COMMISSION OF INQUIRY
ON HORMONE RECEPTOR TESTING

BEFORE THE HONOURABLE JUSTICE CAMERON - COMMISSIONER

July 21, 2008

Appearances:

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

Jackie Brazil . . . . . Her Majesty in Right of NL

Peter Browne/Jane Hennebury . . . . . Doctors Kara Laing et al

Daniel Simmons/Beth Whalen . . . . . Eastern Regional Integrated
. . . . . Health Authority

Pam Taylor. . . . . 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

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THE COMMISSIONER:
Q. Ms. Chaytor.
CHAYTOR, Q.C.:
Q. Good morning, Commissioner. We have a new witness this morning, it's Barry Dyer.
MR. BARRY DYER, SWORN, EXAMINATION BY SANDRA CHAYTOR, Q.C.
REGISTRAR:
Q. Would you please state and spell your complete name for the Commission?
MR. DYER:
A. Barry Dyer, B-A-R-R-Y D-Y-E-R.
REGISTRAR:
Q. Thank you.
MR. DYER:
A. Thank you.
CHAYTOR, Q.C.:
Q. Good morning, Mr. Dyer.
MR. DYER:
A. Good morning.
CHAYTOR, Q.C.:
Q. Commissioner, we have a number of new exhibits which I would ask, please, to have entered. It's P-2309 through P-2329 inclusive, P-2356, P-2357, P-2358, P-2359, P-2361 through to--I'm

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sorry, if we could go back. It's inclusive to P-2329. Then it's P-2356, then we skip to P-2359 and then that goes through inclusive to P-2394.

THE COMMISSIONER:

Q. (Inaudible) okay, entered.

EXHIBITS ENTERED AND MARKED P-2309 THROUGH P-2329

EXHIBIT ENTERED AND MARKED P-2356

EXHIBITS ENTERED AND MARKED P-2359 THROUGH P-2394

CHAYTOR, Q.C.:

Q. Thank you. Mr. Dyer, if we could begin, please, by you telling us briefly your education background and your professional history?

MR. DYER:

A. I graduated from high school in 1981. I spent two years in university. From there, I entered the College and started the medical laboratory technologist program, graduated in '86, immediately started working in the laboratory at hematology at the Janeway. There, I learned about--in '87, I was trained in on the job for bone marrow readings and got involved with histochemical staining. In '89, I was hired as--I got a permanent full-time

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position in anatomic pathology, and from there, I've been there ever since, in pathology. In '92, we--in '91, I was sent away for training in computer technology for current LIS systems. In '98, '99, 2000, I did some continuing medical education with university, business courses, things like that. Moved to Health Science in 2001, became manager in 2002 in Health Care Corporation, and in 2006, I believe, I became manager, regional manager of anatomic pathology for Eastern Health.

CHAYTOR, Q.C.:

Q. Okay. The move to the Health Science in 2001, that was the physical move, was it, of the Janeway to the Health Science site?

MR. DYER:

A. Yes.

CHAYTOR, Q.C.:

Q. Okay. So you remained with the Janeway though at that point in time?

MR. DYER:

A. For that nine months, yes.

CHAYTOR, Q.C.:

Q. Okay, for nine months you were still at the

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Janeway.

MR. DYER:

A. Well, the Janeway, the laboratories actually consolidated.

CHAYTOR, Q.C.:

Q. The laboratories consolidated, so the Janeway did not maintain an independent laboratory?

MR. DYER:

A. No.

CHAYTOR, Q.C.:

Q. Okay, and but at that time, were you then still doing the same job functions, in terms of pediatric?

MR. DYER:

A. Yes.

CHAYTOR, Q.C.:

Q. Okay. So you worked in the Janeway portion of the lab?

MR. DYER:

A. Yes.

CHAYTOR, Q.C.:

Q. But it wasn't divided up, as such?

MR. DYER:

A. No.

CHAYTOR, Q.C.:

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Q. Okay. But you were doing pediatric work?

MR. DYER:

A. Yes.

CHAYTOR, Q.C.:

Q. Okay. In the courses that you did, you did business courses you said throughout?

MR. DYER:

A. Yes.

CHAYTOR, Q.C.:

Q. At one point in time. What were those courses in? Were those management courses?

MR. DYER:

A. Yes, business administration, business management, union management relations, things like this.

CHAYTOR, Q.C.:

Q. Okay, and your work at the Janeway, you said included histochemical stains?

MR. DYER:

A. Yes.

CHAYTOR, Q.C.:

Q. And were you ever involved in any IHC while at the Janeway?

MR. DYER:

A. For a very brief time, I think around '94/95,

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we--at the Janeway, we decided to attempt some of the immunoperoxidase through kit methods, but they were very expensive and I think it only lasted like two months, very little time using it.

CHAYTOR, Q.C.:

Q. Okay, and again, that would have been done using kits and would it have also involved petri dishes?

MR. DYER:

A. Yes.

CHAYTOR, Q.C.:

Q. So it was a very manual process?

MR. DYER:

A. Very manual process.

CHAYTOR, Q.C.:

Q. So after that, any IHC testing that the Janeway required, where was it done?

MR. DYER:

A. It was done at the Health Science Centre?

CHAYTOR, Q.C.:

Q. And were you involved in arranging for those tests to be done for the Janeway?

MR. DYER:

A. In terms of I would just like send the block

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over to the Health Science so that for them to perform testing on.

CHAYTOR, Q.C.:

Q. Okay. So we've heard from technologists who were at St. Clare's and what their involvement would be in terms of interacting with the Health Science to arrange tests. So from the Janeway site, you would have a similar involvement, I take it?

MR. DYER:

A. Yes.

CHAYTOR, Q.C.:

Q. And in your time at the Janeway, so I just understand then, in March of 2002, you say you became the manager of the pathology laboratory? Is that correct?

MR. DYER:

A. Correct.

CHAYTOR, Q.C.:

Q. And that then, at that point in time, was for the Health Care Corporation?

MR. DYER:

A. Yes.

CHAYTOR, Q.C.:

Q. Okay, and so you would have, at that point in

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time, have had--you would have been manager of how many sites?

MR. DYER:

A. Two.

CHAYTOR, Q.C.:

Q. And what would those be?

MR. DYER:

A. It would have been Health Science and St. Clare's.

CHAYTOR, Q.C.:

Q. Okay.

MR. DYER:

A. Because the Janeway was considered part of the Health Science at the time.

CHAYTOR, Q.C.:

Q. Yes, okay. So while you were still a technologist at the Janeway, perhaps you can tell us about your experience there? How did that work? How much interaction, for example, would you have had with the pathologists?

MR. DYER:

A. We had one and a half pathologists at the Janeway, one and a half FTEs, and we had daily constant interaction. A lot of the duties that I performed at the Janeway were--I would

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do all the routine, like processing cut staining, special stains. I also did grossing. The pathologist and I, we also developed the immunohistochemistry program for the province. We also developed immunofluoresence, so very technical. We were all involved with all aspects. Where the Janeway was a pediatric, they require the same services. So we just started developing them all ourselves.

CHAYTOR, Q.C.:

Q. Okay, and so the pathologist that you worked with there then, was the pathologist helpful to you or assisting you in learning how to do those new procedures?

MR. DYER:

A. Yes. What we would do was, like for Dr. P, we would look at muscle histochemistry -

CHAYTOR, Q.C.:

Q. Sorry, what's her name?

MR. DYER:

A. Oh, sorry, Dr. Pushpanathan, I'm sorry.

CHAYTOR, Q.C.:

Q. Thank you.

MR. DYER:

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A. We would look at muscle--you know, immunohistochemistry, which is muscle enzymatic stainings. So, you know, we would just pull out books and read on books about what we would call like an ATP or an RATP, these are different types of stains, and we would just take those books and on-the-job training, start learning, teaching ourselves how to perform those stains, and I would mostly perform the stains and work on them and critique them and she would constantly give feedback daily on how those stains, in her opinion, were working.

CHAYTOR, Q.C.:

Q. And were you sent for any outside training?

MR. DYER:

A. No.

CHAYTOR, Q.C.:

Q. Okay, so no continuing education courses to enable you to be able to do that?

MR. DYER:

A. No, that's on-the-job training is how it was always done.

CHAYTOR, Q.C.:

Q. Okay, and in terms of running those special

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stains, did you read controls? I take it controls would be run for those stains as well.

MR. DYER:

A. It depended on the type of stain, but yes, controls were run for most stains.

CHAYTOR, Q.C.:

Q. And were you taught to read the external controls?

MR. DYER:

A. Yes.

CHAYTOR, Q.C.:

Q. Okay, and who taught you how to do that?

MR. DYER:

A. For muscle histochemistry, it would have been Dr. P, Dr. Pushpanathan, but for routine stains, we learned that stuff in school. So like, you know, you have all kinds of different types of classification of stains. We have what we call routine stains, like H & E, you know, PAS, depending on what it's looking for, iron stain. So those you actually learn in school. But anything else, you had to--you don't learn in school, it's all taught on the job. So for muscle, for

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immunofluoresence, things like that, yes, she would actually teach us.

CHAYTOR, Q.C.:

Q. Okay, and did you then, were you responsible for ensuring that the control, external control worked or was that still read by the pathologist?

MR. DYER:

A. I would look at it, but Dr. P always made a final decision.

CHAYTOR, Q.C.:

Q. If you looked at the external control and made the determination that it hadn't worked, what would you do?

MR. DYER:

A. I would just repeat the stain.

CHAYTOR, Q.C.:

Q. Okay, so it would never go to the pathologist? You would sort of have the first step, in terms of anything getting out of the lab, you would check to make sure it had worked?

MR. DYER:

A. That's correct.

CHAYTOR, Q.C.:

Q. And if it hadn't worked, you'd redo your own

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work?

MR. DYER:

A. Correct.

CHAYTOR, Q.C.:

Q. Okay, and if we could just stick for a moment with your time at the Janeway, what was the state of affairs at the Janeway, and this is before the amalgamation in 2001, but what was the state of affairs at the Janeway pathology lab in terms of protocols?

MR. DYER:

A. Protocols for routine?

CHAYTOR, Q.C.:

Q. Yes.

MR. DYER:

A. We'd have protocols pretty well written for routine, yes.

CHAYTOR, Q.C.:

Q. Okay, and everything was in writing?

MR. DYER:

A. I didn't have anything in manuals. It was all like on the PC or on the computer or I would write things down and have them on the wall for quick references.

CHAYTOR, Q.C.:

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Q. Okay, and were they--had they been specifically developed for your laboratory or were they spec sheets from manufacturers?
MR. DYER:
A. Well, I would use spec sheets to help write the protocols, but I would actually have things written down.
CHAYTOR, Q.C.:
Q. And you may have to tweak them, depending on your own process?
MR. DYER:
A. Yes.
CHAYTOR, Q.C.:
Q. Okay. Your involvement for, was it, immunohistochemistry for muscles?
MR. DYER:
A. Yes.
CHAYTOR, Q.C.:
Q. Tell us about that, what did that involve? What type of work would you have been doing?
MR. DYER:
A. It's a total manual procedure where you would take non-fixed tissue, so it's--and what we would do is we would, you know--it would require like it's a very manual, very slow

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process for cutting the frozens, and everything had to be sequential. It's a very, very specific on how you would actually perform those procedures and all of them involved like pHing. Everything was done at specific pH levels, and the idea was to try and get the enzymes to see if the enzymes were working in those tissues.
CHAYTOR, Q.C.:
Q. And in terms then of a quality assurance program at the Janeway, was there a quality assurance program?
MR. DYER:
A. In terms of, like our quality assurance, we would run controls.
CHAYTOR, Q.C.:
Q. You'd run controls?
MR. DYER:
A. That was it.
CHAYTOR, Q.C.:
Q. And was there a committee or anything else above that?
MR. DYER:
A. No, there wasn't.
CHAYTOR, Q.C.:

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Q. Was there any external proficiency happening at the pathology lab at the Janeway?
MR. DYER:
A. No, there wasn't.
CHAYTOR, Q.C.:
Q. Okay. So after the Janeway then in 2001 moved over, you continued to work as a technologist then at the Health Sciences, but you concentrated mostly still on doing Janeway work? Is that right?
MR. DYER:
A. Yes.
CHAYTOR, Q.C.:
Q. Okay, and I guess you became manager, when in 2002?
MR. DYER:
A. I believe it was March of '02.
CHAYTOR, Q.C.:
Q. March, okay, so less than a year, you were continuing on a technologist at the Health Sciences?
MR. DYER:
A. Yes.
CHAYTOR, Q.C.:
Q. Okay, and what did you observe upon working as

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a technologist in the Health Science laboratory? What did you observe in terms of the work environment, compared to the work environment that you had left to the work environment at the Health Science?
MR. DYER:
A. It was pretty similar, almost very, very close.
CHAYTOR, Q.C.:
Q. Okay.
MR. DYER:
A. We were both--the Janeway was a very busy laboratory and so was Health Science.
CHAYTOR, Q.C.:
Q. Okay, and in terms of how the technical staff and the pathologists or medical staff interacted, did you make any observations on that?
MR. DYER:
A. It was pretty well the same as the Janeway. We were all on first name basis.
CHAYTOR, Q.C.:
Q. And did you detect whether or not there was any animosity or any difficulties amongst the staff themselves interacting?

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MR. DYER:
A. No.
CHAYTOR, Q.C.:
Q. And I understand the Grace had closed in 2000?
MR. DYER:
A. Yes.
CHAYTOR, Q.C.:
Q. And people from the Janeway had moved over now in 2001. Was there any difficulty in trying to achieve a team approach to doing things?
MR. DYER:
A. I guess like any organization, you know, we had a lot of people who came in from--we had people who came from the Grace who were probably working there like 25-30 years, so they were all in bred with their ideas and at Health Science, they all had--they had their ideas and of course, me, at the Janeway, I had my ideas. So yes, it was a very challenging time and we knew that we had to bring all these ideas together to make one standard for each protocol. So we knew--I knew it was going to be a lot of work.
CHAYTOR, Q.C.:
Q. So I take it when you assumed then the

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management position in March of 2002, you were aware that you had your work cut out in that regard, to bring things together and to create that team environment and have one standard going forward?
MR. DYER:
A. In the routine lab, yes.
CHAYTOR, Q.C.:
Q. And what impediments did you--what impediments existed to being able to achieve that?
MR. DYER:
A. You mean to bring things together?
CHAYTOR, Q.C.:
Q. Yes.
MR. DYER:
A. The biggest thing--well, it's not the biggest thing, my whole time at the Janeway, it was always about--my whole career, I'll be honest, my whole career was about budget cuts, cut, cut, cut. When I first started at the Janeway and I got my first job, it was really good, but I mean, every February, all they ever talked about was, you know, you're going to have a job for the next budget. It was amazing. And we were down to even counting

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gauze. Like it was very--we just lived through budget cut after budget cut, and so when we got to--when I got to the Health Science, it was pretty well the same thing and the lab was extremely busy. There was a lot of work all the time.
CHAYTOR, Q.C.:
Q. Okay, and you were trying to do that--what you're saying is you were trying to do that and the background to that was constant budget cuts?
MR. DYER:
A. Yes, constantly watching the budget.
CHAYTOR, Q.C.:
Q. Okay.
MR. DYER:
A. But we persevered. We worked through it and, you know, that will always have--we have--in the lab itself, we would have our regular meetings with--I would have regular--as a manager, would have regular meetings starting off with the techs, just so we would constantly--you know, pep talks, constantly promoting communication, conversation, new ideas. That's what I was always about is new

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ideas, never afraid to try something different if it's going to make things better, so constantly, and I think that, you know, I think we really did do a good job on bringing the group together.
CHAYTOR, Q.C.:
Q. Okay, and that was your style of management, when you took -
MR. DYER:
A. That was--I always had open door policy, always.
CHAYTOR, Q.C.:
Q. And while you're still a lab, working side by side with the other technologists, were there things that you had been taught at the Janeway or had learned at the Janeway through Dr. P, as you call her, were there things that you learned that you tried to teach to the technologists you were working with at Health Science?
MR. DYER:
A. Yes. When I moved over from--when I moved over in 2001, when I would do special stains, for example, myself, and we wouldn't duplicate, so if there were special stains on

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the adult side, I would do those also, but what I would do is I would constantly--it's just the way I am, I would draw chemical formulas and any technologist who was interested in learning, I would teach them how--like how this formula is working, what it's doing to the tissue for all that routine stains, and I constantly, everyone who would do a turn on specials, I would take them through those formulas, those processes, so they understand what's going on at each step.

One thing I did at the Janeway was I always cut frozen sections for the pathologists, because we use a microtome, so you may cut hundreds of sections a day routinely, so the use of cryostat, it's just a microtome in the cooler. So you are much more proficient, and when I say proficient, I mean you can probably do a much better section. So when I got over there, I noticed that the techs weren't doing that with pathologists. They were pretty well on their own, so I approached Mr. Gulliver and he agreed that, you know, we should start that type of practice and so whoever was not trained in

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frozen section, I trained them in, and created different methods. Like when you're involved with muscle histochemistry, you learn all kinds of new ways to cut frozens, because frozens can be very challenging. So we developed our own method at the Janeway and it pretty well made cutting frozens very simple, and where we were involved with neuropathology and brain tumours and that, they're also very difficult and challenging. So we brought over all those techniques and I introduced them to try and standardize, so we all could be doing the one thing and the easiest way to do it, because we were always--it was the workload, workload, workload was always there. So if you could make things easier, it would be great.

CHAYTOR, Q.C.:

Q. Okay, and in terms of your ability or your practice of checking the external controls, was that also happening at the Health Science laboratory?

MR. DYER:

A. I think for routine stains, I believe they were reviewing them, but I gave a much more

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in-depth, I think, teaching of what you actually should see, and now we do do that.

CHAYTOR, Q.C.:

Q. Okay, and that was--so back in your days in 2001, when you were a lab tech working side by side there with him, you did do some training with them in terms of what to look for in external controls, that's for special stains?

MR. DYER:

A. For routine specials, yes.

CHAYTOR, Q.C.:

Q. For routine specials. Were you involved at all in IHC?

MR. DYER:

A. No, very little.

CHAYTOR, Q.C.:

Q. Did you do any IHC while you were--in those few months that you were there?

MR. DYER:

A. As a tech?

CHAYTOR, Q.C.:

Q. Yes.

MR. DYER:

A. No.

CHAYTOR, Q.C.:

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Q. Okay, and so did you ever operate the DAKO machine?

MR. DYER:

A. No.

CHAYTOR, Q.C.:

Q. Okay. Was there a lead tech as such in the pathology lab?

MR. DYER:

A. We had--I think when I first got there, I was a senior tech. I know I was junior, but I was an actual Tech II and Peggy and Mary were Tech II's at the time over at the Health Science.

CHAYTOR, Q.C.:

Q. So Peggy Welsh and Mary Butler?

MR. DYER:

A. Yes.

CHAYTOR, Q.C.:

Q. Okay, and -- but between the two of them, was one considered to be the lead in the lab?

MR. DYER:

A. I think both of them pretty well considered equal in the lab.

CHAYTOR, Q.C.:

Q. So they were the only other Tech IIs?

MR. DYER:

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A. Yes.
CHAYTOR, Q.C.:
Q. And in terms of the technologists, were they receptive to your attempts to try and bring knowledge that you had acquired in your career, were they receptive to that?
MR. DYER:
A. I think they were, yes.
CHAYTOR, Q.C.:
Q. Okay, and you didn't run into any opposition then or anyone who was less than happy with you trying to bring new ideas?
MR. DYER:
A. No, not for the routine, I don't think. Everybody was pretty acceptable of it.
CHAYTOR, Q.C.:
Q. Okay. So you didn't yourself do any IHC as a technologist?
MR. DYER:
A. No.
CHAYTOR, Q.C.:
Q. And you didn't receive any training or didn't operate the DAKO machine?
MR. DYER:
A. When I was there as -- again curiosity, Mary

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Butler actually took me through the process because I -- you know, in the lab and seeing it there all the time, I'd like to know at least how it worked. So I remember Mary did take me through the process.
CHAYTOR, Q.C.:
Q. The process of the DAKO system?
MR. DYER:
A. Yes.
CHAYTOR, Q.C.:
Q. And did you ever do any antigen retrieval?
MR. DYER:
A. Myself?
CHAYTOR, Q.C.:
Q. Yes.
MR. DYER:
A. No.
CHAYTOR, Q.C.:
Q. And who then was doing -- when you arrived in 2001, who was doing the IHC work?
MR. DYER:
A. Peggy and Mary.
CHAYTOR, Q.C.:
Q. Just the two of them?
MR. DYER:

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A. Yes.
CHAYTOR, Q.C.:
Q. And so you would have been -- would you have been involved then in grossing when you went to the Health Science as a tech?
MR. DYER:
A. Yes.
CHAYTOR, Q.C.:
Q. And you mentioned in telling us about your history that you were involved, I believe, back in 1991 with some computer technology courses or work at that point?
MR. DYER:
A. Yes, the Janeway decided to go Meditec. That's a laboratory information system for laboratory, so I was picked to go -- as one of five to go away for training down in Boston.
CHAYTOR, Q.C.:
Q. And was that when the Meditec System was coming on for the Janeway?
MR. DYER:
A. Yes.
CHAYTOR, Q.C.:
Q. That's when that was happening, okay. When you came then -- did you then come back, I

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guess -- you went to Boston for training. Did you come back then and were you instrumental in setting up the Meditec System for the Janeway for your pathology lab?
MR. DYER:
A. Well, I went away for pathology, but I ended up learning how to write the program -- learning how to write the dictionaries for all the laboratories. I was the youngest one there and I was the go-getter, so I learned it all, but I only wrote -- I wrote micro and pathology when I came back, or helped at micro specialty.
CHAYTOR, Q.C.:
Q. And you did it for all the laboratories at the Janeway at the time?
MR. DYER:
A. I was one of a team, but I mainly focused on -- - like, I focused mainly on pathology, but I helped out with hematology, and I would help out with chemistry and I helped out with micro.
CHAYTOR, Q.C.:
Q. Okay. When you became manager then in March of 2002, who did you report to?

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MR. DYER:
A. Terry Gulliver.
CHAYTOR, Q.C.:
Q. And maybe you could tell us what exactly it meant to be manager of the pathology lab for the Health Care Corporation, what were your duties?
MR. DYER:
A. Well, when I got hired, I had a learning curve. There was a lot of things to learn. At the Janeway, I was already involved -- I was the leader at the Janeway, so I was involved with -- and I was also involved with the union, so I had a lot of knowledge of contract negotiations, contract interpretations, things like this. So when I got hired, the first thing I had to do was I had to learn all the budgetary, which was huge. I had to learn all the indicators, how things operated. We had about 150/200 pieces of equipment that had to be maintained. It was my first introduction to St. Clare's because I'd never been to St. Clare's prior to that, so I had a lot of learning to do because when I did get hired at St. Clare's, I noticed

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that there was -- you know, again just like when the Grace came over, everyone had their own ideas. When I was introduced to St. Clare's, they were doing things a lot different also. So I knew that we were going to try to do standardization there also. It was a big learning curve, I had to learn how to write tenders. I was also the -- when I got hired, I was also -- part of my position was laboratory information systems co-ordinator. So changes that were made to the LIS, I would have to be involved with. So that took up a lot of time and a lot of work also. So I knew I had a lot on my plate to do.
CHAYTOR, Q.C.:
Q. And was it -- was there a job description provided to you or were you involved in writing a job description?
MR. DYER:
A. I was involved with writing a job description after the fact.
CHAYTOR, Q.C.:
Q. And I take it it involved those things that you've now described to us?

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MR. DYER:
A. Yes.
CHAYTOR, Q.C.:
Q. Those were the main things. The 250 pieces of machinery --
MR. DYER:
A. About 150 to 200.
CHAYTOR, Q.C.:
Q. Okay, 150 to 200 that required maintenance, who was responsible for ensuring that the machines were maintained?
MR. DYER:
A. I guess that would be me.
CHAYTOR, Q.C.:
Q. Okay, and so were you involved in setting up routine maintenance schedules for them?
MR. DYER:
A. Well, a lot of the was already going on, but the bit ones like the microscopes and that, I would actually -- I wrote a tender for the microscopes to make sure they were being cleaned. Technical Services, they were doing the preventative maintenance on the DAKO. We had -- the processors and the stainers were all by Sakura, so they would come in yearly to

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do the main PMs also. Things like that, so a lot to learn.
CHAYTOR, Q.C.:
Q. And in terms of any ongoing daily or more frequent maintenance, were there schedules in place and were you involved in making sure that there were schedules in place for ongoing cleaning and maintenance?
MR. DYER:
A. As time went by, yes, I would write up charts to follow for cleaning, like, the cover slip or the stain, things like this, yes.
CHAYTOR, Q.C.:
Q. And then in terms of going back to check and make sure it was done, whose responsibility was that?
MR. DYER:
A. That would have been mine.
CHAYTOR, Q.C.:
Q. And you say that there were two sites that you became responsible for, St. Clare's and Health Science?
MR. DYER:
A. Yes.
CHAYTOR, Q.C.:

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Q. Prior to that, had there been individual managers for the pathology lab in both sites?
MR. DYER:
A. Yes, this was the first time that Health Care Corporation was going to have one manager.
CHAYTOR, Q.C.:
Q. So how did you divide your time then if you're going to be manager to both sites?
MR. DYER:
A. Well, I would try to spend a few hours every morning -- St. Clare's was a much smaller site. They were doing about -- about half of what Health Science was doing. So I'd spend a couple of hours there every morning and then I would come to the Health Science.
CHAYTOR, Q.C.:
Q. Where was your office actually located?
MR. DYER:
A. I had an office at both sites.
CHAYTOR, Q.C.:
Q. And so you would spend the majority of your time, I take it, at the Health Science?
MR. DYER:
A. Yes.
CHAYTOR, Q.C.:

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Q. You would start your day at St. Clare's?
MR. DYER:
A. St. Clare's.
CHAYTOR, Q.C.:
Q. And then the majority of your day would be spent at the Health Sciences?
MR. DYER:
A. All depending on meetings and schedules and things that were on the go at the time.
CHAYTOR, Q.C.:
Q. Okay, and I guess you'd be back and forth, depending on where the meetings were taking place?
MR. DYER:
A. Yes.
CHAYTOR, Q.C.:
Q. So and -- who then in that structure -- so I take it there was one management position which was taken away at that point in time?
MR. DYER:
A. Yes.
CHAYTOR, Q.C.:
Q. And who then would have reported directly to you?
MR. DYER:

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A. All the technologists and support staff.
CHAYTOR, Q.C.:
Q. All the technologists and support staff for the pathology lab?
MR. DYER:
A. Yes.
CHAYTOR, Q.C.:
Q. And I take it there were other managers for the other types of labs?
MR. DYER:
A. Yeah, I think there was about -- I think there was seven of us in total.
CHAYTOR, Q.C.:
Q. Okay, and again was it done the same way? So for hematology, was there one manager for both sites?
MR. DYER:
A. Yes.
CHAYTOR, Q.C.:
Q. And if there had been a manager at each site, then they also lost a manager in the process?
MR. DYER:
A. That's what happened.
CHAYTOR, Q.C.:
Q. So really your management positions were cut

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in half in that time period?
MR. DYER:
A. Even more so, I believe.
CHAYTOR, Q.C.:
Q. Is that right?
MR. DYER:
A. Yes. Since '96 when the Health Care Corporation started down to now, I'd say it was cut probably two-thirds.
CHAYTOR, Q.C.:
Q. In terms of then obviously the number of technologists that you would have been responsible for, can you tell me how many people would have been reporting to you?
MR. DYER:
A. In 2002, I think about 25 is a good guess. I mean techs and support. I'd say about 25.
CHAYTOR, Q.C.:
Q. And I guess then the manager who was in place or the two managers that were in place before that would have had less than half that number?
MR. DYER:
A. Well, the manager who I replaced, he had other divisions under his belt, but over at St.

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Clare's, Mr. Murphy, he just had -- he had the St. Clare's group, so he had -- I think he had about seven, seven or eight there.

CHAYTOR, Q.C.:

Q. So I just want to understand that. So the management position prior to, they may have had more than just pathology, they may have had pathology and hematology or whatever?

MR. DYER:

A. The one prior to me, he had multiple divisions, yes.

CHAYTOR, Q.C.:

Q. Okay. So it may not have been an increased workload for the particular position that you took on?

MR. DYER:

A. I don't understand.

CHAYTOR, Q.C.:

Q. I'm trying to get a sense of the workload that you took on, and if there was a reduction as we've heard in the number of managers -- so if there was a reduction in the number of managers, but was there any increase in the workload for the person then taking on the management position?

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MR. DYER:

A. For me there was.

CHAYTOR, Q.C.:

Q. For you personally?

MR. DYER:

A. Yes.

CHAYTOR, Q.C.:

Q. I'm just trying to think then, the person who was involved in having to manage more than just the pathology lab probably still would have had 25 people reporting to him or her?

MR. DYER:

A. Yes.

CHAYTOR, Q.C.:

Q. Up to this point in time, March of 2002, had you had any experience in management?

MR. DYER:

A. Just leadership, doing leadership -- I was the lead tech at the Janeway, so I was involved with the OR, I was involved with oncologists, involved with hematologists, involved with neurologists, so at the Janeway I learned -- I picked up a lot of leadership skills in dealing with them because I was the lead person at the Janeway. The lab manager was

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actually the manager of the lab. So, like, for pathology, we never had a manager until -- I never had a direct manager. I would actually go through, I guess, what we term today as a laboratory director. So I was really in charge of the lab at the Janeway.

CHAYTOR, Q.C.:

Q. So people reported to you, the other technologists reported to you?

MR. DYER:

A. Only there was just one technologist there.

CHAYTOR, Q.C.:

Q. I'm sorry? Oh, there's only one --

MR. DYER:

A. There was only one with me, yes.

CHAYTOR, Q.C.:

Q. So in terms of having experience in management, having people report to you, and you giving direction to people, did you have that kind of experience before you assumed the management position?

MR. DYER:

A. In terms of the lab, I had just one person reporting to me.

CHAYTOR, Q.C.:

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Q. Okay, so -- and that person reported directly to you or that person could also go to the director?

MR. DYER:

A. Or they could go to the director also.

CHAYTOR, Q.C.:

Q. So in terms of any formal chart, that person, did they understand that they would report to you first or could they go directly to the director?

MR. DYER:

A. They could go to the director, but I believe they understood I was the lead tech, so they would come to me with issues first.

CHAYTOR, Q.C.:

Q. Okay. When you assumed then your management position, you said you would start your day at St. Clare's, and what would you do at St. Clare's?

MR. DYER:

A. Visit St. Clare's in the lab to see how things were going. One of the big focuses was we had a lot -- it was getting the work out. Biopsies had to be out within 48 to 72 hours, and larger specimens within another day or

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two, so it was a constant about how things were flowing and is the work getting out.

CHAYTOR, Q.C.:

Q. Okay, and then you would go over for the rest of your day at the Health Sciences and what would you do over there?

MR. DYER:

A. Pretty well the same thing, although -- I was involved with committees. Again still in '02, still learning the budget, things like this, but -- pretty well just trying to maintain the lab.

CHAYTOR, Q.C.:

Q. So would you spend -- where was your office actually located at the Health Science?

MR. DYER:

A. In the pathology lab.

CHAYTOR, Q.C.:

Q. Okay, so it was actually there in the lab?

MR. DYER:

A. Yes.

CHAYTOR, Q.C.:

Q. Would you spent most of your time then in the lab conversing with the technologists?

MR. DYER:

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A. No, I would spend -- yes and no. Like, it's hard to say. Again, you know, if there was issues, I had lead techs. Like, when I got hired, you tend to pick out who the leaders are in the lab and that's the people I would speak to just to see how things were going.

CHAYTOR, Q.C.:

Q. I guess, on that then, was there somebody when you weren't at -- and couldn't obviously divide yourself and be in two places at once. So when you're not at St. Clare's, was there a lead tech in charge there?

MR. DYER:

A. Yes.

CHAYTOR, Q.C.:

Q. And who was your lead tech?

MR. DYER:

A. Catherine Parnell.

CHAYTOR, Q.C.:

Q. And at the Health Science, was there also a lead tech there?

MR. DYER:

A. I would consider Peggy and Mary.

CHAYTOR, Q.C.:

Q. So Peggy and Mary continued as the lead techs?

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MR. DYER:

A. Yes.

CHAYTOR, Q.C.:

Q. Were they officially designated as lead techs?

MR. DYER:

A. Well, they were Tech IIs. They were the lead techs at that time.

CHAYTOR, Q.C.:

Q. So that's well understood by people that if you're Tech II, you're the lead tech?

MR. DYER:

A. At that time, yes.

CHAYTOR, Q.C.:

Q. Okay.

MR. DYER:

A. I also carried a pager 24/7 in case anything came up.

CHAYTOR, Q.C.:

Q. So you became then -- as manager, you became responsible for all aspects of the pathology lab. That would include, I take it, IHC portion of the lab?

MR. DYER:

A. Yes.

CHAYTOR, Q.C.:

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Q. And at that time, I take it, it was still Mary and Peggy who were running the machines?

MR. DYER:

A. Yes.

CHAYTOR, Q.C.:

Q. And running the IHC portion, and you, yourself, would have had very little in the way of knowledge of IHC or of the DAKO process?

MR. DYER:

A. Again I had some knowledge of it because I learned -- I went through it all with Mary. Immunofluorescence is also antibody antigen reaction style technique, and the difference is antigen retrieval.

CHAYTOR, Q.C.:

Q. And you hadn't been involved in that process?

MR. DYER:

A. No.

CHAYTOR, Q.C.:

Q. And Mary took you through on one occasion, was it, through the DAKO System?

MR. DYER:

A. Yes, just so I would understand how things operated and how they actually did their work,

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things like this.
CHAYTOR, Q.C.:
Q. So in terms of training then --
MR. DYER:
A. No, no official training.
CHAYTOR, Q.C.:
Q. You had no official training and in terms of the actual DAKO process, you would have had very little, I would suggest to you, in terms of knowledge of that process?
MR. DYER:
A. Again I knew the process, but total detail, no, I wasn't totally detailed.
CHAYTOR, Q.C.:
Q. So if Mary or Peggy had any issues regarding the process or what they were doing, would you have been able to assist them?
MR. DYER:
A. Well, what I would have -- again I don't recall very many issues. The main ones would be is if the machine went down, for example, and we needed someone immediately, I would just call Tech Services or actually they would call Tech Services.
CHAYTOR, Q.C.:

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Q. They could do that for themselves?
MR. DYER:
A. For sure. So they would call Tech Services themselves also, but they never really came to me with an issues. The only issue that really stood out was that -- again I know I'm getting early into it, but the slides would wash off, or the tissues would come off the slides.
CHAYTOR, Q.C.:
Q. Yes, and I will talk to about that.
MR. DYER:
A. So things like that, for the most part.
CHAYTOR, Q.C.:
Q. And when that occurred, they did come to you?
MR. DYER:
A. They would talk to me about it, yes.
CHAYTOR, Q.C.:
Q. But for the most part then, they were up and running this system and were fairly independent in what they were doing, is that right?
MR. DYER:
A. Well, they had Dr. Ejeckam. They had Dr. Ejeckam there for all technical issues, and they would go to him -- I know Peggy and --

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not so much Peggy, she wasn't around a long time, but Mary would go to him all the time.
CHAYTOR, Q.C.:
Q. So that included any issues from a technical point of view, they would speak to Dr. Ejeckam about?
MR. DYER:
A. Yes, or other -- and other pathologists. Like, we had pathologists who were pretty good with immunos, so they would talk to other pathologists too.
CHAYTOR, Q.C.:
Q. And how much time then would you, yourself, spend in the IHC portion of the lab?
MR. DYER:
A. Very little.
CHAYTOR, Q.C.:
Q. And if they needed to consult you, what types of issues would you be consulted on? Not technical, from what you're telling me.
MR. DYER:
A. Right, mostly non-technical issues they would discuss with me. Like, you know, if someone was sick today, how do we handle it. More operational than anything else.

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CHAYTOR, Q.C.:
Q. Administrative issues?
MR. DYER:
A. Yes.
CHAYTOR, Q.C.:
Q. And what if they needed resources for the IHC lab, would that have to come through you?
MR. DYER:
A. Yes.
CHAYTOR, Q.C.:
Q. So tell us about that, how would that work, who would approach you?
MR. DYER:
A. Well, Mary or Peggy, if they wanted -- for example, if a pathologist approached them for a new antibody, and they wanted one, they would come to me or ask the pathologist to come to me, and if we can afford it, we would buy the new antibody. If they were running out of slides or something of this nature, and they needed something brought in immediately, I would just make the phone calls to get things brought in, things like that.
CHAYTOR, Q.C.:
Q. And in terms of the maintenance checks then on

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the equipment that they were using, were you carrying out -- were you overseeing that and checking to make sure appropriate maintenance was taking place?

MR. DYER:

A. For the DAKO machine, what would happen is the machine wouldn't operate unless the maintenance was actually performed, so they always performed the maintenance so they could do their work.

CHAYTOR, Q.C.:

Q. And in terms of any cleaning or anything else that needed to be done, was that true the machine wouldn't actually work if it hadn't been done?

MR. DYER:

A. That was my understanding that the machine would only do so many hundred slides and then it would stop.

CHAYTOR, Q.C.:

Q. Yes.

MR. DYER:

A. And you would have to perform a specific technical protocol before you can move forward.

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CHAYTOR, Q.C.:

Q. So it wasn't your understanding that they needed to do anything on a daily basis, they didn't need to check or calibrate or doing anything on a daily basis?

MR. DYER:

A. No, just routine wiping down, things like this, just so things -- keep the dust off, things like that.

CHAYTOR, Q.C.:

Q. And what about the other tools of the trade that they were using. We've heard some issue about pipettes, for example, and calibration of pipettes and other things that they were using in the lab. Was there any maintenance schedule or replacement schedule for those -- the other tools they were using?

MR. DYER:

A. Can you be more specific?

CHAYTOR, Q.C.:

Q. Pipettes is a specific example.

MR. DYER:

A. Pipettes is the one that's going to stand out.

CHAYTOR, Q.C.:

Q. That's the one that's come up here, but, I

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mean, we can go through --

MR. DYER:

A. Yes.

CHAYTOR, Q.C.:

Q. And we will eventually get to Trish Wegrynowski's report. There were several things identified.

MR. DYER:

A. We didn't calibrate pipettes. We didn't calibrate pipettes.

CHAYTOR, Q.C.:

Q. Was there anything -- what was in place in terms of overseeing what they were and were not doing in terms of the maintenance of their equipment?

MR. DYER:

A. There was -- again I --

CHAYTOR, Q.C.:

Q. What was being done? Like what -- was there anything posted, any guidelines given, and then were there checks to actually ensure that it was taking place?

MR. DYER:

A. There was no documentation as to what they were actually doing, only what was on the

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DAKO. Like, once you cleaned the DAKO, it was documented on the machine itself.

CHAYTOR, Q.C.:

Q. Okay, so when you became manager then in 2002, what was happening in the pathology lab in terms of quality assurance?

MR. DYER:

A. The things that we did were, again, I will say it up front, there was very little documentation, but just like I did at the Janeway, all the--we ran controls for every single thing that was, all slides, all special stains, all stains that were run, a normal control was run with them and that was our QC. When it came to -

CHAYTOR, Q.C.:

Q. So that was your QC, your quality control.

MR. DYER:

A. That was our QC, when it came to cutting, staining, a pH, whenever that was required, it was always done, it just wasn't documented.

CHAYTOR, Q.C.:

Q. Okay, so was there a quality assurance program?

MR. DYER:

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A. No.
CHAYTOR, Q.C.:
Q. And who did you understand, upon becoming manager, to be responsible to--for quality assurance in the pathology lab?
MR. DYER:
A. It was coming from, we talked about--when I got hired, the site chief and the clinical chief were working on a QC, a quality assurance program at the time.
CHAYTOR, Q.C.:
Q. I'm sorry?
MR. DYER:
A. When I first got hired and I was invited to the site chief's meeting, that's when I first became aware that the site chief and clinical chief were working on a QC program or a QA program, I'm sorry.
CHAYTOR, Q.C.:
Q. So you saw it as the responsibility of the site chief and the clinical chief?
MR. DYER:
A. And I believe that the management should also be part of it.
CHAYTOR, Q.C.:

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Q. Okay. This issue about the pipettes, why weren't they being calibrated?
MR. DYER:
A. It just wasn't a practice at the time. I don't think any of our labs were actually calibrating their pipettes at the time.
CHAYTOR, Q.C.:
Q. And did you understand the importance of it yourself?
MR. DYER:
A. Again, did I understand the importance of calibration?
CHAYTOR, Q.C.:
Q. Yes.
MR. DYER:
A. What we did is, just like at the Janeway, we ran controls and if the stain didn't work, it would be the control that would have picked it up, then we would go back and try and determine what went wrong.
CHAYTOR, Q.C.:
Q. So you didn't link any particular significance or importance to calibration of the pipettes?
MR. DYER:
A. Not at the time, no.

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CHAYTOR, Q.C.:
Q. And in terms of quality assurance, there was an effort underway when you became manager and you attended a meeting of site chief and the clinical chief, who was--by the way, who was the site chief at the time?
MR. DYER:
A. The site chief was Sushil Parai.
CHAYTOR, Q.C.:
Q. That's at the Health Science, I take it?
MR. DYER:
A. Yes.
CHAYTOR, Q.C.:
Q. And how about the clinical chief, who was that?
MR. DYER:
A. Dr. Cook.
CHAYTOR, Q.C.:
Q. So in becoming manager and I understand the background that you took on this role, in terms of what you've described in budgetary constraints and there had already been some amalgamation of services, what did you--what did you see as being your main goal or objective?

