

Volume: I
Pages: 1-157
Exhibits: 203-204

COMMONWEALTH OF MASSACHUSETTS
HAMPDEN, SS SUPERIOR COURT DEPARTMENT
OF THE TRIAL COURT

COMMONWEALTH OF MASSACHUSETTS

vs.

Erick Cotto	07-0770
Jermaine Watt	09-1068; 09-1069
Lizardo Vega	09-0097
Omar Harris	10-1233
Wendell Richardson	12-0399
Fiori Liquori	12-0624
Rolando Penate	12-0083
Omar Brown	05-1159
Bryant Ware	07-1072; 09-1072;
	10-0253
Glenda Aponte	12-0226

MOTION FOR NEW TRIAL
BEFORE THE HONORABLE RICHARD J. CAREY

APPEARANCES:
(see next page)

Hampshire Superior Court
15 Gothic Street
Northampton, Massachusetts
December 8, 2016

ALICIA CAYODE KYLES
Official Court Stenographer
Registered Merit Reporter

APPEARANCES:

For the Commonwealth:

Office of The Attorney General Maura Healey:
Assistant Attorney General Thomas Caldwell
Assistant Attorney General Heather Valentine

Office of the Hampden County District Attorney:
Assistant District Attorney Deborah Ahlstrom
Assistant District Attorney Katharine Johnston

For the Defendants:

Luke Ryan, Esquire, representing Defendant Lizardo Vega,
(09-97)

Jared Olanoff, Esquire, representing Defendants Omar Harris
(10-1233); Wendell Richardson (12-399); Fiori Liquori
(12-624)

Rebecca Jacobstein, Esquire, representing Defendants Erick
Cotto (07-770); Jermaine Watt (09-1068; 09-1069)

Jennifer Appleyard, Esquire, representing Defendant Rolando
Penate (12-83)

James McKenna, Esquire, representing Defendants Omar Brown
(05-1159); Bryant Ware (07-1072; 09-1072; 10-253)

I N D E X

Witness	Direct	Cross	Redirect	Recross
James Hanchett				
(By Mr. Ryan).....	7.....			154
(By Mr. Caldwell).....		113.....		155
(By The Court).....		143		
(By Mr. Olanoff).....		149		

PREMARKED EXHIBITS

Exhibits 1 - 202 were premarked

EXHIBITS	PAGE
Exhibit 203.....controlled substance registration	
certificate 12/12/11.....	80
Exhibit 204.....Reference Standard Inventory.....	107

LIST OF PRE-MARKED EXHIBITS

Evidence from First Evidentiary Hearing

- Ex.1 A. Quality Assurance Audit (October 10, 2012)
- Ex. 2 B. Lab Inventory (January 19, 2013)
- Ex. 2A 1. Evidence Inventory Report From
- Ex. 2B 2. Supplemental Report by Jeremy Miller
- Ex. 3 C. Grand Jury Testimony of Nikki Lee
(Day 1 - February 7, 2013)
- Ex. 4 D. Grand Jury Exhibit on Day 2 -
February 21, 2013 (9 photos of Farak's
workstation and items recovered therefrom)
- Ex. 5 E. Grand Jury Testimony of Joseph Ballou
(Day 3 - February 28, 2013) and exhibits
- Ex. 5A 1. Transcript of interview of Sonja Farak
- Ex. 5B 2. Online news article recovered from Farak's
car (re: pharmacist)
- Ex. 5C 3. Online news article recovered from
Farak's car (re: steroid probe)
- Ex. 5D 4. Online news article recovered from Farak's
car (re: SF drug lab technician)
- Ex. 5E 5. Photograph of trunk of Farak's car
- Ex. 5F 6. Photograph of items recovered from driver's
side door of Farak's car
- Ex. 5G 7. 9 photographs of Farak's workstation
and items recovered therefrom

1	Ex. 5H	8. Photograph of items recovered from Farak's
2		tote bag
3	Ex. 5I	9. Photograph of items recovered from Farak's
4		tote bag
5	Ex. 5J	10. Photograph of items recovered from Farak's
6		tote bag
7	Ex. 5K	11. Photograph of items recovered from Farak's
8		tote bag
9	Ex. 6	F. Grand Jury Testimony of Woods/Hanchett/Ballou
10		(Day 4 - March 11, 2013) and exhibits
11	Ex. 6A	1. MSP certificate of analysis of items
12		recovered from Farak's workstation, car and
13		tote bag (by Woods)
14	Ex. 6B	2. 9 photographs of items recovered from
15		Farak's workstation
16	Ex. 6C	3. Photograph of off-white powder in
17		plastic bag recovered from white bin in
18		Farak's workstation
19	Ex. 6D	4. Photograph of white, putty-like substance
20		recovered from white bin in Farak's workstation
21	Ex. 6E	5. Photograph of white, putty-like substance
22		recovered from white bin in Farak's workstation
23	Ex. 6F	6. Photograph of white, putty-like substance
24		recovered from white bin in Farak's workstation
25	Ex. 6G	7. Photograph of white, putty-like substance

1		recovered from white bin in Farak's workstation
2	Ex. 6H	8. Photograph of lab sample number A12-04793
3		recovered from Farak's workstation
4	Ex. 6I	9. Photograph of lab sample number A12-04793
5		recovered from Farak's workstation
6	Ex. 6J	10. Photograph of lab sample number A12-04791
7		recovered from Farak's workstation
8	Ex. 6K	11. Photograph of lab sample number A12-04791
9		recovered from Farak's workstation
10	Ex. 6L	12. Photograph of lab sample number A12-04791
11		recovered from Farak's workstation
12	Ex. 6M	13. Photograph of 34 clear capsules containing
13		white powder recovered from Farak's car
14	Ex. 6N	14. Photograph of rock powder in a knotted
15		plastic bag recovered from Farak's car
16	Ex. 6O	15. Photograph of field tests conducted by
17		James Hanchett
18	Ex. 6P	16. Photograph of empty evidence bag with cocaine
19		residue recovered from Farak's tote bag
20	Ex. 6Q	17. Photograph of folded piece of weigh paper
21		with trace of cocaine recovered from Farak's tote
22		bag
23	Ex. 7	G. Grand Jury Testimony of Ballou (Day 5 -
24		April 1, 2013)
25	Ex. 7A	1. Drug receipt for lab sample number A12-04791

1	Ex. 7B	2. Drug certificate for lab sample number
2		A12-04791
3	Ex. 7C	3. Drug receipt for lab sample number A12-04793
4	Ex. 7D	4. Drug return receipt for lab sample number
5		A12-04793
6	Ex. 7E	5. Drug worksheet of Farak for lab sample
7		numbers A12-04791 & A12- 04793
8	Ex. 7F	6. Drug receipt for lab sample number A12-04793
9	Ex. 7G	7. Drug return receipt for lab sample number
10		A12-04793
11	Ex. 7H	8. Drug receipt for lab sample number A12-00156
12	Ex. 7I	9. Chain of evidence form for lab sample number
13		A12-00156
14	Ex. 8	H. Photographs of Farak's Car
15	Ex. 9	I. Department of Public Health Policies and
16		Procedures Handbook
17	Ex. 10	J. Police report of MSP Sgt. Joseph Ballou
18		(February 6, 2013)
19	Ex. 11	K. Police report of MSP Trooper Randy Thomas
20		(January 24, 2013)
21	Ex. 12	L. Police report of MSP Sgt. Joseph Ballou
22		(February 15, 2013)
23	Ex. 13	M. Police report of MSP Sgt. Joseph Ballou
24		(March 8, 2013)
25	Ex. 14	N. Attorney General's Evidence Log

1 Ex. 15 O. Selected Discovery in Commonwealth v.
2 Finch and Commonwealth v. Espinosa
3 Ex. 15A 1. Police report of MSP Sgt. Joseph Ballou
4 (September 3, 2013)
5 Ex. 15B 2. Drug certificate for lab sample number
6 A12-01257
7 Ex. 15C 3. Springfield Police Department Property
8 Receipt for lab sample number A12-01257
9 Ex. 16 P. Cover pages and page 75 of transcript
10 from Commonwealth v. Berube (April 9, 2012)
11 Ex. 17 Q. Selected discovery from chemist discovery
12 packet provided by Farak and Pontes in
13 Commonwealth v. Renaul Horsler, Hampden County
14 Indictment No. 10-329
15 Ex. 18 R. ILAC Guidelines for Forensic Science
16 Laboratories
17 Ex. 19 S. MSP Protocols for the Analysis of General
18 Unknown Powders and Liquid Samples
19 Ex. 20 T. SWGDRUG Recommendations
20 Ex. 21 U. SWGDRUG Supplemental Document SD-1
21 for Part I: A Code of Professional Practice
22 for Drug Analysts
23 Ex. 22 V. SWGDRUG Supplemental Document SD-5 for
24 SWGDRUG Recommendations: Reporting Examples
25 Ex. 23 W. Testimony of James Hanchett in Commonwealth

v. Edward Robinson, Berkshire County Indictment
No. 08-105 (October 27, 2009)

Ex. 24 X. Discovery letter and packet provided by
Rebecca Pontes in Commonwealth v Rolando Penate,
Hampden County Indictment No. 12-083

Ex. 25 Y. Discovery letter and packet provided by Sonja
Farak in Commonwealth v. Rolando Penate, Hampden
County Indictment No. 12-083

Ex. 26 Z. Discovery page provided by MSP in
Commonwealth v. Rolando Penate, Hampden County
Indictment No. 12-083

Ex. 27 AA. Executive Summary for Hinton Laboratory
Drug Lab Internal Inquiry

Ex. 28 BB. Selected Evidence in Commonwealth v.
Kathleen Carter

Ex. 28A 1. Photograph labeled Exhibit 7

Ex. 28B 2. Pages 89 to 93 of trial transcript
(March 23, 2012)

Ex. 28C 3. Pages 12 to 13 and page 93 of trial
transcript (March 26, 2012)

Ex. 29 36. UMass Medical School Retest Results
in Commonwealth v. Xavier Sands

UMass Sample Nos. W13-03263 thru W13-03268)

(Amherst Sample Nos. A12-00452 thru A12-00453)

(Amherst Sample Nos. A12-02877 thru A12-02880)

1 Ex. 30 37. Amherst Drug Lab Case File in Commonwealth
2 v. Xavier Sands
3 (Amherst Sample Nos. A12-02877 thru A12-02880)
4 Ex. 31 38. Amherst Drug Lab Case File in Commonwealth
5 v. Xavier Sands
6 (Amherst Sample Nos. A12-00452 thru A12-00453)
7 Ex. 32 39. Amherst Drug Lab Case File in Commonwealth
8 v. Byron Stradford
9 (Amherst Sample Nos. A12-02628 thru A12-02631)
10 Ex. 33 40. UMass Medical School Retest Results in
11 Commonwealth v. Byron Stradford
12 (UMass. Sample Nos. W13-01206 thru W13-01209)
13 (Amherst Sample Nos. A12-02628 thru A12-02631)
14 Ex. 34 41. Amherst Drug Lab Case File in Commonwealth
15 v. Shaun Morton
16 (Amherst Sample No. A12-02902)
17 Ex. 35 42. Amherst Drug Lab Case File in Commonwealth
18 v. Shaun Morton
19 (Amherst Sample Nos. A12-02997A thru A12-02997B)
20 Ex. 36 43. Mass. State Police Retest Results in
21 Commonwealth v. Shaun Morton
22 (Mass. State Police Case No. 13-158839)
23 (Amherst Sample No. A12-02902)
24 Ex. 37 44. Mass. State Police Retest Results in
25 Commonwealth v. Shaun Morton

1		(Mass. State Police Case No. 13-158377)
2		(Amherst Sample Nos. A12-02997A thru A12-02997B)
3	Ex. 38	45. Amherst Drug Lab Case File for Sample No.
4		A12-04791
5	Ex. 39	46. Amherst Drug Lab Case File for Sample No.
6		A12-04793
7	Ex. 40	47. Amherst Drug Lab Case File for Sample No.
8		A12-04973
9	Ex. 41	48. Amherst Drug Lab Case File for Sample No.
10		A13-00156
11	Ex. 42	49. Amherst Case File in Commonwealth v. Eric
12		Finch
13		(Amherst Sample Nos. A12-01256 thru A12-01257)
14	Ex. 43	50. ODV™ Field Testing Instruction Manual
15	Ex. 44	51. DA Discovery in Commonwealth v. Jamel R.
16		Davis
17	Ex. 45	52. DA Discovery in Commonwealth v. Kamari
18		Howard
19	Ex. 46	53. DA Discovery in Commonwealth v. Angel
20		Sanchez
21	Ex. 47	54. DA Discovery in Commonwealth v. Louis L.
22		Butler
23		
24	Ex. 48	55. DA Discovery in Commonwealth v. Shelly
25		Spencer

1 Ex. 49 56. Amherst case file for Commonwealth v.
2 Richard Charles
3 Ex. 50 57. Transcript of Rebecca Pontes Interview
4 Ex. 51 58. MSP Criminalistics Video of Amherst Drug Lab
5 Post-Closure
6 Ex. 52 59. DPH Statistics for Samples Analyzed at
7 Hinton Drug Lab by Chemist from 1993-2012
8 Ex. 53 60. Curriculum Vitae of Heather Harris
9

10 **Exhibits from Proposed Findings**
11

12 Ex. 54 1. Response of ServiceNet, Inc. to Summons to
13 Produce Records in Commonwealth v. Watt, No.
14 HDCR2009-01069, dated March 17, 2015
15 Ex. 55 2. Response of Sarah Hawrylak to Summons to
16 Produce Records in Commonwealth v. Watt, No.
17 HDCR2009-01069, dated June 8, 2015
18 Ex. 56 3. Commonwealth v. Doe, Grand Jury Minutes
19 (September 16, 2015)
20 Ex. 57 4. Sentencing memo submitted by defense counsel
21 in Commonwealth v. Farak, 1380-CR-00061
22 Ex. 58 5. Personnel File of Sonja Farak (Selected
23 pages)
24 Ex. 59 6. Commonwealth v. Doe, Grand Jury Minutes
25 (September 29, 2015)

Ex. 60 7. Response of Western Mass. Women's
Correctional Center to Summons to Produce Records
in Commonwealth v. Watt, No. HDCR2009-01069, dated
March 24, 2015

Ex. 61 8. Commonwealth v. Doe, Grand Jury Minutes
(February 7, 2013)

Ex. 62 9. Sonja Farak Proffer (August 2015)

Ex. 63 10. Commonwealth v. Doe, Grand Jury Minutes
(September 30, 2015)

Ex. 64 11. Office of the Inspector General,
"Investigation of the Drug Laboratory at the
William A. Hinton State Laboratory Institute
2002-2012" (March 4, 2014)

Ex. 65 12. Teresa Mayors, DPH Drug Analysis
Laboratories: Case Study (April 1991)

Ex. 66 13. Governor's Commission on Criminal Justice
Innovation, Final Report (2004)

Ex. 67 14. Department of Public Health, Executive
Summary for Hinton Laboratory Drug Lab Internal
Inquiry (also Exhibit AA0

Ex. 68 18. SWGDRUG Recommendations (July 2011)

Ex. 69 20. Hinton Pivot Table Listing Number of Samples
Tested by Chemist by Month (1993-2012)

Ex. 70 23. Affidavit of Nathan Tamulis with
Attachments

1	Ex. 71	25.	Commonwealth v. Doe, Grand Jury Minutes
2			(February 1, 2016)
3	Ex. 72	26.	Interview of Paul Jaszek (September 10,
4			2012)
5	Ex. 73	27.	Interview of Alan Stevenson (September 10,
6			2012)
7	Ex. 74	28.	Interview of Gerald Giguere (September 10,
8			2012)
9	Ex. 75.	29.	Curriculum Vitae of James Hanchett
10	Ex. 76	30.	Curriculum Vitae of Sharon Salem
11	Ex. 77	31.	Interview of Donna Lacroix (September 10,
12			2012)
13	Ex. 78	32.	Curriculum Vitae of Rebecca Pontes
14	Ex. 79	33.	Commonwealth v. Doe, Grand Jury Minutes
15			(February 4, 2016)
16	Ex. 80	34.	Transcript from Amherst Drug Lab
17			Evidentiary Hearing (September 9, 2013)
18	Ex. 81	35.	Commonwealth v. Doe, Grand Jury Minutes
19			(February 21, 2013)
20	Ex. 82	36.	Interview of Rebecca Pontes (January 18,
21			2013)
22	Ex. 83	37.	Reference Standard Inventory, Amherst Drug
23			Lab
24	Ex. 84	48.	Homework 11-16-11, Undisclosed Car Evidence
25	Ex. 85	49.	"ServiceNet Diary Card," Undisclosed Car

Evidence

- Ex. 86 50. Farak Lab Notebook (January 9, 2012),
Penate DA DISCOVERY 306-09
- Ex. 87 51. Drug Lab Results Worksheet (January 9,
2012), Penate DA DISCOVERY 374
- Ex. 88. 52. Drug Certificates, signed January 9, 2012,
Penate DA DISCOVERY 90-100
- Ex. 89 53. Gas Chromatograph Runs (January 9, 2012)
- Ex. 90 54. Gas Chromatograph/Mass Spectrometer Runs
(January 9, 2012)
- Ex. 91 56. Emails between Maida Wassermann and Sonja
Farak (May and June 2012), AMH00001361-1363
- Ex. 92 58. "RP" Initials, Undisclosed Car Evidence
- Ex. 93 59. Discovery Packet for A12-02628-02631, Drug
Receipt, Farak Discovery 3620
- Ex. 94 60. Discovery Packet for A12-02628-02631, Sample
to Lab, Farak Discovery 3621
- Ex. 95 61. Transcript from Amherst Drug Lab
Evidentiary Hearing (October 7, 2013)
- Ex. 96 62. Response of Anna Kogan to Summons to
Produce Records in Commonwealth v. Watt, No.
HDCR2009-01069
- Ex. 97 65. Farak Direct Notes, Undisclosed Trial
Notebook

1 Ex. 98 66. Emails between Sonja Farak and
2 prosecutors, AMH000006170-6179,
3 AMH00000107-110, AMH00002294
4 Ex. 99 67. Interview of Sonja Farak (January 18,
5 2013)
6 Ex. 100 68. Report by Timothy Woods, Analyst for MSP
7 Forensic Services Group (February 18, 2013)
8 Ex. 101 71. AGO Case Report (January 29, 2013)
9 Ex. 102 80. NFSTC, Needs Assessment of Forensic
10 Services in the Commonwealth of
11 Massachusetts (April 2002)
12 Ex. 103 82. Letter from James Hanchett to Elizabeth
13 Schiebel (May 7, 2009), Undisclosed Car Evidence
14 Ex. 104 85. Email from Julianne Nassif to the Drug
15 Labs for 5/6/11 Meeting
16 Ex. 105 86. Letter from James Hanchett to Dan Ring,
17 Undisclosed Car Evidence
18 Ex. 106 87. E-mail Correspondence between Ann Looney
19 and Amherst Lab (August 2011)
20 Ex. 107 91. Email from Julianne Nassif to the Drug
21 Labs for 9/16/11 Meeting
22 Ex. 108 93. DPH QC Emails and Minutes, 2006-2007
23
24 Ex. 109 96. National Academy of Science,
25 STRENGTHENING FORENSIC SCIENCE IN THE

1 UNITED STATES: A PATH FORWARD (2009).

2 Ex. 110 98. Drugs of Abuse Laboratory "Standards and

3 Controls in Laboratory Procedures"

4 Ex. 111 99. MSP, "The Analysis of General Unknown

5 Powders and Liquid Samples"

6 Ex. 112 100. Sample to Lab (February 19, 2010), Horsler

7 DA Discovery 81

8 Ex. 113 101. Drug Receipt (January 15, 2010), Horsler

9 DA Discovery 79

10 Ex. 114 102. "Identification of Tablets, Capsules, and

11 Other Prescription Drugs"

12 Ex. 115 103. IDENTIDEX Imprint Identification &

13 Drugs.com print-out, Horsler DA Discovery 85-86

14 Ex. 116 104. Instrument 1, Sequence (February 22, 2010),

15 Horsler DA Discovery 87

16 Ex. 117 105. Chemist Discovery Packet, No. 15, Horsler

17 DA Discovery 75-77

18 Ex. 118 106. Library Consultations, NWDA Discovery 178

19 Ex. 119 107. Instrumental Data, A10-00203, Horsler DA

20 Discovery 100-104

21 Ex. 120 108. Pontes Drug Lab Results (March 22, 2010)

22 Ex. 121 109. Test Results for Sample A12-0622

23 Ex. 122 110. Drug Sample Review Form, Farak DA Discovery

24 3798

25 Ex. 123 111. GC/MS Testing with Buprenorphine Standard

(January 2, 2013), Farak DA Discovery 3799

Ex. 124 118. Transcript from Amherst Drug Lab
Evidentiary Hearing (October 23, 2013)

Ex. 125 119. Boston Drug Lab GC/MS Protocol (July 17,
2007)

Ex. 126 120. DAL "Blank Policy"

Ex. 127 121. MSP Forensic Services Group, "Protocol for
the Analysis of Cocaine Samples"

Ex. 128 122. Blank with Carryover, Undisclosed Car
Evidence

Ex. 128A 122a. Cocaine Peak in Blank with Carryover,
Undisclosed Car Evidence.

Ex. 129 123. RMPSequence (December 20, 2011)

Ex. 130 124. Instrumental Data, Penate DA Discovery
220-224

Ex. 131 125. Quality Control Procedure for the GC/MS,
Farak DA Discovery 1906

Ex. 132 126. Commonwealth v. Doe, Grand Jury Minutes
(February 11, 2016)

Ex. 133 127. Quality Assurance

Ex. 134 128. Notes Regarding Septum, Penate Discovery
235

Ex. 135 129. Email from Guy Vallaro to the MSP Crime Lab
(October 15, 2012), AMH000007496

Ex. 136 131. Testimony Review Form, Undisclosed Trial

1 Notebook

2 Ex. 137 132. Balance Calibration Logs

3 Ex. 138 133. Email from Rebecca Pontes to Sonja Farak

4 with attachments (September 21, 2012),

5 AMH000010780-10782

6 Ex. 139 134. Narcotic Inventory and/or Weight Variance

7 Forms

8 Ex. 140 135. Email Correspondence between Nancy Burns

9 and Sonja Farak, AMH000003023; AMH00003116

10 Ex. 141 136. Email Correspondence regarding the Journal

11 of Forensic Sciences, AMH000004894, 000007498,

12 000007553

13 Ex. 142 138. MSP Crime Laboratory - Quality Assurance

14 Audit of the Amherst Drug Lab (October 10, 2012)

15 Ex. 143 139. Pontes Affidavit, Commonwealth v. Gonzalez,

16 No. HDCR2011-00703

17 Ex. 144 140. OIG Supplemental Report (February 2, 2016)

18

19 Ex. 145 141. Drug Enforcement Administration,

20 "N-BENZYLPIPERAZINE," (Mar. 2014), available at

21 http://www.dea diversion.usdoj.gov/drug_chem_info/bzp.pdf

22

23 Ex. 146 142. Email Correspondence between Sonja Farak

24 and Annie Dookhan (AMH00000550-551)

25 Ex. 147 143. Amherst Drug Lab Case File in Commonwealth

1 v. Eric Finch (Amherst Sample Nos. A12-01256-1257)

2 Ex. 148 144. Police Report of MSP Sgt. Joseph Ballou
3 (September 3, 2013)

4 Ex. 149 145. Springfield Police Department Property
5 Receipt for Sample No. A12-01257 (May 16, 2012)

6 Ex. 150 146. Drug Certificate for Sample No A12-01257
7 (May 8, 2012)

8 Ex. 151 147. Email Correspondence between Sonja Farak
9 and Eduardo Velazquez (February 1, 2011),
10 AMH00007326

11 Ex. 152 148. Response of Dr. Anne Weaver to Summons to
12 Produce Records in Commonwealth v. Watt,
13 No. HDCR2009-01069.

