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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)

Hampden Superior Court
50 State Street
Springfield, Massachusetts
December 16, 2016

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Official Court Stenographer
Registered Merit Reporter

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(09-97)

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(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
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Elaine Pourinski

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(By Mr. Caldwell).....23

(By The Court).....34

Dean Mazzone

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(* * * *)

(The Court entered at 9:30 a.m.)

(The defendants and the interpreter were present.)

THE CLERK: Good morning, Your Honor. Good morning everyone.

This is the criminal session for December 16, 2016, the Honorable Justice Richard Carey is presiding. I'm Assistant Clerk Lois Cignoli for the court. Matters before the court as part of the Farak drug lab hearing, cases of Commonwealth vs. Erick Cotto, Docket 07-770, represented by Attorney Rebecca Jacobstein.

Commonwealth vs. Jermaine Watt respective Docket Number 09-1068, 09-1069, represented by Attorney Rebecca Jacobstein.

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

The Commonwealth vs. Omar Harris, 2010-1233, represented by Attorney Jared Olanoff.

The Commonwealth vs. Wendell Richardson, 2012-399, represented by Attorney Jared Olanoff.

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

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

Commonwealth vs. Omar Brown Docket, 2005-1159,

1 represented by Attorney James McKenna.

2 The Commonwealth vs. Bryant Ware respective Docket
3 Numbers 07-1072, 09-1072, 2010-253 represented by Attorney
4 James McKenna.

5 For the Commonwealth we have -- oh, I'm sorry, and
6 Commonwealth vs. Glenda Aponte, Docket, 2012-226,
7 represented by Attorney James McKenna.

8 Commonwealth -- for the Commonwealth we have Assistant
9 Attorney Generals, Kim West, Judy Zeprun and Thomas Caldwell
10 and Heather Valentine. And from the District Attorney's
11 Office we have Assistant District Attorneys Deborah Ahlstrom
12 and Katharine Johnston.

13 And for the record the interpreter is present as are
14 Mr. Watt and Penate.

15 THE COURT: Good morning everyone.

16 ALL COUNSEL: Good morning.

17 THE COURT: So, Mr. Caldwell, I have been directed to
18 inquire about the evidence, photographs of evidence.

19 MR. CALDWELL: Yes, Your Honor. May we approach
20 sidebar?

21 THE COURT: Sure.

22 (Beginning of Sidebar Discussion)

23 MR. CALDWELL: Thank you, Your Honor.

24 So, Your Honor, I have the State Trooper Sergeant
25 Ballou obtain this evidence from our evidence locker in

1 Boston and bring it out here.

2 So this is all of the evidence that was seized from the
3 car and the duffle bag at Farak's work station at the
4 Amherst laboratory. So I'm really asking the Court, in
5 terms of proceeding -- I don't know if the Court, perhaps,
6 wanted this for in camera review or how the Court wants to
7 handle this. It is still active evidence.

8 THE COURT: Sure.

9 MR. CALDWELL: I don't think we can really put it into
10 evidence in this case because at some point I'm sure we may
11 need this back.

12 THE COURT: Right. Yeah, no, it was -- it is much less
13 involved than that.

14 The testimony, because that it was transported from the
15 barracks to the AG's evidence location, that Sergeant Ballou
16 took it out and went through it, that Mr. Ryan went
17 through -- I was just curious as to how voluminous.

18 So all I want is, I think a photograph of it made an
19 exhibit so that myself and any appellate judge, who may, I
20 suspect, be looking at this thing, has a sense of what we're
21 talking about.

22 MR. CALDWELL: I can at the lunch break -- I do have
23 photographs I can print out and I can put into evidence.

24 THE COURT: Okay.

25 MR. CALDWELL: And, Your Honor, whatever you would like

1 to do further.

2 THE COURT: That's just --

3 MR. CALDWELL: I will make it available if the Court so
4 wishes.

5 THE COURT: We will, hopefully, make it a joint exhibit
6 and be done with it.

7 MR. RYAN: Okay.

8 MS. WEST: Thank you.

9 (End of Sidebar Discussion)

10 THE COURT: Secondly, before we call any further
11 witnesses, let's talk about the briefing schedule.

12 And it's my understanding that there's agreement that,
13 I believe, the Commonwealth (sic) will file its brief by
14 January 31. Is that accurate?

15 MS. AHLSTROM: I believe that's --

16 MS. JACOBSTEIN: I will file my brief by January 31.

17 THE COURT: Okay. All right. Anybody else who wants
18 to on your side?

19 MS. JACOBSTEIN: Yes, we will.

20 MS. APPELEYARD: Excuse me, Your Honor, Jennifer
21 Appleyard on behalf of Rolando Penate is currently
22 incarcerated. I will ask I be able to file mine by
23 January 10.

24 THE COURT: Sure.

25 MS. APPELEYARD: Because his sentence -- he's scheduled

1 for his sentence to be wrapping up in February so it would
2 be in his interest to possibly have this matter resolved
3 prior to that.

4 THE COURT: All right. Not promising that, but you can
5 file your brief by January 10.

6 And February 17.

7 MS. AHLSTROM: The Commonwealth, being the DA's Office,
8 will not be able to respond to it in any more of a timely
9 fashion than it can to the defendants' brief.

10 THE COURT: And you wanted until February 17 to file
11 yours?

12 MS. AHLSTROM: I believe that is what we decided on,
13 yes.

14 THE COURT: All right. So ordered.

15 Then there was some discussion about a hearing, a
16 hearing for argument or something -- no? No? No?

17 MS. AHLSTROM: Your Honor, we didn't know if you wanted
18 an argument on the briefs and then we discussed the fact
19 that we would be perhaps addressing the individual
20 defendants cases.

21 THE COURT: Well, I mean, my --

22 MS. AHLSTROM: So we didn't know what you wanted.

23 THE COURT: Well, let me tell you what -- I don't need
24 to hear anymore argument from any of you.

25 I hope I never see any of you again -- just kidding.

1 (Laughing)

2 THE COURT: I don't believe I need anything further,
3 oral argument -- and what I envisioned was over the next --
4 well, January, principally and part of February, is to have
5 individual one hour or so hearings from the individual
6 cases, so I can really get at the arguments of each counsel
7 for their individual client, and their individual client
8 circumstances and how that plays into my weighing what the
9 decision should be on these various motions to dismiss,
10 motions to vacate, motions for new trial, and so forth and
11 so on.

12 And I was just going to have individual counsel arrange
13 with Ms. Cignoli dates that are mutually convenient in
14 January of 2013 or February. And I'm going to be in
15 Springfield all of January of 2013, all of February, so I'll
16 be around, and so that's what I envisioned.

17 Hearing no objections?

18 MS. JACOBSTEIN: I'm definitely fine with that as long
19 as I understand what I am going to do to at my hearing. So
20 am I going to provide more evidence just specifically to my
21 client? If we agree upon the evidence are we just going to
22 argue it?

23 I guess that's what I'm confused about.

24 THE COURT: Generally, I don't envision a whole lot of
25 evidence being presented. It really is more -- you can talk

1 to your opponent on that and see what you do want to
2 present. And it's -- I suspect an -- this is up to you, you
3 are all the advocates, to present to me your specific
4 client's position relative to these motions and just a
5 chance to advocate for what I should do on that particular
6 motion to either vacate, new trial, dismissal.

7 I've left you stunned.

8 MS. JACOBSTEIN: I'm writing a brief on that, but you
9 don't want an argument on the brief, so is it basically kind
10 of like a summary of what I'm going to write in my brief?

11 THE COURT: There needs to be a record as to your
12 particular client's, Mr. Cotto -- Mr. Cotto's circumstances.

13 MS. JACOBSTEIN: I see.

14 THE COURT: And why I should dismiss the case outright
15 against Mr. Cotto, or why I should allow his motion for
16 whatever the particular motion is.

17 MS. JACOBSTEIN: I see.

18 THE COURT: So work with Clerk Cignoli and we will work
19 those dates out and we can, hopefully, by the end of
20 February, I'll be in a position to start putting something
21 together.

22 With that, you may call your the next witness.

23 MR. OLANOFF: Thank you, Your Honor. Elaine Pourinski.

24 (Elaine Pourinski, sworn)

25 THE WITNESS: Good morning, Your Honor.

1 THE COURT: Mr. Olanoff, when you're ready.

2 MR. OLANOFF: Thank you, Your Honor.

3 (Elaine Pourinski)

4 DIRECT EXAMINATION BY MR. OLANOFF

5 Q. Good morning.

6 A. Good morning, Jared.

7 Q. Could you please give us your full name and spell your
8 last name?

9 A. Elaine Pourinski, that's P as in Peter,
10 O-U-R-I-N-S-K-I.

11 Q. And on a scale of one to ten, how thrilled are you to
12 be here?

13 A. It's like the weather, negative.

14 (Laughing)

15 Q. (By Mr. Olanoff) What is your occupation?

16 A. I'm a lawyer.

17 Q. And how long have you been a lawyer?

18 A. A little too long, about 25, maybe 26 years.

19 Q. Where is your office located now?

20 A. In Northampton.

21 Q. And where do you primarily practice?

22 A. It depends, sometimes in Springfield, sometimes in
23 Northampton.

24 Q. Are you a member of any panels?

25 A. I'm a member of the CJAA panel; I'm a member of the

1 murder panel; I'm a member of the appellate panel.

2 Q. Okay. And at some point, in January, 2013, were you
3 retained to represent Sonja Farak?

4 A. Yes, I was.

5 And her name is pronounced Farak for everybody's
6 benefit.

7 Q. Oh, my apologies. My apologies.

8 And do you remember, approximately, when you were
9 retained to represent her?

10 A. I -- to give you dates, I don't know. It's when she
11 was arrested.

12 Q. Okay. Were you present for her arraignment in district
13 court?

14 A. Yes, I was.

15 Q. Was that in Belchertown District Court?

16 A. Yes, it was.

17 Q. And how long after her arrest did that happen, if you
18 remember?

19 A. That I was retained?

20 Q. No, that her arraignment occurred.

21 A. I -- I imagine, I don't have a specific memory. I
22 imagine she was arrested on the weekend, I believe. She was
23 held over the weekend. I visited her at the jail over the
24 weekend, so I believe it was probably that Monday after.

25 Q. And who was the prosecutor that handled her

1 arraignment? If you remember.

2 A. I really don't remember. I remember the prosecutor who
3 handled the case. I don't recall if she was the one who
4 came for the arraignment.

5 Q. And which, which prosecutor's office was handling the
6 prosecution of Sonja Farak?

7 A. The Attorney General's Office.

8 Q. Okay. And to the best of your recollection, was it the
9 Attorney General's Office who represented the Commonwealth
10 at Sonja Farak's arraignment?

11 A. I believe so, but I can't swear to it.

12 Q. Okay. At some point was Ms. Farak indicted?

13 A. Yes, she was.

14 Q. In which court?

15 A. She was indicted in Hampshire Superior Court.

16 Q. And do you remember what month that may have happened
17 in?

18 A. No.

19 Q. Were you present for her arraignment there?

20 A. I was.

21 Q. Do you happen to remember which prosecutor was present
22 for her arraignment in Superior Court?

23 A. Again, I don't. I mean, I dealt with Attorney
24 Kaczmarek mostly, so it's possible she was present for the
25 arraignment.

1 Q. Do you have a recollection of the first time you met
2 Ms. Kaczmarek?

3 A. Like I say, she is the one I dealt with, so when the
4 case started I assume. I don't recall dealing with anyone
5 else.

6 Q. Okay. And was your understanding that she was a
7 prosecutor for the Commonwealth in the Attorney General's
8 Office?

9 A. Yes.

10 Q. Do you remember when you first received discovery in
11 this case?

12 A. I don't have a specific memory of the date or it was in
13 a short period of time, but I don't have a specific memory
14 of the time.

15 Q. Okay. Do you remember how you received discovery in
16 the case? Was it by in the mail or by email or -- or did
17 you pick it up somewhere?

18 A. I know I didn't pick it up. I believe it was by mail.

19 Q. Now, showing you what has been marked already as
20 Exhibit -- sorry, Exhibit 168.

21 THE COURT: I'm sorry, 168?

22 MR. OLANOFF: Yes, 168, Your Honor.

23 THE COURT: Thank you.

24 Q. (By Mr. Olanoff) Do you remember what this is?

25 A. Yes, I do.

1 Q. Okay. What is this?

2 A. It's the Commonwealth's first certificate of discovery.

3 Q. And do you remember, approximately, when you received
4 this?

5 A. No, I don't.

6 Q. Okay. And do you remember how you received this?

7 A. As a specific memory, no. I believe it was through the
8 mail.

9 Q. But, safe to say, you didn't go to Boston to pick it
10 up?

11 A. I never went to Boston to pick up anything.

12 Q. And do you remember, based on looking at this now, who
13 sent this to you?

14 A. I don't. I mean, like I say, my dealings with Attorney
15 Kaczmarek.

16 Q. Okay. And is her name on this and her signature?

17 A. It looks like it is, yes.

18 Q. Okay. Now, what's your understanding of what a
19 certificate of discovery is?

20 A. It's a certificate telling you what discovery they've
21 handed over to you. It usually comes with the discovery,
22 sometimes after.

23 Q. And, to the best of your recollection, did discovery
24 come with this certificate?

25 A. Like I say, I don't have a specific memory of that, you

1 know, I can make assumptions, but I am sure you don't want
2 assumptions.

3 Q. Okay. It says here that there was a CD labeled
4 Discovery Number One and that the top of the next page there
5 was also a CD labeled Discovery Number Two and then other
6 CDs of videos and photos.

7 Do you remember receiving CDs in this case as
8 discovery?

9 A. You know, I haven't looked at my file since this case
10 closed. So, if it says that I received CDs in it, I
11 probably received CDs.

12 Q. Okay. Directing your attention to the -- on the
13 discovery receipt where it says CD labeled Discovery Number
14 Two, if you go to number four there, could you read us what
15 that says?

16 A. Paperwork recovered from motor vehicle, MV, seven
17 pages.

18 Q. Okay. Now directing your attention to Exhibit 169, I'm
19 going to go through, just scroll through slowly these pages,
20 and ask you if you recognize these.

21 A. Yes, I do.

22 Q. Okay. Are these the pages that you received -- are
23 these the seven pages that you received for that item
24 labeled documents recovered from motor vehicle?

25 A. I did receive this document, yes.

1 Q. Okay. When you received these documents, did you look
2 at them?

3 A. Yes, I read them.

4 Q. And what was your understanding of what these documents
5 were?

6 A. My understanding that they were treatment sheets that
7 were made out by Sonja.

8 Q. Okay. And did you know what they contained?

9 A. Yes.

10 Q. Did you understand that they contained admissions of
11 her drug use?

12 A. I did.

13 Q. Did you also understand that they contained admissions
14 regarding possibly taking drugs at work?

15 A. Yes.

16 Q. Okay.

17 A. I mean, I read the documents.

18 Q. Okay. And did you have any idea of when these -- what
19 time period these documents were from? In other words, what
20 time they were made?

21 A. I don't have a recollection of the dates on there.

22 Q. So on the -- on page seven of the discovery, did you
23 see that there were December dates up on there for each day?

24 A. Yes.

25 Q. Okay. And did you -- did you hear what year these

1 dates referred to?

2 A. I would rather -- there's attorney-client privilege
3 here.

4 Q. No, no, I'm not asking you --

5 A. Anything that leads into that, I don't -- prefer not to
6 answer.

7 Q. Based on your review of the documents alone, do you
8 know when these documents were from?

9 A. I mean, whatever the document said is what I knew. So
10 if it's on the document, I knew it.

11 Q. Do you have an independent recollection today as to
12 what year these documents were from?

13 A. If -- if it was 2010, I mean, I don't really have a --
14 I haven't looked at this document in quite awhile.

15 Q. Okay. Now, going back to the discovery receipt here,
16 and do you see the date at the bottom of April 22, 2013?

17 A. Yes.

18 Q. Do you have an approximate recollection of when you may
19 have received these documents, like what time of year it
20 was?

21 A. I don't. I mean, I received the discovery not too long
22 after the case began, so it all came together and these
23 documents were in there.

24 Q. Okay.

25 MR. OLANOFF: Thank you, Your Honor. That's all I

1 have.

2 THE COURT: Okay.

3 (Pause)

4 THE COURT: I'm sorry. Anyone else over on this side?

5 MS. JACOBSTEIN: Just one -- (Indicating)

6 THE COURT: Okay.

7 (Off the record discussion among Counsel.)

8 MR. OLANOFF: I'm sorry, Your Honor, apparently I
9 wasn't done.

10 THE COURT: Okay.

11 Q. (By Mr. Olanoff) Did you ever have any discussions
12 with Anne Kaczmarek as to the contents of these -- this
13 discovery that's up on the board now?

14 A. Not regarding the contents, no.

15 Q. Okay.

16 A. That's not my recollection. I mean, we had general
17 discussions about Sonja's illness.

18 Q. Okay. And did Ms. Kaczmarek indicate to you whether
19 these documents were privileged or not privileged?

20 A. She did indicate to me that the office was considering
21 them privileged, yes.

22 Q. Did she also tell you that she was not going to hand
23 over these documents to --

24 MR. CALDWELL: Objection.

25 Q. (By Mr. Olanoff) -- defendants seeking new trials?

1 THE COURT: No, you can answer if you feel you can.

2 THE WITNESS: It's not my recollection that she said
3 she was not going to hand them over. It was my recollection
4 that the office decided they were privileged and they were
5 not going to be turned over.

6 I never had the feeling that she was the one making the
7 decisions.

8 Q. (By Mr. Olanoff) When you -- when did Ms. Farak's case
9 end? When did it close?

10 A. You know, I don't have a specific recollection of a
11 specific date. She did a plea in front of Judge Rup. Like
12 I said, I haven't reviewed this case in awhile.

13 Q. Well, do you remember her case was still going on when
14 we did that big consolidated hearing upstairs with the 15
15 co-defendants?

16 A. To be honest with you, I gave very little thought to
17 that hearing. I was only focused on my client, but I knew
18 that there was a hearing going on.

19 Q. And you were -- and Sonja Farak's case was still
20 pending in its pre-trial stage, correct?

21 A. I believe it was, yes.

22 Q. Okay.

23 MR. OLANOFF: Thank you, Your Honor, I think I'm done
24 now.

25 MR. CALDWELL: Thank you.

CROSS EXAMINATION BY MR. CALDWELL

Q. Good morning, Attorney Pourinski.

A. Good morning, Mr. Caldwell.

Q. So Attorney Pourinski, as you indicated, you represented Sonja Farak?

A. Yes, I did.

Q. And you represented her not only in her pending criminal matter when she was indicted in Hampshire Superior, but you also represented her on later dates before a Grand Jury in Northampton also, correct?

A. Yes, I did.

Q. And that was due to her testimony before a Grand Jury over a several day period, correct?

A. Yes, that's correct.

Q. Now, you were the retained attorney for the pendency of her criminal matter, her indictments?

A. Yes.

Q. And I think what I want to do is, I just want to cut right to the discovery Attorney Olanoff was discussing with you. You indicated that you received a notice of discovery?

A. Yes, I did.

Q. And you believe it was on compact discs?

A. Some of it, yes.

Q. And fair to say it was a lot of discovery that you received in this matter?

1 A. Yes.

2 Q. And you got it right away?

3 A. I don't recall waiting for that long.

4 Q. Okay. And you had an opportunity, obviously, to review
5 every piece of paper that Attorney Kaczmarek turned over to
6 you in regard to your client?

7 A. Yes, I did.

8 Q. And not to add -- not to get into the conversation, but
9 you discussed that with your client what was turned over?

10 A. I rather not answer it.

11 Q. All right. That's fine.

12 And, obviously, you had a full opportunity to review
13 all these seven pages that Attorney Olanoff is referencing
14 the ServiceNet Diary Card and the worksheets and everything
15 like that?

16 A. Yes.

17 Q. Okay. Now, you had conversations with AAG Kaczmarek
18 about these specifically, correct?

19 A. I don't recall having -- only what I just stated to
20 Attorney Olanoff, but as far as the contents, I don't recall
21 really discussing specifically the contents, just Sonja's
22 general condition of addiction, having an addiction.

23 Q. So that was a big part of the conversation, your
24 client's addiction to drugs?

25 A. I wouldn't say it's a big part of the conversation, but

1 it was -- I mean, it was definitely obvious and definitely
2 discussed.

3 Q. And Attorney Kaczmarek, and it's fair to say in those
4 conversations, she discussed these admissions of drug use
5 with you and that they were statements of your client,
6 correct?

7 A. I can't say I remember that. I mean, it was -- I can
8 never -- I can't say I remember her saying, oh, on here she
9 said she did that. I mean it was a fairly obvious thing
10 that she was struggling with drug addiction.

11 Q. And Attorney Kaczmarek had indicated that these were
12 not going to be presented to the Grand Jury, correct?

13 A. I'm -- not to the Grand Jury. She said they weren't
14 going to be turned over to defense.

15 Q. Now, she said they weren't going to be turned over?

16 A. Because the office considered them privileged, to be
17 privileged.

18 Q. In terms of that statement, Attorney Kaczmarek she
19 turned them over to you?

20 A. She turned them over to me, yes.

21 Q. And I think, and in terms of that statement she wasn't
22 going to turn them over to anyone else; this is very early
23 on in the case, this is April, correct of 2013?

24 A. Right, but she made that statement later. That was a
25 statement that was made later.

1 Q. And she said she wasn't going to turn them over to
2 anybody?

3 A. Like I say, she didn't say she. She said they
4 determined them to be privileged and they weren't -- I took
5 it to mean that they weren't going to be turned over to
6 defense counsel in that case going on.

7 Q. You pointed out to Attorney Kaczmarek that you believed
8 that these were privileged, correct?

9 A. No.

10 Q. You never said -- you never -- when these were turned
11 over, at no time you ever said to her, you know, Anne, I
12 think what you've given me is privileged documents and I'd
13 rather you not present them to the Grand Jury, or I'd rather
14 you not turn them over to any other party seeking them?

15 A. No.

16 Q. Is that fair?

17 A. No. I never said that. That's not fair. I never said
18 that.

19 I mean, do I think they are privileged? Yes, I do.
20 That they were privileged, yes. Did I tell her not to turn
21 them over? No.

22 Q. And when did she make that statement to you?

23 A. It was in -- I mean, she came out to Northampton a few
24 times. It was during one of the times that she came out.
25 We would have discussions out in the hallway and it was just

1 a statement.

2 Q. But you don't recall when the exact timing the
3 statement was made?

4 A. I don't recall the exact time, but I'm 100 percent
5 positive she said it. And it was significant to me because
6 of the nature of the statements and it was sort of, as
7 defense attorney, I was concerned about the scope of, and
8 whether she was going to be -- Sonja was going to be charged
9 with any other charges. So it was significant to me when
10 she said that.

11 Q. And Attorney Kaczmarek, she indicated to you that she
12 segregated these documents; is that correct?

13 A. No. I mean it was just one statement. We didn't have
14 a discussion about it. It was just one -- it was a
15 statement that she made.

16 Q. But you don't recall the time that statement was made?

17 A. I can tell you it was some time after two o'clock in
18 the afternoon in the hallway. I can't tell you the exact
19 date. It was waiting for court to begin.

20 Q. Did she discuss with you why someone would be looking
21 for these?

22 A. No.

23 Q. I think what I'm asking you, why would she just make
24 that statement to you out of like -- (Indicating)

25 A. I mean, I don't recall the context of the conversation,

1 but she made that statement. I have no doubt she made that
2 statement.

3 Because, like I say, it was significant to the case
4 for, in my evaluation of the case and what to do with it.

5 Q. It was significant because, essentially, these were
6 admissions by the defendant that she was using drugs and
7 tampering with evidence, that's why it was significant,
8 correct?

9 A. Well, I mean that was concerning to see that right
10 there on paper, but it was significant because it indicated
11 to me that she probably wasn't going to be charged with more
12 cases or it was -- the scope was going to be limited to, to
13 the cases that she had already been charged with.

14 Q. Okay. So you've -- you had conversations with Attorney
15 Kaczmarek about additional charges for your client?

16 A. I'd say we talked about -- she would be charged with
17 anything else, um.

18 Q. At any time did Attorney Kaczmarek indicate that
19 Ms. Farak would be charged with additional crimes?

20 A. No, she didn't.

21 (Off the record discussion among Counsel.)

22 MR. CALDWELL: Your Honor, there is going to be a
23 stipulation as to this next exhibit. I would like to have
24 it marked.

25 THE COURT: Okay.

1 THE CLERK: Marked as Number 267.

2 (Exhibit No. 267, emails from Attorney Pourinski to AAG
3 Kaczmarek (9/22/13), marked)

4 Q. (By Mr. Caldwell) Well, Attorney Pourinski, I'm
5 turning to, what was just marked and accepted as Number 267.
6 I'm putting it before you.

7 Could you please look at that entire email and look up
8 when you're done, including the second page.

9 A. (Witness complying)

10 Q. Attorney Pourinski, I'm putting up screens for the
11 Court to this exhibit just entered, and it's dated the 10th
12 of September, 2013, approximately 10:05 a.m.

13 Can you read that?

14 A. Not from there.

15 Q. No, not from there, but from the piece of paper you
16 have in front of you.

17 A. What's the date, September 22?

18 Q. No, September 10. It's the second page of the exhibit.
19 It's an email that you wrote to Attorney Kaczmarek.

20 If you could read it to the Court, please, and the
21 record.

22 A. It says: Anne, do you have discovery on the case that
23 they found a discrepancy? There is a hearing in Springfield
24 going on in which a Berkshire case was mentioned. Is that
25 the same case? Do you intend to bring further charges

1 against Sonja?

2 Q. So that is what I was referencing in my previous
3 question. So you were aware of a discrepancy in Berkshire
4 County, Anne made you aware of that?

5 A. I don't have a present memory of that, but if it says
6 here, then I -- apparently I was.

7 Q. Okay. So you were just inquiring if further charges or
8 indictments were going to be brought forward.

9 Now, if you could turn the page to the next page of the
10 exhibit.

11 So Anne Kaczmarek responded to that email the same day
12 at approximately 10:16 a.m.

13 If I could just call your attention to the response.
14 And I can read that for you. Attorney Kaczmarek indicated
15 to you: I just got in the mail yesterday. Here it is.

16 And I believe she's referring to the Berkshire case.

17 I'm not sure what to do. We could be finding these
18 cases for years. Will you think about doing a proffer to
19 determine the scope of Sonja's alleged misconduct?

20 A. Yes.

21 Q. And that's the response.

22 And then you responded approximately three days later,
23 Ms. Pourinski, and you indicated: I have been sick. I will
24 get back to you.

25 Do you have a memory of these early discussions

1 concerning a proffer?

2 A. Yes, I do.

3 Q. And it was Assistant Attorney General Kaczmarek who
4 first brought the idea of a proffer to you?

5 A. That's correct.

6 Q. And you had indicated, obviously, that you would think
7 about it, correct?

8 A. Yes.

9 Q. Okay. And approximately nine days later, you had
10 indicated to Attorney Kaczmarek that you were thinking about
11 the possibility of the proffer, however, just to paraphrase,
12 it would have to include complete immunity for possible
13 additional charges in State and/or Federal Court, correct?

14 A. That's correct and we were also looking for probation.

15 Q. So not only were you looking for State and Federal
16 immunity, but you were also looking for probation on the
17 matter?

18 A. That's correct.

19 Q. Okay.

20 A. And my recollection is when we talked about it -- we
21 also talked about it, not just email, that Attorney
22 Kaczmarek always said: I'll get back to you.