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MR. DYER:
A. Our main goal was to get the slides up and produce a quality slide and get them out to the pathologists for interpretation.
CHAYTOR, Q.C.:
Q. And did you have any particular plan in place as to how you were going to achieve that quality service?
MR. DYER:
A. Well the first thing I wanted to do was to start trying to standardize some of the processes that we were doing and what it is, we developed a, well, I guess a complex schedule so that staff would have specific duties to do and as long as those duties were getting done, we could create a continuous flow.
CHAYTOR, Q.C.:
Q. And when you say "standardized practices" and you've described a bit about how things were being done differently from site to site, so you wanted to ensure that there was consistency in how things were being done and why would that be important?
MR. DYER:

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A. When it comes to pathologoy, I think as I explained earlier, it's very subjective and when I was hired, I noticed--actually there is a tech I would notice, you know, sometimes a pathologist would come into the technical lab, again, I'm not referring to IHC, and they would say, you know, like this H&E was query today, they didn't think it worked, and so then I would go and talk to other pathologists and they would say it worked, so it was very subjective. So different pathologists preferred things different ways and that's just--it was extremely hard to manage from a technical point of view. So what I wanted to do was to just have one tech--one procedure or one technique for each thing.

CHAYTOR, Q.C.:

Q. So you were looking at having standard operating procedures across the board?

MR. DYER:

A. Well, for example, with the grossing, what I did was, I think in 2003, 2004, we created templates for all the technical staff, so I think we had like 12 or 13 templates created so that the grossing would always be done the

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same way for the techs, so things like that we started doing.

CHAYTOR, Q.C.:

Q. And how much of the grossing were the techs doing at that point in time?

MR. DYER:

A. I'd say probably about thirty, forty percent.

CHAYTOR, Q.C.:

Q. They weren't doing breasts, I take it?

MR. DYER:

A. No, I'm sorry, techs, just like techs--all the tech's grossed were specimens that would not require a cut or an incision, so they would do all the biopsies, mediastinal masses, things like this.

CHAYTOR, Q.C.:

Q. Okay, and in terms of trying to standardize, to achieve that, did you have consolidation of the pathology labs in mind?

MR. DYER:

A. As soon as I was hired, that was--in 2002, that was--once I visited and started understanding how things were operated, within a couple of months that's what I wanted to do.

CHAYTOR, Q.C.:

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Q. Okay, so you set out as that being a main goal and you felt that was necessary in order to be able to standardize and bring things together?

MR. DYER:

A. It would be the only way.

CHAYTOR, Q.C.:

Q. Okay, and did you have in mind--and I take it by that, you mean getting everything moved to one site?

MR. DYER:

A. Yes.

CHAYTOR, Q.C.:

Q. And did you have any particular site in mind?

MR. DYER:

A. When I talked about consolidation, I enlisted the services of, I'm not sure, Facilities Management and they sent down an engineer to do a total assessment and they decided that--because I was unbiased, it didn't matter to me where the consolidated--if it could be at St. Clare's, Health Sciences, as long as we were together, that was the goal, and they assessed that St. Clare's lab was too small and -

CHAYTOR, Q.C.:

Q. They didn't physically have the space, I take

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it?

MR. DYER:

A. Correct, so they felt that if we were to consolidate, the Health Sciences would be the optimal spot.

CHAYTOR, Q.C.:

Q. If we could look, please, at P-2316, Registrar? And this is a meeting of laboratory program division managers' meeting on June 18th, 2002 and present include yourself and Mr. Dyer. Lynn Wade, what would her role have been at that point in time?

MR. DYER:

A. I believe Lynn was manager of client services at the time.

CHAYTOR, Q.C.:

Q. Okay, and the others, I take it, were also managers.

MR. DYER:

A. Yes.

CHAYTOR, Q.C.:

Q. And if we come down to page 2, so this would, again, be a couple of months into your mandate as manager. H says "Operational review. Barry involved the group about his plans for

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the pathology lab at St. Clare's." What do you recall that would have been referencing?

MR. DYER:

A. I think, I believe that would be the process to start a consolidation.

CHAYTOR, Q.C.:

Q. Okay, and if we could look, please, at P-2317? And this is a year now into your management and this is a laboratory program planning day, March 24th, 2003. And if we just look at page 6, the action plan is "to provide a comprehensive timely high quality service utilizing available technology and human resources in an efficient manner within existing financial capacity". And objective 3) "To make available the most up-to-date laboratory technology, ensuring the HCCSJ lab program as a leader in Canada." And "Technical consolidation of pathology staff thereby utilizing current technology in a more efficient and expanded manner. How to do it, transfer to the Health Science site, microtones, tissue processor, automatic staining, bedding centre, automatic cover slip"--responsibility is yourself--"and to be

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completed June, 2003." So I take it this is part of the consolidation that you had in mind?

MR. DYER:

A. Yes.

CHAYTOR, Q.C.:

Q. And was to be, this portion at least to be completed by June, 2003.

MR. DYER:

A. Yes.

CHAYTOR, Q.C.:

Q. And on page 8, again, Objective 4, "To ensure that there is proper number of qualified staff, the correct skill mix of staff and to utilize human resources in an efficient manner." And action steps "technical consolidation to Health Sciences Centre, thereby expanding pathology service, standardizing quality and improving TAT." What's your TATs?

MR. DYER:

A. Turn-around-times.

CHAYTOR, Q.C.:

Q. "Consolidation then, move one tech to, remove remaining technologists, replace vacant

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technologist's position with lab assistant, efficient transport system" you are responsible and then there's a variety of completion dates throughout 2003. Mr. Dyer, so was the idea that all the technologists--would any technologist remain at St. Clare's?

MR. DYER:

A. Yes, St. Clare's would maintain their clinical practice over there, so they had a frozen section room, so what the plan was was to leave a person over there for the cutting of frozen sections and to assist with grossing.

CHAYTOR, Q.C.:

Q. And so in terms of any surgeries then that would take place at St. Clare's, so if surgery took place, for example, breast surgery, we understand there was a lot of breast surgeries at St. Clare's, so what would happen in terms of getting the tissue to the Health Science?

MR. DYER:

A. Well what would happen first, once the specimen was surgically removed, we had a tech there, they would go downstairs to the frozen section room and get the specimens or there was a--actually there was a portering system,

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but we would also go down to check ourselves. It would be brought up to the--we brought it up to our gross room at St. Clare's and then it was grossed or what the regular protocol was, was it was usually left overnight, grossed the next day and at that time--well it wasn't happening yet, but then once they were grossed, they would actually be, they were fixed and then they were sent over by a transport system over to Health Science for processing.

CHAYTOR, Q.C.:

Q. Now is that what actually happened or that was going to be the plan, in terms of consolidating services?

MR. DYER:

A. No, the plan, my overall plan would be to have all grossing also performed at the same site.

CHAYTOR, Q.C.:

Q. Would have all, all right, so what actually happened is what you described in the grossing taking place at St. Clare's, but what you were proposing was to move the grossing, everything over to the Health Science?

MR. DYER:

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A. That would have been my final goal, but that was--the grossing was done by pathologists, so it was really out of my realm.
CHAYTOR, Q.C.:
Q. And did you encounter any obstacles in trying to standardize the pathology procedures and practices and your ultimate goal of consolidating the lab itself?
MR. DYER:
A. Yes.
CHAYTOR, Q.C.:
Q. And perhaps then you can tell the Commissioner about difficulties you ran into along the way?
MR. DYER:
A. If you go to the end of this, I think you will see it too, I think the biggest issue was the pathologists at St. Clare's were not in favour of consolidation, that was our biggest issue.
CHAYTOR, Q.C.:
Q. So the pathologists at St. Clare's weren't in favour.
MR. DYER:
A. Yes.
CHAYTOR, Q.C.:
Q. And why was that? What was the concern?

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MR. DYER:
A. I think you should talk to Don about that, Dr. Cook.
CHAYTOR, Q.C.:
Q. But what was told to you?
MR. DYER:
A. They just didn't--they did not want to consolidate.
CHAYTOR, Q.C.:
Q. And but were you given any reasons, like was there a rationale given to you, and if so, did you accept that?
MR. DYER:
A. When I got hired at the Health Science--when I got hired into this position, what I found was when I moved to St. Clare's, it was a different type of environment and from my experience at the Health Science and my experience at the Janeway, when it came to like the actual technical things, the manager was in charge, but they worked in collaboration with the site chief, but I found at St. Clare's that it was more that the pathologists were in charge and they ran the lab as they saw it and manager wasn't as involved.
CHAYTOR, Q.C.:
Q. So even though there was a manger there, the manage wasn't as involved in the management of the technical staff?
MR. DYER:
A. Yes. So I was a different kind of person, I was more involved with the staff. And I think they just saw it as, you know, it wasn't that it was a conflict, but I think they just saw it as, I was stepping on their toes or in their territory, so it would take some time, I knew--I learned quickly it would take some time to promote this idea.
CHAYTOR, Q.C.:
Q. Okay, and was there something you said in this document that if you want to scroll through it, you thought there was something in this document?
MR. DYER:
A. I think if you go to the very end.
CHAYTOR, Q.C.:
Q. The very end of the document. Okay.
MR. DYER:
A. I'm not sure.

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CHAYTOR, Q.C.:
Q. Because I think this is page 12.
MR. DYER:
A. No, "Disadvantages."
CHAYTOR, Q.C.:
Q. "Disadvantages"?
MR. DYER:
A. There's the two disadvantages.
CHAYTOR, Q.C.:
Q. "Transitional period for standardization of techniques and training of personnel, pathologists at St. Clare's are not in favour of technical consolidation."
MR. DYER:
A. Correct.
CHAYTOR, Q.C.:
Q. And so those were the, in terms of the major impediment or obstacle standing in your path of achieving this was the opposition from the pathologists at St. Clare's?
MR. DYER:
A. Yes.
CHAYTOR, Q.C.:
Q. So, Dr. Cook was clinical chief of the Laboratory Medicine Program at the time?

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MR. DYER:
A. Yes.
CHAYTOR, Q.C.:
Q. So I take it that was a huge obstacle then for you?
MR. DYER:
A. He was also site chief at St. Clare's.
CHAYTOR, Q.C.:
Q. Okay, so it was no small obstacle in your path towards trying to standardize and consolidate?
MR. DYER:
A. Correct.
CHAYTOR, Q.C.:
Q. Did you know Dr. Cook prior to becoming manager?
MR. DYER:
A. No.
CHAYTOR, Q.C.:
Q. And what introduction did you have to Dr. Cook?
MR. DYER:
A. I believe, I think the first time I met Dr. Cook was at my interview.
CHAYTOR, Q.C.:
Q. Okay, and in the early days, did Dr. Cook have

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any advice for you?
MR. DYER:
A. What do you mean? I don't understand.
CHAYTOR, Q.C.:
Q. Did he have any advice for you in terms of this whole, well we're at St. Clare's, this is what we're doing, like how did you get the sense that there was going to be this opposition from St. Clare's?
MR. DYER:
A. I think--where did I get it?
CHAYTOR, Q.C.:
Q. Yeah, what was said to you and in particular what was said by Dr. Cook to you for you to form that opinion?
MR. DYER:
A. We had an incident that one day while I was over having a staff meeting, over in St. Clare's, I believe you already know about it, you've read the letter.
CHAYTOR, Q.C.:
Q. Yes, and I think--and I'll come to that, I think that happens then in February of 2003, but was there anything prior to that? Anything in terms of the role of the

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pathologist verses what he saw to be your role?
MR. DYER:
A. Again, little things like, I would ask the staff to do one thing and pathologists would tell staff to do other things, so they would listen to the pathologists
CHAYTOR, Q.C.:
Q. Okay. So, the idea that pathologists are going to run their own ship or they're independent thinkers, was that kind of sentiment expressed to you?
MR. DYER:
A. Yes.
CHAYTOR, Q.C.:
Q. Okay. And was it made clear to you that that's the way it was going to be and you weren't going to tell them otherwise?
MR. DYER:
A. Yes.
CHAYTOR, Q.C.:
Q. And Dr. Sushil Parai, he was the site chief then for Health Science?
MR. DYER:
A. Yes.

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CHAYTOR, Q.C.:
Q. Okay. And how was your relationship with Dr. Parai?
MR. DYER:
A. I think we had a good working relationship.
CHAYTOR, Q.C.:
Q. Okay. And when you took your manager's position did Dr. Parai have any advice for you?
MR. DYER:
A. Yes. He explained about the politics in, I guess, in laboratory, or I guess in Health Care in general and he said, you know, it was just to watch your back.
CHAYTOR, Q.C.:
Q. Okay. And what did you understand him to mean by that?
MR. DYER:
A. What did I understand him to mean?
MR. DYER:
A. Yes.
CHAYTOR, Q.C.:
Q. Just walk softly; be careful what I do.
CHAYTOR, Q.C.:
Q. And did that prove to be good advice?

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MR. DYER:
A. Obviously, yes.
CHAYTOR, Q.C.:
Q. So, you saw that there were things that were being done differently from site to site, but were there any particular practices or procedures that you had concerns with at either site?
MR. DYER:
A. Yes.
CHAYTOR, Q.C.:
Q. And perhaps you could tell the Commissioner then about some of those.
MR. DYER:
A. I know it's already spoke to, so I can speak about it. But there was all kinds of differences between Health Sciences and St. Clare's and I'm not trying to pick on St. Clare's, but the biggest difference I saw was--there's a lot of clinical differences also, but the biggest technical difference I saw was reprocessing.
CHAYTOR, Q.C.:
Q. Sorry, reprocessing?
MR. DYER:

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A. Yes.
CHAYTOR, Q.C.:
Q. And we've heard something about that, but perhaps you could tell us what exactly is reprocessing and why was that a concern to you?
MR. DYER:
A. Well, the process of--again, from what I've read and from what I've learned, reprocessing is not something that you would do--most times reprocessing is done because of, I guess, poor fixation. But through my career I've never ever reprocessed a specimen and in the time that I was at Health Sciences, I've never seen a specimen be reprocessed, but it was definitely a weekly or even more than a weekly occurrence at St. Clare's. So, I definitely didn't like it and I wanted it to stop.
CHAYTOR, Q.C.:
Q. Okay. And did you make any inquiries as to why they were finding the need to reprocess so often?
MR. DYER:
A. Well, I was finding at St. Clare's it was their bigger tissues, like the water based

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tissues and their fatty tissues.
CHAYTOR, Q.C.:
Q. So, I take it breast tissue were an issue.
MR. DYER:
A. Breast tissue, that was major component of reprocessing. Whereas at Health Science, they were doing breast and we weren't reprocessing them.
CHAYTOR, Q.C.:
Q. And so fixation could be an issue? Was there any inquiries made to determine why it was necessary to be doing so much reprocessing, in particular, of the breast tissue?
MR. DYER:
A. Yes. I definitely inquired about it.
CHAYTOR, Q.C.:
Q. What were you able to find out?
MR. DYER:
A. Well, from what I concluded, it wasn't actually the formalin that was causing the issue, because a lot of other tissues were being processed the same day and they were all fine. It was mainly their larger tissues and I believe we linked it back to the actual gross room.

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CHAYTOR, Q.C.:
Q. And who was doing the grossing?
MR. DYER:
A. At the time, physicians and residents.
CHAYTOR, Q.C.:
Q. So, no technologists. Those were the pathologists or the pathology residents?
MR. DYER:
A. Correct.
CHAYTOR, Q.C.:
Q. Okay. And so then did you take that up with anyone? Did you discuss that?
MR. DYER:
A. I did. I took that up with Dr. Cook.
CHAYTOR, Q.C.:
Q. And what was said and what happened?
MR. DYER:
A. Well, first what I did was I talked to the tech who actually assisted. So, again, there's a difference between assisting and assisting, but our techs, what they did was they would sit next--like, a pathologist would be here and they would be grossing. A tech would be here, so the tech would provide the specimen. They would label cassettes, lay the

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cassettes out, they would do worksheets of exactly what's being done. Pathologists will put the tissue in the cassettes. Either the pathologists or the assistant here, the tech, will close them and put them into formalin. And when I talked to the tech about it, what we were finding was a lot of these tissues that were being required for reprocessing were very thick. Like, they weren't--they were cut too thick; they weren't fitting properly in the cassettes. So, they needed to be cut smaller.

CHAYTOR, Q.C.:

Q. And you approached Dr. Cook with that?

MR. DYER:

A. Yes.

CHAYTOR, Q.C.:

Q. Okay. And was Dr. Cook receptive to that?

MR. DYER:

A. Well, I believe he--I didn't do follow-up with him. I would have assumed he would have spoke to his physicians or the residents about it.

CHAYTOR, Q.C.:

Q. Okay. So, you brought it to his attention?

MR. DYER:

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A. Yes.

CHAYTOR, Q.C.:

Q. Okay. And he didn't voice any opposition or objection to the fact that you were bringing it to his attention?

MR. DYER:

A. I can't remember; I don't think so.

CHAYTOR, Q.C.:

Q. Okay. And who was the tech involved that advised you of this?

MR. DYER:

A. Gary Hand.

CHAYTOR, Q.C.:

Q. Gary Hand?

MR. DYER:

A. Yes.

CHAYTOR, Q.C.:

Q. Okay. And what was your concern anyhow about reprocessing? What's the danger in reprocessing specimens?

MR. DYER:

A. Well, what happens is if you look at formalin, what formalin will do is formalin is two-fold. Number one, it fixes the tissue, of course, that's very important, but even more important

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process with formalin to fix a tissue is it protects the tissue when it goes through this processor. The processor is like 10, 11 steps and is very aggressive on this gentle tissue. So, we have to make sure it's fixed, so it's protected. So, what happens is you go through the process and if it's not fixed, well then it's not going to--the processor, you will get multi-layer fixation.

So, what's happening is tissue goes on, only some of it is fixed in formalin and now we start getting it fixed in 70 percent alcohol. That will give you a different look. That 70 percent is forced through an 80 which finally gets to the 100. So, it's different levels of fixation for that tissue. Then we go through the process until the end where it's in wax. Then they actually took the tissue, put it back xylene, started going backwards, they bring it back to water. And so now water is being introduced again into the tissue. Now, when water gets introduced to the tissue, your cells can be slightly distorted and then they start the whole process over again. So, it damages tissue.

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From what I've learned or from what I've read, it actually damages tissue. Again, at the Janeway, in my career, 12, 13 years, we've never reprocessed on specimen.

CHAYTOR, Q.C.:

Q. Okay. And so in terms of at the end of the day if that tissue is to be used for IHC testing, ultimately I take it, it could interfere with the end product?

MR. DYER:

A. Well, at the time, where I wasn't truly involved with IHC, I didn't do a true link to that. I was just, in general, what it would do the tissue.

CHAYTOR, Q.C.:

Q. Concerned about the danger to it.

MR. DYER:

A. Yes.

CHAYTOR, Q.C.:

Q. Sorry, I didn't mean to cut you off.

MR. DYER:

A. That's okay.

CHAYTOR, Q.C.:

Q. But ultimately, I take it that is a concern.

MR. DYER:

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A. For sure.
CHAYTOR, Q.C.:
Q. Yes. And you said it was happening at least weekly at St. Clare's. Did they actually have an embedder for that process?
MR. DYER:
A. They did.
CHAYTOR, Q.C.:
Q. They had an embedder dedicated to reprocessing?
MR. DYER:
A. Just to do the processing. And again, I wasn't in favour of reprocessing, but also when we were looking at trying to standardize our efficiencies, they were doing this work twice which was another issue. So, if they reprocess a hundred block this week, for example, that's a hundred, like those blocks gone through everything twice. So again, it just slows down the process and it's more difficult for you and you have to do more checks, so that things don't get missed.
CHAYTOR, Q.C.:
Q. Okay. And you spoke to Mr. Hand obviously, and you spoke to Dr. Cook. Did you instruct

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the lab technologists to not reprocess?
MR. DYER:
A. Yes, I did.
CHAYTOR, Q.C.:
Q. Okay. And did they listen to you?
MR. DYER:
A. No.
CHAYTOR, Q.C.:
Q. And why not?
MR. DYER:
A. They said pathologists would instruct them to, they wanted this reprocessed, so they would do it.
CHAYTOR, Q.C.:
Q. Did you have to threaten to discipline or actually discipline technologists for not following your instructions in that issue?
MR. DYER:
A. I may have made that comment, yes.
CHAYTOR, Q.C.:
Q. And yet reprocessing continued?
MR. DYER:
A. Yes, I'll be honest, it did -
CHAYTOR, Q.C.:
Q. Eventually stop.

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MR. DYER:
A. I joined it before consolidation. The actual process did actually slow down.
CHAYTOR, Q.C.:
Q. Slowed down.
MR. DYER:
A. Yes, less cases being processed.
CHAYTOR, Q.C.:
Q. Before the ultimate consolidation where?
MR. DYER:
A. Once the consolidation occurred at the Health Science, I refused; there would be no reprocessing at the Health Science.
CHAYTOR, Q.C.:
Q. And when did that happen?
MR. DYER:
A. That wasn't until 2005.
CHAYTOR, Q.C.:
Q. 2005?
MR. DYER:
A. Yes.
CHAYTOR, Q.C.:
Q. So, it eventually slowed down and you drew the line in the sand, as such, and said, that's not going to be happening at Health Sciences?

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MR. DYER:
A. Correct.
CHAYTOR, Q.C.:
Q. Okay. And until that point in time, from 2002 when you first noticed this to be an issue until 2005, it continued, but it slowed down over the course of time?
MR. DYER:
A. Yes, slowed down for the breast.
CHAYTOR, Q.C.:
Q. Did you bring the concerns to any other pathologists as opposed to Dr. Cook?
MR. DYER:
A. In terms of -
CHAYTOR, Q.C.:
Q. This issue of reprocessing, did you discuss it with anyone else, any other pathologists at St. Clare's?
MR. DYER:
A. I can't say for sure if I did. I can't remember.
CHAYTOR, Q.C.:
Q. And would Dr. Elms have been there at the time?
MR. DYER:

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A. Dr. Elms was there, yes.
CHAYTOR, Q.C.:
Q. Do you remember discussing it with him?
MR. DYER:
A. I may have.
CHAYTOR, Q.C.:
Q. What about Dr. Vaze?
MR. DYER:
A. I can't really say for sure if I spoke to them about it. I was very open and whenever I saw issues, I always spoke about them.
CHAYTOR, Q.C.:
Q. Whoever was there.
MR. DYER:
A. So, it wouldn't surprise me if I did, but I can't say for sure.
CHAYTOR, Q.C.:
Q. But you certainly brought it to the clinical chief's attention?
MR. DYER:
A. I did.
CHAYTOR, Q.C.:
Q. Okay.
MR. DYER:
A. And again, when I saw things like this, I

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would also let Mr. Gulliver know.
CHAYTOR, Q.C.:
Q. Okay. And do you know whether or not Mr. Gulliver took it up with anyone else?
MR. DYER:
A. I wouldn't be able to tell you?
MR. DYER:
A. And did he offer you any advice as to how to deal with issue?
MR. DYER:
A. Just communication, keep speaking about it until something happens. I did ask Mr. Gulliver. He did have a meeting with the staff over there, I believe, in 2003, but I'm not sure if we actually discussed reprocessing, but we did have a meeting.
CHAYTOR, Q.C.:
Q. Okay. So, the reprocessing issue, when you made your inquiries, you tracked it back to the grossing and the grossing, the sections being too thick.
MR. DYER:
A. Yes.
CHAYTOR, Q.C.:
Q. Was there any concern with fixation?

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MR. DYER:
A. I didn't have a concern with fixation at the time. Other tissues seem to be fine and so I didn't have any issue. It always appeared to be around these large fatty or water based tissues.
CHAYTOR, Q.C.:
Q. And in terms of the amount of fixation time you observed for breast specimens at St. Clare's, did you observe any concern or did you have concern about the length of fixation time?
MR. DYER:
A. At St. Clare's, what happened is, the big difference I had noticed with St. Clare's, I can't really comment on the length of fixation, but when I worked at the Health Science, grossing always started around 10 in the morning, but at St. Clare's, it didn't start until like 2 or 3 every afternoon. And so it was always a rush to get the work done because when you're doing 40 cases in a matter of two or three hours and have it frozen in between that or two, it's amazing, you know, that you actually get it done.

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CHAYTOR, Q.C.:
Q. So, were breast specimens coming to the lab in the afternoon and being then put into the processor overnight, the same day, is that what you're saying?
MR. DYER:
A. That has happened, yes.
CHAYTOR, Q.C.:
Q. Okay. And well, tell us about that, what is it that you observed?
MR. DYER:
A. Well, what I observed was--again, we keep talking about St. Clare's--when it came to the--I remember Mr. Hand would come to me from time to time and show me as a he cleaned the processor, how black that the formula would be and the only thing to cause this formula to turn black in a processor is blood. So, we knew bloody tissues were going on. I can't say if they were breast. We just knew that bloody tissues were going on the processor. Now, the processor has a two-hour fixation on it also. So, there was the concept that if we--you know, you can put a tissue on that's almost fixed any put it on the processor using

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a vacuum, that you would get your last few hours of fixation.

CHAYTOR, Q.C.:

Q. So, I take it there shouldn't be blood in formalin coming out of the processor?

MR. DYER:

A. Should not be.

CHAYTOR, Q.C.:

Q. Not if it's properly fixed for the right length of time.

MR. DYER:

A. Correct.

CHAYTOR, Q.C.:

Q. And did you actually observe that breast would come down from the OR in the afternoon and be fixed for the two or three hours left in that afternoon and be processed that evening?

MR. DYER:

A. I can't say if I actually seen it myself.

CHAYTOR, Q.C.:

Q. Was it told to you?

MR. DYER:

A. Yes, yes, it was.

CHAYTOR, Q.C.:

Q. And who was it that told you that?

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MR. DYER:

A. The technician who was assisting, Mr. Hand.

CHAYTOR, Q.C.:

Q. So, we're talking two or three hours of fixation time on breast tissue?

MR. DYER:

A. I can't say if it's two or three hours.

CHAYTOR, Q.C.:

Q. It was an afternoon?

MR. DYER:

A. Yes.

CHAYTOR, Q.C.:

Q. And what about those concerns, did you raise those with anyone?

MR. DYER:

A. I believe I may have brought it up with Dr. Cook again. I think, overall, it was just a general concern of how fast the work was being pumped out over in the gross room. And that, you know, we shouldn't be grossing that fast, from 2 to 5, to do that kind of workload.

CHAYTOR, Q.C.:

Q. Okay. So, I take it you told Mr. Hand or the technicians or technologists who brought it up with you that that wasn't acceptable practice.

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MR. DYER:

A. I told Gary himself, don't put tissues on if they're not--if they're bloody, don't put them on. And he would only do it under the direction of a physician.

CHAYTOR, Q.C.:

Q. And did that happen? Did he run into issues where he was being told one thing by you and something by the pathologist involved?

MR. DYER:

A. Yes.

CHAYTOR, Q.C.:

Q. And so what about that. How did that ultimately work out? To your knowledge, did the idea of things being underfixed continue?

MR. DYER:

A. Well, I made several suggestions to Dr. Cook, again, things that we were doing at the Health Science, like, start grossing is earlier in the morning or one of the big issues that St. Clare's is, I admit, their frozen section room was crazy. They did a lot of frozens. So, I suggested to have two pathologists on service; one who would just, as they did at the Health Science, they would have a pathologist

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grossing and a pathologist who would just do frozens. So, I remember making suggestions like that to him just so we could stretch out the workload in there and make, I guess, more quality assurance, more than anything else, just so we know--make the possibility of less errors occuring.

CHAYTOR, Q.C.:

Q. And so were they receptive to your ideas in that regard?

MR. DYER:

A. I know Dr. Cook himself, he started grossing early in the morning, but other pathologists didn't.

CHAYTOR, Q.C.:

Q. Okay. So, the pathologist determined, obviously, when grossing took place, that was their function or the function of their residents.

MR. DYER:

A. Yes.

CHAYTOR, Q.C.:

Q. Who were under their control.

MR. DYER:

A. Yes.

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CHAYTOR, Q.C.:
Q. Okay. And how the grossing took place was also within the territory of the pathologist and their residents.
MR. DYER:
A. Yes.
CHAYTOR, Q.C.:
Q. So, ultimately in terms of, though, when it went into the processor, what was wrong with it waiting then and putting it into the processor later?
MR. DYER:
A. I don't understand.
CHAYTOR, Q.C.:
Q. So, in terms of once it was grossed, then what was the next step?
MR. DYER:
A. Well, the processor was usually set up to start around 5 in the evening. So, you try to get your grossing done so you can load the processor for 5.
CHAYTOR, Q.C.:
Q. Okay. So, it wouldn't be an option to wait and then run those particular specimens, then the next day?

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MR. DYER:
A. They certainly could, however, turnaround times was an issue and we only had one processor. And again, for large specimens, you do a long processing cycle. You would start at five in the evening and it probably didn't come off until like six or seven the next day. So, what you would do is you would have to wait at least a full 24 hours before the next processing cycle.
CHAYTOR, Q.C.:
Q. Okay. And in terms of the processor then at St. Clare's, who was responsible for the maintenance of the tissue processor?
MR. DYER:
A. Well, Gary did all the--well, I guess, I'm ultimately responsible, but the tech involved would be involved.
CHAYTOR, Q.C.:
Q. Okay. So, in terms of what was happening at St. Clare's and your attempts to give direction to the technologists when you observed an issue in particular that was of concern, they were coming from a background or a culture where they weren't used to taking

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direction from the lab manager. They were taking their direction more from pathologists and stuff. Is that what was happening?
MR. DYER:
A. I believe so.
CHAYTOR, Q.C.:
Q. Okay. And that was different from what you had experienced at or what you observed at the Health Science and what you experienced yourself at the Health Science?
MR. DYER:
A. Yes. Although the pathologist have a very interactive role at the Health Science also.
CHAYTOR, Q.C.:
Q. I'm sorry?
MR. DYER:
A. The pathologists did have a very interactive role at the Health Science also, but it's just that they weren't in the lab all the time, like, every day run in the lab for things. It was very structured at the Health Science. You would go to a particular person if you had this issue, so that people could continue to do their work. Whereas at St. Clare's they would just go in and talk to anyone who was

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there.
CHAYTOR, Q.C.:
Q. Was there any, the same sense though of confusion of roles in terms of who could direct technologists to do things at Health Science. Did they understand better the role of the manager?
MR. DYER:
A. I think so.
CHAYTOR, Q.C.:
Q. Were there site meetings being held at St. Clare's when you became manager?
MR. DYER:
A. Site meetings in terms of?
CHAYTOR, Q.C.:
Q. In terms of the managers of the pathology lab, the managers of the lab in general.
MR. DYER:
A. Like we had a lab managers group where the managers met all the time.
CHAYTOR, Q.C.:
Q. So, that was similar to the minutes I showed you.
MR. DYER:
A. That was that one there, yes, yes.

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CHAYTOR, Q.C.:
Q. Was that happening at Health Science and at St. Clare's?
MR. DYER:
A. Well, there was only seven of us.
CHAYTOR, Q.C.:
Q. So, that was for both sites?
MR. DYER:
A. That was for all of us. There was what I would call a site chiefs meetings and that would be the site chiefs and the manager, that would be and then I think, I know at Health Science for sure they also have what we call a pathologist meeting. So, like, where the pathologist would get together every month and have discussions about issues concerning clinical and technical.
CHAYTOR, Q.C.:
Q. Would you attend those meetings?
MR. DYER:
A. They did invite me to those meetings, so I would attend, yes.
CHAYTOR, Q.C.:
Q. That was at the Health Sciences?
MR. DYER:

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A. Yes.
CHAYTOR, Q.C.:
Q. And did you also attend those meetings at St. Clare's?
MR. DYER:
A. I'm unsure if St. Clare's actually had such a structured group, but I know they did invite me once.
CHAYTOR, Q.C.:
Q. So, did you ever have occasion to bring any concerns, for example, concerns regarding processing or length of fixation times. Did you bring those concerns up in any meetings?
MR. DYER:
A. For which site?
CHAYTOR, Q.C.:
Q. Well, this was only happening, I understood, at St. Clare's, the issue of reprocessing was certainly only St. Clare's.
MR. DYER:
A. Yes. I was only ever invited to one meeting at St. Clare's and I don't think we discussed reprocessing there. I can't remember if we did.
CHAYTOR, Q.C.:

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Q. Okay. So, you attended one meeting that you recall.
MR. DYER:
A. Only one.
CHAYTOR, Q.C.:
Q. Okay. And why didn't you attend others?
MR. DYER:
A. If they had them, I wasn't invited.
CHAYTOR, Q.C.:
Q. Okay. So, the issue then of reprocessing then didn't come up at that meeting. The issue of fixation times, was that peculiar to St. Clare's or was that also an issue then at the Health Sciences?
MR. DYER:
A. No, at times at the Health Science also, there were--you know, specimens were left, but in terms of, I think--good question. When it came to actual grossing at the Health Science, again, they would start early in the morning, but the actual room, the specimen reception room is right next to my office. I was much more involved. So, what would happen there was all specimens that would come down were pretty well, large specimens were taken at

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4:00, between 4 and 5 and actually breadloafed and left overnight. Now, where I wasn't very often late at St. Clare's I wouldn't be able to say if I actually seen the breadloaf. I think that was the practice, but I didn't see it.
CHAYTOR, Q.C.:
Q. Okay. So, at Health Science specimens were breadloafed and left overnight then in the fixative.
MR. DYER:
A. Yes.
CHAYTOR, Q.C.:
Q. And then your processing took place the next day -
MR. DYER:
A. Twenty-four hours later.
CHAYTOR, Q.C.:
Q. - twenty four hours later.
MR. DYER:
A. Yes, pathologists would be assigned so many--initially pathologists would be assigned, if we did 75 cases at Health Sciences, they were assigned the 75 and the techs would gross the biopsies. Them or--the pathologists or a

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resident would gross what could be grossed that day and then the large specimens were grossed first thing the next morning, so, we would make sure so the grossing could continue or the flow wouldn't be maintained.

CHAYTOR, Q.C.:

Q. And the issue that you were able to track back in terms of the need for reprocessing at St. Clare's, the issue being the thickness of the specimen being cut, was that an issue at the Health Sciences?

MR. DYER:

A. I'm sure I've seen some cases like it.

CHAYTOR, Q.C.:

Q. But not to the same degree, is that it?

MR. DYER:

A. Yes.

CHAYTOR, Q.C.:

Q. Okay. Was there any--I'm just trying to get a sense of, I understand what you're saying, there wasn't any standard procedure from one institution to the other. Was there even any standard procedure from one pathologist to another in terms of the thickness of grossing or the manner of grossing?

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MR. DYER:

A. I think each pathologist grossed the way each pathologists grossed. I think they were all trained through the residency program, but I believe they all grossed the way they grossed.

CHAYTOR, Q.C.:

Q. So, there was no standard operating procedure that they were asked and expected to follow?

MR. DYER:

A. I believe, I think they used Ackerman's, was the book that was used and that was for their use for grossing.

CHAYTOR, Q.C.:

Q. But in terms of the hospital having a standard operating procedure for the Health Care Corporation -

MR. DYER:

A. Officially written down, no.

CHAYTOR, Q.C.:

Q. - across the board.

MR. DYER:

A. No.

CHAYTOR, Q.C.:

Q. Okay. So, it was up to the individual pathologists to follow Ackerman's or whatever they'd been taught.

MR. DYER:

A. Correct, or that's my understanding.

CHAYTOR, Q.C.:

Q. And you saw variability, I take it in the thickness of what the specimen that was being grossed?

MR. DYER:

A. Yes.

CHAYTOR, Q.C.:

Q. In terms of formalin, when you took your management role with the Health Care Corporation, was formalin being purchased? Was there commercial formalin used at the time or was it being made up in house?

MR. DYER:

A. It was in house.

CHAYTOR, Q.C.:

Q. And how was it actually made up?

MR. DYER:

A. A tech would actually -- there was a formula written down how to measure out -- you know, what chemicals to measure out, and what we'll do, we have a carbuoy of 25 litre carbuoy, and there was markings on the carbuoy "fill here

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to water", "fill here with formaldehyde", and there was actual protocol or procedure there.

CHAYTOR, Q.C.:

Q. So the people who were the technologists -- was it technologists or technicians?

MR. DYER:

A. If it was -- mostly at Health Science it was lab assistants.

CHAYTOR, Q.C.:

Q. Lab assistants.

MR. DYER:

A. And the technician at St. Clare's.

CHAYTOR, Q.C.:

Q. So they were the people actually doing the mixing, and in terms of what concentration, for example, to use, they had it written up, there was a written protocol?

MR. DYER:

A. There was, yes.

CHAYTOR, Q.C.:

Q. And was there any testing of the pH of the formalin that was being mixed?

MR. DYER:

A. Not on a regular basis, no.

CHAYTOR, Q.C.:

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Q. And what irregular basis was it being tested?
MR. DYER:
A. Pardon?
CHAYTOR, Q.C.:
Q. And what then irregular basis was it being tested, how often was it happening?
MR. DYER:
A. Well, again when I got hired, it only went on for a couple of months, and then we -- so I've seen it done once in that couple of months. From there, we went with a -- we purchased.
CHAYTOR, Q.C.:
Q. So it was no standard requiring that every time you make up a batch that you test the pH?
MR. DYER:
A. No.
CHAYTOR, Q.C.:
Q. Okay.
MR. DYER:
A. Again though, we weren't -- I wasn't getting any complaints about formalin fixation at the time either.
CHAYTOR, Q.C.:
Q. At that time in 2002?
MR. DYER:

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A. Correct.
CHAYTOR, Q.C.:
Q. Okay. This went on for a couple of months?
MR. DYER:
A. Just a --
CHAYTOR, Q.C.:
Q. You joined in March of 2002 as manager?
MR. DYER:
A. Yes.
CHAYTOR, Q.C.:
Q. And it went on for -- so by May of --
MR. DYER:
A. May/June -- I think June -- I think the official date was June 20th that we actually started the process of using pre-made formula.
CHAYTOR, Q.C.:
Q. June of 2002?
MR. DYER:
A. Yes.
CHAYTOR, Q.C.:
Q. And did it -- did the -- was there a period of time, though, that it still continued in order to use up what had already been purchased?
MR. DYER:
A. No, that date was the day when we actually --

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it was no more.
CHAYTOR, Q.C.:
Q. You started in June?
MR. DYER:
A. We started, yes.
CHAYTOR, Q.C.:
Q. When did it begin, to your knowledge. I understand -- I know you weren't there, but you worked as a tech in the lab before that. How long had they been making up their own formalin?
MR. DYER:
A. I would imagine since the lab started.
CHAYTOR, Q.C.:
Q. And was that through the Janeway as well?
MR. DYER:
A. Yes.
CHAYTOR, Q.C.:
Q. And St. Clare's?
MR. DYER:
A. I would imagine.
CHAYTOR, Q.C.:
Q. So all sites made up their own formalin?
MR. DYER:
A. And Grace. Yes.

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CHAYTOR, Q.C.:
Q. Until June of 2002?
MR. DYER:
A. Yes.
CHAYTOR, Q.C.:
Q. And pH meter was never used to check the formalin?
MR. DYER:
A. On a regular basis, no.
CHAYTOR, Q.C.:
Q. Was it ever used at all, a pH meter?
MR. DYER:
A. oh, I'm sorry, a pH meter, no. Good point.
CHAYTOR, Q.C.:
Q. Yes.
MR. DYER:
A. Not during my time.
CHAYTOR, Q.C.:
Q. So how would they check the pH levels?
MR. DYER:
A. They would use a strip, a chemistry strip, a pH line, and you just put it in and it will give you an estimate. It would turn blue if it's between 6.8 and 7.4, for example. So it's a strip like a urine strip.

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CHAYTOR, Q.C.:
Q. Like a dip stick?
MR. DYER:
A. Dip stick, thank you.
CHAYTOR, Q.C.:
Q. And that would give you a range or an estimate, is that what you're saying?
MR. DYER:
A. Yes, yes.
CHAYTOR, Q.C.:
Q. Okay, and you say that you were responsible for instituting the change to commercial formalin?
MR. DYER:
A. Yes.
CHAYTOR, Q.C.:
Q. And why was that important to you?
MR. DYER:
A. It was more so for occupational health and safety. I felt it wasn't right for -- I didn't think it was correct for our staff to make up vats and distribute throughout the organization.
CHAYTOR, Q.C.:
Q. So it was more of a health and safety issue

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for you?
MR. DYER:
A. Yes, up to -- I never -- again I wasn't getting any complaints about formalin fixation at that time, so it was actually OH & S why we did it.
CHAYTOR, Q.C.:
Q. And from the time that you first came up with that idea to actually effecting the change, that was a change you were able to have happen within two or three months, is that what you're saying?
MR. DYER:
A. Yes, I think, yes.
CHAYTOR, Q.C.:
Q. So I take it you didn't -- you weren't met with any resistance to that issue?
MR. DYER:
A. No, just -- it was challenging because the organization is big and for something like this to happen, our stores would actually have to give us space so that we could do this, and again other -- more monetary issues because we would purchase and make everything and send it out, now we weren't purchasing any more. Each

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individual group would have to come up with that money in their budget to do it.
CHAYTOR, Q.C.:
Q. So it was a bit of an issue in that regard?
MR. DYER:
A. Yes.
CHAYTOR, Q.C.:
Q. And after you moved then to the commercial formalin, were the pH levels checked or any other analysis done -- carried out on the premixed formalin?
MR. DYER:
A. No.
CHAYTOR, Q.C.:
Q. And is there any -- currently any protocol requiring that that be done?
MR. DYER:
A. The stuff that the lab purchases, yes, we do that now.
CHAYTOR, Q.C.:
Q. And when was that instituted?
MR. DYER:
A. We only started this year.
CHAYTOR, Q.C.:
Q. So 2008?

