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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 14, 2016

ALICIA CAYODE KYLES
Official Court Stenographer
Registered Merit Reporter

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

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(10-1233); Wendell Richardson (12-399); Fiori Liquori
(12-624)

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

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

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

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1 (The Court entered at 9:34 a.m.)

2 (The defendant was present with interpreter.)

3 THE COURT: I was going to get away without listing
4 every defendant, but Ms. Cignoli has overruled me.

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

7 This is the criminal session for December 14, 2016.

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

11 Commonwealth vs. Jermaine Watt, respective Docket
12 09-1068, 09-1069, represented by Attorney Rebecca
13 Jacobstein.

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

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

18 The Commonwealth vs. Wendell Richardson, Docket
19 2012-399, represented by Attorney Jared Olanoff.

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

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

24 The Commonwealth vs. Omar Brown, Docket 2005-1159,
25 represented by Attorney James McKenna.

1 The Commonwealth vs. Bryant Ware, respective Docket
2 Numbers 2007-1072, 2009-1072, 2010-253, represented by
3 Attorney James McKenna.

4 The Commonwealth vs. Glenda Aponte, Docket Number
5 2012-226, represented by Attorney James McKenna.

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

9 From the District Attorney's Office we have Assistant
10 District Attorneys Deborah Ahlstrom and Katherine Johnson.

11 And for the record, Your Honor, Mr. Penate is present
12 with an interpreter.

13 THE COURT: Good morning everyone.

14 ALL COUNSEL: Good morning.

15 THE COURT: It's my understanding that there are two
16 agreed-upon exhibits and that the first one is entitled
17 Joint Stipulation, that consists of four pages signed by
18 counsel and that will be entered in the appropriate order as
19 an exhibit.

20 THE CLERK: Marked as Number 233.

21 (Exhibit No. 233, Joint Stipulation, marked)

22 THE COURT: And secondly there is an affidavit of
23 Joseph Dorant. It's a two-page document dated November 29,
24 2016, and that will be an exhibit in the appropriate order.

25 THE CLERK: Marked as Number 234.

(Exhibit No. 234, affidavit of Joseph Dorant, marked)

MR. RYAN: And I believe I have two more by agreement to be marked, so we can get the ball rolling here.

THE COURT: Okay. If we could have Sergeant Ballou back on the stand.

COURT OFFICER: Yes, Your Honor.

THE CLERK: Marked as Number 235 is the drug cert. from Kevin Burnham dated 2005 -- I'm sorry, May 10, 2007.

And as Number 236, is the cert. dated August 5, 2009.

(Exhibit No. 235, Drug Certification - Defendant Erick Cotto (5/10/07), marked)

(Exhibit No. 236, Drug Certification - Defendant Under Investigation (08/05/09), marked)

THE COURT: Good morning Sergeant.

THE WITNESS: Good morning, Your Honor.

THE COURT: And I believe you were done and over here somewhere.

MR. CALDWELL: Thank you, Your Honor.

(Joseph Ballou, continued)

CROSS EXAMINATION BY MR. CALDWELL

Q. Good morning, Sergeant Ballou.

A. Good morning.

Q. How are you?

A. Good.

Q. Sergeant, I just I want to go over a little, very

1 briefly, some of your testimony and then I have some other
2 questions I'd just like to ask you.

3 A. Yes.

4 Q. So just to get us started again today, so you executed
5 a search warrant on January 19, of 2013?

6 A. Yes.

7 Q. At the Northampton barracks, correct?

8 A. Correct, yes.

9 Q. With now Major Irwin and Trooper Randy Thomas?

10 A. Yes.

11 Q. And that was done pursuant to a search warrant that was
12 approved by the court?

13 A. Yes.

14 Q. And while you were in the barracks, you were -- you
15 indicated in the direct testimony that you were pulling a
16 lot of papers out of the car and laid everything out on the
17 ground?

18 A. Yes.

19 Q. Correct?

20 And you had -- later, and Randy -- or the State Police
21 later, Trooper Randy Thomas' return, and moving forward, you
22 had indicated some of the items discovered were assorted lab
23 paperwork?

24 A. Yes.

25 Q. And there were, approximately, I believe, you saw on

1 the screen yesterday, two entries on the return of the
2 search warrant done by Randy Thomas about assorted lab
3 paperwork?

4 A. Yes.

5 Q. And that was separated for a reason, correct?

6 A. Yes.

7 Q. Because you found this paperwork in different Manila
8 envelopes, correct?

9 A. Yes.

10 Q. And it was all mixed together?

11 A. Yes.

12 Q. And in terms of those envelopes, you later learned in
13 your investigation, as a case officer, that these envelopes
14 used to transport items and documents to Court by the
15 chemist, correct?

16 A. Yes.

17 Q. At the time of the execution of the search warrant you
18 and your fellow troopers, you thumbed through some of these
19 documents, correct?

20 A. Yes.

21 Q. But you didn't really take a hard look at them at that
22 time?

23 A. Right. Yes.

24 Q. Given, obviously, all the facts and circumstances that
25 you previously testified to during the execution of the

1 warrant?

2 A. Yes.

3 Q. When I say that, the time, the area, and the condition
4 of the car, correct?

5 A. Yes.

6 Q. Now, at some point, as a case officer, you would always
7 report to the prosecutor, and when I say that, I mean, if
8 you execute a search warrant, the things that you found?

9 A. Yes.

10 Q. And, approximately a week, I think you testified after
11 the execution of the search warrant, while you were
12 preparing for Grand Jury, you did have the opportunity to
13 take a hard look at all of the documents recovered from the
14 car?

15 A. I think it was more than a week but, yes.

16 Q. More than a week?

17 A. Yes.

18 Q. And that included what Trooper Randy Thomas indicated
19 on the search warrant return, was assorted lab paperwork?

20 A. Yes.

21 Q. And you spread these out at the AG's Office in
22 Springfield?

23 A. Yes.

24 Q. And you were able to get a good grip on what was before
25 you?

1 A. Yes.

2 Q. And when I say that, you were able to hard look at the
3 documents and discover their significance in the case moving
4 forward against Ms. Farak, correct?

5 A. Yes.

6 Q. And I believe you testified that some of these items
7 were cryptic in nature?

8 A. Yes.

9 Q. Some of the items discovered were, fair to say, good
10 materials, good evidence regarding Ms. Farak's misconduct?

11 A. Yes.

12 Q. And others were not so good?

13 A. Right.

14 Q. And when I say that, they really had no significance to
15 the case whatsoever at the time you made those observations?

16 A. Yes.

17 Q. Okay. Now, you testified to some specific mental
18 health worksheets, I believe we're calling them, that when
19 you discovered them, you were excited because they contained
20 admissions of Ms. Farak's perhaps tampering of drugs at the
21 lab and drug use?

22 A. Potentially, yes.

23 Q. Potentially. And it's fair to say at the time you made
24 these discoveries, you would characterize that as
25 inculpatory evidence or evidence that would assist in the

1 prosecution of Ms. Farak?

2 A. Yes.

3 Q. And that was based upon the admissions and other
4 information on those worksheets that you had the opportunity
5 to observe and take note of?

6 A. Yes.

7 Q. Now, after -- you had testified that after you had
8 discovered these admissions on these worksheets, you had a
9 conversation with Assistant Attorney General Anne Kaczmarek,
10 correct?

11 A. Yes.

12 Q. And I believe you said you called her on the phone?

13 A. Yes.

14 Q. And that you had indicated that you found the
15 worksheets, correct?

16 A. I don't recall exactly what I told her. I told her --
17 I know I at least told her I had found some things that I
18 thought were interesting in the paperwork.

19 Q. Okay. And did you indicate that you found some
20 articles, to her newspaper articles?

21 A. I think I did, yes.

22 Q. Okay. And did you indicate that you had also found
23 what you thought perhaps were lab test results?

24 A. Yes.

25 Q. Okay. And now, at this point, as the case officer,

1 it's fair to say that your entire focus, at this point, is
2 the criminal prosecution of Ms. Farak?

3 A. Yes, definitely.

4 Q. And building a good prosecution case against her?

5 A. Yes.

6 Q. And that would include any admissions of a defendant,
7 that's very helpful evidence, correct?

8 A. Yes.

9 Q. Now, this examination of the materials at the Attorney
10 General's Office, that was done before you had sent an email
11 correspondence to Ms. Kaczmarek on, I believe, February 14?

12 A. Yes.

13 Q. And you recall that email that you sent Attorney
14 Kaczmarek, correct?

15 A. I do.

16 Q. Now, moving back to the conversation you had with
17 Attorney Kaczmarek, did you indicate at that first initial
18 conversation that you had concerns about privilege or some
19 medical privileges or things of that nature?

20 A. Yes. I wasn't sure we would be able to use them.

21 Also, without authentication, I wasn't sure if we'd be able
22 to say that Sonja's actually was the one who wrote those;
23 but yeah, privilege, I didn't know if there was, you know, a
24 patient/doctor privilege involved.

25 Q. Okay. And Attorney Kaczmarek told you she appreciated

1 those concerns, correct?

2 A. And she said she would check with her supervisor.

3 Q. Did she say anything more in regards to privilege
4 issue?

5 A. I don't think so. No.

6 Q. Now, you had testified previously that before you
7 testified in the Grand Jury, you had a conversation with
8 Attorney General Kaczmarek, correct?

9 A. Yes.

10 Q. And that, one of -- of course, you had many
11 conversations, but I'm sure one of the conversations you
12 testified to was that AAG Kaczmarek indicated that you are
13 not going to use or she was not planning on using those
14 mental health worksheets in the Grand Jury, correct?

15 A. Correct.

16 Q. And did AAG Kaczmarek indicate to you further at this
17 time, in terms of the Grand Jury presentation, these items
18 were not necessary to obtain probable cause?

19 A. Yeah, exactly, yes.

20 MR. CALDWELL: May I have a moment, Your Honor?

21 THE COURT: Sure.

22 MR. CALDWELL: May I approach?

23 THE COURT: Sure.

24 Q. (By Mr. Caldwell) Exhibit 205. If you could please
25 take a look at that and just look up when you are finished.

1 There are several documents within that exhibit.

2 That was previously shown to you?

3 A. Yes.

4 (Pause)

5 Q. (By Mr. Caldwell) Thank you.

6 If I may.

7 Sergeant Ballou, just again, this is the email
8 correspondence we had previously spoken about just a few
9 moments ago and yesterday. It was an email sent to Attorney
10 Kaczmarek on February 14, 2013, correct?

11 A. Yes.

12 Q. And this is the email that you sent, and the
13 attachments were articles and notes, Emotion Regulation
14 homework, positive morphine test, and Emotion Regulation
15 Worksheets, and they are all in PDF form?

16 A. Yes.

17 Q. And you're essentially saying, and if you could -- and
18 if I could read it for you:

19 Here are those forms with the admission of drug use I
20 was talking about. They're also news articles with
21 handwritten comments about officials being caught with
22 drugs. All these were found in the car inside the lab in
23 Manila envelopes.

24 Joe.

25 You said you sent that email?

1 A. Yes.

2 Q. And if I could just go through these for the record,
3 there's an article from the Pittsfield.com regarding
4 Capeless' statement on steroid probe?

5 A. Yes.

6 Q. And there's some handwritten notes there?

7 A. Yes.

8 Q. There's a Masslive article detailing the alleged
9 misconduct of a Pittsfield pharmacist, correct?

10 A. Yes.

11 Q. Here's another article from SFgate regarding the feds
12 indict former san Francisco PD drug lab technician?

13 A. Yes.

14 Q. A sheet with some -- blank sheet, and here's an Emotion
15 Regulation Worksheet?

16 A. Yes.

17 Q. And there's some writing here?

18 A. Yes. Handwriting, yes.

19 Q. And I believe, at the time, you believed this
20 handwriting was Sonia Farak's, correct?

21 A. I could only guess, yes.

22 Q. Because it came from her vehicle?

23 A. Right.

24 Q. Here's a second worksheet. It's a handwritten, pros
25 and cons --

1 A. Yes.

2 Q. -- also found?

3 Here's another handwritten sheet, grids with various
4 days of the week?

5 A. Yes.

6 Q. Here's a Quest Diagnosis morphine test that you had
7 indicated you found?

8 A. Yes.

9 Q. And here's another Emotion Regulation Worksheet --

10 A. Yes.

11 Q. -- you also found in the car?

12 And also here's a ServiceNet Diary Card and you had
13 testified about this previously, it has the December dates
14 on it?

15 A. Yes.

16 Q. No years, but just the date, month, and the day of the
17 week?

18 A. December dates, yes.

19 Q. Okay. The last one is a check box that I believe was
20 attached to the first -- you found this also, correct?

21 A. Yes.

22 Q. Now, when you sent the attachments to Anne Kaczmarek,
23 those are the only attachments that you sent, correct?

24 A. Yes.

25 Q. And those are the only items -- you didn't send any

1 more to her?

2 A. I don't think so. I think those were all the
3 documents, of all of the documents I looked at, I thought
4 those were the ones that were potentially inculpatory or
5 potentially relevant to the case.

6 Q. They're the most important?

7 A. Yes.

8 Q. The ones that you think AAG Kaczmarek needs to see?

9 A. Yes.

10 MR. CALDWELL: Your Honor, may I approach again?

11 THE COURT: Sure.

12 Q. (By Mr. Caldwell) Just show you an item that was
13 previously -- I don't have the marked item, but this was
14 previously marked Exhibit 84.

15 It's a homework sheet from November 16, 2011.

16 Sergeant, can you just take a look at that?

17 A. (Witness complying)

18 Yes.

19 Q. And look up when you're finished.

20 A. (Witness complying)

21 Q. Have you ever seen that document before?

22 A. I don't have any memory of this document at all, no.

23 Q. Okay. So this wasn't something that -- you can't
24 recall if this was found in the car?

25 A. No, I can't.

1 Q. At the time of the search?

2 A. No, I can't.

3 Q. Okay. And it's obviously not a document that you sent
4 attached on this February 14, email, correct?

5 A. Correct.

6 Q. Okay. Did any time and any point in your
7 investigation, did you discover this sheet at all and
8 forward it to Attorney Kaczmarek?

9 Obviously you said you've never seen it before, but
10 just to clarify.

11 A. I have seen that part "Dear Min (phonetic)" looks
12 familiar but I, you know, almost four years ago. I really
13 just don't remember seeing this.

14 Q. Okay. Thank you.

15 Now, that September 9th hearing that you were summonsed
16 to appear in --

17 A. Yes.

18 Q. -- and a motion to quash was partly allowed, but you
19 still had to testify?

20 A. Yes.

21 Q. You admitted that you had turned everything over to
22 Assistant Attorney General Anne Kaczmarek?

23 A. Yes.

24 Q. And you say that you mean everything you believe you
25 had in your possession that was of evidentiary value?

1 A. Yes.

2 Q. And, in addition, you had indicated that you were under
3 the belief that you turned over everything to Ms. Sonja
4 Farak's Attorney, Elaine Pourinski, correct?

5 A. Yes.

6 Q. And you say that because at a certain point she came up
7 and reviewed all of the evidence, correct?

8 A. Yes.

9 Q. Including these worksheets that were sent to Attorney
10 Kaczmarek in that February 14, email, correct?

11 A. Yes.

12 Q. Okay. You had indicated yesterday, I believe, through
13 Attorney Ryan, that you were assisting not only getting the
14 discovery together for the Assistant Attorney General and
15 Elaine Pourinski, Farak's defense attorney, but you also
16 were assisting in getting the discovery out to the various
17 District Attorneys' Offices, correct?

18 A. Well, my only assistance was I literally delivered the
19 envelopes to the DAs' Offices. They were already sealed. I
20 didn't see what was inside of them.

21 Q. Because you don't deal with discovery, that's the
22 prosecutor's job, correct?

23 A. Yes.

24 Q. Okay. So is it fair to say you assembled various
25 reports, evidence logs, possible Grand Jury exhibits, things

1 of that nature or actual Grand Jury exhibits?

2 A. I don't deal with Grand Jury exhibits, but yes,
3 everything that was in my case file I made sure they had.

4 Q. Okay. Now, in terms of the mental health worksheets
5 and, specifically, the ones contained in the February 14,
6 email, that's evidence, correct?

7 A. Yes.

8 Q. And in your training and experience and the State
9 Police, evidence is always secured, correct?

10 A. Yes.

11 Q. And when I say "secured" I mean in a secure location
12 and usually in the AGO Mass. State Police evidence locker at
13 our various offices, correct?

14 A. Yes.

15 Q. And can you tell us why that is?

16 A. Yeah, we're responsible for the integrity of it and I
17 need to be able to come to court and say this is the same
18 piece of evidence that I seized and nobody else tampered
19 with it.

20 Q. So it's fair to say that these mental health worksheets
21 you could describe as physical evidence, correct?

22 A. Yes.

23 Q. And that's different than just plain documents,
24 correct?

25 A. Yes.

1 Q. Why is that? Can you explain for us that difference?

2 A. Well, again, evidence would be something I seized that
3 I want to make sure it stays in the same state it was when I
4 seized it and then I can document where I found it.

5 Reports and things like that are things that we type
6 and sort of document what we did.

7 Q. Okay. So fair to say that a police report that you
8 authored, that's a document?

9 A. Yes.

10 Q. Okay. In your opinion?

11 And physical evidence is something much different than
12 that, correct?

13 A. Yes. Yes.

14 Q. Now, when you were subpoenaed in the Watt case to come
15 and testify on September 9 of 2013, you were asked to bring
16 documents, correct?

17 A. Yes.

18 Q. And on that day in court, when you are, I believe,
19 subpoenaed by Attorney Olanoff, you brought your documents
20 to court, correct?

21 A. I did.

22 Q. And, but it's fair to say the physical evidence,
23 specifically those worksheets, were stored back at the AGO
24 State Police evidence locker, correct?

25 A. Yes, they were.

1 Q. Okay. Now, at a certain point, when you received the
2 subpoena to testify from Attorney Olanoff, did you have any
3 conversations with him prior to your testimony?

4 A. I did, I did call his office.

5 Q. So you called Attorney Olanoff's office?

6 A. Yes.

7 Q. And why'd you do that?

8 A. I wanted to let him know, acknowledge that I received
9 the subpoena.

10 Q. And was there any other reason why you called?

11 A. And, also, I asked if there was anything he wanted me
12 to prepare for the hearing.

13 Q. Did he say anything to you?

14 A. No, no.

15 Q. No? So he didn't ask to you bring anything
16 specifically?

17 A. No.

18 Q. He just said show up with what the subpoena tells you
19 to show up with?

20 A. Yes.

21 Q. Okay. Now, I want to just go over, a little bit, about
22 there was some talk about a pill case that you investigated
23 after Sonja Farak was arrested, correct?

24 A. Yes.

25 Q. And that was a case where an Assistant District

1 Attorney from the Hampden DA's Office called to your
2 attention the discrepancy in the evidence, correct?

3 A. Yes.

4 Q. And it was, she had indicated that some pills were
5 seized and she was being told by the detective from the
6 Springfield Police Department that there was something wrong
7 with the evidence. It wasn't the evidence that -- he was
8 telling her it wasn't the evidence that he seized on the
9 night of the arrest?

10 A. Yes.

11 Q. Correct?

12 And there was a discrepancy in the amount of tablets?

13 A. Yes. He had thought he had seized 51 tablets and when
14 he got it back from the lab there was 61 tablets.

15 Q. And you testified yesterday that you had alerted AAG
16 Kaczmarek about this, correct?

17 A. Yes. Yes.

18 Q. You also alerted now Major Robert Irwin about this,
19 correct?

20 A. Yes.

21 Q. And I think you were given a directive at that point,
22 correct?

23 A. Yes.

24 Q. And the directive was to followup with the case,
25 correct?

1 A. Yes.

2 Q. And I believe Major Irwin specifically said: Joe, make
3 sure you document everything?

4 A. Yes.

5 Q. And there was a -- you were shown an email yesterday, I
6 believe from Anne Kaczmarek, and she indicated to you that
7 this is, quote, the tip of the iceberg, unquote?

8 A. Yes.

9 Q. And when she said that to you, it's fair to say that
10 she was referencing continued inquiries from other District
11 Attorneys' Offices in regards to problems they may be having
12 with evidence, correct?

13 A. Yes.

14 Q. And that's very similar to your experience or Attorney
15 Kaczmarek's experience the Dookhan investigation, correct?

16 A. Yes, exactly.

17 Q. Is that fair to say, that for the most part every time
18 that you received a complaint or concern about evidence from
19 a District Attorneys' Office you made good faith effort to
20 followup on those things, correct?

21 A. Yes.

22 Q. Now, in terms of the particular pill case, you
23 investigated and you authored a report, correct?

24 A. Yes.

25 MR. CALDWELL: May I have one moment, Your Honor?

1 THE COURT: Yes.

2 (Pause)

3 MR. CALDWELL: May I approach?

4 THE COURT: Sure.

5 Q. (By Mr. Caldwell) So, Sergeant Ballou, I'm placing
6 before you what was -- showing you what was previously
7 marked as Exhibit 15A. Just take a look at that.

8 Look up when you're finished.

9 A. (Witness complying)

10 THE COURT: Sorry. Mr. Caldwell, 15A?

11 MR. CALDWELL: Fifteen A, correct, Your Honor.

12 Thank you.

13 THE COURT: Thank you.

14 THE WITNESS: Yes, this is the report I authored
15 regarding the Finch Espinosa case.

16 Q. (By Mr. Caldwell) Okay. So it's fair to say it's
17 several paragraphs in that report, Exhibit 15A?

18 A. Yes, five, yes.

19 Q. Five. And you had an opportunity to speak with the
20 detective?

21 A. I did.

22 Q. And you also had an opportunity review the evidence
23 yourself, correct?

24 A. I did.

25 Q. And it's fair to say there was no photos of the pills

1 before submission to the police department?

2 A. Correct.

3 Q. And is it fair to say that in your investigation,
4 you -- it was revealed that the pills were not counted by
5 Sharon Salem when they came into the Amherst Laboratory?

6 A. That's correct. She said she takes the, however it's
7 submitted by the police, whatever is submitted on the
8 envelope by face value. The first time it's counted is by
9 the chemist when they open the bag.

10 Q. In addition, the detective from the Springfield Police
11 Department could not remember, when questioned, what
12 about -- he couldn't recall what the pills looked like,
13 correct?

14 A. Correct.

15 Q. And, in terms of the -- as you finished this
16 investigation, it's fair to say that you made a
17 determination there was not enough probable cause into this
18 case to charge Sonja Farak with tampering with this
19 evidence, correct?

20 A. Yes.

21 Q. Now, at this point, as you're moving forward to
22 March/April, you testified in the Grand Jury, it's fair to
23 say, you developed a theory as to what Sonja Farak was doing
24 at the Amherst Lab, correct?

25 A. Yes.

1 Q. And what was that theory that you were developing?

2 A. I was developing a theory that she was testing cocaine
3 and then when she found out -- crack cocaine, and when she
4 found it out was a good product, she was taking some of it
5 for herself and replacing it with counterfeit product to try
6 to make up the weight and before it was returned to the
7 police department.

8 Q. Okay. And you had knowledge of the evidence that was
9 seized from her work station at the Amherst Laboratory?

10 A. Yes.

11 Q. And it's fair to say that some of the pictures you were
12 shown of the items you observed resembled that of not only
13 powder cocaine, but crack cocaine?

14 A. Yes.

15 Q. And what was later discovered to be in the
16 investigation by the State Police and yourself, counterfeit
17 crack cocaine --

18 A. Yes.

19 Q. -- correct?

20 And that's one part of, that played into your theory of
21 not only the tampering of evidence, but her crack cocaine
22 use and replacing it with counterfeit substances, correct?

23 A. Yes. All of the counterfeit substances she had in that
24 bin seemed to be to create a fake crack cocaine.

25 Q. Okay. Sergeant Ballou, prior to the arrest of

1 Ms. Farak, you had the opportunity to observe her before
2 January 2013, correct?

3 A. Yes, I think it was September 11 of that year.

4 Q. Okay. And was that the first time that you had the
5 opportunity to see Ms. Farak?

6 A. Yes.

7 Q. And can you please describe what she looked like,
8 physically, in that first encounter that you had with her?

9 And I believe you alluded to it yesterday on direct.

10 A. Right. I thought she was somewhat pretty woman,
11 looked -- I mean, she looked somewhat healthy to me.

12 Q. Yeah. And, you know, your training and experience as a
13 State Police Officer, you've seen people in the throes of
14 drug addiction, correct?

15 A. Yes.

16 Q. And it's fair to say that Sonja Farak did not look like
17 somebody who was addicted to crack cocaine?

18 A. Not to me, no.

19 THE COURT: I'm sorry, Mr. Caldwell. What date are we
20 talking about?

21 THE WITNESS: September 11.

22 MR. CALDWELL: September 11 of 2011, Your Honor.

23 THE WITNESS: No, no. No. 2012.

24 MR. CALDWELL: Excuse me, 2012.

25 THE COURT: 2012.

1 MR. CALDWELL: My apologies.

2 THE COURT: Okay. Thank you.

3 Q. (By Mr. Caldwell) Now, at the point where, after you
4 executed the search warrant, after you had spoken to
5 Attorney -- AAG Kaczmarek, testified in the Grand Jury. At
6 that point, as the indictments were returned, what was the,
7 if you can tell us, your belief, as the case officer, and a
8 member of the law enforcement, what did you believe the
9 scope of her misconduct was at this point?

10 A. Well, I remember thinking we started with two cases and
11 then I was thinking it could have gone back weeks or even
12 months at some point, which I was surprised that somebody
13 could get away with that for even that long in an official
14 lab. But I definitely thought it seemed to be this frenzy
15 in December with so many open envelopes that were, you know,
16 dated with December dates. Everything seemed to come back
17 to that time frame.

18 Q. And working with AAG Kaczmarek, you understood that
19 various employees from the laboratory testified in the Grand
20 Jury?

21 A. Yes.

22 Q. And they testified as to their observations of
23 Ms. Farak being close employees with her, correct?

24 A. Yes, and I had spoken to them as well; yes.

25 Q. And it's fair to say they had indicated they had not

1 noticed any type of deterioration in the work performance of
2 Ms. Farak or deterioration of her physical appearance until
3 only a few months before her arrest in January; is that
4 correct?

5 A. Yes, that's what they told me, yes.

6 MR. CALDWELL: I have nothing further, Your Honor.

7 **QUESTIONS BY THE COURT**

8 THE COURT: Sergeant, Exhibit 205, which was, for lack
9 of a better phrase, the Valentine's Day email to
10 Ms. Kaczmarek.

11 THE WITNESS: Yes, Your Honor.

12 THE COURT: And the documents you emailed her by PDF
13 are the documents attached to that exhibit; is that
14 accurate?

15 THE WITNESS: I believe so, Your Honor. Yes.

16 THE COURT: Okay. And I think you answered Mr.
17 Caldwell's question, those are the only documents, at that
18 time, that you sent to Ms. Kaczmarek by email; is that
19 accurate?