23 I understood she had to talk to someone else.

24 Q. And so it's your interpretation that Attorney Kaczmarek
25 had to ask one of her superiors?

1 A. That's correct. That was always -- and whenever we
2 discussed anything she said: I'll get back to you.

3 Q. Okay. But the point I want to make is she was the
4 first one to contact you about that issue, correct?

5 A. Right. All my dealings were with Attorney Kaczmarek.

6 (Pause)

7 THE WITNESS: I mean, she never hid that they knew that
8 there were other cases. I think during the sentencing
9 argument she made that known to the court that they were
10 aware there were other cases out there.

11 Q. (By Mr. Caldwell) There were other cases, however she
12 was not going to bring new indictments, correct?

13 A. No. And like I say, they asked for a state prison
14 sentence on a first time nonviolent offender, so I think
15 they considered that, probably.

16 Q. And after that sentencing she was, eventually, your
17 client was incarcerated for a period of time, correct?

18 A. Yes. She received an 18 months sentence.

19 Q. And is currently on probation?

20 A. She is currently on probation.

21 Q. And Attorney Kaczmarek (sic), I just want to go back in
22 regards to your previous statement concerning the paperwork
23 and not being turned over to another party.

24 A. You called me Attorney Kaczmarek.

25 Q. I'm sorry. Attorney Pourinski, my apologies.

1 A. That's okay.

2 Q. You had earlier testified that -- Ms. Kaczmarek's
3 statement to you in the hallway about turning over discovery
4 and you had a conversation with her about those ServiceNet
5 cards, and those seven pages of discovery, correct, that you
6 have that --

7 A. I don't recall ever having a detailed conversation
8 about those ServiceNet records, the treatment sheets. I do
9 recall her specifically saying that a determination was
10 made, that they were privileged, and they were not going to
11 be turned over to -- and I understood it, and maybe my
12 understanding was wrong, but I understood it to mean to
13 defense counsel.

14 Q. Okay. So that's the point I want to make. You
15 understood whatever conversation that you had, at whatever
16 time, you understood, okay?

17 A. I understood it to be --

18 Q. But not necessarily that would be the case, it was just
19 your understanding, based upon statements made by
20 Ms. Kaczmarek made to you?

21 A. Based on that one statement, yes.

22 Q. And so that's not any certainty, that's just what you
23 believed?

24 A. That's what I believed. That's what I understood at
25 the time, yes.

1 Q. Okay. Thank you.

2 MR. CALDWELL: I have nothing further.

3 **QUESTIONS BY THE COURT**

4 THE COURT: Attorney Pourinski, so you've alluded to
5 really, as I see it, two different possible representations
6 made by Attorney Kaczmarek regarding the ServiceNet records.

7 One, that they or the office or someone has made a
8 determination that they're privileged; and then, secondly,
9 that they're not going to be turned over to the defense.

10 So, I guess my question is, as you sit here today,
11 what's your best recollection of the words Attorney
12 Kaczmarek used in this situation?

13 THE WITNESS: I mean, as far as specific words?

14 THE COURT: To the best of your recollection.

15 (Pause)

16 THE WITNESS: I'm not sure if she used the word "we",
17 but she definitely didn't use the word "I".

18 But I understood it to be the office, that the records
19 are privileged and they're not being turned over to the
20 defense.

21 THE COURT: Okay. So she expressly talked about both
22 those subjects, the privileged subject, and the not turning
23 over subject, to the best of your recollection?

24 THE WITNESS: Yes, to the best of my recollection.

25 THE COURT: All right. And it's your further

1 recollection that this conversation took place in the
2 Hampshire County Superior Court outside the courtroom?

3 THE WITNESS: Yes.

4 THE COURT: Okay. And do you recall what time of year
5 it was?

6 THE WITNESS: As far as winter, summer?

7 THE COURT: Uh-huh.

8 THE WITNESS: I don't believe it was winter, but I
9 don't.

10 THE COURT: Do you recall why you were in court that
11 day with her?

12 THE WITNESS: It was -- certainly wasn't the plea date,
13 it was one of the conference dates.

14 THE COURT: Okay. And was it before Judge Rup, if you
15 recall?

16 THE WITNESS: I don't recall. I mean the only reason
17 why that statement stands out to me is because it affected
18 my thinking about the case. And it was something -- I don't
19 want to go into attorney-client privilege.

20 THE COURT: It affected your thinking about the case
21 because you wanted to put an end to her exposure?

22 THE WITNESS: That's correct.

23 THE COURT: Okay. Anything further over here?

24 MR. OLANOFF: No.

25 THE COURT: Anything further over here?

1 (Pause)

2 THE COURT: Thank you very much, Attorney Pourinski.
3 You may step down.

4 (The witness stepped down.)

5 THE COURT: You may call your next witness.

6 THE WITNESS: Thank you, Judge.

7 MR. RYAN: Dean Mazzone.

8 THE COURT: Okay.

9 (Dean Mazzone, sworn)

10 THE COURT: Good morning, sir.

11 THE WITNESS: Good morning, Your Honor.

12 Good morning, Madam Clerk.

13 (Dean Mazzone)

14 **DIRECT EXAMINATION BY MR. RYAN**

15 Q. Good morning.

16 A. Good morning, Counsel.

17 Q. Could you state your name and spell your last name for
18 record?

19 A. Certainly. Dean Mazzone, M-A-Z-Z-O-N-E.

20 Q. Mr. Mazzone, I would like to talk to you about some
21 things that happened back in first, I guess, in the Spring
22 of 2013. At that time, were you working for the Attorney
23 General's Office?

24 A. I was.

25 Q. And were you working in the capacity of Chief of the

Enterprise and Major Crimes Unit?

A. I was.

Q. And later that year, did you get, take a new position within the office?

A. I did.

Q. And a what new position was that?

A. Senior Trial Counsel to the Criminal Bureau.

Q. And when you did that, did Cara Krysil take your place?

A. She did.

Q. And was that going to be somewhere in October, Fall --

A. Sounds about right. I want to say I was Senior Trial Counsel in the late summer, in the summer, but I could be wrong.

Q. Okay. Back in the, up through say July of 2013, who were the individuals beneath you in the Enterprise and Major Crimes Unit?

A. Sure, Anne Kaczmarek, this -- perhaps Deb Bercovitch, Marina Moriarty, and that's what I recall, I think.

Q. Now, I'm showing you and I don't think this has been marked as an exhibit yet, an email from -- and I'm going to start here on a thread.

A. I can't see it.

Q. If you want to step down to take a look.

A. I'd appreciate that, Counsel. Thank you.

THE WITNESS: With the Court's permission?

1 THE COURT: Sure.

2 THE WITNESS: Thank you, Your Honor.

3 Q. (By Mr. Ryan) At 9:03 on Wednesday July 3, did Anne
4 Kaczmarek send an email to you, Deb Bercovitch, and Patrick
5 Devlin, and Marina Moriarty?

6 A. Patrick Devlin was also in the Enterprise --
7 I'm sorry. What was your question?

8 Q. At 9:03 in the morning, did she send all of you an
9 email?

10 A. I am -- no, I'm reading it.

11 That's what that reflects, yes, so.

12 Q. And what was the title of the email?

13 A. For your viewing pleasure and an advisement against
14 moving to Western Mass.

15 That's what I'm reading from.

16 Q. And the body of the message, did she say: Yes, Frank,
17 you missed the email that preceded your annoying missive.

18 A. I'm reading what's on the screen and, the answer is
19 yes, that's what it says.

20 Q. And did she forward you an email that she had received
21 the day before from Frank Flannery?

22 A. I don't recall that. I don't recall that.

23 Q. In any event, did this first email by Anne result in
24 some email conversation between people in the Enterprise
25 Major Crimes Unit about Western Massachusetts?

1 A. That's what's reflected in the email.

2 Q. And was the last email from Marina Moriarty at 5:52
3 that morning -- excuse me, afternoon?

4 A. Yes.

5 Q. And did she say: Ha-ha, I have often thought this week
6 what it would be like to be a prosecutor in some of these
7 country Florida DAs offices, maybe like working in Western
8 Mass.

9 A. Yes, that's what's on the screen.

10 Q. Okay. Now, if you can have a seat.

11 A. Sure. Thank you.

12 Q. Now, that Fall, did it come to your attention that
13 there was a subpoena that a Sergeant Joseph Ballou assigned
14 to your office, had received to testify in a hearing for
15 some postconviction defendants?

16 A. I don't have a direct memory of that, but sounds like
17 something that -- I don't have a direct memory of it.

18 Q. I'm going to show you.

19 A. Without more specificity, Counsel, I guess is my point.

20 Q. Sure. Sure.

21 Well, let me -- at some point in the Fall did you
22 become involved --

23 A. Of 2013?

24 Q. 2013.

25 Did you become involved in some discussions with some

1 of your colleagues about how to handle the subpoena to turn
2 over all documents and photographs pertaining to the Farak
3 investigation?

4 A. Okay. With the Farak investigation.

5 Q. Yes.

6 A. All right. I'm sorry. And I know that's what this is
7 about, but I just want to be sure that was the question that
8 you're asking.

9 When it came to the -- yes, I knew that there was, that
10 issue was out there, but I wasn't directly -- I was not
11 directly supervising Farak matters, so.

12 Q. Right. Now, before these meetings had happened, had
13 you had an opportunity to review a prosecution memo that
14 Anne Kaczmarek had submitted?

15 A. For Sonja Farak?

16 Q. Yes.

17 A. I absolutely did. Yes.

18 Q. And --

19 A. And this was the prosecution of Sonja Farak, right,
20 Commonwealth vs. Farak?

21 Q. Yes.

22 A. I did, yeah.

23 Q. So this would of been in about late March, 2013?

24 A. If you say so. I'm not sure.

25 Q. I say so.

1 A. Okay.

2 Q. And in that prosecution memo do you recall her
3 referring to the office having evidence of mental health
4 worksheets?

5 A. I certainly do.

6 Q. And those mental health worksheets contained admissions
7 of drug use?

8 A. I'm not sure exactly if that's true, I don't know if
9 that's exactly true. I can't say that was definitely an
10 issue about mental health records and whether that should be
11 presented to the Grand Jury or not.

12 Q. Okay. Right. And so then fast forward to the Fall of
13 2013. Were you involved in some discussions with Anne, with
14 Randy Ravitz, with Susan Reardon, with John Verner, about
15 how to handle a subpoena that Joseph Ballou had gotten to
16 produce --

17 A. I can't recall that.

18 Not to say someone couldn't have mentioned it to me,
19 but I don't recall being at a meeting about Joe Ballou, so.

20 Q. Do you have any recollection of -- as you sit here
21 today?

22 A. Yeah.

23 Q. As you sit here today --

24 A. Yeah.

25 Q. -- would it be helpful to look at a bunch of emails

1 that have already been introduced into evidence and situate
2 you as, you know, the back and forths (sic) that were going
3 on in the office or do you just not have an independent
4 recollection?

5 A. I don't know. I don't have an independent recollection
6 right now, but.

7 Q. Okay. As a matter of practice within the office, had
8 you been involved in cases where either you or one of your
9 subordinates or somebody you were aware of in the office had
10 received a subpoena?

11 A. As a witness?

12 Q. Yes.

13 A. I would think so. I used to work in the Attorney
14 General's Office in the Appeals Division, and we handled
15 subpoena responses. We did that and yes there are
16 subpoenas -- I'm sorry, with Annie Dookhan there were
17 subpoena issues, yes. So the answer is yes, Counsel.

18 Q. So as a matter of practice, how would you go about
19 figuring out how to respond to a subpoena?

20 A. Well, a subpoena would usually be handled by the
21 Criminal Division of the Criminal Bureau, they are the ones
22 who handled that and whoever was assigned to the case,
23 whatever Assistant Attorney General was assigned to the
24 case, and then it would be reviewed, eventually, by the
25 chief of the bureau, maybe; how that was handled, certainly

1 the chief of the division, as to how the subpoena was
2 handled.

3 So if that answers your question, Counsel.

4 Q. As a matter of practice, would the people in the
5 Appeals Division, assigned to handle the subpoena, talk to
6 the people who got the subpoena?

7 A. When you say "as a matter of practice", in my
8 experience, the answer is yes.

9 Q. And what would you do? You were in the Appeals
10 Division, what would you do if you're representing a trooper
11 or a fellow AAG whose got a subpoena? How do you respond to
12 that subpoena?

13 A. It depends on the case.

14 Q. Well, is there any sort of -- is one of the things that
15 you do -- let's say it's a subpoena duces tecum.

16 A. Yup, for documents.

17 Q. Right. What do you do if you're in the Appeals
18 Division and this becomes your next task?

19 A. It depends. You'd have to check -- you would
20 absolutely have to see what that person had -- what the case
21 was about, and what documents were exactly actually
22 referring to, and see how to respond, based on the
23 applicable law and the circumstances.

24 If that's -- I'm not trying to be funny with you.

25 Q. Okay.

1 No, no, that's very helpful.

2 Now, do you have any recollection of that occurring in
3 the Farak case?

4 A. Me, personally, no and I can an give you answer as to
5 why.

6 Q. Okay.

7 A. Because the Farak case, when it came in, it was
8 personally supervised and handled by my direct supervisor
9 who is the Chief of the Bureau. And to the extent, when I
10 was Senior Trial Counsel -- I'm Deputy Chief of the Bureau
11 now. In that position I would supervise everybody, with the
12 exception of the chief.

13 So when it comes to the Farak issue, I knew that the
14 Chief of the Bureau was personally handling it, so I wasn't
15 in that -- you know, I wasn't the person who would make
16 decisions because the Chief of the Bureau had the case.

17 So I'm just trying to be helpful.

18 Q. No; that is. Now, so in September of 2010, do you know
19 whether you were still -- you had been supervising Anne as
20 head of the --

21 A. That's correct.

22 Q. -- Enterprise and Major Crimes, had you made the switch
23 over to Senior Trial Counsel by that or were you still --

24 A. Well, I was Chief of the Enterprise and Major Crimes
25 Division, but that when it came to -- and that -- excuse me.

1 Farak was a case handled within the EMC division, just
2 as Annie Dookhan was a case handled in the EMC division.
3 Both cases, because of their nature, special nature of them,
4 were handled personally also by John Verner, the Chief of
5 the Bureau.

6 So those are the two actually unique instances where I
7 would say that I didn't -- I did not consider myself
8 responsible to be up to speed on everything in the cases.

9 Q. So I want to show you --

10 A. Not that I wasn't aware of things they were happening,
11 to the extent people let me be aware of them.

12 Q. I want to show you, if we can switch over, an email.
13 And, again, if you feel it would be easier.

14 A. It would. May I?

15 THE WITNESS: Your Honor, may I?

16 Thank you so much.

17 THE COURT: Sure.

18 Q. (By Mr. Ryan) So this is an email thread that began at
19 on Tuesday, September 10, 9:54 in the morning with -- at
20 8:55 with an email from John Verner and Anne Kaczmarek and
21 you and Kris Foster, asking Kris what happened with the
22 request for documents, et cetera?

23 A. Okay.

24 Q. What I'd ask -- I'm going to just go up the -- I'm
25 going to scroll up. I'm not going to talk about each one of

1 these. I just want to ask you a couple of questions when we
2 are done, so if I go too fast just let me know.

3 A. Sure. I appreciate that.

4 Thank you.

5 Do you want me to read everything? It may take me a
6 second.

7 Q. Kris Foster -- I will stop scrolling. I don't want
8 anybody getting seasick here.

9 A. Sure. (Witness complying)

10 Okay. Thank you, Counsel.

11 Q. I'm going to keep going up here.

12 A. Yup, I appreciate that, Counsel.

13 (Witness complying)

14 Okay.

15 Q. One more.

16 A. I appreciate it.

17 Q. Sure. One last email from you.

18 A. Thank you. (Witness complying)

19 Okay. Okay.

20 Q. All right.

21 A. Okay.

22 Q. So, my question -- my first question is, did you see in
23 the email from Anne Kaczmarek to the group where she's
24 talked about what Joe has and among other things --

25 A. I did. Will you scroll up again?

1 I'm not trying to be difficult.

2 Q. No, no.

3 A. I want to make sure I answer the question correctly and
4 I understand what you are saying.

5 Q. This isn't the email. I'm going to go back.

6 Sorry.

7 A. Right.

8 Q. I'm going to go to a different one.

9 A. Okay.

10 Q. All right. So this email here, the very top one, I
11 think for the sake of the record what happened is, can we
12 agree, there were two requests that John Verner made; one of
13 Anne for some information and one for Kris?

14 A. Based on this?

15 Q. Yes, what I had just shown you, was Kris' response and
16 then your response to Kris?

17 A. My response to Kris was that last part at the top?

18 Q. Right.

19 A. Yeah, correct.

20 Q. So now I put a new email in front of you and it's an
21 email at 9:52 a.m. on September 10, 2013, and this is from
22 Anne Kaczmarek to the group?

23 A. Yup.

24 Q. And if you just take a second to read that.

25 A. Thank you. (Witness complying)

1 Okay.

2 Q. So, now, my question is, you see where Anne says: Joe
3 has her mental health worksheets?

4 A. I do.

5 Q. And when she said that, did that -- were you reminded
6 of the fact that that was part of the prosecution memo
7 that --

8 A. At that time, when I'm reading --

9 Q. Sure.

10 A. -- I can't recall what came to my memory when I read
11 that so.

12 Q. Sure. Did you have any understanding as to what the
13 status of those mental health worksheets was?

14 A. I don't understand your question, Counsel.

15 Q. Okay. I'll ask a better one.

16 Did you have any understanding, did Anne, at any point,
17 or anybody, say that these mental health worksheets had
18 already been turned over or not?

19 A. I don't recall a conversation like that that I had with
20 anybody.

21 Q. Okay. So when she referenced mental health worksheets,
22 what's your best recollection of what that meant to you?

23 A. I can't recall even reading it. I know mental health
24 worksheets was in a pros memo and that, and I discussed it
25 in regards to the Grand Jury presentation.

1 Q. Okay. At the end, after Kris Foster had given her
2 response and saying that she -- Judge Kinder, unfortunately,
3 didn't give too much insight into what he's looking for,
4 when you said -- can you explain what your response was of
5 what he doesn't tell the answer to the question, everyone is
6 fishing?

7 A. Yup.

8 I'll say this, it seems like from the email traffic,
9 it's like we told the judge everything that we turned over,
10 but he keeps asking for something else, and he's not sure
11 what. And so I said he doesn't know the answer. What is it
12 that you want; and I wrote: Everyone is fishing.

13 Q. Okay.

14 A. You know, I guess, like no one's clear as to, you know,
15 there's something people want more, but everyone is saying
16 we gave -- we gave everything.

17 Q. Okay.

18 A. I think, but that's as best as --

19 MR. RYAN: Thank you. You can have a seat.

20 THE WITNESS: Thank you, Counsel.

21 MR. RYAN: I don't have anything else. Thank you.

22 THE WITNESS: Oh nice.

23 **CROSS EXAMINATION BY MR. CALDWELL**

24 Q. Good morning, Mr. Mazzone, how are you?

25 A. Very good, Mr. Caldwell. How are you?

1 Q. I'm doing well.

2 I just want to ask you some questions and kind of put
3 some things in prospective --

4 A. Sure.

5 Q. -- in terms of your employment and your duties and
6 responsibilities in the Attorney General's Office.

7 So kind of stepping back in time, I know it's difficult
8 given the time that's passed since 2013. If I could bring
9 you back to the month of January, 2013. You were aware
10 approximately mid month, that Mr. Verner or perhaps
11 Ms. Kaczmarek received a phone call from somebody regarding
12 the Amherst laboratory, correct?

13 A. Yes.

14 Q. Some type of communication from perhaps District
15 Attorney's Office or the State Police there was a problem at
16 the Amherst laboratory?

17 A. Yes.

18 Q. And you did not accept any phone call in regards to
19 that, correct? The problem with the Amherst laboratory?

20 A. I did not receive a phone call about the problem at
21 Amherst laboratory?

22 Q. Correct. If you know, if you can recall.

23 A. Call from who?

24 Q. Call from anyone, State Police?

25 A. I received a call from Jeremy Bucci.

1 Q. And it was concerning the Amherst laboratory, correct?

2 A. Yeah, yeah.

3 Q. And he had indicated that there was a problem there?

4 A. He did.

5 Q. And that information at a certain point was forwarded
6 to a Mr. John Verner, correct?

7 A. Yes. I believe, yes.

8 Q. Now, in terms of that time, you received that phone
9 call, what did you do, if anything?

10 A. In between the time -- well, when I received the phone
11 call I knew I had to let someone know. I can't recall whom
12 I let know or exactly when I let someone know, but I do know
13 that -- I believe it was a late Friday afternoon that I took
14 that phone call. I do know that I came in on a Monday, that
15 things had happened around the Amherst lab that I wasn't
16 aware of over the weekend.

17 Q. When you say things "happened" you mean?

18 A. Search warrant, law enforcement actions.

19 Q. Law enforcement actions and involvement from other
20 people in the Attorney General's Office?

21 A. Absolutely, yes, and meaning John Verner and Anne
22 Kaczmarek, yeah.

23 Q. And so it's fair to say after you received that phone
24 call on Friday, things transpired over the weekend and you
25 had nothing to do with --

1 A. Not over the weekend no, I remember coming in and --

2 Q. On Monday?

3 A. Yeah.

4 Q. Now after things transpired over the weekend, it's fair
5 to say that various members of the Attorney General's Office
6 had meetings concerning Sonja Farak?

7 A. I certainly recall maybe John Verner being over our
8 side with Anne Kaczmarek, our side of the office, and
9 talking about the case, but not as if I had any direct
10 participation in it. It was clear that John was handling --
11 you know, John was up to speed on everything and had taken
12 actions on the case, so.

13 Q. And you had testified to Mr. Ryan because the Bureau
14 Chief, Mr. John Verner, was closely involved with Anne
15 Kaczmarek, you, yourself, as the Chief of the Enterprise and
16 Major Crimes Division took a step back?

17 A. Absolutely.

18 Q. And that's -- that would be typical protocol for anyone
19 in your position?

20 A. Absolutely. Absolutely.

21 Q. Now, it's fair to say that at a certain point
22 Mr. Verner or someone showed you the prosecution memo that
23 was drafted by Ms. Kaczmarek?

24 A. I think I read it for to approve it.

25 Again, the case was in the Enterprise and Major Crimes

1 Division, so I'd have to review every pros memo that came
2 out of the Enterprise and Major Crimes Division.

3 I knew Anne was working on it with John Verner and Anne
4 was going to write the pros memo on it. And so she
5 submitted it to me in the ordinary course, so I would take a
6 look at the pros memo.

7 Q. And you reviewed it and approved it and sent it to
8 Mr. Verner?

9 A. I did.

10 Q. And after you sent it to Mr. Verner, do you know what
11 happened?

12 A. No. With that memo, no, I do not.

13 Q. And you had indicated to Mr. Ryan there were some
14 questions about mental health worksheets that was raised in
15 the prosecution memo?

16 A. Yes.

17 Q. And do you remember or can you recall any conversations
18 with the AAG Kaczmarek regarding those mental health
19 worksheets and the presentation to the Grand Jury?

20 A. Yeah, I mean there was an issue, there always is, you
21 know, if these -- you know, these are sensitive mental
22 health records. I didn't see them. Anne told me that's
23 what they were. Whether or not they were relevant to a
24 Grand Jury presentation, we talked that out, as to how they
25 would could be relevant. Anne didn't want to -- you know,

1 there's HIPAA, and all that -- Anne didn't want to --

2 Sorry. There's an exception for a Grand Jury
3 investigation --

4 Q. Yes.

5 A. -- with the -- where the mental health records are
6 relevant, but, you know, that was the question.

7 I think, based on our conversation, they weren't
8 relevant to the presentation of the crimes with which Ms.
9 Farak was charged.

10 Q. So in terms of a bottom line, they weren't really
11 necessary to establish probable cause?

12 A. No, in fact it could of been just as Anne was
13 concerned, that they would be -- she would be doing
14 something wrong if she presented them to the Grand Jury when
15 it turns out -- and my response is oh, they're not necessary
16 for the crime to put them in.

17 Q. So, essentially, let's move forward the indictment, we
18 can deal with this issue at a later date?

19 A. Absolutely, yes. Absolutely.

20 Q. And it's fair to say, if you know, Attorney Kaczmarek
21 had conversations with the Bureau Chief, Mr. John Verner,
22 about this issue? If you know.

23 A. I don't really know. I couldn't say that; but from
24 other things people told me, I would say that seems to have
25 happened, but I wasn't there to see them.

1 Q. And you are aware of a footnote in the prosecution memo
2 where Attorney Kaczmarek addresses the issue --

3 A. Yeah, I may have told her to put it in a footnote, I
4 don't remember. But I know the footnote, yes.

5 Q. And, are you aware of any comments that Mr. Verner made
6 about that footnote?

7 A. Well, I -- I do know, and remember -- I can't recall
8 when it was, but it was some time considerably after the
9 prosecution of Sonja Farak. John -- I don't know if I was
10 in his office for other things or what, but John pulled out
11 a copy of the prosecution memo, and it had his, what
12 seemed -- what appeared to me to be notes written on it,
13 things circled, as if someone had edited it.

14 And I believe, based on the conversation I had with
15 John, that those are his notes about the prosecution memo,
16 which I had forwarded; sorry approved out of EMC to go to
17 him. And he had asked me about some things.

18 Q. If I showed you that prosecution memo, would it refresh
19 your memory?

20 A. It certainly would.

21 MR. CALDWELL: If I may, Your Honor?

22 THE COURT: Uh-huh.

23 MR. CALDWELL: If I may I approach, Your Honor?

24 THE COURT: Sure.

25 Q. (By Mr. Caldwell) Sir, I'm placing before you as

1 previously marked and entered as Grand Jury -- excuse me, as
2 Exhibit Number 163.

3 A. Yup.

4 Q. If you could just take a -- leaf through that.

5 A. I certainly will. Okay. (Complying)

6 Yup.

7 Q. Okay. If you know, is that the prosecution memo that
8 you --

9 A. It certainly is. It's got my signature. I dated it
10 March 27, 2013, which would indicate when I signed off on
11 the prosecution memo and forwarded it to the Chief of the
12 Bureau, and it was an approved product out of the EMC
13 Division.

14 Q. Now, I'm just going to call your attention, we
15 previously were discussing a footnote?

16 A. Yup.

17 Q. And this is --

18 MR. CALDWELL: For the record, this is page five for
19 the prosecution memo, Exhibit again Number 163.

20 Q. (By Mr. Caldwell) Calling your attention to the bottom
21 of page number five, footnote seven.

22 A. Yup.

23 Q. Please just look at that footnote.

24 A. Yup.

25 Q. Now, there's some -- are you finished?

1 A. I am.

2 Q. Now, there is a -- that footnote is circled and there's
3 some handwriting underneath that footnote. Do you know
4 whose handwriting that is?

5 A. I do not know. I'm making an inference, based on the
6 circumstances, that it's John Verner's.

7 Q. Can you please read for us what is written underneath
8 footnote number seven?

9 A. These papers not -- and "not" is underlined -- turned
10 over to DA's Office yet.

11 Q. Okay. And, if you know, what does that mean?

12 A. I think he told -- we had this conversation after the
13 Farak matter had been closed and -- or maybe not after it
14 even closed, but because of the nature of the crime which
15 Sonja Farak committed, and in line with what we did in the
16 Annie Dookhan case previously, we took our investigation and
17 gave it to the DA's Office -- the relevant DAs Offices to do
18 what they deemed proper in light of the fact that our
19 prosecution would have had an effect, likely an effect on
20 defendants in their counties.

21 Q. And you indicated that you had done a similar thing in
22 terms of delivering discovery to the various District
23 attorneys?

24 A. Absolutely.

25 Q. And because, perhaps, based upon information that the

1 Attorney General's Office had, it could affect other
2 counties or other drug cases moving forward?

3 A. Yes. Information generated by the Attorney General's
4 Office criminal investigation, these respective cases would
5 possibly have had relevance to criminal -- individual
6 criminal prosecutions of which we otherwise knew nothing, to
7 the local DAs Office.

