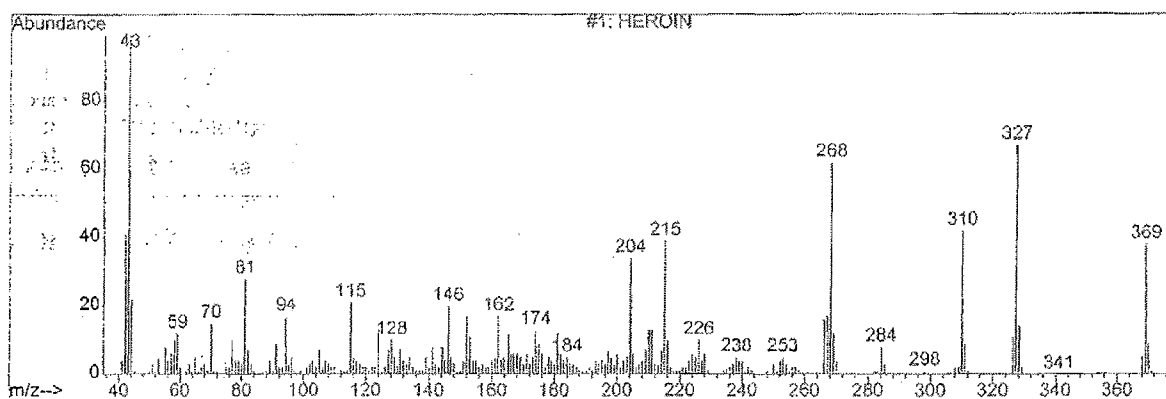
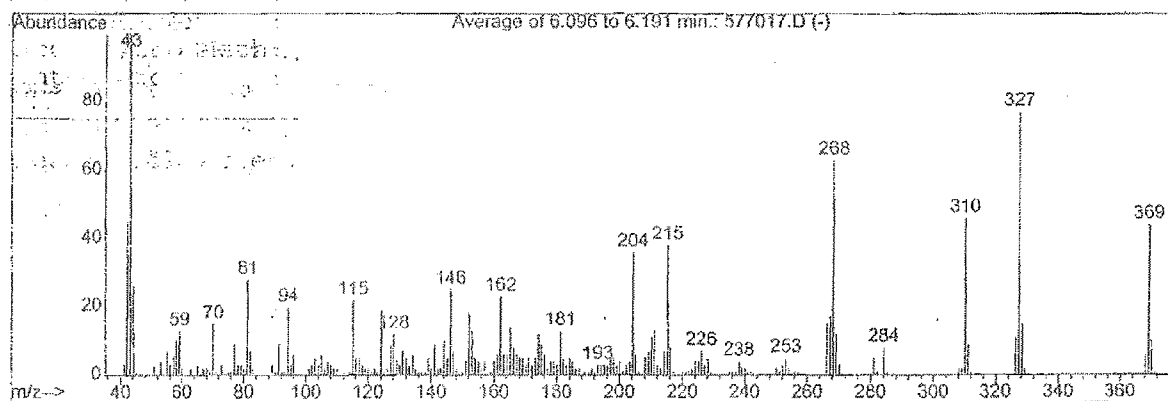
Area Percent / Library Search Report

Information from Data File:

File Name : E:\SYSTEM4\09\_11\_07\577017.D  
Operator : KAC  
Date Acquired : 11 Sep 2007 13:58  
Sample Name : 821975  
Submitted by : ASD  
Vial Number : 17  
AcquisitionMeth: DRUGS  
Integrator : RTE

Search Libraries: C:\DATABASE\SLI.L Minimum Quality: 90  
C:\DATABASE\PMW\_TOX2.L Minimum Quality: 90  
C:\DATABASE\NIST98.L

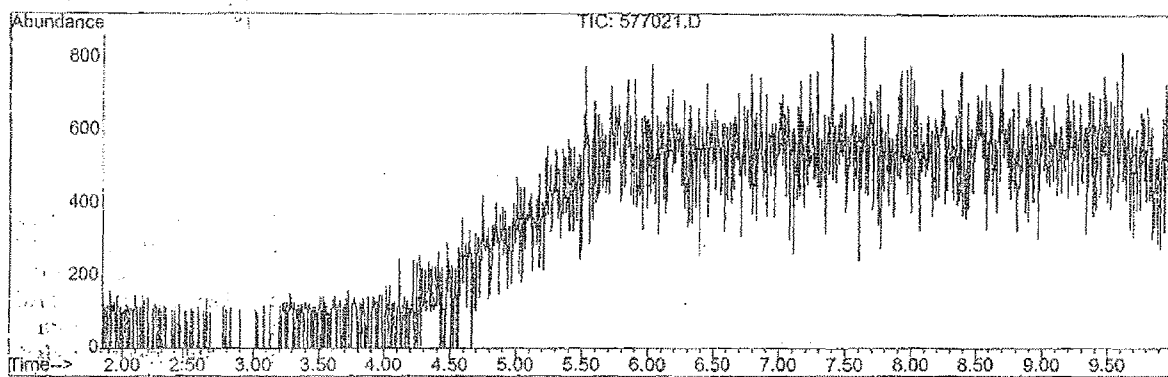
PK#	RT	Library/ID	CAS#	Qual
2	6.13	C:\DATABASE\SLI.L HEROIN	000561-27-3	97



Area Percent / Library Search Report

Information from Data File:

File Name : E:\SYSTEM4\09\_11\_07\577021.D  
Operator : KAC  
Date Acquired : 11 Sep 2007 14:53  
Sample Name : BLANK  
Submitted by :  
Vial Number : 1  
AcquisitionMeth: DRUGS  
Integrator : RTE

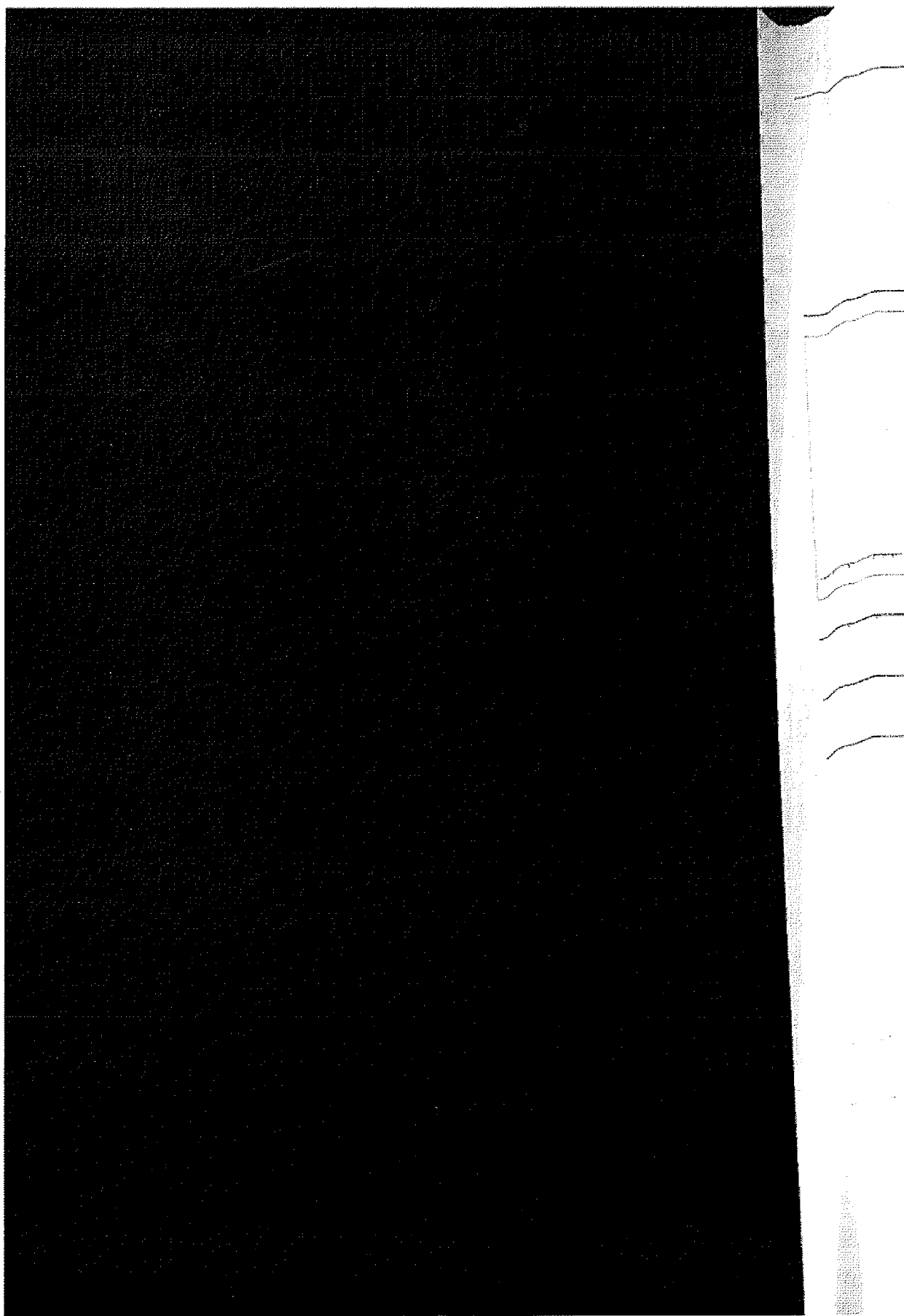


AcquisitionMeth: DRUGS

Integrator: RTE

Ret. Time	Area	Area %	Ratio %
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\*\*\*NO INTEGRATED PEAKS\*\*\*



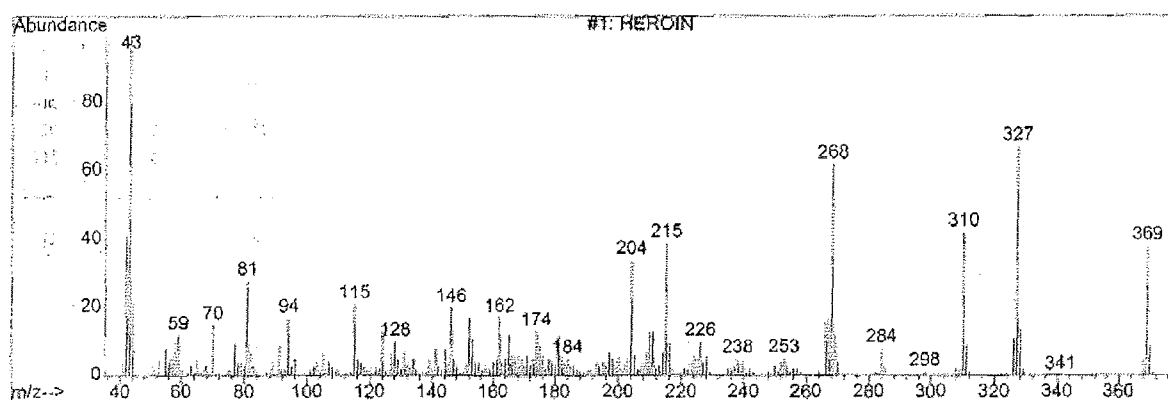
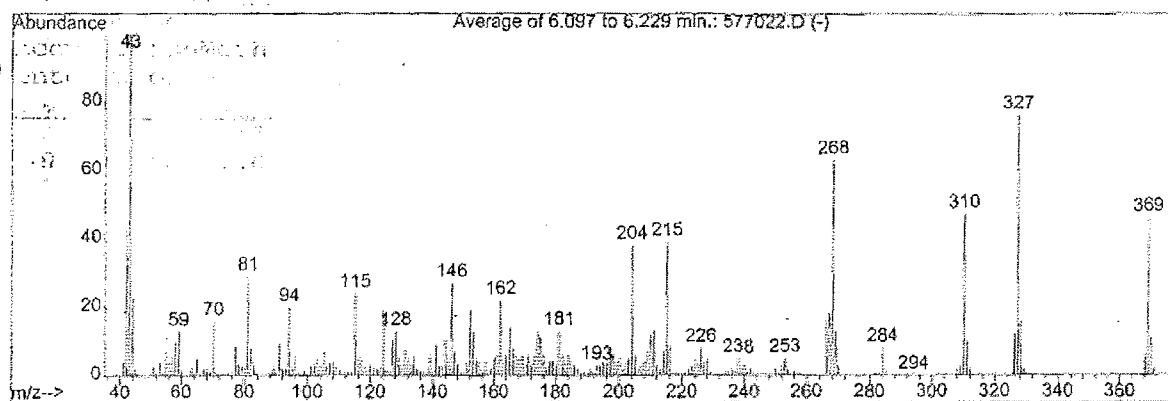
Area Percent / Library Search Report

Information from Data File:

File Name : E:\SYSTEM4\09\_11\_07\577022.D  
Operator : KAC  
Date Acquired : 11 Sep 2007 15:07  
Sample Name : HEROIN STD  
Submitted by :  
Vial Number : 22  
AcquisitionMeth: DRUGS  
Integrator : RTE

Search Libraries: C:\DATABASE\SLI.L Minimum Quality: 90  
C:\DATABASE\PMW\_TOX2.L Minimum Quality: 90  
C:\DATABASE\NIST98.L

PK#	RT	Library/ID	CAS#	Qual
1	6.13	C:\DATABASE\SLI.L HEROIN	000561-27-3	99



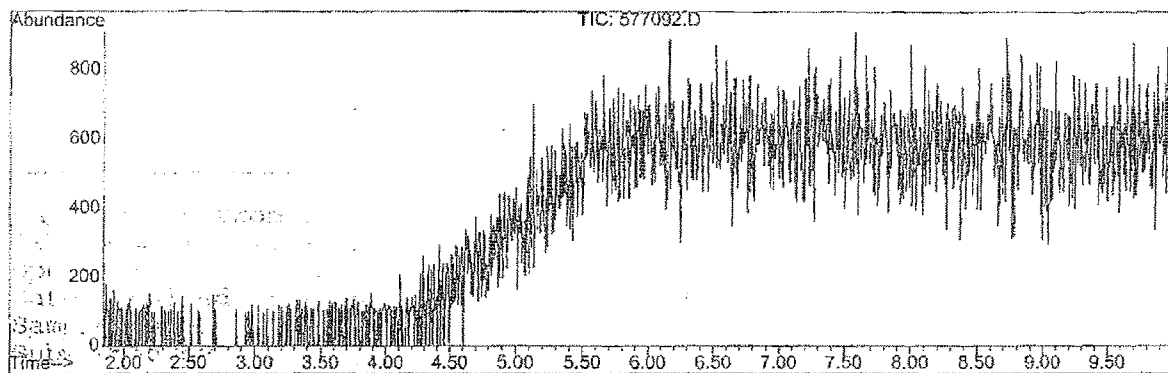
Area Percent / Library Search Report

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Information from Data File:

File Name : E:\SYSTEM4\09\_11\_07\577092.D  
Operator : KAC  
Date Acquired : 12 Sep 2007 7:11  
Sample Name : BLANK  
Submitted by :  
Vial Number : 2  
AcquisitionMeth: DRUGS  
Integrator : RTE

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Ret. Time	Area	Area %	Ratio %
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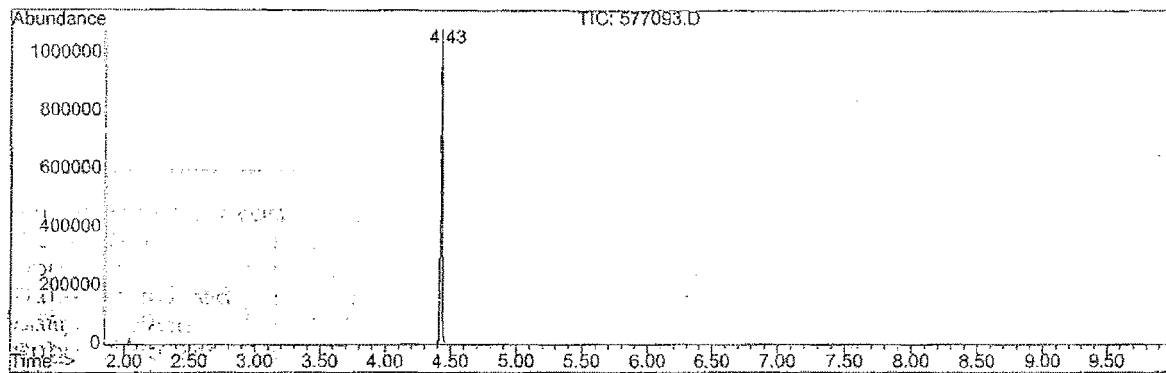
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\*\*\*NO INTEGRATED PEAKS\*\*\*

Area Percent / Library Search Report

Information from Data File:

File Name : E:\SYSTEM4\09\_11\_07\577093.D  
Operator : KAC  
Date Acquired : 12 Sep 2007 7:25  
Sample Name : COCAINE STD  
Submitted by :  
Vial Number : 93  
AcquisitionMeth: DRUGS  
Integrator : RTE



Ret. Time	Area	Area %	Ratio %
4.425	1013663	100.00	100.00



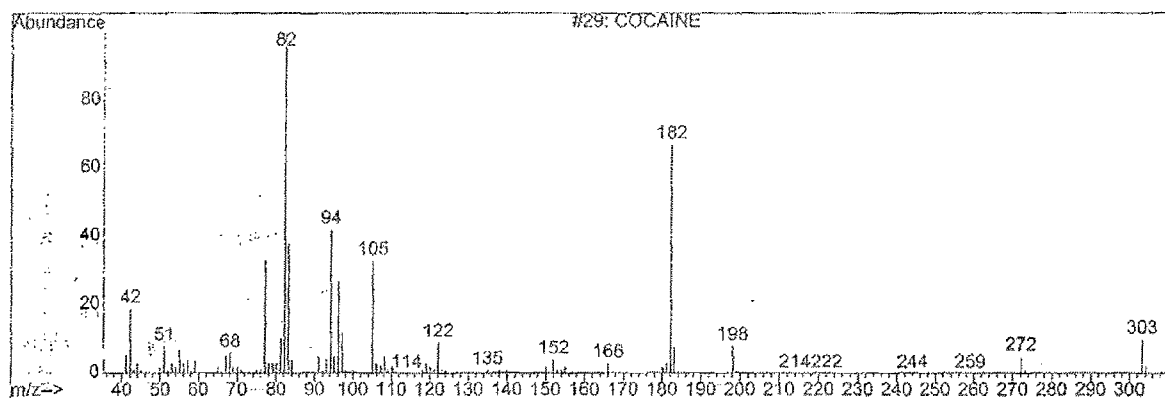
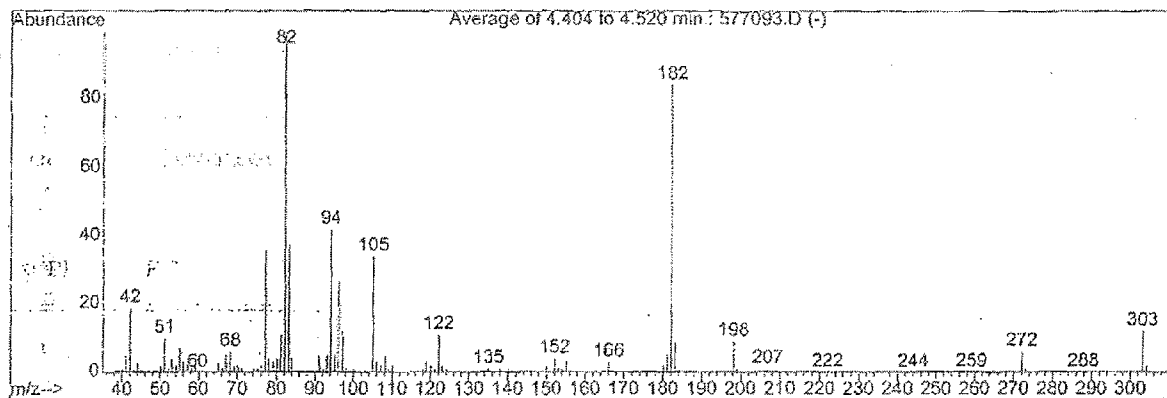
Area Percent / Library Search Report

Information from Data File:

File Name : E:\SYSTEM4\09\_11\_07\577093.D  
Operator : KAC  
Date Acquired : 12 Sep 2007 7:25  
Sample Name : COCAINE STD  
Submitted by :  
Vial Number : 93  
AcquisitionMeth: DRUGS  
Integrator : RTE

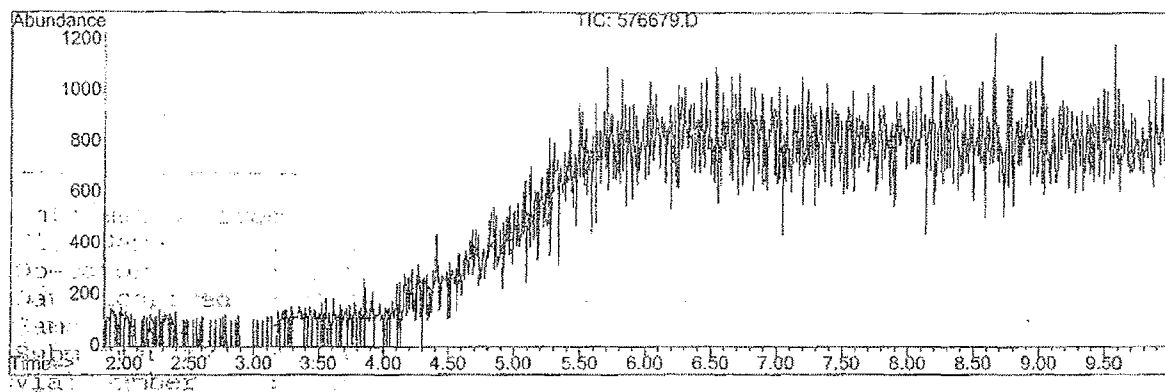
Search Libraries: C:\DATABASE\SLI.L Minimum Quality: 90  
C:\DATABASE\PMW\_TOX2.L Minimum Quality: 90  
C:\DATABASE\NIST98.L

PK#	RT	Library/ID	CAS#	Qual
1	4.43	C:\DATABASE\SLI.L COCAINE	000050-36-2	99



Area Percent / Library Search Report

Information from Data File:  
File Name : E:\SYSTEM4\09\_11\_07\576679.D  
Operator : KAC  
Date Acquired : 12 Sep 2007 11:19  
Sample Name : BLANK  
Submitted by : ASD  
Vial Number : 2  
AcquisitionMeth: DRUGS  
Integrator : RTE



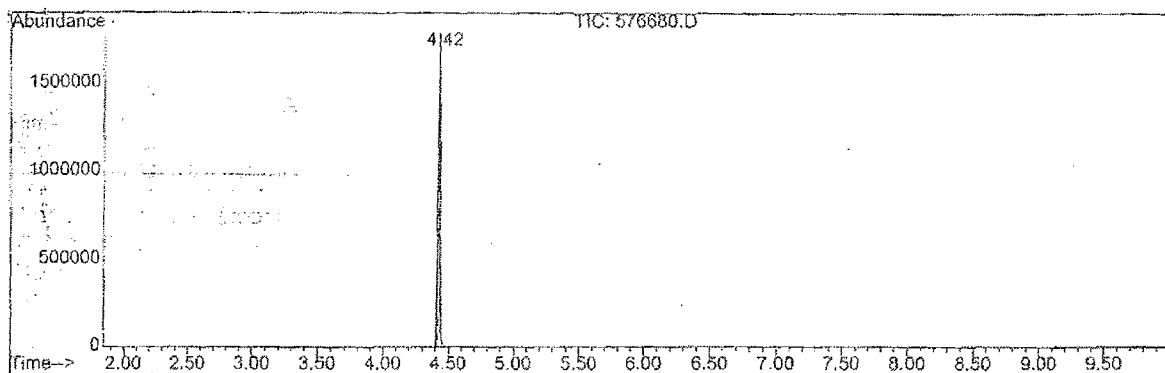
Ret. Time	Area	Area %	Ratio %
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\*\*\*NO INTEGRATED PEAKS\*\*\*

Area Percent / Library Search Report

Information from Data File:

File Name : E:\SYSTEM4\09\_11\_07\576680.D  
Operator : KAC  
Date Acquired : 12 Sep 2007 11:33  
Sample Name : 821976  
Submitted by : ASD  
Vial Number : 14  
AcquisitionMeth: DRUGS  
Integrator : RTE



Ret. Time	Area	Area %	Ratio %
4.424	1859382	100.00	100.00

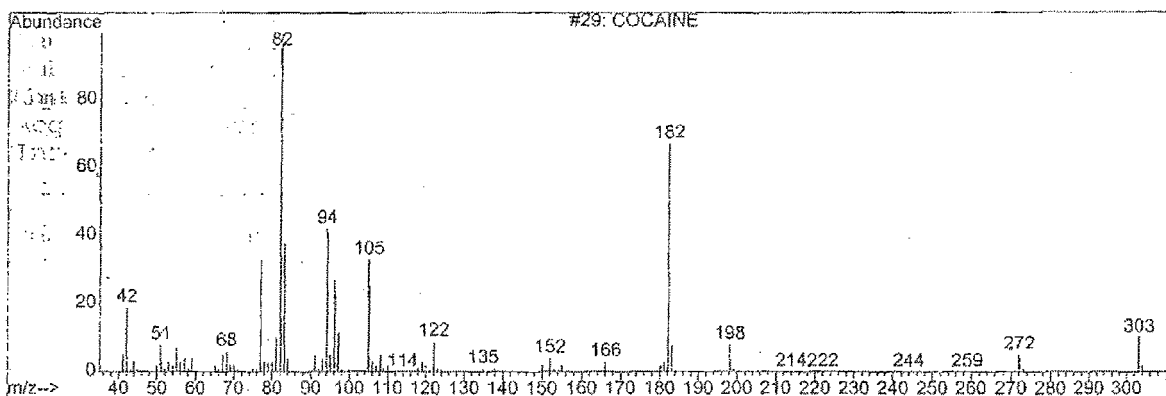
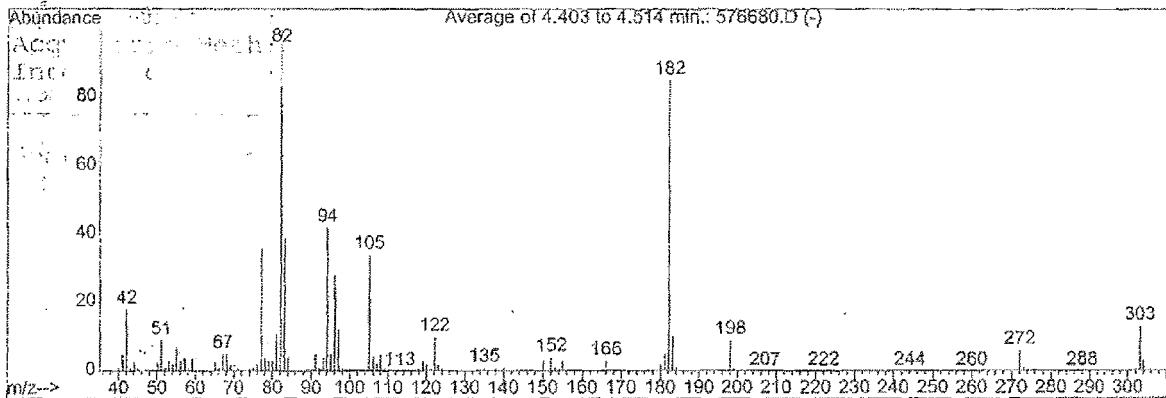
Area Percent / Library Search Report

Information from Data File:

File Name : E:\SYSTEM4\09\_11\_07\576680.D  
Operator : KAC  
Date Acquired : 12 Sep 2007 11:33  
Sample Name : 821976  
Submitted by : ASD  
Vial Number : 14  
AcquisitionMeth: DRUGS  
Integrator : RTE

Search Libraries: C:\DATABASE\SLI.L Minimum Quality: 90  
C:\DATABASE\PMW\_TOX2.L Minimum Quality: 90  
C:\DATABASE\NIST98.L

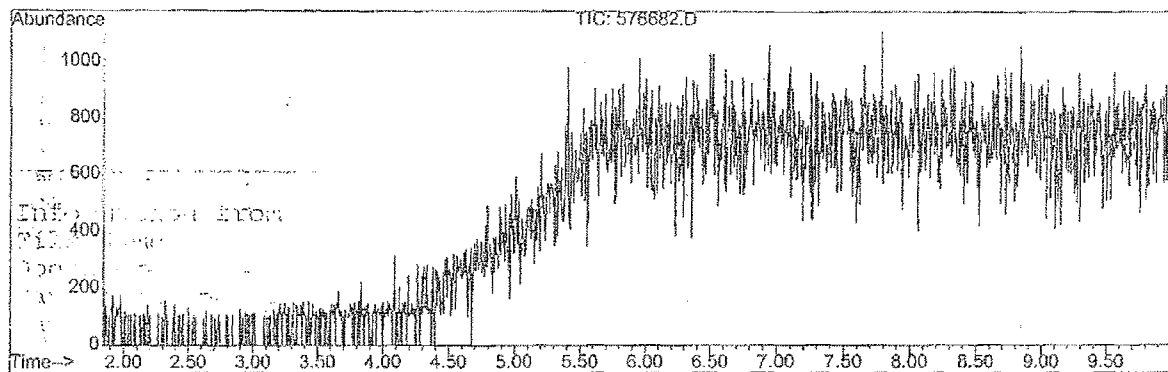
PK#	RT	Library/ID	CAS#	Qual
1	4.42	C:\DATABASE\SLI.L COCAINE	000050-36-2	99



Area Percent / Library Search Report

Information from Data File:

File Name : E:\SYSTEM4\09\_11\_07\576682.D  
Operator : KAC  
Date Acquired : 12 Sep 2007 12:00  
Sample Name : BLANK  
Submitted by :  
Vial Number : 2  
AcquisitionMeth: DRUGS  
Integrator : RTE



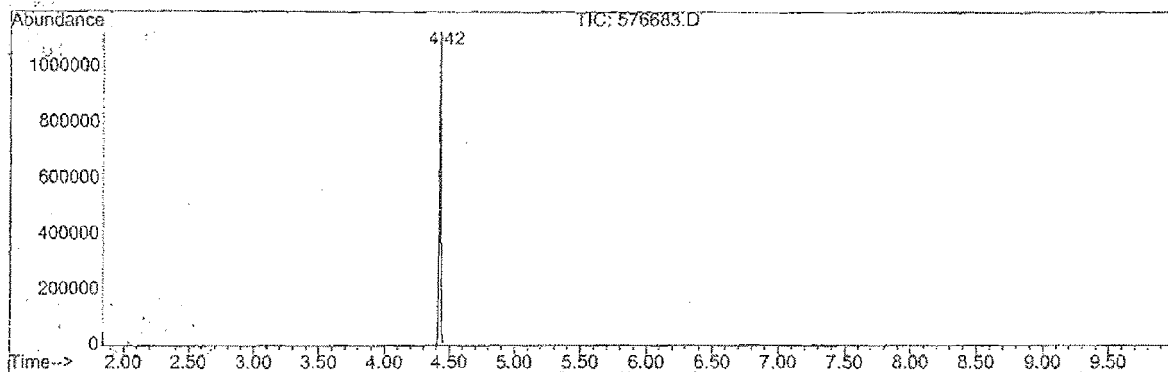
Ret. Time	Area	Area %	Ratio %
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\*\*\*NO INTEGRATED PEAKS\*\*\*

Area Percent / Library Search Report

Information from Data File:

File Name : E:\SYSTEM4\09\_11\_07\576683.D  
Operator : KAC  
Date Acquired : 12 Sep 2007 12:14  
Sample Name : COCAINE STD  
Submitted by :  
Vial Number : 93  
AcquisitionMeth: DRUGS  
Integrator : RTE



Ret. Time	Area	Area %	Ratio %
4.424	1010380	100.00	100.00

Area Percent / Library Search Report

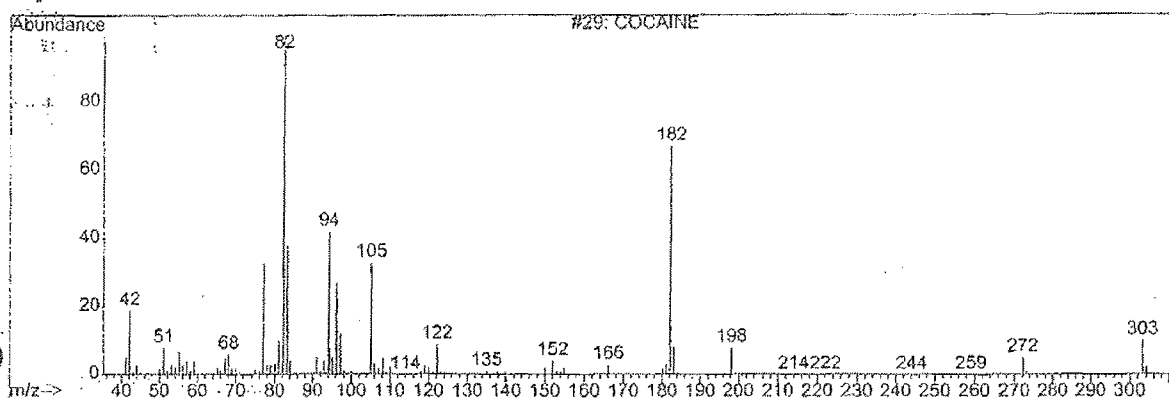
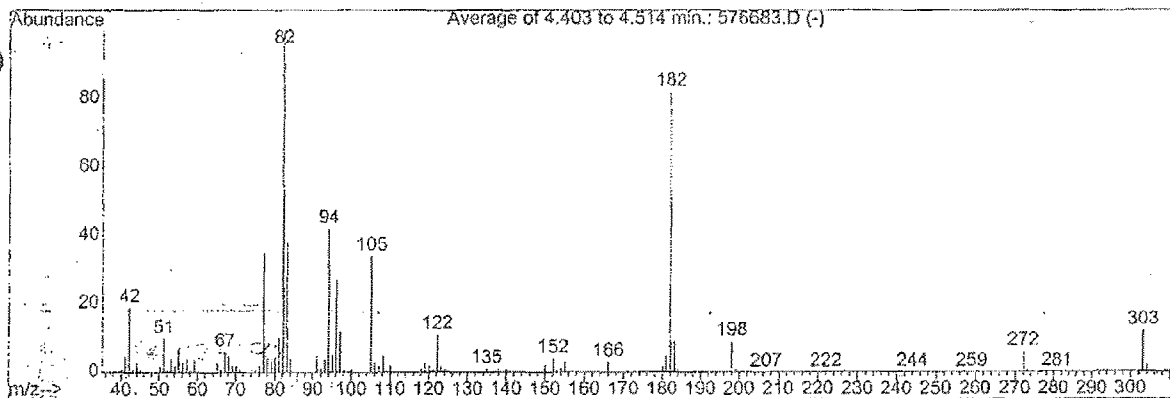
Information from Data File:

File Name : E:\SYSTEM4\09\_11\_07\576683.D  
Operator : KAC  
Date Acquired : 12 Sep 2007 12:14  
Sample Name : COCAINE STD  
Submitted by :  
Vial Number : 93  
AcquisitionMeth: DRUGS  
Integrator : RTE

Search Libraries: C:\DATABASE\SLI.L Minimum Quality: 90  
C:\DATABASE\PMW\_TOX2.L Minimum Quality: 90  
C:\DATABASE\NIST98.L

PK#	RT	Library/ID	CAS#	Qual
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1	4.42	C:\DATABASE\SLI.L		
		COCAINE	000050-36-2	99



576683.D Fri Aug 22 13:06:15 2008

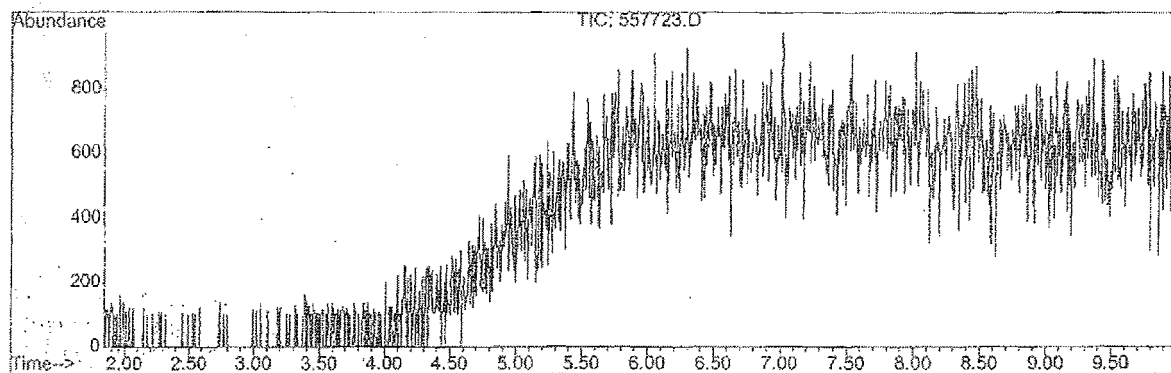
Page 2

AB018

Area Percent / Library Search Report

Information from Data File:

File Name : E:\SYSTEM4\09\_14\_07\557723.D  
Operator : KAC  
Date Acquired : 14 Sep 2007 19:09  
Sample Name : BLANK  
Submitted by :  
Vial Number : 1  
AcquisitionMeth: DRUGS  
Integrator : RTE



Ret. Time	Area	Area %	Ratio %
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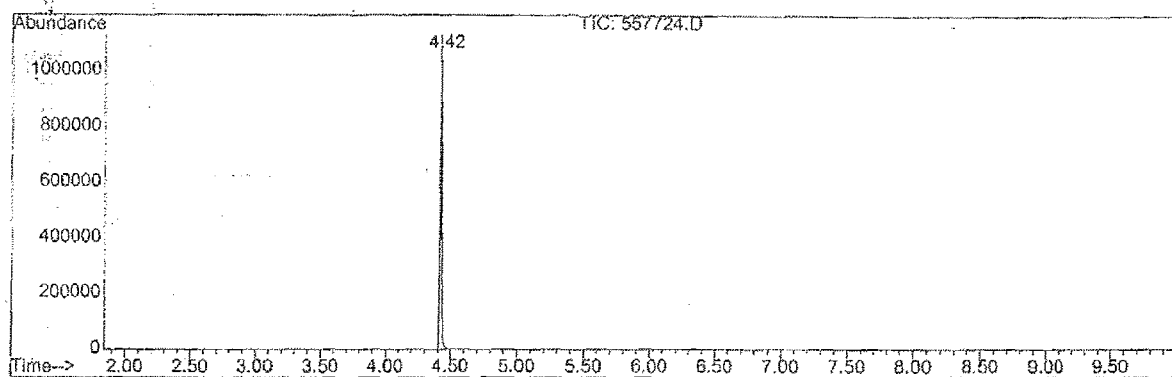
\*\*\*NO INTEGRATED PEAKS\*\*\*



Area Percent / Library Search Report

Information from Data File:

File Name : E:\SYSTEM4\09\_14\_07\557724.D  
Operator : KAC  
Date Acquired : 14 Sep 2007 19:23  
Sample Name : COCAINE STD  
Submitted by :  
Vial Number : 24  
AcquisitionMeth: DRUGS  
Integrator : RTE



Ret. Time	Area	Area %	Ratio %
4.420	1001485	100.00	100.00

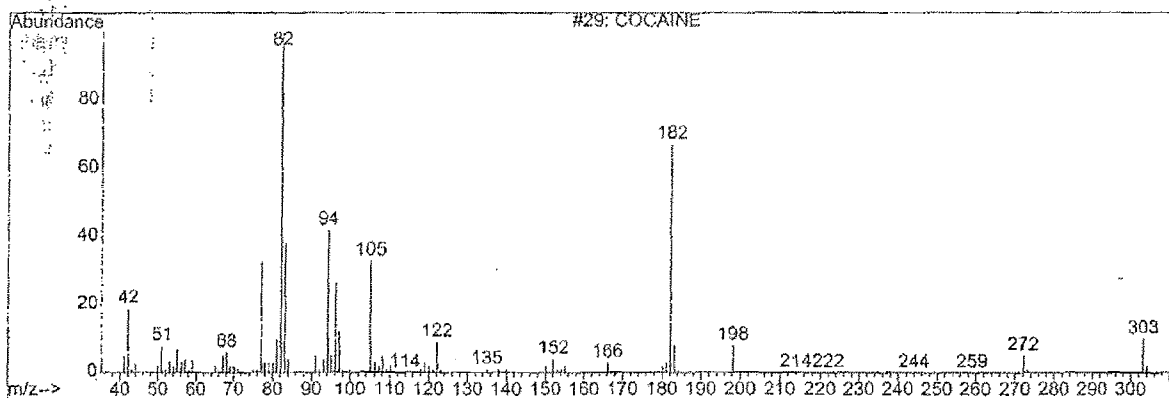
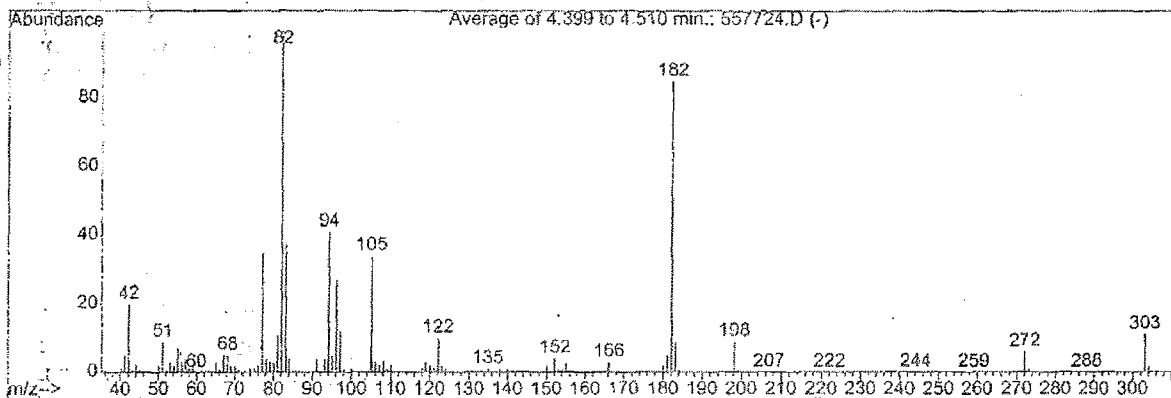
Area Percent / Library Search Report

Information from Data File:

File Name : E:\SYSTEM4\09\_14\_07\557724.D  
Operator : KAC  
Date Acquired : 14 Sep 2007 19:23  
Sample Name : COCAINE STD  
Submitted by :  
Vial Number : 24  
AcquisitionMeth: DRUGS  
Integrator : RTE

Search Libraries: C:\DATABASE\SLI.L Minimum Quality: 90  
C:\DATABASE\PMW\_TOX2.L Minimum Quality: 90  
C:\DATABASE\NIST98.L

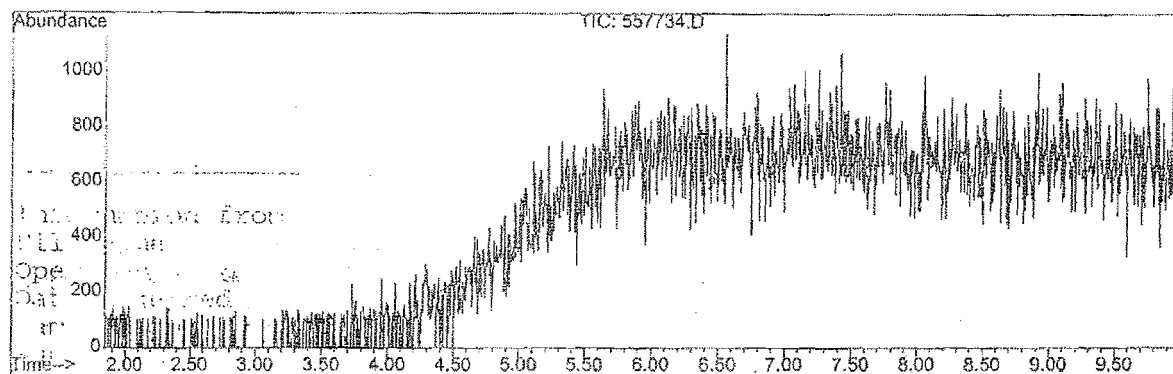
PK#	RT	Library/ID	CAS#	Qual
1	4.42	C:\DATABASE\SLI.L COCAINE	000050-36-2	99



Area Percent / Library Search Report

Information from Data File:

File Name : E:\SYSTEM4\09\_14\_07\557734.D  
Operator : KAC  
Date Acquired : 14 Sep 2007 21:40  
Sample Name : BLANK  
Submitted by : ASD  
Vial Number : 1  
AcquisitionMeth: DRUGS  
Integrator : RTE



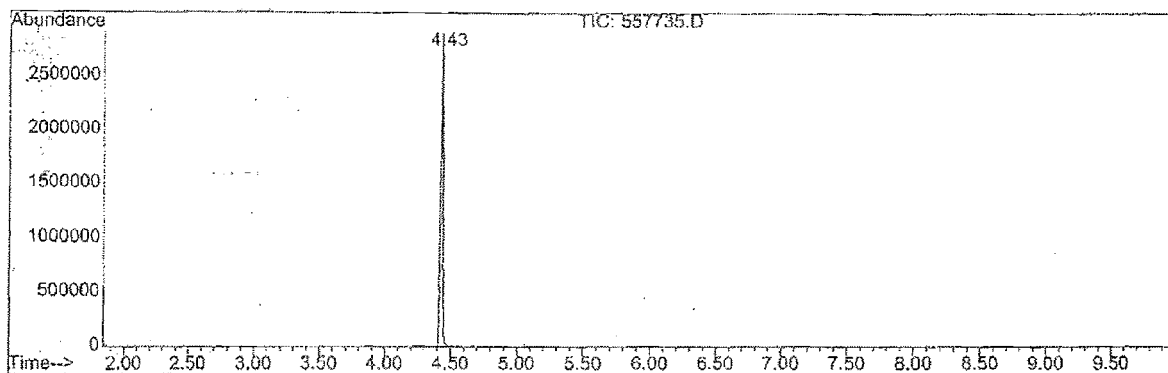
Ret. Time	Area	Area %	Ratio %
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\*\*\*NO INTEGRATED PEAKS\*\*\*

Area Percent / Library Search Report

Information from Data File:

File Name : E:\SYSTEM4\09\_14\_07\557735.D  
Operator : KAC  
Date Acquired : 14 Sep 2007 21:54  
Sample Name : 821977  
Submitted by : ASD  
Vial Number : 35  
AcquisitionMeth: DRUGS  
Integrator : RTE



Ret. Time	Area	Area %	Ratio %
4.435	3612298	100.00	100.00

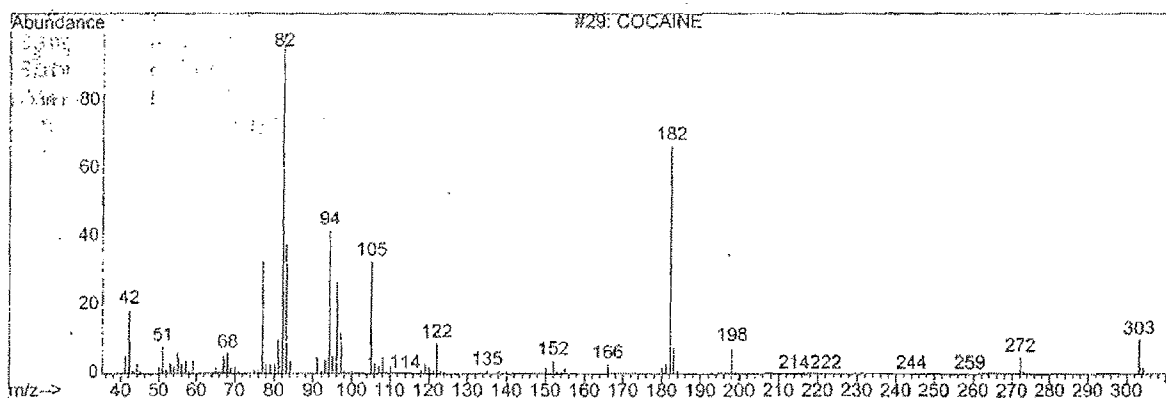
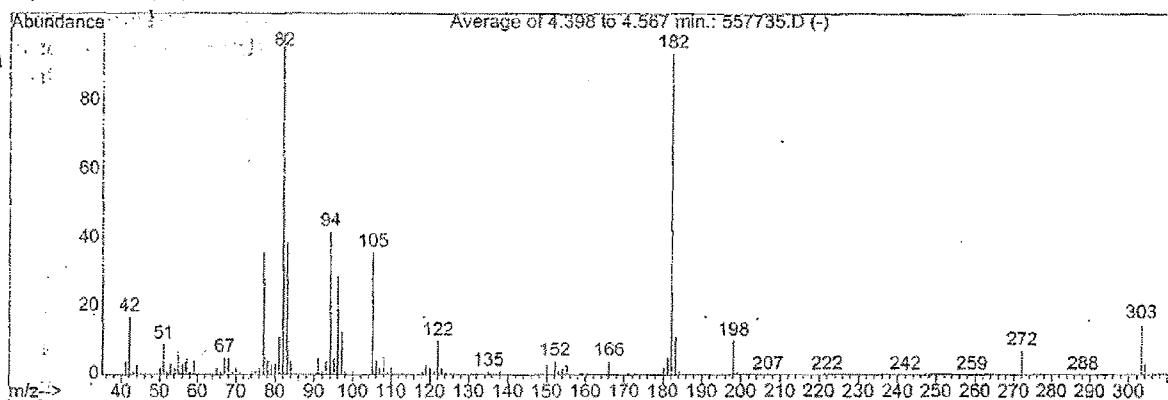
Area Percent / Library Search Report

Information from Data File:

File Name : E:\SYSTEM4\09\_14\_07\557735.D  
Operator : KAC  
Date Acquired : 14 Sep 2007 21:54  
Sample Name : 821977  
Submitted by : ASD  
Vial Number : 35  
AcquisitionMeth: DRUGS  
Integrator : RTE

Search Libraries: C:\DATABASE\SLI.L Minimum Quality: 90  
C:\DATABASE\PMW\_TOX2.L Minimum Quality: 90  
C:\DATABASE\NIST98.L

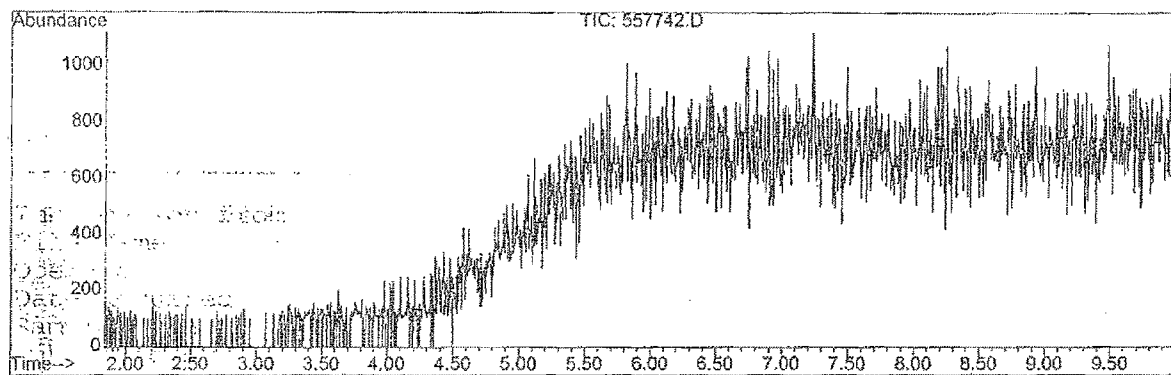
PK#	RT	Library/ID	CAS#	Qual
1	4.43	C:\DATABASE\SLI.L COCAINE	000050-36-2	99



Area Percent / Library Search Report

Information from Data File:

File Name : E:\SYSTEM4\09\_14\_07\557742.D  
Operator : KAC  
Date Acquired : 14 Sep 2007 23:30  
Sample Name : BLANK  
Submitted by :  
Vial Number : 1  
AcquisitionMeth: DRUGS  
Integrator : RTE



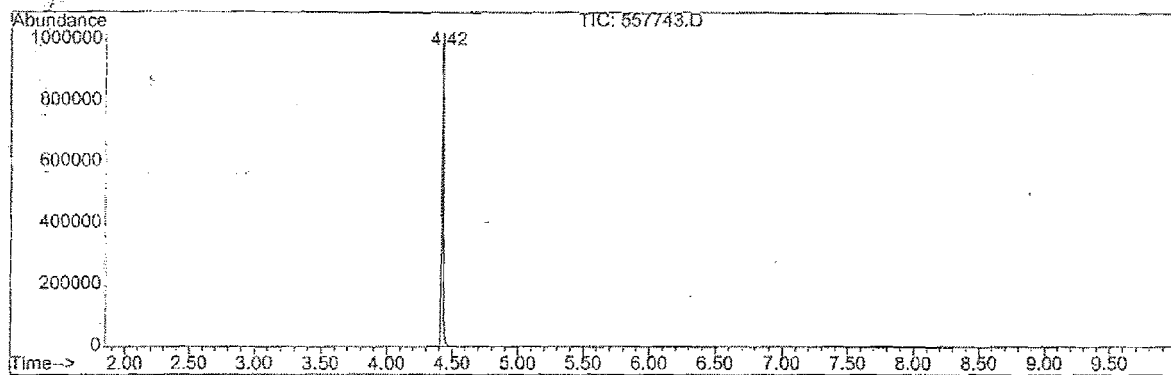
Ret. Time	Area	Area %	Ratio %
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\*\*\*NO INTEGRATED PEAKS\*\*\*

Area Percent / Library Search Report

Information from Data File:

File Name : E:\SYSTEM4\09\_14\_07\557743.D  
Operator : KAC  
Date Acquired : 14 Sep 2007 23:44  
Sample Name : COCAINE STD  
Submitted by :  
Vial Number : 43  
AcquisitionMeth: DRUGS  
Integrator : RTE



Ret. Time	Area	Area %	Ratio %
4.422	964161	100.00	100.00

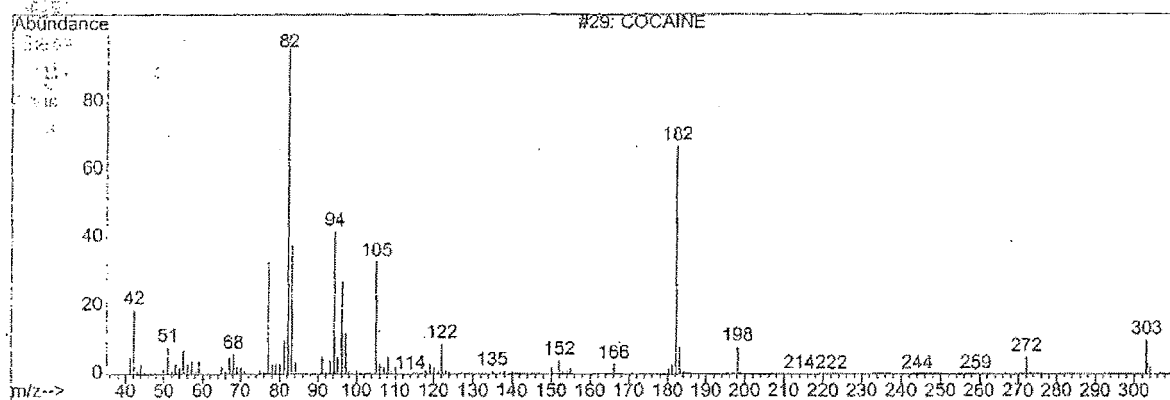
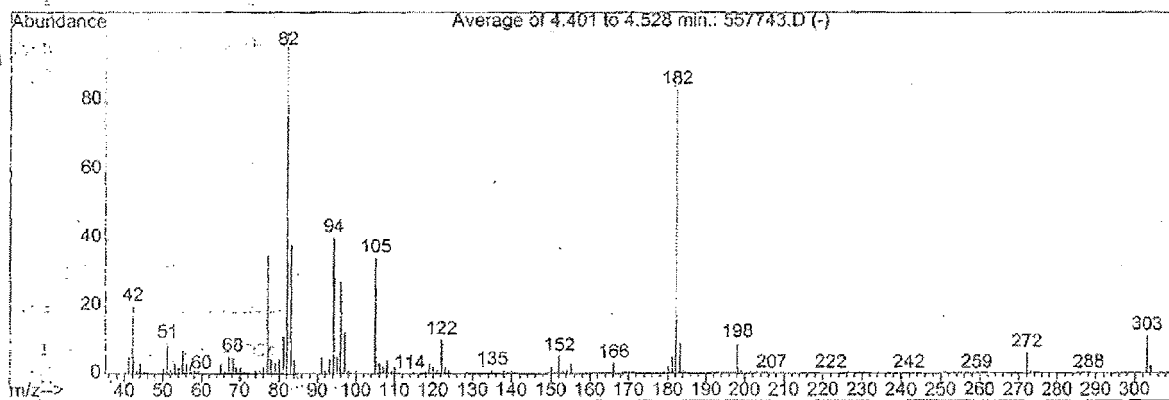
Area Percent / Library Search Report

Information from Data File:

File Name : E:\SYSTEM4\09\_14\_07\557743.D  
Operator : KAC  
Date Acquired : 14 Sep 2007 23:44  
Sample Name : COCAINE STD  
Submitted by :  
Vial Number : 43  
AcquisitionMeth: DRUGS  
Integrator : RTE

Search Libraries: C:\DATABASE\SLI.L Minimum Quality: 90  
C:\DATABASE\PMW\_TOX2.L Minimum Quality: 90  
C:\DATABASE\NIST98.L

PK#	RT	Library/ID	CAS#	Qual
1	4.42	C:\DATABASE\SLI.L COCAINE	000050-36-2	99



557743.D: Fri Aug 22 13:13:14 2008

Page 2

Abundance



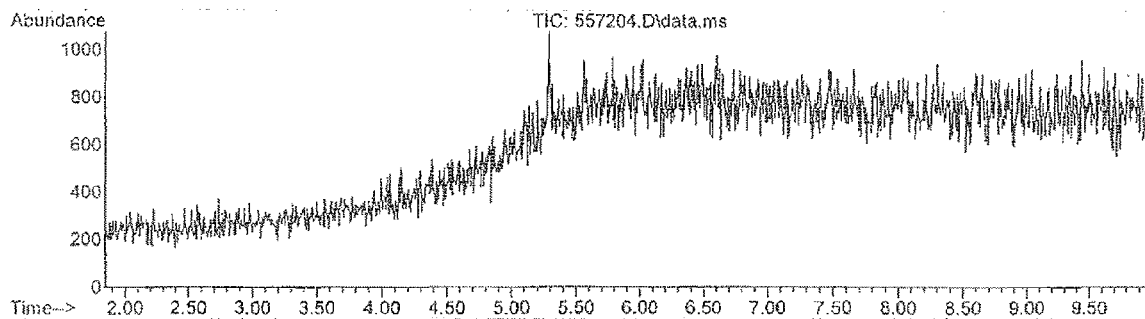
Area Percent / Library Search Report

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Information from Data File:

File Name : E:\SYSTEM7\09\_12\_07\557204.D  
Operator : KAC  
Date Acquired : 12 Sep 2007 8:28  
Sample Name : BLANK  
Submitted by :  
Vial Number : 1  
AcquisitionMeth: DRUGS.M  
Integrator : RTE

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Ret. Time	Area	Area %	Ratio %
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\*\*\*NO INTEGRATED PEAKS\*\*\*

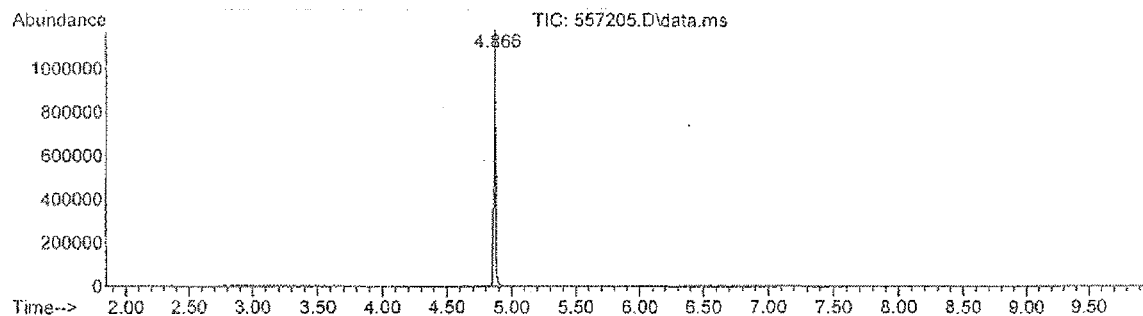
Area Percent / Library Search Report

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Information from Data File:

File Name : E:\SYSTEM7\09\_12\_07\557205.D  
Operator : KAC  
Date Acquired : 12 Sep 2007 8:41  
Sample Name : COCAINE STD  
Submitted by :  
Vial Number : 5  
AcquisitionMeth: DRUGS.M  
Integrator : RTE

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Ret. Time	Area	Area %	Ratio %
4.866	1137622	100.00	100.00

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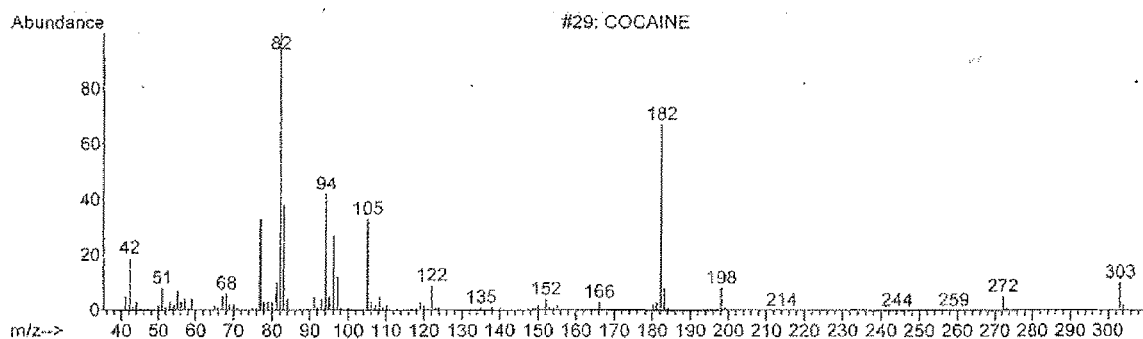
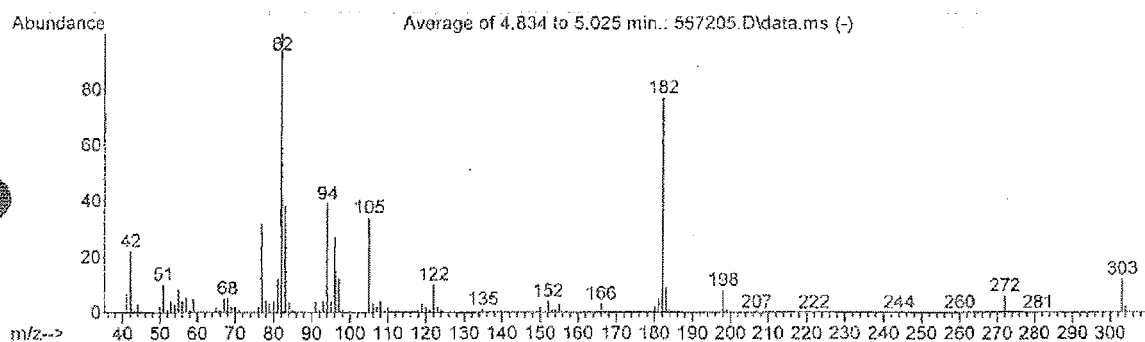
Area Percent / Library Search Report

Information from Data File:

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Operator : KAC  
Date Acquired : 12 Sep 2007 8:41  
Sample Name : COCAINE STD  
Submitted by :  
Vial Number : 5  
AcquisitionMeth: DRUGS.M  
Integrator : RTE

Search Libraries: C:\Database\SLI.L Minimum Quality: 85  
C:\Database\PMW\_TOX2.L Minimum Quality: 85  
C:\Database\NIST05a.L

PK#	RT	Library/ID	CAS#	Qual
1	4.87	C:\Database\SLI.L COCAINE	000050-36-2	99



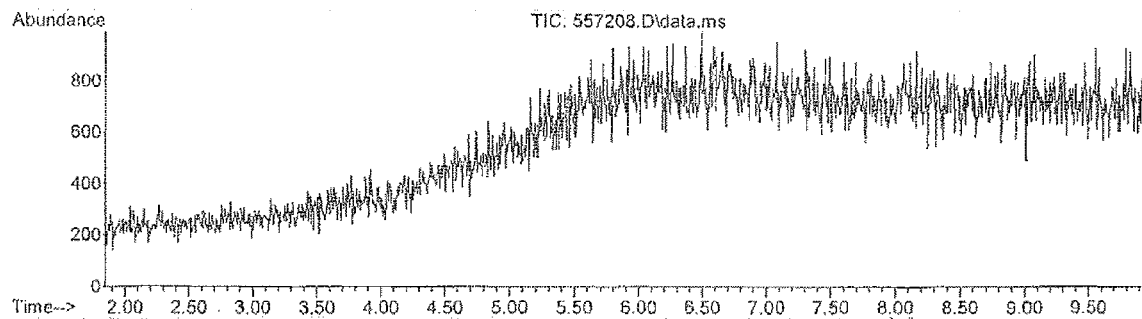
Area Percent / Library Search Report

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File Name : E:\SYSTEM7\09\_12\_07\557208.D  
Operator : KAC  
Date Acquired : 12 Sep 2007 9:19  
Sample Name : BLANK  
Submitted by : ASD  
Vial Number : 1  
AcquisitionMeth: DRUGS.M  
Integrator : RTE

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Ret. Time	Area	Area %	Ratio %
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\*\*\*NO INTEGRATED PEAKS\*\*\*

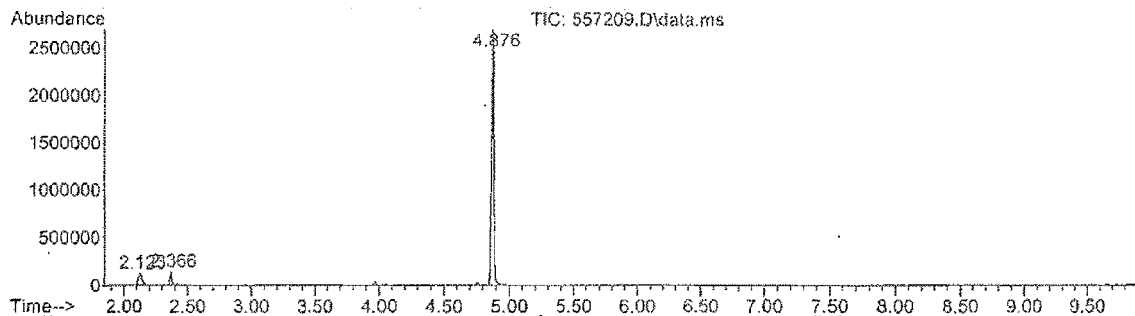
Area Percent / Library Search Report

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Information from Data File:

File Name : E:\SYSTEM7\09\_12\_07\557209.D  
Operator : KAC  
Date Acquired : 12 Sep 2007 9:32  
Sample Name : 821978  
Submitted by : ASD  
Vial Number : 9  
AcquisitionMeth: DRUGS.M  
Integrator : RTE

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Ret. Time	Area	Area %	Ratio %
2.123	255748	6.70	7.49
2.366	148322	3.88	4.34
4.876	3415830	89.42	100.00

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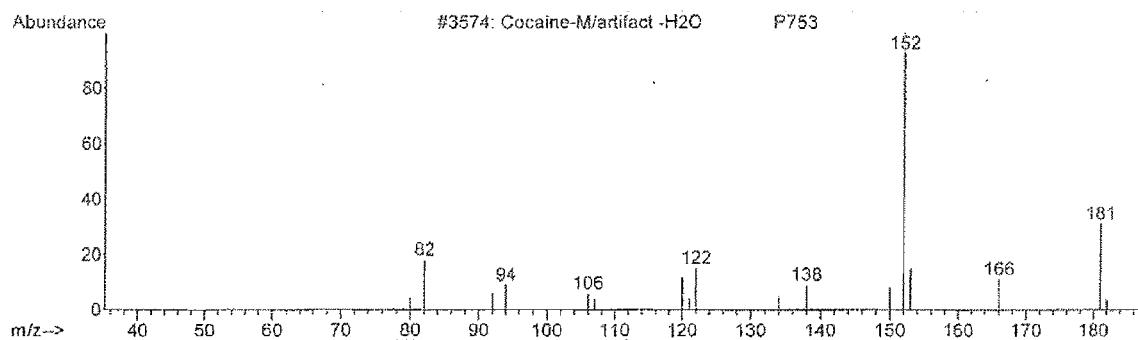
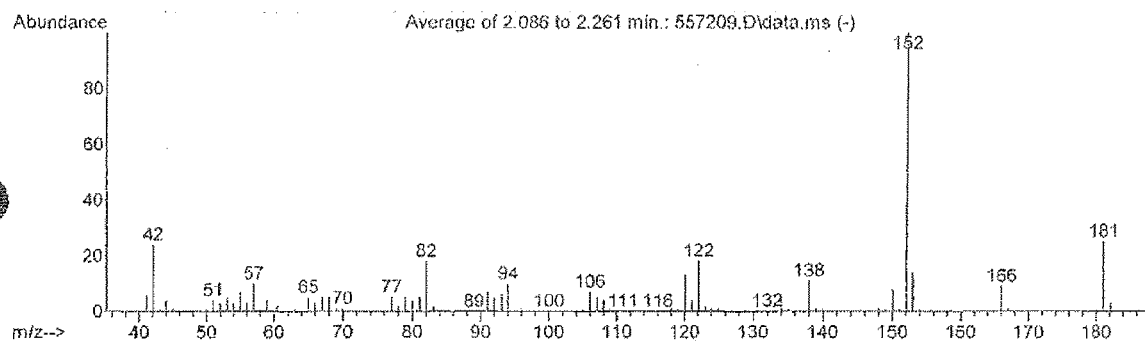
Area Percent / Library Search Report

Information from Data File:

File Name : E:\SYSTEM7\09\_12\_07\557209.D  
Operator : KAC  
Date Acquired : 12 Sep 2007 9:32  
Sample Name : 821978  
Submitted by : ASD  
Vial Number : 9  
AcquisitionMeth: DRUGS.M  
Integrator : RTE

Search Libraries: C:\Database\SLI.L Minimum Quality: 85  
C:\Database\PMW\_TOX2.L Minimum Quality: 85  
C:\Database\NIST05a.L

PK#	RT	Library/ID	CAS#	Qual
1	2.12	C:\Database\PMW_TOX2.L		
		Cocaine-M/artifact -H2O	000000-00-0	97
		MDA-M (desmethylenyl-methyl-) ME @	000000-00-0	40
		Metipranolol-M/artifact AC	000000-00-0	25



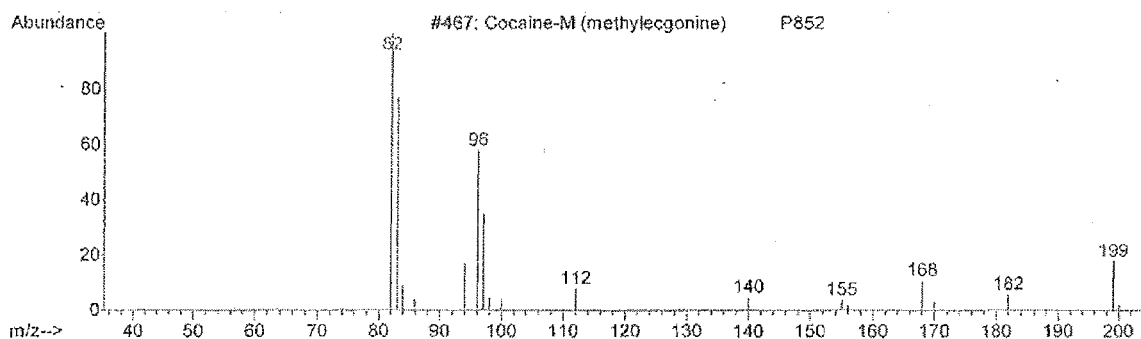
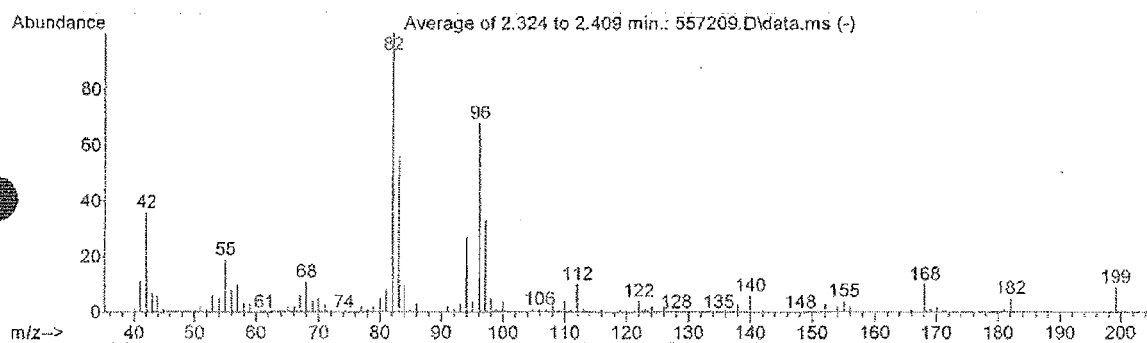
Area Percent / Library Search Report

Information from Data File:

File Name : E:\SYSTEM7\09\_12\_07\557209.D  
Operator : KAC  
Date Acquired : 12 Sep 2007 9:32  
Sample Name : 821978  
Submitted by : ASD  
Vial Number : 9  
AcquisitionMeth: DRUGS.M  
Integrator : RTE

Search Libraries: C:\Database\SLI.L Minimum Quality: 85  
C:\Database\PMW\_TOX2.L Minimum Quality: 85  
C:\Database\NIST05a.L

PK#	RT	Library/ID	CAS#	Qual
2	2.37	C:\Database\PMW_TOX2.L		
		Cocaine-M (methylecgonine)	007143-09-1	96
		Cocaine-M (methylecgonine) AC	000000-00-0	40
		Cocaine	000050-36-2	38



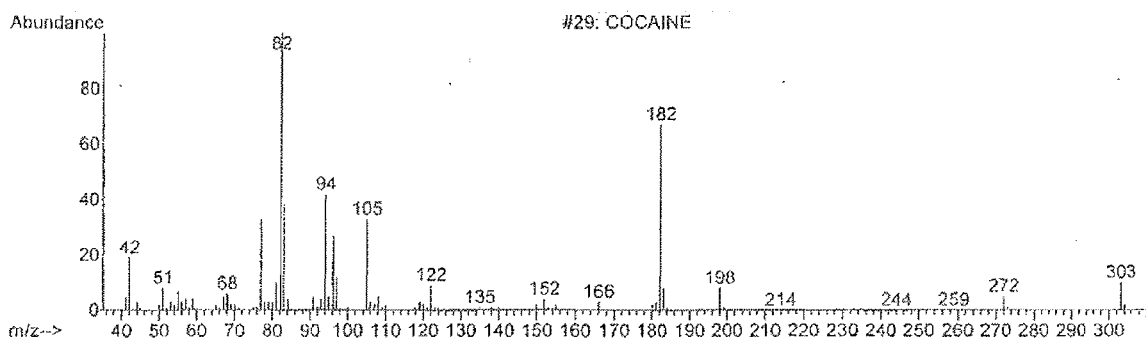
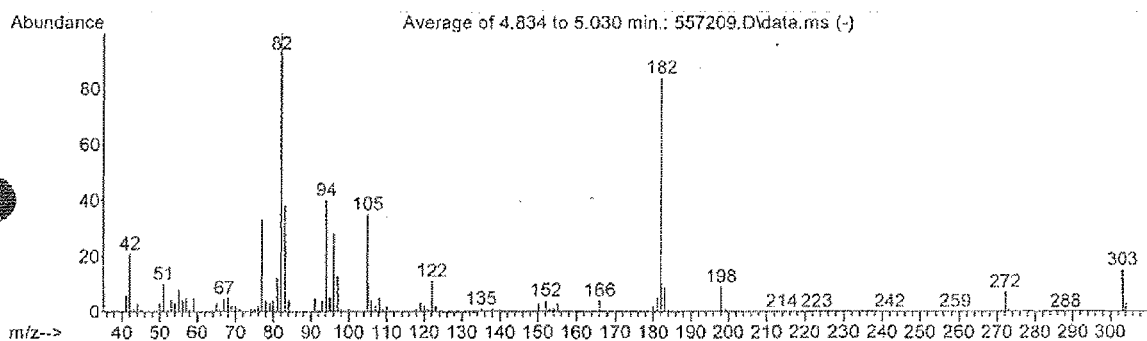
Area Percent / Library Search Report

Information from Data File:

File Name : E:\SYSTEM7\09\_12\_07\557209.D  
Operator : KAC  
Date Acquired : 12 Sep 2007 9:32  
Sample Name : 821978  
Submitted by : ASD  
Vial Number : 9  
AcquisitionMeth: DRUGS.M  
Integrator : RTE

Search Libraries: C:\Database\SLI.L Minimum Quality: 85  
C:\Database\PMW\_TOX2.L Minimum Quality: 85  
C:\Database\NIST05a.L

PK#	RT	Library/ID	CAS#	Qual
3	4.88	C:\Database\SLI.L COCAINE	000050-36-2	99





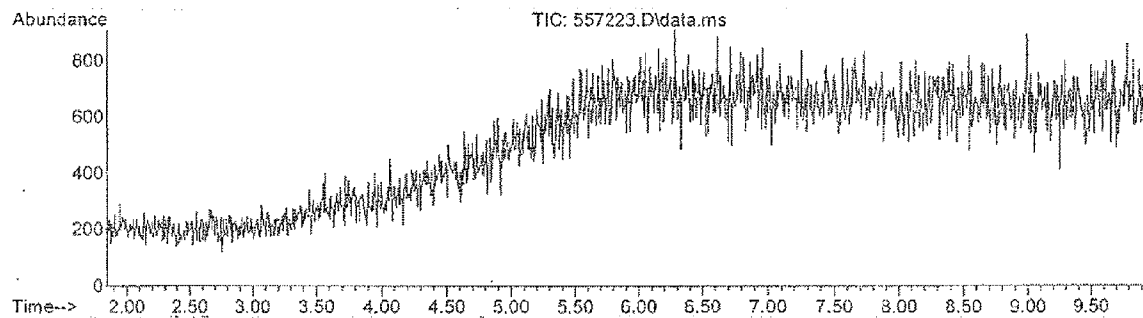
Area Percent / Library Search Report

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Information from Data File:

File Name : E:\SYSTEM7\09\_12\_07\557223.D  
Operator : KAC  
Date Acquired : 12 Sep 2007 12:30  
Sample Name : BLANK  
Submitted by :  
Vial Number : 1  
AcquisitionMeth: DRUGS.M  
Integrator : RTE

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Ret. Time	Area	Area %	Ratio %
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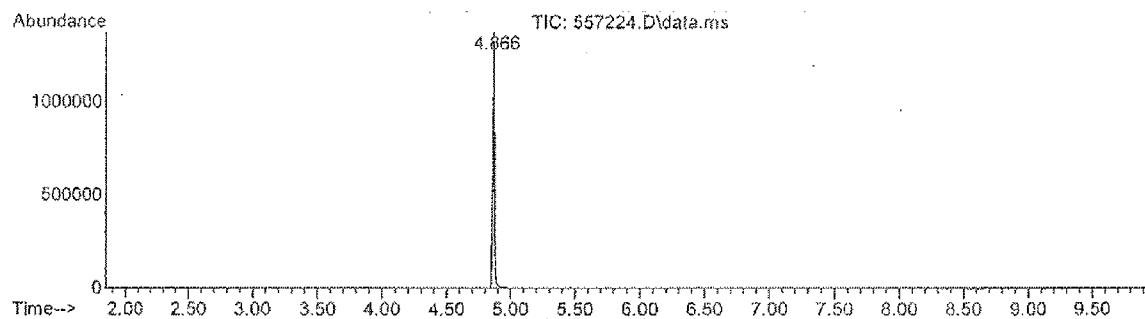
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\*\*\*NO INTEGRATED PEAKS\*\*\*

Area Percent / Library Search Report

Information from Data File:

File Name : E:\SYSTEM7\09\_12\_07\557224.D  
Operator : KAC  
Date Acquired : 12 Sep 2007 12:43  
Sample Name : COCAINE STD  
Submitted by :  
Vial Number : 24  
AcquisitionMeth: DRUGS.M  
Integrator : RTE



Ret. Time	Area	Area %	Ratio %
4.866	1313701	100.00	100.00

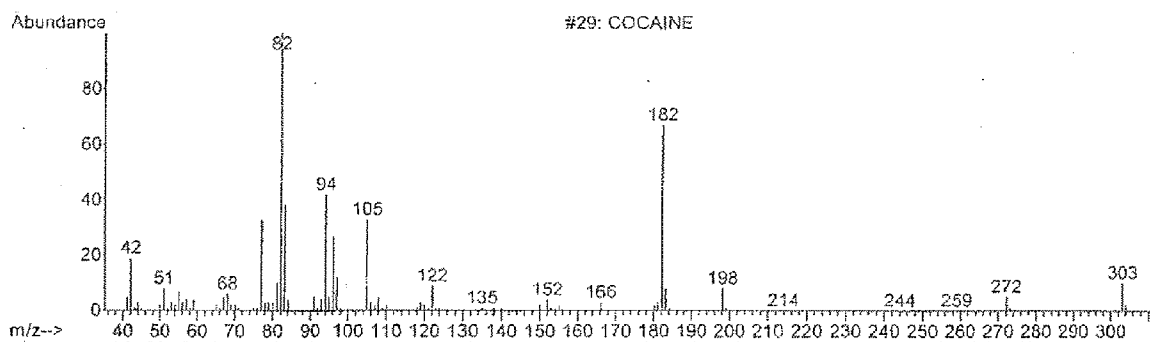
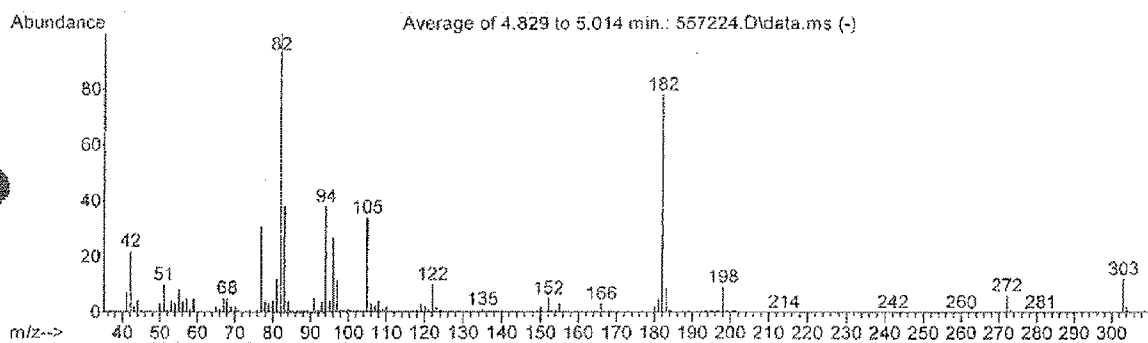
Area Percent / Library Search Report

Information from Data File:

File Name : E:\SYSTEM7\09\_12\_07\557224.D  
Operator : KAC  
Date Acquired : 12 Sep 2007 12:43  
Sample Name : COCAINE STD  
Submitted by :  
Vial Number : 24  
AcquisitionMeth: DRUGS.M  
Integrator : RTE

Search Libraries: C:\Database\SLI.L Minimum Quality: 85  
C:\Database\PMW\_TOX2.L Minimum Quality: 85  
C:\Database\NIST05a.L

PK#	RT	Library/ID	CAS#	Qual
1	4.87	C:\Database\SLI.L COCAINE	000050-36-2	99



3

PRELIM: Heroin

NO. 821975

DATE ANALYZED: 9/12/07

CITY: SALEM

DEF: CUEVAS, MIGUEL

AM'T: SUB: SUB CONT: 1 PB

#TESTED:

DATE REC: 08/09/2007 FROM: P.O. N. O'DONNELL

GROSS WT: 5.43

# TESTS: 4 ASD

NET WEIGHT: 0.40

• 2KAC

QUANT:

FINDINGS: ~~Heroin~~

PRELIM: Cocaine

NO. 821976

DATE ANALYZED: 9/13/07

CITY: SALEM

DEF: CUEVAS, MIGUEL

AM'T: SUB: SUB CONT: 1 PB

#TESTED:

DATE REC: 08/09/2007 FROM: P.O. N. O'DONNELL

GROSS WT: 5.43

# TESTS: 6 ASD

NET WEIGHT: 0.53

• 2KAC

QUANT:

FINDINGS: Cocaine

4

DRUG POWDER ANALYSIS FORM

SAMPLE # 821775 AGENCY Salem ANALYST ASD  
No. of samples tested:            Evidence Wt.           

PHYSICAL DESCRIPTION:

Beige powdered substance  
in 1 pb  
double bagged

Gross Wt ( 1 ): 0.6560  
Gross Wt ( ):             
Pkg. Wt:             
Net Wt: 0.4044

PRELIMINARY TESTS

Spot Tests

Cobalt  
Thiocyanate (+)  
Marquis +  
Froehde's +  
Mecke's +

Microcrystalline Tests

Gold  
Chloride             
TLTA ( )           

OTHER TESTS

PRELIMINARY TEST RESULTS

RESULTS Heroin  
DATE 09-05-07

GC/MS CONFIRMATORY TEST

RESULTS Heroin  
MS  
OPERATOR KAC  
DATE 9-12-07

Revised 7/2005



DRUG POWDER ANALYSIS FORM

SAMPLE # 821977 AGENCY Salem ANALYST AJO

No. of samples tested:           

Evidence Wt.           

PHYSICAL DESCRIPTION:

white powdered substance  
in pb  
double bagged

Gross Wt ( ): 0.7725

Gross Wt ( ):           

Pkg. Wt:           

Net Wt: 0.6445

PRELIMINARY TESTS

Spot Tests

Cobalt  
Thiocyanate (+)

Marquis -

Froehde's -

Mecke's -

Microcrystalline Tests

Gold  
Chloride +

TLTA (+)

OTHER TESTS

PRELIMINARY TEST RESULTS

RESULTS Cocaine

DATE 09-05-07

GC/MS CONFIRMATORY TEST

RESULTS Cocaine

MS  
OPERATOR KAC

DATE 09-17-07

Revised 7/2005

DRUG POWDER ANALYSIS FORM

SAMPLE # 821978 AGENCY Salem ANALYST ASD

No. of samples tested: \_\_\_\_\_

Evidence Wt. \_\_\_\_\_

PHYSICAL DESCRIPTION:

off white chunky substance  
in 1 pb

Gross Wt ( | ): 0.2292

Gross Wt ( ): \_\_\_\_\_

Pkg. Wt: \_\_\_\_\_

Net Wt: 0.1520

PRELIMINARY TESTS

Spot Tests

Cobalt  
Thiocyanate ( - ) +

Marquis -

Froehde's -

Mecke's -

Microcrystalline Tests

Gold  
Chloride +

TLTA ( - ) +

OTHER TESTS

PRELIMINARY TEST RESULTS

RESULTS Cocaine

DATE 09-03-07

GC/MS CONFIRMATORY TEST

RESULTS Cocaine

MS  
OPERATOR KAC

DATE 9-14-07



4

DRUG POWDER ANALYSIS FORM

SAMPLE # 821975 AGENCY Salem ANALYST ADG  
No. of samples tested:            Evidence Wt.           

PHYSICAL DESCRIPTION:

Beige powdered substance  
in 1 pb  
dark bagged

Gross Wt ( 1 ): 0.6560  
Gross Wt ( ):             
Pkg. Wt:             
Net Wt: 0.4044

PRELIMINARY TESTS

Spot Tests

Cobalt  
Thiocyanate (+)  
Marquis +  
Froehde's +  
Mecke's +

Microcrystalline Tests

Gold  
Chloride             
TLTA ( )           

OTHER TESTS

PRELIMINARY TEST RESULTS

RESULTS Heroin  
DATE 09-05-07

GC/MS CONFIRMATORY TEST

RESULTS Heroin  
MS  
OPERATOR KAC  
DATE 9-12-07

DRUG POWDER ANALYSIS FORM

SAMPLE # 821976 AGENCY Sullivan ANALYST ASD

No. of samples tested:            Evidence Wt.           

PHYSICAL DESCRIPTION:

white powdered substance  
in 1 ps

Gross Wt ( 1 ): 0.3854

Gross Wt ( ):           

Pkg. Wt:           

Net Wt: 0.3398

PRELIMINARY TESTS

Spot Tests

Cobalt  
Thiocyanate ( + )           

Marquis -

Froehde's -

Mecke's -

Microcrystalline Tests

Gold  
Chloride +

TLTA ( + )           

OTHER TESTS

PRELIMINARY TEST RESULTS

RESULTS Cocaine

DATE 09-05-07

GC/MS CONFIRMATORY TEST

RESULTS cocaine

MS  
OPERATOR KAC

DATE 9-13-07

Revised 7/2005

DRUG POWDER ANALYSIS FORM

SAMPLE # 821977 AGENCY Salem ANALYST A-50

No. of samples tested:            Evidence Wt.           

PHYSICAL DESCRIPTION:

white powdered substance  
in 1 pb  
double bagged

Gross Wt ( 1 ): 0.7725

Gross Wt ( ):           

Pkg. Wt:           

Net Wt: 0.5445

PRELIMINARY TESTS

Spot Tests

Cobalt  
Thiocyanate (+)  
Marquis -  
Froehde's -  
Mecke's -

Microcrystalline Tests

Gold  
Chloride +  
TLTA (+)

OTHER TESTS

PRELIMINARY TEST RESULTS

RESULTS Cocaine  
DATE 09-05-07

GC/MS CONFIRMATORY TEST

RESULTS Cocaine  
MS  
OPERATOR KAC  
DATE 09-17-07

Revised 7/2005

DRUG POWDER ANALYSIS FORM

SAMPLE # 821978 AGENCY Salem ANALYST ASD

No. of samples tested:           

Evidence Wt.           

PHYSICAL DESCRIPTION:

off white chunky substance  
in 1 pb

Gross Wt ( 1 ): 0.2292

Gross Wt ( ):           

Pkg. Wt:           

Net Wt: 0.1520

PRELIMINARY TESTS

Spot Tests

Cobalt  
Thiocyanate ( - ) +

Marquis -

Froehde's -

Mecke's -

Microcrystalline Tests

Gold  
Chloride +

TLTA ( - ) +

OTHER TESTS

PRELIMINARY TEST RESULTS

RESULTS Cocaine

DATE 09-03-07

GC/MS CONFIRMATORY TEST

RESULTS Cocaine

MS  
OPERATOR KAC

DATE 9-14-07

filed 11/18/08 16  
Richard Deschamps

COMMONWEALTH OF MASSACHUSETTS

ESSEX, ss.

SUPERIOR COURT DEPARTMENT  
ESSEX DIVISION  
NOS: ESCR2007-1535

COMMONWEALTH

V.

MIGUEL CUEVAS

MOTION TO SUPPRESS IDENTIFICATION

Now comes the defendant in the above entitled matters and respectfully moves that this Honorable Court suppress as evidence against him all in-court and out-of-court identifications of him by Kerry Rowe.

As reasons therefor, the defendant states that:

1. The circumstances of the photographic show-up identification were so impermissibly suggestive as to give rise to the substantial likelihood of irreparable misidentification.
2. The show-up identification procedure and subsequent identification were made in violation of rights guaranteed the defendant by the Fourth, Fifth and Fourteenth Amendments to the United States Constitution and Articles 12 and 14 of the Massachusetts Declaration of Rights.
3. The identification procedure and subsequent identification were made in violation of common law principles of fairness. See Commonwealth v. Jones, 423 Mass. 99 (1996).

MIGUEL CUEVAS

By his attorney

A handwritten signature in cursive script, appearing to read "Lawrence J. McGuire".

Lawrence J. McGuire

BBO No. 335080

Committee for Public Counsel Services

One Salem Green Suite 408

Salem, Massachusetts 01970

978-744-9113

COMMONWEALTH OF MASSACHUSETTS

ESSEX, ss.

SUPERIOR COURT DEPARTMENT  
ESSEX DIVISION  
NOS: ESCR2007-1535

COMMONWEALTH

v.

MIGUEL CUEVAS

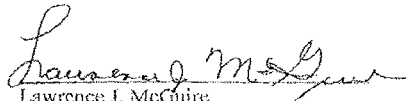
AFFIDAVIT OF COUNSEL

I, Lawrence J. McGuire, upon knowledge, information and belief do hereby swear and affirm that:

1. I am an attorney employed by the Committee for Public Counsel Services assigned to represent the defendant.
2. I have received discovery from the Commonwealth, which I have read.
3. The defendant is accused of selling narcotics to undercover officer Kerry Rowe on January 5, 8 and 10, 2007, in Salem. He was not arrested until June 9, 2007.
4. Salem detectives Bona and Jennings were in charge of the investigation. They observed the transactions.
5. On January 5, 2007, Detective Bona showed Officer Rowe a single photograph of the defendant.

Signed under the pains and penalties of perjury.

Date: Nov. 15, 2008

  
Lawrence J. McGuire



COMMONWEALTH OF MASSACHUSETTS

ESSEX, ss.

SUPERIOR COURT DEPARTMENT  
ESSEX DIVISION  
NOS: ESCR2007-1535

COMMONWEALTH

V.