14 Ex. 153 149. Exhibit 13 at grand jury (missing
15 ServiceNet records)

16 Ex. 154 150. Amherst Drug Lab Results - 2012

17 Ex. 155 151. Transcript from Commonwealth v. Rolando
18 Penate, Hampden County Indictment No. 2012-0083
19 (Dec. 10, 2014)

20 Ex. 156 153. Indictments, Commonwealth v. Burnham,
21 Hampden County Superior Court No. 15-1041

22 Ex. 157 154. Marcum Advisory Group, "City of
23 Springfield, Massachusetts Narcotics Evidence
24 Examination," (February 16, 2016)

25 Ex. 158 155. Test Results for Sample A12-0937

Additional Exhibits

- Ex. 159 500. Transcript from Commonwealth v. Fiori
Liquori, Hampden County Superior Court No.
12-00624 (September 11, 2014)
- Ex. 160 501. Letter from ADA Michael Pelgro to
Anthony Benedetti, dated December 11, 2014
- Ex. 161 502. Emails between Sonja Farak and Annie
Dookhan, AMH00000550-551
- Ex. 162 503. Letter from DA Anthony Gulluni to Andrew
Klyman, dated March 22, 2016
- Ex. 163 504. Prosecution Memo with handwritten notes
- Ex. 164 505. Commonwealth's Prong One Concession of
Egregious Governmental Misconduct
- Ex. 165 506. Letter from AAG John Verner to DA
Conley, dated March 27, 2013
- Ex. 166 507. Letter from Luke Ryan to AAG Patrick
Devlin, dated November 1, 2014
- Ex. 167 508. Letter from AAG Verner to DA Sullivan,
dated November 14, 2014
- Ex. 168 509. Commonwealth's First Certificate of
Discovery, Commonwealth v. Sonja Farak,
Hampshire County Superior Court No. 13-00061
- Ex. 169 510. Paperwork recovered from MV search
(listed in First Certificate of Discovery)
- Ex. 170 511. Transcript from Commonwealth v.

Rolando Penate, Hampden Superior Court

No. 12-00083 (October 2, 2013)

Ex. 171 512. Letter from AAG James O'Brien to

Jennifer Appleyard, dated April 12, 2016

Ex. 172 513. Search Warrant and Return for Farak's
Car

Ex. 173 514. Search Warrant and Return for Farak's
Tote Bag

Ex. 174 515. Photos of vial from workstation and
packaging

Ex. 175 516. Undisclosed papers from Farak's car,
Initials "JH"

Ex. 176 517. Other undisclosed paperwork from Farak's
car

Ex. 177 518. Emails from ADA John Bosse to AAG Anne
Kaczmarek

Ex. 178 519. Draft of letter attached to email sent
by ADA John Bosse to AAG Anne Kaczmarek

Ex. 179 520. Letter from ADA John Bosse to Karen
Morth, dated October 2, 2013

Ex. 180 521. Transcript from Plea Hearing in
Commonwealth v. Farak, Hampshire Superior Court
No. 13-00060-61

Ex. 181 522. Office of the Inspector General,
"Supplemental Report Regarding the Hinton

Drug Laboratory" (February 2, 2016)

Ex. 182 523. Letter from John Verner to DA Samuel Sutter, dated September 17, 2012, and Index of Discovery Enclosed Therewith

Ex. 183 524. Summons of Sgt. Joseph Ballou, Commonwealth v. Watt, Hampden County Superior Court No. 09-01068

Ex. 184 600. Order denying Motion for New Trial in Commonwealth v. Cotto, Hampden Superior Court No. 07-00770

Ex. 185 601. Order denying Motion for New Trial in Commonwealth v. Watt, Hampden Superior Court No. 09-01068-1069

Ex. 186 602. Order denying Motion for New Trial in Commonwealth v. Harris, Hampden Superior Court No. 10-01233

Ex. 187 603. Order allowing Motion for New Trial in Commonwealth v. Guzman, Hampden Superior Court No. 12-00055

Ex. 188 604. Order Clarifying Partial Allowance of Defendant's Rule 17 Motion, Commonwealth v. Rolando Penate, Hampden Superior Court No. 12-00083

Ex. 189 605. Order denying Motion to Inspect Physical Evidence, Commonwealth v. Rolando Penate, Hampden

Superior Court No. 12-00083

Ex. 190 606. Order on Defendant's Motion to Compel
Discovery, Commonwealth v. Rolando Penate, Hampden
Superior Court No. 12-00083

Ex. 191 607. Order Denying Motion to Quash Subpoena
of Sergeant Joseph Ballou, Commonwealth v. Fiori
Liquori, Hampden County Superior Court No.
12-00624

Ex. 192 608. Objection by Sonja Farak to the Court's
Decision to Vacate the Protective Order Relative
to Her Privileged Treatment Records

Ex. 193 609. Letter from AAG Kris Foster to Judge
Kinder, dated September 16, 2013

Ex. 194 610. Judge Cratsley's March 28, 2013,
decision (redacted)

Ex. 195 611. Commonwealth's Brief, Commonwealth v.
Ware, SJC 11709

Ex. 196 612. Assented to Motion to Inspect Physical
Evidence, Commonwealth v. Burston, Hampshire
Superior Court No. 13-00113

Ex. 197 613. Sentencing Memo filed by Attorney Elaine
Pourinski, Commonwealth v. Sonja Farak, Hampshire
Superior Court No. 13-00061

Ex. 198 614. Motion to Quash Subpoena for
Sgt. Joseph Ballou and Memorandum of Law,

1 Commonwealth v. Rolando Penate, Hampden Superior
2 Court No. 12-00083, dated November 25, 2013
3 Ex. 199 615. Motion to Quash Subpoena for AAG Anne
4 Kaczmarek and Memorandum of Law, Commonwealth v.
5 Rolando Penate, Hampden Superior Court No.
6 12-00083, dated November 25, 2013
7 Ex. 200 700. Certificates of Analysis for
8 Commonwealth v. Glenda Aponte
9 Ex. 201 701. Certificates of Analysis for
10 Commonwealth v. Bryant Ware
11 Ex. 202 CC. Certificate of Analysis for
12 Commonwealth v. Jose Manuel Torres
13 Offered in Court 12/8/16
14 Ex. 203 Controlled Substance Registration Certificate
15 12/12/11
16 Ex. 204 Reference Standard Inventory
17
18
19
20
21
22
23
24
25

1 (* * * * *)

2 (The Court entered at 9:26 a.m.)

3 THE CLERK: Good morning, Your Honor, good morning
4 everyone. This is the criminal session for December 8,
5 2016, the Honorable Justice Richard Carey is presiding. I'm
6 Assistant Clerk Lois Cignoli for the Court.

7 Matters before the Court, a part of the drug lab cases,
8 and they include the Commonwealth vs. Erick Cotto, Docket
9 07-770, represented by Attorney Rebecca Jacobstein.

10 Commonwealth vs. Jermaine Watt, 09-1068 and 09-1069,
11 also represented by Attorney Rebecca Jacobstein.

12 The Commonwealth vs. Lizardo Vega, Docket 09-97,
13 represented by Attorney Luke Ryan.

14 Commonwealth vs. Omar Harris, Docket 2010-1233,
15 represented by Attorney Jared Olanoff.

16 Commonwealth vs. Wendell Richardson, Docket 2012-399,
17 represented by Attorney Jared Olanoff.

18 Commonwealth vs. Fiori Liquori, Docket 2012-624,
19 represented by Attorney Jared Olanoff.

20 The Commonwealth vs. Rolando Penate, Docket 2012-83,
21 represented by Attorney Jennifer Appleyard.

22 The Commonwealth vs. Omar Brown, Docket Number 05-1159,
23 represented by Attorney James McKenna.

24 The Commonwealth vs. Bryant Ware, Docket 2007-1072,
25 2009-1072, 2010-253, represented by Attorney James McKenna.

1 Commonwealth vs. Glenda Aponte, Docket 2012-226,
2 represented by Attorney James McKenna for the Commonwealth.

3 Present are Assistant Attorney Generals Thomas Caldwell
4 and Heather Valentine and Assistant District Attorneys
5 Brenda Ahlstrom and Katherine Johnson.

6 And, for the record, an interpreter is present for
7 Mr. Penate.

8 THE COURT: Good morning everyone.

9 A FEW COUNSEL: Good morning.

10 THE COURT: Anybody?

11 Good morning everyone.

12 ALL COUNSEL: Good morning, Your Honor.

13 THE COURT: Okay. Mr. Caldwell.

14 MR. CALDWELL: Your Honor, as an aside, may I approach
15 at sidebar?

16 THE COURT: Sure.

17 (Off the record discussion)

18 THE COURT: All right. Before we have the first
19 witness, I just want to put on the record that there are
20 agreed upon exhibits, they have been put together a list of
21 exhibits that have been made available to all counsel, and
22 they are Exhibit 1 through Exhibit 202. At this point,
23 those exhibits are deemed admitted into evidence. They will
24 be available to counsel at the hearing.

25 Mr. Ryan, you may call your first witness.

1 MR. RYAN: Thank you, Your Honor. Before I do, I want
2 to alert the Court, I've spoken to the stenographer again.
3 I don't have a written motion with me, but I will be asking
4 the Court if you would consider allowing a motion for daily
5 copy of today's proceedings and next week's as well. That
6 was it.

7 Defense calls --

8 THE COURT: What did the stenographer said to you when
9 you said that?

10 MR. RYAN: I thought it would be a nice way to get a
11 little extra cash for the holidays, but I think it's
12 possible that we might be able to work something out.

13 THE COURT: All right. I will take that under
14 advisement, and I will confer with the stenographer.

15 MR. RYAN: Okay. Defense will call James Hanchett as
16 the first witness.

17 MR. CALDWELL: Your Honor, if I may just pass an aside,
18 I spoke to my colleague, Ms. Ahlstrom, about this. Thomas
19 Caldwell with the Office of the Attorney General. I am here
20 conducting the hearing by the request of the Hampden
21 District Attorney's Office.

22 THE COURT: Okay.

23 THE INTERPRETER: Your Honor, if the interpreter may, I
24 just want to inform Your Honor that I am a using a wireless
25 system that goes directly from interpreter to one defendant.

1 And if the interpreter could have permission to move around
2 for as needed for hearing purposes.

3 THE COURT: Sure.

4 THE INTERPRETER: And last but not least, sometimes
5 instead of stack of dictionaries, interpreter carries around
6 a cell phone. It's not texting, it's a dictionary.

7 THE COURT: Okay. Thank you.

8 COURT OFFICER: Please stand here, face the clerk, and
9 raise your right hand to be sworn.

10 (James Hanchett, sworn)

11 THE COURT: Mr. Ryan, when you're ready.

12 (James Hanchett)

13 **DIRECT EXAMINATION BY MR. RYAN**

14 Q. Good morning, Mr. Hanchett.

15 A. Good morning.

16 Q. Could you state your name and spell your last name for
17 the record.

18 A. James Hanchett, H-A-N-C-H-E-T-T.

19 Q. Mr. Hanchett, am I correct that you are currently
20 retired?

21 A. Correct.

22 Q. And did you begin working for the Department of Public
23 Health Food & Drug lab in Amherst back in 1977?

24 A. Correct.

25 Q. And when you started, were you a Chemist I?

1 A. That's correct.

2 Q. And did you work at the food portion of that lab for
3 about the first year, year and a half?

4 A. Approximately.

5 Q. And after that first year, year and a half, did you
6 then switch over and begin testing substances suspected of
7 containing narcotics?

8 A. Correct.

9 Q. At the time, was the supervisor of that portion of the
10 drug lab a man named Alan Stevenson?

11 A. No.

12 Q. Who supervised the --

13 A. The whole laboratory was Fred Degregorio and the drug
14 section was Richard Waskiewicz.

15 Q. At some point, did Alan Stevenson take over the drug
16 portion of that lab?

17 A. Correct.

18 Q. And about when was that?

19 A. I don't know.

20 Q. Did he go by the name "Cam"?

21 A. Correct.

22 THE COURT: I'm sorry, Mr. Ryan, the name what?

23 MR. RYAN: Cam, C-A-M.

24 THE COURT: Okay.

25 Q. (By Mr. Ryan) Okay. Did you work under Cam Stevenson

1 up until he retired in 2008?

2 A. I don't know the dates, but I did work under him until
3 he retired.

4 Q. Okay. Now, back in about 1980, were you promoted to
5 the position of Chemist II?

6 COURT OFFICER: If you can hold out, Attorney, he is
7 having a problem with his mic.

8 (Pause)

9 Q. (By Mr. Ryan) I think the last question I asked was in
10 approximately 1980, were you promoted to the position of
11 Chemist II?

12 A. I don't know the dates, been a long time.

13 Q. If you look up at the screen, is this a copy of your CV
14 here?

15 A. It's got my name on it.

16 Q. And does it say that you were promoted to the position
17 of Chemist II back on April 13, 1980?

18 A. Yes. Yes.

19 Q. And by this point, had you -- were you focusing
20 exclusively on the testing of suspected narcotics?

21 A. Yes. By 1980, I was, yes.

22 Q. And did this Chemist II position come with some new
23 responsibilities?

24 A. No, not really. Same. Little -- little more stronger,
25 heavier drugs and stuff instead of just the marijuanas.

1 THE INTERPRETER: The interpreter missed -- instead
2 of --

3 THE WITNESS: Pardon me?

4 THE INTERPRETER: Little more stronger drugs?

5 THE WITNESS: Yes. You start off, you start basically
6 doing the simpler drugs, marijuana, and then you work your
7 way up to the harder drugs.

8 THE COURT: Mr. Hanchett, I'm going --

9 THE WITNESS: Yes.

10 THE COURT: -- to ask you to pull that microphone down
11 towards you and then if you can pull yourself a little
12 closer to it.

13 THE WITNESS: I have a bad knee, Your Honor.

14 THE COURT: All right. I'm not going to be responsible
15 for any injuries.

16 THE WITNESS: It's a fake knee but it's not any good.

17 THE COURT: Mr. Ryan, when you're ready.

18 MR. RYAN: Thank you.

19 Q. (By Mr. Ryan) When you became a Chemist II, is one of
20 the new things that you began doing was maintaining and
21 programming all the instruments?

22 A. Yes, I started approximately then.

23 Q. And is this something that you continued to do for
24 about the next three decades?

25 A. That is correct.

1 Q. In 1985, did you ascend to the position of Chemist III?

2 A. Again -- I don't see it.

3 Yes.

4 THE COURT: I'm sorry, what was the date?

5 MR. RYAN: 1985.

6 THE COURT: Thank you.

7 Q. (By Mr. Ryan) And with this new position, did you
8 begin ordering all lab supplies?

9 A. Not all supplies, but bulk of them, yes, for the drug
10 lab.

11 Q. Is that when you put in your CV there, also orders all
12 lab supplies?

13 A. I never ordered the drugs. I didn't have a DEA
14 license.

15 Q. Now, putting aside the drugs, did you continue to order
16 lab supplies until you retired?

17 A. That is correct.

18 Q. Now. In 2004, did you get another promotion to
19 Laboratory Supervisor I?

20 A. Yes.

21 Q. And at this point, did you take on the training of new
22 analysts?

23 A. That is correct.

24 Q. And on July 1, 2008, did you become a Lab Supervisor
25 II?

1 A. Yes, I did.

2 Q. And would that have been a promotion you got right
3 after Cam Stevenson retired?

4 A. That is correct.

5 Q. Now, I'd like to talk a little bit about the
6 relationship that your lab had with the Department of Public
7 Health. Do you know a person named Julie Nassif?

8 A. She was the person I reported to. She was head of
9 analytical chemistry.

10 Q. And was --

11 THE COURT: I'm sorry. Mr. Ryan, do you have a
12 spelling on that?

13 MR. RYAN: N-A-S-S-I-F.

14 THE COURT: Thank you.

15 Q. (By Mr. Ryan) And was home base for Ms. Nassif in this
16 position of head of analytical chemistry the Hinton Drug Lab
17 in Jamaica Plain?

18 A. Correct.

19 Q. And if I told you she started this job in 2006, would
20 that sound about right?

21 A. I'm sorry, I had a heart attack. My memory is not as
22 good as it used to be. I can't help you there.

23 Q. Okay. When Cam Stevenson retired in 2008, did you
24 begin reporting directly to her?

25 A. Yes.

1 Q. And do you know a person named Linda Han, H-A-N?

2 A. Yes. That's who Julie Nassif reported to. She was the
3 director of the Hinton Lab.

4 Q. And was that -- was she the director of the Bureau of
5 Laboratory Sciences?

6 A. Correct.

7 Q. And did that position -- well, let me ask you this:

8 In addition to the Hinton Drug Lab at Jamaica Plain,
9 did that State Laboratory Institute building house a number
10 of other laboratories as well?

11 A. Yes, I believe it was seven or eight, but I'm not
12 positive. It was a long time ago.

13 Q. And so, did Linda Han have responsibility for all of
14 the labs in that building?

15 A. That is correct.

16 Q. And did Julie Nassif have responsibility for the labs
17 that did analytical chemistry?

18 A. Correct.

19 Q. Okay. And to your knowledge, did Julie Han -- or did
20 Julie Nassif report to Linda Han?

21 A. Yes, I believe she did.

22 Q. If I told you that Linda Han became the director in
23 2009, would that sound about right?

24 A. I've been there almost 40 years. I've seen a lot of
25 directors, and I don't remember the dates. I can't help

1 you.

2 Q. Do you remember a director named Ralph Tippery
3 (phonetic)?

4 A. Timpery (phonetic); yes, I do.

5 Q. How about Alfred DeMaria?

6 A. Vaguely, yes.

7 MR. RYAN: For the benefit of the stenographer,
8 D-E-M-A-R-I-A.

9 Q. (By Mr. Ryan) How about Mary Gilchrist?

10 A. Vaguely.

11 Q. Okay. Did any of these directors of the Bureau of
12 Laboratory Sciences regularly visit the Amherst Drug Lab?

13 A. No.

14 Q. Did any of these directors of the Bureau of Laboratory
15 Sciences ever visit the Amherst Drug Laboratory?

16 A. None that I know of.

17 Q. Now, returning to Julie Nassif, when she became the
18 head of Analytic Chemistry in 2006, did she make regularly
19 scheduled visits to the Amherst Drug Lab?

20 A. No, she did not.

21 Q. During her tenure as the head of Analytic Chemistry,
22 did Julie Nassif ever visit the Amherst Drug Lab?

23 A. Yes.

24 Q. Approximately, how many times would you estimate?

25 A. Not more than three.

1 Q. Now, I'd like to talk a little about your lab's
2 relationship to the Hinton Drug Lab. Am I correct that
3 Amherst was considered a satellite drug lab for the Hinton
4 Lab?

5 A. That's correct.

6 Q. And Hinton was the main drug lab?

7 A. That's right.

8 Q. Now, during the course of your career, in Amherst,
9 would your lab help Hinton with its backlog?

10 A. Yes, we would.

11 Q. And when I say "backlog," what does that mean to you?

12 A. Well, we couldn't keep up with the sample flow within
13 the Boston area, so we would help out and do some of their
14 samples.

15 Q. And in terms of backlog, as a metric in your
16 profession, would the backlog be calculated in either days,
17 weeks or months?

18 A. It depends when. I mean, sometimes it was two weeks we
19 had a turnaround time. I've seen a turnaround time as high
20 as almost a year.

21 Q. And so, the Hinton Drug Lab, when it's turnaround times
22 was getting from weeks to months, would that be -- would
23 they count on the Amherst Drug Lab to pick up some of that
24 backlog?

25 A. Depending on funding.

1 Q. Okay. Now, would you or anyone else at the Amherst Lab
2 drive to Hinton to pick up samples to bring back to Amherst
3 to analyze?

4 A. That's correct.

5 Q. And when did you start doing that?

6 A. Well, we had 2008, so that's probably about when I
7 started doing it. Alan did it before.

8 Q. Okay. So when you became the supervisor of the Amherst
9 Drug Lab, that's when you took on the role of driving to
10 Boston and --

11 A. Jamaica Plain.

12 Q. -- and coming back with the samples.

13 A. Correct.

14 Q. And you mentioned Alan, was this an assignment for the
15 lab supervisor, whoever that might be?

16 A. It was just something we took on.

17 Q. Okay. Now, am I correct that you would go to Jamaica
18 Plain pretty much once a month to pick up samples?

19 A. Yes. I would go approximately once a month.

20 Q. And when you would go, starting when you became the
21 supervisor in July 2008, would you meet with Julie Nassif on
22 your monthly trips to pick up samples?

23 A. Sometimes, not all times.

24 Q. Okay. Between July 2008 and May 2009, did you have
25 occasion to meet with her at least some of those months?

1 A. Yes. I'm sure, usually -- it wasn't every month but it
2 was probably 80 percent of the time.

3 Q. Okay. So if it was 80 percent of the time during those
4 ten months, you may have met with her seven or eight times?

5 A. Could be, not positive.

6 Q. Okay. Now, I'm showing you on the presenter, if you
7 bear with me here, a letter. Could you just take a moment
8 to review this.

9 MR. RYAN: This has been previously marked as Exhibit
10 103. Just for the record as Bates stamped number 00451.

11 THE COURT: Mark.

12 COURT OFFICER: Yes.

13 (Off the record discussion between The Court and The
14 Court Officer.)

15 THE COURT: I don't know how old you think I am, Mr.
16 Ryan. I can't read that.

17 Is there any objection if I look at this, if you turn
18 this toward me. You people are a lot younger than I am.

19 (Pause)

20 THE COURT: That's good. That's fine. Thank you.

21 Mr. Ryan, when you're ready.

22 MR. RYAN: Okay.

23 Q. (By Mr. Ryan) Is this a letter that you wrote,
24 Mr. Hanchett, to former District Attorney Elizabeth
25 Scheibel?

1 A. Yes.

2 Q. What prompted you to write this letter?

3 A. Well, they -- in my tenure there, three or four times
4 they threatened to close the laboratory, lack of funding.
5 It was one of the routine things the supervisor had to do.

6 Q. And on this particular occasion, back in May of 2009,
7 how did you find out that you were -- they were about to
8 close your lab?

9 A. I found out different ways, sometimes we found out in
10 the paper. Sometimes -- one time Springfield PD told us.
11 They had found out. I don't remember.

12 Q. Okay. I'm sorry, if you look at this letter, is this
13 an occasion where you found out by talking to somebody from
14 the Springfield Police Department?

15 A. It could be, I don't know.

16 Q. Well, if you look at the first line does it say: I was
17 just informed by the Springfield Police Department that the
18 House budget calls for the closure of the --

19 A. I see that, but I still don't -- I don't recall. I do
20 remember, but I don't know if this was the time or not.

21 Q. Do did you know somebody named Kevin Burnham?

22 A. Yes, I did.

23 Q. Was Kevin Burnham the evidence officer for the
24 Springfield Police Department?

25 A. Yes, he was.

1 Q. And would he regularly make visits to your laboratory
2 to drop-off and pick up samples?

3 A. Weekly.

4 Q. Did Kevin Burnham -- was he the one, who, on the
5 occasion, when you learned from the Springfield Police
6 Department, was he the one who told you they were going to
7 close your lab?

8 A. Yes, it was Kevin, but, you know, I'm telling you I
9 don't recall. I don't know if he called Sharon and told
10 Sharon and Sharon told me. This is a long time ago.

11 Q. Sure. Now, this letter that is right up on the screen,
12 Exhibit 103, indicates that this was written on a Thursday
13 May 7.

14 Was the original plan on this occasion to close the lab
15 that coming Monday?

16 A. I'm sorry. It's a long time ago. I don't remember.

17 Q. You mentioned before that some of these lab closures or
18 threatened lab closures were things you learned about from
19 accounts in the press. Do you recall that?

20 A. Yes, I did.

21 Q. If I showed you an account of, press account of this
22 threatened closure, do you think it would refresh your
23 recollection as to when this was planned for closure?

24 A. I can look at it, but we've also found out from our
25 Union too had contacted us that the lab was closing, but I

1 don't remember when.