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MR. DYER:
A. Yes.
CHAYTOR, Q.C.:
Q. Okay. In terms of when it's checked, the pH level on the commercial formalin, is that done when it's purchased, when it comes in?
MR. DYER:
A. What we're doing is we do -- a monthly check is what we're doing. So even if the lot number doesn't change, we still check it.
COMMISSIONER:
Q. I'm sorry, you do what kind of check?
MR. DYER:
A. What happens usually is with the standards we've learned today, when a lot number changes on a product, you should then do testing to check it.
COMMISSIONER:
Q. Uh-h.
MR. DYER:
A. But we're not doing that with our formalin. If the lot number -- if a vat of formalin is lasting multiple months, we still check it every month, anyway.
COMMISSIONER:

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Q. So you check on a monthly basis?
MR. DYER:
A. Yes, whether the lot number changes or not.
CHAYTOR, Q.C.:
Q. So if the lot number changes, it's checked?
MR. DYER:
A. Yes.
CHAYTOR, Q.C.:
Q. And in any event, whatever is left there is checked on a monthly basis?
MR. DYER:
A. Yes.
CHAYTOR, Q.C.:
Q. And why is that important? What can happen to formalin over time?
MR. DYER:
A. It can precipitate out. So what that means is the molecular formula can break down.
CHAYTOR, Q.C.:
Q. So it loses its concentration?
MR. DYER:
A. Yes.
CHAYTOR, Q.C.:
Q. Okay. Other than doing the monthly check, are there any other precautions taken to prevent

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that from happening or minimize the effect of formalin sitting around and ultimately losing its concentration?
MR. DYER:
A. It's purchased in small quantities.
CHAYTOR, Q.C.:
Q. Okay, so you purchase smaller quantities?
MR. DYER:
A. Yes.
CHAYTOR, Q.C.:
Q. So you buy more often?
MR. DYER:
A. Correct.
CHAYTOR, Q.C.:
Q. And when did that become your practice?
MR. DYER:
A. Well, that became a practice actually in 2002 when we went with the tender. So they're all prefilled; whereas before the old way was to buy 20 litre. So now they all come in maximum, like, fifty 900 mils.
CHAYTOR, Q.C.:
Q. Okay, and other than doing your monthly checks and ordering in smaller amounts to prevent the amount of time it can actually sit, is there

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any other quality monitoring to the formalin taking place?
MR. DYER:
A. No.
CHAYTOR, Q.C.:
Q. And what in terms of -- is there anything else that's important in terms of formalin being properly maintained as a chemical? Is there anything else?
MR. DYER:
A. No, formalin -- as long as it's maintained at -- I believe it's 22 to 37 is when it's best. So as long as it's maintained at room temperature, which is what we do.
CHAYTOR, Q.C.:
Q. Okay, and that was where I was going to with that in terms of anything else that needs to be done. So is there any temperature checks done, for example, on it?
MR. DYER:
A. On the actual formalin?
CHAYTOR, Q.C.:
Q. Yes.
MR. DYER:
A. No.

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CHAYTOR, Q.C.:
Q. So it's just --
MR. DYER:
A. It's maintained --
CHAYTOR, Q.C.:
Q. At room temperature?
MR. DYER:
A. At room temperature.
CHAYTOR, Q.C.:
Q. Okay. Some of the documentation we saw indicated that at times B5 fixative was used instead of formalin. Are you familiar with that?
MR. DYER:
A. With B5, yes.
CHAYTOR, Q.C.:
Q. With B5, and what's the difference, what's B5 fixative?
MR. DYER:
A. Well, there are many fixatives you can use in pathology, many, many fixatives that are out there. Formalin seems to be the best fixative because it creates what we call bridges or a mask, and those bridges we can attach, we can add things to for reactions to occur. The

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difference between Formalin and B5 is B5 is used mainly on lymphatic tissue, and what it does is it contains mercury and acetic acid and acetic acid will penetrate the nucleus of a cell and make the clarity much better. The big thing about B5 is it will also destroy the cell and destroy the tissue if left in for prolonged periods of time. That's the main difference. So B5 is used specifically on bone marrows, lymphatic, and it's also used on lymphnodes.

CHAYTOR, Q.C.:

Q. Okay, and you told us about how you had been involved in bone marrow work in your Janeway days?

MR. DYER:

A. Yes.

CHAYTOR, Q.C.:

Q. So you would have seen it used commonly there?

MR. DYER:

A. No, at the Janeway they didn't use B5. We used what we called petric acid.

CHAYTOR, Q.C.:

Q. Okay.

MR. DYER:

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A. Again it doesn't have formalin. It has a petric acid, but it still has the acetic acid.

CHAYTOR, Q.C.:

Q. And would B5 fixative be recommended for use in breast tissue?

MR. DYER:

A. Again B5 may be used only if they're dissecting the lymphnodes, and the common practice is we would take a lymphnode and we would just take one section of that lymphnode and fix it in B5, and we would fix the rest of it in formalin, so they can draw comparisons. I'll link to it now for you. When it comes to immunohistochemistry, most antibodies, when the data sheets come in, will tell you what conditions they were tested under and there's very few, if any, immunohistochemistry that's tested under B5 fixative.

CHAYTOR, Q.C.:

Q. Who would make that determination, who decides that particular tissue is going to be fixed in one way or another?

MR. DYER:

A. The person who is grossing, the pathologist.

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CHAYTOR, Q.C.:

Q. So the pathologist makes that determination?

MR. DYER:

A. Yes.

CHAYTOR, Q.C.:

Q. When you took on your role then as the manager in 2002, you've told us about some of the objectives you had in mind, in particular the standardization of procedures and the consolidation of the pathology lab. Did you have an opportunity to develop, I guess, a strategic plan or make a presentation as to your ideas back in 2002?

MR. DYER:

A. Yes, we had a planning day.

CHAYTOR, Q.C.:

Q. So that was your planning day?

MR. DYER:

A. That was our planning day.

CHAYTOR, Q.C.:

Q. That we already looked at?

MR. DYER:

A. Yes.

CHAYTOR, Q.C.:

Q. Okay, and who would have -- who would have

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attended the planning day?

MR. DYER:

A. All the leadership team, like the site chief, clinical chief -- the clinical chief, the site chief of each program, the manager. I think Dr. Robb attended. He was the clinical chair on the university side, and the management, and Mr. Gulliver, and I believe the VP also spoke there.

CHAYTOR, Q.C.:

Q. And did the technologists attend?

MR. DYER:

A. No.

CHAYTOR, Q.C.:

Q. This was just management?

MR. DYER:

A. This was just management for future, and also I believe quality initiatives also had somebody there.

CHAYTOR, Q.C.:

Q. And we looked at the exhibit which showed there was opposition from St. Clare's. So was that actually expressed at the time when you gave your presentation at the planning day?

MR. DYER:

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A. Yes.
CHAYTOR, Q.C.:
Q. So that's when you first learned that there was going to be opposition to this idea?
MR. DYER:
A. I'm not sure if that was the first time.
CHAYTOR, Q.C.:
Q. Probably earlier than that?
MR. DYER:
A. It might have been earlier than that because, like I said, any new ideas, I would speak about them. I would always inform the staff of anything that I'm thinking about just so no one would be surprised.
CHAYTOR, Q.C.:
Q. And in terms of it being, though -- I take it Dr. Cook was up front in expressing his concerns or his opposition to the idea at the planning day?
MR. DYER:
A. Yes.
CHAYTOR, Q.C.:
Q. Did that generate any discussion in terms of -- the VP medical, you said was there.
MR. DYER:

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A. I think they were only there for the introduction and then they left.
CHAYTOR, Q.C.:
Q. So in terms of then other people who were there, was there any discussion then amongst the other pathologists or anyone else -- did anyone else weigh in on the debate?
MR. DYER:
A. Not that I can remember, no.
CHAYTOR, Q.C.:
Q. And did anyone other than Dr. Cook express any concern?
MR. DYER:
A. No.
CHAYTOR, Q.C.:
Q. In terms of your idea to have everything really under one roof is what you were proposing, I take it, to bring everyone together, and the importance of that being to standardize the way you were doing things, could that not be achieved in any event by having written protocols which would be the same across the Health Care Corporation regardless of how many site you have?
CHAYTOR, Q.C.:

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Q. Written protocols, that definitely would have helped, but I still think if everyone was together -- like, one person doing -- right now, okay, sorry. When I looked at both sites, what I saw was staining protocols that were different from one site than the other. I would have a tech doing -- I would have one tech doing H & E stains at one site, a tech doing H & E stains at another site, a tech doing specials at one site, a tech doing specials at another site, techs going embedding at one site, techs doing embedding at another site, and what I would have preferred is to bring everyone together and then have one tech do all the H & Es, have one tech doing the specials, and it all would be treated the same.
CHAYTOR, Q.C.:
Q. So you couldn't divide up the services and have, for example, one tech doing all the H & Es on one particular site. That would be too much of coordinating back and forth, I take it?
MR. DYER:
A. It would be more challenging, I think.

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CHAYTOR, Q.C.:
Q. Okay. In terms, though, of the idea of in the meantime because you realize at this point in time that it's not going to be an easy road, I guess, to go down in trying to bring it all together. So in the interim before you can achieve that ultimate goal, the idea of standardizing through written protocols, did that occur to you?
MR. DYER:
A. Yes, it did.
CHAYTOR, Q.C.:
Q. And did you start along that road then?
MR. DYER:
A. I believe -- yes, we did have a lot of things technically in the routine lab in writing. The Health Science actually had their own entire protocol. It was a three inch thick binder with a lot of protocols, but introducing them -- introducing those ideas over to St. Clare's was challenging.
CHAYTOR, Q.C.:
Q. And why is that?
MR. DYER:
A. I think it was just like when I first got

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hired, and, you know, everybody was -- it's not that they're on edge, but everybody had their own way of doing things and it was challenging -- it took a lot of work just on site to get everyone to finally come down to one idea -- not one idea, but one procedure, but to try and get those procedures or to try and implement those over at St. Clare's, it would be too challenging.

CHAYTOR, Q.C.:

Q. So even in writing standardized procedures or protocols, there was resistance to that?

MR. DYER:

A. The way a PAS was done at one site versus the other was different.

CHAYTOR, Q.C.:

Q. And was it that -- was there a negotiation of ideas or was it that St. Clare's perceived that the Health Science are trying to impose their ideas and their procedures on to St. Clare's?

MR. DYER:

A. I think there was all kinds of ideas like that. There were, but again --

CHAYTOR, Q.C.:

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Q. What was actually happening?

MR. DYER:

A. At St. Clare's, I think -- again it comes down to the physician. There was six physicians over there and they were used to reading slides one way, and there was 12 to 15 at Health Science who had been into reading slides another way.

CHAYTOR, Q.C.:

Q. And in terms of what Dr. Cook actually said, either at the planning day or at other occasions to you, what did you understand, what was his concern, why was he resistant to this?

MR. DYER:

A. He was just -- I believe he just didn't want to consolidate. He wanted to have a lab at St. Clare's.

CHAYTOR, Q.C.:

Q. So you had Dr. Cook certainly vocalizing opposition. Was anyone supporting you in your efforts?

MR. DYER:

A. From St. Clare's?

CHAYTOR, Q.C.:

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Q. In terms of technologists?

MR. DYER:

A. Overall?

CHAYTOR, Q.C.:

Q. Yes.

MR. DYER:

A. I think we had a pretty general agreement from Health Science and from the Janeway, but had very little support from St. Clare's.

CHAYTOR, Q.C.:

Q. And I guess the Health Science and the Janeway had already been consolidated.

MR. DYER:

A. Yes, and -- when we consolidated, we started immediately bringing our protocols together. Like, in that nine months that I was there, we were doing pretty well one protocol for everything, for pediatrics and adults at Health Science. The only difference was there were some protocols that the Janeway was involved with, international -- they were involved with international guidelines for tumours, like, maybe like a Radermeyer Sarcoma Group and things like this. So for that, she may have had to do more specials than what

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they did at the Health Science. So if a bone marrow came in and she's part of that group, then she might have had to do six specials versus Health Science who may not have been part of that group and only did three specials, so -- but the protocols themselves were written to be exact. So they did -- they consolidated, they coagulated and consolidated really well. The only difference was more protocols had to be done.

CHAYTOR, Q.C.:

Q. And was there any attempt to get everyone in the same room to sit down, all the people who needed to be there, to try and consolidate the standard way of doing things?

MR. DYER:

A. I think as long as the consolidation -- as long as there was opposition to consolidation, that wasn't going to happen, so we didn't.

CHAYTOR, Q.C.:

Q. So no attempt was made to do that?

MR. DYER:

A. There may have been attempts, but I don't think it actually came to fruition at all.

CHAYTOR, Q.C.:

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Q. And you went to Mr. Gulliver with your concerns?
MR. DYER:
A. Yes, definitely.
CHAYTOR, Q.C.:
Q. Okay, and whether Mr. Gulliver took it to the VP medical, you don't know?
MR. DYER:
A. No. You'll have to ask Mr. Gulliver.
CHAYTOR, Q.C.:
Q. Yes, but you didn't receive any feedback one way or the other on that?
MR. DYER:
A. No, I just tried to keep open communication all the time.
CHAYTOR, Q.C.:
Q. So in terms of anyone being supportive, I take it, you supervisor, Mr. Gulliver, was supportive of your efforts?
MR. DYER:
A. Yes.
CHAYTOR, Q.C.:
Q. And was in agreement with the plan that you put forward?
MR. DYER:

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A. Yes.
CHAYTOR, Q.C.:
Q. Was there anyone else in terms of the pathologist -- you've indicated the Health Science generally were supportive. Is there anyone that stands out in your mind in terms of -- well, for example, who was the discipline chair at the time?
MR. DYER:
A. Dr. Robb.
CHAYTOR, Q.C.:
Q. Okay, and was -- what was Dr. Robb's position?
MR. DYER:
A. He was a pathologist, but he also carried the chair or he sat in the discipline chair at the university. So he was heavy into research also.
CHAYTOR, Q.C.:
Q. And what was his position in terms of consolidation of services, did he express any position?
MR. DYER:
A. He was a very open minded thinker also, and, yes, he did support it.
CHAYTOR, Q.C.:

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Q. He supported it?
MR. DYER:
A. Yes.
CHAYTOR, Q.C.:
Q. And do you know whether or not he attempted to speak to Dr. Cook about Dr. Cook's opposition to the issue?
MR. DYER:
A. I wouldn't be able to tell you. I can't remember if he did.
COMMISSIONER:
Q. Ms. Chaytor, whenever you want to take the morning break, just let me know.
CHAYTOR, Q.C.:
Q. Okay. I was just going to go to a new exhibit, so we can either do that exhibit or we can take the break now.
COMMISSIONER:
Q. Your call.
CHAYTOR, Q.C.:
Q. Okay, well, perhaps we'll break now. Thank you.
COMMISSIONER:
Q. All right, we'll take the morning break.
(BREAK)

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COMMISSIONER:
Q. Ms. Chaytor.
CHAYTOR, Q.C.:
Q. Thank you, Commissioner. Mr. Dyer, in terms of the resistance that you ran into and you were speaking some length about this morning from St. Clare's in terms of your plans for the pathology lab, did you have any particular encounters with Dr. Cook which caused you to take further action?
MR. DYER:
A. Are you referring to the letter I wrote?
CHAYTOR, Q.C.:
Q. Yes.
MR. DYER:
A. Yes. What had happened was I was at -- I was having a meeting with the staff at St. Clare's discussing, you know, just seeing how things are going. We try to have regular meetings like that. Dr. Cook walked into the room and pointed his finger and pretty well shouted at me at the meeting to get in his office right now, and I think that that upset me because I've never had that experience before.
MR. DYER:

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A. --- My whole career at the Janeway, I was on first name basis with surgeons, with everyone, and within the nine months at Health Science, I was on a first name basis with many physicians, technologists, all of them. So that, it caught me off guard. So we proceeded to go--my office was closer than Dr. Cook's, so we went to Dr. Cook's office and closed the door and he was--let's just say he was very upset about me talking about consolidation.

CHAYTOR, Q.C.:

Q. So that's what the meeting--you were meeting with staff at the time and the meeting, you were discussing consolidation?

MR. DYER:

A. Well, I think that might have been one of the things I was talking about, but when we got into my office with Dr. Cook, it was--consolidation is what came up.

CHAYTOR, Q.C.:

Q. Okay, and what was his concern about you speaking to the staff about consolidation?

MR. DYER:

A. I don't think it was the staff in general. What came out of that meeting was one of the

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physicians at St. Clare's threatened to quit if we consolidate and so he was very upset over the fact that he could lose a physician.

CHAYTOR, Q.C.:

Q. And who was that physician?

MR. DYER:

A. Dr. Wadhwa.

CHAYTOR, Q.C.:

Q. And do you know what Dr. Wadhwa's concerns were?

MR. DYER:

A. No, he didn't say.

CHAYTOR, Q.C.:

Q. Okay, and is he still there?

MR. DYER:

A. She.

CHAYTOR, Q.C.:

Q. She, sorry.

MR. DYER:

A. No, she has since retired.

CHAYTOR, Q.C.:

Q. The meeting that you were having then with the staff, did you have any sense of concern by the staff or the staff apprehensive about the idea of consolidation?

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MR. DYER:

A. Yes, they were. Again, you know, I went through this process myself in 2001, so I understood how the staff would feel, because it's very frightening when you're working in the position for 25 years, 30 years, and all of a sudden you're uprooted. So the process of consolidation, I was hoping would take, you know, approximately a year so we could get comfortable with the idea and how things would be and give us a chance to actually plan for it. So any ideas, I always spoke to the staff in advance, just to let them know, you know, these are some of the things I'm thinking about. I always did that. So of course, I would speak to them about consolidation. I wouldn't just spring it on them.

CHAYTOR, Q.C.:

Q. Okay, and your sense, what you were sensing then from the staff was what you would expect? It was the normal apprehension that would go along with any type of change of that nature?

MR. DYER:

A. Exact same as what I went through.

CHAYTOR, Q.C.:

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Q. Yourself personally?

MR. DYER:

A. Yes.

CHAYTOR, Q.C.:

Q. And we know that your letter was written in February 2003. So I take it that your meeting, and that letter followed, I understand, very closely from the encounter that you had with Dr. Cook?

MR. DYER:

A. Yes, next day.

CHAYTOR, Q.C.:

Q. So you were bringing these things up and speaking to the staff about it in February 2003?

MR. DYER:

A. Yes.

CHAYTOR, Q.C.:

Q. Okay, and had all the--was there any concern that this had not been--there had not been consensus reached as to consolidation and that perhaps in speaking to the staff, you were being premature in bringing the issue to the forefront?

MR. DYER:

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A. Again, it was--I don't think I was being premature. Again, like I said, my style is if we have ideas that we want to try or we want to try and move towards, whether it would happen or not, I would still always inform the staff. It's just like with the staff, you know, no idea is a dumb idea and if the staff ever wanted anything, they would also say the same thing to me. I believe the issue was, is the fact that I think Dr. Cook, that was one of his issues, the fact that this wasn't actually agreed to. We shouldn't talk about it, and I said you know, I disagree, just because, I mean, it could take years to get an agreement, so never talk about it? We have to talk about these ideas to see what would the benefits and the advantages and disadvantages would be. So I always spoke about different things.

CHAYTOR, Q.C.:

Q. So you were aware back when you did the planning day in your first few months back in 2002, you were aware then that there was opposition from St. Clare's?

MR. DYER:

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A. I think the planning day was in '03.

CHAYTOR, Q.C.:

Q. In '03, okay.

MR. DYER:

A. Right, so this was just before the planning day probably.

CHAYTOR, Q.C.:

Q. This is before, yes, that's right, you're right, the planning day was in '03.

MR. DYER:

A. Yes, so when we actually put together a planning day, it wasn't a thing that we did ourselves. I wrote down my ideas and I believe Dr. Cook, the two site chiefs, Dr. Cook and Sushil Parai, and we actually discussed all of these issues at our site chiefs meeting, because out of our site chief meeting came this proposal, and I know then that Dr. Cook wasn't in favour of it, but I wanted it on the agenda.

CHAYTOR, Q.C.:

Q. Okay, so this discussion with the staff was taking place before the planning day in which you brought forward the idea?

MR. DYER:

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A. I believe so. I'm not quite sure, but -

CHAYTOR, Q.C.:

Q. I think it was March, the planning day of 2003.

MR. DYER:

A. And this was in February.

CHAYTOR, Q.C.:

Q. Right.

MR. DYER:

A. Yes.

CHAYTOR, Q.C.:

Q. It was a year after you'd took your position. Okay, then perhaps we'll look at P-1887, and this is the letter that you wrote to Mr. Gulliver, and why is it that you took the step of actually writing your concerns to Mr. Gulliver, putting down in writing your concerns?

MR. DYER:

A. Again, I was a new manager and I felt that my position was maybe threatened over something like this, because I've never experienced this before in my life, and to be honest with you, in my--at that time, I'm almost about 17 years in the field. I've never wrote a letter

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before. That's the first one I ever wrote.

CHAYTOR, Q.C.:

Q. First one you ever wrote?

MR. DYER:

A. Yes.

CHAYTOR, Q.C.:

Q. Is it the only one you've ever had to write?

MR. DYER:

A. Yes, for a situation like that, yes.

CHAYTOR, Q.C.:

Q. The first and only?

MR. DYER:

A. Yes.

CHAYTOR, Q.C.:

Q. Okay, all right, and so the letter is February 17th, 2003 to Mr. Gulliver, and you write "I am writing this letter with apprehension, concern to discuss the treatment of one self during two interactions with Dr. Donald Cook. Mr. Gulliver, being my superior and next line of communication, it is necessary for you to be informed in writing." And then the first interaction that you refer to happened on February 12th, 2003, and "when I approached Dr. Cook's secretary to arrange a meeting with

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Dr. Cook that afternoon to brief him on changes I'd planned to make to anatomical pathology."

So I take it you were going to discuss your idea with Dr. Cook first? Is that right?

MR. DYER:

A. No, this was probably a different issue.

CHAYTOR, Q.C.:

Q. Okay, so perhaps you could tell us then, what was this issue?

MR. DYER:

A. Can I just read further?

CHAYTOR, Q.C.:

Q. Sure, absolutely. I'll take you through then.

MR. DYER:

A. (Unintelligible) recall.

CHAYTOR, Q.C.:

Q. "I discussed the corporate wide recall. We would use two laboratory assistants from the Health Science and one laboratory technician from St. Clare's, as well as the transfer of a technologist II from St. Clare's to Health Science for training with an eventual lateral transfer to an upcoming vacant Tech II position. Without getting into the details,

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the debate was slightly uneasy. One phrase I found quite unsettling was, and I quote, 'heads are going to roll over this, if things do not work out.' I interpreted this as a threat to my position as manager of anatomical pathology. Immediately after meeting, I verbally informed you." So what was that all about?

MR. DYER:

A. We had two--what happened was back in 2002, St. Clare's had--this is concerning post mortem--right, this was about post mortems, autopsy service. So currently in the system, I had--we had two or three people at St. Clare's on call for autopsies for the weekends, and so I think, you know, we might have been getting like six or seven calls a year, but these techs are on call all the time, and at the Health Science, we had two staff doing autopsies, and so they were on call every second weekend. So what I suggested was to improve quality of work life for these staff, you know, and we don't get a lot of calls on the weekend, they're both--all these staff are trained for autopsies, so what

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if we created one corporate wide recall and put them all on the list. So instead of staff being on call every second week, they could be on call probably only every six.

CHAYTOR, Q.C.:

Q. Okay.

MR. DYER:

A. So that was my first--that was the recommendation there, and my second one was by now we had heard that Peggy Welsh was retiring and the Tech II at St. Clare's, Les, he was the most experienced technologist in pathology at the time, so I would--what I wanted was I wanted that experience to be transferred into immunohistochemistry. So that's what we discussed.

CHAYTOR, Q.C.:

Q. So that was the issue here, "the transfer of a technologist II from St. Clare's to the Health Science for training with eventual lateral transfer to an upcoming vacant position." That was Les to take over Peggy Welsh's position?

MR. DYER:

A. Yes, and again that's something that I wanted

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to do. So of course, like I would, I would talk to Dr. Cook about it. That's what I always did.

CHAYTOR, Q.C.:

Q. Okay, and was he also resistant to that idea?

MR. DYER:

A. Yes.

CHAYTOR, Q.C.:

Q. Okay, and what was his reasons for being resistant to Mr. Simms transferring?

MR. DYER:

A. I can't tell you what his actual reasons were. All I know is he didn't want staff leaving St. Clare's.

CHAYTOR, Q.C.:

Q. Okay, and in terms of the issue about the staff being on call then for autopsies, one in six as opposed to every other weekend, what was his rationale for that? Why was he upset with that?

MR. DYER:

A. I think we might have came to some kind of agreement on that one. It's just that I think I may have commented there because that was the things, they were the two things we were

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discussing at the time. I think the actual issue was more over Les moving.

CHAYTOR, Q.C.:

Q. And so what was--you've quoted here, in bold and upper case letter, "heads are going to roll over this if things do not work out." If what didn't work out? What was his concern?

MR. DYER:

A. That was the statement he made. Again, I can't really be sure, but again, most of it was over Les moving.

CHAYTOR, Q.C.:

Q. Okay.

MR. DYER:

A. And he might have had a concern that, you know, a senior technologist who is experienced is leaving the lab.

CHAYTOR, Q.C.:

Q. Did he have any concerns about Mr. Simms not being qualified for the position at the -

MR. DYER:

A. No.

CHAYTOR, Q.C.:

Q. - in the IHC laboratory?

MR. DYER:

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A. He never made that--I don't think he made that comment to me.

CHAYTOR, Q.C.:

Q. So you didn't understand him to be saying that?

MR. DYER:

A. No.

CHAYTOR, Q.C.:

Q. It was the loss of Mr. Simms from his laboratory at St. Clare's?

MR. DYER:

A. I think that's more of what it came down to.

CHAYTOR, Q.C.:

Q. Okay, and how would--what--so why would that be of such concern to--was it just because it's a senior technologist and he's losing a senior technologist? Was there any plan in place to have someone of equal training and experience to replace Mr. Simms?

MR. DYER:

A. Well, we did have other staff there, but what it would mean, I guess, just like in any lab, is a new hire would come in, and that's standard in any lab when somebody--if anybody decides to leave today, a new hire will come

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in and, you know, the chances are they're not trained. But I wanted Les to go. Les had a lot of experience in histology or pathology and he would be the best candidate to go into immunohistochemistry.

CHAYTOR, Q.C.:

Q. Okay, and you said while you would consult Dr. Cook on this, ultimately did Dr. Cook have any authority to say which technologists would hold which positions?

MR. DYER:

A. I'm sorry?

CHAYTOR, Q.C.:

Q. You said you would consult Dr. Cook on this issue.

MR. DYER:

A. Yes.

CHAYTOR, Q.C.:

Q. But ultimately, did Dr. Cook have any authority as to the decision as to which technologist would fill which position?

MR. DYER:

A. I think I had the perceived authority that he did, although for something like this, I would get it approved through Mr. Gulliver first.

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So yeah, you know, I think it was just--you know, again, it was the way the work was over there or the life, you know, the atmosphere was over there of how--of who ran the lab.

CHAYTOR, Q.C.:

Q. And I'm just trying to really understand what the concern would have been and what you understood the concern to be at the time.

MR. DYER:

A. Again, I think it was that he was--that that lab there was going to lose a senior tech.

CHAYTOR, Q.C.:

Q. Okay, and no guarantee that they would get a senior tech to fill the position left void by Mr. Simms moving?

MR. DYER:

A. No, the position was filled. Like again, a position there was filled.

CHAYTOR, Q.C.:

Q. And that was told to Dr. Cook at the time, that someone would come in with equal -

MR. DYER:

A. Somebody would be hired and somebody was hired.

CHAYTOR, Q.C.:

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Q. Okay, and of course, we know that Mr. Simms eventually did move and moved shortly after this. He was in -

MR. DYER:

A. A month later, I believe.

CHAYTOR, Q.C.:

Q. Yes, he was in his position by St. Patrick's Day, he's told us, of 2003.

MR. DYER:

A. Yes.

CHAYTOR, Q.C.:

Q. So I take it that whatever opposition Dr. Cook had to it, it was resolved?

MR. DYER:

A. Yes.

CHAYTOR, Q.C.:

Q. Okay.

MR. DYER:

A. Just I think also one of the other things that we did was, again, where we were an actual--I was the manager of one group, I think one of the things--yeah, now I'm thinking about it-- is we had some very senior technicians who had been in the lab cutting for like 20-30 years and any time I ever had an issue at St.

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Clare's with workload falling behind and that, I would actually transfer technicians from Health Science over to St. Clare's to help them out. So I did have that flexibility and I did do it.

CHAYTOR, Q.C.:

Q. Okay, and then the second interaction that you had was the one, I believe, that you described for us, and that one occurred February 14th, so it's two days after the first encounter.

MR. DYER:

A. Okay.

CHAYTOR, Q.C.:

Q. "I was having a staff meeting with the St. Clare's pathology department in the laboratory to inform them of changes pertaining to the corporate wide recall and the training and eventual lateral transfer of the technologist II position." So what it appears that you were talking to them about was this issue of one and six call, and -

MR. DYER:

A. Yes, about one and five.

CHAYTOR, Q.C.:

Q. - and Mr. Simms moving over to the Health Science?

MR. DYER:

A. Yes.

CHAYTOR, Q.C.:

Q. "I was sitting at the back of the laboratory and he stopped at the front. He pointed his forefinger directly at me and said, I quote, 'you'. He then pointed to the door and said, I quote, 'I want to see you right now.' I responded 'sure, Don' and he stormed out of the lab. I can provide witnesses upon request. We proceeded to my office where another heated debate occurred. Immediately after the debate, I verbally informed you. This conduct exhibited towards me was very degrading, disrespectful and humiliating. All of the staff I manage were in the laboratory at the time and other staff from another department. Please investigate as per the harassment in the workplace policy. I have worked in health care for 17 years and I have always presented myself in a professional manner in all types of situations and I have never been threatened or humiliated. Further to the point, for any upcoming discussions

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concerning the above two changes or the consolidation of anatomical pathology for Dr. Don Cook to be present I will be involved if mediation is provided. It is apparent that Dr. Cook and I have totally different versions of the anatomical pathology department. Also, I request to have a meeting with St. Clare's Pathology staff, myself and Mr. Gulliver to discuss the management of anatomical pathology."

So you set out your concerns and described what had happened to Mr. Gulliver, and what happened? What happened? What was the outcome of you having written this letter?

MR. DYER:

A. I can't--I know I spoke to Mr. Gulliver about it and he was going to investigate, and all I can remember is that was it, it was done.

CHAYTOR, Q.C.:

Q. Did Mr. Gulliver ever get back to you and tell you the outcome of his investigation?

MR. DYER:

A. I can't truly remember if he did, but Dr. Cook and I never had another interaction like that since.

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CHAYTOR, Q.C.:
Q. Okay, so I take it that your relationship improved?
MR. DYER:
A. Yes, it did.
CHAYTOR, Q.C.:
Q. Okay, and did you ever receive anything in writing in response to this letter?
MR. DYER:
A. No.
CHAYTOR, Q.C.:
Q. You asked that it be investigated as per the harassment in the workplace policy?
MR. DYER:
A. I was very upset at the time.
CHAYTOR, Q.C.:
Q. At the time?
MR. DYER:
A. Yes.
CHAYTOR, Q.C.:
Q. So I take it no formal investigation went forward in that respect?
MR. DYER:
A. No.
CHAYTOR, Q.C.:

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Q. The idea of having to have mediation involved in any ongoing discussion on consolidation or any other of the issues that you identified, did that have to occur?
MR. DYER:
A. No, it didn't.
CHAYTOR, Q.C.:
Q. Was mediation required?
MR. DYER:
A. No, it did not.
CHAYTOR, Q.C.:
Q. Okay, and you say here, "it is apparent that Dr. Cook and I have totally different versions for the anatomical pathology department." What did you see as being your divergent views?
MR. DYER:
A. I think, again, what I wanted was to consolidate and have the lab all on one site, so we can have all--one standardized type of procedure for each thing, and Dr. Cook didn't. That was our vision.
CHAYTOR, Q.C.:
Q. So both of the issues that you were proposing or both of the specific examples in this

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context would have involved some loss of autonomy for each of the sites really?
MR. DYER:
A. Yes.
CHAYTOR, Q.C.:
Q. Because you're talking about taking a technologist from one site over to the Health Science and in the other situation, you're talking about consolidating the workloads or the call schedules of the technologists on each of the sites?
MR. DYER:
A. Yes.
CHAYTOR, Q.C.:
Q. So that, I take it, could have been viewed as a step towards consolidation?
MR. DYER:
A. Definitely.
CHAYTOR, Q.C.:
Q. Okay. And then it says, your request here in your letter that there be a meeting of St. Clare's staff, as well as yourself and Mr. Gulliver to discuss the management of anatomical pathology. Did that meeting take place?

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MR. DYER:
A. Yes, it did.
CHAYTOR, Q.C.:
Q. And how did that go?
MR. DYER:
A. I think things started to improve.
CHAYTOR, Q.C.:
Q. Shortly after this was raised.
MR. DYER:
A. Yes.
CHAYTOR, Q.C.:
Q. So having brought your issues to the point of putting them in writing to your immediate supervisor, whatever action Mr. Gulliver took in response to it, appeared to alleviate the problem?
MR. DYER:
A. Yes.
CHAYTOR, Q.C.:
Q. And you indicate that you had gone to speak to Mr. Gulliver immediately after the first encounter, you say you verbally informed him.
MR. DYER:
A. Yes.
CHAYTOR, Q.C.:

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Q. Did Mr. Gulliver request then that you put your concerns in writing?
MR. DYER:
A. I don't think so, no, I just felt I had to do it.
CHAYTOR, Q.C.:
Q. Okay, so although you had verbally informed him, you felt that it was necessary to take the extra step of writing to him.
MR. DYER:
A. Yes.
CHAYTOR, Q.C.:
Q. And documenting your concerns.
MR. DYER:
A. Yes.
CHAYTOR, Q.C.:
Q. So you indicate that things, your relationship with Dr. Cook improved somewhat after this?
MR. DYER:
A. Yes.
CHAYTOR, Q.C.:
Q. And what about the issue then of moving forward with consolidation? Well where does it currently stand?
MR. DYER:

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A. Our consolidation?
CHAYTOR, Q.C.:
Q. Yes.
MR. DYER:
A. In 2005, we actually did the technical consolidation.
CHAYTOR, Q.C.:
Q. And what did that mean and what actually was consolidated then in 2005?
MR. DYER:
A. Well initially what we did was to ease the transition, because it will require a lot of-- well what we did initially was in 2004, we started, we struck committees with the technologists because it was mainly a technical consolidation, so we had a committee with technologists from Health Science and St. Clare's and we formulated a plan as to how we could actually make this work. So we met probably four, I think we had four meetings, a lot of it was how to streamline the work, and then from there, we actually moved all of the equipment, except the processor, the processor stayed on site and all the techs, except a technician and I believe, I think a lab

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assistant. And the purpose was, as our original goal in 2002, was to have grossing and frozen sections all done at St. Clare's and initially to make things a little bit easier, even all the processing took place at St. Clare's for St. Clare's specimens and the techs came over, they went through orientation and the techs actually went through, well I guess what we would call, it's almost like whenever you come into the lab, you start in gross, you do imbedding, cutting, staining, just to get comfortable. Now the techs who were coming over were all skilled in that, but they all had to go through it anyway, just so they could get comfortable with the site and how things operated. And then from there, we slowly, well what happened was every morning the processor would go off and one of the techs who was actually embedding, would pick up the blocks that were in wax and bring them over to Health Science to start embedding. And with that, what happened as we would work, we had a schedule of 7 to 5 and we dropped the schedule back to 5 a.m. in the morning to 5.
CHAYTOR, Q.C.:

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Q. Okay, and you said there was a series of meetings throughout 2004 to -
MR. DYER:
A. Yes.
CHAYTOR, Q.C.:
Q. And was Dr. Cook part of those meetings? Was he part of the committee?
MR. DYER:
A. No, this was the committee that I struck myself with the technologists.
CHAYTOR, Q.C.:
Q. Just technical -
MR. DYER:
A. So they would be totally involved with this process.
CHAYTOR, Q.C.:
Q. Okay, and did you ever hear any other opposition by Dr. Cook to your endeavours to consolidate the technical aspect of the lab?
MR. DYER:
A. He wasn't in favour of it, like we hardly ever spoke about it.
CHAYTOR, Q.C.:
Q. So he remained opposed to it, but it did proceed?

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MR. DYER:
A. I think we only actually got the--I can't remember when the actual approval came down, but in anticipation we started trying to streamline things, I'm not sure when the approval actually came from--because it didn't come from me, I think it came from higher up.
CHAYTOR, Q.C.:
Q. And it happened in 2005. Did it happen after Eastern Health then was incorporated or was it already in place before Eastern Health was incorporated?
MR. DYER:
A. It might be around the same time, I think. I'm not sure when Eastern Health was incorporated.
CHAYTOR, Q.C.:
Q. In April of 2005.
MR. DYER:
A. Well, I'd say this happened pretty well the same time.
CHAYTOR, Q.C.:
Q. Around the same time.
MR. DYER:
A. Yes.

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CHAYTOR, Q.C.:
Q. Was there, other than consolidation, was there anything else that you were advocating as manager that was met with resistance from pathologists?
MR. DYER:
A. I don't understand.
CHAYTOR, Q.C.:
Q. Was there any other issues that, well we talked about the pathologists having issues with the reprocessing and that, but was there anything else in terms of a broader plan? For example, what about pathology assistants? Was that something you were in favour of or they were in favour of? Where did that stand?
MR. DYER:
A. I was a strong proponent for pathology assistants. I felt we really needed--we really should have them. When I would go away, a visit like--I don't know if it's just what a lab tech does, but when you go away on vacation and things like that, you would just always drop into the other hospitals to see what they're doing. That's how you learn too, and I know that in 2002, I knew about

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pathologist assistant's work at the time, but in 2002 when I got hired, I made a drop into the QEII, I think or the VG in Halifax and they had three PAs, but even before then, I remember Dr. Robb, he was a huge proponent of PAs and wanted, he wanted PAs and I wanted PAs.
CHAYTOR, Q.C.:
Q. Okay, was anybody resistant to the idea of PAs?
MR. DYER:
A. I think we did have a couple who were resistant to PAs.
CHAYTOR, Q.C.:
Q. And who were they? Who was it that wasn't in favour of PAs?
MR. DYER:
A. There was, I had a pathologist from one point from St. Clare's who came into my office one day and said to me, never join during her career will a PA or will a technologist ever cut her specimens.
CHAYTOR, Q.C.:
Q. And who said that?
MR. DYER:

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A. That was Dr. Vaze.
CHAYTOR, Q.C.:
Q. And I take it she wasn't the only one, there were others who were opposed to it?
MR. DYER:
A. I think some--well that was the only, an actual aggressive encounter, I guess, but no, I think some pathologists had concerns about technologists actually doing that type of work, that kind of involved work.
CHAYTOR, Q.C.:
Q. So it was a new concept for them, not something they had been exposed to?
MR. DYER:
A. I don't think they've been exposed to it, I mean, I think it was discussed prior to me coming on site or being hired, but it wasn't something I don't think they had seen too much of.
CHAYTOR, Q.C.:
Q. And was this perceived then, the pathologists or pathology residents were doing the grossing, was so this perceived to be, if you were going to bring in PAs for that role, that this would be a loss of work for the

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pathologists?
MR. DYER:
A. Yes.
CHAYTOR, Q.C.:
Q. Why was Dr. Robb in favour of it? Did he tell you the reasons why he saw it as a positive thing?
MR. DYER:
A. I think at Health Science, ever since I've been hired, the Health Sciences never had a full complement of pathologists and he felt that, where they were struggling to recruit pathologists, PAs could actually alleviate some of the work from four pathologists so they could actually focus on microscopy, that's exactly what he said to me.
CHAYTOR, Q.C.:
Q. And from your point of view, I take it it would have been then a positive step forward, in terms of the standardization of the grossing process?
MR. DYER:
A. Definitely.
CHAYTOR, Q.C.:
Q. Yes. And where did Dr. Cook, as clinical

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chief, where did he stand on the issue?
MR. DYER:
A. I think he was in favour of it. I don't think we discussed it very much, but I think he was in favour of it.
CHAYTOR, Q.C.:
Q. And that's something, I take it early on you had in mind, the idea of PAs and Dr. Robb was on line, so that was in your early days as management, I take it?
MR. DYER:
A. Yes, when I worked at the Janeway back in 1991, I was actually trained to do grossing and my skill was actually a little more than what they were doing at the Health Science, like I would actually cut tissue, but very simple tissues that were considered routine, I would actually cut myself and put through.
CHAYTOR, Q.C.:
Q. And was there actually then an effort in those early days, 2002, 2003, were there efforts underway to acquire PAs?
MR. DYER:
A. I know there was no money, that was it, so I know Dr. Robb constantly talked about the

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concept of where we couldn't fill positions at the Health Science, that could they use some of that money, like a pathologist, that salary, to hire a couple of PAs or either that or train a couple of technologists here and, but I think that money came from MCP, so it was a completely separate budget, but the concept was constantly thrown up there. We also do work, we also do work in the laboratory, consult work, so you know, the lab was producing about, I'd say, you know, 80 to 100, $120,000 a year in consult work and so, but that always went right into the coffers, as you say, of Eastern Health, so because the top was trying to get that money, but no, the answer was no for that too. So even though we -
CHAYTOR, Q.C.:
Q. Who was the answer of no coming from?
MR. DYER:
A. Oh, we'd just bring it to--well for the coffers themselves, I think I just brought it to Mr. Gulliver, but I know that they tried that before, before I ever came there and the answer was no, that money always went into the

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main budget for Eastern Health.
CHAYTOR, Q.C.:
Q. So would you put the idea of pathology assistants forward in your budget each year and it would come back with no money for that?
MR. DYER:
A. I think that in our goals and objectives, I think, I'm not sure if we actually said pathology assistants, but we asked for skilled mix and the skilled mix was to get PAs to help out.
CHAYTOR, Q.C.:
Q. Okay, when ultimately did pathology assistants join Eastern Health?
MR. DYER:
A. I believe it was the fall of--well I think we actually got approval in the fall of 2005.
CHAYTOR, Q.C.:
Q. So after the ER/PR issue.
MR. DYER:
A. Yes, after the ER/PR issue started.
CHAYTOR, Q.C.:
Q. And the first one started, I take it, sometime after the fall of 2005?
MR. DYER:

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A. I think it was May of 2006. Like, you know, I was on a committee, a national committee of four PAs with a CSMLS and so I got a lot of information from that committee for writing job descriptions and things like that for PAs, so it took a couple of months to write everything up and go through Human Resources and things like that before we actually--go through recruitment before we actually sent out the actual job hosting. So they probably went up in January, February of '06, a couple of months later.

