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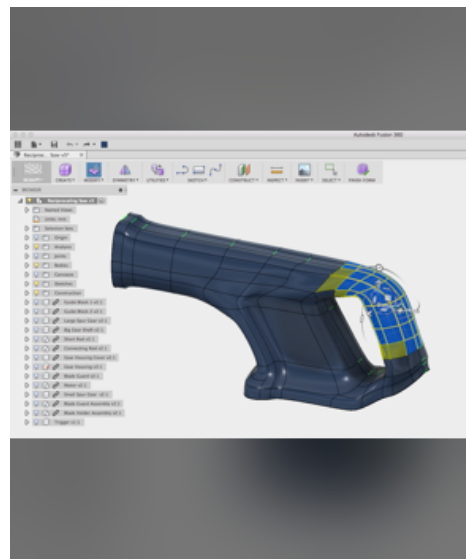
McGovern: Dookhan-linked convictions closer to being overturned

Bob McGovern Thursday, January 19, 2017



Credit: Ted Fitzgerald

CASES DISMISSED? Thousands of convictions — based in part on findings of former state chemist Annie Dookhan, above in a 2013 court appearance, who pleaded guilty to charges she falsified drug tests — are closer to being dismissed after a Supreme Judicial Court move yesterday.



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▶ Thousands of defendants whose cases may have been tainted by disgraced former state chemist Annie Dookhan could soon see their convictions tossed after a high court decision that all but forces prosecutors to dismiss a lion's share of the charges.

The Supreme Judicial Court could have thrown out the 24,000 cases that may have been corrupted by Dookhan, but instead it did the next best thing — a divided SJC yesterday gave prosecutors 90 days to list all of the convictions they want to dismiss.

For the rest, district attorneys have to certify in a letter that they can and will produce evidence — not handled by Dookhan — that could secure a guilty verdict if they are forced to go to trial again.

“The remedy we order, challenging as it is to implement, preserves the ability of these defendants to vindicate their rights through case-by-case adjudication, respects the exercise of prosecutorial discretion, and maintains the fairness and integrity of our criminal justice system,” SJC Chief Justice Ralph Gants wrote.

The not-so-secret result of the decision will likely be thousands of dismissals. District attorney offices are already burdened with ever-increasing caseloads, and taking the time to go back and re-prosecute an avalanche of small-time drug offenses from years past would be crippling.

If they choose to not dismiss cases, prosecutors have to foot the bill for notifying every single defendant of their rights. Gants noted that this could be avoided by “reducing the number of defendants” whose cases will not be dismissed.

“This was a major victory for Dookhan defendants and for justice and fairness in the commonwealth,” said Dan Marx, a private attorney who worked with the American Civil Liberties Union on the case.

Peter Elikann, the former chairman of the Massachusetts Bar Association’s criminal justice section, said the SJC’s decision puts the onus on the state’s prosecutors specifically to “do the right thing.”

“We’ll see whether the DAs do follow the spirit of it,” Elikann said.

The spirit of the thing, in no uncertain terms, is to clear the docket.

Daniel Conley, the Suffolk DA, and Marian Ryan, of Middlesex, both pointed to the decision as reaffirming their belief that they should be allowed to determine which cases should continue.

Conley said his office will weigh a range a factors — from other witnesses and



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evidence to the seriousness of each case — in making decisions. This isn't new for his office: Suffolk prosecutors have tossed 175 Dookhan cases.

While witnesses and evidence will be factors for sure, the biggest consideration is the value of protecting these potentially tainted convictions.

Is it worth paying a taxpayer-funded fortune to fight old battles?

No, it's not, and that's why thousands of Dookhan defendants will likely get long-delayed justice after just 90 more days.

Matt Stout contributed to this report.

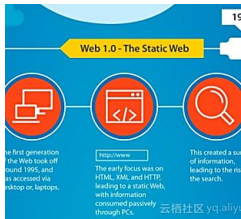
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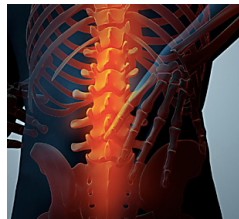
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