COMMONWEALTH OF MASSACHUSETTS

HAMPDEN, ss

SUPERIOR COURT
DOCKET NO. HDCR2007-00770
HDCR2012-00226
HDCR2005-01159
HDCR2010-01233
HDCR2012-00624
HDCR2012-00083
HDCR2012-00399
HDCR2009-00097
HDCR2007-01072
HDCR2009-01072
HDCR2010-00253
HDCR2009-01068
HDCR2009-01069

COMMONWEALTH

v.

ERICK COTTO, JR.
GLENDA APONTE
OMAR BROWN
OMAR HARRIS
FIORI LIQUORI
ROLANDO PENATE
WENDELL RICHARDSON
LIZARDO VEGA
BRYANT WARE
JERMAINE WATT

PARTIES' JOINT PROPOSED FINDINGS OF FACT

I. Sonja Farak – Pre-Drug Lab Employment

1. Farak was born in January, 1978, and grew up in Portsmouth, Rhode Island.[1]

2. She was diagnosed with depression at age 16 and was prescribed Wellbutrin.[2]

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[1] **Ex. 1**, Response of Servicenet, Inc. to Summons to Produce Records in Commonwealth v. Watt, No. HDCR2009-01069, Bates # 000004. Subsequent references to these records are abbreviated as "Servicenet" followed by the Bates #.

3. Farak excelled academically. She received numerous high school awards and was the co-valedictorian of her class.[3]

4. In the fall of 1996, Farak began attending Worcester Polytechnic Institute (WPI).[4]

5. The following spring, she had a second psychiatric hospitalization for five days.[5]

6. At the end of her first year at WPI, Farak not only made the Dean's List; she won the General Chemistry Achievement Award and was named the outstanding female student of the entire first year class.[6]

7. During her time at WPI, Farak took Wellbutrin, in addition to Remeron, Effexxor, and Zoloft.

8. According to Farak, she was not "introduced to any drugs until after college."[7]

9. There is support in her treatment records for this claim.[8]

10. However, Farak admitted to one provider that she engaged in the "recreational use" of an unspecified "hallucinogenic while growing up."[9]

11. In the midst of a "rough period" during her first year at WPI, Farak claimed she did some online research and discovered certain "positive side effects" associated with methamphetamine.[10]

12. Farak stated that she decided that if she was ever going to use illicit drugs, this was the one she "would want to try."[11]

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[2] **Ex. 2**, Hawrylak, 000222.

[3] **Ex. 4**, Sentencing Memorandum, Commonwealth v. Farak, No. 1380CR061, pg. 2; **Ex. 3**, Doe GJ, pp. 8-10 (9/16/15).

[4] **Ex. 5**, Personnel File of Sonja Farak, Bates # 000046. Subsequent references to this exhibit are abbreviated as "Personnel File" followed by the Bates #.

[5] **Ex. 1**, Servicenet, 000003.

[6] **Ex. 5**, Personnel File, 000046.

[7] **Ex. 6**, Commonwealth v. Doe, Grand Jury Minutes, pg. 55 (Sept. 29, 2015). Subsequent references to these minutes are abbreviated as "Doe GJ" followed by the page number and date.

[8] *See, e.g.*, **Ex. 7**, Response of Western Mass Women's Regional Correction Center to Summons to Produce Records in Commonwealth v. Watt, No. HDCR2009-01069, Bates # 000202 ("She notes no drug or alcohol use until age 21").

[9] **Ex. 7**, Response of Western Mass Women's Regional Correction Center to Summons to Produce Records in Commonwealth v. Watt, No. HDCR2009-01069, Bates # 000198.

[10] **Ex. 3**, Doe GJ, pg. 58 (9/16/15).

[11] **Ex. 3**, Doe GJ, pg. 58 (9/16/15).

13. Farak met her future wife, Nikki Lee, on May 11, 2000.[12]

14. Days later, Farak received her degree in Biochemistry with high distinction, as well as an award from the American Institute of Chemists.[13]

15. Lee subsequently accompanied Farak to Philadelphia.[14]

16. There, Farak began a Ph.D. program at the Temple University School of Medicine.[15]

17. Farak testified that it was at this point that Farak started regularly using alcohol[16] and smoking marijuana.[17]

18. Farak testified that while in Philadelphia, she also experimented with harder drugs like cocaine, ecstasy, and heroin.[18]

19. At the end of her first year at Temple, Farak decided not to return.[19]

20. Farak became a DPH Bacteriologist on January 22, 2002.[20]

21. For the next sixteen months,[21] she spent her days at the State Laboratory Institute (SLI) in Jamaica Plain performing tests to determine the presence or absence of HIV.[22]

22. Farak testified that during this time, she continued – if not increased – her consumption of alcohol and recreational drugs, including marijuana and ecstasy.[23]

23. In April 2003, Farak applied for a chemist position in DPH's Jamaica Plain drug analysis laboratory (Hinton drug lab).[24]

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[12] **Ex. 8**, In the Matter of Commonwealth v. Doe, Grand Jury Minutes, pg. 6 (Feb. 7, 2013).

[13] **Ex. 5**, Personnel File, 000046.

[14] **Ex. 8**, Doe GJ, pg. 7 (2/7/13).

[15] **Ex. 5**, Personnel File, 000046.

[16] **Ex. 1**, Servicenet, 000004.

[17] **Ex. 3**, Doe GJ, pg. 55 (9/16/15).

[18] **Ex. 3**, Doe GJ, pg. 55 (9/16/15); **Ex. 9**, Sonja Farak Proffer ¶ 14 (Aug. 2015). Subsequent references to this document are abbreviated as "Proffer" followed by the paragraph number.

[19] **Ex. 8**, Doe GJ, pg. 7 (2/ 7/13).

[20] **Ex. 5**, Personnel File, 000004.

[21] **Ex. 3**, Doe GJ, pg. 12 (9/16/15) ("I started in January of 2002 and I ended in the end of April of 2003.").

[22] **Ex. 5**, Personnel File, 000044.

[23] **Ex. 6**, Doe GJ, pp. 37-38 (9/29/15); **Ex. 9**, Proffer ¶ 14.

24. DPH officials approved Farak's request to transfer to the drug lab in May, 2003.[25]

25. Farak testified that prior to receiving this approval, she did not have to undergo a background check or pass a pre-employment drug test.[26]

26. There is no evidence any questions were posed regarding her prior illicit drug use.

II. Farak's Time at The Hinton Drug Lab – July 2003 – August 2004

A. *Background Information on DPH, Hinton, and the Amherst Lab*

27. Farak began working in the Hinton Drug Lab in May 2003.[27]

28. The SLI in Jamaica Plain housed a total of eighteen DPH laboratories.[28]

29. According to the OIG Report "DPH treated the Drug Lab differently from its other laboratories."[29] Many "employees of the Drug Lab felt neglected by DPH management" and "considered themselves the orphans of the SLI building."[30] "While situated under DPH, the Drug Lab remained underfunded, understaffed and unable to adequately fulfill its mission of delivering free-of-charge forensic analysis of samples submitted by law enforcement agencies in the Commonwealth."[31]

30. The OIG Report further found that from 1989 to 2003, a "Drug Analysis Fund . . . provided up to $100,000 annually to the Drug Lab to help cover costs associated with drug analysis, such as training, equipment, and overtime. Court fees assessed against criminal defendants in drug cases financed this fund."[32]

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[24] **Ex. 3**, Doe GJ, pp. 12-13 (9/16/15).

[25] **Ex. 5**, Personnel File, 000049; *see also* **Ex. 3**, Doe GJ, pp. 13-14 (9/16/15).

[26] **Ex. 10**, Commonwealth v. Doe, Grand Jury Minutes, pg. 56 (Sept. 30, 2015). Subsequent references to these minutes are abbreviated as "Doe GJ" followed by the page number and date.

[27] **Ex. 5**, Personnel File, 000049.

[28] **Ex. 11**, OIG, "Investigation of the Drug Laboratory at the William A. Hinton State Laboratory Institute 2002 – 2012," at 13 (Mar. 4, 2014) [hereinafter "OIG Report"].

[29] **Ex. 11**, OIG Report, pg. 13.

[30] **Ex. 11**, OIG Report, pg. 13.

[31] **Ex. 11**, OIG Report, pg. 17.

[32] **Ex. 11**, OIG Report, pg. 15; *see also* G.L. c. 280, § 6B-C; **Ex. 12**, Teresa Mayors, *DPH Drug Analysis Laboratories: Case Study* 2-3 (Apr. 1991) ("In April of 1988 the Federal Formula Grant funds became available to local police in Massachusetts for street-level enforcement. . . . It became clear that a plan was needed to enable the DPH drug laboratory to respond to the new pressures from the increasing drug enforcement activities. Eight to ten week delays in sample testing were cited by police, prosecutors and judges as the reason for severe court delays in processing drug cases. . . . Policy makers initially focused their discussions on the possibility of obtaining an increase in the state appropriation. . . . Owing to budget

31. The OIG Report also stated that DPH Drug Lab personnel felt constant pressure from law enforcement "clients" to decrease "the turnaround-time" for "drug certifications."[33] With "budget restrictions" generating "significant back-logs," supervisors "welcomed" any chemist's "drive to test samples."[34]

32. To "determine whether a given sample contained a controlled substance, as defined by M.G.L. c. 94C," Hinton analysts utilized "a variety of common forensic drug identification techniques."[35]

33. Farak testified that before performing any tests, chemists were supposed to "do a gross weight of the whole evidence bag that the officer brought in and record that."[36]

34. During the first phase of actual testing, a "primary" chemist would perform "a series of preliminary tests to establish a presumptive identification of an unknown substance," then prepare a small portion of the sample for "secondary" or "confirmatory" testing.[37]

35. Analysts did not prepare portion of marijuana samples or prescription pills for secondary testing but instead relied entirely on the findings they made as primary chemists.[38]

36. Preliminary tests included "color tests, microcrystalline analyses, and ultraviolet visualization," which had "only moderate discriminatory power" and were "not associated with data that can be memorialized with a[n] instrument-generated paper or computer trail and reviewed."[39]

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constraints, an alternative to increasing state appropriations was ultimately favored. It called for the establishment of a drug lab fee for offenders.").

[33] **Ex. 13**, Governor's Commission on Criminal Justice Innovation, "Final Report," pg. 41 (2004). Subsequent references to this document are abbreviated as "Governor's Commission" followed by the page number.

[34] **Ex. 14**, DPH, Executive Summary for Hinton Laboratory Drug Lab Internal Inquiry, pg. 6. Subsequent references to this document are abbreviated as "Internal Inquiry" followed by the page number. This mentality can be seen in a review of Farak's performance evaluations where she was repeatedly praised for her "sample output." *See, e.g.*, **Ex. 5**, Personnel File, 000067.

[35] **Ex. 11**, OIG Report, pg. 35.

[36] **Ex. 3**, Doe GJ, pp. 23-24 (9/16/15).

[37] **Ex. 11**, OIG Report, pg. 35-36.

[38] *See* **Ex. 11**, OIG Report, pp. 37-38.

[39] *Commonwealth v. Scott*, 467 Mass. 336, 340 (2014) (citation omitted).

37. "Due to its physical layout, chemists performed preliminary tests in a number of different rooms throughout the Drug Lab."[40]

38. This second phase of testing typically relied upon a Gas Chromatographer/Mass Spectrometer (GC/MS) – a sophisticated instrument with "high discriminatory power."[41]

39. It was usually, but not always, operated by a second chemist who would ultimately compare the spectrum for the tested sample with the spectrum for a known standard.[42]

40. "A mass spectral pattern is a two dimensional mass of ions produced by a substance processed by a mass spectrometer. It looks like a series of peaks."[43]

41. Each month, supervisors at the Hinton Lab produced spreadsheets tracking the number of samples each analyst purported to test as the primary chemist.[44]

42. These numbers played an important role in measuring productivity.[45]

43. In 2003, Charles Salemi (Salemi) became the Supervisor at the Hinton Drug Lab.[46]

44. Salemi initially "considered an average of 150 to 350 samples analyzed per month to be an acceptable range."[47]

45. Following the Supreme Court's decision in *Melendez-Diaz*, "the productivity of all of the chemists at the Drug Lab precipitously declined," and Salemi recalibrated his expectations.[48]

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[40] **Ex. 11**, OIG Report, pg. 23.

[41] *Scott*, 467 Mass. at 340.

[42] **Ex. 11**, OIG Report, pg. 38.

[43] **Ex. 11**, OIG Report, pg. 37 n.79.

[44] **Ex. 15**, Interview Questions/Responses for Julie Nassif, pg. 4 (Sept. 4, 2012); *see also* **Ex. 16**, Interview of Michael Lawler ¶ 4 (Aug. 7, 2012) (characterizing the monthly reports as "a management tool to check on things").

[45] For example, Farak's personnel file contains multiple instances where she received praise for her "output." *See* **Ex. 5**, Personnel File, pp. 000073, 000068, 000067, 000065, 000049. Later, chemists became "worried on a personal level that their supervisor didn't value them because they were not producing numbers as high as Dookhan." **Ex. 16**, Lawler Interview ¶ 7.

[46] **Ex. 11**, OIG Report, pg. 21.

[47] **Ex. 11**, OIG Report, pg. 63.

[48] **Ex. 11**, OIG Report, pg. 63.

B. *The Initial Training of Chemists*

46. In the report produced following the Hinton Drug Lab's closure in 2012, DPH claimed "extensive initial training was provided to all chemists as a perquisite of testing."[49]

47. Previously, in 2004, DPH officials reported that the "required training" for new chemists lasted "approximately six months."[50]

48. Farak testified that her initial training was considerably shorter.[51]

49. She testified that her "first six weeks were purely an observ[ation]period, where [she] followed around the senior chemists, watched everything they did, asked questions, learned the ins and outs of the job."[52]

50. She further testified that this was supposedly followed by a second "six-week period where everything [she] did was monitored by [her] supervisor superior."[53]

51. In its Report, the OIG stated that "training for new chemists lasted approximately six to eight weeks."[54]

52. The OIG found that "a senior chemist was supposed to check all the work that a new chemist conducted for only two to three weeks after their training had ended."[55]

53. The OIG ultimately concluded that "the initial training of chemists at the Drug Lab was relatively brief" and "inadequate."[56]

54. The mission of the Scientific Working Group for the Analysis of Seized Drugs (SWGDRUG) is "to recommend the minimum standards for the forensic examination of seized drugs."[57]

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[49] **Ex. 14**, Internal Inquiry, pg. 3.

[50] **Ex. 13**, Governor's Commission, pg. 41.

[51] *See* **Ex. 3**, Doe GJ, pg. 15 (9/16/15).

[52] **Ex. 17**, Commonwealth v. Crichlow & Matos, Hampden County Indictment Nos. 09-854, 855, Tr. pg. 82 (Oct. 14, 2010).

[53] **Ex. 17**, Commonwealth v. Crichlow & Matos, Hampden County Indictment Nos. 09-854, 855, Tr. pg. 82 (Oct. 14, 2010).

[54] **Ex. 11**, OIG Report, pg. 27.

[55] **Ex. 11**, OIG Report, pg. 28.

[56] **Ex. 11**, OIG Report, pg. 28.

[57] **Ex. 18**, SWGDRUG, Recommendations, *Introduction*, vii. (July 2011).

55. According to SWGDRUG, "drug labs must have a documented training program approved by lab management,"[58] and "individuals leading the training . . . should be trained in the delivery of training.[59]

56. The OIG Report found that when Farak started in 2003, there were no written training guidelines,[60] and "the Drug Lab did not provide any training to experienced chemists on how to train new chemists."[61] In fact, new "chemists" "did not need a chemistry or science degree;" they simply "needed to meet the civil service requirements."[62]

57. The OIG Report further found that the Hinton Lab lacked "written analytical procedures;"[63] its initial training "lacked sufficient emphasis on chemical theory;"[64] and the lab had no "protocols for the sampling of evidence" or "work practices that prevent contamination."[65]

58. The OIG Report concluded that as a result of these and other deficiencies, the Hinton Drug Lab was not in a position to seek accreditation.[66] As of 2012, the Hinton Drug Lab was "the only one of the eighteen DPH laboratories in the [Bureau of Laboratory Sciences] that was not . . . accredited by its field's accrediting body."[67]

C. *Farak's First Six Months as an Analyst*

59. Farak's initial training concluded on June 30, 2003, when Assistant Commissioner Ralph Timperi appointed her an "Assistant Analyst."[68]

60. On July 2, 2003, Farak reported testing her first sample.[69]

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[58] **Ex. 11**, OIG Report at 27.

[59] **Ex. 11**, OIG Report, pg. 27.

[60] *See* **Ex. 11**, OIG Report, pg. 32 n.69 (noting that a document entitled, "Training Guidelines for New Chemists" was first drafted in 2005, then revised in 2009, but never formally adopted or approved).

[61] **Ex. 11**, OIG Report, pg. 28.

[62] **Ex. 11**, OIG Report, pg. 25 n.42.

[63] **Ex. 11**, OIG Report, pg. 31 (citing SWGDRUG, Recommendations, *Part IV: Quality Assurance/General Practices*, § 5.1.1 (2003)).

[64] **Ex. 11**, OIG Report, pg. 28.

[65] **Ex. 11**, OIG Report, pg. 31 (citations omitted).

[66] **Ex. 11**, OIG Report, pg. 18-19.

[67] **Ex. 11**, OIG Report, pg. 13.

[68] **Ex. 19**, Appointment Letter from Ralph Timperi, Asst. Comm'r, to Sonja Farak (June 30, 2003).

[69] **Ex. 20**, Hinton Pivot Table.

61. Because "the initial training of chemists at the Drug Lab was . . . focused on the preliminary testing process,"[70] Farak, like every new Hinton chemist, started off performing "simple bench top tests."[71]

62. Salemi permitted the chemists to choose which types of drug they wanted to test.[72]

63. The OIG Report stated that Salemi was a "hands-off" administrator; he "believed in allowing chemists to work independently;" and he "rarely question[ed] the amount or type of substances that individual chemists tested."[73]

64. During each one of her first six months at the Hinton Drug Lab, Farak conducted more preliminary tests than any other chemist.[74] However, the OIG found that Dookhan was the sole bad actor.[75]

Table 1 – Monthly Samples as Preliminary Chemist[76]
(July – December 2003)

	DCS	DXF	ELO	KMC	MAI	MGL	SJF	XYG	ZYT
July	241	172	91	38	132	125	**501**	398	244
August	158	361	111	98	121	51	**484**	414	278
September	99	469	168	30	99	253	**677**	376	202
October	57	225	257	4	131	139	**703**	536	328
November	38	98	170	N/A	104	138	**512**	507	140
December	298	405	138	N/A	70	233	**543**	491	253
Totals	891	1730	935	170	657	939	**3420**	2722	1445
Monthly Average	149	288	155	43	109	157	**570**	454	241

D. *". . . When She was a Chemist in a Previous Job . . ."*

65. During her first appearance before the Grand Jury, Farak was asked whether she "ever had the opportunity to test methamphetamine at either the JP lab Hinton or the Amherst laboratory."[77]

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[70] **Ex. 11**, OIG Report, pg. 28.

[71] *Scott*, 467 Mass. at 340.

[72] **Ex. 11**, OIG Report, pg. 83.

[73] **Ex. 11**, OIG Report, pg. 21.

[74] **Ex. 20**, Hinton Pivot Table; **Ex. 23**, Tamulis Affidavit, Attachment C.