CHAYTOR, Q.C.:

Q. And how many PAs do you have now?

MR. DYER:

A. Today? We have three pathology assistants and we have one team leader, that's what we have. And just to take you through it, the team leader, she came from Ontario, she was already a fully trained PA and a great acquisition and I'm glad we got her because she actually set up a lot of the training program. And we hired our second PA, she came from Memorial University and she actually performed PA duties also in Ontario in the 90's and we

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hired two in-house--so that was the only, they were the ones that were acceptable and then we got two in house, and so we created an 18 to 24 month training group or training protocol.

CHAYTOR, Q.C.:

Q. And these were technologists within Eastern Health?

MR. DYER:

A. These are medical laboratory technologists who had senior experience or who has been around a lot of--who have been around pathology. One of our recommendations, you had to be in pathology and you had to be involved with tissues and things like this.

CHAYTOR, Q.C.:

Q. And they went through an 18 to 24 month training process?

MR. DYER:

A. Eighteen months so far, yes.

CHAYTOR, Q.C.:

Q. And so are they already finished their training?

MR. DYER:

A. Well what happened is two of them are pretty well completed, one didn't succeed, so we

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removed and we posted again and hired and so, I'd say she's about 75 percent now. So they're doing, like 95 percent of all gross.

CHAYTOR, Q.C.:

Q. 95 percent of all gross.

MR. DYER:

A. Of all gross.

CHAYTOR, Q.C.:

Q. And this is all taking place where?

MR. DYER:

A. Health Sciences and St. Clare's, they do a rotation. And the position that--we also have a tech II who is still grossing all biopsies, so truly, really there's five of them doing all the gross.

CHAYTOR, Q.C.:

Q. And do they gross the breast specimens?

MR. DYER:

A. Yes, they do.

CHAYTOR, Q.C.:

Q. And was that true before Dr. Carter left?

MR. DYER:

A. Yes, I believe they completed the breast training, it stands out, I think around the same time that we actually went live with the

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ER/PR again, they were already grossing breast then, I think in '07.

CHAYTOR, Q.C.:

Q. And was Dr. Carter involved in their training?

MR. DYER:

A. I can't actually give a guaranteed answer to that. Dr. Lynn Morris-Larkin, she's a site chief at Health Science and she was leading the grossing, but the practice was all pathologists who were proficient in their fields were involved with the training, so I would imagine she was.

CHAYTOR, Q.C.:

Q. So for each particular area, there was a pathologist involved, so for example, breast pathology, you would expect that Dr. Carter would have been involved?

MR. DYER:

A. Yes, exactly.

CHAYTOR, Q.C.:

Q. And were there standard operating procedures developed for the pathology assistants?

MR. DYER:

A. They're being written now. As we go through the training, they were slowly being written.

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CHAYTOR, Q.C.:
Q. And so currently the bread loafing that we heard of, of breast tissue, who does that?
MR. DYER:
A. For the most part, the pathologist's assistants.
CHAYTOR, Q.C.:
Q. And when you say for the most part, why would there be exceptions to that?
MR. DYER:
A. Again, I'm not involved directly, but I would imagine if a pathologist--if a special specimen came down that's extremely complicated and it's not one that they're used to doing, then a pathologist could certainly step in.
CHAYTOR, Q.C.:
Q. So there's no written standard operating procedures, they're in the process of being developed, they're in draft form, I take it?
MR. DYER:
A. Well a lot of, I think a lot of our grossing are written.
CHAYTOR, Q.C.:
Q. They're written?

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MR. DYER:
A. Yes.
CHAYTOR, Q.C.:
Q. Okay, and there are other standard operating procedures in the works for specifically for pathology assistants?
MR. DYER:
A. Oh yes.
CHAYTOR, Q.C.:
Q. Is there anything to say that they are the people who now do these tests or can any pathologist come in and say I'll do my own grossing today, thank you.
MR. DYER:
A. I wouldn't be able to answer that question, I don't know.
CHAYTOR, Q.C.:
Q. Who is the manager of the pathology assistants?
MR. DYER:
A. Who is the manager?
CHAYTOR, Q.C.:
Q. Yeah, do you manage them?
MR. DYER:
A. Well I'm the manager of the laboratory--of

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pathology, but no, we have a team leader who we hired.
CHAYTOR, Q.C.:
Q. So they report directly to her, the woman from Ontario?
MR. DYER:
A. They would go to her for any type of--for any type of clinical issue they would go to her, and if she's not there, they would go to the site chief.
CHAYTOR, Q.C.:
Q. So they'd go to the site chief?
MR. DYER:
A. Yes, because the site chief is a physician and everything they deal with is with handling tissue, grossing.
CHAYTOR, Q.C.:
Q. And who does the team leader report to?
MR. DYER:
A. The team leader for clinical issues would report to the site chief, but for administrative issues, she would report to me.
CHAYTOR, Q.C.:
Q. Okay, so the division in reporting, so in terms of how they do their work and whether or

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not they do certain tests, that would be up to the site chief?
MR. DYER:
A. Yes, or the team leader.
CHAYTOR, Q.C.:
Q. And if the team leader can't resolve it, then go to the site chief.
MR. DYER:
A. Site chief, right.
CHAYTOR, Q.C.:
Q. And ultimately, I guess, could go to the clinical chief?
MR. DYER:
A. Yes.
CHAYTOR, Q.C.:
Q. So whether or not they, any pathologist could come in and take over a duty that the pathology assistant thinks is within their domain, that would have to either be agreed to by the team leader or higher?
MR. DYER:
A. Or probably even higher, I would imagine even higher, but I'm sure the pathologist could override, I mean, that's how it works.
CHAYTOR, Q.C.:

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Q. And that's still how it works?
MR. DYER:
A. Yes.
CHAYTOR, Q.C.:
Q. If you just think back then to your first year of management, 2002 onwards, do you remember any particular issues coming to your attention regarding IHC or ER and PR testing in particular?
MR. DYER:
A. No, nothing stands out. I know we would have discussions and I think, like I said before, I mean the only thing that ever truly stood out was that tissue was washing off the slides. I was not getting any issues in terms of quality of stain.
CHAYTOR, Q.C.:
Q. And I think you were in attendance last week and I took Ms. Butler through what appeared to be a high number of tests which had to be repeated in 2002. Did any--did that come to your attention at the time, that there were a number of repeats in ER/PR testing going on?
MR. DYER:
A. I don't know if that actually came to my--for

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ER/PR in general? No, I don't think so, you know, looking back, I mean we may have discussed there are some repeats, but I mean, in 2002 we probably did, I'd say at least 15,000 slides. So if we heard of two or three or ten or 15 repeats out of 15,000, I think we were doing really well.
CHAYTOR, Q.C.:
Q. But if you're hearing of two or three out of a test that you're not doing very frequently at all, would that have caused you concern is you heard that?
MR. DYER:
A. Yes, it would have.
CHAYTOR, Q.C.:
Q. So nothing stands out in your mind of anyone complaining to you at that particular point in time, anything to do with the IHC tests, other than the washing off the tissue and we'll get to that, other than that, nothing stands out about the staining or about ER/PR in general?
MR. DYER:
A. None.
CHAYTOR, Q.C.:
Q. And in terms of any informal rumours or

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rumblings, did you hear anything of any concern in 2002 regarding the testing?
MR. DYER:
A. None, I'm just trying to think about out site meetings even, but I think they were in 2003, but no, I can't recall if any concerns about IHC in that sense.
CHAYTOR, Q.C.:
Q. And the idea then of the tissue washing off the slide, what were you told about that and who brought that to your that to your attention?
MR. DYER:
A. I'm not sure if it was the techs or, I remember Dr. Ford Elms talking to me about it, about tissue, itself, particularly fatty tissue washing off slides.
CHAYTOR, Q.C.:
Q. Okay, so you remember Dr. Elms and perhaps the techs as well?
MR. DYER:
A. Yeah, maybe the techs might have too, but I remember Ford standing out.
CHAYTOR, Q.C.:
Q. And do you recall any meeting with

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pathologists in which that issue was discussed?
MR. DYER:
A. Not that I can remember.
CHAYTOR, Q.C.:
Q. So just Dr. Elms -
MR. DYER:
A. That's just in general.
CHAYTOR, Q.C.:
Q. Okay, and what can cause that? What can cause the tissue to wash off the slide?
MR. DYER:
A. Oh there are multiple things, I guess, that can cause it. The first thing is, well the first thing, again, is fixation. Fixation can certainly cause that to happen. If the tissue is not well fixed, it's not going to be well impermeated; therefore, it's not going to--it will dry on the slide. The handling of the tissue itself, the handling of the slide can cause that also, how it was -
CHAYTOR, Q.C.:
Q. What about the handling of the slide?
MR. DYER:
A. The handling of the slide, like if it's--I'm

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sorry, I don't mean the handling of the slide, I mean the handling of the cutting itself, if it's cut but it's breaking apart before you actually put it on the slide, the cohesion is already started and they were the two big reasons why, and we always found that fat struggled to adhere to slides and I've learned that through post mortems, the brain is very difficult to stay on slides and it's because it's pretty well all fat.

CHAYTOR, Q.C.:

Q. And breast tissue again -

MR. DYER:

A. And breast, there's a lot of fat in breast also, yes.

CHAYTOR, Q.C.:

Q. So and what if the tissue wasn't processed properly, could that also lead to -

MR. DYER:

A. Again, yes, definitely if it wasn't processed properly.

CHAYTOR, Q.C.:

Q. And, obviously if it's not adhered properly to the slide in the first place, that can cause an issue as well?

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MR. DYER:

A. Yes.

CHAYTOR, Q.C.:

Q. After it was brought to your attention and you say you recall Dr. Elms speaking to you about it, what was done to investigate it, what happened? What did you do about the issue?

MR. DYER:

A. Well the first thing, I remember when we talked about it, the first thing I remember doing is I talked to other groups, like I talked to the pediatrics, I talked to neuro, I talked to the autopsy group to see if we were having an issue with fixation and nobody seemed to have an issue with fixation, so and I believe the next big issue would then be is how the specimen was actually acrosed, if the tissue was too big, we knew we were going to have processing problems. That would have been my next logical step, which is what I believe we did and processing, see, processing is almost like a science that's pretty close to exact. When you look at a tissue for processing and this is what we did at the time, is there's an actual, you can use a

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logarithm in terms of if the tissue is cut approximately three to four millimetres thickness, it can be determined that, you know, based on two to two and a quarter hours in dehydration would do a proper dehydration, so the same thing with Xylene, so there are rules you can use and we use them when we set up the processors. So I truly didn't think that we were having issues with the processor. The processor was changed on a regular basis, it was cleaned, it was dumped all the time, so I didn't think the issue would be processing. Then, once you go from processing, then it would be your cutting and drying. So, you know, the tissues were, again, the tissues were, I think there was some struggling with the cutting of the tissues and you will see that as we go through, but a lot of that was we were constantly have a turn over in the lab, new staff, constantly training staff. You need a good year to cut, to be proficient, it's a total manual procedure. And then the slide itself, how it was dried. I mean, if you get thick wrinkles, I mean, then those wrinkles may not dry, adhere onto your slide

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and I've learned since, of course, is how the AR came to IHC, is that the AR was pretty rough on the actual slide itself too, and apparently that's where it seemed to be happened the most was during the antigen retrieval, like they were getting full sections all the way down, but once it went on the antigen retrieval and came off, that's when they noticed that the slide was different.

CHAYTOR, Q.C.:

Q. And so the antigen retrieval process at the time was the boiling of the tissue.

MR. DYER:

A. Yes.

CHAYTOR, Q.C.:

Q. And that was harsh on the tissue as well.

MR. DYER:

A. Yes.

CHAYTOR, Q.C.:

Q. So that was discussed as an issue back in, well we know that Dr. Ejeckam, for example, intervened in 2003, did this pre-date Dr. Ejeckam's intervention, these discussions?

MR. DYER:

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A. Yes, they did.
CHAYTOR, Q.C.:
Q. And so that was--the effect of the antigen retrieval was something being discussed back in 2002?
MR. DYER:
A. Yes, not the effect--yeah, the effect in terms of quality of how the tissue was actually washing off the slide, yes.
CHAYTOR, Q.C.:
Q. Yes, and how that might be a factor in what was happening?
MR. DYER:
A. Yes.
CHAYTOR, Q.C.:
Q. The issue--what happens in the processor if the tissue is cut too thick, the issue of being cut too thick for the cassettes? What's the problem?
MR. DYER:
A. Well if the tissue is cut too thick, the processing may not actually do the proper job and may not get through--the actual dehydration and the clearing may not function and therefore, then when you get into your

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wax, the wax is not going to adhere.
CHAYTOR, Q.C.:
Q. And, Dr. Elms complaining, his complaints, did that also predate Dr. Ejeckam's intervention?
MR. DYER:
A. Well it was his complaint is what led, like, how can I say, it's not that he was complaining, we had a--I was talking to pathologists -
CHAYTOR, Q.C.:
Q. No, his concern, he brought this as a concern, obviously.
MR. DYER:
A. Well the way the concern was brought to me, actually it wasn't because he was actually having issues, because truly, I can't recall too many issues coming to me. What actually happened with that one from Dr. Elms was, was in 2003, the contract, reagent lease was up with DAKO and I wanted to go out and find a new, get some more equipment, whether it was DAKO or not DAKO. And I remember when I spoke to people about it, that was Ford Elm's concern--issue, was that the tissue was actually washing off the slides and we deduced

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that it was through the antigen retrieval and therefore, I wanted an automated system.
CHAYTOR, Q.C.:
Q. How were you able to deduce that it was the antigen retrieval that was causing -
MR. DYER:
A. I think we went through the whole process and it seemed like, you know, it was a full section, because we went through the entire process and it was a full section going in, but it wasn't a full section coming out.
CHAYTOR, Q.C.:
Q. And so was there any attempt made at that point in time to adjust the antigen retrieval process?
MR. DYER:
A. At that time, no, the antigen retrieval that was recommended was--or the one that we actually followed, we followed the recommended one which was boiling, so what we did was we tried, I believe we brought in a solution from DAKO called histogrip and we used that on the brain slides and we also used it on fatty tissue.
CHAYTOR, Q.C.:

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Q. So you used it on the breast slides as well?
MR. DYER:
A. On the breast slides, yes, and I think that was the best that they had, so that's--we would actually procure our slides in that.
CHAYTOR, Q.C.:
Q. And what did that do? Was that an -
MR. DYER:
A. I think--pardon?
CHAYTOR, Q.C.:
Q. Was that an adhesive or -
MR. DYER:
A. Yes, it was like an adhesive, yes.
CHAYTOR, Q.C.:
Q. So what would actually happen? Were the slides dipped in this or -
MR. DYER:
A. Yes, like a solution came pre-made and you would dip them for, as was a protocol, for so many minutes and then you would take them out and we would dry them in an oven at 37 degrees, I believe, for so many hours and then those were the slides that were actually used for immunohistochemistry.
CHAYTOR, Q.C.:

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Q. And were they also used on the IHC slides? Was that used on the IHC slides?
MR. DYER:
A. Yes, for all IHC.
CHAYTOR, Q.C.:
Q. For all IHC slides, okay. And where did this solution come from? DAKO is the -
MR. DYER:
A. They came from DAKO, yes.
CHAYTOR, Q.C.:
Q. And was there anything--did the lab technologists or assistants who were using this, did they have to actually mix the solution themselves, or did it come -
MR. DYER:
A. I think it might have came pre-made, I'm not sure.
CHAYTOR, Q.C.:
Q. And do you know whether there was any quality control measures to check that solution?
MR. DYER:
A. Not that I know of.
CHAYTOR, Q.C.:
Q. Could that adhesive cause any problem ultimately in the staining process?

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MR. DYER:
A. I was under the impression that no, that it was recommended by DAKO for IHC.
CHAYTOR, Q.C.:
Q. To keep the tissue on the slide -
MR. DYER:
A. To help keep the tissue adhered.
CHAYTOR, Q.C.:
Q. And you're not aware since as to whether or not that could have been a factor in anything?
MR. DYER:
A. No.
CHAYTOR, Q.C.:
Q. And so the idea of then the contract being up with DAKO and looking to acquire a new machine.
MR. DYER:
A. Yes.
CHAYTOR, Q.C.:
Q. This issue of the tissues washing off the slide and antigen retrieval being deduced to be a factor in that, I take it then when you went looking for a machine, you looked for something with antigen retrieval more automated?

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MR. DYER:
A. Yes.
CHAYTOR, Q.C.:
Q. And that was part of the thinking then in getting the Ventana machine.
MR. DYER:
A. Well I wrote, in my initial tender I wrote, the only applicant that came back was DAKO and it was still not automated, so I wouldn't accept it. We went on a search to try and determine what other groups were doing to see if we could find an automated or antigen retrieval on board is what they call it.
CHAYTOR, Q.C.:
Q. And ultimately, of course, you acquired the Ventena?
MR. DYER:
A. Yes.
CHAYTOR, Q.C.:
Q. So you've told us about the issue regarding the washing off could be the fixation, the antigen retrieval process, the grossing.
MR. DYER:
A. When I mean grossing, again, if the tissues were cut thick -

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CHAYTOR, Q.C.:
Q. The thickness.
MR. DYER:
A. - you may not get a true process.
CHAYTOR, Q.C.:
Q. In terms of -
THE COMMISSIONER:
Q. I don't want to interrupt, but I just wanted to be certain about this, to go back to Dr. Elms' concerns as expressed to you, this arose out of, am I right, this arose out of the fact that you were going to go look for new equipment?
MR. DYER:
A. Yes.
THE COMMISSIONER:
Q. And in the conversation about looking for new equipment and what was required for the new equipment, Dr. Elms raised his concern about tissue washing off the slides in the current process.
MR. DYER:
A. Yes.
THE COMMISSIONER:
Q. And you hadn't heard of that before.

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MR. DYER:
A. I think I might have heard of it, but I don't think it was considered a huge issue at the time or at least it wasn't relayed to me that way.
THE COMMISSIONER:
Q. Okay, thank you.
CHAYTOR, Q.C.:
Q. And are you able to date that in terms of when Dr. Elms spoke to you, was that before Dr. Ejeckam we know in April of 2003 -
MR. DYER:
A. Oh yes.
CHAYTOR, Q.C.:
Q. So was it before that?
MR. DYER:
A. It had to be before that, yes.
CHAYTOR, Q.C.:
Q. It was before that, okay. And in 2003, were you aware in 2003 that there were repeats of ER/PR tests which resulted in changes upon repeat? Were you aware of that?
MR. DYER:
A. No.
CHAYTOR, Q.C.:

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Q. And so I take it Dr. Elms, nor anyone else brought that to your attention?
MR. DYER:
A. No.
CHAYTOR, Q.C.:
Q. Have you ever become aware of that?
MR. DYER:
A. Yes.
CHAYTOR, Q.C.:
Q. And when?
MR. DYER:
A. The first time was May 17th, 2005.
CHAYTOR, Q.C.:
Q. That in 2003 there had been conversions?
MR. DYER:
A. I think it was 2003, 2002.
CHAYTOR, Q.C.:
Q. And 2002 as well?
MR. DYER:
A. No, I think there was a conversion in 2002, I believe.
CHAYTOR, Q.C.:
Q. Yes, but when was that conversion made known?
MR. DYER:
A. To me?

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CHAYTOR, Q.C.:
Q. The original test was 2002.
MR. DYER:
A. Yes.
CHAYTOR, Q.C.:
Q. And when was that test -
MR. DYER:
A. I was told May 17th, 2005.
CHAYTOR, Q.C.:
Q. Right, yes, what I'm asking you is if in 2003 you were aware that tests were done in 2003, repeated in 2003 and resulted in changes?
MR. DYER:
A. No, I was never aware.
CHAYTOR, Q.C.:
Q. You were never made aware of that?
MR. DYER:
A. No.
CHAYTOR, Q.C.:
Q. So you've never been made aware of that?
MR. DYER:
A. No.
CHAYTOR, Q.C.:
Q. Any issue of fixation as being a contributing factor to the tissue washing off the slides,

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do you recall any debate as to the necessity of ensuring that breast tissue was sliced to allow even fixation? Do you recall any debate or discussion around that, around the issue of the bread loafing?
MR. DYER:
A. Yes, I was invited to a site meeting at Health Science.
CHAYTOR, Q.C.:
Q. I'm sorry, which meeting?
MR. DYER:
A. I was invited to a site pathologist meeting at Health Science, and that was one of the issues that was discussed -- that was one of the things that was discussed at the meeting.
CHAYTOR, Q.C.:
Q. And can you time that meeting? Which -- around about when was that?
MR. DYER:
A. No, I can't --
CHAYTOR, Q.C.:
Q. So was this in 2002, your first year of management?
MR. DYER:
A. No, no, it wasn't in -- it was probably more -

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- no, it wasn't 2002 for sure.
CHAYTOR, Q.C.:
Q. Was it after Dr. Ejeckam was involved in April, 2003?
MR. DYER:
A. It's hard to place to say when it was.
CHAYTOR, Q.C.:
Q. I take it, it was, though, prior to the ER/PR issue that we're now dealing with arising in 2005?
MR. DYER:
A. Oh, yes.
CHAYTOR, Q.C.:
Q. It predated that?
MR. DYER:
A. Definitely.
CHAYTOR, Q.C.:
Q. Predated that by how long?
MR. DYER:
A. It might have been 2003. It stands out for some reason, so it might have been 2003.
CHAYTOR, Q.C.:
Q. Well, then tell us what happened at that meeting, what was discussed?
MR. DYER:

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A. I think it was just a general meeting, but an issue was brought up again grossing and that the protocol to be followed is all large specimens are to be bread loafed, are to be bread loafed, like what we were doing. So they're all to be bread loafed when they come down every evening, and I think there was an issue about residents for the most part did it, but when -- because residents were assigned to pathologists, but on days where a resident wasn't assigned to a pathologist, it was the pathologist's responsibility to do it.
CHAYTOR, Q.C.:
Q. And so what was the issue or what was the debate about then?
MR. DYER:
A. I think the debate was there were some inconsistencies in bread loafing, not the actual bread loafing, but, I guess, when they did the bread loafing. Some residents were doing it for some pathologists - for pathologists and maybe other times they didn't do it, depending on the pathologist.
CHAYTOR, Q.C.:
Q. Meaning that if the resident didn't do it, the

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pathologist did it, him or herself, or it didn't happen at all?
MR. DYER:
A. Correct, the latter.
CHAYTOR, Q.C.:
Q. The latter?
MR. DYER:
A. Yes.
CHAYTOR, Q.C.:
Q. So bread loafing wasn't happening with all breast specimens?
MR. DYER:
A. Oh, I can't say it was breast, in general. I think -- it was large specimens in general.
CHAYTOR, Q.C.:
Q. Which would include breast?
MR. DYER:
A. Yes.
CHAYTOR, Q.C.:
Q. And you understood that it included breast?
MR. DYER:
A. Yes.
CHAYTOR, Q.C.:
Q. And who attended this meeting, can you recall in particular any pathologists that were

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there?
MR. DYER:
A. Oh, there was multiple pathologists from -- from Health Science were there. I know -- I think Dr. Lynn Morris-Larkin was -- I'm not sure if she was chairing, but she was there, and Dr. Wadden was there, Dr. Ejeckam was there. I think Dr. Cook might have been there, I'm not sure, because I think Terry was even -- I think Mr. Gulliver was also invited to this meeting. He was.
CHAYTOR, Q.C.:
Q. And did someone raise this as an issue of concern that all the large specimens weren't being bread loafed?
MR. DYER:
A. I think, yes.
CHAYTOR, Q.C.:
Q. And who do you recall raising that as a concern?
MR. DYER:
A. I believe it was Dr. Lynn Morris-Larkin.
CHAYTOR, Q.C.:
Q. Okay, and what was the response of the other pathologists in the room? Was there any

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resistance to doing that?
MR. DYER:
A. I think it was pretty well accepted. There was one resistance there who felt that they were an experienced pathologist and they knew how to read the slides, so they felt it may not be -- it wasn't always necessary.
CHAYTOR, Q.C.:
Q. To bread loaf?
MR. DYER:
A. To bread loaf, yes.
CHAYTOR, Q.C.:
Q. And who was that pathologist?
MR. DYER:
A. That was Dr Ejeckam.
CHAYTOR, Q.C.:
Q. Dr. Ejeckam?
MR. DYER:
A. Yes.
CHAYTOR, Q.C.:
Q. So in terms of the outcome of that meeting, was it resolved that on a go-forward basis all large specimens would, in fact, be bread loafed and bread loafed in a standard procedure?

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MR. DYER:
A. That's what Dr. Lynn Morris-Larkin wanted.
CHAYTOR, Q.C.:
Q. And was she successful in getting that?
MR. DYER:
A. I wouldn't be able to tell -- I wouldn't be able to tell you if that happened after.
CHAYTOR, Q.C.:
Q. So at the end of the meeting, it didn't seem to have been resolved, is that right?
MR. DYER:
A. Well, at the end of the meeting, I remember she said this will be -- this is the protocol.
CHAYTOR, Q.C.:
Q. This is --
MR. DYER:
A. This is the protocol, so I would assume they all just followed it after.
CHAYTOR, Q.C.:
Q. So any resistance Dr. Ejeckam had to the issue, he seemed to go along with it at the end of the meeting?
MR. DYER:
A. I wouldn't be able to answer that.
CHAYTOR, Q.C.:

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Q. And do you recall Dr. Ejeckam, how we've heard was certainly very experienced in IHC, did he give any explanation as to why he wouldn't see that as a necessary step to bread loaf the specimens?
MR. DYER:
A. I can't really remember everything. Just that stands out. That's why I remember it.
CHAYTOR, Q.C.:
Q. And I take it for it to be the subject of discussion, it had come to Lynn Morris-Larkin's attention that this was happening, that not all specimens were being bread loafed?
MR. DYER:
A. Again that's hard to say. Obviously, something was brought to her attention for that to come up at the meeting.
CHAYTOR, Q.C.:
Q. Yes.
MR. DYER:
A. Yes.
CHAYTOR, Q.C.:
Q. And do you know whether or not there were others who hadn't been bread loafing the

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specimens?
MR. DYER:
A. Not that I know of.
CHAYTOR, Q.C.:
Q. And the only one who spoke in the meeting to indicate that it hadn't been his practice was Dr. Ejeckam?
MR. DYER:
A. Yes.
CHAYTOR, Q.C.:
Q. Was there any concern in terms of the timing of when the bread loafing would have to take place?
MR. DYER:
A. I think the agreement was any specimens that came down today would be bread loafed between four and five in the evening. So they would wait as late as possible to try and get every specimen come down.
CHAYTOR, Q.C.:
Q. And so were there any concerns that -- any concerns that that had not been happening, you know, in terms of the timing and how that may have been causing any difficulty for the pathologists in doing their grossing?

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MR. DYER:
A. Again I don't understand the question.
CHAYTOR, Q.C.:
Q. Okay, I don't really either. About the timing of the specimen coming down --
MR. DYER:
A. From the OR, you mean?
CHAYTOR, Q.C.:
Q. From the OR, yes, yeah, and how that might interfere with their day and everything else that they had to do, was there some issue --
MR. DYER:
A. That did happen. You know, there were specimens that would run late, and so they would come down on the first -- the 8 o'clock run or the 8:30 run the next morning. So that did happen.
CHAYTOR, Q.C.:
Q. And in those situations, what would happen to the specimen?
MR. DYER:
A. I think -- from what I would see, they would be immediately taken over by the resident or the pathologist that day because it would still be assigned to that pathologist from

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yesterday, and they would deal with the specimen immediately.
CHAYTOR, Q.C.:
Q. Okay.
MR. DYER:
A. From what I saw.
CHAYTOR, Q.C.:
Q. So it did come to the attention of certainly certain pathologists and to yourself, and to Mr. Gulliver's attention, back around 2003 time frame that there was this issue of bread loafing not necessarily happening all the time?
MR. DYER:
A. Yes.
CHAYTOR, Q.C.:
Q. But was there then any written standard operating procedure or any policy put in place to ensure that on a go-forward basis that would happen?
MR. DYER:
A. Again it was clinical, so I didn't -- I didn't see one, but you'd have to ask the physicians.
CHAYTOR, Q.C.:
Q. And to your knowledge, did any such policy or

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procedure exist?
MR. DYER:
A. I didn't see one myself.
CHAYTOR, Q.C.:
Q. Okay, and I take it you've seen one recently?
MR. DYER:
A. Oh, yes.
CHAYTOR, Q.C.:
Q. In 2008?
MR. DYER:
A. Yes.
CHAYTOR, Q.C.:
Q. I just want to talk then a bit about Dr. Ejeckam's concerns which arose in 2003, and first of all, what did you understand Dr. Ejeckam's role to be at that time in terms of the IHC lab?
MR. DYER:
A. He ran the IHC lab.
CHAYTOR, Q.C.:
Q. And could he give direction to the technical staff?
MR. DYER:
A. He could, and he did.
CHAYTOR, Q.C.:

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Q. And did you perceive that as a good thing?
MR. DYER:
A. Most definitely.
CHAYTOR, Q.C.:
Q. And you had no problem, I take it, with him giving that type of one on one to the staff?
MR. DYER:
A. Not at all.
CHAYTOR, Q.C.:
Q. Okay. What do you recall -- we know now, of course, that in April of 2003 he suspended eight stains, two of which were ER and PR. What do you recall about that?
MR. DYER:
A. What happened was I got a phone call from Dr. Ejeckam to come over to his office. So I went over and sat down to talk with him, and he handed me the memo.
CHAYTOR, Q.C.:
Q. The first memo, April 4th?
MR. DYER:
A. The memo saying that there was an issue with ER -- he has issues with some of the staining, not necessarily the staining, but he had issue with the consistency in the staining, I

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believe, of multiple antibodies, and he wanted to stop those -- he wanted us to stop performing those stains on a clinical basis effective immediately.

CHAYTOR, Q.C.:

Q. And so what was your reaction to that?

MR. DYER:

A. I was amazed. I never -- I did not realize we were having issues. I was not receiving any complaints or anything about IHC. So I -- honestly, I was taken back, but I certainly agreed with him and I said, yes, go ahead.

CHAYTOR, Q.C.:

Q. And so you're surprised and amazed, you say, because you hadn't received any complaints about the IHC?

MR. DYER:

A. None.

CHAYTOR, Q.C.:

Q. What did he tell you led him to the concern, had he received complaints or why was he doing this?

MR. DYER:

A. I don't -- I can't really remember what he said about how he actually led to this. I

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just remember him saying there was issues with the consistency in the staining.

CHAYTOR, Q.C.:

Q. So all you had heard in terms of the quality of the product at that point in time, you had heard issues of quality of the slides and that the tissue was washing off?

MR. DYER:

A. Yes.

CHAYTOR, Q.C.:

Q. But the actual staining and whether the staining was sufficient, you hadn't heard anything along those lines?

MR. DYER:

A. That's the first time, and I know we run a -- I don't know if we actually -- we might have talked about controls because I know we run a control every time, and from what I understand, the controls were working.

CHAYTOR, Q.C.:

Q. And did you inquire of him in that regard whether or not --

MR. DYER:

A. I can't remember. It's something I probably would have done, but I don't remember if I

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actually did.

CHAYTOR, Q.C.:

Q. Okay. So after having that discussion with Dr. Ejeckam, what did you do?

MR. DYER:

A. Well, the first thing I did is like I always do, I informed the Program Director?

CHAYTOR, Q.C.:

Q. Mr. Gulliver.

MR. DYER:

A. Yes, that the stains -- that there's six or eight stains that we're going to retest or revalidate, and that we're going to stop performing those stains for the next few weeks and see if we can get them back up to consistent staining. I then spoke to Mary. She was the lead tech, she was the senior tech there and I think I actually spoke to Dr. Ejeckam -- I might have spoken to Dr. Ejeckam about that and recommended that Mary will be the one to do it, and so I spoke with Mary and explained -- I believe actually I told -- I think I might have had -- first I informed Terry, and then I think I had a meeting with my staff to let them know that we're having

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some issues with some stains, and I think from there we discussed that Mary would be the person to do the retesting, so she went down to immuno. We called and spoke to -- I know I did myself, spoke to Dan Belchowsky from DAKO because he was the expert. That's the first thing you would do if you're having issues that are serious like that is we've got to get help.

CHAYTOR, Q.C.:

Q. Okay, and I'll take you through that.

MR. DYER:

A. Okay.

CHAYTOR, Q.C.:

Q. You identified, though, that Mary Butler would be the person to be involved in the retesting?

MR. DYER:

A. Yes.

CHAYTOR, Q.C.:

Q. So you understood that this was going to be retests?

MR. DYER:

A. We were going to revalidate.

CHAYTOR, Q.C.:

Q. Okay, so did you understand there would be

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tests that had already been done and you would retest those?
MR. DYER:
A. No, that wasn't my interpretation. My interpretation was to revalidate these antibodies using controls.
CHAYTOR, Q.C.:
Q. And how did you understand that was going to happen? Would this be fresh tests or a new test coming into the lab, or how was that going to happen?
MR. DYER:
A. No, we would use current antibodies we had used in the current protocol, and we would just start doing what I would call a grid. So, you know, like, we would change dilutions, the standard things you would do. So I spoke to Dan Belchowsky and he gave some advice on what we could do, and we went from there.
CHAYTOR, Q.C.:
Q. Okay.
MR. DYER:
A. So what happened was -- when I say we went from there, what I mean is Dr. Ejeckam took over. He was doing it and he actually

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interacted with Mary, and two of them actually did the retesting. When I say retesting, I mean did the revalidation.
CHAYTOR, Q.C.:
Q. Reevaluation, yes, okay.
MR. DYER:
A. Revalidation.
CHAYTOR, Q.C.:
Q. All right, and did Dr. Ejeckam tell you why those eight stains, what was peculiar about those eight?
MR. DYER:
A. I don't know. I think he just -- you know, now that I read it, I mean, there's only two things stand out; ER/PR was breast, and the others were more lymphomas, and this one prostate.
CHAYTOR, Q.C.:
Q. One prostate.
MR. DYER:
A. That's all I see here.
CHAYTOR, Q.C.:
Q. So you didn't ask him at the time why those?
MR. DYER:
A. Why those particular ones, no.

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CHAYTOR, Q.C.:
Q. And when you brought it to the attention of Mr. Gulliver, did he have any particular questions or concerns for you?
MR. DYER:
A. He did. He was taken back also because -- as to why were we having these issues because I've never reported to him before about having an issue with immuno. So he was taken back also, and the concept of shutting down the staining, I think is the way Dr. Ejeckam said it, he wanted to stop staining, was a bit of take you back also, but we agreed to it immediately.
CHAYTOR, Q.C.:
Q. And so, I take it, based on your reaction, that was a very unusual step to take?
MR. DYER:
A. Yes.
CHAYTOR, Q.C.:
Q. But if Dr. Ejeckam said it was necessary, you accepted that?
MR. DYER:
A. Immediately.
CHAYTOR, Q.C.:

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Q. And went along with it?
MR. DYER:
A. Yes.
CHAYTOR, Q.C.:
Q. And the idea of revalidating -- what about, you know, the tests obviously had been run right up until the beginning of April, 2003.
MR. DYER:
A. That date, yes.
CHAYTOR, Q.C.:
Q. Did it occur to you or did you have any concern, well, what about the patients we did last week or the week before that if there's an issue?
MR. DYER:
A. It never occurred to me. You know, again technically speaking -- I know it was inconsistent, but technically speaking the control was working, so don't think I would have considered even thinking about patients prior to that.
CHAYTOR, Q.C.:
Q. So what conversation did you have, and with whom, to be able to say the controls were working?

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MR. DYER:
A. With Dr. Ejeckam.
CHAYTOR, Q.C.:
Q. You asked Dr. Ejeckam?
MR. DYER:
A. Yes, I'm sure I would have talked about the -- I spoke about the controls with Dr. Ejeckam.
CHAYTOR, Q.C.:
Q. And meaning the external controls?
MR. DYER:
A. Yes, the external controls.
CHAYTOR, Q.C.:
Q. Was there any discussion about internal controls?
MR. DYER:
A. I don't think so.
CHAYTOR, Q.C.:
Q. And you would have understood at the time what an internal control is?
MR. DYER:
A. Again when I was at the Janeway and we did the immunofluorescence antibody antigen reactions, Dr. Pushpanathan taught me about internal controls back then and the purpose of an internal control. When I met with Dr.

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Ejeckam, I don't think I would have known -- I knew what internal controls were and the purpose of them, but I don't think I would have known exactly what internal control was being used for breast, do you understand what I mean.
CHAYTOR, Q.C.:
Q. But Dr. Ejeckam told you the external controls were working?
MR. DYER:
A. Yes.
CHAYTOR, Q.C.:
Q. And whether or not there was an issue with the internal controls, he didn't mention --
MR. DYER:
A. I don't think we discussed it. I mean -- yes, we didn't discuss it, as far as I can remember.
CHAYTOR, Q.C.:
Q. So whether Dr. Ejeckam had previously or at any point pointed out that an internal control may not have worked, that wasn't discussed with you?
MR. DYER:
A. No. His issue was more with consistency.

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CHAYTOR, Q.C.:
Q. If we could look at --
COMMISSIONER:
Q. Sorry, Ms. Chaytor, just before we go on, I'm not sure I understood you description of the validation process. Would you just run that by me again?
MR. DYER:
A. I beg your pardon?
COMMISSIONER:
Q. How you -- what Dr. Ejeckam and Mary were about to do in the revalidation process?
MR. DYER:
A. Oh, they were going to critique the stain. So if that meant changing dilutions or increasing temperature times, things like this, they were going to actually change parts of the protocol to make it more consistent.
COMMISSIONER:
Q. Okay, so -- where would they get the slides on which they would do this?
MR. DYER:
A. They would do it on current control tissue we were using.
COMMISSIONER:

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Q. Control tissue?
MR. DYER:
A. Yes.
COMMISSIONER:
Q. Okay, and they would take --
MR. DYER:
A. So known positives.
COMMISSIONER:
Q. Known samples, as it were?
MR. DYER:
A. Yes.
COMMISSIONER:
Q. Which they would take and then using various dilutions of solutions, would run those and then compare the result in terms of the slides you get?
MR. DYER:
A. Exactly.
COMMISSIONER:
Q. Okay, thank you.
CHAYTOR, Q.C.:
Q. I just want to be clear on that too. Thank you, Commissioner. So in revalidating, the tissue that they would be using to run this, they would use known positives, is that right?

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MR. DYER:
A. Yes.
CHAYTOR, Q.C.:
Q. They would use something from your control bank that had already been determined to be a positive?
MR. DYER:
A. Yes.
CHAYTOR, Q.C.:
Q. And would run -- so it wasn't your understanding they would run current patients?
MR. DYER:
A. No.
CHAYTOR, Q.C.:
Q. Current tests coming in?
MR. DYER:
A. No, any new tests that would come in would be put on hold, and to see how long it would -- I think the agreement was how long it would take -- if this was going to take months, we would just send out -- we would send these orders out to be done. So it all came down to -- that's what we decided.
CHAYTOR, Q.C.:
Q. And if in that time period tests were run and

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then rerun on current cases, you didn't understand that would be happening?
MR. DYER:
A. No, I did not.
CHAYTOR, Q.C.:
Q. So the cases that came in would just be put on hold?
MR. DYER:
A. Yes.
CHAYTOR, Q.C.:
Q. And whether or not there would be any going back or redoing any tests in that time period, you didn't know that that would be happening?
MR. DYER:
A. Again that's called a parallel run, and we do do parallel runs.
CHAYTOR, Q.C.:
Q. And do you know whether or not that was supposed to be happening?
MR. DYER:
A. I don't -- again I didn't sit down with Dr. Ejeckam and formulate a plan as to what they were going to do. I think he sat down with Mary and he gave all the guidance.
CHAYTOR, Q.C.:

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Q. And a parallel run would be, though --
MR. DYER:
A. We would run a patient.
CHAYTOR, Q.C.:
Q. Yes.
MR. DYER:
A. Two different -- well, you run a patient and then run them again.
CHAYTOR, Q.C.:
Q. Yes.
MR. DYER:
A. So, I guess, almost like twice, yes, or you take previous cases that were run and now you run them with your new procedure to see the difference.
CHAYTOR, Q.C.:
Q. Yes.
MR. DYER:
A. So Dr. Ejeckam may have done that.
CHAYTOR, Q.C.:
Q. But your understanding was that they would be going to the control bank, picking old cases, selecting blocks of old cases that had been known to be positive?
MR. DYER:

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A. Yes.
COMMISSIONER:
Q. And why is it you do a parallel run again?
MR. DYER:
A. We would do parallel runs?
COMMISSIONER:
Q. Uh-hm.
MR. DYER:
A. To see how the--okay, good point. So when it comes to controls, external controls will tell us if the system is working. But if you have a previous patient and then you run on one protocol and then you run the patient on this new protocol, you can actually compare and see how the reaction changed. So it's almost like a parallel. You're running the same patient with two different protocols.
THE COMMISSIONER:
Q. Yes, I'm just wondering what the purpose of that would be though?
MR. DYER:
A. The purpose?
THE COMMISSIONER:
Q. If you have arrived at, through the--if what Dr. Ejeckam's objective was in doing the

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revalidation to then, using your controls, arrive at, if you will, the best combination of solutions, etcetera, etcetera, and timing to use for the purpose of running your slides, then I assume he comes to a particular conclusion based on what he sees under the microscope, there having been run at various different levels, so would a parallel be run-- a parallel run be done as an adjunct to that or instead of that?

MR. DYER:

A. Like what would happen is he may have had a slide that's--he said this is inconsistent and he may have felt it should have been positive, and it may not have been positive. So we critique the stain, revalidate the stain, based on this control, and then he may run it on this to draw the comparison and say "well, now, this new protocol worked on here, but it didn't work here." I think, I would imagine that -

THE COMMISSIONER:

Q. Well, that's it, I suppose what I'm saying is would parallel runs be done for the purpose-- because I understood you to say parallel runs

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would be with two different -

MR. DYER:

A. Protocols.

THE COMMISSIONER:

Q. - protocols.

MR. DYER:

A. Right.

THE COMMISSIONER:

Q. So it presumably would be at a stage where you were trying to decide what protocol to use and then you'd say, "well, okay, I'll test it on a few of our current patients."

