

<p>COMMISSION OF INQUIRY ON HORMONE RECEPTOR TESTING</p> <p>BEFORE THE HONOURABLE JUSTICE CAMERON - COMMISSIONER</p> <p>July 10, 2008</p> <p>Appearances:</p> <p>Bernard Coffey, Q.C. Commission Co-counsel Sandra Chaytor, Q.C./Mandy Woodland Commission Co-counsel</p> <p>Jackie Brazil Her Majesty in Right of NL</p> <p>Peter Browne/Jane Hennebury Doctors Kara Laing et al</p> <p>Daniel Simmons Eastern Regional Integrated Health Authority</p> <p>Darlene Russell. Members of the Breast Cancer Testing Class Action</p> <p>Mark Pike NL Medical Association Jennifer Newbury Canadian Cancer Society (NL Division) Blair Pritchett. Central, Western and Labrador-Grenfell Regional Integrated Health Authorities</p>	<p>THIS PAGE ONLY REVISED NOVEMBER 18, 2008</p> <p>LIST OF EXHIBITS</p> <p>EXHIBITS P-2225 THROUGH P-2270 Pg. 5</p> <p>EXHIBITS P-2273 THROUGH P-2280 Pg. 5</p> <p>EXHIBIT P-2281 - CANCELLED EXHIBIT</p> <p>EXHIBITS P-2282 THROUGH P-2296 Pg. 5</p> <p>EXHIBIT P-2271 Pg. 114</p> <p>EXHIBITS P-2297 AND P-2298 Pg. 214</p>
<p>TABLE OF CONTENTS</p> <p>DR. PAUL NEIL - SWORN</p> <p>Examination by Bernard Coffey, Q.C. Pgs. 4 - 362</p> <p>Certificate</p>	<p style="text-align: right;">Page 4</p> <p>1 THE COMMISSIONER: 2 Q. Mr. Coffey. 3 COFFEY, Q.C.: 4 Q. Thank you, Commissioner. The next witness is 5 Dr. Paul Neil. 6 DR. PAUL NEIL, SWORN, EXAMINATION BY BERNARD COFFEY, Q.C. 7 REGISTRAR: 8 Q. Would you please state and spell your complete 9 name for the Commission? 10 DR. NEIL: 11 A. Paul Reginald Neil. Last name, spell the last 12 name? 13 REGISTRAR: 14 Q. Yes, please. 15 DR. NEIL: 16 A. N-E-I-L. 17 REGISTRAR: 18 Q. Thank you very much. 19 DR. NEIL: 20 A. Thank you. 21 COFFEY, Q.C.: 22 Q. Doctor, you got away easily. 23 DR. NEIL: 24 A. Short name. 25 COFFEY, Q.C.:</p>

Page 5

1 Q. Many people have had to spell their full first
 2 and last names. Commissioner, I have a
 3 request to enter some exhibits, please, and
 4 they are Exhibits P-2225 through 2270
 5 inclusive, 2273 through 2280 inclusive, 2282
 6 through 2296 inclusive.
 7 THE COMMISSIONER:
 8 Q. Entered.
 9 EXHIBITS ENTERED AND MARKED P-2225 THROUGH P- 2270
 10 EXHIBITS ENTERED AND MARKED P-2273 THROUGH P- 2280
 11 EXHIBITS ENTERED AND MARKED P-2282 THROUGH P- 2296
 12 COFFEY, Q.C.:
 13 Q. Thank you, Commissioner. Registrar, could we
 14 bring up, please, Exhibit P-2225, please? Dr.
 15 Neil, I understand that this is your
 16 curriculum vitae?
 17 DR. NEIL:
 18 A. That's correct.
 19 COFFEY, Q.C.:
 20 Q. And if we could, please, I'm not going to take
 21 you through all the details of it, but I'm
 22 going to ask you to outline for the
 23 Commissioner, please, highlight for her your
 24 educational background and your professional
 25 background, please?

Page 6

1 DR. NEIL:
 2 A. I started as a staff pathologist in Corner
 3 Brook in January of 1987.
 4 COFFEY, Q.C.:
 5 Q. If I could, please, medical school first, and
 6 then -
 7 DR. NEIL:
 8 A. Sure. I did my training at Health Sciences
 9 Centre in St. John's, Memorial University.
 10 First of all, I had a Bachelor of Science in
 11 Chemistry in May 1977, Bachelor of Medical
 12 Science in May 1979, and an MD in 1981 from
 13 Memorial University. My post-graduate
 14 education was from Memorial University,
 15 majority of that training was there. A very
 16 short period of time, I spent in Toronto
 17 Western Hospital, at the end of my training.
 18 Rotating internship was in June 1981 until
 19 June 1982 and my general pathology residency
 20 was July '82 to December '86.
 21 COFFEY, Q.C.:
 22 Q. And then after that?
 23 DR. NEIL:
 24 A. January '87, I started as a staff pathologist
 25 at Western Memorial and that continued until

Page 7

1 May 1992, when I became Associate Director of
 2 Pathology, and that position lasted until
 3 October 1998 when I became the Director in
 4 that position, from November until the present
 5 day.
 6 COFFEY, Q.C.:
 7 Q. And Doctor, are you a member of the Canadian
 8 College or the American College?
 9 DR. NEIL:
 10 A. American.
 11 COFFEY, Q.C.:
 12 Q. American College of Pathologists?
 13 DR. NEIL:
 14 A. Yes.
 15 COFFEY, Q.C.:
 16 Q. And Doctor, could you tell the Commissioner,
 17 please, what the responsibilities are of your
 18 current position, in the sense of who do you
 19 report to, who reports to you, how many people
 20 report to you and what you're actually
 21 responsible for?
 22 DR. NEIL:
 23 A. The current position that I hold, my title is
 24 really the Regional Chief of Discipline of
 25 Pathology and Laboratory Medicine. That

Page 8

1 position has a reporting mechanism whereby I
 2 report to the VP of Medical Services, Dr. Ken
 3 Jenkins. Working directly with me, side by
 4 side, is a regional director of laboratory
 5 services. Below her, there are two other
 6 laboratory--assistant laboratory managers,
 7 which I work directly with as well. We have,
 8 in our institution now, four pathologists
 9 working. We have position for five, which is
 10 not currently filled, but should be filled by
 11 the end of the month.
 12 COFFEY, Q.C.:
 13 Q. And so that number of positions, is that in
 14 addition to yourself or including you?
 15 DR. NEIL:
 16 A. That's including myself.
 17 COFFEY, Q.C.:
 18 Q. Okay.
 19 DR. NEIL:
 20 A. So there's four current, five to be, and I'm
 21 actually looking for a sixth.
 22 COFFEY, Q.C.:
 23 Q. Is there funding for the sixth position?
 24 DR. NEIL:
 25 A. Not yet.

Page 9

1 COFFEY, Q.C.:

2 Q. Okay, but -

3 DR. NEIL:

4 A. I'm hoping.

5 COFFEY, Q.C.:

6 Q. Okay. Go ahead, Doctor.

7 DR. NEIL:

8 A. Okay, so those people, those pathologists work

9 directly with me and take direction from me in

10 the appropriate manner.

11 COFFEY, Q.C.:

12 Q. Are they located in the same building you are?

13 DR. NEIL:

14 A. Yes, they are.

15 COFFEY, Q.C.:

16 Q. Go ahead, I'm sorry.

17 DR. NEIL:

18 A. So that's--is that what you're looking for?

19 COFFEY, Q.C.:

20 Q. Yes, that's the kind of--the structural

21 arrangement?

22 DR. NEIL:

23 A. Yes.

24 COFFEY, Q.C.:

25 Q. And I take it that that arrangement is for the

Page 10

1 Western Regional Health Authority?

2 DR. NEIL:

3 A. Yes.

4 COFFEY, Q.C.:

5 Q. Which would have come into being, I

6 understand, April 1st, 2005?

7 DR. NEIL:

8 A. Correct.

9 COFFEY, Q.C.:

10 Q. That has been the structure since April 1,

11 2005?

12 DR. NEIL:

13 A. Correct.

14 COFFEY, Q.C.:

15 Q. How about before that, Doctor?

16 DR. NEIL:

17 A. Before that, Western was called Western Health

18 Care Corporation. The structure prior to 2005

19 was very much similar. With regionalization

20 provincially, and I know that's what you're

21 referring to, the catchment area for Western

22 did not change. So really remains -

23 COFFEY, Q.C.:

24 Q. Between like March 31st, 2005 and April 1,

25 2005, it remained more or less the same?

Page 11

1 DR. NEIL:

2 A. Yes.

3 COFFEY, Q.C.:

4 Q. Okay.

5 DR. NEIL:

6 A. Regionalization--Western Health Care

7 Corporation came into being around '99.

8 COFFEY, Q.C.:

9 Q. Okay.

10 DR. NEIL:

11 A. And that structure that I spoke about, the

12 Regional Chief of Discipline of Pathology and

13 Laboratory Medicine was established then.

14 COFFEY, Q.C.:

15 Q. And dates back to 1999?

16 DR. NEIL:

17 A. Dates back to '99.

18 COFFEY, Q.C.:

19 Q. And you've held that position since that time?

20 DR. NEIL:

21 A. Yes.

22 COFFEY, Q.C.:

23 Q. Before that, what was the structure?

24 DR. NEIL:

25 A. Before that, we were under really Western

Page 12

1 Memorial Hospital and -

2 COFFEY, Q.C.:

3 Q. That would date back how far?

4 DR. NEIL:

5 A. That would date back way before my time.

6 COFFEY, Q.C.:

7 Q. All right.

8 DR. NEIL:

9 A. And the structure there, the pathologist in

10 charge, when I first came there, was in charge

11 of Western Memorial itself, the laboratory

12 there, but he also had responsibilities

13 outside Western Memorial, for the pathology

14 aspect of other hospitals, which were included

15 in that region, including Stephenville, Port

16 aux Basques, Port Saunders, any pathology

17 specimens that would fall into that catchment

18 area of Western Memorial. So his duties

19 really did not encompass as much as the duties

20 that I deal with today. He dealt with the

21 pathology aspect. Today, I deal with that,

22 plus all other laboratory related issues from

23 all those labs from Port aux Basques to Port

24 Saunders inclusive, those being including--

25 those including issues such as chemistry,

Page 13

1 microbiology, hematology, that sort of thing,
 2 and the administration that goes along with
 3 that.
 4 COFFEY, Q.C.:
 5 Q. So Doctor, for example, in the year then say
 6 1997, 1998 up until the creation of the
 7 regional authority in 1999, in the years '97,
 8 '98, into '99, at that time, for example in
 9 relation to breast tissue, okay, breast
 10 surgery in that catchment area, as you put it
 11 -
 12 DR. NEIL:
 13 A. Yes.
 14 COFFEY, Q.C.:
 15 Q. - would be performed in which hospitals?
 16 DR. NEIL:
 17 A. Mainly at Western. Occasionally, and
 18 sometimes more often than not, and probably
 19 less so now than it used to be, Stephenville
 20 would have a surgeon. The remaining hospitals
 21 did not, not to the best of my knowledge.
 22 COFFEY, Q.C.:
 23 Q. And the hospital, the name of the hospital in
 24 Stephenville?
 25 DR. NEIL:

Page 14

1 A. Sir Thomas Roddick.
 2 COFFEY, Q.C.:
 3 Q. So that if in some of the materials--because
 4 there are numerous spreadsheets of one form or
 5 another that have been and I anticipate may be
 6 entered it, if there's a reference to Western
 7 Memorial, Sir Thomas Roddick, that in fact is
 8 the Stephenville hospital?
 9 DR. NEIL:
 10 A. Yes, that's correct.
 11 COFFEY, Q.C.:
 12 Q. Okay, and in those days, if there was breast
 13 surgery in Stephenville, how would the sample
 14 end up in Corner Brook? Would it go--would it
 15 end up in Corner Brook for any kind of testing
 16 that was required by a pathologist or
 17 analysis?
 18 DR. NEIL:
 19 A. All samples, all pathology samples came to
 20 Corner Brook for testing.
 21 COFFEY, Q.C.:
 22 Q. In what form would it come to Corner Brook?
 23 Would it be already encased in a block, in
 24 blocks, or would it -
 25 DR. NEIL:

Page 15

1 A. No, they would come in formalin, in a formalin
 2 container with the tissue in it.
 3 COFFEY, Q.C.:
 4 Q. Okay, so that would be dating back to '98/99
 5 DR. NEIL:
 6 A. Yes.
 7 COFFEY, Q.C.:
 8 Q. If there was any surgical sample that required
 9 pathology work -
 10 DR. NEIL:
 11 A. Any surgical or cytology sample that required
 12 us to deal with came in a proper container in
 13 formalin or alcohol, if it was cytology. It
 14 would come to us.
 15 COFFEY, Q.C.:
 16 Q. And there it would be grossed and accessioned
 17 and grossed?
 18 DR. NEIL:
 19 A. And there it would be grossed and accessioned,
 20 yes.
 21 COFFEY, Q.C.:
 22 Q. Were there any other hospitals that were the
 23 origins of surgical samples back in those
 24 days?
 25 DR. NEIL:

Page 16

1 A. Yes.
 2 COFFEY, Q.C.:
 3 Q. Which other ones?
 4 DR. NEIL:
 5 A. Port aux Basques sent some.
 6 COFFEY, Q.C.:
 7 Q. Would they have sent breast?
 8 DR. NEIL:
 9 A. No.
 10 COFFEY, Q.C.:
 11 Q. No, okay.
 12 DR. NEIL:
 13 A. Port Saunders occasionally will send some.
 14 COFFEY, Q.C.:
 15 Q. But not breast tissue, I take it?
 16 DR. NEIL:
 17 A. No. No, the only breast tissue that came was
 18 Stephenville, Sir Thomas Roddick.
 19 COFFEY, Q.C.:
 20 Q. Okay, and what about--when did that last
 21 happen, breast tissue coming from
 22 Stephenville?
 23 DR. NEIL:
 24 A. It still continues to come today.
 25 COFFEY, Q.C.:

Page 17

1 Q. It does today?
 2 DR. NEIL:
 3 A. Yes.
 4 COFFEY, Q.C.:
 5 Q. Okay, and so I take it at various times over
 6 the years, if there's a surgeon in
 7 Stephenville -
 8 DR. NEIL:
 9 A. Yes.
 10 COFFEY, Q.C.:
 11 Q. - that performs breast surgery, then it would
 12 be done there?
 13 DR. NEIL:
 14 A. Yes.
 15 COFFEY, Q.C.:
 16 Q. And the tissue specimens are transported to
 17 Corner Brook?
 18 DR. NEIL:
 19 A. Yes.
 20 COFFEY, Q.C.:
 21 Q. Your institution for processing?
 22 DR. NEIL:
 23 A. Yes.
 24 COFFEY, Q.C.:
 25 Q. Is that, in fact, going on right now?

Page 18

1 DR. NEIL:
 2 A. Yes.
 3 COFFEY, Q.C.:
 4 Q. Currently, okay. Doctor, are you aware of
 5 exactly what means is used to transport such
 6 tissue?
 7 DR. NEIL:
 8 A. Yes.
 9 COFFEY, Q.C.:
 10 Q. Okay, could you tell the Commissioner, please,
 11 about that?
 12 DR. NEIL:
 13 A. When the tissue is removed in the OR in
 14 Stephenville, it's collected, brought by
 15 hospital truck.
 16 COFFEY, Q.C.:
 17 Q. In Stephenville, what's done with it?
 18 DR. NEIL:
 19 A. I haven't actually seen it.
 20 COFFEY, Q.C.:
 21 Q. Well, what's your understanding?
 22 DR. NEIL:
 23 A. My understanding is that the specimen is
 24 removed from the patient as per usual, placed
 25 in the appropriate fixation, formalin.

Page 19

1 COFFEY, Q.C.:
 2 Q. So I take it it's immersed in formalin?
 3 DR. NEIL:
 4 A. Immersed in formalin. The specimen, the
 5 surgery that was done that day is brought in
 6 by hospital truck.
 7 COFFEY, Q.C.:
 8 Q. How long does it usually take, do you know?
 9 DR. NEIL:
 10 A. It's usually the same day.
 11 COFFEY, Q.C.:
 12 Q. So if a surgery, for example, occurs in the
 13 morning in Stephenville, it would arrive in
 14 the normal course, when in your institution?
 15 DR. NEIL:
 16 A. The surgery--the truck usually arrives around
 17 noon. So whatever they can put on that, that
 18 truck, when it comes through Stephenville,
 19 would be put on that truck and brought to us.
 20 If there are things are done later in the
 21 afternoon, obviously that will have to wait
 22 until the transport the next day.
 23 COFFEY, Q.C.:
 24 Q. Okay.
 25 DR. NEIL:

Page 20

1 A. But there's a truck on a daily basis that
 2 comes with those specimens.
 3 COFFEY, Q.C.:
 4 Q. And they arrive at your institution?
 5 DR. NEIL:
 6 A. Yes.
 7 COFFEY, Q.C.:
 8 Q. Are they in any way refrigerated, you know, in
 9 the transport process, do you know?
 10 DR. NEIL:
 11 A. In the transport process, I don't think so,
 12 but I don't honestly know.
 13 COFFEY, Q.C.:
 14 Q. Okay. So when you--when they arrive at -
 15 DR. NEIL:
 16 A. Let me correct myself. I do know that they
 17 are put in cooler, like a picnic cooler.
 18 COFFEY, Q.C.:
 19 Q. Inside a container inside a picnic cooler?
 20 DR. NEIL:
 21 A. The containers are put in a picnic cooler, I
 22 do know that.
 23 COFFEY, Q.C.:
 24 Q. So when you first get them, what do you
 25 actually see then, Doctor, I mean, a breast

Page 21

1 specimen from Stephenville?
 2 DR. NEIL:
 3 A. They arrive at my grossing bench. Someone has
 4 removed them from that picnic table--or picnic
 5 cooler, I'm sorry, and someone has removed
 6 them and brought them to our grossing bench.
 7 COFFEY, Q.C.:
 8 Q. And then when you open the container, I take
 9 it it's a sealed container, each one?
 10 DR. NEIL:
 11 A. Yes.
 12 COFFEY, Q.C.:
 13 Q. The tissue specimen would be there as it was
 14 excised, I take it, whatever form it was in?
 15 DR. NEIL:
 16 A. Yes, that's correct.
 17 COFFEY, Q.C.:
 18 Q. What's the process now then in terms of how
 19 are they handled in Corner Brook then? If you
 20 had been not here today, you were in Corner
 21 Brook and receiving such a specimen, how would
 22 you handle it?
 23 DR. NEIL:
 24 A. A breast specimen?
 25 COFFEY, Q.C.:

Page 22

1 Q. Yes.
 2 DR. NEIL:
 3 A. Today, we would look at the specimen, match
 4 the requisition with the specimen container,
 5 to make sure we're dealing with the correct
 6 patient. It would be accessioned, given a
 7 surgical number, dated. That's all done by
 8 our technologists. It's given to us to
 9 examine. So, as you say, we open it up,
 10 remove it, place it on our grossing bench, do
 11 our description of what we have to deal with,
 12 which this really applies to any surgical
 13 specimen.
 14 COFFEY, Q.C.:
 15 Q. I appreciate that.
 16 DR. NEIL:
 17 A. Describe what we see, measurements, weights,
 18 that sort of thing. For breast particularly,
 19 we will mark the surgical margins with ink
 20 appropriately, giving orientation.
 21 COFFEY, Q.C.:
 22 Q. Yes.
 23 DR. NEIL:
 24 A. After that is done, we will bread slice it.
 25 Do you want -

Page 23

1 COFFEY, Q.C.:
 2 Q. And what, in fact, does that mean, yes?
 3 DR. NEIL:
 4 A. That means we take a large knife and we incise
 5 that breast tissue in small, as small as we
 6 can, slices across its face, from the under
 7 surface, not from the skin surface, from the
 8 under surface.
 9 COFFEY, Q.C.:
 10 Q. Under surface, yes.
 11 DR. NEIL:
 12 A. Because that's easier, it's easier to cut.
 13 Then you'll find where your tumour is.
 14 COFFEY, Q.C.:
 15 Q. Okay.
 16 DR. NEIL:
 17 A. That tumour has to be then exposed to formalin
 18 again. So after it's breast sliced and
 19 marked, we can take paper towel, that sort of
 20 thing, place it in between those bread slices
 21 and the purpose of that is to--I guess you've
 22 heard the term wicking?
 23 COFFEY, Q.C.:
 24 Q. Yes.
 25 DR. NEIL:

Page 24

1 A. Is to get more formalin in between those
 2 spaces.
 3 COFFEY, Q.C.:
 4 Q. Okay.
 5 DR. NEIL:
 6 A. So the tissue can adequately fix or be exposed
 7 to the formalin within the container. We will
 8 let that fix overnight. The next morning, if
 9 this is my case, the next morning, I'll go
 10 back, remove the wicking, take the breast out
 11 of the formalin, remove the wicking, again
 12 examine the slices that I've seen, describe
 13 what I see, look for the tumour or the lesion
 14 that the breast was removed for, presume it
 15 was a tumour, a malignant tumour, find that
 16 tumour, describe it, measure it and take
 17 samples of that tumour in small blocks, small
 18 pieces, and furthermore, we will take samples
 19 of the surrounding breast tissue, the nipple
 20 area, any overlying scarring that may have
 21 occurred in prior--for prior surgery, anything
 22 that is appropriate that we may have to look
 23 at under the microscope. That will be
 24 processed through our tissue processor that
 25 night.

Page 25

1 COFFEY, Q.C.:

2 Q. Yeah, I was going to say then, Doctor, how

3 does it end up from you to the tissue

4 processor?

5 DR. NEIL:

6 A. From me to the tissue processor?

7 COFFEY, Q.C.:

8 Q. Yes.

9 DR. NEIL:

10 A. The tissues are placed in these small blocks,

11 small cassettes. They have a cover on them,

12 they're all numbered. At the end of the day,

13 we have a fair number of these blocks from all

14 the tissues that we examined during that day.

15 These blocks are then placed in a rack, moved

16 from that rack to the tissue processor, which

17 happens to be just behind me. I would place

18 them in that tissue processor. That processor

19 is timed to start at a certain time during the

20 evening and to process the tissue overnight.

21 Would you like me to keep going?

22 COFFEY, Q.C.:

23 Q. Yes, Doctor, exactly.

24 DR. NEIL:

25 A. It's processed over night. That process

Page 26

1 removes the water and that sort of thing and

2 impregnates the tissue with wax. Early in the

3 morning that tissue has wax in it. It's then

4 removed, taken by the technologist.

5 COFFEY, Q.C.:

6 Q. I was going to say, so this part of the

7 process the next morning --

8 DR. NEIL:

9 A. The next morning is a technologist's duty.

10 COFFEY, Q.C.:

11 Q. Okay.

12 DR. NEIL:

13 A. The technologist takes it. He or she will

14 what we call imbed the tissue, which means

15 they would place the tissue appropriately in

16 that block in order for them to then later on

17 that morning place it in a microtone which is

18 an instrument that will slice a piece of that

19 tissue from that paraffin imbedded block into

20 a very small slice and place it on a glass

21 slide. Remember now during all this process

22 the numbering of the sample is watched as it

23 will go through to make sure we have the right

24 patient.

25 COFFEY, Q.C.:

Page 27

1 Q. And right patient's tissue. So it goes

2 through and then we have -- you've created the

3 slides in your scenario by this point in time.

4 Not you, but the technologist.

5 DR. NEIL:

6 A. The technologist has created the slides that

7 are unstained.

8 COFFEY, Q.C.:

9 Q. Yes.

10 DR. NEIL:

11 A. So when you look at the actual slide, you

12 won't see very much except a very thin film of

13 wax and you may not be able to see that very

14 well, but it's there. These slides are then

15 taken and stained appropriately with stain we

16 call H & E. They're cover slipped by a very

17 thin piece of glass placed over that piece of

18 tissue and it's sealed and then tried and

19 given to us to interpret that same morning.

20 COFFEY, Q.C.:

21 Q. Now, Doctor, I take it then, the H & E slide

22 is used for, in effect, your diagnosis as to

23 the type of tumour and how -- you know, if

24 it's invasive, how far it's gone and so on.

25 DR. NEIL:

Page 28

1 A. Correct.

2 COFFEY, Q.C.:

3 Q. And in relation then to estrogen receptors and

4 progesterone receptors, ER and PR, and I

5 gather now HER2/neu --

6 DR. NEIL:

7 A. Yes.

8 COFFEY, Q.C.:

9 Q. When is that ordered and how does that come

10 about?

11 DR. NEIL:

12 A. After we look at the H & E slide of the

13 tumour, there may be three or four H & E slides

14 that are representative of that tumour. We

15 look at that slide. Number one, make a

16 diagnosis. After we make the diagnosis, we

17 will select one of those representative slides

18 to choose a block that's appropriate to send

19 for ER/PR and Her-2-neu.

20 COFFEY, Q.C.:

21 Q. And today, what criteria do you utilize in

22 choosing a block?

23 DR. NEIL:

24 A. When we look -- when I look at and when we

25 look at-- not only me, we have four other

Page 29

1 people that do the same thing. We look at
 2 that block -- look at that slide, I'm sorry.
 3 We will look at that slide to make sure we
 4 have, number one, enough tumour, and number
 5 two, we will look to see if there's normal
 6 breast tissue surrounding that tumour.
 7 COFFEY, Q.C.:
 8 Q. And that is for the purposes of what we've
 9 heard referred to as internal controls being
 10 utilized?
 11 DR. NEIL:
 12 A. Correct.
 13 COFFEY, Q.C.:
 14 Q. And the current situation at Western Health is
 15 what in terms of where are the ER and PR and
 16 HER2/neu tests being done?
 17 DR. NEIL:
 18 A. Today?
 19 COFFEY, Q.C.:
 20 Q. Yes.
 21 DR. NEIL:
 22 A. Mount Sinai.
 23 COFFEY, Q.C.:
 24 Q. Mount Sinai?
 25 DR. NEIL:

Page 30

1 A. Yes.
 2 COFFEY, Q.C.:
 3 Q. I'll be taking you to how that has come about
 4 over the years and so on. In the current
 5 situation then, and I'll be even taking you to
 6 the arrangements and what they are currently,
 7 but you, having -- you or your fellow
 8 pathologists having identified a particular
 9 block for ER/PR and HER2/neu, from your
 10 perspective the most appropriate one, what
 11 then is done?
 12 DR. NEIL:
 13 A. Once the block is identified?
 14 COFFEY, Q.C.:
 15 Q. Yes.
 16 COFFEY, Q.C.:
 17 Q. Once that block is identified, because we have
 18 to make arrangements to send it to Mount
 19 Sinai, I will instruct my secretary with an
 20 appropriate requisition to send this slide and
 21 requisition to Dr. Brendan Mullen in Mount
 22 Sinai.
 23 COFFEY, Q.C.:
 24 Q. And then what happens, as best you know?
 25 DR. NEIL:

Page 31

1 A. It gets sent.
 2 COFFEY, Q.C.:
 3 Q. It gets sent. Then what has been your
 4 experience currently as to -- so it's the
 5 block that's sent, not the --
 6 DR. NEIL:
 7 A. It's the block that's sent.
 8 COFFEY, Q.C.:
 9 Q. Is there anything else sent other than the
 10 block? Do you send any of the H & E stained
 11 slides?
 12 DR. NEIL:
 13 A. No, we send the block.
 14 COFFEY, Q.C.:
 15 Q. You send the block. How about the pathology
 16 report?
 17 DR. NEIL:
 18 A. I don't think that's sent.
 19 COFFEY, Q.C.:
 20 Q. And how long then currently does it take you
 21 to hear from Dr. Mullen?
 22 DR. NEIL:
 23 A. About ten days.
 24 COFFEY, Q.C.:
 25 Q. And how does he report the results?

Page 32

1 DR. NEIL:
 2 A. The report is initially faxed from Mount
 3 Sinai, his report is faxed. So that obviously
 4 improves the turnaround time. After it's
 5 faxed, I guess, their secretaries or
 6 administrative people will mail the hard copy
 7 of that report to us. So we have a fax copy
 8 and the original copy.
 9 COFFEY, Q.C.:
 10 Q. When you receive that copy of the report, what
 11 if anything then do you do in terms of
 12 recording this on a patient's information?
 13 DR. NEIL:
 14 A. Well, we record that we received it obviously.
 15 To get it into our system, our secretary will
 16 type that report verbatim into our Meditec
 17 System. That's our computer system. When
 18 that's done, it's done as an addendum to the
 19 report that we initially sent. In other
 20 words, our diagnostic report. So that'll go
 21 as an addendum to that patient's diagnostic
 22 report. She will then inform me by bringing me
 23 the original report that she's typed into the
 24 system, and bring me or any of our
 25 pathologists the original report -- actually,

Page 33

1 she brings me the faxed report because that's
 2 the first one she gets, confirm to me that
 3 she's typed it in the system. I would check
 4 it to make sure there are no typing errors in
 5 it and I will sign it electronically.
 6 COFFEY, Q.C.:
 7 Q. Doctor, is the report then, the ER/PR and
 8 HER2/neu status report distributed to anyone,
 9 like, any of the attending physicians, other
 10 physicians, do you know?
 11 DR. NEIL:
 12 A. The physician -- obviously, the physician who
 13 did the surgery will get that report, and if
 14 he or she decided to copy to the family doctor
 15 or appropriate people that this lady would be
 16 seeing, it would be defined on the
 17 requisition, copy to so and so, copy to so and
 18 so. Whoever requested that report initially
 19 would decide where the report went.
 20 COFFEY, Q.C.:
 21 Q. Okay. Doctor, we started out with tissue that
 22 was coming from Stephenville.
 23 DR. NEIL:
 24 A. Yes.
 25 COFFEY, Q.C.:

Page 34

1 Q. What if any differences -- I'll back up. What
 2 other ORs will you receive breast tissue from
 3 other than Stephenville?
 4 DR. NEIL:
 5 A. Western.
 6 COFFEY, Q.C.:
 7 Q. Western itself, the actual building that you
 8 work in?
 9 DR. NEIL:
 10 A. Yes.
 11 COFFEY, Q.C.:
 12 Q. In terms of the scenario that you've described
 13 for me, the process that you've described for
 14 me, the tissue from the Western Memorial's own
 15 ORs, how does that end up coming to you, in
 16 what form does it come, and what's the timing
 17 and so on? Today now?
 18 DR. NEIL:
 19 A. Today?
 20 COFFEY, Q.C.:
 21 Q. Yes.
 22 DR. NEIL:
 23 A. It comes in the same form. In other words,
 24 it's in a formalin container. It comes on a
 25 regular basis from the operating rooms. We

Page 35

1 have a scheduled pick up time throughout the
 2 day -- times throughout the day, and I believe
 3 that there are actually five times that
 4 specimens are delivered to us during the day.
 5 So we receive specimens -- any specimens from
 6 the operating room quite frequently on a daily
 7 basis.
 8 COFFEY, Q.C.:
 9 Q. And if you had -- I take it, is it particular
 10 pathologists are responsible on particular
 11 days for anything that comes in?
 12 DR. NEIL:
 13 A. Yes.
 14 COFFEY, Q.C.:
 15 Q. Any specimens that come in. So if it happens
 16 to be your day today, okay, from the OR, it
 17 would show up, I take it, in a formalin
 18 container?
 19 DR. NEIL:
 20 A. Yes.
 21 COFFEY, Q.C.:
 22 Q. With formalin, emersed in formalin?
 23 DR. NEIL:
 24 A. Uh-hm.
 25 COFFEY, Q.C.:

Page 36

1 Q. And in a form that was taken from the patient?
 2 DR. NEIL:
 3 A. Yes.
 4 COFFEY, Q.C.:
 5 Q. And then the process starts.
 6 DR. NEIL:
 7 A. Exactly as I described for Stephenville.
 8 COFFEY, Q.C.:
 9 Q. As you did before with opening the container?
 10 DR. NEIL:
 11 A. Yes, exact same process.
 12 COFFEY, Q.C.:
 13 Q. And then from then on?
 14 DR. NEIL:
 15 A. The exact same process.
 16 COFFEY, Q.C.:
 17 Q. Exact same process.
 18 COFFEY, Q.C.:
 19 Q. Doctor, is there any particular -- you
 20 referred to the idea that there are about five
 21 deliveries a day, scheduled deliveries from
 22 the OR. Is there any particular days of the
 23 week that breast surgery is performed in
 24 Corner Brook?
 25 DR. NEIL:

Page 37

1 A. Breast surgery is performed Mondays, Tuesdays,
 2 and Wednesdays, and occasionally on a
 3 Thursday.
 4 COFFEY, Q.C.:
 5 Q. And since when has that been going on?
 6 DR. NEIL:
 7 A. For a long time. I've been in Corner Brook
 8 for 21 years. It's unusual for breast surgery
 9 to be performed on Friday.
 10 COFFEY, Q.C.:
 11 Q. And why is that? Why is it Monday, Tuesday,
 12 Wednesdays preferably and --
 13 DR. NEIL:
 14 A. Historically?
 15 COFFEY, Q.C.:
 16 Q. Yes.
 17 DR. NEIL:
 18 A. I guess it's the surgeon's preference.
 19 COFFEY, Q.C.:
 20 Q. How about now from a pathologist's
 21 perspective?
 22 DR. NEIL:
 23 A. I have said that breast surgery should not be
 24 performed on Friday.
 25 COFFEY, Q.C.:

Page 38

1 Q. And why is that?
 2 DR. NEIL:
 3 A. Because of the issue of fixation.
 4 COFFEY, Q.C.:
 5 Q. Okay, and I'll be -- there's an exhibit there.
 6 I'll be returning to that to canvas that with
 7 you for the Commissioner. What about surgery
 8 being performed late in the day, for example,
 9 on a Monday, Tuesday, or Wednesday, how is
 10 that handled today?
 11 DR. NEIL:
 12 A. Again you're referring to what happens today?
 13 COFFEY, Q.C.:
 14 Q. Yes, today.
 15 DR. NEIL:
 16 A. We know what surgery is being performed on a
 17 daily basis. We have a listing from the
 18 operating room. We know that on a Monday we
 19 have maybe two mastectomies. So we know that
 20 we should expect two mastectomies before the
 21 end of the day in our lab. As a matter of
 22 fact, last week I was expecting one and I had
 23 to phone the OR and say make sure it gets it
 24 before I leave. So we know it has to be in
 25 our hands before we leave.

Page 39

1 COFFEY, Q.C.:
 2 Q. So if there is a mastectomy, one or more
 3 scheduled for a particular day, and you have
 4 the OR schedules, you or your fellow
 5 pathologists have the OR schedules daily, the
 6 arrangement -- you say it has to get to you.
 7 What is the understanding now as to how that's
 8 to be --
 9 DR. NEIL:
 10 A. I'm not sure I understand the question.
 11 COFFEY, Q.C.:
 12 Q. Well, you made a comment just then you phoned
 13 the OR even last week to tell them I know
 14 there's a mastectomy going on, it has to get
 15 to me before I leave today.
 16 DR. NEIL:
 17 A. Yes.
 18 COFFEY, Q.C.:
 19 Q. So is there any kind of understanding now
 20 about what the scheduling should be, by what
 21 time it has to be in your hands?
 22 DR. NEIL:
 23 A. Yes, there is an understanding that the
 24 laboratory has to receive that. The operating
 25 room does know that.

Page 40

1 COFFEY, Q.C.:
 2 Q. So they have to have the surgery done and the
 3 sample down to you by a particular point in
 4 the day?
 5 DR. NEIL:
 6 A. Yes.
 7 COFFEY, Q.C.:
 8 Q. And why is that?
 9 DR. NEIL:
 10 A. So we can properly handle that tissue for
 11 overnight fixation.
 12 COFFEY, Q.C.:
 13 Q. Which I take it is the bread loafing?
 14 DR. NEIL:
 15 A. Which is the bread loafing.
 16 COFFEY, Q.C.:
 17 Q. To start -- to do the bread loafing process,
 18 get the wicking process started?
 19 DR. NEIL:
 20 A. Yes.
 21 COFFEY, Q.C.:
 22 Q. So you come in the next day and you --
 23 DR. NEIL:
 24 A. I do the process I mentioned to you.
 25 COFFEY, Q.C.:

Page 41

1 Q. Doctor, is there any such thing as emergency
 2 mastectomy surgery?
 3 DR. NEIL:
 4 A. Not that I'm aware of.
 5 COFFEY, Q.C.:
 6 Q. I'm not suggesting there is. I just --
 7 DR. NEIL:
 8 A. It's not something that should be done.
 9 COFFEY, Q.C.:
 10 Q. To return to Stephenville in terms of the days
 11 of the week that breast surgery occurs on,
 12 what's the current practice in Stephenville?
 13 DR. NEIL:
 14 A. It's not done very often. I don't think
 15 there's a particular day.
 16 COFFEY, Q.C.:
 17 Q. What would happen if, for example, it was a
 18 Friday morning that surgery occurred in
 19 Stephenville and the breast specimen did not
 20 make it to the noon day truck? What would the
 21 situation be then?
 22 DR. NEIL:
 23 A. If we didn't know about it, it's a problem.
 24 COFFEY, Q.C.:
 25 Q. Because it would be sitting --

Page 42

1 DR. NEIL:
 2 A. It would be sitting in formalin without being
 3 bread loafed all weekend. With the surgery in
 4 Stephenville, and I'm -- I know that the
 5 surgeon that's there now has received a memo
 6 from me. So he will not be doing surgery on
 7 Friday.
 8 COFFEY, Q.C.:
 9 Q. And the memo in question, does it explain what
 10 that is so, why you don't want it done on
 11 Friday?
 12 DR. NEIL:
 13 A. I'd have to refer to the memo.
 14 COFFEY, Q.C.:
 15 Q. Okay, doctor.
 16 DR. NEIL:
 17 A. I think it's at the end of this. Yes, and I
 18 did say --
 19 COFFEY, Q.C.:
 20 Q. What's the exhibit number, Doctor?
 21 DR. NEIL:
 22 A. The exhibit number is 2296.
 23 COFFEY, Q.C.:
 24 Q. Yes.
 25 DR. NEIL:

Page 43

1 A. And I did mention at the end of the paragraph,
 2 "Surgery should be done Monday through
 3 Wednesday. This is to facilitate proper
 4 fixation for ER/PR testing".
 5 COFFEY, Q.C.:
 6 Q. Yes. I was going to ask you about that,
 7 Doctor, because that's to surgeons?
 8 DR. NEIL:
 9 A. Yes.
 10 COFFEY, Q.C.:
 11 Q. In the OR, which would be Western Memorial
 12 itself?
 13 DR. NEIL:
 14 A. Which includes Stephenville. This should have
 15 gone to Stephenville as well.
 16 COFFEY, Q.C.:
 17 Q. I was going to ask you about that. What then
 18 -- so the Commissioner understands the current
 19 arrangement, okay, in Western Health
 20 Authority, looking at page one of this
 21 exhibit, there's an e-mail of May 6th, 2008.
 22 Well, there are two of them, actually, one
 23 from yourself to J. Grabka?
 24 DR. NEIL:
 25 A. Grabka.

Page 44

1 COFFEY, Q.C.:
 2 Q. Okay, who is that?
 3 DR. NEIL:
 4 A. She is the assistant laboratory manager in
 5 charge of pathology and other areas, but
 6 pathology mainly.
 7 COFFEY, Q.C.:
 8 Q. And it's a memorandum on breast scheduling.
 9 It's copied to Ken Jenkins. Dr. Ken Jenkins,
 10 I take it, is the VP Medical?
 11 DR. NEIL:
 12 A. Yes.
 13 COFFEY, Q.C.:
 14 Q. And he has then forwarded it to Helen Sparkes,
 15 and who is she?
 16 DR. NEIL:
 17 A. Helen is Dr. Jenkins' secretary.
 18 COFFEY, Q.C.:
 19 Q. And for the ER/PR file, and in any case, the
 20 actual memorandum, of course, is page two
 21 which you just referred the Commissioner to.
 22 DR. NEIL:
 23 A. Yes.
 24 COFFEY, Q.C.:
 25 Q. And when you address something to surgeons OR,

Page 45

1 that should go -- your understanding is that
 2 goes to the surgeons in the OR in Western
 3 Regional -- Western Memorial, I'm sorry.
 4 DR. NEIL:
 5 A. This memo --
 6 COFFEY, Q.C.:
 7 Q. Yes.
 8 DR. NEIL:
 9 A. Should have gone to surgeons, any surgeons
 10 that do breast surgery.
 11 COFFEY, Q.C.:
 12 Q. Within?
 13 DR. NEIL:
 14 A. Within Western Health Care Corporation --
 15 within Western Health.
 16 COFFEY, Q.C.:
 17 Q. Western Health, and who's responsible for
 18 that, Doctor, actually doing the distribution?
 19 DR. NEIL:
 20 A. I passed this to our lab manager.
 21 COFFEY, Q.C.:
 22 Q. And that's the --
 23 DR. NEIL:
 24 A. The e-mail that you have.
 25 COFFEY, Q.C.:

Page 46

1 Q. Now, Doctor, are there any other memos to
 2 surgeons addressing this issue of the
 3 timeliness of surgery and -
 4 DR. NEIL:
 5 A. No, there are no memos that I am aware of, but
 6 I will tell you that we have a breast surgeon
 7 in Corner Brook, a very active breast surgeon
 8 in Corner Brook who just recently came back to
 9 work. She was off on maternity leave. Her
 10 scheduled OR when she was coming back to work
 11 was going to be Thursday. Her husband
 12 actually is another surgeon there, his
 13 scheduled OR day was Wednesday. So I had a
 14 discussion with him and her, please switch
 15 your days. They did.
 16 COFFEY, Q.C.:
 17 Q. To accomplish your goal.
 18 DR. NEIL:
 19 A. To accomplish my issue. So there are no memos
 20 to that; I spoke to them personally and Dr.
 21 Jenkins was aware of it--my discussions.
 22 COFFEY, Q.C.:
 23 Q. Well, Doctor, in relation to the issue of
 24 fixation, tissue fixation and tissue
 25 processing in relation, at least anyway to

Page 47

1 breast tissue, this particular memo exists.
 2 Are there any others involving pathologists
 3 that you are aware of, that relate to
 4 pathologists themselves involving breast
 5 tissue, you know, in effect at Western right
 6 now?
 7 DR. NEIL:
 8 A. You're referring to fixation protocol?
 9 COFFEY, Q.C.:
 10 Q. Yes.
 11 DR. NEIL:
 12 A. Yes.
 13 COFFEY, Q.C.:
 14 Q. Okay, and could you tell the Commissioner
 15 please about that, what the current situation
 16 -
 17 DR. NEIL:
 18 A. The current situation is that we fix tissues
 19 according to the fixation protocol that was
 20 given to me, faxed to me from Eastern Health a
 21 little while--not a little while ago, quite a
 22 while ago, I'm not sure--I can't tell you the
 23 date because I don't remember the date.
 24 COFFEY, Q.C.:
 25 Q. And do you recall if that fixation protocol

Page 48

1 was a draft one or the final version or do you
 2 really know?
 3 DR. NEIL:
 4 A. It looked pretty close to a final version. It
 5 didn't say "draft" on it.
 6 COFFEY, Q.C.:
 7 Q. And this particular fixation policy or
 8 protocol, was it just the one? Was there any
 9 other -
 10 DR. NEIL:
 11 A. Anything that had to do with breast tissue:
 12 fixation, grossing, needle core biopsies,
 13 lumpectomies, whatever pertained to breast
 14 tissue with regards to fixation, processing,
 15 grossing, whatever, is what I'm referring to.
 16 COFFEY, Q.C.:
 17 Q. Okay, so any of those protocols that they
 18 sent, is there just the one or is there more
 19 than one, do you know?
 20 DR. NEIL:
 21 A. No, there's a stack of them.
 22 COFFEY, Q.C.:
 23 Q. Stack of them. And, if I could, Commissioner,
 24 as this may be an evolving thing because such
 25 policies and protocols can evolve over time,

Page 49

1 be amended over time. If I could ask, Mr.
 2 Browne and Mr. Pritchard, ask the Doctor to,
 3 when he returns to Corner Brook, to package
 4 up, photocopy and package up and provide to
 5 your counsel to provide to myself and Ms.
 6 Chaytor, and you can even date the cover sheet
 7 as to what the current one is, at least the
 8 most current one that you can -
 9 DR. NEIL:
 10 A. I can provide it to you this afternoon.
 11 COFFEY, Q.C.:
 12 Q. If you could, that would be great, Doctor, if
 13 we could please, thanks, that's all, so we
 14 know exactly what's in place now, okay.
 15 DR. NEIL:
 16 A. Yes.
 17 COFFEY, Q.C.:
 18 Q. And it may help if you're able to ascertain
 19 when it was that the communication went to
 20 you, the last version.
 21 DR. NEIL:
 22 A. I can do that.
 23 COFFEY, Q.C.:
 24 Q. Thanks, Doctor. Doctor, is there any policy
 25 in place to deal with the issue of delays from

Page 50

1 Stephenville due to weather, inclement
 2 weather? You know, a tissue sample that is
 3 coming from Stephenville, that it's delayed
 4 and the weather happens to very nice here
 5 locally, but it's not unknown that we have bad
 6 weather, is there any -
 7 DR. NEIL:
 8 A. Well obviously it would come the next day, the
 9 next appropriate day, but there's not, not to
 10 my knowledge, a policy that says keep it until
 11 the weather is better.
 12 COFFEY, Q.C.:
 13 Q. Or to do any particular thing with it in the
 14 meantime?
 15 DR. NEIL:
 16 A. No.
 17 COFFEY, Q.C.:
 18 Q. Like for example, to refrigerate it?
 19 DR. NEIL:
 20 A. Not that I'm aware of. I'm not saying it's
 21 not there.
 22 COFFEY, Q.C.:
 23 Q. Doctor, thinking of or dealing with
 24 refrigeration, are there any refrigerators in
 25 or connected with the ORs in Western?

Page 51

1 DR. NEIL:
 2 A. Yes, there's a refrigerator in the OR.
 3 COFFEY, Q.C.:
 4 Q. Do you know if there's any policy in the OR in
 5 terms of refrigerating breast or cooling
 6 breast tissue?
 7 DR. NEIL:
 8 A. It is my understanding that breast tissue
 9 removed from the OR is placed in formalin and
 10 then placed in the refrigerator.
 11 COFFEY, Q.C.:
 12 Q. To await the porter.
 13 DR. NEIL:
 14 A. To await the porter.
 15 COFFEY, Q.C.:
 16 Q. And that's been going on how long, Doctor, do
 17 you know?
 18 DR. NEIL:
 19 A. Quite awhile.
 20 COFFEY, Q.C.:
 21 Q. When you say "quite awhile" what would be, in
 22 this context what would be quite awhile, do
 23 you know?
 24 DR. NEIL:
 25 A. Years.

Page 52

1 COFFEY, Q.C.:
 2 Q. Was that going on before July 2005, do you
 3 think or is it since this ER/PR matter came to
 4 the fore -
 5 DR. NEIL:
 6 A. I think it's been going on quite awhile, I
 7 can't give you the date because I don't know
 8 the date.
 9 COFFEY, Q.C.:
 10 Q. And that process, Doctor, or the utilization
 11 of refrigerator, do you recall whose idea that
 12 was? Was that something that the
 13 Perioperative Program came up with or was it
 14 the Pathology Department, Lab Department?
 15 DR. NEIL:
 16 A. It wasn't my idea, but I know it's there, it
 17 should be there and I can't answer for the
 18 Perioperative Program, I don't know who put it
 19 there--I would think it came from the
 20 operating room itself, but I don't know the
 21 answer to that.
 22 COFFEY, Q.C.:
 23 Q. Now, Doctor, the Commissioner has heard
 24 evidence concerning fixation of--and
 25 processing of breast tissue in more recent

Page 53

1 times, like say over the past two or three
 2 years, Dr. Mullen has been dealing with
 3 samples throughout Newfoundland.
 4 DR. NEIL:
 5 A. Uh-hm.
 6 COFFEY, Q.C.:
 7 Q. Have you had occasion to speak to Dr. Mullen
 8 recently?
 9 DR. NEIL:
 10 A. No.,
 11 COFFEY, Q.C.:
 12 Q. Well first of all, I'll go back a bit, Dr.
 13 Mullen has been doing, I gather, from the
 14 documentation ER/PR and Her2/neu.
 15 DR. NEIL:
 16 A. Uh-hm.
 17 COFFEY, Q.C.:
 18 Q. Reporting from, well for Western Health since
 19 around September 2005.
 20 DR. NEIL:
 21 A. That's correct.
 22 COFFEY, Q.C.:
 23 Q. And we'll see that in the documents. How much
 24 contact did you actually have with Dr. Mullen
 25 since November 2005 in a direct way?

Page 54

1 DR. NEIL:
 2 A. In a direct way? None, until just recently.
 3 COFFEY, Q.C.:
 4 Q. Okay, and what then happened recently, can you
 5 tell the Commissioner?
 6 DR. NEIL:
 7 A. The issue that came up in this Commission of
 8 Inquiry about fixation outside Eastern Health
 9 concerned me and I'm sure it concerns
 10 everybody in each individual lab outside of
 11 Eastern Health. If I had a problem with
 12 fixation in our lab, I would like to know
 13 about it. I didn't think I had a problem, I
 14 checked with our CEO, reports from 2007, all
 15 of our reports from 2007, he started--Dr.
 16 Mullen started doing specimen adequacy on his
 17 reports in 2007. We looked through, the CEO
 18 took it upon herself and I assisted her,
 19 looking through those reports to see how many
 20 of his reports were stated as being adequate,
 21 the specimen was being adequate. We had 66
 22 reports and I hope my memory serves me
 23 correctly, 54 of those had a statement of
 24 adequacy on them. The others, I guess he
 25 didn't quite get to do that because there was

Page 55

1 no statement of adequacy on them. Of those
 2 54, 52 of them were adequate. One was in a
 3 decalcification solution was really not
 4 appropriate, the other was marginal. Looking
 5 at that, I didn't think I had a problem. I
 6 was discussing one particular case on the day
 7 in question with another pathologist in our
 8 institution, he had been discussing that
 9 particular case with Dr. Mullen that day. I
 10 took it upon myself that day to confirm what I
 11 thought was true. I spoke to Dr. Mullen and I
 12 said, you know, "we have concerns that
 13 fixation might be an issue from Western
 14 Health, is that in fact true?" He replied and
 15 said, "no, we don't have a problem" which I
 16 kind of knew anyway.
 17 COFFEY, Q.C.:
 18 Q. Pardon me?
 19 DR. NEIL:
 20 A. Which I kind of knew anyway.
 21 COFFEY, Q.C.:
 22 Q. Which you've told us you had understood
 23 anyway.
 24 DR. NEIL:
 25 A. I understood from, at least looking from his

Page 56

1 reports that there was no issue with specimen
 2 adequacy.
 3 COFFEY, Q.C.:
 4 Q. Doctor, and was there anything else said at
 5 that time? I'm not suggesting there was, I'm
 6 just asking you.
 7 DR. NEIL:
 8 A. No, I just reiterated to him that, you know,
 9 we're sending our specimens to you, if you
 10 have a problem, if you can help us, if there's
 11 anything about our material that causes you
 12 difficulty, I expect to know. And he said, no
 13 problem, he would call me at any time.
 14 COFFEY, Q.C.:
 15 Q. Doctor, just while I'm thinking about it, the
 16 issues of fixation and tissue processing,
 17 okay, are you aware of whether or not
 18 Stephenville utilizes a refrigerator for in
 19 the OR there?
 20 DR. NEIL:
 21 A. I'm not aware, no. They probably do, but I
 22 can't tell you with certainty.
 23 COFFEY, Q.C.:
 24 Q. Who within Western Health would be
 25 responsible, if they should be utilizing one,

Page 57

1 who would be responsible for ensuring that?

2 DR. NEIL:

3 A. I would bet you a bottom dollar that there is

4 one there.

5 COFFEY, Q.C.:

6 Q. Okay, and who is responsible, though, for

7 ensuring that it is there.

8 DR. NEIL:

9 A. The laboratory managers are responsible.

10 COFFEY, Q.C.:

11 Q. Okay, so that's the technologist side of the

12 institution or the organization.

13 DR. NEIL:

14 A. Yes.

15 COFFEY, Q.C.:

16 Q. Doctor, with respect to, you've used the word

17 and we've seen it here, the "A" for adequate.

18 DR. NEIL:

19 A. Uh-hm.

20 COFFEY, Q.C.:

21 Q. As a pathologist, correct me if I

22 misunderstand, is there such a thing as, well,

23 from your perspective as a pathologist dealing

24 with tissue that has been fixed and processed,

25 it's adequate for your purposes -

Page 58

1 DR. NEIL:

2 A. Uh-hm.

3 COFFEY, Q.C.:

4 Q. But it's not perhaps optimal in the sense that

5 it could be better done? I mean, does that,

6 as a pathologist, is that a relatively well

7 known idea, there are times things are

8 adequate -

9 DR. NEIL:

10 A. I would like to see that anything that I look

11 at is more than adequate.

12 COFFEY, Q.C.:

13 Q. Yes, and I appreciate that, but I'm just

14 asking about the idea, are there some things--

15 leaving aside breast tissue entirely, just as

16 a pathologist, some specimens are better fixed

17 than others, but that doesn't mean that the

18 less best fixed ones can't be utilized?

19 DR. NEIL:

20 A. Yes, that's correct, if it's not well fixed,

21 we still can make a diagnosis.

22 COFFEY, Q.C.:

23 Q. At times, you know, depending upon again -

24 DR. NEIL:

25 A. Depending on the nature of the tissue that we

Page 59

1 received, how much tissue is on the slide, how

2 long it's been fixed, you can make a

3 diagnosis, yes, but it's not something you

4 want to continue.

5 COFFEY, Q.C.:

6 Q. Now, Doctor, when you trained here in St.

7 John's and I take it from what you've told the

8 Commissioner earlier that you did a short

9 stint toward the end of your residency in

10 Toronto.

11 DR. NEIL:

12 A. In Toronto.

13 COFFEY, Q.C.:

14 Q. Were you ever, at that time in your training

15 when you were a resident, were you exposed to

16 immunohistochemistry?

17 DR. NEIL:

18 A. Very briefly. The initial stage of

19 immunohistochemistry in St. John's at that

20 time was very limited. There were few stains

21 that we would use for diagnostic purposes and

22 one I remember and I think you and I talked

23 about this before, was prostrate.

24 COFFEY, Q.C.:

25 Q. Yes.

Page 60

1 DR. NEIL:

2 A. Prostatic, you know, specific--no, it wasn't

3 even that, prostatic acid phosphatase I think

4 it was called at that time, I don't think we

5 even use it anymore.

6 COFFEY, Q.C.:

7 Q. In the days of your training and your

8 training, looking it really is the first half

9 of the 1980s?

10 DR. NEIL:

11 A. Correct.

12 COFFEY, Q.C.:

13 Q. Immunohistochemistry, at least locally, was

14 just in its infancy, as it were, starting.

15 DR. NEIL:

16 A. Yes.

17 COFFEY, Q.C.:

18 Q. Do you recall who it was, was there any

19 particular pathologist or pathologists who

20 were into IHC, such as it was at the time?

21 DR. NEIL:

22 A. No, because there wasn't very much of it.

23 COFFEY, Q.C.:

24 Q. Doctor, you then after finishing your

25 residency, well I'll just ask you, were you

Page 61

1 exposed to it in Toronto at all, do you
 2 recall?
 3 DR. NEIL:
 4 A. No, because I was doing hematology at the
 5 time.
 6 COFFEY, Q.C.:
 7 Q. And that was your particular rotation through
 8 Toronto.
 9 DR. NEIL:
 10 A. Yes.
 11 COFFEY, Q.C.:
 12 Q. Hematology. And then when you took up your
 13 position in Corner Brook, what then, if you
 14 could just recount to the Commissioner
 15 generally how over the years, if at all, you
 16 were exposed to IHC?
 17 DR. NEIL:
 18 A. There were more and more stains becoming
 19 available and again, these were for diagnostic
 20 purposes. Different tissues had different
 21 stains that would be required to define
 22 whether or not the tissue was, for instance, a
 23 lymphoma verses a cancer, a carcinoma and to
 24 put you down a pathway to say what this tumour
 25 might be.

Page 62

1 COFFEY, Q.C.:
 2 Q. And there were more and more, as time went on
 3 -
 4 DR. NEIL:
 5 A. More and more as time went on.
 6 COFFEY, Q.C.:
 7 Q. Late 80s into the 90s, there was just more and
 8 more -
 9 DR. NEIL:
 10 A. More and more as time went on.
 11 COFFEY, Q.C.:
 12 Q. How would you become aware that a particular
 13 one or a new one was available?
 14 DR. NEIL:
 15 A. You sort of had to do some reading on your
 16 own, number one; and as things went on,
 17 Eastern Health would supply us with
 18 information about what stains are now
 19 available. They constantly kept changing
 20 their requisition forms, which means their
 21 listing of IHC stains that they had available,
 22 that's how we knew what they had available.
 23 You must remember that I had been around for a
 24 long time and the number of pathologists that
 25 have come and gone in Corner Brook over the

Page 63

1 years, there's a fair number of people. I
 2 would rely on those people, more recently
 3 trained than me, more exposed to other areas,
 4 some trained in Calgary, some trained in New
 5 York, some trained in various places in the
 6 U.S. They would come in with new knowledge,
 7 new stains, new information. I would learn
 8 from them. Anything that I--I'm talking
 9 personally now, anything that I would be
 10 unsure with regards to immunohistochemistry, I
 11 would ask my colleagues who were more
 12 experienced in that area than I was.
 13 COFFEY, Q.C.:
 14 Q. And if, for example, you wanted to utilize a
 15 particular new stain, how would you go about,
 16 for example in the early 90s, a new stain came
 17 along and was available and you made inquiries
 18 and you thought, okay, I've got a patient that
 19 might be useful for, how would you go about
 20 learning about well how should I interpret
 21 this, you know, what criteria are used, how do
 22 you go about it?
 23 DR. NEIL:
 24 A. I guess two ways. One would be, as I
 25 mentioned earlier, you talk to your clients.

Page 64

1 COFFEY, Q.C.:
 2 Q. Yes.
 3 DR. NEIL:
 4 A. They've seen this before, they interpreted
 5 this before, what am I looking at, what do I
 6 need to see?
 7 COFFEY, Q.C.:
 8 Q. Uh-hm.
 9 DR. NEIL:
 10 A. The second way is you look it up in the
 11 textbook. Here's what you're supposed to see,
 12 here's some pictures. You read as much as you
 13 can about that particular stain.
 14 COFFEY, Q.C.:
 15 Q. Just dealing with this, as I take it, when you
 16 were a resident, there were precious few of
 17 any textbooks about IHC.
 18 DR. NEIL:
 19 A. Yes.
 20 COFFEY, Q.C.:
 21 Q. Okay. So, as time went on, I take it, there
 22 were texts that did become available that, at
 23 least, either dealt with IHC as a topic wholly
 24 or substantially.
 25 DR. NEIL:

Page 65

1 A. Yes.
 2 COFFEY, Q.C.:
 3 Q. And how about journals? As time went on -
 4 DR. NEIL:
 5 A. Journals would talk about IHC, yes.
 6 COFFEY, Q.C.:
 7 Q. Particular types of stains and what one is to
 8 look for or not.
 9 DR. NEIL:
 10 A. Yes.
 11 COFFEY, Q.C.:
 12 Q. Doctor, today, the internet, I'll ask you and
 13 this will vary from individual to individual,
 14 but your own experience with the internet.
 15 DR. NEIL:
 16 A. The internet has a vast amount of knowledge,
 17 as we all know. Yes, there are sites on the
 18 internet that will tell you about
 19 immunohistochemistry, but I do have to say
 20 this, on particular thing about what it is we
 21 do. Immunohistochemistry is an ancillary test
 22 that is used. It is not the primary stain
 23 that is used on a daily basis, not even close.
 24 The primary stain--I look at hundreds and
 25 hundreds and hundreds of slides. They're all

Page 66

1 H&E slides. I don't need immunohistochemistry
 2 for the vast majority or the work that I do.
 3 We don't rely on it totally. The older
 4 pathologists and me being one of them, will
 5 tell you that your diagnostic slide is your
 6 H&E slide. Your immunohistochemistry will
 7 confirm some of the things that you should
 8 already know.
 9 Now, a lot of the newer pathologists will
 10 be placing a little bit more emphasis on
 11 immunohistochemistry.
 12 COFFEY, Q.C.:
 13 Q. And in respect of ER and PR though, I take it,
 14 they are a type of IHC test that don't really
 15 fall into the category of telling what you
 16 already know.
 17 DR. NEIL:
 18 A. These are diagnostic tests that I'm talking
 19 about.
 20 COFFEY, Q.C.:
 21 Q. Yes.
 22 DR. NEIL:
 23 A. ER/PR is not, in the sense that we're talking
 24 about today, diagnostic. You can use it for
 25 diagnostic purposes, yes, but it's not what

Page 67

1 we're talking about today.
 2 COFFEY, Q.C.:
 3 Q. It's primarily utilized for treatment
 4 decisions.
 5 DR. NEIL:
 6 A. Prognostic -
 7 COFFEY, Q.C.:
 8 Q. Prognostic purposes, yes. And there are, I
 9 understand, and again correct me if I'm wrong,
 10 there are more and more such stains becoming
 11 available, prognostic type IHC stains.
 12 DR. NEIL:
 13 A. Yes, HER2/neu being one of them.
 14 COFFEY, Q.C.:
 15 Q. Doctor, in terms of the internet you've
 16 indicated that you, at times, would utilize
 17 it. In Western Memorial as an institution,
 18 how long has--it's easy for people to forget,
 19 the internet hasn't always existed.
 20 DR. NEIL:
 21 A. Yes.
 22 COFFEY, Q.C.:
 23 Q. How long has the internet been utilized at
 24 Western Memorial, like in the pathology
 25 department, like, available for people if they

Page 68

1 want to use it.
 2 DR. NEIL:
 3 A. I'm trying to give you an accurate date. I
 4 know it was there in '99. We had computers in
 5 '97.
 6 COFFEY, Q.C.:
 7 Q. When the internet came it, probably some time
 8 between '97 and '99.
 9 DR. NEIL:
 10 A. Yes. It may be before that, but it's at least
 11 that far back.
 12 COFFEY, Q.C.:
 13 Q. Within your institution?
 14 DR. NEIL:
 15 A. Yes.
 16 COFFEY, Q.C.:
 17 Q. And Doctor, do you participate in any medical
 18 chat rooms or bulletin boards?
 19 DR. NEIL:
 20 A. Certainly do.
 21 COFFEY, Q.C.:
 22 Q. Okay. And there's a couple of documents the
 23 Commissioner is going to be referred to. And
 24 you've been doing that for how long?
 25 DR. NEIL:

Page 69

1 A. Years.
 2 COFFEY, Q.C.:
 3 Q. Okay. And if you wanted to know a particular
 4 query, for example, you had a particular
 5 question or questions, you could utilize those
 6 -
 7 DR. NEIL:
 8 A. Yes.
 9 COFFEY, Q.C.:
 10 Q. - if you're involved it to -
 11 DR. NEIL:
 12 A. You would get a response back from anywhere in
 13 the world.
 14 COFFEY, Q.C.:
 15 Q. And directing you perhaps to sources of
 16 information.
 17 DR. NEIL:
 18 A. Or other people who would discuss the same
 19 issue.
 20 COFFEY, Q.C.:
 21 Q. I'll be coming to that. So, again for the
 22 Commissioner, from the perspective of a person
 23 who is in charge of the pathology lab in
 24 Corner Brook, to give her some sense of the
 25 current state of affairs is and how long the

Page 70

1 internet has been there, medical journals and
 2 texts for the laboratory medicine program at
 3 Western Memorial, how long have you had texts
 4 available there?
 5 DR. NEIL:
 6 A. Texts have always been there. With new
 7 pathologists coming and going, we always have
 8 access to new textbooks because they bring
 9 their own. And the group that are there now
 10 are very active in buying recent texts. So,
 11 texts are quite easily available.
 12 COFFEY, Q.C.:
 13 Q. And how about journals?
 14 DR. NEIL:
 15 A. Journals are available. We have a library
 16 that's attached to Memorial.
 17 COFFEY, Q.C.:
 18 Q. Memorial University?
 19 DR. NEIL:
 20 A. Memorial University, yes. Any journals that
 21 we want, any articles that we want are easily
 22 made available to us.
 23 COFFEY, Q.C.:
 24 Q. Okay. Doctor, within the Newfoundland and
 25 Labrador context, in the time that you've

Page 71

1 practised here, is there any sort of routine
 2 bulletin, as it were, you distributed to
 3 pathologists by any central agency, Memorial
 4 University's medical school for example, the
 5 Newfoundland and Labrador Medical Association,
 6 the Association of Pathologists, whatever, any
 7 group that periodically from time to time
 8 brings to pathologists or makes available to
 9 pathologists news about new developments?
 10 DR. NEIL:
 11 A. Specifically in pathology?
 12 COFFEY, Q.C.:
 13 Q. Yes.
 14 DR. NEIL:
 15 A. No.
 16 COFFEY, Q.C.:
 17 Q. How about other than specifically to
 18 pathology?
 19 DR. NEIL:
 20 A. There used to be a bulletin. It may have
 21 stopped recently, but I'm not--because I
 22 haven't seen it, from the biochemists
 23 informing us about different biochemical tests
 24 that are available in the chemistry lab. That
 25 was a regular routine.

Page 72

1 COFFEY, Q.C.:
 2 Q. Okay. Doctor, I'm going to take you now to
 3 the estrogen/progesterone receptor matter in
 4 particular. When you first started practice in
 5 the mid '80s continuing into the 1990s, were
 6 you involved in ordering estrogen
 7 receptor/progesterone receptor status for
 8 breast cancer patients?
 9 DR. NEIL:
 10 A. Yes.
 11 COFFEY, Q.C.:
 12 Q. And how is that done and who handled it?
 13 DR. NEIL:
 14 A. That was done completely different than the
 15 way we're doing it today. It was done on
 16 frozen tissue. A small cube of tissue was
 17 removed from the fresh breast specimen, that's
 18 hard to say, taken and frozen immediately in
 19 what we call our ultra low freezer which is
 20 minus 20 I think freezer. That was
 21 transported into St. John's for biochemical
 22 analysis and that continued for quite a while.
 23 COFFEY, Q.C.:
 24 Q. And the ordering of this ER and PR status
 25 test, biochemical assay method, would you, as

Page 73

1 a pathologist, you or your fellow pathologists
 2 actually order the tests?
 3 DR. NEIL:
 4 A. Yes.
 5 COFFEY, Q.C.:
 6 Q. And the result then would go to whom?
 7 DR. NEIL:
 8 A. The result would come back to us and we'd
 9 again attach it to our diagnostic report and
 10 send it out as a number attached to that
 11 report.
 12 COFFEY, Q.C.:
 13 Q. To the attending physician, I take it.
 14 DR. NEIL:
 15 A. The attending physicians.
 16 COFFEY, Q.C.:
 17 Q. We understand that that changed in the late
 18 1990s.
 19 DR. NEIL:
 20 A. Correct.
 21 COFFEY, Q.C.:
 22 Q. Doctor, when did you first hear about the idea
 23 of utilizing an IHC process to determine ER
 24 and PR status, yourself, when did you first
 25 hear about it?

Page 74

1 DR. NEIL:
 2 A. I think it was February of '98 when I had a
 3 memo from Dr. Mahmoud Khalifa regarding the
 4 change in the way we do business. And I think
 5 you may have that memo.
 6 COFFEY, Q.C.:
 7 Q. Yes, we do. I'll just bring up the
 8 particular, or at least one copy of it, we
 9 have a number of copies of that particular
 10 exhibit, but if we could, please, Exhibit P-
 11 1287, a copy of it.
 12 THE COMMISSIONER:
 13 Q. It should be on the screen in front of you,
 14 Doctor.
 15 COFFEY, Q.C.:
 16 Q. Now, Doctor, yourself, do you actually have
 17 the original copy?
 18 DR. NEIL:
 19 A. I have, yes.
 20 COFFEY, Q.C.:
 21 Q. And I gather you -
 22 DR. NEIL:
 23 A. I think that might be mine because I can see
 24 the dots in the corner -
 25 COFFEY, Q.C.:

Page 75

1 Q. Pardon me?
 2 DR. NEIL:
 3 A. - where I had it pinned on my bulletin board.
 4 COFFEY, Q.C.:
 5 Q. Yes. Doctor, I'm just going to ask you about
 6 this, this is a memo of February 16th, 1998.
 7 It's to all Newfoundland pathologists from Dr.
 8 Khalifa and the subject is reference reporting
 9 of estrogen and progesterone receptor
 10 immunohistochemical results. Now, Doctor, did
 11 you know who Dr. Khalifa was prior to this?
 12 DR. NEIL:
 13 A. Yes.
 14 COFFEY, Q.C.:
 15 Q. And how did you know who was he and how did
 16 you come to know him?
 17 DR. NEIL:
 18 A. He worked at the Health Science. He actually
 19 did a locum for us at one particular point in
 20 time. So, I knew him very well.
 21 COFFEY, Q.C.:
 22 Q. That was before--he done the locum before
 23 February of '98 or was it after?
 24 DR. NEIL:

Page 76

1 A. I honestly don't remember when he came, but I
 2 know we did have him for a while.
 3 COFFEY, Q.C.:
 4 Q. And you say you know him well, what's your
 5 understanding of his background? What was
 6 your understanding, you know, in the late '90s
 7 as to his background?
 8 DR. NEIL:
 9 A. Dr. Khalifa is a well rounded, experienced
 10 pathologist who I respected, an excellent
 11 teacher. I have all confidence in his
 12 abilities as a pathologist.
 13 COFFEY, Q.C.:
 14 Q. And did you have any heads up that this memo
 15 was coming?
 16 DR. NEIL:
 17 A. No, not that I can remember.
 18 COFFEY, Q.C.:
 19 Q. Okay. Doctor, when you received this memo and
 20 I take it, you would have read it and not long
 21 after then you pinned it to a bulletin board
 22 where it remained.
 23 DR. NEIL:
 24 A. Um-hm.
 25 COFFEY, Q.C.:

Page 77

1 Q. Had you known that there was any kind of study
 2 or organizational approach going on with any,
 3 well, it would have been then the Health Care
 4 Corporation of St. John's in relation to
 5 bringing in ER/PR IHC?
 6 DR. NEIL:
 7 A. I wasn't aware of what was going on?
 8 COFFEY, Q.C.:
 9 Q. Okay. So, you received this memo and you read
 10 it, what did you think and what did it cause
 11 you to do?
 12 DR. NEIL:
 13 A. Well, we knew we had to change our way of
 14 doing business. The memo is quite explanatory
 15 as to how to do that. It is quite clear of
 16 how you report. It is my assumption because
 17 this is addressed to all Newfoundland
 18 Pathologists, that we all saw it. We had to
 19 develop a protocol of reporting based on Dr.
 20 Khalifa's recommendations. We looked at his
 21 examples of how to report and really went with
 22 that totally, his recommendation as to how to
 23 report on our written reports that we send out
 24 to physicians and we report exactly, reported
 25 at the time, exactly as it says here, using

Page 78

1 both of those examples. And we actually
 2 included, if you look at example 2, we
 3 actually would include that comment and did
 4 for quite while.
 5 COFFEY, Q.C.:
 6 Q. When you received this memo, did you contact
 7 anyone about it?
 8 DR. NEIL:
 9 A. No.
 10 COFFEY, Q.C.:
 11 Q. So, accepted, from your perspective that this
 12 would be the way to do things in the future.
 13 DR. NEIL:
 14 A. Yes.
 15 COFFEY, Q.C.:
 16 Q. Doctor, at that time, February of 1998, who
 17 was in charge of the pathologists in Corner
 18 Brook?
 19 DR. NEIL:
 20 A. It would have been Dr. Valiente. That's
 21 before my time, '98 I started and he was my
 22 predecessor.
 23 COFFEY, Q.C.:
 24 Q. So, February of 1998 he was in charge.
 25 DR. NEIL:

Page 79

1 A. Correct.
 2 COFFEY, Q.C.:
 3 Q. You were -
 4 THE COMMISSIONER:
 5 Q. I'm sorry (inaudible) again.
 6 DR. NEIL:
 7 A. Valiente.
 8 COFFEY, Q.C.:
 9 Q. And you took over in -
 10 DR. NEIL:
 11 A. As director, in November.
 12 COFFEY, Q.C.:
 13 Q. Of that year?
 14 DR. NEIL:
 15 A. Same year.
 16 COFFEY, Q.C.:
 17 Q. Doctor, just looking at this memo, if I could,
 18 phase 2, he writes, "each pathologist would be
 19 asked to report results of his/her own case as
 20 indicated by the brown staining of nuclei of
 21 the invasive neoplastic cells". And this
 22 nuclei staining, at that time, how many stains
 23 utilized nuclei staining, do you recall? Were
 24 there many or few, in terms of your own
 25 experience. I'm not suggesting, you know, in

Page 80

1 theory how many there were, but within Corner
 2 Brook.
 3 DR. NEIL:
 4 A. There were some that were nuclei, some that
 5 were cytoplasmic.
 6 COFFEY, Q.C.:
 7 Q. Okay. This wasn't the first time you'd seen a
 8 reference to nuclei staining?
 9 DR. NEIL:
 10 A. No.
 11 COFFEY, Q.C.:
 12 Q. That's what I'm really -
 13 DR. NEIL:
 14 A. No, that's not the first time, no.
 15 COFFEY, Q.C.:
 16 Q. Okay. And he goes on to say, "this phase will
 17 start March 1, 1998 at which time your
 18 immunostain slides will be mailed back to you
 19 with positive controls whenever it is
 20 technically possible. With each run I will
 21 still be responsible for reviewing the
 22 positive controls here in our laboratory and
 23 the slides will not be mailed to you unless
 24 adequate staining is noted in the positive
 25 controls. As we are all interested in making

Page 81

1 this transition as smooth as possible, I will
 2 be more than glad to continue be available to
 3 answer any questions and address concerns".
 4 And then he talks about discontinuing the
 5 biochemical assay and refers to "attached
 6 please find a proposal for uniform reporting
 7 of ER/PR immunohistochemical staining". And
 8 this proposal was discussed and he talks about
 9 that and you've indicated that in Corner
 10 Brook, it was adopted.
 11 DR. NEIL:
 12 A. We adopted it.
 13 COFFEY, Q.C.:
 14 Q. Doctor, in phase two, that paragraph, the
 15 reference to "will be mailed back to you with
 16 positive controls whenever it is technically
 17 possible", which types of controls did you
 18 understand that to be?
 19 DR. NEIL:
 20 A. External controls.
 21 COFFEY, Q.C.:
 22 Q. And that would be an external positive control
 23 for ER and external positive control for PR.
 24 DR. NEIL:
 25 A. Correct.