[75] **Ex. 11**, OIG Report, pg. 113.

[76] **Ex. 20**, Hinton Pivot Table; **Ex. 23**, Tamulis Affidavit, Attachment C.

[77] **Ex. 3**, Doe GJ, pg. 54 (9/16/15).

66. Farak admitted testing "a couple of crystal methamphetamine submissions,"[78] but unequivocally denied any methamphetamine use "prior to working at the [Amherst] lab."[79]

67. One therapist's record states:

> [Farak] first tried methamphetamine when she was a chemist in a previous job, but "didn't get much from it." After moving to western Mass for her job at the state drug lab, she tried it again and 'really liked it.'"[80]

68. When confronted with these records, Farak offered the following explanation: "I believe I took some [ecstasy] with my partner at one point that might have had some methamphetamine in it, but I didn't take any drugs from the Boston lab."[81]

69. Farak subsequently professed uncertainty as to whether she even encountered methamphetamine before moving to western Mass stating, "I believe I may have gotten a couple of methamphetamine . . . submissions from police departments . .."[82]

70. From July 1, 2003, to July 31, 2004, chemists at the Hinton Drug Lab analyzed a total of 90 samples that came back positive for the presence of methamphetamine.[83]

71. Farak tested 35, or 38.9%, of all methamphetamine samples.[84]

Table 10 – Methamphetamine Samples as Preliminary Chemist[85]
(July, 2003 – July, 2004)

ASK	DCS	DXF	ELO	KMC	MAI	MGL	SJF	XYG	ZYT
8	5	20	4	1	2	5	**35**	7	3

72. Farak denied dry-labbing at the Grand Jury.[86]

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[78] **Ex. 3**, Doe GJ, pg. 54 (9/16/15).

[79] **Ex. 3**, Doe GJ, pg. 57 (9/16/15).

[80] **Ex. 2**, Hawrylak, 000222; **Ex. 6**, Doe GJ, pg. 13 (9/29/15).

[81] **Ex. 6**, Doe GJ, pg. 13 (9/29/15); *see also* **Ex. 10**, Doe GJ, pg. 26 (9/30/15).

[82] **Ex. 6**, Doe GJ, pg. 15 (9/29/15).

[83] **Ex. 23**, Tamulis Affidavit, Attachment I.

[84] **Ex. 23**, Tamulis Affidavit, Attachment I.

[85] **Ex. 23**, Tamulis Affidavit, Attachment I.

[86] **Ex. 3**, Doe GJ, pg. 173 (9/16/15).

73. When asked "what chemist at the JP lab tested the most samples on a month to month basis," Farak gave this answer:

> I know Peter [Piro's] name was probably on a lot of drug certificates but as a two-chemist system, his name went on certificates for multiple chemists when he was doing the mass spec. I mean, I feel I did a fair amount of mari — especially marijuanas when they came through. A woman, Danielle, I forget her last name, probably had quite a bit but, I mean, I don't want to say higher chemists, you know, Chem IIs and Chem IIIs that were doing the bigger samples and needed to spend more time doing it so in theory they were doing less. They were not doing, less work but their sample production was less.[87]

74. The "Danielle" to whom she referred was Daniela Frasca (DXF).

75. During the thirteen months they spent working together, Farak tested more than twice as many samples as she did.[88]

IV. Farak's Time at the Amherst Drug Lab – August 2004 – January 2013

A. "*The Satellite Lab*"

76. In the 1960s, DPH began operating a Food and Drug Laboratory in the Morrill Building on the Amherst campus of the University of Massachusetts.[89]

77. Alan "Cam" Stevenson (Stevenson) supervised drug testing there for almost thirty years before his retirement in 2008.[90]

78. At the start of his tenure, Stevenson managed a staff of four full-time drug chemists[91] and an administrative assistant whose "actual responsibilities included acting as the Evidence Officer for the laboratory."[92]

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[87] **Ex. 10**, Doe GJ, pp. 30-31 (9/30/15).

[88] **Ex. 20**, Hinton Pivot Table.

[89] **Ex. 25**, Commonwealth v. Doe, Grand Jury Minutes, pg. 10 (Feb. 1, 2016). Subsequent references to these minutes are abbreviated as "Doe GJ" followed by the page number and date. *See also* **Ex. 26**, Interview of Paul Jaszek ¶ 2 (Sept. 10, 2012) (stating that he became a drug chemist "because the food side of the laboratory closed").

[90] **Ex. 27**, Interview of Alan Stevenson ¶ 2 (Sept. 10, 2012).

[91] *See* **Ex. 28**, Interview of Gerard Giguere (Sept. 10, 2012); **Ex. 29**, James Hanchett *Curriculum Vitae*, Farak DA Discovery 00001891; **Ex. 30**, Sharon Salem *Curriculum Vitae*, Farak DA Discovery 00001895; **Ex. 26**, Jaszek Interview.

[92] **Ex. 31**, Interview of Donna Lacroix ¶ 1 (Sept. 10, 2012).

79. Hinton was "the main lab" and Amherst was its "satellite."[93]

80. Between March 2002 and October 2003, two Amherst chemists and the *de facto* evidence officer retired.[94]

81. In May, 2004, Pontes was hired as a Chemist I.[95]

82. During her training, Pontes took notes as she watched Hanchett test samples.[96]

83. Pontes' notes later became the basis for the lab's never formally adopted "draft" of standard operating procedures.[97]

84. At about the same time as Pontes commenced her initial training, Farak pursued a transfer to Amherst.[98]

85. DPH ultimately approved Farak's request; in August, she became an Amherst Drug Lab chemist.[99]

B. *First Impressions – Farak Arrives at Amherst*

86. Upon arriving in Amherst, Farak received no additional training.[100]

87. Farak perceived the environment in Amherst as "more laid back" with fewer people "looking over you."[101]

88. For example, whereas Hinton supervisors would occasionally ask analysts to "retest" samples "to show that the results that [they] originally got" were accurate,[102] Salem testified that there were no evidence audits or tech reviews at the Amherst Lab.[103]

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[93] **Ex. 25**, Doe GJ, pg. 24 (2/1/16).

[94] Jaszek retired on March 15, 2002, *see* **Ex. 26**, Jaszek Interview ¶ 1, Lacroix left in September, 2003, **Ex. 31**, Lacroix Interview ¶ 1, and Giguere retired in October, 2003, *see* **Ex. 28**, Giguere Interview ¶ 1.

[95] **Ex. 32**, Rebecca Pontes *Curriculum Vitae*, Farak DA Discovery 00001893.

[96] **Ex. 33**, Commonwealth v. Doe, Grand Jury Minutes, pg. 117 (Feb. 4, 2016). Subsequent references to these minutes are abbreviated as "Doe GJ" followed by the page number and date.

[97] **Ex. 33**, Doe GJ, pg. 117 (2/4/16) (acknowledging "there was really nothing in place before [Pontes] arrived there in terms of written policies").

[98] **Ex. 3**, Doe GJ, pg. 32 (9/16/15).

[99] **Ex. 3**, Doe GJ, pg. 32 (9/16/15).

[100] **Ex. 33**, Doe GJ, pg. 99 (2/4/16); **Ex. 25**, Doe GJ, pg. 74, 79-80 (2/1/16).

[101] **Ex. 3**, Doe GJ, pg. 34 (9/16/15).

[102] **Ex. 10**, Doe GJ, pg. 63-64 (9/30/15); *see also* **Ex. 14**, Internal Inquiry, pg. 10 (discussing the policy of periodic retesting).

[103] **Ex. 34**, Amherst Drug Lab Evidentiary Hearing, pp. 220-21 (Sept. 9, 2013) (testimony of Salem).

89. From Farak's perspective, "no one was watching . . . to see if [she] tested things or how [she] tested."[104]

90. Nor was there any "day-to-day . . . dialogue about [lab] procedures and what [analysts] were doing."[105]

91. As for written policies and procedures, Farak claimed that "a few" were "roaming around the lab," but enforcing compliance with them "was never a priority."[106]

92. Farak testified that there was "basically . . . no oversight in the Amherst lab."[107]

93. In Hinton, both evidence officers and chemists had access to the evidence room, although by protocol access was to be restricted when evidence officers were not present.[108]

94. In Amherst, all of the Amherst chemists, including Farak, had unrestricted "access to . . . the evidence room, the safe and the lab itself,"[109] even by themselves over the weekend.[110]

95. Amherst analysts also had access to the lab's primary standards.[111]

96. "A standard is an aliquot of a known controlled substance and is used to provide a base retention time and spectrum for comparison with unknown substances that are tested on the same GC/MS run."[112]

97. These substances were kept under "lock and key" in Hinton,[113] but Farak estimated that as many as fifty such standards were stored in an Amherst refrigerator that could not be locked.[114]

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[104] **Ex. 3**, Doe GJ, pg. 102 (9/16/15).

[105] **Ex. 3**, Doe GJ, pp. 101-03 (9/16/15).

[106] **Ex. 33**, Doe GJ, pg. 30 (2/4/16).

[107] **Ex. 10**, Doe GJ, pg. 64 (9/30/15).

[108] **Ex. 14**, Internal Inquiry, pg. 4.

[109] **Ex. 3**, Doe GJ, pp. 38-40 (9/16/15); *see also* **Ex. 35**, In the Matter of Commonwealth v. Doe, Grand Jury Minutes, pp. 11-12 (Feb. 21, 2013) (testimony of Salem).

[110] **Ex. 36**, MSP Interview of Pontes, pg. 40 (Jan. 18, 2013).

[111] **Ex. 3**, Doe GJ, pg. 46 (9/16/15).

[112] **Ex. 11**, OIG Report, pg. 37 n.76.

[113] **Ex. 6**, Doe GJ, pg. 15 (9/29/15).

[114] **Ex. 3**, Doe GJ, pp. 45-46 (9/16/15).

98. The biggest item in this unsecured refrigerator was a "brown, opaque bottle" of methamphetamine.[115]

99. Farak testified that, "[w]ay back when in the eighties[,] . . . a different lab in the building had ordered something and got the wrong thing sent to them so they gave it to [the drug] lab."[116]

100. When Farak first encountered it, "the seal around the bottle was corroding" and "[t]he label was coming off."[117]

C. *A Very Dangerous Drug – Farak and Methamphetamine*

101. One afternoon during a "lunch period" in late 2004 or early 2005, Farak approached the methamphetamine bottle, took out "a pipette and just stuck it in the bottle and squirted it in [her] mouth."[118]

102. Farak recalled that this produced "the desired effects,"[119] that she "felt amazing,"[120] and that she suddenly had "energy" and "felt more alert."[121] It gave her "the pep [she]'d been looking for."[122]

103. Within "a short period of time" in early 2005, Farak began using the methamphetamine standard on a "daily" basis.[123]

104. Sometimes, "when no one else was there," she would dip "a small metal spatula" into the bottle, then "lick it."[124]

105. Other times, she would take an aliquot "in the bathroom" and swallow its contents.[125]

106. For a while, Farak ingested methamphetamine "when [she] got to work for energy."[126]

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[115] **Ex. 3**, Doe GJ, pp. 53-54 (9/16/15).

[116] **Ex. 3**, Doe GJ, pg. 49 (9/16/15).

[117] **Ex. 3**, Doe GJ, pg. 49 (9/16/15).

[118] **Ex. 3**, Doe GJ, pg. 59 (9/16/15).

[119] **Ex. 3**, Doe GJ, pg. 60 (9/16/15).

[120] **Ex. 3**, Doe GJ, pg. 60 (9/16/15).

[121] **Ex. 3**, Doe GJ, pg. 60 (9/16/15).

[122] **Ex. 6**, Doe GJ, pp. 59-60 (9/29/15); *see also* **Ex. 9**, Proffer ¶ 11.

[123] **Ex. 3**, Doe GJ, pg. 61 (9/16/15).

[124] **Ex. 3**, Doe GJ, pp. 61-62 (9/16/15).

[125] **Ex. 3**, Doe GJ, pg. 62 (9/16/15).

107. However, it eventually got to the point where she was "bringing it home" and consuming it "first thing in the morning."[127]

108. Farak testified that the high lasted approximately eight to ten hours, and that she often ended up using methamphetamine "a couple times a day."[128]

109. Farak also testified that over the course of the next four years, she attempted to "have periods of sobriety" and occasionally made it "a couple weeks."[129]

110. Nevertheless, for the "majority of [this] time," Farak was "under the effects of methamphetamine while at the laboratory."[130]

111. During her infrequent periods of non-use, Farak said she went through "withdrawals."[131]

112. According to her,

> I became increasingly lethargic, tired beyond belief, wanting to sleep all day long. . . . [T]here were times I took a couple days off from work just because I wasn't feeling like I could get up and go into work.[132]

113. Following "those few days of extreme tiredness," Farak said that she would frequently experience a "rebound effect" in which she continued to suffer from "a lack of energy" and had "trouble focusing."[133]

114. Farak testified that during the stretches when she was not using, Farak was "at least thinking about using most of that time."[134]

115. On April 26, 2005, Farak went to her primary care physician with "kidney pain," and received a prescription for Percocet.[135]

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[126] **Ex. 3**, Doe GJ, pg. 63 (9/16/15).

[127] **Ex. 3**, Doe GJ, pg. 63 (9/16/15).

[128] **Ex. 3**, Doe GJ, pg. 60, 63 (9/16/15).

[129] **Ex. 3**, Doe GJ, pg. 64 (9/16/15).

[130] **Ex. 3**, Doe GJ, pg. 64 (9/16/15).

[131] **Ex. 3**, Doe GJ, pg. 64 (9/16/15).

[132] **Ex. 3**, Doe GJ, pp. 64-65 (9/16/15).

[133] **Ex. 3**, Doe GJ, pg. 65 (9/16/15).

[134] **Ex. 6**, Doe GJ, pg. 17 (9/29/15).

[135] **Ex. 148**, Response of Dr. Anne Weaver to Summons to Produce Records in Commonwealth v. Watt, No. HDCR2009-01069, Bates # _____. Subsequent references to these records are abbreviated as "Weaver" followed by the Bates #.

116. Her primary care physician would later note that Farak was suffering withdrawal symptoms at the time.[136]

117. On June 12, 2005, Farak was promoted to the position of Chemist II.[137]

118. Later that summer, her former supervisor Salemi found that she met or exceeded all expectations in a performance evaluation that did not include a single comment.[138]

D. *A Trusted Employee*

119. In June 2008, Stevenson retired,[139] and Hanchett was promoted to the position of Lab Supervisor II.[140]

120. Before leaving, Stevenson completed a performance evaluation stating that Farak "excels in her analysis of samples and she is on[e] of the top analyst[s] in both labs."[141]

121. In 2006 and 2007, Stevenson had provided similarly glowing assessments: "Sonja is an excellent and thorough analyst. She is one of the top three for output in both labs. … She is extremely careful and thorough with her records."[142]

122. Farak stated in her proffer that "Hanchett was not a big fan of paperwork."[143]

123. During his tenure as supervisor, there were no annual personnel reviews.[144]

124. During the last two or three years that the lab was functioning, Hanchett testified that he stopped doing EPRS reviews due to budget constraints.[145]

125. Evidence Officer Sharon Salem was at the Amherst Drug Lab from 1987 to 2013.[146]

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[136] **Ex. 148**, Weaver #.

[137] **Ex. 5**, Personnel File, pp. 000001-3.

[138] **Ex. 5**, Personnel File, pp. 000070-71.

[139] **Ex. 27**, Stevenson Interview ¶ 2.

[140] **Ex. 29**, James Hanchett *Curriculum Vitae.*

[141] **Ex. 5**, Personnel File pp. 61-63.

[142] **Ex. 5**, Personnel File pp. 64-69.

[143] **Ex. 9**, Proffer ¶ 7.

[144] *But see* **Ex. 11**, OIG Report, pg. 24 ("[A]fter Nassif became director, the practice of completing EPRS evaluations ceased . . . .").

[145] **Ex. 25**, Doe GJ, pg. 105 (2/1/16).

[146] **Ex. 30**, Sharon Salem *Curriculum Vitae.*

126. Salem testified that she saw "[n]o real reason" for discontinuing the practice of annual performance reviews; [147] she believed Hanchett was "just lackadaisical."[148]

127. Hanchett testified that Pontes and Farak "didn't really need a lot of oversight."[149]

128. Hanchett stated that, in his view, she and Pontes "were trusted employees," and he harbored no "doubt[s] they were doing the job properly."[150]

129. Farak testified that using narcotics on the job was "ridiculously simple."[151]

130. She stated that day after day, she would "go to the refrigerator, take out the bottle of methamphetamine, open it up, use a pipette to transfer . . . a milliliter of liquid into a small vial," then "seal the main aliquot back up and put it back in the fridge."[152]

131. Once Farak completed this process – which she could "easily" do "within 30 seconds" – she would keep the vial in her "pocket," "desk drawer or . . . lab bench drawer" until the time came to ingest the drug in a soda or during a bathroom break.[153]

132. On one occasion, Farak overheard Hanchett "complaining" about an audit he had to conduct.[154]

133. Farak knew this task would cause Hanchett to encounter the methamphetamine bottle and discover "the level had gone down dramatically because of what [she] had taken."[155]

134. In her "haste," Farak "added some water to it."[156]

135. According to Farak, the methamphetamine oil and water did not "mix very well."[157]

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[147] **Ex. 33**, Doe GJ, pg. 60 (2/4/16).

[148] **Ex. 33**, Doe GJ, pg. 60 (2/4/16).

[149] **Ex. 25**, Doe GJ, pg. 86 (2/1/16).

[150] **Ex. 25**, Doe GJ, pg. 87 (2/1/16).

[151] **Ex. 3**, Doe GJ, pg. 122 (9/16/15).

[152] **Ex. 3**, Doe GJ, pg. 121 (9/16/15).

[153] **Ex. 3**, Doe GJ, pg. 121 (9/16/15).

[154] **Ex. 3**, Doe GJ, pp. 66-67 (9/16/15).

[155] **Ex. 3**, Doe GJ, pg. 67 (9/16/15).

[156] **Ex. 3**, Doe GJ, pg. 67 (9/16/15).

[157] **Ex. 3**, Doe GJ, pg. 67 (9/16/15).

136. Farak testified that she assumed that Hanchett surmised that the methamphetamine was "just degrading."[158]

137. Farak further testified that Hanchett "siphoned off the oil" and "put it in a very tiny vial" before discarding the bottle.[159]

E. *Farak Starts Treatment*

138. On January 15, 2009, Farak had her first meeting with a therapist named Sarah Hawrylak (Hawrylak).[160]

139. During her "Diagnostic Intake," Farak reported having "trouble focusing" and being "unhappy, irritable, unmotivated, isolated, and very tired," but declined to answer questions about drug and alcohol use.[161]

140. In her first twelve sessions, Farak focused on relationship issues and did not reveal that she was struggling with a drug addiction.[162]

141. During this time, as Farak's supply of methamphetamine decreased, she began examining "different standards" she could "take to help [her] get through the withdrawal period."[163]

142. Farak testified that she found a "large jar" of "amphetamine" and "a couple smaller containers of phentermine."[164]

143. Farak testified that after "try[ing] both in a short period of time," she "came to the conclusion that . . . the amphetamine made [her] feel better" and "was closer to the methamphetamine and the desired effects."[165]

144. Because the effects of amphetamine did not last as long, she used it "multiple times a day."[166]

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[158] **Ex. 3**, Doe GJ, pg. 67 (9/16/15).