MIGUEL CUEVAS

MEMORANDUM OF LAW IN SUPPORT OF MOTION TO SUPPRESS  
IDENTIFICATION

Where a defendant alleges that witness identifications arise from unnecessarily suggestive circumstances, the “defendant has the burden to prove, by a preponderance of the evidence, that the witness was subjected by the State to a pretrial confrontation ... ‘so unnecessarily suggestive and conducive to irreparable mistaken identification’ as to deny the defendant due process of law.” Commonwealth v. Otsuki, 411 Mass. 218, 232 (1991), quoting Commonwealth v. Venios, 378 Mass. 24, 26-27 (1979). The judge, in considering whether the identification testimony should be suppressed, must examine the totality of the circumstances attending the confrontation to determine whether it was unnecessarily suggestive.” Commonwealth v. Otsuki, *supra* at 232-233. If a defendant establishes that a confrontation was unnecessarily suggestive, then the identifications are excluded based on due process rights guaranteed by Article 12 of the Massachusetts Declaration of Rights. See Commonwealth v. Johnson, 420 Mass. 458, 462-465 (1995); Commonwealth v. Botelho, 369 Mass. 860, 865-869 (1976). Subsequent identifications

are admissible only if the Commonwealth demonstrates by clear and convincing evidence that the identifications have an independent source. See Commonwealth v. Johnson, supra at 463, citing Commonwealth v. Botelho, supra at 868.

Once a defendant shows by a preponderance of the evidence that an identification is unnecessarily suggestive, the Commonwealth must then show by clear and convincing evidence that a subsequent in-court identification is based on a source independent of the suggestive confrontation. Commonwealth v. Venios, 378 Mass. 24, 26-27 (1979); Commonwealth v. Moon, 380 Mass. 751, 758-59 (1980). In determining whether a witness's identification is based on a source independent of an unduly suggestive confrontation, relevant considerations include: 1) the opportunity of the witness to view the criminal at the time of the crime; 2) the witness's degree of attention; 3) the accuracy of his prior description of the criminal; 4) the level of certainty demonstrated at the confrontation, and, 5) the time between the crime and the confrontation. Commonwealth v. Botelho, 369 Mass. 860-862 (1976). Only after the Commonwealth establishes by clear and convincing evidence that an identification is based on factors independent of a suggestive confrontation may that identification be admitted into evidence. Commonwealth v. Botelho, 369 Mass. 860-868 (1976).

Show-up identifications are disfavored because they are inherently suggestive. Commonwealth v. Thompson, 422 Mass. 722, 729. The police may show recently apprehended suspects to witnesses shortly after a crime only if there is good reason to do so. Commonwealth v. Thompson, supra. See also Commonwealth v. Moon, 380 Mass. 751, 757 -- 78 (1980); Commonwealth v. Barnett, 371 Mass. 87, 92-93 (1976), cert.

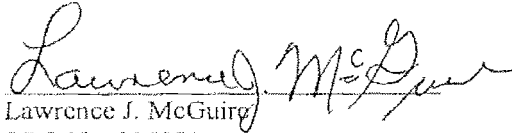
Denied, 429 U.S. 1049 (1977); Commonwealth v. Bumpus, 354 Mass. 494, 500 -01 (1968), cert. Denied, 393 U.S. 1034 (1969).

While exigent or special circumstances are not prerequisites to the use of a one on one identification procedure, either by photograph or in person, still there must be "good reason" for the police to use this inherently suggestive process. Commonwealth v. Martin, 447 Mass. 274; Commonwealth v. Austin, 421 Mass. 357. "Good reason" might be based on the nature of the crime and concern for public safety, the need for efficient police investigation in the immediate aftermath of a crime or the usefulness of the prompt confirmation of the accuracy of investigative information which if erroneous might allow the police to follow other avenues. Commonwealth v. Austin, *supra*.

In this case there was no sufficient reason to show Officer Rowe the single photograph of the defendant. According to his own report, Detective Bona knew the defendant from events predating three encounters in January, 2007. There was no reason for the officers not to place the defendant's photograph in a fairly constructed array to see if Rowe could identify him. This case is unlike Commonwealth v. Martinez, 67 Mass. App. Ct. 788. There, an undercover trooper was shown a single photograph of the defendant twenty minutes after he bought the drugs by other officers who had been observing the transaction. The Court held that the identification procedure was justified by the nature of crime and that efficient investigation would be hampered if the police had to take the time to put together an array. However in Martinez, none of the officers knew the defendant before the sale, and only one sale was involved. In this case two officers knew the defendant, and had permitted him to be at large for two weeks after the first sale was made. In fact, the defendant was not arrested until June 9, 2007.

MIGUEL CUEVAS

By his attorney



Lawrence J. McGuire

BBO No. 335080

Committee for Public Counsel Services

One Salem Green Suite 408

Salem, Massachusetts 01970

978-744-9113

17

COMMONWEALTH OF MASSACHUSETTS

ESSEX, SS.

SUPERIOR COURT  
Indictment Nos:  
ESCR 2007-1535

*Lowy* 1/30/09  
J 20  
FILED IN COURT  
ASST. CLERK

COMMONWEALTH

vs.

MIGUEL CUEVAS

WAIVER OF DEFENDANT'S RIGHTS

I have discussed the above case(s) and my constitutional and other rights with my attorney. I understand that by entering my plea of guilty I will be giving up my right to a trial by jury or to a trial before a judge; to confront, cross-examine, and compel the attendance of witnesses; to present evidence in my defense; to remain silent and refuse to be a witness against myself by asserting my privilege against self-incrimination; all with the assistance of my defense attorney, and to be presumed innocent until proven guilty beyond a reasonable doubt.

I have been advised by my attorney of the nature of the charge or charges to which I am entering my guilty plea. I also have been advised by my attorney of the nature and range of the possible sentence or sentences. I have been advised of the recommendation on sentencing to be made by the Prosecution.

My guilty plea is not the result of force, threats, assurance or promises. I have decided to plead guilty voluntarily and

- 2 -

freely, rather than at the direction of or because of the recommendation of any other person.

I am satisfied that my defense attorney has represented me in an effective and in a competent manner. I have had enough time to speak with him or her regarding any possible defenses I may have to the above charges.

I am not now on or under the influence of any drug, medication, liquor, or other intoxicant or depressant, which would impair my ability to fully understand the constitutional and statutory rights that I am waiving when I plead guilty.

I have been advised by Judge Lowy and I understand that if I am not a citizen of the United States, a conviction in the above case(s) could result in my deportation or exclusion from admission to the United States under federal immigration law and that I may be rejected as an applicant for citizenship in the United States.

I understand that I give up the right to any and all defenses, and objections which I could assert to the above case(s). I also understand that I give up my right to appeal the Court's denial of any motions to dismiss or to suppress or to the Court's acceptance of my plea of guilty to the above offenses and imposition of sentence upon me.

1-31-09  
Date

MIGUEL CUEVAS  
Print Name of Defendant

Miguel Cuevas  
Signature of Defendant

- 3 -

DEFENSE ATTORNEY'S APPROVAL

I have discussed this case and the plea recommendation with my client in detail and have advised the defendant of all matters within the scope of Massachusetts Rules of Criminal Procedure Rule 12, including, the constitutional and other rights of the accused, the factual basis for and the nature of the offense or offenses to which the guilty plea will be entered, possible defenses, and the consequences of the guilty plea. After explaining the above to the defendant, I am satisfied that the defendant has understood my explanation. Moreover, I am satisfied that the defendant is not under the influence of any drug, medication, liquor or other intoxicant which can impair the defendant's ability to fully understand all the constitutional, statutory and/or other rights the defendant would waive when we discussed the consequences of a plea of guilty to the above indictment(s).

I represent to the Court that the Defendant has signed this document voluntarily in my presence.

1-30-09  
Date

Lawrence M. G...  
Attorney for Defendant

BBO No: 3350 80

18

COMMONWEALTH OF MASSACHUSETTS.

ESSEX, SS.

To the Sheriff of the County of Essex, or any of his Deputies, and to the Superintendent of the Massachusetts Correctional Institution, Cedar Junction,

GREETING:

WHEREAS, by the consideration of the Superior Court holden within and for said County of Essex, on the 30<sup>th</sup> day of JANUARY, A.D. 2009

*Miguel Cuevas*

of Salem in said County of Essex, now in custody of said Sheriff, convict of the crime of

*Distribution of COCAINE*  
*94C/32A(a)*

was sentenced to be confined at hard labor, in the Massachusetts Correctional Institution, Cedar Junction, for a term of not less than *FOUR and ONE-HALF (4 1/2)* years and not more than *FIVE (5)* years, and to stand committed according to said sentence.

ORDER: Prisoner deemed to have served *268 -* days as a portion of said sentence under provisions of G. L. Chap. 279, Sec. 33a *+ 5 "STAY"*  
*273 A/O 2/4/09*

WE THEREFORE, COMMAND YOU, the said Sheriff or your said Deputies to remove the said convict from either of the jails in said County of Essex to said Massachusetts Correctional Institution, Cedar Junction; and WE COMMAND YOU the Superintendent of said Massachusetts Correctional Institution, Cedar Junction, to receive him, and immediately thereon to cause him to be confined therein as aforesaid; and for so doing this shall be your warrant.

And you, said Sheriff, are to make return of this Warrant, with your doings therein, to the office of the Clerk of said Court, in Salem, in said County of Essex, as soon as may be.

Witness, Chief Justice of our Superior Court, at Salem, on the day and date aforesaid.

*James E. O'Leary*  
ASSISTANT CLERK.  
*Execution of State Sentence Stayed until 2/4/09;*



ESSEX, ss.

19

In obedience to the within warrant I have conveyed the within named

to the Massachusetts Correctional Institution, Cedar Junction, and delivered him to the Superintendent thereof, with an attested copy of this warrant.

DEPUTY SHERIFF

WARRANT TO MASSACHUSETTS  
CORRECTIONAL INSTITUTION,  
CEDAR JUNCTION

VS.

COMMONWEALTH

NO. CR. - 2007-1535-001

19

COMMONWEALTH OF MASSACHUSETTS.

ESSEX, SS.

To the Sheriff of the County of Essex, or any of his Deputies, and to the Superintendent of the Massachusetts Correctional Institution, Cedar Junction.

GREETING:

WHEREAS, by the consideration of the Superior Court holden within and for said County of Essex, on the 30<sup>th</sup> day of JANUARY, A.D. 1909

of Miguel Cuevas in said County of Essex, now in custody of said Sheriff, convict of the crime of

Distribution of Cocaine  
940/32A (2)

was sentenced to be confined at hard labor, in the Massachusetts Correctional Institution, Cedar Junction, for a term of not less than Four and ONE-HALF (4 1/2) years and not more than Five (5) years, and to stand committed according to said sentence.

CONCURRENT w/ 2007-1535-001  
ORDER: Prisoner deemed to have served 268 days as a portion of said sentence under provisions of G. L. Chap. 279, Sec. 33a: + 5 "STAY"  
273 A/O 2/4/09

WE THEREFORE, COMMAND YOU, the said Sheriff or your said Deputies to remove the said convict from either of the jails in said County of Essex to said Massachusetts Correctional Institution, Cedar Junction; and WE COMMAND YOU the Superintendent of said Massachusetts Correctional Institution, Cedar Junction, to receive him, and immediately thereon to cause him to be confined therein as aforesaid; and for so doing this shall be your warrant.

And you, said Sheriff, are to make return of this Warrant, with your doings therein, to the office of the Clerk of said Court, in Salem, in said County of Essex, as soon as may be.

Witness, Chief Justice of our Superior Court, at Salem, on the day and date aforesaid.

James E. Clancy  
ASSISTANT CLERK  
Execution of State Sentence  
Stayed Until 2/4/09.

ESSEX, ss.

19

In obedience to the within warrant I have conveyed the within named

to the Massachusetts Correctional Institution, Cedar Junction, and delivered him to the Superintendent thereof, with an attested copy of this warrant.

DEPUTY SHERIFF

WARRANT TO MASSACHUSETTS  
CORRECTIONAL INSTITUTION,  
CEDAR JUNCTION

*Miguel Cuevas*

VS.

COMMONWEALTH

NO. CR. *2007-1535-002*

20

COMMONWEALTH OF MASSACHUSETTS.

ESSEX, SS.

To the Sheriff of the County of Essex, or any of his Deputies, and to the Superintendent of the Massachusetts Correctional Institution, Cedar Junction.

GREETING:

WHEREAS, by the consideration of the Superior Court holden within and for said County of Essex, on the 30<sup>th</sup> day of JANUARY, A.D. 2009,

Miguel Cuevas

of Salem in said County of Essex,  
now in custody of said Sheriff, convict of the crime of

Distribution of Cocaine  
94C/32A(a)

was sentenced to be confined at hard labor, in the Massachusetts Correctional Institution, Cedar Junction, for a term of not less than Four and ONE-HALF (4 1/2) years and not more than Five (5) years, and to stand committed according to said sentence.

Concurrent w/ 2007-1535-001

ORDER: Prisoner deemed to have served 268 days as a portion of said sentence under provisions of G. L. Chap. 279, Sec. 33a, + 5 "S.M.S."

273 A/O 2/4/09

WE THEREFORE, COMMAND YOU, the said Sheriff or your said Deputies to remove the said convict from either of the jails in said County of Essex to said Massachusetts Correctional Institution, Cedar Junction; and WE COMMAND YOU the Superintendent of said Massachusetts Correctional Institution, Cedar Junction, to receive him, and immediately thereon to cause him to be confined therein as aforesaid; and for so doing this shall be your warrant.

And you, said Sheriff, are to make return of this Warrant, with your doings therein, to the office of the Clerk of said Court, in Salem, in said County of Essex, as soon as may be.

Witness, \_\_\_\_\_ Chief Justice of our Superior Court, at Salem, on the day and date aforesaid.

James E. Cleary  
ASSISTANT CLERK

Execution of State Sentence  
Stayed until 2/4/09

ESSEX, ss.

19

In obedience to the within warrant I have conveyed the within named

to the Massachusetts Correctional Institution, Cedar Junction, and delivered him to the Superintendent thereof, with an attested copy of this warrant.

DEPUTY SHERIFF

WARRANT TO MASSACHUSETTS  
CORRECTIONAL INSTITUTION,  
CEDAR JUNCTION

VS.

*Miguel Cuevas*

COMMONWEALTH

NO. CR. - *201-1535-003*

21

COMMONWEALTH OF MASSACHUSETTS.

Essex, ss.

To the Sheriff of the County of Essex, or any of his Deputies, and to the Superintendent of the Massachusetts Correctional Institution, Cedar Junction.

GREETING:

WHEREAS, by the consideration of the Superior Court holden within and for said County of Essex, on the 30<sup>th</sup> day of JANUARY 2009  
Miguel Cuevas

of Salem in said County of Essex.

now in custody of said Sheriff, convict of the crime of

Distribution of Heroin  
94C/32 (a)

was sentenced to be confined at hard labor, in the Massachusetts Correctional Institution, Cedar Junction, for a term of not less than Four and one-half (4 1/2) years and not more than Five (5) years, and to stand committed according to said sentence.

Concurrent w/ 2007-1535-001  
ORDER: Prisoner deemed to have served 268 days as a portion of said sentence under provisions of G. L. Chap. 279, Sec. 33a. + 5 "STAY"  
273 A/O 2/4/09

WE THEREFORE, COMMAND YOU, the said Sheriff or your said Deputies to remove the said convict from either of the jails in said County of Essex to said Massachusetts Correctional Institution, Cedar Junction; and WE COMMAND YOU the Superintendent of said Massachusetts Correctional Institution, Cedar Junction, to receive him, and immediately thereon to cause him to be confined therein as aforesaid; and for so doing this shall be your warrant.

And you, said Sheriff, are to make return of this Warrant, with your doings therein, to the office of the Clerk of said Court, in Salem, in said County of Essex, as soon as may be.

Witness, James E. Clancy - Chief Justice of our Superior Court, at Salem, on the day and date aforesaid.

James E. Clancy  
ASSISTANT CLERK  
Execution of State Sentence  
Stayed until 2/4/09

ESSEX, ss.

19

In obedience to the within warrant I have conveyed the within named

to the Massachusetts Correctional Institution, Cedar Junction, and delivered him to the Superintendent thereof, with an attested copy of this warrant.

DEPUTY SHERIFF

WARRANT TO MASSACHUSETTS  
CORRECTIONAL INSTITUTION,  
CEDAR JUNCTION

COMMONWEALTH

NO. CR. 2007-1535-004

Miguel Cuevas

22

COMMONWEALTH OF MASSACHUSETTS

ESSEX, ss.

To the Sheriff of the County of Essex, his Deputies, or any Officer authorized to serve criminal process in the Commonwealth, and the Keeper of either of the Jails in said County,

GREETING:

These are to command you, the said Sheriffs and Officers, in the name of the Commonwealth of Massachusetts, forthwith to remand and deliver into the custody of the said Keeper-Sheriff, the body of

*Miguel Cuevas*

who this day has been brought before the Superior Court, for the transaction of criminal business, holden within and for said County, to answer to an indictment found-complaint against him, wherein he is charged with the crime of

*DIST. of Cocaine*

alleged to have been committed in said County.

You, the said Keeper, are hereby required to receive him/her into your custody in the said Jail, and him/her there safely keep until he/she be discharged by due order of law

*until wed., Feb. 4, 2009 for  
execution of State Sentence*

WITNESS, ~~Robert J. McLaughlin~~ *30th* Chief Justice of our  
Superior Court, the *January* day of  
in the year of our Lord two  
thousand and *2009*.

*James E. Clancy*  
Assistant Clerk



ESSEX, ss.

20

In obedience to the within order, I have conveyed the within-named to the Jail in  
in said County, and left with the Keeper-Sheriff thereof a true  
and attested copy of this mittimus and my return thereon.

No.

2007-1535-001

COMMONWEALTH

vs.

Miguel Cuevas

ORDER REMANDING TO  
CUSTODY OF SHERIFF

23

COMMONWEALTH OF MASSACHUSETTS

ESSEX, SS

SUPERIOR COURT  
NO. 77CR

COMMONWEALTH

2007-1535-001

VS.

Miguel Cuevas

VICTIM/WITNESS ASSESSMENT

The defendant was convicted and it is hereby ordered that the defendant be assessed the amount of \$ 90.00 victim witness fee. Mandatory Drug Assessment in the sum of \$ 150.00. This assessment is to be paid:

(Check the applicable box):

- ☐ A Forthwith - Clerk of Courts Office
- ☐ B Suspended to \_\_\_\_\_ - Probation Office
- ☐ C Defendant Indigent - Assessment Waived/Reduced
- ☒ D Withdraw from inmate's account

To the Superintendent of the receiving Correctional Institution.  
You are hereby ordered to withdraw from the above named inmate's savings or personal account the first \$ \_\_\_\_\_ deposited to that account, said sum to be paid to this court for deposit in the Victim/Witness Assistance Fund pursuant to M.G.L. c258B,s.8, as amended

By the Court, ( Lowy , J.)  
Attest:

Date 1/30/09

James E. Conway  
Assistant Clerk

Note:

- If: Box A or C is checked-after payment, file original with case and discard copy.  
Box B is checked-forward original to Probation and file copy.  
Box D is checked-attach original to mittimus and file copy.

NOTE: APPROVED JUDGMENT CODES ON REVERSE MUST BE USED IN REPORTING JUDGMENTS.

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DC-MV-8 (2/83)		COMMONWEALTH OF MASSACHUSETTS SUPPLEMENTAL MOTOR VEHICLE ABSTRACT		CITATION NUMBER (see number only)	
VIOLATOR NAME (LAST, FIRST, INITIAL) Coulter, Michael		DATE OF BIRTH		LICENSE NUMBER	
STREET ADDRESS		REGISTRATION NUMBER		STATE	
CITY/TOWN		POLICE DEPARTMENT			
DATE OF VIOLATION 1/31/09		LOCATION OF VIOLATION Salem			
DOCKET NUMBER	OFFENSE	CHAPTER	SECTION	JUDGMENT	DATE OF JUDGMENT
07-1535-001	Dist Cocaine	94C	32	G	1/30/09
07-1535-002	Dist Cocaine	94C	32	G	1/30/09
07-1535-003	Dist Cocaine	94C	32	G	1/30/09
07-1535-004	Dist Class A	94C	32	G	1/30/09
INSTRUCTIONS TO COURT: 1. Use a separate form for each citation number. 2. To update previous abstract, fill in shaded areas only. 3. To use to report a conviction for which no citation was written, fill out as completely as possible. 4. Certify abstract with clerk-magistrate's facsimile.				COURT ID 77	CERTIFIED BY CLERK-MAGISTRATE AS A TRUE RECORD

COMMONWEALTH OF MASSACHUSETTS

ESSEX, ss.

SUPERIOR COURT DEPARTMENT  
ESSEX DIVISION  
NOS: ESCR2007-1535

COMMONWEALTH

v.

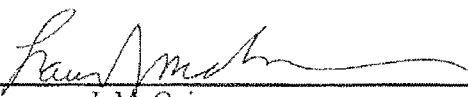
MIGUEL CUEVAS

MOTION TO REVOKE AND REVISE SENTENCE

The defendant respectfully moves that this Honorable Court, Lowy, J., revoke and revise the sentence which it imposed on him on January 30, 2009.

The defendant requests that no action be taken on his motion at this time.

MIGUEL CUEVAS  
By his attorney

  
\_\_\_\_\_  
Lawrence J. McGuire  
BBO No: 335080  
Committee for Public Counsel Services  
One Salem Green Suite 408  
Salem, Massachusetts 01970  
978 744-9113

**FILED**  
IN THE SUPERIOR COURT  
FOR THE COUNTY OF ESSEX

FEB 18 2009

  
CLERK

<b>WARRANT</b>		0777CR001535	
Superior		NAME, ADDRESS AND ZIP CODE OF DEFENDANT CUEVAS, MIGUEL	
DATE OF BIRTH	SEX	RACE	HEIGHT
	M	B	5'11"
			200
			BRO
			BLK
C.C. #	SOCIAL SECURITY #		
DATE OF OFFENSE	PLACE OF OFFENSE		
01/05/2007	SALEM		
COMPLAINANT	POLICE DEPARTMENT		
	SALEM PD		
DATE OF COMPLAINT	RETURN DATE AND TIME		
10/05/2007			
COUNT-OFFENSE			
1 - 94C/32A/B COCAINE, DISTRIBUTE, SUBSQ.OFF. c94C §32A(d)			
<p>on 01/05/2007, not being authorized by law, did knowingly or intentionally manufacture, distribute or dispense a controlled substance defined in clause (4) of paragraph (a) of Class B of G.L. c.94C, §31, to wit: coca leaves or a salt, compound, derivative, or preparation of coca leaves, or a salt, compound, derivative, or preparation thereof which is chemically equivalent or identical with such a substance, not being excepted by law, the defendant having previously been convicted of such an offense, or an offense of another jurisdiction which is the same as or necessarily includes the elements of such offense, in violation of G.L. c.94C, §32A(d). (NO DISTRICT COURT FINAL JURISDICTION IN ADULT SESSION.)</p>			
COUNT-OFFENSE			
COUNT-OFFENSE			
COUNT-OFFENSE			
COUNT-OFFENSE			
<p>THE COURT HAS ORDERED THAT A <input type="checkbox"/> WARRANT <input checked="" type="checkbox"/> DEFAULT WARRANT ISSUE AGAINST THE ABOVE DEFENDANT</p> <p>Therefore you are hereby commanded to arrest the above named defendant and bring the defendant forthwith before this court to answer to the offense(s) listed above and to be dealt with according to law</p>			
FIRST JUSTICE		DATE OF ISSUE	CLERK-MAGISTRATE/ASST. CLERK
WITNESS: MULLIGAN, ROBERT		12/17/2007	<i>Richard D. Delaney</i>

COMMONWEALTH OF MASSACHUSETTS

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FILED  
IN THE SUPERIOR COURT  
FOR THE COUNTY OF ESSEX

APR 27 2009

Sharon A. [Signature]  
CLERK

SALEM SUPERIOR COURT

DOCKET NO.: ESCR-2007-1535

COMMONWEALTH

v.

MIGUEL CUEVAS

DEFENDANT'S MOTION FOR JAIL CREDITS  
AND ISSUANCE OF A CORRECTED MITTIMUS

Now comes the defendant Miguel Cuevas, "pro se" in the above entitled matter and hereby respectfully moves this Honorable Court to award him 37 days Jail credit for time spent in confinement on this matter and issue a corrected mittimus to the Department of Corrections, Record Department reflecting the 37 days Jail credits.

As reasons therefore, the defendant states that he was being held on a \$10,000 cash bail at the Essex County Correctional facility from June 9, 2007 thru July 16, 2007 before posting his bail and being released on the above mentioned Docket.

The defendant further states that he received Jail credits from the dates of May 16, 2008 thru January 20, 2009 in which disposition of the case the court was not informed of or aware of the 37 days Jail credit requested.

4/29/09  
Court Sent

4/29/09 Loux J.  
"Denied" ... Proper credit was given.  
6/19/09 To 7/16/07 = 38 DAYS  
5/16/08 To 1/20/09 = 230 DAYS  
268 TOTAL plus 5 DAY for "STAY"  
ATTEST: James E. Clancy  
NOT CLERK

The defendant has attached an affidavit in support of his motion attached (hereto).

The defendant prays this Honorable Court credit him 37 days Jail credit for time spent in confinement on this matter.

DATE: APRIL 22, 2009

Respectfully Submitted  
By the Defendant,  
Miguel Cuevas  
MIGUEL CUEVAS "PROSE"

### CERTIFICATE OF SERVICE

I MIGUEL CUEVAS do hereby certify that a true copy of the above document was sent to the Essex County District Attorney's office by U.S. 1<sup>st</sup> class mail on 4/22/09.

DATE: APRIL 22, 2009

Miguel Cuevas  
MIGUEL CUEVAS

COMMONWEALTH OF MASSACHUSETTS.

Essex. SS,

SALON SUPERIOR COURT

DOCKET NO: ESCR-2007-1535

COMMONWEALTH

V.

MIGUEL CUEVAS

AFFIDAVIT

IN SUPPORT OF MOTION FOR JAIL CREDITS AND

ISSUANCE OF A CORRECTED WITHIN C.

I, MIGUEL CUEVAS, do hereby depose and say the following.

- 1) I am the defendant in the above entitled matter.
- 2) ON or about June 9, 2007, I was arrested and charged with the charges contained on the above-mentioned Docket.
- 3) as a result of my arrest, bail was set at \$10,000 cash.
- 4) On or about July 16, 2007, family members posted my bail on this matter and was released from confinement.
- 5) On or about May 16, 2008, I was arrested on unrelated charges in which violated my bail agreement with the court on this matter.



6) on or about January 30, 2009, I entered a Plea of guilty on the above mentioned charges and was sentenced to a 4 1/2 to 5 years state prison sentence by the court.

7) upon processing my mittimus by the Records Department at MCI Concord I was informed that the Court credited me the time from May 16, 2008 thru January 20, 2009 Jail credit for time spent in confinement.


8) The Court never credited me the time from the time of my arrest (June 9, 2007), to the time my family posted my bail, (July 16, 2007).

9) From (June 9, 2007) thru (July 16, 2007) I was detained on a \$10,000 cash bail set by the district court and held at the Essex County Correctional Facility.

10) I was not being held or serving any other sentences at the time I was held in Confinement from June 9, 2007 thru July 16, 2007.

11) As A matter of law, I am entitled to the 37 days Jail credit for time spent in Confinement on this matter.

Signed under the Pains and Penalties of Perjury  
on this 22nd day of April, 2009

  
MIGUEL CUEVAS



AGO State Lab  
Investigation  
000077

*Massachusetts State Police*  
*Office of the Attorney General*  
*One Ashburton Place, Room 1910*  
*Boston, MA 02108*


To: Lieutenant Colonel Francis J. Matthews *FJM* 9-12-12.  
Commanding, Division of Investigative Services

From: Detective Lieutenant Robert M. Irwin  
Commanding, MSP-AGO Detective Unit

Subject: Signed Statement of Annie Dookhan

Case #: 2012-034-2589-0052

1. On August 28, 2012 at the conclusion of the interview with Annie Dookhan, I wrote out a brief summary of portions of the interview between Annie Dookhan, detective Captain Mason and me. I had Annie Dookhan read the statement and asked if it was accurate. After she agreed that the statement was accurate I had her acknowledge such by signing at the bottom. Below is the complete content of the written statement. The original is currently secured with the case file kept by this officer.
2. I, Annie Dookhan, had taken out samples of safe and tested them without them being signed out as proper procedure. I also went in the Evidence Log book and postdated and filled the log book in. I signed my initials and an Evidence Officer's initials in the book. That was my mistake and I can't deny that. I also batched, put similar samples together, and tested some and not others; I "dry labbed." I have been doing it for about two to three years. At times, a few, I had to add to a sample that came back from Mass Spec to make it what I said it was. I would get the sample from a known sample. I would try to clean it, the original, up first but if it didn't I would need to take something, drugs, from another case. I intentionally turned a negative sample into a positive a few times.
3. Annie S. Dookhan 6:45p.m. 8-28-2012  
I voluntarily signed this document, and it is true.  
DLT RM Irwin 8/28/12 1845  
DCPT JV Mason 8/28/12 1845 hrs

Respectfully,  
  
*Robert M. Irwin* #1230  
Robert M. Irwin  
Detective Lieutenant, #1230  
Massachusetts State Police  
Office of the Attorney General

AGO State Lab  
Investigation  
000078

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COMMONWEALTH OF MASSACHUSETTS

ESSEX, ss. Salem Superior COURT  
[County] [name of court]

DOCKET NO. ESCR07-1535

COMMONWEALTH  
v. Miguel A. Cuevas  
[name of defendant]

FILED  
IN THE SUPERIOR COURT  
FOR THE COUNTY OF ESSEX  
SEP 28 2012  
Thomas A. Mansell Jr.  
CLERK

10/22/12

DEFENDANT'S MOTION TO BE DECLARED INDIGENT

Now comes the defendant, pro se, in the above-entitled matter and moves this Honorable Court, pursuant to M.G.L. c.211D and Supreme Judicial Court Rule 3:10 to declare the defendant indigent.

As reasons for the foregoing request, the defendant states:

1. The defendant is now indigent, incarcerated and without funds to hire an attorney to pursue post-conviction remedies.
2. A party's indigency status may be reviewed at any stage of a court proceeding if information regarding a change in financial circumstances becomes available to a probation officer or other appropriate court employee, through the court's verification system, or from some other source, including the party. Supreme Judicial Court Rule 3:10, Section 7.
3. The defendant, by separate motion, requests appointment of the Committee for Public Counsel Services for direct appeal, which can only be done if the defendant is declared indigent.

In support of this motion, the defendant has attached his Affidavit of Indigency, as well as a copy of his prison canteen account and savings account, if any.

Respectfully submitted,

Date: 9/23/12

Miguel A. Cuevas [sign name here]  
Miguel A. Cuevas, pro se [print name]  
[mailing address]  
Miguel Cuevas # W93772

10/22/12  
COPY Sent  
All parties

Commonwealth of Massachusetts

**AFFIDAVIT OF INDIGENCY**  
AND REQUEST FOR WAIVER, SUBSTITUTION  
OR STATE PAYMENT OF FEES & COSTS

(Note: If you are currently confined in a prison or jail and are not seeking immediate release under G.L. c. 248 §1, but you are suing correctional staff and wish to request court payment of "normal" fees (for initial filing and service) do not use this form. Obtain separate forms from the clerk.)

Salem Superior Court Commonwealth v. Miguel Cuevas Case Name and Number (if known) ESCR07-153

Name of applicant: Miguel Cuevas

Address: \_\_\_\_\_  
(Street and number) (City or town) (State and Zip)

**SECTION 1:** Under the provisions of General Laws, Chapter 261, Sections 27A-27G, I swear (or affirm) as follows  
**I AM INDIGENT** in that (check only one):

- ☐ (A) I receive public assistance under Transitional Aid to Families with Dependent Children (TAFDC), Emergency Aid to Elderly, Disabled or Children (EAEDC), Supplemental Security Income (SSI), Medicaid (MassHealth) or Massachusetts Veterans Benefits Programs; (circle form of public assistance received); or
- ☐ (B) My income, less taxes deducted from my pay, is \$ \_\_\_\_\_ per week/month/year (circle period that applies), for a household of \_\_\_\_\_ persons, consisting of myself and \_\_\_\_\_ dependents; which income is at or below the court system's poverty level; (Note: The court system's poverty levels for households of various sizes must be posted in this courthouse. If you cannot find it, ask the clerk. The court system's poverty level is updated each year.) (List any other available household income for the circled period on this line: \_\_\_\_\_) or
- ☒ (C) I am unable to pay the fees and costs of this proceeding, or I am unable to do so without depriving myself or my dependents of the necessities of life, including food, shelter and clothing.

IF YOU CHECKED (C), YOU MUST ALSO COMPLETE THE SUPPLEMENT TO THE AFFIDAVIT OF INDIGENCY.

**SECTION 2:** (Note: In completing this form, please be as specific as possible as to fees and costs known at the time of filing this request. A supplementary request may be filed at a later time, if necessary.)

I request that the following **NORMAL FEES AND COSTS** be waived (not charged) by the court, or paid by the state, or that the court order that a document, service or object be substituted at no cost (or a lower cost, paid for by the state): (Check all that apply and, in any "\$ \_\_\_\_" blank, indicate your best guess as to the cost, if known.)

- ☒ Filing fee and any surcharge. \$ N/A
- ☒ Filing fee and any surcharge for appeal. \$ N/A
- ☒ Fees or costs for serving court summons, witness subpoenas or other court papers. \$ N/A

Other fees or costs of \$ N/A for (specify) N/A

☒ Substitution (specify): N/A

SECTION 3: I request that the following EXTRA FEES AND COSTS either be waived (not charged), substitute or paid for by the state:

☒ Cost, \$ N/A, of expert services for testing, examination, testimony or other assistance

(specify): N/A

☒ Cost, \$ N/A, of taking and/or transcribing a deposition of (specify name of person): \_\_\_\_\_

☒ Cassette copies of tape recording of trial or other proceeding, needed to prepare appeal for applicant not represented by Committee for Public Counsel Services (CPCS-public defender).

☒ Appeal bond

☒ Cost, \$ N/A, of preparing written transcript of trial or other proceeding

☒ Other fees and costs, \$ N/A, for (specify) \_\_\_\_\_

☒ Substitution (specify): N/A

Date signed <u>9/23/12</u>	Signed under the penalties of perjury <u>x Miguel Crespo</u>
By order of the Supreme Judicial Court, all information in this affidavit is CONFIDENTIAL. Except by special order of a court, it shall not be disclosed to anyone other than authorized court personnel, the applicant, applicant's counsel or anyone authorized in writing by the applicant.	
This form prescribed by the Chief Justice of the SJC pursuant to G.L. c. 261, § 27B. Promulgated March, 2003	

Commonwealth of Massachusetts

**SUPPLEMENT TO AFFIDAVIT OF INDIGENCY**  
AND REQUEST FOR WAIVER, SUBSTITUTION  
OR STATE PAYMENT OF FEES & COSTS

(Note: If you checked (C) on the AFFIDAVIT OF INDIGENCY, you must complete this form.)

Salem Superior Commonwealth vs. Miguel Cuevas 1535  
Court Case Name and Number (if known)  
Name of applicant: Miguel Cuevas # W93772  
Address: \_\_\_\_\_  
(Street and number) (City or town) (State and Zip)

Under the provisions of General Laws, Chapter 261, Sections 27A-G, I swear or affirm as follows:

**1. PERSONAL INFORMATION**

- (a) Date of Birth: \_\_\_\_\_  
(b) Highest Grade Attained in School: 11th  
(c) Special Training: N/A  
(d) List any physical or mental disabilities which you wish to reveal and which affect your earning capacity or living expenses:  
Incarcerated  
(e) Number of Dependents: 0

**2. INCOME AFTER TAXES (monthly):**

- (a) If from employment, list your occupation and your employer's name and address:  
N/A  
(b) Source of income, if not from employment: N/A  
(c) My gross annual income for the past twelve months was: \$0.00

4. **ASSETS**
- (a) Own home? NO Market Value \$ 0  
Balance owed \$ 0
- (b) Own Car? NO Year & Make N/A  
Market Value \$ 0 Balance Owed \$ N/A
- (c) Bank Accounts (specify type and balance) 0
- (d) Other Property (including Real Estate (specify type and value) 0
5. **DEBTS**
- (a) Specify: 0
6. **MISCELLANEOUS**
- (a) Other facts which may be relevant to your ability to pay fees and costs?  
0

Signed under the penalties of perjury:

Signature: Miguel Cuervo  
Type/Printed Name: Miguel A. Cuervo WA3772  
Address \_\_\_\_\_  
Date: 9/23/12

By order of the Supreme Judicial Court, all information in this affidavit is **CONFIDENTIAL**. Except by special order of a court, it shall not be disclosed to anyone other than authorized court personnel, the applicant, applicant's counsel or anyone authorized in writing by the applicant.

This form prescribed by the Chief Justice of the SJC pursuant to G.L. c. 261, § 27B. Promulgated March , 2003



September 23, 2012

To: Clerk of Courts  
Salem Superior  
Essex County

From: Miguel A. Cuevas #W93772

RE: Motion to be declared indigent.

Please find enclosed and completed my motion to be declared indigent by the courts. I recently found out that my case which was heard in your court between 2007-09 was one of the many affected by the chemist Anne Bookman from the drug lab in Boston. I now want to obtain a lawyer from the Committee for Public Counsel Services to assist me in dealing with this matter. First I need to be declared indigent by the courts before being assigned a lawyer by the CPSC.

I've been incarcerated since May 08 and have no money, so please with all due respect move to grant me this motion.

Thank you  
Miguel Cuevas  
Miguel Cuevas

28

COMMONWEALTH OF MASSACHUSETTS

ESSEX, ss

ESSEX SUPERIOR COURT

DOCKET: ESCR 2007-1535

FILED  
IN THE SUPERIOR COURT  
FOR THE COUNTY OF ESSEX

COMMONWEALTH

OCT 18 2012

v.

MIGUEL CUEVAS

*Thomas A. Marshall*  
CLERK

DEFENDANT'S MOTION TO WITHDRAW GUILTY PLEA

NOW COMES the defendant in the above captioned matter and respectfully requests pursuant to Mass. R. Crim. P. Rule 30 that this court vacate his guilty plea, and order that this matter be restored to the trial list. The defendant states as his grounds the following:

1. The defendant pled guilty to three counts of Possession with Intent to Distribute a Class B Substance and one count of Possession with Intent to Distribute a Class A substance on January 30, 2009 and received a sentence of 4 ½ - 5 years in the state prison, with all counts running concurrently.
2. Chemist Annie Dookhan, who carried out the testing on the alleged controlled substance in this case has been identified by law enforcement officials as a person who intentionally contaminated drug evidence to ensure positive tests, inflated drug sample weights, falsified drug analysis findings, and fraudulently altered chain of custody documents during a time period relevant to this case. It has also been discovered that she misrepresented her educational background to the Department of Public Health and other government officials during a time period relevant to this case by claiming to possess a Master's of Science degree in chemistry from the University of Massachusetts, Boston, which she does not actually possess. As a consequence of the investigation into her action at the Hinton laboratory, two other laboratory supervisors have been suspended, and the drug laboratory in Jamaica Plain has been completely closed down. The commissioner of the Massachusetts Department of Public Health, John Auerbach, has resigned.
3. Officers of the Massachusetts State Police questioned Annie Dookhan. On August 28, 2012 she signed the following statement in their presence:

"I, Annie Dookhan, had taken out samples of safe and tested them without being signed out as proper procedure. I also went in the Evidence Log book and postdated and filled the log book in. I signed my initials and an Evidence Officer's initials in the book. That was my mistake and I can't deny that. I also batched, put similar samples together, and tested some and not others; I "dry labbed." I have been doing it for 2-3 years. At times, a few, I had to add a sample that came back from Mass Spec to make it what I said it was. I would get the sample from a

known sample. I would try to clean it, the original, up first but if it didn't I would need to take something, drugs, from another case. I intentionally turned a negative sample into a positive a few times."

4. The Massachusetts State Police engaged in an investigation of the Hinton Lab in August and September of 2012 at the behest of the Attorney General's Office. This investigation was led by Detective Lieutenant Robert M. Irwin. During this investigation the State Police toured the lab's physical space and interviewed its employees. This investigation is memorialized in a series of police reports under the case # 2012-034-2589-0052.

The following is a summary of some key findings of the State Police during this investigation:

**Items from interviews in discovery packet regarding Dookhan specifically:**

- Dookhan forged other chemists (pg. 5, #2; pg. 7 #6; pg. 8 #14; pg. 15, #9, pg. 22, #4; pg. 29, #12 and 14; pg. 40, #3; pg. 45, #2; pg. 72, #4) and even evidence officer (pg. 15, #8; pg. 22, #6; pg. 25, #2; pg. 37, #6; pg. 72, #3) initials in an unknown number of instances, including on Quality Assurance and Quality Control documents (pg. 5 #s 2, 3; pg. 22, #5; pg. 31, #3; pg. 40, #3; pg. 45, #2).
- She ignored lab procedures by loading and running her own samples on the GCMS (pg. 5 #s 3, 4; pg. 40, #4; pg. 46, #3).
- Dookhan failed to properly run QC/QA test samples (pg. 22, #5), instead purposefully making up test result numbers on the "Quality Control Daily Injector Test on the GC/MS." (pg. 8, #13; pg. 22, #5)
- Dookhan maintained a level of production of test results that concerned supervisors and co-workers (pg. 19 #4; pg. 21, #1; pg. 35, #7; pg. 45 #2), often analyzing more samples in a week than they did in a month (pg. 19, #4; pg. 35, #7).
- She was submitting racks upon racks of sample vials to the confirmatory chemists (pg. 22, #2), and leaving many samples out on her bench top (pg. 73, #8 and 9).
- Dookhan exhibited a pattern of failing basic laboratory procedures (pg. 22, #2), including documentation issues (pg. 7 #11), failing to calibrate balances (pg. 31, #2; pg. 23, #9; pg. 42, #4), and having a work space filled with numerous vials open to cross contamination (pg. 7, #12; pg. 22, #2; pg. 73, #8).
- Dookhan was also allowed to access the evidence office computers to enter and look up data (pg. 12, #5; pg. 23, #6; pg. 32, #8; pg. 34, #2; pg. 38, #12; pg. 46, #4; pg. 72, #6; pg. 90, #2), even after she was suspended from lab duties (pg. 46, #5; pg. 72, #6), and lacking training (pg. 12, #5; pg. 29, #13).
- Dookhan engaged in the practice of "dry labbing," looking at the samples instead of

testing them with the presumptive testing (pg. 24, #16; pg. 73, #7 and 10).

- She was not using the proper method of inspecting slides prepared for a microscope (pg. 19, #5; pg. 32, #6; pg. 21, #1; pg. 42, #2) This resulted in an unknown number of samples coming back as heroin when she had supposedly tested it and found it to be cocaine and vice versa (pg. 7, #8; pg. 23, #8 and 11). She would then alter these samples cocaine or heroin, or in one instance THC, so that they would come out the way she wanted (pg. 6, #s 5, 6; pg. 7, #9; pg. 23, #10; pg. 73, #9).
- Dookhan was contacted directly by ADAs about specific samples to potentially analyze them quicker, potentially out of order (pg. 29, #11; pg. 24, #14; pg. 32, #4; pg. 37, #3; pg. 40, #5; pg. 42, #5; pg. 72, #6), despite lab policies forbidding both this contact and action (pg. 24, #14; pg. 72, #6).
- Dookhan accessed the labs numerous times while suspended (pg. 23, #12; pg. 35, #6; pg. 40, #5; pg. 46, #5; pg. 86, #3).
- Dookhan's key opened the safe (pg. 16, #17; pg. 32, #7; pg. 50, #5), and she may have known the code (pg. 32, #8; pg. 42, #3). Despite policy, she may have been receiving evidence (pg. 32, #8) and may have been trusted with the ability to open and close the lab (pg. 32, #7; pg. 42, #4).
- Dookhan's false claim to have a Master's (pg. 71, #1) was discovered around June 2010, but no action was taken (pg. 30, #15). Other issues with her CV existed. (pg. 35, #4)

**Items regarding the Lab in general:**

- The Laboratory had a culture of lax oversight, as many issues with Dookhan were allowed to continue for years, even having her responsible for training (pg. 31, #2 and #3), and for some QA/QC procedures (pg. 22, #2; pg. 51, #2). This culminated with the assignment of Dookhan to a special project of writing or updating the lab's Standard Operating Procedures (SOPs), even after her suspension for not following procedure. (pg. 15, #9; pg. 35, #6; pg. 55, #3; pg. 59, #3; pg. 86, #3;
- Numerous lab personnel expressed concerns with Dookhan's workload and documentation errors (pg. 8, #13; pg. 15, #9 and #10; pg. 19, #4; pg. 21, #1; pg. 22, #5; pg. 45, #2; pg. 73, #7), blatant forgeries (pg. 5, #2; pg. 7 #6; pg. 8 #14; pg. 15, #9, pg. 22, #4; pg. 40, #3; pg. 45, #2; pg. 72, #4), and questionable test results (pg. 7, #8; pg. 23, #8 and 11), but no action was taken.
- When chemists were audited, there is confusion as to whether or not samples were retested or if paperwork was simply reviewed. No record of how a sample could be resubmitted is given, and the number of these retests doesn't seem to be tracked. There didn't seem to be a procedure in place to handle retests. (pg. 14 #5, 6; pg. 22 #3).

- The Laboratory evidence room and evidence safe were accessible to chemists (pg. 28, # 7; pg. 37, #9; pg. 12, #4). The procedures to restrict access were ignored and circumvented (pg. 16, #15; pg. 37, #9, pg. 38, #11; pg. 39, #2). The safe was found open and unattended (pg. 28, #6; pg. 38, #11), was left propped open when it was "busy," (pg. 28, #6) was accessible by codes and keys that had not been changed in over a decade (pg. 28, #3). An unknown number of chemists had keys to the safe, though they might not have even known it (pg. 26 #4; pg. 16, #16; pg. 37, #8; pg. 12, #4). Further, the palm reader access point to the evidence room might not have been recording those who entered (pg. 17 #19, pg.96, #10).
  - The lab supervisors who discovered the June 2011 breach decided not to notify anyone (pg. 15, #8), compounding their already questionable lack of interest in the misdeeds of Dookhan (pg.19, #s 5,6,7; pg. 22, #6; pg. 55, #2). No written findings of her resubmittals or other QC/QA issues were recorded (pg. 11, #2; pg. 29, #12).
  - The method of samples being checked in and out suffered from lack of oversight, as whole sets of numbers could be pulled by Dookhan without anyone noticing (pg. 28, #7; pg. 29, #12; pg. 36, #1 and 2; pg. 73, #8; ). Further, the evidence officers appear to have a pattern of laxity when it came to tracking samples and access to the evidence room and safe, computer terminals (pg. 32, #8; pg. 38, #12; pg. 42, #3; pg. 46, #4; pg. 90, #2 and 3), and written logbooks (pg. 25, #2 and 3).
  - After the 2011 incident, when it was clear that an unknown number of keys opened the safe (pg. 12, #4; pg. 26 #5; pg. 28, #4; pg. 37, #8; pg. 38, #12; pg. 46, #6), no investigation was recorded. Shirley Sprague claims Chuck Salemi started checking keys (pg. 26 #4; pg. 20, #9), and perhaps switching them out (pg. 20, #9). Chuck Salemi claims that Julie Nassiff said she was doing it for Dookhan and a few others (pg. 16, #17; pg. 28, #4), but no plan to check every key was made (pg. 17, #18). Many of the keys were never checked (pg. 10, #1; pg. 39, #2; pg. 84, #3).
  - The Lab did not appear to have or to enforce any safeguards or policies to prevent ADAs and police officers from contacting a specific chemist about specific cases (pg. 29, #11; pg. 37, #3; pg. 72, #5)
  - The Jamaica Plain lab and the Amherst labs were performing the same tests under the same supervision and management, but evidentially were operating under different SOPs (pg. 55, #3; pg. 59, #3)
5. All drug evidence in the defendant's case was handled at some point by Ms. Dookhan. More specifically, there were three drug samples analyzed in this case. Ms. Dookhan was the confirmatory chemist for two of these samples and she was the preliminary chemist for one of these samples.
6. The State Police Investigation into Ms. Dookhan's malfeasance has cast serious doubt on the integrity of any drug sample handled by her during the period of time in which she

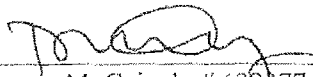
handled the defendant's samples.

7. Had the defendant been aware of the manner in which Ms. Dookhan was handling drug samples, he would not have pled guilty to the drug offenses complained against him in this docket. As a result of Ms. Dookhan's misconduct, the defendant's guilty plea was not knowing and voluntary, and therefore the plea violates rights guaranteed to him by the Fifth and Fourteenth Amendments and Article 12 of the Massachusetts Declaration of Rights.
8. It appears that justice may not have been done on January 30, 2009, when Mr. Cuevas pled guilty to the four offenses against him. On this date he was ignorant of the serious potential mishandling or mislabeling of the drug evidence that had been described to him through documents provided to him in discovery by the Commonwealth.
9. As a result of the misconduct of Ms. Dookhan and/or other employees of the lab, which is imputed to the Commonwealth, the defendant was deprived of due process by the failure of the Commonwealth to provide true and accurate discovery prior to his guilty plea, in violation of the Fifth and Fourteenth Amendments and Article 12. Brady v. Maryland, 373 U.S. 83 (1963).
10. Mr. Cuevas' continued confinement and restraint is being imposed in violation of the Constitution of the United States or of the Commonwealth of Massachusetts.
11. The misconduct of Ms. Dookhan constitutes newly discovered exculpatory evidence.
12. Pursuant to Superior Court Rule 61A, the defendant states that this issue has not previously been the subject of direct or collateral post-conviction review. A direct appeal has not been taken from this matter.
13. The defendant accompanies this motion with a Motion for Discovery pursuant to Mass. R. Crim. Pro. 30(c)(4), as well as a Motion for Stay of Execution of Sentence pursuant to Mass. R. Crim. Pro. 31, and will seek to supplement this motion at a later date when more facts are discovered about Ms. Dookhan's misconduct and that of others at the laboratory.
14. By filing this motion at this time based on the urgency of this newly-discovered evidence, the defendant does not intend to waive any other claims.
15. An affidavit of counsel, with exhibits, is attached hereto in support of this motion and is incorporated by reference.

WHEREFORE the defendant respectfully requests that the court order a new trial in this matter; and further that the court allow the defendant to supplement this motion with additional material uncovered by further investigation of the drug lab investigation, and discovery received from the Commonwealth.

Respectfully Submitted,  
MIGUEL CUEVAS

By his Attorney:

  
\_\_\_\_\_  
Donna M. Cuipyo # 632877  
Committee for Public Counsel Services  
Public Counsel Division  
One Salem Green, Suite 408  
Salem, Massachusetts 01970  
(978) 825-2020

Dated: October 15, 2012

**CERTIFICATE OF SERVICE**

I, Donna M. Cuipyo, hereby certify that I placed a copy of the foregoing Motion and the attached affidavit in the mail to be sent by first class mail, postage prepaid, tomorrow to Assistant District Attorney Karen Hopwood at the office of the District Attorney, 10 Federal St., Salem, MA 01970.

Dated: 10/15/2015 

COMMONWEALTH OF MASSACHUSETTS

ESSEX, ss

ESSEX SUPERIOR COURT  
DOCKET: ESCR 2007-1535

COMMONWEALTH

v.

MIGUEL CUEVAS

AFFIDAVIT OF COUNSEL IN SUPPORT OF DEFENDANT'S MOTION TO WITHDRAW  
GUILTY PLEA

Now comes defense counsel in the above-captioned case and states the following in support of the defendant's Motion to Withdraw Guilty Plea:


1. CPCS was appointed to represent the defendant in this matter, which was last in court on January 30, 2009. On that date Mr. Cuevas was represented by CPCS attorney Lawrence J. McGuire. The prosecuting attorney was ADA Karen Hopwood of the Essex County District Attorney's office. The plea was heard by Judge Lowy.
2. All of the drug evidence in this case was tested at the William A. Hinton State Laboratory Institute in Jamaica Plain, MA. Annie Dookhan, who worked for the Department of Public Health as a chemist since 2003 and is now criminally charged with respect to her handling of samples at the Hinton lab, was involved in the testing of all of the drug samples in this case. More specifically, there were four drug samples analyzed in this case. Ms. Dookhan was the preliminary chemist for all four of these samples. *I have attached copies of the four drug certificates from this case, provided during the discovery phase of this case by the Commonwealth, to this affidavit, along with copies of the testing results, all of which reflect Ms. Dookhan's signatures.*
3. The Commonwealth has publicly acknowledged in the media, as well as in open court in other cases, that Annie Dookhan has been fired and is currently under investigation for serious improprieties at the lab, including inflating drug weights, contaminating drug samples to ensure positive results, and falsifying drug analysis findings. She has broken the chain of custody for Commonwealth drug evidence in a number of pending and closed cases. Her drug analysis certifications are rendered suspect in that she has been accused by law enforcement officials of falsifying the weight and content of samples. It has been discovered that she misrepresented her educational background by falsely claiming to have a master's of science degree in chemistry from the University of Massachusetts, Boston. She has been criminally charged in relation to her conduct at the Hinton Lab.
4. In a signed statement to the Massachusetts State Police, memorialized in the "AGO State Lab Investigation" packet, Case# 2012-034-2589-0052, p.77) Ms. Dookhan admitted to



*serious malfeasance. I have attached to this affidavit a 2-page portion of the State Police Investigation (Case # 2012-034-2589-0052), which memorializes this statement.*

5. The 101 page State Police packet (Case # 2012-034-2589-0052), referenced in this affidavit and the attached motion has now been widely circulated. I can provided it at request of the Court.
6. Analysis of drugs performed in any laboratory in which she worked is suspect, considering the fact that she was personally involved with all drug samples in this case.

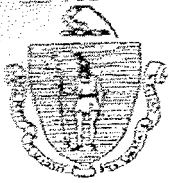
Signed under the pains and penalties of perjury,

A handwritten signature in black ink, appearing to be "D. M. [unclear]", written over a horizontal line.

Date: 10/15/2012

SEP 18 2007 3:01PM DRUG ANALYSIS LAB

NO. 74R P. 3/5



DEVAL L. PATRICK  
GOVERNOR

TIMOTHY P. MURRAY  
LIEUTENANT GOVERNOR

JUDYANN BIGDY, MD  
SECRETARY

JOHN AUERBACH  
COMMISSIONER

The Commonwealth of Massachusetts  
Executive Office of Health and Human Services  
Department of Public Health  
State Laboratory Institute  
305 South Street  
Boston, MA 02130  
617-983-6622

DATE RECEIVED: 08/09/2007

DATE ANALYZED: 09/13/2007

NO. 821976

I hereby certify that the substance

Contained in 1 plastic bag

Submitted by P.O. N. O'DONNELL of the SALEM POLICE DEPT.

MARKED: 821976

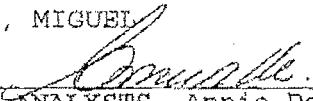
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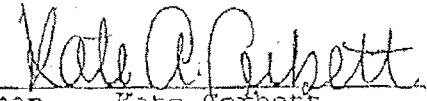
The substance was found to contain:

Cocaine, a derivative of Coca leaves, as defined in Chapter 94 C,  
Controlled Substance Act, Section 31, Class B.

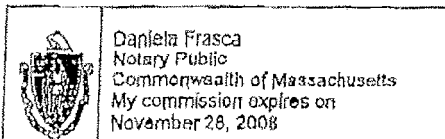
NET WEIGHT: 0.53 grams

DEFENDANT: CUEVAS, MIGUEL

  
ASSISTANT ANALYSTS Annie Dookhan

  
Kate Corbett

On this day 14<sup>th</sup> day of September 2007, before me, the undersigned notary public, personally appeared the above signed subscriber(s), having proved to me through Department of Public Health documentation to be the person(s) whose name(s) is/are signed on this certificate and to be (an) assistant analyst(s) of the Department of Public Health, and who swore to me that the contents of this document are truthful and accurate to the best of his/her/their knowledge and belief.



  
Daniela Frasca, NOTARY PUBLIC  
My commission expires on November 28, 2008

Chapter 111, Section 13 of the General Laws

This certificate shall be sworn to before a Justice of the Peace or Notary Public, and the court shall take judicial notice of the signature of the analyst or assistant analyst and of the fact that he/she is such.

SEP. 10. 2007

3:01PM

DRUG ANALYSIS LAB

NO. 748

P. 2/3



DEVAL L. PATRICK  
GOVERNOR

TIMOTHY P. MURRAY,  
LIEUTENANT GOVERNOR

JUDYANN BIGBY, MD  
SECRETARY

JOHN AUERBACH  
COMMISSIONER

The Commonwealth of Massachusetts  
Executive Office of Health and Human Services  
Department of Public Health  
State Laboratory Institute  
305 South Street  
Boston, MA 02130  
617-983-6622

DATE RECEIVED: 09/09/2007

DATE ANALYZED: 09/12/2007

NO. 821975

I hereby certify that the substance

Contained in 1 plastic bag

MARKED: 821975

Submitted by P.O. N. O'DONNELL of the SALEM POLICE DEPT.

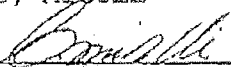
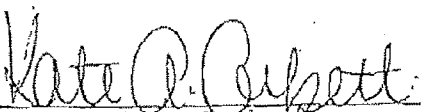
Has been examined with the following results:

The substance was found to contain:

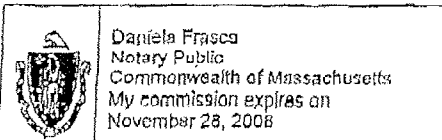
Heroin, (diacetylmorphine) as defined in Chapter 94 C, Controlled  
Substance Act, Section 31, Class A.

NET WEIGHT: 0.40 grams

DEFENDANT: CUEVAS, MIGUEL

   
ASSISTANT ANALYSTS Annie Dookhan Kate Curbett

On this day 14<sup>th</sup> day of September 2007, before me, the undersigned notary public, personally appeared the above signed subscriber(s), having proved to me through Department of Public Health documentation to be the person(s) whose name(s) is/are signed on this certificate and to be (an) assistant analyst(s) of the Department of Public Health, and who swore to me that the contents of this document are truthful and accurate to the best of his/her/their knowledge and belief.



  
Daniela Frasca, NOTARY PUBLIC  
My commission expires on November 28, 2008

Chapter 111, Section 13 of the General Laws

This certificate shall be sworn to before a Justice of the Peace or Notary Public, and the latter shall contain a statement that the subscriber is the analyst or assistant analyst of the department. When properly executed, it shall be prima facie evidence of the composition, quality, and the net weight of the narcotic or other drug, poison, medicine, or chemical analyzed, and the court shall take judicial notice of the signature of the analyst or assistant analyst.



The Commonwealth of Massachusetts  
Executive Office of Health and Human Services  
Department of Public Health  
State Laboratory Institute, 305 South Street  
Boston, MA 02130  
617-983-6622

DEVAL L. PATRICK  
GOVERNOR

TIMOTHY D. MURRAY  
LIEUTENANT GOVERNOR

JUDYANN BIGBY, MD  
SECRETARY

JOHN AUERBACH  
COMMISSIONER

DATE RECEIVED: 08/09/2007  
DATE ANALYZED: 09/17/2007

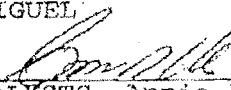
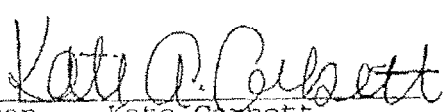
NO. 821977

I hereby certify that the substance  
Contained in 1 plastic bag MARKED: 821977  
Submitted by P.O. N. O'DONNELL of the SALEM POLICE DEPT.

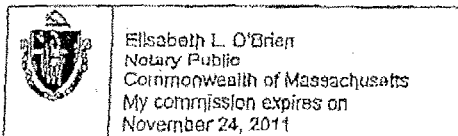
Has been examined with the following results:  
The substance was found to contain:  
Cocaine, a derivative of Coca leaves, as defined in Chapter 94 C,  
Controlled Substance Act, Section 31, Class A.

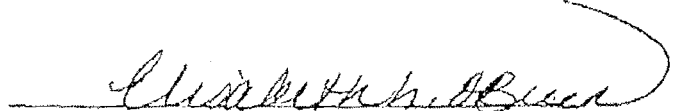
NET WEIGHT: 0.54 grams

DEFENDANT: CUEVAS, MIGUEL

   
ASSISTANT ANALYSTS Annie Dookhan Kate Corbett

On this September 18, 2007, before me, the undersigned notary public, personally appeared the above signed subscriber(s), having proved to me through Department of Public Health documentation to be the person(s) whose name(s) is/are signed on this certificate and to be (an) assistant analyst(s) of the Department of Public Health, and who swore to me that the contents of this document are truthful and accurate to the best of his/her/their knowledge and belief.



  
Elisabeth L. O'Brien, NOTARY PUBLIC  
My commission expires on November 24, 2011

Chapter 111, Section 13 of the General Laws

This certificate shall be sworn to before a Justice of the Peace or Notary Public, and the jurat shall contain a statement that the subscriber is the analyst or assistant analyst of the department. When properly executed, it shall be prima facie evidence of the composition, quality, and the net weight of the signature of the analyst or assistant analyst, and of the fact that he/she is such.



DEVAL L. PATRICK  
GOVERNOR

TIMOTHY P. MURRAY  
LIEUTENANT GOVERNOR

JUDYANN DIGBY, MD  
SECRETARY

JOHN AUERBACH  
COMMISSIONER

The Commonwealth of Massachusetts  
Executive Office of Health and Human Services  
Department of Public Health  
State Laboratory Institute, 305 South Street  
Boston, MA 02130  
617-983-6622

NO. 742 P. 5/5

DATE RECEIVED: 06/09/2007  
DATE ANALYZED: 09/14/2007

NO. 821978

I hereby certify that the substance  
contained in 1 plastic bag

Submitted by P.O. N. O'DONNELL of the SALEM POLICE DEPT.

MARKED: 821978

Has been examined with the following results:

The substance was found to contain:

Cocaine, a derivative of Coca leaves, as defined in Chapter 94 C,  
Controlled Substance Act, Section 31, Class B.

NET WEIGHT: 0.15 grams

DEFENDANT: CUEVAS, MIGUEL

ASSISTANT ANALYSTS Annie Dookhan Kate Corbett

On this September 17, 2007, before me, the undersigned notary public, personally appeared the above signed  
subscriber(s), having proved to me through Department of Public Health documentation to be the person(s) whose  
name(s) is/are signed on this certificate and to be (an) assistant analyst(s) of the Department of Public Health, and  
who swore to me that the contents of this document are truthful and accurate to the best of his/her/their knowledge  
and belief.



Elisabeth L. O'Brien  
Notary Public  
Commonwealth of Massachusetts  
My commission expires on  
November 24, 2011

Elisabeth L. O'Brien, NOTARY PUBLIC  
My commission expires on November 24, 2011

Chapter 111, Section 13 of the General Laws

This certificate shall be sworn to before a Justice of the Peace or Notary Public, and the jurat shall contain a  
statement that the subscriber is the analyst or assistant analyst of the department. When properly executed, it shall  
be prima facie evidence of the composition, quality, and the net weight of the narcotic or other drug, poison,  
medication, or chemical analyzed, and the court shall take judicial notice of the signature of the analyst or assistant  
analyst, and of the fact that he/she is such.

3

PRELIM: Heroin

NO. 821975

DATE ANALYZED: 9/12/07

CITY: SALEM

DEF: CUEVAS, MIGUEL

AM'T: SUB: SUB CONT: 1 PB

#TESTED:

DATE REC: 08/09/2007 FROM: P.O. N. O'DONNELL

GROSS WT: 5.43

# TESTS: 4 ASD

NET WEIGHT: 0.40

• 2KAC

QUANT:

FINDINGS: ~~Heroin~~ Heroin

PRELIM: Cocaine

NO. 821976

DATE ANALYZED: 9/13/07

CITY: SALEM

DEF: CUEVAS, MIGUEL

AM'T: SUB: SUB CONT: 1 PB

#TESTED:

DATE REC: 08/09/2007 FROM: P.O. N. O'DONNELL

GROSS WT: 5.43

# TESTS: 6 ASD

NET WEIGHT: 0.53

• 2KAC

QUANT:

FINDINGS: Cocaine

4

DRUG POWDER ANALYSIS FORM

SAMPLE # 821775 AGENCY Salem ANALYST ADG

No. of samples tested:            Evidence Wt.           

PHYSICAL DESCRIPTION:

Beige powdered substance  
in 1 pb  
double bagged

Gross Wt ( 1 ): 0.6560

Gross Wt ( ):           

Pkg. Wt:           

Net Wt: 0.4044

PRELIMINARY TESTS

Spot Tests

Cobalt  
Thiocyanate (+)

Marquis +

Froehde's +

Mecke's +

Microcrystalline Tests

Gold  
Chloride           

TLTA ( )           

OTHER TESTS

PRELIMINARY TEST RESULTS

RESULTS Heroin

DATE 09-05-07

GC/MS CONFIRMATORY TEST

RESULTS Heroin

MS  
OPERATOR KAC

DATE 9-12-07

Revised 7/2005

DRUG POWDER ANALYSIS FORM

SAMPLE # 821976 AGENCY Silver ANALYST ASD

No. of samples tested:            Evidence Wt.           

PHYSICAL DESCRIPTION:

white powdered substance  
in 1 pb

Gross Wt ( 1 ): 0.5854

Gross Wt (    ):           

Pkg. Wt:           

Net Wt: 0.3398

PRELIMINARY TESTS

Spot Tests

Cobalt  
Thiocyanate ( + )           

Marquis -

Froehde's -

Mecke's -

Microcrystalline Tests

Gold  
Chloride +

TLTA ( A )           

OTHER TESTS

PRELIMINARY TEST RESULTS

RESULTS cocaine

DATE 08-05-07

GC/MS CONFIRMATORY TEST

RESULTS cocaine

MS  
OPERATOR KAC

DATE 9-13-07

Revised 7/2005



DRUG POWDER ANALYSIS FORM

SAMPLE # 821977 AGENCY Salem ANALYST ASD  
No. of samples tested:            Evidence Wt.           

PHYSICAL DESCRIPTION:

white powdered substance  
in 1 pb  
double bagged

Gross Wt ( ): 0.7725  
Gross Wt ( ):             
Pkg. Wt:             
Net Wt: 0.5445

PRELIMINARY TESTS

Spot Tests

Cobalt  
Thiocyanate (+)  
Marquis —  
Froehde's —  
Mecke's —

Microcrystalline Tests

Gold  
Chloride +  
TLTA (+)

OTHER TESTS

PRELIMINARY TEST RESULTS

RESULTS Cocaine  
DATE 09-05-07

GC/MS CONFIRMATORY TEST

RESULTS Cocaine  
MS  
OPERATOR KAC  
DATE 09-17-07

Revised 7/2006

DRUG POWDER ANALYSIS FORM

SAMPLE # 821978 AGENCY Salem ANALYST ASD

No. of samples tested;           

Evidence Wt.           

PHYSICAL DESCRIPTION:

off white chunky substance  
in 1 pb

Gross Wt ( 1 ): 0.2292

Gross Wt ( ):           

Pkg. Wt:           

Net Wt: 0.1520

PRELIMINARY TESTS

Spot Tests

Cobalt  
Thiocyanate ( - ) +

Marquis -

Froehde's -

Mecke's -

Microcrystalline Tests

Gold  
Chloride +

TLTA ( - ) +

OTHER TESTS

PRELIMINARY TEST RESULTS

RESULTS Cocaine

DATE 09-03-07

GC/MS CONFIRMATORY TEST

RESULTS Cocaine

MS  
OPERATOR KAC

DATE 9-14-07

4

DRUG POWDER ANALYSIS FORM

SAMPLE # 821975 AGENCY Salem ANALYST ABJ

No. of samples tested:           

Evidence Wt.           

PHYSICAL DESCRIPTION:

Beige powdered substance  
in 1 pb  
double bagged

Gross Wt ( 1 ): 0.6560

Gross Wt ( ):           

Pkg. Wt:           

Net Wt: 0.4044

PRELIMINARY TESTS

Spot Tests

Cobalt  
Thiocyanate (+)

Marquis +

Froehde's +

Mecke's +

Microcrystalline Tests

Gold  
Chloride           

TLTA ( )           

OTHER TESTS

PRELIMINARY TEST RESULTS

RESULTS Heroin

DATE 09-05-07

GC/MS CONFIRMATORY TEST

RESULTS Heroin

MS  
OPERATOR KAC

DATE 9-12-07

DRUG POWDER ANALYSIS FORM

SAMPLE # 821976 AGENCY Salem ANALYST ASD

No. of samples tested:            Evidence Wt.           

PHYSICAL DESCRIPTION:

white powdered substance  
in 1 pb

Gross Wt ( 1 ): 0.5854

Gross Wt ( ):           

Pkg. Wt:           

Net Wt: 0.3398

PRELIMINARY TESTS

Spot Tests

Cobalt  
Thiocyanate ( + )             
Marquis -  
Froehde's -  
Mecke's -

Microcrystalline Tests

Gold  
Chloride +  
TLTA ( + )           

OTHER TESTS

PRELIMINARY TEST RESULTS

RESULTS cocaine

DATE 09-05-07

GC/MS CONFIRMATORY TEST

RESULTS cocaine

MS  
OPERATOR KAC

DATE 9-13-07

Revised 7/2005

DRUG POWDER ANALYSIS FORM

SAMPLE # 821977 AGENCY Salem ANALYST AJO

No. of samples tested:            Evidence Wt.           

PHYSICAL DESCRIPTION:

white powdered substance  
in bag  
double bagged

Gross Wt ( ): 0.7725

Gross Wt ( ):           

Pkg. Wt:           

Net Wt: 0.5445

PRELIMINARY TESTS

Spot Tests

Cobalt Thiocyanate (+)  
Marquis -  
Froehde's -  
Mecke's -

Microcrystalline Tests

Gold Chloride +  
TLTA (+)

OTHER TESTS

PRELIMINARY TEST RESULTS

RESULTS Cocaine  
DATE 09-05-07

GC/MS CONFIRMATORY TEST

RESULTS Cocaine  
MS OPERATOR KAC  
DATE 09-17-07

Revised 7/2005

DRUG POWDER ANALYSIS FORM

SAMPLE # 826978 AGENCY Salem ANALYST ASD

No. of samples tested:            Evidence Wt.           

PHYSICAL DESCRIPTION:

off white chunky substance  
in 1 pb

Gross Wt ( 1 ): 0.2292

Gross Wt ( ):           

Pkg. Wt:           

Net Wt: 0.1520

PRELIMINARY TESTS

Spot Tests

Cobalt  
Thiocyanate ( - ) +  
Marquis -  
Froehde's -  
Mecke's -

Microcrystalline Tests

Gold  
Chloride +  
TLTA ( - ) +

OTHER TESTS

PRELIMINARY TEST RESULTS

RESULTS Cocaine  
DATE 09-03-07

GC/MS CONFIRMATORY TEST

RESULTS Cocaine  
MS  
OPERATOR KAC  
DATE 9-14-07



AGO State Lab  
Investigation  
000077

*Massachusetts State Police*  
*Office of the Attorney General*  
*One Ashburton Place, Room 1910*  
*Boston, MA 02108*


To: Lieutenant Colonel Francis J. Matthews *FM*, 9-12-12.  
Commanding, Division of Investigative Services

From: Detective Lieutenant Robert M. Irwin  
Commanding, MSP-AGO Detective Unit

Subject: Signed Statement of Annie Dookhan

Case #: 2012-034-2589-0052

1. On August 28, 2012 at the conclusion of the interview with Annie Dookhan, I wrote out a brief summary of portions of the interview between Annie Dookhan, detective Captain Mason and me. I had Annie Dookhan read the statement and asked if it was accurate. After she agreed that the statement was accurate I had her acknowledge such by signing at the bottom. Below is the complete content of the written statement. The original is currently secured with the case file kept by this officer.
2. I, Annie Dookhan, had taken out samples of safe and tested them without them being signed out as proper procedure. I also went in the Evidence Log book and postdated and filled the log book in. I signed my initials and an Evidence Officer's initials in the book. That was my mistake and I can't deny that. I also batched, put similar samples together, and tested some and not others; I "dry labbed." I have been doing it for about two to three years. At times, a few, I had to add to a sample that came back from Mass Spec to make it what I said it was. I would get the sample from a known sample. I would try to clean it, the original, up first but if it didn't I would need to take something, drugs, from another case. I intentionally turned a negative sample into a positive a few times.
3. Annie S. Dookhan 6:45p.m. 8-28-2012  
I voluntarily signed this document, and it is true.  
DLT RM Irwin 8/28/12 1845  
DCPT JV Mason 8/28/12 1845 hrs

Respectfully,  
  
*Robert M. Irwin* #1230  
Robert M. Irwin  
Detective Lieutenant, #1230  
Massachusetts State Police  
Office of the Attorney General

AGO State Lab  
Investigation  
000078



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COMMONWEALTH OF MASSACHUSETTS

ESSEX, ss

ESSEX SUPERIOR COURT  
DOCKET: ESCR 2007-1535  
IN THE SUPERIOR COURT  
FOR THE COUNTY OF ESSEX

COMMONWEALTH

OCT 18 2012

v.

MIGUEL CUEVAS

  
CLERK

DEFENDANT'S MOTION FOR POST-CONVICTION DISCOVERY

Now comes the Defendant in the above-entitled matter and moves this Court, pursuant to Rule 30(c)(4) of the Massachusetts Rules of Criminal Procedure, to order the Commonwealth to provide the Defendant with the following information related to the suspected Class B and Class A substances charged against him. As grounds therefore, counsel for defendant states the following:

1. All controlled substances in this case were tested, either on a preliminary or confirmatory basis, by Annie Dookhan at the Hinton State Laboratory Institute, also known as the Department of Public Health Drug Lab.
2. This drug laboratory has been shut down and is under investigation for allegations of malfeasance and deliberate mishandling of drug evidence, and Annie Dookhan has been criminally charged for her actions at the lab, as is described in the affidavit of counsel in support of the defendant's motion to withdraw his guilty plea, filed this day in accordance with Rule 30(c)(3), which motion and affidavit are incorporated herein by reference.

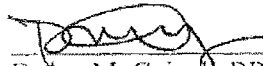
Wherefore the defendant requests that the Commonwealth be ordered to provide the following discovery:

1. A copy of the complete laboratory file, documenting the receipt, processing, analysis and reporting of tests on the substances seized in this case, as well as supporting, relevant documentation, including but not limited to:
  - a. A list and curriculum vitae of all the chemist(s), assistants, evidence officers and laboratory workers who handled the substances in this case.
  - b. Identification of all evidence officers who assisted in signing out drug evidence in this case to the chemists and identification of all evidence officers who received drug evidence after testing, including qualifications and status as members of law enforcement.

- e. A copy of all lab protocols and procedures pertaining to chain of custody, weighing, and preliminary and confirmatory testing, that were used in testing controlled substances in this case.
- d. A description of the methods employed by the laboratory and staff to track samples (such as a bar code system) used at the Hinton State Laboratory Institute in effect at the time drugs were tested in this case.
- e. A list of any and all local, state, national government certification, accreditation, and licenses received by the Hinton State Laboratory Institute, as well as any certifications, or accreditations received by independent, or non-governmental organizations that were in effect at the time of testing drugs in this case.
- f. Documentation of the weekly, daily, and hourly quality assurance or "QC" checks at the Hinton State Laboratory Institute at the time the evidence was tested in this case.
- g. A description of the evidence lockers or containers used by chemists at the Hinton State Laboratory Institute while in possession or custody of the drugs, including rules, regulations and practices regarding the security of these containers or lockers and access to the lockers by other chemists and/or supervisors at the time evidence was tested in this case.
- h. Any handwritten notes produced by the chemist, assistants and laboratory workers who handled the substances in this case.
- i. All log entries and computer tracking entries and tracking numbers relative to the receipt of the drug evidence, transfer of the drug evidence to a chemist or chemists, and return of the drug evidence to the evidence office or officer.
- j. Documentation regarding the delivery and receipt of the substance in this case to the lab, as well as any documentation or notations recording the processes of weighing, and drawing testing samples from the substance in this case.
- k. A description of the method used to draw or cut or otherwise obtain the actual sample[s] tested in this case.
- l. Identification of the equipment used to conduct preliminary and confirmatory testing, as well as copies of operation manuals, training manuals, and records of maintenance for the same.
- m. A statement of the mathematical certainty or probability of the reported results of chemical analysis or testing.
- n. Records and documentation of the adulterant standard, as well as any data, instrumental tracings, printouts, graphs, or documentation indicating the presence of adulterants in the test sample.
- o. A copy of any and all error logs generated in the lab at the time that the substance in this case was tested.

p. Lab records of standard deviation rates for given substances.

Respectfully Submitted,  
Miguel Cuevas  
By his Attorney:

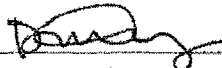


Donna M. Cuipyllo BBO # 632377  
Committee for Public Counsel Services  
Public Counsel Division  
One Salem Green, Suite 408  
Salem, Massachusetts 01970  
(978) 825-2020

Dated: October 15, 2012

**CERTIFICATE OF SERVICE**

I, Donna M. Cuipyllo, hereby certify that I placed a copy of the foregoing Motion and the attached affidavit in the mail to be sent by first class mail, postage prepaid, tomorrow to Assistant District Attorney Karen Hopwood at the office of the District Attorney, 10 Federal St., Salem, MA 01970.

Dated: 10/15/2012 

30

COMMONWEALTH OF MASSACHUSETTS

ESSEX, ss

ESSEX SUPERIOR COURT  
DOCKET: ESCR 2007-1535

COMMONWEALTH

FILED  
IN THE SUPERIOR COURT  
FOR THE COUNTY OF ESSEX

v.

OCT 18 2012

MIGUEL CUEVAS

*Thomas H. Marshall Jr.*  
CLERK

MOTION FOR STAY OF EXECUTION OF SENTENCE

NOW comes the above captioned defendant, and respectfully requests pursuant to Mass. R. Crim. P. 31 that the execution of his sentence be stayed, and that he be immediately released from custody, pending resolution of his Motion to Withdraw Guilty Plea now pending before this court.

The defendant states as his grounds for this request the following:

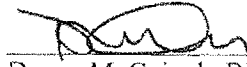
1. The defendant pled guilty to three counts of Possession with Intent to Distribute a Class B Substance and one count of Possession with Intent to Distribute a Class A substance, both violations of M.G.L. c. 94C section 31, on January 30, 2009 on and received a sentence of 4 ½ - 5 years in state prison, all sentences to be served concurrently with one another.
2. Chemist Annie Dookhan, who carried out the testing on the alleged controlled substance, has been identified by law enforcement officials as a person who intentionally contaminated drug evidence to ensure positive tests, inflated drug sample weights, falsified drug analysis findings, and fraudulently altered chain of custody documents during a time period relevant to this case. As a consequence of that investigation, two other laboratory supervisors have been suspended, and the drug laboratory in Jamaica Plain has been completely closed down.
3. As a result of Ms. Dookhan's conduct, the defendant's guilty plea was not knowing and voluntary, and therefore violates the Fourteenth Amendment and Article 14.
4. As a result of the misconduct of Ms. Dookhan and/or other employees of the lab, which is imputed to the Commonwealth, the defendant was deprived of due process by the failure of the Commonwealth to provide true and accurate discovery prior to his guilty plea, in violation of Fourteenth Amendment and Article 14. Brady v. Maryland, 373 U.S. 83 (1963).

howe, J. 11-9-12  
1 Withdrawn, cont to  
12/10/12 @ 9AM status  
AHEB-Patten

5. The misconduct of Ms. Dookhan constitutes newly discovered exculpatory evidence.
6. At a minimum, the question whether Ms. Dookhan's misconduct renders the defendant's guilty plea unconstitutional or otherwise unlawful is a claim with "some reasonable possibility of success," and presents an issue "worthy of presentation to an appellate panel." Commonwealth v. Levin, 7 Mass. App. Ct. 501, 504 (1979).
7. Mr. Cuevas' prior default is related to the issuance of a straight warrant and appears to have been cured the same day it issued, suggesting that Mr. Cuevas was simply late to court. At this time, Mr. Cuevas has served most of his sentence, with just a few weeks remaining to be served.
8. The defendant presents no significant danger, has a good likelihood of success on the merits, and will comply with such conditions as the court might set.

Wherefore, the defendant asked that the above-described relief be granted.

Respectfully Submitted,  
Miguel Cuevas  
By his Attorney:



Donna M. Cuipyllo BBO # 632377  
Committee for Public Counsel Services  
Public Counsel Division  
One Salem Green, Suite 408  
Salem, Massachusetts 01970  
(978) 825-2020

Dated: October 15, 2012

**CERTIFICATE OF SERVICE**

I, Donna M. Cuipyllo, hereby certify that I placed a copy of the foregoing Motion and the attached affidavit in the mail to be sent by first class mail, postage prepaid, tomorrow to Assistant District Attorney Karen Hopwood at the office of the District Attorney, 10 Federal St., Salem, MA 01970.

Dated: 10/15/2012 



# The Commonwealth of Massachusetts

Committee for Public Counsel Services

One Salem Green, Suite 408  
Salem, Massachusetts 01970-3724  
Telephone: (978) 825-2020  
Fax: (978) 741-8567

ANTHONY J. BENEDETTI  
CHIEF COUNSEL

REBECCA EPSTEIN WHITEHILL  
ATTORNEY-IN-CHARGE

October 15, 2012

Office of the Clerk Magistrate  
Criminal Division  
(Attn: Drug Lab case coordinator)  
Essex Superior Court  
J. Michael Ruane Judicial Center  
56 Federal Street  
Salem 01970

2012 OCT 18 130  
FILED  
IN THE SUPERIOR COURT  
FOR THE COUNTY OF ESSEX

Re: Commonwealth v. Miguel Cuevas  
(ESCR 2007-1535)

Dear Clerk of Courts:

Please find for filing: (1) the Defendant's Motion to Withdraw Guilty Plea; (2) Defendant's Motion for Post-Conviction Discovery; and (3) Defendant's Motion for Stay of Execution of Sentence.

A copy of this these motions were sent to Assistant District Attorney Karen Hopwood.

Mr. Cuevas is currently being held at the Old Colony Correctional Center in Bridgewater, Ma. It is my understanding that this case will be scheduled for the pre-set date for this facility: **Thursday, November 15, 2012.**

At your earliest convenience, please call me to confirm that Mr. Cuevas' case will be set for a video-conferenced hearing on that date. My telephone number is (978) 825-2020.

Thank you for your assistance.

Sincerely,

Donna M. Cuipyo

Enclosures: Defendant's Motion to Withdraw Guilty Plea  
Defendant's Motion for Post-Conviction Discovery  
Defendant's Motion for Stay of Execution of Sentence

Cc: ADA Karen Hopwood, Office of the Essex County District Attorney, 10 Federal St.,  
Salem, MA 01970

Miguel Cuevas #W95772, 1 Administration Road, Bridgewater, MA 02324

ESSEX, SS

ESSEX SUPERIOR COURT  
No. 2007-1535

COMMONWEALTH

v.

MIGUEL CUEVAS

COMMONWEALTH'S OPPOSITION TO THE  
DEFENDANT'S MOTION TO STAY EXECUTION OF SENTENCE

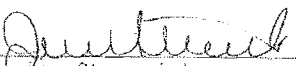
The Commonwealth opposes the defendant's motion to stay the execution of his sentence. The defendant's motion must be denied as no authority exists that provides for a stay of the execution of the defendant's sentence without a pending direct appeal, see Mass. R. Crim. P. 31, or a pending appeal from a ruling on a Motion for a New Trial, see Mass. R. Crim. P. 30(c)(8)(a). Neither situation applies here.

Should the Court consider the merits of the defendant's motion, it should still be denied because he cannot show he a) is likely to succeed on his motion for new trial; and b) is not a security risk. Cf. Commonwealth v. Cohen, 456 Mass. 128, 131 (2010) ("Two considerations govern the discretion that each judge or Justice may exercise in reviewing a stay request: security and likelihood of success on appeal."). The Commonwealth relies on its oral argument at the hearing on the defendant's motion as support for its position that the defendant cannot meet either of these prongs.

As such, the Commonwealth's respectfully requests that the Court deny the defendant's motion to stay the execution of his sentence.

FOR THE COMMONWEALTH:

JONATHAN W. BLODGETT  
DISTRICT ATTORNEY  
FOR THE EASTERN DISTRICT

  
Jessica Strasnick  
Ten Federal Street  
Salem, Massachusetts 01970  
(978) 745-6610  
BBO # 66099



COMMONWEALTH OF MASSACHUSETTS

ESSEX, ss

SUPERIOR COURT  
NO. ESCR2007-1535

COMMONWEALTH

v.

MIGUEL CUEVAS

10/3/13 Filed in  
To be opened  
argued on 11/14/13

MOTION FOR DISCOVERY RE: EXAMINATION-TESTING OF ALLEGED NARCOTICS

Now comes the Defendant in the above-entitled matter and moves that this Honorable Court order the Commonwealth to provide him with the following discovery:

*Materials pertaining to the September 2007 analyses of the alleged controlled substances:*

1. Notice of all scientific testing and/or analyses performed on the alleged controlled substances in this case, including but not limited to:

- a. Drug receipts
- b. Control Cards (front and back)
- c. Powder sheets
- d. Control Sheets
- e. Batch Sheets
- f. Sequence Tables
- g. GC/MS Method Data
- h. Tune Reports
- i. Quality Control Mix Reports
- j. GC/MS results for the evidentiary samples that were tested in this case along with the results of all associated blanks and standards.
- k. All information regarding the standards and reagents used in the analysis of the samples in this case, including but not limited to:
  - i. The manufacturer;
  - ii. The lot number;
  - iii. The expiration date;
  - iv. The certification of analysis; and
  - v. Any notes or computer entries regarding the in-house preparation of reagents and standards.
- l. The manufacturer, model number, and serial number of all instruments and balances used in the analysis of the samples in this case.

12/19/13  
After oral argument, the ADA (Ashley Logan) is ordered to respond to this Motion for Discovery item by item, as to whether produced already, not available, newly ordered and soon available  
not producible by law, etc.  
This written response is due to def atty by 2/13/14.

Special Judicial Magistrate

- m. Records of any in-house calibration of the balances or scales used in the weighing of the samples in this case for the period of time spanning both the month prior to and the month after testing, as well as the most recent certificate of calibration of said balances by an external vendor.
  - n. Records of any Q/C analysis performed on the instruments and balances used in the testing of samples in this case for the six months prior to the performance of testing in this case.
  - o. Validation records, including all validation study data regarding the instruments and methods used in the analysis of the substances in this case.
  - p. All other analytical data derived from the testing and analyses of the alleged controlled substances in this case.
  - q. All other analytical data derived from all testing and analyses of the standards used during the testing and analysis of the alleged controlled substances in this case.
2. Any and all documents or log entries pertaining to the chain of custody of the alleged controlled substances, including, but not limited to:
- a. All computer and/or handwritten logbook entries of transfers of samples or subsamples between the evidence office/safe and lab personnel or between different lab personnel during testing.
  - b. Any other notes, handwritten or digitally entered, of chemists or other laboratory personnel indicating that they were involved in the analyses of the alleged controlled substances in this case.
3. Notice as to nature of any sampling plan(s), (statistical or non-statistical), and/or sampling procedure(s) employed in connection with the analyses of the alleged controlled substances, and documentation of all calculations made in the generation and implementation of such plan(s) and procedure(s).
4. All other reports or notes reflecting results of testing and/or analyses of the alleged controlled substances in this case.

*Protocols, quality control, accreditation, proficiency testing and analysts' CV's:*

5. Records regarding the protocols in place relative to the types of specific testing and analyses performed on the alleged controlled substances in this case.
6. Records regarding the protocols in place relating to general laboratory procedures, including, but not limited to:
- a. The cleaning and maintenance of lab work spaces, equipment, and utensils;
  - b. The recording and documenting of results and procedures; and
  - c. The recording and documentation of inconsistencies between results and other adverse/unusual events or problems.
7. Quality control manuals for all instruments, balances, solutions and reference standards used in connection with the analyses of the alleged controlled substances.

8. Records of the quality control/quality assurance work performed on all instruments, balances, solutions and reference standards used in connection with the analyses and weighing of the alleged controlled substances, including records of testing, calibration, cleaning and other routine maintenance and all repairs.
9. Records relating to the training, continuing education, proficiency testing, and technical reviews or audits of all laboratory personnel involved in the analyses and/or weighing of the alleged controlled substances in this case. (Records of training should include any and all laboratory handouts, outlines, PowerPoint presentations, reading lists, syllabi, or other training materials provided to or prepared by laboratory staff.)
10. Records of any disciplinary action taken relative to the custodial chemist, GC/MS chemist, evidence officer, or any other laboratory staff member who handled evidence in this case.
11. The curriculum vitae of all laboratory personnel involved in the analyses or weighing of the alleged controlled substances.

*Laboratory communications*

12. All internal and external e-mails, notes, and/or memos created by the DPH Hinton Drug Laboratory staff regarding the possible accreditation of the lab and/or any attempts to pursue accreditation.
13. All e-mail communications between any law enforcement personnel or prosecutor's office and the custodial chemist, GC/MS chemist(s), or evidence officer(s) that handled the substances that were tested in this case, including but not limited to: communications with ADA's or any other DA's office staff, police officers; police department administrative staff, AUSA's or any other staff of the United States Attorney's Office; or any other federal law enforcement personnel, including but not limited to agents or staff of the FBI, DEA, ATF, DHS, and the Treasury Department.
14. Any Priority Sample Request Forms employed relative to the analyses of the substances in this case, reflecting the name of the ADA/USA requesting priority handling and the initials of the assigned chemist.

*Notice re: analysts' access to police report(s):*

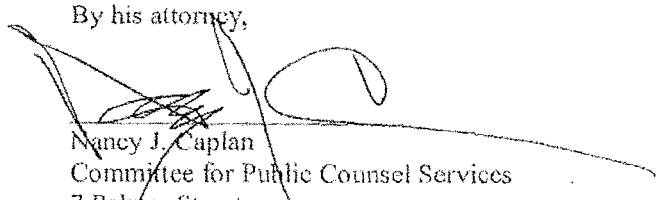
15. Notice as to whether any police reports prepared in this case were made available to any laboratory personnel involved in the testing of the alleged controlled substances and, if so, notice as to which reports were provided to the laboratory.

*Information and materials pertaining to testing and/or inspection of alleged controlled substances by police personnel and qualifications of police personnel who performed such testing and/or inspection:*

16. Notice of all testing and/or inspections performed on the alleged controlled substances by police personnel *which the Commonwealth intends to offer at trial*, including visual, tactile and/or olfactory inspection and "field testing."
17. Names of police personnel who performed such inspection and/or tests and the education, training, experience and certification of such personnel relative to the testing methods used.
18. When and where such testing and/or inspection was performed and names of persons present.
19. Any police protocols, rules or other guidelines in place relative to the testing and/or inspection methods used.
20. All reports, notes, or other documentation prepared by police personnel relative to the testing and/or inspection.
21. The make and model of any kits, devices or other materials and/or instruments used in "field testing" of the alleged narcotics and user manuals and training materials associated with such kits, devices and/or instruments.

MIGUEL CUEVAS

By his attorney,



Nancy J. Caplan  
Committee for Public Counsel Services  
7 Palmer Street.  
Boston, MA 02119  
617-445-7581

# **ANNIE DOOKHAN PROSECUTION**

PROBABLE CAUSE STATEMENT

During the month of August, 2012, Massachusetts State Police Detective Captain Joseph Mason and I were assigned to investigate potential misconduct at the William A. Hinton State Drug Laboratory in Jamaica Plain ("Hinton Laboratory"). As the investigation progressed we began to look at specific misconduct committed by Chemist Annie Dookhan. During our investigation, we have had the opportunity to interview numerous witnesses and review laboratory and court documents pertaining to specific criminal cases.

On August 21, 2012, Detective Captain Mason and I interviewed Chemist Daniel Renczowski. Renczowski is currently a Chemist II employed by the Commonwealth of Massachusetts and was assigned to the Hinton laboratory from October of 2005 until the lab's closing a few weeks ago. Renczowski informed Detective Captain Mason and I that he worked with Annie Dookhan for approximately seven years. Renczowski further stated that on one particular day prior to April or May of 2011 an incident occurred with a sample that Dookhan allegedly tested and determined to be cocaine. According to Renczowski, on this particular day he was assigned to run samples on the mass spectrometry, a machine that analyzes suspected narcotics to see if they are indeed narcotics.<sup>1</sup> Renczowski stated that he ran samples that Dookhan submitted and observed that the samples tested negative for cocaine. Because of this result, Renczowski ran Dookhan's sample a second time, again receiving a negative result. Renczowski went on to state that the samples were returned to Dookhan and he was not informed what happened with the case at that point. I have filed a five page report containing a summary of my entire interview with Mr. Renczowski.

On August 28, 2012, Detective Captain Mason and I interviewed Chemist Annie Dookhan at her home. Initially Ms. Dookhan denied doing anything improper in regards to her analysis of drug samples. As the interview went on, we confronted Ms. Dookhan with information about a particular re-test from a Boston Police case and other anomalies reported to us about her testing procedure and results. When confronted with this information Dookhan became sad and stated "I screwed up big time, I messed up, I messed up bad, it's my fault." She then went on to explain that instead of conducting a preliminary test on each sample she would secure a large number of samples, group them on her bench by the same suspected drug type and test a few samples from each group. She stated that she would group approximately twenty-five of each suspected drug type and test approximately five from each group. She would then prepare all of the samples to be sent to the mass spectrometry. According to Dookhan, if a sample was returned to her from mass spectrometry as a different drug or as being negative for drugs she would try and "clean it up" by making a more concentrated sample or using "more of the sample." Dookhan further admitted that on a few occasion she intentionally turned a negative sample into a positive sample. Dookhan was not able to tell us which particular cases were

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<sup>1</sup> The mass spectrometry is a confirmatory test used to check or confirm the test results done by the original chemist in the preliminary testing phase.