MR. DYER:

A. Correct.

THE COMMISSIONER:

Q. Or set past patients or whatever.

MR. DYER:

A. Right, and that's called parallel running.

THE COMMISSIONER:

Q. Okay. So that's when you are narrowing down your options, as it were, is it?

MR. DYER:

A. Yes.

THE COMMISSIONER:

Q. Okay, and you might be down to the point where

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you're saying "well, we can use this protocol or that protocol. Let's run a few using each of those and see what the results are."

MR. DYER:

A. And draw comparisons.

THE COMMISSIONER:

Q. So that might be, okay, following the initial process which you've described using the controls?

MR. DYER:

A. Yes.

THE COMMISSIONER:

Q. Then you move on to actual patients and run them on two different -

MR. DYER:

A. Yes, and I know Dr. Ejeckam did do things like that.

THE COMMISSIONER:

Q. Okay.

MR. DYER:

A. Good practice.

THE COMMISSIONER:

Q. And you also said, I think, at one point, or you could take previous cases and run it with the new procedure. Why would you do that

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then?

MR. DYER:

A. Well, again, those previous cases, well that's like a parallel run.

THE COMMISSIONER:

Q. Yes, except that the thing that's parallel is the one that you've decided to change presumably.

MR. DYER:

A. I'm sorry, okay, I'm -

THE COMMISSIONER:

Q. If it's a previous case -

MR. DYER:

A. Yes.

THE COMMISSIONER:

Q. - and you're running it after you have made your adjustments -

MR. DYER:

A. Yes.

THE COMMISSIONER:

Q. - then that's -

MR. DYER:

A. You're comparing -

THE COMMISSIONER:

Q. What you're doing is you're testing out your

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new protocol against your old protocol.
MR. DYER:
A. Right, against a case that you wondered--you know, again, he said it was inconsistent. So he may have felt that this patient here should have been positive and it was negative.
THE COMMISSIONER:
Q. Okay.
MR. DYER:
A. So he tried it again afterwards, he would do a parallel on that patient, using the new protocol and see if it changed.
THE COMMISSIONER:
Q. All right, but that means that in respect of the cases that would have been run, presumably Dr. Ejeckam would have had some -
MR. DYER:
A. He would have looked at them.
THE COMMISSIONER:
Q. - thought that there may be something amiss with this particular result?
MR. DYER:
A. Yes.
THE COMMISSIONER:
Q. Okay, thank you.

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MR. DYER:
A. And he must have felt that way if he actually stopped the staining.
CHAYTOR, Q.C.:
Q. But what exactly led to him doing that and stopping the staining?
MR. DYER:
A. No, he stopped the staining--he explained to me it was inconsistent staining, so he stopped those eight antibodies.
CHAYTOR, Q.C.:
Q. Inconsistent staining.
MR. DYER:
A. So he must--but I don't know if he was told by the other pathologists or if he seen it himself.
THE COMMISSIONER:
Q. And what did you take him to mean by inconsistent staining?
MR. DYER:
A. Sometimes it was positive, sometimes it was negative, when he felt--I guess, I assume he felt they should have been positive, inconsistent.
CHAYTOR, Q.C.:

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Q. So did you understand he had obtained inconsistent results?
MR. DYER:
A. No, he didn't say that to me.
CHAYTOR, Q.C.:
Q. But inconsistent staining -
MR. DYER:
A. You would think would lead to that, yes.
CHAYTOR, Q.C.:
Q. Yes.
MR. DYER:
A. But I don't know -
CHAYTOR, Q.C.:
Q. Things that he thought should have been positive were negative and vice versa?
MR. DYER:
A. Well, that's my interpretation of inconsistent.
CHAYTOR, Q.C.:
Q. Yes, and that's what you took him to mean at the time?
MR. DYER:
A. That sometimes they were--it was stronger than others, like you know, today was a very strong, the next day it was weak,

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inconsistent.
CHAYTOR, Q.C.:
Q. And did you also understand inconsistent to mean sometimes it's negative and then tomorrow it's positive and vice versa?
MR. DYER:
A. For--again, that's--I'm sorry, that's hard to--I don't know if I actually meant that, if it was negative and positive. That's something you could think, but I think it's more to the fact that it was--you know, when I say inconsistent, it was weak versus strong versus things like this.
CHAYTOR, Q.C.:
Q. And he told you the controls had been working. Had the controls been working consistently?
MR. DYER:
A. Well, he didn't explain that the controls were perfect every time, but he said there was positivity in the controls.
CHAYTOR, Q.C.:
Q. Okay, and whether there was any degree of weakness in the controls, he didn't indicate that to you?
MR. DYER:

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A. No, I don't think he actually took me that far.
CHAYTOR, Q.C.:
Q. And whether or not any parallel runs, revalidation or any retest in general in 2003 time period resulted in changed results, that wasn't brought to your attention?
MR. DYER:
A. No, never. No, never.
CHAYTOR, Q.C.:
Q. You never heard that discussed?
MR. DYER:
A. No.
CHAYTOR, Q.C.:
Q. And if we could look, please, at P-0113 then? This is the series of memos from Dr. Ejeckam.
MR. DYER:
A. Oh, okay.
CHAYTOR, Q.C.:
Q. And you said on the--he called you in to his office and -
MR. DYER:
A. Yes, that's the one.
CHAYTOR, Q.C.:
Q. - this is the first memo he gave you?

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MR. DYER:
A. Yes.
CHAYTOR, Q.C.:
Q. Okay, and this is addressed to the pathologists, Health Sciences, St. Clare's and out-of-town hospitals, and then it's copied to yourself and all technical staff in immunohistochemistry, and I take it he gave you the copy there and then that day?
MR. DYER:
A. I believe, I think that's what he did. I think he gave me a copy right there.
CHAYTOR, Q.C.:
Q. Okay, and did you distribute it to anyone else?
MR. DYER:
A. Did I? No, I didn't distribute it myself, no.
CHAYTOR, Q.C.:
Q. And the fact that it's copied to all technical staff, did you understand then that to be Mary and Peggy and Ken?
MR. DYER:
A. Mary, at that time, Mary, Peggy, Ken and Les.
CHAYTOR, Q.C.:
Q. And Les, so you understood they would have all

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received it?
MR. DYER:
A. Yes.
CHAYTOR, Q.C.:
Q. And you said you discussed the issue with them yourself?
MR. DYER:
A. I believe I did. I believe I discussed it. Now I'm not sure. I think when I discussed--I think I might have only--okay, I think when I discussed it, I think maybe only Mary and Ken might have been there at that point, and maybe it was just that particular day.
CHAYTOR, Q.C.:
Q. So whether or not they all received the memo, you didn't make any inquiries?
MR. DYER:
A. I don't know. No, I wouldn't know.
CHAYTOR, Q.C.:
Q. And who would you expect then to be responsible for the distribution of the memo?
MR. DYER:
A. For this one here? What we had done was the pathologist at Health Science didn't actually--we had one secretary and three clerical

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staff. So what happens was the secretary, the pathologists didn't actually have a secretary. The site chief had, I think, 25 percent of the secretary's work went directly to the site chief. So what I had done was I drew names out of a hat and if we had--like let's say we had 12 pathologists and there was three clerical staff, four pathologists would be assigned to that clerical staff. So Dr. Ejeckam knew--I think it was Juanita, so he knew when he wanted something typed, he could go right to her and she would type it.
CHAYTOR, Q.C.:
Q. So she'd be responsible for his clerical work, including the typing of the memo, and would she also then be responsible for seeing that the memo is distributed to the people indicated?
MR. DYER:
A. She would send them out, yes, that would be hers too, yes.
CHAYTOR, Q.C.:
Q. And you were her manager, I take it?
MR. DYER:
A. Yes.

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CHAYTOR, Q.C.:
Q. Okay. So she would be responsible for making sure it got to St. Clare's, the pathologists at St. Clare's?
MR. DYER:
A. Yes.
CHAYTOR, Q.C.:
Q. To the pathologists at the Health Sciences and to the pathologists in out-of-town hospitals?
MR. DYER:
A. Yes.
CHAYTOR, Q.C.:
Q. How would she know? How would she know who they are -
MR. DYER:
A. I was about to -
CHAYTOR, Q.C.:
Q. - who to send it to?
MR. DYER:
A. I was about to answer that.
CHAYTOR, Q.C.:
Q. You're ahead of me.
MR. DYER:
A. What happens is in pathology, unlike in the other lab, we have our own clerical staff or

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our own what we call our clerical steno office, clerical office, and we send out every single one, every single report that's done in pathology is sent out by our clerical group. So each one of them had their own list. They had a list of all addresses of every physician in Newfoundland and all the surgeons and things like that, and we always had--they also had a list of all out-of-town pathologists, because we did consult work all the time.
CHAYTOR, Q.C.:
Q. Okay. So she would have a ready list.
MR. DYER:
A. They have a list of all--you know, on stickies, what is it called? And it's all prewritten. So they just pull them off. They have them all in alphabetical order, each person, and they would just pull them as they would go through.
CHAYTOR, Q.C.:
Q. And she would also then, of course, be responsible for distributing to -
MR. DYER:
A. Technical staff.
CHAYTOR, Q.C.:

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Q. - to all the technical staff and -
MR. DYER:
A. Yes, she would actually walk down to the lab.
CHAYTOR, Q.C.:
Q. And how about you, did she give you a copy?
MR. DYER:
A. I don't know if she gave me a copy or not. I know I got a copy, I had a copy.
CHAYTOR, Q.C.:
Q. Yes, Dr. Ejeckam gave you a copy.
MR. DYER:
A. Yes, but she may very well have.
CHAYTOR, Q.C.:
Q. And so he indicates "kindly note that immunohistochemical stains with the following antibodies" and they're listed there, including ER and PR, "have remained unreliable, erratic and therefore unhelpful for diagnostic purposes" and he goes on to say that "these antibodies will stop forthwith until we can solve the reliability, sensitivity and specificity problems." It goes on to say that he'll then duly inform them when such stains can resume.
This was obviously a very brief memo, and

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you say he gave it to you at the time. The idea or the writing that he said here that it's "remained unreliable, erratic and therefore unhelpful for diagnostic purposes," how long did you understand or did you ask of him how long has this been an issue?
MR. DYER:
A. I don't know if I actually asked him how long it had been an issue. I just remember being very surprised that they were erratic and that's a different word, "erratic." My term he said with me was more like inconsistent than erratic. But no, I was just very surprised that that was said. I'm pretty sure I talked to the techs and I don't think they were even receiving any complaints or issues about things not working on a consistent basis.
CHAYTOR, Q.C.:
Q. So when you spoke to the techs about it -
MR. DYER:
A. I'm pretty sure I asked Mary and Ken about this when we were--when we discussed, and nothing really came up.
CHAYTOR, Q.C.:

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Q. Nothing came up, and so whether or not they were getting requests for repeats or any number of repeats, was there any issue like that brought to your attention?
MR. DYER:
A. I don't think we discussed it. I don't think it came up in that discussion about repeats.
CHAYTOR, Q.C.:
Q. And was the issue of the tissue still washing off the slides, was that still ongoing at this point in time?
MR. DYER:
A. Well, this is when we were just made--when it just came to--this is when I was, around this time when I actually discussed it with some of the pathologists, because we were going for--I wanted to go for a new tender, but it's funny because he doesn't say there about the actual quality of the slide. Now he's actually talking about the staining.
CHAYTOR, Q.C.:
Q. Yes, yes, and he's saying--he's using language that it's remained that way, but what you're saying is that you had no knowledge before being handed this memo that there had been an

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issue?
MR. DYER:
A. No.
CHAYTOR, Q.C.:
Q. So the use of the word "have remained" you weren't aware that there was ever any issue with these stains?
MR. DYER:
A. No.
CHAYTOR, Q.C.:
Q. And in your discussions with the technologists, they seemed equally surprised? They weren't aware either?
MR. DYER:
A. They were unaware, as far--from my understanding, yes, they were unaware also.
CHAYTOR, Q.C.:
Q. Okay. So in terms of then your own personal involvement, you spoke to the technologists about it and you contacted the gentleman from DAKO?
MR. DYER:
A. Yes.
CHAYTOR, Q.C.:
Q. And he, I believe, ultimately then wrote to

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you and Ms. Butler?
MR. DYER:
A. Yes, he did.
CHAYTOR, Q.C.:
Q. And offered some assistance. So did you have conversations back and forth with him or was there just the one contact and then you received -
MR. DYER:
A. I believe I had the one contact with him, and in that contact, we talked about, you know, how we would go about to make changes, and again, I think it was verbal, but we discussed--the big things that he suggested was dilution changes or length of incubation. They were the ones that he really stuck to the most, until I actually got his memo and by then, by the time we got his memo, we were pretty well through the actual process.
CHAYTOR, Q.C.:
Q. Okay. So and then in his memo, other things were also identified, I take it?
MR. DYER:
A. Yes, he did. He did identify another couple of things that would have helped.

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CHAYTOR, Q.C.:
Q. So in your verbal conversation with him, was there any indication of--did antigen retrieval come up?
MR. DYER:
A. I don't think we discussed antigen retrieval at the time. I really don't think we did, but he did discuss it in his next--in his memo that he sent me.
CHAYTOR, Q.C.:
Q. And would you have passed along to Dr. Ejeckam anything that was relayed to you by Mr.--is it Belchowsky?
MR. DYER:
A. Belchowsky.
CHAYTOR, Q.C.:
Q. Yes.
MR. DYER:
A. I'm not sure if I spoke to Dr. Ejeckam about it or spoke to Mary about it. I'm not sure who I might have talked to, but I did speak to one of them about it, and it might have been Ejeckam. He started immediately with the dilution factors.
CHAYTOR, Q.C.:

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Q. So ultimately, what adjustments ultimately did you understand that Dr. Ejeckam made back in 2003?
MR. DYER:
A. He made a change to the actual dilution.
CHAYTOR, Q.C.:
Q. And that was it?
MR. DYER:
A. As far as I know, yes, that was it.
CHAYTOR, Q.C.:
Q. Okay, and no change to antigen retrieval process?
MR. DYER:
A. No.
CHAYTOR, Q.C.:
Q. Or the length of incubation?
MR. DYER:
A. Not that I know of. Again, I wasn't informed as to what changes he made. I only learned about that recently.
CHAYTOR, Q.C.:
Q. Now we have some figures in terms of how much ER and PR testing would have been going on back in 2003, and I think it would be probably about, correct me if I'm wrong, but about

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probably 350 a year?
MR. DYER:
A. That sounds very reasonable.
CHAYTOR, Q.C.:
Q. That sound right. What about these other stains? How often were--were those common stains? How many of those would you be doing?
MR. DYER:
A. I wouldn't be able to comment on how many stains we actually did.
CHAYTOR, Q.C.:
Q. Were they more common stains than the ER and PRs?
MR. DYER:
A. No, I think lymphomas were far less than breast cancer.
CHAYTOR, Q.C.:
Q. So these stains weren't something that you were seeing a high volume of?
MR. DYER:
A. I don't think so. I mean, you know, we get lymphomas all the time too, but I don't think they were ordered as often as an ER/PR would be. I think ER/PRs were around a couple hundred, like you say. So I don't think they

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would be.
CHAYTOR, Q.C.:
Q. So they weren't stains that -
MR. DYER:
A. They were regular stains, but I don't know if they were as often as actual ER/PR.
CHAYTOR, Q.C.:
Q. Okay, and how would these came to Dr. Ejeckam's attention, you're not aware?
MR. DYER:
A. I'm not aware of.
CHAYTOR, Q.C.:
Q. Okay. If we could look, please, at P-2155?
MR. DYER:
A. Yes.
CHAYTOR, Q.C.:
Q. And this is a letter dated April 22nd, 2003, written to yourself and Ms. Butler, and it says up here, looks like it was faxed from DAKO.
MR. DYER:
A. Yes.
CHAYTOR, Q.C.:
Q. And the copy that we have is two pages and there's no signature. Is this how you recall

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receiving it or are we missing -
MR. DYER:
A. I think that's how I received it.
CHAYTOR, Q.C.:
Q. Okay, so we're not missing a page?
MR. DYER:
A. No, we're not missing anything, as far as I know.
CHAYTOR, Q.C.:
Q. Okay, and he says he's "taken the time to review the information that Mary provided me with, and I have provided you with comments and suggestions for each of the antibodies. With a little tweaking, I'm sure that we can have this whole situation ironed out in no time." Do you recall what information Mary provided him with?
MR. DYER:
A. No, I can't tell you.
CHAYTOR, Q.C.:
Q. In terms of what you told him yourself, what did you tell him when you spoke to him on the phone?
MR. DYER:
A. I remember speaking to him and saying we're

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having inconsistent staining, not erratic, inconsistent stainings. So it's positive sometimes. Not positive, but the intensity is not there. Like sometimes it's strong and sometimes it's weak. He said it's inconsistent, and so that's pretty well what we discussed was the staining itself.

THE COMMISSIONER:

Q. Is the premise of saying it's inconsistent that, in fact, you're using a control, the same control over a period of time?

CHAYTOR, Q.C.:

Q. Yes.

THE COMMISSIONER:

Q. And then it comes up with different intensities, as opposed to when you switch controls?

MR. DYER:

A. Again, my interpretation was the control was working and so I guess I would assume -

THE COMMISSIONER:

Q. And you're assuming that it was the same control.

MR. DYER:

A. Yes, every time.

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THE COMMISSIONER:

Q. But that a control from the same source, in any event?

MR. DYER:

A. It was a control from the same source.

THE COMMISSIONER:

Q. And that one day you would be getting a stronger positive than the next day or whatever?

MR. DYER:

A. Yes.

THE COMMISSIONER:

Q. Okay, thank you.

MR. DYER:

A. And that's exactly what we discussed about the actual staining itself, and so he proceeded to talk about dilutions and incubation times as things to change.

CHAYTOR, Q.C.:

Q. Okay, and then in terms of your involvement, you either relayed that information to Mary or directly to Dr. Ejeckam?

MR. DYER:

A. Yes.

CHAYTOR, Q.C.:

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Q. Based on -

MR. DYER:

A. I think it was one of them, I know I spoke to about it.

CHAYTOR, Q.C.:

Q. And then did you stayed involved in the process?

MR. DYER:

A. No.

CHAYTOR, Q.C.:

Q. Okay. So in terms of what Mary was doing or popping in to ask how it's going or -

MR. DYER:

A. Oh, I may have popped in and asked how it's going. I may have done that from time to time, but Dr. Ejeckam led everything when it came to IHC.

CHAYTOR, Q.C.:

Q. And as a general comment, he writes "it is going to be important for the future of consistently standardized results that all tissues are fixed and processed as identically as possible." And he goes to on to say "since your control tissues appear to be staining acceptably, it is reasonable to think that the

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variability in staining is due to a variability in tissue preparation. Since you are operating a regional testing centre and you receive samples from hospitals all across the province, I realize that it is difficult to control the conditions under which tissue is prepared in all cases."

So I take it you had enough of a conversation with him to tell him that you didn't prepare all the tissue, that it was coming in from other sites?

MR. DYER:

A. Dan knew we were a regional laboratory.

CHAYTOR, Q.C.:

Q. He had been in before, I take it?

MR. DYER:

A. Yes.

CHAYTOR, Q.C.:

Q. He was someone who was quite familiar with your operation?

MR. DYER:

A. Yes, he was familiar with our operation.

CHAYTOR, Q.C.:

Q. Okay. Had this issue then ever been discussed with him before or had he ever brought this up

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before, about the need to be consistent and, you know, to standardize how tissues are fixed and processed?

MR. DYER:

A. Not with me, no.

CHAYTOR, Q.C.:

Q. And do you know whether he brought it up with anyone?

MR. DYER:

A. I wouldn't be able to tell you.

CHAYTOR, Q.C.:

Q. Okay, and he says "since you are operating a regional centre, you receive samples from hospitals all across the province, it's difficult to control the conditions under which tissue is prepared in all cases. However, it might be a good idea to get some guidelines for the other hospitals so that you always know what you are dealing with. For example, you could send out a letter saying that all specimens must be fixed between 18 to 24 hours in ten percent neutral buffered formalin. Since this will not necessarily be possible in all cases, i.e. at the end of a work week, you could ask the hospital to

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specify the precise fixation conditions if they deviate from the recommended ones. This will help you by establishing a solid connection between IHC results and the condition that the tissue was shipped to you in. I'm not sure how much of this, if any, will be possible for you to accomplish, given the practical and political situation, the more the better though."

What did you take him to be referring to when he refers to the practical and political situation in that context?

MR. DYER:

A. I don't know. I guess the practical would be there's so many areas sending in tissue that it's going to be very difficult to tell other groups outside what to do.

CHAYTOR, Q.C.:

Q. Had you talked to him about any political situation or issue operating?

MR. DYER:

A. No, I don't think I would have, no.

CHAYTOR, Q.C.:

Q. So what he might be meaning by that, you're not sure?

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MR. DYER:

A. No.

CHAYTOR, Q.C.:

Q. You had no discussion with him about any issues in terms of your own particular concerns in being able to implement change or standardized practices?

MR. DYER:

A. No, I didn't know Dan Belchowsky that good.

CHAYTOR, Q.C.:

Q. His idea here to set some guidelines for the referring hospitals -

MR. DYER:

A. Yes.

CHAYTOR, Q.C.:

Q. - so you always would know, he says, what you're dealing with, and sending out a letter specifying what you would expect in terms of a fixation period, adequate fixation and it happening in ten percent neutral buffered formalin, did that ever happen? Did letters go out?

MR. DYER:

A. When I got this memo, I brought it over to Dr. Ejeckam right away to discuss it and he took

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it and I had the impression he was going to deal with it.

CHAYTOR, Q.C.:

Q. And what do you mean by that, he was going to deal with it?

MR. DYER:

A. Well, I'm not sure if we actually discussed these issues, but I know I gave him this form and when everything was completed, once they actually completed the process, then I believe Dr. Ejeckam sent out a memo about formalin fixation.

CHAYTOR, Q.C.:

Q. In May then?

MR. DYER:

A. Yes.

CHAYTOR, Q.C.:

Q. Okay. So that -

MR. DYER:

A. Within a couple of weeks after this one, this memo came in.

CHAYTOR, Q.C.:

Q. Okay, and he included in that the issue of the 18 to 24 hours?

MR. DYER:

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A. I think so.
CHAYTOR, Q.C.:
Q. In terms of the 18 to 24 hours in ten percent neutral buffered formalin, was that happening at the Health Care Corporation?
MR. DYER:
A. At the Health Science, for the most part, that was our protocol, 24-hour fixation. So I know it was happening. At St. Clare's, I'm not--I can't really tell you if it was actually happening or not.
CHAYTOR, Q.C.:
Q. And when you say "for the most part" again, there was no written protocol saying -
MR. DYER:
A. Correct.
CHAYTOR, Q.C.:
Q. - or a policy saying that this has to happen?
MR. DYER:
A. Correct. I know we discussed fixation at one of the site chief meetings, I believe. Not site chief meetings, one of the--yeah, the site meetings, the pathologists meetings, and I think it came up at that meeting about we should be doing everything at 24-hour

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fixation.
CHAYTOR, Q.C.:
Q. Okay, and after this issue arose in 2003 and after DAKO has pointed out the issues, importance of fixation, after Dr. Ejeckam sends out his memo indicating the importance, at that point in time, was there a fixation policy brought in at the Health Care Corporation?
MR. DYER:
A. An official written one, no, we just used his memo.
CHAYTOR, Q.C.:
Q. So you used Dr. Ejeckam's memo?
MR. DYER:
A. Yes.
CHAYTOR, Q.C.:
Q. Ever who received it, but nothing to tell anyone this is a policy of the hospital that now has to be followed?
MR. DYER:
A. No.
CHAYTOR, Q.C.:
Q. Whose responsibility would that have been to bring in such a policy?

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MR. DYER:
A. I would imagine the site chief and myself.
CHAYTOR, Q.C.:
Q. Okay, and so why didn't you go that extra step?
MR. DYER:
A. I just don't think we thought of it at the time. I mean, it was common knowledge to all of us that, you know, 24 hours was the fixation and that's what we were doing. So I just--I don't know why we didn't put it actually in writing as a policy.
CHAYTOR, Q.C.:
Q. And you had some concerns though before that that the 24 hours was not being followed at St. Clare's.
MR. DYER:
A. Oh, I don't know if it was being followed at--but, well, this memo, when we met and discussed this, again, St. Clare's didn't have meetings, so I may have talked to Don Cook about it, I don't know, but Dr. Ejeckam sent the memo to Don Cook also, I believe, about the 18 to 24 hour fixation.
CHAYTOR, Q.C.:

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Q. Yes.
MR. DYER:
A. He sent it to everyone.
CHAYTOR, Q.C.:
Q. So a memo coming from Dr. Ejeckam -
MR. DYER:
A. Yes.
CHAYTOR, Q.C.:
Q. - now Dr. Ejeckam would have no authority in terms of fixation within the hospital or telling people how fixation is going to occur though in the hospital. Dr. Ejeckam wouldn't have--they could follow his memo or they could choose not to?
MR. DYER:
A. Well, I don't think I had the authority either. I could send out a memo. They don't have to follow me.
CHAYTOR, Q.C.:
Q. So whose authority was it or who would have the responsibility to see that a policy were to come into effect regarding fixation? Who would have that authority?
MR. DYER:
A. It would be the site chief himself, because--

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yes, because fixation dealt directly with grossing, and so that would come from--that was a clinical aspect. That was a clinical thing, fixation.

CHAYTOR, Q.C.:

Q. And so the site chief then at St. Clare's at the time was Dr. Cook?

MR. DYER:

A. Yes.

CHAYTOR, Q.C.:

Q. And was Dr. Parai still at the Health Sciences?

MR. DYER:

A. Yes.

CHAYTOR, Q.C.:

Q. At that point in time.

MR. DYER:

A. Yes, and the pathologists answered to them at the respective sites.

CHAYTOR, Q.C.:

Q. And did you have any discussions with Dr. Parai about this issue?

MR. DYER:

A. Not that I--I don't recall having any.

THE COMMISSIONER:

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Q. Ms. Chaytor, wherever you can find a spot, we'll take the luncheon break.

CHAYTOR, Q.C.:

Q. Sure. We'd just continue on then with this letter. He refers to a few specific comments regarding the ER/PR and he says "as discussed, for these three antibodies extend all primary antibody dilutions to 60 minutes." So I take it that was discussed with you, was it?

MR. DYER:

A. With me, yes. Again, I don't know if we actually discussed an actual--that's a typo. Extend all primary antibody dilutions--oh no, okay, incubations to 60 minutes. I don't know if we actually discussed 60 minutes, but we discussed extending the incubation time.

CHAYTOR, Q.C.:

Q. Okay. "Perform antigen retrieval using target retrieval solution by your previously employed Visionware boiling method." Had that been discussed with you?

MR. DYER:

A. Again, that's what he recommended and that's what we were doing at the time.

CHAYTOR, Q.C.:

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Q. Okay, and "both ER and PR should work at one to 50. If the staining is still inadequate, you should try using the high pH target retrieval solution for antigen retrieval. The pH buffer produces the best results for all three of these antibodies although tissue damage or loss can occur if the tissues are improperly fixed or improperly trimmed of fat" and you were having experience with that in terms of tissue loss.

MR. DYER:

A. Yes.

CHAYTOR, Q.C.:

Q. His recommendation here, "both ER and PR should work at one to 50" what do you recall then was the ultimate outcome in terms of dilution? What change did Dr. Ejeckam make?

MR. DYER:

A. I believe he went with a one in 20 at the end of the day.

CHAYTOR, Q.C.:

Q. Yes, I believe you're already at one in 50.

MR. DYER:

A. We were doing a one in 50 at the time.

CHAYTOR, Q.C.:

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Q. Right, and "if the staining is still inadequate, you should try using the high pH target retrieval solution for antigen retrieval."

MR. DYER:

A. Yes.

CHAYTOR, Q.C.:

Q. I take it that didn't happen?

MR. DYER:

A. No, it didn't happen.

CHAYTOR, Q.C.:

Q. Okay.

MR. DYER:

A. But in hindsight, I have to make the comment, in hindsight, now that I'm reading this, Dr. Ejeckam was in charge and I think he attempted the first two and got an acceptable result.

CHAYTOR, Q.C.:

Q. He got acceptable staining?

MR. DYER:

A. I think so.

CHAYTOR, Q.C.:

Q. So then he didn't move to -

MR. DYER:

A. He didn't move to the high pH buffer.

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CHAYTOR, Q.C.:
Q. Okay, and in hindsight, do you think that's of any significance?
MR. DYER:
A. Yes, it is.
CHAYTOR, Q.C.:
Q. Okay, and how so?
MR. DYER:
A. Our current method uses the high pH antigen retrieval buffer. That's the difference between the old system and the new system. So, you know, if we had to move that far, you know, we may--there probably would have been a huge difference or a big difference in the staining, but they stopped at the one in 20, because that was acceptable.
CHAYTOR, Q.C.:
Q. And Mr. Dyer, over here on the side, we see 97 degrees. Do you know, is that your writing and do you know what it might refer to?
MR. DYER:
A. I don't think it's my writing.
CHAYTOR, Q.C.:
Q. Okay, and do you have any idea what it might refer to?

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MR. DYER:
A. I would imagine it refers to the temperature for antigen retrieval.
CHAYTOR, Q.C.:
Q. Then perhaps we'll stop there and pick up with Dr. Ejeckam's next memo after lunch.
THE COMMISSIONER:
Q. All right then. We'll meet again at 2:15. Thank you.
CHAYTOR, Q.C.:
Q. Thank you.
(LUNCH BREAK)
THE COMMISSIONER:
Q. Ms. Chaytor.
CHAYTOR, Q.C.:
Q. Thank you, Commissioner. Good afternoon, Mr. Dyer.
MR. DYER:
A. Good afternoon.
CHAYTOR, Q.C.:
Q. I think when we left we were looking at P-2155, which was the letter you received from DAKO back in April of 2003, and on page two of the exhibit, it's pointed out here that "both the ER and PR should work at one to 50" which

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you've indicated was the dilution that was being used at the time.
MR. DYER:
A. Yes.
CHAYTOR, Q.C.:
Q. And "if the staining is still inadequate, you should try using the high pH target retrieval solution for antigen retrieval." So I take it, Mr. Dyer, what was being recommended by DAKO at that time was that if the one to 50 dilution wasn't working, it wasn't being recommended that a change in dilution be looked at, but rather a change in the antigen retrieval process?
MR. DYER:
A. Well, I think what our interpretation was, again, I wasn't directly involved, but I believe our interpretation was to try dilutions first. So that's what Dr. Ejeckam did.
CHAYTOR, Q.C.:
Q. And that's what happened?
MR. DYER:
A. Yes, that's what happened.
CHAYTOR, Q.C.:

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Q. And if we could have, please, P-0113? And the second memo at page two of this exhibit is the May 2nd, 2003 memo and this is again addressed to all pathologists, pathologists Health Sciences, St. Clare's and out of town, and copied then to the site chief Health Sciences and St. Clare's, as well as yourself and all the technical staff. Did you receive a copy of this memo?
MR. DYER:
A. I can't guarantee that I actually received a copy of that memo.
CHAYTOR, Q.C.:
Q. Okay.
THE COMMISSIONER:
Q. Sorry, did you say you did or didn't?
MR. DYER:
A. I'm not sure if I actually received a copy of the memo.
THE COMMISSIONER:
Q. Thank you.
CHAYTOR, Q.C.:
Q. So you don't recall if you saw it or not. You've seen it, I take it, since?
MR. DYER:

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A. I have read the memo, yes.
CHAYTOR, Q.C.:
Q. Okay, and in terms of some of the things that are pointed out here, it begins, for example, by saying "I am glad to inform you that we have rectified the difficulties related to the immunostain of ER/PR. Therefore we can now resume regular requests of these antibody stains." And then he goes on in some detail to "bring the following information to your attention" and there's a number of issues outlined. In fact, there's eight points noted. Is this--if you had received it, is this--and now having had an opportunity to review it in the course of the Inquiry, is this something that you think you would recall having received?
MR. DYER:
A. Again, I can't--I know I read it, but I don't know if I actually received it at the time he sent that out. I really can't remember.
CHAYTOR, Q.C.:
Q. You've read it since, you mean?
MR. DYER:
A. Yes, I have read it since.

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CHAYTOR, Q.C.:
Q. But whether you received it at the time, you don't recall?
MR. DYER:
A. Right.
CHAYTOR, Q.C.:
Q. Okay. Do you know whether or not--do you know whether the other technologists received it?
MR. DYER:
A. I can't say for sure if the other techs received it or not.
CHAYTOR, Q.C.:
Q. Okay. Did Dr. Ejeckam discuss with you--he's writing in the memo that he's glad to inform that the ER/PR can now resume. Was that discussed with you?
MR. DYER:
A. No.
CHAYTOR, Q.C.:
Q. Okay. So before ER/PR came back online, you weren't told that by Dr. Ejeckam?
MR. DYER:
A. No.
CHAYTOR, Q.C.:
Q. And so how did you learn that it had come back on?
MR. DYER:
A. I can't really say. I just know that I remember we were up and we were performing them again.
CHAYTOR, Q.C.:
Q. And so as lab manager though, you weren't consulted in the decision as to whether it was ready to come back?
MR. DYER:
A. No.
CHAYTOR, Q.C.:
Q. And so I take it then, you made--after it had been suspended then in the beginning of April, in that month that passes, did you make inquiries to determine whether or not--and satisfy yourself as to whether or not, from a technical point of view, the testing could resume?
MR. DYER:
A. I think I would have talked to Mary from time to time, just asked her how are things going, and it might have actually been Mary who told me that we're up and running again. I think I might have got it from Mary.

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CHAYTOR, Q.C.:
Q. And when did you learn that there had been change to the dilution and that was the only change that had taken place?
MR. DYER:
A. Only since this Inquiry started.
CHAYTOR, Q.C.:
Q. So you weren't told that at the time?
MR. DYER:
A. No.
CHAYTOR, Q.C.:
Q. And did you make any inquiries? You were--you learned that it was back up and running. Weren't you curious? Didn't you make any inquiries as to well what happened, and what do we do to try and rectify the problem?
MR. DYER:
A. It was in Dr. Ejeckam's hands. He was the one who was running the lab, running the immuno, so no, I didn't make an inquiry.
CHAYTOR, Q.C.:
Q. And this memo says, of course, the ER/PR is able to resume. What about the other six stains? Do you recall when and if they came back online?

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MR. DYER:
A. No, I don't recall. I don't remember.
CHAYTOR, Q.C.:
Q. Do you recall then around the time that ER/PR came back on in early May, was there any discussion about the memo? Did anyone else indicate to you that they had received it or was there anything generated around this?
MR. DYER:
A. Not that I can remember. I know, I'm pretty sure that memo was out in the actual gross room at some point, but no, I can't remember any discussion around it.
CHAYTOR, Q.C.:
Q. And when you say it was in the gross room, was there a bulletin board there or something for it to be posted on?
MR. DYER:
A. I'm not sure if it was on the bulletin board or just there, like because we had memos everywhere on the walls, you know, on the grossing stations and things like this. So I'm not sure where it actually was, but I think that's where I first came across it.
CHAYTOR, Q.C.:

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Q. Okay. I'm having a problem with my mouse, won't--I think the battery is dead. Okay.
THE COMMISSIONER:
Q. If you don't mind substituting this one. Thank you.
CHAYTOR, Q.C.:
Q. Thank you.
THE COMMISSIONER:
Q. Is that one working?
CHAYTOR, Q.C.:
Q. No, it doesn't work either. I don't suppose we have Blue Tooths running again? Could those who have--is it Blue Teeth or Blue Tooths? Please check to make sure they're not running. Perhaps, Mr. Dyer, can you just check to see if your mouse is working, if you can scroll down?
MR. DYER:
A. No.
CHAYTOR, Q.C.:
Q. No, okay.
MR. SIMMONS:
Q. Try it now. If it works now, we know I'm the culprit.
CHAYTOR, Q.C.:

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Q. You're off the hook.
MR. SIMMONS:
Q. I'm off the hook.
CHAYTOR, Q.C.:
Q. You're off the hook, still not working.
THE COMMISSIONER:
Q. All right. Do you want me to -
CHAYTOR, Q.C.:
Q. That's okay, we can--does your work, Registrar?
REGISTRAR:
Q. Mine is working.
CHAYTOR, Q.C.:
Q. Yours is working, okay.
THE COMMISSIONER:
Q. Yours is working?
CHAYTOR, Q.C.:
Q. If you could scroll down, please, then, please, Registrar. The first paragraph here, Mr. Dyer, refers to results of the immunostains may be affected by, and there's a list of different types of fixation. As well, F is tissue reprocessing, and that's the issue that we talked about earlier this morning, and he also indicates, of course, there can be

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delayed fixation over, under or uneven fixation, as well as inadequate tissue dehydration, and then the optimal fixation time, 18 to 24 hours in ten percent neutral buffered formalin. That was also indicated by DAKO in the letter that you received from DAKO.
So while you don't recall if you received the memo or not, did you make any inquiries of Dr. Ejeckam as to whether or not he had distributed the information in the DAKO letter, including this issue of the fixation, proper fixation, whether that had been distributed to the pathologists, particularly in the outside regions, as DAKO had suggested?
MR. DYER:
A. Well, I can't be sure if I knew that. Yes, I'm not sure if we--again, we didn't discuss it, so I'm not sure. I mean, I assumed--I can't say I assumed. I think when I did see the memo, I think it was addressed to all over, but I didn't actually speak to him myself about did he send this to the outside hospitals.
CHAYTOR, Q.C.:

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Q. And how long after this memo, this memo is the beginning of May 2003, how long was it before you actually saw the memo?
MR. DYER:
A. I think it might have been sometime in May. I think it was out in the gross room when I actually seen it.
CHAYTOR, Q.C.:
Q. Okay, and Dr. Ejeckam appears to have emphasized the ten percent neutral buffered formalin.
MR. DYER:
A. Yes.
CHAYTOR, Q.C.:
Q. Do you know why that would be? Ten percent neutral buffered formalin, was that being used, in any event, at the Health Care Corporation?
MR. DYER:
A. Yes, that's what we were using.
CHAYTOR, Q.C.:
Q. Okay, and do you know whether or not that was being used by other hospitals?
MR. DYER:
A. I know it was being used by Eastern Health,

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but other hospitals, you know, I wouldn't be able to tell you exactly what they were using as a buffer, I mean as a fixative.
CHAYTOR, Q.C.:
Q. Okay.
MR. DYER:
A. We were--the buffered formalin that we were using, we got, it came from a tender, from Newfoundland and Labrador tender. So I could say I was under the impression that whoever was using--I didn't know who was using purchased formalin, but we were all--but whoever was using it was using the same thing.
CHAYTOR, Q.C.:
Q. Okay. If we could scroll down then, please, Registrar? And paragraphs--he continues on paragraph two, "ER/PR false negative results increase in core biopsies, therefore where possible restrict requests to excision biopsies. 3. check normal tests"--sorry, "check normal breast acini in your sections as internal controls. This is a second level control. Nuclear staining in normal breast tissue is heterogeneous and various with menstrual cycle," and I take it the issue of

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internal control, as I mentioned to you earlier today, you had some awareness through your work at the Janeway to internal controls with respect to certain special stains?
MR. DYER:
A. Yes.
CHAYTOR, Q.C.:
Q. Okay, and whether or not though it was of importance to ER and PR, would you have been aware of that at the time?
MR. DYER:
A. No, we didn't perform ER/PR.
CHAYTOR, Q.C.:
Q. Okay, and Dr. Pushpanathan -
MR. DYER:
A. Pushpanathan.
CHAYTOR, Q.C.:
Q. - Pushpanathan, sorry, how senior a pathologist is she?
MR. DYER:
A. How senior?
CHAYTOR, Q.C.:
Q. Yes, like when would she--around when would she have been through medical school or through her residency program?

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MR. DYER:
A. She started as a pathologist at the Janeway in 1987.
CHAYTOR, Q.C.:
Q. 1987?
MR. DYER:
A. Yes.
CHAYTOR, Q.C.:
Q. Okay.
MR. DYER:
A. And I believe she did her residency program at Health Science.
CHAYTOR, Q.C.:
Q. And she was certainly aware of internal controls with respect to -
MR. DYER:
A. To the things that we were dealing with.
CHAYTOR, Q.C.:
Q. Things that you were dealing with?
MR. DYER:
A. Yes.
CHAYTOR, Q.C.:
Q. And this also includes then, in paragraph four, there's some correlation between ER/PR-- it indicates "in carcinoma of the breast, most

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PR tumours are also ER positive." Number five talks about reporting of ER/PR and "several formulae are in the literature. For positive results, ER positive greater or equal to five percent nuclear staining, ER positive ten percent of tumour staining and ER positive, one percent shown to benefit from endocrine therapy--treatment," sorry, and there's a consensus statement referred to.

Were you aware at the time as to what standards for positivity were being used in at the Health Care Corporation?

MR. DYER:

A. Once this was--in '03, yes, I think I knew then.

CHAYTOR, Q.C.:

Q. Okay, and what did you understand, what was being used?

MR. DYER:

A. We were using a ten percent cut off.

CHAYTOR, Q.C.:

Q. Okay.

MR. DYER:

A. Ten percent or greater would be considered a positive result.

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CHAYTOR, Q.C.:

Q. By 2003?

MR. DYER:

A. Yes, in--yes, that's when I learned about it.

CHAYTOR, Q.C.:

Q. Okay.

THE COMMISSIONER:

Q. Excuse me, Mr. Dyer, but could you speak up just a little bit, please? I'm--you're fading on me.

MR. DYER:

A. Indeed.

THE COMMISSIONER:

Q. Thank you.

CHAYTOR, Q.C.:

Q. And if we could scroll down again, please, Registrar?

REGISTRAR:

Q. (Inaudible) working now, Ms. Chaytor.

CHAYTOR, Q.C.:

Q. Oh, thank you. That's great, yes, this one is working now. And there's reference here to certain tumours being ER/PR in number seven, and "low nuclear grade tumours are usually positive for ER and PR and negative for

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HER2/neu, while high grade tumours tend to be positive for HER2/neu and negative for ER/PR." So in terms of this information about which tumours should normally be ER positive, was that something that you would have been aware of, as a technologist?

