

COMMONWEALTH OF MASSACHUSETTS

SUPREME JUDICIAL COURT
FOR SUFFOLK COUNTY
NO. SJ-2014-0005

SUFFOLK SUPERIOR COURT
NO. SUCR2005-10537

BOSTON MUNICIPAL COURT
NO. 0501-CR-0142

ESSEX SUPERIOR COURT
NO. ESCR2007-1535

KEVIN BRIDGEMAN, ET.AL

vs.

THE ELEVEN DISTRICT ATTORNEYS OFFICES OF MASSACHUSETTS

AFFIDAVIT OF ROBERT P. KIDD

NOW COMES Assistant District Attorney Robert P. Kidd, and hereby SWEARS
UNDER PENALTIES OF PERJURY that the following statements are true and correct to the
best of his knowledge, information and belief:

1. My name is Robert P. Kidd. I am an Assistant District Attorney at the Office of Bristol County District Attorney Thomas M. Quinn.
2. I have been an ADA for approximately 9 ½ years.
3. Prior to joining the DA's Office, I was an attorney in private practice in Taunton, Massachusetts, concentrating on criminal defense.
4. I was in private practice for approximately 16 years.
5. During my 16 years of law practice I estimate that I handled thousands of criminal matters assigned to me by the Committee for Public Counsel Services (CPCS).

6. I also served a term on the Board of Directors of the Bristol County Bar Advocates, the local organization that coordinates representation on indigent criminal defendants on behalf of CPCS.
7. I also accepted assigned cases from CPCS in Plymouth County, specifically Wareham District Court and Brockton Superior Court.
8. During my 16 years of law practice I was certified by CPCS to handle superior court criminal cases, as well as criminal appeals and mental health matters.
9. During my 16 years of practice I estimate I tried well over 75 cases to judge and jury, in both district and superior court.
10. During my 16 years of law practice I gained comprehensive knowledge of the policies, practices and procedures of CPCS.
11. I have handled a number of appeals and post trial matters as a defense attorney. I am currently assigned to the appeals unit of the Bristol County District Attorney's Office. As a result, I am very familiar with post trial practice and procedure.
12. In the Fall 2012 I was assigned to supervise the newly formed "drug lab unit" in this office. The unit was formed in order to process the large amount of post-trial motions generated by Drug Chemist Annie Dookhan's malfeasance at the Hinton Laboratory in Jamaica Plain.
13. Our unit consisted of two ADA's and I, along with a support staff person.
14. We handled all of the post-trial motions that resulted from Dookhan's mishandling of evidence at the Laboratory in the newly formed "Drug Lab Session."
15. There was an initial "crush" of cases during first three months, but the caseload dramatically dwindled after that.
16. The vast majority of motions for new trial, over ninety five percent, did not result in any hearing; rather they were resolved by way stipulation to the defense motion and "re-pleas" to lesser sentences.

17. A handful of cases resulted in actual hearings before the Special Magistrate; however almost all of those hearings were non evidentiary. The parties generally stipulated to discovery concerning Dookhan's malfeasance and to affidavits from counsel and defendants.
18. The majority of defendants who filed motions for new trial in Superior Court were serving sentences on cases related to Dookhan and many of them were serving State Prison Sentences.
19. By the Spring of 2013, virtually all of the post-trial motions were resolved. The total period was about six months.
20. The Dookhan Unit handled approximately one hundred post trial motions in district and superior courts.
21. The vast majority of defendants were represented by "Bar Advocates," who CPCS says were not certified to handle post trial matters.
22. Both the defense bar and the Commonwealth, to a large extent, used "boilerplate" motions and memoranda of law that had been drafted by persons with expertise in post-conviction work.
23. The attorneys were all provided with a number of computer disks that contained the entire discovery regarding Dookhan's misconduct to date.
24. There were few if any contested discovery motions, since this office voluntarily and continuously provided counsel with everything in its possession relating to Dookhan.
25. Our office also provided counsel with police reports, drug certificates, grand jury minutes, and other documents pertaining to the investigations of the clients.
26. By the time the decision of *Commonwealth v. Scott*, 467 Mass. 336 (2014) came down in the Fall of 2013, most of the Dookhan cases had already been disposed of.
27. The *Scott* decision created a straightforward "bright line" test whereby if Dookhan's name appears on a drug certificate, there is a "conclusive presumption of governmental conduct."

28. The *Scott* decision has significantly simplified litigation of Dookhan motions in such situations, since the only analysis counsel now needs to do is whether the client would have pled guilty had he been aware the Dookhan handled his drugs.
29. *Scott* is the seminal case that defense counsel must now cite in its memorandum, and there are only a handful of cases that have come down since that decision.
30. The analysis described in paragraph 28, in my opinion, based on my 25 years experience as a lawyer, is something that any trial attorney is capable of doing, and does not require a post conviction lawyer.
31. In every single criminal case lawyers at the trial level perform a cost benefit analysis of the risks and benefits of going to trial, which factors in the Commonwealth's plea offer, the strengths and weaknesses of the case, the risks of incarceration, and the client's prior criminal record.
32. Defense counsel handling Dookhan post trial motions will need only to perform the same analysis previously described, and add in the hypothetical that Dookhan handled the client's drugs.
33. This office will certainly turn over discoverable information on Dookhan to defense counsel voluntarily, as it has in the past.
34. Attorney Nancy Caplan has stated in her affidavit that litigation in post trial Dookhan motions is timely and expensive because it requires counsel to obtain "drug certificates, criminal complaints, docket sheet, police report(s), transcript of the plea colloquy (maybe), search warrant papers (where applicable), and defendant's criminal record."
35. The most important document needed for a Dookhan motion is the actual drug certificate bearing her name.
36. During my time in the drug lab unit, to now, I have received many requests for drug certificates from defense counsel in Dookhan cases.
37. I have never in a single case been unable to locate and provide those drug certificates for counsel, and I have done so usually within two weeks.

38. The drug certificates pertaining to Dookhan, and the entire drug lab files associated with those certificates, are now available in a secure online database accessible to all DA's, Offices, as well as from the individual police departments.
39. Recently I obtained a drug certificate from a New Bedford District Court case from 2004. I did so in about a week.
40. As for police reports, grand jury minutes, or criminal complaints or indictments, if we still have the physical files, I turn those documents over; if not, I don't. There is no significant time factor involved.
41. Attorney Caplan also indicates that there is significant difficulty in tracking down plea counsel.
42. The Board of Bar Overseers maintains a publicly accessible database of contact information for every lawyer in the state, and every local bar advocate office maintains that information for court-appointed counsel as well.
43. While some of the attorneys may no longer be in practice, my opinion, based on my 25 years of experience as a lawyer, is that the vast majority are likely to be doing some sort of business within the Commonwealth, and can be tracked down with relative ease. The oldest Dookhan cases only go back to 2004.
44. There will be lawyers who may not cooperate, as is the case in every post trial proceeding.
45. Attorney Caplan cites in her affidavit some anecdotal evidence that clients who are informed that if their plea is vacated they cannot receive a harsher sentence than the original sentence (pursuant to the holding in Bridgeman), choose to move forward with a motion for new trial.
46. My opinion, having handled thousands of court appointed cases over sixteen years, is that it would be highly unlikely that a large number of criminal defendants who have resolved their cases and are out of jail, would have any desire to reopen the matter.
47. The population I served on behalf of CPCS were poor, and tended to move from place to place. They were often struggling with addiction and mental illness.

48. I had great difficulty getting in touch with the clients due to changing telephone numbers and termination of service.
49. For the most part, clients who were not facing jail just wanted to “get their cases over with.” because they had much more pressing issues related their struggles to survive in our society.
50. The evidence thus far is that only a small fraction of samples were actually tainted or manipulated by Dookhan. Therefore, the vast majority of defendants were correctly charged with controlled substance violations.
51. In my opinion, based on my experience, a defendant who knows the substance he was charged with was in fact an illegal drug, and is “on the street” after having been convicted of that drug offense, would generally only be interested in challenging his conviction if he faced collateral consequences such as deportation, enhanced sentencing denial of subsidized housing, or license loss.
52. We have seen in our office a number of non-incarcerated defendants coming forward years after the their convictions to file Dookhan motions in order to “get out from under” one of the collateral consequences described in paragraph 51.
53. Since we disbanded the Drug lab Unit we have not seen a single defendant come forward stating that the substance for which he was charged was not a controlled substance; nor have we seen a defendant saying he wants a new trial for the sole reason of removing a Dookhan-related case from his record.
54. I have reviewed the affidavit of Paolo Villarreal, an expert retained by the ACLUM to perform a statistical analysis on the Dookhan data supplied to the plaintiffs by the eleven District Attorneys Offices in Massachusetts.
55. I note that according to Mr. Villarreal, 62 percent of the cases where Dookhan signed the drug certificates were convictions for mere possession, and only 37 percent were for distribution related offenses.
56. Again, based on my training and experience, I find it highly unlikely that a significant number of the persons convicted of simple possession offenses in the district courts would be interested in challenging their convictions, absent some collateral consequence of their convictions.

57. When we look at the actual numbers we are left with only 12, 998 distribution-related convictions statewide that could be challenged under the Dookhan theory, according to Mr. Villarreal's affidavit.
58. Also, based on my experience as supervisor of the drug lab unit, I know that of the defendants who do file post trial motions, the vast majority will be handled without a hearing.
59. I can also say that in general, this office will have little interest tying up court time and lawyer time to oppose motions to vacate simple possession convictions, some going back to 2004.
60. I anticipate that the possession cases can be handled in a "screening process" whereby defense counsel files a boiler plate motion with a drug certificate attached, and our office locates the file and decides whether to oppose or assent to the motion.
61. I see no reason why the distribution cases could not be handled in a similar manner as well.

SWORN AND SUBSCRIBED TO under penalty of perjury on this 5th day of

August, 2016



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CERTIFICATE OF SERVICE

I, Robert P. Kidd, Assistant District Attorney for the Office of the Bristol County District Attorney, hereby certify that on **July 11, 2016** I served on the Plaintiffs, a copy of the **AFFIDAVIT OF ROBERT P. KIDD** VIA EMAIL on Nancy Caplan at the COMMITTEE FOR PUBLIC COUNSEL SERVICES, at: ncaplan@publiccounsel.net, and VIA EMAIL to Attorney Matthew Segal at the AMERICAN CIVIL LIBERTIES UNION OF MASSACHUSETTS, at: MSegal@aclum.org



Assistant D.A. Robert P. Kidd

COMMONWEALTH OF MASSACHUSETTS

ESSEX, SS

SUPREME JUDICIAL COURT
FOR SUFFOLK COUNTY
NO. SJ-2014-0005

SUFFOLK SUPERIOR COURT
NO. SUCR2005-10537 (Bridgeman)
NO. SUCR2007-10959 (Bridgeman)

BOSTON MUNICIPAL COURT
NO. 0501 CR 0142 (Creach)

ESSEX SUPERIOR COURT
NO. ESCR2007-1535 (Cuevas)

KEVIN BRIDGEMAN, YASIR CREACH, and MIGUEL CUEVAS

v.

DISTRICT ATTORNEY FOR THE SUFFOLK DISTRICT

and

DISTRICT ATTORNEY FOR THE EASTERN DISTRICT

**AFFIDAVIT OF ESSEX COUNTY ASSISTANT DISTRICT ATTORNEY
SUSAN DOLHUN REGARDING THE PROGRESS OF
MOTIONS FOR NEW TRIAL FILED IN ESSEX COUNTY
RELATED TO ANNIE DOOKHAN'S MISCONDUCT**

I, Susan Dolhun, depose and state:

1. I am an Essex County Assistant District Attorney assigned to handle motions for new trial related to Annie Dookhan's misconduct.
2. I am filing this affidavit to provide factual data relating to the progress of such motions filed and litigated in Essex County.

3. I am responsible for the production of discovery in Superior Court drug lab cases. Certificates of analysis are typically provided within 24-48 hours of the request and are almost always provided within a week of the request.
4. The time required for the production of other case-related documents in Superior Court varies depending upon the nature of the item requested, but normally does not exceed two weeks.
5. The typical response time for Dookhan-related discovery in the Essex County District Courts is between two and four weeks, given the fact that drug certificates and police reports often need to be obtained from one of the thirty-four different municipal police departments within Essex County.
6. All discovery is available upon request without the need for a motion for post-conviction discovery pursuant to Mass. R. Crim. P. 30(c).
7. Our office prioritized the handling of Superior Court cases related to the Dookhan misconduct, and took measures to expedite the hearings of such defendants, including transporting federal detainees into Superior Court to facilitate a speedy motion hearing.
8. The Commonwealth has not been requesting continuances on any of the Superior Court cases. All continuances have been at the request of the defendants and their attorneys. Incarcerated defendants who cited a conflict of interest with their appointed Dookhan attorney have requested new counsel to be appointed, which has also resulted in continuances.
9. As of December 23, 2014, when I authored an affidavit in support of the District Attorneys' brief in *Bridgeman v. District Attorneys for the Suffolk and Eastern Districts*, 471 Mass. 465 (2015) ("*Bridgeman*"), there had been approximately 100 (one hundred) motions for new trial filed in the Essex special drug lab session ("special session") by Dookhan defendants challenging a Superior Court conviction. Some of these motions were withdrawn before a hearing at the request of the defendant for various reasons, including, *inter alia*, a discovery that the contraband in question was tested at a lab other than the Hinton Lab.
10. As of December 23, 2014, there had been approximately 68 (sixty-eight) motions for new trial filed by Dookhan defendants challenging a District Court conviction. This does not include anything prior to January 2013. A handful of these motions (approximately 2-5) were withdrawn at the request of the defendant before a hearing was held. A few (approximately 2-5) defendants filed motions, but never picked a hearing date and failed to pursue

the motion further. Of these 68 motions, approximately 49 were allowed and 19 were denied or withdrawn.