§ 13B, Obstruction of Justice/Misleading a Jury/Judge/Prosecutor and Defense Lawyer pursuant to m.g.l.c. 268 § 13B and Falsely Pretending to Hold a Degree From a College or University pursuant to m.g.l.c. 266 § 89.

The investigation is ongoing and the above report is for the purposes of arraignment only and will be supplemented by additional reports.

Respectfully Submitted,

Detective Lieutenant Robert M. Irwin #1230

**Commonwealth of Massachusetts  
SUFFOLK SUPERIOR COURT  
Case Summary  
Criminal Docket**

**Commonwealth v Dookhan, Annie**

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Details for Docket: SUCR2012-11155

**Case Information**

<b>Docket Number:</b>	SUCR2012-11155	<b>Caption:</b>	Commonwealth v Dookhan, Annie
<b>Entry Date:</b>	12/17/2012	<b>Case Status:</b>	Criminal 1 Ctrm 704
<b>Status Date:</b>	11/22/2013	<b>Session:</b>	Disposed (sentenced)
<b>Lead Case:</b>	NA	<b>Deadline Status:</b>	Active since
<b>Trial Deadline:</b>	12/20/2012	<b>Jury Trial:</b>	NO

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**Parties Involved**

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2 Parties Involved in Docket: SUCR2012-11155

<b>Party Involved:</b>		<b>Role:</b>	Defendant
<b>Last Name:</b>	Dookhan	<b>First Name:</b>	Annie
<b>Address:</b>	3 Birch Street	<b>Address:</b>	
<b>City:</b>	Franklin	<b>State:</b>	MA
<b>Zip Code:</b>	02038	<b>Zip Ext:</b>	
<b>Telephone:</b>			

<b>Party Involved:</b>		<b>Role:</b>	Plaintiff
<b>Last Name:</b>	Commonwealth	<b>First Name:</b>	
<b>Address:</b>		<b>Address:</b>	
<b>City:</b>		<b>State:</b>	
<b>Zip Code:</b>		<b>Zip Ext:</b>	
<b>Telephone:</b>			

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**Attorneys Involved**

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3 Attorneys Involved for Docket: SUCR2012-11155

**Attorney**



**Involved:**

**Last Name:** Gordon  
**Address:** 200 Chauncy Street  
**City:** Mansfield  
**Zip Code:** 02048  
**Telephone:** 774-254-4411  
**Fascimile:** 508-339-3535

**Firm Name:**

**First Name:** Nicolas A  
**Address:**  
**State:** MA  
**Zip Ext:**  
**Tel Ext:**  
**Representing:** Dookhan, Annie (Defendant)

**Attorney  
Involved:**

**Last Name:** Kaczmarek  
**Address:** 1 Ashburton Place  
**City:** Boston  
**Zip Code:** 02108  
**Telephone:** 617-727-2200  
**Fascimile:** 617-727-5768

**Firm Name:**

**First Name:** Anne  
**Address:** 19th Floor  
**State:** MA  
**Zip Ext:**  
**Tel Ext:** 2677  
**Representing:** Commonwealth, (Plaintiff)

**Attorney  
Involved:**

**Last Name:** Verner  
**Address:** 1 Ashburton Place  
**City:** Boston  
**Zip Code:** 02108  
**Telephone:** 617-727-2200  
**Fascimile:** 617-727-5768

**Firm Name:**

**First Name:** John  
**Address:** 17th floor  
**State:** MA  
**Zip Ext:**  
**Tel Ext:**  
**Representing:** Commonwealth, (Plaintiff)

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**Calendar Events**

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18 Calendar Events for Docket: SUCR2012-11155

No.	Event Date:	Event Time:	Calendar Event:	SES:	Event Status:
1	12/20/2012	09:30	Arraignment	CM	Event held as scheduled
2	02/13/2013	09:30	Conference: Pre-Trial	CM	Event held as scheduled
3	04/02/2013	09:30	Status: Filing deadline	CM	Event held as scheduled
4	04/26/2013	09:00	Hearing: Motion	1	Event held as scheduled
5	05/07/2013	09:00	Hearing: Motion	1	Event held as scheduled
6	05/31/2013	09:00	Hearing: Discovery Motions	1	Event held as scheduled
7	06/27/2013	09:00	Hearing: Motion	1	Event held as scheduled
8	07/29/2013	09:00	Conference: Lobby	1	Event canceled not re-scheduled
9	08/16/2013	09:00	Conference: Status Review	1	Event held as scheduled

10	08/19/2013	09:00	Hearing: Motion	1	Event canceled not re-scheduled
11	08/19/2013	09:00	Conference: Final Pre-Trial	3	Event canceled not re-scheduled
12	09/09/2013	09:00	TRIAL: by jury	3	Event rescheduled by court prior to date
13	10/11/2013	09:00	Conference: Lobby	1	Event canceled not re-scheduled
14	10/18/2013	12:00	Conference: Lobby	1	Event held as scheduled
15	10/30/2013	09:00	Hearing: Evidentiary-suppression	9	Event canceled not re-scheduled
16	11/22/2013	12:00	Hearing: Plea Change	1	Event held as scheduled
17	12/30/2013	09:00	Conference: Final Pre-Trial	3	Event canceled not re-scheduled
18	01/06/2014	09:00	TRIAL: by jury	3	Event canceled not re-scheduled

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## Full Docket Entries

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207 Docket Entries for Docket: SUCR2012-11155

Entry Date:	Paper No:	Docket Entry:
12/17/2012	1	Indictment returned
12/17/2012	2	MOTION by Commonwealth for summons of Deft to appear; filed & allowed
12/17/2012	2	(Ball, J)
12/17/2012		Summons for arraignment issued ret 12/20/12
12/20/2012		Defendant came into court
12/20/2012	3	Appearance of Deft's Atty: Nicolas A Gordon
12/20/2012		Deft arraigned before Court
12/20/2012		Deft waives reading of indictment
12/20/2012		RE Offense 1:Plea of not guilty
12/20/2012		RE Offense 2:Plea of not guilty
12/20/2012		RE Offense 3:Plea of not guilty
12/20/2012		RE Offense 4:Plea of not guilty
12/20/2012		RE Offense 5:Plea of not guilty
12/20/2012		RE Offense 6:Plea of not guilty
12/20/2012		RE Offense 7:Plea of not guilty
12/20/2012		RE Offense 8:Plea of not guilty
12/20/2012		RE Offense 9:Plea of not guilty
12/20/2012		RE Offense 10:Plea of not guilty
12/20/2012		RE Offense 11:Plea of not guilty
12/20/2012		RE Offense 12:Plea of not guilty
12/20/2012		RE Offense 13:Plea of not guilty
12/20/2012		RE Offense 14:Plea of not guilty
12/20/2012		RE Offense 15:Plea of not guilty
12/20/2012		Bail satisfied: \$100,000.00 Surety or \$10,000.00 Cash w/o/p. Bail
12/20/2012		warning read. COB: (1). GPS Monitoring. (2). Curfew 10pm - 6am. (3).

12/20/2012		Surrender Passport to Suffolk Superior Court Probation Dept. (4). No
12/20/2012		contact w/the former and/or current employees of the Hinton State Lab
12/20/2012		in Jamaica Plain, MA. Said bail having been met, posted & verified
12/20/2012		via phone is ordered transferred from Boston Municipal Court
12/20/2012		#1201CR4356. Transfer of Bail Sheet on File.
12/20/2012	4	Commonwealth files notice of appearance.
12/20/2012	5	Commonwealth files statement of the case.
12/20/2012	6	Commonwealth files first certificate of discovery.
12/20/2012		Assigned to Track "B" see scheduling order
12/20/2012		Tracking deadlines Active since return date
12/20/2012		Continued to 2/13/2013 for hearing on PTC & Setting of the Balance of
12/20/2012		the Tracking Order. (Gary D. Wilson. Magistrate) - A. Kaczmarek, AAG
12/20/2012		- ERD/JAVS - J. Verner/N. Gordon, Attorney
02/01/2013		Defendant not present
02/01/2013	7	Commonwealth files Motion for Order to Disseminate Grand Jury
02/01/2013	7	Materials to Certain Parties
02/01/2013		Continued to 2/4/2013 by agreement for hearing re: motion. McIntyre,
02/01/2013		J - A. Kaczmarek, AAG - ERD
02/04/2013		Defendant not present
02/04/2013		MOTION (P# 7) denied without prejudice in part and allowed in part as
02/04/2013		endorsed. (see endorsement) McIntyre, J - A. Kazmarek, AAG - ERD
02/13/2013		Defendant came into court
02/13/2013	8	Pre-trial conference report filed
02/13/2013	9	Commonwealth files third certificate of discovery.
02/13/2013		Case Tracking scheduling order (Gary D. Wilson. Magistrate) mailed
02/13/2013		2/13/2013
02/13/2013		Continued to 6/27/2013 for hearing on PTH
02/13/2013		Continued to 8/19/2013 for hearing on FPTH
02/13/2013		Continued to 9/9/2013 for hearing on PTD
02/13/2013		Continued to 4/2/2013 for hearing on filing of motions. (Gary D.
02/13/2013		Wilson. Magistrate) - A. Kaczmarek, ADA - ERD/JAVS - N. Gordan,
02/13/2013		Attorney
02/26/2013		Defendant not present
02/26/2013	10	Commonwealth files Motion for Order to Disseminate Grand Jury
02/26/2013	10	Materials to Certain Parties
02/26/2013		MOTION (P#10) allowed. McIntyre, J - V. Demore, ADA - ERD
02/28/2013	11	Commonwealth files Motion for Release of Grand Jury Minutes to the
02/28/2013	11	Office of the Inspector General
02/28/2013		MOTION (P#11) allowed as endorsed. McIntyre, J
02/28/2013	12	ORDER for Release of Grand Jury Minutes to the Office of the
02/28/2013	12	Inspector General, filed. McIntyre, J
04/02/2013		Defendant not present
04/02/2013		

	13	Deft files motion to seal.
04/02/2013		MOTION (P#13) allowed
04/02/2013	14	Deft files motion to dismiss and (UNDER SEAL) pursuant to MGL Ch.
04/02/2013	14	268, Sec 15D(e).
04/02/2013		Continued to 4/26/2013 for hearing on Motion. (Gary D. Wilson.
04/02/2013		Magistrate) - A. Kaczmarek, ADA -ERD/JAVS - A. Singh for N. Gordon,
04/02/2013		Attorney
04/23/2013		Defendant not present
04/23/2013	15	Commonwealth files Motion to File Under Seal
04/23/2013	16	Commonwealth files Memorandum of Law in Opposition to Defendant's
04/23/2013	16	Motion to Dismiss (SEALED) Locke, RAJ - A. Kazmareck, AAG - ERD
04/26/2013		Defendant came into court - hearing re: motion to dismiss (P#14)
04/26/2013		After hearing on (P#14) was held, matter taken under advisement
04/26/2013		The Court vacates the order sealing deft's motion to dismiss (P#14)
04/26/2013		with incorporated affidavitr and memorandum of law in support thereof.
04/26/2013	17	Commonwealth files Motion to Consolidate Cases for the Purpose of
04/26/2013	17	Resolving Common Pre Trial Motions
04/26/2013		Continued to 5/7/2013 by agreement for hearing re: Commonwealth's
04/26/2013		motion to consolidate. Locke, RAJ - A. Kaczmarek, AAG - ERD - N.
04/26/2013		Gordon, Attorney
05/07/2013		Defendant came into court
05/07/2013		MOTION (P#14) denied. Locke, RAJ (See Memorandum of Decision and
05/07/2013		Order dated 5/7/13)
05/07/2013	18	Memorandum of Decision and Order on Deft's Motion to Dismiss Counts
05/07/2013	18	Two and Three, filed. Locke, RAJ
05/07/2013		Commonwealth's Motion to Consolidate Cases (P#17) referred to Rouse,
05/07/2013		CJ (Copy sent to Rouse, CJ 5/7/13)
05/07/2013		Continued to 5/31/2013 by agreement for hearing re: discovery motions
05/07/2013		(Motions to be filed by 5/24/13) Locke, RAJ - A. Kaczmarek, AAG - ERD
05/07/2013		- N. Gordon, Attorney
05/09/2013		MOTION (P#17) allowed. Rouse, CJ (Notice sent to N. Gordan, Atty
05/09/2013		w/copy of endorsement; A. Kaczmarek, AAG given copy in hand; Norfolk
05/09/2013		and Essex Counties notified)
05/29/2013	19	Deft files Motion for Discovery.
05/31/2013	20	Deft files Motion to Dismiss
05/31/2013	21	Commonwealth files Memorandum of law in opposition to defendant's
05/31/2013	21	Motion to dismiss
06/27/2013		Defendant came into court - hearing re: motions
06/27/2013	22	Deft files Motion for Discovery
06/27/2013		MOTION (P# 22) allowed by agreement. Locke, RAJ (see endorsement)
06/27/2013	23	Commonwealth files Response to Request for Discovery
06/27/2013		Continued to 7/29/2013 by agreement for filing of motions and lobby
06/27/2013		

		conference and continued to 8/19/2013 for hearing re: motions.
06/27/2013		(cancel 8/19/13 FPTC) Locke, RAJ - A. Kaczmarak, AAG - ERD - A.
06/27/2013		Gordon, Atty.
06/27/2013		Bristol County (BRCR13-00009) , Essex County (ESCR12-01467) ,
06/27/2013		Middlesex County (MICR12-01634), Norfolk County (NOCR12-1086) and
06/27/2013		PLymouth County (PLCR 12-00650) Indictments consolidated with Suffolk
06/27/2013		County case SUCR2012-11155 (offenses #016 through #027)
07/15/2013		MOTION (P#20) denied. Roach, J
07/15/2013	24	Memorandum of Decision and Order on Defendant's Consolidated Motion
07/15/2013	24	to Dismiss
07/26/2013		Defendant not present.
07/26/2013	25	Commonwealth files Motion to Continue.
07/26/2013		MOTION (P#25) allowed as endorsed.
07/26/2013		Cancel 7/29/13 Event and Cancel 8/19/13 Event
07/26/2013		Case continued to 8/16/2013 by agreement re:Status and Lobby Roach, J
07/26/2013		- A. Kaczmarek, AAG
08/16/2013		Defendant came into court
08/16/2013	26	Defendant's MOTION to suppress statements, affidavit in support of
08/16/2013	26	and memorandum of law, filed.
08/16/2013	27	JOINT motion to continue, filed.
08/16/2013		MOTION (P#27) allowed. Roach, J (Rule 36 waived) Cancel 9/9/13 trial
08/16/2013		date. New dates: 12/30/13 FPTC and 1/6/14 PTD in the 3rd Criminal
08/16/2013		Session (Ctrm 808)
08/16/2013		Continued to 10/11/2013 by agreement for lobby conference in the 1st
08/16/2013		Criminal Session (Ctrm 704) and continued 10/30/13 for hearing re:
08/16/2013		motion to suppress in the 9th Criminal Session (Ctrm 713) Roach, J -
08/16/2013		A. Kaczmarek, AAG - ERD - N. Gordon, Atty
10/07/2013		Defendant not present, (cancel 10/11/13 event) Case continued until
10/07/2013		10/18/2013 by agreement for lobby conference at 12:00 PM. Ball, J -
10/07/2013		A. Kaczmarek, AAG
10/08/2013	28	ORDER Regarding Plea Conference, filed. Ball, J
10/17/2013	29	Commonwealth files: sentencing memorandum
10/18/2013		Defendant came into court. Lobby Conference Held.
10/18/2013	30	Deft files motion to conduct Plea Conference in Chambers or at
10/18/2013	30	Sidebar.
10/18/2013		MOTION (P#30) denied
10/18/2013	31	Deft files Memorandum in Support of her Sentencing Memorandum.
10/18/2013	32	Deft files motion to file Under Seal.
10/18/2013		MOTION (P#32) denied
10/18/2013	33	Commonwealth files fifth notice of discovery. Ball, J. - A.
10/18/2013	33	Kaczmarek, AAG - ERD/LB - N. Gordon, Attorney
10/23/2013	34	Sentencing Decision Re-Proposed Guilty Plea, filed. (Ball, J.).
10/23/2013		

	34	(Notice sent 10/23/12 & Copy Enclosed).
10/28/2013		Defendant not present, hearing continued until 11/22/2013 re: Change
10/28/2013		of Plea. Ball, J. - A. Kaczmarek, AAG
11/22/2013		Defendant came into court.
11/22/2013		Defendant offers to plead guilty. After hearing, Court accepts
11/22/2013		defendants offer. Defendant pleads guilty to each offense as charged.
11/22/2013		RE Offense 1:Guilty plea
11/22/2013		RE Offense 2:Guilty plea
11/22/2013		RE Offense 3:Guilty plea
11/22/2013		RE Offense 4:Guilty plea
11/22/2013		RE Offense 5:Guilty plea
11/22/2013		RE Offense 6:Guilty plea
11/22/2013		RE Offense 7:Guilty plea
11/22/2013		RE Offense 8:Guilty plea
11/22/2013		RE Offense 9:Guilty plea
11/22/2013		RE Offense 10:Guilty plea
11/22/2013		RE Offense 11:Guilty plea
11/22/2013		RE Offense 12:Guilty plea
11/22/2013		RE Offense 13:Guilty plea
11/22/2013		RE Offense 14:Guilty plea
11/22/2013		RE Offense 15:Guilty plea
11/22/2013		RE Offense 16:Guilty plea
11/22/2013		RE Offense 17:Guilty plea
11/22/2013		RE Offense 18:Guilty plea
11/22/2013		RE Offense 19:Guilty plea
11/22/2013		RE Offense 20:Guilty plea
11/22/2013		RE Offense 21:Guilty plea
11/22/2013		RE Offense 22:Guilty plea
11/22/2013		RE Offense 23:Guilty plea
11/22/2013		RE Offense 24:Guilty plea
11/22/2013		RE Offense 25:Guilty plea
11/22/2013		RE Offense 26:Guilty plea
11/22/2013		RE Offense 27:Guilty plea
11/22/2013		Defendant warned per Chapter 278, Sec 29D of alien status
11/22/2013		Padilla warning read - US Supreme Ct (2010).
11/22/2013		Defendant warned per Chapter 22E Sec. 3 of DNA
11/22/2013	35	Waiver of defendants' rights. Commonwealth moves for sentencing.
11/22/2013		Defendant sentenced to as to #006: MCI Cedar Junction - Max: Five (5)
11/22/2013		years - Min: Three (3) years. Said sentence to be served at MCI
11/22/2013		FRAMINGHAM. Mittimus issued.
11/22/2013		Defendant sentenced to as to #001-#005 and #007-#013: MCI Cedar
11/22/2013		Junction - Max: Five (5) years - Min: Three (3) years each concurrent
11/22/2013		

11/22/2013 with sentence imposed on Offense #006 to be served at MCI FRAMINGHAM.  
11/22/2013 Mittimus issued.  
11/22/2013 Defendant sentenced to as to #014-027: TOTAL Term of Probation - Two  
11/22/2013 (2) years to begin FROM and AFTER release from MCI Framingham.  
11/22/2013 Defendant is subject to the following probation conditions: (1).  
11/22/2013 Mental Health Evaluation and Treatment if deemed neccessary. Provide  
11/22/2013 Probation Dept with Mental Health Reports and Updates. (2) Must  
11/22/2013 present true qualifications to future employers. \*UNSUPERVISED WHILE  
11/22/2013 ON PAROLE ONLY.  
11/22/2013 Sentence credit given as per 279:33A: 1 day.  
11/22/2013 Victim-witness fee assessed: \$90.00 to be paid during probationary  
11/22/2013 term.  
11/22/2013 Probation supervision fee imposed. Ball, J. - A. Kaczmarek, AAG -  
11/22/2013 JAVS - N. Gordon, Attorney

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## Charges

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27 Charges for Docket: SUCR2012-11155

No.	Charge Description:	Indictment:	Status:
1	PERJURY c268 s1		Guilty plea
2	INTIMIDATION OF WITNESS c268 s13B		Guilty plea
3	INTIMIDATION OF WITNESS c268 s13B		Guilty plea
4	INTIMIDATION OF WITNESS c268 s13B		Guilty plea
5	INTIMIDATION OF WITNESS c268 s13B		Guilty plea
6	TAMPERING WITH RECORD,DOCUMENT OR OTHER OBJ FOR OFFICIAL USE IN PROC		Guilty plea
7	TAMPERING WITH RECORD,DOCUMENT OR OTHER OBJ FOR OFFICIAL USE IN PROC		Guilty plea
8	TAMPERING WITH RECORD,DOCUMENT OR OTHER OBJ FOR OFFICIAL USE IN PROC		Guilty plea
9	TAMPERING WITH RECORD,DOCUMENT OR OTHER OBJ FOR OFFICIAL USE IN PROC		Guilty plea
10	TAMPERING WITH RECORD,DOCUMENT OR OTHER OBJ FOR OFFICIAL USE IN PROC		Guilty plea
11	TAMPERING WITH RECORD,DOCUMENT OR OTHER OBJ FOR OFFICIAL USE IN PROC		Guilty plea
12	TAMPERING WITH RECORD,DOCUMENT OR OTHER OBJ FOR OFFICIAL USE IN PROC		Guilty plea
13	TAMPERING WITH RECORD,DOCUMENT OR OTHER OBJ FOR OFFICIAL USE		Guilty

	IN PROC	plea
14	DEGREE, FALSE CLAIM TO HOLD SCHOOL c266 s89	Guilty plea
15	MISLEADING THE GRAND JURY, PROSECUTOR, JUDGE ETC	Guilty plea
16	MISLEADING THE GRAND JURY, PROSECUTOR, JUDGE ETC	Guilty plea
17	MISLEADING THE GRAND JURY, PROSECUTOR, JUDGE ETC	Guilty plea
18	MISLEADING THE GRAND JURY, PROSECUTOR, JUDGE ETC	Guilty plea
19	MISLEADING THE GRAND JURY, PROSECUTOR, JUDGE ETC	Guilty plea
20	MISLEADING THE GRAND JURY, PROSECUTOR, JUDGE ETC	Guilty plea
21	MISLEADING THE GRAND JURY, PROSECUTOR, JUDGE ETC	Guilty plea
22	MISLEADING THE GRAND JURY, PROSECUTOR, JUDGE ETC	Guilty plea
23	MISLEADING THE GRAND JURY, PROSECUTOR, JUDGE ETC	Guilty plea
24	MISLEADING THE GRAND JURY, PROSECUTOR, JUDGE ETC	Guilty plea
25	MISLEADING THE GRAND JURY, PROSECUTOR, JUDGE ETC	Guilty plea
26	MISLEADING THE GRAND JURY, PROSECUTOR, JUDGE ETC	Guilty plea
27	MISLEADING THE GRAND JURY, PROSECUTOR, JUDGE ETC	Guilty plea



INDICTMENT

SUCR2012- 11155-001

Perjury

c. 268, § 1

*Commonwealth of Massachusetts*

SUFFOLK, ss.

At the **SUPERIOR COURT**, begun and holden at the **CITY OF BOSTON**, within and for the County of SUFFOLK on the first Monday of December in the year of our Lord two thousand and twelve.

**THE STATEWIDE JURORS** for the **COMMONWEALTH OF MASSACHUSETTS** on their oath present that

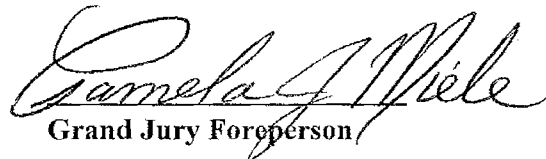
**ANNIE DOOKHAN**

At Boston, in the County of Suffolk, on August 17, 2010, in Commonwealth v. Larry Blue, Annie Dookhan did willfully make a false statement under oath in a judicial proceeding, in a proceeding in a course of justice, or when required by law to take an oath or affirmation to tell the truth, knowing the statement was false at the time she made the statement and that statement was material to the issue or point in question in violation of c. 268, § 1.

Against the peace of the Commonwealth aforesaid, and contrary to the form of the statute in such case made and provided.

  
Assistant Attorney General

A True Bill

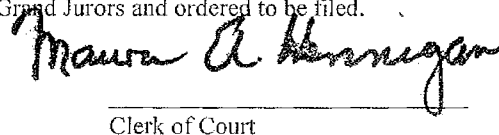
  
Grand Jury Foreperson

Superior Court Department - Criminal Business

December Sitting, 2012

DEC 17 2012

Returned into said Superior Court by the Statewide Grand Jurors and ordered to be filed.

  
Clerk of Court

INDICTMENT

SUCR2012- 11155-002

Obstruction of Justice

c. 268, § 13B

*Commonwealth of Massachusetts*

SUFFOLK, ss.

At the **SUPERIOR COURT**, begun and holden at the **CITY OF BOSTON**, within and for the County of SUFFOLK on the first Monday of December in the year of our Lord two thousand and twelve.

**THE STATEWIDE JURORS** for the **COMMONWEALTH OF MASSACHUSETTS** on their oath present that

**ANNIE DOOKHAN**

At Boston, in the County of Suffolk, on May 18, 2009, in the jury trial of Commonwealth v. Carlos Pineda (SUCR2008-10589), Annie Dookhan did directly or indirectly, willfully threaten, or attempt to cause physical injury, emotional injury, economic injury or property damage to; and/or misled, intimidated or harassed a witness or potential witness at any stage of a criminal investigation, grand jury proceeding, trial or other criminal proceeding of any time; a person who was aware of information, records, documents or objects that relate to a violation of a criminal statute; a person who was furthering a criminal investigation, grand jury proceeding, trial or other criminal proceeding of any time; and/or a person who was attending or had made known her intention to attend a grand jury proceeding, trial or other criminal proceeding of any type with the intent to impeded, obstruct, delay, harm, punish, or otherwise interfere thereby, with a criminal investigation, grand jury proceeding, trial or other criminal proceeding of any type in violation of c. 268, § 13B.

Against the peace of the Commonwealth aforesaid, and contrary to the form of the statute in such case made and provided.

  
Assistant Attorney General

A True Bill

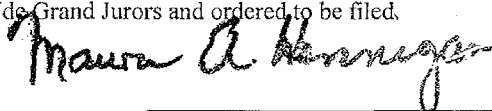
  
Grand Jury Foreperson

Superior Court Department, Criminal Business

December Sitting, 2012

DEC 17 2012

Returned into said Superior Court by the Statewide Grand Jurors and ordered to be filed.

  
Clerk of Court

INDICTMENT

SUCR2012- 11155-003

Obstruction of Justice

c. 268, § 13B

*Commonwealth of Massachusetts*

SUFFOLK, ss.

At the **SUPERIOR COURT**, begun and holden at the **CITY OF BOSTON**, within and for the County of SUFFOLK on the first Monday of December in the year of our Lord two thousand and twelve.

**THE STATEWIDE JURORS** for the **COMMONWEALTH OF MASSACHUSETTS** on their oath present that

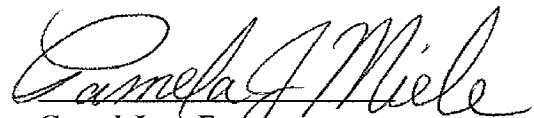
**ANNIE DOOKHAN**

At Chelsea, in the County of Suffolk, on October 30, 2009, in the jury trial of Commonwealth v. Brad Flowers (0814CR3454), Annie Dookhan did directly or indirectly, willfully threaten, or attempt to cause physical injury, emotional injury, economic injury or property damage to; and/or misled, intimidated or harassed a witness or potential witness at any stage of a criminal investigation, grand jury proceeding, trial or other criminal proceeding of any time; a person who was aware of information, records, documents or objects that relate to a violation of a criminal statute; a person who was furthering a criminal investigation, grand jury proceeding, trial or other criminal proceeding of any time; and/or a person who was attending or had made known her intention to attend a grand jury proceeding, trial or other criminal proceeding of any type with the intent to impeded, obstruct, delay, harm, punish, or otherwise interfere thereby, with a criminal investigation, grand jury proceeding, trial or other criminal proceeding of any type in violation of c. 268, § 13B.

Against the peace of the Commonwealth aforesaid, and contrary to the form of the statute in such case made and provided.

  
Assistant Attorney General

A True Bill

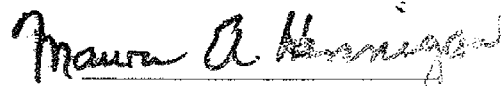
  
Grand Jury Foreperson

Superior Court Department - Criminal Business

DEC 17 2012

December Sitting, 2012

Returned into said Superior Court by the Statewide Grand Jurors and ordered to be filed.

  
Clerk of Court

INDICTMENT

SUCR2012- 11155-004

Obstruction of Justice

c. 268, § 13B

*Commonwealth of Massachusetts*

SUFFOLK, ss.

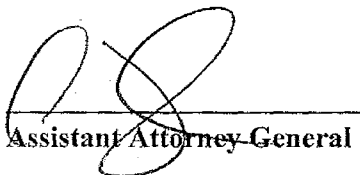
At the **SUPERIOR COURT**, begun and holden at the **CITY OF BOSTON**, within and for the County of SUFFOLK on the first Monday of December in the year of our Lord two thousand and twelve.

**THE STATEWIDE JURORS** for the **COMMONWEALTH OF MASSACHUSETTS** on their oath present that

**ANNIE DOOKHAN**

At Boston, in the County of Suffolk, on August 17, 2010, in the jury trial of Commonwealth v. Larry Blue (SUCR2009-10198), Annie Dookhan did directly or indirectly, willfully threaten, or attempt to cause physical injury, emotional injury, economic injury or property damage to; and/or misled, intimidated or harassed a witness or potential witness at any stage of a criminal investigation, grand jury proceeding, trial or other criminal proceeding of any time; a person who was aware of information, records, documents or objects that relate to a violation of a criminal statute; a person who was furthering a criminal investigation, grand jury proceeding, trial or other criminal proceeding of any time; and/or a person who was attending or had made known her intention to attend a grand jury proceeding, trial or other criminal proceeding of any type with the intent to impeded, obstruct, delay, harm, punish, or otherwise interfere thereby, with a criminal investigation, grand jury proceeding, trial or other criminal proceeding of any type in violation of c. 268, § 13B.

Against the peace of the Commonwealth aforesaid, and contrary to the form of the statute in such case made and provided.

  
Assistant Attorney General

A True Bill

  
Grand Jury Foreperson

Superior Court Department - Criminal Business

December Sitting, 2012

DEC 17 2012

Returned into said Superior Court by the Statewide Grand Jurors and ordered to be filed.

  
Clerk of Court

INDICTMENT

SUCR2012- 11153-005

Obstruction of Justice

c. 268, § 13B

*Commonwealth of Massachusetts*

SUFFOLK, ss.

At the **SUPERIOR COURT**, begun and holden at the **CITY OF BOSTON**, within and for the County of SUFFOLK on the first Monday of December in the year of our Lord two thousand and twelve.

**THE STATEWIDE JURORS** for the **COMMONWEALTH OF MASSACHUSETTS** on their oath present that

**ANNIE DOOKHAN**

At Boston, in the County of Suffolk, on July 1, 2011, in the case of Commonwealth v. Jeffrey Banks, Annie Dookhan did directly or indirectly, willfully threaten, or attempt to cause physical injury, emotional injury, economic injury or property damage to; and/or misled, intimidated or harassed a witness or potential witness at any stage of a criminal investigation, grand jury proceeding, trial or other criminal proceeding of any time; a person who was aware of information, records, documents or objects that relate to a violation of a criminal statute; a person who was furthering a criminal investigation, grand jury proceeding, trial or other criminal proceeding of any time; and/or a person who was attending or had made known her intention to attend a grand jury proceeding, trial or other criminal proceeding of any type with the intent to impeded, obstruct, delay, harm, punish, or otherwise interfere thereby, or do so with reckless disregard, with a criminal investigation, grand jury proceeding, trial or other criminal proceeding of any type in violation of c. 268, § 13B.

Against the peace of the Commonwealth aforesaid, and contrary to the form of the statute in such case made and provided.

  
Assistant Attorney General

A True Bill

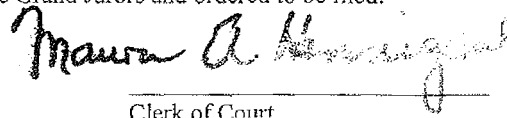
  
Grand Jury Foreperson

Superior Court Department - Criminal Business

December Sitting, 2012

DEC 17 2012

Returned into said Superior Court by the Statewide Grand Jurors and ordered to be filed.

  
Clerk of Court

INDICTMENT

SUCR2012- 11155- 006

Tampering with Evidence  
c. 268, § 13E

*Commonwealth of Massachusetts*

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SUFFOLK, ss.

At the **SUPERIOR COURT**, begun and holden at the **CITY OF BOSTON**, within and for the County of SUFFOLK on the first Monday of December in the year of our Lord two thousand and twelve.

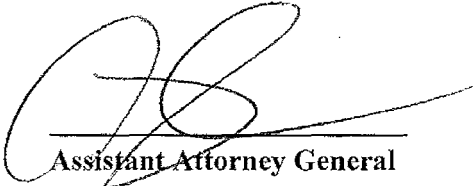
**THE STATEWIDE JURORS** for the **COMMONWEALTH OF MASSACHUSETTS** on their oath present that

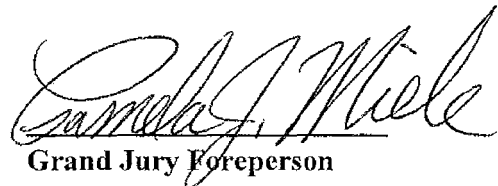
**ANNIE DOOKHAN**

At Boston, in the County of Suffolk, on or about November 22, 2010, Annie Dookhan did alter, destroy, manipulate, or conceal a record, document, or other object (to wit: sample number B10-09283), or attempt to do so with the intent to impair the record, document or object's integrity or availability for use in an official proceeding, whether or not the proceeding was pending at that time in violation of c. 268, § 13E.

Against the peace of the Commonwealth aforesaid, and contrary to the form of the statute in such case made and provided.

A True Bill

  
Assistant Attorney General

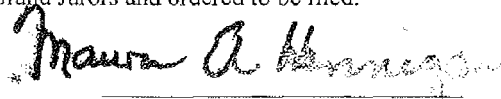
  
Grand Jury Foreperson

Superior Court Department - Criminal Business

December Sitting, 2012

DEC 17 2012

Returned into said Superior Court by the Statewide Grand Jurors and ordered to be filed.

  
Maura A. Hennigan

INDICTMENT

SUCR2012- 11155-007

Tampering with Evidence  
c. 268, § 13E

*Commonwealth of Massachusetts*

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SUFFOLK, ss.

At the **SUPERIOR COURT**, begun and holden at the **CITY OF BOSTON**, within and for the County of SUFFOLK on the first Monday of December in the year of our Lord two thousand and twelve.


**THE STATEWIDE JURORS** for the **COMMONWEALTH OF MASSACHUSETTS** on their oath present that

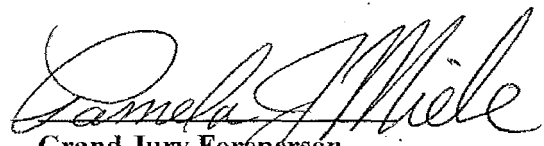
**ANNIE DOOKHAN**

At Boston, in the County of Suffolk, on or about December 6, 2010, Annie Dookhan did alter, destroy, manipulate, or conceal a record, document, or other object (to wit: sample number B10-13145), or attempt to do so with the intent to impair the record, document or object's integrity or availability for use in an official proceeding, whether or not the proceeding was pending at that time in violation of c. 268, § 13E.

Against the peace of the Commonwealth aforesaid, and contrary to the form of the statute in such case made and provided.

A True Bill

  
Assistant Attorney General

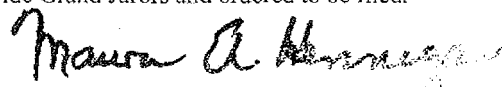
  
Grand Jury Foreperson

Superior Court Department - Criminal Business

December Sitting, 2012

DEC 17 2012

Returned into said Superior Court by the Statewide Grand Jurors and ordered to be filed.

  
Clerk of Court

INDICTMENT

SUCR2012- 11155-008

Tampering with Evidence

c. 268, § 13E

*Commonwealth of Massachusetts*

---

SUFFOLK, ss.

At the **SUPERIOR COURT**, begun and holden at the **CITY OF BOSTON**, within and for the County of SUFFOLK on the first Monday of December in the year of our Lord two thousand and twelve.


**THE STATEWIDE JURORS** for the **COMMONWEALTH OF MASSACHUSETTS** on their oath present that


**ANNIE DOOKHAN**

At Boston, in the County of Suffolk, on or about December 8, 2010, Annie Dookhan did alter, destroy, manipulate, or conceal a record, document, or other object (to wit: sample number B10-10485), or attempt to do so with the intent to impair the record, document or object's integrity or availability for use in an official proceeding, whether or not the proceeding was pending at that time in violation of c. 268, § 13E.

Against the peace of the Commonwealth aforesaid, and contrary to the form of the statute in such case made and provided.

A True Bill

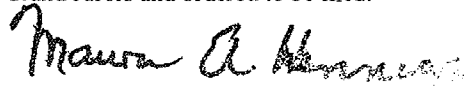
  
Assistant Attorney General

  
Grand Jury Foreperson

Superior Court Department - Criminal Business

December Sitting, 2012

DEC 17 2012 Returned into said Superior Court by the Statewide Grand Jurors and ordered to be filed.

  
Clerk of Court



INDICTMENT

SUCR2012- 11155-009

Tampering with Evidence  
c. 268, § 13E

*Commonwealth of Massachusetts*

---

SUFFOLK, ss.

At the **SUPERIOR COURT**, begun and holden at the **CITY OF BOSTON**, within and for the County of SUFFOLK on the first Monday of December in the year of our Lord two thousand and twelve.

**THE STATEWIDE JURORS** for the **COMMONWEALTH OF MASSACHUSETTS** on their oath present that

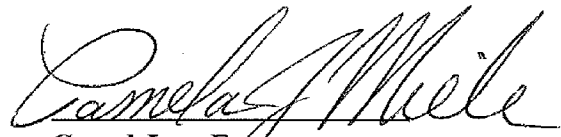
**ANNIE DOOKHAN**

At Boston, in the County of Suffolk, on or about January 19, 2011, Annie Dookhan did alter, destroy, manipulate, or conceal a record, document, or other object (to wit: sample number B10-11884), or attempt to do so with the intent to impair the record, document or object's integrity or availability for use in an official proceeding, whether or not the proceeding was pending at that time in violation of c. 268, § 13E.

Against the peace of the Commonwealth aforesaid, and contrary to the form of the statute in such case made and provided.

A True Bill

  
Assistant Attorney General

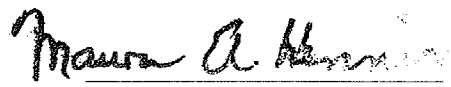
  
Grand Jury Foreperson

Superior Court Department - Criminal Business

December Sitting, 2012

DEC 17 2012

Returned into said Superior Court by the Statewide Grand Jurors and ordered to be filed.

  
Clerk of Court

INDICTMENT

SUCR2012- 11155-010

Tampering with Evidence

c. 268, § 13E

*Commonwealth of Massachusetts*

---

SUFFOLK, ss.

At the **SUPERIOR COURT**, begun and holden at the **CITY OF BOSTON**, within and for the County of SUFFOLK on the first Monday of December in the year of our Lord two thousand and twelve.

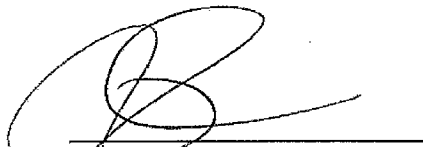
**THE STATEWIDE JURORS** for the **COMMONWEALTH OF MASSACHUSETTS** on their oath present that

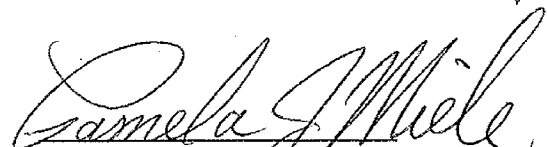
**ANNIE DOOKHAN**

At Boston, in the County of Suffolk, on or about March 7, 2011, Annie Dookhan did alter, destroy, manipulate, or conceal a record, document, or other object (to wit: sample number B10-14541 & B10-14542), or attempt to do so with the intent to impair the record, document or object's integrity or availability for use in an official proceeding, whether or not the proceeding was pending at that time in violation of c. 268, § 13E.

Against the peace of the Commonwealth aforesaid, and contrary to the form of the statute in such case made and provided.

A True Bill

  
Assistant Attorney General

  
Grand Jury Foreperson

Superior Court Department - Criminal Business

December Sitting, 2012

DEC 17 2012

Returned into said Superior Court by the Statewide Grand Jurors and ordered to be filed.

  
Clerk of Court

INDICTMENT

SUCR2012- 11155 -011

Tampering with Evidence

c. 268, § 13E

*Commonwealth of Massachusetts*

SUFFOLK, ss.

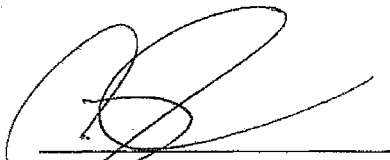
At the **SUPERIOR COURT**, begun and holden at the **CITY OF BOSTON**, within and for the County of SUFFOLK on the first Monday of December in the year of our Lord two thousand and twelve.

**THE STATEWIDE JURORS** for the **COMMONWEALTH OF MASSACHUSETTS** on their oath present that

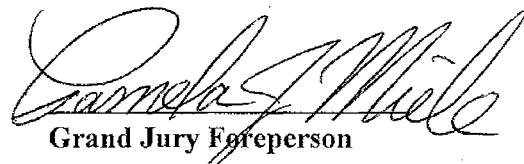
**ANNIE DOOKHAN**

At Boston, in the County of Suffolk, on or about May 14, 2011, Annie Dookhan did alter, destroy, manipulate, or conceal a record, document, or other object (to wit: Discovery Packet for sample number B10-50966), or attempt to do so with the intent to impair the record, document or object's integrity or availability for use in an official proceeding, whether or not the proceeding was pending at that time in violation of c. 268, § 13E.

Against the peace of the Commonwealth aforesaid, and contrary to the form of the statute in such case made and provided.

  
Assistant Attorney General

A True Bill

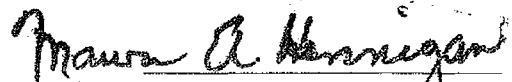
  
Grand Jury Foreperson

Superior Court Department - Criminal Business

DEC 17 2012

December Sitting, 2012

Returned into said Superior Court by the Statewide Grand Jurors and ordered to be filed.



INDICTMENT

SUCR2012- 11155-012

Tampering with Evidence

c. 268, § 13E

*Commonwealth of Massachusetts*

SUFFOLK, ss.

At the **SUPERIOR COURT**, begun and holden at the **CITY OF BOSTON**, within and for the County of SUFFOLK on the first Monday of December in the year of our Lord two thousand and twelve.

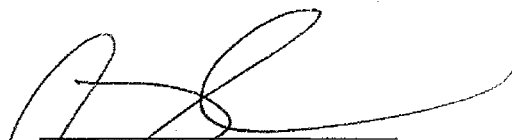
**THE STATEWIDE JURORS** for the **COMMONWEALTH OF MASSACHUSETTS** on their oath present that


**ANNIE DOOKHAN**

At Boston, in the County of Suffolk, on or about May 19, 2011, Annie Dookhan did alter, destroy, manipulate, or conceal a record, document, or other object (to wit: sample number B11-04712), or attempt to do so with the intent to impair the record, document or object's integrity or availability for use in an official proceeding, whether or not the proceeding was pending at that time in violation of c. 268, § 13E.

Against the peace of the Commonwealth aforesaid, and contrary to the form of the statute in such case made and provided.

A True Bill

  
Assistant Attorney General

  
Grand Jury Foreperson

Superior Court Department - Criminal Business

December Sitting, 2012

DEC 17 2012

Returned into said Superior Court by the Statewide Grand Jurors and ordered to be filed.

  
Clerk of Court

INDICTMENT

SUCR2012- 11155-013

Tampering with Evidence

c. 268, § 13E

*Commonwealth of Massachusetts*

SUFFOLK, ss.

At the **SUPERIOR COURT**, begun and holden at the **CITY OF BOSTON**, within and for the County of SUFFOLK on the first Monday of December in the year of our Lord two thousand and twelve.

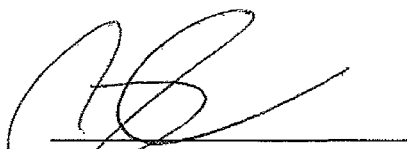
**THE STATEWIDE JURORS** for the **COMMONWEALTH OF MASSACHUSETTS** on their oath present that

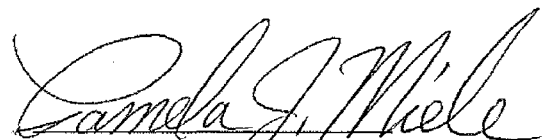
**ANNIE DOOKHAN**

At Boston, in the County of Suffolk, on or about June 17, 2011, Annie Dookhan did alter, destroy, manipulate, or conceal a record, document, or other object (to wit: evidence log book), or attempt to do so with the intent to impair the record, document or object's integrity or availability for use in an official proceeding, whether or not the proceeding was pending at that time in violation of c. 268, § 13E.

Against the peace of the Commonwealth aforesaid, and contrary to the form of the statute in such case made and provided.

A True Bill

  
Assistant Attorney General

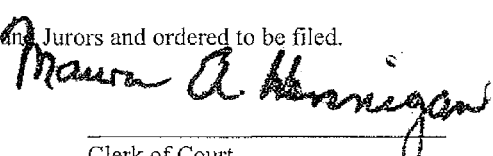
  
Grand Jury Foreperson

Superior Court Department - Criminal Business

December Sitting, 2012

DEC 17 2012

Returned into said Superior Court by the Statewide Grand Jurors and ordered to be filed.

  
Clerk of Court

INDICTMENT

SUCR2012- 1155-014

False Claim to Hold Degree  
c. 266, § 89

*Commonwealth of Massachusetts*

SUFFOLK, ss.


At the **SUPERIOR COURT**, begun and holden at the **CITY OF BOSTON**, within and for the County of SUFFOLK on the first Monday of December in the year of our Lord two thousand and twelve.

**THE STATEWIDE JURORS** for the **COMMONWEALTH OF MASSACHUSETTS** on their oath present that

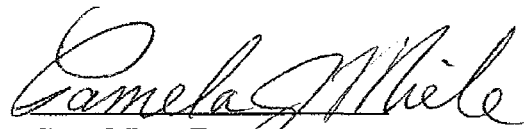
**ANNIE DOOKHAN**

At Boston, in the County of Suffolk, on divers dates between May 18, 2009 to January 24, 2012, Annie Dookhan did, in writing, knowingly and falsely pretend to be a graduate or to hold any degree, of a college or other educational institution of this Commonwealth (to wit: UMass Boston) in violation of c. 266, § 89.

Against the peace of the Commonwealth aforesaid, and contrary to the form of the statute in such case made and provided.

  
Assistant Attorney General

A True Bill

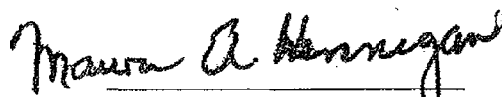
  
Grand Jury Foreperson

Superior Court Department - Criminal Business

December Sitting, 2012

DEC 17 2012

Returned into said Superior Court by the Statewide Grand Jurors and ordered to be filed.

  
Clerk of Court

INDICTMENT  
SUCR2012- 11155- 015

Obstruction of Justice  
c. 268, § 13B

*Commonwealth of Massachusetts*

SUFFOLK, ss.

At the **SUPERIOR COURT**, begun and holden at the **CITY OF BOSTON**, within and for the County of SUFFOLK on the first Monday of December in the year of our Lord two thousand and twelve.

**THE STATEWIDE JURORS** for the **COMMONWEALTH OF MASSACHUSETTS** on their oath present that

**ANNIE DOOKHAN**

At Boston, in the County of Suffolk, on June 27, 2011, in the case of Commonwealth v. Paul Reeves, Annie Dookhan did directly or indirectly, willfully threaten, or attempt to cause physical injury, emotional injury, economic injury or property damage to; and/or misled, intimidated or harassed a witness or potential witness at any stage of a criminal investigation, grand jury proceeding, trial or other criminal proceeding of any time; a person who was aware of information, records, documents or objects that relate to a violation of a criminal statute; a person who was furthering a criminal investigation, grand jury proceeding, trial or other criminal proceeding of any time; and/or a person who was attending or had made known her intention to attend a grand jury proceeding, trial or other criminal proceeding of any type with the intent to impeded, obstruct, delay, harm, punish, or otherwise interfere thereby with a criminal investigation, grand jury proceeding, trial or other criminal proceeding of any type in violation of c. 268, § 13B.

Against the peace of the Commonwealth aforesaid, and contrary to the form of the statute in such case made and provided.

  
Assistant Attorney General

A True Bill

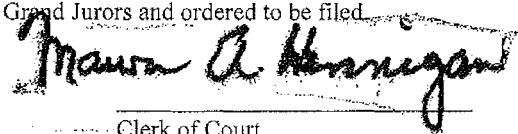
  
Grand Jury Foreperson

Superior Court Department - Criminal Business

December Sitting, 2012

DEC 17 2012

Returned into said Superior Court by the Statewide Grand Jurors and ordered to be filed.

  
Clerk of Court

INDICTMENT

~~SUCR2012-~~ 11155-#016

~~BRER2013-~~ 00009

Obstruction of Justice

c. 268, § 13B

*Commonwealth of Massachusetts*

SUFFOLK, ss.

At the **SUPERIOR COURT**, begun and holden at the **CITY OF BOSTON**, within and for the County of SUFFOLK on the first Monday of December in the year of our Lord two thousand and twelve.

**THE STATEWIDE JURORS** for the **COMMONWEALTH OF MASSACHUSETTS** on their oath present that

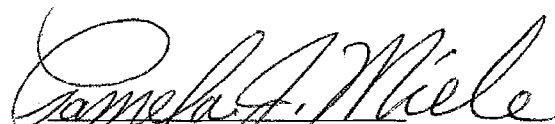
**ANNIE DOOKHAN**

At Fall River, in the County of Bristol, on January 9, 2012, in the jury-waived trial of Commonwealth v. Robert Annunziata (BRER2010-00760), Annie Dookhan did directly or indirectly, willfully threaten, or attempt to cause physical injury, emotional injury, economic injury or property damage to; and/or misled, intimidated or harassed a witness or potential witness at any stage of a criminal investigation, grand jury proceeding, trial or other criminal proceeding of any time; a person who was aware of information, records, documents or objects that relate to a violation of a criminal statute; a person who was furthering a criminal investigation, grand jury proceeding, trial or other criminal proceeding of any time; and/or a person who was attending or had made known her intention to attend a grand jury proceeding, trial or other criminal proceeding of any type with the intent to impeded, obstruct, delay, harm, punish, or otherwise interfere thereby, or did so with reckless disregard, with a criminal investigation, grand jury proceeding, trial or other criminal proceeding of any type in violation of c. 268, § 13B.

Against the peace of the Commonwealth aforesaid, and contrary to the form of the statute in such case made and provided.

  
Assistant Attorney General

A True Bill

  
Grand Jury Foreperson

Superior Court Department - Criminal Business

December Sitting, 2012

DEC 17 2012

Returned into said Superior Court by the Statewide Grand Jurors and ordered to be filed.

  
Clerk of Court



SUCR 2012-11155-#017  
INDICTMENT  
SUCR2012- ~~1467-001~~

Obstruction of Justice  
c. 268, § 13B

*Commonwealth of Massachusetts*

SUFFOLK, ss.

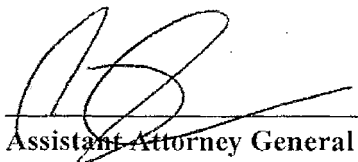
At the **SUPERIOR COURT**, begun and holden at the **CITY OF BOSTON**, within and for the County of SUFFOLK on the first Monday of December in the year of our Lord two thousand and twelve.

THE STATEWIDE JURORS for the **COMMONWEALTH OF MASSACHUSETTS** on their oath present that

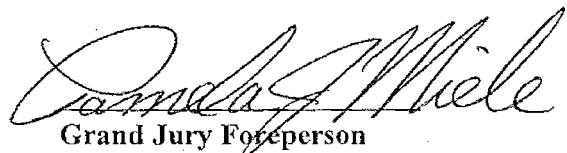
**ANNIE DOOKHAN**

At Lawrence, in the County of Essex, on March 30, 2010, in the jury trial of Commonwealth v. Raymond Garcia (ESCR2007-00647), Annie Dookhan did directly or indirectly, willfully threaten, or attempt to cause physical injury, emotional injury, economic injury or property damage to; and/or misled, intimidated or harassed a witness or potential witness at any stage of a criminal investigation, grand jury proceeding, trial or other criminal proceeding of any time; a person who was aware of information, records, documents or objects that relate to a violation of a criminal statute; a person who was furthering a criminal investigation, grand jury proceeding, trial or other criminal proceeding of any time; and/or a person who was attending or had made known her intention to attend a grand jury proceeding, trial or other criminal proceeding of any type with the intent to impeded, obstruct, delay, harm, punish, or otherwise interfere thereby, with a criminal investigation, grand jury proceeding, trial or other criminal proceeding of any type in violation of c. 268, § 13B.

Against the peace of the Commonwealth aforesaid, and contrary to the form of the statute in such case made and provided.

  
Assistant Attorney General

A True Bill

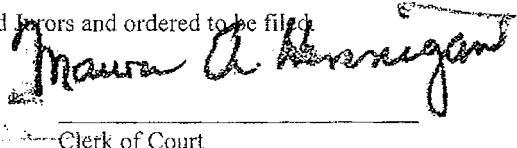
  
Grand Jury Foreperson

Superior Court Department - Criminal Business

December Sitting, 2012

DEC 17 2012

Returned into said Superior Court by the Statewide Grand Jurors and ordered to be filed

  
Clerk of Court

INDICTMENT

SUCR2012- 11155- # 018

Obstruction of Justice

c. 268, § 13B

*Commonwealth of Massachusetts*

SUFFOLK, ss.

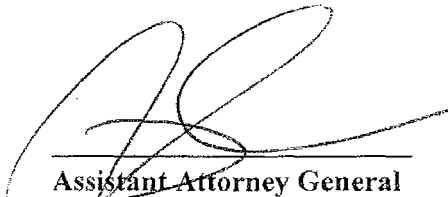
At the **SUPERIOR COURT**, begun and holden at the **CITY OF BOSTON**, within and for the County of SUFFOLK on the first Monday of December in the year of our Lord two thousand and twelve.

**THE STATEWIDE JURORS** for the **COMMONWEALTH OF MASSACHUSETTS** on their oath present that

**ANNIE DOOKHAN**

At Woburn, in the County of Middlesex, on May 4, 2010, in the jury trial of Commonwealth v. Jean Pierre (MICR2009-00610), Annie Dookhan did directly or indirectly, willfully threaten, or attempt to cause physical injury, emotional injury, economic injury or property damage to; and/or misled, intimidated or harassed a witness or potential witness at any stage of a criminal investigation, grand jury proceeding, trial or other criminal proceeding of any time; a person who was aware of information, records, documents or objects that relate to a violation of a criminal statute; a person who was furthering a criminal investigation, grand jury proceeding, trial or other criminal proceeding of any time; and/or a person who was attending or had made known her intention to attend a grand jury proceeding, trial or other criminal proceeding of any type with the intent to impeded, obstruct, delay, harm, punish, or otherwise interfere thereby, with a criminal investigation, grand jury proceeding, trial or other criminal proceeding of any type in violation of c. 268, § 13B.

Against the peace of the Commonwealth aforesaid, and contrary to the form of the statute in such case made and provided.

  
Assistant Attorney General

A True Bill

  
Grand Jury Foreperson

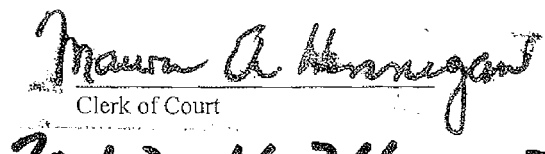
Superior Court Department - Criminal Business

DEC 17 2012

December Sitting, 2012

Returned into said Superior Court by the Statewide Grand Jurors and ordered to be filed.

ORIGINAL

  
Clerk of Court

INDICTMENT

SUCR2012-11155-#019

Obstruction of Justice

c. 268, § 13B

*Commonwealth of Massachusetts*

SUFFOLK, ss.

At the **SUPERIOR COURT**, begun and holden at the **CITY OF BOSTON**, within and for the County of SUFFOLK on the first Monday of December in the year of our Lord two thousand and twelve.

**THE STATEWIDE JURORS** for the **COMMONWEALTH OF MASSACHUSETTS** on their oath present that

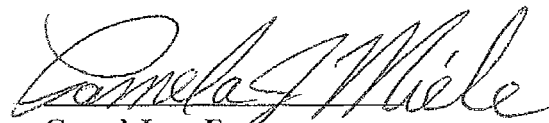
**ANNIE DOOKHAN**

At Woburn, in the County of Middlesex, on August 18, 2010, in the case of Commonwealth v. Geronimo Alomar (MICR2008-01412), Annie Dookhan did directly or indirectly, willfully threaten, or attempt to cause physical injury, emotional injury, economic injury or property damage to; and/or misled, intimidated or harassed a witness or potential witness at any stage of a criminal investigation, grand jury proceeding, trial or other criminal proceeding of any time; a person who was aware of information, records, documents or objects that relate to a violation of a criminal statute; a person who was furthering a criminal investigation, grand jury proceeding, trial or other criminal proceeding of any time; and/or a person who was attending or had made known her intention to attend a grand jury proceeding, trial or other criminal proceeding of any type with the intent to impeded, obstruct, delay, harm, punish, or otherwise interfere thereby, with a criminal investigation, grand jury proceeding, trial or other criminal proceeding of any type in violation of c. 268, § 13B.

Against the peace of the Commonwealth aforesaid, and contrary to the form of the statute in such case made and provided.

  
Assistant Attorney General

A True Bill

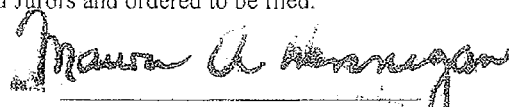
  
Grand Jury Foreperson

Superior Court Department - Criminal Business

December Sitting, 2012

DEC 17 2012

Returned into said Superior Court by the Statewide Grand Jurors and ordered to be filed.

  
Clerk of Court

2012-1634-002

INDICTMENT

SUCR2012- 11155-# 020

Obstruction of Justice

c. 268, § 13B

*Commonwealth of Massachusetts*

SUFFOLK, ss.

At the **SUPERIOR COURT**, begun and holden at the **CITY OF BOSTON**, within and for the County of SUFFOLK on the first Monday of December in the year of our Lord two thousand and twelve.

**THE STATEWIDE JURORS** for the **COMMONWEALTH OF MASSACHUSETTS** on their oath present that

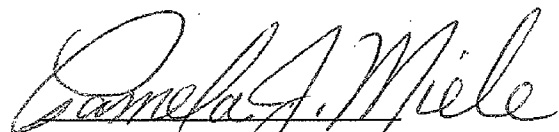
**ANNIE DOOKHAN**

At Malden, in the County of Middlesex, on November 8, 2010, in the jury trial of Commonwealth v. Harold Pierre (0950CR1850), Annie Dookhan did directly or indirectly, willfully threaten, or attempt to cause physical injury, emotional injury, economic injury or property damage to; and/or misled, intimidated or harassed a witness or potential witness at any stage of a criminal investigation, grand jury proceeding, trial or other criminal proceeding of any time; a person who was aware of information, records, documents or objects that relate to a violation of a criminal statute; a person who was furthering a criminal investigation, grand jury proceeding, trial or other criminal proceeding of any time; and/or a person who was attending or had made known her intention to attend a grand jury proceeding, trial or other criminal proceeding of any type with the intent to impeded, obstruct, delay, harm, punish, or otherwise interfere thereby, or did so with reckless disregard, with a criminal investigation, grand jury proceeding, trial or other criminal proceeding of any type in violation of c. 268, § 13B.

Against the peace of the Commonwealth aforesaid, and contrary to the form of the statute in such case made and provided.

  
Assistant Attorney General

A True Bill

  
Grand Jury Foreperson

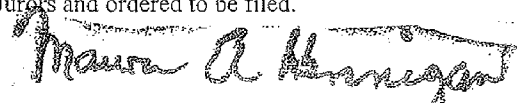
Superior Court Department - Criminal Business

DEC 17 2012

December Sitting, 2012

Returned into said Superior Court by the Statewide Grand Jurors and ordered to be filed.



  
Clerk of Court

2012-1634-001

*SUCR 2012-11155-021*  
INDICTMENT  
~~NO CR2012-1086-001~~

Obstruction of Justice  
c. 268, § 13B

*Commonwealth of Massachusetts*

SUFFOLK, ss.

At the **SUPERIOR COURT**, begun and holden at the **CITY OF BOSTON**, within and for the County of SUFFOLK on the first Monday of December in the year of our Lord two thousand and twelve.

**THE STATEWIDE JURORS** for the **COMMONWEALTH OF MASSACHUSETTS** on their oath present that


**ANNIE DOOKHAN**

At Dedham, in the County of Norfolk, on February 25, 2011, in the jury-waived trial of Commonwealth v. Isa Fernandes (NOCR2009-00852), Annie Dookhan did directly or indirectly, willfully threaten, or attempt to cause physical injury, emotional injury, economic injury or property damage to; and/or misled, intimidated or harassed a witness or potential witness at any stage of a criminal investigation, grand jury proceeding, trial or other criminal proceeding of any time; a person who was aware of information, records, documents or objects that relate to a violation of a criminal statute; a person who was furthering a criminal investigation, grand jury proceeding, trial or other criminal proceeding of any time; and/or a person who was attending or had made known her intention to attend a grand jury proceeding, trial or other criminal proceeding of any type with the intent to impeded, obstruct, delay, harm, punish, or otherwise interfere thereby, or did so with reckless disregard, with a criminal investigation, grand jury proceeding, trial or other criminal proceeding of any type in violation of c. 268, § 13B.

Against the peace of the Commonwealth aforesaid, and contrary to the form of the statute in such case made and provided.

  
Assistant Attorney General

A True Bill

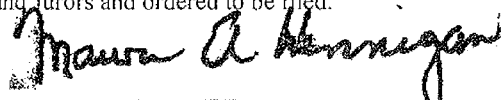
  
Grand Jury Foreperson

Superior Court Department - Criminal Business

December Sitting, 2012

DEC 17 2012

Returned into said Superior Court by the Statewide Grand Jurors and ordered to be filed.

  
Clerk of Court

*SMR 2012-11155-#022*  
INDICTMENT  
~~NO CR2012-1086-002~~

Obstruction of Justice  
c. 268, § 13B

*Commonwealth of Massachusetts*

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SUFFOLK, ss.

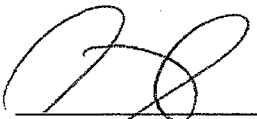
At the **SUPERIOR COURT**, begun and holden at the **CITY OF BOSTON**, within and for the County of SUFFOLK on the first Monday of December in the year of our Lord two thousand and twelve.

THE STATEWIDE JURORS for the **COMMONWEALTH OF MASSACHUSETTS** on their oath present that


**ANNIE DOOKHAN**

At Dedham, in the County of Norfolk, on or about May 14, 2011, in the case of Commonwealth v. Amanda Burke and James Lane, Annie Dookhan did directly or indirectly, willfully threaten, or attempt to cause physical injury, emotional injury, economic injury or property damage to; and/or misled, intimidated or harassed a witness or potential witness at any stage of a criminal investigation, grand jury proceeding, trial or other criminal proceeding of any time; a person who was aware of information, records, documents or objects that relate to a violation of a criminal statute; a person who was furthering a criminal investigation, grand jury proceeding, trial or other criminal proceeding of any time; and/or a person who was attending or had made known her intention to attend a grand jury proceeding, trial or other criminal proceeding of any type with the intent to impeded, obstruct, delay, harm, punish, or otherwise interfere thereby, or did so with reckless disregard, with a criminal investigation, grand jury proceeding, trial or other criminal proceeding of any type in violation of c. 268, § 13B.

Against the peace of the Commonwealth aforesaid, and contrary to the form of the statute in such case made and provided.

  
Assistant Attorney General

A True Bill

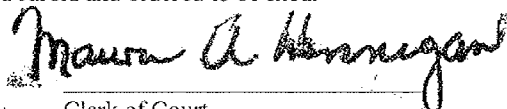
  
Grand Jury Foreperson

Superior Court Department - Criminal Business

December Sitting, 2012

**DEC 17 2012**

Returned into said Superior Court by the Statewide Grand Jurors and ordered to be filed.

  
Clerk of Court

12-00650-001

INDICTMENT

SUCR2012-11155-#023

Obstruction of Justice

c. 268, § 13B

*Commonwealth of Massachusetts*

SUFFOLK, ss.

At the **SUPERIOR COURT**, begun and holden at the **CITY OF BOSTON**, within and for the County of SUFFOLK on the first Monday of December in the year of our Lord two thousand and twelve.

**THE STATEWIDE JURORS** for the **COMMONWEALTH OF MASSACHUSETTS** on their oath present that

**ANNIE DOOKHAN**

At Brockton, in the County of Plymouth, on August 10, 2009, in the jury trial of Commonwealth v. Craig Charlton (PLCR2007-00350), Annie Dookhan did directly or indirectly, willfully threaten, or attempt to cause physical injury, emotional injury, economic injury or property damage to; and/or misled, intimidated or harassed a witness or potential witness at any stage of a criminal investigation, grand jury proceeding, trial or other criminal proceeding of any time; a person who was aware of information, records, documents or objects that relate to a violation of a criminal statute; a person who was furthering a criminal investigation, grand jury proceeding, trial or other criminal proceeding of any time; and/or a person who was attending or had made known her intention to attend a grand jury proceeding, trial or other criminal proceeding of any type with the intent to impeded, obstruct, delay, harm, punish, or otherwise interfere thereby with a criminal investigation, grand jury proceeding, trial or other criminal proceeding of any type in violation of c. 268, § 13B.

Against the peace of the Commonwealth aforesaid, and contrary to the form of the statute in such case made and provided.

*Robert A. Boring*  
Clerk of Courts

*[Signature]*  
Assistant Attorney General

A True Bill

*Camela J. Miele*  
Grand Jury Foreperson

Superior Court Department - Criminal Business

December Sitting, 2012

DEC 17 2012

Returned into said Superior Court by the Statewide Grand Jurors and ordered to be filed.

*Maura A. Harrigan*  
Clerk of Court

~~12-06650-002~~

INDICTMENT  
SUCR2012-11155-#024

Obstruction of Justice  
c. 268, § 13B

*Commonwealth of Massachusetts*

SUFFOLK, ss.

At the **SUPERIOR COURT**, begun and holden at the **CITY OF BOSTON**, within and for the County of SUFFOLK on the first Monday of December in the year of our Lord two thousand and twelve.

**THE STATEWIDE JURORS** for the **COMMONWEALTH OF MASSACHUSETTS** on their oath present that

**ANNIE DOOKHAN**

At Brockton, in the County of Plymouth, on February 23, 2011, in the jury trial of Commonwealth v. Rony Neves (1015CR003057), Annie Dookhan did directly or indirectly, willfully threaten, or attempt to cause physical injury, emotional injury, economic injury or property damage to; and/or misled, intimidated or harassed a witness or potential witness at any stage of a criminal investigation, grand jury proceeding, trial or other criminal proceeding of any time; a person who was aware of information, records, documents or objects that relate to a violation of a criminal statute; a person who was furthering a criminal investigation, grand jury proceeding, trial or other criminal proceeding of any time; and/or a person who was attending or had made known her intention to attend a grand jury proceeding, trial or other criminal proceeding of any type with the intent to impeded, obstruct, delay, harm, punish, or otherwise interfere thereby, or did so with reckless disregard with a criminal investigation, grand jury proceeding, trial or other criminal proceeding of any type in violation of c. 268, § 13B.

Against the peace of the Commonwealth aforesaid, and contrary to the form of the statute in such case made and provided.

A TRUE COPY ATTEST

*Robert A. Berman*  
Clerk of Courts

A True Bill

*[Signature]*  
Assistant Attorney General

*[Signature]*  
Grand Jury Foreperson

Superior Court Department - Criminal Business

December Sitting, 2012

DEC 17 2012

Returned into said Superior Court by the Statewide Grand Jurors and ordered to be filed.

*Maura A. Harrigan*



~~12-00650-003~~

INDICTMENT  
SUCR2012-11155-#025

Obstruction of Justice  
c. 268, § 13B

*Commonwealth of Massachusetts*

SUFFOLK, ss.

At the **SUPERIOR COURT**, begun and holden at the **CITY OF BOSTON**, within and for the County of SUFFOLK on the first Monday of December in the year of our Lord two thousand and twelve.

**THE STATEWIDE JURORS** for the **COMMONWEALTH OF MASSACHUSETTS** on their oath present that

**ANNIE DOOKHAN**

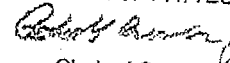
At Brockton, in the County of Plymouth, on August 13, 2009, in the jury trial of Commonwealth v. Donta Hood (PLCR2009-00022), Annie Dookhan did directly or indirectly, willfully threaten, or attempt to cause physical injury, emotional injury, economic injury or property damage to; and/or misled, intimidated or harassed a witness or potential witness at any stage of a criminal investigation, grand jury proceeding, trial or other criminal proceeding of any time; a person who was aware of information, records, documents or objects that relate to a violation of a criminal statute; a person who was furthering a criminal investigation, grand jury proceeding, trial or other criminal proceeding of any time; and/or a person who was attending or had made known her intention to attend a grand jury proceeding, trial or other criminal proceeding of any type with the intent to impeded, obstruct, delay, harm, punish, or otherwise interfere thereby, with a criminal investigation, grand jury proceeding, trial or other criminal proceeding of any type in violation of c. 268, § 13B.

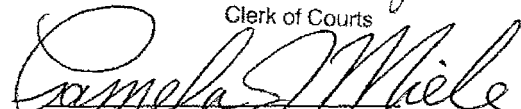
Against the peace of the Commonwealth aforesaid, and contrary to the form of the statute in such case made and provided.

  
Assistant Attorney General

A True Bill

A TRUE COPY ATTEST

  
Clerk of Courts

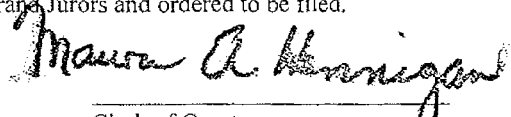
  
Grand Jury Foreperson

Superior Court Department - Criminal Business

December Sitting, 2012

DEC 17 2012

Returned into said Superior Court by the Statewide Grand Jurors and ordered to be filed.

  
Clerk of Court

12-00650-005

INDICTMENT

SUCR2012- 11155- #026

Obstruction of Justice  
c. 268, § 13B

*Commonwealth of Massachusetts*

SUFFOLK, ss.

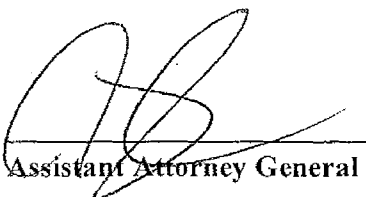
At the **SUPERIOR COURT**, begun and holden at the **CITY OF BOSTON**, within and for the County of SUFFOLK on the first Monday of December in the year of our Lord two thousand and twelve.

**THE STATEWIDE JURORS** for the **COMMONWEALTH OF MASSACHUSETTS** on their oath present that

**ANNIE DOOKHAN**

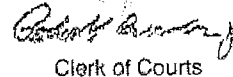
At Brockton, in the County of Plymouth, on October 22, 2010, in the jury waived trial of Commonwealth v. Leo McLaughlin III (PLCR2009-00481), Annie Dookhan did directly or indirectly, willfully threaten, or attempt to cause physical injury, emotional injury, economic injury or property damage to; and/or misled, intimidated or harassed a witness or potential witness at any stage of a criminal investigation, grand jury proceeding, trial or other criminal proceeding of any time; a person who was aware of information, records, documents or objects that relate to a violation of a criminal statute; a person who was furthering a criminal investigation, grand jury proceeding, trial or other criminal proceeding of any time; and/or a person who was attending or had made known her intention to attend a grand jury proceeding, trial or other criminal proceeding of any type with the intent to impeded, obstruct, delay, harm, punish, or otherwise interfere thereby, with a criminal investigation, grand jury proceeding, trial or other criminal proceeding of any type in violation of c. 268, § 13B.

Against the peace of the Commonwealth aforesaid, and contrary to the form of the statute in such case made and provided.

  
Assistant Attorney General

A True Bill

A TRUE COPY ATTEST

  
Clerk of Courts

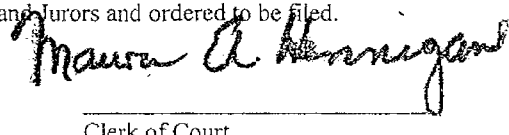
  
Grand Jury Foreperson

Superior Court Department - Criminal Business

December Sitting, 2012

DEC 17 2012

Returned into said Superior Court by the Statewide Grand Jurors and ordered to be filed.

  
Clerk of Court

12-00650-004

INDICTMENT

SUCR2012-11155-#027

Obstruction of Justice  
c. 268, § 13B

*Commonwealth of Massachusetts*

SUFFOLK, ss.

At the SUPERIOR COURT, begun and holden at the CITY OF BOSTON, within and for the County of SUFFOLK on the first Monday of December in the year of our Lord two thousand and twelve.

THE STATEWIDE JURORS for the COMMONWEALTH OF MASSACHUSETTS on their oath present that

**ANNIE DOOKHAN**

At Brockton, in the County of Plymouth, on December 6, 2010, in the jury trial of Commonwealth v. Rony Neves (1015CR001433), Annie Dookhan did directly or indirectly, willfully threaten, or attempt to cause physical injury, emotional injury, economic injury or property damage to; and/or misled, intimidated or harassed a witness or potential witness at any stage of a criminal investigation, grand jury proceeding, trial or other criminal proceeding of any time; a person who was aware of information, records, documents or objects that relate to a violation of a criminal statute; a person who was furthering a criminal investigation, grand jury proceeding, trial or other criminal proceeding of any time; and/or a person who was attending or had made known her intention to attend a grand jury proceeding, trial or other criminal proceeding of any type with the intent to impeded, obstruct, delay, harm, punish, or otherwise interfere thereby, or did so with reckless disregard, with a criminal investigation, grand jury proceeding, trial or other criminal proceeding of any type in violation of c. 268, § 13B.

Against the peace of the Commonwealth aforesaid, and contrary to the form of the statute in such case made and provided.

A TRUE COPY ATTEST

*Robert J. Bennett*  
Clerk of Courts

A True Bill

*[Signature]*  
Assistant Attorney General

*Camela J. Miele*  
Grand Jury Foreperson

Superior Court Department - Criminal Business

December Sitting, 2012

DEC 17 2012

Returned into said Superior Court by the Statewide Grand Jurors and ordered to be filed.

*Maura A. Harrigan*  
Clerk of Court

5

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

SUPERIOR COURT DEPARTMENT

NO. SUCR 2012-10863

11155

**COMMONWEALTH**

**VS.**

**ANNIE DOOKHAN**

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**COMMONWEALTH'S STATEMENT OF THE CASE**

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Now comes the Commonwealth and offers the following statement of facts. This statement does not constitute a bill of particulars, nor does it recite all the facts known to the Commonwealth, rather it is a summary of the facts.

The defendant, Annie Dookhan, was employed as a chemist in the drug analysis unit of the Hinton State Lab in Jamaica Plain, which tested drug evidence submitted by law enforcement across the state. The defendant was hired as a Chemist I in 2003, promoted to Chemist II in 2005, and resigned in March of 2012. In her capacity as a chemist, Dookhan would analyze drug evidence and at times testify in court as to her findings.

Until June of 2011, her work product was consistently the highest in the lab among her co-workers. In June a problem was discovered with the defendant's work. An evidence officer was in the process of scanning some drug samples back into the drug safe, when she discovered 90 samples of drugs had not been properly scanned out of the drug safe and that there was no

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chemist assigned to the sample. Dookhan's name appeared on the control card as the primary chemist but in the evidence log book there were no initials of an evidence officer signing out the drug samples to her. On June 20, three of the defendant's supervisors met to discuss the problem and observed that there were no evidence officer initials in the log book for those 90 samples.

The next day, when Dookhan was confronted with the log book, the initials of Gloria Phillips had suddenly appeared in the book. Dookhan denied knowledge of the discrepancies with the log book. She claimed to not remember how the samples got into her possession in the first place. Dookhan later confessed to investigators that she had written in Gloria Phillips' initials. During the investigation, it was determined that Dookhan did not follow proper protocol for signing out drug samples from the evidence room, and further tampered with evidence by forging the initials of an evidence officer to cover-up her misconduct.

In July of 2012, in accordance with legislation, control of the drug lab was transferred from Department of Public Health to Executive Office of Public Safety and Security. As a result of this transfer, a more extensive investigation into Dookhan's practices was initiated by the State Police. Massachusetts State Police investigators interviewed all the employees of the lab and questioned them about defendant's lab practices. The defendant was interviewed by investigators on August 28, 2012 and she admitted to "dry labbing" some of the samples. "Dry labbing" is the term used for the practice of merely visually identifying samples

instead of performing the required chemical test. It was discovered that Dookhan would assemble multiple drug samples from different cases that appeared to be the same substance. She would then perform the chemical tests on a few of the samples to verify that the samples were in fact the drug she believed they were, and if those were positive, would assume all the samples were positive without performing the necessary chemical tests.

Typically, a small amount of the drug sample is mixed into a vial by the primary chemist and then sent to a second testing stage to confirm the initial results. If the second test does not confirm the initial results, the vial is sent back to the primary chemist to concentrate and resubmit. When samples were sent back to Dookhan in this stage, she tampered with the vials before resubmitting them in order to make them consistent with the inaccurate and positive results reached as a result of her "dry labbing." Recent testing done on these samples by the Massachusetts State Police Crime Laboratory corroborates these allegations. Investigators were able to retest samples because Dookhan only altered the substances while they were in the testing vials. She did not alter the original samples.

The Commonwealth identified six specific instances where Dookhan tampered with the testing vials. Five of those cases originated in Suffolk County: Jeffrey Banks, Paul Flannelly, Stephen Goudreau, Paul Reeves, and Michael Vasquez. One case is from Bristol County: Eliezer Santiago. In the case of Jeffrey Banks, the drug certificate sworn by Dookhan that the substance was

cocaine was submitted to a Suffolk County grand jury. The grand jury relied on the drug analysis to indict Banks.

In a review of the defendant's work emails, investigators found a discovery packet that had been emailed to a prosecutor for a pending criminal case that contained an altered test. In that packet, Dookhan submitted a print out for a test designed to quantify the drug sample. In organizing the discovery information, the defendant realized that she had not printed out, or never ran, the quantifying analysis. To cover this mistake, the defendant ran the test using that the case sample number and submitted it with the discovery packet. The defendant obliterated the date the test was run. This particular machine has no capacity to save past analyses and the print date on the bottom of the document states May 5, 2011, nearly six months after the drug samples were returned to the submitting police agency. Again, the sample was not contaminated; in fact, it was no longer at the lab when this test was performed.

In fourteen separate criminal trials, the defendant testified as an expert witness regarding her job as a chemist in the drug lab. While under oath, she stated that she had a Master's degree in Chemistry from UMass Boston. This testimony was relied upon to establish a foundation for her credibility as an expert and the veracity of the drug certificate admitted into evidence. Further investigation revealed that she did not hold a Master's in Chemistry from the University of Massachusetts nor was she ever enrolled as a student in master's level classes.

The defendant also perjured herself during her testimony in the Suffolk County trial of Commonwealth v. Blue. In that case, Dookhan testified that she had a Master's in Chemistry and was in charge of quality control. A review of the questioning by the prosecuting and defense attorney, as well as their closing arguments, reveals that Dookhan's qualifications were a material fact in the trial.

Respectfully submitted

For the Commonwealth,

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December 20, 2012



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COMMONWEALTH OF MASSACHUSETTS

2012-11155

SUFFOLK, ss

SUFFOLK SUPERIOR COURT

NORFOLK, ss

INDICTMENT NO: NOCR 2012-01086

BRISTOL, ss.

INDICTMENT NO. BRCR2013-00009

ESSEX, ss.

INDICTMENT NO. ESCR2012-01467

MIDDLESEX, ss.

INDICTMENT NO. MICR 2012-01634

PLYMOUTH, ss.

INDICTMENT NO. PLCR 2012-00650

COMMONWEALTH

v.

ANNIE DOOKHAN

**MEMORANDUM OF LAW IN OPPOSITION TO DEFENDANT'S MOTION TO  
DISMISS**

Now comes the Commonwealth in the above-entitled matter and respectfully moves this Honorable Court to deny the Defendant's Motion to Dismiss the eleven indictments alleging violations of G.L. c. 268, § 13B, during her testimony in the criminal trials of Commonwealth v. Raymond Garcia (ESCR2007-00647), Commonwealth v. Rony Neves (1015CR001433), Commonwealth v. Leo McLaughlin III (PLCR2009-00481), Commonwealth v. Craig Charlton (PLCR2007-00350), Commonwealth v. Rony Neves (1015CR003057), Commonwealth v. Donta Hood (PLCR2009-00022), Commonwealth v. Robert Annuziata (BICR2010-00760), Commonwealth v Isa Fernandes (NOCR2009-00852), Commonwealth v Geromino Alomar (MICR2008-01412), Commonwealth v Harold Pierre (0905CR1850), and Commonwealth v Jean Pierre (MICR2009-00610). Where the evidence presented to the Statewide grand jury shows that the Defendant misled the factfinder by willfully misrepresenting her credentials to them. The Defendant's motion has no merit, and must fail.

### SPECIFIC COUNTY CLAIMS

The Defendant challenges indictments arising from several different counties. The Defendant's arguments are based upon the same facts and legal analyses. As a result, the Commonwealth filed a motion to consolidate all the pre-trial motions for a single justice to decide and the motion was allowed by Chief Justice Rouse on May 9, 2013. The Defendant was charged in six different counties for Obstruction of Justice based on her testimony at criminal trials where she embellished her qualifications as an expert witness. The specific indictments challenged by the Defendant are:

1. In Middlesex County, the Defendant was indicted on three counts for testifying at the following trials: Commonwealth v Geromino Alomar (MICR2008-01412); Commonwealth v Harold Pierre (0905CR1850); and Commonwealth v Jean Pierre (MICR2009-00610);
2. In Essex County, the Defendant was indicted on one count for testifying at the following trial: Commonwealth v. Raymond Garcia (ESCR2007-00647);
3. In Plymouth County, the Defendant was indicted on five counts for testifying at the following trials: Commonwealth v. Rony Neves (1015CR001433); Commonwealth v. Leo McLaughlin III (PLCR2009-00481); Commonwealth v. Craig Charlton (PLCR2007-00350); Commonwealth v. Rony Neves (1015CR003057); and Commonwealth v. Donta Hood (PLCR2009-00022).
4. In Bristol County, the Defendant was indicted on one count for testifying at the following trial: Commonwealth v. Robert Annuziata (BICR2010-00760); and
5. In Norfolk County, the Defendant was indicted on one count for testifying at the following trial: Commonwealth v Isa Fernandes (NOCR2009-00852).

As this memorandum demonstrates, these claims are without merit; consequently, the Commonwealth asks this Honorable Court to deny each of the defendants' motions.

### **FACTS PRESENTED TO THE GRAND JURY**

The investigation into the Defendant's activities began in August of 2012 as a result of allegations that the Defendant had tampered with the results of drug evidence at the Hinton Drug Lab in Jamaica Plain. The Statewide Grand Jurors indicted the Defendant on eight counts of Tampering with Evidence (Ch. 268 §13E), one count of Perjury (Ch. 268 §1), one count of False Claim to Hold a Degree (Ch. 266 §89), and seventeen counts of Obstruction of Justice (Ch. 268 §13B).

The evidence presented to the Statewide Grand Jurors showed that the Defendant did not have a Master's in Chemistry, nor had she even been accepted into the Master's program, at UMass Boston. (See Exhibit A: GJ Minutes dated October 11, 2012, page 32, lines 9-14). The Defendant used two different resumes, one that stated she had a Master's and a second that did not include this fact. Id. at pages 32-33. The evidence presented to the grand jurors showed that the Defendant sent her resume to a prosecutor and it included the Master's designation while providing her lab supervisor with her actual credentials- all within six days of each other. Id.

On October 25, 2012 and November 29, 2012, the grand jurors were presented with a total of fifteen transcripts of court proceedings where the Defendant testified under oath that she had a Master's in Chemistry. See Exhibits B and C: GJ Minutes dated October 25, 2012 and November 29, 2012. On those two days of testimony, the fifteen transcripts were introduced as evidence. Id. The Grand Jurors were presented with evidence that the Defendant testified in court at a jury trial that she had a Master's degree in Chemistry when, in truth, she had no such degree. Id.

On October 25, 2012, the Grand Jurors were presented with evidence that relates to the Defendant's testimony at the following trials which led to the challenged indictments: Commonwealth vs. Raymond Garcia, Commonwealth vs. Robert Annunziata, Commonwealth vs. Donta Hood, and Commonwealth vs. Isa Fernandes, and Commonwealth vs. Harold Pierre. See Exhibit B. According to the transcripts introduced into evidence, the Defendant, under oath, is asked about her educational background. In each of the enumerated transcripts, the Defendant answers that she has a Master's in Chemistry. Id.

On November 29, 2012, the Grand Jurors were presented with evidence that relates to the Defendant's testimony at the following trials which led to the challenged indictments: Commonwealth v. Rony Neves, Commonwealth v. Leo McLaughlin III, Commonwealth v. Craig Charlton, Commonwealth v. Rony Neves, Commonwealth v Geromino Alomar, and Commonwealth v. Jean Pierre. See Exhibit C. According to the transcripts introduced into evidence, the Defendant, under oath, is asked about her educational background. In each of the enumerated transcripts, the Defendant answers that she has a Master's in Chemistry. Id.

On November 29, 2012, the grand jury witness, Detective Lt. Robert Irwin, read a portion of the trial transcript from Commonwealth v. Carlos Pineda into the record. Exhibit C at page 15.

Q: Approximately how many times have you had an occasion to test for a control substance?

A: Several.

Q: Okay. I know it's hard to ballpark but would you say more than a hundred?

A: Probably.

Q: Okay. Do you think it is more than a few hundred times?

A: Probably.

Id. at page 15, lines 11-19.

The grand jury also heard on the same date testimony from another submitted transcript from the trial of Commonwealth v. Craig Charlton on the same date.

Q: What is your educational background, ma'am?  
A: I have a master's in biochemistry and chemistry.  
Q: Where did you receive those degrees?  
A: University of Massachusetts.  
Q: And in all the years that you've been employed as a chemist with the State Lab, could you estimate perhaps how many times you have tested an unknown substance for its chemical composition?  
A: Thousands.  
Q: Thousands. How many samples do you usually test in a given week say?  
A: A hundred.  
Q: A hundred a week?  
A: Yeah.  
Exhibit C: page 9-10.

Also presented on November 29, 2012 was the trial transcript of Commonwealth v. Blue. Id. at page 16. The Defendant's direct and cross examination was read into the record, as well as relevant portions of the closing statements from both the prosecutor and defense counsel. Id. The defense counsel argued to the jury that the Dookhan's testimony was only her personal opinion and that the test was a "subjective analysis". Id. at page 19, line 6. The prosecutor countered in his closing that "there was no doubt about whether those items are cocaine." Id. at line 12-13. The prosecutor's argument also included a reference to the Defendant's qualifications, in conformity with the Defendant's testimony on direct examination. Id.

### LEGAL STANDARD

Generally, courts will not inquire into grand jury proceedings absent a showing of "extraordinary circumstances." Commonwealth v. Matthews, 450 Mass. 852, 873 (2008), citing Commonwealth v. Freeman, 407 Mass. 279, 282 (1990). As such, the Supreme Judicial Court has identified only two such extraordinary circumstances where judicial inquiry is warranted: "(1) when it is unclear that sufficient evidence was presented to the grand jury to support a finding of probable cause to believe that the Defendant committed the offense charged in the

indictment; and (2) when the Defendant contends that the integrity of the grand jury proceedings somehow has been impaired.” Freeman, 407 Mass. at 282. The Defendant’s challenge is based on the adequacy of the evidence presented to the grand jury.

## ARGUMENT

### **I. The Commonwealth presented sufficient evidence from which the grand jury could infer the Defendant “willfully” interfered with criminal proceedings.**

G.L. c. 268 § 13B prohibits the willful misleading of jurors in a criminal proceeding. The Defendant contends that “(w)illfulness requires a showing that the defendant intended both the conduct and its harmful consequences” Commonwealth v. Schuchardt, 408 Mass. 347, 352 (1990). In the present case, the Defendant willfully testified that she had a Master’s degree in chemistry when she had no such degree. The grand jurors were presented with a total of fifteen transcripts where the Defendant, under oath, made this claim. From the record of her academic transcript admitted into evidence, it is clear that the Defendant did not have a Master’s in Chemistry. Other evidence presented proved that she proactively maintained the fabrication. The Defendant was sent an email from her lab supervisor requesting an updated resume. In the response she sent back to her supervisor, there was no mention of a Master’s degree. Six days later, at the request of a prosecutor, the Defendant sent the prosecutor a resume indicating that she had a Master’s in Chemistry from the University of Massachusetts.

Under the statute, the analysis then shifts to the consequences of her actions. By embellishing her qualifications to prosecutors, defense attorneys, judges, and jurors, the Defendant was bolstering her credibility as a witness. Presented to the jurors as an expert witness in drug analysis, such misrepresentation does great harm to the fact-finding process. The grand jurors heard testimony of the Defendant’s conscious action of falsely stating that she had a

Master's degree. The grand jury could infer based on all of the transcripts introduced, and specific testimony highlighted, that the Defendant intended to mislead the prosecutors, defense counsel, judge, and jury about her qualifications and intended the consequences. Appearing more qualified or educated before the court was the direct result of her fabrications regarding her education and achievements, and this in turn, improperly bolstered her credibility as a chemist.

The Defendant's intention to fabricate her academic background and qualifications is further highlighted by her testimony in the Pineda trial when compared to her testimony in the Charlton trial. The grand jurors heard the drastic change in the Defendant's testimony regarding how many samples she had tested. In May of 2009 she testified she had only tested "hundreds" of samples. In her August 2009 testimony, the Defendant testified she had tested "thousands" of samples. She went on to testify in August that she tested approximately a hundred samples a week. This example of the Defendant's shifting testimony clearly highlights the Defendant's intentional misrepresentations regarding her qualifications as an expert witness. The grand jurors were presented with ample evidence to make this inference, and find probable cause that the Defendant willfully misled the jurors.

**II. The Commonwealth presented sufficient evidence from which the grand jury could infer the Defendant's specific intent to mislead jurors.**

The Supreme Judicial Court has officially adopted a definition of "mislead," as used in G.L. c. 268 § 13B, that mirrors the federal definition of "misleading conduct," as used in 18 U.S.C. § 1512(b). Commonwealth v. Figueroa, 464 Mass. 365, 371-73 (2013). That definition declares that "knowingly making a false statement" qualifies as misleading conduct. 18 U.S.C. § 1512(b). In Commonwealth v. Fortuna, the Appeals Court held that the defendant lied to police officers during their immediate investigation of the defendant's shooting was sufficient to show

the defendant's intent to mislead the officers. 80 Mass. App. Ct. 45, 50-51, review denied, 460 Mass. 1114 (2011).

Importantly, the Defendant does not contest that she knew, at the time of her testimony, that she did not possess the educational qualifications that she claimed she had during her testimony before the fact finders in the above-referenced trials. Furthermore, the Commonwealth submitted extensive evidence to the grand jury showing that the Defendant falsely testified as to her educational credentials and that she did so knowingly. Such a showing is sufficient to establish the Defendant's specific intent to mislead the jurors as to her educational qualifications. The testimony in Commonwealth v. Blue showed the grand jurors how both the defense and the prosecution relied on the Defendant's misrepresentation about her qualifications in their arguments concerning the credibility of the drug analysis. Blue provides evidence for the grand jurors to infer the damage that the Defendant's fabrication could inflict on the fact-finding process in a criminal trial. Contrary to the Defendant's argument that there is no evidence showing that the Defendant had a specific intent to mislead the jurors, the jurors could find probable cause that the Defendant willfully mislead the fact finders in the above-referenced trials regarding her qualifications as an expert witness.

The Defendant's contention that there was no evidence that the Defendant "intended harmful consequences" from her actions is beside the point. Whether or not the Defendant herself would put the label of "harmful" on her actions, there is little doubt that she willfully testified falsely, and that this false testimony is per se harmful to the integrity of the judicial proceedings.



**III. Misleading the fact finder as to the educational qualifications of an expert witness interferes with the criminal proceedings.**

“The jury’s function, vis-à-vis an expert witness, is to assess the soundness and credibility of his opinions....One factor in assessing the strength of expert testimony is the expert’s knowledge and experience. A jury may properly evaluate that knowledge and experience in deciding what weight to give the opinion when reaching a final decision.” Leibovich v. Antonellis, 410 Mass. 568, 573 (1991). “ ‘The crucial issue,’ in determining whether a witness is qualified to give an expert opinion, ‘is whether the witness has sufficient education, training, experience and familiarity with the subject matter of the testimony.’ ” McCarthy v. Quirk Nissan, Inc., 2009 Mass. App. Div. 159 (Dist. Ct. 2009)(quoting McLaughlin v. Selectmen of Amherst, 422 Mass. 359, 361–362 (1996))(citations omitted). In the above-referenced trials, the Defendant was called to testify about her examination of the controlled substances introduced at trial. The Defendant’s education and training directly affects the weight of her testimony regarding the accuracy of the testing, and the quality control procedures utilized during testing.

