

COMMISSION OF INQUIRY
ON HORMONE RECEPTOR TESTING

BEFORE THE HONOURABLE JUSTICE CAMERON - COMMISSIONER

July 16, 2008

Appearances:

- Bernard Coffey, Q.C. Commission Co-counsel
- Sandra Chaytor, Q.C./Mandy Woodland Commission Co-counsel

- Rolf Pritchard/Jackie Brazil Her Majesty in Right of NL

- Peter Browne/Jane Hennebury Doctors Kara Laing et al

- Daniel Simmons Eastern Regional Integrated
. Health Authority

- Chesley Crosbie, Q.C.. Members of the Breast Cancer
. Testing Class Action

- Mark Pike NL Medical Association
- Jennifer Newbury Canadian Cancer Society (NL Division)
- Blair Pritchett. Central, Western and Labrador-Grenfell
. Regional Integrated Health Authorities

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LIST OF EXHIBITS

NOTE: See July 17, 2008 Transcript for cancellation 842P- through P-1847. These exhibits were re-entered as In-camera exhibits (C-exhibits).

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MS. MARY BUTLER - SWORN

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Certificate

1 THE COMMISSIONER:
 2 Q. Technical problems. All right, we'll try
 3 again.
 4 MR. LESLIE SIMMS, RESUMES STAND, EXAMINATION BY SANDRA
 5 CHAYTOR, Q.C.
 6 CHAYTOR, Q.C.:
 7 Q. Good morning, Mr. Simms.
 8 MR. SIMMS:
 9 A. Good morning, Ms. Chaytor.
 10 CHAYTOR, Q.C.:
 11 Q. I believe when we finished last day, we were
 12 looking at Dr. Ejeckam's memos and we have P-
 13 0113 already on the screen. Thank you,
 14 Registrar. Now Mr. Simms, you indicated that
 15 you did not receive the April 4th, 2003 memo,
 16 but you had only shortly taken up your
 17 position. You're a couple of weeks into your
 18 position at this point in time?
 19 MR. SIMMS:
 20 A. That's correct.
 21 CHAYTOR, Q.C.:
 22 Q. Okay. Were you otherwise aware that there was
 23 suspension of the antibodies that are listed
 24 in the memo?
 25 MR. SIMMS:

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1 A. Only from Mary in mentioning it.
 2 CHAYTOR, Q.C.:
 3 Q. And what were you told at that time? What
 4 were you told? What did you understand was
 5 happening?
 6 MR. SIMMS:
 7 A. That these particular antibodies, they were
 8 having some difficulties with these particular
 9 antibodies and it would be taken care of. It
 10 would be rectified.
 11 CHAYTOR, Q.C.:
 12 Q. Okay, and do you know what type of
 13 difficulties they were having, particularly
 14 with the ER and PR?
 15 MR. SIMMS:
 16 A. No, I do not.
 17 CHAYTOR, Q.C.:
 18 Q. And who did you understand was working on the
 19 issue to try and rectify it?
 20 MR. SIMMS:
 21 A. My understanding, it was Mary and Barry.
 22 CHAYTOR, Q.C.:
 23 Q. Mary and?
 24 MR. SIMMS:
 25 A. Barry Dyer.

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1 CHAYTOR, Q.C.:
 2 Q. And Barry Dyer?
 3 MR. SIMMS:
 4 A. Yes.
 5 CHAYTOR, Q.C.:
 6 Q. And do you know what they were doing?
 7 MR. SIMMS:
 8 A. No.
 9 CHAYTOR, Q.C.:
 10 Q. Were you advised when the test resumed, when
 11 those stains were brought online again, within
 12 a few weeks, were you advised of that?
 13 MR. SIMMS:
 14 A. No.
 15 CHAYTOR, Q.C.:
 16 Q. And were you yourself involved in any of the
 17 adjustments that were carried out at that
 18 time?
 19 MR. SIMMS:
 20 A. In this particular -
 21 CHAYTOR, Q.C.:
 22 Q. Yes, in April 2003.
 23 MR. SIMMS:
 24 A. No, I was not.
 25 CHAYTOR, Q.C.:

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1 Q. Okay. Were you ever involved in any
 2 adjustments to the ER/PR testing during your
 3 time there, prior to what happens in 2005?
 4 MR. SIMMS:
 5 A. On the DAKO, no.
 6 CHAYTOR, Q.C.:
 7 Q. Not with respect to the DAKO?
 8 MR. SIMMS:
 9 A. No.
 10 CHAYTOR, Q.C.:
 11 Q. You were involved, you told us yesterday, with
 12 bringing on the Ventana and with validation
 13 for the Ventana machine.
 14 MR. SIMMS:
 15 A. Helping with validation for the Ventana, and
 16 understanding validation for the Ventana.
 17 CHAYTOR, Q.C.:
 18 Q. Okay. Were you advised of any changes that
 19 came about as a result of Dr. Ejeckam's
 20 adjustments in 2003?
 21 MR. SIMMS:
 22 A. No.
 23 CHAYTOR, Q.C.:
 24 Q. Do you know whether or not there were any
 25 changes, for example, to the dilutions?

Page 8

1 MR. SIMMS:
 2 A. As I said yesterday, I vaguely recall with the
 3 ER, but I can't be sure, so it probably
 4 wouldn't be fair to stick to that. I can
 5 remember the ER dilution may have changed, but
 6 that could have only been a mention from Barry
 7 or Mary, but I wasn't notified in any formal
 8 way.
 9 CHAYTOR, Q.C.:
 10 Q. Okay, and if it was written on the spec sheet,
 11 you would have been aware of it through that?
 12 MR. SIMMS:
 13 A. Yes, yeah.
 14 CHAYTOR, Q.C.:
 15 Q. Okay. Was there--do you know was there any
 16 change in the antigen retrieval process at
 17 that time?
 18 MR. SIMMS:
 19 A. Not to my knowledge.
 20 CHAYTOR, Q.C.:
 21 Q. Okay, and that's something you think you would
 22 have been aware of?
 23 MR. SIMMS:
 24 A. I would have been aware of. Any change, any
 25 changes I would have been made aware of, I'm

Page 9

1 pretty sure.
 2 CHAYTOR, Q.C.:
 3 Q. And you think you'd recall that, if there were
 4 a change in, for example, the length of time
 5 or the temperature for antigen retrieval, you
 6 think you'd recall that?
 7 MR. SIMMS:
 8 A. I think I would recall that.
 9 CHAYTOR, Q.C.:
 10 Q. So you don't recall any adjustments in that
 11 regard?
 12 MR. SIMMS:
 13 A. No, I do not.
 14 CHAYTOR, Q.C.:
 15 Q. Okay, and the change over then to the Ventana
 16 machine in early 2004, did you receive any
 17 particular training on the Ventana machine at
 18 that time?
 19 MR. SIMMS:
 20 A. Not in--well, yes, from Ken and Barry who had
 21 been--they had gone on training to it and then
 22 they came back and taught Mary and myself,
 23 yes.
 24 CHAYTOR, Q.C.:
 25 Q. Okay. So you were taught in house by Ken and

Page 10

1 Barry?
 2 MR. SIMMS:
 3 A. That's right.
 4 CHAYTOR, Q.C.:
 5 Q. And did you ultimately do your own course or
 6 were you sent away to also learn how to use
 7 the--or further instruction on the Ventana
 8 system?
 9 MR. SIMMS:
 10 A. I'm terrible with time lines, but we purchased
 11 a new piece of--an updated piece of equipment.
 12 From the Benchmark, it went to the VXT, which
 13 is still the Ventana system but it's improved,
 14 it's a more updated system, and I went to
 15 Tucson, Arizona in 2006 to the Ventana
 16 headquarters or their factory and did training
 17 there for a week.
 18 CHAYTOR, Q.C.:
 19 Q. Okay, so that was -
 20 MR. SIMMS:
 21 A. Directly on the machine.
 22 CHAYTOR, Q.C.:
 23 Q. That's 2006.
 24 MR. SIMMS:
 25 A. I think.

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1 CHAYTOR, Q.C.:
 2 Q. Okay, and that's when the second Ventana
 3 machine was purchased, is that right, around
 4 that time?
 5 MR. SIMMS:
 6 A. Around that time, if my time, if my dates are
 7 correct.
 8 MR. SIMMONS:
 9 Q. It was the third.
 10 CHAYTOR, Q.C.:
 11 Q. I'm sorry?
 12 MR. SIMMONS:
 13 Q. It was the third machine.
 14 CHAYTOR, Q.C.:
 15 Q. The third machine.
 16 MR. SIMMS:
 17 A. Yes.
 18 CHAYTOR, Q.C.:
 19 Q. Third machine, okay, so there were three
 20 Ventana machines?
 21 MR. SIMMS:
 22 A. Then, at that point, yes.
 23 CHAYTOR, Q.C.:
 24 Q. At that point. There was originally two.
 25 MR. SIMMS:

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1 A. Originally two and then they purchased -
 2 CHAYTOR, Q.C.:
 3 Q. And this was the purchase of the third?
 4 MR. SIMMS:
 5 A. A more updated model.
 6 CHAYTOR, Q.C.:
 7 Q. Thank you, Mr. Simmons. Okay, and in the
 8 instruction that you were given on the Ventana
 9 machine, were you taught how to service the
 10 machine, maintain it, how to clean it?
 11 MR. SIMMS:
 12 A. Yes, that sort of thing.
 13 CHAYTOR, Q.C.:
 14 Q. And was that actually happening with respect
 15 to the original two machines?
 16 MR. SIMMS:
 17 A. We were--yes, we were doing--because there was
 18 daily maintenance, weekly maintenance, monthly
 19 maintenance and so on and we were doing it.
 20 The problem was we weren't documenting it.
 21 Now for the daily maintenance, it was noted in
 22 the machine itself. All of it could be noted
 23 in the machine itself, but we didn't always
 24 check off that we did it.
 25 CHAYTOR, Q.C.:

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1 Q. Okay, and so you're saying that you were doing
 2 the daily maintenance on the machine?
 3 MR. SIMMS:
 4 A. Daily.
 5 CHAYTOR, Q.C.:
 6 Q. And the monthly and quarterly or whatever was
 7 required, but there wasn't documents kept to
 8 verify that?
 9 MR. SIMMS:
 10 A. There wasn't documents kept, and the monthly
 11 and the quarterly may have been a little more
 12 erratic, not right on schedule, but it was
 13 done.
 14 CHAYTOR, Q.C.:
 15 Q. And the changeover then from DAKO to Ventana,
 16 was there a period of time when both systems
 17 ran parallel?
 18 MR. SIMMS:
 19 A. There was.
 20 CHAYTOR, Q.C.:
 21 Q. And who was involved in overseeing that
 22 process? Was there any particular
 23 pathologist?
 24 MR. SIMMS:
 25 A. Overseeing the parallel running?

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1 CHAYTOR, Q.C.:
 2 Q. Yes.
 3 MR. SIMMS:
 4 A. No, there was no particular pathologist that I
 5 can remember.
 6 CHAYTOR, Q.C.:
 7 Q. Okay, and so who was overseeing then the
 8 project and -
 9 MR. SIMMS:
 10 A. The manager, Barry Dyer.
 11 CHAYTOR, Q.C.:
 12 Q. Barry Dyer?
 13 MR. SIMMS:
 14 A. Yes.
 15 CHAYTOR, Q.C.:
 16 Q. Okay, and then in terms of any checking of the
 17 results, Mr. Dyer would take that to whichever
 18 pathologist was available, I take it?
 19 MR. SIMMS:
 20 A. That was my understanding.
 21 CHAYTOR, Q.C.:
 22 Q. There was no one pathologist at that time in
 23 the IHC portion of the lab?
 24 MR. SIMMS:
 25 A. Not that I'm aware of.

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1 CHAYTOR, Q.C.:
 2 Q. Okay. How was--otherwise, you've mentioned
 3 about the documentation regarding the
 4 maintenance of the Ventana machine. By the
 5 time the Ventana machine came on in 2004, how
 6 otherwise was documentation or record keeping
 7 in the IHC portion of the lab?
 8 MR. SIMMS:
 9 A. We were--I'll have to admit, the
 10 documentation, we fell down on documentation.
 11 We weren't--and I lead no excuses or anything,
 12 but no, we didn't have very good
 13 documentation.
 14 CHAYTOR, Q.C.:
 15 Q. And did that eventually change?
 16 MR. SIMMS:
 17 A. Oh yes.
 18 CHAYTOR, Q.C.:
 19 Q. And when did those improvements come about?
 20 MR. SIMMS:
 21 A. When the recommendations came from the various
 22 reports and that, then it started to change.
 23 We started to make sure that we had the
 24 documentation there, and it was a matter of
 25 time--of having time as well. Somebody had to

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1 get this documentation together and we kept
 2 saying yes, we're going to do it, we're going
 3 to do it, but finally, we were--said okay, we
 4 got to do it now.
 5 CHAYTOR, Q.C.:
 6 Q. So I take it by the time you left your
 7 position this year, the documentation was in
 8 order?
 9 MR. SIMMS:
 10 A. There's documentation everywhere. There's
 11 binders wherever you want to reach for them.
 12 CHAYTOR, Q.C.:
 13 Q. And that began to change sometime after Trish
 14 Wegrynowski's review in the fall of 2005?
 15 MR. SIMMS:
 16 A. Yes, yeah.
 17 CHAYTOR, Q.C.:
 18 Q. Other than the documentation, Mr. Simms, did
 19 you have any concerns as to the process in the
 20 lab, in particular with respect to IHC
 21 testing? Were there any other concerns or, I
 22 don't want to say deficiencies but any
 23 shortcomings or things that you thought could
 24 have been done differently or better at the
 25 time?

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1 MR. SIMMS:
 2 A. Not at that time.
 3 CHAYTOR, Q.C.:
 4 Q. Okay. So from your perspective -
 5 MR. SIMMS:
 6 A. We were proceeding -
 7 CHAYTOR, Q.C.:
 8 Q. - as a technologist working, you thought
 9 everything was in order?
 10 MR. SIMMS:
 11 A. Yeah, we were proceeding as we thought was
 12 quite sufficient.
 13 CHAYTOR, Q.C.:
 14 Q. How is it then that the 2005 issue is brought
 15 to your attention? When and how did you first
 16 learn about the problems with ER/PR?
 17 MR. SIMMS:
 18 A. Front page of the paper.
 19 CHAYTOR, Q.C.:
 20 Q. I'm sorry, in October 2005, and that's how you
 21 -
 22 MR. SIMMS:
 23 A. Well, that's how I--that's where I found out
 24 that there was a problem.
 25 CHAYTOR, Q.C.:

Page 18

1 Q. That's how you learned of it?
 2 MR. SIMMS:
 3 A. Yeah.
 4 CHAYTOR, Q.C.:
 5 Q. And the media, we understand, broke the story
 6 in October 2005.
 7 MR. SIMMS:
 8 A. Yeah.
 9 CHAYTOR, Q.C.:
 10 Q. So the fact that there was retests happening
 11 in the Health Sciences lab in June, July of
 12 2005, you weren't aware of that?
 13 MR. SIMMS:
 14 A. We weren't aware of that procedure.
 15 CHAYTOR, Q.C.:
 16 Q. You weren't aware of that, and now, Dr. Cook
 17 wrote a memo on August 8th, 2005. Were you
 18 given a copy of that memo?
 19 MR. SIMMS:
 20 A. I was.
 21 CHAYTOR, Q.C.:
 22 Q. Okay. So perhaps we could look at that memo,
 23 please? That's at 0559, please? And this
 24 memo was addressed to Mr. Gulliver, Mr. Dyer,
 25 and yourself, Mr. Green and Ms. Butler, the

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1 three lab technologists for IHC, August 8th,
 2 and estrogen receptors and progesterone
 3 receptors. There are seven points. "There
 4 will be a hold on reporting of all ER and PRs
 5 by all pathologists. The immunohistochemical
 6 form will continue to be filled out, filled by
 7 our pathologists. Upon receipt of the
 8 immunohistochemical form, fax a copy to Dr.
 9 Carter at St. Clare's. You will continue to
 10 proceed with the request and return stained ER
 11 and PR slides using the Ventana system to the
 12 ordering pathologist. 5. Following this, the
 13 same paraffin block will be forwarded to Dr.
 14 Carter at St. Clare's. 6. Dr. Carter will
 15 forward the paraffin blocks to Mount Sinai
 16 with a standardized request. 7. The Mount
 17 Sinai report with the slides and paraffin
 18 block will be returned to the St. Clare's
 19 site" and then that's signed by Dr. Cook as
 20 clinical chief. So you did receive this, and
 21 what did you understand then this to be about?
 22 MR. SIMMS:
 23 A. I did receive this, and this memo or e-mail is
 24 the only one that I can find with my name on
 25 it regarding the ER/PR receptor issue.

Page 20

1 CHAYTOR, Q.C.:
 2 Q. But this didn't alert you to any particular
 3 problem with ER/PR?
 4 MR. SIMMS:
 5 A. Not any particular problem because, number
 6 one, he said there would be a hold on
 7 reporting, and we read this or we had it stuck
 8 it up on the wall and finally it hit us that
 9 this not a hold on reporting or doing ER/PR.
 10 It's a hold on reporting of ER/PRs, and number
 11 four, we were specifically requested to
 12 continue to proceed with requests and return
 13 stained ER and PR slides using the Ventana
 14 system to the ordering pathologist, and that's
 15 exactly what we did. There was no--never an
 16 e-mail saying stop doing ER/PR.
 17 CHAYTOR, Q.C.:
 18 Q. Okay. So you continued on as per normal and
 19 with the process from the technical point of
 20 view?
 21 MR. SIMMS:
 22 A. Yes, we did.
 23 CHAYTOR, Q.C.:
 24 Q. And nobody alerted you to the fact that there
 25 was any problem behind this memo?

Page 21

1 MR. SIMMS:
 2 A. No.
 3 CHAYTOR, Q.C.:
 4 Q. That there were any problems with the
 5 technical?
 6 MR. SIMMS:
 7 A. Not officially that there was any problems.
 8 You know, we talked amongst ourselves. We
 9 had, you know, "well, what's going on here?
 10 Is there a problem?" But no, we weren't -
 11 CHAYTOR, Q.C.:
 12 Q. So amongst yourselves meaning the lab
 13 technologists?
 14 MR. SIMMS:
 15 A. Yes, myself, Ken and Mary.
 16 CHAYTOR, Q.C.:
 17 Q. And wondered amongst yourselves as to what was
 18 happening?
 19 MR. SIMMS:
 20 A. Yes, what's the issue here.
 21 CHAYTOR, Q.C.:
 22 Q. And other than this communication, this memo,
 23 you received no other communication or
 24 notification from Eastern Health?
 25 MR. SIMMS:

Page 22

1 A. Not directly, no.
 2 CHAYTOR, Q.C.:
 3 Q. And what about indirectly then?
 4 MR. SIMMS:
 5 A. Never indirectly to stop doing ER/PR.
 6 CHAYTOR, Q.C.:
 7 Q. Okay, and so the first time you learned that
 8 there was an actual issue is when the rest of
 9 the public learned, through the news media in
 10 October 2005?
 11 MR. SIMMS:
 12 A. When the public learned, yes.
 13 CHAYTOR, Q.C.:
 14 Q. And what was your reaction at that time?
 15 MR. SIMMS:
 16 A. Shock, because, you know, how come we weren't
 17 called--you know, if people are doing--are
 18 reassessing work that was done by us, well,
 19 why weren't we informed of it at the beginning
 20 or why weren't we asked to repeat these tests
 21 and see what we would get or any form of
 22 notification? But these things were all done
 23 without our notification, without us knowing
 24 about it.
 25 CHAYTOR, Q.C.:

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1 Q. And why did you think there were blocks being
 2 sent to Mount Sinai? The memo indicated Dr.
 3 Carter would be sending blocks to Mount Sinai.
 4 Why did you think that was happening or did
 5 you know?
 6 MR. SIMMS:
 7 A. We knew that they were sending blocks to Mount
 8 Sinai, but didn't know, you know, for just to
 9 get them to repeat or re-evaluate and see if
 10 they get the same result, but not as a formal
 11 thing, not as being the whole overall
 12 reassessment of all these blocks or all these
 13 years.
 14 CHAYTOR, Q.C.:
 15 Q. And you understood this to be a pathologist
 16 issue, a hold on the reading or interpretation
 17 by pathologists, as opposed to the system?
 18 MR. SIMMS:
 19 A. Yes, because we continued doing ER and PRs all
 20 throughout this whole thing. There was no--we
 21 never stopped doing ER/PRs.
 22 CHAYTOR, Q.C.:
 23 Q. And nobody ever came back to you and said to
 24 stop?
 25 MR. SIMMS:

Page 24

1 A. Stop.
 2 CHAYTOR, Q.C.:
 3 Q. Okay. So all of the blocks which were sent on
 4 to Mount Sinai for retesting were also slides
 5 were prepared in your laboratory as well?
 6 MR. SIMMS:
 7 A. Yes, they were.
 8 CHAYTOR, Q.C.:
 9 Q. And to your knowledge, has anybody ever
 10 interpreted those slides or read those slides?
 11 MR. SIMMS:
 12 A. Up to the time that I left in May, not to my
 13 knowledge.
 14 CHAYTOR, Q.C.:
 15 Q. That hadn't happened?
 16 MR. SIMMS:
 17 A. No.
 18 CHAYTOR, Q.C.:
 19 Q. So I take it throughout the summer of 2005 and
 20 up to, well, October when you learn about it,
 21 or learn more about this in the media, nobody
 22 had come to you to ask anything of you in
 23 terms of the process, how it works or any
 24 difficulties you may have been experiencing?
 25 MR. SIMMS:

Page 25

1 A. No.
 2 CHAYTOR, Q.C.:
 3 Q. And had you heard any complaint about your
 4 process?
 5 MR. SIMMS:
 6 A. About the procedure itself?
 7 CHAYTOR, Q.C.:
 8 Q. Yes, about the procedure itself. Had you
 9 heard any complaint?
 10 MR. SIMMS:
 11 A. That it could be incorrect?
 12 CHAYTOR, Q.C.:
 13 Q. Yes, that, you know, the product wasn't
 14 satisfactory, any -
 15 MR. SIMMS:
 16 A. No. The only time it was unsatisfactory was
 17 when we had little things we had to tweak, as
 18 we called it, and because when all this is
 19 going on, we were still doing a lot of slides
 20 for ER/PR validation and validation on other
 21 antibodies. So you know, even while you were
 22 doing regular ER/PRs, we were still doing
 23 various protocols to check and make sure if
 24 there was a more optimized procedure and so
 25 on. But no, but nobody--no one ever

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1 complained "is the procedure wrong?" Not to
 2 me anyway.
 3 CHAYTOR, Q.C.:
 4 Q. Okay. Now we also have heard that Carol
 5 Quevillon, I believe may be her name -
 6 MR. SIMMS:
 7 A. Yes.
 8 CHAYTOR, Q.C.:
 9 Q. - of Ventana, she was in in early August,
 10 August 5th 2005.
 11 MR. SIMMS:
 12 A. Okay.
 13 CHAYTOR, Q.C.:
 14 Q. Were you aware that she had come in to check
 15 the Ventana system?
 16 MR. SIMMS:
 17 A. I was.
 18 CHAYTOR, Q.C.:
 19 Q. Okay, and what did you understand was the
 20 purpose of her visit?
 21 MR. SIMMS:
 22 A. Just to come in and check our Ventana system
 23 to make sure that it was up to par and we were
 24 doing the procedures properly.
 25 CHAYTOR, Q.C.:

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1 Q. And was that a regular normal thing for her to
 2 do in any event? Would she sometimes come by
 3 and meet with you?
 4 MR. SIMMS:
 5 A. Yes, she did.
 6 CHAYTOR, Q.C.:
 7 Q. Okay, and so that didn't stick out as being
 8 out of the ordinary for you?
 9 MR. SIMMS:
 10 A. No, great, you know, that's fine.
 11 CHAYTOR, Q.C.:
 12 Q. So did you understand at that time that there
 13 was any question regarding the Ventana system?
 14 MR. SIMMS:
 15 A. Yes, by that time, I guess, you know, I'd
 16 thought about that people--some certain people
 17 were thinking, I didn't know whomever, right,
 18 was thinking well maybe there's a problem with
 19 the Ventana system and we need to check it,
 20 and that's fine, that's no problem.
 21 CHAYTOR, Q.C.:
 22 Q. Okay. So you understood there may have been
 23 some question about the Ventana?
 24 MR. SIMMS:
 25 A. Maybe some question by whomever.

Page 28

1 CHAYTOR, Q.C.:
 2 Q. But did the Ventana system continue to operate
 3 for all--well, you continued to do ER and PR
 4 as well, so I take it the Ventana system
 5 continued for all other IHC stains as well?
 6 MR. SIMMS:
 7 A. Yes, it did.
 8 CHAYTOR, Q.C.:
 9 Q. Okay.
 10 MR. SIMMS:
 11 A. The ER/PRs were only one to two percent of our
 12 workload.
 13 CHAYTOR, Q.C.:
 14 Q. Okay, and those continued as well. It's just
 15 that there was a hold on the reporting from
 16 your perspective?
 17 MR. SIMMS:
 18 A. There was a hold on the reporting of the
 19 ER/PRs. That's the only memo we got was a
 20 hold on reporting.
 21 CHAYTOR, Q.C.:
 22 Q. Okay, and did you meet with Ms. Quevillon when
 23 she was in?
 24 MR. SIMMS:
 25 A. Carol?

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1 CHAYTOR, Q.C.:

2 Q. Carol, yes.

3 MR. SIMMS:

4 A. Oh yes. Yes, I was there.

5 CHAYTOR, Q.C.:

6 Q. Okay, and what did you discuss with her?

7 MR. SIMMS:

8 A. Just the various work of the machine and the

9 maintenance we should be doing and got a

10 little crack on the knuckles for not doing our

11 documentation properly.

12 CHAYTOR, Q.C.:

13 Q. Okay. So she pointed out that the

14 documentation on -- the maintenance in the

15 machine wasn't being done or wasn't being

16 recorded?

17 MR. SIMMS:

18 A. Oh, she did.

19 CHAYTOR, Q.C.:

20 Q. If we could look at P-0552, please. This is a

21 letter that she wrote, August 5, 2005, to Mr.

22 Gulliver and she says, "As per your request, I

23 checked the Ventana benchmark instruments". So

24 at this point in time, I take it, you had two

25 machines, two Ventana machines?

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1 MR. SIMMS:

2 A. Two benchmarks and the XT, so three.

3 CHAYTOR, Q.C.:

4 Q. Okay, "The procedure and protocols used for

5 the ER and PGR stains, the knowledge and

6 capacity of the technicians to troubleshoot

7 and run the instruments". So did you know

8 that she was specifically looking at the

9 procedure and protocols used for ER and PR?

10 MR. SIMMS:

11 A. Not specific for ER/PR.

12 CHAYTOR, Q.C.:

13 Q. And did you understand that she was

14 investigating the knowledge and capacity of

15 the technicians to troubleshoot and run the

16 instrument?

17 MR. SIMMS:

18 A. No.

19 CHAYTOR, Q.C.:

20 Q. She goes on to say, "I performed a level one

21 on both instruments and both instruments are

22 within specifications. I ran a full coverage

23 Vimentin run on both instruments to validate

24 the staining and they both gave good results.

25 I checked the protocols that you are using for

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1 ER and PGR and CCI standard and 32 min primary

2 incubation. These protocols are used in many

3 accounts in Canada and recommended by Ventana.

4 I checked the pH of the solutions, they're

5 within specifications. I asked questions to

6 the different technicians using the

7 instruments. They are properly trained and

8 able to troubleshoot if a problem occurs". So

9 I take it she did meet with you and ask you

10 various questions about the Ventana System?

11 MR. SIMMS:

12 A. As she was working -- as she was -- we were

13 all, Ken, Mary, and myself, we were there as

14 she was going through the machine.

15 CHAYTOR, Q.C.:

16 Q. So you met with her collectively together?

17 MR. SIMMS:

18 A. Yeah.

19 CHAYTOR, Q.C.:

20 Q. "I found out that the recommended maintenance

21 procedures monthly and quarterly were never

22 done on the instruments".

23 MR. SIMMS:

24 A. And I assume she wrote that because she didn't

25 find any documentation.

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1 CHAYTOR, Q.C.:

2 Q. So you're saying it was done, it just wasn't

3 recorded?

4 MR. SIMMS:

5 A. That's right.

6 CHAYTOR, Q.C.:

7 Q. "We did it monthly and quarterly on one

8 benchmark yesterday and they are doing the

9 second one today. A monthly and quarterly

10 maintenance will be put in place". So, Mr.

11 Simms, if it had been done, why would it be

12 necessary to do another one in August of '05?

13 MR. SIMMS:

14 A. Because that was her instructions. She just

15 asked, you know, to make sure that we did it.

16 CHAYTOR, Q.C.:

17 Q. So overall she concludes by saying, "She feels

18 confident that the technicians know what

19 they're doing and how to use the instruments,

20 and the benchmark instruments are staining as

21 they should".

22 MR. SIMMS:

23 A. Yes.

24 CHAYTOR, Q.C.:

25 Q. Now were you advised of the outcome of that,

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1 that she found that you were able to
 2 troubleshoot, you knew what you were doing,
 3 and the machines were working appropriately?
 4 MR. SIMMS:
 5 A. We were never told that formally, no.
 6 CHAYTOR, Q.C.:
 7 Q. You were just told the issue about keeping the
 8 documentation.
 9 MR. SIMMS:
 10 A. Yes.
 11 CHAYTOR, Q.C.:
 12 Q. Doing the maintenance on the machines and
 13 documenting it?
 14 MR. SIMMS:
 15 A. That's right.
 16 CHAYTOR, Q.C.:
 17 Q. So in October when you say you're shocked to
 18 hear about the issue then in the media, what
 19 did you do the next day? Did you make
 20 inquiries of anyone? what happened after
 21 learning about this?
 22 MR. SIMMS:
 23 A. If I remember correctly, we just went in and
 24 spoke with each other and just continued our
 25 daily work. We still had -- we just continued

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1 on as normal because nobody had told us to do
 2 anything differently. We just continued
 3 doing a normal day's work which took up our
 4 time, and that was it.
 5 CHAYTOR, Q.C.:
 6 Q. So you, Ms. Butler, and Mr. Green, spoke about
 7 it amongst yourselves?
 8 MR. SIMMS:
 9 A. Oh, of course.
 10 CHAYTOR, Q.C.:
 11 Q. And were they axilla shocked and concerned?
 12 MR. SIMMS:
 13 A. They were.
 14 CHAYTOR, Q.C.:
 15 Q. And they were surprised, I take it, as well?
 16 MR. SIMMS:
 17 A. Yes.
 18 CHAYTOR, Q.C.:
 19 Q. So you continued on with your work. Did
 20 anyone after this became a public issue then
 21 come to you and talk to you, and inform you or
 22 bring you up to date as to what was happening?
 23 MR. SIMMS:
 24 A. No.
 25 CHAYTOR, Q.C.:

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1 Q. So as the retesting process continued and the
 2 samples were being sent off to Mount Sinai for
 3 retesting, you remained unaware that that
 4 process -- you knew it was happening, you
 5 learned about it in the media, but were you
 6 kept up to date as to what was happening, the
 7 status of the investigation and the retesting?
 8 MR. SIMMS:
 9 A. No, we were not.
 10 CHAYTOR, Q.C.:
 11 Q. And I take it you weren't asked to attend any
 12 meetings regarding the issue?
 13 MR. SIMMS:
 14 A. Not specifically for the retesting, no.
 15 CHAYTOR, Q.C.:
 16 Q. Did you attend any meetings regarding the
 17 ER/PR issue at all?
 18 MR. SIMMS:
 19 A. Not to talk about directly about sending the
 20 specimens off or being repeated, no.
 21 CHAYTOR, Q.C.:
 22 Q. Tell me what meetings you did attend.
 23 MR. SIMMS:
 24 A. I can't recall. We'll have to do them in a
 25 timeline. I'll wait for you to bring up some

Page 36

1 that I supposedly attended, you know, because
 2 there was meetings going on at all levels, and
 3 I wasn't party to any of these meetings.
 4 CHAYTOR, Q.C.:
 5 Q. So what I'm thinking about at this point in
 6 time is in the fall then of 2005 whether or
 7 not anyone approached you to seek your input
 8 as to potential problems with the testing or
 9 with the system? Did anything like that
 10 happen?
 11 MR. SIMMS:
 12 A. Not to my knowledge.
 13 CHAYTOR, Q.C.:
 14 Q. And you do recall, though, at some point in
 15 time -- are you saying that at some point in
 16 time you were part of a meeting or a group
 17 discussion around this issue?
 18 MR. SIMMS:
 19 A. No.
 20 CHAYTOR, Q.C.:
 21 Q. No?
 22 MR. SIMMS:
 23 A. No, not specifically.
 24 CHAYTOR, Q.C.:
 25 Q. Well, how about in a general sense?

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1 MR. SIMMS:
 2 A. No. I remember raising it once with Heather
 3 Predham, I remember.
 4 CHAYTOR, Q.C.:
 5 Q. Okay and that comes up --
 6 MR. SIMMS:
 7 A. That's the only one that I can --
 8 CHAYTOR, Q.C.:
 9 Q. And that's, I believe, May of 2007. I will
 10 direct you to that one.
 11 MR. SIMMS:
 12 A. Okay.
 13 CHAYTOR, Q.C.:
 14 Q. That's the only one you think you --
 15 MR. SIMMS:
 16 A. Yes.
 17 CHAYTOR, Q.C.:
 18 Q. And that's quite far along in the process.
 19 MR. SIMMS:
 20 A. Right.
 21 CHAYTOR, Q.C.:
 22 Q. May of '07, does that sound right to you?
 23 MR. SIMMS:
 24 A. That sounds right.
 25 CHAYTOR, Q.C.:

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1 Q. Now we also know that Ms. Wegrynowski came in
 2 in September, 2005, to conduct a review?
 3 MR. SIMMS:
 4 A. Yes.
 5 CHAYTOR, Q.C.:
 6 Q. And did you meet with her as well?
 7 MR. SIMMS:
 8 A. Very briefly.
 9 CHAYTOR, Q.C.:
 10 Q. And what did you discuss with her?
 11 MR. SIMMS:
 12 A. Didn't discuss anything in general.
 13 CHAYTOR, Q.C.:
 14 Q. What did you understand was the purpose of her
 15 visit?
 16 MR. SIMMS:
 17 A. Again to come in -- at that point to come in
 18 and check out the lab to see if there were any
 19 deficiencies and just see how we stood up as
 20 compared to other labs in Canada.
 21 CHAYTOR, Q.C.:
 22 Q. And did you understand that to be specific to
 23 the ER -- any issues with the ER and PR?
 24 MR. SIMMS:
 25 A. No, I assumed it was the IHC lab in general.

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1 CHAYTOR, Q.C.:
 2 Q. IHC lab in general?
 3 MR. SIMMS:
 4 A. Yes.
 5 CHAYTOR, Q.C.:
 6 Q. Yes, and she did do an overall review, you're
 7 right.
 8 MR. SIMMS:
 9 A. Yes.
 10 CHAYTOR, Q.C.:
 11 Q. So again that wasn't a flag to you that there
 12 was any particular issue with ER and PR?
 13 MR. SIMMS:
 14 A. No.
 15 CHAYTOR, Q.C.:
 16 Q. And you saw that as part of just a regular
 17 review and not necessitated through any
 18 problem?
 19 MR. SIMMS:
 20 A. It was arranged because of the ER/PR issue,
 21 but arranged at a level that I wasn't
 22 associated with because at that point in time
 23 I, personally, didn't even know who suggested
 24 that she come and check out the IHC lab.
 25 CHAYTOR, Q.C.:

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1 Q. And originating because of the ER/PR issue.
 2 Were you even aware of that in September,
 3 2005?
 4 MR. SIMMS:
 5 A. Well, September of 2005 we knew there was
 6 something going on with the ER/PR issue
 7 because in August we had the memo from Dr.
 8 Cook.
 9 CHAYTOR, Q.C.:
 10 Q. Yes.
 11 MR. SIMMS:
 12 A. So at this time, you know, yes, October of
 13 '05, anywhere from then on, yes, we were aware
 14 there was something going on with the ER/PR,
 15 but what overall or how it was being handled
 16 or what was being done at that moment in time,
 17 no, we weren't aware of it.
 18 CHAYTOR, Q.C.:
 19 Q. So I'm just wondering at the time that you met
 20 with Ms. Wegrynowski whether or not you were
 21 aware then that this had been --
 22 MR. SIMMS:
 23 A. That it was an issue. I was aware at that
 24 time that it was an issue, but how big or how
 25 large, or what it meant overall, no, or what

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1 the time frame was, no.
 2 CHAYTOR, Q.C.:
 3 Q. Okay, and that's what you learned from the
 4 media accounts?
 5 MR. SIMMS:
 6 A. Yes.
 7 CHAYTOR, Q.C.:
 8 Q. And your meetings then with Ms. Wegrynowski,
 9 or you had a brief meeting with her, about how
 10 long did you meet with her?
 11 MR. SIMMS:
 12 A. I think that was in Barry's office. We were
 13 with her for about an hour, I would say.
 14 CHAYTOR, Q.C.:
 15 Q. And was that all three of you?
 16 MR. SIMMS:
 17 A. If I remember correctly, all three of us and
 18 Barry was there, and she went over the theory
 19 and principles, actually, of
 20 immunohistochemistry.
 21 CHAYTOR, Q.C.:
 22 Q. Yes, I understand she did do a PowerPoint
 23 presentation on Barry's computer?
 24 MR. SIMMS:
 25 A. Right.

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1 CHAYTOR, Q.C.:
 2 Q. Do you recall that? Did you find that
 3 helpful?
 4 MR. SIMMS:
 5 A. Yes, very much so.
 6 CHAYTOR, Q.C.:
 7 Q. And was that the first time you had had any
 8 kind of background or theory presented to you
 9 in IHC?
 10 MR. SIMMS:
 11 A. Presented -- no, not necessarily, because
 12 various pathologists -- over the period of
 13 time, you know, Ken had been off on a couple
 14 of --
 15 CHAYTOR, Q.C.:
 16 Q. Yes, I'm thinking about yourself specifically?
 17 MR. SIMMS:
 18 A. Myself specifically, no, but Ken would have
 19 talked to me too. So it wasn't necessarily
 20 just finding out about the theory and
 21 principle for the first time.
 22 CHAYTOR, Q.C.:
 23 Q. And I think Ken may have gone that same month,
 24 it may have been his first trip for -- in
 25 September, 2005, as well.

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1 MR. SIMMS:
 2 A. And I did have various instructions from Barry
 3 who had a fair amount of knowledge on the
 4 theory and principle of immunohistochemistry.
 5 CHAYTOR, Q.C.:
 6 Q. So he from time to time --
 7 MR. SIMMS:
 8 A. Oh, yes.
 9 CHAYTOR, Q.C.:
 10 Q. Would do presentations with you?
 11 MR. SIMMS:
 12 A. He would do -- if we had specific questions in
 13 specific areas, he would certainly come and
 14 give his explanation.
 15 CHAYTOR, Q.C.:
 16 Q. I'm just wondering -- so he was there and
 17 available for you to bounce questions off, I
 18 take it?
 19 MR. SIMMS:
 20 A. Yes, he was.
 21 CHAYTOR, Q.C.:
 22 Q. And he seemed to have a good in-depth
 23 knowledge of IHC?
 24 MR. SIMMS:
 25 A. He appeared to, yes.

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1 CHAYTOR, Q.C.:
 2 Q. But in terms of giving a formal presentation,
 3 a PowerPoint or anything like that, was Ms.
 4 Wegrynowski's the first?
 5 MR. SIMMS:
 6 A. Yes.
 7 CHAYTOR, Q.C.:
 8 Q. And we understand Dr. Banerjee was also by in
 9 the fall of 2005. Did you also meet with him?
 10 MR. SIMMS:
 11 A. I never met him.
 12 CHAYTOR, Q.C.:
 13 Q. You never met him, okay. Did you even know
 14 that he was -- that he was coming or that he
 15 was there?
 16 MR. SIMMS:
 17 A. I was aware -- somebody informed me that he
 18 was there or he was coming and he was there.
 19 CHAYTOR, Q.C.:
 20 Q. But you had no discussions with him?
 21 MR. SIMMS:
 22 A. No.
 23 CHAYTOR, Q.C.:
 24 Q. If we could look, please, at P-0046. Mr.
 25 Simms, this is the first report that Dr.

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1 Banerjee wrote. It's October 17th, 2005, and
 2 this is just a cover letter. I'll just take
 3 you to the next page here. Here's the actual
 4 report and it's copy five of eight. I take it
 5 you weren't privy to the contents of this
 6 report?
 7 MR. SIMMS:
 8 A. I was not.
 9 CHAYTOR, Q.C.:
 10 Q. And when did you -- have you ever seen the
 11 report?
 12 MR. SIMMS:
 13 A. I saw the report itself when it was released
 14 by the Commission.
 15 CHAYTOR, Q.C.:
 16 Q. And it says here in terms of he reviewed a
 17 number of cases from the retrospect of testing
 18 set with Dr. Cook. "All of the cases that had
 19 converted from negative to positive by
 20 switching platforms had one or more of the
 21 following characteristics; one, poor fixation;
 22 two, negative internal controls; three, absent
 23 internal controls, and it's apparent that too
 24 much reliance is being placed on external
 25 positive controls with no attention paid to

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1 internal controls". The issue of poor
 2 fixation, do you recall concerns prior to this
 3 -- prior to the issue arising in 2005, do you
 4 recall concerns about the quality of the
 5 tissue or quality of specimens?
 6 MR. SIMMS:
 7 A. As I said yesterday, we were sometimes
 8 concerned too of the poor quality of the
 9 fixation, the size of the tissue, right, the
 10 type of tissue that was presented, and when
 11 I'm talking here too about the specimens,
 12 where so much emphasis is on ER/PR, I'm
 13 speaking mostly of breast tissue, dealing with
 14 breast tissue, yes, there was a fixation and a
 15 processing problem, or appeared to be.
 16 Perhaps it could never be improved -- fixed, I
 17 don't know. Maybe it can't be fixed
 18 entirely, but we thought it could be improved
 19 by getting a proper tissue sample to begin
 20 with and working from there. So there has
 21 always been a problem with the quality of --
 22 not always, but some of the breast tissue,
 23 right. Now whether that comes from the
 24 collecting of the sample itself, right, the
 25 size of the tissue, the fixation, the

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1 processing, that still has to be determined.
 2 It's improving once people are understanding
 3 what piece of tissue to take, right, how large
 4 to make it and so on. So it's improving, but
 5 there's still room for improvement, and I
 6 don't know -- perhaps it's a thing that can
 7 never be solved. I'm not an expert in that.
 8 I don't know that, but I think it can be
 9 improved a little, yes.
 10 CHAYTOR, Q.C.:
 11 Q. But this was an issue that was well known
 12 certainly amongst the technologists?
 13 MR. SIMMS:
 14 A. Yes.
 15 CHAYTOR, Q.C.:
 16 Q. And was it well known as well through
 17 discussions or with pathologists?
 18 MR. SIMMS:
 19 A. And the pathologists, yes, they were aware of
 20 it as well.
 21 CHAYTOR, Q.C.:
 22 Q. And do you recall then any measures being
 23 implemented or taken to try to address the
 24 concern back in -- before all this happened in
 25 2005?

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1 MR. SIMMS:
 2 A. Not officially. It was only if we, as
 3 technologists mentioned it to whoever was
 4 doing the grossing at the beginning to, look,
 5 you know, first of all get a proper piece of
 6 tissue and we'll see what happens from there.
 7 CHAYTOR, Q.C.:
 8 Q. Did you express any concerns regarding the
 9 quality of the specimens or tissue to Mr.
 10 Dyer?
 11 MR. SIMMS:
 12 A. Oh, yes, Barry was quite aware of it, yes.
 13 CHAYTOR, Q.C.:
 14 Q. He was aware of it, and how do you know that
 15 the pathologists were also aware of it?
 16 MR. SIMMS:
 17 A. Because -- well, for one thing, they would
 18 come back and say, look, you know, most of the
 19 tissue is washed off this slide or, you know,
 20 there's no tissue on this slide, or this has
 21 no normal tissue with it, right, and we would
 22 say, yes, we know that, but we're presented
 23 with a paraffin block, so we can't -- that's
 24 what we work with, what you give us.
 25 CHAYTOR, Q.C.:

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1 Q. So you would have that discussion with them
 2 and tell them that you were concerned with the
 3 quality of what was being presented to you to
 4 make the slides from?
 5 MR. SIMMS:
 6 A. If they came to us and said there was a
 7 problem with the tissue washing off or
 8 whichever, we would say, well, maybe because
 9 of this, yes.
 10 CHAYTOR, Q.C.:
 11 Q. And you recall having that discussion with
 12 various pathologists from time to time?
 13 MR. SIMMS:
 14 A. From time to time.
 15 CHAYTOR, Q.C.:
 16 Q. Did the technologists ever try to do anything
 17 to counteract the poor quality of the tissue?
 18 For example, was there any reprocessing taking
 19 place?
 20 MR. SIMMS:
 21 A. Oh, there was reprocessing, yes.
 22 CHAYTOR, Q.C.:
 23 Q. And was that happening at the Health Sciences,
 24 do you recall, when you moved over in 2003?
 25 MR. SIMMS:

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1 A. When I moved over in 2003, I don't recall any
 2 reprocessing happening.
 3 CHAYTOR, Q.C.:
 4 Q. That was happening at St. Clare's?
 5 MR. SIMMS:
 6 A. No, that's not true, there was some
 7 reprocessing at the beginning because I think
 8 we had mentioned it and we tried some
 9 reprocessing, but they didn't continue it. It
 10 was only on a limited basis, but at St.
 11 Clare's, it was -- breast tissue, it was a
 12 normal activity.
 13 CHAYTOR, Q.C.:
 14 Q. It was a normal activity, and so it was well
 15 known, I take it at St. Clare's, that there
 16 was an issue with the quality of the breast
 17 tissue?
 18 MR. SIMMS:
 19 A. Yes, because St. Clare's did the majority of
 20 the breast tissue, so they would get the most
 21 specimens, so they would be more aware of it
 22 than other people.
 23 CHAYTOR, Q.C.:
 24 Q. Now maybe you could just explain to us -- we
 25 have heard it from another witness, but

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1 explain to us what it means to reprocess the
 2 tissue?
 3 MR. SIMMS:
 4 A. To reprocess the tissue, we would -- now after
 5 it was -- to go through the whole process, it
 6 would be embedded, right, so now it had wax in
 7 it. So the thing now was to get it back to
 8 the position so we could put it through again.
 9 All that happened in reprocessing was it was
 10 double processed. It was run through the
 11 machine again, right, but in order to do that,
 12 of course, you had to get the wax out, so we
 13 put it in xylene to get the wax out -- soak it
 14 in xylene and then rinsed in alcohols and got
 15 it back to formalin, right, and then put it on
 16 the machine again, right, and go through the
 17 same process you did before. So it was --
 18 reprocessing was only a double processing. It
 19 was going through for the second time, so it
 20 had longer in the alcohols and it had double
 21 times of everything. It had more chance of
 22 penetration and -- especially if it was a
 23 large tissue.
 24 CHAYTOR, Q.C.:
 25 Q. Okay.

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1 MR. SIMMS:
 2 A. Now sometimes it got to the point where we
 3 could tell even by taking it off the machine,
 4 without even embedding it in the paraffin wax,
 5 that, look, this is not going to work, this is
 6 just pure fatty tissue, so we might as well
 7 put it through again. At that point if you
 8 caught it that way, you'd just put it back
 9 through again.
 10 CHAYTOR, Q.C.:
 11 Q. And were you aware of any potential pitfalls
 12 in reprocessing the tissue?
 13 MR. SIMMS:
 14 A. Not that we were aware of. There were various
 15 theories from various people or various
 16 thoughts, but nowhere in writing did we see
 17 that it was detrimental to the tissue.
 18 CHAYTOR, Q.C.:
 19 Q. And have you since learned otherwise?
 20 MR. SIMMS:
 21 A. No, I have not.
 22 CHAYTOR, Q.C.:
 23 Q. With respect to any IHC testing or ER/PR, in
 24 particular, whether or not it could cause
 25 damage to the tissue or interfere with the

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1 process?

2 MR. SIMMS:

3 A. Not that I'm aware of.

4 CHAYTOR, Q.C.:

5 Q. Okay, and how did you originally learn to

6 reprocess the tissue?

7 MR. SIMMS:

8 A. Because we were having problems with the

9 tissue and that was at St. Clare's.

10 CHAYTOR, Q.C.:

11 Q. And did someone suggest that to you as a

12 possible remedy?

13 MR. SIMMS:

14 A. Yes, we were having problems with it and a Dr.

15 Tadross said, oh, that's no--you know, to him

16 it seemed like a fairly normal thing to do or

17 any every day thing to do, because he said,

18 no, that's no problem, just reprocess it and

19 we just said, what do you mean, reprocess it?

20 And then he explained the situation to us or

21 the procedure to us and we tried it and people

22 were happy with it, actually. The specimens

23 were--I'll have to admit, the specimens were

24 much easier to cut.

25 CHAYTOR, Q.C.:

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1 Q. And you say people were happy with it, were

2 the pathologists aware that reprocessing was

3 happening?

4 MR. SIMMS:

5 A. Yes.

6 CHAYTOR, Q.C.:

7 Q. And there was no concern expressed about that

8 process?

9 MR. SIMMS:

10 A. No, there wasn't because I guess Dr. Tadross

11 explained to them that they had done this and

12 I'm not sure, in Ontario, Kingston, I think,

13 where he came from, that they did it all the

14 time and there wasn't a problem there and they

15 didn't appear to have any concern there.

16 CHAYTOR, Q.C.:

17 Q. If we could look, please, at P-0071?

18 THE COMMISSIONER:

19 Q. Mr. Simms, I just want to make sure that I'm

20 really clear on the point you're making, vis-

21 a-vis the "fixation problems". It seems to me

22 that you're referring to a couple of different

23 things which occurred or didn't occur on the

24 slide, which indicated to you there was a

25 fixation problem. One was that there was not

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1 sufficient normal tissue and the other was

2 that sometimes things were not adhering to the

3 slides themselves.

