

Massachusetts' Drug Problem

Annie Dookhan's goal was simple: Get drug users "off the street" and into prison. Dookhan took pride in her work at a state forensics drug lab, where she tested evidence seized from alleged drug offenders to determine whether the substances were illegal. But Dookhan was more interested in imprisoning defendants than discovering whether they were actually guilty. So she falsified tens of thousands of reports, often marking results as "positive" without testing a substance. When whistleblowers reported Dookhan, the lab silenced them, then covered up her misconduct and allowed her to continue her work. Over her nine-year career, Dookhan tainted the convictions of tens of thousands of people—most of them poor, a majority of them charged with mere possession and then coerced into plea deals.

A series of rulings by Massachusetts' highest court has helped some of these "Dookhan defendants" overturn their wrongful convictions. But 24,391 of them remain unaided, some still in prison or on parole, others denied housing and employment on account of their criminal records. A sizable number have already been deported. The Massachusetts court has found that each of these defendants has a right to a hearing—yet by one estimate, appealing the remaining convictions case-by-case would take 48 years and stretch the public defenders' resources to a breaking point. How, then, can the state possibly restore justice to these 24,391 defendants convicted on the basis of potentially falsified evidence?

The American Civil Liberties Union has an idea: Overturn their convictions. Every single one of them. Immediately.

Last week, the ACLU filed a forceful, exasperated brief with the Massachusetts Supreme Judicial Court, the highest court in the state, urging the justices to vacate every "Dookhan-tainted conviction" in one fell swoop. If that remedy sounds extreme, so is the crisis: 24,391 people being denied due process every minute of every day in a state that cannot afford to fulfill its legal obligations to them. Meanwhile, a second Massachusetts crime lab scandal looms: Sonja Farak, a former employee at the Amherst crime lab with duties similar to Dookhan's, was convicted of regularly stealing drug samples and conducting analyses while blazingly high on crack cocaine, methamphetamine, amphetamine, ketamine, ecstasy, and LSD. Farak's egregious misconduct may have tainted up to 18,000 cases.

That leaves Massachusetts staring down as many as 42,000 wrongful convictions. The Supreme Judicial Court initially expected prosecutors to help locate and assist Dookhan defendants but many have done the opposite, actively thwarting advocacy groups' efforts. When Dookhan litigation began, some district attorneys were happy to vacate any possession sentence stained by Dookhan's misconduct. But others fought tooth and nail to keep Dookhan defendants behind bars, vigorously opposing motions for relief, explicitly acknowledging that their goal is to protect convictions, not secure justice. At one hearing, a justice asked a district attorney whether his office had an obligation to

inform Dookhan defendants that they had been convicted based on possibly falsified evidence. The answer? No.

The DAs' resistance is especially remarkable given the state Supreme Judicial Court's firm declaration that Dookhan defendants have a right to challenge their convictions. In fact, the justices have even found that any defendants whose evidence was analyzed by Dookhan are "entitled to a conclusive presumption that egregious government misconduct occurred" in their case.

But prosecutors are not especially eager to disseminate that information. This summer, DAs anticipated that the court would soon require them to inform the 24,391 remaining Dookhan defendants of their rights as outlined by the justices. So they preemptively sent a letter to the defendants—an extraordinarily confusing and vaguely menacing notice that did not explain the defendants' rights and instead implied that they might be re-prosecuted and forced to re-serve their sentences. The letter included a Spanish "translation" so garbled and nonsensical as to be unreadable. It was sent in a cryptically marked envelope purporting to be from both Massachusetts and "RG/2 Systems Inc." To all outward appearances, the letter was spam mail or a scam. In other words, it was a poison pill.

For the ACLU, that was the last straw. The group has concluded that many district attorneys are not interesting in securing justice for Dookhan defendants. Many of them are more or less honest about their disinterest in vacating Dookhan-tainted convictions. In May 2015, the Supreme Judicial Court ruled that the delay in overturning these convictions had not violated defendants' due process rights—yet. Sixteen months later, with no relief in sight, the ACLU believes the time has come to concede that the case-by-case approach will not and cannot work: The only avenue for vindicating Dookhan defendants' due process rights is a mass reversal of 24,391 wrongful convictions. Already, the court has invited amicus briefs on the ACLU's proposal, suggesting the justices are taking it very seriously.

On Friday, I spoke with Matthew Segal, legal director at the ACLU of Massachusetts, about his request for a sweeping resolution to the Dookhan scandal.

"This is the right remedy," he told me, "because everything else has been tried and it just hasn't worked. We now know that we've only scratched the surface of the cases that Dookhan tainted. There simply aren't enough lawyers in Massachusetts, or enough resources, to continue to litigate these cases one at a time."

Segal also expressed remorse that the Dookhan scandal had to be solved through litigation rather than cooperation.

"This was and is a perfect opportunity for the state to walk away from tainted drug cases that weren't really doing any good for anyone anyway," he said. "Public officials in Massachusetts are quite willing to say that we can't arrest our way out of the problem of drug abuse. And that's true—but at the same time, we need to act on that belief."

Jesus Christ this should be simple. A necessary element for convicting someone of possession of a drug is that they...shocker...POSSESSED THE DRUG. You HAVE to actually prove the the substance recovered was the drug, that's a necessary step. More... Segal noted that at this point, most Dookhan defendants are out of prison. The ACLU isn't trying to spring open the jailhouse doors; it's attempting to help people still suffering from the vast collateral consequences of their convictions. I asked Segal why he thought the state remained so committed to keeping wrongful convictions on these defendants' records.

“It’s as though the state is almost addicted to prosecuting its way out of the problem of drug abuse,” he said. “The addiction is so strong that the state won’t even walk away from convictions tainted by fraud. And they *could* walk away. Prosecutors could walk away from these cases right now.” Segal sighed “But they won’t.”

By: Mark Joseph Stern