20 THE WITNESS: I believe so, Your Honor.

21 THE COURT: All right. And those documents were
22 contained in the envelope which was part of Item Number 4,
23 assorted lab paperwork, on Trooper Thomas' return; is that
24 accurate, or do you know that?

25 THE WITNESS: I don't know that for sure.

1 THE COURT: Okay. The envelope that those documents
2 that you sent Ms. Kaczmarek came out of, were there other
3 documents in that envelope or were those the only documents
4 in that envelope?

5 THE WITNESS: As I sit here, I can't even say that
6 these were all from the same envelope. These -- of all of
7 the paperwork I looked at, these were all the things I
8 thought were significant.

9 THE COURT: Okay. So tell me about the disclosure to,
10 I believe, Attorney Pourinski. Where did that -- do you
11 know what I'm talking about?

12 THE WITNESS: No, Your Honor.

13 THE COURT: Okay. You disclosed evidence to Sonja
14 Farak's Attorney?

15 THE WITNESS: No, Your Honor. I was -- at one point I
16 was told she was going to come in and review evidence, and I
17 allowed her and Mrs. Farak to do that.

18 THE COURT: Okay. Tell me about that.

19 THE WITNESS: I really only remember we took all of the
20 evidence out of the evidence room, we brought it into our
21 conference room, and they came in and they reviewed it.
22 They spent a good amount of time there. I don't know what
23 they -- we gave them some privacy. I don't know exactly
24 what they looked at.

25 THE COURT: You gave them some privacy?

1 THE WITNESS: Well, no, they were supervised, but I
2 didn't, I didn't like pay attention to, you know, what they
3 were -- what they thought was significant.

4 THE COURT: Okay.

5 THE WITNESS: We gave them some time to talk
6 afterwards.

7 THE COURT: When you say "a good amount of time", are
8 you talking ten hours, one hour?

9 THE WITNESS: You know, I really think they were in
10 there over an hour.

11 THE COURT: Okay. And what -- what's the volume of
12 that evidence?

13 THE WITNESS: I feel like you've seen it all, Your
14 Honor. The paperwork was shown in exhibits yesterday.

15 THE COURT: Okay. So was it a table full of evidence?

16 THE WITNESS: Yes, Your Honor.

17 THE COURT: And that occurred approximately when?
18 Sonja Farak and her attorney came in and took a look at the
19 evidence?

20 THE WITNESS: Without referencing something, I don't
21 know, Your Honor.

22 THE COURT: Okay. And then you indicated that you
23 delivered packets of discovery to the DAs?

24 THE WITNESS: Yes, Your Honor.

25 THE COURT: And tell me about that. Where did those

1 packets come from?

2 THE WITNESS: They were assembled by the prosecutors in
3 our office in Boston, and my role, really, was I could of
4 been -- I could of been anyone. I was just a delivery
5 person. I was told to meet somebody at an exit on the
6 turnpike. They gave me sealed envelopes for each of the
7 western counties, and I brought them out to troopers from
8 each of those counties.

9 THE COURT: And do you have a -- a recollection of when
10 that occurred?

11 THE WITNESS: I believe it was very early in the case.
12 There was a lot of pressure to get this information out to
13 the different DAs Offices. I feel like it was within the
14 first couple of weeks.

15 THE COURT: And your -- your mission was to get these
16 envelopes by another trooper somewhere on the turnpike?

17 THE WITNESS: Yes.

18 THE COURT: Okay. And you didn't deliver them to the
19 DAs. You delivered them to other troopers who delivered
20 them to the DAs?

21 THE WITNESS: Yes, Your Honor.

22 THE COURT: And were you responsible for the three or
23 four DAs in the west, is that --

24 THE WITNESS: Yes, Your Honor.

25 THE COURT: And what were the circumstances that you

1 saw Sonja Farak on September 11 of 2012?

2 THE WITNESS: I was -- I interviewed her and everyone
3 at the lab, at the Amherst Lab, regarding the Annie Dookhan
4 case.

5 THE COURT: Okay. Hold on.

6 Mr. Olanoff.

7 **REDIRECT EXAMINATION BY MR. OLANOFF**

8 Q. Good morning, again.

9 A. Good morning.

10 Q. You just mentioned a moment ago that you were in charge
11 of putting together the discovery that would be provided to
12 Attorney Pourinski, correct?

13 A. No, I did not.

14 Q. You didn't have any involvement in getting the
15 discovery together that would go to her, to Sonja Farak's
16 lawyer?

17 A. No involvement at all.

18 Q. Do you know which discovery was presented to
19 Ms. Pourinski?

20 A. I do not.

21 Q. Yesterday, you had testified, when I asked you, that
22 you knew that those documents there, those admissions of
23 drug use, had been provided to Sonja Farak's lawyer. Do you
24 remember saying that yesterday?

25 A. Yes.

1 Q. Okay. And so, is that true, is that your
2 understanding, that you knew that those documents had been
3 turned over?

4 A. Yes. They were either provided to her in discovery or
5 she was allowed to see them when she came for the evidence
6 review.

7 Q. And does April of 2013 sound about the time that those
8 documents were turned over to Ms. Pourinski?

9 A. I didn't turn any documents over to her, so I don't
10 know when that happened.

11 Q. So you don't know when those documents were turned
12 over?

13 A. No.

14 Q. Okay. And so, when we fast forward to September of
15 2013, and again, you had this knowledge that those documents
16 had been turned over to Ms. Pourinski, did you think that
17 they had been turned over to the defendants in the Farak
18 hearing?

19 A. I did think they had been, yes.

20 Q. And was that the reason you had thought that because
21 they had been turned over previously to another lawyer?

22 A. No. I thought so because I know those discovery
23 packets had gone out to the DAs and I just presumed that --
24 again, I wasn't -- didn't look at it. I presumed that
25 everything that I turned over would have been in those

1 packets.

2 Q. Okay. So you did actually, personally, look at those
3 discovery packets that were sent out, correct?

4 A. No, I did not.

5 Q. Okay. Did anyone tell you, whether or not or what
6 items had been provided or what were not being provided?

7 A. I was told that everything was being turned over.

8 Q. And who told you that?

9 A. Everyone I talked to. I don't remember exactly who
10 told me that, but --

11 MR. OLANOFF: Thank you.

12 Thank you, Your Honor.

13 THE COURT: Mr. Ryan.

14 MR. RYAN: Thank you.

15 **RE CROSS EXAMINATION BY MR. RYAN**

16 Q. Sergeant, you testified that you were told that
17 chemists would use Manila envelopes to take paperwork to
18 court?

19 A. Yes.

20 Q. And that was the explanation that why Sonja Farak would
21 of had these Manila envelopes in her trunk, dating back
22 2008, 2009 cases?

23 A. Well, no. I was also that told they recycled envelopes
24 and that's why the case numbers were crossed out on the
25 tops.

1 Q. Well, did you later learn that Sonja Farak had never
2 been to court in any of the cases where there were these
3 Manila envelopes?

4 A. Yes.

5 Q. Okay. Now, I'm going to show you -- you testified as
6 to when you made these deliveries, and you said it was
7 pretty quickly after her arrest, but you couldn't recall a
8 date?

9 A. Yes.

10 Q. If I show you this, what's previously been marked as
11 Exhibit 165, does that refresh your recollection as to
12 approximately when you delivered these packets?

13 A. Yes. It says on March 27, and that sounds about right.

14 Q. So this --

15 THE COURT: March 27 of?

16 THE WITNESS: 2013, Your Honor.

17 THE COURT: Thank you.

18 Q. (By Mr. Ryan) So this would have been over two months
19 after Sonja Farak's arrest, correct?

20 A. Yes.

21 Q. Okay. Now, I'm showing you -- Judge Carey asked you
22 some questions or maybe Mr. Caldwell did, about where in the
23 discovery particular items came from.

24 Could you take a look at where I flagged, put little
25 stickies and compare them to 205 and see if we got the right

1 location as being the right place of origin of these?

2 And, just for the record, I'm having you look at
3 Exhibit 222 right now.

4 A. (Witness complying)

5 Q. Does 222 contain three of what -- pages of what you
6 attached to Exhibit 205?

7 I just want to match them up with --

8 A. Yes, three of the items.

9 Q. I hate to be wandering around you here, but maybe I can
10 help with just lineups, so if you go to that first one
11 that's been Bates stamp number 000502.

12 Is that a ServiceNet Diary Card?

13 A. Yes.

14 Q. That appears in your attached email as AGOFRK001816?

15 A. Okay. I don't know what number that is, but that was
16 one of the attachments that I sent, yes.

17 Q. Okay. Just so we can identify them.

18 And then, if you take a look at this Emotion Regulation
19 Worksheet, 000506, does that match up with this Emotion
20 Regulation Worksheet which is AGOFRK001815?

21 A. Yes.

22 Q. And then the last item there, Bates stamp 000504, does
23 that match up with AGOFRK001817?

24 A. Yes.

25 Q. If we were to look at the evidence tag at the beginning

1 of this, this would have been a box that -- the collection
2 officer was Robert Irwin, correct?

3 A. Yes.

4 Q. And this would have been Item Number 006, correct?

5 A. Yes.

6 Q. Now, were there a number of other items that were
7 attached to this email that you sent that were located in
8 Item Number 11, that the collection officer was you, and I
9 have it right here before you.

10 A. Yes.

11 Q. Why don't you take a look --

12 MR. RYAN: And if the Court finds this helpful, I don't
13 know --

14 THE COURT: Your representation would be what?

15 MR. RYAN: That the -- these items were taken from --

16 THE COURT: Yes.

17 MR. RYAN: -- separate envelopes. They weren't all
18 together in one envelope.

19 THE COURT: But they were in one of the three assorted
20 lab paperwork envelopes?

21 MR. RYAN: Yes, two of the three.

22 THE COURT: All right. And that's not contested?

23 MR. CALDWELL: No. No, Your Honor.

24 MR. RYAN: Okay.

25 THE COURT: All right. Point taken.

1 THE WITNESS: That seems to confirm my memory that it
2 was scattered throughout multiple envelopes and mixed in
3 with all of the other lab paperwork.

4 Q. (By Mr. Ryan) Now, as you spread out all of these
5 documents at the Attorney General's Office in Springfield,
6 did you -- you'd agree with me that some of the assorted lab
7 paperwork was actual lab paperwork, correct?

8 A. Actually, a majority of it, yes.

9 Q. And was there -- did you recall seeing any graphs with
10 squiggly lines on it?

11 A. Yes.

12 Q. Did you know what any of that meant?

13 A. I assumed that those were some type of lab tests.

14 Q. Do you have any training in forensic drug analysis?

15 A. No.

16 Q. Like me, were you absent the day that they taught
17 chemistry in high school?

18 A. I got probably a B, but.

19 Q. Okay. Did you ever have anybody take a look at any of
20 this actual lab paperwork that was found in the trunk of
21 Sonja Farak's car?

22 A. No.

23 Q. On the topic of having people take a look at it, I'd
24 like to put up on the board the number of people, as case
25 officer, that you know actually looked in that box, Bankers

1 Box, that -- with documents and other materials taken from
2 Sonja Farak's car.

3 So fair to say you did?

4 A. Yes.

5 Q. Fair to say I did?

6 A. Yes.

7 Q. Anybody else?

8 A. Obviously Major Irwin and Trooper Randy Thomas.

9 Q. Well, in terms of looking through the box, the way you
10 did at the Attorney General's Office after you spread it all
11 on a table, not just pulling it out of the car, actually
12 looking, going through this in a controlled environment, not
13 seizing it. Did anybody besides you and me, to your
14 knowledge, ever go through that box?

15 A. Prior to you, at one point the prosecutors said that
16 they wanted to see the evidence and I had to deliver all of
17 the evidence to Boston, and I don't know what date that
18 happened, but it was before you looked at it.

19 Q. It was after Sonja Farak pled guilty, wasn't it?

20 A. I'm not sure.

21 Q. It was because it was a Public Records Request in the
22 Spring of 2014 that you took that box and you met with
23 Patrick Devlin in the Ashburton Place with that material,
24 wasn't it?

25 A. My meeting with Patrick Devlin was I brought my case

1 file, I don't believe that's when I brought the evidence.

2 Q. Did Anne Kaczmarek ever go through this box, to your
3 knowledge?

4 A. I don't recall her doing that.

5 Q. Did anybody else from the Attorney General's Office
6 ever go through that box?

7 A. As I said, when I delivered it to Boston other people
8 looked through it. I'm not sure who.

9 THE COURT: Is there a photograph of this evidence? Of
10 the, you know, the whole shooting match.

11 MR. RYAN: We'd asked the Attorney General's Office to
12 provide it with the idea of introducing it as an exhibit. I
13 understand, from Mr. Caldwell, it can't come in as an
14 exhibit. I would still love to have it here. I don't know
15 what the -- why we haven't been able to get it, but I
16 believe it still exists.

17 THE COURT: Okay. If we can get it, that would be
18 grand.

19 MR. RYAN: Okay.

20 Q. (By Mr. Ryan) I just want to show -- does this refresh
21 your recollection as to when you brought boxes to Boston,
22 when there was a request to look at them?

23 MR. RYAN: I apologize. I should have shown this to
24 Counsel.

25 Q. (By Mr. Ryan) I apologize to you for yanking it out of

1 your face.

2 In June of 2014, did you get an email from Patrick
3 Devlin saying you needed to transfer the evidence boxes down
4 here?

5 A. I don't see my name on here.

6 I don't believe it was sent to me.

7 (Pause)

8 Q. (By Mr. Ryan) Evan Breeding is one of the people who
9 works in your office?

10 A. Yes.

11 Q. Okay. Possible that he brought the evidence down?

12 A. Yes, it's possible.

13 MR. RYAN: I don't have any further questions for the
14 witness.

15 THE COURT: Okay.

16 MR. CALDWELL: Very briefly, Your Honor.

17 THE COURT: Okay.

18 **RECROSS EXAMINATION BY MR. CALDWELL**

19 Q. Sergeant Ballou, just to clarify, when you -- when you
20 amassed all of the evidence -- let me step back.

21 When you were looking at all of this evidence preparing
22 for Grand Jury --

23 A. Yes.

24 Q. Yeah, you collect what you, in your training and
25 experience as a law enforcement officer, you collect, and

1 segregate what you think are the most important items for
2 later review by the prosecution?

3 A. Yes.

4 Q. And it's fair to say, at a certain point, you deliver
5 everything to the prosecution, correct?

6 A. Yes.

7 Q. And it's their job to do further evaluation, in their
8 experience as prosecutors of what -- of that evidence and
9 what should be used in Grand Jury, and what shouldn't be
10 used, and what they think should be admissible for trial,
11 and what should not be admissible for trial, correct?

12 A. There was a lot of time spent deciding to send things
13 off for drug testing, whether any -- there was a lot of
14 discussion about, you know, what to prioritize and things
15 like that.

16 Q. Now, in terms of that forensic paperwork you had
17 mentioned just a moment ago, that's for the -- that's fair
18 to say that's for the prosecutor to review and make a
19 determination of the value of that paper, not you, correct?

20 A. Correct.

21 Q. You're not a forensic scientist, correct?

22 A. Right.

23 Q. You've never tested drugs, correct?

24 A. No.

25 Q. That's for the Assistant Attorney General, the

1 prosecutor, to determine, correct?

2 A. Yes.

3 Q. Now, Mr. Ryan, had sent you an email and he had
4 discussed about bringing boxes to the Attorney General's
5 Office, and that was conversation that, I think you had with
6 Assistant Attorney General Patrick Devlin?

7 A. Yes.

8 Q. Now, that is well after the Farak prosecution and plea,
9 correct?

10 A. Yes.

11 Q. That was in the Summer of 2014, correct?

12 A. According to that email, that sounds right, yes.

13 Q. And, if you know, at a certain point Attorney Ryan did
14 come to the Attorney General's Office, correct?

15 A. I'm sorry, who came?

16 Q. Attorney Ryan came to the Attorney General's Office?

17 A. Yes.

18 Q. If you know, that was around November?

19 A. I thought it was the Fall of 2014.

20 Q. Okay. Fair enough, Fall of 2014. And, if you know,
21 did Attorney Ryan have a complete opportunity to review all
22 of the files at the AG's Office?

23 A. I wasn't present, but I talked to Lieutenant Michael
24 O'Hearn and he said that they did.

25 Q. They did?

1 A. Yes.

2 Q. And that was with Assistant District Attorney General
3 Patrick Devlin?

4 A. Yes.

5 Q. And he facilitated that process?

6 A. Yes.

7 MR. CALDWELL: Okay. Thank you very much. I have
8 nothing further.

9 **RE CROSS EXAMINATION BY MR. RYAN**

10 Q. Just to correct something.

11 Should I also put Elaine Pourinski's name and Sonja
12 Farak's name up on that board of people who went through
13 that box?

14 A. If you'd like.

15 Q. Well, did they go through and -- for the sake of being
16 accurate, were they also made privy and had a chance to go
17 through this box?

18 A. Yes.

19 Q. Okay. And these are all -- and you said Patrick Devlin
20 went through the box too?

21 A. After the trial or after the plea.

22 MR. RYAN: Okay. No further questions.

23 THE COURT: All set?

24 MR. RYAN: I have nothing further, Your Honor. Thank
25 you.

1 THE COURT: Thank you, Sergeant. You may step down.

2 THE WITNESS: Thank you, Your Honor.

3 THE COURT: You may call your next witness.

4 MR. CALDWELL: Rebecca Pontes.

5 (Rebecca Pontes, sworn)

6 THE CLERK: Thank you. You may take the stand.

7 THE COURT: When you're ready.

8 MR. RYAN: Thank you, Your Honor.

9 If I could just take a moment.

10 THE COURT: Sure.

11 (Rebecca Pontes, sworn)

12 DIRECT EXAMINATION BY MR. RYAN

13 Q. Good morning.

14 A. Good morning.

15 Q. If you could state your name and spell your last name
16 for the record.

17 A. Rebecca Pontes, P-O-N-T-E-S.

18 Q. And, Ms. Pontes, what's your maiden maim?

19 A. My maiden name is LaFleur.

20 Q. And were you Rebecca LaFleur when you started working
21 at the Amherst Drug Lab?

22 A. Yes.

23 Q. Now, you previously testified at a Grand Jury this past
24 February, correct?

25 A. I believe it was November/December.

1 Q. Well, did you go down to Boston for a proceeding where
2 Mr. Caldwell asked you some questions about the time you
3 worked at the Amherst Drug Lab?

4 A. Yes.

5 Q. If I told you that was on February 4, 2016, any reason
6 to doubt that?

7 A. No.

8 Q. Now, during that testimony, did you have occasion to
9 tell Mr. Caldwell about an incident at the Amherst Drug Lab
10 where your supervisor, Jim Hanchett, had had a conversation
11 with you and Sonja Farak about some missing or lower than
12 expected standards; do you recall that?

13 A. Yes.

14 Q. And I believe you said at the time, that when you were
15 confronted with this information that there was some
16 standards that were lower than expected you were shocked?

17 A. Yes.

18 Q. And just for the sake of clarify, these would of been
19 the standards that your lab had that came from
20 pharmaceutical companies?

21 A. Yes.

22 Q. Now, did you have any occasion before that,
23 February 2016 Grand Jury appearance with Attorney Caldwell,
24 to tell anybody, investigators, about this experience that
25 you deemed somewhat shocking?

1 A. No.

2 Q. And why hadn't you talked to anybody about that?

3 A. No one questioned me on those standards.

4 Q. Now, I was hoping you could take a look at some
5 assorted lab paperwork that was seized from the car of Sonja
6 Farak on the night of her arrest.

7 And I'm going to start with what's been Bates stamped
8 number 000505. And can you see that, the screen from there?

9 A. Yes.

10 Q. Is this a -- well, what is this?

11 A. It looks like a blank.

12 Q. Is this a representation of some instrumental testing
13 that was done at the Amherst Drug Laboratory?

14 A. Yes.

15 Q. And was that done back on June 22 of 2011?

16 A. According to that date, yes.

17 Q. And at the time does it say the operator was SJF?

18 A. Yes.

19 Q. And that was Sonja Farak's initials?

20 A. The file says SJF yes; operator, yes.

21 Q. Now, this blank that is before you, is there anything
22 unusual about it?

23 A. It's quite a bit of peaks in there.

24 Q. Now, when you ran a blank through the machine, would
25 you get any peaks at all?

1 A. There would be some peaks, low abundance peaks, or what
2 you would call noise.

3 Q. This wasn't noise though, was it?

4 A. Some of it's noise and some of it are peaks.

5 Q. And do any of the peaks, in terms of their retention
6 time, look familiar to you as to what that might be?

7 A. No.

8 Q. Does any of them look like they have a retention time
9 that's kind of familiar or similar to cocaine?

10 A. Around the three minutes -- to my memory.

11 Q. Now, this testing was done at 12:36 on this date of
12 June 22; is that correct?

13 A. Yes.

14 Q. So just keeping that in mind, if I were to open up
15 another document here, it's been previously marked, Bates
16 stamp 000542, is this another, a spectra for that blank
17 sample reflecting the peak two?

18 A. Yes.

19 Q. And does it appear as though this blank sample
20 contained a substance that the computer's best guess was
21 cocaine?

22 A. Yes.

23 Q. Is this an example of what, in your profession, is
24 known as carryover?

25 A. Possibly, yes.

1 Q. So, preceding this sample, it would have been standard
2 practice to run a cocaine/heroin mixture to just make sure
3 that the machine was performing properly, correct?

4 A. Correct.

5 Q. And then you would run a blank to make sure that
6 nothing from the prior vial was continuing to remain in the
7 column thereby contaminating future testing, correct?

8 A. That's one of the reasons, yes.

9 Q. So, this is an example of why it's important to run
10 blanks, correct?

11 A. Correct.

12 Q. Now, if I could turn your attention to what's
13 previously marked 000485, is (sic) this reflect testing of
14 one of those cocaine/heroin standards on November 29, 2011
15 at 9:06 p.m.?

16 A. Yes.

17 Q. And, again, would Sonja Farak have been the operator?

18 A. Yes.

19 Q. And this cocaine/heroin standard, is there anything
20 unusual about what you're noticing right there?

21 A. There's an extra peak in the middle.

22 Q. And what do you mean by there being "an extra peak"?

23 A. Usually these standards that we used only contained
24 cocaine and heroin, sometimes they would contain
25 adulterants.

1 Q. And they would contain adulterants, because the cocaine
2 and heroin standard that you would use would have been
3 things you skimmed from police samples?

4 MS. JOHNSTON: Objection, Your Honor.

5 THE COURT: Basis of the objection?

6 (Pause)

7 MS. JOHNSTON: I guess I'll withdraw.

8 THE COURT: Okay.

9 THE WITNESS: I didn't make the -- they would call them
10 secondary standards and that would be used from samples that
11 were previously tested and confirmed to be cocaine or
12 heroin.

13 Q. (By Mr. Ryan) And they would have been submitted by
14 police departments, and you would have tested them, and it
15 would have come back positive for cocaine or heroin and then
16 your supervisor would use some leftovers from them to create
17 what then became the lab standard for future casework,
18 correct?

19 A. Correct.

20 Q. And sometimes your supervisor wasn't successful in
21 getting out the adulterants, correct?

22 A. Yes.

23 Q. So this would be an occasion where he just wasn't
24 successful in purifying what your lab standard was, correct?

25 A. Possibly, yes.

1 Q. I ask you to take a look now at what's been previously
2 marked 000550.

3 Is (sic) this reflect testing done by Sonja Farak, the
4 next day, November 30, 2011, of cocaine/heroin standard?

5 A. It looks to be, yes.

6 Q. Anything noteworthy about this data?

7 A. It looks similar to the previous one, but the peaks are
8 not -- they weren't underlined to give the retention time.

9 Q. And that would be true for any of them, correct?

10 A. I'm sorry?

11 Q. Well, does the document say that it didn't detect any
12 peaks?

13 A. Yes.

14 Q. But just looking at the graph, you'd agree there's some
15 peak there that you would of have expected to have been
16 detected, correct?

17 A. Yes. Sometimes the retention time moves a little bit,
18 depending on if there's any work done on the instrument.

19 If the column was cut, then the library wouldn't detect
20 those peaks at the exact retention time as the initial
21 standard.

22 Q. So this was something that had been run as the lab
23 standard, the cocaine/heroin standard, correct?

24 A. Yes.

25 Q. And it looks, again, like it was an impure

1 cocaine/heroin standard because there are those peaks there,
2 right?

3 A. Correct.

4 Q. But there was something -- I guess you are going to
5 have to explain it to me that the instrument itself didn't
6 record any of the retention times or didn't say the right
7 peaks. Is that a failing on the part of the instrument or
8 the analyst?

9 A. Neither. Sometimes you would have to go in and
10 manually underline the peaks, and have the computer verify
11 what those peaks are and give you a retention time that may
12 be a little different than the standard.

13 Q. So, I guess what I'm understanding is it's pretty
14 important, the job of an analyst, to be attune to the
15 machine. You don't just load these in an autosampler and
16 press a button and know what you've got there, correct?

17 A. Correct.

18 Q. I draw your attention to what's previously been marked
19 000511. Does this reflect testing done by Sonja Farak on
20 December 6, 2011 at 6:39 p.m.?

21 A. Yes.

22 Q. Now, this has -- it's the second vial and that was the
23 vial where you would typically run a blank, correct?

24 A. Correct.

25 Q. And in this case, the machine came back and it

1 indicated that there were two peaks there, right?

2 A. Yes.

3 Q. But, in your professional opinion, those weren't real
4 peaks, were they?

5 A. No.

6 Q. That's just some noise, correct?

7 A. Yes.

8 Q. So this is a case where the previous one where there
9 were actual peaks, and the machine didn't, for whatever
10 reason, detect them; this is one where there are no peaks
11 and the machine is saying there are peaks; is that accurate?

12 A. Yes.

13 Q. Now, these machines could be programmed to run a series
14 of samples, correct?

15 A. Yes.

16 Q. And, what you would do is you would put all your
17 samples in different vials and you'd load them onto the
18 machine, and then the machine would do the work of analyzing
19 each of the sample vials, correct?

20 A. Correct.

21 Q. How many samples -- how many different vial holders
22 were there in an autosampler?

23 A. I want to say six, but I'm not 100 percent sure.

24 Q. In any event, these vials would be programmed and you
25 would have -- you would expect them to give each vial a

1 chance to have all of the components in it, have about ten
2 minutes to go through the column; is that correct?

3 A. Yes.

4 Q. And so on the bottom of this graph here, you have --
5 that's a time graph, and I don't know whether that's the X
6 or the Y axis. Do you know whether it's X or Y?

7 A. It's an X axis.

8 Q. So on the X axis, it's zero minutes to ten minutes,
9 correct?

10 A. Yes.

11 Q. And so all of the -- when you would -- would you
12 sometimes load up this machine, and then leave for the day
13 and let it run at night?

14 A. Yes.

15 Q. Now, I'm showing you -- and turn your attention to
16 what's previously been marked at 000501, does this reflect
17 testing that Sonja Farak did on or -- on December 23, 2011
18 at 11:08 in the morning?