11. Evidentiary motion hearings in the special session usually proceeded on stipulated exhibits of the parties. Several hearings required the testimony of a chemist. During 2014, approximately 1-2 motions went forward each week in the special session, with proposed findings being issued several weeks thereafter.
12. In March of 2015, the special session was adjourned due to a lack of motions filed. Defendants filing motions on Dookhan-related grounds have subsequently filed such motions directly in Essex Superior Court or the relevant District Court.
13. Between December 23, 2014, and the filing of this affidavit, only eight (8) cases involving Dookhan-related claims have been pending or are currently pending in Essex Superior Court. This number includes cases in which a motion for new trial has been argued or briefed, and not decided, and cases which are awaiting a change of plea hearing or a trial following the allowance of the motion for new trial.
14. Between December 23, 2014, and the filing of this affidavit, no more than ten (10) cases involving Dookhan-related claims have been pending or are currently pending in Essex County District Courts. This number includes cases in which a motion for new trial has been argued or briefed and not decided, and cases which are awaiting a change of plea hearing or a trial following the allowance of the motion for new trial.
15. To my knowledge, only one Essex County defendant has been re-tried following the allowance of his *Scott*¹ motion for new trial. See *Commonwealth v. Angel Rodriguez*, ESCR-2007-875. Defendant Rodriguez rejected an offer to change his plea to guilty and be sentenced to time served. After the allowance of his *Scott* motion, the original charges in his case were restored to the trial docket, without comment or objection from either of his two experienced CPCS attorneys. The drugs in his case were retested, and he was convicted after a jury trial.
16. Miguel Cuevas, one of the named plaintiffs in the *Bridgeman* litigation, has a case that is presently scheduled for trial in Essex Superior Court following the

¹ *Commonwealth v. Scott*, 467 Mass. 336 (2014).

allowance of his *Scott* motion. See *Commonwealth v. Miguel Cuevas*, ESCR2007-1535. Following the allowance of his motion, Cuevas rejected an offer to change his plea to guilty and be sentenced to time served; his case is currently scheduled for trial in September 2016. He has been indicted with multiple new drug offenses in Essex County arising from conduct that occurred after the allowance of his *Scott* motion in ESCR2007-1535. See, e.g., ESCR2016-0114 (possession of cocaine with intent to distribute); and ESCR2016-0353 (possession of heroin and cocaine).

Signed under penalties of perjury August 5, 2016



Susan Dolhun
Assistant District Attorney
For the Eastern District
BBO No. 665345

COMMONWEALTH OF MASSACHUSETTS

ESSEX, SS

SUPREME JUDICIAL COURT
FOR SUFFOLK COUNTY
NO. SJ-2014-0005

SUFFOLK SUPERIOR COURT
NO. SUCR2005-10537 (Bridgeman)
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KEVIN BRIDGEMAN, YASIR CREACH, and MIGUEL CUEVAS

v.

DISTRICT ATTORNEY FOR THE SUFFOLK DISTRICT

and

DISTRICT ATTORNEY FOR THE EASTERN DISTRICT

**AFFIDAVIT OF ESSEX COUNTY ASSISTANT DISTRICT ATTORNEY
QUENTIN R. WELD RELATING TO IDENTIFICATION AND
NOTIFICATION EFFORTS ARISING FROM SINGLE JUSTICE STATUS
CONFERENCES HELD IN THE ABOVE CAPTIONED LITIGATION**

I, Quentin R. Weld, depose and state:

1. I am an Assistant District Attorney assigned to handle appellate litigation arising in Essex County related to Annie Dookhan's misconduct, including *Bridgeman v. District Attorneys for the Suffolk and Eastern Districts*, 471 Mass. 465 (2015) ("*Bridgeman*").
2. I am filing this affidavit to provide factual data relating to the progress of the efforts undertaken in Essex County to identify and notify defendants affected by Dookhan's misconduct.
3. Between July 2014 and May 2016, regular status conferences were held before the Single Justice of the Supreme Judicial Court for the County of

Suffolk (“Single Justice status conferences”). Present at these status conferences were attorneys from the ACLU (counsel for the *Bridgeman* petitioners), the Committee for Public Counsel Services (“CPCS”), and the Suffolk and Essex County District Attorney’s Offices.¹ The primary agreed purpose of these status conferences was to determine the optimal means of providing notice to defendants in all of the counties affected by Dookhan’s misconduct. Between September 2014 and May 2016, these status conferences were conducted in a relatively informal setting, around a conference table in the Single Justice courtroom.

4. Pursuant to discussions at these status conferences, in August of 2014 I created an initial list (“August 2014 Essex List”) -- with the help of technical staff from the Essex County District Attorney’s Office -- listing those Essex County defendants who had been convicted in part based on a drug analysis certificate for which Dookhan served as the primary or confirmatory chemist. This list was based on *The Identification of Individuals Potentially Affected by the Alleged Conduct of Chemist Annie Dookhan at the Hinton Drug Laboratory*, issued by David E. Meier in August 2013 (the “Meier list”).
5. In August 2014, I provided the Committee for Public Counsel Services (“CPCS”) with a CD containing the August 2014 Essex List.
6. The August 2014 Essex List included 5,172 identified criminal convictions, involving approximately 3,400 individual defendants, and displayed docket numbers, social security numbers, and dates of birth for the affected defendants. As such, it included “identifying information,” by which a possessor of the list could readily obtain contact information for the identified defendants (A “finalized” list was provided in May of 2016.² See ¶ 11, below).
7. No more than twenty *Scott* motions have been filed in Essex County since the August 2014 Essex List -- which included identifying information -- was provided to CPCS. See enclosed *Affidavit of Essex County Assistant District Attorney Susan Dolhun*, also dated August 5, 2016, at ¶ 12-13.
8. After the provision of the August 2014 Essex List, counsel for CPCS stated at a Single Justice status conference that CPCS had contacted some of those defendants identified on the August 2014 Essex List. CPCS counsel

¹ After the Petitioners’ successful motion to join the other affected District Attorney’s Offices in the *Bridgeman* Single Justice litigation, these status conferences included ADAs from Middlesex, Norfolk, Bristol, Plymouth, and Barnstable & Dukes Counties.

² Both the August 2014 Essex List and the May 2016 “finalized list” are incorporated into this affidavit, by reference.

represented that many of these defendants had elected not to go forward with their *Scott* motions because they believed they could face sentences greater than those they received when they initially pled guilty. This “exposure issue” was resolved on May 18, 2015, with the issuance of this Court’s decision in *Bridgeman*, in which the Court capped the potential exposure for defendants filing *Scott* motions at the convictions and sentences they received at the time they initially pled.

9. No more than ten *Scott* motions have been filed in Essex County since the May 8, 2015 issuance of this Court’s decision in *Bridgeman*, which resolved the exposure issue in favor of the petitioners. See enclosed Affidavit of Essex County Assistant District Attorney Susan Dolhun, also dated August 5, 2016, at ¶ 12-13.
10. At a Single Justice status conference on February 21, 2016, the Single Justice proposed that two rebuttable presumptions be applied to the “finalized” lists provided by the seven affected counties: (1) a presumption that those defendants identified on the lists *are* Dookhan defendants, thus relieving them of the obligation to produce a drug certificate; and (2) a presumption that any defendant left off the lists, who later produces a drug certificate, would be entitled to an immediate allowance of his *Scott* motion. All parties present at this hearing apparently supported the application of these presumptions. It was apparently agreed that the presumptions would incentivize a high degree of accuracy by the District Attorney’s Offices in the creation of the lists, and would maximize the efficient litigation of any motions arising after the notice mailing was sent.
11. On May 9, 2016, I provided CPCS, the ACLU, and the County Court with an updated, “finalized” list of affected Essex County defendants (“finalized Essex List”). The finalized Essex List included 3,839 defendants who had been convicted based in part on a Dookhan drug certificate.
12. The finalized Essex List was created in part by utilizing Trial Court data provided to my office by the Administrative Office of the Trial Court. By using the AOTC data, my office was able to locate approximately 450 additional criminal convictions that were not included on the August 2014 Essex List.
13. On May 20, 2016, CPCS and the ACLU filed a “Petitioners’ and Intervenors’ Request for Reservation and Report Regarding Comprehensive Remedy for Dookhan Defendants,” in which they stated they would no longer participate in the notice process. The primary reason given for this request for a mass vacatur of Dookhan cases was the release of grand jury minutes in the investigation into the misconduct of Amherst lab chemist Sonja Farak. Due to the timing of this abrupt retreat from a cooperative solution, funding was lost for the notice project, and the information technology infrastructure project

from which the District Attorneys diverted the money was left unfunded and canceled. As the new fiscal year has begun, the District Attorneys have found a vendor to complete the notice process and have secured a new funding stream. We anticipate sending notice shortly and will seek to supplement our filings after notice is sent.

14. To my knowledge, the system of remedies implemented in this Commonwealth following the discovery of Dookhan's misconduct -- assuming that the notice described in the directly foregoing paragraph is sent -- will equal or exceed those remedies implemented in other jurisdictions that have faced similar misconduct. See, e.g., "Affidavit of Caroline S. Donovan," and Exhibits 1-9 attached thereto, originally filed in this litigation November 10, 2015, in support of the "Petitioners and Intervenors' Request for Briefing and Hearing Concerning Identification and Notification."

Signed under penalties of perjury August 5, 2016.



Quentin R. Weld
Assistant District Attorney
For the Eastern District
BBO No. 683830

AFFIDAVIT OF PARALEGAL CHRIS IRWIN OF THE MIDDLESEX DISTRICT ATTORNEY'S OFFICE REGARDING THE PROCESS OF ADDRESSING CASES RELATED TO FORMER HINTON LABORATORY CHEMIST ANNIE DOOKHAN

I, Chris Irwin, hereby depose and state as follows:

1) I am a paralegal in the Middlesex County District Attorney's Office ("MDAO"), assigned to support the assistant district attorneys handling cases relating to the William A. Hinton Laboratory ("Hinton Lab") and former chemist Annie Dookhan ("Dookhan"). I have worked for the Middlesex District Attorney's Office in this capacity since October 12, 2012. The Middlesex District Attorney's Office has actively worked since September 2012 to identify and address cases in which Dookhan was a testing chemist.

2) Dookhan was suspended from all laboratory analysis work effective June 21, 2011. Dookhan continued to work at the Hinton Lab performing other duties but eventually resigned in March of 2012. This was not known by MDAO until March, 2012.

3) On March 21, 2012 First Assistant District Attorney Michael Fabbri sent an email to all court team and unit chiefs notifying them of the alleged protocol breach committed by Annie Dookhan at the Hinton Lab that occurred prior to June 2011; Fabbri requested the chiefs to ask their ADAs to identify cases, past and present, where Dookhan was involved as a chemist. A summary of the MDAO response follows.

4) On May 31, 2012 the first of twenty-one discovery notices to be provided in cases for which Dookhan was a testing chemist was distributed. As the MDAO received additional documents from sources such as the Attorney General's Office, the Inspector General's Office and the Massachusetts District Attorneys Association subsequent discovery notices were drafted by the Hinton Lab Crisis Litigation Team ("The Team") and distributed to ADAs to provide Hinton Lab Discovery notices and attachments in their cases. The Team consisted of MDAO ADAs and support staff and was established to oversee and coordinate the MDAO's response to the events that transpired as a result of Dookhan's misconduct. The types of information provided with these discovery notices included items such as Hinton Laboratory investigative reports; photographs of the laboratory; Hinton Laboratory policy, procedure and training guidelines; interview transcripts; lab sample analysis reports; internal Hinton Laboratory documents such as memos, quality control logs and chain of custody documents; and written communications between key Hinton Laboratory, Attorney General's Office, Inspector General's Office, and the various District Attorneys' Office personnel.

5) In an effort to identify Middlesex cases impacted by Dookhan-related issues, on July 30, 2012 The Team sent out a request for information to all Middlesex ADAs on cases involving Dookhan as a testing chemist, past and present. This was a necessary step in gathering information because at no time did the electronic case management system (DAMION) utilized by the various District Attorneys' offices track the names of the chemists involved or identify which chemists signed the drug certificates in individual cases. The information

provided by MDAO ADAs was organized into a case tracking spreadsheet. This spreadsheet is updated as new cases are added and as cases progress through the court system, continuing to the present day. This spreadsheet tracks not only Dookhan-related cases but cases with drug samples tested at the Hinton Laboratory by other Hinton chemists and not involving Dookhan directly. Our office identifies these cases as “general Hinton Lab cases,” in contrast to “Dookhan” or “Dookhan-related” cases.” Subsequent calls to ADAs for updated reports on Dookhan-related cases were sent periodically.

6) On August 30, 2012 the Drug Laboratory, part of the William A. Hinton State Laboratory in Jamaica Plain, was ordered closed by Governor Deval Patrick.

7) On September 5, 2012 ADA Marian T. Ryan in her role as General Counsel to District Attorney Gerry Leone sent out an email providing instructions to MDAO ADAs for their practice and responsibilities regarding “Dookhan cases.” Emails updating policy and procedure for the handling of “Dookhan cases” were sent to all Middlesex ADAs on September 26, October 5, and October 11, 2012. Marian T. Ryan took the lead role on the “Hinton Lab Crisis Litigation Team.”

8) On September 20, 2012, the Governor established a task force spearheaded by Attorney David Meier to conduct an investigation into the Hinton Drug Laboratory. One result of this investigation was the “Meier’s List,” created in an effort to link certificates of drug analysis signed by Annie Dookhan to individual drug cases. Soon after the announcement regarding the creation of this list was made, defendants began filing post-conviction motions to have cases reviewed. Defendants with open (pre-conviction) cases began filing motions to have their cases dismissed.

9) Beginning in October of 2012, and carrying through to the present day, the MDAO practice of creating “shadow files” for each Hinton Lab case was established to maintain case documentation, track court dates and outcomes, motions filed, and dispositions of cases being reviewed post-conviction, as well as open (pre-conviction) cases. Shadow files were created not only for “Dookhan cases” but for “general Hinton Lab cases” as well. These case-tracking files provide the MDAO and The Team the ability to monitor Hinton Lab cases and ensure that they are prosecuted in a consistent manner and in alignment with established MDAO policies and procedures for handling such cases. They also become a resource for new cases as templates for best practice in varying situations that arise.

10) A list of incarcerated defendants who were presumed eligible for a hearing in the Middlesex Superior Court Special Session was generated by the clerk’s office. On or about October 3, 2012 the list was distributed to the Committee for Public Counsel Services (“CPCS”) and the MDAO with instructions for defendants to file a motion for relief on or before October 17, 2012. The first day of these Superior Court sessions was scheduled for October 21, 2012.

11) During October of 2012, the Chief Justice of the Superior Courts and the Chief Justice of the District Courts each designated judges to sit in special Hinton Lab court sessions to assist in managing the influx of these cases. A Hinton Lab Special Session for Middlesex district court cases was established with special sessions designated to hear Hinton Lab cases one day a week. The location of this session is Cambridge District Court, the sessions

conducted by the Honorable Roanne Sragow. The first of these District Court special sessions was scheduled for October 31, 2012; special sessions continue to the present day. On November 26, 2012, Superior Court Chief Justice Barbara J. Rouse ordered the assignment of the Honorable Paul A. Chernoff as a Special Magistrate of the Superior Court to preside over the Superior Court Hinton Lab Special Session. Review of the Special Magistrate's decision was conducted by the Superior Court RAJ. Superior Court special sessions continued until March 5, 2015. Hinton Lab cases were then heard before Superior Court judges and this practice continues to the present day.