4 MR. SIMMS:

5 A. Uh-hm.

6 THE COMMISSIONER:

7 Q. Is that correct?

8 MR. SIMMS:

9 A. Yes, Madam Commissioner, that's right, yes.

10 THE COMMISSIONER:

11 Q. And it seems to me that in respect of one of

12 those, you seem to be saying that in part the

13 problem could arise because of the grossing

14 process?

15 MR. SIMMS:

16 A. That's correct.

17 THE COMMISSIONER:

18 Q. In the sense that the original samples taken

19 would not necessarily, for example, include

20 sufficient normal tissue?

21 MR. SIMMS:

22 A. That is correct.

23 THE COMMISSIONER:

24 Q. But another point in terms of the adhering to

25 the slide, now what would, in your view,

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1 account for that kind of problem?

2 MR. SIMMS:

3 A. The tissue, we'll use the term again, fatty

4 tissue is very difficult to adhere to the

5 slide. Fatty tissue is very difficult to fix,

6 all right, and process. Now whether or not

7 it's a combination of both fixation and

8 processing, that, I don't know, but it appears

9 to be. But first of all, the first step would

10 be to get a proper sample to fix. Washing off

11 the slides usually comes from fatty tissue,

12 unfixed tissue will not adhere to the slide or

13 it will wash off very easily.

14 THE COMMISSIONER:

15 Q. So you seem to be musing most of the problems

16 that you saw to the fixation end, rather than

17 the processing end.

18 MR. SIMMS:

19 A. I don't, I -

20 THE COMMISSIONER:

21 Q. Or are you saying you're not sure which of the

22 combination of the two that occurred?

23 MR. SIMMS:

24 A. I'm not sure of that, it's a combination of

25 both, right. I've never been shown that one

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1 doesn't follow the other. If it's not fixed
 2 properly, will processing take care of it, or
 3 if it is fixed properly, can you still have a
 4 processing problem? I don't know that, I
 5 don't know if it's one or the other, or both.
 6 THE COMMISSIONER:
 7 Q. Or a combination of the two, all right, thank
 8 you, that's clear.
 9 MR. SIMMS:
 10 A. Thank you.
 11 CHAYTOR, Q.C.:
 12 Q. And Mr. Simms, you said that reprocessing was
 13 a common occurrence at St. Clare's. Why
 14 wasn't it happening at the Health Sciences?
 15 MR. SIMMS:
 16 A. I can't speak for that, you will have to ask
 17 someone who used to work at the Health
 18 Science.
 19 CHAYTOR, Q.C.:
 20 Q. Did anyone instruct you not to reprocess?
 21 MR. SIMMS:
 22 A. No.
 23 CHAYTOR, Q.C.:
 24 Q. And did you ever make inquiries when you were
 25 finding difficulties with the tissue, did you

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1 ever make inquiries about reprocessing or
 2 attempt to reprocess?
 3 MR. SIMMS:
 4 A. I'm sure we, you know, we did mention yes, you
 5 know, well we just used to reprocess the
 6 tissue.
 7 CHAYTOR, Q.C.:
 8 Q. And what were you told?
 9 MR. SIMMS:
 10 A. Well we don't.
 11 CHAYTOR, Q.C.:
 12 Q. And who told you that?
 13 MR. SIMMS:
 14 A. The manager, Terry or Barry would have said,
 15 right, well we don't normally reprocess
 16 tissue. Now they did give it a try, from my
 17 understanding, they did try a few, but they
 18 didn't get much breast tissue to begin with,
 19 right, but they had a couple of--you know,
 20 some breast tissue they did try and they
 21 didn't have a problem with it, but for some
 22 reason, they just stopped doing it.
 23 CHAYTOR, Q.C.:
 24 Q. And if the reason had anything to do with any
 25 danger inherent in the process, you're not

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1 aware of that?
 2 MR. SIMMS:
 3 A. No, I'm not aware of that.
 4 CHAYTOR, Q.C.:
 5 Q. On the issue of what you learned through the
 6 media then in October, I understand you
 7 weren't aware that there was retesting taking
 8 place and are you saying you weren't aware of
 9 the magnitude of the issue? What is it that
 10 you learned through the media?
 11 MR. SIMMS:
 12 A. The magnitude of the issue. I was aware that
 13 they were retesting a few samples and that, I
 14 mean I work in the IHC lab, we had our
 15 technologists involved, of course you hear
 16 rumours, but there was no formal
 17 acknowledgement to us that, you know, we're
 18 re-visiting this particular case because of a
 19 conversion or whatever, we were never given
 20 that information at all.
 21 CHAYTOR, Q.C.:
 22 Q. You were never told that?
 23 MR. SIMMS:
 24 A. We were never told that information, but the
 25 magnitude of it didn't hit us until--hit me

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1 until I saw it in the media.
 2 CHAYTOR, Q.C.:
 3 Q. And you realized then it was for a -
 4 MR. SIMMS:
 5 A. This is, you know, they're going back to '97
 6 here.
 7 CHAYTOR, Q.C.:
 8 Q. And that it was involving hundreds of people?
 9 MR. SIMMS:
 10 A. That's right.
 11 CHAYTOR, Q.C.:
 12 Q. And you learned that from the media?
 13 MR. SIMMS:
 14 A. I did.
 15 CHAYTOR, Q.C.:
 16 Q. And the fact that there was any retest
 17 happening in house in June, July, you weren't
 18 made aware of that?
 19 MR. SIMMS:
 20 A. No.
 21 CHAYTOR, Q.C.:
 22 Q. And if we could look, please, at P-0071, page
 23 12? And this is a key message document that,
 24 I'm just going to bring you back, it's draft
 25 media releases which we understand didn't go

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1 out at that time, but they're drafted for July
 2 of 2005. And on page 12, the second bullet
 3 here says "Laboratory technicians have been
 4 working around the clock to complete retesting
 5 of samples to ensure proper treatment has been
 6 and will be administered. A second specimen
 7 sample is being retested by Mount Sinai to
 8 ensure accuracy." The idea of the laboratory
 9 technicians at Eastern Health working around
 10 the clock to complete retesting in July of
 11 2005, were you involved in that or even aware
 12 of it?
 13 MR. SIMMS:
 14 A. July of 2005? We were working around the
 15 clock to complete retesting of samples. We
 16 would have loved to have retested all the
 17 samples, but we did not, everything was sent
 18 to Mount Sinai, we didn't retest any samples,
 19 not on a, you know, not on a group basis.
 20 CHAYTOR, Q.C.:
 21 Q. And if you did, you're not aware of it?
 22 MR. SIMMS:
 23 A. I'm not aware of it, unless it was unbeknownst
 24 to us, I'm not aware of it, no.
 25 CHAYTOR, Q.C.:

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1 Q. And so the idea of you working around the
 2 clock or your colleagues working around the
 3 clock to complete retesting, what do you say
 4 about the accuracy of that statement?
 5 MR. SIMMS:
 6 A. No, personally I don't know where that came
 7 from.
 8 CHAYTOR, Q.C.:
 9 Q. And are you aware whether Mr. Butler--or Ms.
 10 Butler or Mr. Green were working around the
 11 clock to complete retesting of samples?
 12 MR. SIMMS:
 13 A. Not that I'm aware of, I would have know. Not
 14 for retesting, I know we were working, not
 15 around the clock, but working extra time for
 16 just doing other things, but no, I'm not aware
 17 of Mary or Ken working around the clock to
 18 retest samples.
 19 CHAYTOR, Q.C.:
 20 Q. And if I could just bring you back for a
 21 minute to the reprocessing issue. I just want
 22 to be clear, in St. Clare's when you were
 23 there, blocks--obviously there was a lot of
 24 breast surgeries.
 25 MR. SIMMS:

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1 A. Yes.
 2 CHAYTOR, Q.C.:
 3 Q. And blocks were prepared in at St. Clare's and
 4 the blocks at that point in time were sent
 5 over to the Health Science for the Health
 6 Science to prepare the ER/PR slides?
 7 MR. SIMMS:
 8 A. Yes.
 9 CHAYTOR, Q.C.:
 10 Q. Okay, so in terms of issues that you were
 11 having in St. Clare's with reprocessing, was
 12 that for your H&E slides? You weren't doing
 13 the--you weren't doing IHC at St. Clare's?
 14 MR. SIMMS:
 15 A. Right, so the reprocessing would have been
 16 done for the whole thing, for the H&E slides
 17 with special stains or whatever activity was
 18 done on that particular case.
 19 CHAYTOR, Q.C.:
 20 Q. Okay. So the problems that you were having
 21 there and necessitating reprocessing were
 22 regarding your special stains and your H&E
 23 slides.
 24 MR. SIMMS:
 25 A. That's right.

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1 CHAYTOR, Q.C.:
 2 Q. Thank you.
 3 THE COMMISSIONER:
 4 Q. Mr. Simms, I'm not sure if it was you or it
 5 might have been Mr. Green who said recently,
 6 in the last few days, I think it was a short
 7 period of time where St. Clare's prepared
 8 their own slides?
 9 MR. SIMMS:
 10 A. There was a short period of time.
 11 THE COMMISSIONER:
 12 Q. But that didn't last very long, is that -
 13 MR. SIMMS:
 14 A. No, I don't know the timeline, but a very
 15 short period of time, Madam Commissioner.
 16 THE COMMISSIONER:
 17 Q. Okay.
 18 CHAYTOR, Q.C.:
 19 Q. If we could look, please, at P-0047? And Mr.
 20 Simms, this is the first report prepared by
 21 Ms. Wegrynowski, November 9th, 2005, and we're
 22 looking at copy one of four or copy seven of
 23 eight.
 24 MR. SIMMS:
 25 A. Uh-hm.

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1 CHAYTOR, Q.C.:

2 Q. When did you first see this report?

3 MR. SIMMS:

4 A. When it was released by the Commission.

5 CHAYTOR, Q.C.:

6 Q. Were you otherwise advised prior to that of

7 the contents of the report?

8 MR. SIMMS:

9 A. Parts of the contents, mostly--when I say

10 "parts of the content" I mean some of the

11 recommendations, not all, some.

12 CHAYTOR, Q.C.:

13 Q. And when were you first informed of some of

14 the recommendations?

15 MR. SIMMS:

16 A. I don't recall the timeline.

17 CHAYTOR, Q.C.:

18 Q. And was it also around the time of the, your

19 interview with Commission counsel in November,

20 2007?

21 MR. SIMMS:

22 A. 2007? I don't know, I can't recall.

23 CHAYTOR, Q.C.:

24 Q. So in terms of the content, at some point in

25 time you became aware of some of the

Page 66

1 recommendations. Do you recall who told you

2 about that or who showed you the

3 recommendations? Were you shown any document?

4 MR. SIMMS:

5 A. Dr. Nash Denic.

6 CHAYTOR, Q.C.:

7 Q. Okay, and so was that after Dr. Denic became

8 clinical chief?

9 MR. SIMMS:

10 A. Yes.

11 CHAYTOR, Q.C.:

12 Q. Had you asked to see the report prior to then?

13 MR. SIMMS:

14 A. Had I personally asked to see it?

15 CHAYTOR, Q.C.:

16 Q. Yes.

17 MR. SIMMS:

18 A. No.

19 CHAYTOR, Q.C.:

20 Q. Did you make any inquiries as to the content

21 of the report and what Ms. Wegrynowski

22 actually found, the results of her review?

23 MR. SIMMS:

24 A. Only to Barry.

25 CHAYTOR, Q.C.:

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1 Q. And what were you told?

2 MR. SIMMS:

3 A. That the report was not being released, as a

4 matter of fact, Barry didn't even have it.

5 The pathologist had it--the clinical chief was

6 the only source that we were connected to, who

7 had the report.

8 CHAYTOR, Q.C.:

9 Q. And when did you go looking for information

10 from the report? Was that shortly after Ms.

11 Wegrynowski was in or what time period would

12 that have been?

13 MR. SIMMS:

14 A. Just questioning information shortly after we

15 knew that she sent a report back, because we

16 were just curious then, okay, like anyone,

17 well okay, what did she say or what did she

18 find, you know, just out of professional

19 curiosity again.

20 CHAYTOR, Q.C.:

21 Q. So you raised the issue with Mr. Dyer?

22 MR. SIMMS:

23 A. Yeah.

24 CHAYTOR, Q.C.:

25 Q. And you were told that -

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1 MR. SIMMS:

2 A. He had not had it either, he had no report.

3 CHAYTOR, Q.C.:

4 Q. And were you give any information as to the

5 outcome of the review?

6 MR. SIMMS:

7 A. No.

8 CHAYTOR, Q.C.:

9 Q. So in terms of Dr. Denic then, once he became

10 clinical chief telling you some of the

11 recommendations, do you recall what you were

12 told at that time?

13 MR. SIMMS:

14 A. No, just that there were a few recommendations

15 that we should begin putting in place.

16 CHAYTOR, Q.C.:

17 Q. Okay.

18 MR. SIMMS:

19 A. Which ones? I can't recall specifically,

20 maybe when I read them, I may be able to tell

21 you.

22 CHAYTOR, Q.C.:

23 Q. And what was the context of that discussion

24 with Dr. Denic? Were you in a meeting? Was

25 this said to just you or was there a group of

Page 69

1 people?

2 MR. SIMMS:

3 A. No, I don't know if all three of us were in

4 the lab or not, but I was there and Ken was

5 there and I'm pretty sure Mary was there too.

6 No, he would just come into the IHC department

7 and say, now, you know, we need to do this

8 now.

9 CHAYTOR, Q.C.:

10 Q. And do you recall whether or not that was in

11 late 2007, shortly before QMPLS came in?

12 Would it be around that time period?

13 MR. SIMMS:

14 A. It was a good while before that?

15 CHAYTOR, Q.C.:

16 Q. It was before that?

17 MR. SIMMS:

18 A. Yeah.

19 CHAYTOR, Q.C.:

20 Q. Okay and about how much before that?

21 MR. SIMMS:

22 A. No, don't recall either because the time

23 became so confusing here now, from 2005, from

24 August of 2005 up to the present, time just

25 became--I couldn't recall the times for you to

Page 70

1 save my life.

2 CHAYTOR, Q.C.:

3 Q. Did you at any point see a spreadsheet with

4 recommendations on it?

5 MR. SIMMS:

6 A. Again, yes, I did, some recommendations on it.

7 CHAYTOR, Q.C.:

8 Q. And perhaps we could look at P-0050 then, that

9 might jog your memory. And this is the most

10 recent version, April 26, 2007.

11 MR. SIMMS:

12 A. Uh-hm.

13 CHAYTOR, Q.C.:

14 Q. Or the most recent version we have, anyhow.

15 Do you recall seeing this or a version of

16 this? There's a total of three pages.

17 MR. SIMMS:

18 A. Not this specifically, no.

19 CHAYTOR, Q.C.:

20 Q. You didn't see this one specifically?

21 MR. SIMMS:

22 A. No.

23 CHAYTOR, Q.C.:

24 Q. Okay, so something that looked like this?

25 MR. SIMMS:

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1 A. No.

2 CHAYTOR, Q.C.:

3 Q. You didn't see this at all?

4 MR. SIMMS:

5 A. No.

6 CHAYTOR, Q.C.:

7 Q. Okay. Did you have any concerns that you

8 weren't told the content of Ms. Wegrynowski's

9 report or the outcome of her review and had

10 not been told all the recommendations? Did

11 you have any concerns around that?

12 MR. SIMMS:

13 A. My concern around that was, okay, constructive

14 criticism, I have no problem whatsoever, if

15 there's something we can improve on, if

16 there's something we can fix that is not being

17 done properly, not a problem, we can certainly

18 do it. But how can we implement these things

19 or do these things when we don't know what's

20 been recommended? And also know why it was

21 recommended.

22 CHAYTOR, Q.C.:

23 Q. And were you offered an opportunity to give

24 any feedback on the recommendation, on any of

25 the recommendations?

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1 MR. SIMMS:

2 A. No.

3 CHAYTOR, Q.C.:

4 Q. For example, were you asked whether or not,

5 you'll see there's a column here "agreed with

6 recommendations". Were you asked for any

7 input as to whether or not, from a technical

8 point of view, you agreed with any

9 recommendations? Were you consulted in any

10 way?

11 MR. SIMMS:

12 A. Not me personally, no.

13 CHAYTOR, Q.C.:

14 Q. Okay. And you've since had a chance to read

15 or review Ms. Wegrynowski's two reports?

16 MR. SIMMS:

17 A. Yes.

18 CHAYTOR, Q.C.:

19 Q. And overall do you agree with her contents,

20 the contents of her recommendations.

21 MR. SIMMS:

22 A. I agree with her recommendations. I have no

23 problem with her recommendations, no, it's

24 fine. There's always room for improvement and

25 that's all--from what I can gather, there's

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1 room for improvement.
 2 CHAYTOR, Q.C.:
 3 Q. And are there--do you think, back when she did
 4 the review, in the fall of 2005 and her first
 5 report was submitted, would it have been
 6 helpful to you to know about those
 7 recommendations and her findings at that point
 8 in time?
 9 MR. SIMMS:
 10 A. It would have been extremely helpful.
 11 CHAYTOR, Q.C.:
 12 Q. Overall, Mr. Simms, as one of the three
 13 technologists working in the IHC lab while
 14 this process was evolving and the retesting
 15 was happening and in the aftermath of the
 16 problem being discussed, how was the
 17 communication with you from Eastern Health
 18 regarding the issue?
 19 MR. SIMMS:
 20 A. Communication, you mean personally from
 21 Eastern Health on what was happening?
 22 CHAYTOR, Q.C.:
 23 Q. Yes.
 24 MR. SIMMS:
 25 A. There was no communication about what was

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1 happening.
 2 CHAYTOR, Q.C.:
 3 Q. Mr. Simms, were you ever told what had gone
 4 wrong or what may have caused the number of
 5 conversions?
 6 MR. SIMMS:
 7 A. No, I was never told.
 8 CHAYTOR, Q.C.:
 9 Q. From a technical point of view, do you have
 10 any opinion as to what may have caused the
 11 problems?
 12 MR. SIMMS:
 13 A. My only feeling on what may have caused the
 14 problem, as it's referred to, is--and I can
 15 only speak, because I came in on the end of
 16 this, so as a technologist with years of
 17 experience, improvement in technology changed
 18 the results. You take any, not any, but if
 19 you take most scientific procedures and do it
 20 now and do it ten years from now, it's very
 21 unlikely that you're going to get the exactly
 22 the same result as you got then. So, if you
 23 had an ER/PR, as a scenario, if you had an
 24 ER/PR for instance, if an ER/PR was done 10 or
 25 15 years ago, and was just questionably,

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1 weakly positive perhaps, depending on the
 2 interpretation of it, weakly positive. Then
 3 you did it ten years later, most likely,
 4 you're going to get a more strongly positive
 5 case. So, if you had an ER that was reported
 6 as a ten percent ten years ago, and did it
 7 again ten years later, with the improvement in
 8 technology and techniques and knowledge that
 9 pathologists as well as technologists have
 10 today, I think you're going to see that ten
 11 percent could very easily be now up to 30
 12 percent or higher.
 13 CHAYTOR, Q.C.:
 14 Q. What about the idea of someone who originally
 15 was negative, becoming positive and in cases,
 16 becoming strongly positive, what could explain
 17 that?
 18 MR. SIMMS:
 19 A. I would explain the negative because at
 20 reading it at that time, it may appear to be
 21 negative, of interpretation, it may appear to
 22 be quite negative, but maybe there may have
 23 been some slight positivity there or it wasn't
 24 detected by the present system and in the
 25 later system, picked it up.

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1 CHAYTOR, Q.C.:
 2 Q. If we could look please at P-0114. I'm sorry.
 3 MR. SIMMS:
 4 A. And then also, no matter what, apparently,
 5 from statistics and everything, you're open to
 6 a five, you could have a five percent
 7 conversion rate anyway. That's just the way it
 8 is. There's no guarantees. There's no
 9 absolutes.
 10 CHAYTOR, Q.C.:
 11 Q. Yes. Where do you get that figure, the five
 12 percent conversion rate? Is that in
 13 literature or -
 14 MR. SIMMS:
 15 A. Just from literature, just from reading.
 16 Somebody may say one percent, somebody might
 17 save five. It's just from various--you have
 18 to remember that IHC is an infant in its place
 19 in--it's a great diagnostic tool, but it's not
 20 the be all, end all of diagnosis.
 21 CHAYTOR, Q.C.:
 22 Q. And when you use the five percent, you said,
 23 conversion rate, do you mean a conversion rate
 24 or do you mean a discrepancy? Are you saying
 25 there might be a difference between -

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1 MR. SIMMS:
 2 A. Discrep -
 3 CHAYTOR, Q.C.:
 4 Q. Discrepancy is what you mean as opposed to a
 5 change in results.
 6 MR. SIMMS:
 7 A. Yes, right. And see, going from a negative to
 8 a positive is no necessarily a conversion. It
 9 could be a discrepancy because it may not have
 10 been negative to begin with, but the
 11 technology didn't pick it up at that time.
 12 CHAYTOR, Q.C.:
 13 Q. And why the technology wouldn't pick it up at
 14 that time, are you able to offer any
 15 explanation?
 16 MR. SIMMS:
 17 A. For the engineering and the technology, I
 18 can't speak to that. I know a big thing for
 19 us, the big thing in the immunohistochemistry
 20 for us is antigen retrieval. And when we were
 21 using, or that was being used in 1997 onward
 22 is a very aggressive procedure and you did
 23 have problems with it and then we moved into
 24 where you've got a better antigen retrieval
 25 system. The antibodies became better, so you

Page 78

1 picked up more sites.
 2 CHAYTOR, Q.C.:
 3 Q. And you say there were problems with antigen
 4 retrieval?
 5 MR. SIMMS:
 6 A. What do you mean, there were problems?
 7 CHAYTOR, Q.C.:
 8 Q. You said it was a very aggressive procedure
 9 and there were problems with it.
 10 MR. SIMMS:
 11 A. It was an aggressive problems, yes, there were
 12 problems with it because you would get tissue
 13 washing off, yes.
 14 CHAYTOR, Q.C.:
 15 Q. So you think that may have been attributable
 16 to the antigen retrieval process.
 17 MR. SIMMS:
 18 A. I think so. I think antigen retrieval could
 19 have been a contributing factor, yes.
 20 CHAYTOR, Q.C.:
 21 Q. As well as the fixation issue that you
 22 described earlier.
 23 MR. SIMMS:
 24 A. As the fixation issue, processing issue,
 25 technology.

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1 CHAYTOR, Q.C.:
 2 Q. Was there any discussion or concern expressed
 3 about antigen retrieval and it being an
 4 aggressive procedure? Was there any concern
 5 expressed amongst the laboratory medicine
 6 program about that issue?
 7 MR. SIMMS:
 8 A. No, because at that point in time we were
 9 doing--that's all that was available. That
 10 was where technology was. So, yeah, there may
 11 have been some concerns expressed about it,
 12 but there was nothing at that point in time we
 13 knew of or they knew of then in 1997, in those
 14 earlier years, that they knew of that they
 15 could change.
 16 CHAYTOR, Q.C.:
 17 Q. So, no pathologist suggested to you any
 18 alternate way of doing your antigen retrieval
 19 or any manager, anyone, suggest to you any
 20 other way of doing antigen retrieval?
 21 MR. SIMMS:
 22 A. Not to me from 2003 onward.
 23 CHAYTOR, Q.C.:
 24 Q. And do you know whether or not that had ever
 25 been expressed before your time there?

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1 MR. SIMMS:
 2 A. I don't know, you'll have to ask the
 3 appropriate people.
 4 CHAYTOR, Q.C.:
 5 Q. So, nothing that came to your knowledge?
 6 MR. SIMMS:
 7 A. No.
 8 CHAYTOR, Q.C.:
 9 Q. Okay. If we could look then, please, at P-
 10 0114? And Mr. Simms, this is a document which
 11 may have originated from Ms. Predham. It's
 12 feedback from immunohistochemistry
 13 technologist, May 29th, 2007. And you alluded
 14 to earlier in your evidence today that you
 15 recall a meeting with Ms. Predham.
 16 MR. SIMMS:
 17 A. Um-hm.
 18 CHAYTOR, Q.C.:
 19 Q. And what do you recall about that meeting with
 20 Ms. Predham? Why did that meeting come about;
 21 what was the purpose of it?
 22 MR. SIMMS:
 23 A. Don't recall this particular issue.
 24 CHAYTOR, Q.C.:
 25 Q. You don't recall. You're reading what's on

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1 the screen there.
 2 MR. SIMMS:
 3 A. Yes, don't recall this -
 4 CHAYTOR, Q.C.:
 5 Q. So, you don't recall this?
 6 MR. SIMMS:
 7 A. No.
 8 CHAYTOR, Q.C.:
 9 Q. So, tell us about your recollection of your
 10 meeting then with Ms. Predham.
 11 MR. SIMMS:
 12 A. Just general discussion on--the meeting I
 13 recall with Heather Predham is after it broke
 14 in the media and she came and met with us, but
 15 that was a general--that was all, the general
 16 pathology lab, actually, could have been
 17 attending that meeting as well. I think after
 18 the meeting, the IHC lab stayed behind, and we
 19 expressed some thoughts and so on about how we
 20 felt about what was going on, how we were
 21 being portrayed in the media and what we could
 22 do about it, if anything.
 23 CHAYTOR, Q.C.:
 24 Q. Okay. So, this was some time in October 2005,
 25 your meeting with Ms. Predham?

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1 MR. SIMMS:
 2 A. Yes.
 3 CHAYTOR, Q.C.:
 4 Q. Okay. And she met with the entire pathology
 5 lab, all the staff of the lab. And do you
 6 recall what was the purpose of her meeting
 7 with you at that point in time?
 8 MR. SIMMS:
 9 A. For the one I just spoke about?
 10 CHAYTOR, Q.C.:
 11 Q. Yes.
 12 MR. SIMMS:
 13 A. Just to inform us, you know, of--to calm
 14 people down because people were becoming
 15 concerned about being portrayed in the media,
 16 you know, their pictures on TV, et cetera, and
 17 it was just something that we'll have a
 18 general discussion on, to ease their minds and
 19 let them know that everything, you know, is
 20 fine, we're taking care of it, this is being
 21 handled by Eastern Health.
 22 CHAYTOR, Q.C.:
 23 Q. So who requested the meeting? Was it a
 24 request by the staff or was this something
 25 that was put forward by management?

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1 MR. SIMMS:
 2 A. From what I remember, Heather just recommended
 3 it, she said she'd come down and have a chat.
 4 CHAYTOR, Q.C.:
 5 Q. Okay, and people were concerned that their
 6 photos were being shown on TV?
 7 MR. SIMMS:
 8 A. Yes.
 9 CHAYTOR, Q.C.:
 10 Q. In clips, I take it, in the news media.
 11 MR. SIMMS:
 12 A. Yes.
 13 CHAYTOR, Q.C.:
 14 Q. And was there anything else discussed? Were
 15 you give any kind of an update or told the
 16 status of the situation?
 17 MR. SIMMS:
 18 A. Not specifically that I recall, no.
 19 CHAYTOR, Q.C.:
 20 Q. Do you recall anything else then being
 21 discussed then at the meeting?
 22 MR. SIMMS:
 23 A. No.
 24 CHAYTOR, Q.C.:
 25 Q. And you say that the IHC laboratory technician

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1 stayed behind to have further discussion with
 2 Ms. Predham.
 3 MR. SIMMS:
 4 A. Yes.
 5 CHAYTOR, Q.C.:
 6 Q. And what was discussed in that meeting?
 7 MR. SIMMS:
 8 A. I remember, the only thing I remember about
 9 being discussed during that meeting, you know,
 10 by the IHC people was second party or
 11 regarding communications and communications,
 12 again.
 13 CHAYTOR, Q.C.:
 14 Q. Now this was much later, this is in May of
 15 2007?
 16 MR. SIMMS:
 17 A. Well there you go, right, but at the other
 18 meeting -
 19 CHAYTOR, Q.C.:
 20 Q. This was also brought up at that meeting as
 21 well, you're saying, October of '05?
 22 MR. SIMMS:
 23 A. Yes.
 24 CHAYTOR, Q.C.:
 25 Q. Issues of communication?

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1 MR. SIMMS:
 2 A. Yes.
 3 CHAYTOR, Q.C.:
 4 Q. And what were your concerns? What were the
 5 concerns expressed about communication?
 6 MR. SIMMS:
 7 A. My concern was the request for project type
 8 worker coming from numerous sources, i.e.
 9 clinical chief, IHC chief without explanation
 10 and knowledge of manager, so the manager
 11 wasn't aware of what was requested of us, what
 12 we were requested to do from the clinical
 13 chief, the IHC chief, the various pathologists
 14 and that, so we were now in a situation where
 15 what are priorities now, you know, we were
 16 stuck. We, as technologists, were being
 17 called upon now to adjust priorities. Well,
 18 do I do this project first, do I do this
 19 particular case first, do I do Dr. So and So
 20 first or now I have to put this in some kind
 21 of priority and would my priority be the same
 22 as our manager's priority.
 23 CHAYTOR, Q.C.:
 24 Q. Okay, so that was also brought up, you're
 25 reading that from 114, P-114, but that was

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1 also something brought up in the fall of 2005?
 2 MR. SIMMS:
 3 A. I can't recall, I don't know. I don't know if
 4 I'm getting the two of them mixed up or not.
 5 CHAYTOR, Q.C.:
 6 Q. That's fine, I'm just wondering if there's
 7 anything else you can recall then from the
 8 fall of 2005 in meeting with Ms. Predham.
 9 MR. SIMMS:
 10 A. No.
 11 CHAYTOR, Q.C.:
 12 Q. Did anyone else attend the meeting, other than
 13 Ms. Predham?
 14 MR. SIMMS:
 15 A. Which one? Which meeting?
 16 CHAYTOR, Q.C.:
 17 Q. The October or the fall of 2005.
 18 MR. SIMMS:
 19 A. When we were talking about the media?
 20 CHAYTOR, Q.C.:
 21 Q. Yes.
 22 MR. SIMMS:
 23 A. Yes, there were other people from the general
 24 lab.
 25 CHAYTOR, Q.C.:

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1 Q. Yes, but was there anyone else from management
 2 there?
 3 MR. SIMMS:
 4 A. There was, I can't remember who.
 5 CHAYTOR, Q.C.:
 6 Q. Okay. Was Mr. Dyer there?
 7 MR. SIMMS:
 8 A. Mr. Dyer was there.
 9 CHAYTOR, Q.C.:
 10 Q. Okay. And was there any pathologists in
 11 attendance?
 12 MR. SIMMS:
 13 A. No.
 14 CHAYTOR, Q.C.:
 15 Q. So, Dr. Cook, clinical chief wasn't there?
 16 MR. SIMMS:
 17 A. No.
 18 CHAYTOR, Q.C.:
 19 Q. Okay. Now this meeting here appears to have
 20 taken place or at least it's documented, May
 21 29th, 2007 and this is indicated to be
 22 feedback from immunohistochemistry
 23 technologists. Do you recall a meeting then
 24 in May of 2007?
 25 MR. SIMMS:

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1 A. No, I do not.
 2 CHAYTOR, Q.C.:
 3 Q. You don't. And so, this has two bullets with
 4 different concerns and then sub-bullets under
 5 those. The first being "expressed concerns
 6 related to co-ordination of quality assurance
 7 activities for entire immunohistochemical
 8 service". Do you recall being at any meeting
 9 where these things were discussed?
 10 MR. SIMMS:
 11 A. No, I don't.
 12 CHAYTOR, Q.C.:
 13 Q. No. So, vast majority of IHC SOPs not signed
 14 off; ER/PR have been completed; no knowledge
 15 or feedback re: external proficiency testing;
 16 no knowledge or overall action planned or
 17 status of same; recommended training for
 18 technologists re: controls has not occurred;
 19 overall feeling that QA activities for ER/PR
 20 are in place, but not for the remaining
 21 service". You don't recall being in a meeting
 22 where those issues were discussed?
 23 MR. SIMMS:
 24 A. I don't recall any of this, I'm sorry. No, I
 25 do not.

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1 CHAYTOR, Q.C.:

2 Q. Okay. And you didn't relay those concerns to

3 Ms. Predham or anyone else in management?

4 MR. SIMMS:

5 A. Not to my knowledge?

6 MR. SIMMS:

7 A. Okay. The overall training for technologists

8 re: controls has not occurred as of May 29th,

9 2007, it says. Could it be that this was

10 relayed through Mr. Dyer, that these things

11 were told to Mr. Dyer by you or other

12 technologists? Do you recall expressing these

13 concerns to anyone?

14 MR. SIMMS:

15 A. No.

16 CHAYTOR, Q.C.:

17 Q. Okay. And your training to read controls as

18 of May 29th, 2007 had not occurred, is that

19 accurate?

20 MR. SIMMS:

21 A. We were never formally trained to read

22 controls, no.

23 CHAYTOR, Q.C.:

24 Q. Okay. Up to the time of leaving your position

25 in the last month and a half, had you ever

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1 been trained to read controls?

2 MR. SIMMS:

3 A. I was never personally trained to read

4 controls and as such, in my understanding, I

5 never signed off that I read a control, read

6 an external control.

7 CHAYTOR, Q.C.:

8 Q. So, your process was you would never sign off

9 that you had even checked a control?

10 MR. SIMMS:

11 A. All the pathologists, and when I say all the

12 pathologists assumed, and rightfully so, that

13 the technologists check the external control,

14 and we did.

15 CHAYTOR, Q.C.:

16 Q. So, you would check it to see if there was any

17 kind of staining.

18 MR. SIMMS:

19 A. To see if there was proper staining. We're

20 into the Ventana now, we're checking to see,

21 because all of us were much more knowledgable

22 then in looking at IHC reactions.

23 CHAYTOR, Q.C.:

24 Q. Yes. So, at some point you were just looking

25 for any staining and then you became more

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1 informed about proper staining.

2 MR. SIMMS:

3 A. Using the DAKO, we were looking for any

4 staining, just any brown staining. The

5 Ventana, we were more precise.

6 CHAYTOR, Q.C.:

7 Q. Okay. So, this bullet here, "the recommended

8 training for technologists re: controls has

9 not occurred", you would agree with that and

10 that had occurred up to the time you left your

11 job.

12 MR. SIMMS:

13 A. Up to the time I left.

14 CHAYTOR, Q.C.:

15 Q. Okay. The idea of the third bullet, "no

16 knowledge of overall action plan or status of

17 same", would you agree with as of May 29th,

18 2007?

19 MR. SIMMS:

20 A. I would.

21 CHAYTOR, Q.C.:

22 Q. You would?

23 MR. SIMMS:

24 A. And then second concern here is "expressed

25 concerns regarding communication", and you've

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1 already spoken about the first bullet, the

2 request for project type works. So, I gather

3 from what you're telling the Commissioner

4 there is that there were numerous people

5 coming at you from different directions. You

6 were being asked to do many tasks and you

7 weren't sure how you were supposed to

8 prioritize your work.

9 MR. SIMMS:

10 A. That's right.

11 CHAYTOR, Q.C.:

12 Q. So, these requests weren't coming through the

13 proper chain of command, as such, through your

14 manager?

15 MR. SIMMS:

16 A. In my opinion.

17 CHAYTOR, Q.C.:

18 Q. Okay. And this also says, requests for

19 "documentation are coming in without knowledge

20 of manager". Do you recall that happening?

21 MR. SIMMS:

22 A. I don't recall specifically, but I know, you

23 know, it's happened because with all this

24 going on here, and communications--

25 communications, I don't know who I expressed a

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1 lot of these concerns to because this was a
 2 weekly thing, would express concerns to
 3 whoever would listen to me.
 4 CHAYTOR, Q.C.:
 5 Q. What kind of documentation was being requested
 6 and who was making the requests?
 7 MR. SIMMS:
 8 A. I can't recall specifically. I wouldn't know
 9 specifically on that. I'm sure Barry would
 10 know.
 11 CHAYTOR, Q.C.:
 12 Q. Do you recall were pathologists--well, this
 13 says it was done without the knowledge of
 14 management.
 15 MR. SIMMS:
 16 A. Right, but he would know after the fact. It
 17 was done without the knowledge of--I don't
 18 know where that statement came from.
 19 CHAYTOR, Q.C.:
 20 Q. So, you weren't personally being asked to
 21 provide documentation?
 22 MR. SIMMS:
 23 A. No, because I don't know what they mean by
 24 documentation. Requests for documentation;
 25 documentation of what?

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1 CHAYTOR, Q.C.:
 2 Q. When all of this happened in 2005 and the
 3 issue became the issue that is today, were
 4 pathologists coming into the lab requesting
 5 blocks or slides from the technologists?
 6 MR. SIMMS:
 7 A. Not me personally, not at the Health Science,
 8 to my knowledge.
 9 CHAYTOR, Q.C.:
 10 Q. So, not to you personally. Were you aware
 11 whether they were making such requests of
 12 anyone else in the lab?
 13 MR. SIMMS:
 14 A. No.
 15 CHAYTOR, Q.C.:
 16 Q. Were you being asked to redo any tests?
 17 MR. SIMMS:
 18 A. There were requests for retesting, but to us
 19 that was just another request for a repeat.
 20 CHAYTOR, Q.C.:
 21 Q. And was that done through the regular channel
 22 with a requisition form?
 23 MR. SIMMS:
 24 A. Oh yes.
 25 CHAYTOR, Q.C.:

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1 Q. And did the number of repeats increase in that
 2 time period after--you became very aware of
 3 this issue, you've told us, October 2005.
 4 MR. SIMMS:
 5 A. Right.
 6 CHAYTOR, Q.C.:
 7 Q. So, in that timeframe, were you noticing the -
 8 MR. SIMMS:
 9 A. The requests increase?
 10 CHAYTOR, Q.C.:
 11 Q. Yes.
 12 MR. SIMMS:
 13 A. No, they did not.
 14 CHAYTOR, Q.C.:
 15 Q. Okay. So, nothing more than the norm.
 16 MR. SIMMS:
 17 A. The occasional -
 18 CHAYTOR, Q.C.:
 19 Q. At that point in time though, ER/PR--while you
 20 were continuing with your staining and with
 21 your processing of the slides--did you also
 22 stain the slides by the way or just process
 23 them? You went through the whole thing.
 24 MR. SIMMS:
 25 A. The whole thing.

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1 CHAYTOR, Q.C.:
 2 Q. The whole thing, okay. So, there are other
 3 requests coming in other than the retests, I'm
 4 sorry, other than the prospective cases that
 5 you were continuing to do in any event, where
 6 there requests coming in for old cases to be
 7 retested.
 8 MR. SIMMS:
 9 A. No, not any--no. You would get the occasional
 10 request for an older test to be repeated, but
 11 we just assumed, okay, that's another repeat.
 12 We didn't know if that had anything to do with
 13 the ER/PR status at the time or not. Yes, we
 14 would get requests for repeats, but we got
 15 that all the time.
 16 CHAYTOR, Q.C.:
 17 Q. You got that all the time, requests for
 18 repeats.
 19 MR. SIMMS:
 20 A. For repeats, now, you know, I'm saying -
 21 CHAYTOR, Q.C.:
 22 Q. On older cases?
 23 MR. SIMMS:
 24 A. On which?
 25 CHAYTOR, Q.C.:

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1 Q. On older cases?
 2 MR. SIMMS:
 3 A. Oh yeah, that would happen.
 4 CHAYTOR, Q.C.:
 5 Q. That would happen?
 6 MR. SIMMS:
 7 A. Yeah, infrequently, you know, it wasn't an
 8 everyday occurrence.
 9 CHAYTOR, Q.C.:
 10 Q. And would anyone tell you why that was
 11 happening?
 12 MR. SIMMS:
 13 A. Oh no.
 14 CHAYTOR, Q.C.:
 15 Q. No.
 16 MR. SIMMS:
 17 A. All we got was a request for procedure. We
 18 did it; we didn't question it.
 19 CHAYTOR, Q.C.:
 20 Q. Okay. And were you ever aware of the outcome
 21 of a repeat of an older case?
 22 MR. SIMMS:
 23 A. No.
 24 CHAYTOR, Q.C.:
 25 Q. To your knowledge, had any repeat been carried

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1 out on an ER/PR test prior to April of 2005
 2 and the results of the repeat was a change in
 3 result?
 4 MR. SIMMS:
 5 A. I wasn't aware of it.
 6 CHAYTOR, Q.C.:
 7 Q. Are you aware now whether or not that every
 8 happened?
 9 MR. SIMMS:
 10 A. No, not formally.
 11 CHAYTOR, Q.C.:
 12 Q. And about informally? What do you know about
 13 that?
 14 MR. SIMMS:
 15 A. Ask the question again.
 16 CHAYTOR, Q.C.:
 17 Q. What I'm asking you is, we're aware that in
 18 April of 2005 Ms. Peggy Dean was retested and
 19 there was a change in her result. And then
 20 following that, in May, there were some
 21 further tests done and there were other
 22 conversions. I'm asking you, prior to Peggy
 23 Dean's case in April of 2005, was there a
 24 retest of an ER or PR at the Health Sciences
 25 which resulted in a changed result?

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1 MR. SIMMS:
 2 A. Not to my knowledge.
 3 CHAYTOR, Q.C.:
 4 Q. Have you ever heard anything about that?
 5 MR. SIMMS:
 6 A. No, not before Peggy Dean.
 7 CHAYTOR, Q.C.:
 8 Q. And if you were carrying out retests on older
 9 cases and one of them had converted, that
 10 wasn't brought to your attention?
 11 MR. SIMMS:
 12 A. No, and I wouldn't know that.
 13 CHAYTOR, Q.C.:
 14 Q. And nobody came to you to make any inquiry
 15 following that.
 16 MR. SIMMS:
 17 A. No.
 18 CHAYTOR, Q.C.:
 19 Q. So, it wasn't brought to the attention of the
 20 staff, if that happened?
 21 MR. SIMMS:
 22 A. No.
 23 THE COMMISSIONER:
 24 Q. I want to make sure, I'm s a bit unclear here.

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1 MR. SIMMS:
 2 A. So am I.
 3 THE COMMISSIONER:
 4 Q. Do I take it from what you're saying that even
 5 when you got requests for a retest or a
 6 repeat, whatever you want to call them, then
 7 once it left the lab you would not know what
 8 the result was on any of them?
 9 MR. SIMMS:
 10 A. No, we wouldn't know what the result was.
 11 THE COMMISSIONER:
 12 Q. Okay. So, if you got a request for a repeat
 13 and the result was a change in treatment for a
 14 patient, you would not know that, in the
 15 normal course?
 16 MR. SIMMS:
 17 A. The technologists, we would not be aware of
 18 that.
 19 THE COMMISSIONER:
 20 Q. Okay. So, it was only if something occurred
 21 subsequently to bring that case to someone's
 22 attention that you would even learn about it.
 23 MR. SIMMS:
 24 A. That's right.
 25 THE COMMISSIONER:

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1 Q. So, if such retests were done before the case
 2 of Mrs. Dean, then you wouldn't know about it
 3 in any event?
 4 MR. SIMMS:
 5 A. To us it would be just another retest.
 6 THE COMMISSIONER:
 7 Q. Okay.
 8 CHAYTOR, Q.C.:
 9 Q. And so nobody ever came back to you and made
 10 inquiries so that it would have been brought
 11 to your attention that a changed result had
 12 been received.
 13 MR. SIMMS:
 14 A. No, we were never told that.
 15 CHAYTOR, Q.C.:
 16 Q. Okay. And even when that happened with Ms.
 17 Dean's case, it wasn't brought to the
 18 attention of the technologists.
 19 MR. SIMMS:
 20 A. It was not.
 21 CHAYTOR, Q.C.:
 22 Q. Okay.
 23 MR. SIMMS:
 24 A. Or not brought to my attention.
 25 CHAYTOR, Q.C.:

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1 Q. Mr. Simms, up to the time of your retirement
 2 then this year, 2008, how would you describe
 3 the lab in May of 2008 compared to the IHC
 4 portion of the lab that you joined in 2003?
 5 MR. SIMMS:
 6 A. The lab of 2008 when I left, with all that
 7 we'd put in place and all that had been, the
 8 procedures and documentation, I would, right
 9 now, that particular lab, the IHC, the Health
 10 Science department, I would compare with any
 11 lab across Canada and they can stand on their
 12 feet, anywhere in Canada.
 13 CHAYTOR, Q.C.:
 14 Q. So, I take it you saw a vase improvement?
 15 MR. SIMMS:
 16 A. A vast improvement.
 17 CHAYTOR, Q.C.:
 18 Q. And are you able to specifically say what some
 19 of those improvements have been?
 20 MR. SIMMS:
 21 A. Too many things, modern, up-to-date technology
 22 and the education and the knowledge of the
 23 technologists involved.
 24 CHAYTOR, Q.C.:
 25 Q. I'm sorry, the education and knowledge -

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1 MR. SIMMS:
 2 A. And knowledge that they're attained.
 3 CHAYTOR, Q.C.:
 4 Q. Okay. And what's the change in the
 5 technology, the modern, up-to-date technology.
 6 What's that?
 7 MR. SIMMS:
 8 A. Ventana.
 9 CHAYTOR, Q.C.:
 10 Q. Okay. So, that change, of course, took place
 11 in the spring of 2004. So, you saw that as a
 12 huge improvement over the DAKO system that was
 13 there in '03?
 14 MR. SIMMS:
 15 A. That was a tremendous improvement.
 16 CHAYTOR, Q.C.:
 17 Q. Now, Mr. Simms, I'm just going to ask you
 18 broadly, of any other knowledge that you have
 19 at all regarding this issue, any discussions
 20 you've ever had regarding this issue, anything
 21 else that you know which is pertinent to the
 22 ER/PR issue and the Commissioner's mandate?
 23 MR. SIMMS:
 24 A. And discussion that I've had with anyone?
 25 CHAYTOR, Q.C.:

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1 Q. Anything, or anything you've heard, anything
 2 at all that you and I haven't yet talked about
 3 that you know that it's important in order for
 4 this matter to be properly addressed and
 5 recommendations to come forward, what else is
 6 there that you know? This is your chance to
 7 tell the Commissioner.
 8 MR. SIMMS:
 9 A. No, there's nothing that I can add to it. I
 10 think we've covered everything.
 11 CHAYTOR, Q.C.:
 12 Q. So you had no other discussions or meetings
 13 with anyone regarding the issue?
 14 MR. SIMMS:
 15 A. No.
 16 CHAYTOR, Q.C.:
 17 Q. Okay, and there's nothing else that you've
 18 heard about in the background in terms of any
 19 prior problems with the IHC testing other than
 20 what we've already discussed?
 21 MR. SIMMS:
 22 A. That's right.
 23 CHAYTOR, Q.C.:
 24 Q. Okay, and Mr. Simms, is there anything else
 25 then that you would like to add, because I'm--

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1 those are my questions for you.
 2 MR. SIMMS:
 3 A. I would just like, Madam Commissioner, to
 4 thank the Commission for the opportunity of
 5 coming here and although I'm retired, it's
 6 still every day I think is there something--
 7 and I'm only speaking personally now, think is
 8 there something I could have done, something I
 9 could improved on to help in this particular
 10 issue, and I firmly believe that personally, I
 11 did everything I could with what we had at
 12 that time to improve or to give the best
 13 results that we could give at that time. Now
 14 there are problems and there probably will
 15 always be problems in the immunohistochemistry
 16 department. It's in its infancy, but it's
 17 improving day by day and as I just said, my--
 18 what I can go of being proud of now or feeling
 19 good about is that with the improved
 20 technology, the improved knowledge of the
 21 technologists, the IHC lab that we have in the
 22 Health Science here in St. John's is that I
 23 think in the future, breast cancer patients
 24 will have a tremendously increased chance of
 25 survival because of the knowledge that will be

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1 attained from the immunohistochemistry
 2 department.
 3 CHAYTOR, Q.C.:
 4 Q. Sorry, Mr. Simms, there was one other thing.
 5 If we could have P-2175? And I just wanted to
 6 give you a chance to look at this because this
 7 was the only exhibit that we put in through
 8 you, and it's called procedure manual
 9 pathology lab.
 10 MR. SIMMS:
 11 A. Um-hm.
 12 CHAYTOR, Q.C.:
 13 Q. And it's just a few pages here, I'll click
 14 through. I'm sure I had them there,
 15 Registrar. I'll click back. There we go.
 16 Okay, and it's, I think, a three or four-page
 17 document.
 18 MR. SIMMS:
 19 A. Um-hm.
 20 CHAYTOR, Q.C.:
 21 Q. Here we go. It's actually an eight page
 22 document.
 23 MR. SIMMS:
 24 A. Uh-hm.
 25 CHAYTOR, Q.C.:

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1 Q. And we've seen a -- we've seen a much more
 2 voluminous manual since this, but is this what
 3 was in place or can you tell us what this
 4 document is? Is this what was in place when
 5 you finished up? You can just scroll down
 6 through if you wish and have a look. We've
 7 certainly seen a number of other documents.
 8 MR. SIMMS:
 9 A. Yes.
 10 CHAYTOR, Q.C.:
 11 Q. Was this a version of the procedure manual,
 12 and if so, when was this version in existence?
 13 MR. SIMMONS:
 14 Q. If I might, I recall -- I think this was
 15 provided as a copy of one of the specific
 16 pieces of a manual, one specific policy of a
 17 manual.
 18 CHAYTOR, Q.C.:
 19 Q. Okay.
 20 MR. SIMMS:
 21 A. Yes.
 22 MR. SIMMONS:
 23 Q. An index page or a cover page from the larger
 24 volume.
 25 CHAYTOR, Q.C.:

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1 Q. Oh, okay.
 2 COMMISSIONER:
 3 Q. There's a Table of Contents to this document.
 4 CHAYTOR, Q.C.:
 5 Q. And then there are a couple of draft policies
 6 attached to it.
 7 MR. SIMMS:
 8 A. This is what I was going to say, there was
 9 more to this, but this --
 10 CHAYTOR, Q.C.:
 11 Q. There was more to this.
 12 MR. SIMMS:
 13 A. Yes.
 14 CHAYTOR, Q.C.:
 15 Q. Great, thank you, Mr. Simmons. That's great.
 16 Thank you, Mr. Simms, and thank you for
 17 coming.
 18 MR. SIMMS:
 19 A. Thank you.
 20 COMMISSIONER:
 21 Q. Ms. Brazil, do you have any questions of this
 22 witness?
 23 MS. BRAZIL:
 24 Q. No questions, Commissioner.
 25 COMMISSIONER:

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<p>1 Q. Mr. Browne?</p> <p>2 MR. BROWNE:</p> <p>3 Q. Just a couple.</p> <p>4 MR. LESLIE SIMMS, EXAMINATION BY MR. PETER BROWNE</p> <p>5 MR. BROWNE:</p> <p>6 Q. Good morning, Mr. Simms.</p> <p>7 MR. SIMMS:</p> <p>8 A. Mr. Browne.</p> <p>9 MR. BROWNE:</p> <p>10 Q. We met previously. As you are aware, I</p> <p>11 represent a number of individual physicians,</p> <p>12 including Dr. Ejeckam who testified</p> <p>13 previously. I just want to cover a couple of</p> <p>14 areas with you today. First of all, going</p> <p>15 back to 2003 when you were transferred from</p> <p>16 St. Clare's over to the Health Sciences Centre</p> <p>17 and when you started doing</p> <p>18 immunohistochemistry, and do you recall at</p> <p>19 that time how many antibodies were in use?</p> <p>20 MR. SIMMS:</p> <p>21 A. When I came over?</p> <p>22 MR. BROWNE:</p> <p>23 Q. Yes.</p> <p>24 MR. SIMMS:</p> <p>25 A. From my recollection, 70 to 80.</p>	<p>1 another dilution, that's it.</p> <p>2 MR. BROWNE:</p> <p>3 Q. Okay, and when you went to prepare our</p> <p>4 antibodies each time, would you always check</p> <p>5 the spec sheet before you prepared your</p> <p>6 antibodies?</p> <p>7 MR. SIMMS:</p> <p>8 A. Always.</p> <p>9 MR. BROWNE:</p> <p>10 Q. Okay, thank you. I asked Mr. Green this</p> <p>11 question yesterday as well. Your recollection</p> <p>12 in terms of the antigen retrieval on the DAKO</p> <p>13 System, was it the water bath method that you</p> <p>14 used?</p> <p>15 MR. SIMMS:</p> <p>16 A. Personally I called it the boiling method, so</p> <p>17 it was a water bath, yes.</p> <p>18 MR. BROWNE:</p> <p>19 Q. Okay, so -- because boiling, we understand,</p> <p>20 there's a pressure cooker approach which we</p> <p>21 understand Mount Sinai uses. Can you tell me</p> <p>22 what your understood -- at least what your</p> <p>23 approach was for antigen retrieval with the</p> <p>24 particular device that you used?</p> <p>25 MR. SIMMS:</p>
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<p>1 MR. BROWNE:</p> <p>2 Q. And in your experience over the time to your</p> <p>3 retirement, does every antibody -- is every</p> <p>4 antibody prepared in the same manner? I guess</p> <p>5 we'll have to distinguish, we did with Mr.</p> <p>6 Green yesterday, the DAKO approach and the</p> <p>7 Ventana approach. With Ventana, I understand,</p> <p>8 a lot of the antibodies are prepared by</p> <p>9 Ventana, is that correct?</p> <p>10 MR. SIMMS:</p> <p>11 A. Yes.</p> <p>12 MR. BROWNE:</p> <p>13 Q. With DAKO then, were there different</p> <p>14 approaches to preparing the antibodies?</p> <p>15 MR. SIMMS:</p> <p>16 A. No, you go by your spec sheet. They were</p> <p>17 pretty -- no, they were the same.</p> <p>18 MR. BROWNE:</p> <p>19 Q. So when you were taught to sort of prepare</p> <p>20 antibodies, were you taught just to look at</p> <p>21 the spec sheet and then follow the spec sheet?</p> <p>22 MR. SIMMS:</p> <p>23 A. Right, because preparing antibodies was just a</p> <p>24 dilution. It was just -- right. They may</p> <p>25 have a different dilution, but it was just</p>	<p>1 A. My particular approach was to keep it between</p> <p>2 97 and 100.</p> <p>3 MR. BROWNE:</p> <p>4 Q. Okay, and there would be a thermometer that</p> <p>5 you would use?</p> <p>6 MR. SIMMS:</p> <p>7 A. There would be a thermometer inserted in the</p> <p>8 solution itself.</p> <p>9 MR. BROWNE:</p> <p>10 Q. Okay. It all would be put in a batch in that</p> <p>11 particular, I guess, device, is that right?</p> <p>12 MR. SIMMS:</p> <p>13 A. That's right, it would go in in bulk.</p> <p>14 MR. BROWNE:</p> <p>15 Q. Was there any sort of -- was that finicky or</p> <p>16 tricky at all in terms of doing that part of</p> <p>17 the process?</p> <p>18 MR. SIMMS:</p> <p>19 A. Just to maintain the proper temperature, you</p> <p>20 know, you had to be careful.</p> <p>21 MR. BROWNE:</p> <p>22 Q. You had to be careful. So you had to be there</p> <p>23 at all times looking at that?</p> <p>24 MR. SIMMS:</p> <p>25 A. Sure, yes, you had to be careful.</p>

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1 MR. BROWNE:
 2 Q. Now in terms of the switch to the Ventana
 3 machine, at that time there was yourself, Mr.
 4 Green, and Ms. Butler, is that right?
 5 MR. SIMMS:
 6 A. That's correct.
 7 MR. BROWNE:
 8 Q. Were all three of you trained on the Ventana
 9 machine?
 10 MR. SIMMS:
 11 A. Yes, we were.
 12 MR. BROWNE:
 13 Q. Did all three of you carry on with the Ventana
 14 machine?
 15 MR. SIMMS:
 16 A. Yes, we did.
 17 MR. BROWNE:
 18 Q. Now I also asked yesterday about slides, and
 19 Mr. Green in his evidence mentioned that when
 20 he made the transfer from St. Clare's to the
 21 Health Sciences Centre, he noted that the type
 22 of slides that you were using at St. Clare's
 23 didn't use the histotech adhesive.
 24 MR. SIMMS:
 25 A. Histogrip.