19 A. Yes.

20 Q. And, incidentally, are you aware, in 2016, now whether
21 there was any evidence that Sonja Farak actually used drugs
22 at work on December 23, 2011?

23 A. Yes.

24 Q. So that was one of the days she actually admitted in a
25 diary sheet that she used drugs at work, correct?

1 A. I don't know if that was the exact date, but to my
2 knowledge, I just read what was in the papers.

3 Q. Okay. Now, on this particular day, when she ran a
4 sample from West Springfield A11-04118, anything unusual
5 about the peak that she got there?

6 A. Which one?

7 Q. Well, first of all, with the machine, did the machine
8 only record one peak?

9 A. It looks like it, yes.

10 Q. Does it look like there are more than one peaks?

11 A. Yes.

12 Q. And the one peak that it recorded, how long was that
13 sample in the machine?

14 A. Twenty-two minutes.

15 Q. That's kind of unusual, isn't it?

16 A. Depends on what you're analyzing for.

17 Q. Well, the machine is typically set up to do every ten
18 or 12 minutes, go vial, vial, vial, correct?

19 A. For cocaine or heroin, also marijuana, but if you have
20 certain tablets, they need longer run times. So, for
21 example, Buprenorphine would need a 30 minute run in order
22 to detect the peak that you were looking for.

23 Q. Well, if you have a sample, and you don't know what it
24 is, and just have it as, it's a powder, and you just put it
25 through the machine and you haven't programmed it correctly,

1 is it possible that something that takes that long to run
2 through the machine could end up in a couple of different
3 runs?

4 A. Possibly, yes.

5 Q. Showing you now what's been previously marked as
6 000688. Is this a sample that it indicates you actually did
7 the testing of a cocaine/heroin standard on November 12,
8 2009?

9 A. Yes.

10 Q. Is there anything unusual about the results of this
11 testing?

12 A. No peaks were detected.

13 Q. Why would that be unusual?

14 A. Something probably happened with the instrument.

15 Q. And so, you would of expected, if this is the
16 cocaine/heroin standard, to see a peak for cocaine and a
17 peak for heroin, correct?

18 A. Correct.

19 Q. Does that look a lot like the graph you would expect if
20 you would run a blank sample through?

21 A. Sometimes.

22 Q. Is it possible that this had been mislabeled and the --
23 and the blank sample was actually run in the vial location
24 where the controlled cocaine/heroin standard was supposed to
25 be?

1 A. It's possible, but I don't think -- I would of -- I
2 would of caught that.

3 Q. Well, are you sure that you were the one who did this
4 just because RMP is on the -- this document?

5 A. Knowing what I know now, it's possible it wasn't me.

6 Q. You know now that Sonja Farak was actually using your
7 password and was in the computer in ways she shouldn't have
8 been, correct?

9 A. Correct.

10 Q. Showing you what's been marked as 000690, this again
11 says RMP, and just to sequentially get us oriented here, the
12 one before was November 12 at 10:51 in the morning, and this
13 000690 was a reading of vial number two, same day at 11:04
14 in the morning; is that correct?

15 A. What was the first one?

16 Q. 10:51.

17 And that was about the usual interval between vials,
18 correct?

19 A. Yes.

20 Q. Looking at the readings for this blank sample, anything
21 unusual about this blank sample?

22 A. There's a peak in the blank sample.

23 Q. And, did the machine detect the peak or underline the
24 peak in the blank sample?

25 A. No.

1 Q. And, again, would there be an error on the part of the
2 machine or the analyst, or do you know?

3 A. It looks like the abundance is really low, so the
4 detection level was probably not met for the instrument.

5 Q. But just looking at the graph, you agree that that's a
6 peak?

7 A. Yes.

8 Q. And it's a peak in what is supposed to be a blank,
9 correct?

10 A. Yes.

11 Q. Now, if you can take a look at what's previously marked
12 as 000692, this is -- again, it's your initials up there but
13 we don't necessarily, you don't know whether you did the
14 testing for A09-4018 sitting here today, do you?

15 A. No.

16 Q. This was vial number three, same date, testing at 11:17
17 in the morning, correct?

18 A. Yes.

19 Q. And anything unusual about the data generated for this
20 sample?

21 A. There's three peaks in the sample that aren't detected.

22 Q. Again the machine, for whatever reason, isn't
23 underlining or registering peaks that appear visible on the
24 graph?

25 A. Correct.

1 Q. And if we can just go back, this was vial number three,
2 would have been A09-4018, correct?

3 A. Yes.

4 Q. Now, when you would give assigned batches of samples,
5 they would be assigned usually in a sequential order,
6 correct?

7 A. Correct.

8 Q. So if you were expecting vial number four to show up,
9 what would you expect the sample number would be if that's
10 the sample number of vial number three?

11 A. It depends what the next sample number was, if it was
12 marijuana, it wouldn't be sequential.

13 Q. How many marijuana -- what's a maximum you would get
14 for a batch?

15 A. Probably 20.

16 Q. Okay. So if you had run vial number three and it was
17 4818, and then you got 19 marijuanas and then another one,
18 you ran through the machine, you'd agree you would be
19 somewhere up around 4038, correct?

20 A. Yes.

21 Q. Does this reflect that vial number five for this batch
22 was A09-4054?

23 A. Yes.

24 Q. And that's a pretty big jump, isn't it?

25 A. Yes.

1 Q. And, again, this shows peaks in the sample that the
2 machine has not registered?

3 A. Correct.

4 Q. Does it appear to you that this machine may have been
5 malfunctioning in some way that day?

6 A. It doesn't appear so, just with the first initial
7 standard that you showed, but this looks normal.

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

9 THE COURT: Mr. Olanoff.

10 MR. OLANOFF: Thank you.

11 **CROSS EXAMINATION BY MR. OLANOFF**

12 Q. Did you sit across from Sonja Farak in the lab for
13 eight years?

14 A. Yes.

15 Q. And you were at the same table, actually, correct?

16 A. In the lab, yes.

17 Q. And you were just a mere couple feet away from her
18 every day, correct?

19 A. Yes.

20 Q. At any point did you suspect that she was under the
21 influence of drugs during those eight years?

22 A. No.

23 Q. At any point, did you suspect that she was stealing any
24 of the samples, any of the, excuse me, the standards --

25 A. No.

1 Q. -- that you used at the lab?

2 A. No.

3 Q. At any point, did you suspect that she was taking any
4 of the drug samples that had been assigned to you at the
5 lab?

6 A. No.

7 Q. And you and Ms. Farak shared a temporary storage
8 locker, correct?

9 A. Yes.

10 Q. And that's where you would store evidence overnight if
11 you weren't done testing it by -- at the end of the day,
12 correct?

13 A. Correct.

14 Q. And those samples were typically left opened, correct?

15 A. Some were, some were not.

16 Q. And at any point during your eight years there, did you
17 suspect that Sonja Farak was taking drug samples from the
18 storage locker that you shared?

19 A. No.

20 Q. What about the main evidence locker?

21 A. That she was stealing from there?

22 Q. Yeah.

23 A. No.

24 Q. Now, you are a still a chemist to this day, correct?

25 A. Yes.

1 Q. For the Massachusetts State Police, correct?

2 A. Correct.

3 Q. And you -- so you've had how many years of experience
4 as a forensic chemist?

5 A. Almost 12 years.

6 Q. And you know now what Sonja Farak is not just accused
7 of doing, but actually did at the lab, correct?

8 A. Yes.

9 Q. In your experience, as a trained and forensic chemist,
10 how do you think that that was able to go on undetected for
11 eight years?

12 A. She didn't do it in front of me.

13 MR. OLANOFF: Thank you.

14 I don't have anything further.

15 THE COURT: Ms. Johnston.

16 MS. JOHNSTON: Thank you, Your Honor.

17 **CROSS EXAMINATION BY MS. JOHNSTON**

18 Q. Have you seen any of these documents that have been run
19 through over the past 10/15 minutes prior today?

20 A. No. In the laboratory, if it was mine.

21 Q. If it was yours; but in terms of the specific
22 documents, especially the ones with Sonja's initials on
23 them, you've never seen them?

24 A. No.

25 Q. And while you're clearly able to walk us through them

1 today, can you put them in context without seeing the rest
2 of the batch -- what was run, what was the whole sort of
3 whole context of what went on on any of those given days?

4 A. No, not really.

5 Q. So Attorney Ryan is asking you about peaks, peaks being
6 detected, carryover, noise. Explain some of those things
7 and how, in your normal process, if you ran a batch from
8 start to finish, as an analyst, how all those things would
9 come to play, what you would notice?

10 A. In my daily routine, it was to get a batch together,
11 run a standard coke/heroin standard, a blank, and then a
12 batch of samples. If anything looked not right to me,
13 whether it was a standard that didn't -- wasn't detected or
14 a blank that seemed dirty, but with an abundance that was
15 sufficient enough to call, just raise a red flag, then I
16 would either run another blank or sometimes the instrument
17 would be down, sometimes a syringe needed to be changed,
18 certain maintenance needed to happen, so that would be
19 performed.

20 So it's hard to say if that was done on these
21 particular days.

22 Q. Okay. And so, in your training and experience, all the
23 things that you may be able to quickly pick up on without
24 ever seeing these documents, obviously, as you're working in
25 the lab every day, you would be in tune with all of those

1 issues that you've been able to point out for the court
2 today?

3 A. I believe so, yes.

4 Q. And, in your training and experience, as you were
5 seeing these things, a blank with peaks, what would you do?

6 A. It depends on what I saw, if there was a peak, but the
7 abundance was low, it detected it as cocaine. Sometimes it
8 would just -- I don't -- in my mind, it wouldn't affect the
9 samples following unless there was something that looked
10 similar to the blank.

11 Q. Okay. And what about some of these, where there are
12 peaks, but the computer is not picking up on it.

13 A. Like I explained before, sometimes the retention times
14 were off just a little bit where the computer library
15 doesn't recognize that peak because they're looking for a
16 particular retention time.

17 Q. Okay. Now, when you say that the retention times are
18 coming from the contemporaneous standards that you're
19 running through which, typically, in this lab were secondary
20 standards, correct?

21 A. There was a library installed, I believe, by Jim
22 Hanchett that was run with a cocaine, a heroin standard.

23 Q. And these were primary standards that created that
24 library?

25 A. I believe so, but I'm not 100 percent sure.

1 Q. Okay. And isn't it true that the manufacturer also
2 installs a library, and that library is the same as here in
3 the United States, in Amherst, in Germany, in Brazil, that
4 that manufacturer's library that spectra doesn't change?

5 A. No, the spectra doesn't change.

6 Q. Okay. And sometimes when these peaks aren't being
7 detected, that can be the issue, that it's not matching back
8 to that manufacturer's library, correct?

9 A. I suppose so, yes.

10 Q. Now, in terms of your process, you were asked, is it
11 possible that Sonja could have somehow put your initials on
12 some of this paperwork, correct?

13 A. Correct.

14 Q. Now, walk me through -- so you come in for the day, you
15 don't have any work that day, so Sharon's going to assign a
16 batch to you, correct?

17 A. Yes.

18 Q. And Sharon knows, in her computer, and in her system,
19 what samples are being assigned to you, correct?

20 A. Yes.

21 Q. Okay. You now take those samples, you go to your work
22 bench, you do your work, you get everything ready, you send
23 it through the machine, you have to input everything into
24 the machine, correct?

25 A. Yes.

1 Q. Okay. And then you, let's say it runs overnight. You
2 come back in the morning, you get all your graphs, you have
3 your bench lab notes, correct? You take all that stuff, you
4 now fill in that worksheet manually, by hand, correct?

5 A. Yes.

6 Q. You give it back to Sharon, she enters it into the
7 computer, correct?

8 A. Yes.

9 Q. And when she's doing that, fair to say that she's going
10 to be checking sample numbers she gave you, let's say the
11 day before, now with what you're bringing back to her?

12 A. Yes.

13 Q. Okay. And she's then going to take that spreadsheet,
14 turn it into a typed spreadsheet, correct?

15 A. Yes.

16 Q. She's going to give that back to you, and with your
17 certificates of analysis, you're going to then sign them
18 and, again, check that all those sample numbers line up,
19 correct?

20 A. Correct.

21 Q. That's going to then go back to her for notary,
22 correct?

23 A. Correct.

24 Q. Then it's going to go back in the safe and eventually
25 Springfield's going to come and pick it up and they're going

1 to check the sample numbers, correct?

2 A. Correct.

3 Q. So fair to say, there's a certain amount of checks and
4 balances between you and Sharon or a particular chemist and
5 Sharon in terms of what sample numbers are working their way
6 around the lab, correct?

7 A. Yes, as far as I --

8 Q. Okay. So Attorney Ryan asked you if it's possible she
9 could of put your name on that sheet, but given that system
10 that was going on in the lab, do you think that's a real
11 probability?

12 A. As far as the initials go, those can be manually
13 entered without a password.

14 Q. Okay.

15 A. So --

16 Q. But do the sample numbers correspond?

17 A. Sample numbers would correspond to what was assigned to
18 me and what I'm returning.

19 Q. So would you, either you or Sharon notice if it wasn't
20 your initials on the paper?

21 A. I have noticed before that Sonja's initials were on
22 mine --

23 Q. Okay.

24 A. As a operator --

25 Q. Yes.

1 A. -- we each had our own file, I believe.

2 Q. Okay.

3 A. But Sharon wouldn't see those papers, so that would be
4 something I would have to observe.

5 Q. Okay. And when you did that, what did you do?

6 A. Usually, if I noticed it, I would cross it out and
7 initial.

8 Q. That it was yours.

9 A. You couldn't go back and change it.

10 Q. Okay. As you sit here today, are you sure when you
11 were doing that, they were your actual lab results?

12 A. Yes.

13 Q. And how are you sure of that?

14 A. Because that's what I entered into the instruments and
15 also had my sheet with me.

16 Q. Your bench notes?

17 A. Yes.

18 MS. JOHNSTON: Okay. May I approach, Your Honor?

19 Q. (By Ms. Johnston) This is not an exhibit yet.

20 If you can just flip through that, let me know if
21 that's a series of documents that you recognize.

22 A. (Witness complying)

23 Yes.

24 Q. Okay. What is that packet, as a whole, in your best
25 description?

1 A. Contains the batch sheets, the ones that Sharon
2 generated, the ones that I finished after running my
3 samples. It also is a chain of custody from when the
4 samples were received and returned, assigned to myself and
5 returned back to Sharon, and there's a sample pickup
6 receipt.

7 There's also, like, a cover sheet of the testing that I
8 did the results --

9 Q. Okay.

10 A. -- from a particular batch.

11 Q. Okay. So fair to say, this process that you and I just
12 walked through, from when you would get a batch from Sharon
13 to when those drugs would eventually go back to Springfield
14 or whatever submitting agency, is contained sort of there in
15 paperwork form?

16 A. Yes.

17 Q. Okay.

18 MS. JOHNSTON: All right. Your Honor, I would like to
19 admit this.

20 MR. RYAN: I haven't seen it yet.

21 MS. JOHNSTON: I apologize.

22 MR. RYAN: That's okay.

23 (Off the record discussion between counsel.)

24 THE COURT: Okay. May be marked.

25 MS. JOHNSTON: Okay.

1 THE CLERK: Marked as Number 237.

2 (Exhibit No. 237, miscellaneous worksheets from the lab
3 (11 pages), marked)

4 Q. (By Ms. Johnston) Now, Rebecca, did you go to court
5 ever?

6 A. For what?

7 Q. To testify.

8 A. Yes.

9 Q. To -- let me ask the question better. Sorry, bad
10 question.

11 Did you come to various courts in the counties that
12 your lab serviced, to give testimony in criminal cases as a
13 chemist who analyzed drugs in those cases?

14 A. Yes.

15 Q. How many times do you think you might have done that?

16 A. Thirty to 50 times maybe.

17 Q. Okay. And how did you bring, or what did you bring to
18 court when you would go?

19 A. I would just bring my notes, the -- my written notes.

20 Q. Okay.

21 A. Maybe the cover sheet and also the batch sheet
22 possibly.

23 Q. Okay. Did you, as the analyst, bring the drugs to lab?

24 A. No.

25 Q. Or to court?

1 A. No.

2 Q. Who brought the drugs to court?

3 A. The police department, I believe.

4 Q. Okay. So the drugs had gone back to the police
5 department, they are going to bring those, you are just
6 coming with your analytical paperwork, correct?

7 A. Yes.

8 Q. Okay. I'm going to show you some photographs. These
9 are contained within Exhibit 8.

10 They are -- what are these photos of, just generally?

11 A. Manila envelopes.

12 Q. Okay. Do you recognize those Manila envelopes, not
13 particularly, but what they are?

14 A. Just Manila envelopes with the lab numbers on them.

15 Q. Okay. Did you ever have occasion to use Manila
16 envelopes like this in the lab?

17 A. Yes, I think so.

18 Q. Okay. And what would you use them for?

19 A. Maybe to send out a discovery packet.

20 Q. Okay. Did you ever keep drugs in Manila envelopes like
21 this?

22 A. No.

23 Q. Okay. Now, were you present for the friendly audit in
24 July of 2012, or at first the friendly visit and then the
25 audit, I guess, later that Fall from Mass. State Police

1 after they took over the lab in July 2012?

2 A. I think so, yes.

3 Q. Okay. And do you remember, were the other employees of
4 the lab there, Jim, Sonja, and Sharon?

5 A. I'm sure Jim and Sharon were, I'm not sure about Sonja.

6 Q. Okay. Did you have a chance, at any point, to meet
7 with people, talk with people, members of Mass. State Police
8 to talk about what was going on in the lab, your processes,
9 moving towards accreditation?

10 A. Yes.

11 Q. Okay. What were their main concerns as you understood
12 them in terms of the Mass. State Police takeover and where
13 your lab was and where you were to be headed?

14 A. There was a few things that we needed to do right away
15 in order to move forward that they had concerns on and much
16 more detailed changes that needed to be done to be
17 accredited.

18 Q. Okay. Fair so say it was mostly documentation and
19 paperwork?

20 A. There was -- yes, quality control documentation,
21 instrument maintenance, running blanks between samples, and
22 any discrepancies noted.

23 Q. Okay. And after that visit, did they shut your lab
24 down?

25 A. No.

1 Q. Okay. Was there an investigation into your lab after
2 that visit?

3 A. Not that I know of.

4 Q. Were any of your samples and your analysis called into
5 question after they visited?

6 A. No.

7 Q. Okay. And fair to say, the lab wasn't shut down until
8 they realized what was going on with Sonja, correct?

9 A. Correct.

10 Q. Now, you are still employed by the Mass. State Police,
11 correct?

12 A. Correct.

13 Q. And you've never been investigated by the Mass. State
14 Police, correct?

15 A. Not that I know of.

16 Q. Okay. And to this day, no one called into question,
17 besides being here, in court, the reliability of your
18 testing, correct?

19 A. No.

20 Q. Okay. And Sharon still works within the system of
21 Mass. State Police as well, correct?

22 A. Yes.

23 Q. And Jim retired?

24 A. Yes.

25 Q. Okay. And given what you know today, as you sit here,

1 do you have reason to question the reliability of testing
2 that you did at the lab over those ten years that you were
3 there?

4 A. No.

5 Q. Why do you say that?

6 A. At the time I believed what we were doing was correct.
7 That's the way I was trained. We were following basic
8 guidelines and I had no other reason to believe that we were
9 doing anything wrong.

10 Q. Okay. And knowing what you know about what Sonja Farak
11 was doing at the lab, do you have questions about the
12 reliability of your testing and your analysis?

13 A. It depends, I guess.

14 Q. What does that mean?

15 A. Because I know she may have tampered with certain
16 things. I don't think it resulted in my testing being
17 affected.

18 Q. Okay. But potentially your samples?

19 A. Correct.

20 Q. Before or after the fact?

21 A. Either.

22 Q. Okay. Now, let me ask you this, if she tampered with a
23 sample before your analysis, and knowing what you know about
24 her sort of process of what she was doing, would that effect
25 a defendant in a negative way or in a positive way do you

1 think?

2 A. I don't know.

3 Q. In other words, if she got into your sample ahead of
4 time, took some out and replaced it with counterfeit, how
5 would that affect a defendant's test result?

6 A. Depends how much she took. It could still register as
7 positive, there would be other adulterants in there that she
8 may have replaced. I don't think it would affect what I
9 ran.

10 Q. Okay. And if she took or got into one of your samples
11 after the fact, as we believe she did, obviously, based on
12 the evidence that you've heard and have found, how would
13 that affect the actual test that you ran?

14 A. It wouldn't.

15 Q. It would have no effect?

16 A. Correct.

17 Q. Attorney Ryan called what Jim was doing "skimming" to
18 make the secondary samples. Would you agree with that sort
19 of classification of what Jim was doing?

20 A. It sounds more like an illegal term to me.

21 Q. Okay. So do you have an understanding of how Jim was
22 making the secondary standards?

23 A. No.

24 Q. Now in terms of --

25 MS. JOHNSTON: If I could have just a moment?

1 THE COURT: Uh-huh.

2 (Pause)

3 Q. (By Ms. Johnston) If there was an -- and I think some
4 of these lab results show this. If there was some other
5 peak detected in a, in your heroin/cocaine standard -- in
6 other words if there was an adulterant or something there,
7 would that affect the reliability of your results?

8 A. No.

9 Q. Why not?

10 A. Because it would not change the results of the cocaine
11 and heroin.

12 Q. Okay. It might match to an adulterant in your sample
13 or not, correct?

14 A. It could, yes.

15 MS. JOHNSTON: Okay. Nothing further, Your Honor.

16 **QUESTIONS BY THE COURT**

17 THE COURT: Ms. Pontes, what's your educational
18 background?

19 THE WITNESS: I have a degree of biology from UMASS
20 Dartmouth.

21 THE COURT: And what did you do after school and prior
22 to starting in the Amherst Drug Lab?

23 THE WITNESS: I worked briefly at a veterinary clinic
24 and then I worked at an environmental lab, Rhode Island
25 Analytical and I also worked, briefly, at Quest Diagnostics.

1 THE COURT: Okay. And you indicated you've been a
2 forensic chemist for 12 years?

3 THE WITNESS: I was hired by the Massachusetts Public
4 Health in 2004.

5 THE COURT: And then you worked aside Sonja Farak for
6 eight years?

7 THE WITNESS: Yes.

8 THE COURT: And how -- literally, how far apart were
9 you from each other?

10 THE WITNESS: Her bench was across from mine, so if you
11 put two of the desks together, then we would probably be
12 like diagonal across from that width.

13 THE COURT: What was she like?

14 THE WITNESS: She was odd, but very smart.

15 THE COURT: When you say "odd" what's the basis of that
16 conclusion?

17 THE WITNESS: There was always one thing that she did
18 that kind of aggravated me a little bit, where she would
19 finish my sentences while I'm speaking, so -- but she wasn't
20 very talkative, and she kept to herself mostly.

21 THE COURT: And so, what's your opinion of her skills
22 as an analyst?

23 THE WITNESS: I always thought she was very meticulous
24 in her work.

25 THE COURT: Now, there's some testimony about blanks,

1 right, and so, educate me. You test a substance, right?

2 THE WITNESS: Uh-huh.

3 THE COURT: And you get the result, whatever it is.

4 Now, before you test the next substance, do you run a blank
5 to clear the chamber or to make sure there's no -- nothing
6 is going to contaminate the second test from the first test?

7 Just educate me as to what the custom was.

8 THE WITNESS: We didn't do that until the State Police
9 took us over.

10 THE COURT: Yup.

11 THE WITNESS: But between each samples, the syringe is
12 rinsed with methanol or solvent or ethanol.

13 THE COURT: Differentiate for me what you did after the
14 State Police and before the State Police?

15 THE WITNESS: Before the State Police, we would run a
16 standard, a blank, and then a series of unknowns, samples.

17 THE COURT: This is before the State Police you did
18 that process?

19 THE WITNESS: Yes.

20 THE COURT: Okay.

21 THE WITNESS: Then after the State Police, it was a
22 standard, and then a blank, a sample, and then a blank, and
23 then a sample, and then a blank, and continue on.

24 THE COURT: So the distinction is they had you do it
25 twice and you only did it once, is that --

1 THE WITNESS: They had us do it in between samples.

2 THE COURT: Okay.

3 THE WITNESS: Unknown samples, where we did not do that
4 previous.

5 THE COURT: Okay. And when would you do it? I'm still
6 not clear when you were doing them, and they insisted you do
7 it differently.

8 THE WITNESS: They insisted we do it differently when
9 they took us over in July 2012.

10 When they came in to, basically, see the lab and see
11 how we were operating, that was one of the things they
12 changed almost immediately.

13 THE COURT: Uh-huh. And what -- based on the way you
14 explained it, you did it before the State Police made that
15 change, what's your degree of comfort as to the reliability
16 of your results as an analyst?

17 THE WITNESS: I'm comfortable in the reliability.

18 When you're talking about carryover in such a small
19 amount compared to what would be in an actual sample, that,
20 in my opinion, it wouldn't affect the results of an unknown
21 unless that unknown was such a small abundance that it
22 looked like the blank, then maybe that would question it.
23 But most samples, to my knowledge, that came back positive
24 cocaine, were a very high abundance peak.

25 THE COURT: Okay. And who was the head honcho for the

1 State Police? Who was kind of calling the shots during this
2 friendly visit and friendly audit? Who was saying you got
3 to change this, this, and this?

4 THE WITNESS: There was a few of them. I don't know
5 who was making the decisions, but there was Nancy Brooks
6 that came through, Kathleen Morison who was in QC, and I'm
7 not sure who else.

8 THE COURT: Okay. All right.

9 All set.

10 MR. RYAN: Just one quick follow-up.

11 THE COURT: Okay.

12 **REDIRECT EXAMINATION BY MR. RYAN**

13 Q. So I'm showing you what's been marked as Exhibit 237
14 here. Page -- it says page one. This reflects testing that
15 you did on April 25, 2012?

16 A. Yes.

17 Q. So on this occasion, you ran the standard through and
18 you got two readings; one for cocaine and one for heroin,
19 correct?

20 A. Correct.

21 Q. And then you ran a series of about 23 or so consecutive
22 samples before running another blank, correct?

23 A. It looks like -- you want me to count?

24 Q. Well, I did; if you want to double check.

25 A. It's okay.

1 Q. So just to answer the Judge's question, once the State
2 Police took over, you would have run in between every, all
3 these sequence of 23, there would have been sample, blank,
4 sample, blank, sample, blank, sample, blank, sample, blank,
5 et cetera, correct?

6 A. Correct.

7 Q. And in this case, you ran 23 in a row without running a
8 blank, correct?

9 A. Correct.

10 **(QUESTIONS BY THE COURT)**

11 THE COURT: Okay. Now, why does that seems
12 inconsistent with what you just told me? So can you just
13 clarify?

14 THE WITNESS: That was previous to when the State
15 Police took us over. That was in April of 2012.

16 THE COURT: Okay.

17 THE WITNESS: The State Police took us over in July of
18 2012.

19 THE COURT: I thought you said before the State Police
20 took you over, you do a sample, a blank, and a sample, but
21 when they took you over you do two blanks in between the
22 samples?

