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

COMMONWEALTH OF MASSACHUSETTS

vs.

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

MOTION FOR NEW TRIAL
BEFORE THE HONORABLE RICHARD J. CAREY

APPEARANCES:
(see next page)

Hampden Superior Court
50 State Street
Springfield, Massachusetts
December 13, 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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(The Court entered at 9:28 a.m.)

THE CLERK: Good morning, Your Honor.

Good morning everyone.

This is the criminal session for December 14, 2016.

The Honorable Justice Richard Carey is presiding. I'm
Assistant Clerk Lois Cignoli for the court.

Matters before the Court, the Farak drug lab matters
are: The Commonwealth vs. Eric Cotto, Docket 07-770,
represented by Attorney Rebecca Jacobstein.

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

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

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

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

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

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

And Commonwealth vs. Omar Brown, Docket 2005-1159
represented by Attorney James McKenna.

Commonwealth vs. Bryant Ware, respective Docket Numbers

1 07-1072, 09-1072, 2010-253, represented by Attorney James
2 McKenna.

3 Commonwealth vs. Glenda Aponte, Docket 2012-226,
4 represented by Attorney James McKenna.

5 For the Commonwealth, we have Assistant Attorney
6 Generals Judy Zeprun, Kim West, and Thomas Caldwell, along
7 with Assistant Attorney General Heather Valentine. And
8 Assistant District Attorneys Deborah Ahlstrom and Katharine
9 Johnston.

10 For the record, Your Honor, an interpreter is present
11 for Mr. Penate.

12 THE COURT: Good morning, everyone.

13 ALL COUNSEL: Good morning.

14 THE COURT: Okay. You may call your next witness.

15 MR. OLANOFF: Kris Foster please, Your Honor.

16 (Kris Foster, sworn)

17 THE CLERK: Thank you, you may take the stand.

18 THE COURT: Good morning.

19 THE WITNESS: Good morning.

20 THE COURT: Pull that microphone down a little bit, the
21 big one.

22 Yeah, that's it, perfect.

23 Mr. Olanoff, when you're ready.

24 MR. OLANOFF: Thank you.

25

(Kris Foster, sworn)

DIRECT EXAMINATION BY MR. OLANOFF

Q. Good morning.

A. Good morning.

Q. Could you please state your name.

A. Kris Foster.

Q. Could you spell your first name?

A. K-R-I-S.

Q. How are you employed?

A. Currently, I'm on maternity leave, but I'm the General Counsel at the Alcoholic Beverages Control Commission.

Q. In September 2013, were you employed as an Assistant Attorney General?

A. I was.

Q. Where was that?

A. At the Massachusetts AG's Office in the Criminal Bureau, Appeals Division.

Q. Located in Boston?

A. Yes.

Q. And in 2013, were you assigned to handle a matter that was pending in this court involving a number of different defendants in the Amherst Drug Lab case?

A. I was.

Q. When did you get assigned to that case?

A. I don't recall the exact date.

1 Q. Okay. Do you remember approximately how long it was
2 before September 2013 you were assigned?

3 A. I don't, maybe a month.

4 Q. Okay. And September 2013 is when the actual hearing
5 started, correct?

6 A. Yes.

7 Q. And what were -- what was your role in handling the
8 Sonja Farak Amherst Drug Lab case?

9 A. I did not have a role in handling the drug lab case. I
10 wasn't the AAG assigned to that.

11 Q. Okay. Was your role to respond to a subpoena that was
12 issued to a State Police trooper?

13 A. Yes.

14 Q. Okay.

15 MR. OLANOFF: Your Honor, I'm looking now at Exhibit
16 183.

17 THE COURT: Thank you.

18 Q. (By Mr. Olanoff) Is this the subpoena that prompted
19 your involvement in the Amherst Drug Lab case?

20 A. I'm not sure. I don't see a date on it.

21 Q. Well --

22 A. I'm sorry.

23 Yes, that is.

24 Q. Okay. And do you remember this subpoena now?

25 A. I do.

1 Q. And this is a subpoena directed to Sergeant Joseph
2 Ballou, the Massachusetts State Police, correct?

3 A. Yes.

4 Q. And it directs him to appear and testify on
5 September 9, 2013, correct?

6 A. I believe that's what it says, yes.

7 Q. And it also commanded him to bring all documents and
8 photographs pertaining to the Sonja Farak investigation,
9 correct?

10 A. Correct.

11 Q. And this is, essentially, the first pleading or, if you
12 will, that you received to prompt your involvement in this
13 case, correct?

14 A. I don't recall.

15 Q. Once you received this document, it was your job to
16 respond to it, correct?

17 A. It was assigned to me, yes.

18 Q. Now, what did you do, in order to respond to this
19 document?

20 A. I don't recall.

21 Q. Do you remember if you reviewed Officer -- Trooper
22 Ballou's case file?

23 A. I never saw his file.

24 Q. Okay. So, the first date of the hearing was
25 September 9, 2013, correct?

1 A. I believe so, yes.

2 Q. And you appeared at that hearing, correct?

3 A. I did.

4 Q. And your purpose in being there was to address the
5 Court in response to this subpoena, correct?

6 MS. WEST: Your Honor, objection.

7 Yesterday you heard from Attorney Caldwell on the, our
8 reluctance to interrupt any of the direct examinations, and
9 I maintain that today.

10 However, as you rightly pointed out yesterday, the
11 issue here is whether somebody intentionally buried
12 evidence. This particular witness is going to speak
13 directly to that, and so I would ask and I think everyone
14 here would agree, that we would like to hear that story from
15 the witness.

16 I have no problem with Mr. Olanoff getting her there,
17 but to repeatedly ask questions with the end word is
18 "correct", I think we need to step away from that practice
19 so you can hear the words from her.

20 MR. OLANOFF: She's a lawyer. If my question is not
21 correct, she'll tell me it's not correct.

22 THE COURT: It's more my job than her's. I'm going to
23 sustain the objection.

24 MS. WEST: Thank you.

25 THE COURT: It's your witness, Mr. Olanoff.

1 Q. (By Mr. Olanoff) Why were you there on September 9,
2 2013?

3 A. I was there to represent Sergeant Ballou.

4 Q. And did you do anything in preparation for representing
5 Sergeant Ballou?

6 A. I wrote a motion to quash the subpoena.

7 Q. Okay. When you -- I want to pull that up for you here.

8 MR. OLANOFF: Your Honor, may I approach?

9 THE COURT: Sure.

10 Q. (By Mr. Olanoff) This is a copy of your motion to
11 quash the subpoena?

12 A. If you give me one second.

13 (Pause)

14 THE WITNESS: I believe it is, but this is an unsigned
15 copy, but I believe it is.

16 Q. (By Mr. Olanoff) Okay.

17 And did you also include a memorandum in support of
18 your motion to quash?

19 A. I did.

20 Q. And is this -- look like a fair and accurate
21 representation of that?

22 A. I believe it is. Again, it's unsigned, but I believe
23 it is.

24 Q. Okay. And -- well, is this the email copy you sent me
25 that wasn't signed?

1 A. I can't tell you if that's from your email, but that
2 looks like what I filed.

3 MR. OLANOFF: Your Honor, may I introduce this as an
4 exhibit at this time.

5 THE COURT: All right. May be marked.

6 THE CLERK: Marked as Number 209.

7 (Exhibit No. 209, Attorney General's motion to quash
8 subpoena (9/6/13), marked)

9 Q. (By Mr. Olanoff) So I'm showing you an exhibit that's
10 now up on the screen. It's been marked 209.

11 You appeared in court and you file this motion for
12 Judge Kinder, correct?

13 A. Correct.

14 Q. And why did you file this motion?

15 A. My superiors asked me to.

16 Q. Who were your superiors?

17 A. My direct supervisor was Randy Ravitz who is the Chief
18 of the Appeals Division, and above him was John Verner, who
19 is Chief of the Criminal Bureau.

20 Q. Do you know why they wanted you to file this motion?

21 MS. WEST: Objection.

22 THE COURT: Sustained.

23 Q. (By Mr. Olanoff) Now, in your motion to quash, what
24 are your grounds for asking the Court to refuse the
25 testimony of Trooper Ballou?

1 A. I don't remember. It was a few years ago.

2 Q. Okay. If I show you, would that refresh your
3 recollection?

4 A. I believe so.

5 Q. Okay. Up on the screen here, you ask that -- well,
6 first of all, on the screen here, do you see that what
7 you're asking to do is, number one, ask that he not be
8 permitted to testify, correct?

9 A. Yes.

10 Q. And, number two, that he not have to turn over any of
11 the documents in the Sonja Farak investigation?

12 A. Well, not to produce any documents that he was
13 subpoenaed to produce.

14 Q. Okay. And what was your understanding of the documents
15 that he was subpoenaed to produce?

16 A. I was told that everything had already been turned
17 over, so I wasn't aware of anything in his file.

18 Q. Who told you that?

19 A. I don't recall.

20 Q. Did you meet with Joseph Ballou prior to filing the
21 motion to quash?

22 A. Not formally, about five minutes before the hearing
23 started.

24 Q. Did you ever review Joseph Ballou's file prior to
25 filing the motion to quash?

1 A. I did not.

2 Q. Did you ask him if -- did you ask Trooper Ballou if
3 everything had been turned over at that point?

4 A. I don't believe I asked him.

5 Q. Okay. Did someone ask him, to your knowledge?

6 A. In a meeting prior to September 9, with Randy Ravitz,
7 John Verner, Dean Mazzone, and I'm not sure who else was
8 there, I was told everything had already been turned over.
9 And then I believe Sergeant Ballou in September 9, testified
10 that everything in his file had been produced.

11 Q. Okay. In your motion to quash you -- you claim that
12 the documents that Joseph Ballou had in his file were
13 privileged, correct?

14 MS. WEST: Objection. He can ask her what does she
15 claim.

16 THE COURT: Overruled.

17 You can answer the question if you feel you can,
18 Attorney Foster.

19 THE WITNESS: Can you repeat the question, please?

20 Q. (By Mr. Olanoff) Why were you claiming that Joseph
21 Ballou should not have to turn over his documents?

22 A. For the reasons I stated in my memorandum of law.

23 Q. And what were those reasons?

24 A. Again, I don't remember them off the top of my head.
25 It was a couple of years ago.

1 Q. Okay. All right. Well, directing your attention to
2 the big screen, did you claim that the document (sic) should
3 not be turned over because they were privileged?

4 A. I believe I said they were privileged, but also the
5 Sonja Farak prosecution was still ongoing, so I believe that
6 was another one of my grounds.

7 Q. Okay. And what would it matter that the Sonja Farak
8 prosecution was still ongoing?

9 A. AAG Kaczmarek told me that those documents, she didn't
10 want turned over -- she didn't want produced, they'd
11 already -- everything already had been produced.

12 Q. Was it your understanding that she was in charge of
13 making the decisions of what documents would be produced or
14 not produced?

15 A. She was not my superior. My superiors are the ones who
16 told me that everything had been produced.

17 Q. Okay. Do you also, in your motion to quash, claim --
18 well, did you claim that the documents were unreasonable or
19 that the subpoena was unreasonable and irrelevant?

20 A. It looks like I did write that, yes.

21 Q. Did you also claim that the documents that were asked
22 to be produced, not relevant to a defendant's decision of
23 whether or not to plead guilty?

24 A. If it's in my motion or memorandum, I did write that.

25 Q. Did you also claim that Sergeant Ballou doesn't have

1 firsthand knowledge of any of the facts that were contained
2 in the documents?

3 A. Again, if it's in my memorandum of law, I did write it.

4 Q. Now, when you showed up for the hearing that day, did
5 Judge Kinder address you?

6 A. He did.

7 Q. And do you remember what happened at the hearing?

8 A. I do.

9 Q. What happened at the hearing?

10 A. The entire hearing or?

11 Q. As far as your motion to quash.

12 A. As far as my motion to quash, it was for Sergeant
13 Ballou. It was denied, ultimately, and he testified.

14 Q. Okay. So, basically, what that means then is that
15 Sergeant Ballou was asked to turn over his file, correct?

16 A. No.

17 Q. Okay. Well, directing your attention back to the
18 hearing, do you remember the Judge asking you: My first
19 question is, have you actually reviewed the file?

20 A. I remember that, and I said no.

21 Q. Okay. And was that a true statement?

22 A. It was.

23 Q. You had not reviewed the file before the hearing?

24 A. To this day I have not reviewed it.

25 Q. Okay. All right.

1 MR. OLANOFF: Sorry, Your Honor.

2 (Pause)

3 Q. (By Mr. Olanoff) All right. As to the subpoena, did
4 the Court tell you it -- that he was not going to take any
5 action on your motion to quash right then and there?

6 A. I don't remember.

7 Q. Okay. Do you remember the Court saying: It has been
8 subpoenaed, so there is a court order that it be present
9 here today.

10 A. I remember that and -- yes, I remember that.

11 Q. He says: My advice to you is to get that file here.
12 Correct?

13 A. Correct.

14 Q. He then told you, if you remember, that if you thought
15 that there were any documents that should not be turned
16 over, because they were privileged or for whatever reason,
17 that you should give those to Judge Kinder, and that he
18 would look at them in camera, and decide if they should be
19 turned over.

20 A. Correct.

21 Q. Now --

22 THE COURT: Is the transcript in the hearing an
23 exhibit?

24 MR. OLANOFF: I'm sorry, Your Honor; yes, it is.
25 Exhibit 80.

1 THE COURT: Thank you.

2 MR. OLANOFF: And those would be pages 13 through 20 I
3 think.

4 THE COURT: Thank you.

5 Q. (By Mr. Olanoff) After you got out of the hearing,
6 what did you do?

7 A. I don't recall.

8 Q. Well, Judge Kinder had just asked you to review the
9 file. Did you review the file?

10 A. I did not.

11 Q. Did you meet with Joseph Ballou?

12 A. I did not.

13 Q. Did you have discussion with anyone as to what evidence
14 may or may not be privileged?

15 A. Whether or not certain documents are privileged, no.

16 Q. Directing your attention to Exhibit (sic) 609. Is this
17 a letter that you wrote to Judge Kinder in response to his
18 order to you on September 9?

19 A. It is.

20 Q. Did you write this letter?

21 A. I did.

22 Q. And did you sign it?

23 A. I did.

24 Q. In this letter, did you tell Judge Kinder that you
25 reviewed Sergeant Ballou's file?

1 A. No.

2 Q. Directing your attention to the fourth line down, where
3 it says: Dear Judge Kinder. Does it say, quote: After
4 reviewing Sergeant Ballou's file, every document in his
5 possession has already been disclosed.

6 A. It doesn't say I reviewed the file. It says "after
7 reviewing".

8 Q. Okay. And so who reviewed Sergeant Ballou's file?

9 A. I'm not sure who reviewed it. My superiors told me
10 that there's -- everything had already been turned over,
11 that there's nothing to turn over.

12 Q. But, again, did Judge Kinder tell you to review the
13 file?

14 A. He said he wanted to get to the bottom of it to get to
15 the facts.

16 Q. And who told you every document in his -- in Joseph
17 Ballou's possession had already been disclosed?

18 A. I believe Sergeant Ballou testified to it on
19 September 9. Attorney Kaczmarek, I believe, in an email
20 said that she believed everything had been turned over.
21 And, ultimately, prior to me filing this letter, my direct
22 supervisor Randy Ravitz told me to draft a letter saying
23 there was nothing to turn over.

24 Q. And your conclusion, therefore -- the last highlighted
25 line: Therefore there's nothing for the Attorney General's

Office to produce for you to review on September 18, 2013.

Correct?

A. Correct.

Q. Now, when Judge Kinder told you to review the file, you didn't think you should do that personally?

A. No.

Q. And who's Randy Ravitz?

A. As I said earlier, he was my supervisor. He was the Chief of the Appeals Division in the Criminal Bureau.

Q. Why would the Appeals Division be involved in quashing a subpoena?

A. The Appeals Division is kind of a misnomer. They are involved in a lot of the civil litigation in the office.

Q. How is that a civil issue?

A. In this case I guess it wasn't. I misspoke, but we would represent different actors in the criminal world.

Q. And so, on September 16, 2013, did you at that -- know -- did you know which documents had or had not been produced to the District Attorney or the defense lawyers?

A. I had been told everything had been turned over.

Q. And that was Randall Ravitz?

A. It was Randy Ravitz, who is the one who told me to draft the letter saying there was nothing to produce.

Q. Okay. Had you had any kind of correspondence with Randall Ravitz prior to -- excuse me, had you had any kind

1 of email correspondence with Randall Ravitz prior to writing
2 that letter?

3 A. Regarding this matter --

4 Q. Yes.

5 A. -- or in general?

6 Q. Yes, regarding this matter.

7 A. I'm not sure.

8 Q. All right. I'm showing you a email from Randall Ravitz
9 to you, dated September 4, 2013.

10 MR. OLANOFF: Not sure if it's in evidence yet, Your
11 Honor.

12 THE COURT: Uh-huh.

13 Q. (By Mr. Olanoff) Do you remember this email?

14 A. No.

15 Q. Do you remember Mr. Ravitz telling you that there was
16 information that he didn't think should be revealed during
17 this hearing?

18 A. I don't remember that, but I was also not privy to a
19 lot of the meetings at the office.

20 Q. Okay. But you were privy to this email, correct?

21 A. I don't remember the email.

22 Q. Okay. Were you reading your emails at the time?

23 A. I would assume so.

24 Q. Okay. Now, this email contained prior emails, part of
25 a forward, so right underneath that, which there's an email

1 from you, Kris Foster, to Randall Ravitz.

2 Does this refresh your recollection as to whether you
3 were reading emails or responding to them?

4 A. No. I believe I wrote that, but it doesn't refresh my
5 memory at all.

6 Q. September 4, earlier that day, Randall Ravitz writes an
7 email to you: I'm moving Kris Foster into this exchange.

8 Do you remember that?

9 A. No.

10 Q. Okay. Do you remember reading the emails that were
11 part of this, all of the information that was contained in
12 that email?

13 A. I'm not sure what you mean by that.

14 Q. Well, earlier in that same message there's a message
15 from John Verner to Anne Kaczmarek, Suzanne Reardon, and
16 Dean Mazzone: We're objecting to that, please.

17 Do you know what they were referring to?

18 MS. WEST: Objection. We addressed this issue
19 yesterday. They are going to be witnesses here.

20 THE COURT: You can answer the question if you feel you
21 can.

22 THE WITNESS: As I said, I don't remember these emails.

23 Q. (By Mr. Olanoff) Okay.

24 A. This particular email chain.

25 Q. Okay. On September 10, 2013, that would be -- that was

1 the day after you came in on your motion to quash subpoena,
2 correct?

3 A. Correct.

4 Q. Do you remember sending this email to John Verner and
5 Anne Kaczmarek, cc-ing Randall Ravitz?

6 A. I do.

7 Q. It starts out by saying: Terrible photo; correct?

8 A. Correct.

9 Q. All right. And you go on to say that -- you explain
10 what happened at the hearing, correct?

11 A. I believe so.

12 Q. What else do you talk about in your email?

13 A. I'm not sure. I'd have to be able to read it. It was
14 a few years ago.

15 Q. Okay. Do you need a moment?

16 (Pause)

17 THE WITNESS: Okay.

18 Q. (By Mr. Olanoff) Do you remember telling your
19 superiors that Judge Kinder had asked that if the Attorney
20 General's Office felt there was anything privileged, to
21 identify what that was, so that he could review it prior to
22 the hearing?

23 A. I did write that.

24 Q. Okay. And did you talk about what Sergeant Ballou
25 testified to at the hearing?

1 A. Generally, yes.

2 Q. Well, in this paragraph right here: Sergeant Ballou
3 only testified to what was in the Grand Jury, i.e. what he
4 found in Farak's car.

5 Do you remember saying that?

6 A. I do, but that's not everything he testified to at the
7 hearing.

8 Q. Okay. And then you go on to say: Judge Kinder did not
9 allow any kind of questioning anywhere near anything
10 privileged.

11 Do you remember saying that?

12 A. If I wrote it, yes.

13 Q. Okay. Do you remember what that privileged information
14 was?

15 A. No. I was told everything had been turned over
16 already.

17 That was just a recitation of what Judge Kinder told
18 me.

19 Q. Okay. Now, right after you wrote that email, three
20 minutes later, Verner writes back to you. Do you remember
21 that?

22 A. I see it in this exhibit, yes.

23 Q. And do you remember Verner asking Anne, writing Anne,
24 meaning Anne Kaczmarek: Can you get a sense from Joe what
25 is in his file, emails, et cetera.

1 And then Verner asks you: Kris, did the Judge say his
2 file or did he indicate Joe had to search his emails, et
3 cetera?

4 A. I remember that.

5 Q. Okay. And then you remember Anne writes back: Joe,
6 has all his reports. Joe has all his reports and all
7 reports generated in this case, all photos and videos and
8 search warrants and returns, copies of the paperwork seized
9 from her car regarding news articles and her mental health
10 worksheets.

11 Do you remember that email?

12 A. I do.

13 Q. And in that email Anne talks about mental health
14 worksheets, correct?

15 A. She does.

16 Q. And what was your understanding of what those were?

17 A. Again, all along, I had been told every document had
18 been turned over already.

19 Q. And did you think that those mental health worksheets
20 had been turned over?

21 A. I had no idea what they were. Again, to this date, I
22 have not seen his file.

23 Q. If I were to show you what those mental health
24 worksheets were, would you recognize them?

25 A. No. As I said, I have never seen them before.

1 Q. Okay. A few minutes after that, Verner writes back to
2 you and Anne Kaczmarek and Randall Ravitz: Is everything in
3 his file?

4 A. Correct.

5 Q. Do you have any recollection of any email exchanges
6 going beyond that?

7 A. No.

8 MR. OLANOFF: Your Honor, at this time may I introduce
9 this as an exhibit?

10 THE COURT: May be marked.

11 THE CLERK: Marked as 210.

12 (Exhibit No. 210, emails from AAG Verner to AAG
13 Kaczmarek/Foster (9/10/13), marked)

14 Q. (By Mr. Olanoff) Do you also remember back in
15 September 2013 that the defense attorneys representing all
16 these defendants wanted to actually look at the evidence?

17 A. I remember Attorney Ryan wanted to.

18 Q. Okay. And is this an email he sent to you asking you
19 what your position would be with respect to viewing the
20 seized evidence?

21 A. Yes.

22 Q. And that was September 16, 2013?

23 A. Yes.

24 Q. And what was your office's position on reviewing the
25 seized evidence?

1 A. I can't speak for the office.

2 Q. What was your position?

3 A. I don't remember, other than everything had been turned
4 over, as far as I knew.

5 Q. Was this an email on September 16, which you forwarded
6 Attorney Ryan's email to Anne Kaczmarek, correct?

7 A. Correct.

8 Q. And your email to her, quote, says: Thoughts, question
9 mark.

10 A. Correct.

11 Q. And did she ever get back to you?

12 A. I don't recall.

13 Q. Okay. How did you know --

14 (Pause)

15 Q. (By Mr. Olanoff) Did Assistant Attorney General Anne
16 Kaczmarek get back to you after you asked her for her
17 thoughts on this?

18 A. According to this email she did.

19 Q. Okay. And did she write something to the effect: No,
20 period. Why is that evidence relevant to his case, question
21 mark. I really don't like him.

22 A. That appears to be what she wrote.

23 MR. OLANOFF: Your Honor, may I introduce this at this
24 time?

25 THE COURT: May be marked.

1 Q. (By Mr. Olanoff) Was it your understanding that the
2 defense attorneys would not be allowed to view the evidence
3 seized from her car?

4 A. I was under the impression that everything had been
5 turned over.

6 Q. Well, I know that, but I'm asking you, what was your
7 impression as to whether the defense attorneys would be
8 allowed to view the evidence?

9 A. I -- from what I remember, I understood Anne's email to
10 say, no, she didn't have any thoughts on his email; not, no,
11 that they're not allowed access.

12 Q. Okay. Or -- okay. Thank you.

13 THE CLERK: For the record, the previous exhibit is
14 marked as Number 211.

15 THE COURT: Thank you.

16 (Exhibit No. 211, emails from AAG Kaczmarek to AAG
17 Mazzone/Foster (9/17/13), marked)

18 **CROSS EXAMINATION BY MR. RYAN**

19 Q. Good morning, Ms. Foster.

20 A. Good morning.

21 Q. You started at the Attorney General's Office in the
22 Summer of 2013?

23 A. I did.

24 Q. And you previously had been a prosecutor, correct?

25 A. An appellate prosecutor; yes.

1 Q. And as appellate prosecutor you've been trained,
2 correct?

3 A. You'd have to be more specific on training.

4 Q. Well, when you join a District Attorney's Office they
5 train you how to be an Assistant District Attorney, correct?

6 A. A lot of it is learning on your feet.

7 Q. And one of the things you learn on your feet is you
8 have an obligation to turn over Brady material, correct?

9 A. Correct.

10 Q. And that's evidence that's exculpatory, correct?

11 MS. WEST: Objection. Again, we're just going right
12 into that.

13 THE COURT: Sustained.

14 MR. RYAN: Not my witness.

15 I don't -- so I don't know if the objection was a
16 leading objection, but if I could have some clarity as to
17 why the objection was sustained.

18 THE COURT: Well, because this isn't necessarily an
19 expert witness on what the obligations of lawyers are.

20 MR. RYAN: I appreciate that.

21 THE COURT: Nor is that an area I'm interested in.

22 MR. RYAN: Okay. Thank you.

23 Q. (By Mr. Ryan) Now, when you became Assistant Attorney
24 General, is it fair to say that some of the tasks you were
25 assigned were familiar from what you had done as an

1 Assistant District Attorney?

2 A. Some were familiar, some weren't.

3 Q. And some were unfamiliar?

4 A. Correct.

5 Q. Was one of the -- your new tasks responding to
6 subpoenas?

7 A. Not all subpoenas, but a couple.

8 Q. Had you ever responded to a subpoena before becoming an
9 Assistant Attorney General?

10 A. No.

11 Q. Did the Attorney General's Office have a training
12 institute for new Assistant Attorney Generals?

13 A. They have the AG Institute for all Assistant Attorney
14 Generals.

15 Q. Showing you a document. If you could just take a
16 moment to review it.

17 A. (Complying)

18 Q. Okay. Is this a redacted copy of a manual the Attorney
19 General's Office produced on the subject of responding to
20 subpoenas?

21 A. I don't know.

22 Q. What's the title page of that document?

23 A. Responding to Subpoena's Where the AGO is a Third
24 Party.

25 Q. Was, according to the title page, one of the authors a

1 woman named Suzanne Reardon?