Page 82

1 COFFEY, Q.C.:
 2 Q. Separate slides.
 3 DR. NEIL:
 4 A. Um-hm.
 5 COFFEY, Q.C.:
 6 Q. And what did you understand by the sentence,
 7 "with each run I will still be responsible for
 8 reviewing the positive controls here in our
 9 laboratory and the slides will not be mailed
 10 to you unless adequate staining is noted in
 11 the positive controls".
 12 DR. NEIL:
 13 A. I think that statement is quite clear.
 14 COFFEY, Q.C.:
 15 Q. And you understood -
 16 DR. NEIL:
 17 A. I understood that we would not be getting
 18 slides that did not have positive controls.
 19 COFFEY, Q.C.:
 20 Q. And that would be either--would you be getting
 21 positive controls all the time or some of the
 22 -
 23 DR. NEIL:
 24 A. No, we wouldn't get positive controls all the
 25 time. Controls are run as batches.

Page 83

1 COFFEY, Q.C.:
 2 Q. Yes.
 3 DR. NEIL:
 4 A. And I'll explain that a little bit.
 5 COFFEY, Q.C.:
 6 Q. Yes.
 7 DR. NEIL:
 8 A. The batch could have a run with a test case
 9 from Corner Brook, a test case from Gander, a
 10 test case from Eastern and they'd be run the
 11 same day. The positive control, there'd be a
 12 positive ER control, a positive PR control run
 13 with those three test samples. You can't send
 14 a control to every place in the province.
 15 Sometimes we would get it; sometimes Grand
 16 Falls would get it; sometimes it would stay
 17 with Eastern. We were told that we wouldn't
 18 get any slides unless they were positive
 19 controls.
 20 On occasion and probably more than
 21 several occasions, we would see written on the
 22 requisition that came back, controls are
 23 positive, indicated.
 24 COFFEY, Q.C.:
 25 Q. Yes, I was going to ask you about that because

Page 84

1 in getting the block and sending it off, I
 2 haven't asked you about how it worked in the
 3 St. John's, I'll take you to that now. The
 4 requisition you referred to earlier,
 5 requisition forms allowed for different types
 6 of stains, ER/PR were two of them.
 7 DR. NEIL:
 8 A. Yes.
 9 COFFEY, Q.C.:
 10 Q. Requisition will be prepared, set off with the
 11 block.
 12 DR. NEIL:
 13 A. Yes.
 14 COFFEY, Q.C.:
 15 Q. When the slides came back with the block and
 16 the requisition, at times -
 17 DR. NEIL:
 18 A. And the test slide.
 19 COFFEY, Q.C.:
 20 Q. Yes, and the test slide, the requisition would
 21 have written on it things like references to
 22 positive controls.
 23 DR. NEIL:
 24 A. Yes.
 25 COFFEY, Q.C.:

Page 85

1 Q. And I'll be referring you to some of those as
 2 examples, okay.
 3 DR. NEIL:
 4 A. Yes.
 5 COFFEY, Q.C.:
 6 Q. So, Doctor, and just so the Commissioner
 7 understands, I take it then that overall from
 8 your perspective as a practising pathologist in
 9 Corner Brook at the time, February of '98
 10 going into March '98, that okay, this is
 11 what's required, this is the new regime. And
 12 you and your fellow pathologists were going to
 13 participate and follow exactly what Dr.
 14 Khalifa suggested.
 15 DR. NEIL:
 16 A. Yes.
 17 COFFEY, Q.C.:
 18 Q. And with the proviso understanding as he said
 19 here that you understood he would not let
 20 slides leave without the positive controls
 21 having been read from--as certain to be
 22 positive from his perspective, Dr. Khalifa's.
 23 DR. NEIL:
 24 A. Quite clear.
 25 COFFEY, Q.C.:

Page 86

1 Q. Yes, and I appreciate that and it appears to
 2 be. So, in the instances when you would get
 3 the external controls yourself, despite his
 4 assurance, would you actually look at the
 5 external controls?
 6 DR. NEIL:
 7 A. If we had controls, we looked at them.
 8 COFFEY, Q.C.:
 9 Q. Did you ever notice any problem with them?
 10 DR. NEIL:
 11 A. I can't say that I did. I remember--I didn't
 12 see a lot. We our numbers of ER/PR cases over
 13 the years averaged from 40 a year, divide that
 14 among three, four pathologists, how many do
 15 you see a year?
 16 COFFEY, Q.C.:
 17 Q. I was going to ask you about that for the
 18 Commissioner. So, -
 19 DR. NEIL:
 20 A. On a personal basis.
 21 COFFEY, Q.C.:
 22 Q. Yes, Corner Brook itself would have about how
 23 many breast cancer cases a year?
 24 DR. NEIL:
 25 A. We would have about 40 cases of ER/PR requests

Page 87

1 per year, an average of 40.
 2 COFFEY, Q.C.:
 3 Q. Has that been fairly steady?
 4 DR. NEIL:
 5 A. It has been.
 6 COFFEY, Q.C.:
 7 Q. Going back from this time, from 1998 -
 8 DR. NEIL:
 9 A. Yes, it has been.
 10 COFFEY, Q.C.:
 11 Q. And so that's 40 a year and if there are four
 12 of you there -
 13 DR. NEIL:
 14 A. That's ten each.
 15 COFFEY, Q.C.:
 16 Q. And I take it, it's no one or two pathologists
 17 did breast cases.
 18 DR. NEIL:
 19 A. No, we all did the same. So, that's about ten
 20 each.
 21 COFFEY, Q.C.:
 22 Q. A year.
 23 DR. NEIL:
 24 A. Which is about once a month, no more than one
 25 or two a month.

Page 88

1 COFFEY, Q.C.:
 2 Q. And if there were three of you, there would be
 3 36 and about one a month then.
 4 DR. NEIL:
 5 A. But now we have five people, so it's a very
 6 few, that's the point.
 7 COFFEY, Q.C.:
 8 Q. Yes. And Doctor, you understood that you were
 9 to be looking for nuclei staining of invasive
 10 neoplastic cells which I take it is tumour
 11 cells?
 12 DR. NEIL:
 13 A. Um-hm.
 14 COFFEY, Q.C.:
 15 Q. The idea of reporting them as percentages,
 16 prior to February of 1998, do you recall if
 17 there were any analysis that you were
 18 conducting as a pathologist where you had to
 19 report a percentage?
 20 DR. NEIL:
 21 A. No.
 22 COFFEY, Q.C.:
 23 Q. This was the first kind of percentage.
 24 DR. NEIL:
 25 A. This was the first percentage.

Page 89

1 COFFEY, Q.C.:

2 Q. It's not the first nuclei staining cases, but

3 it is the first percentages.

4 DR. NEIL:

5 A. Yes.

6 COFFEY, Q.C.:

7 Q. What, if anything, did you understand about

8 how you were to do that? I mean, physically

9 and the mental process, how were you to do

10 that?

11 DR. NEIL:

12 A. You look at your test case, make an estimate

13 of the number of nuclei that were staining in

14 that whole sample, that was before you on a

15 microscope.

16 COFFEY, Q.C.:

17 Q. Okay.

18 DR. NEIL:

19 A. It's an estimate, it's a best guess estimate.

20 COFFEY, Q.C.:

21 Q. So how would you -- your own practice was to

22 do what physically, mentally, as you did this?

23 The slides would come back from St. John's.

24 What would you actually do?

25 DR. NEIL:

Page 90

1 A. You take the slide, the test slide, scan it,

2 see how much -- you can actually look at the H

3 & E slide first to get a better appreciation

4 of the tumour.

5 COFFEY, Q.C.:

6 Q. Yes.

7 DR. NEIL:

8 A. You can see it better in the H & E slide. Get

9 a good appreciation of what is on that H & E

10 slide, take your test slide with the ER

11 staining, and appropriately again after

12 looking at the ER slide, the PR slide. Get an

13 estimate percentage, and that's all it is, a

14 percentage, the percentage of tumour cells

15 that have brown nucelli. Could be ten, 20, 30,

16 40, 50, whatever the case may be. You go with

17 that number.

18 COFFEY, Q.C.:

19 Q. And that's the percentage, that's the -

20 DR. NEIL:

21 A. That's the percentage.

22 COFFEY, Q.C.:

23 Q. That would be filled in in the appropriate

24 space?

25 DR. NEIL:

Page 91

1 A. Filled in the appropriate space.

2 COFFEY, Q.C.:

3 Q. Doctor, your fellow pathologists -- now that

4 was the process you were following in

5 1998/1999. Do you know what process they were

6 following?

7 DR. NEIL:

8 A. I can only assume it was the same process.

9 COFFEY, Q.C.:

10 Q. So was it ever discussed, do you recall, as to

11 how we go about this?

12 DR. NEIL:

13 A. No.

14 COFFEY, Q.C.:

15 Q. Okay.

16 DR. NEIL:

17 A. I can only assume it was the same process.

18 It's an estimate of the number of brown

19 staining nucelli in invasive cells as Dr.

20 Khalifa outlined in his memo.

21 COFFEY, Q.C.:

22 Q. Doctor, you've referred to it today certainly,

23 the approach is to ensure there's normal

24 tissue, normal breast tissue, therefore, to

25 utilize this internal control.

Page 92

1 DR. NEIL:

2 A. Uh-hm.

3 COFFEY, Q.C.:

4 Q. In 1998, when you first got slides involving

5 ER and PR, did you know -- were you looking

6 for internal controls?

7 DR. NEIL:

8 A. No.

9 COFFEY, Q.C.:

10 Q. And did you know about the idea of utilizing

11 internal controls in ER and PR?

12 DR. NEIL:

13 A. Internal controls exist in pathology in

14 general because there are other stains besides

15 ER/PR immunohistochemical stains. So they do

16 exist in pathology. When I received this

17 memo, it clearly stated positive controls,

18 didn't say anything about internal controls.

19 In my practice of pathology over 20 odd years,

20 we always relied on external controls. There

21 was always an external control. It didn't

22 make a difference what slide you were looking

23 at or what particular stain you were looking

24 at, there was always an external control. My

25 emphasis was on the external control.

Page 93

1 COFFEY, Q.C.:

2 Q. You didn't know to look for the internal

3 control at the time?

4 DR. NEIL:

5 A. It didn't -- it wasn't a focus for me.

6 COFFEY, Q.C.:

7 Q. Were you aware of it, that it was utilized in

8 ER and PR at that time?

9 DR. NEIL:

10 A. I can't say that I was.

11 COFFEY, Q.C.:

12 Q. What's your first memory of really becoming

13 aware of it?

14 DR. NEIL:

15 A. My first memory of becoming aware of it,

16 became acutely aware of it, was when I

17 received another memo from Dr. Ejeckam.

18 COFFEY, Q.C.:

19 Q. Okay, and we'll come to that.

20 DR. NEIL:

21 A. In 2003.

22 COFFEY, Q.C.:

23 Q. We'll come to that and talk about it, okay.

24 DR. NEIL:

25 A. Okay.

Page 94

1 COFFEY, Q.C.:

2 Q. So in choosing -- at the time in 1998, and

3 perhaps I'll take you to a particular exhibit.

4 This is just a representative example, okay,

5 that's all. If we would bring up, please,

6 Exhibit 2226, please, and this, Doctor, is on

7 Western Health's stationary. It names four

8 doctors to the left hand side. If the

9 Commissioner is wondering about the spelling,

10 Dr. Valiente's name is there.

11 COMMISSIONER:

12 Q. I wasn't too far off. I gave him a double "I"

13 though.

14 COFFEY, Q.C.:

15 Q. Yourself, Dr. Kulaga and --

16 DR. NEIL:

17 A. Godlewski.

18 COFFEY, Q.C.:

19 Q. Godlewski. You were, I take it, the four

20 pathologists of the day in April of 1998.

21 DR. NEIL:

22 A. Yes.

23 COFFEY, Q.C.:

24 Q. This is April 8th, 1998. It's written to Dr.

25 M. Khalifa. I take it there's probably two

Page 95

1 patients referred to here, two surgical

2 numbers, and two different blocks, Block 4 and

3 Block 6. It's written, "Dr. Khalifa, please

4 find enclosed copy of path reports on blocks

5 in the above cases. These are being referred

6 for ER and PR receptor assays. Please return

7 blocks and comments on completion of these

8 cases". It's signed "Pathology, Pathology

9 Department. I want to ask you about that,

10 Doctor, because the idea of signing "Pathology

11 Department", I take it at that time it was

12 just -- there's no particular doctors name

13 here.

14 DR. NEIL:

15 A. No, this is a -- we instruct our secretary to

16 send these blocks and this is a form letter

17 that she used.

18 COFFEY, Q.C.:

19 Q. Okay.

20 DR. NEIL:

21 A. So she didn't sign her own name, she signed

22 pathology.

23 COFFEY, Q.C.:

24 Q. And, for example, the idea here, check

25 computer Monday morning, and this name here is

Page 96

1 M. Butler, April 14, '98, and we understand

2 this is Mary Butler?

3 DR. NEIL:

4 A. Could be Mary, yes.

5 COFFEY, Q.C.:

6 Q. Okay, and you know who Mary is?

7 DR. NEIL:

8 A. I know Mary.

9 COFFEY, Q.C.:

10 Q. You know Mary?

11 DR. NEIL:

12 A. Yes, I know Mary.

13 COFFEY, Q.C.:

14 Q. What would this signify here in this context,

15 April 14, '98? Would that be coming back

16 perhaps or arriving, or do you know?

17 DR. NEIL:

18 A. I don't honestly know. If you'd go back to

19 the date -- I think she said it was the 14th,

20 and we sent it on the 8th. It's probably that

21 she's received it and done it.

22 COFFEY, Q.C.:

23 Q. And I take it, Doctor, that this would be one

24 of the earlier cases for ER/PR request from

25 Corner Brook?

Page 97

1 DR. NEIL:
 2 A. That's correct.
 3 COFFEY, Q.C.:
 4 Q. For IHC. Now, Doctor, we don't know here
 5 whose particular patients these were and it
 6 doesn't, from my perspective -- it's not of
 7 particular interest to the Commission, except
 8 in relation to what would then happen when
 9 this first wave back in '98 would come to you,
 10 these -- I shouldn't say "wave" because it
 11 would be one or two a month at most sets of
 12 slides. What would you do, this process you
 13 talked about going through?
 14 COFFEY, Q.C.:
 15 Q. Those slides would come back to the
 16 appropriate pathologist who owned the
 17 particular case. They would look at the ER
 18 slide, the PR slide, do their estimate, as
 19 we've discussed, would document what the
 20 number is and the number would be entered into
 21 our pathology report as an addendum based on
 22 the recommendations from Dr. Khalifa's letter.
 23 COFFEY, Q.C.:
 24 Q. Now, Doctor, if we could, please, Exhibit P-
 25 2227. Now, Doctor, again this is just -- it's

Page 98

1 a pathology report from Western Memorial
 2 Regional Hospital. It relates to a 1998 case,
 3 and again it's -- from our perspective, it's
 4 to get some sense of how things were being
 5 reported.
 6 DR. NEIL:
 7 A. Uh-hm.
 8 COFFEY, Q.C.:
 9 Q. In relation to ER/PR around that time. Now
 10 here this particular one on page two of the
 11 exhibit is a reference to estrogen receptors,
 12 negative, 0 percent of neoplastic cells;
 13 progesterone receptors, negative 0 percent of
 14 neoplastic cells.
 15 DR. NEIL:
 16 A. Uh-hm.
 17 COFFEY, Q.C.:
 18 Q. Now, Doctor, 18/02/98, I take it, would be
 19 February 18th, 1998?
 20 DR. NEIL:
 21 A. Yes.
 22 COFFEY, Q.C.:
 23 Q. Which is just, in fact, two days after Dr.
 24 Khalifa's memo. Do you know if there were, in
 25 fact, ER/PR results using the IHC method being

Page 99

1 reported to Corner Brook?
 2 DR. NEIL:
 3 A. Before -- you're right.
 4 COFFEY, Q.C.:
 5 Q. I was just going to ask because --
 6 DR. NEIL:
 7 A. Right, because we did have some in '97. Dr.
 8 Khalifa was reading them.
 9 COFFEY, Q.C.:
 10 Q. Okay, because I had asked you about that
 11 earlier. Upon reflection now, you remember
 12 now --
 13 DR. NEIL:
 14 A. Yes.
 15 COFFEY, Q.C.:
 16 Q. Looking at this that in the early stages
 17 before yourself and your fellow pathologists
 18 in Corner Brook were actually engaged by the
 19 memo to do the reading yourself --
 20 DR. NEIL:
 21 A. Dr. Khalifa was reading them.
 22 COFFEY, Q.C.:
 23 Q. Dr. Khalifa had been reading them.
 24 DR. NEIL:
 25 A. By himself, and he did that correlation

Page 100

1 between the biochemical and the IHC.
 2 COFFEY, Q.C.:
 3 Q. Which is referred to in his memo?
 4 DR. NEIL:
 5 A. Yes.
 6 COFFEY, Q.C.:
 7 Q. In fact, that correlation process.
 8 DR. NEIL:
 9 A. Yes, he was reading them himself.
 10 COFFEY, Q.C.:
 11 Q. So you would have received a report, you or
 12 whomever of your fellow physicians, would have
 13 received a report back in 1998, and this sort
 14 of entry would be dictated?
 15 DR. NEIL:
 16 A. Yes.
 17 COFFEY, Q.C.:
 18 Q. Doctor, I do here -- just because this
 19 particular patient, there's a reference to
 20 October 25 '05, ER/PR recall IHC blocks, Roman
 21 numeral VI, I H & E slides.
 22 DR. NEIL:
 23 A. Right.
 24 COFFEY, Q.C.:
 25 Q. And we will be coming to this shortly, but

Page 101

1 this sort of entry for these retest cases in
 2 2005, was this done routinely for Corner Brook
 3 patients, this sort of entry?
 4 DR. NEIL:
 5 A. When it was sent back for retest was recorded.
 6 COFFEY, Q.C.:
 7 Q. Within the patient's chart?
 8 DR. NEIL:
 9 A. Within the patient's report.
 10 COFFEY, Q.C.:
 11 Q. Meditec report.
 12 DR. NEIL:
 13 A. This is not Meditec, by the way.
 14 COFFEY, Q.C.:
 15 Q. Okay, it's not?
 16 DR. NEIL:
 17 A. This is -- no, this is a very primitive
 18 computer program that we were using before
 19 Meditec. So this is really the only way that
 20 we could enter it.
 21 COFFEY, Q.C.:
 22 Q. Okay.
 23 DR. NEIL:
 24 A. To record it.
 25 COFFEY, Q.C.:

Page 102

1 Q. Okay, so you've been utilizing Meditec now for
 2 --
 3 DR. NEIL:
 4 A. Since '99.
 5 COFFEY, Q.C.:
 6 Q. Since '99, but pre-dating that, this was the
 7 primitive computer --
 8 DR. NEIL:
 9 A. Computer program we used.
 10 COFFEY, Q.C.:
 11 Q. But even then in 2005 when you were in the
 12 position where you had to go back and look at
 13 patient's records before '99 --
 14 DR. NEIL:
 15 A. Yes.
 16 COFFEY, Q.C.:
 17 Q. Which this is one of them, you went back and
 18 entered this in the original primitive
 19 computer --
 20 DR. NEIL:
 21 A. Well, it's a program.
 22 COFFEY, Q.C.:
 23 Q. I appreciate it's a --
 24 DR. NEIL:
 25 A. Program.

Page 103

1 COFFEY, Q.C.:
 2 Q. Program. I appreciate being corrected on this
 3 is actually not Meditec itself.
 4 DR. NEIL:
 5 A. It's not Meditec.
 6 COFFEY, Q.C.:
 7 Q. It did look -- the format did look different.
 8 Doctor, there's a reference here for this
 9 particular patient, April 5, 2006, Block 12
 10 sent directly to Mount Sinai for ER/PR recall.
 11 DR. NEIL:
 12 A. Yes.
 13 COFFEY, Q.C.:
 14 Q. So I take it at times for some patients blocks
 15 got sent directly to Mount Sinai?
 16 DR. NEIL:
 17 A. Yes.
 18 COFFEY, Q.C.:
 19 Q. And we'll be coming to that, but even that
 20 would be recorded in the patient's --
 21 DR. NEIL:
 22 A. Everything is recorded.
 23 COFFEY, Q.C.:
 24 Q. Original computer chart.
 25 DR. NEIL:

Page 104

1 A. Yes.
 2 COFFEY, Q.C.:
 3 Q. For '98 and '99 or in Meditec after '99?
 4 DR. NEIL:
 5 A. Yes, correct.
 6 COFFEY, Q.C.:
 7 Q. And then there's a note as well, report
 8 received April 11, 2006. See that? Doctor,
 9 the reference here to three names, they're
 10 redacted, but they're all MDs, what was the
 11 practice or what is the practice in Corner
 12 Brook vis a vis signing these sorts of
 13 pathology reports? Would all doctors names go
 14 on them, or how does that work?
 15 DR. NEIL:
 16 A. As I mentioned to you, this is a primitive
 17 program.
 18 COFFEY, Q.C.:
 19 Q. Yes.
 20 DR. NEIL:
 21 A. This program could only accept three names.
 22 So if this were my case, I would just tick my
 23 name and sign it.
 24 COFFEY, Q.C.:
 25 Q. Okay.

Page 105

1 DR. NEIL:
 2 A. There were four people at the time. We had to
 3 tweak the system. If my name wasn't there,
 4 the secretary would be able to put it there.
 5 COFFEY, Q.C.:
 6 Q. Okay.
 7 DR. NEIL:
 8 A. When I say "primitive", I mean primitive.
 9 COFFEY, Q.C.:
 10 Q. Doctor, the idea of putting three or four
 11 names -- if the patient happened to be yours,
 12 and I'm not suggesting this particular patient
 13 was, but if it happened to be your patient,
 14 what's the practice now, would it be just your
 15 name or everybody in the department's name?
 16 DR. NEIL:
 17 A. Three names would be there, but one person
 18 would sign their name. Remember physician's
 19 signatures can't always be read.
 20 COFFEY, Q.C.:
 21 Q. Yes.
 22 DR. NEIL:
 23 A. So you could tick your name and scratch, and
 24 you'd know.
 25 COFFEY, Q.C.:

Page 106

1 Q. So what would be the significance then of
 2 having three or four names there? Why --
 3 DR. NEIL:
 4 A. Our department had at the time three or four
 5 people, and we wanted to make sure that --
 6 it's like a form letter with the appropriate -
 7 - I wanted to have the four names there, but
 8 the system couldn't take four names.
 9 COFFEY, Q.C.:
 10 Q. Okay, and to signify whose patient it was, he
 11 or she would have to initial or sign or --
 12 DR. NEIL:
 13 A. You'd sign it.
 14 COFFEY, Q.C.:
 15 Q. Okay.
 16 DR. NEIL:
 17 A. Physically put pen to the paper.
 18 COFFEY, Q.C.:
 19 Q. Which would signify that, in fact, it is that
 20 particular doctor's patient?
 21 DR. NEIL:
 22 A. Yes. I know who owns this.
 23 COFFEY, Q.C.:
 24 Q. Yes, and again it's not -- I'm not going to
 25 ask you. In particular, this -- Doctor, as

Page 107

1 well here, I take it, on the third page
 2 there's a note here, "This case was sent
 3 directly to Mount Sinai Hospital, Toronto,
 4 Ontario, as part of ER/PR retesting and report
 5 is as follows", and I take it this is the
 6 verbatim report?
 7 DR. NEIL:
 8 A. Yes.
 9 COFFEY, Q.C.:
 10 Q. From Dr. Mullen, and continue on into the
 11 fourth page, there's a note here -- in fact,
 12 it ends, I take it, because the -- not only
 13 have you got the report from Dr. Mullen
 14 verbatim, but you've also got the diagnosis
 15 which he included in his reports?
 16 DR. NEIL:
 17 A. He always does.
 18 COFFEY, Q.C.:
 19 Q. Yes, and you've got, "Dr. Paul Neil for Dr.
 20 Brendan Mullen", and April 24, 2006, there's a
 21 note that a particular block is returned, and
 22 May 12, 2006, slides sent to St. Clare's Mercy
 23 Hospital on request of Dr. Cook and Dr. Denic,
 24 total slides sent, 12 slides. So, Doctor, you
 25 say that any time patient's slides or blocks

Page 108

1 were sent anywhere, it was recorded in their
 2 chart, as it were, whether it's the older
 3 program or Meditec?
 4 DR. NEIL:
 5 A. Correct.
 6 COFFEY, Q.C.:
 7 Q. And that's the practice in Corner Brook?
 8 DR. NEIL:
 9 A. Yes.
 10 COFFEY, Q.C.:
 11 Q. And if it was received back --
 12 DR. NEIL:
 13 A. Yes.
 14 COFFEY, Q.C.:
 15 Q. It's also recorded?
 16 DR. NEIL:
 17 A. Yes.
 18 COFFEY, Q.C.:
 19 Q. If we could, please -- Doctor, then after the
 20 process of reporting your own cases in 1998
 21 kind of got up and running, in terms of ER and
 22 PR, did you ever have any concerns about your
 23 reporting of ER/PR, any issues ever brought
 24 up, you know, that you became aware of in
 25 Corner Brook, you know, the quality of the

Page 109

1 slides you were getting?
 2 DR. NEIL:
 3 A. I didn't have, personally, concerns.
 4 COFFEY, Q.C.:
 5 Q. Did you know if anybody else within your
 6 office?
 7 DR. NEIL:
 8 A. On a rare occasion, I have had comments from
 9 two of our pathologists.
 10 COFFEY, Q.C.:
 11 Q. Do you recall who they were, those
 12 pathologists?
 13 DR. NEIL:
 14 A. Yes, I do, Dr. Luer and Dr. Karn.
 15 COFFEY, Q.C.:
 16 Q. Yes, and do you recall what the nature of
 17 those comments was?
 18 DR. NEIL:
 19 A. General comments to say that this particular--
 20 the slides, the slide quality is not as good
 21 as we would like, and I did speak to them
 22 about that and I can't be more--they can't and
 23 I can't be any more specific than that.
 24 COFFEY, Q.C.:
 25 Q. Doctor, have yourself or either--are those two

Page 110

1 doctors still there?
 2 DR. NEIL:
 3 A. Yes.
 4 COFFEY, Q.C.:
 5 Q. Okay. Have yourself or either of those two
 6 physicians gone back to look at their
 7 original--try and see if they could find some
 8 original reports where they recorded those
 9 comments, do you know?
 10 DR. NEIL:
 11 A. Not to my knowledge.
 12 COFFEY, Q.C.:
 13 Q. Okay. With a view to trying to ascertain what
 14 exactly it was, you know, two or three or four
 15 years later, "why I had a concern about the
 16 quality of a particular slide?"
 17 DR. NEIL:
 18 A. Could they tell me?
 19 COFFEY, Q.C.:
 20 Q. Yes.
 21 DR. NEIL:
 22 A. I don't think so.
 23 COFFEY, Q.C.:
 24 Q. Okay. Now when this would arise, I take it
 25 were you actually then in charge at the time?

Page 111

1 DR. NEIL:
 2 A. Yes.
 3 COFFEY, Q.C.:
 4 Q. Do you recall was it pursued in any way?
 5 DR. NEIL:
 6 A. My comment to anybody and to both of them, if
 7 you have a difficult--if you have difficulty
 8 with any slides that you're receiving from an
 9 outside institution, pick up the phone, call
 10 the technologist who did it, talk to him or
 11 her. If you're not satisfied with that, talk
 12 to the person in charge. Remember, my
 13 experience in immunohistochemistry is not
 14 technical. The technical aspect would come
 15 from Eastern Health. Those were my
 16 instructions to both of them.
 17 COFFEY, Q.C.:
 18 Q. And did you ever recall hearing back from
 19 them?
 20 DR. NEIL:
 21 A. No. I assumed things were fine.
 22 COFFEY, Q.C.:
 23 Q. Doctor, in relation to those two physicians,
 24 are they of a younger or more recent--younger
 25 generation, more recent training than

Page 112

1 yourself?
 2 DR. NEIL:
 3 A. They're probably watching me.
 4 COFFEY, Q.C.:
 5 Q. It is what it is.
 6 DR. NEIL:
 7 A. It is what it is. Dr. Karn started with us in
 8 1999.
 9 COFFEY, Q.C.:
 10 Q. Okay.
 11 DR. NEIL:
 12 A. He's younger than I am. Dr. Luer started with
 13 us much later, but he's older than me.
 14 COFFEY, Q.C.:
 15 Q. Okay.
 16 DR. NEIL:
 17 A. So he's--Dr. Karn has a lot of experience in
 18 other parts of the world. Dr. Karn's
 19 experience is--his working experience is in
 20 Corner Brook.
 21 COFFEY, Q.C.:
 22 Q. His?
 23 DR. NEIL:
 24 A. His working experience is in Corner Brook.
 25 COFFEY, Q.C.:

Page 113

1 Q. Is in Corner Brook, okay.
 2 DR. NEIL:
 3 A. He trained in Calgary.
 4 COFFEY, Q.C.:
 5 Q. Okay. So did you have any understanding that
 6 they may have been exposed to IHC, ER/PR
 7 slides elsewhere before they arrived in Corner
 8 Brook?
 9 DR. NEIL:
 10 A. I think they probably did.
 11 COFFEY, Q.C.:
 12 Q. Okay.
 13 DR. NEIL:
 14 A. But I can't be entirely sure of that.
 15 COFFEY, Q.C.:
 16 Q. And anytime--your recollection, at any time
 17 either of them raised it with you around the
 18 office, the concern they had, you directed
 19 them to take it up with the people who created
 20 the slides?
 21 DR. NEIL:
 22 A. Yeah, and remember now, this is only one
 23 occasion with each person, one occasion.
 24 COFFEY, Q.C.:
 25 Q. Okay, one with each, and the time frame, you

Page 114

1 don't -
 2 DR. NEIL:
 3 A. I don't think it had anything to do with ER/PR
 4 and it was a while ago.
 5 COFFEY, Q.C.:
 6 Q. Exhibit--if we could, we have a new exhibit,
 7 Commissioner. I believe it's Exhibit P-2271.
 8 It's kind of an organizational listing that
 9 was provided by Dr. Neil's counsel this
 10 morning.
 11 THE COMMISSIONER:
 12 Q. Exhibit P-2271 entered.
 13 EXHIBIT ENTERED AND MARKED P-2271
 14 COFFEY, Q.C.:
 15 Q. And if we could bring that up, please?
 16 Doctor, I take it that this is a--it's in your
 17 handwriting?
 18 DR. NEIL:
 19 A. Yes, it is.
 20 COFFEY, Q.C.:
 21 Q. Okay, and this is an organizational chart by
 22 way of chronological time in Corner Brook as a
 23 physician, a pathologist?
 24 DR. NEIL:
 25 A. It's a time line of pathologists who have come

Page 115

1 and gone.
 2 COFFEY, Q.C.:
 3 Q. And we see--you've got a--I take it the
 4 second, the longest line.
 5 DR. NEIL:
 6 A. No, no, I have the third line.
 7 COFFEY, Q.C.:
 8 Q. Third?
 9 DR. NEIL:
 10 A. Dr. Dimakulangan
 11 COFFEY, Q.C.:
 12 Q. Oh, yes.
 13 DR. NEIL:
 14 A. Dr. Dimakulangan had the top line.
 15 COFFEY, Q.C.:
 16 Q. Top line, and was it -
 17 DR. NEIL:
 18 A. And I think his line is actually--his line was
 19 actually the longest. But Dr. Valiente was
 20 very close.
 21 COFFEY, Q.C.:
 22 Q. These go back to 1975 anyway, these two
 23 physicians at the top. We have yourself there
 24 in '87, January of '87, and okay, Doctor, let
 25 me see, the two physicians that on a single

Page 116

1 occasion each spoke to you are Dr. Luer?
 2 DR. NEIL:
 3 A. Yes.
 4 COFFEY, Q.C.:
 5 Q. Which is here, which would mean Dr. Luer
 6 started October 21st, 2002?
 7 DR. NEIL:
 8 A. That's correct.
 9 COFFEY, Q.C.:
 10 Q. And continues there. So any such conversation
 11 would have had to have been after that?
 12 DR. NEIL:
 13 A. Yes.
 14 COFFEY, Q.C.:
 15 Q. And the other doctor is Doctor?
 16 DR. NEIL:
 17 A. Dr. Karn.
 18 COFFEY, Q.C.:
 19 Q. Karn is up here.
 20 DR. NEIL:
 21 A. He started in October 5/98.
 22 COFFEY, Q.C.:
 23 Q. Okay, and so any of the--the comment about or
 24 the slide quality, could have been any time
 25 since then really?

Page 117

1 DR. NEIL:
 2 A. It could have been, but it was probably around
 3 the time that Dr. Luer was there as well.
 4 COFFEY, Q.C.:
 5 Q. Okay. So that would be then since October of
 6 '02?
 7 DR. NEIL:
 8 A. Yes.
 9 COFFEY, Q.C.:
 10 Q. Doctor, I'm going to go--actually,
 11 Commissioner, if we're going to break for the
 12 morning, I think it's about 10 past 11.
 13 THE COMMISSIONER:
 14 Q. Um-hm.
 15 COFFEY, Q.C.:
 16 Q. If we could do that now, because I'm going to
 17 go on to Dr. Ejeckam's memo, so I'd like to
 18 break now.
 19 THE COMMISSIONER:
 20 Q. Sure, yes, all right. We'll take a 15-minute
 21 break.
 22 (RECESS)
 23 THE COMMISSIONER:
 24 Q. Please be seated. Mr. Coffey.
 25 COFFEY, Q.C.:

Page 118

1 Q. Thank you, Commissioner. There are a couple
 2 of exhibits that there are references in them
 3 that I want to refer you to, Doctor. They
 4 don't involve Western, but there are some
 5 subject matters. If I could, please, Exhibit
 6 P-1857? Now Doctor, these are, in particular,
 7 page two and three, are minutes of an
 8 anatomical pathology site chiefs meeting back
 9 in June 17th, 1997, and participants are Dr.
 10 S. Parai, M. Khalifa, Dr. Cook, Don Cook, and
 11 Mr. J. Murphy and apologies from other
 12 physicians, but in particular, Doctor, on this
 13 next page, paragraph 3.4 says "ER and PR
 14 receptor interpretation. This was discussed
 15 in detail. The majority of pathologists at
 16 St. Clare's, as well as the Grace Hospital,
 17 would like to interpret their own cases with
 18 control slides. Dr. Khalifa has agreed to
 19 provide a number of cases to the Grace
 20 Hospital to review them to be familiar with
 21 the positive and negative results." And
 22 Doctor, in relation to a question I had asked
 23 you earlier then, the idea then--because I'm
 24 going to ask you about the February 1998 memo
 25 from Dr. Khalifa, you had indicated that

Page 119

1 initially it was the first you could recall of
 2 it, but then upon reflection, you thought
 3 well, in fact, Dr. Khalifa had already been
 4 reporting them for a while?
 5 DR. NEIL:
 6 A. Yes.
 7 COFFEY, Q.C.:
 8 Q. The idea that's raised here, back in June of
 9 1997, that the majority of pathologists, in
 10 particular--a particular site, St. Clare's and
 11 the Grace, would like to interpret their own
 12 cases involving ER and PR receptors, was
 13 Corner Brook ever consulted about whether or
 14 not they wanted to get involved in the sense
 15 of -
 16 DR. NEIL:
 17 A. No.
 18 COFFEY, Q.C.:
 19 Q. Okay, I just wanted to--because it was
 20 alluded--well, not alluded to, it's referred
 21 to here, and your memory is though that
 22 didn't--you weren't consulted one way or the
 23 other about it?
 24 DR. NEIL:
 25 A. The date here is '97?

Page 120

1 COFFEY, Q.C.:
 2 Q. Yes, this is June of 1997.
 3 DR. NEIL:
 4 A. Now I wasn't in the position that I'm in today
 5 in '97.
 6 COFFEY, Q.C.:
 7 Q. I appreciate that, yes.
 8 DR. NEIL:
 9 A. Dr. Valiente was there and I think that he
 10 would have discussed it with me, if he had
 11 been contacted.
 12 COFFEY, Q.C.:
 13 Q. Yes. I think you were the -
 14 DR. NEIL:
 15 A. Associate.
 16 COFFEY, Q.C.:
 17 Q. - associate, yes.
 18 DR. NEIL:
 19 A. Yes, he would have discussed it with me if he
 20 had been contacted.
 21 COFFEY, Q.C.:
 22 Q. Exhibit P-1870, please? Doctor, this is a
 23 memo to Provincial Laboratory Directors, the
 24 Program Director at Laboratory Medicine
 25 Program, and Divisional Managers, Division of

Page 121

1 Anatomy Pathology, from Dr. Cook, April 27th,
 2 2000.
 3 DR. NEIL:
 4 A. Um-hm.
 5 COFFEY, Q.C.:
 6 Q. And it involves HER2/neu expression as the
 7 subject, and now would this sort of memo ever
 8 have gotten to yourself?
 9 DR. NEIL:
 10 A. Yes.
 11 COFFEY, Q.C.:
 12 Q. And this is effective April 1, 2000.
 13 "Pathologists at the Health Care Corporation
 14 of St. John's have begun reporting of HER2/neu
 15 over expression" and it refers to the details
 16 of it, and he continues and concludes by
 17 saying, in the last paragraph, "we will be
 18 able to perform HER2/neu immunoperoxidase
 19 stains on paraffin blocks on cases referred
 20 in. Once the stains are completed, both the
 21 paraffin blocks and the slides will be
 22 referred back to your hospital. At this point
 23 in time, reporting of HER2/neu over expression
 24 will be the responsibility of the pathologist
 25 who ordered the stain. It is also recommended

Page 122

1 that for evaluation of breast biopsies for
 2 HER2/neu over expression the biopsies should
 3 be fixed overnight for at least 18 hours."
 4 Doctor, do you recall how is HER2/neu
 5 then developed, in terms of reporting, from
 6 Western's perspective? Did you get involved
 7 in such reportings?
 8 DR. NEIL:
 9 A. I'd actually forgotten we did this, but yeah,
 10 the stains were completed and the paraffin
 11 blocks and the slides were referred back to
 12 our hospital. Again, there were very, very,
 13 very few of these. There were some
 14 instructions that did come back with it.
 15 COFFEY, Q.C.:
 16 Q. The actual--as to how they should be reported,
 17 how they should be interpreted and reported?
 18 DR. NEIL:
 19 A. Yes, there was a kit with kit instructions
 20 that came back, and it went something like one
 21 plus, two plus, three plus. So yes, it was
 22 there, and we did it, but like I say, it was
 23 very, very sparse, numbers that we did.
 24 COFFEY, Q.C.:
 25 Q. And Doctor, here, in fact, if you just look at

Page 123

1 the memo itself, there's a reporting -
 2 DR. NEIL:
 3 A. Yes, I remember this.
 4 COFFEY, Q.C.:
 5 Q. - format suggested there. The reference to--
 6 because I take it the--would the HER2/neu be
 7 ordered on the same blocks as the ER/PR?
 8 DR. NEIL:
 9 A. Yes.
 10 COFFEY, Q.C.:
 11 Q. And there's a reference here, "the biopsy
 12 should be fixed overnight for at least 18
 13 hours."
 14 DR. NEIL:
 15 A. Um-hm.
 16 COFFEY, Q.C.:
 17 Q. Do you recall--or what, if anything, was your
 18 understanding, as of April 2000, as to what
 19 sorts of time is required for fixation, for
 20 example, for ER and PR?
 21 DR. NEIL:
 22 A. Fixation is important for any large--for any
 23 tissue.
 24 COFFEY, Q.C.:
 25 Q. Yes.

Page 124

1 DR. NEIL:
 2 A. Most especially for larger tissues, and longer
 3 times are required. More formalin is required
 4 for larger tissues. So to be specific about
 5 ER/PR versus any other standard specimen that
 6 we receive, fixation is of vital importance to
 7 any tissue.
 8 COFFEY, Q.C.:
 9 Q. Now this refers to 18 hours, in particular.
 10 DR. NEIL:
 11 A. Yes.
 12 COFFEY, Q.C.:
 13 Q. For at least 18 hours. Was there any
 14 procedure in place to ensure that a
 15 particular--like for example, a breast
 16 specimen was fixed for at least 18 hours?
 17 DR. NEIL:
 18 A. If this is referring to a large specimen, it
 19 would be fixed overnight.
 20 COFFEY, Q.C.:
 21 Q. Okay.
 22 DR. NEIL:
 23 A. Which is within the time frame of 18 hours.
 24 COFFEY, Q.C.:
 25 Q. But is there any actual procedure in place to

Page 125

1 ensure that it is 18 hours or more? Even to
 2 this day, do you know if there's any procedure
 3 in place?
 4 DR. NEIL:
 5 A. Well, we do have specimen fixation protocols
 6 from Eastern Health that we talked about
 7 earlier this morning.
 8 COFFEY, Q.C.:
 9 Q. Okay, so whatever they specify is what's being
 10 followed now?
 11 DR. NEIL:
 12 A. Yes.
 13 COFFEY, Q.C.:
 14 Q. Exhibit P-1874? Now Doctor, this is Division
 15 of Anatomic Pathology, minutes of meeting of
 16 February 22nd, 2001. It involves the Health
 17 Care Corporation of St. John's, but at page
 18 three of the exhibit, page three of the
 19 underlying minutes, under new business
 20 continued, "4.2 Quality Control of
 21 immunoperoxidase staining. There's been a
 22 study going on the quality--a studying going
 23 on," I presume it should say, "on the quality
 24 of immunoperoxidase staining for both sites,"
 25 and this would be, in this context, the

Page 126

1 General Hospital and St. Clare's. "It is
 2 agreed the control for immunoperoxidase
 3 staining be run for every batch. A
 4 pathologist will check on the control slide
 5 before sending the slide to the other site.
 6 Dr. S. Parai has agreed to do this. In case
 7 he is not available, another pathologist will
 8 be looking at the control."
 9 Now this, I gather, in the context here,
 10 is quality control of immunoperoxidase
 11 staining in general, that's what this refers
 12 to?
 13 DR. NEIL:
 14 A. Um-hm.
 15 COFFEY, Q.C.:
 16 Q. Were you ever made aware, in February,
 17 January, February, March of 2001 that this
 18 sort of a study was going on?
 19 DR. NEIL:
 20 A. No.
 21 COFFEY, Q.C.:
 22 Q. Until 2003, Dr. Ejeckam's memos, were you ever
 23 made aware of any concerns from St. John's
 24 about immunoperoxidase staining?
 25 DR. NEIL:

Page 127

1 A. No.
 2 COFFEY, Q.C.:
 3 Q. Exhibit P-1876 please? Now, Doctor, these are
 4 again minutes of a meeting of site chiefs and
 5 divisional managers, this is at Health Care
 6 Corporation of St. John's, April 25th, 2001.
 7 And under "Business Arising" paragraph two,
 8 "quality control immunoperoxidase staining
 9 generally the immunos appear to be very good,
 10 there appears to be some problems with the
 11 estrogen and progesterone receptors. Positive
 12 controls are checked daily by a pathologist;
 13 however, these need to be documented. Dr.
 14 Parai will follow up on this. Note is also
 15 made of heavy utilization of immuno services
 16 and high volumes encountered." So I take it
 17 this was not brought to your attention either?
 18 DR. NEIL:
 19 A. No.
 20 COFFEY, Q.C.:
 21 Q. And under "New Business", paragraph two,
 22 "terminology of estrogen and progesterone
 23 reports. Mr. Gulliver will develop a Canned
 24 Text for reporting of estrogen and
 25 progesterone receptors. Information for this

Page 128

1 will be obtained from Dr. Parai." I
 2 appreciate you had heard from Dr. Khalifa in
 3 the format back in '98.
 4 DR. NEIL:
 5 A. Uh-hm.
 6 COFFEY, Q.C.:
 7 Q. Did you ever hear about any suggested changes
 8 to ER/PR reporting formats or Canned Text
 9 after that.
 10 DR. NEIL:
 11 A. No.
 12 COFFEY, Q.C.:
 13 Q. That was until 2005, I take it?
 14 DR. NEIL:
 15 A. Uh-hm.
 16 COFFEY, Q.C.:
 17 Q. And, Doctor, if we could, Exhibit P-1877.
 18 Doctor, these are minutes of site chiefs and
 19 divisional managers' meeting of June 26th,
 20 2001 for the Health Care Corporation of St.
 21 John's, page, that's the agenda, page two of
 22 the minutes, and I apologize, page two of the
 23 minutes. And paragraph 3.2, labelled "HER2
 24 expression, ER/PR control" the text reads
 25 here, "The controls for all these

Page 129

1 immunostaining are checked by the site chief
 2 or by on call pathologist when site chief is
 3 not available." Okay?
 4 DR. NEIL:
 5 A. Uh-hm.
 6 COFFEY, Q.C.:
 7 Q. Now, Doctor, I want to ask you about this
 8 because by this point, that is by 2001,
 9 certainly Dr. Khalifa had been gone for
 10 awhile, you would have been aware that Dr.
 11 Khalifa left around '99, 2000?
 12 DR. NEIL:
 13 A. I'm not sure when he left.
 14 COFFEY, Q.C.:
 15 Q. But you would have been generally aware at
 16 some point that he had gone.
 17 DR. NEIL:
 18 A. Yes.
 19 COFFEY, Q.C.:
 20 Q. When he left, what was your understanding
 21 about this assurance given back in February of
 22 1998 concerning the controls being checked,
 23 the external controls being checked? And we
 24 talked about that earlier. When you learned
 25 that Dr. Khalifa had gone, did you make any

Page 130

1 assumptions about that whether there was
 2 somebody replacing him and checking the
 3 controls?
 4 DR. NEIL:
 5 A. I assumed that someone took his work.
 6 COFFEY, Q.C.:
 7 Q. Okay.
 8 DR. NEIL:
 9 A. And did his job.
 10 COFFEY, Q.C.:
 11 Q. And on that point, Doctor, I take it then that
 12 the assurance given in February of '98 in that
 13 memo.
 14 DR. NEIL:
 15 A. Yes.
 16 COFFEY, Q.C.:
 17 Q. You didn't see that as a personal assurance so
 18 much as the person in his position?
 19 DR. NEIL:
 20 A. Yes, correct.
 21 COFFEY, Q.C.:
 22 Q. It wasn't so much Dr. Khalifa per se, as is
 23 Dr. Khalifa as site chief at the time?
 24 DR. NEIL:
 25 A. As the person doing the job at that particular

Page 131

1 time, not necessarily Dr. Khalifa.
 2 COFFEY, Q.C.:
 3 Q. Were you ever made aware, Doctor, do you
 4 recall in June 2001 or in 2001 that there was
 5 at least a recognition that the site chief or
 6 the pathologist on call was in effect,
 7 checking these controls?
 8 DR. NEIL:
 9 A. No.
 10 COFFEY, Q.C.:
 11 Q. That they had referred to this--the point I'm
 12 getting at, is that there was no assurance
 13 kind of sent out that you recall to everybody,
 14 Khalifa is gone, but we're still doing this?
 15 DR. NEIL:
 16 A. No, there was no assurance sent out.
 17 COFFEY, Q.C.:
 18 Q. If I could, please, Exhibit P-0113 please?
 19 Now, Doctor, this is Dr. Ejeckam's memo of
 20 April 4, 2003 and the Commissioner has seen
 21 this on a number of occasions. It's addressed
 22 to pathologists, including out of town
 23 hospitals, which would include Western
 24 Memorial. Did you receive this?
 25 DR. NEIL:

Page 132

1 A. No.
 2 COFFEY, Q.C.:
 3 Q. Okay, I'm just going to, if we could, please,
 4 I'm just going to go to the next page, page
 5 two, which is the May 2nd, 2003, memo. Did
 6 you receive this?
 7 DR. NEIL:
 8 A. Yes.
 9 COFFEY, Q.C.:
 10 Q. It is addressed to the same group, as it were,
 11 to pathologists, HSC, St. Clare's and out of
 12 town hospitals. We look back at page one, the
 13 April 4th memo, "Pathologists, HSC, St.
 14 Clare's and Out-of-Town Hospitals." So you
 15 got the second one?
 16 DR. NEIL:
 17 A. I got the second one.
 18 COFFEY, Q.C.:
 19 Q. But not the first?
 20 DR. NEIL:
 21 A. Not the first.
 22 COFFEY, Q.C.:
 23 Q. When did you first become aware that there was
 24 an April 4, 2003 memo?
 25 DR. NEIL:

Page 133

1 A. I think it was during my first interview with
 2 you.
 3 COFFEY, Q.C.:
 4 Q. Okay, when I--myself and Mr. Eaton, I believe
 5 and Mr. Browne?
 6 DR. NEIL:
 7 A. Yes.
 8 COFFEY, Q.C.:
 9 Q. He's nodding, interviewed you in Corner Brook.
 10 DR. NEIL:
 11 A. Yes.
 12 COFFEY, Q.C.:
 13 Q. In connection with this matter?
 14 DR. NEIL:
 15 A. Yes.
 16 COFFEY, Q.C.:
 17 Q. Doctor, I'm going to take you through the
 18 wording of this and it says, "kindly note that
 19 immunohistochemical stains with the following
 20 antibodies"--and it lists eight of them, I'll
 21 call it "CK34, CD3, CD5, CD20, CD79, CEA ER
 22 and PR have remained unreliable, erratic and
 23 therefore, unhelpful for diagnostic purposes.
 24 Consequently on the above, staining of these
 25 antibodies will stop forthwith until we can

Page 134

1 solve the reliability, sensitivity and
 2 specificity problems. Efforts are underway
 3 and hopefully a solution will be found within
 4 the next four to six weeks. You will be duly
 5 informed when such stains can resume." And
 6 it's signed by Dr. Ejeckam, copied to Mr Dyer
 7 and technical staff. Doctor, I appreciate,
 8 I'm asking this question with the benefit of
 9 hindsight, if you had received this memo in
 10 April, 2003, in this--using this wording,
 11 what, if anything do you think that would have
 12 caused you to do or think about at the time?
 13 What do you think your reaction would be?
 14 DR. NEIL:
 15 A. I wouldn't do very much, except make sure that
 16 all of our pathologists knew that those stains
 17 were not to be ordered, because obviously they
 18 were unreliable, erratic and unhelpful, and we
 19 would wait their return, as Dr. Ejeckam has
 20 outlined in the memo.
 21 COFFEY, Q.C.:
 22 Q. Now these are, I understand, four of these are
 23 stains that are related to lymphoma, I believe
 24 one gastro stain and one prostrate and the ER
 25 and PR?

Page 135

1 DR. NEIL:
 2 A. Uh-hm.
 3 COFFEY, Q.C.:
 4 Q. Doctor, in April of 2003 and before that, had
 5 you had any reason to believe that these
 6 stains were unreliable, erratic and unhelpful
 7 for diagnostic purposes in your practice.
 8 DR. NEIL:
 9 A. In my own? No, no.
 10 COFFEY, Q.C.:
 11 Q. And in terms of the other pathologists
 12 practising with you, had any of them suggested
 13 this sort of thing to you?
 14 DR. NEIL:
 15 A. I had no suggestion that there were any
 16 problems, but bear in mind my previous
 17 comments about the numbers that we would have
 18 done.
 19 COFFEY, Q.C.:
 20 Q. Yes, I understand that. For example, just so
 21 the Commissioner perhaps can put this in
 22 context, of those four lymphoma stains in
 23 early 2003, how often, for example, would
 24 Corner Brook order those kind of -
 25 DR. NEIL:

Page 136

1 A. I can tell you the practice with lymphomas.
 2 Lymphomas are generally sent to St. John's for
 3 diagnostic purposes.
 4 COFFEY, Q.C.:
 5 Q. Period.
 6 DR. NEIL:
 7 A. Period.
 8 COFFEY, Q.C.:
 9 Q. So if there are stains ordered, they would be
 10 generally done in St. John's anyway.
 11 DR. NEIL:
 12 A. Yes, yes.
 13 COFFEY, Q.C.:
 14 Q. Ordered in St. John's and interpreted?
 15 DR. NEIL:
 16 A. Yes, lymphomas are dealt with in St. John's
 17 because of the ancillary testing that goes
 18 along with the--flocytometry being one of
 19 them, so lymphoma stains per se would be
 20 generally a St. John's issue.
 21 COFFEY, Q.C.:
 22 Q. The prostrate related -
 23 DR. NEIL:
 24 A. Prostrate, we do it quite frequently now.
 25 COFFEY, Q.C.:

Page 137

1 Q. Back in April of 2003?
 2 DR. NEIL:
 3 A. Not near what we would do today. So in that
 4 particular month, from April 4th, 2003 to the
 5 next memo, we may have not done any.
 6 COFFEY, Q.C.:
 7 Q. Okay. And you--now Dr. Ejeckam, I'll refer
 8 you now to Exhibit P-0113, it's page two, May
 9 2nd, 2003 memo that you did receive.
 10 DR. NEIL:
 11 A. Yes.
 12 COFFEY, Q.C.:
 13 Q. Now this memo begins by saying that "I'm glad
 14 to inform you that we have rectified the
 15 difficulties related to the immunostain of
 16 ER/PR; therefore, we can now resume regular
 17 requests for these antibody stains. I will,
 18 however, like to bring the following
 19 information to your attention." And he goes
 20 on at some length. When you received this,
 21 Doctor, did you have any questions about what
 22 difficulties were being rectified here?
 23 DR. NEIL:
 24 A. No. I didn't really realize they had
 25 difficulties when I read the letter--until I

Page 138

1 read the letter.
 2 COFFEY, Q.C.:
 3 Q. And I appreciate that, but having read the
 4 letter, did you make any inquiries about well
 5 what difficulties are we talking about here?
 6 DR. NEIL:
 7 A. No, no.
 8 COFFEY, Q.C.:
 9 Q. Doctor, the idea of suspending the usage of,
 10 at least temporarily of certain stains, by
 11 which is referred to in that April 4th memo,
 12 do you have any memory of ever otherwise, ever
 13 being told by St. John's, by Eastern Health or
 14 its predecessor, the Health Care Corporation,
 15 that they were suspending the usage of stains
 16 for a particular period -
 17 DR. NEIL:
 18 A. No.
 19 COFFEY, Q.C.:
 20 Q. So, you didn't receive the memo, but if you
 21 had received it, it would have been your one
 22 and only time?
 23 DR. NEIL:
 24 A. Yes.
 25 COFFEY, Q.C.:

Page 139

1 Q. When you received the May 2nd memo, Doctor,
 2 what did you understand it was about and why
 3 it had been sent out?
 4 DR. NEIL:
 5 A. Well, I looked at this as an educational memo.
 6 Obviously they had to tell me that ER/PR stain
 7 was now re-instated, which I didn't realize it
 8 was stopped.
 9 COFFEY, Q.C.:
 10 Q. Suspended in the first place, yeah.
 11 DR. NEIL:
 12 A. I didn't know it was stopped in the first
 13 place. So, you know, it's an information and
 14 educational memo, so it told me it restarted
 15 and pointed out some difficulties that may
 16 have influenced the ER/PR staining of which we
 17 should pay attention to.
 18 COFFEY, Q.C.:
 19 Q. And what, if anything, having received the
 20 memo yourself, what, if anything, did you do
 21 with it? Did you distribute it to anyone or
 22 discuss it with anyone?
 23 DR. NEIL:
 24 A. This letter was addressed to "Pathologists,
 25 HSC, St. Clare's and Out-of-Town Hospitals."

Page 140

1 It was my assumption that every pathologist
 2 got this letter, that's how it reads, that's
 3 how I interpreted it. So I didn't
 4 particularly discuss it with anybody else.
 5 COFFEY, Q.C.:
 6 Q. Even within your own shop.
 7 DR. NEIL:
 8 A. We didn't have a meeting per se to discuss
 9 this memo. This is an information memo, an
 10 educational memo, quite clear in what it says,
 11 quite clear in what you need to do.
 12 COFFEY, Q.C.:
 13 Q. So it wasn't--was it posted on a bulletin
 14 board, kind of with -
 15 DR. NEIL:
 16 A. It was posted on my bulletin board.
 17 COFFEY, Q.C.:
 18 Q. - with Dr. Khalifa's February, '98 memo?
 19 DR. NEIL:
 20 A. Yes.
 21 COFFEY, Q.C.:
 22 Q. And in terms of distributing, you didn't know
 23 at the time, as the head there, distributed to
 24 all the pathologists.
 25 DR. NEIL:

Page 141

1 A. My practice would have been to circulate
 2 anything that I felt was important. You have
 3 other memos that I had, I would write a note
 4 on a memo, "please circulate to all
 5 pathologists", that's my general practice. In
 6 this particular memo, I didn't write it there,
 7 it doesn't mean I didn't circulate it. I just
 8 don't remember if I did or not, even though it
 9 is addressed to all pathologists.
 10 COFFEY, Q.C.:
 11 Q. So you're saying that you may have circulated
 12 it.
 13 DR. NEIL:
 14 A. I may very well have circulated it.
 15 COFFEY, Q.C.:
 16 Q. But you may not be, on the basis that
 17 everybody should have gotten it, you
 18 understood -
 19 DR. NEIL:
 20 A. Everybody should have gotten it by the
 21 address, but it's my practice to circulate
 22 things that I think are important. I didn't
 23 write it on this, so I don't know if I did,
 24 but that's my practice.
 25 COFFEY, Q.C.:

Page 142

1 Q. Now, Doctor, this deals with, particularly in
 2 the first paragraph, deals with the whole
 3 fixation issue and tissue processing,
 4 including E, inadequate tissue dehydration and
 5 F, tissue reprocessing, the idea of tissue
 6 dehydration is part of the initial processing.
 7 DR. NEIL:
 8 A. Yes.
 9 COFFEY, Q.C.:
 10 Q. Process itself, did you distribute this to
 11 anyone within Western Memorial at the time in
 12 the technologist end of things, because they
 13 would actually do the tissue processing or
 14 reprocessing.
 15 DR. NEIL:
 16 A. No.
 17 COFFEY, Q.C.:
 18 Q. So you'd have -
 19 DR. NEIL:
 20 A. Not that I'm aware of, not that I recall.
 21 COFFEY, Q.C.:
 22 Q. You had no reason then to believe that it
 23 would have been brought to their attention.
 24 DR. NEIL:
 25 A. No.

Page 143

1 COFFEY, Q.C.:
 2 Q. Now the reference here to optimal fixation
 3 time for immunostains is 18 to 24 hours.
 4 DR. NEIL:
 5 A. Uh-hm.
 6 COFFEY, Q.C.:
 7 Q. Which I take it is longer than perhaps, as
 8 times can be longer than--well depends, I
 9 suppose, 18 to 24, it may or may not be an
 10 overnight, depending upon the time of day it
 11 ends up first in the formalin and the time you
 12 started work the next day.
 13 DR. NEIL:
 14 A. Uh-hm.
 15 COFFEY, Q.C.:
 16 Q. It could be just under 18 hours and anywhere
 17 up from there. So, Doctor, overall then I
 18 take it, having received the memo, you read
 19 it?
 20 DR. NEIL:
 21 A. Yes.
 22 COFFEY, Q.C.:
 23 Q. And what, if any, changes in your own practice
 24 did you make as a result? Particularly when
 25 we look at paragraph 3, I'll just ask you,

Page 144

1 well first of all we'll go back, in terms of
 2 paragraph 1, I take it, was concerned with
 3 fixation and tissue processing and
 4 reprocessing and the type of formalin, they
 5 used 10 percent neutral buffer formalin, the
 6 formalin that was being used in Corner Brook?
 7 DR. NEIL:
 8 A. Right.
 9 COFFEY, Q.C.:
 10 Q. On that point, while it's on my mind, do you
 11 have any memory of Corner Brook utilizing--
 12 mixing its own formalin?
 13 DR. NEIL:
 14 A. Corner Brook did not mix its own formalin.
 15 COFFEY, Q.C.:
 16 Q. Okay, it's utilized commercially -
 17 DR. NEIL:
 18 A. Commercially prepared formalin.
 19 COFFEY, Q.C.:
 20 Q. Do you know if any checks were routinely made
 21 as to what the formalin's pH level from time
 22 to time, do you know?
 23 DR. NEIL:
 24 A. It wasn't at that time, but it is now.
 25 COFFEY, Q.C.:

Page 145

1 Q. Okay, and that's been done since when? Since
 2 2005?
 3 DR. NEIL:
 4 A. No, no, just recently when it became an issue.
 5 COFFEY, Q.C.:
 6 Q. And when you say "recently" what are we
 7 talking about?
 8 DR. NEIL:
 9 A. Within the last two weeks--excuse me, it's
 10 probably being done today, I'm not sure
 11 exactly when it started.
 12 COFFEY, Q.C.:
 13 Q. But it's certainly since 2008 began, the
 14 subject matter arose and it's been addressed
 15 since the beginning of 2008 in Western
 16 Memorial.
 17 DR. NEIL:
 18 A. We discussed it in our initial interviews.
 19 COFFEY, Q.C.:
 20 Q. Yes.
 21 DR. NEIL:
 22 A. I did my investigation as to what was being
 23 done, discovered Ph was not being measured, it
 24 is being measured now.
 25 COFFEY, Q.C.:

Page 146

1 Q. And that's since the interview that I referred
 2 to earlier?
 3 DR. NEIL:
 4 A. Yes.
 5 COFFEY, Q.C.:
 6 Q. Okay. You made inquiries and have taken steps
 7 to ensure it's done.
 8 DR. NEIL:
 9 A. Yes.
 10 COFFEY, Q.C.:
 11 Q. Doctor, just looking at Dr. Ejeckam's memo
 12 here, the first page, the last sentence reads
 13 "Regular check and change of grades of alcohol
 14 in the tissue processor will eliminate
 15 inadequate tissue dehydration." Do you know--
 16 well, first of all, who in Corner Brook is
 17 responsible for that end of the matter?
 18 DR. NEIL:
 19 A. The tissue processor has a maintenance
 20 schedule that I believe you have a copy of?
 21 COFFEY, Q.C.:
 22 Q. Yes.
 23 DR. NEIL:
 24 A. That maintenance schedule responsibility is a
 25 technologist responsibility and that's looked

Page 147

1 after on a daily, weekly and a monthly basis
 2 with the appropriate checks that you have in
 3 that document. That would include changes of
 4 alcohols.
 5 COFFEY, Q.C.:
 6 Q. Okay, and how long--maybe you just said it,
 7 you're certain it is being done now. In the
 8 past, do you know how religiously that was or
 9 wasn't followed?
 10 DR. NEIL:
 11 A. That maintenance schedule has been in place
 12 for a long time.
 13 COFFEY, Q.C.:
 14 Q. Okay. Throughout the period of time since
 15 the, say '97, '98?
 16 DR. NEIL:
 17 A. I would think so, yes, we have had several
 18 processors in my time. The two that we're
 19 using today had been there quite awhile and
 20 that would have been on a recommendation from
 21 the manufacturer as to how to do the regular
 22 maintenance schedule. So I'm pretty confident
 23 saying that back in '97 we were using that.
 24 COFFEY, Q.C.:
 25 Q. Doctor, do you know if any records are kept of

Page 148

1 the fact that such maintenance is being done?
 2 DR. NEIL:
 3 A. There are records, yes, I don't know how long
 4 they are kept, but there are records of that.
 5 COFFEY, Q.C.:
 6 Q. Prepared by the technologists involved?
 7 DR. NEIL:
 8 A. Yes, signed, initialled.
 9 COFFEY, Q.C.:
 10 Q. Doctor, here in paragraph two, the reference
 11 here to ER/PR false negative results increase
 12 in core biopsies, therefore where possible
 13 request excision biopsies." Did you make any
 14 change in your own practice in relation to
 15 that?
 16 DR. NEIL:
 17 A. No, most of our cases for ER/PR are not done
 18 on core biopsies.
 19 COFFEY, Q.C.:
 20 Q. They're done on -
 21 DR. NEIL:
 22 A. They're done on excision biopsies, there was
 23 no change. Excision biopsies or the
 24 mastectomy specimen, whichever the case may
 25 be?

Page 149

1 COFFEY, Q.C.:

2 Q. Paragraph 3 refers to normal tissue as

3 internal controls, it's the second level

4 control, "nuclear staining and normal breast

5 tissue is heterogeneous and varies with

6 menstrual cycle." Now, when you read that,

7 was that your first introduction to the idea

8 of internal controls?

9 DR. NEIL:

10 A. I knew about internal controls.

11 COFFEY, Q.C.:

12 Q. For ER and PR I mean.

13 DR. NEIL:

14 A. Internal controls are not different for ER/PR

15 than they are for any other stain.

16 COFFEY, Q.C.:

17 Q. Okay, were you using or looking out for or

18 reading internal controls before May of 2003

19 in relation to ER/PR?

20 DR. NEIL:

21 A. My focus was on external controls.

22 COFFEY, Q.C.:

23 Q. So you don't know whether you would or

24 wouldn't have looked at the internal controls

25 before that?

Page 150

1 DR. NEIL:

2 A. I can't say that I looked at internal

3 controls. I can't say that I didn't look at

4 internal controls. My focus was external

5 controls as outlined by Dr. Khalifa's memo.

6 COFFEY, Q.C.:

7 Q. Do you know if the contents of paragraph 3

8 caused you to change your approach?

9 DR. NEIL:

10 A. Yes, certainly.

11 COFFEY, Q.C.:

12 Q. Okay, what, if anything, did you -

13 DR. NEIL:

14 A. I paid attention to internal controls as much

15 as I possibly could.

16 COFFEY, Q.C.:

17 Q. And I take it that would be in terms of like

18 looking through the scope, at the tail end of

19 it -

20 DR. NEIL:

21 A. Yes.

22 COFFEY, Q.C.:

23 Q. But how about choosing choice of blocks?

24 DR. NEIL:

25 A. Choice of blocks? Yes, you would choose

Page 151

1 blocks that had internal controls.

2 COFFEY, Q.C.:

3 Q. Assuming that was possible, I take it, you're

4 hesitating a bit and I take it -

5 DR. NEIL:

6 A. I hesitate because you said blocks.

7 COFFEY, Q.C.:

8 Q. Oh, block for ER/PR.

9 DR. NEIL:

10 A. When you actually take the tissue and put it

11 into the block, you don't know you have a

12 control, an internal control.

13 COFFEY, Q.C.:

14 Q. I appreciate that.

15 DR. NEIL:

16 A. Until you look at the slide from that block.

17 When choosing the blocks, you make sure you

18 have normal breast tissue, utilize the amount

19 of tumour.

20 COFFEY, Q.C.:

21 Q. Utilizing the H&E slide.

22 DR. NEIL:

23 A. Utilizing the H&E slide, and we did.

24 COFFEY, Q.C.:

25 Q. So from May onward, May 2003 onward, your own

Page 152

1 personal practice was to do that?

2 DR. NEIL:

3 A. Oh yes.

4 COFFEY, Q.C.:

5 Q. Do you know if your fellow pathologists'

6 practice was to do that from May of 2003

7 onward?

8 DR. NEIL:

9 A. I would think so.

10 COFFEY, Q.C.:

11 Q. Have you discussed it with any of the since?

12 DR. NEIL:

13 A. No, I haven't discussed it but I have looked

14 at our spreadsheets for Mount Sinai from that

15 period of time and on our spreadsheets,

16 internal controls are noted. There's a high

17 percentage of internal controls that are

18 present and stained from those spreadsheets

19 from those particular years, which leaves me

20 to believe that we all looked through them and

21 sent -

22 COFFEY, Q.C.:

23 Q. Those years would be from 2003 on, I take it?

24 Or was it for all years, even before 2003?

25 DR. NEIL:

Page 153

1 A. Those spreadsheets?
 2 COFFEY, Q.C.:
 3 Q. Yes, because the spreadsheets will cover the
 4 whole, the period '98 through '05, so I'm just
 5 curious -
 6 DR. NEIL:
 7 A. Yes, those spreadsheets, I looked through all
 8 those spreadsheets, all those results, there's
 9 a high percentage of internal controls that
 10 are present and stained, which leaves me to
 11 believe that we did, all of our pathologists
 12 looked for internal controls.
 13 COFFEY, Q.C.:
 14 Q. And would that have been before May of 2003,
 15 as well as after or did you distinguish in
 16 looking at the spreadsheets did anything
 17 change in May of '03?
 18 DR. NEIL:
 19 A. It didn't change.
 20 COFFEY, Q.C.:
 21 Q. It didn't.
 22 DR. NEIL:
 23 A. It didn't change, if you look through the
 24 spreadsheets, if you look consistent
 25 throughout ever sheet.