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1 MR. BROWNE:
 2 Q. Histogrip, sorry, adhesive. Did you notice
 3 that as well?
 4 MR. SIMMS:
 5 A. Yes.
 6 MR. BROWNE:
 7 Q. Okay, and did you notice any particular, I
 8 guess, difficulties with the slides between
 9 the ones that use albumin, I think, it was,
 10 and the ones that used the histogrip?
 11 MR. SIMMS:
 12 A. I didn't notice any difference.
 13 MR. BROWNE:
 14 Q. Did you point that out to anybody in terms of
 15 your superiors about the fact that St. Clare's
 16 was using different slides?
 17 MR. SIMMS:
 18 A. No, I did not.
 19 MR. BROWNE:
 20 Q. Okay. Just on that point, during the time
 21 period between, I guess, '97 and 2005, who
 22 would have been the manager for St. Clare's,
 23 and there may have been several managers?
 24 MR. SIMMS:
 25 A. Yeah, there were several managers. John

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1 Murphy.
 2 MR. BROWNE:
 3 Q. Okay, just -- but Mr. Murphy, I understood,
 4 retired. Between '97 and 2005 --
 5 MR. SIMMS:
 6 A. Did John Murphy --
 7 MR. BROWNE:
 8 Q. Let me help you, was Mr. Dyer also a manager
 9 at any point for St. Clare's for any time
 10 period?
 11 MR. SIMMS:
 12 A. Yes.
 13 MR. BROWNE:
 14 Q. Was Mr. Gulliver the manager at a particular
 15 point?
 16 MR. SIMMS:
 17 A. I don't remember Mr. Gulliver being manager
 18 for St. Clare's.
 19 MR. BROWNE:
 20 Q. Okay, but Mr. Dyer was?
 21 MR. SIMMS:
 22 A. Mr. Dyer was.
 23 MR. BROWNE:
 24 Q. So presumably the issue of tissue reprocessing
 25 when you went over to Health Sciences and

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1 found out they weren't doing it there, and you
 2 raised it with Mr. Dyer, he ought to have been
 3 aware of that fact going on at St. Clare's as
 4 well?
 5 MR. SIMMS:
 6 A. He was aware of it, yes.
 7 MR. BROWNE:
 8 Q. Okay. Did he express to you why it was going
 9 on at -- any reason why it was going on at St.
 10 Clare's and not going on at --
 11 MR. SIMMS:
 12 A. Well, why we were doing it at St. Clare's is
 13 because we had the bulk of the breast tissue,
 14 and apparently the few breast specimens that
 15 they had, it wasn't a problem.
 16 MR. BROWNE:
 17 Q. Okay. So he saw no problem with the fact that
 18 it was going on at St. Clare's and not going
 19 on at --
 20 MR. SIMMS:
 21 A. No.
 22 MR. BROWNE:
 23 Q. Okay. Again I asked Mr. Green about this
 24 yesterday as well, the positively charged
 25 slides, just to go back on that for a minute,

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1 that was something that came on with Ventana?
 2 MR. SIMMS:
 3 A. Ventana, specific for Ventana.
 4 MR. BROWNE:
 5 Q. And were you given any understanding as to why
 6 these special slides were used for IHC?
 7 MR. SIMMS:
 8 A. Because they were positively charged slides
 9 and from research and whatever, the specimen
 10 adhered to the slide more efficiently.
 11 MR. BROWNE:
 12 Q. And would that prevent washing off as well?
 13 MR. SIMMS:
 14 A. It would.
 15 MR. BROWNE:
 16 Q. In terms of your -- you mentioned yesterday
 17 your meetings with Dr. Carter and Dr. Ejeckam
 18 around a microscope. The discussions that
 19 they had, would that sometimes be
 20 professional, I guess, discussions surrounding
 21 interpretations and the staining of the slide?
 22 Did one like a particular approach to stain
 23 versus the other in terms of Dr. Carter and
 24 Dr. Ejeckam?
 25 MR. SIMMS:

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1 A. It would be their different interpretations.
 2 MR. BROWNE:
 3 Q. Their different interpretations. You were
 4 also shown both yesterday, I think, and
 5 possibly this morning, Dr. Ejeckam's memo of
 6 June, 2003, and you testified yesterday that
 7 he spoke to you about the contents of that
 8 letter and, in fact, I think you said you
 9 commented to him at that time that that should
 10 -- they should stand up and listen to it or
 11 something, words to that effect?
 12 MR. SIMMS:
 13 A. I don't know my exact words, but that's close
 14 enough.
 15 MR. BROWNE:
 16 Q. That's sort of captures it?
 17 MR. SIMMS:
 18 A. Yes.
 19 MR. BROWNE:
 20 Q. Did Dr. Ejeckam tell you who he was sending
 21 that letter to?
 22 MR. SIMMS:
 23 A. Administration.
 24 MR. BROWNE:
 25 Q. He said administration. Did you inquire who

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1 in administration?
 2 MR. SIMMS:
 3 A. Oh, no.
 4 MR. BROWNE:
 5 Q. Just bear with me for one minute. Do you ever
 6 recall an occasion when Dr. Cook came over,
 7 and this is now looking at 2005 and after the
 8 events of 2005, and I'm looking at the period
 9 sometime between, let's say, June and October,
 10 2005, where Dr. Cook came over? You mentioned
 11 you recall getting the memo in August?
 12 MR. SIMMS:
 13 A. Yes.
 14 MR. BROWNE:
 15 Q. Okay. Do you recall any occasion, it may have
 16 been in the summer of 2005 or in the fall of
 17 2005, where Dr. Cook came over and met with
 18 technologists?
 19 MR. SIMMS:
 20 A. No.
 21 MR. BROWNE:
 22 Q. Did you have any discussions about Dr. Cook's
 23 memo with either Mr. Gulliver or Mr. Dyer and
 24 what that meant?
 25 MR. SIMMS:

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1 A. With Mr. Dyer.
 2 MR. BROWNE:
 3 Q. Yes.
 4 MR. SIMMS:
 5 A. With Mr. Dyer.
 6 MR. BROWNE:
 7 Q. Okay, and did he explain to you what was going
 8 on in terms of the background of that memo at
 9 all?
 10 MR. SIMMS:
 11 A. No, he just read the memo the same as I did.
 12 MR. BROWNE:
 13 Q. And were -- you were shown Ms. Wegrynowski's
 14 report, and I think you testified -- you did
 15 testify this morning that the first time you
 16 saw that document was after it was released to
 17 the public?
 18 MR. SIMMS:
 19 A. By the Commission.
 20 MR. BROWNE:
 21 Q. Okay. Was there ever any occasion when
 22 anybody in, I guess, your management structure
 23 came in and read you the contents of that
 24 document?
 25 MR. SIMMS:

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1 A. Yes, there was.
 2 MR. BROWNE:
 3 Q. Okay, and who was the individual who read you
 4 the contents?
 5 MR. SIMMS:
 6 A. Barry Dyer.
 7 MR. BROWNE:
 8 Q. And --
 9 MR. SIMMS:
 10 A. That was the first time I had seen it then.
 11 He had it in his hand and that's when I got a
 12 copy of it, at the same time.
 13 MR. BROWNE:
 14 Q. So that's Ms. Wegrynowski's report?
 15 MR. SIMMS:
 16 A. Yes.
 17 MR. BROWNE:
 18 Q. And when did that occur?
 19 MR. SIMMS:
 20 A. I can't recall the specific time.
 21 MR. BROWNE:
 22 Q. Would it have been in --
 23 MR. SIMMS:
 24 A. In 2008.
 25 MR. BROWNE:

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1 Q. 2008?
 2 MR. SIMMS:
 3 A. It wasn't long ago.
 4 MR. BROWNE:
 5 Q. It would have been released before that.
 6 MR. SIMMS:
 7 A. It was released, but --
 8 MR. BROWNE:
 9 Q. Was it after it was released or before it was
 10 released?
 11 MR. SIMMS:
 12 A. After it was released.
 13 MR. BROWNE:
 14 Q. After it was released?
 15 MR. SIMMS:
 16 A. After it was released.
 17 MR. BROWNE:
 18 Q. Okay, so not until after it was released?
 19 MR. SIMMS:
 20 A. No.
 21 MR. BROWNE:
 22 Q. And did you become aware -- have you become
 23 aware of who in administration had copies of
 24 that document?
 25 MR. SIMMS:

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1 A. I wasn't aware of that.
 2 MR. BROWNE:
 3 Q. Have you subsequently become aware of who had
 4 copies of the document?
 5 MR. SIMMS:
 6 A. I knew Dr. Cook and Dr. Robert Williams had
 7 it.
 8 MR. BROWNE:
 9 Q. Do you know if anybody in management, such as
 10 Mr. Gulliver, had a copy of the document?
 11 MR. SIMMS:
 12 A. I wasn't aware.
 13 MR. BROWNE:
 14 Q. That's all the questions I have. Thank you.
 15 MR. SIMMS:
 16 A. Thank you.
 17 COMMISSIONER:
 18 Q. Thank you, Mr. Browne. Mr. Pritchard?
 19 MR. PRITCHARD:
 20 Q. No questions, Commissioner, thank you.
 21 COMMISSIONER:
 22 Q. Ms. Newbury.
 23 MS. NEWBURY:
 24 Q. No questions.
 25 COMMISSIONER:

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1 Q. Mr. Crosbie.
 2 CROSBIE, Q.C.:
 3 Q. I do.
 4 COMMISSIONER:
 5 Q. Good timing.
 6 CROSBIE, Q.C.:
 7 Q. You can hear fairly well out there, better
 8 than with the air conditioning here.
 9 MR. LESLIE SIMMS, EXAMINATION BY CHESLEY CROSBIE, Q.C.
 10 CROSBIE, Q.C.:
 11 Q. Thank you, Mr. Simms. Ches Crosbie. This is
 12 something Mr. Browne asked you about that you
 13 spoke of earlier as well, the -- what you
 14 referred to as the boiling method, and I just
 15 wonder if you can enlarge on that a little bit
 16 more as well. You say that -- and this is
 17 something you participated in when you moved
 18 up to the HSC, I gather, in that lab there?
 19 MR. SIMMS:
 20 A. It was.
 21 CROSBIE, Q.C.:
 22 Q. While you were using the DAKO autostainer in
 23 that lab?
 24 MR. SIMMS:
 25 A. Yes.

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1 CROSBIE, Q.C.:

2 Q. And so specimens would be brought to a

3 temperature between, you said, 97 degrees

4 centigrade and 100 degrees centigrade?

5 MR. SIMMS:

6 A. Yes.

7 CROSBIE, Q.C.:

8 Q. And I think you said perhaps yesterday that

9 the standard for how long they're subjected to

10 this heat system -- heating system, was twenty

11 minutes?

12 MR. SIMMS:

13 A. Twenty minutes.

14 CROSBIE, Q.C.:

15 Q. And that didn't vary, did it, that was the

16 target that you --

17 MR. SIMMS:

18 A. That was the target, twenty minutes.

19 CROSBIE, Q.C.:

20 Q. And you learned this from Ms. Walsh, was it,

21 or Ms. Welsh?

22 MR. SIMMS:

23 A. Peggy Welsh, yes.

24 CROSBIE, Q.C.:

25 Q. Peggy Welsh, and the -- it was manual to the

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1 extent that you -- did you have to monitor the

2 thermometer to ensure that it was within that

3 band of 97 to 100?

4 MR. SIMMS:

5 A. You did.

6 CROSBIE, Q.C.:

7 Q. And you're not going to stand there, I guess,

8 for twenty minutes looking at the thermometer,

9 you're probably going to busy yourself with

10 other tasks in the immediate vicinity, but

11 keep an eye on it, is that how I understand --

12 MR. SIMMS:

13 A. Periodically check it, every five minutes or

14 so.

15 CROSBIE, Q.C.:

16 Q. About every five minutes or so. So there must

17 have been some kind of thermostatic control on

18 the machine?

19 MR. SIMMS:

20 A. It was thermo -- the water bath itself was

21 thermostatically controlled, yes.

22 CROSBIE, Q.C.:

23 Q. And you could set the temperature how finely?

24 MR. SIMMS:

25 A. Give or take one percent.

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1 CROSBIE, Q.C.:

2 Q. One degree?

3 MR. SIMMS:

4 A. You had a variability of one percent that was

5 allowable.

6 CROSBIE, Q.C.:

7 Q. That's what the equipment was supposed to do?

8 MR. SIMMS:

9 A. Yes.

10 CROSBIE, Q.C.:

11 Q. It could go up or down within two degrees, I

12 guess.

13 MR. SIMMS:

14 A. Right.

15 CROSBIE, Q.C.:

16 Q. So if you set it at 99, it would go between

17 100 and 98?

18 MR. SIMMS:

19 A. Right.

20 CROSBIE, Q.C.:

21 Q. And what would you set it to?

22 MR. SIMMS:

23 A. I would set it at -- me, personally, the

24 thermostat was set at 98.

25 CROSBIE, Q.C.:

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1 Q. At 98. Well, I guess you could tell if it was

2 at 100 because that would basically -- that

3 would be boiling?

4 MR. SIMMS:

5 A. Boiling, and if it went over 100, it wasn't

6 critical to -- from all literature, it wasn't

7 critical to if it did go over because -- other

8 places now are using pressure cookers, which

9 goes to 120. So obviously it doesn't have a

10 great effect on the procedure.

11 CROSBIE, Q.C.:

12 Q. When you say "pressure cooker", is that the

13 same as an autoclave?

14 MR. SIMMS:

15 A. I don't know, because I don't know what

16 they're using.

17 CROSBIE, Q.C.:

18 Q. Um.

19 MR. SIMMS:

20 A. I haven't seen it.

21 CROSBIE, Q.C.:

22 Q. I have a vision of the pressure cooker at home

23 that my mother used to use.

24 MR. SIMMS:

25 A. So do I.

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1 CROSBIE, Q.C.:
 2 Q. But you didn't use that method?
 3 MR. SIMMS:
 4 A. No.
 5 CROSBIE, Q.C.:
 6 Q. So you can't comment on it.
 7 MR. SIMMS:
 8 A. I can't comment on that one.
 9 CROSBIE, Q.C.:
 10 Q. And did you tell us that with pressure method,
 11 the temperature could go to 120 or 121?
 12 MR. SIMMS:
 13 A. That's my understanding. That's the knowledge
 14 that I have. I didn't use the pressure cooker,
 15 so I didn't look to see.
 16 CROSBIE, Q.C.:
 17 Q. So that suggested to you that if the
 18 temperature went to 100 or even, you know,
 19 beyond that, that it was nothing to be
 20 concerned about?
 21 MR. SIMMS:
 22 A. No. The worse it could do was increase the
 23 antigen, the retrieval sites.
 24 CROSBIE, Q.C.:
 25 Q. Yes, okay. I wonder if I could ask the

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1 Registrar to bring up document 2176. This you
 2 can see I believe sir.
 3 MR. SIMMS:
 4 A. Uh-hm.
 5 CROSBIE, Q.C.:
 6 Q. The source is stated in the left hand corner
 7 on top to be Mary Butler, and it's one of a
 8 number of pages. You can flip through if you
 9 wish to do so, but I'd bring you first for my
 10 purpose to what's labelled as page five on
 11 this.
 12 MR. SIMMS:
 13 A. Uh-hm, okay.
 14 CROSBIE, Q.C.:
 15 Q. I guess the first question is does the manual
 16 look somewhat familiar?
 17 MR. SIMMS:
 18 A. It does look familiar.
 19 CROSBIE, Q.C.:
 20 Q. This is something you had access to when you
 21 went up to the Health Sciences?
 22 MR. SIMMS:
 23 A. It was.
 24 CROSBIE, Q.C.:
 25 Q. That you were given, I suppose?

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1 MR. SIMMS:
 2 A. Shown where it was.
 3 CROSBIE, Q.C.:
 4 Q. Shown where it was. So are we on page five?
 5 MR. SIMMS:
 6 A. We are.
 7 CROSBIE, Q.C.:
 8 Q. We are, and they're talking here about a
 9 particular target retrieval solution, 10 times
 10 concentrate, and gives it -- they give it a
 11 code number. The same information appears,
 12 for example, on page seven, if you want to
 13 quickly look to that.
 14 MR. SIMMS:
 15 A. Uh-hm.
 16 CROSBIE, Q.C.:
 17 Q. A different code number, but it's a target
 18 retrieval solution from DAKO.
 19 MR. SIMMS:
 20 A. Yeah.
 21 CROSBIE, Q.C.:
 22 Q. So we can stop there, but the same thing
 23 appears back at page five.
 24 MR. SIMMS:
 25 A. Uh-hm.

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1 CROSBIE, Q.C.:
 2 Q. And when we go to description, you can see
 3 that term in the paragraph?
 4 MR. SIMMS:
 5 A. Yes, uh-hm.
 6 CROSBIE, Q.C.:
 7 Q. It says, "For laboratory use, the retrieval
 8 procedure involves immersion of tissue
 9 sections mounted on slides in DAKO target
 10 retrieval solution and heating either in a
 11 water bath", and they say 95 to 99 degrees
 12 centigrade, "or an autoclave", and they have
 13 in brackets 121 degrees centigrade.
 14 MR. SIMMS:
 15 A. Uh-hm.
 16 CROSBIE, Q.C.:
 17 Q. So I don't know, someone with more technical
 18 knowledge may have to explain that, but it
 19 seems that the temperature range for water
 20 bath versus autoclave, which I suspect is the
 21 method that you're referring to when you say
 22 "pressure", would tolerate different heat
 23 ranges. That's what I get out of that.
 24 MR. SIMMS:
 25 A. Um-hm.

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1 CROSBIE, Q.C.:

2 Q. I guess you're not in a position to comment,

3 are you?

4 MR. SIMMS:

5 A. No.

6 CROSBIE, Q.C.:

7 Q. So if we carry on there, recommended

8 procedure, water bath, which is, I guess, what

9 you were following at the Health Science lab.

10 You can see that, sir?

11 MR. SIMMS:

12 A. Yes.

13 CROSBIE, Q.C.:

14 Q. It says "full coplin jar or other suitable

15 container." Just comment on what container

16 you would use.

17 MR. SIMMS:

18 A. Suitable container, matter of fact, for this

19 particular one, we had designed a metal

20 container which could hold the tray of slides.

21 The tray of slides was probably four inches,

22 four by three, whatever, so the metal

23 container was designed so that the tray of 30

24 slides probably or however many slides you had

25 could fit into that container. The container

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1 would be placed in the water bath. The

2 thermometer for it would be put in the metal

3 container, by the way, not in the water bath

4 itself. You would make sure that the internal

5 solution that was in the metal container was

6 what you needed.

7 CROSBIE, Q.C.:

8 Q. Okay, and so how would that differ from a

9 coplin jar? Is that something that you -

10 MR. SIMMS:

11 A. Coplin jar is just another container. It's

12 glass. Coplin jar is just a container,

13 contains less slides.

14 CROSBIE, Q.C.:

15 Q. And it's glass?

16 MR. SIMMS:

17 A. It's glass.

18 CROSBIE, Q.C.:

19 Q. Okay, so you used a suitable container and you

20 used, no doubt, a sufficient quantity or

21 believed you had of target retrieval

22 solutions?

23 MR. SIMMS:

24 A. Target retrieval solution, yes.

25 CROSBIE, Q.C.:

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1 Q. Then it says "place container in water bath.

2 Heat water bath to 95 to 99 degrees

3 Centigrade." Then it has, in brackets, "do

4 not boil."

5 MR. SIMMS:

6 A. Um-hm.

7 CROSBIE, Q.C.:

8 Q. Were you aware of that instruction?

9 MR. SIMMS:

10 A. I can recall reading this particular procedure

11 that said do not boil, yes. So I guess, you

12 know, the method we used, we recommended not

13 to boil.

14 CROSBIE, Q.C.:

15 Q. However, it would appear that boiling was

16 reached from time to time with the procedure

17 as you followed it, within your knowledge?

18 MR. SIMMS:

19 A. Yes.

20 CROSBIE, Q.C.:

21 Q. It goes on to mention, "incubate for"--item

22 three below there--"20 to 40 minutes." Do you

23 know how the 20-minute incubation was arrived

24 at in the case of your lab?

25 MR. SIMMS:

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1 A. I guess, well, it was when they set up their

2 protocol and set up their procedure, that was

3 their optimum procedure was 20 minutes.

4 That's where they attained, I assume, their

5 best results.

6 CROSBIE, Q.C.:

7 Q. That's what you assume, but it's basically

8 inherited information that you had to work

9 with?

10 MR. SIMMS:

11 A. Yes.

12 CROSBIE, Q.C.:

13 Q. You can't speak to that personally. It's just

14 what you were given as the understanding.

15 MR. SIMMS:

16 A. What I was given as the optimal procedure.

17 CROSBIE, Q.C.:

18 Q. Could we go to page 24, please? This is still

19 the DAKO manual, Exhibit 2176, the bottom of

20 page 24, and here we have the familiar--it's

21 an item under quality control.

22 MR. SIMMS:

23 A. Okay.

24 CROSBIE, Q.C.:

25 Q. We have item A, positive control specimen, and

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1 the description there by now would be fairly
 2 familiar to everybody, I guess.
 3 MR. SIMMS:
 4 A. Yes.
 5 CROSBIE, Q.C.:
 6 Q. Nothing remarkable in that paragraph at the
 7 bottom of the page, is it?
 8 MR. SIMMS:
 9 A. No.
 10 CROSBIE, Q.C.:
 11 Q. If you would go, sir, to the top of page 25,
 12 they have Item B, negative control specimen.
 13 MR. SIMMS:
 14 A. Um-hm.
 15 CROSBIE, Q.C.:
 16 Q. And if I understand things correctly, when you
 17 were exposed to the DAKO auto stainer, were
 18 they or were they not in the habit of using a
 19 negative control specimen?
 20 MR. SIMMS:
 21 A. Did not run negative control specimens, no.
 22 CROSBIE, Q.C.:
 23 Q. I'm sorry?
 24 MR. SIMMS:
 25 A. No, did not run negative control specimens.

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1 CROSBIE, Q.C.:
 2 Q. Were you aware of this in the--under quality
 3 control in the manual, negative control
 4 specimen?
 5 MR. SIMMS:
 6 A. Was I aware of it from the reading material,
 7 from -
 8 CROSBIE, Q.C.:
 9 Q. From reading the manual?
 10 MR. SIMMS:
 11 A. Yes.
 12 CROSBIE, Q.C.:
 13 Q. Did you ask anybody about that?
 14 MR. SIMMS:
 15 A. I asked and the procedure was that they
 16 didn't--negative controls wasn't included in
 17 their procedure at that time.
 18 CROSBIE, Q.C.:
 19 Q. And who told you that, sir?
 20 MR. SIMMS:
 21 A. Peggy.
 22 CROSBIE, Q.C.:
 23 Q. Did anyone else tell you that?
 24 MR. SIMMS:
 25 A. No.

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1 CROSBIE, Q.C.:
 2 Q. Sir, if you just go down towards the bottom of
 3 the page there, under limitations, word to the
 4 side on the left.
 5 MR. SIMMS:
 6 A. Um-hm.
 7 CROSBIE, Q.C.:
 8 Q. Would you be kind enough to read just that
 9 first three-line paragraph, starting "tissue
 10 staining"
 11 MR. SIMMS:
 12 A. "Tissue staining is dependent on the handling
 13 and processing of the tissue prior to
 14 staining. Improper fixation, freezing,
 15 thawing, washing, drying, heating or
 16 sectioning may produce artifacts or false
 17 negative results."
 18 CROSBIE, Q.C.:
 19 Q. And I take it from what we've been hearing
 20 from you, you wouldn't disagree with anything
 21 in that?
 22 MR. SIMMS:
 23 A. I wouldn't disagree with that at all.
 24 CROSBIE, Q.C.:
 25 Q. You mentioned that up until when you retired

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1 in May this year, I think, the lab was
 2 continuing to do ER/PR?
 3 MR. SIMMS:
 4 A. Yes, they were.
 5 CROSBIE, Q.C.:
 6 Q. Even though pathologists weren't reading it?
 7 Have I got that right?
 8 MR. SIMMS:
 9 A. That's my understanding.
 10 CROSBIE, Q.C.:
 11 Q. Could this be justified as a matter of skill
 12 maintenance for when they have the available
 13 team to do the reading?
 14 MR. SIMMS:
 15 A. It certainly could be justified as skill
 16 maintenance, yes, indeed it could.
 17 CROSBIE, Q.C.:
 18 Q. There could be somebody who could explain that
 19 a bit more to us, I guess, later on. It may
 20 just be me, but I was puzzled, Mr. Simms, when
 21 you--you had a distinction in how you used the
 22 terms conversion versus discrepancy, and I'm
 23 just wondering if you could elaborate on that
 24 a little bit. That was in the context of
 25 talking about--you didn't use this term, but

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1 it might--I thought you might have been
 2 meaning an inherent rate of error or
 3 disagreement or uncertainty when tests are
 4 repeated.
 5 MR. SIMMS:
 6 A. My understanding, that is extremely personal
 7 opinion, coming from me, discrepancy or
 8 conversion, me as being a technologist for all
 9 these years, I could--giving it to, if you
 10 handed it to 20 people or whatever, and you
 11 got X number of different results, is it a
 12 conversion or is it a discrepancy in the
 13 reading of the slide? I don't know. That'll
 14 have to be interpreted by someone more
 15 knowledgeable than myself.
 16 CROSBIE, Q.C.:
 17 Q. Okay, thank you, sir. I was struck by the
 18 language you used yesterday actually, and it
 19 was the same language you used again today,
 20 that the boiling method, which you said is how
 21 you referred to it, was very aggressive and we
 22 did have problems with it with tissue washing
 23 off and so forth. Could it be, looking back
 24 on it now, that that was a function of
 25 actually bringing the specimens to boiling

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1 temperature?
 2 MR. SIMMS:
 3 A. There's always that possibility, yes, but I
 4 can't say that's why, by bringing it to a
 5 boiling temperature. That was the result of
 6 the tissue washing off, because we brought it
 7 to a boiling point. I can't speak to that.
 8 CROSBIE, Q.C.:
 9 Q. Well, I just put it to you that there may be a
 10 reason DAKO has for saying "do not boil."
 11 MR. SIMMS:
 12 A. There very well may be.
 13 CROSBIE, Q.C.:
 14 Q. Thank you, sir, for your illuminating
 15 testimony.
 16 MR. SIMMS:
 17 A. Thank you.
 18 THE COMMISSIONER:
 19 Q. Mr. Simmons, it's near the time for a break,
 20 and I was just going to ask you whether you'd
 21 prefer to press on and complete with this
 22 witness or should we take the break and then
 23 come back and you can ask your questions?
 24 MR. SIMMONS:
 25 Q. Maybe a break might help. I won't be very

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1 long.
 2 THE COMMISSIONER:
 3 Q. All right. Well, we'll take the morning
 4 break.
 5 (RECESS)
 6 THE COMMISSIONER:
 7 Q. Mr. Simmons.
 8 MR. LESLIE SIMMS, EXAMINATION BY MR. DANIEL SIMMONS
 9 MR. SIMMONS:
 10 Q. Thank you, Commissioner. Mr. Simms, in your
 11 evidence, you described for us some of the
 12 problems that were encountered with some of
 13 the breast tissue samples, and you told us
 14 that that type of tissue sample tends to be
 15 what you called a fatty tissue?
 16 MR. SIMMS:
 17 A. Yes.
 18 MR. SIMMONS:
 19 Q. The samples that were subject to ER/PR
 20 testing, if I understand correctly, would
 21 include tumour and normal breast tissue as
 22 well?
 23 MR. SIMMS:
 24 A. That's right.
 25 MR. SIMMONS:

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1 Q. When you described the sample as a fatty
 2 tissue, does that apply to both the tumour and
 3 the normal tissue?
 4 MR. SIMMS:
 5 A. No. The tumour, that was the thing, and
 6 probably that was the reasoning for sometimes
 7 would look at the--people from outside would
 8 look at the slide and say it was a poor
 9 quality slide, because some of the tissue had
 10 washed off and some of it was--or some of it
 11 was missing. In fixation and that and in
 12 retaining it on the slide, the tumour is not
 13 the problem. The tumour is fine. It's the
 14 normal surrounding tissue that is the problem,
 15 the fatty tissue. So you never had a problem
 16 with the tumour itself. It was the fatty
 17 tissue or the normal tissue outside which
 18 contained the internal controls, of course,
 19 right. So if all you were left with was a
 20 piece of tumour on the slide, you didn't have
 21 an internal control, because you had no normal
 22 tissue, and that may not have been from
 23 whoever collected the specimen itself or
 24 whoever cut the section of tissue itself. It
 25 could have been, you know, just from the

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1 washing off.
 2 MR. SIMMONS:
 3 Q. So in your experience with the water bath
 4 antigen retrieval method and the washing off
 5 of tissue from the slides, in your experience,
 6 was that limited to the normal fatty breast
 7 tissue or did it include the tumour tissue as
 8 well?
 9 MR. SIMMS:
 10 A. In the higher percentage of the time, it was
 11 the normal tissue, not the tumour.
 12 MR. SIMMONS:
 13 Q. Okay, and you've been asked quite a bit about
 14 antigen retrieval and the methods used for
 15 that, and I have a few more questions for you
 16 concerning it. First, when the DAKO auto
 17 stainer was in use and you were using the
 18 water bath method for antigen retrieval,
 19 you've described for us how the apparatus had
 20 water, which was heated, and there was a
 21 container put in the heated water. The
 22 antigen retrieval solution was in that
 23 container and the slides were immersed in the
 24 antigen retrieval solution in that container?
 25 MR. SIMMS:

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1 A. Yes.
 2 MR. SIMMONS:
 3 Q. And you told us as well that you used a
 4 thermometer to check the temperature. Now
 5 were you checking the temperature of the water
 6 or of the solution that was in the same
 7 container that the slides were in?
 8 MR. SIMMS:
 9 A. Okay, so let's go through this again one more
 10 time.
 11 MR. SIMMONS:
 12 Q. Okay.
 13 MR. SIMMS:
 14 A. The boiling technique, as I used to refer to
 15 it as. You had a water bath filled with
 16 water. You had a container with the buffer in
 17 it, a metal container with the buffer in it
 18 which we had our slides in. The metal
 19 container, the water bath was set at around 98
 20 degrees. The thermostat was set at around 98
 21 degrees. The container was in the water,
 22 right. The buffer in the container. Another
 23 thermometer was put in the metal container
 24 where the slides were. The procedure was to
 25 get that temperature between 97 and 99, right.

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1 So you would heat the water to heat the buffer
 2 inside. So the temperature in the buffer
 3 remained--put it this way, the water, the
 4 buffer did not boil. The water may boil
 5 outside in the water bath, maybe. It
 6 shouldn't have and it didn't happen on any
 7 occasion, but that's why you stood there and
 8 watched it, just in case the thermostat wasn't
 9 correct, right. So the water inside where the
 10 slides were in the metal container, that
 11 didn't boil, no.
 12 MR. SIMMONS:
 13 Q. Okay. Were you aware, when you were using
 14 that method, that it was undesirable for the
 15 buffer solution to boil?
 16 MR. SIMMS:
 17 A. Well, it stated in the procedure.
 18 MR. SIMMONS:
 19 Q. Did you take any particular precautions or pay
 20 any particular attention to ensure that the
 21 solution that the slides were immersed in
 22 didn't come to a boil?
 23 MR. SIMMS:
 24 A. Kept checking it, very periodic, you know,
 25 quite often. Made sure, yes, we were--that

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1 was--you made--you try to make sure it didn't
 2 come to a boil.
 3 MR. SIMMONS:
 4 Q. Okay. When you switched to using the Ventana
 5 machine, you've told us that there was a
 6 different method for antigen retrieval. Can
 7 you describe for us how antigen retrieval was
 8 done on the automated Ventana system?
 9 MR. SIMMS:
 10 A. On the automated Ventana, it was on it with--
 11 they have heating, they have pads, metal pads
 12 which you lay the slide on. So the metal pad
 13 heats up. The buffer is sprayed on the slide,
 14 right on the upper part of the slide. The
 15 metal pad heats up and it's gentler, it's
 16 easier. So you don't have a boiling--you
 17 know, it just heats up. It's laid on the
 18 metal pad, sprayed from the top and heats up.
 19 MR. SIMMONS:
 20 Q. Okay.
 21 MR. SIMMS:
 22 A. A gentle procedure.
 23 MR. SIMMONS:
 24 Q. So within the Ventana machine, the device, are
 25 there separate metal pads for each of the 20

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1 slides that go into each machine?
 2 MR. SIMMS:
 3 A. Every slide has its individual pad.
 4 MR. SIMMONS:
 5 Q. And those metal pads are heated by the machine
 6 and is the temperature and the duration of the
 7 heating controlled automatically by the
 8 machine?
 9 MR. SIMMS:
 10 A. By the computer, by the machine, yes, it is.
 11 MR. SIMMONS:
 12 Q. Okay. And one of the things that you can vary
 13 in setting up the protocols in that machine,
 14 if I understand correctly, is you can vary the
 15 length of time that the heat is applied for
 16 antigen retrieval on that machine, can you?
 17 MR. SIMMS:
 18 A. Yes, you can.
 19 MR. SIMMONS:
 20 Q. Okay.
 21 THE COMMISSIONER:
 22 Q. (Inaudible) different slides on the machine?
 23 MR. SIMMS:
 24 A. Yes.
 25 MR. SIMMONS:

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1 Q. Now you, I believe, told us that the antigen
 2 retrieval was one of the big differences in
 3 the switch from the DAKO auto stainer method
 4 to the Ventana Benchmark equipment.
 5 MR. SIMMS:
 6 A. It was.
 7 MR. SIMMONS:
 8 Q. When that switch was made, did you look at the
 9 slides that were produced using the Ventana
 10 machine and compare them to what you'd seen in
 11 your own observations of the slides produced
 12 on the DAKO auto stainer?
 13 MR. SIMMS:
 14 A. We did and I did, yes, and I noticed a more
 15 cleaner, crisper stain.
 16 MR. SIMMONS:
 17 Q. Okay, and was that just for any particular
 18 antibodies or was that generally -
 19 MR. SIMMS:
 20 A. That was an overall thing that I saw.
 21 MR. SIMMONS:
 22 Q. Okay. Do you know if anyone else made any
 23 similar observations about the quality of the
 24 slides produced on the Ventana machine?
 25 MR. SIMMS:

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1 A. It was mentioned by the other technologists
 2 and by Barry and by several pathologists, yes.
 3 It was quite noticeable.
 4 MR. SIMMONS:
 5 Q. Okay. Did you attribute, in your mind, that
 6 change to anything in particular?
 7 MR. SIMMS:
 8 A. Just the increase in technology, just--and
 9 again, the antigen retrieval.
 10 MR. SIMMONS:
 11 Q. Right, and was there anything being done
 12 differently regarding the fixation and
 13 processing of the tissues when the Ventana
 14 machine was put into use compared to when the
 15 DAKO auto stainer was in use?
 16 MR. SIMMS:
 17 A. Nothing that I'm aware of.
 18 MR. SIMMONS:
 19 Q. Okay. Thank you very much. I don't have
 20 anything further, Mr. Simms.
 21 MR. SIMMS:
 22 A. Thank you.
 23 THE COMMISSIONER:
 24 Q. Ms. Chaytor, do you have anything arising?
 25 CHAYTOR, Q.C.:

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1 Q. No, nothing arising.
 2 THE COMMISSIONER:
 3 Q. Thank you very much, Mr. Simms, for your
 4 contribution.
 5 MR. SIMMS:
 6 A. Thank you, Madam Commissioner.
 7 THE COMMISSIONER:
 8 Q. Ms. Chaytor, are you ready with the next
 9 witness? Thank you.
 10 MR. SIMMS:
 11 A. You're welcome. Thank you.
 12 CHAYTOR, Q.C.:
 13 Q. The next witness is Mary Butler.
 14 MS. MARY BUTLER, SWORN, EXAMINATION BY SANDRA CHAYTOR,
 15 Q.C.
 16 REGISTRAR:
 17 Q. Would you please state and spell your complete
 18 name for the Commission?
 19 MS. BUTLER:
 20 A. Mary Butler, M-A-R-Y B-U-T-L-E-R.
 21 REGISTRAR:
 22 Q. Thank you.
 23 THE COMMISSIONER:
 24 Q. Ms. Butler, as I'm sure you've heard by now,
 25 the exhibits will pop up on the screen in

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1 front of you if they're referred to, and for
 2 some of them, at least, you'll have paper
 3 copies and we'll assist you to find them, if
 4 you need them.
 5 CHAYTOR, Q.C.:
 6 Q. Good morning, Ms. Butler.
 7 MS. BUTLER:
 8 A. Good morning, Ms. Chaytor.
 9 CHAYTOR, Q.C.:
 10 Q. And we'll bring up the exhibits for you. For
 11 the most, they'll appear on your screen and
 12 I'll direct you to portions that we'll be
 13 referring to, but you also do have control of
 14 the mouse yourself. If at any time you need a
 15 break, that's no problem. You just ask us and
 16 you can have a break. If we could, there are
 17 a number of new exhibits, please,
 18 Commissioner, that I'd ask to have entered
 19 through Ms. Butler. They are P-1843 through
 20 P-1848 inclusive, P-2180, P-2183 through P-
 21 2189 inclusive, P2191 through P-2194
 22 inclusive, and P-2339.
 23 THE COMMISSIONER:
 24 Q. Entered.
 25 EXHIBIT ENTERED AND MARKED P-1848

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1 EXHIBIT ENTERED AND MARKED P-2180
 2 EXHIBITS ENTERED AND MARKED P-2183 THROUGH P-2189
 3 EXHIBITS ENTERED AND MARKED P-2191 THROUGH P-2194
 4 EXHIBIT ENTERED AND MARKED P-2339
 5 CHAYTOR, Q.C.:
 6 Q. Thank you. Ms. Butler, could we begin,
 7 please, tell us about your educational
 8 background and your work history?
 9 MS. BUTLER:
 10 A. I graduated from Elizabeth Regional High in
 11 '67 and I came to work at the General Hospital
 12 in August of -
 13 CHAYTOR, Q.C.:
 14 Q. 1970 maybe?
 15 MS. BUTLER:
 16 A. Yes, 1970, sorry.
 17 CHAYTOR, Q.C.:
 18 Q. That's okay.
 19 MS. BUTLER:
 20 A. Take a little while.
 21 CHAYTOR, Q.C.:
 22 Q. The questions get easier.
 23 MS. BUTLER:
 24 A. Yeah, I hope so.
 25 CHAYTOR, Q.C.:

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1 Q. Yes, okay, and so you went to work with the
 2 General Hospital in August of 1970.
 3 MS. BUTLER:
 4 A. Yes.
 5 CHAYTOR, Q.C.:
 6 Q. After finishing high school in 1967, did you
 7 have any--did you go to trade school?
 8 MS. BUTLER:
 9 A. I attended trade school for September until
 10 April and then I gave up for personal reasons.
 11 CHAYTOR, Q.C.:
 12 Q. Okay, and what were you studying at the trade
 13 school?
 14 MS. BUTLER:
 15 A. I started off to do the lab technology course.
 16 CHAYTOR, Q.C.:
 17 Q. Okay, and so you were there from September of
 18 1967 through to April '98 (sic).
 19 MS. BUTLER:
 20 A. Yes.
 21 CHAYTOR, Q.C.:
 22 Q. And then you left the course?
 23 MS. BUTLER:
 24 A. Yes.
 25 CHAYTOR, Q.C.:

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1 Q. Okay, and then you went to work at the General
 2 Hospital in August of 1970?
 3 MS. BUTLER:
 4 A. Yes.
 5 CHAYTOR, Q.C.:
 6 Q. And what was your position at the General
 7 Hospital when you commenced employment in
 8 1970?
 9 MS. BUTLER:
 10 A. I didn't have a title as such when I first
 11 came there, and I just trained in on the job
 12 to do anything that they required of me, and
 13 that would be, I learnt how to cut and -
 14 CHAYTOR, Q.C.:
 15 Q. So you were in the lab?
 16 MS. BUTLER:
 17 A. In the pathology lab.
 18 CHAYTOR, Q.C.:
 19 Q. In the pathology lab, yes.
 20 MS. BUTLER:
 21 A. I learned how to do the gross and I learnt how
 22 to do the cutting and staining and things like
 23 that.
 24 CHAYTOR, Q.C.:
 25 Q. So the time period you spent at trade school,

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1 September to April, was that a complete year
 2 or did you not finish that year?
 3 MS. BUTLER:
 4 A. No, I didn't finish the year.
 5 CHAYTOR, Q.C.:
 6 Q. You didn't finish the year?
 7 MS. BUTLER:
 8 A. No.
 9 CHAYTOR, Q.C.:
 10 Q. Okay, and so the job then that you took at the
 11 pathology lab at General Hospital though was
 12 in lab technology?
 13 MS. BUTLER:
 14 A. Yes.
 15 CHAYTOR, Q.C.:
 16 Q. And did you have a title or a position? What
 17 -
 18 MS. BUTLER:
 19 A. No, until--I was there approximately two years
 20 before the manager of the lab had to--went and
 21 got me, you know, you had to--your job
 22 description and when he knew all the things
 23 that I had done, I was titled a lab
 24 technician.
 25 CHAYTOR, Q.C.:

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1 Q. Okay. So after two years then, you were given
 2 the title lab technician. Now back in that
 3 time period, back in 1970, was it an option to
 4 do your diploma or do on-the-job training?
 5 Was that an option for lab technologists?
 6 MS. BUTLER:
 7 A. Well, it seemed at that time it was very easy
 8 to get a job in hospitals. Like they were
 9 seeking people from the outside as well. I
 10 guess staff was hard to come by.
 11 CHAYTOR, Q.C.:
 12 Q. Okay, and the fact that you had done a few
 13 months of the program -
 14 MS. BUTLER:
 15 A. And I, yeah, I was informed--my sister worked
 16 at the hospital and she knew of some jobs
 17 coming up. She asked me to apply.
 18 CHAYTOR, Q.C.:
 19 Q. Okay, and so you went there and you worked in
 20 the pathology lab from the beginning?
 21 MS. BUTLER:
 22 A. Yes.
 23 CHAYTOR, Q.C.:
 24 Q. And you learned how to gross, and what else
 25 were you doing in those first two years before

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1 you actually got a job description?
 2 MS. BUTLER:
 3 A. You learnt how to--well, every aspect of the
 4 lab. You started off with your gross and then
 5 your cutting of those, after embedding and
 6 that and making your blocks. You used to cut
 7 the sections and then you'd stain those and
 8 then you'd get them ready to go out to the
 9 doctor.
 10 CHAYTOR, Q.C.:
 11 Q. Okay, and if you had continued on with your
 12 course, how long was your course, how many
 13 years?
 14 MS. BUTLER:
 15 A. Three years.
 16 CHAYTOR, Q.C.:
 17 Q. It was three years back then, okay, and you
 18 had the most part of the first year completed?
 19 MS. BUTLER:
 20 A. Yes.
 21 CHAYTOR, Q.C.:
 22 Q. And were there other--when you went to the
 23 General Hospital in 1970, was it common that
 24 there were people working in the lab that
 25 didn't have their trade school diploma?

