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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;<br>10-0253 |
| Glenda Aponte      | 12-0226                      |

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MOTION FOR NEW TRIAL  
BEFORE THE HONORABLE RICHARD J. CAREY

**APPEARANCES:**  
(see next page)

Hampden Superior Court  
50 State Street  
Springfield, Massachusetts  
December 12, 2016

ALICIA CAYODE KYLES  
Official Court Stenographer  
Registered Merit Reporter

**APPEARANCES:**

*For the Commonwealth:*

Office of The Attorney General Maura Healey:  
Assistant Attorney General Kim West  
Deputy General Counsel Judy Zeprun Kalman  
Assistant Attorney General Thomas A. Caldwell  
Assistant Attorney General Heather Valentine

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

*For the Defendants:*

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

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

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

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

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

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1 (The Court entered at 9:43 a.m.)

2 (The defendants were present.)

3 (The interpreter was not present.)

4 THE CLERK: Good morning, Your Honor.

5 Good morning, everyone. This is the criminal session  
6 for December 12, 2016, the Honorable Justice Richard Carey  
7 is presiding. I'm Assistant Clerk Lois Cignoli for the  
8 Court.

9 Matters before the Court are part of the Farak drug lab  
10 cases and include the Commonwealth vs. Erick Cotto, Docket  
11 07-770, represented by Attorney Rebecca Jacobstein.

12 Commonwealth vs. Jermaine Watt, respective Dockets  
13 09-1068 and 09-1069, represented by Attorney Rebecca  
14 Jacobstein.

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

17 Commonwealth vs. Omar Harris, Docket 10-1233,  
18 represented by Attorney Jared Olanoff.

19 Commonwealth vs. Wendell Richardson, Docket 12-399,  
20 represented by Attorney Jared Olanoff.

21 Commonwealth vs. Fiori Liquori, Docket 12-624,  
22 represented by Attorney Jared Olanoff.

23 The Commonwealth vs. Rolando Penate, Docket 12-83,  
24 represented by Attorney Jennifer Appleyard.

25 The Commonwealth vs. Omar Brown, Docket 05-1159,

1 represented by Attorney James McKenna.

2 The Commonwealth vs. Bryant Ware, respective Docket  
3 Numbers 07-1072, 09-1072, and 10-253, represented by  
4 Attorney James McKenna.

5 Commonwealth vs. Glenda Aponte, Docket 12-226,  
6 represented by Attorney James McKenna.

7 For the Commonwealth we have Assistant Attorney  
8 Generals Kim West, Thomas Caldwell, and Heather Valentine.

9 And Assistant District Attorneys Deborah Ahlstrom and  
10 Katharine Johnson.

11 Your Honor, for the record, an interpreter is not yet  
12 present and has been requested for this proceeding.

13 THE COURT: Good morning, everybody.

14 ALL COUNSEL: Good morning.

15 THE COURT: You may call your first witness.

16 MR. RYAN: Before we do that, Your Honor, can I be  
17 heard on a couple of administrative matters?

18 THE COURT: Sure.

19 MR. RYAN: First, I filed a motion for daily copy on  
20 Friday. I just would like to have that clarified for the  
21 record. I had wanted to make sure that the Commonwealth was  
22 aware that I was seeking daily copy, but I understand  
23 there's a statute that says that if the Commonwealth wants a  
24 copy, they have to pay \$1.50 a page. And I want to make  
25 sure that the stenographer is compensated for her work. So

1 I don't want your allowance of my motion to be misconstrued  
2 in any way that prevents the stenographer from getting what  
3 she's entitled to.

4 THE COURT: How do you come to knowledge of that  
5 statute?

6 MR. RYAN: The stenographer told me about it.

7 THE COURT: Okay.

8 MR. RYAN: Secondly, I was wondering if, for the  
9 hearing, if the Court would consider allowing the defendants  
10 to be cuffed in front.

11 THE COURT: Sure.

12 MR. RYAN: Third, in terms of the schedule today, we  
13 have four witnesses who we're prepared to call. The fourth  
14 of the witnesses, Attorney Frank Flannery, teaches a class.  
15 He apparently has a final exam to administer between one and  
16 two p.m. I'd proposed if we don't get to him before 12:30  
17 that we suspend until 2:15. I think we'll definitely be  
18 able to handle him in the afternoon if we do that.

19 THE COURT: Okay.

20 MR. RYAN: And then, to the extent that if we do finish  
21 with those four witnesses before the end of the court day, I  
22 think we have some administrative matters related to the  
23 admission of some exhibits in the form that they'll be  
24 before the Court that we could take up.

25 So I think we'll have a full day. We might not use it

1 from beginning to end with witnesses, but I suspect we'll  
2 get quite a bit accomplished.

3 THE COURT: Okay. Sure.

4 MR. RYAN: Thank you.

5 MR. OLANOFF: Randy Thomas.

6 THE COURT: Okay.

7 **(Randy L. Thomas, sworn)**

8 **DIRECT EXAMINATION BY MR. OLANOFF**

9 THE COURT: Good morning.

10 THE WITNESS: Good morning, Your Honor.

11 Q. (By Mr. Olanoff) Good morning.

12 A. Good morning.

13 Q. Can you please state your full name.

14 A. Randy L. Thomas.

15 Q. How are you employed?

16 A. I'm a State Trooper in the Mass. State Police assigned  
17 to the Attorney General's Office in Springfield.

18 Q. How long you have been a State Trooper?

19 A. For 16 and a half years.

20 Q. And how long have you been assigned to the Attorney  
21 General's Office here in Springfield?

22 A. Eight and a half years.

23 Q. And that is the division you were in in 2013?

24 A. Yes.

25 Q. Okay. And how long had you been in that division?

1 A. I'm sorry. How long have I been in that division?

2 Q. Yeah.

3 A. The whole eight and a half years I've been assigned to  
4 the Attorney General's Office.

5 Q. Now, in 2013, what was your rank?

6 A. Trooper.

7 Q. And who were your superiors?

8 A. Sergeant Joseph Ballou.

9 Q. And anyone else?

10 A. At the time, Detective Lieutenant Irwin -- Robert  
11 Irwin.

12 Q. And where were they located out of?

13 A. Sergeant Ballou is out of Springfield with me, and  
14 Detective Lieutenant Irwin, at the time, was in Boston.

15 Q. Okay. Now, drawing your attention back to January 18,  
16 2013, that's when the State Police began its investigation  
17 into the misconduct of Sonja Farak at the Amherst Drug Lab,  
18 correct?

19 A. Yes.

20 Q. And early on, Sonja Farak was the main person of  
21 interest in that investigation?

22 A. Yes.

23 Q. You were aware that on that date, the State Police had  
24 tried to interview her here in this courthouse?

25 A. Yes.



1 Q. And after that interview, the State Police asked her  
2 if -- for her consent to search her car?

3 A. Yes.

4 Q. And she refused, correct?

5 A. Correct.

6 Q. And so later on that day, you then applied for a search  
7 warrant to search her car, correct?

8 A. Yes.

9 Q. And that car was located in a parking garage nearby --  
10 near this courthouse, right?

11 A. Not while I was applying for the warrant. It had  
12 already been secured and it was in Northampton.

13 Q. Okay. And it was towed to Northampton to the  
14 Massachusetts State Police barracks, correct?

15 A. Yes.

16 Q. And on January 19th, so the following day, you then  
17 searched that vehicle, correct?

18 A. Yes.

19 Q. And the people that searched that vehicle were you,  
20 Lieutenant Robert Irwin, and Sergeant Joseph Ballou,  
21 correct?

22 A. Detective Lieutenant Robert Irwin but, yes.

23 Q. Okay. And that search took place at 3:23 a.m.,  
24 correct?

25 A. I'd have to see that in my report, but I believe that's

1 correct.

2 Q. Would it help refresh your recollection if I show you  
3 that report?

4 A. Yes.

5 MR. OLANOFF: Your Honor, may I display it?

6 THE COURT: Sure.

7 (Pause)

8 THE COURT: I would just ask you if it's an exhibit, if  
9 you can just reference the exhibit number.

10 MR. OLANOFF: Sure. I will do that, Your Honor.

11 That will be Exhibit 11, Your Honor.

12 THE COURT: Thank you.

13 Q. (By Mr. Olanoff) I don't know if you can -- you can  
14 see the screen?

15 A. I can, yes.

16 Q. Are you now refreshed as to when that search occurred?

17 A. Yes, 3:23.

18 Q. Now, 3:23 a.m., that wasn't your normal shift?

19 A. No.

20 Q. When was your normal shift?

21 A. 8:30 to 5:00.

22 Q. So you stayed awake that entire time before doing the  
23 search, correct?

24 A. Yes.

25 Q. The other detectives involved in this case, that wasn't

1 their normal shift either, correct?

2 A. Correct.

3 Q. And they had stayed awake the entire time at the  
4 office, correct?

5 A. I can't speak to what they were doing.

6 Q. Okay. And the reason the search took place at 3:23 in  
7 the morning, was because this was a high-priority  
8 investigation, correct?

9 A. That was my understanding.

10 Q. And the reason it was a high-priority investigation is  
11 because you were looking into the possible misconduct of a  
12 government employee, correct?

13 A. Yes.

14 Q. A government employee who was suspected of tampering  
15 with drug samples at the drug lab, correct?

16 A. That's right.

17 Q. Now, at the time you conducted this search, you were  
18 aware that four samples were either stolen or tampered with  
19 at the Amherst Drug Lab, correct?

20 A. Without seeing the exact report, I don't recall the  
21 exact number of samples that were tampered with, but I do  
22 know samples were tampered with.

23 Q. And Sonja Farak was your main suspect, correct?

24 A. Yes.

25 Q. Now, at that State Police barracks in Northampton, that

1 is where searches usually take place, correct?

2 A. They take place at various locations. In this case,  
3 that's where the car was secured, that's where it was  
4 searched.

5 Q. Well, you prefer to do it at the State Police barracks  
6 because that's where all of your investigation and tagging  
7 materials are, correct?

8 A. I don't know that I would say that.

9 Q. Then why did you take the car from Springfield and  
10 bring it to the barracks?

11 A. Yeah, I didn't seize the car, so I'm not sure of the  
12 reasoning for the officers that brought it there, so I can't  
13 speak to their reasoning for securing it and bringing it  
14 there.

15 Q. Okay. And do searches -- have other searches occurred  
16 at those barracks in the past?

17 A. I believe so.

18 Q. Okay. And where was the car brought specifically?  
19 Where did the search take place?

20 A. In a garage.

21 Q. Okay. And that garage was heated?

22 A. I don't recall if it's heated or not. It's underneath  
23 the State Police barracks so it's part of the State Police  
24 building. I don't recall if there's heat or not.

25 Q. Was it well lit?

1 A. Yes.

2 Q. You had evidence tagging materials with you, correct?

3 A. Yes.

4 Q. Like a camera?

5 A. We had a Crime Scene Services trooper there for that  
6 purpose to document it.

7 Q. You had evidence bags, correct?

8 A. Yes.

9 Q. You had markers, correct?

10 A. I believe so.

11 Q. And you had plenty of space to lay out all of the  
12 evidence that you took from the car, correct?

13 A. Yes.

14 Q. Now, you are trained in conducting searches, correct?

15 A. Yes.

16 Q. And searches should be done in systematic fashion,  
17 right?

18 A. I'd say that is fair to say, yes.

19 Q. And if we talk about that, that system, it's -- it  
20 would basically -- the first thing you would do is you take  
21 a photograph of the item when you -- as it is placed in the  
22 car, correct?

23 A. That a common practice. I can't say that it's an exact  
24 rule, that's a common practice that we use.

25 Q. And that's what happened in this case, correct?

1 A. I don't recall when the photos were taken.

2 Q. Okay. Well, are you telling us that items were removed  
3 before the photographs were taken?

4 MR. CALDWELL: Objection.

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

6 THE WITNESS: I don't recall.

7 Q. (By Mr. Olanoff) Okay. Now, it's fair to say -- well,  
8 going back to the process. You -- preferable to photograph  
9 it, then you removed the item from the car, correct?

10 A. Okay. Yes.

11 Q. You determine what it is?

12 A. Yes.

13 Q. You put it in an evidence bag?

14 A. Typically, unless you need to discuss it with another  
15 officer.

16 Q. Okay. And so there is discussion before tagging it,  
17 correct?

18 A. Sometimes. Depends what you found.

19 Q. If you don't know what it is maybe?

20 A. It's not clear what it is?

21 Q. If you -- if it looks like it's something really  
22 important, you may discuss it with a fellow officer,  
23 correct?

24 A. Yes.

25 Q. And then it's put into a bag, correct?

1 A. Usually, if it will fit into a bag. Typically, yes.

2 Q. The bag is labeled.

3 A. Yes.

4 Q. And then you make a record of it on some piece of  
5 paper, correct?

6 A. Yes.

7 Q. And that record consists of what the item is, correct?

8 A. Right.

9 Q. And what the number is that you assigned to it,  
10 correct?

11 A. Yes.

12 Q. Now, when you're doing a search, it's important to  
13 search whatever you are searching thoroughly?

14 A. Correct.

15 Q. And as we just said, it's important to document all of  
16 these items, anything that you find, correct?

17 A. Yes.

18 Q. Now, it's fair to say that when you first look at an  
19 item, you may not really understand or know its  
20 significance. But later on, it may become significant. You  
21 just don't know it at the time, correct?

22 A. That does happen, yes.

23 Q. And that's why it's critically important to seize the  
24 item, identify it, and then tag it as evidence, correct?

25 A. If you're able to identify it.

1 Q. Okay. Now, on January 19, 2013, at 3:23 a.m., you  
2 recovered several items from Ms. Farak's personal vehicle,  
3 correct?

4 A. Yes.

5 Q. And it's fair to say that you seized every removable  
6 item from her car, correct?

7 A. I wouldn't say that.

8 Q. There -- so you're saying there were items that you did  
9 not take from her car?

10 A. I believe so.

11 Q. There were items that you left behind?

12 A. I believe so, as I'm sitting here.

13 Q. Do you happen to remember what any of those items were  
14 that you did not tag as evidence?

15 A. Not specifically but, I mean, we found, I don't know,  
16 personal items, tissues or chapstick or loose change,  
17 something like that. I'm not sure perhaps that would have  
18 not been tagged and seized.

19 Q. What about receipts, things like that maybe would not  
20 have been tagged?

21 A. Depends what it was. I mean, we follow what the search  
22 warrant authorizes us to search for. It was outlined in the  
23 search warrant what we're authorized to take. If you want  
24 to put it up there, I can take a look at it. But I know  
25 it's articulated there what we're authorized to take. So



1 anything that fits within that scope is what we would have  
2 seized.

3 Q. Okay. I will do that then.

4 (Pause)

5 MR. OLANOFF: Your Honor, this is Exhibit 172 that's  
6 been marked and agreed on.

7 THE COURT: Okay. Thank you.

8 MR. OLANOFF: 176, Your Honor, I'm sorry.

9 THE COURT: Okay.

10 Q. (By Mr. Olanoff) So this is a obviously document  
11 called ServiceNet Diary Card, correct?

12 A. Correct.

13 Q. And you recovered this from Sonja Farak's vehicle,  
14 correct?

15 A. I don't recall that.

16 Q. You've never seen this before?

17 A. I don't recall seeing that.

18 Q. So it's fair to say that you weren't the person who  
19 took this from the car, you didn't seize it?

20 A. It's not fair to say that. I don't recall -- I don't  
21 recall this item.

22 Q. You've never looked at this item before?

23 A. I don't recall seeing this item before. It was four  
24 years ago, so I don't recall, sorry.

25 Q. Okay. Well, four years ago would have been 2012.

1 A. Four years ago next month.

2 Q. Okay. And so, who did -- so, who did find this piece  
3 of evidence?

4 A. I don't know.

5 Q. Did anyone consult you about it?

6 A. I don't recall.

7 Q. Did anyone show it to you?

8 A. I don't recall.

9 Q. Did you have any discussions about this piece of  
10 evidence any time after this search?

11 A. I don't recall that.

12 Q. So it's fair to say what your testimony is, right now,  
13 that this is the first time you've ever seen this document,  
14 correct?

15 A. That's the first time I recall seeing this. I've no  
16 memory of this document.

17 Q. What do you mean it's the first time you recall seeing  
18 this document? Is this the first time you've seen this  
19 document, yes or no?

20 MR. CALDWELL: Objection.

21 THE COURT: Sustained. If he doesn't recall, he  
22 doesn't recall.

23 Next question.

24 MR. OLANOFF: All right.

25 Q. (By Mr. Olanoff) Now, you wrote the search warrant

1 application in this case, correct?

2 A. Yes.

3 Q. And you also wrote the search warrant return in this  
4 case, correct?

5 A. Yes.

6 Q. Now, I'm going to show you some other documents that  
7 have been marked within the same exhibit. This is titled an  
8 Emotion Regulation Worksheet. Have you seen this document  
9 before?

10 THE COURT: What's the number?

11 MR. OLANOFF: It's the same exhibit, Exhibit 176, Your  
12 Honor.

13 THE WITNESS: I don't recall that document.

14 Q. (By Mr. Olanoff) So today here in court, this is the  
15 first time that you've seen this document, correct?

16 A. I believe so.

17 Q. Okay. This page, as well, page two, titled Emotion  
18 Regulation Worksheet with what appears handwriting. Is this  
19 the first time you've seen this document?

20 A. Yes. I don't recall this.

21 Q. What about this page also within Exhibit 176. This is  
22 page three. Have you seen this document before in your  
23 life?

24 A. I don't recall seeing this.

25 Q. Well, same thing for this page?

1 (Pause)

2 THE WITNESS: Could you leave it there, please. I'm  
3 just reviewing it.

4 Q. (By Mr. Olanoff) Sure.

5 A. Thank you.

6 (Pause)

7 THE WITNESS: No, I don't recall that.

8 Q. (By Mr. Olanoff) Nobody showed that document to you at  
9 any time?

10 A. I don't recall that. I'm not saying it didn't happen.  
11 I don't recall that.

12 Q. Okay. No one ever sent you an email with these  
13 documents included in them?

14 A. Not that I recall.

15 Q. Sergeant Ballou never told you that these documents  
16 existed?

17 A. Later on he did mention that there were some items that  
18 were found that we had seized that were of concern.

19 Q. When was that?

20 A. It certainly wasn't that day or the next day. I'd be  
21 guessing, but I would say it was, I don't know, a matter of  
22 days or weeks later. I'm not sure.

23 Q. And the matter of concern was that Sergeant Ballou had  
24 some documents that talked about -- well, that Sonja Farak  
25 purportedly admitted to using drugs at the lab, correct?

1 MR. CALDWELL: Objection.

2 THE COURT: You can answer it if you feel you can.

3 THE WITNESS: I don't recall when he said we had some  
4 documents, what they were relevant to exactly.

5 Q. (By Mr. Olanoff) He didn't send those to you in an  
6 email?

7 A. Not that I recall.

8 Q. Okay. What were the documents that he told you that  
9 were of concern?

10 A. I believe it was about her mental health.

11 Q. What was it about her mental health?

12 A. I don't -- I don't know.

13 Q. Now, I'm showing you a second ServiceNet Diary Card.  
14 You have not seen this either?

15 A. Yeah, I don't recall seeing that before.

16 Q. The one with the name Sonja at the top?

17 A. Same answer. I don't recall seeing that.

18 Q. So what was your role then when you're in the State  
19 Police barracks searching this car?

20 A. So, we're executing a search warrant within the  
21 parameters of the items that we're authorized by the warrant  
22 to seize. We are to secure anything that is clearly  
23 relevant, possibly relevant.

24 Q. I'm going to cut you off there. What did you do? What  
25 were you doing?

1 A. I was searching.

2 Q. What did you look -- what were you searching for?

3 Actually, strike that.

4 What did you take from the car?

5 A. I'd have to see the evidence sheet. I can't recall  
6 exactly what I took that day.

7 Q. Okay.

8 A. So our job is to secure any evidence or possible  
9 evidence and take it back to our facility and then it will  
10 be reviewed more thoroughly off-site later on.

11 Q. Okay. And whose job is it to review things off-site  
12 later on?

13 A. Depends. Sometimes a case officer, sometimes the case  
14 officer may ask for help.

15 Q. So you had no part in reviewing this evidence once it  
16 was taken from the car, correct?

17 A. I don't recall helping with that.

18 Q. Okay. So I'm showing you your search warrant return.  
19 You wrote this, correct?

20 A. Yes.

21 Q. And you filed the -- again, the search was on the 19th  
22 and you filed this on January 23, 2013, correct?

23 A. If you show me it's on there, I don't recall the date.

24 Q. Do you see the date there?

25 A. Yes.

1 Q. Okay. So that was -- you filed this four days after  
2 the search, correct?

3 A. Yes.

4 Q. Now, you list -- now, you typed this out on a computer,  
5 correct?

6 A. Yes.

7 Q. You didn't use one of the standard forms that's on the  
8 back of the search warrant, correct?

9 A. Right. This is a digital form that we have used.

10 Q. Okay. And, basically, what you do is you list the  
11 items that you found by number, correct?

12 A. Yes.

13 Q. And so for number one, you put one Manila envelope with  
14 a bunch of letters and numbers containing evidence bag and  
15 unknown paper, correct?

16 A. Yes.

17 Q. Two, one envelope for Jim Hanchett, right?

18 A. Yes.

19 MR. OLANOFF: I'm sorry, Your Honor, this is Exhibit  
20 172.

21 THE COURT: Thank you.

22 Q. (By Mr. Olanoff) Now, when you get to items four and  
23 five and eight, they all say assorted lab paperwork,  
24 correct?

25 A. Yes.

1 Q. What kind of assorted lab paperwork was included in  
2 those?

3 A. I don't recall without seeing the evidence.

4 Q. Well, did you bring the evidence with you today?

5 MR. CALDWELL: Objection.

6 THE COURT: It's a question.

7 THE WITNESS: No.

8 Q. (By Mr. Olanoff) Were you asked to bring -- were you  
9 told to bring the evidence in today?

10 A. No.

11 Q. Okay. So that number four, assorted lab paperwork,  
12 whose idea was it to write "assorted lab paperwork"?

13 A. It's a common practice we use with search warrants when  
14 we have voluminous documents, to be able to secure that and  
15 get away from the scene, so that it can be reviewed more  
16 thoroughly later.

17 Q. Okay. So, when you say this was "a common practice", a  
18 common practice used by whom?

19 A. By police officers at search warrants, and I've been on  
20 multiple search warrants.

21 Q. Okay. In this case, why did you use the words  
22 "assorted lab paperwork"?

23 A. The car was full of paperwork and junk and garbage and  
24 it was completely a mess, completely full of stuff,  
25 including paperwork.



1           It would have been unreasonable, at the time, to go  
2 through in a detailed manner each piece of paper in that  
3 vehicle and evaluate its importance, especially if you don't  
4 necessarily have a lot of -- you're not the case officer, et  
5 cetera.

6           So we secure it. And sometimes multiple pieces of  
7 paperwork, in this case, are secured and given assorted lab  
8 paperwork because it looked to us at first look it was lab  
9 paperwork and that's why it was titled as such and it was  
10 secured.

11       Q. Did you actually look at these items before you called  
12 them assorted lab paperwork?

13       A. Yes.

14       Q. And so it's fair to say then that you did -- that you  
15 went through these papers and came up with the phrase  
16 "assorted lab paperwork", correct?

17       A. Not necessarily. I may have titled some of them those.  
18 The other two officers searching may have handed me a bag  
19 full of items and said this is assorted lab paperwork that I  
20 found in a particular part of the vehicle. And so I would  
21 of written it down as evidence the way they told me it  
22 should be documented.

23       Q. Okay. So what you're saying is, when you write down  
24 "assorted lab paperwork" on your search warrant return, you  
25 may not have ever seen what was seized, correct?

1 A. I probably did not go through it in detailed fashion  
2 before the warrant return was done, yes.

3 Q. Okay. So you take someone else's word if they hand you  
4 a bag of evidence and they say this is assorted lab  
5 paperwork, you take their word for it, correct?

6 A. Police officer at the scene, yes, I do.

7 Q. All right. And that's what you did for number four,  
8 correct?

9 A. I can't say which number it was, mine or if you show me  
10 something that shows that I seized a particular number, I  
11 can say that.

12 Q. Well, what's the difference between number four and  
13 number five?

14 A. Probably just packaging. Only so much fits into a  
15 paper bag or an evidence bag and it's full and we have more  
16 of it then that's probably why there's more than one item as  
17 assorted lab paperwork.

18 Q. Okay. Now, when you go to for example Number 11,  
19 Number 11 says: One envelope, A11 01848-01849 to Joseph  
20 Wentworth, Northampton District, ADA Michael Russo,  
21 containing assorted lab paperwork and positive morphine  
22 test.

23 You wrote that, correct?

24 A. Yes.

25 Q. Now, that one is really detailed, you would agree,

1 right?

2 A. Yes.

3 Q. Now, so what -- what you did do is you went through  
4 those items and found out what paperwork was included in  
5 there, correct?

6 A. No. I believe that's detailed because that was an  
7 envelope that was marked, as it is in the quotations. It  
8 appeared to be a case, a criminal or civil case envelope.  
9 That's why it was singled out. It's clearly important and  
10 relevant that it's in her personal vehicle.

11 Q. That last one there, positive morphine test, that was a  
12 single document, correct?

13 A. I don't know. I don't recall.

14 Q. Okay. Now, did someone tell you to write this down or  
15 did you just do it on your own?

16 A. I don't recall on that item.

17 Q. Okay. It's fair to say that the level of detail that  
18 you have in number eleven, is not the same as the level of  
19 detail you have in four, five and eight, correct?

20 A. Can I see it, please?

21 (Pause)

22 THE WITNESS: That's correct.

23 Q. (By Mr. Olanoff) Now, nowhere in your search warrant  
24 return do you ever mention that you find any personal  
25 papers, correct?

1 A. Can you scroll through that, please?

2 (Pause)

3 THE WITNESS: Can you go back up to 11, please?

4 Q. (By Mr. Olanoff) Sure.

5 A. Thank you.

6 (Pause)

7 THE WITNESS: Okay. The certificate of registration I  
8 would consider personal paperwork, if you will, but other  
9 than that I don't see anything else listed there.

10 Q. (By Mr. Olanoff) But what about the words "personal  
11 papers"?

12 A. I didn't see that as just reviewed there.

13 Q. Okay. Now, in your training, is that a set of words  
14 that is used to describe random paperwork coming from a  
15 personal vehicle?

16 A. Sometimes.

17 Q. Okay. And are you testifying here that you didn't find  
18 any personal papers in her car?

19 A. I'm testifying I don't recall, at the time, seizing any  
20 personal paperwork that I saw. If we did, we definitely  
21 would of articulated that. There's no reason not to.

22 Just like number -- the one with the case envelope,  
23 that clearly is more identifiable, clearly relevant to the  
24 case. Therefore we give it its own item and we use as much  
25 detail as possible.

1           If we found personal paperwork that we noticed was  
2 relevant to this case, it certainly would not be under  
3 sorted paperwork. It would have been articulated for what  
4 it was.

5 Q.    Okay. And so, as you sit here today, you don't know if  
6 Lieutenant Irwin told you to call these items "assorted lab  
7 paperwork"?