2 A. Yes.

3 Q. Who is Suzanne Reardon?

4 A. At the time, she was a Deputy Chief of the Appeals
5 Division.

6 Q. Was she one of your supervisors?

7 A. She was.

8 Q. Did you work closely with her in these Farak-related
9 issues?

10 A. No.

11 Q. Now, does the manual describe steps that must be taken
12 each time your office receives a subpoena or subpoena duces
13 tecum?

14 A. No.

15 Q. It doesn't have a -- maybe I can help you out here.

16 A. This manual isn't a requirement.

17 Q. Did your office's manual say with respect to civil
18 discovery requests that the first step was to determine who
19 will handle the subpoena duces tecum?

20 A. Again, I don't know if this is the manual. I'm not
21 sure what this is, to be honest.

22 Q. Is that the insignia of the Attorney General's Office?

23 A. It is.

24 Q. Is this entitled: Responding to Subpoenas Where the
25 AGO is a Third Party.

1 A. I don't know what that's for.

2 The Training Institute has hundreds of lectures a year.
3 And this was, my guess, one of them.

4 Q. And does it say that this manual was revised in March
5 of 2013?

6 A. Correct.

7 Q. Okay. And so, it's your testimony that you've never
8 received any training on this topic?

9 A. Training, no.

10 Q. Did you receive any guidance from Sue Reardon on this
11 topic?

12 A. I'm not sure. I was given a couple sample motions to
13 quash to work with.

14 Q. Now, you testified, when Attorney Olanoff was
15 questioning you, about some work you did with respect to the
16 subpoena Joseph Ballou received in the Watt case. Do you
17 recall that?

18 A. I've -- yes.

19 Q. Did you also, before that, get assigned to respond to
20 a -- subpoenas that had been issued to Sergeant Ballou and
21 Anne Kaczmarek in the Penate case?

22 A. I don't remember the dates, but yes.

23 Q. Putting up on the screen what's previously marked as
24 AGOFRK007218. Is this an email that you received from
25 Randall Ravitz on August 23, at 5:18 in the afternoon?

1 A. It appears to be.

2 Q. And was the attachments: Dookhan and Farak Penate
3 subpoena?

4 A. Yes.

5 Q. And does it say: Attached is a copy of that subpoena
6 and the docket in the case.

7 A. Yes.

8 Q. Thanks again, Randy.

9 A. Yes.

10 Q. Is that, were you assigned to work on this Penate
11 subpoena on August 23?

12 A. I don't recall if it was that particular date that it
13 was assigned to me.

14 Q. On or about that particular date?

15 A. Most likely, yes.

16 Q. Now, three days after that, did I send you an email at
17 8:29 p.m.?

18 A. Yes, but I'm not sure what the email is; but I see that
19 it's from you to me.

20 Q. If you take a look and review that email.

21 A. (Witness complying)

22 Okay.

23 Q. Now, in this email, did I tell that you I represented a
24 second Farak defendant named Rafael Rodriguez?

25 A. Yes.

1 Q. And did I tell you he was one of the 15 postconviction
2 defendants who had a hearing coming up on September 9?

3 A. I'm not sure if this email says that.

4 Oh, yes, yes. I apologize, yes.

5 Q. And were some pleadings attached to this email?

6 A. I believe so. Under attachments it says there are
7 attachments.

8 Q. And did I -- at the end of the email, did I tell you
9 that it had become, quote, clear to me that in order to
10 prepare effectively for the hearing on 9/9 I would need to
11 inspect the 60 items seized during the course of the Farak
12 investigation, referenced in a Case Information Report
13 Sergeant Ballou generated on 1/29/13?

14 A. You wrote that, yes.

15 Q. Did I ask you if it would be possible for you or
16 someone from your office to assist me in making arrangements
17 to inspect this evidence?

18 A. That's what you wrote.

19 Q. Did responding to my discovery motion in the Rodriguez
20 case become another one of your assignments?

21 A. Yes.

22 Q. Now, the next day, at 9:35 in the morning, did you
23 forward a copy of what I had sent you to Anne Kaczmarek?

24 A. It appears I did.

25 Q. And did you ask her if she had any thoughts on what I

1 had sent you?

2 A. That's what my email says.

3 Q. Now, showing you -- is this the motion that was
4 attached to my email that's previously been marked as
5 AGOFRK003167?

6 A. I'm not sure if that's what was attached.

7 Q. Can you take a look at this document and see if it's
8 familiar to you?

9 A. The motion's familiar. I am just not sure if this is
10 what was attached to the email.

11 Q. I'd ask you to take a look at Item Number 11 on the
12 motion.

13 A. Okay.

14 Q. Did this item request: Any and all evidence suggesting
15 that a third party may have been aware of Farak's evidence
16 tampering at the Amherst Drug Laboratory prior to Farak's
17 arrest in January of 2013.

18 A. It says that.

19 Q. At the time that I made this request, did your office
20 possess documents suggesting that a third party may have
21 been aware of Farak's evidence tampering at the Amherst Drug
22 Laboratory prior to her arrest?

23 A. I don't know.

24 Q. Sitting here today, you don't know the answer to that
25 question?

1 A. I have never reviewed the documents. I was told that
2 everything had been turned over that needed to be turned
3 over.

4 Q. Well, did you find out in November of 2014 that your
5 office possessed some documents that hadn't been turned
6 over?

7 A. I'm not sure. November 2014, I am not sure.

8 Q. We're here in 2016, correct?

9 A. Correct.

10 Q. This pleading was filed in 2013, correct?

11 A. Correct.

12 Q. There was a series of hearings that happened in 2013,
13 correct?

14 A. Series of hearings, I'm not sure, but there was at
15 least one.

16 Q. And in 2014, you were involved in a motion to inspect
17 evidence that I had filed, correct?

18 A. I don't know about the date, but there was a motion to
19 inspect evidence.

20 Q. And you're aware that eventually in the Fall of 2014 I
21 inspected this evidence, correct?

22 A. Again, I'm not sure of the date but, yes, you
23 eventually got to inspect the evidence.

24 Q. And after I inspected the evidence, did I advise your
25 office that I found some things that hadn't been turned

1 over?

2 A. I don't recall.

3 Q. No recollection of any conversations that took place in
4 November of 2014 about newly discovered evidence?

5 A. As I told you, November 2014, I don't know. I would
6 need to see something.

7 Q. Okay. Now, did Ms. Kaczmarek have any thoughts about
8 what I had emailed you?

9 A. I don't remember.

10 Q. In any event, at 10:05 the morning of August 30, 2013,
11 did you respond to my email?

12 A. I did.

13 Q. And, in your response, did you say that, quote, because
14 of the ongoing investigation I cannot give you access to the
15 main evidence room.

16 A. I did.

17 Q. Now, just to be clear, because there's been some
18 confusion on this, did you refuse my request to view the
19 Farak evidence?

20 A. At this point, I say: I'll need to be able to respond
21 to you more fully later; that I was just letting you know
22 that I got your email.

23 Q. Was that in reference to the pleadings that I had
24 filed?

25 A. My email response is response to your email.

1 It's not any formal opposition or anything. I
2 specifically say I needed more time to fully respond.

3 Q. Did you write: Just from looking at your email and
4 motion quickly, I will be opposing the discovery motion.
5 I'm also not sure yet if a hearing will even be warranted on
6 the discovery motion. Seeing the judge could deny or allow
7 it on the papers. So as of this time, I don't believe a
8 hearing is warranted.

9 Also, comma, because of the ongoing investigation, I
10 cannot give you access to the main evidence room.

11 Is that what you wrote?

12 A. I believe so.

13 Q. Did you refuse my request to see the evidence in the
14 main evidence room?

15 A. You're ignoring the last sentence where I say: I will
16 need to be able to more fully respond to your request, that
17 I'm just getting back to you with my initial thoughts.

18 Q. Oh, okay. Now, did you end up filing an opposition to
19 the Rodriguez discovery motion?

20 A. I believe so.

21 Q. Would you just take a second to review this and see if
22 this is your opposition?

23 A. (Witness complying)

24 It is.

25 Q. Now, prior to filing that opposition, did you do an

1 initial review to see what kinds of documents and ESI your
2 office had?

3 A. I didn't personally review any documents.

4 Q. And I think you testified that you had previously been
5 told that all documents in your office had previously been
6 turned over, correct?

7 A. Correct.

8 Q. Now, with respect to Item Number 11, third party
9 knowledge, did you write: The AGO has turned over all Grand
10 Jury minutes, exhibits and police reports in its possession
11 to the District Attorney's Office.

12 Based on these records to which the defendant has
13 access, there is no reason to believe that a third party had
14 knowledge of Farak's alleged malfeasance prior to her
15 arrest.

16 A. Correct. I wrote that.

17 Q. Now, in writing that, I didn't ask you in my motion
18 for -- I'd asked for any and all evidence; is that accurate?

19 A. That suggests a third party had knowledge; yes.

20 Q. Correct. And so you didn't say that any and all
21 evidence, you classified Grand Jury minutes, exhibits, and
22 police reports had been turned over, correct?

23 A. Correct.

24 Q. You didn't say that all evidence had been turned over,
25 correct?

1 A. I didn't say that in my opposition.

2 MR. RYAN: I'd ask that this opposition be marked as
3 the next exhibit.

4 THE COURT: All right. May be marked.

5 THE CLERK: Marked as Number 212.

6 THE COURT: What number is it, Lois?

7 THE CLERK: 212.

8 THE COURT: Thank you.

9 (Exhibit No. 212, Attorney General's Opposition to
10 Defendant Rodriguez motion for discovery (filed 9/6/13),
11 marked)

12 Q. (By Mr. Ryan) Now I just want to be clear, you did not
13 review any documents that Anne Kaczmarek possessed?

14 A. I haven't reviewed any documents related to Sonja Farak
15 ever.

16 Q. So you didn't see a discovery letter that John Verner
17 had sent to the District Attorneys in March of 2013 saying
18 what he had -- the office had turned over?

19 A. I don't recall seeing it.

20 MR. RYAN: Could this be marked for Identification?

21 THE CLERK: Marked as B for Identification. B as in
22 boy.

23 (Exhibit B, letter from AG to DA Conley (3/27/13),
24 marked for Identification)

25 THE WITNESS: I don't believe I've seen this.

1 Q. (By Mr. Ryan) Okay. And -- now, had you ever, in your
2 time as an Assistant Attorney General, reviewed any files in
3 your capacity as a member of the Appeals Division?

4 A. You'd have to be more specific.

5 Q. Well, in cases where your -- let's say your Enterprise
6 and Major Crimes Unit took a case to trial and obtained a
7 conviction. Would there sometimes be an appeal?

8 A. Sometimes, if there's a conviction.

9 Q. And were you assigned to work on any of those appeals?

10 A. Not for Enterprise and Major Crime, I don't believe.

11 Q. Any members of the Criminal Bureau have a case that was
12 con- -- that there was a conviction and there was an appeal
13 that you worked on?

14 A. In the office, yes.

15 Q. And are you familiar with something known as a
16 prosecution memo?

17 A. No.

18 MR. RYAN: Could I have this marked for Identification?

19 THE CLERK: Marked as C for Identification.

20 (Exhibit C, prosecution memo (3/27/13), marked for
21 Identification)

22 Q. (By Mr. Ryan) So I'm showing you a copy of what's been
23 marked as C for Identification. I'm going to ask you two
24 questions after reviewing it. One, if you'd ever seen this
25 document; and, two, if you had ever seen any prosecution

1 memo during the time you worked at the Office of Attorney
2 General.

3 A. I've never seen this, and as far as I can recall I've
4 never seen any of these in any of my time there.

5 Q. Now, I think you testified when Attorney Olanoff asked
6 you about meetings at your office, I think you said
7 something to the effect that you didn't go to a lot of them
8 or you weren't privy to a lot of them?

9 A. Correct.

10 Q. Showing you what's previously been marked as
11 AGOFRK00715 this is, subject: Farak subpoena meeting,
12 Tuesday September 3, 2013, 1:30 to 1:45 p.m. organized by
13 Meghan Scafati.

14 Do you know who Meghan Scafati is?

15 A. She was the administrative assistant for the Chief of
16 the Criminal Bureau.

17 Q. And were you one of the required attendees at this
18 meeting?

19 A. I think I'm on there, yes.

20 Q. And John Verner, he was Chief of the Criminal Bureau at
21 the time, correct?

22 A. Correct.

23 Q. You said Randall Ravitz was Chief of the Appeals
24 Division?

25 A. Correct.

1 Q. And Suzanne Reardon was Deputy Chief of the Appeals
2 Division?

3 A. Yes.

4 Q. Dean Mazzone was head of the Enterprise and Major
5 Crimes at that time?

6 A. I'm not sure at that time what his title was.

7 Q. Did he move to General Counsel at some point that Fall?

8 A. I forget what the title he moved to was, but he did
9 move, changed titles at some point.

10 Q. And Cara Krysil took over as head of Enterprise and
11 Major Crimes?

12 A. I'm not sure.

13 Q. In any event, Robert Irwin was another one of the
14 required attendees at this meeting?

15 A. Okay.

16 Q. Do you know who he was?

17 A. I did.

18 Q. Do you recall what was discussed at this meeting in
19 regard to the Farak subpoena?

20 A. No.

21 Q. Did your office, by that point, had decided to move to
22 quash the subpoena that Mr. Olanoff had served on behalf of
23 Mr. Watt?

24 A. By September 3, I'm not sure.

25 Q. Now, Attorney Olanoff had shown you the email that

1 Randall Ravitz had sent expressing concerns about a defense
2 attorney trying to elicit information of the type we think
3 shouldn't be revealed. That was sent to you on September 4
4 at 11:57 a.m.

5 Do you recall those questions?

6 A. I recall the questions from Attorney Olanoff, yes.

7 Q. And later that afternoon, did John Verner, send a group
8 email to -- that you received, saying: Okay. We should get
9 the band back together.

10 A. Yes.

11 Q. And did you end up having another meeting with this
12 group related to the Farak subpoena that Attorney Olanoff
13 had served in the Watt case?

14 A. I don't recall.

15 Q. Now, I guess I'm a little confused as to why your
16 office would of moved to quash a subpoena duces tecum if all
17 of its documents had already been turned over.

18 A. The subpoena was -- I can't tell you why my office
19 instructed me to, but the subpoena was also for testimony.

20 Q. Right. But if you had turned over all of the documents
21 in the case, why didn't you just say, we've turned over all
22 of the documents in the case?

23 A. I believe I did say that on September 9, which Judge
24 Kinder responded asking if I had personally seen all of them
25 and I said no.

1 Q. Now, showing you a document that's previously marked
2 AGOFRK007158.

3 Take a second to review that.

4 A. (Witness complying)

5 Okay.

6 Q. At 11:10 on the morning of September 5, 2005 (sic), did
7 you send Ms. Reardon a copy of the draft of your Watt
8 subpoena?

9 A. I did.

10 Q. And did you ask for some feedback on what you provided
11 to her?

12 A. Yes.

13 Q. Now, did Ms. Reardon respond to your email?

14 A. She did.

15 Q. And did she make comments on the draft of the pleading
16 that you had provided her?

17 A. She said she did. I don't recall if she actually did.

18 Q. Did she provide some feedback in the body of her email?

19 A. I don't know if I classify it as feedback, but yes.

20 Q. Did one of the things that she said was that if you
21 could, quote, get anymore information about what was already
22 given to defense counsel that might help?

23 A. She did say that.

24 Q. And at the conclusion of the email, did she tell you
25 that she would be, quote, more comfortable knowing what

1 documents are at issue or what had already been turned over
2 before we raised the CORI privilege?

3 A. She did say that.

4 Q. So --

5 (Pause)

6 Q. (By Mr. Ryan) Is this a copy of the marked-up draft
7 that you received back from Sue Reardon?

8 A. I have no idea if it is.

9 Q. Well, is the caption of the pleading: Memorandum of
10 law in support of Attorney General's motion to quash summons
11 served on Sergeant Joseph F. Ballou?

12 A. That's what it says.

13 Q. And is this in the Jermaine Watt case?

14 A. It says it is.

15 Q. And you had filed a pleading in this case, correct?

16 A. I had.

17 Q. And it bore this same styling, correct?

18 A. I'm not sure of the exact title of what I filed.

19 Q. Do you have any reason to believe that this isn't Sue
20 Reardon's comments on the draft that you provided her?

21 A. I can't read the comments from here.

22 Q. I'm going to show you page ten.

23 MR. RYAN: And, Your Honor, may the witness step down
24 to get a better look at the comments?

25 THE COURT: Sure. Sure.

1 (Pause)

2 THE WITNESS: Just this comment?

3 Q. (By Mr. Ryan) What's that?

4 A. Just this comment?

5 Q. There's going to be one more. I have a question about
6 this.

7 A. Okay.

8 Q. In the draft pleading that you gave Ms. Reardon, did
9 you say, as explained below, nearly all documents that would
10 be responsive to the subpoena would constitute CORI?

11 A. Yes.

12 Q. And was her comment: Is this true?

13 A. That was her comment.

14 Q. And then go to Page 13.

15 If you could look, is there a sentence that says: Here
16 with the exception of a few documents that contain no
17 information or barely any information at all, all documents
18 in the possession of Sergeant Ballou that would be
19 responsive to the subpoena fall within the above definition
20 of CORI.

21 A. Yes.

22 Q. And what was her comments on that?

23 A. Do you know this for sure.

24 Q. Did Sue Reardon encourage you to look at the file?

25 A. No.

1 Q. Well, did she encourage -- you may, sit down.

2 Did she encourage you to make sure that what you were
3 writing about what had been turned over and what these
4 documents contained was accurate and true?

5 A. She did.

6 Q. Now, you testified you weren't sure whether there had
7 been another meeting that you attended about the Farak
8 subpoena issue.

9 I'm going to show you what's been previously marked
10 AGOFRK000724.

11 Does this signify another meeting took place in the
12 chief's office on the subject of Farak's subpoena?

13 A. No. It says one was scheduled.

14 Q. So it's your testimony that you didn't attend any such
15 meeting?

16 A. I'm not saying that. That's not what you had asked me.
17 You asked me if this meant there was a hearing -- a meeting
18 that was held, and I'm not sure. This just means that one
19 was scheduled.

20 Q. Okay. So you have no recollection of attending a
21 meeting at this time, on this date, that had been scheduled?

22 A. Not at that particular time and date. There were a few
23 meetings, but I don't know the dates of them.

24 Q. And you attended a few meetings, correct?

25 A. I did.

1 Q. Now, showing you a copy of pleading -- is this what you
2 ended up filing in the Watt case?

3 A. It appears to be, yes.

4 Q. If I could turn your attention to page nine.

5 A. Okay.

6 Q. Did section five of the pleading contain this sentence:
7 In the event that this Court declines to quash the subpoena,
8 it should restrict its scope by relieving the Attorney
9 General, the AGO, or relieving the obligation of the AGO to
10 produce the following types of information.

11 Does it say that?

12 A. It does.

13 Q. What's the third type of information you wanted relief
14 from the obligation to produce?

15 A. I wrote information concerning the health or medical or
16 psychological treatment of individuals.

17 Q. Why did you write that?

18 A. Honestly, I took it from a sample motion that Randy had
19 given me.

20 Q. So, at the time you wrote that, you didn't know that
21 the office had information concerning the health and medical
22 or psychological treatment of individuals it had not yet
23 turned over?

24 A. Correct. And, in fact, when I put this language in a
25 draft that Randy edited, I don't remember if it was this

1 defendant or not, but a similar case he told me to take it
2 out because it was irrelevant.

3 Q. So it was relevant in this case; is that what you're
4 saying?

5 A. No. I'm saying I'm not sure if it was this one because
6 I believe Sue -- I'm not sure who edited this one; but in
7 one of these that Randy edited, he told me to -- at least
8 one -- he told me to take that language out because it was
9 irrelevant.

10 Q. So this got filed in court, correct?

11 A. It did.

12 Q. And before things got filed in court, how many sets of
13 eyes would typically see pleadings?

14 A. It depends on the case.

15 Q. In this case, who reviewed your pleadings before you
16 filed them in court?

17 A. Sometimes Randy, sometimes Sue.

18 Q. Did at least one of them review everything you filed?

19 A. They would edit my draft, and then I would file after
20 making edits.

21 Q. So the final version that you filed, contained this
22 request to be relieved of the obligation to produce
23 information concerning the health and/or medical
24 psychological treatment of individuals?

25 A. It says that.

1 Q. What's the seventh and final type of information you
2 wanted relief from the obligation to produce?

3 A. Emails responsive to the subpoena, but not already
4 contained in the case file, specifically listed therein.

5 Q. Did you know that Sergeant Ballou possessed some emails
6 that were responsive to the subpoena, but weren't in his
7 case file?

8 A. No.

9 Q. And that's, again, something that was reviewed by your
10 superiors before it was filed in court?

11 A. By at least one of them. They would edit a draft, not
12 necessarily the final product.

13 MR. RYAN: I ask that this be admitted as the next
14 exhibit.

15 THE COURT: All right. May be marked.

16 THE CLERK: Marked as Number 213.

17 (Exhibit No. 213, memorandum of Attorney General on
18 Defendant Watt motion to quash, marked)

19 Q. (By Mr. Ryan) Now, you testified some about this
20 evidentiary hearing that took place on September 9, 2013 and
21 Attorney Olanoff asked you some questions about what
22 happened at the outset of that hearing.

23 I believe this has been marked previously as Exhibit
24 80. Turn your attention to page 15.

25 A. Okay.

1 Q. After Judge Kinder denied your motion to quash Sergeant
2 Ballou's testimony, did he then turn to your request for the
3 protective order and ask whether you had, quote, personally
4 reviewed the file to determine that there are categories of
5 documents in the file that fit the description of those that
6 you wished to be protected?

7 A. He said that.

8 Q. And did you answer this question by saying, that you
9 had, quote, been talking with AGA (sic) Kaczmarek and that
10 she had indicated that several documents, emails,
11 correspondence, would be protected under work product
12 mostly.

13 A. I did say that.

14 Q. So when he asked if there were things that your office
15 wanted to be protected, you indicated that there were or
16 that you had been told that there were?

17 A. I had been told everything that should be turned over
18 was turned over.

19 Q. Well, when he asked you if there were categories of
20 documents that should be protected, you didn't say, Judge,
21 everything that has been, should be turned over, has already
22 been turned over, correct?

23 A. I believe that that was the intent, and especially by
24 the fact that Judge Kinder yelled at me for saying,
25 basically, how could you represent that when you haven't

1 seen the file yourself.

2 Q. What I'm asking you is did you tell Judge Kinder that
3 AGA (sic) Kaczmarek had told you that there were actually
4 some documents that your office had, pertaining to the Sonja
5 Farak and Amherst Drug Lab investigation that should be
6 protected under the categories you listed in your motion?

7 A. This was in discussion, specifically related to the
8 documents being requested though. It wasn't -- this is
9 addressing very specific and itemized list of documents that
10 were being sought.

11 Q. Well, this was in response to the Watt subpoena,
12 correct?

13 A. I don't believe there's just a subpoena because we're
14 talking about seven subcategories of documents.

15 Q. Well, you identified seven subcategories of documents
16 that you thought if Judge Kinder wasn't going to quash the
17 subpoena, he should relieve you of the obligation of you
18 having to produce, correct?

19 A. Can you ask that again, please?

20 Q. Judge Kinder wanted to know are there documents that
21 actually fit into these seven categories, any of these seven
22 categories that haven't been turned over, that you think are
23 protected and privileged?

24 A. And I said I haven't looked at the file, in that its
25 been represented to me that documents had been turned over.

1 Q. But it also had been represented to you that the
2 documents existed that hadn't been turned over?

3 A. No.

4 Q. Well, what did you tell Judge Kinder when you said that
5 AGA (sic) Kaczmarek indicated that several documents,
6 emails, correspondence would be protected under work product
7 mostly?

8 A. That doesn't say those documents weren't turned over.

9 Q. Why would you be filing a motion to protect your office
10 from turning over what had already been turned over?

11 A. Because I believed there was a much broader request for
12 documents.

13 Q. Right. It was every document and photograph pertaining
14 to the whole investigation, correct?

15 A. Right. And I was told that everything had been turned
16 over that needed to be turned over.

17 Q. But you also filed a motion listing seven categories of
18 different documents that you were asking to be relieved of
19 the burden of producing.

20 A. Producing again and the motion to quash was also for
21 testimony.

22 Q. Well, the protective order that you sought in the
23 alternative to the motion to quash listed a number of
24 different categories of information that you didn't want to
25 turn over, correct?

1 A. As I said before, I took that list, whether it was good
2 practice or not, I took that list from a sample motion that
3 I had been given.

4 Q. And you also --

5 A. And I used that language.

6 Q. And you also spoke with AGA (sic) Kaczmarek and she had
7 told you that there were documents that fit into some of
8 those categories; that's what you told Judge Kinder, right?

9 A. That's what appears to be what I said, that's what the
10 transcript says.

11 Q. Now, Attorney Olanoff showed you that email from the
12 next day that read where Anne Kaczmarek referenced the fact
13 that in Joe's file were mental health worksheets.

14 Do you recall that?

15 A. Yes.

16 Q. You were present in the courtroom when Joe Ballou
17 testified, correct?

18 A. I was.

19 Q. You reported on his testimony in that email thread that
20 you were shown, correct?

21 A. I gave what I thought were highlights of it.

22 Q. And just so we're clear, when Anne Kaczmarek said, the
23 day after this hearing, September 10, that Joe has her
24 mental health worksheets; she didn't explain what she meant
25 by that, did she?

1 A. To me, no.

2 Q. To anybody, did she?

3 A. I can't tell you what she told other people.

4 Q. Can -- well, the way that she wrote this, indicates
5 some pre-existing knowledge about these mental health
6 worksheets on the part of recipients; is that fair to say?

7 A. No.

8 THE COURT: Is email in?

9 MR. RYAN: It's in already.

10 Q. (By Mr. Ryan) So she just put out "mental health
11 worksheets" in this email, you had no idea what she was
12 talking about?

13 A. I didn't. I had been told everything was turned over.
14 There was several other people cc'd on that email.

15 MR. RYAN: And just for the record, Your Honor, it's
16 Exhibit 210 that I just showed the witness.

17 THE COURT: Thank you, Mr. Ryan.

18 Q. (By Mr. Ryan) Now, you just testified that you were in
19 the courtroom when Sergeant Ballou testified, correct?

20 A. Correct.

21 Q. And you were present when Attorney Olanoff asked him a
22 number of questions, correct?

23 A. Yes. I was present for the day.

24 Q. And I asked him some questions too, correct?

25 A. I don't recall. I know he was questioned. I don't

1 remember by who.