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1 MS. BUTLER:
 2 A. Yes.
 3 CHAYTOR, Q.C.:
 4 Q. So that wasn't an uncommon thing back then?
 5 MS. BUTLER:
 6 A. No.
 7 CHAYTOR, Q.C.:
 8 Q. Okay.
 9 MS. BUTLER:
 10 A. Actually, the year I arrived there, I think it
 11 was a new grad came out just before me, I
 12 think, and she might have been the first
 13 person there from the College.
 14 CHAYTOR, Q.C.:
 15 Q. Okay. So was the program fairly new in the
 16 late 60s, was it?
 17 MS. BUTLER:
 18 A. I'm not--I'm going to say--I'm not really
 19 sure, but it was new.
 20 CHAYTOR, Q.C.:
 21 Q. It was a new program?
 22 MS. BUTLER:
 23 A. It was new.
 24 CHAYTOR, Q.C.:
 25 Q. Okay, and so you continued on in your position

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<p>1 at the pathology lab and tell us, how did that</p> <p>2 progress over time? You're still there, I</p> <p>3 take it?</p> <p>4 MS. BUTLER:</p> <p>5 A. Yes, not for much longer.</p> <p>6 CHAYTOR, Q.C.:</p> <p>7 Q. Okay, and you're retiring soon?</p> <p>8 MS. BUTLER:</p> <p>9 A. Soon.</p> <p>10 CHAYTOR, Q.C.:</p> <p>11 Q. Okay, this month, is it? You're retiring this</p> <p>12 month?</p> <p>13 MS. BUTLER:</p> <p>14 A. Yes, 31st.</p> <p>15 CHAYTOR, Q.C.:</p> <p>16 Q. All right, and did you always remain in the</p> <p>17 pathology lab?</p> <p>18 MS. BUTLER:</p> <p>19 A. Yes, I did.</p> <p>20 CHAYTOR, Q.C.:</p> <p>21 Q. Okay, and at some point, were you promoted to</p> <p>22 laboratory technologist II?</p> <p>23 MS. BUTLER:</p> <p>24 A. Yes, when Terry was moving on to be manager.</p> <p>25 CHAYTOR, Q.C.:</p>	<p>1 technologist I, is that right?</p> <p>2 MS. BUTLER:</p> <p>3 A. Yes.</p> <p>4 CHAYTOR, Q.C.:</p> <p>5 Q. And then you continued on and at any point in</p> <p>6 time, did you write -</p> <p>7 MS. BUTLER:</p> <p>8 A. No.</p> <p>9 CHAYTOR, Q.C.:</p> <p>10 Q. Sorry?</p> <p>11 MS. BUTLER:</p> <p>12 A. We have to back up there.</p> <p>13 CHAYTOR, Q.C.:</p> <p>14 Q. Yes.</p> <p>15 MS. BUTLER:</p> <p>16 A. Because I was a technician and then I went on</p> <p>17 to do my--I became a technologist by writing</p> <p>18 my national exams.</p> <p>19 CHAYTOR, Q.C.:</p> <p>20 Q. Oh, so you weren't a technologist. You were a</p> <p>21 technician?</p> <p>22 MS. BUTLER:</p> <p>23 A. Technician.</p> <p>24 CHAYTOR, Q.C.:</p> <p>25 Q. Yes, okay, for those first couple of years?</p>
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<p>1 Q. Terry Gulliver?</p> <p>2 MS. BUTLER:</p> <p>3 A. Terry Gulliver, and I was able--I was most</p> <p>4 senior in the lab and so I tried out for the</p> <p>5 new position with Peggy down in the IHC lab.</p> <p>6 CHAYTOR, Q.C.:</p> <p>7 Q. Okay. So at that point in time, you applied</p> <p>8 for a position in the IHC portion of the lab?</p> <p>9 MS. BUTLER:</p> <p>10 A. Yes.</p> <p>11 CHAYTOR, Q.C.:</p> <p>12 Q. And you were promoted to laboratory</p> <p>13 technologist II?</p> <p>14 MS. BUTLER:</p> <p>15 A. After--not directly. I think I went down</p> <p>16 there in '88 and then I think it was 1990 I</p> <p>17 had my paperwork--1992 and then it was</p> <p>18 retroactive to 1990, so it took a few years to</p> <p>19 become the Tech II.</p> <p>20 CHAYTOR, Q.C.:</p> <p>21 Q. To become a Tech II, okay, and after your</p> <p>22 first couple of years at the hospital, you</p> <p>23 said then there was a job description done for</p> <p>24 you. I take it you were then--the job</p> <p>25 description given to you was laboratory</p>	<p>1 MS. BUTLER:</p> <p>2 A. Yes.</p> <p>3 CHAYTOR, Q.C.:</p> <p>4 Q. And then you went to write your exam?</p> <p>5 MS. BUTLER:</p> <p>6 A. Yeah.</p> <p>7 CHAYTOR, Q.C.:</p> <p>8 Q. And when did you do that?</p> <p>9 MS. BUTLER:</p> <p>10 A. In 1981, I completed that and I became a</p> <p>11 subject RT in histology.</p> <p>12 CHAYTOR, Q.C.:</p> <p>13 Q. Okay, so 1981, and was that a national exam</p> <p>14 you wrote?</p> <p>15 MS. BUTLER:</p> <p>16 A. Yes.</p> <p>17 CHAYTOR, Q.C.:</p> <p>18 Q. Okay, and you were successful in passing that?</p> <p>19 MS. BUTLER:</p> <p>20 A. Yes.</p> <p>21 CHAYTOR, Q.C.:</p> <p>22 Q. In 1981?</p> <p>23 MS. BUTLER:</p> <p>24 A. Yes.</p> <p>25 CHAYTOR, Q.C.:</p>

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1 Q. Okay, and you became a subject RT?
 2 MS. BUTLER:
 3 A. Yes.
 4 CHAYTOR, Q.C.:
 5 Q. What's the difference? What does a subject RT
 6 mean?
 7 MS. BUTLER:
 8 A. Subject RT means I could only work in
 9 histology, and a general RT, you can work in
 10 all the other labs, like chemistry, micro,
 11 hematology, those labs.
 12 CHAYTOR, Q.C.:
 13 Q. Okay, histology, and histology including
 14 immunohistochemistry?
 15 MS. BUTLER:
 16 A. Well, that's a part of the lab.
 17 CHAYTOR, Q.C.:
 18 Q. That's part of the histology lab?
 19 MS. BUTLER:
 20 A. Part of histology, yes.
 21 CHAYTOR, Q.C.:
 22 Q. Okay, and why is it that you were a subject
 23 RT, as opposed to an RT that could work
 24 anywhere?
 25 MS. BUTLER:

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1 A. That was a path where we could follow to
 2 increase our knowledge, you know, so that we
 3 could become an RT. We just learned all about
 4 the job, on-the-job training. So then you had
 5 your choice to write your exam if you wanted
 6 to. You didn't have to.
 7 CHAYTOR, Q.C.:
 8 Q. But could you write a--could you have written
 9 an exam that would allow you to be a
 10 technologist in any area?
 11 MS. BUTLER:
 12 A. I could have, but I would have had to go to
 13 the college.
 14 CHAYTOR, Q.C.:
 15 Q. You'd have to go to school to do that?
 16 MS. BUTLER:
 17 A. Have to give up work and go to school to do
 18 it.
 19 CHAYTOR, Q.C.:
 20 Q. Okay, all right, so it was based on, I take
 21 it, not only passing the exam, but also on the
 22 knowledge that you had acquired on the job in
 23 the pathology lab?
 24 MS. BUTLER:
 25 A. Yes.

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1 CHAYTOR, Q.C.:
 2 Q. And so you became a subject RT then in 1981?
 3 MS. BUTLER:
 4 A. Yes.
 5 CHAYTOR, Q.C.:
 6 Q. And that permitted you to work anywhere in the
 7 country, but only in histology?
 8 MS. BUTLER:
 9 A. Only in histology.
 10 CHAYTOR, Q.C.:
 11 Q. And so in that regard, did you--was that like
 12 a subspecialty? Did you have a specialty in
 13 histology then? Would you have had more
 14 knowledge in histology than someone who had
 15 done general program?
 16 MS. BUTLER:
 17 A. No, other than I just was more consistent on
 18 the job. Mine was on-the-job training.
 19 CHAYTOR, Q.C.:
 20 Q. That's where your training was.
 21 MS. BUTLER:
 22 A. With some college. In order to write your
 23 exam, you had to go--my work allowed me to go
 24 to the college so many, say, afternoons a week
 25 to attend classes.

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1 CHAYTOR, Q.C.:
 2 Q. Okay.
 3 MS. BUTLER:
 4 A. And that was on the way to writing the exam.
 5 CHAYTOR, Q.C.:
 6 Q. Okay, and how long did you have to do that?
 7 MS. BUTLER:
 8 A. I can't recall how long.
 9 CHAYTOR, Q.C.:
 10 Q. So it was a period of weeks?
 11 MS. BUTLER:
 12 A. Yes.
 13 CHAYTOR, Q.C.:
 14 Q. Just a period of weeks leading up to the exam?
 15 MS. BUTLER:
 16 A. Yes.
 17 CHAYTOR, Q.C.:
 18 Q. You did extra courses then?
 19 MS. BUTLER:
 20 A. Yes.
 21 CHAYTOR, Q.C.:
 22 Q. And I take it you never did complete though
 23 your program at the College?
 24 MS. BUTLER:
 25 A. No.

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1 CHAYTOR, Q.C.:

2 Q. And then at some point were you then promoted

3 to Laboratory Technologist III?

4 MS. BUTLER:

5 A. Yes, that was in the last couple of -

6 CHAYTOR, Q.C.:

7 Q. Your last year, sorry?

8 MS. BUTLER:

9 A. February of '05.

10 CHAYTOR, Q.C.:

11 Q. In 2005.

12 MS. BUTLER:

13 A. '05, I think it is.

14 CHAYTOR, Q.C.:

15 Q. And do you know what month that was?

16 MS. BUTLER:

17 A. Maybe February, January--February, I think it

18 was.

19 CHAYTOR, Q.C.:

20 Q. And what does it mean to be a Technologist

21 III?

22 MS. BUTLER:

23 A. I just, some different duties and I was able

24 to oversee all the other staff and make sure

25 all the things were progressing in the lab.

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1 You had to do payroll, supervisory duties.

2 CHAYTOR, Q.C.:

3 Q. So you had supervisory duties then, okay. And

4 you would have to do those on top of your

5 other duties?

6 MS. BUTLER:

7 A. Yes.

8 CHAYTOR, Q.C.:

9 Q. And I just want to be clear on when it is that

10 you moved into the area of IHC. When did you

11 first become involved in IHC?

12 MS. BUTLER:

13 A. It was 1988.

14 CHAYTOR, Q.C.:

15 Q. That's 1988.

16 MS. BUTLER:

17 A. '88.

18 CHAYTOR, Q.C.:

19 Q. And was Peggy Welsh already involved at that

20 point in time? She was already there?

21 MS. BUTLER:

22 A. Yes, she was there.

23 CHAYTOR, Q.C.:

24 Q. Okay, and how did you learn then about IHC?

25 MS. BUTLER:

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1 A. Well through Peggy's instructions and she just

2 taught me what to do and then from there, we'd

3 start, you know, you'd read, give you methods

4 to read over and things like that. Mostly

5 like following her lead.

6 CHAYTOR, Q.C.:

7 Q. Okay, and I take it at that point in time IHC

8 was done through a manual process, is that

9 right?

10 MS. BUTLER:

11 A. Yes.

12 CHAYTOR, Q.C.:

13 Q. And how many different stains would there have

14 been at that point in time?

15 MS. BUTLER:

16 A. In '88? I'm not going to be able to say

17 because we used to do mostly, they were broke

18 down, I think we did mostly rabbit things and

19 so it was only--in '88 -

20 CHAYTOR, Q.C.:

21 Q. There weren't many, I take it.

22 MS. BUTLER:

23 A. No, I'm not going to be able to say.

24 CHAYTOR, Q.C.:

25 Q. Okay, and it was done, as I said, through a

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1 manual process.

2 MS. BUTLER:

3 A. Yes.

4 CHAYTOR, Q.C.:

5 Q. And do you recall then the--and anything you

6 learned in terms of that manual process was

7 taught to you by Peggy or through anything

8 that you could read, is that right?

9 MS. BUTLER:

10 A. (No audible response.)

11 CHAYTOR, Q.C.:

12 Q. Do you recall then the switch from the manual

13 process to the DAKO machine and what do you

14 recall about that?

15 MS. BUTLER:

16 A. Okay, like the process like from when I

17 started to the DAKO was quite a period, so we

18 went through, first when we started, I think

19 it was petri dishes and then you went to

20 trays.

21 CHAYTOR, Q.C.:

22 Q. So there were several different manual

23 processes.

24 MS. BUTLER:

25 A. Yeah, you processed differently as you went

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1 along. You got better and better as, you
 2 know, and more things became available for you
 3 to use.
 4 CHAYTOR, Q.C.:
 5 Q. What about ER/PR, when did you start doing
 6 that for the first time?
 7 MS. BUTLER:
 8 A. 1996 Dr. Khalifa began testing different
 9 patients.
 10 CHAYTOR, Q.C.:
 11 Q. And that was done--what method was used at
 12 that point in time?
 13 MS. BUTLER:
 14 A. Manual method.
 15 CHAYTOR, Q.C.:
 16 Q. So that's the bioassay method.
 17 MS. BUTLER:
 18 A. Bioassay, that's chemistry, isn't it?
 19 CHAYTOR, Q.C.:
 20 Q. You didn't do that, that was not done or you
 21 only did the histol -
 22 MS. BUTLER:
 23 A. That's right, replaced chemistry.
 24 CHAYTOR, Q.C.:
 25 Q. So when it moved from the bioassay method over

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1 to the pathology lab, that was around 1996?
 2 MS. BUTLER:
 3 A. It moved in 1996, 1997 the actual test came
 4 on, 1996 Dr. Khalifa put a lot of testing into
 5 it.
 6 CHAYTOR, Q.C.:
 7 Q. And so the only--did you ever do, I guess this
 8 is a better way to as you, did you ever do
 9 ER/PR testing, any other method than the DAKO
 10 machine.
 11 MS. BUTLER:
 12 A. Manually.
 13 CHAYTOR, Q.C.:
 14 Q. Manually, okay.
 15 MS. BUTLER:
 16 A. First when it started, it was all manual.
 17 CHAYTOR, Q.C.:
 18 Q. Okay, so you did do it manually.
 19 MS. BUTLER:
 20 A. All manual.
 21 CHAYTOR, Q.C.:
 22 Q. And that would be around when?
 23 MS. BUTLER:
 24 A. Started, well 1996 when we were testing it.
 25 CHAYTOR, Q.C.:

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1 Q. Okay, and so then after a couple of years,
 2 after a couple of years then the DAKO machine
 3 was brought in, is that right?
 4 MS. BUTLER:
 5 A. Yeah, 1998, I think the DAKO was brought in.
 6 CHAYTOR, Q.C.:
 7 Q. Were you involved then at all with Dr. Khalifa
 8 in what he was doing to test the method or
 9 bring it in into the pathology lab in 1996?
 10 MS. BUTLER:
 11 A. I have to--he'd give me numbers of patients,
 12 we'd have to locate the blocks and the slides
 13 first and then he'd pick out which block he
 14 wanted from the slides, and then we would have
 15 to get the block and cut the tissues and then
 16 test whatever he requested, the method we'd
 17 use for the ER/PR, we would go ahead and do
 18 our procedure for him, from beginning to end
 19 and then he would check all the slides. But I
 20 think before we had to develop some controls,
 21 he'd get some controls as well.
 22 CHAYTOR, Q.C.:
 23 Q. And in terms of antigen retrieval at that
 24 point in time, what did you do for antigen
 25 retrieval in the manual method?

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1 MS. BUTLER:
 2 A. In its earlier stages, we had our method of,
 3 we'd boil water in a pot on a hotplate and
 4 then we'd just, what required antigen
 5 retrieval, you'd take a coplin jar and you'd
 6 put your buffer in your coplin jar and you'd
 7 place your slides inside the coplin jar and
 8 you'd place that in the boiling water.
 9 CHAYTOR, Q.C.:
 10 Q. And when the DAKO machine then came on, do you
 11 recall what year that was, that you started
 12 using the DAKO machine?
 13 MS. BUTLER:
 14 A. Sometime in '98.
 15 CHAYTOR, Q.C.:
 16 Q. And do you know what, if any validation or
 17 concordance studies were run at that time to
 18 move over to the DAKO machine?
 19 MS. BUTLER:
 20 A. I know they were done, but -
 21 CHAYTOR, Q.C.:
 22 Q. You know they were done.
 23 MS. BUTLER:
 24 A. I know something was done and we'd like, we'd
 25 run manually and then they'd compare the same

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1 slides on the DAKO. I know something was
 2 done, but -
 3 CHAYTOR, Q.C.:
 4 Q. And was there any particular pathologist
 5 involved in that, in bringing on the DAKO
 6 machine?
 7 MS. BUTLER:
 8 A. Dr. Khalifa.
 9 CHAYTOR, Q.C.:
 10 Q. That was still Dr. Khalifa.
 11 MS. BUTLER:
 12 A. Uh-hm.
 13 CHAYTOR, Q.C.:
 14 Q. And it was still just you and Peggy there at
 15 that time, I take it?
 16 MS. BUTLER:
 17 A. Yes.
 18 CHAYTOR, Q.C.:
 19 Q. And you weren't dedicated solely to IHC at
 20 that time?
 21 MS. BUTLER:
 22 A. Myself and Peggy.
 23 CHAYTOR, Q.C.:
 24 Q. Two of you were?
 25 MS. BUTLER:

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1 A. To IHC, along with our other duties.
 2 CHAYTOR, Q.C.:
 3 Q. Yes, you didn't do just IHC.
 4 MS. BUTLER:
 5 A. No, not just IHC, no.
 6 CHAYTOR, Q.C.:
 7 Q. When the DAKO machine came on, what training
 8 did you receive then to use that system?
 9 MS. BUTLER:
 10 A. Through Peggy, when the salesperson or the
 11 technical person came in to, with the DAKO, he
 12 trained in Peggy and then he also showed me,
 13 then Peggy took the big lead in it and then I
 14 learned most of it after that from Peggy,
 15 because I always had a little bit of an
 16 aversion to anything to do with computers.
 17 CHAYTOR, Q.C.:
 18 Q. Okay, so a bit of an aversion to computers.
 19 MS. BUTLER:
 20 A. I hated them.
 21 CHAYTOR, Q.C.:
 22 Q. Okay, so Peggy took the lead and then you
 23 followed her?
 24 MS. BUTLER:
 25 A. Then I followed, I got more comfortable as

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1 time went on.
 2 CHAYTOR, Q.C.:
 3 Q. So was there a period of time that you didn't
 4 use the machine on your own, that you would
 5 follow Peggy and watch what she was doing?
 6 MS. BUTLER:
 7 A. Oh yes, it wasn't long after when I finally
 8 got over my - And I got more comfortable.
 9 CHAYTOR, Q.C.:
 10 Q. Okay, so your training was the sales person
 11 came from DAKO, and how long was that person
 12 with you?
 13 MS. BUTLER:
 14 A. I think he was in the better part, I think at
 15 least three or four days.
 16 CHAYTOR, Q.C.:
 17 Q. And was your antigen retrieval process
 18 different through the DAKO system than what
 19 you had been doing manually for ER/PR?
 20 MS. BUTLER:
 21 A. No.
 22 CHAYTOR, Q.C.:
 23 Q. It was the same.
 24 MS. BUTLER:
 25 A. Just that we used it our way with the pot on

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1 the hotplate and then we went to the--we
 2 brought in the water bath.
 3 CHAYTOR, Q.C.:
 4 Q. So that the change to the water bath came
 5 about at the same time that the DAKO system
 6 was brought in?
 7 MS. BUTLER:
 8 A. I'm not sure of the dates, but it was around
 9 the same time.
 10 CHAYTOR, Q.C.:
 11 Q. Around the same time, okay. And what did you
 12 have to do with the water bath for antigen
 13 retrieval?
 14 MS. BUTLER:
 15 A. The water bath was more, like the temperature
 16 was set on the water bath, it was set to your
 17 hundred because we had to deal with the
 18 temperature, we had to get a temperature of
 19 between 95 and 99. So the water bath would be
 20 regulated and so you would have a more
 21 constant temperature.
 22 CHAYTOR, Q.C.:
 23 Q. And what was the water bath set at?
 24 MS. BUTLER:
 25 A. I'm pretty well sure it was boiling.

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1 CHAYTOR, Q.C.:
 2 Q. Set at 100?
 3 MS. BUTLER:
 4 A. 100 degrees centigrade.
 5 CHAYTOR, Q.C.:
 6 Q. And how long would the specimens be left or
 7 the slides left in the water bath?
 8 MS. BUTLER:
 9 A. On our spec sheets, it used to say 20 to 40, I
 10 left mine for 30.
 11 CHAYTOR, Q.C.:
 12 Q. You left yours for 30, 30 minutes?
 13 MS. BUTLER:
 14 A. 30, I went in between.
 15 CHAYTOR, Q.C.:
 16 Q. And how would you time that?
 17 MS. BUTLER:
 18 A. We had a, you'd use your timer.
 19 CHAYTOR, Q.C.:
 20 Q. And how did you gauge the temperature?
 21 MS. BUTLER:
 22 A. I gauged the temperature, well your coplin
 23 jar, again in your water bath you had to
 24 place, depending on the number of slides, you
 25 either used your glass coplin jars or we had

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1 glass dishes that held more slides, like the
 2 size of the container, so then we'd put the
 3 buffer within the coplin jars or the glass
 4 dish and then we'd, you'd have to put this in
 5 with the water and bring it up to the
 6 temperature of a hundred and once you--you'd
 7 have to leave that for maybe an hour or so in
 8 order for this temperature to come up -
 9 CHAYTOR, Q.C.:
 10 Q. To get the water bath to the right
 11 temperature.
 12 MS. BUTLER:
 13 A. Yes, and the same way, you'd dish -
 14 CHAYTOR, Q.C.:
 15 Q. Before you would ever put the slides in.
 16 MS. BUTLER:
 17 A. Yes. So then you'd have to check your buffer
 18 inside your coplin jar or glass dish to see if
 19 it had reached between 95 and 99.
 20 CHAYTOR, Q.C.:
 21 Q. And then what would you do?
 22 MS. BUTLER:
 23 A. Then you'd be--once it got in between 95 to
 24 99, then you'd place your test slides in
 25 there.

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1 CHAYTOR, Q.C.:
 2 Q. Okay, and then is that the point at which then
 3 you would start your timer?
 4 MS. BUTLER:
 5 A. Yes.
 6 CHAYTOR, Q.C.:
 7 Q. And you would do it for 30 minutes?
 8 MS. BUTLER:
 9 A. Yes, I would do it for 30, yes.
 10 CHAYTOR, Q.C.:
 11 Q. And during that 30 minutes, would you check
 12 your temperatures?
 13 MS. BUTLER:
 14 A. No, because there was a lid on the test, so if
 15 you removed the lid, your temperature would
 16 drop.
 17 CHAYTOR, Q.C.:
 18 Q. So you never checked the temperature once it
 19 was put in?
 20 MS. BUTLER:
 21 A. Once it was put in.
 22 CHAYTOR, Q.C.:
 23 Q. And how would you know when your 30 minutes
 24 were up? Would your timer go off?
 25 MS. BUTLER:

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1 A. The timer would go off.
 2 CHAYTOR, Q.C.:
 3 Q. And was there ever any checks to the
 4 thermometers or the timer? Were there ever
 5 any checks carried out as to the accuracy of
 6 those instruments?
 7 MS. BUTLER:
 8 A. No.
 9 CHAYTOR, Q.C.:
 10 Q. By the end of the training that you received
 11 with the person from DAKO and then I hear what
 12 you're saying, how you stepped back a little
 13 and let Peggy take the lead on the DAKO
 14 machine. How comfortable were you in those
 15 first few weeks or months of using the DAKO
 16 machine?
 17 MS. BUTLER:
 18 A. Not comfortable for, I'd say not very
 19 comfortable, but after a couple of months
 20 then, I started, because Peggy would--any
 21 problems I had, Peggy would help me and then
 22 it just came to a point where I had no
 23 problems and just could go on.
 24 CHAYTOR, Q.C.:
 25 Q. And were there any particular aspects of it

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1 that you weren't as comfortable with? What
 2 was it about it that, other than it was a
 3 computer -
 4 MS. BUTLER:
 5 A. Mostly the computer thing, just having to put
 6 data in, the actual putting slides on and
 7 things, anything visual, but there was
 8 something there about the computer that I
 9 didn't like.
 10 CHAYTOR, Q.C.:
 11 Q. Okay, so the actual manual aspects to the job,
 12 placing jobs on, antigen retrieval, those
 13 things, weren't of issue to you.
 14 MS. BUTLER:
 15 A. No.
 16 CHAYTOR, Q.C.:
 17 Q. But the actual programming the computer, for
 18 example for protocols and that kind of thing,
 19 is that what caused -
 20 MS. BUTLER:
 21 A. Yeah, those things.
 22 CHAYTOR, Q.C.:
 23 Q. Those were the things you weren't so
 24 comfortable with?
 25 MS. BUTLER:

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1 A. Yes.
 2 CHAYTOR, Q.C.:
 3 Q. And who did that? Who programmed--were the
 4 protocols all programmed into the DAKO
 5 machine?
 6 MS. BUTLER:
 7 A. Yes.
 8 CHAYTOR, Q.C.:
 9 Q. And who did that?
 10 MS. BUTLER:
 11 A. Peggy and Dan Belchowski.
 12 CHAYTOR, Q.C.:
 13 Q. Dan Belchowski, he was the salesperson from
 14 DAKO?
 15 MS. BUTLER:
 16 A. Yes.
 17 CHAYTOR, Q.C.:
 18 Q. And the ER/PR protocols then that would have
 19 been programmed into DAKO, that then was done
 20 by Peggy and Mr. Belchowski?
 21 MS. BUTLER:
 22 A. Yes.
 23 CHAYTOR, Q.C.:
 24 Q. And do you know whether or not they changed
 25 then over time, whether there was any change

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1 to that ER or PR protocol?
 2 MS. BUTLER:
 3 A. I don't think so, I think they were always the
 4 same.
 5 CHAYTOR, Q.C.:
 6 Q. And perhaps if we could look, please, at P-
 7 2339? This is a brochure of the DAKO
 8 autostainer and Ms. Butler, I'm just going to,
 9 just for our own education on this, you could
 10 help us out a bit, we had a -
 11 REGISTRAR:
 12 Q. Excuse me, Ms. Chaytor?
 13 CHAYTOR, Q.C.:
 14 Q. Yes.
 15 REGISTRAR:
 16 Q. Administration hasn't put the exhibit on -
 17 CHAYTOR, Q.C.:
 18 Q. Okay, what does that mean? That's fine.
 19 THE COMMISSIONER:
 20 Q. We'll just come back to that in a few minutes.
 21 CHAYTOR, Q.C.:
 22 Q. Yeah, we'll come back to that then, that's no
 23 trouble. And my only purpose in bringing that
 24 up was we've seen a reagent map and we were
 25 looking to visualize how the actual DAKO would

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1 work in terms of placement of the slides, and
 2 perhaps you can tell us about that? How many
 3 slides did the DAKO machine take and how were
 4 they configured on the machine?
 5 MS. BUTLER:
 6 A. There was 48.
 7 CHAYTOR, Q.C.:
 8 Q. Okay, 48 slides and were they done in rows?
 9 MS. BUTLER:
 10 A. Yes, four rows and they were labelled 1 to 12,
 11 12 to 24 -
 12 CHAYTOR, Q.C.:
 13 Q. So from left to right, so 1 to 12, 13 onwards
 14 and for four rows.
 15 MS. BUTLER:
 16 A. For four rows.
 17 CHAYTOR, Q.C.:
 18 Q. And in terms of then knowing where to place
 19 your slides on the machine, because I would
 20 take it different slides would have different
 21 reagents applied to them.
 22 MS. BUTLER:
 23 A. Yes.
 24 CHAYTOR, Q.C.:
 25 Q. How would you know how to do that, where to

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1 put the slides?
 2 MS. BUTLER:
 3 A. I wish I had the pictures.
 4 CHAYTOR, Q.C.:
 5 Q. They'll be ready in a minute. Well that's
 6 fine, maybe you can tell us then, after the
 7 slides are placed on the machine--we'll come
 8 back to that, after the slides are placed on
 9 the machine, how long would it take the
 10 machine to run a batch?
 11 MS. BUTLER:
 12 A. I think it depended on how many antibodies we
 13 put on it, it could be up to three hours or
 14 longer.
 15 CHAYTOR, Q.C.:
 16 Q. Three hours or longer.
 17 MS. BUTLER:
 18 A. It could be a little less too, just depended
 19 on the number of antibodies she had to do and
 20 slides too, the number of slides.
 21 CHAYTOR, Q.C.:
 22 Q. Okay, so it would vary.
 23 MS. BUTLER:
 24 A. Yeah, because that would depend on how much
 25 work she had to do, how much washing she had

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1 to do and things like that.
 2 CHAYTOR, Q.C.:
 3 Q. Okay, and then what would you do while the
 4 machine is running?
 5 MS. BUTLER:
 6 A. Well when we did our work, we rotated, so when
 7 we were down in the IHC part, we just
 8 basically stayed there, unless you were going
 9 on a coffee break, and then if your machine
 10 was running, you'd have someone listening to
 11 the timers, if need be.
 12 CHAYTOR, Q.C.:
 13 Q. So you and Peggy would never go on your coffee
 14 break or lunch hour together, I'd take it.
 15 MS. BUTLER:
 16 A. No.
 17 CHAYTOR, Q.C.:
 18 Q. There'd always be someone left.
 19 MS. BUTLER:
 20 A. There'd always be someone there in the lab to
 21 listen.
 22 CHAYTOR, Q.C.:
 23 Q. And at that point in time, were you also doing
 24 the other duties, grossing and cutting, were
 25 you involved in those things as well?

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1 MS. BUTLER:
 2 A. Yes.
 3 CHAYTOR, Q.C.:
 4 Q. And would you be doing those when you were
 5 assigned to IHC or those would be on your
 6 other week?
 7 MS. BUTLER:
 8 A. The grossing, I think sometimes, I'm not sure
 9 if it was when we were extra busy, but I know
 10 that I have done some grossing and left the
 11 machine, you know, when the machine was set
 12 up, it could run on its own, you didn't have
 13 to watch it. So you could go do other duties,
 14 that was sort of the purpose of the DAKO
 15 machine, you could go do other duties.
 16 CHAYTOR, Q.C.:
 17 Q. To free you up to do other things?
 18 MS. BUTLER:
 19 A. Yes.
 20 CHAYTOR, Q.C.:
 21 Q. And were there any alarms on the machine?
 22 MS. BUTLER:
 23 A. Yes.
 24 CHAYTOR, Q.C.:
 25 Q. Okay, and what alarms, what were they for,

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1 when would the -
 2 MS. BUTLER:
 3 A. It would alarm if you, say you had forgotten
 4 to put in enough solution to run your tests,
 5 it would alarm and it would tell you, and then
 6 when the alarm went, you had, I'm not sure, it
 7 was a period of time to go and correct and if
 8 you corrected it, then the machine would go
 9 and do its work, but if you never made it,
 10 then it would be written--when you're watching
 11 the screen, you could see--the screen was
 12 telling every step that the machine had done.
 13 CHAYTOR, Q.C.:
 14 Q. Yes, okay.
 15 MS. BUTLER:
 16 A. So then you could see, you'd have to get in
 17 the habit of reading your screen to make sure
 18 things didn't happen.
 19 CHAYTOR, Q.C.:
 20 Q. Okay, and so it would alarm and then what
 21 would you do?
 22 MS. BUTLER:
 23 A. You'd go and add your solution and then she'd
 24 just move on. It made a delay of maybe one,
 25 maybe a minute or I'm not sure how long now,

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1 but there was a delay.
 2 CHAYTOR, Q.C.:
 3 Q. And did that ever happen to you, that the
 4 machine alarmed and you had to add solution?
 5 MS. BUTLER:
 6 A. Not too often because I usually tried to make
 7 sure I had adequate levels.
 8 CHAYTOR, Q.C.:
 9 Q. But it happened from time to time, I take it?
 10 MS. BUTLER:
 11 A. It happened from time to time.
 12 CHAYTOR, Q.C.:
 13 Q. And if you made it in time from the time it
 14 alarmed, then you would add the solution and
 15 it would continue on.
 16 MS. BUTLER:
 17 A. And it would continue on with no trouble.
 18 CHAYTOR, Q.C.:
 19 Q. And no notation, no record of it.
 20 MS. BUTLER:
 21 A. No, it would say just exactly what it had
 22 done.
 23 CHAYTOR, Q.C.:
 24 Q. Okay, and if you didn't -
 25 MS. BUTLER:

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1 A. It would tell you that it delayed or, I mean,
 2 I'm pretty well sure of that.
 3 CHAYTOR, Q.C.:
 4 Q. Okay, and if you didn't make it in time to add
 5 the solution, did the machine continue on with
 6 the rest of the run?
 7 MS. BUTLER:
 8 A. It went on with its run and it would tell you
 9 that on slide No. 12 or 13, whatever number,
 10 that the solution had not been applied.
 11 CHAYTOR, Q.C.:
 12 Q. Okay, and what was your practice in terms of
 13 checking the screen, like if the screen then
 14 continued on, I guess, with the next phase of
 15 the, whatever was happening in the process, so
 16 what was your practice? Would you get a hard
 17 copy of what had happened, the run data I
 18 guess it would be?
 19 MS. BUTLER:
 20 A. When it would come to the end of the program,
 21 I'm pretty well sure it said staining
 22 completed, no--I think it said no errors or
 23 no--it would tell you right there, it would
 24 give you a warning then if you had to go and
 25 look at everything and make sure, but

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1 generally it would say okay, everything was
 2 okay.
 3 CHAYTOR, Q.C.:
 4 Q. And if you did see a note that there had been
 5 insufficient or inadequate solution, what
 6 would you do at that point with those slides?
 7 MS. BUTLER:
 8 A. You'd--you'd just take your slides and you'd
 9 repeat it.
 10 CHAYTOR, Q.C.:
 11 Q. You'd have to repeat those slides?
 12 MS. BUTLER:
 13 A. You'd repeat them, yeah.
 14 CHAYTOR, Q.C.:
 15 Q. And did that happen from time to time?
 16 MS. BUTLER:
 17 A. Again with--you know, from my perspective,
 18 where I kept my solutions up, it didn't
 19 happen.
 20 CHAYTOR, Q.C.:
 21 Q. Okay, but I take it there were times when you
 22 had to add solutions?
 23 MS. BUTLER:
 24 A. Yes.
 25 CHAYTOR, Q.C.:

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1 Q. Okay.
 2 MS. BUTLER:
 3 A. Yes.
 4 CHAYTOR, Q.C.:
 5 Q. And do you recall were there times --
 6 MS. BUTLER:
 7 A. Not having to--I've known that it have had to
 8 be added because I've been there when the
 9 alarm had gone off when other people have run
 10 the machines.
 11 CHAYTOR, Q.C.:
 12 Q. And were there alarms for anything else?
 13 MS. BUTLER:
 14 A. No, I think that was --
 15 CHAYTOR, Q.C.:
 16 Q. That was it?
 17 MS. BUTLER:
 18 A. I think that was it. It was just that one.
 19 CHAYTOR, Q.C.:
 20 Q. Okay. Were there--we have our picture up now,
 21 so maybe we can look at this then. I'll just
 22 take you to page two, and we have a picture
 23 here, a circular picture, and is this the four
 24 rows of the slides?
 25 MS. BUTLER:

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1 A. Yes.
 2 CHAYTOR, Q.C.:
 3 Q. And if we look down here at, sorry, didn't
 4 mean to do that, the picture down here on the
 5 bottom, this is a closer up-close version of
 6 where you would put the slides, is that right?
 7 MS. BUTLER:
 8 A. Yes.
 9 CHAYTOR, Q.C.:
 10 Q. I know it's hard to see there. Actually the
 11 next page or page 4, it's page 3 is probably a
 12 better version over here. Here you go. So
 13 these are the slots, the types of slots you
 14 would put your slides in, I take it?
 15 MS. BUTLER:
 16 A. Yes.
 17 CHAYTOR, Q.C.:
 18 Q. Okay. And on the next page, which is page 4
 19 of the exhibit, we have here program slides?
 20 MS. BUTLER:
 21 A. Yes.
 22 CHAYTOR, Q.C.:
 23 Q. And I know it's small, but perhaps you could
 24 tell us what, this is a slide lay-out map, is
 25 that right?

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1 MS. BUTLER:
 2 A. Yes.
 3 CHAYTOR, Q.C.:
 4 Q. And this here, with the circles, is that the
 5 reagent map?
 6 MS. BUTLER:
 7 A. Reagent map, yes.
 8 CHAYTOR, Q.C.:
 9 Q. And perhaps you could tell us how you would
 10 get from your reagent map to your slide map
 11 and how you would use the two?
 12 MS. BUTLER:
 13 A. I'm trying to think what came first. First
 14 when we started off, all our cases would be,
 15 we had--this is before the machine now, when
 16 we had all the cases, you'd list them off on
 17 your worksheet and that would be labelled one
 18 to forty-eight, so you would list your patient
 19 and then however many cases you'd have, that
 20 person would have done.
 21 CHAYTOR, Q.C.:
 22 Q. That's before you had the DAKO?
 23 MS. BUTLER:
 24 A. No, this is now to get to here.
 25 CHAYTOR, Q.C.:

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1 Q. Yes.
 2 MS. BUTLER:
 3 A. So then you would take your--and all your
 4 antibodies would be listed on this worksheet
 5 and then you'd match up the slide reagent--the
 6 slide holders, all the slides would go in, if
 7 it was No. 1 on your sheet, it would go in No.
 8 1 on the program slide.
 9 CHAYTOR, Q.C.:
 10 Q. So No. 1 would start right here and go across
 11 through No. 12. There's four rows.
 12 MS. BUTLER:
 13 A. I said in the beginning that it was one--I
 14 can't -
 15 THE COMMISSIONER:
 16 Q. Do you want to see if you can enhance that a
 17 little further?
 18 MS. BUTLER:
 19 A. I just know we would - one to forty-eight and
 20 then we would, No. 1 on this here would be No.
 21 1, and then we'd--goodness gracious, that is
 22 small, good thing I got glasses on too.
 23 CHAYTOR, Q.C.:
 24 Q. It is small.
 25 REGISTRAR:

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1 Q. I'll see if I can enlarge it.
 2 CHAYTOR, Q.C.:
 3 Q. It gets blurry when you enlarge it too much.
 4 Here we go. So what I was just trying to get
 5 some sense of -
 6 MS. BUTLER:
 7 A. I don't think you're going to connect both of
 8 those--I don't think there's a big connection.
 9 I think the slide area is more in tune with
 10 our -
 11 CHAYTOR, Q.C.:
 12 Q. With your worksheet.
 13 MS. BUTLER:
 14 A. - sheet that we had on our bench.
 15 CHAYTOR, Q.C.:
 16 Q. All right, well we could have a look at--let's
 17 bring up P-2190? And this is a sample of some
 18 of your worksheets that you've given us, Ms.
 19 Butler. And so, for example, here we have
 20 down to forty-eight, one to forty-eight.
 21 MS. BUTLER:
 22 A. Yes.
 23 CHAYTOR, Q.C.:
 24 Q. And so then one through twelve, for example,
 25 that would be your first row of slides, I take

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1 it?

2 MS. BUTLER:

3 A. Yes.

4 CHAYTOR, Q.C.:

5 Q. Okay, and if we could just go back then,

6 please, to 2339? So would that be your first

7 row here or is your first row at the top? Do

8 you remember how that would work?

9 MS. BUTLER:

10 A. No, I'm trying to think now, I'm not sure if

11 it's -

12 CHAYTOR, Q.C.:

13 Q. Okay, and it's been some time, in fairness,

14 since you used that machine?

15 MS. BUTLER:

16 A. Yeah, I'm beginning to think that we went from

17 front to back, even though I said in the

18 beginning it was back from front, but I'm

19 thinking that's the first slide there, with

20 the PSA on it.

21 CHAYTOR, Q.C.:

22 Q. And so I take it the first thing you would do

23 would be to complete your worksheet.

24 MS. BUTLER:

25 A. Uh-hm.

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1 CHAYTOR, Q.C.:

2 Q. And your worksheet, the information on your

3 worksheet, so if we go back, please, to 2190

4 and that's not a typical run day, so perhaps

5 we'll look at page 3 of that exhibit.

6 MS. BUTLER:

7 A. Okay.

8 CHAYTOR, Q.C.:

9 Q. So the information, for example here we have

10 one as an ER test and then we have a number

11 here.

12 MS. BUTLER:

13 A. Uh-hm.

14 CHAYTOR, Q.C.:

15 Q. What is the number?

16 MS. BUTLER:

17 A. CS487.

18 CHAYTOR, Q.C.:

19 Q. Yes, but what is the number, is this the

20 patient specimen number or surgical number?

21 MS. BUTLER:

22 A. Yes, yes.

23 CHAYTOR, Q.C.:

24 Q. Is that what that is, okay. So you would

25 receive requisitions, I take it, telling you

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1 that an ER test has been ordered for this

2 particular patient?

3 MS. BUTLER:

4 A. Yes.

5 CHAYTOR, Q.C.:

6 Q. And you would transpose all that onto your

7 work sheet?

8 MS. BUTLER:

9 A. Yes.

10 CHAYTOR, Q.C.:

11 Q. And that would be the first order of the day,

12 is that right?

13 MS. BUTLER:

14 A. Well this would be the worksheet here, yes.

15 CHAYTOR, Q.C.:

16 Q. Yes, okay, and then after you get your

17 worksheet complete, then you would go to your

18 -

19 MS. BUTLER:

20 A. Put your slides on in place.

21 CHAYTOR, Q.C.:

22 Q. You'd put your slides or you'd do your

23 reagents next?

24 MS. BUTLER:

25 A. You could do -

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1 CHAYTOR, Q.C.:

2 Q. You could do either.

3 MS. BUTLER:

4 A. - either because once you put your slides on

5 the machine, all you had to do is make sure

6 that they didn't try out and so you put your

7 buffer on them. So then, you know, you could

8 wait then. But I think we made up the

9 reagents.

10 CHAYTOR, Q.C.:

11 Q. Was there any issue or was there any alarm on

12 this system to, if you put your slides in the

13 wrong slots?

14 MS. BUTLER:

15 A. No.

16 CHAYTOR, Q.C.:

17 Q. There was nothing to give a warning of that?

18 MS. BUTLER:

19 A. No.

20 CHAYTOR, Q.C.:

21 Q. Okay, and did you have a habit of always

22 putting your controls at the end?

23 MS. BUTLER:

24 A. Usually at the end, unless you had a program

25 all set up, that's the only time you would see

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<p>1 some cases on the end.</p> <p>2 CHAYTOR, Q.C.:</p> <p>3 Q. So if you had your program all set up and your</p> <p>4 controls all set up, everything set up and</p> <p>5 then tests got added?</p> <p>6 MS. BUTLER:</p> <p>7 A. Yeah, if you had, just say this one here, No.</p> <p>8 37 and 38 were vacant, right?</p> <p>9 CHAYTOR, Q.C.:</p> <p>10 Q. Yes.</p> <p>11 MS. BUTLER:</p> <p>12 A. You could add, you still got the opportunity</p> <p>13 to add cases there.</p> <p>14 CHAYTOR, Q.C.:</p> <p>15 Q. So when would that happen, would those be</p> <p>16 requisitions that came into you late?</p> <p>17 MS. BUTLER:</p> <p>18 A. You might be setting up your run very late in</p> <p>19 the afternoon and someone might come in and</p> <p>20 say I'd like to have this tomorrow and you</p> <p>21 were running those--if you could, if the</p> <p>22 capability was there, like, say this run here,</p> <p>23 you only had two, two antibodies, so you had</p> <p>24 loads of space.</p> <p>25 CHAYTOR, Q.C.:</p>	<p>1 the machine know that, for example, it's</p> <p>2 slides, spaces one and three that need ER?</p> <p>3 MS. BUTLER:</p> <p>4 A. Yeah, well on your--you got to go back to -</p> <p>5 CHAYTOR, Q.C.:</p> <p>6 Q. Want to go back to the other slides?</p> <p>7 MS. BUTLER:</p> <p>8 A. This a long time ago.</p> <p>9 CHAYTOR, Q.C.:</p> <p>10 Q. Here we go.</p> <p>11 MS. BUTLER:</p> <p>12 A. Yeah, once you filled out your slides, up on</p> <p>13 the slides and then you put all your reagents</p> <p>14 in, everything was in there then for the</p> <p>15 machine to go ahead.</p> <p>16 CHAYTOR, Q.C.:</p> <p>17 Q. So was there any safeguard built in if the</p> <p>18 wrong--or was there any possibility that the</p> <p>19 wrong reagent could get applied to the wrong</p> <p>20 slide?</p> <p>21 MS. BUTLER:</p> <p>22 A. Was there any possibility? We usually</p> <p>23 followed, like where your circles are, that's</p> <p>24 where we placed our chemicals or what was</p> <p>25 needed.</p>
<p>Page 206</p> <p>1 Q. Yes, okay, so there were times when tests got</p> <p>2 added on?</p> <p>3 MS. BUTLER:</p> <p>4 A. Yes.</p> <p>5 CHAYTOR, Q.C.:</p> <p>6 Q. So your controls, for the most part, you tried</p> <p>7 to put them at the end, but there were times</p> <p>8 when things got added on.</p> <p>9 MS. BUTLER:</p> <p>10 A. Yes.</p> <p>11 CHAYTOR, Q.C.:</p> <p>12 Q. And you said the machine would alarm if there</p> <p>13 was insufficient antibody. Did the machine</p> <p>14 also have a way of knowing which antibody gets</p> <p>15 applied to which slides?</p> <p>16 MS. BUTLER:</p> <p>17 A. That was programmed in.</p> <p>18 CHAYTOR, Q.C.:</p> <p>19 Q. Programmed in. And you would program that in</p> <p>20 before you operated the machine, I take it?</p> <p>21 MS. BUTLER:</p> <p>22 A. No, that was already programmed in and you</p> <p>23 just had to -</p> <p>24 CHAYTOR, Q.C.:</p> <p>25 Q. Well I guess what I'm wondering is how does</p>	<p>Page 208</p> <p>1 CHAYTOR, Q.C.:</p> <p>2 Q. Okay, and if there were, for example, a</p> <p>3 particularly busy day or you're distracted or</p> <p>4 you have to multi task to do something else in</p> <p>5 the lab that day and things got placed in the</p> <p>6 wrong order -</p> <p>7 MS. BUTLER:</p> <p>8 A. You'd never be--multi task, but once you were</p> <p>9 down doing your procedure, you stayed with</p> <p>10 your procedure, you didn't leave your</p> <p>11 procedure.</p> <p>12 CHAYTOR, Q.C.:</p> <p>13 Q. Okay, so any--and this is not directed--don't</p> <p>14 get me wrong, specifically at any individual.</p> <p>15 MS. BUTLER:</p> <p>16 A. Right.</p> <p>17 CHAYTOR, Q.C.:</p> <p>18 Q. But I'm just wondering, you know, people can</p> <p>19 be distracted or we all make mistakes and if</p> <p>20 something gets placed in the wrong place, I'm</p> <p>21 just wondering would the machine pick up on</p> <p>22 that or was it possible then for the wrong</p> <p>23 reagent to be applied to the wrong slide?</p> <p>24 MS. BUTLER:</p> <p>25 A. I think mostly only if you happened to put</p>

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1 your slide, if you happened to put a wrong
 2 slide and that should be two cases mixed up.
 3 THE COMMISSIONER:
 4 Q. Ms. Butler, it might help if you told me which
 5 you did first in when you start your day's
 6 run, as it were.
 7 MS. BUTLER:
 8 A. Yes.
 9 THE COMMISSIONER:
 10 Q. Is the first process having to do with the
 11 reagent or is the first process having to do
 12 with your slides?
 13 MS. BUTLER:
 14 A. You'd have to get the slides on the machine
 15 first because then the machine would tell you
 16 exactly how much she'd need --
 17 COMMISSIONER:
 18 Q. So --
 19 MS. BUTLER:
 20 A. When you come around to the circle, how much
 21 solution you needed.
 22 COMMISSIONER:
 23 Q. So you put your -- you'd have that little list
 24 that we've seen?
 25 MS. BUTLER:

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1 A. Yes.
 2 COMMISSIONER:
 3 Q. With your numbers on it and with what you're
 4 doing?
 5 MS. BUTLER:
 6 A. Yes.
 7 COMMISSIONER:
 8 Q. So as you're putting your slides on, you're
 9 filling in your list, are you?
 10 MS. BUTLER:
 11 A. No, the list is filled out before.
 12 COMMISSIONER:
 13 Q. The list is filled out before. So you make
 14 sure then that the slides go in the proper
 15 spot corresponding to what's on your list?
 16 MS. BUTLER:
 17 A. My list and the computer has a list too
 18 because you bring up the -- you follow the
 19 computer as well. There's a spot there on the
 20 computer --
 21 COMMISSIONER:
 22 Q. Okay.
 23 MS. BUTLER:
 24 A. Where it tells you -- because you have to
 25 click on slides as well and tell it if you

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1 need to cover them.
 2 COMMISSIONER:
 3 Q. Now isn't there a code on the slides?
 4 MS. BUTLER:
 5 A. A code for --
 6 COMMISSIONER:
 7 Q. Not a code on these slides?
 8 MS. BUTLER:
 9 A. Not as in patient, but as in antibody, which
 10 is on the bottom, and then that's dilution to
 11 -- they all needed 200 microlitres per slide.
 12 COMMISSIONER:
 13 Q. What I'm interested in is how you matched up
 14 what it was that is on your slide and the load
 15 for the reagents?
 16 MS. BUTLER:
 17 A. The load for reagents came from your slides.
 18 I'm pretty sure the machine because when you -
 19 - just go down to the reagents. See the
 20 reagents there. On that it says you need .8
 21 mils of protinaze, 2 mils of Protinaze K.
 22 COMMISSIONER:
 23 Q. Yeah.
 24 MS. BUTLER:
 25 A. Once the slides were put on the machine --

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1 COMMISSIONER:
 2 Q. Uh-hm.
 3 MS. BUTLER:
 4 A. And you saw the yellow layouts --
 5 COMMISSIONER:
 6 Q. Yeah.
 7 MS. BUTLER:
 8 A. That was the areas that was clicked for the
 9 tissue.
 10 COMMISSIONER:
 11 Q. Yeah.
 12 MS. BUTLER:
 13 A. So that told the machine that once they added
 14 them up, if there was -- okay, so it got 1224.
 15 COMMISSIONER:
 16 Q. Yes, one of the prior witnesses explained, I
 17 think, that --
 18 MS. BUTLER:
 19 A. Yeah, and that tells you --
 20 COMMISSIONER:
 21 Q. That what's down below is the total amount
 22 that might be needed for the slides above.
 23 MS. BUTLER:
 24 A. Yes, the machine added that all up, I would

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1 assume, you know, within our internal
 2 information.
 3 COMMISSIONER:
 4 Q. Okay. So you really had nothing to do
 5 yourself with the information on the load
 6 except that the information came from the
 7 slides that you put in the proper spot?
 8 MS. BUTLER:
 9 A. Yes, the computer made it up for you.
 10 COMMISSIONER:
 11 Q. All right, thanks.
 12 CHAYTOR, Q.C.:
 13 Q. Is that okay.
 14 MS. BUTLER:
 15 A. I'm not very good at explaining sometimes.
 16 CHAYTOR, Q.C.:
 17 Q. That's fine, and it looks -- if we look at
 18 this, it looks like perhaps the slides you
 19 start, this would be your first row?
 20 MS. BUTLER:
 21 A. Uh-hm.
 22 CHAYTOR, Q.C.:
 23 Q. And it ends here, so this looks like it might
 24 be the last row?
 25 MS. BUTLER:

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1 A. Yes, I'm thinking now it goes from front to
 2 back.
 3 CHAYTOR, Q.C.:
 4 Q. Does that seem right?
 5 MS. BUTLER:
 6 A. Yes.
 7 CHAYTOR, Q.C.:
 8 Q. Okay. So in terms of any error in placement
 9 of slides on the machine, if that happened --
 10 MS. BUTLER:
 11 A. You sort of had -- you sort of had -- your
 12 sheet that's on your bench --
 13 CHAYTOR, Q.C.:
 14 Q. Yes.
 15 MS. BUTLER:
 16 A. You went and checked your machine, and then it
 17 was also on the computer as well.
 18 CHAYTOR, Q.C.:
 19 Q. And what did you do in terms of any checks or
 20 balances for yourself to make sure you placed
 21 the slides in the right place?
 22 MS. BUTLER:
 23 A. I always -- my sheet that I was working with
 24 to the machine and just checked them out. You
 25 know, like, if it said -- number one said VSA,

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1 I'd go to the machine and I'd say -- this one
 2 you're bringing up here now is ER, but you
 3 just go and -- your first slide should read
 4 ER, the second one should be PR.
 5 CHAYTOR, Q.C.:
 6 Q. And so in terms of doing any double checking
 7 or writing on your worksheet that you had
 8 double checked, would you have a practice --
 9 MS. BUTLER:
 10 A. I wouldn't write it down. I would just be
 11 doing this -- it would just be habits you'd
 12 form. You'd take your sheet over, check it
 13 out, and looking at the computer as well to
 14 make sure number one matched number one on the
 15 computer because that would be the tell signs
 16 with the computer -- looking at the computer
 17 and what's on the slide -- program slide area.
 18 That would be more important than my sheet.
 19 You know, they'd all be important is what I'm
 20 trying to say, but the computer areas would be
 21 more important.
 22 CHAYTOR, Q.C.:
 23 Q. Do you recall any times when there were any
 24 particular problems with the DAKO machine?
 25 MS. BUTLER:

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1 A. At one point the arm -- something happened to
 2 the arm. She might have stopped.
 3 CHAYTOR, Q.C.:
 4 Q. That's the robotic arm?
 5 MS. BUTLER:
 6 A. Yes.
 7 CHAYTOR, Q.C.:
 8 Q. Okay, and it may have stopped, and do you --
 9 were you there when that happened or how did
 10 you know that had happened?
 11 MS. BUTLER:
 12 A. I was present in the lab at the time, and I
 13 knew -- you'd know when you had to have your
 14 technicians coming in to fix the machine.
 15 CHAYTOR, Q.C.:
 16 Q. And did that only happen on one occasion?
 17 MS. BUTLER:
 18 A. One that I can recall.
 19 CHAYTOR, Q.C.:
 20 Q. Were there any other problems with the DAKO
 21 machine that you were aware of?
 22 MS. BUTLER:
 23 A. Other than the computer failed at one point,
 24 and then someone came in and did their --
 25 repaired that.