8 Q. And that's a very important thing that you did, in
9 terms of releasing information, in not only Dookhan, but
10 also the Farak investigation, correct?

11 A. To say "you", it was the office. Again, the Dookhan
12 case was -- I just don't want to take credit.

13 Q. Yeah, the office.

14 A. Yeah, it was important that the office do that.
15 Absolutely.

16 Q. That's not necessarily a legal obligation, correct?

17 A. It is not a legal obligation. In a way, I feel like
18 it's an ethical obligation, but I could be wrong, it may not
19 be.

20 Q. But that's my next point, it's an ethical obligation,
21 correct?

22 A. If I, as a prosecutor, have knowledge that's
23 exculpatory in any case anywhere outside that comes into my
24 possession, I believe, regardless of what an ethics book
25 says, I would have an absolutely duty to let the local

1 prosecutor, local authorities know I have that information
2 in my possession.

3 Q. And, in fact, you've done that in other cases?

4 A. I have.

5 Q. Not just the Dookhan matter?

6 A. That's correct.

7 Q. Not just the Farak matter?

8 A. That's correct.

9 Q. The office --

10 A. I have. I have.

11 Q. -- and you personally have done it in other matters
12 that you have indicted?

13 A. I have. Since, post these cases I have done it, yes.
14 It's become a practice.

15 Q. Now, you had indicated previously that because
16 Mr. Verner was involved in assisting Ms. Kaczmarek in
17 prosecution, you, as the Chief of Enterprise and Major
18 Crimes and later as Senior Trial Counsel kind of took a step
19 back?

20 A. Yes.

21 Q. But it's fair to say that, somewhat, you were always
22 kept in the loop about what was going on?

23 A. Yeah, I mean but to the extent that -- I would only
24 know what people would feel free to tell me, you know.

25 Q. When you say that, you mean informally?

1 A. Informally, yes.

2 Q. And perhaps in some cases, maybe somebody like Anne
3 Kaczmarek would come to you, and maybe ask advice?

4 A. And John Verner too.

5 Q. And John Verner and in an informal --

6 A. Yup.

7 Q. Now, so based upon that answer you gave me, it's fair
8 to say that you had no knowledge of any discussions
9 concerning any type of proffer or immunity or agreements for
10 Ms. Farak?

11 A. No.

12 Q. Now, after Ms. Farak pled, that was in January of 2014.

13 A. Okay.

14 Q. Do you recall you had indicated that there was, you had
15 conversations with Mr. Verner in regards to this prosecution
16 memo in his office?

17 A. Yeah, I remember that.

18 Q. And can you just detail, if you know, what specifically
19 that conversation was about regarding this pros memo?

20 A. Yeah, it was about the Grand Jury -- it was about --
21 not the Grand Jury, I'm sorry. It was about the mental
22 health records. And, once again, HIPAA makes everybody
23 hypersensitive, okay, which I disagree with; but the idea
24 that if these mental health records were somehow
25 exculpatory, would we have to turn them over.

1 And I told him if they're exculpatory, and, you know,
2 number one, as constitutional matter we absolutely turn them
3 over. I don't care what HIPAA says. Sorry. I think it
4 takes precedence and I think that's correct.

5 And, again, I'm not so silent, but regardless of what
6 any ethics rule says, if those records somehow are
7 exculpatory of, which casts doubt on someone's convictions,
8 then we turn them over.

9 Q. And that's when this conversation took place --

10 A. Yes, awhile, later. Yeah. Yeah.

11 Q. After the plea?

12 A. Yeah.

13 Q. Let me ask you, if you know, was Anne Kaczmarek still
14 employed by the Attorney General's Office when you had this
15 conversation with Mr. Verner?

16 A. Yeah, that's a good question. I don't know the answer
17 to it.

18 Q. You're aware, at some point, Attorney Kaczmarek
19 obviously left the Attorney General's Office?

20 A. I certainly am, yes.

21 Q. Now, I want to ask you, you had indicated that you had
22 previously been in the Appeals Division of the Attorney
23 General's Office?

24 A. Yes.

25 Q. And it's fair to say that you also served in the

1 Appeals Division on a couple of occasions with Suffolk
2 County District Attorney, correct?

3 A. I worked in the Appeals Unit in the Suffolk County
4 District Attorney's Office.

5 Q. So I just want to talk about -- I'll be brief. I want
6 to talk about some of the work specifically that the Appeals
7 Division does at the Attorney General's Office. It's fair
8 to say they do a wide array of things?

9 A. Absolutely.

10 Q. And some of them are subpoenas?

11 A. Yes.

12 Q. Correct?

13 Others are -- there's also habeas cases that they
14 handle?

15 A. Federal habeas, yes.

16 Q. And can you explain for us what those are?

17 A. Federal habeas?

18 Q. Yes.

19 A. Absolutely. A federal habeas practice in the
20 Massachusetts Attorney General's Office is we defend state
21 convictions in Federal Court. Pursuant to statute, only an
22 Attorney General can appear in Federal Court on behalf of
23 the Commonwealth.

24 And we do that where a person's state conviction goes
25 all the way through the system, affirmed by the SJC, but yet

1 there is another layer of review which is very differential
2 as opposed to the state courts. And the Assistant Attorney
3 General would represent, would defend those convictions in
4 Federal Court based on any federal constitutional
5 violations, so.

6 Q. Okay. And there are other things the Appeals Division
7 represents various executive agencies throughout the
8 Commonwealth?

9 A. The Appeals Division, yeah, with a criminal slant to
10 it, that's why in the criminal bureau.

11 Q. Now, as to the habeas cases, is it fair to say that's
12 probably the largest area of practice in the Attorney
13 General's Office.

14 A. It certainly is, yes. It certainly is.

15 Q. So it consumes most of the individual's time?

16 A. I believe, based on my job now, supervising it, I
17 believe that's the answer. Certainly I remember as an
18 Assistant Attorney General in that division, yes.

19 Q. And a lot of those federal habeas cases, they're very
20 difficult cases, and I say that they involve very serious
21 offenses, correct; usually?

22 A. They certainly -- well, usually, yes. In fact, mostly
23 they would, because by the time -- you know, there's always
24 going to be, usually, a first-degree murder that someone is
25 still serving because it's life, so by the time, you know --

1 with other lesser crimes, people would already be out, and
2 there's no reason to, you know, to file a habeas.

3 Q. So it's like felonies -- rape, murder, child sexual
4 assault?

5 A. Yes, Mr. Caldwell. Correct.

6 Q. And many of these cases always usually involve an
7 appeal to the First Federal Circuit, correct?

8 A. Well, a COA has to be applied for and granted after the
9 United States District Court denies the habe, but yes. The
10 answer is yes, they probably more likely end up in the First
11 Circuit.

12 Q. And it's fair to say, as a whole, a lot of the cases
13 out of the Appeals Division that the Attorney General's
14 Office handles are very important cases?

15 A. Yes.

16 Q. And just like the Sonja Farak case, that's a very
17 important case, correct?

18 A. It certainly was.

19 Q. As is anything that comes through the door and accepted
20 by the Appeals Division?

21 A. In my -- yes.

22 Q. And all these cases, especially when they rise to the
23 appellate level have far-reaching consequences?

24 A. They could.

25 Q. And they do?

1 A. Yeah.

2 Q. Most of the time?

3 A. Yeah.

4 Q. And that's as to each and every case?

5 A. Yeah.

6 Q. So what I'm just trying to say is, in terms of the
7 Appeals Division, nothing is easy?

8 A. That's certainly correct. That's probably one of the
9 most difficult -- it's also reactive, so --

10 Q. Correct.

11 A. So when it, if I may, when it comes, you know, we get
12 to -- the Criminal Bureau can select prosecutions, pick good
13 cases to do.

14 The Appeals Division is a defensive division, meaning
15 they have to respond to every federal habeas position that
16 comes through the door. So the volume of cases is very very
17 high and a great number of them, as you said, are extremely
18 consequential.

19 Q. Okay. Now, just to followup; now when you had this
20 conversation with Mr. Verner regarding the prosecution memo
21 and these mental health worksheets, what was Mr. Verner's
22 demeanor when you were having this conversation?

23 A. His demeanor was, and this is me inferring his
24 demeanor, that he wanted to make sure that he did -- what he
25 did was right, or that he was right in what he was doing.

1 He wanted to be sure.

2 So I don't know if that answers the question, but
3 that's the sense I got; Is this right?

4 And he was a little -- I don't want to say on edge, but
5 it was a matter of concern. It wasn't blasé?

6 Q. So it was a matter of concern for him?

7 A. Yes, absolutely.

8 Q. And I think you said he was "on edge"?

9 A. I said that, and I think that's a fair way to describe
10 it. Yes, I'm just trying to search for the right words,
11 Counsel.

12 Q. Okay. But, however, as you had indicated, you weren't
13 really involved in the Farak matter even up to this point?

14 A. No, that's absolutely correct. Yup.

15 Q. Okay. Now, I'm just going to ask you some very pointed
16 questions here.

17 A. Sure.

18 Q. Were you ever privy to any conversations of any member
19 of the Attorney General's Office where there were
20 discussions about withholding exculpatory evidence?

21 A. No.

22 Q. Had you, at any point, ever had a conversation with
23 Kris Foster and told her that, that the -- not to look in
24 the Farak file for anything that's exculpatory?

25 A. No.

1 Q. And that, as far as you know, in terms of any
2 conversations or emails or anything that you were privy to,
3 no one ever suggested to Ms. Foster not to look through the
4 file?

5 A. No.

6 MR. CALDWELL: I have nothing further.

7 **QUESTIONS BY THE COURT**

8 THE COURT: Mr. Mazzone, this phone call you got
9 January 2013 from Jeremy Bucci.

10 THE WITNESS: Yes.

11 THE COURT: Did you know Mr. Bucci prior to that?

12 THE WITNESS: I certainly did.

13 THE COURT: You worked with him in the DA's Office?

14 THE WITNESS: I supervised him in the Suffolk County
15 District Attorney's Office in the Narcotics Unit and he's a
16 friend of mine.

17 THE COURT: And approximately what time did you receive
18 this phone call?

19 THE WITNESS: I'm going to say it's late in the day,
20 like -- I just vividly remember the phone call and I want to
21 say it was late in the day on Friday.

22 THE COURT: What did he say?

23 THE WITNESS: He said: We have another Annie Dookhan
24 out west. That's what he said.

25 THE COURT: Another Annie Dookhan what?

1 THE WITNESS: Another Annie Dookhan out west.

2 THE COURT: Out west.

3 THE WITNESS: And let me clarify that, because I'm a
4 Boston guy. Maybe he didn't say "out west", maybe he said
5 here. And when I relayed that to other people, I may have
6 said out west.

7 THE COURT: What else did he say?

8 THE WITNESS: Just that get in touch with Anne
9 Kaczmarek, because he remembered Anne Kaczmarek did Dookhan,
10 whatever experience; and you have to tell people.

11 THE COURT: It was your sense that was the first
12 contact to the AG's Office from someone in the West?

13 THE WITNESS: I'm sorry. I have to believe that, but I
14 mean, I don't know; but he presented it to me as if he's
15 just learning about it and our office would just be learning
16 about it.

17 THE COURT: You testified as to what appeared to be a
18 particular conversation that you had with Anne Kaczmarek
19 regarding the mental health records and their use or non-use
20 before the Grand Jury. Do you recollect that?

21 THE WITNESS: I do.

22 THE COURT: All right. Where did that conversation --

23 THE WITNESS: I want to say it would of been in my
24 office, in the EMC side. Like, perhaps -- we shared -- we
25 were right next to each other. I had the corner office,

1 Anne was right next to me. So it was either outside, in her
2 office, my office. We have a lot of conversations like
3 that.

4 THE COURT: How did that meeting come to be?

5 THE WITNESS: I was not a meeting. I wouldn't say a
6 meeting. I can't recall, but -- boy, in -- you know, people
7 would come into my office and run things by me all the time,
8 so.

9 THE COURT: All right. But you had a conversation with
10 her and that conversation was fairly detailed and fairly
11 specific about these mental health records?

12 THE WITNESS: Yes. Yeah. Yup.

13 THE COURT: Tell me about that conversation, as best
14 you recall it, what did you say and what did she say?

15 THE WITNESS: Just that there were mental health --
16 there's some mental health records or a journal or something
17 about -- something that was therapeutic.

18 THE COURT: Uh-huh.

19 THE WITNESS: And whether they should go in front --
20 you know, she didn't know if they should go in front of a
21 Grand Jury or should she -- are they confidential, how
22 should she deal with them.

23 THE COURT: Okay. All right. And do you recall
24 whether she had those records with her?

25 THE WITNESS: When we talked? I can only say no,

1 because I know I never looked at them.

2 THE COURT: Okay. And now, directing your attention to
3 the Fall of 2014, when it became known that the Attorney
4 General did not turn over certain documents and there was a
5 flurry of activity about what happened and so forth and so
6 on, do you recall that?

7 THE WITNESS: Yes, I do. Yup. Yeah.

8 THE COURT: What do you recall about it?

9 THE WITNESS: The flurry of activity. I just know --
10 memory is a funny thing. I know it was an issue and you
11 know, how you described "flurry of activity" whether it was
12 people talking to me, or however that came about. Somehow I
13 was aware just exactly what you're saying.

14 THE COURT: All right. Do you recall being at any
15 meetings at which it was pointedly asked of Kris Foster
16 about her representations to Judge Kinder at any hearings
17 out here?

18 THE WITNESS: No.

19 THE COURT: Okay. All right. Are you familiar with
20 "privilege log"?

21 THE WITNESS: I thought you were going to say privilege
22 law. Privilege log, no, I'm not.

23 In this case?

24 THE COURT: Just generally.

25 THE WITNESS: Oh, the idea of privilege log, sure.

1 Yeah.

2 THE COURT: Okay. So would it be fair to say that if
3 you had privileged records that contained exculpatory
4 information, one alternative would be to present to the
5 court a privilege log?

6 THE WITNESS: Absolutely.

7 THE COURT: Would you say that would be good practice?

8 THE WITNESS: Absolutely.

9 THE COURT: Anything else?

10 MR. OLANOFF: May I, briefly?

11 **CROSS EXAMINATION BY MR. OLANOFF**

12 Q. Good morning, Jared Olanoff on behalf of some of the
13 defendants.

14 You mentioned that Sonya Farak pled guilty in January
15 of 2014, around there.

16 A. Did I mention it? I don't know if I mentioned it, but
17 that's -- could be right. I don't know.

18 Q. And then shortly after she pled guilty, you had a
19 meeting with either Verner or Anne --

20 A. When you say "meeting", a conver- -- I mean -- go
21 ahead. I'm sorry. I'll let you finish your question,
22 Counsel.

23 Q. Well, you just testified earlier, in response to one of
24 the attorneys, that there was a meeting after Farak's plea
25 as to whether these documents were exculpatory or not. And

1 someone had asked if they were exculpatory and you said,
2 well, yeah, if they're exculpatory they need to be produced.

3 A. Are you talking about me talking with John Verner, a
4 conversation with John Verner?

5 Q. Right.

6 A. Is that what you're talking about?

7 Q. Right.

8 A. Yeah, that's correct.

9 Q. And to the best of your recollection, when did that
10 conversation take place, what month?

11 A. I have no idea what month.

12 Q. Do you remember what season it was --

13 A. I have no idea what season.

14 Q. -- possibly?

15 Okay. And do you remember why you were having that
16 conversation with Verner?

17 A. The answer to the question that you posed is no, if
18 that's the question you want to ask.

19 Q. But the main point of that conversation was that the
20 records should go out, right?

21 A. That was my opinion, yeah.

22 Q. And you are sure you have no idea what month that
23 happened in?

24 A. I really don't, Counsel.

25 MR. OLANOFF: Okay. All right. Thank you.

1 THE COURT: Anything further?

2 MR. CALDWELL: If I may have one moment, Your Honor?

3 THE COURT: Sure.

4 (Pause)

5 MR. CALDWELL: Just a few questions, Your Honor.

6 **RECROSS EXAMINATION BY MR. CALDWELL**

7 Q. This is in reference to some questions that
8 Mr. Olanoff -- Attorney Olanoff asked.

9 A. Sure.

10 Q. Yeah, so this conversation you had with Mr. Verner
11 regarding the prosecution memo and --

12 A. Yup.

13 Q. -- and exculpatory information, are you aware of
14 Mr. Patrick Devlin receiving a letter in the mail regarding
15 mental health worksheets?

16 A. I am aware that Patrick Devlin, who kind of inherited
17 responses -- who inherited the Farak issues, that he did get
18 a letter from defense attorneys and that raised issues of
19 things. Yeah, I'm aware of that.

20 Q. Did you ever have the opportunity to look at that
21 letter?

22 A. I do not believe so.

23 Q. But you are aware that Mr. Devlin received the letter?

24 A. Yeah, and he had to do something. He had to produce
25 something, or had to respond to something that had to do

1 with Farak.

2 MR. CALDWELL: Your Honor, if I could just have one
3 moment?

4 THE COURT: Uh-huh.

5 (Pause)

6 (Off the record discussion among Counsel.)

7 Q. (By Mr. Caldwell) Okay. So Mr. Devlin was a member of
8 the Enterprise and Major Crimes Division, correct, for the
9 Attorney General's Office?

10 A. Yes.

11 Q. And you said, upon receipt of this letter he was tasked
12 with doing something. Do you recall what he was tasked with
13 doing?

14 A. To respond -- I have to say, my answer has to be I
15 don't know specifically what he was tasked with doing,
16 except that he was responsible for the case, and we knew
17 this was the kind of case, like Dookhan, that would have
18 collateral consequences. And it was his responsibility to
19 deal with those collateral consequences, whatever they may
20 be.

21 Q. And you were Senior Trial Counsel at that time,
22 correct?

23 A. I believe; yes, i was.

24 Q. And so you were no longer really privy to anything that
25 was going on in the Enterprise and Major Crimes Division?

1 A. My office wasn't there anymore, so yes. My level of
2 knowledge about what was going on was reduced considerably.

3 Q. And you have your own caseload at this point?

4 A. I did, yeah.

5 Q. And --

6 A. And when you say "caseload", I had criminal cases and a
7 lot of supervise- -- my duties were really supervisory
8 across the bureau.

9 MR. CALDWELL: One moment, Your Honor?

10 THE COURT: Uh-huh.

11 (Pause)

12 MR. CALDWELL: If I may I approach, Your Honor?

13 THE COURT: Sure.

14 Q. (By Mr. Caldwell) I'm putting before you what was
15 previously been marked and entered as Exhibit 166. Please
16 take a brief look at that.

17 A. (Witness complying)

18 Q. Okay. Is that a letter that's addressed to Assistant
19 District Attorney Patrick Devlin?

20 A. It is.

21 Q. And who is -- whom is it from?

22 Who is the signatory of that letter?

23 A. Luke Ryan.

24 Q. And it's a lengthy letter, correct?

25 A. It is.

1 Q. And it contains, if you recall, various exhibits,
2 correct?

3 A. It does.

4 Q. And what is the date of this letter?

5 A. November 1, 2014.

6 Q. Okay. So now stepping back to that conversation with,
7 that you had with Mr. Verner now regarding the prosecution
8 memo and this exculpatory information. Does this letter
9 refresh your memory as to maybe perhaps when that
10 conversation took place with Mr. Verner regarding the
11 exculpatory evidence?

12 A. When you say, does it refresh my recollection, I can
13 more easily draw an inference that it happened post that
14 letter, because that conversation only makes sense in the
15 context of us receiving that letter -- of the Attorney
16 General's Office receiving that letter.

17 So to answer your question, that allows me to draw that
18 inference.

19 Q. That inference; so there was a flurry of activity,
20 correct?

21 A. There was a flurry of activity, yes.

22 Q. And it was regarding not only Mr. Verner in asking your
23 counsel, correct?

24 A. Yeah.

25 Q. But also in what Mr. Devlin or what you observed

1 Mr. Devlin doing?

2 A. Yeah. Yup. Yes.

3 MR. CALDWELL: I have nothing further.

4 THE COURT: Okay. All set?

5 MR. RYAN: All set.

6 THE COURT: Thank you, Mr. Mazzone. You may step down
7 sir.

8 THE WITNESS: And, Your Honor, thank you, so much.

9 Madam Clerk, thank you.

10 THE COURT: Take the morning recess.

11 (The Court exited at 10:58 a.m.)

12 (* * * * *)

13 (The Court entered at 11:28 a.m.)

14 (The defendants and the interpreter were present.)

15 THE CLERK: Your Honor, we are back on the record in
16 the Farak drug lab hearing.

17 THE COURT: Mr. Ryan.

18 MR. RYAN: Anne Kaczmarek.

19 (Anne Kaczmarek, sworn)

20 THE COURT: Good morning.

21 THE WITNESS: Good morning.

22 THE COURT: Mr. Ryan.

23 MR. RYAN: Thank you.

24

25

(Anne Kaczmarek)

DIRECT EXAMINATION BY MR. RYAN

Q. Good morning.

A. Good morning.

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

A. Yes, my name is Anne Kaczmarek, A-N-N-E, K-A-C-Z-M-A-R-E-K.

Q. Ms. Kaczmarek, my name is Luke Ryan. I don't think we met before.

A. Nice to meet you.

Q. I'm handing you what has previously been marked and is up on the screen, Exhibit 211.

A. Okay. Thank you.

Q. This is a thread email that you forwarded to Dean Mazzone on September 17, 2013, at 9:18 a.m.; is that correct?

(Pause)

THE WITNESS: I'm sorry. Your question was?

Q. (By Mr. Ryan) Is this an email thread you forwarded to Dean Mazzone on September 17, 2013 at 9:18 a.m.?

A. Yes.

Q. And directing your attention to the bottom of the thread?

A. Yes.

1 Q. Does it begin with a request from me to Kris Foster on
2 September 11, 2013, to view the evidence seized from Sonja
3 Farak's car?

4 A. Yes.

5 Q. And following the thread up on September 12, 2013, did
6 I confirm my interest in inspecting the evidence seized from
7 Ms. Farak's car?

8 A. Yes, sir.

9 Q. Following the thread up again on September 16, 2013,
10 did I ask Kris a third time what the position of your office
11 would be with respect to viewing the seized evidence?

12 A. Yes, sir.

13 Q. And did Kris Foster forward this thread to you for your
14 thoughts?

15 A. Yes.

16 Q. And what were your thoughts?

17 A. I said: No. Why is this relevant to this case. I
18 really don't like him.

19 THE CLERK: Can you move the microphone in front of
20 you, please?

21 No, no. The one -- (Indicating)

22 Yes.

23 THE WITNESS: The FTR one.

24 Q. (By Mr. Ryan) I'm putting up on the board a drug
25 certificate. Can you read it from your seat there?

1 A. Not really, sort of.

2 Q. Okay. If at any time you want to get up, I think the
3 Judge would be happy to give you permission to get a closer
4 look.

5 By the time that thread was forwarded to you, were you
6 aware I represented a man named Rolando Penate?

7 A. I don't know.

8 Q. Had I given you a subpoena to appear and testify in a
9 case, Commonwealth v. Penate?

10 A. I don't know.

11 MR. RYAN: Could you switch to the emails.

12 Q. (By Mr. Ryan) Was this a subpoena that you received to
13 come testify in this courthouse on August 27, 2013 in the
14 case of Commonwealth vs. Rolando Penate?

15 A. I can see that it's a subpoena. I can't see who it's
16 for.

17 Q. Does it say: Anne Kaczmarek Enterprise and Major
18 Crimes Division, Criminal Bureau, 19th Floor, One Ashburton
19 Place, Boston, Massachusetts.

20 A. Yes, at the top. I'm sorry. I didn't see it.

21 Q. So this, was it a subpoena duces tecum here that
22 required you to bring some documents for inspection or
23 copies of?

24 A. I'm sorry. I can't read it from here, I apologize.

25 Q. Sure.

1 Does it say right here: You are further commanded to
2 produce for inspection and/or copying at the hearing the
3 documents and materials listed on Exhibit A?

4 A. Yes. Thank you.

5 Q. And, the first one of Exhibit A, it says: Copies of
6 any and all inter and intraoffice correspondence pertaining
7 to the scope of evidence tampering and/or deficiencies at
8 the Amherst Drug Laboratory from January 18, 2013 to the
9 present.

10 A. Yes.

11 Q. So I'm showing you a drug certificate where the name
12 Rolando Penate -- can you see who signed this as the
13 assistant analyst?

14 A. It's Ms. Farak.

15 Q. And can you see the date that she said that she said
16 that she did the analysis?

17 A. I can't, sir. I'm sorry.

18 Q. I direct your attention up here. Does it say December
19 22, 2011, date analyzed? (Indicating)

20 A. I don't mean to be difficult, but I just had an eye
21 injury yesterday, so that's why I'm wearing glasses. I
22 don't normally -- it's just --

23 Q. Do you want to get out your seat and take a look?

24 A. Sure.

25 Q. Okay.

1 A. I'll take your word for it, that's the date, but.

2 Yes. 12/22/2011.

3 Q. Now, showing you what's previously been marked as
4 Exhibit 205. Is this an email that you received from Joseph
5 Ballou, on February 14, 2013?

6 A. Yes, sir.

7 Q. And what was the title of that email?

8 A. Articles, notes -- oh, I'm sorry: Farak admissions.

9 Q. Now, you see the Bates numbers there at the bottom?

10 A. Yes, sir.

11 Q. If you could, go to AGOFRK001816. Do you see that
12 document?

13 A. I do.

14 Q. Just to be clear, this is an email that you recall
15 receiving, correct?

16 A. I know I received it.

17 Q. Okay. So this document here, do you see that it has,
18 and there's one in front of you. The first line, some
19 December dates?

20 A. Yes, sir.

21 Q. And with the December dates that it has, does it have
22 Christmas falling on a Sunday?

23 A. It does.

24 Q. And you had received this in February of 2013. Do you
25 know when the last time that Christmas fell on a Sunday was?

1 A. No.

2 Q. Showing you a calendar for the year 2010. It's double
3 sided. Can you take a look and see what -- when Christmas
4 fell in 2010, what day of the week?

5 A. This is 2011, sir.

6 Q. Excuse me 2011.

7 A. Christmas fell on a Sunday.

8 Q. So that would be the same day as indicated on this card
9 up here, the one that's before you?

10 A. Presumably.

11 Q. Okay. Now, do you see, as you go down, there's a box
12 called: Target behaviors?

13 A. Yes, sir.

14 Q. And do you see there's, one, drink or take drugs?

15 A. Yes.

16 Q. Can we agree that there's a diagonal line that
17 indicates the use of alcohol on the top, and the use of
18 drugs, or maybe it's top and bottom isn't right; but you can
19 distinguish between drugs and drink from the diagonal line,
20 correct?

21 A. Correct.

22 Q. If you go down to Thursday, December 22, column do you
23 see a -- the number four and the word "yes"?

24 A. I'm sorry. Am I going up? I'm going up.

25 I'm sorry, sir.

1 Q. If you look at the board. If you go across, drink or
2 take drugs, and you get to here. And you go up. That would
3 be December 22, right? There's a yes in that column?

4 (Indicating)

5 A. Correct.

6 Q. Now, if you go down to the bottom of the page, there's
7 some handwritten entries for that Thursday, correct?

8 A. Uh-huh, yes.

9 Q. And can you read what the handwritten entry for that
10 Thursday says?

11 A. I'm sorry. Tried to resist using at work, but ended up
12 failing. I know I should have called, but I had thoughts
13 about how I felt last time. I -- I think it's called in.

14 Q. Okay.

15 A. Maybe -- the neighbors -- something about presents.

16 Q. Now, I'd like to return to that email that's marked 211
17 that you took a look at.

18 Right at the beginning.

19 A. Sure. Which one, yours?

20 Q. Yes.

21 A. Okay.

22 Q. Now, before you're expressing your dislike for me you
23 asked Kris Foster a question?

24 A. Yes.

25 Q. And you asked her how this evidence from Sonja Farak's

1 car was relevant to my case, correct?