2 Q. Well, you have in front of you the Exhibit 80
3 transcript of the proceeding. Does it indicate that Joseph
4 Ballou's testimony covered approximately 55 pages of
5 testimony?

6 A. Yes.

7 Q. During those 55 pages of testimony, do you recall
8 anybody asking Joe Ballou any questions about mental health
9 worksheets?

10 A. I don't recall.

11 Q. Could you take a look at page -- bottom of page 173, to
12 the top of 176 of Exhibit 80.

13 A. Through what page? I'm sorry.

14 Q. 176. Bottom of 173 to top of 176.

15 A. (Witness complying)

16 Okay.

17 Q. Did I ask Sergeant Ballou why defense attorneys had not
18 been permitted to inspect the evidence seized from
19 Ms. Farak's car?

20 A. I believe so, yes.

21 Q. Did I ask Sergeant Ballou if reports regarding what was
22 in her car were summary notes?

23 A. You do ask that.

24 Q. Did he agree with that?

25 A. He said summary, yes.

1 Q. And did I ask him to confirm that he didn't write
2 paragraph after paragraph about what assorted lab paperwork
3 was found?

4 A. You asked that.

5 Q. Did Sergeant Ballou claim that there were some pretty
6 detailed photographs had been taken?

7 A. Yes.

8 Q. Now, you agree that you have no recollection of me or
9 anybody else asking Sergeant Ballou any questions about any
10 admissions of drug use contained on any mental health
11 worksheets that were seized from Sonja Farak's car, correct?

12 A. I don't remember the testimony from that day, no.

13 Q. Now, at the end of the hearing, if I could ask you to
14 turn your attention to page 244 of the transcript.

15 A. Okay.

16 Q. After the last witness of the day had finished
17 testifying, did you ask Judge Kinder whether his order
18 pertaining to the in camera production pertained to, quote,
19 the documents Joe Ballou had or the documents that the
20 Attorney General's Office had?

21 A. Where are you reading that?

22 Q. Bottom of page 244 of the transcript.

23 A. Bottom of page.

24 (Pause)

25 A. It says I said that, but --

1 Q. (By Mr. Ryan) Right. Did you ask the question of
2 whether or not he wanted you to turn over documents that Joe
3 Ballou had or the entire office had, correct?

4 A. I believe I did, but it looks like there's some error
5 with the transcript because the statements above what's mine
6 also is attributed to me.

7 Q. That appears to be The Court that was talking above
8 that, right?

9 A. I'm not sure. I haven't had time to read this
10 transcript.

11 Q. Let's just focus on the one part of the thing that I
12 asked you to focus on.

13 Did you ask that question about whether or not his
14 order pertained to documents that Joe Ballou had or the
15 entire office had?

16 A. I did ask that.

17 Q. And what was Judge Kinder's response?

18 A. The subpoena -- he said, As I understood it, it went to
19 Sergeant Ballou and that was the subpoena that you sought to
20 quash. So that's -- I say, Correct; and he says, So that's
21 what we're talking about.

22 Q. After this exchange with Judge Kinder, did you have a
23 clear understanding as to what you were being ordered to
24 produce?

25 A. I did.

1 Q. What did you think you were being ordered to produce?

2 A. What Sergeant -- my impression, at that time, was what
3 Sergeant Ballou had in his file that hadn't already been
4 turned over.

5 Q. Just so we're clear, Judge Kinder said: The subpoena
6 duces tecum, as I understood it, went to Sergeant Ballou,
7 and that was the subpoena that you sought to quash.
8 Correct?

9 A. Correct.

10 Q. And the subpoena duces tecum that went to Sergeant
11 Ballou ordered him to produce all documents and photographs
12 pertaining to the Sonja Farak investigation?

13 A. Well, it was to bring them to the hearing, yes.

14 Q. Right. And so after Judge Kinder said that, did you
15 have a clear understanding of whether or not he was
16 refer- -- had he answered your question in a way that you
17 understood what he wanted?

18 A. He did.

19 Q. What did you think he wanted?

20 A. I thought I just answered that, anything in Sergeant
21 Ballou's file that had not been turned over.

22 Q. Did you refer to his file or did you say documents that
23 Joe had?

24 A. I would have used the terms interchangeably.

25 Q. Showing you what's previously been marked as

1 AGOFRK003311.

2 Attorney Olanoff had shown you Exhibit 210, this thread
3 that began with your report, and I think he asked you some
4 questions about -- some questions John Verner had posed of
5 Anne Kaczmarek and you and that Exhibit 210 contained Anne
6 Kaczmarek's response.

7 Does the exhibit -- the item before you right now, is
8 that an email where you responded to the question that had
9 been posed to you?

10 A. I did.

11 Q. And just so we're clear, the question that had been
12 posed to you was: Kris, did the Judge say his file, or did
13 he indicate Joe had to search his emails, et cetera?

14 How did you answer that question?

15 A. Verbatim?

16 Q. Yeah.

17 A. Judge Kinder unfortunately did not give too much
18 insight into what he's looking for. I kept asking him to
19 clarify and the best he would do is say, quote, the subpoena
20 for Sergeant Ballou is what he has, end quote, or something
21 along those lines.

22 Sergeant Ballou did testify that he thinks everything
23 in his file has already been turned over.

24 Q. So, did you have a clear understanding of what Judge
25 Kinder had ordered you to turn over?

1 A. At the time, no, evidently.

2 Q. Now, after telling the group that Judge Kinder didn't
3 give too much insight into what he was looking for, did you
4 or anyone else suggest it might be a good idea to file a
5 motion for clarification?

6 A. I know one was filed in some matter, I don't remember
7 which.

8 Q. Well, it wasn't filed in respect to the Watt motion to
9 quash, was it?

10 A. I'm not sure, like I said, I know one was filed in one
11 of these matters, but I just don't remember which.

12 Q. Was it filed in the Rolando Penate case when Judge
13 Kinder issued a written order telling you you had to turn
14 over some interoffice and intraoffice correspondence?

15 A. It might have been.

16 Q. Okay. Did anyone in your office suggest it might be --
17 that you might be better off producing too many documents to
18 Judge Kinder as opposed to too few?

19 A. I had been told everything had been turned over.

20 Q. At 9:54 a.m. did Dean Mazzone respond to the group?

21 A. He did.

22 Q. What did he have to say?

23 A. He doesn't know the answer to the question; everyone is
24 fishing.

25 Q. Did that mean that he, when he referred to "he" was he

1 referring to Judge Kinder doesn't know what he's looking
2 for?

3 A. I can't tell you what he meant by it.

4 Q. How did you understand it?

5 A. I understand it as he was talking about Judge Kinder.

6 Q. Now, Attorney Olanoff asked you some questions about
7 that letter that you wrote to Judge Kinder on September 16,
8 2013. Do you recall those questions?

9 A. I do.

10 Q. Do you recall -- did you draft the letter or did you
11 just sign it?

12 A. I drafted it.

13 Q. And who reviewed it before you signed it and sent it to
14 a Superior Court Judge?

15 A. Randy Ravitz.

16 Q. Now, in your letter you said that every document in
17 Sergeant Ballou's possession had already been disclosed.

18 A. I believe so, I don't have the letter in front of me,
19 but I believe that's generally what it says.

20 Q. Now, sitting here today in 2016, you'd agree that this
21 is not true, correct?

22 A. I don't know. I -- to date, I have not reviewed one
23 document in the Farak case.

24 Q. Do you know why you're sitting here in 2016?

25 MS. WEST: Objection.

1 THE COURT: Sustained.

2 Q. (By Mr. Ryan) Now --

3 MR. RYAN: Is that letter in evidence -- all right.

4 I believe this letter is already in evidence. I'm
5 going to, if I may, just show the witness a copy of it.

6 THE COURT: Sure.

7 MR. RYAN: And I'll get an exhibit number or I'll move
8 to introduce it.

9 THE COURT: Okay.

10 MR. RYAN: It's Exhibit 193.

11 THE COURT: All right. Thank you.

12 Q. (By Mr. Ryan) In your letter to Judge Kinder, did you
13 say that the documents in Joe Ballou's possession had
14 already been disclosed, including Grand Jury minutes,
15 exhibits, and police reports?

16 A. I did say that.

17 Q. Was this the same language that you'd used in opposing
18 the Rodriguez motion for discovery of third-party knowledge?

19 A. I'm not sure.

20 Q. Now, you still have Exhibit 80, the transcript, in
21 front of you?

22 A. I do.

23 Q. Could you turn back to page 245.

24 A. Okay.

25 Q. At the end of the hearing did I ask Judge Kinder to be

1 heard on the issue of access to the evidence that was seized
2 from Ms. Farak's car?

3 A. You did.

4 Q. Did I tell Judge Kinder that ADA Flannery had attempted
5 to facilitate such an inspection but your office had opposed
6 it?

7 A. That's what you said.

8 Q. And this was correct, wasn't it?

9 A. I'm not sure.

10 Q. You think -- did you think I made that up?

11 A. I can't speak for you.

12 Q. Did Judge Kinder instruct us to attempt to work
13 something out and put the onus on me to file a motion if we
14 couldn't?

15 A. He did say that, paraphrasing, yes.

16 Q. Showing you what's been marked as Exhibit 211. If you
17 could start at the bottom of that thread, on September 11.
18 Did I send you an email asking if there had been any
19 decision as to whether I'll be permitted to view the
20 evidence seized from Ms. Farak's car?

21 A. You did ask that.

22 Q. Did you respond by asking me whether I was looking to
23 view evidence seized from her car or have access to the
24 evidence locker?

25 A. Right. Because all of your previous requests had been

1 access to the evidence locker.

2 Q. On September 12, 2013, did I write back to state: I'm
3 interesting in inspecting the evidence seized from
4 Ms. Farak's car, and from her drawer in the white bucket at
5 the lab.

6 A. You did say that.

7 Q. Four days later on September 16, 2013, did I ask you if
8 your office had determined what its position would be with
9 respect to viewing the seized evidence?

10 A. You did ask.

11 Q. Now, I think you testified that you forwarded this to
12 Anne Kaczmarek for her response?

13 A. Yes.

14 Q. And did you then respond to me after she had responded
15 to you?

16 A. I don't recall.

17 Q. Showing you what's previously marked as AGOFRK008798.
18 At the top of that, on Tuesday September 17 at 9:20 a.m.,
19 did you respond to my email?

20 A. I did.

21 Q. And what did you say?

22 A. Hi, Luke. Our position is that viewing the seized
23 evidence is irrelevant to any case other than Farak's.
24 Kris.

25 Q. Now, is it fair to say that you refused my request that

1 I made to view the evidence in the possession of your
2 office?

3 A. The office refused your request.

4 Q. Are you a spokesperson for your office with respect to
5 this request that had been made?

6 A. I don't know if I would use the word spokesperson, but
7 I conveyed the office's position to you.

8 Q. Okay.

9 MR. RYAN: I move to introduce this, Your Honor, at
10 this time.

11 THE COURT: Okay. May be marked.

12 THE CLERK: Marked as Number 214.

13 (Exhibit No. 214, emails from Attorney Ryan to AAG
14 Foster (10/2/13), marked)

15 Q. (By Mr. Ryan) After receiving this response, did I
16 file a motion to inspect the physical evidence?

17 A. I know you did at some point.

18 Q. Did I send a copy of this motion to you on the morning
19 of October 2, 2013?

20 A. I'm not sure. I'm not sure of the date.

21 Q. Let me ask you this, were you expecting me to file the
22 motion?

23 A. I know you're being very thorough on the case, so I
24 wasn't surprised. I don't know about expected.

25 Q. Did you tell people, in your office, that you should --

1 on September 12, that you should expect another motion from
2 me any day now asking for access to the evidence?

3 A. If that's what I wrote. I don't recall, but --

4 Q. What's previously been marked as AGOFRK003701, this
5 thread that was sent by -- email sent by you at 10:26 a.m.
6 on September 12, 2013, second paragraph.

7 (Pause)

8 THE WITNESS: I did write that.

9 MR. RYAN: I ask this be admitted at this time.

10 THE COURT: All right. May be marked.

11 Mr. Ryan, we are going to take the morning recess.

12 Ms. Foster, I will ask you to step down temporarily so
13 we can take the morning recess.

14 (The Court exited at 11:02 a.m.)

15 (Exhibit 215, Emails from AAG Kaczmarek to AAG Foster
16 (9/12/13), marked)

17 (* * * * *)

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

19 (The defendants and the interpreter were present.)

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

22 THE COURT: Please have the witness back on the stand
23 please.

24 MR. RYAN: Thank you, Your Honor.
25

(Kris Foster, continued)

DIRECT EXAMINATION BY MR. RYAN

Q. Good morning again, Ms. Foster.

A. Good morning.

Q. I have, up on the screen, a copy of an email that you forwarded to John Verner, Randall Ravitz, and Patrick Devlin dated Monday, November 3, 2014. Contained some attachments there. I'm going to pull up the attachment, motion to inspect physical evidence.

A. Okay.

Q. Is this the motion that I ended up filing on behalf of Mr. Penate?

A. I believe so.

Q. And in this motion, did I request to conduct an exam -- an inspection examination of physical evidence recovered during searches conducted in the course of investigation and prosecution of Sonja Farak?

A. That's what you said.

Q. And did I cite a number of exhibits?

A. Yes.

Q. See Exhibit A?

A. Yes.

Q. Was that the first one that I cited, a report of Trooper Randy Thomas regarding search warrant execution of Farak's vehicle?

1 A. That's what you wrote, yes.

2 Q. Now, was there a hearing on this motion to inspect that
3 took place on the morning of October 2, 2013?

4 A. I don't recall.

5 Q. This is a transcript of the hearing that took place on
6 October 2, 2013.

7 A. Okay.

8 Q. Did you attend that hearing?

9 A. I did.

10 Q. If you could turn to page 14 of the transcript.

11 A. Okay.

12 Q. Did Judge Kinder ask you, quote, As a practical matter,
13 if Mr. Ryan were to show up with his investigator and simply
14 say, I would like an opportunity to physically view, without
15 physically handling the exhibits; what is the prejudice to
16 the Commonwealth?

17 A. He said that, yes.

18 Q. And at that time, did you lodge an objection to the
19 timing of my motion?

20 A. I wouldn't say I lodged an objection. I just said I
21 got it that morning so I didn't have the time to review it.

22 Q. Did Judge Kinder instruct you to focus on his question?

23 A. He did.

24 Q. And what was the answer you gave to his question?

25 A. Correct, Your Honor, I think the problem is that this

1 is just irrelevant evidence. I think the prejudice would be
2 the fact that every single defendant, who has ever had an
3 Amherst case, will all of a sudden be asking for access to
4 the lab to look at, essentially, irrelevant evidence.

5 Q. Now --

6 A. But -- but the Judge said I had cut him off at that
7 point.

8 Q. Okay. Now, this representation that this was just
9 irrelevant evidence, you testified today you've never seen
10 any of this evidence; is that correct?

11 A. Correct.

12 Q. It was your understanding that, encompassed in this
13 body of evidence that I wanted to see were some mental
14 health worksheets, correct?

15 A. I don't think so specifically. You said you wanted
16 access to all the evidence.

17 Q. Well, you were aware that there were these mental
18 health worksheets that existed, that Anne referred to in her
19 September 10, email you received, correct?

20 A. That's the only time I ever heard of anything to do
21 with mental health worksheets.

22 Q. So you, having gotten that email, you knew that these
23 documents existed. Your testimony is you never saw them,
24 correct?

25 A. Correct. To this day, I still haven't seen anything.

1 Q. And, but because you were of that email, you knew that
2 what I was wanting to go see, these would have been among
3 the things that I could see if I actually been allowed to do
4 so, correct?

5 A. I'm not sure. I, again, never saw evidence in this.
6 Don't know where it was stored necessarily.

7 Q. Well, there'd been some references to something that
8 Joe had, by Anne Kaczmarek, and included in that was some
9 mental health worksheets, right?

10 A. Based on that one email she wrote, yes.

11 Q. Okay. Now, the day before -- well, let me ask you
12 this, do you know how that motion was resolved?

13 A. This motion that the hearing was on October 2?

14 Q. Yes.

15 A. I don't remember if it's this defendant, but ultimately
16 me and AAG Pat Devlin assented to your motion. I believe it
17 might have been a year later.

18 MR. RYAN: Before I do show the witness, may I move to
19 admit this transcript as the next exhibit?

20 THE COURT: Okay. May be marked.

21 THE CLERK: Marked as Number 216.

22 (Exhibit No. 216, transcript from Commonwealth vs.
23 Penate, Docket 2010-83, hearing dated (10/2/13), marked)

24 Q. (By Mr. Ryan) Showing you an endorsed ruling on my
25 motion to inspect, on October 2, 2013, what -- how did Judge

1 Kinder rule on that motion?

2 A. He wrote: Denied. I'm not persuaded that Rule 17(A)2
3 permits a third party to inspect evidence held in a pending
4 criminal case, particularly under the circumstances of this
5 case where the physical evidence has been described in
6 detail for the defendant and photographs of that evidence
7 have been provided.

8 And then he signs and dates it.

9 MR. RYAN: Move to admit this as the next exhibit.

10 THE COURT: Okay.

11 THE CLERK: Marked as Number 217.

12 (Exhibit No. 217, Kinder, J., ruling on Defendant
13 Penate motion to inspect physical evidence (10/2/13),
14 marked)

15 Q. (By Mr. Ryan) Now, the day before you had that
16 hearing, did you file a pleading in the Penate case seeking
17 to quash a summons that I had served on Anne Kaczmarek?

18 A. I'm not sure of the date, but I did file one.

19 Q. And I may have misspoken, does that indicate this was
20 actually filed on October 4, 2013?

21 A. It does.

22 Q. If you could just take a second to confirm that that's
23 a pleading that you filed?

24 A. It is.

25 Q. I'd like to turn your attention to the bottom of page

1 four.

2 A. Sir, I realized I numbered this wrong. My number four
3 on this, or the fourth page?

4 It starts at page three, I apologize.

5 Q. Had you attached to this a motion?

6 A. Yeah, the motion was pages one and two, and page three
7 was the memo of law.

8 Q. Why don't we check on page four, there, yes. So it's
9 page four of this document.

10 A. Okay.

11 Q. Can you read the sentence that begins: As an initial
12 matter.

13 A. As an initial matter, several of the documents the
14 defendant is seeking from AAG Kaczmarek and not in her care,
15 custody or control.

16 Q. Did you go on to state that this included evidence of
17 third-party knowledge?

18 A. And evidence of accomplice of an accomplice and
19 handwriting analysis.

20 Q. So, in this pleading that you filed, you indicated that
21 Anne Kaczmarek didn't have any evidence that included
22 evidence of third-party knowledge; is that correct?

23 A. She didn't have anything in her care, custody, or
24 control.

25 Q. When you had filed this, did you give any thought to

1 whether or not those mental health worksheets might display
2 some third-party knowledge of Ms. Farak's misconduct?

3 A. No. Because I was told everything that needed to be
4 turned over was turned over.

5 Q. You can turn to the bottom of page nine, of what's been
6 marked on this as page nine.

7 A. Okay.

8 Q. Can you read the paragraph that begins: The testimony
9 the defendant apparently seeks.

10 A. Read the whole paragraph?

11 Q. Yes, please.

12 A. The testimony the defendant apparently seeks from AAG
13 Anne Kaczmarek either could be obtained from other sources
14 or is irrelevant.

15 The drugs and in the defendant's case were seized in
16 October, November of 2011. It appears that the defendant is
17 going to argue that Farak may have tampered with the drugs
18 in his case by attempting to elicit from AAG Kaczmarek that
19 the allegations against Farak date back much further than
20 the roughly four months before Farak's arrest that the AGO
21 alleges. This is merely a fishing expedition. There's
22 nothing to indicate that the allegations against Farak date
23 back to the time she tested the drugs of defendant's case.
24 Therefore, her testimony would be irrelevant and unhelpful
25 to the Court.

1 Q. So the alleged narcotics in the defendant's case were
2 seized in October/November of 2011, correct?

3 A. From what I wrote, my memory is better back then.

4 Q. Showing you what was admitted at the Grand Jury as
5 Exhibit 8 on February 1, 2012, a drug certificate signed by
6 Sonja Farak.

7 A. I can't speak to what this is. I wasn't the prosecutor
8 in this case. This was handled by this County's DA's Office
9 I believe.

10 Q. Does it appear to reflect that Sonja Farak reported
11 doing testing on December 22, 2011?

12 Is that the date analyzed up there?

13 A. It is.

14 Q. Is that Mr. Penate's name there?

15 A. It is.

16 Q. Okay.

17 THE COURT: Mr. Ryan, can I have a second.

18 (Off the record discussion with The Court and The
19 Clerk.)

20 THE COURT: All right. Mr. Ryan, before you -- since
21 there's a pause, it's quarter of 12:00. You're the second
22 lawyer to question this witness. There are 19 more
23 witnesses on the witness list. These hearings conclude
24 Friday at 4:00 p.m. They don't go beyond that. How you
25 collectively use your time, who you call, so forth and so

1 on, so --

2 MR. RYAN: Circling the proverbial drain here, Judge.

3 THE COURT: For what's it's worth, there you go.

4 Q. (By Mr. Ryan) Ms. Foster, in November of 2014,
5 November 1, did Patrick Devlin forward an email that he had
6 received from me to you and Cara Krysil?

7 A. I don't remember, but it looks like he did.

8 Q. And did you responded 6:22 p.m. on Sunday, November 2,
9 and said to Pat: I can't open the letter, what does it say?

10 A. That's what that email says.

11 Q. Did you ever open the letter email that Pat Devlin had
12 attempted to forward you?

13 A. I don't recall.

14 Q. You testified several times that you have never seen
15 the items that were seized by the State Police from
16 Ms. Farak's car; is that correct?

17 A. Other than -- that's correct.

18 Q. Showing you an email, you sent to Patrick Devlin on
19 Wednesday, November 5, 2014 at 11:12 a.m., can you read that
20 email?

21 A. Hey, Pat, have you been able to get copies of the
22 papers Luke Ryan references? If so, could I get a copy of
23 them? I'd like to see them, and I'm sure whatever judge
24 we're in front of may want a copy too.

25 Thanks.

1 Q. So by this point, had you been able to open a copy of
2 the letter that I had sent to Pat Devlin?

3 A. I can't tell you. I don't know what date this is or
4 what it's referencing.

5 Q. Does it say Wednesday, November 5, 2014?

6 A. I can't read it from here.

7 Q. Do you want to get off the witness stand and see if
8 I've got that right?

9 A. I believe you, if that's what it says.

10 Q. Okay. And I'd like to just show you what's previously
11 been marked as Exhibit 166.

12 A. Okay.

13 Q. Is this the letter that I sent to Pat Devlin that you
14 couldn't open on November 2?

15 A. Well, since I couldn't open it, I don't know if it is.

16 Q. Well, were you ever given a hard copy or given another
17 opportunity to look at this?

18 A. I don't know when, but I have seen this at some point.

19 Q. And does this, on page seven of the letter, reference
20 some papers including an Emotion Regulation Worksheet and
21 some ServiceNet Diary Cards?

22 A. It is something you typed up. It's not actual
23 documents.

24 Q. Right. So did you ask Pat if he could get you copies
25 of the actual papers that I had referenced?

1 A. What I wrote is what I wrote.

2 Q. And you wanted them because you were going to be
3 appearing in court and the Judge may want to see these,
4 correct?

5 A. I can't tell you what my intent was at that point.

6 Q. During the course of this litigation, Ms. Foster, is it
7 fair to say you made a number of representations about the
8 nature of evidence in the possession of your office and the
9 Massachusetts State Police?

10 A. Yes.

11 Q. Is it fair to say that you made those representations
12 based on information provided from other individuals?

13 A. From my superiors and other AAGs in the office, yes.

14 Q. Do you have reason to believe, sitting here today, that
15 some of the representations you made were inaccurate?

16 A. No.

17 Q. Sitting here today, do you believe that everything had
18 been turned over as you told Judge Kinder back in September
19 of 2013?

20 A. I can't say either way. To date, I haven't seen any of
21 the documents in this matter.

22 Q. Did you think it might be a good idea, given the
23 representations you made to the Court, personal letter to a
24 Superior Court Judge that you might want to do that kind of
25 investigation and see what had been turned over?

1 A. No.

2 MR. RYAN: I don't have any further questions.

3 THE COURT: Okay.

4 **CROSS EXAMINATION BY MS. WEST**

5 Q. Good morning.

6 A. Good morning.

7 Q. Ms. Foster, you started at the Attorney General's
8 Office in July of 2013, right?

9 A. Correct.

10 Q. And prior to that, you were at Suffolk County DA's
11 Office?

12 A. I was.

13 Q. What did you do there?

14 A. I was in the Appeals Division.

15 Q. For how long?

16 A. Approximately five years.

17 Q. Have you ever been a line prosecutor prosecuting your
18 own cases?

19 A. Not at the trial level, no.

20 Q. After you left Suffolk County and went to the AGO, how
21 long a period of time did you stay at the AGO?

22 A. I was there from July 2013 to, I believe,
23 February 2015; so a year and a half, give or take.

24 Q. And moving back to your time at the DA's Office, you
25 said you never prosecuted any of your own cases. Have you

1 ever sent over discovery on your own?

2 A. No.

3 Q. How many times had you been in a trial court prior to
4 the times you were in -- you were here in the Farak case?

5 A. I second sat a couple of hearings, to actually -- I
6 guess I would need clarification on the question, acting as
7 an attorney?

8 Q. Yes.

9 A. A handful of times; usually it was second seating a
10 trial prosecutor.

11 Q. And had you ever had any experience being the lead
12 prosecutor?

13 A. No.

14 Q. So it's fair to say, in regard to turning over
15 discovery you have had no experience, at all, on that
16 subject matter?

17 A. Correct.

18 Q. I want to talk a little bit about the appellate
19 department at the Attorney General's Office and the kinds of
20 cases that it deals with. You talk about habeas cases.
21 What are those?

22 A. Habeas cases are, essentially, once a criminal
23 defendant's state remedies, or appellate remedies are
24 exhausted, then they can go federally. And so it goes from
25 US District Court, in theory, all the way up to the Supreme

1 Court.

2 Q. And those are cases where the AAGs appear in the
3 District Court, correct -- in the Federal District Court?

4 A. Most of the time it's on the papers at the District
5 Court level, but there can be appearances, yes.

6 Q. That was a chunk of your cases, right?

7 A. A lot -- a majority of my cases, yes.

8 Q. And then in regards to motions to quash, before you got
9 to the AG's Office, had you ever handled one of those
10 before?