Page 154

1 COFFEY, Q.C.:
 2 Q. Okay, and these, I take it, these spreadsheets
 3 are which ones you're talking about now?
 4 DR. NEIL:
 5 A. The spreadsheets from Mount Sinai which gave
 6 the results of the recall.
 7 COFFEY, Q.C.:
 8 Q. I'm sorry, gave you results of which?
 9 DR. NEIL:
 10 A. The recall.
 11 COFFEY, Q.C.:
 12 Q. The retesting?
 13 DR. NEIL:
 14 A. Retesting.
 15 COFFEY, Q.C.:
 16 Q. That would be the spreadsheets that came in
 17 2006, is that the--those spreadsheets?
 18 DR. NEIL:
 19 A. Yes, yes.
 20 COFFEY, Q.C.:
 21 Q. They would be the internal controls, I take it
 22 that Mount Sinai's own slides.
 23 DR. NEIL:
 24 A. Yes.
 25 COFFEY, Q.C.:

Page 155

1 Q. Using Western Memorial's blocks?
 2 DR. NEIL:
 3 A. Yes, correct.
 4 COFFEY, Q.C.:
 5 Q. Okay, are present and stained and they would
 6 be Dr. Mullen's -
 7 DR. NEIL:
 8 A. Dr. Mullen's slides, but taken from the blocks
 9 that we would have selected.
 10 COFFEY, Q.C.:
 11 Q. Doctor, have you been made aware that Dr.
 12 Mullen has looked back at the original slides
 13 for at least certain patients? Were you aware
 14 of that?
 15 DR. NEIL:
 16 A. No.
 17 COFFEY, Q.C.:
 18 Q. Okay. Now while I'm thinking about it,
 19 Doctor, in terms of this whole ER/PR issue,
 20 because otherwise I'll just forget to return
 21 to it, have you, yourself, had occasion to go
 22 back and look at the original slides for
 23 ER/PR?
 24 DR. NEIL:
 25 A. No, I don't have the original slides.

Page 156

1 COFFEY, Q.C.:
 2 Q. And they got, I take it, in the retesting
 3 process, got sent to St. John's?
 4 DR. NEIL:
 5 A. Correct.
 6 COFFEY, Q.C.:
 7 Q. Doctor, in reference here to paragraph four,
 8 Dr. Ejeckam refers to "most PR tumours,
 9 positive tumours are also ER positive, however
 10 ten percent would be PR positive, ER
 11 negative." Were you aware of the sort of
 12 statistics involving positivity rates for ER
 13 verses PR?
 14 DR. NEIL:
 15 A. No.
 16 COFFEY, Q.C.:
 17 Q. So this would have been the first you would
 18 have learned of it?
 19 DR. NEIL:
 20 A. Correct.
 21 COFFEY, Q.C.:
 22 Q. Exposed to it. Does Corner Brook keep any
 23 stats on ER or PR positivity rates?
 24 DR. NEIL:
 25 A. No.

Page 157

1 COFFEY, Q.C.:

2 Q. And that was back then and even today you

3 don't?

4 DR. NEIL:

5 A. Correct.

6 COFFEY, Q.C.:

7 Q. Reporting of ER and its formulae in the

8 literature, he refers to for positive results

9 and then there's a reference to this consensus

10 statement. Now, Doctor, you had been

11 utilizing that comment that Dr. Khalifa had

12 provided back in 1998, as to 30 percent being

13 the equivalent biochemical assay positivity.

14 Did this change anything in relation to that?

15 DR. NEIL:

16 A. No, no.

17 COFFEY, Q.C.:

18 Q. Did you continue to utilize the comment?

19 DR. NEIL:

20 A. Yes.

21 COFFEY, Q.C.:

22 Q. That comment is a correlation between the

23 biochemical assay and the immunohistochemical

24 assay.

25 COFFEY, Q.C.:

Page 158

1 Q. That's the one cited by Dr. Khalifa.

2 DR. NEIL:

3 A. Yes, but has nothing to do with the percentage

4 of staining that we reported.

5 COFFEY, Q.C.:

6 Q. So having read this, you thought, well if

7 there's any percentage at all positive, we

8 were reporting that anyway, so I'll just

9 continue to utilize that.

10 DR. NEIL:

11 A. Yes, yes.

12 COFFEY, Q.C.:

13 Q. Now the oncologists in Corner Brook,

14 oncologists who practise in Corner Brook

15 throughout the timeframe we've been talking

16 about, '97,'98 through even today, for that

17 matter, they're in the main located where,

18 based where, oncologists are based, are they

19 based in Corner Brook or in St. John's?

20 DR. NEIL:

21 A. Well they're based in St. John's.

22 COFFEY, Q.C.:

23 Q. And decisions as to hormonal treatment in

24 Corner Brook are in the main made by which

25 group of doctors?

Page 159

1 DR. NEIL:

2 A. The oncologists.

3 COFFEY, Q.C.:

4 Q. And so they would be the ones, you would have

5 always understood that they are the ones who

6 would be utilizing your report?

7 DR. NEIL:

8 A. Yes, yes.

9 COFFEY, Q.C.:

10 Q. Reference here to "higher staining intensity

11 does not reflect better results. This is a

12 function of staining procedure and may alter."

13 What did you understand was meant by "higher

14 staining intensity" here in this context?

15 DR. NEIL:

16 A. The browner the stain.

17 COFFEY, Q.C.:

18 Q. Okay, the more intense, I take it, the colour?

19 DR. NEIL:

20 A. Yes.

21 COFFEY, Q.C.:

22 Q. "And all cytoplasmic staining and ER and PR

23 immunostain is to be considered as negative."

24 DR. NEIL:

25 A. Yes.

Page 160

1 COFFEY, Q.C.:

2 Q. Would you have been aware of that before this?

3 DR. NEIL:

4 A. Yes.

5 COFFEY, Q.C.:

6 Q. And you would be aware of that because of the

7 reference to nuclei?

8 DR. NEIL:

9 A. Yes.

10 COFFEY, Q.C.:

11 Q. "ER positive tumours" and there's a listing of

12 them there and I gather, as well from evidence

13 the Commissioner has heard, that lobular

14 should also have been included here, Dr.

15 Ejeckam said he just omitted to include it.

16 As a practising pathologist, were you aware

17 that certain types of tumours were more prone

18 to being ER positive than others?

19 DR. NEIL:

20 A. No.

21 COFFEY, Q.C.:

22 Q. So this would have been your first exposure to

23 that?

24 DR. NEIL:

25 A. Yes.

Page 161

1 COFFEY, Q.C.:

2 Q. Did you make any inquiries in that regard?

3 DR. NEIL:

4 A. No, this was a memo that came from another

5 well respected physician or pathologist and

6 this is a statement of fact. I'm sure it's

7 found in any standard textbook as a practising

8 pathologist who is not a breast pathologist,

9 who does not see a lot of ER/PR staining,

10 simply because we don't have the numbers, this

11 would not have been something that I would

12 have had on the top of my head at any time. I

13 kept this as a memo and I'm aware of it.

14 COFFEY, Q.C.:

15 Q. And, Doctor, he concludes by saying "We are

16 working on the remaining antibodies and

17 hopefully will, all normal immunostains will

18 resume soon." So, at the time, this obviously

19 presupposes somebody has read the April 4th

20 memo.

21 DR. NEIL:

22 A. Yes.

23 COFFEY, Q.C.:

24 Q. Did that cause you any curiosity or make any

25 inquiries about what he was talking about

Page 162

1 here?

2 DR. NEIL:

3 A. No. My assumption was that if we request any

4 particular stain that they weren't doing, they

5 wouldn't do them and tell us that they weren't

6 doing them because they were having problems

7 with them.

8 COFFEY, Q.C.:

9 Q. In that regard, Doctor, and while on the topic

10 now, Western Memorial and then Western Health,

11 in this--in relation to this sort of subject

12 matter such as IHC service, which certain

13 since the late 90's and before was being done

14 solely at the General Hospital, how did

15 Western Memorial, from your perspective, view

16 the Health Care Corporation and then Eastern

17 Health in relation to this matter? What was

18 the relationship between you concerning, for

19 example, IHC stains, in comparison, for

20 example, to Mount Sinai now, because they're

21 doing some IHC staining.

22 DR. NEIL:

23 A. Uh-hm.

24 COFFEY, Q.C.:

25 Q. How did you view the relationship?

Page 163

1 DR. NEIL:

2 A. I'm not sure what you mean by the question,

3 but I will say this -

4 COFFEY, Q.C.:

5 Q. In the context here, because you just made a

6 comment, look, we were asking for a test to be

7 done.

8 DR. NEIL:

9 A. Yes.

10 COFFEY, Q.C.:

11 Q. If they can't do it or can't do it properly,

12 they'll let me know.

13 DR. NEIL:

14 A. Yes.

15 COFFEY, Q.C.:

16 Q. And it's in relation to that sort of thing,

17 like how did you view the relationship in that

18 regard between Western and St. John's?

19 DR. NEIL:

20 A. I would say we had a good working

21 relationship, but, I mean, I would often

22 discuss issues with appropriate technologists

23 or pathologists if I had concerns. I didn't

24 have any hesitation picking up the phone and

25 talking to Dr. Cook about anything, and I've

Page 164

1 done that on numerous occasions usually

2 regarding employment and trying to get other

3 physicians to come work for us. That was one

4 of our main focuses, but in relationship with

5 Eastern Health, Eastern Health is a referral

6 centre, they do things that we don't -- even

7 outside -- many more things outside pathology.

8 They're the referral centre for all of our in-

9 province testing. There's always a constant

10 relationship between our lab manager and their

11 lab managers, their technologists and our

12 technologists, similar as what we would have

13 with Mount Sinai. They're now the referral

14 centre for immunohistochemistry ER/PR and

15 HER2/neu.

16 COFFEY, Q.C.:

17 Q. And was Western during the period from, say,

18 '98 through 2005 utilizing any other location

19 for IHC testing?

20 DR. NEIL:

21 A. No.

22 COFFEY, Q.C.:

23 Q. So all the IHC testing.

24 DR. NEIL:

25 A. As far as I can remember, IHC testing was done

Page 165

1 in Eastern Health. Now we have had occasion
 2 to refer consultation cases to Halifax. If in
 3 their judgment, they needed -- the pathologist
 4 in Halifax needed further immunohistochemical
 5 staining for diagnostic purposes, I'm sure
 6 that they would go ahead and perform them at
 7 their own institution and report as they saw
 8 fit.
 9 COFFEY, Q.C.:
 10 Q. And come back --
 11 DR. NEIL:
 12 A. And come back to us as an external
 13 consultation, but our referral for our own
 14 purposes to get stains done would be to
 15 Eastern Health, or Health Care Corporation, as
 16 it was then.
 17 COFFEY, Q.C.:
 18 Q. And finally, Doctor, Dr. Ejeckam, who wrote
 19 the memo at that time in 2003, you understood
 20 who -- who did you understand Dr. Ejeckam was
 21 in relation to IHC? Before you got this memo,
 22 did you have any understanding as to whether
 23 he had any involvement in IHC?
 24 DR. NEIL:
 25 A. I did know he had something to do with IHC, so

Page 166

1 I wasn't surprised to get a memo from him
 2 regarding IHC. There was some indication that
 3 he had some involvement with IHC and some
 4 relationship with that lab.
 5 COFFEY, Q.C.:
 6 Q. Doctor, at the time you received this May 2nd
 7 2003 memo, did it cross your mind at all that
 8 maybe a look back in terms of the results you
 9 had received up to that point -- the stains,
 10 the stain slides you'd received and reported
 11 on up to that point, did it cross your mind or
 12 did it ever come up at Western that you were
 13 aware of that maybe we should look back at the
 14 past two months -- two or three months to see?
 15 DR. NEIL:
 16 A. We didn't do that. We didn't -- and it didn't
 17 cross my mind.
 18 COFFEY, Q.C.:
 19 Q. And, Doctor, Exhibit -- page five, this is the
 20 June -- P-0113, page five, June 19th, 2003
 21 memo. This is to Terry Gulliver from Dr.
 22 Ejeckam. Again, Doctor, it's not sent to you,
 23 nor to Western. I take it that you had --
 24 you're certainly now aware that this memo
 25 exists, or are you, this June 19th memo?

Page 167

1 DR. NEIL:
 2 A. I don't know what's in this memo.
 3 COFFEY, Q.C.:
 4 Q. Okay, this is -- it's sort of internal to
 5 Eastern Health, but Dr. Ejeckam is -- it says,
 6 "Following persistent erratic results of
 7 immuno stains in our laboratory, I expect to
 8 work closely with technical staff in order to
 9 rectify this problem. Despite the fact the
 10 problem seems to have been arrested, the state
 11 of immuno stains at the General Hospital,
 12 Department of Laboratory Medicine, Pathology
 13 is still unsatisfactory", and then he goes on
 14 from there.
 15 DR. NEIL:
 16 A. Yes, okay.
 17 COFFEY, Q.C.:
 18 Q. Were you made aware of this at any point
 19 before coming here today, do you think?
 20 DR. NEIL:
 21 A. I knew that -- I knew in recent months that
 22 that existed.
 23 COFFEY, Q.C.:
 24 Q. Okay.
 25 DR. NEIL:

Page 168

1 A. Did I read it, did I have it; I don't -- no, I
 2 didn't read it.
 3 COFFEY, Q.C.:
 4 Q. And that's just, as you say, in recent months
 5 to now?
 6 DR. NEIL:
 7 A. Yes.
 8 COFFEY, Q.C.:
 9 Q. Okay.
 10 DR. NEIL:
 11 A. Way back in 2003, I had no idea that existed.
 12 COFFEY, Q.C.:
 13 Q. That there was this sort of internal concern
 14 being expressed within Eastern Health --
 15 DR. NEIL:
 16 A. No.
 17 COFFEY, Q.C.:
 18 Q. Or within the Health Care Corporation.
 19 DR. NEIL:
 20 A. I was not part of that.
 21 COFFEY, Q.C.:
 22 Q. Doctor, as a utilizer of that IHC service at
 23 the time, if those sorts of concerns were
 24 being expressed by Dr. Ejeckam, who apparently
 25 at that time had significant involvement in

Page 169

1 the matter, do you think as a utilizer of the
 2 service would it have been potentially useful
 3 for you to know?
 4 DR. NEIL:
 5 A. Yes, I certainly agree, it would very -- it
 6 would be a very useful memo for me to see.
 7 COFFEY, Q.C.:
 8 Q. And why is that?
 9 DR. NEIL:
 10 A. I think it's -- can I go back to the first
 11 part?
 12 COFFEY, Q.C.:
 13 Q. You certainly can, Doctor, yes.
 14 DR. NEIL:
 15 A. Having not read this, I haven't gone through
 16 every page -- every line, but the first
 17 statement would cause me great concern.
 18 "Persistent erratic results" would cause me
 19 great concern.
 20 COFFEY, Q.C.:
 21 Q. Because you'd want to know persistent over
 22 what time, how erratic?
 23 DR. NEIL:
 24 A. Yes.
 25 COFFEY, Q.C.:

Page 170

1 Q. Which stains?
 2 DR. NEIL:
 3 A. Yes.
 4 COFFEY, Q.C.:
 5 Q. You'd want those questions answered.
 6 DR. NEIL:
 7 A. Yes.
 8 COFFEY, Q.C.:
 9 Q. And as you are utilizing the service -- I'm
 10 going to ask you this. Was Western Memorial
 11 paying for the service?
 12 DR. NEIL:
 13 A. We shouldn't have been paying for the service.
 14 COFFEY, Q.C.:
 15 Q. I was going to ask you about that. First of
 16 all, were you paying for the service?
 17 DR. NEIL:
 18 A. I think we were paying for the service, yes.
 19 COFFEY, Q.C.:
 20 Q. And that would be -- I take it, you'd order an
 21 IHC stain or stains?
 22 DR. NEIL:
 23 A. Yes, and it would all be charged back to us.
 24 COFFEY, Q.C.:
 25 Q. charged back to your budget?

Page 171

1 DR. NEIL:
 2 A. Yes.
 3 COFFEY, Q.C.:
 4 Q. And you say you shouldn't have been. Why is
 5 that?
 6 DR. NEIL:
 7 A. Well, again as I mentioned earlier, Eastern
 8 Health or Health Care Corporation at the time,
 9 I believe was the tertiary care centre. We
 10 did what we had to do in the periphery within
 11 our own capacity and we had to have a tertiary
 12 care centre to send our cases that we couldn't
 13 handle on our own, which was Health Care
 14 Corporation of St. John's. This was a service
 15 that should have been provided to us.
 16 COFFEY, Q.C.:
 17 Q. How does that stand as we -- as you sit here
 18 and I stand here today, what's the situation
 19 now?
 20 DR. NEIL:
 21 A. I don't think the situation has changed.
 22 COFFEY, Q.C.:
 23 Q. It's the same as it always was in terms of --
 24 DR. NEIL:
 25 A. And I can't be entirely sure of that, Mr.

Page 172

1 Coffey, to be honest. It may be a question
 2 that we can address later.
 3 COFFEY, Q.C.:
 4 Q. Oh, I'll take it up with your VP Medical.
 5 DR. NEIL:
 6 A. Because that -- our lab manager would know
 7 that right away.
 8 COFFEY, Q.C.:
 9 Q. Okay.
 10 DR. NEIL:
 11 A. And I don't quite know the answer to that, but
 12 I suspect nothing has changed.
 13 COFFEY, Q.C.:
 14 Q. That issue, the issue of payment for service,
 15 has that ever been raised, do you know?
 16 DR. NEIL:
 17 A. I've complained about it.
 18 COFFEY, Q.C.:
 19 Q. Whom have you complained to?
 20 DR. NEIL:
 21 A. I guess among ourselves and our lab managers
 22 that we shouldn't be doing this, and I'm sure
 23 our lab managers have asked Eastern Health why
 24 are we doing this. As far as I know, nothing
 25 has changed.

Page 173

1 COFFEY, Q.C.:

2 Q. If we could -- you say where Dr. Ejeckam here

3 in his June 19th memo says, "Persistent

4 erratic results", that would have given you

5 concern, results of immuno stains. Looking

6 back at page one, the April 4, 2003, memo

7 which I appreciate you did not receive where

8 he says here -- he lists eight stains. Two of

9 them are ER/PR, "have remained unreliable,

10 erratic, and, therefore, unhelpful for

11 diagnostic purposes". If you had received

12 that at the time, would you have had any

13 concerns about that, bearing in mind that

14 you've been reporting cases for a month or

15 two?

16 DR. NEIL:

17 A. No, I wouldn't have any concerns about that

18 because "they're unhelpful for diagnosis

19 purposes". We wouldn't have occasion to

20 utilize those on a very frequent basis. The

21 only concern that I would have is that if they

22 were going to be longer than four to six

23 weeks. It said, "Efforts are underway.

24 Hopefully a solution will be found within the

25 next four to six weeks". If it had occurred

Page 174

1 any longer than that, I would have had

2 probably to find some place else to get those

3 stains performed. As I mentioned earlier,

4 some of them are for lymphomas, so that

5 wouldn't be a concern to me, anyway. The only

6 ones that would be probably of concern would

7 be the prostate, the CEA, and the ER/PR, but

8 we didn't frequent those anyway. So it really

9 didn't make a lot of difference. We'd wait

10 and see if they got it up and running and take

11 it from there.

12 COFFEY, Q.C.:

13 Q. I appreciate that in the prospective sense.

14 When he says, "have remained", that's past

15 tense, "unreliable, erratic, and, therefore,

16 unhelpful for diagnostic purposes" -- now at

17 this point in time, ER and PR, you weren't

18 utilizing them in the main for diagnostic

19 purposes, it was for treatment decisions? I

20 appreciate ER and PR can be utilized for

21 diagnostic --

22 DR. NEIL:

23 A. Yes.

24 COFFEY, Q.C.:

25 Q. In some situations, but that's not really what

Page 175

1 that's -- ER and PR most of the time in your

2 world would have been ordered for non-

3 diagnostic?

4 DR. NEIL:

5 A. It would be more for therapeutic purposes.

6 COFFEY, Q.C.:

7 Q. For therapeutic purposes?

8 DR. NEIL:

9 A. Yes.

10 COFFEY, Q.C.:

11 Q. So if in this context here -- if in April,

12 2003, you had learned that those four stains,

13 in particular, you just referred to, as stated

14 here, "remained unreliable, erratic and

15 unhelpful", do you think that would have

16 caused you -- would it have caused you to

17 think back to, well, I reported an ER and PR a

18 month or two ago?

19 DR. NEIL:

20 A. Yeah, that would be a concern, yes. What I

21 was reading there, Mr. Coffey, was the comment

22 about diagnostic purposes.

23 COFFEY, Q.C.:

24 Q. And I appreciate that, and I -- I appreciate

25 in your world that that, as a physician, has a

Page 176

1 particular technical meaning, but ER/PR was

2 not in the main used for diagnostic purposes?

3 DR. NEIL:

4 A. No, that's right.

5 COFFEY, Q.C.:

6 Q. It was used for therapeutic purposes or

7 decisions, and to be told that it's

8 unreliable, erratic, and unhelpful --

9 DR. NEIL:

10 A. It would cause me concern, yes.

11 COFFEY, Q.C.:

12 Q. And I gather, as best one can tell, I take it,

13 you would think that you might have made some

14 inquiries even internally to say, well, how

15 many have we had recently?

16 DR. NEIL:

17 A. Yes.

18 COFFEY, Q.C.:

19 Q. Do you think you should have been made aware

20 as the Chief of Pathology in Corner Brook

21 utilizing this service that this was a

22 problem?

23 DR. NEIL:

24 A. Most definitely. Although it says "out of

25 town hospitals", I didn't get it. Anything

Page 177

1 that we send anywhere which is a problem, as I
 2 mentioned earlier in my comments about Dr.
 3 Mullen, it should be referred back to the
 4 place that it originated. As the person who
 5 was asking for the test, if there's a problem,
 6 I'd like to know about it.
 7 COFFEY, Q.C.:
 8 Q. I take it as well if an institution that you
 9 are utilizing as a consultancy service becomes
 10 aware of a problem that could affect the work
 11 you've done --
 12 DR. NEIL:
 13 A. Yes.
 14 COFFEY, Q.C.:
 15 Q. You'd like to know?
 16 DR. NEIL:
 17 A. Yes, I'd like to know.
 18 COFFEY, Q.C.:
 19 Q. If we could, please, Exhibit P-0907, please.
 20 Actually, I apologize -- I'll leave that.
 21 Exhibit P-1913, please. Doctor, these are
 22 minutes of the Division of Anatomical
 23 Pathology, meaning site chiefs and divisional
 24 managers of the Health Care Corporation, March
 25 31, 2004. Page two, Doctor, and at 4.2, "New

Page 178

1 technology. The immunoperoxidase stainer
 2 appears to be working generally well.
 3 However, there continues to be some problems
 4 with estrogen and progesterone receptors".
 5 The idea that there was continuing, at least
 6 according to this assertion, some problems
 7 with estrogen and progesterone receptors in
 8 March, 2004, was that brought to your
 9 attention?
 10 DR. NEIL:
 11 A. No.
 12 COFFEY, Q.C.:
 13 Q. Exhibit P-1393, please, page - 1393, thank
 14 you. Doctor, this is again -- these are
 15 minutes of Division of Anatomical Pathology
 16 meeting, September 1st, 2004. Paragraph 3.6
 17 on page three, "HER2/neu, ER and PR immuno
 18 staining, Dr. Fontaine did mention that Dr. B.
 19 Carter would like to review all the new
 20 HER2/neu and ER/PR immuno staining before
 21 returning to the reporting pathologist. Some
 22 members of the division expressed that this is
 23 unnecessary and they will continue reporting
 24 their own cases". Doctor, I appreciate --
 25 again this involves St. John's, but you did

Page 179

1 have at times contact with pathologists in St.
 2 John's in an informal way.
 3 DR. NEIL:
 4 A. Uh-hm.
 5 COFFEY, Q.C.:
 6 Q. Back and forth. Were you ever made aware that
 7 -- well, first of all, do you know who Dr.
 8 Carter is, B. Carter?
 9 DR. NEIL:
 10 A. Yes, I do.
 11 COFFEY, Q.C.:
 12 Q. She's a breast pathologist. Were you made
 13 aware in the fall of 2004 that she was
 14 interested in looking at ER/PR and HER2/neu
 15 slides, and the reaction -- I'm talking about,
 16 I suppose, were you made aware of this through
 17 the gossip or commentary with pathologists in
 18 St. John's that Dr. Carter --
 19 DR. NEIL:
 20 A. I can't say that I was, no.
 21 COFFEY, Q.C.:
 22 Q. Okay.
 23 DR. NEIL:
 24 A. I'm not surprised that she'd want to do that,
 25 but I wasn't made aware that she was going to

Page 180

1 do that.
 2 COFFEY, Q.C.:
 3 Q. Doctor, if you had had the -- been in the
 4 position where Dr. Carter had, in fact, been
 5 working in Corner Brook and she wanted to look
 6 at everyone's ER/PR and HER2/neu slides, would
 7 you have had any problem with that?
 8 DR. NEIL:
 9 A. It would be an ideal situation.
 10 COFFEY, Q.C.:
 11 Q. I take it from your perspective, you would
 12 have had her report all of them?
 13 DR. NEIL:
 14 A. Yes. Appropriate training.
 15 COFFEY, Q.C.:
 16 Q. Yes.
 17 COMMISSIONER:
 18 Q. Excuse me, Mr. Coffey, but while this is
 19 running through my head, Doctor, when you were
 20 talking about the initial use of IHC for
 21 ER/PR, and there was that period of time which
 22 initially you'd forgotten about that they came
 23 to St. John's and were read in St. John's and
 24 reported and came back to you --
 25 DR. NEIL:

Page 181

1 A. Yes.
 2 COMMISSIONER:
 3 Q. And then things switch around then, the slides
 4 were sent back, and you started to read the
 5 slides yourselves in Corner Brook, did the
 6 pathologists in Corner Brook take any position
 7 about their wanting to read the slides or were
 8 you content with the older method where Dr.
 9 Khalifa was effectively reading the slides and
 10 sending back the reports?
 11 DR. NEIL:
 12 A. I was quite content for Dr. Khalifa to
 13 continue. Did I object to them sending them
 14 to us; no.
 15 COMMISSIONER:
 16 Q. But did you object to his reading them --
 17 DR. NEIL:
 18 A. No, I didn't object to it.
 19 COMMISSIONER:
 20 Q. Or was Corner Brook among any movement to have
 21 the pathologists read their own slides?
 22 DR. NEIL:
 23 A. No.
 24 COMMISSIONER:
 25 Q. Okay, thank you.

Page 182

1 DR. NEIL:
 2 A. I would have preferred if Dr. Khalifa had
 3 continued to do it, to be quite honest.
 4 COMMISSIONER:
 5 Q. And why would that be?
 6 DR. NEIL:
 7 A. Workload is one issue. Experience on his
 8 part, the more you see, the better you get,
 9 but they made the decision that they were
 10 going to have all pathologists read them, and
 11 I accepted that.
 12 COFFEY, Q.C.:
 13 Q. Exhibit P-1918, please. Doctor, this is a
 14 memo, October 7, 2004, and again it doesn't
 15 involve -- it's from Dr. Cook as Clinical
 16 Chief, and it involves pathologists at the
 17 Health Care Corporation, but the subject
 18 matter I want to ask you about. He writes, "I
 19 would like to remind everyone that estrogen
 20 and progesterone receptors should be ordered
 21 automatically on all excisional biopsies,
 22 lumpectomy, and mastectomy specimens,
 23 demonstrating infiltrating carcinomas. It's
 24 come to my attention these receptors have not
 25 been ordered on a number of cases", and he

Page 183

1 wants -- he asks for their cooperation.
 2 Doctor, in Corner Brook in terms of the idea
 3 of ordering ER and PR for all those types of
 4 cases, how long has it been the practice in
 5 Corner Brook?
 6 DR. NEIL:
 7 A. A very long time.
 8 COFFEY, Q.C.:
 9 Q. Would it predate October, 2004?
 10 DR. NEIL:
 11 A. Yes.
 12 COFFEY, Q.C.:
 13 Q. Had you ever become aware of the necessity to
 14 remind everyone in Corner Brook?
 15 DR. NEIL:
 16 A. I didn't do what Dr. Cook did, but I don't
 17 recall ever having to say to someone "would
 18 you please remember to do that", no, on a
 19 verbal --
 20 COFFEY, Q.C.:
 21 Q. Sure. It never came to your attention, I take
 22 it, in -
 23 DR. NEIL:
 24 A. Never came to my attention that there was--no.
 25 COFFEY, Q.C.:

Page 184

1 Q. So, and the ordering of ER and PR dates back
 2 to when, do you think, as a routine or as a
 3 uniform thing in Corner Brook?
 4 DR. NEIL:
 5 A. Well, remember, we did the biochemical.
 6 COFFEY, Q.C.:
 7 Q. Yes.
 8 DR. NEIL:
 9 A. So it started way back then and it continued,
 10 just a change of method.
 11 COFFEY, Q.C.:
 12 Q. Okay. Doctor, quality assurance activity in
 13 Corner Brook for pathologists or pathologist-
 14 type activity, what, if any, is there now?
 15 DR. NEIL:
 16 A. Today?
 17 COFFEY, Q.C.:
 18 Q. Yes.
 19 DR. NEIL:
 20 A. Every biopsy that is of concern, every biopsy
 21 that is malignant is reviewed by a second
 22 pathologist. We document that on our reports.
 23 Any cases that we have any concerns about
 24 whatsoever, we share among ourselves and come
 25 up with a consensus diagnosis.

Page 185

1 COFFEY, Q.C.:

2 Q. That's noted in the report, I take it, as a

3 consensus diagnosis?

4 DR. NEIL:

5 A. If we have a consensus, it is noted in the

6 report.

7 COFFEY, Q.C.:

8 Q. This checking, is it done blind, in the sense

9 of--not so much, you know -

10 DR. NEIL:

11 A. No.

12 COFFEY, Q.C.:

13 Q. - in the sense of do you know if you're

14 checking somebody else's work what he or she's

15 initial view is? For example, if I'm your

16 fellow pathologist, and I've looked at the

17 slide and made my own determination, and ask

18 you to check it, would you know what my view

19 was already?

20 DR. NEIL:

21 A. No. Sometimes I might.

22 COFFEY, Q.C.:

23 Q. Sometimes you would.

24 DR. NEIL:

25 A. A lot of times, I don't.

Page 186

1 COFFEY, Q.C.:

2 Q. Okay, and you understand what I'm talking

3 about, in terms of sometimes you can be

4 unconsciously influenced by someone else's

5 decision.

6 DR. NEIL:

7 A. Yes. In cases where it's obvious, that's--it

8 doesn't matter what I say. It's obvious. In

9 cases where it's not obvious, I would say to

10 my colleague, "please look at this slide.

11 Give me your opinion." And they do the same.

12 COFFEY, Q.C.:

13 Q. Is there any written policy in Corner Brook in

14 relation to that?

15 DR. NEIL:

16 A. No.

17 COFFEY, Q.C.:

18 Q. Is there any external quality assurance or

19 proficiency testing that Corner Brook

20 pathologists are involved in today?

21 DR. NEIL:

22 A. From a surgical pathology perspective?

23 COFFEY, Q.C.:

24 Q. Yes.

25 DR. NEIL:

Page 187

1 A. We send slides to Gamma DynaCare and not in a

2 formal quality assurance manner, but they do

3 see our slides, but that's not quality

4 assurance. We do send consultations to

5 Halifax, but that's not quality assurance. I

6 know the question you're asking me and the

7 answer is no, we don't have an external

8 quality assurance program for pathologists.

9 COFFEY, Q.C.:

10 Q. Have you made any inquiries in that regard?

11 DR. NEIL:

12 A. I know it exists in St. John's. They send

13 somewhere to Calgary, I do believe. I'll have

14 some comments later on after.

15 COFFEY, Q.C.:

16 Q. Okay.

17 DR. NEIL:

18 A. Some of the recommendations I would like to

19 see, and that is certainly going to be one of

20 them.

21 COFFEY, Q.C.:

22 Q. Is there any money available in Corner Brook

23 for continuing education, for example, for

24 pathologists?

25 DR. NEIL:

Page 188

1 A. Now there is. There was, during my whole

2 career, very little, but there was some

3 available. That's since changed.

4 COFFEY, Q.C.:

5 Q. I'm sorry, so there was very -

6 DR. NEIL:

7 A. 1200 dollars.

8 COFFEY, Q.C.:

9 Q. 1200 per pathologist?

10 DR. NEIL:

11 A. Per pathologist on a yearly basis.

12 COFFEY, Q.C.:

13 Q. And that changed when?

14 DR. NEIL:

15 A. 1st of May.

16 COFFEY, Q.C.:

17 Q. Of this year?

18 DR. NEIL:

19 A. Um-hm.

20 COFFEY, Q.C.:

21 Q. How much is it now?

22 DR. NEIL:

23 A. 5,000

24 COFFEY, Q.C.:

25 Q. Over the years, Doctor, how much, in practice,

Page 189

1 would 1200 dollars--how much continuing
 2 medical education for a pathologist would that
 3 buy?
 4 DR. NEIL:
 5 A. Very little.
 6 COFFEY, Q.C.:
 7 Q. Okay. What could you, in fact, do with 1200
 8 dollars?
 9 DR. NEIL:
 10 A. I attend a pathology review course every year
 11 in Toronto for a weekend. It doesn't cover
 12 that.
 13 COFFEY, Q.C.:
 14 Q. It subsidizes it, I take it?
 15 DR. NEIL:
 16 A. It subsidizes that.
 17 COFFEY, Q.C.:
 18 Q. Doctor, again, related to that, if you can
 19 tell the Commissioner, if you had--from your
 20 perspective, how much time per year would you
 21 spend on continuing education?
 22 DR. NEIL:
 23 A. We've had an allotted one week for CME.
 24 COFFEY, Q.C.:
 25 Q. And in order to do that, I take it, from

Page 190

1 Corner Brook you'd have to travel?
 2 DR. NEIL:
 3 A. Yes.
 4 COFFEY, Q.C.:
 5 Q. How much does that cost? Ballpark figure, how
 6 much--because again, you know, we wouldn't
 7 know. I mean, as lawyers, as Commissioner, as
 8 a judge, we wouldn't necessarily know how much
 9 it would cost a pathologist to travel and to
 10 attend a CME.
 11 DR. NEIL:
 12 A. If you want to travel to a CME that's got
 13 substance to it -
 14 COFFEY, Q.C.:
 15 Q. Yes.
 16 DR. NEIL:
 17 A. - and by that I mean, you know, Boston,
 18 somewhere in the U.S., and there's a lot of
 19 material that's--a lot of courses that are
 20 available in various parts of the U.S. and in
 21 Europe. Realizing that we are specialists
 22 that are few, so we have to meet with other
 23 specialists who do the same thing that we do.
 24 So we have to travel fair distances. So a
 25 course in Boston, which some of us have

Page 191

1 attended in the past number of years, could
 2 run you five to six thousand dollars.
 3 COFFEY, Q.C.:
 4 Q. Okay. So the most recent increase, the
 5 current state of affairs might cover one -
 6 DR. NEIL:
 7 A. Yes, will help. Will help, yes, it will.
 8 COFFEY, Q.C.:
 9 Q. It will cover the one -
 10 DR. NEIL:
 11 A. It should cover that one course. It didn't
 12 before.
 13 COFFEY, Q.C.:
 14 Q. Doctor, the practice you refer to of, you
 15 know, informally, but routinely looking at
 16 each other's slides within Corner Brook, you
 17 know, when there is a case that somebody--you
 18 want somebody else to look at, to check a
 19 diagnosis or whatever, how long has that been
 20 going on?
 21 DR. NEIL:
 22 A. It's been going on quite a while, on an
 23 informal basis. We recently, I would say
 24 probably in the last year or 18 months or so,
 25 have said this has to occur. This is

Page 192

1 mandatory. We have to do this. And we have
 2 been documenting. If I saw something, I'd
 3 write it that you had seen it as well. So
 4 we're becoming a lot more stringent with that.
 5 I have recently, around this same time frame,
 6 gathered information about quality assurance
 7 for pathologists throughout the U.S. and
 8 Canada, of which I have a draft document that
 9 I want to implement.
 10 COFFEY, Q.C.:
 11 Q. I'm sorry, that you what? I just couldn't
 12 hear you.
 13 DR. NEIL:
 14 A. I have a draft document that I would like to
 15 implement.
 16 COFFEY, Q.C.:
 17 Q. Okay, yes.
 18 DR. NEIL:
 19 A. Within our own institution. However, I've
 20 been hesitant with doing that because I'd like
 21 to see this as a provincial issue. We should
 22 all be doing the same thing. For me to
 23 develop a particular document for my
 24 institution for five pathologists, it should
 25 be spread out to the province, and in my field

Page 193

1 of work, I don't always have the time to
 2 continue with these administrative duties and
 3 see them to their fruition as much as I would
 4 like. So it's been shelved to a certain
 5 extent, but it's still there to be done, and
 6 hopefully at the end of many of these
 7 proceedings, these will be some of the
 8 recommendations that come out that we have to
 9 have this as a provincial initiative.
 10 COFFEY, Q.C.:
 11 Q. So, Doctor, this draft that you've prepared,
 12 is that suited to your size institution or is
 13 it wider?
 14 DR. NEIL:
 15 A. It can be wider. These are recommendations
 16 from the American Pathology organizations,
 17 associations.
 18 COFFEY, Q.C.:
 19 Q. Yes. Have you distributed that to anyone,
 20 like locally to -
 21 DR. NEIL:
 22 A. Yes, we've discussed it.
 23 COFFEY, Q.C.:
 24 Q. Okay. Within Corner Brook?
 25 DR. NEIL:

Page 194

1 A. Yes.
 2 COFFEY, Q.C.:
 3 Q. How about outside?
 4 DR. NEIL:
 5 A. No.
 6 COFFEY, Q.C.:
 7 Q. Possible for us to get a copy of that?
 8 Bearing in mind it is a draft, and I
 9 appreciate that.
 10 DR. NEIL:
 11 A. Well, I mean, I can find it off the web site.
 12 I don't have it with me.
 13 COFFEY, Q.C.:
 14 Q. Okay, and I appreciate, but you could forward
 15 that through Mr. Browne.
 16 DR. NEIL:
 17 A. I could certainly forward that.
 18 COFFEY, Q.C.:
 19 Q. Okay, if you would, please?
 20 DR. NEIL:
 21 A. Yes.
 22 COFFEY, Q.C.:
 23 Q. And it's been discussed locally within Corner
 24 Brook itself?
 25 DR. NEIL:

Page 195

1 A. Yes.
 2 COFFEY, Q.C.:
 3 Q. And your fellow physicians there, are they
 4 receptive to that?
 5 DR. NEIL:
 6 A. Oh yes.
 7 THE COMMISSIONER:
 8 Q. Excuse me, Mr. Coffey. I'm butting in again.
 9 Doctor, have you been--I understand that there
 10 is an informal, if not formal arrangement
 11 whereby people with your position in the other
 12 hospitals, other authorities, meet from time
 13 to time.
 14 DR. NEIL:
 15 A. Not very often.
 16 THE COMMISSIONER:
 17 Q. You're looking -
 18 DR. NEIL:
 19 A. Not very often, but we do meet -
 20 THE COMMISSIONER:
 21 Q. It exists in theory, but -
 22 DR. NEIL:
 23 A. - we do meet from time to time, but it's rare.
 24 THE COMMISSIONER:
 25 Q. Okay, and well, do you use technology and have

Page 196

1 conference calls or anything of that nature?
 2 DR. NEIL:
 3 A. We have--we do speak to one another, but it's
 4 very, very informal.
 5 THE COMMISSIONER:
 6 Q. Okay. So it's not likely that I'm going to
 7 see a agenda which says -
 8 DR. NEIL:
 9 A. You won't see an agenda.
 10 THE COMMISSIONER:
 11 Q. - develop a provincial -
 12 DR. NEIL:
 13 A. No, you won't see that.
 14 THE COMMISSIONER:
 15 Q. - quality assurance program.
 16 DR. NEIL:
 17 A. You won't see that.
 18 THE COMMISSIONER:
 19 Q. And who's going to do what on it or anything
 20 of that nature?
 21 DR. NEIL:
 22 A. It's been talked about at Eastern Health.
 23 THE COMMISSIONER:
 24 Q. Um-hm.
 25 DR. NEIL:

Page 197

1 A. And I've talked about it in my own region, but
 2 actually to get together and actually do that,
 3 it's not been done. I know that there have
 4 been some meetings that I wasn't able to
 5 attend, and I don't know much about them, but
 6 Bev Carter actually has discussed this with
 7 some other people and I don't know if it's--
 8 how far along it is.
 9 THE COMMISSIONER:
 10 Q. Okay, and have you had any contacts, for
 11 example, from somebody within the Department
 12 of Health to sort of say "can we be of
 13 assistance -
 14 DR. NEIL:
 15 A. I haven't personally, no.
 16 THE COMMISSIONER:
 17 Q. - in coordinating this for regions?" or
 18 something of that nature?
 19 DR. NEIL:
 20 A. I haven't personally, no.
 21 THE COMMISSIONER:
 22 Q. May not necessarily be their role, but--or
 23 have you thought about contacting them to say
 24 "can you be of assistance in developing this?"
 25 DR. NEIL:

Page 198

1 A. This is really the recommendation that I'd
 2 like to make, and I have it -
 3 THE COMMISSIONER:
 4 Q. Okay. Yes, we'll let you do that a little
 5 later.
 6 COFFEY, Q.C.:
 7 Q. We'll come to that, Doctor.
 8 DR. NEIL:
 9 A. It should be done. Everything you just said
 10 should be done. I'd like to see it done.
 11 THE COMMISSIONER:
 12 Q. Okay, all right. We'll talk about it further
 13 later.
 14 COFFEY, Q.C.:
 15 Q. Doctor, while we're on this topic, rounds, do
 16 they occur in Corner Brook? Do pathologists
 17 take part in them?
 18 DR. NEIL:
 19 A. Are you referring to pathology rounds?
 20 COFFEY, Q.C.:
 21 Q. Yes, pathology rounds, yes.
 22 DR. NEIL:
 23 A. No.
 24 COFFEY, Q.C.:
 25 Q. Okay.

Page 199

1 DR. NEIL:
 2 A. We're a very small group of people.
 3 COFFEY, Q.C.:
 4 Q. And surgical pathology rounds, they don't
 5 occur in Corner Brook either?
 6 DR. NEIL:
 7 A. No.
 8 COFFEY, Q.C.:
 9 Q. It's too small.
 10 DR. NEIL:
 11 A. There's no formal rounds per se.
 12 COFFEY, Q.C.:
 13 Q. Okay.
 14 DR. NEIL:
 15 A. We are constantly in and out of one another's
 16 offices, discussing cases, and we all may be
 17 in one office for an hour.
 18 COFFEY, Q.C.:
 19 Q. Discussing a particular case?
 20 DR. NEIL:
 21 A. Discussing several cases.
 22 COFFEY, Q.C.:
 23 Q. Okay.
 24 DR. NEIL:
 25 A. You can call that a round, if you like.

Page 200

1 COFFEY, Q.C.:
 2 Q. Yes.
 3 DR. NEIL:
 4 A. I don't.
 5 COFFEY, Q.C.:
 6 Q. Doctor, rounds by telecommunications with, for
 7 example, St. John's.
 8 DR. NEIL:
 9 A. Yes.
 10 COFFEY, Q.C.:
 11 Q. Are there any rounds that occur that you can
 12 participate in, or your fellow physicians in
 13 Corner Brook can participate in that occur in
 14 St. John's?
 15 DR. NEIL:
 16 A. St. John's did start a tumour board round.
 17 COFFEY, Q.C.:
 18 Q. Yes.
 19 DR. NEIL:
 20 A. That I became aware of. I did attend one. At
 21 the time, the quality of the transmissions
 22 were so poor that I didn't attend any more. I
 23 think things have improved. I attended one,
 24 and one of my colleagues attended the same
 25 one. I think things have improved, but on a

Page 201

1 regular basis, we haven't been attending them.
 2 You must realize too that our workload does
 3 not dictate that we can spend this amount of
 4 time, you know, at any particular time
 5 attending rounds when there's a pile of work
 6 on this side of the table that needs to be
 7 done.
 8 COFFEY, Q.C.:
 9 Q. And before we break for lunch, I want to ask
 10 you about that, the pile of work. Doctor,
 11 over the years, the staffing level for the
 12 pathology department in Corner Brook, from the
 13 late 90s onward has been, I take it, four or
 14 five funded positions?
 15 DR. NEIL:
 16 A. When I started, there were three funded
 17 positions.
 18 COFFEY, Q.C.:
 19 Q. Three.
 20 DR. NEIL:
 21 A. When I started, there were two funded
 22 positions. I made it the third.
 23 COFFEY, Q.C.:
 24 Q. Okay, that was back in the 80s.
 25 DR. NEIL:

Page 202

1 A. That was back in the 80s, and you have a table
 2 of the number of pathologists that we've gone
 3 through. I think the fourth position started
 4 in '95, and the fifth position started in
 5 2004.
 6 COFFEY, Q.C.:
 7 Q. Okay, so there were four then really from '95
 8 through '04?
 9 DR. NEIL:
 10 A. From '95 to '04, there were--yes.
 11 COFFEY, Q.C.:
 12 Q. Four funded positions?
 13 DR. NEIL:
 14 A. Four funded positions.
 15 COFFEY, Q.C.:
 16 Q. And then there's been another position added?
 17 DR. NEIL:
 18 A. A fifth one added in 2004.
 19 COFFEY, Q.C.:
 20 Q. Now that's positions?
 21 DR. NEIL:
 22 A. Yes.
 23 COFFEY, Q.C.:
 24 Q. I'm going to ask you about, how about actually
 25 them being filled?

Page 203

1 DR. NEIL:
 2 A. We have been short on numerous occasions.
 3 From 2004--sorry, from--could we bring up the
 4 document?
 5 COFFEY, Q.C.:
 6 Q. Sure, we certainly can.
 7 DR. NEIL:
 8 A. Because it would help me.
 9 COFFEY, Q.C.:
 10 Q. It's P-2271.
 11 DR. NEIL:
 12 A. When I did this, you asked me to do this,
 13 asked me to determine when pathologists
 14 started and when they finished. This was
 15 quite surprising to me actually how it turned
 16 out. You can see that the three top people
 17 have been there quite a long time, and as we
 18 added the fourth and fifth positions, if you
 19 look at a time line, those lines represent
 20 points in time that these people were actually
 21 there.
 22 COFFEY, Q.C.:
 23 Q. Yes.
 24 DR. NEIL:
 25 A. The turnover was tremendous and still

Page 204

1 continues to be tremendous, except for Dr.
 2 Karn and Dr. Luer who probably will stay. But
 3 the time frame, people come, they stay their
 4 required amount of time, which is usually two
 5 to three years, and then gone. My issue is
 6 recruitment to keep people in positions. It's
 7 been a constant, constant battle to keep
 8 people.
 9 COFFEY, Q.C.:
 10 Q. And it's your position that's responsible -
 11 DR. NEIL:
 12 A. It's my position. I take the initiative to
 13 find these people. I get help from Medical
 14 Services. They're very good at it, but I take
 15 the initiative myself to do this, and Dr. Cook
 16 has done the same thing, and he and I are both
 17 frustrated with this issue. The turnaround
 18 time or the time frame that these people have
 19 been here, it fulfils the requirements for
 20 their work, and then they're gone, and the
 21 line just drops off as we continue with
 22 addition of more pathologists, if you
 23 appreciate the way that table is working. I
 24 was quite surprised when I saw that.
 25 COFFEY, Q.C.:

Page 205

1 Q. So at any one point in time, if the
 2 Commissioner wanted to, she could just simply
 3 go down through it and say, okay, you can tell
 4 at a particular point in time how many are
 5 there, just by looking down a column?
 6 DR. NEIL:
 7 A. That's right. Remember now, just because
 8 they're there, doesn't mean they're fully
 9 functional, because the person who arrives the
 10 end of this month, for instance, which we
 11 expect someone to arrive the end of this
 12 month, there's an orientation process. You
 13 have to get them used to their work
 14 environment, get them used to the procedures
 15 that we follow. So they might not be up and
 16 fully functional for maybe a month. So that
 17 cuts down the time frame, also takes away from
 18 my work and the work of other pathologists who
 19 have to acquaint these people with their jobs.
 20 It would be--an ideal situation would be
 21 people who come and stay, and we can get on
 22 with our work. That does not happen.
 23 COFFEY, Q.C.:
 24 Q. Now Doctor, is there any arrangement or has
 25 there been any arrangement over the years in

Page 206

1 Corner Brook, in terms of remuneration,
 2 whereby if the actual staffing level, filled
 3 staffing positions falls below a certain
 4 point, the remaining physicians get paid a
 5 certain amount more?
 6 DR. NEIL:
 7 A. Yes.
 8 COFFEY, Q.C.:
 9 Q. How does that -
 10 DR. NEIL:
 11 A. That's through Department of Health and the
 12 way it works, and I can explain it from the
 13 positions of five. If there are two vacant
 14 positions and we are down to three people, we
 15 can get extra workload compensation, but it
 16 has to be a critical mass of three. So if we
 17 are paid for five and one person is vacant, no
 18 compensation.
 19 COFFEY, Q.C.:
 20 Q. The other four have to do the workload of the
 21 five and there's no extra money?
 22 DR. NEIL:
 23 A. Correct. If there are two people away, and it
 24 has to be for a period of seven days or more,
 25 the remaining three will be compensated for

Page 207

1 extra workload.
 2 COFFEY, Q.C.:
 3 Q. Is the compensation the equivalent of the
 4 other two, divvying up the other two people's
 5 money?
 6 DR. NEIL:
 7 A. No, the compensation is--I think the figure is
 8 315 dollars a day, multiple that by the number
 9 of positions that are vacant, which is two.
 10 COFFEY, Q.C.:
 11 Q. 630, yes.
 12 DR. NEIL:
 13 A. 630, multiply that by the number of days the
 14 person was vacant, these people, these two
 15 people were vacant, which would be your total
 16 figure, and then you take that and divide it
 17 among the three that are left.
 18 COFFEY, Q.C.:
 19 Q. Okay. Doctor, DynaCare, you've referred to?
 20 DR. NEIL:
 21 A. Yes.
 22 COFFEY, Q.C.:
 23 Q. Is Corner Brook utilizing DynaCare?
 24 DR. NEIL:
 25 A. Yes.

Page 208

1 COFFEY, Q.C.:
 2 Q. When did it begin to do so, do you recall?
 3 DR. NEIL:
 4 A. About two months ago.
 5 COFFEY, Q.C.:
 6 Q. Okay.
 7 DR. NEIL:
 8 A. After we had spoken in Corner Brook.
 9 COFFEY, Q.C.:
 10 Q. Yes, in fact, you had just, I gather, made--
 11 were making the arrangements at the time.
 12 DR. NEIL:
 13 A. Yes.
 14 COFFEY, Q.C.:
 15 Q. At the time we were there to interview you.
 16 Doctor, has Corner Brook, before this year,
 17 ever utilized an organization such as
 18 DynaCare?
 19 DR. NEIL:
 20 A. No.
 21 COFFEY, Q.C.:
 22 Q. Okay, so this sending out of large numbers of
 23 specimens for analysis has never occurred
 24 before?
 25 DR. NEIL:

Page 209

1 A. No.
 2 COFFEY, Q.C.:
 3 Q. In the past, if the work was there -
 4 DR. NEIL:
 5 A. We pulled up our socks and went to work.
 6 COFFEY, Q.C.:
 7 Q. - had to do it. Now DynaCare, you're
 8 utilizing now?
 9 DR. NEIL:
 10 A. Yes.
 11 COFFEY, Q.C.:
 12 Q. You have an arrangement in place. Is that
 13 envisaged that it will continue indefinitely
 14 or related to what your workload and staffing
 15 levels are or what?
 16 DR. NEIL:
 17 A. I envision it occurring indefinitely, with
 18 some provisions. When our fifth pathologist
 19 arrives, obviously we will reassess what we
 20 are doing. However, I don't expect it to stop
 21 when she arrives. Gamma DynaCare is providing
 22 a good service to us now, in the sense that
 23 external consultations or cases that we may
 24 have a little bit of difficulty with, cases
 25 that we need another opinion on, we don't have

Page 210

1 anybody else to send it to. We, over the
 2 years, relied on St. John's as an external
 3 consultant. Dr. Cook had called me, Dr. Denic
 4 had called me, not sure which one, but one of
 5 them, had called me several years ago and said
 6 "we can't handle this any more." They're
 7 overworked. "Please send your external
 8 consultations somewhere else." I appreciate
 9 what he was telling me. I had told our people
 10 not to do that any more.
 11 COFFEY, Q.C.:
 12 Q. Not to send the external consultations to -
 13 DR. NEIL:
 14 A. Not to send to Eastern Health, unless you
 15 absolutely had to. We were using--utilizing
 16 Halifax quite frequently. Earlier on this
 17 year, I had a letter from--her name escapes me
 18 for the moment, but the director there--saying
 19 "we are in the same predicament. We cannot
 20 handle external consultations. If you know
 21 somewhere else to send it, please do. If you
 22 absolutely have to send it, go ahead." So now
 23 I have no St. John's, no Halifax. I have to
 24 send it somewhere. So that's why I envision
 25 Gamma DynaCare taking over that role.

Page 211

1 COFFEY, Q.C.:
 2 Q. And so what role or function are they
 3 performing now?
 4 DR. NEIL:
 5 A. Now? They are--it started off with
 6 dermatopathology cases. We have an active
 7 dermatologist in Corner Brook who is
 8 increasing our workload. We're not experts in
 9 dermatopathology. We have an expert in
 10 dermatopathology at Gamma DynaCare which we
 11 utilize. That's our main focus to start off.
 12 We also send other cases that we need their
 13 expertise in, but the main focus was skin
 14 pathology, but that has expanded to other
 15 areas, prostate, whatever our pathologists
 16 feel they need another external opinion on.
 17 COFFEY, Q.C.:
 18 Q. I'm sorry, what was it you said?
 19 DR. NEIL:
 20 A. Another external opinion.
 21 COFFEY, Q.C.:
 22 Q. You said one of them was--did you say
 23 prostate?
 24 DR. NEIL:
 25 A. It could be prostate. It could be anything.

Page 212

1 It depends on what our pathologist decides he,
 2 at the time now, wants or she, soon to be,
 3 decide they want to send.
 4 COFFEY, Q.C.:
 5 Q. Doctor, the funding for this, the funding
 6 source for this is what? What's being--whose
 7 budget is being utilized to do that?
 8 DR. NEIL:
 9 A. Ours.
 10 COFFEY, Q.C.:
 11 Q. Okay, that's Western Health's?
 12 DR. NEIL:
 13 A. Western Health.
 14 COFFEY, Q.C.:
 15 Q. Okay. If we could, please, Commissioner, I'd
 16 like to come back then and go through the 2005
 17 ER/PR with the doctor right after lunch.
 18 THE COMMISSIONER:
 19 Q. Sure. We'll break until ten after two.
 20 COFFEY, Q.C.:
 21 Q. Thanks, Judge.
 22 (LUNCH BREAK)
 23 THE COMMISSIONER:
 24 Q. Mr. Coffey.
 25 COFFEY, Q.C.:

Page 213

1 Q. Yes, Commissioner, just before you came in,
 2 Dr. Neil said that there was something just
 3 over the lunch hour he had been just thinking
 4 about and he wanted to make a comment about, a
 5 comment you made this morning.
 6 THE COMMISSIONER:
 7 Q. Yes.
 8 COFFEY, Q.C.:
 9 Q. Doctor?
 10 DR. NEIL:
 11 A. Yes, I was talking about Ph and when we
 12 checked our pH on the commercially available
 13 formalin. I may have left you the impression
 14 that it was weeks, but it was actually a week,
 15 so days, not weeks. I said weeks, I do
 16 believe.
 17 COFFEY, Q.C.:
 18 Q. So after, you'd been checking it for the past
 19 week?
 20 DR. NEIL:
 21 A. Past week.
 22 COFFEY, Q.C.:
 23 Q. For the past week?
 24 DR. NEIL:
 25 A. Yes.

Page 214

1 COFFEY, Q.C.:
 2 Q. Okay.
 3 DR. NEIL:
 4 A. So it's just initiating.
 5 COFFEY, Q.C.:
 6 Q. It began just this past week?
 7 DR. NEIL:
 8 A. Yes.
 9 COFFEY, Q.C.:
 10 Q. Okay. If we could, please, and I appreciate
 11 the clarification, Doctor. Registrar, I
 12 believe there's a new exhibit, 2297 and 2298.
 13 Commissioner, if you'd -
 14 THE COMMISSIONER:
 15 Q. Entered.
 16 EXHIBITS ENTERED AND MARKED P-2297 AND P-2298
 17 COFFEY, Q.C.:
 18 Q. And if we could open those. Well, 2297 will
 19 suffice, for my purposes. Doctor, this is a
 20 Western Memorial Regional Hospital pathology
 21 report. It's redacted, but there's one part
 22 of it, in particular, I wanted to ask you
 23 about. In addendum number one, it says it's
 24 entered 15/01/04, 11:09, which would be
 25 January 15th, 2004?

Page 215

1 DR. NEIL:
 2 A. Yes.
 3 COFFEY, Q.C.:
 4 Q. And it reads "immunoperoxidase stains reveal
 5 estrogen receptors, poor quality of sections
 6 and staining preclude an assessment. Stain is
 7 non-contributory" and then "progesterone
 8 receptors positive in approximately 50 percent
 9 of the tumour cells. Sections are of poor
 10 quality and assessment is difficult."
 11 Addendum signed, signature on file, Dr. Andrew
 12 Luer, January 15th '04.
 13 DR. NEIL:
 14 A. Yes.
 15 COFFEY, Q.C.:
 16 Q. Now Doctor, you've indicated that on one
 17 occasion, Dr. Luer had spoken to you about a
 18 concern he had about a slide or slides. Do
 19 you know if this is the particular instance?
 20 DR. NEIL:
 21 A. No, it might.
 22 COFFEY, Q.C.:
 23 Q. It may or may not be.
 24 DR. NEIL:
 25 A. I just don't know.

Page 216

1 COFFEY, Q.C.:
 2 Q. But is it--bearing in mind the context in
 3 which the conversation with him occurred
 4 before, is it possible that it was this sort
 5 of matter?
 6 DR. NEIL:
 7 A. Yes.
 8 COFFEY, Q.C.:
 9 Q. And you pointed out to the Commissioner that
 10 at the time it was raised with you, you
 11 directed him to deal with the lab that he got
 12 the slides from?
 13 DR. NEIL:
 14 A. Yes.
 15 COFFEY, Q.C.:
 16 Q. The Health Sciences Centre.
 17 DR. NEIL:
 18 A. Health Sciences' technologist first and I
 19 guess, Dr. Ejeckam.
 20 COFFEY, Q.C.:
 21 Q. Yes, in '04, that would be.
 22 DR. NEIL:
 23 A. Yes.
 24 COFFEY, Q.C.:
 25 Q. If we could, please, then, Registrar, Exhibit

Page 217

1 P-94--I'm sorry, 0492, please? Now what we
 2 have been dealing with in terms of the ER/PR
 3 matter in 2005, you know, the matter that
 4 brings us here today, Doctor, when did you
 5 first hear, and how, about this matter? About
 6 ER/PR being--you know, there was a problem
 7 with some stains, ER/PR stains in St. John's,
 8 when did you first hear about this? From
 9 whom?
 10 DR. NEIL:
 11 A. From Dr. Cook, Dr. Cook's memo.
 12 COFFEY, Q.C.:
 13 Q. Which is this memo here, I take it?
 14 DR. NEIL:
 15 A. Yes.
 16 COFFEY, Q.C.:
 17 Q. Okay, and that's why I brought it up. So
 18 before you got this memo, June 14th 2005,
 19 that's what it's dated, you had no--no one had
 20 ever phoned you or called you about this?
 21 DR. NEIL:
 22 A. No.
 23 COFFEY, Q.C.:
 24 Q. And you are listed there as the second last
 25 entry in the addressees.

Page 218

1 DR. NEIL:
 2 A. Um-hm.
 3 COFFEY, Q.C.:
 4 Q. And he writes indicating "we are aware of a
 5 number of negative estrogen and progesterone
 6 receptors that have converted on repeat
 7 testing with our new Ventana Benchmark
 8 immunoperoxidase testing." Doctor, when you
 9 got this, what did you understand by the--when
 10 he says "ER and PR that have converted on
 11 repeat testing"? Converted in this context
 12 meant what to you?
 13 DR. NEIL:
 14 A. Their values had changed.
 15 COFFEY, Q.C.:
 16 Q. Okay, and here he continues on. He says
 17 "presently we are in the"--well, he refers
 18 then to "false negatives -
 19 DR. NEIL:
 20 A. Yes.
 21 COFFEY, Q.C.:
 22 Q. - have occurred during the year 2002." So I
 23 take it that the change would be from a
 24 negative to a positive?
 25 DR. NEIL:

Page 219

1 A. To a positive, correct.
 2 COFFEY, Q.C.:
 3 Q. Of some sort, and he says "we are in the
 4 process of retesting all negative ER and PRs
 5 for that particular year. We request that
 6 you," and you're one of the you's, "forward
 7 all negative ER and PR cases for the year 2002
 8 to Mr. Dyer," Barry Dyer, and he looks for
 9 particular things, original ER/PR slides,
 10 controls, H & E slides and paraffin blocks.
 11 Doctor, when you first got this, what was
 12 your--well, first of all, when did you first
 13 get this, do you recall?
 14 DR. NEIL:
 15 A. The letter is dated June the 14th.
 16 COFFEY, Q.C.:
 17 Q. So it would have been shortly after?
 18 DR. NEIL:
 19 A. Shortly thereafter that.
 20 COFFEY, Q.C.:
 21 Q. Why I'm asking, in terms of you weren't on
 22 vacation for a month or so around that time?
 23 DR. NEIL:
 24 A. I was on vacation, but I would have been there
 25 in June.

Page 220

1 COFFEY, Q.C.:
 2 Q. And then what was your initial reaction to
 3 this? Who did you share it with? How did you
 4 react to it? What did you believe or
 5 understand was required of you?
 6 DR. NEIL:
 7 A. Well, we had a little work to do. We had to
 8 gather the material that was asked for. So I
 9 discussed it with several people within the
 10 lab, including our managers, our secretaries,
 11 and those were the main people. I'm not sure
 12 if I discussed it with any of our
 13 technologists, but certainly our secretaries
 14 and our manager that was responsible at the
 15 time, that we had to gather these cases and
 16 submit them appropriately.
 17 COFFEY, Q.C.:
 18 Q. And did you inform anyone initially, like in
 19 June or July of 2005, you know, higher up in
 20 the organization?
 21 DR. NEIL:
 22 A. No.
 23 COFFEY, Q.C.:
 24 Q. Okay. Why not?
 25 DR. NEIL:

Page 221

1 A. I did what I was asked to do and gather the
 2 material that I was asked to gather. I didn't
 3 think there was a need at the time to involve
 4 somebody in a simple task that I was asked to
 5 do.
 6 COFFEY, Q.C.:
 7 Q. Doctor, the second last sentence of the first
 8 paragraph reads "we will repeat all ER and PR
 9 receptors with the Ventana system and forward
 10 the results to you."
 11 DR. NEIL:
 12 A. Yes.
 13 COFFEY, Q.C.:
 14 Q. So I take it the results, in this context,
 15 were going to be what? Would they be the
 16 numerical number or the slides or both or
 17 what? He says "and refer the results to you."
 18 What kind of results were you looking to get
 19 or expect to receive? I'll just show you
 20 right here, Doctor. I'm sorry.
 21 DR. NEIL:
 22 A. Yes, yeah.
 23 COFFEY, Q.C.:
 24 Q. "We will repeat all ER/PR receptors with the
 25 Ventana and forward the results to you."

Page 222

1 DR. NEIL:
 2 A. The results would be the number.
 3 COFFEY, Q.C.:
 4 Q. The number?
 5 DR. NEIL:
 6 A. Yeah.
 7 COFFEY, Q.C.:
 8 Q. So the reading of the slides?
 9 DR. NEIL:
 10 A. New report, a new report would be sent to us.
 11 COFFEY, Q.C.:
 12 Q. Because you would have done the original
 13 reports in '02?
 14 DR. NEIL:
 15 A. Yes.
 16 COFFEY, Q.C.:
 17 Q. And so you expected St. John's would create
 18 new slides and generate a report?
 19 DR. NEIL:
 20 A. Yes.
 21 COFFEY, Q.C.:
 22 Q. With new numbers on it?
 23 DR. NEIL:
 24 A. Yes.
 25 COFFEY, Q.C.:

Page 223

1 Q. I shouldn't say new numbers, with numbers on
 2 it?
 3 DR. NEIL:
 4 A. Yes.
 5 COFFEY, Q.C.:
 6 Q. Did you contact anybody in St. John's about
 7 this at the time?
 8 DR. NEIL:
 9 A. No. I may have discussed it with Barry to say
 10 that I'd be submitted these cases.
 11 COFFEY, Q.C.:
 12 Q. Okay, and in terms of how many negatives--how
 13 many false negatives they had, why this--how
 14 they became aware of this and so on?
 15 DR. NEIL:
 16 A. No, no. I had a task to do, and I did it.
 17 COFFEY, Q.C.:
 18 Q. He says, refer to Dr. Cook or Bev Carter, so
 19 you didn't call Bev Carter at that point?
 20 DR. NEIL:
 21 A. No, I didn't.
 22 COFFEY, Q.C.:
 23 Q. Nor Don Cook, and you may have spoken to Barry
 24 Dyer?
 25 DR. NEIL:

Page 224

1 A. I may have spoken to Barry for the logistics
 2 purpose of getting the paraffin blocks to him.
 3 I may not have, I don't honestly remember.
 4 COFFEY, Q.C.:
 5 Q. And I understand then, as time went on, we're
 6 going to see the memos or memo, you were asked
 7 to go back much further than 2002.
 8 DR. NEIL:
 9 A. Yes.
 10 COFFEY, Q.C.:
 11 Q. Perhaps you could then, overall, describe the
 12 process of trying to identify the patients who
 13 had had ER and PR tests done, you know, via
 14 Western Memorial? What physically was
 15 involved and what processes? Because you have
 16 told us too, there was an older computer
 17 system.
 18 DR. NEIL:
 19 A. We needed to generate a list of patients that
 20 had ER and PR done over the time frame from--
 21 well, if we're talking just 2002, that's a
 22 little different.
 23 COFFEY, Q.C.:
 24 Q. Yes, and I appreciate that's probably what you
 25 started to do in '02.

Page 225

1 DR. NEIL:
 2 A. Yes.
 3 COFFEY, Q.C.:
 4 Q. Did you get the '02 one done before you were
 5 tasked with the larger task?
 6 DR. NEIL:
 7 A. No.
 8 COFFEY, Q.C.:
 9 Q. Okay, so perhaps then you could describe then
 10 kind of what the overall task became?
 11 DR. NEIL:
 12 A. The overall task.
 13 COFFEY, Q.C.:
 14 Q. Yes.
 15 DR. NEIL:
 16 A. It would be much easier. So the overall task
 17 was to develop a list of patients that had
 18 ER/PR testing done from the time frame
 19 identified, 1997 to 2005. As I said earlier
 20 this morning, we had two computer systems.
 21 One was primitive, which we used for ten
 22 years, but it was primitive. It was not--it
 23 had a non-searchable database. We had that up
 24 until 1999 when Meditec came in. Meditec had
 25 a searchable database. It was easy to pick up

Page 226

1 patients in a searchable database because we
 2 had marked them with a marker that we could
 3 retrieve them easily. So these had an ER/PR
 4 marker on them.
 5 COFFEY, Q.C.:
 6 Q. Okay. So at the time Meditec was brought in
 7 in Corner Brook -
 8 DR. NEIL:
 9 A. Yes.
 10 COFFEY, Q.C.:
 11 Q. - when you began to use the system, when you
 12 were doing an ER and PR test on a patient or
 13 ordering -
 14 DR. NEIL:
 15 A. We could mark that we did that.
 16 COFFEY, Q.C.:
 17 Q. There was a marker, and you were doing it.
 18 DR. NEIL:
 19 A. We were doing it and we could retrieve
 20 patients based on that, and you'll see in some
 21 of the documentation that I asked my expert in
 22 Meditec in the pathology module to retrieve
 23 those cases for me, which he did. So he gave
 24 me a list from 1999 up until the cutoff dates
 25 that we're talking about. So I had a list

Page 227

1 from that period generated through Meditec.
 2 The time prior to Meditec, the database was
 3 not searchable, so I had to find another way
 4 to get those patients' names. The listing of-
 5 -or the ordering of ER/PR tests was done
 6 through a requisition, which we talked about.
 7 Those requisitions, luckily, had been kept.
 8 They were kept right back to the time frame
 9 that we were interested in. Our secretaries
 10 went through every requisition from 1997 up to
 11 '99 and past 1999 to generate another list.
 12 Anybody who had been ordered it on that
 13 requisition, we picked up.
 14 COFFEY, Q.C.:
 15 Q. For ER and PR testing?
 16 DR. NEIL:
 17 A. For ER and PR. So that's two ways. The third
 18 way, and there are three ways, there are three
 19 ways in total. The third way, any cancers
 20 that we diagnosed since I've been in Corner
 21 Brook have been registered with NCTRF. I made
 22 some phone calls, e-mails, can't exactly
 23 remember what it was, but to the Cancer
 24 Registry saying "I need a list" and I knew
 25 they had it because these were cancers we were

Page 228

1 dealing with, of patients who had breast
 2 cancer. So I had three lists by which I could
 3 cross-reference.
 4 COFFEY, Q.C.:
 5 Q. The list generated by the NC -
 6 DR. NEIL:
 7 A. NCTRF, the requisition forms and Meditec. So
 8 I had three lists.
 9 COFFEY, Q.C.:
 10 Q. The requisition form, Doctor, that search, did
 11 that--how far into '99, 2000, did that extend?
 12 You started, you know, in '97.
 13 DR. NEIL:
 14 A. Yes.
 15 COFFEY, Q.C.:
 16 Q. But the search of the requisition forms, did
 17 that extend all the way up to '05?
 18 DR. NEIL:
 19 A. Yes.
 20 COFFEY, Q.C.:
 21 Q. Okay, so it overlapped in the Meditec time
 22 frame?
 23 DR. NEIL:
 24 A. It overlapped.
 25 COFFEY, Q.C.:

Page 229

1 Q. Okay. I didn't understand that.
 2 DR. NEIL:
 3 A. Yes, it overlapped. The time frame that we
 4 were concerned with -
 5 COFFEY, Q.C.:
 6 Q. The requisitions were all searched.
 7 DR. NEIL:
 8 A. Requisitions covered the whole time.
 9 COFFEY, Q.C.:
 10 Q. And they were all searched?
 11 DR. NEIL:
 12 A. They were all searched.
 13 COFFEY, Q.C.:
 14 Q. Okay.
 15 DR. NEIL:
 16 A. So I felt fairly confident that I had every
 17 body that I was asked to get.
 18 COFFEY, Q.C.:
 19 Q. Doctor, are you aware of any that were missed?
 20 Have you ever become aware of any that were
 21 missed?
 22 DR. NEIL:
 23 A. Occasionally there would be a case that would
 24 pop up and was my concern from day one that "I
 25 really hope I don't miss anybody" and I tried

Page 230

1 my best and I have since tried my best to pick
 2 up, from whatever source, is there any way
 3 that I would have missed anybody.
 4 COFFEY, Q.C.:
 5 Q. Doctor, on those occasions, how--I take it
 6 there were few that have--were missed?
 7 DR. NEIL:
 8 A. Few, very few. Very few.
 9 COFFEY, Q.C.:
 10 Q. On those occasions where that's come to your
 11 attention, how is it that it came to your
 12 attention?
 13 DR. NEIL:
 14 A. That's a difficult question to ask--answer. I
 15 really can't answer that.
 16 COFFEY, Q.C.:
 17 Q. You don't recall -
 18 DR. NEIL:
 19 A. How it came to my attention.
 20 COFFEY, Q.C.:
 21 Q. - as to how particular -
 22 DR. NEIL:
 23 A. There were several people and I really can't
 24 answer how they--each specifically came to my
 25 attention.