By lying to the fact finders about her educational credentials, the Defendant interfered with the fact finder’s ability to properly assess and weigh the credibility of the evidence she presented. The Defendant testified as an expert on chemistry. In Massachusetts, chemists are not required to submit to a preliminary finding of qualification by the trial judge. Campbell v. Cape & Islands Healthcare Services, Inc., 81 Mass. App. Ct. 252, 259-60, review denied, 462 Mass. 1102 (2012)(discussing the judge’s role as “gatekeeper” for the jury’s exposure to expert testimony). Such a policy implicitly indicates the Commonwealth’s general regard for people in the chemistry profession and indicates a certain level of respect that these professionals are afforded in the eyes of the court. This practice also leaves the finders of fact with the sole responsibility for considering the evidence presented through such witnesses in the context of all

the facts presented at trial. If the Defendant were merely a lay witness, perhaps one could conclude that her fabrication was not an intentional interference with the fact finding process. But given her status as an expert, the grand jury could find probable cause that the Defendant did indeed have the intent to interfere in the fact-finding process by improperly bolstering her testimony.

The Defendant's false statements regarding her level of education and, hence, her training and experience with the subject matter on which she was testifying, compounded an already implicit presumption as to the credibility and weight of her testimony. Such misrepresentation and distortion of the fact finding process in a criminal trial cannot in any way be said to be harmless. The fabrication of her education misled the finders of fact as to her qualifications and interfered with the jurors or judge in a bench trial the ability to properly assess "the soundness and credibility" of her opinions. 410 Mass. 568 at 573.

### CONCLUSION

The Defendant's presentation of false testimony was intentionally misleading to the jurors at the trials of Commonwealth v. Raymond Garcia, Commonwealth v. Rony Neves, Commonwealth v. Leo McLaughlin III, Commonwealth v. Craig Charlton, Commonwealth v. Rony Neves, Commonwealth v. Donta Hood, Commonwealth v. Robert Annuziata, Commonwealth v Isa Fernandes, Commonwealth v Geromino Alomar, Commonwealth v Harold Pierre, and Commonwealth v Jean Pierre. Misleading judge or jury, by definition, interferes with criminal proceedings. The intent to mislead the fact finder, then, indicates nothing less than an intent to interfere with criminal proceedings. By testifying that she had a Master's degree, the

Defendant has misled the fact finder by improperly bolstering her credibility, and therefore, improperly bolstering their perception of her as a witness.

The chemical analysis of any unlawful substance is at the heart of the criminal trial when a defendant is on trial for the possession or distribution of said substance, the Defendant's testimony is therefore material to the testing of the drugs. The Commonwealth presented sufficient evidence for the grand jurors to find probable cause that the Defendant willfully misled the petit jurors or judge in a bench trial during the criminal trials of Commonwealth v. Raymond Garcia, Commonwealth v. Rony Neves, Commonwealth v. Leo McLaughlin III, Commonwealth v. Craig Charlton, Commonwealth v. Rony Neves, Commonwealth v. Donta Hood, Commonwealth v. Robert Annuziata, Commonwealth v Isa Fernandes, Commonwealth v Geromino Alomar, Commonwealth v Harold Pierre, and Commonwealth v Jean Pierre with the requisite intent to interfere with the proceedings. As reasons set forth, the Commonwealth asks this Honorable Court to deny the Defendant's Motion to Dismiss.

Respectfully Submitted  
For the Commonwealth,

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May 31, 2013

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COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT DEPARTMENT  
INDICTMENT NO: 2012-11155

COMMONWEALTH

v.

ANNIE DOOKHAN

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COMMONWEALTH'S SENTENCING MEMORANDUM

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Now comes the Commonwealth in the above-captioned matter and respectfully provides this Honorable Court with the instant sentencing memorandum in order both to explain the Commonwealth's sentencing recommendation and to aid the Court in sentencing the defendant.

Commonwealth's Recommendation

The Commonwealth contends that the defendant's actions that are the subject of the above indictments warrant substantial incarceration in State Prison. For eight counts of Tampering with Evidence, one count of Perjury, one count of Falsely Claiming to Hold a Degree, and seventeen counts of Obstruction of Justice, the Commonwealth recommends that the defendant be sentenced to 5-7 years in State Prison with a 5 year probationary term to run on and after the period of incarceration.

Factual Background

This case arises from an investigation into allegations of the defendant's criminal conduct at the Hinton State Lab in Jamaica Plain, Massachusetts. The investigation revealed that the defendant had tampered with the results of several drug samples from a number of pending criminal cases. She also falsely testified in six different counties that she had obtained a Master's degree in Chemistry from the University of Massachusetts. The Statewide Grand

Jurors indicted the defendant on eight counts of Tampering with Evidence (Ch. 268 §13E), one count of Perjury (Ch. 268 §1), one count of Falsely Claiming to Hold a Degree (Ch. 266 §89), and seventeen counts of Obstruction of Justice (Ch.268 §13B).

The defendant, Annie Dookhan, was employed as a chemist in the drug analysis unit of the Hinton State Lab in Jamaica Plain, which tested drug evidence submitted by law enforcement agents from across the state. The defendant was hired as a Chemist I in 2003, promoted to Chemist II in 2005, and resigned in March of 2012. In her capacity as a chemist, the defendant would analyze drug evidence and, at times, testify in court as to her findings.

Until June of 2011, Dookhan's work product was considered exemplary, and her productivity consistently among the highest of her co-workers. In June, however, a problem was discovered with the defendant's work. An evidence officer at the lab was in the process of scanning drug samples back into the drug safe when she noticed that 90 samples of drugs had not been properly scanned out of the drug safe and that no chemist appeared to be assigned to the samples. Although the defendant's name appeared on the control card as the primary chemist, in the evidence log book there was no indication that an evidence officer had signed out the drug samples to her, as was the standard protocol. On June 20, three of the defendant's supervisors met to discuss the problem and they took note of the problem, that is, that there were no evidence officer initials in the log book for those 90 samples.

The next day, when the defendant was confronted with the log book, her supervisors were surprised to see that the initials of evidence officer Gloria Philips were now in the log book. The defendant denied knowledge of any discrepancies with the log book. She claimed to not remember how the samples got into her possession in the first place. The defendant, however, later confessed to investigators that she had in fact written in Gloria Phillips' initials. During the

investigation, it was determined that the defendant regularly failed to follow proper protocols for signing out drug samples from the evidence room, and in fact tampered with evidence by forging the initials of an evidence officer to cover-up her misconduct.

In July of 2012, pursuant to recently enacted legislation, control of the drug lab was transferred from the Department of Public Health to the Executive Office of Public Safety and Security. As a result of this transfer, a more extensive investigation into the defendant's practices was initiated by the State Police. Massachusetts State Police investigators interviewed all the employees of the lab and questioned them about the defendant's lab practices. The defendant was interviewed by investigators on August 28, 2012 and she admitted to "dry labbing" some of the samples. "Dry labbing" is the term used for the practice of merely visually identifying samples instead of performing the required chemical test on them to determine if the sample was in fact a controlled substance. Investigators learned that the defendant would assemble multiple drug samples from different cases that appeared to be the same substance. She would then perform the chemical tests on a few of the samples to verify that the samples were in fact the drug she believed they were, and, if those were positive, she would certify that all the other, sometimes unrelated, samples were positive as well without performing the necessary chemical tests.

Also, it was standard practice for a small amount of a drug sample to be mixed into a vial by the primary chemist and then sent to a second testing stage to confirm the initial results. If the second test does not confirm the initial results, the vial is sent back to the primary chemist to concentrate and resubmit. When samples were sent back to the defendant at this stage, however, she tampered with the vials before resubmitting them in order to make them consistent with the inaccurate and positive results reached as a result of her "dry labbing." Recent testing done on

these samples by the Massachusetts State Police Crime Laboratory corroborates these allegations. Indeed, investigators were able to retest samples only because the defendant always altered the substances while they were in the testing vials. She did not alter the original samples.

The Commonwealth identified six specific instances where the defendant tampered with the testing vials. Five of those cases originated in Suffolk County: Jeffrey Banks, Paul Flannelly, Stephen Goudreau, Paul Reeves, and Michael Vasquez. One case is from Bristol County: Eliezer Santiago. In the case of Jeffrey Banks, the drug certificate generated and sworn to by the defendant that the substance was cocaine was submitted to a Suffolk County grand jury. The grand jury relied on the drug analysis to indict Banks.

In a review of the defendant's work emails, investigators found a discovery packet that had been emailed to a prosecutor in a pending criminal case that contained an altered test. In that packet, the defendant submitted a print-out for a test designed to quantify the drug sample. In organizing the discovery information, it appears that the defendant realized that she had not printed out, or indeed never ran, the quantifying analysis. To obscure this omission, the defendant ran the test using the case sample number and submitted it with the discovery packet. The defendant obliterated the notation of the date on which the test was run. This particular machine has no capacity to save past analyses and the print date on the bottom of the document states May 5, 2011, nearly six months after the drug samples were returned to the submitting police agency. Again, the sample was not contaminated; in fact, it was no longer at the lab when this test was performed.

Also, in fourteen separate criminal trials, the defendant testified as an expert witness regarding her job as a chemist in the drug lab. While under oath, she stated that she had a Master's degree in Chemistry from the University of Massachusetts at Boston. This testimony

was relied upon to establish a foundation both for the defendant's credibility as an expert and the reliability of the drug certificate admitted into evidence. Further investigation revealed that the defendant did not in fact hold a Master's degree in Chemistry from the University of Massachusetts, nor was she ever enrolled as a student in Master's level classes.

The defendant also perjured herself during her testimony in the Suffolk County trial of Commonwealth v. Blue. In that case, the defendant testified that she had a Master's in Chemistry and was in charge of quality control. A review of the questioning by the prosecuting and defense attorneys, as well as their closing arguments, reveals that the defendant's qualifications were a material fact in the trial, where each attorney relied on that fact to support his respective position at trial.

#### **Sentencing Considerations**

The sentence in any criminal case should reflect the judge's careful weighing of several important goals: "punishment, deterrence, protection of the public and rehabilitation." Commonwealth v. Goodwin, 414 Mass. 88, 92 (1993), citing Cepulonis v. Commonwealth, 384 Mass. 495, 499 (1981). A trial judge is permitted "great latitude" in sentencing. Commonwealth v. Celeste, 358 Mass. 307, 310 (1970). The "nature of the offense and the circumstances surrounding the commission of the crime" serve as the starting points to generating a fair and just sentence. Commonwealth v. Coleman, 390 Mass. 797, 805 (1984).

The defendant here is charged with intentionally tampering with evidence in a criminal case. The evidence suggests that the defendant's motivation for her actions was purely self-interested. Indeed, the defendant deliberately altered the results of drug analyses of at least six individuals to cover her own mistakes. Seeking to improve her productivity and burnish her reputation at work, the defendant deliberately skipped vital steps in the drug testing process.



With no regard for the consequences, the defendant ensured that samples would test positive for controlled substances thus eviscerating both the integrity of the lab's internal testing processes, and the concomitant fact finding process that was a jury's to perform.

Beyond the tampering of the drug samples, the defendant is charged with perjury and misleading the fact finders at trial. Again, her motives were purely self-serving. The defendant falsely bolstered her credentials and experience to appear more qualified than she actually was. In apparently believing that a Master's in chemistry sounds more impressive than a Bachelor of Science, the defendant betrayed a public trust.

Further, in addition to the case-specific facts readily available to a trial judge, "the judge may consider many factors which would not be relevant at trial including hearsay information about the defendant's character, behavior, and background." Commonwealth v. Goodwin, 414 Mass. at 92. Although a sentencing judge may not punish a defendant for conduct other than that for which he has been convicted, untried conduct is relevant for the purpose of fashioning an appropriate individualized sentence. Commonwealth v. Goodwin, 414 Mass at 93. Uncharged or untried conduct may be considered as bearing on the defendant's character, the likelihood of rehabilitation, and the type of punishment to be imposed by the sentencing judge. Commonwealth v. Stuckich, 450 Mass. 449, 461-462 (2008).

The gravity of the present case cannot be overstated. The defendant's actions not only affected the particular individuals named in the indictments but also the entire criminal justice system in Massachusetts. Her malfeasance has not only potentially affected every drug sample that the defendant is believed to have handled at the Hinton Lab, but her misconduct has helped to engender public mistrust in the criminal justice system by impugning the role of the government witness in a criminal trial and undermining the integrity of evidence admitted at

those trials. This level of mistrust now becomes an issue in every criminal trial for every defendant for both the Commonwealth and the defense.

The Commonwealth has spent hundreds of millions of dollars, both in attempting simply to make an accurate assessment of the scope of the defendant's damage, and in attempting to mitigate the effect on the thousands of individuals charged with drug offenses in the past decade. These monies have been spent on funding for reports and investigations to ascertain the damage and to determine which individuals were actually affected by the defendant's conduct. Additionally, the budgets of both prosecution and defense offices have been supplemented to meet the demands of the thousands of new collateral and trial motions filed by potentially affected individuals. Police departments are forced to pay overtime due to the influx of newly-released people into the communities, particularly in the city of Boston. Finally, the stress on the criminal justice system caused by the deluge of motions and hearings has substantially drained the resources of the courts.

Equally important is the impact on public safety. A direct consequence of her malfeasance is the dismissal of the criminal cases upon which the defendant's indictments were predicated. One defendant, Donta Hood, was released and is now charged with murder. In Mr. Hood's case, the defendant testified falsely at his trial that she had a Master's degree in chemistry. At least fifty other defendants who have been released due to Dookhan's wrongdoings have been re-arrested for other crimes.

#### Conclusion

The Commonwealth's recommendation of 5-7 years in State Prison with a 5 year probationary term to run on and after the State Prison sentence is founded not only upon the serious nature of the crime, but also on the concerns of the public, which the Commonwealth

represents. Generally, a substantial period of incarceration is required as a general deterrent to others and, more importantly, as a means of expressing societal disapproval, or "punishment" of the defendant for her criminal behavior. See Commonwealth v. Therriault, 401 Mass. 237, 242 (1987) (stating "this court has recognized that punishment served other societal interests, including isolation and incapacitation, retribution and moral reinforcement, and reformation"). The total costs to rectify Dookhan's actions have climbed into the millions with no end in sight, and the financial aspect does not even address the loss of liberty of affected individuals, the significant deleterious effect on the safety of the public, or the breakdown of public trust in the system. Given that the motives for the Defendant's actions were selfish and shallow, coupled with the egregious damage she created for those reasons, significant incarceration is warranted. The sentence imposed by this Court should punish the Defendant accordingly.

The Commonwealth makes this recommendation in contemplation of the defendant accepting responsibility and pleading guilty. The Commonwealth recognizes that its recommendation is outside the Sentencing Guidelines, which call for an incarceration range of twelve to thirty-six months. The Defendant's lack of criminal history and the non-violent nature of her offenses naturally reduce the sentence contemplated by the guidelines. However, the maximum sentence for Tampering with Evidence and Obstruction of Justice contemplated by statute is a maximum sentence of ten years in State Prison while Perjury carries a maximum of twenty years in State Prison. Therefore, the Sentencing Guidelines are of limited use in this case which involves aggravating factors such as the extensive collateral repercussions discussed *infra*. Given the significant gulf between the Sentencing Guidelines and the maximum sentence permitted by law, this Court should fashion its sentence based on the traditional and appropriate


considerations of punishment, deterrence, protection of the public and rehabilitation, as detailed above.

Respectfully Submitted  
For the Commonwealth,

MARTHA COAKLEY  
ATTORNEY GENERAL

Date: October 17, 2013

By:

  
\_\_\_\_\_  
Anne Kaczmarek  
John Verner  
Assistant Attorneys General  
Office of the Attorney General  
One Ashburton Place  
Boston, MA 02108  
617-727-2200

304

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT  
CRIMINAL ACTION  
NO. 12-11155

COMMONWEALTH

v.

ANNIE DOOKHAN

---

SENTENCING DECISION  
RE-PROPOSED GUILTY PLEA

---

After consideration of the submissions of the parties and the arguments of counsel before this judge on October 18, 2013, I have decided that, if the defendant were to plead guilty before me, I would not exceed a sentence of three to five years in state prison, with a probationary term to follow, without allowing Ms. Dookhan to withdraw her change of plea. Probation would be for a period of two years and, if she is paroled short of five years, the probation would be unsupervised while she is being overseen by a parole officer.

I have reached this decision mindful of the uniqueness of this case and the extremes presented. On the one hand the defendant presents as a tragic and broken person who has been undone by her own ambition. The Commonwealth concedes that her criminal behavior was driven by nothing more than a desire to be recognized as a productive employee. On the other hand, the consequences of her behavior, which she

*Filed*  
*10-23-13*

ought to have foreseen, have been nothing short of catastrophic: innocent persons were incarcerated, guilty persons have been released to further endanger the public, millions and millions of public dollars are being expended to deal with the chaos Ms. Dookhan created, and the integrity of the criminal justice system has been shaken to the core.

It is certainly true that Ms. Dookhan has no prior record, that her disabled child will become another victim of her crimes upon her incarceration, and that the guidelines call for a sentence of but twelve to thirty-six months at the high end. However, given the magnitude of the harm she has done, considerations of general deterrence and, particularly, punishment dictate a significantly harsher sentence.

By the court,

Carol S. Ball JSC  
Carol S. Ball  
Justice of the Superior Court

Date: October 23, 2013

**Commonwealth of Massachusetts  
County of Suffolk  
The Superior Court**

CRIMINAL DOCKET#: **SUCR2012-11155**

RE: Commonwealth v Dookhan, Annie  
TO: Nicolas A Gordon, Esquire  
200 Chauncy Street  
Mansfield, MA 02048

*Copy  
10/23/13  
①*

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**NOTICE OF DOCKET ENTRY**

You are hereby notified that on 10/23/2013 the following entry was made on the above referenced docket:

**Sentencing Decision Re-Proposed Guilty Plea, filed. (Ball, J.).**

Dated at Boston, Massachusetts this 23rd day of October, 2013.

Maura A. Hennigan,  
Clerk of the Court

Assistant Clerk

Telephone: 617-788-8101

Disabled individuals who need handicap accommodations should contact the Administrative Office of the Superior Court at (617) 788-8130

## MISCELLANEOUS





The Official Website of the Governor of Massachusetts

## Governor Deval Patrick

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DEVAL PATRICK  
GOVERNOR

For Immediate Release - November 05, 2012

TIM MURRAY  
LIEUTENANT GOVERNOR

### GOVERNOR PATRICK ANNOUNCES INSPECTOR GENERAL GLENN CUNHA TO TAKE OVER DRUG LAB REVIEW

#### Media Contact

Kim Haberlin  
Bonnie McGilpin  
Mary-Leah Assad  
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With support of prosecutors and defense bar leaders, Cunha will be responsible for independent review of Hinton drug lab practices and operations

BOSTON – Monday, November 5, 2012 – Governor Deval Patrick today announced that Inspector General Glenn Cunha will take over the review of the Hinton Drug Laboratory's operations from the Attorney General's Office. The Governor called for an independent assessment of the drug lab to complement the ongoing criminal and central office investigations into chemist Annie Dookhan's wrongdoing and to determine whether the lab's failures are limited to Dookhan and her supervisors and managers, all of whom have been removed from their positions.

"Inspector General Cunha brings the necessary independence and experience to the task and enjoys the support of both prosecutors and the defense bar," said Governor Patrick. "I look forward to his findings."

"The integrity and credibility of the criminal justice system require a comprehensive and thorough review of the drug lab," said Inspector General Cunha. "My office is prepared to conduct such a review and to that end, I have already begun to assemble an experienced team to examine the lab's operations, paying particular attention to its policies and procedures."

"The Massachusetts Bar Association applauds Governor Patrick for his quick and decisive action in appointing Inspector General Cunha to conduct an independent investigation of the drug lab," said Martin Healy, Chief Legal Counsel to the Massachusetts Bar Association. "We are pleased that the Governor has selected the Inspector General, who has the experience and strong investigatory tools at hand to thoroughly examine the matter."

Inspector General Cunha will begin his work immediately. He plans to combine current staff and investigatory resources with the retention of independent forensic experts to determine whether potential failures at the drug lab impact cases beyond those handled directly by Dookhan. Alongside this review, Attorney David Meier is leading the central office the Governor established and is working collaboratively with prosecutors, defense attorneys, the courts, and other impacted agencies to oversee the identification of defendants whose cases may have been adversely affected by Dookhan. Meier has identified upwards of 1,900 cases to date, and has been sharing that information with prosecutors and defense attorneys so that they can make informed decisions about each defendant.

The IG's review and the central office are among the series of responsive and corrective steps the Administration has taken since Dookhan admitted to law enforcement that she mishandled evidence toward the end of her nine-year career. The Governor ordered the lab's immediate closure on August 29 and since then the Administration has been in regular contact with effected parties, urging collaboration and reiterating the Governor's commitment to preventing potential miscarriages of justice, assigning accountability and restoring integrity to the drug lab's work. The Massachusetts State Police are now responsible for all state drug sample testing and the Administration has filed a supplemental funding request with the Legislature to cover costs associated with case review, court hearings, public safety programs and other efforts to respond to the drug lab's failures.

Prior to being named Inspector General in July, Cunha served as Chief of the Insurance & Unemployment Fraud Division and Managing Attorney of the Criminal Bureau in the Attorney General's Office. In the latter role, he oversaw the management of eight divisions, supervised division chiefs and worked closely with the State Police Detectives Unit assigned to the Attorney General's Office. He supervised investigations and prosecutions relative to financial fraud, probation, lottery, fraudulently-produced MBTA passes, human trafficking, child pornography and a case of complex fraud by a charity organization. At the same time, Cunha also managed a caseload of public corruption matters, including investigations of the Middlesex Sheriff's Department, Medford Housing Authority, and Chelsea Housing Authority.

###

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COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPREME JUDICIAL COURT

ORDER

This Order is issued to facilitate the handling of matters related to allegations of misconduct at the William A. Hinton State Laboratory Institute. To further the expeditious handling of such matters, and notwithstanding any provisions to the contrary in any Rule of Court or Standing Order, it is hereby ORDERED that a Chief Justice of a Trial Court Department may assign for all purposes, including disposition, any post conviction motion in which a party seeks relief based on alleged misconduct at the Hinton State Laboratory to any judge of that Trial Court Department. The assigned judge may reassign the motion to the original trial judge where the interests of justice require.

This Order is effective immediately and shall remain in effect until further Order of this Court.

RODERICK L. IRELAND Chief Justice

FRANCIS X. SPINA )

)

)

ROBERT J. CORDY )

)

)

MARGOT BOTSFORD )

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Justices

)

RALPH D. GANTS )

)

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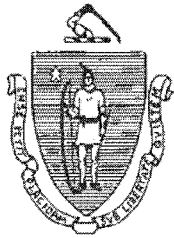
FERNANDE R.V. DUFFLY )

)

)

BARBARA A. LENK )

DATE: NOVEMBER 9, 2012



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Crime Lab Testimony of the Committee for Public Counsel Services  
Anthony J. Benedetti, Chief Counsel  
Presented before the  
House Committee on Post Audit and Oversight  
Joint Committee on Public Health  
Joint Committee on Public Safety & Homeland Security  
December 12, 2012

Chairman Linsky, Chairman Naughton, Chairman Sanchez, and members of the Committee thank you for inviting me to testify before you today. My name is Anthony Benedetti and I am the Chief Counsel for the Committee for Public Counsel Services (CPCS).

As you know, CPCS is the state agency constitutionally and statutorily mandated to provide representation for indigent persons in Massachusetts which includes the right to counsel for those charged with a criminal offense. We are deeply troubled by the scandal at the William Hinton State Laboratory (Hinton Lab) and the impact it is having on our justice system. We are especially troubled that the pervasive misconduct may have resulted in the violation of the fundamental rights of thousands, specifically the right to a fair and reliable adjudication of the charges brought against them. Many of these individuals have been convicted when they should not have been. Many have had to serve longer sentences as a result of drug weights being altered by Hinton Lab chemist Annie Dookhan. Many have suffered not only unjust imprisonment, but have also been subjected to severe collateral consequences, including job loss, exclusion from public housing, loss of federal student aid, termination of parental custody, and deportation.

The primary goal in trying to rectify this unprecedented scandal must be to ensure that every single individual affected by this breakdown in the criminal justice system is afforded the relief that he or she deserves. This needs to be accomplished in the fairest, least burdensome, and most expedient way possible. Only if every single individual is afforded relief will the Commonwealth be able to restore public confidence in the criminal justice system.

When CPCS first learned last summer about the extent of Annie Dookhan's egregious mishandling of suspected drug evidence, we took the following steps:

- 1 We asked our staff attorneys and the private bar to search through past cases to try to locate any that were handled by Dookhan and to identify the original counsel assigned to each case.
- 2 We contacted district attorneys in impacted counties and asked them to share with us any docket numbers and drug certifications, the true names of defendants who were only identified by nicknames or aliases, and the names of any codefendants involved in cases who were not already identified.
- 3 We set up a hot line for anyone who believed they had been wrongly convicted by misconduct at the Hinton Lab to call to obtain legal assistance.

Not long after we began these initiatives, we were invited to be a participant in the "Boiler Room" set up by Governor Patrick to assist in identifying individuals whose cases have been tainted. Although the job of accurately identifying these individuals is still proving to be extremely challenging, the initial meetings brought all relevant parties together and set the stage for collaboration.

In addition, CPCS met with all levels of the Trial Court – Superior, District, and Boston Municipal – to discuss best procedures to handle these cases and be fully informed of the Court's decision on the scheduling of initial hearings. We established teams in every county so that bar advocate programs and public staff attorneys were prepared for these hearings and we introduced a training module to educate our attorneys on how to handle these unique cases.

As more information on the scandal was released, CPCS became aware of the incredible magnitude of the problem. Like others, we were stunned by the initial assessment that Dookhan was associated with over 34,000 cases, most of which involve CPCS clients. Regrettably, as more facts emerged through the distribution of discovery compiled by the state police investigation we discovered that in addition to the intentional fraud committed by Dookhan in her own cases, there was also opportunity for her to affect results produced by other chemists throughout the lab. The information revealed system-wide defects in security, reporting, QA/QC, and oversight. It exposed a lax laboratory culture that not only permitted Dookhan's conduct, but allowed other inconsistencies and inaccuracies to flourish, which inevitably tainted the entire Hinton lab.

Details of the specific misconduct related to Dookhan, and the lax policies and procedures at the Hinton lab are numerous. Facts gleaned from the discovery reveal information that is clearly exculpatory. With the disclosure of exculpatory information, individuals must be afforded the right to argue to have their convictions overturned because of the tainted evidence. Examples of some of the exculpatory information revealed thus far:

- Dookhan prepared false drug reports without doing any testing, what is referred to as "dry-labbing."
- Dookhan accessed the evidence safe unsupervised and apparently had the key to do so her entire career at the Hinton Lab. This of course gave her the opportunity to contaminate, alter, or in any way tamper with any sample in the lab.
- Dookhan intentionally contaminated drug samples to get the result that she wanted, including comingling of samples. She could easily have done the same to any other sample in the lab to which she had access.
- The security system for the lab was very lax and not at all secure. There were frequent gaps in evidence room coverage and absences. The evidence safe was left unattended and open at times. This was attested to by multiple chemists and evidence officers in their interviews in the state police investigation.
- Based on the discovery we know that chemists' keys opened the evidence safe. We know that Dookhan accessed the safe unsupervised and it is unclear which other chemists knew their keys opened the safe.
- The discovery says that there were times when the evidence safe was overflowing with samples and so they could not be properly stored in the safe at all. This immense backlog existed for most of Dookhan's time in the lab and resulted in Middlesex county samples being officially reassigned to the Massachusetts State Police Lab in Sudbury.

- Chemists kept multiple samples of drugs from multiple cases in their own work lockers for weeks and months at a time. There is no documentation to prove that these were stored in a manner that would prevent contamination.
- Dookhan kept multiple cases open at her work bench at the same time. She would "batch" samples by taking out large groups of the same drug and attempting to analyze them all at once. It is easy for drug particles to become airborne and to contaminate other samples not only on the same bench, but even within the same lab.
- Additionally, we know that at times she wouldn't test all of the samples but just test some of them. A confirmatory chemist would then analyze the samples to confirm and if one sample came back negative, they would just send it back to Dookhan to retest. There are no records of when or how often this happened. She admits that as a result of her "dry-labbing" she went back and doctored results and this batch-testing process presents the same dynamic for fraud.
- When performing the role of the preliminary chemist, Dookhan would seemingly do as much of the job of the confirmatory chemist as she could and then forge the initials of the confirmatory chemist on this preparatory work.
- Finally, the Hinton Lab standard operating procedures did not include an acceptable level of comprehensive quality assurance (QA) and quality control (QC) policies and procedures, and insufficient documentation that any procedures were followed.

In light of this discovery, CPCS realized that the potential number of tainted cases could be far greater than the 34,000 that was initially discussed. To try to determine the potential number and in turn how many cases CPCS may have to handle (provide counsel for) we had to perform a budget and staffing assessment.

We began by running a report from our private attorney billing records for the years 2003 to 2012 requesting the number of cases (NACs) that had any drug charge issued in the eight counties served by the Hinton Lab. The report revealed that there were a total of 182,111 such cases. After factoring in an estimate for the number of cases handled by staff attorneys and an estimate of the number of Middlesex County drug cases in or after 2009 that were not tested at the Hinton Lab, we concluded that our possible exposure – the universe of cases out of the Hinton lab – was approximately 190,000 cases. That said, of the estimated 190,000 cases, some may have been conducted by the state police in conjunction with local law enforcement and tested at the State Police Lab and not at Hinton. Our understanding is that only investigations that involved multiple police departments or crossed county lines would have gone to the State Police Lab. If this proves true, our projected universe would be somewhat smaller.

CPCS disclosed this number to the Executive Office of Administration & Finance (ANF) at the end of October in response to their request for an assessment of our initial and projected related costs. In presenting the information to ANF we divided the nature and costs into three categories – work and costs associated with an initial assessment of the 7,500 cases that we knew of at the time of the request, work and costs related to the later acknowledged 34,000 cases, and the possible work and costs generated by the worst case scenario, the need for counsel to individually litigate 190,000 cases. The total number of cases that will be individually litigated will, in large part, be dependent on prosecutorial decisions. The number of cases the district attorneys choose to litigate, rather than dismiss, will determine the number of cases where CPCS will have to appoint counsel and, ultimately, the total cost. Shortly after providing this information to ANF, we delivered and discussed it with the staff of the House and Senate Committees on Ways & Means, Leadership in both branches, and several members of this Committee.

To help you better understand how we built our assessment of the potential work and related costs, both long and short term, I am submitting to the Committee an outline of our initial assessment of the nature and costs related to the Hinton Lab and a related spreadsheet.

No one knows exactly how many cases this scandal will ultimately generate. To date, a universally accepted methodology to determine the total number has not been established. CPCS firmly believes that informing the Administration and the Legislature of our projected possible universe of cases and the potential costs related to this worst case scenario was the best, most honest position from which to start, especially because CPCS will have no control over the number of cases litigated. To present a smaller, more palatable, but inaccurate number, and then be required to request additional assistance as this smaller, less troublesome number grows, would be misleading and much less productive.

The most critical decision that will drive the overall number of cases and ultimately the cost, as I mentioned above, will be made by the District Attorneys of the Commonwealth. The DAs must find a cost-effective alternative to a case-by-case adjudication of all cases to avoid protracted litigation of thousands of cases over several years and their related costs. A case-by-case adjudication will result in staggering costs to taxpayers without any substantial benefit. For instance, in cases where defendants have served more than half of their sentences, District Attorneys should resolve the cases by dismissals. In cases where Ms. Dookhan analyzed the samples and individuals are not also charged with a violent crime or a weapons offense, District Attorneys should resolve the cases by dismissals.

If the District Attorneys in each county impacted by tainted drug samples exercise their discretion in this manner, then the time and cost associated with these cases will be diminished greatly and justice will be well served. While some cases will certainly require individual treatment, many others demand a broad-based approach, and one that will assure consistency and provide justice to those convicted on tainted evidence while at the same time save taxpayer dollars. A broad based approach will substantially reduce the burden on CPCS attorneys, assistant district attorneys and the court system, allowing all to focus on litigating the more serious cases. It will allow public defenders and prosecutors to focus on cases being litigated for the first time, rather than on post-conviction cases where the primary conviction is tainted based on the misconduct of a prosecution witness.

Before closing, I would like to address one last critical issue. It does not resolve the immediate problem created by the Hinton Lab scandal, but it will help to prevent similar problems from occurring in the future. I believe all agree that there must be a process put in place that prevents a recurrence of this debacle. Although the breadth of our problem is unprecedented, sadly, we are not the first state to have issues with the veracity or certainty of samples tested by crime labs. The Innocence Project, a national litigation and public policy organization dedicated to exonerating wrongfully convicted persons, has been documenting cases for years and is leading the fight to establish meaningful oversight of labs in every state across the nation. A number of states have come to rely on autonomous forensic commissions or advisory boards that provide independent and expert review of labs. The assistance provided and the auditing conducted by these independent entities help curtail incidents of misconduct and even reduce incidents of errors that often lead to serious miscarriages of justice.

The Innocence Project reports, and I quote, "improper forensic science is a leading cause of wrongful convictions. In more than 50% of the DNA exonerations nationwide, unvalidated or improper forensic science have contributed to underlying wrongful convictions." Because of this, the Innocence Project encourages states to establish independent panels that include a wide range of experts who understand the needs of the forensic community.

CPCS is committed to helping prevent such a scandal from undermining our criminal justice system ever again. We offer our assistance to work in collaboration with members of your committees, the entire Legislature, the Executive branch, the Court, law enforcement, and the defense community to explore the possibility of an independent board to oversee all crime labs in the Commonwealth. The present situation makes it all too evident that something must be done as we move forward. Only then can Massachusetts be

confident that the misconduct that occurred at the Hinton Lab and the subsequent slow reaction to informing the public of that misconduct will not happen again.

In addition, although some Massachusetts laboratories are accredited, the Hinton Lab was not. In fact, it never was, and its procedures and protocols were generalized and lacked specificity. We urge that action be taken to assure that all Massachusetts crime laboratories are subject to thorough and higher quality system certifications. The Massachusetts State Police Lab is moving toward a higher standard, and should be commended for it. The interests of a balanced and just legal system would seem to dictate that each of the Commonwealth's forensic laboratories be held to the same standards.

We also ask that concerns raised in a report by the National Academies of Science, Engineering, and Medicine be given serious consideration. The report, "Strengthening Forensic Science in the United States: A Path Forward," funded by the U.S. Department of Justice and published in 2009, cautions that crime lab systems administered by law enforcement are problematic and, I quote, "lead to significant concerns related to the independence of the laboratory and its budget." A number of states, among them Connecticut, Virginia and Rhode Island, as well as the District of Columbia and two Texas counties, have established independent crime labs. Other states, such as New Mexico and North Carolina are considering legislation on this matter. While the Massachusetts State Police should be applauded for playing a key role in investigating and exposing the scandal at the Hinton Lab, it does not immunize Massachusetts from problems that arise when labs lack autonomy from law enforcement.

If we truly want to expend the effort and energy to establish safeguards at our crime labs then let us do so in a way that ensures we will not be exposed to future miscarriages of justice. The effort expended in establishing these safeguards will be minimal in comparison to the effort we are all now exerting to undo the miscarriages of justice caused by the lack of oversight at the Hinton Lab. After all, this scandal has revealed much more than just the malfeasance of a single chemist. It has revealed a laboratory-wide cascade of failures. It has uncovered lapses in documentation, oversight, security, and meaningful quality control and assurance. These lapses would seem to have been too numerous to count and that no one in the lab was interested in doing the counting. Indeed, there was no DPH-wide Quality unit, no third-party certifying body, and no state or federal agency whose duty it was to audit any of the procedures and policies that were in place and, most importantly, to make sure they were being followed.

I would like to thank the Committee for inviting me to testify before you today. If you have any questions for me I will do my best to answer them.



## After Dookhan, backlog burdens Sudbury drug lab

By Laura Krantz/Daily News staff

**The MetroWest Daily News**

Posted Mar 10, 2013 @ 12:16 AM

Last update Mar 10, 2013 @ 07:52 PM

### On the Web

Read more about the scandal

SUDBURY — Seven chemists in a MetroWest lab are struggling to keep up with a gargantuan backlog of drug samples that mushroomed from 400 to 14,000 in the seven months since the evidence tampering scandal, police say.

A little-known effect of the Dookhan crisis is the colossal amount of work suddenly shouldered by the police crime lab in Sudbury, which performs the same duties as the now-closed Hinton Laboratory in Jamaica Plain. The lab's backlog has made it difficult for the police to identify the identity of drug samples for police and prosecutors to use as evidence.

Local police evidence officers say the turnaround time for drug sample results has doubled, making them worry it could hamper prosecutors' ability to charge people in drug crimes.

"Oh boy is it taking longer," said Marlborough Sgt. Richard Medeiros, who is still waiting for samples he took to the lab in August.

Before the Dookhan crisis, in which the chemist from Franklin allegedly tampered with drug samples in as many as 100 cases statewide, Medeiros said it took six to eight weeks for the lab, located at 59 Horse Pond Road, to analyze a sample.

"I'm looking at least six months now," he said.

Framingham evidence officer Alan Dubeshter said pre-Dookhan, the turn-around time was six weeks. Post-Dookhan, it's now months.

He takes fewer trips now, going to the Sudbury lab every three weeks instead of every two.

So far the lag hasn't affected police work, Dubeshter said. But he said judges could dismiss court proceedings if evidence isn't analyzed in time.

Franklin and Milford police, who take about 25 samples each month to the Sudbury lab, said they have not noticed a significant increase in turnaround time.

Meanwhile, state police understand the backlog's implications and are working to shrink it.

After the Dookhan investigation unfolded last July, state police transferred 8,000 cases from Jamaica Plain to Sudbury. Massachusetts State Police spokesman David Procopio.

Since then, the Sudbury lab has also taken new drug cases that would have gone to Hinton. The lab analyzes between 100 and 200 drug cases per month, with an average turn-around time of 91 days.

Procopio said the lab has had to prioritize cases because of the increased workload and still has samples from more than 100 cases.



ago.

State police plan to reduce the backlog by hiring more chemists. Seven are training and two more are undergoing ba Procopio said.

"We are devoting increased resources there, which we expect will reduce the backlog and improve turnaround time, email. "That is an important point. Numbers should improve significantly once all new chemists are trained and wo

Chemists from the Jamaica Plain lab will not be allowed to return to work at least until after the state inspector gene operations finishes his review, Procopio said.

District Attorney Gerry Leone, whose office prosecutes many drug criminals, said he is confident the staffing plan w the backlog.

"We remain confident in the ability of the Massachusetts State Police to execute their remedial staffing plan in a way compromise to the time it takes to analyze and process drugs for our usage in presenting our cases in court in a fair, fashion," Leone said in a statement.

*Laura Krantz can be reached at 508-626-4429 or [lkrantz@wickedlocal.com](mailto:lkrantz@wickedlocal.com). Follow her on Twitter [@laurak](https://twitter.com/laurak)*

**Commonwealth of Massachusetts  
ESSEX SUPERIOR COURT  
Case Summary  
Criminal Docket**

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**Commonwealth v Rodriguez, Angel**

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Details for Docket: ESCR2007-00875

**Case Information**

<b>Docket Number:</b>	ESCR2007-00875	<b>Caption:</b>	Commonwealth v Rodriguez, Angel
<b>Entry Date:</b>	06/13/2007	<b>Case Status:</b>	CtRm 3 (Lawrence)
<b>Status Date:</b>	11/18/2013	<b>Session:</b>	Sentence Appeal Pending
<b>Lead Case:</b>	NA	<b>Deadline Status:</b>	Active since
<b>Trial Deadline:</b>	07/19/2007	<b>Jury Trial:</b>	NO

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**Parties Involved**

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2 Parties Involved in Docket: ESCR2007-00875

<b>Party Involved:</b>		<b>Role:</b>	Defendant
<b>Last Name:</b>	Rodriguez	<b>First Name:</b>	Angel
<b>Address:</b>		<b>Address:</b>	
<b>City:</b>		<b>State:</b>	
<b>Zip Code:</b>		<b>Zip Ext:</b>	
<b>Telephone:</b>			

<b>Party Involved:</b>		<b>Role:</b>	Plaintiff
<b>Last Name:</b>	Commonwealth	<b>First Name:</b>	
<b>Address:</b>		<b>Address:</b>	
<b>City:</b>		<b>State:</b>	
<b>Zip Code:</b>		<b>Zip Ext:</b>	
<b>Telephone:</b>			

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**Attorneys Involved**

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8 Attorneys Involved for Docket: ESCR2007-00875

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**Tel Ext:** 617  
**Representing:** Rodriguez, Angel (Defendant)

**Attorney Involved:**  
**Last Name:** Leos  
**Address:** 1 Salem Green  
**City:** Salem  
**Zip Code:** 01970  
**Telephone:** 978-825-2020  
**Fascimile:** 978-741-8567

**Firm Name:** MA150  
**First Name:** Lynette M  
**Address:** Suite 408  
**State:** MA  
**Zip Ext:** 3724  
**Tel Ext:**  
**Representing:** Rodriguez, Angel (Defendant)

**Attorney Involved:**  
**Last Name:** Duran  
**Address:** 15 Commonwealth Ave  
**City:** Woburn  
**Zip Code:** 01801  
**Telephone:** 781-897-8900  
**Fascimile:** 781-897-8901

**Firm Name:** MIDD02  
**First Name:** Denise S  
**Address:**  
**State:** MA  
**Zip Ext:**  
**Tel Ext:**  
**Representing:** Commonwealth, (Plaintiff)

**Attorney Involved:**  
**Last Name:** Barker  
**Address:** 1 Salem Green  
**City:** Salem  
**Zip Code:** 01970  
**Telephone:** 978-825-2020  
**Fascimile:** 978-741-8567

**Firm Name:** MA150  
**First Name:** Amanda L.  
**Address:** Suite 408  
**State:** MA  
**Zip Ext:** 3724  
**Tel Ext:**  
**Representing:** Rodriguez, Angel (Defendant)

**Attorney Involved:**  
**Last Name:** Strasnick  
**Address:** 10 Federal Street  
**City:** Salem  
**Zip Code:** 01970

**Firm Name:** ESSE02  
**First Name:** Jessica M  
**Address:**  
**State:** MA  
**Zip Ext:**

**Telephone:** 978-745-6610

**Fascimile:** 978-741-4971

**Tel Ext:** 5082

**Representing:** Commonwealth, (Plaintiff)

**Attorney  
Involved:**

**Last Name:** Logan

**Address:** 10 Federal Street

**City:** Salem

**Zip Code:** 01970

**Telephone:** 978-745-6610

**Fascimile:** 978-741-4971

**Firm Name:** ESSE02

**First Name:** Ashlee

**Address:**

**State:** MA

**Zip Ext:**

**Tel Ext:**

**Representing:** Commonwealth, (Plaintiff)

**Attorney  
Involved:**

**Last Name:** Ranieri

**Address:** 1 Salem Green

**City:** Salem

**Zip Code:** 01970

**Telephone:** 978-744-9113

**Fascimile:** 978-741-8567

**Firm Name:** MA150

**First Name:** Victoria

**Address:** Suite 408

**State:** MA

**Zip Ext:** 3724

**Tel Ext:**

**Representing:** Rodriguez, Angel (Defendant)

**Attorney  
Involved:**

**Last Name:** Levin

**Address:** 44 Bromfield Street

**City:** Boston

**Zip Code:** 02108

**Telephone:**

**Fascimile:**

**Firm Name:**

**First Name:** Patrick

**Address:**

**State:** MA

**Zip Ext:**

**Tel Ext:**

**Representing:** Rodriguez, Angel (Defendant)

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## Calendar Events

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34 Calendar Events for Docket: ESCR2007-00875

No.	Event Date:	Event Time:	Calendar Event:	SES:	Event Status:
1	07/17/2007	09:00	Arraignment	1	Event held as scheduled
2	08/30/2007	09:00	Conference: Pre-Trial	1	Event held as scheduled
3	10/01/2007	09:00	Hearing: Motion	1	Event not held--joint request
4	11/05/2007	09:00	Hearing: Pre-Trial	1	Event not held--joint request
5	11/21/2007	09:00	Status: Review by Clerk	1	Event rescheduled by court prior to date

6	12/20/2007	09:00	Hearing: Non-Evidentiary - Suppression	1	Event held as scheduled
7	01/03/2008	09:00	Conference: Trial Assignment	1	Event not held--joint request
8	01/29/2008	09:00	Hearing: Plea Change	1	Event held as scheduled
9	11/09/2012	10:00	Drug Lab: Hearing Stay Sentence	2	Event held as scheduled
10	12/10/2012	10:00	Drug Lab: Status	2	Event held as scheduled
11	01/03/2013	10:00	Drug Lab: Status	4	Event held as scheduled
12	01/17/2013	10:00	Drug Lab: Status	4	Event held as scheduled
13	02/07/2013	10:00	Drug Lab: Hearing Motion for New Trial	4	Event not held--joint request
14	02/14/2013	14:00	Drug Lab: Hearing Motion for New Trial	4	Event held as scheduled
15	02/28/2013	10:00	Conference: Status Review	4	Event held as scheduled
16	03/28/2013	10:00	Drug Lab: Hearing Motion for New Trial	4	Event not held--joint request
17	04/18/2013	10:00	Drug Lab: Status	4	Event canceled not re-scheduled
18	04/19/2013	09:30	Drug Lab: Hearing Motion for New Trial	T1	Event held--(ACTIVE) under advisement
19	06/06/2013	09:30	Conference: Trial Assignment	1	Event held as scheduled
20	06/06/2013	10:00	Drug Lab: Status	4	Event held as scheduled
21	08/06/2013	09:30	Conference: Pre-Trial	1	Event held as scheduled
22	08/29/2013	09:30	Conference: Status Review	1	
23	09/24/2013	09:30	Conference: Status Review	1	Event held as scheduled
24	09/25/2013	09:30	Conference: Final Pre-Trial	1	Event held as scheduled
25	10/08/2013	09:30	TRIAL: by jury	1	Event not held--joint request
26	10/09/2013	09:00	TRIAL: by jury	T3	Event moved to another session
27	10/09/2013	09:00	TRIAL: by jury	T1	Event held as scheduled
28	10/10/2013	09:00	TRIAL: by jury	T1	Held in Session Ready for trial
29	11/05/2013	09:00	TRIAL: by jury	T1	Event moved to another session
30	11/05/2013	09:00	TRIAL: by jury	T3	Trial begins
31	11/06/2013	09:00	TRIAL: by jury	T3	Event continues over multiple days
32	11/07/2013	09:00	TRIAL: by jury	T3	Event continues over multiple days
33	11/08/2013	09:00	TRIAL: by jury	T3	Event held as scheduled
34	11/12/2013	09:00	TRIAL: by jury	T3	Trial ends

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## Full Docket Entries

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205 Docket Entries for Docket: ESCR2007-00875

<b>Entry Date:</b>	<b>Paper No:</b>	<b>Docket Entry:</b>
06/13/2007	1	Indictment returned

07/16/2007		Summons for arraignment issued ret 7/17/07
07/17/2007		Deft arraigned before Court
07/17/2007	2	Interpreter present: Tania V. West on 7/17/2007
07/17/2007	3	Appearance of Commonwealth's Atty: Denise S Duran
07/17/2007	4	Appearance of Deft's Atty: Carol Lynn Cahill
07/17/2007		Deft waives reading of indictment
07/17/2007		RE Offense 1:Plea of not guilty
07/17/2007		Bail set: \$250,000.00 Cash Set without prejudice
07/17/2007		Bail warning read
07/17/2007		Legal counsel fee assessed in the amount of \$150.00 (Howard
07/17/2007		Whitehead, Justice)
07/17/2007	5	Commonwealth files Notice of Discovery
07/17/2007		Assigned to Track "A", see scheduling order
07/17/2007	6	Case Tracking scheduling order (Howard Whitehead, Justice) mailed
07/17/2007	6	7/19/2007
07/17/2007	7	Interpreter present: Tania V. West on7/17/2007.
07/19/2007		Tracking deadlines Active since return date
08/30/2007	8	Appearance of Deft's Atty: Lynette M Leos - C.P.C.S.
08/30/2007	9	Joint Pre-Trial Conference.
10/01/2007	10	Motion for Discovery of Surveillance Information no action taken at
10/01/2007	10	this time
10/01/2007	11	Motion for List of Witnesses Agreed
10/01/2007	12	Motion for Discovery of Physical and Documentary Evidence Agreed
10/01/2007	13	Motion for Rewards Promises and Inducements Agreed
10/01/2007	14	Motion for Discovery of Statements of Defendant agreed
10/01/2007	15	Motion for Notice of Expert Testimony Agreed
10/01/2007	16	Motion of Statements of Co-Defendant Agreed
10/01/2007	17	Motion for Discovery of Booking Sheets and Related Documents Agreed
11/05/2007	18	Commonwealth's certificate of discovery compliance filed in court
11/21/2007	19	Motion to suppress filed
12/20/2007		Motion #19 DENIED (Whitehead, J)
12/20/2007	20	Interpreter present: on 12/20/2007
01/29/2008		RE Offense 1:Guilty plea (lesser offense) to so much of the
01/29/2008		Indictment that alleges Trafficking Cocaine over 28 Grams
01/29/2008	21	Waiver of defendants' rights
01/29/2008	22	001 Defendant sentenced to Five to Seven (5-7) Years Committed to the
01/29/2008	22	Massachusetts Correctional Institution Cedar Junction. Credit of 286
01/29/2008	22	Days (Howard Whitehead, Justice)
01/29/2008	23	Victim-witness fee assessed: \$90.00 (Howard Whitehead, Justice)
01/29/2008		Fee: waived \$150.00 Drug Assessment and \$50.00 Attorney Fee
01/29/2008	24	Abstract sent to RMV
01/06/2009		Victim-witness fee paid as assessed \$90
10/21/2012		

	25	Defendant's Motion To Vacate Guilty Plea (Drug Lab)
10/31/2012	26	Defendant's Motion to Stay Sentence (Drug Lab)
10/31/2012	27	Defendant's Motion for Discovery (Drug Lab)
11/09/2012		Appearance of Commonwealth's Atty: Jessica M Strasnick
11/09/2012		Committee for Public Counsel Services appointed, pursuant to Rule 53
11/09/2012		Amanda Barker
11/09/2012	28	Commonwealth's Opposition to the Defendant's Motion to Stay Execution
11/09/2012	28	of Sentence Filed
11/09/2012		Hearing Held on Motion to Stay ; Motion DENIED (Lowy, J.)
02/22/2013	29	Joint Motion To Stay Decision And Defendant's Motion To Re-Open
02/22/2013	29	Evidence - filed.
02/26/2013		MOTION (P#29) allowed (Cratsley, Special Judicial Magistrate) Copies
02/26/2013		mailed 4/26/2013
03/22/2013	30	Deft files memorandum in Support of Motion to Vacate Guilty Plea
03/22/2013	31	Commonwealth files memorandum in Support of its Opposition to
03/22/2013	31	Defendant's Motion to Withdraw Guilty Plea
03/28/2013	32	Proposed Findings and Order on Defendant's Motion to Withdraw Guilty
03/28/2013	32	Plea (Cratsley,J)
03/28/2013	33	Motion #25 My proposed Findings and Order that this motion be Allowed
03/28/2013	33	filed today (Cratsley,J)
04/01/2013	34	Commonwealth files objection to the special magistrates ruling
04/01/2013	34	allowing the defendant's motion for new trial. (Copy to Lu, J.)
04/02/2013	35	Deft files Response To The Commonwealth's Objection To The Special
04/02/2013	35	Magistrate's Ruling Allowing The Defendant's Motion For New Trial.
04/19/2013		De Novo hearing held on Commonwealth's Objection to Special
04/19/2013		Magistrate's Proposed Findings and Rulings held and taken under
04/19/2013		advisement
04/19/2013		File returned to Salem Superior Court
05/29/2013	36	MEMORANDUM AND ORDER - Angel Rodriguez' motion to withdraw his guilty
05/29/2013	36	plea (paper #25) is allowed. (John T. Lu, Justice)
06/06/2013		Motion for new trial Allowed on 5/29/13 prior sentences vacated this
06/06/2013		date
06/06/2013	37	ORDER on Vacated Sentence Drug Lab
06/06/2013	38	Bail set: \$\$10,000.00 Cash
06/06/2013		Bail warning read
07/09/2013		Court Reporter JAV Essex CV CtRm 3 Lawrence is hereby notified to
07/09/2013		prepare one copy of the transcript of the evidence of 04/19/2013
07/09/2013	39	Transcript of testimony received from Transcript of proceedings from
07/09/2013	39	Court Reporter Elizabeth Hayes, Court Reporter ( JAV Essex CV) CtRm 3
07/09/2013	39	Lawrence
08/06/2013	40	Appearance of Deft's Atty: Victoria Ranieri
09/25/2013	41	Filed: Joint Pre-Trial Memorandum
09/25/2013		

	42	Motion to Exclude Proposed Expert Witness Testimony or in the
09/25/2013	42	Alternative for a Daubert Lanigan Voir of Proposed Expert Witnesses
09/25/2013	42	Filed
10/09/2013		Interpreter present: West, Tania on 10/9/2013
10/09/2013	43	Commonwealth files list of witnesses
10/09/2013	44	Commonwealth files proposed voir dire questions for purposes of jury
10/09/2013	44	impanelment
10/09/2013	45	MOTION by Commonwealth: in limine to exclude testimony of Daniel
10/09/2013	45	Renczkowski
10/09/2013	46	MOTION by Deft: to sequester witnesses
10/09/2013	47	MOTION by Deft: in limine for voir dire and exclusion of improper
10/09/2013	47	opinion testimony
10/09/2013	48	MOTION by Deft: for examination of jurors
10/09/2013	49	Request of defendant for appointment of court reporter
10/09/2013	50	MOTION and memo by Deft: to exclude proposed expert witnesses
10/09/2013	50	testimony or in the alternative for a Daubert-Lanigan voir dire of
10/09/2013	50	proposed expert witnesses
10/09/2013	51	MOTION by Deft: to strike alais name from indictment
10/09/2013	52	MOTION by Deft: in limine regarding the issuance of a search warrant
10/09/2013	53	MOTION by Deft: in limine to exclude evidence of prior arrest, drug
10/09/2013	53	activities or that the defendant is "known to the police"
10/09/2013		MOTION (P#46) allowed (Richard E. Welch III, Justice).
10/09/2013		MOTION (P#49) denied (Richard E. Welch III, Justice).
10/09/2013		MOTION (P#50) allowed as to a hearing (Richard E. Welch III, Justice).
10/10/2013	54	MOTION by Deft: To Quash Summons Or In The Alternative To Allow
10/10/2013	54	Written Assertion Of Fifth Amendment Privilege Through Affidavit Of
10/10/2013	54	Counsel and Affidavit in Support Of - filed. faxed to Lawrence Sup.
10/10/2013	54	Ct.
10/10/2013		MOTION (P#54) allowed in part. Assertion of privilege through counsel
10/10/2013		permitted. (Richard E. Welch III, Justice). Copies mailed 10/10/2013
10/10/2013	55	MOTION to Quash Subpoena for Detective Lieutenant Robert Irwin
10/10/2013		MOTION (P#55) After hearing allowed in part. In giving limited to
10/10/2013		statements made by Dookan, whether Lieutenant Irwin in quire into
10/10/2013		contamination not only of vials, but bag of evidence itself and
10/10/2013		finally wheather there is any evidence that Dookan altered drug
10/10/2013		analysis in 2007. (Richard E. Welch III, Justice). Copies mailed
10/10/2013		10/10/2013
10/10/2013		MOTION (P#42) DENIED; For reasons stated on the record. (Richard E.
10/10/2013		Welch III, Justice). Copies mailed
10/17/2013		Court Reporter JAVS Essex CtRm 4 Lawrence is hereby notified to
10/17/2013		prepare one copy of the transcript of the evidence of 10/10/20139CD
10/17/2013		SENT TO OTS FOR PROCESS)
10/21/2013		



10/31/2013		RE-ISSUED REQUEST Court Reporter JAVS Essex CtRm 4 to prepare one copy of the transcript of the evidence of 10/10/2013
10/31/2013		9CD SENT TO OTS FOR PROCESS)
11/06/2013	56	MOTION by Commonwealth: to quash summons for Captain Robert Irwin
11/06/2013		MOTION (P#56) Commonwealth claims "worth product" and "privilege" but
11/06/2013		has not show that either applies to Captain Irwin's testimony
11/06/2013		regarding statements made to him by Ms. Dookan. DENIED as to that
11/06/2013		evidence. (Mary-Lou Rup, Justice). Copies mailed
11/06/2013	57	Defendant's Motion in Limine for voire dire regarding prior bad act
11/06/2013	57	evidence
11/06/2013		MOTION (P#57) Voire dire will be conducted before first of these
11/06/2013		witnesses testifies. (Mary-Lou Rup, Justice). Copies mailed 11/6/2013
11/06/2013	58	Defendant's Motion in Limine to exclude physical evidence and drug
11/06/2013	58	analysis
11/06/2013		MOTION (P#58) No action at this time as Commonwealth represents it
11/06/2013		will not offer evidence of the twist or analysis. Defendant will
11/06/2013		renew this motion if Commonwealth offers this evidence. (Mary-Lou
11/06/2013		Rup, Justice). Copies mailed 11/6/2013
11/06/2013		MOTION (P#45) No action taken at this time. (Mary-Lou Rup, Justice).
11/06/2013		Copies mailed
11/06/2013		MOTION (P#47) DENIED. I will permit testimony by trooper Racki (a
11/06/2013		non-percipient witness), in my discretion, to the extent that his
11/06/2013		testimony is in general terms regarding conduct of distribution level
11/06/2013		gor narcotics (street value of crack cocaine, how to make crack
11/06/2013		cocaine). (Mary-Lou Rup, Justice). Copies mailed
11/06/2013		MOTION (P#51) withdrawn by defendant. (Mary-Lou Rup, Justice). Copies
11/06/2013		mailed
11/08/2013	59	MOTION by Deft: for required finding of not guilty at close of the
11/08/2013	59	Commonwealth's case
11/08/2013		MOTION (P#59) denied (Mary-Lou Rup, Justice). Copies mailed
11/12/2013	60	Verdict of guilty as charged recorded 11/12/2013 @ 11:05 PM
11/12/2013	61	Memo of Trial filed
11/12/2013	61	Defendant sentenced to Not less than eight years and not more than
11/12/2013	61	eight years and one day MCI Cedar Junction Committed ; 2401 days
11/12/2013	61	credit; notice of right to appeal given (Mary-Lou Rup, Justice)
11/12/2013		Drug fee waived (Mary-Lou Rup, Justice)
11/12/2013		Victim Witness Fee and Drug Assessment Fee: waived
11/12/2013		Sentence credit given as per 279:33A: 2401 days
11/12/2013	62	Motion to Dismiss Due to Lost or Destroyed Evidence or in the
11/12/2013	62	Alternative to Exclude Reference to Lost or Destroyed Evidence; (62A)
11/12/2013	62	Affidavit of Counsel; (62B) Memorandum in Support of Motion
11/12/2013		MOTION #62: As to the extra ordinary remedy of dismissal, the
11/12/2013		

		defendant has not met his burden. The Commonwealth represents that
11/12/2013		the items in question were destroyed following the defendant's guilty
11/12/2013		plea in 2008. Therefore, dismissal as a sanction is denied. With
11/12/2013		regard to photographs of plate and scale, those photographs will be
11/12/2013		excluded. Any testimony regarding scale will be excluded. M. L. Rup,
11/12/2013		Justice 11/5/13
11/12/2013	63	Defendant's Witness List
11/12/2013	64	Request for Jury Instructions filed by Defendant
11/12/2013	65	MOTION fo Required Finding of Not Guilty at Close of All of the
11/12/2013	65	Evidence filed by defendant and denied 11/8/2013
11/12/2013	66	Question to Jury from the Court: "Do you wish to suspend your
11/12/2013	66	deliberations at this time and resume your deliberations again
11/12/2013	66	Tuesday at 9:00 AM?" Response: "No, If we have a decision by 4:45 we
11/12/2013	66	will announce it. If no decision will return Tuesday AM." Dated
11/12/2013	66	11/8/2013
11/12/2013	67	ORDERED: Sentencing waiver of Drug Assessment Fee and Victim Witness
11/12/2013	67	Fee Dated 11/12/2013 (Mary-Lou Rup, Justice)
11/12/2013	68	Defendant's MOTION for Stay of Execution Pending Appeal, filed
11/12/2013	68	11/12/2013: No action taken at this time, at defendant's request.
11/12/2013	68	Dated 11/12/2013 (Mary-Lou Rup, Justice)
11/12/2013	69	NOTICE of APPEAL FILED by Angel Rodriguez on 11/12/2013
11/12/2013		File and Exhibits (with the exception of Exhibit 6 - see exhibit log
11/12/2013		at Lawrence) returned to Salem Superior Court on 11/12/2013
11/12/2013		RE Offense 1:Guilty verdict
11/13/2013	70	Return of Exhibits: Exhibit #6 (Class B subst.) returned to Detective
11/13/2013	70	Neil Perrocki, Lawrence Police Department on 11/13/2013
11/13/2013		Court Reporter JAV Essex CV CtRm 3 Lawrence is hereby notified to
11/13/2013		prepare one copy of the transcript of the evidence of 11/05-12/2013
11/13/2013	71	Corrected mittimus issued on 11/13/2013 (noting "over 100 grams"
11/18/2013	72	Notice of appeal from sentence to Cedar Junction MCI (Walpole) filed
11/18/2013	72	by Angel Rodriguez
11/18/2013	73	Letter transmitted to the Appellate Division. All parties notified
11/18/2013	73	11/20/2013.
12/10/2013		Transcript: JAVS-3 Lawrence Superior DVD/CD (11/5 11/6 11/7 11/8
12/10/2013		11/12/13) sent to OTS for Process
12/11/2013	74	Appearance of Deft's Atty: Patrick Levin, CPCS

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## Charges

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1 Charges for Docket: ESCR2007-00875

No.	Charge Description:	Indictment:	Status:
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1 COCAINE, TRAFFICKING IN c94C s32E(b)

Guilty verdict

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## **Essex District Attorney's Office Jonathan Blodgett**

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For Immediate Release - November 12, 2013

### **Media Contact**

978-745-6610 ext. 5079

## **"Dookhan" Defendant Convicted of Trafficking Cocaine**

Angel Rodriquez, 49, who moved to withdraw his guilty plea because Dookhan was the primary chemist in his case, was found guilty by a jury of trafficking over 100 grams of cocaine in Lawrence Superior Court today. Mary-Lou Rup sentenced him to eight years to eight years + one day in prison.

Rodriquez, who is from Lawrence, pleaded guilty to the lesser offense of trafficking over 28 grams of cocaine on January 29, 2008. He was sentenced to serve five to seven years in state prison. On May 29, 2013, Rodriquez's motion to withdraw his guilty plea was allowed based on the fact that Annie Dookhan was the primary chemist on his case.

Essex Assistant District Attorney Ashlee Logan proved that Rodriquez possessed over 100 grams of cocaine and had the intent to traffic it based on the fact that the State Police Crime Lab re-tested and confirmed that the substance was in fact cocaine and it weighed in excess of 100 grams.

"Since the information about Ms. Dookhan's conduct at the Hinton LaSalle Correctional Institution came to light, this office has carefully reviewed each and every case in which she was involved to ascertain the facts," Essex District Attorney Jonathan Blodgett said. "In this case, as in many others, the drugs were still available to be re-tested and confirmed that this defendant was in fact trafficking cocaine. It is for that reason that I have rejected the wholesale argument that a defendant should be acquitted simply because Ms. Dookhan had some involvement in their case."

Rodriquez was represented by Attorney Victoria Ranieri and received no credit toward his sentence.

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# EagleTribune.com, North Andover, MA

*November 12, 2013*

## Dookhan defense fails for city drug trafficker

*By Warren Talbot*

**wtalbot@eagletribune.com**

--- — LAWRENCE — A Lawrence man accused of drug trafficking decided to take his chances with a new trial after it became known that former state lab worker Annie Dookhan was the primary chemist in his case.

That decision backfired on Angel Rodriquez, when a jury in Lawrence Superior Court yesterday found him guilty of trafficking over 100 grams of cocaine and Judge Mary-Lou Rup sentenced him to eight years to eight years and one day in state prison.

Rodriquez, 49, withdrew his guilty plea because his case was one of about tens of thousands handled by Dookhan, accused of tampering with evidence in drug cases brought to the state's Hinton lab in Boston.

Rodriquez had pleaded guilty to the lesser offense of trafficking over 28 grams of cocaine on January 29, 2008. He was sentenced to serve five to seven years in state prison. On May 29, 2013, Rodriquez's motion to withdraw his guilty plea was allowed based on the fact that Dookhan was the primary chemist on his case.

Essex Assistant District Attorney Ashlee Logan proved that Rodriquez was in possession of over 100 grams of cocaine and had the intent to traffic it, based on the fact that the State Police Crime Lab re-tested and confirmed that the substance was in fact cocaine and it weighed in excess of 100 grams.

Authorities have said Dookhan tested more than 60,000 drug samples involving 34,000 defendants at Hinton state lab. State police closed the lab last summer, months after Dookhan's resignation during an internal probe by public health officials.

At least 337 state prison inmates have been released as a result of Dookhan's case, a spokesman for the state Executive Office of Public Safety and Security said Friday.

"Since the information about Ms. Dookhan's conduct at the Hinton Lab came to light, this office has carefully reviewed each and every case in which she was involved to ascertain the facts," Essex District Attorney Jonathan Blodgett said yesterday. "In this case, as in many others, the drugs were still available to be re-tested and confirmed that this defendant was in fact trafficking cocaine. It is for this reason that I have rejected the wholesale argument that a defendant should be released simply because Ms. Dookhan had some involvement in their case."

Rodriquez was represented by Attorney Victoria Ranieri and received 2,401 days credit toward his sentence.

Meanwhile, Dookhan, 35, of Franklin, is scheduled to go on trial Jan. 6.

The Boston Globe

**Metro**

# State fires chemist after probe casts doubt on credentials

By Milton J. Valencia and John R. Ellement | GLOBE STAFF NOVEMBER 26, 2013

The drug analyst who was fired for misstating her credentials allegedly falsely testified in federal court as recently as August that she has a degree in chemistry and possibly did so in dozens of state court cases as well, opening the door for a flood of new legal challenges related to the Hinton drug lab scandal.

The analyst, Kate Corbett, was fired by the State Police Friday for allegedly asserting that she holds a degree in chemistry from Merrimack College, though investigators determined that her degree is in sociology.

Corbett has not been accused of tampering with evidence, a charge that led to the conviction of Annie Dookhan, the woman at the center of the lab scandal.

But Corbett's declarations in court that she is an expert with a chemistry degree could potentially derail convictions in those cases, say legal analysts, who say her testimony would be tainted.

Dookhan, 36, was sentenced to 3 to 5 years in prison Friday after being convicted of, among other charges, lying about her resume in court.

"It gives her [Corbett] a lot of credibility she is not entitled to," said Stephen Weymouth, a veteran Boston defense attorney, who was speaking generally and does not have any cases related to the analyst.

He said any false statements are compounded by Corbett's connection to the now-closed Hinton laboratory in Jamaica Plain, which was run by the state Department of Public Health and has come under scrutiny for failing to follow basic standards.

"That would give me concerns," Weymouth said, adding, "I think that defendants who were convicted have nothing to lose by filing a motion for a new trial, by saying this is newly discovered evidence that taints the trial and prejudices the jury against the defendant."



Weymouth and other defense attorneys have already argued that state officials should investigate all of the work by chemists at the Hinton lab, totaling about 190,000 cases, beyond the investigation into Dookhan's work. They are anticipating the state inspector general's audit of the laboratory, which is slated to be released in January.

"What this underscores is the critical importance of a thorough and complete investigation of the [Hinton] lab," said J. Martin Richey of the federal public defender's office in Boston, who handled at least one case Corbett testified in. "The system is clogged, and a lot of people are awaiting the results of this investigation, to see what claims they have, and it bears scrutiny."

Joe Dorant, president of the Massachusetts Organization of State Engineers & Scientists, said in an interview Monday that Corbett is challenging her firing and maintains that she has proper credentials.

"She is a highly competent chemist that has given seven good years of her life to public service in the Commonwealth of Massachusetts, and anyone that knows her will tell you that," he said.

Corbett began working as a chemist at the Hinton laboratory in 2005. She and other analysts were placed on paid leave last year, once the investigation into Dookhan began and the lab was closed.

The State Police, which took over the lab's responsibilities, moved to transfer the chemists to its jurisdiction over recent months.

However, State Police conducted background checks on the chemists' education to ensure that the analysts met the agency's standards for accreditation, and superiors learned of the discrepancies with Corbett's education.

According to a State Police report obtained by the Globe, Corbett earned a bachelor of arts degree in sociology from Merrimack College in 2001, though she claimed on her resume that she obtained a degree in chemistry in 2003.

A State Police investigation concluded that, in the two years after she first earned the sociology degree, she took enough credits that she believed would satisfy a chemistry degree. However, according to the State Police report, Corbett assumed she had earned a second degree without confirming it with Merrimack College.

Also, according to the report, she would not have qualified for a second degree because she would have had to take an additional set of coursework to meet bachelor of science requirements.

Essex District Attorney Jonathan W. Blodgett, who also serves as president of the Massachusetts District Attorneys Association, said that he and other district attorneys learned about the concerns over Corbett last week and that they are now doing a review of each of her cases, similar to what was done with Dookhan's work.

"We are going through all our cases . . . to see if what, if any, involvement she had in our cases," Blodgett said.

He said there is no evidence at this time that Corbett tampered with evidence, but said, "At this point, the concern that has been raised is the educational qualifications of Kate Corbett."

*Milton J. Valencia can be reached at [mvalencia@globe.com](mailto:mvalencia@globe.com). Follow him on Twitter [@miltonvalencia](https://twitter.com/miltonvalencia). John R. Ellement can be reached at [john.ellement@globe.com](mailto:john.ellement@globe.com).*


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CERTIFICATE OF SERVICE

I, Shrutih V. Ramlochan-Tewarie, an attorney for petitioners, hereby certify that on January 9, 2014, I served the foregoing by causing copies to be mailed, by Federal Express, to the following:

Daniel F. Conley  
District Attorney for Suffolk County  
One Bulfinch Place  
Boston, Massachusetts 02114

Jonathan Blodgett  
District Attorney for Essex County  
10 Federal Street  
Salem, Massachusetts 01970

  
Shrutih V. Ramlochan-Tewarie  
Foley Hoag LLP  
155 Seaport Boulevard  
Boston, MA 02210  
(617) 832-1000

Dated: January 9, 2014.



Seaport West  
155 Seaport Boulevard  
Boston, MA 02210-2600

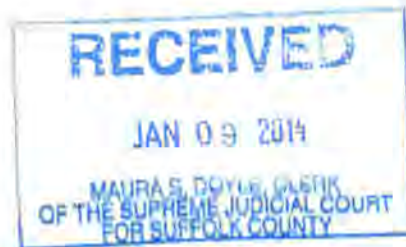
617 832 1000 *main*  
617 832 7000 *fax*

Caroline S. Donovan  
617 832 1165 *direct*  
cdonovan@foleyhoag.com

January 9, 2014

**VIA HAND DELIVERY**

Clerk Susan Mellen  
Supreme Judicial Court for the  
Commonwealth of Massachusetts  
One Pemberton Square, Suite 1400  
Boston, MA 02108-1724



Re: Bridgeman, et al., v. District Attorney for Suffolk County, et al.:  
Supreme Judicial Court for Suffolk County

Dear Clerk Mellen:

Enclosed for filing on behalf of petitioners Kevin Bridgeman, Yasir Creach, and Miguel Cuevas, please find one copy of the following:

- Petition Seeking Relief Pursuant To Gen. Laws c.211, §3;
- Memorandum in Support of Petition Seeking Relief Pursuant To Gen. Laws c.211, §3;
- Record Appendix; and,
- CD containing documents described at page -x- of the Record Appendix.

Please advise if you would like electronic copies of any of the above-referenced materials. In addition, a check for \$315.00 is also enclosed.

Petitioners respectfully request that their petition be referred to Justice Botsford, who has continuing jurisdiction over Hinton Lab matters — the subject-matter of this petition — by virtue of the rulings in Commonwealth v. Charles, 466 Mass. 63 (2013). In the alternative, Petitioners respectfully request that the petition be reserved and reported to the full Court.

Please date-stamp a copy of this letter to confirm receipt and return it to the waiting courier. Thank you for your attention to this matter.

Clerk Susan Mellen  
January 9, 2014  
Page 2

Very truly yours,

A handwritten signature in cursive script, reading "Caroline S. Donovan", followed by a horizontal line.

Caroline S. Donovan

CSD/mef  
Enclosures

cc (via Federal Express):

Daniel F. Conley, District Attorney for Suffolk County  
Jonathan Blodgett, District Attorney for Essex County  
Matthew R. Segal, American Civil Liberties Union of Massachusetts  
Daniel N. Marx, Foley Hoag LLP



Seaport West  
155 Seaport Boulevard  
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Daniel N. Marx  
617 832 1202 *direct*  
dmarx@foleyhoag.com

March 7, 2014

**Via Hand Delivery**

Maura S. Doyle, Clerk  
Supreme Judicial Court for the County of Suffolk  
John Adams Courthouse  
One Pemberton Square  
Suite 1300  
Boston, MA 02108-1707

Re: **Bridgeman, et al. v. District Attorney for Suffolk County, et al.**  
**Docket No. SJ2014-0005**

Dear Ms. Doyle:

Pursuant to Mass. R. App. P. 16(l), we write on behalf of Petitioners in the above-referenced matter to address a recent decision of the Supreme Judicial Court, which is highly significant to the pending Petition. The new decision was rendered on March 5, 2014, in *Commonwealth v. Scott*, No. SJC-11465. A copy of the opinion is attached to this letter.

*Scott* is one of six appeals that the Court decided on March 5 concerning motions, pursuant to Mass. R. Crim. P. 30, by criminal defendants to withdraw their guilty pleas due to the misconduct of Annie Dookhan in the William A. Hinton State Laboratory Institute.<sup>1</sup> The Court held that all defendants who pleaded guilty to drug crimes, and who produce certificates of analysis signed by Dookhan on the line labeled "Assistant Analyst," are "entitled to a conclusive presumption" of egregious misconduct by the Commonwealth for purposes of the first prong of *Ferrara v. United States*, 456 F.3d 278 (1st Cir. 2006). *Scott*, slip op. at 9. The Court reasoned that Dookhan's misconduct "is the sort of egregious misconduct that could render a defendant's guilty plea involuntary" and that it "may be attributed to the government for the purposes of the *Ferrara* analysis." *Id.* In so ruling, the Court took the first step toward providing a comprehensive remedy to address the due

---

<sup>1</sup> The other appeals are *Commonwealth v. Gardner*, No. SJC-11470; *Commonwealth v. Rodriguez*, No. SJC-11462; *Commonwealth v. Davila*, No. SJC-11463; *Commonwealth v. Bjork*, No. SJC-11464; and *Commonwealth v. Torres*, No. SJC-11466.

Ms. Maura S. Doyle, Clerk  
March 7, 2014  
Page 2

process violations that have resulted from the scandal in the Hinton drug lab and affected over 40,000 defendants ("Dookhan defendants").

With respect to the second prong of *Ferrara*—concerning materiality—the Court left unresolved additional questions that the above-referenced Petition squarely presents. In particular, the Court ruled that any Dookhan defendant must have an opportunity to "demonstrate a reasonable probability that he would not have pleaded guilty had he known of Dookhan's misconduct." *Id.* at 11. It will be up to the trial court, in the first instance, "to determine whether, in the totality of the circumstances, the defendant can demonstrate a reasonable probability that had he known of Dookhan's misconduct, he would not have admitted to sufficient facts and would have insisted on taking his chances at trial." *Id.*

The above-referenced Petition explains that due process establishes certain boundaries for resolving the materiality prong of *Ferrara*. Thus, given the Court's resolution of *Scott* and its companion cases, the Court should now decide "whether . . . due process and common law principles require a clear, prophylactic rule that Dookhan defendants who seek post-conviction relief cannot be subjected to more severe punishment" (Question 1 and Pet. at 6), and also "whether inordinate and prejudicial delay in providing post-conviction relief for Dookhan defendants violates due process" (Question 2 and Pet. at 6-7). It is critical that Dookhan defendants and their counsel know what might happen if they seek to withdraw their guilty pleas and when relief can be expected. Continued uncertainty threatens to chill the exercise of post-conviction rights and to postpone the ultimate resolution of this scandal for many more years.

In sum, *Scott* and its companion cases decided one of the important legal issues that the above-referenced Petition raises (specifically, whether Dookhan defendants satisfy the first prong of the *Ferrara* analysis), but they left unanswered the related questions that the Petition presents. Thank you for your consideration of this letter and the pending Petition.

Respectfully submitted,



Daniel N. Marx  
*Counsel for Petitioners*

DM:sml  
Enclosure

cc: Daniel F. Conley, District Attorney for Suffolk County, *via U.S. Mail*  
Jonathan Blodgett, District Attorney for Essex County, *via U.S. Mail*  
Matthew R. Segal, Esq., American Civil Liberties Union of Massachusetts, *via U.S. Mail*  
Emma Anderson, Esq., American Civil Liberties Union, *via U.S. Mail*

COMMONWEALTH OF MASSACHUSETTS

SUPREME JUDICIAL COURT

SUFFOLK, ss.

NO. SJ-2014-0005

KEVIN BRIDGEMAN,  
and others

v.

DISTRICT ATTORNEY FOR SUFFOLK COUNTY,  
and others

RECEIVED

MAY 27 2014

MAURA S. DOYLE CLERK  
OF THE SUPREME JUDICIAL COURT  
FOR SUFFOLK COUNTY

MOTION TO INTERVENE

Now comes the Committee for Public Counsel Services (CPCS), pursuant to Mass. R. Civ. P.24(a), 365 Mass. 769 (1974), and moves to intervene in the above-captioned matter.

INTRODUCTION

The failure of the Hinton drug lab has "cast a shadow over the entire criminal justice system." Commonwealth v. Scott, 467 Mass. 336, 352 (2014). That shadow will not be lifted unless and until this Court fashions a comprehensive remedy that places the burden of re-litigating tainted Hinton lab convictions entirely on the Commonwealth, and guarantees that Hinton lab defendants whose rights have been violated may not be further punished for having sought to vindicate those rights.

Accordingly, CPCS agrees with and supports the position of the petitioners in this case as set forth



-2-

in the questions presented in their petition for relief. Indeed, the constitutional necessity for the relief requested has become more urgent, where, as described in the instant motion to intervene, the Commonwealth has been responsible for inordinate delay which today -- nearly three years after Dookhan's supervisors first became aware of her misconduct -- has left tens of thousands whose due process rights have been violated still unidentified.

If permitted to intervene, CPCS also will ask that the following measures essential to the fair and expeditious resolution of tainted Hinton lab cases be taken:

- That the Court establish a bright-line rule which protects Dookhan defendants who succeed in vacating their guilty pleas from receiving a harsher sentence than the terms of the plea, should they be convicted after a trial;
- That the Court make clear that an attorney who represented a Dookhan defendant at the plea stage, and who has been re-appointed to seek post-conviction relief for that defendant, may testify, as plea counsel, at a motion to vacate the tainted plea and may argue that his or her testimony should be credited without running afoul of the "advocate-witness" rule, see Mass. R. Prof. C. 3.7(a), 426 Mass. 1396 (1998);
- That the Court declare that the testimony of a Dookhan defendant at

-3-

a motion to vacate is inadmissible in any future prosecution of the defendant, except for perjury;

- That the District Attorneys of the seven counties affected by the Hinton lab failure be ordered to provide CPCS with information in their custody or control necessary to identify the criminal cases and discover the Dookhan-involved Hinton lab certificates of analyses associated with the 40,323 persons whose names appear on the so-called Meier list, and;
- That the Office of the Inspector General (OIG) be ordered to provide CPCS with access to the underlying data which it collected and produced in connection with its investigation of the Hinton lab failure.

#### BACKGROUND

1. This case raises issues affecting the ability of indigent defendants to obtain justice following the Court's ruling in Commonwealth v. Scott, 467 Mass. 336 (2014), that "egregious government misconduct," id. at 347, has infected the integrity of tens of thousands of convictions based on allegedly controlled substances processed over the course of a decade at the Hinton lab.

2. CPCS moved to intervene at an earlier stage of this "burgeoning crisis," Commonwealth v. Charles, 466 Mass. 63, 89 (2013), to advocate for remedies that "would allow for the fair resolution of large numbers

-4-

of cases, while avoiding inefficient and costly case-by-case litigation in tens of thousands of cases."

Commonwealth v. Charles, SJ-2013-0066 & Commonwealth v. Milette, SJ-2013-0086 (CPCS' Motion to Intervene, at 10) (March 12, 2013).

3. The single justice (Botsford, J.,) denied that motion to intervene because she concluded that it was premature, at that time, for the Court to consider whether a global solution to the crisis was necessary. Commonwealth v. Charles, SJ-2013-0066 & Commonwealth v. Milette, SJ-2013-0086, Commonwealth v. Superior Court, SJ-2013-0092, Reservation and Report, at 3 (March 22, 2013) (Botsford, J.).

4. More specifically, the single justice noted that the work of Attorney David Meier and OIG's investigation of the Hinton lab had yet to be completed, and that the information that these two sources were expected to provide "within a reasonable amount of time would give all concerned a more informed basis on which to consider what types of systemic remedies, if any, might be appropriate." Id.

5. Accordingly, the single justice denied CPCS's motion to intervene -- "without prejudice to renewal" -- retained jurisdiction, and invited CPCS to move to intervene again "at an appropriate time." Id.

6. Attorney Meier completed his work on August

20, 2013. But the so-called Meier list of 40,323 individuals with Dookhan-involved cases lacks information needed to timely identify, locate, and provide legal counsel to about three-quarters of those individuals; and the District Attorneys of the seven affected counties, who have that information in their custody or control, have not made it available to CPCS despite repeated requests.

7. Accordingly, if permitted to intervene, CPCS will ask that the District Attorneys be ordered to provide CPCS with the police report, booking sheet, docket number, and drug analysis certificate(s) associated with the still-unidentified Meier list entries associated with their county.

8. The Office of the Inspector General's report, "Investigation of the Drug Laboratory at the William A. Hinton State Laboratory Institute, 2002-2012" (OIG Report), was released on March 4, 2014.

9. The report concludes that management and operation of the unaccredited lab was grossly deficient from top to bottom, with chemists receiving "wholly inadequate" training and virtually no supervision, a quality control system that was "ineffective in detecting malfeasance, incompetence and inaccurate results," and an absence of any "formal and uniform protocols" concerning basic lab operations, including

testing methods, chain of custody, and evidence security. OIG Report at 1-2, 21-26, 27-33, 43-52, 114-117.<sup>1/</sup>

10. The OIG Report also raises significant questions regarding the integrity of criminal convictions in cases involving chemists other than Dookhan. For example,

- after concluding that the Hinton lab "improperly used arbitrary approaches to infer the identity and estimate the net weight of substances," the report refers to OIG's review of "156 [trafficking] cases . . . in which the chemist did not statistically identify enough of the population to report the net weights that the Drug Lab reported for the case." OIG Report at 93, 100.
- after concluding that Hinton lab supervisors failed adequately to train and supervise chemists providing testimony in criminal cases, the report refers to OIG's review of testimony of "multiple chemists [who] testified to being 95% confident that their analytical results were correct in situations in which there was no statistical support for those statements [and who] also described significant aspects of the testing process differently from one another and often in ways that the forensic drug analysis community would not support. OIG Report at 24.

11. The OIG Report does not identify the cases in

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<sup>1/</sup>The OIG Report is available through the OIG's website (<http://www.mass.gov/ig/>) (last visited May 21, 2014).

which Hinton lab chemists were found to have improperly estimated drug weights or to have testified in ways that the forensic drug analysis community would not support, and has thus far declined to make that information (or any of the data underlying its investigation of the Hinton lab) available to CPCS.

12. Accordingly, if permitted to intervene, CPCS will ask that OIG be ordered to provide CPCS access to the underlying data which it collected and produced in connection with its investigation of the Hinton lab failure, subject to such protective orders as may be deemed appropriate.

13. With the release of Commonwealth v. Scott, 467 Mass. 336 (2014), on March 5, 2014, the Court erected a framework for the case-by-case litigation of motions to vacate guilty pleas in those Hinton lab cases in which defendants are able to show that Dookhan acted as the primary or secondary chemist in the analysis of the alleged narcotics.

14. More specifically, Scott created "a conclusive presumption" that egregious misconduct attributable to the government infects the case of any defendant whose motion to withdraw is supported by a Hinton lab drug certificate (a) "from the defendant's case," and (b) "signed by Dookhan on the line labeled 'Assistant Analyst.'" Commonwealth v. Scott, 467 Mass.

at 353.

15. But Scott does "not relieve the defendant of his burden . . . to particularize Dookhan's misconduct to his decision to tender a guilty plea." Id. at 354.

16. To the contrary, in order to obtain relief, a defendant who is able to produce a drug certificate signed by Dookhan in his case still must "demonstrate a reasonable probability that he would not have pleaded guilty had he known of Dookhan's misconduct." Id. at 354-355.

17. Significant issues have arisen that undermine the ability of the system to deliver justice for identified Dookhan defendants seeking to satisfy Scott's "materiality" prong.

18. First, following the sentencing of Angel Rodriguez (R. 239, 726-729), Dookhan defendants have been deterred from even initiating a motion to vacate by the concern that they will be punished more harshly following any re-conviction, should their motion be allowed; accordingly, if permitted to intervene, CPCS will ask the Court to announce a bright-line rule that protects Dookhan defendants who succeed in vacating their guilty pleas from receiving a harsher sentence than the terms of the plea, should they be convicted after a trial. See and compare Commonwealth v. Hyatt, 419 Mass. 815, 819-824 (1995).



19. Second, CPCS's practical ability to assign counsel for Dookhan defendants has been put in question by the position taken by the Suffolk County District Attorney's office that an attorney who represented a Dookhan defendant at the plea stage may not thereafter represent the defendant at a Scott hearing without violating Mass. R. Prof. C. 3.7(a), 426 Mass. 1396 (1998); accordingly, if permitted to intervene, CPCS will ask the Court to rule that Rule 3.7(a), is not violated where an attorney who represented a Dookhan defendant at the plea stage, and who has been re-appointed to seek post-conviction relief for that defendant, testifies, as plea counsel, at a motion to vacate the plea and argues that his or her testimony should be credited. See and compare Smaland Beach Ass'n v. Genova, 461 Mass. 214, 219-227 (2012).

20. Third, Dookhan defendants with viable motions to vacate have concerns about going forward because special magistrates have permitted wide-ranging cross examination of defendants as to their factual guilt of the charges to which they pleaded guilty; accordingly, if permitted to intervene, CPCS will ask the Court to rule that such testimony is inadmissible against the defendant should the plea be vacated and the charges go to trial.

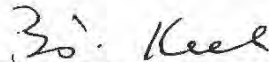


-10-

CONCLUSION

For the above-stated reasons, and for the further reasons set forth in the accompanying affidavits of Chief Counsel Anthony J. Benedetti and Attorney Nancy J. Caplan, CPCS should be permitted to intervene in this matter. See Cruz Mgt. Co. v. Thomas, 417 Mass. 782, 786 (1994); Massachusetts Federation of Teachers v. School Committee of Chelsea, 409 Mass. 203, 205 (1991); Cosby v. Dept. of Social Services, 32 Mass. App. Ct. 392, 396 (1992). See also Commonwealth v. Charles, SJ-2013-0066 & Commonwealth v. Milette, SJ-2013-0086 (CPCS' Motion to Intervene, at 5-10) (March 12, 2013).

Respectfully submitted,



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BENJAMIN H. KEEHN  
BBO #542006  
COMMITTEE FOR PUBLIC COUNSEL SERVICES  
Public Defender Division  
44 Bromfield Street  
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(617) 482-6212  
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Dated: May 27, 2014.

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 ANTHONY J. BENEDETTI  
IN SUPPORT OF MOTION TO INTERVENE

I, Anthony J. Benedetti, state as follows.

1. I am the Chief Counsel of the Committee for Public Counsel Services (CPCS).

2. I submitted an affidavit in support of the petition for relief pursuant to G.L. c.211, §3, filed by the petitioners in this case on January 6, 2014, which affidavit and its attachments (R. 268-288) are incorporated by reference herein.

3. On March 12, 2013, CPCS sought to intervene in the Charles and Milette matters then pending before the single justice (Botsford, J.) to "preserve its clients' due process rights to the just and timely resolution of the many thousands of previously-adjudicated cases tainted by systemic malfeasance and incompetence at the Hinton Drug Lab." Commonwealth v. Charles, SJ-2013-0066 & Commonwealth v. Millette, SJ-2013-0086

-2-

(CPCS' Motion to Intervene, at 1) (March 12, 2013).

4. That motion was denied on March 22, 2013, "without prejudice to renewal," because consideration of a systemic remedy was then viewed as premature, where the work of Attorney David Meier and the Inspector General's investigation of the Hinton lab had yet to be completed.<sup>1/</sup>

5. The so-called Meier list -- released on August 20, 2013 -- brought us only incrementally closer than we were in September 2012 to ascertaining the identities of tens of thousands of individuals with tainted Dookhan-involved convictions.

6. The reasons that the information collected by Attorney Meier is insufficient by itself to enable us to identify Dookhan defendants are set out at ¶¶28-43 of the affidavit of Attorney Nancy J. Caplan submitted in support of the petitioners in this case (R. 239-244).<sup>2/</sup>

7. In an effort to fill the gaps in the Meier

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<sup>1/</sup>Copies of CPCS's motion to intervene in Charles and Milette, and of the reservation and report in those cases (in which the single justice denied CPCS's motion to intervene without prejudice to renewal) are attached hereto, as Attachments A and B, respectively.

<sup>2/</sup>What is missing from the Meier list is also described in my letters to the District Attorneys of the seven affected counties dated February 11, 2014, attached hereto as Attachment C. See also ¶¶30-62 of my affidavit in support of CPCS's motion to intervene in Charles and Milette (R. 281-287).

-3-

list, I wrote to the District Attorneys of each of the seven affected counties on February 11, 2014, requesting information in their custody or control necessary in order for CPCS to identify, locate, and counsel defendants convicted in Dookhan-involved cases.

8. Specifically, I asked the District Attorneys to provide CPCS with the police report, booking sheet, docket number, and drug analysis certificate(s) associated with the Meier list entries for their county.

9. Commonwealth v. Scott, 467 Mass. 336 (2014), was decided on March 5, 2014. Scott did not adopt the position taken by CPCS as amicus curiae in that case that all Dookhan convictions should be vacated and the underlying cases dismissed without prejudice, subject to re-filing under certain defined circumstances. See Brief for the Committee for Public Counsel Services and Others as Amici Curiae, at 26-48, Commonwealth v. Scott, 467 Mass. 336 (2014) (No. SJC-11465). See also Commonwealth v. Scott, 467 Mass. at 354-358.

10. Nonetheless, Scott stands for the significant proposition that each of the 40,323 individuals whose names make up the Meier list is the victim of "egregious government misconduct." 467 Mass. at 352.

11. As of April 11, 2014 -- i.e., two months after my initial request for information and more than

-4-

five weeks after Scott was decided -- none of the District Attorneys whose offices have relied on Dookhan's work product to obtain criminal convictions had responded to my letter.

12. Accordingly, I sent a follow-up letter to the District Attorneys, referencing Scott and reiterating the need for information in their custody or control that would allow CPCS to identify, in a reasonably timely manner, the individuals whose names appear on the Meier list.

13. To date, only the Middlesex County District Attorney's office has responded.<sup>3/</sup>

14. The conclusive presumption of egregious government misconduct created by Scott gives Dookhan defendants a potentially powerful legal tool with which to seek to remedy the violation of their fundamental right not to be convicted on the basis of fraudulent evidence.

15. There are 40,323 names on the Meier list. CPCS has assigned counsel in about 8,700 Dookhan cases. The math thus suggests that approximately 31,600 individuals with tainted Dookhan convictions have yet to receive the advice of counsel.

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<sup>3/</sup>Copies of my letters to the District Attorneys, dated April 11, 2014, and February 11, 2014, are attached hereto as Attachment C.

-5-

16. Therefore, without assistance from the District Attorneys, CPCS will not within any reasonable period of time be able to identify, locate, and advise over 30,000 defendants whose convictions rest on evidence that, as matter of law under Scott, is tainted by egregious government misconduct.

17. For those Dookhan defendants who can produce a copy of a certificate in which Dookhan attested to the chemical nature of the alleged narcotics, Scott calls for an "individualized" determination by a judge, following a hearing on the defendant's motion to vacate, as to whether knowledge of Dookhan's egregious misconduct would probably have changed the plea decision. 467 Mass. at 356.

18. About ninety-five percent of the post-conviction assignments made by CPCS each year -- including all direct appeals and rule 30 motions -- are to private attorneys certified by the Private Counsel Division to accept such assignments.

19. There are no more than 300 attorneys who are willing to accept such assignments.

20. By necessity, therefore, the vast majority of the 8,700 Dookhan assignments made by CPCS thus far have been to plea counsel, few of whom are certified to accept post-conviction assignments.

21. We have refocused our training, forensic, and oversight resources to train and support these trial

-6-

panel attorneys, few of whom are familiar with post-conviction practice.

22. Bar advocates and staff public defenders have made every reasonable effort to provide post-conviction representation to their former clients in Dookhan cases but cannot be expected to take on any significant number of additional Dookhan cases, which are outside of their normal practice area and being handled on top of their regular case loads.