23 THE WITNESS: No.

24 THE COURT: So clarify that.

25 THE WITNESS: Sorry. What he said is correct. We did

1 a standard -- before the State Police took us over, we did a
2 standard, one blank, and then a series of unknown samples.

3 THE COURT: Yes.

4 THE WITNESS: And when the State Police took us over,
5 it would be a standard, one blank, an unknown, then a blank,
6 an unknown, then a blank.

7 THE COURT: Okay. And so, prior to the State Police,
8 what would trigger you, if anything, to do another blank
9 once you've done the initial blank on the machine?

10 THE WITNESS: If the blank looks suspicious, then I may
11 run another blank. If I had a really long batch, like that
12 was a very long batch, so usually, I would run a blank, an
13 extra blank. If I had 20 or so samples; maybe at the end of
14 the 20, if I had another 10 to 15 samples I would run a
15 blank. (Indicating)

16 Just to see, make sure that it's okay.

17 THE COURT: You've already answered this. Let me just
18 ask you again.

19 That -- given, in this instance, for instance, that you
20 ran 23 samples without a blank, your level of confidence in
21 the result is based on what, without doing any blanks within
22 those 23 samples?

23 THE WITNESS: On the mass spectra that I received per
24 those samples.

25 THE COURT: Okay. Thank you, Ms. Pontes, you may step

1 down.

2 We will take the morning recess.

3 (The Court exited at 11:11 a.m.)

4 (* * * * *)

5 (The Court entered at 11:46 a.m.)

6 (The defendant was present with an interpreter.)

7 THE COURT: This is like a jury trial. I received a
8 note from the Clerk: Judge, before the break, can you
9 address counsel regarding scheduling issue of the expert?

10 MS. JOHNSTON: Yes. Commonwealth retained an expert,
11 Your Honor. We have given notice and we gave notice, I
12 believe of last week of this expert.

13 We had secured him to be here Thursday afternoon,
14 tomorrow afternoon. We were hoping that the Court would
15 carve out time for that. The schedule obviously has been
16 shifted. I would say it really wasn't shifted with any
17 consultation with the DA's Office. I think shifting was
18 done between the defense and AG's Office without keeping in
19 mind that the Commonwealth was hoping to make that
20 presentation of evidence through the DA's Office. So we're
21 requesting of the Court that we carve out an hour of
22 tomorrow afternoon for the Commonwealth's expert.

23 THE COURT: Okay.

24 MR. RYAN: We're not going to object. I mean, I think
25 there are a lot of moving parts here, so we are hoping it's

1 going to be an hour and not more.

2 We've moved a witness from today until tomorrow, not
3 knowing about this; but I understand both sides are doing
4 the best they can to manage a lot of different schedules,
5 so --

6 THE COURT: Okay. Well, why don't we -- you want to --
7 give you a half hour for direct, and half an hour for cross?

8 MS. JOHNSTON: That's fine, Your Honor.

9 THE COURT: And that's what we will do.

10 MS. JOHNSTON: Thank you.

11 THE COURT: Next witness.

12 MR. RYAN: Edward Bedrosian.

13 THE COURT: Okay.

14 (Edward Bedrosian, Jr., sworn)

15 THE CLERK: Thank you. Please take the stand.

16 THE COURT: Mr. Ryan.

17 **(Edward Bedrosian, Jr.)**

18 **DIRECT EXAMINATION BY MR. RYAN**

19 Q. Good morning.

20 A. Good morning.

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

23 A. Sure. My name is, excuse me, Edward, last name
24 Bedrosian, B-E-D-R-O-S-I-A-N and it's Junior.

25 Q. Now, did you work as a First Assistant Attorney General

1 for the Commonwealth of Massachusetts?

2 A. Yes, sir.

3 Q. And when -- how long did you hold that position?

4 A. I held the First Assistant's position from December of
5 2009 until June, July-ish of 2014.

6 Q. So I'd like to talk about -- begin by talking about
7 some work you did in that capacity, in January of 2013.

8 Do you recall on January 18, 2013 getting notification
9 there had been a report of some evidence tampering at the
10 Massachusetts State Police Drug Lab in Amherst?

11 A. I don't know if I could remember the date, quite
12 frankly, even the year, but I do remember the event.

13 Q. Who's Dean Mazzone?

14 A. Dean Mazzone was an Assistant Attorney General who
15 worked in the Criminal Bureau.

16 Q. And back in January of 2013 was he Chief of the
17 Enterprise and Major Crimes Unit?

18 A. I believe that is correct, sir.

19 Q. Okay. I will show you an email.

20 A. Thank you.

21 Q. Having looked at that, did Dean Mazzone ask you whether
22 you were up on Amherst, on the evening of January 18, 2013?

23 A. According to this document, there was an email to that
24 effect.

25 Q. And do you recall learning about the allegations in --

1 within hours or at least within a day or so of the initial
2 report?

3 A. I assume I did. I just can't remember the sequence
4 right now.

5 Q. Now, do you recall, at any point, getting -- well, why
6 don't we just get the chain of command here.

7 As First Assistant Attorney General, you reported to
8 Martha Coakley?

9 A. I did.

10 Q. And who -- was Sheila Calkins below you as the Deputy
11 Attorney General back in this time period?

12 A. I would say, technically, the First Assistant was the
13 first among equals. There was a couple Chief Deputy
14 Attorney Generals, Sheila being one of them.

15 So we would -- I wouldn't say she worked for me, I'd
16 say we worked together.

17 Q. That's helpful. Thank you.

18 Who else would have been on that sort of plane within
19 the hierarchy of the office?

20 A. If I have my time frames correct, Chris Barry-Smith was
21 a Deputy Attorney General. I think he was in that position
22 at that time. Kevin Conroy had been a Deputy Attorney
23 General. He might have left the office by that point.

24 Then we had bureau chiefs.

25 Q. And was John Verner one of the Bureau Chiefs?

1 A. Yes, sir.

2 Q. Was he Chief of the Criminal Bureau?

3 A. Yes, sir.

4 Q. And do you recall getting some emails from John Verner,
5 in the early morning hours, reporting on a search of Sonja
6 Farak's car?

7 A. I don't know if I have a present memory that I got
8 emails. I suspect that's true.

9 Q. Would it be helpful to look at some emails as I ask you
10 questions to refresh your recollection?

11 A. I can't guarantee you will refresh my recollection, but
12 yes, sir.

13 Q. Okay. Now, was it customary for you to participate in
14 high-profile cases with drafting press releases?

15 A. I don't think I drafted press releases. We had a
16 communications office, but certainly the communications
17 office would ask that they'd be reviewed by myself or other
18 members involved in whatever subject matter was going on.

19 Q. Right. So by "participate" you might review it before
20 it would go out, correct?

21 A. Yes, sir.

22 Q. And who's Brad Puffer, was he in the communication
23 department at that time?

24 A. He was.

25 Q. I'm going to show you an email from Brad Puffer and ask

1 you to take a look down here. The one that was sent at 4:59
2 on Saturday -- yes, January 19 of 2013. Is this an email
3 about a Farak press release?

4 A. Give me one second.

5 (Pause)

6 THE WITNESS: Yes, I believe.

7 Q. (By Mr. Ryan) Now, was there a discussion, or if you
8 could, just take a look at that email, the body of the email
9 that Brad Puffer sent you.

10 In the fourth paragraph, does he state: We'll also
11 want to hint at motivation, but this can be done on
12 background or off record as discussed. Additional charges
13 would make that easier to explain.

14 My question to you is when he used, "as discussed", did
15 you understand what he was -- that he was referring to an
16 earlier discussion?

17 A. I don't have an independent memory of this email, so I
18 couldn't answer that.

19 Q. Do you have an independent memory of ever discussing
20 what Sonja Farak's motivation may have been for her criminal
21 behavior?

22 A. At what point?

23 Q. At this early juncture.

24 A. I do not.

25 Q. By this point in January of 2013, am I correct, that

1 the Annie Dookhan case had been one that your office had
2 been prosecuting for several months by that point?

3 A. That's correct, sir.

4 Q. And by this point, had your office developed some
5 theories as to what her motivation for her criminal behavior
6 was?

7 A. I don't -- when you say "developed" theories I think we
8 understood what we believed the evidence proved.

9 Q. And did you believe the evidence proved that she was
10 motivated to test an extraordinary number of samples for
11 professional reasons?

12 MS. WEST: Objection.

13 Your Honor, again, this particular witness is going to
14 go to the very issue that you raised on Monday. I think it
15 would be beneficial to the Court, and particularly the
16 record, to hear the history from the witness himself.

17 THE COURT: You can answer the question, if you feel
18 you can.

19 THE WITNESS: I'm sorry, if you could just repeat it.

20 MR. RYAN: Could the stenographer repeat that question,
21 I don't think it was a leading one, but maybe it was.

22 (The requested material was read back by the
23 stenographer.)

24 (Pause)

25 THE WITNESS: Yeah, my memory was she -- there was a

1 theory that was professional and had personal/professional
2 answer.

3 Q. (By Mr. Ryan) And could I have you take a look at the
4 draft of the press release that's before you?

5 A. Is there any particular part?

6 Q. Yes, this, the third paragraph. Is that a draft of a
7 quote that might be used for Attorney General Coakley?

8 A. Yes, it is.

9 Q. And could you read into the record the two sentences,
10 the first that begins: We allege.

11 A. We allege this chemist violated that trust, placed in
12 the integrity of that evidence and the question we are just
13 now beginning to process of determining her motivation, the
14 extent of the problem.

15 Q. Now, that sentence that talks about a process to
16 determine the extent of the problem, what steps did you know
17 that had been taken at that time to do that?

18 A. I believe we were engaged in a criminal investigation
19 of her conduct.

20 Q. And is the problem that's refenced there, the placing
21 of the integrity of evidence into question?

22 A. I'm sorry. Can you just clarify that?

23 Q. Sure. When it talks about the extent of the problem,
24 is the extent of the problem the integrity of evidence
25 that's been placed into question?

1 A. I don't know.

2 Q. Okay. Do you know what steps your office had planned
3 to take to determine the extent of the problem?

4 A. I believe we're engaged in a criminal investigation of
5 Miss Farak.

6 Q. And did you, at that point, have any sort of working
7 hypothesis what the extent testify problem was?

8 A. When you say, "at that point" what point are we talking
9 about, sir?

10 Q. When -- the Saturday afternoon when you -- this press
11 release draft was, early evening, provided to you?

12 A. No.

13 Q. Okay. Are you familiar with something called a
14 prosecution memo?

15 A. Yes.

16 Q. I'd like to show you one that's been previously marked
17 for Identification as D, and is in evidence as Exhibit 163.

18 Could you take a second to review this.

19 A. Yes.

20 Q. And I'm going to ask you -- I guess the first question
21 I'm going to ask you is if you've ever seen it before.

22 A. (Witness complying)

23 I'm sorry. The question was?

24 Q. Before me giving it to you right now, have you ever
25 seen that document before?

1 A. I have seen it in preparation for today.

2 Q. Just so we're clear, is there a cover page on that
3 document?

4 A. I have two of the documents, but yes, there is a cover
5 page.

6 Q. And is your name listed on the cover page?

7 A. It is listed and crossed out.

8 Q. Right. And so, whose name is to the right of the cross
9 out of your name?

10 A. Sheila Calkins.

11 Q. And so, is -- within the office, would prosecution
12 memos be drafted by line prosecutors?

13 A. Yes, sir.

14 Q. And then would they be submitted for approval
15 pre-indictment?

16 A. Yes, sir.

17 Q. And would the level of review typically, but not in all
18 cases, end up including a review by you?

19 A. In -- not in all cases; no, sir.

20 Q. But, in the ordinary course of doing the work of a
21 First Assistant, do you have occasion to review and approve
22 a number of prosecution memos?

23 A. Yes, sir.

24 Q. But as you sit here today, having seen your name
25 crossed out, you've indicated you looked at it in

1 preparation for today, but do you have any independent
2 memory of ever reviewing it prior to then?

3 A. I do not, sir.

4 Q. Is it possible you did?

5 A. Anything's possible.

6 Q. Now, at some point or another, did you become aware
7 that your office had gone forward and indicted Sonja Farak?

8 A. Yes, sir.

9 Q. And after indicting Sonja Farak, did you learn that a
10 number of defendants who had cases where she had signed drug
11 certificate, had begun seeking relief related to her alleged
12 misconduct?

13 A. I don't have an independent memory, but of course that
14 sound rational, but I don't have an independent memory.

15 Q. Is this something that had happened in the, after Annie
16 Dookhan had been charged and indicted?

17 A. Yes, sir.

18 Q. And is it fair to say you have a better memory of the
19 Annie Dookhan case than the Sonja Farak case?

20 A. Boy, all these things happened awhile ago. Maybe the
21 Annie Dookhan case was the first, unfortunately, that there
22 are things that stick out in my memory clear because we had
23 to develop a process to how to sort of deal with all this,
24 so some of those things might stick out clear.

25 Q. Now, in your office, were there any protocols in place

1 for cases where a suspect or a defendant would be offering a
2 proffer?

3 A. Well, you would have to -- usually, the defense counsel
4 would want a letter or some type of affirmation about the
5 scope of the proffer.

6 Q. And maybe we can just start at the beginning. What's
7 your understanding of a proffer?

8 A. A proffer is where a criminal defendant and/or suspect
9 would come in to give information on a subject matter under
10 terms at which the information they used couldn't be used
11 against them.

12 Q. And was there some level of review in your office in
13 place that if a line prosecutor had a defendant who said,
14 Hey, I want to give a proffer, would that line prosecutor
15 have to get supervision from either the unit or the bureau
16 division or the whole office?

17 A. The bureau chief had authority to approve proffers, but
18 on occasion would alert me about a proffer.

19 Q. And, in this case, did John Verner alert you about a
20 potential proffer of Sonja Farak?

21 A. I have no memory of that.

22 Q. I'm going to show you an email and perhaps --

23 MR. RYAN: Well, I'm going to ask it be marked for
24 Identification.

25 THE COURT: Okay.

1 THE CLERK: Marked as E for Identification.

2 (Exhibit E, email from AAG Kaczmarek to AAG Verner,
3 (10/2/13), marked for Identification)

4 Q. (By Mr. Ryan) I'm going to show you what's been marked
5 as E for Identification. If you could take a minute and see
6 if this might refresh your recollection as to whether or not
7 you have any involvement in a Sonja Farak proffer offer.

8 A. It does not refresh my memory.

9 Q. Okay. And so, do you know who Mark Reilly is?

10 A. I do.

11 Q. And who -- let's -- what role did Mark Reilly have back
12 in January of 2013, if you know?

13 A. Well, Mark was at some point Governor's Legal Counsel.
14 I just don't remember the dates he served in that role. He
15 was also Deputy Legal Counsel I think under Mo Cowan when Mo
16 served as legal counsel. So I just don't remember if he was
17 Governor's Legal Counsel on that particular -- 2013.

18 Q. Now, in January of -- I'm going to be showing you an
19 email that you sent, that you sent back on January 20, 2013,
20 where at 9:31 a.m. where you wrote: Notifications of
21 Western DAs, MDAA, and Gov.'s legal done.

22 And you got a response back from Sheila Calkins: All
23 or do I need to do any.

24 With a subject matter heading of: Farak Press Release.

25 Would Mark Reilly have been the Governor's Legal

1 Counsel that you had reached out to?

2 A. I don't know -- if he was Governor's Legal Counsel,
3 which I suspect is just a fact at that point, he would have
4 been the person.

5 Q. And what would have been the notification that you
6 would have provided?

7 A. We might have -- I think I was notifying them of the
8 existence of this issue. I don't know if I would of sent
9 them a copy of the press release.

10 Q. And with respect to notification of the issue, what
11 sort of information did you provide to Governor's Legal
12 Counsel? Do you know what the MDAA is?

13 A. Mass. District Attorneys Association.

14 Q. And the Western DAs would have been the Northwestern DA
15 and Hampden and Berkshire DAs?

16 A. I think maybe those of us who live in Eastern Mass.
17 often think of Worcester as Western Mass. even though it
18 isn't. It might have also been the DA of Worcester County
19 also.

20 Q. Well, did Worcester have its own drug laboratory?

21 A. I don't know. I think -- I think in an abundance of
22 caution, I don't know if I knew, at that point, who went to
23 Amherst and who didn't go to Amherst, so just trying to be
24 over inclusive. And I'm suspecting. I don't know for sure,
25 I'm suspecting.

1 Q. Do you recall a press conference that happened on
2 Sunday morning, January 20, day after Sonja Farak's arrest?

3 A. I don't.

4 A Sunday morning press conference?

5 Q. Yeah.

6 A. I don't.

7 Q. Showing you another email, is this an email that you
8 received from a person named Corey Welford?

9 A. I was one of the recipients yes.

10 Q. And did -- who is Corey Welford at that time? What
11 role in your office did he have?

12 A. At that point, I think he was head of communications.
13 He did take on the role of Chief of Staff at some point, but
14 I don't know exactly when.

15 Q. And did Corey Welford forward you an article from the
16 State House news service about the Amherst Lab shut down?

17 A. Yes. I was one of the people he forwarded it to.

18 Q. And did you -- well -- strike that.

19 If I could just --

20 MR. RYAN: Could I have this next email get an exhibit
21 number?

22 THE COURT: I'm having a hard time seeing relevance.
23 Tell me where you're headed. Specifics.

24 MR. RYAN: Well, you're going to -- the article that's
25 featured in this they email contains quotes from the

1 Governor and a statement from the Attorney General
2 essentially saying, this is a very small problem, and that
3 there's no need to do any review of the Amherst Lab because
4 the people who were running the lab detected this problem.

5 And one of the issues that I think we tried to work out
6 through stipulation and that I'm going to be asking this
7 witness about is whether or not the Inspector General's
8 Office got involved. So this is some context for a question
9 that I will eventually pose as to whether or not the
10 Inspectors General's Office was asked by Ms. Coakley's
11 Office to conduct an investigation of the Amherst Drug Lab.

12 THE COURT: So what if it was, if it wasn't, as to the
13 allegation that there was, I suppose, the reckless or
14 intentional misconduct -- I'm just having a hard time.

15 MR. RYAN: Well, we're here in these cases partly
16 because the Supreme Judicial Court found that the Attorney
17 General's Office conducted a cursory investigation.

18 THE COURT: All right.

19 MR. RYAN: And it's our theory that the cursoriness of
20 this investigation went beyond just not turning over these
21 discrete items here, but there was an -- some calculated
22 decisions made to keep things very, very small and to not
23 look in places that could of unearthed a much bigger scandal
24 than the one that was, ended being prosecuted.

25 THE COURT: I'm still -- I guess, assuming that to be

1 the case, and that there was a cursory investigation, and
2 that, not remedy, but the result of that, was the SJC saying
3 you know, go off and do a thorough investigation, which
4 resulted in Mr. Caldwell's investigation and report and so
5 forth.

6 I mean isn't that a separate and discrete issue from
7 the issue of seeking to have these cases dismissed because
8 of prosecutorial misconduct?

9 I am kind of free flowing here, but there's a number of
10 issues. This was sloppy. And this was sloppy. And this
11 person should have known X and Y. And isn't there a quantum
12 leap from that to prosecutorial misconduct, such that cases
13 should be dismissed?

14 MR. RYAN: Here's what I would have to say, and I am a
15 trial attorney, you are a trial judge, you are the center of
16 my universe here. But these cases here -- I'm also lead
17 counsel or one of lead counsel for, appointed by Judge
18 Kinder for Farak defendants. We now don't know the exact
19 number of them, but there could be about 10,000 or so. And
20 so this is our shot to make a record, and there are certain
21 questions that I can tell Your Honor doesn't deem as
22 important or fitting into the bigger picture, but if I don't
23 ask them, if I have emails in my possession, if I don't have
24 a witness here and pose them, and try to get some greater
25 understanding about choices that were made within the

1 office, I can guarantee in a couple of years from now I'm
2 going to be getting calls from defense counsel in federal
3 cases and other cases saying, Why didn't you explore this.
4 And so I'm -- I would just ask for some latitude. I
5 understand, I don't want to try the Court's patience. I'll
6 try to get to the issues that I know the Court is interested
7 in, but that's what's going on here. We are trying to make
8 a record. We are trying to get to the bottom of a scandal
9 that, unfortunately, no one got to the bottom of back in
10 2013.

11 THE COURT: Okay. Well, I don't -- I don't have any
12 problem with giving you some leeway, but I guess I will
13 leave you with this. I've got to decide the case that's in
14 front of me.

15 MR. RYAN: I get it.

16 THE COURT: Okay.

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

19 THE COURT: Are you asking that be marked?

20 MR. RYAN: I am asking that be may be marked.

21 THE COURT: May be marked.

22 THE CLERK: Marked as Number 238.

23 (Exhibit No. 238, email from Welford to AAG Bedrosian
24 (1/22/13), marked)

25 Q. (By Mr. Ryan) Now, Mr. Bedrosian, I do want to ask you

1 a couple questions about the Dookhan investigation.

2 At some point, after her misconduct came to light, but
3 before she was arrested, did Governor Patrick ask your
4 office to do an independent investigation, not just of
5 Ms. Dookhan, but of the misconduct of the entire lab?

6 A. My -- I don't know exactly when, but yes, the Governor
7 did make that request.

8 Q. Did you write a letter dated September 20, 2012 to
9 District Attorney Joseph Early and Chief Counsel of
10 Committee for Public Counsel Services, outlining that
11 request, that had been made by the Governor as well as what
12 you're intended response was?

13 A. If you have a document you can show me, it might help
14 refresh my memory.

15 Q. Sure.

16 A. Thank you.

17 (Pause)

18 THE WITNESS: Yes, sir.

19 Q. (By Mr. Ryan) And in that letter, did you say your
20 office had agreed to conduct a broader review of the Drug
21 Analysis Unit at the Hinton Laboratory?

22 A. Yes, sir.

23 Q. In the letter, did you state: Our review is focused on
24 whether any failures at the laboratory impacted the
25 reliability, the results on cases beyond those handled

1 directly by the chemist?

2 A. Yes, sir.

3 Q. And the chemist would have been Annie Dookhan?

4 A. Yes, sir.

5 Q. Now, when you referred to failures at the laboratory,
6 were you referring to systemic failures in the handling and
7 testing of alleged narcotics?

8 A. I suspect that was part of it, sir.

9 Q. And by this point, had any such failures been
10 identified?

11 A. I don't -- at this particular point when I wrote the
12 letter?

13 Q. Yeah.

14 A. I don't have an independent memory, if they had been
15 identified.

16 Q. Well, is that why the Governor asked you to do that
17 investigation because of such failures had been identified?

18 A. I can't speak for the Governor. I would assume there
19 were -- obviously, there was a lot of press around this.

20 Q. And in the letter, did you advise that: Determining
21 the impact of any systemic failures is critically important
22 to persons previously charged and convicted of crimes, in
23 part, based on the scientific results from the Hinton Drug
24 Laboratory?

25 A. Yes.

1 Q. And in the wake of sending that letter, did you end up
2 in communication with Mark Reilly about a plan to do this
3 investigation?

4 A. Again, if you have a document that might help me.

5 MR. RYAN: Your Honor, I would ask this letter be
6 marked as the next exhibit.

7 THE COURT: May be marked.

8 THE CLERK: Marked as Number 239.

9 (Exhibit No. 239, letter to DA's/CPCS from AAG
10 Bedrosian (9/20/12), marked)

11 THE WITNESS: Could you repeat your question?

12 Q. (By Mr. Ryan) Sure. Is that a memo or draft of a memo
13 from you to Mark Reilly?

14 A. Yes.

15 Q. And is there an October 20, 2012 date on it?

16 A. Yes, sir.

17 Q. And does this memo lay out what the plan was for your
18 office to conduct this investigation beyond the criminal
19 investigation of Annie Dookhan?

20 A. That's part of it, yes.

21 Q. And that middle paragraph, does that lay out the
22 resources your office was preparing to devote to this
23 endeavor?

24 A. It does.

25 Q. And when I say "preparing", your office never really

1 ended up going very far with this because the Inspector
2 General's Office came in and took over this top to bottom
3 review of the lab, correct?

4 A. Well, we put a lot, but -- this just may be a
5 paragraph, but the resources that we put into planning this,
6 trying to hire experts, thinking about it "probably" isn't
7 accurately reflected here, but a put a lot --

8 Q. Sure. Absolutely. You devoted many weeks to coming up
9 with a very systematic plan to do this work, correct?

10 A. Correct.

11 Q. And you were prepared to give three Assistant Attorney
12 Generals nothing but this assignment, correct?

13 A. Correct.

14 Q. And support staff and paralegals, correct?

15 A. Correct.

16 Q. You were prepared to retain outside forensic experts
17 to, in administration and forensic science, all to look at
18 the Hinton Lab, correct?

19 A. Yes, sir.

20 MR. RYAN: Okay. I'd ask that this be admitted as the
21 next exhibit.

22 THE COURT: May be marked.

23 THE CLERK: Marked as Number 240.

24 (Exhibit No. 240, memo to M. Reilly from AAG Bedrosian
25 10/20/12), marked)

1 THE COURT: Lois, can I see the next two exhibits.

2 THE CLERK: Sure.

3 Q. (By Mr. Ryan) Showing you another email dated
4 January 29, 2013, from John Verner, to you and Sheila
5 Calkins and other recipients. Can you just take a second to
6 review that?

7 A. Sure.

8 (Pause)

9 THE WITNESS: Okay.

10 Q. (By Mr. Ryan) Now, in this email, did they come with
11 some attachments, according to the cover of the email?

12 A. According to the cover, it did come with attachments.

13 Q. And did John Verner ask to talk about what he had
14 attached as exhibits to this email?

15 A. That's what the email says.

16 Q. And did he indicate that a quality assurance audit had
17 recently been done of the Amherst Lab?

18 A. I --

19 Q. Why don't do we just read it in, if you want: MSP got
20 a FOIA request, correct?

21 What does that say?

22 A. It says: MSP got a FOIA request for quality assurance
23 audit that was done when they took over Amherst, reports
24 related to transition and the audit done in October.

25 Keep going?

1 Q. Yeah, if you just finish it.

2 A. I have thoughts that will only take two minutes, maybe
3 right before or right after the 2:45.

4 Q. So, do you have any recollection of speaking with John
5 Verner about the results of this audit of the Amherst Drug
6 Lab?

7 A. I do not.

8 Q. At any point, was there any conversation that you
9 remember about devoting similar resources to investigating
10 the, any deficiencies that might exist at the Amherst
11 Laboratory?

