

<p>COMMISSION OF INQUIRY ON HORMONE RECEPTOR TESTING</p> <p>BEFORE THE HONOURABLE JUSTICE CAMERON - COMMISSIONER</p> <p>July 21, 2008</p> <p>Appearances:</p> <p>Bernard Coffey, Q.C. Commission Co-counsel Sandra Chaytor, Q.C. Commission Co-counsel</p> <p>Jackie Brazil Her Majesty in Right of NL</p> <p>Peter Browne/Jane Hennebury Doctors Kara Laing et al</p> <p>Daniel Simmons/Beth Whalen Eastern Regional Integrated Health Authority</p> <p>Pam Taylor. Members of the Breast Cancer Testing Class Action</p> <p>Mark Pike NL Medical Association Jennifer Newbury Canadian Cancer Society (NL Division) Blair Pritchett. Central, Western and Labrador-Grenfell Regional Integrated Health Authorities</p>	<p>THIS PAGE ONLY REVISED NOVEMBER 18, 2008</p> <p>LIST OF EXHIBITS</p> <p>EXHIBITS P-2309 THROUGH P-2329 Pg. 5 EXHIBIT P-2356 Pg. 5 EXHIBITS P-2359 AND P-2361 THROUGH P-2394 Pg. 5 EXHIBIT P-2357 Pg. 421</p>
<p>TABLE OF CONTENTS</p> <p>MR. BARRY DYER - SWORN</p> <p>Examination-in-chief by Sandra Chaytor, Q.C. . . . Pgs. 4 - 457</p> <p>Certificate</p>	<p style="text-align: right;">Page 4</p> <p>1 THE COMMISSIONER: 2 Q. Ms. Chaytor. 3 CHAYTOR, Q.C.: 4 Q. Good morning, Commissioner. We have a new 5 witness this morning, it's Barry Dyer. 6 MR. BARRY DYER, SWORN, EXAMINATION BY SANDRA CHAYTOR, 7 Q.C. 8 REGISTRAR: 9 Q. Would you please state and spell your complete 10 name for the Commission? 11 MR. DYER: 12 A. Barry Dyer, B-A-R-R-Y D-Y-E-R. 13 REGISTRAR: 14 Q. Thank you. 15 MR. DYER: 16 A. Thank you. 17 CHAYTOR, Q.C.: 18 Q. Good morning, Mr. Dyer. 19 MR. DYER: 20 A. Good morning. 21 CHAYTOR, Q.C.: 22 Q. Commissioner, we have a number of new exhibits 23 which I would ask, please, to have entered. 24 It's P-2309 through P-2329 inclusive, P-2356, 25 P-2357, P-2358, P-2359, P-2361 through to--I'm</p>

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1 sorry, if we could go back. It's inclusive to
 2 P-2329. Then it's P-2356, then we skip to P-
 3 2359 and then that goes through inclusive to
 4 P-2394.
 5 THE COMMISSIONER:
 6 Q. (Inaudible) okay, entered.
 7 EXHIBITS ENTERED AND MARKED P-2309 THROUGH P-2329
 8 EXHIBIT ENTERED AND MARKED P-2356
 9 EXHIBITS ENTERED AND MARKED P-2359 THROUGH P-2394
 10 CHAYTOR, Q.C.:
 11 Q. Thank you. Mr. Dyer, if we could begin,
 12 please, by you telling us briefly your
 13 education background and your professional
 14 history?
 15 MR. DYER:
 16 A. I graduated from high school in 1981. I spent
 17 two years in university. From there, I
 18 entered the College and started the medical
 19 laboratory technologist program, graduated in
 20 '86, immediately started working in the
 21 laboratory at hematology at the Janeway.
 22 There, I learned about--in '87, I was trained
 23 in on the job for bone marrow readings and got
 24 involved with histochemical staining. In '89,
 25 I was hired as--I got a permanent full-time

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1 position in anatomic pathology, and from
 2 there, I've been there ever since, in
 3 pathology. In '92, we--in '91, I was sent
 4 away for training in computer technology for
 5 current LIS systems. In '98, '99, 2000, I did
 6 some continuing medical education with
 7 university, business courses, things like
 8 that. Moved to Health Science in 2001, became
 9 manager in 2002 in Health Care Corporation,
 10 and in 2006, I believe, I became manager,
 11 regional manager of anatomic pathology for
 12 Eastern Health.
 13 CHAYTOR, Q.C.:
 14 Q. Okay. The move to the Health Science in 2001,
 15 that was the physical move, was it, of the
 16 Janeway to the Health Science site?
 17 MR. DYER:
 18 A. Yes.
 19 CHAYTOR, Q.C.:
 20 Q. Okay. So you remained with the Janeway though
 21 at that point in time?
 22 MR. DYER:
 23 A. For that nine months, yes.
 24 CHAYTOR, Q.C.:
 25 Q. Okay, for nine months you were still at the

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1 Janeway.
 2 MR. DYER:
 3 A. Well, the Janeway, the laboratories actually
 4 consolidated.
 5 CHAYTOR, Q.C.:
 6 Q. The laboratories consolidated, so the Janeway
 7 did not maintain an independent laboratory?
 8 MR. DYER:
 9 A. No.
 10 CHAYTOR, Q.C.:
 11 Q. Okay, and but at that time, were you then
 12 still doing the same job functions, in terms
 13 of pediatric?
 14 MR. DYER:
 15 A. Yes.
 16 CHAYTOR, Q.C.:
 17 Q. Okay. So you worked in the Janeway portion of
 18 the lab?
 19 MR. DYER:
 20 A. Yes.
 21 CHAYTOR, Q.C.:
 22 Q. But it wasn't divided up, as such?
 23 MR. DYER:
 24 A. No.
 25 CHAYTOR, Q.C.:

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1 Q. Okay. But you were doing pediatric work?
 2 MR. DYER:
 3 A. Yes.
 4 CHAYTOR, Q.C.:
 5 Q. Okay. In the courses that you did, you did
 6 business courses you said throughout?
 7 MR. DYER:
 8 A. Yes.
 9 CHAYTOR, Q.C.:
 10 Q. At one point in time. What were those courses
 11 in? Were those management courses?
 12 MR. DYER:
 13 A. Yes, business administration, business
 14 management, union management relations, things
 15 like this.
 16 CHAYTOR, Q.C.:
 17 Q. Okay, and your work at the Janeway, you said
 18 included histochemical stains?
 19 MR. DYER:
 20 A. Yes.
 21 CHAYTOR, Q.C.:
 22 Q. And were you ever involved in any IHC while at
 23 the Janeway?
 24 MR. DYER:
 25 A. For a very brief time, I think around '94/95,

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1 we--at the Janeway, we decided to attempt some
 2 of the immunoperoxidase through kit methods,
 3 but they were very expensive and I think it
 4 only lasted like two months, very little time
 5 using it.
 6 CHAYTOR, Q.C.:
 7 Q. Okay, and again, that would have been done
 8 using kits and would it have also involved
 9 petri dishes?
 10 MR. DYER:
 11 A. Yes.
 12 CHAYTOR, Q.C.:
 13 Q. So it was a very manual process?
 14 MR. DYER:
 15 A. Very manual process.
 16 CHAYTOR, Q.C.:
 17 Q. So after that, any IHC testing that the
 18 Janeway required, where was it done?
 19 MR. DYER:
 20 A. It was done at the Health Science Centre?
 21 CHAYTOR, Q.C.:
 22 Q. And were you involved in arranging for those
 23 tests to be done for the Janeway?
 24 MR. DYER:
 25 A. In terms of I would just like send the block

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1 over to the Health Science so that for them to
 2 perform testing on.
 3 CHAYTOR, Q.C.:
 4 Q. Okay. So we've heard from technologists who
 5 were at St. Clare's and what their involvement
 6 would be in terms of interacting with the
 7 Health Science to arrange tests. So from the
 8 Janeway site, you would have a similar
 9 involvement, I take it?
 10 MR. DYER:
 11 A. Yes.
 12 CHAYTOR, Q.C.:
 13 Q. And in your time at the Janeway, so I just
 14 understand then, in March of 2002, you say you
 15 became the manager of the pathology
 16 laboratory? Is that correct?
 17 MR. DYER:
 18 A. Correct.
 19 CHAYTOR, Q.C.:
 20 Q. And that then, at that point in time, was for
 21 the Health Care Corporation?
 22 MR. DYER:
 23 A. Yes.
 24 CHAYTOR, Q.C.:
 25 Q. Okay, and so you would have, at that point in

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1 time, have had--you would have been manager of
 2 how many sites?
 3 MR. DYER:
 4 A. Two.
 5 CHAYTOR, Q.C.:
 6 Q. And what would those be?
 7 MR. DYER:
 8 A. It would have been Health Science and St.
 9 Clare's.
 10 CHAYTOR, Q.C.:
 11 Q. Okay.
 12 MR. DYER:
 13 A. Because the Janeway was considered part of the
 14 Health Science at the time.
 15 CHAYTOR, Q.C.:
 16 Q. Yes, okay. So while you were still a
 17 technologist at the Janeway, perhaps you can
 18 tell us about your experience there? How did
 19 that work? How much interaction, for example,
 20 would you have had with the pathologists?
 21 MR. DYER:
 22 A. We had one and a half pathologists at the
 23 Janeway, one and a half FTES, and we had daily
 24 constant interaction. A lot of the duties
 25 that I performed at the Janeway were--I would

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1 do all the routine, like processing cut
 2 staining, special stains. I also did
 3 grossing. The pathologist and I, we also
 4 developed the immunohistochemistry program for
 5 the province. We also developed
 6 immunofluorescence, so very technical. We were
 7 all involved with all aspects. Where the
 8 Janeway was a pediatric, they require the same
 9 services. So we just started developing them
 10 all ourselves.
 11 CHAYTOR, Q.C.:
 12 Q. Okay, and so the pathologist that you worked
 13 with there then, was the pathologist helpful
 14 to you or assisting you in learning how to do
 15 those new procedures?
 16 MR. DYER:
 17 A. Yes. What we would do was, like for Dr. P, we
 18 would look at muscle histochemistry -
 19 CHAYTOR, Q.C.:
 20 Q. Sorry, what's her name?
 21 MR. DYER:
 22 A. Oh, sorry, Dr. Pushpanathan, I'm sorry.
 23 CHAYTOR, Q.C.:
 24 Q. Thank you.
 25 MR. DYER:

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1 A. We would look at muscle--you know,
 2 immunohistochemistry, which is muscle
 3 enzymatic stainings. So, you know, we would
 4 just pull out books and read on books about
 5 what we would call like an ATP or an R ATP,
 6 these are different types of stains, and we
 7 would just take those books and on-the-job
 8 training, start learning, teaching ourselves
 9 how to perform those stains, and I would
 10 mostly perform the stains and work on them and
 11 critique them and she would constantly give
 12 feedback daily on how those stains, in her
 13 opinion, were working.
 14 CHAYTOR, Q.C.:
 15 Q. And were you sent for any outside training?
 16 MR. DYER:
 17 A. No.
 18 CHAYTOR, Q.C.:
 19 Q. Okay, so no continuing education courses to
 20 enable you to be able to do that?
 21 MR. DYER:
 22 A. No, that's on-the-job training is how it was
 23 always done.
 24 CHAYTOR, Q.C.:
 25 Q. Okay, and in terms of running those special

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1 stains, did you read controls? I take it
 2 controls would be run for those stains as
 3 well.
 4 MR. DYER:
 5 A. It depended on the type of stain, but yes,
 6 controls were run for most stains.
 7 CHAYTOR, Q.C.:
 8 Q. And were you taught to read the external
 9 controls?
 10 MR. DYER:
 11 A. Yes.
 12 CHAYTOR, Q.C.:
 13 Q. Okay, and who taught you how to do that?
 14 MR. DYER:
 15 A. For muscle histochemistry, it would have been
 16 Dr. P, Dr. Pushpanathan, but for routine
 17 stains, we learned that stuff in school. So
 18 like, you know, you have all kinds of
 19 different types of classification of stains.
 20 We have what we call routine stains, like H &
 21 E, you know, PAS, depending on what it's
 22 looking for, iron stain. So those you
 23 actually learn in school. But anything else,
 24 you had to--you don't learn in school, it's
 25 all taught on the job. So for muscle, for

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1 immunofluorescence, things like that, yes, she
 2 would actually teach us.
 3 CHAYTOR, Q.C.:
 4 Q. Okay, and did you then, were you responsible
 5 for ensuring that the control, external
 6 control worked or was that still read by the
 7 pathologist?
 8 MR. DYER:
 9 A. I would look at it, but Dr. P always made a
 10 final decision.
 11 CHAYTOR, Q.C.:
 12 Q. If you looked at the external control and made
 13 the determination that it hadn't worked, what
 14 would you do?
 15 MR. DYER:
 16 A. I would just repeat the stain.
 17 CHAYTOR, Q.C.:
 18 Q. Okay, so it would never go to the pathologist?
 19 You would sort of have the first step, in
 20 terms of anything getting out of the lab, you
 21 would check to make sure it had worked?
 22 MR. DYER:
 23 A. That's correct.
 24 CHAYTOR, Q.C.:
 25 Q. And if it hadn't worked, you'd redo your own

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1 work?
 2 MR. DYER:
 3 A. Correct.
 4 CHAYTOR, Q.C.:
 5 Q. Okay, and if we could just stick for a moment
 6 with your time at the Janeway, what was the
 7 state of affairs at the Janeway, and this is
 8 before the amalgamation in 2001, but what was
 9 the state of affairs at the Janeway pathology
 10 lab in terms of protocols?
 11 MR. DYER:
 12 A. Protocols for routine?
 13 CHAYTOR, Q.C.:
 14 Q. Yes.
 15 MR. DYER:
 16 A. We'd have protocols pretty well written for
 17 routine, yes.
 18 CHAYTOR, Q.C.:
 19 Q. Okay, and everything was in writing?
 20 MR. DYER:
 21 A. I didn't have anything in manuals. It was all
 22 like on the PC or on the computer or I would
 23 write things down and have them on the wall
 24 for quick references.
 25 CHAYTOR, Q.C.:

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1 Q. Okay, and were they--had they been
 2 specifically developed for your laboratory or
 3 were they spec sheets from manufacturers?
 4 MR. DYER:
 5 A. Well, I would use spec sheets to help write
 6 the protocols, but I would actually have
 7 things written down.
 8 CHAYTOR, Q.C.:
 9 Q. And you may have to tweak them, depending on
 10 your own process?
 11 MR. DYER:
 12 A. Yes.
 13 CHAYTOR, Q.C.:
 14 Q. Okay. Your involvement for, was it,
 15 immunohistochemistry for muscles?
 16 MR. DYER:
 17 A. Yes.
 18 CHAYTOR, Q.C.:
 19 Q. Tell us about that, what did that involve?
 20 What type of work would you have been doing?
 21 MR. DYER:
 22 A. It's a total manual procedure where you would
 23 take non-fixed tissue, so it's--and what we
 24 would do is we would, you know--it would
 25 require like it's a very manual, very slow

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1 process for cutting the frozens, and
 2 everything had to be sequential. It's a very,
 3 very specific on how you would actually
 4 perform those procedures and all of them
 5 involved like pHing. Everything was done at
 6 specific pH levels, and the idea was to try
 7 and get the enzymes to see if the enzymes were
 8 working in those tissues.
 9 CHAYTOR, Q.C.:
 10 Q. And in terms then of a quality assurance
 11 program at the Janeway, was there a quality
 12 assurance program?
 13 MR. DYER:
 14 A. In terms of, like our quality assurance, we
 15 would run controls.
 16 CHAYTOR, Q.C.:
 17 Q. You'd run controls?
 18 MR. DYER:
 19 A. That was it.
 20 CHAYTOR, Q.C.:
 21 Q. And was there a committee or anything else
 22 above that?
 23 MR. DYER:
 24 A. No, there wasn't.
 25 CHAYTOR, Q.C.:

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1 Q. Was there any external proficiency happening
 2 at the pathology lab at the Janeway?
 3 MR. DYER:
 4 A. No, there wasn't.
 5 CHAYTOR, Q.C.:
 6 Q. Okay. So after the Janeway then in 2001 moved
 7 over, you continued to work as a technologist
 8 then at the Health Sciences, but you
 9 concentrated mostly still on doing Janeway
 10 work? Is that right?
 11 MR. DYER:
 12 A. Yes.
 13 CHAYTOR, Q.C.:
 14 Q. Okay, and I guess you became manager, when in
 15 2002?
 16 MR. DYER:
 17 A. I believe it was March of '02.
 18 CHAYTOR, Q.C.:
 19 Q. March, okay, so less than a year, you were
 20 continuing on a technologist at the Health
 21 Sciences?
 22 MR. DYER:
 23 A. Yes.
 24 CHAYTOR, Q.C.:
 25 Q. Okay, and what did you observe upon working as

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1 a technologist in the Health Science
 2 laboratory? What did you observe in terms of
 3 the work environment, compared to the work
 4 environment that you had left to the work
 5 environment at the Health Science?
 6 MR. DYER:
 7 A. It was pretty similar, almost very, very
 8 close.
 9 CHAYTOR, Q.C.:
 10 Q. Okay.
 11 MR. DYER:
 12 A. We were both--the Janeway was a very busy
 13 laboratory and so was Health Science.
 14 CHAYTOR, Q.C.:
 15 Q. Okay, and in terms of how the technical staff
 16 and the pathologists or medical staff
 17 interacted, did you make any observations on
 18 that?
 19 MR. DYER:
 20 A. It was pretty well the same as the Janeway.
 21 We were all on first name basis.
 22 CHAYTOR, Q.C.:
 23 Q. And did you detect whether or not there was
 24 any animosity or any difficulties amongst the
 25 staff themselves interacting?

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

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

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1 gauze. Like it was very--we just lived
 2 through budget cut after budget cut, and so
 3 when we got to--when I got to the Health
 4 Science, it was pretty well the same thing and
 5 the lab was extremely busy. There was a lot
 6 of work all the time.
 7 CHAYTOR, Q.C.:
 8 Q. Okay, and you were trying to do that--what
 9 you're saying is you were trying to do that
 10 and the background to that was constant budget
 11 cuts?
 12 MR. DYER:
 13 A. Yes, constantly watching the budget.
 14 CHAYTOR, Q.C.:
 15 Q. Okay.
 16 MR. DYER:
 17 A. But we persevered. We worked through it and,
 18 you know, that will always have--we have--in
 19 the lab itself, we would have our regular
 20 meetings with--I would have regular--as a
 21 manager, would have regular meetings starting
 22 off with the techs, just so we would
 23 constantly--you know, pep talks, constantly
 24 promoting communication, conversation, new
 25 ideas. That's what I was always about is new

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

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1 the adult side, I would do those also, but
 2 what I would do is I would constantly--it's
 3 just the way I am, I would draw chemical
 4 formulas and any technologist who was
 5 interested in learning, I would teach them
 6 how--like how this formula is working, what
 7 it's doing to the tissue for all that routine
 8 stains, and I constantly, everyone who would
 9 do a turn on specials, I would take them
 10 through those formulas, those processes, so
 11 they understand what's going on at each step.
 12 One thing I did at the Janeway was I
 13 always cut frozen sections for the
 14 pathologists, because we use a microtome, so
 15 you may cut hundreds of sections a day
 16 routinely, so the use of cryostat, it's just a
 17 microtome in the cooler. So you are much more
 18 proficient, and when I say proficient, I mean
 19 you can probably do a much better section. So
 20 when I got over there, I noticed that the
 21 techs weren't doing that with pathologists.
 22 They were pretty well on their own, so I
 23 approached Mr. Gulliver and he agreed that,
 24 you know, we should start that type of
 25 practice and so whoever was not trained in

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1 frozen section, I trained them in, and created
 2 different methods. Like when you're involved
 3 with muscle histochemistry, you learn all
 4 kinds of new ways to cut frozens, because
 5 frozens can be very challenging. So we
 6 developed our own method at the Janeway and it
 7 pretty well made cutting frozens very simple,
 8 and where we were involved with neuropathology
 9 and brain tumours and that, they're also very
 10 difficult and challenging. So we brought over
 11 all those techniques and I introduced them to
 12 try and standardize, so we all could be doing
 13 the one thing and the easiest way to do it,
 14 because we were always--it was the workload,
 15 workload, workload was always there. So if
 16 you could make things easier, it would be
 17 great.
 18 CHAYTOR, Q.C.:
 19 Q. Okay, and in terms of your ability or your
 20 practice of checking the external controls,
 21 was that also happening at the Health Science
 22 laboratory?
 23 MR. DYER:
 24 A. I think for routine stains, I believe they
 25 were reviewing them, but I gave a much more

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1 in-depth, I think, teaching of what you
 2 actually should see, and now we do do that.
 3 CHAYTOR, Q.C.:
 4 Q. Okay, and that was--so back in your days in
 5 2001, when you were a lab tech working side by
 6 side there with him, you did do some training
 7 with them in terms of what to look for in
 8 external controls, that's for special stains?
 9 MR. DYER:
 10 A. For routine specials, yes.
 11 CHAYTOR, Q.C.:
 12 Q. For routine specials. Were you involved at
 13 all in IHC?
 14 MR. DYER:
 15 A. No, very little.
 16 CHAYTOR, Q.C.:
 17 Q. Did you do any IHC while you were--in those
 18 few months that you were there?
 19 MR. DYER:
 20 A. As a tech?
 21 CHAYTOR, Q.C.:
 22 Q. Yes.
 23 MR. DYER:
 24 A. No.
 25 CHAYTOR, Q.C.:

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1 Q. Okay, and so did you ever operate the DAKO
 2 machine?
 3 MR. DYER:
 4 A. No.
 5 CHAYTOR, Q.C.:
 6 Q. Okay. Was there a lead tech as such in the
 7 pathology lab?
 8 MR. DYER:
 9 A. We had--I think when I first got there, I was
 10 a senior tech. I know I was junior, but I was
 11 an actual Tech II and Peggy and Mary were Tech
 12 II's at the time over at the Health Science.
 13 CHAYTOR, Q.C.:
 14 Q. So Peggy Welsh and Mary Butler?
 15 MR. DYER:
 16 A. Yes.
 17 CHAYTOR, Q.C.:
 18 Q. Okay, and -- but between the two of them, was
 19 one considered to be the lead in the lab?
 20 MR. DYER:
 21 A. I think both of them pretty well considered
 22 equal in the lab.
 23 CHAYTOR, Q.C.:
 24 Q. So they were the only other Tech II's?
 25 MR. DYER:

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1 A. Yes.
 2 CHAYTOR, Q.C.:
 3 Q. And in terms of the technologists, were they
 4 receptive to your attempts to try and bring
 5 knowledge that you had acquired in your
 6 career, were they receptive to that?
 7 MR. DYER:
 8 A. I think they were, yes.
 9 CHAYTOR, Q.C.:
 10 Q. Okay, and you didn't run into any opposition
 11 then or anyone who was less than happy with
 12 you trying to bring new ideas?
 13 MR. DYER:
 14 A. No, not for the routine, I don't think.
 15 Everybody was pretty acceptable of it.
 16 CHAYTOR, Q.C.:
 17 Q. Okay. So you didn't yourself do any IHC as a
 18 technologist?
 19 MR. DYER:
 20 A. No.
 21 CHAYTOR, Q.C.:
 22 Q. And you didn't receive any training or didn't
 23 operate the DAKO machine?
 24 MR. DYER:
 25 A. When I was there as -- again curiosity, Mary

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1 Butler actually took me through the process
 2 because I -- you know, in the lab and seeing
 3 it there all the time, I'd like to know at
 4 least how it worked. So I remember Mary did
 5 take me through the process.
 6 CHAYTOR, Q.C.:
 7 Q. The process of the DAKO system?
 8 MR. DYER:
 9 A. Yes.
 10 CHAYTOR, Q.C.:
 11 Q. And did you ever do any antigen retrieval?
 12 MR. DYER:
 13 A. Myself?
 14 CHAYTOR, Q.C.:
 15 Q. Yes.
 16 MR. DYER:
 17 A. No.
 18 CHAYTOR, Q.C.:
 19 Q. And who then was doing -- when you arrived in
 20 2001, who was doing the IHC work?
 21 MR. DYER:
 22 A. Peggy and Mary.
 23 CHAYTOR, Q.C.:
 24 Q. Just the two of them?
 25 MR. DYER:

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1 A. Yes.
 2 CHAYTOR, Q.C.:
 3 Q. And so you would have been -- would you have
 4 been involved then in grossing when you went
 5 to the Health Science as a tech?
 6 MR. DYER:
 7 A. Yes.
 8 CHAYTOR, Q.C.:
 9 Q. And you mentioned in telling us about your
 10 history that you were involved, I believe,
 11 back in 1991 with some computer technology
 12 courses or work at that point?
 13 MR. DYER:
 14 A. Yes, the Janeway decided to go Meditec.
 15 That's a laboratory information system for
 16 laboratory, so I was picked to go -- as one of
 17 five to go away for training down in Boston.
 18 CHAYTOR, Q.C.:
 19 Q. And was that when the Meditec System was
 20 coming on for the Janeway?
 21 MR. DYER:
 22 A. Yes.
 23 CHAYTOR, Q.C.:
 24 Q. That's when that was happening, okay. When
 25 you came then -- did you then come back, I

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1 guess -- you went to Boston for training. Did
 2 you come back then and were you instrumental
 3 in setting up the Meditec System for the
 4 Janeway for your pathology lab?
 5 MR. DYER:
 6 A. Well, I went away for pathology, but I ended
 7 up learning how to write the program --
 8 learning how to write the dictionaries for all
 9 the laboratories. I was the youngest one
 10 there and I was the go-getter, so I learned it
 11 all, but I only wrote -- I wrote micro and
 12 pathology when I came back, or helped at micro
 13 specialty.
 14 CHAYTOR, Q.C.:
 15 Q. And you did it for all the laboratories at the
 16 Janeway at the time?
 17 MR. DYER:
 18 A. I was one of a team, but I mainly focused on -
 19 - like, I focused mainly on pathology, but I
 20 helped out with hematology, and I would help
 21 out with chemistry and I helped out with
 22 micro.
 23 CHAYTOR, Q.C.:
 24 Q. Okay. When you became manager then in March
 25 of 2002, who did you report to?

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

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

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1 MR. DYER:
 2 A. Yes.
 3 CHAYTOR, Q.C.:
 4 Q. Those were the main things. The 250 pieces of
 5 machinery --
 6 MR. DYER:
 7 A. About 150 to 200.
 8 CHAYTOR, Q.C.:
 9 Q. Okay, 150 to 200 that required maintenance,
 10 who was responsible for ensuring that the
 11 machines were maintained?
 12 MR. DYER:
 13 A. I guess that would be me.
 14 CHAYTOR, Q.C.:
 15 Q. Okay, and so were you involved in setting up
 16 routine maintenance schedules for them?
 17 MR. DYER:
 18 A. Well, a lot of the was already going on, but
 19 the bit ones like the microscopes and that, I
 20 would actually -- I wrote a tender for the
 21 microscopes to make sure they were being
 22 cleaned. Technical Services, they were doing
 23 the preventative maintenance on the DAKO. We
 24 had -- the processors and the stainers were
 25 all by Sakura, so they would come in yearly to

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1 do the main PMs also. Things like that, so a
 2 lot to learn.
 3 CHAYTOR, Q.C.:
 4 Q. And in terms of any ongoing daily or more
 5 frequent maintenance, were there schedules in
 6 place and were you involved in making sure
 7 that there were schedules in place for ongoing
 8 cleaning and maintenance?
 9 MR. DYER:
 10 A. As time went by, yes, I would write up charts
 11 to follow for cleaning, like, the cover slip
 12 or the stain, things like this, yes.
 13 CHAYTOR, Q.C.:
 14 Q. And then in terms of going back to check and
 15 make sure it was done, whose responsibility
 16 was that?
 17 MR. DYER:
 18 A. That would have been mine.
 19 CHAYTOR, Q.C.:
 20 Q. And you say that there were two sites that you
 21 became responsible for, St. Clare's and Health
 22 Science?
 23 MR. DYER:
 24 A. Yes.
 25 CHAYTOR, Q.C.:

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1 Q. Prior to that, had there been individual
 2 managers for the pathology lab in both sites?
 3 MR. DYER:
 4 A. Yes, this was the first time that Health Care
 5 Corporation was going to have one manager.
 6 CHAYTOR, Q.C.:
 7 Q. So how did you divide your time then if you're
 8 going to be manager to both sites?
 9 MR. DYER:
 10 A. Well, I would try to spend a few hours every
 11 morning -- St. Clare's was a much smaller
 12 site. They were doing about -- about half of
 13 what Health Science was doing. So I'd spend a
 14 couple of hours there every morning and then I
 15 would come to the Health Science.
 16 CHAYTOR, Q.C.:
 17 Q. Where was your office actually located?
 18 MR. DYER:
 19 A. I had an office at both sites.
 20 CHAYTOR, Q.C.:
 21 Q. And so you would spend the majority of your
 22 time, I take it, at the Health Science?
 23 MR. DYER:
 24 A. Yes.
 25 CHAYTOR, Q.C.:

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1 Q. You would start your day at St. Clare's?
 2 MR. DYER:
 3 A. St. Clare's.
 4 CHAYTOR, Q.C.:
 5 Q. And then the majority of your day would be
 6 spent at the Health Sciences?
 7 MR. DYER:
 8 A. All depending on meetings and schedules and
 9 things that were on the go at the time.
 10 CHAYTOR, Q.C.:
 11 Q. Okay, and I guess you'd be back and forth,
 12 depending on where the meetings were taking
 13 place?
 14 MR. DYER:
 15 A. Yes.
 16 CHAYTOR, Q.C.:
 17 Q. So and -- who then in that structure -- so I
 18 take it there was one management position
 19 which was taken away at that point in time?
 20 MR. DYER:
 21 A. Yes.
 22 CHAYTOR, Q.C.:
 23 Q. And who then would have reported directly to
 24 you?
 25 MR. DYER:

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1 A. All the technologists and support staff.
 2 CHAYTOR, Q.C.:
 3 Q. All the technologists and support staff for
 4 the pathology lab?
 5 MR. DYER:
 6 A. Yes.
 7 CHAYTOR, Q.C.:
 8 Q. And I take it there were other managers for
 9 the other types of labs?
 10 MR. DYER:
 11 A. Yeah, I think there was about -- I think there
 12 was seven of us in total.
 13 CHAYTOR, Q.C.:
 14 Q. Okay, and again was it done the same way? So
 15 for hematology, was there one manager for both
 16 sites?
 17 MR. DYER:
 18 A. Yes.
 19 CHAYTOR, Q.C.:
 20 Q. And if there had been a manager at each site,
 21 then they also lost a manager in the process?
 22 MR. DYER:
 23 A. That's what happened.
 24 CHAYTOR, Q.C.:
 25 Q. So really your management positions were cut

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

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1 Clare's, Mr. Murphy, he just had -- he had the
 2 St. Clare's group, so he had -- I think he had
 3 about seven, seven or eight there.
 4 CHAYTOR, Q.C.:
 5 Q. So I just want to understand that. So the
 6 management position prior to, they may have
 7 had more than just pathology, they may have
 8 had pathology and hematology or whatever?
 9 MR. DYER:
 10 A. The one prior to me, he had multiple
 11 divisions, yes.
 12 CHAYTOR, Q.C.:
 13 Q. Okay. So it may not have been an increased
 14 workload for the particular position that you
 15 took on?
 16 MR. DYER:
 17 A. I don't understand.
 18 CHAYTOR, Q.C.:
 19 Q. I'm trying to get a sense of the workload that
 20 you took on, and if there was a reduction as
 21 we've heard in the number of managers -- so if
 22 there was a reduction in the number of
 23 managers, but was there any increase in the
 24 workload for the person then taking on the
 25 management position?

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1 MR. DYER:
 2 A. For me there was.
 3 CHAYTOR, Q.C.:
 4 Q. For you personally?
 5 MR. DYER:
 6 A. Yes.
 7 CHAYTOR, Q.C.:
 8 Q. I'm just trying to think then, the person who
 9 was involved in having to manage more than
 10 just the pathology lab probably still would
 11 have had 25 people reporting to him or her?
 12 MR. DYER:
 13 A. Yes.
 14 CHAYTOR, Q.C.:
 15 Q. Up to this point in time, March of 2002, had
 16 you had any experience in management?
 17 MR. DYER:
 18 A. Just leadership, doing leadership -- I was the
 19 lead tech at the Janeway, so I was involved
 20 with the OR, I was involved with oncologists,
 21 involved with hematologists, involved with
 22 neurologists, so at the Janeway I learned -- I
 23 picked up a lot of leadership skills in
 24 dealing with them because I was the lead
 25 person at the Janeway. The lab manager was

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1 actually the manager of the lab. So, like, for
 2 pathology, we never had a manager until -- I
 3 never had a direct manager. I would actually
 4 go through, I guess, what we term today as a
 5 laboratory director. So I was really in
 6 charge of the lab at the Janeway.
 7 CHAYTOR, Q.C.:
 8 Q. So people reported to you, the other
 9 technologists reported to you?
 10 MR. DYER:
 11 A. Only there was just one technologist there.
 12 CHAYTOR, Q.C.:
 13 Q. I'm sorry? Oh, there's only one --
 14 MR. DYER:
 15 A. There was only one with me, yes.
 16 CHAYTOR, Q.C.:
 17 Q. So in terms of having experience in
 18 management, having people report to you, and
 19 you giving direction to people, did you have
 20 that kind of experience before you assumed the
 21 management position?
 22 MR. DYER:
 23 A. In terms of the lab, I had just one person
 24 reporting to me.
 25 CHAYTOR, Q.C.:

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1 Q. Okay, so -- and that person reported directly
 2 to you or that person could also go to the
 3 director?
 4 MR. DYER:
 5 A. Or they could go to the director also.
 6 CHAYTOR, Q.C.:
 7 Q. So in terms of any formal chart, that person,
 8 did they understand that they would report to
 9 you first or could they go directly to the
 10 director?
 11 MR. DYER:
 12 A. They could go to the director, but I believe
 13 they understood I was the lead tech, so they
 14 would come to me with issues first.
 15 CHAYTOR, Q.C.:
 16 Q. Okay. When you assumed then your management
 17 position, you said you would start your day at
 18 St. Clare's, and what would you do at St.
 19 Clare's?
 20 MR. DYER:
 21 A. Visit St. Clare's in the lab to see how things
 22 were going. One of the big focuses was we had
 23 a lot -- it was getting the work out.
 24 Biopsies had to be out within 48 to 72 hours,
 25 and larger specimens within another day or

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1 two, so it was a constant about how things
 2 were flowing and is the work getting out.
 3 CHAYTOR, Q.C.:
 4 Q. Okay, and then you would go over for the rest
 5 of your day at the Health Sciences and what
 6 would you do over there?
 7 MR. DYER:
 8 A. Pretty well the same thing, although -- I was
 9 involved with committees. Again still in '02,
 10 still learning the budget, things like this,
 11 but -- pretty well just trying to maintain the
 12 lab.
 13 CHAYTOR, Q.C.:
 14 Q. So would you spend -- where was your office
 15 actually located at the Health Science?
 16 MR. DYER:
 17 A. In the pathology lab.
 18 CHAYTOR, Q.C.:
 19 Q. Okay, so it was actually there in the lab?
 20 MR. DYER:
 21 A. Yes.
 22 CHAYTOR, Q.C.:
 23 Q. Would you spent most of your time then in the
 24 lab conversing with the technologists?
 25 MR. DYER:

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1 A. No, I would spend -- yes and no. Like, it's
 2 hard to say. Again, you know, if there was
 3 issues, I had lead techs. Like, when I got
 4 hired, you tend to pick out who the leaders
 5 are in the lab and that's the people I would
 6 speak to just to see how things were going.
 7 CHAYTOR, Q.C.:
 8 Q. I guess, on that then, was there somebody when
 9 you weren't at -- and couldn't obviously
 10 divide yourself and be in two places at once.
 11 So when you're not at St. Clare's, was there a
 12 lead tech in charge there?
 13 MR. DYER:
 14 A. Yes.
 15 CHAYTOR, Q.C.:
 16 Q. And who was your lead tech?
 17 MR. DYER:
 18 A. Catherine Parnell.
 19 CHAYTOR, Q.C.:
 20 Q. And at the Health Science, was there also a
 21 lead tech there?
 22 MR. DYER:
 23 A. I would consider Peggy and Mary.
 24 CHAYTOR, Q.C.:
 25 Q. So Peggy and Mary continued as the lead techs?

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1 MR. DYER:
 2 A. Yes.
 3 CHAYTOR, Q.C.:
 4 Q. Were they officially designated as lead techs?
 5 MR. DYER:
 6 A. Well, they were Tech IIs. They were the lead
 7 techs at that time.
 8 CHAYTOR, Q.C.:
 9 Q. So that's well understood by people that if
 10 you're Tech II, you're the lead tech?
 11 MR. DYER:
 12 A. At that time, yes.
 13 CHAYTOR, Q.C.:
 14 Q. Okay.
 15 MR. DYER:
 16 A. I also carried a pager 24/7 in case anything
 17 came up.
 18 CHAYTOR, Q.C.:
 19 Q. So you became then -- as manager, you became
 20 responsible for all aspects of the pathology
 21 lab. That would include, I take it, IHC
 22 portion of the lab?
 23 MR. DYER:
 24 A. Yes.
 25 CHAYTOR, Q.C.:

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1 Q. And at that time, I take it, it was still Mary
 2 and Peggy who were running the machines?
 3 MR. DYER:
 4 A. Yes.
 5 CHAYTOR, Q.C.:
 6 Q. And running the IHC portion, and you,
 7 yourself, would have had very little in the
 8 way of knowledge of IHC or of the DAKO
 9 process?
 10 MR. DYER:
 11 A. Again I had some knowledge of it because I
 12 learned -- I went through it all with Mary.
 13 Immunofluorescence is also antibody antigen
 14 reaction style technique, and the difference
 15 is antigen retrieval.
 16 CHAYTOR, Q.C.:
 17 Q. And you hadn't been involved in that process?
 18 MR. DYER:
 19 A. No.
 20 CHAYTOR, Q.C.:
 21 Q. And Mary took you through on one occasion, was
 22 it, through the DAKO System?
 23 MR. DYER:
 24 A. Yes, just so I would understand how things
 25 operated and how they actually did their work,

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1 things like this.
 2 CHAYTOR, Q.C.:
 3 Q. So in terms of training then --
 4 MR. DYER:
 5 A. No, no official training.
 6 CHAYTOR, Q.C.:
 7 Q. You had no official training and in terms of
 8 the actual DAKO process, you would have had
 9 very little, I would suggest to you, in terms
 10 of knowledge of that process?
 11 MR. DYER:
 12 A. Again I knew the process, but total detail,
 13 no, I wasn't totally detailed.
 14 CHAYTOR, Q.C.:
 15 Q. So if Mary or Peggy had any issues regarding
 16 the process or what they were doing, would you
 17 have been able to assist them?
 18 MR. DYER:
 19 A. Well, what I would have -- again I don't
 20 recall very many issues. The main ones would
 21 be is if the machine went down, for example,
 22 and we needed someone immediately, I would
 23 just call Tech Services or actually they would
 24 call Tech Services.
 25 CHAYTOR, Q.C.:

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1 Q. They could do that for themselves?
 2 MR. DYER:
 3 A. For sure. So they would call Tech Services
 4 themselves also, but they never really came to
 5 me with an issues. The only issue that really
 6 stood out was that -- again I know I'm getting
 7 early into it, but the slides would wash off,
 8 or the tissues would come off the slides.
 9 CHAYTOR, Q.C.:
 10 Q. Yes, and I will talk to about that.
 11 MR. DYER:
 12 A. So things like that, for the most part.
 13 CHAYTOR, Q.C.:
 14 Q. And when that occurred, they did come to you?
 15 MR. DYER:
 16 A. They would talk to me about it, yes.
 17 CHAYTOR, Q.C.:
 18 Q. But for the most part then, they were up and
 19 running this system and were fairly
 20 independent in what they were doing, is that
 21 right?
 22 MR. DYER:
 23 A. Well, they had Dr. Ejeckam. They had Dr.
 24 Ejeckam there for all technical issues, and
 25 they would go to him -- I know Peggy and --

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

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1 CHAYTOR, Q.C.:
 2 Q. Administrative issues?
 3 MR. DYER:
 4 A. Yes.
 5 CHAYTOR, Q.C.:
 6 Q. And what if they needed resources for the IHC
 7 lab, would that have to come through you?
 8 MR. DYER:
 9 A. Yes.
 10 CHAYTOR, Q.C.:
 11 Q. So tell us about that, how would that work,
 12 who would approach you?
 13 MR. DYER:
 14 A. Well, Mary or Peggy, if they wanted -- for
 15 example, if a pathologist approached them for
 16 a new antibody, and they wanted one, they
 17 would come to me or ask the pathologist to
 18 come to me, and if we can afford it, we would
 19 buy the new antibody. If they were running
 20 out of slides or something of this nature, and
 21 they needed something brought in immediately,
 22 I would just make the phone calls to get
 23 things brought in, things like that.
 24 CHAYTOR, Q.C.:
 25 Q. And in terms of the maintenance checks then on

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1 the equipment that they were using, were you
 2 carrying out -- were you overseeing that and
 3 checking to make sure appropriate maintenance
 4 was taking place?
 5 MR. DYER:
 6 A. For the DAKO machine, what would happen is the
 7 machine wouldn't operate unless the
 8 maintenance was actually performed, so they
 9 always performed the maintenance so they could
 10 do their work.
 11 CHAYTOR, Q.C.:
 12 Q. And in terms of any cleaning or anything else
 13 that needed to be done, was that true the
 14 machine wouldn't actually work if it hadn't
 15 been done?
 16 MR. DYER:
 17 A. That was my understanding that the machine
 18 would only do so many hundred slides and then
 19 it would stop.
 20 CHAYTOR, Q.C.:
 21 Q. Yes.
 22 MR. DYER:
 23 A. And you would have to perform a specific
 24 technical protocol before you can move
 25 forward.