8 A.    I don't know.

9 Q.    You don't know if Sergeant Ballou was the one who told  
10 you to call these items "assorted lab paperwork"?

11 A.    That's right. I don't know.

12 Q.    Now, you wrote a police report in this case, correct?

13 A.    Yes. Search warrant execution report.

14 Q.    And that is Exhibit 11. Your police report is three  
15 pages, correct?

16 A.    I believe so.

17 Q.    And this is -- you type out in a Microsoft Word  
18 document, correct?

19 A.    Yes.

20 Q.    So it could have been longer if you wanted it to,  
21 right?

22 A.    Yeah, yes.

23 Q.    And you wrote this on January 24, 2013, correct?

24 A.    Yes.

25 Q.    So that was five days after the search, correct?

1 A. That's when the final document was dated. It has auto  
2 dating so I could of written it the next day and after I  
3 reviewed it, made sure it was good to go, then it may have  
4 filled in the auto date of January 24th.

5 Q. Now, did you go through the evidence that was seized  
6 from her car, prior to writing your police report?

7 A. I'm not sure. I'd like to look at the report.

8 Q. Okay. By the way, the whole purpose of this report is  
9 to talk about your search of the car, correct?

10 A. That we executed a search warrant, yes, and what we  
11 found.

12 Q. And to also talk about the items that are found,  
13 correct?

14 A. Yes.

15 Q. And this appears to be an -- it's just a cut and paste  
16 job from the search warrant return, correct?

17 A. I don't know if that's true, but it looks like -- you  
18 went by pretty fast. It looks like it is the same items  
19 listed the same way as the return.

20 (Pause)

21 Q. (By Mr. Olanoff) I'm going to -- you literally cut and  
22 pasted the search warrant return and put it in your police  
23 report, correct?

24 A. I don't recall if I did that, but it is the same.

25 Q. So, it's fair to say that you did not review the

1 documents that were in the assorted lab paperwork prior to  
2 writing your police report, correct?

3 A. I would say that's probably true.

4 Q. Are you aware if anyone reviewed those documents prior  
5 to writing your police report?

6 A. They did review in more detail. Like I told you,  
7 Sergeant Ballou did. I don't know who else did. I don't  
8 recall taking part in that, and I don't know the timing of  
9 when they found that paperwork.

10 Q. Okay. Did Sergeant Ballou -- before you submitted your  
11 report, did you have Sergeant Ballou review it?

12 A. Typically he reviews all of my reports, especially a  
13 return like this, yeah.

14 Q. Okay. And, again, nowhere in your police report do you  
15 make any mention of ServiceNet Diary Cards, Emotion  
16 Regulation Worksheets, anything of the sort, correct?

17 A. Can you scroll down to the items for me please, before  
18 I answer?

19 (Pause)

20 THE WITNESS: That's correct.

21 Q. (By Mr. Olanoff) And nowhere in here, again, do we  
22 ever see the words "personal papers", correct?

23 A. That's correct.

24 Q. Now, Sergeant Ballou, now you knew that he kept a file  
25 in this case, correct?

1 A. I don't know where the case file was. This was a joint  
2 case with Boston and the main case file may have been in  
3 Boston. I don't recall.

4 Q. Okay. But he had a copy of everything, correct?

5 A. I don't know that.

6 Q. You never looked at his file?

7 A. No.

8 Q. Okay. But you knew that he was in charge of producing  
9 all of this evidence for the Attorney General, correct?

10 A. Yes.

11 Q. Okay. Now at some point, you said Sergeant Ballou came  
12 to you and told you that there was some documents of concern  
13 they found in her car, correct?

14 A. Yes.

15 Q. And to this day, you don't know what those documents  
16 were, correct?

17 A. As I stated before, I know they're psychological  
18 documents.

19 Q. Okay. And that's -- the only way you know they were  
20 psychological documents is that's what someone told you,  
21 correct?

22 A. That's right.

23 Q. No one ever told you that there were admissions of drug  
24 use in those documents in her car, correct?

25 A. I don't recall.



1 Q. You don't recall?

2 A. I don't recall.

3 Q. And did you have any role in addressing this concern  
4 about these records?

5 MR. CALDWELL: Objection.

6 THE COURT: No, you can answer it if you feel you can.

7 THE WITNESS: Can you give me an example what you mean  
8 for a role, I mean --

9 Q. (By Mr. Olanoff) So when Sergeant Ballou tells you we  
10 have some concern about some psychological records we found  
11 in her car, what do you do?

12 A. If he asked me to do something to assist, then I do  
13 something to assist. I don't recall doing anything to  
14 followup on this personally. I'm not saying it didn't  
15 happen. But I don't have a recollection of doing follow-up  
16 work on that other than hearing that there were some  
17 documents.

18 Q. Okay. After your search of the vehicle, there were a  
19 number of emails that were sent back and forth between the  
20 State Police and the Attorney General's Office, correct?

21 A. I heard that.

22 Q. And you have an email address with the State Police,  
23 correct?

24 A. Yes.

25 Q. And oftentimes you would be -- some of the emails would

1 be addressed to you, correct?

2 A. Yes.

3 Q. And other times they would be addressed -- you would be  
4 cc'd, correct?

5 A. Right.

6 Q. And the emails had to do with the search of her car,  
7 correct?

8 A. Which emails are you talking about?

9 (Pause)

10 Q. (By Mr. Olanoff) Okay. This is an email dated  
11 January 23, 2013, at 8:38 a.m.

12 THE COURT: Is that an exhibit?

13 MR. RYAN: It's not.

14 MR. OLANOFF: Not yet. I think it will be, Your Honor.

15 THE COURT: Okay.

16 Q. (By Mr. Olanoff) This is an email sent from John  
17 Verner to Joseph Ballou and Anne Kaczmarek, and you're cc'd,  
18 correct?

19 A. Yes.

20 Q. And this email, the subject line is "search warrant for  
21 Farak's duffle bag." Do you remember seeing this email?

22 A. Just give me a moment to look through it.

23 Q. Sure.

24 (Pause)

25 THE WITNESS: I recalled there was going to be a search

1 warrant written for the duffle bag now that I read it there.  
2 I don't -- this email is not familiar to me. Obviously, I  
3 was cc'd on it, and would have received it, but I don't have  
4 recollection as to the details that I'm reading.

5 Q. (By Mr. Olanoff) All right. So, what was going on  
6 here is the State Police were trying to get a search warrant  
7 to search Sonja Farak's duffle bag, correct?

8 A. That's what looks like.

9 Q. And this bag was found at her lab work station when the  
10 police searched the lab, correct?

11 (Pause)

12 THE WITNESS: I'm just trying to find that.

13 I see about the items found at her desk, but I don't  
14 see about the duffle bag was there. Maybe it is, I just  
15 don't see it. It's hard to read from back here.

16 Q. (By Mr. Olanoff) Now, you participated in applying for  
17 a search warrant to search the duffle bag, correct?

18 A. I'm not sure if that was me or not.

19 Q. Did you assist in any way in getting that search  
20 warrant?

21 A. I don't know. Could you show me the search warrant for  
22 that?

23 Q. Well, I don't want to leave this.

24 A. I don't recall who filed for that search warrant, if it  
25 was me or someone else. I'm not sure.

1 Q. Okay. I want to just bring your attention to number  
2 three, where Verner says, in the second sentence: I would  
3 add all that was found, including the papers. The fact that  
4 all this stuff was found in her car leads credence to our  
5 proposition that stuff will be found in the bag. Most is in  
6 there, but we found personal papers, drug test results  
7 pertaining to an unknown or do we know person.

8 So, do you remember reading this email?

9 MR. CALDWELL: Objection.

10 THE COURT: Sustained.

11 Q. (By Mr. Olanoff) At any time does this -- does this  
12 email cause you to question whether -- whether personal  
13 papers were in her car?

14 MR. CALDWELL: Objection.

15 THE COURT: Sustained.

16 Let's -- let me educate myself a little bit here.

17 Am I correct that there were -- there was a document or  
18 a series of documents that were psychological records of  
19 Ms. Farak that indicated that her drug use started much  
20 earlier than previously anticipated; is that accurate?

21 MR. OLANOFF: Yes.

22 THE COURT: And that paperwork consisted of  
23 approximately how many pages?

24 MR. OLANOFF: Six or seven. We just had them up on the  
25 screen a minute ago.

1 THE COURT: Six or seven pages collected together?

2 MR. OLANOFF: Yes.

3 THE COURT: And they were -- were they all

4 psychological records of Ms. Farak?

5 MR. OLANOFF: They -- yeah. They all had the -- my  
6 understanding is they were all together.

7 THE COURT: Okay. I'm just trying to --

8 MR. OLANOFF: No, no, no, I'm just trying to think of  
9 what my understanding is. Yeah, that they were all together  
10 in this box. You know, they are in this -- they are just  
11 papers.

12 THE COURT: And those six pages really are the focus of  
13 the allegation of prosecutorial misconduct; is that  
14 accurate?

15 MR. OLANOFF: Correct.

16 THE COURT: And those papers were found in one of the  
17 three bags, or whatever they may be placed in, that were  
18 labeled "assorted lab paperwork".

19 MR. OLANOFF: Correct.

20 THE COURT: And do we know which one?

21 MR. OLANOFF: Four.

22 THE COURT: So in number four. So on that list, number  
23 four they were found in.

24 And so, those -- those were -- the six-page document,  
25 was the document that the defense alleges was not turned

1 over to Mr. Ryan until a year later?

2 MR. OLANOFF: Right.

3 THE COURT: So that's the focus of my interest and  
4 that's the focus I think of what the relevant testimony will  
5 be for what it's worth.

6 MR. OLANOFF: Right. And that's what I'm focusing on  
7 here just -- yeah, okay. So I'll jump ahead.

8 Q. (By Mr. Olanoff) Did you respond to Verner when he was  
9 asking for help in drafting this search warrant application?

10 A. I don't recall.

11 Q. You don't remember if you read the email or responded  
12 to it, correct?

13 A. That's correct.

14 I would just like to add I'm sure that I read the  
15 email, but I don't have a recollection as to the details of  
16 it or what I did to followup with Verner or not.

17 Q. Do you remember anything in the email peeking your  
18 interest?

19 A. What do you mean by that?

20 Q. Is there anything --

21 A. Do you mean recalling? Does it look familiar to me?  
22 Is that what you mean?

23 Q. Well, no. On this particular date, January 25th, the  
24 day that Verner sends this email out, had you -- had Ballou  
25 told you about those documents of concern that were taken

1 from the car?

2 A. I don't recall the time frame when Sergeant Ballou did,  
3 but clearly that's -- somebody had reviewed the evidence  
4 more thoroughly, found the paperwork, now Verner was  
5 following up with us. So I don't know when Sergeant Ballou  
6 told me whether it was before that email, during that email,  
7 after that email. I don't know.

8 Q. Okay. This is an email not yet in evidence.

9 February 15, 2013, you were cc'd again on this email,  
10 correct?

11 A. Yes.

12 Q. And it's from Joseph Ballou. He's writing to Anne  
13 Kaczmarek, correct?

14 A. Yes.

15 Q. And he's asking Anne, if there's a Grand Jury this  
16 Thursday for the Farak case and if you need someone, to  
17 reach out to Randy Thomas, correct?

18 A. Correct.

19 Q. You were designated as the person who was going to  
20 testify before the Grand Jury regarding the search of the  
21 car, correct?

22 A. That's not what that necessarily means. Typically we  
23 have a trooper go with the prosecutor in case they need  
24 anything. That does not necessarily mean that I would be  
25 testifying. It's actually unlikely that's what that email

1 means.

2 Q. Okay. But Ballou wasn't going to be the person going  
3 to Boston, right?

4 A. He's saying to reach out to me. That means he must  
5 have been unavailable for some reason.

6 Q. Okay. In receiving this email --

7 A. Excuse me.

8 Q. -- you looked at what came before it, correct?

9 So underneath this email, is a section where Ballou  
10 wrote to Kaczmarek on February 14, 2013, do you remember  
11 reading this email?

12 MR. CALDWELL: Objection.

13 THE COURT: Sustained. These are emails not from him  
14 or to him or -- I'm having a hard time.

15 MR. OLANOFF: Your Honor, I'm sorry to interrupt. He  
16 got this. This is in the email that he got.

17 Q. (By Mr. Olanoff) So here's page one of your email in  
18 which you're cc'd by Ballou to reach out to Randy Thomas,  
19 and then right underneath it is Ballou's email to Kaczmarek.

20 So as you read the email that Ballou sent to Kaczmarek,  
21 did you see this?

22 A. Were these photocopied or is this a definite string?

23 Q. This is --

24 A. All of these are definitely a string together?

25 Q. This is a string.



1 MR. CALDWELL: Your Honor, I would object.

2 I think it's unclear, very unclear.

3 THE COURT: Well, Trooper, you can read it. And if you  
4 feel you can answer it, you can answer it. If you feel that  
5 you can't, you don't have to.

6 THE WITNESS: Okay. Yes, Your Honor.

7 (Pause)

8 THE WITNESS: I don't recall reading that email.

9 Q. (By Mr. Olanoff) Okay. So you never saw those  
10 documents that Ballou sent to Kaczmarek about the forms with  
11 the admissions of drug use, correct?

12 A. I may have seen it at some point in the length of the  
13 investigation, but I don't know exactly when.

14 Q. Okay. Did you testify at the Grand Jury in Boston in  
15 the case against Sonja Farak?

16 A. I'm not sure. I don't recall.

17 Q. Now, this is an entry from your calendar. Do you  
18 recognize this?

19 A. Yes, I see what it is.

20 Q. You're the organizer, right?

21 A. Yes.

22 Q. And you organized to go to the Suffolk Superior Court  
23 in Boston --

24 A. Uh-huh.

25 Q. -- for the Farak Grand Jury, correct?

1 A. Right.

2 Q. In fact, it says: Thomas Farak Grand Jury; correct?

3 A. That's right.

4 Q. And also, now, the prosecutor who is in charge of  
5 presenting the case to the Grand Jury was Anne Kaczmarek,  
6 correct?

7 A. I believe so.

8 Q. And you -- I'm sure you met with her before you went on  
9 the witness stand, correct?

10 A. Is this the same date that Sergeant Ballou said to  
11 reach out to somebody if you need something?

12 Q. This is February 21, 2013. That's the date that you  
13 scheduled to go to Boston to testify at the Grand Jury.

14 A. Right. But because I was scheduled to go to Grand Jury  
15 in Boston does not necessarily mean I testified. Like I  
16 explained before, sometimes we send an officer involved in a  
17 case to go with the prosecutor in case questions come up or  
18 they need something else.

19 So I just looking at this calendar event, that looks  
20 like it was created by me and I went to Boston, I don't know  
21 if that was testimony or just to be there with the  
22 prosecutor.

23 Q. Okay. And did you speak with the prosecutor -- well,  
24 do you remember going to Boston?

25 A. I don't have an individual memory of that, no.

1 Q. You don't have a memory of speaking to Anne Kaczmarek?

2 A. I have multiple times. I don't know about on this  
3 date.

4 Q. Okay. And at some point, did you have a conversation  
5 with Anne Kaczmarek about these records of concern, as you  
6 called them?

7 A. I don't recall ever speaking to her about it. I know  
8 Sergeant Ballou did. But I don't recall having a  
9 conversation with her. Doesn't mean that I didn't, but I  
10 don't remember doing that.

11 Q. And do you remember the result of the conversation as  
12 to what would be done with the records that were -- in which  
13 contained admissions of drug use?

14 A. Whose conversation?

15 Q. Do you remember what the result was -- did Sergeant  
16 Ballou ever tell you what was going to happen with those  
17 records?

18 MR. CALDWELL: Objection.

19 THE COURT: Sustained.

20 Sergeant Ballou is not testifying, right?

21 Oh, he is.

22 Sustained.

23 Q. (By Mr. Olanoff) Did you have any part in keeping  
24 these records from the Attorney General?

25 A. Keeping them from the Attorney General, what do you

1 mean by that?

2 Q. Did you have any part in not turning these over to the  
3 Attorney General?

4 A. Did I withhold any evidence from turning it over to the  
5 prosecutor? Is that what you are asking me?

6 Q. Right.

7 A. No.

8 Q. Do you know when the evidence was turned over to the  
9 Attorney General?

10 A. To the prosecutor Anne Kaczmarek, I don't know.

11 Q. Do you know what was turned over?

12 A. Well, it would have been everything that we seized, I  
13 would believe. I don't recall giving her -- it was probably  
14 Sergeant Ballou that produced the evidence we seized for  
15 her.

16 I'm not sure -- I can't say for sure that it was him  
17 that gave it to her, and if he gave her everything. I'm  
18 sure it's common practice, of course, the prosecutor wants  
19 to see everything we took, and they look over it thoroughly  
20 and so we -- at a later date, I don't know.

21 Q. Okay. I'm going to show you what's been marked Exhibit  
22 5B. Do you recognize this?

23 A. That seems vaguely familiar.

24 Q. Vaguely familiar?

25 A. Vaguely familiar that a pharmacist, a Pittsfield

1 pharmacist was stealing something with drugs. Yeah, that's  
2 vaguely familiar to me.

3 Q. I'm talking about the document itself. Do you remember  
4 when this was found in the back of her trunk?

5 A. No.

6 Q. No one told you about this article that was found in  
7 Sonja Farak's trunk?

8 A. Not that I recall.

9 Q. Okay. Same thing for this one here, do you remember  
10 this online news article being found in the back of Sonja  
11 Farak's trunk?

12 A. No.

13 MS. JOHNSTON: What exhibit is that?

14 MR. OLANOFF: 5C.

15 Q. (By Mr. Olanoff) Exhibit 5D, do you remember this  
16 online news article being found in Ms. Sonja Farak's car?

17 A. No.

18 Q. Had you ever seen these documents before?

19 A. Not that I recall.

20 Q. Okay. So no one came to you and submitted these to you  
21 and said, hey, we have something interesting here?

22 A. I don't recall that.

23 Q. In your search warrant return, do you make any -- is  
24 there any mention of online news articles?

25 A. To be 100 percent sure, I'd like to see it again, but I

1 don't recall anything about online news articles on there.

2 (Pause)

3 THE WITNESS: Can I just see number 12, please?

4 Q. (By Mr. Olanoff) Sure.

5 A. Thank you.

6 I don't see anything about online news articles listed  
7 specifically, no.

8 Q. And had you -- is today the first time you're seeing  
9 those online news articles?

10 A. I can't say that. I may have seen them in the past. I  
11 don't have a recollection, as I'm sitting here today of  
12 seeing them before.

13 Q. Okay. Now how were these online news articles  
14 identified in the search warrant return?

15 A. I don't know.

16 Q. Are they assorted lab paperwork?

17 A. Those online news articles, were they seized?

18 They were definitely seized from the car?

19 Okay. Then I would say that it would be fair to say  
20 that they would have been in with the assorted lab paperwork  
21 mixed in.

22 Q. Is it also fair to say you did not look through any of  
23 those articles or any of those documents? Someone just --  
24 is this a situation where someone just told you to write  
25 down assorted lab paperwork for those items?

1 MR. CALDWELL: Objection.

2 THE COURT: You can answer if you feel you can.

3 THE WITNESS: Can you repeat the question?

4 Q. (By Mr. Olanoff) Sure. Why are those items labeled  
5 assorted lab paperwork, if you know?

6 A. Those particular items?

7 Q. Yup.

8 A. I don't know.

9 Q. Now, I'm showing you what's been marked Exhibit 175.  
10 Do you know what these are?

11 A. I don't.

12 Q. Did you find any clear unused baggies with the initials  
13 JH on them?

14 A. I don't recall.

15 Q. And anywhere on your search warrant return, did you  
16 write that you found baggies with Jim Hanchett's initials on  
17 them?

18 A. I saw Jim Hanchett articulated there. I don't recall  
19 which envelope for Jim Hanchett.

20 Q. And were those baggies in that envelope?

21 A. I don't know.

22 Q. Well, the envelope says "for Jim Hanchett," correct?  
23 That's what it is written on it, correct?

24 A. That's true. Yes.

25 Q. But you don't know where on here those baggies would

1 be, correct?

2 A. No, I don't.

3 Q. You also found a piece of paper or envelope where  
4 Ms. Farak was practicing the initials RP for Rebecca Pontes?

5 A. I do -- I do recall reading that in Sergeant Ballou's  
6 case report. That's the only reason I recall that.

7 Q. Is that identified on your search warrant return?

8 A. I don't believe so.

9 Q. Now, there was also a DEA acceptance letter that was  
10 found in her car, correct?

11 A. I don't know.

12 Q. Did anyone bring that to your attention at the time?

13 A. I don't recall that.

14 Q. Okay. And at -- that's, of course, not listed on the  
15 search warrant return, correct?

16 A. Correct.

17 MR. OLANOFF: Your Honor, may I have a moment, please?

18 THE COURT: Sure.

19 (Pause)

20 (Off the record discussion with Defense Counsel and The  
21 Defendant.)

22 MR. OLANOFF: Thank you, Your Honor. I believe other  
23 counsel has questions.

24 THE COURT: Really?

25 MR. RYAN: Thank you, Your Honor.



**CROSS EXAMINATION BY MR. RYAN**

Q. Trooper Thomas, I believe you testified before this wasn't your first search warrant that you applied for, correct?

A. Correct.

Q. And you participated in the execution of many search warrants before this, correct?

A. Yes.

Q. You wrote an affidavit in order to get this search warrant, correct?

A. Yes.

Q. And in the affidavit, you told the Court that you had attended many training courses including international money laundering, fraudulent document training, participated in white collar crime investigations; is that correct?

A. I have.

Q. And all of those can be pretty document intense investigations, correct?

A. Some of them, yes.

Q. And, in fact, when you submitted this search warrant application, one of the things that you asked to search for was records or paperwork associated with controlled substances, correct?

A. I'd like to see that, please.

MR. RYAN: I'd like to approach the witness?

1 THE COURT: Certainly.

2 THE WITNESS: Thank you.

3 Q. (By Mr. Ryan) If you go to the end of the affidavit,  
4 I've underlined there subparagraph eight.

5 A. Yes. Thank you.

6 Q. So you asked permission to conduct a search that was  
7 going to have you and the people that you were doing it with  
8 looking for paper, correct?

9 A. Yes.

10 Q. And you found, in the course of conducting this  
11 investigation, in the early morning hours, hundreds of  
12 pieces of paper; is that accurate?

13 A. I would say that's roughly fair to say.

14 Q. Now --

15 A. As far as the number.

16 Q. Now, you had four days before you filed this search  
17 warrant return, correct?

18 A. The 19th to the -- I thought it was the 24th, no.

19 Q. Well, you filed your police report on the 24th. You  
20 filed the search warrant return on the 23rd, correct?

21 A. Yes.

22 Q. And when you filed that search warrant return, you  
23 swore that this is an inventory -- that this inventory is a  
24 true and detailed account of all of the property taken by me  
25 on this search warrant. Is that what you told the Court?

1 A. If that's what it says there, then yes.

2 Q. Would you like to see it?

3 A. Yes, please.

4 (Pause)

5 THE WITNESS: Yes.

6 Q. (By Mr. Ryan) So it's your testimony here today that  
7 when you filed this inventory, this true and detailed  
8 account of all of the property taken by you, that you had  
9 not reviewed those couple hundred pieces of paper?

10 A. That's right. Not in any further detail than when we  
11 took them, that's correct.

12 Q. Now, you eventually learned that what you had told the  
13 Court was assorted lab paperwork contained items that had  
14 nothing to do with the lab, correct?

15 A. I am not sure what you mean. Can you clarify that for  
16 me, please?

17 Q. Well, these items of concern that you mentioned that  
18 Sergeant Ballou told you about --

19 A. Right.

20 Q. -- he told you that among the things found in that car  
21 were papers that were not related to operation of the lab,  
22 correct?

23 A. He said they were psychological paperwork.

24 Q. And did he tell you that they contained admissions of  
25 Ms. Farak's drug use?

1 A. I believe I learned that at one point. I don't know  
2 when that was.

3 Q. So the true and detailed account you gave the Court was  
4 incorrect, wasn't it?

5 A. No. That was all the information we had at the time  
6 that the return was done, and we have to do return -- the  
7 warrant within a given number of days. So, the evidence had  
8 not been -- it clearly had not been reviewed in further  
9 detail by the time that we had to do the return and learned  
10 that information afterwards.

11 If I had learned anything further in detail, it would  
12 have been -- the return would be more detailed and it would  
13 be articulated in there clearly.

14 Q. In preparation for today's testimony, did you read a  
15 report written by Detective Captain Paul L'Italien and  
16 Captain James Coughlin?

17 A. No.

18 Q. Did you speak with now Detective Captain Robert Irwin?

19 A. I spoke with Major Irwin.

20 Q. He's now Major Irwin? Did you talk to Major Irwin  
21 about what his recollections were about the contents of the  
22 paperwork found in Ms. Farak's car?

23 A. No.

24 Q. Before you filed this return, this true and detailed  
25 return with the Court, was there any discussion about HIPAA?

1 A. Not that I recall.

2 Q. Well, you were the one who had to sign your name to  
3 this return, correct?

4 A. Yes.

5 Q. And so, before doing that, you didn't think it would be  
6 prudent to go through these couple hundred pieces of paper  
7 to see if what you were telling the Court that you seized  
8 was, in fact, accurate?

9 A. This is an ongoing investigation, and there was other  
10 moving parts with this investigation. There was --  
11 evidently there was not time for this case officer, myself,  
12 and other officers to review all this in enough detail where  
13 we could feel like it was completely reviewed in time before  
14 the search warrant return was done.

15 Therefore the return was filed with the information we  
16 had on that date, nothing less, nothing more.

17 Q. Now, you -- you filed a police report on January 24th,  
18 the day after the return, Mr. Olanoff showed you that  
19 report, correct?

20 A. 25th, correct.

21 Q. 24th, I think. Do you want to see it?

22 A. Sure.

23 Q. It's been marked as Item 11.

24 A. Okay. Yes, thank you.

25 Q. Now, after this was directed to then Detective

1 Lieutenant Robert Irwin, correct?

2 A. Yes.

3 Q. And he accepted this report from you?

4 A. If it's stamped at the bottom, he did, bottom of the  
5 first page.

6 No -- yeah. So it was acknowledge by a supervisor  
7 that -- Joe Ballou is JB. So it was an approved report.

8 Q. So it was an approved report by Joe Ballou and then  
9 later on Joe Ballou told you he had some concerns that there  
10 were other items found in that car, correct?

11 A. At some point.

12 Q. Did you ever think that maybe you should do a  
13 supplemental report to perhaps clear the record and not  
14 leave this January 24th report as your final word on what  
15 that car contained?

16 MR. CALDWELL: Objection.

17 THE COURT: Sustained.

18 Q. (By Mr. Ryan) Did you file a supplemental report after  
19 learning that the car contained these items of concern that  
20 Joe Ballou mentioned to you?

21 A. I personally did not.

22 MR. RYAN: I don't have any other questions.

23 THE COURT: Ms. Jacobstein, are you all set?

24 MS. JACOBSTEIN: Yes, Your Honor. Thank you.

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

**CROSS EXAMINATION BY MR. CALDWELL**

Q. Trooper Thomas, I just want to go over a little bit of the testimony.

So going -- let's go back. You indicated on direct that you have been a trooper for 16 and a half years?