2 Q. Showing you an article that appeared on May 12, 2009 --

3 THE COURT: What exhibit have we got?

4 MR. RYAN: This is not an admitted exhibit. This is to
5 refresh, potentially, the witness' recollection.

6 THE COURT: Okay.

7 Q. (By Mr. Ryan) If you could just take a moment to
8 review.

9 If you can let me know, I will scroll down.

10 A. Scroll.

11 Scroll again.

12 Q. If you look up where it says reprieve, were you quoted
13 in this article as saying that the plan was to close the lab
14 and layoff four employees on that Monday?

15 (Pause)

16 A. I don't know if they were laying them off that Monday,
17 but it would have had to go through the Union procedure and
18 it takes longer than just one day.

19 Q. So, at this time, had you worked for the Department of
20 Public Health at this lab for about 30 years?

21 A. That is correct.

22 Q. And on this particular occasion, does it appear that
23 they were prepared to give you just a couple of days' notice
24 before they closed your lab?

25 A. Because of the Union, they had to give us more time.

1 They perhaps could of, but we would had bumping rights in
2 Boston.

3 Q. Okay.

4 A. So we would not have been laid off.

5 Q. So they might not have laid you off because you had
6 seniority, but at least this occasion, were they about to
7 close the lab that you ran and worked at for 30 years with
8 giving you, at most, a couple of days' notice?

9 A. I don't know how long we got. I really don't remember,
10 sir.

11 Q. Okay. Now, I want to get back to the letter you wrote
12 Assistant District Attorney Scheibel. In this letter, did
13 you point out to District Attorney Scheibel how many samples
14 your lab had tested the year before?

15 A. Yes, 8640.

16 THE INTERPRETER: Interpreter, as to figure.

17 THE WITNESS: 8640.

18 Q. (By Mr. Ryan) Okay. And I showed you that article
19 before where you were quoted. Did you end up speaking to
20 the press about the threatened closure in the days after
21 sending this letter?

22 A. Yes, I did.

23 Q. And did you inform the media how Amherst helped Hinton
24 out with its backlog?

25 A. I believe I did.

1 Q. And did you make the point that it didn't cost a whole
2 lot of money to run the Amherst Drug Lab?

3 A. No, the building was free.

4 Q. And at that time, was the cost somewhere either
5 approximately 300,000 dollars or a little bit less?

6 A. That sounds about right.

7 Q. Now, on this occasion back in May of 2009 did they
8 ultimately end up not closing the drug lab because of an
9 outbreak of swine flu?

10 A. That, I couldn't tell you. I don't remember.

11 Q. Okay.

12 A. Not at all.

13 Q. In any event in 2009, in Spring/Summer did the Supreme
14 Court come out with its decision in Melendez-Diaz?

15 A. They came out with a decision, but I don't remember
16 when it was, sir.

17 Q. Okay. You remember the Melendez-Diaz decision?

18 A. Yes, I do.

19 Q. If I told you it came out in June of 2009, do you have
20 any reason to doubt that's correct?

21 A. No, I do not.

22 Q. And this was a decision that had a big impact on people
23 in your profession, correct?

24 A. Correct.

25 Q. Before this decision, you actually didn't spend a whole

1 lot of time in court, did you?

2 A. No.

3 Q. And after this decision, analysts, like yourself, ended
4 up having to come to court to testify a lot more often,
5 correct?

6 A. Correct.

7 Q. And, in addition to coming to testify in court, more of
8 your time in the lab was spent responding to discovery
9 requests than before, correct?

10 A. Correct.

11 Q. And all of this time in court and responding to
12 discovery requests, is it fair to say that it reduced the
13 number of samples that a chemist could test?

14 A. I don't recall. I can't say. It might of, but I don't
15 think by a lot.

16 I don't remember to tell you the truth.

17 Q. Okay. So, before Melendez-Diaz, your job was to test
18 these samples and sign these drug certificates, correct?

19 A. Correct.

20 Q. And after Melendez-Diaz, you had new responsibilities
21 that involved you being out of the lab for significant
22 periods of time, correct?

23 A. Correct.

24 Q. And you also had to do things in the lab that weren't
25 necessarily testing, correct?

1 A. Correct.

2 Q. So, based on these new responsibilities, did the number
3 of samples that any chemist could test tend to go down?

4 A. I can't answer that. You never considered overtime.

5 Q. Did DPH eventually in 2009 find money to keep your lab
6 open?

7 A. I have no idea when it was.

8 Q. Well, it didn't close in 2009, did it?

9 A. No. Correct. No, it did not.

10 Q. Now, this wasn't the first time that DPH had attempted
11 to close your lab, correct?

12 A. Probably two or three other times.

13 Q. Do you remember something similar like this happening
14 in 1989?

15 A. Again, sir, I don't know the years. I'm sorry.

16 MR. RYAN: Your Honor, may I approach the witness?

17 THE COURT: Uh-huh.

18 Q. (By Mr. Ryan) Showing you some newspaper accounts
19 here, if you could just take a moment.

20 You probably just need to look at some headlines.

21 A. Yeah. Yeah, okay. It says -- yup, August '89.

22 Q. And so in 1989, did you go through a similar routine
23 with the Department of Public Health where they threatened
24 closure?

25 A. Correct.

1 Q. And did -- were these threatened closures typically
2 part of cost-cutting plans?

3 A. Yeah, usually tried to get more money out of the
4 legislature.

5 Q. And would Western Mass. officials complain that it
6 didn't cost very much to run your lab?

7 A. That's correct.

8 Q. And would they complain that the municipalities from
9 out here would then have to drive all their samples to
10 Sudbury or Boston?

11 A. Yes.

12 Q. And that doing this would cost them money in terms of
13 their budgets?

14 A. Yes, they would have to pay a lot more for travel.

15 Q. Now, you previously testified about helping Jamaica
16 Plain out with its backlog. Is it fair to say that Amherst
17 analysts could make a bigger dent in the Hinton backlog when
18 you were all able to work overtime?

19 A. Definitely.

20 Q. And, in fact, is that when you would usually analyze
21 Hinton samples is when you were working on overtime?

22 THE INTERPRETER: I'm sorry. Interpreter missed a
23 word.

24 MR. RYAN: I'll repeat the question.

25 THE COURT: Interpreter, I'm going to ask you not to

1 interrupt.

2 Counsel who represent the defendants with the language
3 barrier can meet with the interpreter after at the recess to
4 go over any problems whatsoever, but --

5 Mr. Ryan.

6 MR. RYAN: Thank you.

7 Q. (By Mr. Ryan) I think you just testified that you
8 would usually do Hinton samples on overtime; is that
9 correct?

10 A. Sometimes. Not all the time.

11 We -- at one time we were doing certain cities from
12 that area. We did Lowell and Lawrence one time. We did
13 Framingham and that was done in regular time. It depends
14 when. I've been there almost 40 years. It's hard to say.

15 Q. Do you recall testifying at the Grand Jury in Boston
16 back in February of this year?

17 A. Yes, I do.

18 Q. And Exhibit 71, which has been premarked, I'm going to
19 be drawing your attention to page 13.

20 Up on the screen, lines (sic) eight, were you asked the
21 question: Is there anything else that you did when you
22 would go to the Hinton Laboratory?

23 Asked that question?

24 A. Yes.

25 Q. And the answer you gave is: I would pick up drug

1 samples from the Boston lab. They were, they had a very
2 high backlog, you know, in the tens of thousands. So, I
3 would probably bring two, three hundred samples back to the
4 Amherst Lab, which we would analyze usually on overtime.

5 A. Usually.

6 Q. Okay.

7 A. Not all of the time.

8 Q. Is it fair to say that the overtime budget was
9 something that came and went?

10 A. Frequently.

11 Q. And the fiscal year, that would run from July to June?

12 A. July 1 to June 30.

13 Q. And when the budget was approved, you'd have overtime
14 starting in maybe August, that would run out maybe in May or
15 April?

16 A. Possibly. Depends when the budget was approved.

17 Q. Well, if I can draw your attention to page 17 of your
18 prior testimony, lines six through eight.

19 A. It says: Maybe starting in August. I said it --

20 Q. Right.

21 A. -- it depended on when the legislature passed the
22 budget.

23 Q. Right. Well, did I just quote you in that question
24 that I had asked you?

25 A. Yes. Okay.

1 Q. Okay. So is it fair to say that when you tabulated the
2 number of samples you -- your lab would analyze, your
3 numbers tended to be lower in the months of May, June and
4 July?

5 A. I can't -- I don't have any of my notes. I don't have
6 my paperwork. They could be. I don't know. I'm sorry.

7 Q. Well, if you did -- if the overtime started in August,
8 then you wouldn't have overtime in July, correct?

9 A. You're trying to over simplify. You don't know the
10 complexity of the samples we're working on. If somebody
11 happened to analyze a lot of marijuanas that month, they
12 could do a lot more samples, I don't know. I don't have
13 my -- this was all on my computer, all in my notes. I don't
14 have access to it. I'm sorry.

15 THE COURT: Mr. Hanchett, relax.

16 You're not responsible to have in front of you what you
17 don't have in front of you.

18 All that you're responsible --

19 THE WITNESS: Sorry. Sorry, Your Honor.

20 THE COURT: That's all right. All that you're
21 responsible for is answering the questions to the best of
22 your ability. Okay?

23 A. Okay.

24 THE COURT: All right.

25 Mr. Ryan.

1 Q. (By Mr. Ryan) So my question is if overtime started in
2 August, would that mean that you didn't have overtime in
3 July?

4 A. True.

5 Q. Okay. And if overtime ran out in May, then you
6 wouldn't have overtime in June?

7 A. Correct.

8 Q. And when you had overtime, that meant you could analyze
9 more samples, correct?

10 A. I told you I don't know. It depends on the complex of
11 the samples. Possibly you're correct. If I had my notes, I
12 would see it.

13 Q. Okay. I'm going to now show you an email that you sent
14 to a person named Ann Looney. Do you know who that is?

15 A. A union lawyer.

16 Q. And did she -- when you say "union" was your union
17 MOSES?

18 A. Correct.

19 Q. M-O-S-E-S.

20 A. M-O-S-E-S, correct.

21 Q. Do you know what MOSES stood for or stands for?

22 A. Massachusetts Organization of State Engineers and
23 Scientists.

24 Q. And was Ann Looney -- and spelling her name
25 L-O-O-N-E-Y -- was she general counsel for MOSES?

1 A. She was one of the attorneys, yes.

2 Q. Now, on August 16, 2011 at 11:03 a.m., did you send her
3 an email?

4 A. It says I did, yes. I don't remember.

5 MR. RYAN: And, for the record, this would be Exhibit
6 106.

7 THE COURT: Thank you.

8 Q. (By Mr. Ryan) Is the subject heading of this email:
9 Nassif Report?

10 A. Yes.

11 Q. And in this email, did you say that Julie Nassif's
12 report breaks down Amherst and -- Boston and Amherst
13 submissions for both labs, but it is only for three months?

14 A. Yes.

15 Q. Did the Department of Public Health try to close your
16 lab again in August of 2011?

17 A. I'm sorry, sir. I don't remember.

18 Q. Okay. Do you recall this report that Julie Nassif
19 wrote that only included submissions for three months?

20 A. No, I don't.

21 Q. Did -- you said you don't recall whether or not DPH
22 attempted to close your lab in August of 2011?

23 A. I don't remember, sir.

24 Q. If I showed you a press account from August of 2011
25 about an attempted closure, do you think that might refresh

1 your recollection?

2 A. It might.

3 There's four or five times, three or four times anyways
4 they tried to close us down. I don't remember which is
5 which. I'm sorry.

6 Q. Showing you a news account, Bates stamp number 000429.
7 Reading that first part of this news account, does this
8 refresh your recollection about an attempt to close your lab
9 in August of 2011?

10 A. I don't remember. I'm sorry.

11 I see that, yes.

12 Q. Okay.

13 A. But there was so many times they tried to close us, I
14 can't remember which one was which.

15 Q. And when they would try to close your lab down, was it
16 customary for you to reach out to members of the media to
17 make the case for keeping the lab open?

18 A. I don't think -- not directly. We'd probably contact
19 the local police departments first and the local District
20 Attorney's Office and then the media would contact us.

21 Q. Showing you what's Bates stamped number 000444, is this
22 a letter that you wrote in August of 2011 to a reporter
23 named Kristin?

24 THE COURT: Mr. Ryan, just for clarification, if you
25 show something that is an exhibit, would you just make sure

1 you say it.

2 MR. RYAN: I will, Your Honor.

3 THE COURT: And if I don't hear an exhibit number, I'll
4 assume it's not an exhibit.

5 MR. RYAN: This is not an exhibit.

6 THE COURT: Okay. Thank you.

7 (Pause)

8 THE WITNESS: It could be right. I have no idea.

9 Q. (By Mr. Ryan) This -- I'm going to show you one more
10 document that's previously, or Bates stamp number 000461.

11 Is this a similar correspondence to another reporter?

12 A. Yeah, okay, if you say so.

13 I don't remember, sir.

14 Q. Did these correspondence -- pieces of correspondence
15 I've showed you contain some figures about the productivity
16 at the Amherst Drug Lab?

17 A. Yes. Samples received, samples analyzed.

18 Q. And did you include the numbers of samples in the body
19 of the letter that you helped the Boston Drug Lab out with?

20 A. Yes.

21 Q. You said: We have also assisted our parent laboratory
22 in Boston with an analysis of 1,527 --

23 A. 1527, correct.

24 Q. -- samples?

25 Now, in 2011, fair to say that they did not end up

1 closing the Amherst Drug Lab?

2 A. No, they never closed us.

3 Q. And did you -- did the legislature end up finding
4 another 300,000 dollars to keep the lab open?

5 A. I don't know how it went about, either the legislature
6 or the public health, I have no idea.

7 Q. Did your budget stay static at the time you were there?
8 Did you get a lot more money or less money?

9 A. Sometimes it came in spurts. They had extra money and
10 we'd get more money. I don't remember the years, sir. This
11 stuff was all in paperwork.

12 Q. Sure.

13 A. It's all boxed up somewhere.

14 Q. Let me ask you this, did these efforts, you said three
15 or four times on the part of Department of Public Health to
16 close your lab, affect your relationship with any of your
17 Department of Public Health superiors?

18 A. I mean, I still had to report to them. They're still
19 my bosses, I mean, doesn't mean I had to like what they
20 were doing.

21 Q. Did you trust them?

22 A. I think they would look out for themselves before they
23 would look out for Amherst.

24 Q. And so, fair to say, you didn't think that they
25 necessarily had the best interest of the Amherst Drug Lab at

1 heart?

2 A. Not at all.

3 Q. Now, is it also fair to say that each time they tried
4 to close your lab, you and your colleagues resisted these
5 efforts?

6 A. Correct.

7 Q. And, in the course of resisting these efforts, you
8 would cite the numbers of samples that Amherst had analyzed?

9 A. Yes.

10 Q. And you'd also note how little it cost to run the lab?

11 A. Uh-huh.

12 Q. In the course of fighting to keep the lab open, I think
13 you may have referenced, did you seek the support of
14 district attorneys?

15 A. Yes, I did.

16 Q. And did you seek the support of police chiefs?

17 A. Indirectly. I would go through the evidence officer,
18 and he would contact the Chief of Police.

19 Q. Did your MOSES representatives highlight the role your
20 lab played in keeping drug dealers off the street?

21 A. I believe so.

22 Q. Is it fair to say that in the course of fighting to
23 keep the lab open, you did not seek or receive the support
24 of the Massachusetts Association of Criminal Defense
25 Lawyers?

1 A. Never approached them.

2 Q. You didn't approach the Committee for Public Counsel
3 Services either?

4 A. No, I did not.

5 Q. Or any other organization dedicated to protecting the
6 rights of criminal defendants?

7 A. No, I did not.

8 Q. Now, I'd like to talk a little bit about the low cost
9 of running the lab. Was one of the reasons that it cost so
10 little because you had such a small staff?

11 A. That and plus the building was built by our department
12 in the early '60s, so the building was free. The University
13 took it over. They maintained it. They provided
14 electricity, the heat and water, and everything else.

15 Q. Now, just in terms of the staff, after Cam retired in
16 the Summer of 2008, was it yourself, Sharon Salem, Sonja
17 Farak, and Rebecca Pontes who worked there?

18 A. Correct.

19 Q. And the fact that it was only four of you, is it fair
20 to say made it difficult to get done what you had to get
21 done?

22 A. No. Staffing was the same. Alan never did samples
23 very often so the amount of people working in the
24 laboratory, doing actual, you know, chemical analysis were
25 the same.

1 Q. Showing you your testimony from this past February
2 starting on line 12 to line 14, did you previously
3 testify -- this is Exhibit 71, again, for the record --
4 There were only four of us so, it made it, you know,
5 difficult to get everything done we had to get done?

6 MS. VALENTINE: What page?

7 MR. RYAN: Page five.

8 THE WITNESS: It made it difficult, but didn't make it
9 impossible.

10 Q. (By Mr. Ryan) Now, Sharon Salem, as of Summer of 2008,
11 she was a Chemist III, correct?

12 A. She was a Chemist III, but I don't know the date.

13 Q. You would agree, when you took over as lab supervisor,
14 Sharon should have been working in the lab?

15 A. Yes, she should of.

16 Q. But you had lost your evidence officer through
17 retirement and they never replaced her, correct?

18 A. Correct.

19 Q. That was Donna Lacroix?

20 A. Correct.

21 MR. RYAN: And for the record, L-A-C-R-O-I-X.

22 Q. (By Mr. Ryan) At some point after Miss Lacroix
23 retired, did Sharon volunteer to handle the evidence?

24 A. I don't know if she volunteered or Cam asked her, I
25 don't remember.

1 Q. Turning your attention to page six of your prior
2 testimony, lines three through six, did you previously
3 testify: Well, she should have been working in the lab, but
4 we lost our evidence officer through retirement and they
5 never replaced her, so Sharon volunteered to handle the
6 evidence?

7 A. Yeah, okay.

8 Q. When she volunteered to handle the evidence, she
9 stopped testing samples, correct?

10 A. Not 100 percent, no.

11 Q. Well, was -- how often would she test samples after she
12 became the evidence officer?

13 A. I think when one of the girls was on vacation she would
14 help out, but like I said, it's been years. I don't recall
15 exactly.

16 Q. In the course of -- well, we'll hold onto that.

17 When Cam Stevenson retired, they didn't replace him
18 either, did they?

19 A. No, they just moved me up.

20 Q. And you continued to test samples after taking on the
21 position of Lab Supervisor, correct?

22 A. Correct.

23 Q. But because of your supervisory responsibilities, you
24 did not have as much time to test samples as Rebecca and
25 Sonja did; is that correct?

1 A. That's correct.

2 Q. And they tended to test, roughly, the same amount of
3 samples each month?

4 A. Again, I'd have to look at the flow chart that had it
5 all. I don't have that anymore. I can't say for sure.

6 Q. Is it fair to say that you tested about a half or about
7 a third as many samples as they did?

8 A. Again, sir, I don't have that information anymore. I'm
9 sorry.

10 Q. Now, you talked about some of the benefits of having
11 this relationship with the University of Massachusetts. Is
12 it fair to say that the Department of Public Health did not
13 devote much in the way of resources to the upkeep of your
14 lab?

15 A. No, they didn't; no. Very little. Occasionally
16 there'd be money. We can do bench jobs. It was sporadic.

17 Q. Would you agree that there was a lack of support from
18 higher up in public health?

19 A. Yeah. We were the junior lab. They didn't really give
20 us much of a shot at the funding.

21 Q. And as a result of this lack of support and not having
22 a shot at the funding, is it fair to say that your lab was
23 in a deplorable condition?

24 A. Have you ever been to 1010 Commonwealth? Have you ever
25 been to the Jamaica Plain lab before they refurbished it?

1 THE COURT: Mr. Hanchett, you don't get to ask
2 questions.

3 THE WITNESS: I know, but I'm just saying it wasn't
4 deplorable.

5 THE COURT: Okay. Well, the answer is it wasn't
6 deplorable.

7 THE WITNESS: Well, he's being sarcastic and I really
8 don't like that.

9 THE COURT: Mr. Hanchett. Mr. Hanchett.

10 THE WITNESS: Okay. I understand, sir. I'm sorry.

11 Q. (By Mr. Ryan) Drawing your attention to page 28, of
12 your prior testimony, starting on line two, did you say --
13 testify and say: Oh, yes, we complained lack of budget,
14 lack of support from higher up in public health, you know,
15 our lab was in deplorable condition.

16 A. Their lab was in deplorable condition also.

17 Q. Right. I asked you if your lab was in a deplorable
18 condition.

19 A. Same as others, exactly.

20 Q. Okay. Are you familiar with something called a fume
21 hood?

22 A. Yes, I am.

23 Q. Is this a type of local ventilation device?

24 A. That's correct.

25 Q. Are fume hoods designed to protect analysts from

1 inhaling toxic materials?

2 A. Correct.

3 Q. Do they also prevent things like cross contamination?

4 A. No, not for chemicals; biological, yes; not for
5 chemicals, in my experience.

6 Q. Well, when you would use -- you'd agree that a lot of
7 these samples that you would test, like cocaine, for
8 example, it's a fine powder, correct?

9 A. Correct.

10 Q. And there's dangers in handling these fine powders of
11 being exposed to these chemicals, correct?

12 A. I mean it's not toxic. There is a slight danger, but
13 they're not toxic.

14 Q. Well, when you would open up a package of cocaine
15 there's a potential that some of the -- this powder would
16 leave the package?

17 A. It could.

18 Q. Sort of like opening up the top of a bottle of baby
19 powder?

20 A. You could get some coming out, yes.

21 Q. So, when you would have a fume hood, would this be a
22 location to do procedures in the testing process to guard
23 against having some of these microscopic powders end up in
24 places that they shouldn't?

25 A. No.

1 Q. Well, in any event, did the Amherst Drug Lab have fume
2 hoods?

3 A. Yes, we did.

4 Q. And would these fume hoods sometimes break?

5 A. Frequently.

6 Q. And when they broke, would you ask that they be fixed
7 or replaced?

8 A. Yes.

9 Q. Did DPH fix or replace broken fume hoods at the Amherst
10 Lab in kind of timely way?

11 A. We always had at least one hood working, but, no, there
12 was a couple of them did, they didn't get right on right
13 away.

14 Q. And did you previously testify equipment hoods were
15 broken, not replaced, not fixed -- line 13 of your --

16 A. Yeah, we always had one, at least one working.

17 Q. And is it fair to say that this was not a good
18 environment in which to work?

19 A. Not for the regular routine sampling of the drugs. The
20 only time you necessitated using a hood was when you're
21 dealing with highly toxic reagents.

22 Q. Did you testify at line 12, previously, that, quote, It
23 was not a good environment to be working under?

24 A. Not a hood; but if he had a hood, you would use it.

25 Q. Let's back away from the hood.

1 At the Amherst Lab, in general, was this just not a
2 good environment to be working under?

3 A. It wasn't the most pristine.

4 Q. Now, were you concerned that if you pushed as lab
5 supervisor for more staff or better equipment, DPH might use
6 this as an excuse to close your lab?

7 A. It was in the back of my mind, I'm sure.

8 Q. Are you familiar with an organ called ASCLD?

9 A. Yes.

10 Q. Is this the American Society of Crime Lab Directors?

11 A. Sounds familiar, but I'm not -- like I said, we weren't
12 accredited by any organization. We started the process, but
13 they lacked the funding to complete it.

14 Q. And is ASCLD an organization that specializes in
15 accrediting laboratories?

16 A. That's one of them, but I don't think that was the one
17 we were using, but I don't remember.

18 Q. Are you familiar with an organization called SWGDRUG?

19 A. Yes, we are.

20 Q. And was this the Scientific Working Group for the
21 Analysis of Seized Drugs?

22 A. Correct.

23 Q. And SWGDRUG is not an accrediting body, is it?

24 A. No, it's not.

25 Q. It's mission is to recommend minimum standards for the

1 forensic examination of seized drugs; does that sound right?