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1 CHAYTOR, Q.C.:
 2 Q. So it wasn't your understanding that they
 3 needed to do anything on a daily basis, they
 4 didn't need to check or calibrate or doing
 5 anything on a daily basis?
 6 MR. DYER:
 7 A. No, just routine wiping down, things like
 8 this, just so things -- keep the dust off,
 9 things like that.
 10 CHAYTOR, Q.C.:
 11 Q. And what about the other tools of the trade
 12 that they were using. We've heard some issue
 13 about pipettes, for example, and calibration
 14 of pipettes and other things that they were
 15 using in the lab. Was there any maintenance
 16 schedule or replacement schedule for those --
 17 the other tools they were using?
 18 MR. DYER:
 19 A. Can you be more specific?
 20 CHAYTOR, Q.C.:
 21 Q. Pipettes is a specific example.
 22 MR. DYER:
 23 A. Pipettes is the one that's going to stand out.
 24 CHAYTOR, Q.C.:
 25 Q. That's the one that's come up here, but, I

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1 mean, we can go through --
 2 MR. DYER:
 3 A. Yes.
 4 CHAYTOR, Q.C.:
 5 Q. And we will eventually get to Trish
 6 Wegrynowski's report. There were several
 7 things identified.
 8 MR. DYER:
 9 A. We didn't calibrate pipettes. We didn't
 10 calibrate pipettes.
 11 CHAYTOR, Q.C.:
 12 Q. Was there anything -- what was in place in
 13 terms of overseeing what they were and were
 14 not doing in terms of the maintenance of their
 15 equipment?
 16 MR. DYER:
 17 A. There was -- again I --
 18 CHAYTOR, Q.C.:
 19 Q. What was being done? Like what -- was there
 20 anything posted, any guidelines given, and
 21 then were there checks to actually ensure that
 22 it was taking place?
 23 MR. DYER:
 24 A. There was no documentation as to what they
 25 were actually doing, only what was on the

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1 DAKO. Like, once you cleaned the DAKO, it was
 2 documented on the machine itself.
 3 CHAYTOR, Q.C.:
 4 Q. Okay, so when you became manager then in 2002,
 5 what was happening in the pathology lab in
 6 terms of quality assurance?
 7 MR. DYER:
 8 A. The things that we did were, again, I will say
 9 it up front, there was very little
 10 documentation, but just like I did at the
 11 Janeway, all the--we ran controls for every
 12 single thing that was, all slides, all special
 13 stains, all stains that were run, a normal
 14 control was run with them and that was our QC.
 15 When it came to -
 16 CHAYTOR, Q.C.:
 17 Q. So that was your QC, your quality control.
 18 MR. DYER:
 19 A. That was our QC, when it came to cutting,
 20 staining, a pH, whenever that was required, it
 21 was always done, it just wasn't documented.
 22 CHAYTOR, Q.C.:
 23 Q. Okay, so was there a quality assurance
 24 program?
 25 MR. DYER:

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1 A. No.
 2 CHAYTOR, Q.C.:
 3 Q. And who did you understand, upon becoming
 4 manager, to be responsible to--for quality
 5 assurance in the pathology lab?
 6 MR. DYER:
 7 A. It was coming from, we talked about--when I
 8 got hired, the site chief and the clinical
 9 chief were working on a QC, a quality
 10 assurance program at the time.
 11 CHAYTOR, Q.C.:
 12 Q. I'm sorry?
 13 MR. DYER:
 14 A. When I first got hired and I was invited to
 15 the site chief's meeting, that's when I first
 16 became aware that the site chief and clinical
 17 chief were working on a QC program or a QA
 18 program, I'm sorry.
 19 CHAYTOR, Q.C.:
 20 Q. So you saw it as the responsibility of the
 21 site chief and the clinical chief?
 22 MR. DYER:
 23 A. And I believe that the management should also
 24 be part of it.
 25 CHAYTOR, Q.C.:

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1 Q. Okay. This issue about the pipettes, why
 2 weren't they being calibrated?
 3 MR. DYER:
 4 A. It just wasn't a practice at the time. I
 5 don't think any of our labs were actually
 6 calibrating their pipettes at the time.
 7 CHAYTOR, Q.C.:
 8 Q. And did you understand the importance of it
 9 yourself?
 10 MR. DYER:
 11 A. Again, did I understand the importance of
 12 calibration?
 13 CHAYTOR, Q.C.:
 14 Q. Yes.
 15 MR. DYER:
 16 A. What we did is, just like at the Janeway, we
 17 ran controls and if the stain didn't work, it
 18 would be the control that would have picked it
 19 up, then we would go back and try and
 20 determine what went wrong.
 21 CHAYTOR, Q.C.:
 22 Q. So you didn't link any particular significance
 23 or importance to calibration of the pipettes?
 24 MR. DYER:
 25 A. Not at the time, no.

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1 CHAYTOR, Q.C.:
 2 Q. And in terms of quality assurance, there was
 3 an effort underway when you became manager and
 4 you attended a meeting of site chief and the
 5 clinical chief, who was--by the way, who was
 6 the site chief at the time?
 7 MR. DYER:
 8 A. The site chief was Sushil Parai.
 9 CHAYTOR, Q.C.:
 10 Q. That's at the Health Science, I take it?
 11 MR. DYER:
 12 A. Yes.
 13 CHAYTOR, Q.C.:
 14 Q. And how about the clinical chief, who was
 15 that?
 16 MR. DYER:
 17 A. Dr. Cook.
 18 CHAYTOR, Q.C.:
 19 Q. So in becoming manager and I understand the
 20 background that you took on this role, in
 21 terms of what you've described in budgetary
 22 constraints and there had already been some
 23 amalgamation of services, what did you--what
 24 did you see as being your main goal or
 25 objective?

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

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1 A. When it comes to pathology, I think as I
 2 explained earlier, it's very subjective and
 3 when I was hired, I noticed--actually there is
 4 a tech I would notice, you know, sometimes a
 5 pathologist would come into the technical lab,
 6 again, I'm not referring to IHC, and they
 7 would say, you know, like this H&E was query
 8 today, they didn't think it worked, and so
 9 then I would go and talk to other pathologists
 10 and they would say it worked, so it was very
 11 subjective. So different pathologists
 12 preferred things different ways and that's
 13 just--it was extremely hard to manage from a
 14 technical point of view. So what I wanted to
 15 do was to just have one tech--one procedure or
 16 one technique for each thing.
 17 CHAYTOR, Q.C.:
 18 Q. So you were looking at having standard
 19 operating procedures across the board?
 20 MR. DYER:
 21 A. Well, for example, with the grossing, what I
 22 did was, I think in 2003, 2004, we created
 23 templates for all the technical staff, so I
 24 think we had like 12 or 13 templates created
 25 so that the grossing would always be done the

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1 same way for the techs, so things like that we
 2 started doing.
 3 CHAYTOR, Q.C.:
 4 Q. And how much of the grossing were the techs
 5 doing at that point in time?
 6 MR. DYER:
 7 A. I'd say probably about thirty, forty percent.
 8 CHAYTOR, Q.C.:
 9 Q. They weren't doing breasts, I take it?
 10 MR. DYER:
 11 A. No, I'm sorry, techs, just like techs--all the
 12 tech's grossed were specimens that would not
 13 require a cut or an incision, so they would do
 14 all the biopsies, mediastinal masses, things
 15 like this.
 16 CHAYTOR, Q.C.:
 17 Q. Okay, and in terms of trying to standardize,
 18 to achieve that, did you have consolidation of
 19 the pathology labs in mind?
 20 MR. DYER:
 21 A. As soon as I was hired, that was--in 2002,
 22 that was--once I visited and started
 23 understanding how things were operated, within
 24 a couple of months that's what I wanted to do.
 25 CHAYTOR, Q.C.:

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1 Q. Okay, so you set out as that being a main goal
 2 and you felt that was necessary in order to be
 3 able to standardize and bring things together?
 4 MR. DYER:
 5 A. It would be the only way.
 6 CHAYTOR, Q.C.:
 7 Q. Okay, and did you have in mind--and I take it
 8 by that, you mean getting everything moved to
 9 one site?
 10 MR. DYER:
 11 A. Yes.
 12 CHAYTOR, Q.C.:
 13 Q. And did you have any particular site in mind?
 14 MR. DYER:
 15 A. When I talked about consolidation, I enlisted
 16 the services of, I'm not sure, Facilities
 17 Management and they sent down an engineer to
 18 do a total assessment and they decided that--
 19 because I was unbiased, it didn't matter to me
 20 where the consolidated--if it could be at St.
 21 Clare's, Health Sciences, as long as we were
 22 together, that was the goal, and they assessed
 23 that St. Clare's lab was too small and -
 24 CHAYTOR, Q.C.:
 25 Q. They didn't physically have the space, I take

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1 it?
 2 MR. DYER:
 3 A. Correct, so they felt that if we were to
 4 consolidate, the Health Sciences would be the
 5 optimal spot.
 6 CHAYTOR, Q.C.:
 7 Q. If we could look, please, at P-2316,
 8 Registrar? And this is a meeting of
 9 laboratory program division managers' meeting
 10 on June 18th, 2002 and present include
 11 yourself and Mr. Dyer. Lynn Wade, what would
 12 her role have been at that point in time?
 13 MR. DYER:
 14 A. I believe Lynn was manager of client services
 15 at the time.
 16 CHAYTOR, Q.C.:
 17 Q. Okay, and the others, I take it, were also
 18 managers.
 19 MR. DYER:
 20 A. Yes.
 21 CHAYTOR, Q.C.:
 22 Q. And if we come down to page 2, so this would,
 23 again, be a couple of months into your mandate
 24 as manager. H says "Operational review.
 25 Barry involved the group about his plans for

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1 the pathology lab at St. Clare's." What do
 2 you recall that would have been referencing?
 3 MR. DYER:
 4 A. I think, I believe that would be the process
 5 to start a consolidation.
 6 CHAYTOR, Q.C.:
 7 Q. Okay, and if we could look, please, at P-2317?
 8 And this is a year now into your management
 9 and this is a laboratory program planning day,
 10 March 24th, 2003. And if we just look at page
 11 6, the action plan is "to provide a
 12 comprehensive timely high quality service
 13 utilizing available technology and human
 14 resources in an efficient manner within
 15 existing financial capacity". And objective
 16 3) "To make available the most up-to-date
 17 laboratory technology, ensuring the HCCSJ lab
 18 program as a leader in Canada." And
 19 "Technical consolidation of pathology staff
 20 thereby utilizing current technology in a more
 21 efficient and expanded manner. How to do it,
 22 transfer to the Health Science site,
 23 microtones, tissue processor, automatic
 24 staining, bedding centre, automatic cover
 25 slip"--responsibility is yourself--"and to be

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1 completed June, 2003." So I take it this is
 2 part of the consolidation that you had in
 3 mind?
 4 MR. DYER:
 5 A. Yes.
 6 CHAYTOR, Q.C.:
 7 Q. And was to be, this portion at least to be
 8 completed by June, 2003.
 9 MR. DYER:
 10 A. Yes.
 11 CHAYTOR, Q.C.:
 12 Q. And on page 8, again, Objective 4, "To ensure
 13 that there is proper number of qualified
 14 staff, the correct skill mix of staff and to
 15 utilize human resources in an efficient
 16 manner." And action steps "technical
 17 consolidation to Health Sciences Centre,
 18 thereby expanding pathology service,
 19 standardizing quality and improving TAT."
 20 What's your TATS?
 21 MR. DYER:
 22 A. Turn-around-times.
 23 CHAYTOR, Q.C.:
 24 Q. "Consolidation then, move one tech to, remove
 25 remaining technologists, replace vacant

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1 technologist's position with lab assistant,
 2 efficient transport system" you are
 3 responsible and then there's a variety of
 4 completion dates throughout 2003. Mr. Dyer,
 5 so was the idea that all the technologists--
 6 would any technologist remain at St. Clare's?
 7 MR. DYER:
 8 A. Yes, St. Clare's would maintain their clinical
 9 practice over there, so they had a frozen
 10 section room, so what the plan was was to
 11 leave a person over there for the cutting of
 12 frozen sections and to assist with grossing.
 13 CHAYTOR, Q.C.:
 14 Q. And so in terms of any surgeries then that
 15 would take place at St. Clare's, so if surgery
 16 took place, for example, breast surgery, we
 17 understand there was a lot of breast surgeries
 18 at St. Clare's, so what would happen in terms
 19 of getting the tissue to the Health Science?
 20 MR. DYER:
 21 A. Well what would happen first, once the
 22 specimen was surgically removed, we had a tech
 23 there, they would go downstairs to the frozen
 24 section room and get the specimens or there
 25 was a--actually there was a portering system,

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1 but we would also go down to check ourselves.
 2 It would be brought up to the--we brought it
 3 up to our gross room at St. Clare's and then
 4 it was grossed or what the regular protocol
 5 was, was it was usually left overnight,
 6 grossed the next day and at that time--well it
 7 wasn't happening yet, but then once they were
 8 grossed, they would actually be, they were
 9 fixed and then they were sent over by a
 10 transport system over to Health Science for
 11 processing.
 12 CHAYTOR, Q.C.:
 13 Q. Now is that what actually happened or that was
 14 going to be the plan, in terms of
 15 consolidating services?
 16 MR. DYER:
 17 A. No, the plan, my overall plan would be to have
 18 all grossing also performed at the same site.
 19 CHAYTOR, Q.C.:
 20 Q. Would have all, all right, so what actually
 21 happened is what you described in the grossing
 22 taking place at St. Clare's, but what you were
 23 proposing was to move the grossing, everything
 24 over to the Health Science?
 25 MR. DYER:

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1 A. That would have been my final goal, but that
 2 was--the grossing was done by pathologists, so
 3 it was really out of my realm.
 4 CHAYTOR, Q.C.:
 5 Q. And did you encounter any obstacles in trying
 6 to standardize the pathology procedures and
 7 practices and your ultimate goal of
 8 consolidating the lab itself?
 9 MR. DYER:
 10 A. Yes.
 11 CHAYTOR, Q.C.:
 12 Q. And perhaps then you can tell the Commissioner
 13 about difficulties you ran into along the way?
 14 MR. DYER:
 15 A. If you go to the end of this, I think you will
 16 see it too, I think the biggest issue was the
 17 pathologists at St. Clare's were not in favour
 18 of consolidation, that was our biggest issue.
 19 CHAYTOR, Q.C.:
 20 Q. So the pathologists at St. Clare's weren't in
 21 favour.
 22 MR. DYER:
 23 A. Yes.
 24 CHAYTOR, Q.C.:
 25 Q. And why was that? What was the concern?

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1 MR. DYER:
 2 A. I think you should talk to Don about that, Dr.
 3 Cook.
 4 CHAYTOR, Q.C.:
 5 Q. But what was told to you?
 6 MR. DYER:
 7 A. They just didn't--they did not want to
 8 consolidate.
 9 CHAYTOR, Q.C.:
 10 Q. And but were you given any reasons, like was
 11 there a rationale given to you, and if so, did
 12 you accept that?
 13 MR. DYER:
 14 A. When I got hired at the Health Science--when I
 15 got hired into this position, what I found was
 16 when I moved to St. Clare's, it was a
 17 different type of environment and from my
 18 experience at the Health Science and my
 19 experience at the Janeway, when it came to
 20 like the actual technical things, the manager
 21 was in charge, but they worked in
 22 collaboration with the site chief, but I found
 23 at St. Clare's that it was more that the
 24 pathologists were in charge and they ran the
 25 lab as they saw it and manager wasn't as

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1 involved.
 2 CHAYTOR, Q.C.:
 3 Q. So even though there was a manger there, the
 4 manage wasn't as involved in the management of
 5 the technical staff?
 6 MR. DYER:
 7 A. Yes. So I was a different kind of person, I
 8 was more involved with the staff. And I think
 9 they just saw it as, you know, it wasn't that
 10 it was a conflict, but I think they just saw
 11 it as, I was stepping on their toes or in
 12 their territory, so it would take some time, I
 13 knew--I learned quickly it would take some
 14 time to promote this idea.
 15 CHAYTOR, Q.C.:
 16 Q. Okay, and was there something you said in this
 17 document that if you want to scroll through
 18 it, you thought there was something in this
 19 document?
 20 MR. DYER:
 21 A. I think if you go to the very end.
 22 CHAYTOR, Q.C.:
 23 Q. The very end of the document. Okay.
 24 MR. DYER:
 25 A. I'm not sure.

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1 CHAYTOR, Q.C.:
 2 Q. Because I think this is page 12.
 3 MR. DYER:
 4 A. No, "Disadvantages."
 5 CHAYTOR, Q.C.:
 6 Q. "Disadvantages"?
 7 MR. DYER:
 8 A. There's the two disadvantages.
 9 CHAYTOR, Q.C.:
 10 Q. "Transitional period for standardization of
 11 techniques and training of personnel,
 12 pathologists at St. Clare's are not in favour
 13 of technical consolidation."
 14 MR. DYER:
 15 A. Correct.
 16 CHAYTOR, Q.C.:
 17 Q. And so those were the, in terms of the major
 18 impediment or obstacle standing in your path
 19 of achieving this was the opposition from the
 20 pathologists at St. Clare's?
 21 MR. DYER:
 22 A. Yes.
 23 CHAYTOR, Q.C.:
 24 Q. So, Dr. Cook was clinical chief of the
 25 Laboratory Medicine Program at the time?

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1 MR. DYER:
 2 A. Yes.
 3 CHAYTOR, Q.C.:
 4 Q. So I take it that was a huge obstacle then for
 5 you?
 6 MR. DYER:
 7 A. He was also site chief at St. Clare's.
 8 CHAYTOR, Q.C.:
 9 Q. Okay, so it was no small obstacle in your path
 10 towards trying to standardize and consolidate?
 11 MR. DYER:
 12 A. Correct.
 13 CHAYTOR, Q.C.:
 14 Q. Did you know Dr. Cook prior to becoming
 15 manager?
 16 MR. DYER:
 17 A. No.
 18 CHAYTOR, Q.C.:
 19 Q. And what introduction did you have to Dr.
 20 Cook?
 21 MR. DYER:
 22 A. I believe, I think the first time I met Dr.
 23 Cook was at my interview.
 24 CHAYTOR, Q.C.:
 25 Q. Okay, and in the early days, did Dr. Cook have

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1 any advice for you?
 2 MR. DYER:
 3 A. What do you mean? I don't understand.
 4 CHAYTOR, Q.C.:
 5 Q. Did he have any advice for you in terms of
 6 this whole, well we're at St. Clare's, this is
 7 what we're doing, like how did you get the
 8 sense that there was going to be this
 9 opposition from St. Clare's?
 10 MR. DYER:
 11 A. I think--where did I get it?
 12 CHAYTOR, Q.C.:
 13 Q. Yeah, what was said to you and in particular
 14 what was said by Dr. Cook to you for you to
 15 form that opinion?
 16 MR. DYER:
 17 A. We had an incident that one day while I was
 18 over having a staff meeting, over in St.
 19 Clare's, I believe you already know about it,
 20 you've read the letter.
 21 CHAYTOR, Q.C.:
 22 Q. Yes, and I think--and I'll come to that, I
 23 think that happens then in February of 2003,
 24 but was there anything prior to that?
 25 Anything in terms of the role of the

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1 pathologist verses what he saw to be your
 2 role?
 3 MR. DYER:
 4 A. Again, little things like, I would ask the
 5 staff to do one thing and pathologists would
 6 tell staff to do other things, so they would
 7 listen to the pathologists
 8 CHAYTOR, Q.C.:
 9 Q. Okay. So, the idea that pathologists are
 10 going to run their own ship or they're
 11 independent thinkers, was that kind of
 12 sentiment expressed to you?
 13 MR. DYER:
 14 A. Yes.
 15 CHAYTOR, Q.C.:
 16 Q. Okay. And was it made clear to you that
 17 that's the way it was going to be and you
 18 weren't going to tell them otherwise?
 19 MR. DYER:
 20 A. Yes.
 21 CHAYTOR, Q.C.:
 22 Q. And Dr. Sushil Parai, he was the site chief
 23 then for Health Science?
 24 MR. DYER:
 25 A. Yes.

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1 CHAYTOR, Q.C.:
 2 Q. Okay. And how was your relationship with Dr.
 3 Parai?
 4 MR. DYER:
 5 A. I think we had a good working relationship.
 6 CHAYTOR, Q.C.:
 7 Q. Okay. And when you took your manager's
 8 position did Dr. Parai have any advice for
 9 you?
 10 MR. DYER:
 11 A. Yes. He explained about the politics in, I
 12 guess, in laboratory, or I guess in Health
 13 Care in general and he said, you know, it was
 14 just to watch your back.
 15 CHAYTOR, Q.C.:
 16 Q. Okay. And what did you understand him to mean
 17 by that?
 18 MR. DYER:
 19 A. What did I understand him to mean?
 20 MR. DYER:
 21 A. Yes.
 22 CHAYTOR, Q.C.:
 23 Q. Just walk softly; be careful what I do.
 24 CHAYTOR, Q.C.:
 25 Q. And did that prove to be good advice?

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1 MR. DYER:
 2 A. Obviously, yes.
 3 CHAYTOR, Q.C.:
 4 Q. So, you saw that there were things that were
 5 being done differently from site to site, but
 6 were there any particular practices or
 7 procedures that you had concerns with at
 8 either site?
 9 MR. DYER:
 10 A. Yes.
 11 CHAYTOR, Q.C.:
 12 Q. And perhaps you could tell the Commissioner
 13 then about some of those.
 14 MR. DYER:
 15 A. I know it's already spoke to, so I can speak
 16 about it. But there was all kinds of
 17 differences between Health Sciences and St.
 18 Clare's and I'm not trying to pick on St.
 19 Clare's, but the biggest difference I saw was--
 20 there's a lot of clinical differences also,
 21 but the biggest technical difference I saw was
 22 reprocessing.
 23 CHAYTOR, Q.C.:
 24 Q. Sorry, reprocessing?
 25 MR. DYER:

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

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1 tissues and their fatty tissues.
 2 CHAYTOR, Q.C.:
 3 Q. So, I take it breast tissue were an issue.
 4 MR. DYER:
 5 A. Breast tissue, that was major component of
 6 reprocessing. Whereas at Health Science, they
 7 were doing breast and we weren't reprocessing
 8 them.
 9 CHAYTOR, Q.C.:
 10 Q. And so fixation could be an issue? Was there
 11 any inquiries made to determine why it was
 12 necessary to be doing so much reprocessing, in
 13 particular, of the breast tissue?
 14 MR. DYER:
 15 A. Yes. I definitely inquired about it.
 16 CHAYTOR, Q.C.:
 17 Q. What were you able to find out?
 18 MR. DYER:
 19 A. Well, from what I concluded, it wasn't
 20 actually the formalin that was causing the
 21 issue, because a lot of other tissues were
 22 being processed the same day and they were all
 23 fine. It was mainly their larger tissues and
 24 I believe we linked it back to the actual
 25 gross room.

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1 CHAYTOR, Q.C.:
 2 Q. And who was doing the grossing?
 3 MR. DYER:
 4 A. At the time, physicians and residents.
 5 CHAYTOR, Q.C.:
 6 Q. So, no technologists. Those were the
 7 pathologists or the pathology residents?
 8 MR. DYER:
 9 A. Correct.
 10 CHAYTOR, Q.C.:
 11 Q. Okay. And so then did you take that up with
 12 anyone? Did you discuss that?
 13 MR. DYER:
 14 A. I did. I took that up with Dr. Cook.
 15 CHAYTOR, Q.C.:
 16 Q. And what was said and what happened?
 17 MR. DYER:
 18 A. Well, first what I did was I talked to the
 19 tech who actually assisted. So, again,
 20 there's a difference between assisting and
 21 assisting, but our techs, what they did was
 22 they would sit next--like, a pathologist would
 23 be here and they would be grossing. A tech
 24 would be here, so the tech would provide the
 25 specimen. They would label cassettes, lay the

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1 cassettes out, they would do worksheets of
 2 exactly what's being done. Pathologists will
 3 put the tissue in the cassettes. Either the
 4 pathologists or the assistant here, the tech,
 5 will close them and put them into formalin.
 6 And when I talked to the tech about it, what
 7 we were finding was a lot of these tissues
 8 that were being required for reprocessing were
 9 very thick. Like, they weren't--they were cut
 10 too thick; they weren't fitting properly in
 11 the cassettes. So, they needed to be cut
 12 smaller.
 13 CHAYTOR, Q.C.:
 14 Q. And you approached Dr. Cook with that?
 15 MR. DYER:
 16 A. Yes.
 17 CHAYTOR, Q.C.:
 18 Q. Okay. And was Dr. Cook receptive to that?
 19 MR. DYER:
 20 A. Well, I believe he--I didn't do follow-up with
 21 him. I would have assumed he would have spoke
 22 to his physicians or the residents about it.
 23 CHAYTOR, Q.C.:
 24 Q. Okay. So, you brought it to his attention?
 25 MR. DYER:

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1 A. Yes.
 2 CHAYTOR, Q.C.:
 3 Q. Okay. And he didn't voice any opposition or
 4 objection to the fact that you were bringing
 5 it to his attention?
 6 MR. DYER:
 7 A. I can't remember; I don't think so.
 8 CHAYTOR, Q.C.:
 9 Q. Okay. And who was the tech involved that
 10 advised you of this?
 11 MR. DYER:
 12 A. Gary Hand.
 13 CHAYTOR, Q.C.:
 14 Q. Gary Hand?
 15 MR. DYER:
 16 A. Yes.
 17 CHAYTOR, Q.C.:
 18 Q. Okay. And what was your concern anyhow about
 19 reprocessing? What's the danger in
 20 reprocessing specimens?
 21 MR. DYER:
 22 A. Well, what happens is if you look at formalin,
 23 what formalin will do is formalin is two-fold.
 24 Number one, it fixes the tissue, of course,
 25 that's very important, but even more important

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1 process with formalin to fix a tissue is it
 2 protects the tissue when it goes through this
 3 processor. The processor is like 10, 11 steps
 4 and is very aggressive on this gentle tissue.
 5 So, we have to make sure it's fixed, so it's
 6 protected. So, what happens is you go through
 7 the process and if it's not fixed, well then
 8 it's not going to--the processor, you will get
 9 multi-layer fixation.
 10 So, what's happening is tissue goes on,
 11 only some of it is fixed in formalin and now
 12 we start getting it fixed in 70 percent
 13 alcohol. That will give you a different look.
 14 That 70 percent is forced through an 80 which
 15 finally gets to the 100. So, it's different
 16 levels of fixation for that tissue. Then we
 17 go through the process until the end where
 18 it's in wax. Then they actually took the
 19 tissue, put it back xylene, started going
 20 backwards, they bring it back to water. And
 21 so now water is being introduced again into
 22 the tissue. Now, when water gets introduced
 23 to the tissue, your cells can be slightly
 24 distorted and then they start the whole
 25 process over again. So, it damages tissue.

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1 From what I've learned or from what I've read,
 2 it actually damages tissue. Again, at the
 3 Janeway, in my career, 12, 13 years, we've
 4 never reprocessed on specimen.
 5 CHAYTOR, Q.C.:
 6 Q. Okay. And so in terms of at the end of the
 7 day if that tissue is to be used for IHC
 8 testing, ultimately I take it, it could
 9 interfere with the end product?
 10 MR. DYER:
 11 A. Well, at the time, where I wasn't truly
 12 involved with IHC, I didn't do a true link to
 13 that. I was just, in general, what it would
 14 do the tissue.
 15 CHAYTOR, Q.C.:
 16 Q. Concerned about the danger to it.
 17 MR. DYER:
 18 A. Yes.
 19 CHAYTOR, Q.C.:
 20 Q. Sorry, I didn't mean to cut you off.
 21 MR. DYER:
 22 A. That's okay.
 23 CHAYTOR, Q.C.:
 24 Q. But ultimately, I take it that is a concern.
 25 MR. DYER:

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

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1 the lab technologists to not reprocess?
 2 MR. DYER:
 3 A. Yes, I did.
 4 CHAYTOR, Q.C.:
 5 Q. Okay. And did they listen to you?
 6 MR. DYER:
 7 A. No.
 8 CHAYTOR, Q.C.:
 9 Q. And why not?
 10 MR. DYER:
 11 A. They said pathologists would instruct them to,
 12 they wanted this reprocessed, so they would do
 13 it.
 14 CHAYTOR, Q.C.:
 15 Q. Did you have to threaten to discipline or
 16 actually discipline technologists for not
 17 following your instructions in that issue?
 18 MR. DYER:
 19 A. I may have made that comment, yes.
 20 CHAYTOR, Q.C.:
 21 Q. And yet reprocessing continued?
 22 MR. DYER:
 23 A. Yes, I'll be honest, it did -
 24 CHAYTOR, Q.C.:
 25 Q. Eventually stop.

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1 MR. DYER:
 2 A. I joined it before consolidation. The actual
 3 process did actually slow down.
 4 CHAYTOR, Q.C.:
 5 Q. Slowed down.
 6 MR. DYER:
 7 A. Yes, less cases being processed.
 8 CHAYTOR, Q.C.:
 9 Q. Before the ultimate consolidation where?
 10 MR. DYER:
 11 A. Once the consolidation occurred at the Health
 12 Science, I refused; there would be no
 13 reprocessing at the Health Science.
 14 CHAYTOR, Q.C.:
 15 Q. And when did that happen?
 16 MR. DYER:
 17 A. That wasn't until 2005.
 18 CHAYTOR, Q.C.:
 19 Q. 2005?
 20 MR. DYER:
 21 A. Yes.
 22 CHAYTOR, Q.C.:
 23 Q. So, it eventually slowed down and you drew the
 24 line in the sand, as such, and said, that's
 25 not going to be happening at Health Sciences?

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1 MR. DYER:
 2 A. Correct.
 3 CHAYTOR, Q.C.:
 4 Q. Okay. And until that point in time, from 2002
 5 when you first noticed this to be an issue
 6 until 2005, it continued, but it slowed down
 7 over the course of time?
 8 MR. DYER:
 9 A. Yes, slowed down for the breast.
 10 CHAYTOR, Q.C.:
 11 Q. Did you bring the concerns to any other
 12 pathologists as opposed to Dr. Cook?
 13 MR. DYER:
 14 A. In terms of -
 15 CHAYTOR, Q.C.:
 16 Q. This issue of reprocessing, did you discuss it
 17 with anyone else, any other pathologists at
 18 St. Clare's?
 19 MR. DYER:
 20 A. I can't say for sure if I did. I can't
 21 remember.
 22 CHAYTOR, Q.C.:
 23 Q. And would Dr. Elms have been there at the
 24 time?
 25 MR. DYER:

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1 A. Dr. Elms was there, yes.
 2 CHAYTOR, Q.C.:
 3 Q. Do you remember discussing it with him?
 4 MR. DYER:
 5 A. I may have.
 6 CHAYTOR, Q.C.:
 7 Q. What about Dr. Vaze?
 8 MR. DYER:
 9 A. I can't really say for sure if I spoke to them
 10 about it. I was very open and whenever I saw
 11 issues, I always spoke about them.
 12 CHAYTOR, Q.C.:
 13 Q. Whoever was there.
 14 MR. DYER:
 15 A. So, it wouldn't surprise me if I did, but I
 16 can't say for sure.
 17 CHAYTOR, Q.C.:
 18 Q. But you certainly brought it to the clinical
 19 chief's attention?
 20 MR. DYER:
 21 A. I did.
 22 CHAYTOR, Q.C.:
 23 Q. Okay.
 24 MR. DYER:
 25 A. And again, when I saw things like this, I

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1 would also let Mr. Gulliver know.
 2 CHAYTOR, Q.C.:
 3 Q. Okay. And do you know whether or not Mr.
 4 Gulliver took it up with anyone else?
 5 MR. DYER:
 6 A. I wouldn't be able to tell you?
 7 MR. DYER:
 8 A. And did he offer you any advice as to how to
 9 deal with issue?
 10 MR. DYER:
 11 A. Just communication, keep speaking about it
 12 until something happens. I did ask Mr.
 13 Gulliver. He did have a meeting with the
 14 staff over there, I believe, in 2003, but I'm
 15 not sure if we actually discussed
 16 reprocessing, but we did have a meeting.
 17 CHAYTOR, Q.C.:
 18 Q. Okay. So, the reprocessing issue, when you
 19 made your inquiries, you tracked it back to
 20 the grossing and the grossing, the sections
 21 being too thick.
 22 MR. DYER:
 23 A. Yes.
 24 CHAYTOR, Q.C.:
 25 Q. Was there any concern with fixation?

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

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

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1 a vacuum, that you would get your last few
 2 hours of fixation.
 3 CHAYTOR, Q.C.:
 4 Q. So, I take it there shouldn't be blood in
 5 formalin coming out of the processor?
 6 MR. DYER:
 7 A. Should not be.
 8 CHAYTOR, Q.C.:
 9 Q. Not if it's properly fixed for the right
 10 length of time.
 11 MR. DYER:
 12 A. Correct.
 13 CHAYTOR, Q.C.:
 14 Q. And did you actually observe that breast would
 15 come down from the OR in the afternoon and be
 16 fixed for the two or three hours left in that
 17 afternoon and be processed that evening?
 18 MR. DYER:
 19 A. I can't say if I actually seen it myself.
 20 CHAYTOR, Q.C.:
 21 Q. Was it told to you?
 22 MR. DYER:
 23 A. Yes, yes, it was.
 24 CHAYTOR, Q.C.:
 25 Q. And who was it that told you that?

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1 MR. DYER:
 2 A. The technician who was assisting, Mr. Hand.
 3 CHAYTOR, Q.C.:
 4 Q. So, we're talking two or three hours of
 5 fixation time on breast tissue?
 6 MR. DYER:
 7 A. I can't say if it's two or three hours.
 8 CHAYTOR, Q.C.:
 9 Q. It was an afternoon?
 10 MR. DYER:
 11 A. Yes.
 12 CHAYTOR, Q.C.:
 13 Q. And what about those concerns, did you raise
 14 those with anyone?
 15 MR. DYER:
 16 A. I believe I may have brought it up with Dr.
 17 Cook again. I think, overall, it was just a
 18 general concern of how fast the work was being
 19 pumped out over in the gross room. And that,
 20 you know, we shouldn't be grossing that fast,
 21 from 2 to 5, to do that kind of workload.
 22 CHAYTOR, Q.C.:
 23 Q. Okay. So, I take it you told Mr. Hand or the
 24 technicians or technologists who brought it up
 25 with you that that wasn't acceptable practice.

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1 MR. DYER:
 2 A. I told Gary himself, don't put tissues on if
 3 they're not--if they're bloody, don't put them
 4 on. And he would only do it under the
 5 direction of a physician.
 6 CHAYTOR, Q.C.:
 7 Q. And did that happen? Did he run into issues
 8 where he was being told one thing by you and
 9 something by the pathologist involved?
 10 MR. DYER:
 11 A. Yes.
 12 CHAYTOR, Q.C.:
 13 Q. And so what about that. How did that
 14 ultimately work out? To your knowledge, did
 15 the idea of things being underfixed continue?
 16 MR. DYER:
 17 A. Well, I made several suggestions to Dr. Cook,
 18 again, things that we were doing at the Health
 19 Science, like, start grossing is earlier in
 20 the morning or one of the big issues that St.
 21 Clare's is, I admit, their frozen section room
 22 was crazy. They did a lot of frozens. So, I
 23 suggested to have two pathologists on service;
 24 one who would just, as they did at the Health
 25 Science, they would have a pathologist

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1 grossing and a pathologist who would just do
 2 frozens. So, I remember making suggestions
 3 like that to him just so we could stretch out
 4 the workload in there and make, I guess, more
 5 quality assurance, more than anything else,
 6 just so we know--make the possibility of less
 7 errors occurring.
 8 CHAYTOR, Q.C.:
 9 Q. And so were they receptive to your ideas in
 10 that regard?
 11 MR. DYER:
 12 A. I know Dr. Cook himself, he started grossing
 13 early in the morning, but other pathologists
 14 didn't.
 15 CHAYTOR, Q.C.:
 16 Q. Okay. So, the pathologist determined,
 17 obviously, when grossing took place, that was
 18 their function or the function of their
 19 residents.
 20 MR. DYER:
 21 A. Yes.
 22 CHAYTOR, Q.C.:
 23 Q. Who were under their control.
 24 MR. DYER:
 25 A. Yes.

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1 CHAYTOR, Q.C.:

2 Q. Okay. And how the grossing took place was

3 also within the territory of the pathologist

4 and their residents.

5 MR. DYER:

6 A. Yes.

7 CHAYTOR, Q.C.:

8 Q. So, ultimately in terms of, though, when it

9 went into the processor, what was wrong with

10 it waiting then and putting it into the

11 processor later?

12 MR. DYER:

13 A. I don't understand.

14 CHAYTOR, Q.C.:

15 Q. So, in terms of once it was grossed, then what

16 was the next step?

17 MR. DYER:

18 A. Well, the processor was usually set up to

19 start around 5 in the evening. So, you try to

20 get your grossing done so you can load the

21 processor for 5.

22 CHAYTOR, Q.C.:

23 Q. Okay. So, it wouldn't be an option to wait

24 and then run those particular specimens, then

25 the next day?

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1 MR. DYER:

2 A. They certainly could, however, turnaround

3 times was an issue and we only had one

4 processor. And again, for large specimens,

5 you do a long processing cycle. You would

6 start at five in the evening and it probably

7 didn't come off until like six or seven the

8 next day. So, what you would do is you would

9 have to wait at least a full 24 hours before

10 the next processing cycle.

11 CHAYTOR, Q.C.:

12 Q. Okay. And in terms of the processor then at

13 St. Clare's, who was responsible for the

14 maintenance of the tissue processor?

15 MR. DYER:

16 A. Well, Gary did all the--well, I guess, I'm

17 ultimately responsible, but the tech involved

18 would be involved.

19 CHAYTOR, Q.C.:

20 Q. Okay. So, in terms of what was happening at

21 St. Clare's and your attempts to give

22 direction to the technologists when you

23 observed an issue in particular that was of

24 concern, they were coming from a background or

25 a culture where they weren't used to taking

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1 direction from the lab manager. They were

2 taking their direction more from pathologists

3 and stuff. Is that what was happening?

4 MR. DYER:

5 A. I believe so.

6 CHAYTOR, Q.C.:

7 Q. Okay. And that was different from what you

8 had experienced at or what you observed at the

9 Health Science and what you experienced

10 yourself at the Health Science?

11 MR. DYER:

12 A. Yes. Although the pathologist have a very

13 interactive role at the Health Science also.

14 CHAYTOR, Q.C.:

15 Q. I'm sorry?

16 MR. DYER:

17 A. The pathologists did have a very interactive

18 role at the Health Science also, but it's just

19 that they weren't in the lab all the time,

20 like, every day run in the lab for things. It

21 was very structured at the Health Science.

22 You would go to a particular person if you had

23 this issue, so that people could continue to

24 do their work. Whereas at St. Clare's they

25 would just go in and talk to anyone who was

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1 there.

2 CHAYTOR, Q.C.:

3 Q. Was there any, the same sense though of

4 confusion of roles in terms of who could

5 direct technologists to do things at Health

6 Science. Did they understand better the role

7 of the manager?

8 MR. DYER:

9 A. I think so.

10 CHAYTOR, Q.C.:

11 Q. Were there site meetings being held at St.

12 Clare's when you became manager?

13 MR. DYER:

14 A. Site meetings in terms of?

15 CHAYTOR, Q.C.:

16 Q. In terms of the managers of the pathology lab,

17 the managers of the lab in general.

18 MR. DYER:

19 A. Like we had a lab managers group where the

20 managers met all the time.

21 CHAYTOR, Q.C.:

22 Q. So, that was similar to the minutes I showed

23 you.

24 MR. DYER:

25 A. That was that one there, yes, yes.

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1 CHAYTOR, Q.C.:

2 Q. Was that happening at Health Science and at

3 St. Clare's?

4 MR. DYER:

5 A. Well, there was only seven of us.

6 CHAYTOR, Q.C.:

7 Q. So, that was for both sites?

8 MR. DYER:

9 A. That was for all of us. There was what I

10 would call a site chiefs meetings and that

11 would be the site chiefs and the manager, that

12 would be and then I think, I know at Health

13 Science for sure they also have what we call a

14 pathologist meeting. So, like, where the

15 pathologist would get together every month and

16 have discussions about issues concerning

17 clinical and technical.

18 CHAYTOR, Q.C.:

19 Q. Would you attend those meetings?

20 MR. DYER:

21 A. They did invite me to those meetings, so I

22 would attend, yes.

23 CHAYTOR, Q.C.:

24 Q. That was at the Health Sciences?

25 MR. DYER:

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1 A. Yes.

2 CHAYTOR, Q.C.:

3 Q. And did you also attend those meetings at St.

4 Clare's?

5 MR. DYER:

6 A. I'm unsure if St. Clare's actually had such a

7 structured group, but I know they did invite

8 me once.

9 CHAYTOR, Q.C.:

10 Q. So, did you ever have occasion to bring any

11 concerns, for example, concerns regarding

12 processing or length of fixation times. Did

13 you bring those concerns up in any meetings?

14 MR. DYER:

15 A. For which site?

16 CHAYTOR, Q.C.:

17 Q. Well, this was only happening, I understood,

18 at St. Clare's, the issue of reprocessing was

19 certainly only St. Clare's.

20 MR. DYER:

21 A. Yes. I was only ever invited to one meeting

22 at St. Clare's and I don't think we discussed

23 reprocessing there. I can't remember if we

24 did.

25 CHAYTOR, Q.C.:

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1 Q. Okay. So, you attended one meeting that you

2 recall.

3 MR. DYER:

4 A. Only one.

5 CHAYTOR, Q.C.:

6 Q. Okay. And why didn't you attend others?

7 MR. DYER:

8 A. If they had them, I wasn't invited.

9 CHAYTOR, Q.C.:

10 Q. Okay. So, the issue then of reprocessing then

11 didn't come up at that meeting. The issue of

12 fixation times, was that peculiar to St.

13 Clare's or was that also an issue then at the

14 Health Sciences?

15 MR. DYER:

16 A. No, at times at the Health Science also, there

17 were--you know, specimens were left, but in

18 terms of, I think--good question. When it

19 came to actual grossing at the Health Science,

20 again, they would start early in the morning,

21 but the actual room, the specimen reception

22 room is right next to my office. I was much

23 more involved. So, what would happen there

24 was all specimens that would come down were

25 pretty well, large specimens were taken at

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1 4:00, between 4 and 5 and actually breadloafed

2 and left overnight. Now, where I wasn't very

3 often late at St. Clare's I wouldn't be able

4 to say if I actually seen the breadloaf. I

5 think that was the practice, but I didn't see

6 it.

7 CHAYTOR, Q.C.:

8 Q. Okay. So, at Health Science specimens were

9 breadloafed and left overnight then in the

10 fixative.