12 A. I think there was discussions up front.

13 Q. And what were those discussions?

14 A. Discussions up front were based on what happened in the
15 Dookhan case and the defense bar. And when I say "defense
16 bar" I mean CPCS, ACLU -- they're separate, not quite the
17 defense bar -- and Max Stern, deciding that the Attorney
18 General's Office didn't have the impartiality in the Dookhan
19 case to do the investigation. The investigation needed to
20 be above reproach, that a similar -- similar tact would be
21 taken in this case.

22 Q. So, in order to avoid any appearance of a conflict of
23 interest, your office didn't feel like you could conduct an
24 independent investigation of the entire lab; is that
25 correct?

1 A. Well, so, with the caveat with the criminal
2 investigation --

3 Q. Right.

4 A. -- obviously, was focused on the scope of misconduct,
5 criminal misconduct by Ms. Farak, which, hopefully, would
6 have identified the scope of her misconduct at the lab. But
7 the broader issues about whether there were systemic
8 problems, quote, you made me read about the Dookhan case, I
9 think we thought the same issues applied, the same concerns
10 the defense bar raised in Dookhan applied in this case.

11 Q. So at that point, did you or anyone from your office
12 turn to the Inspector General or the Governor and ask that
13 some independent entity investigate any potential systemic
14 failures at the Amherst Drug Lab?

15 A. So my memory is that we alerted the administration and
16 the DAs to say we were in the same position, that,
17 unfortunately, anything we would of done would of been
18 suspect.

19 Q. So --

20 A. But that we were -- we were, in our criminal case,
21 obviously, striving to identify the scope of misconduct by
22 Ms. Farak.

23 Q. So in a sense, the criminal case could become a proxy
24 for learning more about any larger problems at the lab?

25 A. I don't know if I could necessarily -- as far as Ms.

1 Farak went.

2 Q. Okay. Now, when you say you alerted the
3 administration, you alerted the Patrick administration?

4 A. Yes.

5 Q. And you alerted the DAs?

6 A. Yes -- well, I don't know if I did directly. I might
7 have been.

8 I did not -- we were attending the -- their monthly MDA
9 meetings where all the DAs got together and often
10 Ms. Calkins attended those.

11 Q. And, to your knowledge, nobody from your office reached
12 out independently to the Inspector General's Office,
13 correct?

14 A. I don't know that. I mean, we had a good relationship
15 with the Inspector General. Could there have been
16 conversations about this; I don't know.

17 I have talked to the Inspector General, but I don't
18 have an independent memory.

19 Q. Have you ever tried talking to the Inspector General?

20 (Pause)

21 Q. (By Mr. Ryan) I will withdraw the question.

22 In any event, you personally don't have any
23 recollection of making a request of the Inspector General of
24 doing an investigation into the Amherst Drug Lab; is that
25 fair to say?

1 A. I do not have an independent recollection, sir.

2 MR. RYAN: Could I just have a moment?

3 And I guess I'd ask that this email be marked as the
4 next exhibit.

5 THE COURT: Okay.

6 THE CLERK: Marked as Number 241.

7 (Exhibit No. 241, email from AAG Verner to AAG
8 Bedrosian, (1/29/13), marked)

9 (Off the record discussion among Counsel.)

10 MR. RYAN: No further questions.

11 MS. WEST: Thank you, Your Honor.

12 THE COURT: Ms. West.

13 **CROSS EXAMINATION BY MS. WEST**

14 Q. Good afternoon.

15 A. Good afternoon.

16 Is there any chance I could get a little more water?

17 THE COURT: Sure.

18 Q. (By Ms. West) Sir, you indicated you were a First
19 Assistant beginning in December 2009, right?

20 A. First Assistant at that point, right.

21 Q. Prior to that, what was your job?

22 A. I was the Deputy First Assistant from January of 2007
23 until that time 2009.

24 Q. And prior to 2007, where were you?

25 A. I was in Middlesex District Attorney's Office from, oh

1 God, approximately 1991 until 2007.

2 Q. And what sort of cases did you deal with at Middlesex?

3 A. Oh, boy. Everything. I started in District Court. I
4 advanced to Superior Court Lowell for six years. I took
5 over the Special Investigations Unit that handled organized
6 crime, white collar, everything that didn't really fit
7 anywhere else.

8 I ended up being a Deputy DA in charge of Superior
9 Court toward the end in about 2006. So I tried pretty much
10 everything except child abuse.

11 Q. And you left the AG's Office in Summer of 2014?

12 A. Yeah, June, July.

13 Q. And where'd you go?

14 A. I became of counsel at a New York law firm, Orrick,
15 Harrington & Sutcliffe for about 18 months.

16 Q. And after those 18 months, where did you go?

17 A. I am now the Executive Director of the Massachusetts
18 State Gaming Commission.

19 Q. So you were asked some questions under examination in
20 regard to the Dookhan investigation. When the Dookhan
21 investigation came in, you were the First Assistant, right?

22 A. I was.

23 Q. And who asked you to do the lab investigation of
24 Hinton?

25 A. Boy, I don't know if I have an independent memory.

1 Usually, someone from our Criminal Bureau would have gotten
2 the first notification. They would of come up and said, you
3 know, we've got a problem. And we would have rolled from
4 there.

5 Q. But at some point, did you come to an understanding the
6 Governor's Office wanted you to do an investigation of the
7 entire lab?

8 A. Oh, I'm sorry. I think I misunderstood the question.

9 Q. Talking about the lab itself.

10 A. Hinton, not Amherst. I apologize. Hinton, not
11 Amherst. It's been awhile.

12 Yes. The -- my memory is initially the Governor asked,
13 yes.

14 Q. And were there also -- was there also an interest from
15 the defense bar and the ACLU that you do that investigation?

16 A. Yes. They were -- they were initially pushing us to
17 expand our investigation beyond the criminal investigation
18 of Ms. Dookhan.

19 Q. And, in order to comply with the request, did you put
20 together a team of attorneys to do this?

21 A. We -- in that -- we put together a team of attorneys
22 and set up a Chinese wall because we want to avoid a
23 conflict that we would have folks doing the criminal
24 investigation separate from folks doing the lab
25 investigation, so we stayed out of our criminal bureau to

1 develop the resources to do that separate investigation.

2 Q. And that team included the head of your trial division?

3 A. Ms. Kazanjian, yes.

4 Q. And some other AAGs as well?

5 A. Yes.

6 Q. Did it also include support staff?

7 A. It did, and potentially contract help also.

8 Q. So you made some efforts to hire experts?

9 A. We did.

10 Q. And what about hiring a database company?

11 A. We did. There was, you know, there was an issue we
12 were going to have a lot of records and stuff to look at and
13 we really needed a way to keep track of them and digitize
14 them.

15 Q. And did you also engage with other attorneys like David
16 Meier and Marty Murphy in order to work as consultants for
17 the case?

18 A. Yes, we did. And at that point, I think David was also
19 being contracted potentially by the Governor's Office to
20 help identify the scope of the Dookhan cases.

21 Q. Did you have to go through some calculations to figure
22 out how much you --

23 You didn't drink.

24 A. Thank you.

25 Q. You went through some calculations to figure out how

1 much money this would all cost, didn't you?

2 A. We did.

3 Q. And you spent several weeks getting ready to do this
4 full investigation of the lab?

5 A. I just remember we put in -- it seems like we put in a
6 lot of time.

7 MS. WEST: Your Honor, may I approach?

8 THE COURT: Sure.

9 Q. (By Ms. West) I'm going to show you a document and
10 this is an email in which you were one of the authors, and
11 can you start at the very beginning.

12 It's dated October 5, 2002. It's during this period of
13 time, right?

14 A. It is.

15 Q. This email is from Max Stern, is he one of the defense
16 attorneys who was interested in the Attorney General's
17 Office doing this full investigation?

18 A. Max was.

19 Q. And he indicated to you, he was asking you where you're
20 heading on this, a week ago Ed indicated the decision was
21 imminent, but we heard nothing.

22 Does this give you a sense about how long you had been
23 having these discussions about the investigation?

24 A. Discussions with the defense folks?

25 Q. Yes.

1 A. Yeah. It went on for -- I mean, it was very important
2 for them. It went on for awhile.

3 Q. And who is Lisa Hewitt?

4 A. Lisa worked at CPCS and I apologize I forget exactly
5 what her job was.

6 Q. Was she one of the parties who was also involved in
7 these discussions?

8 A. Lisa was one of them, yes.

9 Q. And who is Marty Healy?

10 A. Marty Healy is still, I think, the head -- oh, boy.

11 Q. Is he head of MACDL?

12 A. No, Mass. Bar -- this is, like, a fact I should know.

13 Q. That's all right. Was he a defense attorney who was a
14 head of particular association?

15 A. I don't know if he was a defense attorney, per se, but
16 he was the head of an association; Mass., oh, boy, this is
17 embarrassing. I should know this.

18 Marty, I apologize.

19 Mass. Bar, you know, who represented a lot of defense
20 folks who had an interest in this. He was a very serious
21 stakeholder.

22 MS. WEST: Your Honor, may we admit this exhibit?

23 THE COURT: Yes, may be marked.

24 THE CLERK: Marked as Number 242.

25

1 (Exhibit No. 242, email from M. Healy to Hewitt cc:
2 AAG Bedrosian (10/5/12), marked)

3 Q. (By Ms. West) Now, as these conversations continue, at
4 some point toward the end of October, did you receive notice
5 from the Boston Globe that there was a letter that had been
6 written by a number of these same defense attorneys urging
7 you not to take on this investigation?

8 A. We did.

9 Q. So the first time you ever heard about that, where did
10 it come from?

11 A. It came from my press office.

12 Q. And what did they tell you?

13 A. That the Globe is calling about a letter that is being
14 circulated saying -- in this I'm summarizing, saying you're
15 not -- the AG's Office is not independent enough to
16 undertake the wider investigation.

17 And I refreshed my memory. Marty Healy is the Chief
18 Operating Officer, Legal Counsel of Mass. Bar Association.

19 Q. And were you surprised by this letter?

20 A. I was very surprised by this letter.

21 Q. Why were you surprised?

22 A. We had been working, you know, somewhat
23 collaboratively, although, I know they were frustrated at
24 the speed at trying to address their concerns about doing
25 the wider investigation. And I was just surprised it wasn't

1 given a heads up. We ironed all that out afterwards.

2 Q. Okay. Were you surprised at all by the substance of
3 this letter, however?

4 A. Yes. I was surprised at what appeared to be a change
5 in their position.

6 MS. WEST: Your Honor, may this be the next exhibit?

7 THE COURT: Uh-huh.

8 THE CLERK: Marked as Number 243.

9 (Exhibit No. 243, letter to AG Coakley from Healy/CPCS
10 and others (10/24/12), marked)

11 Q. (By Ms. West) Now, as a result of that request, did
12 you comply?

13 A. I'm sorry.

14 Q. Did you comply? Did you decide not to do the
15 investigation?

16 A. Yeah, to be clear, it wasn't me, per say, it was an
17 office decision, yes.

18 Q. And were you the liaison with the Governor's Office?

19 A. I was. I was the liaison with most constitutional
20 offices.

21 Q. All right. So in front of you, you've got a letter
22 from you October 30, to Mo Cowan. He was the Chief of Staff
23 at the Governor's Office, right?

24 A. At that point he was. He must of been, yes.

25 Q. And you can take a moment to refresh your recollection

1 on that letter, but then I'll ask you a question.

2 (Pause)

3 THE WITNESS: Yes, ma'am.

4 Q. (By Ms. West) So I'm going go to direct your attention
5 to the fourth paragraph, at the end.

6 It says: As a result we're asking the Governor, in
7 consultation with the DAs and defense counsel appoint an
8 independent investigator to conduct this broader review of
9 the lab policies, practices, and oversights.

10 Do you see that?

11 A. Yes.

12 Q. Can you tell us what that exactly means?

13 A. Well, I think it's, what it meant was someone to fill
14 the role that we were prepared to fill, because of the
15 change in the, you know, what was now being viewed as
16 whatever the AG's Office was going to do not be viewed with
17 independence, it would always be called into question. So I
18 think we were asking for the Governor to appoint someone,
19 some entity who would, hopefully, be above reproof, who
20 wouldn't have the same type of perceived type of conflict
21 that some perceived.

22 Q. And you understand sometime subsequent to this, the
23 Inspector General's Office took up the investigation of the
24 Hinton Lab?

25 A. I am.

1 Q. And it was the Governor who referred the Dookhan lab
2 investigation to the IG, wasn't it?

3 A. I believe so.

4 Q. And did you expect the Governor would take
5 responsibility for the Amherst Lab as well, and refer that
6 to whoever was going to do an investigation?

7 A. Again, you use the term "Governor" maybe I will use the
8 term Executive Branch.

9 Q. Yes.

10 A. Yes.

11 MS. WEST: So -- excuse me, may this be the next
12 exhibit?

13 THE CLERK: Marked as Number 244.

14 (Exhibit No. 244, letter to M. Cowan from AAG Bedrosian
15 (10/30/12), marked)

16 Q. (By Ms. West) Notwithstanding, the Attorney General's
17 Office proceeded with Farak investigation, purely on the
18 criminal case for Farak, right?

19 A. Yes, ma'am.

20 Q. And wherever those facts on her alone took you, that's
21 what you were going to prosecute, right?

22 A. Yes, ma'am.

23 Q. Were those the events, in the Fall of '14, in regard to
24 the Dookhan investigation, did that in any way bear on what
25 you thought when the Farak investigation came in January

1 2013 (sic)? Was there any relationship?

2 A. I'm sorry. The Farak investigation, in the Fall of
3 '12?

4 Q. Excuse me, yes.

5 A. Yeah, Fall of '12.

6 I'm sorry. Could you repeat the question.

7 Q. So my question is, what is the relationship between
8 your experience and the Dookhan investigation and having the
9 investigation pulled out from under you when, in January of
10 2013, the Farak investigation walks in the door?

11 At that point -- do you have any intent of ever doing a
12 lab investigation of Amherst?

13 A. No, in the sense of we're talking on this broader
14 reliability investigation, but yes, to the extent that
15 involved Sonja Farak's criminal conduct.

16 Q. So, just to be clear, you had every intent to do a
17 criminal investigation on Sonja Farak wherever that may take
18 you?

19 A. Yes, ma'am.

20 Q. But as a result of your experience doing, attempting to
21 do the Hinton Lab investigation, you walked into this never
22 having any intent, at all, of doing an investigation of the
23 Amherst Lab?

24 A. Yeah. You know, I don't know if, in our mind, we
25 prejudged anything; but as it turned out the two, although

1 different, had similarities and the -- if there were
2 reliability problems at these two different labs, they
3 needed to be addressed. And, in our minds, some of the same
4 concerns, although different cases, apply to both cases and
5 one, obviously, was a lack of perceived independence in the
6 Attorney General's Office.

7 Q. But sir, you didn't do the bigger investigation of
8 Amherst; you didn't make that decision not to do it in some
9 way to keep it small and look like it wouldn't be a big
10 scandal, did you?

11 A. No.

12 Q. Now, you were asked, on direct, in regard to some of
13 the steps that were taken in regard to the Farak
14 investigation, and one of those steps would include when
15 tips were called in or when the Criminal Bureau would
16 receive information from labs or from DAs Offices that they
17 might have found another sample that Farak had tampered
18 with, right?

19 A. I assume so. I don't know if I have an independent
20 memory of the granular investigation.

21 Q. But you understood that was happening, correct?

22 A. I assumed that was part of the review, yes.

23 Q. I just put an email in front of, from Verner to you on
24 January 23. Just take a look at it.

25 A. Yup.

1 Q. And in this email, he's talking about a search warrant
2 on her duffle bag, right?

3 A. Yes, ma'am.

4 Q. And at the end he writes: Finally Hampden DA's Office
5 called and discovered a case where Farak did the testing and
6 the number of pills is off and we're looking at that now.

7 My question to you is, it was your expectation that if
8 the Criminal Bureau received information like that, they
9 would follow-up, right?

10 A. Of course.

11 MS. WEST: Your Honor. May this be the next exhibit?

12 THE COURT: Yes.

13 THE CLERK: Marked as 245.

14 (Exhibit No. 245, email from AAG Verner to AAG
15 Bedrosian, (1/23/13), marked)

16 Q. (By Ms. West) You also understood that when you
17 received information in regard to Farak, we were sharing
18 that information with the District Attorney's Office?

19 A. Correct.

20 Q. And did that happen in Dookhan as well?

21 A. Yeah, we had to set up a procedure to make sure all the
22 information got to District Attorneys' Office, in a
23 consistent manner as they all got the same thing.

24 Q. You were asked a little bit about the hierarchy in the
25 Attorney General's Office. And just so that we all

1 understand. Were you the direct supervisor for the Criminal
2 Bureau?

3 A. I was.

4 Q. And did Sheila Calkins have some particular part of
5 that as well?

6 A. I mean we, Sheila and I both came from Middlesex DA's
7 Office. She had a long prosecutorial career also. She
8 had -- she could authorize and basically stand in my shoes
9 and we shared -- we shared responsibility in that regard.

10 Q. Did you know John Verner from Middlesex?

11 A. I did. John worked with us at Middlesex.

12 Q. And you weren't involved in the day-to-day business of
13 the Criminal Bureau, right?

14 A. I was not. I had a lot of other responsibility in the
15 Criminal Bureau.

16 Q. Okay. But there were -- so, for example, you were
17 asked some questions about proffers. There was some
18 occasions maybe a proffer would come up to you?

19 A. Notification about a proffer, yes.

20 Q. Did you have any experience of your own doing proffers?

21 A. I did. As I referred to when I was charged with
22 Special Investigations Unit at the Middlesex DA's Office,
23 part of our job would do long-term investigations, organized
24 crimes, we did wiretaps, that often resulted in people
25 wanting to do proffers.

1 Q. And in your experience, are there some types of cases
2 that are not particularly suitable for a proffer?

3 A. I don't know if I've ever thought about it that way, I
4 would characterize a case as suitable or not suitable. I
5 don't know if I ever thought about it that way, so it's hard
6 for me to answer.

7 Q. How about this, in the Dookhan case, was there a
8 proffer entertained of Annie Dookhan?

9 A. No.

10 Q. You have no memory or there was no proffer on the
11 table?

12 A. Well, for it to be entertained it has to be -- well, I
13 guess you could go, as a prosecutor, you could go to someone
14 and say, how about a proffer, and that -- certainly, that's
15 certainly one way to do it.

16 And in another way, a defense attorney or someone
17 representing a witness may come in and offer a proffer.

18 I don't know that either of those happened in the
19 Dookhan case.

20 Q. And, in your experience, have you ever been in a
21 position where a defendant wanted to come in and give you a
22 proffer and you said no?

23 A. Boy, maybe there's one out there, but generally, if
24 someone wanted to talk, I saw all the value in the world at
25 least take in a proffer.

1 Q. But in this situation with Sonja Farak, you don't
2 remember having that conversation with John Verner?

3 A. I don't.

4 Q. Okay. Sir, did you receive any direction from the
5 Attorney General to keep the Farak matter limited only to
6 the evidence found in her car and desk?

7 A. No.

8 Q. Did you ever receive any direction from anyone in the
9 office to deliberately withhold evidence from distribution
10 to particular parties?

11 A. Absolutely not.

12 Q. Did you ever have a conversation with anyone at the
13 office regarding the intentional withholding of evidence to
14 any party?

15 A. No.

16 Q. Mr. Bedrosian, do you agree with me that it's this --
17 you understand the facts of this Farak case and what has
18 happened since, correct?

19 A. I suspect I don't know them as well as everyone in this
20 room does, but I think I understand them at a 5,000 foot
21 level.

22 Q. All right. And at that level, do you agree, that this
23 is a regrettable set of circumstances for the Attorney
24 General's Office, but there was never any deliberate
25 withholding of evidence from the parties?

1 MR. RYAN: I'm going to be object.

2 MR. OLANOFF: Object.

3 THE COURT: Sustained.

4 Q. (By Ms. West) Do you have any comment about that?

5 MR. OLANOFF: Objection.

6 MR. RYAN: Objection.

7 THE COURT: Sustained.

8 Q. (By Ms. West) Mr. Bedrosian, you are with the Gaming
9 Commission now?

10 A. Right.

11 Q. And --

12 A. I am.

13 Q. And you have been there for how long?

14 A. Oh, 11 months.

15 Q. And how long were you at the Attorney General's Office
16 total?

17 A. Oh boy, I started in January of 2007. I left in
18 June/July of '14.

19 Q. And during that period of time, did you actually
20 prosecute any cases yourself?

21 I know you supervised, but did you prosecute?

22 A. I did not.

23 Q. All right. So, but nonetheless, your experience to
24 prosecute cases came from your number of years you were at
25 Middlesex?

1 A. I prosecuted a lot of cases at that point, yeah.

2 Q. You've indicated that you have a high-level
3 understanding of what happened here.

4 As to your understanding of what happened here, if you
5 had known about it at the time, would you have condoned it?

6 A. I would never condone not turning over discovery.

7 (Off the record discussion among Counsel.)

8 MS. WEST: Thank you.

9 **QUESTIONS BY THE COURT:**

10 THE COURT: Mr. Bedrosian.

11 THE WITNESS: Yes, sir.

12 THE COURT: Do you have a reason to believe that
13 discovery was not turned over?

14 THE WITNESS: As far as I know, it sounds like, and
15 again, that's why I say I have a 5,000 foot level, that
16 unfortunately, and I -- and you will find the circumstances
17 about this, not me, Your Honor, items which -- mental health
18 treatment records, which there had been representations that
19 all discovery were turned over, were not turned over.

20 That's my understanding, Your Honor.

21 THE COURT: And you said, "that's my understanding".
22 Earlier you said, "that sounds like that happened". Do you
23 have any personal knowledge, based on conversations with
24 subordinates, that that was not done?

25 THE WITNESS: I do not.

1 I just point out, Your Honor, I don't know the exact
2 time frame of all of this; when the discovery was. I was --
3 I left the office in -- I was in the office until about June
4 of '14. So anything that happened after June of '14', I was
5 not there.

6 THE COURT: Okay. So you were around for Ms. Farak's
7 arrest?

8 THE WITNESS: Yes, sir.

9 THE COURT: Okay. And you were First Assistant AG at
10 that time?

11 THE WITNESS: Yes, sir.

12 THE COURT: Needless to say, issues like the Annie
13 Dookhan and the Sonja Farak issues, those issues percolated
14 up to your level because of their notoriety?

15 THE WITNESS: Yes, sir.

16 THE COURT: Okay. And so, what's your present
17 recollection of how you were first told about Sonja Farak?

18 THE WITNESS: I don't know if I have an independent
19 recollection, Your Honor. I have some very vague memory of
20 someone from the Criminal Bureau, whether it was Mr. Verner
21 or then Lieutenant Irwin, notifying me and saying, you know,
22 we have a problem at the Amherst Lab.

23 THE COURT: Okay. And is it fair to say that at those
24 initial stages there was some high-level meetings that you
25 were at, concerning what you were going to do about the

1 Farak matter?

2 THE WITNESS: Just what's going on here and what we
3 were going to do; yes, sir.

4 THE COURT: All right. And during that time, through
5 January of 2013, to the time you left, as the First
6 Assistant Attorney General, what was your understanding as
7 to who was in charge of prosecuting Sonja Farak on behalf of
8 the Attorney General's Office?

9 THE WITNESS: So, when you use the term "in charge"?

10 THE COURT: Who was calling the shots; not who was
11 supervising; not who was reviewing; who was calling the
12 shots?

13 THE WITNESS: Yeah, so Anne Kaczmarek was the line
14 attorney, the same attorney we had on the Dookhan case.

15 THE COURT: Okay.

16 THE WITNESS: John Verner was the Bureau Chief, you may
17 know that.

18 THE COURT: Uh-huh.

19 THE WITNESS: I was the First Assistant. Sheila
20 Calkins was the Deputy Attorney General.

21 In this particular case, I think -- you know,
22 obviously, we brief the Attorney General. And any major
23 decisions were with the consent of the Attorney General
24 based on advice given to her, probably by me, John and even
25 Anne.

1 THE COURT: And so, do you have any recollection,
2 September of 2013, and the specific date isn't important,
3 about a dust up or controversy out here in the West in front
4 of Judge Kinder, regarding a hearing relative to discovery
5 and lack of discovery, and possibly Judge Kinder yelling at
6 one of the Assistant Attorney Generals about defense
7 attorneys wanting to take a look at the evidence and arguing
8 that they've been precluded from doing so, and Judge Kinder
9 having a hearing on that issue where Assistant Attorney
10 General Foster came out?

11 (Pause)

12 THE WITNESS: I don't think I have an independent
13 memory of that, Your Honor. I apologize.

14 THE COURT: Do you have any independent memory of
15 having any conversations with Anne Kaczmarek regarding these
16 mental health records?

17 THE WITNESS: I do not.

18 THE COURT: Okay. Anything else?

19 MR. RYAN: Very briefly.

20 **REDIRECT EXAMINATION BY MR. RYAN**

21 Q. You mentioned the role of David Meier in response to
22 some of Ms. West's questions?

23 A. Sure, yup.

24 Q. Did he produce in the Dookhan scandal something known
25 as the Meier List?

1 A. I think he did.

2 If I can just clarify, my understanding of the Meier
3 List was the best attempt to identify the cases on which
4 Annie Dookhan, and I forget, there might have been different
5 lists, was either the primary or secondary chemist.

6 Q. Her name was on a drug cert. other than being a notary,
7 correct?

8 A. Yeah. I think there was a difference between her being
9 the primary and her being the confirmatory.

10 Q. Sure, but, essentially, his task that he was entrusted
11 with was going through boxes and identifying some 40,000
12 individuals who had their names with, along with Annie
13 Dookhan's correct?

14 MS. WEST: Objection.

15 THE COURT: You can answer it, if you feel you can.

16 THE WITNESS: I think the -- well, first I think the
17 primary issue is how do you identify, you know, how do you
18 identify all of the cases that a particular chemist worked
19 on.

20 Q. (By Mr. Ryan) Sure. And there was some prioritization
21 given to people who may still have been in custody; does
22 that sound familiar?

23 A. It does.

24 Q. Did any of that happen in the Sonja Farak case?

25 A. I don't -- I know we did the criminal investigation.

1 David Meier did not work -- to my knowledge, David Meier did
2 not work on the Sonja Farak case.

3 Q. And did anybody fulfill that role out here with respect
4 to those cases?

5 A. I do not know.

6 Q. And I think you said that it was your expectation, when
7 you got out, when you sent that letter to Mo Cowan, that
8 somebody else was going to get in; and because there'd been
9 a request from the defense bar, for you to get out and have
10 somebody get in, and you decided, well, I guess we'll just
11 join in with the defense bar in requesting somebody else.
12 Is that accurate?

13 A. There were a lot of parts to that.

14 Q. Maybe I'm over simplifying. That's a bad question. I
15 will withdraw it.

16 It was your expectation, when you sent that letter,
17 saying that -- I think your testimony was, you expected
18 someone was going to fill the role that you were going to
19 do, correct?