2 A. Correct.

3 Q. Sitting here today, do you see how this evidence was
4 relevant to my case?

5 A. Yes. I do now. At the time I didn't realize that it
6 wasn't the Christmas that I'd just finished.

7 Q. Now, last December, December 9, did you meet with two
8 State Police Captains at One Ashburton Place?

9 A. What date, I'm sorry?

10 Q. December 9, 2015?

11 A. Yes.

12 Q. And did your interview with them last about an hour,
13 give or take?

14 A. Give or take, I don't recall how -- the length of it.

15 Q. During this one-hour interview, were you asked some
16 questions about your participation in the Annie Dookhan
17 case?

18 A. Yes.

19 Q. Did you explain how your office's criminal
20 investigation was conducted independently from the Inspector
21 General's investigation of systemic failures at the Hinton
22 lab?

23 A. Yes.

24 Q. And did you tell the Captain that this division of
25 labor was the result of a directive from Governor Patrick?

1 A. That was my understanding.

2 Q. Did you explain the governor's desire to avoid possible
3 confusion or conflicts which may have been created by one
4 agency conducting both investigations?

5 A. I said that, but that was just my understanding of it.
6 I wasn't at that level of conversation.

7 Q. Sure.

8 Back on December 9, 2015, did you tell the Captains
9 that the Sonja Farak investigation was to be conducted in
10 the same manner?

11 A. I don't know if I said that. I don't remember.

12 Q. Did you tell the Captains that you were under the
13 impression the Inspector General would investigate the
14 systemic flaws in Amherst?

15 A. I was under the impression that it would be handled
16 like the Dookhan Cass was handled.

17 Q. And the Dookhan case, the Inspector General's Office
18 handled the systemic flaws?

19 A. Someone else did the systemic failures, yes, other than
20 the Attorney General's Office.

21 Q. Well, did you tell them that you thought the Inspector
22 General was going to do the investigation?

23 A. I thought an outside entity.

24 Q. Now, showing you an email, I'll bring a paper copy to
25 you.

1 A. Thank you.

2 Q. Showing you an email, are you one of the recipients of
3 this email?

4 A. Yes, sir.

5 Q. And was this from Michael Halpin?

6 A. Yes.

7 Q. And what was this -- what was the nature of this email?
8 Why did you get this email?

9 A. They were -- they attached the quality control.
10 Amherst had been audited, at some point, prior to Farak's
11 arrest. They were forwarding it to me, as -- you know, so
12 that we would have the materials so we can --

13 Q. And I attached as -- to that email in front of you, is
14 that the quality control audit that you --

15 A. That I received, yes, it is sir.

16 MR. RYAN: Can this be marked as the next exhibit?

17 THE COURT: Uh-huh.

18 THE CLERK: Marked as Number 268.

19 (Exhibit No. 268, email from Halpin to AAG
20 Verner/Kaczmarek (1/29/13 10:14 a.m.), marked)

21 Q. (By Mr. Ryan) Now, I put another email up on the board
22 and hand you a paper copy.

23 A. Thank you.

24 Q. Is that an email that you sent to John Verner?

25 A. It is.

1 Q. And what did you -- and just so we're clear. Did you
2 attach to the email the same audit that you had received
3 from Michael Halpin earlier that day?

4 A. It looks like it was attached, yes.

5 Q. At 12:52 p.m. on January 29, 2013, what did you say in
6 this email to John Verner?

7 A. I said: I'm okay with this. It's a little
8 embarrassing how little quality control they have, but I
9 guess that is water under the bridge.

10 Q. Now, the: I'm okay with this. Was there some -- did
11 you originally get it because there was a question as to
12 whether or not this would be responsive to a public record
13 request.

14 A. Oh, I don't know.

15 Q. If you go down to see what you forward from Michael
16 Halpin, does it say: As you discussed with Major Connolly,
17 we received a public records request seeking the attached
18 material?

19 A. Okay. I think the public records request went to the
20 State Police, not to the Attorney General's Office.

21 Q. Okay. So, in any event, you acknowledged it was a
22 little embarrassing how little quality control they have in
23 Amherst?

24 A. Correct.

25 MR. RYAN: Can I have this marked as the next exhibit,

1 please?

2 THE CLERK: Marked as Number 269.

3 (Exhibit No. 269, email from AAG Kaczmarek to AAG
4 Verner (1/29/13 12:52 p.m.), marked)

5 Q. (By Mr. Ryan) Now, putting up on the presenter again,
6 another email, handing you a paper copy.

7 A. Thank you.

8 Q. Is that an email you received from Assistant Attorney
9 General named Beth Lux?

10 A. Correct.

11 Q. And did Beth Lux apprise you of some press coverage
12 regarding the Amherst Drug Lab case?

13 A. Yes, sir.

14 Q. And if you look at the actual article that she
15 forwarded, do you see a -- there's a quote that's attributed
16 to Assistant District Attorney named Jeremy Bucci?

17 A. Yes, sir.

18 Q. And what's the quote attributed to Assistant Attorney
19 General (sic) Jeremy Bucci?

20 A. We are also waiting word on whether Amherst would be
21 subject of an investigation by the Inspector General, he
22 said, referring to the crime lab on the University of
23 Massachusetts campus. Until those questions are answered,
24 we cannot really comment on this.

25 Q. Okay. Putting up another email on the presenter. I'm

1 going to hand you a paper copy of it.

2 A. Thank you.

3 Q. And --

4 MR. RYAN: May the prior email be marked as an exhibit?

5 THE CLERK: Marked as 270.

6 (Exhibit No. 270, email from AAG Kaczmarek to AIG Mark
7 (2/26/13), marked)

8 Q. (By Mr. Ryan) Now, this email that's before you, did
9 you forward or cut and paste the article you received from
10 Beth Lux and send an email at 11:10 a.m. on February 26,
11 2013?

12 A. Yes, I did.

13 Q. And to whom did you send this email?

14 A. I sent it to Audrey Mark.

15 Q. And at that time, what position did Audrey Mark hold?

16 A. I don't know what her position was, but she was a
17 member of the Inspector General's Office.

18 Q. And what did you say in the email that you sent Audrey
19 Mark?

20 A. I said: Audrey, when they ask to you do this audit say
21 no. Actually, it is very different than JP, a professional
22 lab.

23 Q. Now, by "JP" were you referring to Jamaica Plain?

24 A. I was.

25 Q. And did you suggest to Ms. Mark that there were no

1 systemic failures in Amherst that would be worthy of
2 investigation by the Inspector General?

3 A. No.

4 Q. Well, can you explain what you meant when you said that
5 the Inspector General's Office should not do an
6 investigation of the Amherst lab?

7 A. Oh, I didn't mean the Inspector General's Office. I
8 meant Audrey Mark.

9 Audrey Mark was currently doing, and in the midst of
10 the JP Hinton Lab investigation. And she was in the middle
11 of, like, a ton of work. She was doing all the scanning at
12 this particular time, is my memory.

13 I meant someone else in her office should do it.

14 Q. Well, why did you then do on to say: It's actually
15 very different than JP, a professional lab?

16 A. I meant, it looked like it was, at the time, based on
17 the evidence that I believed, that it was really just going
18 to be Sonja Farak was going to be the bad actor.

19 The problem with, the difference between the JP lab is
20 it looked like it was -- at the time, they looked completely
21 different.

22 Q. Well, didn't about four weeks before you get that email
23 with the quality assurance audit, where you looked at it and
24 you said there was an embarrassing lack of quality control?

25 A. Yes, because at the time I didn't realize -- when I got

1 the audit, I didn't realize that in order for Amherst to
2 have operated the way it did, it did have to have a
3 different operating systems than say Sudbury lab did. Which
4 was currently an accredited lab, so they had a lot -- they
5 had different evidence protocols.

6 When I started just talking to the chemists and seeing
7 how the lab actually had to function, it did need to have
8 different sort of evidence controls at the time. That's
9 what I meant.

10 Q. Do you still have that Mass. State Police lab audit
11 results in front of you as an attachment to Mr. Halpin's
12 email?

13 A. I don't. You took it, sir.

14 Q. Would you agree that this audit is a series of
15 questions and answers?

16 A. Yes.

17 Q. And the first one is: Is unit staff aware of the
18 quality assurance manual; is that correct?

19 A. Correct.

20 Q. And the answer was: No. Staff does not have a quality
21 manual.

22 And then it goes on, correct?

23 A. It does.

24 Q. And then they say: Nor do they comply with MSP FSG QA
25 procedures?

1 A. Correct.

2 Q. They go down, number two: Are the instrument logs
3 current and complete?

4 Is that the next question?

5 A. It is.

6 Q. And what is the answer?

7 A. No logs not in existence prior to end of
8 September 2012.

9 Q. Okay. So then it goes on for another paragraph as
10 well, correct?

11 A. Right. These are the questions that they were using if
12 it was an accredited lab. It clearly was not at this point.
13 They were striving to go toward an accreditation; but what I
14 meant in the difference is when you went to Amherst versus
15 when you went to the Hinton lab, the Amherst lab was, you
16 know, just walking into the evidence safe at the time it was
17 cataloged very neatly, you could -- they were numbered
18 sequentially. If you went into the Hinton lab at that time
19 when it was stocked, it was chaos.

20 Q. So, is it your testimony that this paints the picture
21 of a professional lab?

22 A. No, it's not. No.

23 Q. Okay.

24 A. I would not have made that comment to, I think it, was
25 John or Dean.

1 Q. Now, I'm going to bounce backward a bit and show you
2 another email.

3 (Off the record discussion among Counsel.)

4 Q. (By Mr. Ryan) I'm showing you another email exchange.
5 This time one you had with John Verner. And what was -- if
6 you could look at that thread from Wednesday, January 23,
7 that ends at 7:55 a.m.

8 What was the nature of the exchange that you had with
9 him?

10 A. They were trying to get -- they were trying to get a
11 search warrant for her duffle bag that they -- I don't know
12 if the duffle bag was at the lab or if it was in her car,
13 but they were trying to get a search warrant for her duffle
14 bag.

15 Q. And did John Verner tell you that he would be providing
16 some feedback the next morning?

17 A. He says he'll -- we'll read it in the a.m.

18 Q. Okay. And he said that actually at 9:31 at night on
19 January 22, correct?

20 A. Correct.

21 Q. And if I told you that was the day of, the 22nd was the
22 date of Sonja Farak's arraignment, does that sound right?

23 A. I don't know the actual date, sir, but I'll take your
24 word for it.

25 Q. Now, showing you another email, and this one I'm not

1 sure I have a paper copy, so I apologize, but you may need
2 to -- if you can't read it, step away from the podium.

3 Actually, I do have a paper copy. It's from January 23
4 at 8:38 in the morning.

5 A. Thank you.

6 Q. If you could just take a second to review that.

7 A. (Witness complying)

8 Q. And just so the record is clear, this was admitted as
9 Exhibit 261?

10 A. Yes, sir. I read it.

11 Q. Now, was John in this email giving some thoughts as to
12 what he thought might help beef up the draft of the
13 affidavit that was forwarded to him in order to establish
14 probable cause to look at this tote bag?

15 A. I don't know.

16 MS. WEST: Your Honor, I don't want to interpret these
17 proceedings. I want to be efficient about this.

18 I would just like it, I think the Court would like it
19 as well, if the testimony in this case is coming from this
20 particular witness who is significant. If we are going to
21 go through emails and documents and have him read them and
22 then just have her say yes or no, I don't think that's an
23 efficient use of the Court's time.

24 MR. RYAN: I'm happy to defer to a most efficient use
25 of time. I have some direct, I think I'm asking questions

1 that are --

2 MS. WEST: What you could do is say: Did you send.

3 THE COURT: Ms. West -- Ms. West -- when I want your
4 help, I'll ask for it.

5 MS. WEST: Thank you.

6 THE COURT: Sit down.

7 Now, you have this proclivity to be overly thorough.
8 That's not a bad thing. But I would ask that you get to the
9 direct questions as to this witness' personal knowledge, and
10 go from there.

11 MR. RYAN: Okay.

12 Q. (By Mr. Ryan) Do you see references in this email to
13 personal papers?

14 A. Yes.

15 Q. And what did you understand those references to
16 personal papers to be?

17 A. There was a lot of papers in her car, that's what I
18 took it to mean, like, there was like a ton of paperwork,
19 you know, ownership of the car. I mean, it was a mess so
20 that's --

21 Q. Did John, in his email, indicate that he was of the
22 opinion that some of these personal papers could have helped
23 establish probable cause?

24 A. I don't know what John was thinking. I think he just
25 wanted -- he wanted to make sure we had probable cause. I

1 think he's just listing all the things that, it appears, all
2 the things that were recovered in the car. He's listing
3 them, enumerating them.

4 Q. I guess my big question here is, by this point of 1/23,
5 8:38 -- and by 1/23, I mean January 23, at 8:38 in the
6 morning.

7 A. Yeah.

8 Q. Had you become aware that the individuals conducting
9 the search of the car had found some personal papers of
10 Ms. Farak's that contained admissions of drug use?

11 A. I don't know if I knew at that time, sir.

12 Q. Is it possible you may have known at that time?

13 A. I don't remember right now.

14 Q. Well, when do you remember learning about these papers?

15 A. I think when I got the email from Sergeant Ballou which
16 would have been --

17 Q. That was the very first time you have any recollection
18 of seeing any of those papers?

19 A. That's the first time I saw these papers, yes; that I
20 remember.

21 Q. Okay. Now, at about this time, did you -- do you
22 recall getting an email from, indicating that there was an
23 Assistant District Attorney in Hampden County who wanted to
24 make a report about some missing pills?

25 A. Correct.

1 Q. And what do you recall about that report?

2 A. I remember Sergeant Ballou -- I believe -- I remember
3 contacting him and asking him to follow-up on this.

4 Q. And, to your knowledge, did he follow-up on it?

5 A. To my knowledge he did, yes.

6 Q. And do you recall what he learned when he followed up
7 on this?

8 A. He learned that, that the police officer who submitted
9 the pills was stating that the drugs, he had submitted a --
10 what he believed to be a certain drug and a certain
11 quantity, and when it was returned back from the lab it was
12 not an illegal substance, and it was not the same number
13 that he said that he had sent.

14 Q. And did -- when he reported to you about his
15 conversations to the Hampden District Attorney's Office, did
16 he disclose that he learned anything else out about a
17 totally unrelated case?

18 A. Did who?

19 Q. Sergeant Ballou.

20 A. I don't remember.

21 But in the pill case, I'd asked him to do an
22 investigation to see if we, you know, if it was something
23 that we could assign to Farak. And I believe we were unable
24 to establish enough evidence that it was a sample that Farak
25 tampered with.

1 Q. Now, just in terms of the -- if you read what's been --
2 what's up on the board right now, I'm going to put it, this
3 email from Joe Ballou at 4:41 p.m. to you and Robert Irwin.
4 Do you see the line that begins: While I was there?

5 A. Yes, sir.

6 Q. See if -- can you read that and see if that refreshes
7 your recollection as to whether or not you learned anything
8 about another case?

9 A. When I read it, he's mentioning another case that a DA
10 is saying that came back, disappointed her, because it came
11 lower than the hundred-gram threshold. And so that this DA
12 was disappointed and I guess insinuating that it could be a
13 tampered sample.

14 Q. Could be a tampered sample or could be something else,
15 correct?

16 A. Correct.

17 Q. Now, did Joe indicate that he was a little skeptical
18 because neither these cases seemed to fit the scheme that
19 you thought Farak was perpetrating?

20 A. Yes, that's what he's saying.

21 Q. What was the scheme you thought she was perpetrating
22 four days after her arrest?

23 A. We thought she was just -- we thought -- well, I don't
24 know what Joe thought, but -- and I guess it's a little
25 early. But we thought -- and I think that, actually, if I

1 read that, I think it goes to the pills in that we, our
2 running theory early was that she was using crack cocaine
3 and not pills. And also that if it was four grams less, it
4 looked -- because of the samples that we eventually indicted
5 her for, she was putting the correct drug, you know, the
6 correct weight back. So it seemed -- it just seemed, on the
7 outset, inconsistent, but not outside the realm of
8 possibility I don't think.

9 Q. So four days into this, had your -- had your theory
10 solidified as to what was going on here?

11 A. No. No. No. It certainly hadn't solidified. We
12 didn't have the time to do that yet.

13 Q. And when he said they go back a lot further than the
14 cases we're looking at, at the top of the email, had he
15 disclosed that Sonja Farak handled the pills in May of 2008
16 (sic) -- in '12?

17 A. Well, it says that in the email right, May 8, 2012.

18 Q. Would you agree that was further back than when you
19 were looking at May of 2012?

20 A. No, I was -- at that point I was looking at an entire
21 scope. I hadn't limited it to a certain time frame at that
22 point. But it looked like she -- I mean, I think it's more
23 to the pills than it is to the time frame.

24 Q. Now, at 9:16 in the morning on Thursday, January of 24,
25 did you get another email from Joe Ballou talking about

1 following up on that case that was light by four grams?

2 A. Do you have it in a paper copy, sir?

3 Q. Directing your attention to the 9:16 entry.

4 (Pause)

5 THE WITNESS: Okay.

6 Q. (By Mr. Ryan) Did Joe tell you when that testing had
7 occurred in that case?

8 A. He did back in 2005.

9 Q. And at 9:47 did you reply to Joe's email?

10 A. Yes.

11 Q. And what did you say?

12 A. I said: Please don't let this get more complicated
13 than we thought. If she was suffering from back injury
14 maybe she took the oxies.

15 MR. RYAN: Can I have this marked as the next exhibit?

16 It's actually been admitted as an exhibit, Exhibit 231.

17 THE COURT: Okay. Thank you.

18 Q. (By Mr. Ryan) Ms. Kaczmarek, what did you mean by:
19 Maybe if she's suffering from a back injury she took some
20 oxies?

21 A. Because at that time, I thought -- I mean, based on the
22 evidence that we had, thought she was using crack cocaine.
23 And my experience is that you usually have a drug and you
24 stick with it, so I didn't think that she was going to go
25 outside to the oxies, and, I -- you know, it was kind of a

1 throw-away comment at the time, was, you know, maybe she
2 hurt her back and she took some oxies. I wasn't saying that
3 it was outside of the realm of possibility that it was a
4 Farak tampered sample.

5 And when I said: Please don't let this get anymore
6 complicated. I just meant, like, it was kind of a plea to
7 God, being like this is going to be like an avalanche of
8 work to hit us.

9 Q. Well, did Joe Ballou do anything about the 2005 case?

10 A. The pill case?

11 Q. No, the one where cocaine was light by four grams. Did
12 he write a report? Did he talk to the investigating
13 officer? Do anything beyond write this email to you?

14 A. Well, it looked like he talked to the DA who says she
15 believes it was because -- she gave her theory as to why it
16 was light of four grams, and I don't know if he did anything
17 beyond that.

18 Q. Well, did you -- did anybody ever learn about this
19 until these emails from your office were disclosed?

20 Did you forward this information to District Attorneys
21 throughout the state?

22 A. Well, the District Attorney sent it to us.

23 Q. Right.

24 A. So they had knowledge of that, they already knew that.

25 Q. Well, did you have a police report? Did Joe Ballou do

1 an investigation and report to you as to this tip about a
2 cocaine case from 2005 being light by four grams?

3 A. I don't know if Joe Ballou did that, but I think it's
4 clear that the DA -- the drugs had been retested. It seems
5 it was four grams different, and the DA had knowledge of
6 that.

7 Q. Right, but you're the one who's investigating Sonja
8 Farak, right?

9 A. Correct.

10 Q. And, eventually, you're the one who's providing
11 information to DAs with the understanding that they would be
12 turning things over to defense counsel, correct?

13 MS. WEST: Objection to form.

14 THE COURT: That's argument. Let's get to the
15 questions.

16 Q. (By Mr. Ryan) Now, do you still have Exhibit 205 in
17 front of you?

18 A. I do.

19 Q. Did you receive that at 3:31 in the afternoon?

20 A. Correct.

21 Q. I'd like to show you an email that you had sent earlier
22 that morning. And it's a thread, and I'll try to find the
23 paper copy for you.

24 It was February 14, 2013 at 10:44 a.m. And the first
25 email was sent by you at 10:23 that morning. And I do have

1 a paper copy I will provide to you.

2 A. Thank you.

3 Q. Now, did you have correspondence with somebody named
4 Nancy Brooks that morning?

5 A. I did.

6 Q. And what was the correspondence about?

7 A. I asked her what the initials "TB" would mean in
8 regards to drugs, possibly a chemist abbreviation.

9 Q. And did Nancy Brooks know the answer to that?

10 A. No. She said he she didn't know.

11 Q. And did she ask you where this had kind of come up for
12 you?

13 A. I wrote: Some of Farak's notes.

14 Q. And so what were you -- what Farak's notes were you
15 reviewing that had TB on it?

16 A. I don't know.

17 Q. And just so we're clear, this would have been some five
18 hours before you got Joe Ballou's email; is that right?

19 A. Correct.

20 Q. Do you still have Joe Ballou's email in front of you?

21 A. I do.

22 Q. Can you flip through and find a chart, handwritten
23 chart, pros and cons?

24 A. Yes, sir.

25 Q. And what are the pros and cons of doing or not doing --

1 bad question.

2 (Pause)

3 Q. (By Mr. Ryan) So I'm going to put up on the
4 presenter -- what's the Bates stamp number, if you can, for
5 sake of the record?

6 A. AGOFRK001812.

7 Q. Now, is this the -- are you looking at the same
8 document in your -- that you just read the Bates stamp
9 number for that's up on the presenter?

10 A. Yes, sir.

11 Q. Does it list pros and cons of resisting and TB?

12 A. It does.

13 Q. Is this what you were referring to that morning when
14 you asked Nancy Brooks that question?

15 A. I don't know. I mean, it could have been, but I don't
16 know.

17 Q. Are you sure that the first you saw these documents
18 that are attached to Joe Ballou's email is when Joe Ballou
19 sent them?

20 A. I didn't say that before. I said I don't remember. He
21 would of sent it to me, but I didn't have them before he
22 sent them to me.

23 Q. Did you get any materials from Robert Irwin?

24 A. In regards to this?

25 Q. Yeah.

1 A. I don't know. I don't remember.

2 Q. Okay.

3 A. Sorry.

4 Q. Now, did the samples that were seized from Sonja
5 Farak's car and work station ever get tested at a forensic
6 laboratory?

7 A. They got tested at the Sudbury lab.

8 Q. And who did that testing, if you remember?

9 A. First name was Tim I think.

10 Q. Was it Tim Woods?

11 A. I don't know. I believe his first name is Tim. I
12 don't remember his last name.

13 Q. Do you recall getting a drug cert in the case?

14 A. Yes, sir.

15 Q. And do you recall what was on the drug cert?

16 A. I remember that it was a lengthy drug cert.

17 MR. RYAN: If you can, put it up on the presenter.

18 Q. (By Mr. Ryan) Is -- and I know from where you're
19 sitting it might be a little blurry, but I represent to you
20 that this is a Forensic Services Group, 59 Horse Pond Road,
21 Sudbury, Mass.

22 Defender or suspect: Sonja Farak.

23 Does this look like the heading of the drug cert that
24 you got?

25 A. Yes, sir.

1 Q. Do you recall on the drug cert having one of items come
2 back and test positive for the presence of Oxycodone and
3 acetaminophen?

4 A. I don't remember. I don't remember.

5 Q. And do you have any recollection of bringing charges
6 against Sonja Farak for anything other than cocaine as a
7 Class B drug?

8 A. I don't think -- I don't remember.

9 Q. I'll represent to you that Item 17 on the drug cert was
10 a white chunky powder in a test tube with a narrow glass
11 tube piece, marked 478 covered with paraffin, a brown paper
12 bag, and that after being examined it was found to contain
13 acetaminophen and Oxycodone.

14 Does this refresh your recollection as to whether there
15 was anything besides cocaine as a controlled substance found
16 in her possession or work space?

17 A. It doesn't, but if it -- I mean, if it was at her work
18 station, I don't know necessarily that -- it doesn't. I'm
19 sorry.

20 I see it. I know it's there. I don't know exactly
21 where the test tube was recovered.

22 Q. I guess my question is, at any point did you cause to
23 reconsider your theory, four days in, that she was only
24 interested in cocaine?

25 A. No, I didn't.

1 Q. Do you recall at an early stage in this investigation,
2 getting some investigative or some reports regarding door
3 access at the Amherst Drug Lab?

4 A. I don't.

5 Do you have a paper copy by of this? I'm sorry.

6 Q. I don't think that I do.

7 At any point did you learn that Sonja Farak had not
8 been, unlike the other three chemists, using a key fob to be
9 in a position where her movements and entry into certain
10 rooms in the Amherst Drug Lab were being recorded?

11 A. I don't remember that.

12 Q. If you had gotten that, would you agree that that would
13 be potentially relevant evidence?

14 MS. WEST: Objection.

15 THE COURT: Sustained.

16 Q. (By Mr. Ryan) Now, at some point did you draft a
17 prosecution memo?

18 A. I did.

19 Q. And --

20 MR. RYAN: I think it's 163. Previously been marked as
21 163.

22 Q. (By Mr. Ryan) I'm going to show you a copy on page --
23 and direct your attention to page five.

24 Now, before I ask you some questions about that
25 specifically, what was the practice, in your office, with

1 respect to prosecution memos?

2 A. Before we were able to ask for indictment, we needed to
3 file a pros memo that listed, basically, the facts, the
4 evidence that had been recovered, the charges that you were
5 going to be requesting, possible problems with the case.

6 Q. And would that be submitted for approval to the Chief
7 of the Bureau?

8 A. Yes, sir.

9 Q. And at this time, was that Dean Mazzone?

10 A. No, Chief of the Bureau is John Verner.

11 Q. Well, Chief of the Division, sorry.

12 Enterprise and Major Crimes, is he running that?

13 A. Yes. Yes. Yes.

14 Q. Okay. And then it had to also be submitted to the
15 Chief of the Bureau?

16 A. Correct.

17 Q. And then it would go up to the 20th floor for
18 somebody's approval?

19 A. That's correct, yes.

20 Q. Now, do you recognize the handwriting that's -- there's
21 a circle around footnote seven, then an arrow at the bottom.

22 A. I don't know whose handwriting that is.

23 Q. Is it your handwriting?

24 A. No, sir, it's not.

25 Q. Okay. So is it safe to say it's one of your superiors

1 within the office?

2 A. Yes, sir.

3 Q. And what does it say?

4 A. It says: This paperwork not turned over to the DA's
5 Office yet.

6 Q. And what -- was this returned to you, the pros memo,
7 after it had been approved?

8 A. Yes.

9 Q. And so that comment there, what did you -- why was that
10 there? What significance did that have to you?

11 A. I never read that comment, sir. I just, once I knew
12 that it was approved I just -- I went ahead with what I --
13 it was very -- it would be very rare, in my practice, that I
14 would go through and read the comments because, usually, in
15 my opinion -- or, in my experience, it was these were
16 notes -- if there were notes they were to be, you know, to
17 the executive staff or, you know, Criminal Bureau whatever.

18 If there was something specifically they wanted to
19 bring to my attention, it would have been brought to my
20 attention.

21 Q. Did you participate in the process of getting out
22 discovery to District Attorneys Offices in the Dookhan case?

23 A. In the Dookhan case?

24 Q. Yes.

25 A. I don't know. I don't remember.

1 Q. In any event, did you participate or were you aware of
2 discovery that was going out to the DAs in the Farak case?

3 A. Yes.

4 Q. And were you, with respect to these items that you
5 received from Joe Ballou, what -- did you put those into the
6 Grand Jury as an exhibit or elicit testimony about them?