11 MR. DYER:

12 A. Yes.

13 CHAYTOR, Q.C.:

14 Q. And then your processing took place the next

15 day -

16 MR. DYER:

17 A. Twenty-four hours later.

18 CHAYTOR, Q.C.:

19 Q. - twenty four hours later.

20 MR. DYER:

21 A. Yes, pathologists would be assigned so many--

22 initially pathologists would be assigned, if

23 we did 75 cases at Health Sciences, they were

24 assigned the 75 and the techs would gross the

25 biopsies. Them or--the pathologists or a

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1 resident would gross what could be grossed
 2 that day and then the large specimens were
 3 grossed first thing the next morning, so, we
 4 would make sure so the grossing could continue
 5 or the flow wouldn't be maintained.
 6 CHAYTOR, Q.C.:
 7 Q. And the issue that you were able to track back
 8 in terms of the need for reprocessing at St.
 9 Clare's, the issue being the thickness of the
 10 specimen being cut, was that an issue at the
 11 Health Sciences?
 12 MR. DYER:
 13 A. I'm sure I've seen some cases like it.
 14 CHAYTOR, Q.C.:
 15 Q. But not to the same degree, is that it?
 16 MR. DYER:
 17 A. Yes.
 18 CHAYTOR, Q.C.:
 19 Q. Okay. Was there any--I'm just trying to get a
 20 sense of, I understand what you're saying,
 21 there wasn't any standard procedure from one
 22 institution to the other. Was there even any
 23 standard procedure from one pathologist to
 24 another in terms of the thickness of grossing
 25 or the manner of grossing?

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1 MR. DYER:
 2 A. I think each pathologist grossed the way each
 3 pathologists grossed. I think they were all
 4 trained through the residency program, but I
 5 believe they all grossed the way they grossed.
 6 CHAYTOR, Q.C.:
 7 Q. So, there was no standard operating procedure
 8 that they were asked and expected to follow?
 9 MR. DYER:
 10 A. I believe, I think they used Ackerman's, was
 11 the book that was used and that was for their
 12 use for grossing.
 13 CHAYTOR, Q.C.:
 14 Q. But in terms of the hospital having a standard
 15 operating procedure for the Health Care
 16 Corporation -
 17 MR. DYER:
 18 A. Officially written down, no.
 19 CHAYTOR, Q.C.:
 20 Q. - across the board.
 21 MR. DYER:
 22 A. No.
 23 CHAYTOR, Q.C.:
 24 Q. Okay. So, it was up to the individual
 25 pathologists to follow Ackerman's or whatever

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1 they'd been taught.
 2 MR. DYER:
 3 A. Correct, or that's my understanding.
 4 CHAYTOR, Q.C.:
 5 Q. And you saw variability, I take it in the
 6 thickness of what the specimen that was being
 7 grossed?
 8 MR. DYER:
 9 A. Yes.
 10 CHAYTOR, Q.C.:
 11 Q. In terms of formalin, when you took your
 12 management role with the Health Care
 13 Corporation, was formalin being purchased?
 14 Was there commercial formalin used at the time
 15 or was it being made up in house?
 16 MR. DYER:
 17 A. It was in house.
 18 CHAYTOR, Q.C.:
 19 Q. And how was it actually made up?
 20 MR. DYER:
 21 A. A tech would actually -- there was a formula
 22 written down how to measure out -- you know,
 23 what chemicals to measure out, and what we'll
 24 do, we have a carbuoy of 25 litre carbuoy, and
 25 there was markings on the carbuoy "fill here

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1 to water", "fill here with formaldehyde", and
 2 there was actual protocol or procedure there.
 3 CHAYTOR, Q.C.:
 4 Q. So the people who were the technologists --
 5 was it technologists or technicians?
 6 MR. DYER:
 7 A. If it was -- mostly at Health Science it was
 8 lab assistants.
 9 CHAYTOR, Q.C.:
 10 Q. Lab assistants.
 11 MR. DYER:
 12 A. And the technician at St. Clare's.
 13 CHAYTOR, Q.C.:
 14 Q. So they were the people actually doing the
 15 mixing, and in terms of what concentration,
 16 for example, to use, they had it written up,
 17 there was a written protocol?
 18 MR. DYER:
 19 A. There was, yes.
 20 CHAYTOR, Q.C.:
 21 Q. And was there any testing of the pH of the
 22 formalin that was being mixed?
 23 MR. DYER:
 24 A. Not on a regular basis, no.
 25 CHAYTOR, Q.C.:

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1 Q. And what irregular basis was it being tested?
 2 MR. DYER:
 3 A. Pardon?
 4 CHAYTOR, Q.C.:
 5 Q. And what then irregular basis was it being
 6 tested, how often was it happening?
 7 MR. DYER:
 8 A. Well, again when I got hired, it only went on
 9 for a couple of months, and then we -- so I've
 10 seen it done once in that couple of months.
 11 From there, we went with a -- we purchased.
 12 CHAYTOR, Q.C.:
 13 Q. So it was no standard requiring that every
 14 time you make up a batch that you test the pH?
 15 MR. DYER:
 16 A. No.
 17 CHAYTOR, Q.C.:
 18 Q. Okay.
 19 MR. DYER:
 20 A. Again though, we weren't -- I wasn't getting
 21 any complaints about formalin fixation at the
 22 time either.
 23 CHAYTOR, Q.C.:
 24 Q. At that time in 2002?
 25 MR. DYER:

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1 A. Correct.
 2 CHAYTOR, Q.C.:
 3 Q. Okay. This went on for a couple of months?
 4 MR. DYER:
 5 A. Just a --
 6 CHAYTOR, Q.C.:
 7 Q. You joined in March of 2002 as manager?
 8 MR. DYER:
 9 A. Yes.
 10 CHAYTOR, Q.C.:
 11 Q. And it went on for -- so by May of --
 12 MR. DYER:
 13 A. May/June -- I think June -- I think the
 14 official date was June 20th that we actually
 15 started the process of using pre-made formula.
 16 CHAYTOR, Q.C.:
 17 Q. June of 2002?
 18 MR. DYER:
 19 A. Yes.
 20 CHAYTOR, Q.C.:
 21 Q. And did it -- did the -- was there a period of
 22 time, though, that it still continued in order
 23 to use up what had already been purchased?
 24 MR. DYER:
 25 A. No, that date was the day when we actually --

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1 it was no more.
 2 CHAYTOR, Q.C.:
 3 Q. You started in June?
 4 MR. DYER:
 5 A. We started, yes.
 6 CHAYTOR, Q.C.:
 7 Q. When did it begin, to your knowledge. I
 8 understand -- I know you weren't there, but
 9 you worked as a tech in the lab before that.
 10 How long had they been making up their own
 11 formalin?
 12 MR. DYER:
 13 A. I would imagine since the lab started.
 14 CHAYTOR, Q.C.:
 15 Q. And was that through the Janeway as well?
 16 MR. DYER:
 17 A. Yes.
 18 CHAYTOR, Q.C.:
 19 Q. And St. Clare's?
 20 MR. DYER:
 21 A. I would imagine.
 22 CHAYTOR, Q.C.:
 23 Q. So all sites made up their own formalin?
 24 MR. DYER:
 25 A. And Grace. Yes.

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1 CHAYTOR, Q.C.:
 2 Q. Until June of 2002?
 3 MR. DYER:
 4 A. Yes.
 5 CHAYTOR, Q.C.:
 6 Q. And pH meter was never used to check the
 7 formalin?
 8 MR. DYER:
 9 A. On a regular basis, no.
 10 CHAYTOR, Q.C.:
 11 Q. Was it ever used at all, a pH meter?
 12 MR. DYER:
 13 A. oh, I'm sorry, a pH meter, no. Good point.
 14 CHAYTOR, Q.C.:
 15 Q. Yes.
 16 MR. DYER:
 17 A. Not during my time.
 18 CHAYTOR, Q.C.:
 19 Q. So how would they check the pH levels?
 20 MR. DYER:
 21 A. They would use a strip, a chemistry strip, a
 22 pH line, and you just put it in and it will
 23 give you an estimate. It would turn blue if
 24 it's between 6.8 and 7.4, for example. So it's
 25 a strip like a urine strip.

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1 CHAYTOR, Q.C.:

2 Q. Like a dip stick?

3 MR. DYER:

4 A. Dip stick, thank you.

5 CHAYTOR, Q.C.:

6 Q. And that would give you a range or an

7 estimate, is that what you're saying?

8 MR. DYER:

9 A. Yes, yes.

10 CHAYTOR, Q.C.:

11 Q. Okay, and you say that you were responsible

12 for instituting the change to commercial

13 formalin?

14 MR. DYER:

15 A. Yes.

16 CHAYTOR, Q.C.:

17 Q. And why was that important to you?

18 MR. DYER:

19 A. It was more so for occupational health and

20 safety. I felt it wasn't right for -- I didn't

21 think it was correct for our staff to make up

22 vats and distribute throughout the

23 organization.

24 CHAYTOR, Q.C.:

25 Q. So it was more of a health and safety issue

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1 for you?

2 MR. DYER:

3 A. Yes, up to -- I never -- again I wasn't

4 getting any complaints about formalin fixation

5 at that time, so it was actually OH & S why we

6 did it.

7 CHAYTOR, Q.C.:

8 Q. And from the time that you first came up with

9 that idea to actually effecting the change,

10 that was a change you were able to have happen

11 within two or three months, is that what

12 you're saying?

13 MR. DYER:

14 A. Yes, I think, yes.

15 CHAYTOR, Q.C.:

16 Q. So I take it you didn't -- you weren't met

17 with any resistance to that issue?

18 MR. DYER:

19 A. No, just -- it was challenging because the

20 organization is big and for something like

21 this to happen, our stores would actually have

22 to give us space so that we could do this, and

23 again other -- more monetary issues because we

24 would purchase and make everything and send it

25 out, now we weren't purchasing any more. Each

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1 individual group would have to come up with

2 that money in their budget to do it.

3 CHAYTOR, Q.C.:

4 Q. So it was a bit of an issue in that regard?

5 MR. DYER:

6 A. Yes.

7 CHAYTOR, Q.C.:

8 Q. And after you moved then to the commercial

9 formalin, were the pH levels checked or any

10 other analysis done -- carried out on the

11 premixed formalin?

12 MR. DYER:

13 A. No.

14 CHAYTOR, Q.C.:

15 Q. And is there any -- currently any protocol

16 requiring that that be done?

17 MR. DYER:

18 A. The stuff that the lab purchases, yes, we do

19 that now.

20 CHAYTOR, Q.C.:

21 Q. And when was that instituted?

22 MR. DYER:

23 A. We only started this year.

24 CHAYTOR, Q.C.:

25 Q. So 2008?

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1 MR. DYER:

2 A. Yes.

3 CHAYTOR, Q.C.:

4 Q. Okay. In terms of when it's checked, the pH

5 level on the commercial formalin, is that done

6 when it's purchased, when it comes in?

7 MR. DYER:

8 A. What we're doing is we do -- a monthly check

9 is what we're doing. So even if the lot

10 number doesn't change, we still check it.

11 COMMISSIONER:

12 Q. I'm sorry, you do what kind of check?

13 MR. DYER:

14 A. What happens usually is with the standards

15 we've learned today, when a lot number changes

16 on a product, you should then do testing to

17 check it.

18 COMMISSIONER:

19 Q. Uh-h.

20 MR. DYER:

21 A. But we're not doing that with our formalin.

22 If the lot number -- if a vat of formalin is

23 lasting multiple months, we still check it

24 every month, anyway.

25 COMMISSIONER:

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1 Q. So you check on a monthly basis?
 2 MR. DYER:
 3 A. Yes, whether the lot number changes or not.
 4 CHAYTOR, Q.C.:
 5 Q. So if the lot number changes, it's checked?
 6 MR. DYER:
 7 A. Yes.
 8 CHAYTOR, Q.C.:
 9 Q. And in any event, whatever is left there is
 10 checked on a monthly basis?
 11 MR. DYER:
 12 A. Yes.
 13 CHAYTOR, Q.C.:
 14 Q. And why is that important? What can happen to
 15 formalin over time?
 16 MR. DYER:
 17 A. It can precipitate out. So what that means is
 18 the molecular formula can break down.
 19 CHAYTOR, Q.C.:
 20 Q. So it loses its concentration?
 21 MR. DYER:
 22 A. Yes.
 23 CHAYTOR, Q.C.:
 24 Q. Okay. Other than doing the monthly check, are
 25 there any other precautions taken to prevent

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1 that from happening or minimize the effect of
 2 formalin sitting around and ultimately losing
 3 its concentration?
 4 MR. DYER:
 5 A. It's purchased in small quantities.
 6 CHAYTOR, Q.C.:
 7 Q. Okay, so you purchase smaller quantities?
 8 MR. DYER:
 9 A. Yes.
 10 CHAYTOR, Q.C.:
 11 Q. So you buy more often?
 12 MR. DYER:
 13 A. Correct.
 14 CHAYTOR, Q.C.:
 15 Q. And when did that become your practice?
 16 MR. DYER:
 17 A. Well, that became a practice actually in 2002
 18 when we went with the tender. So they're all
 19 prefilled; whereas before the old way was to
 20 buy 20 litre. So now they all come in maximum,
 21 like, fifty 900 mils.
 22 CHAYTOR, Q.C.:
 23 Q. Okay, and other than doing your monthly checks
 24 and ordering in smaller amounts to prevent the
 25 amount of time it can actually sit, is there

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1 any other quality monitoring to the formalin
 2 taking place?
 3 MR. DYER:
 4 A. No.
 5 CHAYTOR, Q.C.:
 6 Q. And what in terms of -- is there anything else
 7 that's important in terms of formalin being
 8 properly maintained as a chemical? Is there
 9 anything else?
 10 MR. DYER:
 11 A. No, formalin -- as long as it's maintained at
 12 -- I believe it's 22 to 37 is when it's best.
 13 So as long as it's maintained at room
 14 temperature, which is what we do.
 15 CHAYTOR, Q.C.:
 16 Q. Okay, and that was where I was going to with
 17 that in terms of anything else that needs to
 18 be done. So is there any temperature checks
 19 done, for example, on it?
 20 MR. DYER:
 21 A. On the actual formalin?
 22 CHAYTOR, Q.C.:
 23 Q. Yes.
 24 MR. DYER:
 25 A. No.

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1 CHAYTOR, Q.C.:
 2 Q. So it's just --
 3 MR. DYER:
 4 A. It's maintained --
 5 CHAYTOR, Q.C.:
 6 Q. At room temperature?
 7 MR. DYER:
 8 A. At room temperature.
 9 CHAYTOR, Q.C.:
 10 Q. Okay. Some of the documentation we saw
 11 indicated that at times B5 fixative was used
 12 instead of formalin. Are you familiar with
 13 that?
 14 MR. DYER:
 15 A. With B5, yes.
 16 CHAYTOR, Q.C.:
 17 Q. With B5, and what's the difference, what's B5
 18 fixative?
 19 MR. DYER:
 20 A. Well, there are many fixatives you can use in
 21 pathology, many, many fixatives that are out
 22 there. Formalin seems to be the best fixative
 23 because it creates what we call bridges or a
 24 mask, and those bridges we can attach, we can
 25 add things to for reactions to occur. The

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1 difference between Formalin and B5 is B5 is
 2 used mainly on lymphatic tissue, and what it
 3 does is it contains mercury and acetic acid
 4 and acetic acid will penetrate the nucleus of
 5 a cell and make the clarity much better. The
 6 big thing about B5 is it will also destroy the
 7 cell and destroy the tissue if left in for
 8 prolonged periods of time. That's the main
 9 difference. So B5 is used specifically on
 10 bone marrows, lymphatic, and it's also used on
 11 lymphnodes.
 12 CHAYTOR, Q.C.:
 13 Q. Okay, and you told us about how you had been
 14 involved in bone marrow work in your Janeway
 15 days?
 16 MR. DYER:
 17 A. Yes.
 18 CHAYTOR, Q.C.:
 19 Q. So you would have seen it used commonly there?
 20 MR. DYER:
 21 A. No, at the Janeway they didn't use B5. We used
 22 what we called petric acid.
 23 CHAYTOR, Q.C.:
 24 Q. Okay.
 25 MR. DYER:

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1 A. Again it doesn't have formalin. It has a
 2 petric acid, but it still has the acetic acid.
 3 CHAYTOR, Q.C.:
 4 Q. And would B5 fixative be recommended for use
 5 in breast tissue?
 6 MR. DYER:
 7 A. Again B5 may be used only if they're
 8 dissecting the lymphnodes, and the common
 9 practice is we would take a lymphnode and we
 10 would just take one section of that lymphnode
 11 and fix it in B5, and we would fix the rest of
 12 it in formalin, so they can draw comparisons.
 13 I'll link to it now for you. When it comes to
 14 immunohistochemistry, most antibodies, when
 15 the data sheets come in, will tell you what
 16 conditions they were tested under and there's
 17 very few, if any, immunohistochemistry that's
 18 tested under B5 fixative.
 19 CHAYTOR, Q.C.:
 20 Q. Who would make that determination, who decides
 21 that particular tissue is going to be fixed in
 22 one way or another?
 23 MR. DYER:
 24 A. The person who is grossing, the pathologist.

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1 CHAYTOR, Q.C.:
 2 Q. So the pathologist makes that determination?
 3 MR. DYER:
 4 A. Yes.
 5 CHAYTOR, Q.C.:
 6 Q. When you took on your role then as the manager
 7 in 2002, you've told us about some of the
 8 objectives you had in mind, in particular the
 9 standardization of procedures and the
 10 consolidation of the pathology lab. Did you
 11 have an opportunity to develop, I guess, a
 12 strategic plan or make a presentation as to
 13 your ideas back in 2002?
 14 MR. DYER:
 15 A. Yes, we had a planning day.
 16 CHAYTOR, Q.C.:
 17 Q. So that was your planning day?
 18 MR. DYER:
 19 A. That was our planning day.
 20 CHAYTOR, Q.C.:
 21 Q. That we already looked at?
 22 MR. DYER:
 23 A. Yes.
 24 CHAYTOR, Q.C.:
 25 Q. Okay, and who would have -- who would have

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1 attended the planning day?
 2 MR. DYER:
 3 A. All the leadership team, like the site chief,
 4 clinical chief -- the clinical chief, the site
 5 chief of each program, the manager. I think
 6 Dr. Robb attended. He was the clinical chair
 7 on the university side, and the management,
 8 and Mr. Gulliver, and I believe the VP also
 9 spoke there.
 10 CHAYTOR, Q.C.:
 11 Q. And did the technologists attend?
 12 MR. DYER:
 13 A. No.
 14 CHAYTOR, Q.C.:
 15 Q. This was just management?
 16 MR. DYER:
 17 A. This was just management for future, and also
 18 I believe quality initiatives also had
 19 somebody there.
 20 CHAYTOR, Q.C.:
 21 Q. And we looked at the exhibit which showed
 22 there was opposition from St. Clare's. So was
 23 that actually expressed at the time when you
 24 gave your presentation at the planning day?
 25 MR. DYER:

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1 A. Yes.
 2 CHAYTOR, Q.C.:
 3 Q. So that's when you first learned that there
 4 was going to be opposition to this idea?
 5 MR. DYER:
 6 A. I'm not sure if that was the first time.
 7 CHAYTOR, Q.C.:
 8 Q. Probably earlier than that?
 9 MR. DYER:
 10 A. It might have been earlier than that because,
 11 like I said, any new ideas, I would speak
 12 about them. I would always inform the staff
 13 of anything that I'm thinking about just so no
 14 one would be surprised.
 15 CHAYTOR, Q.C.:
 16 Q. And in terms of it being, though -- I take it
 17 Dr. Cook was up front in expressing his
 18 concerns or his opposition to the idea at the
 19 planning day?
 20 MR. DYER:
 21 A. Yes.
 22 CHAYTOR, Q.C.:
 23 Q. Did that generate any discussion in terms of -
 24 - the VP medical, you said was there.
 25 MR. DYER:

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1 A. I think they were only there for the
 2 introduction and then they left.
 3 CHAYTOR, Q.C.:
 4 Q. So in terms of then other people who were
 5 there, was there any discussion then amongst
 6 the other pathologists or anyone else -- did
 7 anyone else weigh in on the debate?
 8 MR. DYER:
 9 A. Not that I can remember, no.
 10 CHAYTOR, Q.C.:
 11 Q. And did anyone other than Dr. Cook express any
 12 concern?
 13 MR. DYER:
 14 A. No.
 15 CHAYTOR, Q.C.:
 16 Q. In terms of your idea to have everything
 17 really under one roof is what you were
 18 proposing, I take it, to bring everyone
 19 together, and the importance of that being to
 20 standardize the way you were doing things,
 21 could that not be achieved in any event by
 22 having written protocols which would be the
 23 same across the Health Care Corporation
 24 regardless of how many site you have?
 25 CHAYTOR, Q.C.:

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1 Q. Written protocols, that definitely would have
 2 helped, but I still think if everyone was
 3 together -- like, one person doing -- right
 4 now, okay, sorry. When I looked at both
 5 sites, what I saw was staining protocols that
 6 were different from one site than the other.
 7 I would have a tech doing -- I would have one
 8 tech doing H & E stains at one site, a tech
 9 doing H & E stains at another site, a tech
 10 doing specials at one site, a tech doing
 11 specials at another site, techs going
 12 embedding at one site, techs doing embedding
 13 at another site, and what I would have
 14 preferred is to bring everyone together and
 15 then have one tech do all the H & Es, have one
 16 tech doing the specials, and it all would be
 17 treated the same.
 18 CHAYTOR, Q.C.:
 19 Q. So you couldn't divide up the services and
 20 have, for example, one tech doing all the H &
 21 Es on one particular site. That would be too
 22 much of coordinating back and forth, I take
 23 it?
 24 MR. DYER:
 25 A. It would be more challenging, I think.

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

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1 hired, and, you know, everybody was -- it's
 2 not that they're on edge, but everybody had
 3 their own way of doing things and it was
 4 challenging -- it took a lot of work just on
 5 site to get everyone to finally come down to
 6 one idea -- not one idea, but one procedure,
 7 but to try and get those procedures or to try
 8 and implement those over at St. Clare's, it
 9 would be too challenging.
 10 CHAYTOR, Q.C.:
 11 Q. So even in writing standardized procedures or
 12 protocols, there was resistance to that?
 13 MR. DYER:
 14 A. The way a PAS was done at one site versus the
 15 other was different.
 16 CHAYTOR, Q.C.:
 17 Q. And was it that -- was there a negotiation of
 18 ideas or was it that St. Clare's perceived
 19 that the Health Science are trying to impose
 20 their ideas and their procedures on to St.
 21 Clare's?
 22 MR. DYER:
 23 A. I think there was all kinds of ideas like
 24 that. There were, but again --
 25 CHAYTOR, Q.C.:

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1 Q. What was actually happening?
 2 MR. DYER:
 3 A. At St. Clare's, I think -- again it comes down
 4 to the physician. There was six physicians
 5 over there and they were used to reading
 6 slides one way, and there was 12 to 15 at
 7 Health Science who had been into reading
 8 slides another way.
 9 CHAYTOR, Q.C.:
 10 Q. And in terms of what Dr. Cook actually said,
 11 either at the planning day or at other
 12 occasions to you, what did you understand,
 13 what was his concern, why was he resistant to
 14 this?
 15 MR. DYER:
 16 A. He was just -- I believe he just didn't want
 17 to consolidate. He wanted to have a lab at
 18 St. Clare's.
 19 CHAYTOR, Q.C.:
 20 Q. So you had Dr. Cook certainly vocalizing
 21 opposition. Was anyone supporting you in your
 22 efforts?
 23 MR. DYER:
 24 A. From St. Clare's?
 25 CHAYTOR, Q.C.:

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1 Q. In terms of technologists?
 2 MR. DYER:
 3 A. Overall?
 4 CHAYTOR, Q.C.:
 5 Q. Yes.
 6 MR. DYER:
 7 A. I think we had a pretty general agreement from
 8 Health Science and from the Janeway, but had
 9 very little support from St. Clare's.
 10 CHAYTOR, Q.C.:
 11 Q. And I guess the Health Science and the Janeway
 12 had already been consolidated.
 13 MR. DYER:
 14 A. Yes, and -- when we consolidated, we started
 15 immediately bringing our protocols together.
 16 Like, in that nine months that I was there, we
 17 were doing pretty well one protocol for
 18 everything, for pediatrics and adults at
 19 Health Science. The only difference was there
 20 were some protocols that the Janeway was
 21 involved with, international -- they were
 22 involved with international guidelines for
 23 tumours, like, maybe like a Radermeyer Sarcoma
 24 Group and things like this. So for that, she
 25 may have had to do more specials than what

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1 they did at the Health Science. So if a bone
 2 marrow came in and she's part of that group,
 3 then she might have had to do six specials
 4 versus Health Science who may not have been
 5 part of that group and only did three
 6 specials, so -- but the protocols themselves
 7 were written to be exact. So they did -- they
 8 consolidated, they coagulated and consolidated
 9 really well. The only difference was more
 10 protocols had to be done.
 11 CHAYTOR, Q.C.:
 12 Q. And was there any attempt to get everyone in
 13 the same room to sit down, all the people who
 14 needed to be there, to try and consolidate the
 15 standard way of doing things?
 16 MR. DYER:
 17 A. I think as long as the consolidation -- as
 18 long as there was opposition to consolidation,
 19 that wasn't going to happen, so we didn't.
 20 CHAYTOR, Q.C.:
 21 Q. So no attempt was made to do that?
 22 MR. DYER:
 23 A. There may have been attempts, but I don't
 24 think it actually came to fruition at all.
 25 CHAYTOR, Q.C.:

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1 Q. And you went to Mr. Gulliver with your
 2 concerns?
 3 MR. DYER:
 4 A. Yes, definitely.
 5 CHAYTOR, Q.C.:
 6 Q. Okay, and whether Mr. Gulliver took it to the
 7 VP medical, you don't know?
 8 MR. DYER:
 9 A. No. You'll have to ask Mr. Gulliver.
 10 CHAYTOR, Q.C.:
 11 Q. Yes, but you didn't receive any feedback one
 12 way or the other on that?
 13 MR. DYER:
 14 A. No, I just tried to keep open communication
 15 all the time.
 16 CHAYTOR, Q.C.:
 17 Q. So in terms of anyone being supportive, I take
 18 it, you supervisor, Mr. Gulliver, was
 19 supportive of your efforts?
 20 MR. DYER:
 21 A. Yes.
 22 CHAYTOR, Q.C.:
 23 Q. And was in agreement with the plan that you
 24 put forward?
 25 MR. DYER:

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1 A. Yes.
 2 CHAYTOR, Q.C.:
 3 Q. Was there anyone else in terms of the
 4 pathologist -- you've indicated the Health
 5 Science generally were supportive. Is there
 6 anyone that stands out in your mind in terms
 7 of -- well, for example, who was the
 8 discipline chair at the time?
 9 MR. DYER:
 10 A. Dr. Robb.
 11 CHAYTOR, Q.C.:
 12 Q. Okay, and was -- what was Dr. Robb's position?
 13 MR. DYER:
 14 A. He was a pathologist, but he also carried the
 15 chair or he sat in the discipline chair at the
 16 university. So he was heavy into research
 17 also.
 18 CHAYTOR, Q.C.:
 19 Q. And what was his position in terms of
 20 consolidation of services, did he express any
 21 position?
 22 MR. DYER:
 23 A. He was a very open minded thinker also, and,
 24 yes, he did support it.
 25 CHAYTOR, Q.C.:

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1 Q. He supported it?
 2 MR. DYER:
 3 A. Yes.
 4 CHAYTOR, Q.C.:
 5 Q. And do you know whether or not he attempted to
 6 speak to Dr. Cook about Dr. Cook's opposition
 7 to the issue?
 8 MR. DYER:
 9 A. I wouldn't be able to tell you. I can't
 10 remember if he did.
 11 COMMISSIONER:
 12 Q. Ms. Chaytor, whenever you want to take the
 13 morning break, just let me know.
 14 CHAYTOR, Q.C.:
 15 Q. Okay. I was just going to go to a new
 16 exhibit, so we can either do that exhibit or
 17 we can take the break now.
 18 COMMISSIONER:
 19 Q. Your call.
 20 CHAYTOR, Q.C.:
 21 Q. Okay, well, perhaps we'll break now. Thank
 22 you.
 23 COMMISSIONER:
 24 Q. All right, we'll take the morning break.
 25 (BREAK)

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

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1 A. --- My whole career at the Janeway, I was on
 2 first name basis with surgeons, with everyone,
 3 and within the nine months at Health Science,
 4 I was on a first name basis with many
 5 physicians, technologists, all of them. So
 6 that, it caught me off guard. So we proceeded
 7 to go--my office was closer than Dr. Cook's,
 8 so we went to Dr. Cook's office and closed the
 9 door and he was--let's just say he was very
 10 upset about me talking about consolidation.
 11 CHAYTOR, Q.C.:
 12 Q. So that's what the meeting--you were meeting
 13 with staff at the time and the meeting, you
 14 were discussing consolidation?
 15 MR. DYER:
 16 A. Well, I think that might have been one of the
 17 things I was talking about, but when we got
 18 into my office with Dr. Cook, it was--
 19 consolidation is what came up.
 20 CHAYTOR, Q.C.:
 21 Q. Okay, and what was his concern about you
 22 speaking to the staff about consolidation?
 23 MR. DYER:
 24 A. I don't think it was the staff in general.
 25 What came out of that meeting was one of the

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1 physicians at St. Clare's threatened to quit
 2 if we consolidate and so he was very upset
 3 over the fact that he could lose a physician.
 4 CHAYTOR, Q.C.:
 5 Q. And who was that physician?
 6 MR. DYER:
 7 A. Dr. Wadhwa.
 8 CHAYTOR, Q.C.:
 9 Q. And do you know what Dr. Wadhwa's concerns
 10 were?
 11 MR. DYER:
 12 A. No, he didn't say.
 13 CHAYTOR, Q.C.:
 14 Q. Okay, and is he still there?
 15 MR. DYER:
 16 A. She.
 17 CHAYTOR, Q.C.:
 18 Q. She, sorry.
 19 MR. DYER:
 20 A. No, she has since retired.
 21 CHAYTOR, Q.C.:
 22 Q. The meeting that you were having then with the
 23 staff, did you have any sense of concern by
 24 the staff or the staff apprehensive about the
 25 idea of consolidation?

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1 MR. DYER:
 2 A. Yes, they were. Again, you know, I went
 3 through this process myself in 2001, so I
 4 understood how the staff would feel, because
 5 it's very frightening when you're working in
 6 the position for 25 years, 30 years, and all
 7 of a sudden you're uprooted. So the process
 8 of consolidation, I was hoping would take, you
 9 know, approximately a year so we could get
 10 comfortable with the idea and how things would
 11 be and give us a chance to actually plan for
 12 it. So any ideas, I always spoke to the staff
 13 in advance, just to let them know, you know,
 14 these are some of the things I'm thinking
 15 about. I always did that. So of course, I
 16 would speak to them about consolidation. I
 17 wouldn't just spring it on them.
 18 CHAYTOR, Q.C.:
 19 Q. Okay, and your sense, what you were sensing
 20 then from the staff was what you would expect?
 21 It was the normal apprehension that would go
 22 along with any type of change of that nature?
 23 MR. DYER:
 24 A. Exact same as what I went through.
 25 CHAYTOR, Q.C.:

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1 Q. Yourself personally?
 2 MR. DYER:
 3 A. Yes.
 4 CHAYTOR, Q.C.:
 5 Q. And we know that your letter was written in
 6 February 2003. So I take it that your
 7 meeting, and that letter followed, I
 8 understand, very closely from the encounter
 9 that you had with Dr. Cook?
 10 MR. DYER:
 11 A. Yes, next day.
 12 CHAYTOR, Q.C.:
 13 Q. So you were bringing these things up and
 14 speaking to the staff about it in February
 15 2003?
 16 MR. DYER:
 17 A. Yes.
 18 CHAYTOR, Q.C.:
 19 Q. Okay, and had all the--was there any concern
 20 that this had not been--there had not been
 21 consensus reached as to consolidation and that
 22 perhaps in speaking to the staff, you were
 23 being premature in bringing the issue to the
 24 forefront?
 25 MR. DYER:

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1 A. Again, it was--I don't think I was being
 2 premature. Again, like I said, my style is if
 3 we have ideas that we want to try or we want
 4 to try and move towards, whether it would
 5 happen or not, I would still always inform the
 6 staff. It's just like with the staff, you
 7 know, no idea is a dumb idea and if the staff
 8 ever wanted anything, they would also say the
 9 same thing to me. I believe the issue was, is
 10 the fact that I think Dr. Cook, that was one
 11 of his issues, the fact that this wasn't
 12 actually agreed to. We shouldn't talk about
 13 it, and I said you know, I disagree, just
 14 because, I mean, it could take years to get an
 15 agreement, so never talk about it? We have to
 16 talk about these ideas to see what would the
 17 benefits and the advantages and disadvantages
 18 would be. So I always spoke about different
 19 things.
 20 CHAYTOR, Q.C.:
 21 Q. So you were aware back when you did the
 22 planning day in your first few months back in
 23 2002, you were aware then that there was
 24 opposition from St. Clare's?
 25 MR. DYER:

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1 A. I think the planning day was in '03.
 2 CHAYTOR, Q.C.:
 3 Q. In '03, okay.
 4 MR. DYER:
 5 A. Right, so this was just before the planning
 6 day probably.
 7 CHAYTOR, Q.C.:
 8 Q. This is before, yes, that's right, you're
 9 right, the planning day was in '03.
 10 MR. DYER:
 11 A. Yes, so when we actually put together a
 12 planning day, it wasn't a thing that we did
 13 ourselves. I wrote down my ideas and I
 14 believe Dr. Cook, the two site chiefs, Dr.
 15 Cook and Sushil Parai, and we actually
 16 discussed all of these issues at our site
 17 chiefs meeting, because out of our site chief
 18 meeting came this proposal, and I know then
 19 that Dr. Cook wasn't in favour of it, but I
 20 wanted it on the agenda.
 21 CHAYTOR, Q.C.:
 22 Q. Okay, so this discussion with the staff was
 23 taking place before the planning day in which
 24 you brought forward the idea?
 25 MR. DYER:

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1 A. I believe so. I'm not quite sure, but -
 2 CHAYTOR, Q.C.:
 3 Q. I think it was March, the planning day of
 4 2003.
 5 MR. DYER:
 6 A. And this was in February.
 7 CHAYTOR, Q.C.:
 8 Q. Right.
 9 MR. DYER:
 10 A. Yes.
 11 CHAYTOR, Q.C.:
 12 Q. It was a year after you'd took your position.
 13 Okay, then perhaps we'll look at P-1887, and
 14 this is the letter that you wrote to Mr.
 15 Gulliver, and why is it that you took the step
 16 of actually writing your concerns to Mr.
 17 Gulliver, putting down in writing your
 18 concerns?
 19 MR. DYER:
 20 A. Again, I was a new manager and I felt that my
 21 position was maybe threatened over something
 22 like this, because I've never experienced this
 23 before in my life, and to be honest with you,
 24 in my--at that time, I'm almost about 17 years
 25 in the field. I've never wrote a letter

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1 before. That's the first one I ever wrote.
 2 CHAYTOR, Q.C.:
 3 Q. First one you ever wrote?
 4 MR. DYER:
 5 A. Yes.
 6 CHAYTOR, Q.C.:
 7 Q. Is it the only one you've ever had to write?
 8 MR. DYER:
 9 A. Yes, for a situation like that, yes.
 10 CHAYTOR, Q.C.:
 11 Q. The first and only?
 12 MR. DYER:
 13 A. Yes.
 14 CHAYTOR, Q.C.:
 15 Q. Okay, all right, and so the letter is February
 16 17th, 2003 to Mr. Gulliver, and you write "I
 17 am writing this letter with apprehension,
 18 concern to discuss the treatment of one self
 19 during two interactions with Dr. Donald Cook.
 20 Mr. Gulliver, being my superior and next line
 21 of communication, it is necessary for you to
 22 be informed in writing." And then the first
 23 interaction that you refer to happened on
 24 February 12th, 2003, and "when I approached
 25 Dr. Cook's secretary to arrange a meeting with

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1 Dr. Cook that afternoon to brief him on
 2 changes I'd planned to make to anatomical
 3 pathology."
 4 So I take it you were going to discuss
 5 your idea with Dr. Cook first? Is that right?
 6 MR. DYER:
 7 A. No, this was probably a different issue.
 8 CHAYTOR, Q.C.:
 9 Q. Okay, so perhaps you could tell us then, what
 10 was this issue?
 11 MR. DYER:
 12 A. Can I just read further?
 13 CHAYTOR, Q.C.:
 14 Q. Sure, absolutely. I'll take you through then.
 15 MR. DYER:
 16 A. (Unintelligible) recall.
 17 CHAYTOR, Q.C.:
 18 Q. "I discussed the corporate wide recall. We
 19 would use two laboratory assistants from the
 20 Health Science and one laboratory technician
 21 from St. Clare's, as well as the transfer of a
 22 technologist II from St. Clare's to Health
 23 Science for training with an eventual lateral
 24 transfer to an upcoming vacant Tech II
 25 position. Without getting into the details,

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1 the debate was slightly uneasy. One phrase I
 2 found quite unsettling was, and I quote,
 3 'heads are going to roll over this, if things
 4 do not work out.' I interpreted this as a
 5 threat to my position as manager of anatomical
 6 pathology. Immediately after meeting, I
 7 verbally informed you." So what was that all
 8 about?
 9 MR. DYER:
 10 A. We had two--what happened was back in 2002,
 11 St. Clare's had--this is concerning post
 12 mortem--right, this was about post mortems,
 13 autopsy service. So currently in the system,
 14 I had--we had two or three people at St.
 15 Clare's on call for autopsies for the
 16 weekends, and so I think, you know, we might
 17 have been getting like six or seven calls a
 18 year, but these techs are on call all the
 19 time, and at the Health Science, we had two
 20 staff doing autopsies, and so they were on
 21 call every second weekend. So what I
 22 suggested was to improve quality of work life
 23 for these staff, you know, and we don't get a
 24 lot of calls on the weekend, they're both--all
 25 these staff are trained for autopsies, so what

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1 if we created one corporate wide recall and
 2 put them all on the list. So instead of staff
 3 being on call every second week, they could be
 4 on call probably only every six.
 5 CHAYTOR, Q.C.:
 6 Q. Okay.
 7 MR. DYER:
 8 A. So that was my first--that was the
 9 recommendation there, and my second one was by
 10 now we had heard that Peggy Welsh was retiring
 11 and the Tech II at St. Clare's, Les, he was
 12 the most experienced technologist in pathology
 13 at the time, so I would--what I wanted was I
 14 wanted that experience to be transferred into
 15 immunohistochemistry. So that's what we
 16 discussed.
 17 CHAYTOR, Q.C.:
 18 Q. So that was the issue here, "the transfer of a
 19 technologist II from St. Clare's to the Health
 20 Science for training with eventual lateral
 21 transfer to an upcoming vacant position."
 22 That was Les to take over Peggy Welsh's
 23 position?
 24 MR. DYER:
 25 A. Yes, and again that's something that I wanted

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1 to do. So of course, like I would, I would
 2 talk to Dr. Cook about it. That's what I
 3 always did.
 4 CHAYTOR, Q.C.:
 5 Q. Okay, and was he also resistant to that idea?
 6 MR. DYER:
 7 A. Yes.
 8 CHAYTOR, Q.C.:
 9 Q. Okay, and what was his reasons for being
 10 resistant to Mr. Simms transferring?
 11 MR. DYER:
 12 A. I can't tell you what his actual reasons were.
 13 All I know is he didn't want staff leaving St.
 14 Clare's.
 15 CHAYTOR, Q.C.:
 16 Q. Okay, and in terms of the issue about the
 17 staff being on call then for autopsies, one in
 18 six as opposed to every other weekend, what
 19 was his rationale for that? Why was he upset
 20 with that?
 21 MR. DYER:
 22 A. I think we might have come to some kind of
 23 agreement on that one. It's just that I think
 24 I may have commented there because that was
 25 the things, they were the two things we were

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1 discussing at the time. I think the actual
 2 issue was more over Les moving.
 3 CHAYTOR, Q.C.:
 4 Q. And so what was--you've quoted here, in bold
 5 and upper case letter, "heads are going to
 6 roll over this if things do not work out." If
 7 what didn't work out? What was his concern?
 8 MR. DYER:
 9 A. That was the statement he made. Again, I
 10 can't really be sure, but again, most of it
 11 was over Les moving.
 12 CHAYTOR, Q.C.:
 13 Q. Okay.
 14 MR. DYER:
 15 A. And he might have had a concern that, you
 16 know, a senior technologist who is experienced
 17 is leaving the lab.
 18 CHAYTOR, Q.C.:
 19 Q. Did he have any concerns about Mr. Simms not
 20 being qualified for the position at the -
 21 MR. DYER:
 22 A. No.
 23 CHAYTOR, Q.C.:
 24 Q. - in the IHC laboratory?
 25 MR. DYER:

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1 A. He never made that--I don't think he made that
 2 comment to me.
 3 CHAYTOR, Q.C.:
 4 Q. So you didn't understand him to be saying
 5 that?
 6 MR. DYER:
 7 A. No.
 8 CHAYTOR, Q.C.:
 9 Q. It was the loss of Mr. Simms from his
 10 laboratory at St. Clare's?
 11 MR. DYER:
 12 A. I think that's more of what it came down to.
 13 CHAYTOR, Q.C.:
 14 Q. Okay, and how would--what--so why would that
 15 be of such concern to--was it just because
 16 it's a senior technologist and he's losing a
 17 senior technologist? Was there any plan in
 18 place to have someone of equal training and
 19 experience to replace Mr. Simms?
 20 MR. DYER:
 21 A. Well, we did have other staff there, but what
 22 it would mean, I guess, just like in any lab,
 23 is a new hire would come in, and that's
 24 standard in any lab when somebody--if anybody
 25 decides to leave today, a new hire will come

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1 in and, you know, the chances are they're not
 2 trained. But I wanted Les to go. Les had a
 3 lot of experience in histology or pathology
 4 and he would be the best candidate to go into
 5 immunohistochemistry.
 6 CHAYTOR, Q.C.:
 7 Q. Okay, and you said while you would consult Dr.
 8 Cook on this, ultimately did Dr. Cook have any
 9 authority to say which technologists would
 10 hold which positions?
 11 MR. DYER:
 12 A. I'm sorry?
 13 CHAYTOR, Q.C.:
 14 Q. You said you would consult Dr. Cook on this
 15 issue.
 16 MR. DYER:
 17 A. Yes.
 18 CHAYTOR, Q.C.:
 19 Q. But ultimately, did Dr. Cook have any
 20 authority as to the decision as to which
 21 technologist would fill which position?
 22 MR. DYER:
 23 A. I think I had the perceived authority that he
 24 did, although for something like this, I would
 25 get it approved through Mr. Gulliver first.