[159] **Ex. 3**, Doe GJ, pg. 67 (9/16/15).

[160] **Ex. 2**, Hawrylak, 000206.

[161] **Ex. 2**, Hawrylak, 000217.

[162] **Ex. 2**, Hawrylak, 000219-221.

[163] **Ex. 3**, Doe GJ, pg. 66 (9/16/15).

[164] **Ex. 3**, Doe GJ, pg. 68 (9/16/15).

[165] **Ex. 3**, Doe GJ, pg. 68 (9/16/15).

[166] **Ex. 3**, Doe GJ, pg. 69 (9/16/15).

145. On April 28, 2009, Farak finally admitted to Hawrylak that she had "been using illegal substances (methamphetamine primarily) for a long period of time."[167]

146. According to Hawrylak's notes, Farak confessed "obtain[ing] the drugs from her job at the state drug lab, by taking portions of samples that have come in to be tested.[168]

147. At their next session on May 5, 2009, Hawrylak "recommended that [Farak] consider a voluntary hospitalization on a dual diagnosis unit to address her mental health and substance abuse issues."[169]

148. In a treatment note dated May 21, 2009, Farak's primary care physician memorialized admissions by Farak concerning her use of amphetamine and methamphetamine in its "oil base form." This note indicates while there "were some periods when [Farak] wasn't using," she "usually" consumed "1/4 – 1/3" grams each day.[170]

F. *A Close Call*

149. The Hawrylak records reported that Farak "was fidgety" and "scratched skin on [her] arms throughout [a] session" on July 2, 2009.[171]

150. Two weeks later, she reported progress in reducing her alcohol consumption but admitted to engaging "in other risky behavior" on a "daily" basis.[172]

151. A Hawrylak treatment record dated July 23, 2009 indicates that Farak reported she was "experiencing physical [and] emotional symptoms of withdrawal."[173]

152. Farak fell off the wagon on August 14, 2009, "which led to relapse (daily usage)."[174]

153. On August 25, 2009, she advised Hawrylak that she was "almost out" of her drug supply and "wants to stop."[175] Farak reported she had a "close call"[176] the previous Saturday night during a routine traffic stop.[177]

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[167] **Ex. 2**, Hawrylak, 000221.

[168] **Ex. 2**, Hawrylak, 000221.

[169] **Ex. 2**, Hawrylak, 000221.

[170] **Ex. 148**, Response of Dr. Anne Weaver to Summons to Produce Records in Commonwealth v. Watt, No. HDCR2009-01069.

[171] **Ex. 2**, Hawrylak, 000226.

[172] **Ex. 2**, Hawrylak, 000226.

[173] **Ex. 2**, Hawrylak, 000227.

[174] **Ex. 2**, Hawrylak, 000228.

[175] **Ex. 2**, Hawrylak, 000228.

[176] **Ex. 2**, Hawrylak, 000228.

154. According to Farak, she "[t]otally forgot" she had a bottle of amphetamine in her glove box.[178] She testified that as she searched for her registration, a state trooper "shined [his] flashlight in the . . . glove box" and asked if there was "a problem."[179] Farak stated that she invited the trooper "to take a look in [the] glove box,"[180] but that the trooper informed her that she had a broken taillight and let her drive home.[181]

G. *The Cocaine Standard*

155. According to her notes, on September 8, 2009, Hawrylak returned from a vacation to learn that Farak "had some periods of sobriety since [her] last [appointment] (longest period – 6 days) but continue[d] polysubstance use otherwise."[182]

156. Farak testified that one of the substances she began to use at about this time was the lab's "cocaine standard."[183] She stated that "snorting" this "very pure" powder produced "the desired effect but it was a very quick high and dissipated quickly."[184]

157. According to Farak's testimony, unlike some of the other standards Farak stole, the lab did not have an abundance of it and the "fair number of cocaine submissions" meant this standard was used regularly for its intended purpose.[185]

158. Consequently, cocaine was not among the standards Farak abused on a daily basis.[186]

159. A treatment note dated September 15, 2009, indicates that Farak had "been clean (with the exception of lamictal use)" since September 4th, and that Farak went so far as to throw "out any drugs she had at home."[187]

160. However, one week later, Farak admitted to a "slip."[188]

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[177] **Ex. 2**, Hawrylak, 000228.

[178] **Ex. 6**, Doe GJ, pg. 21 (9/29/15).

[179] **Ex. 6**, Doe GJ, pg. 22 (9/29/15).

[180] **Ex. 6**, Doe GJ, pg. 22 (9/29/15).

[181] **Ex. 6**, Doe GJ, pg. 22 (9/29/15).

[182] **Ex. 2**, Hawrylak, 000228.

[183] **Ex. 3**, Doe GJ, pg. 77 (9/16/15).

[184] **Ex. 3**, Doe GJ, pp. 77-78 (9/16/15).

[185] **Ex. 3**, Doe GJ, pg. 77 (9/16/15).

[186] **Ex. 3**, Doe GJ, pg. 78 (9/16/15).

[187] **Ex. 2**, Hawrylak, 000229.

[188] **Ex. 2**, Hawrylak, 000229.

161. Asked to reflect on what caused her to use, all Farak could say was that it was "available."[189]

162. In late 2009, the Postal Service submitted four bags of cocaine totaling almost 500 grams for testing.[190]

163. Farak took "some off to the side for personal use."[191]

164. When the case later went to trial, Farak ended up "sitting on the stand and looking at it and knowing that [she] had analyzed the sample and that [she] had then tampered with it."[192]

165. According to Farak, this represented a line she "never thought [she] would cross."[193]

166. Farak claimed at the Grand Jury that this was the first piece of evidence she ever tampered with.[194]

167. When confronted with evidence that she told Hawrylak that she stole from samples and not standards, Farak maintained that this was a miscommunication and what she was stealing at the time was the lab's primary standards.[195]

H. *"Dishonest . . . in Reporting her Drug Use"*

168. By the end of 2009, as Farak reported making progress controlling her addiction, she reported that her depression seemed to get worse.[196] As such, on December 22, 2009, her therapist noted that Farak asked her to talk with Dr. Federman, Farak's prescribing psychiatrist, in advance of Farak's medication evaluation scheduled for the following day.[197]

169. According to her treatment notes, Hawrylak left a message for Federman expressing her "concerns about lack of improvement in level of depression," and wondered

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[189] **Ex. 2**, Hawrylak, 000229.

[190] **Ex. 3**, Doe GJ, pp. 80-81 (9/16/15).

[191] **Ex. 3**, Doe GJ, pg. 81 (9/16/15).

[192] **Ex. 3**, Doe GJ, pg. 82 (9/16/15).

[193] **Ex. 3**, Doe GJ, pg. 83 (9/16 /15).

[194] **Ex. 3**, Doe GJ, pg. 82 (9/16 /15).

[195] **Ex. 6**, Doe GJ, pg. 12 (9/29 /15).

[196] *See, e.g.*, **Ex. 2**, Hawrylak, 000231.

[197] **Ex. 2**, Hawrylak, 000232.

whether the lamictal is working as it should.[198] The next day, Federman called back and said he listened to Hawrylak's voicemail after meeting with Farak and that Farak's "presentation was the 'opposite' of what [Hawrylak] described."[199] After hearing from Farak that her mood was "great," Federman had increased her dosage of lamictal and scheduled her next appointment for six weeks down the road.[200]

170. In her next session with Hawrylak on January 5, 2010, the therapist noted that Farak stated she "stopped lamictal for [the] last week [of] December."[201] In its place, she took LSD.[202] On January 12, 2010, Farak complained of "lack of energy, motivation, [and] fatigue" but did not report any illicit drug use.[203]

171. At her next appointment on January 19, 2010, Farak said that she decreased her use of alcohol and marijuana, but had "difficulty staying asleep" and was "fatigued during the day."[204] One week later, after Farak complained of daily fatigue and lack of motivation, Hawrylak reviewed Farak's progress in treatment and noted Farak had made some gains in reducing her substance abuse."[205]

172. At the start of the next session, however, Farak told her therapist that she was dishonest at her last appointment in reporting her drug use.[206] Farak admitted that she had been using cocaine for several weeks, as well as ketamine occasionally.[207]

173. The next day, Farak reported an outbreak of a "significant rash" to her therapist, which she attributed to abuse of her Wellbutrin prescription.[208] At her appointment with Hawrylak on February 16, 2010:

> [Farak] denied she had been using any substances today. [Farak] revealed she did not stop taking the Wellbutrin as Barry Federman recommended – in fact, she took up to 800-900 mgs. the day the rash appeared ("to punish myself for using drugs"). Rash unexpectedly then disappeared. . . . She does not plan to tell Barry what she did. We discussed my alarm & concerns about her actions, yet [Farak] did not find them serious. . . . [Farak]

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[198] **Ex. 2**, Hawrylak, 000232.

[199] **Ex. 2**, Hawrylak, 000232.

[200] **Ex. 2**, Hawrylak, 000232.

[201] **Ex. 2**, Hawrylak, 000232.

[202] **Ex. 6**, Doe GJ, pg. 24 (9/29/15).

[203] **Ex. 2**, Hawrylak, 000232.

[204] **Ex. 2**, Hawrylak, 000232.

[205] **Ex. 2**, Hawrylak, 000232-233.

[206] **Ex. 2**, Hawrylak, 000232-233.

[207] **Ex. 2**, Hawrylak, 000233.

[208] **Ex. 2**, Hawrylak, 000233.

contracted not to use any illegal or legal substances (other than as prescribed) until next appt. on 2-23."[209]

I. "*Other Staff at Work May Know about Her Taking Samples*"

174. On February 23, 2010, Farak stated that "other staff at work may know about her taking samples."[210] When asked about this comment at the Grand Jury, because she generally denied taking samples at this point in time, Farak suggested it was another miscommunication.[211]

175. On March 2, 2010, Farak admitted using cocaine, alcohol, and marijuana in the past week, then reported "continuing polysubstance abuse" on March 9, 2010.[212]

176. According to her therapist's notes, at a session on March 30, 2010, Farak reported that she began using cocaine, alcohol, and acid again.[213] She then claimed to have not used any illegal substances for the next three weeks, until Monday, April 19, 2010, when she "took cocaine, ketamine & MDMA."[214] Farak disclosed on May 11, 2010, that she had been "using a mild amphetamine again."[215]

177. On May 13, 2010, Farak met with a Servicenet clinician for purposes of completing an intake assessment.[216] During this therapeutic session, Farak made the following disclosures:

> Starting in about 2005, she has a history of abusing a number of different classes of drugs, including cocaine, cannabis, methamphetamine, and fen fen. She had a week long cocaine binge in March. . . . She admits to stealing drugs from the police drug analysis lab where she works. . . . She drives recklessly, does not feel that she has her own identity, and often feels as she has no purpose or reason to do anything. She has episodes of spacing out for hours at home, and admits to worrying about what others are thinking about her at work.[217]

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[209] **Ex. 2**, Hawrylak, 000233-234.

[210] **Ex. 2**, Hawrylak, 000234.

[211] **Ex. 6**, Doe GJ, pg. 26 (9/29/15).

[212] **Ex. 2**, Hawrylak, 000234.

[213] **Ex. 2**, Hawrylak, 000235.

[214] **Ex. 2**, Hawrylak, 000236.

[215] **Ex. 2**, Hawrylak, 000236.

[216] **Ex. 1**, Servicenet, 000003.

[217] **Ex. 1**, Servicenet, 000004-5.

178. When Farak returned to Hawrylak on May 18, 2010, she acknowledged that she had "continued to use amphetamine intermittently since her last appointment.[218]

J. *Perceptual Disturbances*

179. By mid-2010, Farak "had used all of the amphetamine standard."[219]

180. Farak knew if anyone discovered the amphetamine jar was empty, her criminal activity would become apparent.[220]

181. Farak solved this problem by replacing it with a counterfeit substance, in all likelihood "sodium sulphate," an inactive drug the lab happened to have on hand.[221]

182. Farak went back to the "phentermine standard that [she] had tried."[222]

183. But because phentermine "did not give [her] quite the same effect that [she] had wanted," Farak soon began "using more of the cocaine standard."[223]

184. During this time, Farak also experimented with "some smaller vials of ketamine they had in the lab," as well as MDMA (ecstasy) and MDEA – a substance related to ecstasy.[224]

185. Although Farak denied any "auditory or visual hallucinations in the present," she reported that "when abusing stimulants, she has had perceptual disturbances in the past, including paranoia and auditory hallucinations."[225]

K. "*Ongoing Ambivalence about Abstaining from Drugs*"

186. By this time in mid-2010, Farak was admittedly abusing the drugs she was supposed to be testing.[226]

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[218] **Ex. 2**, Hawrylak, 000236-237.

[219] **Ex. 3**, Doe GJ, pg. 85 (9/16/15).

[220] **Ex. 3**, Doe GJ, pg. 85 (9/16/15).

[221] **Ex. 3**, Doe GJ, pg. 85 (9/16/15).

[222] **Ex. 3**, Doe GJ, pg. 85 (9/16/15).

[223] **Ex. 3**, Doe GJ, pg. 85 (9/16/15).

[224] **Ex. 3**, Doe GJ, pg. 86 (9/16/15).

[225] **Ex. 1**, Servicenet, 000011.

[226] *See* **Ex. 3**, Doe GJ, pg. 80-81 (9/16/15).

187. Farak testified that to weigh powder samples, such as cocaine, she would pour the powder onto wax paper.[227] Then, after recording the weight, she would take a portion to test and return the remainder to the evidence bag.[228] Farak stated that: "[O]ccasionally there was some substance left on the [wax] paper,"[229] so when she was by herself, she licked the cocaine off the paper before throwing it away.[230] This did not produce any sort of "high," but it did lead to "a numbing, tingling feeling" on her "tongue which [she] enjoyed."[231]

188. Farak further testified that by the end of 2010, she was stealing powder cocaine samples she was assigned to analyze.[232]

189. A subsequent Servicenet treatment note dated February 7, 2011, indicated that she reported a recent increase in her drug use.[233]

190. Farak reported that among the "[p]ossible explanations" for her "almost daily" use of cocaine, phentermine, alcohol, and marijuana was overtime work, which presented "more opportunities to steal drugs."[234]

M. *"Bad for Your Health"*

191. In 2011, the lab "seemed to be getting less and less cocaine."[235]

192. At the Grand Jury, Salem recalled that when the Holyoke Police Department would drop off samples, Farak would ask: "Did you get anything good? What did you get today?"[236]

193. Farak testified that by 2011, she had "already exhausted the methamphetamine, amphetamine and ketamine standards," and felt her next best option was to begin smoking rocks of crack that she removed from samples coming in as evidence.[237]

194. This was another line Farak thought she would never cross.[238]

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[227] **Ex. 3**, Doe GJ, pg. 134 (9/16/15).

[228] **Ex. 3**, Doe GJ, pg. 134 (9/16/15).

[229] **Ex. 3**, Doe GJ, pg. 134 (9/16/15).

[230] **Ex. 3**, Doe GJ, pg. 134 (9/16/15).

[231] **Ex. 3**, Doe GJ, pg. 134 (9/16/15).

[232] **Ex. 3**, Doe GJ, pp. 85-86 (9/16/15).

[233] **Ex. 1**, Servicenet, 000124, 000127, 000128.

[234] **Ex. 1**, Servicenet, 000124, 000127, 000128.

[235] **Ex. 3**, Doe GJ, pg. 137 (9/16/15).

[236] **Ex. 33**, Doe GJ, pg. 49 (2/4/16).

[237] **Ex. 3**, Doe GJ, pg. 139-140 (9/16/15).

195. Farak testified that at first, she "wasn't really good at [smoking crack]."[239] She stated that she had "never been a smoker in general" and did not have the proper paraphernalia.[240] Using "aluminum foil pipes" was "bad for your health" and produced a pungent odor that increased the risk of getting caught.[241]

196. Farak further testified that borrowing crack pipes submitted for analysis led to better hits but they carried germs and eventually had to be returned.[242] She stated that she finally experienced a breakthrough when she broke off the tip of a "glass pipette[] in the lab" and inserted copper mesh inside the tube.[243] The invention of this apparatus "quickly" caused her to become "very addicted."[244]

197. On November 16, 2011, she resolved to "lie about certain things," if necessary, to convince her psychiatrist to refill one of her prescription medications.[245]

198. That same month the Servicenet record reflects that Farak reported: "[po]lysubstance abuse continues to occur on more days than not."[246]

199. Farak testified that once "the crack really got heavy in 2011," she was "totally controlled by [this] addiction."[247] Farak was accustomed to cravings, but the ones she felt for crack were "ridiculously intense."[248]

200. Farak further testified that she began to "look in the computer system" to see the contents of the next batch of samples to be assigned.[249] If items suspected of "containing a cocaine case or something like that" were present, she would rush to "return [her] submissions immediately to get that next batch of samples."[250]

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[238] **Ex. 3**, Doe GJ, pg. 159 (9/16/15).

[239] **Ex. 3**, Doe GJ, pg. 140 (9/16/15).

[240] **Ex. 3**, Doe GJ, pg. 140 (9/16/15).

[241] **Ex. 3**, Doe GJ, pp. 140-41 (9/16/15).

[242] **Ex. 3**, Doe GJ, pg. 142 (9/16/15).

[243] **Ex. 3**, Doe GJ, pg. 141 (9/16/15).

[244] **Ex. 3**, Doe GJ, pg.141 (9/16/15).

[245] **Ex. 48**, "Homework 11-16-11," Undisclosed Car Evidence.

[246] **Ex. 1**, Servicenet, 000142, 000143, 000145-46.

[247] **Ex. 6**, Doe GJ, pg. 145 (9/29/15); **Ex. 3**, Doe GJ, pg. 143 (9/16/15).

[248] **Ex. 10**, Doe GJ, pg. 48 (9/30/15).

[249] **Ex. 3**, Doe GJ, pp. 136-37 (9/16/15).

[250] **Ex. 3**, Doe GJ, pg. 137 (9/16/15).

201. Farak also testified that she explored the Morrill Science building in search of the best bathrooms for getting high.[251] When "Jim and Rebecca were intensely involved in doing bench work," she would "sneak across the hallway to the fume hood where [she] would smoke" and "get rid of . . . the smoke directly."[252] If her co-workers "weren't around" at the end of the day, Farak "could normally smoke at [her] lab bench."[253] At times, she even "smoked in the evidence room."[254]

N. "*Tried to Resist Using at Work But Ended up Failing.*"

202. Farak wrote, on a Servicenet Diary Card she filled out in conjunction with her DBT treatment, [255] that on December 22, 2011,she "tried to resist using [at] work, but ended up failing."[256] On December 23, 2011, she used drugs at work again, but this time did so without debating doing it.[257]

O. *"Color Swaying in the Wind"*

203. Farak testified that on January 9, 2012, Farak took LSD "around lunchtime" and conceded that the sensation of "colors swaying in the wind" rendered her unable "to function too well."[258]

204. In her proffer, Farak said that, she got so "ridiculously high," she became "ineffective at work."[259]

205. According to Farak, her memory of January 9, 2012, was as follows:

> [She] smoked crack cocaine in the morning. In the afternoon after the other lab employees went home, [she] took a dose of liquid LSD from a sample. [She] stayed at work the whole day doing paperwork and moving samples from the gas chromatograph to the mass spectrometer. Farak did not begin any new tests that day.[260]

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[251] **Ex. 3**, Doe GJ, pp. 122-123 (9/16/15).