23. Furthermore, the viability of every Dookhan assignment that CPCS has made to plea counsel has been put in question by the position taken by the Suffolk County District Attorney's office that the "advocate-witness" rule, see Mass. R. Prof. C. 3.7(a), prohibits counsel in a Dookhan case from "act[ing] as both an advocate and a witness for purposes of a Rule 30 evidentiary hearing." Commonwealth v. Newton, SUCR2010-10406, Commonwealth's Memorandum Regarding Advocate-Witness Issues, at 1 (dated April 24, 2014).

24. This problem, further described at ¶¶12-29 of Attorney Caplan's affidavit in support of the instant motion to intervene, threatens to significantly disrupt CPCS's ability to provide post-conviction counsel for indigent Dookhan defendants in Scott hearings.

25. For this reason, if permitted to intervene in this matter, CPCS will ask the Court to rule that Rule 3.7(a) does not bar an attorney appointed to represent



-7-

a Dookhan defendant at a Scott hearing, and who represented the defendant at the plea stage, from testifying at that hearing and arguing, if necessary and appropriate, that his or her testimony should be believed.

26. The report of the Office of the Inspector General (OIG) regarding its investigation of the Hinton lab was released on March 4, 2014.

27. For a summary of what that report concludes about the Hinton lab failure, I refer the Court to the affidavit of Attorney Caplan accompanying this motion to intervene, at ¶¶34-46.

28. For present purposes, I draw the Court's attention to the following points:

- The OIG report faults "multiple" Hinton lab chemists for testifying in criminal trials "in ways that the forensic drug analysis community would not support," Report at 24, but it does not identify the cases in which they so testified.
- The report states that the underlying data pertaining to its investigation was collected by OIG "for the benefit" of six listed state agencies -- which list does not include CPCS. Report at 8.<sup>4/</sup>
- OIG has thus far declined to make

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<sup>4/</sup>The six entities who have been given access to the OIG data base of Hinton lab-related information are: the Department of Public Health, the Massachusetts State Police, the Governor's legal staff, the Executive Office of Public Safety, and the Office of the Attorney General. Report at 8.



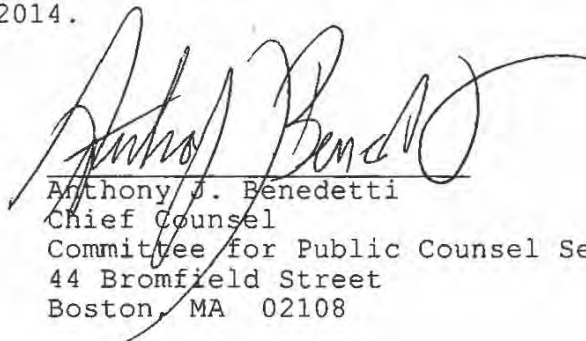
-8-

any of the data underlying its report available to CPCS -- including the names of the defendants against whom Hinton lab chemists other than Dookhan were found by OIG to have testified in ways that credible scientists "would not support."

29. The information gathered by the OIG regarding the Hinton lab failure ought to benefit the thousands of Hinton lab defendants convicted of drug offenses on the basis of flawed and fabricated evidence generated by the lab.

30. If permitted to intervene, CPCS will therefore ask that OIG's underlying data pertaining to its investigation be made available to CPCS, for the benefit of its clients and subject to such protective orders as may be deemed appropriate.

SIGNED UNDER THE PAINS AND PENALTIES OF PERJURY  
THIS 27<sup>th</sup> DAY OF MAY, 2014.

  
Anthony J. Benedetti  
Chief Counsel  
Committee for Public Counsel Services  
44 Bromfield Street  
Boston, MA 02108

Attachment A to Affidavit of Anthony J. Benedetti

Commonwealth v. Charles, SJ-2013-0666

Commonwealth v. Milette, SJ-2013-0083

CPCS' Motion to Intervene

May 12, 2013

-Attachment A. 1-

COMMONWEALTH OF MASSACHUSETTS

SUPREME JUDICIAL COURT

ESSEX, ss.

NOS. SJ-2013-0066 &  
SJ-2013-0083

COMMONWEALTH

V.

SHUBAR CHARLES

&

COMMONWEALTH

V.

HECTOR MILETTE

COMMITTEE FOR PUBLIC COUNSEL SERVICES'  
MOTION TO INTERVENE

The Committee for Public Counsel Services (CPCS) moves to intervene in the above-captioned cases in order (a) to preserve its clients' due process rights to the just and timely resolution of the many thousands of previously-adjudicated cases tainted by systemic malfeasance and incompetence at the Hinton Drug Lab, (b) to protect its clients against the devastating fiscal and human costs attendant to the case-by-case approach to the resolution of those cases exemplified by the Commonwealth petitions for emergency relief now before the Court, and (c) to advocate for remedies that will restore the integrity of the criminal justice system.

-Attachment A. 2-

-2-

BACKGROUND

A. The Hinton Lab fiasco

For background regarding the misconduct at the Hinton Lab that has given rise to these Commonwealth petitions, CPCS incorporates the section of defendant Shubar Charles's "Request to Reserve and Report His Question, and Opposition to the Commonwealth's Petition Pursuant to G.L. c.211, §3" (Request to Reserve and Report) entitled "Background Concerning Fraudulent Conduct at the Hinton State Laboratory," at pages 3-10 of the Request to Reserve and Report, and Exhibits "A" through "K" submitted in support of the Request to Reserve and Report.

CPCS further submits the accompanying affidavits of CPCS' Chief Counsel Anthony J. Benedetti and its Director of Forensic Services, Anne Goldbach, in support of its position that:

- initial hopeful descriptions of the Hinton Drug Lab scandal as entailing merely the misconduct of a single "rogue chemist" have proven to be inaccurate;<sup>1/</sup>
- the Department of Public Health's own

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<sup>1/</sup>See Attachment C to Affidavit of Anthony J. Benedetti in Support of Motion to Intervene (Benedetti Affidavit), Deborah Becker, "Outgoing Mass. Official Addresses Drug Lab Shutdown," WBUR (Sept. 19, 2012) (<http://www.wbur.org/2012/09/19/auerbach-crime-lab>).

-Attachment A. 3-

-3-

investigation of the Hinton Lab<sup>2/</sup> reveals that it was operated during Annie Dookhan's tenure there at a level below what was minimally necessary to insure reliable test results;

- Annie Dookhan's e-mail communication with assistant district attorneys and other law enforcement personnel reveals a laboratory steeped in a culture of incompetence, in which the chemist was seen not as an independent professional but as an ends-justifies-the-means member of the prosecution's team;

- the combination of Dookhan's personal malfeasances and the Hinton Lab's institutional incompetence has rightly moved one District Attorney to acknowledge recently that every case touched by the Hinton Lab between 2003 and 2012 may ultimately need to be dismissed;<sup>3/</sup>

- although the system initially responded to revelations regarding the Hinton Lab failures with a resolve to right the wrongs inflicted upon the many

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<sup>2/</sup>See Exhibit "A" to Request to Reserve and Report.

<sup>3/</sup>See Exhibit "E" in support of Request to Reserve and Report, Deborah Becker, "DA Leone: Wider Range of Drug Lab Cases May Be Dismissed," WBUR (Feb. 8, 2013) (<http://www.wbur.org/2013/02/08/leone-drug-lab-scandal-cases>) (reporting DA Leone's recognition that, "[a]s we identify cases at the Hinton lab, and we realize that there were insufficiencies and inadequacies in practices, protocols and policies there, it may be that a wide swath -- if not all -- of the cases done by the Jamaica Plain lab between 2003 and 2012 may not be prosecuted").

-Attachment A. 4-

-4-

thousands of criminal defendants whose convictions are tainted, and to insure that no aggrieved person would "fall through the cracks," in practice, the attempted case by case re-litigation of these cases has been an almost complete failure;

- the fiasco is having an increasingly damaging impact on the justice system as a whole,<sup>4/</sup> which threatens the due process rights of all those persons in Massachusetts entitled to the assistance of counsel.

B. The interests of CPCS's clients in these cases.

Pursuant to G.L. c.211D, §5, CPCS is required to

establish, supervise and maintain a system for the appointment or assignment of counsel at any stage of a proceeding, either criminal or noncriminal in nature, provided, however, that the laws of the commonwealth or the rules of the supreme judicial court require that a person in such proceeding be represented by counsel; and, provided further, that such person is unable to obtain counsel by reason of his indigency.

CPCS is thus required to actualize the right to

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<sup>4/</sup>See, e.g., Attachment F to Benedetti Affidavit, Laura Krantz, "After Dookhan, Backlog Burdens Sudbury Drug Lab," MetroWest Daily News (March 10, 2013) (reporting that chemists at the State Police laboratory in Sudbury are "struggling to keep up with a gargantuan backlog of drug samples that mushroomed from 400 to 14,000 in the seven months since the Annie Dookhan evidence tampering scandal" resulted in the shutting down of the Hinton Lab).

-Attachment A. 5-

-5-

counsel not merely of adults facing criminal charges but also, e.g., children involved in care and protection, juvenile delinquency, and youthful offender matters, and mentally ill persons facing commitment proceedings. Notwithstanding this broad scope of duties, the ability of CPCS to pay the costs of carrying out its section five mandate is constrained by the limits of its annual budget appropriation. That appropriation is perennially deficient, so much so at times that the entire system has been brought to its knees. See Lavallee v. Justices of Hampden Superior Court, 442 Mass. 228 (2004).

The costs of individually re-litigating each and every Hinton Lab case will be staggering. Absent this Court's intervention, the incalculable costs of the current case-by-case approach to the attempted resolution of these cases will necessarily come at the expense of thousands upon thousands of current and future CPCS clients' right to counsel.

ARGUMENT

THE COMMITTEE FOR PUBLIC COUNSEL SERVICES SHOULD BE PERMITTED TO INTERVENE IN THESE MATTERS BECAUSE ITS CLIENTS HAVE A COMPELLING INTEREST IN THE JUST AND EFFICIENT RESOLUTION OF THE LEGAL DISPUTES STEMMING FROM THE DRUG-LAB SCANDAL.

The Massachusetts Rules of Civil Procedure "govern the procedure before a single justice of the Supreme Judicial Court." Mass. R. Civ. P. 1. Under Rule 24(a)



-Attachment A. 6-

-6-

of the Rules of Civil Procedure, "[a] judge should allow intervention as of right when (1) the applicant claims an interest in the subject of the action, and (2) he is situated so that his ability to protect this interest may be impaired as a practical matter by the disposition of the action, and (3) his interest is not adequately represented by the existing parties."

Massachusetts Federation of Teachers, etc. v. School Committee of Chelsea, 409 Mass. 203, 205 (1991). CPCS readily satisfies each of these requirements.

1. CPCS's interest in the subject of the action.

This Court has recognized that a public agency's institutional interest in a case can justify intervention. In Cruz Mgt. Co. v. Thomas, 417 Mass. 782 (1994), for example, this Court held that it was proper to allow the Massachusetts Housing Finance Agency ("MHFA") to intervene -- even post-judgment -- in a case raising "the significant question of how damages should be calculated in an action for breach of the implied warranty of habitability brought by a tenant who is the beneficiary of rent subsidies, paid with Federal funds by MHFA, on the tenant's behalf." Id. at 786. Because MHFA was the administrator of the Federal section 8 Housing Assistance Payment Program, it -- not the landlord who was an original party in the case -- was "the proper party to raise concerns about



-Attachment A. 7-

-7-

the impact of [the] litigation on the section 8 program in general." Id. The Court therefore held that MHFA had a "compelling interest" in the litigation that justified post-judgment intervention. Id. See also Cosby v. Dept. of Social Services, 32 Mass. App. Ct. 392, 396 (1992) (union permitted to intervene where it had "a strong interest in maintaining its position as the exclusive bargaining agent for all employees").

CPCS has a strong interest in this litigation that justifies its intervention. As the State's sole public defender agency, CPCS is responsible for providing representation to the tens of thousands of defendants whose constitutional rights have been trampled by malfeasance at the Hinton Lab. Over the coming months and years, the responsible execution of this duty will require the agency to expend a significant portion of its budget, human resources, and institutional energy addressing the drug-lab scandal. The questions that the parties to this case have asked the Court to address could significantly affect the way all drug-lab cases -- not just these specific cases -- are handled. As such, CPCS clearly has an interest in the outcome of this litigation.

-Attachment A. 8-

-8-

2. The effect of this litigation on CPCS's interests.

In determining whether the resolution of these cases might impair CPCS's interests, "the pertinent question is not whether [the agency's] interest could be protected in another action, but whether there 'may' be a practical negative impact on the protection of that interest if intervention is not allowed." Johnson Turf & Golf Mgmt., Inc. v. City of Beverly, 60 Mass. App. Ct. 386, 392 (2004).

In his Request to Reserve and Report, the defendant Charles asks this Court to "provide guidance to the inferior courts regarding the expanse and propriety of equitable remedies to be deployed in order to repair the integrity of the system, mend the faith of the public and the affected litigants, and vanquish the constitutional crisis created by malfeasance in the Hinton Lab." Because it is CPCS's duty to provide appointed counsel to indigent criminal defendants in Massachusetts, any legal standards this Court establishes to provide guidance to the trial courts for handling the Hinton Lab crisis inevitably will have significant impact on CPCS's interests in and ability to effectively carry out its required duties. CPCS should therefore be permitted to intervene and provide, as a party, its position on what the proper standards

-Attachment A. 9-

-9-

should be for addressing the vast crisis that has resulted from misconduct at the Hinton Lab.

3. Representation of CPCS's interests by existing parties.

"An applicant for intervention as of right has the burden of showing that representation [of its interests by existing parties] may be inadequate, although the burden should be treated as minimal." Frostar Corp. v. Malloy, 77 Mass. App. Ct. 705, 712 (2010), quoting United States Postal Service v. Brennan, 579 F.2d 188, 191 (2d Cir. 1978). The resolution of this issue "depends upon the relationships of the various parties." Cosby v. Department of Social Services, 32 Mass. App. Ct. 392, 397-398 (1992). Where the proposed intervenor's "interest is similar to, but not identical with that of one of the parties, a discriminating judgment is required on the circumstances of the particular case, but the applicant ordinarily should be allowed to intervene unless it is clear that the existing party will provide adequate representation for the absentee." Id. (citation, internal quotation marks, and brackets omitted).

Here, the individual defendants before the Court do not share CPCS's institutional interests and therefore are not in a position to represent those interests adequately. "One way for [a proposed] intervenor to show inadequate representation is to

-Attachment A. 10-

-10-

demonstrate that its interests are sufficiently different in kind or degree from those of the named party." B. Fernandez & Hnos., Inc. v. Kellogg USA, Inc., 440 F.3d 541, 546 (1st Cir. 2006). The defendants do, of course, have a strong interest in achieving favorable outcomes in their own cases, but they do not share CPCS's interest in providing effective representation to the tens of thousands of other clients affected by misconduct at the Hinton Lab, while remaining within the budgetary constraints imposed by the Legislature. CPCS is not attempting to join these cases for the purpose of asserting the interests of these specific defendants -- that is already being done by the defendants' attorneys. Rather, the agency seeks intervention in order to advocate for a system that will allow for the fair resolution of large numbers of cases, while avoiding inefficient and costly case-by-case litigation in tens of thousands of cases. Because CPCS's unique interests will not be adequately represented by the existing parties, this Court should allow the agency to intervene.

-Attachment A. 11-

-11-

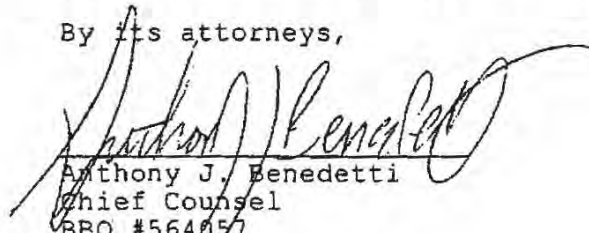
CONCLUSION

For the above-stated reasons, CPCS should be permitted to intervene.

Respectfully submitted,

COMMITTEE FOR PUBLIC COUNSEL SERVICES

By its attorneys,



Anthony J. Benedetti  
Chief Counsel  
BBO #564057

Randy Gioia  
Deputy Chief Counsel  
Public Defender Division  
BBO #193480

Nancy Bennett  
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Private Counsel Division  
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BBO #542006

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abenedetti@publiccounsel.net

Dated: March 12, 2013.

Attachment B to Affidavit of Anthony J. Benedetti

Commonwealth v. Charles, SJ-2013-0666

Commonwealth v. Milette, SJ-2013-0083

Commonwealth v. Superior Court, SJ-2013-0092

Reservation and Report (Botsford, J.)

May 22, 2013

-Attachment B. 1-

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPREME JUDICIAL COURT  
FOR SUFFOLK COUNTY  
NOS. SJ-2013-0066  
SJ-2013-0083  
SJ-2013-0092

COMMONWEALTH vs. SHUBAR CHARLES

COMMONWEALTH vs. HECTOR MILETTE

COMMONWEALTH vs. SUPERIOR COURT

RESERVATION AND REPORT

These three cases concern certain procedures that have been adopted by the Superior Court for handling postconviction matters in criminal cases in which a defendant has been convicted of a drug offense and the drugs were tested at the William A. Hinton State Laboratory Institute.

Background. The Commonwealth, represented by the District Attorney for the Eastern District, has brought the first two cases -- No. SJ-2013-0066 (Charles) and No. SJ-2013-0083 (Milette) -- pursuant to G. L. c. 211, § 3. In its petitions the Commonwealth seeks relief from orders that have been entered in the underlying criminal cases by a special magistrate appointed by the Chief Justice of the Superior Court and by a judge of the Superior Court in connection with motions for a new trial that have been filed by the defendants. Specifically, in the Charles case, the Commonwealth challenges orders by the special magistrate and by the judge granting a stay of execution of Charles's sentence while his motion for a new trial is pending. The Commonwealth argues, among other things, that neither a special magistrate nor a judge has authority to stay execution of a sentence pending the disposition of a new trial motion. In the Milette case, the Commonwealth challenges an order of the special magistrate reconsidering and allowing a motion for a stay of execution that previously had been considered and denied by a judge. The Commonwealth argues, among other things, that a special magistrate has no authority in these circumstances to reconsider a ruling of a judge.



In the third petition — No. SJ-2013-0092 (Superior Court) — the Commonwealth, represented by the same District Attorney, seeks in more general terms a "clarification" of the authority of a special magistrate to preside over certain aspects of these cases. The third petition alludes to both the Charles and Milette cases, but focuses more specifically on the validity of a two-step protocol that the Superior Court has established for entertaining guilty pleas in these cases. Under the protocol, a special magistrate is to conduct the plea colloquy with the defendant and make relevant findings, which will then be transmitted to a judge, who will make the determination whether to accept the plea. The Commonwealth argues, among other things, that this two-step process is unlawful and that it cannot be required to submit to the part of the proceeding before the special magistrate.

Request for reservation and report. The Commonwealth requests that I reserve and report the three cases in their entireties to the full court for resolution. The defendants in the Charles and Milette cases do not oppose a reservation and report.

I am mindful that there are a variety of threshold procedural questions that have not yet been fully addressed by the parties. To begin with, some of the specific relief requested by the Commonwealth in the Charles and Milette cases may be moot. In the Charles case, for example, the order of the special magistrate purporting to grant a stay of execution of Charles's sentence pending the disposition of his motion for a new trial has been superseded by a subsequent order of the judge granting the same relief. Likewise in the Milette case, the order of the special magistrate reconsidering the order of the first judge has since been superseded by an order of a second judge. However, these cases raise important issues that are recurring in the trial court and that warrant a resolution by this court, and toward that end I will reserve and report specific questions to the full court, while retaining jurisdiction over the disposition of the petitions after we receive answers from the full court to the reported questions.

With respect to the third case, there are also threshold procedural concerns. Specifically, I am informed that in Essex County, no special magistrate has to date even conducted a guilty plea colloquy under the challenged two-step protocol. In every instance in which the protocol would apply, the prosecutor has objected to the involvement of a special magistrate, and, given the objection, the plea colloquy has been conducted by a judge, not by a special magistrate, in the



first instance. The third petition thus appears to be challenging a hypothetical situation where the Commonwealth may, some day, be required over its objection to proceed before the special magistrate. That said, and despite the speculative nature of the challenge, I will report to the full court a question concerning the validity of the two-step protocol; but I will also report the threshold procedural question, i.e., whether the hypothetical nature of the challenge counsels against reviewing the two-step protocol at this time, because I believe that the full court, and not only I as a single justice, should answer that question.

Reported questions. Based on the foregoing, I hereby reserve the following questions for consideration by the full court and report so much of the cases as is necessary for understanding the questions reserved. The questions are:

1. Does a special magistrate appointed by the Chief Justice of the Superior Court pursuant to Mass. R. Crim. P. 47, or a judge of the Superior Court, have the authority to allow a defendant's motion to stay execution of his sentence, then being served, pending disposition of the defendant's motion for a new trial?

2. Does a special magistrate have the authority to reconsider and allow a motion to stay execution of a criminal defendant's sentence where a judge of the Superior Court has previously denied a motion to stay execution filed by the same defendant?

3. (a) Is it appropriate for this court to answer the question set forth in 3(b) below, regarding the validity of plea colloquies conducted by special magistrates, where, under the terms of the protocol established by the Superior Court, neither side can be required to submit over its objection to a plea colloquy conducted by a special magistrate, and where, to date, because of the Commonwealth's objections, all colloquies in Essex County have been conducted by judges and not by special magistrates?

(b) If the court answers the question in 3(a) in the affirmative, does such a special magistrate have the authority under Mass. R. Crim. P. 47 to conduct a guilty plea colloquy and to report findings concerning such issues as the voluntariness of the proposed plea and the factual basis for the plea to a presiding justice of the Superior Court?

This report shall be based on the papers filed in each of these cases to date. The parties are also encouraged to prepare a statement of agreed facts, to the extent possible, for use by the full court.

Other requested relief. The defendants in the Charles and Milette cases have requested that I report the following question as well:

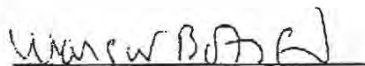
"Where ongoing disputes in litigation caused by corrupt practices in the Hinton Lab have compounded the injustices of that scandal, whether this Court, pursuant to its extraordinary powers and superintendent capacity under G. L. c. 211, § 3, should direct and endorse a range of equitable judicial remedies designed to protect the due process rights of affected defendants, to restore the integrity of the affected judicial system, and to ensure the public's confidence therein."

In connection with this question, the Committee for Public Counsel Services (CPCS) has moved to intervene as a party in the Charles and Milette cases. CPCS argues that, as the only public defender agency in the Commonwealth, it is and has been responsible for providing representation to many thousands of defendants whose constitutional rights may have been denied or interfered with as a result of the alleged misconduct at the Hinton State Laboratory. At a hearing on all these cases held March 13, 2013, the Commonwealth orally opposed the proposed reported question and the motion to intervene.

I decline to report the additional question proposed by the defendants in the Charles and Milette cases at this time. I also deny, without prejudice to renewal, the motion of CPCS to intervene. While the question, or some similar questions, relating to the systemic impact of the alleged misconduct at the laboratory on many criminal cases that were initiated, tried, and resolved between 2003 and 2012, may be appropriate for the full court to consider at some point, I am of the view that it would be premature for the court to attempt now to provide the type of global solution sought by these motions. The work of David Meier, Esq. — appointed by the Governor to, among other things, conduct an inquiry into the number of cases and defendants that the alleged misconduct connected to the Hinton Laboratory may affect — is not yet complete. Nor is the investigation of the Inspector General complete. At least the information that these two sources are expected to provide within a reasonable amount of time would give all concerned a more informed basis on which to consider what types of systemic remedies, if any, might be appropriate. As stated above, I am retaining jurisdiction of these cases, so the

individual defendants and CPCS will have an opportunity to renew their respective motions before me at an appropriate time.

Scheduling. As discussed at the March 13 hearing, the cases will be heard by the full court at its May, 2013, sitting. The Commonwealth, represented by the District Attorney, as the petitioning party in all three cases, will be deemed the appellant. The parties shall promptly confer with each other and with the clerk of the full court to arrange a suitable briefing schedule.

  
Margot Botsford  
Associate Justice

Dated: March 22, 2013

Attachment C to Affidavit of Anthony J. Benedetti

Letters to District Attorneys

April 11, 2013  
February 11, 2013

-Attachment C. 1-



ANTHONY J. BENEDETTI  
CHIEF COUNSEL

The Commonwealth of Massachusetts  
Committee for Public Counsel Services  
44 Bromfield Street, Boston, MA 02108-4909

TEL: (617) 482-6212  
FAX: (617) 988-8495

April 11, 2014

District Attorney Jonathan W. Blodgett  
Ten Federal Street  
Salem, MA 01970

Dear District Attorney Blodgett:

I am writing to follow-up on my previous letter to you in which I requested the cooperation of your office in providing CPCS with certain information that would significantly advance our collective efforts to identify, locate and counsel indigent defendants convicted in cases in which chemist Annie Dookhan was involved in the analysis of alleged controlled substances. Specifically, I requested that your office produce the police report and booking sheet, the docket number and the certificate of analysis associated with the Essex County samples entered on David Meier's August 2013 list of samples of alleged drugs tested by Annie Dookhan at the Hinton Drug Laboratory between 2003 and 2012. (See attached copy of February 11, 2014 letter.)

As I know you are aware, the Supreme Judicial Court, in its recently issued decision in Commonwealth v. Scott, 467 Mass. 336 (2014), held that defendants in cases where Annie Dookhan signed a drug certificate, as primary or secondary chemist, are entitled to a conclusive presumption of egregious government misconduct, in the context of claims that guilty pleas should be vacated as not knowing and voluntary, and thus violative of due process. (In these cases, defendants are left to demonstrate a reasonable probability that they would not have pleaded guilty had they known of Dookhan's misconduct.)

Where the SJC has affirmed the proposition that defendants convicted in Dookhan-involved drug cases have viable claims for relief from their convictions, the duty of CPCS to identify, locate and counsel as many of those individuals as possible has become even clearer. And, as I indicated in my earlier letter to you, the documents I have requested – documents that I believe are accessible to you and your agents – are necessary to enable CPCS to accomplish these goals in a reasonably efficient manner. I do recognize that what I am asking of you, your staff and your agents, calls for the expenditure of significant time and effort.

I would welcome an opportunity to speak with you before the end of the month to discuss how and when the production I have requested might best be accomplished. I am sending comparable requests to the District Attorneys in each of the six other effected counties – I am also open to a joint meeting with all seven District Attorneys. I look forward to your response and to discussing with you how we can work cooperatively to ensure that all individuals whose drug convictions may have been tainted by Annie Dookhan's misconduct get their day in court.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Anthony J. Benedetti".

Anthony J. Benedetti  
Chief Counsel

Enclosure

-Attachment C. 2-



ANTHONY J. BENEDETTI  
CHIEF COUNSEL

The Commonwealth of Massachusetts  
Committee for Public Counsel Services  
44 Bromfield Street, Boston, MA 02108-4909

TEL: (617) 482-6212  
FAX: (617) 988-8495

February 11, 2014

District Attorney Jonathan W. Blodgett  
Ten Federal Street  
Salem, MA 01970

Dear District Attorney Blodgett:

I am writing in the hope that your office will be able to provide CPCS with certain information that will significantly advance our collective efforts to identify, locate and counsel indigent defendants convicted in drug cases in which chemist Annie Dookhan was involved in the analysis of alleged controlled substances.

This past August, we were all provided with an updated list, prepared by Attorney David Meier at the request of Governor Deval Patrick, of 40,323 individuals whose samples of alleged narcotics had been tested by Dookhan, as primary or secondary chemist, between 2003 and 2012. (Several preliminary such lists generated by Meier were provided in September, 2012. The largest of these reflected 37,554 names.)

As I am sure you are aware, Attorney Meier prepared all of these lists with Hinton Drug Lab data and he was able to prepare the August 2013 list, which amplifies the September, 2012 lists, as a result of a file-by-file review of Hinton Drug Lab documents, including drug receipts.

While the August 2013 list is the end result of a monumental and impressive effort by Attorney Meier, because of the limits of the Hinton data upon which it is based, it is missing information necessary for the defense bar to move forward. Some of that information is, we think, accessible to you and your agents.

- The list does not provide birthdates or social security numbers for defendants. We need these precise identifiers so that we can efficiently and accurately search for individuals. Defendants' birthdates and social security numbers are typically found in police incident reports and/or booking sheets.
- The list does not contain case docket numbers. We need this information to enable us to efficiently obtain case dispositions so that we can restrict our search efforts to individuals actually convicted in Dookhan-involved drug cases.
- While the list provides a link to a PDF of the drug receipt associated with each sample, the list does not provide a similar manner of accessing the actual certificate of drug analysis because, surprisingly, Hinton Drug Lab files did not include copies of the "drug certs" themselves. (The drug certs, which reflect the names of the two chemists involved in each analysis and the role played by each (primary or secondary chemist), and the police reports are documents essential to enable assigned attorneys to advise clients as to the merits of possible new trial motions. The drug *receipts*, filled out by police officers on submission of the drug evidence, contain "police reference numbers" – police department file numbers – which provide a link between the Hinton Drug Lab sample numbers and the police reports associated with those samples.)

-Attachment C. 3-

District Attorney Blodgett  
Page Two  
February 11, 2014

I am therefore asking that you provide the police report and booking sheet, the docket number and the certificate of analysis associated with the Essex County samples entered on David Meier's August 2013 list. These entries begin at line #14,597 and end at line # 24,921.

I recognize that what I am asking of you, your staff and your agents calls for the expenditure of considerable time and effort. Yet, I can see no reasonable way around this approach given the scope of the task at hand. Please feel free to call me to discuss how we can all work together cooperatively to ensure that all individuals potentially denied due process get their day in court and to keep this process moving forward.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Anthony J. Benedetti", written in a cursive style.

Anthony J. Benedetti  
Chief Counsel



-Attachment C. 4-



ANTHONY J. BENEDETTI  
CHIEF COUNSEL

The Commonwealth of Massachusetts  
Committee for Public Counsel Services  
44 Bromfield Street, Boston, MA 02108-4909

TEL: (617) 482-6212  
FAX: (617) 988-8495

April 11, 2014

District Attorney Daniel F. Conley  
One Bulfinch Place  
Boston, MA 02114

Dear District Attorney Conley:

I am writing to follow-up on my previous letter to you in which I requested the cooperation of your office in providing CPCS with certain information that would significantly advance our collective efforts to identify, locate and counsel indigent defendants convicted in cases in which chemist Annie Dookhan was involved in the analysis of alleged controlled substances. Specifically, I requested that your office produce the police report and booking sheet, the docket number and the certificate of analysis associated with the Suffolk County samples entered on David Meier's August 2013 list of samples of alleged drugs tested by Annie Dookhan at the Hinton Drug Laboratory between 2003 and 2012. (See attached copy of February 11, 2014 letter.)

As I know you are aware, the Supreme Judicial Court, in its recently issued decision in Commonwealth v. Scott, 467 Mass. 336 (2014), held that defendants in cases where Annie Dookhan signed a drug certificate, as primary or secondary chemist, are entitled to a conclusive presumption of egregious government misconduct, in the context of claims that guilty pleas should be vacated as not knowing and voluntary, and thus violative of due process. (In these cases, defendants are left to demonstrate a reasonable probability that they would not have pleaded guilty had they known of Dookhan's misconduct.)

Where the SJC has affirmed the proposition that defendants convicted in Dookhan-involved drug cases have viable claims for relief from their convictions, the duty of CPCS to identify, locate and counsel as many of those individuals as possible has become even clearer. And, as I indicated in my earlier letter to you, the documents I have requested – documents that I believe are accessible to you and your agents – are necessary to enable CPCS to accomplish these goals in a reasonably efficient manner. I do recognize that what I am asking of you, your staff and your agents, calls for the expenditure of significant time and effort.

I would welcome an opportunity to speak with you before the end of the month to discuss how and when the production I have requested might best be accomplished. I am sending comparable requests to the District Attorneys in each of the six other effected counties – I am also open to a joint meeting with all seven District Attorneys. I look forward to your response and to discussing with you how we can work cooperatively to ensure that all individuals whose drug convictions may have been tainted by Annie Dookhan's misconduct get their day in court.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Anthony J. Benedetti".

Anthony J. Benedetti  
Chief Counsel

Enclosure



-Attachment C. 5-



ANTHONY J. BENEDETTI  
CHIEF COUNSEL

The Commonwealth of Massachusetts  
Committee for Public Counsel Services  
44 Bromfield Street, Boston, MA 02108-4909

TEL: (617) 482-6212  
FAX: (617) 988-8495

February 11, 2014

District Attorney Daniel F. Conley  
One Bulfinch Place  
Boston, MA 02114

Dear District Attorney Conley:

I am writing in the hope that your office will be able to provide CPCS with certain information that will significantly advance our collective efforts to identify, locate and counsel indigent defendants convicted in drug cases in which chemist Annie Dookhan was involved in the analysis of alleged controlled substances.

This past August, we were all provided with an updated list, prepared by Attorney David Meier at the request of Governor Deval Patrick, of 40,323 individuals whose samples of alleged narcotics had been tested by Dookhan, as primary or secondary chemist, between 2003 and 2012. (Several preliminary such lists generated by Meier were provided in September, 2012. The largest of these reflected 37,554 names.)

As I am sure you are aware, Attorney Meier prepared all of these lists with Hinton Drug Lab data and he was able to prepare the August 2013 list, which amplifies the September, 2012 lists, as a result of a file-by-file review of Hinton Drug Lab documents, including drug receipts.

While the August 2013 list is the end result of a monumental and impressive effort by Attorney Meier, because of the limits of the Hinton data upon which it is based, it is missing information necessary for the defense bar to move forward. Some of that information is, we think, accessible to you and your agents.

- The list does not provide birthdates or social security numbers for defendants. We need these precise identifiers so that we can efficiently and accurately search for individuals. Defendants' birthdates and social security numbers are typically found in police incident reports and/or booking sheets.
- The list does not contain case docket numbers. We need this information to enable us to efficiently obtain case dispositions so that we can restrict our search efforts to individuals actually convicted in Dookhan-involved drug cases.
- While the list provides a link to a PDF of the drug receipt associated with each sample, the list does not provide a similar manner of accessing the actual certificate of drug analysis because, surprisingly, Hinton Drug Lab files did not include copies of the "drug certs" themselves. (The drug certs, which reflect the names of the two chemists involved in each analysis and the role played by each (primary or secondary chemist), and the police reports are documents essential to enable assigned attorneys to advise clients as to the merits of possible new trial motions. The drug *receipts*, filled out by police officers on submission of the drug evidence, contain "police reference numbers" – police department file numbers – which provide a link between the Hinton Drug Lab sample numbers and the police reports associated with those samples.)

-Attachment C. 6-

District Attorney Conley  
Page Two  
February 11, 2014

I am therefore asking that you provide the police report and booking sheet, the docket number and the certificate of analysis associated with the Suffolk County samples entered on David Meier's August 2013 list. These entries begin at line # 54,138 and end at line # 86,062.

I recognize that what I am asking of you, your staff and your agents calls for the expenditure of considerable time and effort. Yet, I can see no reasonable way around this approach given the scope of the task at hand. Please feel free to call me to discuss how we can all work together cooperatively to ensure that all individuals potentially denied due process get their day in court and to keep this process moving forward.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Anthony J. Benedetti", written in a cursive style.

Anthony J. Benedetti  
Chief Counsel

-Attachment C. 7-



ANTHONY J. BENEDETTI  
CHIEF COUNSEL

The Commonwealth of Massachusetts  
Committee for Public Counsel Services  
44 Bromfield Street, Boston, MA 02108-4909

TEL: (617) 482-6212  
FAX: (617) 988-8495

April 11, 2014

District Attorney Timothy J. Cruz  
32 Belmont Street  
Brockton, MA 02303

Dear District Attorney Cruz:

I am writing to follow-up on my previous letter to you in which I requested the cooperation of your office in providing CPCS with certain information that would significantly advance our collective efforts to identify, locate and counsel indigent defendants convicted in cases in which chemist Annie Dookhan was involved in the analysis of alleged controlled substances. Specifically, I requested that your office produce the police report and booking sheet, the docket number and the certificate of analysis associated with the Plymouth County samples entered on David Meier's August 2013 list of samples of alleged drugs tested by Annie Dookhan at the Hinton Drug Laboratory between 2003 and 2012. (See attached copy of February 11, 2014 letter.)

As I know you are aware, the Supreme Judicial Court, in its recently issued decision in Commonwealth v. Scott, 467 Mass. 336 (2014), held that defendants in cases where Annie Dookhan signed a drug certificate, as primary or secondary chemist, are entitled to a conclusive presumption of egregious government misconduct, in the context of claims that guilty pleas should be vacated as not knowing and voluntary, and thus violative of due process. (In these cases, defendants are left to demonstrate a reasonable probability that they would not have pleaded guilty had they known of Dookhan's misconduct.)

Where the SJC has affirmed the proposition that defendants convicted in Dookhan-involved drug cases have viable claims for relief from their convictions, the duty of CPCS to identify, locate and counsel as many of those individuals as possible has become even clearer. And, as I indicated in my earlier letter to you, the documents I have requested – documents that I believe are accessible to you and your agents – are necessary to enable CPCS to accomplish these goals in a reasonably efficient manner. I do recognize that what I am asking of you, your staff and your agents, calls for the expenditure of significant time and effort.

I would welcome an opportunity to speak with you before the end of the month to discuss how and when the production I have requested might best be accomplished. I am sending comparable requests to the District Attorneys in each of the six other effected counties – I am also open to a joint meeting with all seven District Attorneys. I look forward to your response and to discussing with you how we can work cooperatively to ensure that all individuals whose drug convictions may have been tainted by Annie Dookhan's misconduct get their day in court.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Anthony J. Benedetti".

Anthony J. Benedetti  
Chief Counsel

Enclosure

-Attachment C. 8-



ANTHONY J. BENEDETTI  
CHIEF COUNSEL

The Commonwealth of Massachusetts  
Committee for Public Counsel Services  
44 Bromfield Street, Boston, MA 02108-4909

TEL: (617) 482-6212  
FAX: (617) 988-8495

February 11, 2014

District Attorney Timothy J. Cruz  
32 Belmont Street  
Brockton, MA 02303

Dear District Attorney Cruz:

I am writing in the hope that your office will be able to provide CPCS with certain information that will significantly advance our efforts to identify, locate and counsel indigent defendants convicted in drug cases in which chemist Annie Dookhan was involved in the analysis of alleged controlled substances.

This past August, we were all provided with an updated list, prepared by Attorney David Meier at the request of Governor Deval Patrick, of 40,323 individuals whose samples of alleged narcotics had been tested by Dookhan, as primary or secondary chemist, between 2003 and 2012. (Several preliminary such lists generated by Meier were provided in September, 2012. The largest of these reflected 37,554 names.)

As I am sure you are aware, Attorney Meier prepared all of these lists with Hinton Drug Lab data and he was able to prepare the August 2013 list, which amplifies the September, 2012 lists, as a result of a file-by-file review of Hinton Drug Lab documents, including drug receipts.

While the August 2013 list is the end result of a monumental and impressive effort by Attorney Meier, because of the limits of the Hinton data upon which it is based, it is missing information necessary for the defense bar to move forward. Some of that information is, we think, accessible to you and your agents.

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- The list does not contain case docket numbers. We need this information to enable us to efficiently obtain case dispositions so that we can restrict our search efforts to individuals actually convicted in Dookhan-involved drug cases.
- While the list provides a link to a PDF of the drug receipt associated with each sample, the list does not provide a similar manner of accessing the actual certificate of drug analysis because, surprisingly, Hinton Drug Lab files did not include copies of the "drug certs" themselves. (The drug certs, which reflect the names of the two chemists involved in each analysis and the role played by each (primary or secondary chemist), and the police reports are documents essential to enable assigned attorneys to advise clients as to the merits of possible new trial motions. The drug receipts, filled out by police officers on submission of the drug evidence, contain "police reference numbers" – police department file numbers – which provide a link between the Hinton Drug Lab sample numbers and the police reports associated with those samples.)

-Attachment C. 9-

District Attorney Cruz  
Page Two  
February 11, 2014

I am therefore asking that you provide the police report and booking sheet, the docket number and the certificate of analysis associated with the Plymouth County samples entered on David Meier's August 2013 list. These entries begin at line #45,607 and end at line # 54,137.

I recognize that what I am asking of you, your staff and your agents calls for the expenditure of considerable time and effort. Yet, I can see no reasonable way around this approach given the scope of the task at hand. Please feel free to call me to discuss how we can all work together cooperatively to ensure that all individuals potentially denied due process get their day in court and to keep this process moving forward.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Anthony J. Benedetti". The signature is fluid and cursive, with the first name being more prominent.

Anthony J. Benedetti  
Chief Counsel

-Attachment C. 10-



ANTHONY J. BENEDETTI  
CHIEF COUNSEL

The Commonwealth of Massachusetts  
Committee for Public Counsel Services  
44 Bromfield Street, Boston, MA 02108-4909

TEL: (617) 482-6212  
FAX: (617) 988-8495

April 11, 2014

District Attorney Michael Morrissey  
45 Shawmut Road  
Canton, MA 02021

Dear District Attorney Morrissey:

I am writing to follow-up on my previous letter to you in which I requested the cooperation of your office in providing CPCS with certain information that would significantly advance our collective efforts to identify, locate and counsel indigent defendants convicted in cases in which chemist Annie Dookhan was involved in the analysis of alleged controlled substances. Specifically, I requested that your office produce the police report and booking sheet, the docket number and the certificate of analysis associated with the Norfolk County samples entered on David Meier's August 2013 list of samples of alleged drugs tested by Annie Dookhan at the Hinton Drug Laboratory between 2003 and 2012. (See attached copy of February 11, 2014 letter.)

As I know you are aware, the Supreme Judicial Court, in its recently issued decision in Commonwealth v. Scott, 467 Mass. 336 (2014), held that defendants in cases where Annie Dookhan signed a drug certificate, as primary or secondary chemist, are entitled to a conclusive presumption of egregious government misconduct, in the context of claims that guilty pleas should be vacated as not knowing and voluntary, and thus violative of due process. (In these cases, defendants are left to demonstrate a reasonable probability that they would not have pleaded guilty had they known of Dookhan's misconduct.)

Where the SJC has affirmed the proposition that defendants convicted in Dookhan-involved drug cases have viable claims for relief from their convictions, the duty of CPCS to identify, locate and counsel as many of those individuals as possible has become even clearer. And, as I indicated in my earlier letter to you, the documents I have requested – documents that I believe are accessible to you and your agents – are necessary to enable CPCS to accomplish these goals in a reasonably efficient manner. I do recognize that what I am asking of you, your staff and your agents, calls for the expenditure of significant time and effort.

I would welcome an opportunity to speak with you before the end of the month to discuss how and when the production I have requested might best be accomplished. I am sending comparable requests to the District Attorneys in each of the six other effected counties – I am also open to a joint meeting with all seven District Attorneys. I look forward to your response and to discussing with you how we can work cooperatively to ensure that all individuals whose drug convictions may have been tainted by Annie Dookhan's misconduct get their day in court.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Anthony J. Benedetti".

Anthony J. Benedetti  
Chief Counsel

Enclosure



-Attachment C. 11-



ANTHONY J. BENEDETTI  
CHIEF COUNSEL

The Commonwealth of Massachusetts  
Committee for Public Counsel Services  
44 Bromfield Street, Boston, MA 02108-4909

TEL: (617) 482-6212  
FAX: (617) 988-8495

February 11, 2014

District Attorney Michael Morrissey  
45 Shawmut Road  
Canton, MA 02021

Dear District Attorney Morrissey:

I am writing in the hope that your office will be able to provide CPCS with certain information that will significantly advance our collective efforts to identify, locate and counsel indigent defendants convicted in drug cases in which chemist Annie Dookhan was involved in the analysis of alleged controlled substances.

This past August, we were all provided with an updated list, prepared by Attorney David Meier at the request of Governor Deval Patrick, of 40,323 individuals whose samples of alleged narcotics had been tested by Dookhan, as primary or secondary chemist, between 2003 and 2012. (Several preliminary such lists generated by Meier were provided in September, 2012. The largest of these reflected 37,554 names.)

As I am sure you are aware, Attorney Meier prepared all of these lists with Hinton Drug Lab data and he was able to prepare the August 2013 list, which amplifies the September, 2012 lists, as a result of a file-by-file review of Hinton Drug Lab documents, including drug receipts.

While the August 2013 list is the end result of a monumental and impressive effort by Attorney Meier, because of the limits of the Hinton data upon which it is based, it is missing information necessary for the defense bar to move forward. Some of that information is, we think, accessible to you and your agents.

- The list does not provide birthdates or social security numbers for defendants. We need these precise identifiers so that we can efficiently and accurately search for individuals. Defendants' birthdates and social security numbers are typically found in police incident reports and/or booking sheets.
- The list does not contain case docket numbers. We need this information to enable us to efficiently obtain case dispositions so that we can restrict our search efforts to individuals actually convicted in Dookhan-involved drug cases.
- While the list provides a link to a PDF of the drug receipt associated with each sample, the list does not provide a similar manner of accessing the actual certificate of drug analysis because, surprisingly, Hinton Drug Lab files did not include copies of the "drug certs" themselves. (The drug certs, which reflect the names of the two chemists involved in each analysis and the role played by each (primary or secondary chemist), and the police reports are documents essential to enable assigned attorneys to advise clients as to the merits of possible new trial motions. The drug receipts, filled out by police officers on submission of the drug evidence, contain "police reference numbers" – police department file numbers – which provide a link between the Hinton Drug Lab sample numbers and the police reports associated with those samples.)

-Attachment C. 12-

District Attorney Morrissey  
Page Two  
February 11, 2014

I am therefore asking that you provide the police report and booking sheet, the docket number and the certificate of analysis associated with the Norfolk County samples entered on David Meier's August 2013 list. These entries begin at line #35,921 and end at line # 45,606.

I recognize that what I am asking of you, your staff and your agents calls for the expenditure of considerable time and effort. Yet, I can see no reasonable way around this approach given the scope of the task at hand. Please feel free to call me to discuss how we can all work together cooperatively to ensure that all individuals potentially denied due process get their day in court and to keep this process moving forward.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Anthony J. Benedetti", written in a cursive style.

Anthony J. Benedetti  
Chief Counsel



-Attachment C. 13-



ANTHONY J. BENEDETTI  
CHIEF COUNSEL

The Commonwealth of Massachusetts  
Committee for Public Counsel Services  
44 Bromfield Street, Boston, MA 02108-4909

TEL: (617) 482-6212  
FAX: (617) 988-8495

April 11, 2014

District Attorney Michael O'Keefe  
P.O. Box 455  
3231 Main Street  
Barnstable, MA 02630

Dear District Attorney O'Keefe:

I am writing to follow-up on my previous letter to you in which I requested the cooperation of your office in providing CPCS with certain information that would significantly advance our collective efforts to identify, locate and counsel indigent defendants convicted in cases in which chemist Annie Dookhan was involved in the analysis of alleged controlled substances. Specifically, I requested that your office produce the police report and booking sheet, the docket number and the certificate of analysis associated with the Barnstable County and Dukes County samples entered on David Meier's August 2013 list of samples of alleged drugs tested by Annie Dookhan at the Hinton Drug Laboratory between 2003 and 2012. (See attached copy of February 11, 2014 letter.)

As I know you are aware, the Supreme Judicial Court, in its recently issued decision in Commonwealth v. Scott, 467 Mass. 336 (2014), held that defendants in cases where Annie Dookhan signed a drug certificate, as primary or secondary chemist, are entitled to a conclusive presumption of egregious government misconduct, in the context of claims that guilty pleas should be vacated as not knowing and voluntary, and thus violative of due process. (In these cases, defendants are left to demonstrate a reasonable probability that they would not have pleaded guilty had they known of Dookhan's misconduct.)

Where the SJC has affirmed the proposition that defendants convicted in Dookhan-involved drug cases have viable claims for relief from their convictions, the duty of CPCS to identify, locate and counsel as many of those individuals as possible has become even clearer. And, as I indicated in my earlier letter to you, the documents I have requested – documents that I believe are accessible to you and your agents – are necessary to enable CPCS to accomplish these goals in a reasonably efficient manner. I do recognize that what I am asking of you, your staff and your agents, calls for the expenditure of significant time and effort.

I would welcome an opportunity to speak with you before the end of the month to discuss how and when the production I have requested might best be accomplished. I am sending comparable requests to the District Attorneys in each of the six other effected counties – I am also open to a joint meeting with all seven District Attorneys. I look forward to your response and to discussing with you how we can work cooperatively to ensure that all individuals whose drug convictions may have been tainted by Annie Dookhan's misconduct get their day in court.

Very truly yours,

A handwritten signature in black ink, appearing to read "Anthony J. Benedetti".

Anthony J. Benedetti  
Chief Counsel

Enclosure

-Attachment C. 14-



ANTHONY J. BENEDETTI  
CHIEF COUNSEL

The Commonwealth of Massachusetts  
Committee for Public Counsel Services  
44 Bromfield Street, Boston, MA 02108-4909

TEL: (617) 482-6212  
FAX: (617) 988-8495

February 11, 2014

District Attorney Michael O'Keefe  
P.O. Box 455  
3231 Main Street  
Barnstable, MA 02630

Dear District Attorney O'Keefe:

I am writing in the hope that you will be able to provide CPCS with certain information that will significantly advance our collective efforts to identify, locate and counsel indigent defendants convicted in drug cases in which chemist Annie Dookhan was involved in the analysis of alleged controlled substances.

This past August, we were all provided with an updated list, prepared by Attorney David Meier at the request of Governor Deval Patrick, of 40,323 individuals whose samples of alleged narcotics had been tested by Dookhan, as primary or secondary chemist, between 2003 and 2012. (Several preliminary such lists generated by Meier were provided in September, 2012. The largest of these reflected 37,554 names.)

As I am sure you are aware, Attorney Meier prepared all of these lists with Hinton Drug Lab data and he was able to prepare the August 2013 list, which amplifies the September, 2012 lists, as a result of a file-by-file review of Hinton Drug Lab documents, including drug receipts.

While the August 2013 list is the end result of a monumental and impressive effort by Attorney Meier, because of the limits of the Hinton data upon which it is based, it is missing information necessary for the defense bar to move forward. Some of that information is, we think, accessible to you and your agents.

- The list does not provide birthdates or social security numbers for defendants. We need these precise identifiers so that we can efficiently and accurately search for individuals. Defendants' birthdates and social security numbers are typically found in police incident reports and/or booking sheets.
- The list does not contain case docket numbers. We need this information to enable us to efficiently obtain case dispositions so that we can restrict our search efforts to individuals actually convicted in Dookhan-involved drug cases.
- While the list provides a link to a PDF of the drug receipt associated with each sample, the list does not provide a similar manner of accessing the actual certificate of drug analysis because, surprisingly, Hinton Drug Lab files did not include copies of the "drug certs" themselves. (The drug certs, which reflect the names of the two chemists involved in each analysis and the role played by each (primary or secondary chemist), and the police reports are documents essential to enable assigned attorneys to advise clients as to the merits of possible new trial motions. The drug *receipts*, filled out by police officers on submission of the drug evidence, contain "police reference numbers" – police department file numbers – which provide a link between the Hinton Drug Lab sample numbers and the police reports associated with those samples.)

-Attachment C. 15-

District Attorney O'Keefe  
Page Two  
February 11, 2014

I am therefore asking that you provide the police report and booking sheet, the docket number and the certificate of analysis associated with the Barnstable County and Dukes County samples entered on David Meier's August 2013 list. These entries begin at line # 2 and end at line # 3,739 (Barnstable County) and line # 14,440 and end at line # 14,596 (Dukes County).

I recognize that what I am asking of you, your staff and your agents calls for the expenditure of considerable time and effort. Yet, I can see no reasonable way around this approach given the scope of the task at hand. Please feel free to call me to discuss how we can all work together cooperatively to ensure that all individuals potentially denied due process get their day in court and to keep this process moving forward.

Very truly yours,

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

Anthony J. Benedetti  
Chief Counsel

-Attachment C. 16-



ANTHONY J. BENEDETTI  
CHIEF COUNSEL

The Commonwealth of Massachusetts  
Committee for Public Counsel Services  
44 Bromfield Street, Boston, MA 02108-4909

TEL: (617) 482-6212  
FAX: (617) 988-8495

April 11, 2014

District Attorney Marian T. Ryan  
15 Commonwealth Avenue  
Woburn, MA 01801

Dear District Attorney Ryan:

I am writing to follow-up on my previous letter to you in which I requested the cooperation of your office in providing CPCS with certain information that would significantly advance our collective efforts to identify, locate and counsel indigent defendants convicted in cases in which chemist Annie Dookhan was involved in the analysis of alleged controlled substances. Specifically, I requested that your office produce the police report and booking sheet, the docket number and the certificate of analysis associated with the Middlesex County samples entered on David Meier's August 2013 list of samples of alleged drugs tested by Annie Dookhan at the Hinton Drug Laboratory between 2003 and 2012. (See attached copy of February 11, 2014 letter.)

As I know you are aware, the Supreme Judicial Court, in its recently issued decision in Commonwealth v. Scott, 467 Mass. 336 (2014), held that defendants in cases where Annie Dookhan signed a drug certificate, as primary or secondary chemist, are entitled to a conclusive presumption of egregious government misconduct, in the context of claims that guilty pleas should be vacated as not knowing and voluntary, and thus violative of due process. (In these cases, defendants are left to demonstrate a reasonable probability that they would not have pleaded guilty had they known of Dookhan's misconduct.)

Where the SJC has affirmed the proposition that defendants convicted in Dookhan-involved drug cases have viable claims for relief from their convictions, the duty of CPCS to identify, locate and counsel as many of those individuals as possible has become even clearer. And, as I indicated in my earlier letter to you, the documents I have requested – documents that I believe are accessible to you and your agents – are necessary to enable CPCS to accomplish these goals in a reasonably efficient manner. I do recognize that what I am asking of you, your staff and your agents, calls for the expenditure of significant time and effort.

I would welcome an opportunity to speak with you before the end of the month to discuss how and when the production I have requested might best be accomplished. I am sending comparable requests to the District Attorneys in each of the six other effected counties – I am also open to a joint meeting with all seven District Attorneys. I look forward to your response and to discussing with you how we can work cooperatively to ensure that all individuals whose drug convictions may have been tainted by Annie Dookhan's misconduct get their day in court.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Anthony J. Benedetti".

Anthony J. Benedetti  
Chief Counsel

Enclosure

-Attachment C. 17-



ANTHONY J. BENEDETTI  
CHIEF COUNSEL

The Commonwealth of Massachusetts  
Committee for Public Counsel Services  
44 Bromfield Street, Boston, MA 02108-4909

TEL: (617) 482-6212  
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February 11, 2014

District Attorney Marian T. Ryan  
15 Commonwealth Avenue  
Woburn, MA 01801

Dear District Attorney Ryan:

I am writing in the hope that your office will be able to provide CPCS with certain information that will significantly advance our collective efforts to identify, locate and counsel indigent defendants convicted in drug cases in which chemist Annie Dookhan was involved in the analysis of alleged controlled substances.

This past August, we were all provided with an updated list, prepared by Attorney David Meier at the request of Governor Deval Patrick, of 40,323 individuals whose samples of alleged narcotics had been tested by Dookhan, as primary or secondary chemist, between 2003 and 2012. (Several preliminary such lists generated by Meier were provided in September, 2012. The largest of these reflected 37,554 names.)

As I am sure you are aware, Attorney Meier prepared all of these lists with Hinton Drug Lab data and he was able to prepare the August 2013 list, which amplifies the September, 2012 lists, as a result of a file-by-file review of Hinton Drug Lab documents, including drug receipts.

While the August 2013 list is the end result of a monumental and impressive effort by Attorney Meier, because of the limits of the Hinton data upon which it is based, it is missing information necessary for the defense bar to move forward. Some of that information is, we think, accessible to you and your agents.

- The list does not provide birthdates or social security numbers for defendants. We need these precise identifiers so that we can efficiently and accurately search for individuals. Defendants' birthdates and social security numbers are typically found in police incident reports and/or booking sheets.
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-Attachment C. 18-

District Attorney Ryan  
Page Two  
February 11, 2014

I am therefore asking that you provide the police report and booking sheet, the docket number and the certificate of analysis associated with the Middlesex County samples entered on David Meier's August 2013 list. These entries begin at line #24,922 and end at line # 35,920.

I recognize that what I am asking of you, your staff and your agents calls for the expenditure of considerable time and effort. Yet, I can see no reasonable way around this approach given the scope of the task at hand. Please feel free to call me to discuss how we can all work together cooperatively to ensure that all individuals potentially denied due process get their day in court and to keep this process moving forward.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Anthony J. Benedetti", written in a cursive style.

Anthony J. Benedetti  
Chief Counsel



-Attachment C. 19-



ANTHONY J. BENEDETTI  
CHIEF COUNSEL

The Commonwealth of Massachusetts  
Committee for Public Counsel Services  
44 Bromfield Street, Boston, MA 02108-4909

TEL: (617) 482-6212  
FAX: (617) 988-8495

April 11, 2014

District Attorney C. Samuel Sutter  
P.O. Box 973  
888 Purchase Street  
New Bedford, MA 02741

Dear District Attorney Ryan:

I am writing to follow-up on my previous letter to you in which I requested the cooperation of your office in providing CPCS with certain information that would significantly advance our collective efforts to identify, locate and counsel indigent defendants convicted in cases in which chemist Annie Dookhan was involved in the analysis of alleged controlled substances. Specifically, I requested that your office produce the police report and booking sheet, the docket number and the certificate of analysis associated with the Bristol County samples entered on David Meier's August 2013 list of samples of alleged drugs tested by Annie Dookhan at the Hinton Drug Laboratory between 2003 and 2012. (See attached copy of February 11, 2014 letter.)

As I know you are aware, the Supreme Judicial Court, in its recently issued decision in Commonwealth v. Scott, 467 Mass. 336 (2014), held that defendants in cases where Annie Dookhan signed a drug certificate, as primary or secondary chemist, are entitled to a conclusive presumption of egregious government misconduct, in the context of claims that guilty pleas should be vacated as not knowing and voluntary, and thus violative of due process. (In these cases, defendants are left to demonstrate a reasonable probability that they would not have pleaded guilty had they known of Dookhan's misconduct.)

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Very truly yours,

A handwritten signature in dark ink, appearing to read "Anthony J. Benedetti".

Anthony J. Benedetti  
Chief Counsel

Enclosure

-Attachment C. 20-



ANTHONY J. BENEDETTI  
CHIEF COUNSEL

The Commonwealth of Massachusetts  
Committee for Public Counsel Services  
44 Bromfield Street, Boston, MA 02108-4909

TEL: (617) 482-6212  
FAX: (617) 988-8495

February 11, 2014

District Attorney C. Samuel Sutter  
P.O. Box 973  
888 Purchase Street  
New Bedford, MA 02741

Dear District Attorney Sutter:

I am writing in the hope that your office will be able to provide CPCS with certain information that will significantly advance our collective efforts to identify, locate and counsel indigent defendants convicted in drug cases in which chemist Annie Dookhan was involved in the analysis of alleged controlled substances.

This past August, we were all provided with an updated list, prepared by Attorney David Meier at the request of Governor Deval Patrick, of 40,323 individuals whose samples of alleged narcotics had been tested by Dookhan, as primary or secondary chemist, between 2003 and 2012. (Several preliminary such lists generated by Meier were provided in September, 2012. The largest of these reflected 37,554 names.)

As I am sure you are aware, Attorney Meier prepared all of these lists with Hinton Drug Lab data and he was able to prepare the August 2013 list, which amplifies the September, 2012 lists, as a result of a file-by-file review of Hinton Drug Lab documents, including drug receipts.

While the August 2013 list is the end result of a monumental and impressive effort by Attorney Meier, because of the limits of the Hinton data upon which it is based, it is missing information necessary for the defense bar to move forward. Some of that information is, we think, accessible to you and your agents.

- The list does not provide birthdates or social security numbers for defendants. We need these precise identifiers so that we can efficiently and accurately search for individuals. Defendants' birthdates and social security numbers are typically found in police incident reports and/or booking sheets.
- The list does not contain case docket numbers. We need this information to enable us to efficiently obtain case dispositions so that we can restrict our search efforts to individuals actually convicted in Dookhan-involved drug cases.
- While the list provides a link to a PDF of the drug receipt associated with each sample, the list does not provide a similar manner of accessing the actual certificate of drug analysis because, surprisingly, Hinton Drug Lab files did not include copies of the "drug certs" themselves. (The drug certs, which reflect the names of the two chemists involved in each analysis and the role played by each (primary or secondary chemist), and the police reports are documents essential to enable assigned attorneys to advise clients as to the merits of possible new trial motions. The drug receipts, filled out by police officers on submission of the drug evidence, contain "police reference numbers" – police department file numbers – which provide a link between the Hinton Drug Lab sample numbers and the police reports associated with those samples.)



-Attachment C. 21-

District Attorney Sutter  
Page Two  
February 11, 2014

I am therefore asking that you provide the police report and booking sheet, the docket number and the certificate of analysis associated with the Bristol County samples entered on David Meier's August 2013 list. These entries begin at line #3,740 and end at line # 14,439.

I recognize that what I am asking of you, your staff and your agents calls for the expenditure of considerable time and effort. Yet, I can see no reasonable way around this approach given the scope of the task at hand. Please feel free to call me to discuss how we can all work together cooperatively to ensure that all individuals potentially denied due process get their day in court and to keep this process moving forward.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Anthony J. Benedetti", written in a cursive style.

Anthony J. Benedetti  
Chief Counsel

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 INTERVENE

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 failure of the Hinton drug lab and associated disclosures of wrongdoing by chemist Annie Dookhan.

2. I filed an affidavit in support of the petition for relief pursuant to G.L. c.211, §3, filed by the petitioners in this case on January 6, 2014 (R. 231-245), which affidavit and its attachments are incorporated by reference herein.

3. Four full-time Public Defender Division attorneys now staff the DLCLU. We represent indigent defendants convicted in drug cases in which the alleged narcotics can be shown to have been analyzed by Dookhan (Dookhan cases) or to have been tested by the Hinton

-2-

lab during Dookhan's tenure there from 2003 until 2012 (whole lab cases).

4. DLCLU staff attorneys also provide advice and training to public defenders and bar advocates handling Hinton lab cases, and seek to identify and locate indigent defendants with tainted Hinton lab drug convictions and advise those who have not received the advice of counsel about the possibility of seeking post-conviction relief.

**The impact of Commonwealth v. Scott**

5. Commonwealth v. Scott, 467 Mass. 336 (2014), released on March 5, 2014, erects a framework for the litigation of motions to vacate guilty pleas in those Hinton lab cases in which the defendant can show that Dookhan analyzed the alleged narcotics.

6. More specifically, Scott creates "a conclusive presumption" that egregious misconduct attributable to the government infected the case of any defendant whose motion to vacate is supported by a Hinton lab drug certificate (a) "from the defendant's case," and (b) "signed by Dookhan on the line labeled 'Assistant Analyst.'" Commonwealth v. Scott, 467 Mass. at 353.

7. But Scott does "not relieve the defendant of his burden . . . to particularize Dookhan's misconduct to his decision to tender a guilty plea." Id. at 354.

8. To the contrary, in order to obtain relief, a

-3-

defendant whose conviction has been shown to have been tainted under the first prong of Scott still must "demonstrate a reasonable probability that he would not have pleaded guilty had he known of Dookhan's misconduct." Id. at 354-355.

9. Scott "emphasize[s]" that litigation of this "materiality" prong must address "the full context" of a Dookhan defendant's decision to plead guilty, that the "relevant factors and their relative weight will differ from one case to the next," and that motion judges ruling on Dookhan motions to vacate must engage in a "fact-intensive analysis" which considers the "range of circumstances" surrounding the defendant's "individualized" decision to plead guilty. Id. at 357-358.

**Problems with the case-by-case  
approach after Scott**

10. Prosecutorial approaches to the litigation of Dookhan motions to vacate have varied widely from county to county following Scott.

11. In Essex County and Middlesex County, defendants have submitted into evidence, at evidentiary hearings on motions to vacate guilty pleas, their own affidavits and affidavits of plea counsel, without objection by the Commonwealth.

12. In Suffolk County, on the other hand,

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prosecutors routinely object to the admission of such affidavits and demand an opportunity to question the affiants under oath.

13. The Suffolk County approach has created substantial challenges for Dookhan defendants, for the following reasons.

14. Following revelation of Dookhan's misconduct and the closure of the Hinton lab in 2012, CPCS made thousands of assignments of counsel to defendants with potential claims for relief. The vast majority of these assignments were made to the same attorneys who had represented the defendants at the plea stage.

15. In light of the language in Scott calling for an exploration of the "full context" of the plea decision, the Suffolk County approach has raised the question whether an attorney who represented a Dookhan defendant at the plea stage may represent that defendant at a Scott hearing without running afoul of Mass. R. Prof. C. 3.7(a), which provides that a "lawyer shall not act as an advocate at a trial in which the lawyer is likely to be a necessary witness," unless certain exceptions apply.

16. In April 2014, Attorney Michael Roitman, who has been assigned by CPCS to represent five Suffolk County Dookhan defendants whom he had represented at the plea stage, sought guidance relative to this issue

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from the Massachusetts Bar Association's Committee on Professional Ethics.

17. In response, Timothy Dacey, vice-chair of the committee, stated,

[I]f the evidence you will give is critical to your client's case and you expect that you will be subject to cross-examination by the district attorney, you should assume that Rule 3.7 applies. Assuming that Rule 3.7 does apply, you may not act as both advocate and witness unless one of the exceptions to the Rule applies. The only exception which seems to apply in your case is Rule 3.7(a)(3), which permits [a] lawyer to testify if disqualification will "work a substantial hardship on the client."

18. Attorney Roitman consulted with my office to further explore this issue, which he recognized had implications for every Dookhan defendant represented by plea counsel attempting to show that the plea decision probably would have been different had the defendant been aware of Dookhan's criminal misconduct.

19. We directed Attorney Roitman to Smaland Beach Ass'n v. Genova, 461 Mass. 214 (2012), in which the Court stresses that the "primary purpose" of Rule 3.7 is to "prevent the jury as fact finder from becoming confused by the combination of roles of attorney and witness." Id. at 220, quoting Steinert v. Steinert, 73 Mass. App. Ct. 287, 291 (2008).

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20. Smaland further states that Rule 3.7 is not implicated

in every case in which counsel could give testimony on behalf of his client on other than formal or uncontested matters.... Rather, our framework requires a more searching review to determine whether the lawyer's continued participation as counsel taints the legal system or the trial of the case before it.

Id. at 220-221 (internal citations omitted).

21. Attorney Dacey had not considered Smaland. Accordingly, Attorney Roitman sent him a copy of the opinion, and asked whether it changed his Rule 3.7 analysis.

22. Attorney Dacey responded that he did not think Smaland "settle[d] the issue," and reiterated his advice that Attorney Roitman bring the matter to the attention of the judge considering the motion to vacate.

23. The e-mail exchange between Attorneys Roitman and Dacey (a copy of which is attached hereto as Attachment A) was made available to judges, special magistrates, defense attorneys, and prosecutors handling Dookhan motions to vacate in Suffolk County.

24. In another post-Scott Suffolk County Dookhan case (Commonwealth v. Robert Newton, SUCR2010-10406), Attorney Anne Rousseve, who had represented the



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defendant at the time of the plea, was prepared to proceed with an evidentiary hearing in a dual role (with her client's informed consent and with other counsel standing ready to handle her direct examination).

25. The Commonwealth objected on grounds that the procedure would violate Rule 3.7. After receiving memoranda from the parties, the special magistrate ruled that it "would be improper" under Rule 3.7 and "unfair to the Commonwealth" if counsel, having testified about the advice that she gave to Newton in connection with his decision to plead, were permitted to argue her own credibility. Commonwealth v. Robert Newton, SUCR2010-10406, Memorandum of Decision, at 3 (May 6, 2014) (Attachment B). Accordingly, the special magistrate ruled that "plea counsel may testify and may argue her client's credibility and that of any other witness except herself." Id. at 4 (emphasis supplied).

26. In a hearing held on a motion to vacate in one of Attorney Roitman's cases (Commonwealth v. Hipólito Cruz, SUCR-2009-10595), the special magistrate permitted Attorney Roitman to testify, as plea counsel, in narrative form, but ordered that he not argue his own credibility. Accordingly, Attorney Roitman, who did not have other counsel to assist him, refrained from arguing that his testimony should be credited.



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27. Requiring re-assignments of counsel in these cases, or requiring that co-counsel be assigned to conduct direct examinations of plea counsel and make argument relative to plea counsel's credibility, would add to the significant delay that has already been endured by Hinton lab defendants, some of whom initiated their pursuit of post-conviction relief in the fall of 2012.

28. Of even greater concern is the practical impossibility of finding a sufficient number of new or additional attorneys to represent the thousands of defendants whose ability to obtain relief will be affected if the Suffolk County approach takes hold.

29. In addition to the Rule 3.7 issue, the Suffolk County approach requires that defendants themselves consider testifying in order to meet their burden of proving that Dookhan's misconduct was material to the decision to plead guilty.

30. The scope of permissible cross-examination where the defendant has taken the stand has been problematic. Defendants have taken the position that cross-examination relative to the facts of the case should be limited to the defendant's understanding of the nature and extent of the prosecution's evidence, whereas prosecutors have argued that the "full context" of a defendant's plea decision under Scott opens the

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door to an inquiry encompassing the defendant's factual guilt of the offense pleaded to.

31. Rulings by special magistrates on this issue have varied widely. In Cruz (referenced ante at ¶26), the special magistrate permitted the prosecutor, over objection, to cross examine the defendant about his culpability for the offense -- what he had done, said, and known with respect to the alleged contraband in question -- and to conclude the cross examination by asking the defendant whether it was not true that he had pleaded guilty because in fact he was guilty.

32. Dookhan defendants are extremely concerned about the issue of scope, where testimony from Scott hearings may be admissible in the Commonwealth's case-in-chief should a case go to trial following allowance of a motion to vacate, and where special magistrates' rulings as to whether prosecutors may compel Dookhan defendants to incriminate themselves at such hearings have varied.

33. Uncertainty as to this question threatens to deter Dookhan defendants from pursuing viable motions to vacate.

Problems with whole lab cases  
following release of the Inspector  
General's report

34. In addition to cases in which the defendant

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can produce a certificate of analysis signed by Dookhan, attorneys in my unit are counseling clients seeking relief from Hinton lab convictions that do not appear to involve Dookhan as either the primary or secondary chemist.

35. Such "whole lab" claims are premised on evidence of the Hinton lab's gross mismanagement, which, among other things, permitted Dookhan essentially unfettered access to all suspected drug evidence held at the lab.

36. On March 4, 2014, the Office of the Inspector General (OIG) released its much-anticipated report of its investigation of the Hinton lab, "Investigation of the Drug Laboratory at the William A. Hinton State Laboratory Institute, 2002 -- 2012" (available through the OIG's website, <http://www.mass.gov/ig/>) (last visited May 21, 2014).

37. The bulk of the report is devoted to a description of multiple grave and systemic deficiencies in the operation of the unaccredited lab, including the following:

- Managers were ill-suited to oversee a forensic lab, and provided virtually no supervision. Report at 1, 21-26 and 114-115.
- A lack of any "formal and uniform protocols" concerning basic lab operations, including testing methods and chain of custody.

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Report at 1, 31-33 and 115.

- Training of chemists that was "wholly inadequate." Report at 2, 27-30 and 115.
- A quality control system that was "ineffective in detecting malfeasance, incompetence and inaccurate results." Report at 2, 43-47 and 116.
- Inadequate security measures, including a vulnerable "drug safe." Report at 2, 49-52 and 117.

38. Seemingly tacked on to its detailed and damning findings of top-to-bottom deficiencies in the Hinton lab's management and operations are the report's conclusions that "Dookhan was the sole bad actor," and that only cases involving samples assigned to Dookhan as primary chemist needed to be viewed "with any increased suspicion because of Dookhan's involvement." Report at 1, 3, 113, 120.

39. To establish a due process violation in a non-Dookhan Hinton lab case, it will be necessary for the defendant to refute the OIG's suggestion that the justice system need not concern itself with Hinton lab cases in which the alleged narcotics were analyzed by chemists other than Dookhan.

40. But the report does not include any of the underlying facts forming the basis for its conclusions that Dookhan was the "sole bad actor" and that only

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those cases in which Dookhan was the primary chemist warrant "increased suspicion." Nor does the report describe the methodology by which OIG reached these conclusions.

41. Notwithstanding the absence of this information, the report raises glaring questions as to whether justice has been done in non-Dookhan cases.

42. For example, OIG reviewed an unstated number of unidentified transcripts and audiotapes of testimony given by Hinton lab chemists in criminal trials.

43. The report faults Hinton lab supervisors for failing to oversee such testimony, noting that

multiple chemists testified to being 95% confident that their analytical results were correct in situations in which there was no statistical support for those statements. Chemists also described significant aspects of the testing process differently from one another and often in ways that the forensic drug analysis community would not support.

Report at 24 (emphasis supplied).

44. But the report does not identify either the "multiple chemists" who testified "in ways that the forensic drug community would not support" or the defendants against whom they so testified.

45. I have asked the Office of the Inspector General for access to evidence in its custody or control which is necessary for non-Dookhan defendants

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to vindicate their due process rights, including identifying information regarding the above-described cases in which chemists other than Dookhan were found by the OIG to have provided scientifically suspect testimony.

46. To date, the Office of the Inspector General, has declined to make any such evidence available to CPCS, on grounds that it is "confidential." A copy of my e-mail exchange with the OIG's General Counsel regarding this issue is attached hereto (Attachment C).

Continuing problems identifying  
Dookhan defendants

47. CPCS staff attorneys have continued to seek to identify, locate, and offer counsel to indigent Dookhan defendants.

48. Our belief in the importance of this work has been strengthened by Scott, which recognizes that Dookhan's misconduct has "cast a shadow over the entire criminal justice system," Scott, 467 Mass. at 352, and has tainted every case that she touched "as either the primary or secondary chemist." Id. at 349.

49. My affidavit in support of the petition before the Court describes the difficulties that CPCS has encountered in identifying Dookhan defendants, and explains why the Meier list of 40,323 individuals whose samples of alleged narcotics were tested by Dookhan

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lacks information needed to identify and locate defendants in cases that resulted in convictions (R. 239-244 [Affidavit of Nancy J. Caplan at ¶¶28-43]).

50. To address the deficiencies in the Meier list, Chief Counsel Benedetti has asked the District Attorneys of each of the seven affected counties to provide CPCS with the police report and booking sheet, docket number, and drug analysis certificate(s) of the Meier list entries associated with their county.

51. Without the requested information from the District Attorneys, it will difficult if not impossible, and would in any event take many years, for CPCS to identify, locate, and offer counsel to the many thousands of unidentified Dookhan defendants on the Meier list.

Continuing uncertainty as to whether Dookhan defendants whose guilty pleas have been vacated may thereafter be punished more harshly

52. My affidavit in support of the instant petition describes why, following the Rodriguez case, many defendants have been deterred from seeking relief from their Dookhan-tainted convictions by the fear that a successful motion to vacate may ultimately lead to the imposition of additional punishment after a trial (R. 236-239 [Affidavit of Nancy J. Caplan, at ¶¶18-27]).




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53. This issue has created a significant impediment to our efforts to secure justice for Dookhan defendants whose due process rights have been violated, and continues to deter defendants with viable motions to vacate under Scott from pursuing such relief.

SIGNED UNDER THE PAINS AND PENALTIES OF PERJURY

THIS 27<sup>th</sup> DAY OF MAY 2014.



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



Attachment A to Affidavit of Nancy J. Caplan

E-mail exchange between Attorney Michael Roitman and  
Attorney Timothy J. Dacey

-Attachment A. 1-

From: Michael Roitman  
Sent: Wednesday, April 02, 2014 5:06 PM  
To: Jean Stevens  
Cc: Nancy Caplan; Jane Rabe  
Subject: Ethics Opinion - Dookhan Hearings

Ms. Stevens

I request an Ethics Opinion addressing issues arising in upcoming hearings on motions for a new trial for defendants whose drugs were analyzed by Annie Dookhan.

My practice is criminal defense. I am a bar advocate; I accept appointment to represent indigent defendants in Suffolk Superior Court. I have five pending cases where the client pled guilty to certain drug charges and later learned that Annie Dookhan had analyzed the drugs in the case. For each of the clients, I filed a Motion for a New Trial pursuant to M.R.Crim. P. Rule 30. I filed the motions for new trials in the fall of 2012, when the criminal defense bar was first informed of Ms. Dookhan's misconduct.

In Suffolk County, where the majority of Annie Dookhan cases were prosecuted, most motions for a new trial in the Dookhan cases have not been litigated. The prosecution and defense counsel continued most of the cases for repeated status conferences while the investigation and prosecution of Annie Dookhan went forward and while the Inspector General conducted an investigation of the DPH Hinton Laboratory in Jamaica Plain where Ms. Dookhan worked.

In early March the Inspector General released his report on the Hinton Laboratory and the Supreme Judicial Court issued decisions in several cases involving Annie Dookhan. The lead case is Commonwealth v. Scott, 467 Mass. 336 (2014).

In Scott, the Supreme Judicial Court held that -

Therefore, we hold that in cases in which a defendant seeks to vacate a guilty plea under Mass. R. Crim. P. 30(b) as a result of the revelation of Dookhan's misconduct, and where the defendant proffers a drug certificate from the defendant's case signed by Dookhan on the line labeled "Assistant Analyst," the defendant is entitled to a conclusive presumption that egregious government misconduct occurred in the defendant's case.

-Attachment A. 2-

However, the Supreme Judicial Court also held that -

We therefore remand the defendant's case for the judge to determine whether, in the totality of the circumstances, the defendant can demonstrate a reasonable probability that had he known of Dookhan's misconduct, he would not have admitted to sufficient facts and would have insisted on taking his chances at trial.

Since the Scott decision, Judges Hinkle, Donovan and Gershengorn, who are serving as special magistrates in Suffolk Superior Court, have begun to schedule evidentiary hearings where each defendant must establish a reasonable probability that had he known of Dookhan's misconduct, he would not have pled guilty and would have taken his case to trial. I have four cases scheduled for hearings on motions for a new trial on April 10, 2014.

In three of the four cases, I was appointed counsel to the defendant in the underlying case and at his guilty plea. I anticipate that both the client and I will need to testify at the hearing on the motion for a new trial. The client would need to testify that had he known about Annie Dookhan's misconduct, and notwithstanding the prosecution's reduction of the charges and mandatory penalties in the negotiated plea bargain, he would not have accepted the plea agreement and would have insisted upon his trial. I would need to testify that I did not advise the client that he could successfully challenge the Commonwealth's Drug Certificate (where Annie Dookhan was an analyst) and that had I known of Annie Dookhan's misconduct, I would have advised my client that he had a very strong defense to the Commonwealth's proof of the content and weight of the alleged controlled substance such that he was likely to be acquitted at trial.

This situation presents several ethical issues on which I, and many other lawyers, need guidance.

1. May I represent the client at the hearing on the motion for a new trial and also testify as a witness? See, Rule 3.7 of the Rules of Professional Conduct. At this point, re-shuffling all the lawyers representing clients in Annie Dookhan cases so that different lawyers would represent the client and testify at the hearing on the motion for a new trial would be logistically complex and would significantly delay the hearings on hundreds of motions for new trials which would be a substantial hardship for the clients.

2. What is the permissible scope of my testimony without violating my client's Attorney/Client Privilege and his Fifth Amendment and Article 12

-Attachment A. 3-

Rights Against Self Incrimination? See, Rule 1.6 of the Rules of Professional Conduct.

3. What is the permissible scope of the client's testimony concerning his decision to plead guilty based on the information he had at the time and his decision to either plead guilty or go to trial had he known then of Annie Dookhan's misconduct without waiving his Attorney/Client Privilege or his Fifth Amendment and Article 12 Rights Against Self-Incrimination? I anticipate that the prosecutor will want to cross-examine the client about his knowledge of the Commonwealth's proof on the elements of the offense and the benefits of the plea bargain. This is a particularly important question since if he prevails on the motion for a new trial, the Commonwealth may seek a new trial and might seek to introduce his testimony from the motion for a new trial against the client in the new trial.

I am copying Nancy Caplan, Esq. of CPCS on this message. She has information on the number of clients with Dookhan cases. I am also copying Jane Rabe, Esq. at the Office of Bar Counsel with whom I recently discussed these issues.

I hope this message adequately presents the issues for your review. If you need any additional information, please do not hesitate to contact me.

Michael Roitman  
65a Atlantic Avenue, 3d Floor  
Boston, MA 02110

\* \* \*

On 4/4/2014 3:31 PM, Dacey, Timothy J. wrote:

Dear Mr. Roitman,

Your request for ethical advice, set forth below, has been referred to me for response. As Vice-Chair of the MBA Committee on Professional Ethics, I am authorized to give advice in urgent cases that cannot await the next regularly scheduled meeting of the Committee.

Your first question is governed by Rule 3.7 of the Massachusetts Rules of Professional Conduct. That Rule prohibits a lawyer from acting "as an advocate at a trial in which the lawyer is likely to be a necessary witness" unless certain exceptions apply.

-Attachment A. 4-

An initial question is whether your testimony at the hearings on your clients' motions should be treated as testimony "at trial" for purposes of the Rule. I am not aware of any Massachusetts decision on point. Judicial decisions in other states appear to be divided. Compare International Resource Ventures, Inc. v. Diamond Mining Co., 326 Ark. 765 (1996) (Rule 3.7 prohibits a lawyer from testifying in person and by affidavit at a pre-trial hearing) with Carroll v. Town of Univ. Park, 12 F. Supp. 2d 475, 486 (D. Md. 1997) (Rule 3.7 does not prohibit a lawyer from submitting an affidavit in opposition to summary judgment). See also State v. Van Dyck, 149 N.H. 604 (2003), which noted that it was an open question whether Rule 3.7 applied to an evidentiary hearing on a motion to dismiss in a criminal case, but ruled that it was unnecessary to decide the issue because the lawyer was not a necessary witness. The Restatement (Third) of the Law Governing Lawyers, which is not binding on Massachusetts courts but is sometimes useful in resolving issues not clearly addressed in the Rules of Professional Conduct, interprets the advocate-witness rule as applying "in all contested proceedings, including trials, hearings on motions for preliminary injunction and summary judgment, and trial-type hearings before administrative hearings." The Restatement also recognizes, however, that there may be less need for "exacting application of the rule" in contested pretrial matters, "particularly when the testimony of the advocate will not be lengthy." Restatement, Section 108, comment c. It is clear from your inquiry that the hearings scheduled for next week are not routine pre-trial matters but rather are critical stages in your clients' cases that may, in some cases, determine whether your clients remain in jail or are acquitted at a new trial. It seems to me that, if the evidence you will give is critical to your client's case and you expect that you will be subject to cross-examination by the district attorney, you should assume that Rule 3.7 applies.

Assuming that Rule 3.7 does apply, you may not act as both advocate and witness unless one of the exceptions to the Rule applies. The only exception which seems to apply in your case is Rule 3.7(a)(3), which permits lawyer to testify if disqualification will "work a substantial hardship on the client." Whether the substantial hardship exception applies is a fact-intensive inquiry involving a number of competing considerations. Restatement, Section 108, comment h for a list of the relevant factors. Your inquiry does not provide me with enough information to provide good advice about whether the hardship exception applies in the three cases in which you expect to testify. I note that Superior Court Rule 12 prohibits a lawyer from taking part in the conduct of a trial in which the lawyer intends to be a witness "except by special leave of court." You might consider requesting the court for leave to appear as both advocate and witness and providing the court with a fuller record on the issue of substantial hardship than you have



-Attachment A. 5-

provided in your inquiry to the Committee.

Regarding your second and third questions, I'm afraid I can give you only limited guidance. Under the Rules of the Committee on Professional Ethics, questions regarding the application of the attorney-client privilege and the privilege against self-incrimination are considered questions of substantive law about which the Committee may not give advice. Your ethical obligation is to make sure your clients fully appreciate the risks of testifying themselves or permitting you to take the stand and that they give informed consent to whatever course you agree on. See Rule 1.6(a), Mass. R. Prof. C., which permits a lawyer to reveal confidential information if the client "consents after consultation."

Very truly yours,  
Timothy J. Dacey  
Vice-Chair, MBA Committee on Professional Ethics

This advice is that of a committee without official governmental status.

\* \* \*

From: Michael Roitman  
Sent: Wednesday, April 09, 2014 4:11 PM  
To: Dacey, Timothy J.  
Subject: Re: MBA Ethics Inquiry 2014-T17 - Dookhan Hearings

Dear Mr. Dacey

Thank you for your prompt and thoughtful reply to my inquiry.

In my further analysis of this issue, I found the case of Smaland Beach Asso. v. Genova, 416 Mass. 214 (2012) where the Supreme Judicial Court had an opportunity to review the applicability of Rule 3.7 in the context of a civil dispute. In part, the Court focused on the hearing/trial distinction and held that Rule 3.7 did not apply to pre-trial proceedings. Id. at 225-226. Does the Court's analysis in Smaland affect your analysis that I should assume that Rule 3.7 applies to a post-trial Rule 30(a) hearing?

I have also attached an affidavit that I filed in one of my Dookhan cases to provide you with a better sense of the scope of my anticipated testimony as plea counsel.

Thank you,

-Attachment A. 6-

Michael Roitman

\* \* \*

Subject: MBA Ethics Inquiry 2014-T17 - Dookhan Hearings  
Date: Fri, 11 Apr 2014 19:41:10 +0000  
From: Dacey, Timothy J.  
To: mroitman

Dear Mr. Roitman,

Thank you for drawing my attention to Smaland Beach Assoc. v. Genova, 461 Mass. 214 (2012). As you point out, that opinion emphasizes that Rule 3.7 prohibits a lawyer from acting as an advocate at a trial in which the lawyer will be a necessary witness. See 461 Mass. at 225-226. Courts in some states have read this "at trial" language literally, as I mentioned in my email of April 4.

In my judgment, however, the Smaland Beach decision does not settle the issue raised by your inquiry. In the section of the opinion you cite, the Court is contrasting Rule 3.7, which focuses on the lawyer's role as an advocate at trial, with former DR 5-102(a), which had been construed to prohibit the lawyer-witness from participating in pre-trial proceedings. Under the Court's reading of Rule 3.7, a lawyer may participate in pretrial proceedings such as conducting discovery or appearing at routine pretrial conferences, even if the lawyer will be a witness "at trial."

The SJC also observed, however, that Rule 3.7(a) is intended to mitigate "the potential negative perception by the public that the attorney colored his or her testimony to further the client's case" and to relieve the opposing counsel "of the difficult task of cross-examining his lawyer-adversary." 461 Mass. at 220. The Court cited with approval ABA Ethics Informal Opinion 89-1529, which cautioned against a lawyer-witness arguing a pretrial motion where the lawyer's testimony is material to the substance of the motion. 461 Mass. at 226, n.18. In the that same opinion, the ABA Ethics Committee observed, "[T]he policy behind the prohibition applies to any situation where the lawyer is placed in the position of arguing the lawyer's own veracity to a court or other body. . . ."

The hearings in which you will appear next week are not routine pre-trial proceedings. The court's rulings may as a practical matter determine whether your clients remain in jail or continue to have a criminal record, and the outcome may depend on the credibility of your testimony. In

-Attachment A. 7-

these circumstances, a court might well decide that Rule 3.7 does apply, notwithstanding Smaland Beach. Accordingly, I still think it would be prudent to raise the issue of your role with the court by a motion analogous to a motion under Superior Court Rule 12 and let the Court decide whether to permit you to participate in the hearings as both advocate and witness.

Very truly yours,  
Timothy J. Dacey  
Vice-Chair, MBA Committee on Professional Ethics

This opinion is that of a committee without official governmental status



Attachment B to Affidavit of Nancy J. Caplan

Commonwealth v. Robert Newton, SUCR2010-10406,

1. Docket Entries

2. Defendant's Memorandum Regarding Advocate-  
Witness Issues, April 18, 2014;

Commonwealth's Memorandum Regarding Advocate-  
Witness Issues, April 24, 2014

Memorandum of Decision [On Advocate Witness Issue]

May 6, 2014

-Attachment B. 1-  
**Commonwealth of Massachusetts**  
**SUFFOLK SUPERIOR COURT**  
**Case Summary**  
**Criminal Docket**

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**Commonwealth v Newton, Robert**

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Details for Docket: SUCR2010-10406

**Case Information**

<b>Docket Number:</b>	SUCR2010-10406	<b>Caption:</b>	Commonwealth v Newton, Robert
<b>Entry Date:</b>	04/13/2010	<b>Case Status:</b>	Criminal 10 Ctrm 404
<b>Status Date:</b>	10/22/2012	<b>Session:</b>	Disp (post sentence -Drug Lab)
<b>Lead Case:</b>	NA	<b>Deadline Status:</b>	Amended sinc
<b>Trial Deadline:</b>	11/17/2010	<b>Jury Trial:</b>	NO

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**Parties Involved**

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4 Parties Involved in Docket: SUCR2010-10406

<b>Party Involved:</b>		<b>Role:</b>	Alias defendant name
<b>Last Name:</b>	Gens	<b>First Name:</b>	Michael
<b>Address:</b>		<b>Address:</b>	
<b>City:</b>		<b>State:</b>	
<b>Zip Code:</b>		<b>Zip Ext:</b>	
<b>Telephone:</b>			

<b>Party Involved:</b>		<b>Role:</b>	Alias deft name
<b>Last Name:</b>	Gens	<b>First Name:</b>	Michael
<b>Address:</b>		<b>Address:</b>	
<b>City:</b>		<b>State:</b>	
<b>Zip Code:</b>		<b>Zip Ext:</b>	
<b>Telephone:</b>			

<b>Party Involved:</b>		<b>Role:</b>	Defendant
<b>Last Name:</b>	Newton	<b>First Name:</b>	Robert

-Attachment B. 2-

**Address:** 18 Lattimore Court  
**City:** Roxbury  
**Zip Code:** 02118  
**Telephone:**

**Address:**  
**State:** MA  
**Zip Ext:**

**Party Involved:**  
**Last Name:** Commonwealth  
**Address:**  
**City:**  
**Zip Code:**  
**Telephone:**

**Role:** Plaintiff  
**First Name:**  
**Address:**  
**State:**  
**Zip Ext:**

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### Attorneys Involved

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4 Attorneys Involved for Docket: SUCR2010-10406

**Attorney Involved:**  
**Last Name:** Rousseve  
**Address:** 44 Bromfield Street  
**City:** Boston  
**Zip Code:** 02108  
**Telephone:** 617-209-5500  
**Fascimile:** 617-523-0354

**Firm Name:** MA130  
**First Name:** Anne  
**Address:** #2  
**State:** MA  
**Zip Ext:**  
**Tel Ext:**  
**Representing:** Newton, Robert (Defendant)

**Attorney Involved:**  
**Last Name:** Iannini  
**Address:** 1 Bulfinch Place  
**City:** Boston  
**Zip Code:** 02114  
**Telephone:** 617-619-4000  
**Fascimile:** 617-619-4210

**Firm Name:** SUFF03  
**First Name:** Craig  
**Address:** 3rd floor  
**State:** MA  
**Zip Ext:** 2997  
**Tel Ext:** 4168  
**Representing:** Commonwealth, (Plaintiff)

**Attorney Involved:**  
**Last Name:** Selman

**Firm Name:** MA130  
**First Name:** Benjamin B.

<b>Address:</b>	44 Bromfield Street	-Attachment B. 3-	<b>Address:</b>	#2
<b>City:</b>	Boston		<b>State:</b>	MA
<b>Zip Code:</b>	02108		<b>Zip Ext:</b>	
<b>Telephone:</b>	617-209-5500		<b>Tel Ext:</b>	
<b>Fascimile:</b>	617-523-0354		<b>Representing:</b>	Newton, Robert (Defendant)
<b>Attorney Involved:</b>			<b>Firm Name:</b>	SUFF03
<b>Last Name:</b>	Spatz		<b>First Name:</b>	Greer
<b>Address:</b>	1 Bulfinch Place		<b>Address:</b>	3rd floor
<b>City:</b>	Boston		<b>State:</b>	MA
<b>Zip Code:</b>	02114		<b>Zip Ext:</b>	2997
<b>Telephone:</b>	617-619-4000		<b>Tel Ext:</b>	
<b>Fascimile:</b>	617-619-4210		<b>Representing:</b>	Commonwealth, (Plaintiff)

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## Calendar Events

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31 Calendar Events for Docket: SUCR2010-10406

No.	Event Date:	Event Time:	Calendar Event:	SES:	Event Status:
1	05/04/2010	09:30	Arraignment	CM	Event held as scheduled
2	06/09/2010	09:30	Conference: Pre-Trial	CM	Event held as scheduled
3	07/26/2010	09:30	Conference: Pre-Trial	CM	Event held as scheduled
4	08/19/2010	09:30	Status: Filing deadline	CM	Event held as scheduled
5	09/22/2010	09:30	Hearing: Compliance	CM	Event held as scheduled
6	10/20/2010	09:30	Hearing: Motion	CM	Event held as scheduled
7	11/17/2010	09:30	Conference: Lobby	1	Event held as scheduled
8	12/16/2010	09:00	Hearing: Plea Change	9	Event held as scheduled
9	01/28/2011	09:00	Hearing: Sentence Imposition	8	Event held as scheduled
10	02/07/2011	09:00	Conference: Final Pre-Trial	5	Event rescheduled by court prior to date
11	02/22/2011	09:00	TRIAL: by jury	5	Event canceled not re-scheduled
12	03/15/2011	09:00	Conference: Final Pre-Trial	5	Event canceled not re-scheduled
13	04/05/2011	09:00	TRIAL: by jury	5	Event canceled not re-scheduled
14	10/12/2012	09:00	Hearing: Motion	9	Event moved to another session
15	10/12/2012	09:00	Hearing: Motion	7	Event moved to another session
16	10/12/2012	09:00	Hearing: Motion	3	Event canceled not re-scheduled
17	10/22/2012	09:00	Drug Lab: Hearing (INACTIVE)	3	Event held by Video Conference
18	11/19/2012	09:00	Drug Lab: Hearing (INACTIVE)	3	Event held as scheduled

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19	12/12/2012	09:00	Drug Lab: Status	4	Event held as scheduled
20	01/23/2013	09:00	Drug Lab: Status	4	Event held as scheduled
21	03/20/2013	09:00	Drug Lab: Status	10	Event held as scheduled
22	05/07/2013	09:00	Drug Lab: Status	10	Event held as scheduled
23	07/30/2013	09:00	Drug Lab: Status	10	Event held as scheduled
24	10/29/2013	09:00	Drug Lab: Status	10	Event held as scheduled
25	01/08/2014	09:30	Hearing: Misc Matters	CM	Event held as scheduled
26	02/05/2014	09:00	Drug Lab: Status	10	Event not held--joint request
27	03/12/2014	09:00	Drug Lab: Status	10	Event held as scheduled
28	04/09/2014	09:00	Drug Lab: Status	10	Event held as scheduled
29	04/16/2014	09:00	Drug Lab: Status	10	Event held as scheduled
30	04/22/2014	09:00	Drug Lab: Status	10	Event held as scheduled
31	05/28/2014	09:00	Drug Lab: Hearing Motion for New Trial	10	

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## Full Docket Entries

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175 Docket Entries for Docket: SUCR2010-10406

Entry Date:	Paper No:	Docket Entry:
04/13/2010	1	Indictment returned
04/13/2010	2	MOTION by Commonwealth for summons of Deft to appear; filed &
04/13/2010	2	allowed. Bail, J.
04/13/2010		Summons for arraignment issued ret May 4, 2010
05/04/2010		Defendant came into court
05/04/2010		Committee for Public Counsel Services appointed Anne Rousseve
05/04/2010		pursuant to Rule 53
05/04/2010		Legal counsel fee assessed in the amount of \$150.00 211D (to be
05/04/2010		satisfied within 60 days)
05/04/2010		Deft arraigned before Court
05/04/2010		Deft waives reading of indictment
05/04/2010		RE Offense 1:Plea of not guilty
05/04/2010		RE Offense 2:Plea of not guilty
05/04/2010	3	Bail satisfied: \$5,000.00 with surety or in the alternative \$500.00
05/04/2010	3	cash without prejudice. to be transferred from Dorchester District
05/04/2010	3	Court #0907CR7491 (verified) Bail papers filed. Bail warning read.
05/04/2010		Legal counsel fee paid as assessed in the amount of \$150.00
05/04/2010	4	Commonwealth files Statement of the Case
05/04/2010	5	Commonwealth files First Notice of Discovery
05/04/2010		Assigned to Track "B" see scheduling order
05/04/2010		Tracking deadlines Active since return date
05/04/2010		Continued to 6/9/2010 by agreement for PTC and to set the balance of

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05/04/2010		the tracking order. Wilson, MAG - C. Iannini, ADA - ERED - J.
05/04/2010		McKinnon for A. Rousseve, Attorney
05/04/2010		Deft notified of right to request drug exam
06/09/2010		Defendant came into court
06/09/2010	6	Commonwealth files second notice of discovery.
06/09/2010	7	Deft files motion for discovery of drug analysis.
06/09/2010	8	Deft files motion for investigator funds w/an affidavit in support
06/09/2010	8	thereof.
06/09/2010		MOTION (P#8) allowe up to \$1,000.00 at CPCS rates.
06/09/2010	9	Deft files motion for funds for a chemist w/an affidavit in support
06/09/2010	9	thereof.
06/09/2010		MOTION (P#9) allowed up to \$500.00 at CPCS rates.
06/09/2010		Case Tracking scheduling order (Gary D Wilson, Magistrate) mailed
06/09/2010		6/9/2010
06/09/2010		Continued to 7/26/2010 for hearing on PTC
06/09/2010		Continued to 2/7/2011 for hearing on FPTH
06/09/2010		Continued to 2/21/2011 for hearing on PTD (Gary D Wilson, Magistrate)
06/09/2010		- C. Iannini, ADA - ERD/JAVS - A. Rousseve, Attorney
07/26/2010		Defendant comes into court, hearing continued until 8/19/2010 re: to
07/26/2010		file motions.
07/26/2010	10	Pre-trial conference report filed. Wilson, Mag - C. Iannini,ADA -
07/26/2010	10	ERD/JAVS - A. Rousseve, Attorney
08/19/2010		Defendant not present, (presence waived this day) hearing continued
08/19/2010		until 9/22/2010 re: discovery compliance.
08/19/2010	11	Deft files motion for funds for a pharmacologist w/an affidavit in
08/19/2010	11	support thereof.
08/19/2010		MOTION (P#11) allowed up to \$2,000.00 at CPCS rates. (Gary D Wilson,
08/19/2010		Magistrate) - C. Ianinni, ADA - ERD/JAVS - A. Rousseve, Attorney
09/22/2010		Defendant comes into court, continued by agreement until 10/20/2010
09/22/2010		for filing of Motion. Defendant prsence waived for 10/20/10. Wilson,
09/22/2010		MAG - C. Iannini, ADA - ERD/JAVs - A. Rousseve, Attorney
10/20/2010		Defendant not present, hearing continued until 11/17/2010 re: lobby
10/20/2010		conference.
10/20/2010	12	Deft files motion for information.
10/20/2010	13	Defendant's MOTION to suppress evidence w/an affidavit in support
10/20/2010	13	thereof. Wilson, Mag - C. Iannini, ADA - ERD/JAVS - A. Rousseve,
10/20/2010	13	Attorney
11/17/2010		Defendant comes into court. Lobby Conference, held.
11/17/2010		Continued to 12/16/2010 for hearing re: Motion to Suppress in the 9th
11/17/2010		Criminal Session
11/17/2010		Continued to 3/15/2011 for FPTC and 4/5/2011 for PTD by agreement in
11/17/2010		the 5th Criminal Session. Ball. J- C. Iannini, ADA - ERD(LB) - A.