12) Currently there is one district court ADA point person handling post-conviction Hinton Lab cases in the special session and one superior court ADA handling post-conviction Hinton Lab cases, with one paralegal to support them. Open (pre-conviction) cases are handled by ADAs assigned to the corresponding court. The Hinton Lab Team communicates with and advises all ADAs handling cases with Hinton Lab issues. The Team meets bi-weekly to review and address policy, cases, and related issues. The Team reports directly to the First Assistant District Attorney.

13) Beginning in December 2012 and carrying through to the present the MDAO has routinely responded to requests for certificates of analyses and other discovery documents from CPCS and their agents, as well as private defense counsel, and have provided hundreds of discovery packets directly to defense counsel. We have worked closely with CPCS in providing notices in Dookhan cases, providing discovery items, and sharing our statistical data on special session cases in response to multiple requests for such information. However, in May and June of 2013 letters were sent to Lynda L. Dantas, a regional director for CPCS, to affirmatively identify drug convictions involving Annie Dookhan as a chemist. These lists included defendant names, dates of birth, and corresponding docket numbers and court locations. This effort was terminated after identifying a total of fifty cases as no response was received from CPCS showing that this information was welcome or useful in any way.

14) During the month of December 2012 ADA Jodie Walker, in her capacity as Chief Legal Counsel to District Attorney Gerry Leone, contacted police departments in Middlesex County to obtain their information on investigations/drug certificates involving Annie Dookhan.

15) From the period of December 2012 through February 2013 approximately 4000 emails from Annie Dookhan to Middlesex ADAs were reviewed by the administrative assistant and one paralegal assigned to the Hinton Lab Team to identify potential Dookhan defendants. These "Middlesex County Dookhan Emails" were provided to us by the Massachusetts District Attorneys Association which provides IT support and services to the various District Attorneys' Offices. The email review and witness list search became the basis of proactive notification and case-related document gathering, including drug certificates and police reports. In addition, the Information Technology Unit of the MDAO identified cases where Annie Dookhan testified, or was scheduled to testify, as a witness. This information was incorporated into the database of Dookhan cases being developed by the MDAO.

16) On August 21, 2013 we received a compact-disc (CD) from Attorney David Meier containing the "Meier's List" and a copy of his report to the Governor. The complete

Meier's List contained a list of approximately 37,500 individuals whose drug samples had been tested by Annie Dookhan. This list referred to approximately 70,000 drug samples (certificates), 10,999 of which were attributed to Middlesex County drug investigations or cases. After qualitative and quantitative analysis of this data, the MDAO estimated that the 10,999 certificates represented approximately 6,000 potential Middlesex "Dookhan defendants," some individuals with multiple drug cases, and some certificates not resulting in criminal cases.

17) On January 9, 2014 the case of Bridgeman v. District Attorney for Suffolk County and District Attorney for Essex County, a petition filed under Massachusetts General Laws Chapter 211, Section 3, is entered on the docket of the County Court of the Supreme Judicial Court.

18) On March 4, 2014 the Office of the Inspector General published the report on "The Investigation of the Drug Laboratory at the William A. Hinton State Laboratory Institute 2002 – 2012," a summary of the information gathered during the investigation into Hinton Laboratory policies and practices and overall operating procedures. This investigation reviewed thousands of documents including laboratory testing records and internal documents, and involved interviews of Hinton Lab employees. The resulting report put forth findings regarding the deficiencies of supervision and training and other flaws in the daily operation of the Hinton Lab, as well as information on Dookhan's malfeasance.

19) On March 5, 2014 the Appeals Court issued a decision in Commonwealth v. Scott which raised important legal issues significant to "Dookhan defendants" and the Bridgeman case.

20) On May 18, 2015 the Supreme Judicial Court issued a decision in Bridgeman v. District Attorney for Suffolk County and District Attorney for Essex County, remanding the petition to the single justice for further proceedings.

21) On July 7, 2015 the MDAO received a letter from Justice Margot Botsford asking for our assistance in linking defendant names and docket numbers to the drug certificates listed on the Meier's List; the stated purpose was to create a list of defendants to whom notices of Dookhan-based claims would be sent.

22) Initially, upon receipt of the single justice's letter, the task of identifying docket numbers and defendant information for Middlesex drug certs from the Meier's List was added to the work duties of this affiant, representing approximately one day a week of my workload. On December 7, 2015 a Meier's List Team was created involving this affiant and one intern, intern hours consisting of approximately six hours per day, three days per week for the three weeks leading up to "Winter Break."

23) On December 31, 2015 the motion for joinder of respondents in Bridgeman v. District Attorney for Suffolk County and District Attorney for Essex County is allowed; Middlesex, Plymouth, Norfolk, Cape and Islands and Bristol offices become part of the Bridgeman case. The single justice request for this list required that the Meier's List of 10,999 drug certificates be split in two; the creation of an "Adverse" list, cases in which there was an outcome that could have a negative effect on the defendant's record and the creation of a "Non-Adverse" list, cases in which there was an outcome that would not have a negative effect on the

defendant's record. For example, MDAO considered Dismissal after admission to sufficient facts and Continuance Without a Finding (CWOFF) an adverse disposition because, though the instant charges were ultimately dismissed, the CWOFF remains on a criminal record and can be significant in immigration matters or can impact future criminal charges. Any kind of "Guilty" disposition was considered an adverse disposition, as was a "Responsible" or "Delinquent" disposition in a juvenile case. "Defaults" and "Open Cases" were put on the Adverse List as future outcomes could negatively impact a person's criminal record. Individuals with active warrants not yet arraigned were also added to the "Adverse" list. Cases involving drug charges based on the Meier's List of Dookhan drug certificates that had dispositions of "Not Guilty," "Dismissed," or "Nolle Prosequi" were included on the "Non-Adverse" list. The single justice sought to treat the cases on the "Adverse" list as entitled to the presumption of the Scott decision's first stage; such defendants would be notified that they could seek relief under Scott.

24) Now under court order, work on producing defendant and docket information for each Dookhan drug receipt present on the Meier's List became a priority for this affiant, representing almost 100% of my workload. On January 11, 2016 the previous intern returned and resumed a three-day work schedule. On or about March 9, 2016 two additional MDAO employees were reassigned to work part-time on the Meier's List project. Over the next few weeks an additional six interns, with varying part-time schedules, were assigned to the Meier's List project. During the month of April of 2016, as the May 9th deadline for producing the requested information drew near, four additional MDAO employees were directed to contribute to the work, one full time and three part-time as their workload allowed. Needless to say it took considerable "man hours" and office resources to identify defendant and docket number information and to assign a case as belonging on "Adverse" list: versus the "Non-Adverse" list.

25) Identifying defendants and docket numbers that match the drug certificate numbers provided on the original Meier's List was a complex and time-consuming task. The information contained on the Meier's List had only one nexus point with court and district attorney records, the drug receipt. In theory, each "line" on the Meier's List, representing one drug certificate number created when a police agency submitted alleged drugs for analysis, could be linked to a scanned copy of the drug receipt associated with that drug certificate. Of significance to identifying "Dookhan defendants" is the fact that drug certificates may have suspect names on them but no names of potential co-defendants, or in some instances no name at all. Nor did each drug certificate on the Meier's list correspond to a criminal drug case. Ideally, the drug receipt contained a name or other descriptor such as "undercover buy" indicating the source of the alleged drug samples, the name of the police representative who physically submitted the samples for analysis, the corresponding police department, a police reference number (which could either be an incident number or evidence number associated with the sample), the drug certificate number, some form of description of the samples being submitted under each certificate number, and date of submission. For various reasons all having to do with the complex process of matching defendant identity with names on drug certificates with docket numbers in many situations, such as similarity of names, misspellings, use of alias names, or functionally null identifiers on the drug certificate such as "White Male #1," exact matches between drug certificates and defendant/docket number information could not be determined with reasonable certainty in every circumstance.

26) The task also involved a significant amount of work and time of police departments across Middlesex County in determining if charges were actually brought and cases initiated based on these drug certs, which was not a straightforward task, as in many cases the actual individuals being charged were not the ones named on the drug certificates, drug certificates listed identifiers such as "Under Cover Buy" or "Under Investigation," or in some cases charges were never brought or were circumvented pre-arraignment by assignment of community service or other such means. Contributing to the difficulty of the task was the fact that, for Middlesex, most cases were almost a decade old and oftentimes detective or supplemental reports had been destroyed or were otherwise missing, eliminating the ability to identify with certainty a proper match between some drug certificates and defendant/case information. The fact that many steps had to take place, with information needing to be present and accurate at each stage significantly slowed down the identification process.

27) On February 3, 2016, at the direction of the single justice, each District Attorney's Office was provided with a CD that listed "94 C" cases from each court in the district during the "Dookhan Years." This allowed another entry point for data matching, providing police incident numbers, dates of birth, and social security numbers; the process of defendant identification sped up considerably by supplying the information needed to run Board of Probation Records (BOPS). Use of personal identifiers helped the Meier's List Team match docket numbers more accurately and efficiently.

28) The compact discs (CDs) of defendant information are provided to the single justice and to the petitioners on the deadline date of May 9, 2016.

29) The primary goal of the process of creating the "Adverse" list of defendants filed with the single justice was to determine the set of individuals to whom notice letters should be sent. I have reviewed the entries shown on the "Adverse" list. To the best of my ability I have counted the following: approximately 3500 individual (discounting repeats of names) defendant names on the "Adverse" list represent approximately 3600 distinct (discounting repeats) docket numbers. Of the approximately 3600 distinct docket numbers on the "Adverse" list, about sixty percent (2150) involved dispositions categorized as some form of "Guilty," (guilty plea or verdict, admission to sufficient facts with guilty finding, adjudicated responsible or delinquent or youthful offender), not CWOFF. This constitutes about 2000 defendants with guilty dispositions, defendants eligible for notice of a presumptive "Dookhan claim," i.e., that Dookhan is named as a testing chemist on the corresponding drug certificate. Of the approximately 2150 docket numbers about 85% are district court cases, with the remaining 15% being split, one third juvenile cases and two thirds superior court cases.

30) In preparation of this affidavit I have reviewed the status of each of the 219 defendants on the May, 2016 "Adverse" list who had been indicted. 23 defendants were in default prior to any disposition. Of the remaining 196 defendants, 27 defendants had active proceedings in the superior court, and had been provided discovery concerning the Hinton Lab; a single defendant was believed deceased; 10 defendants had made requests for their certificates (Dookhan as an analyst) but proceeded no further; and 16 defendants remained who had been notified affirmatively by this office but who had not proceeded, either as part of the notice to those incarcerated in 2012 when the special session in superior court began, or the MDAO outreach to defense counsel. Of the final 142 defendants on the May, 2016

“Adverse” list who had been indicted, 65 defendants brought motions in the special session of the superior court or the superior court after the special session magistrate was not renewed; of these 65 defendants, five are active, and 60 are disposed. Thus, I believe there are 77 defendants on the May, 2016 “Adverse” list who had been indicted who have not yet sought review and were not yet affirmatively notified of their position on the “Adverse” list.

Signed under the pains and penalties of perjury this 4th day of August, 2016



Chris Irwin, paralegal to Hinton Lab Team
Middlesex District Attorney's Office
15 Commonwealth Avenue
Woburn, MA 01801

COMMONWEALTH OF MASSACHUSETTS

SUPREME JUDICIAL COURT

SUFFOLK, ss.

NO. SJ-2014-0005

KEVIN BRIDGEMAN, et al.

v.

DISTRICT ATTORNEY FOR THE SUFFOLK DISTRICT, et al.

AFFIDAVIT OF MIDDLESEX COUNTY ASSISTANT DISTRICT ATTORNEY
SARA CONCANNON DESIMONE

I, Sara DeSimone, hereby depose and state as follows:

1. I am an Assistant District Attorney in the Middlesex County District Attorney's Office (MDAO). Since January 2013 I have been assigned to the Hinton Lab Team at MDAO which, was established to address cases relative to the William A. Hinton Laboratory in Jamaica Plain ("Hinton Lab") and misconduct attributed to former chemist Annie Dookhan ("Dookhan").
2. My responsibilities include reviewing cases relative to Dookhan and/or the Hinton Lab and addressing potential motions to vacate convictions in the Middlesex Superior Court. There is a counterpart Assistant District Attorney who handles district court cases in a special session established in the Cambridge District Court.
3. On November 26, 2012, Superior Court Chief Justice Barbara J. Rouse ordered the assignment of the Honorable Paul A. Chernoff as a Special Magistrate of the Superior Court to preside over criminal proceedings in connection with cases relating to the Hinton Lab. Judge Chernoff sat in the Middlesex County Special Session (hereinafter "Special Session"). That session has since expired and cases are now heard before sitting Superior Court Judges usually through the coordination of the Regional Administrative Judge.
4. The Honorable Judge Roanne Sragow, sitting in the Cambridge District Court, was assigned to preside over all criminal proceedings in the Middlesex County District Courts in connection with cases relating to the Hinton Lab (hereinafter "District Court Special Session"). To date, that session continues to hear all District Court matters relative to Hinton/Dookhan.

5. In my capacity as an Assistant District Attorney I have had contact with the Defense Bar and the Committee for Public Counsel Services (CPCS) regarding motions filed and discoverable materials pertaining to the Hinton Lab and Dookhan. I have had discussions with defense attorneys about the status of the respective investigations of the Attorney General's Office and the Office of the Inspector General regarding the Hinton Lab and Dookhan as well as developing case law. On many occasions I worked with defense counsel to review cases and determine the position of MDAO and how to proceed in the best interest of justice. For example, in many cases defense counsel and I developed an agreed resolution and filed a joint recommendation to the Court for resentencing that usually involved a reduced sentence or period of probation. There were also agreements designed to effectuate an early termination of parole.
6. Many inquiries by defendants or attorneys have consisted solely of requests for certificates of analyses to determine if Dookhan was involved as a chemist in a particular case. Our office routinely provides this information in an expeditious manner by either a search of our file or contact with the police department involved. If it were agreed that Dookhan was not a testing chemist often the defendant either did not file a motion for a new trial or withdrew a motion filed. However, some motions are pursued that do not have any known involvement with Dookhan as a testing chemist.
7. Upon request, we provide the Hinton Lab packet of testing materials and record of the Gas Liquid Chromatography/Mass Spectrometry (GC/MS) testing that is maintained by the Governor's Office Drug Lab Task Force.
8. If a Motion for a New Trial is filed MDAO provides two sets of Discovery to all Defendants. Each defendant receives a standard set of twenty-one volumes of Discovery Notices pertaining to the investigation of the Hinton Lab and Dookhan. See Affidavit from Chris Irwin for further detail about the documents included in the Discovery Notices. We also provide any case specific discovery such as police reports, statements and any other information relative to that underlying case.
9. We have also responded to numerous requests for certificates of analyses for samples analyzed at laboratories other than the Hinton Lab. We received approximately 10 motions in Superior Court cases where samples were tested at the Massachusetts State Police Laboratory. At least one of those cases resulted in an evidentiary hearing.
10. The MDAO and Law enforcement agencies in Middlesex County discontinued submitting drug samples to the Hinton Lab in or around 2009. We relied thereafter on the Massachusetts State Police Laboratory instead.
11. When the Special Session first began in 2012, the MDAO, on behalf of the Commonwealth, routinely filed a Nolle Prosequi by agreement in cases that involved Annie Dookhan as a testing chemist, without the need for an evidentiary

hearing.