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1 CHAYTOR, Q.C.:

2 Q. And how did you know the computer had failed?

3 MS. BUTLER:

4 A. She just went -- she just stopped working.

5 CHAYTOR, Q.C.:

6 Q. Just stopped working?

7 MS. BUTLER:

8 A. Yeah.

9 CHAYTOR, Q.C.:

10 Q. And was the DAKO machine then out of operation

11 for a period of time?

12 MS. BUTLER:

13 A. Well, she had to be, and then -- she would

14 have to be. I don't know how long for,

15 though. Then you would maybe go back to your

16 manual method then. You had the capabilities

17 of going back from DAKO to your manual method

18 if there was a big delay.

19 CHAYTOR, Q.C.:

20 Q. And did that happen on occasion that you

21 reverted back to the manual way of doing

22 tests?

23 MS. BUTLER:

24 A. On occasion.

25 CHAYTOR, Q.C.:

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1 Q. Yes, and that was -- any tests then, any IHC

2 tests that needed to be done in that period,

3 which may have included ER/PR, would have been

4 done manually?

5 MS. BUTLER:

6 A. Manually, yes.

7 CHAYTOR, Q.C.:

8 Q. Okay, and you indicated that you worked with

9 Dr. Khalifa. How did you find Dr. Khalifa in

10 terms of his interaction with the

11 technologists?

12 MS. BUTLER:

13 A. Good.

14 CHAYTOR, Q.C.:

15 Q. It was good, and what did -- his level of

16 knowledge of IHC, did he seem to be

17 knowledgeable?

18 MS. BUTLER:

19 A. Very knowledgeable.

20 CHAYTOR, Q.C.:

21 Q. And did he make an effort to work with the

22 technologists and teach you things about IHC?

23 MS. BUTLER:

24 A. How do you mean, technical or --

25 CHAYTOR, Q.C.:

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1 Q. Well, just in terms of his interaction --

2 well, I guess, from his point of view, it

3 wouldn't be so much technical, it would be

4 more the theory of IHC.

5 MS. BUTLER:

6 A. Basically he just did -- he picked out his

7 cases, we ran the procedure, and the slides

8 went back to him.

9 CHAYTOR, Q.C.:

10 Q. So in terms of learning from him or learning

11 the process, did you feel that you learned

12 anything from Dr. Khalifa about IHC?

13 MS. BUTLER:

14 A. Mostly in -- you know, like he'd -- sometimes

15 he might ask me to look -- let you look in

16 under the scope to just -- to say this is good

17 staining, things like that.

18 CHAYTOR, Q.C.:

19 Q. So point out to you what to look for under the

20 scope?

21 MS. BUTLER:

22 A. Not what to look for, just point out, like,

23 say, this is a good stain, but he never ever

24 got into teaching us any differences.

25 CHAYTOR, Q.C.:

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1 Q. And were you looking -- in the DAKO days,

2 would you -- would you check external

3 controls?

4 MS. BUTLER:

5 A. In the DAKO days, the only way you'd -- you

6 would look at your controls sometimes because

7 he'd be after -- you'd go to the doctor for

8 your control.

9 CHAYTOR, Q.C.:

10 Q. I'm sorry, so the doctor would give you the

11 block?

12 MS. BUTLER:

13 A. He would pick out -- he would pick out your

14 block and you would make controls. So after

15 running -- well, you might be after running

16 several, many, you would begin to notice some

17 things, and then you would ask him, you know,

18 is this okay and things like that. So it was

19 more from your own observance would you know.

20 CHAYTOR, Q.C.:

21 Q. Okay, and was there any particular doctor that

22 you would go to when you needed controls for

23 your control bank? Was there anyone in

24 particular?

25 MS. BUTLER:

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1 A. Khalifa mostly in ER/PR, but all the other
 2 pathologists, whichever specialty they had.
 3 CHAYTOR, Q.C.:
 4 Q. And after Dr. Khalifa left, was there someone
 5 who took over from him in that role with
 6 respect to ER/PR?
 7 MS. BUTLER:
 8 A. ER/PR, no. After he left, it was mostly other
 9 -- any doctor, that if we ran out of a
 10 control, we would ask any of them.
 11 CHAYTOR, Q.C.:
 12 Q. Okay, and when Dr -- during Dr. Khalifa's
 13 time, I take it after he left, the number of
 14 antibodies were continuing to expand, the
 15 number of antibodies over that period of time,
 16 I would take it?
 17 MS. BUTLER:
 18 A. After he left --
 19 CHAYTOR, Q.C.:
 20 Q. The late 90s.
 21 MS. BUTLER:
 22 A. Up until he left -- up until 1998, I remember
 23 seeing a list of my antibodies in 1998. We
 24 were doing about 70.
 25 CHAYTOR, Q.C.:

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1 Q. About 70 at that point?
 2 MS. BUTLER:
 3 A. 70 odd.
 4 CHAYTOR, Q.C.:
 5 Q. Okay, and up to the current time, I guess,
 6 it's over 150 now?
 7 MS. BUTLER:
 8 A. It's over -- it's about 100 at least.
 9 CHAYTOR, Q.C.:
 10 Q. About 100 at least?
 11 MS. BUTLER:
 12 A. About 100, maybe more now because I've been --
 13 the last -- well, since January. Could be new
 14 ones on since then, so --
 15 CHAYTOR, Q.C.:
 16 Q. I'm sorry?
 17 MS. BUTLER:
 18 A. I haven't been down in the lab much since
 19 January.
 20 CHAYTOR, Q.C.:
 21 Q. Okay, what have you been doing since January?
 22 MS. BUTLER:
 23 A. January -- well, January, I was planning on
 24 retiring in January, but I stayed on.
 25 CHAYTOR, Q.C.:

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1 Q. And so what's your current duties?
 2 MS. BUTLER:
 3 A. My current duties are helping -- my current
 4 duties are organizing a lot of things, doing
 5 some special projects for Mr. Dyer.
 6 CHAYTOR, Q.C.:
 7 Q. Special projects for Mr. Dyer. So you haven't
 8 been in the lab since January, 2008?
 9 MS. BUTLER:
 10 A. January for sure, and before that.
 11 CHAYTOR, Q.C.:
 12 Q. And what were you doing before that?
 13 MS. BUTLER:
 14 A. I was in the lab up until -- when they hired
 15 the new technologists to replace myself and
 16 Les, I sort of came out of the -- I came out
 17 of the lab.
 18 CHAYTOR, Q.C.:
 19 Q. I think that's in the fall.
 20 MS. BUTLER:
 21 A. Yeah, I think that's October.
 22 CHAYTOR, Q.C.:
 23 Q. October.
 24 MS. BUTLER:
 25 A. So before then, like, when the Ventana and

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1 things were -- when Ventana was coming on, and
 2 computer again, you know --
 3 CHAYTOR, Q.C.:
 4 Q. That was back in April, '04.
 5 MS. BUTLER:
 6 A. Yeah, running away from the computer again. I
 7 let Ken have it. I let Ken do the -
 8 CHAYTOR, Q.C.:
 9 Q. Yes. So since around October of last year you
 10 haven't actually been in the lab doing the
 11 work?
 12 MS. BUTLER:
 13 A. No.
 14 CHAYTOR, Q.C.:
 15 Q. You've been doing other things?
 16 MS. BUTLER:
 17 A. Yes.
 18 CHAYTOR, Q.C.:
 19 Q. And as part of -- I'll come to in a while with
 20 you, but is part of what you've also been
 21 doing cataloguing and organizing slides from
 22 the retest, the retest slides?
 23 MS. BUTLER:
 24 A. Retest slides, yes.
 25 CHAYTOR, Q.C.:

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1 Q. Retest slides. So you've been involved in
 2 that process?
 3 MS. BUTLER:
 4 A. Yes.
 5 CHAYTOR, Q.C.:
 6 Q. Okay. We'll talk about that a little later.
 7 Was there ever -- in terms of your external
 8 controls, was there ever an occasion when you
 9 ran a batch without -- a batch without an
 10 external control for a given antibody?
 11 MS. BUTLER:
 12 A. On occasion, but not for -- it might have been
 13 -- like, our neuropathologist, sometimes she
 14 might want a run done, and she would -- if she
 15 wanted it done quickly, we could say we could
 16 do it without your control, and she would
 17 accept that. She would accept the
 18 responsibility then if we ran it for her.
 19 Other than that, generally -- or if sometimes
 20 we had an antibody that didn't have a control
 21 developed, we would say to the pathologist the
 22 antibody is there, but we don't have a
 23 control, and if you want it, we can run it for
 24 you, but you won't have a control.
 25 CHAYTOR, Q.C.:

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1 Q. Okay. So for example, if you--some of the
 2 late requisitions, if something came in late
 3 and you still had space on your machine -
 4 MS. BUTLER:
 5 A. Yes.
 6 CHAYTOR, Q.C.:
 7 Q. - but you only had space to run the patient
 8 slides and none for the control slides, there
 9 were times occasionally that that would
 10 happen?
 11 MS. BUTLER:
 12 A. No, you'd break them up. You wouldn't do it.
 13 CHAYTOR, Q.C.:
 14 Q. So when you said if a pathologist asked you,
 15 your neuropathologist you gave as an example,
 16 to run a test, but if you didn't have either a
 17 control available to you or space on your
 18 machine, would that be the other issue?
 19 MS. BUTLER:
 20 A. You could do it if the antibody was being run
 21 with a control and then you could share it
 22 out, share it with the other pathologists.
 23 CHAYTOR, Q.C.:
 24 Q. Yes, so my question was whether or not you
 25 ever had occasion to run an antibody with no

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1 control for that antibody?
 2 MS. BUTLER:
 3 A. I'd say no.
 4 CHAYTOR, Q.C.:
 5 Q. Okay. What was your example then in terms of
 6 the neuropathologist? Was that--you said you
 7 could run it, but she wouldn't have or he
 8 wouldn't have a control.
 9 MS. BUTLER:
 10 A. She would be, she'd take the responsibility
 11 for her slides, like without the control.
 12 Maybe she'd--the issue of internal control,
 13 she would say they have internal controls. So
 14 she could do without the positive control.
 15 CHAYTOR, Q.C.:
 16 Q. And did that happen?
 17 MS. BUTLER:
 18 A. That would tell her if our machines was
 19 working as well.
 20 CHAYTOR, Q.C.:
 21 Q. So did that happen at times?
 22 MS. BUTLER:
 23 A. Mostly with the neuro.
 24 CHAYTOR, Q.C.:
 25 Q. Okay, do you know whether or not an ER/PR test

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1 was ever run without an external control?
 2 MS. BUTLER:
 3 A. Not to my knowledge, other than when you were
 4 testing.
 5 CHAYTOR, Q.C.:
 6 Q. I'm sorry, when you were testing?
 7 MS. BUTLER:
 8 A. Sometimes when you were testing, you might,
 9 because they would have a lot of different--it
 10 wasn't run to give a result.
 11 CHAYTOR, Q.C.:
 12 Q. How could you test without having a known
 13 control?
 14 MS. BUTLER:
 15 A. Maybe I'm wrong there.
 16 CHAYTOR, Q.C.:
 17 Q. How would you know if your run -
 18 MS. BUTLER:
 19 A. I was thinking that sometimes they ran some
 20 with--when they had--because they were all
 21 known to be, like known cases.
 22 CHAYTOR, Q.C.:
 23 Q. So when you say testing, do you mean like
 24 changing dilutions or -
 25 MS. BUTLER:

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1 A. No, not in that instant. Like maybe back like
 2 in 1997 when Dr. Khalifa was--in 1996, when
 3 Dr. Khalifa was running a lot of different -
 4 CHAYTOR, Q.C.:
 5 Q. When Dr. Khalifa was doing his -
 6 MS. BUTLER:
 7 A. Did his testing before we started the actual
 8 patient.
 9 CHAYTOR, Q.C.:
 10 Q. And that was done without controls?
 11 MS. BUTLER:
 12 A. I'm not saying it was, but I'm saying could
 13 have been.
 14 CHAYTOR, Q.C.:
 15 Q. Okay. Well, do you recall any other times in
 16 which an ER/PR test may have been run without
 17 an external control?
 18 MS. BUTLER:
 19 A. No.
 20 CHAYTOR, Q.C.:
 21 Q. Do you recall, at some point in time, Dr. Robb
 22 doing research on ER or PR?
 23 MS. BUTLER:
 24 A. Yes.
 25 CHAYTOR, Q.C.:

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1 Q. And what do you recall about that research?
 2 When was that?
 3 MS. BUTLER:
 4 A. I'm not going to be able to tell you a date.
 5 I know I went on for a while, because he was--
 6 he did his--he had his own lab, separate lab
 7 in the university for doing that and his own
 8 staff.
 9 CHAYTOR, Q.C.:
 10 Q. Okay, but where would the tests actually be
 11 run?
 12 MS. BUTLER:
 13 A. Over in his own lab.
 14 CHAYTOR, Q.C.:
 15 Q. And how would you be aware of it?
 16 MS. BUTLER:
 17 A. Sometimes his staff member would come, she
 18 might run out of some antibody and she'd come
 19 and ask us if we used the same antibody or
 20 same reagents, if we could help her out.
 21 CHAYTOR, Q.C.:
 22 Q. And in terms of a time frame, and without the
 23 exact date, can you give us a particular year?
 24 Was it after 2000? Was it somewhere between--
 25 think about Dr. Ejeckam being there. Was it

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1 before Dr. Ejeckam in 2003 time frame? When
 2 would that have been?
 3 MS. BUTLER:
 4 A. I can remember it, but I'm not going to be
 5 able to put a time frame on it for you.
 6 CHAYTOR, Q.C.:
 7 Q. Okay. So whether it's two years ago, five
 8 years ago, well, Dr. Robb has been -
 9 MS. BUTLER:
 10 A. It's more than five years ago.
 11 CHAYTOR, Q.C.:
 12 Q. Yes, more than five years ago?
 13 MS. BUTLER:
 14 A. More than five years ago.
 15 CHAYTOR, Q.C.:
 16 Q. All right, and Dr. Robb, of course, is since
 17 deceased.
 18 MS. BUTLER:
 19 A. Yes.
 20 CHAYTOR, Q.C.:
 21 Q. If you think around the time that -
 22 MS. BUTLER:
 23 A. It was long before he died.
 24 CHAYTOR, Q.C.:
 25 Q. Long before he died, okay, and you don't know

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1 what the nature of his research was, but that
 2 it did involve ER/PR?
 3 MS. BUTLER:
 4 A. No, Dr. Robb was always involved in all kinds
 5 of research.
 6 CHAYTOR, Q.C.:
 7 Q. Okay. Prior to the issue that arose in 2005,
 8 were you aware of any problems with ER or PR?
 9 MS. BUTLER:
 10 A. Before 2005?
 11 CHAYTOR, Q.C.:
 12 Q. Yes, 2005, the spring of 2005, April/May 2005,
 13 when we understand this issue started to
 14 arise, were you aware of anything before that
 15 time frame in terms of problems with ER or PR
 16 testing?
 17 MS. BUTLER:
 18 A. Other than--there's nothing coming to mind,
 19 other than maybe when, like say, the DAKO
 20 might have went down for a couple of reasons
 21 and then that would be our issue, because we'd
 22 have to get the testing done.
 23 CHAYTOR, Q.C.:
 24 Q. And that would affect every stain, I would
 25 take it, all your IHC process?

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1 MS. BUTLER:
 2 A. Yes, and then you'd go behind sometimes, so
 3 that way.
 4 CHAYTOR, Q.C.:
 5 Q. So did anything in particular, when the DAKO
 6 machine went down, was there any particular
 7 cause of concern about ER or PR testing?
 8 MS. BUTLER:
 9 A. No, it was no different than any other
 10 antibody.
 11 CHAYTOR, Q.C.:
 12 Q. So there was nothing in particular about the
 13 machine not working properly and that somehow
 14 being connected to ER/PR results?
 15 MS. BUTLER:
 16 A. No.
 17 CHAYTOR, Q.C.:
 18 Q. Nothing like that pointed out to you?
 19 MS. BUTLER:
 20 A. No.
 21 CHAYTOR, Q.C.:
 22 Q. Okay. So other than, of course, you became
 23 aware, I take it, of the issue at some point
 24 in 2005. Prior to that, did any pathologist,
 25 for example, ever come to you and express

Page 234

1 concerns about their slides or about the
 2 product of what they were seeing?
 3 MS. BUTLER:
 4 A. No.
 5 THE COMMISSIONER:
 6 Q. Ms. Chaytor, wherever you can find a
 7 convenient spot, we'll take the luncheon
 8 break.
 9 CHAYTOR, Q.C.:
 10 Q. Okay, thank you. Was there any concern ever
 11 expressed about fixation?
 12 MS. BUTLER:
 13 A. With the fixation, a lot of times we'd be
 14 aware of like some of the blocks--like
 15 sometimes you could look at a block and tell
 16 it wasn't adequate.
 17 CHAYTOR, Q.C.:
 18 Q. And what was it that--what was it about the
 19 block that you could tell it wasn't adequate?
 20 MS. BUTLER:
 21 A. Well, sometimes you could touch a block and if
 22 it wasn't properly fixed or processed, it
 23 would be soft and then upon cutting then, it
 24 would leave holes.
 25 CHAYTOR, Q.C.:

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1 Q. Leave holes, and did any pathologist ever
 2 express concern to you about that, about the
 3 holes in the slides or otherwise about any -
 4 MS. BUTLER:
 5 A. No, because you'd do the test and it would go
 6 out to the pathologist and you'd wait for them
 7 to come back. Generally you'd wait for them
 8 to come back. If we had some wash off occur,
 9 we would repeat it on our own because of wash
 10 off, thinking there was no tissue there and
 11 you think you could do better.
 12 CHAYTOR, Q.C.:
 13 Q. So this issue of fixation, you were aware of
 14 it as a technologist in the lab. Was it well
 15 known amongst your colleagues, amongst the
 16 other technologists that there was an issue of
 17 -
 18 MS. BUTLER:
 19 A. Well, any cutter should be aware of when they--
 20 -if they're cutting fat, it's not going to--if
 21 they have trouble cutting it, they know it
 22 hasn't been processed or fixed.
 23 CHAYTOR, Q.C.:
 24 Q. And in terms of having any discussion with
 25 then the pathologist on that, you don't recall

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1 that specifically being addressed?
 2 MS. BUTLER:
 3 A. No, basically at the Health Science, if--we
 4 tried to--the main thing in your lab was to
 5 give a good H & E. So if they sent us in a
 6 block from the gross and you tried to cut it
 7 and you couldn't cut it, we sent it back to
 8 them like it was.
 9 CHAYTOR, Q.C.:
 10 Q. And so then, I take it, you would request
 11 another block?
 12 MS. BUTLER:
 13 A. We wouldn't request another block. They
 14 would--hopefully they'd go back. They had
 15 their report, blocks that they cut in front of
 16 them. So if it was a pathologist or the
 17 resident, they should go and cut their block,
 18 but we might say we'd need another block, yes.
 19 CHAYTOR, Q.C.:
 20 Q. There would have to be some communication back
 21 -
 22 MS. BUTLER:
 23 A. Yes.
 24 CHAYTOR, Q.C.:
 25 Q. - I would think, if you were bringing the

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1 block back.
 2 MS. BUTLER:
 3 A. Yes.
 4 CHAYTOR, Q.C.:
 5 Q. Okay. Commissioner, this would be a good
 6 place, please.
 7 THE COMMISSIONER:
 8 Q. We'll come back then at five after two. Thank
 9 you.
 10 (LUNCH BREAK)
 11 THE COMMISSIONER:
 12 Q. Ms. Chaytor.
 13 CHAYTOR, Q.C.:
 14 Q. Thank you, Commissioner. Good afternoon, Ms.
 15 Butler.
 16 MS. BUTLER:
 17 A. Good afternoon.
 18 CHAYTOR, Q.C.:
 19 Q. Ms. Butler, when we broke, I believe I was
 20 asking you about whether or not you were aware
 21 of any concerns prior to 2005 regarding ER/PR
 22 testing. Specifically with respect to antigen
 23 retrieval, was there ever any concerns
 24 expressed as to antigen retrieval and whether
 25 or not it was effective or there were any

Page 238

1 problems about the antigen retrieval?
 2 MS. BUTLER:
 3 A. No.
 4 CHAYTOR, Q.C.:
 5 Q. Okay. Do you know whether or not any issues
 6 with antigen retrieval were part of the reason
 7 for bringing in the Ventana, which would have
 8 then had the antigen retrieval on board? Do
 9 you remember anything being discussed along
 10 those lines?
 11 MS. BUTLER:
 12 A. That was--I can remember we wanted to make
 13 things better, I guess, by making it standard,
 14 just standardizing it more. It's like when
 15 the DAKO came on, we used to have to do all
 16 the washing by ourselves. So the DAKO used to
 17 do that for us, and when we--it just, you'd be
 18 more sure of the antigen retrieval, take away
 19 the guess work with the Ventana.
 20 CHAYTOR, Q.C.:
 21 Q. Yes, and so in the decision making leading up
 22 to acquiring the Ventana, which we understand
 23 then had the antigen retrieval on board, do
 24 you recall any discussions about it being a
 25 concern about antigen retrieval under the old

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1 method, under the DAKO system, and that being
 2 one of the reasons to move to the Ventana?
 3 MS. BUTLER:
 4 A. Just thought that it was--like our managers
 5 thought it was a better way to go and would
 6 take it away from us having to deal with it,
 7 and bring it all on board one machine.
 8 CHAYTOR, Q.C.:
 9 Q. Right, and whose--which manager was that?
 10 MS. BUTLER:
 11 A. Terry.
 12 CHAYTOR, Q.C.:
 13 Q. Terry Gulliver, okay, and did--in doing the
 14 antigen retrieval under the DAKO method, did
 15 you have any difficulties with making sure the
 16 temperature was kept at an adequate level?
 17 MS. BUTLER:
 18 A. The temperature, no, was using the water bath.
 19 It always had the--there was a temperature
 20 gauge on it.
 21 CHAYTOR, Q.C.:
 22 Q. And did you run into any difficulties in
 23 trying to maintain the temperature of the
 24 water bath?
 25 MS. BUTLER:

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1 A. No.
 2 CHAYTOR, Q.C.:
 3 Q. Do you recall whether or not, prior to the
 4 issue arising in 2005, so do you recall
 5 whether or not Dr. Carter expressed any
 6 concerns to you or any of the technologists
 7 regarding the IHC slides and in particular
 8 ER/PR?
 9 MS. BUTLER:
 10 A. No.
 11 CHAYTOR, Q.C.:
 12 Q. Do you recall whether or not she expressed any
 13 dissatisfaction as to the work product?
 14 MS. BUTLER:
 15 A. Not with ER/PR, some other stains maybe.
 16 CHAYTOR, Q.C.:
 17 Q. And what do you recall her saying? What was
 18 the nature of her concerns?
 19 MS. BUTLER:
 20 A. Like some of the antibodies, she mightn't have
 21 been able to--she might have wanted us to work
 22 on certain other antibodies to make them come
 23 up clearer.
 24 CHAYTOR, Q.C.:
 25 Q. And you recall Dr. Carter bringing that to

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1 your attention?

2 MS. BUTLER:

3 A. Bringing it to the lab's attention.

4 CHAYTOR, Q.C.:

5 Q. And did she work with you on that?

6 MS. BUTLER:

7 A. No.

8 CHAYTOR, Q.C.:

9 Q. But she requested that with certain of the

10 antibodies that--was the staining not clear

11 enough? Was that her concern?

12 MS. BUTLER:

13 A. I'm not sure right now if it wasn't staining

14 clear enough or if it wasn't--it was too

15 strong, one or the other. It just needed to be

16 tweaked, I guess, is the word they use a lot.

17 CHAYTOR, Q.C.:

18 Q. Okay, and you don't recall that being ER/PR?

19 That was other antibodies?

20 MS. BUTLER:

21 A. Other antibodies.

22 CHAYTOR, Q.C.:

23 Q. And you do recall though Dr. Carter raising

24 some concerns regarding those antibodies?

25 MS. BUTLER:

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1 A. Yes.

2 CHAYTOR, Q.C.:

3 Q. But do you recall anything else about that?

4 MS. BUTLER:

5 A. No.

6 CHAYTOR, Q.C.:

7 Q. And what was your relationship like with Dr.

8 Carter?

9 MS. BUTLER:

10 A. It was fine. She was on St. Clare's site and

11 she just sent over her orders through fax

12 basically.

13 CHAYTOR, Q.C.:

14 Q. And did you have any personal interactions

15 with her?

16 MS. BUTLER:

17 A. No, minimal.

18 CHAYTOR, Q.C.:

19 Q. Okay, and at one point in time, we've heard

20 others say there was a period of time when Dr.

21 Ejeckam and Dr. Carter worked with the

22 technologists to try and provide some

23 instruction. Were you involved in that as

24 well?

25 MS. BUTLER:

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1 A. On a--I was involved on a small scale.

2 CHAYTOR, Q.C.:

3 Q. And what do you recall about that?

4 MS. BUTLER:

5 A. Well, there used to be some disagreement

6 between them, as pathologists.

7 CHAYTOR, Q.C.:

8 Q. Okay, and what were they disagreeing about?

9 Do you recall any specifics about what it was,

10 what was the subject matter?

11 MS. BUTLER:

12 A. Basically, they'd look in under the scope.

13 They couldn't agree on what they were seeing,

14 you know, I mean, percentage wise and things

15 like this.

16 CHAYTOR, Q.C.:

17 Q. So percentage wise in terms of the staining

18 that they were seeing?

19 MS. BUTLER:

20 A. Yes.

21 CHAYTOR, Q.C.:

22 Q. Was there any difference of opinion as to

23 whether or not they should be looking at

24 percentages? And I take it this was about

25 ER/PR? This was ER/PR?

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1 MS. BUTLER:

2 A. Yes, it was only -

3 CHAYTOR, Q.C.:

4 Q. Yes, was there any difference in philosophy

5 between the two pathologists as to whether

6 they should be looking at percentages or just

7 calling it negative or positive?

8 MS. BUTLER:

9 A. There was, yes.

10 CHAYTOR, Q.C.:

11 Q. Okay, and what do you remember about that?

12 MS. BUTLER:

13 A. I remember Dr. Ejeckam was one way and Dr.

14 Carter was another.

15 CHAYTOR, Q.C.:

16 Q. I'm sorry, it's harder to hear.

17 MS. BUTLER:

18 A. Sorry. Dr. Ejeckam was--had one opinion and

19 she had another, Dr. Carter had another.

20 CHAYTOR, Q.C.:

21 Q. Okay, and do you recall which was Dr.

22 Ejeckam's preference? Was he into percentages

23 or just saying negative or positive?

24 MS. BUTLER:

25 A. Negative or positive.

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1 CHAYTOR, Q.C.:

2 Q. Negative or positive. So Dr. Ejeckam's view

3 was any degree of positivity, you call it

4 positive, regardless of percentage?

5 MS. BUTLER:

6 A. Yes.

7 CHAYTOR, Q.C.:

8 Q. And that's what you recall about that?

9 MS. BUTLER:

10 A. Yes.

11 CHAYTOR, Q.C.:

12 Q. And they couldn't agree on that?

13 MS. BUTLER:

14 A. Yes.

15 CHAYTOR, Q.C.:

16 Q. Okay. Was there a period in time when you

17 were not prepared to do work with Dr. Carter?

18 MS. BUTLER:

19 A. No.

20 CHAYTOR, Q.C.:

21 Q. Do you recall a period, a point where you

22 refused to do any work for her or where you

23 didn't want to be doing certain tests?

24 MS. BUTLER:

25 A. Not to my knowledge. I never refused any of

Page 246

1 them any work.

2 CHAYTOR, Q.C.:

3 Q. Okay, do you recall then having some sort of

4 disagreement or some issue with Dr. Carter?

5 MS. BUTLER:

6 A. No.

7 CHAYTOR, Q.C.:

8 Q. Okay, and do you recall discussing that with

9 us in your interview?

10 MS. BUTLER:

11 A. No.

12 CHAYTOR, Q.C.:

13 Q. You don't?

14 MS. BUTLER:

15 A. No.

16 CHAYTOR, Q.C.:

17 Q. Okay. So you have no recollection of any

18 issue with Dr. Carter, okay. Did you, in

19 terms of other pathologists, did you have any

20 issue with any other pathologists?

21 MS. BUTLER:

22 A. Just--well, myself and Dr. Ejeckam, we had our

23 own--you know, like sometimes he would like to

24 go to the males instead of the female, but we

25 learned to--we got around that.

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1 CHAYTOR, Q.C.:

2 Q. Okay, and overall in terms of generally then,

3 the relations between the pathologists and the

4 technical staff, were you aware of any tension

5 between the staff or did everyone work

6 together in a fairly collegial manner?

7 MS. BUTLER:

8 A. Are you referring to like ER/PR or everything?

9 CHAYTOR, Q.C.:

10 Q. Everything.

11 MS. BUTLER:

12 A. Everything, like -

13 CHAYTOR, Q.C.:

14 Q. Your work environment.

15 MS. BUTLER:

16 A. We had a good--at the Health Science, you

17 know, they just ordered their cases and then

18 we would do the work for them and then we'd go

19 back and ask them was everything okay, things

20 like that, that sort of worked well on our

21 site.

22 CHAYTOR, Q.C.:

23 Q. Okay, and was there anything in particular

24 with respect then to ER/PR, because when I

25 asked the question, you said "well do you mean

Page 248

1 ER/PR?" Was there any tension around ER/PR?

2 MS. BUTLER:

3 A. Well, other than the--like with Dr. Ejeckam

4 and Bev, when they were looking at their

5 slides.

6 CHAYTOR, Q.C.:

7 Q. Yes, okay. So basically then, it was a fairly

8 collegial work atmosphere and did you feel you

9 could--could you approach any pathologist with

10 any issues or questions that you had?

11 MS. BUTLER:

12 A. I felt I could.

13 CHAYTOR, Q.C.:

14 Q. You felt you could, okay, and they were

15 helpful?

16 MS. BUTLER:

17 A. Yes.

18 CHAYTOR, Q.C.:

19 Q. Were you ever asked by any pathologist to redo

20 an ER/PR test?

21 MS. BUTLER:

22 A. I'm sure at times, it's just that sometimes

23 you don't put it together, you know what I

24 mean. Sometimes you wouldn't know if it would

25 be a repeat. So I'm sure we did repeats.

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1 CHAYTOR, Q.C.:

2 Q. So there may be repeats requested through a

3 requisition sheet that you wouldn't realize

4 was a repeat?

5 MS. BUTLER:

6 A. Yeah, unless they happened to mark repeat on

7 it.

8 CHAYTOR, Q.C.:

9 Q. And we've seen that in some of the forms.

10 Sometimes repeat is actually -

11 MS. BUTLER:

12 A. Yeah, because you wouldn't--where we had a

13 rotation in our lab, you'd cut one week and

14 you'd be on the machine another week and then

15 you'd do kidney biopsies another week. So it

16 could be two weeks before you'd go back

17 cutting, so you wouldn't see the name, you

18 know. If you were there all the time, you

19 might notice names being the same or numbers

20 being the same.

21 CHAYTOR, Q.C.:

22 Q. On any occasions when you did run a repeat,

23 was there ever any communication between you

24 and the pathologist or would it just come

25 through on the requisition sheet with the word

Page 250

1 "repeat"? Would there be any dialogue on the

2 issue?

3 MS. BUTLER:

4 A. No, mostly on the requisition.

5 CHAYTOR, Q.C.:

6 Q. I'm sorry?

7 MS. BUTLER:

8 A. On the requisition.

9 CHAYTOR, Q.C.:

10 Q. Just on the requisition, so there wouldn't be

11 any dialogue as to well, why do you need a

12 repeat?

13 MS. BUTLER:

14 A. No.

15 CHAYTOR, Q.C.:

16 Q. Did you ever have that occasion to actually

17 speak to the pathologist? Are there

18 pathologists who approach you and say that

19 they were looking for a repeat?

20 MS. BUTLER:

21 A. Only, I remember Dr. Ejeckam sometimes,

22 because he worked with you really well, and if

23 he had a problem, he--I remember once he asked

24 me for a repeat because he said his internal

25 control didn't work.

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1 CHAYTOR, Q.C.:

2 Q. Okay. So you remember that, that Dr. Ejeckam

3 -

4 MS. BUTLER:

5 A. Yes, I remember that with Dr. Ejeckam.

6 CHAYTOR, Q.C.:

7 Q. And he explained that to you, that his

8 internal control hadn't worked?

9 MS. BUTLER:

10 A. Internal control hadn't worked.

11 CHAYTOR, Q.C.:

12 Q. Okay, and do you know when about that was?

13 MS. BUTLER:

14 A. No, I can't remember the time. Can't give you

15 a date line.

16 CHAYTOR, Q.C.:

17 Q. Okay, and so you understood that the reason,

18 in that particular instance, that he needed a

19 repeat was because the internal control had

20 failed?

21 MS. BUTLER:

22 A. Because of his internal, so we tried it again

23 to see if it would repeat--if it would work

24 for him.

25 CHAYTOR, Q.C.:

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1 Q. And do you know what the outcome was?

2 MS. BUTLER:

3 A. No, he didn't tell me.

4 CHAYTOR, Q.C.:

5 Q. Was any other reason ever given to you for--

6 other than an internal control failed, was

7 there any other reason given to you for

8 wanting a repeat?

9 MS. BUTLER:

10 A. Not that I can think of.

11 CHAYTOR, Q.C.:

12 Q. And I take it that instance with Dr. Ejeckam

13 happened prior to 2005, when this issue became

14 -

15 MS. BUTLER:

16 A. I'm thinking it was.

17 CHAYTOR, Q.C.:

18 Q. Yes, and in all the times when you would have

19 been asked to do a repeat, were you ever

20 informed as to whether a different result had

21 occurred, upon repeating the test?

22 MS. BUTLER:

23 A. No.

24 CHAYTOR, Q.C.:

25 Q. Did anyone ever discuss that with you?

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1 MS. BUTLER:
 2 A. No.
 3 THE COMMISSIONER:
 4 Q. Ms. Butler, would there ever have been
 5 occasion where, within the lab, you might
 6 decide to do a repeat? And if so, what kind
 7 of occasion would that be?
 8 MS. BUTLER:
 9 A. If your run was over and your--something
 10 washed off totally for you, you'd repeat it
 11 then, on your own.
 12 THE COMMISSIONER:
 13 Q. Okay, within the lab, you'd make that decision
 14 then.
 15 MS. BUTLER:
 16 A. Because it washed off type thing.
 17 THE COMMISSIONER:
 18 Q. Okay. Are there any other circumstances where
 19 you might decide to do that?
 20 MS. BUTLER:
 21 A. No, mostly on wash off, you tried maybe a
 22 second time before you'd let it go to the
 23 pathologist.
 24 CHAYTOR, Q.C.:
 25 Q. Was there any particular time period that

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1 stands out in your mind that it appeared that
 2 it was more frequent that you were having to
 3 repeat ER/PR tests?
 4 MS. BUTLER:
 5 A. I'm sure--I can't--time frames are hard for
 6 me. I just can't keep--I know, you know, at--
 7 I'm sure when things were happening we had to
 8 do repeats, because how else would they be
 9 able to, you know what I mean, get--if they
 10 were having trouble, how else--could we not do
 11 it.
 12 CHAYTOR, Q.C.:
 13 Q. Okay, that's in 2005, you mean?
 14 MS. BUTLER:
 15 A. Yes, so like I won't be able to give you
 16 times.
 17 CHAYTOR, Q.C.:
 18 Q. No, I just want to think before that, though,
 19 before 2005, because we'll get to that and
 20 what happened there, but I'm just thinking was
 21 there ever any time in 2000, 2001, 2002, 2003,
 22 2004, prior to -- let's look at prior to
 23 Ventana days.
 24 MS. BUTLER:
 25 A. Okay.

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1 CHAYTOR, Q.C.:
 2 Q. And the DAKO days in early 2000, say, up to
 3 when the Ventana comes in and is on line,
 4 April, 2004. Do you recall any particular
 5 time period where there appeared to be more
 6 ER/PR repeats?
 7 MS. BUTLER:
 8 A. No, no.
 9 CHAYTOR, Q.C.:
 10 Q. And so how frequent would it be to have to
 11 repeat an ER or PR test?
 12 MS. BUTLER:
 13 A. I -- thinking about it, again I may not know
 14 because again with the rotation and that, you
 15 mightn't notice.
 16 CHAYTOR, Q.C.:
 17 Q. And I appreciate that too, and at one point
 18 it's just the two of you on rotation, so you'd
 19 be there every other week?
 20 MS. BUTLER:
 21 A. Yeah, yeah, yes.
 22 CHAYTOR, Q.C.:
 23 Q. And then Ken comes on in 2002, so you're every
 24 third week.
 25 MS. BUTLER:

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1 A. Every third week.
 2 CHAYTOR, Q.C.:
 3 Q. Okay. So was it -- I just want to get some
 4 sense then, and have the Commissioner have
 5 some sense of whether the frequency would be
 6 such that it may come up, you know, twice a
 7 year, it may come up every rotation I'm on,
 8 that I'm got to do a repeat of ER. How
 9 frequently, or somewhere in between?
 10 MS. BUTLER:
 11 A. Like, if someone was doing my -- say, I did a
 12 test and someone did my repeat, I wouldn't
 13 know it.
 14 CHAYTOR, Q.C.:
 15 Q. Right.
 16 MS. BUTLER:
 17 A. So, you know what I mean, it could happen --
 18 CHAYTOR, Q.C.:
 19 Q. But if you're doing a test --
 20 MS. BUTLER:
 21 A. And someone else -- you might think, oh, okay.
 22 Unless they --
 23 CHAYTOR, Q.C.:
 24 Q. You wouldn't know.
 25 MS. BUTLER:

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1 A. It depends on if they sent in the -- sometimes
 2 they sent us back the form.
 3 CHAYTOR, Q.C.:
 4 Q. The same requisition form.
 5 MS. BUTLER:
 6 A. With our names on it, and you would know you
 7 were doing a repeat because someone else's
 8 name was here on a certain date.
 9 CHAYTOR, Q.C.:
 10 Q. Right.
 11 MS. BUTLER:
 12 A. And then you'd sign the same requisition.
 13 Other times they'd send us in the requisition
 14 and it would be a brand new requisition, so
 15 you really wouldn't know.
 16 CHAYTOR, Q.C.:
 17 Q. So there might be a - in those cases, you
 18 wouldn't know?
 19 MS. BUTLER:
 20 A. You wouldn't know.
 21 CHAYTOR, Q.C.:
 22 Q. But any time where another tech or yourself
 23 had signed a requisition earlier from an
 24 earlier batch, you would know because there
 25 would not be -- you're either resigning the

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1 same form, or --
 2 MS. BUTLER:
 3 A. Or I'm signing yours.
 4 CHAYTOR, Q.C.:
 5 Q. You're signing someone else's form that they
 6 had already signed from a previous run?
 7 MS. BUTLER:
 8 A. Yes.
 9 CHAYTOR, Q.C.:
 10 Q. Okay. So on those times, you would know?
 11 MS. BUTLER:
 12 A. Yes.
 13 CHAYTOR, Q.C.:
 14 Q. So let's just think about those times then.
 15 How frequently would that happen that your
 16 name would appear twice on a form, or your
 17 name and Peggy Welsh's would appear twice?
 18 MS. BUTLER:
 19 A. I don't think -- you know, I don't think I've
 20 even just thought about it much.
 21 CHAYTOR, Q.C.:
 22 Q. Okay.
 23 MS. BUTLER:
 24 A. You know, you just sort of just did your work
 25 and you never thought of those things.

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1 CHAYTOR, Q.C.:
 2 Q. Okay.
 3 MS. BUTLER:
 4 A. Unless one of the pathologists came in with
 5 some problems, you just thought everything was
 6 okay.
 7 CHAYTOR, Q.C.:
 8 Q. But in terms of a sense of it happening, how
 9 frequently that would happen?
 10 MS. BUTLER:
 11 A. Like I say, I still think you wouldn't know
 12 because of, you know, the weeks.
 13 CHAYTOR, Q.C.:
 14 Q. Yes, there might be other times, like you say,
 15 where you're running the test and it's a new
 16 requisition for?
 17 MS. BUTLER:
 18 A. Yes.
 19 CHAYTOR, Q.C.:
 20 Q. So those you wouldn't know.
 21 MS. BUTLER:
 22 A. Unless they mark -- even that new one, unless
 23 they marked it was a repeat, you wouldn't
 24 know.
 25 CHAYTOR, Q.C.:

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1 Q. But if someone else already signed it and
 2 you're doing it again, I take it --
 3 MS. BUTLER:
 4 A. Yeah.
 5 CHAYTOR, Q.C.:
 6 Q. Would there be any other reason other than a
 7 repeat of the test?
 8 MS. BUTLER:
 9 A. No, I don't think so.
 10 CHAYTOR, Q.C.:
 11 Q. It would be a repeat?
 12 MS. BUTLER:
 13 A. It would be a repeat then.
 14 CHAYTOR, Q.C.:
 15 Q. And so you're not able to say whether that
 16 appeared to be happening once every time you
 17 were on or once a year?
 18 MS. BUTLER:
 19 A. No, I wouldn't be able to give you because I
 20 never -I just never thought on those lines.
 21 CHAYTOR, Q.C.:
 22 Q. Okay, and you said unless a pathologist came
 23 to you to discuss it with you, there may be
 24 that you don't even realize that you're doing
 25 a retest?

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1 MS. BUTLER:
 2 A. You wouldn't do anything -- you think
 3 everything would be fine, so you wouldn't do -
 4 - you wouldn't change anything.
 5 CHAYTOR, Q.C.:
 6 Q. And did any pathologist ever come to you and
 7 discuss it with you?
 8 MS. BUTLER:
 9 A. No.
 10 CHAYTOR, Q.C.:
 11 Q. Okay. So you were unaware that there was any
 12 issue with -- if there were an issue, you
 13 weren't aware of it?
 14 MS. BUTLER:
 15 A. No.
 16 CHAYTOR, Q.C.:
 17 Q. We have a sample of requisition forms, and
 18 it's only a sample, but perhaps what I'll do
 19 then is take you through some of those.
 20 MS. BUTLER:
 21 A. Okay.
 22 CHAYTOR, Q.C.:
 23 Q. If we could look at 2149, please. Ms. Butler,
 24 this is for a period of time in 2002, and as
 25 you say, we don't have all of them and we

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1 wouldn't have -- we wouldn't know if there was
 2 a repeat unless there's a couple of signatures
 3 on the bottom for the most part.
 4 MS. BUTLER:
 5 A. Uh-hm.
 6 CHAYTOR, Q.C.:
 7 Q. So I'm just going to direct your attention to
 8 a few of these. This one here is on page one.
 9 It has your signature on the bottom and your
 10 signature is there with three different dates;
 11 January 30th, February 13th, and February
 12 15th, and it's for an estrogen and
 13 progesterone test.
 14 MS. BUTLER:
 15 A. Uh-hm.
 16 CHAYTOR, Q.C.:
 17 Q. So would this be repeats of that test?
 18 MS. BUTLER:
 19 A. I'm thinking that's repeats with trouble with
 20 wash off there maybe.
 21 CHAYTOR, Q.C.:
 22 Q. Okay. So on January 30th then you're back for
 23 your session or your week with IHC, again
 24 February 13th, and then that week two days
 25 later you repeated the test again?

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1 MS. BUTLER:
 2 A. Yeah.
 3 CHAYTOR, Q.C.:
 4 Q. And if we could have page five, please.
 5 Actually let's go back to page one. Thank
 6 you, Mr. Coffey. What is the significance to
 7 the date completed, what does that mean?
 8 MS. BUTLER:
 9 A. When we finished -- after we finished our
 10 ER/PR, and we're ready to send it out, we just
 11 sign, put the date on it when we've completed
 12 it and it's ready to go out in the pathologist
 13 slot.
 14 CHAYTOR, Q.C.:
 15 Q. So it's not necessarily the date that the run
 16 was actually completed?
 17 MS. BUTLER:
 18 A. No, it was the actual day that we're ready to
 19 place it -- to give it to the pathologist.
 20 CHAYTOR, Q.C.:
 21 Q. And would that -- when you do your run, would
 22 that normally happen? Would these forms
 23 normally be filled out --
 24 MS. BUTLER:
 25 A. They're usually filled out that same day, or

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1 it could be the next morning.
 2 CHAYTOR, Q.C.:
 3 Q. Or it could be the next day. So within a day
 4 of the run having been completed?
 5 MS. BUTLER:
 6 A. Yeah.
 7 CHAYTOR, Q.C.:
 8 Q. Okay, and if we look on page two, which is
 9 actually the back of this form, there's a
 10 couple of dates over here as well; February
 11 11th, 2002, and February 18th, 2002.
 12 MS. BUTLER:
 13 A. Uh-hm.
 14 CHAYTOR, Q.C.:
 15 Q. Do you know what those dates mean?
 16 MS. BUTLER:
 17 A. That one -- that first one there, February
 18 11th, is when it came in the lab from -- I
 19 forget the doctor, was it Wadhwa, and that was
 20 when it -- yeah, came in from that person.
 21 CHAYTOR, Q.C.:
 22 Q. So that's when it would have been sent back to
 23 you?
 24 MS. BUTLER:
 25 A. And then the second date is when it went back.

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1 CHAYTOR, Q.C.:

2 Q. When it went back?

3 MS. BUTLER:

4 A. Yeah.

5 CHAYTOR, Q.C.:

6 Q. Okay. So February 11th. Obviously, it was

7 January 28th, and the first test was done

8 January 30th?

9 MS. BUTLER:

10 A. Uh-hm.

11 CHAYTOR, Q.C.:

12 Q. So February 11th would be the day that he sent

13 it back?

14 MS. BUTLER:

15 A. Came back.

16 CHAYTOR, Q.C.:

17 Q. Is that a "he", he or she?

18 MS. BUTLER:

19 A. She.

20 CHAYTOR, Q.C.:

21 Q. She, and February 13th is the date that you're

22 ready to send it back again?

23 MS. BUTLER:

24 A. Yes.

25 CHAYTOR, Q.C.:

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1 Q. And then it gets sent back and you redo the

2 test again February 15th, is that right?

3 MS. BUTLER:

4 A. I'm thinking it -- the first time it may have

5 went to her and she sent it back for a repeat

6 on washing off, and I'm thinking I did it

7 twice, it washed off again, and I repeated it

8 again.