7 A. I did not.

8 Q. And can you tell the Judge why.

9 A. In the abundance of caution, I was afraid that I'd be
10 violating Dwyer or some HIPAA violation, because I thought
11 they're mental health worksheets. So we had enough strong
12 evidence to present to the Grand Jury, I didn't want to
13 taint the Grand Jury with that. In case, you know, I
14 could -- I didn't want to face a problem with it, so I
15 consciously and I think even the pros memo, I consciously
16 kept it out of the Grand Jury. And I did turn it over to
17 Ms. Pourinski, but I didn't put it to the Grand Jury.

18 Q. So, if you didn't put it in to the Grand Jury -- by
19 that point had you known that the Dookhan Grand Jury minutes
20 and exhibits had gone out to the District Attorneys?

21 A. Yes. So I had to get, because of the protective nature
22 of -- the privacy nature of the Grand Jury, I actually had
23 to go -- for both Farak and Dookhan, I had to go before a
24 judge and have them release the Grand Jury minutes.

25 Q. So by -- when the decision was made, out of an

1 abundance of caution, not to put this evidence in to the
2 Grand Jury. At that point you knew they wouldn't go out as
3 a Grand Jury exhibit to the District Attorneys; is that
4 correct?

5 A. I don't know if I didn't know they wouldn't go -- they
6 definitely wouldn't have gone out as Grand Jury exhibits is
7 how I would say that.

8 Q. Right. And so this -- whoever wrote this on the
9 prosecution memo was making a note that that they hadn't
10 gone out yet, correct?

11 A. Correct. I mean, nothing had gone out yet. You know,
12 I don't think the Grand Jury minutes were ready yet either.

13 Q. The Grand Jury didn't actually return an indictment
14 until April 1, 2013, correct?

15 A. Correct, yes.

16 Q. And so this superior who wrote this, was indicating, by
17 saying "yet", that this was material that would eventually
18 or should eventually be disclosed to the DAs, correct?

19 A. I don't know if I would characterize it exactly like
20 that, Mr. Ryan. I think that it means that this hasn't been
21 turned over yet. Not necessarily saying, you know, that it
22 was. But, it just says that it hadn't been turned over yet.

23 Q. Okay. Was it your intention that it eventually should
24 be turned over?

25 A. I was really nervous about those records at the time.

1 And now, because of -- I see now that I totally misjudged
2 the dates, and I see where that was a mistake on my part.
3 If I had realized that, like, what it really meant, I would
4 have -- I would have turned it over.

5 What I would have done is I would've gotten an order,
6 like I did for the Grand Jury minutes, and have the judge
7 relieve me of any sort of -- any issues that could have come
8 up with privilege and released it.

9 I made a mistake.

10 Q. Now, you mentioned turning this material over to Elaine
11 Pourinski?

12 A. Yes.

13 Q. That was Sonja Farak's attorney?

14 A. Yes, sir.

15 Q. And did you turn that over at Sonja Farak's Superior
16 Court arraignment on April 22, 2013?

17 A. I don't know.

18 Q. Did you file a certificate of discovery in that case?

19 A. I did.

20 Q. And in that certificate of discovery did you note you'd
21 given Elaine Pourinski some paperwork taken from the car?

22 A. I don't know. I do know I turned it over to her; what
23 day I did, I don't know, sir.

24 Q. Did Elaine Pourinski -- well, let me just see if I can
25 refresh your recollection as to when Sonja Farak's

1 arraignment was.

2 Do you know who Grant Woodman is?

3 A. No.

4 Q. Was he somebody in your communications department, does
5 that ring a bell?

6 A. It doesn't.

7 Q. Showing you an email from Monday April 22, 2013,
8 release for review, Farak arraignment release, to you and
9 John Verner. Open the attachment.

10 Does it indicate in this press release, this draft
11 press release, that for immediate release April 22, 2013,
12 State Crime Lab Chemist arraigned in connection with
13 stealing drugs from lab?

14 A. Yes, sir.

15 Q. So is April 22 the date that you appeared -- you
16 appeared at Sonja Farak's arraignment, correct?

17 A. I did.

18 Q. And showing you what's been previously marked 168 and
19 169, is this the certificate of discovery compliance you
20 filed at arraignment?

21 A. Yes, sir.

22 Q. And if I can go to your second page there, CD labeled
23 Discovery Two. Do you see Item 4?

24 A. Yes, sir.

25 Q. Paperwork recovered from MV?

1 A. Yes.

2 Q. And is Exhibit 169 the paperwork recovered from MV that
3 was on that discovery disk?

4 A. Oh, I don't know.

5 Q. Okay. Do you recall, at arraignment, giving Elaine
6 Pourinski a copy of the disk?

7 A. I don't know if I gave it to her at the -- I'm not sure
8 what day or in the manner in which I turned it over.

9 Q. Do you recall having any conversation with her about
10 your intentions with respect to these materials that you
11 deem sensitive enough not to put into the Grand Jury?

12 A. No. No.

13 Q. After she got these materials, did she initiate any
14 sort of conversation with you about what you'd given her?

15 A. No. That I remember.

16 Q. Now, when you gave Ms. Pourinski a copy of the CDs,
17 either in person or by mail, I take it you retained a copy
18 for your own files; is that correct?

19 A. Yes.

20 Q. Now, at some point did you have any exchanges with the
21 Berkshire County District Attorney named John Bosse?

22 A. Yes.

23 Q. And what were your interactions with Mr. Bosse?

24 A. He had a discovery request from a defense attorney and
25 he was looking for information.

1 Q. And did he reach out to you by phone or by email or do
2 you recall?

3 A. Both.

4 Q. Okay. Was he the -- was it your understanding he was
5 the Berkshire County's point person for Farak cases?

6 A. I don't know what his position was.

7 Q. Okay. Did you share with him or forward him a
8 opposition to a motion for postconviction relief that had
9 been filed by a Suffolk District Attorney in a Dookhan case?

10 A. He was asking me for some guidance, if I recall
11 correctly. He was asking, like, how he should respond to
12 the discovery request.

13 Q. And did you forward him a pleading that you had
14 obtained from a District Attorney named Vincent DeMore or
15 DeMore?

16 A. I don't remember if I did, but Vincent DeMore is an
17 Assistant District Attorney who worked on Dookhan cases.

18 Q. Now, did Mr. Bosse actually make a trip to come to
19 Boston to come to your office and talk about this?

20 A. He did.

21 Q. And did he forward the discovery letters that he had to
22 respond to?

23 A. I don't know.

24 (Pause)

25 Q. (By Mr. Ryan) I'm showing you an email thread from

1 Friday, August 30.

2 A. Thank you.

3 Q. Does this refresh your recollection as to whether
4 Mr. Bosse had actually forwarded you the discovery letters
5 that he had received?

6 A. I don't remember receiving the letters, if that's --

7 Q. Does the email indicate that he had faxed them over to
8 you?

9 A. It does indicate -- it indicates that he faxed it to
10 me.

11 Q. And did he make plans to come see you on September 4?

12 A. Yes, sir.

13 Q. When you met with him on September 4, what did you tell
14 him?

15 A. I don't know.

16 Q. Well --

17 A. I don't --

18 Q. -- did he eventually write you an email at the end of
19 September 30, at 8:48 in the morning?

20 A. Yes. It appears he does, yes.

21 Q. Handing you that email along with an attachment to it,
22 did Mr. Bosse request you to review the attached letter and
23 let him know if it looks good?

24 A. He did ask me that.

25 Q. And did the attached letter say that on September 4,

1 2013, Assistant Attorney General Anne Kaczmarek informed me
2 that all relevant discovery from the Farak prosecution has
3 been provided to the Berkshire DA Office?

4 A. That's what his letter says.

5 Q. And did you say, give him any feedback as to whether
6 that was something that he could feel and should feel
7 comfortable sending out?

8 A. I don't remember reading it, sir. I don't know.

9 Q. Well, had all relevant discovery in the Farak
10 prosecution been provided to the Berkshire's DA's Office?

11 A. I believe so at the time.

12 Q. Well, what about those attachments that you received
13 from Joe Ballou back on Valentine's Day, had those been
14 provided?

15 A. Now I know they have not.

16 Q. Did you think that, at any point, that that had
17 actually been provided?

18 A. I -- I don't know. I really don't.

19 Q. Now, did you have some ongoing dialogue with First
20 Assistant Hampden District Attorney Frank Flannery?

21 A. Did I have any one-on-one?

22 Q. Bad question.

23 In August of 2013, did he begin communicating with you
24 because he had to do a postconviction hearing related to the
25 Farak misconduct at the same time you had a pending criminal

1 case against her?

2 A. I don't remember.

3 Q. I'm not sure I have a hard copy of this one. It's from
4 August 16, 10:09 a.m. from Frank Flannery to you.

5 And does it say: Hello, Anne. A couple of things,
6 first, Judge Kinder has ordered an evidentiary hearing for
7 9/9. Purpose of the hearing, according to this order, is to
8 confine the scope and extent, if possible, of Ms. Farak's
9 misconduct?

10 A. Yes.

11 Q. Now, did he say: I expect the evidence submitted in
12 this hearing will include the testimony of some
13 investigators and chemists involved in your investigation
14 along with discovery you had provided.

15 A. Uh-huh.

16 Q. And the last line of that first paragraph say: Having
17 an extensive evidentiary hearing in one court concerning
18 evidence that relates to a pending criminal case in another
19 is, to say the least, unusual and so I want to keep you in
20 the loop in case you have any questions or concerns.

21 Does this refresh your recollection whether you had
22 communications with Frank Flannery in August of 2013?

23 A. No, it's clear I did. But I don't remember it.

24 Q. Well, do you have any recollection of learning, in late
25 August, about cases where Sonja Farak had tested the samples

1 originally and other chemists were re-analyzing them and
2 finding discrepancies or what looked to be pretty clear
3 evidence of tampering?

4 MS. WEST: Objection.

5 THE COURT: If you know.

6 THE WITNESS: I know the UMASS lab did some testing, if
7 that's what you're referring to.

8 Q. (By Mr. Ryan) Did the Sudbury lab do some testing too
9 that indicated some potential problems?

10 A. I don't recall, off the top of my head, sorry.

11 Q. Do you recall having any conversations with a analyst
12 named Kimberly Dunlap?

13 A. I don't remember it, but I see that the email exists,
14 yes.

15 Q. And so on Wednesday, August 28, at 9:40 in the morning
16 she sent you some -- an email with re-analysis case from
17 Amherst and told that you she had a couple of cases that
18 came back only with a trace amount of cocaine?

19 A. Yes.

20 Q. And did you have any follow-up with Sharon Salem about
21 this?

22 A. I don't remember.

23 Q. Who is Sharon Salem?

24 A. She was the evidence officer at the Amherst lab.

25 Q. I'm going to be handing you paper document thread that

1 ends at August 28 at 11:29 a.m.

2 A. Thank you.

3 Okay.

4 Q. Did Ms. -- did you forward Ms. Salem what Kimberly
5 Dunlap had sent you?

6 A. Yes, sir.

7 Q. And did you ask Ms. Salem to let you know or get you
8 some discovery from Amherst related to the case?

9 A. Yes.

10 Q. And what, generally, did Ms. Salem tell you about what
11 she learned?

12 A. She's sending -- she said: I'll send you the Amherst
13 discovery packet. And looking at the data, did not look
14 good for Farak. I think these are 2012 cases. The
15 re-testing discovery packet from Sudbury will be handled by
16 Sudbury, not me, and I will forward your request to them.

17 As far as I know, this case was submitted for analysis
18 at the request of the defense attorney on behalf of his
19 client and the ADA on this case is Richard Locke in
20 Berkshire County.

21 Q. Now, when she says it doesn't look good for Farak, did
22 you eventually learn what that meant?

23 A. No. I don't know.

24 Q. Did you eventually learn that when it was in Amherst,
25 it wasn't trace amounts of cocaine, it was actually a

1 relatively pure sample?

2 A. I didn't.

3 Q. Okay.

4 A. This was in the end of August.

5 MR. RYAN: Okay. May this be marked as the next
6 exhibit.

7 THE CLERK: Marked as Exhibit 271.

8 (Exhibit No. 271, emails from Sharon Salem to AAG
9 Kaczmarek (8/28/13), marked)

10 Q. (By Mr. Ryan) Now, did Sharon Salem send you another
11 email at 1:32 p.m. August 28, 2013?

12 A. Yes.

13 Q. And in that email, did she advise you that there were
14 some other re-analysis cases from the Worcester drug lab
15 that some discrepancies had been found?

16 A. Yes, sir.

17 Q. Now, at this point or at any point before the September
18 9, 2013 hearing, did you tell Frank Flannery that there were
19 these cases where analysts were saying they're discovering
20 evidence of tampering by Sonja Farak?

21 A. Well, these cases were all retested at the request of a
22 District Attorney's Office so that information was already
23 given to them, was my understanding.

24 Q. Well, Richard Locke is from the Berkshire Office,
25 correct?

1 A. Yeah, I guess, yes.

2 Q. And Frank Flannery was from the Hampden Office,
3 correct?

4 A. Yes.

5 Q. And so -- and you knew from Frank's reaching out to you
6 saying, I want to keep you in the loop, you didn't think, as
7 a professional courtesy, you should keep Frank in the loop?

8 MS. WEST: Objection.

9 THE COURT: Sustained.

10 Q. (By Mr. Ryan) Now, eventually, did you learn that
11 Sergeant Joseph Ballou had been subpoenaed to testify at the
12 hearing Frank Flannery was representing the Commonwealth on?

13 A. Yes.

14 Q. And what do you recall learning about that?

15 A. Really, what I can remember is that he was subpoenaed.

16 Q. Do you recall whether this was a subpoena duces tecum?

17 A. Don't recall.

18 Q. Do you recall a series of meetings with people in your
19 office about what to do about this subpoena for Joe Ballou?

20 A. Can you --

21 Q. Was there any talk about trying to move to quash Joe
22 Ballou's subpoena?

23 A. I don't know if there was talk to quash this particular
24 subpoena. I'm unsure, I'm sorry.

25 Q. Well, do you recall whether there was any emails

1 exchanges on the subject of trying to -- whether or not to
2 quash Joe Ballou's subpoena?

3 A. I don't recall them right now. Sorry.

4 Q. Do you recall any meetings you attended or were invited
5 to with the heading: Farak subpoena meeting?

6 A. I don't, sir. I'm sorry.

7 Q. Do you know somebody in the office named Kris Foster?

8 A. I do.

9 Q. Who was Kris Foster?

10 A. She was in the Appellate Unit.

11 Q. And at some point or another, did you learn that Kris
12 Foster had taken on the task of representing Joe Ballou with
13 respect to this subpoena?

14 A. Yes, sir.

15 Q. And what conversations, if any, did you have with Kris
16 Foster about what to do about this subpoena?

17 A. I don't know if I had any -- I don't remember any
18 exchange I had with her in regards to Joe Ballou's subpoena.

19 Q. You don't remember having any meetings with Kris Foster
20 where she attended, and you attended, and the conversation
21 was what do we do about a subpoena for all the documents and
22 photographs related the Farak investigation?

23 A. Not that specifically.

24 Q. Do you recall feeling like Joe Ballou -- I'm going to
25 show you an email that you sent to John Verner -- or,

1 actually, I'm going to show you the email down this thread,
2 that you sent on September 3, 9:01 a.m. to John Verner,
3 Randy Ravitz, Suzanne Reardon regarding Farak subpoena,
4 where you wrote: I'm told the Judge wants to come to the
5 bottom of the issues mentioned below, making it unlikely he
6 will allow a motion to quash. As long as the Judge has set
7 up the scope of the motion and I'm confident that Ballou
8 will be pretty unhelpful in what the Judge is trying to do.
9 Do we just let Ballou go?

10 A. Okay.

11 Q. Having seen that email that you sent, what do you mean,
12 being confident in Joe Ballou's un-helpfulness with what the
13 judge is trying to do?

14 A. Can I see what my -- can I see the whole email, sir?

15 Q. Sure.

16 A. I don't know exactly what the Judge was trying to do,
17 so I can't answer that.

18 Q. Begins on Joe Ballou saying on August 30, that he has a
19 subpoena from Defense Attorney Jared Olanoff to appear in
20 Hampden County on Monday, September 9.

21 Do you want to see the next one up?

22 A. I still don't know what I'm --

23 Q. So, you have no recollection, sitting here today, of
24 any --

25 A. Wait. Can you go back to that, sir?

1 Q. Sure.

2 A. Thank you.

3 (Pause)

4 THE WITNESS: I'm sorry, I have to get up and read it.

5 (Pause)

6 THE WITNESS: It says: Specifically, the Court is
7 trying to determine the scope of Farak's malfeasance and
8 whether the sample numbers found in the car were tampered
9 with as well. The other chemists can answer these questions
10 the best.

11 So I'm saying that as to whether the other samples in
12 the car, meaning the other paperwork, that the chemist could
13 answer that best. And I don't know at the time, or Sergeant
14 Ballou had really any evidence as -- that would help him
15 with the scope. I didn't think he did.

16 Q. (By Mr. Ryan) Well, he had the emails, the attachments
17 of the email on Valentine's Day he sent you, correct?

18 A. But as I said before, I didn't realize that expanded
19 the scope. I really didn't.

20 Q. Well, in terms of expanding the scope, you realize that
21 it disclosed that she was using not only drugs at a
22 particular time, but using them at work, right?

23 A. I knew it disclosed she was using them at work, but I
24 thought it was for the Christmas that had just past, which
25 fed with the working theory that we had, that it was really

1 for only a six-month time.

2 Q. How did you end up with this feeling that it was only a
3 six-month time?

4 A. Well, we subpoenaed Farak's wife into the Grand Jury
5 and she testified -- that was the primary reason that we
6 subpoenaed her in to the Grand Jury, was to see if she could
7 help us determine what Farak's drug use was, when it began.

8 She was particularly unhelpful in that regard or said
9 that she'd only seen Farak use drugs, I think prior to her
10 working as a chemist.

11 And then Mr. Hanchett, I think was the person in charge
12 of Amherst. He was in the Grand Jury and said that she had
13 a great performance up until about four to five months
14 before the arrest. He never had any problems with her. She
15 didn't miss -- if I -- and this is my memory, she didn't
16 miss work. And so, at that point, I had -- I didn't
17 think -- I clearly did, at the time I didn't think I had
18 anything else that would expand the scope beyond that six
19 months.

20 Q. Well, didn't you say at one point that there was no way
21 to tell when she began doing this?

22 A. I don't remember saying that.

23 But that makes logical -- I mean, I --

24 Q. On September 10, at 1:17 p.m., did you tell, in an
25 email to Sharon Salem, say: Can you think of anything else

1 that came up in court yesterday that I need to get to the
2 defense attorneys? I feel like they're seeking answers for
3 how long Sonja was doing this, when there's no way to tell.

4 A. I mean, yes; meaning they wanted affirmative evidence
5 to show that she was doing it beyond the six months that I
6 had -- that was my theory.

7 Q. Wasn't your theory that she'd been using heavily for at
8 least four to five months before her arrest?

9 A. That she had been using, I don't know if I would
10 characterize it as heavily, but.

11 I had met her prior to the arraignment when I he was
12 doing the Dookhan investigation. And based on her
13 appearance from when I met her, to when I arraigned her, she
14 looked like a completely different human being.

15 Q. Do you know who Major James Connolly is?

16 A. I do.

17 Q. Showing you an email sent to him on March 19, 2013.

18 A. And then I never -- yup.

19 Q. That was your theory, that she'd been using heavily for
20 at least four to five months before the arrest, correct?

21 A. Yes.

22 MR. RYAN: Can this be marked as the next exhibit?

23 THE COURT: Uh-huh.

24 THE CLERK: Marked as 272.

25

1 (Exhibit No. 272, email from AAG Kaczmarek to Major
2 Connolly (3/19/13), marked)

3 Q. (By Mr. Ryan) Were you aware, at any point, any
4 pleadings that Kris Foster filed with respect to the
5 subpoena that you received?

6 A. I'm sorry. Can you repeat the question?

7 Q. Did you become aware of any subpoenas that Kris Foster
8 filed moving to quash the subpoena that you had received?

9 A. I know she had filed motions to quash.

10 Q. Did you review the motions before she filed them?

11 A. I did not, sir.

12 To my knowledge, that I remember.

13 Q. Are you aware of any representations that Kris Foster
14 made as to what your testimony would be as to how long Sonja
15 Farak had been abusing narcotics?

16 A. I don't remember.

17 Q. Did she run it by you before, at least that statement
18 saying, Hey, I'm going to say in this pleading --

19 A. No. No.

20 Q. Okay. Now, after that September 9, hearing, do you
21 recall having an email discussion about what happened at the
22 first day of this evidentiary hearing?

23 A. The September 9 hearing with Judge Kinder?

24 Q. Yes.

25 A. And do I recall? I'm sorry?

1 Q. Do you recall, after the hearing, participating in a
2 group email basically processing what happened at the
3 hearing?

4 A. I recall there was a back and forth. To the specifics,
5 I don't remember.

6 Q. I think what I'm referring to here has been previously
7 marked as Exhibit 211.

8 And do you recall Kris Foster or maybe, if you can,
9 just read the --

10 A. Do you have the exhibit?

11 MR. RYAN: I think we're working on that.

12 (Pause)

13 MR. RYAN: I don't think we have it handy.

14 I'd hate to trouble you, but could you -- I'll start
15 down at the bottom of it. And can you tell me when to
16 scroll up?

17 A. You can scroll.

18 (Pause)

19 THE WITNESS: Okay.

20 MR. RYAN: Just to correct the record, I'm referring to
21 Exhibit 210. Ms. Jacobstein did find it.

22 THE WITNESS: Yes, sir.

23 Q. (By Mr. Ryan) So, before talking about exactly what
24 this says, do you recall being -- having looked at this now,
25 being involved with this group of people in trying to figure

1 out how to handle this subpoena to Joe Ballou?

2 A. I don't have a specific memory of it.

3 Q. Okay. In any event, this exchange that happened
4 here --

5 A. Yes.

6 Q. -- when you were asked what Joe has in his file, did
7 you indicate that he had, among other things, the -- her
8 mental health worksheets?

9 A. Yes, sir.

10 Q. And prior to disclosing that, and an in answer to John
11 Verner's question, had you told anybody else that she -- in
12 Joe's file was her mental health worksheets?

13 A. I don't know.

14 Q. In that meeting, is it fair to say that John Verner and
15 Dean Mazzone both would have known about these mental health
16 worksheets because the --

17 MS. WEST: Objection.

18 MR. RYAN: -- because they reviewed your pros memo?

19 THE COURT: Sustained.

20 Q. (By Mr. Ryan) Did Dean Mazzone approve a pros memo
21 that referenced the mental health worksheets?

22 A. I see a signature on it, yes.

23 Q. And John did too, right?

24 A. Yes, sir.

25 Q. So did any -- of the other three people -- Kris Foster,

1 Suzanne Reardon, or Randall Ravitz, had you talked to them
2 previously about the fact that these mental health
3 worksheets existed?

4 A. I don't know. I really don't.

5 Q. Now, after this exchange happened, did you make
6 arrangements to meet with Joe Ballou to see what was in his
7 file?

8 A. I don't know.

9 Q. And the end of the exchange of 210, did John Verner ask
10 the question: Is that everything in the file?

11 A. Yes.

12 Q. And at 10:01 a.m., did you say, yes: By file we're
13 talking about his working file, think trial binder. The
14 boxes of actual evidence are in Springfield -- log books
15 which we have copied, actual items taken from car, tote bag,
16 in drawer, all of which are photographed.

17 Did you then go on to tell, at 9:53, John Verner, that
18 you asked Ballou to come to Boston sometime this week so
19 we/I can look at his file?

20 A. I wrote that.

21 Q. And do you have any recollection of going through Joe
22 Ballou's file with him?

23 A. I don't.

24 Q. At some point, did you have any conversation with Kris
25 Foster about what she should tell the Court in response to

1 the Judge's order to provide documents that hadn't been
2 disclosed?

3 A. I don't -- I don't remember having a conversation with
4 Ms. Foster.

5 Q. You don't remember ever having a conversation with Ms.
6 Foster?

7 A. No, no, no. I meant about that.

8 Q. Did Ms. Foster ever ask you for your file?

9 A. No.

10 Q. Did you ever tell Ms. Foster that everything in your
11 file had about already been disclosed?

12 A. No.

13 Q. And why, why wouldn't you have said that?

14 A. Because I don't think -- I think that I knew the mental
15 health records hadn't been disclosed up until that point.

16 Q. And, so, as you sit here today, and you have -- let me
17 ask you this. Did you ever go through the box of evidence
18 from which the mental health worksheets were taken?

19 A. Do you mean the box in Springfield?

20 Q. Yeah.

21 A. I was there when Elaine Pourinski and her client went
22 through them. I went to Springfield for that day. So I
23 briefly, when we were laying it out for them, I was briefly
24 there. I didn't catalog anything. So -- yes and no, would
25 be my answer.

1 Q. Did anybody catalog anything, to your knowledge, as to
2 what was in there other than what Joe gave you by the of
3 Valentine's Day email?

4 A. What do you mean "catalog". Can you explain what you
5 mean by that?

6 Q. Just going through and say five blank ServiceNet Diary
7 Cards.

8 A. I don't think they were described as such.

9 Q. Okay. But was there any sort of document that
10 categorized or itemized the things that were taken from
11 Sonja Farak's car other than the search warrant return?

12 A. But I think -- I don't think -- where the evidence logs
13 may be, but I think they were all under personal papers,
14 perhaps.

15 Q. In the Spring of 2014, did you become aware that Karen
16 Morth, an attorney from New York, had made a public records
17 request that Pat Devlin in your office was going to have to
18 deal with?

19 A. Yes.

20 Q. And in dealing with that public records request, did
21 Patrick Devlin end up looking through the boxes?

22 A. I don't know personally, but I think so.

23 Q. And were you aware that Ms. Morth was the same attorney
24 who had filed the discovery letter with John Bosse from the
25 Fall before?

1 A. I don't know. I don't know if I put that connection
2 together.

3 THE COURT: Mr. Ryan, I think we will suspend.

4 MR. RYAN: Okay.

5 THE COURT: Ms. Kaczmarek, I will ask you to step down
6 for the luncheon recess, please.

7 Two o'clock.

8 (The Court exited at 12:59 p.m.)

9 (* * * * *)

10 (The Court entered at 2:10 p.m.)

11 (The defendants and the interpreter were present.)

12 THE CLERK: We are back on the record in Farak drug lab
13 hearing.

14 MS. VALENTINE: Your Honor, I have, for the Court, a
15 joint stipulation regarding two things: One, certificates
16 of analysis which are available for cases now before the
17 court for samples that were made available for testing after
18 Sonja Farak's arrest. And I have those certificates of
19 analysis to offer into evidence.

20 And, secondly, a stipulation as to samples that the
21 Springfield Police Department currently has in its
22 possession, custody, and control that are available for
23 testing.

24 THE COURT: Okay. Those can be marked.

25 MS. VALENTINE: Thank you.

1 THE CLERK: They will be marked as Items Number 273,
2 274, 275, 276, 277 and 278.

3 THE COURT: Okay.

4 (Exhibit No. 273, stipulation, marked)

5 (Exhibit No. 274, certificate of analysis (Defendant
6 Richardson, submitted 6/8/15), marked)

7 (Exhibit No. 275, certificate of analysis (Defendant
8 Vega, submitted 7/9/15), marked)

9 (Exhibit No. 276, certificate of analysis (Defendant
10 Harris, submitted 6/8/15), marked)

11 (Exhibit No. 277, certificate of analysis (Defendant
12 Penate, analyzed 8/8/13), marked)

13 (Exhibit No. 278, State Police record (6/12/13),
14 marked)

15 MR. CALDWELL: Good afternoon, Your Honor.

16 Tom Caldwell from the Attorney General's Office.

17 Your Honor, we had discussed this morning at sidebar
18 the state of the physical evidence in the Farak prosecution.
19 I have ten photographs of the boxes of which the physical
20 evidence is currently contained. They are secured in our
21 Springfield Office of the Attorney General.