2 A. Yes.

3 Q. Now, do you know whether SWGDRUG made any
4 recommendations with regard to continuing professional
5 development?

6 A. It's been a long time, I looked at that, sir. I'm
7 sorry. I don't remember.

8 Q. I'm putting up for you what's previously been marked as
9 Exhibit 20. This would be the Scientific, SWGDRUG's 2011
10 recommendations, and draw your attention to page four. You
11 could just review what's under subsection three there
12 labeled: Continuing professional development.

13 A. Yes.

14 Q. State's laboratory shall provide support and
15 opportunities for continuing professional development?

16 A. Yes.

17 Q. Is this something the Amherst Drug Lab did?

18 A. Through the Hinton Lab we did obtain -- go to seminars.
19 I don't know how we met the requirement there, but we did,
20 on the, you know, yearly, possibly bi-yearly basis we did go
21 to seminars.

22 Q. Does Section 3.1 of the SWGDRUG recommendations say
23 that the minimum continued professional development
24 requirements for laboratory analysts are 20 hours of
25 training every year?

1 A. Yes, it does.

2 Q. Is this something that the Amherst Drug Lab could
3 afford to do every year to have Sonja Farak and Rebecca
4 Pontes get 40 hours total of continuing professional
5 development?

6 A. I think it was more the funding end of it. We didn't
7 pay for it. That came out of their budget.

8 Q. So is it fair to say that from year to year, this is
9 not something that the Amherst Drug Lab had money to
10 support?

11 A. Oh, definitely, we didn't have the money.

12 Q. Now, if Ms. Pontes and Ms. Farak had done this amount
13 of professional education, would this have resulted in a
14 reduction of the number of samples that they would have been
15 able to analyze?

16 A. Yes, depending on overtime.

17 Q. Now, if you -- I'm going to show you page 33 of this
18 same Exhibit 20. Subsection entitled: Proficiency and
19 competency testing.

20 If you could just take a moment to look that over.

21 A. (Witness complying)

22 Q. Did SWGDRUG state that proficiency testing should occur
23 at least annually?

24 A. Yes.

25 Q. And did it say where possible, at least one of these

1 proficiency tests should be from a recognized external
2 proficiency test provider?

3 A. We did occasional ones, not yearly; but occasional.

4 Q. Did Rebecca Pontes have one proficiency test during the
5 time you were the supervisor?

6 A. At least one.

7 Q. Did Sonja Farak ever have a proficiency test?

8 A. She started in Boston, so I couldn't tell you.

9 Q. When she was working in Amherst, she never had one, did
10 she?

11 A. Not that I recall.

12 Q. Okay. Was it possible for the Amherst Drug Lab to pay
13 an external proficiency test provider each year to
14 administer these tests?

15 A. No, that came out of Boston's funding.

16 Q. And I think you said before Boston was looking out for
17 itself, so did they give you any money to have your analysts
18 take proficiency tests every year?

19 A. No, they did not.

20 Q. Now, I'm going to go back to page one of this same
21 Exhibit 20, section entitled, Code of Professional Practice
22 for Drug Analysts.

23 If you could just take a moment to review the first few
24 subsections I have before you.

25 A. (Complying)

1 Q. And I'm going to scroll down to Section 1.4.

2 A. Okay.

3 Q. Now, with respect to 1.4, did SWGDRUG recommend that
4 all employers of analysts develop a code of professional
5 practice and a means of dealing with breaches of the code?

6 A. Yes, it did.

7 Q. And just so I'm clear, when you became the lab
8 supervisor or when Cam Stevenson retired, you did not
9 inherit a code of professional practice; is that correct?

10 A. No, never did.

11 Q. And nobody at the Hinton Lab asked you to develop one,
12 correct?

13 A. No.

14 Q. And developing one of these would have taken some time,
15 correct?

16 A. Time and money.

17 Q. And you didn't have the time and money to devote to
18 endeavors like this, did you?

19 A. That's correct.

20 Q. Now -- now if I could turn your attention to section
21 four on page five of Exhibit 20. Titled: Initial Training
22 Requirements.

23 Among other things, did SWGDRUG require a documented
24 training program?

25 A. Yes.

1 Q. And as well as documented standards for performance?

2 A. Yes.

3 Q. A plan for assessing theoretical and practical
4 competence?

5 A. Yes.

6 Q. A training syllabus?

7 A. Yes.

8 Q. Again, these are things you did not inherit, correct?

9 A. No. We had a powder protocol that was developed by
10 Northeastern University in the '80s. And that's what we had
11 given to all of our chemists when they were hired and that
12 contained all of that.

13 THE COURT: Mr. Hanchett, the beginning of that
14 sentence you said: We had a what?

15 THE WITNESS: It was a protocol developed by
16 Northeastern University. It was by a professor of
17 toxicology, forensic science, and a grad -- postgrad who
18 came down, spend a week at our lab, maybe two weeks, week or
19 two at Boston. And as a protocol for the analysis of drugs
20 and contained a lot of that stuff. And that was a given to
21 every new hire who went to the drug lab. So there was
22 something there.

23 Q. (By Mr. Ryan) So is this a document that was given to
24 Rebecca Pontes when she joined the Amherst Drug Lab?

25 A. It wasn't given to her, it was in the library. We had

1 a small library and we said: Here it is; Here's the powder
2 protocol. This is how we handle certain drugs.

3 Q. So that -- did that have a training syllabus in it?

4 A. I don't remember, sir.

5 Q. Okay. Now, I'm going to turn your attention to page
6 34, of this document, Exhibit 20, entitled Deficiency of
7 Analysis.

8 Am I correct that SWGDRUG required a documented policy
9 to address operations or results that are deficient in some
10 manner?

11 A. Yes.

12 Q. And this documented policy was supposed to include a
13 definition for deficiency as: Any erroneous analytical
14 result or interpretation or any unapproved deviation from an
15 established policy or procedure in an analysis?

16 A. Correct.

17 Q. And this documented policy required administrative
18 review of the work or activity of the individual involved?

19 A. There was -- we did a review of the work.

20 Q. Well, let me ask you this, did you have a documented
21 policy concerning deficiencies of analysis at the Amherst
22 Drug Lab?

23 A. Oral. It was oral.

24 Q. And to turn an oral policy into a written one is
25 another thing that would have taken time and money, correct?

1 A. We were in the process of doing all of that. Never got
2 to finish it though.

3 Q. And just -- this would have -- if you had an oral
4 policy, and you turned it into a written policy for
5 deficiencies of analysis, this is another thing that would
6 have taken time and money to accomplish, correct?

7 A. Correct.

8 Q. And it was another thing that would have reduced the
9 output of samples you were able to test?

10 A. Correct.

11 Q. And fair to say, that you were concerned that any
12 significant reduction in sample output would have left your
13 lab vulnerable to closure?

14 A. Always had that in the back of my mind.

15 Q. Now, I'd like to show you another document.

16 This has been Bates stamped 000541. I don't believe
17 this is yet in evidence. I will represent it will
18 eventually be.

19 But if you could take a moment to review this document
20 that's on the presenter.

21 A. (Complying)

22 I can't read some of this.

23 Q. Let me see if I can -- does that help?

24 A. First line, vulnerability factors, I can't get all
25 that.

1 Q. Okay. Let me ask you this question. Before today,
2 have you ever seen this document before?

3 A. No, I haven't.

4 Q. Okay. Now, if you had -- you had occasion to work with
5 Sonja Farak for about eight years, correct?

6 A. Correct.

7 Q. And you had opportunity to observe her handwriting,
8 correct?

9 A. Occasionally, not often.

10 Q. Does this appear to be Sonja Farak's handwriting?

11 A. Sir, I don't know.

12 Q. Okay. If you look at prompting event, the third box
13 down, does it say: Told Jim earlier in week I put DEA
14 application in?

15 Do you see that?

16 A. Uh-huh.

17 Q. But I didn't, in parens, figured I would later/soon.
18 Today found out I need his signature on it. Equals he
19 knows/will know I lied.

20 Now, DEA training, was this something that Rebecca
21 Pontes did in June of 2011?

22 A. She did it, but I don't remember when.

23 Q. Putting another document on the screen, not an exhibit
24 but Bates stamp number 000465.

25 Is this a travel authorization form for Rebecca Pontes

1 for the week of June 5 through June 11 in 2011?

2 A. Yes.

3 Q. Is this when she did the DEA training down in Virginia?

4 A. Yes, must be.

5 Q. Now, did Sonja Farak eventually get DEA training as
6 well?

7 A. Yes, she did.

8 Q. And would that have been in March of 2012?

9 A. I can't recall.

10 Q. Showing you what's been -- well, let me go --
11 previously Bates stamp number 000464. Is that an email
12 dated January 17, 2012, one of the recipients being Sonja
13 Farak, informing her that she'd been accepted to DEA state
14 and local seminar in March 19-23, in 2012?

15 A. Correct.

16 Q. And she received this notification on January 17, 2012?

17 A. Correct.

18 Q. So, this -- if we go back to this document here, do you
19 recall whether or not you had to sign the applications for
20 Rebecca Pontes and Sonja Farak in order to attend these DEA
21 programs?

22 A. I don't really recall, could of been Julie Nassif. She
23 was in charge of a lot of that stuff.

24 Q. In any event, do you have any recollection of Sonja
25 Farak lying to you about putting in a DEA application?

1 A. No recollection at all.

2 Q. Any recollections about her lying about anything else?

3 A. None that I can recall.

4 Q. Okay. If you could take a look at further down. This
5 box that's -- looks like it's cut off and it would be,
6 Action Urge. What do I feel like doing or saying.

7 Is the first Action Urge: Asking Becky who she had
8 sign it?

9 A. Yes. The first line, I can't make out the rest.

10 Q. Right. Was Becky -- did Rebecca Pontes go by Becky at
11 the lab?

12 A. Yes, she did.

13 Q. And does the next line, does it say: Action Urge:
14 Use. Have 12 urge full samples to analyze out of the next
15 13?

16 MR. CALDWELL: Objection.

17 THE COURT: What's basis of the objection?

18 MR. CALDWELL: Your Honor, it's not personal knowledge
19 of Mr. Hanchett.

20 THE COURT: Mr. Ryan, I'm having a hard time. You're
21 just showing him documents. I'm not getting a whole lot of
22 factual information. I mean, I don't -- I don't -- I'm
23 having a hard time following the purposefulness of where
24 you're headed with this particular witness.

25 And I also just note it's 10:35 and -- but I'll hear

1 you.

2 MR. RYAN: To proffer, Your Honor, one of the issues in
3 this case is going to be what efforts were made by law
4 enforcement officials who seized this document from Sonja
5 Farak's trunk.

6 What I've got this witness is he, if -- if -- he's --
7 it's referencing an event, a DEA application, which had to
8 have happened between June of 2011 when Rebecca Pontes
9 attended this class and January of 2012 when Rebecca -- and
10 when Sonya Farak was admitted into this program.

11 This Action Urge of using samples, of having 12 out of
12 13, was something that must have happened during that window
13 of time which is well beyond what it was represented by the
14 Attorney General's Office as the scope in terms of timing of
15 Sonja Farak's misconduct at the lab.

16 THE COURT: What I'm -- I understand that. What I'm
17 saying for a quite of number of these exhibits, you asked
18 him: Does the screen say X: And, The screen says X.

19 What do you remember about it? Nothing.

20 So -- well, anyways, go ahead.

21 MR. RYAN: Thank you.

22 Q. (By Mr. Ryan) Let me ask you this, were analysts
23 assigned individual samples to analyze or did they get
24 assigned batches of samples?

25 A. Repeat that. I don't understand what you are saying.

1 Q. When an analyst, at your lab, would be assigned some
2 work, would they get a single sample or would they get a
3 batch of samples?

4 A. Depends on the complexity.

5 Q. Okay. Was it customary to get batches of 10 or 15 or
6 20 samples from time to time?

7 A. Probably less than 20, but 10 to 15 sounds more
8 reasonable.

9 Q. And did the lab keep track of each batch that was
10 assigned to each analyst?

11 A. Not until the State Police took us over. We didn't go
12 by batches. We went by sample number.

13 Q. Well, would you have --

14 A. If you're talking about the sign out, that could be
15 construed as a batch, yes. We did track that.

16 Q. Okay.

17 A. Sorry, I misunderstood.

18 Q. So putting up on the screen an example of sample two
19 lab.

20 A. Yes.

21 Q. From the case of Commonwealth v. Rolando Penate.

22 A. Uh-huh.

23 Q. This would be a batch of samples that would go assigned
24 by, in this case, your name is up there, correct? JH?

25 A. Yes.

1 Q. And there's a chemist SJF, Sonja Farak, correct?

2 A. Sonja, correct.

3 Q. And these laboratory numbers would reflect a batch of
4 samples that Ms. Farak would get?

5 A. Correct.

6 Q. Okay. Now, my question to you is, after Sonja Farak
7 was arrested, did anybody ask you to examine the batches of
8 samples she was assigned between October and December 2011?

9 A. We had no access to the equipment or the laboratory.
10 We couldn't do any of that.

11 Q. So the answer to that, no?

12 A. No.

13 Q. Would it have been possible to see if she had been
14 assigned a batch of 13 samples during that time period?

15 A. It would be in the books.

16 Q. Now, I'd like to ask you some questions about the
17 testing procedures at your laboratory, and I'm going to
18 refer to the SWGDRUG recommendations, again. Which --
19 Exhibit 20, and I'm going to be on page 14.

20 Now, would you agree with the statement that the
21 correct identification of a drug or chemical depends on the
22 use of an analytic scheme based on validated methods and the
23 competence of an analyst?

24 A. That's correct.

25 Q. And did SWGDRUG require the use of multiple

1 uncorrelated techniques?

2 A. Yes, they did.

3 Q. Now, does this SWGDRUG document contain a chart here
4 with three different categories of kinds of tests?

5 A. Yes.

6 Q. And are you familiar with this chart?

7 A. Yes, I am.

8 Q. And the Category A, B, and C, are they separated by, in
9 terms of discriminating power, of different kinds of tests?

10 A. Yes.

11 Q. And so the Category A techniques are more
12 discriminating than the B or C?

13 A. Correct.

14 Q. Now, in terms of complying with SWGDRUG, was it
15 required that a Category A technique be incorporated with
16 another technique?

17 A. Yes.

18 Q. And so, in -- at your lab, did you comply with SWGDRUG
19 or attempt to comply with SWGDRUG by doing mass spectrometry
20 and gas chromatography --

21 A. Chromatography, yes.

22 Q. Thank you.

23 Is that how you fulfilled this requirement?

24 A. Yes.

25 Q. Now, in terms of gas chromatography, can we call that

1 GC?

2 A. Sure.

3 Q. I'd like to focus on your GC work for samples suspected
4 of containing cocaine and heroin. Is it fair to say that
5 these illegal -- that street drugs are almost always a
6 combination of illegal and legal substances?

7 A. For the most part.

8 Q. Did dealers add cutting agents to increase the weight
9 of their product?

10 A. Yes.

11 Q. In the course of your career, would you agree was
12 incredibly rare to get a 99.9 percent pure sample seized by
13 the police?

14 A. Depends on the amount.

15 Large quantities are usually purer.

16 Q. And, but, even when they were usually purer, were they
17 100 percent purer, or did they tend to have cutting agents
18 in them?

19 A. No, they were 100 percent sometimes, just for the
20 cocaine bricks.

21 THE COURT: I'm sorry, sir?

22 THE WITNESS: The cocaine bricks.

23 THE COURT: Okay.

24 THE WITNESS: A kilogram of cocaine.

25 THE COURT: Yup.

1 Q. (By Mr. Ryan) Aside from those larger bricks of
2 cocaine, were most of the samples that your lab analyzed
3 mixtures?

4 A. Yes.

5 Q. And this GC device, was it, one of it's functions to
6 separate different substances in a mixture?

7 A. Yes, it was.

8 Q. Did a GC instrument have an injection port on one end
9 and a detector on the other?

10 A. Correct.

11 Q. And in between was there metal column?

12 A. No, it's actually glass.

13 Q. Well, this thing in between, was this something that
14 was coiled up in a box?

15 A. Yes.

16 Q. And if you extended it fully, it would have been 75 or
17 100 feet, does that sound about right?

18 A. Closer to 100.

19 Q. Okay. Now, when you would put -- would a technician
20 put a portion of a sample in the injection port of the GC?

21 A. It was done robotically.

22 Q. Would the technician prepare the vials that would go to
23 the auto sampler that would inject it into the GC?

24 A. Correct.

25 Q. And once it got inside the GC, would the sample

1 immediately vaporize?

2 A. Yes.

3 Q. And this would separate it into its components?

4 A. When it travels down the column.

5 Q. And there would be a gas inside the column that would
6 carry it forward?

7 A. Correct.

8 Q. And were these columns packed with a sand-like
9 material?

10 A. Not in 30 years.

11 Q. Okay. In any event, the goal here is to promote
12 separation, correct?

13 A. Correct.

14 Q. And would you agree that the different molecular
15 characteristics of each substance affect how long it would
16 take to get through the column?

17 A. Yes.

18 Q. And is the amount of time that a compound is retained
19 in the GC column known as the retention time?

20 A. Yes.

21 Q. Would analysts at Amherst always begin instrumental
22 testing by injecting a mixture of cocaine and heroin into
23 the GC port?

24 A. Yes.

25 Q. And is this something you would do even if the unknown

1 samples you were about to test were suspected of, not
2 suspected of containing cocaine or heroin?

3 A. Yes, we would.

4 Q. Would you do this just to ensure that the instrument
5 was functioning properly?

6 A. That's correct.

7 Q. Now, when cocaine and heroin, this mixture of the two
8 went through the GC, you would get a different retention
9 time for each; is that correct?

10 A. Yes.

11 Q. And am I correct, that the retention times of cocaine
12 and heroin could vary?

13 A. Few percent.

14 Q. In other words, on one run, it might take 3.6 minutes
15 for a sample of cocaine to pass from the injunction port to
16 the detector. Could that happen?

17 A. I'd have to see. I don't -- you know, it's been a long
18 time.

19 Q. Well, when you said it could vary from a few percentage
20 points --

21 A. A few percent.

22 Q. It depended on things, the conditions of a test on a
23 particular day; is that correct?

24 A. It could be the sample amount, it could be how strong
25 it was. It could be the cuts.

1 Q. Is it fair to say you could always count on cocaine
2 going through faster than heroin would?

3 A. Yes.

4 Q. All right. Now, this instrument would track the times
5 that each sample or component went through, correct?

6 A. Correct.

7 Q. And after you introduced these known samples through,
8 you could then introduce an unknown sample, correct?

9 A. Correct.

10 Q. And the instruments would track how long it took the
11 unknown -- components of the unknown sample to go through
12 the column, correct?

13 A. Correct.

14 Q. And then at the end, you could compare the retention
15 times for the known and the unknown, correct?

16 MR. CALDWELL: Your Honor, I'm going to object at this
17 point to the line of questioning in terms of relevancy.

18 THE COURT: Mr. Ryan.

19 MR. RYAN: Well, I think it's important for the Court
20 to understand the science here, because I don't think the
21 Amherst Lab adhered to it.

22 I think you're going to hear testimony and see evidence
23 that Amherst would introduce this mixture of cocaine and
24 heroin, and we'll talk about where that comes from in a
25 second, but they introduced that through and they'd get

1 their retention times for those substances.

2 When they had anything but cocaine and heroin, they
3 would not introduce a contemporaneous standard.

4 For example, if they had Oxycodone, they would not see
5 what the retention time of Oxycodone was for their lab
6 standard and then put a suspected Oxycodone through the
7 machine and get a retention time that they could compare;
8 which, our argument would be, is an essential part of doing
9 a Category B, GC test.

10 And so, the larger argument is going to be here, at the
11 end of all of this, is that the Amherst Lab was not adhering
12 to acceptable practices in the test testing of narcotics.

13 THE COURT: Let's go back a second, just for my own
14 clarification.

15 Is it SWGDRUG?

16 MR. RYAN: Yes.

17 THE COURT: And SWGDRUG, tell me again what SWGDRUG is.

18 MR. RYAN: SWGDRUG sets the floor for forensic
19 laboratories minimum standards. They're a body of
20 scientists and they say, essentially, this is the bare
21 minimum of what you need to do to run one of these labs.

22 THE COURT: Now, are you saying that that is a
23 recommendation or is that a legal requirement for this
24 particular Amherst Lab to follow?

25 MR. RYAN: Well, it's a couple of things. One of the

1 things that consistently happens is Amherst Lab analysts
2 would advise juries and judges and defense attorneys and
3 prosecutors that they were complying with SWGDRUG. So
4 there's, in our view, a misrepresentation as to the work
5 that's happening at the lab.

6 But I think, in order to have forensically defensible
7 results, at a minimum, a lab has to comply with SWGDRUG.

8 I think we'll have an expert come in and testify that
9 that's what this is.

10 Labs are free and their jurisdictions to go beyond
11 SWGDRUG to certain degrees, to get accredited, to do all
12 sorts of things, but you can't fall below SWGDRUG and defend
13 the results of any instrumental testing in a Court of law.

14 MR. CALDWELL: Your Honor, just hearing what Mr. Ryan
15 said, and the Court I know will correct me. It seems like
16 we are going outside of the scope of the hearing here. I
17 believe these are matters that were litigated back in front
18 of Judge Kinder back in 2013 in regards to the laboratory
19 itself and the issues that they have there. And now we're
20 kind of going back down the same road where we're attacking
21 the lab. And I think that matter has already been decided
22 and ruled on by another court and these -- this was the
23 exact same testimony, not exact, but similar in nature to
24 the 2013 hearings that took place in Hampden Superior
25 Court.

1 MR. RYAN: We waited a long time for Mr. Caldwell's
2 investigation to wrap up and one of the reasons we did and
3 were patient is because Mr. Caldwell, to his credit, in the
4 course of investigating the scope of Sonja Farak's
5 misconduct, learned something about the Amherst Drug Lab,
6 including its use of adulterated skimmed standards, which
7 necessitated this Grand Jury in Suffolk County in February
8 of this year and informed a significant portion of the
9 report that he filed with this Court.

10 When we were last before Your Honor, at a status
11 conference, I think Your Honor said this hearing was going
12 to cover three things. It was going to cover the scope and
13 implications of Sonja Farak's misconduct; the overall
14 integrity of the lab, which not only includes the tampering
15 outside of the samples that were assigned to Sonja Farak,
16 but these things that Mr. Caldwell identified through the
17 course of this long protracted investigation; and then,
18 finally, the allegations of prosecutorial misconduct.

19 So what I'm attempting to do with the former director
20 of this lab is just bring out what were they doing in terms
21 of basic testing at the lab. And I don't -- I think we are
22 in a new place here because of, thankfully, Mr. Caldwell's
23 work in bringing a lot of this new evidence to light about
24 the problems at the Amherst Drug Lab.

25 THE COURT: Okay. So well, I agree with Mr. Ryan in

1 the sense that I do believe that those are three areas that
2 go through the Cotto case, as well as my rulings are fair
3 game.

4 Now, having said that, let's look at a piece of reality
5 that -- and that is it's now 10:52. This hearing that's
6 going to continue next week is going to conclude next week.
7 And so I think people have to triage what they want in and
8 what the meat of the matter is here. And, frankly, there
9 are aspects of the evidence so far that talks about the
10 frustrations of lack of funds and budget cuts and so forth
11 and so on that have existed from time and memorial.

12 And what the relief that the defendants seek
13 appropriately and properly is tied to some assertions by the
14 defense of improper conduct. And so, I guess, I'm dancing
15 around. Everybody needs to get to the meat of the matter.

16 MR. RYAN: I understand, Your Honor.

17 Just so the Court is aware, I'm operating under the
18 assumption we are going to move a lot quicker once we kind
19 of get some of this background done. We don't have a line
20 of witnesses out the door today. We've come here to
21 accommodate Mr. Hanchett. I understand we have the morning
22 to accomplish this and I think the time that we put in with
23 initial witnesses like Mr. Hanchett will serve us well, as
24 we move forward. I'll take -- I don't want to bore the
25 Court, I get that, so I will move it along; but I just want

1 the Court to know this isn't a sign of things to come here,
2 in terms of the way in which we're proceeding.