11 A. Never.

12 Q. And as to those motions, those are cases in where you
13 file a motion on behalf of -- either an employee at a state
14 agency?

15 A. Correct.

16 Q. And that agency might be a law enforcement agency,
17 right?

18 A. Yes.

19 Q. Or might be an agency that is not law enforcement, but
20 it has to do with a criminal justice matter?

21 A. Exactly.

22 Q. What percentage of your work at the AG's Office was
23 motions to quash?

24 A. Very small part; it was a -- basically, these couple
25 Farak motions, then one Annie Dookhan one I believe.

1 Q. In your experience doing direct appeals, can you tell
2 us what type of record you worked from?

3 A. I worked from exclusively the trial record. That's the
4 whole point of an appeal is reviewing what happened in the
5 trial.

6 Q. So you have a transcript in front of you?

7 A. Transcript and the exhibits, anything marked for
8 identification; but it's limited to the trial hearing; or if
9 it's a motion to suppress appeal, limited to that hearing.

10 Q. And you've done about 60 of those appeals at Suffolk
11 County?

12 A. A little more than 60 I believe.

13 Q. And in any of those cases, did you actually look at a
14 prosecutor's box or their file?

15 A. I have, but on the rare occasion.

16 Q. When you first got to the Attorney General's Office,
17 it's fair to say you had no experience at all with motions
18 to quash, right?

19 A. Correct.

20 Q. And, in the beginning, you got templates or work pieces
21 from other attorneys?

22 A. I think mostly from my supervisor Randy Ravitz, but
23 yes.

24 Q. Did you know Anne Kaczmarek before you got to the AG's
25 Office?

1 A. I knew her husband and he said to look out for her when
2 I got up to the AG's Office.

3 Q. Look out for her in order to say hi, you mean?

4 A. Yeah.

5 Q. And had you ever met Joe Ballou before you got to the
6 AG's Office?

7 A. No.

8 Q. And prior to the hearing here on September 9, had you
9 ever met him?

10 A. I don't believe I had.

11 Q. Prior to the hearing, did you have an opportunity to
12 talk to him?

13 A. I believe I talked to him just to set up -- to tell him
14 what time the hearing was at, but I don't recall.

15 Q. At the Attorney General's Office you're -- where the
16 appellate attorney sits, is that separate from where the EMC
17 attorneys sit?

18 A. Yes.

19 Q. How is -- give us a description of that; what does it
20 look like?

21 A. So from what I remember, I believe it was the 19th
22 floor of the Ashburton building, and it was a huge floor.
23 Offices lined the outside, and there were cubicles on the
24 inside. It was basically a big circle with the elevator
25 being in the middle.

1 And appeals was in one corner. And I don't even
2 remember which units came after that. Appeals kind of stays
3 to itself for the most part because you're relying just on
4 the record.

5 Q. All right. So explain that a little bit more. What is
6 the interaction between appeals and the trial attorneys?

7 A. There's not, consistently, a lot of interaction
8 because, like I said, an appeal is completely based on the
9 trial record, specifically, if it's a direct appeal of a
10 conviction. So, you might touch base with a trial lawyer to
11 let them know an appeal has been received, let them know the
12 status of your brief, you might let them read your brief to
13 make any edits; but other than that, there's no requirement.

14 They might come with you to oral argument, but there's
15 no requirement that they're involved in the appellate
16 process.

17 Q. And several times during your direct examination, your
18 cross, you spoke about the fact that you had kept hearing
19 from a number of people that everything had already been
20 turned over to the DA's Office.

21 A. Correct.

22 Q. Now, specifically, tell us who did you hear that from?

23 A. From the people I recall, it was Randy Ravitz, John
24 Verner, Dean Mazzone and I believe -- and I remember Joe
25 Ballou -- Sergeant Ballou, testifying that he had turned

1 over -- he thought everything had been turned over. And
2 other than that, I believe Anne Kaczmarek, but I'm not
3 100 percent certain.

4 Q. And were you in meetings when that information was
5 relayed to you?

6 A. Yes.

7 Q. Where were those meetings?

8 A. In John Verner's office.

9 Q. And was that a frequent pattern of the way you
10 communicated?

11 A. Yes. It would usually be short little five-minute
12 meetings.

13 Q. Okay. Can you just -- can you tell us about the first
14 meeting that you remember with John, Randy, and Dean, where
15 that message was relayed?

16 A. I don't remember much more other than being told I
17 didn't need to see the file, that there was nothing in it.
18 This was before the September 9, hearing; but I don't
19 remember what the date was.

20 Being told that everything had been turned over,
21 there's no need to see the trial file. It was an ongoing
22 prosecution, and that I should just go with that.

23 Q. What do you mean "go with that"?

24 A. That -- to take them for their word that everything had
25 been turned over. They were my superiors, so that's what I

1 did.

2 Q. Okay. So did you have this type of meeting or was this
3 communication relayed to you once or more than once?

4 A. It was multiple times. I couldn't tell you how many
5 times, but we had several meetings on this.

6 Q. Those three people that you mentioned, Randy Ravitz,
7 was your Chief, right?

8 A. He was.

9 Q. Dean Mazzone was Senior Trial Counsel?

10 A. I believe he was at that time, but I know his title
11 changed.

12 Q. And John Verner was the Chief?

13 A. Okay. Yes.

14 Q. And you had been in the office for how long?

15 A. I started July 2013 right after the Fourth of July.

16 Q. And were you the latest hire in the Appellate Division?

17 A. I was, yes.

18 Q. So were you following orders from your superiors?

19 A. I was.

20 Q. So let's talk about the September 9, hearing, the first
21 time you were out here in front of Judge Kinder. You
22 indicated that there had been you -- Kinder had asked you
23 whether you had personally looked at the file, right?

24 A. Right.

25 Q. And you had indicated to him that you didn't look at

1 the file?

2 A. Right.

3 Q. Why didn't you look at the file?

4 A. Because I had been told there was -- by my superiors --
5 there was no need to, and that everything had already been
6 turned over.

7 Q. And after that hearing on September 9, on September 10,
8 you wrote an email that you saw earlier, where you described
9 to everyone what had happened, right?

10 A. Yes.

11 Q. All right. Let's just -- I want to talk a little bit
12 more about why you didn't look in the file.

13 You indicated that they were your superiors?

14 A. Yes.

15 Q. Did you feel that you couldn't make a decision that was
16 different than their's?

17 A. No, but I had no reason to not believe them; that they
18 represented to me that Anne was in the middle of prosecuting
19 this matter and everything that needed to be turned over was
20 already turned over.

21 Q. And you didn't have any experience otherwise with
22 motions to quash, right?

23 A. No.

24 Q. And you were new to the office, correct?

25 A. Only about a month or so, maybe a month and a half when

1 I got the first subpoena.

2 Q. And you're out here at the hearing and Joe Ballou
3 testified that he thought all the material had been over
4 (sic) -- you believed that, right?

5 A. I did.

6 Q. Did you understand, at the time, that it was not -- it
7 would not have been Joe Ballou who would have made the
8 decision as to what to hand over in discovery?

9 A. I would of understood that, but the fact that he was
10 working with Anne, I believed -- and he was under oath, I
11 believed he was telling the truth.

12 Q. But you didn't understand the basis for him to say
13 that, right?

14 A. Correct. No, I didn't.

15 Q. You had never seen a discovery letter that said all of
16 these things had been turned over?

17 A. That's right.

18 Q. You took -- you took him at his word based on just what
19 he said?

20 A. I did.

21 Q. You saw an email earlier in which, right after that
22 hearing, you were describing what happened and there was
23 discussion about what exactly was in that file. Do you
24 remember those questions?

25 A. I do.

1 Q. And Anne Kaczmarek answered that email and she
2 indicated there were mental health worksheets in that file,
3 right?

4 A. She did, yes.

5 Q. Did that term "mental health worksheets" at all stick
6 to your memory? Did you find it unusual?

7 A. It didn't. The way I read it, it was just part of her
8 list, because I believe in the email she said Grand Jury
9 minutes, police reports, all that had been turned over, so I
10 just assumed it was part of that list.

11 Q. All right.

12 A. Nothing stood out.

13 Q. So Joe Ballou had said his file had been turned over,
14 right?

15 A. Yes.

16 Q. And she put a list of things that were in the file, so
17 you assumed all these things had been turned over?

18 A. Yes.

19 Q. But you didn't check yourself?

20 A. Correct.

21 Q. Did you make any independent decisions about this case
22 on your own?

23 A. No.

24 Q. Why didn't you?

25 A. That's not really the protocol at the AG's Office, at

1 least at the time when I was there.

2 A line AAG, so someone without a title, has very little
3 to any discretion.

4 Q. When Judge Kinder himself said you should look in the
5 file, why didn't you follow his advice?

6 A. Well, I went back and I don't remember the date, but I
7 know we had a meeting about it. And shortly after that
8 meeting Randy told me that I should write the letter saying
9 there's nothing to turn over or nothing to produce in
10 camera.

11 Q. Okay. But still Judge Kinder had said to you, Take a
12 look at the file. Was there a reason that you were
13 balancing your pressures at work with what the Court had
14 told you, and you ultimately made a decision not to look at
15 the file?

16 A. Well, again, I had it on representation from Randy and
17 earlier from John and Dean that there was nothing --
18 everything had already been turned over and I still had no
19 reason to believe otherwise. But I did draft my letter to
20 the Court leaving open to the fact that I did not review the
21 file because I didn't want to misrepresent it to the Court
22 that I had.

23 MS. WEST: Can you turn this back?

24 MS. JACOBSTEIN: Sure.

25 Q. (By Ms. West) So I'm going to show you that letter

1 again. It's previously been marked an exhibit.

2 You saw this earlier, right?

3 A. I did.

4 Q. And as you said, after September 9, on September 10,
5 you went back to the office and described what happened?

6 A. Yes.

7 Q. And did a meeting follow?

8 A. It did. I'm not sure what date.

9 Q. Okay. A meeting with a bunch of people subsequent to
10 the hearing, correct?

11 A. Yes.

12 Q. Do you remember who was at the hearing?

13 A. I don't remember everyone, but I know Randy, John, and
14 Dean were there.

15 Q. Subsequent to that meeting, did you have a conversation
16 with Randy Ravitz?

17 A. Yes. A short time after, whether it was hours or a
18 day, yes.

19 Q. And what did he tell you?

20 A. He told me to write the letter saying that there was
21 nothing to turn over. Everything had already been produced.

22 Q. And you drafted this letter, right?

23 A. I did.

24 Q. And you specifically used the language, "after
25 reviewing Sergeant Ballou's file every document in his

1 possession has already been disclosed"?

2 A. I did.

3 Q. Did you purposely make that vague?

4 A. I did.

5 Q. Why?

6 A. I didn't want to misrepresent to the Court that I had
7 looked at the file, but also balancing it with the fact that
8 my superior told me to write a letter to the Court saying
9 the file has been looked at.

10 Q. But Randy Ravitz didn't tell you to write it that way,
11 right?

12 A. Correct.

13 Q. And did Randy know -- had you ever told Randy that you
14 hadn't looked at the file yourself?

15 A. They all knew I had never seen the file.

16 Q. How do you know that?

17 A. Because in these meetings they told me -- at least in
18 one meeting I was told I didn't need to see the file, that
19 everything had already been turned over.

20 Q. All right. But did you ever say to anyone at those
21 meetings, I, myself, have not looked at this file and I need
22 to look at this file?

23 A. I don't believe I ever said I needed to look at the
24 file, but I made it clear that I had never seen it.

25 Q. Do you have any memory of them telling you that you

1 should look at the file yourself?

2 A. No.

3 Q. Were there -- you spoke earlier about some trainings at
4 the office. Do you have any memory of taking a training on
5 this subject matter?

6 A. On this subject matter, I don't recall.

7 Q. Okay. But do you know that those types of trainings
8 were offered?

9 A. Yeah, the AG's Office offers probably hundreds of
10 trainings a year.

11 Q. But, specifically, was one of these offered, training
12 about motions to quash?

13 A. I don't believe there was one by the time I was working
14 on these.

15 Q. Okay.

16 Mr. Ryan asked you some questions about the hearing on
17 the 9th and your communications with Judge Kinder about
18 specifically what he was talking about; do you remember
19 those questions?

20 A. Yes.

21 Q. As to whether, was it the AG's file or was it Joe
22 Ballou's file, right?

23 A. Right.

24 Q. And at the end of that hearing, by the time you got
25 back, you had some understanding that they were talking

1 about something in the possession of Joe Ballou, correct?

2 A. Correct.

3 Q. Not something in possession of the Attorney General's
4 Office?

5 A. Right. Yes.

6 Q. And because you understood that everything in Ballou's
7 file had been turned over, then you believed that if there
8 were mental health records, they had been turned over?

9 A. Correct.

10 Q. Ms. Foster, would it be fair to say that -- would it be
11 fair to say that if this situation arose today and the judge
12 told you to look at a file, you would look at it personally?

13 A. Yes.

14 Q. So at the time, can we consider this to be poor
15 practice that you didn't look at the file?

16 A. I disagree with that representation.

17 Q. Tell me why.

18 A. I had representations from my superiors, who I had no
19 reason to disbelieve, and an AAG who was working on the
20 prosecution of Ms. Farak, with a representation that
21 everything had been turned over.

22 Q. Okay. But they didn't tell you specifically not to
23 look at the file, did they?

24 A. I know at one point I was told there was no need to
25 look at the file.

1 Q. Who said that?

2 A. I don't remember. It would have been either John,
3 Randy or Dean.

4 Q. And where was that said?

5 A. I don't remember the date, but it was said in John
6 Verner's office at one of our meetings.

7 Q. Okay. Now, as you indicated earlier, while you were at
8 the DA's Office you had never done a motion to quash, so
9 these were your first motions to quash, right?

10 A. Correct.

11 Q. And you talked earlier about getting templates from
12 other attorneys and, namely, Randy Ravitz, right?

13 A. Yes.

14 Q. So I'm going to show you an email that you actually
15 spoke about before, and this is an email from Randy on
16 August 26, giving you a template, and that's the Vaughn
17 memo.

18 And if you go to the beginning of this chain,
19 Mr. Ravitz says that attached are some samples that you can
20 work off of; and then you ask for a sample motion that
21 includes argument of CORI and he says it's Vaughn. You say
22 you don't have it and then he says: Here's Vaughn.

23 Do you remember getting this?

24 A. Yes.

25 Q. And is this one of the templates that you worked off

1 of?

2 A. It is.

3 Q. Can you turn to page 17.

4 A. Okay.

5 Q. And this is the part of the motion that talks about the
6 alternative to quashing the subpoena.

7 So this is in the event that a Court doesn't quash,
8 it's a request to do these certain things, right?

9 A. Right.

10 Q. And this is a listing that you became very familiar
11 with, right?

12 A. Yes.

13 Q. There's a period of time where Randy was editing your
14 work, right?

15 A. Yes.

16 Q. And then there was also a period of time that Sue
17 Reardon edited your work?

18 A. Yes.

19 Q. So this is just a short time later, a couple of weeks
20 later in which you send Randy Ravitz a motion to quash.
21 This is the Secreast matter. Was this a Dookhan case?

22 A. I believe so, yes.

23 Q. All right. So it's a motion to quash, as you look
24 through, it was Bobbie Irwin was one of the witnesses,
25 right, and --

1 A. Yes.

2 Q. -- DPH I think was the other witness?

3 A. Yes.

4 Q. This is Randy's response to your first draft?

5 A. It is.

6 Q. And your first draft was based on his Vaughn template,
7 correct?

8 A. Yes.

9 Q. All right. These are -- this is his red lining, but in
10 it, in his email, he says: Please take note of my comment
11 to Section 3, which I leave to you to adjust appropriately.

12 Can you turn to the second to the last page?

13 A. Yes.

14 Q. This, again, is that section, the end section, that
15 talks about alternatives to quashing the subpoena. And we
16 have one through seven. Is this a direct lift from his
17 Vaughn memo?

18 A. Yes.

19 Q. And in his comment he says: Just make sure that you --
20 this list should be tailored to the facts in your case,
21 right?

22 A. Right.

23 Q. Now, you've already seen this before, this is the --
24 your Watt motion and response. And, in fact, I think it's
25 been submitted as an exhibit twice already, but take a look

1 at this.

2 A. Thank you.

3 Q. Now, Watt's different in that Sue Reardon was the
4 editor, right?

5 A. Yes.

6 Q. And in the previous Secreast matter, Reardon would not
7 have seen Randy's comments, would she?

8 A. Correct.

9 Q. She's not copied on that type of thing?

10 A. Right.

11 Q. So -- and Watt, if you go to, again, the end starting
12 on page nine, the alternative section.

13 A. Yes.

14 Q. Do you recognize this one through seven all over again?

15 A. I do.

16 Q. And what is it?

17 A. I hate to use the language, but it's essentially a copy
18 and paste from the sample motion.

19 Q. Okay. But Sue did didn't say anything about this part,
20 right?

21 A. Not that I recall.

22 Q. And Sue, since she wasn't on the Vaughn email or the
23 Secreast email would not have seen Randy's comments?

24 A. Correct.

25 Q. Mr. Ryan pointed out he was showing you the red line

1 version from Sue on this Watt response.

2 A. Yes.

3 Q. And an email that she sent you, in which she made some
4 statements about that it would be helpful to know what had
5 been turned over. What did you understand that to mean?

6 A. Well, from what I remember her comments were, was make
7 sure the statement is true, paraphrasing.

8 And, again, I had it on representation that everything
9 that needed to be turned over had been turned over. So that
10 was me verifying that it was true, true statement.

11 Q. But you didn't verify it by looking at the file itself?

12 A. Correct. I verified it by talking to my superiors.

13 Q. In regard to this cut and paste in the Watt memo, was
14 this tailored to Watt?

15 A. No.

16 Q. All right. So, in particular, number seven -- sorry,
17 number seven -- number three, regarding health, medical or
18 psychological treatment of individuals. That, you didn't
19 specifically write this pursuant to the facts in this case?

20 A. Correct. I just took it from another sample or from
21 the Vaughn sample I mean.

22 Q. And you were questioned by Attorney Ryan, he asked you
23 some questions regarding the hearing that took place on 9 --
24 on September 9, when you told Judge Kinder what Kaczmarek
25 had told you.

1 Is the transcript hearing in front of you still?

2 A. It is.

3 Q. Can you turn to page 15.

4 A. Okay.

5 Q. And he asked -- my first question is: Have you
6 actually personally reviewed the file to determine that
7 there are categories of documents in the file that fit the
8 descriptions of those you wish protected?

9 Do you see that?

10 A. Yes.

11 Q. And your response is: After talking to AAG Kaczmarek,
12 who has been doing the -- excuse me, the investigation for
13 the Attorney General's Office, and she's indicated several
14 documents, emails, correspondence would be protected under
15 work product mostly.

16 Do you remember these questions that Attorney Ryan
17 asked you?

18 A. Yes.

19 Q. All right. Can you explain why it is that you made
20 that representation to the Court when you were moving to
21 quash at the same time?

22 A. I made these representations because that's what I was
23 told by my superiors, that everything had been turned over.
24 And I don't remember now this conversation with Anne
25 Kaczmarek, but I wouldn't have misrepresented it to the

1 Court, so.

2 Q. You didn't deliberately say that in order to get
3 defense attorneys off a scent, right?

4 A. Right.

5 Q. And were you -- if you were put in that position again,
6 where you would have a hearing where this judge particularly
7 told you to review the file yourself, today, would you,
8 yourself, review the file and not rely on somebody else?

9 MR. OLANOFF: Objection.

10 THE COURT: Sustained.

11 Q. (By Ms. West) There's some other questions about
12 Mr. Ryan wanting to inspect material in the car and in the
13 lab. Do you remember those questions?

14 A. I do.

15 Q. And you indicated to him that he could not because
16 there was an ongoing investigation?

17 A. Right.

18 Q. And your response to him was that based off of
19 conversation that you had with Anne --

20 A. It would of probably been with Anne, but it would of
21 been either with Anne or with a superior.

22 Q. And when you made that representation, do you
23 understand why that there's -- there would be a reason not
24 to turn something over while there's an ongoing
25 investigation?

1 Do you understand the basis behind that?

2 A. Yes.

3 Q. And what is that?

4 A. Well, the basis of not turning over evidence in a
5 pending case is it can prejudice the pending case.

6 There's law enforcement techniques, there's a bunch of
7 reasons why you wouldn't necessarily turn over anything from
8 a pending matter.

9 Q. And in the Penate matters, you also represented to
10 Mr. Ryan that there was no reason to believe a third party
11 had knowledge, and those subsequent documents would not be
12 in there?

13 A. Right.

14 Q. What was the basis for saying that?

15 A. From what I knew, there was no third-party knowledge,
16 and I had been told, again, every -- that was in discussing
17 production of documents. And I had been told every document
18 that needed to be turned over had been turned over.

19 Q. Were any of those conversations that you had with your
20 superiors specific to mental health documents?

21 A. Not that I can recall. The only time we ever went over
22 anything specific, I don't remember which defendant it was.
23 I think it was where it was one of the cases where I filed a
24 motion to clarify an order. I don't remember which case
25 that is though.

1 Q. All right. But had you seen the file yourself, you
2 would have had an understanding as to whether anything in
3 there was relevant or not to a third party?

4 A. Can you say that again?

5 Q. If you had seen the file yourself, if you had looked at
6 Joe Ballou's file yourself, you would have seen whether
7 there was anything in there that was relevant to a third
8 party, would you not?

9 A. Not necessarily.

10 Q. Why not?

11 A. First of all, I wouldn't -- I don't know what was in
12 there, so to date I can't tell you what was specifically in
13 his file. So without reviewing anything I can't say I would
14 know, you know from looking at something, whether or not it
15 had relevance.

16 Q. Would you agree with me that it would have been a
17 better practice for you to look at the file?

18 A. Yes.

19 Q. Did you deliberately mislead the Court in this matter
20 by reporting that everything in Ballou's file had been
21 turned over?

22 A. No.

23 Q. Did you believe, did you honestly believe that
24 everything in Joe Ballou's had been turned over?

25 A. I did.

1 Q. Did you intentionally not provide relevant exculpatory
2 material to the defense attorneys who requested it?

3 A. I did not.

4 Q. You ever receive an order to affirmatively conceal the
5 mental health records?

6 A. No.

7 Q. Did you ever know of a decision by your superiors to
8 conceal the mental health records?

9 MR. OLANOFF: I'm sorry, Your Honor. I'm not getting
10 this; if she could slow down.

11 MS. WEST: I'll slow down. Sorry.

12 Q. (By Ms. West) Did you ever receive an order to
13 affirmatively conceal mental health records from your
14 superiors?

15 A. No.

16 Q. Did you know of a conversation or decision by your
17 superiors to conceal the mental health records?

18 A. No.

19 Q. Do you agree that some of your actions in this case
20 might have constituted poor practice, but were never
21 deliberately made in order conceal records?

22 A. I disagree with that --

23 Q. Why?

24 A. -- characterization.

25 Q. Uh-huh?

1 A. If I had to do it again, there would still be a
2 situation where my superiors are telling me that there is
3 nothing to turn over.

4 Yes, it would be good to look at the documents, but,
5 again, I don't know if I would call it poor practice.

6 Q. Well, did you find yourself balanced -- walking this
7 fine line between what your superiors told you and what a
8 judge told you?

9 A. Yes.

10 Q. And you chose, in that situation, to follow your
11 superiors?

12 A. I disagree with that characterization.

13 I never represented to the Court that I looked at these
14 documents. In fact, on the September 9 hearing, Judge
15 Kinder yelled at me because I hadn't looked at these
16 documents.

17 So I never made that representation, so I think I
18 balanced both interests of representing to the Court what I
19 knew and in good faith and that -- what my superiors had
20 told me to do.

21 (Off the record discussion among Counsel.)

22 MS. WEST: Your Honor, if I could have a moment to grab
23 a document and then I will be done.

24 (Pause)

25 Q. (By Ms. West) Ms. Foster, you were shown this earlier

1 by Mr. Ryan, which --

2 MR. RYAN: I don't believe I did.

3 MS. WEST: Apologies.

4 Q. (By Ms. West) First of all, I'm showing you several
5 documents. Tell me this, have you ever seen them before?

6 A. No.

7 Q. Okay. And there is some questions from Mr. Ryan about
8 a communication you had with Pat Devlin in November of 2014?

9 A. Yes.

10 Q. And Mr. Ryan showed you a letter that he had written
11 Mr. Devlin?

12 A. Yes.

13 Q. And you recognized that letter?

14 A. I did.

15 Q. And in the body of that letter, there's some sort of
16 writing there that clearly Mr. Ryan had --

17 A. Had written.

18 Q. Had written, so.

19 Do you see -- is that writing familiar to you in these
20 documents?

21 A. I just remember the heading he had me read about one
22 worksheet, but the rest of it -- and ServiceNet, I remember
23 him saying that word, but otherwise, no.

24 Q. In your memory, is this the first time you're taking a
25 very good look at these documents?

1 A. I haven't seen these before, other than what Mr. Ryan
2 put in that letter himself.

3 Q. Do you recognize these to be mental health worksheets
4 from Sonja Farak?

5 A. I'm not quite sure what mental health worksheets are.

6 Q. Do you know what these documents are?

7 A. Not specifically, no.

8 MS. WEST: Can I just mark these for ID, please?

9 THE CLERK: Marked as D for Identification.

10 (Exhibit D, worksheets, marked for Identification)

11 Q. (By Ms. West) Ms. Foster, you made a number of filings
12 in this case, right?

13 A. Yes.

14 Q. And in any of those filings, were they made
15 deliberately to ensure that certain evidence was withheld
16 from the defense?

17 A. No.

18 Q. Any of those filings made with the intent to hide
19 particular documents in the Attorney General's possession?

20 A. No.

21 Q. Were any of those filings, the language that you used,
22 purposefully chosen to deliberately ensure that documents in
23 the possession of Attorney General's Office, specifically
24 those records that you just looked at, were not handed over
25 to defense?

1 A. No.

2 MS. WEST: Thank you, Your Honor.

3 THE COURT: Anything else?

4 MR. RYAN: No.

5 THE COURT: All right. Thank you, Attorney Foster.

6 You may step down.

7 (The witness stepped down.)