A. Yes.

Q. Correct?

And you've been assigned to the Office of the Attorney General for eight and a half years.

A. Correct.

Q. And you had various trainings, not only with the State Police, but the Office of the Attorney General in terms of your duties and responsibilities as a State Trooper, correct?

A. Yes.

Q. And several of those are regarding the seizure of evidence, whether it be evidence from a search warrant or from a crime scene, but you're taught how to seize evidence, how to log it, document it, inventory it, things of this nature, correct?

A. Yes.

Q. That's a very important part of your job, is that fair to say?

A. Yes.

Q. Because, really, you could say the integrity of the

1 evidence is very important as we move forward in the  
2 judicial process?

3 A. Yes, that's correct.

4 Q. So can you briefly, very briefly outline just some of  
5 the training in regards to evidence, not only the collection  
6 of evidence, but the inventorying of evidence and the  
7 management of evidence within the State Police.

8 A. We get training in the academy, which is a six-month  
9 academy going over that.

10 You know, we've had -- we've had various trainings at  
11 the Attorney General's Office talking about seizure of  
12 various types of evidence, including digital evidence and  
13 including other things.

14 As far as listing specific courses, I'm sorry, I'm --  
15 without seeing my resume, I'm a little at a loss for exactly  
16 which courses I've taken for that.

17 Q. Okay. Now, in terms of the inventorying of evidence,  
18 what is -- what are the policies and procedures of the State  
19 Police regarding inventorying evidence?

20 A. Well, that it needs to be seized and secured, marked  
21 with, you know, evidence; who seized it, what it is, where  
22 it was found.

23 Typically, at a scene, we have an evidence officer. In  
24 this case it was me. So various officers bring evidence to  
25 you. Here's a bag, this is what I found. They label it,



1 where they found it, their name.

2 I take it and it gets put on the evidence log, and then  
3 secured from the scene and brought back to our office for  
4 further review at a later time.

5 Q. Okay. So you bring back what you seize back to your  
6 office?

7 A. Yes.

8 Q. And then you begin -- you, essentially, inventory those  
9 items, correct?

10 A. Well, they are inventoried at the scene to a certain  
11 extent, which is reasonable, given the circumstances.  
12 Sometimes we're in a house so we can't be there for two days  
13 going through excruciating detail.

14 So we secure everything that we feel is relevant and  
15 within the scope of the search warrant itself, that we're  
16 authorized, and then it's usually reviewed further at our  
17 office in a more controlled environment.

18 Q. Now, you mentioned search warrants of a house. You  
19 can't be there all the time, you can't be there for two days  
20 inventorying all of the evidence?

21 A. Right.

22 Q. It's fair to say, in a lot of the cases you  
23 investigate, there's a voluminous amount of evidence,  
24 correct?

25 A. Yes.

1 Q. And, it's fair to say, that the most important job as  
2 the individual executing the warrant or collecting evidence  
3 as a law enforcement officer is to secure the scene, take  
4 all relevant evidence, collect it all, label it as you see  
5 it at the scene, and then bring it back where a case officer  
6 would, in painstaking detail, go through each piece of  
7 paper, correct?

8 A. That's correct, yes.

9 Q. Now, in this investigation into the Amherst Drug Lab  
10 and Sonja Farak, and when you were first involved with it in  
11 this search warrant, was there a case officer signed?

12 A. Sergeant Ballou, I believe, was the case officer.

13 Q. And it's the responsibility of the case officer to, not  
14 only after the evidence is collected and seized, to review  
15 that evidence in greater detail --

16 A. Yes.

17 Q. -- correct?

18 And usually at that point, an additional report is  
19 authored by that case officer regarding the specific  
20 evidence, correct?

21 A. Yes.

22 Q. And that is then, in turn, like in this situation,  
23 turned over to the Office of the Attorney General for  
24 possible prosecution, correct?

25 A. Yes.

1 Q. And frequently the conversations are usually between  
2 the case officer in these types of situation and the  
3 Assistant Attorney General, correct?

4 A. That's correct.

5 Q. And the main line of communications are between those  
6 two parties and usually no one else?

7 A. That's correct.

8 Q. Okay. You indicated on direct this was a high-priority  
9 investigation, correct?

10 A. Yes.

11 Q. Why would you term it a high-priority investigation?

12 A. It was a State Police -- I'm sorry, it was a state  
13 employee with misconduct. You know, it was involving drug  
14 samples for people who have been prosecuted.

15 And just the fact that I got called at, I don't know,  
16 7, 8:00 o'clock at night and told to go out to Amherst or  
17 Northampton now and that's very unusual for our type of  
18 work. We all responded there immediately, and we were out  
19 all night taking care of this business.

20 Q. And was it Major Irwin who contacted you at the time  
21 and told you to go out to Northampton?

22 A. No, Sergeant Ballou.

23 Q. And did you meet him at -- in Northampton?

24 A. Yes.

25 Q. And who else was there?

1 A. There was various other troopers from the District  
2 Attorney's Office that were there who had been involved in  
3 this investigation earlier in the day.

4 Major, then Detective Lieutenant Irwin arrived, also  
5 Sergeant Ballou, myself.

6 That's all I recall right now.

7 Q. Okay. Now, when you went to the State Police barracks  
8 in Northampton to execute this search of Ms. Farak's  
9 vehicle, was that the first time that you saw the car?

10 A. Yes.

11 Q. And when you entered the vehicle, what were your -- if  
12 you recall, what were your initial observations of the  
13 interior of that car?

14 A. It looked like somebody lived out of it almost. It was  
15 just full of -- it was a complete mess. It was just like it  
16 was trash, papers, stuff just everywhere, front seat, back  
17 seat. It was a hatch, in the hatch area.

18 Q. And you indicated I believe on direct that there was  
19 junk and garbage amongst paperwork?

20 A. Yes.

21 Q. That, you are talking about right now?

22 A. Yes.

23 Q. In terms of managing that -- the interior of that car,  
24 was it split up? When I say "split up," did maybe Sergeant  
25 Ballou search the hatchback? Did you search the front? Was

1       there any type of order?

2       A.    I believe it was done that way.  We almost always do it  
3       that way to be systematic to know nothing gets missed, that  
4       somebody is assigned, you're going to do the hatchback area,  
5       you're going to do the driver side front and rear, you are  
6       going to do the passenger side front and rear.

7            I do recall there being an order to it.  As far as who  
8       was assigned particularly which compartment, I don't recall  
9       that.

10      Q.    Because, as you indicated, this is a high-priority  
11      situation, correct?

12      A.    Yes.

13      Q.    So you want to make sure you find everything that's  
14      relevant to the alleged theft of controlled substances,  
15      correct?

16      A.    Right.

17      Q.    And you want to make sure everything is detailed?

18      A.    Yes.

19      Q.    Is it fair to say -- is this the first time you ever  
20      executed a search warrant on a vehicle in this condition?  
21      And I say "condition," I'm referring to junk, garbage,  
22      hundreds of pieces of paper.

23      A.    Yes, definitely.

24      Q.    Okay.  Now, you indicated the search warrant took place  
25      in a garage area underneath the State Police barracks in

1 Northampton?

2 A. Yes.

3 Q. And you have tables there, correct?

4 A. I don't think we had any tables.

5 Q. Not that night?

6 A. I don't think so.

7 Q. So you begin to systematically take evidence from the  
8 car and put it into bags, correct?

9 A. Yes, or whatever containers we had to take the  
10 evidence. Sometimes it's boxes, sometimes bags.

11 Q. And you indicated there was someone there from Crime  
12 Scene Services?

13 A. Yes.

14 Q. And they were taking photographs?

15 A. Yes.

16 Q. And you photographed the evidence as you had found it,  
17 correct?

18 A. They did.

19 Q. Okay.

20 A. They took -- I'm sorry, I just want to add they took  
21 the photos. I don't know -- I don't recall exactly the  
22 order of when they took them.

23 Q. This is a systematic search?

24 A. Yes.

25 Q. Okay. At what time -- approximately, what time in the

1 morning?

2 A. 3:23 a.m.

3 Q. And you had indicated on direct that it's important  
4 that you do a thorough search, that you document each  
5 item -- the items taken as allowed by the search warrant,  
6 correct?

7 A. Yes.

8 Q. And then they're taken back to not only be inventoried  
9 but also to determine if they have any greater significance,  
10 correct?

11 A. Correct.

12 Q. So, is it fair to say your experience in collecting  
13 evidence from scenes, that a lot of times when you get  
14 something you don't really realize the true significance of  
15 that item at that moment?

16 A. Yes.

17 Q. You say that happens frequently?

18 A. That does happen fairly frequently, yes. You don't  
19 realize what you have until you get back and start going  
20 through it more thoroughly.

21 Q. So, for an example for that, if you're doing a drug  
22 investigation and you find what looks like white powder,  
23 that's very apparent that that could be drugs --

24 A. Yes.

25 Q. -- correct?

1           As opposed to perhaps a ledger or a piece of paper  
2       which you later on might discover has some connection to the  
3       drugs?

4       A.    Correct.

5       Q.    Okay.  Now, you indicated that you seized all removable  
6       items that you were given authority to under the search  
7       warrant, however, there were also items that you left  
8       behind?

9       A.    Yes.

10      Q.    And those were things, I think you indicated, maybe  
11      Chapstick or loose change?

12      A.    I don't recall specifically but I did mention those as  
13      examples of things that would not be authorized by the  
14      warrant and may not be relevant.

15      Q.    But, in this case and the Sonja Farak investigation,  
16      and specifically the search of the car, you took everything  
17      that you thought may have any connection --

18      A.    Yes.

19      Q.    -- to the theft of controlled substances?

20      A.    That's right.

21      Q.    That's including what you had termed in your search  
22      warrant return "assorted lab paperwork"?

23      A.    Yes.

24      Q.    Because in your observations, when those items were  
25      taken and given to you, they could have, later on, have some



1 significance?

2 A. That's correct.

3 Q. And you had indicated -- you were shown various  
4 exhibits. I believe marked for the record Exhibit 176 and  
5 those were what Mr. Olanoff referred to as ServiceNet Diary  
6 Cards?

7 A. Yes.

8 Q. Things of that nature?

9 A. Yes.

10 Q. And that's what you later learned from Sergeant Ballou  
11 were some type of psychological paperwork that belonged to  
12 Sonja Farak?

13 A. Correct.

14 Q. And Sergeant Ballou indicated that to you at some  
15 point?

16 A. Yes.

17 Q. That they had some significance?

18 A. Right.

19 Q. And at that point, Sergeant Ballou wrote a report about  
20 those items, correct?

21 A. Yes.

22 Q. Now, you had indicated that Joe Ballou, in this -- the  
23 Farak investigation, was the case officer?

24 A. Yes.

25 Q. And can you describe -- and you've done investigations

1 on your own, correct?

2 A. Yes.

3 Q. Where you have been the case officer?

4 A. Yes.

5 Q. Could you just details for the Court the duties and  
6 responsibilities of a case officer in the Mass. State  
7 Police?

8 A. Well, a case officer is ultimately responsible for that  
9 case. So, you typically write, you know, like, a case  
10 report. You organize search warrants, things like that.  
11 And, ultimately, you communicate what you have, what you  
12 need to do, where the case is going with the prosecutor.

13 It's the case officer's responsibility, ultimately,  
14 with anything with the case, not, you know, the evidence  
15 officer or another trooper or local police officer to help  
16 out at the scene of the search warrant or arrest warrant,  
17 things like that.

18 So, basically the case officer is responsible for  
19 orchestrating and working with the prosecutor and ultimately  
20 communicating what they have and what they need and has  
21 those conversations with the prosecutor.

22 Q. And like I -- like you had indicated earlier on this  
23 matter, you were not the case officer?

24 A. Right.

25 Q. You were, in fact, assisting the case officer, Sergeant

1 Ballou, in gathering the evidence and preparing search  
2 warrants and preparing the case to the prosecution to move  
3 forward?

4 A. Yes.

5 Q. It's fair to say after the execution of the search  
6 warrant on the car and the return that you had authored  
7 you're -- the work you did moving forward is very little, if  
8 anything at all?

9 A. Yes, that's correct.

10 Q. And you, as far as you know, you did not have  
11 anything -- you didn't have any duties and responsibilities  
12 in regards to the search warrant regarding Ms. Farak's  
13 duffle bag, correct?

14 A. I remember that we had the duffle bag. I don't  
15 recall --

16 Q. Doing anything of substance concerning that yourself?

17 A. No. Not that I recall, no.

18 Q. And you received a subpoena to be here today, correct,  
19 Trooper Thomas?

20 A. Yes.

21 Q. And who did you receive that subpoena from?

22 MR. OLANOFF: Objection.

23 THE COURT: What's the offer of proof, Mr. Caldwell?

24 MR. CALDWELL: Your Honor, Mr. Olanoff had indicated  
25 that he did not bring any evidence here with him today in

1        regards to the search warrant, he was not directed to. This  
2        being the witness for the moving party, I would assume that,  
3        you know, it goes to essentially why that paperwork isn't  
4        here right now.

5                THE COURT: Okay. I'm going to sustain the objection.

6        Q.     (By Mr. Caldwell) Trooper Thomas, can you estimate  
7        about how many pieces of paper were in Ms. Farak's  
8        automobile?

9        A.     I can only give a very loose estimation of hundreds.

10       Q.     And Attorney Olanoff showed you those various  
11       worksheets, ServiceNet Diary Cards up on the screen.

12       A.     Yes.

13       Q.     So it's fair to say that those documents that Attorney  
14       Olanoff showed you are just a very small representation of  
15       the contents of the automobile?

16       A.     Yes.

17       Q.     It's fair to say that maybe even, like, minute?

18       A.     Yes.

19       Q.     And you had indicated that at the time you collected  
20       the paperwork from the car it was unreasonable to go over  
21       all the paperwork at that time, correct?

22       A.     Yes.

23       Q.     Because it was a lot of it?

24       A.     Yes.

25       Q.     And, in the course of an investigation, especially an

1 execution of a search warrant, it's important that you speak  
2 to your fellow officers, correct?

3 A. Yes.

4 Q. And discuss observations they maybe have made or things  
5 they have found?

6 A. In collecting evidence, yes. Yes.

7 Q. And anything that's usually recognizable on its face,  
8 that maybe goes towards the guilt of an individual. That's  
9 something you would probably mention?

10 A. Yes.

11 Q. But there's others that you do not, correct?

12 A. As far as articulating it in detail, you mean?

13 Q. Yes.

14 A. Yes, that's correct.

15 Q. Now, on your return, you had indicated that you had  
16 found assorted lab paperwork on two occasions and you  
17 documented that. And then there were others in terms of  
18 envelopes that had specific writing and named individuals on  
19 it, correct?

20 A. Yes.

21 Q. And detailed those?

22 A. Yes.

23 Q. Because it was readily apparent on its face what they  
24 were?

25 A. Yes.

1 Q. And this was an investigation regarding alleged theft  
2 of controlled substances from the lab?

3 A. Yes.

4 Q. And you saw things, specifically, lab numbers, names,  
5 names of District Attorneys, and you thought that was very  
6 important?

7 A. Yes.

8 Q. So you documented it?

9 A. We all did, yes.

10 Q. And the more identifiable on its face, you give it more  
11 detail in your return?

12 A. That's correct.

13 Q. And you are executing a search warrant or getting a  
14 search warrant, and getting and returning the items found,  
15 there is time constraints under statutory law, correct?

16 A. Yes.

17 Q. So then it's fair to say when you're doing  
18 investigations of this type, involving search warrants,  
19 returns, other things, time is of the essence, right?

20 A. Yes.

21 Q. Because failure to do so, do a return in a timely  
22 fashion, could result in suppression of evidence, correct?

23 A. Yes.

24 Q. And at the end of your -- at the end of -- after your  
25 return, you authored your own report?

1 A. Yes.

2 Q. And that's a search warrant execution report?

3 A. Yes.

4 Q. And it's fair to say that type of report is just a  
5 synopsis or summary of what took place during the search  
6 warrant?

7 A. That's correct.

8 Q. And any detail regarding what was found in that search  
9 warrant is done at a later time by the case officer?

10 A. Typically, yes.

11 Q. Now, that was done in this situation, correct?

12 A. I believe so.

13 Q. So, moving forward, after your involvement in the  
14 search warrant, you never had an opportunity to review  
15 Sergeant Ballou's file, correct?

16 A. That's correct.

17 Q. Sergeant Ballou did indicate to you he did find  
18 psychological documents or other type of paperwork that was  
19 of concern to him?

20 A. Yes, I don't recall who found it upon review, but he's  
21 the one that told me they found some psychological paperwork  
22 and what was seized, yes.

23 Q. Now, in your experience as a State Trooper and  
24 specifically working in the Office of the Attorney General,  
25 when investigations of this type happen, including the

1 execution of search warrants, it's very common to -- that  
2 there's a discussion not only amongst yourselves as troopers  
3 of the AGO, but also with the Assistant Attorney Generals?

4 A. Yes.

5 Q. And there's also communication where you discuss  
6 strategy moving forward or, essentially, you know, the  
7 drafting of various documents for court, search warrants,  
8 those types of things?

9 A. Yes.

10 Q. And usually it's the case if a trooper -- if there's a  
11 party out there involved, they're usually cc'd on that  
12 email?

13 A. I'm sorry. If they were involved with --

14 Q. Involved with the investigation at any point.

15 A. Yes.

16 Q. And it's typical in a situation -- you had indicated  
17 this on direct, that frequently, as a State Trooper of the  
18 AGO, you assist the Assistant Attorney Generals in the Grand  
19 Jury process?

20 A. Yes.

21 Q. And that's usually in regards to witnesses, correct?

22 A. Yes.

23 Q. So necessarily, you're not there to testify, but you're  
24 there to assist the Attorney General -- Assistant Attorney  
25 General in not only managing the witness, but also if they



1 make -- if the witness perhaps make a statement, you can  
2 then later on document that in a report, correct?

3 A. That does happen, correct.

4 Q. Okay. You never had any conversations with the  
5 Assistant Attorney General Anne Kaczmarek regarding any type  
6 of paperwork that was found in the car, correct?

7 A. I don't recall having any.

8 Q. Okay. And the various paperwork that was put up for  
9 you on the screen, not only those Emotion Regulation  
10 Worksheets, but the articles that were discovered in the  
11 car, you say you don't recall ever seeing those prior to  
12 this, correct?

13 A. Right. One of them seemed familiar only because it's  
14 in the area where I live, so I think maybe I heard about  
15 that some other way, but --

16 Q. Was it the Pittsfield matter that you're referring to?

17 A. Yes. Yes. But, short of that, yeah, I don't -- those  
18 don't look familiar to me.

19 Q. Now, as to your search warrant return, I just want to  
20 go back to that very briefly. You had indicated on direct  
21 that you list and return all information that you had at the  
22 time the return was drafted?

23 A. Yes.

24 Q. And it's always expected, in fact, in every case with  
25 the State Police, that the return is done and then later on

1 further documentation -- or the Trooper or the investigator,  
2 further documents, what was discovered, correct?

3 A. If it's necessary which it almost always is.

4 Q. Now at the time the search warrant was executed, had  
5 Ms. Farak already been placed under arrest, if you know?

6 A. No, I don't believe so.

7 MR. CALDWELL: Your Honor, may I approach the witness?  
8 This was marked Exhibit 172.

9 THE COURT: Yes.

10 MR. CALDWELL: Thank you, Your Honor.

11 Q. (By Mr. Caldwell) Trooper Thomas, I'm putting a  
12 document before you. Please take a brief look at that, and  
13 the pages, and look up when that's completed.

14 (Pause)

15 Q. (By Mr. Caldwell) Exhibit 172, the first page is the  
16 search warrant, correct?

17 A. Yes.

18 Q. And you are authorized to seize -- you are therefore  
19 commanded, within a reasonable time, and in no event later  
20 than seven days from the issue of the search warrant to  
21 search the following property, correct?

22 A. Yes.

23 Q. And it lists specifically, I believe, five separate  
24 lines of what you're looking for?

25 A. Yes.

1 Q. And the last one is, as I believe other counsel pointed  
2 out, "records or paperwork associated with controlled  
3 substances."

4 A. Yes.

5 Q. And it's your signature on this application, correct,  
6 and affidavit?

7 A. Yes.

8 Q. Now, just moving forward, Exhibit 172 again, this is  
9 the -- your return, correct?

10 A. Yes, it is.

11 Q. Two pages in length?

12 A. Yes.

13 Q. Okay. Approximately 20 items?

14 A. Yes.

15 Q. Okay. Some you indicate in detail?

16 A. Yes.

17 Q. And I say that, for one example, one CVS pill bottle,  
18 correct?

19 A. Yes.

20 Q. One large Manila envelope, correct?

21 A. Yes.

22 Q. With writing on it.

23 Because those, as you had indicated before, those are  
24 specific things that you could identify -- readily  
25 identifiable upon the seizure from the car, correct?

1 A. Yes. Yes.

2 THE COURT: Trooper Thomas, are you okay?

3 THE WITNESS: I'm sorry. I'm having some leg pain,  
4 actually.

5 THE COURT: You can stand up, if you want, or stretch,  
6 if you want.

7 THE WITNESS: Thank you, Your Honor.

8 THE COURT: Take your time.

9 (Pause)

10 MR. CALDWELL: Your Honor, I have nothing further of  
11 the witness.

12 THE COURT: Okay.

13 THE WITNESS: Thank you, Your Honor.

14 **QUESTIONS BY THE COURT**

15 THE COURT: Sure. So, Trooper, on January 18, 2013,  
16 you're at home, 7 or 8:00 o'clock at night, you get a phone  
17 call from Joe Ballou?

18 THE WITNESS: Yes.

19 THE COURT: What does he say?

20 THE WITNESS: He says he needs me. They got a search  
21 warrant they need to do. He needs me to respond to DA's  
22 Office in Northampton.

23 THE COURT: Okay. All right. And that's where you go?

24 THE WITNESS: Yes.

25 THE COURT: And that's where the search warrant is

1 drawn up?

2 THE WITNESS: Yes.

3 THE COURT: Okay. And, to your knowledge, where was  
4 the car seized?

5 THE WITNESS: Seized from or was it being secured?

6 THE COURT: No. Where was it seized from, if you know?

7 THE WITNESS: At the time I don't know, but I know from  
8 reading later it was seized from, I believe, the parking  
9 garage here near the court here.

10 THE COURT: In Springfield?

11 THE WITNESS: Yes, I believe so.

12 THE COURT: And then the State Police, best of your  
13 acknowledge, arrange to have it towed up to the barracks?

14 THE WITNESS: Yes.

15 THE COURT: So paint me a picture of the barracks.  
16 Where is it when you show up there?

17 THE WITNESS: Okay. So it's also our troop  
18 headquarters. It's a three-story building. If you go down  
19 and around the back, which is a lower level, there's either  
20 four or five garage bays across.

21 Counsel had actually asked me if it was heated or not.  
22 I am now recalling we were freezing, it was not heated, so I  
23 remember us bundling up and everything.

24 So, from looking back at the photos, there was a  
25 cruiser in one of the bays. The other bays were all empty

1       except for Ms. Farak's car was secured. So we basically had  
2       maybe a two or three empty bay area to work with. We ended  
3       up having to lay evidence out on the floor as we took it out  
4       of the car.

5               THE COURT: Uh-huh.

6               THE WITNESS: After -- when it was photographed and  
7       everything.

8               THE COURT: And there were three of you?

9               THE WITNESS: There was three investigators and then a  
10       trooper from Crime Scene Services who was there to document  
11       it with photographs.

12              THE COURT: Okay.

13              THE WITNESS: Which is a common practice we do.

14              THE COURT: Sure, and so, now you -- your original  
15       testimony indicated that -- I believe you testified Sergeant  
16       Ballou is the case officer, I believe.

17              Do you have any question about that in your mind?

18              THE WITNESS: The reason I say that is I'm not sure if  
19       it was this case or another case. There are times when  
20       somebody of higher rank in our office, sometimes is  
21       initially the case officer, where it may have been at the  
22       time Detective Lieutenant Irwin and then transferred  
23       response -- more responsibility to Sergeant Ballou because  
24       it's out geographically in our office area.

25              So that's the only reason I question, if Sergeant

1 Ballou was the case officer right along or he became the  
2 case officer at some point during the investigation.

3 THE COURT: And what's your best understanding now as  
4 to -- let me ask you this: Is it spoken? I mean, when you  
5 gather there initially, does somebody say: Okay. You're  
6 going to be the case officer in this case.

7 THE WITNESS: No. Typically -- typically you know that  
8 it's my case and I organize the event and everybody knows  
9 you've been doing this case, and we're here to help you out  
10 and all that --

11 But sometimes within our office the responsibilities,  
12 if you will, can transfer. Like I said, even because  
13 geographically we realize, all right, the trooper is going  
14 to have to do a lot of work out in Western Mass. and have  
15 more responsibility, so --

16 THE COURT: So who did you believe the case officer to  
17 be at the night of the search? The morning of the search, I  
18 should say.

19 THE WITNESS: I'm not really sure. It may have been  
20 Detective Lieutenant Irwin at the time. I believe it became  
21 Sergeant Ballou at a later date, but I'm not positive.

22 THE COURT: When the search was being conducted and the  
23 three of you were freezing in that back bay --

24 THE WITNESS: Yes.

25 THE COURT: -- looking through the car, who was calling

1 the shots? Who was directing the other two; you look here,  
2 you look there, blah, blah, blah.

3 THE WITNESS: Right. Well, Detective Lieutenant Irwin,  
4 not necessarily because he was the case officer, but because  
5 he has the highest ranked and we are a paramilitary  
6 organization, so --

7 THE COURT: Do you have a present recollection of  
8 Detective Irwin saying: Ballou, you do this; and, Thomas,  
9 you do that.

10 THE WITNESS: I believe so.

11 THE COURT: Okay. All right. And you say you went  
12 into the vehicle and put the evidence that you obtained on  
13 the ground initially?

14 THE WITNESS: Uh-huh.

15 THE COURT: Right. And so this -- there were three  
16 items on the return. All three of which were labeled  
17 "assorted lab work"?

18 THE WITNESS: Yes.

19 THE COURT: What's your best recollection of seeing it,  
20 seizing it, bagging it, anything in that department?

21 THE WITNESS: My current recollection is because we  
22 just had voluminous papers, when we would look through, we  
23 would see a lot of stuff relative to the lab and we are  
24 trying to secure it. And we know that we are going to go  
25 through it in further detail in a more controlled



1 environment and make sure we don't miss anything, as opposed  
2 to the less than ideal conditions in a garage at 3:00 in the  
3 morning when it's, you know, 20-degrees out.

4 So, if we had -- you know, seeing how you have this lab  
5 paperwork, we saw more lab paperwork, let's grab it, you  
6 know, bunches of it even, and put it into evidence bags.

7 If there's nothing that stuck out, you know, when we  
8 saw those envelopes that had a case number on them, that was  
9 readily apparent to us that is a critical piece of evidence.  
10 It was -- obviously it's in her personal car, it came from  
11 the lab. So we singled that out and I articulated that on  
12 the return as such.

13 Anything else, when we see slips that, you know, that  
14 -- none of us are lab technicians. We don't work at the  
15 lab. If we've just paperwork that had the lab heading on  
16 it, we don't know what it is to us and its common practice,  
17 it's assorted lab paperwork, and we'll sort it out and go  
18 through it.