Page 231

1 COFFEY, Q.C.:
 2 Q. Okay. In general though, was it self-
 3 identified patients?
 4 DR. NEIL:
 5 A. No, they weren't self-identified.
 6 COFFEY, Q.C.:
 7 Q. Okay, they weren't?
 8 DR. NEIL:
 9 A. No.
 10 COFFEY, Q.C.:
 11 Q. There wasn't that.
 12 DR. NEIL:
 13 A. No.
 14 COFFEY, Q.C.:
 15 Q. Because that's one thing the Commissioner has
 16 heard from--you know, from other patients,
 17 from witnesses and other people that they
 18 self-identified or its referred to in some of
 19 the materials, in the sense of they hadn't
 20 been contacted and therefore -
 21 DR. NEIL:
 22 A. Eastern Health may have contacted me, "is this
 23 patient on the list?" I'm speculating now,
 24 because I really don't know the answer.
 25 COFFEY, Q.C.:

Page 232

1 Q. Okay. At the times that those patients were
 2 identified, did you make any inquiries as to
 3 why they were missed or how they could have
 4 been missed? You know, like why they wouldn't
 5 appear on a requisition form or they were on a
 6 requisition form and it got missed, did you
 7 make any inquiries in that regard?
 8 DR. NEIL:
 9 A. There could be, you know, clerical
 10 transposition, just not picking up the patient
 11 on the list when you were making up the master
 12 list. That could have easily happened.
 13 COFFEY, Q.C.:
 14 Q. So but an actual inquiry on a patient-by-
 15 patient basis wasn't made? It's just you were
 16 happy that you'd identified -
 17 DR. NEIL:
 18 A. I was quite confident that I had as many as I
 19 could possibly get, but there were occasional
 20 patients that did pop up later.
 21 COFFEY, Q.C.:
 22 Q. And when they were so identified, were they
 23 dealt with and put into the process?
 24 DR. NEIL:
 25 A. They were dealt with appropriately.

Page 233

1 THE COMMISSIONER:
 2 Q. Dr. Neil, you indicated that you were able,
 3 post a certain era, to use Meditec to identify
 4 those places where there had been an ER/PR
 5 test conducted?
 6 DR. NEIL:
 7 A. Yes.
 8 THE COMMISSIONER:
 9 Q. Now was that because Meditec could do this or
 10 when Meditec was put into your operation, did
 11 somebody say to you "now what kind of fields
 12 do you want to be able to search?" and you
 13 identified those fields or what?
 14 DR. NEIL:
 15 A. We decided to mark -
 16 THE COMMISSIONER:
 17 Q. That was a decision made by you within your -
 18 DR. NEIL:
 19 A. Yes, Meditec could do it, and we made it do
 20 it. It was a part of Meditec that was useable
 21 in that sense, that if we wanted to tag
 22 certain patients for any reason at all, you
 23 could do that.
 24 COMMISSIONER:
 25 Q. But that would have had to have been a

Page 234

1 decision made when Meditec came in, I assume?
 2 Do you see the difference in what I'm saying.
 3 DR. NEIL:
 4 A. Yeah.
 5 COFFEY, Q.C.:
 6 Q. Is it that Meditec was capable of doing that,
 7 and when Meditec was put in, there it was, or
 8 did somebody when they were instituting
 9 Meditec in your hospital, come along to your
 10 division and say, okay, now we have all these
 11 possibilities, do you want us to make sure
 12 they're operational in your Meditec System and
 13 what kind of things would you like to be able
 14 to search, and you might have said, oh, ER/PR?
 15 DR. NEIL:
 16 A. It was part of Meditec when it was brought in.
 17 COMMISSIONER:
 18 Q. Okay, thank you.
 19 DR. NEIL:
 20 A. That feature is in Meditec.
 21 COFFEY, Q.C.:
 22 Q. Did you have to turn it on, as it were, or
 23 pick it as one feature we want?
 24 DR. NEIL:
 25 A. I'm not an expert in Meditec, but I know we

Page 235

1 told Meditec -- we knew we could search based
 2 on markers.
 3 COFFEY, Q.C.:
 4 Q. Yes.
 5 DR. NEIL:
 6 A. And that was a function of Meditec.
 7 COFFEY, Q.C.:
 8 Q. If you identified one or more markers that you
 9 wanted --
 10 DR. NEIL:
 11 A. Yes.
 12 COFFEY, Q.C.:
 13 Q. You knew that if you told Meditec that, the
 14 people who were installing it, that they could
 15 do that?
 16 DR. NEIL:
 17 A. Yes.
 18 COFFEY, Q.C.:
 19 Q. I think what the Commissioner is perhaps
 20 asking is then did you identify ER and PR
 21 breast cancer --
 22 DR. NEIL:
 23 A. We identified ER and PR as a marker we wanted
 24 to have.
 25 COMMISSIONER:

Page 236

1 Q. But did you do that when they were putting
 2 Meditec in?
 3 DR. NEIL:
 4 A. Yes.
 5 COMMISSIONER:
 6 Q. Oh, okay. So when it was originally being
 7 installed in Western, presumably somebody
 8 would have said look what we can do?
 9 DR. NEIL:
 10 A. Yes.
 11 COMMISSIONER:
 12 Q. And what of these things would you like us to
 13 do as opposed to their coming in and saying
 14 here's the package, you're getting this
 15 whether you want it or not? Do you know what
 16 I mean, because it's one thing for a system to
 17 be imposed and then three years later you say,
 18 ah, okay, that could do that.
 19 DR. NEIL:
 20 A. I understand.
 21 COMMISSIONER:
 22 Q. And can we now use it, as opposed to somebody
 23 coming in and saying we have this new system
 24 which has these capabilities and we'll give
 25 you this perhaps for a fee, or perhaps not, if

Page 237

1 you wanted to, but we won't bother to give you
 2 everything if you're not going to use it?
 3 DR. NEIL:
 4 A. It was always there. We decided to turn it
 5 on.
 6 COMMISSIONER:
 7 Q. All right.
 8 COFFEY, Q.C.:
 9 Q. Exhibit P-0928, please. Doctor, these are
 10 minutes of a pathology working group, July
 11 20th, 2005. The attendees include, amongst
 12 others, yourself, and other physicians and
 13 non-physicians. This, I take it, was a
 14 working group that was dealing with trying to
 15 improve remuneration for pathologists.
 16 DR. NEIL:
 17 A. Might I see the rest of the document, please?
 18 COFFEY, Q.C.:
 19 Q. Oh, sorry, Doctor. It refers to the need for
 20 entry level provincial salary comparisons to
 21 be included in conjunction with the average
 22 provincial salaries already detailed and so
 23 on.
 24 DR. NEIL:
 25 A. Yes.

Page 238

1 COFFEY, Q.C.:
 2 Q. The Commissioner has already seen this. What
 3 I wanted to ask you about is were you involved
 4 in this effort?
 5 DR. NEIL:
 6 A. Yes.
 7 COFFEY, Q.C.:
 8 Q. Okay, and that's -- you were involved why?
 9 I'm not going to ask you in detail about your
 10 involvement in it, but just --
 11 DR. NEIL:
 12 A. I'll go back to the beginning and see who was
 13 there. I was involved because of my position.
 14 Dr. Morris Dalton was in Grand Falls, I was in
 15 Corner Brook, Nash Denic was in St. John's,
 16 and our positions across the province as lab
 17 directors.
 18 COFFEY, Q.C.:
 19 Q. And then as time went on, you participated in
 20 the efforts of this group to prepare the
 21 report and so on?
 22 DR. NEIL:
 23 A. Yes.
 24 COFFEY, Q.C.:
 25 Q. Exhibit P-2233, please. Doctor, this is a

Page 239

1 memo of July 28, 2005, from Dr. Cook again to
 2 a number of lab directors, including yourself,
 3 and there's handwritten, "please copy and
 4 circulate to all pathologists, P. Neil, August
 5 17 '05".
 6 DR. NEIL:
 7 A. Yes.
 8 COFFEY, Q.C.:
 9 Q. Okay, and this indicates -- it's related to
 10 HER2/neu, but it concludes by saying, "As a
 11 reminder when choosing blocks to send for both
 12 hormone receptor testing and HER2/neu testing,
 13 please select the section that contains both
 14 tumour and normal or benign epithelium. The
 15 normal and/or benign epithelium acts as an
 16 internal control for the immunohistochemical
 17 staining". Signed, Donald Cook. Doctor, by
 18 July 28th, 2005, I take it you were aware that
 19 internal controls should be utilized for ER
 20 and PR?
 21 DR. NEIL:
 22 A. Yes.
 23 COFFEY, Q.C.:
 24 Q. And HER2/neu. Now, Doctor, by this time, the
 25 end of July, 2005, and you only actually got

Page 240

1 to distribute it, I believe, the middle of
 2 August --
 3 DR. NEIL:
 4 A. I was away in July.
 5 COFFEY, Q.C.:
 6 Q. Yes. Doctor, having received that June 14th
 7 memo from Dr. Cook, and possibly talking to
 8 Barry Dyer, did you hear anything further
 9 throughout the main part of this, and you were
 10 gone in July -- so before you went, did you
 11 hear anything further from Dr. Cook?
 12 DR. NEIL:
 13 A. No.
 14 COFFEY, Q.C.:
 15 Q. You came back.
 16 DR. NEIL:
 17 A. Yes.
 18 COFFEY, Q.C.:
 19 Q. When did you next hear of this ER/PR matter?
 20 DR. NEIL:
 21 A. The first part of September.
 22 COFFEY, Q.C.:
 23 Q. Okay. If we could, please, Exhibit P-2234,
 24 please. Just a moment, please, Commissioner.
 25 Now perhaps we'll just use this -- this is a

Page 241

1 memorandum from yourself, Doctor, to all
 2 pathologists and pathology secretaries, August
 3 23, 2005.
 4 DR. NEIL:
 5 A. Yes.
 6 COFFEY, Q.C.:
 7 Q. And it's ER/PR and HER2/neu, and you write,
 8 "As per my conversations with Dr. Donald Cook,
 9 Clinical Chief in St. John's, please be
 10 advised that they are temporarily
 11 discontinuing the ER/PR immunohistochemistry
 12 as of today and will be referring all cases to
 13 Toronto", and it says "see attached". "I've
 14 asked Maureen to type a similar template for
 15 our use as per Dr. Cook's previous memo on
 16 HER2/neu. This analysis should also be done
 17 in the same block. Please try to select
 18 blocks that include normal breast tissue for
 19 internal controls. Thanks". So this reference
 20 here to "as of today they are temporarily
 21 discontinuing ER/PR IHC", this would have been
 22 as of August 23rd?
 23 DR. NEIL:
 24 A. Yes. My previous comment, September, was a
 25 written memo.

Page 242

1 COFFEY, Q.C.:
 2 Q. Okay, yes.
 3 DR. NEIL:
 4 A. I had spoken to Dr. Cook concerning the issue
 5 that day.
 6 COFFEY, Q.C.:
 7 Q. And I think -- I gather Dr. Cook had called
 8 you and effectively gave you a heads up?
 9 DR. NEIL:
 10 A. Yes.
 11 COFFEY, Q.C.:
 12 Q. That there was a memo coming?
 13 DR. NEIL:
 14 A. Yes.
 15 COFFEY, Q.C.:
 16 Q. If we could, please -- one second, please,
 17 Commissioner. If necessary I'll come back to
 18 it. It's just a reference Dr. Cook had in
 19 handwritten notes to his conversation with
 20 you, and, in fact, it recounts having given
 21 you a heads up that they were stopping the
 22 testing and would be going further, I think,
 23 with the retesting matter. Perhaps scroll
 24 down. Page 2, it's on the same -- thank you,
 25 Mr. Simmons. This is it. Dr. Neil, you

Page 243

1 wouldn't have seen this before, Dr. Neil, I
 2 wouldn't anticipate, but you see the note
 3 here, "Spoke to Paul Neil, August 23rd, 2005".
 4 DR. NEIL:
 5 A. Uh-hm.
 6 COFFEY, Q.C.:
 7 Q. "Concentrate on the '99 to 2000 (sic.), four
 8 years, current cases refer directly to Mount
 9 Sinai. Sent name of contact individual at
 10 Mount Sinai".
 11 DR. NEIL:
 12 A. Correct.
 13 COFFEY, Q.C.:
 14 Q. So I take it that he referred you to a lady,
 15 Maria Mendes?
 16 DR. NEIL:
 17 A. Yes.
 18 COFFEY, Q.C.:
 19 Q. And this suggests here by this point in time
 20 that Dr. Cook was thinking of a much wider
 21 scope than 2002?
 22 DR. NEIL:
 23 A. Yes.
 24 COFFEY, Q.C.:
 25 Q. '99 to 2004 here to concentrate on. Doctor,

Page 244

1 when Dr. Cook first told you, look, this is
 2 going to cover a much wider time period than
 3 '02, did you ask him about what was going on?
 4 Did you have a conversation about it or did he
 5 tell you about why?
 6 DR. NEIL:
 7 A. Nothing more than what was already discussed
 8 here with regards to the problems they were
 9 having with their automated immunostainer.
 10 COFFEY, Q.C.:
 11 Q. And that was in that June 14th letter?
 12 DR. NEIL:
 13 A. That was the extent of the conversation.
 14 COFFEY, Q.C.:
 15 Q. Okay.
 16 DR. NEIL:
 17 A. Much of the conversation, as I recall, was
 18 about how and what we were to do.
 19 COFFEY, Q.C.:
 20 Q. As opposed to why whatever happened in St.
 21 John's to cause --
 22 DR. NEIL:
 23 A. Whatever happened in St. John's was a -- in my
 24 perception and my recollection of the
 25 discussion, it was a St. John's issue. I had

Page 245

1 my own thing to deal with, which was the task
 2 put before me, and I had to deal with it.
 3 COFFEY, Q.C.:
 4 Q. The execution of which you just described to
 5 the Commissioner.
 6 DR. NEIL:
 7 A. The execution which I just described. Part of
 8 it I just described. There's a lot more to it
 9 than that.
 10 COFFEY, Q.C.:
 11 Q. Doctor -- and so he didn't elaborate any more
 12 upon why they couldn't continue to do the
 13 ER/PR in St. John's?
 14 DR. NEIL:
 15 A. No. It wasn't my focus and it wasn't his. To
 16 discuss with me -- I'm sure it was his focus.
 17 COFFEY, Q.C.:
 18 Q. Doctor, was it brought to your attention that
 19 summer, going into September, that at least
 20 some pathologists in St. John's or groups of
 21 pathologists in St. John's in August, 2005,
 22 had concerns about this investigation that was
 23 going on as to how it should be conducted?
 24 DR. NEIL:
 25 A. No.

Page 246

1 COFFEY, Q.C.:
 2 Q. And did the topic of informing patients about
 3 this come up at that point in time?
 4 DR. NEIL:
 5 A. No.
 6 COFFEY, Q.C.:
 7 Q. It hadn't come up, I take it, in June?
 8 DR. NEIL:
 9 A. Pardon me?
 10 COFFEY, Q.C.:
 11 Q. It hadn't come up in June when you -- to
 12 yourself, when you got the letter in June, "I
 13 have to tell my patients or tell our patients
 14 about the fact this is going on"?
 15 DR. NEIL:
 16 A. No.
 17 COFFEY, Q.C.:
 18 Q. And then when you spoke to Dr. Cook on August
 19 23rd, it didn't come up either?
 20 DR. NEIL:
 21 A. No.
 22 COFFEY, Q.C.:
 23 Q. When did the idea or concern, or any concern
 24 or idea about contacting patients or informing
 25 them about the fact this was going on, that's

Page 247

1 Western's patients --
 2 DR. NEIL:
 3 A. Yes.
 4 COFFEY, Q.C.:
 5 Q. When did that first arise, do you recall?
 6 DR. NEIL:
 7 A. My involvement in contacting patients was nil.
 8 COFFEY, Q.C.:
 9 Q. Okay.
 10 DR. NEIL:
 11 A. My involvement in deciding when patients were
 12 to be contacted, how they were going to be
 13 contacted, the whole issue of disclosure, was
 14 not part of my mandate, not part of my --
 15 COFFEY, Q.C.:
 16 Q. Were you ever consulted about it?
 17 DR. NEIL:
 18 A. No.
 19 COFFEY, Q.C.:
 20 Q. Within Western's -- from Western's perspective
 21 and within Western, who would you identify as
 22 the person or persons tasked with that?
 23 DR. NEIL:
 24 A. There are various people in Western that would
 25 be involved with disclosure.

Page 248

1 COFFEY, Q.C.:
 2 Q. That would be?
 3 DR. NEIL:
 4 A. VP of Medical Services.
 5 COFFEY, Q.C.:
 6 Q. Dr. Jenkins?
 7 DR. NEIL:
 8 A. Dr. Jenkins. There's a girl by the name of
 9 Bonnie Walker, who's in quality management, I
 10 believe.
 11 COFFEY, Q.C.:
 12 Q. Yes.
 13 DR. NEIL:
 14 A. I don't know what her title is. The whole
 15 department, and I can't give you names.
 16 COFFEY, Q.C.:
 17 Q. Okay, people actually involved in the nitty-
 18 gritty of it.
 19 DR. NEIL:
 20 A. Nitty-gritty of it.
 21 COFFEY, Q.C.:
 22 Q. And decisions as to whether or not it should
 23 occur, and if so, the timing and the manner,
 24 that would be the senior management?
 25 DR. NEIL:

Page 249

1 A. That's the senior management team. That was
 2 their issue, not mine.
 3 COFFEY, Q.C.:
 4 Q. That would be the CEO?
 5 DR. NEIL:
 6 A. The CEO and whoever they had involved in that
 7 whole process, which was not part of what I
 8 was involved in.
 9 COFFEY, Q.C.:
 10 Q. Exhibit P-1699, please. Now, Doctor, here
 11 there's some e-mails of August 26th through
 12 August 31st. The first of them is from
 13 yourself, August 26th, 2005, to Maria Mendes,
 14 copied to Frank Holloway. Who's Mr. Holloway?
 15 DR. NEIL:
 16 A. Frank Holloway was the Regional Director of
 17 Laboratory Services at the time.
 18 COFFEY, Q.C.:
 19 Q. And he had been the Regional Director for a
 20 period of years before that?
 21 DR. NEIL:
 22 A. Yes, I think Frank started in 2002 as
 23 Director.
 24 COFFEY, Q.C.:
 25 Q. Okay, and who was the director before that?

Page 250

1 DR. NEIL:
 2 A. Judy Gash.
 3 COFFEY, Q.C.:
 4 Q. And Mr. Holloway, you said he was -- is he any
 5 longer?
 6 DR. NEIL:
 7 A. He's retired.
 8 COFFEY, Q.C.:
 9 Q. He's retired. When did he retire? I didn't
 10 mean to put you on the spot. Was it fairly
 11 recent?
 12 DR. NEIL:
 13 A. Pretty recent. I'm trying to remember to get
 14 a date. June, probably 2006.
 15 COFFEY, Q.C.:
 16 Q. Okay, and he would have been then retired when
 17 most of the actual work of identifying the
 18 patients and so on had been concluded by then,
 19 June '06?
 20 DR. NEIL:
 21 A. He had some involvement in it, yes.
 22 COFFEY, Q.C.:
 23 Q. Before he retired, he would have been
 24 involved.
 25 DR. NEIL:

Page 251

1 A. Before he retired, he still had some
 2 involvement in it.
 3 COFFEY, Q.C.:
 4 Q. You've written here, "As per our conversation,
 5 we would appreciate ER/PR and HER2/neu, IHC on
 6 our breast tissue cases from this hospital.
 7 And as you are aware, Dr. Cook in St. John's
 8 has been doing these for us, but has suspended
 9 this temporarily. As you will be doing his,
 10 we need to send you ours as well. You will
 11 note in 2004 we had approximately 40 cases.
 12 We anticipate that 2005 will be no different;
 13 however, our oncologists want HER2/neu on all
 14 the cases now, so we anticipate the same
 15 number of these. I would appreciate more
 16 information on how to submit these cases, as
 17 well as costs as we have to budget for the
 18 amount. I assume the best mode on transport
 19 would be courier." And you say "Please
 20 contact me if you need anything further."
 21 Then there's an e-mail from Ms. Mendes to Dr.
 22 Brendan Mullen and Dr. Frances O'Malley
 23 concerning your request and then there's
 24 another e-mail here from internally within
 25 Mount Sinai dealing with the logistics, I take

Page 252

1 it, internally of how they're going to deal
 2 with this and the billings for it. So,
 3 Doctor, the idea of utilizing Mount Sinai was
 4 suggested by Dr. Cook.
 5 DR. NEIL:
 6 A. Yes.
 7 COFFEY, Q.C.:
 8 Q. And had you ever dealt with Mount Sinai before
 9 this?
 10 DR. NEIL:
 11 A. Not for anything like this, no.
 12 COFFEY, Q.C.:
 13 Q. Okay, and you found it acceptable to take his
 14 suggestion and utilize it.
 15 DR. NEIL:
 16 A. Yes.
 17 COFFEY, Q.C.:
 18 Q. If we could, Exhibit P-1701? And Doctor, this
 19 memo suggests you were nothing, if not
 20 persistent. There's an e-mail September 1st,
 21 2005 to Ms. Mendes saying, "Please advise if
 22 you can handle these cases. I need to send,
 23 as we now have a few new cases pending"--and I
 24 can see that explains the persistence, and
 25 then there's a response the same day from

Page 253

1 Maria Mendes, apologizing for not getting back
 2 to you sooner, you can go ahead and send the
 3 cases to the address she sets out.
 4 DR. NEIL:
 5 A. I should apologize to her for the bold print.
 6 I hope she didn't think I was shouting.
 7 COFFEY, Q.C.:
 8 Q. "The cases will be entered as consults and
 9 will be reported as such." So the cases were
 10 to be sent to Frances O'Malley, to her
 11 attention. So, Doctor, I take it then and in
 12 terms of current cases, that was what was
 13 done, you just simply, as current cases came
 14 along, you'd fill out the appropriate form -
 15 DR. NEIL:
 16 A. Yes.
 17 COFFEY, Q.C.:
 18 Q. And courier the blocks and wait for the
 19 results.
 20 DR. NEIL:
 21 A. That was the arrangement I made back at that
 22 time and that is the arrangement we still have
 23 today.
 24 COFFEY, Q.C.:
 25 Q. And while we're on the topic, Doctor, Eastern

Page 254

1 Health has or did in February of 2007 resume
 2 ER and PR testing.
 3 DR. NEIL:
 4 A. Yes.
 5 COFFEY, Q.C.:
 6 Q. I gather, based upon evidence we heard a week
 7 or two ago, that, well two weeks ago now, that
 8 they have started to utilize Mount Sinai
 9 themselves, again, for that purpose.
 10 DR. NEIL:
 11 A. Yes.
 12 COFFEY, Q.C.:
 13 Q. Why in 2007 did Western Health not go back to
 14 utilizing Eastern Health for ER/PR?
 15 DR. NEIL:
 16 A. Two reasons: first reason has to do with
 17 workload. Eastern Health were very short of
 18 pathologists and still are. We were asked
 19 several years ago to discontinue our
 20 consultations, as we discussed this morning.
 21 To be asked to re-instate and send more work
 22 into an institution that had already told us
 23 they're overworked, didn't make sense to me.
 24 We're getting good service from Mount Sinai,
 25 which is really the second reason I didn't

Page 255

1 send it back, so there are really three
 2 reasons. We were getting good service from
 3 Mount Sinai, excellent service from Mount
 4 Sinai; Eastern Health was overworked; and the
 5 third reason, we really wanted to have this
 6 inquiry over and dealt with, recommendations
 7 made and then make a decision as to what we
 8 were going to do. So wait until everything is
 9 said and done and then reassess. Sounds like
 10 a good decision on my part because we would
 11 have had to have gone back to Mount Sinai
 12 anyway.
 13 COFFEY, Q.C.:
 14 Q. As it turns out.
 15 DR. NEIL:
 16 A. So retrospectively, it turned out okay.
 17 COFFEY, Q.C.:
 18 Q. And so the initial decision, I take it in
 19 February of '97, and March '97 and April--'07,
 20 I apologize, February, March and April of '07,
 21 the initial decision not to return to Eastern
 22 Health for ER and PR was based upon the idea
 23 of good service from Mount Sinai and workload
 24 issues in St. John's.
 25 DR. NEIL:

Page 256

1 A. Yes.
 2 COFFEY, Q.C.:
 3 Q. Because the Inquiry didn't even exist at that
 4 point, but since the Inquiry has come on,
 5 certainly you've decided that you're going to
 6 wait for the outcome of that.
 7 DR. NEIL:
 8 A. That's correct.
 9 COFFEY, Q.C.:
 10 Q. Doctor, if we could, please, Exhibit P-0590?
 11 Doctor, this is a memo of September 6th, 2005,
 12 again it's to all lab directors, including
 13 yourself, lab directors across Newfoundland
 14 and these lab directors, here you're described
 15 as a lab director, it's interesting because it
 16 says "all lab directors:" and there's a
 17 listing.
 18 DR. NEIL:
 19 A. Yes.
 20 COFFEY, Q.C.:
 21 Q. And, of course, they're all physicians with
 22 the exception of Dr. Williams is a physician
 23 wouldn't be a lab director.
 24 DR. NEIL:
 25 A. No, that's correct.

Page 257

1 COFFEY, Q.C.:

2 Q. I'm going to ask you about that, Doctor, you

3 would have understood, if you had been

4 following the Inquiry at all, would understand

5 that the reporting structure within St.

6 John's, within Eastern Health in terms of

7 clinical chief and the technologist's lead, as

8 it were, has changed. You understand the

9 reporting structure has changed in St. John's?

10 DR. NEIL:

11 A. Yes.

12 COFFEY, Q.C.:

13 Q. Has it changed in Western?

14 DR. NEIL:

15 A. No.

16 COFFEY, Q.C.:

17 Q. Has any consideration been given to changing,

18 do you know?

19 DR. NEIL:

20 A. You're aware what the situation is today?

21 COFFEY, Q.C.:

22 Q. In Corner Brook? Perhaps you could tell us,

23 the current situation in Corner Brook, is

24 what? You report to?

25 DR. NEIL:

Page 258

1 A. I report to the VP Medical Services.

2 COFFEY, Q.C.:

3 Q. Yes, and the technology -

4 DR. NEIL:

5 A. The regional director of laboratory services

6 reports to the VP of Medical Services.

7 COFFEY, Q.C.:

8 Q. Yes, and that regional director of laboratory

9 services is a technologist senior position?

10 DR. NEIL:

11 A. Is a technologist, yes.

12 COFFEY, Q.C.:

13 Q. And that's the system that used to exist in

14 St. John's, I gather up until relatively

15 recently.

16 DR. NEIL:

17 A. Uh-hm.

18 COFFEY, Q.C.:

19 Q. I'm given to understand from the evidence

20 we've heard, Dr. Denic is now in charge here

21 in St. John's, the technologist senior one

22 reports to him and he reports to VP Medical,

23 so that hasn't changed in Corner Brook.

24 DR. NEIL:

25 A. No.

Page 259

1 COFFEY, Q.C.:

2 Q. I take it there's been no thought given to it

3 and no perceived need for it to change?

4 DR. NEIL:

5 A. No perceived need.

6 COFFEY, Q.C.:

7 Q. Now, Doctor, here, this September 6th memo,

8 ERs and PRs is the subject matter. "I wish to

9 advise you that we are doing a review of our

10 estrogen and progesterone receptors. I expect

11 to have more information within the next few

12 weeks, I'll keep you updated. Please note the

13 following points"--and here it's spelled out

14 in quite some detail as to the parameters of

15 what is being requested of you. Doctor, and

16 it refers here in the second page to the hold

17 on current reporting of current cases and

18 suggests that perhaps you might want to go to

19 Mount Sinai or a lab of your choice. Doctor,

20 when you got this in September 6th, did you

21 have any understanding by this point in time,

22 by September 6th, as to how long this process

23 might take, the retest process?

24 DR. NEIL:

25 A. The retest process?

Page 260

1 COFFEY, Q.C.:

2 Q. Yes.

3 DR. NEIL:

4 A. No, but considering the magnitude of--or not

5 the magnitude, the number of cases that had to

6 be looked at over that period of time, it

7 wasn't going to be a task that was going to be

8 completed very soon.

9 COFFEY, Q.C.:

10 Q. So from your perspective at the time, had you

11 actually given any thought as to how long this

12 would likely take?

13 DR. NEIL:

14 A. I thought it would take many weeks, maybe even

15 months.

16 COFFEY, Q.C.:

17 Q. I take it, it was going to take even a while

18 for your own organization to identify all the

19 patients and get all the blocks pulled and the

20 material.

21 DR. NEIL:

22 A. Yes.

23 COFFEY, Q.C.:

24 Q. That was going to take time itself.

25 DR. NEIL:

Page 261

1 A. That would take a significant amount of time.
 2 COFFEY, Q.C.:
 3 Q. And then the process of retesting of all these
 4 samples would take time -
 5 DR. NEIL:
 6 A. Would probably take longer.
 7 COFFEY, Q.C.:
 8 Q. Now, Doctor, when we look at the very end of
 9 this, the last paragraph refers to "the status
 10 of the Ventana system will be determined when
 11 we review correlations of the ER and PR
 12 results from Mount Sinai and Montreal General
 13 Labs." And they refer to "as a precautionary
 14 measure, we are awaiting reports for medical
 15 and technical consultants before we
 16 operationalize the Ventana system." Doctor,
 17 having received this memo in September of
 18 2005, did you have any--or how were you
 19 feeling, yourself, as a pathology director at
 20 Western concerning what you might be facing
 21 here, in terms of potentially changed results,
 22 they apparently didn't know what the problem
 23 was at this point in time. What was your--
 24 sitting in Corner Brook, what was your view of
 25 it?

Page 262

1 DR. NEIL:
 2 A. My feeling is that you know you have a problem
 3 when it's placed before you. In this
 4 particular case, we were retesting. We knew
 5 that there were some problems. I didn't know
 6 what the magnitude of the problem was. My
 7 focus was to prove we have a problem first and
 8 deal with that problem later. When you define
 9 what your problem is, you deal with that and
 10 you know you have the magnitude of the
 11 problem.
 12 COFFEY, Q.C.:
 13 Q. I take it when you get some results.
 14 DR. NEIL:
 15 A. When you get some results. So the task before
 16 me was to get the material to the appropriate
 17 place in a timely manner.
 18 COFFEY, Q.C.:
 19 Q. Doctor, when did you first become aware of the
 20 magnitude of what turned out to be the
 21 problem?
 22 DR. NEIL:
 23 A. I guess it's when some of the results started
 24 coming back and we were debriefed by Nash
 25 Denic, gave us some information as to what the

Page 263

1 numbers actually were.
 2 COFFEY, Q.C.:
 3 Q. And when was that, do you recall?
 4 DR. NEIL:
 5 A. There's a memo in your files.
 6 COFFEY, Q.C.:
 7 Q. We'll come across that, was it Nash or was in
 8 Don Cook, do you know?
 9 DR. NEIL:
 10 A. Nash.
 11 COFFEY, Q.C.:
 12 Q. Nash Denic, okay. And Nash Denic at that time
 13 was in what position?
 14 DR. NEIL:
 15 A. He took over from Don.
 16 COFFEY, Q.C.:
 17 Q. Okay, so he had become clinical, acting
 18 clinical chief anyway by then?
 19 DR. NEIL:
 20 A. Yes.
 21 COFFEY, Q.C.:
 22 Q. So by that point in time, Corner Brook would
 23 have already begun to get some of its own
 24 results from the retesting -
 25 DR. NEIL:

Page 264

1 A. The results started coming back very slowly.
 2 COFFEY, Q.C.:
 3 Q. Yes.
 4 DR. NEIL:
 5 A. We were getting results back.
 6 COFFEY, Q.C.:
 7 Q. And we'll come to that then. If we could
 8 please, Exhibit P-2235, please. Now Doctor,
 9 this is an e-mail--I alluded to this earlier,
 10 it's September 16th, 15th and 16th, 2005 and I
 11 take it this is--it's printed on your e-mail
 12 system, can see it up here.
 13 DR. NEIL:
 14 A. Yes.
 15 COFFEY, Q.C.:
 16 Q. Doctor, what sort of circumstances did this
 17 involve in the sense of, because it refers to
 18 clear cutoff rates and so on. What's going on
 19 here, if you could explain to the
 20 Commissioner?
 21 DR. NEIL:
 22 A. As I mentioned to you this morning, the
 23 discussion group that I participate in can
 24 pose all kinds of question as subject matter.
 25 As I was reading or checking my e-mails, as I

Page 265

1 usually do every morning, I came across some
 2 subject matter relating to Ventana, ER/PR
 3 cutoffs, that sort of thing. I said this
 4 sounds like something I should probably be
 5 printing off and putting in my ER/PR file
 6 because it might be helpful in the future.
 7 So, I came across several of these which we
 8 have one in front of us.
 9 COFFEY, Q.C.:
 10 Q. Yes. I take it, this wasn't something you
 11 went looking for.
 12 DR. NEIL:
 13 A. No, this just happened to show at the same
 14 time.
 15 COFFEY, Q.C.:
 16 Q. Okay. Doctor, you said, your ER/PR file. Did
 17 you have, literally, a physical file?
 18 DR. NEIL:
 19 A. Yes.
 20 COFFEY, Q.C.:
 21 Q. When did you start that?
 22 DR. NEIL:
 23 A. I've had it for a while.
 24 COFFEY, Q.C.:
 25 Q. In terms of--well, this dates back to

Page 266

1 September 2005. Did you start it before the
 2 June '05 memo from Dr. Cook or was it the
 3 September 6th one that perhaps occasioned an
 4 ER/PR file or did you have one anyway?
 5 DR. NEIL:
 6 A. I've had it for a while. I don't know how
 7 long I've had it.
 8 COFFEY, Q.C.:
 9 Q. Okay. And if we could, please, Exhibit P-
 10 2236. I take it this is a similar sort of e-
 11 mail as to the one we looked at before,
 12 September 16th, 2005 this one is.
 13 DR. NEIL:
 14 A. Yes.
 15 COFFEY, Q.C.:
 16 Q. And it also, the text of it does refer to this
 17 National Institutes of Health Consensus
 18 Statement in 2000 and dealing with cutoffs and
 19 so on. So, Exhibit P-2237, please. I take it
 20 this is another e-mail of the same, September
 21 16th, similar.
 22 DR. NEIL:
 23 A. Similar. What happens in these e-mails that
 24 someone will read one and then make a response
 25 to it. So, you may get three or four the same

Page 267

1 day. You usually do get three or four the
 2 same day because people are talking.
 3 COFFEY, Q.C.:
 4 Q. And in effect, these are snapshots of the
 5 conversation.
 6 DR. NEIL:
 7 A. These are snapshots of the conversations.
 8 COFFEY, Q.C.:
 9 Q. Have you utilized this as a tool yourself to
 10 pursue particular -
 11 DR. NEIL:
 12 A. I have on occasion, yes.
 13 COFFEY, Q.C.:
 14 Q. Okay. Have you found it useful?
 15 DR. NEIL:
 16 A. Very useful. It also helps in recruitment.
 17 COFFEY, Q.C.:
 18 Q. Doctor, with respect to that, how widely known
 19 is the existence of this in Corner Brook, in
 20 the pathology community?
 21 DR. NEIL:
 22 A. People in Corner Brook know I use it. I can't
 23 tell you if anybody does. I don't think so,
 24 but I have had occasion to speak to people to
 25 say that I use this.

Page 268

1 COFFEY, Q.C.:
 2 Q. Exhibit P-1780, it's a letter of September
 3 26th, 2005 from Dr. Brendan Mullen to yourself
 4 and I take it, this is Dr. Mullen's formal
 5 letter setting up the arrangements with
 6 Western as to ER/PR and HER2/neu status
 7 testing.
 8 DR. NEIL:
 9 A. Yes.
 10 COFFEY, Q.C.:
 11 Q. Okay. So, in effect Doctor, this refers to
 12 for cases requiring FISH assessment of the
 13 HER2/neu status, the hospital will be billed
 14 \$400.00.
 15 DR. NEIL:
 16 A. Um-hm.
 17 COFFEY, Q.C.:
 18 Q. And he says that less than 20 percent of cases
 19 required FISH confirmation. Doctor, do you
 20 know how much the ER and PR and HER2/neu
 21 status testing costs Western when Mount Sinai
 22 does it? How much per patients?
 23 DR. NEIL:
 24 A. It's my understanding and you'll read from
 25 that letter that they bill MCP.

Page 269

1 COFFEY, Q.C.:

2 Q. Okay.

3 DR. NEIL:

4 A. They bill us for the HER2/neu.

5 COFFEY, Q.C.:

6 Q. And the ER/PR is billed through MCP.

7 DR. NEIL:

8 A. That's my understanding.

9 COFFEY, Q.C.:

10 Q. Which doesn't, in effect, get billed to your

11 budget.

12 DR. NEIL:

13 A. No.

14 COFFEY, Q.C.:

15 Q. But the HER2/neu test -

16 DR. NEIL:

17 A. Yes. Why that occurs, I don't know. That's

18 what occurs.

19 COFFEY, Q.C.:

20 Q. And the actual financial nitty gritty of this

21 within your organization is dealt with my

22 whom? You referred to the lab director.

23 DR. NEIL:

24 A. The bills sometimes come to me which I quickly

25 pass onto somebody else.

Page 270

1 COFFEY, Q.C.:

2 Q. Who do you pass it -

3 DR. NEIL:

4 A. It's usually the lab manager associated with

5 pathology.

6 COFFEY, Q.C.:

7 Q. Okay.

8 DR. NEIL:

9 A. If not, then the regional director.

10 COFFEY, Q.C.:

11 Q. Exhibit P-2238 please. Doctor, there are

12 several e-mails of September 29th and 30th,

13 2005. The first of them is from September

14 29th, it's from Heather Predham, Susan

15 Sullivan and J. Budgell. Who's that, J.

16 Budgell -

17 DR. NEIL:

18 A. I don't know.

19 COFFEY, Q.C.:

20 Q. Okay, that would be central, I take it. And

21 then it's from Susan Sullivan to Kelli

22 O'Brien. Do you know Ms. O'Brien?

23 DR. NEIL:

24 A. Um-hm.

25 COFFEY, Q.C.:

Page 271

1 Q. Who is she?

2 DR. NEIL:

3 A. Kelli O'Brien is one of our VPs. She's on the

4 senior management team. I don't know if she

5 was at that time, but that's where she is now.

6 COFFEY, Q.C.:

7 Q. And here, she begins by saying, "Hi Kelli, I

8 just spoke to Heather, this is apparently

9 hitting the media today and George Tilley is

10 going to contact the CEOs re: this matter.

11 And I wanted you to be aware so that you can

12 share with your senior person, people

13 responsible for lab such that they can follow

14 up. Regards, Sue". And Ms. Predham's e-mail

15 had begun with "We have had an issue with our

16 ER/PR testing and this has been an issue we

17 have been dealing with all summer" and it goes

18 on. And refers to, amongst other things, we

19 have had external reviews done on our Ventana

20 machine on the pathology side of the service

21 and the technical side". And she concludes by

22 saying, "why am I telling you two all this?

23 Well, since June, Dr. Cook, our chief of

24 pathology requested that your two boards send

25 in your blocks to be retested at Mount Sinai.

Page 272

1 To no avail"--I take it that probably says--"I

2 wanted to give you a heads up. We have to

3 begin to inform people individually about this

4 issue, but the Department of Health wants us

5 to make a public statement. Since your labs

6 have not responded yet to our request, you may

7 be asked about the reasons why. What do you

8 think"?

9 And then Doctor, Ms. O'Brien, Susan

10 Gillam--now, Susan Gillam is whom?

11 DR. NEIL:

12 A. Susan Gillam is the CEO.

13 COFFEY, Q.C.:

14 Q. Of Western?

15 DR. NEIL:

16 A. Yes.

17 COFFEY, Q.C.:

18 Q. Copies it to Ken Jenkins, September 30th and

19 she writes, "Hi Susan, do you want me to

20 follow up with the lab and Dr. Neil so that

21 response can be prepared? I've cc'd Ken, but

22 realize he's off today. Do you wish me to

23 contact as well" and then Dr. Jenkins

24 responds. And he says, "I heard about this

25 for the first time at the med directors

Page 273

1 meeting yesterday. There was no indication
 2 this would be hitting the media today and he
 3 says this will be a very sensitive and
 4 complicated issue to communicate. Dr. Neil
 5 will need to be involved. I suggest Heidi
 6 should contact him immediately". Now, Doctor,
 7 were you contacted about this, the fact that
 8 it was going public and what were you told
 9 about it?
 10 DR. NEIL:
 11 A. I knew it was going public. I don't have a
 12 huge recollection of what I was told at the
 13 time, but I knew that the issue was going
 14 public.
 15 COFFEY, Q.C.:
 16 Q. Okay. So Doctor, what if any difference did
 17 that make to you in your role at that point?
 18 DR. NEIL:
 19 A. None really.
 20 COFFEY, Q.C.:
 21 Q. What was going on at that point, internally in
 22 the hospital in relation to this?
 23 DR. NEIL:
 24 A. The is September 30th.
 25 COFFEY, Q.C.:

Page 274

1 Q. Yes.
 2 DR. NEIL:
 3 A. We would have been actively trying to complete
 4 the tasks that we were asked to do in the
 5 September 6th memo.
 6 COFFEY, Q.C.:
 7 Q. Now, in September when you got that September
 8 6th memo, had you made anyone senior to you in
 9 the hospital aware?
 10 DR. NEIL:
 11 A. Yes, Dr. Jenkins.
 12 COFFEY, Q.C.:
 13 Q. So, Dr. Jenkins--do you recall when you told
 14 him about this?
 15 DR. NEIL:
 16 A. Not the date, no.
 17 COFFEY, Q.C.:
 18 Q. And had he known about it before September
 19 29th, do you think?
 20 DR. NEIL:
 21 A. I honestly don't know if he did.
 22 COFFEY, Q.C.:
 23 Q. Pardon me?
 24 DR. NEIL:
 25 A. I don't honestly know if he did or not.

Page 275

1 COFFEY, Q.C.:
 2 Q. Now, the exhibit P-2241 is a letter of October
 3 6th, 2005 addressed to Barry Dyer from
 4 yourself. Doctor, I take it, this is a
 5 letter, cover letter as it were, telling him
 6 "please find enclosed the ER/PR negative cases
 7 for the year 2002".
 8 DR. NEIL:
 9 A. That's correct.
 10 COFFEY, Q.C.:
 11 Q. And you indicate, "I've included a list of
 12 names, some of which I have kept slides for
 13 reasons outlined on this sheet, but I've
 14 included the report if you need to review".
 15 Now Doctor, at this point in time, that is,
 16 early October, were you sending material
 17 related to deceased patients?
 18 DR. NEIL:
 19 A. No.
 20 COFFEY, Q.C.:
 21 Q. I take it that was because you understood -
 22 DR. NEIL:
 23 A. My understanding was we would not be doing
 24 that at this time. We were concentrate on the
 25 patients, obviously, the living patients.

Page 276

1 COFFEY, Q.C.:
 2 Q. And how did you identify that put aside then
 3 the -
 4 DR. NEIL:
 5 A. Sometimes it was very difficult. I had access
 6 to MediTec, what we refer to patient-to-
 7 patient care inquiry, PCI. As a physician you
 8 can access patient records. So, I could
 9 access patient records and determine from that
 10 whether or not this patient was deceased or
 11 not. Often I would find deceased patients.
 12 I'd write deceased next to their name and that
 13 would be--I'd move onto the next one.
 14 COFFEY, Q.C.:
 15 Q. Doctor, how successful were you, in hindsight,
 16 in actually identifying people, deceased
 17 patients?
 18 DR. NEIL:
 19 A. I think I did a good job of it.
 20 COFFEY, Q.C.:
 21 Q. There were--Western, in fact, sent in very
 22 few, in the initial round or round of
 23 submission of material.
 24 DR. NEIL:
 25 A. It was a lot of work.

Page 277

1 COFFEY, Q.C.:

2 Q. But very few deceased patients were sent in.

3 DR. NEIL:

4 A. Um-hm.

5 COFFEY, Q.C.:

6 Q. If we could, Exhibit P-2242. Doctor, these

7 are a couple of e-mails. The first is from

8 Susan Sullivan to Kelli O'Brien and Ken

9 Jenkins, October 6th and this is sending a

10 Globe and Mail, a reference to a link to a

11 Globe and Mail story involving this matter.

12 And then, I take it, this is an e-mail from

13 Doctor Jenkins to yourself, "for your

14 information, please feel free to share with

15 the staff. We need to keep the momentum going

16 to get our samples in. Sincere thanks to all

17 who are making the extra efforts to deal with

18 this".

19 DR. NEIL:

20 A. Um-hm.

21 COFFEY, Q.C.:

22 Q. And if we could, please, Exhibit P-2243,

23 October 7th, 2005, this is the cover letter

24 sending the 2000 cases into Barry Dyer?

25 DR. NEIL:

Page 278

1 A. Yes.

2 COFFEY, Q.C.:

3 Q. Okay. If we could, Exhibit P-2244, please.

4 Now Doctor, there are several e-mails here,

5 two e-mails here, but one of them--the first

6 is October 7th, it's from Diane Smith at

7 Eastern Health to, amongst other, Dr. Jenkins

8 and it's communicated regarding your peer

9 testing. "Please see attached communique from

10 Dr. Paul Gardinar regarding the ER/PR testing

11 issue". Dr. Jenkins then on the 11th of

12 October forwarded it to H. Spark and yourself

13 and others saying "please print the attachment

14 for the ER/PR file and forward a copy to all

15 docs in the region. Thanks". So Dr.

16 Gardiner's letter, I take it, was distributed

17 in the Western region.

18 DR. NEIL:

19 A. Yes, it was.

20 COFFEY, Q.C.:

21 Q. Exhibit P-2245, please. Doctor, this would be

22 Tuesday, October 11, 2005 letter sending Mr.

23 Dyer a covering letter, the 2001 cases.

24 DR. NEIL:

25 A. Correct.

Page 279

1 COFFEY, Q.C.:

2 Q. It would be the day after the Thanksgiving

3 weekend, I take it. "P.S. there are a few

4 ER/PR slides that we have to located which we

5 will forward in due course. All documentation

6 is on a working sheet". Now, this working

7 sheet, Doctor, what was that?

8 DR. NEIL:

9 A. That working sheet was the best thing I ever

10 did. That working sheet contained patient

11 name, number, number of H&E slides, the ER

12 slide, the PR slide, whether there were any

13 controls with that slide. It was a table, per

14 se.

15 COFFEY, Q.C.:

16 Q. A spreadsheet.

17 DR. NEIL:

18 A. A spreadsheet, in effect, that I had for each

19 particular year. It became our working sheet.

20 And these were all the patients that

21 identified as ER/PR patients for those

22 particular years. Everyone was included in

23 that. I reviewed all of those patients,

24 making notes on the right hand side next to

25 each patient, clinical notes that would

Page 280

1 determine whether or not I would send that

2 particular block for retesting, based on the

3 criteria in the September 6th letter. Obvious

4 ER cases that were obviously positive, I would

5 write on the left hand side of the column next

6 to the patient name, "keep, no need to send".

7 these didn't meet the criteria.

8 COFFEY, Q.C.:

9 Q. In other words, it had been reported, for

10 example, obvious ER 80 percent.

11 DR. NEIL:

12 A. 80, obvious cases. Anything that was

13 questionable, whether it met the criteria--if

14 it did meet the criteria, fine, I would send

15 it. If it was questionable, I would send it

16 anyway. So, that was our working sheet. We

17 have those for each particular year.

18 COFFEY, Q.C.:

19 Q. And Doctor, was this computerized, this sheet?

20 DR. NEIL:

21 A. The names on the spreadsheet are on the

22 computer, my personal notes are handwritten.

23 COFFEY, Q.C.:

24 Q. Okay. And I take it, were you able to add

25 names to the spreadsheet if you wanted to

Page 281

1 create another one?
 2 DR. NEIL:
 3 A. Yes, I could add a name.
 4 COFFEY, Q.C.:
 5 Q. Okay. Well, "questionable", when you say
 6 where there was a questionable case, what do
 7 you mean by that?
 8 DR. NEIL:
 9 A. Well, I wasn't sure that it actually met the
 10 criteria and it was a borderline number
 11 according to the criteria in the September 6th
 12 letter.
 13 COFFEY, Q.C.:
 14 Q. Like, for example, I take it, ten percent -
 15 DR. NEIL:
 16 A. Ten, I'd probably send that.
 17 COFFEY, Q.C.:
 18 Q. Okay. If it the cutoff stipulated in the
 19 letter was ten percent, you would send the
 20 ten.
 21 DR. NEIL:
 22 A. I'd send the ten.
 23 COFFEY, Q.C.:
 24 Q. How about if it was, for example, 20, the
 25 report was ER--in 2002 an ER of 20. Would you

Page 282

1 send that?
 2 DR. NEIL:
 3 A. If the cutoff -
 4 COFFEY, Q.C.:
 5 Q. Was ten.
 6 DR. NEIL:
 7 A. If the cutoff was ten?
 8 COFFEY, Q.C.:
 9 Q. Yes.
 10 DR. NEIL:
 11 A. And the patient report said 20?
 12 COFFEY, Q.C.:
 13 Q. Yes.
 14 DR. NEIL:
 15 A. No, I'd keep it.
 16 COFFEY, Q.C.:
 17 Q. Keep, okay, but if it was ten, like right on
 18 the line -
 19 DR. NEIL:
 20 A. If it was borderline, I'd send it.
 21 COFFEY, Q.C.:
 22 Q. Exhibit P-2230, please. Doctor, this is
 23 undated, but it refers to, is a cover letter,
 24 I take it for ER/PR cases for the year 1998.
 25 DR. NEIL:

Page 283

1 A. Yes.
 2 COFFEY, Q.C.:
 3 Q. So, this would have been sent in this
 4 timeframe -
 5 DR. NEIL:
 6 A. Yes, it's my mistake, I didn't insert the date
 7 in that particular letter.
 8 COFFEY, Q.C.:
 9 Q. Exhibit -
 10 DR. NEIL:
 11 A. If you just stop there for a second.
 12 COFFEY, Q.C.:
 13 Q. Sure.
 14 DR. NEIL:
 15 A. Some examples of things that I would have kept
 16 are on that particular note. For instance,
 17 there is a diagnosis there, it says
 18 psuedoangiomaticous hyperplasia.
 19 COFFEY, Q.C.:
 20 Q. Yes.
 21 DR. NEIL:
 22 A. Something I would not be sure of whether or
 23 not they wanted it or not, I would send it
 24 anyway.
 25 COFFEY, Q.C.:

Page 284

1 Q. This is why--and you're highlighting this in a
 2 cover letter here.
 3 DR. NEIL:
 4 A. Yes.
 5 COFFEY, Q.C.:
 6 Q. You concluded by saying, "Would you refer
 7 these to the panel of experts for decision on
 8 whether we need to do these".
 9 DR. NEIL:
 10 A. Yeah, I sent them the report.
 11 COFFEY, Q.C.:
 12 Q. Yes.
 13 DR. NEIL:
 14 A. I was not sure what they wanted to do with it.
 15 I sent them the report and I would have
 16 expected the panel to say if they want it,
 17 they would have asked me for it.
 18 COFFEY, Q.C.:
 19 Q. Now this panel of experts you're referring to
 20 here is what?
 21 DR. NEIL:
 22 A. It was a panel that was set up by Eastern
 23 Health that included pathologists,
 24 oncologists, and several other people that
 25 would review particular patients and make

Page 285

1 clinical decisions based on the information
 2 that they had put before them.
 3 COFFEY, Q.C.:
 4 Q. Exhibit P-2246, please. Here, Doctor, in the
 5 middle of the page here is an e-mail of
 6 October 11th, 2005, from yourself to Dr.
 7 Jenkins saying, "We are almost complete, 2002
 8 and 2000 are sent, 2001 and 2003 to go today.
 9 Hopefully, 2004 to go out tomorrow. 1997 to
 10 1999 will be a little more time consuming
 11 since we are not on Meditec, but we are
 12 striving to get all done by weeks end, signed
 13 Paul", and if we could, Exhibit P-2247, on
 14 October 12th, 2005, you send in your 2003
 15 cases.
 16 DR. NEIL:
 17 A. Uh-hm.
 18 COFFEY, Q.C.:
 19 Q. Exhibit P-2248, October 13th, 2005, this is
 20 the covering letter for the 2004 cases?
 21 DR. NEIL:
 22 A. Uh-hm, yes.
 23 COFFEY, Q.C.:
 24 Q. If we could, please, Exhibit P-2250. Now,
 25 Doctor, here there's an e-mail of October

Page 286

1 13th, 2005, from yourself to S. Ryan, copied
 2 to Dr. Jenkins saying, "Hi Susan, as per our
 3 telephone conversation, I appreciate your help
 4 in retrieving the following data for Western
 5 Health concerning patients for repeat ER/PR
 6 testing as outlined by Eastern Health. We are
 7 required to send all the ER negative cases and
 8 primary breast lesions from May '97 to March
 9 31 '04. We have been able to retrieve most
 10 from our Meditec System, however, in the early
 11 years we were on another pathology program
 12 which is not searchable. We require your help
 13 from May '97 to include the years '98 and
 14 '99", and this, I take it, is you were looking
 15 for this sort of information -- you were
 16 looking and then saying, "Please provide us
 17 with all patients with breast cancer diagnosed
 18 at that time -- in that time frame, by name
 19 and MCP". So this would be the Newfoundland
 20 Cancer Treatment Foundation?
 21 DR. NEIL:
 22 A. Yes.
 23 COFFEY, Q.C.:
 24 Q. This is your request there, the third --
 25 DR. NEIL:

Page 287

1 A. The third method to retrieve patients, yes.
 2 COFFEY, Q.C.:
 3 Q. How quickly did they get back to you with
 4 that, do you recall?
 5 DR. NEIL:
 6 A. It wasn't long, but I -- it wasn't long. I do
 7 believe the information is in my file and may
 8 be in yours.
 9 COFFEY, Q.C.:
 10 Q. Exhibit P-2251, please. I take it, October
 11 13th, 2005, Doctor, this is an e-mail from Dr.
 12 Jenkins to the senior management group, copied
 13 to yourself, referring to a phone call from
 14 Pat Pilgrim referencing an expert panel.
 15 DR. NEIL:
 16 A. Yes.
 17 COFFEY, Q.C.:
 18 Q. So this is this panel. That's when you were
 19 first told about the panel?
 20 DR. NEIL:
 21 A. Yes.
 22 COFFEY, Q.C.:
 23 Q. Okay, Exhibit P-2252, please, a letter of
 24 October 14th, 2005, the covering letter for
 25 the 2005 cases, Doctor?

Page 288

1 DR. NEIL:
 2 A. Yes.
 3 COFFEY, Q.C.:
 4 Q. Exhibit P-2253. This is a fax transmission
 5 from the Newfoundland Cancer Treatment and
 6 Research Foundation of October 14th, 2005.
 7 It's from Callista Silver?
 8 DR. NEIL:
 9 A. Yes.
 10 COFFEY, Q.C.:
 11 Q. For Susan Ryan, and sending five pages, "re:
 12 sent as per your request. Enjoy the weekend",
 13 signed by herself, and I take it then that
 14 these are the patient's MCP numbers and names
 15 are redacted, but these are the 1997, 1998,
 16 1999 cases?
 17 DR. NEIL:
 18 A. Yes.
 19 COFFEY, Q.C.:
 20 Q. Involving Western Memorial. Exhibit P-2254,
 21 please. Doctor, these are again some e-mails
 22 of October 18th and 21st. You write on
 23 October 18th to Dr. Jenkins, "As per our
 24 discussion, I spoke with Barry Dyer. He's
 25 indeed gathering an extensive amount of data

Page 289

1 on all cases from each region and will be
 2 producing results on spreadsheets for each
 3 region. I thought he would. As of now, the
 4 information is on paper, but when complete,
 5 all will be computerized. On the second point
 6 of our discussion, the one that really
 7 concerns me, Barry can also send us another
 8 list of patients that had IHC tests ordered
 9 from Western that we can cross-reference. He
 10 thinks that that list should be all inclusive.
 11 It looks like we have done all we can do.
 12 I'll keep you informed. Paul".
 13 DR. NEIL:
 14 A. Yes.
 15 COFFEY, Q.C.:
 16 Q. I take it by October 18th, and shortly, I
 17 gather, thereafter, looking at Mr. Dyer's
 18 list, that would be about it?
 19 DR. NEIL:
 20 A. Yes.
 21 COFFEY, Q.C.:
 22 Q. In terms of identifying patients.
 23 DR. NEIL:
 24 A. Yes.
 25 COFFEY, Q.C.:

Page 290

1 Q. Doctor, this reference to a computerized list
 2 or database from Mr. Dyer, did you ever
 3 receive that?
 4 DR. NEIL:
 5 A. No.
 6 COFFEY, Q.C.:
 7 Q. Did you ever make any inquiries further as to
 8 --
 9 DR. NEIL:
 10 A. No.
 11 COFFEY, Q.C.:
 12 Q. Where it was?
 13 DR. NEIL:
 14 A. I felt confident I had what I needed.
 15 COFFEY, Q.C.:
 16 Q. Oh, yes, and I -- it's just that he does
 17 reference the fact that he made --
 18 DR. NEIL:
 19 A. No, I didn't get it.
 20 COFFEY, Q.C.:
 21 Q. You didn't get it. Exhibit P-2255, please.
 22 This is the covering letter of October 24th,
 23 2005, involving the 1997 cases being sent to
 24 St. John's?
 25 DR. NEIL:

Page 291

1 A. Yes.
 2 COFFEY, Q.C.:
 3 Q. And Exhibit P-2257, please. This is a
 4 covering letter of October 27th, 2005, for the
 5 1999 cases, and here, Doctor, you've written
 6 in the second paragraph, "This concludes our
 7 search", and you say, "you will notice always
 8 that there are notes attached to each
 9 patient's name and some are notes on reports.
 10 Some of these cases had to be sent with
 11 different block numbers as some are not in our
 12 files, and I suspect they are still in yours.
 13 To expedite the process of retesting, I
 14 selected another block containing tumour. I
 15 have sent all reports. If there are other
 16 blocks required, please let me know". I take
 17 it, Doctor, other than perhaps an occasional
 18 case, you weren't requested to identify any
 19 more blocks?
 20 DR. NEIL:
 21 A. No.
 22 COFFEY, Q.C.:
 23 Q. Okay. Exhibit P-2258, please.
 24 COMMISSIONER:
 25 Q. Mr. Coffey, we'll take the afternoon break

Page 292

1 wherever you can find a spot.
 2 COFFEY, Q.C.:
 3 Q. Yes, thank you, Commissioner. Just one or two
 4 other exhibits. Doctor, this is an e-mail of
 5 October 28th from Dr. Jenkins to yourself,
 6 it's copied to others. He says, "Hi Paul,
 7 thanks for the update and all the great
 8 efforts in attending promptly to this issue.
 9 We are referring patients with questions to
 10 the patient relations officer in St. John's
 11 and/or family doctors, who have been provided
 12 with the background info. We are also working
 13 with Eastern Health to confirm the mechanism
 14 for notification of the patients where the
 15 tissue samples are being retested. I wonder
 16 if Marilyn may be able to assist with the
 17 notification process. I'll have Helen arrange
 18 a meeting with her to discuss. Once again, my
 19 sincere thanks to everyone involved for their
 20 excellent efforts". Before -- below that,
 21 Doctor, on the 28th, you had sent an e-mail to
 22 -- response to Dr. Jenkins. You concluded by
 23 saying, "In that light, I've given a complete
 24 list of cases sent from here to Marilyn
 25 Saunders at the Cancer Clinic. She's received

Page 293

1 calls from patients wondering if their test
 2 has been sent out. As of today, she will be
 3 able to tell any patient when the tissue left
 4 here. I wonder where we should take this
 5 issue. Any thoughts? Paul". So, Doctor,
 6 what were you looking at there, what were you
 7 thinking about?
 8 DR. NEIL:
 9 A. Maybe this was another possible way to
 10 identify patients that we may have missed.
 11 Patients have direct contact with the Cancer
 12 Clinic, it's where they're treated, and there
 13 are people there that they know. If they had
 14 questions, that was the likely place for them
 15 to call. If I provided a list to Marilyn of
 16 patients that I had sent, she would be able to
 17 help these patients.
 18 COFFEY, Q.C.:
 19 Q. And who is she?
 20 DR. NEIL:
 21 A. She is -- I don't want to downgrade her
 22 position because I don't really know it, but I
 23 know she works in the Cancer Clinic.
 24 COFFEY, Q.C.:
 25 Q. In?

Page 294

1 DR. NEIL:
 2 A. Corner Brook.
 3 COFFEY, Q.C.:
 4 Q. The Cancer Clinic in Corner Brook, and -
 5 because you had -- and I think to perhaps put
 6 this fully in context here, you begun your e-
 7 mail of the 28th by saying in cases for repeat
 8 ER/PR testing -- I'm sorry, "all cases for
 9 repeat ER/PR testing have been sent to HSC for
 10 retesting as requested. Last batch went
 11 yesterday, October 27th. We are confident
 12 that we've sent all the cases that we could
 13 identify and have been as thorough as we could
 14 possibly be. However, there is always the
 15 possibility we may have missed someone. We
 16 sincerely hope not. I don't know how HSC is
 17 handling that. Is that a PR issue?". I take
 18 it that's a public relations issue?
 19 DR. NEIL:
 20 A. Uh-hm.
 21 COFFEY, Q.C.:
 22 Q. "Should patients that suspect that their tests
 23 should be repeated contact someone to ask that
 24 question", and then you go on.
 25 DR. NEIL:

Page 295

1 A. That's where I got the idea of Marilyn. If
 2 anybody called her, she would know, yes, your
 3 test was sent; or, no, you're not on the list,
 4 maybe you should be.
 5 COFFEY, Q.C.:
 6 Q. Was that done, was the list given to her?
 7 DR. NEIL:
 8 A. Yes, the list was given to her I personally
 9 gave it to her.
 10 COFFEY, Q.C.:
 11 Q. Finally, Commissioner, P-2260. Doctor, this
 12 is a December 6, 2005 letter from yourself to
 13 Barry Dyer. You say, "As per your request,
 14 please find the enclosed list for ER/PR cases
 15 we have sent to you. These are copies of what
 16 we sent initially with the slides and blocks".
 17 I take it you were requested to send in a list
 18 of everything that you had sent?
 19 DR. NEIL:
 20 A. He had already had --
 21 COFFEY, Q.C.:
 22 Q. Yes, I appreciate that.
 23 DR. NEIL:
 24 A. But I resent it.
 25 COFFEY, Q.C.:

Page 296

1 Q. You sent it?
 2 DR. NEIL:
 3 A. Yes.
 4 COFFEY, Q.C.:
 5 Q. Resent it again. Commissioner --
 6 DR. NEIL:
 7 A. As per his request.
 8 COFFEY, Q.C.:
 9 Q. Yeah, he had sent -- in the intervening time,
 10 there's a letter --
 11 DR. NEIL:
 12 A. I sent each year individually with a covering
 13 letter and a list of patients.
 14 COFFEY, Q.C.:
 15 Q. Yes.
 16 DR. NEIL:
 17 A. So he had what he was asking for, but he
 18 wanted it again.
 19 COFFEY, Q.C.:
 20 Q. He sent, I take it, a kind of form letter to
 21 yourself and others.
 22 DR. NEIL:
 23 A. Yeah, I think so.
 24 COFFEY, Q.C.:
 25 Q. Looking for kind of a complete list.

Page 297

1 DR. NEIL:
 2 A. Yes.
 3 COFFEY, Q.C.:
 4 Q. If we could, Commissioner. Thank you.
 5 (RECESS)
 6 COMMISSIONER:
 7 Q. Mr. Coffey.
 8 COFFEY, Q.C.:
 9 Q. Thank you, Commissioner. If we could, please,
 10 Exhibit P-0046, please. Doctor, the
 11 Commissioner has seen this exhibit innumerable
 12 times now. It's a letter of October 17th,
 13 2005, to Dr. Cook. It's from a Dr. Banerjee,
 14 who conducted an external quality review of
 15 the immunohistochemical service at Eastern
 16 Health. Doctor, were you aware that external
 17 reviewers had been asked by Eastern Health in
 18 September of -- to come in in September, 2005?
 19 DR. NEIL:
 20 A. No.
 21 COFFEY, Q.C.:
 22 Q. When did you first become aware that that had
 23 happened?
 24 DR. NEIL:
 25 A. I guess as a result of the proceedings of this

Page 298

1 inquiry.
 2 COFFEY, Q.C.:
 3 Q. Doctor, did you ever receive any explanation
 4 from anyone at Eastern Health or connected
 5 with Eastern Health as to what had caused --
 6 what the cause or causes of the ER/PR problem
 7 had been?
 8 DR. NEIL:
 9 A. Dr. Denic, as I mentioned earlier, did brief
 10 us.
 11 COFFEY, Q.C.:
 12 Q. Okay. So it was in Dr. Denic's time?
 13 DR. NEIL:
 14 A. Yes.
 15 COFFEY, Q.C.:
 16 Q. As clinical chief?
 17 DR. NEIL:
 18 A. Yes.
 19 COFFEY, Q.C.:
 20 Q. Okay, I'll come to that shortly, but until
 21 that point, you did not receive explanation?
 22 DR. NEIL:
 23 A. No.
 24 COFFEY, Q.C.:
 25 Q. Exhibit P-1740, please? Doctor, these are

Page 299

1 handwritten notes of Dr. Cook, here at the
 2 bottom of the page here. One of them is
 3 November 1st, 2005, 9:15 a.m. "spoke to Dr.
 4 Paul Neil regarding the issuing of written
 5 report from Mount Sinai by me and how this
 6 would be directed to the lab director." Do
 7 you recall what that was about?
 8 DR. NEIL:
 9 A. "Issuing of written report from Mount Sinai."
 10 I can only speculate that this was concerning
 11 the reports that would come back from Mount
 12 Sinai to Dr. Cook and how he would report that
 13 Mount Sinai report to me.
 14 COFFEY, Q.C.:
 15 Q. Okay. If we could, please, Exhibit P-2261,
 16 please? Doctor, this is a fax cover sheet.
 17 It's from Judy, on behalf of Dr. Donald Cook,
 18 January 4th '06. It's to yourself. It's
 19 canned text for ER/PR.
 20 DR. NEIL:
 21 A. Um-hm.
 22 COFFEY, Q.C.:
 23 Q. It's two pages. Second page of the exhibit is
 24 a laboratory NPRHCC PTH canned text dictionary
 25 and I take it that then this is a suggested

Page 300

1 text as to how ER and PR that had been
 2 retested at Mount Sinai would be or could be
 3 reported?
 4 DR. NEIL:
 5 A. Yes, that's correct.
 6 COFFEY, Q.C.:
 7 Q. And if we could, please, Exhibit P-2262? Now
 8 had you requested this sort of format from
 9 him?
 10 DR. NEIL:
 11 A. Yes. I wanted to know how we were going to
 12 handle it, to report it, and that's what he
 13 sent.
 14 COFFEY, Q.C.:
 15 Q. And here, 2262, Doctor, is a memorandum to
 16 Shelley and Maureen from yourself, January
 17 6th, 2006, ER/PR reporting, and you say "for
 18 ER/PR retested cases, use the following canned
 19 text" and "this case was referred to Mount
 20 Sinai for retesting of ER/PR status as part of
 21 Eastern Health's quality review process. The
 22 results from Mount Sinai are as follows:
 23 please correlate with the previous result.
 24 Note: please make sure this is used only for
 25 retest cases, i.e. that there should be a

Page 301

1 previous--i.e. there should be a previous
 2 addendum report with ER/PR result already
 3 done. Also record that we have this report
 4 returned from Mount Sinai in our ER/PR file."
 5 So I take it, Doctor, by the beginning of
 6 2006, early '06, you were looking ahead to
 7 actually how we're enter this information?
 8 DR. NEIL:
 9 A. Yes, correct.
 10 COFFEY, Q.C.:
 11 Q. By that point, you understood that the results
 12 would probably be back when, the bulk of the
 13 results? Do you know if by then you had any
 14 sense of when -
 15 DR. NEIL:
 16 A. I didn't honestly know when they were coming.
 17 COFFEY, Q.C.:
 18 Q. Doctor, I take it because you had sent them
 19 in--by year, and we've looked at that.
 20 DR. NEIL:
 21 A. Yes.
 22 COFFEY, Q.C.:
 23 Q. In the fall of '05, did you expect that the
 24 results would generally come back in like
 25 waves or a large wave?