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1 So yeah, you know, I think it was just--you
 2 know, again, it was the way the work was over
 3 there or the life, you know, the atmosphere
 4 was over there of how--of who ran the lab.
 5 CHAYTOR, Q.C.:
 6 Q. And I'm just trying to really understand what
 7 the concern would have been and what you
 8 understood the concern to be at the time.
 9 MR. DYER:
 10 A. Again, I think it was that he was--that that
 11 lab there was going to lose a senior tech.
 12 CHAYTOR, Q.C.:
 13 Q. Okay, and no guarantee that they would get a
 14 senior tech to fill the position left void by
 15 Mr. Simms moving?
 16 MR. DYER:
 17 A. No, the position was filled. Like again, a
 18 position there was filled.
 19 CHAYTOR, Q.C.:
 20 Q. And that was told to Dr. Cook at the time,
 21 that someone would come in with equal -
 22 MR. DYER:
 23 A. Somebody would be hired and somebody was
 24 hired.
 25 CHAYTOR, Q.C.:

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1 Q. Okay, and of course, we know that Mr. Simms
 2 eventually did move and moved shortly after
 3 this. He was in -
 4 MR. DYER:
 5 A. A month later, I believe.
 6 CHAYTOR, Q.C.:
 7 Q. Yes, he was in his position by St. Patrick's
 8 Day, he's told us, of 2003.
 9 MR. DYER:
 10 A. Yes.
 11 CHAYTOR, Q.C.:
 12 Q. So I take it that whatever opposition Dr. Cook
 13 had to it, it was resolved?
 14 MR. DYER:
 15 A. Yes.
 16 CHAYTOR, Q.C.:
 17 Q. Okay.
 18 MR. DYER:
 19 A. Just I think also one of the other things that
 20 we did was, again, where we were an actual--I
 21 was the manager of one group, I think one of
 22 the things--yeah, now I'm thinking about it--
 23 is we had some very senior technicians who had
 24 been in the lab cutting for like 20-30 years
 25 and any time I ever had an issue at St.

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1 Clare's with workload falling behind and that,
 2 I would actually transfer technicians from
 3 Health Science over to St. Clare's to help
 4 them out. So I did have that flexibility and
 5 I did do it.
 6 CHAYTOR, Q.C.:
 7 Q. Okay, and then the second interaction that you
 8 had was the one, I believe, that you described
 9 for us, and that one occurred February 14th,
 10 so it's two days after the first encounter.
 11 MR. DYER:
 12 A. Okay.
 13 CHAYTOR, Q.C.:
 14 Q. "I was having a staff meeting with the St.
 15 Clare's pathology department in the laboratory
 16 to inform them of changes pertaining to the
 17 corporate wide recall and the training and
 18 eventual lateral transfer of the technologist
 19 II position." So what it appears that you
 20 were talking to them about was this issue of
 21 one and six call, and -
 22 MR. DYER:
 23 A. Yes, about one and five.
 24 CHAYTOR, Q.C.:
 25 Q. - and Mr. Simms moving over to the Health

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1 Science?
 2 MR. DYER:
 3 A. Yes.
 4 CHAYTOR, Q.C.:
 5 Q. "I was sitting at the back of the laboratory
 6 and he stopped at the front. He pointed his
 7 forefinger directly at me and said, I quote,
 8 'you'. He then pointed to the door and said,
 9 I quote, 'I want to see you right now.' I
 10 responded 'sure, Don' and he stormed out of
 11 the lab. I can provide witnesses upon
 12 request. We proceeded to my office where
 13 another heated debate occurred. Immediately
 14 after the debate, I verbally informed you.
 15 This conduct exhibited towards me was very
 16 degrading, disrespectful and humiliating. All
 17 of the staff I manage were in the laboratory
 18 at the time and other staff from another
 19 department. Please investigate as per the
 20 harassment in the workplace policy. I have
 21 worked in health care for 17 years and I have
 22 always presented myself in a professional
 23 manner in all types of situations and I have
 24 never been threatened or humiliated. Further
 25 to the point, for any upcoming discussions

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1 concerning the above two changes or the
 2 consolidation of anatomical pathology for Dr.
 3 Don Cook to be present I will be involved if
 4 mediation is provided. It is apparent that
 5 Dr. Cook and I have totally different versions
 6 of the anatomical pathology department. Also,
 7 I request to have a meeting with St. Clare's
 8 Pathology staff, myself and Mr. Gulliver to
 9 discuss the management of anatomical
 10 pathology."
 11 So you set out your concerns and
 12 described what had happened to Mr. Gulliver,
 13 and what happened? What happened? What was
 14 the outcome of you having written this letter?
 15 MR. DYER:
 16 A. I can't--I know I spoke to Mr. Gulliver about
 17 it and he was going to investigate, and all I
 18 can remember is that was it, it was done.
 19 CHAYTOR, Q.C.:
 20 Q. Did Mr. Gulliver ever get back to you and tell
 21 you the outcome of his investigation?
 22 MR. DYER:
 23 A. I can't truly remember if he did, but Dr. Cook
 24 and I never had another interaction like that
 25 since.

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1 CHAYTOR, Q.C.:

2 Q. Okay, so I take it that your relationship

3 improved?

4 MR. DYER:

5 A. Yes, it did.

6 CHAYTOR, Q.C.:

7 Q. Okay, and did you ever receive anything in

8 writing in response to this letter?

9 MR. DYER:

10 A. No.

11 CHAYTOR, Q.C.:

12 Q. You asked that it be investigated as per the

13 harassment in the workplace policy?

14 MR. DYER:

15 A. I was very upset at the time.

16 CHAYTOR, Q.C.:

17 Q. At the time?

18 MR. DYER:

19 A. Yes.

20 CHAYTOR, Q.C.:

21 Q. So I take it no formal investigation went

22 forward in that respect?

23 MR. DYER:

24 A. No.

25 CHAYTOR, Q.C.:

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1 Q. The idea of having to have mediation involved

2 in any ongoing discussion on consolidation or

3 any other of the issues that you identified,

4 did that have to occur?

5 MR. DYER:

6 A. No, it didn't.

7 CHAYTOR, Q.C.:

8 Q. Was mediation required?

9 MR. DYER:

10 A. No, it did not.

11 CHAYTOR, Q.C.:

12 Q. Okay, and you say here, "it is apparent that

13 Dr. Cook and I have totally different versions

14 for the anatomical pathology department."

15 What did you see as being your divergent

16 views?

17 MR. DYER:

18 A. I think, again, what I wanted was to

19 consolidate and have the lab all on one site,

20 so we can have all--one standardized type of

21 procedure for each thing, and Dr. Cook didn't.

22 That was our vision.

23 CHAYTOR, Q.C.:

24 Q. So both of the issues that you were proposing

25 or both of the specific examples in this

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1 context would have involved some loss of

2 autonomy for each of the sites really?

3 MR. DYER:

4 A. Yes.

5 CHAYTOR, Q.C.:

6 Q. Because you're talking about taking a

7 technologist from one site over to the Health

8 Science and in the other situation, you're

9 talking about consolidating the workloads or

10 the call schedules of the technologists on

11 each of the sites?

12 MR. DYER:

13 A. Yes.

14 CHAYTOR, Q.C.:

15 Q. So that, I take it, could have been viewed as

16 a step towards consolidation?

17 MR. DYER:

18 A. Definitely.

19 CHAYTOR, Q.C.:

20 Q. Okay. And then it says, your request here in

21 your letter that there be a meeting of St.

22 Clare's staff, as well as yourself and Mr.

23 Gulliver to discuss the management of

24 anatomical pathology. Did that meeting take

25 place?

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1 MR. DYER:

2 A. Yes, it did.

3 CHAYTOR, Q.C.:

4 Q. And how did that go?

5 MR. DYER:

6 A. I think things started to improve.

7 CHAYTOR, Q.C.:

8 Q. Shortly after this was raised.

9 MR. DYER:

10 A. Yes.

11 CHAYTOR, Q.C.:

12 Q. So having brought your issues to the point of

13 putting them in writing to your immediate

14 supervisor, whatever action Mr. Gulliver took

15 in response to it, appeared to alleviate the

16 problem?

17 MR. DYER:

18 A. Yes.

19 CHAYTOR, Q.C.:

20 Q. And you indicate that you had gone to speak to

21 Mr. Gulliver immediately after the first

22 encounter, you say you verbally informed him.

23 MR. DYER:

24 A. Yes.

25 CHAYTOR, Q.C.:

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1 Q. Did Mr. Gulliver request then that you put
 2 your concerns in writing?
 3 MR. DYER:
 4 A. I don't think so, no, I just felt I had to do
 5 it.
 6 CHAYTOR, Q.C.:
 7 Q. Okay, so although you had verbally informed
 8 him, you felt that it was necessary to take
 9 the extra step of writing to him.
 10 MR. DYER:
 11 A. Yes.
 12 CHAYTOR, Q.C.:
 13 Q. And documenting your concerns.
 14 MR. DYER:
 15 A. Yes.
 16 CHAYTOR, Q.C.:
 17 Q. So you indicate that things, your relationship
 18 with Dr. Cook improved somewhat after this?
 19 MR. DYER:
 20 A. Yes.
 21 CHAYTOR, Q.C.:
 22 Q. And what about the issue then of moving
 23 forward with consolidation? Well where does
 24 it currently stand?
 25 MR. DYER:

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1 A. Our consolidation?
 2 CHAYTOR, Q.C.:
 3 Q. Yes.
 4 MR. DYER:
 5 A. In 2005, we actually did the technical
 6 consolidation.
 7 CHAYTOR, Q.C.:
 8 Q. And what did that mean and what actually was
 9 consolidated then in 2005?
 10 MR. DYER:
 11 A. Well initially what we did was to ease the
 12 transition, because it will require a lot of--
 13 well what we did initially was in 2004, we
 14 started, we struck committees with the
 15 technologists because it was mainly a
 16 technical consolidation, so we had a committee
 17 with technologists from Health Science and St.
 18 Clare's and we formulated a plan as to how we
 19 could actually make this work. So we met
 20 probably four, I think we had four meetings, a
 21 lot of it was how to streamline the work, and
 22 then from there, we actually moved all of the
 23 equipment, except the processor, the processor
 24 stayed on site and all the techs, except a
 25 technician and I believe, I think a lab

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

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1 Q. Okay, and you said there was a series of
 2 meetings throughout 2004 to -
 3 MR. DYER:
 4 A. Yes.
 5 CHAYTOR, Q.C.:
 6 Q. And was Dr. Cook part of those meetings? Was
 7 he part of the committee?
 8 MR. DYER:
 9 A. No, this was the committee that I struck
 10 myself with the technologists.
 11 CHAYTOR, Q.C.:
 12 Q. Just technical -
 13 MR. DYER:
 14 A. So they would be totally involved with this
 15 process.
 16 CHAYTOR, Q.C.:
 17 Q. Okay, and did you ever hear any other
 18 opposition by Dr. Cook to your endeavours to
 19 consolidate the technical aspect of the lab?
 20 MR. DYER:
 21 A. He wasn't in favour of it, like we hardly ever
 22 spoke about it.
 23 CHAYTOR, Q.C.:
 24 Q. So he remained opposed to it, but it did
 25 proceed?

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1 MR. DYER:
 2 A. I think we only actually got the--I can't
 3 remember when the actual approval came down,
 4 but in anticipation we started trying to
 5 streamline things, I'm not sure when the
 6 approval actually came from--because it didn't
 7 come from me, I think it came from higher up.
 8 CHAYTOR, Q.C.:
 9 Q. And it happened in 2005. Did it happen after
 10 Eastern Health then was incorporated or was it
 11 already in place before Eastern Health was
 12 incorporated?
 13 MR. DYER:
 14 A. It might be around the same time, I think.
 15 I'm not sure when Eastern Health was
 16 incorporated.
 17 CHAYTOR, Q.C.:
 18 Q. In April of 2005.
 19 MR. DYER:
 20 A. Well, I'd say this happened pretty well the
 21 same time.
 22 CHAYTOR, Q.C.:
 23 Q. Around the same time.
 24 MR. DYER:
 25 A. Yes.

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

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1 pathologist assistant's work at the time, but
 2 in 2002 when I got hired, I made a drop into
 3 the QEII, I think or the VG in Halifax and
 4 they had three PASs, but even before then, I
 5 remember Dr. Robb, he was a huge proponent of
 6 PASs and wanted, he wanted PASs and I wanted
 7 PASs.
 8 CHAYTOR, Q.C.:
 9 Q. Okay, was anybody resistant to the idea of
 10 PASs?
 11 MR. DYER:
 12 A. I think we did have a couple who were
 13 resistant to PASs.
 14 CHAYTOR, Q.C.:
 15 Q. And who were they? Who was it that wasn't in
 16 favour of PASs?
 17 MR. DYER:
 18 A. There was, I had a pathologist from one point
 19 from St. Clare's who came into my office one
 20 day and said to me, never join during her
 21 career will a PA or will a technologist ever
 22 cut her specimens.
 23 CHAYTOR, Q.C.:
 24 Q. And who said that?
 25 MR. DYER:

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1 A. That was Dr. Vaze.
 2 CHAYTOR, Q.C.:
 3 Q. And I take it she wasn't the only one, there
 4 were others who were opposed to it?
 5 MR. DYER:
 6 A. I think some--well that was the only, an
 7 actual aggressive encounter, I guess, but no,
 8 I think some pathologists had concerns about
 9 technologists actually doing that type of
 10 work, that kind of involved work.
 11 CHAYTOR, Q.C.:
 12 Q. So it was a new concept for them, not
 13 something they had been exposed to?
 14 MR. DYER:
 15 A. I don't think they've been exposed to it, I
 16 mean, I think it was discussed prior to me
 17 coming on site or being hired, but it wasn't
 18 something I don't think they had seen too much
 19 of.
 20 CHAYTOR, Q.C.:
 21 Q. And was this perceived then, the pathologists
 22 or pathology residents were doing the
 23 grossing, was so this perceived to be, if you
 24 were going to bring in PASs for that role, that
 25 this would be a loss of work for the

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1 pathologists?

2 MR. DYER:

3 A. Yes.

4 CHAYTOR, Q.C.:

5 Q. Why was Dr. Robb in favour of it? Did he tell

6 you the reasons why he saw it as a positive

7 thing?

8 MR. DYER:

9 A. I think at Health Science, ever since I've

10 been hired, the Health Sciences never had a

11 full complement of pathologists and he felt

12 that, where they were struggling to recruit

13 pathologists, PAs could actually alleviate

14 some of the work from four pathologists so

15 they could actually focus on microscopy,

16 that's exactly what he said to me.

17 CHAYTOR, Q.C.:

18 Q. And from your point of view, I take it it

19 would have been then a positive step forward,

20 in terms of the standardization of the

21 grossing process?

22 MR. DYER:

23 A. Definitely.

24 CHAYTOR, Q.C.:

25 Q. Yes. And where did Dr. Cook, as clinical

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1 chief, where did he stand on the issue?

2 MR. DYER:

3 A. I think he was in favour of it. I don't think

4 we discussed it very much, but I think he was

5 in favour of it.

6 CHAYTOR, Q.C.:

7 Q. And that's something, I take it early on you

8 had in mind, the idea of PAs and Dr. Robb was

9 on line, so that was in your early days as

10 management, I take it?

11 MR. DYER:

12 A. Yes, when I worked at the Janeway back in

13 1991, I was actually trained to do grossing

14 and my skill was actually a little more than

15 what they were doing at the Health Science,

16 like I would actually cut tissue, but very

17 simple tissues that were considered routine, I

18 would actually cut myself and put through.

19 CHAYTOR, Q.C.:

20 Q. And was there actually then an effort in those

21 early days, 2002, 2003, were there efforts

22 underway to acquire PAs?

23 MR. DYER:

24 A. I know there was no money, that was it, so I

25 know Dr. Robb constantly talked about the

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1 concept of where we couldn't fill positions at

2 the Health Science, that could they use some

3 of that money, like a pathologist, that

4 salary, to hire a couple of PAs or either that

5 or train a couple of technologists here and,

6 but I think that money came from MCP, so it

7 was a completely separate budget, but the

8 concept was constantly thrown up there. We

9 also do work, we also do work in the

10 laboratory, consult work, so you know, the lab

11 was producing about, I'd say, you know, 80 to

12 100, \$120,000 a year in consult work and so,

13 but that always went right into the coffers,

14 as you say, of Eastern Health, so because the

15 top was trying to get that money, but no, the

16 answer was no for that too. So even though we

17 -

18 CHAYTOR, Q.C.:

19 Q. Who was the answer of no coming from?

20 MR. DYER:

21 A. Oh, we'd just bring it to--well for the

22 coffers themselves, I think I just brought it

23 to Mr. Gulliver, but I know that they tried

24 that before, before I ever came there and the

25 answer was no, that money always went into the

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1 main budget for Eastern Health.

2 CHAYTOR, Q.C.:

3 Q. So would you put the idea of pathology

4 assistants forward in your budget each year

5 and it would come back with no money for that?

6 MR. DYER:

7 A. I think that in our goals and objectives, I

8 think, I'm not sure if we actually said

9 pathology assistants, but we asked for skilled

10 mix and the skilled mix was to get PAs to help

11 out.

12 CHAYTOR, Q.C.:

13 Q. Okay, when ultimately did pathology assistants

14 join Eastern Health?

15 MR. DYER:

16 A. I believe it was the fall of--well I think we

17 actually got approval in the fall of 2005.

18 CHAYTOR, Q.C.:

19 Q. So after the ER/PR issue.

20 MR. DYER:

21 A. Yes, after the ER/PR issue started.

22 CHAYTOR, Q.C.:

23 Q. And the first one started, I take it, sometime

24 after the fall of 2005?

25 MR. DYER:

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1 A. I think it was May of 2006. Like, you know, I
 2 was on a committee, a national committee of
 3 four PAs with a CSMLS and so I got a lot of
 4 information from that committee for writing
 5 job descriptions and things like that for PAs,
 6 so it took a couple of months to write
 7 everything up and go through Human Resources
 8 and things like that before we actually--go
 9 through recruitment before we actually sent
 10 out the actual job hosting. So they probably
 11 went up in January, February of '06, a couple
 12 of months later.
 13 CHAYTOR, Q.C.:
 14 Q. And how many PAs do you have now?
 15 MR. DYER:
 16 A. Today? We have three pathology assistants and
 17 we have one team leader, that's what we have.
 18 And just to take you through it, the team
 19 leader, she came from Ontario, she was already
 20 a fully trained PA and a great acquisition and
 21 I'm glad we got her because she actually set
 22 up a lot of the training program. And we
 23 hired our second PA, she came from Memorial
 24 University and she actually performed PA
 25 duties also in Ontario in the 90's and we

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1 hired two in-house--so that was the only, they
 2 were the ones that were acceptable and then we
 3 got two in house, and so we created an 18 to
 4 24 month training group or training protocol.
 5 CHAYTOR, Q.C.:
 6 Q. And these were technologists within Eastern
 7 Health?
 8 MR. DYER:
 9 A. These are medical laboratory technologists who
 10 had senior experience or who has been around a
 11 lot of--who have been around pathology. One
 12 of our recommendations, you had to be in
 13 pathology and you had to be involved with
 14 tissues and things like this.
 15 CHAYTOR, Q.C.:
 16 Q. And they went through an 18 to 24 month
 17 training process?
 18 MR. DYER:
 19 A. Eighteen months so far, yes.
 20 CHAYTOR, Q.C.:
 21 Q. And so are they already finished their
 22 training?
 23 MR. DYER:
 24 A. Well what happened is two of them are pretty
 25 well completed, one didn't succeed, so we

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1 removed and we posted again and hired and so,
 2 I'd say she's about 75 percent now. So
 3 they're doing, like 95 percent of all gross.
 4 CHAYTOR, Q.C.:
 5 Q. 95 percent of all gross.
 6 MR. DYER:
 7 A. Of all gross.
 8 CHAYTOR, Q.C.:
 9 Q. And this is all taking place where?
 10 MR. DYER:
 11 A. Health Sciences and St. Clare's, they do a
 12 rotation. And the position that--we also have
 13 a tech II who is still grossing all biopsies,
 14 so truly, really there's five of them doing
 15 all the gross.
 16 CHAYTOR, Q.C.:
 17 Q. And do they gross the breast specimens?
 18 MR. DYER:
 19 A. Yes, they do.
 20 CHAYTOR, Q.C.:
 21 Q. And was that true before Dr. Carter left?
 22 MR. DYER:
 23 A. Yes, I believe they completed the breast
 24 training, it stands out, I think around the
 25 same time that we actually went live with the

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1 ER/PR again, they were already grossing breast
 2 then, I think in '07.
 3 CHAYTOR, Q.C.:
 4 Q. And was Dr. Carter involved in their training?
 5 MR. DYER:
 6 A. I can't actually give a guaranteed answer to
 7 that. Dr. Lynn Morris-Larkin, she's a site
 8 chief at Health Science and she was leading
 9 the grossing, but the practice was all
 10 pathologists who were proficient in their
 11 fields were involved with the training, so I
 12 would imagine she was.
 13 CHAYTOR, Q.C.:
 14 Q. So for each particular area, there was a
 15 pathologist involved, so for example, breast
 16 pathology, you would expect that Dr. Carter
 17 would have been involved?
 18 MR. DYER:
 19 A. Yes, exactly.
 20 CHAYTOR, Q.C.:
 21 Q. And were there standard operating procedures
 22 developed for the pathology assistants?
 23 MR. DYER:
 24 A. They're being written now. As we go through
 25 the training, they were slowly being written.

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1 CHAYTOR, Q.C.:

2 Q. And so currently the bread loafing that we

3 heard of, of breast tissue, who does that?

4 MR. DYER:

5 A. For the most part, the pathologist's

6 assistants.

7 CHAYTOR, Q.C.:

8 Q. And when you say for the most part, why would

9 there be exceptions to that?

10 MR. DYER:

11 A. Again, I'm not involved directly, but I would

12 imagine if a pathologist--if a special

13 specimen came down that's extremely

14 complicated and it's not one that they're used

15 to doing, then a pathologist could certainly

16 step in.

17 CHAYTOR, Q.C.:

18 Q. So there's no written standard operating

19 procedures, they're in the process of being

20 developed, they're in draft form, I take it?

21 MR. DYER:

22 A. Well a lot of, I think a lot of our grossing

23 are written.

24 CHAYTOR, Q.C.:

25 Q. They're written?

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1 MR. DYER:

2 A. Yes.

3 CHAYTOR, Q.C.:

4 Q. Okay, and there are other standard operating

5 procedures in the works for specifically for

6 pathology assistants?

7 MR. DYER:

8 A. Oh yes.

9 CHAYTOR, Q.C.:

10 Q. Is there anything to say that they are the

11 people who now do these tests or can any

12 pathologist come in and say I'll do my own

13 grossing today, thank you.

14 MR. DYER:

15 A. I wouldn't be able to answer that question, I

16 don't know.

17 CHAYTOR, Q.C.:

18 Q. Who is the manager of the pathology

19 assistants?

20 MR. DYER:

21 A. Who is the manager?

22 CHAYTOR, Q.C.:

23 Q. Yeah, do you manage them?

24 MR. DYER:

25 A. Well I'm the manager of the laboratory--of

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1 pathology, but no, we have a team leader who

2 we hired.

3 CHAYTOR, Q.C.:

4 Q. So they report directly to her, the woman from

5 Ontario?

6 MR. DYER:

7 A. They would go to her for any type of--for any

8 type of clinical issue they would go to her,

9 and if she's not there, they would go to the

10 site chief.

11 CHAYTOR, Q.C.:

12 Q. So they'd go to the site chief?

13 MR. DYER:

14 A. Yes, because the site chief is a physician and

15 everything they deal with is with handling

16 tissue, grossing.

17 CHAYTOR, Q.C.:

18 Q. And who does the team leader report to?

19 MR. DYER:

20 A. The team leader for clinical issues would

21 report to the site chief, but for

22 administrative issues, she would report to me.

23 CHAYTOR, Q.C.:

24 Q. Okay, so the division in reporting, so in

25 terms of how they do their work and whether or

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1 not they do certain tests, that would be up to

2 the site chief?

3 MR. DYER:

4 A. Yes, or the team leader.

5 CHAYTOR, Q.C.:

6 Q. And if the team leader can't resolve it, then

7 go to the site chief.

8 MR. DYER:

9 A. Site chief, right.

10 CHAYTOR, Q.C.:

11 Q. And ultimately, I guess, could go to the

12 clinical chief?

13 MR. DYER:

14 A. Yes.

15 CHAYTOR, Q.C.:

16 Q. So whether or not they, any pathologist could

17 come in and take over a duty that the

18 pathology assistant thinks is within their

19 domain, that would have to either be agreed to

20 by the team leader or higher?

21 MR. DYER:

22 A. Or probably even higher, I would imagine even

23 higher, but I'm sure the pathologist could

24 override, I mean, that's how it works.

25 CHAYTOR, Q.C.:

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

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1 ER/PR in general? No, I don't think so, you
 2 know, looking back, I mean we may have
 3 discussed there are some repeats, but I mean,
 4 in 2002 we probably did, I'd say at least
 5 15,000 slides. So if we heard of two or three
 6 or ten or 15 repeats out of 15,000, I think we
 7 were doing really well.
 8 CHAYTOR, Q.C.:
 9 Q. But if you're hearing of two or three out of a
 10 test that you're not doing very frequently at
 11 all, would that have caused you concern is you
 12 heard that?
 13 MR. DYER:
 14 A. Yes, it would have.
 15 CHAYTOR, Q.C.:
 16 Q. So nothing stands out in your mind of anyone
 17 complaining to you at that particular point in
 18 time, anything to do with the IHC tests, other
 19 than the washing off the tissue and we'll get
 20 to that, other than that, nothing stands out
 21 about the staining or about ER/PR in general?
 22 MR. DYER:
 23 A. None.
 24 CHAYTOR, Q.C.:
 25 Q. And in terms of any informal rumours or

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1 rumblings, did you hear anything of any
 2 concern in 2002 regarding the testing?
 3 MR. DYER:
 4 A. None, I'm just trying to think about out site
 5 meetings even, but I think they were in 2003,
 6 but no, I can't recall if any concerns about
 7 IHC in that sense.
 8 CHAYTOR, Q.C.:
 9 Q. And the idea then of the tissue washing off
 10 the slide, what were you told about that and
 11 who brought that to your that to your
 12 attention?
 13 MR. DYER:
 14 A. I'm not sure if it was the techs or, I
 15 remember Dr. Ford Elms talking to me about it,
 16 about tissue, itself, particularly fatty
 17 tissue washing off slides.
 18 CHAYTOR, Q.C.:
 19 Q. Okay, so you remember Dr. Elms and perhaps the
 20 techs as well?
 21 MR. DYER:
 22 A. Yeah, maybe the techs might have too, but I
 23 remember Ford standing out.
 24 CHAYTOR, Q.C.:
 25 Q. And do you recall any meeting with

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1 pathologists in which that issue was
 2 discussed?
 3 MR. DYER:
 4 A. Not that I can remember.
 5 CHAYTOR, Q.C.:
 6 Q. So just Dr. Elms -
 7 MR. DYER:
 8 A. That's just in general.
 9 CHAYTOR, Q.C.:
 10 Q. Okay, and what can cause that? What can cause
 11 the tissue to wash off the slide?
 12 MR. DYER:
 13 A. Oh there are multiple things, I guess, that
 14 can cause it. The first thing is, well the
 15 first thing, again, is fixation. Fixation can
 16 certainly cause that to happen. If the tissue
 17 is not well fixed, it's not going to be well
 18 impermeated; therefore, it's not going to--it
 19 will dry on the slide. The handling of the
 20 tissue itself, the handling of the slide can
 21 cause that also, how it was -
 22 CHAYTOR, Q.C.:
 23 Q. What about the handling of the slide?
 24 MR. DYER:
 25 A. The handling of the slide, like if it's--I'm

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1 sorry, I don't mean the handling of the slide,
 2 I mean the handling of the cutting itself, if
 3 it's cut but it's breaking apart before you
 4 actually put it on the slide, the cohesion is
 5 already started and they were the two big
 6 reasons why, and we always found that fat
 7 struggled to adhere to slides and I've learned
 8 that through post mortems, the brain is very
 9 difficult to stay on slides and it's because
 10 it's pretty well all fat.
 11 CHAYTOR, Q.C.:
 12 Q. And breast tissue again -
 13 MR. DYER:
 14 A. And breast, there's a lot of fat in breast
 15 also, yes.
 16 CHAYTOR, Q.C.:
 17 Q. So and what if the tissue wasn't processed
 18 properly, could that also lead to -
 19 MR. DYER:
 20 A. Again, yes, definitely if it wasn't processed
 21 properly.
 22 CHAYTOR, Q.C.:
 23 Q. And, obviously if it's not adhered properly to
 24 the slide in the first place, that can cause
 25 an issue as well?

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1 MR. DYER:
 2 A. Yes.
 3 CHAYTOR, Q.C.:
 4 Q. After it was brought to your attention and you
 5 say you recall Dr. Elms speaking to you about
 6 it, what was done to investigate it, what
 7 happened? What did you do about the issue?
 8 MR. DYER:
 9 A. Well the first thing, I remember when we
 10 talked about it, the first thing I remember
 11 doing is I talked to other groups, like I
 12 talked to the pediatrics, I talked to neuro, I
 13 talked to the autopsy group to see if we were
 14 having an issue with fixation and nobody
 15 seemed to have an issue with fixation, so and
 16 I believe the next big issue would then be is
 17 how the specimen was actually acrosed, if the
 18 tissue was too big, we knew we were going to
 19 have processing problems. That would have
 20 been my next logical step, which is what I
 21 believe we did and processing, see, processing
 22 is almost like a science that's pretty close
 23 to exact. When you look at a tissue for
 24 processing and this is what we did at the
 25 time, is there's an actual, you can use a

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

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1 and I've learned since, of course, is how the
 2 AR came to IHC, is that the AR was pretty
 3 rough on the actual slide itself too, and
 4 apparently that's where it seemed to be
 5 happened the most was during the antigen
 6 retrieval, like they were getting full
 7 sections all the way down, but once it went on
 8 the antigen retrieval and came off, that's
 9 when they noticed that the slide was
 10 different.
 11 CHAYTOR, Q.C.:
 12 Q. And so the antigen retrieval process at the
 13 time was the boiling of the tissue.
 14 MR. DYER:
 15 A. Yes.
 16 CHAYTOR, Q.C.:
 17 Q. And that was harsh on the tissue as well.
 18 MR. DYER:
 19 A. Yes.
 20 CHAYTOR, Q.C.:
 21 Q. So that was discussed as an issue back in,
 22 well we know that Dr. Ejeckam, for example,
 23 intervened in 2003, did this pre-date Dr.
 24 Ejeckam's intervention, these discussions?
 25 MR. DYER:

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1 A. Yes, they did.
 2 CHAYTOR, Q.C.:
 3 Q. And so that was--the effect of the antigen
 4 retrieval was something being discussed back
 5 in 2002?
 6 MR. DYER:
 7 A. Yes, not the effect--yeah, the effect in terms
 8 of quality of how the tissue was actually
 9 washing off the slide, yes.
 10 CHAYTOR, Q.C.:
 11 Q. Yes, and how that might be a factor in what
 12 was happening?
 13 MR. DYER:
 14 A. Yes.
 15 CHAYTOR, Q.C.:
 16 Q. The issue--what happens in the processor if
 17 the tissue is cut too thick, the issue of
 18 being cut too thick for the cassettes? What's
 19 the problem?
 20 MR. DYER:
 21 A. Well if the tissue is cut too thick, the
 22 processing may not actually do the proper job
 23 and may not get through--the actual
 24 dehydration and the clearing may not function
 25 and therefore, then when you get into your

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

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1 that it was through the antigen retrieval and
 2 therefore, I wanted an automated system.
 3 CHAYTOR, Q.C.:
 4 Q. How were you able to deduce that it was the
 5 antigen retrieval that was causing -
 6 MR. DYER:
 7 A. I think we went through the whole process and
 8 it seemed like, you know, it was a full
 9 section, because we went through the entire
 10 process and it was a full section going in,
 11 but it wasn't a full section coming out.
 12 CHAYTOR, Q.C.:
 13 Q. And so was there any attempt made at that
 14 point in time to adjust the antigen retrieval
 15 process?
 16 MR. DYER:
 17 A. At that time, no, the antigen retrieval that
 18 was recommended was--or the one that we
 19 actually followed, we followed the recommended
 20 one which was boiling, so what we did was we
 21 tried, I believe we brought in a solution from
 22 DAKO called histogrip and we used that on the
 23 brain slides and we also used it on fatty
 24 tissue.
 25 CHAYTOR, Q.C.:

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1 Q. So you used it on the breast slides as well?
 2 MR. DYER:
 3 A. On the breast slides, yes, and I think that
 4 was the best that they had, so that's--we
 5 would actually procure our slides in that.
 6 CHAYTOR, Q.C.:
 7 Q. And what did that do? Was that an -
 8 MR. DYER:
 9 A. I think--pardon?
 10 CHAYTOR, Q.C.:
 11 Q. Was that an adhesive or -
 12 MR. DYER:
 13 A. Yes, it was like an adhesive, yes.
 14 CHAYTOR, Q.C.:
 15 Q. So what would actually happen? Were the
 16 slides dipped in this or -
 17 MR. DYER:
 18 A. Yes, like a solution came pre-made and you
 19 would dip them for, as was a protocol, for so
 20 many minutes and then you would take them out
 21 and we would dry them in an oven at 37
 22 degrees, I believe, for so many hours and then
 23 those were the slides that were actually used
 24 for immunohistochemistry.
 25 CHAYTOR, Q.C.:

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1 Q. And were they also used on the IHC slides?
 2 Was that used on the IHC slides?
 3 MR. DYER:
 4 A. Yes, for all IHC.
 5 CHAYTOR, Q.C.:
 6 Q. For all IHC slides, okay. And where did this
 7 solution come from? DAKO is the -
 8 MR. DYER:
 9 A. They came from DAKO, yes.
 10 CHAYTOR, Q.C.:
 11 Q. And was there anything--did the lab
 12 technologists or assistants who were using
 13 this, did they have to actually mix the
 14 solution themselves, or did it come -
 15 MR. DYER:
 16 A. I think it might have come pre-made, I'm not
 17 sure.
 18 CHAYTOR, Q.C.:
 19 Q. And do you know whether there was any quality
 20 control measures to check that solution?
 21 MR. DYER:
 22 A. Not that I know of.
 23 CHAYTOR, Q.C.:
 24 Q. Could that adhesive cause any problem
 25 ultimately in the staining process?

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1 MR. DYER:
 2 A. I was under the impression that no, that it
 3 was recommended by DAKO for IHC.
 4 CHAYTOR, Q.C.:
 5 Q. To keep the tissue on the slide -
 6 MR. DYER:
 7 A. To help keep the tissue adhered.
 8 CHAYTOR, Q.C.:
 9 Q. And you're not aware since as to whether or
 10 not that could have been a factor in anything?
 11 MR. DYER:
 12 A. No.
 13 CHAYTOR, Q.C.:
 14 Q. And so the idea of then the contract being up
 15 with DAKO and looking to acquire a new
 16 machine.
 17 MR. DYER:
 18 A. Yes.
 19 CHAYTOR, Q.C.:
 20 Q. This issue of the tissues washing off the
 21 slide and antigen retrieval being deduced to
 22 be a factor in that, I take it then when you
 23 went looking for a machine, you looked for
 24 something with antigen retrieval more
 25 automated?

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1 MR. DYER:
 2 A. Yes.
 3 CHAYTOR, Q.C.:
 4 Q. And that was part of the thinking then in
 5 getting the Ventana machine.
 6 MR. DYER:
 7 A. Well I wrote, in my initial tender I wrote,
 8 the only applicant that came back was DAKO and
 9 it was still not automated, so I wouldn't
 10 accept it. We went on a search to try and
 11 determine what other groups were doing to see
 12 if we could find an automated or antigen
 13 retrieval on board is what they call it.
 14 CHAYTOR, Q.C.:
 15 Q. And ultimately, of course, you acquired the
 16 Ventana?
 17 MR. DYER:
 18 A. Yes.
 19 CHAYTOR, Q.C.:
 20 Q. So you've told us about the issue regarding
 21 the washing off could be the fixation, the
 22 antigen retrieval process, the grossing.
 23 MR. DYER:
 24 A. When I mean grossing, again, if the tissues
 25 were cut thick -

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1 CHAYTOR, Q.C.:
 2 Q. The thickness.
 3 MR. DYER:
 4 A. - you may not get a true process.
 5 CHAYTOR, Q.C.:
 6 Q. In terms of -
 7 THE COMMISSIONER:
 8 Q. I don't want to interrupt, but I just wanted
 9 to be certain about this, to go back to Dr.
 10 Elms' concerns as expressed to you, this arose
 11 out of, am I right, this arose out of the fact
 12 that you were going to go look for new
 13 equipment?
 14 MR. DYER:
 15 A. Yes.
 16 THE COMMISSIONER:
 17 Q. And in the conversation about looking for new
 18 equipment and what was required for the new
 19 equipment, Dr. Elms raised his concern about
 20 tissue washing off the slides in the current
 21 process.
 22 MR. DYER:
 23 A. Yes.
 24 THE COMMISSIONER:
 25 Q. And you hadn't heard of that before.

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1 MR. DYER:
 2 A. I think I might have heard of it, but I don't
 3 think it was considered a huge issue at the
 4 time or at least it wasn't relayed to me that
 5 way.
 6 THE COMMISSIONER:
 7 Q. Okay, thank you.
 8 CHAYTOR, Q.C.:
 9 Q. And are you able to date that in terms of when
 10 Dr. Elms spoke to you, was that before Dr.
 11 Ejeckam we know in April of 2003 -
 12 MR. DYER:
 13 A. Oh yes.
 14 CHAYTOR, Q.C.:
 15 Q. So was it before that?
 16 MR. DYER:
 17 A. It had to be before that, yes.
 18 CHAYTOR, Q.C.:
 19 Q. It was before that, okay. And in 2003, were
 20 you aware in 2003 that there were repeats of
 21 ER/PR tests which resulted in changes upon
 22 repeat? Were you aware of that?
 23 MR. DYER:
 24 A. No.
 25 CHAYTOR, Q.C.:

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1 Q. And so I take it Dr. Elms, nor anyone else
 2 brought that to your attention?
 3 MR. DYER:
 4 A. No.
 5 CHAYTOR, Q.C.:
 6 Q. Have you ever become aware of that?
 7 MR. DYER:
 8 A. Yes.
 9 CHAYTOR, Q.C.:
 10 Q. And when?
 11 MR. DYER:
 12 A. The first time was May 17th, 2005.
 13 CHAYTOR, Q.C.:
 14 Q. That in 2003 there had been conversions?
 15 MR. DYER:
 16 A. I think it was 2003, 2002.
 17 CHAYTOR, Q.C.:
 18 Q. And 2002 as well?
 19 MR. DYER:
 20 A. No, I think there was a conversion in 2002, I
 21 believe.
 22 CHAYTOR, Q.C.:
 23 Q. Yes, but when was that conversion made known?
 24 MR. DYER:
 25 A. To me?