MR. DYER:

A. No, that's out of my scope of practice.

CHAYTOR, Q.C.:

Q. Do you recall any discussion around that in May of 2003 or after this memo came out?

MR. DYER:

A. Not with me.

CHAYTOR, Q.C.:

Q. So I take it there's information in this, and again, Dr. Ejeckam saw fit to distribute it or certainly intended to distribute it to yourself and to the technical staff. So I take it there's information in here which would have been new to you?

MR. DYER:

A. Yes.

CHAYTOR, Q.C.:

Q. Things that you would not have otherwise been aware of?

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MR. DYER:

A. Yes.

CHAYTOR, Q.C.:

Q. Okay, and do you--is it also information which would have been helpful to you and the staff you manage in IHC?

MR. DYER:

A. Yes, I think so.

CHAYTOR, Q.C.:

Q. Do you recall around this time, did Dr.--after this memo went out, do you recall, was Dr. Ejeckam asking for anything else or was there any further discussion then in particular about ER/PR?

MR. DYER:

A. Not to my knowledge.

CHAYTOR, Q.C.:

Q. And so other than you had the--you made the initial contact with the DAKO representative and you conveyed information to Dr. Ejeckam, made some inquiries, informal inquiries of Ms. Butler as the revalidation was taking place. Other than that, did you have anything to do with Dr. Ejeckam's investigations in 2003?

MR. DYER:

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A. No.
CHAYTOR, Q.C.:
Q. And in terms of following up with him to determine if he was now satisfied with what was happening or making any further checks, you didn't do that?
MR. DYER:
A. No.
CHAYTOR, Q.C.:
Q. If we could then continue on with the next -- the third memo is written June 19th, 2003, and this is just addressed to Mr. Gulliver, and copied to a number of physicians, as well as yourself as the manager. Did you receive this memo?
MR. DYER:
A. Yes, I think I did.
CHAYTOR, Q.C.:
Q. Okay.
MR. DYER:
A. Yes, that one sounds familiar, yeah.
CHAYTOR, Q.C.:
Q. And what do you recall about this -- so from then you learn in May sometime that ER/PR is resumed, and then June 19th there's another

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memo. In the meantime, had you heard any complaints or had Dr. Ejeckam brought anything to your attention?
MR. DYER:
A. I think we might have -- I think around this time he did talk to me about a couple of issues, and the ones that stood out the most were he wanted dedicated technologists in the immuno lab and he wanted a separate immuno lab. They're the two big things, I believe, that we actually talked about or discussed.
CHAYTOR, Q.C.:
Q. And when he was suggesting dedicated technologists, I take it that there were technologists specifically dedicated to the IHC lab, but they were rotating into other duties, is that what the problem was?
MR. DYER:
A. Yes. That was his issue, yes.
CHAYTOR, Q.C.:
Q. So there were three -- well, by this point there were three people who were -- the only three people doing IHC.
MR. DYER:
A. Correct.

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CHAYTOR, Q.C.:
Q. For the technologists, but the problem being they also had other duties besides IHC, is that it?
MR. DYER:
A. Yes, and just -- that was a standard in pretty well all labs. Like, when I worked -- when I worked in the lab, like, prior to the -- just to give you a sense of how labs operate, when I worked in hematology, for example, I could -- and I'm working in the evening, you know, I'll be in hematology and I'll get a call from the OR that they need more blood. So I would run up, take the blood, come down and start a cross match. In between the cross match, I get a call from Emerg that someone is in there with maybe a meningitis, so they want me to come over, get a CSF, and do a set up for that, and I might get a phone call to do -- while those two protocols are running, I may get a phone call and they want to add more tests, like, add coagulation. So you multi-task all the time. That was just the standard all the time. So when I worked at the Janeway in pathology, I would be grossing, I would be

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doing special stains at the same time; in between cutting, I may be performing an autopsy. That was just all standard, that was the way the lab operated. So when I moved to Health Science and they had two technologists rotating, that was the standard of practice at the time.
CHAYTOR, Q.C.:
Q. And was that the standard practice for IHC laboratory?
MR. DYER:
A. Well, for the one that I -- for the one that I worked in, yes, it was. Like, it was Peggy and Mary. They were doing about -- like, when I came on board, they were doing about 40 or 50 cases a day, and so that was pretty well -- that wasn't really a full day's work. So they did -- so that's how they rotated, two people down there at one time would have their work done very quickly. I think what they did is to help out the pathologist, they had one gross while one did immunos, and they would just rotate, and that was just -- that was the common practice.
CHAYTOR, Q.C.:

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Q. And was it the common practice in other hospitals who were doing IHC?
MR. DYER:
A. Oh, I wouldn't be able to say. That was just the way we did things.
CHAYTOR, Q.C.:
Q. Yes, and the Health Science being the only place that was offering IHC, I take it, in the province at that time?
MR. DYER:
A. Yes.
CHAYTOR, Q.C.:
Q. So that was certainly the way things were happening here, but I'm just wondering were inquiries made as to whether or not dedicated staff were the norm in other institutions which were offering IHC?
MR. DYER:
A. At that time I didn't inquire.
CHAYTOR, Q.C.:
Q. And have you since?
MR. DYER:
A. Well, what I did is since the 2005 incident, we just took what Ms. Wegrynowski said and went with that.

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CHAYTOR, Q.C.:
Q. And they were certainly -- they certainly had dedicated -- Mount Sinai had dedicated staff?
MR. DYER:
A. Yes, they did, yes.
CHAYTOR, Q.C.:
Q. In their lab for quite some time.
MR. DYER:
A. Yes.
CHAYTOR, Q.C.:
Q. The idea then that Dr. Ejeckam was suggesting in terms of dedicated staff, and the other was the dedicated space, is that right?
MR. DYER:
A. Yes.
CHAYTOR, Q.C.:
Q. Dedicated space. So you recall him addressing those issues with you?
MR. DYER:
A. Yes, we did discuss those issues.
CHAYTOR, Q.C.:
Q. Okay, and was that prior to you getting the memo of June 19th?
MR. DYER:
A. I think it probably was prior to this one.

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CHAYTOR, Q.C.:
Q. So did you have any -- did you have any sense that you were -- that this memo was going to be coming?
MR. DYER:
A. No.
CHAYTOR, Q.C.:
Q. You didn't know?
MR. DYER:
A. No, I didn't have a sense that this was coming.
CHAYTOR, Q.C.:
Q. So when Dr. Ejeckam first brought up the idea of dedicated staff and dedicated space to you, what was your response to that?
MR. DYER:
A. Oh, I fully supported it. It was a good idea.
CHAYTOR, Q.C.:
Q. You thought it was a good idea?
MR. DYER:
A. It was a good idea, yes.
CHAYTOR, Q.C.:
Q. And do you know why then he went forward with the memo to Mr. Gulliver? Had you brought the idea to Mr. Gulliver and did he support the

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idea?
MR. DYER:
A. I can't remember if -- I might have talked to Terry about it, and if I did -- no, I can't remember if I actually spoke to Terry about that or not.
CHAYTOR, Q.C.:
Q. So do you have any -- after then receiving a copy of the memo, what happened, did you have any further discussions with Dr. Ejeckam, with Mr. Gulliver --
MR. DYER:
A. Once I received this memo?
CHAYTOR, Q.C.:
Q. Yes.
MR. DYER:
A. Yes, I remember some time after the memo, myself and Terry first discussed how could we go about this. I mean, there was no money, and in order for us to -- in order for us to have dedicated techs, we needed people to actually gross because -- or there would be no one to gross. That's the decision, what do we do. In terms of space, there was no space at the time. So what we decided to do was pull

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another tech out of our lab and start the process of training them to gross, so we can relieve the grossing duties from the two -- from the technologist.

CHAYTOR, Q.C.:

Q. So at that point in time, the only other duties they had were the grossing, is that right?

MR. DYER:

A. In 2003? There was three of them, so I think we did a three way rotation. So one was in immuno, one was in the lab, and one was on grossing.

CHAYTOR, Q.C.:

Q. Okay.

MR. DYER:

A. And the one in the lab would help out in the lab, but their first primary duty would be to cut -- to help cut sections for the immunostains and cut controls and things like this, but they also helped out in the lab, for cutting mainly.

CHAYTOR, Q.C.:

Q. Okay, and so after then Dr. Ejeckam raises the concern, the decision was made to bring

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another technologist to do all the grossing?

MR. DYER:

A. What we did first was Terry and I met and discussed what could we do because again there was no financial resources, so how could we do this within our own fiscal capacity. Then after that, we had a meeting with Dr. Ejeckam in Terry's office and that was the plan. The plan was we were -- chemistry was under renovations, and in the back of the pathology lab was what we called hormone assay, which was part of chemistry, and they were slated to move once the chemistry area was developed. So that's how we were going to address that issue, but again, you know, it was all up to facilities, I couldn't push it any further than what I could push it until that got done. It was now summer. So what we decided to do was to take the senior tech -- Catherine Parnell was the senior tech over at St. Clare's and she had a lot of experience in pathology. So what we decided was in the fall we would take her and start training her in on grossing, and that's what we did.

CHAYTOR, Q.C.:

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Q. Okay. So in terms of financial piece, to have the three technologists dedicated to IHC alone, and have someone else do the grossing, would that be of any financial -- what additional financial consequences would be to that? That's just a matter of reshifting the work amongst individuals, isn't it?

MR. DYER:

A. Reshifting the work, yes, however, we were -- our lab was extremely busy all the time, and we always struggled to hit our bench -- like, to hit our 48 hours for biopsies. So taking someone out of that will have an impact on our turnaround times. So really what we needed is we needed money to hire techs to gross, and then it wouldn't impact on our current work.

CHAYTOR, Q.C.:

Q. But I'm just thinking if the work that they -- so what you're saying is the work they were doing for three people would now have to be work of four people, is that it?

MR. DYER:

A. For sure. Yes, because if we're going to pull them off the gross -- the gross needed to be done, that was a full day-- full time

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position.

CHAYTOR, Q.C.:

Q. And it couldn't be that it could be the same three people with one doing gross and the other two then dedicated. You felt you needed three people dedicated to IHC.

MR. DYER:

A. That's what Dr. Ejeckam -- he wanted all his staff dedicated to IHC.

CHAYTOR, Q.C.:

Q. He wanted three, though?

MR. DYER:

A. We had three at the time and he wanted all staff dedicated. I think what his idea was was in the rotation, one would do the staining, one would do the cutting, so we would cut in the lab, and one would do the housekeeping.

CHAYTOR, Q.C.:

Q. And was there any analysis done as to how many people actually were required for the volume of IHC testing that you had?

MR. DYER:

A. Well, if we wanted to include the housekeeping, like the research in terms of

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study and the learning more and more in depth, we would have needed three. Like, one person wasn't going to be able to cut all the requests, cut all the controls, and perform all the staining.

CHAYTOR, Q.C.:

Q. But whether or not two could do it or four were needed, was there any analysis carried out?

MR. DYER:

A. I think what we did is we just based on what the workload was now and having three staff. I think that's how we figured it out.

CHAYTOR, Q.C.:

Q. So you recall discussing it with Mr. Gulliver, and then by the fall Catherine Parnell is brought over from St. Clare's and dedicated to grossing?

MR. DYER:

A. And we started training her for grossing, yes.

CHAYTOR, Q.C.:

Q. Okay, and so when did -- when did dedicated staff then -- when did the other three become dedicated just to IHC?

MR. DYER:

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A. Well, Catherine started grossing in January. So the process was now started, but --

CHAYTOR, Q.C.:

Q. January, 2004?

MR. DYER:

A. Yes, but what had happened was -- again they still weren't dedicated the way I think Dr. Ejeckam wanted them dedicated because if Catherine was sick or was off for a day or off on something else, then I would still require one of the IHC techs to come in and gross so the grossing wouldn't fall behind.

CHAYTOR, Q.C.:

Q. Okay.

MR. DYER:

A. So I would put them about 90 percent.

CHAYTOR, Q.C.:

Q. So they were still doing backup for Catherine Parnell?

MR. DYER:

A. Backup only, yes, and at the same time those techs, part of their duties was -- I wanted to bring all immunos together so they were also involved with immunohistochemistry, which is the muscle. So Catherine was also trained for

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that.

CHAYTOR, Q.C.:

Q. Okay, and so by January, 2004, 90 percent you're saying of their time was dedicated to -- -

MR. DYER:

A. I feel it was a good 90 percent, I would imagine, yes.

CHAYTOR, Q.C.:

Q. Was dedicated to IHC?

MR. DYER:

A. Yes.

CHAYTOR, Q.C.:

Q. And in terms of a space then, how did that come along?

MR. DYER:

A. Well, what happened was finally -- I think it was in the fall of 2003, hormone assay actually moved out, hormone chemistry moved out, and by now we've gone with another tender and the new equipment was coming in in December of '03, and when the equipment came in, we moved it all to the back of the lab.

CHAYTOR, Q.C.:

Q. And when did that happen?

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MR. DYER:

A. December of '03.

CHAYTOR, Q.C.:

Q. December of '03, and so it was moved to the back in its own space?

MR. DYER:

A. Yes.

CHAYTOR, Q.C.:

Q. Was it an enclosed space or was it otherwise -- - was it its own space or was it just in the rear of the lab?

MR. DYER:

A. Oh, no, into its own space.

CHAYTOR, Q.C.:

Q. Into its own space?

MR. DYER:

A. Yes.

CHAYTOR, Q.C.:

Q. And so that's where it is still today?

MR. DYER:

A. Yes.

CHAYTOR, Q.C.:

Q. And so in terms of that change or shift to its own physical space, that had happened within six months of Dr. Ejeckam's memo?

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MR. DYER:
A. Yes.
CHAYTOR, Q.C.:
Q. Okay. I'm sure you've seen this memo several times by now, but certainly in paragraph six, which has also been brought up here several times, Dr. Ejeckam certainly had some strong wording here where he indicated, "Diagnosis based on inappropriate immunostain will surely jeopardize patient care and may even expose the HCCSJ to litigation. Therefore, it will be ill-advised to operate a non-reliable erratic immunochemical procedures in our laboratory", and he's asked that you kindly take a hard look at the above. When you read that, was that of concern to you, the strength of his assertion?
MR. DYER:
A. That's how Dr. Ejeckam spoke. He was always very explosive in his words or in his terminology.
CHAYTOR, Q.C.:
Q. So it didn't cause you too much of an eyebrow raiser.
MR. DYER:

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A. Create concern --
CHAYTOR, Q.C.:
Q. Because you're used to him --
MR. DYER:
A. Well, again he was -- all the slides -- again I wasn't given a lot of complaints and every single slide that's produced in pathology goes to a physician. So that's the first time that I had actually read something like that also and he was the only one who actually said something like that, but I had faith that the work was good that was coming out.
CHAYTOR, Q.C.:
Q. And what was that faith based on?
MR. DYER:
A. Based on getting very few complaints.
CHAYTOR, Q.C.:
Q. But the person who is the most knowledgeable and is overseeing the IHC lab at this point in time is certainly voicing a very strong concern in this memo. So did that cause you concern?
MR. DYER:
A. We acted on it as fast as we could.
CHAYTOR, Q.C.:

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Q. Okay.
MR. DYER:
A. Immediately.
CHAYTOR, Q.C.:
Q. And I just want to understand. Are you saying that this wasn't the first time that you heard Dr. Ejeckam use pointed language of this nature?
MR. DYER:
A. Not that type of language, but it's just that the way he spoke. That's how he -- that's how he talked. Like, he always used explosive words. A good example is I remember when frozen sections -- when I moved over and when we actually trained techs for cutting frozen sections, Dr. Ejeckam didn't like going to the frozen section room. He felt it wasn't necessary. So I remember the first time he went to the frozen section room, he went up with the technologist. Now remember prior to this a tech never ever went with a physician. He went there and when he came back, he came right into my room and he was upset, you know, about the frozen sectioning, and I said why, what's wrong, you have a tech to help you, and

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his answer was, "Well, when I worked in Qatar, I had a technologist who would actually do my staining, I had a technologist to do my cutting, and I had a technologist who would wipe my brow while I read". That's how he spoke and that's unrealistic, but this is how he spoke all the time.
CHAYTOR, Q.C.:
Q. And that discussion with him and any exaggeration in that statement, that had taken place before you received the June 19th memo?
MR. DYER:
A. Yes.
CHAYTOR, Q.C.:
Q. So you saw somewhat of exaggerated language you were thinking reading into his memo?
MR. DYER:
A. Yes, again I considered it serious because we -- I talked to Terry and we moved on it as fast as we can move, you know.
CHAYTOR, Q.C.:
Q. Did you meet with Dr. Ejeckam to discuss his concerns?
MR. DYER:
A. Myself, Terry, and Dr. Ejeckam met at Terry's

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office and we explained to him, you know, based on what we were trying to do about taking a tech out of the rotation to train for grossing and to get new technologies, and they were trying to move the hormone assay out as quick as possible.

CHAYTOR, Q.C.:

Q. And when did that meeting take place?

MR. DYER:

A. It was shortly after this -- it wasn't too long after that actual memo.

CHAYTOR, Q.C.:

Q. So in response to his memo, you and Mr. Gulliver actually went to Dr. Ejeckam and met with him in his office?

MR. DYER:

A. We met in Terry's office.

CHAYTOR, Q.C.:

Q. In Mr. Gulliver's office?

MR. DYER:

A. Yes, Mr. Gulliver's office.

CHAYTOR, Q.C.:

Q. So you had a meeting to discuss his concerns?

MR. DYER:

A. Yes.

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CHAYTOR, Q.C.:

Q. And told him that you were acting on it as quickly as you could?

MR. DYER:

A. Immediate -- said this is what we're trying to do.

CHAYTOR, Q.C.:

Q. And what was his response? Was he satisfied with that?

MR. DYER:

A. I think he was, you know, again with Dr. Ejeckam, it's hard to say, but I think he was happy that we were actually finding space and trying to dedicate the technologists.

CHAYTOR, Q.C.:

Q. Now you indicated you have a fairly good relationship with Dr. Robb?

MR. DYER:

A. Yes.

CHAYTOR, Q.C.:

Q. Did Dr. Robb come to you and ask you what's this all about?

MR. DYER:

A. I don't think we ever discussed it.

CHAYTOR, Q.C.:

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Q. Dr. Cook?

MR. DYER:

A. No.

CHAYTOR, Q.C.:

Q. Dr. Parai?

MR. DYER:

A. No.

CHAYTOR, Q.C.:

Q. Did any pathologist come to you and ask what is happening here, once this memo went out?

MR. DYER:

A. Not that I can remember, no.

CHAYTOR, Q.C.:

Q. Did anyone make any inquiries as to what was being done to address the concerns raised?

MR. DYER:

A. Nobody. The only person I actually spoke to about it was Dr. Ejeckam.

CHAYTOR, Q.C.:

Q. Do you know whether or not any of the concerns raised by Dr. Ejeckam found its way to Dr. Williams?

MR. DYER:

A. I wouldn't be able to tell you. I don't even think it made its way to any of our meetings.

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I can't remember even at our site chief's meeting discussing this issue.

CHAYTOR, Q.C.:

Q. So in terms of what you and Mr. Gulliver had to do to offer dedicated space and dedicated technologists, where did the money come from?

MR. DYER:

A. There was no money.

CHAYTOR, Q.C.:

Q. So those were things that could be done without any investment of money.

MR. DYER:

A. No, like I said, we had to make a decision and what we did is we pulled another tech from the lab.

CHAYTOR, Q.C.:

Q. And in terms of the space?

MR. DYER:

A. Oh in terms of the space? No, chemistry, I think was already undergoing renovations and I think the plan was that the hormone assay would move into biochemistry, so that's what we were waiting--we were just waiting on Facilities Management to finish that section of chemistry, so they could move over.

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CHAYTOR, Q.C.:
Q. Yes, so it was done by reassigning staff and without any expenditure of funds.
MR. DYER:
A. Yes.
CHAYTOR, Q.C.:
Q. Did you sense that Dr. Ejeckam was becoming increasingly frustrated?
MR. DYER:
A. About this? No, I didn't get that impression.
CHAYTOR, Q.C.:
Q. Did you ever get any impression from Dr. Ejeckam that things weren't moving quickly enough and changes weren't happening quickly enough for him?
MR. DYER:
A. He didn't speak to me about it after--I don't think we discussed it after this about him thinking it should be done quicker and quicker, no.
CHAYTOR, Q.C.:
Q. So nothing came to your attention along those lines?
MR. DYER:
A. No, at least not that I can remember.

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CHAYTOR, Q.C.:
Q. And again, bearing in mind that two months before you had the memo which talked about the erratic and unreliable stains and the same language being used again in this memo of June, "it will be ill-advised to operate an unreliable and erratic immunohistochemical procedure in our laboratory." Was any concern expressed or did it come to your mind or was it expressed by anyone within your ear shot as to well what does that mean, have we been offering an unreliable and erratic service, and if so, what impact might that have on the patients?
MR. DYER:
A. No, not that I remember.
CHAYTOR, Q.C.:
Q. So no concern as to tests that have already been carried out up to this point in time?
MR. DYER:
A. None that I'm--personally with my involvement? No, I don't think any.
CHAYTOR, Q.C.:
Q. And was any consideration given to going back and retesting at that point in time?

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MR. DYER:
A. Not that I am aware of.
CHAYTOR, Q.C.:
Q. And why not?
MR. DYER:
A. I don't know if anyone ever thought of it, just that--I don't know, as far as I know we didn't.
CHAYTOR, Q.C.:
Q. And you didn't think of it yourself.
MR. DYER:
A. I didn't think of it myself, no.
CHAYTOR, Q.C.:
Q. Has it been the discussions or a topic of discussion since, now that everyone has seen what happened, has it been the subject of discussion, well why didn't we go back in 2003? Why didn't anyone think of it.
MR. DYER:
A. In hindsight?
CHAYTOR, Q.C.:
Q. Yes.
MR. DYER:
A. Yes, there has been discussion and, I mean, no one, like I said, I never thought of it and in

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terms of Dr. Ejeckam or anyone else had asked them why they didn't think of it or anything like that, I don't know.
CHAYTOR, Q.C.:
Q. But you have heard it discussed since?
MR. DYER:
A. Oh yes.
CHAYTOR, Q.C.:
Q. And the review doesn't actually happen then until 2005.
MR. DYER:
A. Correct.
CHAYTOR, Q.C.:
Q. What have you heard discussed since?
MR. DYER:
A. No, I think we just discussed--that's one of the things when we were going over this and that's one of the things that was brought up or brought to my attention, why didn't, you know, when this happened in 2003, why didn't we go back? And I said, well, I don't think anyone ever thought of going back.
CHAYTOR, Q.C.:
Q. And who has discussed that since and asked, well why didn't you go back in 2003?

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MR. DYER:
A. No, I think we just discussed it in general when everything happened in 2005.
CHAYTOR, Q.C.:
Q. Yes, and who discussed it is my question?
MR. DYER:
A. Oh I can't remember who was there because I think it was just general, as we talked, I might have talked with the techs, I could be Heather Predham, I don't know, it was just generally discussed.
CHAYTOR, Q.C.:
Q. And what explanation have you heard offered for not having gone back in 2003?
MR. DYER:
A. Well, again, this is just with me and again, I said I never thought of it. In terms of physicians, I don't know what they would have said.
CHAYTOR, Q.C.:
Q. Have you heard any explanation offered as to why there was no review conducted in 2003?
MR. DYER:
A. No, no official one, no.
CHAYTOR, Q.C.:

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Q. Have you heard anything unofficial?
MR. DYER:
A. Unofficial?
CHAYTOR, Q.C.:
Q. Yes, what have you heard?
MR. DYER:
A. Well I've heard, but again, it's unofficial, you know, Dr. Ejeckam didn't think we needed to go back and do it, but I don't know where I heard--I heard that from someone. I don't know where I heard it from.
CHAYTOR, Q.C.:
Q. That Dr. Ejeckam didn't think that at the time or Dr. Ejeckam didn't think that -
MR. DYER:
A. Didn't think at the time.
CHAYTOR, Q.C.:
Q. In 2003.
MR. DYER:
A. Yes. But again, that's just hearsay, I can't -
CHAYTOR, Q.C.:
Q. But any suggestion that Dr. Ejeckam was--that it ever dawned on Dr. Ejeckam in 2003?
MR. DYER:

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A. Pardon?
CHAYTOR, Q.C.:
Q. Was there a suggestion that it ever dawned on Dr. Ejeckam in 2003 to go back and at that point in time -
MR. DYER:
A. I don't know.
CHAYTOR, Q.C.:
Q. - he didn't think it was necessary.
MR. DYER:
A. I wouldn't be able to tell you at the time, no.
CHAYTOR, Q.C.:
Q. And in what context did you hear that said?
MR. DYER:
A. I can't remember.
CHAYTOR, Q.C.:
Q. Do you recall who said it?
MR. DYER:
A. No, I don't even remember who said it, but I know I heard those words somewhere.
CHAYTOR, Q.C.:
Q. And hearing the issue discussed since about, well why didn't we go back, the only thing you've heard offered is that Dr. Ejeckam

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didn't think it was necessary?
MR. DYER:
A. I heard that in passing, yes.
CHAYTOR, Q.C.:
Q. Have you heard anything else?
MR. DYER:
A. No, that's it.
CHAYTOR, Q.C.:
Q. Have you heard any explanation given as to there not having been an indexed patient in 2003?
MR. DYER:
A. No, I don't think that's been said to me.
CHAYTOR, Q.C.:
Q. And before I learn then Dr. Ejeckam's memos, is there anything else around this time period and around your interactions with Dr. Ejeckam that you think is relevant that we haven't already covered?
MR. DYER:
A. No, I don't think so.
CHAYTOR, Q.C.:
Q. So after having your meeting with him, you and Mr. Gulliver and then within six months or thereabouts, the staff becoming 90 percent

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dedicated and the space being dedicated to IHC.

MR. DYER:

A. Yes.

CHAYTOR, Q.C.:

Q. You had no further discussions about the issue with Dr. Ejeckam?

MR. DYER:

A. No, not that I can recall.

CHAYTOR, Q.C.:

Q. And were any further concerns then after that point in time brought to your attention?

MR. DYER:

A. No.

CHAYTOR, Q.C.:

Q. If we could have, please, P-1572? This is a meeting April 15th, 2003 of a Surgical Pathology Review Committee and Dr. Ejeckam was apparently the chair of that committee and there's a number of physicians in attendance. Were you aware of the existence of such a committee?

MR. DYER:

A. Not at that time, no.

CHAYTOR, Q.C.:

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Q. And when did you become aware that such a committee existed?

MR. DYER:

A. I became aware of that committee when Dr. Ejeckam had a request for some work wanting to be done, I can't remember when it was.

THE COMMISSIONER:

Q. Request for what, I'm sorry?

MR. DYER:

A. He had a request that he wanted some work done for that committee.

THE COMMISSIONER:

Q. Oh, okay.

CHAYTOR, Q.C.:

Q. So I take it it was sometime within, around this time period you became aware that the committee existed?

MR. DYER:

A. Yes.

CHAYTOR, Q.C.:

Q. 2003.

MR. DYER:

A. Yes.

CHAYTOR, Q.C.:

Q. And what did you understand was the purpose of the committee?

MR. DYER:

A. I didn't understand the purpose of the committee, I just knew there was a committee and I only understood that there was one project they were doing at the time and that was clinical information on requisitions.

CHAYTOR, Q.C.:

Q. Clinical information on requisitions.

MR. DYER:

A. Yes.

CHAYTOR, Q.C.:

Q. So there was some concern that there wasn't clinical histories or clinical information being provided on the requisitions?

MR. DYER:

A. Correct.

CHAYTOR, Q.C.:

Q. And what work was it that Dr. Ejeckam needed done for this committee?

MR. DYER:

A. One day, again now taking the context of the laboratory and everybody having assigned duties to do and one day Dr. Ejeckam came in, I think it was on a Tuesday or a Wednesday and

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he was having a meeting the next day for this surgical committee group and he was to present at that meeting a stats for clinical history on requisitions. And he went into our steno pool and he told everyone to stop doing their work right now and he said, I want 4,000 requisitions reviewed today for, to be photocopied so he could take them all to this group, take them all to this committee. So, of course, down came the lead secretary complaining to me, saying, you know, Dr. Ejeckam is making these demands and they're typing their grosses or they're typing urgent cases and so I went to Dr. Ejeckam about it and I said, "Dr. Ejeckam, we just can't stop doing our work because you want 4,000"--he wanted four months of requisitions reviewed. And I said, "that will take days and we just can't stop doing our work." But he was very upset about that and what I suggested was, you know, I would help out and we would even do a month, which took a day to do and give him a month, but he was very upset that he wanted four months. And we just couldn't stop our work just like that, but that's what Dr.

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Ejeckam always expected. He would just go in and tell you to do something and even though you got assigned duties and were trying to keep the workload going, he expected you to change because he told you to change. So when it came to that, I know he had issues with me or with management because I know he actually wrote a complaint to Don Cook about it and Don went to Terry and Terry came to me and I explained to Terry what the situation was. We just couldn't stop doing work just like that, actually what I recommended to Dr. Ejeckam was if he would give us notice today and as they're actually doing--the girls are typing their gross, if they notice a requisition, then they would take it and photocopy it, so the workflow keeps going and then we could do it for the following month, but he was insistent that he wanted it done for the next day. So that's when I learned about this committee for the first time.

CHAYTOR, Q.C.:

Q. Okay, and if we look then at Section 3.1 under "New Business" for the committee, it talks about ER and PR receptors. "Dr. G. Ejeckam

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stated that ER and PR receptors are not being performed for the next six weeks due to a technical problem. If a solution cannot be found, these tests will be sent outside of St. John's. He stated it is being considered to send one or two technologists to Halifax or Toronto for training." So, Mr. Dyer, this is the time period when the stains were stopped being performed. Did you know it was being considered that if he couldn't come up with a solution, that the test might be sent outside of St. John's?

MR. DYER:

A. I don't think he actually said that to me, but I think that would have been like more of a commonsense thing, because we can't hold back the staining, the diagnosis has to get out. So I think--I would have just automatically assumed that if it's not working after a certain period, we would just--he told tell me, we would just start sending them out.

CHAYTOR, Q.C.:

Q. So his discontent with the quality of the staining in April of 2003 was such that it wasn't a matter of it just having been tweaked

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or not quite intense enough, he was dissatisfied to the point that unless it could be fixed, it wasn't going to happen in St. John's.

MR. DYER:

A. No, it's not that it wasn't going to happen, it's just that--my interpretation would be again, if it's not--you know, if we can't fix it in a certain amount of time, we can't hold back on diagnosis for these specials, so we would send them out, but we would continue to work.

CHAYTOR, Q.C.:

Q. But resuming it and trying to tweak it, that wasn't an option, it was such that it had to be suspended and unless a solution could be found, the test would have to go elsewhere.

MR. DYER:

A. Yes.

CHAYTOR, Q.C.:

Q. And he stated, it says here, "it's being considered to send one or two technologists to Halifax or Toronto for training." Were you aware of that at the time?

MR. DYER:

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A. No, no, I wasn't.

CHAYTOR, Q.C.:

Q. Was that discussed with you?

MR. DYER:

A. I don't think we actually discussed sending techs away, that doesn't sound familiar to me.

CHAYTOR, Q.C.:

Q. Was it brought to your attention any notion that the technologists needed further training?

MR. DYER:

A. No, what Dr. Ejeckam--my interpretation of what he wanted was if we had three dedicated staff, one of them would be able to read and learn about it under his guidance.

CHAYTOR, Q.C.:

Q. And so in terms of the competency levels of the techs to be able to do IHC, did you have any concerns as to whether or not that they understood the theory of IHC and what they were doing well enough to carry on with it?

MR. DYER:

A. I had no issues with their competency levels whatsoever, they were performing the stain and a physician was reading it. They weren't

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responsible for interpreting, so I didn't have any issues with their competency level.

CHAYTOR, Q.C.:

Q. Was there any competency testing carried out on the technologists?

MR. DYER:

A. Not for IHC no, or not during my time.

CHAYTOR, Q.C.:

Q. Is that being done now?

MR. DYER:

A. What's happening is everything they do is being documented with Dr. Ford Elms.

CHAYTOR, Q.C.:

Q. So everything they do, in terms of any additional training you mean?

MR. DYER:

A. Yes.

CHAYTOR, Q.C.:

Q. And at this point in time in 2003, did any of them have any special training in IHC?

MR. DYER:

A. Only based on how they were trained by--again, you know, just like when I set immunohistochemistry, it's all about, you know, you use the books and you work in

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conjunction with the physician.

CHAYTOR, Q.C.:

Q. And to your knowledge, what inquiries did you make becoming their manager, as to how much training they had had in IHC?

MR. DYER:

A. I don't think I made any actual inquiries, they were--my interpretation was the system was up and running and they were the ones who were doing it when I got hired.

CHAYTOR, Q.C.:

Q. And when they were dedicated then 90 percent at least, by the end of the year, they're 90 percent dedicated by IHC, was there any inquiries made at that point in time as to whether or not they needed any additional training?

MR. DYER:

A. No. And Dr. Ejeckam didn't bring any inquiries to me about it at that time.

CHAYTOR, Q.C.:

Q. So, if it was being considered to send one or two of them outside the province for additional training at that time, but was not brought to your attention, nor was the need

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for that to happen brought to your attention.

MR. DYER:

A. No.

CHAYTOR, Q.C.:

Q. And as their manager, was that information that you would expect to know?

MR. DYER:

A. Definitely.

CHAYTOR, Q.C.:

Q. Mr. Dyer, at some point in time a decision was made to put external controls on the same slide as the patient's tissue slide or the same slide as the patient's tissue.

MR. DYER:

A. Yes.

CHAYTOR, Q.C.:

Q. Whose idea was that?

MR. DYER:

A. I think it was being tossed around from time to time, but I really got involved with it when I started learning about the Ventana.

CHAYTOR, Q.C.:

Q. Okay. And ultimately, I understand, that was done. Was that done prior to the Ventana coming on?

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MR. DYER:

A. It was done in conjunction with the Ventana coming online.

CHAYTOR, Q.C.:

Q. So, it was never done while DAKO was in operation?

MR. DYER:

A. Not unless it was, I guess, a special request or something from a physician. I don't recall it being done.

CHAYTOR, Q.C.:

Q. Okay. And whose decision ultimately was it to go that route, to have the external control on the slide with patient tissue?

MR. DYER:

A. I think when the Ventana system, when I was learning or exploring about the Ventana system or the actual IHC for the new technology, once we realized that Ventana was out there, what happened was myself and Mr. Gulliver, we went to meet the Ventana officials in Montreal. And I visited a couple of hospitals while I was there to see what the practices were for IHC. And one of the things that Ventana talked about and I think one of the hospitals,

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they weren't doing a lot of it, but they were doing some, what we call twin slides. And when I saw twin slides, what that means is putting the control on the top of the slide or putting the control and the patient on the same slide, the external control. So, I came back and I discussed it with--I talked about it with, I think it might have been Des Robb at the time because he was big into research and he said that we had a huge tumour bank in Health Care Corporation which we did. I mean, we do about 25 - 30,000 a year cases, not tumour, I mean surgical cases and we keep them for 20 years. So, we had a massive bank. So, he said, you know, he thought it was a really good idea and we definitely had the tissue to be able to do it. So, I remember speaking to the pathologists, I think I talked about it at one of our site meetings, just to let them know that I will keep the pathologists updated all the time about how the system was going once it came in. And I also talked about this concept and what I did was we actually drew up a requisition with a slide and showing them, at the same time we were bringing in a

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labelling system, an automatic labeller. So, we drew pictures of where the control would be, where the patient would be and how to interpret the actual label on the slide for demographic purposes.

CHAYTOR, Q.C.:

Q. Okay.

MR. DYER:

A. It was a very good idea because of the fact that now we could eliminate this issue of controls being fed out to different pathologists. Now, we would know we could have a control on every one. So, it would have been an excellent QC practice to start.

CHAYTOR, Q.C.:

Q. Okay. So, I take it there had been concerns with the prior practice of external controls being on separate slides?

MR. DYER:

A. I think it was more of an administration issue than anything else.

CHAYTOR, Q.C.:

Q. And how so, what was the problem?

MR. DYER:

A. Well, I know when we were actually putting the

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controls out in the reporting room, everyone would have to go to the reporting room, sit down and look at controls before they read their slides. Whereas this one now, when they'd go to the reporting room, they'd just take their slides and go back to their office. So, it's more administrative than anything else, I believe.

MR. DYER:

A. Okay. And Dr. Robb indicated you had a huge tumour bank registry or a huge tumour bank supply.

MR. DYER:

A. We did, yes.

CHAYTOR, Q.C.:

Q. For doing controls for, in the ER/PR, for doing controls, did it have to be breast tissue for your external control or could it be any kind of tissue?

MR. DYER:

A. Again, I think that's out of my scope of practice. I can tell you what I think, but not actually what may be fact. What was happening at the time was they were using a positive breast tumours as an external

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control. That's what they were doing.

CHAYTOR, Q.C.:

Q. So, that's what was being used?

MR. DYER:

A. Yes.

CHAYTOR, Q.C.:

Q. So, we've heard use of tonsils for external controls, but tonsils weren't being used, I take it, for ER/PR, for external controls.

MR. DYER:

A. No, no.

CHAYTOR, Q.C.:

Q. So, to your knowledge, external controls for ER/PR were always breast tissue.

MR. DYER:

A. Always a positive breast tumour.

CHAYTOR, Q.C.:

Q. Positive breast tumour.

MR. DYER:

A. Yes.

CHAYTOR, Q.C.:

Q. Okay. And still there was thought to be ample tumour supply available to be able to use the control on each slide?

MR. DYER:

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A. Yes.
CHAYTOR, Q.C.:
Q. Okay. And did that ever become an issue? Did you ever become short on your supply for external controls?
MR. DYER:
A. Based on that concept of a positive tumour?
CHAYTOR, Q.C.:
Q. Yes.
MR. DYER:
A. No, we have lots of tumour--well, what would be, I guess, the issue is a physician always identifies the control to use. So, it's at the hands of the physician when they're available to help identify a control, then that's what would happen.
CHAYTOR, Q.C.:
Q. And back in looking at external controls, we've heard about how sometimes if it's an institution outside of St. John's, there'd be an external control sent out to the other areas or it may not be sent out. It may be checked by a pathologist in St. John's and indicated to have been checked. Were you aware that those practices were happening?

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MR. DYER:
A. Yes.
CHAYTOR, Q.C.:
Q. Okay. And what was your understanding? Was there an external control--how many external controls were being run and did you ever hear any complaints as to people not receiving external controls?
MR. DYER:
A. No, I don't think I've ever received any complaints, but what would happen was they would--the techs would run an external control based on site. So, they would run one for the Janeway, I mean, one for the Health Science, one for St. Clare's. If Carbonear ordered one, they would run one for Carbonear. But I think there were times when we might have had 49 slides to run, but we only had 28 spaces. So, what they may do is instead of running an extra control, they would do one of two things. They would either do that run and then chose not to send a control to one of the site, but have a physician on site read it, or they would wait and run them with the controls the next day.

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CHAYTOR, Q.C.:
Q. Okay. And you never heard any complaints about that practice?
MR. DYER:
A. About not getting controls, no.
CHAYTOR, Q.C.:
Q. About not receiving controls or -
MR. DYER:
A. No.
CHAYTOR, Q.C.:
Q. Okay. You said that in your days as technologist at the Janeway, you would check the external control before you sent it to the pathologist to make sure your run was satisfactory.
MR. DYER:
A. Yes.
CHAYTOR, Q.C.:
Q. Do you know whether that was the practice at the Health Science, in the IHC lab? Were the technologists checking the external controls before sending out the work product?
MR. DYER:
A. I think that's a real point, I'll have to make sure it was understood by all of it, but the

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technologists were never responsible for reading external controls. That was my viewpoint. When I was at the Janeway, I did that for all routine stains and when I moved to Health Science, we instituted that at Health Science for routine stains that the techs would do it. And all those routine stains you're also trained in college. So, I didn't have an issue with that. But for the external controls for IHC, that's totally different. So, you know, I was always under the understanding and that was always my viewpoint that technologists were never responsible for reading external controls. They did look at them, I think, for curiosity and for their own benefit. And most times they would look for just a brown stain, but as you know, I mean, you can get a lot of background staining. And in order to truly look at an external control you have to be able to identify that antibody, exactly how it links to those cells. Is it nuclear? Is it membrane? You have to understand all that and you have to be able to identify cancer cells. And they've never been trained to do that.

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CHAYTOR, Q.C.:
Q. Okay. And how does that differ from what's expected of you in checking external controls in special stains?
MR. DYER:
A. Routine special stains?
CHAYTOR, Q.C.:
Q. Yes, routine special stains.
MR. DYER:
A. The difference is again, no, it's pretty well the same. The control will still be sent out. At the Janeway I would still send a control after I reviewed it. But you know, if you look at an iron stain, for example, I know, I understand what iron looks like, so if I see in a liver that the iron didn't attach, then I wouldn't send that out. I would repeat it because it was completely negative.
CHAYTOR, Q.C.:
Q. Okay. I'm just trying to understand because you said that you are trained in your program to look at -
MR. DYER:
A. In college for those--yes, but -
CHAYTOR, Q.C.:

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Q. - for special stains.
MR. DYER:
A. Right, but special stains -
CHAYTOR, Q.C.:
Q. Or routine stains.
MR. DYER:
A. Right and that's not actually--they're not cellular staining, like that's more like -
CHAYTOR, Q.C.:
Q. What's the difference? Why are you not comfortable with technologists checking external controls in IHC?
MR. DYER:
A. At that time?
CHAYTOR, Q.C.:
Q. Yes.
MR. DYER:
A. Because they were never trained to interpret the cells.
CHAYTOR, Q.C.:
Q. Okay. And how about today, are they trained?
MR. DYER:
A. Today, again, I think it's still a bit of a issue with me. Again, when you look at interpretation of external controls, to truly

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identify it, you have to be able to identify cellular components. And the agreement is that the techs are being trained to do that. But you know, as you heard Dr. Fontaine last week, you know, it's still very subjective. So, I don't have issues with the techs actually learning to interpret the controls, but I still believe that it should be, a final check off should be done by the physician.
CHAYTOR, Q.C.:
Q. Okay. And is that currently happening? So that while the technologists may check to see if they believe the external control worked, when it's forwarded onto the pathologists, they still know they ultimately are responsible for external controls and have to check them.
MR. DYER:
A. Yes, they do.
CHAYTOR, Q.C.:
Q. So, that's currently the practice?
MR. DYER:
A. That is currently the practice. However, the techs are now being trained also to interpret. They are being trained.