[252] **Ex. 3**, Doe GJ, pg. 123 (9/16/15).

[253] **Ex. 3**, Doe GJ, pp. 123, 143 (9/16/15).

[254] **Ex. 3**, Doe GJ, pg. 143 (9/16/15).

[255] **Ex. 49**, Servicenet Diary Card 12/20 – 12/26, Undisclosed Car Evidence.

[256] **Ex. 49**, Servicenet Diary Card 12/20 – 12/26, Undisclosed Car Evidence.

[257] **Ex. 49**, Servicenet Diary Card 12/20 – 12/26, Undisclosed Car Evidence.

[258] **Ex. 3**, Doe GJ, pp. 149-51 (9/16/15).

[259] **Ex. 9**, Proffer ¶ 28.

[260] **Ex. 9**, Proffer ¶ 28.

206. When asked if anyone else was present at the lab that day, Farak testified that Hanchett "wasn't around in the afternoon," but recalled that Salem "would have been across the hall" and Pontes "was still around."[261]

207. Farak further testified that as the hallucinogenic took hold, she decided to go "to the bathroom to smoke crack," but ended up "dropping some of it."[262] This caused Farak to "totally freak[] out" by "crawling on the floor and trying to find crack which [she] thought was there."[263]

208. With respect to her work activities, Farak testified that she did not use the GC/MS for any testing after taking the LSD.[264] At most, she "may have pulled some . . . of the reports off the computer and put it off to the side so someone else could use the machinery."[265] As "she waited inside the lab" for her "scheduled time to leave," Farak said she "maybe re-filed some folders or whatnot."[266] When that time finally came, she remembered moving her car "from one lot to a separate lot so people wouldn't see [her] car still sitting next to their car when they went to leave."[267] Farak further testified she "then . . . walked around UMass campus" until she reached the point where she could safely navigate her way home.[268]

209. Farak's lab notebook contains eleven entries on that date documenting her supposed analysis of "heroin" and "cocaine" samples.[269]

210. On this same date, Farak also completed a "Drug Lab Results" worksheet for these samples[270] and "personally appeared" before Salem to sign eleven drug certificates swearing that the findings they contained were "truthful and accurate to the best of [her] knowledge and belief."[271]

211. The GC/MS records from January 9, 2012, suggest that she did use that instrument on that date. As for Farak's claim that she did not operate the GC/MS after taking the LSD, readings from the instrument suggest otherwise.[272]

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[261] **Ex. 3**, Doe GJ, pg. 150 (9/16/15).

[262] **Ex. 3**, Doe GJ, pg. 151 (9/16/15).

[263] **Ex. 3**, Doe GJ, pg. 151 (9/16/15).

[264] **Ex. 3**, Doe GJ, pg. 150 (9/16/15).

[265] **Ex. 3**, Doe GJ, pg. 150 (9/16/15).

[266] **Ex. 3**, Doe GJ, pg. 152 (9/16/15).

[267] **Ex. 3**, Doe GJ, pg. 152 (9/16/15).

[268] **Ex. 3**, Doe GJ, pg. 152 (9/16/15).

[269] *See* **Ex. 50**, Farak Lab Notebook, 1/9/12, Penate DA Discovery 306-09.

[270] **Ex. 51**, Drug Lab Results Worksheet, 1/9/12, Penate DA Discovery 374.

[271] **Ex. 52**, Drug Certificates, 1/9/12, Penate DA Discovery 90-100.

[272] **Ex. 53**, GC Runs, 1/9/12; **Ex. 54**, GC/MS Runs 1/9/12.

Q. *"Drug Dealers Aren't Always the Most Honest People :)"*

212. On June 4, 2012, a Hampden County Superior Court prosecutor sent Farak an email explaining what a "mess" a certain case had become.[273]

213. A new defense attorney reviewing 2011 testing felt Farak had made a "mistake since [she] found ketamine in addition to heroin."[274]

214. Farak initially responded: "Ketamine is occasionally found in heroin samples – probably [less than] 5%, but it does happen."[275]

215. Pressed for an "explanation," she responded: "My best guess is that drug dealers aren't always the most honest people :)."[276]

216. "In all seriousness, though," Farak continued, "I've been trying to figure it out."[277]

217. After sharing a hunch as to how a "dissociative" like ketamine could "enhance[] the doping effects of the heroin," she discussed an article that raised the possibility of ketamine's presence contributing to a rash of heroin overdoses in 2001.[278]

218. It appears Farak considered sending a link to the article but refrained from doing so based on her uncertainty as to whether the prosecutor would then "have to/want to share it with the defense counsel."[279]

219. Ketamine, like cocaine, is a fine powder that "can be inadvertently transferred from an object to a person or from a person to an object through physical contact."[280]

220. As previously noted, ketamine was one of the standards at the lab that Farak completely "exhausted."[281]

R. *Touching Other People's Work*

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[273] **Ex. 56**, Emails between Sonja Farak and Maida Wassermann, AMH00001361-63.

[274] **Ex. 56**, Emails between Sonja Farak and Maida Wassermann, AMH00001362.

[275] **Ex. 56**, Emails between Sonja Farak and Maida Wassermann, AMH00001361.

[276] **Ex. 56**, Emails between Sonja Farak and Maida Wassermann, AMH00001361.

[277] **Ex. 56**, Emails between Sonja Farak and Maida Wassermann, AMH00001361.

[278] **Ex. 56**, Emails between Sonja Farak and Maida Wassermann, AMH00001361.

[279] **Ex. 56**, Emails between Sonja Farak and Maida Wassermann, AMH00001361.

[280] **Ex. 57**, Lockie C. Ieong, LCMS Method for the Determination of Illicit Drug Residues on Paper Currency, Int'l Chemistry Review, Issue 1, pg. 2 (2015); *see also id.* at 10 ("Ketamine was the most frequently detected residue, found in approximately 98 % of the samples . . . .").

[281] **Ex. 3**, Doe GJ, pg. 139 (9/16/15).

221. Farak testified that in order "to touch anyone else's samples [she] would either need to forge their initials or find a way to get a bag that had their initials on it."[282]

222. Hanchett testified that when a chemist was finished testing a sample, the chemist was "supposed to seal [it in] a plastic bag, initial the plastic bag and return it to the evidence officer."[283]

223. Hanchett further testified that sometimes he would "get a little sloppy" and put his initials on empty K-pacs before sealing them.[284]

224. Farak testified that when she discovered Hanchett "was leaving bags with his initials on [them] on the side of his desk so he wouldn't have to write it out each time,"[285] she raided his "supply" and held onto these pre-initialed bags until she came across a Hanchett sample she wanted.[286]

225. Before the grand jury in 2015, Farak was unable to recall when she started "touch[ing] other people's work"[287] or how many times she did so.

226. Farak stated in her proffer that she began taking other chemists' samples in the summer of 2012.[288]

227. With respect to Hanchett, she "[p]robably" tampered with a "half a dozen" crack samples assigned to him.[289]

228. According to Farak, one of these samples was a Pittsfield Police Department submission.[290]

229. According to Farak:

> I took a fair amount of that. I went back into the bag a few times. So, you know, I took a little. I'm not gonna do it again. Every day you swear you're not going to and then, you know, you'd put it back, return it to the safe, but

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[282] **Ex. 3**, Doe GJ, pg. 155 (9/16/15).

[283] **Ex. 25**, Doe GJ, pg. 41 (2/1/16).

[284] **Ex. 25**, Doe GJ, pg. 86, 110 (2/1/16).

[285] **Ex. 3**, Doe GJ, pg. 155 (9/16/15).

[286] **Ex. 3**, Doe GJ, pg. 155, 158 (9/16/15).

[287] **Ex. 3**, Doe GJ, pg. 159 (9/16/15).

[288] **Ex. 9**, Proffer ¶ 30.

[289] **Ex. 3**, Doe GJ, pg. 157 (9/16/15).

[290] **Ex. 3**, Doe GJ, pg. 157 (9/16/15).

then a night would come when I was the only one there, it was morning or whatever time of day it was and I would want more of. I'd go back into the evidence office, go into the safe, take some more and use one of the bags that I had already stashed with the initials on the evidence bag.[291]

230. As for the issue of forgery, Farak acknowledged practicing the initials of her fellow chemists.[292]

231. At the Grand Jury, she nevertheless conveyed her "belie[f]" that she never "forged [Hanchett's] initials and used a bag."[293]

232. Farak also claimed her only tampering of a Pontes sample was effectuated by means of a pre-initialed bag.[294]

233. Investigators discovered a piece of scrap paper in Farak's car with the initials "RP" scrawled across it.[295]

S. *Escalating Substance Abuse*

234. On July 8, 2012, Farak engaged in the "frowned upon" practice of assigning herself a batch of twenty samples that had been submitted by the Westfield police.[296]

235. Several of these samples consisted of white chunks that had been seized from a defendant named Byron Stradford.[297]

236. When these samples were re-submitted to another laboratory for analysis, the analyst stated that one of the bags "appeared to have two different substances" and in "thirty years," he had no recollection of "seeing something exactly like that."[298]

237. Farak testified that she used "a variety of substances" in the process of "trying to figure out how to counterfeit crack,"[299] including rocks, soap ships, candle wax, and modeling clay which she hardened in the ovens at work.[300]

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[291] **Ex. 3**, Doe GJ, pg. 157-58 (9/16/15).

[292] **Ex. 3**, Doe GJ, pg. 159 (9/16/15).

[293] **Ex. 3**, Doe GJ, pg. 159 (9/16/15).

[294] **Ex. 3**, Doe GJ, pg. 156 (9/16/15).

[295] *See* **Ex. 58**, "RP" Initials, Undisclosed Car Evidence.

[296] **Ex. 33**, Doe GJ, pg. 20 (2/4/16) (testimony of Salem); **Ex. 59**, "Drug Receipt," 6/15/12, Farak Discovery 3620; **Ex. 60**, "Sample to Lab," 7/8/12, Farak DA Discovery 3621.

[297] **Ex. 59**, "Drug Receipt," 6/15/12, Farak DA Discovery 3620.

[298] **Ex. 61**, Amherst Drug Lab Evidentiary Hearing, pp. 24-26 (Oct. 7, 2013).

[299] **Ex. 3**, Doe GJ, pg. 169 (9/16/15).

[300] **Ex. 3**, Doe GJ, pg. 169-170 (9/16/15).

T. *"A Quantity Worth My Time"*

238. At some point that same summer, Farak testified that she walked by Pontes' desk and noticed an empty evidence bag with her co-worker's initials.[301] Farak stated that "Rebecca rarely ever did that,"[302] so she took the bag and "put it in [her] lab bench drawer."[303] On a later date, Pontes was assigned a Springfield submission consisting of 73 or 74 grams of white powder believed to contain cocaine.[304] According to Farak, this proved to be the "right opportunity" to use the bag with Pontes' initials.[305] Farak stated that she removed "about 30 grams" of the powder and "replaced it with a counterfeit substance."[306]

239. Farak further testified that instead of consuming the 30 grams as cocaine, Farak used it to make crack.[307] This process involved "dissolving the cocaine in water, adding baking soda, heat[ing] it up, [and] let[ting] it precipitate out."[308] Farak stated she would then "form the crack," "filter it through a funnel," and "let it dry for [her] use."[309] All of this took place at her place of employment. Farak would "go into work when [she] wasn't scheduled" and "manufacture[] base cocaine at the laboratory."[310]

240. According to Farak's testimony, the 30 grams she took from the Pontes sample was "a big enough submission where [she] could make a quantity worth [her] time.[311] So, too, was the 100 grams of powder she took from a kilogram of cocaine submitted by the Chicopee Police Department[312] and "the 200 grams of powder cocaine" she stole "from a Holyoke case."[313] Looking back, Farak believed she cooked cocaine at the Amherst Drug Lab "[m]aybe three or four times."[314]

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[301] **Ex. 3**, Doe GJ, pg. 155 (9/16/15).

[302] **Ex. 3**, Doe GJ, pg. 155 (9/16/15).

[303] **Ex. 3**, Doe GJ, pg. 155 (9/16/15).

[304] **Ex. 3**, Doe GJ, pp. 155-56 (9/16/15).

[305] **Ex. 3**, Doe GJ, pp. 155-56 (9/16/15).

[306] **Ex. 3**, Doe GJ, pg. 156 (9/16/15).

[307] **Ex. 3**, Doe GJ, pg. 156 (9/16/15).

[308] **Ex. 3**, Doe GJ, pp. 147-48 (9/16/15).

[309] **Ex. 3**, Doe GJ, pg. 148 (9/16/15).

[310] **Ex. 3**, Doe GJ, pg. 146 (9/16/15).

[311] **Ex. 3**, Doe GJ, pg. 147 (9/16/15).

[312] **Ex. 3**, Doe GJ, pg. 147 (9/16/15).

[313] **Ex. 9**, Proffer ¶ 34

[314] **Ex. 3**, Doe GJ, pg. 146 (9/16/15).

U. *Manipulating the System*

241. On August 10, 2012, Lee caught Farak with drugs for the first time.[315]

242. Farak met with Anna Kogan (Kogan) for the first time on August 17, 2012.[316]

243. In a report generated on or about that date, Kogan described Farak's "Presenting Problem" this way: "Client . . . states she is struggling with a drug addiction, which has worsened in the last few months and may be affecting client's job performance."[317]

244. While Farak did not disclose how much crack she had been smoking, she did admit to daily use during the work week.[318]

245. Farak testified that by the end of 2011, she was "very in tune to what pieces of evidence were coming up" and she attempted "to manipulate the system so [she] could get pieces of evidence [she] wanted to analyze."[319]

246. She further testified that instead of returning samples when she completed them, she would sometimes hold onto them if the next batch did not contain crack.[320]

247. Farak testified that her "habit increased" to the point where she "was going to smoke crack at work multiple, multiple — like ten, twelve times a day" and her "productivity" went "down."[321]

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[315] **Ex. 149**, Doe GJ, Ex. 13, Medical Records, pg. __ (9/29/15).

[316] **Ex. 62**, Response of Anna Kogan to Summons to Produce Records in Commonwealth v. Watt, No. HDCR2009-01069, Bates # 000174. Subsequent references to these records are abbreviated as "Kogan" followed by the Bates #.

[317] **Ex. 62**, Response of Anna Kogan to Summons to Produce Records in Commonwealth v. Watt, No. HDCR2009-01069, Bates # 000174. Subsequent references to these records are abbreviated as "Kogan" followed by the Bates #.

[318] **Ex. 62**, Response of Anna Kogan to Summons to Produce Records in Commonwealth v. Watt, No. HDCR2009-01069, Bates # 000174. Subsequent references to these records are abbreviated as "Kogan" followed by the Bates #.

[319] **Ex. 3**, Doe GJ, pg. 143 (9/16/15).

[320] **Ex. 3**, Doe GJ, pp. 143-44 (9/16/15).

[321] **Ex. 3**, Doe GJ, pg. 144 (9/16/15).

248. Farak testified that in the summer and fall of 2012, she was attending individual and group therapy sessions while "under the influence of crack cocaine." She did not disclose her intoxication to her therapists or to the group.[322]

V. *Into the Drug Safe*

249. On November 28, 2012, the House Committee on Post Audit and Oversight held an Oversight Hearing on the Hinton Drug Lab Crisis.[323]

250. During questioning from the chair, MSP Major James Connolly (Connolly) was asked whether an Annie Dookhan-type scandal could go on for "months and months and months . . . as apparently went on at the Hinton Laboratory."[324]

251. Connolly answered: "I'm confident it would not go on and would be immediately identified and corrective action would be taken."[325]

252. Farak testified that by this point at the end of 2012, she had begun going "into the drug safe" to open unassigned evidence bags when she thought she could do so inconspicuously.[326]

253. On such occasions, Farak stated she would weigh the sample and record its weight on a "scrap piece of paper."[327] Then, after testing the sample "to see what it was,"[328] she would "then take some of it…, reseal the bag and put it back in the drug safe."[329]

254. This process inevitably reduced the gross weight of the submission.

255. Farak further testified that to cover her tracks, she did her "best to get those samples" assigned to her.[330] However, as a precaution, she would also "go into the

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[322] **Ex. 3**, Doe GJ, pp. 174-75, 202 (9/16/15).

[323] **Ex. 64**, House Committee on Post Audit and Oversight - Oversight Hearing (Nov. 28, 2012), https://malegislature.gov/Events/EventDetail?eventId=945&eventDataSource=VideoService&videoSource=hse (last visited Feb. 18, 2016)

[324] **Ex. 64**, House Committee on Post Audit and Oversight - Oversight Hearing (Nov. 28, 2012), https://malegislature.gov/Events/EventDetail?eventId=945&eventDataSource=VideoService&videoSource=hse (last visited Feb. 18, 2016) (testimony at approximately 1:40:00).

[325] **Ex. 64**, House Committee on Post Audit and Oversight - Oversight Hearing (Nov. 28, 2012), https://malegislature.gov/Events/EventDetail?eventId=945&eventDataSource=VideoService&videoSource=hse (last visited Feb. 18, 2016) (testimony at approximately 1:40:00).

[326] **Ex. 3**, Doe GJ, pg. 160 (9/16/15).

[327] **Ex. 3**, Doe GJ, pp. 160-61 (9/16/15).

[328] **Ex. 3**, Doe GJ, pg. 161 (9/16/15).

[329] **Ex. 3**, Doe GJ, pg. 161 (9/16/15).

[330] **Ex. 3**, Doe GJ, pg. 164 (9/16/15).

computer system and change the gross weights on the drug receipts,"[331] then replace the original drug receipts with new ones reflecting the gross receipts of the samples subsequent to her tampering. This way, if a sample "was assigned to another chemist, . . . the evidence weight would be the same."[332] Then, once the testing process was complete, Farak would go "back into the system and chang[e] the evidence weight[s] back to [the] original weight[s] when the . . . police officers brought [the samples] in."[333]

256. Farak also stated in her proffer that shortly before her arrest, she stopped worrying about variance in gross weights and expedited this process by cutting "a small hole in the bags," taking the evidence, "then cover[ing] up the hole with the evidence label."[334]

W. *A Little Science Experiment Thing*

257. Farak testified that the following occurred in the first week of 2013: Farak stated that she had recently "made some crack" at the lab and was drying it in a drawer.[335] In the midst of "rushing to get back home," she collected all the crack but "left a beaker that had some liquid and some white residue, probably not crack, probably baking soda/baking powder on the edge in the drawer."[336] James Hanchett "ended up finding it,"[337] and when he confronted her about the beaker, Farak feigned ignorance.[338]

258. Farak further testified that Pontes had "taken time off for the holidays" and was not at work that day.[339] She stated that Hanchett "came up with the idea that well, maybe Rebecca had brought her daughter in and they were doing a little science experiment thing."[340] Farak "said, 'yeah, maybe' and left it at that."[341]

259. Farak testified that Hanchett did not "follow-up" with her and that she did not know if he followed up with Pontes.[342]

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[331] **Ex. 3**, Doe GJ, pg. 163 (9/16/15).

[332] **Ex. 3**, Doe GJ, pg. 164 (9/16/15).

[333] **Ex. 3**, Doe GJ, pg. 164 (9/16/15).

[334] **Ex. 9**, Proffer ¶ 37.

[335] **Ex. 3**, Doe GJ, pg. 153 (9/16/15).

[336] **Ex. 3**, Doe GJ, pg. 153 (9/16/15).