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1 CHAYTOR, Q.C.:
 2 Q. The original test was 2002.
 3 MR. DYER:
 4 A. Yes.
 5 CHAYTOR, Q.C.:
 6 Q. And when was that test -
 7 MR. DYER:
 8 A. I was told May 17th, 2005.
 9 CHAYTOR, Q.C.:
 10 Q. Right, yes, what I'm asking you is if in 2003
 11 you were aware that tests were done in 2003,
 12 repeated in 2003 and resulted in changes?
 13 MR. DYER:
 14 A. No, I was never aware.
 15 CHAYTOR, Q.C.:
 16 Q. You were never made aware of that?
 17 MR. DYER:
 18 A. No.
 19 CHAYTOR, Q.C.:
 20 Q. So you've never been made aware of that?
 21 MR. DYER:
 22 A. No.
 23 CHAYTOR, Q.C.:
 24 Q. Any issue of fixation as being a contributing
 25 factor to the tissue washing off the slides,

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1 do you recall any debate as to the necessity
 2 of ensuring that breast tissue was sliced to
 3 allow even fixation? Do you recall any debate
 4 or discussion around that, around the issue of
 5 the bread loafing?
 6 MR. DYER:
 7 A. Yes, I was invited to a site meeting at Health
 8 Science.
 9 CHAYTOR, Q.C.:
 10 Q. I'm sorry, which meeting?
 11 MR. DYER:
 12 A. I was invited to a site pathologist meeting at
 13 Health Science, and that was one of the issues
 14 that was discussed -- that was one of the
 15 things that was discussed at the meeting.
 16 CHAYTOR, Q.C.:
 17 Q. And can you time that meeting? Which --
 18 around about when was that?
 19 MR. DYER:
 20 A. No, I can't --
 21 CHAYTOR, Q.C.:
 22 Q. So was this in 2002, your first year of
 23 management?
 24 MR. DYER:
 25 A. No, no, it wasn't in -- it was probably more -

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1 - no, it wasn't 2002 for sure.
 2 CHAYTOR, Q.C.:
 3 Q. Was it after Dr. Ejeckam was involved in
 4 April, 2003?
 5 MR. DYER:
 6 A. It's hard to place to say when it was.
 7 CHAYTOR, Q.C.:
 8 Q. I take it, it was, though, prior to the ER/PR
 9 issue that we're now dealing with arising in
 10 2005?
 11 MR. DYER:
 12 A. Oh, yes.
 13 CHAYTOR, Q.C.:
 14 Q. It predated that?
 15 MR. DYER:
 16 A. Definitely.
 17 CHAYTOR, Q.C.:
 18 Q. Predated that by how long?
 19 MR. DYER:
 20 A. It might have been 2003. It stands out for
 21 some reason, so it might have been 2003.
 22 CHAYTOR, Q.C.:
 23 Q. Well, then tell us what happened at that
 24 meeting, what was discussed?
 25 MR. DYER:

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1 A. I think it was just a general meeting, but an
 2 issue was brought up again grossing and that
 3 the protocol to be followed is all large
 4 specimens are to be bread loafed, are to be
 5 bread loafed, like what we were doing. So
 6 they're all to be bread loafed when they come
 7 down every evening, and I think there was an
 8 issue about residents for the most part did
 9 it, but when -- because residents were
 10 assigned to pathologists, but on days where a
 11 resident wasn't assigned to a pathologist, it
 12 was the pathologist's responsibility to do it.
 13 CHAYTOR, Q.C.:
 14 Q. And so what was the issue or what was the
 15 debate about then?
 16 MR. DYER:
 17 A. I think the debate was there were some
 18 inconsistencies in bread loafing, not the
 19 actual bread loafing, but, I guess, when they
 20 did the bread loafing. Some residents were
 21 doing it for some pathologists - for
 22 pathologists and maybe other times they didn't
 23 do it, depending on the pathologist.
 24 CHAYTOR, Q.C.:
 25 Q. Meaning that if the resident didn't do it, the

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1 pathologist did it, him or herself, or it
 2 didn't happen at all?
 3 MR. DYER:
 4 A. Correct, the latter.
 5 CHAYTOR, Q.C.:
 6 Q. The latter?
 7 MR. DYER:
 8 A. Yes.
 9 CHAYTOR, Q.C.:
 10 Q. So bread loafing wasn't happening with all
 11 breast specimens?
 12 MR. DYER:
 13 A. Oh, I can't say it was breast, in general. I
 14 think -- it was large specimens in general.
 15 CHAYTOR, Q.C.:
 16 Q. Which would include breast?
 17 MR. DYER:
 18 A. Yes.
 19 CHAYTOR, Q.C.:
 20 Q. And you understood that it included breast?
 21 MR. DYER:
 22 A. Yes.
 23 CHAYTOR, Q.C.:
 24 Q. And who attended this meeting, can you recall
 25 in particular any pathologists that were

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1 there?
 2 MR. DYER:
 3 A. Oh, there was multiple pathologists from --
 4 from Health Science were there. I know -- I
 5 think Dr. Lynn Morris-Larkin was -- I'm not
 6 sure if she was chairing, but she was there,
 7 and Dr. Wadden was there, Dr. Ejeckam was
 8 there. I think Dr. Cook might have been
 9 there, I'm not sure, because I think Terry was
 10 even -- I think Mr. Gulliver was also invited
 11 to this meeting. He was.
 12 CHAYTOR, Q.C.:
 13 Q. And did someone raise this as an issue of
 14 concern that all the large specimens weren't
 15 being bread loafed?
 16 MR. DYER:
 17 A. I think, yes.
 18 CHAYTOR, Q.C.:
 19 Q. And who do you recall raising that as a
 20 concern?
 21 MR. DYER:
 22 A. I believe it was Dr. Lynn Morris-Larkin.
 23 CHAYTOR, Q.C.:
 24 Q. Okay, and what was the response of the other
 25 pathologists in the room? Was there any

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1 resistance to doing that?
 2 MR. DYER:
 3 A. I think it was pretty well accepted. There
 4 was one resistance there who felt that they
 5 were an experienced pathologist and they knew
 6 how to read the slides, so they felt it may
 7 not be -- it wasn't always necessary.
 8 CHAYTOR, Q.C.:
 9 Q. To bread loaf?
 10 MR. DYER:
 11 A. To bread loaf, yes.
 12 CHAYTOR, Q.C.:
 13 Q. And who was that pathologist?
 14 MR. DYER:
 15 A. That was Dr Ejeckam.
 16 CHAYTOR, Q.C.:
 17 Q. Dr. Ejeckam?
 18 MR. DYER:
 19 A. Yes.
 20 CHAYTOR, Q.C.:
 21 Q. So in terms of the outcome of that meeting,
 22 was it resolved that on a go-forward basis all
 23 large specimens would, in fact, be bread
 24 loafed and bread loafed in a standard
 25 procedure?

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1 MR. DYER:
 2 A. That's what Dr. Lynn Morris-Larkin wanted.
 3 CHAYTOR, Q.C.:
 4 Q. And was she successful in getting that?
 5 MR. DYER:
 6 A. I wouldn't be able to tell -- I wouldn't be
 7 able to tell you if that happened after.
 8 CHAYTOR, Q.C.:
 9 Q. So at the end of the meeting, it didn't seem
 10 to have been resolved, is that right?
 11 MR. DYER:
 12 A. Well, at the end of the meeting, I remember
 13 she said this will be -- this is the protocol.
 14 CHAYTOR, Q.C.:
 15 Q. This is --
 16 MR. DYER:
 17 A. This is the protocol, so I would assume they
 18 all just followed it after.
 19 CHAYTOR, Q.C.:
 20 Q. So any resistance Dr. Ejeckam had to the
 21 issue, he seemed to go along with it at the
 22 end of the meeting?
 23 MR. DYER:
 24 A. I wouldn't be able to answer that.
 25 CHAYTOR, Q.C.:

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1 Q. And do you recall Dr. Ejeckam, how we've heard
 2 was certainly very experienced in IHC, did he
 3 give any explanation as to why he wouldn't see
 4 that as a necessary step to bread loaf the
 5 specimens?
 6 MR. DYER:
 7 A. I can't really remember everything. Just that
 8 stands out. That's why I remember it.
 9 CHAYTOR, Q.C.:
 10 Q. And I take it for it to be the subject of
 11 discussion, it had come to Lynn Morris-
 12 Larkin's attention that this was happening,
 13 that not all specimens were being bread
 14 loafed?
 15 MR. DYER:
 16 A. Again that's hard to say. Obviously,
 17 something was brought to her attention for
 18 that to come up at the meeting.
 19 CHAYTOR, Q.C.:
 20 Q. Yes.
 21 MR. DYER:
 22 A. Yes.
 23 CHAYTOR, Q.C.:
 24 Q. And do you know whether or not there were
 25 others who hadn't been bread loafing the

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1 specimens?
 2 MR. DYER:
 3 A. Not that I know of.
 4 CHAYTOR, Q.C.:
 5 Q. And the only one who spoke in the meeting to
 6 indicate that it hadn't been his practice was
 7 Dr. Ejeckam?
 8 MR. DYER:
 9 A. Yes.
 10 CHAYTOR, Q.C.:
 11 Q. Was there any concern in terms of the timing
 12 of when the bread loafing would have to take
 13 place?
 14 MR. DYER:
 15 A. I think the agreement was any specimens that
 16 came down today would be bread loafed between
 17 four and five in the evening. So they would
 18 wait as late as possible to try and get every
 19 specimen come down.
 20 CHAYTOR, Q.C.:
 21 Q. And so were there any concerns that -- any
 22 concerns that that had not been happening, you
 23 know, in terms of the timing and how that may
 24 have been causing any difficulty for the
 25 pathologists in doing their grossing?

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1 MR. DYER:
 2 A. Again I don't understand the question.
 3 CHAYTOR, Q.C.:
 4 Q. Okay, I don't really either. About the timing
 5 of the specimen coming down --
 6 MR. DYER:
 7 A. From the OR, you mean?
 8 CHAYTOR, Q.C.:
 9 Q. From the OR, yes, yeah, and how that might
 10 interfere with their day and everything else
 11 that they had to do, was there some issue --
 12 MR. DYER:
 13 A. That did happen. You know, there were
 14 specimens that would run late, and so they
 15 would come down on the first -- the 8 o'clock
 16 run or the 8:30 run the next morning. So that
 17 did happen.
 18 CHAYTOR, Q.C.:
 19 Q. And in those situations, what would happen to
 20 the specimen?
 21 MR. DYER:
 22 A. I think -- from what I would see, they would
 23 be immediately taken over by the resident or
 24 the pathologist that day because it would
 25 still be assigned to that pathologist from

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1 yesterday, and they would deal with the
 2 specimen immediately.
 3 CHAYTOR, Q.C.:
 4 Q. Okay.
 5 MR. DYER:
 6 A. From what I saw.
 7 CHAYTOR, Q.C.:
 8 Q. So it did come to the attention of certainly
 9 certain pathologists and to yourself, and to
 10 Mr. Gulliver's attention, back around 2003
 11 time frame that there was this issue of bread
 12 loafing not necessarily happening all the
 13 time?
 14 MR. DYER:
 15 A. Yes.
 16 CHAYTOR, Q.C.:
 17 Q. But was there then any written standard
 18 operating procedure or any policy put in place
 19 to ensure that on a go-forward basis that
 20 would happen?
 21 MR. DYER:
 22 A. Again it was clinical, so I didn't -- I didn't
 23 see one, but you'd have to ask the physicians.
 24 CHAYTOR, Q.C.:
 25 Q. And to your knowledge, did any such policy or

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1 procedure exist?
 2 MR. DYER:
 3 A. I didn't see one myself.
 4 CHAYTOR, Q.C.:
 5 Q. Okay, and I take it you've seen one recently?
 6 MR. DYER:
 7 A. Oh, yes.
 8 CHAYTOR, Q.C.:
 9 Q. In 2008?
 10 MR. DYER:
 11 A. Yes.
 12 CHAYTOR, Q.C.:
 13 Q. I just want to talk then a bit about Dr.
 14 Ejeckam's concerns which arose in 2003, and
 15 first of all, what did you understand Dr.
 16 Ejeckam's role to be at that time in terms of
 17 the IHC lab?
 18 MR. DYER:
 19 A. He ran the IHC lab.
 20 CHAYTOR, Q.C.:
 21 Q. And could he give direction to the technical
 22 staff?
 23 MR. DYER:
 24 A. He could, and he did.
 25 CHAYTOR, Q.C.:

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

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1 believe, of multiple antibodies, and he wanted
 2 to stop those -- he wanted us to stop
 3 performing those stains on a clinical basis
 4 effective immediately.
 5 CHAYTOR, Q.C.:
 6 Q. And so what was your reaction to that?
 7 MR. DYER:
 8 A. I was amazed. I never -- I did not realize we
 9 were having issues. I was not receiving any
 10 complaints or anything about IHC. So I --
 11 honestly, I was taken back, but I certainly
 12 agreed with him and I said, yes, go ahead.
 13 CHAYTOR, Q.C.:
 14 Q. And so you're surprised and amazed, you say,
 15 because you hadn't received any complaints
 16 about the IHC?
 17 MR. DYER:
 18 A. None.
 19 CHAYTOR, Q.C.:
 20 Q. What did he tell you led him to the concern,
 21 had he received complaints or why was he doing
 22 this?
 23 MR. DYER:
 24 A. I don't -- I can't really remember what he
 25 said about how he actually led to this. I

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1 just remember him saying there was issues with
 2 the consistency in the staining.
 3 CHAYTOR, Q.C.:
 4 Q. So all you had heard in terms of the quality
 5 of the product at that point in time, you had
 6 heard issues of quality of the slides and that
 7 the tissue was washing off?
 8 MR. DYER:
 9 A. Yes.
 10 CHAYTOR, Q.C.:
 11 Q. But the actual staining and whether the
 12 staining was sufficient, you hadn't heard
 13 anything along those lines?
 14 MR. DYER:
 15 A. That's the first time, and I know we run a --
 16 I don't know if we actually -- we might have
 17 talked about controls because I know we run a
 18 control every time, and from what I
 19 understand, the controls were working.
 20 CHAYTOR, Q.C.:
 21 Q. And did you inquire of him in that regard
 22 whether or not --
 23 MR. DYER:
 24 A. I can't remember. It's something I probably
 25 would have done, but I don't remember if I

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1 actually did.
 2 CHAYTOR, Q.C.:
 3 Q. Okay. So after having that discussion with
 4 Dr. Ejeckam, what did you do?
 5 MR. DYER:
 6 A. Well, the first thing I did is like I always
 7 do, I informed the Program Director?
 8 CHAYTOR, Q.C.:
 9 Q. Mr. Gulliver.
 10 MR. DYER:
 11 A. Yes, that the stains -- that there's six or
 12 eight stains that we're going to retest or
 13 revalidate, and that we're going to stop
 14 performing those stains for the next few weeks
 15 and see if we can get them back up to
 16 consistent staining. I then spoke to Mary.
 17 She was the lead tech, she was the senior tech
 18 there and I think I actually spoke to Dr.
 19 Ejeckam -- I might have spoken to Dr. Ejeckam
 20 about that and recommended that Mary will be
 21 the one to do it, and so I spoke with Mary and
 22 explained -- I believe actually I told -- I
 23 think I might have had -- first I informed
 24 Terry, and then I think I had a meeting with
 25 my staff to let them know that we're having

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1 some issues with some stains, and I think from
 2 there we discussed that Mary would be the
 3 person to do the retesting, so she went down
 4 to immuno. We called and spoke to -- I know I
 5 did myself, spoke to Dan Belchowsky from DAKO
 6 because he was the expert. That's the first
 7 thing you would do if you're having issues
 8 that are serious like that is we've got to get
 9 help.
 10 CHAYTOR, Q.C.:
 11 Q. Okay, and I'll take you through that.
 12 MR. DYER:
 13 A. Okay.
 14 CHAYTOR, Q.C.:
 15 Q. You identified, though, that Mary Butler would
 16 be the person to be involved in the retesting?
 17 MR. DYER:
 18 A. Yes.
 19 CHAYTOR, Q.C.:
 20 Q. So you understood that this was going to be
 21 retests?
 22 MR. DYER:
 23 A. We were going to revalidate.
 24 CHAYTOR, Q.C.:
 25 Q. Okay, so did you understand there would be

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

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1 interacted with Mary, and two of them actually
 2 did the retesting. When I say retesting, I
 3 mean did the revalidation.
 4 CHAYTOR, Q.C.:
 5 Q. Reevaluation, yes, okay.
 6 MR. DYER:
 7 A. Revalidation.
 8 CHAYTOR, Q.C.:
 9 Q. All right, and did Dr. Ejeckam tell you why
 10 those eight stains, what was peculiar about
 11 those eight?
 12 MR. DYER:
 13 A. I don't know. I think he just -- you know,
 14 now that I read it, I mean, there's only two
 15 things stand out; ER/PR was breast, and the
 16 others were more lymphomas, and this one
 17 prostate.
 18 CHAYTOR, Q.C.:
 19 Q. One prostate.
 20 MR. DYER:
 21 A. That's all I see here.
 22 CHAYTOR, Q.C.:
 23 Q. So you didn't ask him at the time why those?
 24 MR. DYER:
 25 A. Why those particular ones, no.

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1 CHAYTOR, Q.C.:
 2 Q. And when you brought it to the attention of
 3 Mr. Gulliver, did he have any particular
 4 questions or concerns for you?
 5 MR. DYER:
 6 A. He did. He was taken back also because -- as
 7 to why were we having these issues because
 8 I've never reported to him before about having
 9 an issue with immuno. So he was taken back
 10 also, and the concept of shutting down the
 11 staining, I think is the way Dr. Ejeckam said
 12 it, he wanted to stop staining, was a bit of
 13 take you back also, but we agreed to it
 14 immediately.
 15 CHAYTOR, Q.C.:
 16 Q. And so, I take it, based on your reaction,
 17 that was a very unusual step to take?
 18 MR. DYER:
 19 A. Yes.
 20 CHAYTOR, Q.C.:
 21 Q. But if Dr. Ejeckam said it was necessary, you
 22 accepted that?
 23 MR. DYER:
 24 A. Immediately.
 25 CHAYTOR, Q.C.:

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1 Q. And went along with it?
 2 MR. DYER:
 3 A. Yes.
 4 CHAYTOR, Q.C.:
 5 Q. And the idea of revalidating -- what about,
 6 you know, the tests obviously had been run
 7 right up until the beginning of April, 2003.
 8 MR. DYER:
 9 A. That date, yes.
 10 CHAYTOR, Q.C.:
 11 Q. Did it occur to you or did you have any
 12 concern, well, what about the patients we did
 13 last week or the week before that if there's
 14 an issue?
 15 MR. DYER:
 16 A. It never occurred to me. You know, again
 17 technically speaking -- I know it was
 18 inconsistent, but technically speaking the
 19 control was working, so don't think I would
 20 have considered even thinking about patients
 21 prior to that.
 22 CHAYTOR, Q.C.:
 23 Q. So what conversation did you have, and with
 24 whom, to be able to say the controls were
 25 working?

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1 MR. DYER:
 2 A. With Dr. Ejeckam.
 3 CHAYTOR, Q.C.:
 4 Q. You asked Dr. Ejeckam?
 5 MR. DYER:
 6 A. Yes, I'm sure I would have talked about the --
 7 I spoke about the controls with Dr. Ejeckam.
 8 CHAYTOR, Q.C.:
 9 Q. And meaning the external controls?
 10 MR. DYER:
 11 A. Yes, the external controls.
 12 CHAYTOR, Q.C.:
 13 Q. Was there any discussion about internal
 14 controls?
 15 MR. DYER:
 16 A. I don't think so.
 17 CHAYTOR, Q.C.:
 18 Q. And you would have understood at the time what
 19 an internal control is?
 20 MR. DYER:
 21 A. Again when I was at the Janeway and we did the
 22 immunofluorescence antibody antigen reactions,
 23 Dr. Pushpanathan taught me about internal
 24 controls back then and the purpose of an
 25 internal control. When I met with Dr.

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1 Ejeckam, I don't think I would have known -- I
 2 knew what internal controls were and the
 3 purpose of them, but I don't think I would
 4 have known exactly what internal control was
 5 being used for breast, do you understand what
 6 I mean.
 7 CHAYTOR, Q.C.:
 8 Q. But Dr. Ejeckam told you the external controls
 9 were working?
 10 MR. DYER:
 11 A. Yes.
 12 CHAYTOR, Q.C.:
 13 Q. And whether or not there was an issue with the
 14 internal controls, he didn't mention --
 15 MR. DYER:
 16 A. I don't think we discussed it. I mean -- yes,
 17 we didn't discuss it, as far as I can
 18 remember.
 19 CHAYTOR, Q.C.:
 20 Q. So whether Dr. Ejeckam had previously or at
 21 any point pointed out that an internal control
 22 may not have worked, that wasn't discussed
 23 with you?
 24 MR. DYER:
 25 A. No. His issue was more with consistency.

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1 CHAYTOR, Q.C.:
 2 Q. If we could look at --
 3 COMMISSIONER:
 4 Q. Sorry, Ms. Chaytor, just before we go on, I'm
 5 not sure I understood you description of the
 6 validation process. Would you just run that
 7 by me again?
 8 MR. DYER:
 9 A. I beg your pardon?
 10 COMMISSIONER:
 11 Q. How you -- what Dr. Ejeckam and Mary were
 12 about to do in the revalidation process?
 13 MR. DYER:
 14 A. Oh, they were going to critique the stain. So
 15 if that meant changing dilutions or increasing
 16 temperature times, things like this, they were
 17 going to actually change parts of the protocol
 18 to make it more consistent.
 19 COMMISSIONER:
 20 Q. Okay, so -- where would they get the slides on
 21 which they would do this?
 22 MR. DYER:
 23 A. They would do it on current control tissue we
 24 were using.
 25 COMMISSIONER:

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1 Q. Control tissue?
 2 MR. DYER:
 3 A. Yes.
 4 COMMISSIONER:
 5 Q. Okay, and they would take --
 6 MR. DYER:
 7 A. So known positives.
 8 COMMISSIONER:
 9 Q. Known samples, as it were?
 10 MR. DYER:
 11 A. Yes.
 12 COMMISSIONER:
 13 Q. Which they would take and then using various
 14 dilutions of solutions, would run those and
 15 then compare the result in terms of the slides
 16 you get?
 17 MR. DYER:
 18 A. Exactly.
 19 COMMISSIONER:
 20 Q. Okay, thank you.
 21 CHAYTOR, Q.C.:
 22 Q. I just want to be clear on that too. Thank
 23 you, Commissioner. So in revalidating, the
 24 tissue that they would be using to run this,
 25 they would use known positives, is that right?

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1 MR. DYER:
 2 A. Yes.
 3 CHAYTOR, Q.C.:
 4 Q. They would use something from your control
 5 bank that had already been determined to be a
 6 positive?
 7 MR. DYER:
 8 A. Yes.
 9 CHAYTOR, Q.C.:
 10 Q. And would run -- so it wasn't your
 11 understanding they would run current patients?
 12 MR. DYER:
 13 A. No.
 14 CHAYTOR, Q.C.:
 15 Q. Current tests coming in?
 16 MR. DYER:
 17 A. No, any new tests that would come in would be
 18 put on hold, and to see how long it would -- I
 19 think the agreement was how long it would take
 20 -- if this was going to take months, we would
 21 just send out -- we would send these orders
 22 out to be done. So it all came down to --
 23 that's what we decided.
 24 CHAYTOR, Q.C.:
 25 Q. And if in that time period tests were run and

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1 then rerun on current cases, you didn't
 2 understand that would be happening?
 3 MR. DYER:
 4 A. No, I did not.
 5 CHAYTOR, Q.C.:
 6 Q. So the cases that came in would just be put on
 7 hold?
 8 MR. DYER:
 9 A. Yes.
 10 CHAYTOR, Q.C.:
 11 Q. And whether or not there would be any going
 12 back or redoing any tests in that time period,
 13 you didn't know that that would be happening?
 14 MR. DYER:
 15 A. Again that's called a parallel run, and we do
 16 do parallel runs.
 17 CHAYTOR, Q.C.:
 18 Q. And do you know whether or not that was
 19 supposed to be happening?
 20 MR. DYER:
 21 A. I don't -- again I didn't sit down with Dr.
 22 Ejeckam and formulate a plan as to what they
 23 were going to do. I think he sat down with
 24 Mary and he gave all the guidance.
 25 CHAYTOR, Q.C.:

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1 Q. And a parallel run would be, though --
 2 MR. DYER:
 3 A. We would run a patient.
 4 CHAYTOR, Q.C.:
 5 Q. Yes.
 6 MR. DYER:
 7 A. Two different -- well, you run a patient and
 8 then run them again.
 9 CHAYTOR, Q.C.:
 10 Q. Yes.
 11 MR. DYER:
 12 A. So, I guess, almost like twice, yes, or you
 13 take previous cases that were run and now you
 14 run them with your new procedure to see the
 15 difference.
 16 CHAYTOR, Q.C.:
 17 Q. Yes.
 18 MR. DYER:
 19 A. So Dr. Ejeckam may have done that.
 20 CHAYTOR, Q.C.:
 21 Q. But your understanding was that they would be
 22 going to the control bank, picking old cases,
 23 selecting blocks of old cases that had been
 24 known to be positive?
 25 MR. DYER:

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1 A. Yes.
 2 COMMISSIONER:
 3 Q. And why is it you do a parallel run again?
 4 MR. DYER:
 5 A. We would do parallel runs?
 6 COMMISSIONER:
 7 Q. Uh-hm.
 8 MR. DYER:
 9 A. To see how the--okay, good point. So when it
 10 comes to controls, external controls will tell
 11 us if the system is working. But if you have
 12 a previous patient and then you run on one
 13 protocol and then you run the patient on this
 14 new protocol, you can actually compare and see
 15 how the reaction changed. So it's almost like
 16 a parallel. You're running the same patient
 17 with two different protocols.
 18 THE COMMISSIONER:
 19 Q. Yes, I'm just wondering what the purpose of
 20 that would be though?
 21 MR. DYER:
 22 A. The purpose?
 23 THE COMMISSIONER:
 24 Q. If you have arrived at, through the--if what
 25 Dr. Ejeckam's objective was in doing the

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1 revalidation to then, using your controls,
 2 arrive at, if you will, the best combination
 3 of solutions, etcetera, etcetera, and timing
 4 to use for the purpose of running your slides,
 5 then I assume he comes to a particular
 6 conclusion based on what he sees under the
 7 microscope, there having been run at various
 8 different levels, so would a parallel be run--
 9 a parallel run be done as an adjunct to that
 10 or instead of that?
 11 MR. DYER:
 12 A. Like what would happen is he may have had a
 13 slide that's--he said this is inconsistent and
 14 he may have felt it should have been positive,
 15 and it may not have been positive. So we
 16 critique the stain, revalidate the stain,
 17 based on this control, and then he may run it
 18 on this to draw the comparison and say "well,
 19 now, this new protocol worked on here, but it
 20 didn't work here." I think, I would imagine
 21 that -
 22 THE COMMISSIONER:
 23 Q. Well, that's it, I suppose what I'm saying is
 24 would parallel runs be done for the purpose--
 25 because I understood you to say parallel runs

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1 would be with two different -
 2 MR. DYER:
 3 A. Protocols.
 4 THE COMMISSIONER:
 5 Q. - protocols.
 6 MR. DYER:
 7 A. Right.
 8 THE COMMISSIONER:
 9 Q. So it presumably would be at a stage where you
 10 were trying to decide what protocol to use and
 11 then you'd say, "well, okay, I'll test it on a
 12 few of our current patients."
 13 MR. DYER:
 14 A. Correct.
 15 THE COMMISSIONER:
 16 Q. Or set past patients or whatever.
 17 MR. DYER:
 18 A. Right, and that's called parallel running.
 19 THE COMMISSIONER:
 20 Q. Okay. So that's when you are narrowing down
 21 your options, as it were, is it?
 22 MR. DYER:
 23 A. Yes.
 24 THE COMMISSIONER:
 25 Q. Okay, and you might be down to the point where

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1 you're saying "well, we can use this protocol
 2 or that protocol. Let's run a few using each
 3 of those and see what the results are."
 4 MR. DYER:
 5 A. And draw comparisons.
 6 THE COMMISSIONER:
 7 Q. So that might be, okay, following the initial
 8 process which you've described using the
 9 controls?
 10 MR. DYER:
 11 A. Yes.
 12 THE COMMISSIONER:
 13 Q. Then you move on to actual patients and run
 14 them on two different -
 15 MR. DYER:
 16 A. Yes, and I know Dr. Ejeckam did do things like
 17 that.
 18 THE COMMISSIONER:
 19 Q. Okay.
 20 MR. DYER:
 21 A. Good practice.
 22 THE COMMISSIONER:
 23 Q. And you also said, I think, at one point, or
 24 you could take previous cases and run it with
 25 the new procedure. Why would you do that

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1 then?
 2 MR. DYER:
 3 A. Well, again, those previous cases, well that's
 4 like a parallel run.
 5 THE COMMISSIONER:
 6 Q. Yes, except that the thing that's parallel is
 7 the one that you've decided to change
 8 presumably.
 9 MR. DYER:
 10 A. I'm sorry, okay, I'm -
 11 THE COMMISSIONER:
 12 Q. If it's a previous case -
 13 MR. DYER:
 14 A. Yes.
 15 THE COMMISSIONER:
 16 Q. - and you're running it after you have made
 17 your adjustments -
 18 MR. DYER:
 19 A. Yes.
 20 THE COMMISSIONER:
 21 Q. - then that's -
 22 MR. DYER:
 23 A. You're comparing -
 24 THE COMMISSIONER:
 25 Q. What you're doing is you're testing out your

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1 new protocol against your old protocol.
 2 MR. DYER:
 3 A. Right, against a case that you wondered--you
 4 know, again, he said it was inconsistent. So
 5 he may have felt that this patient here should
 6 have been positive and it was negative.
 7 THE COMMISSIONER:
 8 Q. Okay.
 9 MR. DYER:
 10 A. So he tried it again afterwards, he would do a
 11 parallel on that patient, using the new
 12 protocol and see if it changed.
 13 THE COMMISSIONER:
 14 Q. All right, but that means that in respect of
 15 the cases that would have been run, presumably
 16 Dr. Ejeckam would have had some -
 17 MR. DYER:
 18 A. He would have looked at them.
 19 THE COMMISSIONER:
 20 Q. - thought that there may be something amiss
 21 with this particular result?
 22 MR. DYER:
 23 A. Yes.
 24 THE COMMISSIONER:
 25 Q. Okay, thank you.

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1 MR. DYER:
 2 A. And he must have felt that way if he actually
 3 stopped the staining.
 4 CHAYTOR, Q.C.:
 5 Q. But what exactly led to him doing that and
 6 stopping the staining?
 7 MR. DYER:
 8 A. No, he stopped the staining--he explained to
 9 me it was inconsistent staining, so he stopped
 10 those eight antibodies.
 11 CHAYTOR, Q.C.:
 12 Q. Inconsistent staining.
 13 MR. DYER:
 14 A. So he must--but I don't know if he was told by
 15 the other pathologists or if he seen it
 16 himself.
 17 THE COMMISSIONER:
 18 Q. And what did you take him to mean by
 19 inconsistent staining?
 20 MR. DYER:
 21 A. Sometimes it was positive, sometimes it was
 22 negative, when he felt--I guess, I assume he
 23 felt they should have been positive,
 24 inconsistent.
 25 CHAYTOR, Q.C.:

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1 Q. So did you understand he had obtained
 2 inconsistent results?
 3 MR. DYER:
 4 A. No, he didn't say that to me.
 5 CHAYTOR, Q.C.:
 6 Q. But inconsistent staining -
 7 MR. DYER:
 8 A. You would think would lead to that, yes.
 9 CHAYTOR, Q.C.:
 10 Q. Yes.
 11 MR. DYER:
 12 A. But I don't know -
 13 CHAYTOR, Q.C.:
 14 Q. Things that he thought should have been
 15 positive were negative and vice versa?
 16 MR. DYER:
 17 A. Well, that's my interpretation of
 18 inconsistent.
 19 CHAYTOR, Q.C.:
 20 Q. Yes, and that's what you took him to mean at
 21 the time?
 22 MR. DYER:
 23 A. That sometimes they were--it was stronger than
 24 others, like you know, today was a very
 25 strong, the next day it was weak,

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1 inconsistent.
 2 CHAYTOR, Q.C.:
 3 Q. And did you also understand inconsistent to
 4 mean sometimes it's negative and then tomorrow
 5 it's positive and vice versa?
 6 MR. DYER:
 7 A. For--again, that's--I'm sorry, that's hard to--
 8 I don't know if I actually meant that, if it
 9 was negative and positive. That's something
 10 you could think, but I think it's more to the
 11 fact that it was--you know, when I say
 12 inconsistent, it was weak versus strong versus
 13 things like this.
 14 CHAYTOR, Q.C.:
 15 Q. And he told you the controls had been working.
 16 Had the controls been working consistently?
 17 MR. DYER:
 18 A. Well, he didn't explain that the controls were
 19 perfect every time, but he said there was
 20 positivity in the controls.
 21 CHAYTOR, Q.C.:
 22 Q. Okay, and whether there was any degree of
 23 weakness in the controls, he didn't indicate
 24 that to you?
 25 MR. DYER:

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1 A. No, I don't think he actually took me that
 2 far.
 3 CHAYTOR, Q.C.:
 4 Q. And whether or not any parallel runs,
 5 revalidation or any retest in general in 2003
 6 time period resulted in changed results, that
 7 wasn't brought to your attention?
 8 MR. DYER:
 9 A. No, never. No, never.
 10 CHAYTOR, Q.C.:
 11 Q. You never heard that discussed?
 12 MR. DYER:
 13 A. No.
 14 CHAYTOR, Q.C.:
 15 Q. And if we could look, please, at P-0113 then?
 16 This is the series of memos from Dr. Ejeckam.
 17 MR. DYER:
 18 A. Oh, okay.
 19 CHAYTOR, Q.C.:
 20 Q. And you said on the--he called you in to his
 21 office and -
 22 MR. DYER:
 23 A. Yes, that's the one.
 24 CHAYTOR, Q.C.:
 25 Q. - this is the first memo he gave you?

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1 MR. DYER:
 2 A. Yes.
 3 CHAYTOR, Q.C.:
 4 Q. Okay, and this is addressed to the
 5 pathologists, Health Sciences, St. Clare's and
 6 out-of-town hospitals, and then it's copied to
 7 yourself and all technical staff in
 8 immunohistochemistry, and I take it he gave
 9 you the copy there and then that day?
 10 MR. DYER:
 11 A. I believe, I think that's what he did. I
 12 think he gave me a copy right there.
 13 CHAYTOR, Q.C.:
 14 Q. Okay, and did you distribute it to anyone
 15 else?
 16 MR. DYER:
 17 A. Did I? No, I didn't distribute it myself, no.
 18 CHAYTOR, Q.C.:
 19 Q. And the fact that it's copied to all technical
 20 staff, did you understand then that to be Mary
 21 and Peggy and Ken?
 22 MR. DYER:
 23 A. Mary, at that time, Mary, Peggy, Ken and Les.
 24 CHAYTOR, Q.C.:
 25 Q. And Les, so you understood they would have all

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1 received it?
 2 MR. DYER:
 3 A. Yes.
 4 CHAYTOR, Q.C.:
 5 Q. And you said you discussed the issue with them
 6 yourself?
 7 MR. DYER:
 8 A. I believe I did. I believe I discussed it.
 9 Now I'm not sure. I think when I discussed--I
 10 think I might have only--okay, I think when I
 11 discussed it, I think maybe only Mary and Ken
 12 might have been there at that point, and maybe
 13 it was just that particular day.
 14 CHAYTOR, Q.C.:
 15 Q. So whether or not they all received the memo,
 16 you didn't make any inquiries?
 17 MR. DYER:
 18 A. I don't know. No, I wouldn't know.
 19 CHAYTOR, Q.C.:
 20 Q. And who would you expect then to be
 21 responsible for the distribution of the memo?
 22 MR. DYER:
 23 A. For this one here? What we had done was the
 24 pathologist at Health Science didn't actually-
 25 -we had one secretary and three clerical

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

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1 CHAYTOR, Q.C.:

2 Q. Okay. So she would be responsible for making

3 sure it got to St. Clare's, the pathologists

4 at St. Clare's?

5 MR. DYER:

6 A. Yes.

7 CHAYTOR, Q.C.:

8 Q. To the pathologists at the Health Sciences and

9 to the pathologists in out-of-town hospitals?

10 MR. DYER:

11 A. Yes.

12 CHAYTOR, Q.C.:

13 Q. How would she know? How would she know who

14 they are -

15 MR. DYER:

16 A. I was about to -

17 CHAYTOR, Q.C.:

18 Q. - who to send it to?

19 MR. DYER:

20 A. I was about to answer that.

21 CHAYTOR, Q.C.:

22 Q. You're ahead of me.

23 MR. DYER:

24 A. What happens is in pathology, unlike in the

25 other lab, we have our own clerical staff or

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1 our own what we call our clerical steno

2 office, clerical office, and we send out every

3 single one, every single report that's done in

4 pathology is sent out by our clerical group.

5 So each one of them had their own list. They

6 had a list of all addresses of every physician

7 in Newfoundland and all the surgeons and

8 things like that, and we always had--they also

9 had a list of all out-of-town pathologists,

10 because we did consult work all the time.

11 CHAYTOR, Q.C.:

12 Q. Okay. So she would have a ready list.

13 MR. DYER:

14 A. They have a list of all--you know, on

15 stickies, what is it called? And it's all

16 prewritten. So they just pull them off. They

17 have them all in alphabetical order, each

18 person, and they would just pull them as they

19 would go through.

20 CHAYTOR, Q.C.:

21 Q. And she would also then, of course, be

22 responsible for distributing to -

23 MR. DYER:

24 A. Technical staff.

25 CHAYTOR, Q.C.:

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1 Q. - to all the technical staff and -

2 MR. DYER:

3 A. Yes, she would actually walk down to the lab.

4 CHAYTOR, Q.C.:

5 Q. And how about you, did she give you a copy?

6 MR. DYER:

7 A. I don't know if she gave me a copy or not. I

8 know I got a copy, I had a copy.

9 CHAYTOR, Q.C.:

10 Q. Yes, Dr. Ejeckam gave you a copy.

11 MR. DYER:

12 A. Yes, but she may very well have.

13 CHAYTOR, Q.C.:

14 Q. And so he indicates "kindly note that

15 immunohistochemical stains with the following

16 antibodies" and they're listed there,

17 including ER and PR, "have remained

18 unreliable, erratic and therefore unhelpful

19 for diagnostic purposes" and he goes on to say

20 that "these antibodies will stop forthwith

21 until we can solve the reliability,

22 sensitivity and specificity problems." It

23 goes on to say that he'll then duly inform

24 them when such stains can resume.

25 This was obviously a very brief memo, and

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1 you say he gave it to you at the time. The

2 idea or the writing that he said here that

3 it's "remained unreliable, erratic and

4 therefore unhelpful for diagnostic purposes,"

5 how long did you understand or did you ask of

6 him how long has this been an issue?

7 MR. DYER:

8 A. I don't know if I actually asked him how long

9 it had been an issue. I just remember being

10 very surprised that they were erratic and

11 that's a different word, "erratic." My term

12 he said with me was more like inconsistent

13 than erratic. But no, I was just very

14 surprised that that was said. I'm pretty sure

15 I talked to the techs and I don't think they

16 were even receiving any complaints or issues

17 about things not working on a consistent

18 basis.

19 CHAYTOR, Q.C.:

20 Q. So when you spoke to the techs about it -

21 MR. DYER:

22 A. I'm pretty sure I asked Mary and Ken about

23 this when we were--when we discussed, and

24 nothing really came up.

25 CHAYTOR, Q.C.:

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

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1 issue?
 2 MR. DYER:
 3 A. No.
 4 CHAYTOR, Q.C.:
 5 Q. So the use of the word "have remained" you
 6 weren't aware that there was ever any issue
 7 with these stains?
 8 MR. DYER:
 9 A. No.
 10 CHAYTOR, Q.C.:
 11 Q. And in your discussions with the
 12 technologists, they seemed equally surprised?
 13 They weren't aware either?
 14 MR. DYER:
 15 A. They were unaware, as far--from my
 16 understanding, yes, they were unaware also.
 17 CHAYTOR, Q.C.:
 18 Q. Okay. So in terms of then your own personal
 19 involvement, you spoke to the technologists
 20 about it and you contacted the gentleman from
 21 DAKO?
 22 MR. DYER:
 23 A. Yes.
 24 CHAYTOR, Q.C.:
 25 Q. And he, I believe, ultimately then wrote to

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1 you and Ms. Butler?
 2 MR. DYER:
 3 A. Yes, he did.
 4 CHAYTOR, Q.C.:
 5 Q. And offered some assistance. So did you have
 6 conversations back and forth with him or was
 7 there just the one contact and then you
 8 received -
 9 MR. DYER:
 10 A. I believe I had the one contact with him, and
 11 in that contact, we talked about, you know,
 12 how we would go about to make changes, and
 13 again, I think it was verbal, but we
 14 discussed--the big things that he suggested
 15 was dilution changes or length of incubation.
 16 They were the ones that he really stuck to the
 17 most, until I actually got his memo and by
 18 then, by the time we got his memo, we were
 19 pretty well through the actual process.
 20 CHAYTOR, Q.C.:
 21 Q. Okay. So and then in his memo, other things
 22 were also identified, I take it?
 23 MR. DYER:
 24 A. Yes, he did. He did identify another couple
 25 of things that would have helped.

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1 CHAYTOR, Q.C.:
 2 Q. So in your verbal conversation with him, was
 3 there any indication of--did antigen retrieval
 4 come up?
 5 MR. DYER:
 6 A. I don't think we discussed antigen retrieval
 7 at the time. I really don't think we did, but
 8 he did discuss it in his next--in his memo
 9 that he sent me.
 10 CHAYTOR, Q.C.:
 11 Q. And would you have passed along to Dr. Ejeckam
 12 anything that was relayed to you by Mr.--is it
 13 Belchowsky?
 14 MR. DYER:
 15 A. Belchowsky.
 16 CHAYTOR, Q.C.:
 17 Q. Yes.
 18 MR. DYER:
 19 A. I'm not sure if I spoke to Dr. Ejeckam about
 20 it or spoke to Mary about it. I'm not sure
 21 who I might have talked to, but I did speak to
 22 one of them about it, and it might have been
 23 Ejeckam. He started immediately with the
 24 dilution factors.
 25 CHAYTOR, Q.C.:

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1 Q. So ultimately, what adjustments ultimately did
 2 you understand that Dr. Ejeckam made back in
 3 2003?
 4 MR. DYER:
 5 A. He made a change to the actual dilution.
 6 CHAYTOR, Q.C.:
 7 Q. And that was it?
 8 MR. DYER:
 9 A. As far as I know, yes, that was it.
 10 CHAYTOR, Q.C.:
 11 Q. Okay, and no change to antigen retrieval
 12 process?
 13 MR. DYER:
 14 A. No.
 15 CHAYTOR, Q.C.:
 16 Q. Or the length of incubation?
 17 MR. DYER:
 18 A. Not that I know of. Again, I wasn't informed
 19 as to what changes he made. I only learned
 20 about that recently.
 21 CHAYTOR, Q.C.:
 22 Q. Now we have some figures in terms of how much
 23 ER and PR testing would have been going on
 24 back in 2003, and I think it would be probably
 25 about, correct me if I'm wrong, but about

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1 probably 350 a year?
 2 MR. DYER:
 3 A. That sounds very reasonable.
 4 CHAYTOR, Q.C.:
 5 Q. That sound right. What about these other
 6 stains? How often were--were those common
 7 stains? How many of those would you be doing?
 8 MR. DYER:
 9 A. I wouldn't be able to comment on how many
 10 stains we actually did.
 11 CHAYTOR, Q.C.:
 12 Q. Were they more common stains than the ER and
 13 PRs?
 14 MR. DYER:
 15 A. No, I think lymphomas were far less than
 16 breast cancer.
 17 CHAYTOR, Q.C.:
 18 Q. So these stains weren't something that you
 19 were seeing a high volume of?
 20 MR. DYER:
 21 A. I don't think so. I mean, you know, we get
 22 lymphomas all the time too, but I don't think
 23 they were ordered as often as an ER/PR would
 24 be. I think ER/PRs were around a couple
 25 hundred, like you say. So I don't think they

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1 would be.
 2 CHAYTOR, Q.C.:
 3 Q. So they weren't stains that -
 4 MR. DYER:
 5 A. They were regular stains, but I don't know if
 6 they were as often as actual ER/PR.
 7 CHAYTOR, Q.C.:
 8 Q. Okay, and how would these came to Dr.
 9 Ejeckam's attention, you're not aware?
 10 MR. DYER:
 11 A. I'm not aware of.
 12 CHAYTOR, Q.C.:
 13 Q. Okay. If we could look, please, at P-2155?
 14 MR. DYER:
 15 A. Yes.
 16 CHAYTOR, Q.C.:
 17 Q. And this is a letter dated April 22nd, 2003,
 18 written to yourself and Ms. Butler, and it
 19 says up here, looks like it was faxed from
 20 DAKO.
 21 MR. DYER:
 22 A. Yes.
 23 CHAYTOR, Q.C.:
 24 Q. And the copy that we have is two pages and
 25 there's no signature. Is this how you recall

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1 receiving it or are we missing -
 2 MR. DYER:
 3 A. I think that's how I received it.
 4 CHAYTOR, Q.C.:
 5 Q. Okay, so we're not missing a page?
 6 MR. DYER:
 7 A. No, we're not missing anything, as far as I
 8 know.
 9 CHAYTOR, Q.C.:
 10 Q. Okay, and he says he's "taken the time to
 11 review the information that Mary provided me
 12 with, and I have provided you with comments
 13 and suggestions for each of the antibodies.
 14 With a little tweaking, I'm sure that we can
 15 have this whole situation ironed out in no
 16 time." Do you recall what information Mary
 17 provided him with?
 18 MR. DYER:
 19 A. No, I can't tell you.
 20 CHAYTOR, Q.C.:
 21 Q. In terms of what you told him yourself, what
 22 did you tell him when you spoke to him on the
 23 phone?
 24 MR. DYER:
 25 A. I remember speaking to him and saying we're

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1 having inconsistent staining, not erratic,
 2 inconsistent stainings. So it's positive
 3 sometimes. Not positive, but the intensity is
 4 not there. Like sometimes it's strong and
 5 sometimes it's weak. He said it's
 6 inconsistent, and so that's pretty well what
 7 we discussed was the staining itself.
 8 THE COMMISSIONER:
 9 Q. Is the premise of saying it's inconsistent
 10 that, in fact, you're using a control, the
 11 same control over a period of time?
 12 CHAYTOR, Q.C.:
 13 Q. Yes.
 14 THE COMMISSIONER:
 15 Q. And then it comes up with different
 16 intensities, as opposed to when you switch
 17 controls?
 18 MR. DYER:
 19 A. Again, my interpretation was the control was
 20 working and so I guess I would assume -
 21 THE COMMISSIONER:
 22 Q. And you're assuming that it was the same
 23 control.
 24 MR. DYER:
 25 A. Yes, every time.