9 CHAYTOR, Q.C.:

10 Q. Would you have actually, though, signed the

11 document unless it was ready to go -- on

12 February 13th, would you have signed the

13 document unless it was ready to go back to the

14 pathologist?

15 MS. BUTLER:

16 A. That day maybe I would have completed it, and

17 I wasn't happy -- maybe happy with it, and I

18 repeated it again the next day.

19 CHAYTOR, Q.C.:

20 Q. And what would have to happen for you not to

21 be happy with it after it's completed? What

22 would you have --

23 MS. BUTLER:

24 A. Most things -- I didn't like it when it washed

25 off because I figured the pathologist couldn't

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1 read anything if it was washing off.

2 CHAYTOR, Q.C.:

3 Q. But at what stage would it wash off?

4 MS. BUTLER:

5 A. You'd -- a lot of times in the AR, she'd wash

6 off.

7 CHAYTOR, Q.C.:

8 Q. Yes.

9 MS. BUTLER:

10 A. But we'd still complete our stain.

11 CHAYTOR, Q.C.:

12 Q. So even if it had washed off through antigen

13 retrieval, you would still use that slide to

14 complete your stain?

15 MS. BUTLER:

16 A. Yes.

17 CHAYTOR, Q.C.:

18 Q. So you wouldn't go back and repeat the slides

19 at that point if you have a problem with it

20 washing off at the antigen retrieval stage?

21 MS. BUTLER:

22 A. No, you go to the end of it and then you'd

23 send it. A lot of times you'd go to the

24 pathologist and you'd hope they'd changed the

25 block.

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1 CHAYTOR, Q.C.:

2 Q. So I just want to be clear. If there were a

3 problem during the antigen retrieval process

4 with your tissue washing off your slides, you

5 would still complete the antigen retrieval

6 process, still put the slides in through the

7 DAKO --

8 MS. BUTLER:

9 A. It would still -- it could still further wash

10 off in the program. Like, there might be a

11 fair amount of tissue there, but it still --

12 by completing the whole program, by the time

13 all the solutions went on it, it would further

14 take more tissue away.

15 CHAYTOR, Q.C.:

16 Q. Yes, but your practise would be to continue

17 with that particular slide?

18 MS. BUTLER:

19 A. Yes.

20 CHAYTOR, Q.C.:

21 Q. Okay. If we look at page two then, the date

22 February 11th. So it's come back. How do you

23 know that you need to do a repeat, how is that

24 communicated to you?

25 MS. BUTLER:

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1 A. I don't think it's -- could you go up to the
 2 top again. I don't see anything there that --
 3 CHAYTOR, Q.C.:
 4 Q. There's UT over here. What does that mean?
 5 MS. BUTLER:
 6 A. We had taken our units.
 7 CHAYTOR, Q.C.:
 8 Q. Okay.
 9 MS. BUTLER:
 10 A. We have to take units for everything you did.
 11 CHAYTOR, Q.C.:
 12 Q. So how did you know when it came back to you
 13 on February 11th that you had to do the test
 14 again?
 15 MS. BUTLER:
 16 A. Right now, I can't answer that.
 17 CHAYTOR, Q.C.:
 18 Q. Would that be the practise, that if a
 19 pathologist wants it done, that the form would
 20 come back to you with -- is that the practice,
 21 to send the requisition back to you?
 22 MS. BUTLER:
 23 A. No, it was a -- it was done both ways.
 24 CHAYTOR, Q.C.:
 25 Q. Sometimes they'd send a new requisition?

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1 MS. BUTLER:
 2 A. And sometimes they'd give you the old one
 3 back.
 4 CHAYTOR, Q.C.:
 5 Q. So if you get back a completed requisition
 6 form that you've already signed --
 7 MS. BUTLER:
 8 A. Yes.
 9 CHAYTOR, Q.C.:
 10 Q. That would mean for you to do redo the test?
 11 Is that what you would take from that?
 12 MS. BUTLER:
 13 A. Yes.
 14 CHAYTOR, Q.C.:
 15 Q. If it's sent back to you, regardless if it has
 16 repeat written on it or not?
 17 MS. BUTLER:
 18 A. Yes.
 19 CHAYTOR, Q.C.:
 20 Q. Okay. If we could look at page five, please,
 21 and on this date again it's an estrogen
 22 progesterone, and it's Dr. Ismil?
 23 MS. BUTLER:
 24 A. Ismil, yeah, from Corner Brook.
 25 CHAYTOR, Q.C.:

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1 Q. From Corner Brook, okay, and we see we have
 2 your signature twice. We have February 27th
 3 '02 and March 1st '02, and the date on the
 4 back is March 12th.
 5 MS. BUTLER:
 6 A. March 12th.
 7 CHAYTOR, Q.C.:
 8 Q. So I take it this date -- there's only one
 9 date on the back of this form. Is that the
 10 date that it was sent back?
 11 MS. BUTLER:
 12 A. I'd say yes.
 13 CHAYTOR, Q.C.:
 14 Q. Okay. So the two dates on this occasion,
 15 February 27th and March 1st --
 16 MS. BUTLER:
 17 A. I'm repeating there again for some reason. I
 18 think --
 19 CHAYTOR, Q.C.:
 20 Q. Okay. So is this -- is this that you ran a
 21 test twice?
 22 MS. BUTLER:
 23 A. Yes. It looks like --
 24 CHAYTOR, Q.C.:
 25 Q. It looks like it came in originally February

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1 25th.
 2 MS. BUTLER:
 3 A. February 25th.
 4 CHAYTOR, Q.C.:
 5 Q. Or February 26th.
 6 MS. BUTLER:
 7 A. The 25th. Repeat -- can you just go down to
 8 the bottom of that again?
 9 CHAYTOR, Q.C.:
 10 Q. Sure.
 11 MS. BUTLER:
 12 A. Please. February 25th, and I did it March
 13 1st. I'm not sure if -- like, up on top it
 14 said "repeat", so I may have -- I've got "lock
 15 in lab until we hear from", I'm assuming hear
 16 from Nadia because I'm thinking that block is
 17 washing off.
 18 CHAYTOR, Q.C.:
 19 Q. Okay.
 20 MS. BUTLER:
 21 A. So that if she had wanted it repeated again, I
 22 may have repeated it for her because it's
 23 "repeat" there in that left hand corner.
 24 CHAYTOR, Q.C.:
 25 Q. So you may have -- I'm sorry, repeat in the

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1 left hand corner. That's what this says?
 2 MS. BUTLER:
 3 A. It looks like "repeat" there.
 4 CHAYTOR, Q.C.:
 5 Q. Repeat, yeah. So you may have kept the block
 6 in case -- although you had done it twice --
 7 MS. BUTLER:
 8 A. Although I'd done it, I still might have kept
 9 the block in the lab thinking she might come
 10 back again for a third time.
 11 CHAYTOR, Q.C.:
 12 Q. And ask for it a third time, okay, but you
 13 yourself did it twice, on February 27th --
 14 MS. BUTLER:
 15 A. Very close together.
 16 CHAYTOR, Q.C.:
 17 Q. And then again the next day, March 1st, okay,
 18 and if we could have page 8, please? This is
 19 Dr. Ismil again.
 20 MS. BUTLER:
 21 A. Uh-hm.
 22 CHAYTOR, Q.C.:
 23 Q. And this is received March 4th and it's not
 24 the same surgical number, but it is another
 25 one of her patients.

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1 MS. BUTLER:
 2 A. Uh-hm.
 3 CHAYTOR, Q.C.:
 4 Q. And if we scroll down here, estrogen and
 5 progesterone and repeat, so it looks like you
 6 did the original and then -
 7 MS. BUTLER:
 8 A. And then Peggy did the next one.
 9 CHAYTOR, Q.C.:
 10 Q. And then Peggy Welsh then, on her cycle, looks
 11 like March 6th, I believe and March 14th.
 12 MS. BUTLER:
 13 A. March 14th, looks like a repeat again.
 14 Because she's saying "repeat for me".
 15 CHAYTOR, Q.C.:
 16 Q. And "repeat" is written up here.
 17 MS. BUTLER:
 18 A. Yeah.
 19 CHAYTOR, Q.C.:
 20 Q. Okay. And then on page 9, it's from Dr. Denic
 21 and it's March 13th and we have "repeat!"
 22 written over here. Who would have written
 23 that there?
 24 MS. BUTLER:
 25 A. Dr. Denic.

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1 CHAYTOR, Q.C.:
 2 Q. That's Dr. Denic. And Peggy Welsh did the
 3 original, it looks like, March 17th, I
 4 believe?
 5 MS. BUTLER:
 6 A. Yes.
 7 CHAYTOR, Q.C.:
 8 Q. And then it says "block sent to Mayo clinic,
 9 these are the only unstained slides we have."
 10 Do you know--is that your handwriting?
 11 MS. BUTLER:
 12 A. No, that's his writing.
 13 CHAYTOR, Q.C.:
 14 Q. That's his writing. And then your signature,
 15 April 3rd -
 16 MS. BUTLER:
 17 A. Looks like Barry sent me some slides to do the
 18 ER/PR on.
 19 CHAYTOR, Q.C.:
 20 Q. And so it was a repeat of the ER/PR test.
 21 MS. BUTLER:
 22 A. Yeah, because it looks like he was sending it
 23 out as well.
 24 CHAYTOR, Q.C.:
 25 Q. Okay. And then if we look at page 10, May

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1 13th, 2002 and this is Doctor--what's this
 2 doctor's name?
 3 MS. BUTLER:
 4 A. Wadhwa.
 5 CHAYTOR, Q.C.:
 6 Q. I'm sorry, it's Doctor Wad -
 7 MS. BUTLER:
 8 A. Wadhwa.
 9 CHAYTOR, Q.C.:
 10 Q. Is that a St. John's pathologist?
 11 MS. BUTLER:
 12 A. Yes, Grace Hospital.
 13 CHAYTOR, Q.C.:
 14 Q. At the Grace. And May 10th or 16th, 2002 -
 15 MS. BUTLER:
 16 A. Uh-hm.
 17 CHAYTOR, Q.C.:
 18 Q. And if we notice the number here, 355602.
 19 MS. BUTLER:
 20 A. Yes.
 21 CHAYTOR, Q.C.:
 22 Q. And then your date on the next page.
 23 MS. BUTLER:
 24 A. When we received the block into the lab.
 25 CHAYTOR, Q.C.:

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1 Q. Okay. Then on page 12 we have the same block,
 2 same number and it's May 17th now and a repeat
 3 of that test by Peggy.
 4 MS. BUTLER:
 5 A. Yes.
 6 CHAYTOR, Q.C.:
 7 Q. So that's a repeat on that of the one that you
 8 had run on your week before, in the lab?
 9 MS. BUTLER:
 10 A. Yes.
 11 CHAYTOR, Q.C.:
 12 Q. And then if we could have, please, page 17?
 13 And on this one it's June 11th, 2002 and it's
 14 for Dr. Baker in Carbonear. And it's written
 15 on the bottom here, this one is not a repeat
 16 but it's written "ER control weak but still
 17 okay, check by Dr. S. Parai." Is that your
 18 writing?
 19 MS. BUTLER:
 20 A. Yes.
 21 CHAYTOR, Q.C.:
 22 Q. So your ER control was weak and I take it then
 23 you had Dr. Parai check?
 24 MS. BUTLER:
 25 A. Check it.

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1 CHAYTOR, Q.C.:
 2 Q. Was Dr. Parai checking external controls in
 3 any event before they went out to other
 4 hospitals?
 5 MS. BUTLER:
 6 A. A good many times, yes.
 7 CHAYTOR, Q.C.:
 8 Q. And in terms of choosing control tissue,
 9 positive controls, would it be strong positive
 10 that would be chosen?
 11 MS. BUTLER:
 12 A. You'd like to see a strong positive.
 13 CHAYTOR, Q.C.:
 14 Q. And is the tissue chosen because it's supposed
 15 to be a strongly positive?
 16 MS. BUTLER:
 17 A. Yes, this one was staining weaker, not the
 18 actual controls, this one is just when we did
 19 the procedure, came out weak, so that's why I
 20 would say he's checking it out as well.
 21 CHAYTOR, Q.C.:
 22 Q. And would you have brought that to the
 23 attention of Dr. Parai or is that something
 24 Dr. Parai noticed and communicated to you?
 25 MS. BUTLER:

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1 A. No, I noticed it.
 2 CHAYTOR, Q.C.:
 3 Q. You noticed it.
 4 MS. BUTLER:
 5 A. I noticed it was weak and I was making sure.
 6 CHAYTOR, Q.C.:
 7 Q. And so you asked Dr. Parai to look at it?
 8 MS. BUTLER:
 9 A. Yes.
 10 CHAYTOR, Q.C.:
 11 Q. But you weren't asked to repeat the test?
 12 MS. BUTLER:
 13 A. No, not that I know of, unless you're going
 14 to--unless another sheet was found.
 15 CHAYTOR, Q.C.:
 16 Q. And if we could look at, what I'm issue to is
 17 that I may not have all the sheets, page 21,
 18 please?
 19 MS. BUTLER:
 20 A. If you did, you'd have an awful lot of them.
 21 CHAYTOR, Q.C.:
 22 Q. These are a sample of the ones we do have.
 23 And this is your signature and it's June 20th,
 24 2002 and it says "repeat and send to Grand
 25 Falls", so it looks like on June 20th, there

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1 was a repeat, that's rush is it?
 2 MS. BUTLER:
 3 A. That's "rush" there.
 4 CHAYTOR, Q.C.:
 5 Q. Okay, "repeat and send to Grand Falls".
 6 MS. BUTLER:
 7 A. Yeah, maybe I was doing a repeat, maybe I
 8 knew--maybe they had phoned or something
 9 there, right, and asked me to repeat or
 10 something.
 11 CHAYTOR, Q.C.:
 12 Q. So that's a repeat of the test on that day?
 13 MS. BUTLER:
 14 A. Yeah, could be, yes.
 15 CHAYTOR, Q.C.:
 16 Q. And the date, June 21st, '02.
 17 MS. BUTLER:
 18 A. When it went back -
 19 CHAYTOR, Q.C.:
 20 Q. Sent back to Grand Falls.
 21 MS. BUTLER:
 22 A. Yeah.
 23 CHAYTOR, Q.C.:
 24 Q. Next day. If we could have page 27, please,
 25 Registrar? And I'm just pointing out ones

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1 that you were involved in, either the original
 2 or the repeat. So there are some others in
 3 between but on this occasion, it's July 4th is
 4 the requisition and it's Dr. Baker again. And
 5 you did the original test, it appears, July
 6 11th, 2002, repeated by Peggy Welsh, July
 7 16th, 2002. And that's an estrogen receptor
 8 and progesterone receptor test as well?
 9 MS. BUTLER:
 10 A. Yes.
 11 CHAYTOR, Q.C.:
 12 Q. And page 29, I'm not sure if you can make out
 13 the pathologist's name there?
 14 MS. BUTLER:
 15 A. It looks like Dr. Dankwa from St. Anthony
 16 maybe.
 17 CHAYTOR, Q.C.:
 18 Q. Okay, and it's July 8th, 2002. And on July
 19 12th, 2002 and then again on July 23rd, 2002,
 20 and it's written here "had to repeat, tissue
 21 washing off".
 22 MS. BUTLER:
 23 A. Sometimes I wrote it -
 24 CHAYTOR, Q.C.:
 25 Q. Is that you?

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1 MS. BUTLER:
 2 A. Yes, that's my writing.
 3 CHAYTOR, Q.C.:
 4 Q. That's your writing, okay, and so you had to
 5 repeat it then from the first test?
 6 MS. BUTLER:
 7 A. Yes.
 8 CHAYTOR, Q.C.:
 9 Q. Is that what this means?
 10 MS. BUTLER:
 11 A. Yes, that's right.
 12 CHAYTOR, Q.C.:
 13 Q. And it was sent July 8th, so you did it on the
 14 12th and -
 15 MS. BUTLER:
 16 A. And I did it again on the 23rd, so it's a
 17 while in between there.
 18 CHAYTOR, Q.C.:
 19 Q. It's a while in between. And if you were
 20 aware of the reason for the repeat, would you
 21 always record it on your form? For example
 22 here, if you -
 23 MS. BUTLER:
 24 A. Sometimes I did.
 25 CHAYTOR, Q.C.:

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1 Q. So not necessarily?
 2 MS. BUTLER:
 3 A. Not necessarily all the time.
 4 CHAYTOR, Q.C.:
 5 Q. Okay. And the next page, Dr. Anwar in Corner
 6 Brook, July 22nd, 2002. Again, estrogen,
 7 progesterone and your signature, looks like
 8 July 26th, '02 and it was sent back, according
 9 to this, July 26th.
 10 MS. BUTLER:
 11 A. So he has a repeat on it, so obviously we did
 12 a -
 13 CHAYTOR, Q.C.:
 14 Q. So "please repeat" and then there's a date of
 15 August 15th. So it looks like this would be
 16 Dr. Anwar, is that right?
 17 MS. BUTLER:
 18 A. Yes, that's his -
 19 CHAYTOR, Q.C.:
 20 Q. Asking that it be repeated?
 21 MS. BUTLER:
 22 A. Uh-hm.
 23 CHAYTOR, Q.C.:
 24 Q. So it went back to Dr. Anwar on July 26th and
 25 it came back looking for repeat.

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1 MS. BUTLER:
 2 A. Yes.
 3 CHAYTOR, Q.C.:
 4 Q. If we could have page 36, please? And this is
 5 July 25th, I believe, 2002 and it's Dr. Elms'
 6 case, estrogen/progesterone tests and Peggy
 7 Welsh's signature appears for July 30th, 2002
 8 and then yours for August 28th, 2002. So
 9 almost a month later.
 10 MS. BUTLER:
 11 A. Seems like he sent it back for a repeat.
 12 CHAYTOR, Q.C.:
 13 Q. "Please repeat", so it looks like there was a
 14 repeat -
 15 MS. BUTLER:
 16 A. Yeah, seems like it went over and it came
 17 back.
 18 CHAYTOR, Q.C.:
 19 Q. And then the next page, page 37? Again, it's
 20 Dr. Elms and Peggy Welsh, same dates and
 21 "please repeat" and those are the same dates
 22 again, so July 30th for this one, the same as
 23 the one immediately before and asked to be
 24 repeated on August 28th.
 25 MS. BUTLER:

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1 A. Yes.
 2 CHAYTOR, Q.C.:
 3 Q. And again, the next page and you will see
 4 there are difference cases because they're
 5 different surgical numbers.
 6 MS. BUTLER:
 7 A. Different case numbers, yes.
 8 CHAYTOR, Q.C.:
 9 Q. But it is another of Dr. Elms' case?
 10 MS. BUTLER:
 11 A. Uh-hm.
 12 CHAYTOR, Q.C.:
 13 Q. And Ms. Welsh originally did the test July
 14 30th and then your own signature for August
 15 28th having repeated.
 16 MS. BUTLER:
 17 A. Uh-hm.
 18 CHAYTOR, Q.C.:
 19 Q. And if we could have, please, page 41? Can
 20 you recall, for example, on an occasion like
 21 that when Dr. Elms has three cases, do you
 22 recall Dr. Elms ever picking up the phone or
 23 calling over and asking you about that or
 24 making any inquiries?
 25 MS. BUTLER:

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1 A. No.
 2 CHAYTOR, Q.C.:
 3 Q. And page 41, this is one of your cases,
 4 September 12th, '02 and it's indicated on the
 5 top "ER control weak, but working" is that
 6 your writing?
 7 MS. BUTLER:
 8 A. That's my writing, yes.
 9 CHAYTOR, Q.C.:
 10 Q. That's your writing and did you have a doctor
 11 check it on that occasion?
 12 MS. BUTLER:
 13 A. Sometimes if they were going back to St.
 14 Clare's, they have a pathologist as well, so I
 15 might have relied on him, I was telling him
 16 that it was weak, to check it out.
 17 CHAYTOR, Q.C.:
 18 Q. So you're giving Dr. Elms the heads up that
 19 this is weak -
 20 MS. BUTLER:
 21 A. That this is weaker than usual.
 22 CHAYTOR, Q.C.:
 23 Q. And there's the date, I guess, that it went
 24 back, is that right?
 25 MS. BUTLER:

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1 A. Going back, yeah.
 2 CHAYTOR, Q.C.:
 3 Q. And page 43, September 4th now, 2002, and Dr.
 4 Ismil again ordering the test. And your
 5 signature appears twice, both on September
 6 10th and again on September 17th?
 7 MS. BUTLER:
 8 A. I think up on top she's--there's an "R" there,
 9 I'm assuming that might be a repeat.
 10 CHAYTOR, Q.C.:
 11 Q. Might be a repeat, so it seems like it went -
 12 MS. BUTLER:
 13 A. Went out and came back maybe.
 14 CHAYTOR, Q.C.:
 15 Q. Went out -
 16 MS. BUTLER:
 17 A. There's only one date on it at this time, the
 18 25th.
 19 CHAYTOR, Q.C.:
 20 Q. That's September 25th, and you repeated it--
 21 no, that's when it went, so it was repeated a
 22 week apart?
 23 MS. BUTLER:
 24 A. Yeah.
 25 CHAYTOR, Q.C.:

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1 Q. And page 49, please Registrar? I'm sorry, I
 2 skipped one, page 45 and it's Dr. Somers, is
 3 that correct? And it's an ER/PR test and your
 4 signature again appears twice, on September
 5 10th and again on September 19th and it goes
 6 back, it looks to the doctor on September
 7 25th. So I take it the ER/PR test was
 8 repeated that you had done on September 10th,
 9 was done again September 19th, would that be
 10 right?
 11 MS. BUTLER:
 12 A. Yes.
 13 CHAYTOR, Q.C.:
 14 Q. And then the final one was that I wanted to
 15 bring to your attention was on page 49 and we
 16 see the word "repeat" written up here and it's
 17 Dr. Dalton's case and it looks like Ken Green
 18 did the first test September 18th, 2002 and
 19 it's difficult to see, but is this your
 20 signature, October 4th, 2002?
 21 MS. BUTLER:
 22 A. It may be, I can't pick that one out for sure.
 23 CHAYTOR, Q.C.:
 24 Q. Okay. I believe it may have been a little
 25 clearer, but it would certainly either have to

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1 be you or Peggy?
 2 MS. BUTLER:
 3 A. Yes.
 4 CHAYTOR, Q.C.:
 5 Q. And so I just take you through that exercise,
 6 Ms. Butler, to show that this is 2002 and in
 7 that starting late in January, in the first
 8 repeat that I showed you there was February
 9 13th, 2002 and again, there may be forms, as
 10 you say, that for the first time it's a repeat
 11 and we wouldn't have those or know that it's a
 12 repeat because there'd only be one signature
 13 on those. But out of those starting February,
 14 2002 up until September that I just showed
 15 you, in that time period, just what you were
 16 involved in alone, either doing the original
 17 test or doing a repeat, there are 17 repeats
 18 of estrogen, progesterone.
 19 MS. BUTLER:
 20 A. Um-hm.
 21 CHAYTOR, Q.C.:
 22 Q. Does that seem high to you or was that
 23 typical.
 24 MS. BUTLER:
 25 A. Looking at it there now, it seems high, yes.

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1 CHAYTOR, Q.C.:
 2 Q. Seems high?
 3 MS. BUTLER:
 4 A. Seems high.
 5 CHAYTOR, Q.C.:
 6 Q. So, was this period that I'm pointing out here
 7 in 2002 out of the norm or is that the
 8 frequency with which ER and PR tests were
 9 being repeated?
 10 MS. BUTLER:
 11 A. No, I'm thinking this is a bit of--this time
 12 here seems to be--I can't remember when the,
 13 you know, about repeats that way, but looking
 14 at--if you were following -
 15 CHAYTOR, Q.C.:
 16 Q. That seems high.
 17 MS. BUTLER:
 18 A. That seems high.
 19 CHAYTOR, Q.C.:
 20 Q. Seems high, okay. Was there anything going on
 21 in 2002, was there anything, to your knowledge
 22 going on or any reason why there would be a
 23 high number of repeats in ER and PR in 2002?
 24 MS. BUTLER:
 25 A. Not that I can remember.

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1 CHAYTOR, Q.C.:
 2 Q. Did anyone bring to your attention that there
 3 was concern in 2002 with the ER and PR
 4 testing?
 5 MS. BUTLER:
 6 A. Again, I'm having trouble with the date lines.
 7 CHAYTOR, Q.C.:
 8 Q. Okay, forget date lines. Any time before 2005
 9 did you hear of particular concerns regarding
 10 ER and PR testing?
 11 MS. BUTLER:
 12 A. I'm thinking that when Dr. Ejeckam took over
 13 some testings, there was ER/PR involved in
 14 that, when he was testing out the lymphoma
 15 panel, whatever timeframe that was.
 16 CHAYTOR, Q.C.:
 17 Q. Is that the time period when he suspended
 18 testing of certain stains?
 19 MS. BUTLER:
 20 A. Yes.
 21 CHAYTOR, Q.C.:
 22 Q. So, that would be April -
 23 MS. BUTLER:
 24 A. A six week period there.
 25 CHAYTOR, Q.C.:

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1 Q. That's April 2003.
 2 MS. BUTLER:
 3 A. Okay. So, something was leading up to, you
 4 know what I mean, they were possibly maybe
 5 beginning to notice because I think he was
 6 there then.
 7 CHAYTOR, Q.C.:
 8 Q. And do you remember hearing any discussion
 9 then around that?
 10 MS. BUTLER:
 11 A. No.
 12 CHAYTOR, Q.C.:
 13 Q. Is this what led up to Dr. Ejeckam's concerns,
 14 do you know?
 15 MS. BUTLER:
 16 A. No, not from anybody telling us, no.
 17 CHAYTOR, Q.C.:
 18 Q. Okay. Do you remember any discussion about
 19 concerns in 2002 in this time period about
 20 estrogen receptor or progesterone receptor
 21 testing?
 22 MS. BUTLER:
 23 A. The only thing I can remember is--and again,
 24 if I haven't got to worry about date lines--is
 25 Dr. Ejeckam, I think it was Dr. Ejeckam coming

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1 in and saying we have to do some extra work.
 2 So, if it was around this time, maybe he
 3 initiated it and we would have to do some more
 4 work.
 5 CHAYTOR, Q.C.:
 6 Q. So, you recall Dr. Ejeckam coming and saying
 7 more work needs to be done or you have to do
 8 some work. Was that shortly before he
 9 suspended the testing though or was it months
 10 before?
 11 MS. BUTLER:
 12 A. I'm thinking that--I'm trying to, like, when
 13 Peggy was leaving and just when--it's a time
 14 there, so I'm thinking that's when we did a
 15 lot of work for Dr. Ejeckam, having to--he was
 16 concerned about some with having to repeat
 17 some tests.
 18 CHAYTOR, Q.C.:
 19 Q. Around the time Peggy was leaving.
 20 MS. BUTLER:
 21 A. It was around when Peggy was leaving.
 22 CHAYTOR, Q.C.:
 23 Q. And again, that's April 2003?
 24 MS. BUTLER:
 25 A. Yes. I remember something then of him coming

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1 in himself and not used to pathologists coming
 2 back and talking to you much, I remember him
 3 coming in and I had to do some work for him.
 4 I know I had to do it because I think he got
 5 me to do it because Les was just new and Ken
 6 had been there I think the previous year.
 7 CHAYTOR, Q.C.:
 8 Q. Okay. So, again that would be 2003 time
 9 period.
 10 MS. BUTLER:
 11 A. Yes.
 12 CHAYTOR, Q.C.:
 13 Q. Do you recall Dr. Ejeckam any time before that
 14 expressing concern that -
 15 MS. BUTLER:
 16 A. No, no. I knew Dr. Ejeckam was a pathologist
 17 and--I don't know how long he was there, again
 18 time lines are hard for me, but he didn't act
 19 like--just like the rest of the pathologists,
 20 come in with his own cases, deal with his own
 21 cases and that's how they all did it, dealing
 22 with their own cases.
 23 CHAYTOR, Q.C.:
 24 Q. Okay. So, you didn't see any difference in
 25 Dr, Ejeckam than any of the other pathologists

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1 in terms of taking an interest in the IHC lab
 2 or -
 3 MS. BUTLER:
 4 A. Dr. Ejeckam took more of an interest--you
 5 know, when he'd do his cases and if he felt
 6 that, not even ER/PR, but all the rest of the
 7 antibodies that we were running for him,
 8 sometimes he'd come and tell us about, you
 9 know, if he felt that one wasn't working or if
 10 it should work and things like that. So, he
 11 did take more of an interest.
 12 CHAYTOR, Q.C.:
 13 Q. Yes, okay. So, other than the time that you
 14 then worked with him, and I'm going to get you
 15 to that in--and I understand that may have
 16 been around the time Peggy is leaving, you're
 17 saying, around April 2003.
 18 MS. BUTLER:
 19 A. Yes.
 20 CHAYTOR, Q.C.:
 21 Q. You worked with Dr. Ejeckam.
 22 MS. BUTLER:
 23 A. Yes.
 24 CHAYTOR, Q.C.:
 25 Q. Had he approached you any time before that

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1 about any concerns about ER/PR?
 2 MS. BUTLER:
 3 A. No, only--no, other than with other cases that
 4 he was doing.
 5 CHAYTOR, Q.C.:
 6 Q. Okay. Yes, there was at least one time you
 7 told us that he indicated that his internal
 8 control hadn't worked.
 9 MS. BUTLER:
 10 A. Yes.
 11 CHAYTOR, Q.C.:
 12 Q. And so that was of concern to -
 13 MS. BUTLER:
 14 A. That was definitely an ER/PR.
 15 CHAYTOR, Q.C.:
 16 Q. That was an ER/PR and the test was repeated, I
 17 take it.
 18 MS. BUTLER:
 19 A. Yes.
 20 CHAYTOR, Q.C.:
 21 Q. Okay. And so other than him, like any other
 22 pathologist asking for repeats, you didn't
 23 have any interaction with him in identifying a
 24 problem or working on solving a problem until
 25 April 2003.

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1 MS. BUTLER:
 2 A. Yes, that's right.
 3 CHAYTOR, Q.C.:
 4 Q. Okay. What about any other discussion? Did
 5 anyone else mention anything about any problem
 6 with ER/PR testing prior to Dr. Ejeckam
 7 bringing it up?
 8 MS. BUTLER:
 9 A. Not that I remember ER/PR.
 10 CHAYTOR, Q.C.:
 11 Q. Well, was there any discussion about IHC in
 12 general.
 13 MS. BUTLER:
 14 A. Yeah, IHC general, sometimes they would
 15 because the other antibodies were done in
 16 panels and, I mean, panels, you might run
 17 seven or eight or ten or three, you know what
 18 I mean, depending on what they were asking
 19 for.
 20 CHAYTOR, Q.C.:
 21 Q. And again, that would be to look for repeats,
 22 was that -
 23 MS. BUTLER:
 24 A. No, it was nothing--that was case, when they'd
 25 do a case. If they were doing a melanoma, it

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1 would be three. If they were doing lymphoma,
 2 it could be seven or eight stains. And
 3 scattered times one of those mightn't be to
 4 their satisfactory and they'd come back and
 5 they might talk about it.
 6 CHAYTOR, Q.C.:
 7 Q. Okay. And do you know whether or not anyone
 8 took any action or initiative to try and
 9 determine why there were issues?
 10 MS. BUTLER:
 11 A. No, my biggest recollection is Dr. Ejeckam
 12 working with different antibodies.
 13 CHAYTOR, Q.C.:
 14 Q. Okay. And then tell us what you recall about
 15 that? How did Dr. Ejeckam's issues first come
 16 to your knowledge and what do you remember
 17 about it?
 18 MS. BUTLER:
 19 A. I just remember him coming to me and saying to
 20 me "well, you're the most senior and you know
 21 a bit about doing the stains" and everything,
 22 and that he'd like me to do it.
 23 CHAYTOR, Q.C.:
 24 Q. So he approached you to do that?
 25 MS. BUTLER:

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1 A. To do it, yes.
 2 CHAYTOR, Q.C.:
 3 Q. Okay, and what was it that you understood that
 4 you would have to do?
 5 MS. BUTLER:
 6 A. Just run a lot of different dilutions and show
 7 it to him, dilutions or do different changes
 8 with the antibodies and I had to approach--
 9 because whenever I ran into trouble on an
 10 antibody or felt that it needed to be changed,
 11 I would call Dan Belchowski for his
 12 assistance.
 13 CHAYTOR, Q.C.:
 14 Q. Okay, and he's the gentleman again from DAKO?
 15 MS. BUTLER:
 16 A. Yes, you always had--he was always there
 17 whenever there was a problem.
 18 CHAYTOR, Q.C.:
 19 Q. Okay, and do you recall having to contact him
 20 very often?
 21 MS. BUTLER:
 22 A. Not very often, no.
 23 CHAYTOR, Q.C.:
 24 Q. Okay, and if we--were you aware that Dr.
 25 Ejeckam actually suspended eight stains in

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1 April of 2003?
 2 MS. BUTLER:
 3 A. Yes, I can remember him, you know, like
 4 suspend them, yeah.
 5 CHAYTOR, Q.C.:
 6 Q. Okay.
 7 MS. BUTLER:
 8 A. Until he got satisfied with--he kept doing
 9 them different ways until he got happy with
 10 them.
 11 CHAYTOR, Q.C.:
 12 Q. And that's when you worked with him on that?
 13 MS. BUTLER:
 14 A. That's when I worked with him on it.
 15 CHAYTOR, Q.C.:
 16 Q. If we could look at P-0113, please? And these
 17 are a series of three memos that Dr. Ejeckam
 18 wrote. the first one is April 4th, 2003 and
 19 this is the one where he writes to
 20 pathologists, both Health Science, St. Clare's
 21 and out of town, and it's copied to Barry Dyer
 22 and all technical staff, and he indicates that
 23 "a series of eight stains, including ER and
 24 PR, have remained unreliable, erratic, and
 25 therefore unhelpful for diagnostic purposes.

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1 And consequent on the above, staining with
 2 these antibodies shall stop forthwith until we
 3 can solve the reliability, sensitivity and
 4 specificity problems." Did you receive a copy
 5 of that memo?
 6 MS. BUTLER:
 7 A. I can't remember getting the memo. I remember
 8 doing the work.
 9 CHAYTOR, Q.C.:
 10 Q. You remember doing the work. So he goes on to
 11 say "efforts are under way and hopefully a
 12 solution will be found within the next four to
 13 six weeks." You remember in that time period
 14 then doing the work and working with Dr.
 15 Ejeckam?
 16 MS. BUTLER:
 17 A. I remember working with him and him giving me
 18 all the direction that I needed, with the help
 19 of Dan Belchowski.
 20 CHAYTOR, Q.C.:
 21 Q. Okay, and then we have, on page two of the
 22 exhibit, another memo, May 2nd 2003, which is
 23 written to, again, the pathologists within St.
 24 John's and outside and it's copied to Barry
 25 Dyer and all technical staff on his

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1 immunohistochemistry. Do you recall receiving
 2 a copy of this memo?
 3 MS. BUTLER:
 4 A. No.
 5 CHAYTOR, Q.C.:
 6 Q. You didn't receive it?
 7 MS. BUTLER:
 8 A. No, I'm thinking no, I didn't, just knowing
 9 that I have to do the work, that's all. I
 10 just done his work for him.
 11 CHAYTOR, Q.C.:
 12 Q. And then on June 19th is the third memo, which
 13 is only written to--or addressed to Terry
 14 Gulliver and copied to Dr. Robb, Dr. Cook, Dr.
 15 Parai, and Barry Dyer. So I take it you
 16 didn't receive a copy of this memo, June 19th?
 17 MS. BUTLER:
 18 A. No.
 19 CHAYTOR, Q.C.:
 20 Q. Did you otherwise know that he had written
 21 this memo on June 19th?
 22 MS. BUTLER:
 23 A. Other than a lot of times when he'd come in
 24 the lab, he'd get--he'd sort of express
 25 himself. Dr. Ejeckam had no problem

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1 expressing himself.
 2 CHAYTOR, Q.C.:
 3 Q. And what do you recall Dr. Ejeckam expressing
 4 himself about?
 5 MS. BUTLER:
 6 A. He'd get uptight about things not moving as
 7 fast as he'd like things to move.
 8 CHAYTOR, Q.C.:
 9 Q. And what did you understand him being wanting
 10 to move?
 11 MS. BUTLER:
 12 A. Well, if he couldn't get the management to do
 13 things fast enough for him he wouldn't be
 14 happy.
 15 CHAYTOR, Q.C.:
 16 Q. What changes did you understand Dr. Ejeckam
 17 wanted to have put in place?
 18 MS. BUTLER:
 19 A. Well, I don't think he liked the way we worked
 20 in our rotations and no one being dedicated to
 21 IHC, things like that.
 22 CHAYTOR, Q.C.:
 23 Q. Was there anything else?
 24 MS. BUTLER:
 25 A. No, mostly about, I think more about us being,

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1 some dedicated people to IHC.
 2 CHAYTOR, Q.C.:
 3 Q. And do you recall whether or not he expressed
 4 any concern as to why he thought the dedicated
 5 staff was needed?
 6 MS. BUTLER:
 7 A. So, that we could just dedicate ourselves and
 8 spend our time learning more about it and have
 9 more time to--I guess if you got more time,
 10 you will spend more time in going after more
 11 information, trying to trace down, look for
 12 more troubleshooting and things like that.
 13 CHAYTOR, Q.C.:
 14 Q. So, he was concerned about your -
 15 MS. BUTLER:
 16 A. And more time to research things. Sometimes
 17 when we're testing in between our work as
 18 well, so I guess he didn't like that idea.
 19 CHAYTOR, Q.C.:
 20 Q. So, you were--I'm sorry, you were testing in
 21 between your work?
 22 MS. BUTLER:
 23 A. Yeah, even though those antibodies were
 24 affected, we still had a lot more antibodies
 25 to work with and we still worked for several

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1 other pathologists. He wasn't the only one we
 2 were working for.
 3 CHAYTOR, Q.C.:
 4 Q. Yes. But Dr. Ejeckam wanting to have
 5 dedicated staff, was his concern that the way
 6 the set up was at that point in time with
 7 rotating staff that the work wasn't getting
 8 done. Was it just not getting done
 9 efficiently or was he concerned about the
 10 quality of the work that was being done?
 11 MS. BUTLER:
 12 A. I guess he had concerns about both of them, I
 13 guess.
 14 CHAYTOR, Q.C.:
 15 Q. Did he ever indicate to you that he was
 16 concerned about the slides that were being
 17 produced or the work that was being produced?
 18 MS. BUTLER:
 19 A. No, he never. Like, say with these here, they
 20 picked out, I guess some other pathologist
 21 because four of those stains there are
 22 involved with a lymphoma panel. One is
 23 involved with diagnosing CAs. So, maybe the
 24 other pathologists asked him, maybe they felt
 25 that those stains could use some more work.

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1 CHAYTOR, Q.C.:
 2 Q. Okay. So, do you know that? Do you know if
 3 other pathologists raised issues regarding
 4 these stains and that's what led to the
 5 suspension?
 6 MS. BUTLER:
 7 A. All I'm thinking is sometimes they'd come to
 8 you and ask you to do a stain. And you
 9 wouldn't know it wasn't working until, could
 10 be months later. It could be when someone
 11 else is picking up on a problem, then maybe a
 12 couple of others would come in and say, oh,
 13 that hasn't worked. So, it was no--if you do
 14 a stain, sometimes they'd just put up with it,
 15 I guess, and wouldn't come back until much
 16 later.
 17 CHAYTOR, Q.C.:
 18 Q. So, I just want to understand then. So, there
 19 were times when you would do a run and it may
 20 be a period of months later before somebody
 21 came back to complain or criticize the
 22 outcome?
 23 MS. BUTLER:
 24 A. Well, with a lot of the other antibodies, not-
 25 -more talking about the other antibody panels.

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1 CHAYTOR, Q.C.:
 2 Q. Did that happened with ER and PR?
 3 MS. BUTLER:
 4 A. ER/PR, no, no one complained much about the
 5 ER/PR until later years.
 6 CHAYTOR, Q.C.:
 7 Q. Except to ask for repeats.
 8 MS. BUTLER:
 9 A. Unless they asked for repeats.
 10 CHAYTOR, Q.C.:
 11 Q. So, which stains were they complaining about?
 12 MS. BUTLER:
 13 A. Well, the lymphoma panel used to have
 14 different antibodies, L 26, well that CD 20.
 15 UCH01 used to be one of them and then they
 16 brought in--from my memory now about the
 17 antibodies, some of the coincide with each
 18 other and then they wouldn't be satisfied--
 19 they thought they could work better and they'd
 20 bring in a more sensitive antibody to go along
 21 with, I'm not sure if it's CD3 or CD5, UCHL1
 22 CD5 is comparable to it. So, he might have
 23 brought in a newer antibody, rather than the
 24 older one we dealt with.
 25 CHAYTOR, Q.C.:

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1 Q. Okay. You don't have any recollection of ER
 2 and PR being part of the complaints?
 3 MS. BUTLER:
 4 A. No, other than the repeats we just went
 5 through.
 6 CHAYTOR, Q.C.:
 7 Q. Okay.
 8 THE COMMISSIONER:
 9 Q. Ms. Butler, it just seems to somebody like me
 10 who has not much contact with the lab that
 11 this particular expression by Dr. Ejeckam that
 12 these stains which he has noted here have
 13 remained unreliable, erratic and therefore,
 14 unhelpful for diagnostic purposes, is a fairly
 15 strong statement.
 16 MS. BUTLER:
 17 A. Yes.
 18 THE COMMISSIONER:
 19 Q. Yes. And it just seems odd that you get to
 20 this point without there having been some hint
 21 beforehand that he felt that way about it.
 22 MS. BUTLER:
 23 A. Um-hm.
 24 THE COMMISSIONER:
 25 Q. But are you saying that up until then you

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1 didn't know he had these problems with these
 2 stains?
 3 MS. BUTLER:
 4 A. No, I guess, at some of their meetings, some
 5 of the pathologists must have had chats with
 6 him and then he started to come and ask us to
 7 do some work. And that's when I started, when
 8 he was ready, and I started doing a lot or
 9 work for him.
 10 THE COMMISSIONER:
 11 Q. Okay.
 12 CHAYTOR, Q.C.:
 13 Q. And do you have any knowledge of that, that
 14 there were meetings at which pathologists
 15 expressed concerns regarding these stains?
 16 MS. BUTLER:
 17 A. No, only their--I think they have regular, I
 18 don't know if it's monthly meetings or -
 19 CHAYTOR, Q.C.:
 20 Q. And did Dr. Ejeckam indicate to you or anybody
 21 else indicate to you that that was the reason
 22 why he undertook this effort in 2003?
 23 MS. BUTLER:
 24 A. No, not that I know of.
 25 CHAYTOR, Q.C.:

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1 Q. If we could look, please, at P-2173 and page
 2 three, please. And this is another
 3 requisition or special procedure request form.
 4 This one is dated April 4th, 2003 and Dr.
 5 Denic is the pathologist.
 6 MS. BUTLER:
 7 A. Um-hm.
 8 CHAYTOR, Q.C.:
 9 Q. And you are the histo tech indicated, April,
 10 and there's no date, but it's April '03,
 11 estrogen/progesterone.
 12 MS. BUTLER:
 13 A. Um-hm.
 14 CHAYTOR, Q.C.:
 15 Q. And on the back of this form, is written,
 16 return slides May 27th, '03, problem with
 17 ER/PR antibodies. Is this your handwriting?
 18 MS. BUTLER:
 19 A. Yes.
 20 CHAYTOR, Q.C.:
 21 Q. And what do you recall about that?
 22 MS. BUTLER:
 23 A. Right now, not a lot.
 24 CHAYTOR, Q.C.:
 25 Q. I'm sorry?

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1 MS. BUTLER:
 2 A. Not a lot right now.
 3 CHAYTOR, Q.C.:
 4 Q. And again, this is April 4th that the test was
 5 requested.
 6 MS. BUTLER:
 7 A. Um-hm.
 8 CHAYTOR, Q.C.:
 9 Q. And Dr. Ejeckam's first memo would have been
 10 around this time. So, would that be -
 11 MS. BUTLER:
 12 A. Could have been in among the -
 13 CHAYTOR, Q.C.:
 14 Q. So, this would be around that time -
 15 MS. BUTLER:
 16 A. - time it started.
 17 CHAYTOR, Q.C.:
 18 Q. So, problem with ER/PR antibody -
 19 MS. BUTLER:
 20 A. Maybe I was telling, that was ongoing,
 21 starting to, you know, what I mean, that he
 22 was starting to tell us.
 23 CHAYTOR, Q.C.:
 24 Q. So, you'd send back the slides on May 27th,
 25 '03?

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1 MS. BUTLER:
 2 A. Um-hm.
 3 CHAYTOR, Q.C.:
 4 Q. And perhaps you're indicating, are you, to Dr.
 5 Denic that there is a problem with the
 6 antibodies and that's the reason for the delay
 7 in his tests. Would that be -
 8 MS. BUTLER:
 9 A. It could possibly be.
 10 CHAYTOR, Q.C.:
 11 Q. - it? Otherwise, do you know of any other
 12 problem with the ER/PR antibodies that you'd
 13 be referring to?
 14 MS. BUTLER:
 15 A. Not that I can think of.
 16 CHAYTOR, Q.C.:
 17 Q. Okay. And you did then work with Dr. Ejeckam
 18 in 2003 in trying to optimize the staining for
 19 those various antibodies?
 20 MS. BUTLER:
 21 A. Yes.
 22 CHAYTOR, Q.C.:
 23 Q. It wasn't just ER and PR. It was all of them,
 24 I take it.
 25 MS. BUTLER:

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1 A. All of them together, yeah.
 2 CHAYTOR, Q.C.:
 3 Q. And did he explain to you what he was doing or
 4 why he was doing it?
 5 MS. BUTLER:
 6 A. I'm sure he did. Dr. Ejeckam was--when you
 7 were working with him, he explained a lot of
 8 things.
 9 CHAYTOR, Q.C.:
 10 Q. Well, what did you understand, in particular,
 11 with ER and PR, what did you understand the
 12 problem was?
 13 MS. BUTLER:
 14 A. With ER and PR, I just assumed it was maybe
 15 the antibody being weak because where we wrote
 16 that a bit, weak or things like that. So,
 17 when you say erratic, that would be a sign of
 18 erratic, maybe weak staining and not being
 19 optimum enough.
 20 CHAYTOR, Q.C.:
 21 Q. Okay. So, was there any indication that--he
 22 had indicated to you on one occasion with ER
 23 and PR that his internal control hadn't work.
 24 MS. BUTLER:
 25 A. Yes.

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1 CHAYTOR, Q.C.:
 2 Q. So, I take it on that occasion it hadn't
 3 stained at all, hadn't stained his internal
 4 control.
 5 MS. BUTLER:
 6 A. Hadn't--no, that's right. And I don't know if
 7 the second time, if it did or it did not,
 8 because he didn't let me know then.
 9 CHAYTOR, Q.C.:
 10 Q. Okay. And so you understood that there was
 11 weak staining. Did you understand also there
 12 was concern that there may be no staining,
 13 that the tests might not have been working?
 14 MS. BUTLER:
 15 A. He never said.
 16 CHAYTOR, Q.C.:
 17 Q. So, what was he trying--so, your understanding
 18 is that it was weak staining, is that it?
 19 MS. BUTLER:
 20 A. Weak staining, I'm not--I can't remember him
 21 saying anything about no staining.
 22 CHAYTOR, Q.C.:
 23 Q. Was that just ER or what about PR? What was
 24 the problem with PR?
 25 MS. BUTLER:

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1 A. PR, I don't know because most of the time when
 2 they were working with ER and PR, the put
 3 more, it seemed to me they put more emphasis
 4 on the ER because PR usually always, what we
 5 called over-stained, which could be more, you
 6 know, you could--when it over-stained, meant
 7 it was working almost too much. You needed to
 8 tweak it down.
 9 CHAYTOR, Q.C.:
 10 Q. Okay. And so you were aware of that, that the
 11 PR was thought to over-stain?
 12 MS. BUTLER:
 13 A. Yeah, and they just never, no one ever came to
 14 us to do that. They just left it alone.
 15 CHAYTOR, Q.C.:
 16 Q. What did you then embark upon with Dr.
 17 Ejeckam? What did you do to try to address
 18 the issue, in particular with the ER and PR
 19 stains?
 20 MS. BUTLER:
 21 A. Well, we had to call Dan, Dan Belchowski and
 22 then he started form there and then when Dan
 23 sent us some procedures -
 24 CHAYTOR, Q.C.:
 25 Q. Is that the first thing you did before you did

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1 anything, you contacted the DAKO rep?
 2 MS. BUTLER:
 3 A. The DAKO rep, yes.
 4 CHAYTOR, Q.C.:
 5 Q. Okay. And then, I'm sorry, Mr. Wechowski
 6 (sic.), is it?
 7 MS. BUTLER:
 8 A. Dan Belchowski.
 9 CHAYTOR, Q.C.:
 10 Q. He sent you then some procedures?
 11 MS. BUTLER:
 12 A. He sent us the literature.
 13 CHAYTOR, Q.C.:
 14 Q. Okay. And what literature did he send you?
 15 MS. BUTLER:
 16 A. I think I seen it in my notes. He had
 17 different ways of approaching -
 18 CHAYTOR, Q.C.:
 19 Q. Is it his letter, the letter addressed to you
 20 and Mr. Dyer?
 21 MS. BUTLER:
 22 A. Yes.
 23 CHAYTOR, Q.C.:
 24 Q. Okay, if we could look at -
 25 MS. BUTLER:

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1 A. There might be something in that one--I have
 2 to see it first.
 3 CHAYTOR, Q.C.:
 4 Q. P-2155, please. So, before you started on
 5 anything with Dr. -
 6 MS. BUTLER:
 7 A. No, it was nothing -
 8 CHAYTOR, Q.C.:
 9 Q. Not this? Because this is April -
 10 MS. BUTLER:
 11 A. This might have been the initial--wait now.
 12 CHAYTOR, Q.C.:
 13 Q. So, we'll come back then to this because I
 14 think that might occur later. So, before you
 15 started though you work with Dr. Ejeckam, you
 16 contacted Dan at DAKO.
 17 MS. BUTLER:
 18 A. Yes. Can we just come down through that a
 19 little bit.
 20 CHAYTOR, Q.C.:
 21 Q. There's two pages, sorry. Is this is?
 22 MS. BUTLER:
 23 A. Yes, he's telling me here to -
 24 CHAYTOR, Q.C.:
 25 Q. There is a section on ER/PR here.