Page 302

1 DR. NEIL:
 2 A. I thought they would come back in waves,
 3 because I had sent them sort of in waves. But
 4 I'm only one place.
 5 COFFEY, Q.C.:
 6 Q. And in the meantime, just so the Commissioner
 7 understands for Corner Brook, because I take
 8 it the ongoing consult cases were being done
 9 from time--as the cases had to be ordered,
 10 ER/PR -
 11 DR. NEIL:
 12 A. The go-forward cases, yes.
 13 COFFEY, Q.C.:
 14 Q. - go-forward cases, yes. Were there any cases
 15 from Corner Brook, Doctor, which had to be--in
 16 the retest group, that had to be, as it were,
 17 pulled out of the queue or retested in the
 18 fall on an urgent basis, do you recall? Do
 19 you recall--I'm not suggesting there were, I'm
 20 just asking you, like after you'd sent these
 21 by year, retest cases, in large groups, were
 22 you ever asked to pull cases or an individual
 23 case, asked by an oncologist, for example, to
 24 pull a case -
 25 DR. NEIL:

Page 303

1 A. No.
 2 COFFEY, Q.C.:
 3 Q. - and have it retested on an urgent basis?
 4 DR. NEIL:
 5 A. No.
 6 COFFEY, Q.C.:
 7 Q. Okay.
 8 DR. NEIL:
 9 A. Now I wasn't personally. I don't know if
 10 anybody else was.
 11 COFFEY, Q.C.:
 12 Q. Yes, and if somebody in Western was, I take it
 13 generally you would have been aware of it?
 14 DR. NEIL:
 15 A. Not necessarily.
 16 COFFEY, Q.C.:
 17 Q. Okay, so they might approach another
 18 pathologist?
 19 DR. NEIL:
 20 A. If the secretary had knew who owned that
 21 particular case, she would approach that
 22 particular person. But I'm not--I don't think
 23 that happened, to be honest.
 24 COFFEY, Q.C.:
 25 Q. Now if we could, Exhibit P-0684? Now Doctor,

Page 304

1 this is an e-mail of November 24th, 2005.
 2 It's neither sent to nor did it originate from
 3 you, but this is an e-mail where Heather
 4 Predham is writing to Dr. Williams and copying
 5 others and she, in the body of it, says "Dr.
 6 Kwan made a suggestion at the last panel that
 7 I should track those we may have potentially
 8 harmed. We had agreed to classify patients as
 9 being converted with or without
 10 recommendations, but Dr. Kwan, and rightly so,
 11 felt it didn't accurately reflect those who
 12 had been impacted. For example, if a person
 13 was initially diagnosed with breast cancer in
 14 the left breast and was ER/PR negative and
 15 then had metastases to the right breast which
 16 was ER/PR positive, the patient would be then
 17 treated with Tamoxifen. So when we panelled
 18 the person after their first results
 19 converted, the panel would have no
 20 recommendations, but there has been a
 21 potential impact. At the last panel meeting,
 22 out of the 17 panelled, there were seven
 23 patients who were potentially negatively
 24 impacted. I will have to review all the
 25 patients panelled, but I'll try to have this

Page 305

1 complete information for you next week."
 2 Now Doctor, the notion of trying to
 3 identify people who, as she puts it here, "we
 4 may--people who may--patients who may have
 5 potentially been harmed" -
 6 DR. NEIL:
 7 A. Um-hm.
 8 COFFEY, Q.C.:
 9 Q. - did that ever come up in Western?
 10 DR. NEIL:
 11 A. No, not to me.
 12 COFFEY, Q.C.:
 13 Q. Oh yes, and to your knowledge, has Western
 14 ever conducted any such analysis of its own
 15 patients?
 16 DR. NEIL:
 17 A. I don't know that. It's not my--that was not
 18 my mandate to be looking at patients directly.
 19 COFFEY, Q.C.:
 20 Q. I understand that, okay, but are you aware
 21 though of any that -
 22 DR. NEIL:
 23 A. No, I'm not.
 24 COFFEY, Q.C.:
 25 Q. Okay, that's what I was just asking. If such

Page 306

1 a--I take it that that would be an oncologist,
 2 treating physician's -
 3 DR. NEIL:
 4 A. An oncologist.
 5 COFFEY, Q.C.:
 6 Q. Or a surgeon?
 7 DR. NEIL:
 8 A. Yes, or a surgeon.
 9 COFFEY, Q.C.:
 10 Q. Do you know if Eastern Health has ever
 11 provided any such information to Western?
 12 DR. NEIL:
 13 A. I don't know.
 14 COFFEY, Q.C.:
 15 Q. Okay, not that you're aware of, I take it?
 16 DR. NEIL:
 17 A. No.
 18 COFFEY, Q.C.:
 19 Q. Exhibit P-2263, please, Registrar? Now
 20 Doctor, this is an e-mail of January 30th,
 21 2006, from Dr. Jenkins to senior management
 22 and copied to yourself and others saying "I
 23 just had a call from Dr. Bob Williams. The
 24 ER/PR test results from Mount Sinai are back
 25 and I should be getting a call from Heather

Page 307

1 Predham today with the results for Western
 2 Region patients. We will be required to
 3 notify the patients with negative results.
 4 For those with positive results who are
 5 patients of the Cancer Clinic in St. John's,
 6 an expert panel in St. John's will review the
 7 results and provide advice to treating
 8 providers. For those with positive results
 9 who are not Cancer Clinic patients, it is
 10 anticipated that further clinical information
 11 will need to be provided so that the cases can
 12 be reviewed by the expert panel and advice
 13 provided. We will need to have some staffing
 14 supports to call the patients who are negative
 15 and advise attending physicians of the
 16 positive converters for whom further
 17 information is required. For Kelli and Bonnie
 18 Walker be made available to do this, or should
 19 I look elsewhere? Thanks, Ken Jenkins."
 20 So I take it, Doctor, by--this is your
 21 notification at the end of January that the
 22 results are back?
 23 DR. NEIL:
 24 A. Yes.
 25 COFFEY, Q.C.:

Page 308

1 Q. Now, Doctor, as the senior pathologist in
 2 Western at the time, what was your job when
 3 the--I take it the results from the retesting
 4 came back in late January?
 5 DR. NEIL:
 6 A. Um-hm.
 7 COFFEY, Q.C.:
 8 Q. How did they come to you?
 9 DR. NEIL:
 10 A. On a spreadsheet.
 11 COFFEY, Q.C.:
 12 Q. Spreadsheet, and what was your responsibility
 13 and what did you do?
 14 DR. NEIL:
 15 A. I didn't know how the patients were going to
 16 be informed. I didn't know how the results
 17 were going to get to the physicians that were
 18 concerned. I later understood that reports
 19 would be coming back from Dr. Cook as we
 20 discussed. So the spreadsheet was for
 21 information purposes for me.
 22 COFFEY, Q.C.:
 23 Q. And because the spread--you were going to get
 24 individual--for each patient on the
 25 spreadsheet -

Page 309

1 DR. NEIL:
 2 A. Yes, I was going to get an individual report
 3 to go into our system.
 4 COFFEY, Q.C.:
 5 Q. Individual report from Dr. Cook?
 6 DR. NEIL:
 7 A. Yes.
 8 COFFEY, Q.C.:
 9 Q. And it would come from Dr. Cook?
 10 DR. NEIL:
 11 A. Yes.
 12 COFFEY, Q.C.:
 13 Q. On Eastern Health letterhead or some sort?
 14 DR. NEIL:
 15 A. Yes.
 16 COFFEY, Q.C.:
 17 Q. Reporting what was in the spreadsheet?
 18 DR. NEIL:
 19 A. Yes.
 20 COFFEY, Q.C.:
 21 Q. And your responsibility was to take that and
 22 ensure that got into Corner Brook's Meditec?
 23 DR. NEIL:
 24 A. Yes, correct.
 25 COFFEY, Q.C.:

Page 310

1 Q. And that was done?
 2 DR. NEIL:
 3 A. That was done.
 4 COFFEY, Q.C.:
 5 Q. Doctor, now the spreadsheets came to you for
 6 informational purposes then bearing in mind
 7 that individual reports were going to come.
 8 DR. NEIL:
 9 A. Um-hm.
 10 COFFEY, Q.C.:
 11 Q. What did you use the spreadsheets for?
 12 DR. NEIL:
 13 A. I reviewed the spreadsheets to see--Dr. Mullen
 14 had a fair amount of information on them,
 15 reviewed the spreadsheet to see what he had
 16 commented on the specimen adequacy, commented
 17 on internal controls. Of course, he gave us
 18 the results. I briefly scanned the results to
 19 see what conversions there were and just to
 20 get a general idea of the problem, and I would
 21 try to correlate if there was any discrepancy
 22 in our diagnosis and his diagnosis.
 23 COFFEY, Q.C.:
 24 Q. The underlying diagnosis itself?
 25 DR. NEIL:

Page 311

1 A. Yes, the underlying diagnosis. In that
 2 spreadsheet, there was a Mount Sinai diagnosis
 3 and a Western diagnosis. There was a Western
 4 ER/PR result and there was a Mount Sinai ER/PR
 5 result.
 6 COFFEY, Q.C.:
 7 Q. And now Doctor, you understood that Dr.
 8 Mullen, in sending back that--or that
 9 spreadsheet, I take it, the portion of his
 10 spreadsheet that you got was limited to
 11 Western?
 12 DR. NEIL:
 13 A. Yes.
 14 COFFEY, Q.C.:
 15 Q. Okay, Western patients. You understood Dr.
 16 Mullen had reviewed what, in creating that
 17 spreadsheet? Did you have any understanding
 18 as to whether he'd reviewed the original
 19 slides?
 20 DR. NEIL:
 21 A. No, I didn't.
 22 COFFEY, Q.C.:
 23 Q. One way or the other? Or you just didn't--or
 24 you thought he hadn't or -
 25 DR. NEIL:

Page 312

1 A. No, the original slides, I didn't think he had
 2 the original slides.
 3 COFFEY, Q.C.:
 4 Q. Okay. To your knowledge they had been sent to
 5 St. John's -
 6 DR. NEIL:
 7 A. Yes.
 8 COFFEY, Q.C.:
 9 Q. And that was as far as they gone?
 10 DR. NEIL:
 11 A. Yes.
 12 COFFEY, Q.C.:
 13 Q. Exhibit--before I leave that, did you do any
 14 analysis of the information in the spreadsheet
 15 at any time?
 16 DR. NEIL:
 17 A. Statistical analysis?
 18 COFFEY, Q.C.:
 19 Q. Yes.
 20 DR. NEIL:
 21 A. No.
 22 COFFEY, Q.C.:
 23 Q. Now about, without getting into the statistics
 24 of it, kind of analysis from which you could
 25 draw just general conclusions about -

Page 313

1 DR. NEIL:
 2 A. Apart from eyeballing the spreadsheet and
 3 making a general assessment? No.
 4 COFFEY, Q.C.:
 5 Q. If any analysis or statistical analysis was to
 6 be conducted -
 7 DR. NEIL:
 8 A. Yes.
 9 COFFEY, Q.C.:
 10 Q. And this is the beginning of 2006, who did you
 11 understand it might be conducted by?
 12 DR. NEIL:
 13 A. Eastern Health.
 14 COFFEY, Q.C.:
 15 Q. Did you ever have any discussions with Eastern
 16 Health about that?
 17 DR. NEIL:
 18 A. No.
 19 COFFEY, Q.C.:
 20 Q. About whether or not they were doing it?
 21 DR. NEIL:
 22 A. No.
 23 COFFEY, Q.C.:
 24 Q. To this day do you know if there was any
 25 statistical analysis?

Page 314

1 DR. NEIL:
 2 A. I'm sure there are all kinds of statistics. I
 3 know there are all kinds of statistics. I
 4 didn't do them.
 5 COFFEY, Q.C.:
 6 Q. Doctor, as an individual physician, have you
 7 looked, like in looking at the spreadsheets or
 8 any information you had, have you been able to
 9 identify which of the patients were retesting
 10 might have been your patients?
 11 DR. NEIL:
 12 A. My own particularly?
 13 COFFEY, Q.C.:
 14 Q. Yes.
 15 DR. NEIL:
 16 A. No.
 17 COFFEY, Q.C.:
 18 Q. In terms of the--did you ever prepare that
 19 sort of data at any point in time?
 20 DR. NEIL:
 21 A. No.
 22 COFFEY, Q.C.:
 23 Q. Okay, Corner Brook was, from your perspective,
 24 was viewed as a group?
 25 DR. NEIL:

Page 315

1 A. Corner Brook was a group. Fair number of
 2 physicians at that -
 3 COFFEY, Q.C.:
 4 Q. Yes, and you've pointed that out that over the
 5 years there would be quite a number who--any
 6 one physician who was in Corner Brook for two
 7 or three years would have had a number of
 8 ER/PRs?
 9 DR. NEIL:
 10 A. Certainly had a number of them, yes.
 11 COFFEY, Q.C.:
 12 Q. And statistically, some of them would have had
 13 negative result originally -
 14 DR. NEIL:
 15 A. Yes.
 16 COFFEY, Q.C.:
 17 Q. And that would result in a retesting.
 18 DR. NEIL:
 19 A. Yes.
 20 COFFEY, Q.C.:
 21 Q. So there'd be results there. Exhibit P-1976
 22 please? Now, Doctor, this is a memo of
 23 February 1st, 2006, again. You head the list
 24 this time, up here, it's to the various
 25 pathologists throughout Newfoundland, from Dr.

Page 316

1 Cook. He says, "We have received most of the
 2 results from Mount Sinai regarding ER/PR
 3 review process. Results from Mount Sinai were
 4 issued on Excel spreadsheets. I will be
 5 issuing individual reports on patients and
 6 submitting these to the respective sites.
 7 When you see these reports, please ensure
 8 they're incorporated into your hospital
 9 information or laboratory information systems.
 10 I expect you will be receiving the first of
 11 these reports within the next two weeks." And
 12 in fact, he's handwritten here "spoke to Gary
 13 Baker, February 9 and Paul, Wednesday,
 14 February 10, ensuring they got my memo." When
 15 did in fact you get the reports, those
 16 individual reports on the retest reports? Do
 17 you recall when generally it was?
 18 DR. NEIL:
 19 A. We were getting them in batches. They came at
 20 various times. Can I put a date on the first
 21 one? No, I can't really.
 22 COFFEY, Q.C.:
 23 Q. And how about on the last, as it were? Like
 24 over what time -
 25 DR. NEIL:

Page 317

1 A. They came over a long--a fairly wide
2 timeframe.
3 COFFEY, Q.C.:
4 Q. Period of months, weeks?
5 DR. NEIL:
6 A. Probably a month.
7 COFFEY, Q.C.:
8 Q. A month or so.
9 DR. NEIL:
10 A. Probably a month or so, yes, five to six weeks
11 maybe.
12 COFFEY, Q.C.:
13 Q. Doctor, in the meantime, what was going on
14 with respect to notifying patients, do you
15 know, in terms of how were they--the phone
16 calls?
17 DR. NEIL:
18 A. That was being handled outside of my
19 department.
20 COFFEY, Q.C.:
21 Q. And were they utilizing the spreadsheet that
22 had been sent to you, like the patients who
23 came back zero zero?
24 DR. NEIL:
25 A. I believe that's--not in my spreadsheet, that

Page 318

1 spreadsheet was e-mailed, of course, and I'm
2 sure that senior management had a similar copy
3 to mine.
4 COFFEY, Q.C.:
5 Q. And we'll be talking--so Dr. Jenkins would be
6 involved in that?
7 DR. NEIL:
8 A. Yes.
9 COFFEY, Q.C.:
10 Q. We'll be speaking with him. Exhibit P-2266
11 please? Now, here Doctor, as order of March
12 6, 2006, you've written here to Dr. Laing, "As
13 per Eastern Health ER/PR recall protocol,
14 please find the enclosed patient report on the
15 above-mentioned patient who was seen in
16 Cleveland Clinic and has, according to our
17 hospital records, been taking Tamoxifen. Her
18 ER was reported as negative. In our review of
19 cases for retesting, she was not sent since
20 she was seen at Cleveland Clinic. It has come
21 to my attention that she was not in fact
22 retested there. I am sending you this report
23 wondering if in fact she needs to be retested
24 since she is apparently taking Tamoxifen.
25 Could you please advise me if we need to send

Page 319

1 a tissue to Mount Sinai or not." Do you
2 recall what has happened with respect to this
3 patient's--was this retested, Doctor?
4 DR. NEIL:
5 A. That was retested.
6 COFFEY, Q.C.:
7 Q. Retested.
8 DR. NEIL:
9 A. Mr. Coffey, there are several letters that you
10 have that are directly related to requests and
11 conversations that I have had with physicians
12 regarding particular patients.
13 COFFEY, Q.C.:
14 Q. Yes.
15 DR. NEIL:
16 A. And that's exactly what they're about. I
17 wouldn't want particular patients to come up.
18 COFFEY, Q.C.:
19 Q. And you'll see here the patient's name is not
20 -
21 DR. NEIL:
22 A. I know the patient's name won't come up, but
23 patient's history may be written in some of
24 those letters.
25 COFFEY, Q.C.:

Page 320

1 Q. And there might be particular enough to
2 identify a patient, I take it is what you're
3 getting at.
4 DR. NEIL:
5 A. Yes.
6 COFFEY, Q.C.:
7 Q. Doctor, on this point and what I'll ask you
8 about is this, why would you be writing to Dr.
9 Laing?
10 DR. NEIL:
11 A. She was the oncologist that was looking after
12 the patients.
13 COFFEY, Q.C.:
14 Q. This patient or patients generally?
15 DR. NEIL:
16 A. I don't know if that patient particularly was
17 seeing Dr. Laing.
18 COFFEY, Q.C.:
19 Q. And in terms of--because up to this point in
20 the process, had you been dealing with Dr.
21 Laing concerning this ER/PR matter -
22 DR. NEIL:
23 A. Yes.
24 COFFEY, Q.C.:
25 Q. Okay, in what context were you dealing with

Page 321

1 her?

2 DR. NEIL:

3 A. I do believe that she was in charge of the

4 oncology program.

5 COFFEY, Q.C.:

6 Q. Yes. No, I'm asking you in terms of the ER/PR

7 matter, the retest matter, had you been

8 dealing with her in relation to the ER/PR

9 retesting process?

10 DR. NEIL:

11 A. Apart from an occasional letter, I hadn't been

12 dealing with her particularly because I've

13 letters there written to Dr. Ganguly as well,

14 who I believe was on a panel.

15 COFFEY, Q.C.:

16 Q. So the involvement you would have had with Dr.

17 Ganguly or Dr. Laing in relation to the ER/PR

18 retesting -

19 DR. NEIL:

20 A. Yes, are specific patient issues.

21 COFFEY, Q.C.:

22 Q. Okay, specific patients.

23 DR. NEIL:

24 A. Yes.

25 COFFEY, Q.C.:

Page 322

1 Q. As opposed to kind of the systemic approach to

2 how we're going to do this, how we're going to

3 -

4 DR. NEIL:

5 A. These are specific patient issues that I

6 wanted clarified in order to do the particular

7 follow up on these patients. I wanted to know

8 what to do with their report, their test, did

9 it need to be retested? There were certain

10 clinical situations that I was unclear about

11 that any of these oncologists could assist me

12 with that procedure, that's why I wrote to

13 them.

14 COFFEY, Q.C.:

15 Q. Doctor, how did the issue come to your

16 attention?

17 DR. NEIL:

18 A. Which issue?

19 COFFEY, Q.C.:

20 Q. The issue involved in this particular letter

21 and the idea that -

22 DR. NEIL:

23 A. This particular letter, again, this is a

24 patient issue and I'd rather not discuss that.

25 COFFEY, Q.C.:

Page 323

1 Q. Well how would you know that her ER was

2 reported negative? I mean, what I'm trying to

3 get at here, Doctor, she doesn't get into the

4 queue -

5 DR. NEIL:

6 A. She should have been in the queue, okay.

7 COFFEY, Q.C.:

8 Q. Okay, that's what I'm--that's what I'm

9 interested in, is that aspect of it. So they

10 came to your attention that she was not in the

11 queue.

12 DR. NEIL:

13 A. Yes, she should have been in the queue.

14 COFFEY, Q.C.:

15 Q. Okay, and you made inquiries?

16 DR. NEIL:

17 A. Yes. And I dealt with it.

18 COFFEY, Q.C.:

19 Q. And I had asked you this earlier, did this

20 patient self identify?

21 DR. NEIL:

22 A. No.

23 COFFEY, Q.C.:

24 Q. Okay. Now you do say here that she was not

25 sent, since she was seen at Cleveland Clinic.

Page 324

1 Now, Doctor, with respect to that, because you

2 have told the Commissioner that in looking

3 through and identifying patients, bearing in

4 mind the criteria Eastern Health had given

5 you, that you went through the--before sending

6 them to St. John's and some of them you marked

7 "keep".

8 DR. NEIL:

9 A. Yes.

10 COFFEY, Q.C.:

11 Q. And, of course, one of the criteria would be

12 that they, or not, you know, they're right on

13 the borderline, the ten percent is a good

14 example you used, this Cleveland Clinic, was

15 that used as a criterion not to send blocks?

16 DR. NEIL:

17 A. There's information about--there's a couple of

18 people about Cleveland Clinic.

19 COFFEY, Q.C.:

20 Q. Okay, and they were not sent, I take it, in

21 the initial round for retesting?

22 DR. NEIL:

23 A. No, no.

24 COFFEY, Q.C.:

25 Q. Was there anything and again, I don't want to

Page 325

1 identify the patients and -
 2 DR. NEIL:
 3 A. We're getting close to it.
 4 COFFEY, Q.C.:
 5 Q. But you should know, Doctor, you should be
 6 aware here, okay, that there have been
 7 references here to, over 30 patients from
 8 Newfoundland over a certain period of time are
 9 sent for testing or some sort of treatment to
 10 the Cleveland Clinic. So, did anyone--what I
 11 want to ask you about is this, the utilization
 12 of a criteria that a patient had visited the
 13 Cleveland Clinic -
 14 DR. NEIL:
 15 A. Yes.
 16 COFFEY, Q.C.:
 17 Q. And you use that as an exclusionary,
 18 initially, exclusionary determination, the
 19 idea for that, was that your own or -
 20 DR. NEIL:
 21 A. No.
 22 COFFEY, Q.C.:
 23 Q. Okay, so that came from someone else. And
 24 without--if it came from the patient, I'm not
 25 -

Page 326

1 DR. NEIL:
 2 A. It didn't come from the patient, I really
 3 can't answer your questions.
 4 MR. SIMMONS:
 5 Q. Commissioner, I might have missed it, but I
 6 didn't hear Dr. Neil say earlier that the
 7 Cleveland Clinic was an exclusionary
 8 criterion, I understood it had something to -
 9 DR. NEIL:
 10 A. It had something to do with it, yes. It's not
 11 an exclusion. I know you're confused, but I'm
 12 not, I know these patients.
 13 THE COMMISSIONER:
 14 Q. Mr. Browne, I'm just wondering do you want
 15 five minutes to see if we can work this out?
 16 MR. BROWNE:
 17 Q. Sure.
 18 THE COMMISSIONER:
 19 Q. Why don't we do that.
 20 (RECESS)
 21 THE COMMISSIONER:
 22 Q. Please be seated. Mr. Coffey.
 23 COFFEY, Q.C.:
 24 Q. Yes, Commissioner, Mr. Browne and myself have
 25 had a discussion, I don't believe there will

Page 327

1 be a problem with me asking a couple of
 2 questions and -
 3 THE COMMISSIONER:
 4 Q. Well I'm sure Mr. Browne will tell us if you
 5 get into trouble.
 6 COFFEY, Q.C.:
 7 Q. Thank you. Doctor, P-2266, just on the matter
 8 of, because you've indicated that certainly
 9 when all the patients' names had been
 10 initially identified, as best you could, it's
 11 a long list.
 12 DR. NEIL:
 13 A. Uh-hm.
 14 COFFEY, Q.C.:
 15 Q. Cross checking them and so on, you referred to
 16 the fact that, well one of the criteria was
 17 the patient was still alive, so you excluded
 18 the deceased patients when you were able to
 19 identify them. This particular patient,
 20 there's a reference here to "She was not sent,
 21 since she was seen at Cleveland Clinic."
 22 DR. NEIL:
 23 A. Yes.
 24 COFFEY, Q.C.:
 25 Q. I take it was that, the decision not to send

Page 328

1 the block to St. John's or a block to St.
 2 John's was your decision in relation to that
 3 patient.
 4 DR. NEIL:
 5 A. Yes.
 6 COFFEY, Q.C.:
 7 Q. And I take it, Doctor, that was because--well
 8 I'll ask you this, did you understand that the
 9 patient's tissue, ER/PR, had been done in St.
 10 John's at all at that point?
 11 DR. NEIL:
 12 A. No.
 13 COFFEY, Q.C.:
 14 Q. Okay, you understood it had been done where?
 15 DR. NEIL:
 16 A. I had understood it was done in Cleveland.
 17 COFFEY, Q.C.:
 18 Q. Oh in Cleveland, okay, and accordingly the
 19 retesting was not of Cleveland's materials -
 20 DR. NEIL:
 21 A. Correct.
 22 COFFEY, Q.C.:
 23 Q. It was of St. John's -
 24 DR. NEIL:
 25 A. St. John's material.

Page 329

1 COFFEY, Q.C.:

2 Q. And therefore, it wouldn't be sent off for

3 retesting.

4 DR. NEIL:

5 A. It wouldn't make sense to send it.

6 COFFEY, Q.C.:

7 Q. Then, Doctor, in the lead up to this letter of

8 March 6th, 2006, I take it you do say here

9 that it has come to your attention that she

10 was not in fact retested there?

11 DR. NEIL:

12 A. Yes.

13 COFFEY, Q.C.:

14 Q. That is retested -

15 DR. NEIL:

16 A. At Cleveland.

17 COFFEY, Q.C.:

18 Q. - in Cleveland, in fact, it wasn't so much

19 retested as tested at all in Cleveland.

20 DR. NEIL:

21 A. Correct.

22 COFFEY, Q.C.:

23 Q. Doctor, do you recall how that came about,

24 that you became aware that -

25 DR. NEIL:

Page 330

1 A. No.

2 COFFEY, Q.C.:

3 Q. Okay, you just -

4 DR. NEIL:

5 A. I can't be specific on how I knew that

6 information.

7 COFFEY, Q.C.:

8 Q. But it came to our attention that this

9 particular patient had not been tested at all

10 in Cleveland, first nor last?

11 DR. NEIL:

12 A. Correct.

13 COFFEY, Q.C.:

14 Q. And with that in mind, you then learned,

15 because you indicated that the patient was

16 already on Tamoxifen, did you learn whether or

17 not the patient had been tested at St. John's

18 at all?

19 DR. NEIL:

20 A. She was tested at St. John's.

21 COFFEY, Q.C.:

22 Q. Okay, you became aware of that.

23 DR. NEIL:

24 A. Yes.

25 COFFEY, Q.C.:

Page 331

1 Q. And then, by that point I take it, she now met

2 the criteria potentially for retesting.

3 DR. NEIL:

4 A. And she was sent as a retest; hence the reason

5 for this letter.

6 COFFEY, Q.C.:

7 Q. Okay. I think, does that make it,

8 Commissioner, clear, the process?

9 THE COMMISSIONER:

10 Q. Clear why she then had to be sent, yes.

11 COFFEY, Q.C.:

12 Q. Yes. Exhibit P-1591 please? Doctor, this is

13 an e-mail from yourself to, March 29th, 2006,

14 to a D. Boone of Health West, Newfoundland.

15 DR. NEIL:

16 A. Yes.

17 COFFEY, Q.C.:

18 Q. I take it this D. Boone is whom?

19 DR. NEIL:

20 A. One of our lab managers, who predates the

21 current one, he was in charge of pathology at

22 the time.

23 COFFEY, Q.C.:

24 Q. I just raise it because D. Boone, Dan Boone,

25 it's not the Dan -

Page 332

1 DR. NEIL:

2 A. It's not Dan Boone.

3 COFFEY, Q.C.:

4 Q. It's not Dan Boone, okay, thank you. And, but

5 the e-mail below, the main e-mail is from Nash

6 Denic, the same date to a number of

7 individuals, including yourself. And it says,

8 "There has been some confusion from the Cancer

9 Clinic who the reports from Mount Sinai

10 Hospital should go to, therefore, the Cancer

11 Clinic will be sending a letter to all

12 pathology lab directors outlining the

13 directions how the ER/PR, HER2/neu reports

14 from the Mount Sinai Hospital should be

15 handled. In the meantime, if you have

16 questions, you can call Dr. Joy McCarthy"--and

17 her particular number. What was this about,

18 Doctor, do you recall?

19 DR. NEIL:

20 A. The Cancer Clinic wanted reports directly from

21 Mount Sinai to avoid any typing errors.

22 COFFEY, Q.C.:

23 Q. Transposition errors.

24 DR. NEIL:

25 A. Transcribing errors, to see a copy of the

Page 333

1 report directly from Mount Sinai would mean
 2 that there were no transcribing errors.
 3 COFFEY, Q.C.:
 4 Q. So was this on the retest results, as well as
 5 current cases, I take it or just the retests?
 6 DR. NEIL:
 7 A. From my perspective it was the go-forward
 8 cases.
 9 COFFEY, Q.C.:
 10 Q. Okay, that's the current cases, I take it?
 11 DR. NEIL:
 12 A. Current cases, so I guess, you know, the
 13 reports and I don't know how they came back
 14 from Mount Sinai to Eastern Health, I'm sure
 15 they came back in the same manner. Before Dr.
 16 Cook would transcribe them into his format, I
 17 guess the Cancer Clinic would get a copy
 18 before that happened, which I'm sure was the
 19 case.
 20 COFFEY, Q.C.:
 21 Q. So how did you address this at Western?
 22 DR. NEIL:
 23 A. We did what was asked.
 24 COFFEY, Q.C.:
 25 Q. If we could, please, Exhibit P-1811 please?

Page 334

1 Now, Doctor, before we leave the beginning of
 2 2006, this is an e-mail from Brendan Mullen,
 3 Friday, January 20th to Dr. Donald Cook. It's
 4 attaching the ER/PR results for the
 5 Newfoundland and Labrador retrospective review
 6 and then he says, he concludes by saying,
 7 "When you have had an opportunity"--that is
 8 Dr. Cook has had an opportunity--"to review
 9 the results, I would like to discuss some of
 10 the technical difficulties we encountered with
 11 processing and staining of specimens, some of
 12 the same issues are present in the current
 13 Newfoundland and Labrador material."
 14 DR. NEIL:
 15 A. Uh-hm.
 16 COFFEY, Q.C.:
 17 Q. Those three lines there, these three, was Dr.
 18 Mullen's comment in January of '06 ever
 19 brought to your attention?
 20 DR. NEIL:
 21 A. No.
 22 COFFEY, Q.C.:
 23 Q. Exhibit P-2267 please? Now, Doctor, this is a
 24 letter of April 3rd, 2006. I take it it's on
 25 Western Health letterhead. It's a letter that

Page 335

1 you would have sent to Dr. Ganguly?
 2 DR. NEIL:
 3 A. Yes.
 4 COFFEY, Q.C.:
 5 Q. And you begin by saying, "As part of the ER/PR
 6 recall, Dr. Don Cook has sent me a list of
 7 patients for me to follow up based on results
 8 of the Mount Sinai retesting." And then
 9 there's a number of individual patients
 10 referred to and their particular
 11 circumstances.
 12 DR. NEIL:
 13 A. Uh-hm.
 14 COFFEY, Q.C.:
 15 Q. And this is a redacted version. Doctor, what
 16 occasioned this at this point in time, I mean,
 17 this sort of a process?
 18 DR. NEIL:
 19 A. This is a reconciliation of what's on the
 20 spreadsheet.
 21 COFFEY, Q.C.:
 22 Q. Okay. And if there was any discrepancy of
 23 what was on the spreadsheet with the Mount
 24 Sinai diagnosis and our diagnosis, it had to
 25 be dealt with, and these patients and several

Page 336

1 other subsequent letters dealt with that type
 2 of issue.
 3 COFFEY, Q.C.:
 4 Q. Okay.
 5 DR. NEIL:
 6 A. I was seeking opinions from various
 7 specialists as to how to handle them.
 8 COFFEY, Q.C.:
 9 Q. And at times, there are letters, were there
 10 also phone calls between yourself and Dr. Cook
 11 about these sorts of matters?
 12 DR. NEIL:
 13 A. There were phone calls but the main focus was
 14 written letters because it's clear when you
 15 write it down what it is you're asking.
 16 COFFEY, Q.C.:
 17 Q. Exhibit P-2269, please, and Doctor, here there
 18 is a--this is a letter from yourself, I
 19 gather, June 19th, 2006, to Dr. Cook, and you
 20 write "after our discussion this morning, I
 21 have reviewed the list of patients below. You
 22 will note they are the same as the group I
 23 wrote you about in April." And there are a
 24 number of--in fact, there are seven patients
 25 on this particular letter referred to.

Page 337

1 Doctor, on some of these patients there are
 2 references to--and the Commissioner has heard
 3 otherwise about this--DCIS that Mount Sinai
 4 had reported as DCIS.
 5 DR. NEIL:
 6 A. Yes.
 7 COFFEY, Q.C.:
 8 Q. And then, of course, the question arose as to,
 9 I gather from these patients in the main, they
 10 had been diagnosed as invasive carcinoma of
 11 one sort or another.
 12 DR. NEIL:
 13 A. Yes.
 14 COFFEY, Q.C.:
 15 Q. Ductal invasive carcinoma, and I take it
 16 inquiries were made in that regard. Could you
 17 tell generally how that matter--tell the
 18 Commissioner how the DCIS was handled from
 19 Western's perspective?
 20 DR. NEIL:
 21 A. There were probably about 20 or so patients
 22 that had the diagnosis of DCIS from the Mount
 23 Sinai spreadsheet. We were to try to resolve
 24 the issue of DCIS on a Mount Sinai diagnosis
 25 with a Western diagnosis which differed and it

Page 338

1 differed by degree, in the sense that DCIS was
 2 in situ or within the duct, the invasive
 3 component as a minor component outside of the
 4 duct. It's still a cancer. The DCIS were not
 5 retested for ER/PR by definition, but the
 6 invasive cancers are retested. So there's a
 7 discrepancy. We had to try to resolve that
 8 discrepancy and treat the patient
 9 appropriately. Those discrepancies were
 10 resolved through individual patient review and
 11 individual slide review--or not slide review,
 12 individual consultation, because I never did
 13 receive the slides. I did correlate my
 14 diagnosis or Western's diagnosis with Mount
 15 Sinai diagnosis and did resolve the issues to
 16 the best of our ability. So these patients
 17 were treated appropriately after my
 18 investigation. Some of these letters are the
 19 result or are the mechanism whereby I would
 20 try to resolve those issues.
 21 COFFEY, Q.C.:
 22 Q. And Doctor, here, if we could just look,
 23 please, Registrar, at 2270, please? Because
 24 your letter was dated June 19th and this is a
 25 letter from Dr. Cook to yourself of June 26th

Page 339

1 acknowledging receipt of your letter, that is
 2 the letter dated June 19th, and he says "we
 3 will be going through the list of patients
 4 that you have forwarded to us." He's also
 5 "forwarding this information to Heather
 6 Predham who's involved with Quality
 7 Initiatives and with our panelling process on
 8 the Tumour Board Committee," and he refers
 9 then to two particular items two and three on
 10 your letter, and he says "I will keep you
 11 updated on the remaining patients. I deeply
 12 apologize for not getting back to you
 13 earlier." So I take it that this then, then
 14 as the summer of 2006 went on, got addressed?
 15 DR. NEIL:
 16 A. Yes.
 17 COFFEY, Q.C.:
 18 Q. Doctor, Exhibit P-2274, please? This is a
 19 letter of August 7th, 2006. It's from
 20 yourself to Dr. Laing and Doctor, without
 21 occasioning the need for another break again -
 22 DR. NEIL:
 23 A. This is the same patient.
 24 COFFEY, Q.C.:
 25 Q. Same patient?

Page 340

1 DR. NEIL:
 2 A. Yes.
 3 COFFEY, Q.C.:
 4 Q. Okay, I just wanted to ask you about that. It
 5 came up back in March?
 6 DR. NEIL:
 7 A. Yes.
 8 COFFEY, Q.C.:
 9 Q. And you're still looking for--that's why I
 10 referred to it again. This is August 7th.
 11 This is about four or five months later and -
 12 DR. NEIL:
 13 A. So I sent the tissue anyway, when I discussed
 14 it with Dr. Laing. She has been retested at
 15 Mount Sinai, sent directly from our hospital.
 16 COFFEY, Q.C.:
 17 Q. So you conclude here by saying "as per your
 18 instructions," Dr. Laing's, "I will send her
 19 tissue for retesting at Mount Sinai." So the
 20 matter that you first raised in March finally
 21 did get addressed in August?
 22 DR. NEIL:
 23 A. Yes.
 24 COFFEY, Q.C.:
 25 Q. And you've indicated here, you received Dr.

Page 341

1 Laing's phone message on your return from
 2 vacation. Doctor, what had been the delay?
 3 Had it been on your part or Dr. Laing's,
 4 because there's about a four -
 5 DR. NEIL:
 6 A. I don't know.
 7 COFFEY, Q.C.:
 8 Q. You don't recall. Because you had written Dr.
 9 Laing looking for information?
 10 DR. NEIL:
 11 A. Yes.
 12 COFFEY, Q.C.:
 13 Q. And there's no two ways about it.
 14 DR. NEIL:
 15 A. Yes, I don't know what the delay was.
 16 COFFEY, Q.C.:
 17 Q. Okay.
 18 DR. NEIL:
 19 A. I'm sure one or both of us may have been on
 20 vacation, but I don't know the answer to that.
 21 COFFEY, Q.C.:
 22 Q. If we could, please, Exhibit P-2275? Doctor,
 23 this is a series of e-mails but the first one
 24 at the bottom of the page here is October 30,
 25 2006. It's from Nancy Parsons to Heather

Page 342

1 Predham. She says "Hi, Heather. Dr. Neil,
 2 Paul Neil called back. He said" redacted "was
 3 not retested because she is deceased and they
 4 have not been given any instructions to retest
 5 any deceased patients. He is willing to send
 6 this lady's sample for retesting if we wish,
 7 but someone has to let him know. I will call
 8 'blank' back and tell him that we did not yet
 9 retest her sample." So Doctor, this is
 10 October '06.
 11 DR. NEIL:
 12 A. Um-hm.
 13 COFFEY, Q.C.:
 14 Q. What was the situation as of that point, in
 15 terms of the deceased patients?
 16 DR. NEIL:
 17 A. We had no instructions to send back deceased
 18 patients.
 19 COFFEY, Q.C.:
 20 Q. And I take it this was a particular request
 21 that arose?
 22 DR. NEIL:
 23 A. Yes.
 24 COFFEY, Q.C.:
 25 Q. Okay. Doctor, did you become aware that

Page 343

1 Eastern Health had, in respect of the deceased
 2 patients, obtained an ethics consult? Were
 3 you made aware in 2006?
 4 DR. NEIL:
 5 A. No.
 6 COFFEY, Q.C.:
 7 Q. Were you aware until I just mentioned it to
 8 you now?
 9 DR. NEIL:
 10 A. No.
 11 COFFEY, Q.C.:
 12 Q. Okay, just this is the first you've become
 13 aware of it?
 14 DR. NEIL:
 15 A. Yes.
 16 COFFEY, Q.C.:
 17 Q. Okay. Exhibit P-1198, please? If I could,
 18 please, just before we go to that--I
 19 apologize, Commissioner, Exhibit P-2104? Now
 20 Doctor, these are notes of Dr. Cook of a
 21 conversation. He says he "spoke to Paul Neil
 22 July 14th 2006. Paul wishes to review any
 23 discrepancy in DCIS himself with his
 24 pathologists and disclose themselves. Will
 25 review his 20 odd DCIS and compare with

Page 344

1 original pathology report to confirm DCIS. I
 2 asked him to send in his pathology reports on
 3 confirmed DCIS." And so this--he goes on from
 4 there. I've referred you to this already. So
 5 this is that process that you've described to
 6 the Commissioner?
 7 DR. NEIL:
 8 A. Yes.
 9 COFFEY, Q.C.:
 10 Q. Okay, began around that time and then went on
 11 through the summer?
 12 DR. NEIL:
 13 A. Yes.
 14 COFFEY, Q.C.:
 15 Q. Okay. Exhibit 1198. Doctor, this is an e-
 16 mail of November 17th, 2006, involving a video
 17 conference for November 20th, 2006, and we
 18 look at the second page of it -- actually,
 19 video conference sites have been set up to
 20 view Dr. Denic's presentation from the main
 21 auditorium on ER/PR testing as follows, and
 22 refers to Corner Brook Hospital audio visual
 23 theatre?
 24 DR. NEIL:
 25 A. Yes.

Page 345

1 COFFEY, Q.C.:

2 Q. Right there. I take it that -- and amongst

3 others, you're there as a contact person?

4 DR. NEIL:

5 A. Yes.

6 COFFEY, Q.C.:

7 Q. How did you come to be aware of this ER/PR

8 presentation, Doctor, and what if any

9 involvement did you have in it? Did you

10 participate?

11 DR. NEIL:

12 A. I'm sure this must have been the one -- I have

13 some notes that I made concerning the results

14 that Nash was to present. I'm sure this was

15 the video conference that I attended.

16 COFFEY, Q.C.:

17 Q. Okay. You had --

18 DR. NEIL:

19 A. Was it a video conference or an audio

20 conference?

21 COFFEY, Q.C.:

22 Q. This is video according to this one.

23 DR. NEIL:

24 A. I don't recall -- I don't recall it video.

25 COFFEY, Q.C.:

Page 346

1 Q. Because there is an audio conference -- a

2 conference call in May of '07, and I'll be

3 referring to that in a moment, but the video

4 conference that occurred in the fall of 2006,

5 you don't recall?

6 DR. NEIL:

7 A. I have a -- I have a summary document there

8 somewhere that describes what Nash -- the

9 results that Nash had. I'm assuming this is

10 the same one.

11 COFFEY, Q.C.:

12 Q. Okay, do you have that readily available

13 there, Doctor?

14 DR. NEIL:

15 A. Pardon me?

16 COFFEY, Q.C.:

17 Q. Do you have that readily available there?

18 DR. NEIL:

19 A. No. It's in my own handwriting.

20 COMMISSIONER:

21 Q. You don't know where that is, do you, Mr.

22 Simmons?

23 MR. SIMMONS:

24 Q. No, Commissioner, I don't.

25 COFFEY, Q.C.:

Page 347

1 Q. There is -- some material is dated and some is

2 not. It would be very difficult to -- do you

3 recall the time frame, Doctor?

4 DR. NEIL:

5 A. No. That's why I was trying to see what I had

6 written.

7 COFFEY, Q.C.:

8 Q. Okay.

9 DR. NEIL:

10 A. And I don't even know if I dated it.

11 COMMISSIONER:

12 Q. Mr. Coffey, it's near the end of the day, in

13 any event.

14 COFFEY, Q.C.:

15 Q. Perhaps I'll go on and we'll come back to that

16 and to conclude with -- and cover that in the

17 morning, Doctor. In the meantime, Doctor, in

18 terms of -- we understand that in November of

19 2006, there was a large video conference

20 presentation involving a number of physicians;

21 Dr. Carter, Dr. Denic, Dr. Elms, and there

22 were a number, anyway, involved in it. Do you

23 recall participating in that? This would have

24 had slideshow, the whole works.

25 DR. NEIL:

Page 348

1 A. Yes, it comes back to me now, yes. It's not -

2 - and I didn't make notes on that. That was

3 the first -- that was another one.

4 COFFEY, Q.C.:

5 Q. I appreciate -- that's what I thought.

6 DR. NEIL:

7 A. That was another one. That's why I had to go

8 back to the video.

9 COFFEY, Q.C.:

10 Q. So there was a video with slideshows --

11 DR. NEIL:

12 A. Yes.

13 COFFEY, Q.C.:

14 Q. And so on and so forth.

15 DR. NEIL:

16 A. Yes.

17 COFFEY, Q.C.:

18 Q. How did you come to take part in that? Were

19 you just offered it at the time, these e-mails

20 and --

21 DR. NEIL:

22 A. These e-mails came out. I do remember that

23 now.

24 COFFEY, Q.C.:

25 Q. And at the time, what's your recollection in

Page 349

1 terms of your overall impression of it?

2 DR. NEIL:

3 A. Considering it was hard for me to remember I

4 had been there --

5 COFFEY, Q.C.:

6 Q. Okay, I appreciate that, yeah.

7 DR. NEIL:

8 A. There was a lot of work that had been done,

9 and Dr. Elms had a lot of material that he

10 presented. He seemed to know what he was

11 talking about. They were looking to

12 reinstate, I think, the ER/PR at that time.

13 COFFEY, Q.C.:

14 Q. Yes.

15 DR. NEIL:

16 A. They were looking to get our support for that.

17 COFFEY, Q.C.:

18 Q. And at that point in time, I take it,

19 correspondingly around that -- before that or

20 around that time, there were concerns

21 expressed about their manpower issue?

22 DR. NEIL:

23 A. Yes, that's right, right.

24 COFFEY, Q.C.:

25 Q. Doctor, at that point were you actually asked

Page 350

1 at that point to send the material in to

2 Eastern Health?

3 DR. NEIL:

4 A. We were asked to send it back, yes.

5 COFFEY, Q.C.:

6 Q. Back around the time they were re-instituting

7 the service?

8 DR. NEIL:

9 A. Yes.

10 COFFEY, Q.C.:

11 Q. And who asked you, do you recall?

12 DR. NEIL:

13 A. Dr. Denic.

14 COFFEY, Q.C.:

15 Q. And what did you tell him?

16 DR. NEIL:

17 A. I wasn't ready to do it.

18 COFFEY, Q.C.:

19 Q. And did you explain why?

20 DR. NEIL:

21 A. I explained why.

22 COFFEY, Q.C.:

23 Q. Which is the -- with the exception of the

24 reference to the Commission --

25 DR. NEIL:

Page 351

1 A. Yes, I explained why.

2 COFFEY, Q.C.:

3 Q. You explained what you told us this morning?

4 DR. NEIL:

5 A. Yes.

6 COFFEY, Q.C.:

7 Q. Did you get a copy of the slide presentation?

8 Did anybody offer to send that to you?

9 DR. NEIL:

10 A. I don't have a copy, and I don't recall if

11 anybody offered to send me a copy.

12 COFFEY, Q.C.:

13 Q. Exhibit P-2276, please. Doctor, this is a

14 letter of March 23rd, 2007. It's from Dr.

15 Denic to Barry Dyer, and he's -- he writes,

16 "This is to inform you that we've received all

17 the slides and blocks that we referred to

18 Mount Sinai for retesting on ER/PR and

19 HER2/neu. It is my recommendation that we

20 retain all glass slides from the test

21 performed and return all paraffin blocks to

22 the labs of origin. This decision was made

23 based on a request from one of the sites,

24 Corner Brook, by Dr. Paul Neil, for the blocks

25 to be returned". I refer you to this because

Page 352

1 there's a reference to you having made a

2 request.

3 DR. NEIL:

4 A. Uh-hm.

5 COFFEY, Q.C.:

6 Q. So you had asked Dr. Denic to do what here?

7 DR. NEIL:

8 A. Send us back our material.

9 COFFEY, Q.C.:

10 Q. And that would be the blocks?

11 DR. NEIL:

12 A. Yeah.

13 COFFEY, Q.C.:

14 Q. And I take it, did you also -- were you also

15 looking for the original ER and PR slides?

16 DR. NEIL:

17 A. I was looking for all of our material back.

18 Once they were finished with it, I wanted it

19 back.

20 COFFEY, Q.C.:

21 Q. And so what did you actually get back?

22 DR. NEIL:

23 A. Nothing.

24 COFFEY, Q.C.:

25 Q. Have you gotten even the blocks back yet?

Page 353

1 DR. NEIL:
 2 A. No.
 3 COFFEY, Q.C.:
 4 Q. Have you made any inquiries since March of '07
 5 about it?
 6 DR. NEIL:
 7 A. No, because I was told the blocks were going
 8 to stay there until the inquiry was done.
 9 COFFEY, Q.C.:
 10 Q. Okay, so by the time -- the inquiry was
 11 announced in May of '07, so I take it that you
 12 didn't insist on it between the end of March
 13 and the end of May?
 14 DR. NEIL:
 15 A. No. As long as I know where they are, and
 16 they're in a safe place.
 17 COFFEY, Q.C.:
 18 Q. Okay. Exhibit P-2277. Whose handwriting is
 19 this, Doctor, do you know?
 20 DR. NEIL:
 21 A. Just scan down a bit --
 22 COFFEY, Q.C.:
 23 Q. There it is.
 24 DR. NEIL:
 25 A. I think it's Ken Jenkins.

Page 354

1 COFFEY, Q.C.:
 2 Q. Okay, so it's -- if we could, please, Exhibit
 3 P-2278. Now, Doctor, a couple of e-mails of
 4 May 24th, 2007. The first of them is from
 5 Heidi Simmons to Ken Jenkins, and it says,
 6 "Ken, the Western Star has called today
 7 wondering how many of our patients were
 8 involved in the ER/PR issue, and how many
 9 would have had an incorrect treatment as a
 10 result, and how many have since died. When
 11 you have a few minutes to discuss", signed
 12 Heidi. Dr. Jenkins then responds saying, "I'm
 13 away most of the next two weeks. As of
 14 tomorrow morning, Helen has my file. Bonnie
 15 Walker has detailed knowledge of the numbers.
 16 It may be best to ask Paul Neil to respond to
 17 this request in my absence". Were you asked
 18 to respond?
 19 DR. NEIL:
 20 A. Yes.
 21 COFFEY, Q.C.:
 22 Q. And did you do so?
 23 DR. NEIL:
 24 A. No.
 25 COFFEY, Q.C.:

Page 355

1 Q. Okay, and -- this was the request of Western
 2 Health set out here? You were asked to
 3 respond to that?
 4 DR. NEIL:
 5 A. Yes.
 6 COFFEY, Q.C.:
 7 Q. That's the request we're talking about here.
 8 DR. NEIL:
 9 A. Yes.
 10 COFFEY, Q.C.:
 11 Q. And did you discuss -- what were you asked to
 12 do and what did you tell the person who asked
 13 you?
 14 DR. NEIL:
 15 A. I was not in the business of disclosure.
 16 COFFEY, Q.C.:
 17 Q. Yes.
 18 DR. NEIL:
 19 A. I did what I was asked to do. Disclosure was
 20 not my issue. Someone else in the senior team
 21 would do that.
 22 COFFEY, Q.C.:
 23 Q. And do you recall who within your own
 24 organization asked you, Doctor?
 25 DR. NEIL:

Page 356

1 A. Probably Heidi.
 2 COFFEY, Q.C.:
 3 Q. And her position is what?
 4 DR. NEIL:
 5 A. She's the communication director.
 6 COFFEY, Q.C.:
 7 Q. Okay. And so Doctor Jenkins, when it was
 8 conveyed to you, you said, thanks, but no
 9 thanks, that's not my -
 10 DR. NEIL:
 11 A. Thanks, but no thanks, not my role.
 12 COFFEY, Q.C.:
 13 Q. If we could, please, Exhibit P-2279. Now
 14 Doctor, this is an exhibit of July 11, 2007
 15 and it's a memo of some sort of Dr. Jenkins
 16 re: 1 p.m phone call and compiling of all
 17 documentation. "I flagged the summary, 1995 -
 18 2005 from Dr. Neil and also the individual
 19 yearly stats. And re: this summary report
 20 from Bonnie Walker re: people contacted, this
 21 is not in the file. Bonnie notes she has this
 22 and will bring with her" and so on. And it
 23 continues toward the bottom of the memo, as
 24 well, I now have a file of info from Dennis
 25 Boone, Dr. Neil's office and from the lab

Page 357

1 stenosis all on my desk". Doctor, what was this
 2 about? What summary and what information did
 3 you provide here?
 4 DR. NEIL:
 5 A. Oops, I want to get the date.
 6 COFFEY, Q.C.:
 7 Q. It's July 11th, I'm sorry, Doctor.
 8 DR. NEIL:
 9 A. July 11th?
 10 COFFEY, Q.C.:
 11 Q. Yes, 2007.
 12 DR. NEIL:
 13 A. I referred to an ER/PR file this morning or
 14 this afternoon.
 15 COFFEY, Q.C.:
 16 Q. Yes.
 17 COFFEY, Q.C.:
 18 Q. Any information that was in that which you
 19 have is what is referred to that came from my
 20 office.
 21 COFFEY, Q.C.:
 22 Q. Okay. So, you passed that on to -
 23 DR. NEIL:
 24 A. Every bit of information that I had.
 25 COFFEY, Q.C.:

Page 358

1 Q. Now, in this context, to put this in context
 2 as to what else was going on at the time,
 3 Doctor, if we could look please, Registrar at
 4 P-2280. And Doctor, this is a letter from Ken
 5 Jenkins, it's copied to Ms. Gillam and
 6 yourself. It's addressed to Don MacDonald,
 7 July 13th, 2007, it's re: ER/PR testing and
 8 patient notification, Western Health. And he
 9 says, "further to our telephone discussion of
 10 July 11th, please find enclosed the copies of
 11 the reports and related documents that you
 12 requested. Our regional director of
 13 laboratory services has made contact with Dr.
 14 Neil, our chief of pathology, regarding
 15 pathology summary report. The reference to
 16 report on the table refers to cases where it
 17 is uncertain whether tissue blocks need to be
 18 submitted in accordance with the criteria for
 19 the review. Tissue samples related to "these
 20 reports" were submitted as requested by
 21 Eastern Health. As well, please note that
 22 there are some variation in the total number
 23 of the pathology summary, 249 verses the total
 24 number in the final summary. As reflected in
 25 the enclosed table dated July 12, 2007, actual

Page 359

1 total is 254 and all cases are accounted for
 2 from a patient contact perspective. Do not
 3 hesitate to contact me should you have any
 4 questions." Now, Doctor Neil, I take it that
 5 because the Commission had been established by
 6 this point and there was some effort by the
 7 Newfoundland and Labrador Centre for Health
 8 Information to compile a database.
 9 DR. NEIL:
 10 A. Uh-hm.
 11 COFFEY, Q.C.:
 12 Q. You would have been made aware of that?
 13 DR. NEIL:
 14 A. Yes.
 15 COFFEY, Q.C.:
 16 Q. What, if anything, was your role on behalf of
 17 Western in that regard, in terms of providing
 18 information to NLCHI or the Don MacDonald and
 19 company?
 20 DR. NEIL:
 21 A. Any information I had with patients was
 22 directed through Dr. Jenkins to Mr. MacDonald,
 23 as per his request. The pathology summary
 24 reports that are being talked about there are
 25 the spreadsheets that I referred to earlier

Page 360

1 with the patient name, surgical number, Mount
 2 Sinai report, number of ER/PR slides, and the
 3 handwritten notes that I had on the right-hand
 4 side. Those are some of the pathology summary
 5 reports.
 6 COFFEY, Q.C.:
 7 Q. That's the ones you're talking about.
 8 THE COMMISSIONER:
 9 Q. Mr. Coffey, it's 5:05, it might be cruel and
 10 unusual punishment to push it much further
 11 today. That's just a gentle hint, Mr. Coffey.
 12 COFFEY, Q.C.:
 13 Q. Well before I take the hint, if I could, one
 14 last one, I'll push it just a bit, just one
 15 exhibit, Doctor, while we're on the topic, P-
 16 1036 please? Doctor, this is a letter of
 17 October 30th, 2007, I take it from yourself to
 18 Susan Gillam, your CEO?
 19 DR. NEIL:
 20 A. Yes.
 21 COFFEY, Q.C.:
 22 Q. And it's ER/PR request of October 29th, 2007
 23 and you say, "Please find attached our review
 24 data on the cases you requested in your
 25 correspondence from Robert Thompson, October

1 29th. As you will see, patients listed with
 2 corresponding information on their retest
 3 status. As you will realize, some were not
 4 retested, several do not meet the retest
 5 criteria for percent cut off, while others did
 6 not meet the criteria for primary breast
 7 lesion or the original request criteria from
 8 Eastern Health. We have detailed comments for
 9 each case and have included as much
 10 information for each as we have. If deemed
 11 necessary, please feel free to have the
 12 clinical information further reviewed by the
 13 panel to ensure we have not missed anyone
 14 inappropriately. Also note that we will send
 15 one case of"--redacted name--"that was not
 16 sent previously. She had been repeated before
 17 on left breast but later was on a right
 18 breast, so we will repeat. Furthermore, there
 19 are two cases which we believe are not from
 20 Western Health. These have been identified in
 21 the comments. As for the second list of four
 22 patients, we have results of three, but do not
 23 expect result from"--blank--"due to the nature
 24 of the lesion. Notification of these results
 25 should have been through Cancer Clinic or

1 CERTIFICATE
 2 I, Judy Moss, hereby certify that the foregoing is
 3 a true and correct transcript in the matter of the
 4 Commission of Inquiry on Hormone Receptor Testing,
 5 heard on the 10th day of July, A.D., 2008 before
 6 the Honourable Justice Margaret A. Cameron,
 7 Commissioner, at the Commission of Inquiry, St.
 8 John's, Newfoundland and Labrador and was
 9 transcribed by me to the best of my ability by
 10 means of a sound apparatus.
 11 Dated at St. John's, Newfoundland and Labrador
 12 this 10th day of July, A.D., 2008
 13 Judy Moss

1 Bonnie Walker." And you refer Ms. Gillam to
 2 others if she has any questions. So I take
 3 it, Doctor, that as of the end of October,
 4 2007, you were providing what was requested of
 5 you to Mr. Thompson and company.
 6 COFFEY, Q.C.:
 7 Q. Yes.
 8 COFFEY, Q.C.:
 9 Q. Thank you, Commissioner.
 10 THE COMMISSIONER:
 11 Q. All right then, we'll adjourn until tomorrow
 12 morning, 9:30, thank you.

<p>-\$-</p> <p>\$400.00 [1] 268:14</p> <hr/> <p>-&-</p> <p>& [10] 27:16,21 28:12,13 31:10 90:3,8,9 100:21 219:10</p> <hr/> <p>-'-</p> <p>'02 [5] 117:6 222:13 224:25 225:4 244:3</p> <p>'03 [1] 153:17</p> <p>'04 [5] 202:8,10 215:12 216:21 286:9</p> <p>'05 [6] 100:20 153:4 228:17 239:5 266:2 301:23</p> <p>'06 [5] 250:19 299:18 301:6 334:18 342:10</p> <p>'07 [5] 255:19,20 346:2 353:4,11</p> <p>'80s [1] 72:5</p> <p>'82 [1] 6:20</p> <p>'86 [1] 6:20</p> <p>'87 [3] 6:24 115:24,24</p> <p>'90s [1] 76:6</p> <p>'95 [3] 202:4,7,10</p> <p>'97 [14] 13:7 68:5,8 99:7 119:25 120:5 147:15,23 158:16 228:12 255:19,19 286:8,13</p> <p>'98 [18] 13:8 74:2 75:23 78:21 85:9,10 96:1,15 97:9 104:3 128:3 130:12 140:18 147:15 153:4 158:16 164:18 286:13</p> <p>'98/99 [1] 15:4</p> <p>'99 [16] 11:7,17 13:8 68:4 68:8 102:4,6,13 104:3,3 129:11 227:11 228:11 243:7,25 286:14</p> <p>'blank' [1] 342:8</p> <hr/> <p>---</p> <p>-or [1] 227:5</p> <hr/> <p>-0-</p> <p>0 [2] 98:12,13</p> <p>0492 [1] 217:1</p> <hr/> <p>-1-</p> <p>1 [6] 10:10,24 80:17 121:12 144:2 356:16</p> <p>10 [4] 1:4 117:12 144:5 316:14</p> <p>1036 [1] 360:16</p> <p>10th [2] 363:5,12</p> <p>11 [4] 104:8 117:12 278:22 356:14</p> <p>114 [1] 3:7</p>	<p>1198 [1] 344:15</p> <p>11:09 [1] 214:24</p> <p>11th [5] 278:11 285:6 357:7,9 358:10</p> <p>12 [4] 103:9 107:22,24 358:25</p> <p>1200 [4] 188:7,9 189:1,7</p> <p>1287 [1] 74:11</p> <p>12th [1] 285:14</p> <p>1393 [1] 178:13</p> <p>13th [4] 285:19 286:1 287:11 358:7</p> <p>14 [2] 96:1,15</p> <p>14th [8] 96:19 217:18 219:15 240:6 244:11 287:24 288:6 343:22</p> <p>15-minute [1] 117:20</p> <p>15/01/04 [1] 214:24</p> <p>15th [3] 214:25 215:12 264:10</p> <p>16th [5] 75:6 264:10,10 266:12,21</p> <p>17 [2] 239:5 304:22</p> <p>17th [3] 118:9 297:12 344:16</p> <p>18 [12] 3:1 122:3 123:12 124:9,13,16,23 125:1 143:3,9,16 191:24</p> <p>18/02/98 [1] 98:18</p> <p>18th [4] 98:19 288:22,23 289:16</p> <p>1975 [1] 115:22</p> <p>1977 [1] 6:11</p> <p>1979 [1] 6:12</p> <p>1980s [1] 60:9</p> <p>1981 [2] 6:12,18</p> <p>1982 [1] 6:19</p> <p>1987 [1] 6:3</p> <p>1990s [2] 72:5 73:18</p> <p>1992 [1] 7:1</p> <p>1995 [1] 356:17</p> <p>1997 [9] 13:6 118:9 119:9 120:2 225:19 227:10 285:9 288:15 290:23</p> <p>1998 [21] 7:3 13:6 75:6 78:16,24 80:17 87:7 88:16 92:4 94:2,20,24 98:2,19 100:13 108:20 118:24 129:22 157:12 282:24 288:15</p> <p>1998/1999 [1] 91:5</p> <p>1999 [9] 11:15 13:7 112:8 225:24 226:24 227:11 285:10 288:16 291:5</p> <p>19th [6] 166:20,25 173:3 336:19 338:24 339:2</p> <p>1st [6] 10:6 178:16 188:15 252:20 299:3 315:23</p> <hr/> <p>-2-</p> <p>2 [3] 78:2 79:18 242:24</p> <p>20 [9] 72:20 90:15 92:19 268:18 281:24,25 282:11</p>	<p>337:21 343:25</p> <p>2000 [9] 121:2,12 123:18 129:11 228:11 243:7 266:18 277:24 285:8</p> <p>2001 [9] 125:16 126:17 127:6 128:20 129:8 131:4 131:4 278:23 285:8</p> <p>2002 [10] 116:6 218:22 219:7 224:7,21 243:21 249:22 275:7 281:25 285:7</p> <p>2003 [25] 93:21 126:22 131:20 132:5,24 134:10 135:4,23 137:1,4,9 149:18 151:25 152:6,23 152:24 153:14 165:19 166:7,20 168:11 173:6 175:12 285:8,14</p> <p>2004 [14] 177:25 178:8 178:16 179:13 182:14 183:9 202:5,18 203:3 214:25 243:25 251:11 285:9,20</p> <p>2005 [54] 10:6,11,18,24 10:25 52:2 53:19,25 101:2 102:11 128:13 145:2 164:18 212:16 217:3,18 220:19 225:19 237:11 239:1,18,25 241:3 243:3 245:21 249:13 251:12 252:21 256:11 261:18 264:10 266:1,12 268:3 270:13 275:3 277:23 278:22 285:6,14 285:19 286:1 287:11,24 287:25 288:6 290:23 291:4 295:12 297:13,18 299:3 304:1 356:18</p> <p>2006 [26] 103:9 104:8 107:20,22 154:17 250:14 300:17 301:6 306:21 313:10 315:23 318:12 329:8 331:13 334:2,24 336:19 339:14,19 341:25 343:3,22 344:16,17 346:4 347:19</p> <p>2007 [14] 54:14,15,17 254:1,13 351:14 354:4 356:14 357:11 358:7,25 360:17,22 362:4</p> <p>2008 [7] 1:4 3:1 43:21 145:13,15 363:5,12</p> <p>20th [3] 237:11 334:3 344:17</p> <p>21 [1] 37:8</p> <p>214 [1] 3:8</p> <p>21st [2] 116:6 288:22</p> <p>2226 [1] 94:6</p> <p>2227 [1] 97:25</p> <p>2236 [1] 266:10</p> <p>2262 [1] 300:15</p> <p>2270 [2] 5:4 338:23</p> <p>2273 [1] 5:5</p> <p>2280 [1] 5:5</p> <p>2282 [1] 5:5</p> <p>2296 [2] 5:6 42:22</p> <p>2297 [2] 214:12,18</p>	<p>2298 [1] 214:12</p> <p>22nd [1] 125:16</p> <p>23 [1] 241:3</p> <p>23rd [4] 241:22 243:3 246:19 351:14</p> <p>24 [3] 107:20 143:3,9</p> <p>249 [1] 358:23</p> <p>24th [3] 290:22 304:1 354:4</p> <p>25 [1] 100:20</p> <p>254 [1] 359:1</p> <p>25th [1] 127:6</p> <p>26th [5] 128:19 249:11 249:13 268:3 338:25</p> <p>27th [3] 121:1 291:4 294:11</p> <p>28 [1] 239:1</p> <p>28th [4] 239:18 292:5,21 294:7</p> <p>29th [6] 270:12,14 274:19 331:13 360:22 361:1</p> <p>2nd [4] 132:5 137:9 139:1 166:6</p> <hr/> <p>-3-</p> <p>3 [3] 143:25 149:2 150:7</p> <p>3.2 [1] 128:23</p> <p>3.4 [1] 118:13</p> <p>3.6 [1] 178:16</p> <p>30 [4] 90:15 157:12 325:7 341:24</p> <p>30th [5] 270:12 272:18 273:24 306:20 360:17</p> <p>31 [2] 177:25 286:9</p> <p>315 [1] 207:8</p> <p>31st [2] 10:24 249:12</p> <p>36 [1] 88:3</p> <p>362 [1] 2:3</p> <p>3rd [1] 334:24</p> <hr/> <p>-4-</p> <p>4 [5] 2:3 95:2 131:20 132:24 173:6</p> <p>4.2 [2] 125:20 177:25</p> <p>40 [6] 86:13,25 87:1,11 90:16 251:11</p> <p>4th [5] 132:13 137:4 138:11 161:19 299:18</p> <hr/> <p>-5-</p> <p>5 [4] 3:3,4,6 103:9</p> <p>5,000 [1] 188:23</p> <p>5/98 [1] 116:21</p> <p>50 [2] 90:16 215:8</p> <p>52 [1] 55:2</p> <p>54 [2] 54:23 55:2</p> <p>5:05 [1] 360:9</p> <hr/> <p>-6-</p> <p>6 [3] 95:3 295:12 318:12</p>	<p>630 [2] 207:11,13</p> <p>66 [1] 54:21</p> <p>6th [14] 43:21 256:11 259:7,20,22 266:3 274:5 274:8 275:3 277:9 280:3 281:11 300:17 329:8</p> <hr/> <p>-7-</p> <p>7 [1] 182:14</p> <p>7th [4] 277:23 278:6 339:19 340:10</p> <hr/> <p>-8-</p> <p>80 [2] 280:10,12</p> <p>80s [3] 62:7 201:24 202:1</p> <p>8th [2] 94:24 96:20</p> <hr/> <p>-9-</p> <p>9 [1] 316:13</p> <p>90's [1] 162:13</p> <p>90s [3] 62:7 63:16 201:13</p> <p>9:15 [1] 299:3</p> <p>9:30 [1] 362:12</p> <hr/> <p>-A-</p> <p>A.D [2] 363:5,12</p> <p>a.m [1] 299:3</p> <p>abilities [1] 76:12</p> <p>ability [2] 338:16 363:9</p> <p>able [15] 27:13 49:18 105:4 121:18 197:4 233:2 233:12 234:13 280:24 286:9 292:16 293:3,16 314:8 327:18</p> <p>above [2] 95:5 133:24</p> <p>above-mentioned [1] 318:15</p> <p>absence [1] 354:17</p> <p>absolutely [2] 210:15 210:22</p> <p>accept [1] 104:21</p> <p>acceptable [1] 252:13</p> <p>accepted [2] 78:11 182:11</p> <p>access [4] 70:8 276:5,8,9</p> <p>accessioned [3] 15:16 15:19 22:6</p> <p>accomplish [2] 46:17 46:19</p> <p>accordance [1] 358:18</p> <p>according [5] 47:19 178:6 281:11 318:16 345:22</p> <p>accordingly [1] 328:18</p> <p>accounted [1] 359:1</p> <p>accurate [1] 68:3</p> <p>accurately [1] 304:11</p> <p>acid [1] 60:3</p> <p>acknowledging [1] 339:1</p> <p>acquaint [1] 205:19</p>
--	---	---	---	---