3 THE COURT: Okay. All right. The objection is
4 overruled. You may proceed, Mr. Ryan.

5 MR. RYAN: Thank you, Your Honor.

6 Q. (By Mr. Ryan) Mr. Hanchett, when we talk about
7 retention times for GC analysis, would you agree, that the
8 important thing about a sample's retention time is not
9 necessarily the retention time itself, but how close or far
10 it is from the retention time of the lab standard?

11 A. Yeah, it's true.

12 Q. Now, briefly, with respect to mass spectrometry, can we
13 call that MS?

14 A. Sure.

15 Q. MS is a process that begins when an instrument
16 electrically charges specimen molecules; is that correct?

17 A. After it passes through the gas chromatograph.

18 Q. Right. And so, sequentially GC, happens before MS,
19 correct?

20 A. Correct.

21 Q. GC splits the mixtures into their component parts,
22 correct?

23 A. Correct.

24 Q. And then MS goes to work on those components, correct?

25 A. Correct.

1 Q. And it accelerates these molecules through a magnetic
2 field, correct?

3 A. Correct.

4 Q. And the molecules break apart, right?

5 A. Their ionized and they split up.

6 Q. And you end up with a number of charged fragments; is
7 that right?

8 A. That's right.

9 Q. And the MS instrument can detect these different
10 charged fragments, right?

11 A. Correct.

12 Q. And it creates this spectral plot displaying the mass
13 of each fragment; is that right?

14 A. That's right.

15 Q. And this spectra that we are talking about looks, on a
16 piece of paper, like some squiggly lines, right?

17 A. Yes.

18 Q. Now, when you run a -- at the beginning of your
19 sequence, the mixture of cocaine and heroin through the MS
20 portion of this instrument, you should get a peak for
21 cocaine and heroin, correct?

22 A. If it's working properly, yes.

23 Q. Okay. And each peak of -- would have these set of
24 squiggly lines, correct?

25 A. Correct.

1 Q. And when you then run the unknown through the MS, you
2 typically get one or more peaks for that, right?

3 A. Correct.

4 Q. And eventually an analyst would end up doing a visual
5 comparison between the squiggly lines on the unknown and the
6 squiggly lines on the known; is that correct?

7 A. First, it's done by the computer.

8 THE COURT: Mr. Hanchett, I'm going to ask you to just
9 speak louder.

10 THE WITNESS: Oh, I'm sorry.

11 First it's done by the computer.

12 Q. (By Mr. Ryan) Ultimately, does the analyst have a
13 judgment call to make as to whether the squiggly lines are
14 similar enough to call it a same substance being the source?

15 A. It has to be within a certain match in the library
16 quality. We introduce a standard sample. We store it in a
17 library. That is matched against the suspected sample and
18 its got to be within a certain percentage.

19 Ninety-nine percent is the highest you can get with the
20 search library that was provided by the instrument
21 manufacturer.

22 Q. Okay. We are going to talk about computer match
23 quality in a second here, but is there a visual comparison
24 component to the analysis that analysts do?

25 A. Yes, you have to make sure it matches.

1 Q. Is this kind of like there's a chemical fingerprint of
2 a known and then you're looking at a finger print of an
3 unknown?

4 A. Yeah, similar.

5 Q. And you're seeing if they are close enough to call it a
6 match; is that fair?

7 A. Based also on the computer guidelines, it's a
8 combination of both, not just one.

9 Q. Now, can I ask you, you heard my proffer earlier. Did
10 your lab, before the State Police takeover in July of 2012,
11 did it use lab standards beyond cocaine and heroin in the
12 course of instrumental testing?

13 A. Only on certain drugs.

14 Q. Which drugs would those be?

15 A. Oh, lysergic acid, diethylamide, psilocin, psilocybin;
16 oh, geez, a handful of them.

17 Q. Maybe we can do it this way.

18 Amphetamine. If you got a pill or tablets suspected of
19 containing amphetamine, would you go to your lab standard
20 and take out some of the amphetamine that you had on hand
21 and introduce it into the instrumental testing and then
22 compare it to the unknown, to see if the squiggly lines
23 matched, and see if the retention times were similar?

24 A. I think it depends on the sample. If it's a labeled
25 pill, we wouldn't do that. If it's a powder, it wasn't

1 required, but it was frequently done.

2 Q. Okay. Amphetamine; do you know what class drug that
3 was?

4 A. It's a B.

5 Q. If you got a labeled pill of amphetamine, you would not
6 feel the need to do any instrumental testing to see what
7 that was?

8 A. No, we would still do the GC and we still would do the
9 mass spec.

10 Q. But you wouldn't be comparing it to the lab standard,
11 correct?

12 A. Yes, the lab standard was put into the computer and
13 stored in there.

14 Q. You would not be running a concurrent lab standard
15 through the machine, as you ran the unknown tab through the
16 machine; is that fair to say?

17 You would be doing just -- you would be consulting the
18 with spectral library that was in the computer?

19 A. Exactly. And that's where you get the 99 percent.

20 Q. And that's all you would be doing, correct?

21 A. Not all the time, but like I said, most samples. That
22 if they are labeled, that would be it, just a GC and a mass
23 spec.

24 If it's unlabeled, we would do the -- we'd introduce
25 the amphetamine standard.

1 THE COURT: I'm sorry. If it was what?

2 THE WITNESS: If it was an unlabeled pill, see if it
3 was in powder form. That's when we would do the known
4 sample too.

5 THE COURT: Okay. Thank you.

6 Q. (By Mr. Ryan) But the GC, let's just stick with that.
7 There is no library of retention times in the GC component?

8 A. Yes, there is.

9 Q. There is?

10 A. Yes. What I put in. I put the library in, but I only
11 put in a few things. It depends what the sample is. And I
12 know where amphetamine comes out.

13 Q. You know, from your training and experience, what the
14 average retention time of amphetamine is?

15 A. I did at the time, not now.

16 Q. Right. But there's nothing in the instrument that says
17 amphetamine will take 4.3 minutes or something like that?

18 A. Again, I programmed the instrument. I programmed the
19 cocaine peak. I programmed the heroin peak. I tell the
20 instrument where to look.

21 And you're misunderstanding GC. It's presumptive test.
22 It's giving me an idea where to go, and that's according to
23 SWG it's presumptive.

24 Q. Right. And so, if you had a pill that had a label on
25 it --

1 A. Yup.

2 Q. -- you would not be going to your jar of amphetamine
3 powder and comparing it with --

4 A. No.

5 Q. Okay. Now, did you learn, at any point, that Sonja
6 Farak had tampered with your amphetamine standard at the
7 lab?

8 A. Not until afterwards.

9 Q. And did you learn afterwards, that she actually took
10 out all of the amphetamine powder and replaced it with
11 sodium sulfate?

12 A. No, didn't know that.

13 Q. Do you recall, at any point, early in your career, the
14 lab getting a large bottle of methamphetamine?

15 A. We had a bottle of, yeah, liquid methamphetamine in the
16 refrigerator, yes.

17 Q. And was that something that had been delivered to
18 another lab at the Morrill Science Building?

19 A. Yes.

20 Q. And did that lab say, essentially, We have no use for
21 this; do you guys want this?

22 A. Yes.

23 Q. Did your lab take that?

24 A. It's before my time. It's been in there a long time.

25 Q. So you started in 1977.

1 A. Prior.

2 Q. So you got this bottle before 1977?

3 A. Oh, yes.

4 Q. All right. Now, you know this bottle that I'm
5 referring to?

6 A. Yes.

7 Q. How big was this bottle?

8 A. Oh, maybe a half pint, maybe. I forget exactly how
9 much. It was yea big. (Indicating)

10 Q. And did this sit on the shelf of the refrigerator for
11 decades?

12 A. Probably for more than that, hard to say.

13 Q. And after taking over for Cam Stevenson, at any point
14 did you have an opportunity or responsibility to do an
15 environmental safety inspection of the standards at the lab?

16 A. Yes. I had to list everything we had in the lab.

17 Q. And do you recall inspecting this really old bottle of
18 methamphetamine and notice anything about the -- what had
19 happened to its contents?

20 A. I noticed the cap had deteriorated.

21 Q. Did you notice that it appeared to contain a different
22 liquid inside it in?

23 A. Never noticed. Never tested it.

24 Q. Did you siphon off any of the, what appeared to be the
25 oil that was still useable for future casework?

1 A. I took out what was left of the bottle, yes, and
2 prepared a standard.

3 Q. And I want to jump ahead to just a couple of weeks
4 before Sonja Farak's arrest.

5 Did you have an occasion to find, in a drawer by the
6 fume hood, a beaker with some liquid and white residue?

7 A. Yeah, it was a beaker sitting on the cabinet or
8 something. I don't recall where it was.

9 Q. Did you ask Ms. Farak what this was?

10 A. No I dumped it down the drain. I said, did somebody
11 leave something out. That's all.

12 Q. Did you ever ask Rebecca Pontes whether she had her
13 daughter in and maybe did some science experiment?

14 A. I thought they were just making crystals. I had no
15 idea what it was.

16 Q. Okay. In the course of your career, were you sometimes
17 called upon to do testing in federal cases?

18 A. Yes.

19 Q. Is -- are federal drug laws different than
20 Massachusetts drug laws?

21 A. Different schedules, yes.

22 Q. How many scheduled drugs are there, classification wise
23 in federal law?

24 A. I really don't recall.

25 Q. Does five sound about right?

1 A. It could be. I -- it's been awhile.

2 Q. Does Massachusetts classify its drugs with letters of
3 the alphabet?

4 A. Yes, they do.

5 Q. Is it A through E?

6 A. Yes.

7 Q. Are you familiar with a substance that's commonly
8 referred to as BZP?

9 A. What's the name?

10 Q. Well -- is --

11 (Pause)

12 THE WITNESS: Benzylpiperazine.

13 Q. (By Mr. Ryan) Yes.

14 THE COURT: I'm sorry, Mr. Hanchett, I didn't hear your
15 answer.

16 THE WITNESS: Benzylpiperazine.

17 THE COURT: Thank you.

18 Q. (By Mr. Ryan) And Benzylpiperazine, can we call this
19 BZP for short?

20 A. Yes.

21 Q. Is this illegal to possess under federal law?

22 A. I don't have the laws in front of me. I would have to
23 look it up under the schedule.

24 Q. Do you know whether it's illegal to possess under
25 Massachusetts law?

1 A. If it was ever used as a pharmaceutical, it would be
2 considered a Class E.

3 Q. This spreadsheet that's up on the board -- and this has
4 not been admitted as an exhibit yet -- is this a list of BZP
5 cases from your laboratory from 2008?

6 A. It's our laboratory numbers and it's the date, yes;
7 could very well be.

8 Q. Are these occasions, when analysts in your lab,
9 classify BZP as a Class E drug?

10 A. Yes.

11 Q. Now, did analysts in your lab -- let me ask you, did
12 you, during the course -- is your name on here as one of the
13 analysts who classified BZP as a Class E drug?

14 A. Yes.

15 Q. Did you sincerely believe that BZP was a Class E drug?

16 A. If it was ever used as a pharmaceutical, it's under
17 Massachusetts law, it's considered a Class E.

18 Q. As you sit here today, do you believe it is illegal
19 under Massachusetts law?

20 A. As far as I know, it was used as a pharmaceutical at
21 one time. We consulted some old books; somebody did and
22 said yes, it was used as a pharmaceutical product,
23 therefore, it is, under Massachusetts schedule, the unlisted
24 prescription drugs.

25 Q. I'm showing you now, on the board, a -- some email

1 correspondence that's previously been admitted as Exhibit
2 161. I'm going to start at the bottom of this and ask you
3 to review this correspondence.

4 Let me know when I can scroll up.

5 A. Again, that says Cam. That's not me. I'm just doing
6 what was told, it was existed as a pharmaceutical one time;
7 so, therefore, it would be controlled as a Class E drug in
8 Massachusetts.

9 Q. So is this a correspondence that Sonja Farak sent to
10 Annie Dookhan?

11 A. That's what it says.

12 Q. And did Ms. Farak ask what -- how they dealt with BZP
13 at the Hinton Drug Lab?

14 A. Yes.

15 Q. And did she tell Annie Dookhan that she knew it was not
16 a prescription drug?

17 MS. VALENTINE: Objection, Your Honor.

18 THE COURT: Objection sustained.

19 Q. (By Mr. Ryan) Do you recall getting any advice from
20 Cam Stevenson with respect to what to do with BZP?

21 A. I don't recall, sir.

22 Q. Now, you discovered Sonja Farak's misconduct at the lab
23 on January 18, 2013?

24 A. I don't remember the date.

25 Q. Any reason to dispute that date as the day that you

1 discovered her misconduct?

2 A. No.

3 Q. Okay. And you discovered that day she had stole some
4 samples that had tested positive for the presence of
5 cocaine, correct?

6 A. No.

7 Q. What did you discover?

8 A. Two empty evidence bags at her work station.

9 I never said she stole them. They were located at her
10 work station.

11 I called the State Police right after that finding and
12 then I was out of the picture.

13 Q. Right.

14 A. Totally. Out of the lab, in the hallway, lab's locked,
15 alarm's on.

16 Q. So you had an obligation as a -- with a federal
17 license, to make a report when there's missing narcotics at
18 your lab, correct?

19 A. Correct.

20 Q. And there's DEA regulations that say this is something
21 you have to do, correct?

22 A. It was something I was unaware of until afterwards we
23 renewed our license. I went and we got all the new rules
24 describing the procedures you're supposed to do with the
25 controlled substances in the lab, and that was inventory

1 twice a year, which I never knew.

2 Q. In any event, you immediately, when you discovered
3 this, notified the State Police, correct?

4 A. Correct.

5 Q. Now, you just indicated that you learned late in your
6 career that you had responsibilities to do inventories at
7 the lab, correct?

8 A. Correct.

9 Q. And did you have, in late 2012 -- were you responsible
10 for doing an inventory then in preparation for applying for
11 a new DEA license?

12 A. I did, but I don't remember the year, I'm sorry.

13 Q. Well, did the DEA license you have expire in January of
14 2013?

15 A. My recollection is they changed the name of our
16 department, so therefore, we had to get a new license, which
17 was handled by Sudbury Laboratory, I believe. I'm not
18 positive.

19 Q. I'm putting up on the screen a document that was
20 previously produced with Farak discovery page 0001905.

21 Is this a copy of the DEA license that your lab, last
22 copy of the DEA license that the Amherst Drug Lab had?

23 A. Yes. Okay.

24 MR. RYAN: Your Honor, I would like to move to
25 introduce this as Exhibit 203.

1 THE COURT: Without objection, may be marked.

2 MR. CALDWELL: No objection, Your Honor.

3 THE COURT: All right; 203.

4 MR. RYAN: And if I could just proceed while

5 Ms. Jacobstein looks for the paper copy?

6 THE COURT: As long as she doesn't forget.

7 (Exhibit 203, controlled substance certificate -

8 12/12/11, marked)

9 Q. (By Mr. Ryan) Now, in applying for this new license,
10 did you do an inventory in the Fall of 2012 of lab
11 standards?

12 A. I had it in my computer. I don't know the date. I did
13 an inventory.

14 Q. Okay. And during this inventory, did you form the
15 opinion that there were standards in the cabinet that were
16 lower than you thought they should be?

17 A. Yeah, there could of been, but, you know, everybody had
18 access to it, and everybody did standards from time to time,
19 so I never gave it much thought.

20 Q. Did you discuss any concern about the low volume of
21 standards with Sharon Salem?

22 A. Yes, I mentioned it to Sharon, some were low.

23 Q. Okay. Did you follow-up and express your concerns to
24 Rebecca Pontes and Sonja Farak?

25 A. Yes. I mentioned, looked like somebody was using a lot

1 of standards.

2 Q. And did you, at this point, report the -- your concerns
3 to anybody from the DEA?

4 A. Number one, you have to have a starting point. I
5 didn't have a reference point. When I went in, I set the
6 reference point. I weighed every bottle so I knew exactly
7 what was supposed to be in there.

8 Q. So you didn't know how much you were supposed have in
9 any bottle --

10 A. Other than the weight that was labeled on the bottle;
11 so three years, it could have been used.

12 Q. But, I think you just testified you were surprised to
13 see how few some of the standards --

14 A. A couple of them seemed low, but I don't remember which
15 ones. But, again, there was -- we do a lot of samples.
16 People use standards. You can do quants, use a lot of
17 standards for a quant.

18 Q. And I think you testified that -- and I think you
19 testified that you did not that know you had to use -- to do
20 this inventory until very late in your career?

21 A. Right.

22 Q. Okay. Now, I want to go back to the SWGDRUG, Exhibit
23 20, and show you on page 30, Standard 6.14.

24 Do you see that?

25 A. Uh-huh.

1 Q. When SWGDRUG uses the term "traceable standards", what
2 does that mean to you?

3 A. It's a standard that you purchase that has a
4 certificate of analysis with it.

5 Q. And SWGDRUG say: The laboratory shall monitor
6 analytical processes using appropriate controls and these
7 traceable standards.

8 A. The recommendation.

9 Q. And this certificate of analysis, would this be
10 something that would attest to the chemical composition of
11 the substance?

12 A. Yes.

13 Q. And would it contain a lot number from where it was
14 produced?

15 A. Yes, it would.

16 Q. And would it contain an expiration date?

17 A. Some drugs do, some drugs don't. Some last a long
18 time.

19 Q. Well, would this certificate of analysis memorialize
20 the origins of the substance?

21 A. Yes, they would.

22 Q. And is that what makes it traceable?

23 A. Yes.

24 Q. And did you refer to these, or in the course of your
25 career, as primary standards?

1 A. Yes, I did.

2 Q. Now, I think you said a second ago that you got your
3 primary standards from pharmaceutical companies?

4 A. Some; some from Sigma, some from Alltech. It was a
5 couple, three or four companies we used.

6 Q. And they were all pharmaceutical companies?

7 A. Or compounders.

8 Q. Okay. Now, was it standard, did you testify at the
9 Grand Jury that it was standard laboratory procedure when
10 you entered the laboratory field to make secondary standards
11 from primaries?

12 A. Occasionally.

13 Q. Now, you made secondary standards at the Amherst Drug
14 Lab, correct?

15 A. Correct.

16 Q. I'm sorry?

17 A. Correct.

18 Q. And, but you didn't make them from primaries, did you?

19 A. Was compared to a primary, that's all that has to be
20 done.

21 Q. Well, did you make secondary standards at the Amherst
22 Drug Lab by taking portions of samples that had been
23 submitted by police departments for analysis?

24 A. Yes.

25 Q. And was it your practice to skim portions of these

1 police submissions and then use them for lab standards?

2 A. Only for cocaine and heroin, because of the sometimes
3 difficulty of obtaining the heroin especially.

4 Q. Now, when you would do this, would you know the police
5 departments that were the sources of these, what became
6 secondary standards?

7 A. I would have it written down in my notes somewhere.

8 Q. Would you know the names of the defendants from whom
9 they were potentially been seized?

10 A. No, I never looked at defendants' names.

11 Q. In terms of being able to trace where these standards
12 came from, that's all you would know, the police department
13 that submitted them, correct?

14 A. That's all -- wouldn't even need to know that. All I
15 care about is the drug itself. Is that comparable to the
16 primary standard? Yes, it is.

17 Q. Well, in terms of it being traceable, you just wouldn't
18 know where it originated, correct?

19 A. I'm sure probably out in the jungle somewhere. I have
20 no idea.

21 Q. Right. And when -- you wouldn't know how many times
22 this sample had changed hands before it --

23 A. That wouldn't matter because it compared to the primary
24 standard. It doesn't matter how many times it changed
25 hands.

1 Q. And you don't know how many times it would have been
2 diluted with cutting agents?

3 A. You'd clean it up.

4 Q. And you didn't know where this -- these samples had
5 been stored prior to them showing up at your lab?

6 A. Immaterial. It doesn't matter.

7 Q. And you said you wrote down where you got these samples
8 from in terms of submissions from police departments?

9 A. Uh-huh.

10 Q. Is this something, this practice of skimming from
11 police submissions, something that you ever reduced to
12 writing in terms of how you did it, and when you did it, and
13 kept track of it that way?

14 A. Although the vials, bottles, that I store the samples
15 in, that were extracted and purified, were labeled.

16 Q. And what were they labeled with?

17 A. The sample number, which is individual for each sample
18 that comes in the department.

19 Q. Was this something that you disclosed to District
20 Attorneys who would contact you about material for discovery
21 in drug cases?

22 A. I don't understand the question. Why would I do that?
23 It has nothing to do with it. I'm -- I just testified, it's
24 immaterial where it came from.

25 Q. Well, did the lab that -- have a document called

1 Quality Assurance, or Quality Control?

2 A. Yeah, there was one.

3 Q. And --

4 A. It was developed by the Boston Lab, but I have no idea
5 where it is.

6 Q. Is this it, right up on the screen here, what was
7 previously disclosed DA discovery, page 0002371, and I'm
8 going to say that this is, for the record, Exhibit 133
9 that's been introduced into evidence.

10 (Pause)

11 Q. (By Mr. Ryan) Is this a document that your lab issued
12 in December of 2004?

13 A. If you say so. I don't remember.

14 Q. Down on the bottom, does it say: Issued December 2004?

15 A. It doesn't say my lab though.

16 THE COURT: Mr. Ryan, how much more do you have?

17 MR. RYAN: I have about 20 or 30 minutes.

18 THE COURT: Okay. All right. I think we will take the
19 morning recess at this point.

20 THE WITNESS: Mr. Hanchett, I'm going to ask you to
21 step down temporarily. We will take about 15 minutes.

22 Now, Ms. Cignoli tells me there's a motion that you
23 want me to take up today regarding the Inspector General.
24 Is that accurate? What are people's expectations?

25 THE COURT: Anybody?

1 MS. JACOBSTEIN: Your Honor, the Inspector General's
2 office filed a motion to quash a summons and we were hoping
3 to get that heard today so we can determine whether or not
4 their witness has to come next week.

5 THE COURT: And their witness is subpoenaed to appear
6 when?

7 MS. JACOBSTEIN: Next week.

8 THE COURT: When next week?

9 MS. JACOBSTEIN: Well, we have summonsed everyone for
10 Monday, but we are looking at Thursday, probably, if we
11 wanted to have her in.

12 THE COURT: All right. So should we -- do you want me
13 to take that up in about 15 minutes and you can talk to
14 counsel about -- I'm assuming it's just argument?

15 MS. JACOBSTEIN: Yes.

16 THE COURT: Accurate?

17 MS. JACOBSTEIN: Yes.

18 THE COURT: Then you've got another 20 minutes, I think
19 you said.

20 MR. RYAN: (Indicating)

21 THE COURT: You may have said 20 to 30 I'm not cutting
22 you off.

23 All right. So we're not doing terrible.

24 (The Court exited at 11:20 a.m.)

25 (* * * * *)

1 (The Court entered at 11:41 a.m.)

2 (The defendants and interpreter were present.)

3 THE CLERK: Back on the record in the Farak drug lab
4 matters.

5 THE COURT: All right. Attorney Andrus.

6 MS. ANDRUS: Good morning, Your Honor.

7 THE COURT: Good morning. I'll hear you on your
8 motion --

9 MS. ANDRUS: Thank you very much, Your Honor.

10 Your Honor, I'm Julia Andrus, represent the Office of
11 the Inspector General. Here with me at counsel table is
12 John Brooks, the Associate General Counsel.

13 Your Honor, the Office of the Inspector General, one of
14 its former employees received a summons in September. We
15 were before this Court, before Your Honor back in
16 October 12, to address that summons. There's -- initially a
17 summons was addressed to the current Inspector General Glen
18 Cunha and that has since been withdrawn and has not been
19 renewed.

20 So the summons that we're talking about today, Your
21 Honor, is addressed to Audrey Mark, who is the former
22 General Counsel of the Office of the Inspector General.