[337] **Ex. 3**, Doe GJ, pg. 153 (9/16/15).

[338] **Ex. 3**, Doe GJ, pg. 153 (9/16/15).

[339] **Ex. 3**, Doe GJ, pg. 153 (9/16/15).

[340] **Ex. 3**, Doe GJ, pg. 153 (9/16/15).

[341] **Ex. 3**, Doe GJ, pg. 153 (9/16/15).

[342] **Ex. 3**, Doe GJ, pg.154 (9/16/15).

X. *Day of Farak's Arrest*

260. Farak spent the morning of January 18, 2013, at the Hampden County Hall of Justice waiting to be called as a witness.[343]

261. Farak testified that during the midday recess, she went to her car in the parking garage where she had both her lunch and a "fair amount of crack."[344]

262. Farak testified that after she "smoked up" and "got pretty high," she returned to the courthouse.[345]

263. Farak testified that she had previously testified under the influence of substances because she was using them daily.[346]

264. Before Farak entered the courtroom, two MSP detectives asked to speak with her.[347]

265. During this interview, Farak denied any wrongdoing.[348]

266. At its conclusion, investigators obtained warrants for her car and a tote bag found at her workstation.

267. On her last day as a drug lab chemist, Farak possessed dozens of capsules containing N-acetyl-L-cysteine ("NAC").[349]

268. When taken orally, NAC is "used to prevent liver damage from acetaminophen overdose."[350]

269. One cause of acetaminophen overdose is the abuse of the narcotic, Oxycodone-acetaminophen, otherwise known as Percocet or Tylox.[351]

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[343] **Ex. 3**, Doe GJ, pg. 188 (9/16/15).

[344] **Ex. 3**, Doe GJ, pg. 188 (9/16/15).

[345] **Ex. 3**, Doe GJ, pg. 188 (9/16/15).

[346] **Ex. 3**, Doe GJ, pg. 80 (9/16/15).

[347] **Ex. 3**, Doe GJ, pp. 188-89 (9/1/15).

[348] **Ex. 67**, Interview of Sonja Farak (Jan. 18, 2013).

[349] **Ex. 68**, Report by Timothy Woods, Analyst for MSP Forensic Services Group (Feb. 18, 2013).

[350] **Ex. 69**, WebMD, "Acetylcysteine Uses," available at www.webmd.com/drugs/2/drug-8938/acetylcysteine/details.

270. Nine days after Farak's arrest, Sergeant Joseph Ballou discovered a vial of crushed Oxycodone-acetaminophen at her work station.[352]

V. The State of the Amherst Lab – A Lack of Funding and Support

A. "*A Little Leftover from All the Tests*"

271. Sharon Salem testified that she did not know the expiration dates for some of the standards in the cabinet and that some had been there for 30 years.[353]

272. Hanchett testified that the "shelf life" of such substances was "indefinite" provided they were "kept in a dark and you know, air conditioned place and stuff."[354]

273. Salem testified that it was "standard practice" at the Amherst Lab to use secondary standards.[355]

274. On occasion, Hanchett would make heroin from morphine.[356]

275. However, most "in house" standards came from samples submitted by local police departments.[357]

276. In trafficking cases, chemists could "always" count on there being "a little leftover from all the tests."[358]

277. Hanchett "would take some of that leftover" and attempt to "purify it" or "clean it up" by "get[ting] rid of a lot of the contamina[nts]."[359]

278. These street samples of cocaine and heroin were "never very pure," so he would "have to do an extraction process."[360]

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[351] **Ex. 70**, WebMD, "Oxycodone-acetaminophen Side Effects," www.webmd.com/drugs/2/drug-2796-5352/oxycodone-acetaminophen-oral/oxycodone2facetaminophen-oral/details/list-sideeffects; *Percocet, available at* https://www.drugs.com/percocet.html; *Tylox*, *available at* https://www.drugs.com/search.php?searchterm=tylox.

[352] **Ex. 71**, AGO Case Report, Item No. 056 (Jan. 29, 2013).

[353] **Ex. 33**, Doe GJ, pg. 28-29 (2/4/16).

[354] **Ex. 25**, Doe GJ, pg. 53 (2/1/16).

[355] **Ex. 33**, Doe GJ, pg. 29 (2/4/16).

[356] **Ex. 25**, Doe GJ, pg. 49 (2/1/16).

[357] **Ex. 33**, Doe GJ, pg. 27 (2/4/16).

[358] **Ex. 25**, Doe GJ, pg. 46 (2/1/16).

[359] **Ex. 25**, Doe GJ, pg. 47 (2/1/16).

[360] **Ex. 25**, Doe GJ, pg. 47 (2/1/16).

279. Sometimes the finished product "wasn't, you know, as pure as the primary."[361]

280. There were certain "co-contaminants" they "couldn't get rid of all the time."[362]

281. However, Hanchett did not perceive this as a problem because, according to him, the impurities in the in-house standards "never interfered with the sample itself."[363]

282. Pontes testified that once Hanchett finished manufacturing a sufficient supply of cocaine and heroin, he would combine these two secondary standards with a solvent in a 50 milliliter flask that was kept in an unlocked refrigerator.[364]

283. Analysts used small portions of this mixture at the start of every GC/MS run to ensure the instrument was functioning properly.[365]

284. There was uncertainty as to how long these in-house standards lasted.[366]

285. According to Hanchett, the shelf lives of secondary standards "depend[ed] on how often they were left out on the bench," as "sunlight would hasten their degradation."[367]

286. After "maybe three, four months," analysts would "start getting interference in the peaks" on MS spectra and Hanchett would make a new standard.[368]

287. When asked whether he ever "discuss[ed] the manufacturing of secondary samples with anyone else in the Department of Public Health," Hanchett testified: "Well, they knew I was doing it down in Boston because I -- I believe they were doing the similar thing. One of the chemist[s] came out and . . . I made some heroin for him one time"[369]

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[361] **Ex. 25**, Doe GJ, pg. 48 (2/1/16).

[362] **Ex. 25**, Doe GJ, pg. 49 (2/1/16).

[363] **Ex. 25**, Doe GJ, pg. 49 (2/1/16).

[364] **Ex. 33**, Doe GJ, pp. 86-88 (2/4/16).

[365] **Ex. 33**, Doe GJ, pg. 96 (2/4/16).

[366] **Ex. 33**, Doe GJ, pg. 28 (2/4/16).

[367] **Ex. 25**, Doe GJ, pg. 51 (2/1/16).

[368] **Ex. 25**, Doe GJ, pg. 51 (2/1/16).

[369] **Ex. 25**, Doe GJ, pg. 54 (2/1/16).

B. "*. . . Reducing Quality Might Jeopardize Correct, Error Free Results.*"

288. In April, 2002, a team from the National Forensic Science Technology Center (NFSTC) visited Amherst as part of an "evaluation of the sufficiency of [all current forensic services in the Commonwealth] as well as developing a strategic plan for such services in the future."[370]

289. NFSTC identified two major concerns. There were problems with the lab's "physical plant:"[371]

> The drug unit is located on ground level and covers several thousand square feet. The drug laboratory is housed in a building that was constructed in the 1950s. The space does not flow with maximum efficiency. Some of the rooms are small and others are in need of remodeling. For the size of the staff and the amount of scientific equipment, the space is very restrictive. Cabinet and bench spaces were found to be crowded. Lighting and electrical power appear to be adequate. The facility is very crowded and thus creates inefficient operations. Safety issues and contamination might become a concern if additional staff and/or equipment are added.[372]

290. NFSTC thus recommended "that consideration be given to locating to a facility that would allow the efficient operation of the unit."[373]

291. The 2002 NFSTC Report further stated that "[f]ormal quality systems" were "not in place," and there were no "written protocols for the analyses of exhibits."[374]

292. According to the report, "[t]he laboratory has not met the standards set by ASCLD/LAB and it does not conform to all of their requirements or with the requirements of SWGDRUG. [The lab] would have to develop written protocols for the analyses of exhibits submitted along with the requirement for peer reviews of reports. There would also have to be a proficiency testing program implemented in the laboratory."[375]

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[370] **Ex. 80**, NFSTC, "Needs Assessment of Forensic Services in the Commonwealth of Massachusetts (Apr. 2002) [hereinafter "Needs Assessment"].

[371] **Ex. 80**, Needs Assessment, pg. 29.

[372] **Ex. 80**, Needs Assessment, pg. 29.

[373] **Ex. 80**, Needs Assessment, pg. 29.

[374] **Ex. 80**, Needs Assessment, pg. 30. When asked whether DPH had "any type of protocol" pertaining to "the steps" analysts were supposed to take "to detect certain narcotic substances," Salem stated that this was "done by word of mouth within the lab." **Ex. 33**, Doe GJ, pg. 9 (2/4/16).

[375] **Ex. 80**, Needs Assessment, pg. 30. "The American Society of Crime Laboratory Directors/Laboratory Accreditation Board is a not-for-profit corporation specializing in the accreditation of public and private crime laboratories." *See* http://www.ascld-lab.org/ (last visited Mar. 11, 2016).

293. The NFSTC long term recommendations in regard to all facilities in Massachusetts that were performing controlled substances examinations included the following caveat:

> It needs to be pointed out that as caseloads increase, the laboratory response due to a lack of additional resources is to reduce quality assurance safeguards. While this has not had a knowledgeable effect on the outcome of chemical analysis as of yet, in the future reducing quality might jeopardize correct, error free results.[376]

294. The 2003 Governor's Commission on Criminal Justice Innovation recommended that "all forensic drug testing laboratories demonstrate compliance with the national SWG-Drug standards through external audits and the subcommittee favored ASCLD/LAB accreditation."[377]

295. While it estimated annual costs "between $10,000 and $25,000" to gain and maintain accreditation "for each DPH laboratory," the report stated that "[a]n assessment of additional infrastructure retrofit costs at the DPH Amherst facility may yield additional costs to be borne to allow for accreditation of that drug lab."[378]

296. In fact, below is a chart reflecting the funds budgeted by the legislature for Amherst Drug Lab refurbishments during the last years of the facility's existence:[379]

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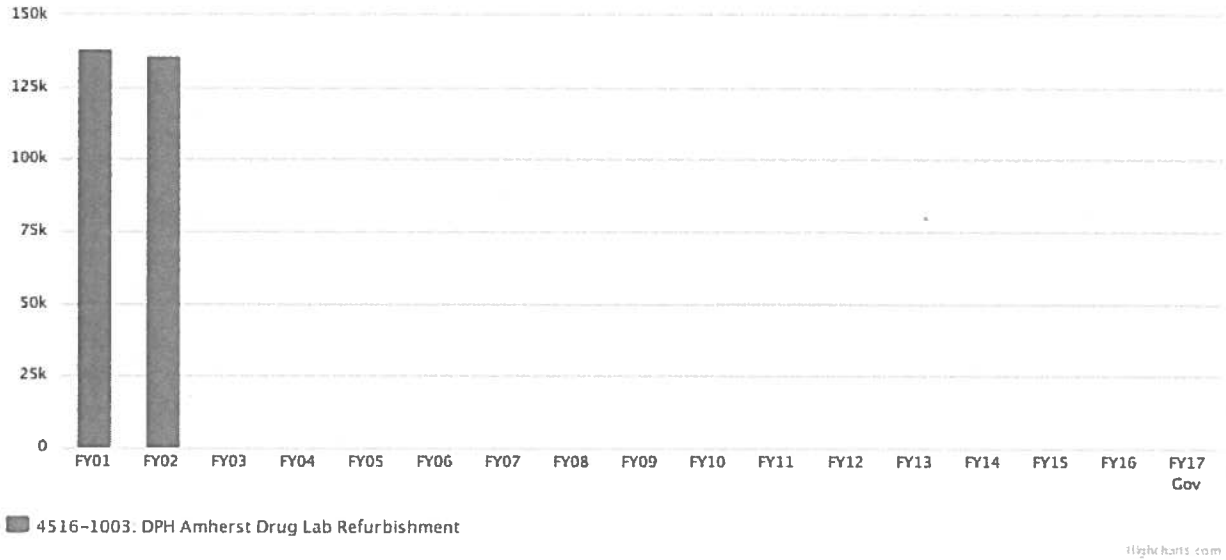
[376] **Ex. 80**, Needs Assessment, pg. 43.

[377] **Ex. 13**, Governor's Commission, pg. 43.

[378] **Ex. 13**, Governor's Commission, pg. 43.

[379] Massachusetts Budget and Policy Center, DPH Amherst Drug Lab Refurbishment, *available at* http://www.massbudget.org/browser/line_item.php?id=4516100300&inflation=cpi (last visited June 21, 2016).



C. *A "Disinterested and Unresponsive" Director*

297. From 2006 to 2012, Julianne Nassif (Nassif) was the Director of Analytical Chemistry within the Department of Public Health.[380]

298. Nassif had previously been in charge of the Organics Lab and the Environmental Chemistry Lab.[381]

299. As the Director of Analytical Chemistry, Nassif's responsibilities included overseeing the Hinton and Amherst Drug Labs.[382]

300. Among other things, the OIG Report stated that Nassif "had no academic or work experience in forensic chemistry prior to becoming the director" and drug law employees opined that she had no "interest in learning about . . . [Hinton] Drug Lab functions."[383]

301. As director, Nassif rarely scheduled meetings with Hinton Drug Lab supervisors and often cancelled them. "Though the Drug Lab aimed to have monthly staff meetings to address changes in the protocols or other concerns these meetings occurred far less frequently once Nassif became the director."[384]

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[380] **Ex. 11**, OIG Report, pg. 21.

[381] **Ex. 11**, OIG Report, pg. 21.

[382] **Ex. 11**, OIG Report, pg. 21.

[383] **Ex. 11**, OIG Report, pp. 21-22.

[384] **Ex. 11**, OIG Report, pg. 23.

302. As stated in the OIG Report, Nassif was perceived by certain Hinton chemists as "disinterested and unresponsive," and conducted herself "in a way that suggested that the [Hinton] Drug Lab was not a priority for her."[385]

303. According to Salem's grand jury testimony, "Julie Nassif and Chuck Salemi came out for a visit once when we were undergoing some construction"[386] and once when the Amherst Lab was threatened with closure.[387]

304. Salem agreed that it was "fair to say" there was "perhaps a lack of oversight by the Department of Public Health of the laboratory."[388]

305. Hanchett testified that one of the foremost obstacles he faced in running a forensic lab seemed to come from the absence of adequate funding or "support from higher up in Public Health."[389]

306. Hanchett complained that his "lab was in deplorable condition."[390] For example when equipment hoods broke, they were neither fixed nor replaced.[391]

307. Hanchett testified that "[i]t was not a good environment" in which to work.[392]

D. *Impact of Melendez-Diaz*

308. On June 25, 2009, the United States Supreme Court issued its decision in the case of *Melendez-Diaz v. Massachusetts*.[393]

309. *Melendez-Diaz* held that the "Sixth Amendment does not permit the prosecution to prove its case via *ex parte* out-of-court affidavits." [394]

310. Rather, criminal defendants had a constitutional right to challenge "analysts' honesty, proficiency, and methodology" through "cross-examination."[395]

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[385] **Ex. 11**, OIG Report, pg. 23.

[386] **Ex. 33**, Doe GJ, pg. 60 (2/4/16).

[387] **Ex. 33**, Doe GJ, pg. 60 (2/4/16).

[388] **Ex. 33**, Doe GJ, pg. 60 (2/4/16).

[389] **Ex. 25**, Doe GJ, pg. 28 (2/1/16).

[390] **Ex. 25**, Doe GJ, pg. 28 (2/1/16).

[391] **Ex. 25**, Doe GJ, pg. 28 (2/1/16).

[392] **Ex. 25**, Doe GJ, pg. 28 (2/1/16).

[393] 557 U.S. 305 (2009).

[394] 557 U.S. at 329.

[395] 557 U.S. at 321.

311. As a result of the Court's ruling, chemists spent "time away from analyzing samples to testify in court and to collect the data and paperwork to provide to the parties."[396]

E. *DPH and Funding of the Amherst Lab.*

312. Beginning in the fall of 2009, DPH had the opportunity to receive funds, as an MSP sub-recipient, from the National Institute of Justice's (NIJ) Paul Coverdell Forensic Sciences Improvement Grant (Coverdell grant).[397]

313. "The MSP was the Coverdell Grant State Administering Agency, meaning that the MSP applied directly to the NIJ for the funds and then coordinated the sub-recipients' applications, funds distribution, and grant progress reports."[398]

314. When the MSP notified Nassif in April 2011, "that it planned to eliminate the Drug Lab's Coverdell grant allocation," she "responded that the Drug Lab could not absorb the loss of the Coverdell grant without a significant impact on the delivery of drug-testing services."[399]

315. After discussions between EOHHS, DPH, and the MSP, the MSP continued the grant allocation to DPH, but reduced it by 18%.[400]

316. On or about May 2, 2011, Nassif sent an email to all DPH Drug Labs employees to schedule "monthly drug lab meetings" in "preparation for accreditation."[401]

317. The correspondence contained this note to Hanchett: "Jim – you are always invited, please come when it works for your schedule. I know it's not feasible to clear out the entire Amherst lab so I will plan on an Amherst meeting quarterly."[402]

318. "When the [Hinton] Drug Lab closed in 2012, management had yet to take any significant steps toward initiating the process for accreditation."[403]

319. Hanchett testified that he frequently received "push-back" when he tried to order essential supplies like "paper," "chemicals," and "consumables," which included

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[396] **Ex. 11**, OIG Report, pg. 16.

[397] **Ex. 11**, OIG Report, pg. 79.

[398] **Ex. 11**, OIG Report, pg. 79.

[399] **Ex. 11**, OIG Report, pg. 79.

[400] **Ex. 11**, OIG Report, pg. 79.

[401] **Ex. 85**, Email from Julianne Nassif, AMH00000559.

[402] **Ex. 85**, Email from Julianne Nassif, AMH00000559.

[403] **Ex. 11**, OIG Report, pg. 20.

"gloves," "beakers," "glassware," and the "plastic bags [chemists] used to package the drugs."[404]

320. While "there was . . . an open-ended allotment to fix the machinery,"[405] when asked if he ever voiced his concerns to Nassif regarding the lack of money or problems with older machines, Hanchett stated, "every year I had a wish list I gave to her for equipment we thought we needed, replacing instruments."[406]

321. Among the "references and documents" that SWGDRUG recommendations state "shall be available and accessible to analysts" are "relevant periodicals (e.g., *Journal of Forensic Scientists* . . .)," but the subscription was "dropped" due to the "prohibitive . . . cost to [DPH]."[408]

322. Each month, Hanchett would drive to the "parent laboratory"[409] to provide Nassif with "monthly reports" that listed how many samples they were behind, how many samples came in, and how many samples each chemist had analyzed broken down by type of drug.[410]

323. Hanchett testified that in an effort to help reduce Hinton's backlog, he would bring "two, three hundred samples back to the Amherst lab," which he and his staff "would analyze usually on overtime."[411]

324. Hanchett became aware of DPH's intention to close the Amherst lab, and corresponded with Ann Looney (Looney), General Counsel for MOSES in August 2011, who was garnering support for the continued operation of the Amherst Drug Lab.[412] And so, on August 16, 2011, Hanchett sent Looney information for a "Legislative Fact Sheet"[413] and explained how "Nassif's report breaks down Boston and Amherst submissions for both labs. But it is for only 3 months."[414]

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[404] **Ex. 25**, Doe GJ, pp.21-23 (2/1/16).