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CHAYTOR, Q.C.:
Q. So, and I take it if they're not satisfied, they redo the run.
MR. DYER:
A. Yes.
CHAYTOR, Q.C.:
Q. If they are satisfied it goes on to the pathologist, but the pathologist know they still have to check it.
MR. DYER:
A. Right now, yes. And we still run a control on every slide.
CHAYTOR, Q.C.:
Q. Yes. So now technologists, in order to do that, have to check every slide, not just one external control or four external controls. They have to check each slide.
MR. DYER:
A. Yes.
CHAYTOR, Q.C.:
Q. In terms of choosing appropriate blocks to use as external controls, how is that currently done?
MR. DYER:
A. Today?

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CHAYTOR, Q.C.:
Q. Yes.
MR. DYER:
A. That is done through the director of immunohistochemistry, Dr. Ford Elms.
CHAYTOR, Q.C.:
Q. And how was it done in the past?
MR. DYER:
A. I think the process is pretty well the same as it is done today. What would happen is I'm slowing teaching the staff how to use the computers more. But like, Ford would come to me right now and ask me to run a search for multiple, different types of diagnosis. And I would run those searches and identify patients for and give them to him or the staff would do that now too for him. We did the same thing in 2002. The staff would come to me and say, you know, we're looking for a new control for ER. So, I would run searches to find patients that are positive, that would have a word or text of positivity and then hand it off to them. They would find the blocks and do a stain and then ask a physician to look at it.
CHAYTOR, Q.C.:

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Q. Okay. So, in 2002 a tech might come to you to do computer search for patients. And I take it, are they coming to you as manager? Coming to you because you're -
MR. DYER:
A. Knowledgable in the way -
CHAYTOR, Q.C.:
Q. - knowledgable in the computer -
MR. DYER:
A. That's more for -
CHAYTOR, Q.C.:
Q. More the latter.
MR. DYER:
A. Yes, yes.
CHAYTOR, Q.C.:
Q. So, you would help them identify patients which were ER positive?
MR. DYER:
A. Yes.
CHAYTOR, Q.C.:
Q. Or PR positive, as the case may be.
MR. DYER:
A. Yes.
CHAYTOR, Q.C.:
Q. And so then they would take that block, make

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it into slides and then bring it to the pathologist and ask the pathologist to pick which ones.
MR. DYER:
A. They would either do that or they would actually take the report and ask the pathologist, based on the report, you know, would this patient be good and if so, then they would take some of the blocks, cut a section, stain it and then ask them to review.
CHAYTOR, Q.C.:
Q. So, they might do either.
MR. DYER:
A. Yes.
CHAYTOR, Q.C.:
Q. They might take the report, they might take the slides.
MR. DYER:
A. Yes. Also another practice they would do is while they were doing staining, while they were actually going through the immunohistochemistry and they would see slides that seem to stain up very strong to them, they would ask pathologists about that specific case too. I know that's happened.

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CHAYTOR, Q.C.:
Q. Okay. And when you were looking to help identify appropriate patient tissue for controls blocks or control slides, were you looking, in particular, for something that was a strong positive? What were you looking for?
MR. DYER:
A. Usually it was strong positives.
CHAYTOR, Q.C.:
Q. Strong positive?
MR. DYER:
A. Yes.
CHAYTOR, Q.C.:
Q. Okay.
THE COMMISSIONER:
Q. While we are on the topic of your computer savvy, as it were, with the Meditech system, is it easy, in your view to find in which files or find cases where and ER/PR test has been performed?
MR. DYER:
A. To actually find if an ER/PR test was performed, I would usually chase down, like, a procedure, an ER was ordered. That would be easy to do. But finding an actual percentage,

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like if I was looking for 80 percent, no, that was very challenging to do. There was no standard text in the system. So, you're at the mercy of how someone typed it in.

THE COMMISSIONER:

Q. So, were you involved in the search for identification of the patients when they got involved in this in 2005 to find out what tests had been done and to pull them for the purpose of the retesting?

MR. DYER:

A. Yes.

THE COMMISSIONER:

Q. And what was--that I understand from the evidence of other people, turned out to be fairly complicated.

MR. DYER:

A. Very challenging, yes.

THE COMMISSIONER:

Q. So, what, in your view, from--it just seems to me, in this day of technology, it should have been very easy. So, what was the problem, from your perspective?

MR. DYER:

A. Okay. When we went through the actual

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searches to identify patients for this whole Inquiry, what had happened was--sorry, not for the Inquiry, but for the retesting, I think we've gone through three or four major updates. So, in 1998, I believe, is when we started, up to 1998 we were all our own separate entity.

THE COMMISSIONER:

Q. Yes.

MR. DYER:

A. So, everyone had their own database, everything was different. So, what had happened was--and then from 1998 up to 2005, we had some major upgrades. So, what had happened was we weren't actually searching through one system. We were searching through four systems of which some of those were, not obsolete, but were many functions didn't actually work.

THE COMMISSIONER:

Q. So, four systems of Meditech.

MR. DYER:

A. Yes, four different systems of Meditech, even with the Health Science, the first system was called MainLab and when they -

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THE COMMISSIONER:

Q. And when you got the second system, it didn't allow you to search the first?

MR. DYER:

A. It did, but it was more challenging to hunt down. And in 1998 things were entered different than from 2000 or 2004. So, there was so many variables to try and hunt down what you want. So, what we did was I was actually on holidays when the initial searches were done, but Mr. Gulliver searched through the most basic way to search and that would have been through procedure.

THE COMMISSIONER:

Q. Okay. And since that period of time have there been changes made in the system for keeping records, to make it more user friendly if one wanted to do the research on, not necessarily this, but anything else in terms of what tests have been done and results and all that kind of stuff?

MR. DYER:

A. We would still go through the same challenges right now. The only real difference is we're now one system. So that, you know, from 1999

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or I believe maybe 2000 on we're now actually one system as for 2000 one--each group got brought on. So, now the Janeway, Health Sciences, St. Clare's are all entered through one system. So, they're all entered through one Health Science system, so that database will now be much easier to -

THE COMMISSIONER:

Q. But do you have a database that's any easier to search or the problem now than you did before?

MR. DYER:

A. No, the database itself hasn't changed in that sense from the old -

THE COMMISSIONER:

Q. Just for curiosity, when you acquired this database, did anybody walk into the lab and say, what kind of information do you, in the lab, need to have and we just want to make sure that you have the ability to search that and the appropriate fields are set up before we institute this system. Do you know if that was done?

MR. DYER:

A. Well, again, when we set up, when I set up the

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Meditech myself, I went down and just told them what I needed, but since then--I think in 1998 we tried to do a major consolidation. So, all four groups got together to try and standardize as much as possible.

COMMISSIONER:

Q. Okay, so when Meditec was purchased, the Health Care Corp might have said that they required something different than Western Regional would have said, is that it?

MR. DYER:

A. Yes.

COMMISSIONER:

Q. And they then would have developed within Meditec a system which would be different for Western Regional then it would be for Health Care?

MR. DYER:

A. A lot of similarities, but, yes, a lot of differences too.

COMMISSIONER:

Q. Okay. My apologies for the diversion.

CHAYTOR, Q.C.:

Q. No problem, and I will ask you more about your efforts in trying to identify patients when we

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come to that point in 2005, but a couple of points that arise from what answering the questions of the Commissioner. Today we've heard that synoptic reporting is now in place. Doesn't that make it easier to search?

MR. DYER:

A. It does, yes. I didn't understand the question, sorry. Yes, standardization is becoming bigger -- more and more important to us all the time, so some things are standardized, yes.

CHAYTOR, Q.C.:

Q. So in terms of that respect, or at least with respect to that, it should be that much easier?

MR. DYER:

A. With respect to breast, yes, we should be able to -- yes, since last year we should be able to do that.

CHAYTOR, Q.C.:

Q. And you in answering the Commissioner's question indicated that in 1998 when Meditec was brought on there was an effort to attempt to bring together all four groups. Do you mean Janeway, Grace, St. Clare's, and the Health

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Sciences in 1998?

MR. DYER:

A. Yes.

CHAYTOR, Q.C.:

Q. Of course, you were all separate entities then.

MR. DYER:

A. Yes, we all had Meditec, but what we were trying to do at that time was actually standardize how we did things.

CHAYTOR, Q.C.:

Q. And how did that work, what was the outcome of that?

MR. DYER:

A. No, we didn't -- there wasn't agreement on total standardization of how we did things.

CHAYTOR, Q.C.:

Q. Were you able to get any of the hospitals to come together?

MR. DYER:

A. Yes.

CHAYTOR, Q.C.:

Q. So tell us about that.

MR. DYER:

A. The Grace, Janeway, and Health Science pretty

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well wrote all their protocols in the system to be pretty well identical.

CHAYTOR, Q.C.:

Q. What about St. Clare's?

MR. DYER:

A. No, they didn't.

CHAYTOR, Q.C.:

Q. Why not?

MR. DYER:

A. I didn't have authority at the time. I wouldn't be able to tell you. They didn't agree to do -- they didn't agree to standardize everything the way we were standardizing.

CHAYTOR, Q.C.:

Q. So the other three in terms of then what you had to do in 2005, in 1998 there was some standardization of the Grace and the Health Science?

MR. DYER:

A. And the Janeway.

CHAYTOR, Q.C.:

Q. Yes, but Janeway, of course, wasn't involved in what you were doing in 2005.

MR. DYER:

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A. Yes.
CHAYTOR, Q.C.:
Q. So at least you had the Health Science and the Grace were fairly well standardized.
MR. DYER:
A. Yes.
CHAYTOR, Q.C.:
Q. But it was St. Clare's then that caused you the extra hurdle in terms of -- an extra challenge in terms of what you had to do in 2005?
MR. DYER:
A. To a degree, yes, but also the Grace was still on their own system at the time too, so that was still a hurdle. St. Clare's was on their own system, so that was still a hurdle.
CHAYTOR, Q.C.:
Q. Okay.
MR. DYER:
A. Also.
CHAYTOR, Q.C.:
Q. I think before we went down that road, I was asking you about external controls.
MR. DYER:
A. Yes.

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CHAYTOR, Q.C.:
Q. And there's just a few other points I'd like to cover off there. The change that you brought about putting the tissue on the patient -- putting the control tissue on the patient's slide, how was that then communicated to the pathologists who would be reading the slides?
MR. DYER:
A. I think what I did was I -- well, in our site chief meeting -- not our site chief -- our site meetings at Health Science, that's when I explained to everyone what we were going to do.
CHAYTOR, Q.C.:
Q. And what about for the St. Clare's physicians?
MR. DYER:
A. I also informed the St. Clare's physicians. I think I might have actually told Don Cook about it, but I know I informed them because the same form that I had written there I sent over, I had at St. Clare's.
CHAYTOR, Q.C.:
Q. And were they sent any documentation or was this verbally communicated?

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MR. DYER:
A. No, I had an actual form made with the actual slide, and how it would look. So I had a picture, a full page picture of the slide and drawn up here saying this would be the external control, this would be the patient.
CHAYTOR, Q.C.:
Q. And then also some explanation, I take it, for the labelling that you had produced as well?
MR. DYER:
A. Yes, yes, like we had the indicators to what each thing would mean because again when it comes to standardization, you know, everybody labelled their slides differently.
CHAYTOR, Q.C.:
Q. Were the pathologists told that the control tissue for the most part was supposed to be a strong positive?
MR. DYER:
A. Were they told that?
CHAYTOR, Q.C.:
Q. Yeah, were they told that?
MR. DYER:
A. I didn't tell them that, no.
CHAYTOR, Q.C.:

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Q. How would they know that?
MR. DYER:
A. Again I didn't pick the controls. The physicians always picked the controls.
CHAYTOR, Q.C.:
Q. And you, though, in helping identify tissue that could be appropriate for controls, you, yourself, looked for strong positives?
MR. DYER:
A. That was what I was asked for.
CHAYTOR, Q.C.:
Q. And you understood it was strong positives?
MR. DYER:
A. Yes.
CHAYTOR, Q.C.:
Q. Okay.
MR. DYER:
A. Yes, I would always look for, like, 60, 70, or higher.
CHAYTOR, Q.C.:
Q. But whether pathologists were told that, that this should be a strong positive, your control should be a strong positive, you don't know if that was communicated?
MR. DYER:

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A. That wouldn't have been, no -- and again this was the practice before I came. Like, when I came, this is what they were doing at the time.

CHAYTOR, Q.C.:

Q. And currently perhaps you could tell us what is used for external controls and how does that work today?

MR. DYER:

A. What is used for external controls?

CHAYTOR, Q.C.:

Q. Yes, and how -- we understand now there's actually three controls on the slide, is that right, or two?

MR. DYER:

A. We run a batch control and that's a separate slide that has no patient on it.

CHAYTOR, Q.C.:

Q. Right.

MR. DYER:

A. And that batch control has what we call three controls. One is a complete negative, one is what we would call unequivocal intermediate, like, it might have been a 30 or 40 percent, and one is a strong positive. That's the

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first control we run for ER/PR.

CHAYTOR, Q.C.:

Q. And that's a batch control?

MR. DYER:

A. That's called a batch control. So that's just run. So if we have 15 patients, that one would be run with the 15. Then the next step is we also run a positive control on every single patient. So that would actually be on the same slide as the patient.

CHAYTOR, Q.C.:

Q. And it's just one positive control?

MR. DYER:

A. That's one positive control, and again that just tells us if the system is doing its job. Then the third control is called a reagent or a negative control, and I'll just shed some light on negative controls. What happens is when you actually stain -when you're actually doing a IHC stain on a patient's slide, you may actually get staining on that tissue or on the patient's tissue that is not directly related to the antibody. It may be related to what we call the detection kit, which is five or six. So what we do is we will actually run

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a parallel run using the exact same protocol on a second piece of tissue from that patient and we would substitute the antibody with a diluent which is like saline -- well, it's not saline, but that's something we would use. So that once you run through parallel runs and once it's completed, if you look at your patient reagent or negative control, if you see positivity, then that tells you that the actual detection kit has caused the patient to stain positive and not the antibody.

CHAYTOR, Q.C.:

Q. So there's something peculiar to that particular patient's tissue causing that?

MR. DYER:

A. Correct.

CHAYTOR, Q.C.:

Q. Okay.

MR. DYER:

A. So then they know that if they see positivity in the negative, then that means that the test has failed because that positivity in the patient may not be directly related to the antibody. Therefore, you get a false result.

CHAYTOR, Q.C.:

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Q. Okay. So if you were to send out a picture today to the pathologist of your slide, it's still the patient tissue and one positive control on the patient tissue slide?

MR. DYER:

A. Yes.

CHAYTOR, Q.C.:

Q. And is that a strong positive or what is that?

MR. DYER:

A. That is still a strong positive.

CHAYTOR, Q.C.:

Q. That's a strong positive?

MR. DYER:

A. Yes, but what the practice -- the practice is we have a -- we had a breast group and the actual reagent control, negative reagent negative control, the patient's actual test, and the sausage control, is all sent to the breast group to review.

CHAYTOR, Q.C.:

Q. Was sent to the breast group?

MR. DYER:

A. Yes, that's the practice.

CHAYTOR, Q.C.:

Q. Okay.

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COMMISSIONER:
Q. Ms. Chaytor, wherever you want to take the afternoon break, you can let me know.
CHAYTOR, Q.C.:
Q. Thank you. In terms then of having to come up with several other then controls now in terms of a weak positive and a negative, have you run into any shortage of supply in terms of coming up with enough control tissue?
MR. DYER:
A. That's a tough one. I don't think we've actually come up with the issue of finding -- unequivocals, I think, is more of an issue, yes, I should say. That means the intermediate.
CHAYTOR, Q.C.:
Q. Intermediate slides.
MR. DYER:
A. It's harder to find an intermediate control.
CHAYTOR, Q.C.:
Q. I take it people are usually either one way or the other for the most part?
MR. DYER:
A. Yes, yes.
CHAYTOR, Q.C.:

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Q. And we've heard something about that. Have you ever heard, either before this system of controls came into effect or after, have you ever heard of any ER/PR tests being run without external controls?
MR. DYER:
A. ER/PR tests?
CHAYTOR, Q.C.:
Q. Yes.
MR. DYER:
A. No, I don't think so.
CHAYTOR, Q.C.:
Q. Okay.
MR. DYER:
A. Not up to this, not up to this incident, no.
CHAYTOR, Q.C.:
Q. So have you ever heard of pathologists instructing technologists to run IHC testing without an external control, for example, if there wasn't enough space on the machine and they wanted their test run?
MR. DYER:
A. Do you mean in general or ER/PR?
CHAYTOR, Q.C.:
Q. Well, I IHC then.

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MR. DYER:
A. In general?
CHAYTOR, Q.C.:
Q. Yes.
MR. DYER:
A. Yes, that has happened.
CHAYTOR, Q.C.:
Q. That has happened?
MR. DYER:
A. Yes.
CHAYTOR, Q.C.:
Q. And whether or not -- you don't know if it's happened with ER/PR specifically?
MR. DYER:
A. From what I understand, ER/PR always had a control.
CHAYTOR, Q.C.:
Q. Okay, and who do you understand that from?
MR. DYER:
A. From our techs. We always ran a control.
CHAYTOR, Q.C.:
Q. Okay.
MR. DYER:
A. And in this retesting and inquiry, we've located hundreds and hundreds and hundreds of

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controls.
CHAYTOR, Q.C.:
Q. Have you been able to identify an external control for every test?
MR. DYER:
A. For every test, no.
CHAYTOR, Q.C.:
Q. And I'll take you to that when we talk about that.
MR. DYER:
A. Sure.
CHAYTOR, Q.C.:
Q. What you actually do in 2005. Was there in the past any record kept as to what tissue was used for external controls for the batch ran?
MR. DYER:
A. No.
CHAYTOR, Q.C.:
Q. Is that currently being done?
MR. DYER:
A. Yes.
CHAYTOR, Q.C.:
Q. So currently if we were to go look for patient "X" and what control tissue is on the slide with patient "X" tissue, there is a record of

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that?
MR. DYER:
A. We have a record book kept of -- all controls are identified based on the patient, and if we make three blocks, one is block "A", one is block "B", and one is block "C", we even record when we stop using block "A" and start using block "B".
CHAYTOR, Q.C.:
Q. And is that recorded on the patient's chart?
MR. DYER:
A. On the patient's chart?
CHAYTOR, Q.C.:
Q. Yes.
MR. DYER:
A. No, I don't think so.
CHAYTOR, Q.C.:
Q. So where is it recorded? It's a central registry, is it?
MR. DYER:
A. I'm not understanding.
CHAYTOR, Q.C.:
Q. So if patient "x" has an ER/PR test today, the controls used for his or her test, is that recorded on her chart?

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MR. DYER:
A. Just the actual result, but not who that control came from, no.
CHAYTOR, Q.C.:
Q. But there would be no number identifying that control, who the control tissue came from so that that could be cross referenced?
MR. DYER:
A. No, the way we would cross reference it is based on date -- again, you know, we would say in our book this is SU1000 and we made three blocks, and this is what's currently being used for ER control. Then we say block "A" or block we're currently using, start date, and when we stop using, we would say end date, and then start date for the next one. So when I call up a patient, patient "x", I can just look at patient "x" and see when she was done, and I will be able to go right back to what control was used and who that control was from.
CHAYTOR, Q.C.:
Q. So you would have to then go to -- physically go to a book or is there a computerized record?

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MR. DYER:
A. No, I think right now we're just doing it manually.
CHAYTOR, Q.C.:
Q. So you would have to manually go to a book and look it up?
MR. DYER:
A. Yes.
CHAYTOR, Q.C.:
Q. There's no electronic record of that?
MR. DYER:
A. No, not right now, I don't think so.
CHAYTOR, Q.C.:
Q. And so nothing then actually put on the patient's -- like, for example, in the pathology record, nothing recorded there as to what control was used?
MR. DYER:
A. Not on the patient's report, no.
CHAYTOR, Q.C.:
Q. Currently, is there any policy that requires pathologists to certify that certain tissue is appropriate for use as controls?
MR. DYER:
A. Is there a policy?

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CHAYTOR, Q.C.:
Q. Yes.
MR. DYER:
A. I believe there is for ER/PR. Dr. Elms was directly involved, so again--and like all--but for every tissue, I don't think there's a policy for every tissue just yet.
CHAYTOR, Q.C.:
Q. Okay, and so that's something recent, in terms of ER/PR as well, that Dr. -
MR. DYER:
A. Yes.
CHAYTOR, Q.C.:
Q. So then Dr. Elms, as director of IHC, would certify that certain controls or certain tissue are appropriate to be used as controls?
MR. DYER:
A. Yes.
CHAYTOR, Q.C.:
Q. Is there any policy which requires pathologists to sign off or verify that they've read the external controls?
MR. DYER:
A. I think there's a letter gone out, but in terms of a formal policy, I don't--I wouldn't

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be able to explain. Best thing is to ask a physician.

CHAYTOR, Q.C.:

Q. Okay.

MR. DYER:

A. Because that would be a clinical issue.

CHAYTOR, Q.C.:

Q. So to your knowledge, there's no formal policy?

MR. DYER:

A. Not that I know of.

CHAYTOR, Q.C.:

Q. But ask Dr. Elms?

MR. DYER:

A. That's the best thing to do. He would be able to tell you.

CHAYTOR, Q.C.:

Q. And I take it that's true also of internal controls, whether there's a policy for them to verify or certify that they have read the internal control on a given test?

MR. DYER:

A. Again, for ER/PR, there is.

CHAYTOR, Q.C.:

Q. There is?

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MR. DYER:

A. But for other IHC, you have to ask Dr. Elms.

CHAYTOR, Q.C.:

Q. So there is such a policy now for ER/PR?

MR. DYER:

A. I think so, because we created a standard text to start that prior to going live in '07.

CHAYTOR, Q.C.:

Q. Okay. Just one more then, one more point, Commissioner, before we break. Mr. Dyer, do you have any concern that tissue that was used as positive controls in the past may not, in fact, have been positive at all? Do you have any concern that tissue that was chosen to be used as positive controls in the past may not have, in fact, been positive?

MR. DYER:

A. Again, we always relied on the physician to tell us if it was positive or negative, so I really--if the physician told me it's positive, I'd believe it's positive.

CHAYTOR, Q.C.:

Q. And with any knowledge that's come to you since, do you have any reason to be concerned that external controls that were indicated to

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be positive may in fact not have been or that there's not appropriate documentation to verify that they were in fact positive?

MR. DYER:

A. Since--any today?

CHAYTOR, Q.C.:

Q. Since everything that's happened, is there any -

MR. DYER:

A. Yes.

CHAYTOR, Q.C.:

Q. - do you have concern?

MR. DYER:

A. Oh, yes, yes.

CHAYTOR, Q.C.:

Q. Okay, and tell us about that. Why are you concerned?

MR. DYER:

A. Well, I'm not concerned to the fact that it's now corrected, but -

CHAYTOR, Q.C.:

Q. Currently, the current situation is fine, but I'm asking about the past, whether or not you have concern that what was thought to have been positive external control may or may not

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have been?

MR. DYER:

A. I think my concern, when I learned what was going on, was the fact that internal controls that would actually--internal controls for ER/PR that actually will determine if the test worked on that patient may not have been read every time.

CHAYTOR, Q.C.:

Q. Okay, what about for external controls though and the choice of tissue for external controls and whether or not it was positive?

MR. DYER:

A. I didn't have concerns at the time, because no one came back and said a control didn't work.

CHAYTOR, Q.C.:

Q. Right. Do you have any concern now though that that in fact may--external controls that were thought to have been positive tissue may not have been?

MR. DYER:

A. I think I understand.

CHAYTOR, Q.C.:

Q. Okay.

MR. DYER:

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A. Again, yes, obviously that could happen.
CHAYTOR, Q.C.:
Q. And how could that happen?
MR. DYER:
A. Well, if we were running a positive, a strong positive control to tell us that, you know, the system was working, if the internal control wasn't being read on that external control, then how could we truly determine if it was a positivity stain, was it a nuclear stain or not. It may not have worked at all. It may have been all background. Does that make sense? I don't know if I'm understanding the question.
CHAYTOR, Q.C.:
Q. Yes.
THE COMMISSIONER:
Q. I think what you're saying is you might get a false external control by virtue of the fact that somebody didn't read an internal control initially?
MR. DYER:
A. Correct.
CHAYTOR, Q.C.:
Q. Yes.

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MR. DYER:
A. That's exactly right.
CHAYTOR, Q.C.:
Q. Because they weren't--because there wasn't--there may not have been attention paid to the internal controls?
MR. DYER:
A. Correct.
CHAYTOR, Q.C.:
Q. Yes, thank you. That's a good place to break, Commissioner.
THE COMMISSIONER:
Q. All right. We'll take the afternoon break.
(RECESS)
THE COMMISSIONER:
Q. Please be seated. Ms. Chaytor.
CHAYTOR, Q.C.:
Q. Thank you, Commissioner. If I could have, please, C-0175? This is a confidential record, Mr. Dyer. It's a pathology report that was done in 2003, and I'm not sure if you were here last week. These are--this was a pathology report I showed to Mrs. Butler, and the documents that I took her through showed that the run for this was actually done April

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30th, 2003.
MR. DYER:
A. Okay.
CHAYTOR, Q.C.:
Q. So it's in the time period when Dr. Ejeckam was doing his adjustments, and you can see here that it was reported by Dr. Morris-Larkin on May 9th, 2003. Sorry, there was another--it was actually run before that, see here. There was a first run which was done May 30th and it was reported--I'm sorry, April 30th, and was reported May 6th, and it was found that "when compared to controls, the specimen is negative for HER2/neu, ER and PR," and that's the first addendum and this run was repeated or this particular test was repeated on May 7th and reported then on May 9th by Dr. Morris-Larkin and "the ER and PR were reported due to quality assurance issues. The repeated stain show the following: ER positive in 80 percent of the cells and PR positive in ten percent of the cells."
Now Mr. Dyer, this is in the time period when you were aware that issues had been identified by Dr. Ejeckam and you assigned

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Mrs. Butler to work with him in working out the issues, and the ER/PR testing came on again on May 2nd, according to the memo, or thereabouts. Was this brought to your attention that ER and PR were repeated due to quality assurance issues, and the repeated stains then, in fact, resulted in a different result?
MR. DYER:
A. No.
CHAYTOR, Q.C.:
Q. Is that something that would have been of importance to you to know, as lab manager at that time?
MR. DYER:
A. Yes.
CHAYTOR, Q.C.:
Q. What would you have done had this been brought to your attention?
MR. DYER:
A. I would have asked to tweak the stain again to see what was going on, if we--I mean, if we--I'm sorry, can you ask the question again?
CHAYTOR, Q.C.:
Q. What would you have done if it had been

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brought to your attention that, in fact, there had been repeats done and there were changes in results?

MR. DYER:

A. I think I would have brought it to the attention of the clinical chief at the time.

CHAYTOR, Q.C.:

Q. Okay, and towards what end?

MR. DYER:

A. Pardon?

CHAYTOR, Q.C.:

Q. Towards what end?

MR. DYER:

A. To try and find out why we were having changes, the way we are, or the way that one did change.

CHAYTOR, Q.C.:

Q. Would you have been concerned about other patients' test results?

MR. DYER:

A. Yeah, I think I would have. I mean, personally, yes, I think I would have been concerned.

CHAYTOR, Q.C.:

Q. And knowing what you knew about what Dr.

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Ejeckam's concerns had been, knowing what had happened and then with changed results, do you think at that point in time, it would have then dawned on you that perhaps we need to do a review?

MR. DYER:

A. I think if--see, it's hard to say. If you have one or two cases that change, I don't know--again, that's a clinical decision. I don't know if--you know, it would be up to them to guide as to what they would like us to do, because they make the decisions on--this is a clinical issue and they would make that decision.

CHAYTOR, Q.C.:

Q. Okay, and would you have gone looking though for--would you have asked more questions and asked that further tests be looked at?

MR. DYER:

A. Again, that would--that's difficult to answer because the physicians did all the interpretation. So I would assume that they would make the inquiry, more so than I would or a technologist would.

CHAYTOR, Q.C.:

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Q. At the very least, you would have brought it to Dr. Cook's attention and you would have been concerned yourself that other patients may also be impacted?

MR. DYER:

A. If I was informed that there were actual result changes, yes, but again, results were not--were out of my scope of practice. It was all the physician.

CHAYTOR, Q.C.:

Q. And if we could have, please, C-0174? And again, this is a confidential record. It's a pathology report of an unidentified patient, and in this case, the original ER/PR was reported by Dr. Elms on August 29th, 2002, and at that point in time, immunohistochemical staining for progesterone receptors is positive in approximately 15 percent of lesional cells. Immunohistochemical staining for estrogen receptors is negative. And the records that we have, and I took Ms. Butler through last week, showed that there was a repeat--there were two runs. Requisition was dated May 23rd, 2003 and that it was done, the requisition was at the request of Dr. Zaidi.

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The run was ran May 29th, 2003 and it's reported here by Dr. Elms on June 11th, 2003, and he writes "at the request of Dr. Zaidi, immunohistochemical staining for estrogen and progesterone receptors has been repeated. Estrogen receptors show faint positivity in approximately ten to 75 percent of lesional cells. Progesterone receptors are unequivocally positive in approximately 75 percent of lesional cells." So it's almost a year from the time of the first test to the second and the second test again taking place in May of 2003 after Dr. Ejeckam's adjustment in dilution had taken place.

MR. DYER:

A. Yes.

CHAYTOR, Q.C.:

Q. Again, would this have been of significance or importance to you, as lab manager, to know that tests had been run which resulted in a changed result in your lab?

MR. DYER:

A. I think to me it would have been of significance. Again, though it's a clinical issue. I look at it as a clinical issue, and

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it would be up to the physician to decide what they want to do.

CHAYTOR, Q.C.:

Q. In terms of patient treatment, I take it, but in terms of -

MR. DYER:

A. Not just -

CHAYTOR, Q.C.:

Q. - your lab and your lab producing consistent reproducible results.

MR. DYER:

A. For a situation like this, I would expect that Dr. Elms would talk to Dr. Ejeckam about it, because Dr. Ejeckam was running the actual immuno lab technically, so that's what I would expect him to--that's what I would have expected him to do.

CHAYTOR, Q.C.:

Q. And in terms of any issue as to your lab being able to run or produce reproducible results, if there's any issue as to that, would you expect that to be brought to your attention?

MR. DYER:

A. Yes.

CHAYTOR, Q.C.:

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Q. Okay, and had this been brought to your attention, again, what, if anything, would you have done?

MR. DYER:

A. Again, I would have--if it was brought to my attention, I would have investigated to see why it was happening.

CHAYTOR, Q.C.:

Q. Okay. Were either of those cases brought to your attention?

MR. DYER:

A. No.

CHAYTOR, Q.C.:

Q. Would you have expected this, as lab manager, to have been brought to your attention?

MR. DYER:

A. Again, it's--I would think it could be, but again, it would be up to Dr. Ejeckam, who was in charge of the immuno lab to decide if he would want to bring it to me or not.

CHAYTOR, Q.C.:

Q. Mr. Dyer, on May 17th, 2005, was the index patient and her case brought to your attention as lab manager?

MR. DYER:

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A. Yes.

CHAYTOR, Q.C.:

Q. If we could have, please, P-1576? Sorry about that, Mr. Dyer. This is a meeting of division of Anatomical Pathology, pathologists meeting at the General Hospital site, September 24th 2003, and I'm just going to take you to the first page, in terms of who's in attendance at the meeting. We have Doctors Fernandez, Chittal, Parai, M. Parai, Pirzada, Ejeckam, Carter, Barron, Fontaine and S. Parai, and on page three, under new business, "4.1. Laboratory technical quality. This was discussed with Barry Dyer, Terry Gulliver and Dr. D. Cook. The discussion included the technical quality of the slides, error of labelling, floater and others. Some of these issues have been documented. Dr. G. Ejeckam has given a lecture on quality assurance of the laboratory, which was attended by one senior technologist. This program is available for all the lab technical staff at a suitable time, if interested. A log book is available in the reporting room to record all problems"

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The issue of discussion included the technical quality of the slides, error of labelling, floaters and others, and it says that had been discussed with you. What do you recall, and again, this is September 2003, what do you recall around issues about the quality of the slides at that time?

MR. DYER:

A. That was all about the actual, the routine lab and we were having high--when I say "the routine lab" that's the basic cutting, staining, H&E and what was happening was we were having a lot of turn around, a lot of staff and turn around in staff and they were having issues that some of the sections that were coming out had holes in them, that was mainly what that was about, the quality of the slide. We did have, you know, again, we did have some error of labelling, like it might have been Block A instead of a Block B, floaters--what a floater is is whenever you're actually sectioning or doing a section, you have what we call a water bath and that's how you spread out your tissue, so with the water bath, it's slightly warmer than what the

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tissue is and it helps spread the tissue to get out wrinkles and folds and things like that, so the issue was between each cut, you would actually have to clean the water bath. So there was a floater or two identified, maybe one they assessed that was identified as floating onto another patient tissue.

CHAYTOR, Q.C.:

Q. Yes, those issues, though, if they're happening to your H&E slides, wouldn't they also, wouldn't it also be pertinent to your slides that are ultimately used for IHC?

MR. DYER:

A. Well IHC was usually cut by a separate person. This was just routine, I don't think we discussed anything about immunohistochemistry at that meeting.

CHAYTOR, Q.C.:

Q. So you believe your issues were limited to your routine -

MR. DYER:

A. That was all routine, so a log book was set up in the reporting room.

CHAYTOR, Q.C.:

Q. And so the log book, could any issues, though,

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with IHC also be entered in the log book?

MR. DYER:

A. I don't see why not.

CHAYTOR, Q.C.:

Q. It wasn't just limited to--there was no exclusion for IHC?

MR. DYER:

A. Not that I know of, although I think all they ever talked about was routine.

CHAYTOR, Q.C.:

Q. Okay, and I believe that we have P-2356 please? And this is a new exhibit, this is a total of five pages which has been provided to us. Can you tell us what this is?

MR. DYER:

A. This appears to be the log book that was set up in 2003 for technical issues.

CHAYTOR, Q.C.:

Q. For technical issues, okay.

MR. DYER:

A. Yes.

CHAYTOR, Q.C.:

Q. And as I said, there's only a total of five pages provided to us, are you able to say, did you select which pages were to be provided or

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are you able to say what those pages are?

MR. SIMMONS:

Q. He'd have to produce the book -

CHAYTOR, Q.C.:

Q. No, that's--I was just wondering, my question is why these pages.

MR. DYER:

A. That's the entire book.

CHAYTOR, Q.C.:

Q. That's the entire book?

MR. DYER:

A. It is.

CHAYTOR, Q.C.:

Q. Oh, okay, so that's it.

MR. DYER:

A. That's it. I think in my original interview I remember that it didn't go on for a very long period of time, but that's the entire book right there.

CHAYTOR, Q.C.:

Q. Okay, and it appears to have started in August of '03 or there may be something a little bit before that, but the first date I see here is August 5th, '03.

MR. DYER:

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A. That's probably when it started.

CHAYTOR, Q.C.:

Q. And, so this is it, that's the entire book?

THE COMMISSIONER:

Q. Supposed to have ended by February of '04?

MR. DYER:

A. It ended -

CHAYTOR, Q.C.:

Q. Yes, trying to get to the end. The last entry is February 6th, 2004.

MR. DYER:

A. That's probably correct.

CHAYTOR, Q.C.:

Q. And so why didn't the practice continue?

MR. DYER:

A. I think you'll have to ask the physicians.

CHAYTOR, Q.C.:

Q. So this was set up, so I take it, what was the purpose, that they could communicate any issues back to the technical side?

MR. DYER:

A. Yes.

CHAYTOR, Q.C.:

Q. And who was responsible then for reading the log book and identifying any issues that

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needed to be addressed?
MR. DYER:
A. That would have been me.
CHAYTOR, Q.C.:
Q. That would have been you?
MR. DYER:
A. Yes.
CHAYTOR, Q.C.:
Q. And did you ever identify anything related to the quality of the slides?
MR. DYER:
A. The quality? Yes, if you read, you will see that there were issues.
CHAYTOR, Q.C.:
Q. Okay, so if we come down to here, we have September 28th, '03, is that right?
MR. DYER:
A. Yes.
CHAYTOR, Q.C.:
Q. September 12th, 2003, I believe, maybe, and it says "slide show, poor quality, folds etceteras", is that -
MR. DYER:
A. No, that's the surgical number.
CHAYTOR, Q.C.:

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Q. I'm sorry?
MR. DYER:
A. That's the surgical number, so that's surgical 12,803.
CHAYTOR, Q.C.:
Q. Oh, thank you, it's not a date.
MR. DYER:
A. No.
CHAYTOR, Q.C.:
Q. I assume it's sometime in '03, though.
MR. DYER:
A. I would imagine it's the fall.
CHAYTOR, Q.C.:
Q. Because it appears it's only '03 up to February '04?
MR. DYER:
A. Yes.
CHAYTOR, Q.C.:
Q. "Slide show, poor quality, folds, et cetera." Is there anything else then in reading through it, in terms of the quality of the slides?
MR. DYER:
A. There may be some more there.
CHAYTOR, Q.C.:
Q. I take it you've looked through this before?

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MR. DYER:
A. Just a couple of days ago, yes.
CHAYTOR, Q.C.:
Q. And what would you do, for example, with a comment like that? What would need to be addressed?
MR. DYER:
A. When we met to discuss technical issues, one thing that I had to do first was we put a mechanism in place to identify exactly what each tech was doing, so what we did was I wrote a policy on all technologists who cut a block of any kind would always have to record it into a book that they cut that block. And they would actually record the block if the block--they would record the case, if the case had twenty blocks, they would record each of the twenty blocks, so that now I would be able to go back and track down issues. Also the same thing is you can see there's some embedding there. We did the same thing with embedding, what we did was everybody was given a different colour based on what week you were working and there were, like little stickies and you would actually put them right into the

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top part of your cassette, so I could pick up a block and say this is red, right, and the date it was done. And I could identify who actually embedded it, so that was the mechanism I put in place so we could actually start corrective action for issues like this. And what I would do is I would investigate each case to see what happened and I would report back to the physician what we found.
CHAYTOR, Q.C.:
Q. And how would you report back--it doesn't appear that there are any signatures on any of these comments.
MR. DYER:
A. No signatures, no, I would just go back based on the surgical number, I could see who it was assigned to.
CHAYTOR, Q.C.:
Q. Okay, so they wouldn't actually sign that as their particular complaint, you would then look up the surgical number -
MR. DYER:
A. No, I don't think there are any signatures there at all.
CHAYTOR, Q.C.:

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Q. And you would look up the surgical number then and figure out who the physician was from there.
MR. DYER:
A. Right, and I would talk to the tech about the case to see, the big thing would be what kind of case it was, how challenging it was and what we can do about it.
CHAYTOR, Q.C.:
Q. And in reviewing those few pages over the past couple of days, did you see anything in there pertaining to IHC?
MR. DYER:
A. Well right here on the AU6503, page one, immunohistochemistry was ordered on these blocks, slides were cut and labelled "slides don't correspond to the actual block", so what happened was a wrong case must have been pulled.
CHAYTOR, Q.C.:
Q. Okay, and in terms of the quality of the staining or fixation issues, did you see anything along those lines identified?
MR. DYER:
A. I believe there was one fixation issue there

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on the last page, yes, right here. February 6th, '04 on all small cases and I believe that that's from--so that would be Health Science. "Variable fixation, nuclei very poorly preserved."
CHAYTOR, Q.C.:
Q. And what does this say over here?
MR. DYER:
A. That's Dr. Lynn Morris-Larkin's signature.
CHAYTOR, Q.C.:
Q. So Dr. Morris-Larkin did sign her signature there?
MR. DYER:
A. Yes, she did.
CHAYTOR, Q.C.:
Q. And so what would you have done then to address that issue?
MR. DYER:
A. I can explain that issue because that's what we would call an event or because it was more than one, it was multiple, we might have had 20 biopsies that day and they all had the same issue, and what had actually happened was I think that if I remember correctly, at some point around that time, we were running low,

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not us, but I think the PD department was running low on formalin, and the prefilled containers, so I believe they asked us if they could fill up some containers over in our department and we agreed that they could do it that evening, so they came in and they might have filled up 30 or 40 containers to send upstairs to surgical daycare. And when they came down, so that might have happened let's say on a Wednesday, they were just trying to group fill for this one group, just to get by and I remember when the techs were grossing that data, they were getting this strong scent and what had actually happened was the people who filled the containers didn't fill them with 10 percent neutral buffered formalin, they filled it with 10 percent acidic buffer formalin and that was the smell that they were getting, but they were already there, so we took them out and put them in buffer formalin as soon as possible and ran them as we would.
CHAYTOR, Q.C.:
Q. And had any tests already been processed or was this detected immediately?
MR. DYER:

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A. No, I think it was detected right up, after a few cases were grossed, they started getting that smell, so then they started checking all the bottles and removing the specimens and putting them into buffer formalin.
CHAYTOR, Q.C.:
Q. And do you know whether or not any breast specimens had been -
MR. DYER:
A. No, these were biopsies, all--she says "they're all smalls" so these were like, probably all like upper GIs.
CHAYTOR, Q.C.:
Q. Okay. And if we could have then please, and I take it if there had been any testing done at that point in time, it would have been picked up immediately, for example, if there had of been any testing on your formalin at that time, that would have been detected?
MR. DYER:
A. I don't understand.
CHAYTOR, Q.C.:
Q. So in terms of it being the wrong chemical, not 10 percent buffered formalin, if there had been any kind of testing carried out, like you

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have in place now, that would have been detected at the time.