23 And I'd like, if I could, Your Honor, to give the Court
24 a little bit of the history of the Office of the Inspector
25 General, and little bit of the purpose of it, because I

1 think it plays to our argument.

2 THE COURT: Well, let me ask you this --

3 MS. ANDRUS: Absolutely.

4 THE COURT: Has it happened before?

5 MS. ANDRUS: I'm sorry. Has the members of the office
6 been summonsed before?

7 THE COURT: Right.

8 MS. ANDRUS: Yes, Your Honor.

9 THE COURT: And in what context and what happened?

10 MS. ANDRUS: Well, Your Honor, the two -- there's a few
11 instances that I know of, since I've been -- not that not
12 have happened since I have been with the office, but
13 happened before my time.

14 There are two federal court cases that address, in
15 which employees of the office were summonsed, but those
16 cases are Bliss vs. Fisher and the Town of Grafton vs. Pulte
17 Homes.

18 THE COURT: And they're cited in your papers?

19 MS. ANDRUS: They are, Your Honor.

20 THE COURT: Okay.

21 MS. ANDRUS: I have copies of them today, if the Court
22 would like them.

23 And, Your Honor, those cases are distinguishable from
24 the present case, because in both of those cases, the Office
25 of the Inspector General published findings in some form or

1 another of an investigation that had occurred.

2 In this matter, Your Honor, we're arguing that the
3 statutory confidentiality and the investigatory privilege
4 protect this office from revealing any information that
5 Audrey Mark could have to testify to.

6 THE COURT: And so what did your office do, generally,
7 in this case?

8 MS. ANDRUS: Well, Your Honor, we're here today to
9 prevent that inquiry, that very inquiry.

10 THE COURT: Okay. If you can, just tell me in a
11 general way.

12 MS. ANDRUS: Our position, Your Honor, is that to
13 either confirm or deny the existence of an investigation,
14 goes against our principles and statutory confidentiality
15 the legislature has given us.

16 THE COURT: Okay.

17 Yeah.

18 MS. ANDRUS: And the purpose of that is, as I'm sure
19 the Court understands, if we even deny the existence of an
20 investigation, in certain instances, that means we have
21 effectively confirmed it in others. And that --

22 THE COURT: How would these, these were both federal
23 cases that you are referencing. And so tell me, just a
24 thumbnail sketch of the facts in those cases that
25 distinguish them from this situation?

1 MS. ANDRUS: Sure. I think, Your Honor, in the Bliss
2 case, my understanding was that the office published a
3 report of its investigative findings and the Court that
4 considered that case, considered whether the investigatory
5 privilege applied, and found that whether or not it applied,
6 the office had waived the investigatory privilege as a
7 blanket privilege.

8 And, in fact, was going to be subject to question by
9 question assertion of the investigatory privilege at
10 either -- I don't remember whether if it was a deposition or
11 a hearing.

12 In the Grafton case, Your Honor, the Office sent a
13 letter to the Town of Grafton, and the Court similarly held,
14 I think in that case the Court went so far as to indicate
15 the investigatory privilege did apply, but had again been
16 waived by the publication of this letter. And that on a
17 question by question basis, the privilege applies as a
18 blanket rule. It applies to the Office of the Inspector
19 General as a blanket rule.

20 Whether or not it has been waived is discussed in a
21 question by question basis. And I think that the law, the
22 federal law addressing the investigatory and the law
23 enforcement privilege states that pretty clearly. That is,
24 you can't be simply -- it applies as a blanket, but it can't
25 be waived as a blanket. It can only be waived in discrete

1 bits.

2 THE COURT: Okay. And in your papers, you ask that the
3 subpoena be quashed, in the alternative you ask that the
4 questioning be limited; is that accurate?

5 MS. ANDRUS: Yes, Your Honor.

6 THE COURT: And what do you mean by that?

7 MS. ANDRUS: Well, Your Honor if the Court orders --
8 our position, Your Honor, is that we do have an
9 investigatory privilege, which is an evidentiary privilege.
10 If the Court disagrees with us and orders that the statutory
11 confidentiality does not protect someone from testifying and
12 orders testimony, the Office would request limited
13 testimony, and we would want a very clear understanding of
14 what that testimony is going to be, and only so far as to
15 satisfy the requirements of the defendant.

16 And, Your Honor, that gets to sort of the second point
17 of the motion which is that we still don't know and still,
18 to do this day don't exactly know what defendants are
19 looking for from Ms. Mark.

20 And that's something, I think, would be good to
21 clarify, at least give us an opportunity to clarify.

22 One other case I did want to raise to Your Honor was a
23 Superior Court case, that we have copies of a decision and
24 that case was a civil lawsuit. I think the name of it is,
25 Peter Zagorianokos (phonetic) vs. the Transit Realty

1 Associates, LLC.

2 It was a civil suit, Your Honor, and in that case they
3 also -- they summonsed one of the investigators who had
4 actually gone out to do some questioning of someone and
5 pertaining to an investigation. This Office argued, again,
6 that the investigatory privilege applied and the Superior
7 Court agreed and quashed the summons in its entirety.

8 THE COURT: Is that case cited in --

9 MS. ANDRUS: It is not, Your Honor, we just discovered
10 it the other day.

11 THE COURT: Can you supply a copy of that case to Ms.
12 Cignoli?

13 MS. ANDRUS: Yes, Your Honor.

14 THE COURT: So is it public knowledge that you were
15 directed or elected to do some sort of investigation
16 relative to this matter?

17 MS. ANDRUS: No, Your Honor. The only -- so what's in
18 the public record relates to the Hinton matter.

19 THE COURT: Yup.

20 MS. ANDRUS: So, Your Honor, we have copies of the
21 Hinton report. It is available online. We can give copies
22 out today. What's clear from the public record relating to
23 the Hinton matter is that the legislature, first of all,
24 appropriated, I think it was something close to 30 million
25 dollars to handle the Hinton Laboratory matter. I think

1 some of that went to CPCS, some of that went to the Attorney
2 General's Office, some of that went to the State and the
3 County -- the County DA's who are handling the fallout of
4 the Hinton Lab.

5 And some of it went to our office as well.

6 Governor Patrick requested our office undertake an
7 investigation and our office agreed to do so. And that's
8 all public information that has been published in the Hinton
9 Laboratory Report.

10 The results of the Hinton Laboratory Report speak for
11 themselves. I don't know that anything defendants are
12 looking for today relates to the Hinton investigation, but
13 again, Your Honor, still three months after receiving the
14 summons and after appearing before the Court before, we
15 don't exactly know what defendants are looking for.

16 I've been told sort of two different theories as to
17 what the defendants are looking for. One of them pertains
18 to, I think there was proposed stipulation between the
19 defendants and the Attorney General's Office, and I've not
20 seen a copy of that stipulation, but I understand that
21 stipulation has not been agreed to, and so we're here today
22 arguing our motion.

23 My understanding was, and the defendants can please
24 correct me if I'm wrong, but if the stipulation was accepted
25 Ms. Mark would not be required to testify. The contents of

1 the stipulation, as I understand them, were that the AGO did
2 not ask the Office of the Inspector General to investigate
3 the Farak matter. And, further, that the Office of the
4 Inspector General did not investigate the Farak matter.

5 I understand that stipulation has not been agreed to.
6 I can do nothing about that.

7 The other area of inquiry that I've been notified of by
8 defense counsel pertains to, there's an email exchange,
9 Audrey Mark and Anne Kaczmarek, and that email exchange was
10 forwarded us by Attorney Jacobstein. It was attached to our
11 motion.

12 And I believe the substance of the email is effectively
13 AAG or then AAG Kaczmarek forwards Ms. Mark a news article
14 and says: When they ask you to do this investigation, say
15 no. Ms. Mark responds and says: You know, am I allowed to
16 say no, question mark, question mark, question mark, smiley
17 face. AAG Kaczmarek then responds back: I should have.
18 It's really far.

19 That's the extent of the information that we have as to
20 why Ms. Marks' testimony is in any way relevant to the
21 inquiry that the Court is going to undertake next week.

22 THE COURT: Okay. Any further you'd like to say,
23 Attorney Andrus?

24 MS. ANDRUS: Yes, Your Honor. I just would want to
25 impress upon the Court the seriousness in which we take this

1 matter, our confidentiality, our statutory confidentiality
2 is extremely important to the work of the office.

3 And I understand that Ms. Marks' proposed testimony is
4 probably a very small portion of what will be heard next
5 week and of the other matters this Court will consider and,
6 there will be a number of witnesses appearing before this
7 Court; but to us, Your Honor, the Office of the Inspector
8 General, it is in fact a very big deal.

9 Our statute provides confidentiality to all of the
10 information in our possession. Our regulations similarly
11 provide that our employees have to take measures to ensure
12 all of the materials and proceedings we undergo are
13 confidential.

14 And our regulations, I would like to point out, are
15 approved by the General Court and the Governor.

16 They are not simply issued, similar to another
17 administrative agency. Our regulations have to be approved
18 and so they have slightly more weight to them.

19 There are also protections for the information we have
20 that rise to the level of Grand Jury secrecy; so when we use
21 our to summons ability to summons information from
22 third-parties, that information, those summonses, the very
23 fact those summonses exist are protected by Grand Jury
24 secrecy and there are, in fact, criminal penalties on our
25 employees for violating the secrecy provisions. We do take

1 this very, very seriously.

2 I think when we consider what little we know about what
3 defendants are actually looking for, and we look at the
4 important work that our office does, not only
5 investigating -- not only do we use summons authority to
6 investigate third parties we also have access to different
7 state agencies.

8 THE COURT: Thank you very much.

9 MS. ANDRUS: Thank you.

10 MS. APPLEYARD: Jennifer Appleyard on behalf of the
11 defendants --

12 THE COURT: Ms. Appleyard, why isn't this just a
13 blatant fishing expedition?

14 MS. APPLEYARD: It is -- we have spent fair amount of
15 time trying to reach a stipulation. We're not looking for
16 records and documents as the statute provides. We're
17 looking merely to find out whether or not the OIG was asked
18 to conduct an investigation.

19 So we believe that Audrey Marks' testimony is needed in
20 order to establish that fact, because we have not been able
21 to reach a stipulation with the other side.

22 THE COURT: Well, so when you say "the other side" who
23 are you referring to?

24 MS. APPLEYARD: The Office for the Inspector General
25 informed us in October that they were not the appropriate

1 party to reach the stipulation, that we had to reach the
2 stipulation with the Attorney General's Office or the
3 Commonwealth.

4 And as of this date, we have not been able to reach an
5 agreement as to that with either of those individuals.

6 THE COURT: Well, these are all Hampden County cases
7 and so wouldn't the other party relative to a stipulation to
8 be submitted in this hearing, be between you and the DA?

9 MS. APPLEYARD: It would and then the DA, it's my
10 understanding, deferred to the Attorney General's Office.

11 THE COURT: Well, let's find out.

12 Whose got the Hampden County DA?

13 Okay. So you're saying, Ms. Appleyard, you are looking
14 for a stipulation that they were not asked or they were
15 asked to do an investigation; is that accurate?

16 MS. APPLEYARD: Yes, whether the OIG was asked to
17 conduct an investigation of the Amherst Lab.

18 THE COURT: Okay. All right.

19 And, Ms. Andrus, what's your answer to that question?

20 MS. ANDRUS: Your Honor, with respect to the
21 stipulation what I --

22 THE COURT: Ms. Ahlstrom, don't leave me.

23 MS. ANDRUS: What I told defense counsel in October,
24 Your Honor, that I thought a stipulation -- my understanding
25 and Your Honor's obviously the expert, stipulations are

1 between the parties at issue. So between the two competing
2 parties, they can stipulate the sky is green and we live on
3 Mars. It doesn't matter whether or not it's true, from our
4 prospective or anyone else's.

5 THE COURT: But stipulations are usually based upon
6 good faith and fact. The question is, you won't tell, you
7 won't say, or are you saying that there -- you were or were
8 not requested to do an investigation into the Amherst Lab?

9 MS. ANDRUS: Your Honor, without a court order, it is
10 our position we will not say.

11 THE COURT: Okay. All right. All right.

12 All right. And that's the one question you have?

13 MS. APPLEBYARD: That is the one question, yes.

14 THE COURT: Okay. All right.

15 And, Ms. Ahlstrom, what's the DA's position?

16 MS. AHLSTROM: Your Honor, first of all, I know nothing
17 about a proposed stipulation. And as far as I know, our
18 office did not make any requests for investigation, but I
19 can't say that really with any authority because I don't
20 know.

21 THE COURT: Okay. All right.

22 And, okay, Ms. Andrus, you can be seated.

23 Ms. Appleyard, anything further you would like to say?

24 MS. APPLEBYARD: I would just say, I would ask the Court
25 to look at the statutes carefully, because the statutes

1 which govern the OIG pertain to records and the statute is
2 quite detailed GL 12A.

3 As to these records and in this case we are not asking
4 the witness to bring in any records. We are asking the
5 witness to testify.

6 In addition, I had attached the federal cases which
7 were cited to not only in our opposition, as well, but I
8 would suggest, in those cases, the remedy ended up the
9 individual coming in and testifying, and then if there were
10 specific privileges, those privileges were asserted on a
11 question by question basis.

12 They weren't prohibited from being able to ask the
13 question. It's just whether or not the answers were made
14 accessible.

15 Finally, I would say that in some of these cases their
16 constitutional claims of Brady, and that also factors in as
17 to whether or not it's relevant to hear Ms. Marks'
18 testimony.

19 So unless the Court has further questions, I'd rest on
20 the motion.

21 THE COURT: Thank you all. I will take the matter
22 under advisement.

23 All right. Mr. Hanchett, you can re-take the stand.

24 MS. ANDRUS: Thank you.

25 THE COURT: Thank you.

1 Mr. Ryan, it's 11:59. In fairness, I'm going to hold
2 you to your 20 minutes.

3 MR. RYAN: I'll take it. Thank you.

4 **(James Hanchett, continued)**

5 **DIRECT EXAMINATION BY MR. RYAN**

6 Q. Mr. Hanchett, right before we broke, I put a document
7 up on the board entitled Quality Assurance. And is this a
8 document that your laboratory produced in the course of
9 doing its work?

10 A. I don't know if it's our lab or not. I can't tell.
11 I'll have to see the -- our Quality Assurance was in a
12 folder. I guess it could be.

13 Q. It could be.

14 If it was your lab and your lab said that as part of
15 its work it includes the use of known standards, that
16 wouldn't be entirely accurate, would it?

17 A. Sure, they're known.

18 Q. Well, when you say that "known standards", are they
19 standards that you were using that you got from
20 pharmaceutical companies and had a certificate of analysis?

21 A. Originally, yes, they were. And then the secondary
22 standards were, became secondary standards after they were
23 confirmed to be the drug -- just like when I test a sample.
24 I tested it's heroin; it's heroin.

25 It doesn't matter where it came from.

1 Q. When you would test these, do these skimming from
2 police submissions, would you do the skimming before or
3 after you weighed the sample?

4 A. After it was weighed. It was only done in quants.

5 THE COURT: I'm sorry. Done in?

6 THE WITNESS: It was only done -- we used to quantitate
7 a lot of samples that came in, especially trafficking cases.
8 So there'd be a large amount, we'd have to take more sample
9 out of the bag to perform the quant. Sometimes it was left
10 over.

11 That's what they're talking about. It wasn't skimming
12 samples. It was just leftover drugs from the original
13 sampling scan.

14 THE COURT: Thank you.

15 Mr. Ryan.

16 Q. (By Mr. Ryan) Once you used these leftovers for future
17 casework, would you just use them or would you do a process
18 to try to remove the adulterants that would inevitably be in
19 them?

20 A. Sometimes I would do an extraction to remove the
21 adulterants. Sometimes it worked. Sometimes it didn't, but
22 the sample is still the same.

23 Q. Did you have a written protocol for doing this
24 extraction of leftover samples?

25 A. Had a protocol for doing extractions of different

1 drugs, yes.

2 Q. For this particular use, did you have a published
3 protocol for how you would go about trying to get some of
4 the adulterants out so that you could use this for future
5 casework?

6 A. Yeah, I believe it was in the records, we have a
7 listing of how to purify certain drugs or different methods.

8 Q. For purposes of using as lab standards?

9 A. It doesn't matter, you're purifying the drug. It's a
10 procedure you follow to purify something. It doesn't matter
11 if it's standard or for sample.

12 Q. Were you successful in removing all adulterants from
13 these leftovers.

14 A. Maybe 99 percent of the time. A few times it didn't
15 clean up as well as I liked. I didn't have time to go back
16 in and re-purify.

17 Q. So the thing you were using as a lab standard would
18 sometimes have co-contaminates that you couldn't get rid of,
19 correct?

20 A. Probably could have gotten rid of, if I had the time.
21 It wasn't worth it because it's not necessary. That's what
22 I'm trying to make my point.

23 Q. What was the shelf life of these secondary standards
24 that you created from leftovers?

25 A. No. Are you talking about the powder itself or in

1 dilution in an ethanol or methanol solution?

2 Q. Well, the extraction process would require you to use
3 some --

4 A. Solvent.

5 Q. Exactly.

6 A. And we dry it out, so it would be dried. Probably life
7 shelf, could be -- well, for cocaine it's indefinite
8 probably.

9 Heroin, as long as it's kept cool and dry, it would
10 probably last five, six, maybe seven, eight years.

11 Q. Did you previously testify about this at the Grand Jury
12 back in --

13 A. I probably did. I don't recall.

14 Q. When you testified previously about this, did you say
15 these would last three to four months at the most?

16 A. That's in the liquid form. I just explained that to
17 you.

18 Q. And that would be the form that you would put this in
19 the refrigerator that chemists would then go and use this
20 for future casework, correct?

21 A. Correct.

22 Q. And so there would be no assigned expiration date that
23 you would give these samples, correct?

24 A. No.

25 Q. And it would be dependent upon chemists telling you

1 that they were, with respect to a heroin sample, beginning
2 to breakdown, correct?

3 A. No, never a problem. It was always we ran out and had
4 to make more.

5 Q. Chemists like Rebecca Pontes and Sonja Farak never went
6 to you and said, Hey --

7 A. Not for heroin.

8 THE COURT: No, hold it. Mr. Hanchett, I'm going to
9 ask you to wait until he finishes the question.

10 THE WITNESS: Okay. Sorry.

11 THE COURT: Mr. Ryan.

12 Q. (By Mr. Ryan) They never came to you and said that
13 they were getting interference in the peaks that were
14 appearing during instrumental testing?

15 A. Not for heroin.

16 Q. Page 51 of your prior testimony, you're asked: How
17 long did your manufacturing standards last?

18 Your answer: Depends how often they were left on the
19 bench or I mean sunlight would hasten their degradation. I
20 would say a good time, you know, maybe three, four months,
21 probably at the most we'd get out of it, and then we would
22 start getting interference in the peaks and we'd have to
23 make a new standard.

24 Is that what you testified to previously?

25 A. I could of. I don't remember, sir.

1 Q. Now, did you ever manufacture heroin at the lab?

2 A. Yes, I have.

3 Q. And did you have a license to do that?

4 A. Under the DEA license we did.

5 Q. And when did you get your DEA license for the lab?

6 A. We had our DEA license since I started there in '77.

7 Q. Did you ever manufacture heroin at the lab and give
8 some to one of the chemists from the Sudbury Drug Lab or,
9 excuse me, the Hinton Drug Lab?

10 A. Yes.

11 Q. That would be Paul Servino (sic)?

12 A. Servizio.

13 Q. Servizio.

14 MR. RYAN: For the record, S-E-R-V-I-Z-I-O.

15 Q. (By Mr. Ryan) When you would manufacture heroin, how
16 often would you do this?

17 A. Probably twice.

18 Q. And did you --

19 A. Maybe three.

20 Q. Did you keep any records of this production of heroin?

21 A. It's in my notebooks.

22 Q. It's in your notebooks that you produced heroin?

23 A. I believe. I always -- we had steno notebooks we used
24 to use for making drugs and stuff.

25 MR. RYAN: May I approach the witness?

1 THE COURT: Sure.

2 Q. (By Mr. Ryan) Showing you a copy of a document, is
3 this copy of one of the steno notebooks that you used at the
4 lab?

5 A. Yes.

6 Q. And --

7 A. No, that's not a steno notebook. This is a hard bound
8 notebook.

9 Q. And are these pages in there, does this record your use
10 of and purchase of acquisition of standards?

11 A. No, it does not.

12 Q. What does it reference?

13 A. Let me look.

14 The only few standards I purchased -- okay -- these are
15 just the standards that are in the cabinet.

16 I only purchased -- in my tenure there, I only
17 purchased samples, drug standards maybe once -- one time, I
18 think maybe got eight or ten samples.

19 MR. RYAN: I'd move to introduce this document at this
20 time.

21 THE COURT: Without objection, may be marked.

22 THE CLERK: Marked as Number 204.

23 Q. (By Mr. Ryan) Showing you another document.

24 (Exhibit No. 204, Reference Standard Inventory, marked)

25 Q. (By Mr. Ryan) Is this an inspection report from 1986

1 for your lab?

2 A. This is before -- I wasn't in charge, I had no
3 knowledge of this whatsoever.

4 Q. So this report from before you were in charge, this
5 would have been done -- you recognize the name of the
6 inspector?

7 A. Richard Waskiewicz was, he was the Assistant of
8 Commissioner -- not commissioner, of Public -- of Food &
9 Drug. He was a Deputy Director, so he wasn't an Inspector.

10 Q. When you took over the supervision of the lab, did you
11 take over custody of lab records like this?

12 A. No, I did not.

13 Q. Who was ultimately responsible for the records that
14 were at the --

15 A. Donna Lacroix had all the lab records.

16 Q. Well, she retired in 2002 or 2003, didn't she?

17 A. That's right.

18 Q. And so somebody inherited those and you eventually
19 became the supervisor of that lab, right?

20 A. The records are right in the closet in the hall.
21 That's all I knew.

22 MR. RYAN: I'm going to move to introduce this as the
23 next exhibit.

24 MR. CALDWELL: I'm going to object, Your Honor, as to
25 relevancy.

1 THE COURT: Objection is sustained.

2 Q. (By Mr. Ryan) Okay. Did this report from your lab
3 indicate on page three here, item three, that a bi-annual
4 inventory of controlled substances is not being performed?

5 A. I never saw the report.

6 That's Richard Waskiewicz. I don't know. I've never
7 seen the report and never knew anything about it.

8 THE COURT: You answered the question.

9 Q. (By Mr. Ryan) Now --

10 (Pause)

11 MR. RYAN: Just a couple more questions.

12 Q. (By Mr. Ryan) Was Phentermine a drug that you had on
13 hand at the Amherst Drug Lab?

14 A. I'm sure it was. I don't recall exactly.

15 Q. Did anybody ever ask you, after Sonja Farak's arrest,
16 whether or not your supply Phentermine had been diminished?

17 A. I told you before, I never did an inventory prior, so I
18 don't know what was missing.

19 Q. I guess my question was, did anybody ask you, after
20 Sonja Farak was arrested, whether or not there was
21 Phentermine at the lab or whether it was diminished?

22 A. There was Phentermine at the lab. I don't recall if it
23 was diminished.

24 Q. I'm not interested in whether it was diminished or not.
25 What I'm interested in, your answer to, did anybody ask you

1 to look into the Phentermine supply at the Amherst Lab after
2 Sonja Farak was arrested?

3 A. I do not recall.

4 Q. Okay. Now, would you sometimes pre-mark your KPACs at
5 the lab?

6 A. Yes, occasionally.

7 Q. And as -- what's a KPAC?

8 A. It's a sample that we seal the samples in.

9 Q. And why would you pre-mark them?

10 A. If I had a large batch of them maybe, 10, 15 samples
11 out, I would mark them just to make it easier.

12 Q. And when you -- so were you pre-initialing these bags?

13 A. Yes.

14 Q. And did it come to your attention after Sonja Farak's
15 arrest that she was stealing your premarked KPAC bags with
16 your initials on them?

17 A. After her arrest, we were already -- we were already
18 under the State Police guidelines and we were not -- I was
19 not pre-marking them at that point.