12. Since the decision of Commonwealth v. Scott, 467 Mass. 336, we have applied the two-prong analysis set forth by the Supreme Judicial Court where the defendant's conviction was based upon a change of plea. If Dookhan was a testing chemist according to the certificate of analysis the MDAO agrees to vacate a conviction and file a Nolle Prosequi unless there is a sufficient basis to oppose vacateur of a plea based upon the materiality prong delineated by Scott.
13. The MDAO considers cases in which the defendants are incarcerated a priority, particularly when Dookhan was a testing chemist. The Commonwealth proactively worked to have these cases addressed in court by sending notices to CPCS. In District Court this has not been a significant issue because defendants have generally not remained incarcerated at the time that Dookhan's misconduct was disclosed, given the early date we ended reliance on the Hinton lab. In light of the effort of the Superior Court clerk's office to identify cases involving incarcerated defendants at the outset of the review period, it is my belief that all defendants with sentences of incarceration imposed for drug convictions involving Dookhan as a testing chemist have been addressed.
14. The majority of post-conviction cases involving the Hinton Lab and/or Dookhan have been handled by private defense attorneys either by appointment or privately retained. In Middlesex County our records reflect that CPCS staff attorneys have handled approximately 12-15 cases in all in the Superior and District Court.
15. I have read the affidavit of Nancy J. Caplan submitted in July (dated June 29, 2016). I was not aware that CPCS was concerned about the performance of the defense bar that was handling the majority of Motions regarding the Hinton Lab and/or Dookhan.
16. While sitting in the special session, Judge Chernoff made every effort to hear the cases expeditiously. I am not aware of any undue delay after the release of the Report from the Office of the Inspector General ("OIG Report") on March 4, 2014 and the decision of Commonwealth v. Scott issued on March 5, 2014. Any delay prior to the release of the OIG report was due to strategic decisions made by defendants to await its release. The Court's decision in Scott provided guidance for the parties either to proceed to an evidentiary hearing or to withdraw their motion based upon the facts and circumstances. The impact of the decision was to reduce the caseload in the Special Session.
17. After Scott, most cases quickly proceeded either to an evidentiary hearing or were resolved through an agreed disposition. As early as the following day, March 6, 2014, the MDAO participated in an evidentiary hearing. Some of the motions were withdrawn on the basis that Dookhan was not a testing chemist. After the release of Scott, the Special Session actively addressed cases either through an evidentiary hearing or agreed resolution. Some hearings have involved testimony

from chemists or police officers. However, many of the hearings have proceeded with agreed stipulations from the parties resulting in speedier resolutions for defendants. Where Dookhan is known to be a testing chemist pursuant to a certificate of analysis there is a stipulation as to the first-prong of the Scott analysis as to egregious government misconduct. The Commonwealth has opposed motions to vacate a plea on the basis of the second-prong of materiality only where there is a sufficient basis based upon the facts and circumstances of a specific case.

18. On or about March 5, 2014, when the Scott decision was released, the MDAO was handling approximately 38 cases in the Superior Court Special Session. Approximately 18 of those cases involved Dookhan as a testing chemist, and the remainder involved other chemists employed at the Hinton Lab during Dookhan's tenure.
19. After the Scott decision, the MDAO has handled approximately 18 cases in the District Court Special Session. Approximately 7 of those cases involved Dookhan as a testing chemist, and the remainder involved other chemists employed at the Hinton Lab during Dookhan's tenure. Most of the motions involving Dookhan as a chemist in the District Court Special Session were routinely allowed in favor of the defendants even before the release of the Scott decision.
20. We are currently handling approximately ten cases in the Superior Court. Approximately five of those cases involve Dookhan as a testing chemist, and the others involve other chemists employed at the Hinton Lab during Dookhan's tenure.
21. We are currently handling approximately 9 cases in the District Court special session. Approximately five of those cases involve Dookhan as a testing chemist and the others involve other chemists employed at the Hinton Lab during Dookhan's tenure.
22. Motions for a New Trial have been filed where Dookhan was not a testing chemist but was listed on the certificate of analysis as a Notary Public.
23. There are currently four cases on appeal that arose from Hinton Lab related motions. One of the four cases on appeal involves Dookhan as a testing chemist. Two of the cases involve chemists at the Hinton Lab other than Dookhan. One of the cases involves drug testing at the Massachusetts State Police Crime Laboratory and not the Hinton Lab as alleged by the defendant.
24. The MDAO has not retried any cases where a defendant was successful in withdrawing a guilty plea or requesting a new trial. The Commonwealth has either filed a nolle prosequi or reached a negotiated resolution. There was only one case resolved without agreement after the defendant's motion was allowed.

That District Court case ultimately resulted in a Continuance Without a Finding.

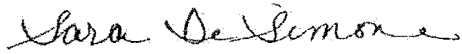
25. The possibility of retrying cases if the court imposes a blanket vacatur of all drug convictions will not generally be a viable option for MDAO because our Hinton Lab cases are older since we stopped using the Hinton Lab in 2009. The drug evidence in most cases will likely have been destroyed in the normal course prior to the disclosure of Dookhan misconduct based upon the age and closed status of the cases.
26. This office has worked proactively since September 2012 to identify and address cases where Dookhan was a testing chemist. We have routinely responded to requests for certificates of analyses and other documentation, and have provided discovery materials directly to defense counsel in response to well over 170 requests for information. We have also proactively sent lists of cases involving Dookhan, as either the primary or confirmatory analyst, to CPCS on the respective dates of May 1, 2013 and June 18, 2013. We have worked closely with CPCS in providing notices in Dookhan cases and sharing our statistical data re the special sessions documented through Assistant District Attorneys and a paralegal. See Affidavit of Chris Irwin.
27. Since the assignment of Judge Chernoff (ret.) as a Special Magistrate in November 2012 there have been approximately 110 post-conviction motions filed in the Middlesex Superior Court Special Session. Approximately 65 of the total motions involved Dookhan as either a primary or a confirmatory chemist and the remaining motions involved other chemists. See Affidavit of Chris Irwin: MDAO counts 219 separate cases on the Superior Court docket placed on the "Adverse" list in May, 2016.
28. Approximately 65 cases filed in the Superior Court Special Session have been resolved through an agreed upon resolution prior to an evidentiary hearing. Usually the Commonwealth has prepared an agreed resolution document signed by the parties, and we have jointly presented the intended request to the Magistrate for approval prior to a hearing. Whenever possible we have worked together collaboratively with defense counsel. The remainder of motions filed are either still pending or have been resolved either by an evidentiary hearing or withdrawal of the motion. Approximately 10 cases remain pending in the Superior Court.
29. Since November 2012 there have been approximately 100 post-conviction motions filed in the Middlesex District Court Special Session. Approximately 70 of the total motions involved Dookhan as either a primary or a confirmatory chemist and the remaining motions involved other chemists. The remainder of motions filed are either still pending or have been resolved either by an evidentiary hearing or withdrawal of the motion. Approximately 9 cases remain pending in the District Court.

30. Please note, in preparation for this affidavit we reviewed a previous affidavit submitted by MDAO in December 2014 as to the number of for post-conviction matters addressed in the district court. The previous affidavit reported approximately 130 district court matters, counting requests for discovery regarding Dookhan involvement and motions for relief filed; the counting we make now is approximately 100 district court cases with motions filed.

Signed under the pains and penalties of perjury this 5th day of August, 2016

Respectfully submitted
For the Commonwealth,

MARIAN T. RYAN
DISTRICT ATTORNEY



Sara Concannon DeSimone
Assistant District Attorney
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BBO No. 636991

CERTIFICATE OF SERVICE

I hereby certify, under pains and penalties of perjury, that on this 5th day of August, 2016, in the case of Bridgeman v. District Attorneys, no. SJ-2014-0005, the District Attorney for the Northern District (Middlesex) has served one copy of the Affidavit of Sara DeSimone and one copy of the Affidavit of Chris Irwin upon counsel for the Petitioner and for the Intervener:

Matthew Segal, for Petitioner
ACLU of Massachusetts
211 Congress Street, Suite 3
Boston, MA 02110

Benjamin H. Keehn, for Intervener
Committee for Public Counsel Services
Public Defender Division
44 Bromfield Street
Boston, MA 02108

FOR THE DISTRICT ATTORNEY
for the Northern District,



ROBERT J. BENDER
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COMMONWEALTH OF MASSACHUSETTS
SUPREME JUDICIAL COURT

SUFFOLK, ss.

NO. SJ-2014-0005

KEVIN BRIDGEMAN, et al.
v.

DISTRICT ATTORNEY FOR THE
SUFFOLK DISTRICT, et al.

AFFIDAVIT OF SUSANNE M. O'NEIL,
ASSISTANT DISTRICT ATTORNEY
NORFOLK DISTRICT ATTORNEY'S OFFICE

I, Susanne M. O'Neil, Assistant District Attorney, do hereby depose and state as follows.

- 1) I make each of the following statements of my own personal knowledge, information or belief.
- 2) In September 2012, I was assigned by the Norfolk District Attorney to be the point prosecutor for the response to the revelations of misconduct by former Hinton State Laboratory chemist Annie Dookhan. In this capacity, I attended the stakeholder meetings that brought together representatives of the District Attorneys, State Police, Executive Office of Public Safety and Security, United States Attorney's Office, the Committee for Public Counsel Services (Committee), federal public defenders, representatives of the private defense bar, and Trial Court administration. I have been the point of contact for discovery and motions for new trial, and I have handled many of the motions filed. In addition, I have been responsible for tracking the outcome of Dookhan cases; representing the Norfolk District Attorney's Office (NDAO) in *Bridgeman et al. v. Suffolk District Attorney, et al.*, SJ-2014-0005; and completing the task of identifying docket numbers associated with the samples tested by Annie Dookhan. I have worked with, been assisted by, and

given assistance to other legal and administrative staff in these efforts.

- 3) The NDAO was first apprised of misconduct by Dookhan on January 31, 2012, when the Department of Public Health informed the Office that Dookhan had breached protocol on the testing of 90 drug samples from Norfolk County in June 2011. Those samples were associated with 40 individual cases. Letters were sent immediately to counsel of record on the affected cases about what was then known as a breach of protocol and chain of custody issue. Based on the facts of each case dispositions were reached that took into account the information about Dookhan's conduct.
- 4) Prosecutors provided the information about Dookhan's breach of protocol to defendants in pending cases in which she had tested evidence, and in some instances sent evidence for new testing.
- 5) The Attorney General's Office announced it was investigating Dookhan at the end of August 2012. At that time investigators provided information that showed Dookhan's misconduct was greater in scope than the breach of protocol described by the Department of Public Health earlier in the year.
- 6) Following those revelations, the Department of Public Health (DPH) provided the NDAO with lists of lab (or certificate) numbers tested by Dookhan from 2003 to 2011 for Norfolk County. For each lab number included the date the evidence was received at the lab; the submitting agency; the name of the individual(s) on the evidence; the testing results; primary and confirmatory chemist initials; and date of analysis.
- 7) All Superior Court staff assigned drug cases were given lists to in order to identify closed and pending cases associated with Dookhan. Prosecutors immediately began notifying defense counsel. Prosecutors, defense counsel and the Superior Court cooperated in scheduling hearings for bail, stays of sentence, and discovery motions. All parties prioritized identifying defendants in custody and bringing those cases forward for hearing.

- 8) Likewise, District Court staff had access to the lists to determine if Dookhan had tested the evidence in open drug cases and to ensure that defendants were provided with the available discovery about the investigation and earlier breach of protocol.
- 9) The NDAO also pulled all available District Court drug case from archives. An assistant district attorney reviewed the files for the purpose of finding any defendant who was in custody or on probation on a Dookhan case. While those files were being reviewed, I reviewed closed Superior Court Dookhan cases for the same purpose. We notified counsel in these priority cases.
- 10) NDAO staff also met with the presiding judges of the county's courts, representatives of the Committee's local offices and the bar advocates, and the Norfolk County Bar Association to inform them of our response plan. The defense bar was encouraged to contact us with questions and to request certificates of analysis.
- 11) Although certificates of analysis could be located in many of the closed files on hand, a significant number of files did not contain copies of the certificates. In some of these cases, the defendant had pleaded before the certificate was available. In all cases the NDAO agreed to provide copies of the certificates.
- 12) Each police department within Norfolk County designated an officer to respond to questions and assist with obtaining copies of certificates of analysis. Going a step further, most departments within the jurisdiction provided the NDAO with copies of all certificates of analysis for 2003-2011 or all certificates of analysis signed by Dookhan during that time. The remaining few departments designated an officer to respond to inquiries. Responses for requests for certificates were sent as quickly as the same day to within three weeks.
- 13) Retired Justice Wendy Gershengorn was assigned as Special Judicial Magistrate for the Special Drug Lab session in Norfolk Superior Court. The majority of the Superior Court hearings for bail and stays of

execution of sentence were completed before the first special session was held. Many of the motions for new trial in those cases had been assented to by the NDAO and the cases resolved with a new plea or a nolle prosequi. Special Judicial Magistrate Gershengorn conducted non-evidentiary hearings on the remaining motions for new trial and status conferences on open cases. No full evidentiary hearing has been held in Norfolk Superior Court on Dookhan motions.