20 A. I'm -- just to put this in context, we're now talking
21 about my letter to Mo Cowan?

22 Q. Correct.

23 A. Yes.

24 Q. So the defense bar had asked the Attorney General's
25 Office not to continue this investigation, that you had

devoted a lot of time and energy to beginning, correct?

A. Yes, sir.

Q. And at that point, you expected somebody would fill your role?

A. Yes.

Q. And that turned out to be the Inspector General's Office?

A. Yeah. I know they played a big role. I don't know if it was combination of Meier and the Inspector General.

Q. Right. In the Farak case, when you had, just had that experience where the defense bar had said we don't want you to do an -- a big investigation of the lab itself, we want somebody else to do it. Was it your expectation that anybody else was going to step into that role?

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

I know we were focused on Farak. I apologize I'm mispronouncing it, Farak's actions, and how they impacted the lab.

Q. And suffice it to say, you didn't write a similar letter to Mo Cowan saying, I'd ask you to appoint somebody else to do an investigation of the Amherst Lab?

A. I did not. Mo might have been gone by then, but I did not write a letter to whoever the Chief of Staff was.

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

THE COURT: All set?

1 (Pause)

2 THE COURT: Thank you, Mr. Bedrosian.

3 THE WITNESS: Thank you, Your Honor.

4 THE COURT: You may step down, sir.

5 We will take the luncheon recess.

6 (The Court exited at 12:59 p.m.)

7 (* * * * *)

8 (The Court entered at 2:13 p.m.)

9 (The defendant and the interpreter were present.)

10 THE CLERK: Back on the record with the Farak drug
11 matters.

12 THE COURT: Okay. Call your next witness.

13 COURT OFFICER: Sheila Calkins.

14 (Sheila Calkins, sworn)

15 THE WITNESS: Good afternoon, Your Honor.

16 THE COURT: Good afternoon.

17 (Sheila Calkins)

18 **DIRECT EXAMINATION BY MR. RYAN**

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

21 A. Sheila Calkins. C-A-L-K-I-N-S.

22 Q. Ms. Calkins, who do you currently do for work?

23 A. I work for Suffolk University and I'm the Director of
24 the Title IX and Clery Act Compliance.

25 Q. Back in January 2013, were you the Deputy Attorney

1 General for the Commonwealth of Massachusetts?

2 A. For the Attorney General's Office, yes.

3 Q. Okay. And I want to draw your attention to March of --
4 end of March, 2013. Were you aware, by this point, that a
5 chemist at the Amherst Drug Laboratory named Sonja Farak had
6 been arrested?

7 A. Yes.

8 Q. And were you aware that your office was prosecuting
9 her?

10 A. Yes.

11 Q. Now, in your office, is it customary for line
12 prosecutors, before an indictment, to complete a document
13 called a prosecution memo?

14 A. Yes.

15 Q. And I'm going to show you --

16 MR. RYAN: If we can turn this on.

17 (Pause)

18 Q. (By Mr. Ryan) Show you an email that was sent by John
19 Bedrosian and you on Wednesday, March 27, 2013 at 11:41 a.m.

20 Do you need a second to review that email?

21 A. You're going to have to show me a hard copy.

22 Q. I'm not sure I have one readily available.

23 MR. RYAN: Would it be okay for the witness to step
24 down?

25 THE WITNESS: I just -- I can't really see it from this

1 angle. I'm sorry.

2 Q. (By Mr. Ryan) So, John Verner --

3 A. Yes.

4 Q. So John Verner wrote you this email and said: Will be
5 up to both of you in about an hour.

6 I just need to clear one thing up with Anne, Anne is
7 looking to get indictments Monday. Pros memo is short and
8 concise, case is very good, very strong circumstantial case
9 with many pieces of corroborating direct evidence.

10 I read that correctly?

11 A. Yes, you did.

12 Q. When he said, be up to see you both in about an hour,
13 was your office on a different floor than John Verner's?

14 A. Yes, Criminal Bureau is -- was on the 19th floor and
15 the executive offices were on 20.

16 Q. And did you and Ed Bedrosian have offices on the 20th
17 floor?

18 A. We both did, yes.

19 Q. Do you recall John Verner coming up with the
20 prosecution memo to discuss it with you?

21 A. No, I don't honestly recall. I'm sure he did. I just
22 don't recall.

23 Q. I'm going to show you a copy of what was previously
24 marked as -- Exhibit 163. If you can take a minute to
25 review it.

1 A. (Witness complying)

2 Okay.

3 Q. Okay.

4 A. Twelve pages, right.

5 Q. Yes. I'm going to show, walk through a few pieces of
6 this document. I will put it up on the presenter.

7 You have a hard copy there.

8 This first page here, was this prosecution memo
9 originally have a space for Ed Bedrosian to sign off on?

10 A. Yes. What usually -- if he did not sign off on it and
11 I did, then, you know, there wouldn't be a signature above
12 his name. There would be one above mine.

13 Q. So is that what happened in this case? Did you end up
14 signing off on this?

15 A. According to this, no.

16 Q. You didn't sign off on this prosecution memo?

17 A. It doesn't have my signature, no. It has my name, but
18 normally I would have signed above my name.

19 Q. Well, did he come up with a prosecution memo to see the
20 two of you?

21 A. I honestly don't recall. I'm assuming he did. If he
22 said he did, then he probably did. I just don't have any
23 recollection today of him coming up within an hour.

24 Q. And is this, have you seen this document before today?

25 A. I don't know if I've seen this one. I don't know.

1 Q. Did you see a version of a --

2 A. I mean I can tell you that's my writing, Sheila
3 Calkins, Deputy AG.

4 Q. Okay. So there is some writing you would agree
5 throughout the document, correct?

6 A. Yes.

7 Q. And down below, on the very first page do you -- is
8 that your writing or somebody else's writing?

9 A. On page two?

10 Q. The very first page that's on the bottom.

11 A. Oh, I'm sorry. I'm sorry. No, that's not my writing.

12 Q. Do you recognize the writing?

13 A. Normally, if it's from John Verner it might be his
14 writing. I don't recognize the writing, but it might be his
15 writing.

16 Q. And is it fair to say that Dean Mazzone had also signed
17 off on this document as well, before you did?

18 A. According to this, yes.

19 Q. Okay. And does it look like Dean Mazzone's writing?

20 A. I'm sorry. I wouldn't really be familiar with Dean's
21 writing.

22 Q. Sure. In any event, I'm going to show you, if you
23 could turn to page five of this document.

24 A. Yes.

25 Q. And the second full paragraph, if you could just take a

1 second to read that paragraph, and I'm going to be asking
2 about that photograph and specifically footnote number
3 seven.

4 A. (Witness complying)

5 Yeah.

6 Q. Okay. Now, you see where it says: Items of note
7 recovered from the vehicle were Manila lab envelopes, news
8 article involving indicted chemist out of San Francisco, and
9 mental health worksheets describing how Farak feels when she
10 uses illegal substances and the temptation of working with
11 urgeful samples?

12 A. Yes.

13 Q. So if you look down at footnote seven, could you read
14 what footnote seven says?

15 A. These worksheets were not submitted to the Grand Jury
16 out of an abundance of caution, in order to protect
17 possibly, privileged information. Case law suggests,
18 however, that the paperwork is not privileged.

19 Q. And then did somebody circle item seven and draw a line
20 down to the bottom of the page?

21 A. Yes.

22 Q. And what does that handwritten note say, if you can
23 read it?

24 A. This, it looks like: Paper -- I'm assuming
25 paperwork -- not turned over to DA's, I believe, Office yet.

1 Q. Okay. Now, had you been through -- you'd been with the
2 office the prior Fall when Annie Dookhan got arrested?

3 A. Yes.

4 Q. And when Annie Dookhan got arrested, did your office
5 end up putting together discovery packets that went out to
6 the District Attorney's throughout the state?

7 A. I'm assuming so. I was not involved in that.

8 Q. Okay. Was it your understanding, after reviewing this
9 prosecution memo, that there were some items described as
10 mental health worksheets that hadn't been introduced at the
11 Grand Jury?

12 A. Yes. Yes, I do recall that.

13 Q. And that they had also not been turned over to District
14 Attorneys Offices?

15 A. Again, I wouldn't have been involved in that at that
16 point, so I don't know whether they turned them over to the
17 DA's Office.

18 Q. Well, does the note say: This paperwork not turned
19 over to DA's Office yet.

20 A. Yes. But, I don't -- I don't know what time frame
21 they're talking about.

22 Q. Well, sure. When you got the memo, that was what was
23 on the memo on March 27, or March 28, correct?

24 A. That's what the memo says, yes.

25 Q. Okay. So as of that date, the note would seem to

1 suggest that this paperwork had not been turned over to the
2 DA's Office as yet?

3 A. Whatever day that was written, yes.

4 Q. Okay. Now, as I'm going to show you, do you recall in
5 this meeting with John Verner any conversation about whether
6 or not Sonja Farak should perhaps face charges of possession
7 with intent to distribute?

8 A. I don't recall a meeting with John Verner. A lot of
9 times John would come up and drop the pros memo off, so I
10 can't tell you, Counsel, whether there was an actual
11 meeting. I don't remember. I don't recall.

12 Q. In any event, if you look at page ten of the
13 prosecution memo, starting with all of the crack cocaine, if
14 you could just take a moment to review that paragraph.

15 A. (Witness complying)

16 Okay.

17 Q. Now, according to this paragraph of the prosecution
18 memo, these emotional worksheets of Sonja Farak were
19 important evidence in -- well, would you agree in two
20 different ways --

21 Let me be more clear.

22 Refers to Farak's admissions on her emotional
23 worksheets, do you see that?

24 A. Yes. Yes.

25 Also Farak's admissions on her emotional worksheets

1 recovered from her car detail her struggle with substance
2 abuse.

3 Q. An admission is something, in the business of
4 prosecuting cases, that can be used against the defendant,
5 correct?

6 MS. WEST: Objection.

7 THE COURT: Sustained.

8 MR. RYAN: You get this?

9 THE COURT: I get that part.

10 MR. RYAN: Okay.

11 Q. (By Mr. Ryan) Well, I guess the larger point I'm
12 trying to make is this was also regarded as somewhat
13 mitigating evidence against Sonja Farak, correct?

14 MS. WEST: Objection.

15 THE COURT: You can answer the question if you feel you
16 can.

17 THE WITNESS: Counsel, I'm sorry. I honestly don't
18 recall the conversations around this, and whether it was
19 considered mitigating.

20 Q. (By Mr. Ryan) Well, it was the reason that she didn't
21 end up facing charges of possession and intent, one of the
22 reasons?

23 MS. WEST: Objection.

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

25 Sustained.

1 Q. (By Mr. Ryan) Turning your attention to the last page
2 of the document, the very last paragraph, this case is
3 unlike the Dookhan case in many ways. If you could read
4 that paragraph and the notes next to it?

5 A. (Witness complying)

6 Yes.

7 Q. Okay. At the top of the page, is there a statement
8 that there was not a breakdown of quality control and
9 managerial oversight?

10 A. At the top of the paragraph?

11 Q. Yes.

12 A. Yes.

13 Q. And is there an indication that someone wrote, still a
14 problem with QC, underlined twice?

15 A. I can't see it all, but it looks like: Still a prob
16 with QC; yes.

17 Q. Had you been alerted by John Verner to any problems
18 with QC at the Amherst Drug Lab prior to receiving this
19 prosecution memo that you approved?

20 A. I honestly don't recall.

21 Q. At the bottom of this prosecution memo that you
22 approved, can you read the last two sentences?

23 A. We are also hoping that the defendant, once indicted,
24 will detail how long she has been abusing drugs and how many
25 cases are affected. Farak would expect some consideration

1 in sentencing for that information.

2 Q. So this memo, being approved by your office, was that
3 the -- at the time it was approved, the office's collective
4 hope was to, that the defendant would eventually,
5 essentially come clean and say how long she's been doing
6 this?

7 A. I don't know how -- whether it was the office, but it
8 appears to be the prosecutor's feeling, yes.

9 Q. Well, a number of --

10 A. And it was John and Anne Kaczmarek, yeah.

11 Q. Right. And there's a number of handwritten notations
12 like the one above, where the author says: There was not a
13 breakdown in quality control; and then somebody who's
14 approving it says: Well, there's still a problem with QC.

15 Do you see that?

16 A. I don't know whose writing that is, so I don't know if
17 it was -- I don't believe it's my writing, but I don't
18 recognize it as my writing; so, I don't know when you say
19 someone from above wrote in that it was still a problem with
20 QC.

21 Q. Well, you were the last person to review this and
22 approve this document, correct?

23 A. Yes. But my understanding that there had been an audit
24 at the lab and that there was not anything found, so.

25 Q. No problems as a result of that lab audit?

1 A. That's my understanding. That's my memory.

2 Q. Okay. And I guess what I'm trying to get at here is,
3 nobody took issue with this idea that Farak would expect
4 some consideration for saying how long she had been doing
5 this.

6 MS. WEST: Objection.

7 THE COURT: If you know.

8 THE WITNESS: I don't know, I'm sorry.

9 Q. (By Mr. Ryan) Do you know whether or not at any point
10 your office, representatives of your office, engaged in
11 proffer discussions with Ms. Farak?

12 A. I don't.

13 Q. Now, you mentioned that it was your understanding an
14 audit had been done and there were no problems found?

15 A. That's my memory, that right after the event, that the
16 head of the lab, Guy Vallaro, I believe, but I'm not sure of
17 the name. They went in and looked and did an audit of the
18 lab, yes; and that there was nothing found.

19 Q. So, I'm sorry, the timing of that was before her arrest
20 or after her arrest?

21 A. It would be after her arrest, I believe.

22 Q. Okay. So your recollection is after her arrest, a
23 group went in and did an inventory of all of the samples
24 that were there?

25 A. Yeah, the lab was closed down and they did an audit

1 after the lab was closed down.

2 Q. All right. Now, did they do an audit before the lab
3 closed down?

4 A. Actually, you know, I think there may have been
5 something that was done before this case. I just don't know
6 what type of audit it was. I'm not sure.

7 Q. I'd like to put up on the screen -- and, again, you
8 should feel free to get up and look if you can't read it --
9 an email that John Verner sent to you and Ed Bedrosian on
10 January 29, 2013.

11 A. March 2013?

12 Q. January.

13 A. January.

14 Q. 1/29/2013. Right up here, was forwarded on.

15 A. Okay. You're not looking -- you're looking at the top
16 one. Okay.

17 Q. Right. So that's John Verner. You're one of the
18 recipients.

19 A. Yup.

20 Q. And there's some attachment to this, correct?

21 A. No, I'm -- I wasn't sure if you were referring to the
22 bottom email or the top one.

23 Q. Okay. It's this one right here. (Indicating)

24 A. Okay.

25 Q. And his message is: Ed/Sheila, can we talk about this.

1 Correct?

2 A. Yup.

3 Q. And he attaches a number of items?

4 A. Yes.

5 Q. And the first one up here is: Amherst Drug Lab Tech
6 Audit with Remediation?

7 A. Right.

8 Q. So he sent you this document. Did you ever open this
9 document?

10 A. I don't recall. It would have been my practice to open
11 attachments if they were sent to me, yes.

12 Q. And it would have been, in your practice, to open them
13 if somebody is going to want to come up and take two minutes
14 of your time to talk about it too, right?

15 A. Yes.

16 Q. So, having looked at this, do you recall what the
17 results were of the Amherst Drug Lab Tech Audit with
18 Remediations?

19 A. I don't.

20 Q. I'm putting that document up there on the board. Can
21 you see this was an audit that was done on October 10, 2012?

22 A. Yes.

23 Q. And Dr. Guy Vallaro was one of the audit team members
24 that day?

25 A. Yes.

1 Q. Now, as we go through, there were a number of questions
2 on this audit and answers to the questions that the auditors
3 gave?

4 A. Yes.

5 Q. And sitting here today, having looked at this now, do
6 you recall being made aware of this document?

7 A. No. But this isn't the audit I'm talking about.

8 Q. Right. You're talking about after Sonja Farak gets
9 arrested, they send a team in to just see how many samples
10 are missing and --

11 A. Exactly.

12 Q. -- and they found a total of four samples were missing,
13 correct?

14 A. Exactly.

15 Q. But John Verner wanted to come up and talk to you about
16 an audit that reflected how the lab had been run prior to
17 Sonja Farak's arrest, correct?

18 A. Yes.

19 Q. And, so, that's what that audit report is about,
20 correct, that you don't have any recollection of?

21 A. I'm sorry. Say that again. I'm not sure I followed
22 that.

23 Q. Sure. Sonja Farak got arrested on January 19, 2013.
24 Does that sound right?

25 A. Yes.

1 Q. This is ten days later, correct?

2 A. Yes.

3 Q. And John Verner is sending you and Ed Bedrosian an
4 email saying: Can we talk about this? And he's attaching
5 various documents, correct?

6 A. Yes.

7 Q. And one of the ones is the one that I just showed you,
8 which is a Tech Lab Audit with Remediation, correct?

9 A. Exactly.

10 MR. RYAN: And, for the record, that document has been
11 admitted as Exhibit 1 in this proceeding.

12 Q. (By Mr. Ryan) He told you that the MSP got a FOIA
13 request for the quality assurance audit that was done when
14 they took over Amherst. And he eventually goes to say he
15 has thoughts, and it will only take two minutes, right
16 before or after a meeting.

17 Now, having had been a recipient of this email, do you
18 recall having any conversations with anyone, at any time,
19 about the way in which Amherst was run?

20 A. I honestly don't recall. I just don't have any memory
21 of having any conversation with John or even after that.

22 Q. Well, let me ask you this. Had you had conversations
23 about the way that the Hinton Drug Lab had been run?

24 A. Yes.

25 Q. And did you write letters to people like Jay Gonzalez

1 about the way that the Hinton Drug Lab had been run?

2 A. Yes.

3 Q. And in -- were those letters asking for money to
4 investigate how the Hinton Drug Lab was run?

5 A. Yes.

6 Q. So, so sitting here today, you have no recollection,
7 after -- ten days after this arrest of Sonja Farak, learning
8 anything about the way that this other former Department of
9 Public Health Laboratory was being run?

10 A. I honestly just don't remember the specifics. I'm
11 sorry. I don't even remember the specifics of the audit.

12 Q. Now, did you organize a meeting in the Fall of 2013,
13 and send out a request for people to attend that had a
14 heading of Hinton and Amherst, parens, potential new invest?

15 A. I don't recall.

16 Q. Is it possible that at some point or another, you would
17 of asked various mid upper-level people in your office to
18 meet about that particular topic?

19 A. In the Fall of 2013?

20 Q. I'll give you a specific date of September 4, 2013.

21 A. I don't -- I might have. I don't recall.

22 Q. And if you might have, do you have any idea what that
23 topic would have been about?

24 A. I'm sorry, no.

25 Q. Those two labs together and a new investigation?

1 A. In the Fall, no. I mean, if it had happened right
2 after Farak in January of 2013, maybe, but I honestly don't
3 know. I don't know why I would have been calling a meeting
4 in the Fall.

5 Q. I'm showing you now another email that you -- excuse
6 me, received. Again, feel free to step down.

7 But do you know Hanne Rush is?

8 A. I think it's Hanne Rush.

9 Q. Does she spell it H-A-N-N-E?

10 A. Yes.

11 Q. Oh, okay.

12 A. I believe it's Hanne Rush.

13 Q. Sure, apologies.

14 A. I think she was an appellate attorney.

15 Q. Did she send an email to you and Ed Bedrosian and John
16 Verner and various other people, including Anne Kaczmarek,
17 about a public records request regarding chemist Sonja
18 Farak?

19 A. From that email it appears, yes.

20 Q. And did she, in the body of her email, say that the
21 office received a public records request from New York
22 Attorney Karen Morth for documents related to Sonya Farak's
23 potential irregular handling of drug evidence in 2010 and
24 earlier?

25 Is that what it says?

1 A. That's what it says.

2 Q. Did she go on to say that Ms. Morth represented a
3 defendant in Berkshire Superior Court and made a similar
4 request in 2013, and they -- they had asserted an
5 investigatory materials exception because the case was still
6 open?

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

8 Q. And that Ms. Morth now states because Ms. Farak has
9 been sentenced she presumes this office would consider that
10 exemption no longer applies?

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

12 Q. And this public record request by Ms. Morth -- I'm
13 going to put that up on the board.

14 MS. WEST: What's the date of that? I can't see.

15 MR. RYAN: 5/28/14.

16 Q. (By Mr. Ryan) Karen Morth, Attorney at Law, requesting
17 of your office, certain documents including in Category F,
18 copies of the assorted lab paperwork identified as Items 4,
19 5, 8 and 14 in the search warrant execution, case number of
20 Ms. Farak's car.

21 Do you see that?

22 A. Yes.

23 Q. Now, Ms. Morth had made a request in May of 2014 to see
24 this materials; can we agree on that?

25 A. The assorted paperwork, yes.

1 Q. And at that time, did it trigger any memory, in you
2 that there was a prosecution memo that said that items of
3 note recovered from the Farak's vehicle included mental
4 health worksheets where she admitted using drugs or having
5 urges to take drugs?

6 A. You're asking me if, at the time that I read that,
7 whether that refreshed my memory?

8 Q. Sure.

9 A. I wouldn't know what, assorted lab paperwork,
10 identified as 4, 5, 6 and 14 were, Counsel.

11 Q. Well, does it reference a search warrant execution?

12 A. Yes.

13 Q. And so, did you, in your sort of supervisory capacity
14 and as a recipient of this email, instruct anybody in your
15 office to look into seeing whether or not these mental
16 health worksheets you learned about, that were seized from
17 the car, had been disclosed to District Attorneys yet?

18 A. I don't understand the connection between those and
19 those documents right there.

20 If you're -- I -- and that wouldn't necessarily have
21 been my role. It would of been the Criminal Bureau Chief
22 and the prosecutor's role to make sure that that was turned
23 over.

24 I wouldn't have been involved in the matter that far
25 down.

1 I mean, I would have gotten this email, but I would
2 not -- I would of assumed, at this point, that if it was --
3 had been turned over, it had already been turned over.

4 MR. RYAN: I have no further questions.

5 THE COURT: Anything?

6 MS. WEST: Nothing. Thank you.

7 THE COURT: Can I see Exhibit 163.

8 MR. RYAN: I used a printed out copy.

9 Ms. Cignoli won't let me touch the exhibits anymore.

10 THE COURT: Can anybody give me a copy?

11 Can the witness have one.

12 (Pause)

13 MR. RYAN: Do you still have yours?

14 THE WITNESS: Is that what this is?

15 MR. RYAN: Yes.

16 THE COURT: I believe so.

17 **QUESTIONS BY THE COURT**

18 THE COURT: Attorney, Calkins.

19 THE WITNESS: Yes.

20 THE COURT: Where were you -- at that time, where were
21 you in the pecking order?

22 THE WITNESS: At what time, Your Honor?

23 In March?

24 THE COURT: In March of 2013.

25 THE WITNESS: I would have been Deputy AG under Ed

1 Bedrosian; so it would have been First Assistant and then
2 Deputy AG.

3 THE COURT: Okay. And so, these prosecution memos were
4 common?

5 THE WITNESS: Yes.

6 THE COURT: And so, looking at this one, let me ask you
7 this. Clearly this one's written all over. Is that part of
8 the protocol, they come up and they get edited, and then
9 they go back down to the lower echelon and somebody would
10 re-do it to the satisfaction of the top dogs?

11 THE WITNESS: I don't know whether it would have been
12 re-done, but I can tell you it was very common that John
13 Verner would write over the pros memos before they came up.
14 He would put his kind of thoughts into the pros memo.

15 THE COURT: Okay. So when you look at this and you see
16 the signatures, and you see the dates, and you see where
17 your name is printed, what opinion or what conclusions do
18 you come to, at what stage this particular prosecution memo
19 was at?

20 THE WITNESS: You know, Your Honor, I'll be honest with
21 you, that's what's confusing, because normally, if I had
22 reviewed it, and I had sent it back down for them to move
23 forward on, I would have put my signature over where it says
24 Sheila Calkins. So I don't -- I don't know why my signature
25 is not on it. So that's what I can't -- I don't know the

1 timing of this document right here, because normally I would
2 have signed my name so that they knew that they could go in
3 front of the Grand Jury.

4 THE COURT: Uh-huh. Okay. And who would, typically,
5 make the sort of editorial comments that are made in this
6 particular prosecution memo?

7 THE WITNESS: It would have been John Verner's practice
8 to make those sort of notations.

9 THE COURT: Okay.

10 THE WITNESS: I, also, at times, would make notations.

11 I'm just looking to see whether my writing is on here.

12 (Pause)

13 THE WITNESS: The only writing, I believe, Your Honor,
14 that might be mine is on page two.

15 THE COURT: Okay.

16 THE WITNESS: Where it has second, because that would
17 be the way that I would write second where it says: 2-d, on
18 page two.

19 THE COURT: Uh-huh.

20 THE WITNESS: And where, been generated yet, and it has
21 down, but missing question.

22 Those are my abbreviations that I use before or after
23 testing.

24 THE COURT: Okay. And so, in March of 2013, Sonja
25 Farak was a big deal; is that fair to say?

1 THE WITNESS: She was a big deal?

2 THE COURT: In the AG's Office?

3 THE WITNESS: I think the fact that we had another case
4 out of one of the state labs, yes. She would have been
5 considered a big deal.

6 THE COURT: Okay. And so, do you recall any -- well,
7 do you recall this prosecution memo?

8 THE WITNESS: Yes, I mean, I recall it.

9 THE COURT: Okay. In what context?

10 THE WITNESS: I remember getting one, Your Honor. I
11 just don't remember the specifics of it; but looking at
12 this, yes.

13 THE COURT: Okay. And as you look through it, do
14 you -- do you recall any meetings regarding it?

15 THE WITNESS: I honestly don't, Your Honor.

16 THE COURT: Okay. All right.

17 Okay. All set. Anybody else?

18 (Pause)

19 THE COURT: Okay. Thank you very much. You may step
20 down.

21 THE WITNESS: Thank you.

22 THE COURT: You may call your next witness.

23 MR. RYAN: Suzanne Reardon.

24 (Suzanne Reardon, sworn)

25 THE COURT: Good afternoon.

1 THE WITNESS: Good afternoon.

2 MR. RYAN: Thank you.

3 (Suzanne Reardon)

4 DIRECT EXAMINATION BY MR. RYAN

5 Q. Good afternoon.

6 A. Good afternoon.

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

9 A. Suzanne Reardon, R-E-A-R-D-O-N.

10 Q. And, Ms. Reardon, how are you employed?

11 A. I'm an Assistant Attorney General at the Attorney
12 General's Office.

13 Q. In which division or bureau are you assigned?

14 A. In the Appeals Division of the Criminal Bureau.

15 Q. And do you have a title within that division?

16 A. Not right now, no.

17 Q. And, sorry, there was some commotion behind me. When
18 you first identified yourself, did you just say, I'm an
19 Assistant Attorney General?