[405] **Ex. 25**, Doe GJ, pg. 21 (2/1/16).

[406] **Ex. 25**, Doe GJ, pg. 24 (2/1/16).

[407] **Ex. 18**, SWGDRUG, Recommendations, Part II, § 5(d) (2011).

[408] **Ex. 25**, Doe GJ, pg. 61 (2/1/16).

[409] **Ex. 86**, Letter from James Hanchett to Dan Ring (undated), Undisclosed Car Evidence.

[410] **Ex. 25**, Doe GJ, pg. 12 (2/1/16).

[411] **Ex. 25**, Doe GJ, pg. 13 (2/1/16).

[412] **Ex. 87**, E-mail Correspondence between James Hanchett and Ann Looney (Aug. 2011), Undisclosed Car Evidence.

[413] **Ex. 87**, E-mail Correspondence between James Hanchett and Ann Looney (Aug. 2011), Undisclosed Car Evidence.

[414] **Ex. 87**, E-mail Correspondence between James Hanchett and Ann Looney (Aug. 2011), Undisclosed Car Evidence.

325. To explain the volume of testing performed at the two facilities, he produced numbers for the preceding fiscal year.[415]

326. On September 9, 2011, twenty-three state legislators from the four western counties sent a letter to the House and Senate Chairs of the Committees of Ways and Means requesting the inclusion of $300,000 for the Amherst Lab in a supplemental spending bill.[416]

327. Among other things, the letter noted that this was far less than the $420,000 the Worcester District Attorney received to test samples seized in that county at the Drugs of Abuse Laboratory (DAL) at the UMass Medical School.[417]

328. Nassif subsequently sent a reminder to all DPH Drug Lab chemists about an upcoming meeting in Boston where the first agenda item would be "Change, change, change."[418]

329. With the future of the Amherst Lab still in doubt, she told Hanchett and his staff they could participate by phone and asked them to "provide the best number."[419]

330. On October 5, 2011, legislators finally approved a supplemental budget with the $300,000 needed to keep the Amherst Drug Lab open.[420]

VI. Lack of Reliability and Accuracy at the Amherst Lab

A. *"Budget Restraints" on "Quality Control Functions"*

331. In its report, the OIG explained the difference between Quality Control (QC) and Quality Assurance (QA):

> Quality control focuses on finding problems and defects. Quality control does not ensure quality; it is designed to find instances where quality is

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[415] **Ex. 87**, E-mail Correspondence between James Hanchett and Ann Looney (Aug. 2011), Undisclosed Car Evidence.

[416] **Ex. 89**, Dan Ring, "Western Massachusetts legislators move to save drug lab in Amherst," MASSLIVE (Sept. 13, 2011); *see also* **Ex. 90**, Letter from Sen. Stan Rosenberg et al. to Hon. Stephen Brewer & Hon. Brian Dempsey (Sept. 9, 2011).

[417] **Ex. 90**, Letter from Sen. Stan Rosenberg et al. to Hon. Stephen Brewer & Hon. Brian Dempsey (Sept. 9, 2011).

[418] **Ex. 91**, Email from Julianne Nassif, AMHH00005140.

[419] **Ex. 91**, Email from Julianne Nassif, AMHH00005140.

[420] **Ex. 92,** Kyle Quinlan, "Last Minute Funding Keeps UMass Drug Lab Open," (Oct. 18, 2011), *available at* https://kylequinlan.wordpress.com/2011/10/18/last-minute-funding-keeps-umass-drug-lab-open/ (last visited Mar. 3, 2016).

lacking. It is a reactive process. . . . Quality Assurance refers to a set of policies that focus on preventing quality problems and defects before they develop rather than identifying them after the fact.[421]

332. Until 2007, "[e]very DPH laboratory at the State Laboratory Institute (SLI) was required to participate in a QC/QA Group which was responsible for overseeing all quality assurance and quality control protocols and methods for all eighteen DPH laboratories at the SLI."[422]

333. One function of this Group was to "ensure that all the DPH laboratories complied with their respective accrediting bodies' requirements and the recommendations from periodic audit findings."[423]

334. Because the DPH "Drug Lab was not accredited and did not undergo routine audits, the Group had difficulty structuring a suitable quality control plan."[424]

335. "For the Drug Lab, all the Group could do was require it to produce its quality control records on a monthly basis."[425] Following its review of these documents, the QC/QA Group would "discuss defects or issues detected and propose changes and improvements."[426]

336. As reflected in emails, on March 7, 2006, one such meeting took place in Hinton.[427]

337. According to the minutes written in the emails, the first agenda item was a "Review of February QC."[428] This review was limited to operations at Hinton and included an appraisal of various lab instruments and logs.[429]

338. The minutes indicate that after assessing the written results for a sample audit in Hinton, "Amherst Lab QC records were checked and signed off by Dr. [Harvey] George."[430]

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[421] **Ex. 11**, OIG Report, pg. 43 n.83, 44 n.91.

[422] **Ex. 11**, OIG Report, pg. 45.

[423] **Ex. 11**, OIG Report, pg. 45.

[424] **Ex. 11**, OIG Report, pg. 45.

[425] **Ex. 11**, OIG Report, pg. 45.

[426] **Ex. 11**, OIG Report, pg. 45.

[427] **Ex. 93**, DPH QC Emails and Minutes, 2006-2007.

[428] **Ex. 93**, DPH QC Emails and Minutes, 2006-2007.

[429] **Ex. 93**, DPH QC Emails and Minutes, 2006-2007.

[430] **Ex. 93**, DPH QC Emails and Minutes, 2006-2007.

339. Stevenson – a recipient of a subsequent e-mail containing the minutes – did not attend the meeting.[431]

340. Stevenson also did not attend similar QC/QA meetings that took place that June and the following August, as reflected in the emails.[432]

341. The vast majority of what was discussed addressed Hinton-specific issues.[433]

342. At some point in 2007, "budget restraints" forced the dissolution of the QC/QA Group, and Nassif assumed responsibility for "quality control functions."[434]

343. The "routine monthly quality control meetings" soon became a thing of the past.[435]

344. According to the OIG Report, QC/QA was not a "priority" for Nassif.[436]

345. In a 2008 response to a public records request, Nassif made the following representations:

> [T]he Massachusetts Department of Public Health Drug Analysis Laboratories . . . provide accurate identification of illicit drugs and pharmaceuticals for law enforcement purposes using methodology recommended by the Scientific Working Group for the Analysis of Seized Drugs. Appropriate quality control and quality assurance practices are regularly employed to ensure the integrity of the sample data.[437]

346. On February 18, 2009, the National Academy of Science (NAS) published "Strengthening Forensic Science in the United States: A Path Forward."[438]

347. The NAS Report was printed with the following caveat: "This document is a research report submitted to the Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice."

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[431] **Ex. 93**, DPH QC Emails and Minutes, 2006-2007.

[432] **Ex. 93**, DPH QC Emails and Minutes, 2006-2007.

[433] **Ex. 93**, DPH QC Emails and Minutes, 2006-2007.

[434] **Ex. 11**, OIG Report, pg. 45.

[435] **Ex. 11**, OIG Report, pg. 45.

[436] **Ex. 11**, OIG Report, at 45.

[437] **Ex. 94**, Pet'r Br., Appendix, Melendez-Diaz v. Massachusetts, 07-591 (June 16, 2008); *see also* **Ex. 95**, Resp. Br. pg. 6 n.2 (Sept. 2, 2008).

[438] **Ex. 96**, NAS, STRENGTHENING FORENSIC SCIENCE IN THE UNITED STATES: A PATH FORWARD (2009).

348. In its summary, the Committee on Identifying the Needs of the Forensic Science Community made the following recommendations concerning quality control, assurance, and improvement:

> Laboratory accreditation and individual certification of forensic science professionals should be mandatory, and all forensic science professionals should have access to a certification process. . . . No person . . . should be allowed to practice in a forensic science discipline . . . without certification. Certification requirements should include, at a minimum, written examinations, supervised practice, proficiency testing, continuing education, recertification procedures, adherence to a code of ethics, and effective disciplinary procedures.[439]

349. During Farak's eight years at the DPH Drug Lab in Amherst, she received minimal supervision,[440] had no continuing education obligations,[441] never took a proficiency test,[442] and was not constrained by a code of ethics[443] or effective disciplinary procedures.[444]

B. *No Concurrently Run Primary Standards*

350. At the Hinton Drug Lab, analysts were "expected to analyze data results by comparing an unknown with known authentic standards present in every run."[445]

351. Positive identifications is made "when the unknown and standard ha[d] consistent retention times (with+ 2.5 %) and mass spectral (acquired in full spectrum scan mode) fragmentation patterns."[446]

352. This same rule applied at the other Commonwealth drug labs not under the direction of DPH. For example, in Worcester, "Class A, B, C, or D drugs" had to be "compared to concurrently run primary standards."[447] In Sudbury, protocols

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[439] **Ex. 96**, NAS, STRENGTHENING FORENSIC SCIENCE IN THE UNITED STATES: A PATH FORWARD, pg. 25 (2009).

[440] **Ex. 25**, Doe GJ, pp. 86-87 (2/1/16).

[441] **Ex. 105**, Chemist Discovery Packet, No. 15, Horsler DA Discovery 77; *see also* **Ex. 61,** Amherst Drug Lab Evidentiary Hearing, pg. 157 (Oct. 7, 2013).

[442] **Ex. 105**, Chemist Discovery Packet, No. 15, Horsler DA Discovery 77.

[443] **Ex. 61,** Amherst Drug Lab Evidentiary Hearing, pp. 137-138, 157 (Oct. 7, 2013).

[444] **Ex. 61,** Amherst Drug Lab Evidentiary Hearing, pp. 157-158 (Oct. 7, 2013).

[445] **Ex. 97**, Hinton "Overview of GC MS."

[446] **Ex. 97**, Hinton "Overview of GC MS."

[447] **Ex. 98**, DAL "Standards and Controls in Laboratory Procedures."

mandated the comparison of "ion spectra and/or retention time with reference standards."[448]

353. Asked whether she had to "use standards with [her] testing every time [she] did a test" or whether there was "something locked into the machines that already gave [her] a pre-result," Farak testified that when she thought she had "some positive oxycodone," she "would run . . . an oxycodone standard."[449]

354. On February 19, 2010, Farak was assigned to identify the contents of a capsule, sample #A10-00203.[450]

355. Amherst's "draft" protocol for the identification of capsules suspected of containing a Class A, B, C, or D substance called for an imprint identification followed by GC screening and confirmation with a MS.[451]

356. This procedure conformed with SWGDRUG "Methods of Analysis/Drug Identification."[452]

357. After Farak's preliminary imprint analysis suggested that A10-00203 contained oxycodone, a Class B drug,[453] she injected a portion of the sample in a vial and performed an instrumental analysis.[454]

358. The first vial in that run, as reflected by the sequence table, contained the lab's standard cocaine and heroin mixture,[455] and was followed by a blank.[456]

359. Vial number 5 was A10-00203.[457]

360. The sequence table does not reflect that Farak ran an oxycodone standard, skipping a required part of the analysis.[458]

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[448] **Ex. 99**, MSP "The Analysis of General Unknown Powders and Liquid Samples."

[449] **Ex. 10**, Doe GJ, pg. 50 (9/30/15).

[450] **Ex. 100**, Sample to Lab, 2/19/10, Horsler DA Discovery 81; **Ex. 101**, Drug Receipt, 1/15/10, Horsler DA Discovery 79.

[451] **Ex. 102**, "Identification of Tablets, Capsules, and Other Prescription Drugs," Horsler DA Discovery 180-82.

[452] **Ex. 18**, SWGDRUG, Recommendations, Part IIIB, *Methods of Analysis/Drug Identification* (2011).

[453] **Ex. 103**, IDENTIDEX Imprint Identification & Drugs.com, Horsler DA Discovery 85-86.

[454] **Ex. 104**, Instrument 1, Sequence, 2/22/10, Horsler DA Discovery 87.

[455] **Ex. 104**, Instrument 1, Sequence, 2/22/10, Horsler DA Discovery 87.

[456] **Ex. 104**, Instrument 1, Sequence, 2/22/10, Horsler DA Discovery 87.

[457] **Ex. 104**, Instrument 1, Sequence, 2/22/10, Horsler DA Discovery 87.

361. The Mass Spectrometer used by Farak, like most Mass Spectrometers, employed a probability based matching algorithm to sift through the reference spectra in its libraries in search of the closest matches.[459]

362. Both GC/MS instruments have three libraries, two of which were created from standards in the lab.[460] "The spectral search is set up to compare the unknown submission spectrum with the known spectrums in the 2 Drug Lab libraries first, and if no hits are found, to then search the NIST library to see if there are any matched there."[461]

363. Mass Spectrometers in Sudbury were programmed to consult three libraries and generate reports with the top three matches from each library.[462]

364. The first spectra for A10-00203 contained a single peak that had a 93 match quality to a spectra for oxycodone designated as reference number 27 in the second Amherst library.[463]

```
                              Sample A00203.D
Information from Data File:
File       : D:\CHEMISTS\SJF\A00203.D
Operator   : SJF
Acquired   : 22 Feb 2010  10:39     using AcqMethod EXP_5
Sample Name: West Springfield
Misc Info  :
Vial Number: 5
Instrument : HP5973

Search Libraries:   C:\DATABASE\DRUG1.L              Minimum Quality:  80
                    C:\DATABASE\DRUGA.L              Minimum Quality:  80
                    C:\DATABASE\NIST98.L

Unknown Spectrum:   Peak average
Integration Params: rteint.p (RTEINT used)

Pk#  RT    Area%          Library/ID                    Ref#     CAS#    Qual
-----------------------------------------------------------------------------
  1   5.53 100.00 C:\DATABASE\DRUGA.L
                  Oxycodone                              27 000076-42-6 93
```

365. A second run of A10-00203 generated a spectra with two peaks – the first had a 98 match quality to a spectra for n-Hexadecanoic acid designated as reference number 109985 in the NIST library; the second had a 99 match quality to oxycodone, reference number 27 in the second Amherst library.[464]

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[458] *See, e.g.*, **Ex. 104**, Instrument 1, Sequence, 2/22/10, Horsler DA Discovery 87; **Ex. 108**, Pontes Drug Lab Results, 3/22/10, Spencer DA Discovery pp. 40-42; **Ex. 109**, Test Results for Sample A12-0622; **Ex. 123**, RMPSEQUENCE, 12/20/11, Penate DA Discovery 209.

[459] *See* **Ex. 97**, Hinton "Overview of GC MS."

[460] **Ex. 105**, Chemist Discovery Packet, No. 15, Horsler DA Discovery 75-77.

[461] **Ex. 105**, Chemist Discovery Packet, No. 15, Horsler DA Discovery 75-77.

[462] *See, e.g.*, **Ex. 106**, Library Consultations, NWDA Discovery 178.

[463] **Ex. 107**, Instrumental Data, A10-00203, Horsler DA Discovery 100-104.

[464] **Ex. 107**, Instrumental Data, A10-00203, Horsler DA Discovery 100-104.

366. The Hinton Lab had an internal document that states:

> Match quality, as seen on every report, is only used as an interpretative guide to the unknown's identity and is not the determining factor for a positive identification. Confirmations are always made by the analyst not the instrument. Far too many factors affect match quality and no search strategy or routine can compensate for these variables. User created libraries greatly improve match quality but ultimately all confirmations are based on comparisons with known standards.[465]

367. On April 2, 2012, Hanchett tested sample number A12-0622, a tablet submitted by the Northampton Police Department.[466]

368. After preliminary tests indicated the possible presence of amphetamine, Hanchett failed to compare the retention time for a portion of this unknown tablet against the retention time for a contemporaneously run lab standard.[467]

369. On April 20, 2012, Hanchett tested A12-937 – 3.54 grams of a white powder believed to contain ketamine.[468]

370. Following the MSP takeover of the lab on July 1, 2012, Salem started completing "Drug Sample Review Form[s]."[469]

371. Among other things, she reviewed whether analysts had run the "appropriate standards . . . if needed."[470]

372. This scrutiny caused Farak and her fellow chemists to begin running the standards of substances, like Buprenorphine.[471]

C. *No Work Practices that Prevent Contamination*

373. "Drug residues, cocaine in particular," are not "limited to the environments of users."[472]

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[465] **Ex. 97**, Hinton "Overview of GC MS."

[466] **Ex. 109**, Test Results for Sample A12-0622.

[467] **Ex. 109**, Test Results for Sample A12-0622.

[468] **Ex. 155**, Test Results for Sample A12-0937.

[469] **Ex. 110**, "Drug Sample Review Form," Farak DA Discovery 3798.

[470] **Ex. 110**, "Drug Sample Review Form," Farak DA Discovery 3798.

[471] *See, e.g.*, **Ex. 111** GC/MS Testing with Buprenorphine Standard, 1/2/13, Farak DA Discovery 3799.

[472] **Ex. 112**, Frederick P. Smith & Kevin R. McGrath, "Cocaine surface contamination and the medico-legal implications of its transfer," EGYPTIAN JOURNAL OF FORENSIC SCIENCES, Vol. 1, pp. 1-4 (2011).

374. SWGDRUG recommends "work practices that prevent contamination."[473]

375. Heather Harris testified that the fact that chemists sometimes left samples unsealed in a temporary safe introduced an opportunity for cross-contamination to occur.[474]

D. *Getting Nothing Accomplished – The Failure to Run Blanks*

376. Carryover from prior GC/MS runs can result in cross-contamination.[475]

377. This phenomenon occurs when an instrument retains an analyte that interferes with the evaluation of a subsequent sample.[476]

378. "Carryover may originate from the syringe, the injector's liner, the gold seal, the bead of the column, or a contaminated blank."[477]

379. "Carryover will have the same retention time for that analyte if it were normally injected."[478]

380. "Negative control tests help prevent false positives."[479]

381. A blank is a type of negative control; it is "a specimen . . . not containing the analyte or other interfering substances."[480]

382. It "is typically made up of the solvent that the sample is dissolved in."[481]

383. The Hinton protocol stated:

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[473] **Ex. 18**, SWGDRUG, Recommendations, *Part IV: Quality Assurance/General Practices*, § 5.1.3 (2003).

[474] **Ex. 118**, Amherst Drug Lab Evidentiary Hearing, pg. 38 (Oct. 23, 2013) (testimony of Heather Harris) ("[S]torage and packaging is where cross contamination occurs between cases. So proper packaging should, to the extent that it can, prevent against that. But if you're not sealing up evidence before it goes back into a safe or into an evidence room with other cases, you get cross contamination. It's hard to imagine, but you know, molecules go airborne and you don't see them, but our tests that we are conducting are so sensitive we can definitely pick up this type of contamination.").

[475] *See* **Ex. 11**, OIG Report, pg. 37.

[476] *See* **Ex. 33**, Doe GJ, pg. 91 (2/4/16).

[477] **Ex. 119**, "Boston Drug Lab GC MS protocol."

[478] **Ex. 119**, "Boston Drug Lab GC MS protocol."

[479] **Ex. 11**, OIG Report, pg. 43 n.85.

[480] **Ex. 18**, SWGDRUG, Recommendations § A.2.6 (2011).

[481] **Ex. 11**, OIG Report pg. 36 n.74.