- 14) The District Court Drug Lab session began in October 2012. Mary Hogan Sullivan, Presiding Justice, Dedham District Court, and Mark S. Coven, Presiding Justice, Quincy District Court conducted the motion session sitting in Dedham District Court on Wednesday afternoons. For convenience and security, the first drug lab session was held at the Superior Court with a video link to the house of correction to facilitate release of defendants whose convictions were vacated. When the volume of cases dropped, Judge Coven scheduled cases Quincy District Court where the majority of the challenged cases originated. No full evidentiary hearing has been held on a District Court Dookhan motion.
- 15) The NDAO distributed discovery following each release of investigative documents by the State Police and Office of the Attorney General in September, November, and December 2012 and January, February, and March 2013.¹ The Governor's Task Force on the Hinton Lab released documents in June, July, and August 2013. As the point prosecutor, I prepared the electronic copies and index to these discovery materials for our office.
- 16) From the outset, the NDAO response to motions to vacate guilty pleas did not distinguish between Dookhan's roles as primary or confirmatory chemist.

¹ The discovery phase required additional time in redacting materials provided by DPH. The original 446 DPH internal report was redacted by Suffolk County. After DPH released approximately 6,000 emails from Dookhan's Outlook account Suffolk and Norfolk did a tandem review and redaction of information protected by CORI and not subject to disclosure under G.L. c. 4, sec. 7(26)(c).

In each case, however, the decision whether to assent to, or contest, any of the motions filed was made only after a review of the underlying facts, the relevance of the drug analysis, the original charges, and the original disposition.

- 17) I tracked Dookhan motions filed in Norfolk County. From September 2012 to March 2013, 195 cases were brought before Norfolk County courts: 22 bail hearings in open Superior Court cases; 72 motions for new trial in Superior Court; and 101 motions for new trial in District Court.
- 18) From March 2013 to March 2014, 7 motions for new trial were filed in Superior Court and approximately 40 motions for new trial were filed in District Court.
- 19) From March 2014 to April 2015, approximately 5 motions were filed in Superior Court and approximately 10 motions were filed in the District Court.
- 20) From May 2015 to the present, 2 motions have been filed in Superior Court and 4 motions in District Court.
- 21) In most of these cases an agreement was reached on the motion or disposition prior to any hearing. Some defendants withdrew their motions before hearing.
- 22) In the majority of motions, the NDAO assented to the motion to withdraw the guilty plea to some or all of the counts and either entered a nolle prosequi or agreed to a new plea. Approximately 15 cases returned to the trial list after the plea was vacated, rather than resulting in an immediate re-plea. I am not aware that any of those cases resulted in a trial.
- 23) As the Superior Court Special Drug Lab session wound down in early 2014 when fewer than 10 motions remained and impact of Dookhan's conduct on those cases was unclear, Special Judicial Magistrate Gershengorn denied the remaining motions "without prejudice" to allow the defendants to refile the motions after the Inspector General issued his

report. Of the motions denied on this basis, none have been refiled.

- 24) While the motion sessions were most active, defense attorneys expressed three primary reasons their clients were moving to vacate pleas: to release a defendant from custody or probation; to avoid immigration consequences; or to regain a license to operate a motor vehicle.
- 25) The vast majority of defendants in custody or on probation obtained relief with the assent of the NDAO. Those who remained in custody on bail or a sentence had other non-94C charges or drug evidence tested by a chemist other than Dookhan.
- 26) In immigration cases the NDAO worked with defense counsel to schedule hearings to minimize the likelihood a defendant would be removed without an opportunity to be heard. To the best of my recollection and review of our records, I estimate that we had 4 or 5 cases where deportation was imminent because of a conviction that was based on evidence tested by Dookhan.
- 27) The NDAO had only one case where a defendant who had been removed from the United States filed a motion for new trial. Although his motion was allowed and the charges dismissed, his lengthy record provided numerous other grounds for his exclusion or removal, and is likely the reason he has not been permitted to re-enter the United States.
- 28) Under G.L. c. 90, § 22 (f) (repealed by St. 2016, c. 64, §1, effective March 30, 2016), the Registry of Motor Vehicles was required to suspend the right to operate of anyone convicted of an offense under G.L. c. 94C. For defendants who tendered new pleas after a successful motion for new trial, the clerk's office sent a "corrected" abstract to the Registry noting the new sentence and that it was nunc pro tunc so that the suspension would not run anew and would terminate early, if appropriate.
- 29) I have reviewed almost every Dookhan motion filed in Norfolk County. They have all followed the same template. Prior to *Commonwealth v. Scott*, 467 Mass. 336 (2014), the motions raised claims of newly

discovered evidence and failure to produce exculpatory evidence in violation of *Brady v. Maryland*, 373 Mass. 83 (1963). Post *Scott*, the motions set forth the *Scott* two-part analysis, in addition to claiming newly discovered evidence and a *Brady* violation.

- 30) Dookhan motion resources are available to defense attorneys and pro se defendants on the Massachusetts Bar Association website where a page is devoted to information about Dookhan, legal resources, and available discovery. The page contains links to CPCS Communications²; Trial Court Orders and Communications³; Defense Attorney Resources⁴; Independent Investigation Filings⁵; and Latest News⁶.

² The CPCS Communications section includes: Drug Lab Crisis Litigation Unit Case Referral Form; Important Info re: appeals from Rule 30 decisions; DPH/Drug Lab Discovery from November 12, 2012; video testimony from the Post Audit and Oversight Committee Hearing re the DPH Drug Lab; Letter to CPCS from Worcester District Attorney Joseph Early; Discovery Requests based on AGO investigation documents; information that DPH did not keep copies of certificates of analysis; non-citizen advocacy points; AGO State Lab investigation advocacy bullet points; AGO State Lab investigation discovery bullet points.

³ The Trial Court Orders and Communications section includes: William A. Hinton State Laboratory Institute Standing Order; Special Session JP Lab Courts and Judicial Assignments; Drug Lab Courts; and Superior Court fax numbers.

⁴ The Defense Attorney Resources section includes: MBA "Training related to Dookhand and Other DPH Cases" seminar materials; Office of the Attorney General Investigative Reports; Memo to the MBA from the Executive Office of Public Safety and Security; and Defense counsel form to access a state-created database of information to identify individuals whose cases potentially may have been affected.

⁵ The independent investigation finding contains a link to David Meier's Report to Governor Deval L. Patrick with Exhibits A and B.

⁶ This Latest News section has links to 68 articles from the Boston Globe, Boston Herald, WBUR, New York Times, Worcester Telegram and Gazette, as well as

<http://www.massbar.org/legislative-activities/drug-lab-crisis-resource-center>.

- 31) Massachusetts MCLE sponsored a seminar touching on "Dookhan motions." See e.g., Crimmigration 101: Criminal issues that arise in Immigration cases. July 30, 2014.
http://www.mcle.org/includes/pdf/2140241P01_J.pdf
- 32) Massachusetts Practice Series contains annotations related to Dookhan to aid practitioners drafting "Dookhan motions" for new trial. See 42 Mass. Prac. Criminal Defense Motions § 9.31, New Trial (4th ed.); 30A Mass. Prac. § 24.91, Procedures in Hinton drug laboratory cases (4th ed.).
- 33) I was admitted to the Massachusetts Bar in 1994. I have more than eight years' experience handling post-conviction motions and appeals as an Assistant District Attorney. In my opinion, private counsel, bar advocates, and public counsel have raised the appropriate issues and made the relevant arguments in Dookhan motions.
- 34) The NDOA receives an estimated 10-20 motions based on *Padilla v. Kentucky*, 559 U.S. 356 (2010) and G.L. c. 278, § 29D per year. These motions are handled in the normal course in the district court by trial attorneys. In some cases, the motions are handled by an appeals unit attorney. Because trial court attorneys routinely engage in plea negotiations, they are particularly well-equipped to address the second prong of the ineffective assistance of counsel claim on a *Padilla* motion.
- 35) Until April 2015 no appeals had been brought in Norfolk County based on the allowance or denial of a motion to withdraw a guilty plea based on Annie Dookhan. (Two appeals were filed on non-Dookhan cases raising general drug lab claims.)
- 36) Presently, two Dookhan cases are pending on appeal. In one, the issue is whether a defendant who pleaded guilty before the drug evidence was tested by Dookhan is entitled to a new trial under *Commonwealth v. Scott*, 467 Mass. 336 (2014). In the

other publications from August 31, 2012 to November 22, 2013.

other, the issue is whether a defendant is entitled to return of probation fees after his plea was vacated because of Dookhan and the Commonwealth entered a nolle Prosequi on the complaint.

- 37) Since the Governor's Special Drug Lab Task Force made drug lab documents available from Navigant, I have obtained documents and provided discovery packages on request. In some cases, I initially objected on relevancy grounds where a defendant pleaded before testing or the defendant filed a sentencing memorandum clearly setting forth the reasons for the plea independent of testing.
- 38) After the custody, probation, and parole cases were "triaged," I continued to add docket information to the original DPH lists of Dookhan lab numbers.
- 39) In August 2013, David Meier produced a disk containing an updated and revised version of the original DPH list intended to identify individuals whose drug evidence was tested by Dookhan. (Identification of Individuals Associated with Annie Dookhan Drug Tests) ("Meier list"). There are 9,686⁷ entries on the Norfolk Meier list.
- 40) For each lab number, the Meier list contains the sample (lab) number, police department, name(s) of individual(s) as entered at the lab, date of submission to the lab, findings, and the name of the individuals re-entered to create a separate entry for samples associated with more than one individual. The list also contains links to drug receipts for the submitting agencies. A significant number of these receipts contained a police incident number that could be used to locate a docket number in our internal case management database (DAMION).
- 41) I did an entry-by-entry review of the Meier list adding docket numbers and disposition information, as well as adding co-defendant information in

⁷ These numbers come directly from counts of entries on the original Meier List CD for Norfolk County. In his affidavit for the Interveners, David Colarusso gives a figure of 9,665 for Meier entries. I do not know the source of his data.

appropriate cases. I used DAMION to search for docket numbers. In April 2015, a copy of this list, referred to as the "enhanced-Meier" list, was provided to the Single Justice to aid in the identification and notification of Dookhan defendants as discussed at the hearing on March 20, 2015.

42) The total number of "enhanced-Meier" list" entries for Norfolk County in April 2015 was 9,779, inclusive of co-defendants and multiple entries for lab numbers associated with more than one defendant.

43) To aid the identification and notification project being overseen by the Single Justice, on February 3, 2016, Mark Prior, Deputy Chief Information Officer, Judicial Information Services provided a compilation of data from the Trial Court's Mass Courts system identifying all the defendants convicted of an offense under G. L. c. 94C from 2003 to 2012 in Norfolk County ("trial court data"). This data consisted of two files: one, "caseparty_Norfolk," has a single entry for each case with the case id number, docket number, date of complaint, incident number, filing agency, defendant name, date of birth, and social security number; and two, "chargdisp_Norfolk," has multiple entries for each case based on the number of charges. This list provides the case id number, charge, charge disposition, and date of disposition.

44) I used the file caseparty_Norfolk to search for all names on the "enhanced-Meier" list for which I did not have a matching docket number. This led to additional adult and juvenile docket numbers and disposition information. I was also able to identify additional co-defendants associated with evidence tested by Dookhan. I was also able to correct disposition on the earlier version of the "enhanced-Meier" list.

45) I used multiple techniques to search for docket numbers associated with entries on the Meier list. I used spelling variations and wild-card search formats. I looked for a docket in the correct court at the approximate date. I compared police incident numbers, dates, and charges to confirm matches.

- 46) To find co-defendants I checked the drug receipt on the Meier list for additional names. I checked DAMION for reference to co-defendants. If a defendant had a conspiracy charge, but I found no co-defendant name on the drug receipt or in DAMION, I checked DAMION or the trial court data for additional dockets with the same police incident number or I checked sequential docket numbers for cases from the same police department with the same date of offense and same or similar charges.
- 47) I also utilized the Hinton Lab Testing Data, case files, and certificates of analysis provided in 2012 by the police departments to exclude or include potential cases and co-defendants.
- 48) For some names on the "enhanced-Meier" list, I identified a docket number in DAMION, but did not find a corresponding docket in the trial court data. Howard Wong, Norfolk District Attorney's Office Director of Information Technology, used Microsoft Access to merge the trial court caseparty_Norfolk list and "enhanced-Meier" list to create a list of those cases on the "enhanced-Meier" list that did not match dockets in the trial court data. In order to do this, he first reformatted all Superior Court docket numbers to reflect the Mass Courts format: two-digit year-82-CR-00123."
- 49) I did a line by line review of these unmatched cases and determined that the reasons were: mis-types in the docket number; juvenile docket numbers that were in different formats; juvenile docket numbers from Brookline Division, which were not included in the trial court data; cases that had been associated with Dookhan as co-defendants, but did not have a G.L. c. 94C charge; or complaints that were filed outside the date range of the trial court list.
- 50) I corrected the entry errors and reformatted the juvenile docket numbers accordingly.
- 51) In addition, after exhausting these resources, I gave each police department in the county a list of the names and sample numbers for which I did not find a docket number. Each department researched the

cases and provided disposition information, if any, or advised that the evidence sample corresponded to an investigation or a matter that was not prosecuted.

- 52) The final Norfolk "enhanced-Meier" list contains 9,799 entries. Of the 9,799 entries, 1,698 do not have an associated docket number (these entries included investigative buys, found drugs, and drugs for which an associated individual or co-defendant was not charged). The 9,799 entries contain 7,860 unique lab sample numbers; 4,204 unique docket numbers; and 4900 unique individual names (including those with no associated docket numbers). After duplicate docket numbers were removed, the number of unique individuals (both adult and juvenile) with an associated docket number and an adverse disposition was 2,360.⁸
- 53) In order to include dates of birth and social security numbers for defendant with an adverse disposition for the planned notification mailing, Howard Wong used Microsoft Access to merge the trial caseparty_Norfolk and chargdisp_Norfolk lists based on the unique case id number. Then he extracted from the "enhanced-Meier" list the entries with docket numbers. Using Microsoft Access, he merged this "enhanced-Meier" list of docket numbers with the combined trial court data. This provided the date of birth, social security number, charge, and charge disposition information for each lab number on "enhanced-Meier" list with a docket number.
- 54) Finally, he extracted all entries that had adverse dispositions and removed duplicate docket numbers to arrive at a final list of defendants with adverse dispositions. In anticipation that the list would be used as outlined in Single Justice's

⁸ Juvenile docket numbers are not uniform across the county. All of the docket numbers, however, contain the relevant year, juvenile department code, and unique docket number. The trial court could not provide a list of cases from the Brookline Division of the Juvenile Court. At my request, a clerk for the Juvenile Division of the Brookline District Court checked the original dispositions on 4 dockets.

Interim Order, the list was cleaned of extraneous information and labeled "NFK-VendorReadyList."