22 THE COURT: Okay.

23 MR. CALDWELL: These are ten photographs. We are going
24 to ask these all be marked and are stipulated.

25 THE COURT: Okay. May be marked.

1 MR. CALDWELL: As one collectively.

2 THE COURT: Sure.

3 MR. CALDWELL: And, Your Honor, there's another issue.

4 As to Exhibit 225, this was admitted by Mr. Ryan. It's
5 regarding some of the evidence, that physical evidence, it's
6 in a bag. There was one question as to a plastic bag that
7 was purportedly initialed by James Hanchett. And I
8 confirmed, if you look at the Bates stamp 4000406 it seems
9 as if it was just a piece of paper. The parties
10 stipulated -- in fact, I have inspected the evidence myself,
11 that was in fact a plastic KPac bag and not a piece of
12 paper.

13 THE COURT: Okay. Go ahead.

14 MR. CALDWELL: One final thing, Your Honor, in terms
15 of, Your Honor, and I briefly mentioned this at sidebar that
16 the evidence now is being secured here in Springfield. If,
17 at any point, Your Honor, would like to have in camera
18 review of that physical evidence, the Clerk can contact our
19 office and we will make that evidence available for you at
20 any time.

21 THE COURT: Thank you.

22 THE CLERK: For the record, Your Honor, the photos were
23 marked as 279.

24 (Exhibit No. 279, photographs of evidence seized from
25 vehicle (10 photos), marked)

1 THE COURT: Thank you.

2 MR. RYAN: Thank you.

3 (Anne Kaczmarek - continued)

4 DIRECT EXAMINATION BY MR. RYAN

5 Q. Good afternoon.

6 A. Good afternoon.

7 Q. Your last day as an Assistant Attorney General was
8 July 21, 2014, does that sound about right?

9 A. Yeah, it's in that time frame, yes.

10 Q. And where did you go after you left the AG's Office?

11 A. I went to the Trial Court. I'm an Assistant Clerk
12 Magistrate for Suffolk Superior Criminal Clerk's Office.

13 Q. Is that literally just a couple hundreds yards from One
14 Ashburton Place where you worked?

15 A. It is.

16 Q. Now, you testified earlier about having some State
17 Troopers interview you last December?

18 A. Yes, sir.

19 Q. Prior to that, had you become aware of some
20 developments in this case?

21 A. I don't think I understand your question.

22 Q. Well, after -- did you become aware that in November of
23 2014, I'd been able to see this evidence and I had reached
24 out to the -- your former office and said that I found some
25 materials that weren't disclosed?

1 Did anybody from that office reach out to you and say,
2 hey, Anne, what's going on, we are trying to figure out what
3 happened some 19 months ago or 16 months ago?

4 A. I don't remember that.

5 Q. Okay. Did you learn about or find out about the --
6 through media or any other thing that there'd been a --
7 Sonja Farak's medical records had been disclosed and
8 revealed she'd been using for close to a decade?

9 A. I didn't know that, no.

10 Q. So when you got this call from the State Troopers
11 asking about what happened in this particular case, did you
12 not -- did you then reach out to anybody to try to find out
13 what that was all about?

14 A. I don't think that it wasn't out of the blue being
15 called to be interviewed. I think I understood there was
16 some investigation going on. But, as to particulars, I
17 don't recall what they were, but I knew that there was more
18 motion -- more motions hearing going on.

19 Q. So, it sounds from like, just getting back to the start
20 of your testimony today, it sounds like you realized you
21 made a mistake in saying that this was irrelevant evidence?

22 A. Yes.

23 Q. And so, the question I have is, when you met with the
24 troopers last December, why didn't you say you made a
25 mistake?

1 A. I don't think I was asked that.

2 Q. Well, didn't the -- didn't you adamantly deny any
3 wrongdoing?

4 MS. WEST: Objection.

5 THE COURT: Sustained.

6 Q. (By Mr. Ryan) Well, did you -- did they not ask any
7 questions that it would have been giving you an opportunity
8 to explain that you made a mistake?

9 A. No; that I remember.

10 MR. RYAN: I don't have any further questions.

11 MS. WEST: Thank you, Your Honor.

12 THE COURT: Sure.

13 **CROSS EXAMINATION BY MS. WEST**

14 Q. Good afternoon.

15 A. Good afternoon.

16 Q. Earlier today you were asked some questions about the
17 arraignment of Ms. Farak in Northampton. Do you remember
18 those?

19 A. Yes.

20 Q. And you went out to Northampton court and met Elaine
21 Pourinski, right?

22 A. Correct.

23 Q. This was not the first time you met Elaine?

24 A. No, I met her at the initial arraignment at
25 Belchertown.

1 Q. And you were also asked some questions about whether
2 you had had a conversation with Elaine about the privileged
3 nature of the mental health worksheets. Do you remember
4 having any of those conversations?

5 A. I don't.

6 Q. Was the privileged nature of those mental health
7 worksheets the only privilege that came up in this case?

8 A. No. I think her biggest concern -- or what I remember
9 her concern was, at the time, was I subpoenaed Ms. Farak's
10 wife or spouse at the time, to the Grand Jury. And in her
11 Grand Jury testimony, the wife gave up some, spoke candidly
12 about her own mental health issues, not Ms. Farak's, but
13 rather the wife's. And Ms. Pourinski was very apprehensive
14 that that -- she knew I was going to release the Grand -- I
15 was going to ask the court to allow me to release the Grand
16 Jury minutes and she was concerned that information should
17 be redacted. That was the extent of what I remember talking
18 to her about privileged information and redacting
19 information.

20 Q. And did you ultimately tell her that the office had
21 decided that it wouldn't release that privileged
22 information?

23 A. Yes. I think that's what the -- we decided.

24 Q. And you decided to redact those transcripts?

25 A. Correct.

1 Q. And was she content with that decision?

2 A. Yes.

3 Q. You were asked about the Dookhan -- so back up.

4 You were involved with the Dookhan investigation as
5 well, right?

6 A. Yes.

7 Q. You were the lead prosecutor on that?

8 A. Yes.

9 Q. As to the any conversations between the Attorney
10 General's Office and the Governor's Office were you involved
11 with those?

12 A. No.

13 Q. Were you involved with any conversations between the
14 Attorney General's Office and Max Stern?

15 A. No.

16 Q. Were you involved with any of the decisions or
17 conversations that got the Trial Division of the Attorney
18 General's Office involved in the Dookhan case?

19 A. No.

20 Q. So when the Dookhan case went to the IG's Office,
21 for -- to have a lab investigated, were you involved with
22 any of those discussions?

23 A. No.

24 Q. So do you know how it got to the IG's Office?

25 A. Specifically, no, I don't.

1 Q. And were you -- so you were not aware that it was in
2 fact the Governor who referred it to the Attorney --

3 A. No.

4 Q. -- excuse me, to the IG's Office?

5 A. No. No.

6 Q. And you also said that you had met with Farak once
7 before?

8 A. Correct.

9 Q. And was that during the course of your prosecution of
10 the Dookhan case?

11 A. Yes.

12 Q. Where was that meeting?

13 A. I was at the Sudbury lab doing an investigation about
14 Dookhan. And the Amherst lab -- two of the Amherst lab
15 chemists, Sonja Farak and who I believe was Rebecca Pontes,
16 P-O-N-T-E-S, were present. And they were taking a tour of
17 the lab because they were attempting to become accredited
18 and so I was introduced to them because I was, I happened to
19 be there. So I did meet Sonja at that time.

20 Q. And was that early Fall of 2012?

21 A. Yes.

22 Q. And what -- describe her appearance then.

23 A. Nothing remarkable, you know. She was dressed
24 casually, but other than that there was nothing -- nothing
25 that stood out to me about her appearance.

1 Q. And you had a direct conversation with her, right?

2 A. I did.

3 Q. And you were close to her as you were having this
4 conversation?

5 A. Yeah. I was about the same distance from you and me.

6 It wasn't a long conversation, but it was to be
7 introduced and they were explaining why they were there to
8 me.

9 Q. Tell us how she looked different when you saw her at
10 the first arraignment.

11 A. She was markedly skinny -- skinnier. She looked dirty,
12 just bedraggled, you know, just -- she looked like a crack
13 head. I mean, she looked like she had been using drugs for
14 a long time, but it was, you know, like she looked like
15 she -- she looked completely different.

16 Q. When you met her in the Fall of 2012 she didn't look
17 like she was using drugs?

18 A. No, I didn't get that impression, no I did not have
19 that impression.

20 Q. Now, you also spoke about having a conversation or at
21 least understanding from Jim Hanchett that he said there was
22 no issues with her performance, right?

23 A. Correct.

24 Q. Did he give you a time frame for that?

25 A. He said within the last four to six month, that's when

1 he noticed that there was a problem with her work product,
2 but before that he hadn't -- he had no problems with her.

3 Q. And that was the last four to six months before January
4 of 2013?

5 A. Correct.

6 Q. And did you also have that same conversation with
7 Sharon Salem?

8 A. I did.

9 Q. And what did she say?

10 A. The same.

11 Q. In the course of the Grand Jury, you met Ms. Farak's
12 wife, right?

13 A. Yes.

14 Q. And did she give you an indication in regards to when
15 she thought Ms. Farak was using drugs?

16 A. I don't think -- she didn't give me an idea of her
17 present use. She said that she had only seen her use drugs
18 once before, cocaine before. And it was, I believe,
19 predated her work as a chemist.

20 Q. So this would have been pre-2003?

21 A. Is my best memory.

22 Q. Had the wife recently had an injury?

23 A. She had. She testified or it somehow came to my
24 knowledge that she had suffered a head injury and it made
25 her, as a result of that injury, she was much more dependent

1 on Ms. Farak in the home.

2 Q. And did that information have any significance for you?

3 A. I just -- I took it and inferred that due to the wife's
4 injury, that there was added stress to Ms. Farak's life and
5 that led her to start to use drugs.

6 I had no other frame of reference.

7 Q. You also spoke earlier about the audit that had taken
8 place at the Amherst lab. Do you remember those questions?

9 A. Yes.

10 Q. And in that audit, you read the audit and you
11 discovered there was a lack of security controls at Amherst,
12 right?

13 A. Yes.

14 Q. And at the time, when you read it, you felt that was
15 surprising?

16 A. Yes.

17 Q. But as time went on, you realized that it made some
18 sense, didn't it?

19 A. It did.

20 Q. Why?

21 A. So, just to give -- I had been dealing mostly with --
22 after Hinton, I had been dealing mostly with Sudbury and
23 Sudbury was an accredited lab. And they had incredible
24 controls in place for their drug evidence and how things
25 were, the chain of custody. And so when I went to the

1 Amherst -- when I read the audit, it was a complete
2 difference as to how an accredited lab works, because it
3 didn't have the same safeguards as to who has access into
4 the drug safe.

5 And then, as I met or, you know, starting to realize
6 how the Amherst lab had to work because there were so few
7 employees, I think at the time there or only four employees,
8 that it -- for it to work, it was necessary that everyone
9 had access to the drugs, I think at most times.

10 So there wasn't just one evidence officer who would
11 take drugs out of the safe. Everyone had access to it.

12 Q. Sorry. The fact that everyone had access, did that --
13 was that of any significance to you?

14 A. Well, it was in the fact that I was, like, well, she
15 had access from the getgo, so she would have had access to
16 all of these drugs. If she had been using drugs to the
17 extent that, you know, Mr. Hanchett had said and Sharon
18 Salem had said, and just the way she looked, I would have
19 assumed that she would have -- she would have been using the
20 drugs long before then. Like she would -- it would have
21 been like having a drugstore at her disposal. But, because
22 I didn't see anything -- I didn't really have any evidence
23 to suggest she was outside of that six months, I -- that was
24 my conclusion I made.

25 Q. So, in fact, it made sense to you --

1 A. It made sense.

2 Q. -- that this addiction happened in the last four to six
3 months, didn't it?

4 A. Right.

5 Q. You were also asked about other sort of cases trickling
6 in for lack of a better term?

7 A. Yes.

8 Q. And, specifically, you were asked questions about a
9 pill case that came in, and you shared a particular email.
10 I don't have to show this to you now, but this was a pill
11 case where it appeared to go from 51 pills to 61 pills,
12 right?

13 A. Correct, yes.

14 Q. And, ultimately, as you understood, Joe Ballou did some
15 follow-up in that and you decided that there was no case to
16 pursue?

17 A. Correct.

18 Q. And why was that?

19 A. Well, we did a report -- he did a report, and he was
20 able to document that we didn't have any evidence as to what
21 the pills looked like when they were submitted to the
22 Amherst Drug Lab. We had no documentation of how many pills
23 were actually submitted. So it would have been, even if
24 there was some sort of malfeasance on the part of Farak,
25 there was no way -- we couldn't have proved that in the

1 Grand Jury as being a case that she tampered with.

2 Q. Okay. So I'm going to -- this is Exhibit 231 that you
3 were shown earlier, and you may have a copy up there, but
4 here you go.

5 And this is the email that talked about the pill case,
6 but it also spoke about another case that the DA's Office
7 had referenced and that was one that had been light by four
8 grams, do you see that?

9 A. Yes.

10 Q. And then, in response to this, you wrote, please don't
11 let this get more complicated than we thought. If she were
12 suffering from a back injury, maybe she took some oxies.

13 Now, as to that first sentence: Please don't let this
14 get more complicated than we thought, can you explain for us
15 what you exactly meant?

16 A. Yeah, I think -- it was -- I don't know if the
17 expression is tongue in cheek, but I was like, oh, I just
18 felt we were going to hit an avalanche of all these cases
19 hitting us. I was like, please don't let this get more
20 complicated, but somewhat resigned that perhaps it would.

21 And then I just went on to try to explain maybe she did
22 take the oxies. And the reason I say back injury is because
23 it just didn't fit the profile that I had in my head that
24 she was using crack. So that's why, I guess I was coming up
25 with some sort of explanation for her.

1 Q. You thought potentially the oxy was one off, right?

2 A. Yes.

3 Q. You thought maybe she had an injury, she took one oxy,
4 this doesn't make any sense because this is a cocaine case?

5 A. Yes.

6 Q. And you testified earlier that in your experience, when
7 people use drugs, they stick to one drug?

8 A. Yes.

9 Q. When did you first become a prosecutor?

10 A. In July of 2000.

11 Q. And was what your first job.

12 A. I worked in Dorchester District Court, Suffolk County.

13 Q. What sort of cases did you do?

14 A. I was a general District Court prosecutor. It was
15 guns, drugs, you know, assault and batteries, and the
16 regular misdemeanors that we handled in District Court.

17 Q. And then after District Court, where did you go?

18 A. I was a -- I was duly assigned to General Felony Team
19 at the time, and that is kind of the first tier in Superior
20 Court. It handles a lot of drug cases, like burglary type
21 of cases. I was also assigned to The Safe Neighborhood
22 Initiative and that is concentrating in one specific part of
23 Boston, that is more gang cases, so that's drugs and guns.

24 Q. So you had extensive experience in drug cases by that
25 point?

1 A. Yes.

2 Q. So, you just said that this -- for you, this email made
3 it such that you might be resigned to take these new cases
4 as they came in, right?

5 A. Correct.

6 Q. I'm going to show you another email.

7 And this one is dated March 21.

8 So you indicted this case, on April 1, correct?

9 A. Yes.

10 Q. And this email starts from Jim Connolly, who's Jim
11 Connolly?

12 A. At the time he was the major that was in charge of the,
13 basically the labs, the drug lab, the forensic lab.

14 Q. And, I'm sorry, I misspoke. It doesn't start with Jim
15 Connolly. It actually starts with you. If you can go to
16 the beginning of this email.

17 A. Sure.

18 Q. And you can read it, you don't have to read it out
19 loud, but just get a sense of it.

20 A. (Witness complying)

21 Yes.

22 Q. What were you asking of the major here?

23 A. I wanted -- I'm -- I was looking for more tampered-with
24 samples so I asked him to conduct a search on crack cocaine
25 samples that were submitted from July to July 18 (sic), in

1 that six month time frame that I thought was relevant. And
2 I had -- I knew how many samples there were, and I wanted
3 them to look at them to see if they were, looked like they
4 had been tampered with.

5 Q. All right. So you're asking Sharon Salem to do this,
6 right?

7 A. I'm asking Major Connelly to do that, to direct people
8 who work under him.

9 Q. Okay. And you specifically took that time frame July
10 to January, right?

11 A. Correct.

12 Q. And that was because that's what you thought at the
13 moment what the scope was?

14 A. That's correct.

15 Q. But you were going to do a thorough review of that
16 entire scope to find more samples?

17 A. Yes.

18 Q. And then you asked, you said that there were 271
19 samples from 19 agencies. Was that all the samples?

20 A. No, of crack cocaine samples.

21 Q. For Sonja Farak?

22 A. Correct.

23 Q. Okay. So you send this on to the major and the major
24 agrees that he will go ahead and do this, right?

25 A. Well, he asked me how long a time frame it is, because

1 they were inundated with a lot of the Dookhan retests at
2 that point. And they're really the only drug lab that was
3 running at this point. So, he's asking me when I want it
4 done by.

5 Q. And then in response, you indicate that the Grand Jury
6 is finishing April 1. And then you say: I don't think
7 there's enough time to include anything we find in this
8 Grand Jury, who would like to say that we're looking for
9 other tampered samples, especially for sitting in Amherst,
10 and then you say three weeks.

11 Now when was this Grand Jury ending?

12 A. April 1.

13 Q. You were -- here you were telling him that you'd be
14 willing to open a new Grand Jury, if need be?

15 A. That's correct.

16 Q. Major Connolly responds that that sounds reasonable to
17 identify any tampering and may take longer. And then you
18 say: Let's start with the tampering. We can identify
19 anything and then work from there.

20 Why did you say, "Let's start with the tampering"?

21 A. I thought because the way the drug samples looked that
22 we had found that Farak had, like the initial ones that we
23 had recovered. By eyeballing it, it was clear that most of
24 these -- that these samples had been tampered with. So I
25 thought that we could eyeball them first and then come up

1 with a list of things.

2 Q. Okay.

3 MS. WEST: Your Honor, may this be admitted as the next
4 exhibit?

5 THE COURT: May be marked.

6 THE CLERK: Marked as Number 280.

7 (Exhibit No. 280, email from AAG Kaczmarek to Major
8 Connolly (3/21/13), marked)

9 Q. (By Ms. West) Now, you just said that that Grand Jury
10 would finish soon, right?

11 A. Yes.

12 Q. Just remind me again. What was the date that it was
13 going to finish.

14 A. I think April 1.

15 Q. I show you another email and this is an email between
16 you and Nancy Tavilla. Who's that?

17 A. She was the administrative assistant in charge of Grand
18 Jury for the Attorney General's Office.

19 Q. And in this email on March 26, she asked you: Will it
20 be a full or partial indictment? Do we need to vote over or
21 extend anything?

22 Can you just explain what she's asking you?

23 A. So she's asking me do I want more time to, am I going
24 to vote out Sonja Farak's case out of the Grand Jury, or am
25 I going to ask the Grand Jurors to come back at a later date

1 to vote. And I said: I think it's going to be full
2 indictments. Meaning I am going to ask for a vote on the
3 evidence that I had presented thus far. I wasn't going to
4 ask this Grand Jury to be extended.

5 Q. And so, then you say: If we find more evidence later,
6 I may just open a new Grand Jury. Right?

7 A. Correct, yes.

8 Q. So you were willing to continue on and indict her on
9 more counts, weren't you?

10 A. Yes.

11 Q. If you found them?

12 A. Yes.

13 Q. And at that time, you were actually, affirmatively
14 looking for more counts, weren't you?

15 A. Yes.

16 MS. WEST: May this be admitted as the next exhibit?

17 THE COURT: Uh-huh.

18 THE CLERK: Marked as 281.

19 (Exhibit No. 281, emails from AAG Kaczmarek to Nancy
20 Tavilla (3/26/13), marked)

21 Q. (By Ms. West) I'm going to show you, it's Exhibit 281.
22 I only have one copy. It's already been admitted, so I'll
23 come up for you to take a look at it.

24 Now, this is the exhibit where you're speaking to
25 Sharon Salem, and she says: It doesn't look good for Farak,

1 correct?

2 A. Correct.

3 Q. And in this -- in this email it's dated August 28,
4 2013?

5 A. Correct.

6 Q. All right. So this is well after indictment?

7 A. Correct.

8 Q. Several months into the case?

9 A. Yes.

10 Q. And she's giving you information that there are two
11 more samples that it may be Farak tampered with, right?

12 A. Yes.

13 Q. But the source of these samples are actually the
14 defense attorney and the ADA?

15 A. Correct.

16 Q. So they already know about this, don't they?

17 A. Yeah.

18 Q. So, from your prospective, what did this matter to you?

19 A. I think she was letting me know that there was more
20 things being, you know, that there might be more samples, if
21 I wanted to present it to the Grand Jury, to decide what I
22 wanted to do at the time; but it was really late -- it was
23 getting sort of late in the case and I -- I mean, I think
24 that's why she just wanted me to make sure I had it and
25 other instances at trial, if I needed a prior or subsequent

1 bad acts evidence.

2 Q. And when you say "late in the case" what do you mean by
3 that?

4 A. Well, she had already been indicted and arraigned and
5 at this point I think we are -- I don't know if we are
6 starting -- we are either going to trial soon or we're going
7 to resolve it, and so it was starting to get towards that
8 time. And I don't know if I had indicted this, if it would
9 be included in what I would go to trial with her. So it
10 would be like kind of a separate incident, so, or -- you
11 know.

12 Q. If you had added this case to your indictment, would it
13 necessarily make a difference in sentencing?

14 A. No.

15 Q. So the progression of your litigation over 2013 from
16 the beginning to the end of the year -- she pled in
17 December, right?

18 In the beginning, you were very open to new cases
19 coming in, right?

20 A. Yes. Yes.

21 Q. But as time went by and all the DAs had information and
22 they were getting their own information from defendants out
23 there, you had less an interest in adding to your own direct
24 indictment, correct?

25 A. Yeah, it wouldn't have changed what we were

1 recommending for a sentence.

2 Q. In this -- in the Farak -- excuse me.

3 In the Dookhan matter, did Annie Dookhan proffer in
4 that case?

5 A. No.

6 Q. Did she ask to proffer?

7 A. No.

8 Q. Did you offer for her to proffer?

9 A. (Witness indicating)

10 Q. Did you want her to proffer -- excuse me.

11 A. I don't -- I don't think it was ever brought up. I
12 don't recall that a proffer with Dookhan ever being brought
13 up.

14 Q. All right. I'm showing you what's been marked as
15 Exhibit 267; 267 and this is an email that starts out from
16 Elaine to you. And it's dated September 10. And she says:
17 Anne, do you have the discovery on the case that they found
18 a discrepancy? There's a hearing in Springfield going on,
19 which a Berkshire case was mentioned. Is that the same
20 case? Do you intend to bring further charges against Sonja?

21 This case that she's mentioning on December (sic) 10.
22 Is this the same case in Exhibit 271?

23 A. I don't know.

24 Q. But notwithstanding when this information came in, you
25 ensured that Elaine Pourinski received it, right?

1 A. Yes.

2 Q. And in response to this, you tell her: I just got it
3 in the mail yesterday.

4 So you just sent it out, right?

5 A. Yeah.

6 Q. And then you say: I'm not sure what to do. We can be
7 finding these cases for years.

8 Will you think about doing a proffer to determine the
9 scope of Sonja's 's alleged misconduct?

10 Why did you ask her to do a proffer?

11 A. Because I didn't have any other evidence that showed
12 that she had been -- that I knew of, at the time. I clearly
13 was wrong; but I didn't have any other evidence to show that
14 she was using -- that she was tampering with drugs or using
15 drugs outside of that six-month window.

16 And I knew that was a -- that was a very big issue when
17 it came to what I call like the Farak defendants. They
18 really needed to know what the scope was, and at that time,
19 the only way I thought I could do it was to do a proffer.

20 Q. Because you kept getting requests from DAs Offices,
21 right?

22 A. Yes.

23 Q. And you obviously -- third-party subpoenas were coming
24 in making requests as well?

25 A. Yes.

1 Q. And you thought if she proffered, you could finally
2 figure out what the exact scope is, and you could send this
3 information out?

4 A. Yes.

5 Q. So she said she's been sick, she'll get back to you,
6 and but then on September 22, she says: I'm thinking about
7 a possibility of a proffer, but would have to include
8 complete immunity for possible charges in state and federal
9 court.

10 Now, did you take this request to your superiors?

11 A. Yes.

12 Q. I show you another exhibit. So you just looked at 267
13 and the last date on that was Elaine and her message on
14 September 22.

15 And then on October 4, Elaine writes you and says --
16 she's talking about she's trying to reach you, there are
17 motions, and you're going to have -- a trial date's in
18 February.

19 And in response on October 7, you say: Sorry, I've
20 been on trial out of county, so I haven't been in the
21 office. I'm fine with a continuance. Also still waiting to
22 hear what my bosses think about the immunity idea. I will
23 try to have a meeting with them sometime this week if my
24 trial wraps up.

25 Now, during this period of time -- so you were busy on

1 October 7; you had been busy?

2 A. Yes.

3 Q. All right. But did you notify John Verner that Elaine,
4 that Farak was willing to proffer?

5 A. I don't know specifically. I'm assuming I did, but --

6 MS. WEST: Your Honor, may this email be admitted?

7 THE CLERK: Marked as 282.

8 (Exhibit No. 282, email from Attorney Pourinski to AAG
9 Kaczmarek (10/7/13), marked)

10 Q. (By Ms. West) Showing you another email.

11 A. And I'll amend that; yes, I did. According to this
12 email I did say that Farak is willing to do a proffer
13 regarding the scope of her drug use in exchange for state
14 and federal immunity against her.

15 Q. And you sent that on to John, right?

16 A. Yes.

17 Q. And you said the DAs of Western Mass. would love this.
18 What did you mean by that?

19 A. I meant the DAs in Western Mass. would love it. This
20 is the information they wanted.

21 Q. So this would answer all their questions?

22 A. Yes. That's what I meant by that.

23 Q. And you understood that John brought it up to the
24 attention of Ed Bedrosian?

25 A. I don't know if he did, but it says that he does.

1 Q. Were you privy to any of the conversations between John
2 and Ed Bedrosian?

3 A. I was not present.

4 Q. But, as a result of this going up to John, did you then
5 have -- do remember having a conversation with some of the
6 DAs Offices about this?

7 A. I recall a conference call in John Verner's Office. I
8 don't remember who exactly was on the conference call, but I
9 know it was a couple of different District Attorneys Offices
10 and discussing the viability of a proffer.

11 Q. And what was their response?

12 A. I don't remember their exact -- their exact response at
13 that meeting.

14 Q. All right. But the end result was that --

15 A. The end result is that we did not do a proffer, the
16 decision was made not to do a proffer, and I'm sorry, I
17 don't have a memory as to whose decision that was.

18 Q. But it wasn't your decision was it?

19 A. No.

20 Q. I'll take that.

21 MS. WEST: Your Honor, I will ask this be the next
22 exhibit.

23 THE COURT: Okay.

24 THE CLERK: Marked as Number 283.

25

1 (Exhibit No. 283, email from AAG Verner to AAG
2 Kaczmarek (10/2/13), marked)

3 Q. (By Ms. West) I'm going to show you what's been marked
4 as Exhibit 163. It's the prosecution memo in this case.

5 You may have it, but here you go.

6 I want you to turn to page 12.

7 You wrote this memo, did you?

8 A. I did.

9 Q. And the last paragraph, pardon me, second to last
10 paragraph, you say: The most significant issue that is
11 outstanding is the scope of Farak's drug abuse. We are
12 charging her with tampering of the four known cases, but
13 there is likely more. I believe that we should indict the
14 known cases now in order to remove the case from District
15 Court.