20 A. Yes.

21 Q. Did you at some point have the role of Deputy Chief of
22 the Appeals Division?

23 A. Yes.

24 Q. Now, did you have that role back in 2013, let's start
25 in January?

1 A. Yes.

2 Q. And how long did you retain that role?

3 A. Until the Summer of last year, 2015.

4 Q. And what were some of your duties as the Deputy Chief
5 of that division?

6 A. So my main duties were assigning all of the cases that
7 came in, and I also edited -- so the Chief, who was Randall
8 Ravitz, and I split up the attorneys in the division and
9 would edit half and half of their work.

10 I also had various other duties helping out other
11 divisions and doing research and helping out other AAGs in
12 the division.

13 Q. How many -- you said you sort of split up the Assistant
14 AG's. How many were in your division?

15 A. I believe at that time there were ten, I believe.

16 Q. And in the Summer of 2013, did a new Assistant AG Kris
17 Foster start working in your division?

18 A. Yes.

19 Q. And, in terms of splitting up Assistant AG's, was Miss
20 Foster someone you edited or worked with or that Randall
21 Ravitz did?

22 A. I believe at that time I did.

23 Q. And when she arrived at the office, was she trained?

24 A. No formal training. She came from the Suffolk District
25 Attorney's Office, so she had a good background in criminal

1 law. We didn't necessarily do any formal training. We just
2 slowly built up new AG's caseload and would assist them as
3 they went in learning the cases.

4 Q. And does your office have something known as an AG
5 Institute or did it back in 2013?

6 A. Yes.

7 Q. And would part of the role of the institute be to
8 provide training to new AG's, Assistant AG's?

9 A. Not that I know of, I don't know.

10 Q. Well, did -- were you a faculty member of this unit or
11 institute?

12 A. I have done some trainings for them, yes.

13 Q. And did you -- have you also assisted in designing
14 curriculum, curricula?

15 A. Yes.

16 Q. And did you had any role to play in drafting manuals?

17 A. Yes.

18 Q. Now, with respect to drafting manuals, would those be
19 items that would be available to people who might take a
20 particular training?

21 A. Yes. And I believe they're also posted on our internal
22 internet for anyone who wants, in the office, to look at.

23 Q. And about how many manuals would be available for
24 anybody who is looking to kind of research a discrete topic?

25 A. I don't -- I don't think I can speak to that.

1 Q. Okay. I'd like to have these two items marked by
2 agreement as the next exhibits.

3 THE COURT: Okay.

4 THE CLERK: Marked as Numbers 246 and 247.

5 (Exhibit No. 246, page of a PowerPoint presentation on
6 Responding to Third Party Subpoena, marked)

7 (Exhibit No. 247, Responding to a Subpoena Where the
8 AGO is a Third Party (March 2013), marked)

9 Q. (By Mr. Ryan) Now, back in 2012, did you participate
10 in the creation of what's been marked as Exhibit 247?

11 A. Yes.

12 Q. And in March of 2013, did you also participate in its
13 revision?

14 A. Yes.

15 Q. And what's the title of this document?

16 A. Responding to Subpoenas Where the AGO is a Third Party.

17 Q. And would this be a document that an Assistant Attorney
18 General could consult if they happened to -- well, let me
19 backup.

20 Would attorneys in the Appeals Division take on the
21 task of representing other Assistant Attorney Generals if
22 they happened to get a subpoena?

23 A. Yes.

24 Q. And would your office also take on the responsibility
25 for representing State Troopers assigned to your office, if

1 they got a subpoena?

2 A. Yes.

3 Q. And would the advice that is provided in this document
4 apply to representing both other fellow Assistant Attorney
5 Generals and members of the Massachusetts State Police
6 assigned to your office?

7 A. Yes.

8 Q. Now, Exhibit 246, do you recognize what that is?

9 A. Yes.

10 Q. And is that just the first page of a PowerPoint?

11 A. Yes.

12 Q. And is it -- what's the title of the PowerPoint?

13 A. Responding to Third Party Subpoenas.

14 Q. And, if you recall, did you do a PowerPoint
15 presentation on this in March of 2013?

16 A. Yes.

17 Q. And would this have been before Kris Foster entered the
18 Office?

19 A. I believe so, yes.

20 Q. Okay. And I'd like to ask you some questions and think
21 we'll put it up on the presenter, about Exhibit 247.

22 Now, were there certain steps that were recommended
23 that people in your office should take -- and maybe I'll
24 give you a copy here.

25 A. Thank you.

1 Q. That people in your office should take when
2 representing either an Assistant AG or Mass. State Trooper
3 in your office who got a subpoena?

4 A. Yes.

5 Q. And what was the first step they were supposed to take?

6 A. Are we looking at page four, is that where we are?

7 Q. We are. I have given you a redacted version.

8 A. Okay.

9 MR. RYAN: For the record, it's the version I've
10 received.

11 THE WITNESS: So the first step would be deciding who
12 handles the subpoena.

13 Q. (By Mr. Ryan) And if you're looking up there on the
14 presenter, you will see that the Subsection A it says Civil
15 Discovery Request.

16 Do these steps you're going to talk about, are they the
17 same for whether it's in a criminal or civil action?

18 A. Basically yes, yeah.

19 Q. So, after determining who's going to handle the
20 subpoena duces tecum, what's the next initial action or
21 perhaps the first initial action?

22 A. Determine whether the subpoena was issued and served
23 correctly.

24 Q. Okay. And if we assume that's been done, what is item
25 number three require someone handling a response to a

1 subpoena duces tecum to do?

2 A. Collect the files that were requested under subpoena.

3 Q. And why would you request the files?

4 A. In order to see if, what is responsive to the subpoena
5 and see what else is in the file.

6 Q. And let's assume, for a second, you're using the term
7 "file" here. If this was a subpoena that went to a
8 Massachusetts State Trooper, for example, for all documents
9 and photographs pertaining to a particular investigation,
10 would collecting that particular evidence be the first step?

11 A. Yes.

12 Q. Now, if you look at Subsection 3A, could you just read
13 those two sentences into the record?

14 A. Do an initial review to see what kinds of documents and
15 ESI you have and which privileges may apply.

16 Q. If I can just stop you there for a second. What's
17 "ESI" mean?

18 A. I don't know.

19 Q. Is it Electronically Stored Information?

20 A. Yes. Yes.

21 Q. And are emails a kind of Electronically Stored
22 Information?

23 A. Yes.

24 Q. And are attachments to an email sometimes
25 Electronically Stored Information?

1 A. Yes.

2 Q. If you could continue.

3 A. A detailed index may become appropriate for internal
4 use, a less detailed index or Vaughn index or privilege log
5 may be produced to requesting parties/Court.

6 Q. Now, what's a Vaughn index?

7 A. I don't know off the top of my head.

8 Q. Well, does it refer to a case, is there a footnote down
9 there, just kind of gives a case Vaughn v. Rosen, DC Circuit
10 from 1973?

11 A. Yes.

12 Q. And is it your understanding that in some cases a party
13 may oppose turning over documents, but may be in a position
14 where a Court would want them to at least identify, in
15 general terms, what documents they possess?

16 A. Yes.

17 Q. And, you say "detailed index may become appropriate for
18 internal use". What's meant by that?

19 A. Well, it's a good way to have a record of what
20 documents the office has.

21 Q. Okay. And with respect to Subsection B, could you read
22 that into the record?

23 A. The document review might suggest ways to settle the
24 problem, e.g. the files may not contain the documents the
25 party is seeking, or the only responsive documents are not

1 privileged, or the requester already has what you have.

2 Q. Now, it may seem obvious here, but why would you want
3 to know what documents the requester already has?

4 A. So you didn't have to duplicate efforts.

5 Q. And, in terms of this document review saying that
6 they're -- the files may not contain the documents the party
7 is seeking, you'd agree you can only do that if you actually
8 look in the file, correct?

9 A. Correct.

10 Q. Now, at some point, in August 2013 -- well, let me
11 backup -- no.

12 In August 2013, did you learn that Assistant Attorney
13 General Anne Kaczmarek and Sergeant Joseph Ballou had
14 received subpoenas to testify in a pending criminal case in
15 this county, in the case of Rolando Penate?

16 A. Yes.

17 Q. And did you learn, subsequent to that, that Sergeant
18 Joseph Ballou had received a subpoena to testify in a
19 separate matter for some postconviction defendants that had
20 been scheduled for a hearing before Judge Jeffrey Kinder?

21 A. Yes.

22 Q. And was this -- just for sake of clarity, was this
23 other subpoena served on behalf of a defendant named
24 Jermaine Watt?

25 A. I believe so.

1 Q. Okay. So if I refer to the Watt subpoena, you'll know
2 what I'm talking about?

3 A. Yes.

4 Q. Did the Watt subpoena, to your knowledge, was that
5 subpoena duces tecum?

6 A. I think so.

7 Q. And did it command the production of all documents and
8 photographs pertaining to the investigation of Sonja Farak
9 and the Amherst Drug Lab?

10 A. Yes.

11 Q. Once that it was determined that that subpoena was
12 properly served and it was assigned to Kris Foster, what
13 steps should Ms. Foster have taken in terms of her initial
14 actions in responding to this subpoena?

15 A. Are we talking about the one to Sergeant Ballou?

16 Q. Yes.

17 A. She should have talked with Sergeant Ballou and gone
18 over what documents he had pertaining to that subject.

19 Q. And when you say, go over and talk to him, was her
20 obligation to actually collect the physical evidence and go
21 over it with him and look at the items in his possession?

22 A. Yes.

23 Q. And was it her obligation to also go with Sergeant
24 Ballou and check and see if he had any electronically stored
25 information that wasn't in the physical evidence?

1 MR. CALDWELL: Objection as to "physical evidence".

2 THE COURT: I'm sorry?

3 MR. CALDWELL: As to the physical evidence, the term
4 "physical evidence".

5 THE COURT: Okay. I'm not following you.

6 MR. CALDWELL: I don't think a proper foundation has
7 been established to refer to simple materials as documentary
8 evidence.

9 THE COURT: Overruled.

10 You can answer the question if you feel you can,
11 Attorney Reardon.

12 THE WITNESS: Can you repeat it, please?

13 MR. RYAN: If I may rely upon the stenographer?

14 (The requested material was read back by the
15 stenographer.)

16 THE WITNESS: I think we would have left that up to
17 Sergeant Ballou to check his or to collect his emails.

18 Q. (By Mr. Ryan) Well, when you say in the manual you
19 created, that one of the obligations is to collect ESI. By
20 "collect" do you mean to do something that would allow you
21 to personally review it?

22 A. Correct. And I believe either Sergeant Ballou would
23 look through his files or I think the IT Department could
24 help in that, in collecting, making sure we have everything.

25 Q. Now, in the course of responding to these subpoenas,

1 did you have a number of meetings that you attended?

2 A. The Farak subpoenas are you referring to?

3 Q. Let me backup. Was Kris Foster assigned to be the
4 Assistant AG to handle the response to the Watt subpoena and
5 the Penate subpoenas?

6 A. Yes.

7 Q. And, fair to say, she was still relatively new to the
8 office, correct?

9 A. Correct.

10 Q. And this was a arrest of -- and a prosecution of a
11 former government official, correct?

12 A. I don't know, if, at that time, might have just been
13 the investigation. I'm not sure what stage it was at.

14 Q. Okay. In any event, you knew Sonja Farak was a drug
15 lab chemist?

16 A. Yes.

17 Q. Somebody who worked for the government?

18 A. Yes.

19 Q. And this was a fairly high-profile case, correct?

20 A. I don't know if I -- I don't feel comfortable
21 characterizing it that way.

22 Q. In any event, Kris Foster, to your knowledge, really
23 hadn't done anything like this before, had she?

24 A. No.

25 Q. And so, there were some meetings about how to respond

1 to these subpoenas that Kris Foster was a part of, correct?

2 A. Yes.

3 Q. And Kris Foster also had the benefit of having some
4 more experienced attorneys, like yourself, giving her advice
5 and in some cases instructions on how to respond, correct?

6 A. Yes.

7 Q. Now, yesterday we had an opportunity to look at some
8 feedback of a written draft of a memo that you provided to
9 Kris Foster in which you had encouraged her to collect the
10 file.

11 Is that something that you did in this case?

12 A. Yes.

13 Q. Did you encourage her to make sure any representations
14 of what the file contained or what had already been
15 disclosed were accurate?

16 A. Yes.

17 Q. Was it your understanding that Kris Foster was
18 responding to these instructions of yours?

19 A. Yes.

20 Q. And what did she say?

21 A. I don't remember specifically.

22 Q. Did she tell you that she had gone, and she had gone
23 through the file and looked at the file at any point?

24 A. I don't have a specific memory.

25 Q. Do you recall that at some point or another, decision

1 was made to move to quash these subpoenas?

2 A. Yes.

3 Q. And why was that decision made?

4 A. A number of reasons, a number of privileges that we
5 thought we could assert.

6 Q. And, at that time, was it your understanding that there
7 were certain documents that your office didn't want to turn
8 over?

9 MR. CALDWELL: Objection.

10 THE COURT: No. I'm going to sustain it in that form.

11 Q. (By Mr. Ryan) Well, why would you file a motion to
12 quash?

13 A. Because we thought there were certain privileges we
14 could assert.

15 Q. Assert to do what?

16 A. In arguing there were certain documents that we didn't
17 need to turn over because of the privileges.

18 Q. So it was your understanding, because of the reason you
19 were moving to quash is because you had some documents or
20 your office had some documents you didn't want to turn
21 over -- and I'm using the word "you", but I am talking about
22 your office.

23 MR. CALDWELL: Objection, Your Honor, to the form of
24 the question.

25 THE COURT: You can answer the question as to your

1 personal knowledge. Do you understand?

2 THE WITNESS: Yeah, the answer is yes.

3 Q. (By Mr. Ryan) And, within the office, did you learn
4 what these documents were?

5 A. I learned about the categories of documents. Didn't
6 actually see the documents.

7 Q. What were the categories of documents that you
8 understood that your office possessed that it didn't want to
9 turn over?

10 A. So, from what I remember, they were investigatory
11 privilege. I believe we might have used the CORI privilege,
12 and I don't remember any others.

13 Q. Did you attempt to -- did you consider using a
14 privilege against disclosing information related to health
15 or psychological or medical treatment?

16 A. Yes.

17 Q. And was it your understanding that your office
18 possessed some documents that would fall under that
19 exception?

20 A. I believe so.

21 Q. And when did you learn that?

22 A. I don't remember.

23 Q. And when you say that you believe so, were there
24 actually conversations, meetings taking place between
25 yourself, Randall Ravitz, John Verner, Dean Mazzone and Kris

1 Foster about this topic?

2 A. I don't remember specifically that topic, no.

3 Q. Were there conversations that had taken place about
4 what documents the requester already had?

5 MR. CALDWELL: Objection.

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

7 THE WITNESS: I believe we had discussions about that.

8 Q. (By Mr. Ryan) And was it your understanding that the
9 requester did not have these mental health worksheets?

10 A. I don't know.

11 Q. Well, when your office invoked this privilege against
12 turning over documents related to psychological and medical
13 and health, did you think it was doing that to prevent the
14 dissemination of these documents?

15 MR. CALDWELL: Objection.

16 THE COURT: No, you can answer it.

17 THE WITNESS: Yes. If that privilege was discussed, it
18 was because those kinds of documents were included.

19 MS. WEST: I'm sorry. I didn't hear the beginning of
20 that. What is it? If that?

21 THE WITNESS: If that privilege --

22 (Pause)

23 MR. RYAN: I'm sorry, Your Honor. Are you writing
24 something?

25 THE COURT: No. No. I'm writing everything.

1 MR. RYAN: Okay. I appreciate that.

2 Q. (By Mr. Ryan) Did you ever see these mental health
3 worksheets that you learned about?

4 A. No.

5 Q. And how -- well, let me ask you this, there's a
6 subpoena had also been given to Anne Kaczmarek, correct?

7 A. Yes.

8 Q. And what would have been Kris Fosters, if she was
9 following the steps in this manual, what should she have
10 done with respect to Anne Kaczmarek and her files?

11 A. The same steps, in speaking with her and about what's
12 in the files.

13 Q. And, in addition to speaking with her, actually looking
14 at and collecting what was in the files, correct?

15 A. Yes.

16 Q. And, if necessary, consulting with IT to make sure that
17 you have an accurate understanding of what electronically
18 stored information she had, correct?

19 A. Yes.

20 Q. And were you aware in that time, within a line
21 prosecutor's file, there would also be something called a
22 prosecution memo?

23 A. Yes.

24 Q. And would it have been upon Kris Foster in viewing the
25 file to look at the prosecution memo?

1 MR. CALDWELL: Objection, Your Honor.

2 Q. (By Mr. Ryan) If it was a part of the file?

3 A. Yes.

4 Q. Do you know whether or not she did that?

5 A. I don't know.

6 Q. You instructed her to do so though, correct?

7 A. I instructed her to look through the file, yes.

8 Q. Look through both her file and look through whatever
9 Joe Ballou had, would be responsive to the subpoena,
10 correct?

11 A. Yes.

12 Q. Did Kris Foster report that she had done so?

13 A. Yes.

14 Q. And, in order for pleadings that she filed to go out
15 the door, either you or Randall Ravitz would have to read
16 them first, correct?

17 A. Yes.

18 Q. And if a pleading that Kris Foster filed made
19 representations about what the nature of the evidence in
20 question was, you would of made sure, at least by asking
21 her, if that was true and accurate, correct?

22 A. Yes.

23 Q. And you did that in this case, didn't you?

24 MR. CALDWELL: Objection.

25 THE COURT: No, you can answer it.

1 THE WITNESS: Yes.

2 Q. (By Mr. Ryan) Now, you received an email the day after
3 this hearing in the case, where Sergeant Ballou had received
4 a subpoena to testify, correct?

5 A. I don't remember specifically.

6 Q. Putting up on the board, and you can get out of your
7 seat --

8 Maybe I'm not putting up on the board.

9 (Pause)

10 MR. RYAN: Sorry.

11 (Pause)

12 Q. (By Mr. Ryan) So I'm putting up on the board an email
13 that's already been entered into evidence as Exhibit --

14 MR. RYAN: I believe it's going to be Exhibit 210, Your
15 Honor.

16 THE COURT: Thank you.

17 Q. (By Mr. Ryan) This was from Kris Foster on Tuesday
18 September 10, 9:43 in the morning, to John Verner, Anne
19 Kaczmarek, Dean Mazzone, Randall Ravitz, and Suzanne
20 Reardon. That's you, correct?

21 A. Yes.

22 Q. And in this email Kris Foster related what took place
23 in court the day before, correct?

24 A. Yes.

25 Q. And she told the whole group that Judge Kinder has

1 given us until September 18 to go through Sergeant Ballou's
2 file and anything in it we think is privileged shouldn't be
3 disclosed. We have to give it to Judge Kinder to review in
4 camera.

5 Correct?

6 A. Yes.

7 Q. She then went on to say that Sergeant Ballou only
8 testified to what was in the Grand Jury, what he found in
9 Farak's car, work station, et cetera. Judge Kinder did not
10 allow any kind of questioning anywhere near anything
11 privileged.

12 I guess my question for you is at that time, were you
13 aware whether or not there'd been any finding by the Court
14 as to whether anything was privileged?

15 A. I don't know.

16 Q. Okay. Had your office decided to take a position that
17 some of the things that it had should be privileged?

18 A. I don't know about the timing. I don't know if we had
19 filed a motion to quash at this point or not.

20 Q. Well, if I represent to you that at the beginning it
21 says: So at yesterday's hearing, my motion to quash was
22 flat out rejected.

23 A. Yes. Then yes.

24 Q. So your office had taken the position that there were
25 some things that were privileged, correct?

1 A. Yes.

2 Q. And when she says Judge Kinder didn't allow any
3 questioning near that, that's not because Judge Kinder had
4 allowed your motion, correct?

5 MR. CALDWELL: Objection.

6 THE COURT: Sustained.

7 Q. (By Mr. Ryan) In response to this email, John Verner
8 said to the whole group: Anne, can you get a sense from Joe
9 what is in his file, emails, et cetera.

10 Kris, did the Judge say his file or did he indicate Joe
11 had to search his emails, et cetera?

12 Do you see that?

13 A. Yes.

14 Q. And based on your manual, emails are a part of the
15 file, aren't they?

16 A. Yes.

17 Q. In any event, Anne Kaczmarek wrote back and said: Joe
18 has all reports and reports generated in the case, all
19 photos and videos taken in the case, search warrants and
20 returns, copies of the paperwork seized from her car
21 regarding news articles and her mental health worksheets.

22 Do you see that?

23 A. Yes.

24 Q. Now, prior to receiving this email, you were aware that
25 these mental health worksheets existed, correct?

1 A. I don't remember.

2 Q. Well, they had been the subject of some conversations
3 about the things that were privileged in your office's
4 possession, correct?

5 MR. CALDWELL: Objection, Your Honor.

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

7 THE WITNESS: I don't remember.

8 Q. (By Mr. Ryan) Do you know what Kris Foster ended up
9 submitting to the Court and respond to the Judge's order in
10 producing any undisclosed documents for an in camera review?

11 A. I don't recall.

12 (Off the record discussion among Counsel.)

13 MR. RYAN: If I could have Exhibit 193.

14 (Off the record discussion among Counsel.)

15 Q. (By Mr. Ryan) I'm going to show you what's been marked
16 as Exhibit 193.

17 (Pause)

18 THE COURT: Is that the letter to Judge Kinder?

19 MR. RYAN: It is.

20 Q. (By Mr. Ryan) Have you seen that document before?

21 A. I actually -- I don't remember.

22 Q. Do you recall any conversations with any of those
23 people who received that email about what to do during those
24 six days about this Superior Court Judge's order?

25 A. Conversations following these emails?

1 Q. Right. After Kris Foster said this is what we've got
2 to do and John Verner said, What's in the file, and Anne
3 reported that there are these mental health worksheets in
4 the file; six days later that letter gets in. I'm curious
5 what happened during that six-day period that resulted in
6 that letter getting sent.

7 A. I don't have a memory of that. I'm not sure I was
8 involved with this part of it.

9 Q. Is it possible that Randall Ravitz signed off on that?

10 A. It's possible, yes.

11 Q. And --

12 MR. RYAN: If I can have just a moment?

13 THE COURT: Uh-huh.

14 (Pause)

15 MR. RYAN: No further questions.

16 THE COURT: Okay.

17 MR. CALDWELL: Thank you, Your Honor.

18 **CROSS EXAMINATION BY MR. CALDWELL**

19 Q. Good afternoon, Ms. Reardon.

20 A. Good afternoon.

21 Q. A few questions in regards to what you just testified
22 to.

23 So, Ms. Reardon, you testified in 2013 you were the
24 Deputy Chief of Appeals for the Attorney General's Office?

25 A. Yes.

1 Q. And in that title of Deputy Chief of Appeals you had
2 several duties and responsibilities, correct?

3 A. Yes.

4 Q. Included, but not limited to monitoring work flow,
5 correct?

6 A. Yes.

7 Q. Checking and editing work of other AAGs below you?

8 A. Yes.

9 Q. And also assigning cases, correct?

10 A. Yes.

11 Q. And assigning cases was a particular job that you had
12 solely in the Appeals Division, correct?

13 A. Yes.

14 Q. And you said you supervised, at that time, 2013
15 approximately, ten AAGs?

16 A. Yes.

17 Q. And in your experience in the AAG's Office and
18 specifically to the Criminal Bureau, which has several
19 divisions, correct?

20 A. Yes.

21 Q. Ten Assistant Attorney Generals, that's a lot of
22 attorneys to supervise; is that fair --

23 A. Yes.

24 Q. -- to say?

25 And you had indicated for just one person, correct?

1 A. I'm sorry?

2 Q. For just one person, it's a lot of people to supervise?

3 A. Well, it was Randall Ravitz and myself.

4 Q. And yourself.

5 And so you, in order -- you had to split the
6 responsibilities?

7 A. Yes.

8 Q. But you assigned the cases to all ten, correct?

9 A. Yes.

10 Q. And now, just asking, I just want to get a little
11 background about the Appeals Division. So how do cases come
12 into the Appeals Division?

13 A. Well, there are certain cases that our division only
14 handles such as federal habeas petitions and criminal
15 appeals and then cases like this, like subpoenas, if they're
16 to personnel in our office or criminal justice personnel in
17 other offices, such as DA's or other criminal justice
18 agencies.

19 Q. So you'd, perhaps, for example, represent, like I said,
20 a specific Assistant District Attorney?

21 A. Yes.

22 Q. And you could represent someone from the Inspector
23 General's Office, correct?

24 A. Yes.

25 Q. Someone from Department of Public Health, correct?

1 A. Occasionally.

2 Q. Occasionally, and various executive agencies and
3 agencies throughout the Commonwealth, correct?

4 A. Yes.

5 Q. And now, I just want to know, after a case is assigned
6 to a particular Assistant Attorney General and they begin
7 doing work in the case, they then report to the person who
8 they're assigned to, whether it be you, AG Reardon, or AAG
9 Ravitz, correct?

10 A. Yes.

11 Q. And you had indicated that you, Kris Foster --
12 Assistant Attorney General Kris Foster was hired in the
13 Summer of 2013?

14 A. Yes.

15 Q. And you had indicated -- well, let me ask you. Do you
16 remember how long she was an attorney for before she joined
17 the AGO?

18 A. He believe it was three or four years at the Suffolk
19 DA's Office.

20 Q. And, if you remember, she came directly from the
21 Appeals Division of the Suffolk DA's Office?

22 A. Yes.

23 Q. And I believe you testified with Mr. Ryan that she
24 solely did criminal appellate work?

25 A. Yes.

1 Q. And now, in terms of the experience of some of the AAGs
2 in your division, did a lot have criminal appellate
3 experience?

4 A. At that time, not so many.

5 Q. Not so many. So it's fair to say she was a good person
6 to bring into the division because of this experience with
7 simple criminal appeals, correct?

8 A. Yes.

9 Q. I am not saying they are simple, excuse me.

10 It's fair to say a lot of people there in the office
11 had federal appeals experience?

12 A. Well, there's a good number who had big firm
13 experience, so some of that would include federal.

14 Q. And a lot of civil discovery experience, correct?

15 A. Yes.

16 Q. And when I say "discovery experience" I mean voluminous
17 or very large cases involving complex discovery issues?

18 A. Yes.

19 Q. Okay. But it's fair to say, in terms of the work flow,
20 how it was disbursed, everybody kind of got a little bit of
21 everything, right?

22 A. Yes.

23 Q. So some people do a criminal appeal and do some habes,
24 some would do a motion to quash criminal appeals or whatever
25 you want, to kind of keep everybody doing something new?

1 A. Yes.

2 Q. Okay. And you testified that you were familiar with a
3 subpoena that Anne Kaczmarek received in August of 2013,
4 correct?

5 A. Yes.

6 Q. And that was for her to give testimony, I believe you
7 told Attorney Ryan, a case Commonwealth vs. Penate, correct?

8 A. Yes.

9 Q. And you were then later made aware of another subpoena
10 for Sergeant Joseph Ballou of the Mass. State Police,
11 correct?