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1 THE COMMISSIONER:
 2 Q. But that a control from the same source, in
 3 any event?
 4 MR. DYER:
 5 A. It was a control from the same source.
 6 THE COMMISSIONER:
 7 Q. And that one day you would be getting a
 8 stronger positive than the next day or
 9 whatever?
 10 MR. DYER:
 11 A. Yes.
 12 THE COMMISSIONER:
 13 Q. Okay, thank you.
 14 MR. DYER:
 15 A. And that's exactly what we discussed about the
 16 actual staining itself, and so he proceeded to
 17 talk about dilutions and incubation times as
 18 things to change.
 19 CHAYTOR, Q.C.:
 20 Q. Okay, and then in terms of your involvement,
 21 you either relayed that information to Mary or
 22 directly to Dr. Ejeckam?
 23 MR. DYER:
 24 A. Yes.
 25 CHAYTOR, Q.C.:

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1 Q. Based on -
 2 MR. DYER:
 3 A. I think it was one of them, I know I spoke to
 4 about it.
 5 CHAYTOR, Q.C.:
 6 Q. And then did you stayed involved in the
 7 process?
 8 MR. DYER:
 9 A. No.
 10 CHAYTOR, Q.C.:
 11 Q. Okay. So in terms of what Mary was doing or
 12 popping in to ask how it's going or -
 13 MR. DYER:
 14 A. Oh, I may have popped in and asked how it's
 15 going. I may have done that from time to
 16 time, but Dr. Ejeckam led everything when it
 17 came to IHC.
 18 CHAYTOR, Q.C.:
 19 Q. And as a general comment, he writes "it is
 20 going to be important for the future of
 21 consistently standardized results that all
 22 tissues are fixed and processed as identically
 23 as possible." And he goes to on to say "since
 24 your control tissues appear to be staining
 25 acceptably, it is reasonable to think that the

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1 variability in staining is due to a
 2 variability in tissue preparation. Since you
 3 are operating a regional testing centre and
 4 you receive samples from hospitals all across
 5 the province, I realize that it is difficult
 6 to control the conditions under which tissue
 7 is prepared in all cases."
 8 So I take it you had enough of a
 9 conversation with him to tell him that you
 10 didn't prepare all the tissue, that it was
 11 coming in from other sites?
 12 MR. DYER:
 13 A. Dan knew we were a regional laboratory.
 14 CHAYTOR, Q.C.:
 15 Q. He had been in before, I take it?
 16 MR. DYER:
 17 A. Yes.
 18 CHAYTOR, Q.C.:
 19 Q. He was someone who was quite familiar with
 20 your operation?
 21 MR. DYER:
 22 A. Yes, he was familiar with our operation.
 23 CHAYTOR, Q.C.:
 24 Q. Okay. Had this issue then ever been discussed
 25 with him before or had he ever brought this up

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1 before, about the need to be consistent and,
 2 you know, to standardize how tissues are fixed
 3 and processed?
 4 MR. DYER:
 5 A. Not with me, no.
 6 CHAYTOR, Q.C.:
 7 Q. And do you know whether he brought it up with
 8 anyone?
 9 MR. DYER:
 10 A. I wouldn't be able to tell you.
 11 CHAYTOR, Q.C.:
 12 Q. Okay, and he says "since you are operating a
 13 regional centre, you receive samples from
 14 hospitals all across the province, it's
 15 difficult to control the conditions under
 16 which tissue is prepared in all cases.
 17 However, it might be a good idea to get some
 18 guidelines for the other hospitals so that you
 19 always know what you are dealing with. For
 20 example, you could send out a letter saying
 21 that all specimens must be fixed between 18 to
 22 24 hours in ten percent neutral buffered
 23 formalin. Since this will not necessarily be
 24 possible in all cases, i.e. at the end of a
 25 work week, you could ask the hospital to

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1 specify the precise fixation conditions if
 2 they deviate from the recommended ones. This
 3 will help you by establishing a solid
 4 connection between IHC results and the
 5 condition that the tissue was shipped to you
 6 in. I'm not sure how much of this, if any,
 7 will be possible for you to accomplish, given
 8 the practical and political situation, the
 9 more the better though."
 10 What did you take him to be referring to
 11 when he refers to the practical and political
 12 situation in that context?
 13 MR. DYER:
 14 A. I don't know. I guess the practical would be
 15 there's so many areas sending in tissue that
 16 it's going to be very difficult to tell other
 17 groups outside what to do.
 18 CHAYTOR, Q.C.:
 19 Q. Had you talked to him about any political
 20 situation or issue operating?
 21 MR. DYER:
 22 A. No, I don't think I would have, no.
 23 CHAYTOR, Q.C.:
 24 Q. So what he might be meaning by that, you're
 25 not sure?

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1 MR. DYER:
 2 A. No.
 3 CHAYTOR, Q.C.:
 4 Q. You had no discussion with him about any
 5 issues in terms of your own particular
 6 concerns in being able to implement change or
 7 standardized practices?
 8 MR. DYER:
 9 A. No, I didn't know Dan Belchowsky that good.
 10 CHAYTOR, Q.C.:
 11 Q. His idea here to set some guidelines for the
 12 referring hospitals -
 13 MR. DYER:
 14 A. Yes.
 15 CHAYTOR, Q.C.:
 16 Q. - so you always would know, he says, what
 17 you're dealing with, and sending out a letter
 18 specifying what you would expect in terms of a
 19 fixation period, adequate fixation and it
 20 happening in ten percent neutral buffered
 21 formalin, did that ever happen? Did letters
 22 go out?
 23 MR. DYER:
 24 A. When I got this memo, I brought it over to Dr.
 25 Ejeckam right away to discuss it and he took

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1 it and I had the impression he was going to
 2 deal with it.
 3 CHAYTOR, Q.C.:
 4 Q. And what do you mean by that, he was going to
 5 deal with it?
 6 MR. DYER:
 7 A. Well, I'm not sure if we actually discussed
 8 these issues, but I know I gave him this form
 9 and when everything was completed, once they
 10 actually completed the process, then I believe
 11 Dr. Ejeckam sent out a memo about formalin
 12 fixation.
 13 CHAYTOR, Q.C.:
 14 Q. In May then?
 15 MR. DYER:
 16 A. Yes.
 17 CHAYTOR, Q.C.:
 18 Q. Okay. So that -
 19 MR. DYER:
 20 A. Within a couple of weeks after this one, this
 21 memo came in.
 22 CHAYTOR, Q.C.:
 23 Q. Okay, and he included in that the issue of the
 24 18 to 24 hours?
 25 MR. DYER:

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

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1 fixation.
 2 CHAYTOR, Q.C.:
 3 Q. Okay, and after this issue arose in 2003 and
 4 after DAKO has pointed out the issues,
 5 importance of fixation, after Dr. Ejeckam
 6 sends out his memo indicating the importance,
 7 at that point in time, was there a fixation
 8 policy brought in at the Health Care
 9 Corporation?
 10 MR. DYER:
 11 A. An official written one, no, we just used his
 12 memo.
 13 CHAYTOR, Q.C.:
 14 Q. So you used Dr. Ejeckam's memo?
 15 MR. DYER:
 16 A. Yes.
 17 CHAYTOR, Q.C.:
 18 Q. Ever who received it, but nothing to tell
 19 anyone this is a policy of the hospital that
 20 now has to be followed?
 21 MR. DYER:
 22 A. No.
 23 CHAYTOR, Q.C.:
 24 Q. Whose responsibility would that have been to
 25 bring in such a policy?

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

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1 Q. Yes.
 2 MR. DYER:
 3 A. He sent it to everyone.
 4 CHAYTOR, Q.C.:
 5 Q. So a memo coming from Dr. Ejeckam -
 6 MR. DYER:
 7 A. Yes.
 8 CHAYTOR, Q.C.:
 9 Q. - now Dr. Ejeckam would have no authority in
 10 terms of fixation within the hospital or
 11 telling people how fixation is going to occur
 12 though in the hospital. Dr. Ejeckam wouldn't
 13 have--they could follow his memo or they could
 14 choose not to?
 15 MR. DYER:
 16 A. Well, I don't think I had the authority
 17 either. I could send out a memo. They don't
 18 have to follow me.
 19 CHAYTOR, Q.C.:
 20 Q. So whose authority was it or who would have
 21 the responsibility to see that a policy were
 22 to come into effect regarding fixation? Who
 23 would have that authority?
 24 MR. DYER:
 25 A. It would be the site chief himself, because--

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1 yes, because fixation dealt directly with
 2 grossing, and so that would come from--that
 3 was a clinical aspect. That was a clinical
 4 thing, fixation.
 5 CHAYTOR, Q.C.:
 6 Q. And so the site chief then at St. Clare's at
 7 the time was Dr. Cook?
 8 MR. DYER:
 9 A. Yes.
 10 CHAYTOR, Q.C.:
 11 Q. And was Dr. Parai still at the Health
 12 Sciences?
 13 MR. DYER:
 14 A. Yes.
 15 CHAYTOR, Q.C.:
 16 Q. At that point in time.
 17 MR. DYER:
 18 A. Yes, and the pathologists answered to them at
 19 the respective sites.
 20 CHAYTOR, Q.C.:
 21 Q. And did you have any discussions with Dr.
 22 Parai about this issue?
 23 MR. DYER:
 24 A. Not that I--I don't recall having any.
 25 THE COMMISSIONER:

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1 Q. Ms. Chaytor, wherever you can find a spot,
 2 we'll take the luncheon break.
 3 CHAYTOR, Q.C.:
 4 Q. Sure. We'd just continue on then with this
 5 letter. He refers to a few specific comments
 6 regarding the ER/PR and he says "as discussed,
 7 for these three antibodies extend all primary
 8 antibody dilutions to 60 minutes." So I take
 9 it that was discussed with you, was it?
 10 MR. DYER:
 11 A. With me, yes. Again, I don't know if we
 12 actually discussed an actual--that's a typo.
 13 Extend all primary antibody dilutions--oh no,
 14 okay, incubations to 60 minutes. I don't know
 15 if we actually discussed 60 minutes, but we
 16 discussed extending the incubation time.
 17 CHAYTOR, Q.C.:
 18 Q. Okay. "Perform antigen retrieval using target
 19 retrieval solution by your previously employed
 20 Visionware boiling method." Had that been
 21 discussed with you?
 22 MR. DYER:
 23 A. Again, that's what he recommended and that's
 24 what we were doing at the time.
 25 CHAYTOR, Q.C.:

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1 Q. Okay, and "both ER and PR should work at one
 2 to 50. If the staining is still inadequate,
 3 you should try using the high pH target
 4 retrieval solution for antigen retrieval. The
 5 pH buffer produces the best results for all
 6 three of these antibodies although tissue
 7 damage or loss can occur if the tissues are
 8 improperly fixed or improperly trimmed of fat"
 9 and you were having experience with that in
 10 terms of tissue loss.
 11 MR. DYER:
 12 A. Yes.
 13 CHAYTOR, Q.C.:
 14 Q. His recommendation here, "both ER and PR
 15 should work at one to 50" what do you recall
 16 then was the ultimate outcome in terms of
 17 dilution? What change did Dr. Ejeckam make?
 18 MR. DYER:
 19 A. I believe he went with a one in 20 at the end
 20 of the day.
 21 CHAYTOR, Q.C.:
 22 Q. Yes, I believe you're already at one in 50.
 23 MR. DYER:
 24 A. We were doing a one in 50 at the time.
 25 CHAYTOR, Q.C.:

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1 Q. Right, and "if the staining is still
 2 inadequate, you should try using the high pH
 3 target retrieval solution for antigen
 4 retrieval."
 5 MR. DYER:
 6 A. Yes.
 7 CHAYTOR, Q.C.:
 8 Q. I take it that didn't happen?
 9 MR. DYER:
 10 A. No, it didn't happen.
 11 CHAYTOR, Q.C.:
 12 Q. Okay.
 13 MR. DYER:
 14 A. But in hindsight, I have to make the comment,
 15 in hindsight, now that I'm reading this, Dr.
 16 Ejeckam was in charge and I think he attempted
 17 the first two and got an acceptable result.
 18 CHAYTOR, Q.C.:
 19 Q. He got acceptable staining?
 20 MR. DYER:
 21 A. I think so.
 22 CHAYTOR, Q.C.:
 23 Q. So then he didn't move to -
 24 MR. DYER:
 25 A. He didn't move to the high pH buffer.

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1 CHAYTOR, Q.C.:

2 Q. Okay, and in hindsight, do you think that's of

3 any significance?

4 MR. DYER:

5 A. Yes, it is.

6 CHAYTOR, Q.C.:

7 Q. Okay, and how so?

8 MR. DYER:

9 A. Our current method uses the high pH antigen

10 retrieval buffer. That's the difference

11 between the old system and the new system.

12 So, you know, if we had to move that far, you

13 know, we may--there probably would have been a

14 huge difference or a big difference in the

15 staining, but they stopped at the one in 20,

16 because that was acceptable.

17 CHAYTOR, Q.C.:

18 Q. And Mr. Dyer, over here on the side, we see 97

19 degrees. Do you know, is that your writing

20 and do you know what it might refer to?

21 MR. DYER:

22 A. I don't think it's my writing.

23 CHAYTOR, Q.C.:

24 Q. Okay, and do you have any idea what it might

25 refer to?

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1 MR. DYER:

2 A. I would imagine it refers to the temperature

3 for antigen retrieval.

4 CHAYTOR, Q.C.:

5 Q. Then perhaps we'll stop there and pick up with

6 Dr. Ejeckam's next memo after lunch.

7 THE COMMISSIONER:

8 Q. All right then. We'll meet again at 2:15.

9 Thank you.

10 CHAYTOR, Q.C.:

11 Q. Thank you.

12 (LUNCH BREAK)

13 THE COMMISSIONER:

14 Q. Ms. Chaytor.

15 CHAYTOR, Q.C.:

16 Q. Thank you, Commissioner. Good afternoon, Mr.

17 Dyer.

18 MR. DYER:

19 A. Good afternoon.

20 CHAYTOR, Q.C.:

21 Q. I think when we left we were looking at P-

22 2155, which was the letter you received from

23 DAKO back in April of 2003, and on page two of

24 the exhibit, it's pointed out here that "both

25 the ER and PR should work at one to 50" which

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1 you've indicated was the dilution that was

2 being used at the time.

3 MR. DYER:

4 A. Yes.

5 CHAYTOR, Q.C.:

6 Q. And "if the staining is still inadequate, you

7 should try using the high pH target retrieval

8 solution for antigen retrieval." So I take

9 it, Mr. Dyer, what was being recommended by

10 DAKO at that time was that if the one to 50

11 dilution wasn't working, it wasn't being

12 recommended that a change in dilution be

13 looked at, but rather a change in the antigen

14 retrieval process?

15 MR. DYER:

16 A. Well, I think what our interpretation was,

17 again, I wasn't directly involved, but I

18 believe our interpretation was to try

19 dilutions first. So that's what Dr. Ejeckam

20 did.

21 CHAYTOR, Q.C.:

22 Q. And that's what happened?

23 MR. DYER:

24 A. Yes, that's what happened.

25 CHAYTOR, Q.C.:

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1 Q. And if we could have, please, P-0113? And the

2 second memo at page two of this exhibit is the

3 May 2nd, 2003 memo and this is again addressed

4 to all pathologists, pathologists Health

5 Sciences, St. Clare's and out of town, and

6 copied then to the site chief Health Sciences

7 and St. Clare's, as well as yourself and all

8 the technical staff. Did you receive a copy

9 of this memo?

10 MR. DYER:

11 A. I can't guarantee that I actually received a

12 copy of that memo.

13 CHAYTOR, Q.C.:

14 Q. Okay.

15 THE COMMISSIONER:

16 Q. Sorry, did you say you did or didn't?

17 MR. DYER:

18 A. I'm not sure if I actually received a copy of

19 the memo.

20 THE COMMISSIONER:

21 Q. Thank you.

22 CHAYTOR, Q.C.:

23 Q. So you don't recall if you saw it or not.

24 You've seen it, I take it, since?

25 MR. DYER:

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

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1 CHAYTOR, Q.C.:
 2 Q. But whether you received it at the time, you
 3 don't recall?
 4 MR. DYER:
 5 A. Right.
 6 CHAYTOR, Q.C.:
 7 Q. Okay. Do you know whether or not--do you know
 8 whether the other technologists received it?
 9 MR. DYER:
 10 A. I can't say for sure if the other techs
 11 received it or not.
 12 CHAYTOR, Q.C.:
 13 Q. Okay. Did Dr. Ejeckam discuss with you--he's
 14 writing in the memo that he's glad to inform
 15 that the ER/PR can now resume. Was that
 16 discussed with you?
 17 MR. DYER:
 18 A. No.
 19 CHAYTOR, Q.C.:
 20 Q. Okay. So before ER/PR came back online, you
 21 weren't told that by Dr. Ejeckam?
 22 MR. DYER:
 23 A. No.
 24 CHAYTOR, Q.C.:
 25 Q. And so how did you learn that it had come back

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1 on?
 2 MR. DYER:
 3 A. I can't really say. I just know that I
 4 remember we were up and we were performing
 5 them again.
 6 CHAYTOR, Q.C.:
 7 Q. And so as lab manager though, you weren't
 8 consulted in the decision as to whether it was
 9 ready to come back?
 10 MR. DYER:
 11 A. No.
 12 CHAYTOR, Q.C.:
 13 Q. And so I take it then, you made--after it had
 14 been suspended then in the beginning of April,
 15 in that month that passes, did you make
 16 inquiries to determine whether or not--and
 17 satisfy yourself as to whether or not, from a
 18 technical point of view, the testing could
 19 resume?
 20 MR. DYER:
 21 A. I think I would have talked to Mary from time
 22 to time, just asked her how are things going,
 23 and it might have actually been Mary who told
 24 me that we're up and running again. I think I
 25 might have got it from Mary.

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

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1 MR. DYER:
 2 A. No, I don't recall. I don't remember.
 3 CHAYTOR, Q.C.:
 4 Q. Do you recall then around the time that ER/PR
 5 came back on in early May, was there any
 6 discussion about the memo? Did anyone else
 7 indicate to you that they had received it or
 8 was there anything generated around this?
 9 MR. DYER:
 10 A. Not that I can remember. I know, I'm pretty
 11 sure that memo was out in the actual gross
 12 room at some point, but no, I can't remember
 13 any discussion around it.
 14 CHAYTOR, Q.C.:
 15 Q. And when you say it was in the gross room, was
 16 there a bulletin board there or something for
 17 it to be posted on?
 18 MR. DYER:
 19 A. I'm not sure if it was on the bulletin board
 20 or just there, like because we had memos
 21 everywhere on the walls, you know, on the
 22 grossing stations and things like this. So
 23 I'm not sure where it actually was, but I
 24 think that's where I first came across it.
 25 CHAYTOR, Q.C.:

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1 Q. Okay. I'm having a problem with my mouse,
 2 won't--I think the battery is dead. Okay.
 3 THE COMMISSIONER:
 4 Q. If you don't mind substituting this one.
 5 Thank you.
 6 CHAYTOR, Q.C.:
 7 Q. Thank you.
 8 THE COMMISSIONER:
 9 Q. Is that one working?
 10 CHAYTOR, Q.C.:
 11 Q. No, it doesn't work either. I don't suppose
 12 we have Blue Toths running again? Could
 13 those who have--is it Blue Teeth or Blue
 14 Toths? Please check to make sure they're not
 15 running. Perhaps, Mr. Dyer, can you just
 16 check to see if your mouse is working, if you
 17 can scroll down?
 18 MR. DYER:
 19 A. No.
 20 CHAYTOR, Q.C.:
 21 Q. No, okay.
 22 MR. SIMMONS:
 23 Q. Try it now. If it works now, we know I'm the
 24 culprit.
 25 CHAYTOR, Q.C.:

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1 Q. You're off the hook.
 2 MR. SIMMONS:
 3 Q. I'm off the hook.
 4 CHAYTOR, Q.C.:
 5 Q. You're off the hook, still not working.
 6 THE COMMISSIONER:
 7 Q. All right. Do you want me to -
 8 CHAYTOR, Q.C.:
 9 Q. That's okay, we can--does your work,
 10 Registrar?
 11 REGISTRAR:
 12 Q. Mine is working.
 13 CHAYTOR, Q.C.:
 14 Q. Yours is working, okay.
 15 THE COMMISSIONER:
 16 Q. Yours is working?
 17 CHAYTOR, Q.C.:
 18 Q. If you could scroll down, please, then,
 19 please, Registrar. The first paragraph here,
 20 Mr. Dyer, refers to results of the
 21 immunostains may be affected by, and there's a
 22 list of different types of fixation. As well,
 23 F is tissue reprocessing, and that's the issue
 24 that we talked about earlier this morning, and
 25 he also indicates, of course, there can be

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

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1 Q. And how long after this memo, this memo is the
 2 beginning of May 2003, how long was it before
 3 you actually saw the memo?
 4 MR. DYER:
 5 A. I think it might have been sometime in May. I
 6 think it was out in the gross room when I
 7 actually seen it.
 8 CHAYTOR, Q.C.:
 9 Q. Okay, and Dr. Ejeckam appears to have
 10 emphasized the ten percent neutral buffered
 11 formalin.
 12 MR. DYER:
 13 A. Yes.
 14 CHAYTOR, Q.C.:
 15 Q. Do you know why that would be? Ten percent
 16 neutral buffered formalin, was that being
 17 used, in any event, at the Health Care
 18 Corporation?
 19 MR. DYER:
 20 A. Yes, that's what we were using.
 21 CHAYTOR, Q.C.:
 22 Q. Okay, and do you know whether or not that was
 23 being used by other hospitals?
 24 MR. DYER:
 25 A. I know it was being used by Eastern Health,

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

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1 internal control, as I mentioned to you
 2 earlier today, you had some awareness through
 3 your work at the Janeway to internal controls
 4 with respect to certain special stains?
 5 MR. DYER:
 6 A. Yes.
 7 CHAYTOR, Q.C.:
 8 Q. Okay, and whether or not though it was of
 9 importance to ER and PR, would you have been
 10 aware of that at the time?
 11 MR. DYER:
 12 A. No, we didn't perform ER/PR.
 13 CHAYTOR, Q.C.:
 14 Q. Okay, and Dr. Pushpanathan -
 15 MR. DYER:
 16 A. Pushpanathan.
 17 CHAYTOR, Q.C.:
 18 Q. - Pushpanathan, sorry, how senior a
 19 pathologist is she?
 20 MR. DYER:
 21 A. How senior?
 22 CHAYTOR, Q.C.:
 23 Q. Yes, like when would she--around when would
 24 she have been through medical school or
 25 through her residency program?

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1 MR. DYER:
 2 A. She started as a pathologist at the Janeway in
 3 1987.
 4 CHAYTOR, Q.C.:
 5 Q. 1987?
 6 MR. DYER:
 7 A. Yes.
 8 CHAYTOR, Q.C.:
 9 Q. Okay.
 10 MR. DYER:
 11 A. And I believe she did her residency program at
 12 Health Science.
 13 CHAYTOR, Q.C.:
 14 Q. And she was certainly aware of internal
 15 controls with respect to -
 16 MR. DYER:
 17 A. To the things that we were dealing with.
 18 CHAYTOR, Q.C.:
 19 Q. Things that you were dealing with?
 20 MR. DYER:
 21 A. Yes.
 22 CHAYTOR, Q.C.:
 23 Q. And this also includes then, in paragraph
 24 four, there's some correlation between ER/PR--
 25 it indicates "in carcinoma of the breast, most

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1 PR tumours are also ER positive." Number five
 2 talks about reporting of ER/PR and "several
 3 formulae are in the literature. For positive
 4 results, ER positive greater or equal to five
 5 percent nuclear staining, ER positive ten
 6 percent of tumour staining and ER positive,
 7 one percent shown to benefit from endocrine
 8 therapy--treatment," sorry, and there's a
 9 consensus statement referred to.
 10 Were you aware at the time as to what
 11 standards for positivity were being used in at
 12 the Health Care Corporation?
 13 MR. DYER:
 14 A. Once this was--in '03, yes, I think I knew
 15 then.
 16 CHAYTOR, Q.C.:
 17 Q. Okay, and what did you understand, what was
 18 being used?
 19 MR. DYER:
 20 A. We were using a ten percent cut off.
 21 CHAYTOR, Q.C.:
 22 Q. Okay.
 23 MR. DYER:
 24 A. Ten percent or greater would be considered a
 25 positive result.

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1 CHAYTOR, Q.C.:
 2 Q. By 2003?
 3 MR. DYER:
 4 A. Yes, in--yes, that's when I learned about it.
 5 CHAYTOR, Q.C.:
 6 Q. Okay.
 7 THE COMMISSIONER:
 8 Q. Excuse me, Mr. Dyer, but could you speak up
 9 just a little bit, please? I'm--you're fading
 10 on me.
 11 MR. DYER:
 12 A. Indeed.
 13 THE COMMISSIONER:
 14 Q. Thank you.
 15 CHAYTOR, Q.C.:
 16 Q. And if we could scroll down again, please,
 17 Registrar?
 18 REGISTRAR:
 19 Q. (Inaudible) working now, Ms. Chaytor.
 20 CHAYTOR, Q.C.:
 21 Q. Oh, thank you. That's great, yes, this one is
 22 working now. And there's reference here to
 23 certain tumours being ER/PR in number seven,
 24 and "low nuclear grade tumours are usually
 25 positive for ER and PR and negative for

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1 HER2/neu, while high grade tumours tend to be
 2 positive for HER2/neu and negative for ER/PR."
 3 So in terms of this information about which
 4 tumours should normally be ER positive, was
 5 that something that you would have been aware
 6 of, as a technologist?
 7 MR. DYER:
 8 A. No, that's out of my scope of practice.
 9 CHAYTOR, Q.C.:
 10 Q. Do you recall any discussion around that in
 11 May of 2003 or after this memo came out?
 12 MR. DYER:
 13 A. Not with me.
 14 CHAYTOR, Q.C.:
 15 Q. So I take it there's information in this, and
 16 again, Dr. Ejeckam saw fit to distribute it or
 17 certainly intended to distribute it to
 18 yourself and to the technical staff. So I
 19 take it there's information in here which
 20 would have been new to you?
 21 MR. DYER:
 22 A. Yes.
 23 CHAYTOR, Q.C.:
 24 Q. Things that you would not have otherwise been
 25 aware of?

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1 MR. DYER:
 2 A. Yes.
 3 CHAYTOR, Q.C.:
 4 Q. Okay, and do you--is it also information which
 5 would have been helpful to you and the staff
 6 you manage in IHC?
 7 MR. DYER:
 8 A. Yes, I think so.
 9 CHAYTOR, Q.C.:
 10 Q. Do you recall around this time, did Dr.--after
 11 this memo went out, do you recall, was Dr.
 12 Ejeckam asking for anything else or was there
 13 any further discussion then in particular
 14 about ER/PR?
 15 MR. DYER:
 16 A. Not to my knowledge.
 17 CHAYTOR, Q.C.:
 18 Q. And so other than you had the--you made the
 19 initial contact with the DAKO representative
 20 and you conveyed information to Dr. Ejeckam,
 21 made some inquiries, informal inquiries of Ms.
 22 Butler as the revalidation was taking place.
 23 Other than that, did you have anything to do
 24 with Dr. Ejeckam's investigations in 2003?
 25 MR. DYER:

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1 A. No.
 2 CHAYTOR, Q.C.:
 3 Q. And in terms of following up with him to
 4 determine if he was now satisfied with what
 5 was happening or making any further checks,
 6 you didn't do that?
 7 MR. DYER:
 8 A. No.
 9 CHAYTOR, Q.C.:
 10 Q. If we could then continue on with the next --
 11 the third memo is written June 19th, 2003, and
 12 this is just addressed to Mr. Gulliver, and
 13 copied to a number of physicians, as well as
 14 yourself as the manager. Did you receive this
 15 memo?
 16 MR. DYER:
 17 A. Yes, I think I did.
 18 CHAYTOR, Q.C.:
 19 Q. Okay.
 20 MR. DYER:
 21 A. Yes, that one sounds familiar, yeah.
 22 CHAYTOR, Q.C.:
 23 Q. And what do you recall about this -- so from
 24 then you learn in May sometime that ER/PR is
 25 resumed, and then June 19th there's another

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

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

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1 doing special stains at the same time; in
 2 between cutting, I may be performing an
 3 autopsy. That was just all standard, that was
 4 the way the lab operated. So when I moved to
 5 Health Science and they had two technologists
 6 rotating, that was the standard of practice at
 7 the time.
 8 CHAYTOR, Q.C.:
 9 Q. And was that the standard practice for IHC
 10 laboratory?
 11 MR. DYER:
 12 A. Well, for the one that I -- for the one that I
 13 worked in, yes, it was. Like, it was Peggy
 14 and Mary. They were doing about -- like, when
 15 I came on board, they were doing about 40 or
 16 50 cases a day, and so that was pretty well --
 17 that wasn't really a full day's work. So they
 18 did -- so that's how they rotated, two people
 19 down there at one time would have their work
 20 done very quickly. I think what they did is
 21 to help out the pathologist, they had one
 22 gross while one did immunos, and they would
 23 just rotate, and that was just -- that was the
 24 common practice.
 25 CHAYTOR, Q.C.:

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1 Q. And was it the common practice in other
 2 hospitals who were doing IHC?
 3 MR. DYER:
 4 A. Oh, I wouldn't be able to say. That was just
 5 the way we did things.
 6 CHAYTOR, Q.C.:
 7 Q. Yes, and the Health Science being the only
 8 place that was offering IHC, I take it, in the
 9 province at that time?
 10 MR. DYER:
 11 A. Yes.
 12 CHAYTOR, Q.C.:
 13 Q. So that was certainly the way things were
 14 happening here, but I'm just wondering were
 15 inquiries made as to whether or not dedicated
 16 staff were the norm in other institutions
 17 which were offering IHC?
 18 MR. DYER:
 19 A. At that time I didn't inquire.
 20 CHAYTOR, Q.C.:
 21 Q. And have you since?
 22 MR. DYER:
 23 A. Well, what I did is since the 2005 incident,
 24 we just took what Ms. Wegrynowski said and
 25 went with that.

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1 CHAYTOR, Q.C.:
 2 Q. And they were certainly -- they certainly had
 3 dedicated -- Mount Sinai had dedicated staff?
 4 MR. DYER:
 5 A. Yes, they did, yes.
 6 CHAYTOR, Q.C.:
 7 Q. In their lab for quite some time.
 8 MR. DYER:
 9 A. Yes.
 10 CHAYTOR, Q.C.:
 11 Q. The idea then that Dr. Ejeckam was suggesting
 12 in terms of dedicated staff, and the other was
 13 the dedicated space, is that right?
 14 MR. DYER:
 15 A. Yes.
 16 CHAYTOR, Q.C.:
 17 Q. Dedicated space. So you recall him addressing
 18 those issues with you?
 19 MR. DYER:
 20 A. Yes, we did discuss those issues.
 21 CHAYTOR, Q.C.:
 22 Q. Okay, and was that prior to you getting the
 23 memo of June 19th?
 24 MR. DYER:
 25 A. I think it probably was prior to this one.

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1 CHAYTOR, Q.C.:
 2 Q. So did you have any -- did you have any sense
 3 that you were -- that this memo was going to
 4 be coming?
 5 MR. DYER:
 6 A. No.
 7 CHAYTOR, Q.C.:
 8 Q. You didn't know?
 9 MR. DYER:
 10 A. No, I didn't have a sense that this was
 11 coming.
 12 CHAYTOR, Q.C.:
 13 Q. So when Dr. Ejeckam first brought up the idea
 14 of dedicated staff and dedicated space to you,
 15 what was your response to that?
 16 MR. DYER:
 17 A. Oh, I fully supported it. It was a good idea.
 18 CHAYTOR, Q.C.:
 19 Q. You thought it was a good idea?
 20 MR. DYER:
 21 A. It was a good idea, yes.
 22 CHAYTOR, Q.C.:
 23 Q. And do you know why then he went forward with
 24 the memo to Mr. Gulliver? Had you brought the
 25 idea to Mr. Gulliver and did he support the

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1 idea?
 2 MR. DYER:
 3 A. I can't remember if -- I might have talked to
 4 Terry about it, and if I did -- no, I can't
 5 remember if I actually spoke to Terry about
 6 that or not.
 7 CHAYTOR, Q.C.:
 8 Q. So do you have any -- after then receiving a
 9 copy of the memo, what happened, did you have
 10 any further discussions with Dr. Ejeckam, with
 11 Mr. Gulliver --
 12 MR. DYER:
 13 A. Once I received this memo?
 14 CHAYTOR, Q.C.:
 15 Q. Yes.
 16 MR. DYER:
 17 A. Yes, I remember some time after the memo,
 18 myself and Terry first discussed how could we
 19 go about this. I mean, there was no money,
 20 and in order for us to -- in order for us to
 21 have dedicated techs, we needed people to
 22 actually gross because -- or there would be no
 23 one to gross. That's the decision, what do we
 24 do. In terms of space, there was no space at
 25 the time. So what we decided to do was pull

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1 another tech out of our lab and start the
 2 process of training them to gross, so we can
 3 relieve the grossing duties from the two --
 4 from the technologist.
 5 CHAYTOR, Q.C.:
 6 Q. So at that point in time, the only other
 7 duties they had were the grossing, is that
 8 right?
 9 MR. DYER:
 10 A. In 2003? There was three of them, so I think
 11 we did a three way rotation. So one was in
 12 immuno, one was in the lab, and one was on
 13 grossing.
 14 CHAYTOR, Q.C.:
 15 Q. Okay.
 16 MR. DYER:
 17 A. And the one in the lab would help out in the
 18 lab, but their first primary duty would be to
 19 cut -- to help cut sections for the
 20 immunostains and cut controls and things like
 21 this, but they also helped out in the lab, for
 22 cutting mainly.
 23 CHAYTOR, Q.C.:
 24 Q. Okay, and so after then Dr. Ejeckam raises the
 25 concern, the decision was made to bring

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1 another technologist to do all the grossing?
 2 MR. DYER:
 3 A. What we did first was Terry and I met and
 4 discussed what could we do because again there
 5 was no financial resources, so how could we do
 6 this within our own fiscal capacity. Then
 7 after that, we had a meeting with Dr. Ejeckam
 8 in Terry's office and that was the plan. The
 9 plan was we were -- chemistry was under
 10 renovations, and in the back of the pathology
 11 lab was what we called hormone assay, which
 12 was part of chemistry, and they were slated to
 13 move once the chemistry area was developed.
 14 So that's how we were going to address that
 15 issue, but again, you know, it was all up to
 16 facilities, I couldn't push it any further
 17 than what I could push it until that got done.
 18 It was now summer. So what we decided to do
 19 was to take the senior tech -- Catherine
 20 Parnell was the senior tech over at St.
 21 Clare's and she had a lot of experience in
 22 pathology. So what we decided was in the fall
 23 we would take her and start training her in on
 24 grossing, and that's what we did.
 25 CHAYTOR, Q.C.:

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1 Q. Okay. So in terms of financial piece, to have
 2 the three technologists dedicated to IHC
 3 alone, and have someone else do the grossing,
 4 would that be of any financial -- what
 5 additional financial consequences would be to
 6 that? That's just a matter of reshifting the
 7 work amongst individuals, isn't it?
 8 MR. DYER:
 9 A. Reshifting the work, yes, however, we were --
 10 our lab was extremely busy all the time, and
 11 we always struggled to hit our bench -- like,
 12 to hit our 48 hours for biopsies. So taking
 13 someone out of that will have an impact on our
 14 turnaround times. So really what we needed is
 15 we needed money to hire techs to gross, and
 16 then it wouldn't impact on our current work.
 17 CHAYTOR, Q.C.:
 18 Q. But I'm just thinking if the work that they --
 19 so what you're saying is the work they were
 20 doing for three people would now have to be
 21 work of four people, is that it?
 22 MR. DYER:
 23 A. For sure. Yes, because if we're going to pull
 24 them off the gross -- the gross needed to be
 25 done, that was a full day-- full time

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1 position.
 2 CHAYTOR, Q.C.:
 3 Q. And it couldn't be that it could be the same
 4 three people with one doing gross and the
 5 other two then dedicated. You felt you needed
 6 three people dedicated to IHC.
 7 MR. DYER:
 8 A. That's what Dr. Ejeckam -- he wanted all his
 9 staff dedicated to IHC.
 10 CHAYTOR, Q.C.:
 11 Q. He wanted three, though?
 12 MR. DYER:
 13 A. We had three at the time and he wanted all
 14 staff dedicated. I think what his idea was
 15 was in the rotation, one would do the
 16 staining, one would do the cutting, so we
 17 would cut in the lab, and one would do the
 18 housekeeping.
 19 CHAYTOR, Q.C.:
 20 Q. And was there any analysis done as to how many
 21 people actually were required for the volume
 22 of IHC testing that you had?
 23 MR. DYER:
 24 A. Well, if we wanted to include the
 25 housekeeping, like the research in terms of

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1 study and the learning more and more in depth,
 2 we would have needed three. Like, one person
 3 wasn't going to be able to cut all the
 4 requests, cut all the controls, and perform
 5 all the staining.
 6 CHAYTOR, Q.C.:
 7 Q. But whether or not two could do it or four
 8 were needed, was there any analysis carried
 9 out?
 10 MR. DYER:
 11 A. I think what we did is we just based on what
 12 the workload was now and having three staff.
 13 I think that's how we figured it out.
 14 CHAYTOR, Q.C.:
 15 Q. So you recall discussing it with Mr. Gulliver,
 16 and then by the fall Catherine Parnell is
 17 brought over from St. Clare's and dedicated to
 18 grossing?
 19 MR. DYER:
 20 A. And we started training her for grossing, yes.
 21 CHAYTOR, Q.C.:
 22 Q. Okay, and so when did -- when did dedicated
 23 staff then -- when did the other three become
 24 dedicated just to IHC?
 25 MR. DYER:

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1 A. Well, Catherine started grossing in January.
 2 So the process was now started, but --
 3 CHAYTOR, Q.C.:
 4 Q. January, 2004?
 5 MR. DYER:
 6 A. Yes, but what had happened was -- again they
 7 still weren't dedicated the way I think Dr.
 8 Ejeckam wanted them dedicated because if
 9 Catherine was sick or was off for a day or off
 10 on something else, then I would still require
 11 one of the IHC techs to come in and gross so
 12 the grossing wouldn't fall behind.
 13 CHAYTOR, Q.C.:
 14 Q. Okay.
 15 MR. DYER:
 16 A. So I would put them about 90 percent.
 17 CHAYTOR, Q.C.:
 18 Q. So they were still doing backup for Catherine
 19 Parnell?
 20 MR. DYER:
 21 A. Backup only, yes, and at the same time those
 22 techs, part of their duties was -- I wanted to
 23 bring all immunos together so they were also
 24 involved with immunohistochemistry, which is
 25 the muscle. So Catherine was also trained for

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1 that.
 2 CHAYTOR, Q.C.:
 3 Q. Okay, and so by January, 2004, 90 percent
 4 you're saying of their time was dedicated to -
 5 -
 6 MR. DYER:
 7 A. I feel it was a good 90 percent, I would
 8 imagine, yes.
 9 CHAYTOR, Q.C.:
 10 Q. Was dedicated to IHC?
 11 MR. DYER:
 12 A. Yes.
 13 CHAYTOR, Q.C.:
 14 Q. And in terms of a space then, how did that
 15 come along?
 16 MR. DYER:
 17 A. Well, what happened was finally -- I think it
 18 was in the fall of 2003, hormone assay
 19 actually moved out, hormone chemistry moved
 20 out, and by now we've gone with another tender
 21 and the new equipment was coming in in
 22 December of '03, and when the equipment came
 23 in, we moved it all to the back of the lab.
 24 CHAYTOR, Q.C.:
 25 Q. And when did that happen?