16 And a review of all crack cases from July 1, until
17 January 18, has been requested.

18 Is that the request that you had made of Major Mason?

19 A. Yes. Yes.

20 Q. There were 271 crack cocaine submissions in that six
21 month time frame and 86 of those samples are still at the
22 lab and 16 have been analyzed, and based upon her writings,
23 and the samples we know were tampered with, limited inquiry
24 to crack cocaine case is reasonable.

25 Why did you think that was reasonable?

1 A. Because that's all we had at that time, that's all of
2 the evidence we had.

3 Q. So you weren't going to look for heroin cases, were
4 you?

5 A. I was not at this time, no.

6 Q. And towards the end you write: I believe the impact of
7 Farak's malfeasance is most likely limited to drug
8 submissions of crack cocaine and the tainted samples can be
9 easily identified by retesting.

10 We're also hoping that the defendant, once indicted,
11 will detail how long she's been abusing drugs and how many
12 cases are affected. Farak would expect some consideration
13 in sentencing for that information.

14 Now, when you wrote this, you weren't expecting a
15 response to that part of it from John Verner, were you?

16 A. No.

17 Q. All right. So you were just putting them on notice
18 that you think a proffer is a good idea and you don't know
19 what the scope is and the best way to get it is to get it
20 from the defendant herself?

21 A. Yes.

22 Q. Earlier you were shown an email that Joe Ballou had
23 sent you entitled: Admissions.

24 Is that still up there?

25 A. It is. It's Exhibit Number 205.

1 Q. Thank you. Exhibit 205.

2 And you were -- and attached to this exhibit are some
3 newspaper articles and the paperwork we've been talking
4 about, right?

5 A. Yes.

6 Q. I'm going to show you another piece of paper. And this
7 is entitled: Homework 11/16/11.

8 Have you ever seen this before?

9 A. I saw for the first time, I think last week.

10 Q. And was this part of the email that Joe Ballou sent you
11 on February 14, 2013?

12 A. No.

13 MS. WEST: Your Honor, may this be admitted?

14 THE CLERK: Marked as 284.

15 MR. CALDWELL: It's already an exhibit.

16 MS. WEST: Excuse me. We will find the exhibit.

17 Thank you.

18 Q. (By Ms. West) So going back to Exhibit 205, which is
19 the email from Joe Ballou with the attachment on it.

20 A. Yes.

21 Q. And we're looking specifically at the part that says
22 ServiceNet Diary Card.

23 A. Yes.

24 Q. Why didn't you check the dates of those December dates?

25 A. Um, because I thought, it really was kind of an initial

1 looking at it. I saw Christmas, and Christmas had just
2 passed, so I just assumed that it was this Christmas.

3 Q. And what was this, the -- you saw photos of the state
4 of her car when it was searched, right?

5 A. Yes, her car was a mess.

6 Q. And did you make any connection with the fact that her
7 car was a mess and thinking that this had to be recent?

8 A. Yeah. I thought it was just, you know, she had just
9 tossed it onto the pile of stuff.

10 I -- I can't imagine someone keeping something for over
11 a year in their car. I mean, I know her car was a mess, but
12 I wouldn't -- my brain didn't go there.

13 Q. If you had recognized that these dates were from 2011,
14 what would you have done?

15 A. I would have realized that the scope was much greater
16 than I had thought and I would of -- I mean, that would of
17 expanded the scope.

18 And any questions, if someone said, do I, you know,
19 what do you think the scope is, I would of said it would
20 include, you know, Christmas of 2011.

21 And, you know, as discovery -- I still wouldn't have
22 put it into the Grand Jury. I still would have treated it
23 with caution. I still think that I didn't need it to get an
24 indictment, so I wouldn't have used it. But I think for --
25 thinking about it for -- to release it to the District

1 Attorney's Office as discovery for them, I would have taken
2 it with the Grand Jury minutes and asked a court to do an in
3 camera review and release me from any sort of privilege.

4 But I didn't see it that way at the time.

5 Q. So you put these records aside, right?

6 A. I did.

7 Q. You segregated them in your file?

8 A. Yes, unfortunately.

9 Q. And you spoke briefly, but you knew about certain
10 penalties where a lawyer would disclose these types of
11 records, right?

12 A. I believe so.

13 Q. And what are those penalties -- first, tell me this,
14 what is the process?

15 A. For releasing mental health records, the Dwyer
16 protocol?

17 Q. Yeah.

18 A. You first have to, you know, file a Rule 17 motion.
19 You would have to, you know, the provider of that would have
20 to come in and argue privilege. The Court would have to
21 determine that the documents were relevant, and it's a
22 process.

23 Q. And what happens if you violate that process?

24 A. I believe you can be disbarred.

25 Q. And you particularly put these in a folder, a

1 separate -- excuse me, separate folder in your box?

2 A. I did. I segregated it as the evidence was going to
3 use versus the -- in the Grand Jury.

4 Q. All right. Did you think possibly that you could use
5 these at trial?

6 A. I would have attempted to -- I would had to have
7 brought it to the court's attention. I would have wanted to
8 use it at trial, but we never really got there.

9 Q. So were they out of your mind?

10 A. They were.

11 Q. You sent them over to Elaine Pourinski?

12 A. I did.

13 Q. So you checked off that box?

14 A. I did.

15 Q. And that was your obligation under Rule 14?

16 A. Yes.

17 Q. Now, you earlier saw the prosecution memo?

18 A. Yes.

19 Q. And I think you might have it in front of you still,
20 but --

21 MS. WEST: And that's Exhibit 163 for the record.

22 THE WITNESS: I do.

23 Q. (By Ms. West) There's a footnote in there that said:
24 Have not been turned over to the DA's office yet.

25 A. Correct.

1 Q. Do you remember seeing that comment?

2 A. I don't.

3 Q. The process of prosecution memos in the AAG's Office,
4 the line AAG writes it, correct?

5 A. Yes.

6 Q. Goes up to the Chief above you?

7 A. Yes.

8 Q. And in this case that would have been Dean Mazzone?

9 A. Dean Mazzone, yes.

10 Q. And then it would go up to the Criminal Bureau chief,
11 right?

12 A. Yes.

13 Q. And then if there are comments on the prosecution memo,
14 those comments are ending up in the Executive Bureau, right?

15 A. That's correct.

16 Q. What's your understanding as to whom those comments
17 were meant for?

18 A. They were meant for the First Assistant or the Deputy
19 AG, up in the executive staff.

20 Q. You didn't think they were meant for you?

21 A. No. Generally, I mean, these take forever to write.
22 And if there was any issues or questions or comments, those
23 are usually relayed to you, not in this document; but, you
24 know, in person or an email, and you would probably have
25 those --

1 Q. So if there were problems, they would already be fixed,
2 right?

3 A. I was going to say they'd be fixed before they go up to
4 the executive staff.

5 Q. So, in this situation, there would have been a back and
6 forth with you and Dean Mazzone, right?

7 A. Yes.

8 Q. And if he saw any issues, he would have told you?

9 A. That's correct.

10 Q. And you would have gotten back on your computer and you
11 would of fixed them?

12 A. Yes.

13 Q. And so, from your prospective, the document that's
14 going to John Verner and ultimately going upstairs has no
15 more issues, because if there had been issues, it would have
16 already come back to you?

17 A. Yes.

18 Q. So do you think this is the reason why you never
19 focused on that particular comment?

20 A. I don't know if that's -- yeah, I never focused on it
21 because I never saw it.

22 Q. Okay. So in September or at least early Fall of 2013
23 you were aware that there had been some third-party
24 subpoenas served on Joe Ballou?

25 A. Yes.

1 Q. And also served on you?

2 A. Yes.

3 Q. And who in the office was going to handle them?

4 A. Kris Foster.

5 Q. And these types of subpoenas were not anything you had
6 ever handled?

7 A. Um, no.

8 Q. Strike that.

9 Motions to quash, had you ever handled a motion to
10 quash subpoena?

11 A. No, I have not.

12 Q. And that's typically something the appellate attorneys
13 handled, right?

14 A. That's correct.

15 Q. And do you even know anything about the law in motions
16 to quash?

17 A. I do not.

18 Q. Is the Appellate Division segregated from your
19 division?

20 A. Yes.

21 Q. And when these subpoenas came in, did you give them to
22 Kris Foster?

23 A. Yes.

24 Q. And did you then go about your own business prosecuting
25 this case?

1 A. Yes.

2 Q. Do you remember having any conversations with Kris
3 Foster about the subpoena?

4 A. No.

5 Q. Did she ever ask for your trial box?

6 A. No.

7 Q. Did she ever even come to your office?

8 A. No -- that I remember, that I remember.

9 Q. Okay. Did you know how Kris Foster responded to the
10 subpoena?

11 A. I don't -- no, the only time I would know what was
12 going on was when she would email us. I didn't know her
13 responses or affidavits, what she filed.

14 Q. So you have had no review process of what she filed?

15 A. No.

16 Q. And you were not her superior?

17 A. No.

18 Q. Earlier you were shown an email that you sent to Audrey
19 Marks?

20 A. Uh-huh.

21 Q. And Audrey was a person who worked at the IG's Office?

22 A. Correct.

23 Q. And how long had you known Audrey?

24 A. She and I worked in the Suffolk County DA's Office
25 together, so probably since 2000, 2000 you know 1 or 2.

1 Q. And so the two of you were friendly?

2 A. Yes.

3 Q. I'm just going to put this up again, quickly.

4 And in it you say: Audrey, when they ask you to do
5 this audit say no.

6 What did you know about what Audrey was doing, her job
7 at the IG's office at that time?

8 A. She was doing the JP lab, the Hinton lab audit or
9 investigation. So she was in the middle of all of this
10 E-discovery, docketing, scanning, so she was in the middle
11 of her big investigation.

12 Q. And you knew Audrey had children?

13 A. I did, yes.

14 Q. And that she worked part-time?

15 A. Yes.

16 Q. And did that go into your advice to her to personally
17 say no to this?

18 A. Yes.

19 Q. And when she writes back and says: Am I allowed to say
20 no, three question marks, and then a smiley face, what did
21 you understand that to mean?

22 A. Meaning if they asked her could she say no to it.

23 Q. So was it sort of a joke?

24 A. Yes.

25 Q. And when you wrote back, you wrote: I should have.

1 It's pretty far.

2 Do you mean the distance, the actual distance to come
3 out west?

4 A. That's exactly, I -- yes.

5 (Off the record discussion among Counsel.)

6 MS. WEST: Your Honor, just one moment, please.

7 THE COURT: Uh-huh.

8 (Pause)

9 MS. WEST: Your Honor, there's -- Exhibit 210 is a
10 version of email I'm about to show. I don't believe the
11 extra part of this email is an exhibit yet.

12 Q. (By Ms. West) So, Ms. Anne Kaczmarek, I'm going to
13 show you another email, you had seen part of this already?

14 A. Yes.

15 Q. Okay. And so, in this email, this is the email where
16 Kris Foster has given a description as to what had happened
17 in front of Judge Kinder. And that's when you guys are all
18 talking about the file and you write: Joe has all his
19 reports, and all reports generated in case, all photos and
20 videos and search warrants returns and copies of the
21 paperwork seized from the car regarding news articles and
22 mental health worksheets.

23 When you wrote that email, you weren't looking through
24 his file, right?

25 A. No, that's correct.

1 Q. And you assumed those mental health worksheets were in
2 his file?

3 A. Yes.

4 Q. Would it surprise you to know, at the time, they were
5 not in his file?

6 A. Yes.

7 Q. And would you agree with me that it would be not an
8 unusual decision to take original evidence that he took in
9 this case and instead of putting it in his file, put it in
10 the evidence locker?

11 A. Yes.

12 Q. At the very top, after John asks: Is that everything
13 in his file? You say: Yes. You say: By file we're
14 talking about his working file, think trial binder.

15 When you say "working file" do you mean like his
16 Redweld?

17 A. Yes.

18 Q. And the boxes of actual evidence are in Springfield.

19 Were those worksheets pulled from his (sic) car?

20 A. Were the worksheets pulled from?

21 Q. Her car.

22 A. Yes.

23 Q. And that would be actual evidence in this case, right?

24 A. Yes.

25 MS. WEST: May this be the next exhibit?

1 THE CLERK: This one is marked as 284.

2 (Exhibit No. 284, email from AAG Kaczmarek to AAG
3 Verner (9/10/13) 10:01 a.m.)

4 Q. (By Ms. West) Did you intentionally withhold the
5 mental health worksheets in this case from the defendants?

6 A. No.

7 Q. Was the fact that you didn't convey them to the DA's
8 Office an honest mistake?

9 A. Yes.

10 Q. I'm going to show you an email now. This is something
11 that started with Randy Ravitz. It goes on to you and
12 ultimately John Verner says, talking about Grand Jury stuff.
13 He says: Yes we gave it in Dookhan. We gave it here. The
14 defendants are entitled to it.

15 Now, he's talking about the process of giving material
16 out to the DA's Office in Dookhan, right?

17 A. That's correct.

18 Q. And you were re-creating that same process in Farak?

19 A. That's what they wanted to, yes.

20 Q. And in response, you say: We turned it over only to
21 the DAs Offices, not to defendants. Although entitled to
22 it, but not through us.

23 What did you mean by that?

24 A. That the process that we had used with Dookhan was that
25 we give it to the District Attorney's Office and then they

1 were assembling their own -- their own certificates of
2 discovery to answer their own specific discovery requests as
3 they came in.

4 It wasn't -- there -- it would have been impossible to
5 have done every Dookhan defendant discovery issue from the
6 AG's Office. So, you know, we send everything to the DA's
7 Office and then they would decide what was responsive to
8 their discovery requests.

9 Q. But not only impossible, but those case weren't yours,
10 were they?

11 A. That's correct.

12 Q. So the DAs Offices prosecute their own cases?

13 A. That's correct.

14 Q. And the Attorney General's Office is a separate entity?

15 A. Yes.

16 Q. And so the obligation to those defendants was with the
17 District Attorney's Office?

18 A. Yes.

19 Q. You did not have that obligation, did you?

20 A. No.

21 Q. And in the Farak case, you were giving material over to
22 the DA's Office so they could satisfy their own obligation,
23 true?

24 A. Yes. Yes.

25 Q. And you satisfied yours when you gave the discovery to

1 Elaine Pourinski?

2 A. Yes.

3 Q. Have you ever been accused before of withholding
4 discovery?

5 A. No.

6 MS. WEST: Your Honor, may this be admitted as the next
7 exhibit?

8 THE COURT: Uh-huh.

9 THE CLERK: Marked as Number 285.

10 (Exhibit No. 285, email from AAG Kaczmarek to AAG
11 Verner (10/21/13), marked)

12 (Off the record discussion among Counsel.)

13 Q. (By Ms. West) I just want to ask you a couple more
14 questions about those requests that were coming in from
15 defendants in the Fall of 2013.

16 Now some of those requests were for testimony, some
17 were from you, right? Some were for Joe Ballou, but there
18 were also some requests to inspect the evidence?

19 A. Yes.

20 Q. What was your response to that?

21 A. While the case was pending, my answer to that was no.

22 Q. And why?

23 A. I didn't -- I didn't want to open up my evidence files,
24 my original evidence files to outside parties. I did that
25 to Ms. Pourinski. I let her go through the evidence because

1 she's entitled to it. But I was worried about, you know,
2 lost evidence, destruction of, tampering of evidence. And I
3 needed -- I felt it was my obligation to preserve that
4 evidence.

5 Q. Have you ever had an experience where you did allow
6 that to happen and there was a problem?

7 A. I did. In District Court I was doing a trial and the
8 letters -- it was a violation of restraining order and
9 stalking. And the defendant presented letters from the
10 victim, showing that she had been sending letters to the
11 defendant, you know, showing that she wasn't abiding -- she
12 was contacting him while the violation, while the
13 restraining order was going on. And the trial continued and
14 continued. And finally my victim was like, those letters
15 aren't right. They're not right. And it turns out that the
16 defense attorney had deliberately cut off the dates so that
17 it looked like they were contemporary letters, but they were
18 actually letters that had occurred several years prior.

19 Q. But once the Farak -- once Sonja Farak had pled, did
20 your view on letting people inspect the evidence change?

21 A. Yes. I no longer had any sort of -- I don't have any
22 role in that evidence at all. My -- my sole focus was Sonja
23 Farak and other people in the office were taking care of the
24 discovery requests and allowing, you know, showing the
25 evidence and to other people.

1 I didn't answer any requests. They were not sent to
2 me.

3 MS. WEST: Okay. Thank you, Your Honor.

4 THE COURT: Okay.

5 **QUESTIONS BY THE COURT**

6 THE COURT: So the subpoena directed to you, the
7 subpoena directed to Sergeant Ballou, those obligated you to
8 turn over documents, didn't they?

9 THE WITNESS: Yet they were all, as far as I know, that
10 they were handled by someone else and quashed.

11 THE COURT: Okay. But they originally came, certainly
12 one to you -- came to you, came across your desk, came to
13 your attention, was a subpoena ordering you to turn over
14 your files; am I right, am I correct?

15 THE WITNESS: I don't recall, Your Honor. I don't.

16 THE COURT: Okay. All right. And, but you're familiar
17 with the fact that in September of 2013 there was subpoenas
18 for records including Sergeant Ballou's file; is that
19 accurate?

20 THE WITNESS: From that email; yes, sir.

21 THE COURT: Okay. And at that point, I should say
22 prior to that point, had you previously met Kris Foster?

23 THE WITNESS: I knew her from the office, yes.

24 THE COURT: Okay. And am I correct, that in -- on
25 February 14 of 2013, when you received an email from

1 Sergeant Ballou that referenced Farak admissions, that you
2 looked at those documents at that time?

3 THE WITNESS: Yes, sir.

4 THE COURT: Okay. And when you looked at those
5 documents you pretty quickly recognized that they included,
6 among other things, mental health records?

7 THE WITNESS: Correct.

8 THE COURT: And you were concerned about Dwyer issues,
9 HIPAA issues, that sort of thing?

10 THE WITNESS: Yes.

11 THE COURT: So much so that at one point you spoke with
12 other people in your office about whether or not you should
13 admit some of those documents to Grand Jury?

14 THE WITNESS: Yes.

15 THE COURT: All right. And so, is it fair to say that
16 you knew that you had some documents that, at that point,
17 you didn't realize were particularly relevant or exculpatory
18 as to other potential defendants, but you knew might be
19 privileged documents that needed to be treated gingerly; is
20 that fair to say?

21 THE WITNESS: Yes. Yes.

22 THE COURT: Okay. So now we come to September of 2013,
23 and the subpoenas come in and Kris Foster has it in her lap.
24 And would it be fair to say that the first order of
25 business, to find out what has been turned over and what has

1 not been turned over?

2 THE WITNESS: Yes.

3 THE COURT: Okay. And is it accurate that you were the
4 lead prosecutor in this case? You were the Farak, Sonja
5 Farak prosecutor?

6 THE WITNESS: Yes.

7 THE COURT: And would it also be accurate to say that
8 you, in that role, are responsible for the disclosure of
9 discovery?

10 THE WITNESS: To Ms. Pourinski, yes.

11 THE COURT: Well, beyond Ms. Pourinski, were you the
12 person responsible for that evidence in responding to these
13 subpoenas or determining what has been turned over, or what
14 has not been turned over?

15 THE WITNESS: No, I don't -- I don't see it that way.

16 THE COURT: Okay. Tell me how you see it.

17 THE WITNESS: The -- when the discovery requests would
18 come, and I don't remember the subpoena that went for
19 Sergeant Ballou also being directed to me.

20 THE COURT: Okay.

21 THE WITNESS: I think it was just directed to Sergeant
22 Ballou, is my memory. I could be wrong.

23 And I remember, you know, I can see in this email that
24 I -- he had all the copies of the discovery, and at that
25 time I don't know if I even realized that those worksheets

1 hadn't been turned over. Ms. Foster never came to me with
2 what she had turned over, and what she hadn't turned over.
3 She had access to my file. She had access to all of the
4 evidence.

5 THE COURT: But isn't the first step for her to go to
6 you and find out what's been turned over and what has not
7 been turned over?

8 THE WITNESS: I think so, yes.

9 THE COURT: And do you have any recollection of that
10 happening?

11 THE WITNESS: It did not happen.

12 THE COURT: It did not happen or you do not have any
13 recollection?

14 THE WITNESS: I have no recollection of it happening.

15 THE COURT: Okay. And do you remember the day after
16 September 9, her coming back and that the general word being
17 that she had been yelled at. The Judge said you didn't even
18 look at the file, how do you know what's in the file, not in
19 the file, so forth?

20 THE WITNESS: I don't remember coming back and saying
21 that.

22 THE COURT: Well, do you remember any meetings or
23 conversations after that first day that dealt with the issue
24 of how are we now going to deal with Judge Kinder's
25 directive; that if you've got privileges, if you got -- you

1 know, I'll look at it in camera, explain your reasons, you
2 you've got until the 18th to do it.

3 THE WITNESS: I don't remember that ever happening.

4 THE COURT: You have no recollection of any
5 conversation like that, at all, or any meeting about that?
6 Am I correct?

7 THE WITNESS: I'm sorry. I don't -- I don't. I
8 remember us discussing emails. I think that was the great
9 concern, is that our emails would be discoverable; but as to
10 the privileged documents, I don't, I don't remember that,
11 Judge.

12 THE COURT: And, in the early part of your testimony, I
13 believe you testified, quote, I think -- this is referring
14 to the area of September of 2013. Quote, I think I knew the
15 mental health records had been disclosed.

16 Is that what you testified?

17 THE WITNESS: I think based on what I wrote, what was
18 in Joe Ballou's file, I thought he was taking his file to
19 court and it would have those documents in, and therefore,
20 it would have been discovered or turned over.

21 THE COURT: Are you familiar with the letter Kris
22 Foster wrote to Judge Kinder?

23 THE WITNESS: No, Your Honor.

24 THE COURT: Can we supply that to the witness.

25 THE CLERK: Does someone have a copy of it?

1 (Pause)

2 THE COURT: Let me do this --

3 Let me represent to you that at the initial meeting in
4 Springfield, Ms. Foster talked about work product,
5 privileged records, and so forth and so on. And then
6 shortly thereafter, wrote a letter to Judge Kinder saying
7 everything's been turned over.

8 Any recollection of any conversations, with anyone, at
9 that time, regarding that response?

10 THE WITNESS: No.

11 THE COURT: All right. And, let me represent to you
12 that Ms. Foster testified that even though she had not
13 looked at the file, she told Judge Kinder that because she
14 had been told that by her superiors.

15 Did you tell her that?

16 THE WITNESS: No.

17 THE COURT: Do you have any knowledge as to anyone else
18 who might have told her that?

19 THE WITNESS: No.

20 THE COURT: So, why, or how do you think the mental
21 health records were not disclosed?

22 What do you think happened?

23 THE WITNESS: I think that, and this is my only -- my
24 best guess is that when discovery was being turned over, no
25 one went through the trial box that I had, and simply went

1 based on what I had submitted to the Grand Jury, like an
2 electronic form and of my discovery certs that I had sent to
3 Ms. Pourinski.

4 And I had -- I don't know, I lost focus on the mental
5 health records. I really didn't even contemplate them,
6 because to look at them, Judge, it looks like what I thought
7 was that she had been using a week prior to her arrest, and
8 so rather than being -- and now I know that's, you know,
9 completely untrue but, at the time, I thought well, this --
10 when I initially received them, I don't need this for the
11 Grand Jury. It's overwhelming, we already know that she was
12 using drugs in the lab. We knew she was using it at this
13 time.

14 And then I just -- I did the Grand Jury and I went on
15 with the Farak stuff. So I sent out, you know, the initial
16 letters to the District Attorney's Office.

17 When the discovery requests and the discovery hearing
18 with Judge Kinder were going on, I really was fairly well
19 removed from that. And I don't mean that in a negligence
20 sort of way. It was just a matter of I had other cases to
21 do. I was in the middle of Dookhan and she was responding.

22 I don't know what her responses were, but I don't know
23 how she could have represented that everything was turned
24 over without going through my stuff.

25 THE COURT: Okay. Anything else?

1 MR. OLANOFF: May I, Your Honor?

2 THE COURT: Mr. Olanoff.

3 MR. OLANOFF: Good afternoon.

4 **CROSS EXAMINATION BY MR. OLANOFF**

5 Q. Do you have any recollection of reviewing Joe Ballou's
6 file?

7 A. The -- what I'm referring to here?

8 Q. Yes.

9 A. No.

10 Q. Did you set up a time for him to come out so you could
11 look at it?

12 A. I think I saw an email that said I did. I don't recall
13 ever meeting with him though.

14 Q. Okay. And is this in evidence?

15 MR. OLANOFF: Your Honor, can we introduce this as an
16 exhibit, please?

17 THE COURT: Uh-huh.

18 THE CLERK: Marked as 286.

19 (Exhibit No. 286, email from AAG Kaczmarek to AAG
20 Verner (9/10/13 10:53 a.m.), marked)

21 Q. (By Mr. Olanoff) Now, I want to ask you about your
22 file. As the Judge mentioned, it is fair to say, as of
23 February 14, 2013, these mental health worksheets were part
24 of your file, correct?

25 A. Yes, sir.

1 Q. And at that time, as you just testified, you thought
2 that that those records or those documents were privileged
3 or confidential, correct?

4 A. Correct.

5 Q. And what privilege do you think applied here?

6 A. I -- they could of been -- I think I looked at
7 doctor/patient, the Dwyer with the mental health records,
8 those are the type of issues, HIPAA. Those are the type of
9 things that I was looking at.

10 And I didn't know necessarily -- you know, so we're
11 clear, I didn't know necessarily that that was totally
12 accurate or there wasn't a way to puncture that; but because
13 I didn't feel that that evidence was needed in the Grand
14 Jury I decided, after review, that it was better to be safe
15 than sorry, so I removed it from the Grand Jury.

16 Q. No, I understand. So it's fair to say you had your
17 doubts as to whether they were or were not privileged,
18 correct?

19 A. That's fair to say.

20 Q. And did you consult with anyone else in your office to
21 determine whether or not they were privileged?

22 A. I don't know.

23 Q. So you thought that they were privileged and you
24 weren't going to use them for the Grand Jury. Did you feel
25 that you had any obligation, at that point, with respect to

1 those records, to bring them to a judge or anything like
2 that?

3 A. At that time, no.

4 Q. Okay. And so, is it your understanding that, that if
5 you -- because you thought that they might be privileged,
6 you could just keep them in your file and not disclose them?

7 A. No. I disclosed them.

8 Q. Okay. And when you say that you disclosed them, you
9 disclosed them to Sonja Farak's attorney, correct?

10 A. Correct.

11 Q. Now, this prosecution memo which has been marked as
12 Exhibit 163, you wrote this, right?

13 A. Yes, sir.

14 Q. So anything that's typed, is your work, correct?

15 A. Yes, sir.

16 Q. Now, I want to direct your attention to page five,
17 footnote seven. And it's up on the board here too. I can
18 amplify that if you need.

19 A. I have one here. Thank you, sir.

20 Q. Sure.

21 Now, in footnote seven you specifically refer to these
22 mental health records, correct?

23 A. Yes, sir.

24 Q. And you talked about how they were not submitted to the
25 Grand Jury out of an abundance of caution, correct?

1 A. Yes, sir.

2 Q. In order to protect, possibly, privileged information,
3 correct?

4 A. Yes, sir.

5 Q. Your next line says, case law suggests, however, that
6 the paperwork is not privileged.

7 Did you write that?

8 A. Yes, sir.

9 Q. And so, it was your understanding, that at least the
10 law said that you couldn't hang onto these things?

11 A. That's not how I would characterize it. There's some
12 cases that suggested that it could be and, you know, others
13 were -- I didn't feel like I was on strong footing.