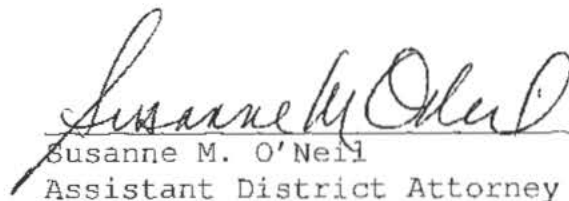
- 55) A few (approximately 38) entries on the "enhanced-Meier" list did not have matches in the trial court data, therefore those entries were included on the final list but do not include dates of birth or social security numbers. These data points have since been completed.
- 56) The Norfolk District Attorney's list of Dookhan Defendants with adverse dispositions filed with the Single Justice on May 9, 2016 was compiled to identify any docket number associated with Dookhan; it was not created or intended to be a list of convictions based on evidence tested by Dookhan. Nor was the list compiled for the purpose of statistical comparison to the original Meier list or the trial court data.
- 57) Drug evidence from Norfolk County was sent in the normal course from the Hinton Lab to Amherst Lab as the labs sought to manage the backlog of cases. Based on available data, I estimate that Sonja Farak tested evidence that was associated with approximately 280 Norfolk cases that resulted in an adverse disposition between 2003 and 2012. I have been finalizing this list.
- 58) On November 10, 2015, the Petitioners' and Intervener's filed a Request for Briefing and Hearing Concerning Identification and Notification. (Docket Paper #55). The Petitioners and Interveners asked the Single Justice to resolve two questions: 1) who bears the legal and ethical responsibility to identify and notify defendants; and 2) how those tasks will be funded and implemented.
- 59) The District Attorneys, although not all joined as Respondents at that time, accepted the responsibility to identify and notify defendants and explored funding to implement the notification process while seeking to work cooperatively with the Committee on accomplishing those tasks. See Letter to Honorable Margot Botsford from ADA Vincent DeMore, December 23, 2015 (Docket Paper #77).

- 60) The Committee objected to providing notice to defendants through counsel of record. The Petitioners and Intervener expressed a preference to send notice directly to defendants. For that reason it was important to obtain social security and date of birth information to locate defendants. The District Attorneys suggested using existing state database resources to locate defendants' best current addresses, but the Petitioners and Intervener preferred to provide the list of defendants with adverse dispositions to a third party search service. See Letter to Honorable Margot Botsford from ADA Vincent DeMore, December 23, 2015 (Docket Paper #77).
- 61) While the District Attorneys were using the trial court data provided by Mark Prior to complete the identification lists, the Single Justice requested at the February 23, 2016 status conference that representatives for the District Attorneys and representatives for the Petitioners and Intervener meet as working group to implement the notice plan for "Dookhan defendants"⁹. See Letter to Justice Botsford from Atty. Nancy Caplan, March 8, 2016 (Docket Paper #91).
- 62) The working group met on April 6, 2016 to discuss the notice letter. The Single Justice requested that the parties continue to work on a joint final draft notice letter to be filed with the Court on May 11, 2016. (Interim Order, ¶ 3, Paper #114)).
- 63) The Respondent District Attorneys made good faith efforts to jointly draft an appropriate notice letter.
- 64) At the May 11, 2016, status conference the Committee raised for the first time concerns that there would not be sufficient attorneys available or willing to represent defendants receiving the notice letter.

⁹ The District Attorneys sought clarification of "Dookhan defendant" as the Court noted in *Bridgeman v. District Attorney for the Suffolk District*, 471 Mass. 465, 467 n. 5 (2015), that the term is overly broad.

- 65) The Single Justice asked that two representatives of the District Attorneys and two representatives of the Petitioners and Intervener meet to discuss the language for the notice letter. Middlesex Assistant District Attorney Robert Bender and I met with Attorney Caplan and Attorney Matthew Segal on May 18, 2016 to discuss the language.
- 66) On May 20, 2016, the Petitioners and Intervener filed a Request for Reservation and Report Regarding Comprehensive Remedy for Dookhan Defendants. The request asked the Court to use the lists that the Respondents created to identify and notify defendants of the right to challenge G.L. c. 94C convictions under *Commonwealth v. Scott*, 467 Mass. 336 (2014), to vacate all of the listed convictions and enter dismissals. (Docket Paper #120). The Respondent District Attorneys asked the Single Justice to implement the notice plan contemplated in the Interim Order.
- 67) The American Civil Liberties Union, of which ACLU of Massachusetts is an affiliate, advocates the repeal of drug prohibition laws.
<https://www.aclu.org/against-drug-prohibition>
retrieved August 1, 2016.
- 68) The Committee "had been on alert" about Annie Dookhan since February 2012, when it learned of her June 2011 breach of protocol. Prior to the August 31, 2012 shutdown of the lab, the Committee had been advising the defense bar about the lab, the breach of protocol, and its suspicions that there was more than a minor breach of protocol.
<http://www.bostonbar.org/docs/default-document-library/boston-bar-journal-summer-2013-edition.pdf>

Signed under the penalties of perjury, this 5th day of August, 2016.


Susanne M. O'Neil
Assistant District Attorney

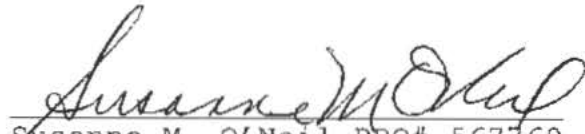
CERTIFICATE OF SERVICE

I hereby certify, under pains and penalties of perjury, that on this 5th day of August, 2016, in the case of Bridgeman v. District Attorneys, no. SJ-2014-0005, I have caused to be served one copy of the foregoing Affidavit of Susanne M. O'Neil upon counsel for the Petitioner and for the Intervener:

Matthew Segal, for Petitioner
ACLU of Massachusetts
211 Congress Street, Suite 3
Boston, MA 02110

Benjamin H. Keehn, for Intervener
Committee for Public Counsel Services
Public Defender Division
44 Bromfield Street
Boston, MA 02108

For the Commonwealth,
Michael W. Morrissey
District Attorney


Susanne M. O'Neil BBO# 567769
Assistant District Attorney
45 Shawmut Road
Canton, Massachusetts 02026
(781) 830-4866



TIMOTHY J. CRUZ
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FAX: (508) 586-3578

August 5, 2016

Amy C. Stewart
Second Assistant Clerk
Office of Clerk Maura S. Doyle
Supreme Judicial Court for the County of Suffolk
Boston, MA 02108

Re: Bridgeman v. Suffolk D.A.
SJ-2014-0005

Dear Clerk Stewart:

Please find enclosed two affidavits, one by ADA Gail M. McKenna with an attachment, and the other by ADA Richard Linehan and a certificate of service.

Thank you for your attention to this matter.

Very truly yours,

A handwritten signature in blue ink that reads "Gail McKenna".

Gail M. McKenna
Assistant District Attorney

Cc: Matthew Segal, Esq.
Benjamin H. Keehn, Esq.



TIMOTHY J. CRUZ
DISTRICT ATTORNEY

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August 5, 2016

Matthew Segal, Esq.
American Civil Liberties Union of Massachusetts
211 Congress Street
Boston, MA 02110

✓ Benjamin H. Keehn, Esq.
Committee for Public Counsel Services
Public Defender Division
44 Bromfield Street
Boston, MA 02108-4909

Re: Bridgeman v. Suffolk D.A.
SJ-2014-0005

Dear Counsel:

Please find enclosed two affidavits, one by ADA Gail M. McKenna with an attachment, and the other by ADA Richard Linehan and a certificate of service.

Thank you for your attention to this matter.

Very truly yours,

Gail M. McKenna
Assistant District Attorney

Cc: Amy C. Stewart, Second Assistant Clerk

CERTIFICATE OF SERVICE

I, Gail M. McKenna, do hereby certify that I have this date, August 5, 2016, served a copy of two affidavits, one by ADA Gail M. McKenna with an attachment, and the other by ADA Richard Linehan in the case of Bridgeman v. District Attorney for the Suffolk District, et al, no. SJ-2014-0005 by mail, postage pre-paid to the offices of:

Matthew Segal, Esq.
American Civil Liberties Union of Massachusetts
211 Congress Street
Boston, MA 02110

Benjamin H. Keehn, Esq.
Committee for Public Counsel Services
Public Defender Division
44 Bromfield Street
Boston, MA 02108-4909

Signed under the penalties of perjury.



Gail M. McKenna
Assistant District Attorney
Plymouth District

COMMONWEALTH OF MASSACHUSETTS
THE SUPREME JUDICIAL COURT
SINGLE JUSTICE SESSION

SJ-2014-0005

KEVIN BRIDGEMAN & others

v.

DISTRICT ATTORNEY FOR SUFFOLK COUNTY & another

PLYMOUTH DISTRICT ATTORNEY'S AFFIDAVIT BY ADA GAIL M.
MCKENNA IN SUPPORT OF ENFORCEMENT OF THE COURT'S PROPOSAL
AND PARTIES' AGREEMENT ON FEBRUARY 21, 2016 AND THE COURT'S
INTERIM ORDER

1. I, Gail M. McKenna, Assistant District Attorney for the Plymouth District, assigned by my office as representative to the Bridgeman remand proceedings, do swear and depose as follows.
2. The Bridgeman remand proceedings were not the start or end point in resolving issues in cases arising from the misconduct of Chemist Annie Dookhan at the Department of Public Health Hinton Lab in Jamaica Plain. The original and updated affidavits of ADA Richard Linehan of this office are attached, and together they describe the steps taken thereto.

3. The District Attorney for the Plymouth District was joined in the ongoing remand litigation in the Bridgeman case, over objection, on December 31, 2015 after having appeared voluntarily before the Single Justice (Botsford, J.) pursuant to an invitation by her.
4. Joinder was for a limited purpose. That being, to assist in identifying so-called Dookhan defendants so that they could be notified of their status as such, and "for the court with the assistance of the parties, to determine which notification method or methods are to be used, and how and by whom the notification should be accomplished." MEMORANDUM AND ORDER ON MOTION TO JOIN DISTRICT ATTORNEYS FOR THE COUNTIES OF BARNSTABLE, BRISTOL, DUKES, MIDDLESEX, NORFOLK, AND PLYMOUTH AS RESPONDENTS, Botsford, J., December 31, 2015. The Single Justice noted that the Plymouth District Attorney and others had appeared voluntarily. "However, their formal joinder as parties at this juncture is necessary, because Dookhan defendants are located in each of these counties and it is unlikely that an appropriate remedial notification plan can be developed or implemented without them." Id.

5. At a status conference on February 21, 2016, the Single Justice proposed that the district attorneys identify Dookhan defendants with adverse dispositions for the purpose of providing them notification. She also proposed that (1) a rebuttable presumption apply that those identified by the district attorneys to receive notice are, in fact, Dookhan defendants -- relieving them of any obligation to produce a drug certificate, and (2) a rebuttable presumption that anyone not so identified, who turned out to be a Dookhan defendant, would be entitled to dismissal of his case. It was agreed that a letter, sent directly to a Dookhan defendant, at the last known address would suffice to provide notice.
6. All parties present, including the petitioners, agreed to the Single Justice's proposal. The petitioners asked that continuances without a finding be included as "adverse dispositions" requiring notification; they declined inclusion of pretrial probation.
7. A working group was created to sort out the details of the notification process.
8. On March 8, 2016 the petitioners wrote to Judge Botsford identifying their designees on the working group, as they described: "which will develop a plan

for executing the notification process" and asking that the court "enter an order describing the identification and notification process and clarifying the parties' responsibilities thereunder, . . ."
(Docket at #91).

9. On May 9, 2016, per the Single Justice's order and the above agreement, undersigned counsel hand-delivered a disk of the identified defendants with adverse dispositions to the ACLU, CPCS, and filed same with the Single Justice.
10. On May 11, 2016, after the disks were delivered, the court entered an interim order which is part of the docket (#114).
11. The CD prepared per the agreement / order of the court ("The PLYMOUTH List") was compiled generally using the following process. (The CD is incorporated herein).
Not every step in the process is included here.
12. The beginning point for identifying Dookhan defendants to be provided notice was the Plymouth County portion of the David Meier list ("The Meier List"). The Meier List speaks for itself, and a sample page is included with an affidavit filed by ADA Vincent DeMore.
13. The Plymouth portion of the Meier List allegedly includes every drug sample originating from Plymouth

County that was tested by Dookhan. Not every tested sample resulted in criminal charges. A descriptor, provided by the police department submitting the sample, is included on the Meier List. At times the descriptor, rather than a person or group of persons under suspicion, is U/I (undercover); C/I (confidential informant) or the like. Testing results include "negative" or non-narcotic indications such as ibuprofen.

14. The Meier List does not contain docket numbers or identifying information for person(s) associated with samples. There are no dates of birth or social security numbers on the Meier List. This complicates the process of matching the defendants to tested drug samples, for example, where a defendant has a common or same name as another defendant. The Meier List also includes the date the item is brought to the lab, significantly narrowing the particular defendant and set of charges associated with that lab test.
15. On May 15, 2015, the Plymouth District Attorney agreed to assist in "matching" the Meier List information to docket numbers and informed Judge Botsford of that decision in an email. The Plymouth District

Attorney's formal letter to Judge Botsford was sent on May 21, 2015.

16. The Plymouth District Attorney's internal case-management system, Damion, has one specific use -- to track "next-dates" for cases. As such it has limitations when used for any other purpose. For example, cases which are resolved at arraignment are not entered because there will never be a "next-date." Police prosecutors handle some cases that arise in Plymouth County. Cases handled by police prosecutors are not entered into Damion. A drug sample number, as is seen on the Meier List, is never entered into Damion.
17. The court docket, and not the information in Damion, is prima-facie evidence of court proceedings. Because the purpose of Damion is to track next-dates, and the information about a case entered into Damion is culled from police reports, not the probation department or judicial records, the data recorded in Damion is not necessarily the same as the data recorded in the court record.
18. The Plymouth District Attorney's support staff, about fifteen people (15), after training by me and another attorney, began the comparison process between the

Meier List and information in Damion with the limitations of both in mind. A worksheet was created to facilitate the process.

19. The initial objective was to proceed from the Meier's list and attempt to find a match in Damion while also checking for codefendants as entered in the Damion system. This was a laborious process given the limitations of each.
20. In early December 2015, the court offered to prepare a list of drug cases from its automated system (MassCourts), by county, for the appropriate time period. The MassCourts data were received (in excel form) in February 2016. That data is impounded by the court. See Docket (#84) re: "MassCourts data identifying defendants convicted of an offense under G. L. c. 94C from 2003 to 2012."
21. Our Information Technology person was able to merge MassCourts files (there are two) into a single file to facilitate the matching process. Using the newly merged MassCourts files, and after another training session, support staff "filled in" matching information that was missing after examination of the Damion system (see above) was exhausted. This too was a time consuming process.