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11/17/2010		Rousseve, Atty
11/17/2010	14	Findings and Order on Motion to Continue Trial Date, filed. Ball. J
11/17/2010	14	(NOTE: 2/7/2011 FPTC and 2/21/2011 PTD CANCELLED)
11/17/2010		Tracking deadlines Amended since return date
12/16/2010		Defendant came into court.
12/16/2010		Re: Offense #001 Deft offers to change his plea to guilty to so much
12/16/2010		of this offense that charges Possession of Class B with the intent to
12/16/2010		distribute ( 1 st Offense ) Re: Offense #002 Deft offers to change
12/16/2010		his plea to guilty to so much of this offense that charges
12/16/2010		Distribution of a Class B controlled substance ( 1 st Offense ) After
12/16/2010		hearing , the Court accepts deft's offer. Deft pleads guilty to
12/16/2010		Offenses #001 & #002 as mentioned above.
12/16/2010	15	Waiver of defendants' rights is filed.
12/16/2010		Defendant warned per Chapter 278, Sec 29D of alien status
12/16/2010		Defendant warned per Chapter 22E Sec. 3 of DNA
12/16/2010		Case is continued to 1/28/11 @ 2:00 P.M. for hearing Re Sentence
12/16/2010		Imposition by agreement in the 8th Session (Room 914) . Kaplan, J -
12/16/2010		C. Iannini ADA - A. Rourerve ATTY - ERD.
12/20/2010		RE Offense 1:Guilty plea (lesser offense)
12/20/2010		RE Offense 2:Guilty plea (lesser offense)
01/28/2011		Defendant came into court for Sentencing.
01/28/2011		Defendant sentenced as to so much of Offense #001: MCI-Cedar Not more
01/28/2011		than Three Years Not less than Two Years. Mitimus Issued.
01/28/2011		Defendant sentenced as to Offense #002: MCI-Cedar Not more than Three
01/28/2011		Years Not less than Two Years Concurrent with sentence imposed on
01/28/2011		Offense #001. Mitimus Issued.
01/28/2011		On oral motion of the Commonwealth the Second and Subsequent portions
01/28/2011		of Offense's #001 and #002 are Dismissed. Defendant assenting thereto.
01/28/2011		Drug fee assessed: \$150.00.
01/28/2011		Victim Witness Fee: waived.
01/28/2011		Notified of right of appeal under Rule 64.
01/28/2011		Sentence credit given as per 279:33A: Zero Days. Kaplan, J. - C.
01/28/2011		Iannini, ADA - A. Reusseve, Attorney - ERD L. Beers.
01/28/2011		Abstract sent to RMV.
02/08/2011	16	Drug fee paid in the amount of \$ 150.00.
09/26/2012	17	Deft files motion to withdraw guilty plea with affidavit insupport
09/26/2012	17	thereof
10/22/2012		Hearing on bail held by Video Conference on 10/22/2012
10/22/2012	18	Defendant's Motion for Stay of Execution of Sentence (Drug Lab)
10/22/2012		MOTION (P#18) allowed.
10/22/2012	19	Court files order on stay of execution of sentence.
10/22/2012		Bail set: \$2,000.00 with surety or in the alternative \$200.00 with

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10/22/2012		cash. Bail Warning read. Mittimus Issued.
10/22/2012		Bail: Conditions of Release - GPS monitoring. Curfew of 10pm - 6am.
10/22/2012		Continued to 11/19/2012 for hearing Re: Status by agreement in Rm.
10/22/2012		808. McEvoy, J. - V. Demore, ADA - D. Cercione, CR - A. Rousseve, Atty.
10/22/2012	20	Defendant's Motion for Post-Conviction Discovery (Drug Lab)
11/19/2012		Defendant comes to court.
11/19/2012	21	Commonwealth files: Notice of Discovery (11-15-12)
11/19/2012		Continued to 12-12-12 by agreement Re: Status. Room 815. (Sentencing
11/19/2012		Judge was Kaplan, J.) McEvoy, J- P. Tressler, ADA - C. Sproul, CR -
11/19/2012		A. Rousseve, Atty.
12/12/2012		Defendant came into court.
12/12/2012	22	Commonwealth files Second Notice of Discovery.
12/12/2012		After hearing Defendant told to bring in Affidavit to Probation. GPS
12/12/2012		to be removed at noon on 12/13/12 in probation for 1 day only. GPS to
12/12/2012		be put back on at 9am in probation on 12/14/12.
12/12/2012		Continued to 1/23/2013 for hearing Re: Status by agreement in Rm.
12/12/2012		815. Hinkle, Special MAG - N. Cordeiro, ADA - M. Wrighton, CR - A.
12/12/2012		Rousseve, Atty.
12/13/2012		Defendant came into court.
12/13/2012	23	Deft files Motion to temporarily vacate GPS condition of release with
12/13/2012	23	Affidavit in support thereof.
12/13/2012		MOTION (P#23) allowed. Donovan, Special MAG - S. Lord, ADA - P.
12/13/2012		Pietrella, CR - A. Rousseve, Atty.
01/23/2013		Defendant came into court.
01/23/2013	24	Commonwealth files Notice of Discovery January 23, 2013.
01/23/2013		After hearing Defendant advised of conditions of release in Re: GPS
01/23/2013		and curfew order.
01/23/2013		Continued to 3/20/2013 for hearing Re: Status by agreement. Hinkle,
01/23/2013		Special MAG - G. Spatz, ADA - M. Wrighton, CR - A. Rousseve, Atty.
03/20/2013		Defendant comes into court.
03/20/2013	25	Commonwealth files Notice of Discovery March 20, 2013
03/20/2013		Continued to May 7, 2013 by agreement. Re: Status. Hinkle, Sp.Mag -
03/20/2013		N. Cordeiro, ADA - ERD - A. Rousseve, Atty.
05/07/2013		Defendant came into court
05/07/2013		Defendant came into court
05/07/2013		Continued to July 30, 2013 for hearing re: status by agreement. Bail
05/07/2013		warning given. Donovan, Spec. Mag - N. Cordeiro, ADA - ERD - A.
05/07/2013		Rousseve, Attorney
07/30/2013		Defendant comes into court. Continued to Oct 29, 2013 by agreement
07/30/2013		for status. Donovan Sp Mag. N Cordiero ADA. A Rousseve ATTY. ERD
10/29/2013		Defendant comes into court. continued to Jan 15, 2014 by agreement



		-Attachment B. 8-
10/29/2013		for status. Donovan Sp Mag. P Tresler ADA. A Rousseve ATTY. ERD
01/02/2014		Defendant not present, (Probation officer's request for a default
01/02/2014		warrant is declined) Case continued until 1/8/2014 by agreement for
01/02/2014		hearing re: GPS equipment. Wilson, MAG - S. Lord, ADA - E. Colon, PO
01/02/2014		- ERD (Notice sent to A. Rousseve, Atty and Deft; copies in file)
01/08/2014		Defendant comes into court, case has next date of 2-5-14 for Drug Lab
01/08/2014		status. Wilson, MAG - JAVS - A. Rousseve, Atty
02/06/2014		Atty Rousseve contacted this date. The matter stands continued to
02/06/2014		3/12/14 for status hearing, the date of 2/5/14 having been cancelled
02/06/2014		due to weather related issues.
03/12/2014		Defendant comes into court, Case continued until 4/9/2014 by
03/12/2014		agreement for hearing re status. P. Treseler, ADA. - RD. - J.
03/12/2014		Sandman, Atty.
04/09/2014		Defendant came into court
04/09/2014	26	Deft files Amended motion to withdraw guilty plea
04/09/2014		Case continued until 4/16/2014 by agreement for hearing re status.
04/09/2014		Hinkle, Sp Mag. N. Cordiero, ADA. ERD. A. Rousseve, Atty.
04/16/2014		Defendant comes into court, Case continued until 4/22/2014 by
04/16/2014		agreement for hearing re rule 30 motion at 9 am. Donovan, Sp Mag. G.
04/16/2014		Spatz, ERD. A. Rouseve and B. Selmen, Atty.
04/22/2014		Defendant comes into court, Case continued until 5/28/2014 by
04/22/2014		agreement for hearing re new trial.
04/22/2014	27	Filed: Joint Memorandum on motion to vacate conviction.
04/22/2014	28	Deft files Memorandum regarding advocate-witness issues. Donovan, Sp
04/22/2014	28	Mag. - G. Spatz, ADA. - ERD. - A. Rousseve/B. Selman, Atty.
04/24/2014	29	Commonwealth files memorandum regarding advocate -witness issues
04/29/2014	30	Deft files Notice regarding informed election of counsel
05/06/2014	31	Court files Memorandum of Decision

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## Charges

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2 Charges for Docket: SUCR2010-10406

No.	Charge Description:	Indictment:	Status:
1	DRUG, POSSESS TO DISTRIB CLASS B, SUBSQ. c94C s32A(b)		Guilty plea (lesser offense)
2	DRUG, DISTRIBUTE CLASS B, SUBSQ.OFF. c94C s32A(b)		Guilty plea (lesser offense)

-Attachment B. 9-

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR  
COURT  
DEPARTMENT  
SUCR10-10406  
(Drug Lab Case)

COMMONWEALTH

v.

ROBERT NEWTON

DEFENDANT'S MEMORANDUM REGARDING  
ADVOCATE-WITNESS ISSUES

NOW COMES the Defendant, Robert Newton, by and through his Counsel, and respectfully submits to this Honorable Court, pursuant to the common law of Massachusetts; Mass. Const. Pt. 1, Art. 12; and U.S. Const. Amends. VI and XIV, the following Memorandum in support of his intent to proceed by way of co-counsel in his forthcoming evidentiary hearing pursuant to Mass. R. Crim. P. 30(b).

As reasons therefor, the Defendant submits the following:

STATEMENT OF THE CASE.

The Defendant has moved for a new trial, pursuant to Mass. R. Crim. P. 30(b) and Commonwealth v. Scott, 467 Mass. 336 (2014), on the

grounds that Annie Dookhan was one of the certifying analysts in his case. Atty. Anne Rousseve represented Mr. Newton beginning with her assignment, on December 31, 2009, when the case was still at the probable-cause stage, through his change of plea in the Superior Court on December 16, 2010, and continues to represent him in his post-conviction action. On April 16, 2014, Atty. Benjamin Selman entered an appearance as co-counsel in the instant case, and the Defendant notified the Commonwealth and the Court of his intent to proceed with Atty. Rousseve functioning both as advocate and witness for purposes of the evidentiary hearing, and with Atty. Selman conducting the direct examination of Ms. Rousseve. An evidentiary hearing is scheduled for May 28, 2014. The Court (Donovan, S.J.M.) ordered that the parties provide memoranda regarding the propriety of such procedure in advance of the hearing.

#### ARGUMENT.

##### *The Advocate-Witness Rule.*

Dual-role representation is proper in the instant case. Even if the advocate-witness rule, as set forth in Mass. R. Prof. C. 3.7 and Mass. Super. Ct. R. 12, is facially applicable, one of its exceptions is also applicable.

Though there is no reported decision addressing the question of whether Mass. R. Prof. C. 3.7(a) applies to a post-conviction evidentiary hearing, it is clear that this rule does not apply at proceedings other than trial.

By its plain language, rule 3.7 (a) prohibits a lawyer from acting “as an advocate at trial in which the lawyer is likely to be a necessary witness” (emphasis added). Unlike the rules governing disqualification due to conflicts of interest with the lawyer-witness’s current client or prior representation of the opposing party, this rule contains the limiting phrase “at trial.” Contrast Mass. R. Prof. C. 1.7, 426 Mass. 1330 (1998) (conflict of interest); Mass. R. Prof. C. 1.9, 426 Mass. 1342 (1998) (prior representation). . . . because the rule strives to mitigate potential jury confusion, to avoid the difficulties of cross-examining an adversary and to diminish the appearance of impropriety where an attorney “leave[s] counsel table for the witness chair,” [ . . . ] judges need only divorce the two functions -- that of advocate and witness -- at the trial itself.

Smaland Beach Ass’n v. Genova, 461 Mass. 214, 225-26 (2012). Mass. Super. Ct. R. 12 contains language of limitation nearly identical to that found in Mass. R. Prof. C. 3.7(a) (“No attorney shall be permitted to take part in the conduct of a trial in which he has been or intends to be a witness for his client, except by special leave of the court” (emphasis added)). Indeed, our Supreme Judicial Court has indicated that a

-Attachment B. 12-

hearing pursuant to Mass. R. Crim. P. 30(b) is a specific situation where dual-role representation is appropriate. See Commonwealth v. McAfee, 430 Mass. 483, 491 n. 6 (1999) (where testimony would be barred from trial from the advocate-witness rule, such evidence “may be more properly raised by a motion for a new trial.”

Given that the rationales of preventing jury confusion and appearance of impropriety are of no concern in a post-conviction motion hearing (where, obviously, there is no jury), the only rationale which could conceivably be of concern is that the Commonwealth may “face the difficulties of cross-examining an adversary.” Smaland Beach, 461 Mass. at 226. In this case, where the Commonwealth’s own legal maneuvers have placed it in a position of having to cross-examine Atty. Rousseve, any complaints regarding the “difficulties” it will thus face are without merit. “Stipulations are a common and appropriate means of avoiding the conflict of interest problems inherent in the advocate-witness situation.” Commonwealth v. Shraiar, 397 Mass. 16, 21-22 (1986). The Commonwealth was invited to stipulate to the admission of Atty. Rousseve’s affidavit, and has refused to do so. In this case, the Defendant seeks relief from egregious government misconduct, and the Commonwealth has refused to assent to the traditional, common-sense solution (stipulation) which would obviate any potential problems created by dual-role representation. Thus, to whatever extent the

-Attachment B. 13-

Commonwealth objects<sup>1</sup> to the Defendant's proposed course of action, it "doth protest too much." See Hamlet, III. ii. 179.

If Mass. R. Prof. C. 3.7(a) does apply to a Mass. R. Crim. P. 30(b)/Scott hearing, then its "substantial hardship to the client" exception applies as well. In this case, Mr. Newton has maintained an attorney-client relationship with Atty. Rousseve dating back at to her assignment to the case on or about December 31, 2009. She worked with him for the following eleven months, up through his change of plea on December 16, 2010. She resumed activity on his Annie Dookhan-related post-conviction matter in October 2012, and has worked with Mr. Newton throughout the ensuing year-and-a-half of litigation.

The advocate-witness rule "carries with it the severe consequence of stripping a party of chosen counsel." Smaland Beach, 461 Mass. at 220. "Where the need for an attorney to testify on behalf of his client arises, **judges should defer to the best judgment of counsel and his client.**" Smaland Beach, 461 Mass. at 221 (citations and quotations omitted, boldface added). Disqualification of counsel is to be reserved for instances where dual-role representation effects genuine prejudice to the client, typically in the form of an attorney withholding helpful

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<sup>1</sup> At the initial hearing of April 16, 2014 regarding this issue, the Commonwealth orally represented that it does not explicitly object to the Defendant's proposed employment of dual-role representation, but rather was concerned that the upcoming evidentiary hearing would somehow be compromised. The Commonwealth further represented that it does not expect to actually challenge the averments set forth in Atty. Rousseve's affidavit, but rather hopes to delve into unidentified matters outside the scope of the affidavit which may present various ethical problems. Regardless of whether it formally objects or merely does so *sub silentio*, the immateriality of the Commonwealth's concerns remain the same.



testimony in order to remain as counsel on the case. See Borman v. Borman, 378 Mass. 775, 790 (1979). Insofar as Atty. Rousseve is prepared to testify, the instant case does not present this concern. The Commonwealth has not identified any prejudice that would flow from Atty. Rousseve providing testimony other than a vague assertion that cross-examination could yield some unexpected harmful testimony. Where the defendant's post-conviction case has already been in progress for close to twice the amount of time of the case-in-chief, the further delay that will be incurred by reassigning counsel carries a greater risk of prejudice in the form of delayed administration of justice.

With respect to Mass. Super. Ct. R. 12, the Defendant submits that since a Special Judicial Magistrate has the "authority to assign counsel," Mass. R. Crim. P. 47, it appears that she also would have the power to "grant special leave" for dual-role representation pursuant to Mass. Super. Ct. R. 12. To whatever extent this rule applies to a hearing on a motion for new trial, the Defendant respectfully submits that leave to proceed with dual-role representation is appropriate in this case, and he respectfully requests that this Court grant such leave.

*Attorney-Client Privilege and Duty of Loyalty.*

At the Defendant's April 16 hearing on this matter, both the Commonwealth and the Court spoke to the potential for problems

involving either the attorney-client privilege (Mass. R. Prof. C. 1.6; Mass. G. Evid. § 502(b)) or the duty of loyalty (Mass. RR. Prof. C. 1.7 and 1.9) arising from the Defendant's proposed dual-role representation. The privilege "may be waived by the client either expressly or implicitly." Commonwealth v. Woodberry, 26 Mass.App.Ct. 636, 637 (1988).

It is well-established that a witness may testify to certain events or communications without effectuating a general waiver of the proponent's privilege. Commonwealth v. Goldman, 395 Mass. 495, 499-501 (1985). Similarly, a judge who hears a motion for a new trial is "well within her discretion" to sustain objections to questions, asked of the Defendant's attorney, which may impermissibly elicit the content of irrelevant and privileged communications. Commonwealth v. Birks, 435 Mass 782, 788-89 (2002).

The defendant reasonably expects Atty. Rousseve's testimony to be limited in scope. The area of relevant inquiry—whether plea counsel's advice would likely have been influenced by the evidence of Annie Dookhan's misconduct, and whether the Defendant's particular plea agreement would likely still have been desirable in light of the evidence—is narrowly-defined in the fourth and fifth factors of the Ferrara/Scott analysis. Scott, 467 Mass. at 356. Furthermore, Ms. Rousseve's anticipated testimony is already spelled out in her affidavit of counsel. "A genuine conflict of interest arises whenever trial counsel is called upon to give testimony **adverse** to his client." Commonwealth v. Shraiar,



397 Mass. 16, 21 (1986)(boldface added). In this case, there is nothing to suggest that Atty. Rousseve's testimony will harm her client. The Commonwealth's concern that its own cross-examination of Atty. Rousseve will be so effective as to elicit some unknown devastating testimony does not rise to the level of a genuine conflict of interest.

In any event, even if Atty. Rousseve had an ethical problem in that her testimony would somehow be adverse to Mr. Newton, such a problem would not be remedied by disqualifying her as post-conviction motion counsel. Were the case to be reassigned to an entirely new attorney, unassociated with the Committee for Public Counsel Public Defender Division, the problem would remain the same: Atty. Rousseve would be in a position of having to provide testimony which adverse to her client, thus violating her duty of loyalty. If asked about the imagined adverse matters, Atty. Rousseve would likely invoke the attorney-client privilege, regardless of whether she would then go on to function as motion counsel.

#### CONCLUSION.

Even if the advocate-rule does apply to the instant case, the client-hardship exception applies. The determination of whether or not dual-role representation is appropriate is the proper domain of the Defendant and his counsel. The Commonwealth has not proffered, and cannot

articulate, any specific evidence that would indicate that Atty. Rousseve's testimony will be adverse to Mr. Newton, and thus create a duty-of-loyalty problem. If, arguendo, the mere prospect of cross-examination creates a conflict of interest between Atty. Rousseve vis-à-vis Mr. Newton, transferring the case to new counsel would do nothing to resolve, or even ameliorate, such conflict—Atty. Rousseve would still have a duty of loyalty to Mr. Newton pursuant to Mass. R. Prof. C. 1.9.

The “problem” that the Commonwealth suggests exists will be present in every case where plea counsel is called to the witness stand, regardless of whether she is also acting as motion counsel. Given that our Supreme Judicial Court explicitly set out “to fashion a workable approach to motions to withdraw a guilty plea brought by defendants affected by [Annie Dookhan’s] misconduct,” Scott, 467 Mass. at 352, it is inconceivable that it intended for such motions to be stymied by the Commonwealth’s empty insistence on cross-examining affiants.

-Attachment B. 18-

WHEREFORE, the Defendant respectfully prays this Honorable Court:

- A. Issue an order granting leave for the Defendant to proceed with dual-role representation; or
- B. Take no further action with respect to this issue at this time.

Respectfully Submitted,  
ROBERT NEWTON  
By and through his Counsel,

BENJAMIN B. SELMAN #662289  
Committee for  
Public Counsel Services  
7 Palmer Street, Suite 302  
Roxbury MA 02119  
tel (617)516-5825  
fax (617)427-1320  
[bselman@publiccounsel.net](mailto:bselman@publiccounsel.net)

Dated: 18 April 2014

CERTIFICATE OF SERVICE

I, Benjamin B. Selman, Attorney for Robert Newton in the above-captioned matter, hereby certify that I have delivered by electronic mail a copy of this Motion to Assistant District Attorney Greer Spatz. Dated this \_\_\_\_ day of April, 2014.

BENJAMIN B. SELMAN

-Attachment B. 19-

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT DEPARTMENT  
DOCKET NO.SUCR2010-10406

COMMONWEALTH

v.

ROBERT NEWTON

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**COMMONWEALTH'S MEMORANDUM REGARDING ADVOCATE-WITNESS  
ISSUES**

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The Commonwealth respectfully submits this memorandum in support of its position that defense counsel should not be permitted to act as both advocate and witness for the purposes of a Rule 30 evidentiary hearing. As reasons therefor, the Commonwealth submits the following:

**I. BACKGROUND**

On December 16, 2010, Robert Newton (the Defendant) pled guilty to two indictments in the above named case: (1) possession with intent to distribute a class B substance; and (2) distribution of a class B substance. In consideration of the defendant's plea, the Commonwealth dismissed the subsequent offender portions of those indictments, each of which carried a five (5) year minimum mandatory sentence, and agreed to a sentence recommendation of not less than two (2) years and not more than three (3) years in state prison. Among the relevant evidence the Commonwealth would have expected to present at trial was the following: (1) Boston police officers, who were assigned to the Drug Control Unit, observed what they believed to be a hand to hand drug transaction between the defendant and another individual; (2) the individual the officers stopped, believing him to be the drug buyer, did have narcotics on his person; (3) the officers then stopped the defendant and found twelve (12) bags of what the Commonwealth

believed was crack cocaine, a paper fold containing what the Commonwealth believed was cocaine, and \$541 in US currency on the defendant's person.

## II. ISSUES PRESENTED

### A. THE ADVOCATE-WITNESS RULE

Mass. R. Prof. C. 3.7(a) should apply in the instant case. Plea counsel purports to give evidence in a criminal matter that is critical to the issue of whether the defendant is granted a new trial and plea counsel will be subject to the Commonwealth's cross examination. As there is no case law specifically on point with respect to Rule 30 motions the Commonwealth asserts that, because a Rule 30 evidentiary hearing is not a routine pre-trial matter but rather a critical stage in the defendant's case that will determine whether the defendant goes back to state prison to complete his sentence or is afforded the opportunity to begin his trial anew, the testimony given in a Rule 30 evidentiary hearing more closely resembles trial testimony. To that end, the witness/attorney is asked to give evidence critical to the client's case and be subject to cross examination by the Commonwealth in a process substantially similar to that of a trial, thereby making it more reasonable to apply Mass. R. Prof. C. 3.7(a) in that situation.<sup>1</sup>

The purpose of Mass. R. Prof. C. 3.7(a), in addition to preventing any jury confusion stemming from the combination of attorney and witness roles, is to mitigate the "potential negative perception by the public that the attorney colored his or her testimony to further the client's case". *Smaland Beach Ass'n v. Genova*, 461 Mass. 214, 220 (2012) (citing *Culebras Enters. Corp. v. Rivera-Rios*, 846 F. 2d 94, 99-100 (1<sup>st</sup> Cir. 1988)). While the defendant asserts that the appearance of impropriety is of "no concern" in a post-conviction hearing because there

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<sup>1</sup> The defendant incorrectly asserts that the Supreme Judicial Court indicated that a hearing pursuant to a Rule 30 motion is a specific situation where dual-role representation is appropriate and cites to *Commonwealth v. McAfee*, 430 Mass. 483, 491 n.6 (1999) (Def. Mem. 4). That citation does not stand for the assertion. That citation merely states that evidence that was not allowed in at trial, due to the fact that the only witness to that evidence was trial counsel, is a matter that may be properly brought up in a motion for new trial.

-Attachment B. 21-

is no jury (Def. Mem. 4); that analysis is flawed. The hearing is still public and the appearance of impropriety is still of concern to the Commonwealth. Further, even where credibility is not challenged, it is always a live issue for the finder of fact. In the instant case, this requires appellate counsel to argue plea counsel's credibility thereby forcing plea counsel to argue her own credibility. Moreover, allowing appellate counsel and plea counsel to be one and the same raises the issue of witness sequestration. Witness sequestration could never work if one of the witnesses is conducting the questioning of another witness. Given this, the appearance of impropriety is certainly a live issue in this hearing.

If the testimony sought to be introduced through opposing counsel is "prejudicial or directed against the client, the case for judicial intervention is more powerful." *Smaland Beach*, 461 Mass. at 221 (citations and quotations omitted). The defendant argues that plea counsel's affidavit contains the entire universe of information to which she would testify and therefore both she and the client are certain that her testimony could not be prejudicial to the defendant. With respect to the Rule 30 motion before the Court, however, the Supreme Judicial Court's ruling on the second prong of *Ferrara* emphasizes that "the full context of the defendant's decision to enter a plea will dictate the assessment of his claim that knowledge of Dookhan's misconduct would have influenced the defendant's decision to plead guilty". *Commonwealth v. Scott*, 467 Mass. 336, 357 (2014). The Commonwealth would expect to delve into the full context of the defendant's decision to enter into the plea which would necessarily encompass the totality of the evidence the plea counsel took into account when advising her client and the defendant, in turn, took into account when deciding to plea. Plea counsel's affidavit speaks only to her advice in the context of the investigation of the lab as opposed to her advice given the full

-Attachment B. 22-

context of the Commonwealth's case. To that end, plea counsel cannot know whether or not her testimony may ultimately be prejudicial to the defendant.

The defendant argues if Mass. R. Prof. C. 3.7(a) does apply in the instant case, then the "substantial hardship" exception should apply to allow him to use plea counsel in the proposed dual-role representation. The substantial hardship the defendant asserts is that he has maintained an attorney-client relationship with plea counsel since the end of 2009. While stripping a party of his chosen counsel is a severe consequence, plea counsel was not "chosen" by the defendant, rather she was appointed. In the context of appointed counsel, a client has a right to a lawyer, not as lawyer of his choosing. Further, the Commonwealth is not suggesting that the defendant must obtain new counsel that has no familiarity with his case, but rather that plea counsel and her appellate co-counsel are colleagues and are able to share information with respect to the discreet issue, the plea agreement, in this matter. Further, appellate co-counsel, as part of the CPCS team assembled to review the Dookhan matters, is already aware of the format and scope of these evidentiary hearings.

**B. ATTORNEY-CLIENT PRIVILEGE**

The attorney client privilege is waived when a witness testifies to the specific content of an identified privileged communication. *Commonwealth v. Goldman*, 395 Mass. 495, 500 (1985). In the instant case, the defendant is asking the court to open up his plea agreement to scrutiny. The discussions the defendant had with his counsel in determining whether to plead guilty are part and parcel of that guilty plea and, as such, are relevant to the Commonwealth's inquiry in an evidentiary hearing in the instant case. The *Scott* decision notes that facts such as the circumstances of a defendant's arrest, circumstantial evidence, and sentence reduction are relevant to the inquiry; facts that counsel necessarily discusses with his or her client when navigating a plea agreement. Plea counsel's affidavit is silent as to those facts. The



-Attachment B. 23-

Commonwealth does expect the opportunity to ask the relevant questions concerning plea counsel's advice to her client, thus the defendant's suggestion that plea counsel's anticipated testimony is "spelled out in her affidavit of counsel" (Def. Mem 8) and therefore "there is nothing to suggest that [her] testimony will harm her client" (Def. Mem 8) is speculation at best.

### III. CONCLUSION

For the foregoing reasons, Mass. R. Prof. C. 3.7(a) should apply in the instant case and plea counsel should act as a witness only in the proceedings.

Respectfully submitted  
FOR THE COMMONWEALTH,

DANIEL F. CONLEY  
District Attorney  
For the Suffolk District

Greer Spatz  
Assistant District Attorney  
BBO# 658613  
One Bulfinch Place  
Boston, MA 02114  
(617) 619-4000

April 24, 2014



-Attachment B. 24-

CERTIFICATE OF SERVICE

I hereby certify, under the pains and penalties of perjury, that I have today made service on the defendant's attorney of record by sending a copy of this memorandum via electronic mail to:

Benjamin B. Selman, Esq.  
CPCS Drug Lab Crisis Litigation Unit  
7 Palmer Street, Suite 302  
Roxbury, MA 02119  
bselman@publiccounsel.net

Greer Spatz  
Assistant District Attorney

April 24, 2014

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**COMMONWEALTH OF MASSACHUSETTS**

**SUFFOLK, ss.**

**SUPERIOR COURT  
CRIMINAL ACTION  
NO. 10-10406**

**COMMONWEALTH**

**vs.**

**ROBERT NEWTON**

**MEMORANDUM OF DECISION**

**[On Advocate Witness Issue]**

This matter is before the Court as a result of the defendant, Robert Newton's motion for a new trial pursuant to Mass. R. Crim. P.30(b). The genesis of the appeal is based upon the issues emanating out of a Massachusetts State Laboratory, known as the Hinton Laboratory which analyzed drugs submitted by police department for the presence of a controlled substance. Recently, the Supreme Judicial Court addressed the issues of the practices and procedures used at the Hinton Laboratory and the effect on the validity of the test results. Commonwealth v. Scott, 467 Mass. 336 (2014).

Mr. Newton pled guilty on December 16, 2010 to two indictments charging possession with intent to distribute class B controlled substance and distribution of a class B controlled substance. The drugs had been analyzed at the Hinton Laboratory by chemist Annie Doohkkan who has since pled guilty to various indictments arising from her work at the laboratory.

*May 6, 2014  
Filed*

At the Rule 30(b) hearing, plea counsel who is also present counsel wishes to testify as to the advice she gave Mr. Newton prior to his entering into to a plea. The Commonwealth objects to this procedure alleging it violates Mass. Rule Prof. C.3.7(a) which provides that "a lawyer shall not act as advocate at a trial in which the lawyer is going to have to be a necessary witness except where: 1) the testimony relates to a uncontested issue; 2) the testimony relates to the nature and value of legal services rendered in the case; or 3) disqualification of the lawyer would work a substantial hardship on the client.

The Supreme Judicial Court wrote "the primary purpose of the rule is 'to prevent the jury as fact finder from becoming confused by the combination of the roles of attorney and witness.'" Smaland Beach Association, Inc. v. Genova, 461 Mass. 214, 220 (2012), quoting Steinert v. Steinert, 73 Mass. App. Ct. 287, 291 (2008). It also eliminates or mitigates any potential negative perception by the public that the attorney colored his or her testimony in favor of his or her client. Smaland, at 220; Culebras Enters. Corp. v. Rivera-Rios, 846 Fed. 2<sup>nd</sup> 94, 99-100 (1st Circ. 1988). Rule 3.7(a) pertains to the attorney's conduct during a trial and not at a post or pretrial hearing. The Court distinguished the rule for disqualification (Rule 1.7) and prior representation (Rule 1.9) from Rule 3.7(a) which contains the limiting phrase "at trial". Smaland at 225. The Court did not expand the interpretation of Rule 3.7 (a) to encompass pretrial hearings. Smaland at 225.

The purpose of Rule 3.7(a) is to eliminate the potential confusion with a jury, whereas a judge sitting without a jury is quite capable of distinguishing the role of an advocate and the role of a witness. Thus, for the purposes of a pretrial hearing, Rule 3.7(a) does not apply. The same reasoning would pertain to a post trial hearing, or in this case, a post plea hearing.

However, the Court did reference the ABA standard in Footnote 18 of the Smaland decision. The Court wrote "as the ABA has cautioned 'some limitations on pretrial representation (where an attorney is designated a necessary witnesses) should be observed'. ABA standing committee on ethics and professional responsibility informal opinion 89-1529 (1989). For instance, although the precise language of the rule does not call for disqualification in such settings, the ABA has suggested that a lawyer-witness should not represent his client at the lawyer-witness's own pretrial deposition, nor should the lawyer-witness argue a pretrial motion when his testimony is material to the substance to that motion."

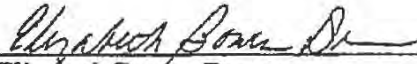
Mr. Newton intends to offer the testimony of his plea counsel on the issue of advice of counsel. Plea counsel will be examined by an another lawyer from her office. She does expect and intend to argue at the conclusion of all of the testimony and the evidence as an advocate for her client. This may produce some conflict as noted in Footnote 18 because she would be arguing not only her client's credibility but also her own. I find this would be improper and place the Commonwealth in an unfair position.

-Attachment B. 28-

**CONCLUSION**

I rule that plea counsel may testify and may argue her client's credibility and that of any other witness except herself.

By the Court,

  
Elizabeth Bowen Donovan  
Justice of the Superior Court

**DATED:** May 6, 2014

Attachment C to Affidavit of Nancy J. Caplan

E-mail exchange between Attorney Caplan  
and Audrey C. Mark, General Counsel, Office of the  
Inspector General

-Attachment C. 1-

From: Nancy Caplan  
Sent: Wednesday, May 07, 2014 10:26 AM  
To: Mark, Audrey C. (IGO)  
Subject: List of needed materials

Hi Audrey,

Here's a list of items we deem essential to enable defense attorneys to effectively litigate certain post-conviction drug lab cases (cases in which Annie Dookhan was not one of signatories to the certificate of analysis) and pending drug cases where the substances in issue were originally analyzed at the Hinton Drug Lab:

1. Consolidated review database provided to six other entities, including the MSP and the AGO. (See p. 8.)
2. Output by experts hired by the OIG in connection with the investigation of the drug lab: analyses, reports, data, charts, spreadsheets etc.
3. Transcripts and audiotapes of chemists' trial testimony reviewed. (See p. 9.)
4. Names of chemists, other than Dookhan, whose testimony was deemed problematic. (See p. 24.)
5. Interviews -- Reports, notes, recordings and/or transcripts of all interviews of individuals associated with the drug lab, including "numerous field interviews" and the 24 interviews conducted under oath. (See pp. 1 and 9. )
6. Methodology used to reach the conclusion that Dookhan had not "tampered with any drug sample assigned to another chemist" and the "suggestion" that only samples "in which Dookhan was the primary chemist" should be treated with any increased suspicion because of Dookhan's involvement. (See pp. 113 and 120 - 120.)
7. Lists of cases in each of Multi-Run Sample categories 1 – 8. (See pp. 109-110.)

Please feed [sic] to call me with any questions about the above.

-Attachment C. 2-

Thanks.

Nancy

\* \* \*

On May 19, 2014, at 12:15 PM, "Mark, Audrey (IGO)" . . . wrote:

Dear Nancy—

Unfortunately, I am unable to provide you with your listed items for the following reasons:

1. The consolidated review database does not contain any OIG documents. As indicated on pages 7 and 8 of our Report, the scanned documents were all obtained from DPH and MSP (and the AGO, who had obtained certain records from DPH and MSP). DPH and MSP provided the OIG with access to its documents on the consolidated review database as a result of the OIG's specific requests made pursuant to the OIG's enabling statute, Mass. Gen. L. c. 12A. All records of the OIG are confidential. See Chapter 12A.
2. All records of the OIG are confidential. See Chapter 12A.
3. All records of the OIG are confidential. See Chapter 12A.
4. All records of the OIG are confidential. See Chapter 12A.
5. All records of the OIG are confidential. See Chapter 12A.
6. You have misstated the OIG's conclusion. The OIG did not state that Dookhan "had not" tampered with other chemist's drug samples; rather the OIG stated that it "did not find evidence" that she had so tampered. The methodology of the OIG's investigation is set forth in the Report.
7. A list of all multi-run samples that the OIG identified for retesting is being provided to the DA's offices, with the expectation that they will disseminate the information to defense attorneys as appropriate. It is my understanding after reviewing the Commonwealth's CORI law that the OIG cannot provide criminal offender information to non-law enforcement agencies.



-Attachment C. 3-

If you have any questions, please do not hesitate to call me at 617-722-8852.

Thanks very much.

--Audrey

\* \* \*

From: Nancy Caplan  
Sent: Monday, May 19, 2014 3:05 PM  
To: Mark, Audrey C. (IGO)  
Subject: Re: List of needed materials

Dear Audrey,

Thanks for your response.

I'm writing to ask that you reconsider your position relative to item #7. You indicated that your office was constrained from providing the re-test data due to CORI concerns. In fact, CPCS has a user agreement with the DCJIS. Pursuant to this agreement, we regularly run CORI searches and access CORI data. Due to our special status vis a vis CJIS, we have received unredacted versions of David Meier's list of 40,000+ Dookhan defendants and unredacted versions of DPH testing databases.

Please let me know whether you will be able to provide the item #7 data in light of this information.

Thanks.

Nancy

\* \* \*

From: "Mark, Audrey (IGO)"  
Date: May 20, 2014 at 11:39:09 AM EDT  
To: Nancy Caplan  
Subject: RE: List of needed materials

Dear Nancy—

I would be happy to reconsider my position with respect to #7, but I

-Attachment C. 4-

need more information from you.

First, what DPH testing databases does CPCS have access to? Who provided this access? Do you know what legal authority they relied on to do so?

Second, when you say that CPCS regularly runs CORI searches, is that for any witness in a case, or just for CPCS's clients? Does CPCS need to get a court order or other authorization before running a CORI?

Third, who made the determination and what was the legal basis for CPCS receiving the unredacted Meier list?

And, lastly, would you be willing to provide me your legal analysis to justify the OIG providing you the spreadsheets at issue? I need to feel comfortable that we would not be violating the CORI law by doing so.

Thanks.

--Audrey

\* \* \*

From: Nancy Caplan  
Sent: Thursday, May 22, 2014 2:12 PM  
To: 'Mark, Audrey (IGO)'  
Subject: RE: List of needed materials

Hi Audrey,

As to your first and third questions, CPCS has been receiving unredacted DPH data since September, 2012, first from Guy Vallaro, the former director of the MSP Crime Lab, and then from David Meier. The materials we received from both were spreadsheets that purport to reflect all cases in which Annie Dookhan acted as primary and secondary chemist from 2003 to 2012. Of course David Meier's final spreadsheet, from August 2013, which we received in unredacted form, is the most comprehensive list to date. We subsequently received, from Byron Knight of the Office of the Governor's Legal Counsel, eleven spreadsheets reflecting Hinton Drug Lab testing data from 2003 – 2012. These spreadsheets purport to reflect data relative to all samples tested at the lab from 2003 – 2012. Thus, non-Dookhan cases are included.

As to your second question, CPCS has a User Agreement with CJIS. A

-Attachment C. 5-

number of years ago, CPCS was designated a "criminal justice agency" for purposes of the CORI statute. Since then, CPCS has entered into successive User Agreements with CJIS which permit trained and authorized CPCS staff to run CORI checks of clients and case witnesses, at the request of CPCS staff attorneys (not bar advocates). Court orders are not required for the performance of these CORI checks.

The legal determinations underlying these disclosures were made by the MSP, David Meier and Byron Knight so I'm not in a position to detail what they were. I can only assume that the decisions were based upon CPCS's well-established, long-standing status as a "criminal justice agency" for CORI purposes, which status provides us access to CORI information. I would suggest that this same justification, which has enabled these other entities to provide CPCS with information that has helped it move forward in its response to the lab crisis, should also allow your office to feel comfortable making the disclosure we've requested.

Thanks Audrey.

Nancy

COMMONWEALTH OF MASSACHUSETTS

ESSEX, SS

SUPREME JUDICIAL COURT  
FOR SUFFOLK COUNTY  
NO. SJ-2014-0005

SUFFOLK SUPERIOR COURT  
NO. SUCR2005-10537  
(Bridgeman)  
NO. SUCR2007-10959  
(Bridgeman)

BOSTON MUNICIPAL COURT  
NO. 0501-CR-0142 (Creach)

ESSEX SUPERIOR COURT  
NO. ESCR2007-1535 (Cuevas)

KEVIN BRIDGEMAN, YASIR CREACH, and MIGUEL CUEVAS

v.

DISTRICT ATTORNEY FOR THE SUFFOLK DISTRICT

and

DISTRICT ATTORNEY FOR THE EASTERN DISTRICT

**VERIFIED OPPOSITION TO PETITION  
SEEKING RELIEF PURSUANT TO GEN. LAWS c. 211, § 3**

**INTRODUCTION**

On January 9, 2014, the petitioners filed a Petition Seeking Relief Pursuant to Gen. Laws c. 211, § 3 ("petition" or "c. 211, § 3 petition"), and a Memorandum in Support.<sup>1</sup> The defendants are the District Attorneys for the Suffolk and Eastern (Essex) Districts.

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<sup>1</sup> The petition is referred to as D. Pet. \_\_; the memorandum as D. Mem. \_\_; and the record appendix as R.A. \_\_.

Each of the three petitioners, Kevin Bridgeman, Yasil Creach, and Miguel Cuevas, has pled guilty to one or more drug offenses: Bridgeman to possession with intent to distribute cocaine and distribution of cocaine in Suffolk Superior Court in October 2005 (R.A. 336), and possession with intent to distribute and distribution of cocaine in April 2008, also in Suffolk Superior Court (R.A. 371); Creach to possession of cocaine in the Central Division of the Municipal Court Department in April 2005 (R.A. 438); and Cuevas to distribution of cocaine and distribution of heroin in Essex Superior Court in January 2009 (R.A. 445-446). Each petitioner pled guilty to the offenses after the contraband in his case was tested at the Hinton State Laboratory, with Annie Dookhan appearing as either the primary or confirmatory chemist on the drug certificate or certificates (R.A. 338-39; 373-74; 434-35; 449-52).<sup>2</sup>

Cuevas has filed a motion to withdraw his guilty plea, which is scheduled for a status hearing on June 5, 2014 (R.A. 607-629). Neither Bridgeman nor Creach has filed a motion to withdraw his guilty plea, and the present

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<sup>2</sup> In the interest of brevity, the Commonwealth will assume that the Court is familiar with the details of the misconduct at the Hinton Lab. See discussion in Commonwealth v. Scott, 467 Mass. 336, 338-342 (2014).

petition is the only pending court proceeding related to their drug convictions (D. Pet. 5-7).

The petitioners divide their petition into two arguments. First, they argue that "due process and common law principles do not permit subjecting Dookhan defendants"<sup>3</sup>

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<sup>3</sup> The term "Dookhan defendants" is not defined in the petition, but apparently refers to every defendant charged with or convicted of a drug offense where contraband was tested at the Hinton Lab during the term of Dookhan's employment there, regardless of her role in the testing. D. Pet. 4. See also D.E. Meier, *The Identification of Individuals Potentially Affected by the Alleged Conduct of Chemist Annie Dookhan at the Hinton Drug Laboratory: Final Report to Governor Deval Patrick* (Aug. 2013) (identifying "40,323 individuals whose drug cases potentially may have been affected by the alleged conduct of Ms. Dookhan"). The petitioners request remedies to be applied indiscriminately to every defendant within this extremely broadly defined class, ignoring the wide range of different circumstances faced by individual defendants potentially affected by the misconduct.

The Full Court has held that such differences are significant, and that defendants who have been affected in varying degrees by the Hinton lab misconduct are entitled to different legal presumptions and remedies. Compare *Commonwealth v. Scott*, 467 Mass. 336 (2014) (Dookhan was primary analyst on certificate of analysis for drugs that formed basis of charge; defendant was thus entitled to conclusive presumption of misconduct) with *Commonwealth v. Gardner*, 467 Mass. 363 (2014) (Dookhan was notary public on certificate of analysis for marijuana seized from another individual arrested as part of the same drug transaction as the defendant, and defendant was thus not entitled to conclusive presumption of misconduct).

The petition not only evinces an unwillingness to acknowledge the differences among individual "Dookhan defendants," but also fails to acknowledge the meaningful differences among the circumstances of the three named petitioners. At one point, they are referred to collectively as "Dookhan defendants who seek post-conviction relief," but only Cuevas has done so.

who seek post-conviction relief to more severe punishment" (D. Mem. 16), and ask the Court<sup>4</sup> to create a new rule that "Dookhan defendants who seek post-conviction relief cannot

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D. Pet. 2. This is representative of the petitioners' tendency to blur rather than distinguish the circumstances of individual defendants potentially affected by the misconduct, when the Court has made clear that it does not favor such an approach. Compare holdings in Scott, 467 Mass. at 336, and Gardner, 467 Mass at 363.

<sup>4</sup> Claiming that Justice Botsford "has continuing jurisdiction over Hinton Lab matters," the petitioners ask that she review the petition "or else that [it] be reserved and reported to the [F]ull Court." D. Pet. 3. This is an overly broad interpretation of the jurisdiction retained by Justice Botsford. Writing in reference to Commonwealth v. Charles, 466 Mass. 63 (2013) (SJ-2013-0066) and Commonwealth v. Millette, 466 Mass. 63 (2013) (SJ-2013-0083), Justice Botsford retained "jurisdiction of *these* cases so the individual defendants and CPCS will have an opportunity to renew" certain motions. Reservation and Report of March 22, 2013, Commonwealth v. Charles, SJ-2013-0066 (emphasis added). The entry of the Full Court decisions in Charles and Millette, written by Justice Spina, terminated "these cases." Moreover, the request for report and reservation to the Full Court as an alternative to review by Justice Botsford suggests some form of automatic Full Court review, without consideration by the Single Justice. See D. Pet. 3. Chapter 211, section 3 contains no provision for bypassing this Court in favor of the Full Court.

In general, the petitioners blur the distinction between "this Court" (i.e., the County Court/Single Justice Session/SJC for Suffolk County) and the Full Court. For example, they allege that they have previously "encouraged *this Court* to exercise its superintendence powers," citing their briefs on collateral appeal *in the Full Court* from the denial or allowance of new trial motions. See D. Pet. 13-14 (emphasis added); Commonwealth v. Rodriguez, 467 Mass 1002 (2014); Scott, 467 Mass. 336. These cases were not before "this Court" and did not involve 211/3 authority. See also Gardner, 467 Mass 363; Commonwealth v. Torres, 467 Mass 1007 (2014); Commonwealth v. Bjork, 467 Mass 1006 (2014); and Commonwealth v. Davila, 467 Mass 1005 (all issued on March 5, 2014).

be penalized with outcomes that are worse -- in terms of the seriousness of the offenses charged or the length of the sentences imposed -- than the original outcomes of their cases" (D. Mem. 5).

Second, they argue that "due process guarantees meaningful post-conviction relief for Dookhan defendants without inordinate and prejudicial delay" (D. Mem. 12), and therefore ask the Court to "vacate all tainted convictions and afford prosecutors only a time-limited opportunity to re-prosecute any Dookhan defendants" (D. Mem. 5).

The petition should be denied, because, *inter alia*, the claims do not meet the standard of exceptional circumstances and irremediable error under the superintendence statute, and the claims are without merit, especially in light of the Full Court's recent decisions related to motions to withdraw guilty pleas based on the Hinton lab misconduct.<sup>5</sup>

STATEMENT OF RELEVANT PRIOR PROCEEDINGS

I. Kevin Bridgeman

On October 4, 2005, in Suffolk Superior Court, Bridgeman pled guilty to one count of possession with intent to distribute cocaine, G.L. c. 94C, § 32A(a), and

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<sup>5</sup> See Scott, 467 Mass. 336; see also Gardner, 467 Mass 363; Torres, 467 Mass 1007; Bjork, 467 Mass 1006; Davila, 467 Mass 1005; and Rodriguez, 467 Mass 1002.



one count of cocaine distribution, G.L. c. 94C, § 32A(a) (No. SUCR2005-10537) (R.A. 336-337). He was sentenced to two to three years in state prison on the first charge, to be followed by three years of probation on the second charge (R.A. 336). Two counts of committing a drug violation near a school or park, G.L. c. 94C, § 32J, were dismissed on the motion of the Commonwealth upon his guilty plea (R.A. 336-337).

On April 17, 2008, also in Suffolk Superior Court, he pled guilty to two counts of cocaine distribution, subsequent offense, G.L. c. 94C, § 32A(b) (No. SUCR2007-10959) (R.A. 371). He was sentenced to two concurrent three to five year state prison terms, to be served concurrently with a state prison sentence he was then serving in an unrelated case (R.A. 371). Another count, for a school zone violation, was dismissed on the motion of the Commonwealth upon his guilty plea (R.A. 372). Annie Dookhan was the primary chemist on the drug certificates in both of Bridgeman's cases (R.A. 338-339, 373-375). He has completed his sentences<sup>6</sup> and has not filed a motion to withdraw either guilty plea (R.A. 3, D. Pet. 7).<sup>7</sup>

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<sup>6</sup> All three petitioners have completed the sentences for the convictions now at issue. See R.A. 3, 10; D. Pet. 7.

<sup>7</sup> Though the petition should be denied on multiple grounds that need not account for the actual guilt or innocence of

II. Yasir Creach

On April 20, 2005, in Boston Municipal Court, Creach pled guilty to one count of cocaine possession G.L. c. 94C, § 34C (No. 0501CR0142) (R.A. 426, 438). He was sentenced to one year in the house of correction, to be served concurrently with a sentence he was then serving on a separate conviction (R.A. 426). Annie Dookhan was the confirmatory chemist on the drug certificate in his case (R.A. 434, 435). He has completed his sentence and has not filed a motion to withdraw his guilty plea (D. Pet. 7).

III. Miguel Cuevas

On January 30, 2009, in Essex Superior Court, Cuevas pled guilty to three counts of distribution of cocaine, G.L. c. 94C, § 32A, and one count of distribution of heroin, G.L. c. 94C, § 32 (No. 0736CR1716) (R.A. 445-446). He was sentenced to four concurrent terms of four-and-one-half to five years in state prison (R.A. 445-446). He has completed his sentence (R.A. 10). Annie Dookhan was the primary chemist on the drug certificates in his case (R.A.

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the three named petitioners, the Commonwealth nonetheless notes that none has claimed actual innocence in his affidavit, or has requested retesting of the contraband in his case, or has claimed that the substance at issue was not the contraband alleged in the indictment or complaint. See affidavits at R.A. 1-12.

449-452). On October 15, 2012, he moved to withdraw his guilty plea (R.A. 607-629).

When the petition was filed, Cuevas was seeking additional discovery on his new trial motion (D. Pet. 5),<sup>8</sup> but after the decision in Scott, which afforded defendants a conclusive presumption of egregious government misconduct if Dookhan was a primary or confirmatory chemist on the drug analysis certificate (and after the filing of the present petition), Cuevas withdrew his request for additional discovery (R.A. 638). A status hearing on his new trial motion is scheduled for June 5, 2014.

#### ARGUMENT

I. The petitioners' request for a new rule should be denied, because:

- the petitioners have not met the standard for relief under the superintendence statute as they have multiple alternative avenues for relief;
- the claim is not ripe, because none of the petitioners has suffered or is in imminent danger of suffering the harm complained of in the petition; and
- the claim is without merit.

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<sup>8</sup> Substantial discovery was provided: the CD filed with the petitioners' record appendix is an example of the universal discovery provided to defendants moving to withdraw their pleas due to the Hinton Lab misconduct, and a similar CD was provided to Cuevas prior to the filing of this petition. See R.A., compact disc.

A. The new-rule claim does not meet the standard for relief under the superintendence statute

The Full Court has "repeatedly held that relief under G.L. c. 211, § 3, is properly denied where there are other routes by which the petitioning party may adequately seek relief." Greco v. Plymouth Sav. Bank, 423 Mass. 1019, 1019 (1996); see also In re McDonough, 457 Mass. 512, 517-518 (2010) ("Parties seeking relief pursuant to G.L. c. 211, § 3, must demonstrate both a violation of their substantive rights and the absence of another adequate or effective avenue of relief.") (emphasis added; further quotations omitted). In other words, the "extraordinary remedy [provided by c. 211, § 3], should be invoked only when appellate review is otherwise unavailable." Commonwealth v. Lam Hue To, 391 Mass. 301, 306 n. 4 (1984). Here, the petitioners' first claim should be denied solely on the ground that it "fail[s] to meet the standard of 'exceptional circumstances' involving 'irremediable error' required to allow [review] under G.L. c. 211, § 3." Commonwealth v. Bertini, 466 Mass. 131, 137 (2013); citing to Beckman v. Commonwealth, 377 Mass. 810, 812 (1979); and Gilday v. Commonwealth, 360 Mass. 170, 171 (1971).

The first numbered section of the Petitioners' Memorandum is captioned "Due process and common law

principles do not permit subjecting Dookhan defendants who seek post-conviction relief to more severe punishment." D. Mem. i. The section contains two distinct though related sub-claims: the first is that reinstatement of the original charges faced by a "Dookhan defendant" upon vacatur of his plea to reduced charges would violate his due process rights. See D. Mem. at 23. The second is that the imposition of a greater penalty upon reconviction than imposed after the original guilty plea would also violate his due process rights. See D. Mem. at 22.

Post-conviction appellate review is available for both sub-claims. With regard to the first, a defendant may challenge his conviction on direct appeal when an original charge is reinstated following vacatur of a guilty plea to a lesser charge. See Commonwealth v. Rollins, 354 Mass. 630, 633 (1968) (defendant challenges the reinstatement of first degree murder charge after he had successfully moved to withdraw his guilty plea to second degree murder); see also Commonwealth v. Miranda, 415 Mass. 1 (1993) (defendant challenges, via direct appeal, his conviction on charges that were reinstated after having been nolle prossed). Any of the petitioners could do the same, should he

successfully move to withdraw his guilty plea and be reconvicted after reinstatement of the original charges.<sup>9</sup>

With regard to the second sub-claim, a defendant can make a post-conviction challenge to the imposition of a greater sentence after reconviction following a successful motion to withdraw his guilty plea or for new trial. See Commonwealth v. Henriquez, 65 Mass. App. Ct. 912 (2006); Commonwealth v. Hyatt, 419 Mass. 815 (1995) (on direct appeal, defendant challenged the imposition of a harsher sentence after reconviction of the same offense following a successful motion for new trial; he relied, as do the petitioners, D. Mem. 17-18, on the "presumption of vindictiveness"). See also Jones v. Commonwealth, 461 Mass. 1005 (2012) and Tavares v. Commonwealth, 447 Mass. 1011 (2006) (in both cases, a c. 211, § 3 petition was denied where the defendant challenged the constitutionality of his sentence, because the claims could have been raised in a post-conviction motion or on direct appeal). Any one of the petitioners could also make such a challenge should he successfully move to withdraw his plea, be reconvicted, and receive a greater sentence than imposed after his original guilty plea.

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<sup>9</sup> For a discussion of the lack of ripeness of the claims addressed in this section, see Section I, Subsection B, infra.

In sum, the petitioners "may obtain full appellate review of th[ese] issue[s] (and any others) as part of a direct appeal if they were to be convicted." Bertini, 466 Mass. at 135. They therefore do not require the extraordinary remedy provided by chapter 211, section 3, and their petition should be denied solely on that ground.

**B. The petitioners' claims are not ripe because none has suffered, or is in imminent danger of suffering, the speculative and hypothetical harm complained of in the petition**

"As a general rule, this [C]ourt will not review [a] matter until the entire case is ripe for review due to the burdensome nature of 'piecemeal appellate review.'" Campana v. Board of Directors of Massachusetts Housing Finance Agency, 399 Mass. 492, 515 at n. 16 (1987). With regard to constitutional questions, the "'traditional and salutary practice'" of the Commonwealth's appellate courts "is not to answer them in the abstract [but] to wait 'until the circumstances of a case are established' that require an answer to such questions." Commonwealth v. Bankert, 67 Mass. App. Ct. 118, 121 (2006), quoting from Commonwealth v. Two Juveniles, 397 Mass. 261, 264 (1986). See also Commonwealth v. Casimir, 68 Mass. App. Ct. 257, 259-260 (2007) (in motion for new trial context, defendant's claim not ripe when he has made no showing that he is actually

facing any of the consequences complained of in his motion).

Ripeness considerations apply to petitions under chapter 211, section 3, and the Full Court has denied such petitions on the grounds that the claims asserted are not ripe for review. See Frates v. Fay, 432 Mass. 1001 (2000) (denial of c. 211, § 3 petition affirmed when petitioner requested that this Court intervene in an ongoing proceeding to modify a 209A order; the Court held that the "petitioner has not demonstrated that this proceeding is ripe for review"); and Barbara F. v. Bristol Div. of Juvenile Court Dept., 432 Mass. 1024 (2000) (denial of c. 211, § 3 petition affirmed where petitioner's allegations were insufficient to confer standing because "[t]o have standing in any capacity, a litigant must show that the challenged action has caused the litigant injury," and the alleged "[i]njuries [were] speculative, remote, and indirect . . .") (quoting from Slama v. Attorney Gen., 384 Mass. 620, 624 (1981), and Ginther v. Commissioner of Ins., 427 Mass. 319, 323 (1998)).

Further, the Full Court has held that challenges to hypothetical future sentences are not ripe for review. In Commonwealth v. Doe, the Commonwealth filed a 211/3 petition, challenging a trial judge's pretrial order



barring the Commonwealth from trying a defendant on charges the Commonwealth had previously agreed to drop (thus reducing the defendant's mandatory minimum sentence) in exchange for the defendant's cooperation with law enforcement. See 412 Mass. 815, 821-822 (1992). On reservation and report from this Court, the Full Court held that the defendant's claim was premature, because the Commonwealth could, at a later stage, still choose to reduce the prison time the defendant faced. Id.

Similarly, the harm alleged in Section I of the petition has not yet occurred. For any of the petitioners to actually suffer such harm, the following sequence of events would need to unfold:

- (1) the petitioner files a motion to withdraw his plea;
- (2) the motion is allowed;
- (3) the original charges, for more serious offenses than those to which he pled guilty, are reinstated;
- (4) the Commonwealth elects to re-prosecute the case;
- (5) the petitioner is convicted; and
- (6) a greater sentence is imposed than when the petitioner first pled guilty to reduced charges.

Petitioners Bridgeman and Creach have undergone none of these six steps, and petitioner Cuevas has completed only

the first step. See D. Pet. 5-9. As shown above, a number of uncertain events must occur before any of the petitioners suffers the injuries they complain of; because those injuries remain "speculative, remote, and indirect," the petitioners' claims are not ripe for review. See Barbara F., 432 Mass. at 1024.

Perhaps in an effort to avoid the ripeness considerations described above, the petitioners argue that they are suffering a present harm, namely: "[t]hey worry that, if they win new trials, they will face more severe penalties if convicted again," D. Mem. 16, and that such a possibility "'serves to chill the exercise of basic constitutional rights.'" D. Mem. 18, quoting North Carolina v. Pearce, 395 U.S. 711 (1969) (further quotation omitted); and citing Hyatt, 419 Mass. at 815, for a similar proposition. In Pearce and Hyatt, the Supreme Court and the Full Court held that a defendant may not receive a harsher punishment upon conviction for the same offense after retrial following the successful appeal of a conviction at trial. Id.

However, there are two fundamental differences between the petitioners and the defendants in Pearce and Hyatt which render those cases irrelevant to the petitioners' claims. First, the defendants in those cases saw their

sentences increased after successfully appealing a conviction *after trial*, while the petitioners initially *pled guilty*, and are therefore not affected by the holding in Pearce, as both the Full Court and the Supreme Court have explicitly held. See Commonwealth v. Tirrell, 382 Mass. 502, 506-509 (1981) (Pearce rules inapplicable to plea bargaining); and Alabama v. Smith, 490 U.S. 794, 795 (1989) (same). Second, the defendants in Pearce and Hyatt sought relief only after they actually were sentenced to the higher penalties in question, while the petitioners, as noted above, have alleged only speculative, remote and indirect injuries.

Superintendence petitions have been denied where petitioners similarly tried to avoid ripeness or standing problems by claiming that their rights to perform some future action had been chilled. See In re Subpoena Duces Tecum, 445 Mass. 685, 685-686 (2006) (on reservation and report from this Court, Commonwealth's 211/3 petition denied by Full Court, which rejected argument that disclosure to the defense of video-taped interviews with children who had made allegations of sexual abuse would chill future communications between law enforcement and citizens) and Barbara F., 432 Mass. at 1024 (Full Court denied 211/3 petition in which petitioner argued her rights

had been chilled, holding that she had not suffered sufficient injury to confer standing). The Court should do so again here, because the petitioners' rhetorical equivocation that they fear a future harm does not change the fact that none of them have suffered, nor are in imminent danger of suffering, the harm they allege.

- C. The claim is without merit because the Full Court and the Supreme Court have held that the presumption of vindictiveness does not apply to defendants who receive greater sentences after reconviction following vacatur of a guilty plea

In addition to failing to meet the superintendence standard and being unripe, the underlying claim has no merit. This is because the "presumption of vindictiveness" prohibiting a defendant from receiving a harsher sentence upon reconviction is inapplicable if, as here, the first conviction was a guilty plea. Smith, 490 U.S. at 801 (see discussion at page 15, supra). The petitioners admit that the Supreme Court has held as much, but neglect to mention, as noted above, that the Full Court has done the same. See Tirrell, 382 Mass. at 506-509 (holding that Pearce is "inapposite to the plea bargaining process"). Because the petitioners have all pled guilty, the holdings of Pearce and Hyatt are inapplicable to their case, and their claims are without merit.

Furthermore, the suggestion that reinstatement of original charges following the withdrawal of a guilty plea evinces "vindictiveness" by the Commonwealth disregards basic principles of the plea process. In fact, such reinstatement is entirely consistent with present case law. See e.g., Rollins, 354 Mass. at 633; Miranda, 415 Mass. at 1; Jackson v. Commonwealth, 430 Mass. 260, 261-62 (1999), cert. denied, 528 U.S. 1194 (2000); Doe v. District Attorney, 29 Mass. App. Ct. 671, 677 & n.6 (1991); and Commonwealth v. Cuevas, 40 Mass. App. Ct. 1117 (1996) ("The complaint charging violation of G.L. c. 94C, § 32J, is reinstated, and the judgment entered upon the defendant's guilty plea with respect to G.L. c. 94C, § 32, is vacated."). Cf. Commonwealth v. Nardone, 406 Mass. 123, 133 (1989) (when defendant is convicted of a lesser-included offense, and successfully appeals, the Commonwealth may retry him on the original more serious charge).

A court in another jurisdiction has eloquently stated why reinstatement following the withdrawal of a guilty plea not only may but should occur: "Familiar and basic principles of law reinforced by simple justice require that when an accused withdraws his guilty plea the status quo ante must be restored. When a plea agreement has been

rescinded the parties are placed by the law in the position each had before the contract was entered into." People v. Scheller, 136 Cal. App. 4th 1143, 1149 (2006). This basic principle is illustrated in the Commonwealth by the holdings in Rollins, Miranda, Jackson, Doe, Cuevas, and Nardone: in short, when charges are reduced in consideration of a defendant's change of plea, he no longer retains the benefit of the bargain once that plea is withdrawn. This applies to the petitioners as it would to any other defendant in the Commonwealth who moves to withdraw his guilty plea.

II. The Court should deny the petitioners' request to vacate the convictions of "all Dookhan defendants," because:

- the claim fails to meet the standard in the superintendence statute; and
- the claim is without merit because the petitioners are not suffering inordinate and prejudicial delay.

A. The second claim fails to meet the standard for relief under the superintendence statute

The request for vacatur of the convictions of all defendants potentially affected by the misconduct due to "inordinate and prejudicial delay" should be denied on the sole ground that it does not meet the superintendence standard (D. Pet. 27). Defendants adversely affected by the Hinton Lab misconduct have been, and will continue to

be, able to pursue dismissal or vacatur of their guilty pleas. There is therefore no "irremediable error" present "to allow [review] under G.L. c. 211, § 3." Bertini, 466 Mass. at 137.

Likewise, the claim does not meet the "exceptional circumstances" prong of the standard in the superintendence statute. Bertini, 466 Mass. at 137. While the Hinton Lab misconduct is undeniably an exceptional circumstance, the circumstances of the named petitioners are not. They have all completed their sentences; they do not claim actual innocence, or that the substance at issue was not what it was alleged to be in the indictment or complaint. Bridgeman and Creach may move to withdraw their guilty pleas should they so choose, and Cuevas' motion to withdraw his plea will proceed with a conclusive presumption of government misconduct. See Scott, 467 Mass. at 362. The petitioners are in substantially the same position as any defendant seeking to withdraw a guilty plea based on allegations of government misconduct.

**B. The claim is without merit because the petitioners are not suffering inordinate and prejudicial delay**

The petitioners claim that "inordinate and prejudicial delays have stymied those defendants who, despite the risks and uncertainty, are willing to proceed in court,"

referencing Cuevas (the only named petitioner to have filed a motion to withdraw his plea) as an example of such a defendant. D. Mem. 4. In fact, the delay in Cuevas' case was created by his desire to await the issuance of the Full Court's decisions in Scott and its companion cases, as well as the release of the Inspector General's Report. See Office of the Inspector General, Investigation of the Drug Laboratory at the William A. Hinton State Laboratory Institute 2002-2012 (March 4, 2014). Now that the defendant has withdrawn his request for additional discovery following the issuance of the Scott decision, his case is scheduled for a pre-motion status date (R.A. 368). There is no longer any cognizable "delay" in his case, and certainly not an inordinate or prejudicial one.

As the petitioners point out, the remedy they request, i.e., the wholesale dismissal of every conviction based in part on work done at the Hinton Lab during Dookhan's tenure, has already been before both this Court and the Full Court. See, e.g., Brief for Scott at 45-47, amicus briefs filed by the Committee for Public Counsel Services, the American Civil Liberties Union, and the Massachusetts Association of Criminal Defense Lawyers, Commonwealth v. Scott, SJC-11465; and Brief for Rodriguez at 24-29, Commonwealth v. Rodriguez, SJC-11462. Though the Full



Court in Scott did not explicitly reject such a remedy, it implicitly did so in holding that defendants affected in different ways by the Hinton Lab misconduct were entitled to different rights and presumptions. From the Scott decision:


It certainly is true that we cannot expect defendants to bear the burden of a systemic lapse, but we also cannot allow the misconduct of one person to dictate an abrupt retreat from the fundamentals of our criminal justice system. See Commonwealth v. Chatman, 466 Mass. 327, 333 (2013) ("The defendant has the burden of proving facts upon which he relies in support of his motion for a new trial"). See also Commonwealth v. Lewin, 405 Mass. 566, 585, 586 (1989) (charges against defendant need not be dismissed where police misconduct was egregious but not prejudicial to fair trial). Unlike evidence of the particular scope of Dookhan's misconduct, evidence of the circumstances surrounding the defendant's decision to tender a guilty plea should be well within the defendant's reach.

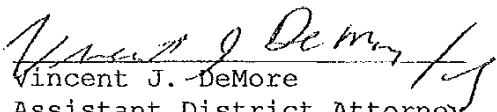
Scott, at n. 11. Thus, the Court held that defendants moving to withdraw their pleas must tie the Hinton Lab misconduct to their own individual decisions to plead guilty. Id. The drastic, overbroad, and indiscriminate remedy the petitioners request is inconsistent with this holding, and this Court should decline to grant it.

CONCLUSION

For the foregoing reasons, the District Attorneys for the Eastern (Essex) and Suffolk Districts respectfully request that this Court deny the petition.

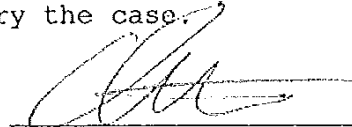
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VERIFICATIONS

I, Quentin R. Weld, hereby verify under the penalties of perjury that the factual information in this opposition about the Essex case is true to the best of my knowledge and belief inasmuch as it was provided to me by the prosecutor assigned to try the case.



Quentin R. Weld  
Assistant District Attorney  
for the Eastern District

I, Vincent J. DeMore, hereby verify under the penalties of perjury that the factual information in this opposition about the Suffolk cases is true to the best of my knowledge and belief inasmuch as it was provided to me by the prosecutors assigned to try the cases.



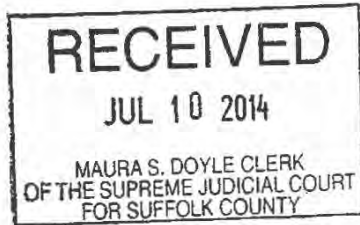
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for the Suffolk District

June 2, 2014

COMMONWEALTH OF MASSACHUSETTS

ESSEX, SS

SUPREME JUDICIAL COURT  
FOR SUFFOLK COUNTY  
NO. SJ-2014-0005



SUFFOLK SUPERIOR COURT  
NO. SUCR2005-10537  
(Bridgeman)  
NO. SUCR2007-10959  
(Bridgeman)

BOSTON MUNICIPAL COURT  
NO. 0501 CR 0142  
(Creach)

ESSEX SUPERIOR COURT  
NO. ESCR2007-1535  
(Cuevas)

KEVIN BRIDGEMAN, YASIR CREACH, and MIGUEL CUEVAS

v.

DISTRICT ATTORNEY FOR THE SUFFOLK DISTRICT

and

DISTRICT ATTORNEY FOR THE EASTERN DISTRICT

OPPOSITION TO CPCS MOTION TO INTERVENE IN PETITION  
SEEKING RELIEF PURSUANT TO G. L. c. 211, § 3<sup>1</sup>

INTRODUCTION

Pending before the Court is a petition by three named criminal defendants ("petitioners") against the District Attorneys of the Suffolk and Eastern

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<sup>1</sup> Record references: motion to intervene, Mot. Int. \_\_; the 211/3 petition, D. Pet. \_\_, its supporting memorandum, D. Mem. \_\_; and the Commonwealth's Opposition thereto, Comm. Opp. \_\_; and the supplemental record appendix hereto, S.R.A. \_\_.

Districts ("the District Attorneys"), seeking various remedies relating to the Hinton Drug Lab misconduct. On May 27, 2014, the Committee for Public Counsel Services ("CPCS" or "proposed intervener") filed a motion to intervene as a party in the petition. To the extent that CPCS acts on behalf of "40,323 individuals whose drug cases potentially may have been affected by [the Hinton Lab misconduct],"<sup>2</sup> the motion to intervene does not further identify, define, or limit the class of individuals CPCS purports to represent.<sup>3</sup>

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<sup>2</sup> D.E. Meier, The Identification of Individuals Potentially Affected by the Alleged Conduct of Chemist Annie Dookhan at the Hinton Drug Laboratory: Final Report to Governor Deval Patrick, at 3 (Aug. 2013). See also Commonwealth v. Scott, 467 Mass. 336, 340 (2014) (describing "over 40,000 cases" in which Dookhan was involved in testing drug samples). CPCS did not represent all of these defendants in their underlying criminal cases. See S.R.A. 1-6 (correspondence explaining that disclosure of information about every defendant, assuming it was even in the possession of the District Attorneys, would likely violate CORI, G. L. c. 6, § 172, because some of the defendants were represented by private counsel).

<sup>3</sup> CPCS's authority to represent the entire class of 40,323 defendants is discussed in Section III at pages 11-13, below.

CPCS lists five remedies it will seek if permitted to intervene; namely, it will ask the Court to:<sup>4</sup>

1. Declare a new rule that defendants who succeed in vacating their guilty pleas on Hinton grounds may not receive a harsher sentence than the terms of their plea, should they be reconvicted after trial;<sup>5</sup>
2. Declare a new rule that an attorney representing a defendant moving to withdraw his plea based on the Hinton Lab misconduct, who also represented him at the plea stage, may testify at a hearing on a motion to vacate that plea, despite the fact that such testimony would violate Mass. R. Prof. C. 3.7(a);
3. Declare a new rule that a defendant's testimony at a hearing on a motion to vacate his plea on Hinton grounds is not admissible in any future non-perjury prosecution of the defendant;
4. Order the District Attorneys of the seven Hinton-affected counties to provide CPCS with the identifying information of each of the 40,323 defendants appearing on the list created by

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<sup>4</sup> CPCS does not specify whether it desires the Full Court or the Single Justice to afford the several forms of relief it requests in its motion to intervene. As noted in the opposition to the petition, the petitioners likewise blur the distinction between this Court and the Full Court. See Comm. Opp. 4, at n. 4.

<sup>5</sup> CPCS ignores the question of whether original charges, which may have been reduced during plea negotiations, can be reinstituted upon vacatur of the guilty plea; the propriety of the reinstatement of the original charges ~~is~~ at issue in the 211/3 petition. See D. Mem. 19-20.

Attorney David Meier at the Governor's request ("the Meier list");<sup>6</sup> and

5. Order the Office of the Inspector General, which is not a party to the petition, to provide CPCS with access to the underlying data it collected and produced in connection with its investigation of the Hinton Lab misconduct.

See D. Br. 2-3.

The motion to intervene should be denied in full: putting aside CPCS's authority to intervene as a party (see Section III at pages 11-13, below), it has not met the standard for intervention because (1) any interest reflected in the first remedy sought by CPCS is adequately represented by the petitioners, (2) it has not shown that it has other interests that would be impaired by the disposition of the petition, and (3) it seeks relief that the petitioners do not seek, and that far exceeds the scope of the petition. See Massachusetts Rule of Civil Procedure 24, §§ (a) and (b).

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<sup>6</sup> The supplemental record appendix includes recent correspondence between CPCS and the Suffolk and Eastern District Attorneys concerning this same issue. S.R.A. 1-6. Among other things, the correspondence reflects the considerable efforts by the Superior Court, the District Attorneys, and others to proactively address the cases of those defendants actually affected by the Hinton Lab misconduct. See S.R.A. 2.

ARGUMENT

- I. The motion to intervene should be denied, because  
(A) any interest reflected in the first remedy sought is adequately represented by the petitioners, (B) CPCS has not shown that it has other interests that would be impaired by the disposition of the petition, and (C) CPCS seeks remedies that the petitioners do not seek, and that far exceed the scope of the petition
- A. Any interest reflected in the first remedy sought is adequately represented by the petitioners

CPCS moves to intervene in the petition "pursuant to Mass. R. Civ. P. 24(a)." Mot. Int. 1. That subsection defines the standard for *intervention of right*:

Upon timely application anyone shall be permitted to intervene in an action: (1) when a statute of the Commonwealth confers an unconditional right to intervene or (2) when the applicant claims an interest relating to the property or transaction which is the subject of the action and he is so situated that the disposition of the action may as a practical matter impair or impede his ability to protect that interest, *unless the applicant's interest is adequately represented by existing parties.*

Mass R. Civ. P. 24 (a) (emphasis added).<sup>7</sup>

"A judge should allow intervention as of right when (1) the applicant claims an interest in the

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<sup>7</sup> CPCS does not state the subsection of Mass. R. Civ. P. 24(a) on which it relies, but since there is no unconditional statutory right to intervene, the District Attorneys infer that CPCS is relying on Mass. R. Civ. P. 24(a)(2).



subject of the action, and (2) he is situated so that his ability to protect this interest may be impaired as a practical matter by the disposition of the action, and (3) his interest is not adequately represented by the existing parties." Massachusetts Federation of Teachers, AFT, AFL-CIO v. School Committee of Chelsea, 409 Mass. 203, 205-206 (1991), citing to Mass. R. Civ. P. 24(a)(2).

As such, when an "applicant for intervention and an existing party have the same interests or ultimate objectives in the litigation, *the application should be denied unless a showing of inadequate representation is made.*" Id., (quotation omitted) (emphasis added). Importantly, "[t]he burden of showing the inadequacy of the representation is on the applicant." Id., quoting Attorney Gen. v. Brockton Agricultural Soc'y, 390 Mass. 431, 434 (1983).

CPCS's motion to intervene does not bear any relation to this framework, but is structured simply as a list of remedies sought.<sup>9</sup> Significantly, CPCS has

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<sup>9</sup> The motion to intervene does not mention the intervention standard at all beyond the initial cite to Mass. R. Civ. P. 24(a), and two case citations in the motion's concluding section. See Mot. Int. 1, 10.

not (1) defined its interests in the 211/3 petition;<sup>9</sup> (2) clarified whether its "interests or ultimate objectives" are "the same"; or (3) established that its interests are inadequately represented by the petitioners. Massachusetts Federation of Teachers, 409 Mass. at 205-206. Far from alleging inadequacy, CPCS states that it "agrees with and supports the position of the petitioners in this case as set forth in their petition for relief." Mot. Int. 1-2. This is a reasonable position, because the interest reflected in the first remedy sought -- that defendants who withdraw their guilty plea on Hinton grounds and are subsequently reconvicted should not receive a higher sentence than they received in their original plea -- is more than adequately represented by the petitioners in the sixteen-page petition and thirty-eight-page supporting memorandum already before the Court. See D. Pet, D. Mem.

**B. The interests reflected in the latter four remedies sought would not be impaired by the disposition of the petition**

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<sup>9</sup> Contrast Lavallee v. Justices in Hampden Superior Court, 442 Mass. 228, 230 (2004) (CPCS filed 211/3 petition on behalf of nineteen indigent criminal defendants being held in lieu of bail set without counsel).

The interests reflected in the remaining four remedies sought will not be "impaired as a practical matter by the disposition of the action" if CPCS is not permitted to intervene. Massachusetts Federation of Teachers, 409 Mass. at 205-206.<sup>10</sup> The particular remedies are: the suspension of the advocate-witness rule to allow advocates to testify for defendants a plea withdrawal hearings; the creation of a new rule that testimony at such hearings may not be used against a defendant in further prosecutions; an order to the District Attorneys' offices to provide CPCS with the personal information of 40,323 defendants; and an order to the Inspector General's Office (again, not a party to the petition) to provide CPCS with various Hinton-related data. See Mot. Int. 2-3.

Aside from a general connection to the Hinton Lab misconduct, these requests are entirely separate from the two claims in the 211/3 petition, and would not be affected in any way by its disposition.<sup>10</sup> CPCS has not

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<sup>10</sup> The 211/3 petitioners' two claims are that (1) original charges should not be reinstated upon a vacatur of a guilty plea on Hinton grounds, and, if a defendant is convicted after such a vacatur, a defendant should not face a higher sentence than he received in his original plea; and (2) the Court should create a new rule that all defendants potentially affected by the Hinton Lab misconduct must

shown, or even attempted to show, that the wide-ranging issues they raise in the latter four remedies sought would be impaired by the disposition of the petition.

In short, CPCS fails to meet the mandatory intervention standard. Mass. R. Civ. P. 24(a); Massachusetts Federation of Teachers, 409 Mass. at 205-206.

C. CPCS seeks remedies that exceed the scope of the petition and are not sought by the petitioners

Notably, the new rules and declaratory judgments CPCS requests in the latter four remedies sought are unrelated to the relief sought by the three named petitioners, Bridgeman, Creach, and Cuevas. Thus, it is evident that CPCS, "the applicant[] for intervention," "want[s] to enter the present proceeding in order to put [new considerations] before the court." Care and Protection of Zelda, 26 Mass. App. Ct. 869, 872 (1989). This objective is contrary to the guiding principle of intervention: "[t]he courts have always striven to maintain the integrity

be released due to inordinate and prejudicial delay in the handling of their Rule 30 motions. See D. Mem. 16-37; see also S.R.A. 1-6, correspondence among CPCS and the District Attorneys regarding the handling of these cases.

of the issues raised by the original pleadings . . . The injection of an independent controversy by intervention is improper." Rothberg v. Schmiedeskamp, 334 Mass. 172, 178 (1956); see also Id. ("The possible consequences of permitting irrelevant issues to be injected in an action at law require no discussion."). Here, "[t]he interest[s] of the [proposed intervener] [are] only vicarious and attenuated." Coggins v. New England Patriots Football Club, Inc., 397 Mass. 525, 539 (1986).

## II. Permissive Intervention

CPCS never mentions the rule governing **permissive** intervention, Mass. R. Civ. P. 24(b), which balances the advantages to the proposed intervener against any disadvantage to the present parties. See id. at 538. Should the Court consider intervention under the permissive standard, the disadvantages to the parties, particularly the District Attorneys, would be great.

The District Attorneys responded in a comprehensive and detailed opposition to the claims made in the petition, and the case is now poised for further action by this Court. If, however, CPCS is permitted to intervene, the existing pleadings would be wholly inadequate to address the issues that CPCS

now wishes to inject into the proceedings. Further briefing would be required, by both the petitioners and the District Attorneys, in order to respond to the additional and more expansive remedies that CPCS seeks. It would also likely be necessary to add the Inspector General's Office as yet another party, so it could address the clear interest it has in the fifth remedy sought by CPCS.

**III. CPCS lacks express statutory authority to intervene on behalf of a broad class of unnamed individuals whom it may or may not represent**

Even assuming CPCS has satisfied the requirements for intervention, the motion should be denied because CPCS lacks express authority to intervene on behalf of a broad class of unnamed individuals whom it may or may not represent. As noted on page two, above, in addition to failing to identify its own interest in the petition, CPCS does not identify, define, or limit the class of individuals whom it purports to represent. In the context of the petition and the motion to intervene, the class is presumably the 40,323 criminal defendants whose cases are potentially affected by the Hinton Lab misconduct, and who are referenced in the fourth remedy sought by CPCS. See

D. Pet. 3; Commonwealth v. Scott, 467 Mass. 336, 340 (2014).

CPCS is authorized by statute to, *inter alia*, "establish, supervise and maintain a system for the appointment or assignment of counsel at any stage of a proceeding." G. L. c. 211D, § 1. Chapter 211D contains no provision authorizing CPCS to intervene for the purpose of asserting remedies for a broad class of unnamed individual defendants, including those **not** represented by CPCS in their underlying criminal case. See G. L. c. 211D §§ 1-16.

In all the reported cases in which CPCS has intervened, it has either represented a criminal defendant intervening in a related civil case, see, e.g., In re Globe, 461 Mass. 113, 114, n.1 (2011) (in action by a newspaper for inquest report and transcript, intervening on behalf of a first-degree murder defendant who was represented by CPCS), or intervened in a case where an existing party's claim involved an issue fundamental to the powers and duties of CPCS, such as a party's right to appointed counsel, see e.g., In re Adoption of Meaghan, 461 Mass. 1006 (2012), or the compensation of experts for indigent defendants. See, e.g., In re Edwards, 464 Mass. 454,



455 (2013). There is certainly no reported decision in which CPCS has successfully intervened on behalf of a broad, unnamed class of individuals whom the Committee may or may not otherwise represent.

Moreover, to the extent that CPCS should rightfully be heard on criminal issues of importance, including the Hinton Lab misconduct, the amicus process defined in Massachusetts Rule of Appellate Procedure 17 affords it a platform to do so. See, e.g., Commonwealth v. Charles, 466 Mass. 63, 77 (2013) (SJ-2013-0066) and Commonwealth v. Milette, 466 Mass. 63, 77 (2013) (SJ-2013-0083) (Hinton Lab cases in which CPCS filed an amicus brief); Mass. R. App. Proc. 17. The Full Court in its published decisions regularly acknowledges amicus briefs filed by CPCS, and has cited them favorably in support of its holdings. See Commonwealth v. Vasquez, 456 Mass. 350, 366 (2010); see also Commonwealth v. Greineder, 464 Mass. 580, 600, n. 2 (2013), and Commonwealth v. Brown, 431 Mass. 772, 775 (2000). Such amicus curiae briefs are an appropriate method by which to voice broad policy concerns, to the extent that those concerns can be resolved in a judicial (i.e., non-legislative) setting.



The amicus process notwithstanding, CPCS is not authorized by statute to intervene in an action between third parties on behalf of a broad, unnamed class of individuals whom the Committee may or may not otherwise represent. The motion to intervene should be denied solely on this ground.

CONCLUSION

CPCS does not meet the mandatory intervention standard, as defined in Mass. R. Civ. P. 24(a), or the permissive intervention standard as defined in Mass. R. Civ. P. 24(b). Moreover, it is not authorized by statute to intervene in the petition. The motion to intervene should be DENIED.

FOR THE DISTRICT ATTORNEYS:



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July 3, 2014

SUPPLEMENTAL RECORD APPENDIX

SUPPLEMENTAL RECORD APPENDIX

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THE COMMONWEALTH OF MASSACHUSETTS  
OFFICE OF THE  
DISTRICT ATTORNEY FOR THE ESSEX DISTRICT  
SALEM NEWBURYPORT LAWRENCE

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Mr. Anthony J. Benedetti  
Chief Counsel  
Committee for Public Counsel Services  
44 Bromfield Street  
Boston, MA 02108

June 3, 2014

Dear Mr. Benedetti,

We have received and reviewed your letters of February 11 and April 11, 2014. As you know, the District Attorneys remain dedicated to ensuring that justice is served in cases involving defendants potentially affected by the misconduct at the Hinton Laboratory.

You are now requesting that we review tens of thousands of individual cases from Suffolk and Essex Counties, in order to identify and provide you with detailed information, including dates of birth and social security numbers, of every defendant in those counties who was named on a drug analysis certificate signed by Annie Dookhan as the primary or confirmatory analyst ("defendants potentially affected by the misconduct").<sup>1</sup>

We believe that this request is unreasonable because (1) the District Attorneys are not funded or staffed for this undertaking, as the resources required to meet the request are immense; (2) the scale and scope of the information you are requesting is extremely overbroad, and undeniably duplicates efforts already undertaken or completed; (3) Criminal Offender Record Information ("CORI") protections and the privacy exemption to the public records law likely prohibit us from providing the Committee for Public Counsel Services ("CPCS") with the dates of birth and social security numbers of criminal defendants who CPCS may or may not represent; (4) the many months of combined efforts by prosecutors, the judiciary, and individual defense attorneys, as well

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<sup>1</sup> As you point out in your letter of April 11, 2014, the Supreme Judicial Court held this year that such defendants are entitled to a presumption of government misconduct in their case, but are not entitled to vacatur of their convictions unless they demonstrate a reasonable probability that they would not have pleaded guilty had they known of the misconduct. See Commonwealth v. Scott, 467 Mass. 336 (2014). Now, as a result of the Scott decision and its companion cases, defendants potentially affected by the misconduct have solid legal framework by which to proceed with their claims.

as saturation news coverage of the issue, constitutes significant notice already provided to those defendants potentially affected by the misconduct; and (5), any additional provision of notice to such defendants can be far more efficiently and effectively accomplished by other means.

First, as we made clear when this crisis began, the District Attorneys lack the resources to pull tens of thousands of case files in order to compile the information you are requesting. As a basis for the request, you reference the list created by Attorney David Meir at the request of Governor Patrick of defendants potentially affected by the misconduct. Governor Patrick created the so-called "boiler room" as the most efficient means of allocating the cumbersome, costly, and time-consuming task associated with identifying those potentially affected by the misconduct. The District Attorneys are no better able now than at the outset to complete such an undertaking.

Second, the enormous scope of your request fails to account for those whose cases have already been addressed through the efforts of prosecutors, the judiciary, the executive branch, Attorney Meier, the Office of the Inspector General, and CPCS itself to identify and bring forward the cases of those defendants potentially affected by the misconduct. CPCS itself, very early in this process, alerted its staff attorneys and bar advocates to review their own client lists to identify defendants potentially affected by the misconduct, and to file motions on their behalf. In both Suffolk and Essex Counties we reacted rapidly to the hundreds of motions that followed: many district, superior court and appellate prosecutors, as well as other staff, were reassigned to address the claims and those who were incarcerated were given first priority. The information you now seek includes those defendants who have already received notice of their potential claim, and may either be currently seeking redress or have already received it.

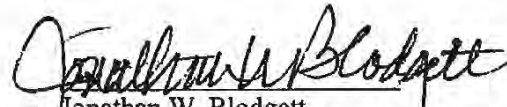
Third, many of the defendants referenced in your request are not represented by CPCS, and we are therefore likely prohibited by law from releasing their dates of birth and social security numbers to a third party, even if that party is CPCS. The information you seek is likely subject to both (1) the CORI statute, G. L. c. 6, § 172, which prohibits the release of CORI information to third parties subject to certain exceptions, none of which are immediately apparent here, and (2) the public records law, which exempts from disclosure "any . . . materials or data relating to a specifically named individual, the disclosure of which may constitute an unwarranted invasion of personal privacy." G. L. c. 4, § 7(26)(c). We acknowledge that CPCS has the best interests of the defendants in mind when making this request, but the requested disclosure of personal information raises non-trivial privacy concerns and likely is prohibited by law.