<p>acting [1] 263:17 Action [1] 1:13 active [3] 46:7 70:10 211:6 actively [1] 274:3 activity [2] 184:12,14 acts [1] 239:15 actual [10] 27:11 34:7 44:20 122:16 124:25 206:2 232:14 250:17 269:20 358:25 acutely [1] 93:16 add [2] 280:24 281:3 added [3] 202:16,18 203:18 addendum [6] 32:18,21 97:21 214:23 215:11 301:2 addition [2] 8:14 204:22 address [6] 44:25 81:3 141:21 172:2 253:3 333:21 addressed [10] 77:17 131:21 132:10 139:24 141:9 145:14 275:3 339:14 340:21 358:6 addressees [1] 217:25 addressing [1] 46:2 adequacy [5] 54:16,24 55:1 56:2 310:16 adequate [9] 54:20,21 55:2 57:17,25 58:8,11 80:24 82:10 adequately [1] 24:6 adjourn [1] 362:11 administration [1] 13:2 administrative [2] 32:6 193:2 adopted [2] 81:10,12 advice [2] 307:7,12 advise [4] 252:21 259:9 307:15 318:25 advised [1] 241:10 affairs [2] 69:25 191:5 affect [1] 177:10 afternoon [4] 19:21 49:10 291:25 357:14 again [35] 23:18 24:11 38:12 58:23 61:19 67:9 69:21 73:9 79:5 90:11 97:25 98:3 106:24 122:12 127:4 166:22 171:7 178:14,25 182:14 189:18 190:6 195:8 239:1 254:9 256:12 288:21 292:18 296:5,18 315:23 322:23 324:25 339:21 340:10 agency [1] 71:3 agenda [3] 128:21 196:7 196:9 ago [9] 47:21,22 114:4 175:18 208:4 210:5 254:7 254:7,19 agree [1] 169:5</p>	<p>agreed [4] 118:18 126:2 126:6 304:8 ahead [6] 9:6,16 165:6 210:22 253:2 301:6 al [1] 1:9 alcohol [2] 15:13 146:13 alcohols [1] 147:4 alive [1] 327:17 allotted [1] 189:23 allowed [1] 84:5 alluded [3] 119:20,20 264:9 almost [1] 285:7 along [6] 13:2 63:17 136:18 197:8 234:9 253:14 alter [1] 159:12 always [15] 67:19 70:6,7 92:20,21,24 105:19 107:17 159:5 164:9 171:23 193:1 237:4 291:7 294:14 amended [1] 49:1 American [4] 7:8,10,12 193:16 among [5] 86:14 172:21 181:20 184:24 207:17 amongst [4] 237:11 271:18 278:7 345:2 amount [9] 65:16 151:18 201:3 204:4 206:5 251:18 261:1 288:25 310:14 analysis [12] 14:17 72:22 88:17 208:23 241:16 305:14 312:14,17,24 313:5,5,25 Anatomic [1] 125:15 anatomical [3] 118:8 177:22 178:15 Anatomy [1] 121:1 ancillary [2] 65:21 136:17 Andrew [1] 215:11 announced [1] 353:11 another's [1] 199:15 answer [11] 52:17,21 81:3 172:11 187:7 230:14 230:15,24 231:24 326:3 341:20 answered [1] 170:5 antibodies [3] 133:20 133:25 161:16 antibody [1] 137:17 anticipate [4] 14:5 243:2 251:12,14 anticipated [1] 307:10 anytime [1] 113:16 anyway [16] 46:25 55:16 55:20,23 115:22 136:10 158:8 174:5,8 255:12 263:18 266:4 280:16 283:24 340:13 347:22 Apart [2] 313:2 321:11 apologies [1] 118:11</p>	<p>apologize [6] 128:22 177:20 253:5 255:20 339:12 343:19 apologizing [1] 253:1 apparatus [1] 363:10 appear [2] 127:9 232:5 Appearances [1] 1:5 applies [1] 22:12 appreciate [28] 22:15 58:13 86:1 102:23 103:2 120:7 128:2 134:7 138:3 151:14 173:7 174:13,20 175:24,24 178:24 194:9 194:14 204:23 210:8 214:10 224:24 251:5,15 286:3 295:22 348:5 349:6 appreciation [2] 90:3,9 approach [6] 77:2 91:23 150:8 303:17,21 322:1 appropriate [18] 9:10 18:25 24:22 28:18 30:10 30:20 33:15 50:9 55:4 90:23 91:1 97:16 106:6 147:2 163:22 180:14 253:14 262:16 appropriately [8] 22:20 26:15 27:15 90:11 220:16 232:25 338:9,17 April [29] 10:6,10,24 94:20,24 96:1,15 103:9 104:8 107:20 121:1,12 123:18 127:6 131:20 132:13,24 134:10 135:4 137:1,4 138:11 161:19 173:6 175:11 255:19,20 334:24 336:23 area [5] 10:21 12:18 13:10 24:20 63:12 areas [3] 44:5 63:3 211:15 arise [2] 110:24 247:5 Arising [1] 127:7 arose [3] 145:14 337:8 342:21 arrange [1] 292:17 arrangement [10] 9:21 9:25 39:6 43:19 195:10 205:24,25 209:12 253:21 253:22 arrangements [4] 30:6 30:18 208:11 268:5 arrested [1] 167:10 arrive [5] 19:13 20:4,14 21:3 205:11 arrived [1] 113:7 arrives [4] 19:16 205:9 209:19,21 arriving [1] 96:16 articles [1] 70:21 ascertain [2] 49:18 110:13 aside [2] 58:15 276:2 asks [1] 183:1 aspect [4] 12:14,21 111:14 323:9</p>	<p>assay [5] 72:25 81:5 157:13,23,24 assays [1] 95:6 assertion [1] 178:6 assessment [4] 215:6,10 268:12 313:3 assist [2] 292:16 322:11 assistance [2] 197:13,24 assistant [2] 8:6 44:4 assisted [1] 54:18 associate [3] 7:1 120:15 120:17 associated [1] 270:4 Association [3] 1:14 71:5,6 associations [1] 193:17 assume [4] 91:8,17 234:1 251:18 assumed [2] 111:21 130:5 assuming [2] 151:3 346:9 assumption [3] 77:16 140:1 162:3 assumptions [1] 130:1 assurance [14] 86:4 129:21 130:12,17 131:12 131:16 184:12 186:18 187:2,4,5,8 192:6 196:15 attach [1] 73:9 attached [7] 70:16 73:10 81:5 241:13 278:9 291:8 360:23 attaching [1] 334:4 attachment [1] 278:13 attend [5] 189:10 190:10 197:5 200:20,22 attended [4] 191:1 200:23,24 345:15 attendees [1] 237:11 attending [7] 33:9 73:13 73:15 201:1,5 292:8 307:15 attention [21] 127:17 137:19 139:17 142:23 150:14 178:9 182:24 183:21,24 230:11,12,19 230:25 245:18 253:11 318:21 322:16 323:10 329:9 330:8 334:19 audio [3] 344:22 345:19 346:1 auditorium [1] 344:21 August [13] 239:4 240:2 241:2,22 243:3 245:21 246:18 249:11,12,13 339:19 340:10,21 authorities [2] 1:17 195:12 authority [4] 1:11 10:1 13:7 43:20 automated [1] 244:9 automatically [1] 182:21</p>	<p>aux [3] 12:16,23 16:5 avail [1] 272:1 available [25] 61:19 62:13,19,21,22 63:17 64:22 67:11,25 70:4,11 70:15,22 71:8,24 81:2 126:7 129:3 187:22 188:3 190:20 213:12 307:18 346:12,17 average [2] 87:1 237:21 averaged [1] 86:13 avoid [1] 332:21 await [2] 51:12,14 awaiting [1] 261:14 aware [64] 18:4 41:4 46:5 46:21 47:3 50:20 56:17 56:21 62:12 77:7 93:7 93:13,15,16 108:24 126:16,23 129:10,15 131:3 132:23 142:20 155:11,13 156:11 160:2 160:6,16 161:13 166:13 166:24 167:18 176:19 177:10 179:6,13,16,25 183:13 200:20 218:4 223:14 229:19,20 239:18 251:7 257:20 262:19 271:11 274:9 297:16,22 303:13 305:20 306:15 325:6 329:24 330:22 342:25 343:3,7,13 345:7 359:12 away [6] 4:22 172:7 205:17 206:23 240:4 354:13 awhile [6] 51:19,21,22 52:6 129:10 147:19</p> <hr/> <p style="text-align: center;">-B-</p> <p>B [2] 178:18 179:8 Bachelor [2] 6:10,11 background [5] 5:24 5:25 76:5,7 292:12 bad [1] 50:5 Baker [1] 316:13 Ballpark [1] 190:5 Banerjee [1] 297:13 Barry [11] 219:8 223:9 223:23 224:1 240:8 275:3 277:24 288:24 289:7 295:13 351:15 based [14] 77:19 97:21 158:18,18,19,21 226:20 235:1 254:6 255:22 280:2 285:1 335:7 351:23 basis [15] 20:1 34:25 35:7 38:17 65:23 86:20 141:16 147:1 173:20 188:11 191:23 201:1 232:15 302:18 303:3 Basques [3] 12:16,23 16:5 batch [3] 83:8 126:3 294:10 batches [2] 82:25 316:19 battle [1] 204:7</p>
---	---	--	--	---

bear [1] 135:16	blank [1] 361:23	Brook [91] 6:3 14:14,15 14:20,22 17:17 21:19,21 36:24 37:7 46:7,8 49:3 61:13 62:25 69:24 78:18 80:2 81:10 83:9 85:9 86:22 96:25 99:1,18 101:2 104:12 108:7,25 112:20,24 113:1,8 114:22 119:13 133:9 135:24 144:6,11,14 146:16 156:22 158:13,14,19,24 176:20 180:5 181:5,6,20 183:2,5,14 184:3,13 186:13,19 187:22 190:1 191:16 193:24 194:24 198:16 199:5 200:13 201:12 206:1 207:23 208:8,16 211:7 226:7 227:21 238:15 257:22,23 258:23 261:24 263:22 267:19,22 294:2,4 302:7 302:15 314:23 315:1,6 344:22 351:24	304:13 307:5,9 332:8,10 332:20 333:17 338:4 361:25 cancers [3] 227:19,25 338:6 canned [5] 127:23 128:8 299:19,24 300:18 cannot [1] 210:19 canvas [1] 38:6 capabilities [1] 236:24 capable [1] 234:6 capacity [1] 171:11 carcinoma [3] 61:23 337:10,15 carcinomas [1] 182:23 care [19] 10:18 11:6 45:14 77:3 121:13 125:17 127:5 128:20 138:14 162:16 165:15 168:18 171:8,9,12,13 177:24 182:17 276:7 career [1] 188:2 Carter [9] 178:19 179:8 179:8,18 180:4 197:6 223:18,19 347:21 case [29] 24:9 44:19 55:6 55:9 79:19 83:8,9,10 89:12 90:16 97:17 98:2 104:22 107:2 126:6 148:24 191:17 199:19 229:23 262:4 281:6 291:18 300:19 302:23,24 303:21 333:19 361:9,15 cases [90] 86:12,23,25 87:17 89:2 95:5,8 96:24 101:1 108:20 118:17,19 119:12 121:19 148:17 165:2 171:12 173:14 178:24 182:25 183:4 184:23 186:7,9 199:16 199:21 209:23,24 211:6 211:12 219:7 220:15 223:10 226:23 241:12 243:8 251:6,11,14,16 252:22,23 253:3,8,9,12 253:13 259:17 260:5 268:12,18 275:6 277:24 278:23 280:4,12 282:24 285:15,20 286:7 287:25 288:16 289:1 290:23 291:5,10 292:24 294:7,8 294:12 295:14 300:18,25 302:8,9,12,14,14,21,22 307:11 318:19 333:5,8 333:10,12 358:16 359:1 360:24 361:19 cassettes [1] 25:11 catchment [3] 10:21 12:17 13:10 category [1] 66:15 caused [5] 134:12 150:8 175:16,16 298:5 causes [2] 56:11 298:6 cc'd [1] 272:21 CD20 [1] 133:21 CD3 [1] 133:21 CD5 [1] 133:21	CD79 [1] 133:21 CEA [2] 133:21 174:7 cells [8] 79:21 88:10,11 90:14 91:19 98:12,14 215:9 central [3] 1:16 71:3 270:20 centre [8] 6:9 164:6,8,14 171:9,12 216:16 359:7 CEO [6] 54:14,17 249:4 249:6 272:12 360:18 CEOs [1] 271:10 certain [14] 25:19 85:21 138:10 147:7 155:13 160:17 162:12 193:4 206:3,5 233:3,22 322:9 325:8 certainly [15] 68:20 91:22 129:9 145:13 150:10 166:24 169:5,13 187:19 194:17 203:6 220:13 256:5 315:10 327:8 certainty [1] 56:22 Certificate [2] 2:4 363:1 certify [1] 363:2 change [14] 10:22 74:4 77:13 146:13 148:14,23 150:8 153:17,19,23 157:14 184:10 218:23 259:3 changed [12] 73:17 171:21 172:12,25 188:3 188:13 218:14 257:8,9 257:13 258:23 261:21 changes [3] 128:7 143:23 147:3 changing [2] 62:19 257:17 charge [11] 12:10,10 44:5 69:23 78:17,24 110:25 111:12 258:20 321:3 331:21 charged [2] 170:23,25 chart [4] 101:7 103:24 108:2 114:21 chat [1] 68:18 Chaytor [1] 1:7 49:6 check [6] 33:3 95:24 126:4 146:13 185:18 191:18 checked [6] 54:14 127:12 129:1,22,23 213:12 checking [7] 130:2 131:7 185:8,14 213:18 264:25 327:15 checks [2] 144:20 147:2 chemistry [3] 6:11 12:25 71:24 chief [14] 7:24 11:12 129:1,2 130:23 131:5 176:20 182:16 241:9 257:7 263:18 271:23 298:16 358:14 chiefs [4] 118:8 127:4 128:18 177:23
bearing [5] 173:13 194:8 216:2 310:6 324:3 became [11] 7:1,3 93:16 108:24 145:4 200:20 223:14 225:10 279:19 329:24 330:22 become [10] 62:12 64:22 132:23 183:13 229:20 262:19 263:17 297:22 342:25 343:12 becomes [1] 177:9 becoming [5] 61:18 67:10 93:12,15 192:4 began [4] 145:13 214:6 226:11 344:10 begin [3] 208:2 272:3 335:5 beginning [5] 145:15 238:12 301:5 313:10 334:1 begins [2] 137:13 271:7 begun [4] 121:14 263:23 271:15 294:6 behalf [2] 299:17 359:16 behind [1] 25:17 below [5] 8:5 206:3 292:20 332:5 336:21 bench [3] 21:3,6 22:10 Benchmark [1] 218:7 benefit [1] 134:8 benign [2] 239:14,15 Bernard [3] 1:6 2:3 4:6 best [13] 13:21 30:24 58:18 89:19 176:12 230:1 230:1 251:18 279:9 327:10 338:16 354:16 363:9 bet [1] 57:3 better [7] 50:11 58:5,16 90:3,8 159:11 182:8 between [11] 10:24 23:20 24:1 68:8 100:1 157:22 162:18 163:18 164:10 336:10 353:12 Bev [3] 197:6 223:18,19 bill [2] 268:25 269:4 billed [3] 268:13 269:6 269:10 billings [1] 252:2 bills [1] 269:24 biochemical [8] 71:23 72:21,25 81:5 100:1 157:13,23 184:5 biochemists [1] 71:22 biopsies [9] 48:12 122:1 122:2 148:12,13,18,22 148:23 182:21 biopsy [3] 123:11 184:20 184:20 bit [8] 53:12 66:10 83:4 151:4 209:24 353:21 357:24 360:14 Blair [1] 1:16	blind [1] 185:8 block [30] 14:23 26:16 26:19 28:18,22 29:2 30:9 30:13,17 31:5,7,10,13 31:15 84:1,11,15 95:2,3 103:9 107:21 151:8,11 151:16 241:17 280:2 291:11,14 328:1,1 blocks [41] 14:24 24:17 25:10,13,15 95:2,4,7,16 100:20 103:14 107:25 121:19,21 122:11 123:7 150:23,25 151:1,6,17 155:1,8 219:10 224:2 239:11 241:18 253:18 260:19 271:25 291:16,19 295:16 324:15 351:17,21 351:24 352:10,25 353:7 358:17 board [6] 75:3 76:21 140:14,16 200:16 339:8 boards [2] 68:18 271:24 Bob [1] 306:23 body [2] 229:17 304:5 bold [1] 253:5 Bonnie [6] 248:9 307:17 354:14 356:20,21 362:1 Boone [7] 331:14,18,24 331:24 332:2,4 356:25 borderline [3] 281:10 282:20 324:13 Boston [2] 190:17,25 bother [1] 237:1 bottom [4] 57:3 299:2 341:24 356:23 Brazil [1] 1:8 bread [6] 22:24 23:20 40:13,15,17 42:3 break [8] 117:11,18,21 201:9 212:19,22 291:25 339:21 breast [61] 1:12 13:9,9 14:12 16:7,15,17,21 17:11 20:25 21:24 22:18 23:5,18 24:10,14,19 29:6 34:2 36:23 37:1,8,23 41:11,19 44:8 45:10 46:6 46:7 47:1,4 48:11,13 51:5,6,8 52:25 58:15 72:8,17 86:23 87:17 91:24 122:1 124:15 149:4 151:18 161:8 179:12 228:1 235:21 241:18 251:6 286:8,17 304:13 304:14,15 361:6,17,18 Brendan [5] 30:21 107:20 251:22 268:3 334:2 brief [1] 298:9 briefly [2] 59:18 310:18 bring [9] 5:14 32:24 70:8 74:7 94:5 114:15 137:18 203:3 356:22 bringing [2] 32:22 77:5 brings [3] 33:1 71:8 217:4	Brook's [1] 309:22 brought [13] 18:14 19:5 19:19 21:6 108:23 127:17 142:23 178:8 217:17 226:6 234:16 245:18 334:19 brown [3] 79:20 90:15 91:18 Browne [7] 49:2 133:5 194:15 326:14,16,24 327:4 Browne/Jane [1] 1:9 browner [1] 159:16 Budgell [2] 270:15,16 budget [4] 170:25 212:7 251:17 269:11 buffer [1] 144:5 building [2] 9:12 34:7 bulk [1] 301:12 bulletin [7] 68:18 71:2 71:20 75:3 76:21 140:13 140:16 business [6] 74:4 77:14 125:19 127:7,21 355:15 Butler [2] 96:1,2 butting [1] 195:8 buy [1] 189:3 buying [1] 70:10		
-C-				
	Calgary [3] 63:4 113:3 187:13 Callista [1] 288:7 calls [6] 196:1 227:22 293:1 317:16 336:10,13 Cameron [2] 1:3 363:6 Canada [1] 192:8 Canadian [2] 1:15 7:7 CANCELLED [1] 3:5 cancer [24] 1:12,15 61:23 72:8 86:23 227:23 228:2 235:21 286:17,20 288:5 292:25 293:11,23 294:4			

<p>choice [3] 150:23,25 259:19</p> <p>choose [2] 28:18 150:25</p> <p>choosing [5] 28:22 94:2 150:23 151:17 239:11</p> <p>chronological [1] 114:22</p> <p>circulate [5] 141:1,4,7 141:21 239:4</p> <p>circulated [2] 141:11,14</p> <p>circumstances [2] 264:16 335:11</p> <p>cited [1] 158:1</p> <p>CK34 [1] 133:21</p> <p>Clare's [7] 107:22 118:16 119:10 126:1 132:11,14 139:25</p> <p>clarification [1] 214:11</p> <p>clarified [1] 322:6</p> <p>Class [1] 1:13</p> <p>classify [1] 304:8</p> <p>clear [9] 77:15 82:13 85:24 140:10,11 264:18 331:8,10 336:14</p> <p>clearly [1] 92:17</p> <p>clerical [1] 232:9</p> <p>Cleveland [15] 318:16 318:20 323:25 324:14,18 325:10,13 326:7 327:21 328:16,18 329:16,18,19 330:10</p> <p>Cleveland's [1] 328:19</p> <p>clients [1] 63:25</p> <p>Clinic [20] 292:25 293:12 293:23 294:4 307:5,9 318:16,20 323:25 324:14 324:18 325:10,13 326:7 327:21 332:9,11,20 333:17 361:25</p> <p>clinical [11] 182:15 241:9 257:7 263:17,18 279:25 285:1 298:16 307:10 322:10 361:12</p> <p>close [4] 48:4 65:23 115:20 325:3</p> <p>closely [1] 167:8</p> <p>CME [3] 189:23 190:10 190:12</p> <p>Co-counsel [2] 1:6,7</p> <p>Coffey [1187] 1:6 2:3 4:2 4:3,6,21,25 5:12,19 6:4 6:21 7:6,11,15 8:12,17 8:22 9:1,5,11,15,19,24 10:4,9,14,23 11:3,8,14 11:18,22 12:2,6 13:4,14 13:22 14:2,11,21 15:3,7 15:15,21 16:2,6,10,14 16:19,25 17:4,10,15,20 17:24 18:3,9,16,20 19:1 19:7,11,23 20:3,7,13,18 20:23 21:7,12,17,25 22:14,21 23:1,9,14,23 24:3 25:1,7,22 26:5,10 26:25 27:8,20 28:2,8,20 29:7,13,19,23 30:2,14 30:16,23 31:2,8,14,19</p>	<p>31:24 32:9 33:6,20,25 34:6,11,20 35:8,14,21 35:25 36:4,8,12,16,18 37:4,10,15,19,25 38:4 38:13 39:1,11,18 40:1,7 40:12,16,21,25 41:5,9 41:16,24 42:8,14,19,23 43:5,10,16 44:1,7,13,18 44:24 45:6,11,16,21,25 46:16,22 47:9,13,24 48:6 48:16,22 49:11,17,23 50:12,17,22 51:3,11,15 51:20 52:1,9,22 53:6,11 53:17,22 54:3 55:17,21 56:3,14,23 57:5,10,15 57:20 58:3,12,22 59:5 59:13,24 60:6,12,17,23 61:6,11 62:1,6,11 63:13 64:1,7,14,20 65:2,6,11 66:12,20 67:2,7,14,22 68:6,12,16,21 69:2,9,14 69:20 70:12,17,23 71:12 71:16 72:1,11,23 73:5 73:12,16,21 74:6,15,20 74:25 75:4,14,21 76:3 76:13,18,25 77:8 78:5 78:10,15,23 79:2,8,12 79:16 80:6,11,15 81:13 81:21 82:1,5,14,19 83:1 83:5,24 84:9,14,19,25 85:5,17,25 86:8,16,21 87:2,6,10,15,21 88:1,7 88:14,22 89:1,6,16,20 90:5,18,22 91:2,9,14,21 92:3,9 93:1,6,11,18,22 94:1,14,18,23 95:18,23 96:5,9,13,22 97:3,14,23 98:8,17,22 99:4,9,15,22 100:2,6,10,17,24 101:6 101:10,14,21,25 102:5 102:10,16,22 103:1,6,13 103:18,23 104:2,6,18,24 105:5,9,20,25 106:9,14 106:18,23 107:9,18 108:6 108:10,14,18 109:4,10 109:15,24 110:4,12,19 110:23 111:3,17,22 112:4 112:9,14,21,25 113:4,11 113:15,24 114:5,14,20 115:2,7,11,15,21 116:4 116:9,14,18,22 117:4,9 117:15,24,25 119:7,18 120:1,6,12,16,21 121:5 121:11 122:15,24 123:4 123:10,16,24 124:8,12 124:20,24 125:8,13 126:15,21 127:2,20 128:6 128:12,16 129:6,14,19 130:6,10,16,21 131:2,10 131:17 132:2,9,18,22 133:3,8,12,16 134:21 135:3,10,19 136:4,8,13 136:21,25 137:6,12 138:2 138:8,19,25 139:9,18 140:5,12,17,21 141:10 141:15,25 142:9,17,21 143:1,6,15,22 144:9,15 144:19,25 145:5,12,19 145:25 146:5,10,21 147:5 147:13,24 148:5,9,19 149:1,11,16,22 150:6,11 150:16,22 151:2,7,13,20 151:24 152:4,10,22 153:2</p>	<p>153:13,20 154:1,7,11,15 154:20,25 155:4,10,17 156:1,6,16,21 157:1,6 157:17,21,25 158:5,12 158:22 159:3,9,17,21 160:1,5,10,21 161:1,14 161:23 162:8,24 163:4 163:10,15 164:16,22 165:9,17 166:5,18 167:3 167:17,23 168:3,8,12,17 168:21 169:7,12,20,25 170:4,8,14,19,24 171:3 171:16,22 172:1,3,8,13 172:18 173:1 174:12,24 175:6,10,21,23 176:5,11 176:18 177:7,14,18 178:12 179:5,11,21 180:2 180:10,15,18 182:12 183:8,12,20,25 184:6,11 184:17 185:1,7,12,22 186:1,12,17,23 187:9,15 187:21 188:4,8,12,16,20 188:24 189:6,13,17,24 190:4,14 191:3,8,13 192:10,16 193:10,18,23 194:2,6,13,18,22 195:2 195:8 198:6,14,20,24 199:3,8,12,18,22 200:1 200:5,10,17 201:8,18,23 202:6,11,15,19,23 203:5 203:9,22 204:9,25 205:23 206:8,19 207:2,10,18,22 208:1,5,9,14,21 209:2,6 209:11 210:11 211:1,17 211:21 212:4,10,14,20 212:24,25 213:8,17,22 214:1,5,9,17 215:3,15 215:22 216:1,8,15,20,24 217:12,16,23 218:3,15 218:21 219:2,16,20 220:1 220:17,23 221:6,13,23 222:3,7,11,16,21,25 223:5,11,17,22 224:4,10 224:23 225:3,8,13 226:5 226:10,16 227:14 228:4 228:9,15,20,25 229:5,9 229:13,18 230:4,9,16,20 231:1,6,10,14,25 232:13 232:21 234:5,21 235:3,7 235:12,18 237:8,18 238:1 238:7,18,24 239:8,23 240:5,14,18,22 241:6 242:1,6,11,15 243:6,13 243:18,24 244:10,14,19 245:3,10,17 246:1,6,10 246:17,22 247:4,8,15,19 248:1,5,11,16,21 249:3 249:9,18,24 250:3,8,15 250:22 251:3 252:7,12 252:17 253:7,17,24 254:5 254:12 255:13,17 256:2 256:9,20 257:1,12,16,21 258:2,7,12,18 259:1,6 260:1,9,16,23 261:2,7 262:12,18 263:2,6,11,16 263:21 264:2,6,15 265:9 265:15,20,24 266:8,15 267:3,8,13,17 268:1,10 268:17 269:1,5,9,14,19 270:1,6,10,19,25 271:6 272:13,17 273:15,20,25 274:6,12,17,22 275:1,10 275:20 276:1,14,20 277:1</p>	<p>277:5,21 278:2,20 279:1 279:15 280:8,18,23 281:4 281:13,17,23 282:4,8,12 282:16,21 283:2,8,12,19 283:25 284:5,11,18 285:3 285:18,23 286:23 287:2 287:9,17,22 288:3,10,19 289:15,21,25 290:6,11 290:15,20 291:2,22,25 292:2 293:18,24 294:3 294:21 295:5,10,21,25 296:4,8,14,19,24 297:3 297:7,8,21 298:2,11,15 298:19,24 299:14,22 300:6,14 301:10,17,22 302:5,13 303:2,6,11,16 303:24 305:8,12,19,24 306:5,9,14,18 307:25 308:7,11,22 309:4,8,12 309:16,20,25 310:4,10 310:23 311:6,14,22 312:3 312:8,12,18,22 313:4,9 313:14,19,23 314:5,13 314:17,22 315:3,11,16 315:20 316:22 317:3,7 317:12,20 318:4,9 319:6 319:9,13,18,25 320:6,13 320:18,24 321:5,15,21 321:25 322:14,19,25 323:7,14,18,23 324:10 324:19,24 325:4,16,22 326:22,23 327:6,14,24 328:6,13,17,22 329:1,6 329:13,17,22 330:2,7,13 330:21,25 331:6,11,17 331:23 332:3,22 333:3,9 333:20,24 334:16,22 335:4,14,21 336:3,8,16 337:7,14 338:21 339:17 339:24 340:3,8,16,24 341:7,12,16,21 342:13 342:19,24 343:6,11,16 344:9,14 345:1,6,16,21 345:25 346:11,16,25 347:7,12,14 348:4,9,13 348:17,24 349:5,13,17 349:24 350:5,10,14,18 350:22 351:2,6,12 352:5 352:9,13,20,24 353:3,9 353:17,22 354:1,21,25 355:6,10,16,22 356:2,6 356:12 357:6,10,15,17 357:21,25 359:11,15 360:6,9,11,12,21 362:6 362:8</p> <p>colleague [1] 186:10</p> <p>colleagues [2] 63:11 200:24</p> <p>collected [1] 18:14</p> <p>College [3] 7:8,8,12</p> <p>colour [1] 159:18</p> <p>column [2] 205:5 280:5</p> <p>coming [19] 16:21 33:22 34:15 46:10 50:3 69:21 70:7 76:15 96:15 100:25 103:19 167:19 236:13,23 242:12 262:24 264:1 301:16 308:19</p> <p>comment [13] 39:12 78:3 111:6 116:23 157:11,18 157:22 163:6 175:21</p>	<p>213:4,5 241:24 334:18</p> <p>commentary [1] 179:17</p> <p>commented [2] 310:16 310:16</p> <p>comments [10] 95:7 109:8,17,19 110:9 135:17 177:2 187:14 361:8,21</p> <p>commercially [3] 144:16,18 213:12</p> <p>Commission [10] 1:1,6 1:7 4:9 54:7 97:7 350:24 359:5 363:4,7</p> <p>Commissioner [113] 1:3 4:1,4 5:2,7,13,23 7:16 18:10 38:7 43:18 44:21 47:14 48:23 52:23 54:5 59:8 61:14 68:23 69:22 74:12 79:4 85:6 86:18 94:9,11 114:7,11 117:11 117:13,19,23 118:1 131:20 135:21 160:13 180:17 181:2,15,19,24 182:4 189:19 190:7 195:7 195:16,20,24 196:5,10 196:14,18,23 197:9,16 197:21 198:3,11 205:2 212:15,18,23 213:1,6 214:13,14 216:9 231:15 233:1,8,16,24 234:17 235:19,25 236:5,11,21 237:6 238:2 240:24 242:17 245:5 264:20 291:24 292:3 295:11 296:5 297:4,6,9,11 302:6 324:2 326:5,13,18,21,24 327:3 331:8,9 337:2,18 343:19 344:6 346:20,24 347:11 360:8 362:9,10 363:7</p> <p>Committee [1] 339:8</p> <p>communicate [1] 273:4</p> <p>communicated [1] 278:8</p> <p>communication [2] 49:19 356:5</p> <p>communiqué [1] 278:9</p> <p>community [1] 267:20</p> <p>company [2] 359:19 362:5</p> <p>compare [1] 343:25</p> <p>comparison [1] 162:19</p> <p>comparisons [1] 237:20</p> <p>compensated [1] 206:25</p> <p>compensation [4] 206:15,18 207:3,7</p> <p>compile [1] 359:8</p> <p>compiling [1] 356:16</p> <p>complained [2] 172:17 172:19</p> <p>complete [7] 4:8 274:3 285:7 289:4 292:23 296:25 305:1</p> <p>completed [3] 121:20 122:10 260:8</p> <p>completely [1] 72:14</p> <p>completion [1] 95:7</p>
--	--	--	--	--

<p>complicated [1] 273:4 component [2] 338:3,3 computer [10] 32:17 95:25 101:18 102:7,9,19 103:24 224:16 225:20 280:22 computerized [3] 280:19 289:5 290:1 computers [1] 68:4 concentrate [3] 243:7 243:25 275:24 concern [16] 110:15 113:18 168:13 169:17,19 173:5,21 174:5,6 175:20 176:10 184:20 215:18 229:24 246:23,23 concerned [4] 54:9 144:2 229:4 308:18 concerning [10] 52:24 129:22 162:18 242:4 251:23 261:20 286:5 299:10 320:21 345:13 concerns [14] 54:9 55:12 81:3 108:22 109:3 126:23 163:23 168:23 173:13,17 184:23 245:22 289:7 349:20 conclude [2] 340:17 347:16 concluded [3] 250:18 284:6 292:22 concludes [6] 121:16 161:15 239:10 271:21 291:6 334:6 conclusions [1] 312:25 conducted [6] 233:5 245:23 297:14 305:14 313:6,11 conducting [1] 88:18 conference [10] 196:1 344:17,19 345:15,19,20 346:1,2,4 347:19 confidence [1] 76:11 confident [5] 147:22 229:16 232:18 290:14 294:11 confirm [5] 33:2 55:10 66:7 292:13 344:1 confirmation [1] 268:19 confirmed [1] 344:3 confused [1] 326:11 confusion [1] 332:8 conjunction [1] 237:21 connected [2] 50:25 298:4 connection [1] 133:13 consensus [5] 157:9 184:25 185:3,5 266:17 Consequently [1] 133:24 consideration [1] 257:17 considered [1] 159:23 considering [2] 260:4 349:3</p>	<p>consistent [1] 153:24 constant [3] 164:9 204:7 204:7 constantly [2] 62:19 199:15 consult [2] 302:8 343:2 consultancy [1] 177:9 consultant [1] 210:3 consultants [1] 261:15 consultation [3] 165:2 165:13 338:12 consultations [6] 187:4 209:23 210:8,12,20 254:20 consulted [3] 119:13,22 247:16 consults [1] 253:8 consuming [1] 285:10 contact [15] 53:24 78:6 179:1 223:6 243:9 251:20 271:10 272:23 273:6 293:11 294:23 345:3 358:13 359:2,3 contacted [8] 120:11,20 231:20,22 247:12,13 273:7 356:20 contacting [3] 197:23 246:24 247:7 contacts [1] 197:10 contained [1] 279:10 container [10] 15:2,12 20:19 21:8,9 22:4 24:7 34:24 35:18 36:9 containers [1] 20:21 containing [1] 291:14 contains [1] 239:13 content [2] 181:8,12 contents [2] 2:1 150:7 context [16] 51:22 70:25 96:14 125:25 126:9 135:22 159:14 163:5 175:11 216:2 218:11 221:14 294:6 320:25 358:1,1 continue [11] 59:4 81:2 107:10 157:18 158:9 178:23 181:13 193:2 204:21 209:13 245:12 continued [5] 6:25 72:22 125:20 182:3 184:9 continues [7] 16:24 116:10 121:16 178:3 204:1 218:16 356:23 continuing [5] 72:5 178:5 187:23 189:1,21 control [23] 81:22,23 83:11,12,12,14 91:25 92:21,24,25 93:3 118:18 125:20 126:2,4,8,10 127:8 128:24 149:4 151:12,12 239:16 controls [54] 29:9 80:19 80:22,25 81:16,17,20 82:8,11,18,21,24,25 83:19,22 84:22 85:20 86:3,5,7 92:6,11,13,17</p>	<p>92:18,20 127:12 128:25 129:22,23 130:3 131:7 149:3,8,10,14,18,21,24 150:3,4,5,14 151:1 152:16,17 153:9,12 154:21 219:10 239:19 241:19 279:13 310:17 conversation [10] 116:10 216:3 242:19 244:4,13,17 251:4 267:5 286:3 343:21 conversations [3] 241:8 267:7 319:11 conversions [1] 310:19 converted [5] 218:6,10 218:11 304:9,19 converters [1] 307:16 conveyed [1] 356:8 Cook [44] 107:23 118:10 118:10 121:1 163:25 182:15 183:16 204:15 210:3 217:11 223:18,23 239:1,17 240:7,11 241:8 242:4,7,18 243:20 244:1 246:18 251:7 252:4 263:8 266:2 271:23 297:13 299:1,12,17 308:19 309:5 309:9 316:1 333:16 334:3 334:8 335:6 336:10,19 338:25 343:20 Cook's [2] 217:11 241:15 cooler [5] 20:17,17,19 20:21 21:5 cooling [1] 51:5 cooperation [1] 183:1 coordinating [1] 197:17 copied [8] 44:9 134:6 249:14 286:1 287:12 292:6 306:22 358:5 copies [4] 74:9 272:18 295:15 358:10 copy [21] 32:6,7,8,10 33:14,17,17 74:8,11,17 95:4 146:20 194:7 239:3 278:14 318:2 332:25 333:17 351:7,10,11 copying [1] 304:4 core [3] 48:12 148:12,18 corner [93] 6:2 14:14,15 14:20,22 17:17 21:19,20 36:24 37:7 46:7,8 49:3 61:13 62:25 69:24 74:24 78:17 80:1 81:9 83:9 85:9 86:22 96:25 99:1 99:18 101:2 104:11 108:7 108:25 112:20,24 113:1 113:7 114:22 119:13 133:9 135:24 144:6,11 144:14 146:16 156:22 158:13,14,19,24 176:20 180:5 181:5,6,20 183:2 183:5,14 184:3,13 186:13 186:19 187:22 190:1 191:16 193:24 194:23 198:16 199:5 200:13 201:12 206:1 207:23 208:8,16 211:7 226:7 227:20 238:15 257:22,23</p>	<p>258:23 261:24 263:22 267:19,22 294:2,4 302:7 302:15 309:22 314:23 315:1,6 344:22 351:24 Corporation [16] 10:18 11:7 45:14 77:4 121:13 125:17 127:6 128:20 138:14 162:16 165:15 168:18 171:8,14 177:24 182:17 correct [40] 5:18 10:8,13 14:10 20:16 21:16 22:5 28:1 29:12 53:21 57:21 58:20 60:11 67:9 73:20 79:1 81:25 97:2 104:5 108:5 116:8 130:20 155:3 156:5,20 157:5 206:23 219:1 243:12 256:8,25 275:9 278:25 300:5 301:9 309:24 328:21 329:21 330:12 363:3 corrected [1] 103:2 correctly [1] 54:23 correlate [3] 300:23 310:21 338:13 correlation [3] 99:25 100:7 157:22 correlations [1] 261:11 correspondence [1] 360:25 corresponding [1] 361:2 correspondingly [1] 349:19 cost [2] 190:5,9 costs [2] 251:17 268:21 counsel [2] 49:5 114:9 couple [6] 68:22 118:1 277:7 324:17 327:1 354:3 courier [2] 251:19 253:18 course [11] 19:14 44:20 189:10 190:25 191:11 256:21 279:5 310:17 318:1 324:11 337:8 courses [1] 190:19 cover [15] 25:11 27:16 49:6 153:3 189:11 191:5 191:9,11 244:2 275:5 277:23 282:23 284:2 299:16 347:16 covered [1] 229:8 covering [6] 278:23 285:20 287:24 290:22 291:4 296:12 create [2] 222:17 281:1 created [3] 27:2,6 113:19 creating [1] 311:16 creation [1] 13:6 criteria [17] 28:21 63:21 280:3,7,13,14 281:10,11 324:4,11 325:12 327:16 331:2 358:18 361:5,6,7 criterion [2] 324:15 326:8 critical [1] 206:16</p>	<p>cross [4] 166:7,11,17 327:15 cross-reference [2] 228:3 289:9 cruel [1] 360:9 cube [1] 72:16 curiosity [1] 161:24 curious [1] 153:5 current [24] 7:18,23 8:20 29:14 30:4 41:12 43:18 47:15,18 49:7,8 69:25 191:5 243:8 253:12,13 257:23 259:17,17 331:21 333:5,10,12 334:12 curriculum [1] 5:16 cut [2] 23:12 361:5 cutoff [5] 226:24 264:18 281:18 282:3,7 cutoffs [2] 265:3 266:18 cuts [1] 205:17 cycle [1] 149:6 cytology [2] 15:11,13 cytoplasmic [2] 80:5 159:22</p> <hr/> <p style="text-align: center;">-D-</p> <p>D [3] 331:14,18,24 daily [7] 20:1 35:6 38:17 39:5 65:23 127:12 147:1 Dalton [1] 238:14 Dan [4] 331:24,25 332:2 332:4 Daniel [1] 1:10 Darlene [1] 1:12 data [4] 286:4 288:25 314:19 360:24 database [6] 225:23,25 226:1 227:2 290:2 359:8 date [16] 12:3,5 47:23,23 49:6 52:7,8 68:3 96:19 119:25 250:14 274:16 283:6 316:20 332:6 357:5 dated [9] 22:7 217:19 219:15 338:24 339:2 347:1,10 358:25 363:11 dates [5] 11:15,17 184:1 226:24 265:25 dating [1] 15:4 days [12] 14:12 15:24 31:23 35:11 36:22 41:10 46:15 60:7 98:23 206:24 207:13 213:15 DCIS [11] 337:3,4,18,22 337:24 338:1,4 343:23 343:25 344:1,3 deal [12] 12:20,21 15:12 22:11 49:25 216:11 245:1 245:2 252:1 262:8,9 277:17 dealing [15] 22:5 50:23 53:2 57:23 64:15 217:2 228:1 237:14 251:25 266:18 271:17 320:20,25 321:8,12</p>
---	---	---	---	--

<p>deals [2] 142:1,2 dealt [11] 12:20 64:23 136:16 232:23,25 252:8 255:6 269:21 323:17 335:25 336:1 debriefed [1] 262:24 decalcification [1] 55:3 deceased [12] 275:17 276:10,11,12,16 277:2 327:18 342:3,5,15,17 343:1 December [2] 6:20 295:12 decide [2] 33:19 212:3 decided [4] 33:14 233:15 237:4 256:5 decides [1] 212:1 deciding [1] 247:11 decision [12] 182:9 186:5 233:17 234:1 255:7,10 255:18,21 284:7 327:25 328:2 351:22 decisions [6] 67:4 158:23 174:19 176:7 248:22 285:1 deemed [1] 361:10 deeply [1] 339:11 define [2] 61:21 262:8 defined [1] 33:16 definitely [1] 176:24 definition [1] 338:5 degree [1] 338:1 dehydration [3] 142:4 142:6 146:15 delay [2] 341:2,15 delayed [1] 50:3 delays [1] 49:25 delivered [1] 35:4 deliveries [2] 36:21,21 demonstrating [1] 182:23 Denic [13] 107:23 210:3 238:15 258:20 262:25 263:12,12 298:9 332:6 347:21 350:13 351:15 352:6 Denic's [2] 298:12 344:20 Dennis [1] 356:24 department [13] 52:14 52:14 67:25 95:9,11 106:4 167:12 197:11 201:12 206:11 248:15 272:4 317:19 department's [1] 105:15 depending [3] 58:23,25 143:10 dermatologist [1] 211:7 dermatopathology [3] 211:6,9,10 describe [5] 22:17 24:12 24:16 224:11 225:9 described [8] 34:12,13</p>	<p>36:7 245:4,7,8 256:14 344:5 describes [1] 346:8 description [1] 22:11 desk [1] 357:1 despite [2] 86:3 167:9 detail [3] 118:15 238:9 259:14 detailed [3] 237:22 354:15 361:8 details [2] 5:21 121:15 determination [2] 185:17 325:18 determine [4] 73:23 203:13 276:9 280:1 determined [1] 261:10 develop [5] 77:19 127:23 192:23 196:11 225:17 developed [1] 122:5 developing [1] 197:24 developments [1] 71:9 diagnosed [4] 227:20 286:17 304:13 337:10 diagnosis [25] 27:22 28:16,16 58:21 59:3 107:14 173:18 184:25 185:3 191:19 283:17 310:22,22,24 311:1,2,3 335:24,24 337:22,24,25 338:14,14,15 diagnostic [20] 32:20,21 59:21 61:19 66:5,18,24 66:25 73:9 133:23 135:7 136:3 165:5 173:11 174:16,18,21 175:3,22 176:2 Diane [1] 278:6 dictate [1] 201:3 dictated [1] 100:14 dictionary [1] 299:24 died [1] 354:10 differed [2] 337:25 338:1 difference [4] 92:22 174:9 234:2 273:16 differences [1] 34:1 different [11] 61:20,20 71:23 72:14 84:5 95:2 103:7 149:14 224:22 251:12 291:11 difficult [5] 111:7 215:10 230:14 276:5 347:2 difficulties [6] 137:15 137:22,25 138:5 139:15 334:10 difficulty [3] 56:12 111:7 209:24 Dimakulangan [2] 115:10,14 din [1] 264:17 direct [3] 53:25 54:2 293:11 directed [4] 113:18 216:11 299:6 359:22 directing [1] 69:15</p>	<p>direction [1] 9:9 directions [1] 332:13 directly [12] 8:3,7 9:9 103:10,15 107:3 243:8 305:18 319:10 332:20 333:1 340:15 director [20] 7:1,3 8:4 79:11 120:24 210:18 249:16,19,23,25 256:15 256:23 258:5,8 261:19 269:22 270:9 299:6 356:5 358:12 directors [9] 120:23 238:17 239:2 256:12,13 256:14,16 272:25 332:12 Discipline [2] 7:24 11:12 disclose [1] 343:24 disclosure [4] 247:13,25 355:15,19 discontinue [1] 254:19 discontinuing [3] 81:4 241:11,21 discovered [1] 145:23 discrepancies [1] 338:9 discrepancy [5] 310:21 335:22 338:7,8 343:23 discuss [11] 69:18 139:22 140:4,8 163:22 245:16 292:18 322:24 334:9 354:11 355:11 discussed [19] 81:8 91:10 97:19 118:14 120:10,19 145:18 152:11 152:13 193:22 194:23 197:6 220:9,12 223:9 244:7 254:20 308:20 340:13 discussing [5] 55:6,8 199:16,19,21 discussion [8] 46:14 244:25 264:23 288:24 289:6 326:25 336:20 358:9 discussions [2] 46:21 313:15 distances [1] 190:24 distinguish [1] 153:15 distribute [3] 139:21 142:10 240:1 distributed [5] 33:8 71:2 140:23 193:19 278:16 distributing [1] 140:22 distribution [1] 45:18 divide [2] 86:13 207:16 division [7] 1:15 120:25 125:14 177:22 178:15,22 234:10 divisional [4] 120:25 127:5 128:19 177:23 divvying [1] 207:4 docs [1] 278:15 doctor [269] 4:22 7:7,16 9:6 10:15 13:5 18:4 20:25 25:2,23 27:21 33:7 33:14,21 36:19 41:1 42:15,20 43:7 45:18 46:1</p>	<p>46:23 49:2,12,24,24 50:23 51:16 52:10,23 56:4,15 57:16 59:6 60:24 65:12 67:15 68:17 70:24 72:2 73:22 74:14,16 75:5 75:10 76:19 78:16 79:17 81:14 85:6 88:8 91:3,22 94:6 95:10 96:23 97:4 97:24,25 98:18 100:18 103:8 104:8 105:10 106:25 107:24 108:19 109:25 111:23 114:16 115:24 116:15,15 117:10 118:3,6,12,22 120:22 122:4,25 125:14 127:3 128:17,18 129:7 130:11 131:3,19 133:17 134:7 135:4 137:21 138:9 139:1 142:1 143:17 146:11 147:25 148:10 155:11,19 156:7 157:10 161:15 162:9 165:18 166:6,19 166:22 168:22 169:13 177:21,25 178:14,24 180:3,19 182:13 183:2 184:12 188:25 189:18 191:14 193:11 195:9 198:7,15 200:6 201:10 205:24 207:19 208:16 212:5,17 213:9 214:11 214:19 215:16 217:4 218:8 219:11 221:7,20 228:10 229:19 230:5 237:9,19 238:25 239:17 239:24 240:6 241:1 243:25 245:11,18 249:10 252:3,18 253:11,25 256:10,11 257:2 259:7 259:15,19 261:8,16 262:19 264:8,16 265:16 267:18 268:11,19 270:11 272:9 273:6,16 275:4,15 276:15 277:6,13 278:4 278:21 279:7 280:19 282:22 285:4,25 287:11 287:25 288:21 290:1 291:5,17 292:4,21 293:5 295:11 297:10,16 298:3 298:25 299:16 300:15 301:5,18 302:15 303:25 305:2 306:20 307:20 308:1 310:5 311:7 314:6 315:22 317:13 318:11 319:3 320:7 322:15 323:3 324:1 325:5 327:7 328:7 329:7,23 331:12 332:18 334:1,23 335:15 336:17 337:1 338:22 339:18,20 341:2,22 342:9,25 343:20 344:15 345:8 346:13 347:3,17,17 349:25 351:13 353:19 354:3 355:24 356:7,14 357:1,7 358:3,4 359:4 360:15,16 362:3 doctor's [1] 106:20 doctors [7] 1:9 94:8 95:12 104:13 110:1 158:25 292:11 document [9] 97:19 147:3 184:22 192:8,14 192:23 203:4 237:17</p>	<p>346:7 documentation [4] 53:14 226:21 279:5 356:17 documented [1] 127:13 documenting [1] 192:2 documents [3] 53:23 68:22 358:11 doesn't [9] 58:17 97:6 141:7 182:14 186:8 189:11 205:8 269:10 323:3 dollar [1] 57:3 dollars [5] 188:7 189:1 189:8 191:2 207:8 Don [7] 118:10 223:23 263:8,15 335:6 358:6 359:18 Donald [4] 239:17 241:8 299:17 334:3 done [70] 17:12 18:17 19:5,20 22:7,24 29:16 30:11 32:18,18 40:2 41:8 41:14 42:10 43:2 58:5 72:12,14,15 75:22 96:21 101:2 135:18 136:10 137:5 145:1,10,23 146:7 147:7 148:1,17,20,22 162:13 163:7 164:1,25 165:14 177:11 185:8 193:5 197:3 198:9,10,10 201:7 204:16 222:12 224:13,20 225:4,18 227:5 241:16 253:13 255:9 271:19 285:12 289:11 295:6 301:3 302:8 310:1 310:3 328:9,14,16 349:8 353:8 dots [1] 74:24 double [1] 94:12 down [9] 40:3 61:24 205:3,5,17 206:14 242:24 336:15 353:21 downgrade [1] 293:21 Dr [1395] 2:2 4:5,6,10,15 4:19,23 5:14,17 6:1,7,23 7:9,13,22 8:2,15,19,24 9:3,7,13,17,22 10:2,7,12 10:16 11:1,5,10,16,20 11:24 12:4,8 13:12,16 13:25 14:9,18,25 15:5 15:10,18,25 16:4,8,12 16:16,23 17:2,8,13,18 17:22 18:1,7,12,18,22 19:3,9,15,25 20:5,10,15 20:20 21:2,10,15,23 22:2 22:16,23 23:3,11,16,25 24:5 25:5,9,24 26:8,12 27:5,10,25 28:6,11,23 29:11,17,21,25 30:12,21 30:25 31:6,12,17,21,22 32:1,13 33:11,23 34:4,9 34:18,22 35:12,19,23 36:2,6,10,14,25 37:6,13 37:17,22 38:2,11,15 39:9 39:16,22 40:5,9,14,19 40:23 41:3,7,13,22 42:1 42:12,16,21,25 43:8,13 43:24 44:3,9,11,16,17</p>
---	--	---	---	---

Inquiry on Hormone Receptor Testing

<p>44:22 45:4,8,13,19,23 46:4,18,20 47:7,11,17 48:3,10,20 49:9,15,21 50:7,15,19 51:1,7,13,18 51:24 52:5,15 53:2,4,7,9 53:12,15,20,24 54:1,6 54:15 55:9,11,19,24 56:7 56:20 57:2,8,13,18 58:1 58:9,19,24 59:11,17 60:1 60:10,15,21 61:3,9,17 62:4,9,14 63:23 64:3,9 64:18,25 65:4,9,15 66:17 66:22 67:5,12,20 68:2,9 68:14,19,24 69:7,11,17 70:5,14,19 71:10,14,19 72:9,13 73:3,7,14,19 74:1,3,18,22 75:2,7,11 75:12,17,24 76:8,9,16 76:23 77:6,12,19 78:8 78:13,19,20,25 79:6,10 79:14 80:3,9,13 81:11 81:19,24 82:3,12,16,23 83:3,7 84:7,12,17,23 85:3,13,15,22,23 86:6 86:10,19,24 87:4,8,13 87:18,23 88:4,12,20,24 89:4,11,18,25 90:7,20 90:25 91:7,12,16,19 92:1 92:7,12 93:4,9,14,17,20 93:24 94:10,15,16,21,24 95:3,14,20 96:3,7,11,17 97:1,22 98:6,15,20,23 99:2,6,7,13,20,21,23,24 100:4,8,15,22 101:4,8 101:12,16,23 102:3,8,14 102:20,24 103:4,11,16 103:21,25 104:4,15,20 105:1,7,16,22 106:3,12 106:16,21 107:7,10,13 107:16,19,19,23,23 108:4 108:8,12,16 109:2,7,13 109:14,14,18 110:2,10 110:17,21 111:1,5,20 112:2,6,7,11,12,16,17 112:18,23 113:2,9,13,21 114:2,9,18,24 115:5,9 115:10,13,14,17,19 116:1 116:2,5,7,12,16,17,20 117:1,3,7,17 118:9,10 118:18,25 119:3,5,16,24 120:3,8,9,14,18 121:1,3 121:9 122:8,18 123:2,8 123:14,21 124:1,10,17 124:22 125:4,11 126:6 126:13,19,22,25 127:13 127:18 128:1,2,4,10,14 129:4,9,10,12,17,25 130:4,8,14,19,22,23,24 131:1,8,15,19,25 132:7 132:16,20,25 133:6,10 133:14 134:6,14,19 135:1 135:8,14,25 136:6,11,15 136:23 137:2,7,10,23 138:6,17,23 139:4,11,23 140:7,15,18,19,25 141:13 141:19 142:7,15,19,24 143:4,13,20 144:7,13,17 144:23 145:3,8,17,21 146:3,8,11,18,23 147:10 147:16 148:2,7,16,21 149:9,13,20 150:1,5,9 150:13,20,24 151:5,9,15 151:22 152:2,8,12,25</p>	<p>153:6,18,22 154:4,9,13 154:18,23 155:2,6,7,8 155:11,15,24 156:4,8,14 156:19,24 157:4,11,15 157:19 158:1,2,10,20 159:1,7,15,19,24 160:3 160:8,14,19,24 161:3,21 162:2,22 163:1,8,13,19 163:25 164:20,24 165:11 165:18,20,24 166:15,21 167:1,5,15,20,25 168:6 168:10,15,19,24 169:4,9 169:14,23 170:2,6,12,17 170:22 171:1,6,20,24 172:5,10,16,20 173:2,16 174:22 175:4,8,19 176:3 176:9,16,23 177:2,12,16 178:10,18,18 179:3,7,9 179:18,19,23 180:4,8,13 180:25 181:8,11,12,17 181:22 182:1,2,6,15 183:6,10,15,16,23 184:4 184:8,15,19 185:4,10,20 185:24 186:6,15,21,25 187:11,17,25 188:6,10 188:14,18,22 189:4,9,15 189:22 190:2,11,16 191:6 191:10,21 192:13,18 193:14,21,25 194:4,10 194:16,20,25 195:5,14 195:18,22 196:2,8,12,16 196:21,25 197:14,19,25 198:8,18,22 199:1,6,10 199:14,20,24 200:3,8,15 200:19 201:15,20,25 202:9,13,17,21 203:1,7 203:11,24 204:1,2,11,15 205:6 206:6,10,22 207:6 207:12,20,24 208:3,7,12 208:19,25 209:4,9,16 210:3,3,13 211:4,19,24 212:8,12 213:2,10,20,24 214:3,7 215:1,11,13,17 215:20,24 216:6,13,17 216:19,22 217:10,11,11 217:14,21 218:1,13,19 218:25 219:14,18,23 220:6,21,25 221:11,21 222:1,5,9,14,19,23 223:3 223:8,15,18,20,25 224:8 224:18 225:1,6,11,15 226:8,14,18 227:16 228:6 228:13,18,23 229:2,7,11 229:15,22 230:7,13,18 230:22 231:4,8,12,21 232:8,17,24 233:2,6,14 233:18 234:3,15,19,24 235:5,10,16,22 236:3,9 236:19 237:3,16,24 238:5 238:11,14,22 239:1,6,21 240:3,7,11,12,16,20 241:4,8,15,23 242:3,4,7 242:9,13,18,25 243:1,4 243:11,16,20,22 244:1,6 244:12,16,22 245:6,14 245:24 246:4,8,15,18,20 247:2,6,10,17,23 248:3 248:6,7,8,13,19,25 249:5 249:15,21 250:1,6,12,20 250:25 251:7,21,22 252:4 252:5,10,15 253:4,15,20 254:3,10,15 255:15,25 256:7,18,22,24 257:10</p>	<p>257:14,19,25 258:4,10 258:16,20,24 259:4,24 260:3,13,21,25 261:5 262:1,14,22 263:4,9,14 263:19,25 264:4,13,21 265:12,18,22 266:2,5,13 266:22 267:6,11,15,21 268:3,4,8,15,23 269:3,7 269:12,16,23 270:3,8,17 270:23 271:2,23 272:11 272:15,20,23 273:4,10 273:18,23 274:2,10,11 274:13,15,20,24 275:8 275:18,22 276:4,18,24 277:3,19,25 278:7,10,11 278:15,18,24 279:8,17 280:11,20 281:2,8,15,21 282:2,6,10,14,19,25 283:5,10,14,21 284:3,9 284:13,21 285:6,16,21 286:2,21,25 287:5,11,15 287:20 288:1,8,17,23 289:13,19,23 290:4,9,13 290:18,25 291:20 292:5 292:22 293:8,20 294:1 294:19,25 295:7,19,23 296:2,6,11,16,22 297:1 297:13,13,19,24 298:8,9 298:12,13,17,22 299:1,3 299:8,12,17,20 300:4,10 301:8,15,20 302:1,11,25 303:4,8,14,19 304:4,5 304:10 305:6,10,16,22 306:3,7,12,16,21,23 307:23 308:5,9,14,19 309:1,5,6,9,10,14,18,23 310:2,8,12,13,25 311:7 311:12,15,20,25 312:6 312:10,16,20 313:1,7,12 313:17,21 314:1,11,15 314:20,25 315:9,14,18 315:25 316:18,25 317:5 317:9,17,24 318:5,7,12 319:4,8,15,21 320:4,8 320:10,15,17,20,22 321:2 321:10,13,16,17,19,23 322:4,17,22 323:5,12,16 323:21 324:8,16,22 325:2 325:14,20 326:1,6,9 327:12,22 328:4,11,15 328:20,24 329:4,11,15 329:20,25 330:4,11,19 330:23 331:3,15,19 332:1 332:16,19,24 333:6,11 333:15,22 334:3,8,14,17 334:20 335:1,2,6,12,18 336:5,10,12,19 337:5,12 337:20 338:25 339:15,20 339:22 340:1,6,12,14,18 340:22,25 341:3,5,8,10 341:14,18 342:1,11,16 342:22 343:4,9,14,20 344:7,12,20,24 345:4,11 345:18,23 346:6,14,18 347:4,9,21,21,21,25 348:6,11,15,21 349:2,7 349:9,15,22 350:3,8,12 350:13,16,20,25 351:4,9 351:14,24 352:3,6,7,11 352:16,22 353:1,6,14,20 353:24 354:12,19,23 355:4,8,14,18,25 356:4 356:10,15,18,25 357:4,8</p>	<p>357:12,23 358:13 359:9 359:13,20,22 360:19 draft [6] 48:1,5 192:8,14 193:11 194:8 draw [1] 312:25 drops [1] 204:21 duct [2] 338:2,4 Ductal [1] 337:15 due [3] 50:1 279:5 361:23 duly [1] 134:4 during [8] 25:14,19 26:21 35:4 133:1 164:17 188:1 218:22 duties [3] 12:18,19 193:2 duty [1] 26:9 Dyer [12] 134:6 219:8,8 223:24 240:8 275:3 277:24 278:23 288:24 290:2 295:13 351:15 Dyer's [1] 289:17 DynaCare [8] 187:1 207:19,23 208:18 209:7 209:21 210:25 211:10</p> <hr/> <p style="text-align: center;">-E-</p> <p>e [14] 27:16,21 28:12,13 31:10 90:3,8,9 100:21 142:4 219:10 266:10 294:6 344:15 e-mail [22] 43:21 45:24 251:21,24 252:20 264:9 264:11 266:20 271:14 277:12 285:5,25 287:11 292:4,21 304:1,3 306:20 331:13 332:5,5 334:2 e-mailed [1] 318:1 e-mails [13] 227:22 249:11 264:25 266:23 270:12 277:7 278:4,5 288:21 341:23 348:19,22 354:3 early [7] 26:2 63:16 99:16 135:23 275:16 286:10 301:6 easier [3] 23:12,12 225:16 easily [5] 4:22 70:11,21 226:3 232:12 Eastern [48] 1:10 47:20 54:8,11 62:17 83:10,17 111:15 125:6 138:13 162:16 164:5,5 165:1,15 167:5 168:14 171:7 172:23 196:22 210:14 231:22 253:25 254:14,17 255:4,21 257:6 278:7 284:22 286:6 292:13 297:15,17 298:4,5 300:21 306:10 309:13 313:13,15 318:13 324:4 333:14 343:1 350:2 358:21 361:8 easy [2] 67:18 225:25 Eaton [1] 133:4 education [4] 6:14 187:23 189:2,21 educational [4] 5:24</p>	<p>139:5,14 140:10 effect [7] 27:22 47:5 131:6 267:4 268:11 269:10 279:18 effective [1] 121:12 effectively [2] 181:9 242:8 effort [2] 238:4 359:6 efforts [6] 134:2 173:23 238:20 277:17 292:8,20 eight [2] 133:20 173:8 either [8] 64:23 82:20 109:25 110:5 113:17 127:17 199:5 246:19 Ejckam [13] 93:17 134:6,19 137:7 156:8 160:15 165:18,20 166:22 167:5 168:24 173:2 216:19 Ejckam's [4] 117:17 126:22 131:19 146:11 elaborate [1] 245:11 electronically [1] 33:5 eliminate [1] 146:14 Elms [2] 347:21 349:9 307:19 elsewhere [2] 113:7 307:19 emergency [1] 41:1 emersed [1] 35:22 emphasis [2] 66:10 92:25 employment [1] 164:2 encased [1] 14:23 enclosed [6] 95:4 275:6 295:14 318:14 358:10,25 encompass [1] 12:19 encountered [2] 127:16 334:10 end [25] 6:17 8:11 14:14 14:15 25:3,12 34:15 38:21 42:17 43:1 59:9 142:12 146:17 150:18 193:6 205:10,11 239:25 261:8 285:12 307:21 347:12 353:12,13 362:3 225:16 ends [2] 107:12 143:11 engaged [1] 99:18 Enjoy [1] 288:12 ensure [7] 91:23 124:14 125:1 146:7 309:22 316:7 361:13 ensuring [3] 57:1,7 316:14 enter [3] 5:3 101:20 301:7 entered [13] 5:8,9,10,11 14:6 97:20 102:18 114:12 114:13 214:15,16,24 253:8 entirely [3] 58:15 113:14 171:25 entry [5] 100:14 101:1,3 217:25 237:20 environment [1] 205:14</p>
--	---	---	---	---

<p>envisaged [1] 209:13 envision [2] 209:17 210:24 epithelium [2] 239:14 239:15 equivalent [2] 157:13 207:3 ER [62] 28:4 29:15 66:13 72:24 73:23 81:23 83:12 90:10,12 92:5,11 93:8 95:6 97:17 108:21 118:13 119:12 123:20 133:21 134:24 149:12 156:9,10 156:12,23 157:7 159:22 160:11,18 174:17,20 175:1,17 178:17 183:3 184:1 218:10 219:4,7 221:8 224:13,20 226:12 227:15,17 235:20,23 239:19 254:2 255:22 261:11 268:20 279:11 280:4,10 281:25,25 286:7 300:1 318:18 323:1 352:15 ER/PR [114] 28:19 30:9 33:7 43:4 44:19 52:3 53:14 66:23 77:5 81:7 84:6 86:12,25 92:15 96:24 98:9,25 100:20 103:10 107:4 108:23 113:6 114:3 123:7 124:5 128:8,24 137:16 139:6 139:16 148:11,17 149:14 149:19 151:8 155:19,23 161:9 164:14 173:9 174:7 176:1 178:20 179:14 180:6,21 212:17 217:2,6 217:7 219:9 221:24 225:18 226:3 227:5 233:4 234:14 240:19 241:7,11 241:21 245:13 251:5 254:14 265:2,5,16 266:4 268:6 269:6 271:16 275:6 278:10,14 279:4,21 282:24 286:5 294:8,9 295:14 298:6 299:19 300:17,18,20 301:2,4 302:10 304:14,16 306:24 311:4,4 316:2 318:13 320:21 321:6,8,17 328:9 332:13 334:4 335:5 338:5 344:21 345:7 349:12 351:18 354:8 357:13 358:7 360:2,22 ER/PRs [1] 315:8 era [1] 233:3 erratic [11] 133:22 134:18 135:6 167:6 169:18,22 173:4,10 174:15 175:14 176:8 errors [5] 33:4 332:21 332:23,25 333:2 ERs [1] 259:8 escapes [1] 210:17 especially [1] 124:2 established [2] 11:13 359:5 estimate [6] 89:12,19,19 90:13 91:18 97:18</p>	<p>estrogen [13] 28:3 72:6 75:9 98:11 127:11,22,24 178:4,7 182:19 215:5 218:5 259:10 estrogen/progesterone [1] 72:3 et [1] 1:9 ethics [1] 343:2 Europe [1] 190:21 evaluation [1] 122:1 evening [1] 25:20 event [1] 347:13 everybody [5] 54:10 105:15 131:13 141:17,20 everyone's [1] 180:6 evidence [4] 52:24 160:12 254:6 258:19 evolve [1] 48:25 evolving [1] 48:24 exact [3] 36:11,15,17 exactly [11] 18:5 25:23 36:7 49:14 77:24,25 85:13 110:14 145:11 227:22 319:16 Examination [2] 2:3 4:6 examine [2] 22:9 24:12 examined [1] 25:14 example [29] 13:5,8 19:12 38:8 41:17 50:18 63:14,16 69:4 71:4 78:2 94:4 95:24 123:20 124:15 135:20,23 162:19,20 185:15 187:23 197:11 200:7 280:10 281:14,24 302:23 304:12 324:14 examples [4] 77:21 78:1 85:2 283:15 Excel [1] 316:4 excellent [3] 76:10 255:3 292:20 except [4] 27:12 97:7 134:15 204:1 exception [2] 256:22 350:23 excised [1] 21:14 excision [3] 148:13,22 148:23 excisional [1] 182:21 excluded [1] 327:17 exclusion [1] 326:11 exclusionary [3] 325:17 325:18 326:7 excuse [3] 145:9 180:18 195:8 execution [2] 245:4,7 exhibit [89] 3:5,5,7 5:14 38:5 42:20,22 43:21 74:10,10 94:3,6 97:24 98:11 114:6,6,7,12,13 118:5 120:22 125:14,18 127:3 128:17 131:18 137:8 166:19 177:19,21 178:13 182:13 214:12 216:25 237:9 238:25 240:23 249:10 252:18</p>	<p>256:10 264:8 266:9,19 268:2 270:11 275:2 277:6 277:22 278:3,21 282:22 283:9 285:4,13,19,24 287:10,23 288:4,20 290:21 291:3,23 297:10 297:11 298:25 299:15,23 300:7 303:25 306:19 312:13 315:21 318:10 331:12 333:25 334:23 336:17 339:18 341:22 343:17,19 344:15 351:13 353:18 354:2 356:13,14 360:15 exhibits [13] 3:2,3,4,6,8 5:3,4,9,10,11 118:2 214:16 292:4 exist [4] 92:13,16 256:3 258:13 existed [3] 67:19 167:22 168:11 existence [1] 267:19 exists [4] 47:1 166:25 187:12 195:21 expanded [1] 211:14 expect [10] 38:20 56:12 167:7 205:11 209:20 221:19 259:10 301:23 316:10 361:23 expected [2] 222:17 284:16 expecting [1] 38:22 expedite [1] 291:13 experience [9] 31:4 65:14 79:25 111:13 112:17,19,19,24 182:7 experienced [2] 63:12 76:9 expert [6] 211:9 226:21 234:25 287:14 307:6,12 expertise [1] 211:13 experts [3] 211:8 284:7 284:19 explain [5] 42:9 83:4 206:12 264:19 350:19 explained [3] 350:21 351:1,3 explains [1] 252:24 explanation [2] 298:3 298:21 explanatory [1] 77:14 exposed [8] 23:17 24:6 59:15 61:1,16 63:3 113:6 156:22 exposure [1] 160:22 expressed [4] 168:14,24 178:22 349:21 expression [5] 121:6,15 121:23 122:2 128:24 extend [2] 228:11,17 extensive [1] 288:25 extent [2] 193:5 244:13 external [25] 81:20,22 81:23 86:3,5 92:20,21 92:24,25 129:23 149:21 150:4 165:12 186:18</p>	<p>187:7 209:23 210:2,7,12 210:20 211:16,20 271:19 297:14,16 extra [4] 206:15,21 207:1 277:17 eyeballing [1] 313:2</p> <hr/> <p style="text-align: center;">-F-</p> <hr/> <p>F [1] 142:5 face [1] 23:6 facilitate [1] 43:3 facing [1] 261:20 fact [32] 14:7 17:25 23:2 38:22 55:14 98:23,25 100:7 106:19 107:11 119:3 122:25 148:1 161:6 167:9 180:4 189:7 208:10 242:20 246:14,25 273:7 276:21 290:17 316:12,15 318:21,23 327:16 329:10 329:18 336:24 fair [5] 25:13 63:1 190:24 310:14 315:1 fairly [4] 87:3 229:16 250:10 317:1 fall [6] 12:17 66:15 179:13 301:23 302:18 346:4 falls [3] 83:16 206:3 238:14 false [3] 148:11 218:18 223:13 familiar [1] 118:20 family [2] 33:14 292:11 far [9] 12:3 27:24 68:11 94:12 164:25 172:24 197:8 228:11 312:9 fax [3] 32:7 288:4 299:16 faxed [5] 32:2,3,5 33:1 47:20 feature [2] 234:20,23 February [21] 74:2 75:6 75:23 78:16,24 85:9 88:16 98:19 118:24 125:16 126:16,17 129:21 130:12 140:18 254:1 255:19,20 315:23 316:13 316:14 fee [1] 236:25 feeling [2] 261:19 262:2 fellow [11] 30:7 39:4 73:1 85:12 91:3 99:17 100:12 152:5 185:16 195:3 200:12 felt [4] 141:2 229:16 290:14 304:11 few [16] 59:20 64:16 79:24 88:6 122:13 190:22 230:6,8,8,8 252:23 259:11 276:22 277:2 279:3 354:11 field [1] 192:25 fields [2] 233:11,13 fifth [4] 202:4,18 203:18 209:18</p>	<p>figure [3] 190:5 207:7 207:16 file [13] 44:19 215:11 265:5,16,17 266:4 278:14 287:7 301:4 354:14 356:21,24 357:13 files [2] 263:5 291:12 fill [1] 253:14 filled [6] 8:10,10 90:23 91:1 202:25 206:2 film [1] 27:12 final [3] 48:1,4 358:24 finally [3] 165:18 295:11 340:20 financial [1] 269:20 fine [2] 111:21 280:14 finished [2] 203:14 352:18 finishing [1] 60:24 first [70] 5:1 6:5,10 12:10 20:24 33:2 53:12 60:8 72:4 73:22,24 80:7,14 88:23,25 89:2,3 90:3 92:4 93:12,15 97:9 119:1 132:19,21,23 133:1 139:10,12 142:2 143:11 144:1 146:12,16 149:7 156:17 160:22 169:10,16 170:15 179:7 216:18 217:5,8 219:11,12,12 221:7 240:21 244:1 247:5 249:12 254:16 262:7,19 270:13 272:25 277:7 278:5 287:19 297:22 304:18 316:10,20 330:10 340:20 341:23 343:12 348:3 354:4 FISH [2] 268:12,19 fit [1] 165:8 five [17] 8:9,20 35:3 36:20 88:5 166:19,20 191:2 192:24 201:14 206:13,17,21 288:11 317:10 326:15 340:11 fix [3] 24:6,8 47:18 fixation [24] 18:25 38:3 40:11 43:4 46:24,24 47:8 47:19,25 48:7,12,14 52:24 54:8,12 55:13 56:16 123:19,22 124:6 125:5 142:3 143:2 144:3 fixed [9] 57:24 58:16,18 58:20 59:2 122:3 123:12 124:16,19 flagged [1] 356:17 flocytometry [1] 136:18 focus [9] 93:5 149:21 150:4 211:11,13 245:15 245:16 262:7 336:13 focuses [1] 164:4 follow [7] 85:13 127:14 205:15 271:13 272:20 322:7 335:7 followed [2] 125:10 147:9 following [9] 91:4,6 133:19 137:18 167:6</p>
---	---	---	---	--