> Quality control for the GC/MS laboratory goes beyond tuning the detector. Operators must insure carry-over does not exist between samples or between a standard and sample. This is accomplished by running blanks (the solvent that the sample is dissolved in) between all vials, both standards and samples. For blanks with carry-over above column bleed levels, the following sample should be re-analyzed. After time, fresh blanks need to be prepared due to material leaching out of the cap's septum.[482]

384. The written policy of the Drugs of Abuse Laboratory at the UMass Medical School in Worcester states:

> All Auto sampler runs will have blanks before each sample. It is advisable to run a blank at the beginning and end of each run in order to assure proper working order and to leave the instrument in good condition for the next operator. Pay careful attention to late-eluting compounds such as noscapine, which can be missed in shorter screen programs and may come out unusually early in the next blank or sample.[483]

385. The MSP's Sudbury Drug Lab had the same parameters; analysts there were required to run "a blank solvent between each sample, unknown and reference samples" when initiating an "autosampler sequence."[484]

386. Hanchett testified they would run a blank "after the standard."[485]

387. When or whether to enlist another blank "depend[ed] on the individual."[486]

388. "There was no set pattern," Hanchett testified.[487]

389. It was "really up to the individual."[488]

390. Hanchett claimed that some individuals would use this discretion to "go five, maybe 10" samples in a row before enlisting another blank.[489]

391. Hanchett acknowledged that "[s]ome instruments are prone to carry over, especially when they're dirty" or "samples are overloaded."[490]

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[482] **Ex. 97**, Hinton "Overview of GC MS."

[483] **Ex. 120**, DAL "Blank Policy."

[484] **Ex. 121**, MSP "Protocol for the Analysis of Cocaine Sample, v4.0."

[485] **Ex. 25**, Doe GJ, pg. 72 (2/1/16).

[486] **Ex. 25**, Doe GJ, pg. 72 (2/1/16).

[487] **Ex. 25**, Doe GJ, pg. 72 (2/1/16).

[488] **Ex. 25**, Doe GJ, pg. 74 (2/1/16).

[489] **Ex. 25**, Doe GJ, pg. 72 (2/1/16).

392. In his mind, an instrumental analysis of a blank sample "took 10, 12 minutes . . . to get nothing accomplished."[491]

393. On June 22, 2011, Farak ran a blank immediately after the cocaine/heroin standard.[492]

394. A chromatograph indicated the presence of three peaks – a clear sign of carryover.[493]

395. The spectra for the second peak had this profile:[494]

Sample Blank1.D

```
Information from Data File:
File        :D:\SJF\Blank1.D
Operator    : SJF
Acquired    : 22 Jun 2011  12:36      using AcqMethod EXP_5.M
Sample Name: Blank1
Misc Info   : Blank1
Vial Number: 2
Instrument : HP5975

Search Libraries:   C:\Database\LIBA.L              Minimum Quality:  90
                    C:\Database\LIBT.L              Minimum Quality:  80
                    C:\Database\NIST08.L

Unknown Spectrum:   Apex
Integration Params: rteint.p (RTEINT used)

Pk#   RT    Area%        Library/ID                  Ref#     CAS#    Qual
-----------------------------------------------------------------------------
  2   3.63  30.66 C:\Database\LIBA.L
                  Cocaine                              1 000050-36-2 95
```

396. Six months later, Pontes initiated a GC/MS run consisting of the cocaine/heroin standard, a blank, and eighteen unknown samples.[495]

397. The blank registered two peaks.[496]

398. "[B]ecause those peaks [were] so low,"[497] Pontes perceived no indication of contamination."[498]

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[490] **Ex. 25**, Doe GJ, pg. 72 (2/1/16).

[491] **Ex. 25**, Doe GJ, pg. 73 (2/1/16).

[492] **Ex. 122**, Blank with Carryover, Undisclosed Car Evidence.

[493] **Ex. 122**, Blank with Carryover, Undisclosed Car Evidence.

[494] **Ex. 122a**, Cocaine Peak in Blank with Carryover, Undisclosed Car Evidence.

[495] **Ex. 123**, RMPSEQUENCE, 12/20/11, Penate DA Discovery 209.

[496] **Ex. 124**, Instrumental Data, Penate DA Discovery 220-24.

[497] **Ex. 61**, Amherst Drug Lab Evidentiary Hearing, pg. 100 (Oct. 7, 2013).

[498] **Ex. 33**, Doe GJ, pg. 90 (2/4/16).

E. *A Disregarded Quality Control Procedure*

399. In July, 2010, the Amherst lab updated its "Quality Control Procedure for the Gas Chromatograph/Mass Spectrometers."[499]

400. Obtaining reliable results required checking, replacing, and/or reconditioning various components including, but not limited to: injection port liners, column nuts, o-rings, filaments, split/splitless inlet vent line traps, calibration vials, carrier gas traps, and foreline and diffusion pump fluids.[500]

401. Analysts were supposed to keep a "logbook" containing "maintenance records and services performed."[501]

402. Hanchett testified that the Amherst Lab relied upon "out of date," Hinton-hand-me-down instruments.[502]

403. A septum is "a rubber seal that is placed upon the injection port of a gas chromatograph."[503]

404. "It helps maintain the pressure within the gas chromatograph."[504]

405. This is also the component "a needle or syringe in an auto sampler would puncture in order to introduce the sample onto a heated column."[505]

406. According to Nancy Brooks, "if you're running a lot of samples or that is, if you're injecting a lot of samples, that septum is going to be pierced many times, so that might require replacement after a couple of days or a day."[506]

407. On March 13, 2012, a septum was changed on the lab's most modern Gas Chromatograph/Mass Spectrometer.[507]

408. Although lab protocols required septum replacements each week,[508] this was the first time anyone had done so in three months.[509]

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[499] **Ex. 125**, Farak DA Discovery 1906.

[500] **Ex. 125**, Farak DA Discovery 1906.

[501] **Ex. 125**, Farak DA Discovery 1906.

[502] **Ex. 25**, Doe GJ, pg. 24 (2/1/16).

[503] **Ex. 126**, Commonwealth v. Doe, Grand Jury Minutes, pg. 43 (2/11/16).

[504] **Ex. 126**, Doe GJ, pg. 43 (2/11/16).

[505] **Ex. 126**, Doe GJ, pg. 43 (2/11/16).

[506] **Ex. 126**, Doe GJ, pg. 43 (2/11/16).

[507] **Ex. 128**, Notes Regarding Septum, Penate DA Discovery 235.

[508] **Ex. 125**, Farak DA Discovery 1906; **Ex. 127**, "Quality Assurance," Farak DA Discovery 2371.

409. Months would pass before the septum was replaced again.[510]

410. After recognizing that the pressure was "too high," someone diagnosed a "possible inlet leak" or "vacuum issue."[511]

411. A "pump down" proved "unsuccessful."[512]

F. *Post-MSP Takeover*

1. *"Don't Do that Anymore." – A "Meet and Greet" in Amherst*

412. On July 1, 2012, the Legislature transferred responsibility for oversight of the Hinton and Amherst Drug Labs to the MSP.[513]

413. Approximately five weeks after assuming responsibility for the satellite lab, MSP personnel in the QA Section decided they should "go out and at least see the facility" and "meet the staff that worked there."[514]

414. On August 7, 2012, Hanchett hosted a "meet and greet."[515]

415. Among those from Maynard who made the trip was Cathleen Morrison (Morrison), a Forensic Scientist V.[516]

416. Although the observations she made that day came in the midst of a "fairly cursory" review, Morrison noted that "the laboratory did not have policy procedures on all of the technical work they were doing."[517]

417. Hanchett had previously informed Nassif that because his lab did not have enough money in its budget to "purchase drugs," it "used secondary standards."[518]

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[509] **Ex. 128**, Notes Regarding Septum, Penate DA Discovery 235.

[510] **Ex. 128**, Notes Regarding Septum, Penate DA Discovery 235.

[511] **Ex. 128**, Notes Regarding Septum, Penate DA Discovery 235.

[512] **Ex. 128**, Notes Regarding Septum, Penate DA Discovery 235.

[513] St. 2012, c. 139, § 56 (repealing G.L. c. 22C, § 39.); St. 2012, c. 139, § 107 (repealing G.L. c. 111, §§ 12-13); *see also Commonwealth v. Scott*, 467 Mass. 336, 338 (2014); *Commonwealth v. Cotto*, 471 Mass. 97, 100 n.6 (2015).

[514] **Ex. 34**, Amherst Drug Lab Evidentiary Hearing, pp. 35-36 (Sept. 9, 2013).

[515] **Ex. 34**, Amherst Drug Lab Evidentiary Hearing, pg. 36 (Sept. 9, 2013).

[516] **Ex. 34**, Amherst Drug Lab Evidentiary Hearing, pg. 36 (Sept. 9, 2013).

[517] **Ex. 34**, Amherst Drug Lab Evidentiary Hearing, pp. 36-37 (Sept. 9, 2013).

[518] **Ex. 25**, Doe GJ, pg. 55 (2/1/16).

418. During this "informal" visit with QA representatives on August 7, Hanchett explained how he manufactured the lab's standards on site.[519]

419. The response from one of Morrison's male colleagues was blunt. "Well, don't do that anymore," he said.[520]

420. At some point, Hanchett "started going through and really recording all the standards."[521]

421. While performing this task, he discovered some standards were either "missing"[522] or "lower than he thought they should be."[523]

422. Hanchett was "concerned."[524]

423. According to Salem, he talked to her first.[525]

424. During their conversation, he raised the possibility of "wrongdoing"[526] and decided to speak with Farak and Pontes.[527]

425. Salem recalls that Hanchett "just asked them if they had been preparing a lot of standards lately"[528] and "dropped" the issue when they denied doing so.[529]

426. On September 17, 2012, Farak told a Servicenet clinician that she was "very stressed" about this ongoing "investigation…at her lab" concerning the whereabouts of some missing "targets."[530]

2. *It Wasn't Her Habit*

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[519] **Ex. 33**, Doe GJ, pg. 37 (2/4/16).

[520] **Ex. 33**, Doe GJ, pg. 37 (2/4/16).

[521] **Ex. 6**, Doe GJ, pg. 110 (9/29/15).

[522] **Ex. 33**, Doe GJ, pg. 110 (2/4/16).

[523] **Ex. 33**, Doe GJ, pg. 33 (2/4/16).

[524] **Ex. 33**, Doe GJ, pg. 34 (2/4/16).

[525] **Ex. 33**, Doe GJ, pg. 34 (2/4/16).

[526] **Ex. 33**, Doe GJ, pp. 34-35 (2/4/16).

[527] **Ex. 33**, Doe GJ, pp. 33-34 (2/4/16).

[528] **Ex. 33**, Doe GJ, pg. 34 (2/4/16).

[529] **Ex. 33**, Doe GJ, pg. 34 (2/4/16).

[530] **Ex. 149**, Doe GJ, Ex. 13, Medical Records, pg. __ (9/29/15).

427. On October 10, 2012, Morrison returned to Amherst as part of a QA team to perform what she described as a "friendly audit."[531]

428. Her team's goal that day was to determine what changes needed to be implemented "to bring the Amherst laboratory" in line with "accreditation standards."[532]

429. One of the other team members was Nancy Brooks (Brooks), the supervisor of the Sudbury Drug Lab.[533]

430. This was her first trip to the Amherst lab,[534] and she quickly deduced it was not a state-of-the-art facility.

431. Brooks observed that "some of the instrumentation on-site was of an older generation" and "some important things such as hoods [were] out of order."[535]

432. Fume hoods not only protect forensic chemists, they are a tool to guard against cross contamination.[536]

433. "As a former chemistry major," Brooks did not perceive "too much difference between when [she] was in a chemistry lab 20 years ago and in the Amherst lab."[537]

434. As audit team members "spread out" to "focus on different areas of the laboratory,"[538] they spoke with Amherst analysts.

435. Hanchett testified that nobody "review[ed] . . . the analysts' written notes in their lab notebooks."[539] However, Morrison testified that she believed that "Jim Hanchett was conducting technical reviews on the casework."[540]

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[531] **Ex. 34**, Amherst Drug Lab Evidentiary Hearing, pg. 34 (Sept. 9, 2013).

[532] **Ex. 34**, Amherst Drug Lab Evidentiary Hearing, pg. 34 (Sept. 9, 2013).

[533] **Ex. 126**, Doe GJ, pg. 5 (2/11/16). Days later, Brooks would receive a promotion and become the Forensic Chemistry Section Manager of the Forensic Chemistry Section. *See* **Ex. 129**, Email from Guy Vallaro to the MSP Crime Lab, AMH000007496.

[534] **Ex. 126**, Doe GJ, pg. 26 (2/11/16).

[535] **Ex. 126**, Doe GJ, pg. 28 (2/11/16).

[536] *See* **Ex. 130**, Jinhee Lee and Ken Mohr, "Forensic Facilities POTential," FORENSIC MAGAZINE (June 25, 2015) ("Building air systems must be of good design to prevent cross contamination . . . ."), *available at* http://www.forensicmag.com/articles/2014/06/forensic-facilities-potential (last visited Mar. 8, 2016).

[537] **Ex. 126**, Doe GJ, pg. 29 (2/11/16).

[538] **Ex. 34**, Amherst Drug Lab Evidentiary Hearing, pg. 40 (Sept. 9, 2013).

[539] **Ex. 61**, Amherst Drug Lab Evidentiary Hearing, pg. 147 (Oct. 7, 2013).

[540] **Ex. 34**, Amherst Drug Lab Evidentiary Hearing, pg. 65 (Sept. 9, 2013).

436. When Morrison was unable to locate "certificates of analysis" for lab standards, she was told they did not "keep the certificates of analysis on file."[541]

437. And when she could not find any "record" or "document" memorializing "quality control checks on instruments," Morrison received assurances they were being performed.[542]

438. In the early afternoon, Farak was scheduled to meet individually with Dr. Guy Vallaro (Vallaro), the Director of the MSP Crime Lab.[543]

439. Farak testified that she "physically didn't feel like [she] could make it through [the meeting] without using."[544]

440. She therefore "smoke[d] crack at lunch," then attended the interview.[545]

441. Farak recalls that during "a fairly light" and "friendly conversation"[546] with Vallaro, she answered questions about Dookhan, denied "dry-labbing," and "talked football."[547]

442. When a police department submitted a sample, it was customary to "obtain a gross weight from it" and generate two copies of a "drug receipt" with that figure.[548]

443. One copy would go to the department that submitted the sample[549] and the other would be given to the analyst assigned to test it.[550]

444. Chemists were supposed to begin the testing process by "mak[ing] sure" the sample's current gross weight was "in line" with the gross weight recorded on the drug receipt.[551]

445. Morrison was informed that Amherst analysts "were doing that and recording the weight."[552]

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[541] **Ex. 34**, Amherst Drug Lab Evidentiary Hearing, pg. 85 (Sept. 9, 2013).

[542] **Ex. 34**, Amherst Drug Lab Evidentiary Hearing, pg. 55 (Sept. 9, 2013).

[543] **Ex. 3**, Doe GJ, pg. 184 (9/16/15).

[544] **Ex. 3**, Doe GJ, pg. 186 (9/16/15).

[545] **Ex. 3**, Doe GJ, pg. 186 (9/16/15).

[546] **Ex. 3**, Doe GJ, pg. 186 (9/16/15).

[547] **Ex. 3**, Doe GJ, pg. 186 (9/16/15).

[548] **Ex. 33**, Doe GJ, pg. 59 (2/4/16).

[549] **Ex. 6**, Doe GJ, pp. 100-101 (9/29/15); **Ex. 33**, Doe GJ, pg. 16 (2/4/16).

[550] **Ex. 3**, Doe GJ, pg. 37 (9/16/15).

[551] **Ex. 33**, Doe GJ, pg. 59 (2/4/16).

446. Farak was not recording gross weights.[553]

447. When asked why she failed to follow this protocol, Farak did not have a "very good answer."[554]

448. "[S]he just didn't do it," Salem later testified, "it wasn't her habit."[555]

449. Hanchett once tried to explain that Farak "used a procedure the Boston lab used" because that "was the way she was taught."[556]

450. However, Farak later acknowledged that "after we had the sample assigned to us" at the Boston lab, "we'd do a gross weight of the whole evidence bag that the officer brought in *and record that.*"[557]

3. *"Gone Anyway"*

451. Five days after the MSP audit in October 2012, Farak told a therapist she "remain[ed] fearful about what they might find regarding her abuse of samples."[558]

452. Farak also disclosed to her therapist that her wife was "was suppressing her anger about [Farak's] substance abuse at work."[559]

453. In the wake of the audit, the lab made more changes, such as using forms for technical[560] and testimony reviews,[561] keeping balance calibration logs,[562] and implementing a system to address narcotic inventory and/or weight variances.[563]

454. Staff members had mandatory trainings[564] and access to reference materials like the *Journal of Forensic Sciences*.[565]

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[552] **Ex. 34**, Amherst Drug Lab Evidentiary Hearing, pg. 50 (Sept. 9, 2013).

[553] **Ex. 33**, Doe GJ, pg. 59 (2/4/16).

[554] **Ex. 33**, Doe GJ, pg. 59 (2/4/16).

[555] **Ex. 33**, Doe GJ, pg. 59 (2/4/16).

[556] **Ex. 61**, Amherst Drug Lab Evidentiary Hearing, pg. 152 (Oct. 7, 2013).

[557] **Ex. 3**, Doe GJ, pp. 23-24 (9/16/15) (emphasis added).

[558] **Ex. 149**, Doe GJ, Ex. 13, Medical Records, pg. __ (9/29/15).

[559] **Ex. 149**, Doe GJ, Ex. 13, Medical Records, pg. __ (9/29/15).

[560] **Ex. 110**, "Drug Sample Review Form," Farak DA Discovery 3798.

[561] **Ex. 131**, Testimony Review Form, Undisclosed Trial Notebook.

[562] **Ex. 132**, Balance Calibration Logs; **Ex. 133**, Email from Rebecca Pontes to Sonja Farak with attachments (September 21, 2012), AMH000010780-10781.

[563] **Ex. 134**, Narcotic Inventory and/or Weight Variance Forms.

455. After the audit, the lab had money to purchase standards[566] and analysts were expected to use them.[567]

456. During DPH's third attempt to close the Amherst lab, it was widely reported that in FY11 Amherst tested a total of 6,156 samples[568] – an average of 513 per month.

457. On Beacon Hill, a MOSES lobbyist touted these figures as proof of "the amazing work being accomplished by the Amherst lab."[569]

458. During the same one year period, sixteen analysts at the Hinton Drug Lab reported testing a total of 17,683 samples.[570]

459. During the first ten months of 2012, the Amherst lab kept pace with its FY11 performance by testing a total of 4,973 samples – an average of 497 per month.[571]

460. In the final two months of the year, the lab only reported testing a total of 544 samples – an average of 272 samples a month.[572]

461. Farak was not the only analyst who experienced a sharp decline in her numbers.[573]

Table 11 - Average Samples Purportedly Tested Per Month in 2012[574]

	January through October	November through December	Percentage Decrease
Hanchett	109.5	41.5	62%
Pontes	195.5	145.5	25%

[564] **Ex. 135**, Correspondence between Nancy Burns and Sonja Farak, AMH000003023; AMH00003116.

[565] **Ex. 136**, Email Correspondence regarding the Journal of Forensic Sciences, AMH000004894, 000007498, 000007553.

[566] **Ex. 37**, Reference Standard Inventory.

[567] **Ex. 33**, Doe GJ, pg. 37 (2/4/16).