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1 MS. BUTLER:
 2 A. He's telling you all the things to do with the
 3 different stains to try to get them to work.
 4 CHAYTOR, Q.C.:
 5 Q. Okay. So, you contacted and this is what you
 6 did before you embarked upon anything with Dr.
 7 Ejeckam, is that right?
 8 MS. BUTLER:
 9 A. I'm thinking about date lines again. I don't
 10 know if I had started. He may have -
 11 CHAYTOR, Q.C.:
 12 Q. May have started -
 13 MS. BUTLER:
 14 A. He may have started, we may have started
 15 seeking out controls and things because when
 16 he was testing some--well, all of these
 17 antibodies, I guess, he would pick blocks that
 18 he knew would be positive for these stains, so
 19 that we would have slides to work with.
 20 CHAYTOR, Q.C.:
 21 Q. And so other than we see two pages here and
 22 it's not signed, but it does indicate that it
 23 came from DAKO up here.
 24 MS. BUTLER:
 25 A. Um-hm.

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1 CHAYTOR, Q.C.:
 2 Q. And do you know, did you see a version of this
 3 that was signed or was it just these two pages
 4 and ended like that?
 5 MS. BUTLER:
 6 A. No, he faxed--I think he faxed those to us.
 7 CHAYTOR, Q.C.:
 8 Q. And was it just the two pages?
 9 MS. BUTLER:
 10 A. I think it was just two pages.
 11 CHAYTOR, Q.C.:
 12 Q. Okay, and -
 13 MS. BUTLER:
 14 A. I think he just faxed it to us and addressed
 15 it to Barry as well.
 16 CHAYTOR, Q.C.:
 17 Q. And so other than that, did he send you
 18 anything else or is this it?
 19 MS. BUTLER:
 20 A. This might be--I'm not sure if this is it or
 21 if there's one more. I don't know if there's
 22 one more, because I remember at the time--this
 23 is April 22nd. I remember at one point, I
 24 didn't--I guess I didn't move fast enough for
 25 Dr. Ejeckam and he wanted Dan's number himself

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1 and he phoned Dan his self and talked to him.
 2 CHAYTOR, Q.C.:
 3 Q. Okay. So that's during this time period, he'd
 4 phoned -
 5 MS. BUTLER:
 6 A. It was during this time period.
 7 CHAYTOR, Q.C.:
 8 Q. - and contacted him himself?
 9 MS. BUTLER:
 10 A. Yes.
 11 CHAYTOR, Q.C.:
 12 Q. And you mentioned though that Dan sent you
 13 literature, and I'm just wondering is this all
 14 that you were sent or were you sent something
 15 besides this?
 16 MS. BUTLER:
 17 A. No, this would be telling us how to -
 18 CHAYTOR, Q.C.:
 19 Q. This is it, is it?
 20 MS. BUTLER:
 21 A. - different things to deal with.
 22 CHAYTOR, Q.C.:
 23 Q. Okay, so this is sort of in a letter format.
 24 MS. BUTLER:
 25 A. Because this is information that--a lot of

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1 this information is on your data sheets with
 2 all antibodies.
 3 CHAYTOR, Q.C.:
 4 Q. Yes.
 5 MS. BUTLER:
 6 A. And then this just might be--we phoned Dan
 7 because he had every antibody that we had. He
 8 had it worked out in his lab as well.
 9 CHAYTOR, Q.C.:
 10 Q. And he says--he writes to Barry Dyer, now what
 11 was Barry's involvement in this?
 12 MS. BUTLER:
 13 A. Well, if I had any issues, I discussed things
 14 with Barry.
 15 CHAYTOR, Q.C.:
 16 Q. Okay, but in terms of the person actually
 17 working with Dr. Ejeckam and doing the
 18 tweaking, as you say, that was just yourself?
 19 MS. BUTLER:
 20 A. Just myself, yes.
 21 CHAYTOR, Q.C.:
 22 Q. Okay, and he writes "I have taken the time to
 23 review the information that Mary provided me
 24 with, and I have provided you with comments
 25 and suggestions for each of the antibodies."

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1 What did you provide Dan Wechowski--is it
 2 Wechowski?
 3 MS. BUTLER:
 4 A. Belchowski.
 5 CHAYTOR, Q.C.:
 6 Q. Belchowski. What did you -
 7 MS. BUTLER:
 8 A. I had phoned him expressing--telling him about
 9 Dr. Ejeckam wanted me to call him.
 10 CHAYTOR, Q.C.:
 11 Q. Okay, and he says though he's taken the time
 12 to review the information that you sent him.
 13 Did you send him anything in writing?
 14 MS. BUTLER:
 15 A. I'm not sure. I know I talked to him, and if
 16 he's saying "time to review" unless he wrote
 17 it down, whatever I--he might have wrote down
 18 everything I expressed to him on the phone,
 19 telling him about the antibodies, that they
 20 were having the trouble with.
 21 CHAYTOR, Q.C.:
 22 Q. He writes "with a little tweaking, I'm sure
 23 that we can have this whole situation ironed
 24 out in no time. As a general comment, it is
 25 going to be important for the future of

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1 consistently standardized results that all
 2 tissues are fixed and processed as identically
 3 as possible." So what information would Mr.
 4 Belchowski have which could lead him to
 5 indicate that tissues were not being fixed and
 6 processed as identically as possible?
 7 MS. BUTLER:
 8 A. I think he was aware that we did tests for
 9 outside hospitals.
 10 CHAYTOR, Q.C.:
 11 Q. Okay.
 12 MS. BUTLER:
 13 A. Like Corner Brook.
 14 CHAYTOR, Q.C.:
 15 Q. So you would have given him that information?
 16 MS. BUTLER:
 17 A. Yes.
 18 CHAYTOR, Q.C.:
 19 Q. Okay, and -
 20 MS. BUTLER:
 21 A. He may have been aware of it.
 22 CHAYTOR, Q.C.:
 23 Q. He also writes "since your control tissues
 24 appear to be staining acceptably" and where
 25 would he get that? Did you send him any

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1 slides, for example? Was he sent any slides?
 2 MS. BUTLER:
 3 A. No, but when he--I remember when he was in
 4 setting up the machine -
 5 CHAYTOR, Q.C.:
 6 Q. Yes.
 7 MS. BUTLER:
 8 A. - he used to look at--he'd do so many runs and
 9 he'd look at his slides.
 10 CHAYTOR, Q.C.:
 11 Q. When had he last been back? Did he come
 12 regularly to your lab?
 13 MS. BUTLER:
 14 A. I remember him being in twice for sure.
 15 CHAYTOR, Q.C.:
 16 Q. Because the machine would have been set up in
 17 '97/98.
 18 MS. BUTLER:
 19 A. Yeah.
 20 CHAYTOR, Q.C.:
 21 Q. So he would have been back in a couple of
 22 times after that?
 23 MS. BUTLER:
 24 A. After that, at least he could have been in--
 25 I'm sure Terry could--maybe Terry -

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1 CHAYTOR, Q.C.:

2 Q. Sorry?

3 MS. BUTLER:

4 A. Maybe Terry could tell you how many times he

5 was in for sure, but I know he was in--like I

6 don't know if it was yearly. But he'd look at

7 some slides. For sure when he set it up, he

8 used to look at slides to compare them.

9 CHAYTOR, Q.C.:

10 Q. Yes, I'm just wondering in April 2003, what

11 knowledge would he have then that "your

12 control tissues appear to be staining

13 acceptably." You don't recall -

14 MS. BUTLER:

15 A. Unless--I can't remember sending him anything,

16 other than a telephone conversation.

17 CHAYTOR, Q.C.:

18 Q. Okay, so you don't remember sending him any

19 slides?

20 MS. BUTLER:

21 A. Unless Dr. Ejeckam had something to do with

22 it.

23 CHAYTOR, Q.C.:

24 Q. Okay, and would you have provided him

25 information on that and told him that the

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1 control tissues were staining acceptably?

2 Would you have been able to give him that

3 assurance?

4 MS. BUTLER:

5 A. I guess I could, and Dr. Ejeckam could have

6 given it to him as well.

7 CHAYTOR, Q.C.:

8 Q. Okay, and there were occasions though, as I

9 took you through in 2002, where you yourself

10 noted that your control slides were staining

11 weakly?

12 MS. BUTLER:

13 A. Weakly, yes.

14 CHAYTOR, Q.C.:

15 Q. You don't know -

16 MS. BUTLER:

17 A. But that only happened--it didn't happen

18 consistently. That might happen sporadically.

19 CHAYTOR, Q.C.:

20 Q. Yes. You don't recall telling that though to

21 Dan?

22 MS. BUTLER:

23 A. I can't remember, no.

24 CHAYTOR, Q.C.:

25 Q. "It is reasonable to think that operating a

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1 regional testing centre--it is reason to think

2 that the variability in staining is due to a

3 variability in tissue preparation. Since you

4 are operating a regional testing centre and

5 you receive samples from hospitals all across

6 the province, I realize that it is difficult

7 to control the conditions under which tissue

8 is prepared in all cases. However, it might

9 be a good idea to get some guidelines for the

10 other hospitals so that you always know what

11 you are dealing with. For example, you could

12 send out a letter saying that all specimens

13 must be fixed within 18 to 24 hours in ten

14 percent neutral buffered formalin." And was

15 that the standard at the Health Sciences in

16 April of 2003, 18 to 24 hours fixation in ten

17 percent neutral buffered formalin?

18 MS. BUTLER:

19 A. Larger specimens, yeah.

20 CHAYTOR, Q.C.:

21 Q. Pardon me?

22 MS. BUTLER:

23 A. Yes, for large specimens.

24 CHAYTOR, Q.C.:

25 Q. Okay. "Since this will not necessarily be

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1 possible in all cases, i.e. at the end of a

2 work week, you could ask the hospital to

3 specify the precise fixation conditions if

4 they deviate from the recommended ones. This

5 will help you establishing a solid connection

6 between IHC results and the condition that the

7 tissue was shipped to you in. I'm not sure

8 how much of this, if any, will be possible for

9 you to accomplish, given the practical and

10 political situation." What did you understand

11 him to mean by that, "the practical and

12 political situation"?

13 MS. BUTLER:

14 A. Well, dealing with different pathologists, I

15 would think, and being able to convey to them

16 how important fixation was.

17 CHAYTOR, Q.C.:

18 Q. And had that been an issue?

19 MS. BUTLER:

20 A. Well, with blocks coming over from St.

21 Clare's, there used to be, well, with the

22 reprocessing issue.

23 THE COMMISSIONER:

24 Q. I'm sorry, I didn't hear what you said.

25 MS. BUTLER:

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1 A. Blocks coming over from St. Clare's and then
 2 coming in from, I think, Western Memorial
 3 particularly. They seemed to have fixation
 4 problems, just by appearance of blocks.
 5 CHAYTOR, Q.C.:
 6 Q. Okay, so Western and St. Clare's, and you
 7 mentioned with St. Clare's, you said given -
 8 MS. BUTLER:
 9 A. Well, reprocessing, as far as I know,
 10 reprocessing has problems with producing a
 11 good slide.
 12 CHAYTOR, Q.C.:
 13 Q. Yes, and were you aware of that at the time,
 14 reprocessing, that it could -
 15 MS. BUTLER:
 16 A. No, I wasn't aware they were reprocessing, but
 17 listening to what--where like Dr. Ejeckam,
 18 when he was dealing with these issues, I
 19 assume he wanted to go back to the initial
 20 step too of being able to produce good slide,
 21 which would be right from the formalin step.
 22 So I would think he would have that uppermost
 23 in his mind.
 24 CHAYTOR, Q.C.:
 25 Q. The issue though of St. Clare's and the

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1 question had been about the practical and
 2 political situation and you'd mentioned St.
 3 Clare's and Western in particular and St.
 4 Clare's reprocessing. Were you aware at the
 5 time about any particular pitfalls of
 6 reprocessing blocks?
 7 MS. BUTLER:
 8 A. Just reprocessing or like you have a fair bit
 9 of wash off, so I'm pretty well sure the
 10 literature said that formalin improperly fixed
 11 or processed, that they would wash off a lot.
 12 CHAYTOR, Q.C.:
 13 Q. And you were aware of that at the time?
 14 MS. BUTLER:
 15 A. Yes.
 16 CHAYTOR, Q.C.:
 17 Q. And do you know whether or not that had ever
 18 been discussed or brought to the attention of
 19 St. Clare's?
 20 MS. BUTLER:
 21 A. No, not that I know of.
 22 THE COMMISSIONER:
 23 Q. So, can I conclude then from what you're
 24 saying is that you observed particularly in
 25 respect of these two sources of your blocks

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1 that there seemed to be problems with them
 2 washing off?
 3 MS. BUTLER:
 4 A. Yes.
 5 THE COMMISSIONER:
 6 Q. Is that how you come to the conclusion that it
 7 was a problem?
 8 MS. BUTLER:
 9 A. When we'd see a lot of wash off.
 10 THE COMMISSIONER:
 11 Q. And that seemed to happen particularly in
 12 relation to those hospitals?
 13 MS. BUTLER:
 14 A. Um.
 15 THE COMMISSIONER:
 16 Q. Is that what you're saying? Okay. Ms.
 17 Chaytor, wherever you want to take a break, we
 18 can do so.
 19 CHAYTOR, Q.C.:
 20 Q. Okay, I'll just finish up then with this
 21 letter.
 22 THE COMMISSIONER:
 23 Q. Okay.
 24 CHAYTOR, Q.C.:
 25 Q. Then he goes on to offer a couple of specific

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1 comments regarding individual antibodies and
 2 with respect to ER/PR, on page two, he writes
 3 "as discussed, for these three antibodies"--so
 4 had you had discussions, apart from this,
 5 after your initial contact with him, had you
 6 had discussions back and forth?
 7 MS. BUTLER:
 8 A. Myself and Dr. Ejeckam you mean?
 9 CHAYTOR, Q.C.:
 10 Q. No, this is Dan from DAKO.
 11 MS. BUTLER:
 12 A. Once he gave me these things here.
 13 CHAYTOR, Q.C.:
 14 Q. Okay, but he writes "as discussed, for these
 15 three antibodies." So had you discussed it
 16 with him?
 17 MS. BUTLER:
 18 A. Discussed--I told him what I was doing, so
 19 then I would assume that all these methods, if
 20 I was having problems with them, I would tell
 21 him. He would ask me what I was doing with
 22 them at present.
 23 CHAYTOR, Q.C.:
 24 Q. Okay. So in terms of him giving you any
 25 guidance before he actually writes this on

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<p>1 April 23rd or giving you any--he says "as 2 discussed for these three antibodies" and then 3 he goes on from there. Do you recall having 4 had discussions with him prior to receiving 5 this letter, other than your initial contact 6 to him? 7 MS. BUTLER: 8 A. No, my initial contact with telling him my 9 problem. 10 CHAYTOR, Q.C.: 11 Q. Okay. 12 MS. BUTLER: 13 A. And talking to him about - 14 CHAYTOR, Q.C.: 15 Q. And what did you tell him your problem was? 16 MS. BUTLER: 17 A. Well, talking about cyclin and ER/PR? 18 CHAYTOR, Q.C.: 19 Q. Yes. 20 MS. BUTLER: 21 A. I would think that it was where saying to him 22 that Dr. Ejeckam said it wasn't staining 23 properly and that we'd like to try to get it 24 to stain better. As it goes to--I really 25 can't remember the extent, if it was up and</p>	<p>1 MS. BUTLER: 2 A. Yes, we were using 30 minutes. 3 CHAYTOR, Q.C.: 4 Q. You were using 30 minutes. 5 MS. BUTLER: 6 A. One in 50 at 30 minutes. 7 CHAYTOR, Q.C.: 8 Q. Yes, because the one out of 50 is your 9 dilution? 10 MS. BUTLER: 11 A. Yes. 12 CHAYTOR, Q.C.: 13 Q. But this is saying 60 minutes. 14 MS. BUTLER: 15 A. Yes. 16 CHAYTOR, Q.C.: 17 Q. Okay. "Perform antigen retrieval using target 18 retrieval solution by your previously employed 19 Vision Ware boiling method." Is that anything 20 different in that? 21 MS. BUTLER: 22 A. That's where we--where I told you we boiled in 23 the pot. 24 CHAYTOR, Q.C.: 25 Q. Yes.</p>
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<p>1 down, weak or just needed to be tweaked. I 2 just can't remember that. 3 CHAYTOR, Q.C.: 4 Q. And I take it you have no other documentation 5 or any notes that you took of your discussions 6 with him? 7 MS. BUTLER: 8 A. No. 9 CHAYTOR, Q.C.: 10 Q. "As discussed, for these three antibodies, 11 extend all primary antibody dilutions to 60 12 minutes." What had you been using for ER? 13 MS. BUTLER: 14 A. 30. 15 CHAYTOR, Q.C.: 16 Q. And what had you been using for PR? 17 MS. BUTLER: 18 A. Wait now, antibody dilutions you mean? 19 CHAYTOR, Q.C.: 20 Q. Yes. 21 MS. BUTLER: 22 A. One in 50, I think it was. 23 CHAYTOR, Q.C.: 24 Q. Okay. So he's suggesting that you extend your 25 antibody dilutions to 60 minutes?</p>	<p>1 MS. BUTLER: 2 A. On the hot plate. 3 CHAYTOR, Q.C.: 4 Q. Yes, okay. So was this anything different? 5 He's asking--he's saying that you perform 6 antigen retrieval using this solution, S1699, 7 by your previously employed Vision Ware 8 boiling method. So is this a new solution 9 that he's suggesting? 10 MS. BUTLER: 11 A. I'm not sure. I'd have to--I thought that was 12 the one we used regularly, but there was two 13 of them. I'm not sure right now. 14 CHAYTOR, Q.C.: 15 Q. Okay. "Both ER and PR should work at one to 16 50." So that's your dilution. 17 MS. BUTLER: 18 A. Um-hm. 19 CHAYTOR, Q.C.: 20 Q. Okay. "If the staining is still inadequate, 21 you should try using the high pH target 22 retrieval solution for antigen retrieval. The 23 high pH buffer produces the best results for 24 all three of these antibodies, although tissue 25 damage or loss can occur if the tissues are</p>

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1 improperly fixed or improperly trimmed of
 2 fat." And I take it you did have experience
 3 with that?
 4 MS. BUTLER:
 5 A. Yeah.
 6 CHAYTOR, Q.C.:
 7 Q. Yes. Over here, it's 97 degrees in the
 8 margin. Did you write that there?
 9 MS. BUTLER:
 10 A. I think so, but I don't know why.
 11 CHAYTOR, Q.C.:
 12 Q. And what was that intended to mean?
 13 MS. BUTLER:
 14 A. I can't think right now.
 15 CHAYTOR, Q.C.:
 16 Q. Sorry?
 17 MS. BUTLER:
 18 A. I can't think right now.
 19 CHAYTOR, Q.C.:
 20 Q. Is that how you would--the temperature for
 21 your antigen retrieval?
 22 MS. BUTLER:
 23 A. The antigen retrieval temp was 95 to 99.
 24 CHAYTOR, Q.C.:
 25 Q. So you don't know what this 97 is?

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1 MS. BUTLER:
 2 A. No.
 3 CHAYTOR, Q.C.:
 4 Q. "It is important to note that all three of
 5 these antibodies are nuclear markers." Would
 6 you have been aware of that before this, April
 7 of 2003?
 8 MS. BUTLER:
 9 A. I think I knew they were nuclear markers, yes.
 10 CHAYTOR, Q.C.:
 11 Q. "It has been our experience that while a
 12 thorough antigen retrieval can yield
 13 successful results with the EnVision polymer
 14 K1491, other methods of detection can yield
 15 better results for these nuclear markers. It
 16 is suspected that the reason for this is that
 17 the very large size of the polymer makes it
 18 difficult to penetrate both the cell and
 19 nuclear membranes. I would like to offer you
 20 samples of the detection kits LSAB plus and
 21 EnVision plus. If you are happier with
 22 staining that you achieve with these detection
 23 reagents, it is very easy to incorporate them
 24 into your auto stainer programming, at the
 25 same time, keeping EnVision for all of other

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1 markers." Do you know whether or not--and
 2 written down here is LSAB. Do you know was
 3 there--did you take Dan up on this, the
 4 samples of these two detection kits?
 5 MS. BUTLER:
 6 A. I'm thinking when the change came, it might
 7 have been we used to use EnVisions and I'm
 8 thinking ER/PR we went to EnVision plus, but I
 9 can't really--it's been a long time.
 10 CHAYTOR, Q.C.:
 11 Q. So in terms of any process changes that came
 12 out of this, do you recall what changes --
 13 what was tweaked or what came out of this 2003
 14 investigation by Dr. Ejeckam?
 15 MS. BUTLER:
 16 A. All of them or just ER/PR?
 17 CHAYTOR, Q.C.:
 18 Q. ER and PR?
 19 MS. BUTLER:
 20 A. ER and PR. I remember we changed dilutions,
 21 and I' thinking we added EnVisions +.
 22 CHAYTOR, Q.C.:
 23 Q. Did you change your antigen retrieval?
 24 MS. BUTLER:
 25 A. To be absolutely sure, I'd have to really see

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1 my -- what my 1699 is because there was two
 2 antigen retrieval solutions. One was high and
 3 one was low, and we used to use six, I think
 4 it was.
 5 CHAYTOR, Q.C.:
 6 Q. If we could, please, look at P-2177, and then
 7 I promise we'll take the break. Page seven,
 8 please, of that document, Registrar, and this
 9 is specification sheet for DAKO, and April 3rd
 10 '03 is written here, and we see 1 out of 50.
 11 MS. BUTLER:
 12 A. Yes.
 13 CHAYTOR, Q.C.:
 14 Q. So would that be your dilution?
 15 MS. BUTLER:
 16 A. Yes.
 17 CHAYTOR, Q.C.:
 18 Q. And is that your handwriting?
 19 MS. BUTLER:
 20 A. I'm not going to swear to that one. I can't
 21 say if it is or not.
 22 CHAYTOR, Q.C.:
 23 Q. And page 11, please.
 24 MS. BUTLER:
 25 A. It may be -- that's my writing.

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1 CHAYTOR, Q.C.:

2 Q. That's your writing, 1 out of 20 as of April

3 28th, 2003?

4 MS. BUTLER:

5 A. Yes.

6 CHAYTOR, Q.C.:

7 Q. And when would you have written that there?

8 Would that be something that was written back

9 in April of 2003?

10 MS. BUTLER:

11 A. Yes.

12 CHAYTOR, Q.C.:

13 Q. So going from the beginning of April, 1 to 50,

14 to 1 to 20 at the end of April --

15 MS. BUTLER:

16 A. Yes.

17 CHAYTOR, Q.C.:

18 Q. Did that come out of the process with Dr.

19 Ejeckam?

20 MS. BUTLER:

21 A. I thinking yes.

22 CHAYTOR, Q.C.:

23 Q. And Dan from DAKO had indicated in his letter,

24 if you recall, both ER and PR should work at

25 1/50, but you ultimately -- you ultimately

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1 went with 1 to 20, I take it?

2 MS. BUTLER:

3 A. 1 to 20, yeah.

4 CHAYTOR, Q.C.:

5 Q. Okay.

6 MS. BUTLER:

7 A. Because we were using 1 to 50.

8 CHAYTOR, Q.C.:

9 Q. You were using 1/50, that's right. So after

10 the tweaking by Dr. Ejeckam and the testing

11 that you went through with him, which I'll

12 take you through after the break, you arrived

13 at 1 to 20?

14 MS. BUTLER:

15 A. One to 20.

16 CHAYTOR, Q.C.:

17 Q. Okay, thank you, Commissioner.

18 COMMISSIONER:

19 Q. Okay, we'll take the afternoon break.

20 (RECESS)

21 COMMISSIONER:

22 Q. Ms. Chaytor.

23 CHAYTOR, Q.C.:

24 Q. Thank you, Commissioner. If we could have,

25 please, P-2190. Actually I have another

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1 exhibit to enter too. I should do that before

2 I forget. It's P-1842, please.

3 REGISTRAR:

4 Q. 1842?

5 CHAYTOR, Q.C.:

6 Q. Yes, thank you.

7 CHAYTOR, Q.C.:

8 Q. And P-2190, Ms. Butler, these are a number of

9 what I understand to be your worksheets. We

10 looked at one earlier that you provided to us,

11 and they start at April 9th on the first page

12 and go through to -- I believe there's 31

13 pages altogether. If we could have page 31.

14 Page 31, please, Registrar, and this is -- I

15 understand to be December 10th, 2003. If we

16 could just go back please to page one. So

17 it's worksheets that we've been provided.

18 Perhaps you could tell the -- throughout 2003,

19 starting April 9th, 2003. Perhaps you could

20 tell the Commissioner what those worksheets

21 are, how did you come across these worksheets?

22 MS. BUTLER:

23 A. Come across these?

24 CHAYTOR, Q.C.:

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1 Q. Yes.

2 MS. BUTLER:

3 A. I think where I've been -- I'm retiring in the

4 last -- I started retiring five years ago, so

5 I've been cleaning up papers.

6 COMMISSIONER:

7 Q. Normally it takes that long.

8 MS. BUTLER:

9 A. It's taking me a long time. I just started

10 cleaning up things, that's all, and I just --

11 I may have left them around because sometimes

12 I never took my units, and I just leave them

13 around and forget about them.

14 CHAYTOR, Q.C.:

15 Q. So normally what would happen to your

16 worksheets after -- at the end of the day?

17 MS. BUTLER:

18 A. At the end of the day -- I think it depended

19 on the person. I just kept mine around for a

20 while. If I was working on something -- if,

21 like, if you did a case and then you sent it

22 over to the pathologist, I just like to keep

23 my sheets around in case they sent something

24 back.

25 CHAYTOR, Q.C.:

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1 Q. So did you keep all of your worksheets or this
 2 is just a sample of what --
 3 MS. BUTLER:
 4 A. Some -- I would say mainly because I didn't
 5 take units, I kept some of these around.
 6 CHAYTOR, Q.C.:
 7 Q. I'm sorry, because of what?
 8 MS. BUTLER:
 9 A. Taking the daily units that you were required
 10 to take to justify your hours of work.
 11 CHAYTOR, Q.C.:
 12 Q. Okay, and -- so you kept your -- you kept most
 13 of your worksheets?
 14 MS. BUTLER:
 15 A. Yeah, because if you see -- if you see "UT"
 16 written on it, if I had taken my units, and
 17 then some of them if you saw -- if "UT" would
 18 be on them, that would say that I took my
 19 units, but I just kept them around, never
 20 bothered to throw them away.
 21 CHAYTOR, Q.C.:
 22 Q. Okay, and did you -- would, though -- are
 23 these complete, do you think, for the time
 24 period, April to December? Would this be all
 25 of your worksheets?

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1 MS. BUTLER:
 2 A. I wouldn't be able to say that.
 3 CHAYTOR, Q.C.:
 4 Q. Were any of your worksheets --
 5 MS. BUTLER:
 6 A. Because some of them you might find might have
 7 an "A" or a "B" on it.
 8 CHAYTOR, Q.C.:
 9 Q. Yes.
 10 MS. BUTLER:
 11 A. And that'll be --
 12 CHAYTOR, Q.C.:
 13 Q. Sometimes we have a "B" and we have no "A".
 14 MS. BUTLER:
 15 A. Yeah, so that might be the -- the "A" run
 16 might have been -- it might have been three
 17 runs, "A", "B", and "C".
 18 CHAYTOR, Q.C.:
 19 Q. Okay, and so -- I just want to get some sense
 20 of whether or not these were kept somewhere
 21 secure that you have any sense that these, in
 22 fact, are all your worksheets in that time
 23 period?
 24 MS. BUTLER:
 25 A. Mostly I know they're mine because I know my

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1 writing.
 2 CHAYTOR, Q.C.:
 3 Q. Yes, okay, but whether or not it's a complete
 4 set of not, you're not able to say?
 5 MS. BUTLER:
 6 A. No. I know this sheet here is where I was --
 7 CHAYTOR, Q.C.:
 8 Q. Yes, and I'll ask you about what they are in
 9 particular now. I just want to get some sense
 10 of what we actually have here. The time
 11 period that we're dealing with here, starting
 12 April 9th, is around the time period you get
 13 involved, I understand, with what Dr. Ejeckam
 14 was doing in 2003?
 15 MS. BUTLER:
 16 A. Yes.
 17 CHAYTOR, Q.C.:
 18 Q. Okay, and were any of your worksheets
 19 destroyed at any particular point in time?
 20 MS. BUTLER:
 21 A. At one point we had a flood in the lab and a
 22 lot of the area -- one of our areas were
 23 affected, the drawers that used to keep a lot
 24 of those things.
 25 CHAYTOR, Q.C.:

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1 Q. So some of your worksheets may have been
 2 destroyed then?
 3 MS. BUTLER:
 4 A. Yes.
 5 CHAYTOR, Q.C.:
 6 Q. And what about -- is there anything else that
 7 got affected by the flood at that time? Was
 8 there any damage to any of the equipment in
 9 the lab?
 10 MS. BUTLER:
 11 A. No, because I think the Ventana -- it happened
 12 during Ventana and our lab down back was not
 13 affected, only the main lab was affected.
 14 CHAYTOR, Q.C.:
 15 Q. And do you recall that the -- do you recall
 16 when that was? When was the flood?
 17 MS. BUTLER:
 18 A. No, I tried to the other night, but I couldn't
 19 do it.
 20 CHAYTOR, Q.C.:
 21 Q. And do you recall whether you had to move to
 22 the university for a period of time?
 23 MS. BUTLER:
 24 A. I can remember having to move to the -- the
 25 main lab had to move to the university. We

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1 were able to continue our work down in back.
 2 CHAYTOR, Q.C.:
 3 Q. So the IHC lab didn't move?
 4 MS. BUTLER:
 5 A. No.
 6 CHAYTOR, Q.C.:
 7 Q. All right. So there we go, page one then of
 8 this exhibit, and perhaps you could tell us
 9 what's going on here, what's this -- this is a
 10 standard worksheet, I take it, that you use
 11 each day?
 12 MS. BUTLER:
 13 A. Yes.
 14 CHAYTOR, Q.C.:
 15 Q. And these are the slide numbers up to 48 that
 16 we talked about earlier?
 17 MS. BUTLER:
 18 A. Yes.
 19 CHAYTOR, Q.C.:
 20 Q. And then your antibody that you're using?
 21 MS. BUTLER:
 22 A. I think we were figuring out controls then to
 23 use for the -- to start working on the actual
 24 cases. These weren't cases. Even though --
 25 they're cases, but known cases that should be

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1 positive, and I'm thinking that was controls
 2 myself and Dr. Ejeckam were working on.
 3 CHAYTOR, Q.C.:
 4 Q. Okay, and this over here, 1 to 50, 1 to 100,
 5 those would be what?
 6 MS. BUTLER:
 7 A. I'm thinking those were all the different
 8 blocks and we were trying to pick out the best
 9 control that would work.
 10 CHAYTOR, Q.C.:
 11 Q. So are these blocks under the "comments"
 12 section? Is that what that is?
 13 MS. BUTLER:
 14 A. Yeah, those are -- like, this would be -- 1 to
 15 3 would be Thymus, which would be a control.
 16 CHAYTOR, Q.C.:
 17 Q. This over here under the "comments" section?
 18 MS. BUTLER:
 19 A. That would be 1 in 50, the dilution.
 20 CHAYTOR, Q.C.:
 21 Q. That's your dilutions, okay.
 22 MS. BUTLER:
 23 A. Dilutions.
 24 CHAYTOR, Q.C.:
 25 Q. And then on the next page then, we don't -- do

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1 we have any ER/PR?
 2 MS. BUTLER:
 3 A. No.
 4 CHAYTOR, Q.C.:
 5 Q. I don't see any ER/PR.
 6 MS. BUTLER:
 7 A. That's all the other antibodies.
 8 CHAYTOR, Q.C.:
 9 Q. Okay, and on page three, April 11th.
 10 MS. BUTLER:
 11 A. Yeah, and on this one there's actual patient's
 12 cases on this.
 13 CHAYTOR, Q.C.:
 14 Q. Okay. So, for example, on slide one there's
 15 ER?
 16 MS. BUTLER:
 17 A. Yes.
 18 CHAYTOR, Q.C.:
 19 Q. And then this is a patient number?
 20 MS. BUTLER:
 21 A. Yes.
 22 CHAYTOR, Q.C.:
 23 Q. What does CS stand for?
 24 MS. BUTLER:
 25 A. Cytology.

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1 CHAYTOR, Q.C.:
 2 Q. Cytology?
 3 MS. BUTLER:
 4 A. Yes.
 5 CHAYTOR, Q.C.:
 6 Q. And what does "S" stand for?
 7 MS. BUTLER:
 8 A. It's the Health Science.
 9 CHAYTOR, Q.C.:
 10 Q. And what's "SS"?
 11 MS. BUTLER:
 12 A. St. Clare's.
 13 CHAYTOR, Q.C.:
 14 Q. So this is a St. Clare's patient at number
 15 five?
 16 MS. BUTLER:
 17 A. Yes.
 18 CHAYTOR, Q.C.:
 19 Q. And then number six is PR for that same
 20 patient?
 21 MS. BUTLER:
 22 A. Yes.
 23 CHAYTOR, Q.C.:
 24 Q. And number one, Cytology, what -- would that
 25 be a Health Science patient?

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1 MS. BUTLER:
 2 A. I'm thinking CS -- we used to say "CY". I
 3 think that was St. Clare's Cytology.
 4 CHAYTOR, Q.C.:
 5 Q. Okay. So then this would be -- when we see
 6 the patient number and then no number next to
 7 the PR, that means that it's the same patient
 8 above, is that right?
 9 MS. BUTLER:
 10 A. Yes.
 11 CHAYTOR, Q.C.:
 12 Q. Okay, and these are all this whole day. It
 13 looks to be all ER/PRs?
 14 MS. BUTLER:
 15 A. Yes.
 16 CHAYTOR, Q.C.:
 17 Q. Now if we look at this patient at slide number
 18 15, ER, and we have a patient number from St.
 19 Clare's, and then we have PR, and then ER/PR
 20 again. What does that tell us?
 21 MS. BUTLER:
 22 A. It's telling me I have two blocks, and I
 23 didn't identify the letter on the block.
 24 CHAYTOR, Q.C.:
 25 Q. So you have two blocks for the one patient?

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1 MS. BUTLER:
 2 A. Yes.
 3 CHAYTOR, Q.C.:
 4 Q. Okay, and so you're running two ER slides and
 5 two PR slides for the one patient?
 6 MS. BUTLER:
 7 A. Yes.
 8 CHAYTOR, Q.C.:
 9 Q. And why would you do that? Was that a common
 10 thing to do?
 11 MS. BUTLER:
 12 A. Yes, they could ask for up to several blocks
 13 sometimes.
 14 CHAYTOR, Q.C.:
 15 Q. So pathologists would sometimes ask for more
 16 than one?
 17 MS. BUTLER:
 18 A. Yes.
 19 CHAYTOR, Q.C.:
 20 Q. Okay, and --
 21 MS. BUTLER:
 22 A. And I'm still thinking even though where this
 23 is in here, I'm not sure if I was running
 24 patients or if it was -- actual patients, what
 25 I mean by that, or if Dr. Ejeckam was picking

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1 out some cases for us to use.
 2 CHAYTOR, Q.C.:
 3 Q. Okay.
 4 MS. BUTLER:
 5 A. So I can't answer why.
 6 CHAYTOR, Q.C.:
 7 Q. Okay, well, I might be able to help you with
 8 that as we go along because it appears that
 9 some, if not all of these, certainly would be
 10 -- certainly real patients and tests that are,
 11 in fact, repeated later.
 12 MS. BUTLER:
 13 A. Yes.
 14 CHAYTOR, Q.C.:
 15 Q. All right, and -- in fact, a number of these
 16 you will see -- this is April 11th '03 and
 17 then they're repeated on May 2nd, and that's
 18 included in your worksheets as well. So over
 19 here you've written controls and you have, I
 20 take it, two ER controls and two PR controls?
 21 MS. BUTLER:
 22 A. Yes.
 23 CHAYTOR, Q.C.:
 24 Q. For this batch, and then what is the CD20 and
 25 then you have different dilutions?

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1 MS. BUTLER:
 2 A. That was one of the antibodies that he was
 3 testing out. CD20 is L26.
 4 CHAYTOR, Q.C.:
 5 Q. Okay.
 6 MS. BUTLER:
 7 A. So I'm not sure how it was written in Dan's
 8 notes or --
 9 CHAYTOR, Q.C.:
 10 Q. Okay, and so this, you think, would be a
 11 regular testing day or it may be some that Dr.
 12 Ejeckam has picked out for testing?
 13 MS. BUTLER:
 14 A. Yeah.
 15 CHAYTOR, Q.C.:
 16 Q. So, for example, at number nine we see a 2002
 17 case.
 18 MS. BUTLER:
 19 A. Uh-hm.
 20 CHAYTOR, Q.C.:
 21 Q. Do you know why that would be?
 22 MS. BUTLER:
 23 A. No, unless he was -- unless someone -- if it
 24 was a real case, someone could be checking --
 25 had a known issue with an '02 case and come

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1 back to get it redone.
 2 CHAYTOR, Q.C.:
 3 Q. Okay, and for those cases otherwise for them
 4 to be tested by Dr. Ejeckam, you say you're
 5 not sure -- they would all be real patients?
 6 MS. BUTLER:
 7 A. Yes.
 8 CHAYTOR, Q.C.:
 9 Q. But are you suggesting that perhaps these are
 10 people who already had ER/PR tests performed
 11 and he's repeating them?
 12 MS. BUTLER:
 13 A. Possibly, yes.
 14 CHAYTOR, Q.C.:
 15 Q. That could be, and this was part of trying to
 16 figure out or adjust the --
 17 MS. BUTLER:
 18 A. Adjust the antibody or maybe it was an issue
 19 that we didn't know about that he was working
 20 on.
 21 CHAYTOR, Q.C.:
 22 Q. Okay, the next page then, I don't think
 23 there's anything with ER/PR on that page?
 24 MS. BUTLER:
 25 A. No, different antibodies.

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1 CHAYTOR, Q.C.:
 2 Q. And on Monday, April 14th, 2003, page five,
 3 over on -- there doesn't appear to be any
 4 tests run on ER/PR, but over in slide 34
 5 through to 40 -- or 34, 35, 36, and then you
 6 skip 37 --
 7 MS. BUTLER:
 8 A. Yeah.
 9 CHAYTOR, Q.C.:
 10 Q. 38, 39, 40.
 11 MS. BUTLER:
 12 A. This would be -- I'm making a notation there.
 13 Obviously, I'm thinking about -- it's not part
 14 of the run, and I'm thinking about ER/PR and
 15 what I was going to use, some dilutions.
 16 CHAYTOR, Q.C.:
 17 Q. I'm sorry, these aren't part of your --
 18 MS. BUTLER:
 19 A. They're not a part of running, they're a part
 20 of -- I was thinking out dilutions that I was
 21 going to use because I think I had had -- I'm
 22 trying to think why I got 1 in 20 next to 1 in
 23 10.
 24 CHAYTOR, Q.C.:
 25 Q. Yes.

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1 MS. BUTLER:
 2 A. Because -- unless it's again it was two blocks
 3 or something like that I'm using two. I'm
 4 thinking about controls, but it's not part of
 5 the run.
 6 CHAYTOR, Q.C.:
 7 Q. So you wrote this on your sheet?
 8 MS. BUTLER:
 9 A. Yes.
 10 CHAYTOR, Q.C.:
 11 Q. On your worksheet, but this is not part of
 12 what you put --
 13 MS. BUTLER:
 14 A. Not a part of that run, no.
 15 CHAYTOR, Q.C.:
 16 Q. Into the machine on April 14th?
 17 MS. BUTLER:
 18 A. No.
 19 CHAYTOR, Q.C.:
 20 Q. And how do you know that?
 21 MS. BUTLER:
 22 A. Because I wouldn't separate them like that.
 23 I'd never put -- I'd never put slides separate
 24 like that.
 25 CHAYTOR, Q.C.:

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1 Q. You wouldn't separate your slides like that?
 2 MS. BUTLER:
 3 A. No, everything would come in order.
 4 CHAYTOR, Q.C.:
 5 Q. Because it appears over here this is what
 6 you're doing for other antibodies over here.
 7 You have different dilutions happening as
 8 well.
 9 MS. BUTLER:
 10 A. Yes.
 11 CHAYTOR, Q.C.:
 12 Q. But you're saying you didn't do any testing on
 13 ER/PR that day?
 14 MS. BUTLER:
 15 A. Not on that run.
 16 CHAYTOR, Q.C.:
 17 Q. And you can't tell us why you would have 1 to
 18 10 and then in brackets --
 19 MS. BUTLER:
 20 A. No.
 21 CHAYTOR, Q.C.:
 22 Q. 1 to 20.
 23 MS. BUTLER:
 24 A. No, because I'm doing the same with the PR
 25 there.

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<p>1 CHAYTOR, Q.C.:</p> <p>2 Q. The PR then looks like 1 to 25, is it, and</p> <p>3 then in brackets, 1 to 100?</p> <p>4 MS. BUTLER:</p> <p>5 A. 1 in 100, yeah.</p> <p>6 CHAYTOR, Q.C.:</p> <p>7 Q. And you have no recollection as to what that's</p> <p>8 about?</p> <p>9 MS. BUTLER:</p> <p>10 A. No, unless I'm thinking that I wrote --</p> <p>11 generally when you're doing your antibodies,</p> <p>12 you go high to a low. Like, I'm gone from 10</p> <p>13 up to 50, and 25 -- I stuck the 100 in between</p> <p>14 that PR, but it's usually three different</p> <p>15 dilutions.</p> <p>16 CHAYTOR, Q.C.:</p> <p>17 Q. Okay. Then on page six, this is one of those</p> <p>18 cases where we have now the date, April 21st,</p> <p>19 '03, and you have a upper case "B", but we</p> <p>20 don't appear to have an "A".</p> <p>21 MS. BUTLER:</p> <p>22 A. No, that would be -- I've done it.</p> <p>23 CHAYTOR, Q.C.:</p> <p>24 Q. I'm sorry?</p> <p>25 MS. BUTLER:</p>	<p>1 MS. BUTLER:</p> <p>2 A. Yes.</p> <p>3 CHAYTOR, Q.C.:</p> <p>4 Q. Okay, and down at 44, 45, and 46, we have ER,</p> <p>5 and you have 1 to 20, and then ER 1 to 30?</p> <p>6 MS. BUTLER:</p> <p>7 A. 1 to 30.</p> <p>8 CHAYTOR, Q.C.:</p> <p>9 Q. And then we have a PR?</p> <p>10 MS. BUTLER:</p> <p>11 A. Yes.</p> <p>12 CHAYTOR, Q.C.:</p> <p>13 Q. So -- now we do have written up here</p> <p>14 "controls".</p> <p>15 MS. BUTLER:</p> <p>16 A. Uh-hm.</p> <p>17 CHAYTOR, Q.C.:</p> <p>18 Q. And then that follows -- when you write</p> <p>19 "controls", does everything that follow</p> <p>20 afterwards, are those your controls?</p> <p>21 MS. BUTLER:</p> <p>22 A. Yes.</p> <p>23 CHAYTOR, Q.C.:</p> <p>24 Q. Okay, so these are controls for ER/PR?</p> <p>25 MS. BUTLER:</p>
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<p>1 A. I've done a previous run.</p> <p>2 CHAYTOR, Q.C.:</p> <p>3 Q. So there would be a sheet "A" somewhere?</p> <p>4 MS. BUTLER:</p> <p>5 A. Somewhere.</p> <p>6 CHAYTOR, Q.C.:</p> <p>7 Q. Or a sheet --</p> <p>8 MS. BUTLER:</p> <p>9 A. With an "A" on it.</p> <p>10 CHAYTOR, Q.C.:</p> <p>11 Q. Okay. This would be a second run for that</p> <p>12 day?</p> <p>13 MS. BUTLER:</p> <p>14 A. That would be a second run.</p> <p>15 CHAYTOR, Q.C.:</p> <p>16 Q. For the same date?</p> <p>17 MS. BUTLER:</p> <p>18 A. Yeah, because all these antibodies require</p> <p>19 antigen retrieval and "A" run might have been</p> <p>20 a run of antibodies that you didn't have to</p> <p>21 have antigen retrieval, so you could utilize</p> <p>22 your machine while you were waiting.</p> <p>23 CHAYTOR, Q.C.:</p> <p>24 Q. So everything we see here require antigen</p> <p>25 retrieval?</p>	<p>1 A. Controls again, yes.</p> <p>2 CHAYTOR, Q.C.:</p> <p>3 Q. Okay, and you're using -- trying out two</p> <p>4 different dilutions, I take it?</p> <p>5 MS. BUTLER:</p> <p>6 A. Yes.</p> <p>7 CHAYTOR, Q.C.:</p> <p>8 Q. On ER?</p> <p>9 MS. BUTLER:</p> <p>10 A. Yes.</p> <p>11 CHAYTOR, Q.C.:</p> <p>12 Q. But there's no actual -- I don't see any</p> <p>13 actual ER/PR test that day?</p> <p>14 MS. BUTLER:</p> <p>15 A. No.</p> <p>16 CHAYTOR, Q.C.:</p> <p>17 Q. So what is it that you're doing here? What</p> <p>18 are you doing?</p> <p>19 MS. BUTLER:</p> <p>20 A. We're just using some ER -- the ER at</p> <p>21 different dilutions.</p> <p>22 CHAYTOR, Q.C.:</p> <p>23 Q. So you're able to -- so you're going to run</p> <p>24 one slide with the 1 to 20 dilution and one</p> <p>25 with the 1 to 30?</p>

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<p>1 MS. BUTLER: 2 A. Yes. 3 CHAYTOR, Q.C.: 4 Q. And what did you do then with the slides after 5 the run? 6 MS. BUTLER: 7 A. The slides after the -- 8 CHAYTOR, Q.C.: 9 Q. With those slides, ER/PR? 10 MS. BUTLER: 11 A. I would say if I'm checking the different 12 dilutions, I would give them to Dr. Ejeckam to 13 see how they were doing. 14 CHAYTOR, Q.C.: 15 Q. Okay, and do you have any specific 16 recollection about that and what conclusions - 17 - 18 MS. BUTLER: 19 A. No. 20 CHAYTOR, Q.C.: 21 Q. Okay. And then we have the next day and also 22 a "B" run. Just go back for a second. In 23 terms of coming up with your dilutions, how 24 would you actually go about doing that? Would 25 you use a pipette to do that?</p>	<p>1 Q. They have S numbers and up at the top in slots 2 25, 26, 27, 28, again two more patients. 3 MS. BUTLER: 4 A. Uh-hm. 5 CHAYTOR, Q.C.: 6 Q. And then under controls, at the bottom, 45 7 through to 48, we have two ERs and two PRs, 8 and written on the bottom here we have "check 9 controls" is that your handwriting? 10 MS. BUTLER: 11 A. Yes, that's just--I might have been running 12 out of controls and just wanted to alert 13 myself to check all my boxes to make sure 14 there's controls in there. 15 CHAYTOR, Q.C.: 16 Q. Okay, and making sure that you have an 17 adequate supply of controls, is that what that 18 is? 19 MS. BUTLER: 20 A. Yes, because late in the evening getting cases 21 ready, you'd want to have your controls. 22 CHAYTOR, Q.C.: 23 Q. Okay, and in drawing up your different 24 dilutions on the previous page, the dilutions 25 we saw, you say you use a pipette, we heard--</p>
<p>Page 366</p> <p>1 MS. BUTLER: 2 A. A pipette, yes. 3 CHAYTOR, Q.C.: 4 Q. To come up with your different dilutions? 5 MS. BUTLER: 6 A. Yes. 7 CHAYTOR, Q.C.: 8 Q. And would Dr. Ejeckam have given you any 9 guidance as to which dilutions to use or would 10 that -- how would you come up with the 1 to -- 11 MS. BUTLER: 12 A. He would tell me what to use. 13 CHAYTOR, Q.C.: 14 Q. He would tell you what to use, okay. Then 15 April 22nd, "B", scroll down, we seem to have 16 ER/PR tests. Would these be regular tests 17 that are running here? 18 MS. BUTLER: 19 A. Yes, I'm thinking yes. 20 CHAYTOR, Q.C.: 21 Q. Okay and again, these are Health Science's 22 cases, I take it? 23 MS. BUTLER: 24 A. Yes. 25 CHAYTOR, Q.C.:</p>	<p>Page 368</p> <p>1 do you know whether or not you ever calibrated 2 the pipettes, whether they were ever 3 calibrated? 4 MS. BUTLER: 5 A. They weren't calibrated. 6 CHAYTOR, Q.C.: 7 Q. They were never calibrated, okay. And do you 8 know whether they were ever replaced while you 9 were there? 10 MS. BUTLER: 11 A. Not replaced, might have bought an extra one. 12 CHAYTOR, Q.C.: 13 Q. And how did you mathematically come up with 14 your dilutions? Would you do that, you know, 15 on paper, long division? Would you use a 16 calculator? How would you actually do it? 17 MS. BUTLER: 18 A. Me, I'd use my paper, I always had to write 19 stuff down. 20 CHAYTOR, Q.C.: 21 Q. So you didn't have a calculator that you would 22 use in the lab, okay. So you'd figure that 23 out through writing it out. 24 MS. BUTLER: 25 A. Writing it down.</p>

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1 CHAYTOR, Q.C.:

2 Q. Okay. And I'm just going to look at page 8

3 here then and we have ER/PR written here and

4 it looks like those all belong, there's a list

5 here of nine different antibodies belonging to

6 the one patient, would that be right?

7 MS. BUTLER:

8 A. Yes.

9 CHAYTOR, Q.C.:

10 Q. Okay. And then if we continue on down, we see

11 "ER/PR" again?