19 You know, it's specifically the case officer who has  
20 the most knowledge of the case and then anybody he asks to  
21 help will likely go through the evidence later on with the  
22 prosecutor.

23 THE COURT: And so these three return items, the three  
24 that are labeled assorted lab paperwork?

25 THE WITNESS: Yes.

1           THE COURT: Do you have a recollection of what sort of  
2 bag they were put in?

3           THE WITNESS: I don't, sorry.

4           THE COURT: Okay. And do you have a recollection of  
5 whether they were placed on the ground outside of the car?

6           THE WITNESS: I don't, I'm sorry.

7           THE COURT: How long did the search take?

8           THE WITNESS: Roughly an hour and a half.

9           THE COURT: Okay. And so now you're done, everything  
10 is out on the floor, what happens next?

11          THE WITNESS: We start -- well, sometimes if it's--

12          THE COURT: I don't want to know about sometimes. I  
13 want to know your best recollection of this time.

14          THE WITNESS: I'm sorry. What I meant by sometimes is  
15 depending on the piece of evidence, if it's readily  
16 available, he might come to me and say: Hey, Randy, this is  
17 an envelope from the lab with this number on it. And I will  
18 mark it right down. Other things, we are not sure what we  
19 have, we might have to spread them out on the floor and take  
20 another look at them.

21          My recollection is that -- and I reviewed the photos of  
22 the cars because it was almost four years ago. It was  
23 really trashed. It was really a mess. There was papers.  
24 And there was even empty plastic bags from the Sunday  
25 Republican. Evidently, she delivered papers, all filling

1 the back of the hatchway.

2 You know, we secured the evidence and groomed it the  
3 best we can -- the best we could, to be separated later, if  
4 it wasn't readily apparent.

5 THE COURT: Okay. So then who picked it all up? Did  
6 they put it into a box? Where did it go after --

7 THE WITNESS: Yes.

8 THE COURT: -- it left the floor of the bay?

9 THE WITNESS: So, we transported it to the Attorney  
10 General's Office here in Springfield and secured it in our  
11 evidence locker.

12 THE COURT: First of all, what did you transport it in?

13 THE WITNESS: One of our cruisers.

14 THE COURT: No, I mean, were these all in a number of  
15 boxes, all this stuff you pulled out of the car?

16 THE WITNESS: Boxes or evidence bags. I don't recall.

17 THE COURT: Okay.

18 THE WITNESS: I know we used plastic evidence bags that  
19 say State Police on them, and have lines to write. That's  
20 usually if you have a smaller item and you need a specific  
21 description.

22 But we also use paper bags for stuff like assorted lab  
23 paperwork that in my hands I'm going to hold them like this.  
24 You are going to hold them a foot apart, and you just need  
25 something to put them in and label the bag. And we also

1 have evidence boxes too.

2 THE COURT: You have boxes and bags and someone brings  
3 all of that stuff to the AG's Office?

4 THE WITNESS: Yes.

5 THE COURT: And who brought it to the AG's Office?

6 THE WITNESS: Sergeant Ballou and I.

7 THE COURT: The two of you?

8 THE WITNESS: Yes.

9 THE COURT: And you went in one of your cruisers?

10 THE WITNESS: We each had our own cruiser because we  
11 arrived separately at the DA's Office.

12 THE COURT: Did you have evidence in both cruisers or  
13 just one cruiser?

14 THE WITNESS: I don't recall for sure, but I believe it  
15 probably would have been one cruiser because it was  
16 paperwork. It wasn't like we took large items like we take  
17 out of houses, like a filing cabinet or anything like that  
18 that. We needed extra room, so it was probably all in one  
19 cruiser.

20 THE COURT: And included in all of this evidence was  
21 Item Number Four on the return, the assorted lab paperwork.

22 THE WITNESS: Right.

23 THE COURT: And it went to the AG's Office. And what  
24 happens to it then? Whose the custodian of it in you're  
25 best memory?

1 THE WITNESS: Well, we put it in -- we secured in our  
2 alarmed and locked, evidence locker at the office. And then  
3 it stays there until a prosecutor, case officer, or somebody  
4 else directed Hey, let's pull that out and, okay, it's time  
5 to lay it out and go through and see what we got in more  
6 detail than we were able to at the scene.

7 THE COURT: And at that point forward, is there a  
8 particular person that's responsible for that evidence and  
9 the chain of custody of that evidence and the handing out of  
10 displaying of that evidence?

11 THE WITNESS: Well, I mean, as an evidence officer that  
12 night, I'm responsible for the chain of custody from the  
13 scene to getting it to the lock -- to our evidence locker.

14 Beyond that, it typically is the case officer only  
15 because they have the most knowledge of the case and they  
16 may know what's more relevant, and they've been working hand  
17 in hand with the prosecutor throughout the whole process.  
18 So, typically, a case officer is the one that will lead  
19 going through evidence like that.

20 THE COURT: Okay. All right. Very briefly, if  
21 anything at all.

22 MR. RYAN: If I may, Your Honor?

23 THE COURT: Briefly.

24 MR. RYAN: I'd like to have this marked for  
25 identification, if I could. It's the L'Italien Coughlin

1 report, Exhibit 13, copies of all items associated with AG  
2 evidence item 11.

3 THE COURT: Mark it for Identification?

4 MR. RYAN: For Identification.

5 THE CLERK: Marked as A for identification.

6 (Exhibit A, copies of all items associated with AGO  
7 evidence #11), marked for Identification)

8 MR. RYAN: Now, may I approach the witness?

9 **RECROSS EXAMINATION BY MR. RYAN**

10 Q. Trooper, you testified before that those images that  
11 Attorney Olanoff showed you of the Emotion Regulation  
12 Worksheet and ServiceNet Diary Cards, those constituted,  
13 kind of, a miniscule portion of the papers that you  
14 encountered while you were doing this search; is that  
15 correct?

16 A. Numbers-wise, yes.

17 Q. I'd like you to review this, if you could, and I  
18 actually can go through it with you.

19 This first page here, this Emotion Regulation  
20 Worksheet, would you agree that's not assorted lab  
21 paperwork, not how you would describe that?

22 A. Correct.

23 Q. This page here looks like a spectra. This might be  
24 assorted lab paperwork, correct?

25 A. That could be.

1 Q. Blank Emotion Regulation Worksheet, not assorted lab  
2 paperwork?

3 A. Right.

4 Q. Homework 11/16/11 problem solution. Seeing prescriber  
5 tomorrow a.m. Need to tell her I'm not going to continue  
6 taking one med but wanted to stay on second.

7 Not assorted lab paperwork, correct?

8 A. Correct.

9 Q. Distress Tolerance Turning the Mind. Imagine \$86,000  
10 in account every day.

11 Agree this is not assorted lab paperwork.

12 A. Can I look at that?

13 (Pause)

14 THE WITNESS: Yes, correct.

15 Q. (By Mr. Ryan) This here, tracking pleasant emotion,  
16 shame, used drugs; talking about work, cable guys,  
17 treatment.

18 Not assorted lab paperwork?

19 A. Correct.

20 Q. Dances with dogs email.

21 Not assorted lab paperwork?

22 A. I don't know about that.

23 Q. Another diary entry, tried pace breathing at  
24 commercials. I'm going back upstairs to find something else  
25 to yell about.

1 Not assorted lab paperwork?

2 A. Correct.

3 Q. Another spectra sheet. Assorted lab paperwork?

4 A. Maybe. I don't know.

5 Q. Pros and cons of resisting or TB.

6 Not assorted lab paperwork.

7 A. I'm not sure what that means.

8 Q. Well, resisting pros, feel better about myself, don't  
9 lose phone coaching, better for health, don't get caught, no  
10 crash afterwards, focus energy on work; not assorted lab  
11 paperwork?

12 A. No.

13 Q. Another spectra. This would be assorted lab paperwork,  
14 correct?

15 A. Possibly.

16 Q. And then we've got wedding a couple of weeks ago. I  
17 disappeared. Nikki got grilled by my mom.

18 Doesn't look like assorted lab paperwork, does it?

19 A. No.

20 Q. Fax cover sheet, discoveries. Assorted lab paperwork?  
21 Could be?

22 A. It's from the Commonwealth. I'd say yes.

23 Q. Then we've got another piece of paper. We've got --  
24 appears to be of a diary nature?

25 A. Yes.



1 Q. Not assorted lab paperwork?

2 A. Yes. And these are all on the back of each other,  
3 correct?

4 Q. What do you mean "on the back of each other"?

5 A. They are two sided like the lab?

6 Q. Some are two-sided. They're all -- the way they were  
7 copied. But if we look at these as you go through,  
8 guidelines for skills training.

9 Not assorted lab paperwork?

10 A. Right.

11 Q. The Path to a Clear Mind, not assorted lab paperwork?

12 A. Right.

13 Q. Another Path to a Clear Mind, not assorted lab  
14 paperwork?

15 A. Right.

16 Q. Fair to say that there are dozens of pages that have  
17 absolutely nothing to do in this, with work at the Amherst  
18 Drug Lab?

19 A. That's correct. Those all came from the search  
20 warrant.

21 MR. RYAN: I don't have anything further.

22 THE COURT: Anything further?

23 No?

24 Anything further?

25 MR. CALDWELL: Very briefly, Your Honor.

1 THE COURT: Very briefly?

2 MR. CALDWELL: Very briefly.

3 Thank you, Your Honor.

4 May I approach him?

5 THE COURT: Sure.

6 MR. CALDWELL: Thank you.

7 **RECROSS EXAMINATION BY MR. CALDWELL**

8 Q. So you just went over what's marked, previously marked  
9 for Identification Exhibit A?

10 THE CLERK: A.

11 Q. (By Mr. Caldwell) And you went through all of these  
12 just now with Mr. Ryan, correct?

13 A. Yes. Yes.

14 Q. Emotion Regulation Worksheet, spectra from the lab, and  
15 it goes on and on?

16 A. Right.

17 Q. Correct?

18 A. Yeah.

19 Q. See some various handwritten notes, dog grooming, more  
20 lab, paperwork, some fax cover sheets, prescription drug buy  
21 back day, correct?

22 A. Yes.

23 Q. Path to a Clear Mind. All these various pieces of  
24 paper, correct?

25 A. Yes.

1 Q. Now, you've gone over these now in pretty good detail,  
2 correct?

3 A. Right.

4 Q. And you understand what these are now?

5 A. Yes.

6 Q. Fair to say that when these were, some of the items  
7 that were first shown to you up on the screen by Attorney  
8 Olanoff, those were the first time you ever recall seeing  
9 those items?

10 A. Yes.

11 Q. So you testified today is that they seem more apparent  
12 to you now because you have gone through them and now you  
13 are familiar with them?

14 A. Yes.

15 MR. CALDWELL: Thank you.

16 I have nothing further.

17 THE COURT: Okay. All right. Thank you.

18 All right. All set?

19 Thank you, Trooper, you may step down.

20 We will take the morning recess.

21 (The Court exited at 11:35 a.m.)

22 (\* \* \* \* \*)

23 (The Court entered at 12:04 p.m.)

24 (The defendants were present.)

25 THE COURT: Mr. Ryan.

1 MR. RYAN: Thank you. Robert Irwin.

2 THE CLERK: We are back on the record.

3 Stop right there and raise your right hand, please.

4 (Robert M. Irwin, sworn)

5 THE COURT: Good afternoon, sir.

6 THE WITNESS: Good afternoon, Your Honor.

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

8 MR. RYAN: Thank you.

9 (Robert M. Irwin)

10 **DIRECT EXAMINATION BY MR. RYAN**

11 Q. Good afternoon.

12 A. Good afternoon.

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

15 A. Yes. My name is Robert M. Irwin. Last name is spelled  
16 I-R-W-I-N.

17 Q. And are you a Detective Major with the Massachusetts  
18 State Police?

19 A. Yes. I'm currently at the rank of Major, Yes, sir.

20 Q. I'd like to talk about the execution of a search  
21 warrant that took place in the early morning hours of  
22 June 19, 2013, at the State Police barracks in Northampton.  
23 Do you recall participating in the execution of that  
24 warrant?

25 A. I do.

1 Q. And the affiant for that warrant, was that Trooper  
2 Randy Thomas?

3 A. That's correct.

4 Q. And among other things, did Trooper Randy Thomas get  
5 permission from the Court to search for records or paperwork  
6 associated with controlled substances?

7 A. Yes.

8 Q. Now, you were the ranking officer at the scene?

9 A. That's correct.

10 Q. And Sergeant Joseph Ballou is also there, correct?

11 A. Yes.

12 Q. And you had Christopher Dolan from Crime Scene Services  
13 who was taking photographs as the three of you conducted the  
14 search, correct?

15 A. That's correct.

16 Q. Now, as you conducted this search, did you make any  
17 phone calls to the Chief of the Criminal Bureau for the  
18 Attorney General's Office John Verner?

19 A. I don't recall in regards to phone calls.

20 Q. Is it possible?

21 A. I did communicate with him. I just don't know whether  
22 it was via email or phone call.

23 Q. Okay. So, just timing-wise, this search started at  
24 about 3:20, 3:23 in the morning?

25 A. That's correct.

1 Q. And it concluded just before 5:00 a.m.?

2 A. Yes, that sounds about right.

3 Q. And so, during that period of time, you, in some manner  
4 or form, communicated with John Verner?

5 A. That's correct.

6 Q. Now, did some of the paperwork that you seized from Ms.  
7 Farak's vehicle end up relating to her treatment for what  
8 appeared to be a drug addiction?

9 A. There was a lot of assorted paperwork. My involvement  
10 in the investigation, in regards to specifics of paperwork  
11 and what they all meant, basically ended other than to just  
12 be the general supervisor of that unit out in Springfield.  
13 But case specific information I was not privy to, no.

14 Q. So -- let me backup here.

15 Showing you what's previously been marked as Exhibit 8.

16 MR. RYAN: Can I approach the witness?

17 THE COURT: Sure.

18 Q. (By Mr. Ryan) These are photographs of Ms. Farak's  
19 vehicle. And, specifically, drawing your attention -- can't  
20 see it very well, but it's been previously marked as Farak  
21 discovery page 3360.

22 Is that the trunk of her car?

23 A. Yes.

24 Q. Okay. And so, during the early morning hours, you were  
25 there as the ranking officer directing this search. At some

1 point or another, fair to say that when you were doing this,  
2 you did not carefully examine each piece of paper you seized  
3 in the moment, correct?

4 MR. CALDWELL: Objection.

5 THE COURT: You can answer it if you feel you can.

6 THE WITNESS: That's correct.

7 Q. (By Mr. Ryan) And it was -- a decision was made, given  
8 the time of day and the location that you were at, that you  
9 were going to collect these materials and you were going to  
10 bring them to another location to conduct a more thorough  
11 review of them; is that correct?

12 A. Yes, it is.

13 Q. Now, what facility was eventually used to go through  
14 the papers that were seized from Ms. Farak's vehicle?

15 A. I couldn't tell you. I wasn't part of that.

16 Q. Do you know who was part of it?

17 A. I believe Sergeant Ballou's team.

18 Q. Who else was on his team?

19 A. Trooper Randy Thomas, and Trooper -- oh boy.

20 Q. Evan Breeding?

21 A. Yes, thank you. Trooper Evan Breeding.

22 Q. And, to your knowledge, Trooper Thomas was --  
23 participated in this more thorough review of what was taken  
24 from Ms. Farak's car?

25 A. I don't know.

1 Q. Well, in any event, did you, at some point or another,  
2 learn there was some papers that were taken from Ms. Farak's  
3 car that appeared to suggest that she was using drugs at  
4 work?

5 A. I am familiar with it, yes.

6 Q. And also that she stole drugs from her place of  
7 employment?

8 A. That's correct.

9 Q. Now, you would agree that these pieces of paper you  
10 seized from the car constituted important evidence in the  
11 case against Sonja Farak, correct?

12 A. That's why we seized them, yes.

13 Q. You were the lead investigator in the Annie Dookhan  
14 case, correct?

15 A. I was.

16 Q. And one of the many people that you interviewed in that  
17 case was Annie Dookhan, herself, correct?

18 A. That's correct.

19 Q. And during her interview with you, Annie Dookhan  
20 actually admitted to dry labbing, didn't she?

21 A. She did.

22 Q. And that became the cornerstone of your prosecution  
23 against Annie Dookhan, correct?

24 A. I don't know if I could testify to the cornerstone of  
25 the prosecution. I know that in regards to the



1 investigation, it was an important part.

2 Q. It was important enough to result in the closure of the  
3 Hinton Drug Lab, wasn't it?

4 A. Yes.

5 Q. Now, you were aware that before you conducted this  
6 search of Sonja Farak's car that she had been interviewed,  
7 correct?

8 A. Yes.

9 Q. Detective Lieutenant Whitney did that interview, right?

10 A. That's correct.

11 Q. And during the course of this interview, you were aware  
12 that Sonja Farak denied any wrongdoing; is that right?

13 A. That's fair to say.

14 Q. Now, these papers that were seized from her car where  
15 she had made written admissions to using drugs and stealing  
16 drugs with the lab, they could of been useful in proving her  
17 guilt at trial, correct?

18 A. If the papers say what you feel they say, absolutely.

19 Q. And these papers could have also been helpful in  
20 determining whether malfeasance at that drug lab had any  
21 impact on any other defendants, is that fair to say?

22 MR. CALDWELL: Objection.

23 THE COURT: Sustained.

24 Q. (By Mr. Ryan) Now, Sonja Farak was arrested on the  
25 night of January 19, 2013; is that right?

1 A. Is that Saturday? That's correct.

2 Q. About 10:30 that night?

3 A. I wasn't there, but yes.

4 Q. And the following Monday, or Sunday morning, there was  
5 a press release that the Attorney Genral's Office put out;  
6 is that correct?

7 A. I'm unaware of that.

8 MR. RYAN: May I approach the witness?

9 THE COURT: Yes.

10 Q. (By Mr. Ryan) Is this an email from Brad Puffer?

11 A. Yes, it is.

12 Q. And is it to AGO, DL, all of AG?

13 A. That's what it says, yes.

14 Q. And would you have been one of the recipients of this?

15 A. I'm not sure, but I probably was. I just don't  
16 remember.

17 Q. Well, your office -- this was a pretty high-profile  
18 case, wasn't it?

19 A. Farak?

20 Q. Yes.

21 A. Yes.

22 Q. And so your office, in those first couple of days, was  
23 in communication with members of the media, correct?

24 A. Again, I don't know who was in contact with who. I  
25 know I wasn't.

1 Q. Now, did you attend a press conference on Sunday  
2 morning, January 20th?

3 A. No, I don't believe I did.

4 Q. Is it possible you did?

5 A. Yes, it's possible. I don't think I did, though.

6 Q. You're based out of Boston?

7 A. That's correct.

8 Q. Now, were you aware that a press conference took place  
9 on Sunday, January 20?

10 A. No, no. I don't remember.

11 Q. Now, who's Ed Bedrosian?

12 A. Ed Bedrosian was Assistant Attorney General. I don't  
13 know if his official title was First Assistant, but I  
14 believe he was the First Assistant. Not sure on that,  
15 though.

16 Q. Now, did you end up having an email communication with  
17 Ed Bedrosian on Monday, January 21, 2013?

18 A. If you have it in front of you, I did, but I don't know  
19 what it was.

20 MR. RYAN: May I approach the witness?

21 THE COURT: Yes.

22 (Off the record discussion)

23 Q. (By Mr. Ryan) Directing your attention to this email  
24 here, Monday morning 8:32 a.m., did you get a email from Ed  
25 Bedrosian?

1 A. I did.

2 Q. And did he indicate he wanted to speak with you and  
3 Anne Kaczmarek, Sheila Calkins, and John Verner about this  
4 new lab case?

5 A. Yes, he did.

6 Q. And did later on that same morning he indicate that he  
7 was really hoping that the call could happen today and that  
8 the topic would be about the next couple of days?

9 A. That's correct.

10 Q. Did he say he was still reeling from last night's  
11 disaster?

12 A. That's what it says.

13 Q. Do you know what he was referring to?

14 A. No idea.

15 Q. Okay. Now, you're familiar that a search warrant, when  
16 it's obtained, has to be returned to the court that issued  
17 it within seven days, correct?

18 A. Yes, sir.

19 Q. And when you do a return, you have to file an inventory  
20 of the property taken pursuant to the warrant, correct?

21 A. You do a warrant return, yes.

22 Q. And this has to be a true and detailed account of the  
23 property taken, correct?

24 A. Correct.

25 Q. Do you recall how Trooper Thomas, in his search warrant

1 return, ended up describing the paperwork seized from  
2 Ms. Farak's car that indicated she had been stealing and  
3 using drugs at the lab?

4 MR. CALDWELL: Objection.

5 THE COURT: If you know.

6 THE WITNESS: Yeah, he described it as assorted  
7 paperwork, assorted lab paperwork, I believe, which is  
8 extremely common in my 30 plus years on the State Police of  
9 taking part in, oh, hundreds and hundreds of search warrant  
10 returns; and that's very common, assorted paperwork because  
11 you don't have time to go through and itemize each piece of  
12 paper.

13 Q. (By Mr. Ryan) Well, you'd agree there's a difference  
14 between assorted paperwork and assorted lab paperwork,  
15 correct?

16 A. No, not really.

17 Q. Well, doesn't the word "lab" modify and describe what  
18 kind of paperwork it is?

19 A. Yeah. I mean, obviously, the word "lab" would modify  
20 it, but, you see the pictures of that car, and you see the  
21 condition that it was in. I mean there was a ton of  
22 paperwork and a lot of stuff all packed together.

23 So, assorted paperwork or assorted lab paperwork is a  
24 description of paperwork that you don't have time -- you  
25 feel it's evidentiary value, but you don't have time to

1 inventory it right there before the return.

2 Q. Well, let me ask you this: Before you filed the  
3 return, you were aware that there were these pages -- pieces  
4 of paper that indicated that Sonja Farak was stealing and  
5 using drugs at the Amherst Drug Lab, correct?

6 MR. CALDWELL: Objection.

7 THE COURT: Answer it if you feel you can.

8 THE WITNESS: No, I don't know what exactly was there.  
9 And at that point, the investigation was in its infancy.  
10 And to be sure about what you were looking at, at 4:30,  
11 5:00 o'clock in the morning after being up for about 24  
12 hours, no, I don't think I was able to grasp what all of the  
13 paperwork meant, no.

14 Q. (By Mr. Ryan) Well, when was the return filed?

15 A. Trooper Thomas filed the return.

16 Q. And he filed it on January 23, 2013, correct?

17 A. I don't know.

18 Q. Do you have any doubt that that's when it was filed?

19 A. No. You're telling me that, that sounds good.

20 Q. Okay. So that's four days later, correct?

21 A. Sure. Yeah.

22 Q. Now, do you recall last December meeting with a -- at  
23 the time they would have been a couple of fellow State  
24 Police Captains L'Italien and Coughlin?

25 A. I do.

1 Q. And did they ask you some questions about these  
2 materials that were seized from Ms. Farak's car?

3 A. I don't know if they asked me specifically about the  
4 material collected from the car, no.

5 Q. Well, did you tell them you became aware of paperwork  
6 seized from the vehicle that was associated with Farak's  
7 admitted drug use?

8 A. Yeah. At the time that I talked to them, yes.

9 Q. Did you tell them that there was concern that this  
10 information may be privileged due to the HIPAA Act?

11 A. Yes. Again, at a later date, that's correct.

12 Q. Did you go on to say that the return of the search  
13 warrant had to be completed within seven days and a  
14 determination of the HIPAA concern had not been reached?

15 A. That's correct.

16 Q. So, just in terms of getting a chronology here, you'd  
17 agree that you knew about these pieces of paperwork Farak  
18 admitted using drugs before the return was filed, correct?

19 A. But I wasn't involved -- this is what I'm -- I wasn't  
20 involved at that time. I later learned and prior to talking  
21 to Detective Captain L'Italien the circumstances surrounding  
22 that paper, that's correct.

23 Q. So, when you spoke to the two captains and you said  
24 that the HIPAA concern had not been reached before the due  
25 date was for the search warrant return, is it your testimony

1 you had no idea that there were these pages of admitted drug  
2 use at that time?

3 A. What time are we talking about?

4 Q. Before January, 23, 2013, when Trooper Randy Thomas  
5 filed this return in the Belchertown District Court.

6 A. That's correct.

7 Q. Now, when did you learn about these papers of admitted  
8 drug use that were found by your search team on January 19,  
9 2013?

10 A. I wouldn't be able to give you an exact date but  
11 sometime as the investigation progressed.

12 Q. You mentioned this HIPAA concern. Can you tell us some  
13 more about who raised HIPAA as a concern in this, deciding  
14 what to do about this paperwork?

15 A. I don't know.

16 Q. Well, you told the other two captains that a  
17 determination of the HIPAA concern had not been reached, so  
18 you were aware there was a HIPAA concern at some point; is  
19 that correct?

20 A. That's correct.

21 Q. And who told you there was a HIPAA concern at some  
22 point?

23 A. Again, I don't know.

24 Q. You have no idea who said that HIPAA may prevent your  
25 unit from revealing the seizure of these documents?



1 A. That's correct. If I was going to give you an answer,  
2 I would have to be accurate and I can't be accurate. I  
3 don't know.

4 Q. Did you, at some point or another, learn that HIPAA did  
5 not in any way prevent the disclosure of these materials  
6 that were seized?

7 A. No. I still don't know that.

8 Q. So, to this day, you think maybe HIPAA prevents these  
9 documents that were found in the car from being disclosed?

10 MR. CALDWELL: Objection.

11 THE COURT: You can answer, if you feel you can.

12 THE WITNESS: That's not what I said. I just said I  
13 don't know whether they are HIPAA or not. I don't know. I  
14 didn't say I thought either way.

15 Q. (By Mr. Ryan) Now, putting up on the screen an email,  
16 is this something that you sent on January 22, 2013, at  
17 4:30 p.m.?

18 A. It says it's from me.

19 Q. I'm going to hand you a paper copy --

20 A. Thank you.

21 Q. -- of what's up on the screen.

22 A. Thank you.

23 Q. Now, January 22, 2013, would this have been the day of  
24 Sonja Farak's arraignment?

25 A. I don't know.

1 Q. Does it sound about right?

2 A. It would be about right, sure.

3 Q. Okay. Now, if you look at the bottom of this thread,  
4 did it begin with a request for Bruce Cranstoun to Mark  
5 Harrison?

6 A. That's correct.

7 Q. And Bruce was a supervisor in the MSP Forensic Services  
8 Group?

9 A. Yes.

10 Q. And Mark worked at UMASS?

11 A. That's correct.

12 Q. And Bruce had asked Mark to get the record for the drug  
13 evidence storage room at the Amherst Drug Lab from July 1,  
14 2012 to January 18, 2013; is that correct?

15 A. Yes, sir.

16 Q. Any idea who decided to limit the search to that six  
17 month period?

18 A. I don't. I don't, but I can tell you those dates  
19 correspond to when the State Police took control of the lab  
20 and it looks like Major Connolly is -- Major Jimmy Connolly  
21 who was running the lab is involved in this. So it's --  
22 those dates, though, are consistent with when DPH turned the  
23 lab over to the State Police.