8 THE COURT: Call your next witness.

9 MR. RYAN: Timothy Woods.

10 (Timothy Woods, sworn)

11 THE CLERK: Thank you. You may take the stand.

12 MR. RYAN: I will be doing it.

13 Can I just have a minute just to get organized here?

14 THE COURT: Sure.

15 (Pause)

16 (Timothy Woods, sworn)

17 **DIRECT EXAMINATION BY MR. RYAN**

18 Q. Good afternoon, Mr. Woods.

19 A. Good afternoon.

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

22 A. Yes. My name is Timothy Woods. My last is spelled
23 W-O-O-D-S.

24 Q. And, Mr. Woods, where do you work?

25 A. I work for the Massachusetts State Police Crime

1 Laboratory in Sudbury.

2 Q. And what position or title do you have there?

3 A. My title is a Forensic Scientist III. I'm a supervisor
4 in the Drug Unit.

5 Q. And how long have you held this position?

6 A. Approximately four years.

7 Q. Four years?

8 A. Yes.

9 Q. Okay. Before holding this position of supervisor in
10 the Drug Lab Unit, what did you do?

11 A. I was an analyst in the unit that performed analysis on
12 submitted items.

13 Q. And how long did you do that?

14 A. Approximately two years.

15 Q. And before that?

16 A. Before that I worked in the private industry.

17 Q. Now, fair to say that a good number of samples that
18 you've encountered in the course of your career that were
19 submitted by law enforcement agencies, turned out to be
20 narcotics, correct?

21 A. Yes.

22 Q. And is it also fair to say that there are a number of
23 samples that have been submitted to you that turned out to
24 be negative for the presence of narcotics?

25 A. Yes.

1 Q. Does your lab keep track of how many samples test
2 negative for controlled substances?

3 A. All our -- all of our results are entered into an
4 electronic system and are trackable. I don't personally
5 have access to those statistics, but certainly they can be
6 generated.

7 Q. These are not great anomalies when there's a negative
8 result; is that correct?

9 A. No.

10 Q. Now, it also sometimes happens that there will be
11 negative findings for samples that actually tested positive
12 when they were subjected to field-testing, correct?

13 A. Yes.

14 Q. And there are some times where samples will be
15 submitted and law enforcement agency will think it's one
16 controlled substance and it turns out to be a different
17 controlled substance?

18 A. Yes, that's correct.

19 Q. Did both of these things happen in the case of
20 Commonwealth v. Sonja Farak?

21 A. Relating to the items that I specifically tested, there
22 were definitely items that I analyzed which were not
23 controlled substances.

24 Q. Did one of the samples that was submitted for analysis
25 in this case had field-tested positive for heroin?

1 A. Yes, I believe so.

2 Q. And when you actually subjected it to instrumental
3 testing, what did you learn that this item was?

4 A. To be able to refer to the specific item?

5 MR. RYAN: Can I --

6 THE COURT: Sure.

7 Q. (By Mr. Ryan) I'm showing you what has previously been
8 marked as Exhibit Number 100. Is that a so-called drug
9 certification that you completed?

10 A. Yes, it is.

11 Q. And I'm specifically interested about -- did you have
12 occasion to discover that one of the items that had been
13 submitted was actually burnt copper wire?

14 A. Yes, I did.

15 Q. And was it the burnt copper wire that tested positive
16 for heroin in the field?

17 A. Yes, I believe that is the case.

18 Q. Any idea why that happened?

19 A. Specifically, no, other than to say chemical field-test
20 kits that are used, if they are -- the instructions aren't
21 followed, if they're overloaded with the sample material,
22 they can return a false positive result.

23 Q. Is this a pretty good illustration as to the important
24 work that labs like yours do?

25 A. Absolutely.

1 Q. Now, when did you complete -- or let me back track.

2 Who submitted samples in this case for you to analyze?

3 A. These were submitted through the Massachusetts State
4 Police B Cell.

5 Q. And is there a specific case officer who dropped these
6 off for testing?

7 A. Yes. The case officer on this case is Massachusetts
8 State Police Sergeant Joseph Ballou.

9 Q. And is that B-A-L-L-O-U?

10 A. Yes, that's correct.

11 Q. Okay. And what date did he drop those off?

12 A. They were submitted to the laboratory on January 31 of
13 2013.

14 Q. And when were you able to finish your analysis?

15 A. I performed analysis from early through mid-February on
16 these items.

17 Q. And did you discover that a number of the items
18 submitted had tested positive for controlled substances?

19 A. Yes, I did.

20 Q. And what, as specific items, tested positive?

21 A. Items 1 to 14.1 and 14.2 I found to contain a weighable
22 amount of cocaine.

23 Item 6 I found to contain a trace amount of cocaine.

24 Item 7 I also found to contain cocaine.

25 And Items 8, 16 and 19 were found to contain residues

1 of cocaine.

2 Q. Now, was there another item in there, Item 17?

3 A. Yes, there was.

4 Q. And what did Item 17 contain?

5 A. Item 17 was found to contain acetaminophen and
6 Oxycodone.

7 Q. And is Oxycodone a controlled substance?

8 A. Yes, it's a derivative of opium.

9 Q. And what class under Massachusetts General Laws would
10 Item 17 fall under?

11 A. Class B.

12 Q. Now, showing you an email from you to Anne Kaczmarek on
13 March 1, 2013.

14 You can take a second to review it.

15 A. (Witness complying)

16 Q. Did you send that email to Anne Kaczmarek?

17 A. Yes, I did.

18 Q. And what did you say in that email?

19 A. The text verbatim is: The results for this are
20 attached finally. Whenever you get a chance, can you give
21 me a call. There's a couple of things that would be helpful
22 for you to know. I'll also work on getting a discovery
23 request going for this along with descriptions on where each
24 item was located and a CD with all of the photos.

25 Can you send me the address that it should be sent to,

1 please?

2 MR. RYAN: Could I have this marked as the next
3 exhibit?

4 THE COURT: Yes.

5 THE CLERK: Marked as Number 218.

6 (Exhibit No. 218, email from AAG Kaczmarek to Sergeant
7 Ballou (3/1/13), marked)

8 Q. (By Mr. Ryan) Showing you what's previously been
9 marked as 174, a double-sided photograph.

10 MR. RYAN: I provided these earlier.

11 THE WITNESS: Yes.

12 Q. (By Mr. Ryan) Do you recognize what's depicted in
13 these photographs?

14 A. Yes. This is a photograph that I took of my Item 17.
15 It's a photograph of the outer paper bag that the item was
16 submitted in and a (sic) inner Massachusetts State Police
17 evidence bag that was contained.

18 Q. And on the other side of the --

19 A. On the other side is a photo that I took of the actual
20 item that was submitted for analysis, which is a test tube
21 with a white chunky substance inside of it.

22 Q. Okay. Put this on the presenter.

23 Now, did you end up testifying at the Grand Jury that
24 indicted Sonja Farak?

25 A. Yes, I did.

1 Q. And did that happen on March 11, 2013?

2 A. Yes, that's correct.

3 Q. In anticipation of your testimony there, did you meet
4 with Anne Kaczmarek?

5 A. I met with her immediately before my testimony.

6 Q. And during your meeting with her, did you talk about
7 what your testimony would entail?

8 A. We talked about my -- the items that I had examined and
9 specifically what the findings were.

10 Q. And did you talk at all about Item 17?

11 A. Yes.

12 Q. And what did you talk about related to Item 17?

13 A. Just in general describing what it was. I believe that
14 we talked about the fact that it would, based on the fact of
15 how it was submitted to us, it was in a test tube, that is
16 commonly associated with something that we use in the
17 laboratory, something that's unique to us.

18 Q. Unique to who?

19 A. Unique to an analytical laboratory.

20 Q. And so, how was that relevant?

21 A. Generally we don't -- generally, samples that are
22 submitted for analysis are contained within some sort of
23 plastic bag, not in a glass test tube.

24 Q. So this coming in, in a glass test tube -- I guest I'm
25 a little confused.

1 What relevance did that have to this discussion with
2 Anne Kaczmarek?

3 A. Just the fact that I found it noteworthy.

4 Q. And how did you find it noteworthy?

5 A. Due to the unusual way that the white chunky substance
6 was packaged.

7 Q. Would this have been a customary way for a lab to have
8 an item that they performed testing on?

9 A. Yes. Or at least in the case of our laboratory, yes.

10 Q. So, did you have any conversation with Anne Kaczmarek
11 whether this had been traced back to any sample at the lab?

12 A. No, I didn't.

13 Q. When you spoke with Anne Kaczmarek was a determination
14 made that you weren't going to talk about Item 17 at the
15 Grand Jury?

16 MR. CALDWELL: Objection.

17 THE COURT: Basis of the objection?

18 MR. CALDWELL: Your Honor, it's not -- I believe, if I
19 have the question correct, something that Ms. Kaczmarek
20 stated, hearsay.

21 THE COURT: Overruled.

22 You can answer the question if you feel you can.

23 THE WITNESS: I don't specifically recall.

24 Q. (By Mr. Ryan) Well, this item that was missed here,
25 did it come along with any identifying documentation saying

1 that it was tied to a particular Amherst Lab sample?

2 A. I believe the location of where it was -- identifying
3 information was on the, written on the paper bag that I
4 received it in.

5 Q. And that indicated that it was found on her desk top?

6 A. Yes, I believe that's correct.

7 Q. But it wasn't tied to any particular sample?

8 A. I don't specifically recall.

9 Q. And this would have been .27 grams of that substance?

10 A. Yes.

11 Q. How much of a substance would you need to do
12 instrumental testing on an Oxycodone-Acetaminophen mixture?

13 A. Depending on how it was being tested; significantly
14 less than this.

15 Q. So, this is not what you would of put into a test tube
16 that you would put into an auto sampler to do instrumental
17 testing at a drug laboratory, .27 grams?

18 A. It would honestly depend on -- it would depend on how
19 the item was submitted and how it was being tested.

20 Acetaminophen and Oxycodone is generally submitted to us in
21 a pharmaceutical form, so -- and in tablet or capsule form,
22 depending on the specific formulation that is submitted and
23 how much of it is removed for testing. A substantially less
24 amount can be taken or amount more along the lines for the
25 amount that I recorded can be taken.

1 Q. Do people sometimes snort these things?

2 A. Generally not Oxycodone-Acetaminophen.

3 Q. Okay. In any event, when you were asked questions at
4 the Grand Jury about various items, do you recall going,
5 more or less, line by line through the items that you had
6 analyzed?

7 A. Yes, I do.

8 Q. And when you got to Item Number 17 did Ms. Kaczmarek
9 indicate that you'd be skipping over Item Number 17?

10 A. Yes.

11 Q. Okay. And do you know why she decided to skip over
12 Item 17?

13 A. I don't specifically recall.

14 Q. And, to your knowledge, was Sonja Farak ever charged
15 with unlawful possession of Oxycodone Class B substance?

16 A. That, I don't know.

17 MR. RYAN: Okay. I don't have any further questions of
18 the witness.

19 THE COURT: Okay.

20 MR. OLANOFF: Thank you, Your Honor.

21 THE COURT: Okay. Anybody?

22 MR. CALDWELL: Thank you, Your Honor.

23 THE COURT: Uh-huh.

24 **CROSS EXAMINATION BY MR. CALDWELL**

25 Q. Trooper Woods -- I'm sorry, not Trooper Woods, Mr.

1 Woods. So, you had the opportunity -- or let me backup.

2 How long have you been a chemist at the crime lab?

3 A. Approximately six and a half years in total.

4 Q. Okay. And what was your previous education?

5 A. I have a Bachelor of Arts in Chemistry and a Masters of
6 Science in Chemistry.

7 Q. And you had indicated on direct from Mr. Ryan you were
8 previously employed in private industry. What were you
9 doing?

10 A. I was employed for a company called Toxikon
11 Corporation. They do medical device testing.

12 Q. And, in your time as a chemist in State Police,
13 approximately how many substances have you had the
14 opportunity to test?

15 A. I've analyzed approximately 2000 cases.

16 Q. And the Sudbury Lab is an accredited lab; is that
17 correct?

18 A. Yes, we are.

19 Q. Okay. So you've had the opportunity, as you indicated,
20 to test not only items that where you discovered to be
21 controlled substances, but also items later discovered to be
22 counterfeit substances, correct?

23 A. Correct.

24 Q. And that's not an uncommon thing?

25 A. No.

1 Q. And -- now, you indicated all of the results, both
2 positive and negative are held within the Mass. State Police
3 Forensic Crime Database, so the drug lab database, correct?

4 A. Yes. A Laboratory Information Management System that
5 we have at the crime laboratory.

6 Q. And you have no access to it, correct?

7 A. I -- I have access to enter the information, but not to
8 generate the specific reports.

9 Q. And that's for security purposes; correct?

10 A. I believe so, yes.

11 Q. So no one can go in later and attempt to change an
12 analysis to positive when it was negative or vice versa,
13 correct. Is that fair to say?

14 A. Well, all analyses, when they are approved, all
15 assignments are locked so they are read only. I don't
16 believe I have access to generate the reports, to see
17 statistics specifically for what was analyzed just to
18 control dissemination of information.

19 Q. And you had indicated that sometimes when there are
20 drug tests done in the field, sometimes they can be false
21 positives, so to speak?

22 A. Correct.

23 Q. And, essentially, what is field-tested as perhaps
24 heroin, can later be tested at an accredited forensic
25 laboratory and found to be cocaine?

1 A. Correct.

2 Q. And there are varieties of factors that weigh into
3 that, perhaps false positive, in a field test?

4 A. Yes.

5 Q. But you testified in the Grand Jury in relationship to
6 what Ryan referred to as the copper substance?

7 A. Yes.

8 Q. You referenced that there was ash on it and other
9 things that could of perhaps affected the field test?

10 A. It could have affected the color that was observed.

11 Q. And that color, the individual doing the field-test,
12 they rely on what color comes up to indicate whether or not
13 it's a controlled substance or not?

14 A. Yes.

15 Q. And if -- I believe you further indicated that if an
16 individual was not experienced in administering the field
17 test, that could also result in a possible false positive,
18 correct?

19 A. Yes, if the specific instructions for the field test
20 weren't followed.

21 Q. And this was explained to the Assistant Attorney
22 General in the Grand Jury?

23 A. Yes, that's correct.

24 Q. In regards to what was found in Ms. Farak's -- what was
25 found in Ms. Farak's work station, correct?

1 A. Yes.

2 Q. And that was the substance that was field tested and
3 founded to first be heroin, and then after testing by you,
4 was found to be, in fact, cocaine?

5 A. Yes. I believe that's correct.

6 (Off the record discussion)

7 Q. (By Mr. Caldwell) Mr. Woods, this is previously marked
8 by my brother as Exhibit 100. I believe that's your drug
9 certification for the items that were submitted by Sergeant
10 Joseph Ballou to your laboratory and then you were
11 subsequently assigned to?

12 A. Yes, that's correct.

13 Q. And it was submitted January 31. You testified it was
14 submitted on 31 of January and it was later tested in
15 February, correct?

16 A. Yes.

17 Q. And you had -- now, in terms of the way that you
18 received this, after it was assigned to you, you'd say this
19 was a very unique set of items, fair to say?

20 A. Yes.

21 Q. And why do you say that?

22 A. Just based on the variation and materials submitted and
23 how a lot of the substances were packaged.

24 Q. And one of those is what's depicted here on the screen,
25 this vial, correct?

1 A. Yes, the test tube.

2 Q. With the acetaminophen in it?

3 A. Yes.

4 Q. And it's unusual because it's not -- you don't receive,
5 usually receive drugs packaged in a glass vial, they are
6 usually packaged, in maybe a plastic bag?

7 A. Correct.

8 Q. Was there anything else unique that you found of the
9 submissions that caught your attention as a forensic
10 chemist?

11 A. Yes, there was.

12 Q. Can you please explain them?

13 A. Yes. Items 6 and 7 were both -- Item 6 was a white
14 rock-like substance and item seven was a yellow rock powder
15 and pieces of compressed powder, and both of these were
16 packaged consistent with how evidence submitted to the
17 Amherst Laboratory was packaged.

18 Q. And you say that, the KPac bag?

19 A. The KPac bag, a heat seal and a unique A number
20 assigned to it, which I believe is how they tracked items
21 submitted for analysis.

22 Q. And as those, the bags that were -- you believe were,
23 or you were familiar with, how evidence was submitted to the
24 Amherst Laboratory, were there any bar codes on those bags?

25 A. I --

1 Q. For example, in your certification, Item Number 6.

2 A. There was a label with the A number.

3 Q. And that was A12-04793, correct?

4 A. That's correct.

5 Q. And was there anything else that you recognize on that
6 bag? Was it signed by anybody?

7 A. Yes. It had -- it was marked S, and something
8 unreadable with a date of 1/4/13.

9 Q. Fair to say that could be an initial of someone?

10 A. Yes.

11 Q. And you recognize that initial?

12 A. Based on subsequent items that I tested, it was
13 consistent with Sonja Farak's initials.

14 Q. Was there anything else done to this bag, if you
15 recall?

16 A. Yes, there was.

17 Q. Can you please tell us?

18 A. There was an incision in the rear of the bag below the
19 heat seal.

20 Q. Is that something that you regularly see?

21 A. No.

22 Q. And why?

23 A. Because it would indicate that the evidence had been
24 opened after it had been sealed at the laboratory.

25 Q. Perhaps inferring that, that there was use of that

1 substance or that substance was tampered with subsequent to
2 testing, correct?

3 A. That's correct.

4 Q. Now, in terms of Item Number 7, on your drug
5 certification --

6 A. Yes.

7 Q. Can you please explain what's on your certification,
8 that's Item Number 7?

9 A. Yes. Yellow rock-like powder and pieces of compressed
10 substance that were mixed together in a plastic bag, in a
11 heat-sealed plastic evidence bag that I noted had an
12 incision in the rear of the bag below the heat seal.

13 The bag was labeled A12-04791. It was in a heat
14 sealable plastic bag. It was unsealed and marked S,
15 unreadable notation, 12/31/12; in a heat-sealed plastic bag,
16 in a brown paper bag labeled CSSS Number 10.

17 Q. Was that found to be, any controlled substance found to
18 be in that substance after you tested it?

19 A. Yes, it was.

20 Q. Can you explain to the Court what you found?

21 A. Yes. I found that the mixture overall contained
22 cocaine, which was in the base form, but that I could
23 physically separate -- it was not a homogenous mixture,
24 meaning it wasn't -- it wasn't uniform, and that I could
25 separate clearly two different components to perform testing

1 on. One of them, once I separated it, I found to contain
2 cocaine and the other one to contain only a trace amount of
3 cocaine.

4 Q. And, again, you said there was an incision in that bag?

5 A. Yes, there was.

6 Q. Like the previous item?

7 A. Correct.

8 Q. And just to sum up, did you analyze several other items
9 there, correct?

10 A. Yes.

11 Q. And it's fair to say that some contained controlled
12 substances and others did not?

13 A. That's correct.

14 Q. And some of them were very unique type of substances
15 that were not controlled substances, correct?

16 A. That's correct.

17 Q. Stuff like, I believe -- excuse me, items that you
18 believed to perhaps been a putty-like substance?

19 A. Yes. Items that I couldn't identify, but based on the
20 testing that I did, appeared to be similar in nature.

21 Q. And they're also substances that -- you said similar in
22 nature, but hardened, correct?

23 A. Correct.

24 Q. But similar composition?

25 A. Based on the testing I did, yes.

1 Q. Meaning, perhaps, in your experience, that these items
2 were dried out?

3 A. Yes.

4 Q. Now, in making observations of everything that you
5 tested, that was seized from Ms. Farak's work station, is
6 it -- would it be your opinion that these are attempts to
7 counterfeit drugs?

8 A. Specifically based on what I observed for Item 7, yes.

9 Q. Okay. And you had a -- as indicated by Mr. Ryan,
10 previously mentioned you testified at Grand Jury?

11 A. Yes.

12 Q. And your testimony at Grand Jury was in March, correct,
13 of 2013?

14 A. Yes, that's correct.

15 Q. And the prosecuting attorney was Assistant Attorney
16 General Anne Kaczmarek?

17 A. Yes.

18 Q. And you had previous conversations with her in regards
19 to your certification and what the testimony was going to be
20 moving forward?

21 A. That's correct.

22 Q. And you had indicated to Mr. Ryan, that an item was
23 skipped over, Item Number 17?

24 A. Yes.

25 Q. And you didn't have any conversation with Attorney

1 Kaczmarek with why that item was skipped over?

2 A. I honestly don't remember.

3 Q. You don't remember.

4 MR. CALDWELL: Okay. Thank you.

5 I have nothing further, Your Honor.

6 MR. RYAN: Very briefly, Your Honor?

7 **QUESTIONS BY THE COURT**

8 THE COURT: So when Sergeant Ballou dropped this stuff
9 off you knew it was about the Farak case?

10 THE WITNESS: Yes.

11 THE COURT: And you knew that she was a suspect in
12 allegedly stealing drugs out of the Amherst Lab?

13 THE WITNESS: I had a -- I definitely had a general
14 knowledge of what had transpired. I found out more details
15 after the testing was complete.

16 THE COURT: Okay. And the way this stuff was
17 presented, was inconsistent with the average police
18 submission of -- based on arrests on the street; is that
19 fair to say?

20 THE WITNESS: The items were definitely submitted
21 appropriately, but the items themselves were definitely
22 unique.

23 THE COURT: Okay. And this one, Item 17 on the screen,
24 that one caught your attention?

25 THE WITNESS: Yes.

1 THE COURT: Why?

2 THE WITNESS: Just because of how the chunky substance
3 was contained within a test tube. That's generally not
4 something that we see drug items submitted in.

5 THE COURT: You say you're familiar with those test
6 tubes?

7 THE WITNESS: Yes.

8 THE COURT: How are you familiar with them?

9 THE WITNESS: We use them -- when we sample items that
10 are submitted to perform testing on them, we use these test
11 tubes in the laboratory.

12 THE COURT: And is -- I can't read it from here.

13 Is it labeled? Is that the test tube that's labeled or
14 is that some marker on what's in it or --

15 THE WITNESS: Yes. I believe the test tube did have
16 writing on it.

17 THE COURT: But is it, like, the manufacturer of the
18 test tube?

19 My point is, are these the same brand of test tubes
20 that you use at your lab?

21 THE WITNESS: I don't -- I don't specifically know
22 whether it's the same brand, but the writing on the test
23 tube is handwriting. It's not a manufacturer marking.

24 THE COURT: Okay. All right. I got you.

25 So these items in there are acetaminophen?

1 THE WITNESS: It was acetaminophen and Oxycodone.

2 THE COURT: And acetaminophen is Tylenol, right?

3 THE WITNESS: Yes.

4 THE COURT: And when you see the -- these two
5 substances, usually they're in pill form?

6 THE WITNESS: Correct.

7 THE COURT: And so what do you think happened here?

8 THE WITNESS: My best assumption would be that this was
9 a tablet that had been sampled for testing or had been
10 tested and this was the remnants that was left over.

11 THE COURT: And when you test those two items, two
12 pills come in; do you crush them like this to test them?

13 THE WITNESS: Yes, we do.

14 THE COURT: You do?

15 THE WITNESS: Yes.

16 THE COURT: So that's not inconsistent with general lab
17 practice, right?

18 THE WITNESS: Correct.

19 THE COURT: Okay. And so a number of items that came
20 in to you -- you know, typically, I suspect, the police
21 bring them in, oftentimes drugs are in little baggies, cut
22 offs, and the things we hear about day in and day out. But
23 what was suspicious here, these things were in actual
24 packages that were heat sealed and were -- which would tell
25 you what?

1 If something -- when you go through the lab process --

2 THE WITNESS: Yes.

3 THE COURT: -- it gets heat sealed after the analysis,
4 is that --

5 THE WITNESS: That's correct, sir.

6 THE COURT: And so, your suspicion was these were drugs
7 that the suspect got her fingers into after the analysis was
8 done?

9 THE WITNESS: Or certainly somebody had accessed after
10 they had been sealed following the analysis.

11 THE COURT: Okay. All right. All right.

12 The phrase, "manufacturing secondary standards", mean
13 anything to you?

14 THE WITNESS: I would need -- I would need to know what
15 context it's being used in.

16 THE COURT: Well, what context would it likely be used
17 in, in your training and experience?

18 THE WITNESS: I mean, in this situation, I could infer
19 that it's referring to -- so we use -- in our laboratory we
20 use certified reference material when we make an
21 identification of a controlled substance.

22 THE COURT: Yes.

23 THE WITNESS: They're -- it's material that we buy from
24 a (sic) accredited outside vendor that they've analyzed,
25 that they provide a certificate and they say this is what we

1 say it is. If we buy, you know, cocaine standard, they are
2 certifying it is actually cocaine.

3 Manufacturing a secondary reference standard, to me,
4 would mean that somehow you're making an in-house standard.

5 THE COURT: Okay. All right. And are you aware of
6 that being done in labs generally?

7 THE WITNESS: Generally, especially -- especially now
8 in accredited labs, that's not something that happens.

9 THE COURT: In the past?

10 THE WITNESS: In the past, I'm sure that it has, yes.

11 THE COURT: Why do you say that? Why do you say "I'm
12 sure it has"?

13 THE WITNESS: I mean even -- as accreditation standards
14 have gotten more stringent, I -- using traceable external
15 reference material to compare to case samples, that's become
16 a more important aspect of analysis.

17 THE COURT: Uh-huh. Okay.

18 **REDIRECT EXAMINATION BY MR. RYAN**

19 Q. In instances -- just picking up on what the Judge
20 talked about where in-house standards are created.

21 Is it your understanding that that's a process that if
22 it's going to happen, or it happened in the past, it would
23 need to be documented and shared with stakeholders in a
24 criminal case?

25 A. Yes, absolutely.

1 Q. And you testified earlier that you've been an analyst
2 now for six and a half years?

3 A. That's correct.

4 Q. And I think you told Mr. Caldwell you analyzed a total
5 of about 2000 samples?

6 A. Two thousand cases.

7 Q. Two thousand cases.

8 And is that number consistent with other analysts at
9 your lab?

10 A. So, primarily as -- now, as a supervisor, I perform
11 case file review. Case analysis isn't my primary duty.
12 When I was an analyst, the amount of cases that I analyzed
13 was consistent with what other analysts within the
14 laboratory were analyzing.

15 Q. Any recollection as to about how many numbers of cases
16 you would handle in a year?

17 A. I believe it was 6- to 700 a year.

18 Q. And that is when you were just a full-time analyst, no
19 supervisory responsibility?

20 A. That's correct.

21 MR. RYAN: Nothing further.

22 THE COURT: Anything further?

23 MR. CALDWELL: Two questions.

24 THE COURT: Okay.

25

CROSS EXAMINATION BY MR. CALDWELL

Q. Mr. Woods, you had testified approximately most chemists have the same amount of samples, usually, in terms of testing, their ability to test?