MR. DYER:

A. No, that wouldn't because -

CHAYTOR, Q.C.:

Q. It wouldn't?

MR. DYER:

A. No, we have a vat here of, like they came into our gross room, we had two or three different vats, like this was 10 percent formalin, buffered formalin, this might have been 20 percent, this might have been acidic formalin, and they just took the acidic formalin and poured it on, so unless we checked every single container and, you know, we do 500 a day, if we checked every single container, you would not have picked that up.

THE COMMISSIONER:

Q. How many a day?

MR. DYER:

A. We do about 4 to 500 specimens, about 400 specimens a day.

THE COMMISSIONER:

Q. Are you saying you're filling 4 to 500 containers a day?

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MR. DYER:

A. No, it's all pre-purchased right now, but at that time, they were running low, so they filled up 20 or so that day themselves and brought them up to the clinic.

THE COMMISSIONER:

Q. I was thinking in terms of your having pre-purchased the solution, are you telling me you pre-purchased something with the solution in it?

MR. DYER:

A. Yes, that's how it's done now.

CHAYTOR, Q.C.:

Q. Okay, so you don't actually have to fill it.

MR. DYER:

A. No.

THE COMMISSIONER:

Q. Okay, thank you.

MR. DYER:

A. Does that make sense?

CHAYTOR, Q.C.:

Q. Yes, okay, thank you. If we could have, please, P-2320?

THE COMMISSIONER:

Q. I'm sorry, the environmentalist in me is just

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popping up, so do you send them back then later for refilling, the container?

MR. DYER:

A. No, they're all -

THE COMMISSIONER:

Q. Disposable?

MR. DYER:

A. They're all disposed, yes, they're kept for two months until we know the case is completely signed out and no issues, and then they're all disposed of.

THE COMMISSIONER:

Q. Okay, thank you.

MR. DYER:

A. A huge storage issue with them because there's hundreds of bags.

THE COMMISSIONER:

Q. Huge disposal issue too.

MR. DYER:

A. Yes, very much so.

THE COMMISSIONER:

Q. P-2320.

CHAYTOR, Q.C.:

Q. P-2320 and this is a meeting of the division of anatomical pathology, pathologists' meeting

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again, General Hospital site, December 11th, 2003, and people in attendance are indicated, physicians who are in attendance. And on page 6 of this exhibit, under "New business issues" it says "Mr. Barry Dyer has discussed and informed a number of issues, these are amalgamation of the anatomical pathology technical lab, corporate wide autopsy on call for the autopsy assistant, renovation of the gross room in the lab, new immunostainers and special stainer, preliminary surgical pathology report, sperm analysis and autopsy information form, as well as editing sign-out report." So, Mr. Dyer, I take it would you bring issues to somebody's attention and then they could be passed along to this group for discussion?

MR. DYER:

A. Yes.

CHAYTOR, Q.C.:

Q. And who would you report to? Who would you pass along the information to?

MR. DYER:

A. Dr. Parai.

CHAYTOR, Q.C.:

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Q. I'm sorry?
MR. DYER:
A. Dr. Parai.
CHAYTOR, Q.C.:
Q. And here it refers, of course, that you are passing along information on the amalgamation of the anatomical pathological technical lab, so as of December 11th, 2003, that's still an ongoing project of yours, I take it?
MR. DYER:
A. It was an ongoing project until it was completed.
CHAYTOR, Q.C.:
Q. And if we could have, please, P-2321? And this is a week later, the same group, so were these weekly meetings?
MR. DYER:
A. I don't think so, I think they were more monthly--oh, I'm sorry, oh this is the site chief one? That would be, I believe we tried to have those monthly.
CHAYTOR, Q.C.:
Q. Okay, this one is site chiefs?
MR. DYER:
A. Yes, that's site chiefs.

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CHAYTOR, Q.C.:
Q. Yes, and the other one was pathologist.
MR. DYER:
A. Yes.
CHAYTOR, Q.C.:
Q. This is Dr. Cook, Dr. Parai and yourself in attendance at this meeting.
MR. DYER:
A. Yes.
CHAYTOR, Q.C.:
Q. And it looks like, it says, "Quality Assurance Program, the draft Quality Assurance Program has been reviewed and revised." Do you recall what that was referencing at the time?
MR. DYER:
A. Again, Dr. Cook and Dr. Parai were working on a quality assurance program and they were started to bring it to the--once they had, I think, pretty well a draft made, they would bring it--they started bring it to the site chief's meeting where I started to become involved.
CHAYTOR, Q.C.:
Q. So I take it at this point in time there was no program, no quality assurance program in place.
MR. DYER:
A. No official one, not that I know of.
CHAYTOR, Q.C.:
Q. And on page 4, under "New technology". "Mr. Barry Dyer has informed that the lab will adopt new technology from January to March of 2004, therefore, there will be a slowdown of the technical work for some time. He also informed the consolidation of the technical lab, as well as need for a policy for billing immunoperoxidase technical work and return of the slides to the centre. The last issues will be discussed in a program meeting and a corporate-wide policy will be adopted." So the technology, I take it that's coming in, is that the -
MR. DYER:
A. That would be our validation, that was our period to validate the Ventana to see if we were going to use it.
CHAYTOR, Q.C.:
Q. Okay, and you are also informing regarding the consolidation then of the technical lab, so that's ongoing into -

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MR. DYER:
A. Constant.
CHAYTOR, Q.C.:
Q. At that time as well, okay. And perhaps then, this brings us to December of '03, so tell us then when is the Ventana system acquired and what happened in terms of validating that system?
MR. DYER:
A. What happened was, so the Ventana came in, in late December, 2003 and it came down to its new site and so what happened was early, like I'm not sure, maybe the 3rd or 4th of January or sometime--in the first couple of weeks of January, the technical representative came in and what happened was when she arrived, I brought her up to our receiving area because that's where all the equipment was still boxed. We didn't touch anything when it came in and what had happened was she had a look at the boxes outside, because these were big, to make sure everything was okay and once it was, then the men who worked in receiving, then proceeded with her and me to bring the equipment down to the lab. We couldn't get it

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into the lab, of course, too big. So out in the hallway in the very back of the lab is where Carole started to dismantle the boxes and slowly take one piece at a time and she brought it into the lab. When she brought it into the lab, she, over the next couple of days, she set up the equipment and did whatever was required to do, like I think she was running a lot of solutions and that, cleaning everything out, doing the checks, making sure everything is up and running. Once everything was actually up and running, I think she did an actual system check and I know that because I watched her, using what is called an antibody vimentin. Once she did that and okayed everything, then she actually started the training, the training of the staff. So by that time, it was Ken--Ken was going to take on the lead role, he was out-- it's not that he was our youngest tech, but he was the tech who wasn't going to retire too soon, whereas Mary and Les could soon retire, and actually in '03, I think they were at the age to go or pretty close. So Ken was picked to work on the validation and I have a little

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bit of knowledge about technology and equipment and all this stuff, so I also participated. So we started, she started step one and started teaching us all about the equipment and so she had manuals with her of the equipment and how to use it, but what would happen in the evenings, I would come back every evening and I would print off all the manuals, so like the system was a PC, so I printed off a training manual, I printed off a total operating manual and I also printed off--I created what I call the easy steps to using the benchmark, and what I did there was I took out the things that I didn't deem important as to how to operate this manual without going through a book this thick, so over the next few nights I did that, and every day, myself and Ken, she would give seminars on the machine, hands on, teaching us how to receive reagents, what the reagents were about, how to set up protocols.

CHAYTOR, Q.C.:

Q. And were Les and Mary part of that as well?

MR. DYER:

A. Les and Mary? On and off. We still had to

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maintain the running of the lab for immunos and at that time I believe there were still doing some grossing. So Mary and Les kept the lab going and myself and Ken learned the Ventana system. But there were periodic times when they got into certain things, like maintenance and that, that I would have them come down too and sit in for an hour, hour and a half lecture, and so that went on, I'm not sure if it was for like a week or a little over a week.

CHAYTOR, Q.C.:

Q. With the Ventana representative.

MR. DYER:

A. With the Ventana rep, yeah, she was there, I'm not sure if she might have been there two weeks in total and we even ran, like once we got through the training and felt comfortable, then we actually created some protocols and ran them just to get comfortable with the system.

CHAYTOR, Q.C.:

Q. And Mr. Green told us about receiving protocols from different hospitals across Canada?

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MR. DYER:

A. We had protocols from the west and central as to how they actually--for protocols to give us ideas.

CHAYTOR, Q.C.:

Q. And you adopted your own on that.

MR. DYER:

A. But we would try to adopt our own first and only if we really had--if we struggled, we felt then we would go and try their protocols.

CHAYTOR, Q.C.:

Q. And was any pathologist involved in this?

MR. DYER:

A. In terms of the actual technical learning? No.

CHAYTOR, Q.C.:

Q. In terms of validating then the machinery, in terms of the results afterwards?

MR. DYER:

A. Once we started the actual validation, we would use our current controls that we had in the system and we would actually--and we would start running them to try and identify a proper protocol.

CHAYTOR, Q.C.:

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Q. Okay, so you took the controls which had been produced -
MR. DYER:
A. From the DAKO.
CHAYTOR, Q.C.:
Q. From the DAKO system and that's what you used to validate the Ventana system?
MR. DYER:
A. Yes, the same controls we were currently using.
CHAYTOR, Q.C.:
Q. Okay, and was there any concern that that tissue would not have been processed the same way as what would be coming out of the Ventana system, in terms of, for example, the antigen retrieval process? Was there any concern that the control tissue would have been put through a different process?
MR. DYER:
A. No, the control itself was still put through the same process, but now we were setting up a brand new system, so we would do different protocols. Am I answering the question right?
CHAYTOR, Q.C.:
Q. Okay, so you took--when you said you used the

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same controls that were used for DAKO, I guess that's what I'm not understanding. What exactly -
MR. DYER:
A. Oh. Well, see the controls that we were currently on the DAKO system was what the pathologists were interpreting. So we took those exact same controls to work on the Ventana system to get the same result.
CHAYTOR, Q.C.:
Q. Yes, okay.
MR. DYER:
A. That would be our goal.
CHAYTOR, Q.C.:
Q. So you identified blocks which would be suitable to use for controls?
MR. DYER:
A. Correct, and that was done, again, by pathologists.
CHAYTOR, Q.C.:
Q. Okay, sorry.
MR. DYER:
A. So then what we would do was--so then we would--so first of all, we would actually start running protocols to identify what would

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be a good protocol and we would bring the slides out to pathologists to read or to interpret.
CHAYTOR, Q.C.:
Q. Okay, and was there any concern, in terms of the technologists? Did any of the technologists have particular difficulty in trying to learn the new system?
MR. DYER:
A. The system was very user friendly. Again, Mary, Mary was a little nervous or a little wary of computers, but by March, she was well trained also.
CHAYTOR, Q.C.:
Q. Okay, by March?
MR. DYER:
A. By March, yes.
CHAYTOR, Q.C.:
Q. And as her manager, did you have any concern that she might not be ready or not able to carry out the system?
MR. DYER:
A. Not at all.
CHAYTOR, Q.C.:
Q. So you felt comfortable that she and the

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others were -
MR. DYER:
A. Very much so.
CHAYTOR, Q.C.:
Q. - were well trained and able to run the Ventana system?
MR. DYER:
A. Yes, and again, the idea was to teach them troubleshooting of the machine and that's what I trained them--that's what Carol trained and that's what I also, and Ken also trained. In one week, for the week of March 1st, I believe--where, Ken was going to be the main user, key operator, he was going down to the Ventana, down to Arizona, to also train, and I tagged along to also go.
CHAYTOR, Q.C.:
Q. So you went to Arizona for the training as well?
MR. DYER:
A. Yes, we spent, I think it was Monday to Friday, a full week of training, and they gave us opportunity, we actually brought--I know I brought down a lot of my own slides to try, because HER2/neu was something that we weren't

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doing on automation and FISH, fluorescence in situ hybridization, and so I brought those with me too, just to see what the capability would be, and the results were fantastic.

CHAYTOR, Q.C.:

Q. Was there any--when the Ventana system was introduced, was there any change to the ER or PR clone that was being utilized?

MR. DYER:

A. Not at first. While we were testing the system, we continued to use the DAKO antibodies, but I think, again, when it comes to standardization, one big component that was offered by Ventana was predilute antibodies.

CHAYTOR, Q.C.:

Q. Yes.

MR. DYER:

A. So that's an antibody that was already QC'ed at the company and came in, and that's where I really would like to go. So what happened was sometime in March--we only started validating in February for the actual ER, I believe, or maybe late February, but in March is when the predilutes actually came in, and the predilute, I believe, for the ER was

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different, their clone was different. So what we did then was we went through another range of validations, using that different clone on our current controls to see if we could use the--to see if their predilutes would be satisfied, we would be happy with them.

CHAYTOR, Q.C.:

Q. And which pathologist would have assisted you in that regard?

MR. DYER:

A. Again, the--in what regard?

CHAYTOR, Q.C.:

Q. In terms of validating the new clone.

MR. DYER:

A. What pathologists were available at the time.

CHAYTOR, Q.C.:

Q. So where's Dr. Ejeckam in this picture? Is he still -

MR. DYER:

A. Dr. Ejeckam was involved also.

CHAYTOR, Q.C.:

Q. But he's not overseeing -

MR. DYER:

A. But he wasn't -

CHAYTOR, Q.C.:

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Q. - the IHC lab at this point?

MR. DYER:

A. Oh, he was overseeing the lab, yes, but he-- but not all slides went to him. We were bringing the slides to whatever pathologist was available at the time.

CHAYTOR, Q.C.:

Q. So there wasn't one pathologist assigned to assist in this matter?

MR. DYER:

A. No.

CHAYTOR, Q.C.:

Q. Why not? Why wouldn't Dr. Ejeckam have been the person?

MR. DYER:

A. I don't--that's a good question, you know, and I don't know. I know when we were setting up the system, pathologists were coming in very excited to want to see the new system, and I think, you know, whoever was open, we would just go right to them, but Dr. Ejeckam also viewed a lot of the slides and he also helped us a lot with the controls at that time. Like he was really involved with identifying controls for us. So he was involved with the

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system, but I don't think he--I know he didn't review all the slides. I mean, we did a lot, we did a lot of slides for the overall validation.

CHAYTOR, Q.C.:

Q. Okay, and if we could have, please, P-2357? I'm sorry, Commissioner, I don't think I asked to have that one entered. These are new documents that we received over the weekend. It's P-2357.

THE COMMISSIONER:

Q. Can you repeat that number again?

CHAYTOR, Q.C.:

Q. P-2357, if we could have that entered?

THE COMMISSIONER:

Q. Just 57?

CHAYTOR, Q.C.:

Q. 2357.

THE COMMISSIONER:

Q. Not 8? That one was reserved as well. You said these are documents -

CHAYTOR, Q.C.:

Q. Oh yes, yeah, P-2357, yes, not 8.

THE COMMISSIONER:

Q. Okay, P-2357?

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CHAYTOR, Q.C.:
Q. That's correct.
THE COMMISSIONER:
Q. Entered.
EXHIBIT ENTERED AND MARKED EXHIBIT P-2357
CHAYTOR, Q.C.:
Q. Thank you, and it might take a while to bring it up. This is 173 pages, I think, this exhibit. Ah, it's pretty fast. And perhaps you could just give us as a quick education on this, Mr. Dyer, and tell us what these documents are and if you wish to pass through a number of the pages, you can just click in the arrow at top and I don't need to tell that to someone who's so astute on computers, do I?
MR. DYER:
A. I'm not--I'll leave it in your hands. This is a completed staining run. So it tells us the run number, the instrument we used, and the instrument type, run operator, administrator, when the run started, when was the run completed, if it was delayed. Like you can delay a start when it comes to the Ventana system, just like with the DAKO, so if I wanted to--if it was 5:00 in the evening, I

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can set up a run overnight and when I come in 8:00 tomorrow morning, I just got to take them off. So I can delay the system.

Then you have your reagent usage detail and this is true--really what you see here is your detection kit, copper, hydrogen peroxide, DAB, SA biotin and inhibitor, and then you also see your vimentin, which is your antibody. So it just tells you serial number, tests dispensed, how many are remaining in that container, what the life is, the lot numbers and when they will be expired.

Then you have a protocol detail and this detail tells you slide position and then the products of slide position 1, 3, 5, 7 and then it tells you the other protocol you ran, protocol number. Usually a number will come up there and then if you want to identify your case, your block ID or your slide, what it is, you can print these out and you can make a comment on staining, if it's positive or negative, and you can make background comments and then you can sign it off.

CHAYTOR, Q.C.:
Q. Okay, and so this was a form brought in, was

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it, for the -
MR. DYER:
A. This is built right into the Ventana system.
CHAYTOR, Q.C.:
Q. On the Ventana system.
MR. DYER:
A. This automatically generated every time you run a report, or I mean, run a--do a run.
CHAYTOR, Q.C.:
Q. When you do a run?
MR. DYER:
A. Yes.
CHAYTOR, Q.C.:
Q. Okay, and then what do we have on page two?
MR. DYER:
A. On page two is--okay, this is the extended report. So what it's telling me is, again, run number, instrument, type, administrator, delay start, and then we come down to the actual detailed report. So position one, the protocol was called VIM install and it tells you exactly what's dropped on that slide. So it actually tells you specifically what was dropped on each individual slide.
CHAYTOR, Q.C.:

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Q. Okay.
MR. DYER:
A. Based on the antibody or the detection kit used.
CHAYTOR, Q.C.:
Q. Okay, and this will tell up here then when the run started?
MR. DYER:
A. Yes.
CHAYTOR, Q.C.:
Q. 5:10 p.m. on January 15th, 2004 and completed January 16th, 2004 at 7:28 a.m.
MR. DYER:
A. So that was the delayed start.
CHAYTOR, Q.C.:
Q. So that ran overnight?
MR. DYER:
A. Yes.
CHAYTOR, Q.C.:
Q. Okay, and so then the--so I take it then someone would come in in the morning and this could be printed off and this would give you your details?
MR. DYER:
A. If you--you can print it off or just read it

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on screen.
CHAYTOR, Q.C.:
Q. Or just read it on the screen?
MR. DYER:
A. If you read some of my notes, I was anti paper. I believe in everything's on screen. Read it on the screen.
CHAYTOR, Q.C.:
Q. Okay, and these are then different run reports, I take it?
MR. DYER:
A. Yeah, that's all from the same run. It's just telling you each position that the slide was--each slide position, so it describes every single position and what was done, what was decanted or dropped.
CHAYTOR, Q.C.:
Q. Okay, and again this is January, mid January 2004, so was this--what's happening here, is this part of the validation of the Ventana machine?
MR. DYER:
A. This would be the final check that the technical expert did before we actually started operating. So I believe what she did,

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she ran these and then she interpreted each slide to ensure that the intensity change--I believe what she did is she changed each protocol by four minutes and to determine--and she did a reading to determine that the actual stain intensity was increasing, the specificity and sensitivity was actually occurring, and then she gave us permission, gave us a go once that was done.
CHAYTOR, Q.C.:
Q. Did she indicate any problem or that she had noticed any concern or problems with your slides, the quality of the slides?
MR. DYER:
A. She didn't read the quality of our slides.
CHAYTOR, Q.C.:
Q. In terms of any fixation issues that may or may not be apparent, did she make any comment on that?
MR. DYER:
A. She didn't. Again, I don't think she actually read any of our slides.
CHAYTOR, Q.C.:
Q. Okay.
MR. DYER:

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A. So she wouldn't have seen any of our patient tissue.
CHAYTOR, Q.C.:
Q. So the slides would have been taken to a pathologist?
MR. DYER:
A. No, these here, I believe that she brought in her own.
CHAYTOR, Q.C.:
Q. I'm sorry, she brought her own slides?
MR. DYER:
A. Yes, because this is all just -
CHAYTOR, Q.C.:
Q. These are her slides?
MR. DYER:
A. These are her slides for validation of the system.
CHAYTOR, Q.C.:
Q. Okay.
THE COMMISSIONER:
Q. So that system was not validated on slides generated within your institution?
MR. DYER:
A. No, for the actual technical, for her?
THE COMMISSIONER:

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Q. Yes.
MR. DYER:
A. No, I don't think they were. I do not believe they were ours. I can't truly remember, but I don't think they were ours.
THE COMMISSIONER:
Q. Okay, thank you.
CHAYTOR, Q.C.:
Q. So what she did that week, she brought her own slides, and -
MR. DYER:
A. Yes, to see that--because I think they were her own QC slides to determine that the system was performing to a specific standard.
CHAYTOR, Q.C.:
Q. Were the protocols set up according to her slides then?
MR. DYER:
A. Yes. No, just this one protocol, VIM install. Just this one protocol she did for the purpose of making sure the system was performing the way it should perform.
CHAYTOR, Q.C.:
Q. Okay, and -
MR. DYER:

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A. It had nothing to do with our validation.
CHAYTOR, Q.C.:
Q. Okay, so that came after she's--she's come and gone, showed you how to use the system?
MR. DYER:
A. No, she's still here.
CHAYTOR, Q.C.:
Q. Yes.
MR. DYER:
A. But she now--she's now telling us that, you know, based on their QC, this system is now operational to run.
CHAYTOR, Q.C.:
Q. Okay.
MR. DYER:
A. So then we did a few while she was here, just to make sure we were doing it properly.
CHAYTOR, Q.C.:
Q. Okay, and when you did a few, you used your own slides?
MR. DYER:
A. Yes.
CHAYTOR, Q.C.:
Q. Well then, and I'm not sure, is this just more of the same or do you want to -

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MR. DYER:
A. No, all this stuff you're seeing now is all validations that we actually started doing on the system.
CHAYTOR, Q.C.:
Q. Okay, with different reagents?
MR. DYER:
A. With different protocols using ER/PR.
CHAYTOR, Q.C.:
Q. Okay, so these are all ER/PR?
MR. DYER:
A. Yes, everything you got is related to ER/PR.
CHAYTOR, Q.C.:
Q. Just ER/PR?
MR. DYER:
A. Just ER/PR, up to March 31st.
CHAYTOR, Q.C.:
Q. Of 2004?
MR. DYER:
A. Of 2004. At the same time, you will see some different antibodies there because we weren't just running ER/PR at the time.
CHAYTOR, Q.C.:
Q. Okay, and in going through them, this whole process, did you run into any particular

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concerns or problems?
MR. DYER:
A. Not that I'm aware of. Again, you know, we were running the ER/PRs using the DAKO system, I mean, using the DAKO antibody.
CHAYTOR, Q.C.:
Q. Yes.
MR. DYER:
A. But as we were--as we ran low, we would start changing over to predilutes.
CHAYTOR, Q.C.:
Q. And again -
MR. DYER:
A. Which is what the goal was with this Ventana system.
CHAYTOR, Q.C.:
Q. And there was a separate validation done, you said, for that, when you switched to your predilute?
MR. DYER:
A. Yes. Yes, if you go to February or if you go to March 15th or 16th, you will see we started getting into the -
MR. SIMMONS:
Q. Excuse me, you can open the bookmarks from

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that. Each run is bookmarked, so you can click on the date and then go right to the start of that run.
MR. DYER:
A. The last few days in March, like try the 26th. I believe that might have been a good one, 24th, 25th, 26th, all those times. So here we are. So if you look at this sheet, you can see--so based on--we were doing some AE1 to AE3's, but if you read the usage, you'll see again what's on that--what's there is the actual detection kit, and then the actual antibodies that we used. So if you look at number eight and number nine, number eight is the PGR clone 16 and number nine is the anti ER 6F11. So they're the two, they are two clones or they were the two predilutes that we brought in, and if you come down a little bit further--oh, I mean, scroll down a little bit further, you will see, here's protocols that we started to set up. So if you look at number eight to number 15, they were protocols.
And what we did was, it was a lot of work to create a different protocol every single

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time, so we did the same thing that Carol taught us. If you actually look at this, you see PR mild 32, PR mild 32, that's a protocol recreated, but that doesn't mean that they're all the same. So what we would do is we would create a protocol PR and then we would start off with 32 and then what would happen is we would change--then we would print out that actual bar coded slide label and put it on a slide and then we would go in and change it by four minutes and go to 28 and then we would do that and we would actually identify on the slide what the actual times were, based on our slide position. If you look at, it's the same thing as Carol, when you go back to the beginning, she had 40 protocols for VIM install and it's all the same word, but every protocol is actually different.

CHAYTOR, Q.C.:

Q. Why wouldn't you just call them PR mild 28?

MR. DYER:

A. It would take -- I think we only had 900 -- we only had 900 spaces for protocols and we did hundreds and hundreds and it would -- we would quickly use them up. If you go through, you

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will see that we did do that for some, but it was using up a lot of the space.

CHAYTOR, Q.C.:

Q. Okay.

MR. DYER:

A. Like I said --

COMMISSIONER:

Q. Just to make sure I understand this, you're saying that if we go from number 8, 9, 10, and 11, all of which if one just reads, the letters and numbers like alike; in fact, if you go within them, there are slight differences in the protocol?

MR. DYER:

A. Yes.

CHAYTOR, Q.C.:

Q. Okay, and then you would bring the slides to whatever pathologist was available and --

MR. DYER:

A. They would review.

CHAYTOR, Q.C.:

Q. They would review and tell you which they preferred or which they thought were the better quality?

MR. DYER:

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A. Yes.

COMMISSIONER:

Q. And would you then delete the others?

MR. DYER:

A. Yes.

CHAYTOR, Q.C.:

Q. And stick with if it's PR mild 32, or if it's 28, that's the one you go with/

MR. DYER:

A. Yes.

CHAYTOR, Q.C.:

Q. And that's the one then that's programmed into the system?

MR. DYER:

A. Yes, and then you will see a protocol number.

CHAYTOR, Q.C.:

Q. How many -- for ER and PR, how many tests, how many slides -- how many tests, I guess, were run, how many different protocols were run and how many slides in each protocol?

MR. DYER:

A. I can't be that specific.

CHAYTOR, Q.C.:

Q. Are you able to tell me whether it was four or five slides for each protocol or 50 slides for

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each protocol?

MR. DYER:

A. No, we would just run our control.

CHAYTOR, Q.C.:

Q. So you would run --

MR. DYER:

A. We would use the same control for different protocols.

CHAYTOR, Q.C.:

Q. So you would run one slide for each protocol?

MR. DYER:

A. Yes.

CHAYTOR, Q.C.:

Q. Okay, so one slide for each protocol, and how many different protocols do you recall?

MR. DYER:

A. I can't give you --

CHAYTOR, Q.C.:

Q. Without telling me exactly.

MR. DYER:

A. I can't give an exact number, but if we go through between the DAKO and the Ventana --

CHAYTOR, Q.C.:

Q. Uh-hm.

MR. DYER:

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A. I believe overall it's over 150.
CHAYTOR, Q.C.:
Q. Okay, different protocols?
MR. DYER:
A. Well, no, like protocols or parallel runs based on a protocol that was selected. We ran quite a few, a lot actually.
CHAYTOR, Q.C.:
Q. And you were trying to get -- in running the two parallel runs between the DAKO and the Ventana, you're trying to get the Ventana to produce a similar result as the DAKO?
MR. DYER:
A. Yes.
CHAYTOR, Q.C.:
Q. Okay, and so the first thing you did, and tell me if that's not right, the first thing you did was the actual validation on the Ventana to come up with which slides the pathologists thought were the best. So you come up with the protocol that they thought was the best for ER? Let's just stick with ER.
MR. DYER:
A. Yes.
CHAYTOR, Q.C.:

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Q. And then you would take that and then do a parallel run with what the DAKO was producing?
MR. DYER:
A. Yes.
CHAYTOR, Q.C.:
Q. And then there might be further adjustments needed?
MR. DYER:
A. Yes.
CHAYTOR, Q.C.:
Q. Were there any discrepancies? Did you notice discrepancies between what Ventana was producing and what DAKO was producing?
MR. DYER:
A. In terms of positive and negative, I was never ever informed of a discrepancy. However, in the Ventana it was definitely -- the comments were "definitely much sharper, much crisper, much stronger".
CHAYTOR, Q.C.:
Q. So when you brought those slides to compare, you would bring the DAKO and the Ventana slide to a pathologist?
MR. DYER:
A. I didn't do that myself. That's what Ken told

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me. As things come off, I would just bring them as I had them, but, yes, we would bring them to the pathologist.
CHAYTOR, Q.C.:
Q. But what feedback you received was that pathologists were commenting the Ventana was much crisper, much stronger, and the result were much crisper and much stronger?
MR. DYER:
A. Yes.
CHAYTOR, Q.C.:
Q. But nobody actually said, well, I've got different results?
MR. DYER:
A. I've never heard that comment. All I've heard was again, you know, that the results -- not the results, but the stain quality itself was much better.
CHAYTOR, Q.C.:
Q. Were you checking the controls?
MR. DYER:
A. Myself?
CHAYTOR, Q.C.:
Q. You or Ken through the process, were you checking?

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MR. DYER:
A. Looking at these controls, yes.
CHAYTOR, Q.C.:
Q. And were you seeing any problems with the controls?
MR. DYER:
A. Again I wasn't qualified to actually identify nuclear staining when it came to ER/PR. All I identified was -- you know, was it brown stain or not.
CHAYTOR, Q.C.:
Q. Were you seeing any difference in what you were seeing in terms of the intensity of the stain?
MR. DYER:
A. I think -- I think I might have seen a stronger intensity, yes.
CHAYTOR, Q.C.:
Q. On the Ventana?
MR. DYER:
A. yes.
COMMISSIONER:
Q. Sorry, but can I just interrupt while the question is running through my head. When you say you compared the DAKO to the Ventana, the

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comparison was just for results, correct?
MR. DYER:
A. Just for the quality of stain, not actual results themselves.
COMMISSIONER:
Q. Well, that's what I'm trying to get at because as I understand in the validation process when the DAKO originally came in and they compared the results on the DAKO to what they had been getting by the prior method, which, in fact, destroyed the tissue, correct, and now when the Ventana comes in, you compare the Ventana to the DAKO?
MR. DYER:
A. Yes.
COMMISSIONER:
Q. And tell me what the purpose of that is?
MR. DYER:
A. What was the purpose of --
COMMISSIONER:
Q. What's the purpose of going through that comparison process?
MR. DYER:
A. To see if the stain was the same, to see how close the stain would be.

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COMMISSIONER:
Q. So when you're validating the DAKO, you assume your old stains were correct, and when you're validating the Ventana, you assume the DAKO is acting correctly?
MR. DYER:
A. Is correct?
COMMISSIONER:
Q. Yes.
MR. DYER:
A. Yes.
COMMISSIONER:
Q. Okay, and in this case, as I understand it, you're saying that the Ventana results were sufficiently like the DAKO to be considered to be okay?
MR. DYER:
A. I think so, yes.
COMMISSIONER:
Q. And have the added benefit that the slides themselves produced a crisper stain, etc, etc?
MR. DYER:
A. Yes.
COMMISSIONER:
Q. All right, thank you.

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CHAYTOR, Q.C.:
Q. Were there any adjustments made to what was being produced by the Ventana to make it more like what was coming from the DAKO?
MR. DYER:
A. No, I think the Ventana always appeared to be much more intense. Again we worked out a protocol and used that protocol.
CHAYTOR, Q.C.:
Q. And throughout that whole process in terms of any comparison between the two systems, no alarm bells went off for anyone or no major concerns or discrepancies were brought forward?
MR. DYER:
A. Again I don't think the -- I can't ever recall a physician actually sitting down and grading the control. I don't think that ever happened. I think they just looked at it for positivity to see if it worked.
CHAYTOR, Q.C.:
Q. And the pathologist that you went on one day with one particular protocol and the pathologist you went to the next day with a different protocol may not have been one and

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the same?
MR. DYER:
A. True, although I think for the ER/PR -- I'm not quite sure, but I think for the ER/PR our tendency was to go with Dr. Robb.
CHAYTOR, Q.C.:
Q. Dr. Robb?
MR. DYER:
A. Yes, he did a lot of research and a lot of, like, ER/PR, HER-2-neu and FISH. He was involved with a lot of that. So for some reason, he stands out as per the ER/PR, but it may not be. That's just -- for some reason he truly stands out.
CHAYTOR, Q.C.:
Q. Do you know what research Dr. Robb was doing on ER/PR?
MR. DYER:
A. Not in detail, no, I'm not sure, but I know he did have -- when we were involved with some of our ER/PRs -- no, when we were involved with our HER-2-neu, he had a huge spreadsheet of a lot of patients that he did ER/PR, HER-2-neu, and FISH, to follow up on. So he was doing his FISH to mark off his HER-2-neu's. So we

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know -- I know he had a lot of experience in that.

CHAYTOR, Q.C.:

Q. And did Dr. Robb ever bring to your attention any concerns he had with ER and PR tests?

MR. DYER:

A. No.

CHAYTOR, Q.C.:

Q. Is there anything else then about the validation of bringing on the Ventana System that you think needs explaining or anything else?

MR. DYER:

A. There may be a couple of points that may be important.

CHAYTOR, Q.C.:

Q. Okay.

MR. DYER:

A. The main point or the main difference between the Ventana System and the actual DAKO System was the antigen retrieval. I started to alert to it in that letter from Dan.

CHAYTOR, Q.C.:

Q. Yes.

MR. DYER:

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A. But the antigen retrieval system used in the DAKO was the citrate buffer pH 6, and the antigen retrieval used on the Ventana was the EDA -- high antigen retrieval, EDA, pH of 8 or 8.4. So if you look back here now, I think that's what was making such a tremendous difference in the actual stain.

CHAYTOR, Q.C.:

Q. The higher pH?

MR. DYER:

A. Yes.

CHAYTOR, Q.C.:

Q. Okay. You said there were a couple of points that you --

MR. DYER:

A. No, sorry, that was the big one.

CHAYTOR, Q.C.:

Q. That's the big one.

MR. DYER:

A. That was my main point. Other than that, everything was standardized.

CHAYTOR, Q.C.:

Q. Okay.

MR. DYER:

A. As I think Ken might have explained, there was

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no more boiling of water or anything like that. There were 20 positions on this new bench mark, and each one is a self-contained oven. So when you put -- the actual -- how can I explain it? The actual treatment of the tissue was identical from the point of deparaffinization right to the counter stain, whereas prior there were many variations and many attacks at that tissue, whereas now you just took your tissue once it's dried, put it on, and you took it off, done. A big difference.

CHAYTOR, Q.C.:

Q. Okay.

MR. DYER:

A. I think you mentioned that when Carole from Ventana was in attendance for the first week or so, she showed you maintenance on the machine?

MR. DYER:

A. Yes, she did.

CHAYTOR, Q.C.:

Q. And what maintenance the machine needed?

MR. DYER:

A. Yes.

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CHAYTOR, Q.C.:

Q. And you invited all the technologists to come to those seminars?

MR. DYER:

A. Yes.

CHAYTOR, Q.C.:

Q. And was the maintenance being carried out on the Ventana machine?

MR. DYER:

A. Not all the time, I found out.

CHAYTOR, Q.C.:

Q. Okay, and when did you realize that was not occurring?

MR. DYER:

A. Oh, when Carole came in in 2005.

CHAYTOR, Q.C.:

Q. So that's her visit in August, 2005?

MR. DYER:

A. Yes, yes.

CHAYTOR, Q.C.:

Q. Okay. After the Ventana was put in place, did you make any inquiries as to whether or not the maintenance was being carried out?

MR. DYER:

A. I don't think we actually monitored it. I

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think I relied on the techs to do it. It was a part of the protocol and it was actually built into the system. So, like, you would go on the PC. You call up daily and just tick it off, call up weekly and tick it off, monthly, as you're doing it. So what we decided to do was I just printed off a full year of all these types of maintenance and posted them on the wall, that it was mandatory to sign off every day.

CHAYTOR, Q.C.:

Q. Okay, and that was implemented after --

MR. DYER:

A. Carole, in August of '05.

CHAYTOR, Q.C.:

Q. In August, 2005?

MR. DYER:

A. Yes.

CHAYTOR, Q.C.:

Q. Okay. Is there anything else then on this exhibit before we leave it?

MR. DYER:

A. No, I think -- I think everything you have there is all the same. It just shows more and more ERs and PRs as you get further and

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further.

CHAYTOR, Q.C.:

Q. Okay. If we could have then, please, P-1913. This is another meeting of site chiefs and divisional manager; Dr. Cook, Parai, and Robb, and you're absent from this meeting, but there is a discussion here that I just wanted to bring to your attention. Under 4.2, new technology, "The immunoperoxidase stainer appears to be working generally well. However, there continues to be some problems with estrogen and progesterone receptors". What is -- do you know what's being referred to there?

MR. DYER:

A. I don't know why that's said, you know.

CHAYTOR, Q.C.:

Q. Were you aware of that, and again this is now March 31st, 2004, and I understand the machine becomes operational the next day?

MR. DYER:

A. No, I didn't -- honestly I didn't think we were having any issues with the ER and PR on the Ventana System.

CHAYTOR, Q.C.:

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Q. So who in attendance at this meeting; Dr. Cook, Parai, and Robb, who would be mentioning that? What would the source of that information be/

MR. DYER:

A. I would imagine Dr. Cook.

CHAYTOR, Q.C.:

Q. Was Dr. Cook involved in the process?

MR. DYER:

A. No.

CHAYTOR, Q.C.:

Q. Would it be Dr. Parai, as site chief?

MR. DYER:

A. It could -- I guess it could be, but I don't know.

CHAYTOR, Q.C.:

Q. Or would it be Dr. Robb? You said you brought most of your slides to Dr. Robb for ER/PR.

MR. DYER:

A. My interpretation after our last run on March 31st, everything was great with ER/PR. That was my interpretation.

CHAYTOR, Q.C.:

Q. So and --

MR. DYER:

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A. I don't know why one of them would have said it. Well, obviously, they must have had an issue with it, but if they did, it wasn't brought to me.

CHAYTOR, Q.C.:

Q. It was never brought to your attention?

MR. DYER:

A. It doesn't sound familiar, no.

CHAYTOR, Q.C.:

Q. And you were the person doing the validation of --

MR. DYER:

A. I was involved with it.

CHAYTOR, Q.C.:

Q. Yes, you and Mr. Green?

MR. DYER:

A. Yes.

CHAYTOR, Q.C.:

Q. And whatever pathologist.

MR. DYER:

A. Yes. Even Mary and Les as they were training, if you go through some of those, you'll see even their name up there because we slowly but surely brought them into the picture also.

CHAYTOR, Q.C.:

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Q. Did you have any problems at all with ER/PR? Was there anything that stood out about ER/PR in trying to validate it as opposed to the other antibodies?
MR. DYER:
A. I don't think so. I don't think we had issues with it.
CHAYTOR, Q.C.:
Q. And this says there continues to be some problems with estrogen and progesterone receptors. After Dr. Ejeckam's adjustments in the spring of 2003, this is now a year later, the end of March, 2004, were you aware of any further problems with estrogen and progesterone receptors?
MR. DYER:
A. None.
CHAYTOR, Q.C.:
Q. And I believe Dr. Cook was shown this during his evidence and he thought it had something to do with the validation of ER and PR and bringing the new system on. And it is listed under new technology, but there's nothing that stands out in your memory that there was any issue in validating ER and PR?

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MR. DYER:
A. None whatsoever.
CHAYTOR, Q.C.:
Q. And the Ventana was brought on stream April 1st, the next day.
MR. DYER:
A. April/May it was brought on stream.
CHAYTOR, Q.C.:
Q. And did you recall having, after March 31st, having to go back and do any further tweaking with ER and PR?
MR. DYER:
A. No.
CHAYTOR, Q.C.:
Q. And if we were to look through Exhibit P-2357 for those dates, the first of April, would we see anything additional?
MR. DYER:
A. I don't think so; I don't think you would.
CHAYTOR, Q.C.:
Q. This only goes as far as March 31st.
MR. DYER:
A. Oh, they're all there; there was eight binders. No, we were up and running.
CHAYTOR, Q.C.:

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Q. So, you were done March 31st?
MR. DYER:
A. Not all validation, but we were done with ER/PR.
MR. DYER:
A. ER/PR was done?
MR. DYER:
A. Yes.
CHAYTOR, Q.C.:
Q. Okay.
THE COMMISSIONER:
Q. Ms. Chaytor, wherever you can find a convenient spot to break.
CHAYTOR, Q.C.:
Q. Okay, thank you. Around the same time that your bringing on the Ventana, was there a labour strike around that spring?
MR. DYER:
A. April.
CHAYTOR, Q.C.:
Q. April.
MR. DYER:
A. Yes.
CHAYTOR, Q.C.:
Q. So, tell us about that and what happened to

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the IHC service during the labour strike.
MR. DYER:
A. What happened with IHC service was, well, I was the manager, so I covered pathology. Requests would come in. If they were actually validated on the Ventana system, for the first two days, I believe , I would perform them, but after that, I didn't have time and what happened was the techs were actually put on a rotation through an agreement with the Union and every time there was an immuno they came in.
CHAYTOR, Q.C.:
Q. Okay. So, you actually ran though the -
MR. DYER:
A. I may have ran a couple of cases for the first day or two.
CHAYTOR, Q.C.:
Q. Okay. And those were run on the Ventana system?
MR. DYER:
A. Yes.
CHAYTOR, Q.C.:
Q. Okay. And was there any difficulties encountered in doing that? Did you have -

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MR. DYER:
A. No.
CHAYTOR, Q.C.:
Q. Didn't run into any problems?
MR. DYER:
A. No.
CHAYTOR, Q.C.:
Q. And are you aware of any issues or problems with the runs that were done during that time period?
MR. DYER:
A. I haven't been informed of any.
CHAYTOR, Q.C.:
Q. Okay. I'm about to go into a new area. So, this would be a convenient time.
THE COMMISSIONER:
Q. All right then, we'll break until tomorrow morning at 9:30. Thank you.
Upon conclusion.

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CERTIFICATE

I, Judy Moss, hereby certify that the foregoing is a true and correct transcript in the matter of the Commission of Inquiry on Hormone Receptor Testing, heard on the 21st day of July, A.D., 2008 before the Honourable Justice Margaret A. Cameron, Commissioner, at the Commission of Inquiry, St. John's, Newfoundland and Labrador and was transcribed by me to the best of my ability by means of a sound apparatus.
Dated at St. John's, Newfoundland and Labrador this 21st day of July, A.D., 2008
Judy Moss

-E-

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