24 Q. Now, if you go up on that thread, does -- is there  
25 another email where Bruce sent an email to Major James

1 Connolly relating to something odd Mark had noticed?

2 A. Yes.

3 Q. And did you eventually receive Door Access Reports from  
4 Major Connolly?

5 A. I didn't. Or if I did, I just passed them on to the  
6 investigators. I don't recall them.

7 MR. RYAN: Approach the witness?

8 Q. (By Mr. Ryan) Is this in email from Major Connolly  
9 dated February 2, 2013?

10 A. Yes, it is.

11 Q. And are you one of the recipients along with Anne  
12 Kaczmarek?

13 A. Yes.

14 Q. And did this come with an attachment of Door Access  
15 Reports?

16 A. It looks like it did, yes.

17 Q. Is this one of the Door Access Reports up on the screen  
18 that was attached to that email?

19 A. I don't even know if I opened it, but that's what it  
20 looks like.

21 Q. Well, the odd thing in this that was brought to your  
22 attention, is that from November to January, Sonja Farak,  
23 there's no record of her of using an identifying means of  
24 getting into anything in the lab; is that correct?

25 A. That's what it says in the email, yes.

1 Q. That's kind of suspicious, isn't it?

2 A. I don't know.

3 Q. You don't think that's kind of suspicious that all  
4 three of her co-workers are using means that would record,  
5 electronically, when they came and went in the lab and Sonja  
6 Farak wasn't doing that?

7 A. Yeah, I don't know if I would describe it as  
8 suspicious, but it is definitely something to look into,  
9 sure.

10 Q. Well, do you know why none of those door reports were  
11 ever shared with Assistant District Attorneys or defense  
12 counsel?

13 A. I don't know.

14 Q. Now, showing you another email thread from January 23,  
15 2013. You can start at the back there.

16 A. (Witness complying)

17 Q. Now, that morning at 10:23 in the morning, did you  
18 receive an email from Sergeant Ballou?

19 A. I did.

20 Q. And was he reporting on a call he got from a Hampden  
21 County Assistant District Attorney reporting a case where  
22 one of the samples contains fewer pills than originally  
23 seized?

24 A. Yes.

25 Q. Did Sergeant Ballou express concern this may be the

1 first of many such calls?

2 A. That's correct.

3 Q. And at 10:30, did Anne Kaczmarek say: I think this is  
4 the tip of the iceberg?

5 A. She did.

6 Q. And did John Verner say this was something that should  
7 be looked into?

8 A. Yes.

9 Q. And did you agree that Joe should get more info and to  
10 document everything?

11 A. Yes.

12 Q. And at 10:56 a.m., did Joe tell you he left a message  
13 for the ADA and at that moment was doing the return of  
14 service now on the search warrant for the car?

15 A. Yes, he did.

16 Q. Now --

17 MR. RYAN: This is Bates 00086.

18 Q. (By Mr. Ryan) Showing you another document with Bates  
19 Number AGOFRK00086. At 4:41 p.m., did Joe Ballou write you  
20 an email?

21 A. Yeah, I'm cc'd in it, yes. He wrote it to Anne  
22 Kaczmarek.

23 Q. And did this email that you received indicate that he'd  
24 had spoken with the Assistant Attorney General -- excuse me,  
25 Assistant District Attorney?

1 A. Yes.

2 Q. And was it reported that there was a sample that was  
3 seized on March 16, 2012, that was believed to be 51  
4 Oxycodone pills?

5 A. That's correct.

6 Q. And Sonja Farak conducted the analysis on May 18, 2012,  
7 but now there are 61 pills?

8 A. Yes.

9 Q. And that the cert showed no controlled substance that  
10 was found?

11 A. That's what the email says, yes.

12 Q. Did he go on to say that he had spoken -- there was  
13 reported another ADA has a cocaine case that was light by  
14 4 grams?

15 A. Yes. Later on in the email, yes.

16 Q. And that this ADA was upset because they just missed  
17 the 100-gram threshold?

18 A. That's correct.

19 Q. Now, did, at the end of this email, Sergeant Ballou  
20 say: I'm a little sceptical because neither of these cases  
21 seem to fit the scheme that we think Farak was perpetrating.  
22 In our cases, she was certifying the drugs correctly and  
23 then stealing/replacing drugs. They also go back a lot  
24 further than the cases we are looking at. Still, it  
25 warrants investigation, of course.

1 Is that how he ended the email?

2 A. Yes.

3 Q. Now, am I correct that John Verner was not the  
4 recipient of that email?

5 A. That's correct.

6 Q. And showing you what's been previously marked  
7 AGOFRK000828. Some five days later, did he send an email  
8 that you received asking how this search had -- or what had  
9 come of this conversation with the Hampden County District  
10 Attorney's Office?

11 A. Yeah, he sent it to both Joe Ballou and myself, cc'd  
12 Anne Kaczmarek.

13 Q. And, showing you another document, did you respond to  
14 that email?

15 A. I did.

16 Q. And did you forward him Joseph Ballou's email about the  
17 March 2012 pill submission that came back negative with an  
18 extra ten pills and the concerns about this 2005 cocaine  
19 case?

20 A. I did.

21 Q. Now, later that morning did you speak with John Verner?

22 A. I don't know.

23 MR. RYAN: Your Honor, would the Court like me to ask  
24 permission when I approach witnesses?

25 THE COURT: No, you -- everybody has permission

1 whenever they're inclined.

2 MR. RYAN: Okay.

3 Q. (By Mr. Ryan) Showing you another email from that  
4 morning, a thread that starts at 11:55 in the morning.

5 Does this refresh your recollection as to whether you  
6 had conversation with John Verner that morning?

7 (Pause)

8 THE WITNESS: Yes, it does.

9 Q. (By Mr. Ryan) Well, let me ask you this: Did John  
10 Verner write to you, Anne Kaczmarek, and Joe Ballou at 11:55  
11 that morning and say: The DLT had a great idea.

12 A. He did.

13 Q. You are the DLT?

14 A. I am.

15 Q. And did he request that the four of you talk today or  
16 tomorrow?

17 A. He did.

18 Q. And did you write back with your availability?

19 A. I did.

20 Q. Did you end up speaking with this group the next  
21 morning?

22 A. I don't know.

23 (Off the record discussion)

24 THE WITNESS: It would make sense, but I don't know.

25 Q. (By Mr. Ryan) Does this refresh your recollection as



1 to whether or not you had a conference call at 11:15 on  
2 January 29, 2013?

3 A. Yeah, it says I'm going to participate in a conference  
4 call. But, again, I don't know -- I have no recollection of  
5 the call.

6 Q. Well, do you have any recollection of what your great  
7 idea was?

8 A. No.

9 Q. Does it appear to have been a great idea related to  
10 this Farak investigation?

11 A. Yeah, I would say it's related to the Farak  
12 investigation, yes.

13 Q. But sitting here today, you don't recall what that  
14 great idea was?

15 A. That's correct.

16 Q. Now, I want to talk a little bit more about the Dookhan  
17 investigation and your role in that. MSP took over the DPH  
18 labs on July 1, 2012 correct?

19 A. That's correct.

20 Q. And within a few days or weeks, you began an  
21 investigation of the Hinton Drug Lab based on some reports  
22 that had been made about concerns about Annie Dookhan's  
23 performance, correct?

24 A. That's fair to say, yes.

25 Q. And a criminal investigation was launched, correct?

1 A. That's correct.

2 Q. And you were the lead investigator?

3 A. Yes.

4 Q. And you interviewed a number of witnesses, correct?

5 A. I did.

6 Q. You wrote a number of reports?

7 A. I did.

8 Q. If I told you you wrote about 30 reports, does that  
9 sound about right?

10 A. It does.

11 Q. And, in addition to interviewing witnesses and writing  
12 reports, did you direct subordinates to do the same?

13 A. Yes.

14 Q. Well, am I correct that Annie Dookhan started at the  
15 Hinton Drug Lab in late 2003 or early 2004?

16 A. I haven't reviewed any of my Dookhan material in quite  
17 awhile, but that sounds about right.

18 Q. Do you recall she spent her entire career working at  
19 the Hinton Drug Lab?

20 A. Yes.

21 Q. Did you nevertheless instruct Sergeant Ballou and  
22 Trooper Thomas to interview individuals who worked at the  
23 Amherst Lab?

24 A. In regards to the Dookhan investigation?

25 Q. Yes.

1 A. Yes.

2 Q. And did this order encompass individuals from the  
3 Amherst Drug Lab who had actually retired before Annie  
4 Dookhan had started working at the Hinton Drug Lab?

5 A. I don't know about the dates of retirement, but we did  
6 do retired employees, if they were part of the lab during  
7 the time in question.

8 Q. And is this because you wanted to conduct as  
9 comprehensive an investigation as possible?

10 A. Yes.

11 Q. Now, did -- as you began working on the Annie Dookhan  
12 case, did it become clear to you that her misconduct had an  
13 impact on other criminal cases?

14 A. Yes.

15 Q. And was it your understanding that defendants in these  
16 other criminal cases had a right to materials that you were  
17 gathering or generating in the course of your investigation?

18 A. That's not a decision for me, that would be a decision  
19 for, you know, the Assistant Attorney General.

20 Q. Are you aware that's a decision that the Assistant  
21 Attorney Generals made?

22 A. I don't take part in discovery.

23 Q. Well, let me ask you this: Did you ever end up getting  
24 subpoenas to come testify in Dookhan-related cases because  
25 reports that you had written ended up out in the world?

1 A. Yes, numerous times.

2 Q. So, you were aware that these -- somebody had made a  
3 decision that this discovery was being provided to District  
4 Attorneys and to defense counsel, correct?

5 A. That's correct.

6 Q. Now, in this Dookhan case, did you end up working  
7 closely with Anne Kaczmarek?

8 A. Yes.

9 Q. And she was the lead prosecutor in the case, correct?

10 A. She took over later on in the case, yes, that's  
11 correct.

12 Q. You appeared at the Grand Jury, correct?

13 A. I did.

14 Q. And she questioned you at the Grand Jury, correct?

15 A. Yes.

16 Q. And in order to present your case against Annie Dookhan  
17 at the Grand Jury, did you and the Assistant Attorney  
18 Generals you were working with have to become familiar with  
19 the way this particular drug lab operated?

20 A. Yes.

21 Q. Now, in familiarizing yourselves with the Hinton Drug  
22 Lab operations, did you identify any deficiencies  
23 independent of misconduct on the part of Annie Dookhan?

24 A. I'm not sure I understand your question.

25 Q. Well, was there certain deficiencies in lab operations,

1 in terms of quality control that came to your attention?

2 A. Yeah, again, I apologize. I'm not trying to be  
3 difficult. I just don't understand the question in regards  
4 to --

5 (Off the record discussion among Counsel.)

6 Q. (By Mr. Ryan) Showing you an email that you sent on  
7 August 13, 2012, to Eileen O'Brien and Joseph Mason. In  
8 this email, did you state that you found it troubling that  
9 Hinton had no palm readers, palm reader records?

10 A. That's correct.

11 Q. At some point in your Dookhan investigation, did you  
12 receive authorization to seize and analyze the Hinton Drug  
13 Lab computer assigned to Annie Dookhan?

14 A. Yes, we did.

15 Q. Did you receive authorization to seize and analyze the  
16 Hinton Drug Lab computers assigned to 15 other drug lab  
17 employees?

18 A. It would sound right, but I don't recall that.

19 Q. Showing you this letter to you from Undersecretary of  
20 Forensic Science and Technology Curtis Wood, dated September  
21 10, 2012, can you let me know if that refreshes your  
22 recollection.

23 (Pause)

24 THE WITNESS: It does.

25 Q. (By Mr. Ryan) Did you receive authorization to seize

1 16 computers from the Hinton Drug Lab?

2 A. We did, yes.

3 Q. And upon receiving that operation, did you, in fact,  
4 seize those computers?

5 A. I believe we did, yes.

6 Q. That would have been on Tuesday, September 11th, the  
7 day after you got this letter, correct?

8 A. Yeah, I didn't take part in the seizure of those  
9 computers, but I believe they were received --

10 Q. Did you receive a report from Dennis Keeler apprizing  
11 you of this seizure?

12 A. Not that I remember, but Dennis was a part of the case.

13 THE COURT: Hold on. Hold on. I don't get it. I  
14 don't get it. Fill me in, because --

15 MR. RYAN: Okay.

16 Q. (By Mr. Ryan) My next question: Did anyone seize the  
17 computers of -- Sonja Farak's computer during this 2013  
18 investigation?

19 A. I don't know.

20 Q. You don't know?

21 A. No.

22 Q. Would you be surprised to learn that the answer to that  
23 is no?

24 A. I don't know.

25 Q. Did anyone seize any of the computers at the Amherst

1 Drug Lab to any of the other chemists who worked there?

2 A. It would be the same answer. I don't know. I'm not  
3 aware of what they did.

4 Q. Did anyone interview -- did you become aware that Sonja  
5 Farak began her career as a chemist working at the Hinton  
6 Drug Lab?

7 A. I knew that, yes.

8 Q. Did anyone interview any of her former co-workers at  
9 the Hinton Drug Lab during this 2013 investigation?

10 A. I don't know.

11 Q. Do you -- do you recall Sergeant Ballou apprizing you  
12 that he had had a conversation with a former Amherst Drug  
13 Lab employee named Gerald Giguere?

14 A. I don't recall that, no.

15 Q. Showing you an email from September 10, 2012, Sergeant  
16 Ballou to you, did he report that Mr. Giguere told him that  
17 Amherst chemists had to fill out progress sheets which  
18 essentially rated them on the volume of cases they analyzed?

19 A. Yes.

20 Q. And again, Giguere --

21 MR. RYAN: And for the record, G-I-G-U-E-R-E.

22 Q. (By Mr. Ryan) -- conveyed his belief that this, quote,  
23 encouraged volume over quality?

24 A. Giguere thought this.

25 Q. Now, this conference call that you had back on January

1 29, 2013 at 11:15 with Anne Kaczmarek and John Verner and  
2 Joe Ballou. Did anyone during that conference call express  
3 any concerns about systemic problems at the Amherst Drug  
4 Lab?

5 A. Again, I don't know if I was on that conference call.

6 Q. During the course of 2013, do you recall anyone having  
7 any concerns about how operations at Amherst may have been  
8 deficient in terms of quality control?

9 A. Specifically pointing towards, generally? I mean, it's  
10 obvious that the Amherst Lab was lacking in quality and  
11 control.

12 I mean, specific conversations, I don't recall exactly  
13 what they were.

14 Q. At any point, either before, during, or after this  
15 conference call, did John Verner or any of his superiors  
16 issue a directive limiting this investigation to the  
17 wrongdoings associated with Sonja Farak's arrest?

18 A. The -- limiting it, I don't know whether that's the  
19 correct word. But it was in regards to the crimes that we  
20 could prove that she had done.

21 And that -- it was my understanding that an overall  
22 system review was not going to be done by the AG's Office  
23 because we didn't do a parallel one in Dookhan. We were  
24 told that the IG's Office was going to do that.

25 So we didn't do the parallel system-wide investigation



1 in Dookhan and that was going to be the -- was going to be  
2 the same with Farak.

3 Q. Well, your office had begun a parallel system-wide  
4 investigation at Hinton, hadn't it?

5 A. No. No, we didn't. We never started a system-wide  
6 investigation. The IG's Office did that.

7 Q. Well, you seized 16 computers on September 11, 2012,  
8 correct?

9 A. Yeah, we had to get those, you know, those computers.

10 Q. Uh-huh.

11 A. We had to seize those records because the Hinton Lab  
12 was being closed and we couldn't -- couldn't have it secured  
13 and make sure that nothing was going to happen to any of  
14 that evidence at that time. What was going to happen to the  
15 evidence, that hadn't been decided yet, but it was to secure  
16 it, pending the direction of the investigation.

17 Q. Well, you actually announced the appointment of  
18 somebody from the AGO's Civil Division to take over a  
19 parallel investigation at the Hinton Drug Lab, correct?

20 A. I didn't announce anybody, but I don't believe that  
21 that ever came to fruition.

22 Q. In any event, there was -- the Inspector General was  
23 not called upon to come into Amherst and investigate any of  
24 these systemic wrongdoings, correct?

25 A. To my knowledge, no.

1 Q. And so this aspect of the investigation went  
2 un-investigated, correct?

3 A. Well, no, that's not correct, but --

4 Q. How is it incorrect?

5 A. I believe there was a system-wide investigation  
6 eventually done.

7 Q. By who?

8 A. Didn't the AG's do an investigation?

9 Q. In what year?

10 A. I don't know. I was out of the office, but --

11 Q. When did you leave the office?

12 (Pause)

13 Q. (By Mr. Ryan) In 2015? July?

14 A. Yes.

15 Q. So that's when the investigation took place at the lab.  
16 That's something that Mr. Caldwell did after you left the  
17 office in July of 2015, correct?

18 A. That's correct.

19 Q. Now, you said that this was an investigation that was  
20 going to focus on the wrongdoings associated with Sonja  
21 Farak's arrest. Did it come to your attention -- you're  
22 shaking your head. Is that incorrect?

23 A. That's incorrect. That's your words.

24 Q. How is it incorrect?

25 A. Not associated with her arrest, associated with her

1 criminal actions that we could prove.

2 Q. Well, when you spoke to the two, at-the-time fellow  
3 captains, did you say that the directive from the Criminal  
4 Division was that the investigation was to focus on Farak's  
5 wrong doings associated with her arrest?

6 A. Okay.

7 Q. Is that what you told them?

8 A. Yes.

9 Q. And did it later come to your attention that as this  
10 case against Sonja Farak was pending, that instances of  
11 other chemists discovered evidence suggesting she had  
12 tampered with additional substances?

13 A. I'm sorry. Could you repeat that again, please.

14 Q. Did it come to your attention, before Sonja Farak pled  
15 guilty, that there were other chemists who were reporting  
16 irregularities and evidence of tampering of samples that had  
17 previously been assigned to Sonja Farak?

18 A. That's correct.

19 Q. And this happened multiple times prior to her plea in  
20 January of 2014, correct?

21 A. That's correct.

22 Q. Now, I'm showing you what's previously been marked  
23 AGOFRK001806, and this is an email with attachments that I  
24 have also printed out that go up to 1817.

25 (Off the record discussion among Counsel.)

1 Q. (By Mr. Ryan) Is this an email that you received on  
2 February 14, 2013, from Joseph Ballou?

3 A. Yes, I was cc'd. That's correct.

4 Q. And you read this email, correct?

5 A. I've seen this material, yes.

6 MR. RYAN: I'd ask this document be marked as the next  
7 exhibit.

8 THE COURT: Without objection, it may be marked.

9 MR. CALDWELL: Objection as to the email.

10 THE COURT: Okay. I will hear you on your objection.

11 MR. CALDWELL: Your Honor, this email wasn't authored  
12 by the Major. It was merely sent to him.

13 THE COURT: Why don't you lay a foundation further as  
14 to its relevance.

15 Q. (By Mr. Ryan) Well, does this email have as a subject  
16 heading "Farak admissions"?

17 A. It does.

18 Q. And does it state in the body of the email: Here are  
19 the forms of the admissions of drug use that I was talking  
20 about.

21 A. Yes.

22 Q. Did you end up forwarding this email or replying to  
23 this email to Joe Ballou advising him that Anne Kaczmarek  
24 was going to be in need of some help at the Grand Jury and  
25 he needed to get one of his team to give her a hand -- it's

1 not in this email here.

2 A. Yeah, I remember that email. If you say it was in  
3 response to that, I don't know if it was in response to this  
4 specific email, but I do remember the email you're talking  
5 about.

6 THE COURT: Okay. You can mark it.

7 THE CLERK: Marked as No. 205.

8 (Exhibit No. 205, email from Ballou to Irwin (2/14/13),  
9 marked)

10 Q. (By Mr. Ryan) Now, would you agree that -- could you  
11 take a look at AGOFRK001816?

12 A. What number?

13 Q. 1816.

14 A. 1816?

15 Q. Yes. Has ServiceNet Diary Card at the top?

16 A. It does.

17 Q. Before discussing its contents, you'd agree that a  
18 decision was made not to introduce this document at the  
19 Grand Jury, correct?

20 A. I don't know.

21 Q. Well --

22 A. I wasn't part of that conversation, if there was one.

23 Q. When you spoke to the, at the time, fellow captains,  
24 did they ask you about whether or not you remember getting  
25 this email?

1 A. I don't know.

2 Q. Did you tell them that you do remember the email being  
3 sent and that the time frame of the email would have been  
4 leading up to Grand Jury proceedings and that Sergeant  
5 Ballou was inquiring whether or not the items would be  
6 introduced to the Grand Jury?

7 MR. CALDWELL: Objection, Your Honor, as to form of the  
8 question.

9 THE COURT: You can answer the question if you feel you  
10 can, Major.

11 THE WITNESS: That's accurate.

12 Q. (By Mr. Ryan) Now, this document that's before you  
13 contains some December dates on top, correct?

14 A. It does.

15 Q. There's no year there, right?

16 A. Not that I see.

17 Q. It indicates December 25th, Christmas, fell on a Sunday  
18 that year, correct?

19 MR. CALDWELL: Your Honor, as to form of the question,  
20 I want to make it clear my objection, if I may. We are  
21 going down the road of so many leading questions here. You  
22 know, I have not objected up to this point because I simply  
23 want to get the information out, but I think moving forward,  
24 Your Honor, I am going to be raising more objections of this  
25 nature as we move forward with the witnesses. I want that

1 to be clear for the Court.

2 THE COURT: Major, I'm going to ask you to step down  
3 for the luncheon recess at this point, please.

4 THE WITNESS: Yes, Your Honor.

5 (The witness stepped down.)

6 THE COURT: Anne Kaczmarek is going to testify?

7 MR. RYAN: And so is Joseph Ballou. If we want to save  
8 that for them, that's fine but --

9 THE COURT: I guess -- I'm --

10 (Pause)

11 THE COURT: I do want to save it for them. See you at  
12 2:00.

13 (The Court exited at 12:56 p.m.)

14 (\* \* \* \* \*)

15 (The Court entered at 2:11 p.m.)

16 (The defendant was present.)

17 THE COURT: Have the witness back on the stand, please.

18 THE CLERK: Back on the record.

19 (Robert Irwin, continued)

20 THE COURT: Good afternoon, sir.

21 THE WITNESS: Good afternoon, Your Honor.

22 THE COURT: Mr. Ryan.

23 MR. RYAN: Thank you.

24

25

(Robert Irwin, continued)

**DIRECT EXAMINATION BY MR. RYAN**

Q. Major, I'd like to jump ahead to August 23, 2013. On that date, did you hear that Joe Ballou and Anne Kaczmarek had received subpoenas to testify in the evidentiary hearing in a pending criminal case against a man named Rolando Penate?

A. I remember looking at those emails, yes.

Q. A week later, did you learn that Joe Ballou had received another subpoena to testify in a consolidated form for 15 post-conviction defendants?

A. I remember looking at that email as well.

Q. And that email that you got from Joe actually attached a copy of that subpoena, correct?

A. No, I don't recall the subpoena.

Q. Showing you an email from Joe Ballou on August 30th, does that have an attached subpoena to it?

A. It does.

Q. And this was a subpoena duces tecum?

A. Duces tecum, is that what you --

Q. Well, the subpoena that required him not only to show up and testify in person but to bring documents as well, correct?

A. Yes.

Q. And what it required was him to bring a copy of all



1 documents and photographs pertaining to investigation of  
2 Sonja Farak and the Amherst Drug Laboratory; is that right?

3 A. Yes.

4 Q. Now, you previously testified as lead investigator in  
5 the Dookhan case. You received subpoenas in the past,  
6 correct?

7 A. I have.

8 Q. And you -- when that had happened, there had been  
9 occasions where attorney -- Assistant Attorney Generals had  
10 represented you in attempting to quash the subpoena?

11 A. Yes. Or limit the testimony, yes.

12 Q. And did Assistant Attorney General Jessica Barnett do  
13 that on more than one occasion for you?

14 A. She might of, yes.

15 Q. And did you discuss with the Assistant Attorney  
16 Generals who represented you what information had already  
17 been provided to defense counsel?

18 A. I don't understand that question.

19 Q. Well, in terms of responding to a subpoena, one way to  
20 respond to a subpoena that would be able to say look if you  
21 want this from me you already have it, correct?

22 A. Yes. So, in regards to my response to the specific  
23 subpoenas, I would bring whatever was on that subpoena. It  
24 was not -- I can't think of any occasions that I was  
25 required to bring material, because it was all out there.

1 Q. Let me ask you this question: After Joe apprized you  
2 that he had been subpoenaed to testify at this September 9th  
3 hearing for the 15 defendants, did you attend a meeting on  
4 how to respond to this subpoena?

5 A. Not that I recall, no.

6 Q. Showing you what's previously been marked as  
7 AGOFRK003497, does this refresh your recollection as to  
8 whether you attended a meeting in regards to the Farak  
9 subpoenas that had been issued?

10 A. Yeah, there was -- appears that a meeting was called.  
11 I just don't know if I went to the meeting.

12 Q. So you have no recollection of going to the meeting, is  
13 that your testimony today?

14 A. Yes, sir.

15 Q. Did you, before that meeting took place, receive an  
16 email from Randy Ravitz?

17 Let me ask you this: Do you know who Randy Ravitz is?

18 A. Yes.

19 Q. Was he the Chief of Appeals for the Attorney General's  
20 Office?

21 A. Yes.

22 Q. And would the Attorney General's Appeals Division be  
23 the division that was tasked with responding to subpoenas  
24 when they were issued to other members of the office?

25 A. Yes.

1 Q. Showing you an email from Randy Ravitz, when was this  
2 email sent?

3 A. The one from Ravitz to --

4 Q. At the top.

5 A. -- to Dean Mazzone and myself, and Meghan Scafati and  
6 Suzanne Reardon?

7 Q. Yes.

8 A. Is that the one? September 3, 2013 -- Tuesday,  
9 September 3rd.

10 Q. And about what time was it?

11 A. 9:47 in the morning.

12 Q. And did he say in this email: One thing we can talk  
13 about is that sometimes, even if we can't quash the subpoena  
14 entirely, we will get its scope limited, so as to preclude  
15 certain types of questions.

16 A. Correct. Limited, yes.

17 Q. Now, did you -- I know you testified you don't recall  
18 attending this meeting. Did you have any discussions about  
19 precluding certain kinds of questions being posed to Joe  
20 Ballou at this evidentiary hearing?

21 A. No.

22 Q. Now, at the time that you received this invitation to  
23 attend this meeting, you received this email from Randall  
24 Ravitz, you had received, at this point, those mental health  
25 worksheets from Joe Ballou, correct?

1 A. I believe so.

2 Q. The ones that came attached to the February 14, 2013  
3 email, correct?

4 A. Correct.

5 Q. Did you, at any point, have any conversation with any  
6 Assistant Attorney Generals about Joe's possession of these  
7 documents?

8 A. No.

9 Q. Now, later that same day, did you get -- did Joe Ballou  
10 send you and Kaczmarek an email at 5:15 -- maybe it will  
11 help if I show it to you.

12 Previously marked as AGOFRK00360, and I direct your  
13 attention to this 5:15 email.

14 Did he, in this email, tell you that he was still on  
15 target to testify at the motion on Monday and would like to  
16 talk about it before then?