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1 MR. DYER:
 2 A. December of '03.
 3 CHAYTOR, Q.C.:
 4 Q. December of '03, and so it was moved to the
 5 back in its own space?
 6 MR. DYER:
 7 A. Yes.
 8 CHAYTOR, Q.C.:
 9 Q. Was it an enclosed space or was it otherwise -
 10 - was it its own space or was it just in the
 11 rear of the lab?
 12 MR. DYER:
 13 A. Oh, no, into its own space.
 14 CHAYTOR, Q.C.:
 15 Q. Into its own space?
 16 MR. DYER:
 17 A. Yes.
 18 CHAYTOR, Q.C.:
 19 Q. And so that's where it is still today?
 20 MR. DYER:
 21 A. Yes.
 22 CHAYTOR, Q.C.:
 23 Q. And so in terms of that change or shift to its
 24 own physical space, that had happened within
 25 six months of Dr. Ejeckam's memo?

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

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1 A. Create concern --
 2 CHAYTOR, Q.C.:
 3 Q. Because you're used to him --
 4 MR. DYER:
 5 A. Well, again he was -- all the slides -- again
 6 I wasn't given a lot of complaints and every
 7 single slide that's produced in pathology goes
 8 to a physician. So that's the first time that
 9 I had actually read something like that also
 10 and he was the only one who actually said
 11 something like that, but I had faith that the
 12 work was good that was coming out.
 13 CHAYTOR, Q.C.:
 14 Q. And what was that faith based on?
 15 MR. DYER:
 16 A. Based on getting very few complaints.
 17 CHAYTOR, Q.C.:
 18 Q. But the person who is the most knowledgeable
 19 and is overseeing the IHC lab at this point in
 20 time is certainly voicing a very strong
 21 concern in this memo. So did that cause you
 22 concern?
 23 MR. DYER:
 24 A. We acted on it as fast as we could.
 25 CHAYTOR, Q.C.:

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

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

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1 office and we explained to him, you know,
 2 based on what we were trying to do about
 3 taking a tech out of the rotation to train for
 4 grossing and to get new technologies, and they
 5 were trying to move the hormone assay out as
 6 quick as possible.
 7 CHAYTOR, Q.C.:
 8 Q. And when did that meeting take place?
 9 MR. DYER:
 10 A. It was shortly after this -- it wasn't too
 11 long after that actual memo.
 12 CHAYTOR, Q.C.:
 13 Q. So in response to his memo, you and Mr.
 14 Gulliver actually went to Dr. Ejeckam and met
 15 with him in his office?
 16 MR. DYER:
 17 A. We met in Terry's office.
 18 CHAYTOR, Q.C.:
 19 Q. In Mr. Gulliver's office?
 20 MR. DYER:
 21 A. Yes, Mr. Gulliver's office.
 22 CHAYTOR, Q.C.:
 23 Q. So you had a meeting to discuss his concerns?
 24 MR. DYER:
 25 A. Yes.

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1 CHAYTOR, Q.C.:
 2 Q. And told him that you were acting on it as
 3 quickly as you could?
 4 MR. DYER:
 5 A. Immediate -- said this is what we're trying
 6 to do.
 7 CHAYTOR, Q.C.:
 8 Q. And what was his response? Was he satisfied
 9 with that?
 10 MR. DYER:
 11 A. I think he was, you know, again with Dr.
 12 Ejeckam, it's hard to say, but I think he was
 13 happy that we were actually finding space and
 14 trying to dedicate the technologists.
 15 CHAYTOR, Q.C.:
 16 Q. Now you indicated you have a fairly good
 17 relationship with Dr. Robb?
 18 MR. DYER:
 19 A. Yes.
 20 CHAYTOR, Q.C.:
 21 Q. Did Dr. Robb come to you and ask you what's
 22 this all about?
 23 MR. DYER:
 24 A. I don't think we ever discussed it.
 25 CHAYTOR, Q.C.:

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1 Q. Dr. Cook?
 2 MR. DYER:
 3 A. No.
 4 CHAYTOR, Q.C.:
 5 Q. Dr. Parai?
 6 MR. DYER:
 7 A. No.
 8 CHAYTOR, Q.C.:
 9 Q. Did any pathologist come to you and ask what
 10 is happening here, once this memo went out?
 11 MR. DYER:
 12 A. Not that I can remember, no.
 13 CHAYTOR, Q.C.:
 14 Q. Did anyone make any inquiries as to what was
 15 being done to address the concerns raised?
 16 MR. DYER:
 17 A. Nobody. The only person I actually spoke to
 18 about it was Dr. Ejeckam.
 19 CHAYTOR, Q.C.:
 20 Q. Do you know whether or not any of the concerns
 21 raised by Dr. Ejeckam found its way to Dr.
 22 Williams?
 23 MR. DYER:
 24 A. I wouldn't be able to tell you. I don't even
 25 think it made its way to any of our meetings.

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1 I can't remember even at our site chief's
 2 meeting discussing this issue.
 3 CHAYTOR, Q.C.:
 4 Q. So in terms of what you and Mr. Gulliver had
 5 to do to offer dedicated space and dedicated
 6 technologists, where did the money come from?
 7 MR. DYER:
 8 A. There was no money.
 9 CHAYTOR, Q.C.:
 10 Q. So those were things that could be done
 11 without any investment of money.
 12 MR. DYER:
 13 A. No, like I said, we had to make a decision and
 14 what we did is we pulled another tech from the
 15 lab.
 16 CHAYTOR, Q.C.:
 17 Q. And in terms of the space?
 18 MR. DYER:
 19 A. Oh in terms of the space? No, chemistry, I
 20 think was already undergoing renovations and I
 21 think the plan was that the hormone assay
 22 would move into biochemistry, so that's what
 23 we were waiting--we were just waiting on
 24 Facilities Management to finish that section
 25 of chemistry, so they could move over.

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1 CHAYTOR, Q.C.:

2 Q. Yes, so it was done by reassigning staff and

3 without any expenditure of funds.

4 MR. DYER:

5 A. Yes.

6 CHAYTOR, Q.C.:

7 Q. Did you sense that Dr. Ejeckam was becoming

8 increasingly frustrated?

9 MR. DYER:

10 A. About this? No, I didn't get that impression.

11 CHAYTOR, Q.C.:

12 Q. Did you ever get any impression from Dr.

13 Ejeckam that things weren't moving quickly

14 enough and changes weren't happening quickly

15 enough for him?

16 MR. DYER:

17 A. He didn't speak to me about it after--I don't

18 think we discussed it after this about him

19 thinking it should be done quicker and

20 quicker, no.

21 CHAYTOR, Q.C.:

22 Q. So nothing came to your attention along those

23 lines?

24 MR. DYER:

25 A. No, at least not that I can remember.

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1 CHAYTOR, Q.C.:

2 Q. And again, bearing in mind that two months

3 before you had the memo which talked about the

4 erratic and unreliable stains and the same

5 language being used again in this memo of

6 June, "it will be ill-advised to operate an

7 unreliable and erratic immunohistochemical

8 procedure in our laboratory." Was any concern

9 expressed or did it come to your mind or was

10 it expressed by anyone within your ear shot as

11 to well what does that mean, have we been

12 offering an unreliable and erratic service,

13 and if so, what impact might that have on the

14 patients?

15 MR. DYER:

16 A. No, not that I remember.

17 CHAYTOR, Q.C.:

18 Q. So no concern as to tests that have already

19 been carried out up to this point in time?

20 MR. DYER:

21 A. None that I'm--personally with my involvement?

22 No, I don't think any.

23 CHAYTOR, Q.C.:

24 Q. And was any consideration given to going back

25 and retesting at that point in time?

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1 MR. DYER:

2 A. Not that I am aware of.

3 CHAYTOR, Q.C.:

4 Q. And why not?

5 MR. DYER:

6 A. I don't know if anyone ever thought of it,

7 just that--I don't know, as far as I know we

8 didn't.

9 CHAYTOR, Q.C.:

10 Q. And you didn't think of it yourself.

11 MR. DYER:

12 A. I didn't think of it myself, no.

13 CHAYTOR, Q.C.:

14 Q. Has it been the discussions or a topic of

15 discussion since, now that everyone has seen

16 what happened, has it been the subject of

17 discussion, well why didn't we go back in

18 2003? Why didn't anyone think of it.

19 MR. DYER:

20 A. In hindsight?

21 CHAYTOR, Q.C.:

22 Q. Yes.

23 MR. DYER:

24 A. Yes, there has been discussion and, I mean, no

25 one, like I said, I never thought of it and in

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1 terms of Dr. Ejeckam or anyone else had asked

2 them why they didn't think of it or anything

3 like that, I don't know.

4 CHAYTOR, Q.C.:

5 Q. But you have heard it discussed since?

6 MR. DYER:

7 A. Oh yes.

8 CHAYTOR, Q.C.:

9 Q. And the review doesn't actually happen then

10 until 2005.

11 MR. DYER:

12 A. Correct.

13 CHAYTOR, Q.C.:

14 Q. What have you heard discussed since?

15 MR. DYER:

16 A. No, I think we just discussed--that's one of

17 the things when we were going over this and

18 that's one of the things that was brought up

19 or brought to my attention, why didn't, you

20 know, when this happened in 2003, why didn't

21 we go back? And I said, well, I don't think

22 anyone ever thought of going back.

23 CHAYTOR, Q.C.:

24 Q. And who has discussed that since and asked,

25 well why didn't you go back in 2003?

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1 MR. DYER:
 2 A. No, I think we just discussed it in general
 3 when everything happened in 2005.
 4 CHAYTOR, Q.C.:
 5 Q. Yes, and who discussed it is my question?
 6 MR. DYER:
 7 A. Oh I can't remember who was there because I
 8 think it was just general, as we talked, I
 9 might have talked with the techs, I could be
 10 Heather Predham, I don't know, it was just
 11 generally discussed.
 12 CHAYTOR, Q.C.:
 13 Q. And what explanation have you heard offered
 14 for not having gone back in 2003?
 15 MR. DYER:
 16 A. Well, again, this is just with me and again, I
 17 said I never thought of it. In terms of
 18 physicians, I don't know what they would have
 19 said.
 20 CHAYTOR, Q.C.:
 21 Q. Have you heard any explanation offered as to
 22 why there was no review conducted in 2003?
 23 MR. DYER:
 24 A. No, no official one, no.
 25 CHAYTOR, Q.C.:

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1 Q. Have you heard anything unofficial?
 2 MR. DYER:
 3 A. Unofficial?
 4 CHAYTOR, Q.C.:
 5 Q. Yes, what have you heard?
 6 MR. DYER:
 7 A. Well I've heard, but again, it's unofficial,
 8 you know, Dr. Ejeckam didn't think we needed
 9 to go back and do it, but I don't know where I
 10 heard--I heard that from someone. I don't
 11 know where I heard it from.
 12 CHAYTOR, Q.C.:
 13 Q. That Dr. Ejeckam didn't think that at the time
 14 or Dr. Ejeckam didn't think that -
 15 MR. DYER:
 16 A. Didn't think at the time.
 17 CHAYTOR, Q.C.:
 18 Q. In 2003.
 19 MR. DYER:
 20 A. Yes. But again, that's just hearsay, I can't
 21 -
 22 CHAYTOR, Q.C.:
 23 Q. But any suggestion that Dr. Ejeckam was--that
 24 it ever dawned on Dr. Ejeckam in 2003?
 25 MR. DYER:

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1 A. Pardon?
 2 CHAYTOR, Q.C.:
 3 Q. Was there a suggestion that it ever dawned on
 4 Dr. Ejeckam in 2003 to go back and at that
 5 point in time -
 6 MR. DYER:
 7 A. I don't know.
 8 CHAYTOR, Q.C.:
 9 Q. - he didn't think it was necessary.
 10 MR. DYER:
 11 A. I wouldn't be able to tell you at the time,
 12 no.
 13 CHAYTOR, Q.C.:
 14 Q. And in what context did you hear that said?
 15 MR. DYER:
 16 A. I can't remember.
 17 CHAYTOR, Q.C.:
 18 Q. Do you recall who said it?
 19 MR. DYER:
 20 A. No, I don't even remember who said it, but I
 21 know I heard those words somewhere.
 22 CHAYTOR, Q.C.:
 23 Q. And hearing the issue discussed since about,
 24 well why didn't we go back, the only thing
 25 you've heard offered is that Dr. Ejeckam

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1 didn't think it was necessary?
 2 MR. DYER:
 3 A. I heard that in passing, yes.
 4 CHAYTOR, Q.C.:
 5 Q. Have you heard anything else?
 6 MR. DYER:
 7 A. No, that's it.
 8 CHAYTOR, Q.C.:
 9 Q. Have you heard any explanation given as to
 10 there not having been an indexed patient in
 11 2003?
 12 MR. DYER:
 13 A. No, I don't think that's been said to me.
 14 CHAYTOR, Q.C.:
 15 Q. And before I learn then Dr. Ejeckam's memos,
 16 is there anything else around this time period
 17 and around your interactions with Dr. Ejeckam
 18 that you think is relevant that we haven't
 19 already covered?
 20 MR. DYER:
 21 A. No, I don't think so.
 22 CHAYTOR, Q.C.:
 23 Q. So after having your meeting with him, you and
 24 Mr. Gulliver and then within six months or
 25 thereabouts, the staff becoming 90 percent

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1 dedicated and the space being dedicated to
 2 IHC.
 3 MR. DYER:
 4 A. Yes.
 5 CHAYTOR, Q.C.:
 6 Q. You had no further discussions about the issue
 7 with Dr. Ejeckam?
 8 MR. DYER:
 9 A. No, not that I can recall.
 10 CHAYTOR, Q.C.:
 11 Q. And were any further concerns then after that
 12 point in time brought to your attention?
 13 MR. DYER:
 14 A. No.
 15 CHAYTOR, Q.C.:
 16 Q. If we could have, please, P-1572? This is a
 17 meeting April 15th, 2003 of a Surgical
 18 Pathology Review Committee and Dr. Ejeckam was
 19 apparently the chair of that committee and
 20 there's a number of physicians in attendance.
 21 Were you aware of the existence of such a
 22 committee?
 23 MR. DYER:
 24 A. Not at that time, no.
 25 CHAYTOR, Q.C.:

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1 Q. And when did you become aware that such a
 2 committee existed?
 3 MR. DYER:
 4 A. I became aware of that committee when Dr.
 5 Ejeckam had a request for some work wanting to
 6 be done, I can't remember when it was.
 7 THE COMMISSIONER:
 8 Q. Request for what, I'm sorry?
 9 MR. DYER:
 10 A. He had a request that he wanted some work done
 11 for that committee.
 12 THE COMMISSIONER:
 13 Q. Oh, okay.
 14 CHAYTOR, Q.C.:
 15 Q. So I take it it was sometime within, around
 16 this time period you became aware that the
 17 committee existed?
 18 MR. DYER:
 19 A. Yes.
 20 CHAYTOR, Q.C.:
 21 Q. 2003.
 22 MR. DYER:
 23 A. Yes.
 24 CHAYTOR, Q.C.:
 25 Q. And what did you understand was the purpose of

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1 the committee?
 2 MR. DYER:
 3 A. I didn't understand the purpose of the
 4 committee, I just knew there was a committee
 5 and I only understood that there was one
 6 project they were doing at the time and that
 7 was clinical information on requisitions.
 8 CHAYTOR, Q.C.:
 9 Q. Clinical information on requisitions.
 10 MR. DYER:
 11 A. Yes.
 12 CHAYTOR, Q.C.:
 13 Q. So there was some concern that there wasn't
 14 clinical histories or clinical information
 15 being provided on the requisitions?
 16 MR. DYER:
 17 A. Correct.
 18 CHAYTOR, Q.C.:
 19 Q. And what work was it that Dr. Ejeckam needed
 20 done for this committee?
 21 MR. DYER:
 22 A. One day, again now taking the context of the
 23 laboratory and everybody having assigned
 24 duties to do and one day Dr. Ejeckam came in,
 25 I think it was on a Tuesday or a Wednesday and

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

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

22 CHAYTOR, Q.C.:

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

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

13 MR. DYER:

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

22 CHAYTOR, Q.C.:

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

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

5 MR. DYER:

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

13 CHAYTOR, Q.C.:

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

18 MR. DYER:

19 A. Yes.

20 CHAYTOR, Q.C.:

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

25 MR. DYER:

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1 A. No, no, I wasn't.

2 CHAYTOR, Q.C.:

3 Q. Was that discussed with you?

4 MR. DYER:

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

7 CHAYTOR, Q.C.:

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

11 MR. DYER:

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

16 CHAYTOR, Q.C.:

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

22 MR. DYER:

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

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1 responsible for interpreting, so I didn't have
 2 any issues with their competency level.
 3 CHAYTOR, Q.C.:
 4 Q. Was there any competency testing carried out
 5 on the technologists?
 6 MR. DYER:
 7 A. Not for IHC no, or not during my time.
 8 CHAYTOR, Q.C.:
 9 Q. Is that being done now?
 10 MR. DYER:
 11 A. What's happening is everything they do is
 12 being documented with Dr. Ford Elms.
 13 CHAYTOR, Q.C.:
 14 Q. So everything they do, in terms of any
 15 additional training you mean?
 16 MR. DYER:
 17 A. Yes.
 18 CHAYTOR, Q.C.:
 19 Q. And at this point in time in 2003, did any of
 20 them have any special training in IHC?
 21 MR. DYER:
 22 A. Only based on how they were trained by--again,
 23 you know, just like when I set
 24 immunohistochemistry, it's all about, you
 25 know, you use the books and you work in

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1 conjunction with the physician.
 2 CHAYTOR, Q.C.:
 3 Q. And to your knowledge, what inquiries did you
 4 make becoming their manager, as to how much
 5 training they had had in IHC?
 6 MR. DYER:
 7 A. I don't think I made any actual inquiries,
 8 they were--my interpretation was the system
 9 was up and running and they were the ones who
 10 were doing it when I got hired.
 11 CHAYTOR, Q.C.:
 12 Q. And when they were dedicated then 90 percent
 13 at least, by the end of the year, they're 90
 14 percent dedicated by IHC, was there any
 15 inquiries made at that point in time as to
 16 whether or not they needed any additional
 17 training?
 18 MR. DYER:
 19 A. No. And Dr. Ejeckam didn't bring any
 20 inquiries to me about it at that time.
 21 CHAYTOR, Q.C.:
 22 Q. So, if it was being considered to send one or
 23 two of them outside the province for
 24 additional training at that time, but was not
 25 brought to your attention, nor was the need

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1 for that to happen brought to your attention.
 2 MR. DYER:
 3 A. No.
 4 CHAYTOR, Q.C.:
 5 Q. And as their manager, was that information
 6 that you would expect to know?
 7 MR. DYER:
 8 A. Definitely.
 9 CHAYTOR, Q.C.:
 10 Q. Mr. Dyer, at some point in time a decision was
 11 made to put external controls on the same
 12 slide as the patient's tissue slide or the
 13 same slide as the patient's tissue.
 14 MR. DYER:
 15 A. Yes.
 16 CHAYTOR, Q.C.:
 17 Q. Whose idea was that?
 18 MR. DYER:
 19 A. I think it was being tossed around from time
 20 to time, but I really got involved with it
 21 when I started learning about the Ventana.
 22 CHAYTOR, Q.C.:
 23 Q. Okay. And ultimately, I understand, that was
 24 done. Was that done prior to the Ventana
 25 coming on?

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1 MR. DYER:
 2 A. It was done in conjunction with the Ventana
 3 coming online.
 4 CHAYTOR, Q.C.:
 5 Q. So, it was never done while DAKO was in
 6 operation?
 7 MR. DYER:
 8 A. Not unless it was, I guess, a special request
 9 or something from a physician. I don't recall
 10 it being done.
 11 CHAYTOR, Q.C.:
 12 Q. Okay. And whose decision ultimately was it to
 13 go that route, to have the external control on
 14 the slide with patient tissue?
 15 MR. DYER:
 16 A. I think when the Ventana system, when I was
 17 learning or exploring about the Ventana system
 18 or the actual IHC for the new technology, once
 19 we realized that Ventana was out there, what
 20 happened was myself and Mr. Gulliver, we went
 21 to meet the Ventana officials in Montreal.
 22 And I visited a couple of hospitals while I
 23 was there to see what the practices were for
 24 IHC. And one of the things that Ventana
 25 talked about and I think one of the hospitals,

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

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1 labelling system, an automatic labeller. So,
 2 we drew pictures of where the control would
 3 be, where the patient would be and how to
 4 interpret the actual label on the slide for
 5 demographic purposes.
 6 CHAYTOR, Q.C.:
 7 Q. Okay.
 8 MR. DYER:
 9 A. It was a very good idea because of the fact
 10 that now we could eliminate this issue of
 11 controls being fed out to different
 12 pathologists. Now, we would know we could
 13 have a control on every one. So, it would
 14 have been an excellent QC practice to start.
 15 CHAYTOR, Q.C.:
 16 Q. Okay. So, I take it there had been concerns
 17 with the prior practice of external controls
 18 being on separate slides?
 19 MR. DYER:
 20 A. I think it was more of an administration issue
 21 than anything else.
 22 CHAYTOR, Q.C.:
 23 Q. And how so, what was the problem?
 24 MR. DYER:
 25 A. Well, I know when we were actually putting the

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1 controls out in the reporting room, everyone
 2 would have to go to the reporting room, sit
 3 down and look at controls before they read
 4 their slides. Whereas this one now, when
 5 they'd go to the reporting room, they'd just
 6 take their slides and go back to their office.
 7 So, it's more administrative than anything
 8 else, I believe.
 9 MR. DYER:
 10 A. Okay. And Dr. Robb indicated you had a huge
 11 tumour bank registry or a huge tumour bank
 12 supply.
 13 MR. DYER:
 14 A. We did, yes.
 15 CHAYTOR, Q.C.:
 16 Q. For doing controls for, in the ER/PR, for
 17 doing controls, did it have to be breast
 18 tissue for your external control or could it
 19 be any kind of tissue?
 20 MR. DYER:
 21 A. Again, I think that's out of my scope of
 22 practice. I can tell you what I think, but
 23 not actually what may be fact. What was
 24 happening at the time was they were using a
 25 positive breast tumours as an external

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1 control. That's what they were doing.
 2 CHAYTOR, Q.C.:
 3 Q. So, that's what was being used?
 4 MR. DYER:
 5 A. Yes.
 6 CHAYTOR, Q.C.:
 7 Q. So, we've heard use of tonsils for external
 8 controls, but tonsils weren't being used, I
 9 take it, for ER/PR, for external controls.
 10 MR. DYER:
 11 A. No, no.
 12 CHAYTOR, Q.C.:
 13 Q. So, to your knowledge, external controls for
 14 ER/PR were always breast tissue.
 15 MR. DYER:
 16 A. Always a positive breast tumour.
 17 CHAYTOR, Q.C.:
 18 Q. Positive breast tumour.
 19 MR. DYER:
 20 A. Yes.
 21 CHAYTOR, Q.C.:
 22 Q. Okay. And still there was thought to be ample
 23 tumour supply available to be able to use the
 24 control on each slide?
 25 MR. DYER:

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

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1 MR. DYER:
 2 A. Yes.
 3 CHAYTOR, Q.C.:
 4 Q. Okay. And what was your understanding? Was
 5 there an external control--how many external
 6 controls were being run and did you ever hear
 7 any complaints as to people not receiving
 8 external controls?
 9 MR. DYER:
 10 A. No, I don't think I've ever received any
 11 complaints, but what would happen was they
 12 would--the techs would run an external control
 13 based on site. So, they would run one for the
 14 Janeway, I mean, one for the Health Science,
 15 one for St. Clare's. If Carbonear ordered
 16 one, they would run one for Carbonear. But I
 17 think there were times when we might have had
 18 49 slides to run, but we only had 28 spaces.
 19 So, what they may do is instead of running an
 20 extra control, they would do one of two
 21 things. They would either do that run and
 22 then chose not to send a control to one of the
 23 site, but have a physician on site read it, or
 24 they would wait and run them with the controls
 25 the next day.

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1 CHAYTOR, Q.C.:
 2 Q. Okay. And you never heard any complaints
 3 about that practice?
 4 MR. DYER:
 5 A. About not getting controls, no.
 6 CHAYTOR, Q.C.:
 7 Q. About not receiving controls or -
 8 MR. DYER:
 9 A. No.
 10 CHAYTOR, Q.C.:
 11 Q. Okay. You said that in your days as
 12 technologist at the Janeway, you would check
 13 the external control before you sent it to the
 14 pathologist to make sure your run was
 15 satisfactory.
 16 MR. DYER:
 17 A. Yes.
 18 CHAYTOR, Q.C.:
 19 Q. Do you know whether that was the practice at
 20 the Health Science, in the IHC lab? Were the
 21 technologists checking the external controls
 22 before sending out the work product?
 23 MR. DYER:
 24 A. I think that's a real point, I'll have to make
 25 sure it was understood by all of it, but the

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

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1 CHAYTOR, Q.C.:

2 Q. Okay. And how does that differ from what's

3 expected of you in checking external controls

4 in special stains?

5 MR. DYER:

6 A. Routine special stains?

7 CHAYTOR, Q.C.:

8 Q. Yes, routine special stains.

9 MR. DYER:

10 A. The difference is again, no, it's pretty well

11 the same. The control will still be sent out.

12 At the Janeway I would still send a control

13 after I reviewed it. But you know, if you

14 look at an iron stain, for example, I know, I

15 understand what iron looks like, so if I see

16 in a liver that the iron didn't attach, then I

17 wouldn't send that out. I would repeat it

18 because it was completely negative.

19 CHAYTOR, Q.C.:

20 Q. Okay. I'm just trying to understand because

21 you said that you are trained in your program

22 to look at -

23 MR. DYER:

24 A. In college for those--yes, but -

25 CHAYTOR, Q.C.:

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1 Q. - for special stains.

2 MR. DYER:

3 A. Right, but special stains -

4 CHAYTOR, Q.C.:

5 Q. Or routine stains.

6 MR. DYER:

7 A. Right and that's not actually--they're not

8 cellular staining, like that's more like -

9 CHAYTOR, Q.C.:

10 Q. What's the difference? Why are you not

11 comfortable with technologists checking

12 external controls in IHC?

13 MR. DYER:

14 A. At that time?

15 CHAYTOR, Q.C.:

16 Q. Yes.

17 MR. DYER:

18 A. Because they were never trained to interpret

19 the cells.

20 CHAYTOR, Q.C.:

21 Q. Okay. And how about today, are they trained?

22 MR. DYER:

23 A. Today, again, I think it's still a bit of a

24 issue with me. Again, when you look at

25 interpretation of external controls, to truly

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1 identify it, you have to be able to identify

2 cellular components. And the agreement is

3 that the techs are being trained to do that.

4 But you know, as you heard Dr. Fontaine last

5 week, you know, it's still very subjective.

6 So, I don't have issues with the techs

7 actually learning to interpret the controls,

8 but I still believe that it should be, a final

9 check off should be done by the physician.

10 CHAYTOR, Q.C.:

11 Q. Okay. And is that currently happening? So

12 that while the technologists may check to see

13 if they believe the external control worked,

14 when it's forwarded onto the pathologists,

15 they still know they ultimately are

16 responsible for external controls and have to

17 check them.

18 MR. DYER:

19 A. Yes, they do.

20 CHAYTOR, Q.C.:

21 Q. So, that's currently the practice?

22 MR. DYER:

23 A. That is currently the practice. However, the

24 techs are now being trained also to interpret.

25 They are being trained.

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1 CHAYTOR, Q.C.:

2 Q. So, and I take it if they're not satisfied,

3 they redo the run.

4 MR. DYER:

5 A. Yes.

6 CHAYTOR, Q.C.:

7 Q. If they are satisfied it goes on to the

8 pathologist, but the pathologist know they

9 still have to check it.

10 MR. DYER:

11 A. Right now, yes. And we still run a control on

12 every slide.

13 CHAYTOR, Q.C.:

14 Q. Yes. So now technologists, in order to do

15 that, have to check every slide, not just one

16 external control or four external controls.

17 They have to check each slide.

18 MR. DYER:

19 A. Yes.

20 CHAYTOR, Q.C.:

21 Q. In terms of choosing appropriate blocks to use

22 as external controls, how is that currently

23 done?

24 MR. DYER:

25 A. Today?

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1 CHAYTOR, Q.C.:

2 Q. Yes.

3 MR. DYER:

4 A. That is done through the director of

5 immunohistochemistry, Dr. Ford Elms.

6 CHAYTOR, Q.C.:

7 Q. And how was it done in the past?

8 MR. DYER:

9 A. I think the process is pretty well the same as

10 it is done today. What would happen is I'm

11 slowing teaching the staff how to use the

12 computers more. But like, Ford would come to

13 me right now and ask me to run a search for

14 multiple, different types of diagnosis. And I

15 would run those searches and identify patients

16 for and give them to him or the staff would do

17 that now too for him. We did the same thing

18 in 2002. The staff would come to me and say,

19 you know, we're looking for a new control for

20 ER. So, I would run searches to find patients

21 that are positive, that would have a word or

22 text of positivity and then hand it off to

23 them. They would find the blocks and do a

24 stain and then ask a physician to look at it.

25 CHAYTOR, Q.C.:

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1 Q. Okay. So, in 2002 a tech might come to you to

2 do computer search for patients. And I take

3 it, are they coming to you as manager? Coming

4 to you because you're -

5 MR. DYER:

6 A. Knowledgable in the way -

7 CHAYTOR, Q.C.:

8 Q. - knowledgable in the computer -

9 MR. DYER:

10 A. That's more for -

11 CHAYTOR, Q.C.:

12 Q. More the latter.

13 MR. DYER:

14 A. Yes, yes.

15 CHAYTOR, Q.C.:

16 Q. So, you would help them identify patients

17 which were ER positive?

18 MR. DYER:

19 A. Yes.

20 CHAYTOR, Q.C.:

21 Q. Or PR positive, as the case may be.

22 MR. DYER:

23 A. Yes.

24 CHAYTOR, Q.C.:

25 Q. And so then they would take that block, make

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1 it into slides and then bring it to the

2 pathologist and ask the pathologist to pick

3 which ones.

4 MR. DYER:

5 A. They would either do that or they would

6 actually take the report and ask the

7 pathologist, based on the report, you know,

8 would this patient be good and if so, then

9 they would take some of the blocks, cut a

10 section, stain it and then ask them to review.

11 CHAYTOR, Q.C.:

12 Q. So, they might do either.

13 MR. DYER:

14 A. Yes.

15 CHAYTOR, Q.C.:

16 Q. They might take the report, they might take

17 the slides.

18 MR. DYER:

19 A. Yes. Also another practice they would do is

20 while they were doing staining, while they

21 were actually going through the

22 immunohistochemistry and they would see slides

23 that seem to stain up very strong to them,

24 they would ask pathologists about that

25 specific case too. I know that's happened.

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1 CHAYTOR, Q.C.:

2 Q. Okay. And when you were looking to help

3 identify appropriate patient tissue for

4 controls blocks or control slides, were you

5 looking, in particular, for something that was

6 a strong positive? What were you looking for?

7 MR. DYER:

8 A. Usually it was strong positives.

9 CHAYTOR, Q.C.:

10 Q. Strong positive?

11 MR. DYER:

12 A. Yes.

13 CHAYTOR, Q.C.:

14 Q. Okay.

15 THE COMMISSIONER:

16 Q. While we are on the topic of your computer

17 savvy, as it were, with the Meditech system,

18 is it easy, in your view to find in which

19 files or find cases where and ER/PR test has

20 been performed?

21 MR. DYER:

22 A. To actually find if an ER/PR test was

23 performed, I would usually chase down, like, a

24 procedure, an ER was ordered. That would be

25 easy to do. But finding an actual percentage,

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1 like if I was looking for 80 percent, no, that
 2 was very challenging to do. There was no
 3 standard text in the system. So, you're at
 4 the mercy of how someone typed it in.
 5 THE COMMISSIONER:
 6 Q. So, were you involved in the search for
 7 identification of the patients when they got
 8 involved in this in 2005 to find out what
 9 tests had been done and to pull them for the
 10 purpose of the retesting?
 11 MR. DYER:
 12 A. Yes.
 13 THE COMMISSIONER:
 14 Q. And what was--that I understand from the
 15 evidence of other people, turned out to be
 16 fairly complicated.
 17 MR. DYER:
 18 A. Very challenging, yes.
 19 THE COMMISSIONER:
 20 Q. So, what, in your view, from--it just seems to
 21 me, in this day of technology, it should have
 22 been very easy. So, what was the problem,
 23 from your perspective?
 24 MR. DYER:
 25 A. Okay. When we went through the actual

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1 searches to identify patients for this whole
 2 Inquiry, what had happened was--sorry, not for
 3 the Inquiry, but for the retesting, I think
 4 we've gone through three or four major
 5 updates. So, in 1998, I believe, is when we
 6 started, up to 1998 we were all our own
 7 separate entity.
 8 THE COMMISSIONER:
 9 Q. Yes.
 10 MR. DYER:
 11 A. So, everyone had their own database,
 12 everything was different. So, what had
 13 happened was--and then from 1998 up to 2005,
 14 we had some major upgrades. So, what had
 15 happened was we weren't actually searching
 16 through one system. We were searching through
 17 four systems of which some of those were, not
 18 obsolete, but were many functions didn't
 19 actually work.
 20 THE COMMISSIONER:
 21 Q. So, four systems of Meditech.
 22 MR. DYER:
 23 A. Yes, four different systems of Meditech, even
 24 with the Health Science, the first system was
 25 called MainLab and when they -

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1 THE COMMISSIONER:
 2 Q. And when you got the second system, it didn't
 3 allow you to search the first?
 4 MR. DYER:
 5 A. It did, but it was more challenging to hunt
 6 down. And in 1998 things were entered
 7 different than from 2000 or 2004. So, there
 8 was so many variables to try and hunt down
 9 what you want. So, what we did was I was
 10 actually on holidays when the initial searches
 11 were done, but Mr. Gulliver searched through
 12 the most basic way to search and that would
 13 have been through procedure.
 14 THE COMMISSIONER:
 15 Q. Okay. And since that period of time have
 16 there been changes made in the system for
 17 keeping records, to make it more user friendly
 18 if one wanted to do the research on, not
 19 necessarily this, but anything else in terms
 20 of what tests have been done and results and
 21 all that kind of stuff?
 22 MR. DYER:
 23 A. We would still go through the same challenges
 24 right now. The only real difference is we're
 25 now one system. So that, you know, from 1999

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1 or I believe maybe 2000 on we're now actually
 2 one system as for 2000 one--each group got
 3 brought on. So, now the Janeway, Health
 4 Sciences, St. Clare's are all entered through
 5 one system. So, they're all entered through
 6 one Health Science system, so that database
 7 will now be much easier to -
 8 THE COMMISSIONER:
 9 Q. But do you have a database that's any easier
 10 to search or the problem now than you did
 11 before?
 12 MR. DYER:
 13 A. No, the database itself hasn't changed in that
 14 sense from the old -
 15 THE COMMISSIONER:
 16 Q. Just for curiosity, when you acquired this
 17 database, did anybody walk into the lab and
 18 say, what kind of information do you, in the
 19 lab, need to have and we just want to make
 20 sure that you have the ability to search that
 21 and the appropriate fields are set up before
 22 we institute this system. Do you know if that
 23 was done?
 24 MR. DYER:
 25 A. Well, again, when we set up, when I set up the

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1 Meditech myself, I went down and just told
 2 them what I needed, but since then--I think in
 3 1998 we tried to do a major consolidation.
 4 So, all four groups got together to try and
 5 standardize as much as possible.
 6 COMMISSIONER:
 7 Q. Okay, so when Meditec was purchased, the
 8 Health Care Corp might have said that they
 9 required something different than Western
 10 Regional would have said, is that it?
 11 MR. DYER:
 12 A. Yes.
 13 COMMISSIONER:
 14 Q. And they then would have developed within
 15 Meditec a system which would be different for
 16 Western Regional then it would be for Health
 17 Care?
 18 MR. DYER:
 19 A. A lot of similarities, but, yes, a lot of
 20 differences too.
 21 COMMISSIONER:
 22 Q. Okay. My apologies for the diversion.
 23 CHAYTOR, Q.C.:
 24 Q. No problem, and I will ask you more about your
 25 efforts in trying to identify patients when we

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1 come to that point in 2005, but a couple of
 2 points that arise from what answering the
 3 questions of the Commissioner. Today we've
 4 heard that synoptic reporting is now in place.
 5 Doesn't that make it easier to search?
 6 MR. DYER:
 7 A. It does, yes. I didn't understand the
 8 question, sorry. Yes, standardization is
 9 becoming bigger -- more and more important to
 10 us all the time, so some things are
 11 standardized, yes.
 12 CHAYTOR, Q.C.:
 13 Q. So in terms of that respect, or at least with
 14 respect to that, it should be that much
 15 easier?
 16 MR. DYER:
 17 A. With respect to breast, yes, we should be able
 18 to -- yes, since last year we should be able
 19 to do that.
 20 CHAYTOR, Q.C.:
 21 Q. And you in answering the Commissioner's
 22 question indicated that in 1998 when Meditec
 23 was brought on there was an effort to attempt
 24 to bring together all four groups. Do you mean
 25 Janeway, Grace, St. Clare's, and the Health

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1 Sciences in 1998?
 2 MR. DYER:
 3 A. Yes.
 4 CHAYTOR, Q.C.:
 5 Q. Of course, you were all separate entities
 6 then.
 7 MR. DYER:
 8 A. Yes, we all had Meditec, but what we were
 9 trying to do at that time was actually
 10 standardize how we did things.
 11 CHAYTOR, Q.C.:
 12 Q. And how did that work, what was the outcome of
 13 that?
 14 MR. DYER:
 15 A. No, we didn't -- there wasn't agreement on
 16 total standardization of how we did things.
 17 CHAYTOR, Q.C.:
 18 Q. Were you able to get any of the hospitals to
 19 come together?
 20 MR. DYER:
 21 A. Yes.
 22 CHAYTOR, Q.C.:
 23 Q. So tell us about that.
 24 MR. DYER:
 25 A. The Grace, Janeway, and Health Science pretty

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1 well wrote all their protocols in the system
 2 to be pretty well identical.
 3 CHAYTOR, Q.C.:
 4 Q. What about St. Clare's?
 5 MR. DYER:
 6 A. No, they didn't.
 7 CHAYTOR, Q.C.:
 8 Q. Why not?
 9 MR. DYER:
 10 A. I didn't have authority at the time. I
 11 wouldn't be able to tell you. They didn't
 12 agree to do -- they didn't agree to
 13 standardize everything the way we were
 14 standardizing.
 15 CHAYTOR, Q.C.:
 16 Q. So the other three in terms of then what you
 17 had to do in 2005, in 1998 there was some
 18 standardization of the Grace and the Health
 19 Science?
 20 MR. DYER:
 21 A. And the Janeway.
 22 CHAYTOR, Q.C.:
 23 Q. Yes, but Janeway, of course, wasn't involved
 24 in what you were doing in 2005.
 25 MR. DYER:

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1 A. Yes.
 2 CHAYTOR, Q.C.:
 3 Q. So at least you had the Health Science and the
 4 Grace were fairly well standardized.
 5 MR. DYER:
 6 A. Yes.
 7 CHAYTOR, Q.C.:
 8 Q. But it was St. Clare's then that caused you
 9 the extra hurdle in terms of -- an extra
 10 challenge in terms of what you had to do in
 11 2005?
 12 MR. DYER:
 13 A. To a degree, yes, but also the Grace was still
 14 on their own system at the time too, so that
 15 was still a hurdle. St. Clare's was on their
 16 own system, so that was still a hurdle.
 17 CHAYTOR, Q.C.:
 18 Q. Okay.
 19 MR. DYER:
 20 A. Also.
 21 CHAYTOR, Q.C.:
 22 Q. I think before we went down that road, I was
 23 asking you about external controls.
 24 MR. DYER:
 25 A. Yes.

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1 CHAYTOR, Q.C.:
 2 Q. And there's just a few other points I'd like
 3 to cover off there. The change that you
 4 brought about putting the tissue on the
 5 patient -- putting the control tissue on the
 6 patient's slide, how was that then
 7 communicated to the pathologists who would be
 8 reading the slides?
 9 MR. DYER:
 10 A. I think what I did was I -- well, in our site
 11 chief meeting -- not our site chief -- our
 12 site meetings at Health Science, that's when I
 13 explained to everyone what we were going to
 14 do.
 15 CHAYTOR, Q.C.:
 16 Q. And what about for the St. Clare's physicians?
 17 MR. DYER:
 18 A. I also informed the St. Clare's physicians. I
 19 think I might have actually told Don Cook
 20 about it, but I know I informed them because
 21 the same form that I had written there I sent
 22 over, I had at St. Clare's.
 23 CHAYTOR, Q.C.:
 24 Q. And were they sent any documentation or was
 25 this verbally communicated?