12 A. Yes.

13 Q. And that was in the case, Commonwealth v. Jermaine
14 Watt, correct?

15 A. Yes.

16 Q. And it's fair to say that both subpoenas were seeking
17 testimony and documents?

18 A. Yes.

19 Q. Just one moment.

20 Okay. I'm going to just take a brief step back here.

21 (Pause)

22 (Off the record discussion with the Clerk.)

23 MR. CALDWELL: I'm sorry, Your Honor.

24 (Pause)

25 Q. (By Mr. Caldwell) Ms. Reardon, I'm approaching you

1 with what has been previously marked as Grand Jury Exhibit
2 247. Please take a look at that.

3 And you have testified as to this, AG Institute
4 pamphlet, document?

5 A. Yes.

6 Q. And it's this title, as you indicated, Responding to a
7 Subpoena Where the AGO is a Third Party?

8 A. Yes.

9 Q. And this is a presentation you assisted in presenting
10 to not only, perhaps, members of the Appeals Division but
11 also all agency attorneys, correct?

12 A. Yes.

13 Q. So this isn't something that's just solely given to the
14 appellate attorneys, everybody within the office could
15 attend, if they so desired?

16 A. Yes.

17 Q. Okay. And as you indicated on direct, this is broken
18 down, essentially, into three separate sections, correct?
19 And beginning with part two, on page four?

20 A. Yes.

21 Q. The -- and it's subpoenas relating to discovery and
22 procedure for responding to subpoenas for deposition and/or
23 production of documents, correct?

24 A. Yes.

25 Q. So, essentially, the first is, as indicated by Attorney

1 Ryan, when asked -- when he asked you on direct is who
2 handles the subpoena, correct?

3 A. Yes.

4 Q. And you had indicated a civil discovery request, as
5 indicated in this paragraph, would be treated the same way
6 as a criminal discovery request?

7 A. Yes.

8 Q. And so, I'm going to skip right down to section three
9 where you indicated discussing collecting files.

10 A. Yes.

11 Q. Now, in your experience as the appellate Assistant
12 Attorney General, specifically as the Deputy involved in
13 this training program, would it be fair to say this is one
14 of the most important steps in responding to a subpoena?

15 A. Yes.

16 Q. And because, as you had indicated previously, a
17 subpoena could perhaps go away or be dealt with without
18 having to file any type of paperwork because the party may
19 have the documents, it may be overbroad or we might not have
20 them at all?

21 A. Yes.

22 Q. So it's important to have your boots on the ground,
23 figure out where we stand before we start filing paperwork
24 or doing anything of that nature, correct?

25 A. Yes.

1 Q. And in terms of the drafting of the memorandum and
2 motion, why is collecting the papers important, in your own
3 words?

4 A. Because then you, only then can you decide what
5 privileges you might assert in a motion to quash.

6 Q. And, essentially, so you know what you're talking
7 about, right?

8 A. Yes.

9 MR. CALDWELL: Okay. If I may?

10 Thank you.

11 (Pause)

12 Q. (By Mr. Caldwell) Now, you assigned Kris Foster not
13 only the Penate matter, but also the Watt matter, correct?

14 A. Yes.

15 Q. Is that your recollection?

16 A. Yes.

17 Q. Okay. Now, working up to that, were there any other
18 AAGs involved in that because Kris Foster wasn't available,
19 if you recall?

20 A. Yes, I believe there were some.

21 Q. Did you have an opportunity to reach out to the
22 Springfield Office of the Attorney General and call a Beth
23 Ann Lux?

24 A. Yes.

25 Q. And why did you have to do that?

1 A. I believe Kris wasn't going to be available for hearing
2 on that and we thought it made sense to see if somebody in
3 the Springfield office could cover the hearing for her.

4 Q. And in a situation, if you recall -- I don't want to
5 put words in your mouth, but is it fair to say that
6 Ms. Foster was going to do all the drafting and someone from
7 the Springfield office of the AGO would come out and do the
8 formal arguments?

9 A. Yes, I think so.

10 Q. But at a certain point, that date changed, it was
11 moved?

12 A. I believe so, yes.

13 Q. And so it was moved from August to September?

14 A. Correct.

15 Q. And now Ms. Foster was available to not only draft, but
16 appear and make argument?

17 A. Yes.

18 Q. Okay. Now, at this point, so were -- you know, if you
19 remember, so we're talking between the end of August now,
20 and the beginning of September, at -- were you reviewing
21 Ms. Foster's work at this point?

22 A. Yes.

23 Q. You were.

24 At any point did AAG Randall Ravitz have an opportunity
25 to review Ms. Foster's work around this time?

1 A. I believe so. There was a point in time when we
2 switched who we were reviewing.

3 Q. And do you recall what time period that --

4 A. I don't remember specifically.

5 Q. That's fair to say that if, perhaps, you had to review
6 a particular AAG's work, and you were out of the office for
7 whatever reason -- vacation or personal reasons -- AAG
8 Ravitz would review those documents, correct?

9 A. Yes.

10 Q. And even if it was the case where they had to be
11 reviewed and then filed immediately, correct?

12 A. Yes.

13 Q. And you would do the same thing, vice versa?

14 A. Yes.

15 Q. If Attorney Ravitz was out, you would step in and do
16 the necessary reviews.

17 At any time with Ms. Foster's work, specifically to the
18 Watt/Penate case, at any time did those paths cross where
19 maybe one of you reviewed some of the work and another
20 person reviewed some of the work?

21 A. That's possible. I don't remember specifically, but it
22 is possible.

23 Q. It is possible.

24 And if that were the case, you would trust that if,
25 say, perhaps Attorney Ravitz was doing reviews, and it was

1 sent back to AAG for edits, and then you had to step in, you
2 would hope you would be able to see that initial first round
3 of edits, correct?

4 A. Yes.

5 Q. In fact, that would be very helpful for you doing your
6 final edits, if you knew what the initial conversations were
7 between, say, Kris Foster and Randall Ravitz, if that were
8 the case?

9 A. Yes.

10 Q. Now, if I can show you an email.

11 Now, I'm going to show you an email -- well, first is
12 from Attorney Kris Foster to you, Suzanne Reardon, and I --

13 MR. CALDWELL: This is already marked as an exhibit.
14 The number escapes me at this point, Your Honor.

15 Q. (By Mr. Caldwell) But if you could please just read
16 what Kris Foster wrote to you on September 5 of 2013.

17 A. Read it out loud?

18 Q. Please, if you could.

19 A. Attached is a first draft --

20 THE INTERPRETER: Let me just switch with the
21 interpreter.

22 THE COURT: Sure, take your time.

23 (Pause)

24 Q. (By Mr. Caldwell) No --

25 THE COURT: Hang on.

1 MR. CALDWELL: Sorry. My apologies.

2 (Pause)

3 THE INTERPRETER: Thank you. I'm all set.

4 Q. (By Mr. Caldwell) Please, can you start from the
5 beginning?

6 A. Attached is a first draft of my motion to quash
7 Sergeant Ballou's subpoena in Commonwealth vs. Jermaine
8 Watt. Bear with me, as this is my first time doing anything
9 with subpoenas, and I'm still figuring out the privileges.
10 Feel free to tear it apart though.

11 Q. And that was signed: Thanks, Kris; correct?

12 A. Yes.

13 Q. And that was sent, as you indicated, September 5, 2013
14 at 11:10 a.m. And then there's an email attached here at
15 the top, your response approximately four hours 20 minutes
16 later at 3:33 p.m. on the fifth of September 2013. It is
17 rather lengthy, but, for the record, I would like you to
18 read that, this entire passage, if you could.

19 A. Kris, I think this looks good. See comments attached.

20 I also wonder if we would be able to make an argument
21 like the attached memo related to Dookhan subpoena on pages
22 five and six, that because this defendant plead guilty, this
23 impeachment information won't help him.

24 And if we could get anymore information about what was
25 already given to defense counsel, that might help.

1 See argument two in the attached memo.

2 Because the Judge has scheduled this hearing for
3 several cases in one day, we may be less likely to get the
4 subpoena quashed altogether, but it never hurts to make him
5 aware of the privileges involved.

6 Looking back at motions to quash that were filed in the
7 Dookhan cases, it looks like Jessica only raised the
8 investigative privilege.

9 Although CORI might be relevant, I would be more
10 comfortable knowing what documents are at issue or what was
11 already turned over before we raised that privilege.

12 Have you heard back from Anne?

13 Q. Thank you.

14 MR. CALDWELL: If I may admit this as the next exhibit?

15 THE COURT: Okay.

16 MR. CALDWELL: Thank you.

17 THE CLERK: Marked as Number 248.

18 (Exhibit No. 248, email from AAG Reardon to AAG Foster
19 (9/5/13), marked)

20 Q. (By Mr. Caldwell) So in reading that email, Ms. Foster
21 (sic), you're basically telling Kris, I am kind of
22 simplifying it, talk to Anne, take a look at the file, take
23 a look at the papers --

24 A. Yes.

25 Q. -- correct?

1 Amongst other things, like attaching an example for her
2 to take a look at?

3 A. Yes.

4 Q. In order to, essentially, draft a better memorandum?

5 A. Correct.

6 Q. And it's true it was Ms. Foster's first case doing a
7 motion to quash, correct?

8 A. Yes.

9 Q. Now, I'm going to ask you something about -- not only
10 the Watt and Penate case in terms of requests for all
11 documents, it's a very broad request, correct?

12 A. Yes.

13 Q. Now, can you -- can you distinguish for me, if you can,
14 the difference between documents and physical evidence? And
15 if you can, can you describe what each -- what you believe
16 each of those things to mean.

17 A. So documents would be papers that were generated in the
18 case. And physical evidence would be actual evidence, such
19 as drugs or something else like that.

20 Q. Drugs, any type of -- fair to say, drugs, weapons
21 written admissions, things of that nature?

22 A. Yes.

23 Q. And those are something that, if you know, are
24 regularly and usually secured by law enforcement, correct?

25 A. Yes.

1 Q. Now, if you know, AAG Reardon, you had the opportunity
2 to review couple of different memorandums regarding the
3 motion to quash in the Penate and Watt cases, correct, that
4 were authored by Ms. Foster?

5 A. Yes.

6 Q. Is it fair to say that in the course of reviewing those
7 you made certain suggestions, correct?

8 A. Yes.

9 Q. And there were several suggestions, perhaps additional
10 cases, or you may want to clean the sentence up or
11 grammatical issues, but the most important one was to look
12 at the documents and talk to Anne Kaczmarek, correct?

13 A. Yes.

14 Q. And, as far as you know, those motions and memos to
15 quash were filed with this Court here in Hampden County?

16 A. Yes.

17 Q. And does the date, September 6, 2013, does that ring a
18 bell to you?

19 A. No, it was around there, I don't know the exact date.

20 Q. Now, I'm going back to what was marked as Exhibit
21 Number 247. And this is -- again, I'm showing you the
22 Responding to Subpoenas Where the AGO is a Third Party.

23 You've seen this before. We talked about it.

24 Is -- looking at the bottom of the first page, was
25 this -- at what point was this manual revised?

1 A. March 2013.

2 Q. Okay. And that's when you took place in the
3 presentation to AGO personnel in regards to subpoena issues,
4 correct?

5 A. Yes.

6 Q. And is there any type of note at the bottom of that
7 first page?

8 A. Yes.

9 Q. Can you please read the note for us?

10 A. This manual was created to provide internal guidance
11 only and should not be considered the official policy of the
12 Massachusetts Office of the Attorney General.

13 Also this manual contains internal practices of the
14 AGO, and is exempt from disclosure as a public record. This
15 manual should not be cited nor circulated outside of the
16 AGO.

17 Q. Okay. Thank you.

18 Okay. So I gave you a date of September 6, 2013. You
19 believe that at or around that date, the documents that you
20 reviewed, that Kris Foster authored on the Watt and Penate
21 case were filed?

22 A. Yes.

23 Q. Let me tell you, as a supervisor supervising other
24 AAGs, when you make a suggestion, like in the email I
25 previously showed you, like talking to somebody, looking at

1 documents, taking any type of advice; as a supervisor when
2 you give that advice, do you trust that the individual you
3 are giving that information to will follow it, correct?

4 A. Yes.

5 Q. And especially a person with limited experience and who
6 is relatively new to these types of issues in terms of
7 quashing subpoenas?

8 A. Yes.

9 Q. Now, talking about privileges, I know Attorney Ryan
10 brought up some privileges and the office asserting various
11 things. In terms of the investigatory privilege, CORI
12 privilege, mental health privileges, things like that, why
13 do we assert those types of privileges at the --

14 THE COURT: Mr. Caldwell, I know that. I don't --

15 MR. CALDWELL: Just for the record, Your Honor.

16 THE COURT: Okay.

17 Q. (By Mr. Caldwell) It's fair to say it's to protect
18 certain interest in people, correct?

19 A. Yes.

20 Q. Personal information?

21 A. Yes.

22 Q. Correct?

23 That doesn't have any bearing on the litigation, fair
24 to say?

25 A. Correct.

1 Q. And it was your previous testimony that you had never
2 seen these mental health worksheets that were discussed in
3 the emails that Mr. Ryan had showed to you previously,
4 correct?

5 A. Correct.

6 Q. Okay. Now, you had indicated on direct and I have gone
7 over it several times, that you instructed Kris Foster to
8 look through the file?

9 A. Yes.

10 Q. And you had indicated yes. Is that your answer to
11 Mr. Ryan?

12 A. Yes.

13 Q. And are you certain of that or could that have been
14 just your belief that you told her to do that?

15 A. No, I'm certain of that.

16 Q. Okay. And in terms of the correspondence written to
17 Judge Kinder from Kris Foster, you had not seen that letter?

18 A. I don't remember that letter, no.

19 Q. You didn't remember that letter at all?

20 A. No.

21 Q. And you didn't authorize her to write a letter,
22 correct?

23 A. Not that I can remember.

24 Q. And so you had no input in terms of its content or the
25 language used, correct?

1 A. I don't think so.

2 Q. And, in terms of any internal meetings of regarding --
3 I know Judge Kinder made a request to review the file and
4 instructed Ms. Foster to do so. Did you have any
5 involvement in any type of internal meetings regarding what
6 the AGO was going to do about that?

7 A. I know we had some meetings. I don't remember if it
8 was specifically about those instructions from Judge Kinder
9 or not.

10 Q. Is it fair to say some of those meetings were in
11 response to how to answer to the subpoenas, that they come
12 in, in a similar way they did in the Dookhan matter?

13 A. Yes.

14 Q. And when I say that, I mean you're getting a lot of
15 these, and how are we going to deal with them?

16 A. Yes.

17 Q. And that includes what privileges if any and at all we
18 can assert in attempts to quash subpoenas for documents
19 and/or testimony?

20 A. Yes.

21 MR. CALDWELL: Can I have one moment, Your Honor?

22 THE COURT: Uh-huh.

23 (Pause)

24 (Off the record discussion among Counsel.)

25 MR. CALDWELL: Thank you, Your Honor.

1 Q. (By Mr. Caldwell) Now, Ms. Reardon, you had testified
2 that it was your understanding that the office possessed
3 documents that fell under the psychological privilege?

4 A. I believe so.

5 Q. And are you certain of that?

6 A. I'm not certain.

7 Q. You indicated though, previously, that you had never
8 seen these documents, correct?

9 A. Correct.

10 Q. Okay. Now, was that previous, and in response to my
11 first question, was that previous understanding based on the
12 fact that Kris Foster added specific language referencing
13 the psychological documents at the end of her Watt memo?

14 A. I'm sorry. Can you repeat that question?

15 Q. Okay. So the answer to my first question, you answered
16 my first question. Now, was it your understanding, based on
17 the fact that Kris Foster added specific language
18 referencing the psychological documents at the end of her
19 Watt memo, do you -- is that why you believe, because she
20 cited that in a memo?

21 A. Yes. Yes.

22 MR. CALDWELL: Your Honor, if I may I approach?

23 THE COURT: Uh-huh.

24 Q. (By Mr. Caldwell) Placing before you what is a
25 memorandum. It's Commonwealth v. Jermaine Watt. Can you

1 please just look that that for us.

2 Take your time.

3 (Pause)

4 Q. (By Mr. Caldwell) Okay. Thank you. So calling your
5 attention to Section Five, I believe it says, as an
6 alternative to quashing the subpoena, the Court should --
7 can you just please explain what this paragraph is -- just
8 very brief synopsis.

9 A. This is an alternative argument. If the Court declined
10 to quash the subpoena in its entirety, we asked for the
11 Court to restrict the information that would be given over.

12 Q. And, if you know, that was the memorandum that was
13 filed?

14 A. Yes.

15 Q. So now, this memorandum was the final copy or was what
16 Kris Foster drafted. And this is -- this product was given
17 to you after you had given her the advice to go through the
18 file, look through things, talk to Anne, correct?

19 A. Yes.

20 Q. So when you see the language in terms of alternative
21 arguments, is it fair to say that you trust that Kris Foster
22 took your advice, as the supervisor, and tailored her
23 argument specifically to her knowledge of what documents we
24 possessed or did not possess?

25 A. Yes.

1 Q. Okay. And you never asked her specifically that she
2 tailor that language, correct?

3 A. Yes.

4 Q. (By Mr. Caldwell) Is it fair to say you just assumed
5 that she was doing her due diligence when that specific
6 language was in there?

7 A. Yeah. Yes.

8 Q. Okay. But -- so you assumed that she would have
9 tailored and put the appropriate language in there based
10 upon her -- after her review of the documents, correct?

11 A. I assumed, but I believe that I would have talked to
12 her about here's an alternative, and include things that
13 might be relevant to the documents.

14 Q. But you have no specific knowledge she asserted the
15 mental health privilege on account of any specific documents
16 we did or didn't have, correct?

17 A. Not specifically.

18 Q. Thank you.

19 (Off the record discussion among Counsel.)

20 MR. CALDWELL: I'm sorry, Your Honor, just one moment.

21 (Off the record discussion among Counsel.)

22 MR. CALDWELL: Your Honor, stipulation of the parties,
23 I would like to have this marked as the next exhibit, two
24 separate exhibits. One is the subpoena to Sergeant Joseph
25 Ballou for documents and testimony for Jermaine Watt.

1 THE COURT: Okay.

2 MR. OLANOFF: Judge, I would object. Those items are
3 already introduced as evidence two days ago, so I can get
4 you those numbers if you need them.

5 MR. CALDWELL: That would be fine, Your Honor, I
6 apologize.

7 MS. WEST: Just for the record, I think the items that
8 were introduced was an unsigned version. I think it was an
9 email version to Mr. Olanoff. This is the signed version.

10 MR. OLANOFF: Okay. Go for it.

11 THE COURT: Okay.

12 MR. CALDWELL: Two separate exhibits?

13 THE COURT: Okay.

14 MR. RYAN: No objection.

15 THE CLERK: Subpoena marked as Exhibit 249. Motion is
16 marked as Number 250.

17 (Exhibit No. 249, subpoena to Sergeant Ballou, marked)

18 (Exhibit No. 250, AG's motion to Quash Subpoena in
19 Defendant Watt's case (09-1068), marked.)

20 MR. CALDWELL: I have nothing further of the witness.

21 **QUESTIONS BY THE COURT**

22 THE COURT: Attorney Reardon.

23 THE WITNESS: Yes.

24 THE COURT: You're Kris Foster's boss, right?

25 THE WITNESS: Yes.

1 THE COURT: Right?

2 And she came to you, and she said, here's my motion to
3 quash. Never did this before. Throw it away if you want,
4 right?

5 Essentially, she said that?

6 THE WITNESS: She said she welcomes the edits,
7 essentially.

8 THE COURT: Okay. And you edited away at some of her
9 work?

10 THE WITNESS: Yes.

11 THE COURT: All right. Because you knew she was brand
12 new, right?

13 THE WITNESS: Brand new to that kind of case, yes.

14 THE COURT: Did you know she never tried a case by
15 herself before that date?

16 THE WITNESS: I believe I did.

17 THE COURT: Okay. And so, at this juncture in
18 September of 2013, she's going back and forth with you
19 relative to this motion to quash out in Springfield,
20 correct?

21 THE WITNESS: Correct.

22 THE COURT: All right. So here is Exhibit 193, which
23 you looked at earlier which is a letter, a letter addressed
24 directly to Judge Kinder, signed by Ms. Foster, responding
25 to this issue.

1 Did she go over this letter with you before she shipped
2 it in to Judge Kinder in the Superior Court?

3 THE WITNESS: I just don't remember that letter. It
4 could have been. It would of been either I or Randall
5 Ravitz would have gone over that letter with her. I just
6 don't have a specific memory if it was me.

7 THE COURT: Let me ask you this. Who decided to hire
8 her?

9 THE WITNESS: Randall Ravitz and I together.

10 THE COURT: You interviewed a bunch of people, you
11 desired to hire Ms. Foster?

12 THE WITNESS: Yes.

13 THE COURT: You hired Ms. Foster, you brought her in.
14 You were aware that she was the -- this was her first motion
15 to quash --

16 THE WITNESS: Yes.

17 THE COURT: -- right?

18 And so you were kind of babysitting her, fair to say,
19 first time through on this issue?

20 THE WITNESS: Yes.

21 THE COURT: All right. And off she goes to
22 Springfield, on her own. And the next morning at 9:46 in
23 the morning, Exhibit 210: So at yesterday's hearing, my
24 motion to quash was flat out rejected. Judge Kinder has
25 given us until September 18, to go through Sergeant Ballou's

1 file and anything in it we think is privileged or shouldn't
2 be disclosed, we have to give it to Judge Kinder -- so forth
3 and so on.

4 And she -- did she tell you, she got yelled at by Judge
5 Kinder?

6 THE WITNESS: I believe so.

7 THE COURT: She told you that Judge Kinder told her,
8 How can you say it's not in the file, you haven't looked at
9 the file?

10 Did she tell that you?

11 THE WITNESS: I don't remember specifically.

12 THE COURT: Okay. Fair to say, it was kind of a big
13 deal, at least a big deal for her, that off she went to
14 Springfield and she's in front of Springfield Superior Court
15 Judge getting yelled at, right; is that accurate?

16 THE WITNESS: Fair to say, yes.

17 THE COURT: Now, am I correct, that a little while ago
18 you testified that you asked her if she looked through the
19 files and she said she did?

20 THE WITNESS: I believe so.

21 THE COURT: What do you mean you believe so. Do you
22 recall it? You don't recall it?

23 THE WITNESS: I don't recall specifically, but that
24 would have been my practice.

25 THE COURT: Well, I'm not asking you what has been your

1 practice. I'm saying, in this particular case, you
2 testified that you asked her if she looked through the files
3 and she -- and you testified she said yes, she did.

4 Now, is that accurate? Do you have a present memory of
5 that? Do you not have a present memory of that?

6 (Pause)

7 THE WITNESS: I believe I have a memory of asking her
8 that. I believe so, yes.

9 THE COURT: And you have a present memory of her
10 telling you she looked through the files?

11 THE WITNESS: Yes.

12 THE COURT: And you have a present memory of where that
13 conversation took place?

14 THE WITNESS: In the office, yeah.

15 THE COURT: And you're just -- assume it's the office;
16 you have no -- or do you have a present memory of a
17 particular office where this particular conversation took
18 place?

19 THE WITNESS: I believe it was in her office.

20 THE COURT: In her office.

21 Do you remember anything else about that part of the
22 conversation or that particular kind of hot item
23 conversation, this incident occurred out in the West?

24 THE WITNESS: Not specifically.

25 THE COURT: Well -- I'm sorry?

1 THE WITNESS: Not specifically, no.

2 THE COURT: Okay. All right.

3 Do you have any recollection of her telling you that,
4 that her superiors told her that everything had been turned
5 over, and she never verified that individually?

6 Do you have any memory of any conversation like that
7 with Ms. Foster?

8 THE WITNESS: Not specifically, no.

9 THE COURT: Who decided that Ms. Foster would handle
10 this motion to quash? Who assigned it to her?

11 THE WITNESS: I discussed it with Mr. -- Attorney
12 Ravitz. And we agreed that it would be a good case to give
13 her, to give her experience in these types of cases.

14 THE COURT: And it was some -- there was some testimony
15 about how this works. And tell me how this works, in this
16 particular instance, in terms of who she reported to on this
17 whole motion to quash issue.

18 Is she reporting to you? Is she reporting to Ms.
19 Kaczmarek? What's the pecking order in this particular
20 motion to quash?

21 THE WITNESS: Well, I would be her first line
22 supervisor, but Mr. Ravitz was also involved. And we had
23 meetings with John Verner and Dean Mazzone where we all
24 discussed it, so it was a group of people who were involved.

25 THE COURT: And so, is it fair to say that you had --

1 particularly, you had a discussion when she came rattling
2 back to Boston and saying that she got yelled at and that
3 he's demanding to see these documents and so forth, so there
4 must have been a summit meeting as a result of that
5 incident. Is that fair to say?

6 THE WITNESS: Yes.

7 THE COURT: And where did that meeting take place?

8 THE WITNESS: I believe it was John Verner's office.

9 THE COURT: And who was in the office?

10 THE WITNESS: John Verner, Randy Ravitz, I believe Dean
11 Mazzone was there, and perhaps Anne Kaczmarek.

12 THE COURT: Okay. And to the best of your knowledge,
13 who said what at that meeting?

14 THE WITNESS: I mean, I don't know specifically, but I
15 know that it was discussed as to, I believe, questions were
16 asked of Anne as to what was in the file, what had we
17 already turned over, along those lines, discussion along
18 those lines.

19 THE COURT: All right. What did Anne say?

20 THE WITNESS: I don't think -- can't answer
21 specifically. I know that she said that there were a number
22 of documents already turned over. I just don't remember the
23 specifics of what they were.

24 THE COURT: Okay. And what -- at that meeting or any
25 subsequent meeting, was there any conversation that led to

1 the sentence, quote, After reviewing Sergeant Ballou's file,
2 every document in his possession has already been disclosed,
3 close quote; that ended up in this letter from Ms. Foster
4 directly to Judge Kinder?

5 Was that -- was that sentence or anything close to that
6 discussed at this meeting that this is the response that
7 should be given to Judge Kinder?

8 THE WITNESS: I believe so, yes.

9 THE COURT: Okay. And tell me what you recall about
10 that. Who said what about that?

11 THE WITNESS: I believe we were asking Anne about what
12 was in Sergeant Ballou's file, and whether she knew what had
13 already been turned over from that file. And I believe my
14 memory is that she thought that everything in his file, I
15 think, had been turned over.

16 THE COURT: Any inquiry?

17 MR. RYAN: No.

18 THE COURT: Any inquiry?

19 MR. CALDWELL: No.

20 THE COURT: Thank you very much.

21 THE WITNESS: Thank you.

22 THE COURT: You may step down.

23 We will suspend for the day.

24 (The witness stepped down.)

25 THE COURT: Nine o'clock tomorrow morning.

(The Court exited at 4:01 p.m.)

(* * * * *)

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 23, 2016

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