<p>257:4 259:13 286:4 300:18 follows [3] 107:5 300:22 344:21 Fontaine [1] 178:18 fore [1] 52:4 foregoing [1] 363:2 forget [2] 67:18 155:20 forgotten [2] 122:9 180:22 form [13] 14:4,22 21:14 34:16,23 36:1 95:16 106:6 228:10 232:5,6 253:14 296:20 formal [4] 187:2 195:10 199:11 268:4 formalin [25] 15:1,1,13 18:25 19:2,4 23:17 24:1 24:7,11 34:24 35:17,22 35:22 42:2 51:9 124:3 143:11 144:4,5,6,12,14 144:18 213:13 formalin's [1] 144:21 format [5] 103:7 123:5 128:3 300:8 333:16 formats [1] 128:8 forms [4] 62:20 84:5 228:7,16 formulae [1] 157:7 forth [2] 179:6 348:14 forthwith [1] 133:25 forward [7] 194:14,17 219:6 221:9,25 278:14 279:5 forwarded [3] 44:14 278:12 339:4 forwarding [1] 339:5 found [5] 134:3 161:7 173:24 252:13 267:14 Foundation [2] 286:20 288:6 four [33] 8:8,20 28:13,25 86:14 87:11 94:7,19 105:2,10 106:2,4,7,8 110:14 134:4,22 135:22 156:7 173:22,25 175:12 201:13 202:7,12,14 206:20 243:7 266:25 267:1 340:11 341:4 361:21 fourth [3] 107:11 202:3 203:18 frame [13] 113:25 124:23 192:5 204:3,18 205:17 224:20 225:18 227:8 228:22 229:3 286:18 347:3 Frances [2] 251:22 253:10 Frank [3] 249:14,16,22 free [2] 277:14 361:11 freezer [2] 72:19,20 frequent [2] 173:20 174:8 frequently [3] 35:6</p>	<p>136:24 210:16 fresh [1] 72:17 Friday [6] 37:9,24 41:18 42:7,11 334:3 front [2] 74:13 265:8 frozen [2] 72:16,18 fruition [1] 193:3 frustrated [1] 204:17 fulfils [1] 204:19 full [1] 5:1 fully [3] 205:8,16 294:6 function [3] 159:12 211:2 235:6 functional [2] 205:9,16 funded [5] 201:14,16,21 202:12,14 funding [3] 8:23 212:5,5 furthermore [2] 24:18 361:18 future [2] 78:12 265:6</p> <hr/> <p style="text-align: center;">-G-</p> <hr/> <p>Gamma [4] 187:1 209:21 210:25 211:10 Gander [1] 83:9 Ganguly [3] 321:13,17 335:1 Gardinar [1] 278:10 Gardiner's [1] 278:16 Gary [1] 316:12 Gash [1] 250:2 gastro [1] 134:24 gather [17] 28:5 53:13 74:21 126:9 160:12 176:12 208:10 220:8,15 221:1,2 242:7 254:6 258:14 289:17 336:19 337:9 gathered [1] 192:6 gathering [1] 288:25 general [13] 6:19 92:14 109:19 126:1,11 141:5 162:14 167:11 231:2 261:12 310:20 312:25 313:3 generally [12] 61:15 127:9 129:15 136:2,10 136:20 178:2 301:24 303:13 316:17 320:14 337:17 generate [3] 222:18 224:19 227:11 generated [2] 227:1 228:5 generation [1] 111:25 gentle [1] 360:11 George [1] 271:9 Gillam [6] 272:10,10,12 358:5 360:18 362:1 girl [1] 248:8 given [17] 22:6,8 27:19 47:20 129:21 130:12 173:4 242:20 257:17</p>	<p>258:19 259:2 260:11 292:23 295:6,8 324:4 342:4 giving [1] 22:20 glad [2] 81:2 137:13 glass [3] 26:20 27:17 351:20 Globe [2] 277:10,11 go-forward [3] 302:12 302:14 333:7 goal [1] 46:17 Godlewski [2] 94:17,19 goes [9] 13:2 27:1 45:2 80:16 136:17 137:19 167:13 271:17 344:3 gone [17] 27:24 43:15 45:9 62:25 110:6 115:1 129:9,16,25 131:14 169:15 202:2 204:5,20 240:10 255:11 312:9 good [12] 90:9 109:20 127:9 163:20 204:14 209:22 254:24 255:2,10 255:23 276:19 324:13 gossip [1] 179:17 Grabka [2] 43:23,25 Grace [3] 118:16,19 119:11 grades [1] 146:13 Grand [2] 83:15 238:14 great [4] 49:12 169:17 169:19 292:7 gritty [2] 248:18 269:20 grossed [3] 15:16,17,19 grossing [5] 21:3,6 22:10 48:12,15 group [14] 70:9 71:7 132:10 158:25 199:2 237:10,14 238:20 264:23 287:12 302:16 314:24 315:1 336:22 groups [2] 245:20 302:21 guess [12] 23:21 32:5 37:18 54:24 63:24 89:19 172:21 216:19 262:23 297:25 333:12,17 Gulliver [2] 127:23 166:21</p> <hr/> <p style="text-align: center;">-H-</p> <hr/> <p>H [11] 27:16,21 28:12,13 31:10 90:2,8,9 100:21 219:10 278:12 H&E [5] 66:1,6 151:21 151:23 279:11 half [1] 60:8 Halifax [5] 165:2,4 187:5 210:16,23 hand [3] 94:8 279:24 280:5 handle [8] 21:22 40:10 171:13 210:6,20 252:22 300:12 336:7 handled [6] 21:19 38:10 72:12 317:18 332:15</p>	<p>337:18 handling [1] 294:17 hands [2] 38:25 39:21 handwriting [3] 114:17 346:19 353:18 handwritten [6] 239:3 242:19 280:22 299:1 316:12 360:3 happy [1] 232:16 hard [3] 32:6 72:18 349:3 harmed [2] 304:8 305:5 he'd [1] 311:18 head [4] 140:23 161:12 180:19 315:23 heads [4] 76:14 242:8,21 272:2 Health [88] 1:11,17 6:8 10:1,17 11:6 29:14 43:19 45:14,15,17 47:20 53:18 54:8,11 55:14 56:24 62:17 75:18 77:3 111:15 121:13 125:6,16 127:5 128:20 138:13,14 162:10 162:16,17 164:5,5 165:1 165:15,15 167:5 168:14 168:18 171:8,8,13 172:23 177:24 182:17 196:22 197:12 206:11 210:14 212:13 216:16,18 231:22 254:1,13,14,17 255:4,22 257:6 266:17 272:4 278:7 284:23 286:5,6 292:13 297:16,17 298:4,5 306:10 309:13 313:13,16 318:13 324:4 331:14 333:14 334:25 343:1 350:2 355:2 358:8,21 359:7 361:8,20 Health's [3] 94:7 212:11 300:21 hear [11] 31:21 73:22,25 128:7 192:12 217:5,8 240:8,11,19 326:6 heard [11] 23:22 29:9 52:23 128:2 160:13 231:16 254:6 258:20 272:24 337:2 363:5 hearing [1] 111:18 Heather [7] 270:14 271:8 304:3 306:25 339:5 341:25 342:1 heavy [1] 127:15 Heidi [4] 273:5 354:5,12 356:1 held [1] 11:19 Helen [4] 44:14,17 292:17 354:14 help [9] 49:18 56:10 191:7,7 203:8 204:13 286:3,12 293:17 helpful [1] 265:6 helps [1] 267:16 hematology [3] 13:1 61:4,12 hence [1] 331:4 Hennebury [1] 1:9 Her-2-neu [1] 28:19</p>	<p>HER2 [1] 128:23 Her2/neu [32] 28:5 29:16 30:9 33:8 53:14 67:13 121:6,14,18,23 122:2,4 123:6 164:15 178:17,20 179:14 180:6 239:10,12,24 241:7,16 251:5,13 268:6,13,20 269:4,15 332:13 351:19 hereby [1] 363:2 herself [2] 54:18 288:13 hesitant [1] 192:20 hesitate [2] 151:6 359:3 hesitating [1] 151:4 hesitation [1] 163:24 heterogeneous [1] 149:5 Hi [5] 271:7 272:19 286:2 292:6 342:1 high [3] 127:16 152:16 153:9 higher [3] 159:10,13 220:19 highlight [1] 5:23 highlighting [1] 284:1 himself [3] 99:25 100:9 343:23 hindsight [2] 134:9 276:15 hint [2] 360:11,13 his/her [1] 79:19 Historically [1] 37:14 history [1] 319:23 hitting [2] 271:9 273:2 hold [2] 7:23 259:16 Holloway [4] 249:14,14 249:16 250:4 honest [3] 172:1 182:3 303:23 honestly [7] 20:12 76:1 96:18 224:3 274:21,25 301:16 Honourable [2] 1:3 363:6 hope [4] 54:22 229:25 253:6 294:16 hopefully [5] 134:3 161:17 173:24 193:6 285:9 hoping [1] 9:4 hormonal [1] 158:23 hormone [3] 1:2 239:12 363:4 hospital [29] 6:17 12:1 13:23,23 14:8 18:15 19:6 98:2 107:3,23 118:16,20 121:22 122:12 126:1 162:14 167:11 214:20 234:9 251:6 268:13 273:22 274:9 316:8 318:17 332:10,14 340:15 344:22 hospitals [10] 12:14 13:15,20 15:22 131:23 132:12,14 139:25 176:25</p>
--	--	--	---	---

<p>195:12 hour [2] 199:17 213:3 hours [9] 122:3 123:13 124:9,13,16,23 125:1 143:3,16 HSC [5] 132:11,13 139:25 294:9,16 huge [1] 273:12 hundreds [3] 65:24,25 65:25 husband [1] 46:11 hyperplasia [1] 283:18</p> <hr/> <p style="text-align: center;">-I-</p> <p>i.e [2] 300:25 301:1 idea [27] 36:20 52:11,16 58:7,14 73:22 88:15 92:10 95:10,24 105:10 118:23 119:8 138:9 142:5 149:7 168:11 178:5 183:2 246:23,24 252:3 255:22 295:1 310:20 322:21 325:19 ideal [2] 180:9 205:20 identified [14] 30:8,13 30:17 225:19 231:3 232:2 232:16,22 233:13 235:8 235:23 279:21 327:10 361:20 identify [15] 224:12 233:3 235:20 247:21 260:18 276:2 291:18 293:10 294:13 305:3 314:9 320:2 323:20 325:1 327:19 identifying [4] 250:17 276:16 289:22 324:3 IHC [32] 60:20 61:16 62:21 64:17,23 65:5 66:14 67:11 73:23 77:5 97:4 98:25 100:1,20 113:6 162:12,19,21 164:19,23,25 165:21,23 165:25 166:2,3 168:22 170:21 180:20 241:21 251:5 289:8 imbed [1] 26:14 imbedded [1] 26:19 immediately [2] 72:18 273:6 immersed [2] 19:2,4 immuno [6] 127:15 167:7,11 173:5 178:17 178:20 immunohistochemical [7] 75:10 81:7 92:15 157:23 165:4 239:16 297:15 immunohistochemicil [1] 133:19 immunohistochemistry [11] 59:16,19 60:13 63:10 65:19,21 66:1,6 66:11 111:13 241:11 immunohistochemistry [1] 164:14</p>	<p>immunoperoxidase [10] 121:18 125:21,24 126:2,10,24 127:8 178:1 215:4 218:8 immunof [1] 127:9 immunostain [3] 80:18 137:15 159:23 immunostainer [1] 244:9 immunostaining [1] 129:1 immunostains [2] 143:3 161:17 impact [1] 304:21 impacted [2] 304:12,24 implement [2] 192:9,15 importance [1] 124:6 important [3] 123:22 141:2,22 imposed [1] 236:17 impregnates [1] 26:2 impression [2] 213:13 349:1 improve [1] 237:15 improved [2] 200:23,25 improves [1] 32:4 inadequate [2] 142:4 146:15 inappropriately [1] 361:14 inaudible [1] 79:5 incise [1] 23:4 inclement [1] 50:1 include [7] 78:3 131:23 147:3 160:15 237:11 241:18 286:13 included [10] 12:14 78:2 107:15 160:14 237:21 275:11,14 279:22 284:23 361:9 includes [1] 43:14 including [11] 8:14,16 12:15,24,25 131:22 142:4 220:10 239:2 256:12 332:7 inclusive [5] 5:5,5,6 12:24 289:10 incorporated [1] 316:8 incorrect [1] 354:9 increase [2] 148:11 191:4 increasing [1] 211:8 indeed [1] 288:25 indefinitely [2] 209:13 209:17 indicate [1] 275:11 indicated [10] 67:16 79:20 81:9 83:23 118:25 215:16 233:2 327:8 330:15 340:25 indicates [1] 239:9 indicating [1] 218:4 indication [2] 166:2 273:1</p>	<p>individual [17] 54:10 65:13,13 243:9 302:22 308:24 309:2,5 310:7 314:6 316:5,16 335:9 338:10,11,12 356:18 individually [2] 272:3 296:12 individuals [1] 332:7 infancy [1] 60:14 infiltrating [1] 182:23 influenced [2] 139:16 186:4 info [2] 292:12 356:24 inform [5] 32:22 137:14 220:18 272:3 351:16 informal [4] 179:2 191:23 195:10 196:4 informally [1] 191:15 information [41] 32:12 62:18 63:7 69:16 127:25 137:19 139:13 140:9 192:6 251:16 259:11 262:25 277:14 285:1 286:15 287:7 289:4 301:7 305:1 306:11 307:10,17 308:21 310:14 312:14 314:8 316:9,9 324:17 330:6 339:5 341:9 357:2 357:18,24 359:8,18,21 361:2,10,12 informational [1] 310:6 informed [3] 134:5 289:12 308:16 informing [3] 71:23 246:2,24 initial [11] 59:18 106:11 142:6 145:18 180:20 185:15 220:2 255:18,21 276:22 324:21 initialled [1] 148:8 initiating [1] 214:4 initiative [3] 193:9 204:12,15 Initiatives [1] 339:7 ink [1] 22:19 innumerable [1] 297:11 inquiries [13] 63:17 138:4 146:6 161:2,25 176:14 187:10 232:2,7 290:7 323:15 337:16 353:4 inquiry [13] 1:1 54:8 232:14 255:6 256:3,4 257:4 276:7 298:1 353:8 353:10 363:4,7 insert [1] 283:6 inside [2] 20:19,19 insist [1] 353:12 installed [1] 236:7 installing [1] 235:14 instance [4] 61:22 205:10 215:19 283:16 instances [1] 86:2 Institutes [1] 266:17 instituting [1] 234:8</p>	<p>institution [15] 8:8 17:21 19:14 20:4 55:8 57:12 67:17 68:13 111:9 165:7 177:8 192:19,24 193:12 254:22 instruct [2] 30:19 95:15 instructions [6] 111:16 122:14,19 340:18 342:4 342:17 instrument [1] 26:18 Integrated [2] 1:10,17 intense [1] 159:18 intensity [2] 159:10,14 interest [1] 97:7 interested [4] 80:25 179:14 227:9 323:9 interesting [1] 256:15 internal [29] 29:9 91:25 92:6,11,13,18 93:2 149:3 149:8,10,14,18,24 150:2 150:4,14 151:1,12 152:16 152:17 153:9,12 154:21 167:4 168:13 239:16,19 241:19 310:17 internally [4] 176:14 251:24 252:1 273:21 internet [9] 65:12,14,16 65:18 67:15,19,23 68:7 70:1 internship [1] 6:18 interpret [4] 27:19 63:20 118:17 119:11 interpretation [1] 118:14 interpreted [4] 64:4 122:17 136:14 140:3 intervening [1] 296:9 interview [3] 133:1 146:1 208:15 interviewed [1] 133:9 interviews [1] 145:18 introduction [1] 149:7 invasive [8] 27:24 79:21 88:9 91:19 337:10,15 338:2,6 investigation [3] 145:22 245:22 338:18 involve [4] 118:4 182:15 221:3 264:17 involved [22] 69:10 72:6 119:14 122:6 148:6 186:20 224:15 238:3,8 238:13 247:25 248:17 249:6,8 250:24 273:5 292:19 318:6 322:20 339:6 347:22 354:8 involvement [10] 165:23 166:3 168:25 238:10 247:7,11 250:21 251:2 321:16 345:9 involves [4] 121:6 125:16 178:25 182:16 involving [10] 47:2,4 92:4 119:12 156:12 277:11 288:20 290:23 344:16 347:20</p>	<p>issue [42] 38:3 46:2,19 46:23 49:25 54:7 55:13 56:1 69:19 136:20 142:3 145:4 155:19 172:14,14 182:7 192:21 204:5,17 242:4 244:25 247:13 249:2 271:15,16 272:4 273:4,13 278:11 292:8 293:5 294:17,18 322:15 322:18,20,24 336:2 337:24 349:21 354:8 355:20 issued [1] 316:4 issues [11] 12:22,25 56:16 108:23 163:22 255:24 321:20 322:5 334:12 338:15,20 issuing [3] 299:4,9 316:5 items [1] 339:9 itself [11] 12:11 34:7 43:12 52:20 86:22 103:3 123:1 142:10 194:24 260:24 310:24</p> <hr/> <p style="text-align: center;">-J-</p> <p>J [4] 43:23 118:11 270:15 270:15 Jackie [1] 1:8 January [13] 6:3,24 115:24 126:17 214:25 215:12 299:18 300:16 306:20 307:21 308:4 334:3,18 Jenkins [30] 8:3 44:9,9 46:21 248:6,8 272:18,23 274:11,13 277:9,13 278:7 278:11 285:7 286:2 287:12 288:23 292:5,22 306:21 307:19 318:5 353:25 354:5,12 356:7 356:15 358:5 359:22 Jenkins' [1] 44:17 Jennifer [1] 1:15 job [4] 130:9,25 276:19 308:2 jobs [1] 205:19 John's [66] 6:9 59:7,19 72:21 77:4 84:3 89:23 121:14 125:17 126:23 127:6 128:21 136:2,10 136:14,16,20 138:13 156:3 158:19,21 163:18 171:14 178:25 179:2,18 180:23,23 187:12 200:7 200:14,16 210:2,23 217:7 222:17 223:6 238:15 241:9 244:21,23,25 245:13,20,21 251:7 255:24 257:6,9 258:14 258:21 290:24 292:10 307:5,6 312:5 324:6 328:1,2,10,23,25 330:17 330:20 363:8,11 journals [6] 65:3,5 70:1 70:13,15,20 Joy [1] 332:16 judge [2] 190:8 212:21 judgment [1] 165:3</p>
---	---	--	---	--

<p>Judy [4] 250:2 299:17 363:2,13</p> <p>July [19] 1:4 6:20 52:2 220:19 237:10 239:1,18 239:25 240:4,10 343:22 356:14 357:7,9 358:7,10 358:25 363:5,12</p> <p>June [28] 6:18,19 118:9 119:8 120:2 128:19 131:4 166:20,20,25 173:3 217:18 219:15,25 220:19 240:6 244:11 246:7,11 246:12 250:14,19 266:2 271:23 336:19 338:24,25 339:2</p> <p>Justice [2] 1:3 363:6</p>	<p style="text-align: center;">-L-</p> <p>I [1] 94:12</p> <p>lab [32] 38:21 45:20 52:14 54:10,12 69:23 71:24 164:10,11 166:4 172:6 172:21,23 216:11 220:10 238:16 239:2 256:12,13 256:14,15,16,23 259:19 269:22 270:4 271:13 272:20 299:6 331:20 332:12 356:25</p> <p>labelled [1] 128:23</p> <p>laboratory [23] 7:25 8:4 8:6,6 11:13 12:11,22 39:24 44:4 57:9 70:2 80:22 82:9 120:23,24 167:7,12 249:17 258:5,8 299:24 316:9 358:13</p> <p>Labrador [7] 70:25 71:5 334:5,13 359:7 363:8,11</p> <p>Labrador-Grenfell [1] 1:16</p> <p>labs [4] 12:23 261:13 272:5 351:22</p> <p>lady [2] 33:15 243:14</p> <p>lady's [1] 342:6</p> <p>Laing [9] 1:9 318:12 320:9,17,21 321:17 339:20 340:14 341:9</p> <p>Laing's [3] 340:18 341:1 341:3</p> <p>large [7] 23:4 123:22 124:18 208:22 301:25 302:21 347:19</p> <p>larger [3] 124:2,4 225:5</p> <p>last [20] 4:11,11 5:2 16:20 38:22 39:13 49:20 121:17 145:9 146:12 191:24 217:24 221:7 261:9 294:10 304:6,21 316:23 330:10 360:14</p> <p>lasted [1] 7:2</p> <p>late [7] 38:8 62:7 73:17 76:6 162:13 201:13 308:4</p> <p>lawyers [1] 190:7</p> <p>lead [2] 257:7 329:7</p> <p>learn [2] 63:7 330:16</p> <p>learned [4] 129:24 156:18 175:12 330:14</p> <p>learning [1] 63:20</p> <p>least [16] 46:25 49:7 55:25 60:13 64:23 68:10 74:8 122:3 123:12 124:13 124:16 131:5 138:10 155:13 178:5 245:19</p> <p>leave [8] 38:24,25 39:15 46:9 85:20 177:20 312:13 334:1</p> <p>leaves [2] 152:19 153:10</p> <p>leaving [1] 58:15</p> <p>left [10] 94:8 129:11,13 129:20 207:17 213:13 280:5 293:3 304:14 361:17</p> <p>length [1] 137:20</p>	<p>lesion [3] 24:13 361:7,24</p> <p>lesions [1] 286:8</p> <p>less [4] 10:25 13:19 58:18 268:18</p> <p>letter [57] 95:16 97:22 106:6 137:25 138:1,4 139:24 140:2 210:17 219:15 244:11 246:12 268:2,5,25 275:2,5,5 277:23 278:16,22,23 280:3 281:12,19 282:23 283:7 284:2 285:20 287:23,24 290:22 291:4 295:12 296:10,13,20 297:12 321:11 322:20,23 329:7 331:5 332:11 334:24,25 336:18,25 338:24,25 339:1,2,10,19 351:14 358:4 360:16</p> <p>letterhead [2] 309:13 334:25</p> <p>letters [7] 319:9,24 321:13 336:1,9,14 338:18</p> <p>level [5] 144:21 149:3 201:11 206:2 237:20</p> <p>levels [1] 209:15</p> <p>library [1] 70:15</p> <p>light [1] 292:23</p> <p>likely [3] 196:6 260:12 293:14</p> <p>limited [2] 59:20 311:10</p> <p>line [11] 114:25 115:4,6 115:14,16,18,18 169:16 203:19 204:21 282:18</p> <p>lines [2] 203:19 334:17</p> <p>link [1] 277:10</p> <p>list [31] 3:2 224:19 225:17 226:24,25 227:11,24 228:5 231:23 232:11,12 275:11 289:8,10,18 290:1 292:24 293:15 295:3,6,8 295:14,17 296:13,25 315:23 327:11 335:6 336:21 339:3 361:21</p> <p>listed [2] 217:24 361:1</p> <p>listing [6] 38:17 62:21 114:8 160:11 227:4 256:17</p> <p>lists [4] 133:20 173:8 228:2,8</p> <p>literally [1] 265:17</p> <p>literature [1] 157:8</p> <p>living [1] 275:25</p> <p>loafed [1] 42:3</p> <p>loafing [3] 40:13,15,17</p> <p>lobular [1] 160:13</p> <p>locally [4] 50:5 60:13 193:20 194:23</p> <p>located [3] 9:12 158:17 279:4</p> <p>location [1] 164:18</p> <p>locum [2] 75:19,22</p> <p>logistics [2] 224:1 251:25</p> <p>longer [7] 124:2 143:7,8 173:22 174:1 250:5 261:6</p>	<p>longest [2] 115:4,19</p> <p>look [49] 22:3 24:13,22 27:11 28:12,15,24,24,25 29:1,2,3,5 58:10 64:10 65:8,24 78:2 86:4 89:12 90:2 93:2 97:17 102:12 103:7,7 110:6 122:25 132:12 143:25 150:3 151:16 153:23,24 155:22 163:6 166:8,13 180:5 186:10 191:18 203:19 236:8 244:1 261:8 307:19 338:22 344:18 358:3</p> <p>looked [18] 48:4 54:17 77:20 86:7 139:5 146:25 149:24 150:2 152:13,20 153:7,12 155:12 185:16 260:6 266:11 301:19 314:7</p> <p>looking [43] 8:21 9:18 43:20 54:19 55:4,25 60:8 64:5 79:17 88:9 90:12 92:5,22,23 99:16 126:8 146:11 149:17 150:18 153:16 173:5 179:14 191:15 195:17 205:5 221:18 265:11 286:14,16 289:17 293:6 296:25 301:6 305:18 314:7 320:11 324:2 340:9 341:9 349:11,16 352:15,17</p> <p>looks [2] 219:8 289:11</p> <p>low [1] 72:19</p> <p>luckily [1] 227:7</p> <p>Luer [8] 109:14 112:12 116:1,5 117:3 204:2 215:12,17</p> <p>lumpectomies [1] 48:13</p> <p>lumpectomy [1] 182:22</p> <p>lunch [4] 201:9 212:17 212:22 213:3</p> <p>lymphoma [4] 61:23 134:23 135:22 136:19</p> <p>lymphomas [4] 136:1,2 136:16 174:4</p>	<p>majority [4] 6:15 66:2 118:15 119:9</p> <p>makes [1] 71:8</p> <p>malignant [2] 24:15 184:21</p> <p>management [7] 248:9 248:24 249:1 271:4 287:12 306:21 318:2</p> <p>manager [6] 44:4 45:20 164:10 172:6 220:14 270:4</p> <p>managers [10] 8:6 57:9 120:25 127:5 164:11 172:21,23 177:24 220:10 331:20</p> <p>managers' [1] 128:19</p> <p>mandate [2] 247:14 305:18</p> <p>mandatory [1] 192:1</p> <p>manner [5] 9:10 187:2 248:23 262:17 333:15</p> <p>manpower [1] 349:21</p> <p>manufacturer [1] 147:21</p> <p>March [17] 10:24 80:17 85:10 126:17 177:24 178:8 255:19,20 286:8 318:11 329:8 331:13 340:5,20 351:14 353:4 353:12</p> <p>Margaret [1] 363:6</p> <p>marginal [1] 55:4</p> <p>margins [1] 22:19</p> <p>Maria [3] 243:15 249:13 253:1</p> <p>Marilyn [4] 292:16,24 293:15 295:1</p> <p>mark [4] 1:14 22:19 226:15 233:15</p> <p>marked [8] 5:9,10,11 23:19 114:13 214:16 226:2 324:6</p> <p>marker [4] 226:2,4,17 235:23</p> <p>markers [2] 235:2,8</p> <p>Mary [6] 96:2,4,6,8,10 96:12</p> <p>mass [1] 206:16</p> <p>mastectomies [2] 38:19 38:20</p> <p>mastectomy [5] 39:2,14 41:2 148:24 182:22</p> <p>master [1] 232:11</p> <p>match [1] 22:3</p> <p>material [15] 56:11 190:19 220:8 221:2 260:20 262:16 275:16 276:23 328:25 334:13 347:1 349:9 350:1 352:8 352:17</p> <p>materials [3] 14:3 231:19 328:19</p> <p>maternity [1] 46:9</p> <p>matter [30] 38:21 52:3 72:3 133:13 145:14</p>
<p style="text-align: center;">-K-</p> <p>Kara [1] 1:9</p> <p>Karn [6] 109:14 112:7 112:17 116:17,19 204:2</p> <p>Karn's [1] 112:18</p> <p>keep [13] 25:21 50:10 156:22 204:6,7 259:12 277:15 280:6 282:15,17 289:12 324:7 339:10</p> <p>Kelli [5] 270:21 271:3,7 277:8 307:17</p> <p>Ken [11] 8:2 44:9,9 272:18,21 277:8 307:19 353:25 354:5,6 358:4</p> <p>kept [8] 62:19 147:25 148:4 161:13 227:7,8 275:12 283:15</p> <p>Khalifa [28] 74:3 75:8 75:11 76:9 85:14 91:20 94:25 95:3 99:8,21,23 118:10,18,25 119:3 128:2 129:9,11,25 130:22,23 131:1,14 157:11 158:1 181:9,12 182:2</p> <p>Khalifa's [6] 77:20 85:22 97:22 98:24 140:18 150:5</p> <p>kind [20] 9:20 14:15 39:19 55:16,20 77:1 88:23 108:21 114:8 131:13 135:24 140:14 221:18 225:10 233:11 234:13 296:20,25 312:24 322:1</p> <p>kindly [1] 133:18</p> <p>kinds [3] 264:24 314:2,3</p> <p>kit [2] 122:19,19</p> <p>knew [17] 55:16,20 62:22 75:20 77:13 134:16 149:10 167:21,21 227:24 235:1,13 262:4 273:11 273:13 303:20 330:5</p> <p>knife [1] 23:4</p> <p>knowledge [8] 13:21 50:10 63:6 65:16 110:11 305:13 312:4 354:15</p> <p>known [4] 58:7 77:1 267:18 274:18</p> <p>Kulaga [1] 94:15</p> <p>Kwan [2] 304:6,10</p>		<p style="text-align: center;">-M-</p> <p>M [3] 94:25 96:1 118:10</p> <p>MacDonald [3] 358:6 359:18,22</p> <p>machine [1] 271:20</p> <p>magnitude [5] 260:4,5 262:6,10,20</p> <p>Mahmoud [1] 74:3</p> <p>mail [6] 32:6 266:11 277:10,11 294:7 344:16</p> <p>mailed [4] 80:18,23 81:15 82:9</p> <p>main [13] 158:17,24 164:4 174:18 176:2 211:11,13 220:11 240:9 332:5 336:13 337:9 344:20</p> <p>maintenance [5] 146:19 146:24 147:11,22 148:1</p> <p>Majesty [1] 1:8</p>		<p>majority [4] 6:15 66:2 118:15 119:9</p> <p>makes [1] 71:8</p> <p>malignant [2] 24:15 184:21</p> <p>management [7] 248:9 248:24 249:1 271:4 287:12 306:21 318:2</p> <p>manager [6] 44:4 45:20 164:10 172:6 220:14 270:4</p> <p>managers [10] 8:6 57:9 120:25 127:5 164:11 172:21,23 177:24 220:10 331:20</p> <p>managers' [1] 128:19</p> <p>mandate [2] 247:14 305:18</p> <p>mandatory [1] 192:1</p> <p>manner [5] 9:10 187:2 248:23 262:17 333:15</p> <p>manpower [1] 349:21</p> <p>manufacturer [1] 147:21</p> <p>March [17] 10:24 80:17 85:10 126:17 177:24 178:8 255:19,20 286:8 318:11 329:8 331:13 340:5,20 351:14 353:4 353:12</p> <p>Margaret [1] 363:6</p> <p>marginal [1] 55:4</p> <p>margins [1] 22:19</p> <p>Maria [3] 243:15 249:13 253:1</p> <p>Marilyn [4] 292:16,24 293:15 295:1</p> <p>mark [4] 1:14 22:19 226:15 233:15</p> <p>marked [8] 5:9,10,11 23:19 114:13 214:16 226:2 324:6</p> <p>marker [4] 226:2,4,17 235:23</p> <p>markers [2] 235:2,8</p> <p>Mary [6] 96:2,4,6,8,10 96:12</p> <p>mass [1] 206:16</p> <p>mastectomies [2] 38:19 38:20</p> <p>mastectomy [5] 39:2,14 41:2 148:24 182:22</p> <p>master [1] 232:11</p> <p>match [1] 22:3</p> <p>material [15] 56:11 190:19 220:8 221:2 260:20 262:16 275:16 276:23 328:25 334:13 347:1 349:9 350:1 352:8 352:17</p> <p>materials [3] 14:3 231:19 328:19</p> <p>maternity [1] 46:9</p> <p>matter [30] 38:21 52:3 72:3 133:13 145:14</p>

<p>146:17 158:17 162:12,17 169:1 182:18 186:8 216:5 217:3,3,5 240:19 242:23 259:8 264:24 265:2 271:10 277:11 320:21 321:7,7 327:7 337:17 340:20 363:3</p> <p>matters [2] 118:5 336:11</p> <p>Maureen [2] 241:14 300:16</p> <p>may [68] 6:11,12 7:1 14:5 24:20,22 27:13 28:13 43:21 48:24 49:18 68:10 71:20 74:5 90:16 107:22 113:6 132:5 137:5,8 139:1,15 141:11,14,16 143:9,9 148:24 149:18 151:25,25 152:6 153:14 153:17 159:12 166:6 172:1 188:15 197:22 199:16 209:23 213:13 215:23,23 223:9,23 224:1 224:3 231:22 266:25 272:6 286:8,13 287:7 292:16 293:10 294:15 304:7 305:4,4,4 319:23 341:19 346:2 353:11,13 354:4,16</p> <p>McCarthy [1] 332:16</p> <p>MCP [4] 268:25 269:6 286:19 288:14</p> <p>MD [1] 6:12</p> <p>MDs [1] 104:10</p> <p>mean [21] 20:25 23:2 58:5,17 89:8 105:8 116:5 141:7 149:12 163:2,21 190:7,17 194:11 205:8 236:16 250:10 281:7 323:2 333:1 335:16</p> <p>meaning [2] 176:1 177:23</p> <p>means [5] 18:5 23:4 26:14 62:20 363:10</p> <p>meant [2] 159:13 218:12</p> <p>meantime [5] 50:14 302:6 317:13 332:15 347:17</p> <p>measure [2] 24:16 261:14</p> <p>measured [2] 145:23,24</p> <p>measurements [1] 22:17</p> <p>mechanism [3] 8:1 292:13 338:19</p> <p>med [1] 272:25</p> <p>media [2] 271:9 273:2</p> <p>medical [17] 1:14 6:5,11 8:2 44:10 68:17 70:1 71:4,5 172:4 189:2 204:13 248:4 258:1,6,22 261:14</p> <p>medicine [5] 7:25 11:13 70:2 120:24 167:12</p> <p>Meditec [38] 32:16 101:11,13,19 102:1 103:3 103:5 104:3 108:3 225:24 225:24 226:6,22 227:1,2 228:7,21 233:3,9,10,19</p>	<p>233:20 234:1,6,7,9,12 234:16,20,25 235:1,6,13 236:2 276:6 285:11 286:10 309:22</p> <p>meet [8] 190:22 195:12 195:19,23 280:7,14 361:4 361:6</p> <p>meeting [9] 118:8 125:15 127:4 128:19 140:8 178:16 273:1 292:18 304:21</p> <p>meetings [1] 197:4</p> <p>member [1] 7:7</p> <p>members [2] 1:12 178:22</p> <p>memo [86] 42:5,9,13 45:5 47:1 74:3,5 75:6 76:14,19 77:9,14 78:6 79:17 91:20 92:17 93:17 98:24 99:19 100:3 117:17 118:24 120:23 121:7 123:1 130:13 131:19 132:5,13,24 134:9,20 137:5,9,13 138:11,20 139:1,5,14,20 140:9,9 140:10,18 141:4,6 143:18 146:11 150:5 161:4,13 161:20 165:19,21 166:1 166:7,21,24,25 167:2 169:6 173:3,6 182:14 217:11,13,18 224:6 239:1 240:7 241:15,25 242:12 252:19 256:11 259:7 261:17 263:5 266:2 274:5 274:8 315:22 316:14 356:15,23</p> <p>memorandum [4] 44:8 44:20 241:1 300:15</p> <p>Memorial [28] 6:9,13 6:14,25 12:1,11,13,18 14:7 43:11 45:3 67:17 67:24 70:3,16,18,20 71:3 98:1 131:24 142:11 145:16 162:10,15 170:10 214:20 224:14 288:20</p> <p>Memorial's [2] 34:14 155:1</p> <p>memory [6] 54:22 93:12 93:15 119:21 138:12 144:11</p> <p>memos [6] 46:1,5,19 126:22 141:3 224:6</p> <p>Mendes [5] 243:15 249:13 251:21 252:21 253:1</p> <p>menstrual [1] 149:6</p> <p>mental [1] 89:9</p> <p>mentally [1] 89:22</p> <p>mention [2] 43:1 178:18</p> <p>mentioned [9] 40:24 63:25 104:16 171:7 174:3 177:2 264:22 298:9 343:7</p> <p>Mercy [1] 107:22</p> <p>message [1] 341:1</p> <p>met [3] 280:13 281:9 331:1</p> <p>metastases [1] 304:15</p>	<p>method [5] 72:25 98:25 181:8 184:10 287:1</p> <p>microbiology [1] 13:1</p> <p>microscope [2] 24:23 89:15</p> <p>microtone [1] 26:17</p> <p>mid [1] 72:5</p> <p>middle [2] 240:1 285:5</p> <p>might [21] 55:13 61:25 63:19 74:23 176:13 185:21 191:5 205:15 215:21 234:14 237:17 259:18,23 261:20 265:6 303:17 313:11 314:10 320:1 326:5 360:9</p> <p>mind [11] 135:16 144:10 166:7,11,17 173:13 194:8 216:2 310:6 324:4 330:14</p> <p>mine [3] 74:23 249:2 318:3</p> <p>minor [1] 338:3</p> <p>minus [1] 72:20</p> <p>minutes [12] 118:7 125:15,19 127:4 128:18 128:22,23 177:22 178:15 237:10 326:15 354:11</p> <p>miss [1] 229:25</p> <p>missed [11] 229:19,21 230:3,6 232:3,4,6 293:10 294:15 326:5 361:13</p> <p>mistake [1] 283:6</p> <p>misunderstand [1] 57:22</p> <p>mix [1] 144:14</p> <p>mixing [1] 144:12</p> <p>mode [1] 251:18</p> <p>module [1] 226:22</p> <p>moment [3] 210:18 240:24 346:3</p> <p>momentum [1] 277:15</p> <p>Monday [5] 37:11 38:9 38:18 43:2 95:25</p> <p>Mondays [1] 37:1</p> <p>money [3] 187:22 206:21 207:5</p> <p>month [15] 8:11 87:24 87:25 88:3 97:11 137:4 173:14 175:18 205:10,12 205:16 219:22 317:6,8 317:10</p> <p>monthly [1] 147:1</p> <p>months [9] 166:14,14 167:21 168:4 191:24 208:4 260:15 317:4 340:11</p> <p>Montreal [1] 261:12</p> <p>morning [24] 19:13 24:8 24:9 26:3,7,9,17 27:19 41:18 95:25 114:10 117:12 125:7 213:5 225:20 254:20 264:22 265:1 336:20 347:17 351:3 354:14 357:13 362:12</p> <p>Morris [1] 238:14</p>	<p>Moss [2] 363:2,13</p> <p>most [13] 30:10 49:8 97:11 124:2 148:17 156:8 175:1 176:24 191:4 250:17 286:9 316:1 354:13</p> <p>Mount [57] 29:22,24 30:18,21 32:2 103:10,15 107:3 152:14 154:5,22 162:20 164:13 243:8,10 251:25 252:3,8 254:8,24 255:3,3,11,23 259:19 261:12 268:21 271:25 299:5,9,11,13 300:2,19 300:22 301:4 306:24 311:2,4 316:2,3 319:1 332:9,14,21 333:1,14 335:8,23 337:3,22,24 338:14 340:15,19 351:18 360:1</p> <p>move [1] 276:13</p> <p>moved [1] 25:15</p> <p>movement [1] 181:20</p> <p>Ms [8] 49:5 251:21 252:21 270:22 271:14 272:9 358:5 362:1</p> <p>Mullen [20] 30:21 31:21 53:2,7,13,24 54:16 55:9 55:11 107:10,13,20 155:12 177:3 251:22 268:3 310:13 311:8,16 334:2</p> <p>Mullen's [4] 155:6,8 268:4 334:18</p> <p>multiple [1] 207:8</p> <p>multiply [1] 207:13</p> <p>Murphy [1] 118:11</p> <p>must [3] 62:23 201:2 345:12</p> <hr/> <p style="text-align: center;">-N-</p> <p>N-E-I-L [1] 4:16</p> <p>name [28] 4:9,11,12,24 13:23 94:10 95:12,21,25 104:23 105:3,15,15,18 105:23 210:17 243:9 248:8 276:12 279:11 280:6 281:3 286:18 291:9 319:19,22 360:1 361:15</p> <p>names [17] 5:2 94:7 104:9,13,21 105:11,17 106:2,7,8 227:4 248:15 275:12 280:21,25 288:14 327:9</p> <p>Nancy [1] 341:25</p> <p>Nash [10] 238:15 262:24 263:7,10,12,12 332:5 345:14 346:8,9</p> <p>National [1] 266:17</p> <p>nature [6] 58:25 109:16 196:1,20 197:18 361:23</p> <p>NC [1] 228:5</p> <p>NCTRF [2] 227:21 228:7</p> <p>near [2] 137:3 347:12</p> <p>necessarily [4] 131:1 190:8 197:22 303:15</p>	<p>necessary [2] 242:17 361:11</p> <p>necessity [1] 183:13</p> <p>need [26] 64:6 66:1 127:13 140:11 209:25 211:12,16 221:3 227:24 237:19 251:10,20 252:22 259:3,5 273:5 275:14 277:15 280:6 284:8 307:11,13 318:25 322:9 339:21 358:17</p> <p>needed [4] 165:3,4 224:19 290:14</p> <p>needle [1] 48:12</p> <p>needs [2] 201:6 318:23</p> <p>negative [18] 98:12,13 118:21 148:11 156:11 159:23 218:5,24 219:4,7 275:6 286:7 304:14 307:3 307:14 315:13 318:18 323:2</p> <p>negatively [1] 304:23</p> <p>negatives [3] 218:18 223:12,13</p> <p>Neil [1196] 2:2 4:5,6,10 4:11,15,19,23 5:15,17 6:1,7,23 7:9,13,22 8:15 8:19,24 9:3,7,13,17,22 10:2,7,12,16 11:1,5,10 11:16,20,24 12:4,8 13:12 13:16,25 14:9,18,25 15:5 15:10,18,25 16:4,8,12 16:16,23 17:2,8,13,18 17:22 18:1,7,12,18,22 19:3,9,15,25 20:5,10,15 20:20 21:2,10,15,23 22:2 22:16,23 23:3,11,16,25 24:5 25:5,9,24 26:8,12 27:5,10,25 28:6,11,23 29:11,17,21,25 30:12,25 31:6,12,17,22 32:1,13 33:11,23 34:4,9,18,22 35:12,19,23 36:2,6,10 36:14,25 37:6,13,17,22 38:2,11,15 39:9,16,22 40:5,9,14,19,23 41:3,7 41:13,22 42:1,12,16,21 42:25 43:8,13,24 44:3 44:11,16,22 45:4,8,13 45:19,23 46:4,18 47:7 47:11,17 48:3,10,20 49:9 49:15,21 50:7,15,19 51:1 51:7,13,18,24 52:5,15 53:4,9,15,20 54:1,6 55:19,24 56:7,20 57:2,8 57:13,18 58:1,9,19,24 59:11,17 60:1,10,15,21 61:3,9,17 62:4,9,14 63:23 64:3,9,18,25 65:4 65:9,15 66:17,22 67:5 67:12,20 68:2,9,14,19 68:25 69:7,11,17 70:5 70:14,19 71:10,14,19 72:9,13 73:3,7,14,19 74:1,18,22 75:2,12,17 75:24 76:8,16,23 77:6 77:12 78:8,13,19,25 79:6 79:10,14 80:3,9,13 81:11 81:19,24 82:3,12,16,23 83:3,7 84:7,12,17,23 85:3,15,23 86:6,10,19</p>
---	---	--	---	---

<p>86:24 87:4,8,13,18,23 88:4,12,20,24 89:4,11 89:18,25 90:7,20,25 91:7 91:12,16 92:1,7,12 93:4 93:9,14,20,24 94:16,21 95:14,20 96:3,7,11,17 97:1 98:6,15,20 99:2,6 99:13,20,24 100:4,8,15 100:22 101:4,8,12,16,23 102:3,8,14,20,24 103:4 103:11,16,21,25 104:4 104:15,20 105:1,7,16,22 106:3,12,16,21 107:7,16 107:19 108:4,8,12,16 109:2,7,13,18 110:2,10 110:17,21 111:1,5,20 112:2,6,11,16,23 113:2 113:9,13,21 114:2,18,24 115:5,9,13,17 116:2,7 116:12,16,20 117:1,7 119:5,16,24 120:3,8,14 120:18 121:3,9 122:8,18 123:2,8,14,21 124:1,10 124:17,22 125:4,11 126:13,19,25 127:18 128:4,10,14 129:4,12,17 130:4,8,14,19,24 131:8 131:15,25 132:7,16,20 132:25 133:6,10,14 134:14 135:1,8,14,25 136:6,11,15,23 137:2,10 137:23 138:6,17,23 139:4 139:11,23 140:7,15,19 140:25 141:13,19 142:7 142:15,19,24 143:4,13 143:20 144:7,13,17,23 145:3,8,17,21 146:3,8 146:18,23 147:10,16 148:2,7,16,21 149:9,13 149:20 150:1,9,13,20,24 151:5,9,15,22 152:2,8 152:12,25 153:6,18,22 154:4,9,13,18,23 155:2 155:7,15,24 156:4,14,19 156:24 157:4,15,19 158:2 158:10,20 159:1,7,15,19 159:24 160:3,8,19,24 161:3,21 162:2,22 163:1 163:8,13,19 164:20,24 165:11,24 166:15 167:1 167:15,20,25 168:6,10 168:15,19 169:4,9,14,23 170:2,6,12,17,22 171:1 171:6,20,24 172:5,10,16 172:20 173:16 174:22 175:4,8,19 176:3,9,16 176:23 177:12,16 178:10 179:3,9,19,23 180:8,13 180:25 181:11,17,22 182:1,6 183:6,10,15,23 184:4,8,15,19 185:4,10 185:20,24 186:6,15,21 186:25 187:11,17,25 188:6,10,14,18,22 189:4 189:9,15,22 190:2,11,16 191:6,10,21 192:13,18 193:14,21,25 194:4,10 194:16,20,25 195:5,14 195:18,22 196:2,8,12,16 196:21,25 197:14,19,25 198:8,18,22 199:1,6,10 199:14,20,24 200:3,8,15 200:19 201:15,20,25</p>	<p>202:9,13,17,21 203:1,7 203:11,24 204:11 205:6 206:6,10,22 207:6,12,20 207:24 208:3,7,12,19,25 209:4,9,16 210:13 211:4 211:19,24 212:8,12 213:2 213:10,20,24 214:3,7 215:1,13,20,24 216:6,13 216:17,22 217:10,14,21 218:1,13,19,25 219:14 219:18,23 220:6,21,25 221:11,21 222:1,5,9,14 222:19,23 223:3,8,15,20 223:25 224:8,18 225:1,6 225:11,15 226:8,14,18 227:16 228:6,13,18,23 229:2,7,11,15,22 230:7 230:13,18,22 231:4,8,12 231:21 232:8,17,24 233:2 233:6,14,18 234:3,15,19 234:24 235:5,10,16,22 236:3,9,19 237:3,16,24 238:5,11,22 239:4,6,21 240:3,12,16,20 241:4,23 242:3,9,13,25 243:1,3,4 243:11,16,22 244:6,12 244:16,22 245:6,14,24 246:4,8,15,20 247:2,6 247:10,17,23 248:3,7,13 248:19,25 249:5,15,21 250:1,6,12,20,25 252:5 252:10,15 253:4,15,20 254:3,10,15 255:15,25 256:7,18,24 257:10,14 257:19,25 258:4,10,16 258:24 259:4,24 260:3 260:13,21,25 261:5 262:1 262:14,22 263:4,9,14,19 263:25 264:4,13,21 265:12,18,22 266:5,13 266:22 267:6,11,15,21 268:8,15,23 269:3,7,12 269:16,23 270:3,8,17,23 271:2 272:11,15,20 273:4 273:10,18,23 274:2,10 274:15,20,24 275:8,18 275:22 276:4,18,24 277:3 277:19,25 278:18,24 279:8,17 280:11,20 281:2 281:8,15,21 282:2,6,10 282:14,19,25 283:5,10 283:14,21 284:3,9,13,21 285:16,21 286:21,25 287:5,15,20 288:1,8,17 289:13,19,23 290:4,9,13 290:18,25 291:20 293:8 293:20 294:1,19,25 295:7 295:19,23 296:2,6,11,16 296:22 297:1,19,24 298:8 298:13,17,22 299:4,8,20 300:4,10 301:8,15,20 302:1,11,25 303:4,8,14 303:19 305:6,10,16,22 306:3,7,12,16 307:23 308:5,9,14 309:1,6,10 309:14,18,23 310:2,8,12 310:25 311:12,20,25 312:6,10,16,20 313:1,7 313:12,17,21 314:1,11 314:15,20,25 315:9,14 315:18 316:18,25 317:5 317:9,17,24 318:7 319:4 319:8,15,21 320:4,10,15</p>	<p>320:22 321:2,10,19,23 322:4,17,22 323:5,12,16 323:21 324:8,16,22 325:2 325:14,20 326:1,6,9 327:12,22 328:4,11,15 328:20,24 329:4,11,15 329:20,25 330:4,11,19 330:23 331:3,15,19 332:1 332:19,24 333:6,11,22 334:14,20 335:2,12,18 336:5,12 337:5,12,20 339:15,22 340:1,6,12,22 341:5,10,14,18 342:1,2 342:11,16,22 343:4,9,14 343:21 344:7,12,24 345:4 345:11,18,23 346:6,14 346:18 347:4,9,25 348:6 348:11,15,21 349:2,7,15 349:22 350:3,8,12,16,20 350:25 351:4,9,24 352:3 352:7,11,16,22 353:1,6 353:14,20,24 354:16,19 354:23 355:4,8,14,18,25 356:4,10,18 357:4,8,12 357:23 358:14 359:4,9 359:13,20 360:19</p> <p>Neil's [2] 114:9 356:25</p> <p>neither [1] 304:2</p> <p>neoplastic [4] 79:21 88:10 98:12,14</p> <p>neutral [1] 144:5</p> <p>never [4] 183:21,24 208:23 338:12</p> <p>new [25] 62:13 63:4,6,7 63:7,15,16 70:6,8 71:9 85:11 114:6 125:19 127:21 177:25 178:19 214:12 218:7 222:10,10 222:18,22 223:1 236:23 252:23</p> <p>Newbury [1] 1:15</p> <p>newer [1] 66:9</p> <p>Newfoundland [16] 53:3 70:24 71:5 75:7 77:17 256:13 286:19 288:5 315:25 325:8 331:14 334:5,13 359:7 363:8,11</p> <p>news [1] 71:9</p> <p>next [24] 4:4 19:22 24:8 24:9 26:7,9 40:22 50:8,9 118:13 132:4 134:4 137:5 143:12 173:25 240:19 259:11 276:12,13 279:24 280:5 305:1 316:11 354:13</p> <p>nice [1] 50:4</p> <p>night [2] 24:25 25:25</p> <p>nil [1] 247:7</p> <p>nipple [1] 24:19</p> <p>nitty [2] 248:17 269:20</p> <p>Nitty-gritty [1] 248:20</p> <p>NL [3] 1:8,14,15</p> <p>NLCHI [1] 359:18</p> <p>non [1] 175:2</p> <p>non-contributory [1] 215:7</p>	<p>non-physicians [1] 237:13</p> <p>non-searchable [1] 225:23</p> <p>None [2] 54:2 273:19</p> <p>noon [2] 19:17 41:20</p> <p>nor [4] 166:23 223:23 304:2 330:10</p> <p>normal [11] 19:14 29:5 91:23,24 149:2,4 151:18 161:17 239:14,15 241:18</p> <p>note [15] 104:7 107:2,11 107:21 127:14 133:18 141:3 243:2 251:11 259:12 283:16 300:24 336:22 358:21 361:14</p> <p>noted [5] 80:24 82:10 152:16 185:2,5</p> <p>notes [12] 242:19 279:24 279:25 280:22 291:8,9 299:1 343:20 345:13 348:2 356:21 360:3</p> <p>nothing [6] 158:3 172:12 172:24 244:7 252:19 352:23</p> <p>notice [2] 86:9 291:7</p> <p>notification [5] 292:14 292:17 307:21 358:8 361:24</p> <p>notify [1] 307:3</p> <p>notifying [1] 317:14</p> <p>notion [1] 305:2</p> <p>November [9] 3:1 7:4 53:25 79:11 299:3 304:1 344:16,17 347:18</p> <p>now [143] 8:8 13:19 17:25 21:18 26:21 27:21 28:5 34:17 37:20 39:7,19 42:5 46:1 47:6 49:14 52:23 59:6 62:18 63:9 66:9 70:9 72:2 74:16 75:10 84:3 88:5 91:3 97:4,24 97:25 98:9,18 99:11,12 102:1 105:14 110:24 113:22 117:16,18 118:6 120:4 121:7 124:9 125:10 125:14 126:9 127:3 129:7 131:19 134:22 136:24 137:7,8,13,16 139:7 142:1 143:2 144:24 145:24 147:7 149:6 154:3 155:18 157:10 158:13 162:10,20 164:13 165:1 166:24 168:5 171:19 174:16 184:14 188:1,21 202:20 205:7,24 209:7,8 209:22 210:22 211:3,5 212:2 215:16 217:1 231:23 233:9,11 234:10 236:22 239:24 240:25 249:10 251:14 252:23 254:7 258:20 259:7 261:8 264:8 271:5 272:10 273:6 274:7 275:2,15 278:4 279:6 284:19 285:24 289:3 297:12 300:7 303:9 303:25,25 305:2 306:19 308:1 310:5 311:7 312:23 315:22 318:11 323:24</p>	<p>324:1 331:1 334:1,23 343:8,19 348:1,23 354:3 356:13,24 358:1 359:4</p> <p>NPRHCC [1] 299:24</p> <p>nucelli [2] 90:15 91:19</p> <p>nuclear [1] 149:4</p> <p>nuclei [9] 79:20,22,23 80:4,8 88:9 89:2,13 160:7</p> <p>number [50] 8:13 22:7 25:13 28:15 29:4,4 42:20 42:22 62:16,24 63:1 71:10 74:9 89:13 90:17 91:18 97:20,20 118:19 131:21 182:25 191:1 202:2 207:8,13 214:23 218:5 221:16 222:2,4 239:2 251:15 260:5 279:11,11 281:10 315:1 315:5,7,10 332:6,17 335:9 336:24 347:20,22 358:22,24 360:1,2</p> <p>numbered [1] 25:12</p> <p>numbering [1] 26:22</p> <p>numbers [13] 86:12 95:2 122:23 135:17 161:10 208:22 222:22 223:1,1 263:1 288:14 291:11 354:15</p> <p>numeral [1] 100:21</p> <p>numerical [1] 221:16</p> <p>numerous [3] 14:4 164:1 203:2</p> <hr/> <p style="text-align: center;">-O-</p> <p>O'Brien [5] 270:22,22 271:3 272:9 277:8</p> <p>O'Malley [2] 251:22 253:10</p> <p>object [3] 181:13,16,18</p> <p>obtained [2] 128:1 343:2</p> <p>obvious [6] 186:7,8,9 280:3,10,12</p> <p>obviously [11] 19:21 32:3,14 33:12 50:8 134:17 139:6 161:18 209:19 275:25 280:4</p> <p>occasion [12] 53:7 83:20 109:8 113:23,23 116:1 155:21 165:1 173:19 215:17 267:12,24</p> <p>occasional [3] 232:19 291:17 321:11</p> <p>occasionally [4] 13:17 16:13 37:2 229:23</p> <p>occasioned [2] 266:3 335:16</p> <p>occasioning [1] 339:21</p> <p>occasions [6] 83:21 131:21 164:1 203:2 230:5 230:10</p> <p>occur [6] 191:25 198:16 199:5 200:11,13 248:23</p> <p>occurred [7] 24:21 41:18 173:25 208:23 216:3 218:22 346:4</p>
--	---	--	--	--

<p>occurring [1] 209:17 occurs [4] 19:12 41:11 269:17,18 October [35] 7:3 100:20 116:6,21 117:5 182:14 183:9 275:2,16 277:9,23 278:6,12,22 285:6,14,19 285:25 287:10,24 288:6 288:22,23 289:16 290:22 291:4 292:5 294:11 297:12 341:24 342:10 360:17,22,25 362:3 odd [2] 92:19 343:25 off [12] 46:9 84:1,10 94:12 194:11 204:21 211:5,11 265:5 272:22 329:2 361:5 offer [1] 351:8 offered [2] 348:19 351:11 office [5] 109:6 113:18 199:17 356:25 357:20 officer [1] 292:10 offices [1] 199:16 often [7] 13:18 41:14 135:23 163:21 195:15,19 276:11 older [5] 66:3 108:2 112:13 181:8 224:16 omitted [1] 160:15 once [6] 30:13,17 87:24 121:20 292:18 352:18 oncologist [4] 302:23 306:1,4 320:11 oncologists [7] 158:13 158:14,18 159:2 251:13 284:24 322:11 oncology [1] 321:4 one [122] 14:4 21:9 28:15 28:17 29:4 30:10 33:2 38:22 39:2 43:20,22 48:1 48:8,18,19 49:7,8 55:2,6 56:25 57:4 59:22 62:13 62:13,16 63:24 65:7 66:4 67:13 74:8 75:19 87:16 87:24 88:3 96:23 97:11 98:10 102:17 105:17 113:22,23,25 119:22 122:20 132:12,15,17 134:24,24 136:18 138:21 158:1 164:3 173:6 176:12 182:7 187:19 189:23 191:5,9,11 196:3 199:15 199:17 200:20,23,24,25 202:18 205:1 206:17 210:4,4 211:22 214:21 214:23 215:16 217:19 219:6 225:4,21 229:24 231:15 234:23 235:8 236:16 242:16 258:21 265:8 266:3,4,11,12,24 271:3 276:13 278:5 281:1 289:6 292:3 299:2 302:4 311:23 315:6 316:21 324:11 327:16 331:20,21 337:11 341:19,23 345:12 345:22 346:10 348:3,7 351:23 360:13,14,14 361:15</p>	<p>ones [7] 16:3 58:18 154:3 159:4,5 174:6 360:7 ongoing [1] 302:8 Ontario [1] 107:4 onto [2] 269:25 276:13 onward [4] 151:25,25 152:7 201:13 Oops [1] 357:5 open [3] 21:8 22:9 214:18 opening [1] 36:9 operating [5] 34:25 35:6 38:18 39:24 52:20 operation [1] 233:10 operational [1] 234:12 operationalize [1] 261:16 opinion [4] 186:11 209:25 211:16,20 opinions [1] 336:6 opportunity [2] 334:7,8 opposed [4] 236:13,22 244:20 322:1 optimal [2] 58:4 143:2 order [8] 26:16 73:2 135:24 167:8 170:20 189:25 318:11 322:6 ordered [12] 28:9 121:25 123:7 134:17 136:9,14 175:2 182:20,25 227:12 289:8 302:9 ordering [6] 72:6,24 183:3 184:1 226:13 227:5 organization [6] 57:12 208:17 220:20 260:18 269:21 355:24 organizational [3] 77:2 114:8,21 organizations [1] 193:16 orientation [2] 22:20 205:12 origin [1] 351:22 original [19] 32:8,23,25 74:17 102:18 103:24 110:7,8 155:12,22,25 219:9 222:12 311:18 312:1,2 344:1 352:15 361:7 originally [2] 236:6 315:13 originate [1] 304:2 originated [1] 177:4 origins [1] 15:23 ORs [3] 34:2,15 50:25 otherwise [3] 138:12 155:20 337:3 ours [2] 212:9 251:10 ourselves [2] 172:21 184:24 Out-of-Town [2] 132:14 139:25 outcome [1] 256:6 outline [1] 5:22 outlined [5] 91:20</p>	<p>134:20 150:5 275:13 286:6 outlining [1] 332:12 outside [9] 12:13 54:8 54:10 111:9 164:7,7 194:3 317:18 338:3 overall [7] 85:7 143:17 224:11 225:10,12,16 349:1 overlapped [3] 228:21 228:24 229:3 overlying [1] 24:20 overnight [7] 24:8 25:20 40:11 122:3 123:12 124:19 143:10 overworked [3] 210:7 254:23 255:4 own [36] 34:14 62:16 65:14 70:9 79:19,24 89:21 95:21 108:20 118:17 119:11 135:9 140:6 143:23 144:12,14 148:14 151:25 154:22 165:7,13 171:11,13 178:24 181:21 185:17 192:19 197:1 245:1 260:18 263:23 305:14 314:12 325:19 346:19 355:23 owned [2] 97:16 303:20 owns [1] 106:22</p> <hr/> <p style="text-align: center;">-P-</p> <p>P [5] 74:10 97:24 239:4 266:9 360:15 P-0046 [1] 297:10 P-0113 [3] 131:18 137:8 166:20 P-0590 [1] 256:10 P-0684 [1] 303:25 P-0907 [1] 177:19 P-0928 [1] 237:9 P-1198 [1] 343:17 P-1393 [1] 178:13 P-1591 [1] 331:12 P-1699 [1] 249:10 P-1701 [1] 252:18 P-1740 [1] 298:25 P-1780 [1] 268:2 P-1811 [1] 333:25 P-1857 [1] 118:6 P-1870 [1] 120:22 P-1874 [1] 125:14 P-1876 [1] 127:3 P-1877 [1] 128:17 P-1913 [1] 177:21 P-1918 [1] 182:13 P-1976 [1] 315:21 P-2104 [1] 343:19 P-2225 [4] 3:3 5:4,9,14 P-2230 [1] 282:22 P-2233 [1] 238:25 P-2234 [1] 240:23</p>	<p>P-2235 [1] 264:8 P-2237 [1] 266:19 P-2238 [1] 270:11 P-2241 [1] 275:2 P-2242 [1] 277:6 P-2243 [1] 277:22 P-2244 [1] 278:3 P-2245 [1] 278:21 P-2246 [1] 285:4 P-2247 [1] 285:13 P-2248 [1] 285:19 P-2250 [1] 285:24 P-2251 [1] 287:10 P-2252 [1] 287:23 P-2253 [1] 288:4 P-2254 [1] 288:20 P-2255 [1] 290:21 P-2257 [1] 291:3 P-2258 [1] 291:23 P-2260 [1] 295:11 P-2261 [1] 299:15 P-2262 [1] 300:7 P-2263 [1] 306:19 P-2266 [2] 318:10 327:7 P-2267 [1] 334:23 P-2269 [1] 336:17 P-2270 [2] 3:3 5:9 P-2271 [5] 3:7 114:7,12 114:13 203:10 P-2273 [2] 3:4 5:10 P-2274 [1] 339:18 P-2275 [1] 341:22 P-2276 [1] 351:13 P-2277 [1] 353:18 P-2278 [1] 354:3 P-2279 [1] 356:13 P-2280 [3] 3:4 5:10 358:4 P-2281 [1] 3:5 P-2282 [2] 3:6 5:11 P-2296 [2] 3:6 5:11 P-2297 [2] 3:8 214:16 P-2298 [2] 3:8 214:16 P-94 [1] 217:1 p.m [1] 356:16 P.S [1] 279:3 package [3] 49:3,4 236:14 page [32] 3:1 43:20 44:20 98:10 107:1,11 118:7,13 125:17,18 128:21,21,22 132:4,4,12 137:8 146:12 166:19,20 169:16 173:6 177:25 178:13,17 242:24 259:16 285:5 299:2,23 341:24 344:18 pages [2] 288:11 299:23 paid [3] 150:14 206:4,17 panel [14] 284:7,16,19 284:22 287:14,18,19 304:6,19,21 307:6,12</p>	<p>321:14 361:13 panelled [3] 304:17,22 304:25 panelling [1] 339:7 paper [3] 23:19 106:17 289:4 paraffin [7] 26:19 121:19,21 122:10 219:10 224:2 351:21 paragraph [18] 43:1 81:14 118:13 121:17 127:7,21 128:23 142:2 143:25 144:2 148:10 149:2 150:7 156:7 178:16 221:8 261:9 291:6 Parai [4] 118:10 126:6 127:14 128:1 parameters [1] 259:14 Pardon [5] 55:18 75:1 246:9 274:23 346:15 Parsons [1] 341:25 part [21] 26:6 107:4 142:6 168:20 169:11 182:8 198:17 214:21 233:20 234:16 240:9,21 245:7 247:14,14 249:7 255:10 300:20 335:5 341:3 348:18 participants [1] 118:9 participate [6] 68:17 85:13 200:12,13 264:23 345:10 participated [1] 238:19 participating [1] 347:23 particular [88] 30:8 35:9 35:10 36:19,22 39:3 40:3 41:15 47:1 48:7 50:13 55:6,9 60:19 61:7 62:12 63:15 64:13 65:7,20 69:3 69:4 72:4 74:8,9 75:19 92:23 94:3 95:12 97:5,7 97:17 98:10 100:19 103:9 105:12 106:20,25 107:21 109:19 110:16 118:6,12 119:10,10 124:9,15 130:25 137:4 138:16 141:6 152:19 162:4 175:13 176:1 192:23 199:19 201:4 205:4 214:22 215:19 219:5,9 230:21 262:4 267:10 279:19,22 280:2,17 283:7 283:16 284:25 303:21,22 319:12,17 320:1 322:6 322:20,23 327:19 330:9 332:17 335:10 336:25 339:9 342:20 particularly [7] 22:18 140:4 142:1 143:24 314:12 320:16 321:12 parts [2] 112:18 190:20 pass [2] 269:25 270:2 passed [2] 45:20 357:22 past [12] 53:1 117:12 147:8 166:14 174:14 191:1 209:3 213:18,21 213:23 214:6 227:11 Pat [1] 287:14</p>
--	--	---	---	--

<p>path [1] 95:4 pathologist [43] 6:2,24 12:9 14:16 55:7 57:21 57:23 58:6,16 60:19 73:1 76:10,12 79:18 85:8 88:18 97:16 114:23 121:24 126:4,7 127:12 129:2 131:6 140:1 160:16 161:5,8,8 165:3 178:21 179:12 184:13,22 185:16 188:9,11 189:2 190:9 209:18 212:1 303:18 308:1 pathologist's [1] 37:20 pathologists [72] 7:12 8:8 9:8 30:8 32:25 35:10 39:5 47:2,4 60:19 62:24 66:4,9 70:7 71:3,6,8,9 73:1 75:7 77:18 78:17 85:12 86:14 87:16 91:3 94:20 99:17 109:9,12 114:25 118:15 119:9 121:13 131:22 132:11,13 134:16 135:11 139:24 140:24 141:5,9 153:11 163:23 179:1,17 181:6 181:21 182:10,16 184:13 186:20 187:8,24 192:7 192:24 198:16 202:2 203:13 204:22 205:18 211:15 237:15 239:4 241:2 245:20,21 254:18 284:23 315:25 343:24 pathologists' [1] 152:5 pathology [62] 6:19 7:2 7:25 11:12 12:13,16,21 14:19 15:9 31:15 44:5,6 52:14 67:24 69:23 71:11 71:18 92:13,16,19 95:8 95:8,10,22 97:21 98:1 104:13 118:8 121:1 125:15 164:7 167:12 176:20 177:23 178:15 186:22 189:10 193:16 198:19,21 199:4 201:12 211:14 214:20 226:22 237:10 241:2 261:19 267:20 270:5 271:20,24 286:11 331:21 332:12 344:1,2 358:14,15,23 359:23 360:4 pathway [1] 61:24 patient [53] 18:24 22:6 26:24 36:1 63:18 100:19 103:9 105:11,12,13 106:10,20 226:12 231:23 232:10,15 276:7,8,9,10 279:10,25 280:6 282:11 292:10 293:3 304:16 308:24 318:14,15 320:2 320:14,16 321:20 322:5 322:24 323:20 325:12,24 326:2 327:17,19 328:3 330:9,15,17 338:8,10 339:23,25 358:8 359:2 360:1 patient's [15] 27:1 32:12 32:21 101:7,9 102:13 103:20 107:25 288:14 291:9 319:3,19,22,23 328:9</p>	<p>patient-by [1] 232:14 patient-to [1] 276:6 patients [99] 72:8 95:1 97:5 101:3 103:14 155:13 224:12,19 225:17 226:1 226:20 228:1 231:3,16 232:1,20 233:22 246:2 246:13,13,24 247:1,7,11 250:18 260:19 268:22 275:17,25,25 276:11,17 277:2 279:20,21,23 284:25 286:5,17 287:1 289:8,22 292:9,14 293:1 293:10,11,16,17 294:22 296:13 304:8,23,25 305:4 305:15,18 307:2,3,5,9 307:14 308:15 311:15 314:9,10 316:5 317:14 317:22 319:12,17 320:12 320:14 321:22 322:7 324:3 325:1,7 326:12 327:18 335:7,9,25 336:21 336:24 337:1,9,21 338:16 339:3,11 342:5,15,18 343:2 354:7 359:21 361:1 361:22 patients' [2] 227:4 327:9 Paul [18] 2:2 4:5,6,11 107:19 243:3 278:10 285:13 289:12 292:6 293:5 299:4 316:13 342:2 343:21,22 351:24 354:16 pay [1] 139:17 paying [4] 170:11,13,16 170:18 payment [1] 172:14 PCI [1] 276:7 peer [1] 278:8 pen [1] 106:17 pending [1] 252:23 people [51] 5:1 7:19 9:8 29:1 32:6 33:15 63:1,2 67:18,25 69:18 88:5 105:2 106:5 113:19 195:11 197:7 199:2 203:16,20 204:3,6,8,13 204:18 205:19,21 206:14 206:23 207:14,15 210:9 220:9,11 230:23 231:17 235:14 247:24 248:17 267:2,22,24 271:12 272:3 276:16 284:24 293:13 305:3,4 324:18 356:20 people's [1] 207:4 per [22] 18:24 87:1 130:22 136:19 140:8 188:9,11 189:20 199:11 241:8,15 251:4 268:22 279:13 286:2 288:12,23 295:13 296:7 318:13 340:17 359:23 perceived [2] 259:3,5 percent [12] 98:12,13 144:5 156:10 157:12 215:8 268:18 280:10 281:14,19 324:13 361:5 percentage [12] 88:19 88:23,25 90:13,14,14,19 90:21 152:17 153:9 158:3</p>	<p>158:7 percentages [2] 88:15 89:3 perception [1] 244:24 perform [2] 121:18 165:6 performed [9] 13:15 36:23 37:1,9,24 38:8,16 174:3 351:21 performing [1] 211:3 performs [1] 17:11 perhaps [19] 58:4 69:15 94:3 96:16 135:21 143:7 224:11 225:9 235:19 236:25,25 240:25 242:23 257:22 259:18 266:3 291:17 294:5 347:15 period [16] 6:16 136:5,7 138:16 147:14 152:15 153:4 164:17 180:21 206:24 227:1 244:2 249:20 260:6 317:4 325:8 periodically [1] 71:7 Perioperative [2] 52:13 52:18 periphery [1] 171:10 persistence [1] 252:24 persistent [5] 167:6 169:18,21 173:3 252:20 person [17] 69:22 105:17 111:12 113:23 130:18,25 177:4 205:9 206:17 207:14 247:22 271:12 303:22 304:12,18 345:3 355:12 personal [4] 86:20 130:17 152:1 280:22 personally [7] 46:20 63:9 109:3 197:15,20 295:8 303:9 persons [1] 247:22 perspective [20] 30:10 37:21 57:23 69:22 78:11 85:8,22 97:6 98:3 122:6 162:15 180:11 186:22 189:20 247:20 260:10 314:23 333:7 337:19 359:2 pertained [1] 48:13 Peter [1] 1:9 Pg [5] 3:3,4,6,7,8 Pgs [1] 2:3 ph [4] 144:21 145:23 213:11,12 phase [3] 79:18 80:16 81:14 phone [10] 38:23 111:9 163:24 227:22 287:13 317:15 336:10,13 341:1 356:16 phoned [2] 39:12 217:20 phosphatase [1] 60:3 photocopy [1] 49:4 physical [1] 265:17 physically [4] 89:8,22</p>	<p>106:17 224:14 physician [10] 33:12,12 73:13 114:23 161:5 175:25 256:22 276:7 314:6 315:6 physician's [2] 105:18 306:2 physicians [21] 33:9,10 73:15 77:24 100:12 110:6 111:23 115:23,25 118:12 164:3 195:3 200:12 206:4 237:12 256:21 307:15 308:17 315:2 319:11 347:20 pick [5] 35:1 111:9 225:25 230:1 234:23 picked [1] 227:13 picking [2] 163:24 232:10 picnic [5] 20:17,19,21 21:4,4 pictures [1] 64:12 piece [3] 26:18 27:17,17 pieces [1] 24:18 Pike [1] 1:14 pile [2] 201:5,10 Pilgrim [1] 287:14 pinned [2] 75:3 76:21 place [22] 22:10 23:20 25:17 26:15,17,20 49:14 49:25 83:14 124:14,25 125:3 139:10,13 147:11 174:2 177:4 209:12 262:17 293:14 302:4 353:16 placed [7] 18:24 25:10 25:15 27:17 51:9,10 262:3 places [2] 63:5 233:4 placing [1] 66:10 plus [4] 12:22 122:21,21 122:21 point [41] 27:3 40:3 75:19 88:6 121:22 129:8 129:16 130:11 131:11 144:10 166:9,11 167:18 174:17 205:1,4 206:4 223:19 243:19 246:3 256:4 259:21 261:23 263:22 273:17,21 275:15 289:5 298:21 301:11 314:19 320:7,19 328:10 331:1 335:16 342:14 349:18,25 350:1 359:6 pointed [3] 139:15 216:9 315:4 points [2] 203:20 259:13 policies [1] 48:25 policy [5] 48:7 49:24 50:10 51:4 186:13 poor [3] 200:22 215:5,9 pop [2] 229:24 232:20 Port [6] 12:15,16,23,23 16:5,13 porter [2] 51:12,14 portion [1] 311:9</p>	<p>pose [1] 264:24 position [25] 7:2,4,18,23 8:1,9,23 11:19 61:13 102:12 120:4 130:18 180:4 181:6 195:11 202:3 202:4,16 204:10,12 238:13 258:9 263:13 293:22 356:3 positions [14] 8:13 201:14,17,22 202:12,14 202:20 203:18 204:6 206:3,13,14 207:9 238:16 positive [37] 80:19,22 80:24 81:16,22,23 82:8 82:11,18,21,24 83:11,12 83:12,18,23 84:22 85:20 85:22 92:17 118:21 127:11 156:9,9,10 157:8 158:7 160:11,18 215:8 218:24 219:1 280:4 304:16 307:4,8,16 positivity [3] 156:12,23 157:13 possibilities [1] 234:11 possibility [1] 294:15 possible [8] 80:20 81:1 81:17 148:12 151:3 194:7 216:4 293:9 possibly [4] 150:15 232:19 240:7 294:14 post [1] 233:3 post-graduate [1] 6:13 posted [2] 140:13,16 potential [1] 304:21 potentially [6] 169:2 261:21 304:7,23 305:5 331:2 PR [51] 28:4 29:15 66:13 72:24 73:24 81:23 83:12 90:12 92:5,11 93:8 95:6 97:18 108:22 118:13 119:12 123:20 133:22 134:25 149:12 156:8,10 156:13,23 159:22 174:17 174:20 175:1,17 178:17 183:3 184:1 218:10 219:7 221:8 224:13,20 226:12 227:15,17 235:20,23 239:20 254:2 255:22 261:11 268:20 279:12 294:17 300:1 352:15 practice [21] 41:12 72:4 89:21 92:19 104:11,11 105:14 108:7 135:7 136:1 141:1,5,21,24 143:23 148:14 152:1,6 183:4 188:25 191:14 practise [1] 158:14 practised [1] 71:1 practising [4] 85:8 135:12 160:16 161:7 pre-dating [1] 102:6 precautionary [1] 261:13 precious [1] 64:16 preclude [1] 215:6 predate [1] 183:9</p>
---	--	--	---	---