A. Yes. Certainly there's variation, but in general, people can analyze around the same amount of cases.

Q. And that depends on the difficulty of the substance. Some are more difficult to test than others, correct?

A. Difficulty of the substance, and the experience of the analyst.

Q. One more thing, so in terms of this document here, and your knowledge of its -- referencing it in the Grand Jury, this was admitted into evidence in the Grand Jury, correct?

A. Yes.

MR. CALDWELL: Thank you. I have nothing further.

THE COURT: All right. Thank you, Mr. Woods. You may step down.

THE WITNESS: Thank you, Your Honor.

THE COURT: Two o'clock.

(The witness stepped down.)

(The Court exited at 12:55 p.m.)

(* * * * *)

(The Court entered at 2:14 p.m.)

(The defendant and interpreter were present.)

THE CLERK: Your Honor, back on the record in the Farak

1 drug lab hearing.

2 MR. RYAN: Thank you, Your Honor.

3 Joseph Ballou.

4 (Joseph Ballou, sworn)

5 MR. CALDWELL: Thank you. Please take the stand.

6 THE COURT: Good afternoon, sir.

7 THE WITNESS: Hi, Your Honor.

8 MR. RYAN: Thank you, Your Honor.

9 (Joseph Ballou)

10 **DIRECT EXAMINATION BY MR. OLANOFF**

11 Q. Good, afternoon. Please state your full name.

12 A. My name is Joseph Ballou.

13 Q. Could you spell your last name, please?

14 A. Sure, Ballou, B-A-L-L-O-U.

15 Q. Are you employed by the Massachusetts State Police?

16 A. I am.

17 Q. How long have you been so?

18 A. Just over 23 years.

19 Q. What is your rank currently?

20 A. I hold the rank of sergeant.

21 Q. Is that the rank you held back in 2013?

22 A. Yes.

23 Q. Back in 2013, who worked below you?

24 A. So I'm in charge of a small State Police Unit at the
25 regional, Springfield Regional Office. There's only two

1 troopers that work for me.

2 Q. Who are they?

3 A. Trooper Randy Thomas and Trooper Evan Breeding.

4 Q. And are you a Massachusetts State Trooper as part of
5 the Attorney General's Office?

6 A. Yes.

7 Q. Who was -- who was your superior back then?

8 A. Now he's a major, Robert Irwin.

9 Q. Now, directing your attention back to January 18, 2013,
10 at some point did you learn that there was going to be an
11 investigation of the Amherst Drug Lab?

12 A. Yes. Captain -- at the time, Detective Lieutenant
13 Robert Irwin called me at home, I think it was at
14 7:00 o'clock that evening.

15 Q. What did he tell you?

16 A. He told me there was some evidence missing from the
17 crime lab and that I should -- and that the Hampshire DA's
18 Office had started an investigation and that I should head
19 out that way.

20 Q. Do you know how many -- approximately, how many samples
21 were at issue at that time?

22 A. At that time I believe I just knew of two.

23 Q. Okay. And what time of day was it when you got that
24 call?

25 A. 7:00 o'clock p.m.

1 Q. What did you do once you learned that information?

2 A. I also called Trooper Thomas and Trooper Breeding and
3 asked them to meet me at the State Police Detective Unit at
4 the Hampshire District Attorney's Office.

5 Q. Okay. And where did you all meet?

6 A. That's where we met. We met at the District Attorney's
7 Office.

8 Q. Was it decided at that time who would be the lead
9 investigator in the case?

10 A. At that time I don't think it had been decided.

11 Q. When was that decided?

12 A. Sometime over that weekend. I didn't know if it was
13 going to be my supervisor or, you know, eventually he told
14 me that he was going to assign me as the case officer.

15 Q. Okay. And by "case officer", does that refer to the
16 lead investigator?

17 A. Well, we don't use that term, but basically you're
18 responsible for managing the case file.

19 Q. And that person was you, correct?

20 A. Correct, yeah.

21 Q. So, you said -- at what time did you learn that you
22 were assigned to be the case officer?

23 A. I don't recall. I think it was one of those things
24 that just sort of, at some point over the weekend.

25 Q. Okay. Well, was there anything formal -- was that, to

1 make you the case officer? Is that -- or was it just a
2 general understanding?

3 A. At some point, Lieutenant Irwin told me, I want you to
4 be the case officer.

5 Q. Okay. And what are some of the duties and
6 responsibilities of the case officer?

7 A. Like I said, primarily you would be the person that
8 would manage the case file and provide some direction in the
9 case I guess.

10 Q. Okay. And when you say "manage the case file", what do
11 you mean by that?

12 A. Just as different officers do reports, and things like
13 that. They would give you the reports.

14 Q. Okay. Was the case officer also in charge of holding
15 onto the evidence?

16 A. Yes.

17 Q. And keeping track of it?

18 A. Yes.

19 Q. Now, on January 19, 2013, was Sonia Farak's personal
20 vehicle searched?

21 A. I -- it was Saturday morning so I think -- did you say
22 January 19?

23 Q. Yes.

24 A. Yes.

25 Q. And that happened at 3:23 in the morning?

1 A. That sounds right.

2 Q. You had a search warrant to search that vehicle?

3 A. Yes.

4 Q. And who else participated in that search besides you?

5 A. At the time, Detective Lieutenant Robert Irwin, and
6 Trooper Thomas, and then we also had somebody from the Crime
7 Scene Services come out to take pictures, Trooper Chris
8 Dolan.

9 Q. And the search took place at the Northampton State
10 Police Barracks?

11 A. Yes.

12 Q. In that lower garage area?

13 A. Correct.

14 Q. The car, you would agree, was in deplorable condition?

15 A. Yes, it was just absolutely full of stuff.

16 Q. And so what your job was to do and the job of the other
17 troopers there was to take the evidence out of the car, and
18 tag it, correct?

19 A. Yes.

20 Q. How did you do that?

21 A. We had -- we had Trooper Dolan first photograph the
22 scene, the car, basically; and then he also photographed as
23 we took things out of the car.

24 But, essentially, as we -- because there was so much in
25 the car, we had an empty bay. So, essentially, we took

1 everything out of the car and laid it out, and then we had
2 to obviously screen things and find, if we thought the items
3 were evidentiary and if they met the criteria of the search
4 warrant.

5 Q. What kinds of things were you looking for?

6 A. At the time I believed we were looking for drugs or for
7 evidence of tampering with drugs at the lab.

8 Q. Okay. And did you find such items?

9 A. We did.

10 Q. Okay. Were there any -- was there any kind of
11 documents that were found in the car?

12 A. Yes, there was a lot of documents. Most of them were
13 in lab folders.

14 Q. Okay. And so were those documents removed from the
15 car?

16 A. Yes.

17 Q. Were they placed in the parking spaces next to the car
18 laid out?

19 A. I don't recall.

20 Q. Well, what happened to the documents once you took them
21 out of the car?

22 A. So as I said, there was a box of papers and many
23 envelopes which some contained papers, some contained
24 plastic bags.

25 Yeah, we took those and laid them out and

1 inventoried -- photographed them and inventoried them.

2 Q. Did you review any of those documents at that time?

3 A. I scanned through what I saw in the folders to try to
4 see what was inside.

5 Q. Okay. And what did you find?

6 A. To me it looked like lab-related paperwork. It looked
7 like somebody had told me they used those folders for
8 discovery to bring to court, and to me it looked like papers
9 that were related to her court duties.

10 Q. And prior to that date, you really hadn't seen what lab
11 paperwork looked like, correct?

12 A. Correct.

13 Q. It's fair to say you did not go through every single
14 paper that you found in the car at that time?

15 A. Correct.

16 Q. Now, what did you do -- did you put the papers in
17 evidence bags or in boxes?

18 A. We left them in the folders that they were in and, I
19 believe, some things we put into evidence bags.

20 Q. Okay. Now, showing you what's been marked Exhibit 172,
21 do you recognize that as the search warrant return in this
22 case?

23 A. Right, and completed by Trooper Thomas, yup.

24 Q. Okay. And you reviewed this in preparation for your
25 testimony today, correct?

1 A. Yes.

2 Q. Now going down to Number 4, where it says "assorted lab
3 paperwork"?

4 A. Yes.

5 Q. What is included or what was included in that?

6 A. I don't know.

7 Q. Who -- who gave those items, who gave those documents
8 to Randy Thomas and told him to write "assorted lab
9 paperwork"?

10 A. Well, as I said, there was only the three of us, so we
11 were all working together. I'm not sure who gave those to
12 him. But, as I said, all the paperwork, to us, appeared to
13 be related to the lab.

14 Q. Same thing for Number 5?

15 A. Yes.

16 Q. As well as Number 8?

17 A. Yes.

18 Q. Where was all of the evidence kept, once it was taken
19 out of the car?

20 A. We have an evidence room in Springfield.

21 Q. At the State Police Office?

22 A. Yes. At the Attorney General's Office in Springfield.

23 Q. And is that where you drove the evidence once you were
24 done taking it from the car?

25 A. Yes.

1 Q. Okay. And what happened once it was in the Springfield
2 office?

3 A. It was secured in the, secured in the evidence room.

4 Q. Now, at some point, did you review the documents that
5 were taken from the car?

6 A. Yes. In preparation for Grand Jury, I think it was a
7 week or two after that, I started going through each piece
8 of paper and trying to review it in more detail.

9 Q. Where did you do this?

10 A. At that office in Springfield.

11 Q. Okay. And did -- did Trooper Thomas assist you in
12 doing that?

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

14 Q. Now, I'm going to direct your attention to Exhibit 176.

15 A. Yup.

16 Q. And this is page five of that exhibit.

17 This is one of the documents that you reviewed, in
18 going through, and going through the evidence taken from
19 Sonja Farak's personal vehicle, correct?

20 A. Correct.

21 Q. And do you know which evidence number this is
22 associated with on the search warrant return?

23 A. No, I don't.

24 Q. All right. Would you -- do you think it would be
25 accurate to say it came from number four?

1 MR. CALDWELL: Objection.

2 THE COURT: Sustained.

3 Q. (By Mr. Olanoff) Okay. Now, this is what is titled
4 the ServiceNet Diary Card?

5 A. Yes.

6 Q. Had you ever seen one of these before that day?

7 A. No, I had not.

8 Q. Okay. And so, in order to figure out what it was you
9 had to look at it, correct?

10 A. Yes.

11 Q. And read it, right?

12 A. Correct.

13 Q. Now, as you can see there there's -- there's a number
14 of dates across the top?

15 A. Yes.

16 Q. Appears to be December 20, on a Monday through
17 December 25 on a Sunday?

18 A. Yes.

19 Q. Okay. Then there appear to be some emotions described,
20 written on the left-hand side, correct?

21 A. Yes.

22 Q. And it's some numbers in the columns over there?

23 A. Right.

24 Q. Going down in the columns, there's a section there, it
25 says: Drink or take drugs.

1 A. Yup. Yes.

2 Q. And in those boxes they're -- someone has divided them
3 in handwritten fashion, and in a number of those boxes you
4 see the word "yes", correct?

5 A. Yes.

6 Q. Okay. Now, there's also a second ServiceNet Diary Card
7 that was right next to the first one, correct?

8 A. Just from looking at this I can tell that, but I know
9 there was a number of these cards, yes.

10 Q. Okay. This one has a name at the top, correct?

11 A. Yup.

12 Q. And the name is "Sonja", correct?

13 A. Correct.

14 Q. So for a number of the days during that week, it looks
15 like four of the seven days where it says: Drink or take
16 drugs; it says: Yes.

17 Correct?

18 A. Yes.

19 Q. Now, going down for the days of the week listed below,
20 under Thursday it says: Tried to resist using at work but
21 ended up failing.

22 Did you see that?

23 A. I did. Yup.

24 Q. On Friday it says: Tried to -- at work, used without
25 debating it.

1 Do you remember seeing that?

2 A. Yes. I read that whole thing, yes.

3 Q. Okay. So you read everything here?

4 A. Yes.

5 Q. It's fair to say once you read it, you realized that
6 this was not assorted lab paperwork, correct?

7 A. Yes.

8 Q. What was this, in your view?

9 MR. CALDWELL: Objection.

10 THE COURT: No. You can answer the question, if you
11 feel you can, sir.

12 THE WITNESS: Yes, I felt like it was some type of
13 worksheet that a psychiatrist or counselor may have asked
14 her to fill out.

15 Q. (By Mr. Olanoff) And did you understand that it
16 contained admissions of drug use by Sonja Farak?

17 A. Yes.

18 Q. Were there other papers in addition to these that also
19 contained admissions of drug use by Sonja Farak?

20 A. I don't think that they included admissions. There
21 were some newspaper articles which suggested that, but there
22 were no admissions on there.

23 Q. Okay. I'm showing you page one of what's been marked
24 Exhibit 176. This is an Emotion Regulation Worksheet,
25 correct?

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

2 Q. That's what it's titled?

3 A. Yes.

4 Q. Now, before seeing this, did you know what an Emotion
5 Regulation Worksheet was?

6 A. No.

7 Q. And so you reviewed this in its entirety, correct?

8 A. Yes.

9 Q. And in doing so, you saw that right at the top, in a
10 handwritten note, it says: Sharon and then in the
11 parenthesis, plus Becky, taking today off.

12 Did you see that?

13 A. I see that, yes.

14 Q. And right above it, it says: Last night with Molly.

15 A. Yes, I can read that.

16 Q. Okay. And so, what -- did you think anything when you
17 read: Last night with Molly?

18 MR. CALDWELL: Objection.

19 THE COURT: No, you can have it. You can answer it if
20 you feel you can.

21 THE WITNESS: I assumed those were friends with hers.
22 I didn't really give that much thought.

23 Q. (By Mr. Olanoff) What about Sharon and Becky? Did you
24 think those were friends of hers?

25 A. No. I don't know who she's referring to, but --

1 Q. Well, did it ever cross your mind that "Sharon"
2 referred to Sharon Salem?

3 A. Oh, yeah, Sharon Salem and Rebecca Pontes, yes.

4 Q. Okay. Going down to "prompting event" where it says:
5 Got good sample at work and having urges to use.

6 What was your understanding of what that meant?

7 A. I read it the same as you. I thought it meant she
8 could -- she would get a good sample at work, and then be
9 tempted to use it, use the drugs.

10 Q. Okay. Now going back to -- now, I'm going to show you
11 another document here that's included. Here's a handwritten
12 page in its entirety listing pros and cons of resisting.

13 Did you see that?

14 A. Yes.

15 Q. And what was your understanding of what this meant?

16 A. That one was a little more cryptic, but, again, I
17 thought it was something a counselor or psychologist may
18 have asked her to fill out.

19 Q. And resisting, did you -- is it -- did you understand
20 the resisting meant resisting using drugs?

21 A. As I said, it's kind of cryptic. I think she also
22 talks about using alcohol, she talks about a lot of
23 behaviors that she wants to modify, but I definitely thought
24 it could have meant drugs.

25 Q. Okay.

1 MR. CALDWELL: What exhibit is this?

2 MR. OLANOFF: 176.

3 MR. CALDWELL: 176?

4 MR. OLANOFF: Yes.

5 Q. (By Mr. Olanoff) Going back to page five of Exhibit
6 176. For any of these documents, did you know when they
7 were made?

8 A. Well, yes; she talks about Christmas time and December.
9 You can see December 20, 21 through the 26; so I presume
10 that they were made a few weeks prior to her arrest.

11 Q. Okay. Well, was Christmas -- was Christmas of 2012 on
12 a Sunday?

13 A. Never -- I never looked at that.

14 Q. You never looked it up?

15 A. Nope.

16 Q. Now, going down to Saturday of this form on page five,
17 where it says: Home from New York. Mad about missing part
18 of Pat's game.

19 Did you read that at the time?

20 A. I don't recall. I know I read the page.

21 Q. Okay. When it said: Mad at missing part of Pat's
22 game; did you understand that to mean the New England
23 Patriots game?

24 A. I don't recall reading it.

25 Q. You don't recall reading this?

1 Did you, at any time, try to verify when the Pat's
2 played on a Saturday, specifically Saturday, December 24?

3 A. No. I did not try to verify that.

4 Q. Now, there was an NFL schedule that was found right
5 along with these papers, did you see that?

6 A. No.

7 Q. Do you remember seeing -- do you remember seeing that
8 as evidence in this case?

9 A. No, I do not.

10 Q. Okay. So it's fair to say though that you did not
11 consult the NFL schedule that was with this to determine
12 when --

13 MR. CALDWELL: Objection.

14 THE COURT: Sustained.

15 Q. (By Mr. Olanoff) -- this came from?

16 And so two weeks -- you said you looked at these about
17 two weeks or so after you took them out of her car, correct?

18 A. Yes.

19 Q. And so that would bring us to maybe the end of January,
20 beginning of February, correct?

21 A. Yes.

22 Q. You wrote a police report in this case, correct?

23 A. Yes.

24 Q. And as -- you wrote a police report on February 6,
25 2013, correct?

1 A. Right.

2 Q. In that police report, and I apologize for the -- it
3 shows up very light in the scan. But in that police report
4 you discuss the items that were found in the back of Sonja
5 Farak's vehicle, correct?

6 A. Correct.

7 Q. And that is listed at Item Number 13, correct? Where
8 it says on January 19, 2013, at approximately 3:23 a search
9 warrant was executed for search of Farak's vehicle, correct?

10 A. Correct.

11 Q. Okay. And you go on to discuss the items that you
12 found in the back of her car, correct?

13 A. Right. That review I did was after this, it was when I
14 went to the lab, I think on February 14; so it was after the
15 date of this report.

16 Q. Okay. All right. You're jumping ahead, but I see what
17 you are saying. So what you're saying is --

18 A. That review was after this report was written, I do
19 remember that.

20 Q. So you wrote a police report on February 6?

21 A. Yes.

22 Q. But you had not reviewed the evidence, the documents in
23 detail, correct?

24 A. Correct.

25 Q. Because it's fair to say that nowhere in your police

1 report do you talk about ServiceNet Diary Cards, Emotion
2 Regulation Worksheets or anything of the sort, correct?

3 A. That's correct.

4 Q. You do, however, talk in great detail about other
5 evidence that was found in the back of her car, correct?

6 A. I detailed the things I thought were relevant at the
7 time, that I found, yes.

8 Q. Okay. For example, the handwritten notes R- -- the
9 handwritten initials, RP, it appeared as if someone was
10 practicing Rebecca Pontes' linitials on a document, correct?

11 A. Yes, I thought that was very important at the time.

12 Q. Now, Trooper Thomas wrote the search warrant return in
13 this case?

14 A. Yes.

15 Q. And that was -- we're still talking in January of 2013,
16 correct?

17 A. Yes.

18 Q. And so it's fair to say that at the time that Trooper
19 Thomas wrote his search warrant return, you had not reviewed
20 those ServiceNet Diary Cards, correct?

21 A. Correct.

22 Q. Trooper Thomas wrote a police report in this case still
23 in January 2013, same thing, still had not reviewed those
24 documents including drug use by then, correct?

25 A. Correct.

1 Q. You wrote four other police reports regarding this case
2 after this one -- sorry, three other police
3 reports -- strike that.

4 Four other police reports after you wrote this one,
5 correct?

6 A. That sounds about right.

7 Q. Okay. It's fair to say that in none of those police
8 reports do you ever mention the mental health worksheets or
9 the admissions of drug use that you found in those
10 documents?

11 MR. CALDWELL: Objection.

12 THE COURT: If you know.

13 THE WITNESS: That's true, yes.

14 Q. (By Mr. Olanoff) In fact, to this day, you still have
15 not written a police report talking about those ServiceNet
16 Diary Cards and Emotion Regulation Worksheets in which she
17 admits to drug use and stealing drugs at the lab, correct?

18 A. No, but I contacted the prosecutor and provided those
19 to her.

20 Q. Okay. I want to direct your attention to --I'm not
21 sure if this is in as an exhibit, yet, but this is an email
22 from John Verner to you and Anne Kaczmarek, correct?

23 A. Yes.

24 Q. The purpose of the search warrant or the title of it,
25 the subject line was: Search warrant for Farak's duffle

1 bag, correct?

2 A. Correct, yeah.

3 Q. Because you were the investigator in charge of writing
4 the affidavit in support of the search warrant application
5 for Sonja Farak's duffle bag, correct?

6 A. Correct.

7 Q. That was a duffle bag that was seized at her work
8 station when the lab was searched, correct?

9 A. Yes.

10 Q. And the whole purpose was to get a separate search
11 warrant to search her bag, correct?

12 A. Yes.

13 Q. Now, in applying for a search warrant, you need an
14 affidavit, and that affidavit needs to contain information
15 as to why you think probable cause has been met, correct?

16 A. Yes.

17 Q. John Verner sent you an email on January 23, helping
18 you in that pursuit, correct?

19 A. Yes.

20 Q. And Number 3, he says, he suggests: I would add all
21 that was found, including the papers.

22 A. Uh-huh.

23 Q. The fact that all this stuff was found in her car leads
24 credence to our proposition that stuff will be found in the
25 bag. Most is in there, but we found personal papers.

1 Do you remember that?

2 A. Yes. Yes.

3 Q. What papers, what personal papers was Verner talking to
4 you about there, that were found in her car?

5 A. As I mentioned, there were a lot of papers in her car.

6 There was newspaper articles, there were lots of things
7 that we found in her car.

8 Q. Okay. Including those -- including those documents in
9 which she admits drug use, correct?

10 A. At that time I don't think I had looked at those yet.

11 Q. Okay. So it's fair to say that you don't know which
12 personal papers Verner's referring to in this email,
13 correct?

14 MR. CALDWELL: Objection.

15 THE COURT: Sustained.

16 Q. (By Mr. Olanoff) And, again, Number 4, Verner again
17 tells you: I think because we found illegal drugs in car,
18 comma, personal papers in car -- same thing, you don't know
19 which personal papers are referred to there?

20 MR. CALDWELL: Objection.

21 THE COURT: Sustained.

22 Q. (By Mr. Olanoff) On February 14, 2013, you sent an
23 email to Anne Kaczmarek, Robert Irwin, and John Verner in
24 which you clearly lay out what you found in those mental
25 health records, correct?

1 A. Yes.

2 THE COURT: Okay.

3 MR. CALDWELL: Pardon me. Is this an exhibit?

4 THE COURT: Well -- you are channeling me.

5 Is this an exhibit?

6 MR. OLANOFF: 210, Your Honor.

7 MR. CALDWELL: Thank you.

8 THE COURT: Thank you.

9 Q. (By Mr. Olanoff) So this was almost a month after the
10 search that you wrote this email?

11 A. Yes.

12 Q. And you write: Anne, here are the forms -- here are
13 those forms with the admissions of drug use I was talking
14 about, correct?

15 A. Yup. That's it.

16 Q. Now, at some point, prior to February 14, 2013, did you
17 have a conversation with Anne about those forms that you
18 reference here?

19 A. Yes, I did.

20 Q. When was that?

21 A. I don't recall, but I assume it was just before that
22 email.

23 Q. And do you remember if it was a phone call or it was in
24 person?

25 A. It was likely to be a phone call.

1 Q. Do you remember what you told her?

2 A. I was excited to find those forms, but I was wondering
3 if we could use them in Grand Jury. I was concerned that
4 they might be privileged, due to a patient-client (sic)
5 privilege, so she had said to email them to her and she
6 would take a look at them.

7 Q. Okay. And so just to be --

8 MR. OLANOFF: I'm sorry, Exhibit 205, Your Honor, my
9 apologies.

10 THE COURT: Okay. Thank you.

11 Q. (By Mr. Olanoff) Now, there are a number of
12 attachments that you included in this email, correct?

13 A. Yes.

14 Q. Now, these are in PDF form, these attachments, correct?

15 A. Yes.

16 Q. And a PDF form is they've been scanned in as an
17 electronic form, much like this document right here?

18 You can open it on any PDF readers like Adobe, correct?

19 A. Correct.

20 Q. And these -- one, two, three, four scans that you made
21 and you titled them various things like, articles and notes,
22 correct? And then there's another one called Emotion
23 Regulation Worksheet, correct?

24 A. It says homework, but, yes.

25 Q. Yes, and then there's a positive morphine test,

1 correct?

2 A. Yes.

3 Q. And then a separate Emotion Regulation Worksheet,
4 correct?

5 A. Correct.

6 Q. And these are an example of the newspaper articles that
7 you gave to Ms. Kaczmarek and Mr. Verner, correct?

8 A. Yes.

9 Q. And these were the online newspaper articles that had
10 apparently been printed out and were found in the back of
11 her car?

12 A. Yes.

13 Q. And why were those of interest to you?

14 A. Well, at first I thought they might just be
15 case-related, different drug cases. But then I noticed on
16 one of them there were notes written, they almost seemed to
17 be some type of admission potentially, if it was written by
18 her.

19 Q. Which notes, handwritten notes were you referring to?

20 A. The one that you have on the screen right there.

21 Q. Okay. Where it says: P.S. most of the cases he's been
22 a part of have been dismissed for exactly this reason.

23 A. Yes.

24 Q. And, again, as you just stated, you felt that those
25 were some type of admission of wrongdoing by Sonja Farak,

1 correct?

2 A. I don't know if I would say an admission. It showed
3 that, you know, she's concerned about that. She's concerned
4 about what happens to people if they get caught stealing
5 drugs.

6 Q. And the theme here is that each of these articles
7 pertains to some law enforcement officer who was caught
8 tampering with or stealing drugs from their respective
9 agencies, correct?

10 A. Yes.

11 Q. Did you ever hear back from Anne Kaczmarek in response
12 to this email?

13 A. Yes.

14 Q. And what -- how -- in what form was that?

15 A. Just that it was decided not to put those into Grand
16 Jury because they could potentially be privileged.

17 Q. And who thought they were privileged?

18 A. I don't know. I don't know if it was her or if she had
19 asked other people. I don't know.

20 Q. Did you think that they were privileged?

21 A. I thought if it was correspondence between her and a
22 doctor, that it could be, that's why I asked.

23 Q. Okay. And did you have any communications with John
24 Verner about these documents?

25 A. No. I don't think so.

1 Q. Did you have any conversations with Robert Irwin about
2 these documents?

3 A. I don't know for sure. At some point I know I did.

4 Q. Did, and so -- did Anne Kaczmarek tell you that she
5 would not be using these at Grand Jury because they were
6 privileged between patient --

7 A. That's not why.

8 MR. CALDWELL: Objection.

9 THE COURT: No, he --

10 THE WITNESS: She just told me they felt that they
11 didn't need them and that it could be an issue, so they'd
12 rather not use them.