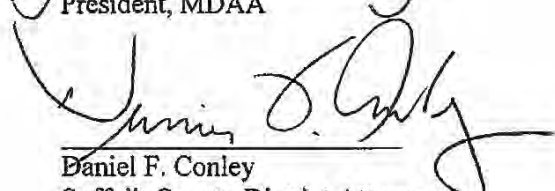
Fourth, to the extent that your request is based on a concern that there may be defendants within in the Commonwealth who are yet unaware of the misconduct, we feel strongly that there is little likelihood that potentially affected defendants have not learned of the misconduct. This is due not only to the saturation news coverage of the issue, but also to the aforementioned far-reaching efforts of many state employees across different agencies and branches of government, as well as defense attorneys, to identify and notify these defendants.

Lastly, additional notice, if necessary, might be more efficiently and effectively provided by different means, e.g., through posting or publication in locations designed to reach the maximum number of potentially affected defendants. Moreover, it would be impossible by the means you suggest to identify those defendants with older convictions whose records have already been destroyed pursuant to the Massachusetts Records Retention Schedule. Any effort to locate the information for such defendants would be in vain; therefore, in the unlikely event that they have not received notice, it could only be provided by other means.

In sum: we lack the resources to comply with your request; we believe the request is overbroad and calls for action duplicative of work already done; we are likely prohibited by law from providing you with dates of birth and social security numbers of the defendants in question; any benefit to such a disclosure would be minimal due to the likelihood that the defendants in question are already aware of the misconduct; and, additional notice, to the extent that any is necessary, can be more efficiently and effectively provided by other means.

Sincerely,

  
Jonathan W. Blodgett  
Essex County District Attorney  
President, MDAA

  
Daniel F. Conley  
Suffolk County District Attorney  
Vice president, MDAA

JWB:QRW:fhs



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FAX: (617) 988-8495

APR 14 2014

April 11, 2014

District Attorney Jonathan W. Blodgett  
Ten Federal Street  
Salem, MA 01970

Dear District Attorney Blodgett:

I am writing to follow-up on my previous letter to you in which I requested the cooperation of your office in providing CPCS with certain information that would significantly advance our collective efforts to identify, locate and counsel indigent defendants convicted in cases in which chemist Annie Dookhan was involved in the analysis of alleged controlled substances. Specifically, I requested that your office produce the police report and booking sheet, the docket number and the certificate of analysis associated with the Essex County samples entered on David Meier's August 2013 list of samples of alleged drugs tested by Annie Dookhan at the Hinton Drug Laboratory between 2003 and 2012. (See attached copy of February 11, 2014 letter.)

As I know you are aware, the Supreme Judicial Court, in its recently issued decision in Commonwealth v. Scott, 467 Mass. 336 (2014), held that defendants in cases where Annie Dookhan signed a drug certificate, as primary or secondary chemist, are entitled to a conclusive presumption of egregious government misconduct, in the context of claims that guilty pleas should be vacated as not knowing and voluntary, and thus violative of due process. (In these cases, defendants are left to demonstrate a reasonable probability that they would not have pleaded guilty had they known of Dookhan's misconduct.)

Where the SJC has affirmed the proposition that defendants convicted in Dookhan-involved drug cases have viable claims for relief from their convictions, the duty of CPCS to identify, locate and counsel as many of those individuals as possible has become even clearer. And, as I indicated in my earlier letter to you, the documents I have requested – documents that I believe are accessible to you and your agents – are necessary to enable CPCS to accomplish these goals in a reasonably efficient manner. I do recognize that what I am asking of you, your staff and your agents, calls for the expenditure of significant time and effort.

I would welcome an opportunity to speak with you before the end of the month to discuss how and when the production I have requested might best be accomplished. I am sending comparable requests to the District Attorneys in each of the six other effected counties – I am also open to a joint meeting with all seven District Attorneys. I look forward to your response and to discussing with you how we can work cooperatively to ensure that all individuals whose drug convictions may have been tainted by Annie Dookhan's misconduct get their day in court.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Anthony J. Benedetti".

Anthony J. Benedetti  
Chief Counsel

Enclosure





ANTHONY J. BENEDETTI  
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FEB 12 2014

February 11, 2014

District Attorney Jonathan W. Blodgett  
Ten Federal Street  
Salem, MA 01970

Dear District Attorney Blodgett:

I am writing in the hope that your office will be able to provide CPCS with certain information that will significantly advance our collective efforts to identify, locate and counsel indigent defendants convicted in drug cases in which chemist Annie Dookhan was involved in the analysis of alleged controlled substances.

This past August, we were all provided with an updated list, prepared by Attorney David Meier at the request of Governor Deval Patrick, of 40,323 individuals whose samples of alleged narcotics had been tested by Dookhan, as primary or secondary chemist, between 2003 and 2012. (Several preliminary such lists generated by Meier were provided in September, 2012. The largest of these reflected 37,554 names.)

As I am sure you are aware, Attorney Meier prepared all of these lists with Hinton Drug Lab data and he was able to prepare the August 2013 list, which amplifies the September, 2012 lists, as a result of a file-by-file review of Hinton Drug Lab documents, including drug receipts.

While the August 2013 list is the end result of a monumental and impressive effort by Attorney Meier, because of the limits of the Hinton data upon which it is based, it is missing information necessary for the defense bar to move forward. Some of that information is, we think, accessible to you and your agents.

- The list does not provide birthdates or social security numbers for defendants. We need these precise identifiers so that we can efficiently and accurately search for individuals. Defendants' birthdates and social security numbers are typically found in police incident reports and/or booking sheets.
- The list does not contain case docket numbers. We need this information to enable us to efficiently obtain case dispositions so that we can restrict our search efforts to individuals actually convicted in Dookhan-involved drug cases.
- While the list provides a link to a PDF of the drug receipt associated with each sample, the list does not provide a similar manner of accessing the actual certificate of drug analysis because, surprisingly, Hinton Drug Lab files did not include copies of the "drug certs" themselves. (The drug certs, which reflect the names of the two chemists involved in each analysis and the role played by each (primary or secondary chemist), and the police reports are documents essential to enable assigned attorneys to advise clients as to the merits of possible new trial motions. The drug receipts, filled out by police officers on submission of the drug evidence, contain "police reference numbers" – police department file numbers – which provide a link between the Hinton Drug Lab sample numbers and the police reports associated with those samples.)

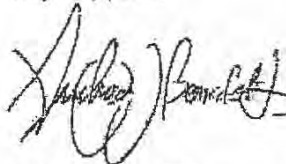


District Attorney Blodgett  
Page Two  
February 11, 2014

I am therefore asking that you provide the police report and booking sheet, the docket number and the certificate of analysis associated with the Essex County samples entered on David Meier's August 2013 list. These entries begin at line #14,597 and end at line # 24,921.

I recognize that what I am asking of you, your staff and your agents calls for the expenditure of considerable time and effort. Yet, I can see no reasonable way around this approach given the scope of the task at hand. Please feel free to call me to discuss how we can all work together cooperatively to ensure that all individuals potentially denied due process get their day in court and to keep this process moving forward.

Very truly yours,

A handwritten signature in black ink, appearing to read "Anthony J. Benedetti". The signature is stylized with a large, looped initial "A" and a cursive "J. Benedetti".

Anthony J. Benedetti  
Chief Counsel

COMMONWEALTH OF MASSACHUSETTS

KEVIN BRIDGEMAN,  
YASIR CREACH, and  
MIGUEL CUEVAS,

Petitioners,

v.

DISTRICT ATTORNEY FOR SUFFOLK  
COUNTY and  
DISTRICT ATTORNEY FOR ESSEX  
COUNTY,

Respondents.

SUPREME JUDICIAL COURT FOR  
SUFFOLK COUNTY  
DOCKET NO.: SJ-2014-0005

REPLY TO VERIFIED OPPOSITION TO PETITION SEEKING RELIEF PURSUANT  
TO GEN. LAWS C. 211, §3, AND RESPONSE TO MOTION TO INTERVENE BY  
THE COMMITTEE FOR PUBLIC COUNSEL SERVICES

INTRODUCTION

The District Attorneys argue, incredibly, that the Court should decline to exercise its superintendence powers to continue to address the Hinton Drug Lab crisis. They propose, instead, that ongoing problems arising from the scandal be resolved (if at all) in a business-as-usual manner, over the course of years, and only after some defendants who challenge their tainted convictions are punished with new convictions for previously dismissed charges and longer prison sentences.

There is no dispute, however, that the drug lab scandal involves exceptional circumstances and constitutes a systemic

failure for which the Commonwealth, not defendants, is to blame. The Court has twice acknowledged that the crisis warrants the exercise of its superintendence powers. See Commonwealth v. Scott, 467 Mass. 336, 352 (2014); Commonwealth v. Charles, 466 Mass. 63, 88-89 (2013).

The District Attorneys also argue, wrongly, that the Petition is not "ripe." The ongoing problems addressed by the Petition presently affect tens of thousands of defendants whose due process rights have been violated by Annie Dookhan's criminal misconduct. The interests of justice require prompt relief. More than three years since the state discovered the egregious misconduct in the drug lab in June 2011, it is no longer appropriate to kick the can down the road and maintain a status quo in which defendants are discouraged from seeking justice due to uncertainty, undue delay and fear of prosecutorial vindictiveness.

Despite the decisions in Charles and Scott, which represented important steps toward needed relief for Dookhan defendants, significant issues remain unresolved. For example, although Attorney David Meier identified 40,323 individuals who may have been affected by Dookhan's misconduct, the Committee for Public Counsel Services (CPCS) lacks the information needed to identify these individuals, and it has been able to assign

counsel in fewer than 9,000 cases. See Aff. of Anthony J. Benedetti in Support of CPCS Mot. to Intervene at ¶ 15 ("CPCS Benedetti Aff."). The inability to identify defendants and the lack of counsel to represent them contribute to the inordinate and prejudicial delays that violate due process.

In addition, even with counsel, Dookhan defendants face the risk that challenging their tainted convictions will result in even greater punishment, including possible re-imprisonment for those who have already completed their sentences. Far from disclaiming that they would ever seek increased punishment, the District Attorneys insist that they can, and will, reinstate more serious charges (that they previously dismissed) and recommend longer sentences. See Opp. at 18. Thus, counsel must warn their clients of this risk, which chills the exercise of post-conviction rights for many defendants.

#### ARGUMENT

**I. The Petition is Ripe and Meets the Standards for this Court to Exercise Its Superintendence Powers.**

The Court has already recognized that the Hinton Drug Lab crisis warrants the exercise of its superintendence power. See Scott, 467 Mass. at 352; Charles, 466 Mass at 88-89. In Scott, the Court held that the over 40,000 defendants identified in Attorney Meier's list are entitled to a "conclusive presumption" that they are victims of "egregious government misconduct." 467

Mass. at 352 (establishing new evidentiary rule for Rule 30 motions). The injuries flowing from this misconduct are neither remote nor speculative. The District Attorneys cite inapposite cases in which petitioners had not suffered, and likely would never suffer, any cognizable harm. See Opp. at 13 (citing, e.g., Barbara F. v. Bristol Div. of Juvenile Ct. Dept., 432 Mass. 1024 (2000)). That is not this case: the drug lab scandal has not gone away, and no decisions to date have addressed the urgent issues presented by the Petition.

The Court has also confirmed the importance of setting clear rules to address the drug lab crisis. In Charles, the District Attorney for Essex County asked this Court to adjudicate the authority of special magistrates to conduct plea colloquies, even though no such colloquies had occurred in Essex County. See 466 Mass. at 85-88. In the prosecution's view, the mere possibility that those procedures could be challenged warranted "[g]uidance from the Full Court." Commonwealth's Pet. at 9-10, Dist. Att'y v. Sup. Ct. (filed Mar. 1, 2013) (Botsford, J.). This Court issued the requested guidance in Charles, 466 Mass. at 88-91, and similar guidance is now needed on the exposure issue raised in the Petition.

Indeed, the affidavits from CPCS establish that the exposure problem -- the risk that Dookhan defendants who

challenge their tainted convictions will face more serious charges or longer sentences and the resulting "chilling" effect on their post-conviction rights -- is far more pressing than the colloquy issue in Charles and demands immediate attention. The District Attorneys admit that the threat of increased exposure is real. Their proposal for litigating the issue on a case-by-case basis assumes that defendants -- like Angel Rodriguez -- will, in fact, suffer convictions for more serious charges and spend more time in prison. Given that position, counsel must advise their clients that seeking post-conviction relief based on Dookhan's criminal misconduct carries a risk of increased punishment. See Aff. of Nancy J. Caplan in Support of Pet. at R. 237, ¶ 21 ("Petitioners' Caplan Aff.").

The District Attorneys argue that the Court should decline to address the problems of increased exposure and appellate delay affecting tens of thousands of Dookhan defendants because the three Petitioners here have secured counsel. That contention contradicts the approach that the Court took in Lavallee v. Justices in the Hamden Super. Ct., 442 Mass. 228 (2004). There, defendants suffered from a shortage of bar advocates. Id. at 229. The ACLU of Massachusetts and CPCS brought a petition for relief. Id. at 230. Even though the named petitioners had obtained counsel, the Court exercised its

superintendence powers to address the systemic issue and vindicate the due process violations. See id. at 246. The Court should do the same here.

**II. Respondents Have Failed to Address the Merits of Petitioners' Claims.**

**A. Fear of Increased Exposure Chills the Post-Conviction Rights of Petitioners and Other Dookhan Defendants.**

The District Attorneys argue that withdrawal of tainted guilty pleas should lead to reinstatement of all dismissed charges because reinstatement simply restores the "status quo ante." Opp. at 18-19 (citing People v. Sheller, 136 Cal. App. 4th 1143, 1149 (2006)). Even if this argument holds true in the ordinary case, in the exceptional circumstances here, placing Dookhan defendants in the same position that they were in before they struck their plea deals would mean placing them in a position in which they were deprived of knowledge of Dookhan's egregious misconduct. This remedy would not address the harm Petitioners continue to suffer or relieve them of the burden they should not have to bear in seeking relief.

The Court's decision in Commonwealth v. Tirrell, 382 Mass. 502 (1981), did not foreclose the relief sought by the Petition. Contrary to the District Attorneys' assertion, see Opp. at 17, the Court in Tirrell did not make any broad assertion that the holding in North Carolina v. Pearce, 395 U.S. 711 (1969) and



Blackledge v. Perry, 417 U.S. 21 (1974), cannot apply where defendants seek post-conviction relief after pleading guilty. Id. Instead, the Court simply held that Pearce and Perry did not apply to the specific facts of the case in which the defendant was arguing that the prosecution improperly changed an offer to recommend a certain sentence during the plea bargaining process. 382 Mass. at 507-510.<sup>1</sup>

Here, as in Tirrell, the Court should seek guidance from the "essential underpinnings" of Pearce and Perry. Id. at 508. The crux of those decisions is that the fear of prosecutorial vindictiveness (even where there is no actual vindictiveness) chills a defendant's right to seek post-conviction relief and, as a result, violates due process. Such fear is greatest when the incentives for prosecutors to "up the ante" are significant, because of the burdens associated with re-trying cases and the risk that defendants might "go free." Perry, 417 U.S. at 27-28. Those factors are present here, giving rise to fear among Dookhan defendants that they will be punished for challenging their tainted convictions.

Citing In re Subpoena Duces Tecum, 445 Mass. 685 (2006), the District Attorneys contend that a "chilling" effect on a petitioner's right to take "some future action" cannot justify

---

<sup>1</sup> The District Attorneys incorrectly argue that Petitioners failed to mention the Court's holding in Tirrell. See Mem. in Support of Pet. at 18-19.



relief. Opp. at 16. But that case did not address a chilling effect on a petitioner's right to seek post-conviction relief for a conviction tainted by egregious government misconduct. Moreover, there, the Court found "there is no risk that the disclosure [of SAIN videotapes] will chill future communications between law enforcement and citizens." 445 Mass. at 690-691 (emphasis added). Here, in stark contrast, the risk of increased punishment does, and will, chill the rights of defendants to seek post-conviction relief. The affidavits in support of the Petition (and CPCS's Motion) establish that fact, which the District Attorneys do not contest.

**B. Inordinate and Prejudicial Delay Violates Due Process.**

The District Attorneys do not dispute that the Hinton drug lab crisis warrants meaningful post-conviction relief without inordinate and prejudicial delay. They concede that, as a legal matter, undue delay in these circumstances presents a due process problem. They further concede, as a factual matter, that such delay prejudices Dookhan defendants and their ability to secure post-conviction relief.

The District Attorneys argue only that there is no undue delay, emphasizing that Petitioner Cuevas, who has filed a Rule 30 motion "now" has a status conference scheduled for July 17, 2014. Opp. at 21. True, but "now" is July 2014, and Dookhan's

misconduct was known to her managers in June 2011. Moreover, until now, Cuevas could have litigated his case only if he had been willing to forgo the Court's guidance in Scott and the Inspector General's Report. See id. And even now, the evidence relied upon by the Inspector General has not been disclosed, and Cuevas can proceed only if he is willing to risk greater punishment than was initially imposed.

In addition, the District Attorneys ignore the reality that, unlike Cuevas, the vast majority of Dookhan defendants have not been identified, do not have counsel and have no prospect for prompt relief. See CPCS Benedetti Aff. at ¶¶ 5-15; Petitioners' Caplan Aff. at R. 239-244; ¶¶ 28-43.

III. CPCS Should Be Permitted To Intervene, And Its Submission Confirms That The Petition Should Be Granted.

As correspondences between the District Attorneys and CPCS demonstrate, there is no agreement or process for disclosing the information that is needed to identify all of the Dookhan defendants. See CPCS Mot. to Intervene at ¶ 6; CPCS Benedetti Aff. at ¶¶ 7-13; Ex. 1 (June 3, 2014 Letter to Benedetti from Essex and Suffolk County District Attorneys). There is also no plan to overcome the lack of counsel for the tens of thousands of Dookhan defendants who must be advised that they could be exposed to more serious charges and longer sentences if they successfully challenge their tainted convictions. The District

Attorneys do not propose any realistic means of resolving these issues. Instead, CPCS in large part is shouldering this heavy burden. And, as CPCS has shown, prosecutors are now deploying a variety of litigation tactics, including accusations of ethical violations, to slow down drug lab litigation. See Aff. of Nancy J. Caplan in Support of CPCS Mot. to Intervene at ¶¶ 15-27.

These circumstances warrant CPCS's intervention.

Further, the drug lab crisis is larger than the three Petitioners, who represent the roughly 40,323 Dookhan defendants whose due process rights were violated by Dookhan's criminal misconduct. Based on its experience representing these defendants, CPCS can inform the Court about how the fear of prosecutorial vindictiveness chills the exercise of post-conviction rights and how the lack of identifying information and counsel continue to cause inordinate and prejudicial delay. Excluding CPCS from these proceedings would only frustrate the work that the Court began in Charles and Scott to address the Hinton Drug Lab crisis and ensure that justice is done.

#### CONCLUSION

For the foregoing reasons, Petitioners respectfully request that this Court grant the Petition, grant CPCS's Motion to Intervene, and provide the requested guidance and relief.

Respectfully submitted,

KEVIN BRIDGEMAN,  
YASIR CREACH, and  
MIGUEL CUEVAS,

by their Attorneys

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Shrutih V. Ramlochan-Tewarie,  
BBO #685467  
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Boston, MA 02210  
(617) 832-1000  
(617) 832-7000 (fax)  
dmarx@foleyhoag.com

Dated: July 15, 2014.

CERTIFICATE OF SERVICE

I, Shrutih V. Ramlochan-Tewarie, an attorney for petitioners, hereby certify that on July 15, 2014, I served the foregoing by causing copies to be mailed, by Federal Express, to the following:

Daniel F. Conley  
District Attorney for Suffolk County  
One Bulfinch Place  
Boston, Massachusetts 02114

Jonathan Blodgett  
District Attorney for Essex County  
10 Federal Street  
Salem, Massachusetts 01970



Shrutih V. Ramlochan-Tewarie  
Foley Hoag LLP  
155 Seaport Boulevard  
Boston, MA 02210  
(617) 832-1000

Dated: July 15, 2014.

# EXHIBIT 1

JUN 5 2014



THE COMMONWEALTH OF MASSACHUSETTS  
OFFICE OF THE  
DISTRICT ATTORNEY FOR THE ESSEX DISTRICT  
SALEM NEWBURYPORT LAWRENCE

JONATHAN W. BLODGETT  
District Attorney

Ten Federal Street  
Salem, Massachusetts 01970

TELEPHONE  
VOICE (978)745-6610  
FAX (978)741-4971  
TTY (978)741-3163

Mr. Anthony J. Benedetti  
Chief Counsel  
Committee for Public Counsel Services  
44 Bromfield Street  
Boston, MA 02108

June 3, 2014

Dear Mr. Benedetti,

We have received and reviewed your letters of February 11 and April 11, 2014. As you know, the District Attorneys remain dedicated to ensuring that justice is served in cases involving defendants potentially affected by the misconduct at the Hinton Laboratory.

You are now requesting that we review tens of thousands of individual cases from Suffolk and Essex Counties, in order to identify and provide you with detailed information, including dates of birth and social security numbers, of every defendant in those counties who was named on a drug analysis certificate signed by Annie Dookhan as the primary or confirmatory analyst ("defendants potentially affected by the misconduct").<sup>1</sup>

We believe that this request is unreasonable because (1) the District Attorneys are not funded or staffed for this undertaking, as the resources required to meet the request are immense; (2) the scale and scope of the information you are requesting is extremely overbroad, and undeniably duplicates efforts already undertaken or completed; (3) Criminal Offender Record Information ("CORI") protections and the privacy exemption to the public records law likely prohibit us from providing the Committee for Public Counsel Services ("CPCS") with the dates of birth and social security numbers of criminal defendants who CPCS may or may not represent; (4) the many months of combined efforts by prosecutors, the judiciary, and individual defense attorneys, as well

---

<sup>1</sup> As you point out in your letter of April 11, 2014, the Supreme Judicial Court held this year that such defendants are entitled to a presumption of government misconduct in their case, but are not entitled to vacatur of their convictions unless they demonstrate a reasonable probability that they would not have pleaded guilty had they known of the misconduct. See Commonwealth v. Scott, 467 Mass. 336 (2014). Now, as a result of the Scott decision and its companion cases, defendants potentially affected by the misconduct have solid legal framework by which to proceed with their claims.

as saturation news coverage of the issue, constitutes significant notice already provided to those defendants potentially affected by the misconduct; and (5), any additional provision of notice to such defendants can be far more efficiently and effectively accomplished by other means.

First, as we made clear when this crisis began, the District Attorneys lack the resources to pull tens of thousands of case files in order to compile the information you are requesting. As a basis for the request, you reference the list created by Attorney David Meir at the request of Governor Patrick of defendants potentially affected by the misconduct. Governor Patrick created the so-called "boiler room" as the most efficient means of allocating the cumbersome, costly, and time-consuming task associated with identifying those potentially affected by the misconduct. The District Attorneys are no better able now than at the outset to complete such an undertaking.

Second, the enormous scope of your request fails to account for those whose cases have already been addressed through the efforts of prosecutors, the judiciary, the executive branch, Attorney Meier, the Office of the Inspector General, and CPCS itself to identify and bring forward the cases of those defendants potentially affected by the misconduct. CPCS itself, very early in this process, alerted its staff attorneys and bar advocates to review their own client lists to identify defendants potentially affected by the misconduct, and to file motions on their behalf. In both Suffolk and Essex Counties we reacted rapidly to the hundreds of motions that followed: many district, superior court and appellate prosecutors, as well as other staff, were reassigned to address the claims and those who were incarcerated were given first priority. The information you now seek includes those defendants who have already received notice of their potential claim, and may either be currently seeking redress or have already received it.

Third, many of the defendants referenced in your request are not represented by CPCS, and we are therefore likely prohibited by law from releasing their dates of birth and social security numbers to a third party, even if that party is CPCS. The information you seek is likely subject to both (1) the CORI statute, G. L. c. 6, § 172, which prohibits the release of CORI information to third parties subject to certain exceptions, none of which are immediately apparent here, and (2) the public records law, which exempts from disclosure "any . . . materials or data relating to a specifically named individual, the disclosure of which may constitute an unwarranted invasion of personal privacy." G. L. c. 4, § 7(26)(c). We acknowledge that CPCS has the best interests of the defendants in mind when making this request, but the requested disclosure of personal information raises non-trivial privacy concerns and likely is prohibited by law.

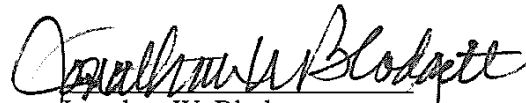
Fourth, to the extent that your request is based on a concern that there may be defendants within in the Commonwealth who are yet unaware of the misconduct, we feel strongly that there is little likelihood that potentially affected defendants have not learned of the misconduct. This is due not only to the saturation news coverage of the issue, but also to the aforementioned far-reaching efforts of many state employees across different agencies and branches of government, as well as defense attorneys, to identify and notify these defendants.

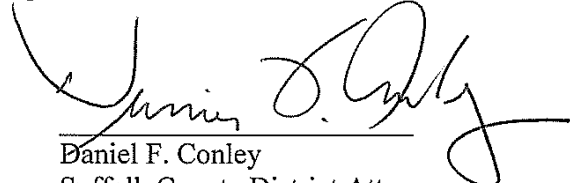


Lastly, additional notice, if necessary, might be more efficiently and effectively provided by different means, e.g., through posting or publication in locations designed to reach the maximum number of potentially affected defendants. Moreover, it would be impossible by the means you suggest to identify those defendants with older convictions whose records have already been destroyed pursuant to the Massachusetts Records Retention Schedule. Any effort to locate the information for such defendants would be in vain; therefore, in the unlikely event that they have not received notice, it could only be provided by other means.

In sum: we lack the resources to comply with your request; we believe the request is overbroad and calls for action duplicative of work already done; we are likely prohibited by law from providing you with dates of birth and social security numbers of the defendants in question; any benefit to such a disclosure would be minimal due to the likelihood that the defendants in question are already aware of the misconduct; and, additional notice, to the extent that any is necessary, can be more efficiently and effectively provided by other means.

Sincerely,

  
Jonathan W. Blodgett  
Essex County District Attorney  
President, MDAA

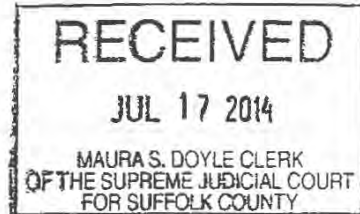
  
Daniel F. Conley  
Suffolk County District Attorney  
Vice president, MDAA

JWB:QRW:fhs

COMMONWEALTH OF MASSACHUSETTS

SUPREME JUDICIAL COURT

SUFFOLK, ss.



NO. SJ-2014-0005

KEVIN BRIDGEMAN,  
and others,

v.

DISTRICT ATTORNEY FOR SUFFOLK COUNTY,  
and another.

REPLY OF THE COMMITTEE FOR PUBLIC COUNSEL SERVICES  
TO RESPONDENTS' OPPOSITION TO MOTION TO INTERVENE

The District Attorneys oppose the Committee for Public Counsel Services' motion to intervene on the grounds that the motion allegedly does not make out a case for intervention under Rule 24(a) or 24(b) of the Rules of Civil Procedure. The opposition makes zero mention of the salient fact that CPCS's motion to intervene in the Charles and Milette matters was denied by the single justice "without prejudice to renewal" if events as they unfolded demonstrated that a systemic rather than a case-by-case approach to the Hinton Lab fiasco was indeed necessary. It is true that the four corners of CPCS's current motion do not dwell much on the law of intervention. (Instead, it incorporates by reference the legal argument made in its previous motion.) Further exegesis of the case law governing intervention as of right under Rule 24(a) hardly seemed

-2-

necessary given that this Court's disposition of CPCS's previous motion makes perfectly clear that it viewed the problem as one of timing, not that it had doubts regarding the propriety of intervention as a matter of law under Rule 24(a), or the legitimacy of CPCS's institutional stake in solutions to the Hinton Lab crisis.

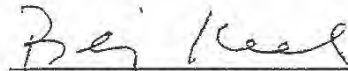
Following this Court's reservation and report in Charles and Milette, the full Court remanded those matters to the single for "further proceedings, consistent with its opinion, as appropriate." Commonwealth v. Charles, 466 Mass. 63, 91 (2013). As a practical matter, CPCS cannot renew its motion to intervene in Charles itself -- even though the single justice retained jurisdiction in order to permit CPCS to do so -- because that case is over. Absent a live case in Charles, there is no more appropriate vehicle than the Bridgeman petition to address the issues raised by the instant motion to intervene.

On that score, it is notable that the District Attorneys do not dispute that the concerns raised by CPCS are substantial, have not been resolved by Commonwealth v. Charles, supra, or Commonwealth v. Scott, 467 Mass. 336 (2014), and will result in years of additional litigation-related delay if not addressed comprehensively. Accordingly, some litigation

-3-

involving CPCS as a party is surely warranted, if only because CPCS needs guidance regarding the issues identified if it is to do its job under a case-by-case approach. Further, the Bridgeman petition is a particularly appropriate vehicle to address these issues comprehensively because the additional delay that inevitably will result from piecemeal litigation supports the claim, advanced by the Bridgeman petitioners, that Dookhan defendants face delays which violate due process.

Respectfully submitted,



BENJAMIN H. KEEHN

BBO #542006

COMMITTEE FOR PUBLIC COUNSEL SERVICES

Public Defender Division

44 Bromfield Street

Boston, Massachusetts 02108

(617) 482-6212

bkeehn@publiccounsel.net

Dated: July 16, 2014.



# The Commonwealth of Massachusetts

Committee for Public Counsel Services

Public Defender Division

44 Bromfield Street, Boston, MA 02108-4909

ANTHONY J. BENEDETTI  
CHIEF COUNSEL

TEL (617) 482-6212  
FAX (617) 988-8485

September 8, 2014

George E. Slyva  
Assistant Clerk, Supreme Judicial Court  
John Adams Courthouse  
One Pemberton Square, Suite 1300  
Boston, MA 02108

RE: Bridgeman v. District Attorney for Suffolk County  
SJ-2014-0005

Dear Mr. Slyva:

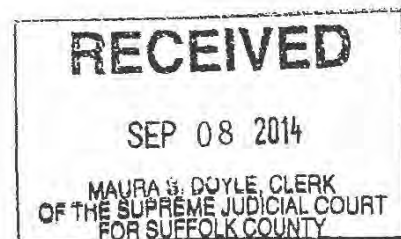
The above-captioned matter is before Justice Botsford. I am writing to advise the Court that, as discussed at the hearing held on August 1, 2014, the Suffolk County District Attorney's Office and Essex County District Attorney's Office will provide CPCS, by the end of the day tomorrow (September 9, 2014), with the docket numbers associated with these counties' entries on the Meier list of Dookhan-involved samples. Accordingly, we suggest that the parties are ready, either later this week or anytime next week, for the meeting that you proposed with Trial Court IT personnel to discuss the production of the dispositional information and defendants' dates of birth associated with the docket numbers to be provided by the District Attorneys offices.

Sincerely,

A handwritten signature in cursive script, appearing to read "Ben. Keehn".

Benjamin H. Keehn

cc: Nancy J. Caplan, Esq.  
ADA Vincent DeMore  
Daniel Marx, Esq.  
Matthew Segal, Esq.  
ADA Quentin Weld



COMMONWEALTH OF MASSACHUSETTS

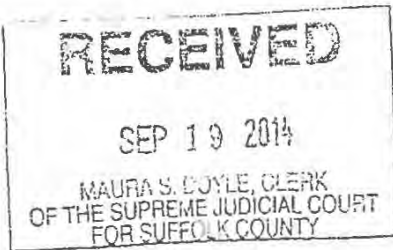
ESSEX, SS

SUPREME JUDICIAL COURT  
FOR SUFFOLK COUNTY  
NO. SJ-2014-0005

SUFFOLK SUPERIOR COURT  
NO. SUCR2005-10537  
(Bridgeman)  
NO. SUCR2007-10959  
(Bridgeman)

BOSTON MUNICIPAL COURT  
NO. 0501-CR-0142  
(Creach)

ESSEX SUPERIOR COURT  
NO. ESCR2007-1535  
(Cuevas)



KEVIN BRIDGEMAN, YASIR CREACH, and MIGUEL CUEVAS

v.

DISTRICT ATTORNEY FOR THE SUFFOLK DISTRICT

and

DISTRICT ATTORNEY FOR THE EASTERN DISTRICT

---

JOINT MOTION OF THE DISTRICT ATTORNEY FOR THE EASTERN  
DISTRICT AND THE COMMITTEE FOR PUBLIC COUNSEL  
SERVICES, REQUESTING (1) AN ORDER AUTHORIZING THE  
DISCLOSURE OF PERSONAL IDENTIFYING INFORMATION, AND  
(2) A PROTECTIVE ORDER RESTRICTING THAT DISCLOSURE

---

The District Attorney for the Eastern District  
(Essex District Attorney) and proposed intervener the  
Committee for Public Counsel Services (CPCS) jointly  
request that the Court issue two (2) orders in advance

of the disclosure by the Essex District Attorney to CPCS of a "Combined Essex Meier List."<sup>1</sup> The list contains personal identifying information, including dates of birth and social security numbers, of defendants potentially affected by the misconduct at the William A. Hinton State Laboratory.<sup>2</sup> The joint movants wish to protect the privacy of these individuals, and to avoid making a disclosure that might be in conflict with certain statutes, including but not necessary limited to Massachusetts General Law Chapter 6, Section 172.

The movants seek (1) an order from this Court authorizing the Essex District Attorney to disclose the personal identifying information contained on the list, and (2) a protective order restricting its further dissemination. Each proposed order is attached to this motion.

---

<sup>1</sup> As agreed upon at the hearing before this Court on August 1, 2014, the Essex District Attorney has already provided CPCS with a "Combined Essex Meier List" containing case docket numbers. The present joint motion concerns a *second* version of the list, which contains dates of birth and social security numbers in addition to docket numbers. The second version has been created but not yet provided to CPCS.

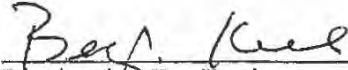
<sup>2</sup> See Commonwealth v. Scott, 467 Mass. 336, 338-343 (2014).

Respectfully Submitted,  
for the District Attorney  
for the Eastern District,



Quentin R. Weld  
Assistant District Attorney  
for the Eastern District  
Ten Federal Street, 5th Floor  
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BBO#: 683830  
quentin.weld@state.ma.us

Respectfully Submitted,  
for the Committee for  
Public Counsel Services,



Benjamin H. Keehn  
Committee for Public  
Counsel Services  
44 Bromfield Street  
Boston, MA 02108  
(617) 482-6212  
BBO#: 542006  
bkeehn@publiccounsel.net

Dated: September 16, 2014





# The Commonwealth of Massachusetts

Committee for Public Counsel Services

Public Defender Division

44 Bromfield Street, Boston, MA 02108-4909

ANTHONY J. BENEDETTI  
CHIEF COUNSEL

TEL (617) 482-6212  
FAX (617) 988-8485

September 26, 2014

George E. Slyva  
Assistant Clerk, Supreme Judicial Court  
John Adams Courthouse  
One Pemberton Square, Suite 1300  
Boston, MA 02108

**RECEIVED**

SEP 26 2014

MAURA S. DOYLE, CLERK  
OF THE SUPREME JUDICIAL COURT  
FOR SUFFOLK COUNTY

RE: Bridgeman v. District Attorney for Suffolk County  
SJ-2014-0005

Dear Mr. Slyva:

At the conclusion of the hearing held in the above-captioned matter before Justice Botsford on Monday, September 22, 2014, there was discussion of the likely reservation and report of the questions raised by the petitioners in their petition for relief. Undersigned counsel is uncertain whether the single justice intends to issue a reservation and report prior to any follow-up hearing. Accordingly, CPCS submits this letter to make clear that it is seeking that the following issues set out in its motion to intervene (at pp. 2-3) be reported to the full bench:

- That the Court establish a bright-line rule which protects Dookhan defendants who succeed in vacating their guilty pleas from receiving a harsher sentence than the terms of the plea, should they be convicted after a trial;
- That the Court make clear that an attorney who represented a Dookhan defendant at the plea stage, and who has been re-appointed to seek post-conviction relief for that defendant, may testify, as plea counsel, at a motion to vacate the tainted plea and may argue that

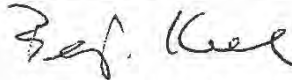
George E. Slyva  
September 26, 2014

Page Two

his or her testimony should be credited without running afoul of the "advocate-witness" rule, see Mass. R. Prof. C. 3.7(a), 426 Mass. 1396 (1998);

- That the Court declare that the testimony of a Dookhan defendant at a motion to vacate is inadmissible in any future prosecution of the defendant, except for perjury; issues raised in its motion to intervene be included in any reservation and report.

Respectfully submitted,



Benjamin H. Keehn

BHK:cp

cc: ADA Vincent J. DeMore  
Daniel N. Marx, Esq.  
Matthew R. Segal, Esq.  
ADA Quentin R. Weld

COMMONWEALTH OF MASSACHUSETTS

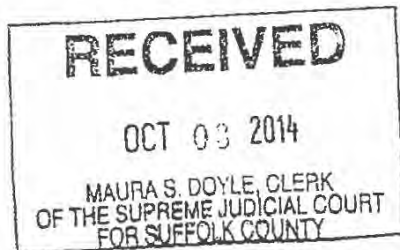
ESSEX, SS

SUPREME JUDICIAL COURT  
FOR SUFFOLK COUNTY  
NO. SJ-2014-0005

SUFFOLK SUPERIOR COURT  
NO. SUCR2005-10537  
(Bridgeman)  
NO. SUCR2007-10959  
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BOSTON MUNICIPAL COURT  
NO. 0501-CR-0142  
(Creach)

ESSEX SUPERIOR COURT  
NO. ESCR2007-1535  
(Cuevas)



KEVIN BRIDGEMAN, YASIR CREACH, and MIGÜEL CUEVAS

v.

DISTRICT ATTORNEY FOR THE SUFFOLK DISTRICT

and

DISTRICT ATTORNEY FOR THE EASTERN DISTRICT

---

STATUS REPORT FROM THE DISTRICT ATTORNEY  
FOR THE EASTERN DISTRICT

---

The District Attorney for the Eastern District (Essex District Attorney) submits this status report to update the Court on the "Combined Essex Meier List," a version of which has been provided by the Essex District Attorney to proposed intervenor the Committee for Public Counsel Services (CPCS).

The Combined Essex Meier List has two purposes:  
(1) to identify those defendants appearing on the August 2013 Meier List who were charged with a G. L. c. 94C offense in Essex County, and (2) to provide identifying information for those defendants that was not included on the August 2013 Meier List.

**I. DISCLOSURE TO DATE**

One version of the Combined Essex Meier List has already been provided to CPCS. It includes the Essex County case docket numbers of those defendants appearing on the August 2013 Meier List who were charged with a G. L. c. 94C offense in Essex County, but does not include dates of birth or social security numbers for those defendants.

**II. PLANNED FUTURE DISCLOSURE**

Pending the issuance of a protective order, for which the Essex District Attorney and CPCS have jointly moved, the Essex District Attorney will provide CPCS with a *second* version of the "Combined Essex Meier List," which includes both the case docket numbers and the dates of birth and social security numbers of the aforementioned defendants.

III. PROCESS USED TO CREATE THE COMBINED ESSEX MEIER LIST

Below is a summary of the process that was employed to create the Combined Essex Meier List:

- A. A list was created of all the defendants charged with a chapter 94C offense in Essex County between 2003 and 2012 ("94C List"), using the Essex County 'Damion' case database. The list contained the defendants' docket numbers, dates of birth, and social security numbers.
- B. The August 2013 Meier List of tests performed at the Hinton Lab ("Meier List") was compared, via computer matching and manually, with the 94C List to determine which tests included on the Meier List actually led to cases on the 94C List.
- C. The first step in matching Meier "tests" to 94C "cases" was to identify data fields from the two lists that shared common information. The data fields used were "Defendant Name" and "Arresting Agency."
- D. These data fields were compared via computer matching between the lists, and singular, exact "Defendant Name" AND "Arresting Agency" matches were identified and labeled as "probable matches" (with further review still needed).
- E. The "probable matches" were then reviewed manually and confirmed to a higher degree of certainty by comparing the "Offense Date" field on the 94C List to the "Date Submitted to Lab" field on the Meier List.
- F. At this point, data that was not identified as a singular exact match was categorized in one of the following two groups:

- Meier Entries with *multiple* exact 94C Matches (requiring further review to determine exactly *which* of the multiple 94C cases actually resulted from the matching Meier test); and
  - Meier Entries without any exact 94C Match, (requiring further review to determine if the absence of a match had resulted from a misspelling or alternate spelling in the "Defendant Name" and "Arresting Agency" fields, e.g., a Meier List entry for "John Doe" that had a corresponding 94C List entry of "Jon Doe" that otherwise matched).
- G. When *multiple* exact 94C matches were identified, the date fields (described in item E., above) were reviewed to identify the most likely match.
- H. Meier List entries that did not have any exact matches on the 94C List were reviewed for simple spelling errors that would have prevented a match. When such errors were found, those Meier List entries were manually paired with their 94C cases, creating more "probable matches" (these probable matches were further confirmed by manually comparing date fields described in item E., above).
- I. This process left some Meier List entries for which 94C List cases could not be located, possibly because:
- An alias was used either in the Meier List entry or in the 94C List entry; or
  - A more complex spelling mistake was made in the "Defendant Name" or "Arresting Agency" fields.

The Essex District Attorney contracted with an outside consultant to develop the process described above. In total, the development and implementation of the process took more than 300 man hours, among nearly a dozen Essex District Attorney staff, including Assistant District Attorneys.

The process was determined to be the fastest and most accurate method by which to match Meier List entries to their resulting Essex County cases. This is because non-uniform case numbering systems exist in the thirty-four law enforcement jurisdictions within Essex County. The accuracy of the final list is dependent on the accuracy of data entry by staff at multiple agencies. Many data entry errors were accounted for and corrected, but the final list inevitably carries a non-negligible margin of error. Nonetheless, the Essex District Attorney has identified, to a high degree of certainty, more than 5,000 defendants whose cases appeared on the Meier List.

Respectfully Submitted,  
for the District Attorney  
for the Eastern District:



---

Quentin R. Weld  
Assistant District Attorney  
for the Eastern District  
10 Federal Street  
Salem, MA 01970  
(978) 745-6610, ext. 5030  
BBO#: 683830

September 22, 2014



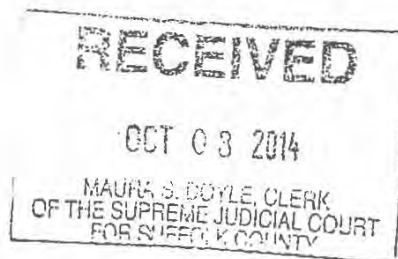
VERIFICATION

I, Quentin R. Weld, hereby verify under the penalties of perjury that the factual information in this status report is true to the best of my knowledge and belief.



Quentin R. Weld  
Assistant District Attorney  
for the Eastern District

September 22, 2013



COMMONWEALTH OF MASSACHUSETTS

SUPREME JUDICIAL COURT

SUFFOLK, ss.

NO. SJ-2014-0005

KEVIN BRIDGEMAN,  
and others

v.

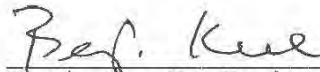
DISTRICT ATTORNEY FOR SUFFOLK COUNTY,  
and others

MOTION TO SUPPLEMENT THE RECORD

Now comes the Committee for Public Counsel Services (CPCS), pursuant to Mass. R.A.P. 8(e), as amended 378 Mass. 932 (1979), and moves to supplement the record in this matter with the attached transcript and other papers from Commonwealth v. Hipolito Cruz, SUCR2009-10595. In support, CPCS states that these papers are pertinent to the question of the permissible scope of cross-examination when a defendant takes the stand at a hearing in support of a motion to vacate a Dookhan-tainted guilty plea.

In further support, CPCS submits the accompanying affidavit of counsel.

Respectfully submitted,



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

Dated: October 7, 2014.

COMMONWEALTH OF MASSACHUSETTS

SUPREME JUDICIAL COURT

SUFFOLK, ss.

NO. SJ-2014-0005

KEVIN BRIDGEMAN,  
and others

v.

DISTRICT ATTORNEY FOR SUFFOLK COUNTY,  
and others

AFFIDAVIT OF COUNSEL IN SUPPORT OF  
MOTION TO SUPPLEMENT THE RECORD

I, Benjamin H. Keehn, state as follows.

1. I represent the Committee for Public Counsel Services in the above-captioned matter, in which CPCS has moved to intervene.

2. As described in the affidavit of Attorney Nancy J. Caplan, submitted in support of CPCS's motion to intervene,

The scope of permissible cross-examination where the defendant has taken the stand [at a hearing on a motion to vacate a Dookhan-tainted guilty plea] has been problematic. Defendants have taken the position that cross-examination relative to the facts of the case should be limited to the defendant's understanding of the nature and extent of the prosecution's evidence, whereas prosecutors have argued that the "full context" of a defendant's plea decision under [Commonwealth v. Scott, 467 Mass. 336 (2014)], opens the door to an inquiry encompassing the defendant's factual guilt of the offense pleaded to. . . . Rulings by special magistrates on this issue

have varied widely. In [Commonwealth v. Hipolito Cruz, SUCR2009-10595], . . . the special magistrate permitted the prosecutor, over objection, to cross examine the defendant about his culpability for the offense -- what he had done, said, and known with respect to the alleged contraband in question -- and to conclude the cross examination by asking the defendant whether it was not true that he had pleaded guilty because in fact he was guilty.... Dookhan defendants are extremely concerned about the issue of scope, where testimony from Scott hearings may be admissible in the Commonwealth's case-in-chief should a case go to trial following allowance of a motion to vacate, and where special magistrates' rulings as to whether prosecutors may compel Dookhan defendants to incriminate themselves at such hearings have varied. . . . Uncertainty as to this question threatens to deter Dookhan defendants from pursuing viable motions to vacate.

Affidavit of Attorney Caplan, at ¶¶30-33.

3. The transcript of the Cruz hearing referenced above was unavailable at the time that CPCS filed its motion to intervene on May 27, 2014, and is appended hereto.

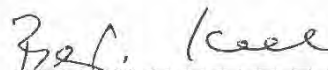
4. Also appended are copies of (a) the docket sheets in Commonwealth v. Hipolito Cruz, SUCR2009-10595, (b) two motions in limine pertaining to the scope of cross examination submitted on behalf of the defendant in Cruz, (c) the decision of the special magistrate recommending that the motion to vacate in Cruz be denied, (d) the decision of the Superior Court (Connors, J.) denying the defendant's motion to vacate.

5. CPCS is of the view that the attached papers will assist the Court if it considers CPCS's request, as set out in its motion to intervene, that the Court "declare that the testimony of a Dookhan defendant at a motion to vacate is inadmissible in any future prosecution of the defendant, except for perjury."

6. The Cruz papers also speak more generally to the question of the permissible scope of cross-examination when a defendant takes the stand at a hearing in support of a motion to vacate a Dookhan-tainted guilty plea.

7. For the reasons set out in Attorney Caplan's affidavit, uncertainty regarding this question has "threaten[ed] to deter Dookhan defendants from pursuing viable motions to vacate."

SIGNED UNDER THE PAINS AND PENALTIES OF PERJURY  
THIS 7<sup>th</sup> DAY OF OCTOBER, 2014.



Benjamin H. Keehn  
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CERTIFICATE OF SERVICE

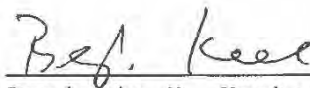
I, Benjamin H. Keehn, on behalf of the Committee for Public Counsel Services, hereby certify that on this 7th day of October, 2014, I served copies of the foregoing "Motion to Supplement the Record" and "Affidavit" and "Attachments" in support thereof, by causing copies to be sent via e-mail and first class mail, postage pre-paid to the offices of:

Vincent J. DeMore  
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Daniel N. Marx  
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Volume I  
Pages: 1-64  
Exhibits: 3

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

SUPERIOR COURT DEPARTMENT  
OF THE TRIAL COURT

\*\*\*\*\*

COMMONWEALTH OF MASSACHUSETTS \*

Plaintiff \*

\*

v.

\* DOCKET NUMBER SUCR2009-10595

\*

HIPOLITO CRUZ

\*

Defendant \*

\*

\*\*\*\*\*

HEARING

BEFORE SPECIAL MAGISTRATE DONOVAN

APPEARANCES:

For the Plaintiff:

Suffolk County District Attorney's Office

One Bulfinch Place

Boston, Massachusetts 02114

By: Paul M. Treseler, Esq.

For the Defendant:

65A Atlantic Avenue

Boston, Massachusetts 02110

By: Michael B. Roitman, Esq.

Boston, Massachusetts

May 6, 2014

Recording produced by digital audio recording system. Transcript  
produced by Approved Court Transcriber, Donna Holmes

I N D E X

WITNESS	DIRECT	CROSS	REDIRECT	RECROSS
Hipolito Cruz				
(By Mr. Roitman)	22			
(By Mr. Treseler)		33		
Michael Roitman				
Narrative of Mr. Roitman, page 51				
(By Mr. Treseler)		55		
Exhibits				
1, Drug Certificates				
2, Phone				
A for ID, photograph				



P R O C E E D I N G S

(Court called to order.)

MR. ROITMAN: Good morning, your Honor. Michael Roitman.

THE COURT: Good morning.

Number 2, please, Hipolito Cruz.

THE CLERK: Number 12, Commonwealth v. Hipolito Cruz. At the bar, your Honor.

THE COURT: Good morning.

MR. ROITMAN: Your Honor, we're ready to go forward on our motion for new trial.

THE COURT: All right. We'll just run through the list and then we'll -- how many witnesses do you have?

MR. ROITMAN: I have -- by affidavit, I have Mr. Cruz and myself, and we're also both here if we need to be cross-examined.

THE COURT: Okay. All right. So just hold for a second call.

MR. ROITMAN: Thank you.

(Discussion off the record.)

THE CLERK: May we call the Hipolito Cruz matter, your Honor?

THE COURT: You may.

THE CLERK: Hipolito Cruz, number 12 on the list. This matter is on for a hearing for a motion for new trial.

MR. ROITMAN: Good morning, your Honor. Michael Roitman, and with me is Mr. Cruz.

1 THE COURT: All right.

2 And Mr. Treseler, you're representing the Commonwealth in  
3 this matter?

4 MR. TRESELER: Paul Treseler on behalf of the Commonwealth,  
5 that is correct, your Honor.

6 THE COURT: All right. Mr. Roitman, would you like to make a  
7 brief opening?

8 MR. ROITMAN: Yes, your Honor. Well, I -- I also have a  
9 couple of motions in limine I'd like to present to the Court.  
10 They should be --

11 THE COURT: Sure. I haven't seen the --

12 MR. ROITMAN: -- have been in the file.

13 THE COURT: Are they in the file?

14 MR. ROITMAN: Should have been. I have an extra copy.

15 THE COURT: Well, let's see if they're in the file first.

16 THE CLERK: Let me find them first.

17 MR. ROITMAN: We were sent to a session with Judge  
18 Gershengorn back on April 10<sup>th</sup>, and I believe on that day I  
19 filed a package of pleadings relating to the motion for a new  
20 trial which I would hope were in the file. If they're not,  
21 I'll --

22 THE COURT: Okay. What --

23 MR. ROITMAN: -- provide the Court with copies.

24 THE COURT: -- what I have right here is the motion itself  
25 and attached to it is your affidavit and an application for a

1 complaint and a probable cause statement and your client's  
2 affidavit. So --

3 MR. ROITMAN: Your Honor --

4 THE COURT: -- there are --

5 MR. ROITMAN: -- if I may, relating to this hearing today,  
6 the motion for a new trial, I have a -- I'm trying to look for  
7 the original and I don't see it. Anyway --

8 Your Honor, may I approach?

9 THE COURT: You may. Your client may be seated. You --

10 MR. ROITMAN: Your Honor --

11 THE COURT: -- Mr. Cruz, you may be seated.

12 MR. ROITMAN: -- for today's hearing, and I thought I had  
13 filed these before, but if not, I have a motion in limine as  
14 to the testimony of the defendant. I have a motion in limine  
15 as to the testimony of plea counsel.

16 THE COURT: Okay.

17 MR. ROITMAN: I have a second affidavit of Mr. Cruz. I have  
18 a second affidavit of myself. And I have a supplemental  
19 memorandum.

20 THE COURT: All right. Did you file an original memorandum?

21 MR. ROITMAN: I believe I filed an original memorandum back  
22 at the time that I filed the original motion for new trial  
23 which would've been maybe back in 2010.

24 THE COURT: November 5<sup>th</sup> was the motion to withdraw the  
25 guilty plea and a new file -- and a new motion. But there's no

1 memorandum filed with a --

2 THE CLERK: I have -- the file's complete with motions in  
3 limines, if we could start with the first one.

4 MR. ROITMAN: No. Those are -- I'm sorry.

5 The -- in the file, this case -- this is a case that pled  
6 on the eve of trial, so when you look at the file, there are  
7 actually motions in limine, trial motions in limine --

8 THE COURT: Sure.

9 MR. ROITMAN: -- in fact, there's a Daubert motion as to the  
10 chemist. There -- there are a bunch of motions in limine that  
11 were trial motions.

12 I -- I thought I had filed in April a set of pleadings  
13 essentially related to this motion for new trial --

14 THE COURT: Okay. Why don't we --

15 MR. ROITMAN: -- which I have copies of today.

16 THE COURT: Why -- why don't I take the copies? I'll read  
17 them. In the meantime, our Clerk can go through and see if we  
18 have originals. And Mr. Treseler, have you seen these motions  
19 in limine?

20 MR. TRESELER: Just briefly, your Honor. I haven't studied  
21 them, nor have I read them, but I'm pretty sure I know what  
22 Mr. Roitman's asking for and I think we need to be heard on --  
23 on those issues.

24 THE COURT: All right. Well, why don't I take a -- a brief  
25 recess and read them? And we'll see if they're in the file and

1 that will also give Mr. Treseler an opportunity to read them.

2 THE CLERK: I'll check, your Honor.

3 MR. ROITMAN: Okay. I can get you another copy and the Judge  
4 can have a copy.

5 THE CLERK: I don't yet --

6 MR. ROITMAN: Okay.

7 THE COURT: Can I take those first?

8 COURT OFFICER: All rise.

9 Court stands at brief recess.

10 (Recess Taken.)

11 THE COURT: You may be seated.

12 MR. ROITMAN: Your Honor, may I start on the motions in  
13 limine?

14 THE COURT: First of all, would you kindly have your client  
15 sign the second affidavit?

16 MR. ROITMAN: I will. I --

17 THE COURT: His affidavit.

18 MR. ROITMAN: My recollection is that we had filed all  
19 these, but obviously they didn't -- somehow it didn't happen.

20 THE COURT: All right. Now, you may proceed, Mr. Roitman.

21 MR. ROITMAN: Well, your Honor, this is the defendant  
22 Hipolito Cruz motion for a new trial on the Dookhan issue.

23 Because Annie Dookhan was a -- one of the chemists on his  
24 case --

25 THE COURT: Which -- which one was she?

1 MR. ROITMAN: I don't remember --

2 MR. TRESELER: I have it for you.

3 MR. ROITMAN: -- and I couldn't put my hand on the  
4 certificate. Do you have it? Do you have it?

5 MR. TRESELER: Yes, I do. She was the -- she was the  
6 confirmatory.

7 MR. ROITMAN: Can I see that?

8 MR. TRESELER: Yes. They're Grand Jury Exhibits.

9 MR. ROITMAN: Your Honor, Ms. Dookhan was the confirmatory  
10 chemist on three certificates which dealt with three different  
11 chunks of cocaine that were involved in this case.

12 THE COURT: Okay. All from the indictment 001 charging  
13 trafficking? Because -- because it -- the indictments as I see  
14 them -- according to our file, the Clerk's -- Clerk's file is  
15 he was charged with trafficking, Class B controlled substance  
16 14 grams or more, and distribution of a Class B as a  
17 subsequent offense. That's --

18 MR. ROITMAN: That's correct.

19 THE COURT: Okay. All right.

20 MR. ROITMAN: -- he was -- he was charged with trafficking  
21 14 to 20 -- between 14 and 28 and distribution of Class B  
22 subsequent offense.

23 THE COURT: Okay.

24 MR. ROITMAN: The --

25 THE COURT: Was --

1 MR. ROITMAN: -- the underlying -- I'm sorry, your Honor.

2 THE COURT: Was -- was the distribution an actual  
3 distribution offense? Did he distribute to someone --

4 MR. ROITMAN: Yeah. The way --

5 THE COURT: -- allegedly distribute to someone?

6 MR. ROITMAN: -- the way this occurred, your Honor, was that  
7 there was some surveillance of Mr. Cruz. Then there was a --  
8 an alleged hand distribution to an undercover --

9 THE COURT: Okay.

10 MR. ROITMAN: -- of a quantity of cocaine, and then after  
11 Mr. Cruz then -- then they found another small amount of  
12 cocaine near where he was arrested. I believe he was arrested  
13 at a fast food place, and they found some cocaine in the  
14 laundry hamper or something like that.

15 And then after he was arrested, they searched his car and  
16 found a larger quantity of cocaine in his car. So --

17 THE COURT: Okay. So that's the three sections.

18 MR. ROITMAN: So there were one -- one small amount of  
19 cocaine distributed hand to hand to an uncover, a small  
20 quantity of cocaine found in the area near where the  
21 distribution took place, although not in -- on his person --

22 THE COURT: Correct.

23 MR. ROITMAN: And then a third larger -- somewhat larger  
24 quantity of cocaine found in his car.

25 THE COURT: Okay. Now --

1 MR. ROITMAN: And there are three certificates. I'd offer  
2 them --

3 THE COURT: All right.

4 MR. ROITMAN: -- as Exhibits. They were Grand Jury Exhibits.

5 THE COURT: Any objection?

6 MR. TRESELER: No objection, your Honor.

7 THE COURT: All right. Why don't we staple them together and  
8 -- and mark them in --

9 MR. TRESELER: Actually, could I actually ask the Court --  
10 those were Grand -- those are actually stickered as Grand Jury  
11 Exhibits, your Honor --

12 THE COURT: Yeah.

13 MR. TRESELER: -- with the original sticker. I'm just going  
14 to ask that a copy be made --

15 THE COURT: Sure.

16 MR. TRESELER: -- because --

17 THE COURT: So we won't -- we won't mark them yet, Joe.  
18 We'll get copies made.

19 MR. ROITMAN: And -- and calling it Exhibit 1, stapling it  
20 together is perfectly fine.

21 THE COURT: Is that agreeable with you --

22 MR. TRESELER: That's fine, your Honor.

23 THE COURT: Okay. So we'll call it Exhibit 1 and we'll have  
24 them all stapled together. And -- All right. So in each one,  
25 Ms. Dookhan was the confirmatory and Ms. Della Saunders was



1 the primary?

2 MR. TRESELER: Correct, your Honor.

3 THE COURT: All right. So that will be Exhibit 1.

4 Do we also have the plea colloquy?

5 MR. ROITMAN: I don't believe so. I thought I had done that  
6 in most of my cases but I did not in this case.

7 THE COURT: All right. Because I think that is essential for  
8 this type of a hearing.

9 MR. ROITMAN: Well, I don't have it today. I --

10 THE COURT: All right.

11 MR. ROITMAN: -- I can order it, your Honor. But I would --  
12 I would -- I'm prepared to go forward without it.

13 THE COURT: Right. We're going to go forward but we may have  
14 some loose ends we're going to have to pull together.

15 All right. Now, you may proceed.

16 MR. ROITMAN: Your Honor, this -- this case as I say was  
17 indicted as trafficking distribution B second offense.

18 THE COURT: Right.

19 MR. ROITMAN: And I briefly described the facts for your  
20 Honor. The case proceeded through discovery, proceeded close  
21 through a motion to suppress I think almost to the trial date.  
22 I believe that there were a series of trial motions in limine  
23 filed. We were ready to try this case.

24 And shortly before the trial or maybe even at the trial  
25 date, Mr. Cruz pled guilty. He pled guilty to trafficking 14

1 to 28, which at that time had a mandatory sentence of three  
2 years State Prison. He pled guilty to distribution of Class B  
3 first offense. Distribution of Class B second offense at that  
4 time had a five year minimum mandatory.

5 So the concession if you will at the time of the plea was  
6 the reduction of distribution B second offense to distribution  
7 B first offense and then a sentence of three years to three  
8 years and a day State Prison followed by two years of  
9 probation.

10 THE COURT: Okay. Now, at the time of the plea was the  
11 distribution of a subsequent offense a from and after sentence  
12 by statute?

13 MR. ROITMAN: I don't believe so. I think it simply called  
14 for a five year mandatory minimum --

15 THE COURT: Okay.

16 MR. ROITMAN: -- but I --

17 THE COURT: I know there was some that were from and after -  
18 -

19 MR. ROITMAN: I don't believe it was a from and --

20 THE COURT: -- I think. Okay.

21 MR. ROITMAN: -- after, obviously, it's changed since.

22 THE COURT: Right.

23 MR. ROITMAN: But my recollection is that it was not -- it  
24 did not require a from and after sentence. It required a five  
25 year minimum mandatory. And in this case, there was not a

1 school zone charge.

2 THE COURT: No.

3 MR. ROITMAN: So that there was no from and after school  
4 zone charge.

5 THE COURT: Right.

6 MR. ROITMAN: The agreed upon sentence, and it was an agreed  
7 upon disposition because the Commonwealth was making a  
8 concession, was three years to three years and a day plus two  
9 years of probation upon his release. And that -- that sentence  
10 was concurrent on both charges, the trafficking and the  
11 distribution of Class B first offense.

12 Mr. Cruz has actually served out the three years. That --  
13 that part of the sentence has long been served.

14 He was then on -- has been on probation. It is my  
15 recollection, your Honor, that his probation actually expired  
16 about a month ago. However, it is still open because there is  
17 a pending probation violation proceeding, again I believe  
18 arising from a domestic A&B that is now in the District Court.  
19 I do not represent Mr. Cruz on that District Court A&B charge  
20 or on his probation surrender proceeding. He has separate  
21 counsel for that.

22 So we stand -- we come before you today seeking a new trial  
23 on the indictment on the 2009 indictment charging trafficking  
24 14 to 28 and distribution of Class B second offense.

25 It is Mr. Cruz's position that -- simply put that Annie

1 Dookhan is the confirmatory chemist on all three of the  
2 certificates so that he is -- there was a presumption now of -  
3 - of impropriety, and that as to himself, had he known about  
4 Annie Dookhan's misconduct and her activities at the Hinton  
5 Laboratory, the poor supervision, the problems of -- of  
6 administration at the library -- laboratory, he would not have  
7 pled guilty back in June of 2010.

8 We're prepared to go forward today. As I have mentioned  
9 earlier, your Honor, we have provided the Court and -- and the  
10 prosecution with a -- an affidavit captioned second affidavit  
11 of Hipolito Cruz, and an affidavit captioned second affidavit  
12 of Michael Roitman.

13 It is our position, your Honor, that those affidavits are -  
14 - should be sufficient to satisfy our burden of proof on the  
15 call it second prong of the new -- motion for new trial  
16 analysis.

17 THE COURT: All right. Now, that -- that second prong, the  
18 conclusive presumption, applies only to Ms. Dookhan. It  
19 doesn't apply to any one else in the laboratory as I read  
20 Scott.

21 MR. ROITMAN: I -- that's -- I believe that is a -- probably  
22 a fair reading of Scott. I think the whole -- the issue about  
23 improprieties at the entire lab and poor supervision certainly  
24 are documented in the Inspector General's report but did not  
25 feature in the Scott decision and I think it's fair to say are

1 left for another day.

2 But certainly even limiting our analysis to Ms. Dookhan, it  
3 is the position of Mr. Cruz that had he known about Ms.  
4 Dookhan's activities, he would not have pled guilty. It is my  
5 position in my affidavit that had I known about Ms. Dookhan's  
6 activities, I would've provided quite different advice to my  
7 client back in June of 2010.

8 And -- and my point simply procedurally is that we're -- at  
9 least I am trying to figure out what is required under the  
10 Scott decision for the defendant to carry his burden of proof  
11 on the issues as to him, and that it is our position that the  
12 affidavits that we've submitted, the second affidavit of Mr.  
13 Cruz, the second affidavit of Michael Roitman, should be  
14 sufficient to carry our burden of proof on the, what I'll call  
15 second individual prong of the Scott test.

16 THE COURT: All right.

17 Anything further?

18 MR. ROITMAN: I think that -- that pretty much is my opening  
19 and also my -- my -- essentially my offer of proof on where we  
20 are. I would ask that the Court accept the second affidavit of  
21 Hipolito Cruz and the second affidavit of Michael Roitman as  
22 testimony in this case, or if they need to be marked as  
23 Exhibits, I'm not sure what the -- what the Court would prefer  
24 on that, but that that is my offer of evidence for the  
25 defendant's case.

1 THE COURT: All right. Now, let me ask you this. In the  
2 event that I do not accept the affidavits in lieu of live  
3 testimony, you intend -- you have a motion in limine to limit  
4 your defendant's testimony and limit your testimony.

5 MR. ROITMAN: I do.

6 THE COURT: So let's hear on that too.

7 MR. ROITMAN: All right. Assuming that the -- that we're  
8 past step one where the affidavits would be sufficient on  
9 their own, then we're into the situation where both Mr. Cruz  
10 and -- and I are potentially witnesses. My position on this is  
11 -- is sort of a two-step process, your Honor.

12 The first step I would propose is that the affidavits be  
13 accepted as the direct testimony. I don't see particularly a  
14 need for either Mr. Cruz or myself to present the Court with a  
15 question and answer direct testimony when the affidavit lays  
16 out what it is we would say. So I would ask the Court to  
17 accept the affidavit as the direct testimony.

18 If there is then, and it would certainly be up to Mr.  
19 Treseler, but let's assume that he wishes to cross-examine  
20 either or both Mr. Cruz and I, then my motion in limine comes  
21 into play.

22 As to Mr. Cruz, what -- my motion in limine is to limit his  
23 testimony to the particular issue of what he would have  
24 decided had he known about Annie Dookhan, rather than inquiry  
25 into, for example, did you distribute cocaine to an undercover

1 agent or something along that line of the elements of the  
2 offense. I don't think it's appropriate for Mr. Cruz to be  
3 asked questions that are essentially the elements of the  
4 offense or would incriminate him as to the elements of the  
5 offense because he is not waiving his Fifth Amendment  
6 privilege by testimony, and this is a very limited offer of  
7 proof as to the second factor of the Scott test, not simply a  
8 waiver of his Fifth Amendment rights and Article 12 rights as  
9 to the underlying proceeding.

10 And my concern obviously is that were he to be asked  
11 questions about the underlying offense and then prevail on his  
12 motion to new trial and then go forward in a trial,  
13 conceivably this testimony could be used then against him in  
14 that new trial. And I think it's incumbent upon me and  
15 incumbent upon the Court to protect his Fifth Amendment rights  
16 and Article 12 rights in this proceeding.

17 I think there is also an issue, your Honor, about  
18 privilege. This is a very limited, in my view, waiver of  
19 privilege. Mr. Cruz is not waiving his attorney-client  
20 privilege for all purposes and in all -- particularly as going  
21 forward in the matter, and that the Court ought to limit  
22 cross-examination and be cognizant of limiting cross-  
23 examination on issues of attorney client privilege so that I -  
24 - there may be under Scott -- assuming that the affidavit is  
25 not sufficient, there may be under Scott an area of

1 appropriate cross examination but I do not believe that area  
2 treads either on Mr. Cruz's Fifth Amendment rights or his  
3 attorney-client privilege.

4 Similarly for myself, should I need to be cross-examined on  
5 this case, I think the Court needs to be, and I need to be  
6 quite aware of the problems of attorney-client privilege that  
7 could arise were I to be asked essentially what did you tell  
8 your client about various things. I'm not -- I do not believe  
9 that by testifying as a witness under the second prong of the  
10 Scott analysis, I am in any way waiving Mr. Cruz's attorney-  
11 client privilege. He doesn't waive it, and I would assert it  
12 on his behalf.

13 Last, your Honor, and I realize I'm going on a bit, but  
14 there's a further issue as to my testimony or my cross-  
15 examination which arises because I am now a witness or about  
16 to be a witness in this proceeding, there is an issue about  
17 whether I could then be both witness and counsel to Mr. Cruz  
18 in this proceeding and in proceedings going forward should the  
19 motion for a new trial be allowed and the case proceed to  
20 trial.

21 I would ask the Court to make a finding on the record that  
22 under Superior Court Rule 12 which deals with attorney as a  
23 witness and Rules of Professional Conduct 3.8 which also deal  
24 with attorney as a witness, that I may ethically and under the  
25 Superior Court Rule participate as a witness in limited areas



1 in this proceeding and also remain and represent Mr. Cruz  
2 going forward.

3 THE COURT: All right. Thank you.

4 Mr. Treseler?

5 MR. TRESELER: Yeah. Just to -- just to begin where I  
6 believe Mr. Roitman began, first of all, I would object to the  
7 affidavits coming in as evidence. Those affidavits, it's the  
8 Commonwealth's perspective and request, is that those are  
9 filings, they are pleadings. That is what gets them a hearing.  
10 Affidavits are not evidence. I would suspect to meet his  
11 burden, the defendant would have to testify and the defendant  
12 deciding to testify is waiving his Fifth Amendment right, and  
13 he's also waiving his privilege because if there's one thing  
14 Scott tells us about the second prong of Ferrara is that you,  
15 the Court, have to weigh the totality of the circumstances  
16 surrounding the plea, what a subjective -- what he  
17 subjectively thought as well as what an objective person would  
18 think at the time of the plea.

19 And when they say the totality of the circumstances in  
20 Scott, that's the evidence that was before the defendant and  
21 the evidence that was before defense counsel at the time he  
22 accepted this plea.

23 What the Court's not aware of is the police actually had  
24 his cell phone number and they called his cell phone and he  
25 was working at Pizza Hut at the time. And he left Pizza Hut

1 for an hour and a half and did a hand to hand transaction with  
2 an undercover Boston Police Officer.

3 The police followed him back to his place of work. They  
4 arrested him. He had hidden his keys. They went back to the  
5 car that was parked in the parking lot. They called for a  
6 canine dog. The canine dog came and hit on the car, meaning  
7 that the dog sniffed drugs inside the car. They went into the  
8 car. They recovered the drugs.

9 All of those facts are open, it's the Commonwealth's  
10 position, to cross-examination of the defendant to know what  
11 he knew both objectively and subjectively at the time of the  
12 plea so that the Court can weigh the totality of the  
13 circumstances to see if this was a valid plea.

14 I think it's all in play. Once he testifies, conversations  
15 he had with his defense attorney about what the facts of the  
16 case are, are all good. Attorney-client privilege, if he's  
17 getting up there and claiming we had mystery talks and I  
18 wouldn't have pled, that's conclusory. The Commonwealth has a  
19 right to at least question as to how that came to be that that  
20 plea occurred. And if that includes attorney-client  
21 privileges, it's the defendant's privilege. It's not the  
22 attorney's privilege. And if the defendant testifies up there  
23 in saying I wouldn't have pled, he's open to cross-examination  
24 on communications he had with his attorney, both about the  
25 facts of the case, the strategy of the case, anything that

1 goes to the totality of the circumstances as to why he  
2 subjectively, and a rational person reasonably would've pled.

3 And I don't think it's a long hearing once it's commences,  
4 but whittling it down to two -- to two affidavits, it's not  
5 evidence, your Honor. It's -- it's just not evidence. And --  
6 and if the Court is actually to follow through what Scott  
7 asked the Court to do, then it's open to a hearing and those  
8 two -- the privilege and the Fifth Amendment and the attorney-  
9 client have to be waived. He's waiving them by testifying. And  
10 you can't narrow it to such a point where he gets a conclusory  
11 statement in, and we're left with that.

12 But again, I -- I don't think it's a long proceeding once  
13 we commence, but certainly the Court has to rule on those  
14 issues before we do.

15 THE COURT: Yes. I'm going to -- I'm not going to accept as  
16 evidence the affidavits. And -- and I must say this too. Mr.  
17 Roitman, on your affidavit, one of it, it -- it's upon  
18 information and belief, and that is totality inappropriate  
19 even for an affidavit to support a pleading.

20 So we're going to have to live testimony, and -- and I do  
21 have to look at the totality of the circumstances that led to  
22 your client entering a plea of guilty to lesser included  
23 offenses in this particular case.

24 So having said that, I think that we will proceed, and --  
25 and with respect -- and one other thing that you mentioned

1 about being able to represent your client at a subsequent  
2 proceeding, I think that was pretty much addressed under Rule  
3 37. -- 3.7A of the Rules of Professional Conduct. And this is  
4 not a trial, so I don't think that precludes you from being  
5 disqualified at a subsequent trial.

6 But at this particular hearing, if in fact you do take the  
7 witness stand and testify and are cross-examined, when it  
8 comes to the summation, I think it would be highly  
9 inappropriate for you as counsel to argue your credibility.  
10 You can argue your client's credibility, but I don't think you  
11 can argue your credibility. So I'm going to put a limitation  
12 on the argument at the conclusion of this hearing.

13 All right. Having said that, we're ready to proceed.

14 MR. ROITMAN: And I'm sorry, your Honor. It -- is your  
15 ruling that you are not accepting the affidavits as direct  
16 testimony?

17 THE COURT: Correct.

18 MR. ROITMAN: All right. Well, then I -- I -- I disagree,  
19 and I suppose I object for the record.

20 THE COURT: Sure.

21 MR. ROITMAN: But I would call Hipolito Cruz.

22 THE COURT: All right.

23 **HIPOLITO CRUZ, Sworn**

24 **DIRECT EXAMINATION BY MR. ROITMAN:**

25 Q Mr. Cruz, what's your full name?

1 A Hipolito Cruz.

2 Q How do you spell your last name?

3 A C-R-U-Z.

4 Q How old are you?

5 A 47.

6 Q Are you currently working?

7 A Yes.

8 Q Where do you work?

9 A Boston Park Plaza Hotel.

10 Q Okay. What kind of work do you do?

11 A Banquet houseman.

12 Q I'm sorry. What was that?

13 A Banquets.

14 Q Banquets.

15 A Yeah.

16 Q Okay. How far did you go in school?

17 A I have GED.

18 Q You have a GED. Okay. Do you recall back in 2009 you were  
19 charged with the crimes of trafficking in cocaine 14 to 28  
20 grams and distribution of Class B second offense?

21 A Yes, sir.

22 Q Okay. And you were charged with those crimes in Suffolk  
23 Superior Court, this Court?

24 A Yes.

25 Q Okay. And am I correct that the indictment, the charge

1       against you, arose from an incident that took place back on  
2       March 14 of 2009?

3       A   Yes.

4       Q   Okay. And you recall that on March 14, 2009, you were  
5       arrested?

6       A   Yes.

7       Q   Okay. And then the police -- is it fair to say that the  
8       police as part of this case alleged that you sold cocaine to  
9       an undercover police officer?

10      A   Yes.

11      Q   Okay. The police and the prosecution allege that they found  
12      a quantity of cocaine near you when you were arrested, is that  
13      right? I'm sorry. There was a quantity of cocaine that you  
14      allegedly sold to an undercover, right?

15      A   Yes.

16      Q   Okay. And then after you were arrested, the police searched  
17      your car --

18      A   Yes.

19      Q   -- is that right?

20      A   Yes.

21      Q   And the police allege that they found cocaine in your car?

22      A   Yes.

23      Q   And the total of the amount of cocaine that the police  
24      alleged you had was something in -- in excess of 15 grams?

25      A   Yes.

1 Q Now --

2 MR. ROITMAN: Your Honor, may I take a look at what -- what  
3 was Exhibit One --

4 THE COURT: Sure.

5 MR. ROITMAN: -- I think the certificates?

6 THE COURT: Exhibit One.

7 THE CLERK: Exhibit One.

8 THE COURT: We'll use the -- we'll use the ones that we  
9 marked as an Exhibit.

10 MR. ROITMAN: Okay. This is terrific.

11 THE COURT: Yeah.

12 Q Mr. Cruz, I'm showing you a document. We marked it as  
13 Exhibit One. And it's three pages of materials, right?

14 A Excuse me?

15 Q I'm -- I'm showing you a document. It says Exhibit One on  
16 it, and it's three pages, right?

17 A Yes.

18 Q Okay. And each of these three pages is a -- it's captioned  
19 up at the top Commonwealth of Massachusetts, Executive Office  
20 of Health and Human Services Department of Public Health  
21 William A. Hinton State Laboratory, and it appears to be a  
22 certificate stating that the substance is cocaine?

23 A Yes, sir.

24 Q All right. And each of these certificates states that the  
25 substance that was tested was a controlled substance under

1 Class B of the Massachusetts laws?

2 A Yes.

3 Q Class B as you know covers cocaine?

4 A Yes.

5 Q And certificate number -- the top page is for 1.06 grams,  
6 do you see that?

7 A Yes.

8 Q The second page is for 2.8 grams?

9 A Yes.

10 Q And the third page is for 12.65 grams?

11 A Yes.

12 Q And looking at the certificates, each certificates where it  
13 indicates analyst is signed by Della, D-E-L-A -- D-E-L-L-A,  
14 Saunders, S-A-U-N-D-E-R-S, and as the confirmatory chemist,  
15 Annie, A-N-N-I-E, Dookhan, D-O-O-K-H-A-N, right?

16 A Yes, sir.

17 Q So Annie Dookhan was the confirmatory chemist on each of  
18 the three certificates?

19 A Yes.

20 Q Now, do you recall, sir, on the -- the charge against you,  
21 that case proceeded along -- the prosecution went along for a  
22 year or so?

23 A Yes.

24 Q Okay. And there were some pretrial motions, do you recall  
25 that?



1 A Yes.

2 Q Do you recall a motion to suppress?

3 A Yes, sir.

4 Q Okay. And then on June 4, 2010, do you recall pleading  
5 guilty to certain charges?

6 A Yes.

7 Q And you pled guilty in this courthouse, in Suffolk Superior  
8 Court?

9 A Yes.

10 Q Okay. And on June 14 of 2010, you pled guilty to  
11 trafficking in cocaine of 14 -- somewhere between 14 and 28  
12 grams?

13 A Yes.

14 Q And you pled guilty to so much of the indictment as charged  
15 distribution of Class B first offense?

16 A Yes.

17 Q Okay. Do you recall your sentence?

18 A Yes, sir.

19 Q Okay. Were you sentenced on both charges to serve three  
20 years to three years and one day in State Prison and -- I'm  
21 sorry. Three years --

22 MR. ROITMAN: I got that wrong, your Honor.

23 Q Three years to three years and one day in State Prison on  
24 the trafficking charge?

25 A Yes.

1 Q Okay. And then two years of probation following your  
2 incarceration on the distribution of Class B charge?

3 A Yes.

4 Q All right. And is it fair to state that the portion of the  
5 indictment that charged distribution of Class B second offense  
6 was dismissed?

7 A Yes.

8 Q Now, at the time that you pled guilty, was -- do you recall  
9 were we pretty much ready to go to trial?

10 A Yes, sir.

11 Q Okay. And in fact your trial counsel at the time was  
12 myself, Michael Roitman?

13 A Yes, sir.

14 Q Now, in May -- in June of 2010 when you pled guilty, had  
15 you had a chance to look at Exhibit One, the certificates of  
16 analysis?

17 A Yes.

18 Q And in looking at those certificates of analysis, did you  
19 believe that there was very little defense to the fact that  
20 the substance that you were charged with possessing and  
21 distributing was cocaine?

22 A Yes.

23 Q Did you believe that these certificates of analysis,  
24 Exhibit One, were accurate?

25 A Yes.

1 Q Did you believe that there was any sort of reasonable  
2 challenge to the weight, the amount of cocaine, that is  
3 presented in the three certificates?

4 A Yes.

5 Q Okay. Did you think that we could challenge that Annie  
6 Dookhan had weighed these things out wrong?

7 THE COURT: I'm not sure that there's evidence of that. Is  
8 there?

9 MR. ROITMAN: I --

10 MR. TRESELER: I'm not objecting, your Honor, because I --

11 THE COURT: All right. All right.

12 MR. ROITMAN: I'm sorry. The -- let me go back a little bit.

13 THE COURT: Sure.

14 Q Each of these three certificates, right, Exhibit One you've  
15 got in front of you?

16 A Yes.

17 Q They each have -- each one has a different amount of  
18 cocaine?

19 A Uh-huh.

20 Q Okay.

21 THE COURT: Yes?

22 Q Is that right?

23 THE COURT: You have to --

24 A Yes.

25 THE COURT: You have to answer --

1 Q Say yes or no on the record.

2 A Yes.

3 Q Okay. And that amount to your knowledge indicated that  
4 someone, either Della Saunders or Annie Dookhan, had weighed  
5 the cocaine?

6 A Yes.

7 Q Okay. And had weighed it and said it was 1.06 grams, or 2.8  
8 grams, or 12.65 grams?

9 A Yes.

10 Q Okay. And in June of 2010, did you think those weights were  
11 accurate?

12 A Yes.

13 Q Now, in June of 2010 when you pled guilty, did you know  
14 that Annie Dookhan, one of the chemists on your case,  
15 allegedly tampered with evidence?

16 A No.

17 Q Did you know that Annie Dookhan allegedly added cocaine to  
18 make the weight greater on particular cases?

19 A No, sir.

20 Q Did you know that Annie Dookhan allegedly stated that  
21 substances were cocaine that may not have been cocaine?

22 A No.

23 Q You didn't know that?

24 A No.

25 Q Okay. Did you know that Annie Dookhan allegedly said she

1 performed tests on cocaine that she did not perform?

2 A No.

3 Q Okay. Did you have any idea in June of 2010 that Annie  
4 Dookhan was doing bad things, was --

5 A No.

6 Q Now, if you had known in June of 2010 that Annie -- of  
7 Annie Dookhan's misconduct, that she was doing bad things at  
8 the laboratory, would you have pled guilty?

9 A Never.

10 Q Now, you realize if you had not pled guilty, the case  
11 would've gone to trial, right?

12 A Yes.

13 Q And was the case ready as far as you know to go to trial?

14 A Yes.

15 Q All right. And do you believe that at trial, if we had been  
16 able to tell the jury about Annie Dookhan's misconduct, it  
17 would have affected the trial?

18 A Yes.

19 Q If you knew -- again, in June of 2010, if you knew about  
20 Annie Dookhan, were you ready to go to trial even though you  
21 might have been facing a five year mandatory sentence on the  
22 distribution second?

23 A Yes.

24 Q You were -- if you had known about Annie Dookhan, you  
25 would've been willing to take that risk?

1 A If I know about what she --

2 Q If you knew about Annie Dookhan in June 2010, you would've  
3 gone to trial and taken the risk of trial?

4 A Yes.

5 Q Is that correct?

6 A Yes.

7 Q Okay. You have to say yes or no.

8 A Yes.

9 Q If your lawyer, me, had told you in June 2010 that Annie  
10 Dookhan is doing bad things at the laboratory --

11 A No.

12 Q Okay. Would you have pled guilty?

13 A No.

14 Q Do you now today wish to withdraw that guilty plea and go  
15 forward on the case on the original indictment?

16 A Yes.

17 Q Okay. And you understand that if the Court allows your  
18 motion for a guilty -- excuse me -- motion to withdraw your  
19 guilty plea, then the government, the prosecution, the  
20 Commonwealth could prosecute you for trafficking in cocaine 14  
21 to 28 grams and distribution of a Class B substance second  
22 offense?

23 A Yes.

24 Q Okay. And you're prepared to go forward with that  
25 prosecution?

1 A Yes.

2 MR. ROITMAN: Your Honor, I have nothing further on direct.

3 THE COURT: All right. Thank you.

4 Cross-examination?

5 MR. TRESELER: Yes, your Honor.

6 MR. ROITMAN: Your Honor, I renew my motion in limine.

7 THE COURT: All right. I'll make note of that.

8 **CROSS-EXAMINATION OF HIPOLITO CRUZ**

9 **BY MR. TRESELER:**

10 Q Good morning, sir.

11 A Good morning, sir.

12 Q Paul Treseler on behalf of the Commonwealth. If you need a  
13 break, please -- please let us know, okay, or if you need  
14 water.

15 A Okay.

16 Q But, sir, I'd like to turn your attention back to March the  
17 14<sup>th</sup> 2009 if I could. Do you remember where you were working at  
18 the time?

19 A Yes.

20 MR. ROITMAN: I object, your Honor.

21 THE COURT: Objection's overruled.

22 Q Where were you working?

23 A Braintree Galleria.

24 Q And what were you doing --

25 THE COURT: Where? I'm sorry. I didn't hear.

1 THE WITNESS: Sorry, your Honor. Braintree Galleria, the  
2 mall.

3 THE COURT: And where's that?

4 THE WITNESS: Up in Braintree.

5 THE COURT: Braintree?

6 THE WITNESS: Yes.

7 THE COURT: Okay. The Braintree Mall.

8 Q You were working at the Braintree Mall, and -- and what did  
9 you do at the Braintree Mall?

10 A I'm a pizza cook.

11 Q A pizza cook?

12 A Yes.

13 Q And for what company were you working?

14 A Sbarro.

15 Q Sbarro?

16 A Yes.

17 Q And you worked on March the 14<sup>th</sup> 2009?

18 A Yes.

19 Q And do you remember what your hours were that day?

20 A 8 hours.

21 Q 8 hours?

22 A Yes.

23 Q And what -- what time in the morning did you start?

24 A I'm not really quite -- I think around 12.

25 Q Noon time?



1 A Yes.

2 Q At some point in time, did you leave Sbarro's for an  
3 afternoon lunch break?

4 MR. ROITMAN: Objection, your Honor. I -- I think this goes  
5 to his Fifth Amendment rights as to the underlying offense and  
6 is not relevant to what this Court needs to decide today.

7 THE COURT: Your objection is noted. It's overruled.

8 Q Sir, at some point in time, did you leave Sbarro's for an  
9 afternoon break?

10 A About 2 o'clock.

11 Q Okay. And where did you go?

12 A I go to somewhere in Dorchester Avenue.

13 Q Excuse me?

14 A Somewhere in Dorchester Avenue.

15 Q Somewhere on Dorchester Avenue?

16 A Yes.

17 Q And why did you go somewhere on Dorchester Avenue?

18 MR. ROITMAN: Your Honor, I -- I objection. I think this  
19 goes --

20 THE COURT: Objection's overruled.

21 MR. ROITMAN: Directly to his Fifth Amendment rights, and  
22 I'm -- I'm very concerned that I should be instructing him not  
23 to answer questions --

24 THE COURT: Objection --

25 MR. ROITMAN: -- that --

1 THE COURT: Objection's overruled.

2 Q And why, sir, is it that you went to Dorchester Avenue?

3 A I'm going to go there to take my break.

4 Q And what were you going to do on Dorchester Avenue while  
5 taking your break?

6 A I want to try to buy some lunch up at McDonald.

7 THE COURT: Some what?

8 THE WITNESS: Lunch, eat.

9 THE COURT: Okay.

10 Q Okay. Did you drive a car on that day?

11 A Yes, sir.

12 Q And what type of car did you drive?

13 A Mazda.

14 Q Fair to say it was a Protégé?

15 A Yes.

16 Q And, sir, is it fair to say you had a cell phone on that  
17 day?

18 A Yes, sir.

19 Q Okay.

20 MR. TRESELER: May I approach, your Honor?

21 THE COURT: You may.

22 Q Sir, I'm showing you an Exhibit. Do you recognize it?

23 A Yes.

24 Q And what is it?

25 A It's my phone.

1 MR. ROITMAN: Your Honor, I object again to this entire  
2 line. Whether he has a --

3 THE COURT: Objection's --

4 MR. ROITMAN: -- particular phone is --

5 THE COURT: Objection's overruled. You know, I've got to  
6 look at the totality of the circumstances.

7 MR. ROITMAN: Your Honor, I think the totality of the --

8 THE COURT: No. I -- I've made a ruling.

9 MR. ROITMAN: Well, I object --

10 THE COURT: I --

11 MR. ROITMAN: -- and I continue to object to --

12 THE COURT: I --

13 MR. ROITMAN: -- requiring this defendant to incriminate  
14 himself for a motion for a new trial.

15 THE COURT: I'll note your objection.

16 MR. ROITMAN: I think it's inappropriate.

17 THE COURT: I'll note your objection.

18 MR. TRESELER: Commonwealth moves to introduce the Exhibit  
19 as he marked -- as he noted -- testified that it is his cell  
20 phone.

21 THE COURT: Okay.

22 MR. ROITMAN: I object. I think this violates my con --

23 THE COURT: Okay.

24 MR. ROITMAN: -- my client's rights under the Fifth  
25 Amendment and Article 12.

1 THE COURT: Objection's noted. Exhibit 2.

2 THE CLERK: Exhibit 2, your Honor.

3 Q So, sir, your testimony is that you decided to leave Sbarro  
4 in the Braintree Mall and go to Galvin Boulevard or Dorchester  
5 Avenue to go get yourself some lunch?

6 A Yes.

7 Q Prior -- prior to going to get yourself some lunch, did you  
8 receive a call on your cell phone?

9 A Well --

10 MR. ROITMAN: Objection, your Honor.

11 THE COURT: Objection's overruled.

12 A I received a few phone calls, yes.

13 Q Okay. And did any of those phone calls request to purchase  
14 narcotics from you?

15 A No --

16 MR. ROITMAN: Objection, your Honor.

17 THE COURT: Objection's overruled.

18 A I don't really remember that.

19 Q You don't remember?

20 A No.

21 Q But you remember going to Gallivan Boulevard?

22 A Yes.

23 Q And driving a Mazda Protégé?

24 A Yes.

25 Q You don't remember receiving a phone call from someone

1        requesting to make a hundred dollar purchase from you?

2        A No.

3        Q Do you remember going to Gallivan Boulevard and meeting  
4        with somebody?

5        A No.

6        Q Do you remember selling cocaine to somebody at Gallivan  
7        Boulevard?

8        A No.

9        Q You have no memory whatsoever?

10       A No.

11       Q What did you do after you say that you went and had some  
12       lunch? Where did you eat that way by the way?

13       A I think it's some cheeseburgers and soda.

14       Q Excuse me?

15       A Cheeseburger and soda.

16       Q And where did you get that cheeseburger and soda?

17       A Right there at McDonalds.

18       Q Okay. And after getting the cheeseburger and -- and the  
19       soda, where'd you go?

20       A Back --

21       Q And by the way, isn't there a McDonalds in the Braintree  
22       Mall?

23       A I don't recall that. I don't know.

24       Q You don't know?

25       A No.

1 Q But you worked at the Braintree Mall --

2 A Yes. I worked --

3 Q -- for a pizza shop, right?

4 A Yes.

5 Q But you drove to Dorchester Avenue to go get a -- a  
6 hamburger and a soda from the McDonalds?

7 A Yes.

8 Q And you don't remember if you met with anybody or didn't  
9 meet with anybody?

10 A No.

11 MR. ROITMAN: I object, your Honor --

12 Q And then where did you go?

13 MR. ROITMAN: -- to this entire line.

14 THE COURT: Objection's overruled.

15 A Back to my work.

16 Q You went back to work?

17 A Yes.

18 Q Where did you park your car?

19 A In the garage.

20 Q In the garage?

21 A Yes.

22 Q And you got back to work?

23 A Yes.

24 Q And when you got back to work, were you in trouble at work?

25 A No. No.

1 Q How long had you been gone?

2 A Like a half an hour.

3 Q Did your manager say anything to you about being angry that  
4 you were gone for an hour and a half?

5 A No.

6 MR. ROITMAN: Objection, your Honor. That would be hearsay.

7 THE COURT: Sustained.

8 Q So you got back to work?

9 A Yes.

10 Q Okay. And when you got back to work, is it fair to say the  
11 police showed up?

12 A Yes, police showed up there.

13 Q Okay. And is it fair to say they found the keys to your  
14 Mazda Protégé in the trash?

15 MR. ROITMAN: Objection, your Honor.

16 A Yes. They found keys --

17 THE COURT: You may have it.

18 Q They found your keys in the trash, right, sir?

19 A Yes, they found the keys.

20 Q And you later learned that a dog, a canine dog, was brought  
21 to examine your car, correct?

22 A No. I never see a dog --

23 MR. ROITMAN: Objection, your Honor.

24 A -- and I've never --

25 THE COURT: He answered no.

1 A I don't know about dogs and -- they just go in the car and  
2 say they found drugs. I'm not present up there when they open  
3 my car.

4 Q Sir, are you the same person, the same Hipolito Cruz, that  
5 on 3/9/2006 out of the Boston Municipal Court Central Division  
6 received a two year committed sentence for possession to  
7 distribute a Class A substance?

8 MR. ROITMAN: Objection, your Honor.

9 A Yes.

10 THE COURT: Objection --

11 MR. ROITMAN: Again, that's way beyond the scope of this  
12 proceeding.

13 THE COURT: Okay. Objection's overruled. There's issues of  
14 credibility.

15 Q Sir, are you the same person that in 2004 was convicted out  
16 of the Boston Municipal Court Central Division for possession  
17 to distribute a Class B substance and received a two and a  
18 half year committed sentence?

19 A Yes.

20 Q Sir, are you the same individual that in 2000, more  
21 specifically July the 17<sup>th</sup>, 2000 was convicted in the Boston  
22 Municipal Court Central Division for possession to distribute  
23 a Class A substance and received a one year committed  
24 sentence?

25 MR. ROITMAN: Objection.



1 THE COURT: Objection's --

2 A Yes.

3 THE COURT: -- overruled.

4 Q So you had been convicted of three prior -- prior drug  
5 offenses at the time that this case arose back in March of  
6 2009, correct?

7 A Yes.

8 Q So there were three potential prior offenses for you at the  
9 time that you were charged with this offense, correct?