[568] *See* **Ex. 88**, Matt Murphy, "Amherst State Lab Closure Could Hamper Prosecution of Drug Cases," STATE HOUSE NEWS SERVICE (Aug. 19, 2011); Dan Ring, "Massachusetts Department of Public Health re-evaluating decision to close drug-testing lab in Amherst," MASSLIVE (Sept. 20, 2011).

[569] **Ex. 87**, E-mail Correspondence between James Hanchett and Ann Looney (Aug. 2011), Undisclosed Car Evidence.

[570] **Ex. 20**, Hinton Pivot Table; **Ex. 88**, Matt Murphy, "Amherst State Lab Closure Could Hamper Prosecution of Drug Cases," STATE HOUSE NEWS SERVICE (Aug. 19, 2011).

[571] **Ex. 150**, Amherst Drug Lab Results – 2012.

[572] **Ex. 150**, Amherst Drug Lab Results – 2012.

[573] **Ex. 150**, Amherst Drug Lab Results – 2012.

[574] **Ex. 150**, Amherst Drug Lab Results – 2012.

Farak	192.3	85.0	55%

462. Farak testified that new policies and procedures also stopped Farak from "even trying to look at standards."[575]

463. Farak testified that there was no way she could "get away with taking them,"[576] and that "most of the standards [she] wanted were gone anyway."[577]

4. *No Red Flags*

464. Several days after Farak's arrest, the QA team that performed the October 10th audit published its report.[578]

465. As noted above, the original purpose of the audit was to identify remediations that, if implemented, would improve the lab's candidacy for accreditation.[579]

466. The audit was published after the Amherst Drug Lab was closed.[580]

467. Audit Team Members ultimately determined that:

(*i*) Amherst Drug Lab personnel did "not have a quality manual, nor d[id] they comply with MSPFSG QA procedures";

(*ii*) "the instrument logs [were not] current and complete" and "no documented policies existed prior to [September 2012]" with regard to doing checks, running standards or performing auto tunes;

(*iii*) "evidence in the Unit [was] [im]properly secured" insofar as "the short term/overnight safe storage" often "contain[ed] unsealed evidence which all staff [could] access";

(*iv*) "evidence [was] [im]properly marked and sealed" as "no initials/dates [were placed] on the seals";

(*v*) "new procedures [were not] properly validated";

(*vi*) newly written procedures were "incomplete";

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[575] **Ex. 6**, Doe GJ, pg. 111 (9/29/15).

[576] **Ex. 6**, Doe GJ, pg. 111 (9/29/15).

[577] **Ex. 6**, Doe GJ, pg. 111 (9/29/15).

[578] **Ex. 34**, Amherst Drug Lab Evidentiary Hearing, pp. 62-63 (Sept. 9, 2013).

[579] **Ex. 34**, Amherst Drug Lab Evidentiary Hearing, pg. 34 (Sept. 9, 2013).

[580] **Ex. 34**, Amherst Drug Lab Evidentiary Hearing, pp. 62-63 (Sept. 9, 2013).

(*vii*) "[n]o training manual exist[ed]";

(*viii*) "the Unit [did not] routinely check the reliability of its reagents";

(*ix*) no "records [were] kept of commercial reagents, in house reagents and supplies, which identif[ied], where appropriate, lot number or batch number, manufacturer's specifications, internal evaluations and shelf life";

(*x*) "critical reagents [were not] checked against known material prior to being placed into service";

(*xi*) "the results of critical reagent Quality Control checks [were not] documented";

(*xii*) "no positive control checks [were] performed";

(*xiii*) when "reagents [we]re used as received from the manufacturer, . . . records [were not] maintained of the manufacturer-supplied Quality Control data sheets for each reagent";

(*xiv*) "blanks [were not] analyzed with the appropriate frequency";

(*xv*) "Submittal and Chain-of-Custody forms [were neither] completely [nor] accurately filled out [nor] . . . establish[ed] custody of [each] sample at all times";

(*xvi*) "[s]eals [we]re not initialed/dated so could be opened and resealed";

(*xvii*) "[s]ignificant weight variances" were not documented on "[d]iscrepancy forms"; and

(*xviii*) "[n]o one verifie[d] inventory discrepancies."[581]

468. Pontes would later state in an affidavit that the QA team "saw no 'red flags.'"[582]

469. According to Hanchett, "we didn't dot our I's and cross our T's the way the State Police did it. We did it slightly different, so we didn't meet their criteria."[583]

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[581] **Ex. 138**, MSP Crime Laboratory – Quality Assurance Audit Amherst Drug Lab (Oct. 10, 2012).

[582] **Ex. 139**, Pontes Affidavit ¶ 7, Commonwealth v. Luis Gonzalez, Hampden County Indictment No. 2011-00703.

[583] **Ex. 61**, Amherst Drug Lab Evidentiary Hearing, pg. 169 (Oct. 7, 2013).

470. A document revised in July 2012 stated "[a]ll procedures performed are the same as any accredited Drug Analysis Laboratory."[584]

[584] **Ex. 127**, "Quality Assurance," Farak DA Discovery 2371

VII. Other Issues Affecting Reliability and Accuracy at Amherst

A. *"You Know How the MGL's Are for Keeping up with the Times"*

471. The Massachusetts General Laws identify "five classes of controlled substances" in Section 31 of Chapter 94C.[585]

472. Some "Class E" substances are listed by name and chemical composition in subsection (a) of this Class.[586]

473. The majority of "Class E" substances are "[p]rescription drugs other than those included in Classes A, B, C, D, and subsection (a) of this Class."[587]

474. Under Chapter 94C, "prescription drugs" are "any and all drugs upon which the manufacturer or distributor has, in compliance with federal law and regulations, placed the following: 'Caution, Federal law prohibits dispensing without prescription.'"[588]

475. Benzylpiperazine (BZP) is a substance "similar to 3,4-methylenedioxy methamphetamine ("MDMA"), more commonly known as 'ecstasy.'"[589]

476. BZP was first synthesized in the 1940s for use as a potential veterinary de-worming agent.[590]

477. Though effective for this purpose, BZP caused certain side effects, like euphoria, which led to its abandonment as a veterinary pharmaceutical.[591]

478. In the 1990s, these same side effects gave rise to its use as a recreational drug.[592]

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[585] G.L. c. 94C, § 31.

[586] G.L. c. 94C, § 31.

[587] G.L. c. 94C, § 31.

[588] G.L. c. 94C, § 1.

[589] **Ex. 140**, OIG Supplemental Report, pg. 23.

[590] **Ex. 141**, Drug Enforcement Administration, "N-BENZYLPIPERAZINE," (Mar. 2014), *available at* http://www.deadiversion.usdoj.gov/drug_chem_info/bzp.pdf (last visited Mar. 13, 2016).

[591] **Ex. 141**, Drug Enforcement Administration, "N-BENZYLPIPERAZINE," (Mar. 2014), *available at* http://www.deadiversion.usdoj.gov/drug_chem_info/bzp.pdf (last visited Mar. 13, 2016).

[592] **Ex. 141**, Drug Enforcement Administration, "N-BENZYLPIPERAZINE," (Mar. 2014), *available at* http://www.deadiversion.usdoj.gov/drug_chem_info/bzp.pdf (last visited Mar. 13, 2016).

479. The similarity between its effects and MDMA (ecstasy) led to its marketing as an alternative to MDMA, its use as an adulterant in MDMA preparations, and sale as counterfeit MDMA.[593]

480. In 2002, the federal government classified BZP as a Schedule I substance based on its "high potential for abuse" and "no currently accepted medical use."[594]

481. A bill to designate BZP as a Class A drug was filed in the state Senate in 2011, but never became law.[595]

482. On April 22, 2011, Farak sent an email to Annie Dookhan, asking what Dookhan and her colleagues did "with BZP results."[596]

483. Specifically, Farak wanted to know whether Hinton analysts "report[ed] it as BZP" and, if so, whether they "report[ed] it as 'E' or not."[597]

484. Farak made it clear that she knew BZP was "not a prescription drug."[598]

485. Farak told Dookhan in an email, "a while back Cam said to call it an 'E.'"[599]

486. The email concluded with an expression of uncertainty as to "how (if at all) it falls under that class."[600]

487. Dookhan responded that it was Hinton Lab policy to "report it as BZP and currently call i[t] Class E."[601]

488. "It is a Schedule 1 Federally," Dookhan wrote, "but it is not scheduled in the MGL."[602]

489. Farak thanked Dookhan for her "BZP input," and concluded:

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[593] **Ex. 141**, Drug Enforcement Administration, "N-BENZYLPIPERAZINE," (Mar. 2014), *available at* http://www.deadiversion.usdoj.gov/drug_chem_info/bzp.pdf (last visited Mar. 13, 2016).

[594] **Ex. 141**, Drug Enforcement Administration, "N-BENZYLPIPERAZINE," (Mar. 2014), *available at* http://www.deadiversion.usdoj.gov/drug_chem_info/bzp.pdf (last visited Mar. 13, 2016).

[595] **Ex. 140**, OIG Supplemental Report, pg. 23 n.38.

[596] **Ex. 142**, Email Correspondence between Sonja Farak and Annie Dookhan, AMH00000550-551.

[597] **Ex. 142**, Email Correspondence between Sonja Farak and Annie Dookhan, AMH00000551.

[598] **Ex. 142**, Email Correspondence between Sonja Farak and Annie Dookhan, AMH00000551.

[599] **Ex. 142**, Email Correspondence between Sonja Farak and Annie Dookhan, AMH00000551.

[600] **Ex. 142**, Email Correspondence between Sonja Farak and Annie Dookhan, AMH00000551.

[601] **Ex. 142**, Email Correspondence between Sonja Farak and Annie Dookhan, AMH00000550.

[602] **Ex. 142**, Email Correspondence between Sonja Farak and Annie Dookhan, AMH00000550.

I knew that federally it is a schedule 1, but you know how the MGLs are for keeping up with the times. Just wanted to make sure that we are calling it the same thing as you do in Boston in case chemists for both labs are needed at the same trial.[603]

490. At the Grand Jury, Farak testified that she "never wanted to analyze anything incorrectly, especially if [she] was going to send someone to jail that didn't deserve it."[604]

491. In its recent Supplemental Report, the OIG noted that Hinton Drug Lab analysts misclassified BZP as a Class E substance 187 times between 2008 and 2012.[605]

B. *Another Bad Actor?*

492. Kevin Burnham (Burnham) was the narcotics evidence officer for the Springfield Police Department from approximately 1984 until his retirement on July 25, 2014.[606]

493. He oversaw the storage and safekeeping of evidence.[607]

494. It was Burnham's job to transport the drugs to the Amherst Drug Lab for testing, and then pick them up when the testing was completed.[608]

495. Burnham came once a week, typically Wednesday mornings, with "a fair number of submissions."[609]

496. On occasion, Burnham brought the samples in unsealed and would seal his samples "on-site."[610]

497. When Farak knew Springfield PD was coming in she "would occasionally turn down the heat sealers just a fraction of an inch."[611]

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[603] **Ex. 142**, Email Correspondence between Sonja Farak and Annie Dookhan, AMH00000550.

[604] **Ex. 6**, Doe GJ, pp. 39-40 (9/29/15).

[605] **Ex. 140**, OIG Supplemental Report, pg. 23.

[606] **Ex. 151**, Transcript from Commonwealth v. Rolando Penate, Hampden County Indictment No. 2012-0083, pg. 164 (Dec. 10, 2014); *see also* **Ex. 152**, "Former Springfield police officer stole evidence money, attorney general says," WCVB, *available at* http://www.wcvb.com/news/former-springfield-police-officer-stole-evidence-money-attorney-general-says/37377724 (last visited June 16, 2016).

[607] **Ex. 151**, Commonwealth v. Rolando Penate, pg. 165 (Dec. 10, 2014).

[608] *See* **Ex. 151**, Commonwealth v. Rolando Penate, pg. 169 (Dec. 10, 2014).

[609] **Ex. 3**, Doe GJ, pg. 166 (9/16/15).

[610] **Ex. 33**, Doe GJ, pg. 99 (2/4/16).

[611] **Ex. 3**, Doe GJ, pg. 167 (9/16/15).

498. Her goal was to prevent "a good seal" and thereby allow "easier access . . . to the evidence."[612]

499. On May 7, 2012, Burnham submitted a batch of samples that purportedly included A12-01257 – fifty-one (51) tablets in one plastic bag.[613]

500. These pills had been seized by Springfield Narcotics Officer Greg Bigda (Bigda).[614]

501. Prior to delivering the pills to Burnham, Bigda and a second officer each counted fifty-one pills,[615] and Bigda filled out a property receipt reflecting a submission of that amount.[616]

502. Bigda also "referred to an online pill identifier to confirm that they were a form of oxycodone."[617]

503. On May 11, 2012, Farak signed her name to a drug certificate stating that "[t]he tablets were found to contain . . . NO Narcotic or Illegal Drugs."[618]

504. This result came as a "surprise" to Bigda.[619]

505. He subsequently "retrieved the evidence and found there were now 61 pills."[620]

506. Upon inspecting these pills, Bigda concluded that "they could [not] have been the same pills he originally submitted for testing."[621]

507. Based on his experience, Bigda knew actual Oxycodone pills "should be a solid blue color, and not just painted on the surface."[622]

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[612] **Ex. 6**, Doe GJ, pg. 102 (9/29/15).

[613] **Ex. 143**, Amherst Case File in Commonwealth v. Eric Finch (Amherst Sample Nos. A12-01256 thru A12-01257).

[614] **Ex. 144**, Police Report of MSP Sgt. Joseph F. Ballou (Sept. 3, 2013).

[615] **Ex. 144**, Police Report of MSP Sgt. Joseph F. Ballou (Sept. 3, 2013).

[616] **Ex. 145**, Springfield Police Department Property Receipt for lab sample number A12-01257.

[617] **Ex. 144**, Police Report of MSP Sgt. Joseph F. Ballou (Sept. 3, 2013).

[618] **Ex. 146**, Drug Certificate for lab sample number A12-01257.

[619] **Ex. 144**, Police Report of MSP Sgt. Joseph F. Ballou (Sept. 3, 2013).

[620] **Ex. 144**, Police Report of MSP Sgt. Joseph F. Ballou (Sept. 3, 2013).

[621] **Ex. 144**, Police Report of MSP Sgt. Joseph F. Ballou (Sept. 3, 2013).

[622] **Ex. 144**, Police Report of MSP Sgt. Joseph F. Ballou (Sept. 3, 2013).

508. The pills Burnham retrieved from Amherst were worn on the edges, "exposing a white color beneath the surface."[623]

509. Bigda also noted that whereas an actual Oxycodone pill would have a "V" on one side and a number imprinted on the other, the pills his department received back from the Amherst Drug Lab had "Vs" on one side and "cut mark[s]" on the other.[624]

510. With respect to another Springfield submission, a Hampden County Superior Court prosecutor sent Farak the following email:

> I recently received your certificate which described the "white chunks" in "1 plastic bag" as "No Narcotic or illegal drugs." These weighed a total of 2.51 grams. Was this all that was submitted to you by detective Burnham, or is there another certificate that I am missing[?] I say this because as I read the police report it describes "nine (9) individual, various sized pieces of suspected crack cocaine" were seized in this arrest. Please advise.[625]

511. Farak explained Burnham's "irritat[ion]" at his fellow officers who "actually count the number of 'rocks' of suspected crack and list that instead of the number of plastic bags/plastic packets, etc."[626]

512. The former approach was undesirable because it failed to account for the fact that evidence bags sometimes got "banged/squished/pressed upon."[627]

513. This could cause "the number of rocks [to] change as they break into 2 or more pieces."[628]

514. Farak speculated that "this is what happened with [this] submission," though she acknowledged she could "not know for sure."[629]

515. "As for the result [she] reported," Farak said "the chunks were positive for acetaminophen (Tylenol), and that this [was] not the first time that [she had] analyzed submissions from Springfield that appear to be crack but ended up containing acetaminophen instead."[630]

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[623] **Ex. 144**, Police Report of MSP Sgt. Joseph F. Ballou (Sept. 3, 2013).

[624] **Ex. 144**, Police Report of MSP Sgt. Joseph F. Ballou (Sept. 3, 2013).

[625] **Ex. 147**, Email from Sonja Farak to Eduardo Velazquez, AMH00007326.

[626] **Ex. 147**, Email from Sonja Farak to Eduardo Velazquez, AMH00007326.

[627] **Ex. 147**, Email from Sonja Farak to Eduardo Velazquez, AMH00007326.

[628] **Ex. 147**, Email from Sonja Farak to Eduardo Velazquez, AMH00007326.

[629] **Ex. 147**, Email from Sonja Farak to Eduardo Velazquez, AMH00007326.

[630] **Ex. 147**, Email from Sonja Farak to Eduardo Velazquez, AMH00007326.

516. On December 30, 2015, Burnham was indicted on seven counts of larceny.[631]

517. It is alleged that he stole nearly $400,000 from the evidence room at the Springfield Police Department.[632]

518. The only allegations at this time are that he tampered with evidence in his possession, stealing some of it outright, and replacing some money with either counterfeit bills or newer money that was put into circulation after the original seizure date.[633]

519. On February 16, 2016, the Marcum Advisory Group completed a "privileged and confidential" report entitled, "City of Springfield, Massachusetts Narcotics Evidence Examination."[634]

520. Among other things, the Marcum Group found:

> (*i*) In some instances, the description of narcotics evidence as documented on the laboratory receipt did not match the actual narcotics that [they] observed in the envelopes or boxes. . . .
>
> (*ii*) The majority of envelopes or boxes did not include a laboratory receipt of narcotics evidence, therefore, [they] could not verify that the quantities and types of narcotics received by the laboratory matched the actual narcotics contained in the envelopes and boxes.
>
> (*iii*) In some instances, narcotics evidence was not contained in a heat sealed plastic package after being returned from the laboratory.
>
> (*iv*) In some instances, the description of narcotics evidence as documented on the arrest report did not match the actual narcotics evidence contained in the envelopes or boxes.[635]

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[631] **Ex. 153**, Indictments, *Commonwealth v. Burnham*, Hampden County Superior Court No. 15-1041.

[632] **Ex. 153**, Indictments, *Commonwealth v. Burnham*, Hampden County Superior Court No. 15-1041.

[633] **Ex. 153**, Indictments, *Commonwealth v. Burnham*, Hampden County Superior Court No. 15-1041.

[634] **Ex. 154**, Marcum Advisory Group, "City of Springfield, Massachusetts Narcotics Evidence Examination," (Feb. 16, 2016).

[635] **Ex. 154**, Marcum Advisory Group, "City of Springfield, Massachusetts Narcotics Evidence Examination," pg. 9 (Feb. 16, 2016).

Respectfully Submitted:

Luke Ryan (RAJ)
Luke Ryan
Attorney for Lizardo Vega and Jermaine Watt

ADA Deborah Ahlstrom
Hampden District Attorney's Office

R.A Jacobstein
Rebecca Jacobstein
Attorney for Erick Cotto, Jr. and Jermaine Watt

Joseph A. Pieropan
ADA Joseph Pieropan
Berkshire District Attorney's Office

Jared Olanoff (RAJ)
Jared Olanoff
Attorney for Fiori Liquori

Jim McKenna (RAJ)
James McKenna
Attorney for Glenda Aponte, Omar Brown, and Bryant Ware

Jennifer Appleyard (RAJ)
Jennifer Appleyard
Attorney for Rolando Penate