17 A. Yes, that's correct.

18 Q. And two minutes later, did you write back to tell him  
19 you'd call him in the morning?

20 A. Yes.

21 Q. And two minutes after that, did he tell you that he  
22 might be busy because ADA Flannery wanted him to set up a  
23 day this week so a team of defense attorneys can review the  
24 Farak evidence at Sergeant Ballou's office before Monday?

25 A. That's correct.

1 Q. At 5:38 p.m., did Anne Kaczmarek voice an objection to  
2 this?

3 A. She wrote: No. This is still an open criminal case.  
4 I do not want defense attorneys going through evidence on a  
5 fishing expedition. I'm sorry. I've been out of touch  
6 today. I'm home with strep throat. I will be in tomorrow.

7 Q. And did Joe Ballou respond this was the answer he was  
8 hoping for?

9 A. I don't see a response from Sergeant Ballou.

10 Q. Did you agree with this position that Ms. Kaczmarek was  
11 taking?

12 THE COURT: Are these exhibits, not exhibits?

13 MR. RYAN: The ones that I'm asking to have admitted I  
14 will make a point of, I just -- I know there's been a few  
15 pieces of paper already introduced and try to limit it to  
16 the ones that are really important.

17 THE COURT: Okay.

18 THE WITNESS: I'm the State Police Investigator and  
19 she's the Assistant Attorney General, so I would respect  
20 what she feels is best for the case.

21 Q. (By Mr. Ryan) Well, did you write a one-word response  
22 to her on -- at 7:43 p.m. that night?

23 A. I did.

24 Q. And did you say you agreed?

25 A. Yes, I agreed with the Assistant Attorney General.

1 Q. Okay. Now, did you speak with Joe Ballou as you said  
2 you would the following morning?

3 A. Don't know.

4 Q. Did you, at any point, tell him that they would be  
5 moving to quash the subpoena for him?

6 A. I don't know.

7 Q. Did you, at any point, discuss with him how to deal  
8 with these mental health worksheets that he possessed?

9 A. I don't recall, no.

10 Q. The next day, September 4, 2014, did you attend a  
11 meeting?

12 A. Again, it shows I accepted the meeting. I don't know  
13 if I remember attending it, though.

14 Q. Was this a meeting organized by Sheila Calkins?

15 A. She's on the list.

16 Q. Do you know -- who is she?

17 A. I believe she was, and I may have this -- she might  
18 have been Chief of Staff.

19 Q. Is it possible she was the Deputy Attorney General?

20 A. That possible.

21 Q. And where's the CBS office?

22 A. I don't know.

23 Q. And the subject of this invitation that you got was  
24 Hinton and Amherst potential new invest. Invest, in your  
25 profession, is short for investigation, correct?

1 A. Yes.

2 Q. What was the Hinton and Amherst Lab potential new  
3 investigation meeting about, if you know?

4 A. I don't know.

5 Q. Now, I've asked you a couple of questions about  
6 these -- this meeting you had with these, at the time,  
7 fellow Captains, L'Italien and I understand I may be  
8 pronouncing that wrong, and Coughlin. Did you know either  
9 of them before the meeting?

10 A. I knew both of them.

11 Q. How did you know them?

12 A. Through my experience on the State Police.

13 Q. And had you ever worked together with either of them in  
14 the past?

15 A. No.

16 Q. Showing you an email AGOFRK002933. Drawing your  
17 attention to this email from Byron Knight on January 24,  
18 2014. Do you know who Byron Knight is?

19 A. I do.

20 Q. And who is Byron Knight?

21 A. He was a special counsel. I believe he was assigned by  
22 the Governor to look into, I want to say, Dookhan.

23 Q. And were you one of the recipients of this email?

24 A. Yes.

25 Q. And was Paul L'Italien another recipient?

1 A. He was.

2 Q. And was Anne Kaczmarek another recipient?

3 A. She was cc'd.

4 Q. And had you worked with Paul L'Italien on the Dookhan  
5 investigation?

6 A. No, not really, he was pretty much with Major Mason.

7 Q. And any idea why you would have been co-recipients of  
8 this email from Byron Knight?

9 A. Why, who would be?

10 Q. Why Paul L'Italien would have received this.

11 A. Because he was stationed at the Crime Lab with Major  
12 Mason and Byron felt whatever he was looking for, that he  
13 needed to bring the Crime Lab into it.

14 Q. Okay. When you searched Sonja Farak's car, you found a  
15 number of Manila envelopes with case numbers on them, do you  
16 recall that?

17 A. I do.

18 Q. And some of these case numbers dated back to 2008,  
19 correct?

20 A. I couldn't tell you that.

21 Q. Does that sound about right?

22 A. It does.

23 Q. And at some point did Joe Ballou ask Sharon Salem to  
24 provide whatever information she could related to these  
25 cases?



1 A. I don't recall that.

2 Q. Did you learn eventually that Sharon Salem -- do you  
3 recall getting a spreadsheet from her that listed what she  
4 knew at that -- at the time about these particular cases?

5 A. I knew that she was doing some work and gathering some  
6 information. I don't recall the spreadsheets.

7 Q. Do you recall expressing an opinion that you felt like  
8 these -- that it was likely or was your guess that she  
9 replaced the drugs in these particular cases with fakes?

10 A. That was an investigative theory that I had, yes.

11 MR. RYAN: I don't have any further questions.

12 THE COURT: Okay.

13 MR. CALDWELL: Thank you, Your Honor.

14 **CROSS EXAMINATION BY MR. CALDWELL**

15 Q. Good afternoon, Major.

16 A. Good afternoon.

17 Q. A few questions for you, regards to the testimony you  
18 just gave.

19 MR. CALDWELL: If I could just have one moment, Your  
20 Honor?

21 THE COURT: Sure.

22 Q. (By Mr. Caldwell) So, Major, we're just going to step  
23 back briefly. We're going to talk about the time you  
24 executed the search warrant with Sergeant Ballou and Trooper  
25 Randy Thomas. That was at the Northampton barracks,

1 correct?

2 A. That's correct.

3 Q. It was approximately 3:20 in the morning?

4 A. I believe the execution time was 3:23 in the morning.

5 Q. And I want to ask, as the Detective Lieutenant of the  
6 Mass. State Police stationed to the Attorney General's  
7 Office, can you just tell the Court and us, when a case of  
8 this nature comes in, a case involving a government  
9 employee, it's fair to say that it's a high-priority  
10 investigation, correct?

11 A. That's correct.

12 Q. And sometimes you would act perhaps outside of the  
13 bounds of how you regularly operate. When I say that, I  
14 mean a 9:00 to 5:00. You would do something like execute a  
15 search warrant at 3:00 a.m.

16 A. That's correct.

17 Q. And can you tell us as a Detective Lieutenant, how you  
18 go about assigning troopers to investigations? And when I  
19 say that, I mean, how do you go about assigning certain  
20 troopers to be the case officer of a particular  
21 investigation?

22 A. It goes by a case by case basis depending on what  
23 section they were in in the office. You know, we had a  
24 white collar, we had an enterprise and major crime.

25 And then the Springfield office was a little unique

1 because they were a sergeant and two troopers so they were a  
2 Jack of all trades. They -- just because of their numbers,  
3 they needed to do basically all types of investigations.

4 So in regards to this case, with Farak, Sergeant Ballou  
5 was the ranking person out here and geographically speaking  
6 it made sense to assign Sergeant Ballou.

7 Q. And, so obviously, because they are out here,  
8 geographically it makes sense.

9 Now, in terms of the Hinton investigation, someone  
10 obviously from the Boston office would be assigned --

11 A. Yes.

12 Q. -- given the geographical location, correct?

13 A. Yes.

14 Q. And you were, in fact, that individual?

15 A. I was.

16 Q. And did you assign yourself or did anyone else direct  
17 you to say you should be the case officer on this case?

18 A. Lieutenant Colonel Frank Matthews was the Commander of  
19 the Division of Investigative Services. He and Major  
20 Connolly made the decision that I would be the lead.

21 Q. And you did that full investigation into the Hinton  
22 Laboratory, correct?

23 A. With Major Mason, that's correct.

24 Q. And how would you characterize the attitude about the  
25 Hinton Lab at the State Police? What were your goals as the

1 case officer? What do you want to discover?

2 A. Any wrongdoing by Annie Dookhan and anybody else that  
3 worked with her at the Hinton Lab.

4 Q. And you obviously did a full investigation into that,  
5 correct?

6 A. We did.

7 Q. And you had the opportunity at a certain point to  
8 discuss, sit down with Miss Dookhan, correct?

9 A. Yes, we did.

10 Q. And she agreed to do an interview with you, correct?

11 A. She did.

12 Q. And how would you -- would you describe that as a very  
13 full and thorough interview?

14 A. Under the circumstances, yes.

15 Q. And it's fair to say that Ms. Dookhan gave you a lot of  
16 information in regards to her alleged misconduct at the  
17 Hinton Laboratory in that sit-down meeting, correct?

18 A. She did.

19 Q. Now, moving forward to the Hinton investigation, excuse  
20 me the Amherst investigation, do you have any knowledge  
21 being, at the time, the Detective Lieutenant that Ms. Farak  
22 gave a statement similar to Ms. Dookhan?

23 A. I'm sorry, similar?

24 Q. Excuse me. Did she give a statement like Ms. Dookhan  
25 did?

1 A. She agreed to give a statement. I wouldn't describe it  
2 as being like Annie Dookhan's. She did speak to Detective  
3 Lieutenant Robin Whitney and one of her investigators.

4 Q. And at a certain point, that interview was terminated,  
5 correct?

6 A. That's correct.

7 Q. And it would be fair to say that to characterize that  
8 interview that Ms. Farak was not as forthcoming as Ms.  
9 Dookhan was, correct?

10 A. From what we know now, that's correct.

11 Q. And now moving to the Northampton barracks that early  
12 morning when you executed a search warrant, were you the  
13 case officer that evening? Would you characterize yourself  
14 as a case officer? I know it's kind of at the very infancy  
15 of the investigation, but would you characterize yourself as  
16 kind of the point at that time?

17 A. Yeah, for a short period of time. When I received the  
18 call and I went out there, I was point person for a short  
19 period of time. It quickly became apparent that it was  
20 going to be extremely time consuming and involved.

21 I lived back east. I had some family commitments,  
22 especially that weekend that I had to be at. And that's  
23 when it became more logical to have Sergeant Ballou and his  
24 troopers run with the lead on the investigation, supported  
25 by other people of rank from the Boston office.

1 Q. And in terms of -- you know, Sergeant Ballou was the  
2 case officer, became the case officer, and it's fair to say  
3 that any type of extra resources he would need in terms of  
4 maybe extra bodies, you would facilitate in supplying these  
5 extra bodies to assist him, correct?

6 A. That's correct. And if I wasn't able to do it,  
7 Lieutenants Cooney, Sergeant Hearn, one of the other people  
8 in the office could help him out.

9 Q. And it's fair to say you were also still very heavily  
10 involved in the Dookhan investigation, correct?

11 A. Yes.

12 Q. So, on the evening that you were looking for the  
13 paperwork -- excuse me. Let me step back.

14 Did you direct -- which Trooper -- did you direct which  
15 trooper should search what area of the car?

16 A. No. No. We all picked basically a spot.

17 Q. And upon -- was that the first time you saw Sonja  
18 Farak's car?

19 A. Yes.

20 Q. And you obviously had a search warrant to search it.  
21 You opened the car and you took a look in, what was your  
22 first observations that you made of the car?

23 A. It was disgusting.

24 Q. When you say "disgusting", just explain that for us,  
25 please.

1 A. Paper, debris -- it was just completely unkept.

2 Q. Was there anything that really stood out in your mind  
3 other than just being unkept and junk and garbage?

4 A. No.

5 Q. And you had the authorization to take anything in  
6 relation to the alleged theft of controlled substances,  
7 paperwork, things of that nature, right?

8 A. Yes.

9 Q. And you did, in fact, do that; you took everything that  
10 when -- you took into possession everything you thought  
11 may -- had evidentiary value at the time, or maybe had  
12 evidentiary value in the future, after further  
13 investigation, correct?

14 A. Yes.

15 Q. Is there anything -- do you recall leaving anything in  
16 the car or saying, no, we don't need to take that?

17 A. No, we left a copy of the search warrant. That was it.

18 Q. It's fair to say at this time of the night the  
19 temperature, the location -- this was not the ideal location  
20 to execute a search warrant, is that fair?

21 A. I mean, it was early morning hours. That's definitely  
22 not the ideal time. But in regards to location, it was  
23 secure. It was in the garage at Northampton, so we weren't  
24 out in the elements or anything like that, so that wasn't  
25 bad.

1 Q. And you had testified previously that you have been a  
2 member of the Mass. State Police for over 30 years, correct?

3 A. Yes.

4 Q. And you executed, I believe you said, hundreds of  
5 search warrants?

6 A. Yes.

7 Q. And you've been the affiant of some of those search  
8 warrants; is that correct?

9 A. Yes.

10 Q. And you also assisted other federal troopers in  
11 executing search warrants?

12 A. Yes.

13 Q. And you've also had the opportunity when you're the  
14 affiant to do the return, correct?

15 A. Yes.

16 Q. In the hundreds of search warrants that you assist in  
17 executing, about how many returns could you estimate you've  
18 done?

19 A. Upwards of 50.

20 Q. And in the situation where you seized paperwork, I  
21 believe it's your testimony that it's very common to use the  
22 term "assorted paperwork" or in this case specifically as  
23 Mr. Ryan indicated to you "assorted lab paperwork", correct?

24 A. It is.

25 Q. And at this time, especially at this time of the night



1 and the amount of paper materials you're dealing with, when  
2 you take this type of evidence, what do you expect is going  
3 to happen say days down the road with that evidence?

4 A. That eventually it will be gone through and examined  
5 for any type of evidentiary value.

6 Q. And, obviously, not yourself in this situation, but the  
7 case officer assigned to do a detailed report indicating  
8 what was, in fact, of evidentiary value that was seized from  
9 the car, correct?

10 A. Yes.

11 Q. And that would be turned over to the prosecutor for a  
12 further review?

13 A. Yes.

14 Q. And it perhaps would have become part of a discovery  
15 packet to a defendant, if charges were to be brought against  
16 that person, correct?

17 A. Whatever the Assistant Attorney General puts in that  
18 discovery packet, yes.

19 Q. Because you don't really deal with discovery, correct?

20 A. That's correct.

21 Q. Your job is to turn it over to the prosecuting officer  
22 and they make that determination?

23 A. That is correct.

24 Q. Now, on this evening, were you, in collecting this  
25 paperwork, the scattered paperwork, were you using boxes or

1 bags? Do you recall?

2 A. I don't recall.

3 Q. And it's fair to say, Major, that at a certain point,  
4 later on down the road, after you executed the search  
5 warrant, you were aware that there was some papers found and  
6 later examined by Joe Ballou to have some type of  
7 significance concerning Sonja Farak, correct?

8 A. That's correct.

9 Q. And these would be titled -- I think, they were  
10 indicated some type of psychological worksheets that were  
11 discovered. If you know.

12 A. I don't recall exactly what they said on them.

13 Q. But, there were -- at any point, did you understand  
14 through Sergeant Ballou, that there were some worksheets  
15 that would indicate perhaps Sonja Farak was using drugs?

16 A. Yes.

17 Q. And how those papers were going to be used in the  
18 future in the prosecution of Farak, that's not something  
19 that you deal with, correct?

20 A. That's correct.

21 Q. That's something that's dealt by -- the prosecutor  
22 deals with that issue, correct?

23 A. Yes.

24 Q. So if there's any sort of privileges or anything like  
25 that, that would be something that, in this case, the

1 Attorney General's Office would deal with?

2 A. Yes.

3 Q. Okay. Now, Mr. Ryan mentioned some emails going back  
4 and forth regarding a Hampden County District Attorney  
5 contacting the Attorney General's Office about some pill  
6 evidence in one of their cases. Do you recall that?

7 A. I do.

8 Q. And you had an email conversation with Sergeant Ballou  
9 in regards to that, correct?

10 A. Yes.

11 Q. And it's fair to say that your directive to him was  
12 look into it, do something about it, try to figure it out?

13 A. And document it.

14 Q. And, as one of the emails indicated, document  
15 everything?

16 A. That's correct.

17 Q. And, obviously, when these types of allegations are  
18 made, it's very important, especially given the scope --  
19 excuse me. Strike that.

20 In these types of situations, when you do get a call  
21 from an Assistant District Attorney or an AAG thinking  
22 something is wrong with some piece of evidence, it's  
23 obviously your job to look into it?

24 A. Yes.

25 Q. And you take all -- any type of these inquiries that

1 you received, in regards to the Hampden DA's Office and the  
2 Sonja Farak evidence, it's something that you would always  
3 recommend your troopers to look at and investigate and see  
4 if there was a problem, correct?

5 A. Yes.

6 Q. Now, you had testified earlier that -- or you had  
7 discussed a parallel investigation into the Dookhan case,  
8 correct?

9 A. Yes.

10 Q. When I say "parallel", I mean not only a criminal  
11 prosecution but also an investigation into the lab as a  
12 whole, correct?

13 A. That's correct.

14 Q. And that was -- and that was -- it was fair to say that  
15 would be very similar to what the Inspector General's Office  
16 did with respect to the Hinton Laboratory.

17 A. That's correct.

18 Q. And at a certain point as being the head of the Dookhan  
19 investigation, you realized that the Hinton Laboratory was  
20 going to be closed, correct?

21 A. Yes.

22 Q. So, the -- it's fair to say that the Office of the  
23 Attorney General was tasked with going to the Hinton  
24 Laboratory and seizing all the evidence that was in -- at  
25 the lab, correct?

1 A. Yes.

2 Q. And that would be limited to not just paperwork and  
3 files, but also hard drives?

4 A. That's correct.

5 Q. And, if you know, those -- that evidence was later  
6 collected by the Attorney General's Office and then sent out  
7 for use by the Inspector General's Office in their  
8 investigation, correct?

9 A. That's correct.

10 MR. CALDWELL: If I could have just one moment, Your  
11 Honor?

12 (Pause)

13 Q. (By Mr. Caldwell) Now, did you have any conversations  
14 with Assistant Attorney Generals in regards to that parallel  
15 investigation into the laboratory?

16 A. Which lab?

17 Q. The Hinton Laboratory.

18 A. Yes.

19 Q. And that was with various -- Ed Bedrosian, perhaps?

20 A. Yes.

21 Q. And do you have knowledge of what the Attorney  
22 General's Office was doing internally in order to prepare  
23 for that investigation?

24 A. Yes.

25 Q. And can you just briefly explain what some of the

1 things the Attorney General's Office was doing in order to  
2 prepare for that parallel investigation with the Hinton Lab?

3 A. Attorney Ryan mentioned it that they -- I believe they  
4 at least temporarily appointed an Assistant Attorney General  
5 that was going to run that parallel investigation.

6 And then it was a decision made that the AG's Office  
7 was not going to do that investigation, that it was going to  
8 go to IG's Office.

9 Q. And that was a decision made by the AG's Office  
10 unilaterally or was it requested of the Attorney General's  
11 Office that they not do that investigation?

12 A. I believe that it was at a request from the defense bar  
13 and some other sources, along that line.

14 Q. Okay. And it's fair to say that's because it's -- you  
15 could characterize it as a conflict, correct?

16 A. That's what it was. It was characterized as the AG's  
17 Office would have had a conflict of interest doing that  
18 investigation.

19 Q. But not only a criminal investigation, but then,  
20 essentially, a civil type investigation, correct?

21 A. That's correct.

22 Q. And as far as you know, we never went forward. As you  
23 had previously indicated, the Inspector General did that  
24 full investigation?

25 A. That's correct.

1 Q. Have you ever had the opportunity visit the Amherst  
2 Laboratory?

3 A. I have not.

4 Q. Do you know that it's a very small lab?

5 A. Anecdotally, yes.

6 Q. And not similar to the size of the Hinton Laboratory?

7 A. That's what I've been told, yes.

8 Q. Approximately four employees?

9 A. Correct.

10 Q. Do you have any knowledge of any State Police audits or  
11 reports regarding the lack of quality control at the -- or  
12 quality assurance at the Amherst Laboratory?

13 A. I -- at the time I did not. I am aware of a document  
14 that they did an inspection when they came over to State  
15 Police control, sometime after July 1, 2013.

16 Q. And the Hinton Lab, at that time, was already closed,  
17 correct?

18 A. I'm not sure in regards to the timing of that  
19 inspection, but the Hinton Lab closed pretty quick after it  
20 was taken over by the State Police.

21 Q. And the Amherst Lab was still operating, correct?

22 A. That's correct.

23 Q. And the Amherst Lab, it's fair to say, was never closed  
24 until the arrest -- even subsequent to the report done by  
25 the Mass. State Police, until Sonja Farak was arrested,

1 correct?

2 A. That's correct, sir.

3 Q. And then at that time, the doors were immediately  
4 locked?

5 A. I'm sorry?

6 Q. At that time that Ms. Farak was arrested, the doors to  
7 that laboratory were locked and they were never to be opened  
8 again?

9 A. That's correct.

10 Q. So I just wanted to go through --

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

12 THE COURT: Uh-huh.

13 Q. (By Mr. Caldwell) So this document just right here  
14 that was recently admitted as Exhibit 205. Just for the  
15 record, it's an email sent from Sergeant Joseph Ballou to  
16 Assistant Attorney General Anne Kaczmarek and you are cc'd  
17 along with John Verner on at this matter, correct?

18 A. Yes.

19 Q. And it states, as Mr. Ryan had read previously: Anne,  
20 here are the forms about the admissions of drug use I was  
21 talking about. There are also news articles with  
22 handwritten comments about other officials being caught with  
23 drugs. All of these were found in the car, inside of the  
24 lab manila envelopes.

25 Joe.



1 And attached to that, as Mr. Ryan indicated, was  
2 several articles. There's one here regarding -- I think  
3 it's Pittsfield.com concerning Dave Capeless' statement on  
4 the steroid probe. And there are some handwritten notes  
5 there, correct?

6 A. Yes, there are.

7 Q. And on the second page, MassLive.com concerning a  
8 Pittsfield pharmacist?

9 A. Yes.

10 Q. Correct?

11 The third article from SFgate.com regarding the Feds  
12 Indict Former SFPD Drug Lab Technician.

13 And onto the -- there's another blank page. It looks  
14 like there's some ads on it concerning that San Francisco  
15 police department.

16 The next one is an Emotion Regulation Worksheet with  
17 some handwritten notes on it, correct?

18 A. Yes.

19 Q. There's some other notes here, looks like handwritten  
20 grid, it says pros and cons on it?

21 A. Correct.

22 Q. The next one looks to be some type of checklist with  
23 calendar, that's all handwritten?

24 A. That's correct.

25 Q. Here's a laboratory report from Quest Diagnostics?

1 A. Correct.

2 Q. Here's another Emotion Regulation Worksheet with  
3 handwritten notes.

4 A. Yes.

5 Q. And there's two more ServiceNet Diary Card with some  
6 dates on it; also, other handwritten notes?

7 A. Yes.

8 Q. And looks like another checklist with further  
9 handwritten notes.

10 And these documents that I just read into the record  
11 through their title page, they were attached to this email  
12 that you were cc'd on?

13 A. That's correct.

14 Q. Were there any other -- and these were the only  
15 documents that were sent by Joe Ballou to Anne Kaczmarek,  
16 yourself, and John Verner attached to this email, correct?

17 A. That's correct.

18 Q. Thank you.

19 MR. CALDWELL: If I may have a moment, Your Honor?

20 THE COURT: Sure.

21 (Pause)

22 MR. CALDWELL: I have nothing further of the witness.

23 THE COURT: Okay.

24 MR. RYAN: Very briefly?

25 THE COURT: Briefly.

**REDIRECT EXAMINATION BY MR. RYAN**

Q. Major, you said it would be the responsibility of the case officer to go through these papers and detect anything and everything of evidentiary value and turn that into a report. Do you recall that testimony you just gave?

A. Yes.

Q. Showing you what's previously been marked as Exhibit 10, is this the report from Sergeant Ballou to you dated February 6, 2013?

A. It is a report, yes.

Q. And this is a report that's been approved?

A. That's correct.

Q. And, paragraph 13, is that the only paragraph in this report that dealt with what was seized from the car of the vehicle?

A. I'd have to go through the whole report.

Q. Well, does that paragraph describe the various things that were taken from the vehicle?

A. It does.

Q. And we can agree that there isn't any indication in there that any of these items that were just shown to you, in Exhibit 205, were taken from the car, correct?

A. In that report, no.

Q. Now, you said also in response to questions from Mr. Caldwell that anytime the District Attorney's Office

1 would contact you with an inquiry or to look into a problem  
2 that it would -- this would be something that your -- you  
3 and your subordinates would take seriously, correct?

4 A. Yes. Given the assignment, yes.

5 Q. Now, you're aware that Sergeant Ballou followed up, per  
6 your order, and spoke with the Assistant District Attorney  
7 who had the pill case, correct?

8 A. Yes.

9 Q. And you're aware that the Assistant District Attorney  
10 said there was a narcotics detective that Sergeant Ballou  
11 should talk to?

12 A. I'm not aware of that, but that would make sense.

13 Q. Do you know when he ended up talking to that narcotics  
14 detective?

15 A. I don't.

16 MR. RYAN: I don't have any further questions.

17 THE COURT: Okay. All set. Thank you, Major. You may  
18 step down, sir.

19 THE WITNESS: Thank you, Your Honor.

20 THE COURT: Okay.

21 (The witness stepped down.)

22 THE COURT: Mr. Ryan, you may call your next witness.

23 Ms. Jacobstein, you may call your next witness, please.

24 MS. JACOBSTEIN: Hi. Frank Flannery, please.

25 THE CLERK: Counsel, will you collect your papers and I

1 need Exhibit 205, please.

2 MS. JOHNSTON: Your Honor, I mentioned to defense  
3 counsel several times throughout the day that Sharon Salem  
4 traveled for four hours to get here today.

5 THE COURT: I'm sorry?

6 MS. JOHNSTON: Sharon Salem traveled from the Cape. It  
7 took four hours to get here. I would ask if there is a way,  
8 knowing that Attorney Flannery lives in Holyoke, perhaps we  
9 could accommodate calling Ms. Sharon Salem.

10 Obviously, it's up to defense how they want to put  
11 their case in.

12 MS. JACOBSTEIN: Attorney Flannery wasn't available  
13 tomorrow. We are hoping we could get through everybody.

14 THE COURT: Is Ms. Salem after Mr. Flannery?

15 MS. JACOBSTEIN: Yes.

16 THE COURT: Okay. So --

17 MS. JACOBSTEIN: I will try to talk fast.

18 THE COURT: All right. We will try to get to  
19 Ms. Salem.

20 Nothing against you or Holyoke, Mr. Flannery.

21 MR. FLANNERY: Thank you.

22 (Frank Flannery, sworn)

23 THE WITNESS: Good afternoon.

24 THE COURT: Good afternoon, Mr. Flannery.

25 Ms. Jacobstein, when you're ready.

(Frank Flannery)

**DIRECT EXAMINATION BY MS. JACOBSTEIN**

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

A. Frank, last name Flannery, F-L-A-N-N-E-R-Y.

Q. What do you do currently?

A. I'm an attorney.

Q. And what did you do previously?

A. Well, I have been an attorney for a long time. I currently am of counsel to Parker and O'Grady, that's a firm in Southampton. Prior to that I worked as an Assistant District Attorney for the Hampden County DA's Office.