12 MS. BUTLER:

13 A. Those two blocks there.

14 CHAYTOR, Q.C.:

15 Q. So that's two blocks for the same patient?

16 MS. BUTLER:

17 A. Yes.

18 CHAYTOR, Q.C.:

19 Q. And then controls, we have your controls over

20 here.

21 MS. BUTLER:

22 A. Yes.

23 CHAYTOR, Q.C.:

24 Q. And does that appear to be a regular patient

25 run?

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1 MS. BUTLER:

2 A. Yes.

3 CHAYTOR, Q.C.:

4 Q. And again, choosing two different blocks or

5 running two slides for ER and two for PR for

6 the one patient, that would be the--the

7 pathologist would specifically ask for that?

8 MS. BUTLER:

9 A. Yes.

10 CHAYTOR, Q.C.:

11 Q. And then at page 9, we seem to have a full

12 page of ER/PRs and this is April 25th (a),

13 2003 and WMH, is that Western Memorial?

14 MS. BUTLER:

15 A. Yes.

16 CHAYTOR, Q.C.:

17 Q. And I take it then this is two blocks again

18 for the same patient?

19 MS. BUTLER:

20 A. The same patient, yes.

21 CHAYTOR, Q.C.:

22 Q. Okay. And does this one say "Gander"?

23 MS. BUTLER:

24 A. Gander, yes.

25 CHAYTOR, Q.C.:

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1 Q. And St. Clare's.

2 MS. BUTLER:

3 A. St. Clare's.

4 CHAYTOR, Q.C.:

5 Q. Two blocks a patient.

6 MS. BUTLER:

7 A. Yes.

8 CHAYTOR, Q.C.:

9 Q. St. Clare's, Western Memorial and two blocks

10 and then St. Clare's, Western Memorial again

11 and St. Clare's again, and Gander again. And

12 then a bunch of controls. And why would you

13 be running so many controls in this situation?

14 MS. BUTLER:

15 A. Well I guess if we count up everybody there,

16 you might get one for each site.

17 CHAYTOR, Q.C.:

18 Q. So this looks like it would be about five ER

19 controls and five PR controls. So you're

20 doing one for every site, is that it?

21 MS. BUTLER:

22 A. One for every site, yes.

23 CHAYTOR, Q.C.:

24 Q. And in this case, your controls are at the

25 end? So does that look to be a regular run on

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1 April 25th?

2 MS. BUTLER:

3 A. Yes.

4 CHAYTOR, Q.C.:

5 Q. And at page 10, if we scroll down to block,

6 along here, block 15, 16, this is not ER/PR,

7 but you've written "test" along the side here.

8 MS. BUTLER:

9 A. Yes, those are still some of the antibodies on

10 his list for trying some extra work with.

11 CHAYTOR, Q.C.:

12 Q. Okay. And then over here under "controls" you

13 do have ER/PR listed.

14 MS. BUTLER:

15 A. Uh-hm.

16 CHAYTOR, Q.C.:

17 Q. And then you have ER/PR, ER/PR and these

18 appear to be patients?

19 MS. BUTLER:

20 A. Yes.

21 CHAYTOR, Q.C.:

22 Q. Okay, so in this case you put your controls

23 before you put your patient slides?

24 MS. BUTLER:

25 A. Yes.

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1 CHAYTOR, Q.C.:
 2 Q. In this particular situation.
 3 MS. BUTLER:
 4 A. Always kept the controls together, usually.
 5 CHAYTOR, Q.C.:
 6 Q. What does this say over here?
 7 MS. BUTLER:
 8 A. Do something in the a.m.
 9 CHAYTOR, Q.C.:
 10 Q. Sorry?
 11 MS. BUTLER:
 12 A. I'm not sure what the first word is, it says
 13 "in a.m."
 14 CHAYTOR, Q.C.:
 15 Q. And then on the bottom you have "look up Dan's
 16 notes on" and then you've got an asterisk.
 17 MS. BUTLER:
 18 A. I would say look up Dan's notes concerning--I
 19 would say that's Dan Belchowski, look up his
 20 notes concerning the testing that I'm doing
 21 there.
 22 CHAYTOR, Q.C.:
 23 Q. Okay, and I believe then, I don't see an
 24 asterisk on this page, but on the next page I
 25 do see some asterisks. So that would be--

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1 would that be -
 2 MS. BUTLER:
 3 A. An asterisk would be just for me to pay
 4 attention to it and to do it.
 5 CHAYTOR, Q.C.:
 6 Q. And this is April 30th.
 7 MS. BUTLER:
 8 A. Uh-hm.
 9 CHAYTOR, Q.C.:
 10 Q. And the letter that I showed you before from
 11 Dan, from DAKO, came in April 22nd.
 12 MS. BUTLER:
 13 A. Okay.
 14 CHAYTOR, Q.C.:
 15 Q. So it appears to have been faxed April 22nd,
 16 so would that be referenced to what he had
 17 written to you?
 18 MS. BUTLER:
 19 A. I'm thinking yes.
 20 CHAYTOR, Q.C.:
 21 Q. And this one then is the same date and you
 22 will see that there are some here with
 23 asterisks on them.
 24 MS. BUTLER:
 25 A. Yes.

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1 CHAYTOR, Q.C.:
 2 Q. Which include your ER/PRs?
 3 MS. BUTLER:
 4 A. Uh-hm.
 5 CHAYTOR, Q.C.:
 6 Q. So that was a reminder to you to check his
 7 notes, is that right?
 8 MS. BUTLER:
 9 A. I'm not sure, it could be. I don't know why I
 10 would circle that.
 11 CHAYTOR, Q.C.:
 12 Q. And this says over in the corner "overnight"?
 13 MS. BUTLER:
 14 A. Yes.
 15 CHAYTOR, Q.C.:
 16 Q. So did this run take place, you ran the
 17 machine overnight?
 18 MS. BUTLER:
 19 A. Yes.
 20 CHAYTOR, Q.C.:
 21 Q. And did that happen sometimes?
 22 MS. BUTLER:
 23 A. Yes, fair bit actually.
 24 CHAYTOR, Q.C.:
 25 Q. It happened a fair bit.

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1 MS. BUTLER:
 2 A. We were into a lot of slides.
 3 CHAYTOR, Q.C.:
 4 Q. Was there any concern in doing that, in
 5 running the machine overnight?
 6 MS. BUTLER:
 7 A. No, honestly felt the machine would tell us if
 8 it did anything wrong.
 9 CHAYTOR, Q.C.:
 10 Q. So if there was a problem with the machine,
 11 you would rely on -
 12 MS. BUTLER:
 13 A. You'd read your, you'd scroll up the computer
 14 and you would read what was in the computer to
 15 make sure that nothing went wrong.
 16 CHAYTOR, Q.C.:
 17 Q. And if there was a problem with the computer,
 18 would you have anyway of knowing if there had
 19 been any issue with your run?
 20 MS. BUTLER:
 21 A. You'd always look at the bottom, it would say
 22 "run completed, everything okay", something to
 23 that effect.
 24 CHAYTOR, Q.C.:
 25 Q. And if there was any problem with that,

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1 though, any problem with the machine or the
 2 machine being able to properly record whether
 3 a problem had occurred?
 4 MS. BUTLER:
 5 A. No, it wouldn't record it, I guess you would
 6 assume that the machine would be, like if the
 7 arm had given trouble, it would be--it
 8 wouldn't be in its proper location and things
 9 like that.
 10 CHAYTOR, Q.C.:
 11 Q. And again, if we look down through this, these
 12 are all ER/PRs that you ran overnight and from
 13 various hospitals, Western Memorial and from
 14 the Health Science, Westerns Memorial and then
 15 you have a bunch of controls and then from
 16 Health Science and then you have two other
 17 patients over here, after the controls.
 18 MS. BUTLER:
 19 A. Uh-hm.
 20 CHAYTOR, Q.C.:
 21 Q. And why would you have done that on that
 22 occasion?
 23 MS. BUTLER:
 24 A. I would say I had my runs set up and then they
 25 came in with more--I might have checked the

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1 slot to see if the doctors had given any more
 2 orders and had room and would have added them
 3 on.
 4 CHAYTOR, Q.C.:
 5 Q. So there's four more after your controls on
 6 this run?
 7 MS. BUTLER:
 8 A. Yes.
 9 CHAYTOR, Q.C.:
 10 Q. And this, like you say, would have ran
 11 overnight?
 12 MS. BUTLER:
 13 A. Yes.
 14 CHAYTOR, Q.C.:
 15 Q. So if a problem were encountered, for example
 16 if there wasn't enough antibody and was enough
 17 to stain the controls, but then not enough
 18 antibody to get to the patient slides which
 19 came after your control slides, would you have
 20 any way of knowing that, given what you told
 21 us, the alarm would sound, there's no one
 22 there to hear the alarm.
 23 MS. BUTLER:
 24 A. Well if you're going to put it on overnight,
 25 the machine tells you the required amount of

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1 antibody you need to run for overnight, you'd
 2 always make sure your vials would be filled to
 3 the maximum.
 4 CHAYTOR, Q.C.:
 5 Q. And if there's any problem, though, that
 6 occurs overnight and the alarm sounds and
 7 there's not anyone there to hear it, the
 8 machine would continue on -
 9 MS. BUTLER:
 10 A. The machine would continue and then you would
 11 read your program and you would see if there
 12 was any spot there that--it would tell you
 13 that it had such and such a slide, 17, 18,
 14 whatever number wouldn't have had the solution
 15 put on it.
 16 CHAYTOR, Q.C.:
 17 Q. And if you are the person coming--it could be
 18 you coming in the next morning or it could be
 19 a different technologist, depending on if
 20 you're at the end of your -
 21 MS. BUTLER:
 22 A. If I put an overnight run on, I used to try to
 23 handle my own overnight run, so I would know
 24 for sure, but you know, if something happened,
 25 someone would check, but they should be aware

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1 of that.
 2 CHAYTOR, Q.C.:
 3 Q. Whoever comes in, in the morning, should check
 4 to make sure there's nothing on the computer -
 5 MS. BUTLER:
 6 A. Yes.
 7 CHAYTOR, Q.C.:
 8 Q. - saying that it wasn't complete or that there
 9 was any issue?
 10 MS. BUTLER:
 11 A. Yes.
 12 CHAYTOR, Q.C.:
 13 Q. And did anyone have to sign off or document
 14 that they in fact did that, that they had
 15 checked and made sure there had been no
 16 problem with the machine overnight?
 17 MS. BUTLER:
 18 A. No.
 19 CHAYTOR, Q.C.:
 20 Q. And then on page 12, this date is May 1st and
 21 it's an "A" and there's another date over
 22 here, looks like May 5th, 2003? Do you know,
 23 is there any significance to that, is that
 24 your handwriting?
 25 MS. BUTLER:

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1 A. Doesn't look like mine, but it's my sheet, so
 2 -
 3 CHAYTOR, Q.C.:
 4 Q. And I take it, I hadn't asked you about all of
 5 this, but I take it everything we've seen so
 6 far is your writing?
 7 MS. BUTLER:
 8 A. Yes, most of these, yeah.
 9 CHAYTOR, Q.C.:
 10 Q. Okay, and you will let me know if there's
 11 anything that's not, okay?
 12 MS. BUTLER:
 13 A. Yes, like I said, that May 5th, must be mine.
 14 CHAYTOR, Q.C.:
 15 Q. And then from 18 onwards, we appear to have a
 16 run of ER/PRs and these are all, it appears to
 17 be, from St. Clare's.
 18 MS. BUTLER:
 19 A. Yes.
 20 CHAYTOR, Q.C.:
 21 Q. And over here as well, for this one patient it
 22 appears then you have two blocks again, and as
 23 well for this patient?
 24 MS. BUTLER:
 25 A. Yes.

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1 CHAYTOR, Q.C.:
 2 Q. And then your controls and you have your ER/PR
 3 controls at the end?
 4 MS. BUTLER:
 5 A. Yes.
 6 CHAYTOR, Q.C.:
 7 Q. And then page 13, we have a bunch of ER/PRs
 8 for May 2nd "A", but then they're crossed off
 9 and if we look at page 14, we have May 2nd "B"
 10 overnight.
 11 MS. BUTLER:
 12 A. Uh-hm.
 13 CHAYTOR, Q.C.:
 14 Q. And it appears that, we see here SS883703
 15 SS159903, we compare that to the next day, it
 16 appears that--or the next run overnight, it
 17 appears that all--I haven't double checked
 18 them all, but it appears that they are ran
 19 overnight instead.
 20 MS. BUTLER:
 21 A. Yes.
 22 CHAYTOR, Q.C.:
 23 Q. Can you tell us what would have happened
 24 there?
 25 MS. BUTLER:

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1 A. I would say I didn't have enough time in my
 2 day to complete the run, where I was testing
 3 out there, not realizing that there's one
 4 there with 60 minutes on it, so when you put
 5 your antibody in 60 minutes, it makes it
 6 longer.
 7 CHAYTOR, Q.C.:
 8 Q. It appears, though, that your overnight run
 9 then, the 60 minute ones, it appears it's the
 10 ER/PRs that you take out.
 11 MS. BUTLER:
 12 A. Yes, I took the ER/PRs and put them overnight.
 13 CHAYTOR, Q.C.:
 14 Q. So you left the others and let these run?
 15 MS. BUTLER:
 16 A. I ran them while I was there and I ran the ERs
 17 overnight.
 18 CHAYTOR, Q.C.:
 19 Q. And ran the ER/PRs overnight, okay. And I'll
 20 take you through this in a little while, but
 21 on this particular run, May 2nd (B) overnight
 22 run, there are a number of those which are, in
 23 fact, repeated from the April 11th run that I
 24 first pointed out to you?
 25 MS. BUTLER:

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1 A. Okay.
 2 CHAYTOR, Q.C.:
 3 Q. Okay, do you have any recollection as to why
 4 that would be? Why April 11th and now this is
 5 May 2nd, and again, bearing in mind the time
 6 period of Dr. Ejeckam and what Dr. Ejeckam was
 7 doing from the beginning of April?
 8 MS. BUTLER:
 9 A. That's what I was saying, I was wondering if
 10 it was cases of Dr. Ejeckam, so unless that
 11 was numbers that they had given him that were
 12 causing them problems, other than that, I
 13 can't answer.
 14 CHAYTOR, Q.C.:
 15 Q. And if we just look down through one in
 16 particular here, 8837--the first one here,
 17 883703 and if we could just bring up, please,
 18 P-2173, page 18? You see the number here,
 19 8837?
 20 MS. BUTLER:
 21 A. Yes.
 22 CHAYTOR, Q.C.:
 23 Q. And if you look at the date, it's May 2nd '03
 24 and the run is by you?
 25 MS. BUTLER:

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1 A. Yes.
 2 CHAYTOR, Q.C.:
 3 Q. Could we have 883702? And if we could just go
 4 back then, please, to where we were on 2190,
 5 page 14, on our worksheet here, you've
 6 indicated 883703?
 7 MS. BUTLER:
 8 A. 03 should have been 02.
 9 CHAYTOR, Q.C.:
 10 Q. That should be 02?
 11 MS. BUTLER:
 12 A. 02 obviously.
 13 CHAYTOR, Q.C.:
 14 Q. Okay. Can you say why then you would be doing
 15 a surgery that happened, I take it the 02
 16 tells us it's a 2002 surgery. Would it be
 17 common to be doing a 2002--running an ER/PR
 18 test on a 2002 surgery in 2003?
 19 MS. BUTLER:
 20 A. I would say not common unless someone was
 21 checking some cases and they realized it
 22 mightn't have been done and they might have
 23 tried to rectify it.
 24 CHAYTOR, Q.C.:
 25 Q. And if we look also at 856003, No. 11, right

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1 here.
 2 MS. BUTLER:
 3 A. Yes.
 4 CHAYTOR, Q.C.:
 5 Q. And if we could go then, please, to 2173, page
 6 15? And this is 856002.
 7 MS. BUTLER:
 8 A. Right.
 9 CHAYTOR, Q.C.:
 10 Q. Dr. Elms' case, May 2nd, '03. It's a
 11 requisition by Dr. Elms, it's for an '02 case
 12 and it's completed by you, May 2nd, '03?
 13 MS. BUTLER:
 14 A. Uh-hm, yes.
 15 CHAYTOR, Q.C.:
 16 Q. So if we could just go back again, please? So
 17 at least it appears that you've written "'03"
 18 down here as your number, that should be an
 19 '02?
 20 MS. BUTLER:
 21 A. '02, yes.
 22 CHAYTOR, Q.C.:
 23 Q. On both of those?
 24 MS. BUTLER:
 25 A. Yes.

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1 CHAYTOR, Q.C.:
 2 Q. Does that make any difference at the end of
 3 the day in terms of patient identification and
 4 then running your slides or -
 5 MS. BUTLER:
 6 A. Not on that particular, because you're -
 7 CHAYTOR, Q.C.:
 8 Q. What number would be on the slide?
 9 MS. BUTLER:
 10 A. Yeah, the number, your block and your slide is
 11 the same. So the number would be there, like
 12 I might have written it there, like the
 13 requisition came in -
 14 CHAYTOR, Q.C.:
 15 Q. Yes.
 16 MS. BUTLER:
 17 A. We had a habit of making sure, because we were
 18 used to pathologists sort of sometimes writing
 19 the wrong number or name or, so you'd always
 20 check out your actual patient, so you'd know
 21 who your patient was initially, okay, and you
 22 had that block and that. So I think we'd be--
 23 I don't think it would be a problem.
 24 CHAYTOR, Q.C.:
 25 Q. So would you then check to see if the mistake

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1 was on the requisition or on your sheet or -
 2 MS. BUTLER:
 3 A. Yes, and hopefully then I would, obviously I
 4 didn't pick it up here on my sheet.
 5 CHAYTOR, Q.C.:
 6 Q. So maybe the pathologists, you're saying, got
 7 the wrong number on his sheet or it could be
 8 either or?
 9 MS. BUTLER:
 10 A. Yeah, it could be either/or, but I'm trying to
 11 think how to answer that right, so that you
 12 understand me. I don't think it would be an
 13 issue with mixing it up with another patient.
 14 CHAYTOR, Q.C.:
 15 Q. Okay, and in terms of -
 16 MS. BUTLER:
 17 A. At this point, at this point here.
 18 CHAYTOR, Q.C.:
 19 Q. When you cross referenced, you were telling
 20 the Commissioner earlier, your worksheet to
 21 the slides on the machines and make sure that
 22 you have the right slides in the right place,
 23 you would cross-reference using, I would take
 24 it -
 25 MS. BUTLER:

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1 A. Yes, you would use the sheet. Like, I had the
 2 year wrong.
 3 CHAYTOR, Q.C.:
 4 Q. Would you refer to your numbers?
 5 MS. BUTLER:
 6 A. Yes, the numbers.
 7 CHAYTOR, Q.C.:
 8 Q. You would refer to the numbers, okay.
 9 MS. BUTLER:
 10 A. Yes.
 11 CHAYTOR, Q.C.:
 12 Q. So in doing that cross-referencing, you would
 13 check -
 14 MS. BUTLER:
 15 A. You're more using the middle, your middle
 16 numbers, not your years.
 17 CHAYTOR, Q.C.:
 18 Q. So you would look mostly at the middle
 19 numbers, not the years?
 20 MS. BUTLER:
 21 A. Yes.
 22 CHAYTOR, Q.C.:
 23 Q. And if we could look at, please, page 21 of
 24 this exhibit? Actually I'm sorry, we'll go
 25 back to page 15. Page 15 then is a May 6 (B)

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1 run and you have ER/PR in three and four,
 2 you've got one to twenty then--one to twenty-
 3 five for PR and then you have 60 in brackets,
 4 what does that mean?
 5 MS. BUTLER:
 6 A. Well I mean, to try the antibody at 60 minutes
 7 long instead of 30, so there's three lots
 8 there, three different blocks, I would say
 9 controls.
 10 CHAYTOR, Q.C.:
 11 Q. And this would be for this particular patient
 12 whose number we see here?
 13 MS. BUTLER:
 14 A. No, I think that patient would be -
 15 CHAYTOR, Q.C.:
 16 Q. I'm sorry?
 17 MS. BUTLER:
 18 A. Wait now, yes.
 19 CHAYTOR, Q.C.:
 20 Q. It's 135 number.
 21 MS. BUTLER:
 22 A. He was using that number there, yeah.
 23 CHAYTOR, Q.C.:
 24 Q. And so he's running one ER and then down here,
 25 ER and PR, there's no numbers after -

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1 MS. BUTLER:
 2 A. I would say it's three blocks.
 3 CHAYTOR, Q.C.:
 4 Q. So is he running three blocks and all the ERs
 5 were run for 120 at 60 minutes?
 6 MS. BUTLER:
 7 A. 60 minutes.
 8 CHAYTOR, Q.C.:
 9 Q. And then we have your controls down here?
 10 MS. BUTLER:
 11 A. Yes.
 12 CHAYTOR, Q.C.:
 13 Q. So two controls for that day or one control of
 14 each antibody. And then this is May 7th, 2003
 15 and does this appear to be a regular, a
 16 regular run that day?
 17 MS. BUTLER:
 18 A. Yes, because I have three controls there.
 19 CHAYTOR, Q.C.:
 20 Q. Yes, have controls down here, okay, and I
 21 believe then, according to Dr. Ejeckam's memo
 22 anyhow, ER/PR was brought back on by then. Is
 23 that right? Brought back on by then, okay.
 24 And then we have May 8th, May 8th A '03, and
 25 does this also appear to be a regular run?

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1 MS. BUTLER:
 2 A. Yes. Yes.
 3 CHAYTOR, Q.C.:
 4 Q. And here we have--you have some ER/PR tests in
 5 your first four blocks, and then in 25, 26,
 6 you have controls, and then at the end, you
 7 have additional two ER/PR tests.
 8 MS. BUTLER:
 9 A. Another case, yeah.
 10 CHAYTOR, Q.C.:
 11 Q. On one patient after your control?
 12 MS. BUTLER:
 13 A. Yes.
 14 CHAYTOR, Q.C.:
 15 Q. And then on May 9th, this also appeared then
 16 to be a regular run of antibody?
 17 MS. BUTLER:
 18 A. Yes.
 19 CHAYTOR, Q.C.:
 20 Q. And we have some ER/PR tests here, and then
 21 your controls with ER/PR controls over here
 22 and can you explain what's happened here? You
 23 have things scratched off.
 24 MS. BUTLER:
 25 A. I have things scratched out, yeah. Let's see.

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1 CHAYTOR, Q.C.:

2 Q. And in particular, is this ER?

3 MS. BUTLER:

4 A. I think I was going to put on some cases, but

5 I chose--I didn't--no, I think I was moving

6 them around and fitting in.

7 CHAYTOR, Q.C.:

8 Q. So what would happen in that situation? Is

9 this ER written here in 47?

10 MS. BUTLER:

11 A. Yes.

12 CHAYTOR, Q.C.:

13 Q. And this is PR?

14 MS. BUTLER:

15 A. Yes. I would say someone must have asked me

16 to come in and try to fit on a case, so I was

17 trying to fit it in.

18 CHAYTOR, Q.C.:

19 Q. And did 46 come out?

20 MS. BUTLER:

21 A. No, I put a CK7 there.

22 CHAYTOR, Q.C.:

23 Q. That's a CK7 for the patient above it?

24 MS. BUTLER:

25 A. Yes.

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1 CHAYTOR, Q.C.:

2 Q. And on page 19 then of the exhibit, does this

3 also appear to be a regular run, and this is

4 May 26th now?

5 MS. BUTLER:

6 A. Regular run, looks like.

7 CHAYTOR, Q.C.:

8 Q. We have an ER at slot 24 and a PR at 25 and

9 then we have a list of controls.

10 MS. BUTLER:

11 A. Yes, with some testing going on as well.

12 CHAYTOR, Q.C.:

13 Q. I'm sorry?

14 MS. BUTLER:

15 A. Looks like I was testing there, a couple of

16 things with 20, 21 and 41, 44.

17 CHAYTOR, Q.C.:

18 Q. Okay. So these here are tests, are they?

19 MS. BUTLER:

20 A. Yes.

21 CHAYTOR, Q.C.:

22 Q. Not on the ER/PR?

23 MS. BUTLER:

24 A. No.

25 CHAYTOR, Q.C.:

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1 Q. We see your ER/PR controls at 36, 37, and then

2 you've put on another ER/PR test at 45 and 46?

3 MS. BUTLER:

4 A. Yes.

5 CHAYTOR, Q.C.:

6 Q. And what does this say at the bottom?

7 MS. BUTLER:

8 A. Just get a--I needed a new S-100 control.

9 CHAYTOR, Q.C.:

10 Q. And then "do controls," what does that mean?

11 MS. BUTLER:

12 A. Make sure my box--check my boxes for controls

13 and add more to it.

14 CHAYTOR, Q.C.:

15 Q. So that's your control bank, is it?

16 MS. BUTLER:

17 A. Yes.

18 CHAYTOR, Q.C.:

19 Q. Make sure you have enough?

20 MS. BUTLER:

21 A. Yes.

22 CHAYTOR, Q.C.:

23 Q. And then May 29th B, and I don't think we have

24 an A, so would there have been an A?

25 MS. BUTLER:

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1 A. Yes.

2 CHAYTOR, Q.C.:

3 Q. Okay, and this appears to be a lot of ER/PRs

4 run on that day.

5 MS. BUTLER:

6 A. Yes.

7 CHAYTOR, Q.C.:

8 Q. And your controls are here, and then May 30th,

9 the A run, have ER/PRs starting at 19?

10 MS. BUTLER:

11 A. Yes.

12 CHAYTOR, Q.C.:

13 Q. Okay, and you have, again at 23 and 24, you

14 have a couple of things scratched off and 25,

15 26, and then you have your numbers changed on

16 your sheet. So can you explain what's

17 happening there?

18 MS. BUTLER:

19 A. Yeah, I think I -

20 CHAYTOR, Q.C.:

21 Q. For example, it appears it was going to be an

22 ER/PR and the numbers look like it's 77 -

23 MS. BUTLER:

24 A. Yeah, I did something with the numbers. So I

25 think I put--I must have blanked out those two

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1 numbers.
 2 CHAYTOR, Q.C.:
 3 Q. Those two numbers, and again up here at 25 -
 4 MS. BUTLER:
 5 A. Yeah, I blanked out those numbers and started
 6 my 23, 24 to 48 down there.
 7 CHAYTOR, Q.C.:
 8 Q. Okay. So you -
 9 MS. BUTLER:
 10 A. 44, so that four of them would give me 48. So
 11 I didn't do anything on those runs.
 12 CHAYTOR, Q.C.:
 13 Q. So you took out these 23, 24, 25, 26 and then
 14 marked over your numbers?
 15 MS. BUTLER:
 16 A. Yes.
 17 CHAYTOR, Q.C.:
 18 Q. So on the machine, 23 would be this ER? Is
 19 that correct?
 20 MS. BUTLER:
 21 A. Yes.
 22 CHAYTOR, Q.C.:
 23 Q. For this patient, 7840?
 24 MS. BUTLER:
 25 A. Yes.

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1 CHAYTOR, Q.C.:
 2 Q. Okay. So in terms of setting up your machine,
 3 would you put anything in slots 23, 24, 25,
 4 26, or this becomes your new 23?
 5 MS. BUTLER:
 6 A. This would be -
 7 CHAYTOR, Q.C.:
 8 Q. This becomes your new 23?
 9 MS. BUTLER:
 10 A. Right.
 11 CHAYTOR, Q.C.:
 12 Q. Okay, and then you have your controls again
 13 with your ER/PRs towards the bottom of the
 14 next -
 15 MS. BUTLER:
 16 A. Yeah, it looks like I -
 17 CHAYTOR, Q.C.:
 18 Q. It appears you have another -
 19 MS. BUTLER:
 20 A. Yeah, that should have been--I would think 43
 21 should have been an ER/PR.
 22 CHAYTOR, Q.C.:
 23 Q. 43 should be an ER?
 24 MS. BUTLER:
 25 A. ER, yeah.

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1 CHAYTOR, Q.C.:
 2 Q. Because otherwise you have two PRs for the one
 3 patient.
 4 MS. BUTLER:
 5 A. Yes, and it wouldn't be right. Not
 6 necessarily it wouldn't be right, unless I--
 7 unless we could find another run that I had
 8 run two ERs.
 9 CHAYTOR, Q.C.:
 10 Q. And that wouldn't be the norm. I would take
 11 it, if you got an ER test -
 12 MS. BUTLER:
 13 A. It's not the norm.
 14 CHAYTOR, Q.C.:
 15 Q. - you a PR test?
 16 MS. BUTLER:
 17 A. Yes, usually. You know, unless you just did--
 18 you realized it and then you tried to correct
 19 it.
 20 CHAYTOR, Q.C.:
 21 Q. And if we look over here, ER on 23 which is
 22 crossed out, it appears, if you look closely,
 23 to be the same number.
 24 MS. BUTLER:
 25 A. Yeah, it's the same number as that there,

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1 right.
 2 CHAYTOR, Q.C.:
 3 Q. But it looks like you planned to run an ER and
 4 a PR on that patient?
 5 MS. BUTLER:
 6 A. Yes.
 7 CHAYTOR, Q.C.:
 8 Q. And in fact, it looks like you may have been
 9 going to run two blocks for the patient.
 10 MS. BUTLER:
 11 A. Well, that might have been--it could be two
 12 blocks, yes.
 13 CHAYTOR, Q.C.:
 14 Q. Because there's no other number.
 15 MS. BUTLER:
 16 A. Yeah, could be, yeah.
 17 CHAYTOR, Q.C.:
 18 Q. So this patient ends up with one run and even
 19 though it says PR -
 20 MS. BUTLER:
 21 A. And it could have been putting the case and
 22 just the control, because it might have fit in
 23 with the rest of the controls. Just go back
 24 to 39, control, and then I added another case.
 25 No, I don't know. I was thinking I might have

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1 put in controls.
 2 CHAYTOR, Q.C.:
 3 Q. Okay. So it's -
 4 MS. BUTLER:
 5 A. I'm thinking something -
 6 CHAYTOR, Q.C.:
 7 Q. So in terms of though then setting up your
 8 machine and setting up the--would this cause
 9 any confusion if it was intended to be an ER
 10 and not a PR?
 11 MS. BUTLER:
 12 A. No, I think in my mind it would have been ER
 13 and that would have been--and I just mightn't
 14 have corrected it on the sheet.
 15 CHAYTOR, Q.C.:
 16 Q. If we look at page 22 of the exhibit then, it
 17 is June 2nd now and it's B run, and again, you
 18 have a number of ER/PRs. There's a number of
 19 tests for this first patient, including ER/PR.
 20 MS. BUTLER:
 21 A. Yes.
 22 CHAYTOR, Q.C.:
 23 Q. And then we have ER/PR again. So all this is
 24 for the one patient, I take it, the whole
 25 first column?

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1 MS. BUTLER:
 2 A. Yes, two blocks.
 3 CHAYTOR, Q.C.:
 4 Q. Two blocks, okay, and then you have a bunch of
 5 controls over on the right-hand side.
 6 MS. BUTLER:
 7 A. Yes.
 8 CHAYTOR, Q.C.:
 9 Q. Including your ER/PR?
 10 MS. BUTLER:
 11 A. Yes.
 12 CHAYTOR, Q.C.:
 13 Q. All right, and June 3rd, what does this say
 14 over here?
 15 MS. BUTLER:
 16 A. Calretinin control.
 17 CHAYTOR, Q.C.:
 18 Q. Okay, and this looks like it's a regular test
 19 run. Is that correct?
 20 MS. BUTLER:
 21 A. Yes.
 22 CHAYTOR, Q.C.:
 23 Q. And a bunch of ER/PR controls over here.
 24 MS. BUTLER:
 25 A. Yes.

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1 CHAYTOR, Q.C.:
 2 Q. And then June 25th, and there's a couple of ER
 3 tests that day, I believe. This patient at 24
 4 and 25 is her PR, or his, and then 26, 27, 28,
 5 29 are ER/PRs, and your controls are at the
 6 end. And then 25, we have a gap. So we've
 7 gone from, as I just showed you, June 25th
 8 2003 to November 10th now 2003, and there are
 9 no worksheets in between. Are there--is there
 10 any particular reason why that would be?
 11 MS. BUTLER:
 12 A. No.
 13 CHAYTOR, Q.C.:
 14 Q. Okay. So these worksheets weren't selected
 15 for any particular time periods? Okay. And
 16 under 16 and 17 then, we're now up to
 17 November, as I said, there's a couple of ER/PR
 18 tests and I take it this looks like a regular
 19 run to you, does it, Ms. Butler?
 20 MS. BUTLER:
 21 A. Yes.
 22 CHAYTOR, Q.C.:
 23 Q. Okay, and your controls are over here, and
 24 page 26 is November 17th and it's a B run, and
 25 you'll see that there are a number of ER/PR

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1 tests, and your controls are at the end. I'm
 2 sorry, if we could just go back. Yes, page 27
 3 then, and this is November 18th and it's a B
 4 run, and again, there's a number of ER/PR
 5 tests included in the run, and your controls.
 6 So your controls start here and we have ER/PR
 7 and then we have another ER/PR, ER/PR, so two
 8 extra blocks for this patient, I take it, from
 9 St. Clare's, added at the end of your run?
 10 MS. BUTLER:
 11 A. Um-hm.
 12 CHAYTOR, Q.C.:
 13 Q. And what's written here?
 14 MS. BUTLER:
 15 A. It's telling me that they're B-5 fixed.
 16 CHAYTOR, Q.C.:
 17 Q. Why would that be? What does B-5 fixed mean?
 18 MS. BUTLER:
 19 A. I don't know. Well, B-5 is just another
 20 fixative. Usually you don't get it on ER/PRs,
 21 but for some reason St. Clare's had put it in
 22 B-5.
 23 CHAYTOR, Q.C.:
 24 Q. Okay, and we had--that's an unusual fixative,
 25 I would take it?

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1 MS. BUTLER:
 2 A. Right. Yes, well, you have to--it's usually
 3 done for lymphomas.
 4 CHAYTOR, Q.C.:
 5 Q. So it would be unusual--this here has a 1996
 6 number.
 7 MS. BUTLER:
 8 A. Yes.
 9 CHAYTOR, Q.C.:
 10 Q. So this would be a fairly old case, I take it?
 11 MS. BUTLER:
 12 A. Old case, yes.
 13 CHAYTOR, Q.C.:
 14 Q. Was B-5 fix, was that more -
 15 MS. BUTLER:
 16 A. Unless they used it back in '96 or unless it
 17 was something back then, I don't know. It
 18 shouldn't have--it still shouldn't--still B-5,
 19 breast, it's not the usual norm to fix it in
 20 B-5.
 21 CHAYTOR, Q.C.:
 22 Q. And what would you do when you see something
 23 B-5 fixed, why are you making a note of that
 24 on your worksheet?
 25 MS. BUTLER:

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1 A. Because we knew that antigen retrieval was
 2 enough trouble with ER/PR, so B-5 added on top
 3 of it would compound it again because it had a
 4 tendency to make tissues wash off.
 5 CHAYTOR, Q.C.:
 6 Q. So in 2003, you knew that antigen retrieval
 7 was already enough of an issue for ER/PR
 8 testing?
 9 MS. BUTLER:
 10 A. Yes.
 11 CHAYTOR, Q.C.:
 12 Q. And you're making a note because this would
 13 compound the problem?
 14 MS. BUTLER:
 15 A. Yeah, and you always had to say if there was
 16 anything--a different fixative used, you
 17 usually like to know it, so and you'd usually
 18 like to say.
 19 CHAYTOR, Q.C.:
 20 Q. Okay, and again, this is now November 20th and
 21 it's a B run and it appears to be just a
 22 regular run. Is that correct?
 23 MS. BUTLER:
 24 A. Yes.
 25 CHAYTOR, Q.C.:

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1 Q. And November 21st, we have as well?
 2 MS. BUTLER:
 3 A. Yes.
 4 CHAYTOR, Q.C.:
 5 Q. Are you able to say what this is? Is that a
 6 PR?
 7 MS. BUTLER:
 8 A. Yeah.
 9 CHAYTOR, Q.C.:
 10 Q. And is this an ER?
 11 MS. BUTLER:
 12 A. Yes.
 13 CHAYTOR, Q.C.:
 14 Q. So those are your controls?
 15 MS. BUTLER:
 16 A. Yes.
 17 CHAYTOR, Q.C.:
 18 Q. And you've written over it but those are, in
 19 fact, ER and PR controls?
 20 MS. BUTLER:
 21 A. Yes, I think I added--I must have added in
 22 another couple of extra controls.
 23 CHAYTOR, Q.C.:
 24 Q. And what about what was intended to be there
 25 in the first place?

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1 MS. BUTLER:
 2 A. AE1, AE3, is there another one of that there?
 3 CHAYTOR, Q.C.:
 4 Q. You're not sure? Did they get added on
 5 somewhere else instead?
 6 MS. BUTLER:
 7 A. I can't answer that one. I'm surprised
 8 there's not an AE1 there actually, and I don't
 9 have one there.
 10 CHAYTOR, Q.C.:
 11 Q. Okay, and then on December 9th, your B run on
 12 December 9th, there's no ER/PR there that I
 13 can see, but at the bottom, you have get an
 14 ER/PR control.
 15 MS. BUTLER:
 16 A. I would imagine ER--after using--you could
 17 have used up the block.
 18 CHAYTOR, Q.C.:
 19 Q. So and to get an ER/PR control, what would you
 20 do?
 21 MS. BUTLER:
 22 A. You'd have to go to the pathologist.
 23 CHAYTOR, Q.C.:
 24 Q. And ask them to identify an appropriate block?
 25 MS. BUTLER:

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1 A. A new block, yeah.
 2 CHAYTOR, Q.C.:
 3 Q. Okay, and then on December 10th, 2003, we have
 4 what appears to be a full day of ER/PR or a
 5 full run of ER/PR and your controls are at the
 6 end?
 7 MS. BUTLER:
 8 A. Yes.
 9 CHAYTOR, Q.C.:
 10 Q. And I believe that's it for your worksheets
 11 that we have been provided. I'd like to just
 12 take you back through this. If we could look,
 13 please, at 2190? Sorry, 2190, page three, and
 14 if we just scroll down here and we see in slot
 15 five, we have 1681-03?
 16 MS. BUTLER:
 17 A. Um-hm.
 18 CHAYTOR, Q.C.:
 19 Q. And if we could go, please, to page 14. Slot
 20 7, we have 168103. So on May 2nd in your "B"
 21 overnight run, it's been a repeat of this
 22 patient's ER/PR test from April 11th?
 23 MS. BUTLER:
 24 A. Yes.
 25 CHAYTOR, Q.C.:

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1 Q. If we could go back, please, to page three,
 2 and we come down to slide 13, patient number
 3 159903, and then if we could go back, please,
 4 to page 14. Slot 3, we see the same patient
 5 again?
 6 MS. BUTLER:
 7 A. Uh-hm.
 8 CHAYTOR, Q.C.:
 9 Q. So her ER/PR or his are being repeated again
 10 on May 2nd. If we could go to page seven,
 11 please, and then 23 and 24, we have patient
 12 458003, and if we could go to page 10, please,
 13 and this run is now on April 30th "A", and we
 14 see 458003 repeated on that day. Go back to
 15 page seven, please, and then Slot 27 and 28 we
 16 have patient 521803. If we could go to page
 17 11, please, and on April 30th, run "B", slide
 18 slot 21 and 22, we see the same patient,
 19 521803. If we could go back to page seven,
 20 please. We have patient -- sorry, 560403 in
 21 slots 25 and 26, and back to page 11, we see
 22 that patient repeated on your overnight run on
 23 April 30th. If we could go to page nine,
 24 please, and in slot 19 and 20, we have patient
 25 from Western Memorial, 437303, and page 14,

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1 please, and here we see that same patient
 2 again on the 2nd of May. If we could look at
 3 page 15, we see that patient once again -- I
 4 thought it was there. I'm sorry, no, it's the
 5 next page, page 16, sorry, 437303. So it
 6 appears that patient had a test on April 25th,
 7 May 2nd, and again on May 7th. If we could go
 8 back, please, to page 11, and here at 29 and
 9 30, we have patient 482103, and if we could go
 10 to page 16, please, and here we have that
 11 patient again then tested again on May 7th.
 12 If we could go back, please, to page 11, 5830
 13 in slots 13 and 14, and this is on April 30th.
 14 If we could go, please, to page 21, and we see
 15 that patient with two blocks being tested
 16 about a month later on May 30th. If we could
 17 have, please, page 16, and this is May 7th,
 18 and we see 666703, and we see here the next
 19 day, 666703, May 8th, and then again May 9th,
 20 666703. Ms. Butler, would you be able to say
 21 why that patient would have had his or her
 22 test done three days in a row?
 23 MS. BUTLER:
 24 A. No, other than Dr. Ejeckam -- obviously this
 25 is a point when Dr. Ejeckam was in control.

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1 CHAYTOR, Q.C.:
 2 Q. And if we could look at, please, page 14 --
 3 I'm sorry, page three, 397203 at 19 and 20,
 4 and the date of this test is April 11th, and
 5 if we could look at page 14, please, and this
 6 is now May 2nd, the overnight run, and we see
 7 397203 right here. So the second test for
 8 that patient took place then May 2nd, the
 9 first one being April 11th, and then if we
 10 could look at page 19, please, 3972 is tested
 11 again on May 26th, and this is May 29th and
 12 it's a "B" run, 3972 is again tested on May
 13 29th. So that's four tests for that patient
 14 from April 11th through to May 29th, and would
 15 you be able to say why that would be?
 16 MS. BUTLER:
 17 A. No. I'm thinking Dr. Ejeckam was keeping
 18 checking.
 19 CHAYTOR, Q.C.:
 20 Q. And also on page 20, we have patient 777803,
 21 Health Science case, and the date of that test
 22 is May 29th, and then the next day we see that
 23 this is the patient tested again with the two
 24 PRs, one would be in error. If we also stick
 25 with this day for a minute here, May 30th, we

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1 see another patient here, I believe, 7840, and
 2 there were two blocks tested on May 30th for
 3 that patient, and that patient was also tested
 4 on May 29th right here -- 7840, sorry. Right
 5 here. If we could go back, please, to page
 6 three, 883702, and this is on April 11th. If
 7 we could look then, please, at page 14, and
 8 883703 is written here, and we already
 9 discussed about the potential error in that
 10 supposedly being in 02.
 11 MS. BUTLER:
 12 A. Yes.
 13 CHAYTOR, Q.C.:
 14 Q. And that's on May 2nd. If we could go back,
 15 please, to -- let's just stay there for a
 16 moment. We have 8560 as well right here at
 17 11, and if we go back to page 11 -- I'm sorry,
 18 page three, you'll see 8560 right here and
 19 that's back on April 11th. Then 3685 on April
 20 11th and if we can go back, please, to page
 21 14, 3685 is repeated on May 2nd, and also on
 22 May 2nd, we have 189003, and if we could go
 23 back to page three, 189003 was also tested on
 24 April 11th. So all of those patients appear
 25 to have been tested April 11th, around the

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1 time that Dr. Ejeckam was doing his
 2 adjustments, and then retested on May 2nd?
 3 MS. BUTLER:
 4 A. Yes.
 5 CHAYTOR, Q.C.:
 6 Q. And if we could look, please, at page seven.
 7 We have 4172 here at slides 19 and 20, and
 8 then if we could go back to page 14, and this
 9 again is the overnight run on May 2nd. Here
 10 we have 417203. So that person was tested on
 11 April 22nd and then again on May 2nd, and 4203
 12 was also tested -- 420303 was also tested on
 13 May 2nd, and if you could go back, please, to
 14 page 7, and this was the run for April 22nd,
 15 and you'll see that that patient 4203 was also
 16 tested on that day. If we could have, please,
 17 page nine. We have a patient here, 4959,
 18 right over here, 29 and 30, a Western Memorial
 19 patient, and if we could have then page 14,
 20 and then you'll see on May 2nd that patient
 21 again, 4959, was also tested again, and also
 22 included on your overnight run on May 2nd, we
 23 have 26, I believe -- what's that, right hand
 24 side, okay, 260503, and if we could go back,
 25 please, to page nine, and that person had been

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1 first tested April 25th, or according to your
 2 worksheets, 2605 is right here and there were
 3 two blocks run on that day. Also on that day,
 4 on April 25th, we have 3684 at the top here
 5 and there were two blocks run, and if we go
 6 back, please, to page three, 368403 is also --
 7 was run originally on April 11th. Now I
 8 realize a lot of the time period from April up
 9 to the beginning of May appears to be the time
 10 period that Dr. Ejeckam was doing some
 11 adjustments?
 12 MS. BUTLER:
 13 A. Yes.
 14 CHAYTOR, Q.C.:
 15 Q. And some of those tests, however, fall outside
 16 that time period or after the ER/PR was
 17 instituted again. Do you know whether or not
 18 did Dr. Ejeckam continue to keep an eye on
 19 things after he reinstated the testing?
 20 MS. BUTLER:
 21 A. I can't answer it.
 22 CHAYTOR, Q.C.:
 23 Q. Okay.
 24 THE COMMISSIONER:
 25 Q. I'm sorry, I didn't hear what you said.

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1 MS. BUTLER:
 2 A. I can't answer that.
 3 CHAYTOR, Q.C.:
 4 Q. If we can have please, P-2173 and if we could
 5 look at page five, please. And this is
 6 similar to the previous request forms that I
 7 showed you that we understand are used for
 8 requesting ER/PR testing by that pathologist.
 9 And this is Dr. Denic, March 18th, 2003 and it
 10 appears to be an '02 case. And this is March
 11 21st, 2003. It was done originally by Mr.
 12 Green and then it appears it was repeated by
 13 you on April 28th, '03. And it says on the
 14 bottom here, "checked by Dr. Ejeckam", what
 15 does that mean?
 16 MS. BUTLER:
 17 A. He checked this out.
 18 CHAYTOR, Q.C.:
 19 Q. I'm sorry?
 20 MS. BUTLER:
 21 A. He checked this, it's my writing and obviously
 22 I had it checked out by him. So, it must have
 23 been within his frame time, when he was doing
 24 all the checking.
 25 CHAYTOR, Q.C.:

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1 Q. And this is--so, a test that was run March
 2 21st and over a month later it was re-run and
 3 checked by Dr. Ejeckam.
 4 MS. BUTLER:
 5 A. Yeah.
 6 THE COMMISSIONER:
 7 Q. What does "checked" mean though?
 8 MS. BUTLER:
 9 A. Bought the slides to him and he checked -
 10 THE COMMISSIONER:
 11 Q. For what purpose, to have him check the
 12 controls, to look at the slides in general.
 13 MS. BUTLER:
 14 A. To look at--if we were testing, in that month
 15 he would look at--he would do patient slide
 16 plus the controls.
 17 THE COMMISSIONER:
 18 Q. And if you weren't testing?
 19 MS. BUTLER:
 20 A. If we were -
 21 THE COMMISSIONER:
 22 Q. If it were a normal circumstance.
 23 MS. BUTLER:
 24 A. Generally a pathologist would look at your
 25 controls.

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1 THE COMMISSIONER:
 2 Q. Okay.
 3 CHAYTOR, Q.C.:
 4 Q. And this indicates Dr. Elms has ER/PR
 5 controls. So, you're telling that to Dr.
 6 Denic, I guess.
 7 MS. BUTLER:
 8 A. Yes.
 9 CHAYTOR, Q.C.:
 10 Q. Is this your handwriting?
 11 MS. BUTLER:
 12 A. Yes, I would say that both of them had cases
 13 run.
 14 CHAYTOR, Q.C.:
 15 Q. Okay. So, you're doing this test, would this
 16 be a regular ER/PR test for this person, if
 17 you're indicating to Dr. Denic where he can go
 18 to look for the controls.
 19 MS. BUTLER:
 20 A. I'm thinking maybe, yes.
 21 CHAYTOR, Q.C.:
 22 Q. And if we could have page 13, please. And
 23 this, both times your name appears, it April
 24 30th, '03 and then again May 2nd, '03. And
 25 you've written "ER/PR checked by Dr. Ejeckam".

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1 And again, what does that mean, that the ER/PR
 2 was checked by him?
 3 MS. BUTLER:
 4 A. Well, he was in charge of the case again, I
 5 would say.
 6 CHAYTOR, Q.C.:
 7 Q. I'm sorry.
 8 MS. BUTLER:
 9 A. He was in charge of the case, all slides would
 10 have went to him.
 11 CHAYTOR, Q.C.:
 12 Q. The pathologist is Dr. Karn. Dr. Karn we
 13 understand is -
 14 MS. BUTLER:
 15 A. Western Memorial.
 16 CHAYTOR, Q.C.:
 17 Q. - Western Memorial. So, Dr. Ejeckam, on May
 18 2nd, '03 checked the slides of this case as
 19 well, is that what that means?
 20 MS. BUTLER:
 21 A. Yes.
 22 CHAYTOR, Q.C.:
 23 Q. If we could have page 42, please.
 24 THE COMMISSIONER:
 25 Q. Ms. Chaytor, we'll break for the day when you

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1 finish with this exhibit.
 2 CHAYTOR, Q.C.:
 3 Q. Thank you. This is now May 7th, May 8th and
 4 May 9th and the doctor is Dr. Somers and
 5 there's three tests. It appears that the test
 6 was run May 7th, May 8th and May 9th. These
 7 are, I take it, those were repeats of the
 8 ER/PR test, is that right?
 9 MS. BUTLER:
 10 A. Yes.
 11 CHAYTOR, Q.C.:
 12 Q. And there's no indication that, nothing
 13 written here that Dr. Ejeckam checked -
 14 MS. BUTLER:
 15 A. No.
 16 CHAYTOR, Q.C.:
 17 Q. - those slides. Thank you, Commissioner. Did
 18 you want me to finish this exhibit or break
 19 there.
 20 THE COMMISSIONER:
 21 Q. Well, it's wherever you want to break, if you
 22 want -
 23 CHAYTOR, Q.C.:
 24 Q. Perhaps we'll break there. Thank you.
 25 THE COMMISSIONER:

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1 Q. Okay. We'll break then until 9:30 in the
2 morning. Thank you.
3 Upon conclusion.

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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 16th 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 16th day of July, A.D., 2008
13 Judy Moss

Inquiry on Hormone Receptor Testing

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