<p>predates [1] 331:20 predecessor [2] 78:22 138:14 Predham [5] 270:14 304:4 307:1 339:6 342:1 Predham's [1] 271:14 predicament [1] 210:19 preferably [1] 37:12 preference [1] 37:18 preferred [1] 182:2 prepare [2] 238:20 314:18 prepared [5] 84:10 144:18 148:6 193:11 272:21 present [6] 7:4 152:18 153:10 155:5 334:12 345:14 presentation [4] 344:20 345:8 347:20 351:7 presented [1] 349:10 presently [1] 218:17 presumably [1] 236:7 presume [2] 24:14 125:23 presupposes [1] 161:19 pretty [3] 48:4 147:22 250:13 previous [6] 135:16 241:15,24 300:23 301:1 301:1 previously [1] 361:16 primarily [1] 67:3 primary [4] 65:22,24 286:8 361:6 primitive [8] 101:17 102:7,18 104:16 105:8,8 225:21,22 print [2] 253:5 278:13 printed [1] 264:11 printing [1] 265:5 Pritchard [1] 49:2 Pritchett [1] 1:16 problem [27] 41:23 54:11,13 55:5,15 56:10 56:13 86:9 167:9,10 176:22 177:1,5,10 180:7 217:6 261:22 262:2,6,7 262:8,9,11,21 298:6 310:20 327:1 problems [8] 127:10 134:2 135:16 162:6 178:3 178:6 244:8 262:5 procedure [5] 124:14 124:25 125:2 159:12 322:12 procedures [1] 205:14 proceedings [2] 193:7 297:25 process [46] 20:9,11 21:18 25:20,25 26:7,21 34:13 36:5,11,15,17 40:17,18,24 52:10 73:23 89:9 91:4,5,8,17 97:12 100:7 108:20 142:10</p>	<p>156:3 205:12 219:4 224:12 232:23 249:7 259:22,23,25 261:3 291:13 292:17 300:21 316:3 320:20 321:9 331:8 335:17 339:7 344:5 processed [3] 24:24 25:25 57:24 processes [1] 224:15 processing [10] 17:21 46:25 48:14 52:25 56:16 142:3,6,13 144:3 334:11 processor [8] 24:24 25:4 25:6,16,18,18 146:14,19 processors [1] 147:18 producing [1] 289:2 professional [1] 5:24 proficiency [1] 186:19 progesterone [12] 28:4 75:9 98:13 127:11,22,25 178:4,7 182:20 215:7 218:5 259:10 prognostic [3] 67:6,8 67:11 program [17] 52:13,18 70:2 101:18 102:9,21,25 103:2 104:17,21 108:3 120:24,25 187:8 196:15 286:11 321:4 promptly [1] 292:8 prone [1] 160:17 proper [2] 15:12 43:3 properly [2] 40:10 163:11 proposal [2] 81:6,8 prospective [1] 174:13 prostate [4] 174:7 211:15,23,25 prostatic [2] 60:2,3 prostrate [4] 59:23 134:24 136:22,24 protocol [6] 47:8,19,25 48:8 77:19 318:13 protocols [3] 48:17,25 125:5 prove [1] 262:7 provide [7] 49:4,5,10 118:19 286:16 307:7 357:3 provided [8] 114:9 157:12 171:15 292:11 293:15 306:11 307:11,13 providers [1] 307:8 providing [3] 209:21 359:17 362:4 province [4] 83:14 164:9 192:25 238:16 provincial [6] 120:23 192:21 193:9 196:11 237:20,22 provincially [1] 10:20 provisions [1] 209:18 proviso [1] 85:18 PRs [2] 219:4 259:8</p>	<p>psuedoangiomas [1] 283:18 PTH [1] 299:24 public [5] 272:5 273:8 273:11,14 294:18 pull [2] 302:22,24 pulled [3] 209:5 260:19 302:17 punishment [1] 360:10 purpose [3] 23:21 224:2 254:9 purposes [23] 29:8 57:25 59:21 61:20 66:25 67:8 133:23 135:7 136:3 165:5 165:14 173:11,19 174:16 174:19 175:5,7,22 176:2 176:6 214:19 308:21 310:6 pursue [1] 267:10 pursued [1] 111:4 push [2] 360:10,14 put [21] 13:10 19:17,19 20:17,21 52:18 61:24 105:4 106:17 135:21 151:10 232:23 233:10 234:7 245:2 250:10 276:2 285:2 294:5 316:20 358:1 puts [1] 305:3 putting [3] 105:10 236:1 265:5</p> <hr/> <p style="text-align: center;">-Q-</p> <p>Q.C [1173] 1:6 2:3 4:3,6 4:21,25 5:12,19 6:4,21 7:6,11,15 8:12,17,22 9:1 9:5,11,15,19,24 10:4,9 10:14,23 11:3,8,14,18 11:22 12:2,6 13:4,14,22 14:2,11,21 15:3,7,15,21 16:2,6,10,14,19,25 17:4 17:10,15,20,24 18:3,9 18:16,20 19:1,7,11,23 20:3,7,13,18,23 21:7,12 21:17,25 22:14,21 23:1 23:9,14,23 24:3 25:1,7 25:22 26:5,10,25 27:8 27:20 28:2,8,20 29:7,13 29:19,23 30:2,14,16,23 31:2,8,14,19,24 32:9 33:6,20,25 34:6,11,20 35:8,14,21,25 36:4,8,12 36:16,18 37:4,10,15,19 37:25 38:4,13 39:1,11 39:18 40:1,7,12,16,21 40:25 41:5,9,16,24 42:8 42:14,19,23 43:5,10,16 44:1,7,13,18,24 45:6,11 45:16,21,25 46:16,22 47:9,13,24 48:6,16,22 49:11,17,23 50:12,17,22 51:3,11,15,20 52:1,9,22 53:6,11,17,22 54:3 55:17 55:21 56:3,14,23 57:5 57:10,15,20 58:3,12,22 59:5,13,24 60:6,12,17 60:23 61:6,11 62:1,6,11 63:13 64:1,7,14,20 65:2 65:6,11 66:12,20 67:2,7 67:14,22 68:6,12,16,21</p>	<p>69:2,9,14,20 70:12,17 70:23 71:12,16 72:1,11 72:23 73:5,12,16,21 74:6 74:15,20,25 75:4,14,21 76:3,13,18,25 77:8 78:5 78:10,15,23 79:2,8,12 79:16 80:6,11,15 81:13 81:21 82:1,5,14,19 83:1 83:5,24 84:9,14,19,25 85:5,17,25 86:8,16,21 87:2,6,10,15,21 88:1,7 88:14,22 89:1,6,16,20 90:5,18,22 91:2,9,14,21 92:3,9 93:1,6,11,18,22 94:1,14,18,23 95:18,23 96:5,9,13,22 97:3,14,23 98:8,17,22 99:4,9,15,22 100:2,6,10,17,24 101:6 101:10,14,21,25 102:5 102:10,16,22 103:1,6,13 103:18,23 104:2,6,18,24 105:5,9,20,25 106:9,14 106:18,23 107:9,18 108:6 108:10,14,18 109:4,10 109:15,24 110:4,12,19 110:23 111:3,17,22 112:4 112:9,14,21,25 113:4,11 113:15,24 114:5,14,20 115:2,7,11,15,21 116:4 116:9,14,18,22 117:4,9 117:15,25 119:7,18 120:1 120:6,12,16,21 121:5,11 122:15,24 123:4,10,16 123:24 124:8,12,20,24 125:8,13 126:15,21 127:2 127:20 128:6,12,16 129:6 129:14,19 130:6,10,16 130:21 131:2,10,17 132:2 132:9,18,22 133:3,8,12 133:16 134:21 135:3,10 135:19 136:4,8,13,21,25 137:6,12 138:2,8,19,25 139:9,18 140:5,12,17,21 141:10,15,25 142:9,17 142:21 143:1,6,15,22 144:9,15,19,25 145:5,12 145:19,25 146:5,10,21 147:5,13,24 148:5,9,19 149:1,11,16,22 150:6,11 150:16,22 151:2,7,13,20 151:24 152:4,10,22 153:2 153:13,20 154:1,7,11,15 154:20,25 155:4,10,17 156:1,6,16,21 157:1,6 157:17,21,25 158:5,12 158:22 159:3,9,17,21 160:1,5,10,21 161:1,14 161:23 162:8,24 163:4 163:10,15 164:16,22 165:9,17 166:5,18 167:3 167:17,23 168:3,8,12,17 168:21 169:7,12,20,25 170:4,8,14,19,24 171:3 171:16,22 172:3,8,13,18 173:1 174:12,24 175:6 175:10,23 176:5,11,18 177:7,14,18 178:12 179:5 179:11,21 180:2,10,15 182:12 183:8,12,20,25 184:6,11,17 185:1,7,12 185:22 186:1,12,17,23 187:9,15,21 188:4,8,12 188:16,20,24 189:6,13</p>	<p>189:17,24 190:4,14 191:3 191:8,13 192:10,16 193:10,18,23 194:2,6,13 194:18,22 195:2 198:6 198:14,20,24 199:3,8,12 199:18,22 200:1,5,10,17 201:8,18,23 202:6,11,15 202:19,23 203:5,9,22 204:9,25 205:23 206:8 206:19 207:2,10,18,22 208:1,5,9,14,21 209:2,6 209:11 210:11 211:1,17 211:21 212:4,10,14,20 212:25 213:8,17,22 214:1 214:5,9,17 215:3,15,22 216:1,8,15,20,24 217:12 217:16,23 218:3,15,21 219:2,16,20 220:1,17,23 221:6,13,23 222:3,7,11 222:16,21,25 223:5,11 223:17,22 224:4,10,23 225:3,8,13 226:5,10,16 227:14 228:4,9,15,20,25 229:5,9,13,18 230:4,9 230:16,20 231:1,6,10,14 231:25 232:13,21 234:5 234:21 235:3,7,12,18 237:8,18 238:1,7,18,24 239:8,23 240:5,14,18,22 241:6 242:1,6,11,15 243:6,13,18,24 244:10 244:14,19 245:3,10,17 246:1,6,10,17,22 247:4 247:8,15,19 248:1,5,11 248:16,21 249:3,9,18,24 250:3,8,15,22 251:3 252:7,12,17 253:7,17,24 254:5,12 255:13 257:2 256:2 256:9,20 257:1,12,16,21 258:2,7,12,18 259:1,6 260:1,9,16,23 261:2,7 262:12,18 263:2,6,11,16 263:21 264:2,6,15 265:9 265:15,20,24 266:8,15 267:3,8,13,17 268:1,10 268:17 269:1,5,9,14,19 270:1,6,10,19,25 271:6 272:13,17 273:15,20,25 274:6,12,17,22 275:1,10 275:20 276:1,14,20 277:1 277:5,21 278:2,20 279:1 279:15 280:8,18,23 281:4 281:13,17,23 282:4,8,12 282:16,21 283:2,8,12,19 283:25 284:5,11,18 285:3 285:18,23 286:23 287:2 287:9,17,22 288:3,10,19 289:15,21,25 290:6,11 290:15,20 291:2,22 292:2 293:18,24 294:3,21 295:5 295:10,21,25 296:4,8,14 296:19,24 297:3,8,21 298:2,11,15,19,24 299:14 299:22 300:6,14 301:10 301:17,22 302:5,13 303:2 303:6,11,16,24 305:8,12 305:19,24 306:5,9,14,18 307:25 308:7,11,22 309:4 309:8,12,16,20,25 310:4 310:10,23 311:6,14,22 312:3,8,12,18,22 313:4 313:9,14,19,23 314:5,13 314:17,22 315:3,11,16</p>
--	---	--	---	---

<p>315:20 316:22 317:3,7 317:12,20 318:4,9 319:6 319:13,18,25 320:6,13 320:18,24 321:5,15,21 321:25 322:14,19,25 323:7,14,18,23 324:10 324:19,24 325:4,16,22 326:23 327:6,14,24 328:6 328:13,17,22 329:1,6,13 329:17,22 330:2,7,13,21 330:25 331:6,11,17,23 332:3,22 333:3,9,20,24 334:16,22 335:4,14,21 336:3,8,16 337:7,14 338:21 339:17,24 340:3 340:8,16,24 341:7,12,16 341:21 342:13,19,24 343:6,11,16 344:9,14 345:1,6,16,21,25 346:11 346:16,25 347:7,14 348:4 348:9,13,17,24 349:5,13 349:17,24 350:5,10,14 350:18,22 351:2,6,12 352:5,9,13,20,24 353:3 353:9,17,22 354:1,21,25 355:6,10,16,22 356:2,6 356:12 357:6,10,15,17 357:21,25 359:11,15 360:6,12,21 362:6,8</p> <p>Q.C./Mandy [1] 1:7</p> <p>quality [24] 108:25 109:20 110:16 116:24 125:20,22,23 126:10 127:8 184:12 186:18 187:2,3,5,8 192:6 196:15 200:21 215:5,10 248:9 297:14 300:21 339:6</p> <p>query [1] 69:4</p> <p>questionable [4] 280:13 280:15 281:5,6</p> <p>questions [11] 69:5 81:3 137:21 170:5 292:9 293:14 326:3 327:2 332:16 359:4 362:2</p> <p>queue [5] 302:17 323:4,6 323:11,13</p> <p>quickly [2] 269:24 287:3</p> <p>quite [29] 35:6 47:21 51:19,21,22 52:6 54:25 70:11 72:22 77:14,15 78:4 82:13 85:24 136:24 140:10,11 147:19 172:11 181:12 182:3 191:22 203:15,17 204:24 210:16 232:18 259:14 315:5</p> <hr/> <p style="text-align: center;">-R-</p> <p>rack [2] 25:15,16</p> <p>raise [1] 331:24</p> <p>raised [5] 113:17 119:8 172:15 216:10 340:20</p> <p>rare [2] 109:8 195:23</p> <p>rates [3] 156:12,23 264:18</p> <p>rather [1] 322:24</p> <p>re [6] 271:10 288:11 356:16,19,20 358:7</p> <p>re-instate [1] 254:21</p>	<p>re-instated [1] 139:7</p> <p>re-instituting [1] 350:6</p> <p>react [1] 220:4</p> <p>reaction [3] 134:13 179:15 220:2</p> <p>read [22] 64:12 76:20 77:9 85:21 105:19 137:25 138:1,3 143:18 149:6 158:6 161:19 168:1,2 169:15 180:23 181:4,7 181:21 182:10 266:24 268:24</p> <p>readily [2] 346:12,17</p> <p>reading [12] 62:15 99:8 99:19,21,23 100:9 149:18 175:21 181:9,16 222:8 264:25</p> <p>reads [5] 128:24 140:2 146:12 215:4 221:8</p> <p>ready [1] 350:17</p> <p>realize [5] 137:24 139:7 201:2 272:22 361:3</p> <p>Realizing [1] 190:21</p> <p>really [31] 7:24 10:22 11:25 12:19 22:12 48:2 55:3 60:8 66:14 77:21 80:12 93:12 101:19 116:25 137:24 174:8,25 198:1 202:7 229:25 230:15,23 231:24 254:25 255:1,5 273:19 289:6 293:22 316:21 326:2</p> <p>reason [7] 135:5 142:22 233:22 254:16,25 255:5 331:4</p> <p>reasons [4] 254:16 255:2 272:7 275:13</p> <p>reassess [2] 209:19 255:9</p> <p>receipt [1] 339:1</p> <p>receive [15] 32:10 34:2 35:5 39:24 124:6 131:24 132:6 137:9 138:20 173:7 221:19 290:3 298:3,21 338:13</p> <p>received [29] 32:14 42:5 59:1 76:19 77:9 78:6 92:16 93:17 96:21 100:11 100:13 104:8 108:11 134:9 137:20 138:21 139:1,19 143:18 166:6,9 166:10 173:11 240:6 261:17 292:25 316:1 340:25 351:16</p> <p>receiving [3] 21:21 111:8 316:10</p> <p>recent [9] 52:25 70:10 111:24,25 167:21 168:4 191:4 250:11,13</p> <p>recently [12] 46:8 53:8 54:2,4 63:2 71:21 145:4 145:6 176:15 191:23 192:5 258:15</p> <p>receptive [1] 195:4</p> <p>receptor [8] 1:2 72:3,7 75:9 95:6 118:14 239:12 363:4</p>	<p>receptor/progesterone [1] 72:7</p> <p>receptors [17] 28:3,4 98:11,13 119:12 127:11 127:25 178:4,7 182:20 182:24 215:5,8 218:6 221:9,24 259:10</p> <p>RECESS [3] 117:22 297:5 326:20</p> <p>recognition [1] 131:5</p> <p>recollection [4] 113:16 244:24 273:12 348:25</p> <p>recommendation [4] 77:22 147:20 198:1 351:19</p> <p>recommendations [8] 77:20 97:22 187:18 193:8 193:15 255:6 304:10,20</p> <p>recommended [1] 121:25</p> <p>reconciliation [1] 335:19</p> <p>record [3] 32:14 101:24 301:3</p> <p>recorded [6] 101:5 103:20,22 108:1,15 110:8</p> <p>recording [1] 32:12</p> <p>records [7] 102:13 147:25 148:3,4 276:8,9 318:17</p> <p>recount [1] 61:14</p> <p>recounts [1] 242:20</p> <p>recruitment [2] 204:6 267:16</p> <p>rectified [2] 137:14,22</p> <p>rectify [1] 167:9</p> <p>redacted [6] 104:10 214:21 288:15 335:15 342:2 361:15</p> <p>refer [14] 42:13 118:3 137:7 165:2 191:14 221:17 223:18 243:8 261:13 266:16 276:6 284:6 351:25 362:1</p> <p>reference [25] 14:6 75:8 80:8 81:15 98:11 100:19 103:8 104:9 123:5,11 143:2 148:10 156:7 157:9 159:10 160:7 241:19 242:18 277:10 290:1,17 327:20 350:24 352:1 358:15</p> <p>references [4] 84:21 118:2 325:7 337:2</p> <p>referencing [1] 287:14</p> <p>referral [4] 164:5,8,13 165:13</p> <p>referred [32] 29:9 36:20 44:21 68:23 84:4 91:22 95:1,5 100:3 119:20 121:19,22 122:11 131:11 138:11 146:1 175:13 177:3 207:19 231:18 243:14 269:22 300:19 327:15 335:10 336:25 340:10 344:4 351:17 357:13,19 359:25</p>	<p>referring [12] 10:21 38:12 47:8 48:15 85:1 124:18 198:19 241:12 284:19 287:13 292:9 346:3</p> <p>refers [18] 81:5 121:15 124:9 126:11 149:2 156:8 157:8 218:17 237:19 259:16 261:9 264:17 268:11 271:18 282:23 339:8 344:22 358:16</p> <p>reflect [2] 159:11 304:11</p> <p>reflected [1] 358:24</p> <p>reflection [2] 99:11 119:2</p> <p>refrigerate [1] 50:18</p> <p>refrigerated [1] 20:8</p> <p>refrigerating [1] 51:5</p> <p>refrigeration [1] 50:24</p> <p>refrigerator [4] 51:2,10 52:11 56:18</p> <p>refrigerators [1] 50:24</p> <p>regard [7] 161:2 162:9 163:18 187:10 232:7 337:16 359:17</p> <p>regarding [9] 74:3 164:2 166:2 278:8,10 299:4 316:2 319:12 358:14</p> <p>regards [4] 48:14 63:10 244:8 271:14</p> <p>regime [1] 85:11</p> <p>Reginald [1] 4:11</p> <p>region [7] 12:15 197:1 278:15,17 289:1,3 307:2</p> <p>regional [16] 1:10,17 7:24 8:4 10:1 11:12 13:7 45:3 98:2 214:20 249:16 249:19 258:5,8 270:9 358:12</p> <p>regionalization [2] 10:19 11:6</p> <p>regions [1] 197:17</p> <p>registered [1] 227:21</p> <p>Registrar [9] 4:7,13,17 5:13 214:11 216:25 306:19 338:23 358:3</p> <p>Registry [1] 227:24</p> <p>regular [6] 34:25 71:25 137:16 146:13 147:21 201:1</p> <p>reinstate [1] 349:12</p> <p>reiterated [1] 56:8</p> <p>relate [1] 47:3</p> <p>related [11] 12:22 134:23 136:22 137:15 189:18 209:14 239:9 275:17 319:10 358:11,19</p> <p>relates [1] 98:2</p> <p>relating [1] 265:2</p> <p>relation [21] 13:9 28:3 46:23,25 77:4 97:8 98:9 111:23 118:22 148:14 149:19 157:14 162:11,17 163:16 165:21 186:14 273:22 321:8,17 328:2</p>	<p>relations [2] 292:10 294:18</p> <p>relationship [7] 162:18 162:25 163:17,21 164:4 164:10 166:4</p> <p>relatively [2] 58:6 258:14</p> <p>reliability [1] 134:1</p> <p>relied [2] 92:20 210:2</p> <p>religiously [1] 147:8</p> <p>rely [2] 63:2 66:3</p> <p>remained [6] 10:25 76:22 133:22 173:9 174:14 175:14</p> <p>remaining [5] 13:20 161:16 206:4,25 339:11</p> <p>remains [1] 10:22</p> <p>remember [22] 26:21 47:23 59:22 62:23 76:1 76:17 86:11 99:11 105:18 111:12 113:22 123:3 141:8 164:25 183:18 184:5 205:7 224:3 227:23 250:13 348:22 349:3</p> <p>remind [2] 182:19 183:14</p> <p>reminder [1] 239:11</p> <p>remove [3] 22:10 24:10 24:11</p> <p>removed [8] 18:13,24 21:4,5 24:14 26:4 51:9 72:17</p> <p>removes [1] 26:1</p> <p>remuneration [2] 206:1 237:15</p> <p>repeat [8] 218:6,11 221:8 221:24 286:5 294:7,9 361:18</p> <p>repeated [2] 294:23 361:16</p> <p>replacing [1] 130:2</p> <p>replied [1] 55:14</p> <p>report [74] 7:19,20 8:2 31:16,25 32:2,3,7,10,16 32:19,20,22,23,25 33:1 33:7,8,13,18,19 73:9,11 77:16,21,23,24 79:19 88:19 97:21 98:1 100:11 100:13 101:9,11 104:7 107:4,6,13 159:6 165:7 180:12 185:2,6 214:21 222:10,10,18 238:21 257:24 258:1 275:14 281:25 282:11 284:10,15 299:5,9,12,13 300:12 301:2,3 309:2,5 318:14 318:22 322:8 333:1 344:1 356:19 358:15,16 360:2</p> <p>reported [15] 77:24 98:5 99:1 122:16,17 158:4 166:10 175:17 180:24 253:9 280:9 300:3 318:18 323:2 337:4</p> <p>reporting [25] 8:1 53:18 75:8 77:19 81:6 88:15 108:20,23 119:4 121:14 121:23 122:5 123:1</p>
--	--	--	---	--

<p>127:24 128:8 157:7 158:8 173:14 178:21,23 257:5 257:9 259:17 300:17 309:17</p> <p>reportings [1] 122:7</p> <p>reports [41] 7:19 54:14 54:15,17,19,20,22 56:1 77:23 95:4 104:13 107:15 110:8 127:23 181:10 184:22 222:13 258:6,22 258:22 261:14 291:9,15 299:11 308:18 310:7 316:5,7,11,15,16,16 332:9,13,20 333:13 344:2 358:11,20 359:24 360:5</p> <p>represent [1] 203:19</p> <p>representative [3] 28:14,17 94:4</p> <p>reprocessing [3] 142:5 142:14 144:4</p> <p>request [21] 5:3 96:24 107:23 148:13 162:3 219:5 251:23 272:6 286:24 288:12 295:13 296:7 342:20 351:23 352:2 354:17 355:1,7 359:23 360:22 361:7</p> <p>requested [11] 33:18 259:15 271:24 291:18 294:10 295:17 300:8 358:12,20 360:24 362:4</p> <p>requests [3] 86:25 137:17 319:10</p> <p>require [1] 286:12</p> <p>required [15] 14:16 15:8 15:11 61:21 85:11 123:19 124:3,3 204:4 220:5 268:19 286:7 291:16 307:2,17</p> <p>requirements [1] 204:19</p> <p>requiring [1] 268:12</p> <p>requisition [19] 22:4 30:20,21 33:17 62:20 83:22 84:4,5,10,16,20 227:6,10,13 228:7,10,16 232:5,6</p> <p>requisitions [3] 227:7 229:6,8</p> <p>Research [1] 288:6</p> <p>resent [2] 295:24 296:5</p> <p>residency [3] 6:19 59:9 60:25</p> <p>resident [2] 59:15 64:16</p> <p>resolve [4] 337:23 338:7 338:15,20</p> <p>resolved [1] 338:10</p> <p>respect [7] 57:16 66:13 267:18 317:14 319:2 324:1 343:1</p> <p>respected [2] 76:10 161:5</p> <p>respective [1] 316:6</p> <p>respond [3] 354:16,18 355:3</p> <p>responded [1] 272:6</p>	<p>responds [2] 272:24 354:12</p> <p>response [5] 69:12 252:25 266:24 272:21 292:22</p> <p>responsibilities [2] 7:17 12:12</p> <p>responsibility [5] 121:24 146:24,25 308:12 309:21</p> <p>responsible [13] 7:21 35:10 45:17 56:25 57:1 57:6,9 80:21 82:7 146:17 204:10 220:14 271:13</p> <p>rest [1] 237:17</p> <p>restarted [1] 139:14</p> <p>result [13] 73:6,8 143:24 297:25 300:23 301:2 311:4,5 315:13,17 338:19 354:10 361:23</p> <p>results [59] 31:25 75:10 79:19 98:25 118:21 148:11 153:8 154:6,8 157:8 159:11 166:8 167:6 169:18 173:4,5 221:10 221:14,17,18,25 222:2 253:19 261:12,21 262:13 262:15,23 263:24 264:1 264:5 289:2 300:22 301:11,13,24 304:18 306:24 307:1,3,4,7,8,22 308:3,16 310:18,18 315:21 316:2,3 333:4 334:4,9 335:7 345:13 346:9 361:22,24</p> <p>resume [4] 134:5 137:16 161:18 254:1</p> <p>retain [1] 351:20</p> <p>retest [15] 101:1,5 259:23 259:25 300:25 302:16,21 316:16 321:7 331:4 333:4 342:4,9 361:2,4</p> <p>retested [20] 271:25 292:15 300:2,18 302:17 303:3 318:22,23 319:3,5 319:7 322:9 329:10,14 329:19 338:5,6 340:14 342:3 361:4</p> <p>retesting [27] 107:4 154:12,14 156:2 219:4 242:23 261:3 262:4 263:24 280:2 291:13 294:10 300:20 308:3 314:9 315:17 318:19 321:9,18 324:21 328:19 329:3 331:2 335:8 340:19 342:6 351:18</p> <p>retests [1] 333:5</p> <p>retire [1] 250:9</p> <p>retired [5] 250:7,9,16,23 251:1</p> <p>retrieve [5] 226:3,19,22 286:9 287:1</p> <p>retrieving [1] 286:4</p> <p>retrospective [1] 334:5</p> <p>retrospectively [1] 255:16</p> <p>return [7] 41:10 95:6</p>	<p>134:19 155:20 255:21 341:1 351:21</p> <p>returned [3] 107:21 301:4 351:25</p> <p>returning [2] 38:6 178:21</p> <p>returns [1] 49:3</p> <p>reveal [1] 215:4</p> <p>review [22] 118:20 178:19 189:10 259:9 261:11 275:14 284:25 297:14 300:21 304:24 307:6 316:3 318:18 334:5 334:8 338:10,11,11 343:22,25 358:19 360:23</p> <p>reviewed [9] 184:21 279:23 307:12 310:13,15 311:16,18 336:21 361:12</p> <p>reviewers [1] 297:17</p> <p>reviewing [2] 80:21 82:8</p> <p>reviews [1] 271:19</p> <p>REVISED [1] 3:1</p> <p>right [28] 1:8 12:7 17:25 26:23 27:1 47:5 99:3,7 100:23 117:20 144:8 172:7 176:4 198:12 205:7 212:17 221:20 227:8 237:7 279:24 282:17 304:15 324:12 345:2 349:23,23 361:17 362:11</p> <p>right-hand [1] 360:3</p> <p>rightly [1] 304:10</p> <p>Robert [1] 360:25</p> <p>Roddick [3] 14:1,7 16:18</p> <p>role [6] 197:22 210:25 211:2 273:17 356:11 359:16</p> <p>Roman [1] 100:20</p> <p>room [4] 35:6 38:18 39:25 52:20</p> <p>rooms [2] 34:25 68:18</p> <p>Rotating [1] 6:18</p> <p>rotation [1] 61:7</p> <p>round [5] 199:25 200:16 276:22,22 324:21</p> <p>rounded [1] 76:9</p> <p>rounds [8] 198:15,19,21 199:4,11 200:6,11 201:5</p> <p>routine [3] 71:1,25 184:2</p> <p>routinely [3] 101:2 144:20 191:15</p> <p>run [8] 80:20 82:7,25 83:8,10,12 126:3 191:2</p> <p>running [3] 108:21 174:10 180:19</p> <p>Russell [1] 1:12</p> <p>Ryan [2] 286:1 288:11</p>	<p>sample [9] 14:13 15:8 15:11 26:22 40:3 50:2 89:14 342:6,9</p> <p>samples [11] 14:19,19 15:23 24:17,18 53:3 83:13 261:4 277:16 292:15 358:19</p> <p>Sandra [1] 1:7</p> <p>satisfied [1] 111:11</p> <p>Saunders [4] 12:16,24 16:13 292:25</p> <p>saw [4] 77:18 165:7 192:2 204:24</p> <p>says [35] 50:10 77:25 118:13 133:18 140:10 167:5 173:3,8 174:14 176:24 196:7 214:23 218:10,16 219:3 221:17 223:18 241:13 256:16 268:18 272:1,24 273:3 283:17 292:6 304:5 316:1 332:7 334:6 339:2,10 342:1 343:21 354:5 358:9</p> <p>scan [2] 90:1 353:21</p> <p>scanned [1] 310:18</p> <p>scarring [1] 24:20</p> <p>scenario [2] 27:3 34:12</p> <p>schedule [4] 146:20,24 147:11,22</p> <p>scheduled [5] 35:1 36:21 39:3 46:10,13</p> <p>schedules [2] 39:4,5</p> <p>scheduling [2] 39:20 44:8</p> <p>school [2] 6:5 71:4</p> <p>Science [3] 6:10,12 75:18</p> <p>Sciences [2] 6:8 216:16</p> <p>Sciences' [1] 216:18</p> <p>scope [2] 150:18 243:21</p> <p>scratch [1] 105:23</p> <p>screen [1] 74:13</p> <p>scroll [1] 242:23</p> <p>se [5] 130:22 136:19 140:8 199:11 279:14</p> <p>sealed [2] 21:9 27:18</p> <p>search [6] 228:10,16 233:12 234:14 235:1 291:7</p> <p>searchable [4] 225:25 226:1 227:3 286:12</p> <p>searched [3] 229:6,10 229:12</p> <p>seated [2] 117:24 326:22</p> <p>second [17] 64:10 115:4 132:15,17 149:3 184:21 217:24 221:7 242:16 254:25 259:16 283:11 289:5 291:6 299:23 344:18 361:21</p> <p>secretaries [5] 32:5 220:10,13 227:9 241:2</p> <p>secretary [6] 30:19 32:15 44:17 95:15 105:4 303:20</p> <p>section [1] 239:13</p>	<p>sections [2] 215:5,9</p> <p>see [56] 20:25 22:17 24:13 27:12,13 29:5 53:23 54:19 58:10 64:6,11 74:23 83:21 86:12,15 90:2,8 104:8 110:7 115:3 115:25 130:17 161:9 166:14 169:6 174:10 182:8 187:3,19 192:21 193:3 196:7,9,13,17 198:10 203:16 224:6 226:20 234:2 237:17 238:12 241:13 243:2 252:24 264:12 278:9 310:13,15,19 316:7 319:19 326:15 332:25 347:5 361:1</p> <p>seeing [2] 33:16 320:17</p> <p>seeking [1] 336:6</p> <p>select [3] 28:17 239:13 241:17</p> <p>selected [2] 155:9 291:14</p> <p>self [2] 231:2 323:20</p> <p>self-identified [2] 231:5 231:18</p> <p>send [60] 16:13 28:18 30:18,20 31:10,13,15 73:10 77:23 83:13 95:16 171:12 177:1 187:1,4,12 210:1,7,12,14,21,22,24 211:12 212:3 239:11 251:10 252:22 253:2 254:21 255:1 271:24 280:1,6,14,15 281:16,19 281:22 282:1,20 283:23 285:14 286:7 289:7 295:17 318:25 324:15 327:25 329:5 340:18 342:5,17 344:2 350:1,4 351:8,11 352:8 361:14</p> <p>sending [15] 56:9 84:1 126:5 181:10,13 208:22 275:16 277:9,24 278:22 288:11 311:8 318:22 324:5 332:11</p> <p>senior [12] 248:24 249:1 258:9,21 271:4,12 274:8 287:12 306:21 308:1 318:2 355:20</p> <p>sense [17] 7:18 58:4 66:23 69:24 98:4 119:14 174:13 185:8,13 209:22 231:19 233:21 254:23 264:17 301:14 329:5 338:1</p> <p>sensitive [1] 273:3</p> <p>sensitivity [1] 134:1</p> <p>sent [73] 16:5,7 31:1,3,5 31:7,9,18 32:19 48:18 96:20 101:5 103:10,15 107:2,22,24 108:1 131:13 131:16 136:2 139:3 152:21 156:3 166:22 181:4 222:10 243:9 253:10 276:21 277:2 283:3 284:10,15 285:8 288:12 290:23 291:10,15 292:21,24 293:2,16 294:9 294:12 295:3,15,16,18</p>
---	---	--	---	--

-S-

<p>296:1,9,12,20 300:13 301:18 302:3,20 304:2 312:4 317:22 318:19 323:25 324:20 325:9 327:20 329:2 331:4,10 335:1,6 340:13,15 361:16</p> <p>sentence [3] 82:6 146:12 221:7</p> <p>Separate [1] 82:2</p> <p>September [29] 53:19 178:16 240:21 241:24 245:19 252:20 256:11 259:7,20,22 261:17 264:10 266:1,3,12,20 268:2 270:12,13 272:18 273:24 274:5,7,18 280:3 281:11 297:18,18</p> <p>series [1] 341:23</p> <p>serves [1] 54:22</p> <p>service [20] 162:12 168:22 169:2 170:9,11 170:13,16,18 171:14 172:14 176:21 177:9 209:22 254:24 255:2,3 255:23 271:20 297:15 350:7</p> <p>services [11] 8:2,5 127:15 204:14 248:4 249:17 258:1,5,6,9 358:13</p> <p>set [4] 84:10 284:22 344:19 355:2</p> <p>sets [2] 97:11 253:3</p> <p>setting [1] 268:5</p> <p>seven [3] 206:24 304:22 336:24</p> <p>several [14] 83:21 147:17 199:21 210:5 220:9 230:23 254:19 265:7 270:12 278:4 284:24 319:9 335:25 361:4</p> <p>share [4] 184:24 220:3 271:12 277:14</p> <p>sheet [11] 49:6 153:25 275:13 279:6,7,9,10,19 280:16,19 299:16</p> <p>Shelley [1] 300:16</p> <p>shelved [1] 193:4</p> <p>shop [1] 140:6</p> <p>short [5] 4:24 6:16 59:8 203:2 254:17</p> <p>shortly [5] 100:25 219:17 219:19 289:16 298:20</p> <p>shouting [1] 253:6</p> <p>show [3] 35:17 221:19 265:13</p> <p>sic [1] 243:7</p> <p>side [10] 8:3,4 57:11 94:8 201:6 271:20,21 279:24 280:5 360:4</p> <p>sign [6] 33:5 95:21 104:23 105:18 106:11,13</p> <p>signature [1] 215:11</p> <p>signatures [1] 105:19</p> <p>signed [9] 95:8,21 134:6 148:8 215:11 239:17</p>	<p>285:12 288:13 354:11</p> <p>significance [1] 106:1</p> <p>significant [2] 168:25 261:1</p> <p>signify [3] 96:14 106:10 106:19</p> <p>signing [2] 95:10 104:12</p> <p>Silver [1] 288:7</p> <p>similar [7] 10:19 164:12 241:14 266:10,21,23 318:2</p> <p>Simmons [6] 1:10 242:25 326:4 346:22,23 354:5</p> <p>simple [1] 221:4</p> <p>simply [3] 161:10 205:2 253:13</p> <p>Sinai [56] 29:22,24 30:19 30:22 32:3 103:10,15 107:3 152:14 154:5 162:20 164:13 243:9,10 251:25 252:3,8 254:8,24 255:3,4,11,23 259:19 261:12 268:21 271:25 299:5,9,12,13 300:2,20 300:22 301:4 306:24 311:2,4 316:2,3 319:1 332:9,14,21 333:1,14 335:8,24 337:3,23,24 338:15 340:15,19 351:18 360:2</p> <p>Sinai's [1] 154:22</p> <p>sincere [2] 277:16 292:19</p> <p>sincerely [1] 294:16</p> <p>single [1] 115:25</p> <p>sit [1] 171:17</p> <p>site [11] 118:8 119:10 126:5 127:4 128:18 129:1 129:2 130:23 131:5 177:23 194:11</p> <p>sites [5] 65:17 125:24 316:6 344:19 351:23</p> <p>sitting [3] 41:25 42:2 261:24</p> <p>situ [1] 338:2</p> <p>situation [12] 29:14 30:5 41:21 47:15,18 171:18 171:21 180:9 205:20 257:20,23 342:14</p> <p>situations [2] 174:25 322:10</p> <p>six [5] 134:4 173:22,25 191:2 317:10</p> <p>sixth [2] 8:21,23</p> <p>size [1] 193:12</p> <p>skin [2] 23:7 211:13</p> <p>slice [3] 22:24 26:18,20</p> <p>sliced [1] 23:18</p> <p>slices [3] 23:6,20 24:12</p> <p>slide [41] 26:21 27:11,21 28:12,15 29:2,3 30:20 59:1 66:5,6 84:18,20 90:1,1,3,8,10,10,12,12 92:22 97:18,18 109:20 110:16 116:24 126:4,5 151:16,21,23 185:17</p>	<p>186:10 215:18 279:12,12 279:13 338:11,11 351:7</p> <p>slides [68] 27:3,6,14 28:13,17 31:11 65:25 66:1 80:18,23 82:2,9,18 83:18 84:15 85:20 89:23 92:4 97:12,15 100:21 107:22,24,24,25 109:1 109:20 111:8 113:7,20 118:18 121:21 122:11 154:22 155:8,12,22,25 166:10 179:15 180:6 181:3,5,7,9,21 187:1,3 191:16 215:18 216:12 219:9,10 221:16 222:8 222:18 275:12 279:4,11 295:16 311:19 312:1,2 338:13 351:17,20 352:15 360:2</p> <p>slideshow [1] 347:24</p> <p>slideshows [1] 348:10</p> <p>slipped [1] 27:16</p> <p>slowly [1] 264:1</p> <p>small [10] 23:5,5 24:17 24:17 25:10,11 26:20 72:16 199:2,9</p> <p>Smith [1] 278:6</p> <p>smooth [1] 81:1</p> <p>snapshots [2] 267:4,7</p> <p>Society [1] 1:15</p> <p>socks [1] 209:5</p> <p>solely [1] 162:14</p> <p>solution [3] 55:3 134:3 173:24</p> <p>solve [1] 134:1</p> <p>someone [12] 21:3,5 130:5 183:17 186:4 205:11 266:24 294:15,23 325:23 342:7 355:20</p> <p>sometimes [9] 13:18 83:15,15,16 185:21,23 186:3 269:24 276:5</p> <p>somewhere [6] 187:13 190:18 210:8,21,24 346:8</p> <p>soon [3] 161:18 212:2 260:8</p> <p>sooner [1] 253:2</p> <p>sorry [15] 9:16 21:5 29:2 45:3 79:5 154:8 188:5 192:11 203:3 211:18 217:1 221:20 237:19 294:8 357:7</p> <p>sort [32] 13:1 22:18 23:19 26:1 62:15 71:1 100:13 101:1,3 121:7 126:18 135:13 156:11 162:11 163:16 167:4 168:13 197:12 216:4 219:3 264:16 265:3 266:10 286:15 300:8 302:3 309:13 314:19 325:9 335:17 337:11 356:15</p> <p>sorts [4] 104:12 123:19 168:23 336:11</p> <p>sound [1] 363:10</p> <p>sounds [2] 255:9 265:4</p> <p>source [2] 212:6 230:2</p>	<p>sources [1] 69:15</p> <p>space [2] 90:24 91:1</p> <p>spaces [1] 24:2</p> <p>Spark [1] 278:12</p> <p>Sparkes [1] 44:14</p> <p>sparse [1] 122:23</p> <p>speak [4] 53:7 109:21 196:3 267:24</p> <p>speaking [1] 318:10</p> <p>specialists [3] 190:21 190:23 336:7</p> <p>specific [7] 60:2 109:23 124:4 321:20,22 322:5 330:5</p> <p>specifically [3] 71:11 71:17 230:24</p> <p>specificity [1] 134:2</p> <p>specify [1] 125:9</p> <p>specimen [20] 18:23 19:4 21:1,13,21,24 22:3,4,13 41:19 54:16,21 56:1 72:17 124:5,16,18 125:5 148:24 310:16</p> <p>specimens [12] 12:17 17:16 20:2 35:4,5,5,15 56:9 58:16 182:22 208:23 334:11</p> <p>speculate [1] 299:10</p> <p>speculating [1] 231:23</p> <p>spell [3] 4:8,11 5:1</p> <p>spelled [1] 259:13</p> <p>spelling [1] 94:9</p> <p>spend [2] 189:21 201:3</p> <p>spent [1] 6:16</p> <p>spoke [11] 11:11 46:20 55:11 116:1 243:3 246:18 271:8 288:24 299:3 316:12 343:21</p> <p>spoken [5] 208:8 215:17 223:23 224:1 242:4</p> <p>spot [2] 250:10 292:1</p> <p>spread [2] 192:25 308:23</p> <p>spreadsheet [22] 279:16 279:18 280:21,25 308:10 308:12,20,25 309:17 310:15 311:2,9,10,17 312:14 313:2 317:21,25 318:1 335:20,23 337:23</p> <p>spreadsheets [21] 14:4 152:14,15,18 153:1,3,7 153:8,16,24 154:2,5,16 154:17 289:2 310:5,11 310:13 314:7 316:4 359:25</p> <p>St [73] 6:9 59:6,19 72:21 77:4 84:3 89:23 107:22 118:16 119:10 121:14 125:17 126:1,23 127:6 128:20 132:11,13 136:2 136:10,14,16,20 138:13 139:25 156:3 158:19,21 163:18 171:14 178:25 179:1,18 180:23,23 187:12 200:7,14,16 210:2 210:23 217:7 222:17 223:6 238:15 241:9</p>	<p>244:20,23,25 245:13,20 245:21 251:7 255:24 257:5,9 258:14,21 290:24 292:10 307:5,6 312:5 324:6 328:1,1,9,23,25 330:17,20 363:7,11</p> <p>stack [2] 48:21,23</p> <p>staff [5] 6:2,24 134:7 167:8 277:15</p> <p>staffing [5] 201:11 206:2 206:3 209:14 307:13</p> <p>stage [1] 59:18</p> <p>stages [1] 99:16</p> <p>stain [16] 27:15 63:15,16 64:13 65:22,24 92:23 121:25 134:24 139:6 149:15 159:16 162:4 166:10 170:21 215:6</p> <p>stained [5] 27:15 31:10 152:18 153:10 155:5</p> <p>stainer [1] 178:1</p> <p>staining [34] 79:20,22 79:23 80:8,24 81:7 82:10 88:9 89:2,13 90:11 91:19 125:21,24 126:3,11,24 127:8 133:24 139:16 149:4 158:4 159:10,12 159:14,22 161:9 162:21 165:5 178:18,20 215:6 239:17 334:11</p> <p>stains [41] 59:20 61:18 61:21 62:18,21 63:7 65:7 67:10,11 79:22 84:6 92:14,15 121:19,20 122:10 133:19 134:5,16 134:23 135:6,22 136:9 136:19 137:17 138:10,15 162:19 165:14 166:9 167:7,11 170:1,21 173:5 173:8 174:3 175:12 215:4 217:7,7</p> <p>stand [2] 171:17,18</p> <p>standard [2] 124:5 161:7</p> <p>Star [1] 354:6</p> <p>start [7] 25:19 40:17 80:17 200:16 211:11 265:21 266:1</p> <p>started [28] 6:2,24 33:21 40:18 54:15,16 72:4 78:21 112:7,12 116:6,21 143:12 145:11 181:4 184:9 201:16,21 202:3,4 203:14 211:5 224:25 228:12 249:22 254:8 262:23 264:1</p> <p>starting [1] 60:14</p> <p>starts [1] 36:5</p> <p>state [4] 4:8 69:25 167:10 191:5</p> <p>statement [8] 54:23 55:1 82:13 157:10 161:6 169:17 266:18 272:5</p> <p>stationary [1] 94:7</p> <p>statistical [3] 312:17 313:5,25</p> <p>statistically [1] 315:12</p> <p>statistics [4] 156:12</p>
---	---	---	--	--

<p>312:23 314:2,3 stats [2] 156:23 356:19 status [10] 33:8 72:7,24 73:24 261:9 268:6,13,21 300:20 361:3 stay [5] 83:16 204:2,3 205:21 353:8 steady [1] 87:3 stenos [1] 357:1 Stephenville [25] 12:15 13:19,24 14:8,13 16:18 16:22 17:7 18:14,17 19:13,18 21:1 33:22 34:3 36:7 41:10,12,19 42:4 43:14,15 50:1,3 56:18 steps [1] 146:6 still [16] 16:24 58:21 80:21 82:7 110:1 131:14 167:13 193:5 203:25 251:1 253:22 254:18 291:12 327:17 338:4 340:9 stint [1] 59:9 stipulated [1] 281:18 stop [3] 133:25 209:20 283:11 stopped [3] 71:21 139:8 139:12 stopping [1] 242:21 story [1] 277:11 stringent [1] 192:4 striving [1] 285:12 structural [1] 9:20 structure [7] 10:10,18 11:11,23 12:9 257:5,9 study [3] 77:1 125:22 126:18 studying [1] 125:22 subject [9] 75:8 118:5 121:7 145:14 162:11 182:17 259:8 264:24 265:2 submission [1] 276:23 submit [2] 220:16 251:16 submitted [3] 223:10 358:18,20 submitting [1] 316:6 subsequent [1] 336:1 subsidizes [2] 189:14,16 substance [1] 190:13 substantially [1] 64:24 successful [1] 276:15 such [19] 12:25 18:5 21:21 41:1 48:24 57:22 60:20 67:10 116:10 122:7 134:5 148:1 162:12 208:17 253:9 271:13 305:14,25 306:11 Sue [1] 271:14 suffice [1] 214:19 suggest [1] 273:5 suggested [6] 85:14 123:5 128:7 135:12 252:4 299:25</p>	<p>suggesting [5] 41:6 56:5 79:25 105:12 302:19 suggestion [3] 135:15 252:14 304:6 suggests [3] 243:19 252:19 259:18 suited [1] 193:12 Sullivan [3] 270:15,21 277:8 summary [9] 346:7 356:17,19 357:2 358:15 358:23,24 359:23 360:4 summer [4] 245:19 271:17 339:14 344:11 supply [1] 62:17 support [1] 349:16 supports [1] 307:14 suppose [2] 143:9 179:16 supposed [1] 64:11 surface [4] 23:7,7,8,10 surgeon [8] 13:20 17:6 42:5 46:6,7,12 306:6,8 surgeon's [1] 37:18 surgeons [6] 43:7 44:25 45:2,9,9 46:2 surgery [23] 13:10 14:13 17:11 19:5,12,16 24:21 33:13 36:23 37:1,8,23 38:7,16 40:2 41:2,11,18 42:3,6 43:2 45:10 46:3 surgical [10] 15:8,11,23 22:7,12,19 95:1 186:22 199:4 360:1 surprised [3] 166:1 179:24 204:24 surprising [1] 203:15 surrounding [2] 24:19 29:6 Susan [10] 270:14,21 272:9,10,12,19 277:8 286:2 288:11 360:18 suspect [3] 172:12 291:12 294:22 suspended [2] 139:10 251:8 suspending [2] 138:9 138:15 switch [2] 46:14 181:3 SWORN [2] 2:2 4:6 system [19] 32:15,17,17 32:24 33:3 105:3 106:8 221:9 224:17 226:11 234:12 236:16,23 258:13 261:10,16 264:12 286:10 309:3 systemic [1] 322:1 systems [2] 225:20 316:9</p>	<p>takes [2] 26:13 205:17 taking [5] 30:3,5 210:25 318:17,24 talks [2] 81:4,8 Tamoxifen [4] 304:17 318:17,24 330:16 task [9] 221:4 223:16 225:5,10,12,16 245:1 260:7 262:15 tasked [2] 225:5 247:22 tasks [1] 274:4 teacher [1] 76:11 team [3] 249:1 271:4 355:20 technical [8] 111:14,14 134:7 167:8 176:1 261:15 271:21 334:10 technically [2] 80:20 81:16 technologist [12] 26:4 26:13 27:4,6 57:11 111:10 142:12 146:25 216:18 258:9,11,21 technologist's [2] 26:9 257:7 technologists [6] 22:8 148:6 163:22 164:11,12 220:13 technology [3] 178:1 195:25 258:3 telecommunications [1] 200:6 telephone [2] 286:3 358:9 telling [4] 66:15 210:9 271:22 275:5 template [1] 241:14 temporarily [4] 138:10 241:10,20 251:9 ten [16] 31:23 87:14,19 90:15 156:10 212:19 225:21 281:14,16,19,20 281:22 282:5,7,17 324:13 tense [1] 174:15 term [1] 23:22 terminology [1] 127:22 terms [36] 21:18 29:15 32:11 34:12 41:10 51:5 67:15 79:24 108:21 122:5 135:11 140:22 144:1 150:17 155:19 166:8 171:23 183:2 186:3 206:1 217:2 219:21 223:12 253:12 257:6 261:21 265:25 289:22 314:18 317:15 320:19 321:6 342:15 347:18 349:1 359:17 Terry [1] 166:21 tertiary [2] 171:9,11 test [22] 65:21 66:14 72:25 83:8,9,10,13 84:18 84:20 89:12 90:1,10 163:6 177:5 226:12 233:5 269:15 293:1 295:3 306:24 322:8 351:20</p>	<p>tested [4] 329:19 330:9 330:17,20 testing [32] 1:2,13 14:15 14:20 43:4 136:17 164:9 164:19,23,25 186:19 218:7,8,11 225:18 227:15 239:12,12 242:22 254:2 268:7,21 271:16 278:9 278:10 286:6 294:8,9 325:9 344:21 358:7 363:4 tests [8] 29:16 66:18 71:23 73:2 224:13 227:5 289:8 294:22 text [8] 127:24 128:8,24 266:16 299:19,24 300:1 300:19 textbook [2] 64:11 161:7 textbooks [2] 64:17 70:8 texts [6] 64:22 70:2,3,6 70:10,11 thank [16] 4:4,18,20 5:13 118:1 178:13 181:25 234:18 242:24 292:3 297:4,9 327:7 332:4 362:9,12 thanks [13] 49:13,24 212:21 241:19 277:16 278:15 292:7,19 307:19 356:8,9,11,11 Thanksgiving [1] 279:2 that'll [1] 32:20 theatre [1] 344:23 themselves [3] 47:4 254:9 343:24 theory [2] 80:1 195:21 therapeutic [3] 175:5,7 176:6 there'd [2] 83:11 315:21 thereafter [2] 219:19 289:17 therefore [9] 91:24 133:23 137:16 148:12 173:10 174:15 231:20 329:2 332:10 They've [1] 64:4 thin [2] 27:12,17 thinking [6] 50:23 56:15 155:18 213:3 243:20 293:7 thinks [1] 289:10 third [9] 107:1 115:6,8 201:22 227:17,19 255:5 286:24 287:1 Thomas [3] 14:1,7 16:18 Thompson [2] 360:25 362:5 thorough [1] 294:13 thought [12] 55:11 63:18 119:2 158:6 197:23 259:2 260:11,14 289:3 302:2 311:24 348:5 thoughts [1] 293:5 thousand [1] 191:2 three [39] 28:13 53:1 83:13 86:14 88:2 104:9 104:21 105:10,17 106:2</p>	<p>106:4 110:14 118:7 122:21 125:18,18 166:14 178:17 201:16,19 203:16 204:5 206:14,16,25 207:17 227:18,18 228:2 228:8 236:17 255:1 266:25 267:1 315:7 334:17,17 339:9 361:22 through [48] 3:3,4,6 5:4 5:5,6,9,10,11,21 19:18 24:24 26:23 27:2 43:2 54:17,19 61:7 97:13 133:17 150:18 152:20 153:4,7,23 158:16 164:18 169:15 179:16 180:19 194:15 202:3,8 205:3 206:11 212:16 227:1,6 227:10 249:11 269:6 324:3,5 338:10 339:3 344:11 359:22 361:25 throughout [9] 35:1,2 53:3 147:14 153:25 158:15 192:7 240:9 315:25 Thursday [2] 37:3 46:11 tick [2] 104:22 105:23 Tilley [1] 271:9 timed [1] 25:19 timeframe [3] 158:15 283:4 317:2 timeliness [1] 46:3 timely [1] 262:17 times [17] 17:5 35:2,3 53:1 58:7,23 67:16 84:16 103:14 124:3 143:8 179:1 185:25 232:1 297:12 316:20 336:9 timing [2] 34:16 248:23 tissue [75] 13:9 15:2 16:15,17,21 17:16 18:6 18:13 21:13 23:5 24:6 24:19,24 25:3,6,16,18 25:20 26:2,3,14,15,19 27:1,18 29:6 33:21 34:2 34:14 40:10 46:24,24 47:1,5 48:11,14 50:2 51:6,8 52:25 56:16 57:24 58:15,25 59:1 61:22 72:16,16 91:24,24 123:23 124:7 142:3,4,5,13 144:3 146:14,15,19 149:2 149:5 151:10,18 241:18 251:6 292:15 293:3 319:1 328:9 340:13,19 358:17 358:19 tissues [6] 25:10,14 47:18 61:20 124:2,4 title [2] 7:23 248:14 today [43] 12:20,21 16:24 17:1 21:20 22:3 28:21 29:18 34:17,19 35:16 38:10,12,14 39:15 65:12 66:24 67:1 72:15 91:22 120:4 137:3 145:10 147:19 157:2 158:16 167:19 171:18 184:16 186:20 217:4 241:12,20 253:23 257:20 271:9 272:22 273:2 285:8 293:2</p>
--	--	--	---	---

-T-

<p>307:1 354:6 360:11 together [1] 197:2 tomorrow [3] 285:9 354:14 362:11 too [4] 94:12 199:9 201:2 224:16 took [6] 54:18 55:10 61:12 79:9 130:5 263:15 tool [1] 267:9 top [5] 115:14,16,23 161:12 203:16 topic [6] 64:23 162:9 198:15 246:2 253:25 360:15 Toronto [8] 6:16 59:10 59:12 61:1,8 107:3 189:11 241:13 total [6] 107:24 207:15 227:19 358:22,23 359:1 totally [2] 66:3 77:22 toward [2] 59:9 356:23 towel [1] 23:19 town [3] 131:22 132:12 176:25 track [1] 304:7 trained [6] 59:6 63:3,4,4 63:5 113:3 training [8] 6:8,15,17 59:14 60:7,8 111:25 180:14 transcribe [1] 333:16 transcribed [1] 363:9 transcribing [2] 332:25 333:2 transcript [1] 363:3 transition [1] 81:1 transmission [1] 288:4 transmissions [1] 200:21 transport [5] 18:5 19:22 20:9,11 251:18 transported [2] 17:16 72:21 transposition [2] 232:10 332:23 travel [4] 190:1,9,12,24 treat [1] 338:8 treated [3] 293:12 304:17 338:17 treating [2] 306:2 307:7 treatment [7] 67:3 158:23 174:19 286:20 288:5 325:9 354:9 tremendous [2] 203:25 204:1 tried [3] 27:18 229:25 230:1 trouble [1] 327:5 truck [7] 18:15 19:6,16 19:18,19 20:1 41:20 true [3] 55:11,14 363:3 try [7] 110:7 241:17 304:25 310:21 337:23 338:7,20</p>	<p>trying [10] 68:3 110:13 164:2 224:12 237:14 250:13 274:3 305:2 323:2 347:5 Tuesday [3] 37:11 38:9 278:22 Tuesdays [1] 37:1 tumour [22] 23:13,17 24:13,15,15,16,17 27:23 28:13,14 29:4,6 61:24 88:10 90:4,14 151:19 200:16 215:9 239:14 291:14 339:8 tumours [4] 156:8,9 160:11,17 turn [2] 234:22 237:4 turnaround [2] 32:4 204:17 turned [3] 203:15 255:16 262:20 turnover [1] 203:25 turns [1] 255:14 tweak [1] 105:3 two [69] 8:5 29:5 38:19 38:20 43:22 44:20 53:1 63:24 81:14 84:6 87:16 87:25 94:25 95:1,2 97:11 98:10,23 109:9,25 110:5 110:14 111:23 115:22,25 118:7 122:21 127:7,21 128:21,22 132:5 137:8 145:9 147:18 148:10 166:14,14 173:8,15 175:18 177:25 201:21 204:4 206:13,23 207:4,4 207:9,14 208:4 212:19 225:20 227:17 254:7,7 254:16 271:22,24 278:5 292:3 299:23 315:6 316:11 339:9,9 341:13 354:13 361:19 type [8] 27:23 32:16 66:14 67:11 144:4 184:14 241:14 336:1 typed [2] 32:23 33:3 types [5] 65:7 81:17 84:5 160:17 183:3 typing [2] 33:4 332:21</p> <hr/> <p style="text-align: center;">-U-</p> <hr/> <p>U.S [4] 63:6 190:18,20 192:7 Uh-hm [27] 35:24 53:5 53:16 57:19 58:2 64:8 92:2 98:7,16 128:5,15 129:5 135:2 143:5,14 162:23 179:4 243:5 258:17 285:17,22 294:20 327:13 334:15 335:13 352:4 359:10 ultra [1] 72:19 Um-hm [19] 76:24 82:4 88:13 117:14 121:4 123:15 126:14 188:19 196:24 218:2 268:16 270:24 277:4,20 299:21 305:7 308:6 310:9 342:12</p>	<p>uncertain [1] 358:17 unclear [1] 322:10 unconsciously [1] 186:4 undated [1] 282:23 under [9] 11:25 23:6,8 23:10 24:23 125:19 127:7 127:21 143:16 underlying [3] 125:19 310:24 311:1 understand [28] 5:15 10:6 39:10 67:9 73:17 81:18 82:6 89:7 96:1 134:22 135:20 139:2 159:13 165:20 186:2 195:9 218:9 220:5 224:5 229:1 236:20 257:4,8 258:19 305:20 313:11 328:8 347:18 understands [3] 43:18 85:7 302:7 understood [18] 55:22 55:25 82:15,17 85:19 88:8 141:18 159:5 165:19 257:3 275:21 301:11 308:18 311:7,15 326:8 328:14,16 underway [2] 134:2 173:23 unhelpful [8] 133:23 134:18 135:6 173:10,18 174:16 175:15 176:8 uniform [2] 81:6 184:3 University [5] 6:9,13 6:14 70:18,20 University's [1] 71:4 unknown [1] 50:5 unless [4] 80:23 82:10 83:18 210:14 unnecessary [1] 178:23 unreliable [7] 133:22 134:18 135:6 173:9 174:15 175:14 176:8 unsatisfactory [1] 167:13 unstained [1] 27:7 unsure [1] 63:10 unusual [2] 37:8 360:10 up [75] 5:14 13:6 14:14 14:15 22:9 25:3 34:1,15 35:1,17 49:4,4 52:13 54:7 61:12 64:10 74:7 76:14 94:5 108:21,24 111:9 113:19 114:15 116:19 127:14 143:11,17 163:24 166:9,11,12 172:4 174:10 184:25 203:3 205:15 207:4 209:5 217:17 220:19 225:23,25 226:24 227:10,13 228:17 229:24 230:2 232:10,11 232:20 242:8,21 246:3,7 246:11,19 258:14 264:12 268:5 271:14 272:2,20 284:22 305:9 315:24 319:17,22 320:19 322:7 329:7 335:7 340:5 344:19 update [1] 292:7</p>	<p>updated [2] 259:12 339:11 urgent [2] 302:18 303:3 usage [2] 138:9,15 useable [1] 233:20 used [21] 13:19 18:5 27:22 57:16 63:21 65:22 65:23 71:20 95:17 102:9 144:5,6 176:2,6 205:13 205:14 225:21 258:13 300:24 324:14,15 useful [5] 63:19 169:2,6 267:14,16 using [9] 77:25 98:25 101:18 134:10 147:19,23 149:17 155:1 210:15 usual [1] 18:24 usually [8] 19:8,10,16 164:1 204:4 265:1 267:1 270:4 utilization [3] 52:10 127:15 325:11 utilize [12] 28:21 63:14 67:16 69:5 91:25 151:18 157:18 158:9 173:20 211:11 252:14 254:8 utilized [12] 29:10 58:18 67:3,23 79:23 93:7 144:16 174:20 208:17 212:7 239:19 267:9 utilizer [2] 168:22 169:1 utilizes [1] 56:18 utilizing [20] 56:25 73:23 92:10 102:1 144:11 151:21,23 157:11 159:6 164:18 170:9 174:18 176:21 177:9 207:23 209:8 210:15 252:3 254:14 317:21</p> <hr/> <p style="text-align: center;">-V-</p> <hr/> <p>vacant [5] 206:13,17 207:9,14,15 vacation [4] 219:22,24 341:2,20 Valiente [4] 78:20 79:7 115:19 120:9 Valiente's [1] 94:10 values [1] 218:14 variation [1] 358:22 varies [1] 149:5 various [7] 17:5 63:5 190:20 247:24 315:24 316:20 336:6 vary [1] 65:13 vast [2] 65:16 66:2 Ventana [7] 218:7 221:9 221:25 261:10,16 265:2 271:19 verbal [1] 183:19 verbatim [3] 32:16 107:6,14 verses [3] 61:23 156:13 358:23 version [4] 48:1,4 49:20</p>	<p>335:15 versus [1] 124:5 VI [1] 100:21 via [1] 224:13 video [10] 344:16,19 345:15,19,22,24 346:3 347:19 348:8,10 view [8] 110:13 162:15 162:25 163:17 185:15,18 261:24 344:20 viewed [1] 314:24 vis [2] 104:12,12 visited [1] 325:12 visual [1] 344:22 vitae [1] 5:16 vital [1] 124:6 volumes [1] 127:16 VP [7] 8:2 44:10 172:4 248:4 258:1,6,22 VPs [1] 271:3</p> <hr/> <p style="text-align: center;">-W-</p> <hr/> <p>wait [6] 19:21 134:19 174:9 253:18 255:8 256:6 Walker [5] 248:9 307:18 354:15 356:20 362:1 wanting [1] 181:7 wants [3] 183:1 212:2 272:4 watched [1] 26:22 watching [1] 112:3 water [1] 26:1 wave [3] 97:9,10 301:25 waves [3] 301:25 302:2 302:3 wax [3] 26:2,3 27:13 ways [5] 63:24 227:17 227:18,19 341:13 weather [5] 50:1,2,4,6 50:11 web [1] 194:11 Wednesday [4] 38:9 43:3 46:13 316:13 Wednesdays [2] 37:2 37:12 week [12] 36:23 38:22 39:13 41:11 189:23 213:14,19,21,23 214:6 254:6 305:1 weekend [4] 42:3 189:11 279:3 288:12 weekly [1] 147:1 weeks [15] 134:4 145:9 173:23,25 213:14,15,15 254:7 259:12 260:14 285:12 316:11 317:4,10 354:13 weights [1] 22:17 West [1] 331:14 Western [84] 1:16 6:17 6:25 10:1,17,17,21 11:6 11:25 12:11,13,18 13:17 14:6 29:14 34:5,7,14</p>
---	---	--	--	---

<p>43:11,19 45:2,3,14,15 45:17 47:5 50:25 53:18 55:13 56:24 67:17,24 70:3 94:7 98:1 118:4 131:23 142:11 145:15 155:1 162:10,10,15 163:18 164:17 166:12,23 170:10 212:11,13 214:20 224:14 236:7 247:21,24 254:13 257:13 261:20 268:6,21 272:14 276:21 278:17 286:4 288:20 289:9 303:12 305:9,13 306:11 307:1 308:2 311:3 311:3,11,15 333:21 334:25 337:25 354:6 355:1 358:8 359:17 361:20</p> <p>Western's [6] 122:6 247:1,20,20 337:19 338:14</p> <p>whatsoever [1] 184:24</p> <p>whereby [4] 8:1 195:11 206:2 338:19</p> <p>wherever [1] 292:1</p> <p>whichever [1] 148:24</p> <p>whole [10] 89:14 142:2 153:4 155:19 188:1 229:8 247:13 248:14 249:7 347:24</p> <p>wholly [1] 64:23</p> <p>wicking [4] 23:22 24:10 24:11 40:18</p> <p>wide [1] 317:1</p> <p>widely [1] 267:18</p> <p>wider [4] 193:13,15 243:20 244:2</p> <p>Williams [3] 256:22 304:4 306:23</p> <p>willing [1] 342:5</p> <p>wish [3] 259:8 272:22 342:6</p> <p>wishes [1] 343:22</p> <p>within [37] 24:7 45:12 45:14,15 56:24 68:13 70:24 80:1 101:7,9 109:5 124:23 134:3 140:6 142:11 145:9 168:14,18 171:10 173:24 191:16 192:19 193:24 194:23 197:11 220:9 233:17 247:20,21 251:24 257:5 257:6 259:11 269:21 316:11 338:2 355:23</p> <p>without [6] 42:2 85:20 304:9 312:23 325:24 339:20</p> <p>witness [1] 4:4</p> <p>witnesses [1] 231:17</p> <p>wonder [2] 292:15 293:4</p> <p>wondering [5] 94:9 293:1 318:23 326:14 354:7</p> <p>Woodland [1] 1:7</p> <p>word [1] 57:16</p> <p>wording [2] 133:18 134:10</p>	<p>words [3] 32:20 34:23 280:9</p> <p>worked [2] 75:18 84:2</p> <p>workload [9] 182:7 201:2 206:15,20 207:1 209:14 211:8 254:17 255:23</p> <p>works [3] 206:12 293:23 347:24</p> <p>world [4] 69:13 112:18 175:2,25</p> <p>write [10] 141:3,6,23 192:3 241:7 276:12 280:5 288:22 336:15,20</p> <p>writes [5] 79:18 182:18 218:4 272:19 351:15</p> <p>writing [2] 304:4 320:8</p> <p>written [17] 77:23 83:21 84:21 94:24 95:3 186:13 241:25 251:4 291:5 299:4 299:9 318:12 319:23 321:13 336:14 341:8 347:6</p> <p>wrong [1] 67:9</p> <p>wrote [3] 165:18 322:12 336:23</p> <hr/> <p style="text-align: center;">-Y-</p> <hr/> <p>year [25] 13:5 79:13,15 86:13,15,23 87:1,11,22 188:17 189:10,20 191:24 208:16 210:17 218:22 219:5,7 275:7 279:19 280:17 282:24 296:12 301:19 302:21</p> <p>yearly [2] 188:11 356:19</p> <p>years [32] 13:7 17:6 30:4 37:8 51:25 53:2 61:15 63:1 69:1 86:13 92:19 110:15 152:19,23,24 188:25 191:1 201:11 204:5 205:25 210:2,5 225:22 236:17 243:8 249:20 254:19 279:22 286:11,13 315:5,7</p> <p>yesterday [2] 273:1 294:11</p> <p>yet [4] 8:25 272:6 342:8 352:25</p> <p>York [1] 63:5</p> <p>you's [1] 219:6</p> <p>younger [3] 111:24,24 112:12</p> <p>yourself [44] 8:14 43:23 73:24 74:16 86:3 94:15 99:17,19 109:25 110:5 112:1 115:23 121:8 139:20 155:21 237:12 239:2 241:1 246:12 249:13 256:13 261:19 267:9 268:3 275:4 277:13 278:12 285:6 286:1 287:13 292:5 295:12 296:21 299:18 300:16 306:22 331:13 332:7 336:10,18 338:25 339:20 358:6 360:17</p>	<p>yourselves [1] 181:5</p> <hr/> <p style="text-align: center;">-Z-</p> <hr/> <p>zero [2] 317:23,23</p>		
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