Q. And when, approximately, did you work for the Hampden District Attorney's Office?

A. I started, I believe, in February of 2013. And I left in September of 2014, I believe.

Q. And as an Assistant District Attorney, what were some of your responsibilities?

A. Well, I had a caseload that consisted largely of murder cases. But shortly after I started in 2013, I'm not exactly sure when, but at some point, I became in charge of the so-called Sonja Farak cases.

Q. And for -- as District Attorney of the Assistant District Attorney for working on the Farak cases, what did you have to do in that role?

1 A. Well, I didn't handle all of them. There were quite a  
2 few. It was sort of an ad hoc process. We didn't really  
3 know in the beginning how big of a problem it was going to  
4 be or how to handle it.

5 So, part of my job was just to come up with some sort  
6 of policy or protocol for handling the cases, getting  
7 discovery to the various defense attorneys. Things of that  
8 nature.

9 Q. And you provided discovery in these Farak cases, but,  
10 when you provide discovery in general, what do you generally  
11 turn over to defense counsel?

12 A. Well, as a prosecutor, I generally turn over  
13 everything. I mean, I -- certainly what I'm obligated to  
14 turn over. Anything that can be used or anything that is  
15 exculpatory. But beyond that, I tend to turn over just  
16 about everything I have.

17 Q. So you are required to turn over all exculpatory  
18 evidence, but that evidence is not always in your  
19 possession. So are you also required to go out and get  
20 evidence?

21 A. I assume you're talking about the Farak cases. That  
22 was unusual, it wasn't a case that our office was handling  
23 which is ordinarily -- that's normally the situation you're  
24 dealing with, you have direct access to the discovery either  
25 it's in your file or it's your -- it's with investigators

1     you're working with directly.

2             So, there I had to go through the AG's Office, the  
3     Attorney General's Office for most of what we disseminated  
4     to defense counsel in those cases.

5     Q.     So in 2013, when you became the point person for the  
6     Farak cases, what was the status of the investigation into  
7     Ms. Farak?

8     A.     Well, when I started in 2013, this had -- it had just  
9     happened, really. I think it was, if memory serves, perhaps  
10    in January of 2013.

11            And so I am not sure when this meeting occurred or even  
12    who was present, but I do believe we had a meeting where I  
13    recall Major Connolly was present. He was the one who -- he  
14    was, sort of, the point person from the State Police at that  
15    time.

16            And we got a briefing on what the State Police intended  
17    to do as far as investigating, you know, what had happened  
18    at the lab.

19    Q.     And what did the State Police intend to do?

20    A.     Well, at that point, we were told that the State Police  
21    had essentially sealed off the lab so that none of the  
22    samples that were there when Ms. Farak was arrested would  
23    leave the lab. And I think their plan was to first catalog  
24    all those samples and then retest some, if not all of them,  
25    to see if they could find any other evidence of tampering.



1 Q. Do you know if that was ever done?

2 A. I think they may have cataloged the samples. I don't  
3 believe they ever retested any. At least not when I was  
4 there at the DA's Office.

5 Q. Beyond retesting of samples, was the State Police going  
6 to undertake any other investigation?

7 A. I think they were looking at the lab more generally but  
8 I don't -- I don't know -- I don't recall what, if anything,  
9 was going to happen in addition to retesting the samples; or  
10 at least as I understood the plan at the time.

11 Q. So as you understood the plan at the time, they were  
12 going to retest samples and then take it from there?

13 A. That -- that was my impression.

14 Q. But they never did the full retesting of the samples?

15 A. As far as --

16 MR. CALDWELL: Objection.

17 THE WITNESS: As far as I know.

18 THE COURT: That's sustained.

19 Q. (By Ms. Jacobstein) Did your office ever attempt to  
20 get samples retested?

21 A. We did.

22 Q. Which samples?

23 A. I don't recall specifically which samples. But we did  
24 not have them retested for the purposes of determining  
25 whether they had been tampered with. It was not -- we

1 weren't attempting to investigate that on our own.

2 But because a lot of these cases were still pending and  
3 we wanted to go forward on some of them, we had to send some  
4 of those samples back for retesting.

5 Q. So, beyond sending the samples back for retesting,  
6 that -- for pending cases to drug test, had any other cases  
7 be sent back for retesting, to your knowledge?

8 A. No.

9 Q. So you were the Hampden District -- Assistant District  
10 Attorney who represented the Commonwealth at the Farak  
11 evidentiary hearing back in September of 2013?

12 A. Yes.

13 Q. So, and the first day of that hearing was September 9,  
14 2013; is that correct?

15 A. It sounds about right. As I recall it, it was  
16 continued. The hearing was continued at least once but it  
17 was in the Fall.

18 Q. And it was -- it was three days?

19 A. Yes.

20 Q. And that hearing was in front of Judge Kinder?

21 A. Yes.

22 Q. And he was the Regional Administrative Judge?

23 A. Yes.

24 Q. And how much notice did you get before that hearing?

25 A. I don't recall how much. It was something that we had

1 planned for a while because there were a number of cases  
2 that were consolidated. I don't recall exactly how much  
3 notice we had.

4 (Off the record discussion among Counsel.)

5 MS. JACOBSTEIN: If I may I approach?

6 THE COURT: Yes.

7 Q. (By Ms. Jacobstein) So I'm showing you an email. Who  
8 wrote that email?

9 A. I did.

10 Q. And who was it to?

11 A. Anne.

12 Q. Kaczmarek?

13 A. Kaczmarek, yes.

14 Q. And was there an attachment to that email?

15 A. Yes. I assume you're referring to the scheduling  
16 order.

17 Q. Well, in the front it says "attachment" and then it  
18 says there's something attached.

19 A. Okay. Yes.

20 Q. Okay. And so -- and attached to it was the lab  
21 scheduling order?

22 A. Yes.

23 Q. And that was from July 25, 2013?

24 A. Yes.

25 Q. And that also gives the date of the evidentiary

1 hearing, September 9, 2013?

2 A. It does.

3 Q. And as part of that order, Judge Kinder defined the  
4 issues to be resolved at that hearing?

5 A. Yes.

6 Q. And what are those issues?

7 A. Well, primarily the issue to be determined was the  
8 scope of Ms. Farak's misconduct in terms of not just how  
9 many samples she tampered with but, sort of, the time frame.  
10 Because we knew when she'd stopped tampering with evidence,  
11 but we did not know when that had started, and that bore on  
12 the issues raised in all those motions for new trial.

13 Q. So, we talked -- you said you basically got your  
14 discovery from the Attorney General's Office. You received  
15 a lot of discovery from them; is that correct?

16 A. Yes.

17 Q. And what did this discovery include?

18 A. Well, we received a large amount of discovery that  
19 related to the lab itself, various protocols, policies, et  
20 cetera.

21 We received a fair amount of discovery that related to  
22 the case against Ms. Farak. So police reports and Grand  
23 Jury minutes, et cetera, that would have been generated as,  
24 you know, as result of that, of that case against her.

25 And then, we also received some other sort of discovery

1 or lab paperwork that would relate to some of the samples  
2 that were retested either by our office or by other DAs  
3 Offices.

4 Q. So before you got the retesting results, did you get  
5 any witness statements from Farak's co-workers?

6 A. Yes, I think. If memory serves, we would have gotten  
7 Grand Jury minutes perhaps. My memory is a little hazy on  
8 that, but I know they were -- maybe not Grand Jury minutes.  
9 I know that they were interviewed, and that would have been  
10 part of the -- as part of the case against Ms. Farak or the  
11 investigation that related to that case, and so we would  
12 of -- I believe we received witness statements from some, if  
13 not all her co-workers at the lab.

14 Q. And do you remember that more than one mentioned that  
15 they noticed that things were different with Ms. Farak in  
16 the months leading up to her arrest?

17 A. Yes.

18 Q. And maybe they noticed a drop off in her production?

19 A. Yes. I don't recall exactly what it was, but I think  
20 the point was that there was a change in her behavior that  
21 may have been consistent with drug use.

22 Q. And based on these observations from her co-workers, it  
23 was generally believed that her -- the timing of her  
24 misconduct went back to September 2012, approximately?

25 A. That corresponded with the changes. I'm taking your

1 word for September. I don't recall exactly but, yes, there  
2 was a time period that I think corresponded with the changes  
3 in her behavior.

4 Q. So, your recollection, not based on mine, is that based  
5 on what these witnesses said, everyone was going on the  
6 assumption that whenever her behavior started to change,  
7 that's when her drug use started?

8 A. I don't know if everyone assumed that, but I think that  
9 was the inference that a lot -- that I drew and I think  
10 perhaps, and I don't know, but I think perhaps the Court  
11 drew as well.

12 Q. So you talked about how you got retesting results. I  
13 wanted to turn your attention to some retesting results from  
14 the Berkshire case. Do you remember the Berkshire case that  
15 I'm talking about?

16 It's been awhile.

17 So what I'm going to do is I'm going to give to you --  
18 this is just pages from Exhibit 80.

19 So if you could turn to page 24 which is the first  
20 page, because I didn't copy of all of them. And it says  
21 that you received some new discovery and then on 25 it was  
22 at, Berkshire County case?

23 A. Yes.

24 Q. So what this is, what you told the Court back on  
25 September 9, 2013, and you had just learned the Friday

1 before that there was this retesting in the Berkshire case.

2 A. Yes, that's what it sounds like.

3 Q. And the initial analysis had been done by Ms. Farak?

4 A. Correct.

5 Q. And that had -- but that was dated July 2012?

6 A. Yes.

7 Q. And so that would move the date back of her misconduct  
8 to July of 2012?

9 A. Yeah. If you assume that she had tampered with that  
10 sample, then yes.

11 Q. Right, because the -- Ms. Farak had originally done the  
12 testing in that case and it had been retested, and there was  
13 concern that she had tampered with that sample.

14 A. Right.

15 Q. And there was a discrepancy in the amount of cocaine  
16 and the quality of the cocaine. It says very large  
17 discrepancy. And so that -- so based on that, it was kind  
18 of assumed that she had tampered with that evidence?

19 A. Right. I don't know that we all just assumed that, but  
20 that was certainly the point of that evidence being  
21 introduced.

22 Q. With respect to the scope of Ms. Farak's misconduct,  
23 before the hearing, what did you think the scope of her  
24 misconduct was?

25 A. I had no idea.

1 Q. Well, what drugs did you think she was using?

2 A. Cocaine.

3 Q. And what was this based on?

4 A. It was based on the -- well, the discovery from the  
5 criminal case against her, and also the samples that were  
6 coming back to us with indications that they had been  
7 tampered with were almost all cocaine.

8 Q. So I believe I gave to you already an email dated  
9 August 27, 2013. Do you have that right there?

10 A. Yes.

11 Q. Why would you send that to Attorney Kaczmarek?

12 A. Well, there was a fair amount I needed to coordinate  
13 with her insofar as the hearing was concerned. I mean, the  
14 evidence that we were introducing was largely from her.  
15 Some of the witnesses that we would be calling were  
16 witnesses that would be called at -- if there was a trial in  
17 a case against Ms. Farak, they were her witnesses,  
18 essentially.

19 So I made sure that she was aware -- this was a fairly  
20 significant juncture in what we were doing, and so I wanted  
21 to make sure that there were no issues with witnesses or  
22 discovery.

23 Q. When you say there were no issues with discovery, what  
24 do you mean by that?

25 A. Well, I wanted to make sure we had everything.



1 Q. Was it your understanding that you did have everything?

2 A. Yes. The retest that formed the bulk of the evidence  
3 of tampering at this hearing sort of came by way of  
4 happenstance for the most part.

5 These samples weren't sent back to the lab for the  
6 purpose of determining whether there was tampering. I don't  
7 think any of the analysts were -- I don't know if they even  
8 knew that Ms. Farak had been the analyst. There was no  
9 protocol that they were given in terms of, you know, extra  
10 things to look for when retesting.

11 So a lot of this -- a lot of those retests and the  
12 results of those retests, they came -- we learned about them  
13 from different sources. And, eventually, it seemed that  
14 everybody who needed to know was informed, but there was no  
15 real kind of organized way for keeping track of those and  
16 making sure that everybody was aware of them.

17 So I was always -- I felt that I -- that I had been  
18 given all of the discovery that related to the pending  
19 criminal case against Ms. Farak, and I believe the AG's  
20 Office had given me everything that they had collected. But  
21 there was these others -- I'm sorry, this is a long-winded  
22 answer to your question. I was mostly --

23 Q. Besides the retests, it sounds like you felt you had  
24 everything?

25 A. Yes. Other than the retests, I felt like I had

1 everything.

2 Q. All right. I would like to give you Exhibit 172 which  
3 is the search warrant. So this is the search warrant and  
4 the search warrant return from Trooper Randy Thomas.

5 Did you receive that in discovery?

6 A. Probably. I don't have a specific memory of this. I  
7 know I received discovery that listed the items that were  
8 seized. So I'm sure I did.

9 Q. So if you received it, you would have turned over to  
10 defense counsel?

11 A. Yes.

12 Q. And the Attorney General's Office wasn't turning  
13 anything over to defense counsel because that was your job?

14 A. Yes.

15 Q. What is the purpose of a search warrant return?

16 A. Just to list the items that were seized.

17 Q. And why do you need to know what was seized?  
18 Specifically for what purpose?

19 A. Well, like, I guess, any inventory just to make sure  
20 that you know exactly what was taken from the house and  
21 for -- I'm not sure exactly what you're asking me. But for  
22 discovery purposes, it's part of --

23 Q. Just to let people know what's in there?

24 A. Yes.

25 Q. I want to turn to page three which is the return. It

1 lists at number 4, 5, 8, 11, 14, and 15 that what was seized  
2 was assorted lab paperwork. Did you ever go look at that  
3 assorted lab paperwork?

4 A. No.

5 Q. Did you ever ask to see it?

6 A. Did I ask to see the assorted lab paperwork? No.

7 Q. Why not?

8 A. Well, I guess I assumed that it was the sort of  
9 paperwork that was generated, sort of, on a fairly large  
10 scale from the lab that would pertain to various testing and  
11 unless -- without more, I wouldn't think that it would be  
12 relevant to what we were trying to determine.

13 Q. Now, defense counsel did want to see the assorted lab  
14 paperwork; is that correct?

15 A. There were requests to review the evidence, yes.

16 Q. Did you try to facilitate that?

17 A. I called the AG's Office because I didn't have an  
18 opposition to it. But I didn't really consider it. The  
19 evidence wasn't, sort of, with me. It was with the Attorney  
20 General's Office. It was their criminal case. And so my --  
21 I believe that they did not agree to it and so motions were  
22 filed.

23 Q. So I've just given you Exhibit 5B, 5C and 5D which were  
24 Exhibits E2 and E3 and E4 at the first hearing. Do you  
25 recognize those articles?

1 A. I do.

2 Q. How did you get them?

3 A. I believe they were provided by the Attorney General's  
4 Office.

5 Q. And did you turn them over to defense counsel?

6 A. Yes.

7 Q. Would you consider those articles to be assorted lab  
8 paperwork?

9 MR. CALDWELL: Objection.

10 THE COURT: Sustained.

11 Q. (By Ms. Jacobstein) I'm showing you what's already in  
12 evidence as Exhibit 176. Will you look through those for  
13 me.

14 A. (Witness complying)

15 Q. Have you seen any of these before?

16 Let me ask you a different question. Did you receive  
17 these pieces of paper in discovery?

18 A. No.

19 Q. So I would like you to turn to the fifth page which is  
20 entitled ServiceNet Diary Card. It's the fifth page and it  
21 has a date on the top.

22 A. Yes.

23 THE COURT: What document is he looking at?

24 MS. JACOBSTEIN: We are still on Exhibit 176 on the  
25 fifth page.

1 THE COURT: Okay.

2 Q. (By Ms. Jacobstein) And do you know what ServiceNet  
3 is?

4 A. Yes. I believe it's -- it provides counseling  
5 services. I'm not sure if it's a public or private agency  
6 or contracts with public agencies, but I believe it provides  
7 counseling for addiction and mental health problems.

8 Q. I'd like to draw your attention to line at the bottom  
9 that says Thursday. Can you read that for the Court?

10 A. I forgot my glasses, but I will do my best.

11 Try to resist using -- I believe that's at work -- but  
12 ended up failing. I know I should have called but had  
13 thoughts about how I felt last time I --

14 Q. I think that says called.

15 A. Called. Okay.

16 Q. That's enough.

17 So basically this says that Farak -- Ms. Farak used  
18 drugs while at work?

19 A. Well, if that's her diary, then that would be the  
20 fair --

21 Q. Fair inference?

22 A. Fair inference, yes.

23 Q. Before you read this document, were you aware that she  
24 was using drugs at work?

25 A. Whether she was using them at work?

1 Q. Yeah.

2 A. No. I mean, the evidence seemed pretty strong she was  
3 tampering with evidence towards the end. I'm not sure what  
4 you -- no. At the time, I didn't have any evidence showing  
5 that she was actually using drugs at work.

6 Q. The fact she was using drugs at work, would that have  
7 been relevant to the question of the timing and scope of  
8 Farak's misconduct?

9 A. Yes.

10 Q. And if we could go down to -- or I guess go up to  
11 Wednesday, and I'll read it for you and you can just see if  
12 you agree with me since --

13 A. Okay.

14 Q. -- you're not wearing your glasses.

15 Leave work 10:30 to get Christmas stuff done. Definite  
16 moment throughout day where I thought I sounded stupid or  
17 did something stupid. DBT group.

18 Do you know what DBT is?

19 A. I don't.

20 Q. Do you know what a DBT group is?

21 A. Is that --

22 Q. In this context?

23 A. No, I don't.

24 Q. Had the Attorney General's Office provided you with  
25 this ServiceNet Diary Card, would you have turned it over to

1 defense counsel?

2 A. Yes.

3 Q. Is this the type of paperwork you would be expecting to  
4 see in the assorted lab paperwork?

5 A. Well, it's not generated by the lab. I mean, I  
6 don't --

7 Q. So, no?

8 A. So, no.

9 Q. Now, we're still on Exhibit 176. If you could turn to  
10 the next page which is page six which is also entitled  
11 ServiceNet Diary Card.

12 THE COURT: Actually, we are going to -- Mr. Flannery,  
13 why don't you step down for the afternoon recess, please.

14 (The witness stepped down.)

15 THE COURT: Mr. Flannery, I understand you're not  
16 available tomorrow. My question is are you available after  
17 tomorrow? Within this week?

18 MR. FLANNERY: Yes, Your Honor.

19 THE COURT: Okay.

20 MR. FLANNERY: I could make myself available tomorrow  
21 morning. I would have to move something. Tomorrow  
22 afternoon is -- would be very, very difficult for me. And  
23 I'm around on Wednesday and, I think I could do Thursday as  
24 well.

25 THE COURT: Okay. All right.

1 Walk away.

2 (Laughter)

3 (The witness stepped down.)

4 THE COURT: Okay. So let me -- let's chat for a few  
5 seconds. I'm going to go until 4:15 and I'm not going to go  
6 any further today. I want to do Ms. Salem today. So I'm  
7 going to get off the bench for the afternoon recess. Talk  
8 among yourselves.

9 But let me just amuse for a minute here.

10 I get it. I get it. There's 212 agreed-upon exhibits.  
11 We all lived together on this case. I get it. I know what  
12 you think. I know what you think.

13 I don't know what the facts are. And that's what I'm  
14 interested in. What I'm hearing a lot of is second-hand and  
15 third-hand hearsay based on amorphous questions that aren't  
16 really telling me anything.

17 You get copied on this email. What did you think of  
18 that? Da, da, da, da. Where's the beef?

19 And there's been some beef during the course of the  
20 day, and I've written that down. And I'm beginning to draw  
21 inferences and all those sorts of things.

22 But I'm taking this opportunity to try to assure you  
23 all that I know what the respective positions are and that  
24 I'm curious to find out what happened, and what -- you know,  
25 whether or not this was a very, very high-profile busy case



1 where people did the best they could or whether somebody  
2 buried, intentionally, credible important exculpatory  
3 evidence.

4 And I'm interested in direct, first-hand knowledge and  
5 proof. And I can garner an awful lot from the very, very,  
6 very hard work you have all done in the enormous number of  
7 agreed upon exhibits we have.

8 So, for what that's worth, we will take ten minutes.

9 (The Court exited at 3:24 p.m.)

10 (\* \* \* \* \*)

11 (The Court entered at 3:36 p.m.)

12 MR. RYAN: Your Honor, at this point, we would like to  
13 suspend Mr. Flannery's testimony and bring Ms. Salem on. I  
14 think that's what the Court wanted us to do.

15 THE COURT: Thank you for your graciousness. Please,  
16 let's do that.

17 (Sharon Salem, sworn)

18 THE COURT: Mr. Ryan, when your ready.

19 MR. RYAN: Thank you.

20 (Sharon Salem)

21 **DIRECT EXAMINATION BY MR. RYAN**

22 Q. Good afternoon, Ms. Salem.

23 A. Good afternoon.

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

1 A. Sharon Salem, S-A-L-E-M.

2 Q. Ms. Salem, from 1987 until January of 2013, were you an  
3 employee at the Amherst Drug Lab?

4 A. Yes.

5 Q. Up until July 1st of 2012, was this run by the  
6 Department of Public Health?

7 A. Yes.

8 Q. And on that date, that's when the Mass. State Police  
9 took over the lab?

10 A. Yes.

11 Q. About a month or so later, do you recall, was there a  
12 meet and greet where some people from the Forensic Service  
13 Group came to Amherst?

14 A. Yes.

15 Q. And that would have been early August?

16 A. I believe so.

17 Q. And during that meeting, they had learned that Jim  
18 Hanchett had been skimming from police submissions to create  
19 manufactured standards for casework at your lab; is that  
20 correct?

21 A. No, he was creating secondary standards not  
22 manufactured standards.

23 Q. Right. He was creating these standards that you would  
24 use to do the casework, correct?

25 A. Yes.

1 Q. And these people from the Forensic Service Group told  
2 him to stop doing that, correct?

3 A. Yes.

4 Q. Now, later on another team came back in October of 2012  
5 to do an audit, correct?

6 A. Yes.

7 Q. And the lab had a DEA license; is that accurate?

8 A. Yes.

9 Q. And that was set to expire in the end of January 2013,  
10 does that sound about right?

11 A. I don't know.

12 Q. Well, in any event, did Jim end up telling you that in  
13 order to reapply for this license, he was going to have to  
14 start doing inventories of the standards that you had on  
15 hand?

16 A. I do not know.

17 Q. Well, do you recall these standards that you had  
18 purchased -- there were standards at the lab that were  
19 purchased from pharmaceutical companies, correct?

20 A. Correct.

21 Q. And some of them were very old, weren't they?

22 A. Yes.

23 Q. Decades old, correct?

24 A. Yes.

25 Q. And at some point before Sonja Farak's arrest, Jim did

1 an inventory of these standards, correct?

2 A. I believe so.

3 Q. And he discovered that he -- that some of them were  
4 lower than he thought they should be, correct?

5 A. Yes.

6 Q. And he was concerned about this?

7 MS. JOHNSTON: Objection, Your Honor.

8 THE COURT: No, he can have it.

9 THE WITNESS: Yes.

10 Q. (By Mr. Ryan) He talked to you first, correct?

11 A. Yes.

12 Q. And he said he was unsure whether it was from normal  
13 usage or if some wrongdoing had been done, correct?

14 A. Yes.

15 Q. And Jim ended up talking to Rebecca and Sonja about  
16 this, correct?

17 A. Yes.

18 Q. And after Sonja Farak was arrested in January of 2013,  
19 I take it these conversations about lower than expected  
20 standards took on a different light for you, is that fair to  
21 say?

22 A. Yes.

23 Q. In retrospect, did you think that this might have been  
24 evidence of wrongdoing on the part of Sonja Farak?

25 MS. JOHNSTON: Objection.

1 THE WITNESS: I would not be able to say that.

2 Q. (By Mr. Ryan) Well, you testified last February at a  
3 Grand Jury in Boston, correct?

4 A. Yes.

5 Q. And at that Grand Jury, Mr. Caldwell asked you about  
6 some lower than expected standards, correct?

7 A. Yes.

8 Q. And you gave him pretty much the same answers you gave  
9 me today, correct?

10 A. Correct.

11 Q. This wasn't the first time you testified at a Grand  
12 Jury in this Farak saga, was it?

13 A. No.

14 Q. And you previously testified at the Grand Jury that  
15 indicted her, correct?

16 A. Yes.

17 Q. Now, prior to testifying, did you meet with the  
18 prosecutor in the case, Anne Kaczmarek?

19 A. Yes.

20 Q. And was that in preparation for your testimony?

21 A. Yes.

22 Q. When you met with Ms. Kaczmarek, were you forthcoming  
23 about the things you knew at the Amherst Drug Lab?

24 A. Yes.

25 Q. You didn't hold anything back from her, correct?

1 A. Not at that time, no.

2 Q. You weren't trying to hide anything, correct?

3 A. No.

4 Q. Did you tell her about the lower than expected  
5 standards that Jim had discovered?

6 A. I didn't feel it was relevant at the time. I didn't  
7 realize -- it was so quick afterwards, I didn't even think  
8 of it.

9 Q. So you did not share that with her?

10 A. No, I did not.

11 Q. Now, I'd like to show you a discovery packet that has  
12 now been marked as Exhibit 40. Is this something that you  
13 prepared?

14 A. Yes, it is.

15 Q. And did you send this packet to Anne Kaczmarek?

16 A. Yes.

17 Q. And did this relate to Amherst Lab No. 12-04973?

18 A. Yes.

19 Q. This was one of the samples that Sonja Farak was  
20 accused of and eventually convicted of tampering with,  
21 correct?

22 A. Yes.

23 Q. Now, I'd like to turn your attention to the drug  
24 receipt you completed, do you see that?

25 A. Yes.

1 Q. And this was one of the samples that Detective Kevin  
2 Burnham delivered to your lab on December 5, 2012, correct?

3 A. Yes.

4 Q. And there's a -- do you see a document entitled "sample  
5 to lab"?

6 A. Yes.

7 Q. So, A12-04973 was one of the batches of samples that  
8 you assigned to Sonja Farak the day before her arrest on  
9 January 17, 2013; is that correct?

10 A. Yes.

11 Q. This was the last batch that you ever assigned to her;  
12 is that correct?

13 A. I do not know that. I would assume so.

14 Q. Well, if you look at what you've got there, did you  
15 ever get drug results back from this submission or this  
16 sample that you actually assigned to her?

17 A. No.

18 Q. Would it have been your practice to assign another  
19 batch to her if you didn't have drug results back from this  
20 first batch?

21 A. It could happen.

22 Q. It could happen?

23 A. Yes, it could.

24 Q. Did it happen in this case?

25 A. I don't know. I would have to look at my records to

1 see if there were other samples that were assigned to her  
2 that day.

3 Q. Would it have been customary to assign another batch of  
4 samples?

5 A. Usually not in the same day, but I could assign another  
6 batch to her without getting results back from the lab  
7 because there is a lag time between when samples are  
8 assigned and when I get the results back.

9 Q. But sitting here today, you don't have any recollection  
10 of having done that the day before Sonja Farak's arrest, do  
11 you?