20 Q. Right. So before they took over, this was something
21 that you had done, correct?

22 A. Correct.

23 Q. And did it come to your attention before the State
24 Police took over, that she was taking your supply of
25 pre-marked bags?

1 A. No.

2 Q. Nobody had ever told you that until I told you right
3 now?

4 A. As far as I remember.

5 Q. Okay. Did you keep track of records as to when staff
6 members worked and did not work?

7 A. We had a log-in sheet.

8 Q. Would a staff of just four people be a fairly rare
9 occasion that Rebecca Pontes and Sharon Salem would both be
10 out on the same day?

11 A. I don't know. It's hard to say.

12 Q. Okay. Well, in any event, is that something that if
13 somebody was interested in finding out, whether or not they
14 took the same day off, that you'd be able to determine by
15 looking at your logs?

16 A. All of our logs were turned over to Boston and prior to
17 police taking over, they were electronic. I have no
18 knowledge of those logs.

19 Q. Did anybody from the Office of the Inspector General
20 ever interview you about practices at the Amherst Drug Lab?

21 A. I was interviewed by them, but I don't exactly recall
22 why.

23 Q. Was it an interview that took place about practices at
24 the Hinton Drug Lab?

25 A. I don't exactly recall.

1 Q. Last line of questions I have here. Would you agree
2 that the people who were responsible for the initial
3 collection and transportation of evidence can
4 unintentionally compromise its integrity?

5 A. I suppose if they were deceitful.

6 Q. Could they do it accidentally by not using good
7 practices in terms of securing evidence?

8 A. As far as I know, all bags are sealed, so I think it
9 would be pretty hard to do.

10 Q. Well, did any of the evidence officers who came and
11 submitted samples at your lab ever show up with unsealed
12 bags?

13 A. That's the question you have to ask the evidence
14 officer, sir.

15 Q. Well, you sometimes pinch hit in the capacity of
16 evidence officer, didn't you?

17 A. Yes, I did, but I don't recall.

18 Q. Do you recall whether Kevin Burnham ever showed up with
19 unsealed evidence bags at your lab?

20 A. Kevin was there every week for 20 years. I can't
21 remember, sir.

22 Q. Do you ever recall him using your heat sealer to seal
23 up unsealed bags that he brought in?

24 A. A lot of them used our heat sealers, but his bags were
25 already sealed when he came in, as far as I know, as far as

1 I remember.

2 Q. Would it not have been good practice to show up at your
3 lab with unsealed evidence bags?

4 A. Departments like Springfield didn't do it.

5 I mean, these are questions you should be asking Sharon
6 Salem, not me.

7 THE WITNESS: I wasn't the evidence officer, Your
8 Honor.

9 MR. RYAN: If it will please the Court, I have no
10 further questions.

11 THE COURT: It pleases the Court exceedingly.

12 THE WITNESS: And me too.

13 THE COURT: Counsel.

14 MR. CALDWELL: Thank you, Your Honor.

15 **CROSS EXAMINATION BY MR. CALDWELL**

16 Q. Mr. Hanchett, I just have a few questions for you.
17 Thank you for your time here today I know you really didn't
18 have a choice but --

19 But, Mr. Hanchett, I know we had spoken at a previous
20 occasion regarding the laboratory which you worked at, you
21 supervised, at Amherst?

22 A. Correct.

23 Q. And you were aware of an investigation that our office
24 did?

25 A. Uh-huh.

1 Q. In regards to the practices and procedures at the
2 Amherst Laboratory and specifically that of Sonja Farak, a
3 chemist who worked under you, correct?

4 A. Correct.

5 Q. So I'm just going to go right to --

6 MR. CALDWELL: I don't have the technology that
7 Mr. Ryan has, so I'm just going to have to do this the old
8 fashioned way, Your Honor, if I may?

9 THE COURT: Okay.

10 Q. (By Mr. Caldwell) So Mr. Ryan showed you an article
11 from the State House news service regarding the Closure of
12 State Drug Testing Lab in Amherst Could Hamper Prosecution
13 of Drug Cases. This was the article from 2011 regarding
14 them closing or threatening to close the Amherst Lab.

15 A. Right.

16 Q. Okay. So, did you have an opportunity to look at this?

17 A. I did look at it.

18 Q. In its entirety?

19 A. Yes.

20 Q. Okay. So what I'd like to point out, occasionally,
21 from time to time, in your employ at the Department of
22 Public Health, sometimes it would be -- there would be
23 budget issues?

24 A. A lot of times.

25 Q. A lot of budget issues for a state agency, there would

1 be various cuts, so they would obviously have to trim the
2 fat in other areas?

3 A. Right.

4 Q. So I'm going to point, if you recall, thus reading this
5 in the article. A quotation, from a individual, I believe
6 seems to be in the press office of the Governor's Office,
7 and it indicates: Due to an unprecedented fiscal situation
8 we had to make extremely difficult decisions and at this
9 time we plan to consolidate our resources and close the
10 Amherst Drug Lab.

11 A. Yes.

12 Q. So you remember that language?

13 A. Yes.

14 Q. And you remember the language that it was an
15 "unprecedented fiscal situation".

16 A. Yes.

17 Q. So keeping the drug labs open, it's fair to say, in
18 your training and experience and your job, it was a very --
19 you had a very important job?

20 A. Yes. And I treated it that way.

21 Q. That was to test unknown substances that were seized by
22 police departments to determine whether or not they were in
23 fact controlled substances and a certain individual broke a
24 regulation in 94C?

25 A. Correct.

1 Q. And you say in your entire history at the Amherst
2 Laboratory, so you're talking over 33 years?

3 A. No, I think 38 years with the state; so probably 37
4 maybe, 36 with the Amherst Drug Lab, and two years with the
5 State Police.

6 Q. And I believe your testimony, it was three or four
7 times they attempted to close the lab due to lack of
8 funding?

9 A. Many times. I can't recall.

10 Q. And as a result you would write -- your -- the
11 legislature?

12 A. Right.

13 Q. You wouldn't necessarily go to DPH with that because
14 that was something out of DPH's control?

15 A. No. Right.

16 Q. Correct. Thank you.

17 A. They would want more money, so we would go to
18 legislatures or -- we requested that the police departments
19 and local DA's would do that too.

20 Q. And in the course of your employ at Amherst, the state
21 never closed that lab at any time?

22 A. No.

23 Q. Now, moving onto the accepting of samples from the
24 Hinton Laboratory.

25 A. Correct.

1 Q. That's something you did after 2008, correct?

2 A. Right.

3 Q. Was that your idea to help Hinton --

4 A. No.

5 Q. -- reduce their backlog?

6 A. Following orders.

7 Q. So that was someone else at DPH who asked you to help
8 out at the Hinton Laboratory?

9 A. Correct.

10 Q. And you obviously agreed to do so?

11 A. Yes.

12 Q. Now, jumping forward to a question Mr. Ryan just asked
13 you. You indicated that you, yourself, would travel to the
14 Hinton Laboratory to pick up these samples?

15 A. Yes.

16 Q. And occasionally you remember there were maybe two or
17 three hundred?

18 A. Yes.

19 Q. Would anyone else ever do that?

20 A. Before me it was Ellen Stevenson.

21 Q. Did Sharon Salem ever do that?

22 A. I don't recall.

23 Q. So when you would pick those up, you would drive to the
24 Hinton Laboratory in your personal vehicle?

25 A. Yes.

1 Q. And it's fair to say you met with -- it's fair to say
2 you met with the evidence officer and the lab supervisor at
3 Hinton?

4 A. Yes.

5 Q. And fair to say there would be a pretty strict policy
6 and procedures that were followed when that evidence was
7 being transferred?

8 A. Yes.

9 Q. Everything was accounted for electronically?

10 A. Right.

11 Q. New bar codes were assigned --

12 A. Yes.

13 Q. -- correct?

14 A. Correct.

15 Q. And the evidence was then transferred into your
16 possession and you would sign out those -- each of those
17 individual samples?

18 A. Yup and verify that I had every one of them too.

19 Q. Because it's a chain of custody issue, correct?

20 A. Exactly.

21 Q. And that's very important in your job, as a chemist,
22 and in accepting those drugs to maintain the, should we say,
23 the integrity of the evidence?

24 A. Exactly.

25 Q. And that's something you took very seriously, correct?

1 A. Yes, I did.

2 Q. Okay. And you indicated approximately how long did you
3 help out Hinton with the overflow?

4 A. Oh, it could have been 15, maybe 20 years. Depended on
5 the funding levels and --

6 Q. And comparing your lab to the Hinton, if you know, you
7 didn't have nearly as big a backlog?

8 A. No, nowhere near what they had.

9 Q. So it's fair to say it was easier for you to take on
10 extra work?

11 A. Yes, it was.

12 Q. You indicated previously that you believed your lab
13 wasn't given as much resources as the Hinton Laboratory?

14 A. Correct.

15 Q. And you didn't get enough money?

16 A. Exactly.

17 Q. Now, you were very small lab?

18 A. Uh-huh.

19 Q. And Hinton, we would say the Hinton Drug Lab was quite
20 large?

21 A. Yeah.

22 Q. About how many chemists do they have working there?

23 A. I'd say maybe one time maybe ten, twelve, but the one
24 time we had seven, so. I don't make those decisions.

25 Q. Okay. So it's fair to say you did more with less?

1 A. Had to.

2 Q. And it's fair to say that because of the various perks,
3 I guess you could say, you had regarding no overhead because
4 of the building situation --

5 A. Right.

6 Q. -- you were able to absorb some of this mon- -- those
7 money issues and still get the job done; when I say that,
8 testing drugs.

9 A. Yes.

10 Q. Now, you indicated at a certain point in time, Salem
11 became the evidence officer full-time?

12 A. Correct.

13 Q. And that was because another individual Ms. Lacroix
14 retired?

15 A. Yes.

16 Q. So she did not really do any testings and her focus was
17 solely on maintaining chain of custody and the drugs --
18 accepting the drugs and narcotics as they came in and as
19 they came out?

20 A. Ninety-nine percent of the time. She did do occasional
21 samples when we were understaffed. Somebody was on vacation
22 or something, she would do occasional samples. Rarely
23 though.

24 Q. And you supervised Sharon and also worked with her and
25 alongside her, correct?

1 A. Correct.

2 Q. And the job of the evidence officer, it's fair to say,
3 is a very important one, correct?

4 A. Oh, definitely.

5 Q. And, in your opinion, and your observations, not only
6 as a fellow employee but a supervisor, it's fair to say that
7 Sharon Salem did an excellent job?

8 A. Meticulous. She was great, did a great job.

9 Q. Now, in certain points you testified about the
10 condition of the lab, and I believe Mr. Ryan pointed out at
11 a certain point in your previous testimony you indicated
12 that the -- it wasn't a good environment to be in?

13 A. No. They had worked -- they finally improved it, but
14 at one point was very bad.

15 Q. Okay. So let me stop you. When you said they started
16 to improve it, can you please explain for us what they did
17 to start improving -- what the Department of Public Health
18 did to start to improve the lab?

19 A. Well, they eventually got new bench tops, new benches
20 in the main lab. They built a secondary lab with a brand
21 new hood. New offices, new storage areas. That was maybe
22 five, six, seven years before we closed.

23 Q. Now, you mentioned a fume hood, a new fume hood. So at
24 any time at the laboratory, when you were a supervisor or a
25 working chemist, were all of the fume hoods broken?

1 A. No, not that I recall. There was always one.

2 Q. So there was always one operable fume hood?

3 A. Yes.

4 Q. And if there was a problem with equipment, you would
5 notify Julianne Nassif or someone at the Hinton Lab in
6 regards to that?

7 A. Yes.

8 Q. And the goals for that would be to get that immediately
9 fixed?

10 A. Right.

11 Q. And that would be either meaning having yourself order
12 a part, replace it, or have an outside vendor come in and
13 make the necessary repairs?

14 A. Correct.

15 Q. And that was something that -- let me ask you -- let me
16 back that up.

17 The chemist that you worked for, or worked for you,
18 would they alert you or would this something you would
19 inspect on your own? Or both?

20 A. Both because I used the hood frequently too, so if
21 something was wrong, somebody would say something.

22 Q. How long were you repairing the equipment at the
23 laboratory at Amherst?

24 A. Probably since the early '80s, I would say, roughly.

25 Q. And in terms of your use of a fume hood, you had

1 indicated that the only time a fume hood would be utilized
2 if you were dealing with highly toxic reagents?

3 A. For the most part, yes.

4 Q. So it's not something you'd use on a regular basis?

5 A. No. Not routinely, no.

6 Q. Other than highly toxic reagents, would you use it for
7 marijuana tests or anything like that?

8 A. Yes, we tested marijuana under the hood because of the
9 hydrochloric acid and the chloroform fumes. But that's
10 again, toxic reagents. That would be the primary reason for
11 using the hood.

12 Q. And now moving forward, Mr. Hanchett, in your earlier
13 testimony we talked about a couple of organizations. I
14 believe it's AC -- ASCLD and you're familiar with that
15 organization?

16 A. Yeah, vaguely. There was a couple of them we had
17 looked into for accreditation.

18 Q. And SWGDRUG?

19 A. Right.

20 Q. And you are very, very familiar with SWGDRUG, correct?

21 A. Yes.

22 Q. And you're very, very familiar with all of the
23 recommendations that SWGDRUG makes?

24 And it's fair to say you would keep up to date with
25 SWGDRUG and any recommendations they may have in terms of

1 maintaining a forensic laboratory?

2 A. Right. If we could afford it, we did it. We think we
3 did meet the minimum requirements for SWG.

4 Q. And when you say that, what do you mean? Can you tell
5 us what you mean by that?

6 A. Well, it's a testing chart that he showed. There was
7 three regions of testing and we met -- when we tested the
8 drugs, we met every one of those criteria for the testing of
9 drugs.

10 Q. And that was something you found as a supervisor to be
11 very important?

12 A. Yes.

13 Q. And you indicated to other employees at the lab that
14 this procedures or these recommendations should be followed
15 as closely as possible?

16 A. Yes.

17 Q. If not to the T?

18 A. Correct.

19 Q. And in terms of your knowledge of SWGDRUG, the SWGDRUG
20 is solely recommendations, correct?

21 A. Exactly.

22 Q. And there are different tiers of SWGDRUG, correct?

23 A. Yes.

24 Q. So it's almost like they are different stages. And do
25 you know what those stages are?

1 A. No, I don't recall. It's been awhile.

2 Q. And you were not an accredited laboratory?

3 A. No, we were not.

4 Q. And in your --

5 MR. CALDWELL: If I could just have one moment?

6 THE COURT: Sure.

7 Q. (By Mr. Caldwell) In your opinion, what was the
8 biggest thing that SWGDRUG wanted a forensic lab to do?

9 A. Accurate analysis.

10 Q. Accurate analysis. And was there -- what was the next
11 thing they wanted you to do if you were accredited?

12 A. Oh, for accreditation?

13 Q. Correct.

14 A. A lot more record keeping. That was a big part which
15 we, at the time, we couldn't afford more record keeping.
16 That was basically it.

17 Q. And then -- so let's move forward to when the State
18 Police took over the lab.

19 A. Uh-huh.

20 Q. Correct. And that was after the incident that happened
21 at the Hinton Laboratory with Ms. Annie Dookhan, correct?

22 A. Right around the same time period. I don't know
23 exactly.

24 Q. Not exact same time period, but at some point the State
25 Police went there to do a quality control or quality

1 assessment of the laboratory?

2 A. Right.

3 Q. And several members of the State Police came there and
4 interviewed you and other employees?

5 A. Yes.

6 Q. And, basically, went through your inventory of
7 standards?

8 A. Yup.

9 Q. Looked at your machinery, and they made an assessment.
10 And when they made that assessment, their primary goal is
11 moving you towards full accreditation?

12 A. Exactly.

13 Q. They did not shut the lab down, correct?

14 A. No, because we met the basic requirements.

15 Q. And you continued to work and test drugs there,
16 correct?

17 A. Yes, we did.

18 Q. Okay. And in terms of looking at the recommendations
19 of SWGDRUG, you also had your own standard operating
20 procedure in place?

21 A. Yes, it was always working on it, never really
22 completed it, but we always had our own SOP.

23 Q. And that was from the 1980s you had an SOP?

24 A. We had original ones from the '80s, but we had revamped
25 it later on, but never completed.

1 Q. Okay. Do you recall at the time when Chemist Rebecca
2 Pontes started the lab? Was she someone who undertook this?

3 A. That was her project, one of her projects was. And she
4 probably started in 204 (sic) maybe, something like that,
5 205 (sic), right around there.

6 Q. And at that time, you were testing drugs full-time in
7 the laboratory?

8 A. Correct.

9 Q. So you were working right next to Rebecca Pontes?

10 A. Yes.

11 Q. And you trained Rebecca Pontes?

12 A. Yes, I did.

13 Q. You also alerted her as to powder protocols and other
14 reference materials in the laboratory that she should be
15 following to the highest level?

16 A. That was part of the training. We trained for roughly
17 a month on different levels of samples and stuff.

18 Q. And you alerted everybody in the lab as to these
19 standards and operating procedures?

20 A. Yes. We all knew.

21 Q. Now, let's move forward to the testing equipment of the
22 lab.

23 A. Correct.

24 Q. So there was some machinery there called the gas
25 chromatograph?

1 A. Yes.

2 Q. And also the mass spectrometer?

3 A. Right.

4 Q. They were essentially two separate machines, however
5 they worked together; is that fair?

6 A. Well, the mass spec. has a GC attached to it and the
7 gas chromatograph, we had a separate one for one of the
8 presumptive tests. So we actually ran two GCs on the
9 sample. One was confirmed by the mass spec. and the other
10 was the FID detector. And that was just a presumptive,
11 because it wasn't a positive, and that's all it needed to
12 meet SWG guidelines, presumptive and a positive.

13 Q. And the chemist would work with the machines?

14 A. Yes.

15 Q. And, in fact, load the vials and the samples onto the
16 machine?

17 A. Everybody was responsible for their own.

18 Q. So now is it fair to say that the machines are doing a
19 vast majority of the work?

20 A. Yes, they did a lot of it. Made it a lot easier for
21 us.

22 Q. And to analyze drugs without this type of machinery
23 would be very difficult, correct, and very time consuming?

24 A. Oh, very time consuming.

25 Q. And inside these machines, they had an internal

1 reference library, correct?

2 A. That's correct.

3 Q. That was verified by the manufacturer?

4 A. Right. And plus I had -- we put our own library in
5 too, so we always compared the libraries to make sure they
6 matched.

7 Q. Yeah, because you wanted to make sure what you were
8 putting in the machine matched what the manufacturer
9 indicated?

10 A. Right.

11 Q. Now, I think Mr. Ryan was talking about fingerprints.
12 And the machines would basically give an accurate
13 fingerprint of what the drug was?

14 A. Correct. It's the mass spec. that gives the breakdown
15 product and it's just like a fingerprint, it's pretty
16 individual for each separate drug.

17 Q. So after the machine was run and you receive the
18 readings from the GCMS and after you've done all of the
19 testing with the machinery, what was the chemist's role at
20 that point?

21 A. The chemist's role was to write up the results, submit
22 it to the evidence officer. And the chemist also had to
23 give another chemist the results and we would verify the
24 results, and make sure everything matched.

25 Q. And that's a second set of eyes?

1 A. Second check, yes.

2 Q. And if there were ever any issues with that first test
3 that the chemist gave to the second, what would happen?

4 A. Redo it, resample, redo it.

5 Q. Would you have the same chemist redo it, who did the
6 original, or would you switch it?

7 A. No, same chemist.

8 Q. And, again, it would be reviewed again?

9 A. Right.

10 Q. And then checked with the evidence officer before
11 certification was generated?

12 A. Yes.

13 Q. Okay. Let's talk about the prepared standards or the
14 secondary standards a little bit.

15 A. Uh-huh.

16 Q. When did you learn about the creation of these types of
17 secondary standards?

18 A. From the DEA manual, we did one of our -- one of my
19 predecessors received when he went to the DEA school, that
20 was standard operating procedure to prepare your own
21 standards, because they didn't have a lot of companies at
22 the time making this.

23 Heroin was very difficult to obtain, but you could get
24 morphine. So you'd make heroin from morphine.

25 Q. So the Drug Enforcement Agency produced a manual

1 indicating how, in fact, you create --

2 A. To produce all these different drugs, yes.

3 Q. So fair to say -- so we're talking, you're going late
4 1970s here?

5 A. Well, that's when I started, but there was people
6 before me who received the manual probably in the early '70s
7 maybe just when the problems started, you know, late '60s,
8 early '70s.

9 Q. So at this point, not only was the DEA giving you a
10 license --

11 A. Uh-huh.

12 Q. -- to operate as a lab of drugs of abuse --

13 A. Yup.

14 Q. -- but they were also indicating you can make secondary
15 standards and you should be using these types of standards?

16 A. They recommended it at the time.

17 Q. Okay. If you know, was the Hinton Laboratory doing
18 this? Or the Boston Laboratory?

19 A. Yeah, it was Hinton then. Geez, I don't recall. I
20 believe they were, but I don't -- they did a different
21 procedure, testing procedures until we had Northeast came in
22 and they developed a procedure for both of our labs. We had
23 to meet the criteria.

24 Q. And you did meet that criteria in terms of the Drug
25 Enforcement Agency and you did follow these procedures for

1 making secondary standards as they indicated you should?

2 A. Yes.

3 Q. Now, when you were supervisor at the lab, did anyone
4 else make standards or was it only you?

5 A. As far as I remember, it was only me.

6 Q. Okay. Now, let's just take this step-by-step if you
7 could.

8 A large trafficking sample comes into the laboratory of
9 cocaine.

10 A. Uh-huh.

11 Q. Probably several kilograms. And, you know, you knew --
12 you were doing that test, correct --

13 A. Yup.

14 Q. -- because there was a larger quantity of the drug, and
15 you usually did that at the lab?

16 A. Right.

17 Q. Tested the larger quantities?

18 A. Until -- yeah, until I became -- spent more time as
19 supervisor, then I had to let Rebecca and Sonja handle some
20 of it.

21 Q. But fair to say Rebecca and Sonja, they usually tested
22 the smaller samples and you tested the larger ones?

23 A. They were more time consuming, especially the large
24 heroin submissions, 10,000 packets at a time.

25 Q. Say this multiple kilo sample of cocaine came in, just

1 very briefly, how did you create the standard?

2 A. The cocaine standard was created prior to when it came
3 in.

4 Q. Excuse me. The cocaine -- the manufacturing standard
5 that you, yourself, made.

6 A. Yes, okay. Well, originally we purchased from a
7 pharmaceutical company bottled cocaine. We used that as the
8 primary standard. The secondary standard came from when I
9 went to do a quant, quantitate the sample. I would maybe
10 take 100 milligrams and probably -- just to get a
11 homogeneous sample. You didn't need that much, probably
12 needed 50, so I always had 50 milligrams approximately left
13 over. That is what was used for the secondary standard. I
14 would compare that to the primary standard. If it matched
15 then that was okay to use as a secondary standard from that
16 point on.

17 Q. And those secondary standards wouldn't last long?

18 A. No.

19 Q. And you would run those, in fact, through the GCMS --

20 A. Yes.

21 Q. -- that you created?

22 A. Right.

23 Q. And it was very important because you need to compare
24 that not only to the standard -- the cocaine standard that
25 was in the machine --

1 A. Right.

2 Q. -- but also the live end?

3 A. Correct.

4 Q. And if those didn't match up, what would you do?

5 A. Wouldn't use it.

6 Q. Did you -- and you frequently -- these manufactured
7 standards, you frequently checked them, is that fair to say,
8 to make sure that they weren't disin- -- breaking down?

9 A. Well, we ran them every day. So, I mean, we knew when
10 they were operational and stuff. And other things are
11 happening. You'd see the columns degrade and stuff, so
12 peaks don't come out right, so then you have to go in and
13 that's when you make -- it's the chemist itself who makes
14 the decision: Oh, okay, this is not working properly,
15 doesn't match what it should. Now we will go in and repair.