13 Q. (By Mr. Olanoff) What could be the issue?

14 A. I don't know.

15 Q. Did she tell you?

16 A. They just said that they didn't want to use them in
17 Grand Jury.

18 Q. Okay. Were you ever instructed to write a police
19 report about these additional items?

20 A. No.

21 Q. Did you ever think it would be -- well, did
22 Ms. Kaczmarek ever tell you that they were privileged?

23 A. No.

24 Q. I'm showing you now what's been marked as Exhibit
25 Number 183. And this is the subpoena you received to appear

1 in Hampden County Superior Court on September 9, for the
2 drug lab hearing, correct?

3 A. Yes.

4 Q. Right around the center of the page, you were commanded
5 it says: To bring with you a copy of all documents and
6 photographs pertaining to the investigation of Sonja J.
7 Farak and the Amherst Drug Laboratory, correct?

8 A. Correct.

9 Q. Did you do that?

10 A. I thought I did, yes.

11 Q. You brought everything to court that day?

12 A. I'm not actually sure. I went to court a number of
13 times on this.

14 Was this the September hearing?

15 Q. Yup. So, see where it says September -- 9th day of
16 September in the year 2013 at 9:00 a.m.

17 A. I brought my case file to court and also the office, I
18 believe, made a motion to not produce stuff -- documents
19 that day.

20 Q. But did you -- where it says you were commanded to
21 bring your file, did you bring your file?

22 A. I brought my file, yes.

23 Q. Okay. And you said your office filed a motion to
24 quash, what do you mean by that?

25 A. I don't know anymore about it than that.

1 Q. Okay. So once you received this email -- I'm sorry,
2 once you received this subpoena --

3 MR. OLANOFF: I'm sorry, Your Honor, I lost a file.

4 THE COURT: It's all right. Take your time.

5 (Pause)

6 Q. (By Mr. Olanoff) Well, at some point, once you
7 received that subpoena, you sent it to Anne Kaczmarek,
8 correct?

9 A. Yes.

10 Q. You said something like, Here, this is what -- this is
11 what we were expecting, correct?

12 A. Yes.

13 Q. Now, once you sent it to her, that sort of got the
14 process of the Attorney General's Office filing the motion
15 to quash, correct?

16 A. Yes.

17 Q. You nevertheless testified on September 9, 2013,
18 correct?

19 A. Yes.

20 Q. Did you have any conversations with Anne Kaczmarek
21 about what you would testify to at that hearing?

22 A. No. They really didn't know what I was going to be
23 asked and they just said to tell the truth and talk about
24 what happened during the case.

25 Q. Was it discussed whether or not you would talk about

1 the mental health and drug use worksheets --

2 A. No.

3 Q. -- that were found in the car?

4 A. No.

5 Q. What about with Kris Foster, did you talk about what
6 you would testify to with her?

7 A. No.

8 Q. Did you meet with either of them prior to testifying?

9 A. I don't recall if I met -- actually, I'm sure I did not
10 meet with Anne prior to that, and I know I did not meet with
11 Kris Foster because I actually met her that day.

12 Q. Okay. Now, when you testified at that hearing,
13 Attorney Ryan asked you, if you had any role in deciding
14 what documentation is provided to the defendants in this
15 case. Do you see that?

16 A. Yes.

17 Q. Your answer was: No, I've -- everything in my case
18 file has been turned over.

19 Was that true?

20 A. Yes, that's true.

21 Q. Had you turned over those mental health worksheets and
22 those admissions of drug use to the defense?

23 A. To Sonja Farak's defense attorney, yes, and those are
24 not in my case file. They're in evidence. They're in the
25 evidence room, and they're still in the evidence room to

1 this day.

2 Q. Well, when you talk about your case file, you had
3 scanned them as PDF files on your computer?

4 A. I took them out of the evidence room. I scanned them
5 to Boston, and I put them back in the evidence room.

6 Q. Okay. So they were on your computer, they just weren't
7 in -- when you talk about your file, what are you referring
8 to?

9 A. All my police reports, photos, those types of things.

10 Q. Okay. And so when you saved those PDF files on your
11 computer, what folder did you save them under?

12 A. They go to a scan folder and I emailed them to the
13 prosecutor.

14 Q. You remember what the folder was called?

15 A. I believe when you scan things in it goes into a folder
16 called scans, and then I just took that and where I may even
17 scanned it directly to her.

18 Q. Well -- well, no. You specifically named these files,
19 correct?

20 A. Yeah, you're right. You're right. I re-named them,
21 but the way it works, when we scan them, it scans to a scan
22 folder, and I right clicked and re-named the files and then
23 I emailed them to her.

24 Q. And so, if -- you had turned these over to Sonja
25 Farak's personal attorney, correct?

1 A. No. We allowed her to examine the evidence.

2 Q. Okay. And so when you said I turned everything in my
3 case file over, didn't the subpoena tell you to bring
4 everything? All documents and photographs pertaining to the
5 investigation?

6 A. Yes.

7 Q. And so, it's fair to say that these documents, these
8 ServiceNet Diary Cards and Emotion Regulation Worksheets,
9 those would qualify as documents, correct?

10 A. Right.

11 Q. But those had not been turned over, correct, to the
12 defendants in this case?

13 A. Right. I don't know what was actually turned over
14 to -- the prosecutor's handled what was turned over.

15 Q. So when you say, everything in my -- well, you were
16 asked: Have you had any role to play in deciding what
17 documentation is provided to the defendants in this case?

18 A. Yes.

19 Q. The question wasn't, what you provided to Anne
20 Kaczmarek. The question was "in this case", and you said:
21 I've. Everything in my case file has been turned over?

22 A. Yes, I turned everything in my case file over to the
23 prosecutors, and they, in turn, turned things over to the
24 defense counsel in this case, and I don't know what was
25 given.

1 MR. OLANOFF: I'm sorry, Your Honor, this is Exhibit
2 80.

3 THE COURT: I think we will take the afternoon break.

4 MR. RYAN: Thank you.

5 THE COURT: Take the afternoon recess.

6 (The Court exited at 2:57 p.m.)

7 (* * * * *)

8 (The Court entered at 3:15 p.m.)

9 (The defendants were present with an interpreter.)

10 THE COURT: Will you have the witness back on the
11 stand, please.

12 (Pause)

13 (Joseph Ballou, resumed the stand)

14 THE COURT: All right. Go ahead, Mr. Ryan.

15 **(Joseph Ballou, continued)**

16 **CROSS EXAMINATION BY MR. RYAN**

17 Q. Good afternoon, Sergeant.

18 A. Good afternoon.

19 Q. Sergeant, I'm going to show you what's previously been
20 mark as Exhibit 14. Do you recognize that document?

21 A. Yes.

22 Q. Is that a department case report that, for this case
23 against Sonja Farak?

24 A. Yes.

25 Q. I'm going to hand you a stack of --

1 A. Essentially, it's an evidence case report.

2 Q. Okay. I'm going to hand you a stack of documents and
3 I'd like to go through these with you, if I could.

4 This first document that's at the top of this stack
5 here, is this a photocopy of a State Police evidence bag?

6 A. Yes.

7 Q. And if you were to look at the item number there, is
8 that Item Number 01001?

9 A. Yes.

10 Q. Does that correspond with 00 Number 1 on your
11 Department Case Report?

12 A. Yes.

13 Q. And the contents of this, does it have the same
14 description, one Manila envelope in quotation marks,
15 A08-299, et cetera?

16 A. Yes. The computer that makes these labels is the same
17 one that makes this, so they should correspond.

18 Q. Okay. And just looking through this, is this a -- is
19 it fair to say that this contains some paperwork and some
20 plastic bags and these are photocopies of those items?

21 A. Yes.

22 Q. Okay. And just to be clear, the plastic bags that were
23 photocopied, those are the ones with Bates stamp number
24 000418 that there's just initials on the corner of the page?

25 A. Yes.

1 Q. And I think -- there's another one 000415?

2 A. Yes.

3 Q. Okay.

4 MR. RYAN: I move this into evidence as the next
5 exhibit.

6 THE COURT: Okay.

7 THE CLERK: Marked as Number 219.

8 (Exhibit No. 219, State Police Evidence Report (1/19/13
9 last three digits 001, marked)

10 Q. (By Mr. Ryan) Now referring again to what's been
11 previously marked as Exhibit 14, I'm going to jump ahead to
12 Item 004 and before I do is, 002 and 003, were those items
13 that did not receive an evidence bag, to the best of your
14 knowledge or, were they not documents?

15 A. I see one of them is the Jim Hanchett envelope, but --

16 Q. Okay.

17 A. -- I don't know how they were --

18 Q. And the other one, Number 3, is just a collection of
19 some pills?

20 A. Right.

21 Q. And if you go to Item Number 4, how is that described
22 on your case evidence report?

23 A. Evidence bag containing miscellaneous papers and then
24 assorted lab paperwork.

25 Q. Is what I'm showing you that has your evidence number

1 64750 Item Number 4, is this -- does this correspond with
2 Item Number 4 on your case report?

3 A. Yes.

4 Q. And if you could just review the documents in there,
5 those fair and accurate copy of those documents that were
6 found within this thing that you collected?

7 A. I didn't make these copies, but it appears to be the
8 kind of paperwork I saw, yes.

9 MR. RYAN: I move this as the next exhibit.

10 THE CLERK: Marked as Number 220.

11 (Exhibit No. 220, State Police Evidence Report (1/19/13
12 last three digits 004, marked)

13 THE COURT: Do these correspond to the number of the
14 search warrant return?

15 MR. RYAN: They correspond -- maybe it would be helpful
16 if I gave the Court a copy of the case report.

17 Q. (By Mr. Ryan) I think that means we have to share.

18 A. Okay.

19 MR. RYAN: So, Your Honor, if you would look on, we're
20 on page two, first one is Item Number 004.

21 THE COURT: Uh-huh.

22 MR. RYAN: And what was just admitted, Ms. Cignoli will
23 have, if you were to look underneath a barcode, you'll see
24 the case number, and after a colon you will see 004. That's
25 how we're tying these together.

1 THE COURT: Okay.

2 Q. (By Mr. Ryan) So moving onto 005. Is this 005 right
3 here? (Indicating)

4 A. Yes.

5 Q. And just taking a look, is this also was described as
6 assorted lab paperwork?

7 A. Yes.

8 Q. And if you can just take a look, is this consistent
9 with the papers that you seized in this item?

10 A. Yes. Like in here there's travel forms for her, so
11 types of thing that would be related to the lab.

12 Q. Okay.

13 A. Yup.

14 MR. RYAN: Ask that this be admitted as the next
15 exhibit.

16 THE CLERK: Marked as Number 221.

17 (Exhibit No. 221, State Police Evidence Report (1/19/13
18 last three digits 005, marked)

19 Q. (By Mr. Ryan) Moving along to Item Number 6.

20 THE COURT: Well, let me ask you this.

21 MR. RYAN: Yes.

22 THE COURT: Is this contested?

23 MR. CALDWELL: None of this is contested, Your Honor.

24 Attorney Ryan and I had a conversation this morning with, in
25 regard to these documents.

1 MR. RYAN: I just want to get them in evidence and I
2 just --

3 THE COURT: Okay.

4 MR. RYAN: And if we -- it's not contested, I'm happy
5 to just have them be marked.

6 THE COURT: Let's do that.

7 MR. RYAN: Okay.

8 MR. CALDWELL: Uncontested, Your Honor.

9 THE COURT: Okay.

10 All right. Put Ms. Cignoli to work.

11 MR. RYAN: I would suggest that each individually
12 either stapled or bindered (sic) one get a separate exhibit.

13 THE COURT: Sure.

14 MR. CALDWELL: That will be fine. Thank you.

15 MR. RYAN: Carpal tunnel here.

16 THE CLERK: Exhibits will be marked as Numbers 222,
17 223, 224, 225, 226, 227, 228, 229, 230 and that would end up
18 on the last few digits being 020.

19 MR. RYAN: Thank you.

20 (Exhibit No. 222, State Police Evidence Report (1/19/13
21 last three digits 006, marked)

22 (Exhibit No. 223, State Police Evidence Report (1/19/13
23 last three digits 008, marked)

24 (Exhibit No. 224, State Police Evidence Report (1/19/13
25 last three digits 011, marked)

1 (Exhibit No. 225, State Police Evidence Report (1/19/13
2 last three digits 012, marked)

3 (Exhibit No. 226, State Police Evidence Report (1/19/13
4 last three digits 013, marked)

5 (Exhibit No. 227, State Police Evidence Report (1/19/13
6 last three digits 014, marked)

7 (Exhibit No. 228, State Police Evidence Report (1/19/13
8 last three digits 015, marked)

9 (Exhibit No. 229, State Police Evidence Report (1/19/13
10 last three digits 017, marked)

11 (Exhibit No. 230, State Police Evidence Report (1/19/13
12 last three digits 020, marked)

13 Q. (By Mr. Ryan) Now, Sergeant, you testified that this
14 searched happened in the early morning hours of Saturday
15 January 19, correct?

16 A. Yes.

17 Q. Concluded just before 5:00 a.m.?

18 A. Yes.

19 Q. At the scene were you or anybody else in communication
20 with John Verner, if you recall?

21 A. Not at the scene, I don't believe, no.

22 Q. In any event, this was not a good place to be doing a
23 thorough review of these documents, can we agree to that?

24 A. It was a pretty secure search warrant location in the
25 likes we had an open bay to work with, but right, it's not

1 an ideal place to review documents. We didn't have a table
2 or anything like that.

3 Q. And for being honest, by 5:00 in the morning, were you
4 kind of tired?

5 A. We had been writing the search warrant all night, yes.

6 Q. Okay. So, you said -- did you then have to drive all
7 the way down to Springfield and secure it in the evidence
8 room in the Attorney General's Office down there?

9 A. Yes.

10 Q. So, it was your understanding that you had seven days,
11 by statute, to file a return for the search warrant,
12 correct?

13 A. Yes.

14 Q. And did you not have any opportunity, in those seven
15 days, to review any of these documents?

16 A. I felt like we had reviewed things satisfactorily for a
17 return at the time.

18 Q. So, let's -- you think that the more thorough review
19 you did would have been on or about February 14?

20 A. It was prior to that, correct.

21 Q. So some days prior to February 14, is when you
22 discovered that what you had put on the return as "assorted
23 lab paperwork" actually contained these admissions of drug
24 use by Sonja Farak, correct?

25 A. I found some personal paperwork mixed in with all of

1 the lab paperwork, correct.

2 Q. So at that point, did you consider filing an amended
3 return to the court?

4 A. No, I did not.

5 Q. Did you, sitting here today, would you acknowledge that
6 a true and detailed account of what was just admitted into
7 evidence would not be best described by "assorted lab
8 paperwork"?

9 MR. CALDWELL: Objection.

10 THE COURT: I am going to sustain the objection.

11 That's argumentative.

12 MR. RYAN: Okay.

13 Q. (By Mr. Ryan) Now, you said that you weren't sure
14 whether Trooper Thomas participated in this more thorough
15 review?

16 A. I don't think he did. I think I was doing it myself.

17 Q. Did you have any conversations with him about, express
18 any concerns about what you had found?

19 A. As I said, I was actually somewhat excited to find
20 those, so I think I probably shared it with him.

21 Q. And were you excited at this point because this was
22 pretty powerful evidence of Sonja Farak's guilt?

23 A. Yes, I thought it was further evidence, yes.

24 Q. Well, at this point, she'd been interviewed by the
25 State Police, correct?

1 A. Yes.

2 Q. And during her interview she denied any wrongdoing
3 correct?

4 A. I didn't do her interview. I think she just refused to
5 continue answering questions.

6 Q. Well, she never said that she was guilty of any crimes,
7 correct?

8 A. Correct.

9 Q. And you referenced, in your February 6, report, the
10 summary of the interview that Detective Lieutenant Whitney
11 did with Sonja Farak, correct?

12 A. Yes.

13 Q. And after that interview is complete, you had found
14 various narcotics in her car, and at her work station,
15 correct?

16 A. Yes.

17 Q. So you didn't find any on Sonja Farak herself, correct?

18 A. Correct.

19 Q. So this was a constructive possession case?

20 A. I'm not a lawyer.

21 MR. CALDWELL: Objection, Your Honor.

22 THE COURT: Sustained.

23 Q. (By Mr. Ryan) Well, you agreed there was some
24 circumstantial evidence that suggested that she had broken
25 the law, correct?

1 A. Yes.

2 Q. But, prior to finding this evidence, you didn't have
3 any admissions that she was stealing and using drugs at
4 work, correct?

5 A. Correct.

6 Q. Now, this -- Attorney Olanoff asked you some questions
7 about the possibly privileged or protected nature of these
8 documents. Did you -- were you present when Sonja Farak and
9 her attorney reviewed the evidence in your office's
10 possession?

11 A. Yes.

12 Q. And were any representations made to them that your
13 office regarded this as privileged or protected
14 documentation?

15 A. No.

16 Q. Did you have any discussions, and when we're talking
17 about privilege or protected, did anybody throw out the term
18 HIPAA?

19 MR. CALDWELL: Objection.

20 THE WITNESS: Not to me, no.

21 THE COURT: No, you can have it.

22 THE WITNESS: Oh.

23 Q. (By Mr. Ryan) When you were thinking about privilege
24 or concerns or I think you said patient/treatment provider
25 privilege, were you concerned about HIPAA?

1 A. No.

2 Q. Now, on the morning of January 23, 200- -- excuse me,
3 yeah, January 23, 2013 at 10:23 a.m., did you write an email
4 to Anne Kaczmarek about a message you'd gotten from an
5 Assistant District Attorney named Karen Southerland?

6 A. Yes.

7 Q. Let's see if I can pull that up.

8 Actually, I'm going to give you the hard copy.

9 Now, you sent that to Anne Kaczmarek, John Verner and
10 Robert Irwin; is that correct?

11 A. Yes.

12 Q. And could you read the message that you sent?

13 A. Sure.

14 Anne, I got a message from Hampden ADA Karen
15 Southerland and her phone number regarding a Sonja Farak
16 drug case she has with two co-defendants. Springfield
17 Police told her that one of the drug samples appears to have
18 been tampered with and one of the samples contained fewer
19 pills than originally seized.

20 I haven't called Mrs. Southerland back yet. I'm
21 inclined to go seize the evidence and take statements, but
22 I'm also concerned that this may be the first of many such
23 calls.

24 Q. Why were you concerned?

25 A. Because we had just done the Annie Dookhan case, and

1 we, basically, were getting a lot of calls in that case, so
2 I thought the same type thing could happen here.

3 Q. Okay. At 10:30 that -- seven minutes later, did Anne
4 Kaczmarek write back to you?

5 A. Yes.

6 I think this is the tip of the iceberg. I think your
7 idea of statements and seizing evidence is good. We might
8 also want to start with Springfield PD to see if they can
9 start an inventory of their drug evidence whether Farak was
10 the chemist or not.

11 Bobby/John, thoughts.

12 Q. Okay. At this time was this an investigation that you
13 both you and Anne Kaczmarek thought it would be worth
14 pursuing?

15 A. Yes.

16 Q. And did your supervisors -- did John Verner say that,
17 thought you should look into it?

18 A. Yes.

19 Q. And did you then call the AD (sic) and, or say: You
20 can call the AD (sic) and get more info, if that's all right
21 with everybody?

22 A. Yes.

23 Q. And did, at the time, Detective Lieutenant Irwin agree
24 and said you should make sure to document everything?

25 A. Yes.

1 Q. Now, at 12:37 that morning, did you send another email
2 or -- it was in the afternoon -- to this same group
3 reporting on what you'd learned on the phone from the ADA?

4 A. Yes.

5 Q. And, just in summary, did she say that there'd been a
6 submission of 51 oxy tablets to the lab, and it came back
7 negative for a controlled substance and the Springfield
8 officer said he examined the bag and it now contains 61
9 tablets?

10 A. Yes.

11 Q. And he also said they are not the same tablets he
12 submitted?

13 A. Right.

14 Q. So did this appear to be a pretty solid lead on
15 potential tampering?

16 A. Yes.

17 Q. And did Anne Kaczmarek write about a half an hour later
18 and ask you a question?

19 A. Yes.

20 Q. And what was her question?

21 A. Is there a slim possibility that in a previously
22 written report by the submitting officer that he described
23 the pills?

24 Q. And what did you write back shortly thereafter?

25 A. I said: I'm hoping.

1 Q. So at the time this was a case that you were hoping
2 there would be enough to go on, to substantiate this
3 evidence tampering charge, correct?

4 A. Yes.

5 Q. Now, later that day, at 4:41 p.m., did you send another
6 email to Anne Kaczmarek and Robert Irwin documenting what
7 you had learned during an in-person conversation with this
8 Assistant District Attorney Karen Southerland?

9 A. Yes.

10 Q. And did you tell them that the police report did show
11 51 Oxycodone pills were seized in March of 2012, that Sonja
12 Farak conducted the analysis in May, and there are now 61
13 pills?

14 A. Yes.

15 Q. So, this would of been, if she handled these in May,
16 some eight and a half months before she'd been arrested,
17 correct?

18 A. Yes.

19 Q. And if we go down here, while you were at the office,
20 did ADA Southerland tell you about another ADA that had a
21 cocaine case that was light by four grams?

22 A. Yes, she did.

23 Q. And was this ADA upset because they missed the 100-gram
24 threshold?

25 A. Yes. This was the day after the arrest, so it was in

1 the newspaper that day. That's why we thought we were going
2 to start getting a lot of these phone calls.

3 Q. Now, did you say at the end of your email that you're a
4 little skeptical because neither these cases seem to fit the
5 scheme that we think Farak was perpetrating?

6 A. Yes.

7 Q. And at the end of this email, did you say: They also
8 go back a lot further than the cases we are looking at.

9 A. Yes.

10 Q. The next morning at 9:16 a.m., did you send another
11 email just to Anne Kaczmarek this time and tell her that
12 you'd spoken to an ADA named Diane Dillon?

13 A. Yes.

14 Q. And she was the one who had the cocaine case that was
15 light by four grams?

16 A. Yes.

17 Q. And when did Diane Dillon say that Sonja Farak did the
18 testing in this case?

19 A. I don't recall.

20 Q. Well, does it say right there?

21 A. Back in 2005.

22 Q. So, when you sent this email to Anne Kaczmarek at
23 9:16 a.m. on January 24, about a half an hour later, did she
24 send a response to you?

25 A. Yes.

1 Q. And what -- could you read what her response was?

2 A. She said: Please don't let this get more complicated
3 than we thought. If she were suffering from back injury
4 maybe she took some oxies, question mark.

5 MR. RYAN: I'd like to move to admit this thread at
6 this time.

7 THE COURT: Okay. May be marked.

8 THE CLERK: Marked as Number 231.

9 (Exhibit No. 231, emails from Sergeant Ballou to AAG
10 Kaczmarek, (1/24/13 9:47 a.m.), marked)

11 Q. (By Mr. Ryan) Now, did you ever do a police report in
12 this case documenting Diane Dillon's concern about a 2005
13 cocaine case being light by 4 grams?

14 A. No, I did not do a report on that one.

15 Q. Eventually, did you follow-up with this narcotics
16 detective who had suspected tampering in the Oxycodone case?

17 A. I did.

18 Q. And do recall when you did that?

19 A. Yes, it was Springfield Officer Greg Bigda and it was
20 in May, I believe.

21 Q. And did it happen in May because Ms. Southerland had
22 actually logged a complaint that nobody had come to see
23 Detective Bigda?

24 A. I'm not aware of that.

25 Q. Now, did you do a report eventually about an account

1 provided by a man named Walter Sadlowsky (phonetic)?

2 A. I did.

3 Q. And who is he?

4 A. I believe he was an air conditioner/refrigeration
5 technician that worked at the UMASS.

6 Q. And did he provide an account of an interaction with
7 Sonja Farak on the day of her arrest?

8 A. He did.

9 Q. And what, to the best of your recollection, did he say
10 happened?

11 A. He said that he had seen her early that morning in the
12 basement bathroom, and when -- she was dressed up, black
13 clothing, and when she saw him, she just ran up the stairs
14 without acknowledging him, which he thought was odd because
15 they did know each other.

16 Q. And what -- why did this register and become a report
17 that you thought it should be documented?

18 A. Because also, you know, they were on the second floor
19 and the other women in the office had said usually they use
20 the third floor bathroom because it had been recently
21 remodeled, and the basement bathroom really wasn't as nice.
22 So it was some question as to why she'd be down there using
23 that bathroom.

24 Q. And this would have been on the day of her arrest?

25 A. Yes.

1 Q. So the inference, potential inference to be drawn is
2 that she may have been down there using or abusing drugs or
3 doing something illegal; is that fair to say?

4 A. Yes.

5 Q. Now, before meeting with Mr. Sudlowsky, you knew that
6 Sonja Farak had used drugs that day, correct?

7 MR. CALDWELL: Objection.

8 THE COURT: You can answer the question if you feel you
9 can.

10 THE WITNESS: I don't think I knew that, no.

11 Q. (By Mr. Ryan) Well, showing you an email that Anne
12 Kaczmarek sent to John Verner, Randall Ravitz, and you, on
13 January 24, 2013 at 10:56 a.m.

14 Just take a moment to review that.

15 A. (Witness complying)

16 Oh, yes, the Probation Department.

17 Q. Did you learn from Anne Kaczmarek on January 24, that
18 Sonja Farak had gone to probation and had tested positive
19 for cocaine?

20 A. Yes.

21 Q. And did she actually admit to the Probation Department
22 that she had last used cocaine on Friday?

23 A. Yes, she did.

24 Q. And that would have been the day of her arrest,
25 correct?

1 A. Yes.

2 Q. And did you respond to that?

3 A. Yes.

4 Q. And what was your response?

5 A. I said usually those tests are only good for three to
6 five days max, so I hope she doesn't have a stash in her
7 house.

8 MR. RYAN: I'd ask that this be admitted as the next
9 exhibit.

10 THE COURT: All right. May be marked.

11 THE CLERK: Marked as Number 232.

12 (Exhibit Number 232, emails from Sergeant Ballou to AAG
13 Kaczmarek (1/24/13 2:02 p.m.), marked)

14 Q. (By Mr. Ryan) Now, speaking of her house, did you --
15 was there any consideration given to trying to get a search
16 warrant for her house?