12 A. I do not.

13 Q. Okay. Now, this batch contained, that you did assign  
14 to her, contained 11 samples, correct?

15 A. Yes.

16 Q. And if you go back and take a look at that drug  
17 receipt, it describes how you -- or it contains descriptions  
18 of those 11 samples, correct?

19 A. Yes.

20 Q. And nine of those samples were white chunks, correct?

21 A. Yes.

22 Q. Two of the samples consisted of vegetable matter?

23 A. Yes.

24 Q. And none of the samples consisted of white powder,  
25 correct?



1 A. Correct.

2 Q. Now, with respect to the containers of these 11  
3 samples, all of them came in plastic bags, correct?

4 A. Yes.

5 Q. And none of them came in a vial.

6 A. No.

7 Q. So, showing you now what I will represent will be  
8 introduced through Sergeant Ballou tomorrow, I've shown  
9 counsel for the Commonwealth these photographs.

10 Is this an item that Sonja Farak would have had any  
11 legitimate purpose to have at her work station at the time  
12 she was arrested?

13 A. I cannot tell what that is.

14 Q. If I represent to you it's a vial of white powder,  
15 would there have been any reason for her to have a vial of  
16 white powder, in this condition, at the time of her arrest,  
17 that was legitimate to her testing responsibilities?

18 A. No.

19 Q. Now, after testifying at the Grand Jury, did you have  
20 occasion to be in communication with Anne Kaczmarek in  
21 August of 2013?

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

23 Q. Showing you an email thread from August 28, 2013, on  
24 that morning at 10:00 a.m., did Anne Kaczmarek forward you  
25 an email she received from a Sudbury Drug Lab chemist named

1 Kimberly Dunlap?

2 A. Yes.

3 Q. And did Ms. Dunlap tell Ms. Kaczmarek about how two  
4 samples from Berkshire County had originally been analyzed  
5 by Ms. Farak but her re-analysis revealed that both cases  
6 came back with only a trace amount of cocaine?

7 A. Yes.

8 Q. Did Ms. Kaczmarek reply a couple of minutes later and  
9 request some discovery packets for these cases?

10 A. Yes.

11 Q. 9:44, did Ms. Dunlap promise to get those discovery  
12 packets in the mail to her this week?

13 A. Ms. Dunlap did or did I?

14 Q. Did Ms. Dunlap at 9:44 make a promise to get those to  
15 Ms. Kaczmarek in this email she forwarded you?

16 A. I'm sorry. She -- it doesn't say that she sent  
17 discovery packets.

18 I don't understand your question. I'm sorry.

19 Q. Well, let me ask you this question: Did -- when this  
20 was forwarded to you, did Ms. Kaczmarek request Amherst  
21 discovery packets for these cases?

22 A. Yes.

23 Q. And did you -- did you respond to her?

24 A. Yes.

25 Q. And what was your response to her about these

1 particular cases?

2 A. That I will send her the discovery packets.

3 Q. And --

4 A. Do you want me to read the email?

5 Q. What did you say to her about -- did you look at what  
6 the discovery revealed?

7 A. Yes. Looking at the data, it does not look good for  
8 Farak. The retesting discovery packet from Sudbury will be  
9 handled by Sudbury, not me. I will forward your request to  
10 them. As far as I know, this case was resubmitted for  
11 analysis at the request for the defense attorney on behalf  
12 of his client. The ADA in this case is Richard Locke in  
13 Berkshire County.

14 Q. Okay. Showing you another email from that morning sent  
15 at 11:34, did you ask Ms. Kaczmarek to give you a call when  
16 she had a minute?

17 A. Yes.

18 Q. Did you end up speaking with Ms. Kaczmarek and telling  
19 her that these Berkshire County samples were originally  
20 relatively pure when they were first analyzed by Ms. Farak  
21 before they appeared to now contain only trace amounts of  
22 cocaine?

23 A. I do not know what I told her. I would have to look at  
24 the data again.

25 Q. Well, when you said it didn't look good for Farak, did

1 you mean that it sort of looked like she had been tampering  
2 with these samples?

3 A. Yes, it probably did.

4 Q. And did you share that opinion with Anne Kaczmarek?

5 A. I would think that I would.

6 Q. Now, you ended up testifying at an evidentiary hearing  
7 that took place on September 9, 2013; is that correct?

8 A. I don't know the date.

9 Q. Well, do you recall being in this courthouse,  
10 testifying at the first day of --

11 A. Yes, I do. Yes, I do.

12 Q. And if I told you that happened on September 9, 2013,  
13 any reason to believe it didn't?

14 A. It is not true? No, I would believe that is the date.

15 Q. And if I told you that was a Monday, does that also  
16 sound right?

17 A. I don't know.

18 Q. In any event, did you speak with a First Assistant with  
19 the Hampden District Attorney's Office named Frank Flannery  
20 on the Friday before your testimony?

21 A. Yes, I did.

22 Q. And in the course of that conversation, did you mention  
23 these Berkshire cases?

24 A. Yes, I did.

25 Q. And Mr. Flannery had not heard of these Berkshire cases

1 before you mentioned it, correct?

2 A. Correct.

3 Q. Now, I have one other email from August 28th I want to  
4 show you. Is that something you sent to Anne Kaczmarek at  
5 1:32 that afternoon?

6 A. Yes, it is.

7 Q. And was there an attachment to that email?

8 A. Must be.

9 Q. Was the attachment "Ballou request"?

10 A. Yes.

11 Q. And did you tell Ms. Kaczmarek that you believed there  
12 were two other cases that Bill Hebard had analyzed and  
13 discovered discrepancies on?

14 A. Yes.

15 Q. And you said: I attached a spreadsheet.

16 And if you look at what's been stapled to this email,  
17 is that the spreadsheet that you attached?

18 A. I assume so, yes.

19 Q. Okay.

20 MR. RYAN: I'm going to ask this be admitted as the  
21 next exhibit.

22 THE COURT: Okay. Without objection, it may be  
23 admitted and marked.

24 THE CLERK: Marked as Number 206.

25 (Exhibit No. 206, email from Salem to AAG Kaczmarek

1 8/28/13), marked)

2 Q. (By Mr. Ryan) Now, after your first day, or after the  
3 Monday, September 9th hearing, did you continue to  
4 correspond with Anne Kaczmarek?

5 A. I don't recall.

6 (Off the record discussion among Counsel.)

7 Q. (By Mr. Ryan) At 11:11, Tuesday, September 10th, did  
8 she send you an email referencing you testifying the day  
9 before?

10 A. Yes.

11 Q. And did it indicate that she had, at this point, spoken  
12 with Bill from UMASS and he was sending her his retest?

13 A. Yes.

14 Q. And did she request some additional discovery packets  
15 from you?

16 A. Yes.

17 Q. At 1:16, did you agree to send them out?

18 A. Yes.

19 Q. Now, later that day, 1:17, that -- let me do this.

20 MR. RYAN: I'd like to have this next email thread that  
21 ends at 1:16 p.m. on September 10 admitted.

22 THE COURT: I don't know what this is.

23 Q. (By Mr. Ryan) Well, is this an email exchange between  
24 you and Anne Kaczmarek on September 10, 2013?

25 A. Yes.

1 THE COURT: Okay. It may be marked.

2 THE CLERK: Marked as No. 207.

3 (Exhibit No. 207, email from Salem to AAG Kaczmarek  
4 (9/10/13 1:16 p.m.), marked)

5 MR. RYAN: Now, if I could just see 207 for one second.

6 Q. (By Mr. Ryan) Exhibit 207 ended with you sending an  
7 email at 1:16 p.m. to Anne Kaczmarek saying you would get  
8 these discovery out as soon as possible?

9 A. Yes.

10 Q. At 1:17 p.m., did Anne Kaczmarek write back to you?

11 A. Yes.

12 Q. In her response to you, did she write: Can you think  
13 of anything else that came up in court yesterday that I need  
14 to get for the defense attorneys? I feel like they're  
15 seeking answers for how long Sonja was doing this when there  
16 is no way to tell.

17 A. Yes, that is what she said.

18 MR. RYAN: I ask that be admitted as the next exhibit.

19 THE COURT: All right. It may be marked.

20 THE CLERK: Marked as No. 208.

21 (Exhibit No. 208, email from Salem to Kaczmarek  
22 (9/10/13 1:24 p.m.), marked)

23 MR. RYAN: I don't have any further questions.

24 Thank you.

25 THE COURT: Okay. Ms. Johnston.

1 MS. JOHNSTON: Thank you.

2 **CROSS EXAMINATION BY MS. JOHNSTON**

3 Q. Good afternoon.

4 A. Good afternoon.

5 Q. Now, you are aware that, as you said, there was a  
6 friendly visit first made some time around August 2012 when  
7 the Mass. State Police took over the lab from DPH?

8 A. Yes.

9 Q. Okay. And were you present when that friendly visit  
10 took place?

11 A. Yes.

12 Q. Was Jim present?

13 A. Yes.

14 Q. Was Sonja present?

15 A. I do not know.

16 Q. Okay. And what about Rebecca?

17 A. I do not know.

18 Q. Okay. And when they came in, what was the -- if you  
19 remember, how long were they in the lab on that friendly  
20 visit day?

21 A. I don't recall exactly.

22 Q. Okay. But that day they were not doing the audit,  
23 correct?

24 A. No.

25 Q. Okay. And then they came back and they did the audit



1 later in the Fall, correct?

2 A. Yes.

3 Q. Okay. Now, on both of those dates, were there various  
4 members of the Mass. State Police Crime Services or Crime  
5 Lab in -- present in your lab in Amherst?

6 A. Yes.

7 Q. And how many would you estimate on either date or on  
8 both dates were present?

9 A. The first time it was one or two, I believe. The  
10 second time, three or four.

11 Q. Okay. And was Nancy Brooks present, if you recall?

12 A. I don't recall.

13 Q. Did you have a chance, after they did the audit, to  
14 review the audit that they did?

15 A. Yes.

16 Q. If you saw that audit, would that help refresh your  
17 memory as to who was there that day?

18 A. Yes.

19 MS. JOHNSTON: Your Honor, this is Exhibit No. 1, I  
20 believe.

21 THE COURT: Okay.

22 (Pause)

23 THE WITNESS: Yes, Nancy Brooks was there.

24 Q. (By Ms. Johnston) Okay. Also does that refresh your  
25 memory whether or not on the audit date both Rebecca and

1 Sonja were also present?

2 A. Yes.

3 Q. Were they present?

4 A. Yes.

5 Q. Okay. And after Mass. State Police came in twice to  
6 your lab, various members of their team, was the lab closed  
7 in July?

8 A. No.

9 Q. Was the lab closed after the audit was completed?

10 A. No.

11 Q. Okay. What was your understanding, after the audit was  
12 completed of -- sort of what the purpose of the audit was  
13 and what was to happen after the audit?

14 A. The purpose of the audit was to verify our testing of  
15 the drugs and to make sure that we were analyzing our drugs  
16 properly.

17 Q. Okay. And on your review of that audit, is it your  
18 recall that they found issues with the way that you were  
19 testing or had issues with the reliability of your testing?

20 A. Our analysis of the drugs was proper. They didn't find  
21 anything wrong with the way we were analyzing the drugs.

22 The things that they did find wrong were mostly  
23 administrative technicalities and administrative issues.

24 Q. Okay. And fair to say that in the months that followed  
25 the audit, there was an increase in documentation and

1 paperwork?

2 A. Yes.

3 Q. Okay. And would that timeline correspond with the time  
4 when you saw the drop-off in Sonja's production?

5 A. Yes.

6 Q. Okay. And at the time, not knowing what you know now,  
7 would that have been a reasonable understanding for why her  
8 productivity was declining?

9 A. We thought it may have been the issue.

10 Q. Now, after they came in, Attorney Ryan talked to you  
11 about they told Jim to stop making secondary standards,  
12 correct?

13 A. Yes.

14 Q. Now, defense counsel mentioned, he called it skimming.  
15 Is that how you would characterize where the secondary  
16 samples came from?

17 A. No, I would not.

18 Q. Why not?

19 A. Skimming alludes to something being done wrong, and it  
20 really wasn't meant to be something that was prepared in a  
21 malicious manner.

22 Q. Okay.

23 A. It was common practice in our laboratory to develop  
24 standards that way.

25 Q. And you'd been in the lab since 1987?

1 A. Correct.

2 Q. Over the course of that time period, had the lab been  
3 using secondary standards that entire time?

4 A. Yes.

5 Q. And you were aware that Jim was preparing these  
6 secondary standards?

7 A. Yes.

8 Q. And if he wasn't quote/unquote skimming, where would  
9 the basis for the secondary standard come from?

10 A. You would have to ask him how he prepared the  
11 standards.

12 Q. Did you ever observe him do that?

13 A. No.

14 Q. Now, the discovery packets that were prepared, did you  
15 always prepare discovery packets for court?

16 A. No.

17 Q. Who would prepare the discovery packet?

18 A. The chemists themselves would prepare their own  
19 discovery packets.

20 Q. And, just briefly, what would that look like? Where  
21 would the sources of information that the discovery would  
22 come from?

23 A. They would get some of the information from their own  
24 notes, from their own output from the instruments, and from  
25 the chain of custodies that were located in my office.

1 Q. And would it contain the certificate as well?

2 A. Yes.

3 Q. Okay --

4 A. A copy of the certificate.

5 Q. -- so it's fair to say there's several sources and  
6 locations from where those discovery packets would have to  
7 be pulled and put together?

8 A. Yes.

9 Q. Now, in the time you were the evidence officer, did you  
10 coordinate the putting together and then receipt of the  
11 discovery for defense counsel or for ADAs who reached out to  
12 you?

13 A. Yes, I would help coordinate.

14 Q. Okay. So in other words, if someone was to reach out  
15 from the DA's Office, would you usually be the recipient of  
16 that request?

17 A. Sometimes.

18 Q. Okay.

19 A. Or they would ask the chemist directly.

20 Q. Okay. In your time, was there ever any complaints  
21 about discovery packets that were provided by Sonja Farak?

22 A. No.

23 Q. Were there any complaints about her testimony at court?

24 A. No.

25 Q. And in the time that Mass. State Police was in the lab,

1 two times in July and then again later for the audit, was  
2 there any mention in the audit or to anyone, either you as a  
3 supervisor or Jim, about her appearance, demeanor, anything  
4 of that nature?

5 A. No.

6 Q. And you obviously have testified on several occasions  
7 that you never made any notice of anything out of the  
8 ordinary in terms of her behavior in the lab?

9 A. No.

10 Q. Or in terms of her work ethic in the lab?

11 A. There was nothing out of the ordinary.

12 Q. And in regards to your work, are you still employed by  
13 the Mass. State Police?

14 A. Yes.

15 Q. Okay. And do you know if Rebecca is still employed in  
16 the Mass. State Police?

17 A. Yes, she is.

18 Q. What about Jim Hanchett?

19 A. He is retired.

20 Q. Okay. So of the three of you that were also doing  
21 testing and work in the lab, two of the three of you remain  
22 employed and one retired?

23 A. Yes.

24 Q. And do you know, in terms of your work at the lab, has  
25 anyone with either the AG's Office or the Mass. State Police

1 ever questioned your reliability and the scientific basis of  
2 your testing?

3 A. No.

4 (Off the record discussion among Counsel.)

5 MS. JOHNSTON: Nothing further for this witness.

6 THE COURT: So, Ms. Salem, you began in 1987 and what  
7 different jobs did you have?

8 THE WITNESS: In Amherst?

9 THE COURT: In Amherst.

10 THE WITNESS: I started as a Forensic Scientist I.  
11 Worked my way up to a II and a III.

12 I started analyzing drugs, did analysis of drugs for  
13 17, 18 years, and transitioned into the evidence officer  
14 position.

15 THE COURT: And when was that? When did you transition  
16 to the evidence officer position?

17 THE WITNESS: About seven years prior to us closing.

18 THE COURT: Okay. And so for how many years did you  
19 and Sonja Farak work together?

20 THE WITNESS: Nine years.

21 THE COURT: Nine years.

22 THE WITNESS: Yeah.

23 THE COURT: What was she like?

24 THE WITNESS: What was she like? She was an excellent  
25 chemist. She was very intelligent. She knew her chemistry.

1 She was meticulous in her note taking and in her work.

2 Once the State Police took us over, we started doing  
3 technical reviews and coming up to snuff with all of their  
4 extra paperwork and how they wanted us to handle things and  
5 I would be reviewing her notes as well as everybody else's  
6 notes. I rarely found a mistake or an error in any of her  
7 work.

8 What else would you like to know?

9 THE COURT: Okay. And when did you have any knowledge  
10 that something was askew?

11 THE WITNESS: I didn't until that day. The day before,  
12 and I didn't even know it was her until we found it in her  
13 bench.

14 THE COURT: Okay. When you say "we found it in her  
15 bench", tell me what you're referring to.

16 THE WITNESS: The -- we found what appeared to be  
17 counterfeit drug paraphernalia under her bench and then  
18 eventually we found the missing samples.

19 THE COURT: All right. And this is an office that most  
20 of those years was manned by four individuals; is that  
21 accurate?

22 THE WITNESS: For the last few years, our laboratory  
23 had been being cut and solely dwindling down to four.

24 THE COURT: Okay. So when you and Sonja Farak -- well,  
25 let me ask this question. When you and Sonja Farak worked



1 together, how close -- physically close were you to each  
2 other in the course of the day?

3 THE WITNESS: Right next to each other, side by side.

4 THE COURT: Okay. All right. And during that  
5 period -- did you say nine years?

6 THE WITNESS: Correct.

7 THE COURT: Do you have any memory of seeing her when  
8 you felt she was under the influence of any narcotics or  
9 anything else?

10 THE WITNESS: It never occurred to me.

11 THE COURT: All right. And now you talked a little  
12 about, if I heard you correctly, some drop-off in  
13 productivity?

14 THE WITNESS: Yes.

15 THE COURT: Tell me about that.

16 THE WITNESS: In July or August, Jim and I --

17 THE COURT: July or August of what year?

18 THE WITNESS: It would be 2012.

19 THE COURT: Okay.

20 THE WITNESS: Right when the State Police took us over  
21 and we started having to increase our paperwork load, we  
22 just noticed that she had dropped off in her production.

23 THE COURT: Okay. And when were you first aware that  
24 Mr. Hanchett was manufacturing secondary standards?

25 THE WITNESS: The day I started in 1987. It was common

1 practice.

2 THE COURT: Okay. And what's the basis of your opinion  
3 that it was common practice?

4 THE WITNESS: It's just what I was told.

5 THE COURT: Okay.

6 THE WITNESS: I was told that most labs across the  
7 country were making secondary standards and using secondary  
8 standards.

9 THE COURT: And based on your training and experience,  
10 were you familiar from the general literature or from  
11 knowing other people from other labs or any source about  
12 manufacturing secondary standards in other labs?

13 THE WITNESS: No, it was strictly my hearsay from the  
14 Amherst Laboratory.

15 THE COURT: Okay. All right. And based on your  
16 training and experience and your opinion, did that  
17 manufacturing of secondary standards affect the accuracy of  
18 the analysis?

19 THE WITNESS: No.

20 THE COURT: Okay. All right. I hope you have an  
21 easier trip home than you did on the way in.

22 THE WITNESS: Thank you.

23 MR. RYAN: Could I follow-up with a few questions?

24 THE COURT: Sure.

25 **REDIRECT EXAMINATION BY MR. RYAN**

1 Q. Ms. Salem, when you were a chemist, you didn't use  
2 secondary standards then, correct?

3 A. I didn't use? Yes, I did.

4 Q. Well, when you testified at the Grand Jury back in  
5 February, did you say: When I was a chemist I could use the  
6 discarded vials from the instruments and use that as a  
7 standard.

8 A. That would be considered a secondary standard.

9 Q. So these are -- I guess I'm a little confused. So a  
10 discarded vial, what is that?

11 A. It's a discarded vial in that it had already been  
12 proven to contain cocaine or heroin.

13 Q. Okay. You said Sonja Farak was meticulous in her notes  
14 and you rarely found an error. For the first eight and half  
15 years you worked together, you never looked at her notes,  
16 did you?

17 A. No.

18 Q. And when you did look at her notes, you eventually  
19 learned that she wasn't recording gross weights like the  
20 other chemists in the lab, correct?

21 A. Correct.

22 Q. And with respect to -- you said they didn't have any  
23 problem with the way you tested samples in Amherst when they  
24 did this audit. Did the audit talk about how you weren't  
25 running blanks appropriately enough?

1 A. Yes, it did.

2 Q. And once the State Police noticed this, they mandated  
3 you run a blank between every sample, correct?

4 A. Yes, they did.

5 Q. And that was to prevent carryover, right?

6 A. Yes.

7 Q. And it also -- they also noticed that you weren't  
8 running standards of anything other than cocaine and heroin,  
9 correct?

10 A. Yes.

11 Q. So, you didn't run a contemporaneous lab standard for  
12 anything like Oxycodone or methamphetamine or amphetamine if  
13 you suspected that the submission contained a sample of a  
14 drug like that, correct?

15 A. It wouldn't be contemporaneously but it would be stored  
16 in our library ahead of time.

17 Q. Well, you would be running it against the library. You  
18 wouldn't be running it against an actual sample that you've  
19 drawn from, correct?

20 A. Correct.

21 Q. And that's one of the ways that -- reasons Sonja Farak  
22 was able to pilfer from these standards is that nobody was  
23 using them?

24 MS. JOHNSTON: Objection, Your Honor.

25 THE COURT: You can answer, if you feel you can.

1 THE WITNESS: I don't know that's true.

2 Q. (By Mr. Ryan) Well, did you find out she had replaced  
3 the amphetamine standard at the lab with sodium sulfate?

4 A. I have no knowledge of that.

5 Q. Okay. Just to be clear here, you said that this audit  
6 didn't result in the lab getting shut down. It did result  
7 in a number of changes at the lab, correct?

8 A. Yes.

9 Q. You, all of a sudden, had to start accounting for  
10 discrepancies, inventory discrepancies, correct?

11 A. Yes.

12 Q. So if a submission came in and the police said there's  
13 ten bags here and you only counted nine, you'd have to fill  
14 out a form that said that, right?

15 A. Correct.

16 Q. Up until then, you never did that, correct?

17 A. Correct.

18 MR. RYAN: Nothing else.

19 THE COURT: Mr. Olanoff?

20 MR. OLANOFF: My apologies in advance, Your Honor.

21 **CROSS EXAMINATION BY MR. OLANOFF**

22 Q. You just said you rarely found a mistake in Sonja  
23 Farak's work, correct?

24 A. Correct.

25 Q. There was no kind of retesting that ever happened at

1 this lab in the eight and a half years that Sonja Farak  
2 worked there, correct?

3 A. Retesting in what way?

4 Q. Retesting someone's -- a chemist's samples to see if  
5 they were doing things properly, correct?

6 A. Correct.

7 Q. When you did a performance review, all you did was you  
8 went through a checklist to see if the chemist performed  
9 their work, correct?

10 A. Are you talking about a technical review of her notes?

11 Q. I'm talking about a review of the chemist. You would  
12 do a yearly review of the chemist, correct?

13 A. I don't know what you're referring to.

14 Q. Did you ever check Sonja Farak's work in terms of her  
15 testing?

16 A. As in a proficiency test?

17 Q. Anything.

18 A. No.

19 Q. No?

20 A. No.

21 Q. And so -- and so you didn't know if she was -- so you  
22 would -- like I said, in a proficiency test, you would go  
23 through if she was following each step, correct?

24 A. We didn't have proficiency tests.

25 Q. Okay. And so no one ever checked Sonja Farak's work in

1 terms of the actual testing of the chemicals, correct?

2 A. Correct.

3 Q. And there was no kind of drug testing of the chemists  
4 working at that lab, correct?

5 A. Correct.

6 MR. OLANOFF: Thank you. I have nothing further.

7 MS. JOHNSTON: Thank you.

8 **RECROSS EXAMINATION BY MS. JOHNSTON**

9 Q. You were asked about a discarded vial. This is  
10 something that comes out of the other end of the machine  
11 after the sample that has been submitted by the police has  
12 been run through the machine, correct?

13 A. Yes.

14 Q. And it's been confirmed to be either cocaine or heroin  
15 or some other substance?

16 A. Yes.

17 Q. And just briefly then, at that point, is it still in  
18 solution?

19 A. Yes.

20 Q. And so would it then be evaporated out of solution so  
21 you would end up back with a powder?

22 A. Yes.

23 Q. And you could then -- either you, or in this instance  
24 it sounds like Jim Hanchett, turn that now known substance  
25 into further testing material, the secondary standard that

1 we're talking about?

2 A. Yes.

3 Q. And that powder form would last a significant amount of  
4 time?

5 A. Yes.

6 Q. And the solutions that were then remade, those would be  
7 the secondary standards that would then be run through the  
8 computer on later runs, correct?

9 A. Yes.

10 Q. Okay. If you noticed there was an issue -- let me say  
11 this: Would you notice if there was an issue with one of  
12 those secondary standards, as you ran it through the  
13 machine?

14 A. Yes.

15 Q. How would you know?

16 A. It would not be picked by the library.

17 Q. What do you mean by that?

18 A. The instrument was set up to pick up on whether the  
19 retention times were the same, whether the compound was  
20 breaking up the same. It would have been noticed.

21 Q. And so the library that we've been talking about, the  
22 library is based on known purchased primary standards,  
23 correct?

24 A. Yes.

25 Q. And for those types of controlled substances or



1 suspected controlled substances that we're talking about  
2 where there were not contemporaneous runs, those were being  
3 checked against the library which are based upon both  
4 manufacturer's input prior to you obtaining the machine,  
5 correct?

6 A. Yes.

7 Q. And then Jim would run a known primary purchased  
8 standard through, to back up the library in that machine,  
9 correct?

10 A. Yes.

11 Q. So those samples that we're talking about would have  
12 still been checked against known primary standards, they  
13 just weren't being, I guess, checked again against a now  
14 secondary standard, correct?

15 A. Yes.

16 Q. And you did testing for many years, correct?

17 A. Yes.

18 Q. And if there was what's been called carryover -- first  
19 of all, what is carryover?

20 A. Carryover is when you have a very high-concentrated  
21 peak in one run, and when you run the same parameters for  
22 the next run, it will show up again.

23 Q. Okay. And so let's say, for the sake of argument, you  
24 run a high cocaine sample and you send through what you  
25 think is a heroin sample and you, as the chemist, now get

1 the results and you notice in this heroin sample that  
2 there's a small cocaine peak, what would you do?

3 A. You would rerun it.

4 Q. Why?

5 A. To make sure, because of that high-concentrated cocaine  
6 peak that was just previous, it was too high. You would  
7 realize that the second sample was probably carried over and  
8 would you have to re-do it.

9 Q. So even prior to Mass. State Police taking over, when  
10 you were not running a blank every time, you were still  
11 running quality control checks to ensure that there wasn't  
12 carryover in samples that were coming later in time?

13 A. Yes.

14 MS. JOHNSTON: Nothing further.

15 THE COURT: Okay. All set?

16 Thank you. Have safe trip home.

17 THE WITNESS: Thank you.

18 THE COURT: See everybody at nine o'clock.

19 (The Court exited at 4:16 p.m.)

20 (\* \* \* \* \*)

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**C E R T I F I C A T I O N**

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Dated: December 21, 2016

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