22. The next step was to verify the accuracy of the PLYMOUTH List through an audit process involving statistically justified sampling methodologies. I planned to use established audit procedures to do so. (Before attending law school, I had achieved the designations of Certified Internal Auditor (CIA) through the Institute of Internal Auditors (IIA) and Certified Information Systems Auditor (CISA) through the ISACA, previously known as the Information Systems Audit and Control Association. Neither designation is current).
23. The larger the sample size, the greater the confidence that the overall population (the matches) are correct. However, here, our tolerance for error was zero, and the overall population of charged defendants appeared relatively small (ending up at about 2100). In the end, after running several statistical scenarios, given the importance of the accuracy of the information, it was determined that I would recheck all the work done by the support staff. Each item of information was audited.
24. This portion of the project took about three and one half weeks, including each week end day, and evenings. It involved rechecking line-by-line each match,

rechecking for potential codefendants (often by scanning the MassCourts list for sequential docket numbers), and making changes to the list in deference to the information in MassCourts. In addition, a non-statistical sample of case files were physically pulled and hand-checked. Some cases were also rechecked by running probation records. This audit process resulted in corrections, additions, and deletions from the list, which was then finalized and provided to the petitioners and the Single Justice as mentioned above.

25. As stated above, the end result was a PLYMOUTH list of those defendants with adverse dispositions who would be sent notice per the agreement of the parties / interim order of the court.
26. Based on the affidavits provided by the petitioners, it appears that defendants included on the district attorneys' notice lists have already, in fact, been notified. (See Nancy Bennett, affidavit re: reopening of upwards of 7000 NAC's - notice of assignment of counsel).
27. This office has identified approximately fifty (50) cases in Plymouth County associated with the Farak matter re: the Department of Public Health Amherst

Lab. Issues arising from the Farak matter are currently being litigated in the western part of the state by the Attorney General and the most affected counties. Neither the Attorney General nor the most affected counties are parties to the Bridgeman.

28. In June 2016, the petitioners and the respondents worked cooperatively to fashion a fair and balanced approach to notice and the District Attorneys began the process of securing funding. Just as notice was nearly ready to be sent, CPCS and the ACLUM stepped away from the "negotiating table" and asked the Single Justice to report this case to the full bench. Due to the timing of that abrupt and unprovoked retreat from a cooperative solution, funding was lost for the notice project, and the information technology infrastructure project from which the District Attorneys diverted the money was left unfunded and canceled. As the new fiscal year has begun, the District Attorneys have found a vendor to complete the notice process and have secured a new funding stream. We anticipate sending notice shortly and will seek to supplement our filings after notice is sent.
29. A chart of decided and withdrawn cases is attached.

Respectfully submitted,

TIMOTHY J. CRUZ
District Attorney

By:



GAIL M. MCKENNA
Assistant District Attorney
Plymouth District
BBO #557173

COMMONWEALTH OF MASSACHUSETTS
THE SUPREME JUDICIAL COURT
SINGLE JUSTICE SESSION

SJ-2014-0005

KEVIN BRIDGEMAN & others

v.

DISTRICT ATTORNEY FOR SUFFOLK COUNTY & another

SUPPLEMENTAL AFFIDAVIT OF RICHARD F. LINEHAN,
ASSISTANT DISTRICT ATTORNEY, RELATING TO THE PROGRESS
OF MOTIONS FOR NEW TRIAL
FILED BY DOOKHAN DEFENDANTS
IN THE PLYMOUTH COUNTY SPECIAL SESSIONS

I, Richard F. Linehan, depose and state:

1. I am a Plymouth County Assistant District Attorney assigned to handle motions for new trial and motions to withdraw pleas brought by Dookhan defendants in the Plymouth County special drug lab session ("Plymouth special session"). I am also responsible for monitoring similar proceedings handled in the District Courts in Plymouth County.
2. I am filing this affidavit to provide factual data relating to Dookhan motions filed in Plymouth County.
3. In creating the information for this affidavit, I relied on a combination of spreadsheets that were kept by me as well as a review of Dispositional Sheets which were specifically flagged as DPH Lab issue involvement. I additionally relied upon calendar entries in a calendar that was created and specifically dedicated to the Plymouth special session. The statistical data which

follows is accurate to the extent that the records that were relied upon were accurate.

4. According to our district court records, approximately one hundred fifty-five (155) motions for new trial have been filed by Dookhan defendants challenging a district court conviction.
5. There have been approximately fifty-two (52) motions for new trial filed in the Plymouth special session by Dookhan defendants challenging a superior court conviction. Some of these motions were withdrawn before a hearing at the request of the defendant for various reasons, including, inter alia, a discovery that the contraband in question was tested at a lab other than the Hinton Lab.
6. There are currently zero (0) superior court cases that remain active in the Plymouth special session, including cases in which the motion for new trial has been argued and not decided, and cases which are awaiting a change of plea hearing following the allowance of the motion for new trial.
7. The volume of cases active in the Plymouth special session around the time of the issuance of the Scott decision¹ was around thirty-six (36) cases. Approximately every week after the Scott decision was issued, the Plymouth special session held evidentiary motion hearings that usually proceeded on stipulated exhibits of the parties. Several of the hearings required the testimony of a chemist. The last set of hearing held before the special magistrate was in March of 2015. The few remaining hearings subsequent to that date

¹ Commonwealth v. Scott, 467 Mass. 336 (2014), decision issued March 5, 2014.

were heard by the RAJ of the Plymouth County Superior Court. There are currently no motions for new trial or motions to withdraw pleas pending at this time in the Superior Court.

8. Only two (2) District Court case currently remain active in the Plymouth special session. The general pattern in the district court is that every month a few (approximately one or two) cases are filed.
9. The total volume of cases active in the district court session at the time Scott was decided was approximately five(5) cases.
10. Our office prioritizes the handling of Superior Court cases related to the Dookhan misconduct, and has taken measures to expedite the hearings of such defendants, including transporting federal detainees into Superior Court to facilitate a speedy motion hearing.
11. The Commonwealth has not requested continuances on any of the Superior Court cases that were not agreed to by defendants. Most all continuances have been at the request of the defendants and the defense attorneys. The defendants who bear the burden of proof in the Scott hearings have often required additional time to procure affidavits, summons witnesses and assemble records. Defendants who cited a conflict of interest with their appointed Dookhan attorney have requested new counsel to be appointed, which has also resulted in continuances. I am not aware of any defendant or defense counsel raising due process or speedy trial type concerns due to any delays in resolving these cases.
12. To date, we have not retried any Superior Court defendants who has had their motion for new trial allowed. We have filed approximately

twenty-two (22) nolle prosequis in the Superior Court. There were only three (3) Superior Court cases actively restored to the trial list after motion for new trial has been allowed and they have been resolved by plea.

13. In the district court, following the allowance of a motion for new trial/ motion to withdraw plea by a Dookhan defendant, to the best of my knowledge there has been one (1) case that has proceeded to a change of plea, four (4) dismissals, one hundred ten (110) nolle prosequis, and nine (9) open cases restored to the trial list. The remainder of the motions were either denied by the court or withdrawn by the defendant.
14. In the last two months there have been requests for production of DPH lab files on approximately eight (8) potential new cases.
15. I am not aware of any defendant in these types of proceedings having a problem obtaining representation of counsel such as having a motion for appointment of counsel denied.

Signed under penalties of perjury, August 5th, 2016.



Richard F. Linehan
Assistant District Attorney
Plymouth County
BBO No. 549107

| County | Citation - published decision/ Docket No | Date Decided | Arises From | Commonwealth | Defendant(s) | Result/Status |
|---------------|---|----------------------------------|--------------------------|-------------------------------|---|--|
| Essex | 477 Mass. App. Ct. 11470 | Commonwealth v. Scott | Magistrate Sessions | Ronald DeRosa | Dr. L. M. King / Ayarsoff, Pfa | On remand for the bulk of the drug analysis |
| Suffolk | 467 Mass. 336 (March 5, 2014) sjc-11465 | Commonwealth v. Scott | Plea | Vincent DeMore | Amy Belger | Standard Set -- remand for findings on the question - is a reasonable probability that the defendant would not have pleaded guilty had he known of Dookhan's misconduct at the Hinton drug lab |
| Suffolk | 467 Mass. 363 (March 5, 2014) sjc-11470 | Commonwealth v. Gardner | Mt to Dismiss | Vincent DeMore | Rebecca Jacobson, CPCS | Judgment of Dismissal Vacated - Dookhan not the Analyst |
| Suffolk | 467 Mass. 1002 (March 5, 2014) sjc-11462 | Commonwealth v. Rodriguez | Plea | Vincent DeMore | Claudia Leis Bolgar | Remand re Scott |
| Suffolk | 467 Mass. 1005 (March 5, 2014) sjc-11463 | Commonwealth v. Davila | Plea | Vincent DeMore | George Gormley/ Stephen Supra | Remand re Scott |
| Suffolk | 467 Mass. 1006 (March 5, 2014) sjc-11464 | Commonwealth v. Bjork | Plea | Vincent DeMore | Chauncey Wood | Remand re Scott |
| Suffolk | 467 Mass. 1007 (March 5, 2014) sjc-11465 | Commonwealth v. Rene Torres | Plea | Vincent DeMore | Dana Alan Curhan | Remand re Scott |
| Plymouth | 470 Mass. 1020 (Feb 23, 2015) sjc-11771 | Commonwealth v. Ramon Torres | Plea | Stacy Gauthier | Matthew J. Koes | Remand - affirms no benefit of Scott where Dookhan notarizes cert |
| Plymouth | Case Dismissed after Argument sjc-11795 | Commonwealth v. Velazquez-Ortiz | Plea | Gail McKeena | J Martin Richey | n/a |
| Suffolk/Essex | 471 Mass. 465 (May 18, 2015) | Bridgeman v. District Attorney | Plea | Vincent DeMore/ Quentin Weld | Segal, ACLU/ Keehn, CPCS | On remand |
| Suffolk | 474 Mass. 816 (July 24, 2016) sjc-11988 (14-P-1139) | Commonwealth v. Francis | Trial | Vincent DeMore | David Rotondo | Scott applies re trial; Remand for retrial |
| Plymouth | 475 Mass 1 (July 25, 2016) sjc-11981 | Commonwealth v. Resende | Plea | Laurie Yeshulas / Lisa Jacobs | Patrick Levin, CPCS | No Malfeasance by Dookhan as set up operator; Discussion of Scott Re: a different sample |
| Suffolk | 86 Mass. App. Ct. 568 (31 Oct 2014) (12-P-1215) | Commonwealth v. Gaston | Trial | Vincent DeMore | William White | Appeal from Verdict After Trial -- Remand for retrial - FAR by def DENIED |
| Suffolk | 88 Mass App Ct 618 (Aug 14, 2015) (14-P-63) | Commonwealth v. Curry | Trial | Vincent DeMore | Jacob Stone | No error - FAR DENIED |
| Suffolk | 88 Mass App Ct 901 (Oct 26, 2015) (14-P-1991) | Commonwealth v. Bond | Plea | Vincent DeMore | Craig Mulcahy | Jail Credits not applied to present sentence where no proof of actual innocence re drug crime - FAR DENIED |
| Plymouth | 89 Mass.App.Ct. 383 (May 12, 2016) (14-P-1111) | Commonwealth v. Antonio Williams | Plea | Laurie Yeshulas | Jason Howard | Remand re Scott |
| Plymouth | 12-P-1806 (April 2, 2014) | Commonwealth v. Dias | Trial | Laurie Yeshulas | Katherine Godin | Order denying motion for new trial affirmed -FAR DENIED |
| Middlesex | 13-P-1410 (July 31, 2014) | Commonwealth v. Perez | Plea | Moire Dobransky | Brad Bennion | Order denying mtn to withdraw plea affirmed; NP of Dookhan cases, others tested by feds, Not a "global" plea - FAR DENIED |
| Plymouth | 14-P-627 (Aug 6, 2014) | Commonwealth v. Pitts | Trial | Suzanne McDonough | Deborah Bates Riordan | Judgment Affirmed; Proof that a substance is a particular drug need not be made by chem. analysis - circumstantial evidence sufficient - FAR DENIED |
| Suffolk | 13-P-692 (Nov 7, 2014) | Commonwealth v. Portalatin | Plea / Mtn Revise-Revoke | Allison Callahan | Bernard Grossberg | Order Allowing Reduction of Sentence Affirmed |
| Bristol | 13-P-743 (Nov. 10, 2014) | Commonwealth v. Sime | Plea | Roger Lee Michel | Ethan Stiles | REMAND re Scott |
| Plymouth | 14-P-40 (Feb 20, 2015) | Commonwealth v. Antonio Williams | Plea | Robert C. Thompson | Jason Howard | Order denying motion to withdraw guilty pleas Affirmed -- FAR DENIED |
| Suffolk | 13-P-1948 (Feb 25, 2015) | Commonwealth v. Medina | Trial | Vincent DeMore | Jon R. Maddox | Order denying motion for new trial affirmed -FAR DENIED |
| Bristol | 14-P-1415 (Oct 5, 2015) | Commonwealth v. Velasquez | Trial | Corey Mastin | Michelle Anna Dame | Order denying motion for new trial affirmed -FAR DENIED |
| Bristol | 14-P-59 (Jan 14, 2016) | Commonwealth v. Richard | Trial | Owen Murphy | Pro Se (CPCS declined to appoint counsel) | Order denying motion for new trial affirmed |
| Suffolk | 15-P-22 (Jan 20, 2016) | Commonwealth v. Gorman | Plea | Vincent DeMore | Brad Bennion | Order allowing motion to withdraw guilty pleas reversed (FAR by def Application Pending) |
| Suffolk | 15-P-542 (Feb 26, 2016) | Commonwealth v. Blue | Trial | Vincent DeMore | Patricia DeJuneas | Order denying motion for new trial affirmed- FAR DENIED |
| Plymouth | Def mot withdraw appeal, 3/16/16, 13-P-9923 | Commonwealth v. Earl Reed | Plea | Laurie Yeshulas | Michelle Brennan | Issue of no shown Dookhan malefeasance vis-à-vis pills; d-counsel asks to withdraw appeal just before argument; pending affidavit |
| Bristol | 15-P-241 (April 1, 2016) | Commonwealth v. Cardoso | Plea | Corey Mastin | Brad Bannion | Order denying motion to vacate guilty pleas affirmed - FAR DENIED |
| Norfolk | 15-P-307 (April 20, 2016) | Commonwealth v. Webb | Trial | Susanne O'Neil | Rosemary Scappichio | Orders denying Post-conviction relief affirmed - FAR DENIED |
| Suffolk | 15-P-440 (July 7, 2016) | Commonwealth v. Hall | Trial | Janis Smith | Pro se New Trial Motion/ Michael Nam-Krane Appeal | Order denying motion for new trial affirmed |

COMMONWEALTH OF MASSACHUSETTS
SUPREME JUDICIAL COURT FOR SUFFOLK COUNTY

SUFFOLK ss.