17 A. We did not do a search warrant at her house.

18 Q. Well, my question is, did anybody consider, was there
19 any talk about doing a search warrant for her house?

20 A. Yes, I believe so.

21 Q. And what was that conversation?

22 A. I think we discussed whether there was probable cause
23 to go into her house or not.

24 Q. Did Sonja Farak, at the end of her interview, to your
25 knowledge, after she terminated it, was that preceded by her

1 denying a request to search her car?

2 A. Yes.

3 Q. And when she did this, did investigators impound her
4 car?

5 A. Yes.

6 Q. And after they impounded her car, did they have to give
7 her a ride home to her Northampton address?

8 A. Yes, they did.

9 Q. And when they dropped her off at her Northampton
10 address was anybody there who came outside?

11 A. Yes, I believe her wife.

12 Q. And when her wife came outside, do you recall what her
13 wife said?

14 A. I don't recall. I wasn't there.

15 Q. Well, did you write about it in a report you filed?

16 A. I did, I just don't recall.

17 Q. Okay. Showing you your -- what's been previously
18 marked as Exhibit 10, your February 6, report.

19 Does this refresh your recollection as to what Sonja
20 Farak's wife said when she came out of the house when Sonja
21 Farak was dropped off by investigators from Mass. State
22 Police?

23 A. Yes, Lieutenant Whitney said that she was nervous and
24 she blurted out: We have medical marijuana in the fridge.

25 Q. And she said: We have medical marijuana in the fridge,

1 correct?

2 A. Correct.

3 Q. At any point in this investigation did you determine
4 whether or not Sonja Farak had a prescription for medical
5 marijuana?

6 A. No, I did not.

7 Q. Did you determine whether Nikki Lee had a prescription
8 for medical marijuana?

9 A. No, I did not. I don't think that was very well
10 established at that time. I think it was just if someone
11 had a card or a letter from the doctor.

12 Q. Well, if you're interested in getting into the house to
13 see if she had maybe stolen more drugs or had over things
14 there, might that have been useful in establishing probable
15 cause?

16 MR. CALDWELL: Objection.

17 THE COURT: Sustained.

18 Q. (By Mr. Ryan) Now, a few days -- on or about
19 January 28, did you happen to go back to the Amherst Drug
20 Lab?

21 A. Yes.

22 Q. And while you were at the Amherst Drug Lab, did you
23 seize a vial of white powder from Sonja Farak's work
24 station?

25 A. Yes.

1 Q. And at the time that you seized this powder, what did
2 you believe it to be?

3 A. We believed it to be a standard for testing.

4 Q. Showing you, again, Exhibit 14, Item 56, did you
5 believe that this was actually suspected cocaine?

6 A. Yes.

7 Q. And had you determined whether or not there was any
8 legitimate reason for Sonja Farak to have this vial of white
9 powder, suspected cocaine at her work station?

10 A. Yes. I was told that it could be a standard that they
11 used in their testing.

12 Q. Do you recall about how many grams this was or
13 percentage of a gram?

14 A. I don't.

15 Q. Okay. In any event, this was submitted along with a
16 number of other items that you dropped off at the Sudbury
17 Drug Lab, correct?

18 A. Yes.

19 Q. And you eventually learned that this wasn't cocaine,
20 correct?

21 A. Correct.

22 Q. You learned that it was a mixture of acetaminophen and
23 Oxycodone?

24 A. I don't recall off hand, but that sounds right.

25 Q. Now, at some point later, did you have occasion to get

1 a subpoena to come testify at a trial of a man named Fiori
2 Liquori?

3 A. Yes.

4 Q. And was that a case where he had been accused of
5 possessing Oxycodone?

6 A. I believe so, yes.

7 Q. And did you testify at Mr. Liquori's trial?

8 A. Yes.

9 Q. And prior to that, had a motion to quash your testimony
10 been filed?

11 A. I believe so.

12 Q. And was that filed by an Assistant Attorney General
13 named Ryan Ferch?

14 A. I don't know who filed it.

15 Q. During the course of your testimony, were you asked
16 about whether or not you had made any seizures of Oxycodone
17 during your Farak investigation?

18 A. I probably was.

19 Q. And when you -- were you asked specifically at some
20 point with whether you made any seizures of Oxycodone from
21 her work station?

22 A. I don't recall that.

23 Q. Well, if I was to say that you did and that you
24 reported that no such seizure had been made, would that have
25 been inaccurate?

1 A. I still don't really even know. I don't recall what
2 the lab test said, and I don't recall the question.

3 Q. Showing you transcript from Commonwealth v. Fiori
4 Liquori, second page, Witness Joseph Ballou, you're crossed
5 on page 32 of the transcript.

6 And if you could just review from the bottom of 32 to
7 the middle, down to line 14.

8 A. (Witness complying)

9 Yes.

10 So you never found any Oxycodone in her possession?

11 No.

12 Not in her car?

13 No.

14 Not in her home?

15 No.

16 But I said: We didn't search her home.

17 Or at her work station, right?

18 No.

19 But I was thinking -- definitely thinking of Oxycodone
20 pills at the time of the questioning.

21 MR. RYAN: Now, that was, just for the record,
22 previously admitted as Exhibit 159.

23 THE COURT: Thank you.

24 Q. (By Mr. Ryan) Now, the day after you had, excuse me,
25 the day that you had seized that vial from the lab, did you

1 receive an email from John Verner to Robert Irwin and Anne
2 Kaczmarek and yourself and a -- somebody at the Attorney
3 General's Office named Meghan O'Brien?

4 A. Only because I see it on the screen, I don't really
5 remember that.

6 Q. Well, did John Verner indicate that the DLT had a great
7 idea and that he wanted the four of you to get together?

8 A. Yes, that's what it says, yes.

9 Q. And who was the DLT back then?

10 A. Robert Irwin.

11 Q. Did you ever meet to discuss what his great idea was?

12 A. Well, that was obviously, January 28. That was pretty
13 early in the game. I would imagine that was, again, getting
14 ready for Grand Jury, but no, I don't know what the idea
15 was.

16 Q. Now, you testified when Attorney Olanoff was asking you
17 questions that, notwithstanding your excitement about
18 finding these materials, you had been told that they would
19 not be introduced at the Grand Jury; is that correct?

20 A. Yes.

21 Q. And you were the case officer, so you knew what
22 exhibits had been introduced at the Grand Jury, correct?

23 A. No, not necessarily.

24 Q. Well, did your case file contain copies of the exhibits
25 that were introduced at the Grand Jury?

1 A. No.

2 Q. Did it contain Grand Jury minutes?

3 A. No.

4 Q. In any event, you testified several times at the Grand
5 Jury, correct?

6 A. Twice, yes.

7 Q. And you were actually asked at the Grand Jury, by Anne
8 Kaczmarek, about the search of the car, correct?

9 A. Yes.

10 Q. And on February 28, 2013, she specifically asked you:
11 Can you tell the Grand Jurors some of the things that were
12 recovered from Ms. Farak's vehicle?

13 Does that sound right?

14 A. Yes.

15 Q. And before she asked you that question about telling
16 them about some of the things in the vehicle, she had told
17 you, you weren't going to talk about the Farak admissions
18 that you had sent to her two weeks before?

19 MR. CALDWELL: Objection.

20 THE COURT: No. He can answer, if you feel can you.

21 THE WITNESS: Yes.

22 Q. (By Mr. Ryan) Now, at some point or another, did it
23 become a theory of the case that Ms. Farak's misconduct had
24 begun just a couple of months before her arrest?

25 A. That was certainly my feeling, yes.

1 Q. And you had interviewed co-workers, if not yourself
2 personally, then members of the investigative team that
3 noted a drop-off in her production?

4 A. Yes.

5 Q. And you had actually testified about your impressions
6 of Ms. Farak when you had interviewed her in September of
7 2012 during the Dookhan case, correct?

8 A. Correct. I thought there was a noted decline in her
9 appearance from September, when I interviewed her until I
10 saw her at the time of her arrest.

11 Q. At the Grand Jury you actually testified that she
12 looked somewhat pretty in September of 2012, is that --

13 A. Sure. Thanks for reminding me.

14 Q. Now, Attorney Olanoff asked you some questions about a
15 couple of the things that you found that you then forwarded
16 on to Anne Kaczmarek?

17 A. Yes.

18 Q. Do you recall those questions?

19 A. I do.

20 Q. And your -- he asked you about the -- your impression
21 as to when this December activity -- which December that
22 took place, and I think your testimony was you thought it
23 happened in December of 2012?

24 A. Yeah, I certainly presumed -- it was in her car. I
25 presumed it was only a few weeks -- a few weeks' old at

1 most.

2 Q. Now, sitting here today, you you'd agree that there's
3 compelling reason to believe that that didn't document
4 activity that took place in December of 2012, correct?

5 A. Yes. I now know that they're older.

6 Q. And they would have dated back to December 2011,
7 correct?

8 A. Correct.

9 Q. Now --

10 MR. RYAN: If I could trouble Ms. Cignoli for some of
11 these back.

12 (Pause)

13 Q. (By Mr. Ryan) I'm going to return these copies of
14 documents seized from Sonja Farak's car. And, if you would
15 turn to the evidence tag 64752 and perhaps help me out by
16 letting me know which Grand Jury number that is?

17 222?

18 A. Correct.

19 Q. Could you go to what's been Bates stamped, 00058 --
20 508.

21 A. Yes.

22 Q. Now, is this a ServiceNet Diary Card with the name
23 Sonja on the top?

24 A. Yes.

25 Q. And does this contain any dates at all?

1 A. I don't believe it does.

2 Q. If you were to look at the diary entries at the bottom,
3 does it have any indication that this would of also been in
4 the December season?

5 A. I know at one point she talks about, yeah, Christmas
6 shopping so I thought again it was Christmas time frame.

7 Q. Now, on that Monday does it say: Nikki made me go with
8 her and Dorothy to Bright Nights?

9 A. It does.

10 Q. What's Bright Nights?

11 A. In Springfield it's a light display at Forest Park.

12 Q. And on that Friday, did she say she got mad at Nikki
13 regarding Bright Nights, again?

14 A. Yes.

15 Q. And did she go on to say: Shame at work. Going to use
16 Phentermine, but when I went to take it, I saw how little,
17 parens, V little, end parens, there is left, equals ended up
18 not using.

19 Is that what's indicated on that Friday?

20 A. It's written very small.

21 Yes, that's what it says.

22 Q. Do you know what Phentermine is?

23 A. I don't.

24 Q. Does it sound like it might be a drug that was at work?

25 A. Yes.

1 Q. And Nikki Lee was somebody who testified at the Grand
2 Jury, correct?

3 A. Yes.

4 Q. And without really getting into it, did you meet Nikki
5 Lee? Were you a part of help facilitating her testimony?

6 A. Yes.

7 Q. Now, did Nikki Lee have some limitations that may have
8 prevented her from being a reliable source of understanding
9 when this might have taken place?

10 A. I don't understand that question.

11 Q. It was a bad question. I don't blame you.

12 A. I thought that was some type of psychological
13 medication. I didn't look it up, but she was on a lot of
14 those things, so that's what I assumed it was.

15 Q. Well, did anybody asked Nikki Lee who Dorothy was?

16 A. No.

17 Q. Nikki Lee testified at the Grand Jury on, if I told you
18 February 7, 2013, does that sound about right?

19 A. I'm sorry. Could you say the date again.

20 Q. February 7, 2013.

21 A. Sounds early.

22 Yes. I know it was earlier, or it was in the late
23 winter of that year.

24 Q. Do you want to take a look at her testimony to date it?

25 A. I've never seen her testimony.

1 Q. Okay. Did anybody ask Nikki Lee, in preparation for
2 her testimony or at the Grand Jury, when she'd last been to
3 Bright Nights?

4 MR. CALDWELL: Objection, as to Nikki Lee's testimony
5 at Grand Jury. She is the spouse of Ms. Farak.

6 THE COURT: No, you can answer the question if you feel
7 you can.

8 THE WITNESS: I don't know if she was asked that.

9 Q. (By Mr. Ryan) All right. Now, if you could take a
10 look at evidence tag number 64754.

11 And direct your attention to Bates number 00534.

12 A. (Witness complying)

13 Q. Now, is this fair to say that this document contains a
14 lot of scribbling that may be difficult to, at first glance
15 decipher?

16 A. Yes. It's a sheet that appears to show a listing of
17 court dates, probably for her; but there's scribbling all
18 over the page.

19 Q. If you could reorient yourself to the bottom of the
20 page, does this contain the name of an address and telephone
21 number of a therapist in Amherst?

22 A. I have no idea. I mean it says: Anna Kogan MSW, LIC,
23 SW.

24 Q. And does, next to that does it say: Do you accept EAP?

25 A. Very cryptic, but yes, it seems to say that at the

1 bottom.

2 Q. Okay. I can take those back from you.

3 (Pause)

4 Q. (By Mr. Ryan) Now, you testified about this
5 evidentiary hearing that took place in September of 2013, on
6 the 9th, do you recall that?

7 A. Yes.

8 Q. Now, in advance of that, did you learn that some
9 defense attorneys had been trying to get access to see the
10 evidence that you possessed?

11 A. Yes.

12 Q. And did you advise Anne Kaczmarek that ADA Flannery had
13 actually reached out to you to try to facilitate this?

14 A. Yes.

15 Q. Did she voice an objection to that happening?

16 A. I believe, at the time, we were still preparing for
17 trial and we didn't want a lot of different people looking
18 through the evidence.

19 Q. So it's fair to say you were, supported the decision to
20 not permit any defense attorneys to see this evidence?

21 A. It wasn't my decision, but I certainly didn't want a
22 lot of different people looking at the evidence.

23 Q. And, when you testified at the Grand Jury or, excuse
24 me, at this hearing, Attorney Olanoff showed you a portion
25 of your transcript. And showing you Exhibit -- what's

1 previously been marked Exhibit 80.

2 And I think he showed you, up to the point, where I had
3 asked you about disclosures that had been made to defense
4 counsel.

5 Do you recall that?

6 A. Yes.

7 Q. Did I go on to ask you: To your knowledge, is
8 everything in this Ms. Kaczmarek's case file been turned
9 over?

10 A. Yes, you did ask me that.

11 Q. And after some talk between Judge Kinder and I, did he
12 say: If for some reason you know the answer to that
13 question, you may answer it?

14 A. Yes.

15 Q. And the answer you gave was what?

16 A. I believe everything pertaining to the Farak
17 investigation has been turned over. I'm not aware of
18 anything else.

19 Q. So you testified that you were under the impression
20 that not only everything in your case file had been turned
21 over, but everything that Anne Kaczmarek possessed had been
22 turned over to defendants as well?

23 A. Actually, I had facilitated sending out discovery
24 packets to different ADAs, so I truly did believe that
25 everything had been sent out.

1 Q. Well, in facilitating -- let me ask you this.

2 During that hearing, did anybody ask you any questions
3 about ServiceNet Diary Cards or Emotion Regulation
4 Worksheets?

5 A. No.

6 Q. Did it strike you as odd that this powerful evidence
7 that you described of Sonja Farak's wrongdoing was not a
8 topic of conversation?

9 A. I had forgotten about them at the time, but I had a
10 binder that you guys had with my case file and everything
11 seemed to be in there. I even saw the -- the newspaper
12 articles that were printed out, so, when I looked at it, it
13 appeared to me that you had everything.

14 Q. Now, at the end of that hearing did I question you with
15 respect to your report writing about what was in that
16 assorted lab paperwork?

17 (Pause)

18 MR. RYAN: This is, again, Exhibit 80, page 175.

19 Q. (By Mr. Ryan) Did I say at the bottom of 174: You
20 would agree that your reports regarding what was in the car,
21 summary notes.

22 A. I said: Summary, yes.

23 Q. And then I said: You didn't write paragraph after
24 paragraph about what assorted lab paperwork was found,
25 right?

1 A. Right.

2 Q. And you answered --

3 A. At that we took some pretty detailed photos.

4 Q. And when you were referring to "pretty detailed photos"
5 you were referring to these photographs that were found in
6 Exhibit 8 here, these 71 photographs?

7 A. Yes.

8 Q. And you'd agree that none of these 71 photographs
9 depicted the ServiceNet Diary Cards or Emotion Regulation
10 Worksheets that you later discovered when you did your more
11 thorough review?

12 A. Correct.

13 Q. Now, you testified that it was your impression that
14 these documents were filled out in conjunction with
15 Ms. Farak receiving therapeutic treatment, is that correct?

16 A. That was my guess, yes.

17 Q. And so this would of been, these were documents that
18 perhaps suggested there were third parties who had knowledge
19 of her misconduct, correct?

20 A. I don't know if she would of -- yes, I suppose.

21 Q. Do you know who Sean Farrell is?

22 A. The name sounds familiar, but off hand, I don't
23 remember.

24 Q. Is he Deputy Chief Legal Counsel for the Mass. State
25 Police?

1 A. Maybe, he might have been.

2 Q. Showing you an email, to you, from him, on September
3 30, 2013, and he had asked you some questions about a motion
4 that he -- had been filed for some discovery; is that
5 correct?

6 A. Yes.

7 Q. And one of the items that MSP was asked to provide was
8 any and all evidence, Number 10, suggesting that a third
9 party may have been aware of Sonya Farak's evidence
10 tampering at the Amherst Drug Lab prior to her arrest; is
11 that correct?

12 A. Yes.

13 Q. And did you eventually respond to him on 4:29 in the
14 afternoon?

15 A. Yes.

16 Q. And did you tell him that -- said that, you could
17 respond to the defense saying your entire investigative file
18 had been turned over?

19 A. Yes.

20 Q. And at the end you found no indication that Ms. Farak
21 had an accomplice or that a third party was aware of her
22 tampering?

23 A. Yes.

24 Q. And you would agree that those ServiceNet Diary Cards
25 suggests that there may have been some third parties who

1 were aware of her tampering?

2 A. Sure. I didn't think of it at the time, but, yes.

3 MR. RYAN: I don't have any further questions.

4 THE COURT: Well, let me ask you, Mr. Caldwell.

5 I'm going to suspend at 4:15, so is it your sense this
6 witness should be carried over until tomorrow?

7 MR. CALDWELL: I think that would be fair to say, Your
8 Honor.

9 THE COURT: In fairness, fine. All right.

10 Sergeant, before you go, let me see if you can satisfy
11 my curiosity.

12 **QUESTIONS BY THE COURT**

13 THE COURT: So you're in the garage?

14 THE WITNESS: Yes, Your Honor.

15 THE COURT: Freezing?

16 THE WITNESS: We had heat. We had heat.

17 THE COURT: And you have three items that ended up on
18 the return, and all of which were in envelopes that were
19 labeled "assorted lab work"?

20 THE WITNESS: Yes, Your Honor.

21 THE COURT: And were each of those -- were they
22 designated separately because they were separate lab Manila
23 folders of some sort?

24 THE WITNESS: Yes, Your Honor.

25 THE COURT: Okay. At some point, I believe, you or

1 someone else testified that those were the -- you believed
2 those to be the sorts of envelopes or folders, whatever they
3 were, that were used by the lab in terms of discovery
4 requests or something?

5 THE WITNESS: Right. Going -- bringing documents to
6 court, yes.

7 THE COURT: And so you, if I understand you correctly,
8 kind of thumbed through that paperwork, but didn't do any
9 sort of detailed inventory?

10 THE WITNESS: Correct, Your Honor.

11 THE COURT: And then, you eventually brought it back to
12 Springfield and into the evidence locker or room or whatever
13 it is, and at some point, it came time to really take a hard
14 look at those documents?

15 THE WITNESS: Yes, Your Honor.

16 THE COURT: Okay. Paint me picture. What do you
17 recall about that occasion, that day, that exercise?

18 THE WITNESS: I know I was preparing for Grand Jury and
19 I just started pulling the evidence out, out of the evidence
20 room, and just started going through it to see what I would
21 find.

22 THE COURT: And you went through it where? At what
23 table, desk or --

24 THE WITNESS: We actually have a table in my office
25 that's clean, has no other -- nothing else on it. So it's a

1 good place to examine evidence.

2 THE COURT: When you say "we", are you saying we in
3 reference to this particular effort?

4 THE WITNESS: No. I mean our -- the little office that
5 we have with Trooper Thomas and Trooper Breeding.

6 In our office area there's a large table that we'll
7 examine evidence on, that we won't eat lunch on it or
8 anything like that, and also it has no other papers or
9 anything like that that could get mixed in with the
10 evidence.

11 THE COURT: And directing your attention to this
12 particular folder that had these particular records, these
13 mental health records, do you recall whether you went
14 through that folder by yourself on that table, in your
15 office, or was there someone else in the room?

16 THE WITNESS: I'm almost certain somebody else was in
17 the room.

18 THE COURT: Okay. Why are you almost certain?

19 THE WITNESS: It's an open room, so Trooper Thomas
20 and/or Trooper Breeding would have been working.

21 THE COURT: But were you collectively working together
22 in this more detailed examination of these documents, or do
23 you have no recollection, or do you recall?

24 THE WITNESS: I really don't recall that.

25 THE COURT: But, at some point, you've got to the point

1 where you looked at these mental health records?

2 THE WITNESS: Yes, Your Honor.

3 THE COURT: And you said Eureka.

4 THE WITNESS: Eureka, but -- I mean, a lot of it was
5 pretty cryptic, but I thought it was good evidence.

6 THE COURT: Okay. And so, as a result of that, you
7 communicated in some fashion with Anne Kaczmarek?

8 THE WITNESS: Yes, Your Honor.

9 THE COURT: And how soon or late after you actually
10 recognized the significance of these documents did you
11 communicate to her?

12 THE WITNESS: I would imagine it was probably right
13 away, probably while I was doing it.

14 THE COURT: Okay.

15 THE WITNESS: And I don't know if she answered the
16 phone that day or if I, you know -- or she got back to me
17 later. I'm not sure.

18 THE COURT: So several different scenarios; you don't
19 have a recollection?

20 THE WITNESS: No, Your Honor.

21 THE COURT: But do you recall whether it was a
22 telephone call or email that was the initial --

23 THE WITNESS: I know I initially told her on the phone.

24 THE COURT: Okay. All right.

25 As best you recall it, what did you say and what did

1 she say?

2 THE WITNESS: Well, it was those worksheets as well as
3 the articles; basically of everything I looked at, those
4 three main things that I thought could be evidentiary, so I
5 just wanted to run them by her to see if she thought they
6 were significant and to let her know I had found them.

7 THE COURT: Those three things, the worksheets, the
8 newspaper articles about other individuals similarly
9 situated and what was the third?

10 THE WITNESS: There was a lab test as well that had a
11 name scribbled out on it. I'd sent her that as well.

12 THE COURT: And now, you looked at a number of
13 documents and you indicated, well, at that point I had not
14 done this -- let's call it this table examination. You have
15 not done this table examination. You had not seen the
16 significance of this particular item.

17 What's the best you can do in terms of pinpointing
18 approximately what date you did that table examination?

19 THE WITNESS: I would think it had to be within a few
20 days prior to that February 14th, date; but I really don't
21 know.

22 THE COURT: Okay. And so, now there was some
23 conversation you indicated by your -- well, I didn't get
24 clearly who you were referring to -- or let me go back.

25 Do you have a recollection of what you said and

1 Ms. Anne Kaczmarek said about those mental health records?

2 THE WITNESS: Well, I said to her I was concerned
3 whether they were privileged with, like, a patient/doctor
4 privilege and she said she wasn't sure and she would check.
5 And then she said, could you email them to me, and that's
6 what I did.

7 THE COURT: Okay. And we have that email and those
8 attachments that were sent with them to her. And shortly
9 thereafter, do you have a conversation after she's had a
10 conversation to digest those?

11 THE WITNESS: Yes, at some point she just told me we're
12 not going to use those in Grand Jury.

13 THE COURT: And so do you have a present recollection
14 that she was the one who told you: We're not going to use
15 those documents with the Grand Jury?

16 THE WITNESS: I think so. Yeah, I'm pretty sure. It
17 may have been me asking her too. I might have said, you
18 know, are we going to -- I may have asked her again, or I'm
19 not sure how it came about, but I am pretty sure that it was
20 her I was talking to.

21 THE COURT: Okay. So now, educate me as to the
22 evidence that you have in your possession, all right?

23 THE WITNESS: Yes, Your Honor.

24 THE COURT: On the September 9th hearing, you
25 testified: I turned everything over.

1 And it's my understanding, correct me if I'm wrong,
2 what you meant by that, was you turned it over to the
3 prosecutor?

4 THE WITNESS: Yes, Your Honor.

5 THE COURT: And was that your custom, that you collect
6 the evidence, you turn it over to the prosecutor, and the
7 prosecutor does whatever the prosecutor is supposed to do
8 with the discovery?

9 THE WITNESS: Yes, Your Honor.

10 THE COURT: Is that what you meant in this particular
11 hearing?

12 THE WITNESS: Yes, Your Honor.

13 THE COURT: And you -- you turned over every bit of
14 evidence that you've collected in the Farak matter, over to
15 the AG's Office; is that accurate?

16 THE WITNESS: Yes, Your Honor.

17 THE COURT: And was that in dribs and drabs or was that
18 one fell swoop? How does that work?

19 THE WITNESS: Well, there was one big -- early on,
20 there was one big push to get everything out to all of the
21 different DAs Offices right away, so there was one big push
22 for one big packet. And then after that, as things came
23 along there were dribs and drabs.

24 I also, though, I distinguished between evidence and --
25 when I say "everything" I think of reports, evidence logs,

1 pictures.

2 I mean, to me evidence is evidence, and it's kept in
3 the evidence room, but --

4 THE COURT: What about these mental health records?

5 THE WITNESS: So I thought those were evidence, and I
6 had them in the evidence room. Although, when I thought
7 they were evidentiary, I obviously forwarded them to the
8 prosecutor.

9 THE COURT: But were they disclosed prior to that date
10 with a larger group of documents in evidence?

11 THE WITNESS: I don't know what was in that large
12 group. All I know is I forwarded everything and then
13 packets were created.

14 (Pause)

15 THE COURT: Okay. I'll see you tomorrow morning.

16 THE WITNESS: All right. Thank you.

17 THE COURT: Nine o'clock.

18 (The Court exited at 4:14 p.m.)

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C E R T I F I C A T I O N

I, ALICIA CAYODE KYLES, REGISTERED PROFESSIONAL REPORTER, REGISTERED MERIT REPORTER, OFFICIAL COURT STENOGRAPHER, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE AND ACCURATE TRANSCRIPT FROM THE RECORD OF THE COURT PROCEEDINGS IN THE ABOVE ENTITLED MATTER.

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ALICIA CAYODE KYLES, RPR, RMR, OCR

Dated: December 21, 2016

50 State Street

Springfield, Massachusetts 01103

413-748-7624