10 A Yes.

11 Q And aside from those convictions, sir, you have other  
12 convictions on your record, correct?

13 MR. ROITMAN: Objection, your Honor.

14 A Yes.

15 THE COURT: You may answer yes, but we're not going to go  
16 into those.

17 Q Sir, at the time of your plea, did you know that there was  
18 a Boston Police Officer and a canine dog that were going to  
19 testify at your trial?

20 MR. ROITMAN: Objection. They -- it calls for foundation.

21 THE COURT: I think we need to break that --

22 A Yes.

23 MR. ROITMAN: I'm not sure what the foundation of that would  
24 be.

25 THE COURT: Okay. We -- I think we need to break that down.

1 THE WITNESS: Okay.

2 THE COURT: I don't think the dog would be testifying.

3 Q Prior -- prior to you taking the plea in this case, is it  
4 fair to say you had many discussions with your -- with your  
5 lawyer?

6 A Excuse me?

7 Q Prior to taking the plea in this case, you had many  
8 discussions with your lawyer, Mr. Roitman, correct?

9 A Yes.

10 Q And he provided some of the information that the government  
11 had, correct?

12 A Yes.

13 Q And he provided you with the evidence that was going to be  
14 used to attempt to convict you, correct?

15 A Yes.

16 Q And part of that evidence was the fact that a search was  
17 done of your car, correct?

18 A Yes.

19 Q And as part of the search of your car, sir, did you learn  
20 during the discovery process from Mr. Roitman or in the  
21 courtroom that a canine dog, a sniffing dog, had been used on  
22 your car?

23 A Yes.

24 Q And that narcotics had been recovered from your car?

25 MR. ROITMAN: Objection, your Honor.

1 A Yes.

2 THE COURT: Objection's overruled.

3 MR. TRESELER: May I approach, your Honor?

4 THE COURT: You may.

5 Q Sir, I'm showing you a document. Do you recognize it?

6 A This is what they show me when they arrest me.

7 Q They showed you that at the time of the arrest?

8 A No. They showed to my -- give copy to the lawyer.

9 Q Okay. And what -- what purportedly is that?

10 MR. ROITMAN: Objection, your Honor.

11 THE COURT: Only if you know.

12 MR. ROITMAN: Both on privilege grounds and under Fifth  
13 Amendment and Article 12 grounds.

14 A You can't --

15 THE COURT: Objection's overruled, only -- only if he knows  
16 what is demonstrated there.

17 A It can be anything like --

18 Q Did the government allege that to be cocaine?

19 A That's what they say, yes.

20 Q And this was the evidence they were -- some of the evidence  
21 they were going to use to attempt to convict you, correct?

22 A Yes.

23 MR. TRESELER: Commonwealth moves to introduce the  
24 photograph, your Honor.

25 MR. ROITMAN: Objection, your Honor.

1 THE COURT: Have you seen that photograph before?

2 THE WITNESS: Huh?

3 THE COURT: Did you see that photograph before?

4 THE WITNESS: I don't remember about that, but I know they  
5 got a few stuff there my lawyer showed me because the -- this  
6 case about they got in the car and they search the car. They -  
7 - they say they got a canine, but I never -- like they go  
8 there. I never be present of that when they do that.

9 THE COURT: Okay.

10 THE WITNESS: You know, they take the keys and they just go.

11 THE COURT: I'm going to exclude that.

12 THE WITNESS: Huh?

13 THE COURT: I'm going to exclude that photo.

14 MR. TRESELER: And just as a -- could I have it marked for  
15 identification --

16 THE COURT: Sure.

17 MR. TRESELER: -- purposes, your Honor?

18 THE COURT: A -- A for identification.

19 THE CLERK: A for identification, your Honor.

20 THE COURT: Thank you.

21 Q Sir, how many offenses were you charged with?

22 A In this -- in --

23 Q In this case?

24 A Trafficking, sell, that's basically --

25 Q Do you know what the minimum mandatory at the time for

1       trafficking was?

2       A   Yes, five year I guess.

3       Q   You thought it was five years?

4       A   Yes.

5       Q   And what about the second and sub, what did you think the -  
6       - what did you think the sentence was for that, the minimum  
7       mandatory?

8       A   I think it two and a half after.

9       Q   One and a half after?

10      A   Two and a half.

11      Q   Two and a half. So you believed at the time that you were  
12      facing seven and a half years State Prison, is that fair to  
13      say?

14      A   Yes.

15      Q   And what did you actually receive in -- in lieu of a -- of  
16      trial for pleading?

17      A   Three to three and a day and two years' probation.

18      Q   Sir, and just -- just as a matter of keeping here, was your  
19      cell phone number at the time 617-229-9640?

20           MR. ROITMAN: I object --

21      A   I don't recall that because it was a long time ago.

22           MR. ROITMAN: -- on Fifth Amendment grounds, Article 12  
23      grounds.

24           THE COURT: Okay. Objection's overruled. He may answer. Do  
25      you recall?

1 THE WITNESS: No, I don't recall that --

2 THE COURT: He doesn't recall.

3 THE WITNESS: -- because it's been a long time. It's almost  
4 five years I guess for this case.

5 Q And, sir, you had -- you had prior convictions for drug  
6 distribution, correct, that were --

7 THE COURT: We've already gone over that.

8 MR. TRESELER: I have a question -- just a -- one limited  
9 question.

10 THE COURT: All right.

11 A Yes. I have a few conviction for drugs.

12 Q On those cases, who packaged those narcotics?

13 MR. ROITMAN: Objection, your Honor.

14 A I don't know.

15 THE COURT: Sustained.

16 MR. TRESELER: Could I just approach for one second, your  
17 Honor?

18 THE COURT: You may.

19 THE WITNESS: I never have a --

20 MR. TRESELER: Approach the Court. I'm sorry.

21 (DISCUSSION AT SIDEBAR)

22 THE COURT: Do we have -- is that the microphone?

23 THE CLERK: I believe it is, your Honor.

24 THE COURT: Okay. I just want to make sure.

25 MR. TRESELER: (Inaudible at 11:25:27, low audio at sidebar)

1 because I don't know what the answer is. So this was a log in.  
2 I don't know if you saw the photograph that's been marked for  
3 identification, but it -- it's all packaged up. And one of  
4 the issues is the weight of that, (inaudible at 11:25:41, low  
5 audio at sidebar) correctly, and he has a history of drug  
6 dealing. And the Commonwealth alleges that he had these drugs  
7 on this day, there's a fair chance that he packaged them and  
8 knew exactly what the weight was which would make completely  
9 irrelevant -- or wouldn't make it completely irrelevant but it  
10 would certainly go to the totality of the circumstances.

11 THE COURT: No. I'm going to sustain the objection.

12 (END OF DISCUSSION AT SIDEBAR)

13 Q Sir, why did you plead guilty to this case?

14 A Well, I'm not really want to plead guilty because I know  
15 the -- I really believe the -- the Commonwealth have to have  
16 search warrant to search the car. They never have that. They  
17 know the facts. But my lawyer kind of talked to me, explained  
18 to me, and that's my -- that's girlfriend pregnant at that  
19 point, and I just don't want to -- you can be -- you know, you  
20 can never tell. So I tendered on the offers. You know, at that  
21 point, it's -- I can handle it, and that's why I pled guilty.

22 Q Did you plead guilty because you were guilty?

23 A No.

24 Q You were not guilty?

25 A No.

1 MR. TRESELER: I -- I have nothing further, your Honor.

2 THE COURT: Okay. Redirect?

3 MR. ROITMAN: Your Honor, I have nothing.

4 THE COURT: Okay. You may step down.

5 You're off -- you may step down --

6 THE WITNESS: Thank you, your Honor.

7 THE COURT: Sure.

8 (Witness excused.)

9 THE COURT: All right. Mr. Roitman, any further testimony?

10 MR. ROITMAN: Your Honor, I would present the affidavit --  
11 my affidavit as my direct testimony in this case.

12 THE COURT: And --

13 MR. TRESELER: I would object, your Honor, and I just  
14 informed Mr. Roitman that I have no intention at this point of  
15 calling him if he does not testify, but I do object to his  
16 affidavit being introduced in evidence.

17 THE COURT: Right. I -- and I've already sustained that  
18 objection.

19 All right.

20 MR. ROITMAN: Well, I think it's incumbent upon my -- to put  
21 in some evidence, and so I would call myself.

22 THE COURT: Come on up here.

23 **MICHAEL ROITMAN, Sworn**

24 MR. ROITMAN: Your Honor, I would propose to do this as  
25 narrative.



1 THE COURT: Absolutely.

2 MR. ROITMAN: I do not have a colleague to ask the  
3 questions.

4 THE COURT: Right. Before we do that, why don't you just  
5 identify yourself for the record though?

6 MR. ROITMAN: Yes, your Honor. My name is Michael Roitman,  
7 R-O-I-T-M-A-N. I'm an attorney and a member of the  
8 Massachusetts Bar.

9 THE COURT: All right.

10 MR. ROITMAN: I've been a member of the Massachusetts Bar  
11 since 1980.

12 I was appointed to represent Hipolito Cruz in this matter  
13 which is Suffolk Superior Court Criminal Case 2009-10595.

14 Mr. Cruz was indicted on two charges, trafficking in  
15 cocaine 14 to 28 grams and distribution of a Class B substance  
16 subsequent offense.

17 The indictment -- the charges arose from an incident that  
18 occurred, it's my understanding, on March 14, 2009. That was  
19 the indictment.

20 During the course of discovery in this case, I received  
21 three certificates of analysis from the Commonwealth. On each  
22 of those certificates of analysis which have been marked  
23 Exhibit One in this proceeding, Annie Dookhan was the  
24 confirmatory chemist.

25 In June of 2010, as the case was coming toward trial, I

1       advised Mr. Cruz that there were mandatory minimum penalties  
2       on the charges for which he was indicted.

3       My recollection is that in June of 2010, the mandatory  
4       minimum penalty for trafficking 14 to 28 was three years in  
5       State Prison. I believe the maximum was 15 years in State  
6       Prison.

7       It's my recollection that in June 2010, the mandatory --  
8       minimum mandatory sentence on distribution of a Class B  
9       substance subsequent offense was five years in State Prison,  
10      minimum of five years in State Prison, and I believe the  
11      maximum was 15 years in State Prison.

12      My recollection is that I discussed with Mr. Cruz that he  
13      faced a mandatory five year sentence on the distribution  
14      second and a minimum mandatory three year sentence on the  
15      trafficking.

16      And through the course of the case, we did litigate a  
17      motion to suppress which was denied. That was -- and we had  
18      prepared the case for trial at -- my recollection is that we  
19      had prepared and filed motions in limine and may have  
20      proceeded to a final pretrial conference.

21      I, at the time in June of 2010, I was not aware that Annie  
22      Dookhan had engaged in misconduct at the Hinton Laboratory. My  
23      recollection is that I first learned of Ms. Dookhan's  
24      misconduct perhaps in the fall of -- summer leading into the  
25      fall of 2012.

1 I did not give Mr. Cruz any advice concerning a possible  
2 challenge to the analysis of the cocaine or the weight of the  
3 cocaine as my understanding at the time was the certificates  
4 of analysis were conclusive evidence as to the chemical  
5 composition and weight of the controlled substance. That was  
6 not part of our anticipated defense.

7 If I had known that Annie Dookhan engaged in misconduct at  
8 the laboratory -- and I now understand that Ms. Dookhan was  
9 accused of adding cocaine to certain cases to make the weight  
10 larger, I understand that she was accused of stating that she  
11 had conducted tests, chemical analysis tests, that were not  
12 conducted where she simply wrote down results with no testing.

13 I'm aware that she was alleged to have stated in  
14 certificates of analysis that substances were controlled  
15 substances when they were not and other misconduct.

16 It's my understanding, although I was not present, that Ms.  
17 Dookhan subsequently pled guilty and was sentenced in this  
18 Court to various charges stemming from her misconduct at the  
19 Hinton Laboratory.

20 If I had known about Annie Dookhan's misconduct in 2010, my  
21 advice to Mr. Cruz would have been substantially different. My  
22 trial strategy would have been different. My trial preparation  
23 would have been different.

24 I -- I think it likely that I would've sought funds for an  
25 independent analyst.

1 I think it likely that I would've sought funds to retain an  
2 expert on proper procedure, proper forensic laboratory  
3 procedures, and the difference between proper laboratory  
4 procedures and what went on at the Hinton Laboratory when Ms.  
5 Dookhan was an analyst.

6 I think I would have challenged the composition and  
7 potentially weight of the substance in his case.

8 My recollection is that I filed a Daubert motion in limine,  
9 pretrial motion in limine challenging the expertise and work  
10 of the two chemists, but my understanding at the time was that  
11 that motion had very little chance of success. I think knowing  
12 what I now know today, that motion would have been  
13 substantially stronger and had a very good likelihood of  
14 success challenging Ms. Dookhan's actions as a chemist and the  
15 veracity and expertise of her expert testimony.

16 THE COURT: So you never proceeded with the Daubert  
17 hearings?

18 MR. ROITMAN: No.

19 THE COURT: Okay

20 MR. ROITMAN: My recollection is that we did not -- that  
21 motion was not acted upon. I don't believe any of my --

22 THE COURT: Okay.

23 MR. ROITMAN: -- motions in limine were acted upon. But I --  
24 it's possible I'm mistaken.

25 I -- I -- had I known about Annie Dookhan, her misconduct,

1 her activities at the laboratory, I likely would have advised  
2 Mr. Cruz that he had a strong defense and a strong likelihood  
3 of a not guilty should the case have proceeded to trial on  
4 both charges.

5 I don't have anything further, your Honor.

6 THE COURT: Okay. Any cross-examination?

7 MR. TRESELER: Just briefly, your Honor.

8 **CROSS-EXAMINATION OF MICHAEL ROITMAN**

9 **BY MR. TRESELER:**

10 Q Good afternoon, Mr. Roitman.

11 A Good afternoon.

12 Q Mr. Roitman, just as a -- a couple matters, and you had all  
13 the discovery at the time that you were -- decided or the  
14 defendant decided to plea this case, correct?

15 A We had whatever discovery -- yes --

16 Q That was provided to you?

17 A -- I believe discovery was completed in the sense that we  
18 had everything that the Commonwealth had provided, and I was  
19 not aware of any outstanding discovery.

20 Q And that includes the drug certs that you've already spoken  
21 about, correct?

22 A That is my recollection that I had those for some time.

23 Q And you understand that the Commonwealth also planned on  
24 calling the -- the handler of a canine dog, is that correct?

25 A My recollection, yes, is that there was a canine that was

1 part of the search and that -- well, I -- I guess I'm not  
2 certain. I'm aware that there was a canine search. I'm not  
3 aware whether the Commonwealth would've needed to call that  
4 canine person at trial. That may have been an issue that we  
5 litigated at the motion to suppress.

6 Q And you're also aware, sir, that a search was done of your  
7 client's car, correct?

8 A I am aware of that.

9 Q And that the government alleged that narcotics were  
10 recovered from that car, correct?

11 A That's correct.

12 Q And you were aware that there was an undercover Boston  
13 Police Officer who alleged that he purchased a hundred  
14 dollars' worth of crack cocaine from your client?

15 A That's my recollection, correct.

16 Q And that the Boston Police recovered the hundred dollars in  
17 buy money from your client at the time of the arrest?

18 A That's my recollection.

19 Q Okay.

20 A That's correct.

21 Q And, sir, are you -- you just testified that in fact you  
22 would have told him not to plea and to go to trial, is that  
23 correct?

24 A That's correct. Well, I would've provided him advice. I  
25 never -- I would say that I always, as to all clients, provide

1       them with options and advice. I have never instructed a client  
2       to go to trial or not to go to trial or to plead or not to  
3       plead. That's not my role.

4       Q   And where was Ms. Dookhan in the process of these certs?  
5       Was she the custodial or the secondary chemist?

6       A   I believe she was the confirmatory chemist who had  
7       performed the GSMS analysis on all three certificates.

8       Q   And would that have been relevant to you at the time that  
9       you were giving him advice whether or not she was custodial or  
10      the secondary?

11      A   Well, at the time in June 2010, it was not particularly  
12      relevant to me. I believed the certificates to be accurate.  
13      Now, it would be -- I think it's -- it's very important that  
14      Ms. Dookhan was involved in his case.

15      Q   Do you know who was responsible for weighing the drugs, the  
16      custodial or the secondary?

17      A   I believe initially -- it's my understanding that the  
18      procedure at the laboratory is that the -- it's the custodial  
19      chemist, but certainly Ms. Dookhan would've had these drugs in  
20      her possession. And it's my understanding she has testified or  
21      -- or indicated to the State Police that she regularly took  
22      samples on her cases and had them out of proper control and  
23      procedures. So I'm really not sure that I could tell you when  
24      Ms. Dookhan had these drugs or didn't have these drugs or what  
25      she did or didn't do with them.

1 Q And who's decision was it to plea back at the plea date?

2 A It was Mr. Cruz's decision.

3 Q Okay. And you gave him advice?

4 A Correct.

5 Q Okay. And, sir, are you aware that a number of these cases  
6 have been retried in Suffolk Superior Court, a number of Annie  
7 Dookhan --

8 A I think I'm aware of two, but there may well have been  
9 more. I know I have talked with counsel on two retrials, but  
10 I'm --

11 Q Okay. And in --

12 A I'm not at all sure that's the universe of retrials.

13 Q Okay. And are you aware of the outcomes of those two?

14 A In the two cases that I'm aware of, the defendant was  
15 convicted on the retrial.

16 Q And, sir, if I told you that there have actually been seven  
17 if Suffolk Superior Court where seven defendants have been  
18 conducted on the retrial, would that change the advice you  
19 would give to a client?

20 A Well, I suppose it would change it in the sense that I  
21 would tell the client that there were seven instances, but I'm  
22 not sure that it -- other than the number, it would change my  
23 analysis.

24 Q Would it change your analysis because when you first  
25 testified in your narrative form, you said it would've been a



1 strong likelihood that we would've won at trial?

2 A I --

3 Q Does your analysis of that strong likelihood change with  
4 the fact that there have been seven trials and all seven  
5 defendants have been convicted?

6 A No.

7 Q You still have the same belief that you gave at the time?

8 A I do.

9 MR. TRESELER: I have nothing further, your Honor.

10 THE COURT: All right. Anything further you wish to say?

11 MR. ROITMAN: No, your Honor.

12 THE COURT: Okay. Thank you. You may step down.

13 (Witness excused.)

14 THE COURT: Any further evidence from the defendant?

15 MR. ROITMAN: No, your Honor.

16 THE COURT: The defendant --

17 MR. ROITMAN: The defense rests.

18 THE COURT: All right. Any evidence from the Commonwealth?

19 MR. TRESELER: No, your Honor.

20 THE COURT: Commonwealth rests. All right.

21 All right. Mr. Roitman?

22 MR. ROITMAN: Your Honor, the defendant, Hipolito Cruz, has  
23 in my view established the predicate of the -- of this  
24 particular proceeding that -- first that Annie Dookhan was  
25 involved as the analyst or chemist on his case as to all three

1 certificates. That's the first prong if you will. And the  
2 second prong is that had he known about Annie Dookhan's  
3 misbehavior or misconduct, he would not have pled guilty, and  
4 I think that he has testified to that unequivocally. Whether  
5 that's a sensible decision or not a sensible decision or  
6 whether it's a decision that Mr. Treseler would make or not  
7 make is not of any moment. The issue is would Mr. Cruz have  
8 made that decision, and it would've been his decision to make,  
9 his alone, and he has testified that had he known what he  
10 knows now, he would have proceeded to trial and not pled  
11 guilty.

12 And on that -- that basis, Mr. Cruz has established a --  
13 the evidence necessary for a motion for a new trial under the  
14 Scott decision, and we would ask your Honor to allow his  
15 motion for a new trial and let the case proceed forward as he  
16 acknowledged in his direct examination he does understand that  
17 should the motion for new trial be allowed, he is then facing  
18 the charges of the original indictment, trafficking in cocaine  
19 14 to 28 grams and distribution of a Class B substance second  
20 offense.

21 Thank you.

22 THE COURT: Thank you.

23 Mr. Treseler?

24 MR. TRESELER: Just -- just briefly, your Honor. I think  
25 what we have for evidence before us is -- is Mr. Roitman

1       testifying that he would've given different advice.

2       The second prong of Ferrara requires the Court to look at  
3       the totality of the circumstances and determine whether a  
4       reasonable person would have taken the plea at the time the  
5       plea was taken.

6       My contention is -- is that Mr. -- Mr. Roitman's advice is  
7       great, but it's not completely relevant to what the defendant  
8       would have done and what he did do.

9       So the real question is what would he have done had he  
10      known, and what I take away from the cross-examination is --  
11      is I don't think you can believe a word he said. Whether or  
12      not he would have or wouldn't have, his credibility was at  
13      issue from the get go denying where he went, what time he  
14      went, whether or not he was in trouble for having gone,  
15      whether or not he actually sold the substance to an undercover  
16      police officer. And in fact, it's borderline perjurious what  
17      he did in this Court today.

18      He doesn't have the right to come in and testify under oath  
19      and lie to the Court and lie to the people who are in the  
20      courtroom which is tantamount to what he did.

21      Some five, six years ago, he pled guilty under oath and  
22      stood up and raised his hand and pled guilty and said those  
23      are the facts. And today, he came before the Court, raised his  
24      hand, and said none of that's true. I lied on that date. I  
25      lied when I pled guilty. How can the Court take any credence

1 from any of his testimony as to what he would have done?

2 I don't know what the outcome is, your Honor, but what I do  
3 know is it's the Commonwealth's position that he hasn't  
4 provided satisfactory evidence, credible evidence, as to what  
5 he would have done because there wasn't quite frankly a whole  
6 lot coming out of his mouth that didn't contradict the prior  
7 plea.

8 I ask you to deny the defendant's motion.

9 THE COURT: All right. I'll take it under advisement.

10 MR. ROITMAN: Thank you, your Honor.

11 THE COURT: Thank you.

12 THE CLERK: The motion is under advisement.

13 (Discussion off the record.)

14 MR. ROITMAN: I'm sorry, your Honor. I just wanted to  
15 reference -- I did file a second supplemental memorandum that  
16 presents a legal argument as to why the motion for new trial  
17 should be allowed, and I wanted to make sure your Honor had  
18 that.

19 THE COURT: The Clerk has it.

20 THE CLERK: I believe I have it.

21 THE COURT: He --

22 MR. ROITMAN: And that I would --

23 THE CLERK: What's that entitled, Mr. Roitman?

24 MR. ROITMAN: It's entitled defendant's second supplemental  
25 memorandum in support of his motion for withdrawal of his

1 guilty plea and for a new trial.

2 THE COURT: Thank you.

3 MR. ROITMAN: And I would incorporate that legal argument as  
4 part of my presentation to the Court on this motion.

5 THE COURT: Thank you. I will take that under advisement.

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25 (Adjourned)



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August 27, 2014  
Date

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<sup>[1]</sup> 33:14  <b>way</b> <sup>[7]</sup> 9:4,6 18:10 39:12, 12,21 42:11</p>	<p><b>we'll</b> <sup>[8]</sup> 3:11,12 6:25 10:18, 23,23 25:8,8  <b>we're</b> <sup>[12]</sup> 3:9,14 11:13,14 14:8 15:8 16:7,9 21:11,20 22:13 43:15  <b>we've</b> <sup>[2]</sup> 15:12 48:7  <b>weigh</b> <sup>[2]</sup> 19:15 20:12  <b>weighed</b> <sup>[3]</sup> 29:6 30:4,7  <b>weighing</b> <sup>[1]</sup> 57:15  <b>weight</b> <sup>[8]</sup> 29:2 30:18 49:4, 8 53:2,5,9 54:7  <b>weights</b> <sup>[1]</sup> 30:10  <b>what's</b> <sup>[2]</sup> 22:25 62:23  <b>whatever</b> <sup>[1]</sup> 55:15  <b>whatsoever</b> <sup>[1]</sup> 39:9  <b>where'd</b> <sup>[1]</sup> 39:19  <b>where's</b> <sup>[1]</sup> 34:3  <b>whether</b> <sup>[10]</sup> 18:17 37:2 56:3 57:9 60:4,6 61:3,11, 14,15  <b>whittling</b> <sup>[1]</sup> 21:4  <b>who's</b> <sup>[1]</sup> 58:1  <b>whole</b> <sup>[2]</sup> 14:22 62:5  <b>will</b> <sup>[7]</sup> 7:1,16 11:3 12:5 21:24 60:1 63:5  <b>william</b> <sup>[1]</sup> 25:21  <b>willing</b> <sup>[1]</sup> 31:25  <b>wish</b> <sup>[2]</sup> 32:14 59:10  <b>wishes</b> <sup>[1]</sup> 16:19  <b>withdraw</b> <sup>[3]</sup> 5:24 32:14, 18  <b>withdrawal</b> <sup>[1]</sup> 62:25  <b>without</b> <sup>[1]</sup> 11:12  <b>witness</b> <sup>[23]</sup> 18:9,15,16,17, 23,24,25 22:7 34:1,4,6 36:8 44:1 46:2,4,10,12 48:1,3, 19 50:6,8 59:13  <b>witnesses</b> <sup>[2]</sup> 3:12 16:10  <b>won</b> <sup>[1]</sup> 59:1  <b>word</b> <sup>[1]</sup> 61:11  <b>work</b> <sup>[11]</sup> 20:3 23:8,10 40:15,16,22,24,24 41:8,10 54:9  <b>worked</b> <sup>[3]</sup> 34:17 40:1,2  <b>working</b> <sup>[6]</sup> 19:25 23:6 33:17,22 34:8,13  <b>worth</b> <sup>[1]</sup> 56:14  <b>wouldn't</b> <sup>[4]</sup> 20:18,23 49:9</p>	<p>61:12  <b>would've</b> <sup>[15]</sup> 5:23 15:6 21:2 31:11,25 32:2 53:24 54:1 56:3,24 57:19 58:25 59:1 60:8 61:1  <b>wrote</b> <sup>[1]</sup> 53:12</p> <hr/> <p style="text-align: center;"><b>Y</b></p> <hr/> <p><b>year</b> <sup>[11]</sup> 12:4,14,25 26:22 31:21 42:6,18,23 47:2 52:13,14  <b>years</b> <sup>[23]</sup> 12:2,7,8,8 13:8,8, 9,12 27:20,20,21,23,23 28:1 47:3,12 48:4 52:4,5,9,10, 11 61:21  <b>years'</b> <sup>[1]</sup> 47:17  <b>you're</b> <sup>[4]</sup> 4:2 32:24 50:5 56:6  <b>you've</b> <sup>[2]</sup> 29:14 55:20  <b>yourself</b> <sup>[3]</sup> 38:5,7 51:5</p> <hr/> <p style="text-align: center;"><b>Z</b></p> <hr/> <p><b>zone</b> <sup>[2]</sup> 13:1,4</p>
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**Commonwealth of Massachusetts  
SUFFOLK SUPERIOR COURT  
Case Summary  
Criminal Docket**

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**Commonwealth v Cruz, Hipolito**

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Details for Docket: SUCR2009-10595

**Case Information**

<b>Docket Number:</b>	SUCR2009-10595	<b>Caption:</b>	Commonwealth v Cruz, Hipolito
<b>Entry Date:</b>	05/14/2009	<b>Case Status:</b>	Criminal 6 Ctrm 906
<b>Status Date:</b>	09/05/2014	<b>Session:</b>	Disposed (appeal pending)
<b>Lead Case:</b>	NA	<b>Deadline Status:</b>	Amended sinc
<b>Trial Deadline:</b>	11/23/2009	<b>Jury Trial:</b>	NO

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**Parties Involved**

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2 Parties Involved in Docket: SUCR2009-10595

<b>Party Involved:</b>		<b>Role:</b>	Defendant
<b>Last Name:</b>	Cruz	<b>First Name:</b>	Hipolito
<b>Address:</b>	639 Tremont Street #4	<b>Address:</b>	
<b>City:</b>	Boston	<b>State:</b>	MA
<b>Zip Code:</b>	02118	<b>Zip Ext:</b>	
<b>Telephone:</b>			

<b>Party Involved:</b>		<b>Role:</b>	Plaintiff
<b>Last Name:</b>	Commonwealth	<b>First Name:</b>	
<b>Address:</b>		<b>Address:</b>	
<b>City:</b>		<b>State:</b>	
<b>Zip Code:</b>		<b>Zip Ext:</b>	
<b>Telephone:</b>			

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**Attorneys Involved**

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7 Attorneys Involved for Docket: SUCR2009-10595

<b>Attorney Involved:</b>		<b>Firm Name:</b>	SUFF03
<b>Last Name:</b>	Callahan	<b>First Name:</b>	Allison
<b>Address:</b>	1 Bulfinch Place	<b>Address:</b>	3rd floor
<b>City:</b>	Boston	<b>State:</b>	MA
<b>Zip Code:</b>	02114	<b>Zip Ext:</b>	2997
<b>Telephone:</b>	617-619-4000	<b>Tel Ext:</b>	
<b>Fascimile:</b>	617-523-5962	<b>Representing:</b>	Commonwealth, (Plaintiff)

<b>Attorney Involved:</b>		<b>Firm Name:</b>	SUFF03
<b>Last Name:</b>	Hinman	<b>First Name:</b>	Kathryn
<b>Address:</b>	1 Bulfinch Place	<b>Address:</b>	3rd floor
<b>City:</b>	Boston	<b>State:</b>	MA
<b>Zip Code:</b>	02114	<b>Zip Ext:</b>	2997
<b>Telephone:</b>	617-619-4000	<b>Tel Ext:</b>	4234
<b>Fascimile:</b>	617-619-4210	<b>Representing:</b>	Commonwealth, (Plaintiff)

<b>Attorney Involved:</b>		<b>Firm Name:</b>	MA130
<b>Last Name:</b>	Brown	<b>First Name:</b>	Timothy
<b>Address:</b>	44 Bromfield Street	<b>Address:</b>	#2
<b>City:</b>	Boston	<b>State:</b>	MA
<b>Zip Code:</b>	02108	<b>Zip Ext:</b>	
<b>Telephone:</b>	617-209-5500	<b>Tel Ext:</b>	
<b>Fascimile:</b>	617-523-0354	<b>Representing:</b>	Cruz, Hipolito (Defendant)

<b>Attorney Involved:</b>		<b>Firm Name:</b>	
<b>Last Name:</b>	Roitman	<b>First Name:</b>	Michael B
<b>Address:</b>	65a Atlantic Avenue	<b>Address:</b>	3rd Floor
<b>City:</b>	Boston	<b>State:</b>	MA
<b>Zip Code:</b>	02110	<b>Zip Ext:</b>	
<b>Telephone:</b>	617-367-6699	<b>Tel Ext:</b>	208
<b>Fascimile:</b>	617-720-4007	<b>Representing:</b>	Cruz, Hipolito (Defendant)

<b>Attorney Involved:</b>		<b>Firm Name:</b>	WALL05
<b>Last Name:</b>	Waller	<b>First Name:</b>	Geoffrey
<b>Address:</b>	345 Neponset Street	<b>Address:</b>	
<b>City:</b>	Canton	<b>State:</b>	MA

**Zip Code:** 02021 **Zip Ext:**  
**Telephone:** 781-562-0997 **Tel Ext:**  
**Fascimile:** 781-562-0787 **Representing:** Cruz, Hipolito (Defendant)

**Attorney Involved:** **Firm Name:**  
**Last Name:** Tripp **First Name:** Jessica L  
**Address:** The Law Office of Jessica Tripp **Address:** 540 Gallivan Blvd - #4  
**City:** Dorchester Center **State:** MA  
**Zip Code:** 02124 **Zip Ext:** 2997  
**Telephone:** 617-282-0244 **Tel Ext:**  
**Fascimile:** **Representing:** Cruz, Hipolito (Defendant)

**Attorney Involved:** **Firm Name:** SUFF03  
**Last Name:** Treseler **First Name:** Paul M  
**Address:** 1 Bulfinch Place **Address:** 3rd floor  
**City:** Boston **State:** MA  
**Zip Code:** 02114 **Zip Ext:**  
**Telephone:** 617-619-4000 **Tel Ext:**  
**Fascimile:** 617-619-4009 **Representing:** Commonwealth, (Plaintiff)

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## Calendar Events

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53 Calendar Events for Docket: SUCR2009-10595

No.	Event Date:	Event Time:	Calendar Event:	SES:	Event Status:
1	06/23/2009	09:30	Arraignment	CM	Event not held--joint request
2	06/29/2009	09:30	Arraignment	CM	Event held as scheduled
3	08/05/2009	09:30	Conference: Pre-Trial	CM	Event held as scheduled
4	08/18/2009	09:00	Conference: Lobby	1	Event not held--joint request
5	08/27/2009	09:30	Conference: Status Review	1	Event held as scheduled
6	09/08/2009	09:30	Status: Filing deadline	CM	Event not held--joint request
7	09/08/2009	09:30	Conference: Status Review	1	Event canceled not re-scheduled
8	09/23/2009	09:30	Status: Filing deadline	CM	Event not held--joint request
9	10/21/2009	09:30	Status: Filing deadline	CM	Event continues over multiple days
10	11/19/2009	09:00	Conference: Lobby	1	Event held as scheduled
11	12/08/2009	09:00	Conference: Final Pre-Trial	5	Event canceled not re-scheduled
12	12/11/2009	09:30	Hearing: Plea Change	1	Event not held--joint request

13	01/05/2010	09:00	TRIAL: by jury	5	Event canceled not re-scheduled
14	01/11/2010	09:30	Conference: Status Review	1	Event held as scheduled
15	02/10/2010	09:30	Hearing: Motion	1	Event not held--joint request
16	02/18/2010	09:30	Hearing: Motion	1	Event held as scheduled
17	03/30/2010	09:30	Conference: Status Review	1	Event held as scheduled
18	04/14/2010	09:00	Hearing: Evidentiary-suppression	9	Event rescheduled by court prior to date
19	05/05/2010	09:00	Hearing: Evidentiary-suppression	9	Event not held--joint request
20	05/11/2010	09:00	Hearing: Evidentiary-suppression	9	Event not held--joint request
21	05/11/2010	09:00	Conference: Final Pre-Trial	5	Event canceled not re-scheduled
22	05/17/2010	09:00	Hearing: Evidentiary-suppression	9	Event held as scheduled
23	05/26/2010	09:00	TRIAL: by jury	5	Event rescheduled by court prior to date
24	06/01/2010	09:00	Conference: Final Pre-Trial	5	Event held as scheduled
25	06/14/2010	09:00	Hearing: Plea Change	5	Event held as scheduled
26	06/14/2010	09:00	TRIAL: by jury	5	Event canceled not re-scheduled
27	09/07/2012	09:30	Hearing: Probation Initial Surrender	CM	Event held as scheduled
28	10/24/2012	09:30	Hearing: Probation Report	CM	Event not held--joint request
29	11/16/2012	09:30	Hearing: Probation Report	CM	Event not held--joint request
30	01/11/2013	09:00	Hearing: Appointment Counsel	1	Event not held--joint request
31	02/25/2013	09:00	Hearing: Probation Report	CM	Event not held--joint request
32	04/26/2013	09:30	Hearing: Probation Report	CM	Event not held--joint request
33	05/10/2013	09:30	Hearing: Probation Report	CM	Event held as scheduled
34	06/03/2013	09:30	Hearing: Probation Report	CM	Event not held--joint request
35	07/24/2013	09:30	Hearing: Probation Report	CM	Event not held--joint request
36	09/04/2013	09:30	Hearing: Probation Report	CM	Event not reached by Court
37	10/01/2013	09:30	Hearing: Probation Report	CM	Event held as scheduled
38	11/20/2013	09:00	Hearing: Probation Final Surrender	1	Event not held--joint request
39	12/18/2013	09:00	Hearing: Probation Final Surrender	1	Event held as scheduled
40	01/22/2014	09:00	Drug Lab: Status	10	Event held as scheduled
41	02/25/2014	09:00	Hearing: Probation Final Surrender	1	Defendant did not appear/default
42	03/14/2014	09:30	Hearing: Probation Report	CM	Event not held--joint request
43	04/01/2014	09:00	Drug Lab: Status	10	Event held as scheduled
44	04/10/2014	09:00	Drug Lab: Hearing Motion for New Trial	10	Event continues over multiple days
45	05/01/2014	09:00	Hearing: Probation Surrender	1	Event not held--joint request
46	05/06/2014	09:00	Drug Lab: Hearing Motion for New Trial	10	Event held as scheduled
47	05/08/2014	09:00	Hearing: Probation Final Surrender	1	Event not held--joint request
48	06/19/2014	09:30	Hearing: Probation Initial Surrender	CM	Event not held--joint request
49	07/16/2014	09:00	Hearing: Probation Report	1	Event rescheduled by court prior to date

50	08/21/2014	14:00	Hearing: Motion	6	Event held as scheduled
51	09/04/2014	14:00	Hearing: Motion	6	Event not held--joint request
52	09/11/2014	09:30	Hearing: Probation Report	CM	Event not held--joint request
53	12/09/2014	09:00	Hearing: Probation Surrender	1	

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## Full Docket Entries

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310 Docket Entries for Docket: SUCR2009-10595

Entry Date:	Paper No:	Docket Entry:
05/14/2009	1	Indictment returned
05/14/2009	2	MOTION by Commonwealth for arrest warrant to issue; filed & allowed
05/14/2009	2	Ball, J.
05/14/2009		Warrant on indictment issued
05/14/2009		Warrant was entered onto the Warrant Management System 5/14/2009
06/23/2009		Defendant not present, hearing continued until 6/29/2009 re:
06/23/2009		arraignment.
06/23/2009	3	Appearance of Deft's Atty: Timothy Brown - CPCS. Wilson, Mag - A.
06/23/2009	3	Callahan, ADA - ERD/JAVS - T. Brown, Attorney
06/29/2009		Defendant brought into court. Warrant recalled.
06/29/2009		Committee for Public Counsel Services appointed, to represent
06/29/2009		defendant (T. Brown)
06/29/2009		Legal counsel fee assessed in the amount of \$150.00 or 16 hours
06/29/2009		community service. Fee waived while in custody and to be satisfied
06/29/2009		within 60 days of release
06/29/2009		Deft waives reading of indictment
06/29/2009		Deft arraigned before Court
06/29/2009		RE Offense 1:Plea of not guilty
06/29/2009		RE Offense 2:Plea of not guilty
06/29/2009		Deft notified of right to request drug exam
06/29/2009		Bail set: \$100,000.00 Surety or \$10,000.00 cash, without prejudice.
06/29/2009		Bail warning read. Mittimus issued.
06/29/2009	4	Commonwealth files statement of the case
06/29/2009	5	Commonwealth files first notice of discovery
06/29/2009		Assigned to Track "A", see scheduling order
06/29/2009		Tracking deadlines Active since return date
06/29/2009		Continued to 8/5/2009 for pre trial conference by agreement
06/29/2009		Continued to 12/8/2009 for Final pre Trial conference by agreement
06/29/2009		Continued to 1/5/2010 for trial by agreement. Wilson, MAG - A.
06/29/2009		Callahan, ADA - ERD - T. Brown, attorney
06/29/2009		Case Tracking scheduling order (Gary D Wilson, Magistrate) mailed
06/29/2009		7/1/2009

08/06/2009		Defendant brought into court.
08/06/2009	6	Pre-trial conference report filed. Continued by agreement to 8/18/09
08/06/2009	6	for hearing re: lobby conference. Wilson, MAG - A. Callahan, ADA -
08/06/2009	6	ERD- T. Brown, Attorney.
08/11/2009	7	Commonwealth files notice of discovery.
08/18/2009		Defendant not in court. Continued to 8/27/09 by agreement for hearing
08/18/2009		re: Lobby/ Poss. Plea. Cratsley. J - A. Callahan, ADA - ERD - T.
08/18/2009		Brown, Atty
08/27/2009		Defendant brought into court.
08/27/2009		Continued to 9/8/09 by agreement for status hearing re: Change of
08/27/2009		counsel and Filing of Motions. Cratsely. J - G. Ogus, ADA - ERD- L.
08/27/2009		Travayiakis, Atty
09/08/2009		Defendant present, continued until 9/23/2009 by agreement to file
09/08/2009		motions. Wilson, MAG - A. Callahan, ADA - ERD - A. Rousseve, attorney
09/23/2009		Defendant not in Court
09/23/2009		Continued to 10/21/2009 by agreement for hearing on re: filing of
09/23/2009		motions. Wilson, Mag. - B. Fahy for A. Callahan, ADA - ERD - A.
09/23/2009		Rousseve, Attorney
10/21/2009		Defendant not present, hearing continued until 11/19/2009 re: lobby
10/21/2009		conference.
10/21/2009	8	Deft files motion for discovery. Wilson, Mag - A. Callahan, ADA -
10/21/2009	8	ERD/JAVS - A. Rousseve, Attorney
11/19/2009		Defendant not in court. Lobby Conference, held.
11/19/2009	9	Findings and Order on Motion to Continue Trial Date, filed. Ball. J (
11/19/2009	9	12/8/2009 FPTH CANCELLED)
11/19/2009		Continued to 12/11/2009 by agreement for hearing re: Change of Plea.
11/19/2009		Ball. J - A. Callahan, ADA - ERD - A. Rousseve, Atty
12/11/2009		Defendant not in court.
12/11/2009	10	New findings and order on motion to continued to trial date. "filed".
12/11/2009	11	Deft files: Motion for disclosure of information relating to the
12/11/2009	11	confidential informant
12/11/2009		Continued to 1/11/2010 for hearing re: Status and counsel and new
12/11/2009		Tracking order. Ball, J. - A. Callahan, ADA - ERD - A. Rousseve,
12/11/2009		Attorney
01/11/2010		Defendant not in court. Hearing re: Tracking order.
01/11/2010		After hearing new dates for tracking order
01/11/2010		Continued to 2/10/2010 by agreement for hearing re: Motion, re:
01/11/2010		Identity in the 1st Criminal Session (Ctrm 704)
01/11/2010		Continued to 5/11/2010 by agreement for hearing re: FPTH in the 5th
01/11/2010		Criminal Session (Ctrm 817)
01/11/2010		Continued to 5/26/2010 by agreement for hearing re: Trial in the 5th
01/11/2010		Criminal Session (Ctrm 817) (2/10/10 new filing date) (Court orders

01/11/2010		habe to issued South Bay on 2/10/10). Lauriat, J. - A. Callahan, ADA
01/11/2010		- ERD(LE) - T. Brown, Attorney
02/10/2010		Defendant not in court. Case continued to 2/18/2010 by agreement for
02/10/2010		hearing re: Motions and hearing re: Counsel. Lauriat. J - A.
02/10/2010		Callahan, ADA - ERD - J. Hanye, Atty
02/18/2010		Defendant brought into court.
02/18/2010		Defendant's Oral Motion to Dismiss Counsel is made and after is
02/18/2010		allowed.
02/18/2010	12	Attorney, Timothy Brown's MOTION to withdraw as counsel of record for
02/18/2010	12	Hipolito Cruz, filed
02/18/2010		Appointment of Counsel Michael B Roitman, pursuant to Rule 53
02/18/2010		After hearing, MOTION (P#12) allowed
02/18/2010		Legal Counsel Fees Waived for this appointment only
02/18/2010		Continued to 3/30/2010 by agreement for status hearing re: Discovery
02/18/2010		in the 1st Criminal Session (Ctrm.704) Lauriat. J - A. Callahan, ADA
02/18/2010		- ERD - M. Roitman, Atty
03/24/2010	13	Defendant's MOTION to suppress and affidaivt in support of
03/30/2010		Defendant not in court for hearing re: Motions
03/30/2010		After hearing, MOTION (P#7) allowed in part see endorsement
03/30/2010		Continued to 4/14/2010 by agreement for hearing re: Motion to
03/30/2010		Suppress in the 9th Criminal Session (Ctrm. 404) (Jail list at South
03/30/2010		Bay) Lauriat. J - A. Callahan, ADA - ERD (LE) - M. Roitman, Atty
03/30/2010		MOTION (P#11) denied without prejudice
04/09/2010		Motion session is unavailable on 4/14/10. Case is continued to
04/09/2010		5/5/2010 for hearing Re: Motions by agreement.
05/04/2010		Attorney Roitman contacts the 9th Session to the effect that he just
05/04/2010		impanelled at the BMC - Brook Courthouse, call received 1:20 PM this
05/04/2010		day. ADA Callahan appears in session. Justice Hely suggests May 11,
05/04/2010		2010 for hearing on motion to suppress in the 9th Session. Said date
05/04/2010		being the new FPTH date as Atty Roitman in newly-appointed. We are
05/04/2010		awaiting availability of Atty. Roitman for May 11, 2010 event. Habe
05/04/2010		to South Bay cancelled. Hely, J - A. Callahan, ADA
05/11/2010		Defendant brought into court. Case is continued to 5/17/10 for
05/11/2010		hearing Re: motions by agreement. Hely, J - A. Callahan ADA - M.
05/11/2010		Roitman ATTY - ERD.
05/11/2010	14	Commonwealth files 2 nd notice of discovery.
05/17/2010		Defendant brought into court.
05/17/2010		Hearing on deft's motion to suppress (Paper# 13 ) is held, matter
05/17/2010		taken under advisement. Hely,J - A. Callahan ADA - M. Roitman ATTY -
05/17/2010		ERD.
05/17/2010	15	Deft's motion for funds for a transcript of the Motion to suppress is

05/17/2010	15	filed and allowed.
05/24/2010	16	Deft files Supplemental memorandum in support of his Motion to
05/24/2010	16	Suppress
06/01/2010		Defendant not present.
06/01/2010	17	Filed: Joint Pre-Trial Memorandum.
06/01/2010	18	Commonwealth files Notice of Expert Witness.
06/01/2010		Case has a 6/14/10 Trial Date Fifth Session. Cratsley, J. - K.
06/01/2010		Hinman, ADA - M. Roitman, Attorney - R. Leroux, Court Reporter.
06/04/2010	19	Commonwealth files Opposition to deft's motion to suppress.
06/09/2010	20	Memorandum of decision and order denying the deft's motion to
06/09/2010	20	suppress ( Paper #13 ) is filed.
06/09/2010		MOTION to suppress (Paper #13 ) is denied (Charles Hely, Justice).
06/09/2010		Copies mailed 6/9/10
06/11/2010	21	Commonwealth files motion in limine for criminal records of potential
06/11/2010	21	jurors
06/11/2010	22	Commonwealth files motion in limine to admit expert testimony on
06/11/2010	22	controlled substances
06/11/2010	23	Deft files motion for suggested questions to the jury asked on an
06/11/2010	23	individual voir dire
06/11/2010	24	Deft files First motion in limine to exclude the expert testimony of
06/11/2010	24	Boston Police officer Robert England
06/11/2010	25	Deft files Second motion in limine to exclude expert testimony of
06/11/2010	25	analysts Della Saunders and Annie Khan
06/11/2010	26	Deft files Third motion in limine to eclude expert testimony of
06/11/2010	26	Boston Police Officer Sean Scannell concerning the actions of police
06/11/2010	26	K-9 Dog "Hans"
06/11/2010	27	Deft files Fourth motion in limine to exclude evidence of prior or
06/11/2010	27	subsequent bad acts
06/14/2010		Defendant brought into court for Trial.
06/14/2010		MOTION (P#21) allowed as endorsed.
06/14/2010		MOTION (P#22) allowed as endorsed.
06/14/2010		MOTION (P#25) denied as endorsed.
06/14/2010		MOTION (P#27) allowed as endorsed.
06/14/2010		Defendant offers to plead guilty as to Offense #001 as charged and as
06/14/2010		to so much of Offense #002 charging Unlawful Distribution of a Class
06/14/2010		B Controlled Substance First Offense.
06/14/2010		After hearing Court accepts defendant's offer to plead guilty.
06/14/2010		RE Offense 1:Guilty plea as agreed upon
06/14/2010		RE Offense 2:Guilty plea as agreed upon
06/14/2010	28	Waiver of defendants' rights, filed.
06/14/2010		Defendant warned per Chapter 278, Sec 29D of alien status
06/14/2010		Defendant warned per Chapter 22E Sec. 3 of DNA



06/14/2010		Defendant warned of potential loss of license.
06/14/2010		Commonwealth moves for sentencing.
06/14/2010		Defendant sentenced as to Offense #001: MCI-Cedar Not more than Three
06/14/2010		Years and One Day Not less than Three Years Nunc Pro Tunc to 314/09.
06/14/2010		Defendant sentenced as to so much of Offense #002: Probation Two
06/14/2010		Years From and After sentence imposed on Offense #001.
06/14/2010		Victim-witness fee assessed: \$90.00 to be paid during Probation.
06/14/2010		Drug Assessment Fee and Legal Counsel Fee : waived.
06/14/2010		Probation supervision fee assessed.
06/14/2010		On oral motion of the Commonwealth the Second and Subsequent portion
06/14/2010		of Offense #002 Dismissed. Defendant assenting thereto.
06/14/2010		Notified of right of appeal under Rule 64
06/14/2010		Abstract sent to RMV
06/14/2010		Court orders the body of Indictment #002 be amended to read Unlawful
06/14/2010		Distribution of a Class B Controlled Substance. Cratsley, J. - K.
06/14/2010		Hinman, ADA - M. Roitman, Attorney - F. Leroux, Court Reporter.
06/14/2010		Interpreter present: Farias, Maria on 6/14/2010
06/18/2010	29	Deft files Motion to Revise and Revoke (notified w/copy of docket
06/18/2010	29	sheets and motion - Cratsley, J. and K. Hinman, ADA)
05/07/2012		Victim-witness fee paid as assessed in the amount of 90.00
08/29/2012	30	Probation files Notice of Surrender and hearing(s) for alleged
08/29/2012	30	violation(s) of probation to appear on 9/7/2012
09/07/2012		Defendant comes into court, hearing continued until 10/24/2012 re:
09/07/2012		probation report. Surrendered by P.O. this day.
09/07/2012		Appointment of Counsel Geoffrey Waller, pursuant to Rule 53
09/07/2012		Legal counsel fee assessed in the amount of \$150.00 (Connie Wong,
09/07/2012		Magistrate)
09/07/2012		Deft released on personal recognizance in the sum of \$100.00 w/o/p.
09/07/2012		Bail warning read. Wong, Mag - Y. Laine, P.O. - ERD/JAVS - G. Waller,
09/07/2012		Attorney
10/24/2012		Defendant not present, hearing continued until 11/16/2012 re:
10/24/2012		probation report. Wong, Mag - Y. Laine, P.O. - ERD/JAVS
11/07/2012	31	Defendant's Motion To Vacate Guilty Plea (Drug Lab) with affidavit
11/16/2012		Defendant comes into court, hearing continued until 1/11/2013 re:
11/16/2012		Counsel's Motion to Stay Surrender Pending Resolution of Dist Court
11/16/2012		Matter. (Note: Dookhan Case). Wilson, Mag - E. Laine, P.O. - ERD/JAVS
11/16/2012		- B. Waller, Attorney
01/11/2013		Defendant comes into court, case continued until 2/25/2013 by
01/11/2013		agreement for filing of a probation report. McIntyre, J - Y. Laine,
01/11/2013		PO - ERD - G. Waller, Attorney
02/25/2013		Defendant comes into court, continued until 4/26/2013 re: probation
02/25/2013		report. Wilson, Mag - Y. Laine, P.O. - ERD/JAVS - G. Waller, Attorney

04/26/2013		Defendant comes into court, hearing continued until 5/10/2013 re:
04/26/2013		further filing of probation report. Wong, Mag - E. Laine, P.O. -
04/26/2013		ERD/JAVS - J. Waller, Attorney
05/10/2013		Defendant came into court. Surrendered this day by Probation Officer.
05/10/2013	32	Probation files Notice of Surrender and hearing(s).
05/10/2013		Deft released on personal recognizance in the amount of \$100.00. Bail
05/10/2013		Warning read.
05/10/2013		Continued to 5/3/2013 for hearing Re: Probation Report. Wilson, MAG -
05/10/2013		Y. Laine, PO - JAVS - G. Waller, Atty.
06/02/2013		Legal counsel fee paid as assessed in the amount of \$150.00
06/03/2013		Defendant comes into court, hearing continued until 7/24/2013 re:
06/03/2013		filing of probation report & further initial surrender. Wong, Mag -
06/03/2013		Y. Laine, P.O. - ERD/JAVS - G. Waller, Attorney
07/24/2013		Defendant comes into court, hearing continued until 9/4/2013 re:
07/24/2013		further filing of probation report. Wilson, Mag - Y. Laine, P.O. -
07/24/2013		ERD/JAVS - G. Waller, Attorney
09/04/2013		Defendant not present, case continued until 10/1/2013 by agreement
09/04/2013		for hearing Re: Probation Report. Wilson, MAG - W. Mitchell/K. Tate,
09/04/2013		PO - JAVS - J. Waller, Atty.
10/01/2013	33	Defendant comes into court, hearing continued until 11/20/2013 re:
10/01/2013	33	final surrender. Amended Notice of Surrender, filed.
10/01/2013	34	Agreed upon final surrender report filed. Wilson, Mag - D. Gibbons,
10/01/2013	34	P.O. - ERD/JAVS - G. Waller, Attorney
11/20/2013		Defendant not present, hearing continued until 12/18/2013 RE: Final
11/20/2013		Surrender. Ball, J. - P. Pietrella, Court Reporter - G. Waller,
11/20/2013		Attorney
12/18/2013		Defendant came into court.
12/18/2013	35	Probation files Amended Notice of Surrender and hearing(s) for
12/18/2013	35	alleged violation(s) of probation to appear on 12/18/2013
12/18/2013		Continued by agreement to 2/25/2014 for hearing re: Final Surrender
12/18/2013		in court room 704.Ball, Justice- S. Bolonos, ADA- ERD- G. Waller, Atty
01/08/2014		at request of Atty Roitman the within case is placed on Drug Session
01/08/2014		listing for the date of 1/22/14 for status hearing re possible
01/08/2014		request for stay of sentence.
01/22/2014		Defendant not present. Atty Roitman not present. By order of the
01/22/2014		court continued to 4/1/14 for status hearing. Atty Roitman to be
01/22/2014		contacted with date. Hinkle Sp Mag. P Treseler ADA. ERD
02/25/2014		Defendant not present
02/25/2014	36	Request filed by probation for a warrant (authorized) - VTP warrant
02/25/2014	36	to issue. Sanders, J - S. Bolanos, PO - ERD - G. Waller, Atty
02/25/2014	37	Probation files Amended Notice of Surrender
02/25/2014		VTP warrant issued; notice sent to probationer

02/26/2014	38	Deft files: Motion for a speedy trial
02/28/2014		Defendant brought into court on a true warrant printout - warrant
02/28/2014		ordered recalled.
02/28/2014		Assessment of \$75.00 re: warrant recall fee payable to the City of
02/28/2014		Boston. Probation notified.
02/28/2014		Appointment of Counsel Jessica L Tripp, pursuant to Rule 53 this day
02/28/2014		only
02/28/2014		Legal Counsel Fees Waived, this day only.
02/28/2014		Surrendered by the Probation Officer this day.
02/28/2014		Deft released on personal recognizance without surety in the sum of
02/28/2014		\$100.00, set without prejudice. Bail warning read.
02/28/2014		Continued to 3/14/2014 by agreement for hearing re: probation report
02/28/2014		in (CM Session, CtRm. 705) (Atty G. Waller notified). G. Wilson, MAG.
02/28/2014		- S. Bolonas, PO - J. Tripp, Attorney - JAVS
02/28/2014		No warrants in WMS. Discharged to issued. G. Wilson, MAG. - S.
02/28/2014		Bolonas, PO - J. Tripp, Attorney - JAVS
03/03/2014		Notice of outstanding warrant returned without service.
03/14/2014		Defendant comes into court, case continued until 5/1/2014 by
03/14/2014		agreement for hearing Re: Final Surrender. Wong, MAG - S. Bolanos, PO
03/14/2014		- JAVS - G. Waller, Atty.
04/01/2014		Defendant comes into court, Case continued until 4/10/2014 by
04/01/2014		agreement for hearing re new trial motion at 9:00 AM. Joint
04/01/2014		memorandum to be filed on or before 4/8/14. Hinkle, Sp Mag. P.
04/01/2014		Treseler, ADA. - M. Roitman, Atty.
04/10/2014		Defendant came into court
04/10/2014	39	Deft files Second supplemental memo in support of his motion for
04/10/2014	39	withdrawal of his guilty plea and for new trial
04/10/2014		Hearing re motion P#30 continued to 5/6/14. Gershengorn, Sp Mag. P.
04/10/2014		Treseler, ADA. M. Roitman, Atty. ERD.
04/10/2014	39	Deft files motion in limine to exclude or limit the testimony of the
04/10/2014	39	defendant
04/10/2014	39	Deft files motion in limine to exclude or limit the testimony of plea
04/10/2014	39	counsel.
05/01/2014		Defendant not present, Case continued until 5/8/2014 by agreement for
05/01/2014		hearing re final probation surrender. Ball, J. - G. Waller, Atty by
05/01/2014		phone.
05/06/2014		Defendant brought into court. Hearing re motion for new trial before
05/06/2014		Sp Mag Donovan(P#31). After hearing motion taken under advisement.
05/06/2014		Donovan, Sp Mag. P. Treseler, ADA. M. Roitman, Atty. ERD.
05/06/2014	39	Joint memorandum on motion to vacate conviction filed.
05/08/2014		Defendant came into court

05/08/2014	40	Probations files Amended notice of surrender
05/08/2014		Case continued until 6/19/2014 by agreement for hearing re intial
05/08/2014		probation surrender. McIntyre, J. - S. Bolanos, PO. - G. Waller,
05/08/2014		Atty. - JAVS.
05/14/2014	41	Deft's Motion for funds to obtain a transcript of his guilty plea
05/14/2014	41	colloquy and affidavit of Counsel filed and allowed
06/19/2014		Defendant comes into court, case continued until 7/16/2014 by a
06/19/2014		greement for further Probation report. Defendant sent to Attleboro
06/19/2014		with Recognizance. Wilson, MAG - S. Bolanos, PO - G. Waller, Atty -
06/19/2014		JAVS
07/08/2014	42	Court Proposed Finding of fact and ruling of law filed and denying
07/08/2014	42	deft's motion to withdraw guilty plea and for a new trial. Donovan,
07/08/2014	42	Sp Mag. (ADA and Atty notified with copies)
07/16/2014		Defendant came into court
07/16/2014		Continued to 9/11/2014 for filing of probation report(Magistrate)
07/16/2014		Christine Roach,Justice)S.Bolanos,APO; G.Waller,Atty; Javs
08/21/2014		Defendant came into court, hearing re: Deft's Objection to the
08/21/2014		proposed Order of the Special Magistrate held before Connors, J.
08/21/2014		After hearing Motion (P#43), matter taken under advisement
08/21/2014		Case has next event 9/11/14 re: filing of probation report (cm)
08/21/2014		Case continued until 9/4/2014 for further status hearing re: Defts'
08/21/2014		Motion(P#43). (906, 2pm, Non-custody). Connors, J. - P. Treseler,
08/21/2014		ADA. - M. Roitman, Atty. - P. Pietrella, C.R.
09/04/2014	43	Ruling on deft's motion to vacate and for new trial filed
09/05/2014	44	NOTICE of APPEAL FILED by Hipolito Cruz
09/11/2014		Defendant comes into court, case continued until 12/9/2014 by
09/11/2014		agreement for hearing Re: Final Surrender (20 min). Wilson, MAG - S.
09/11/2014		Bolanos, PO - G. Waller, Atty - JAVS

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## Charges

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2 Charges for Docket: SUCR2009-10595

No.	Charge Description:	Indictment:	Status:
1	COCAINE, TRAFFICKING IN c94C s32E(b)		Guilty plea as agreed upon
2	DRUG, DISTRIBUTE CLASS B, SUBSQ.OFF. c94C s32A(b)		Guilty plea as agreed upon

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COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

SUPERIOR COURT DEPARTMENT  
OF THE TRIAL COURT

DOCKET NO. SUCR 2009-10595

COMMONWEALTH

v.

HIPOLITO CRUZ

**DEFENDANT'S MOTION IN LIMINE TO  
EXCLUDE OR LIMIT THE TESTIMONY OF THE DEFENDANT**

The defendant, Hipolito Cruz, moves in limine to either admit his affidavit and exclude his testimony at the hearing on defendant's motion for a new trial or, in the event that the Court requires witness testimony from him, defendant moves in limine to limit his testimony to avoid the disclosure of confidential attorney/client communications and the disclosure of potentially incriminatory evidence. *United State Constitution, Fifth and Fourteenth Amendments and Article 12 of the Declaration of Right of the Massachusetts Constitution*. See e.g., *Commonwealth v. Goldman*, 395 Mass. 495, 499-501 (1985)(It is well-established that a witness may testify to certain events or communications without effectuating a general waiver of the proponent's privilege.) and *Commonwealth v. Birks*, 435 Mass 782, 788-89 (2002) (a judge who hears a motion for a new trial is well within her discretion to sustain objections to questions which may impermissibly elicit the content of privileged communications.). See also, *Mass. G. Evid.* §§ 523(b)(2); 523(c)(1).

Dated: April 8, 2014

HIPOLITO CRUZ

By his attorney,



Michael Roitman, Esq.

BBO#425720

65a Atlantic Ave., 3d Floor

Boston, MA 02110

(617) 367-6699

mroitman@socialaw.com

**CERTIFICATE OF SERVICE**

I hereby certify that I served a true copy of the above motion on April 8, 2014 by e-mail and by hand to: ADA Paul Treseler and ADA Vincent DeMore, III of the Suffolk County District Attorney's Office, One Bulfinch Place, Boston MA 02114-2997



Michael Roitman, Esq.

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

SUPERIOR COURT DEPARTMENT  
OF THE TRIAL COURT

DOCKET NO. SUCR 2009-10595

COMMONWEALTH

v.

HIPOLITO CRUZ

**DEFENDANT'S MOTION IN LIMINE TO  
EXCLUDE OR LIMIT THE TESTIMONY OF PLEA COUNSEL**

The defendant, Hipolito Cruz, moves in limine to either admit the affidavit of plea counsel, Michael Roitman, Esq. and exclude his witness testimony at the hearing on defendant's motion for a new trial as the averments in his affidavit are uncontested or, in the event that the Court requires witness testimony from plea counsel, defendant moves in limine to limit the testimony to avoid the disclosure of confidential attorney/client communications and the disclosure of potentially incriminatory statements of the defendant. *United State Constitution, Fifth and Fourteenth Amendments* and *Article 12 of the Declaration of Right of the Massachusetts Constitution*. See e.g., *Commonwealth v. Goldman*, 395 Mass. 495, 499-501 (1985)(It is well-established that a witness may testify to certain events or communications without effectuating a general waiver of the proponent's privilege.) and *Commonwealth v. Birks*, 435 Mass 782, 788-89 (2002) (a judge who hears a motion for a new trial is well within her discretion to sustain objections to questions which may impermissibly elicit the content of privileged communications.). See also, *Mass. G. Evid.* §§ 523(b)(2); 523(c)(1).

Also, to the extent that witness testimony from plea counsel is required, defendant requests that the Court make explicit rulings that Michael Roitman, Esq. is permitted to act both as a witness and as defense counsel in the hearing on defendant's motion for a new trial and that disqualifying Michael Roitman, Esq. as hearing or trial counsel would be a substantial hardship on the defendant. See, *Superior Court Rule 12* and *Rule 3.7(a)(3) of the Massachusetts Rules of Professional Conduct*.

Dated: April 8, 2014

HIPOLITO CRUZ

By his attorney,



\_\_\_\_\_  
Michael Roitman, Esq.  
BBO#425720  
65a Atlantic Ave., 3d Floor  
Boston, MA 02110  
(617) 367-6699  
mroitman@socialaw.com

**CERTIFICATE OF SERVICE**

I hereby certify that I served a true copy of the above motion on April 8, 2014 by e-mail and by hand to: ADA Paul Treseler and ADA Vincent DeMore, III of the Suffolk County District Attorney's Office, One Bulfinch Place, Boston MA 02114-2997



\_\_\_\_\_  
Michael Roitman, Esq.



COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT  
CRIMINAL ACTION  
NO. 09-10595

COMMONWEALTH

vs.

HIPOLITO CRUZ

**PROPOSED FINDINGS OF FACT AND RULINGS OF LAW**

**[On Defendant's Motion to Withdraw His Guilty Plea and For a New Trial]**

**BACKGROUND**

On May 14, 2009 the Grand Jury indicted the defendant, Hipolito Cruz (Mr. Cruz), for trafficking in a Class B controlled substance of 14 grams or more and for distribution of a Class B controlled substance as a subsequent offense in violation of G.L. c. 94c § § 32E(b) and 32A, respectively.

The drugs were taken to the Hinton State Laboratory in Jamaica Plain to be analyzed for the presence of illegal substances. Ms. Della Saunders was the primary chemist and Annie Dookhan was the confirmatory chemist.

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The defendant moved to suppress the evidence seized and after a hearing the motion was denied. The motion judge made comprehensive findings of fact including the testimony of the undercover officer, Greg Walsh who entered Mr. Cruz's Mazda in Dorchester and purchased six small backs of crack for \$100.00 in marked money which

was recovered from the defendant during the subsequent arrest. A search of his motor vehicle at the police station after a drug detecting dog alerted to the presence of drugs resulted in a bag of 15 grams of crack cocaine being recovered from a recessed area of the driver's door handle.

June 14, 2010 Mr. Cruz pled guilty to trafficking in Class B Controlled substance of 14 grams or more and distribution of a Class B controlled substance as a first offense. He admitted during the colloquy that an undercover officer called and made arrangement to buy \$100.00 of crack cocaine. He met the officer at McDonald's in Dorchester. The officer entered Mr. Cruz's Mazda and received the drugs in exchange for \$100.00 in marked money. Mr. Cruz was followed to Sbarro's restaurant where the manager confirmed Mr. Cruz just returned from 1 ½ hour break. He was arrested and recovered from him was the \$100.00 marked money.

He was sentenced to 3 years to 3 years and one day on the trafficking and 2 years probation from and after on the distribution of a Class B controlled substance. The subsequent offense portion was dismissed.

### **FACTS**

The following facts are based on the testimony I deemed credible and all the evidence submitted at the hearing on the motion to withdraw the guilty plea including the affidavits submitted by Mr. Cruz and his attorney.

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On March 14, 2009 Mr. Cruz worked at Sbarros Pizza at the Braintree Mall. He

began his shift at about noon and left at about 2:00 p.m. for lunch. He drove in his Mazda to McDonald's on Dorchester Ave. where he ordered a hamburger and a drink. He did not know whether there was a McDonald's in the Braintree Mall. While on his lunch break he did not recall receiving any phone calls on his cell phone and did not remember selling drugs to anyone. He returned to work and parked his car in the garage.

When Mr. Cruz returned to work the police arrived and observed the car keys on a basket in Mr. Cruz's work area. Mr. Cruz was arrested for selling drugs to an undercover officer. He did not see the canine dog alert to the presence of drugs in his car but his car was searched and recovered was more than 15 grams of what is alleged to be a Class B controlled substance. The police retrieved from his person at the time of the arrest the \$100.00 marked money given to purchase the drugs.

Mr. Cruz claims that he would have taken the risk of a 5 1/2 year mandatory sentence if found guilty during a trial because what he has learned since the plea about the processing of drugs at the Hinton Laboratory and Ms. Dookhan's involvement would have adversely affected the jury against the government's case such that he would not have been convicted. Mr. Cruz acknowledged that he had three prior drug offenses, arrests and convictions. He also claims that he would not have plead guilty because the police did not have a warrant to search his car. ~~Mr. Cruz had an opportunity to litigate~~ this issue at the motion to suppress hearing. Mr. Cruz was aware that he faced a 5 1/2 minimum mandatory sentence if found guilty by a jury.

Attorney Michael Roitman was Mr. Cruz's plea counsel and is his current counsel. He testified that if he knew of the problems at the state laboratory, he would challenged both the weight and the composition of the evidence seized, he would have advised Mr. Cruz that he would have a strong defense and he would have at least given him various options.

### ISSUES

Mr. Cruz raises three issues in support of his motion to withdraw his guilty plea and for a new trial. First, he alleges that his plea was not knowing and voluntary as a result of Ms. Dookhan's conduct and therefore was a violation of the 6<sup>th</sup> and 14<sup>th</sup> Amendments of the United States Constitution and Article 12 of the Declaration of Rights of the Constitution of the Commonwealth of Massachusetts. Secondly, he alleges that his due process rights were violated by the failure of the Commonwealth to provide true and accurate discovery. Finally, he argues that the information pertaining to Ms. Dookhan is newly discovered evidence.

### DISCUSSION

In Commonwealth v. Scott, 467 Mass. 336, (2014) the Court addressed several issues arising out of the drug testing practice and procedure at the Hinton Laboratory in Jamaica Plain, Massachusetts.<sup>1</sup> The Court distinguished the functions of the primary

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<sup>1</sup>See Commonwealth v. Scott, 467 Mass. 336 (2014) for the facts leading up to the decision in that case.

chemist from that of the secondary chemist. The Court noted that the primary chemist did a simple bench top test that included color tests, microcrystalline analysis and ultra violet visualization. The primary chemist was in charge of the drug sample and was responsible for taking a small sample and preparing it for the secondary chemist who would place it in instrumentations such as the Mass Spectrometry, Infrared Spectroscope and Gas Chromatography to be compared to a known sample. The secondary chemist after running the sample through the machine would report the results to the primary chemist and the two chemists would confer to insure that the results were aligned.

When the testing is completed the primary chemist returns the sample to the laboratory evidence officer who prepares a document certifying the results of the chemical composition of the substance tested and the weight as supplied by the primary chemist. The certificate of analysis is signed by both chemists and their signatures are notarized.

In Mr. Cruz's case, Ms. Dookhan was the secondary chemist who received the sample from Ms. Saunders and ran it through the machine to confirm Ms. Saunders' findings as to the composition of the matter being tested.

In Scott, the Court looked to the two prongs test set forth in Ferrara v. United States, 456 F.3d 278, 290 (1<sup>st</sup> Cir. 2006) to resolve the issues emanating from the Hinton Laboratory. Scott, 467 Mass. at 346-358. The Court ruled that where Ms. Dookhan signed the certificate of the analysis either as the primary or secondary chemist, the

defendant is entitled to a conclusive presumption that Ms. Dookhan's conduct occurred in the defendant's case; it was egregious and that is attributable to the Commonwealth.

Scott, 467 Mass. at 354.

With the conclusive presumption in hand a defendant need only prove the second prong of Ferrara , 456 Fed. 3d. at 294; that is, the defendant need only show that there was a reasonable probability<sup>2</sup> that if he had knowledge of Ms. Dookhan's misconduct it would have materially influenced his decision to plea. Scott 467 Mass. at 354-355. The Court in Scott adopted the totality of the circumstances test as set forth in Ferrara, 456 Fed. 3d. at 294. Id. at 355-356. There the Federal Court set forth five factors that should be considered in determining whether there was a reasonable probability. Ferrera, 456 Fed. 3d. at 294. The factors are: 1) whether evidence of the misconducted could have detracted from the factual basis used to support the guilty plea; 2) whether the evidence could have been used to impeach witness whose credibility may have been outcome could have determinative; 3) whether evidence was accumulative of other evidence in the defendant's possession; 4) whether the evidence would have influenced the attorney's recommendation as whether to accept the offer; and 5) whether the value of the evidence was outweighed by the benefit of entering a plea agreement. Id. The Scott Court added other factors such as: 1) whether the defendant had substantial grounds of a defense on which the defendant had placed particular emphasis in deciding whether to accept the

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<sup>2</sup>See footnote 16 in Scott. "A 'reasonable probability' is a probability sufficient to undermine confidence in the outcome". United States v. Bagley, 473 U.S. 667, 682 (1985).

offer; 2) whether the defendant was indicted on additional charges or whether drug related charges were a minor component of a overall plea agreement; 3) circumstances of the defendant's arrest; 4) whether the Commonwealth had possessed circumstantial evidence tending to support the charges of drug possession; 5) the terms of the sentence reduction received by agreeing to plea. Scott, 467 Mass. at 356-357.

A. Was Mr. Cruz's Plea Voluntary and Knowing

In analyzing the first factor set forth in Ferrara, I have reviewed both the facts Mr. Cruz pled too and his motion testimony. Mr. Cruz claims he did not recall receiving a telephone call purportedly from an undercover officer and could not recall selling drugs to a person while on Dorchester Ave at McDonald's. At the time of his arrest the police recovered the marked \$100.00 the undercover officer gave during the buy. The police brought a canine dog to the police station where Mr. Cruz's car was taken. When the drug sniffing dog alerted to odor the motor vehicle was searched and the police recovered what purported to be 15 grams of a Class B controlled substance. It is interesting that Mr. Cruz recalls having a hamburger and a drink at McDonald's but can not recall selling a substance to undercover Officer Walsh in Mr. Cruz's Mazda and receiving \$100.00 which was subsequently recovered from his person during the arrest.

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~~Ms. Dookhan's improprieties, in general, could clearly be used to impeach her~~  
credibility. However, this evidence is outweighed by the extent of the Commonwealth's evidence. Thus, impeachment would not be outcome determinative. There was no

evidence that Ms. Dookhan tampered with the evidence after Ms. Saunders primary findings of positive for cocaine. The jury would have the evidence that the \$100.00 dollars by money used by the undercover officer during the buy was recovered from Mr. Cruz at the time of his arrest. The Commonwealth had evidence from other sources, adding to the strength of its case to more than offset the potential impeachment impact of Ms. Dookhan's testimony as a secondary chemist.

Mr. Cruz's attorney claims that if he had evidence regarding Ms. Dookhan, he would have had other options to present to his client. However, the plea resulted in the defendant serving not the five years of a minimum mandatory sentence, but three years. The defendant has not set forth any substantial grounds of a defense on which he may have placed particular emphasis in deciding whether or not to accept the plea. The fact is the evidence was overwhelming that Mr. Cruz did sell drugs to an undercover officer and did have in his vehicle 15 grams of a purported substance preliminarily tested by Ms. Saunders as a Class B controlled substance. At the time of the arrest he was in possession of the \$100.00 marked money provided by the undercover officer.

Applying the reasonable probability analysis to the actual facts and circumstances Mr. Cruz has failed to establish that his guilty plea was involuntary under the Ferrara analysis because he has been unable to demonstrate under the second prong that

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knowledge of Ms. Dookhan's misconduct would have may materially influenced his decision to plea guilty. See Scott, 467 Mass. at 355-358; Ferrara, 456 F.3d at 294.

B. Newly Discovered Evidence and Failure to Provide Accurate Discovery



The defendant also raises two other grounds in support of his motion to withdraw his guilty plea and for a new trial. First, Mr. Cruz asserts that his due process rights were violated when the Commonwealth failed to provide true and accurate discovery to the defendant regarding Dookhan's misconduct and the investigation surrounding the Hinton drug lab. Second, he argues that this information would also constitute newly discovered evidence that casts real doubt on the justice of the Mr. Mr. Cruz's conviction.

The defendant in Scott, also raised both of these issues. 467 Mass. at 358-362. However, the SJC found that it was not necessary to address those issues because the findings that were ordered to be made on remand, regarding prejudice under the second prong of the Ferrara analysis, "should be sufficient to dispose of all the grounds on which the defendant raised his motion to withdraw his guilty plea." Id. at 362.

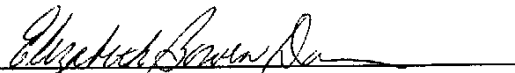
The Court determined that adopting the reasonable probability standard set out in Clarke, would be "the most appropriate formulation" to apply to defendants seeking to withdraw a guilty plea based on either newly discovered evidence or prosecutorial nondisclosure. Id. at 361; see Commonwealth v. Clarke, 460 Mass. 30, 46-47 (2011). Moreover, because the reasonable probability standard adopted in Clarke "mirrors" the second prong of the Ferrara analysis, Scott, 467 Mass. at 356, a defendant who is unable to make a showing of prejudice under Ferrara, would also be unable to make the showing of prejudice required by the other two grounds as well. Id. at 361; see Clarke, 460 Mass. at 47; Ferrara, 456 F.3d at 294. .

In this case, as previously stated, the defendant has failed to demonstrate a reasonable probability that had he known of Dookhan's misconduct, he would not have pled guilty and would have insisted on taking his chances at trial. Scott, 467 Mass. at 358; see Clarke, 460 Mass. at 47; Ferrara, 456 F.3d at 294. Because this showing of prejudice is required for him to succeed on either his newly discovered evidence claim or his prosecutorial nondisclosure claim, the defendant's motion is also **DENIED** on both of these grounds.

CONCLUSION

Mr. Cruz has failed to demonstrate a reasonable probability that he would not have pled guilty, given the totality of the circumstances, if he was aware of Ms. Dookhan's misconduct. His motion for a new trial is denied.

By the Court,

  
Elizabeth Bowen Donovan  
Justice of the Superior Court(Ret)

**DATED:** July , 2014

**COMMONWEALTH OF MASSACHUSETTS**

**SUFFOLK, ss**

**SUPERIOR COURT  
INDICTMENT NO. SUCR2009-10595**

**COMMONWEALTH**

**v.**

**HIPOLITO CRUZ**

**RULING ON DEFENDANT'S MOTION  
TO VACATE PLEA AND FOR NEW TRIAL**

The defendant, Hipolito Cruz, was indicted on charges of trafficking a Class B substance and second offense of distribution of a Class B substance. His case was resolved on June 14, 2010 when, represented by counsel, he negotiated a plea on the former charge in which he was given a sentence of three years to three years and a day, the minimum possible sentence on that charge, *nunc pro tunc* to March 14, 2009. As part of that plea negotiation, the second offense portion of the other charge, to which attached a mandatory prison sentence, was dismissed, and he accepted a sentence of two years probation from and after.

After the defendant's release from the committed portion of his sentence, he was brought before the court on August 29, 2012 for alleged violation of probation he had received on the second count. Before that surrender petition could be heard, the defendant filed a motion for new trial on November 7, 2012. His motion was premised upon the fact that Annie Dookhan, who has since been convicted of crimes relating to her work at the Hinton Drug Laboratory, had been the "confirmatory chemist" on the official analysis of the substances which Cruz had pled guilty to having distributed and possessed. The case was then continued from time to time pending resolution of the new trial motion which sought to vacate the underlying plea upon which the

probation surrender was premised. During that period, the Department of Probation filed several motions to amend its notice of probation violation; however, no action was taken, apparently given the pendency of the new trial motion.<sup>1</sup>

On May 6, 2014, an evidentiary hearing on Cruz' new trial motion was convened before Special Magistrate of the Superior Court Elizabeth Bowen Donovan. At that hearing, testimony was received from the defendant and from his plea counsel Michael Roitman. After the hearing, the Special Magistrate issued her Proposed Findings of Fact and Rulings of Law. In that document, she concluded that Cruz had failed to sustain his evidentiary burden of establishing his right to vacate his plea and to be given a new trial. She noted, *inter alia*, that Cruz had been given a significant benefit in the plea agreement adopted, in which as originally charged he had faced a minimum mandatory sentence of five and one-half years in prison. She also noted the strength of the Commonwealth's case, given that Cruz had pled guilty to having made a hand-to-hand sale to an undercover police officer; that the \$100.00 marked drug purchase money was later recovered from Cruz' person, and that the substance which resulted in the intent to distribute second offense count had been recovered from within his vehicle from a secreted area inside the driver's door handle.

The Special Magistrate concluded with a determination that Cruz had failed to demonstrate a reasonable probability that he would have rejected the plea deal and elected to have gone to trial had he known of Dookhan's misconduct, under the standard enunciated for

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<sup>1</sup> The latest surrender notice, filed on May 8, 2014, sets forth fifteen separate violations against Cruz. While a few involve other types of violation such as failure to report and to pay supervision fee, the great bulk, some eleven, relate to new alleged criminal conduct while Cruz was on probation after his prison release. These include counts of assault and battery upon a pregnant female, intimidation of a witness, driving to endanger, and threats.

such motions in *Commonwealth v. Scott*, 467 Mass. 336 (2014). Following the issuance of that written ruling, the defendant timely filed an objection, requesting the court not accept the findings and rulings.

Under the extraordinary circumstances which arose in the wake of the revelations relating to Dookhan concerning drug-testing at the Hinton Laboratory, Special Magistrates were appointed by the Chief Justice of this Court pursuant to Mass. R. Crim. P. 47. Those Magistrates pursuant to the Rule were empowered “to conduct hearings on post conviction motions, to issue orders regarding discovery, and other matters, and to make proposed findings and rulings to the Regional Administrative Justice.” *Commonwealth v. Charles*, 466 Mass. 63, 76 (2013). Those Special Magistrates, as the Supreme Judicial Court has recognized, “in the first instance, serve a critically important role in addressing the extraordinary demands placed on the Superior Court by the Hinton drug lab cases.” *Id.* Analogizing to the provision for appointment of a special master in civil matters pursuant to Mass. R. Civ. P. 53, the Supreme Judicial Court posited the charge to a Magistrate appointed under Rule 47 as “to hear evidence in connection with any action and report facts,” further observing that “the court shall accept the master’s subsidiary findings of fact unless they are clearly erroneous, mutually inconsistent, unwarranted by the evidence before the master as a matter of law or are otherwise tainted by error of law.” *Id.*, quoting Mass. R. Civ. P. 53 (other citations omitted).

The Commonwealth argues that this court accept the Special Magistrate’s findings and deny the defendant’s new trial motion. The defendant raises several challenges to the findings in his objection. He contends that the Magistrate improperly required him to surrender his right against self-incrimination and his privilege not to divulge confidential communication with his

attorney during the evidentiary hearing. Additionally, he argues that she improperly disregarded testimony that should have led her factually to have concluded that he would not have pled had he known of Hinton Laboratory wrongdoing. Finally, he argues that she committed error of law in not separately addressing whether Cruz, armed with knowing of that wrongdoing, would have struck a more favorable plea deal than that which he entered, as a separate ground for vacating his plea apart from consideration of reasonable probability that he would have taken his case, as originally charged, to trial.

On the first point, the defendant in his memorandum in support of motion asserts in conclusory fashion without specifics that questioning during the evidentiary hearing abridged his constitutional and common law rights. To the extent that issues are raised in the defendant's objection concerning his self-incrimination right and the attorney-client privilege, these are rejected. The burden of satisfying the second prong of the analysis in weighing the merits of a defendant's new trial motion in the circumstances of government misconduct alleged here--that he was prejudiced in having made his plea--rests upon the defendant. See *Commonwealth v. Scott*, 467 Mass. at 354-355. In shouldering that burden, plainly the issue of advice given the defendant by his counsel is relevant. *Id.*, at 355 (noting the fourth of five factors cited from *Ferrara v. United States*, 456 F.3d 278, 290 (1<sup>st</sup> Cir. 2006) as "whether the evidence would have influenced counsel's recommendation as to whether to accept a particular plea offer"). Additionally, the *Scott* ruling implicates centrally in the individualized assessment of whether a defendant would have pled guilty issues relating to the strength of the case with which the defendant was confronted. *Scott*, 467 Mass. at 356 ("factors may include whether then defendant had a substantial ground of defense that would have been pursued at trial or whether any other

special circumstances were present on which the defendant may have placed particular emphasis in deciding whether to accept the government's offer of a plea agreement." ). The court has been shown nothing that would lead it to conclude that the Special Magistrate in her conducting of the hearing or in her decision violated the rights of the defendant.

On the issue concerning the defendant's second point, that she "disregarded" testimony favorable to him, this ignores the central nature of judicial fact-finding. The Magistrate was not, as the defendant appears to suggest in his memorandum, bound to accept his representation that he would have taken his chances at trial had he known of Dookhan's malefaction. Nor was she bound to be convinced by the testimony of his plea counsel that, in hindsight, he would have advised Cruz not to plead had he known, and as a necessary corollary to Cruz in making his case for new trial, that his client would have elected to follow any such advice.

Finally, the defendant asserts that the Magistrate erred in not separately addressing the claim he now raises that his plea should be vacated on the grounds that, had he known of the lab wrongdoing, he could have negotiated a lighter sentence, as opposed to assessment of whether he would have chanced trial. In his memorandum, he cites the *Scott* ruling as supportive of his contention. Review of that case, however, reveals no direction that consideration of a new trial motion in this context must be bifurcated in some fashion to consider likelihood of a more favorable plea separate and apart from the retrospective analysis of the existence of a reasonable probability that the defendant would have elected to have proceeded to trial, with all attendant risks, on the indictment as originally charged, rather than having taken a plea reduction and

sentence.<sup>2</sup>

**Order**

For the reasons set forth as asserted, the court determines that the proposed findings of fact and rulings of law of the Special Magistrate are accepted. The defendant's motion for new trial is **Denied**.

Date: September 1, 2014



Thomas A. Connors  
Justice of the Superior Court

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<sup>2</sup> The defendant in his memorandum also raises two other points upon which he faults the Magistrate's proposed findings. First, he contends that she erred by noting in her findings that there was no evidence that Dookhan had tampered with the specific sample in Cruz' case. That observation, however, only alluded to that fact as it related to Cruz' claim of prejudice in the Magistrate's weighing particularized evidence that might be involved in his decision whether or not to proceed to trial; she plainly had acknowledged in the earlier part of her decision that Cruz benefitted from the role Dookhan played as confirmatory chemist, noting expressly the "conclusive presumption" which relieved him of any burden of establishing egregious government misconduct, in conformity with the principles set forth in *Scott*. The defendant makes an additional, and somewhat confusing, argument that the Magistrate committed legal error in the standard applied through use of the language of "reasonableness" of plea rejection versus "rational" nature of plea rejection. The language the Magistrate employed in her conclusion, that Cruz "has failed to demonstrate a reasonable probability that he would not have pled guilty," is on all fours with the requisite standard prescribed. *Scott*, 467 Mass. at 356. There was no error.



COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

SUPREME JUDICIAL COURT  
FOR SUFFOLK COUNTY  
No. SJ-2014-0005

SUFFOLK SUPERIOR COURT  
NO. SUCR2005-10537  
(Bridgeman)  
NO. SUCR2007-10959  
(Bridgeman)

BOSTON MUNICIPAL COURT  
NO: 0501-CR-0142  
(Creach)

ESSEX SUPERIOR COURT  
NO: ESCR2007-1535  
(Cuevas)

KEVIN BRIDGEMAN, YASIR CREACH and MIGUEL CUEVAS

vs.

DISTRICT ATTORNEY FOR SUFFOLK COUNTY and DISTRICT ATTORNEY FOR  
ESSEX COUNTY

PROTECTIVE ORDER RESTRICTING DISCLOSURE OF PERSONAL  
IDENTIFYING INFORMATION

It is hereby ordered that any personal identifying information of so-called Dookhan defendants, including but not limited to their dates of birth and social security numbers, as provided to CPCS by the District Attorney for the Eastern District on a "Combined Essex Meier List," shall be subject to

the following conditions:

1. No such information shall, at any time and under any circumstances, leave the custody of CPCS without written permission of the Court and for good cause shown, with the exception that attorneys in the Bar Advocate Program who believe they may have represented a so-called Dookhan defendant, or who might at a later date represent such a defendant, may access the Combined Essex Meier List for the sole purpose of identifying such defendants. Bar advocates may only gain such access subject to a signed non-disclosure agreement;
2. No such information shall be duplicated without written permission of the Court and for good cause shown, with the exception of minimal duplication within CPCS to facilitate its notification effort;
3. No such information shall be disseminated via electronic communication such as email; CPCS may use such information to identify and locate individuals using internet-based search platforms and state-operated databases such as the Registry of Motor Vehicles, with the condition that the information entered pursuant to such searches does not identify the individual to be located as a criminal defendant;
4. In the event that such information is disclosed or displayed to any individual assisting in CPCS's notification effort, such individual shall be prohibited from further disclosing or disseminating any such information to any person not directly involved in CPCS's notification effort.

By the Court, (Botsford, J.) *ML*

*James E. Dwyer*  
Assistant Clerk

ENTERED: October 6, 2014

COMMONWEALTH OF MASSACHUSETTS  
SUPREME JUDICIAL COURT

SUFFOLK, ss.

SJ-2014-0005

KEVIN BRIDGEMAN & others vs. DISTRICT ATTORNEY FOR THE SUFFOLK  
DISTRICT & others.

RESERVATION AND REPORT

This is the latest in a series of cases that have come before the court concerning the William A. Hinton laboratory, the misconduct of Annie Dookhan, and the rights of defendants who were convicted of drug offenses in cases where Dookhan was either the primary or secondary chemist (referred to by the parties as the “Dookhan defendants”).

Claims made in petition. The three petitioners in this case pleaded guilty to various drug offenses in 2005, 2008, and 2009. One of them, Miguel Cuevas, has moved in the trial court for a new trial, i.e., to vacate his plea. The other two, Kevin Bridgeman and Yasir Creach, have not yet sought postconviction relief. Bridgeman avers in an affidavit that he is reluctant to seek relief at this time because he is concerned that, if he is successful in vacating his plea, he might “be prosecuted for the serious charges which the Commonwealth moved to dismiss [as part of his negotiated plea agreement] and be sentenced to a longer prison term” than he had received for the offenses to which he pleaded guilty.

Together the petitioners commenced this action pursuant to G. L. c. 211, § 3, asking the court for two forms of relief. First, they ask the court to declare that any defendant who has been convicted of a drug offense,<sup>1</sup> who successfully obtains a new trial based on Dookhan's misconduct, cannot thereafter be convicted of more serious offenses than those of which he or she originally stood convicted, or given longer sentences than were originally imposed. Second, they ask for an order requiring those district attorneys who prosecuted Dookhan defendants to notify all such defendants within ninety days whether they intend to re-prosecute them;<sup>2</sup> vacating the convictions in any cases where the defendants are not so notified; and requiring that any re-prosecutions be concluded within six months. The relief sought by the petitioners obviously extends beyond their individual circumstances and would apply to all of the Dookhan defendants.

Motion to intervene. The petition was filed in the county court shortly before the full court's decisions in Commonwealth v. Scott, 467 Mass. 336 (2014), and the related cases. After Scott was decided, the Committee for Public Counsel Services moved to intervene in the case, joining in the relief sought by the petitioners and seeking additional relief applicable to all Dookhan defendants. For example, CPCS seeks a ruling that would permit any attorney who represented a Dookhan defendant at the plea stage and who also represents the defendant on a motion for a new trial, to testify at a hearing on the motion regarding the circumstances of the plea without withdrawing from representation. Further, CPCS seeks a ruling that any defendant's testimony at a hearing on a motion for a new trial could not be used in a subsequent

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<sup>1</sup> The petitioners do not distinguish between defendants who were convicted after trial and those who pleaded guilty.

<sup>2</sup> The petitioners apparently would have prosecutors so notify all of the Dookhan defendants, even those who have not yet sought and obtained relief from their convictions.

re-prosecution of the defendant.<sup>3</sup> CPCS does not represent any of the individual petitioners in this case. Rather it seeks to intervene purportedly to assert and protect the interests of the numerous other Dookhan defendants for whom it will inevitably be called on to supply (or is already supplying) representation.

In short, both the individual petitioners and CPCS seek comprehensive relief that would affect not only these three individuals, but also all of the other defendants whose convictions may have been tainted by Dookhan's misconduct. In the unique circumstances of this case – where everyone agrees that there are tens of thousands of potentially tainted convictions, each one being a possible candidate for a motion for new trial – I believe that the interests of justice require the court to attempt to resolve as many of the common issues as can properly be resolved at this juncture and on this record. Toward that end, I will send to the full court both the claims raised by the individual petitioners and those additional issues raised by CPCS in its motion to intervene that it has indicated in its letter dated September 26, 2014, it wishes to press before the full court.

At the same time, I am mindful of the district attorneys' objections to CPCS's motion to intervene. I am of the view that the motion to intervene itself is something that ought to be decided by the full court. Therefore, rather than ruling on the motion as a single justice, I will reserve and report it to the full court as well. The full court will thus have before it both the motion to intervene, and, if it allows the motion, the issues raised by CPCS as intervener. If the full court determines that CPCS should not be permitted to intervene, it need not consider CPCS's separate issues and arguments.

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<sup>3</sup> CPCS raised other issues as well in its motion to intervene, but in a letter to the court dated September 26, 2014, has limited the issues that it wishes to press before the full court if the matter is reserved and reported.

Order. Accordingly, I hereby reserve and report to the full court the entire matter that is presently before me, namely:

- the petition pursuant to G. L. c. 211, § 3, and the two specific claims for relief that it raises;
- the motion to intervene filed by CPCS, and the specific issues that CPCS has identified in its letter dated September 26, 2014, that it wishes to raise before the full court; and
- the motion to supplement the record filed by CPCS on October 7, 2014.

The reservation and report is based on all of the pleadings, motions, and other materials that have been filed before me in the case to date. In this way, the record before the full court will consist of everything that is now before me, as is.

Finally, given the unique circumstances of the controversy created by Dookhan's work at the Hinton laboratory and its far-reaching impacts on Dookhan defendants, their attorneys, prosecutors, the Trial Court, and the administration of the criminal justice system in the Commonwealth, I ask the full court, when deciding the case, to consider whether it might be fruitful for the court to undertake to examine the possibility of a more systemic approach to addressing the impacts of the controversy than the individualized, case-specific remedy that the court envisioned in Scott; and if so, what the process for such an examination might be. I am not suggesting that the court will be able to produce in this case the heretofore elusive "global remedy." I am only suggesting that all concerned might benefit from the court's consideration of the feasibility of exploring that possibility, and any guidance the court can give and any process it might be able to supply at this time in furtherance of that end.

Briefing. The petitioners and CPCS shall file their briefs first. CPCS's brief shall address the motion to intervene, any arguments it wishes to make as an intervener on the claims made in the petition, and its arguments on the additional issues identified in its September 26 letter. The district attorneys shall then file their briefs, and the petitioners and CPCS will have

an opportunity to file reply briefs. The parties are to work out the precise dates for the briefing schedule with the clerk of the full court. The case will be tentatively scheduled for the full court's January, 2015 sitting.

Margot Botsford

Margot Botsford  
Associate Justice

Dated: 21 October 2014