14 Q. Okay. You turned them over to Farak's lawyer in
15 April 2013, correct?

16 A. I don't know the exact date.

17 Q. Okay. But you also -- and so, as you testified a few
18 moments ago, your role was, as the Farak prosecutor, was to
19 turn over discovery to Farak's lawyer, correct?

20 A. Yeah, Rule 14 discovery obligation, yes.

21 Q. Did you think you had any obligation to turn over
22 evidence to the District Attorneys who are handling Farak
23 cases?

24 (Pause)

25 THE WITNESS: Um, yes.

1 I suppose I had a certain obligation in the interest
2 of, you know, public interest and this investigation. I
3 mean, it's like a novel sort of case, so.

4 Q. I understand. Well, let's use the example of Frank
5 Flannery and the Hampden County District Attorney's Office.

6 Did you understand that it was your job to get Frank
7 Flannery the Farak discovery?

8 A. I don't know if I'd use the word "obligation", but we
9 were providing information to DAs Offices, yes. Frank
10 Flannery being in the DA's Office.

11 Q. Well, let me ask you this, how else would Frank
12 Flannery have gotten any Farak discovery if it wasn't from
13 you?

14 A. From the Attorney General's Office, yes, we did turn
15 over Farak evidence, yes.

16 Q. Okay. Did you turn over these mental health worksheets
17 to Frank Flannery?

18 A. I did not.

19 Q. Why not?

20 A. I don't know. It was a mistake. It was an honest
21 mistake.

22 Q. Now, you knew that Joseph Ballou had a file, correct?

23 A. Yes, sir.

24 Q. And it's fair to assume that Ballou's file had these
25 mental health worksheets, correct?

1 A. Yes, sir.

2 Q. After all, he was the one that emailed them to you,
3 right?

4 A. I think my email suggests I think they were in his
5 file.

6 Q. And so you -- so it was your understanding that, that
7 who would be turning over discovery to the defendants in the
8 Farak hearing? Whose job was that?

9 A. The Attorney General's Office.

10 Q. And was that done?

11 A. These mental health records were not turned over.

12 Q. And when you say the Attorney General's Office, who in
13 the Attorney General's Office was supposed to turn over
14 these records?

15 A. I don't think it was my specific obligation. I
16 wasn't -- I was -- I don't think that goes part and parcel
17 with prosecuting Sonja Farak, but we were doing -- the
18 Attorney General's Office was, and there was a breakdown.

19 MR. OLANOFF: I think that's all I have, Your Honor.

20 Thank you.

21 THE COURT: All right. Anything further?

22 MS. WEST: No thank you.

23 THE COURT: All right. Thank you very much.

24 THE WITNESS: Thank you.

25 THE COURT: You may step down.

1 We will take five minutes.

2 (The Court exited at 3:22 p.m.)

3 (* * * * *)

4 (The Court entered at 3:37 p.m.)

5 (The defendants and the interpreter were present.)

6 THE CLERK: Back on the record in the Farak drug lab
7 hearing.

8 MR. RYAN: Heather Harris, please.

9 (Heather Harris, sworn)

10 THE COURT: Mr. Ryan.

11 MR. RYAN: Thank you.

12 (Heather Harris)

13 **DIRECT EXAMINATION BY MR. RYAN**

14 Q. Good afternoon.

15 A. Good afternoon.

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

18 A. Heather Harris, H-A-R-R-I-S.

19 Q. And, Ms. Harris, what do you do professionally?

20 A. I am a forensic chemistry consultant and an adjunct
21 professor in forensic chemistry.

22 Q. And did you testify at a prior proceeding in 2013 a
23 little more extensively about your background?

24 A. Yes, I did.

25 Q. And was your resume admitted as an exhibit, as Exhibit

1 53 in this proceeding?

2 A. I guess it was.

3 MS. JOHNSTON: We will stipulate to that, Your Honor.

4 THE COURT: Thank you.

5 Q. (By Mr. Ryan) In addition to doing this work as a
6 scientist, do you also have a law degree?

7 A. Yes, I do.

8 Q. Now, in the last three years since you've been in this
9 courthouse testifying in these Amherst Drug Lab cases, have
10 you had occasion to learn anything more about the Amherst
11 Drug Lab?

12 A. Yes. Over the course of these three years, there's
13 just been a constant unveiling of new information.

14 Q. And has some of that come through the Grand Jury
15 minutes you've had a chance to review?

16 A. Yes.

17 Q. And has some of that come through cases where you've
18 been hired as a consultant to look at particular discovery
19 packets?

20 A. Yes.

21 Q. And did you actually have an occasion, in October of
22 2015, to go to the Attorney General's Office in Boston?

23 A. Yes, I did.

24 Q. And what did you do there that day?

25 A. What we did, essentially, was sort through paper

1 documents. There was a room full of boxes that contained a
2 variety of paper documents. I don't know the source of all
3 the documents, but they were all attributed to the Amherst
4 case issue. And so we went through the documents.

5 I went through specifically trying to find documents
6 related to the practices in the laboratory.

7 Q. And was it your understanding that the Massachusetts
8 Attorney Generals had seized about 160 Bankers boxes of
9 records related to the Amherst Drug Laboratory?

10 A. That number seems about right.

11 Q. How long did you and a team of helpers spend that day
12 looking through those items?

13 A. I would say we were there seven to eight hours. Not
14 everyone was there that long, but maybe the longest stretch
15 of time was seven to eight hours.

16 Q. And was Mr. Caldwell there and kind enough to let us
17 have a scanner and copier to scan things of interest to us?

18 A. Yes, he was.

19 Q. How did you do in your search for documents reflecting
20 practices at the Amherst Drug Lab?

21 A. I didn't find a whole lot, partially just because of
22 the state of the documents. It was very difficult to locate
23 things that I, in particular, were looking for. But I was
24 able to find some notebooks or some random folders that
25 would contain some information that might be acquired from

1 the DEA for example.

2 Q. Did you find anything -- after this search, did your
3 feelings about the practices or opinions about the practices
4 at Amherst change in any way?

5 A. I would say, in many regards, it reinforced what I
6 already suspected to be true about the Amherst lab.

7 Q. And what was that?

8 A. It's my opinion that whatever was going on in the
9 laboratory was not capable of producing accurate and
10 reliable science. It seemed a bit haphazard and
11 disorganized.

12 Q. And how far back would you say that, from what you've
13 been able to discern, your concerns would stretch with
14 operations at the Amherst Drug Lab?

15 A. Oh, well, based on everything that I've learned from
16 the different documents that I've, read these problems go
17 back into the '80. The first instance of an issue I can
18 remember was 1986.

19 Q. And what did you learn about something happening in
20 1986?

21 A. In 1986 there was an audit. I don't remember the
22 agency that conducted the audit, but there was an audit that
23 came in and looked at the drug standards inventory. And at
24 that time, they were not maintaining an inventory. They
25 weren't under proper control. And it was noted and

1 documented and reported to the lab that this is something
2 that they should be doing, and, in fact, they were not doing
3 it, but they never made that correction and did it after
4 that notification.

5 Q. Were there other instances in the course of these last
6 three years where you've learned that perhaps the lab was
7 put on notice to do certain things that they didn't do?

8 A. Yes. There was a visit in 2002. I'm not -- I don't
9 recall the month specifically. It was the National Forensic
10 Science Technology Center, if I have that correct.

11 They came in and conducted an audit and they made some
12 recommendations with regard to quality assurance and quality
13 control.

14 They found, virtually, no quality assurance being
15 practiced in the lab and that was one of their findings, was
16 that this needed to be implemented.

17 Q. Now, can you tell the Judge a little bit about two
18 topics and how they relate, and they are SWGDRUG and
19 accreditation?

20 A. Sure. I'll start with accreditation, that's a bigger
21 umbrella.

22 Accreditation is a process by which a laboratory is
23 meeting a proscribed set of standards. If you want to be
24 accredited today, you have to meet the standard that is ISO
25 17025, I-S-O 17025.

1 ISO lays out a set of requirements related to the
2 management of the laboratory and then to the technical
3 requirements for testing samples. ISO is not forensic
4 specific. ISO applies to any laboratory conducting testing
5 anywhere in the world. So you can think very far afield
6 from forensics and ISO still applies.

7 ISO is concerned with making sure that laboratories
8 have quality systems in place so that the results can be
9 trusted by the customers of the laboratories, and so they
10 look at things such as document control. They look at
11 personnel and chains of command. They look at training of
12 personnel. They look at the physical facilities to make
13 sure that those are set up appropriately.

14 With regard to technical requirements, they require
15 validated methods to be used. They require written
16 procedures. They require quality control samples to be run.
17 They have very specific requirements for what goes into
18 reports. And so ISO is creating this framework within which
19 laboratories have some choices about how to fulfill those
20 requirements.

21 So accreditation does not come into your laboratory and
22 say you must test cocaine in this manner. Accreditation is
23 designed to established a framework where you can achieve
24 accurate and reliable testing results.

25 Q. And what is SWGDRUG? What does SWGDRUG do, what do

1 they put out?

2 A. SWGDRUG is the Scientific Working Group for the
3 Analysis of Seized Drugs. This is an organization that is
4 funded by DEA, it is run by DEA personnel, and to the extent
5 that chair and secretary of the organization must be DEA
6 employees. So this is tied very heavily to them.

7 SWGDRUG sets a minimum recommendation. SWGDRUG is the
8 floor and below that floor we cannot call something positive
9 for a controlled substance. So they're setting the bare
10 minimum that you must surpass in order to then report an
11 item of evidence positive.

12 Q. And would any drug lab that meets the requirements of
13 SWGDRUG necessarily be a candidate for accreditation?

14 A. No. They're two different worlds. SWGDRUG is focused
15 on the actual testing of items of evidence. It does speak
16 to some other issues. For example, it speaks to training of
17 personnel and what type of educational requirements
18 personnel might have.

19 But SWGDRUG is not concerned with chains of command and
20 document control the way accreditation is. SWGDRUG's
21 focused more on the testing of the evidence.

22 Q. Now, do you have an opinion as a forensic scientist and
23 a lawyer, as to whether a lab that does not meet SWGDRUG's
24 requirements would be able to satisfy the Daubert standard?

25 A. I would say, if you are not meeting the minimum

1 recommendations of SWGDRUG you are not reliable and
2 therefore you are not meeting the Daubert factors.

3 Q. Now, specifically to the Amherst Drug Lab, did Amherst,
4 from your review of operations there, did it meet the bare
5 recommendations of SWGDRUG?

6 A. Some cases did, but not all cases.

7 Q. And what in places did you see departures from what
8 SWGDRUG requires?

9 A. In many instances Amherst would count their gas
10 chromatography as a test, but they did not have the full set
11 of data necessary to utilize that as a test. In particular
12 gas chromatography is a comparison between a known and an
13 unknown. And they weren't running knowns to make that
14 comparison. So there's no -- there's nothing you can pull
15 from that data, if you don't have that point of comparison.

16 Q. And with respect to Amherst practices, with having read
17 testimony of their chemist there, do you have any opinions
18 about the way that they use the computer match system or
19 algorithm within the computer that would give a match
20 quality to substances? Is that what the identification
21 process should be about?

22 A. The computer is designed to provide information to
23 allow the chemist to make a complete evaluation of the data.
24 The computer is not there to replace the human being. It
25 cannot do that.

1 It -- you know, it's an algorithm that is limited by
2 the universe you give it to look at. And so it is not
3 capable of telling you what a compound is out of all of the
4 possible, you know, million and billions of compounds in the
5 world. It looks within a confined library that is created
6 by its users, and it will find a match for you, because
7 that's its job, but it doesn't mean that is the correct
8 identification.

9 Q. And in the course of reviewing operations at Amherst,
10 did you come across anything that concerned you about the
11 way that the lab dealt with pills?

12 A. Well, I recall a particular instance where it was an
13 Oxycodone tablet, which I don't know your classifications.
14 I believe it's Class B here in Massachusetts. That would
15 require a series of testing, however, in this particular
16 case it was simply reading the imprint off the tablet and
17 reporting from that.

18 Q. And was that an analyst named Rebecca Pontes who was
19 asked to give an example of a case or a kind of substance
20 where a visual identification would be appropriate or
21 permissible?

22 A. Yes.

23 Q. And was she under the impression that the substance was
24 Oxycodone, was a Class E substance?

25 A. That seems to be the case, yes.

1 Q. Now, you mentioned validated methods. With respect to
2 the use of manufactured standards at the Amherst Drug Lab,
3 is there -- were you able to find, either through your
4 review of the boxes or anyplace in the course of looking at
5 operations there, anything suggesting there were validated
6 methods for what Mr. Hanchett was doing to create these
7 standards, lab standards, from police submissions?

8 A. There were no validated methods for anything. There
9 were no validated methods for testing, let alone for some of
10 this kind of supplemental behavior.

11 Q. And with respect to that practice of using street
12 submissions and attempting to purify them and use them as
13 lab standards, what concerns would you have as a forensic
14 scientist about that process?

15 A. Well, that's just absolutely unacceptable.

16 To somehow say that what is an unknown item of evidence
17 can suddenly become a certified reference material is just
18 factually impossible.

19 Certified reference material is known with regard to
20 how it's manufactured, with regard to its storage, its
21 entire life span. It has been tested, not just on one test,
22 like Mr. Hanchett did, but its been tested on variety of
23 different tests so we can verify that the identity is in
24 fact true.

25 We also know the purity, which is important.

1 You don't know any of this and you don't know anything
2 about the provenance or the life span or the control of
3 something that has been taken off the street and somehow
4 christened to now be a reference standard.

5 Q. And, in terms of your review of instrumentation and
6 other physical plant items at the Amherst Drug Lab, did you
7 have any concerns about that?

8 A. Yes. There was very limited documentation related to
9 the instruments that are -- that were being used.

10 And from what I could see, that they did virtually no
11 maintenance on these instruments. These are, you know, akin
12 maybe to an automobile that you need to give it an oil
13 change, you need to replace the wiper blades. You need to
14 put air in the tires. It's not just you take it off the lot
15 and it works until it dies. So these instrument require
16 continual maintenance. They require continual cleaning.
17 They require auto tuning and calibration. They require
18 monitoring and maintenance on a regular basis and none of
19 that was occurring.

20 Q. And did it appear to you what they had was state of the
21 art equipment or did they appear to have some equipment that
22 was vintage?

23 A. They had some older equipment. You know, old equipment
24 on its own is not bad, if its been properly maintained and
25 cared for, but we are lacking that here.

1 Q. Okay. I'm putting up on the screen a maintenance log.
2 Is this one of the maintenance logs you were able to find
3 during this review of the boxes?

4 A. Yes.

5 Q. And apologies, for this, this was scanned.

6 Looking at the first sheet: Routine maintenance of
7 GC-MS 789A/5975C. What are those things? Column, inlet --
8 can you read them on the screen?

9 A. Yeah. Yeah.

10 So column, inlet -- I can't read the one with the S.

11 Q. Pump oil, diffusion oil.

12 A. Pump oil, diffusion oil -- yeah, I just can't make out
13 the middle one.

14 Q. Okay. What significance do those have, just sort of
15 sitting there on the first page?

16 A. I assume what they're there for is to indicate this is
17 the maintenance that you should undertake. That's all very
18 different and it all would have very different timelines
19 with regard to the maintenance and you would monitor the
20 maintenance in different ways for those.

21 Q. Okay. Going down the page. Does this -- was this,
22 what you saw when you had a chance to look at this
23 particular item reflecting some maintenance on particular
24 dates in 2011, 2012?

25 A. Yes.

1 Q. Anything of concern about the gaps between dates in
2 here?

3 A. I mean, that just shows that they were not doing
4 maintenance. I mean, if this is an accurate reflection of
5 what was being done, then they were dropping the ball on
6 maintenance, particularly septum and liner maintenance
7 should be done every few days, if not, you know, maybe once
8 a week tops.

9 And you can see from some of these gaps that was not
10 happening.

11 Q. Now, in terms of instrumentation, is this a -- the
12 manual for one of the microscopes they had at the lab?

13 A. Yes, it is.

14 Q. And American Optical in Buffalo, New York, is that an
15 entity that still produces microscopes, as far as you know?

16 A. I'm not aware that they are. Maybe they folded into
17 another company.

18 Q. Okay. Now, in terms of learning about increasing your
19 knowledge from 2013, have you had a chance to learn about
20 some of the things that Sonja Farak was doing at that lab?

21 A. Yes, I have.

22 Q. And what of -- is there anything that she was doing in
23 that lab that would have you concerned about attempting to
24 re-analyze submissions that were originally given to her to
25 use in future cases?

1 A. Yeah. You know, the issue, I believe, is that there's
2 no integrity in the evidence once it has been in the hands
3 of the bad actor, if you will.

4 We know that she was tampering with cases. We know
5 that she was using drugs in the lab while she was, you know,
6 doing her job, which, potentially means she's got a case
7 open on her bench while she's smoking crack, which she
8 admitted to.

9 So you've contaminated that evidence.

10 There's information out there about evidence not being
11 sealed properly when it's in storage, which is going to
12 increase the likelihood of cross-contamination between
13 cases.

14 And then there's, you know, evidence of Sonja
15 intentionally preventing the cases from becoming sealed, so
16 that she could get into it.

17 So there's no evidence -- well, there's no clear
18 indication of which evidence was under proper seal and which
19 wasn't, so you have to -- I would believe you would have to
20 assume that it's all potentially unsealed evidence.

21 Q. And with respect to just how -- the issue of
22 contamination. Can you tell the Judge just how big a
23 concern is this?

24 Like how -- with something like cocaine, is that
25 something that could actually end up places that it wasn't

1 intended to?

2 A. Yeah, cocaine is already in lots of places where we
3 don't intend it to, including gas pumps, ATM machines, you
4 know, lakes. Cocaine is quite ubiquitous actually. It's
5 just something about -- it's the molecules, the right size,
6 the right shape, and so particularly when we are talking
7 about cocaine in a powder form, it's very easily released
8 into the air. We don't necessarily see it, we're talking
9 about, you know, microscopic quantities, but it's released
10 into the air and it can contaminate surfaces and materials
11 around it.

12 We know this is a problem, and this is why
13 contamination prevention is such an important component of a
14 lab's protocols.

15 Q. What did you see at Amherst in terms of contamination
16 protocols?

17 A. They had none.

18 Q. What do you mean? Did they have -- did they have a
19 fume hood that they used at the lab?

20 A. I believe there were three fume hoods in total, but
21 they never seemed to all work at the same time, so --

22 Q. Was Sonja Farak -- would she use the fume hood to
23 actually smoke crack?

24 A. Yes. She admitted to smoking crack in a fume hood and
25 she also cooked up some crack in a fume hood.

1 Q. I know we are running a little short on time here. Are
2 there any other -- well, let me ask you this. In terms of,
3 you mentioned SWGDRUG requirements to analytic testing and I
4 think you said that in some cases it would appear that their
5 methods would be consistent with SWGDRUG.

6 Does SWGDRUG also have a, sort of a floor in terms of
7 casework and reporting and training and other non-analytic
8 components?

9 A. Yeah, they're recommendations -- so, ultimately, labs
10 do not have to follow them, but I would say SWGDRUG is an
11 industry standard. I have never heard a forensic chemist
12 testifying in court and say, oh, we don't follow SWGDRUG,
13 because that would isolate you from the forensic community.

14 SWGDRUG is what everyone is able to kind of hang their
15 hat on and say we're doing the minimum, so we have some
16 basis for reliability.

17 MR. RYAN: If I could just have a minute?

18 (Off the record discussion with counsel.)

19 MR. RYAN: Okay. I don't have any further questions
20 for you.

21 **CROSS EXAMINATION BY MS. JOHNSTON**

22 Q. Good afternoon.

23 A. Hello.

24 Q. I noticed on your CV that in addition to controlled
25 substances, you have also done some toxicology and other

1 types of crime scene forensic work in your past; is that
2 correct?

3 A. Well, I was an intern in a crime scene unit. With
4 regard to toxicology, I don't do impairment toxicology. I
5 do analytical toxicology.

6 Q. Okay. What's analytical toxicology?

7 A. Analytical toxicology would be using the GC-MS to
8 analyze or using an infrared instrument. So I'm focused on
9 the analytical chemistry aspect of it, not on the impairing
10 side.

11 Q. Okay. Now, would you agree with me that controlled
12 substances labs, in terms of analytical chemistry, is one of
13 the easier types of chemistry, if we were going to compare
14 it to say, forensic toxicology, when we're talking about
15 postmortem or samples that are being collected from a crime
16 scene?

17 A. No. I would not say that.

18 Using GC-MS is the same, no matter what I'm using the
19 GC-MS for. The back end interpretation, in terms of how do
20 I integrate this data into my case is definitely different,
21 but using the GC-MS, is the same whether I'm injecting it
22 with an extracted blood sample or an extracted powder
23 cocaine sample.

24 Q. What about the front end? So you have an unknown
25 substance coming in and some quantity that is in your hands,

1 it's in a baggie that you can see, and you have known
2 standards that you're running it against. So you're taking
3 that, you're creating a solution, you're running it through,
4 and you're comparing it to it; is that it or is it not,
5 correct?

6 A. Well, on the front is actually where I would argue drug
7 chemistry is more complex than toxicology, because in
8 toxicology you send me a tube of blood, I do the same thing
9 to it no matter what.

10 In drug chemistry, my expertise and my knowledge about
11 the evidence come into play with regard to how do I process
12 this case.

13 And you can often get some ideas about your evidence
14 through the packaging and the appearance of your evidence,
15 and you're not always -- your assumptions are not always
16 proven right through the testing.

17 And so I would argue the chemistry is actually more
18 complex on the front end than toxicology.

19 Q. Okay. And you said you're not always getting what you
20 think, and that's because you're doing -- I guess the way to
21 ensure you are, is you're doing presumptive test, you're
22 doing confirmatory test, correct?

23 A. Yes, you should be. Yes.

24 Q. Okay. And now, you've actually never been to the
25 Amherst lab, have you?

1 A. No, I have not.

2 Q. Okay. And you were never there on a day when everyone
3 was there doing their work, to observe them doing their
4 work?

5 A. No, I was not.

6 Q. Okay. And you never met Sonja Farak in the time
7 between 2004 to 2011, as you've alluded to, that she admits
8 to doing drugs, whether from the samples or from the
9 standards?

10 A. I have never met her at all.

11 Q. Okay. And so have you ever sat down with Jim Hanchett
12 to talk about what he was doing at the lab?

13 A. Never met him.

14 Q. Okay. And you haven't actually seen everything that
15 ever existed at the lab, correct, all the paperwork, all the
16 documentation?

17 A. I'm assuming that I have not.

18 Q. Okay. And, in fact, you said on direct that you didn't
19 find much that was of help or you didn't find a whole lot,
20 correct, in terms of what you were looking for?

21 A. In the box review, correct.

22 Q. Okay. And so you also said that you knew that none of
23 this was occurring, in other words, you knew there was no
24 documentation; you knew they weren't maintaining the
25 machines; you knew they weren't doing these processes; you

1 don't know that; do you?

2 A. Well, I'm relying on the audit that was conducted by
3 MSP in October of 2012 where they explicitly state that none
4 of this stuff was present, none of this stuff was happening.

5 Q. But you don't have any direct knowledge of that?

6 A. I was not there, no.

7 Q. Okay. And so to say that it wasn't occurring, based on
8 your review of materials, and in regards to the lab, you're
9 basing that on the audit, not on your review of the
10 materials?

11 A. Well, I'm basing that on the audit, as well as the,
12 literally hundreds, if not thousands of other pages that
13 I've looked at, none of which included this stuff that
14 should be present, that was noted in the audit.

15 Q. In which you did not find a whole lot of helpful
16 information?

17 A. That was the box review. That's separate from all of
18 the different documents that have been provided to me over
19 the course of the last three plus years.

20 Q. Okay. Now, you talked about cocaine airborne
21 contamination. It's on gas pumps, it's on, I assume, dollar
22 bills, it's on door handles. Is that going to create a real
23 spiked peak on a GC-MS if it's just floating around in the
24 air? You're telling us it's just going to get in the vial
25 and all of a sudden you're going to have a nice pretty peak?

1 A. Yes, that's possible.

2 Q. Okay. And so that could happen in any lab, couldn't
3 it?

4 A. Yes.

5 Q. Okay. Now, you've read Sonja Farak's testimony from
6 the most recent Grand Jury, the updated Grand Jury, so in
7 other words 2015 and 2016?

8 A. I believe so, but I don't recall the specific dates.

9 Q. So you're aware for a period of about four or five
10 years she said she was taking meth oil, and using that to
11 get a great ten-hour high at work?

12 A. Yes, I remember her stating using the --

13 Q. And that was a standard, correct?

14 A. Yes.

15 Q. And that at a certain point that started to be depleted
16 or she was worried someone would notice so she started
17 moving to other standards, and eventually to police
18 submissions, correct?

19 A. That is what she said.

20 Q. Okay. And that she wasn't getting a good high from the
21 street drugs, the way that she was getting from the
22 standards because, as you know, as a great chemist,
23 obviously, those standards are almost in a pure form,
24 correct?

25 A. Yes. Those standards should be in a pure form, so that

1 would give you much better high.

2 Q. Okay. And so, wouldn't it make the most sense for her
3 to take the samples after they had been run through and she
4 knew what they were, if she wanted the best high, and she
5 wasn't going to use the standards anymore?

6 A. I don't know what Sonja Farak should of done, but it
7 wasn't what she did.

8 Q. And how do you know that?

9 A. It's not appropriate to steal drug evidence from cases
10 or to steal drug standards.

11 Q. Oh, no, I'm aware of that, obviously. My question to
12 you is, as someone who had been using standards for a period
13 of five or six years, said she got this great ten-hour high
14 and when she switched to street drugs, it wasn't giving her
15 a good high. Wouldn't it make the most sentence for her, as
16 a trained chemist, to take them from the end, when she knows
17 that's a great street drug?

18 A. She should never take it. I'm not going to say she
19 should of taken it before or after. She should of never
20 taken it.

21 Q. Fair enough.

22 Now, I believe in your original Grand Jury testimony
23 you said, and I quote, at the end of the day, the paperwork
24 cannot represent what a human being actually did to an item
25 of evidence.

1 Would you agree with that statement?

2 A. I never testified in a Grand Jury.

3 Q. I apologize, that would have been in this courthouse,
4 the 2013 hearing in front of Judge Kinder.

5 A. I don't recall exactly what I said, but I agree with
6 that statement.

7 Q. So at the end of the day, the paperwork cannot
8 represent what a human being actually did to an item of
9 evidence?

10 A. That is true.

11 MS. JOHNSTON: I have nothing further.

12 THE COURT: All set?

13 MR. RYAN: All set.

14 THE COURT: Thank you very much. You may step down.

15 THE WITNESS: Thank you, Your Honor.

16 (The witness stepped down.)

17 THE COURT: I am impressed. 4:05.

18 Okay. So I ask you to work with Ms. Cignoli regarding
19 setting up hearings, the individual hearings for January.

20 We have the deadlines that have been agreed on as to
21 the submission of briefs.

22 Anything else from this side?

23 (Pause)

24 THE COURT: Hearing nothing, anything else from this
25 side?

1 MS. JOHNSTON: No, Your Honor.

2 THE COURT: Hearing nothing, so, before I depart. I
3 want to thank all of you. And in large measure and in
4 significant chunks of these proceedings there's been
5 extraordinary cooperation between both sides, that really
6 has been exemplary and has gotten us this far down the road,
7 so thank you.

8 MR. RYAN: Thank you, Your Honor.

9 (The Court exited at 4:06 p.m.)

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