No. SJ-2014-0005

KEVIN BRIDGEMAN, YASIR CREACH AND MIGUEL CUEVAS,
Petitioners,

v.

DISTRICT ATTORNEY FOR THE SUFFOLK DISTRICT, ET AL,
Respondents

AFFIDAVIT OF ASSISTANT DISTRICT ATTORNEY VINCENT J. DEMORE

1. I am a Suffolk County assistant district attorney formerly assigned to supervise the litigation of motions for new trial brought by defendants in Suffolk County relative to Annie Dookhan's conduct at the Department of Public Health's Hinton Drug Laboratory.
2. Within weeks of the closing of the Hinton Laboratory, I was assigned to supervise and participate personally in the litigation of motions for new trial in the Superior Court Department, District Court Department, and Municipal Court Department.
3. I have personally handled virtually all of the appellate litigation arising in Suffolk County stemming from Dookhan's misconduct, including *Commonwealth v. Scott*, 476 Mass. 336 (2014) ("*Scott*"), and *Bridgeman v. District Attorneys for the Suffolk and Eastern Districts*, 471 Mass. 465 (2015) ("*Bridgeman*").
4. As of December 23, 2014, when I authored an affidavit in support of the District Attorneys' brief in *Bridgeman*, there had been 196 motions for new trial adjudicated in the District and Municipal Court, the vast majority of which were resolved by agreement without the need for a contested hearing. On that date only ten cases were pending in our nine District and Municipal Courts.
5. As of December 23, 2014, 228 motions for new trial had been filed by Superior Court defendants. On that date, only 22 cases—spread across 17 defendants—were pending. That number represented an 80% diminution of the caseload in Suffolk County after the Court's clear and practical framework articulated in *Scott*.
6. To my knowledge, only one defendant was re-tried following an assented to allowance of his motion for new trial. See *Commonwealth v. Barrett*,

0984CR10981 (originally convicted at jury trial on January 3, 2012). That defendant rejected an offer to change his plea to guilty and be sentenced to two years in state prison (which was substantially less than the credit time he had accrued and would carry the added benefit of no longer serving as a predicate offense under G.L. c. 279, § 25). He was then convicted for a second time at jury trial.

7. Since December 2014, Suffolk County's nine Municipal and District Court offices and its Superior Court units have received 132 requests for drug certifications, 28 requests for laboratory notes ("bench notes") and four requests for other case related documents (e.g. grand jury minutes, police reports, etc.).
8. I have personally contacted the assistant district attorneys responsible for the production of discovery in drug lab cases. Based upon those conversations, I can report that certificates of analysis are typically provided within 24-48 hours of the request and are almost always provided within a week of the request.
9. In the overwhelming majority of cases, the evidence was processed by the Boston Police Department and certificates of analysis can be obtained within hours of a request to the evidence depository in Hyde Park.
10. Bench notes are obtained through a request from the Department of Public Health, who uses a database maintained by Navigant Consulting to provide the prior week's requests each Friday.
11. The time needed for the production of other case-related documents varies depending upon the nature of the item requested, but in any event, does not exceed two weeks.
12. In Suffolk County all discovery is available upon request without the need for a motion for post-conviction discovery pursuant to M.R.C.P. 30(c). However, once it is determined that Annie Dookhan served as an assistant analyst in any given case, the case can typically be resolved without the need for further discovery.
13. Since December 2014, 108 motions for new trial have been filed in the District and Municipal Courts and 30 have been filed in Superior Court. Twelve of those motions have resulted in full hearings, the balance were allowed by agreement.
14. Motions which are allowed by agreement can be handled in mere moments following the filing of a "boilerplate" motion for new trial and affidavit of appellate counsel. In Chelsea District Court, where I serve as the supervisor, such motions are handled administratively without the need for the appearance of either the defendant or counsel.
15. By way of comparison, 103 motions for new trial alleging ineffective assistance of counsel through a failure to provide immigration advice (so-called "*Padilla*" motions) have been litigated in Suffolk County since 2014. These motions are

rarely allowed by agreement, require the presence of all parties, feature unique pleadings, and require evidentiary hearings.

16. In practice, the litigation of motions to vacate a defendant's plea pursuant to *Scott* is a straight-forward affair. In the Municipal and District Court, judges grant hearings regardless of the quality of the pleadings or the completeness of the affidavits. Once a hearing has been granted, the hearings consist of the testimony of plea counsel and the defendant. Hearings rarely last more than 30 minutes.
17. The judge's decision essentially rises and falls on the credibility determination he or she makes relative to the defendant's testimony that the defendant would not have pled guilty had he been aware of Dookhan's misconduct.
18. Accordingly, the quality of the preparation and examination of witnesses has a far greater impact on the outcome of the motion than the sophistication of the legal arguments presented.
19. In my experience, which includes work at every level of our trial courts and appellate courts, the quality of the examinations conducted by trial attorneys—who have tremendous experience directing witnesses in the context of motions to suppress and trials—is vastly superior to that of the appellate litigators who rarely have the opportunity to direct or cross a witness.
20. Also, the fundamental plea versus trial calculus upon which *Scott* motions ultimately rise and fall is one that trial attorneys make on a daily basis as they advise their clients. Appellate attorneys—who do not enter an appearance until after a conviction—rarely engage in such an analysis.
21. Since the closing of the Hinton Laboratory, the Suffolk County District Attorney's Office has sought to prioritize the litigation of motions for new trial based upon the defendant's custody status or the immediate danger of irremediable adverse consequences facing a defendant.
22. To the best of my knowledge, no defendant who has wished to challenge his conviction has been denied that opportunity.
23. The efforts to create a comprehensive list of all so-called "Dookhan cases" has been a labor-intensive effort that has now totaled over 2,000 hours since the issuance of *The Identification of Individuals Potentially Affected by the Alleged Conduct of Chemist Annie Dookhan at the Hinton Drug Laboratory* by David E. Meier in August 2013 (the "Meier list").
24. The "Meier list" represented an important step in the effort to generate a list of all Dookhan cases, but fell far short of what was required to complete the

identification process. An example of “Meier List” entries is attached to this affidavit as Exhibit 1.¹

25. Each line on the “Meier list” contained a number of data points; each of those data points was headed as follows (tracking the column label, i.e., Submitting Agency (Normalized) can be found in Column A):
 - a. Submitting Agency (Normalized);
 - b. Submitting Agency (As Entered at Lab);
 - c. Town (Normalized);
 - d. County (Normalized);
 - e. Defendant(s) (As Entered at Lab);
 - f. Submitting Officer (As Entered at Lab);
 - g. Date Submitted to Lab;
 - h. Lab Sample #;
 - i. Results (As Entered at Lab);
 - j. Individual Defendant (As Entered at Lab);
 - k. Drug Submission Form (Click for Drug Receipt).
26. Missing from the “Meier list” was the police incident number, the docket number, and any demographic information (i.e., social security numbers or dates of birth).
27. Column K, the “Drug Submission Form” referenced a hyperlinked PDF of the drug receipt. The hyperlink was never functional on the Suffolk list, requiring the user to manually locate and open each PDF.
28. The drug receipt was a document generated jointly by the submitting agency (i.e. police department) and the drug laboratory. A typical drug receipt is attached to this affidavit as Exhibit 2.
29. The top portion of the drug receipt contains the names of the defendants and the police incident number. In the case of the Boston Police Department, the vast majority of the drug receipts also contain the address the defendant provided at his booking.

¹ All Exhibits are filed separately pursuant to the Single Justice’s impoundment order of February 3, 2016

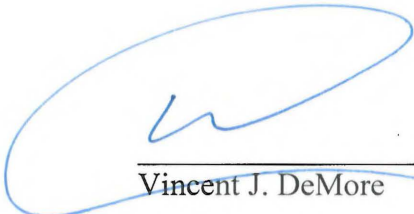
30. The bottom portion of the drug receipt was filled in by laboratory personnel and included a net weight of the items submitted and the analysis number assigned to them.
31. The internal data management systems of the Suffolk County District Attorney's office only track cases by incident report number and docket number. A defendant's name is also captured and, with less frequency, his date of birth and social security number.
32. In order to transform the "Meier list"—essentially a list of samples tested by Annie Dookhan—into a useful list of *cases* in which Annie Dookhan served as an analyst, a link needed to be drawn between the data maintained by the lab and the data maintained by the Suffolk County District Attorney's Office and the Court.
33. I began the process of drawing that link by adding a new column to the "Meier list". By opening and reading each of the drug receipts, I could then enter as a new data point the incident report number, i.e., the "cc" number found at the top of Exhibit 2.
34. In the Suffolk County District Attorney's Office's database, incident report numbers and docket numbers are tied together. For instance, if one searches for the incident report number found on Exhibit 2, 100279158, it would return results for all cases associated with that incident report number—including co-defendants, if any. Conversely, if one searches by the docket number associated with that incident report number, 1001CR003767, it will access only that case, examples of the two search results can be found in Exhibit 3 and Exhibit 4, attached to this affidavit.
35. After manually searching for and reading through each of the drug receipts and entering the new data on all 31,925 lines of the "Meier list", I was then able to search for each of those incident reports in the Suffolk County District Attorney's Office's database.
36. The search for each individual incident report number would generate either no docket numbers (such as would be the case in a probable-cause buy, overdose, or found drugs), a single docket number, or multiple docket numbers. To the extent multiple docket numbers were returned, additional lines were added to the "Meier list" to accommodate them: essentially the line was duplicated and the defendant's name was changed to reflect the newly found co-defendant.
37. Unfortunately, data-entry issues and architectural problems with the Suffolk County District Attorney's Office's database resulted in the possibility that results could have been missed and cases not captured when searching by incident report number alone. In order to ensure accuracy, a second review was then conducted using a manual name search.
38. To conduct the name search, I manually entered the name of the defendant for each entry for which a docket number was missing. These searches would

frequently result in the recovery of multiple possible matches. In order to complete the match, each entry was inspected relative to the date of offense and charged offenses to determine if they matched the date of submission. Fortunately, the Boston Police Department—which submitted the overwhelming majority of samples—submitted drugs to the lab within 24-48 hours of their seizure, thereby providing a clue as to the date of offense. Entries were also checked for the appropriate class of drug, i.e., a case charging distribution of heroin resulted in a certificate of analysis for a class A substance. An example of the results generated by a name search, which is also illustrative of the shortcomings in the Suffolk County District Attorney’s Office’s database, is attached to this affidavit as Exhibit 5.

39. At the conclusion of that process—which took approximately 1,750 man hours to complete—the list was provided to the Committee for Public Counsel Services.
40. In the fall of 2015, this affiant suggested to the Court that various other state agencies could be useful in further perfecting the lists, which by this point had long since evolved from their original form and is better described as the “Suffolk list”.
41. To that end, Mark Prior provided each of the counties with a report run using MassCourts data that was generated from records kept and maintained by the clerks’ offices of the Municipal, District, and Superior Courts (the “Prior list”). The trial court maintained records linking together a defendant’s name, docket number, incident report number, date of birth, and social security number.
42. To utilize the data provided in the “Prior list”, I first normalized the data in the “Suffolk list” to match the current docket naming conventions, i.e. Superior Court dockets had to be edited from SUCR2011-12345 to 1184CR12345, and the formats of the Municipal and District Court dockets had to be checked to confirm that they conformed to the appropriate standards.
43. Using a “VLOOKUP” function in Microsoft Excel, the missing “Suffolk list” docket number fields were populated by the corresponding fields from the “Prior list” where incident report numbers matched.
44. The remaining lines that were missing docket numbers were then subject to a manual search through the “Prior list” using the defendant’s name. Where a match was found, a second search was run using whatever data was associated with that case in the “Prior list” to ensure that co-defendants were captured. For instance, if a defendant was matched, a search was conducted for the incident report number as it appears in the “Prior list” to determine if it would return other results.
45. At the conclusion of the name search, the Suffolk County District Attorney’s Office determined that all sources of information had been exhausted to determine docket numbers.

46. A "VLOOKUP" function was then utilized to populate newly created date of birth and social security number fields for each of the identified cases using first the data in the "Prior list" and then data pulled from internal database reports.
47. The remaining lines for which dates of birth and social security numbers could not be identified were then provided to twelve civilian investigators who searched for board of probation reports by name, declaring a match when the docket number associated with the defendant's case also appeared on the board of probation report.
48. Lastly, a final column was added reflecting the court of origin (e.g. dockets with court code "01" were marked as BMC Central, dockets with court code "02" were marked as "Roxbury", etc.).
49. These lists, incorporated by reference, have been provided to the Committee for Public Counsel Services ("CPCS), the American Civil Liberties Union of Massachusetts ("ACULM"), and the Court. An example of the final "Suffolk list" is attached to this affidavit as Exhibit 6.
50. Following the recent detailed disclosures of the allegations of misconduct of Sonja Farak, the Suffolk County District Attorney's Office, utilizing data from its own internal databases, the Office of the Attorney General, and the Trial Court, has completed its review of the samples tested as "overflow" samples by Ms. Farak while she was employed at the Amherst lab. Ms. Farak tested at least some evidence in 161 cases which resulted in adverse dispositions.
51. In June 2016, the petitioners and the respondents worked cooperatively to fashion a fair and balanced approach to notice and the District Attorneys began the process of securing funding. Just as notice was nearly ready to be sent, CPCS and the ACLUM stepped away from the "negotiating table" and asked the Single Justice to report this case to the full bench. Due to the timing of that abrupt and unprovoked retreat from a cooperative solution, funding was lost for the notice project, and the information technology infrastructure project from which the District Attorneys diverted the money was left unfunded and canceled. As the new fiscal year has begun, the District Attorneys have found a vendor to complete the notice process and have secured a new funding stream. We anticipate sending notice shortly and will seek to supplement our filings after notice is sent.

SIGNED UNDER THE PAINS AND PENALTIES OF PERJUERY THIS 5th DAY
OF AUGUST, 2016



Vincent J. DeMore