16 Q. When you say "go in and repair," what do you mean by
17 that?

18 A. Clean the detector out, clean the injection port out,
19 put a new column in.

20 Q. So at some times either Ms. Farak or Ms. Pontes would
21 come to you and say, for example, Jim, we think there's a
22 problem with the secondary standard that we're using?

23 A. Well, very rarely. Yeah, because we went through the
24 coke and heroin so fast. So say LSD or something, that
25 broke down very rapidly. So there was a problem with that.

1 I had to make that more frequently, but we only -- we're
2 dealing with, you know, microgram quantities, so very
3 little. And we only made, like, maybe 10 or 15 microliters.
4 We didn't make a lot.

5 Q. Can you explain to us what a microliter, in fact, is?
6 What's it representative of?

7 A. A millionth of a liter.

8 It's a very small amount. I mean it's a drop, a drop
9 of water; about that size. Maybe that's even too big.

10 Q. And you always kept notes when you did this?

11 A. Yes.

12 Q. Was that on the bench notebook, the hard bound, or was
13 it on your steno book?

14 A. On the steno notebooks.

15 Q. Now, can you explain the process to the Court what
16 cleaning it up -- when you say I'm going to clean up a
17 standard that you were manufacturing, what, in fact, does
18 that mean?

19 A. Well, prior to us acquiring the mass spec., we had to
20 extract all the samples, we had to purify them all to get
21 them to run in the IR. For the Infrared Spectrophotometer,
22 it has to be pure. So we knew how to handle all these
23 samples that come in, we had to purify it. And that was the
24 procedure we used to purify the sample for the primary
25 standard. To get the secondary standard, I'm sorry.

1 Q. Can you explain to the Court, what in fact an IR is?

2 A. Infrared Spectrophotometer, it measures the frequency
3 of vibrations, transitional vibrations in the molecule and
4 that's like a mass spec.; it's almost like a fingerprint.
5 It's pretty unique for that given compound. And that was
6 the procedure used prior to the development of mass spec. by
7 all of the labs.

8 Q. So, can you back that up? There was an IR process?

9 A. Yes.

10 Q. And a GCMS process?

11 A. Right.

12 Q. And when did the IR process terminate?

13 A. Well, we got mass spec. -- it never terminated fully
14 because it was one of the best ways we could identify crack
15 cocaine. Very rapid.

16 Q. And when you -- but you need not -- you would just test
17 a crack cocaine. You didn't have to designate it as crack
18 cocaine, correct?

19 A. Federal cases we had to.

20 Q. Federal case, yeah. But in terms of the state, there's
21 no --

22 A. No.

23 Q. -- crack cocaine law, per se.

24 A. No, there's not.

25 Q. Okay. And you had indicated in the creation of these

standards there were protocols in place?

A. Yes.

Q. And you had reference material at the laboratory in terms of the creation of these?

A. Exactly.

Q. And is it fair to say that 30 years ago, every lab was creating secondary standards?

A. Everybody did. You just couldn't buy them.

MR. CALDWELL: One moment, Your Honor?

THE COURT: Uh-huh.

(Pause)

Q. (By Mr. Caldwell) Mr. Hanchett, you had indicated when you were making these quants and you were creating these secondary standards, you talked about leftover?

A. Right.

Q. Can you just explain that a little bit more for us?

A. Well, what we do when we're quantitating is basically heroin and cocaine samples, because we used a different procedure, we still use the GC, but we use the recommended procedure from -- I can't even remember the name of the society now, but it was Agricultural Chemists or something, AOAC -- is the name of it, but I can't recall it right now what it stands for -- AOAC. They have a recommendation for doing cocaine quants. We followed theirs, and that's what it called for was maybe 50 -- 25- to 50-milligrams of sample

1 dissolved in either an alcohol with an internal standard.

2 We would GC that into the -- or inject that into the GC, and
3 the GC would determine ratio, the peaks, and that would give
4 us the amount of percent of cocaine present.

5 Q. Okay. So the leftover was essentially what you had to
6 put in the machine anyway?

7 A. Right.

8 Q. Okay. Mr. Hanchett, approximately how long, again,
9 were you at the Amherst Laboratory?

10 A. Well, I had 38 years when I retired, so, I don't know,
11 maybe 35, 36, right around there.

12 Q. Okay. And approximately -- now moving forward, how
13 long did you work with Sharon Salem?

14 A. Fifteen maybe.

15 Q. Fifteen. How long did you work with Rebecca Pontes?

16 A. Eight or ten.

17 Q. How long did you work with Sonja Farak?

18 A. A little less than Rebecca, maybe eight, I think.

19 Q. Because she came over from the Hinton Lab?

20 A. Correct.

21 Q. And that's where she was trained?

22 A. Exactly.

23 Q. And so given the set up of the lab, there was one
24 large, essentially, laboratory area?

25 A. Yes.

1 Q. Attached to that large laboratory area with all the
2 machinery where everything was stored, there was a small
3 office space that was shared?

4 A. Right.

5 Q. And as you would go across a hallway, you would exit a
6 door and go across a hallway, and there were two other
7 rooms, correct?

8 A. Correct.

9 Q. One was the evidence room?

10 A. Correct.

11 Q. And a desk where Sharon would sit and accept the
12 evidence from the police departments?

13 A. Yes.

14 Q. And the police would wait in a small waiting room
15 there?

16 A. Right outside, yes.

17 Q. And attached to that was your office?

18 A. Right.

19 Q. Fair to say you were frequently in the laboratory
20 dealing with supervisor issues and also doing tests?

21 A. Yeah, probably most of the time.

22 Q. And you had the -- obviously, you had the opportunity
23 to observe Sharon Salem and her person.

24 A. Uh-huh.

25 Q. Speak with her and converse with her on a daily basis?

1 A. Yes.

2 Q. You also did the same with Rebecca Pontes?

3 A. Yes.

4 Q. And you also did the same with Sonja Farak?

5 A. Right.

6 Q. And your time working with Sonja Farak, making
7 observations of her person and speaking with her, did you,
8 at any point, see any indications she was abusing narcotics?

9 A. No, never did.

10 Q. And when you say that, what types of observations did
11 you make of her that would lead you to believe she was not
12 under the influence?

13 A. She was always meticulous in her work until maybe the
14 month before her arrest and even then she was just -- just
15 slowed down a bit a month or two before. I never noticed
16 anything other than that. She just -- her work was just
17 being done a little slower.

18 Q. So her production was going down?

19 A. Right. That was the last two months, though.

20 Q. Was there anything about her person that you noticed?

21 A. No, she always was the way she was. She never dressed,
22 you know, great, but that's the way she dressed.

23 Q. Did Rebecca Pontes ever come to you and say, I think
24 there's something wrong with Sonja Farak?

25 A. No.

1 Q. Did Sharon Salem ever come to you and say, I think
2 there's something wrong with Sonja Farak?

3 A. No.

4 Q. Did anyone in law enforcement or from the court system
5 ever contact you in regards to odd behavior on the part of
6 Sonja Farak?

7 A. No, absolutely not.

8 Q. Did they ever contact you about the poor quality of her
9 work or her testing procedures?

10 A. No, absolutely not.

11 Q. Now, you say there was a change in the last couple of
12 months?

13 A. Correct.

14 Q. Did you have the opportunity to watch her do a test on
15 an unknown sample?

16 A. No, not really. We worked in close proximity, but I
17 didn't really pay close attention to it. She was well
18 trained and I assumed everything was going properly.

19 Q. And you said she was well trained. What makes you say
20 that?

21 A. Well, she was trained in the Hinton system and then she
22 got to our lab and we showed her ours. Not a big
23 difference, but the main factor was back then Hinton Lab was
24 doing -- they had three or four different analysts doing a
25 sample. We've always had one analyst doing the whole

1 sample, because when you get called to court, you can't lose
2 five chemists for one day, and that's what was happening
3 in Jamaica Plain at the time.

4 Q. Did you, yourself, produce discovery packets when you
5 went to court?

6 A. Yes.

7 Q. Was it an arduous task producing these packets?

8 A. On some of the samples I worked with, I had bankers
9 boxes full of discovery packets.

10 Q. Is that because they were much larger samples?

11 A. Correct.

12 Q. Kilos or thousands of bags --

13 A. Correct.

14 Q. -- of alleged narcotics?

15 A. Correct.

16 Q. Now, for a sample that maybe perhaps Sonja or Rebecca
17 were doing, smaller ones, how big were those packets
18 usually?

19 A. I would guess maybe 20 pages, 30 pages, could be.

20 MR. CALDWELL: Your Honor, if I could have just one
21 moment?

22 THE COURT: Yes.

23 (Pause)

24 Q. (By Mr. Caldwell) Mr. Hanchett, one final question for
25 you.

1 In terms of the standards that were at the lab, we are
2 kind of throwing this word around "standard", but the ones
3 that were purchased from the pharmaceutical company.

4 A. Correct.

5 Q. Okay. Did a chemist ever come to you and say they
6 thought something was breaking down where these standards
7 were kept?

8 A. No. The only ones they ever complained about breaking
9 down was the standards that were stored in the refrigerator,
10 the ones that were used for the GC mass spec. And that was,
11 like I said LSD, methamphetamine; something that doesn't
12 last very long when it's in solution.

13 Q. And that's not something you can catch by eye, correct?
14 That's something -- they found out that those materials were
15 breaking down because they were running them through the
16 GCMS?

17 A. Right.

18 Q. As they were required to do?

19 A. Exactly.

20 MR. CALDWELL: Your Honor, I have nothing further.

21 THE COURT: Is Mr. Hanchett's resume an exhibit?

22 MR. RYAN: Yes.

23 THE COURT: Okay. All right. Mr. Hanchett, standards.

24 THE WITNESS: Yes.

25 THE COURT: A number of different modifying phrases

1 that have been thrown around this morning.

2 THE WITNESS: Yes.

3 THE COURT: The lab standards and the secondary
4 standard and the purchased standard and the manufactured
5 standard, sort them out for me.

6 THE WITNESS: Okay.

7 THE COURT: Assume you are talking to somebody who
8 flunked biology.

9 THE WITNESS: Well, basically, it's purchased standards
10 or standards -- the primary standards, purchased standards
11 are standards required from pharmaceutical companies.

12 THE COURT: Okay. So they are coming from the outside.

13 THE WITNESS: Right.

14 THE COURT: And typically from pharmaceutical
15 companies?

16 THE WITNESS: Yes.

17 THE COURT: And that's a -- let's call that a purchased
18 standard.

19 THE WITNESS: Yes.

20 THE COURT: And you know what that is, and that's
21 probably the best standard you could get; is that fair to
22 say?

23 THE WITNESS: USP, yes.

24 THE COURT: Okay. Okay. Go ahead.

25 THE WITNESS: And then the secondary standard would be,

1 what I told you, I took some of the sample when I was doing
2 a quant, I would take some of that. The extra sample I
3 would use to make the secondary standard because it was
4 difficult at the time to get heroin and cocaine. It was
5 just --

6 THE COURT: When you say "at the time," what time are
7 you talking about?

8 THE WITNESS: Many years. It's something -- when they
9 make these heroin runs, they produce -- they don't produce a
10 lot and you only buy, like, 10-milligram bottles at a time.
11 That's not a lot when you're running it all the time. So
12 that's why it was more cost effective to make secondary
13 standards, and because of our financial situation there, it
14 was better to do.

15 THE COURT: And so secondary standard, the manufactured
16 standard, at least self-manufactured standard --

17 THE WITNESS: Right, self-manufactured.

18 THE COURT: -- are the same thing?

19 THE WITNESS: Yes.

20 THE COURT: And then we have the purchased standard.
21 And the lab standard may be one or the other; is that what
22 you said?

23 THE WITNESS: That's correct, yes.

24 THE COURT: Okay. For what period of time, just
25 generally, would you say secondary standards for heroin and

1 cocaine were used at the Amherst Lab?

2 THE WITNESS: You mean when it was prepared, how long
3 it lasted or for how long we used it?

4 THE COURT: No. How long have you been making
5 self-manufactured standards for heroin and cocaine at the
6 Amherst Lab?

7 THE WITNESS: I don't know. Since I've been there 35,
8 37, 38 years.

9 THE COURT: All right. And you are comfortable that
10 that self-manufactured standard is accurate?

11 THE WITNESS: Exactly.

12 THE COURT: And if I understand your testimony, your
13 testimony is that that was an acceptable or approved manner
14 than creating a lab standard, that is to self manufacture?

15 THE WITNESS: Yes, it was.

16 THE COURT: And that's based on what?

17 THE WITNESS: Well, when I started, that's the way the
18 system was.

19 THE COURT: Okay. You mentioned something about the
20 DEA producing some sort of instruction or --

21 THE WITNESS: Yeah. When you went to the DEA school,
22 you received a manual. And in that manual, they told you
23 how to make certain samples.

24 And the one we got was from one of my predecessors. It
25 showed you how to make heroin, how to purify cocaine, THC,

1 to make some of the hallucinogens, LSDs, because those were
2 difficult to obtain.

3 THE COURT: And directing your attention to heroin or
4 cocaine, do -- do you get a bag of one or the other?

5 THE WITNESS: Yes.

6 THE COURT: And then you weigh it, is that what you do
7 first?

8 THE WITNESS: Yes.

9 THE COURT: Just, very briefly, tell me what you do
10 next in the process that results in the certificate of
11 analysis.

12 THE WITNESS: Okay. Well, we weigh it. Weigh it in
13 the bag. Empty the contents out onto a weighing paper,
14 weigh the empty bag, subtract the terra difference. That
15 will give you the net weight of the sample.

16 We take maybe 2- to 4-milligram sample, place it in a
17 GC vials, small vial handles about one and half MLs, one and
18 half to two MLs of solution. We put the solution in. That
19 goes to the GC. Presumptive test.

20 All that's telling me is what I probably already knew
21 it was, because it's packaged.

22 Coke and heroin are different, but it's meeting the
23 standards of SWG presumptive test.

24 Now we compare the results. We look. It's cocaine,
25 it's heroin. It says it right on the GC.

1 That sample, then we take to the mass spec. That is
2 our confirmation. And that will prove the presence of
3 whatever drug you're looking for by its breakdown pattern.

4 THE COURT: Okay. And as a result of that, you make
5 out a certificate of analysis?

6 THE WITNESS: Correct.

7 THE COURT: And now directing your attention to
8 January 18, 2013, which I believe is the day you testified
9 that you discovered -- that you suspected that something was
10 out of kilter?

11 THE WITNESS: Correct.

12 THE COURT: Tell me what happened that day.

13 THE WITNESS: Sharon came in and said she's missing two
14 samples from the vault. These two samples were already
15 returned and they were sealed.

16 So I looked through -- we have two safes in the
17 laboratory plus a vault across the hall. I looked through
18 the two safes in the laboratory. I could not find the
19 samples.

20 So then I went to the individual chem. stations where
21 the chemists works and I looked through the drawers and
22 cabinets underneath, and still couldn't find anything.

23 I went back and did it again. Then I started moving
24 stuff around in there and that's when I discovered the two
25 bags that were missing at Sonja Farak's work station.

1 THE COURT: What happened then?

2 THE WITNESS: Called the State Police.

3 THE COURT: And who, if you know, did you speak with
4 about it?

5 THE WITNESS: Oh, he was the head of the lab at the
6 time. I can't think of his name off hand.

7 James.

8 THE COURT: The head of what lab?

9 THE WITNESS: It was the Sudbury lab.

10 THE COURT: The Sudbury lab?

11 THE WITNESS: Yes.

12 THE COURT: Okay. And as best you can recall it, what
13 was your conversation?

14 THE WITNESS: I didn't get ahold of him right away. I
15 called the second in charge at the lab. He got back to me
16 in the meantime. Told him what happened. He said lock the
17 lab, he's on his way. So I did exactly what he said.

18 THE COURT: The rest is history.

19 THE WITNESS: Exactly.

20 THE COURT: All right. Anything else, briefly?

21 Mr. Olanoff.

22 MR. OLANOFF: Yes, Your Honor.

23 **CROSS EXAMINATION BY MR. OLANOFF**

24 Q. I just wanted to correct something that was said a
25 minute ago.

1 When a chemist tests a drug sample, they perform a
2 presumptive test and then they perform a confirmatory test,
3 right?

4 A. Correct.

5 Q. And so it's the same chemist that performs the
6 presumptive test as the confirmatory test?

7 A. Exactly.

8 Q. At no time in eight years that Sonja Farak was at that
9 lab, did anyone ever retest her samples, correct?

10 A. No, not to my knowledge.

11 Q. And you would do performance reviews every so often,
12 correct?

13 A. That's -- toward the end; they stopped that too because
14 we just couldn't -- time constraints, again.

15 Q. As part of a normal performance review, basically, you
16 would go down a list and check off that the chemist had down
17 what they were supposed to do, correct?

18 A. Correct.

19 Q. But at no time, as part of the performance review, did
20 anyone ever re-analyze or re-test any of Sonya Farak's
21 samples, correct?

22 A. No.

23 Q. And so that is why you just testified a minute ago that
24 you had no idea that Ms. Farak was doing anything improper
25 at the lab during the entire eight years she was there,

1 correct?

2 A. Correct. But that was not my decision, that was a
3 decision made in the Boston Lab. We used to test, randomly
4 test samples that were analyzed by chemists, and that was
5 stopped because, again, money and time.

6 Q. Right. And now I moved onto what you knew or didn't
7 know.

8 You didn't know that Miss Farak had committed
9 misconduct during the eight years she was there, correct?

10 A. I did not.

11 Q. And you did not know she had taken evidence samples
12 from the main evidence vault at the lab, correct?

13 A. We all had access to it, but I never knew she did. I
14 would have reported her. As soon as I suspected anything, I
15 reported it.

16 Q. And you never knew she was taking evidence samples from
17 the small temporary storage locker in the lab, correct?

18 A. No, I did not.

19 Q. And you never knew she was taking your pre-signed
20 evidence packets and using those to manufacture drugs,
21 correct?

22 A. No, I had no idea she was doing that.

23 Q. You also never knew that she was going in to that
24 refrigerator and taking the standard for methamphetamine,
25 correct?

1 A. I didn't know. There was a lot of standards in that
2 refrigerator. Everybody had access to that refrigerator to
3 get the standards you needed for the day.

4 Q. As I just mentioned, no one ever came to you and said I
5 think something is amiss here with Miss Farak?

6 A. Not in my recollection, absolutely not.

7 Q. And you never noticed anything yourself, correct?

8 A. Correct. Well, towards the end, I told you, the last
9 month or so, her work had started to slow down. That's the
10 only thing I noticed. I never recognized her as having any
11 problems with drugs or alcohol or anything.

12 Q. And as you mentioned, previously, there was really
13 nothing that, in your mind, you could have done to prevent
14 something like this, correct?

15 A. It wasn't under my power. It rests with the heads of
16 the Hinton Lab.

17 Q. You would agree with me, though, that re-testing
18 chemist samples may have been something that could have been
19 done?

20 A. Absolutely. We were doing it too until the decision
21 was made to stop it. It wasn't my fault. It wasn't my
22 decision.

23 THE COURT: Do you know when that was?

24 THE WITNESS: I'd say mid '80s or maybe late '80s,
25 early '90s.

1 THE COURT: Okay.

2 THE WITNESS: It was before Sonja and Rebecca came to
3 work there. But it was a routine thing that was done.

4 Q. (By Mr. Olanoff) Drug testing of employees may have
5 been one other thing that may have prevented something like
6 that?

7 A. Again, it's not my mine to say.

8 Q. I understand. You remember when we first spoke in
9 2013, when you testified back then and I asked you how long
10 you thought Ms. Farak could have been doing something like
11 this, and you remember at the time you were only aware of
12 those two samples?

13 A. Yes.

14 Q. I asked you how long you thought this could have been
15 going on and your answer to me was "years"?

16 A. It could have been. There was no way to control it.
17 We all had access to everything. You could say that about
18 to me, Sharon, and Rebecca. We all had access to the
19 locker, so anybody could go in there and take the stuff out.
20 This is -- you are operating on the integrity of the
21 individual chemist. It's an unfortunate thing.

22 MR. OLANOFF: Thank you, Your Honor.

23 THE COURT: One minute.

24 MR. RYAN: I won't use all of it.

25

REDIRECT EXAMINATION BY MR. RYAN

Q. You testified to -- Judge Carey asked you a couple of questions when the MSP took over your lab in July of 2012, they eventually found out that you were making standards at the lab, manufactured standards, correct?

A. Yes.

Q. And they told you to stop doing that, correct?

A. Yes.

Q. And then when you -- they shut down the Amherst Lab, you went to Sudbury and worked there for awhile, correct?

A. Correct.

Q. And they didn't use manufactured standards there?

A. Oh, yes, they did.

Q. They didn't make their own standards there?

A. They got them from samples.

Q. Well, let me ask you this: When you --

A. I know they did. I tested drugs down there. They made -- the marijuana samples came from samples they already tested.

Q. On February 1, 2016, Mr. Caldwell asked you a question. He said: Moving forward at this time, an accredited lab would never make secondary standards. And your answer was: No. Probably not, no.

Is that the answer you gave him to that question?

A. I don't remember, but it probably is. But labs did it.

1 MR. RYAN: I have nothing else.

2 THE COURT: Mr. Caldwell, are you all set?

3 MR. CALDWELL: Just two things.

4 **CROSS EXAMINATION BY MR. CALDWELL**

5 Q. You indicated that all the chemists, including
6 yourself, had access to all of the standards, all of the
7 police submitted evidence, correct?

8 A. Correct.

9 Q. And I believe Mr. Olanoff indicated that a re-test
10 would be helpful, especially in the case now that we know
11 about Ms. Farak.

12 But it's also fair to say we don't know at what point
13 the samples could have been stolen. They could have been
14 stolen after the re-test while they were sitting in the
15 locker, correct?

16 A. Correct.

17 Q. And in terms of the accredited laboratory, the State
18 Police had you stop making standards because they were
19 moving you towards accreditation, and SWGDRUG and others did
20 not allow you to manufacture standards if you wanted to be
21 an accredited laboratory which all the Mass. State Police
22 labs are, correct?

23 A. Correct.

24 MR. CALDWELL: Nothing further.

25 THE COURT: Mr. Hanchett, I'm delighted to tell you can

1 step down.

2 THE WITNESS: Thank you, Your Honor.

3 THE COURT: You're welcome.

4 THE WITNESS: It's been trying, believe me.

5 THE COURT: All right. Monday morning 9:00 o'clock,
6 Courtroom 8 in Springfield.

7 See you then.

8 (The Court exited at 1:00 p.m.)

9 (* * * * *)

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

C E R T I F I C A T I O N

I, ALICIA CAYODE KYLES, REGISTERED PROFESSIONAL REPORTER, REGISTERED MERIT REPORTER, OFFICIAL COURT STENOGRAPHER, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE AND ACCURATE TRANSCRIPT FROM THE RECORD OF THE COURT PROCEEDINGS IN THE ABOVE ENTITLED MATTER.

I, ALICIA CAYODE KYLES, FURTHER CERTIFY THAT THE FOREGOING IS IN COMPLIANCE WITH THE ADMINISTRATIVE OFFICE OF THE TRIAL COURT DIRECTIVE ON TRANSCRIPT FORMAT, RESERVING MY RIGHT TO PROVIDE AN ELECTRONIC COPY, WHEN REQUESTED, AT THE COPY RATE AS PROVIDED BY THE STATUTE IN CHAPTER 221: SECTION 88, AS AMENDED.

I, ALICIA CAYODE KYLES, FURTHER CERTIFY THAT I NEITHER AM COUNSEL FOR, RELATED TO, NOR EMPLOYED BY ANY OF THE PARTIES TO THE ACTION IN WHICH THIS HEARING WAS TAKEN, AND FURTHER THAT I AM NOT FINANCIALLY NOR OTHERWISE INTERESTED IN THE OUTCOME OF THE ACTION.

ALICIA CAYODE KYLES, RPR, RMR, OCR

Dated: December 13, 2016

50 State Street

Springfield, Massachusetts 01103

413-748-7624