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1 MR. DYER:
 2 A. No, I had an actual form made with the actual
 3 slide, and how it would look. So I had a
 4 picture, a full page picture of the slide and
 5 drawn up here saying this would be the
 6 external control, this would be the patient.
 7 CHAYTOR, Q.C.:
 8 Q. And then also some explanation, I take it, for
 9 the labelling that you had produced as well?
 10 MR. DYER:
 11 A. Yes, yes, like we had the indicators to what
 12 each thing would mean because again when it
 13 comes to standardization, you know, everybody
 14 labelled their slides differently.
 15 CHAYTOR, Q.C.:
 16 Q. Were the pathologists told that the control
 17 tissue for the most part was supposed to be a
 18 strong positive?
 19 MR. DYER:
 20 A. Were they told that?
 21 CHAYTOR, Q.C.:
 22 Q. Yeah, were they told that?
 23 MR. DYER:
 24 A. I didn't tell them that, no.
 25 CHAYTOR, Q.C.:

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1 Q. How would they know that?
 2 MR. DYER:
 3 A. Again I didn't pick the controls. The
 4 physicians always picked the controls.
 5 CHAYTOR, Q.C.:
 6 Q. And you, though, in helping identify tissue
 7 that could be appropriate for controls, you,
 8 yourself, looked for strong positives?
 9 MR. DYER:
 10 A. That was what I was asked for.
 11 CHAYTOR, Q.C.:
 12 Q. And you understood it was strong positives?
 13 MR. DYER:
 14 A. Yes.
 15 CHAYTOR, Q.C.:
 16 Q. Okay.
 17 MR. DYER:
 18 A. Yes, I would always look for, like, 60, 70, or
 19 higher.
 20 CHAYTOR, Q.C.:
 21 Q. But whether pathologists were told that, that
 22 this should be a strong positive, your control
 23 should be a strong positive, you don't know if
 24 that was communicated?
 25 MR. DYER:

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1 A. That wouldn't have been, no -- and again this
 2 was the practice before I came. Like, when I
 3 came, this is what they were doing at the
 4 time.
 5 CHAYTOR, Q.C.:
 6 Q. And currently perhaps you could tell us what
 7 is used for external controls and how does
 8 that work today?
 9 MR. DYER:
 10 A. What is used for external controls?
 11 CHAYTOR, Q.C.:
 12 Q. Yes, and how -- we understand now there's
 13 actually three controls on the slide, is that
 14 right, or two?
 15 MR. DYER:
 16 A. We run a batch control and that's a separate
 17 slide that has no patient on it.
 18 CHAYTOR, Q.C.:
 19 Q. Right.
 20 MR. DYER:
 21 A. And that batch control has what we call three
 22 controls. One is a complete negative, one is
 23 what we would call unequivocal intermediate,
 24 like, it might have been a 30 or 40 percent,
 25 and one is a strong positive. That's the

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1 first control we run for ER/PR.
 2 CHAYTOR, Q.C.:
 3 Q. And that's a batch control?
 4 MR. DYER:
 5 A. That's called a batch control. So that's just
 6 run. So if we have 15 patients, that one would
 7 be run with the 15. Then the next step is we
 8 also run a positive control on every single
 9 patient. So that would actually be on the same
 10 slide as the patient.
 11 CHAYTOR, Q.C.:
 12 Q. And it's just one positive control?
 13 MR. DYER:
 14 A. That's one positive control, and again that
 15 just tells us if the system is doing its job.
 16 Then the third control is called a reagent or
 17 a negative control, and I'll just shed some
 18 light on negative controls. What happens is
 19 when you actually stain -when you're actually
 20 doing a IHC stain on a patient's slide, you
 21 may actually get staining on that tissue or on
 22 the patient's tissue that is not directly
 23 related to the antibody. It may be related to
 24 what we call the detection kit, which is five
 25 or six. So what we do is we will actually run

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1 a parallel run using the exact same protocol
 2 on a second piece of tissue from that patient
 3 and we would substitute the antibody with a
 4 diluent which is like saline -- well, it's not
 5 saline, but that's something we would use. So
 6 that once you run through parallel runs and
 7 once it's completed, if you look at your
 8 patient reagent or negative control, if you
 9 see positivity, then that tells you that the
 10 actual detection kit has caused the patient to
 11 stain positive and not the antibody.
 12 CHAYTOR, Q.C.:
 13 Q. So there's something peculiar to that
 14 particular patient's tissue causing that?
 15 MR. DYER:
 16 A. Correct.
 17 CHAYTOR, Q.C.:
 18 Q. Okay.
 19 MR. DYER:
 20 A. So then they know that if they see positivity
 21 in the negative, then that means that the test
 22 has failed because that positivity in the
 23 patient may not be directly related to the
 24 antibody. Therefore, you get a false result.
 25 CHAYTOR, Q.C.:

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1 Q. Okay. So if you were to send out a picture
 2 today to the pathologist of your slide, it's
 3 still the patient tissue and one positive
 4 control on the patient tissue slide?
 5 MR. DYER:
 6 A. Yes.
 7 CHAYTOR, Q.C.:
 8 Q. And is that a strong positive or what is that?
 9 MR. DYER:
 10 A. That is still a strong positive.
 11 CHAYTOR, Q.C.:
 12 Q. That's a strong positive?
 13 MR. DYER:
 14 A. Yes, but what the practice -- the practice is
 15 we have a -- we had a breast group and the
 16 actual reagent control, negative reagent
 17 negative control, the patient's actual test,
 18 and the sausage control, is all sent to the
 19 breast group to review.
 20 CHAYTOR, Q.C.:
 21 Q. Was sent to the breast group?
 22 MR. DYER:
 23 A. Yes, that's the practice.
 24 CHAYTOR, Q.C.:
 25 Q. Okay.

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<p>1 COMMISSIONER: 2 Q. Ms. Chaytor, wherever you want to take the 3 afternoon break, you can let me know. 4 CHAYTOR, Q.C.: 5 Q. Thank you. In terms then of having to come up 6 with several other then controls now in terms 7 of a weak positive and a negative, have you 8 run into any shortage of supply in terms of 9 coming up with enough control tissue? 10 MR. DYER: 11 A. That's a tough one. I don't think we've 12 actually come up with the issue of finding -- 13 unequivocals, I think, is more of an issue, 14 yes, I should say. That means the 15 intermediate. 16 CHAYTOR, Q.C.: 17 Q. Intermediate slides. 18 MR. DYER: 19 A. It's harder to find an intermediate control. 20 CHAYTOR, Q.C.: 21 Q. I take it people are usually either one way or 22 the other for the most part? 23 MR. DYER: 24 A. Yes, yes. 25 CHAYTOR, Q.C.:</p>	<p>1 MR. DYER: 2 A. In general? 3 CHAYTOR, Q.C.: 4 Q. Yes. 5 MR. DYER: 6 A. Yes, that has happened. 7 CHAYTOR, Q.C.: 8 Q. That has happened? 9 MR. DYER: 10 A. Yes. 11 CHAYTOR, Q.C.: 12 Q. And whether or not -- you don't know if it's 13 happened with ER/PR specifically? 14 MR. DYER: 15 A. From what I understand, ER/PR always had a 16 control. 17 CHAYTOR, Q.C.: 18 Q. Okay, and who do you understand that from? 19 MR. DYER: 20 A. From our techs. We always ran a control. 21 CHAYTOR, Q.C.: 22 Q. Okay. 23 MR. DYER: 24 A. And in this retesting and inquiry, we've 25 located hundreds and hundreds and hundreds of</p>
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<p>1 Q. And we've heard something about that. Have 2 you ever heard, either before this system of 3 controls came into effect or after, have you 4 ever heard of any ER/PR tests being run 5 without external controls? 6 MR. DYER: 7 A. ER/PR tests? 8 CHAYTOR, Q.C.: 9 Q. Yes. 10 MR. DYER: 11 A. No, I don't think so. 12 CHAYTOR, Q.C.: 13 Q. Okay. 14 MR. DYER: 15 A. Not up to this, not up to this incident, no. 16 CHAYTOR, Q.C.: 17 Q. So have you ever heard of pathologists 18 instructing technologists to run IHC testing 19 without an external control, for example, if 20 there wasn't enough space on the machine and 21 they wanted their test run? 22 MR. DYER: 23 A. Do you mean in general or ER/PR? 24 CHAYTOR, Q.C.: 25 Q. Well, I IHC then.</p>	<p>1 controls. 2 CHAYTOR, Q.C.: 3 Q. Have you been able to identify an external 4 control for every test? 5 MR. DYER: 6 A. For every test, no. 7 CHAYTOR, Q.C.: 8 Q. And I'll take you to that when we talk about 9 that. 10 MR. DYER: 11 A. Sure. 12 CHAYTOR, Q.C.: 13 Q. What you actually do in 2005. Was there in 14 the past any record kept as to what tissue was 15 used for external controls for the batch ran? 16 MR. DYER: 17 A. No. 18 CHAYTOR, Q.C.: 19 Q. Is that currently being done? 20 MR. DYER: 21 A. Yes. 22 CHAYTOR, Q.C.: 23 Q. So currently if we were to go look for patient 24 "X" and what control tissue is on the slide 25 with patient "X" tissue, there is a record of</p>

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1 that?

2 MR. DYER:

3 A. We have a record book kept of -- all controls

4 are identified based on the patient, and if we

5 make three blocks, one is block "A", one is

6 block "B", and one is block "C", we even

7 record when we stop using block "A" and start

8 using block "B".

9 CHAYTOR, Q.C.:

10 Q. And is that recorded on the patient's chart?

11 MR. DYER:

12 A. On the patient's chart?

13 CHAYTOR, Q.C.:

14 Q. Yes.

15 MR. DYER:

16 A. No, I don't think so.

17 CHAYTOR, Q.C.:

18 Q. So where is it recorded? It's a central

19 registry, is it?

20 MR. DYER:

21 A. I'm not understanding.

22 CHAYTOR, Q.C.:

23 Q. So if patient "x" has an ER/PR test today, the

24 controls used for his or her test, is that

25 recorded on her chart?

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1 MR. DYER:

2 A. Just the actual result, but not who that

3 control came from, no.

4 CHAYTOR, Q.C.:

5 Q. But there would be no number identifying that

6 control, who the control tissue came from so

7 that that could be cross referenced?

8 MR. DYER:

9 A. No, the way we would cross reference it is

10 based on date -- again, you know, we would say

11 in our book this is SU1000 and we made three

12 blocks, and this is what's currently being

13 used for ER control. Then we say block "A" or

14 block we're currently using, start date, and

15 when we stop using, we would say end date, and

16 then start date for the next one. So when I

17 call up a patient, patient "x", I can just

18 look at patient "x" and see when she was done,

19 and I will be able to go right back to what

20 control was used and who that control was

21 from.

22 CHAYTOR, Q.C.:

23 Q. So you would have to then go to -- physically

24 go to a book or is there a computerized

25 record?

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1 MR. DYER:

2 A. No, I think right now we're just doing it

3 manually.

4 CHAYTOR, Q.C.:

5 Q. So you would have to manually go to a book and

6 look it up?

7 MR. DYER:

8 A. Yes.

9 CHAYTOR, Q.C.:

10 Q. There's no electronic record of that?

11 MR. DYER:

12 A. No, not right now, I don't think so.

13 CHAYTOR, Q.C.:

14 Q. And so nothing then actually put on the

15 patient's -- like, for example, in the

16 pathology record, nothing recorded there as to

17 what control was used?

18 MR. DYER:

19 A. Not on the patient's report, no.

20 CHAYTOR, Q.C.:

21 Q. Currently, is there any policy that requires

22 pathologists to certify that certain tissue is

23 appropriate for use as controls?

24 MR. DYER:

25 A. Is there a policy?

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1 CHAYTOR, Q.C.:

2 Q. Yes.

3 MR. DYER:

4 A. I believe there is for ER/PR. Dr. Elms was

5 directly involved, so again--and like all--but

6 for every tissue, I don't think there's a

7 policy for every tissue just yet.

8 CHAYTOR, Q.C.:

9 Q. Okay, and so that's something recent, in terms

10 of ER/PR as well, that Dr. -

11 MR. DYER:

12 A. Yes.

13 CHAYTOR, Q.C.:

14 Q. So then Dr. Elms, as director of IHC, would

15 certify that certain controls or certain

16 tissue are appropriate to be used as controls?

17 MR. DYER:

18 A. Yes.

19 CHAYTOR, Q.C.:

20 Q. Is there any policy which requires

21 pathologists to sign off or verify that

22 they've read the external controls?

23 MR. DYER:

24 A. I think there's a letter gone out, but in

25 terms of a formal policy, I don't--I wouldn't

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1 be able to explain. Best thing is to ask a
 2 physician.
 3 CHAYTOR, Q.C.:
 4 Q. Okay.
 5 MR. DYER:
 6 A. Because that would be a clinical issue.
 7 CHAYTOR, Q.C.:
 8 Q. So to your knowledge, there's no formal
 9 policy?
 10 MR. DYER:
 11 A. Not that I know of.
 12 CHAYTOR, Q.C.:
 13 Q. But ask Dr. Elms?
 14 MR. DYER:
 15 A. That's the best thing to do. He would be able
 16 to tell you.
 17 CHAYTOR, Q.C.:
 18 Q. And I take it that's true also of internal
 19 controls, whether there's a policy for them to
 20 verify or certify that they have read the
 21 internal control on a given test?
 22 MR. DYER:
 23 A. Again, for ER/PR, there is.
 24 CHAYTOR, Q.C.:
 25 Q. There is?

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1 MR. DYER:
 2 A. But for other IHC, you have to ask Dr. Elms.
 3 CHAYTOR, Q.C.:
 4 Q. So there is such a policy now for ER/PR?
 5 MR. DYER:
 6 A. I think so, because we created a standard text
 7 to start that prior to going live in '07.
 8 CHAYTOR, Q.C.:
 9 Q. Okay. Just one more then, one more point,
 10 Commissioner, before we break. Mr. Dyer, do
 11 you have any concern that tissue that was used
 12 as positive controls in the past may not, in
 13 fact, have been positive at all? Do you have
 14 any concern that tissue that was chosen to be
 15 used as positive controls in the past may not
 16 have, in fact, been positive?
 17 MR. DYER:
 18 A. Again, we always relied on the physician to
 19 tell us if it was positive or negative, so I
 20 really--if the physician told me it's
 21 positive, I'd believe it's positive.
 22 CHAYTOR, Q.C.:
 23 Q. And with any knowledge that's come to you
 24 since, do you have any reason to be concerned
 25 that external controls that were indicated to

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1 be positive may in fact not have been or that
 2 there's not appropriate documentation to
 3 verify that they were in fact positive?
 4 MR. DYER:
 5 A. Since--any today?
 6 CHAYTOR, Q.C.:
 7 Q. Since everything that's happened, is there any
 8 -
 9 MR. DYER:
 10 A. Yes.
 11 CHAYTOR, Q.C.:
 12 Q. - do you have concern?
 13 MR. DYER:
 14 A. Oh, yes, yes.
 15 CHAYTOR, Q.C.:
 16 Q. Okay, and tell us about that. Why are you
 17 concerned?
 18 MR. DYER:
 19 A. Well, I'm not concerned to the fact that it's
 20 now corrected, but -
 21 CHAYTOR, Q.C.:
 22 Q. Currently, the current situation is fine, but
 23 I'm asking about the past, whether or not you
 24 have concern that what was thought to have
 25 been positive external control may or may not

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1 have been?
 2 MR. DYER:
 3 A. I think my concern, when I learned what was
 4 going on, was the fact that internal controls
 5 that would actually--internal controls for
 6 ER/PR that actually will determine if the test
 7 worked on that patient may not have been read
 8 every time.
 9 CHAYTOR, Q.C.:
 10 Q. Okay, what about for external controls though
 11 and the choice of tissue for external controls
 12 and whether or not it was positive?
 13 MR. DYER:
 14 A. I didn't have concerns at the time, because no
 15 one came back and said a control didn't work.
 16 CHAYTOR, Q.C.:
 17 Q. Right. Do you have any concern now though
 18 that that in fact may--external controls that
 19 were thought to have been positive tissue may
 20 not have been?
 21 MR. DYER:
 22 A. I think I understand.
 23 CHAYTOR, Q.C.:
 24 Q. Okay.
 25 MR. DYER:

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1 A. Again, yes, obviously that could happen.
 2 CHAYTOR, Q.C.:
 3 Q. And how could that happen?
 4 MR. DYER:
 5 A. Well, if we were running a positive, a strong
 6 positive control to tell us that, you know,
 7 the system was working, if the internal
 8 control wasn't being read on that external
 9 control, then how could we truly determine if
 10 it was a positivity stain, was it a nuclear
 11 stain or not. It may not have worked at all.
 12 It may have been all background. Does that
 13 make sense? I don't know if I'm understanding
 14 the question.
 15 CHAYTOR, Q.C.:
 16 Q. Yes.
 17 THE COMMISSIONER:
 18 Q. I think what you're saying is you might get a
 19 false external control by virtue of the fact
 20 that somebody didn't read an internal control
 21 initially?
 22 MR. DYER:
 23 A. Correct.
 24 CHAYTOR, Q.C.:
 25 Q. Yes.

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1 MR. DYER:
 2 A. That's exactly right.
 3 CHAYTOR, Q.C.:
 4 Q. Because they weren't--because there wasn't--
 5 there may not have been attention paid to the
 6 internal controls?
 7 MR. DYER:
 8 A. Correct.
 9 CHAYTOR, Q.C.:
 10 Q. Yes, thank you. That's a good place to break,
 11 Commissioner.
 12 THE COMMISSIONER:
 13 Q. All right. We'll take the afternoon break.
 14 (RECESS)
 15 THE COMMISSIONER:
 16 Q. Please be seated. Ms. Chaytor.
 17 CHAYTOR, Q.C.:
 18 Q. Thank you, Commissioner. If I could have,
 19 please, C-0175? This is a confidential
 20 record, Mr. Dyer. It's a pathology report
 21 that was done in 2003, and I'm not sure if you
 22 were here last week. These are--this was a
 23 pathology report I showed to Mrs. Butler, and
 24 the documents that I took her through showed
 25 that the run for this was actually done April

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1 30th, 2003.
 2 MR. DYER:
 3 A. Okay.
 4 CHAYTOR, Q.C.:
 5 Q. So it's in the time period when Dr. Ejeckam
 6 was doing his adjustments, and you can see
 7 here that it was reported by Dr. Morris-Larkin
 8 on May 9th, 2003. Sorry, there was another--
 9 it was actually run before that, see here.
 10 There was a first run which was done May 30th
 11 and it was reported--I'm sorry, April 30th,
 12 and was reported May 6th, and it was found
 13 that "when compared to controls, the specimen
 14 is negative for HER2/neu, ER and PR," and
 15 that's the first addendum and this run was
 16 repeated or this particular test was repeated
 17 on May 7th and reported then on May 9th by Dr.
 18 Morris-Larkin and "the ER and PR were reported
 19 due to quality assurance issues. The repeated
 20 stain show the following: ER positive in 80
 21 percent of the cells and PR positive in ten
 22 percent of the cells."
 23 Now Mr. Dyer, this is in the time period
 24 when you were aware that issues had been
 25 identified by Dr. Ejeckam and you assigned

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1 Mrs. Butler to work with him in working out
 2 the issues, and the ER/PR testing came on
 3 again on May 2nd, according to the memo, or
 4 thereabouts. Was this brought to your
 5 attention that ER and PR were repeated due to
 6 quality assurance issues, and the repeated
 7 stains then, in fact, resulted in a different
 8 result?
 9 MR. DYER:
 10 A. No.
 11 CHAYTOR, Q.C.:
 12 Q. Is that something that would have been of
 13 importance to you to know, as lab manager at
 14 that time?
 15 MR. DYER:
 16 A. Yes.
 17 CHAYTOR, Q.C.:
 18 Q. What would you have done had this been brought
 19 to your attention?
 20 MR. DYER:
 21 A. I would have asked to tweak the stain again to
 22 see what was going on, if we--I mean, if we--
 23 I'm sorry, can you ask the question again?
 24 CHAYTOR, Q.C.:
 25 Q. What would you have done if it had been

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1 brought to your attention that, in fact, there
 2 had been repeats done and there were changes
 3 in results?
 4 MR. DYER:
 5 A. I think I would have brought it to the
 6 attention of the clinical chief at the time.
 7 CHAYTOR, Q.C.:
 8 Q. Okay, and towards what end?
 9 MR. DYER:
 10 A. Pardon?
 11 CHAYTOR, Q.C.:
 12 Q. Towards what end?
 13 MR. DYER:
 14 A. To try and find out why we were having
 15 changes, the way we are, or the way that one
 16 did change.
 17 CHAYTOR, Q.C.:
 18 Q. Would you have been concerned about other
 19 patients' test results?
 20 MR. DYER:
 21 A. Yeah, I think I would have. I mean,
 22 personally, yes, I think I would have been
 23 concerned.
 24 CHAYTOR, Q.C.:
 25 Q. And knowing what you knew about what Dr.

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1 Ejeckam's concerns had been, knowing what had
 2 happened and then with changed results, do you
 3 think at that point in time, it would have
 4 then dawned on you that perhaps we need to do
 5 a review?
 6 MR. DYER:
 7 A. I think if--see, it's hard to say. If you
 8 have one or two cases that change, I don't
 9 know--again, that's a clinical decision. I
 10 don't know if--you know, it would be up to
 11 them to guide as to what they would like us to
 12 do, because they make the decisions on--this
 13 is a clinical issue and they would make that
 14 decision.
 15 CHAYTOR, Q.C.:
 16 Q. Okay, and would you have gone looking though
 17 for--would you have asked more questions and
 18 asked that further tests be looked at?
 19 MR. DYER:
 20 A. Again, that would--that's difficult to answer
 21 because the physicians did all the
 22 interpretation. So I would assume that they
 23 would make the inquiry, more so than I would
 24 or a technologist would.
 25 CHAYTOR, Q.C.:

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1 Q. At the very least, you would have brought it
 2 to Dr. Cook's attention and you would have
 3 been concerned yourself that other patients
 4 may also be impacted?
 5 MR. DYER:
 6 A. If I was informed that there were actual
 7 result changes, yes, but again, results were
 8 not--were out of my scope of practice. It was
 9 all the physician.
 10 CHAYTOR, Q.C.:
 11 Q. And if we could have, please, C-0174? And
 12 again, this is a confidential record. It's a
 13 pathology report of an unidentified patient,
 14 and in this case, the original ER/PR was
 15 reported by Dr. Elms on August 29th, 2002, and
 16 at that point in time, immunohistochemical
 17 staining for progesterone receptors is
 18 positive in approximately 15 percent of
 19 lesional cells. Immunohistochemical staining
 20 for estrogen receptors is negative. And the
 21 records that we have, and I took Ms. Butler
 22 through last week, showed that there was a
 23 repeat--there were two runs. Requisition was
 24 dated May 23rd, 2003 and that it was done, the
 25 requisition was at the request of Dr. Zaidi.

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1 The run was ran May 29th, 2003 and it's
 2 reported here by Dr. Elms on June 11th, 2003,
 3 and he writes "at the request of Dr. Zaidi,
 4 immunohistochemical staining for estrogen and
 5 progesterone receptors has been repeated.
 6 Estrogen receptors show faint positivity in
 7 approximately ten to 75 percent of lesional
 8 cells. Progesterone receptors are
 9 unequivocally positive in approximately 75
 10 percent of lesional cells." So it's almost a
 11 year from the time of the first test to the
 12 second and the second test again taking place
 13 in May of 2003 after Dr. Ejeckam's adjustment
 14 in dilution had taken place.
 15 MR. DYER:
 16 A. Yes.
 17 CHAYTOR, Q.C.:
 18 Q. Again, would this have been of significance or
 19 importance to you, as lab manager, to know
 20 that tests had been run which resulted in a
 21 changed result in your lab?
 22 MR. DYER:
 23 A. I think to me it would have been of
 24 significance. Again, though it's a clinical
 25 issue. I look at it as a clinical issue, and

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1 it would be up to the physician to decide what
 2 they want to do.
 3 CHAYTOR, Q.C.:
 4 Q. In terms of patient treatment, I take it, but
 5 in terms of -
 6 MR. DYER:
 7 A. Not just -
 8 CHAYTOR, Q.C.:
 9 Q. - your lab and your lab producing consistent
 10 reproducible results.
 11 MR. DYER:
 12 A. For a situation like this, I would expect that
 13 Dr. Elms would talk to Dr. Ejeckam about it,
 14 because Dr. Ejeckam was running the actual
 15 immuno lab technically, so that's what I would
 16 expect him to--that's what I would have
 17 expected him to do.
 18 CHAYTOR, Q.C.:
 19 Q. And in terms of any issue as to your lab being
 20 able to run or produce reproducible results,
 21 if there's any issue as to that, would you
 22 expect that to be brought to your attention?
 23 MR. DYER:
 24 A. Yes.
 25 CHAYTOR, Q.C.:

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1 Q. Okay, and had this been brought to your
 2 attention, again, what, if anything, would you
 3 have done?
 4 MR. DYER:
 5 A. Again, I would have--if it was brought to my
 6 attention, I would have investigated to see
 7 why it was happening.
 8 CHAYTOR, Q.C.:
 9 Q. Okay. Were either of those cases brought to
 10 your attention?
 11 MR. DYER:
 12 A. No.
 13 CHAYTOR, Q.C.:
 14 Q. Would you have expected this, as lab manager,
 15 to have been brought to your attention?
 16 MR. DYER:
 17 A. Again, it's--I would think it could be, but
 18 again, it would be up to Dr. Ejeckam, who was
 19 in charge of the immuno lab to decide if he
 20 would want to bring it to me or not.
 21 CHAYTOR, Q.C.:
 22 Q. Mr. Dyer, on May 17th, 2005, was the index
 23 patient and her case brought to your attention
 24 as lab manager?
 25 MR. DYER:

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1 A. Yes.
 2 CHAYTOR, Q.C.:
 3 Q. If we could have, please, P-1576? Sorry about
 4 that, Mr. Dyer. This is a meeting of division
 5 of Anatomical Pathology, pathologists meeting
 6 at the General Hospital site, September 24th
 7 2003, and I'm just going to take you to the
 8 first page, in terms of who's in attendance at
 9 the meeting. We have Doctors Fernandez,
 10 Chittal, Parai, M. Parai, Pirezada, Ejeckam,
 11 Carter, Barron, Fontaine and S. Parai, and on
 12 page three, under new business, "4.1.
 13 Laboratory technical quality. This was
 14 discussed with Barry Dyer, Terry Gulliver and
 15 Dr. D. Cook. The discussion included the
 16 technical quality of the slides, error of
 17 labelling, floater and others. Some of these
 18 issues have been documented. Dr. G. Ejeckam
 19 has given a lecture on quality assurance of
 20 the laboratory, which was attended by one
 21 senior technologist. This program is
 22 available for all the lab technical staff at a
 23 suitable time, if interested. A log book is
 24 available in the reporting room to record all
 25 problems"

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1 The issue of discussion included the
 2 technical quality of the slides, error of
 3 labelling, floaters and others, and it says
 4 that had been discussed with you. What do you
 5 recall, and again, this is September 2003,
 6 what do you recall around issues about the
 7 quality of the slides at that time?
 8 MR. DYER:
 9 A. That was all about the actual, the routine lab
 10 and we were having high--when I say "the
 11 routine lab" that's the basic cutting,
 12 staining, H&E and what was happening was we
 13 were having a lot of turn around, a lot of
 14 staff and turn around in staff and they were
 15 having issues that some of the sections that
 16 were coming out had holes in them, that was
 17 mainly what that was about, the quality of the
 18 slide. We did have, you know, again, we did
 19 have some error of labelling, like it might
 20 have been Block A instead of a Block B,
 21 floaters--what a floater is is whenever you're
 22 actually sectioning or doing a section, you
 23 have what we call a water bath and that's how
 24 you spread out your tissue, so with the water
 25 bath, it's slightly warmer than what the

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1 tissue is and it helps spread the tissue to
 2 get out wrinkles and folds and things like
 3 that, so the issue was between each cut, you
 4 would actually have to clean the water bath.
 5 So there was a floater or two identified,
 6 maybe one they assessed that was identified as
 7 floating onto another patient tissue.
 8 CHAYTOR, Q.C.:
 9 Q. Yes, those issues, though, if they're
 10 happening to your H&E slides, wouldn't they
 11 also, wouldn't it also be pertinent to your
 12 slides that are ultimately used for IHC?
 13 MR. DYER:
 14 A. Well IHC was usually cut by a separate person.
 15 This was just routine, I don't think we
 16 discussed anything about immunohistochemistry
 17 at that meeting.
 18 CHAYTOR, Q.C.:
 19 Q. So you believe your issues were limited to
 20 your routine -
 21 MR. DYER:
 22 A. That was all routine, so a log book was set up
 23 in the reporting room.
 24 CHAYTOR, Q.C.:
 25 Q. And so the log book, could any issues, though,

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1 with IHC also be entered in the log book?
 2 MR. DYER:
 3 A. I don't see why not.
 4 CHAYTOR, Q.C.:
 5 Q. It wasn't just limited to--there was no
 6 exclusion for IHC?
 7 MR. DYER:
 8 A. Not that I know of, although I think all they
 9 ever talked about was routine.
 10 CHAYTOR, Q.C.:
 11 Q. Okay, and I believe that we have P-2356
 12 please? And this is a new exhibit, this is a
 13 total of five pages which has been provided to
 14 us. Can you tell us what this is?
 15 MR. DYER:
 16 A. This appears to be the log book that was set
 17 up in 2003 for technical issues.
 18 CHAYTOR, Q.C.:
 19 Q. For technical issues, okay.
 20 MR. DYER:
 21 A. Yes.
 22 CHAYTOR, Q.C.:
 23 Q. And as I said, there's only a total of five
 24 pages provided to us, are you able to say, did
 25 you select which pages were to be provided or

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1 are you able to say what those pages are?
 2 MR. SIMMONS:
 3 Q. He'd have to produce the book -
 4 CHAYTOR, Q.C.:
 5 Q. No, that's--I was just wondering, my question
 6 is why these pages.
 7 MR. DYER:
 8 A. That's the entire book.
 9 CHAYTOR, Q.C.:
 10 Q. That's the entire book?
 11 MR. DYER:
 12 A. It is.
 13 CHAYTOR, Q.C.:
 14 Q. Oh, okay, so that's it.
 15 MR. DYER:
 16 A. That's it. I think in my original interview I
 17 remember that it didn't go on for a very long
 18 period of time, but that's the entire book
 19 right there.
 20 CHAYTOR, Q.C.:
 21 Q. Okay, and it appears to have started in August
 22 of '03 or there may be something a little bit
 23 before that, but the first date I see here is
 24 August 5th, '03.
 25 MR. DYER:

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1 A. That's probably when it started.
 2 CHAYTOR, Q.C.:
 3 Q. And, so this is it, that's the entire book?
 4 THE COMMISSIONER:
 5 Q. Supposed to have ended by February of '04?
 6 MR. DYER:
 7 A. It ended -
 8 CHAYTOR, Q.C.:
 9 Q. Yes, trying to get to the end. The last entry
 10 is February 6th, 2004.
 11 MR. DYER:
 12 A. That's probably correct.
 13 CHAYTOR, Q.C.:
 14 Q. And so why didn't the practice continue?
 15 MR. DYER:
 16 A. I think you'll have to ask the physicians.
 17 CHAYTOR, Q.C.:
 18 Q. So this was set up, so I take it, what was the
 19 purpose, that they could communicate any
 20 issues back to the technical side?
 21 MR. DYER:
 22 A. Yes.
 23 CHAYTOR, Q.C.:
 24 Q. And who was responsible then for reading the
 25 log book and identifying any issues that

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1 needed to be addressed?
 2 MR. DYER:
 3 A. That would have been me.
 4 CHAYTOR, Q.C.:
 5 Q. That would have been you?
 6 MR. DYER:
 7 A. Yes.
 8 CHAYTOR, Q.C.:
 9 Q. And did you ever identify anything related to
 10 the quality of the slides?
 11 MR. DYER:
 12 A. The quality? Yes, if you read, you will see
 13 that there were issues.
 14 CHAYTOR, Q.C.:
 15 Q. Okay, so if we come down to here, we have
 16 September 28th, '03, is that right?
 17 MR. DYER:
 18 A. Yes.
 19 CHAYTOR, Q.C.:
 20 Q. September 12th, 2003, I believe, maybe, and it
 21 says "slide show, poor quality, folds
 22 etceteras", is that -
 23 MR. DYER:
 24 A. No, that's the surgical number.
 25 CHAYTOR, Q.C.:

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1 Q. I'm sorry?
 2 MR. DYER:
 3 A. That's the surgical number, so that's surgical
 4 12,803.
 5 CHAYTOR, Q.C.:
 6 Q. Oh, thank you, it's not a date.
 7 MR. DYER:
 8 A. No.
 9 CHAYTOR, Q.C.:
 10 Q. I assume it's sometime in '03, though.
 11 MR. DYER:
 12 A. I would imagine it's the fall.
 13 CHAYTOR, Q.C.:
 14 Q. Because it appears it's only '03 up to
 15 February '04?
 16 MR. DYER:
 17 A. Yes.
 18 CHAYTOR, Q.C.:
 19 Q. "Slide show, poor quality, folds, et cetera."
 20 Is there anything else then in reading through
 21 it, in terms of the quality of the slides?
 22 MR. DYER:
 23 A. There may be some more there.
 24 CHAYTOR, Q.C.:
 25 Q. I take it you've looked through this before?

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1 MR. DYER:
 2 A. Just a couple of days ago, yes.
 3 CHAYTOR, Q.C.:
 4 Q. And what would you do, for example, with a
 5 comment like that? What would need to be
 6 addressed?
 7 MR. DYER:
 8 A. When we met to discuss technical issues, one
 9 thing that I had to do first was we put a
 10 mechanism in place to identify exactly what
 11 each tech was doing, so what we did was I
 12 wrote a policy on all technologists who cut a
 13 block of any kind would always have to record
 14 it into a book that they cut that block. And
 15 they would actually record the block if the
 16 block--they would record the case, if the case
 17 had twenty blocks, they would record each of
 18 the twenty blocks, so that now I would be able
 19 to go back and track down issues. Also the
 20 same thing is you can see there's some
 21 embedding there. We did the same thing with
 22 embedding, what we did was everybody was given
 23 a different colour based on what week you were
 24 working and there were, like little stickies
 25 and you would actually put them right into the

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1 top part of your cassette, so I could pick up
 2 a block and say this is red, right, and the
 3 date it was done. And I could identify who
 4 actually embedded it, so that was the
 5 mechanism I put in place so we could actually
 6 start corrective action for issues like this.
 7 And what I would do is I would investigate
 8 each case to see what happened and I would
 9 report back to the physician what we found.
 10 CHAYTOR, Q.C.:
 11 Q. And how would you report back--it doesn't
 12 appear that there are any signatures on any of
 13 these comments.
 14 MR. DYER:
 15 A. No signatures, no, I would just go back based
 16 on the surgical number, I could see who it was
 17 assigned to.
 18 CHAYTOR, Q.C.:
 19 Q. Okay, so they wouldn't actually sign that as
 20 their particular complaint, you would then
 21 look up the surgical number -
 22 MR. DYER:
 23 A. No, I don't think there are any signatures
 24 there at all.
 25 CHAYTOR, Q.C.:

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1 Q. And you would look up the surgical number then
 2 and figure out who the physician was from
 3 there.
 4 MR. DYER:
 5 A. Right, and I would talk to the tech about the
 6 case to see, the big thing would be what kind
 7 of case it was, how challenging it was and
 8 what we can do about it.
 9 CHAYTOR, Q.C.:
 10 Q. And in reviewing those few pages over the past
 11 couple of days, did you see anything in there
 12 pertaining to IHC?
 13 MR. DYER:
 14 A. Well right here on the AU6503, page one,
 15 immunohistochemistry was ordered on these
 16 blocks, slides were cut and labelled "slides
 17 don't correspond to the actual block", so what
 18 happened was a wrong case must have been
 19 pulled.
 20 CHAYTOR, Q.C.:
 21 Q. Okay, and in terms of the quality of the
 22 staining or fixation issues, did you see
 23 anything along those lines identified?
 24 MR. DYER:
 25 A. I believe there was one fixation issue there

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1 on the last page, yes, right here. February
 2 6th, '04 on all small cases and I believe that
 3 that's from--so that would be Health Science.
 4 "Variable fixation, nuclei very poorly
 5 preserved."
 6 CHAYTOR, Q.C.:
 7 Q. And what does this say over here?
 8 MR. DYER:
 9 A. That's Dr. Lynn Morris-Larkin's signature.
 10 CHAYTOR, Q.C.:
 11 Q. So Dr. Morris-Larkin did sign her signature
 12 there?
 13 MR. DYER:
 14 A. Yes, she did.
 15 CHAYTOR, Q.C.:
 16 Q. And so what would you have done then to
 17 address that issue?
 18 MR. DYER:
 19 A. I can explain that issue because that's what
 20 we would call an event or because it was more
 21 than one, it was multiple, we might have had
 22 20 biopsies that day and they all had the same
 23 issue, and what had actually happened was I
 24 think that if I remember correctly, at some
 25 point around that time, we were running low,

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1 not us, but I think the PD department was
 2 running low on formalin, and the prefilled
 3 containers, so I believe they asked us if they
 4 could fill up some containers over in our
 5 department and we agreed that they could do it
 6 that evening, so they came in and they might
 7 have filled up 30 or 40 containers to send
 8 upstairs to surgical daycare. And when they
 9 came down, so that might have happened let's
 10 say on a Wednesday, they were just trying to
 11 group fill for this one group, just to get by
 12 and I remember when the techs were grossing
 13 that data, they were getting this strong scent
 14 and what had actually happened was the people
 15 who filled the containers didn't fill them
 16 with 10 percent neutral buffered formalin,
 17 they filled it with 10 percent acidic buffer
 18 formalin and that was the smell that they were
 19 getting, but they were already there, so we
 20 took them out and put them in buffer formalin
 21 as soon as possible and ran them as we would.
 22 CHAYTOR, Q.C.:
 23 Q. And had any tests already been processed or
 24 was this detected immediately?
 25 MR. DYER:

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1 A. No, I think it was detected right up, after a
 2 few cases were grossed, they started getting
 3 that smell, so then they started checking all
 4 the bottles and removing the specimens and
 5 putting them into buffer formalin.
 6 CHAYTOR, Q.C.:
 7 Q. And do you know whether or not any breast
 8 specimens had been -
 9 MR. DYER:
 10 A. No, these were biopsies, all--she says
 11 "they're all smalls" so these were like,
 12 probably all like upper GIS.
 13 CHAYTOR, Q.C.:
 14 Q. Okay. And if we could have then please, and I
 15 take it if there had been any testing done at
 16 that point in time, it would have been picked
 17 up immediately, for example, if there had of
 18 been any testing on your formalin at that
 19 time, that would have been detected?
 20 MR. DYER:
 21 A. I don't understand.
 22 CHAYTOR, Q.C.:
 23 Q. So in terms of it being the wrong chemical,
 24 not 10 percent buffered formalin, if there had
 25 been any kind of testing carried out, like you

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1 have in place now, that would have been
 2 detected at the time.
 3 MR. DYER:
 4 A. No, that wouldn't because -
 5 CHAYTOR, Q.C.:
 6 Q. It wouldn't?
 7 MR. DYER:
 8 A. No, we have a vat here of, like they came into
 9 our gross room, we had two or three different
 10 vats, like this was 10 percent formalin,
 11 buffered formalin, this might have been 20
 12 percent, this might have been acidic formalin,
 13 and they just took the acidic formalin and
 14 poured it on, so unless we checked every
 15 single container and, you know, we do 500 a
 16 day, if we checked every single container, you
 17 would not have picked that up.
 18 THE COMMISSIONER:
 19 Q. How many a day?
 20 MR. DYER:
 21 A. We do about 4 to 500 specimens, about 400
 22 specimens a day.
 23 THE COMMISSIONER:
 24 Q. Are you saying you're filling 4 to 500
 25 containers a day?

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1 MR. DYER:
 2 A. No, it's all pre-purchased right now, but at
 3 that time, they were running low, so they
 4 filled up 20 or so that day themselves and
 5 brought them up to the clinic.
 6 THE COMMISSIONER:
 7 Q. I was thinking in terms of your having pre-
 8 purchased the solution, are you telling me you
 9 pre-purchased something with the solution in
 10 it?
 11 MR. DYER:
 12 A. Yes, that's how it's done now.
 13 CHAYTOR, Q.C.:
 14 Q. Okay, so you don't actually have to fill it.
 15 MR. DYER:
 16 A. No.
 17 THE COMMISSIONER:
 18 Q. Okay, thank you.
 19 MR. DYER:
 20 A. Does that make sense?
 21 CHAYTOR, Q.C.:
 22 Q. Yes, okay, thank you. If we could have,
 23 please, P-2320?
 24 THE COMMISSIONER:
 25 Q. I'm sorry, the environmentalist in me is just

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1 popping up, so do you send them back then
 2 later for refilling, the container?
 3 MR. DYER:
 4 A. No, they're all -
 5 THE COMMISSIONER:
 6 Q. Disposable?
 7 MR. DYER:
 8 A. They're all disposed, yes, they're kept for
 9 two months until we know the case is
 10 completely signed out and no issues, and then
 11 they're all disposed of.
 12 THE COMMISSIONER:
 13 Q. Okay, thank you.
 14 MR. DYER:
 15 A. A huge storage issue with them because there's
 16 hundreds of bags.
 17 THE COMMISSIONER:
 18 Q. Huge disposal issue too.
 19 MR. DYER:
 20 A. Yes, very much so.
 21 THE COMMISSIONER:
 22 Q. P-2320.
 23 CHAYTOR, Q.C.:
 24 Q. P-2320 and this is a meeting of the division
 25 of anatomical pathology, pathologists' meeting

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1 again, General Hospital site, December 11th,
 2 2003, and people in attendance are indicated,
 3 physicians who are in attendance. And on page
 4 6 of this exhibit, under "New business issues"
 5 it says "Mr. Barry Dyer has discussed and
 6 informed a number of issues, these are
 7 amalgamation of the anatomical pathology
 8 technical lab, corporate wide autopsy on call
 9 for the autopsy assistant, renovation of the
 10 gross room in the lab, new immunostainers and
 11 special stainer, preliminary surgical
 12 pathology report, sperm analysis and autopsy
 13 information form, as well as editing sign-out
 14 report." So, Mr. Dyer, I take it would you
 15 bring issues to somebody's attention and then
 16 they could be passed along to this group for
 17 discussion?
 18 MR. DYER:
 19 A. Yes.
 20 CHAYTOR, Q.C.:
 21 Q. And who would you report to? Who would you
 22 pass along the information to?
 23 MR. DYER:
 24 A. Dr. Parai.
 25 CHAYTOR, Q.C.:

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1 Q. I'm sorry?
 2 MR. DYER:
 3 A. Dr. Parai.
 4 CHAYTOR, Q.C.:
 5 Q. And here it refers, of course, that you are
 6 passing along information on the amalgamation
 7 of the anatomical pathological technical lab,
 8 so as of December 11th, 2003, that's still an
 9 ongoing project of yours, I take it?
 10 MR. DYER:
 11 A. It was an ongoing project until it was
 12 completed.
 13 CHAYTOR, Q.C.:
 14 Q. And if we could have, please, P-2321? And
 15 this is a week later, the same group, so were
 16 these weekly meetings?
 17 MR. DYER:
 18 A. I don't think so, I think they were more
 19 monthly--oh, I'm sorry, oh this is the site
 20 chief one? That would be, I believe we tried
 21 to have those monthly.
 22 CHAYTOR, Q.C.:
 23 Q. Okay, this one is site chiefs?
 24 MR. DYER:
 25 A. Yes, that's site chiefs.

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1 CHAYTOR, Q.C.:
 2 Q. Yes, and the other one was pathologist.
 3 MR. DYER:
 4 A. Yes.
 5 CHAYTOR, Q.C.:
 6 Q. This is Dr. Cook, Dr. Parai and yourself in
 7 attendance at this meeting.
 8 MR. DYER:
 9 A. Yes.
 10 CHAYTOR, Q.C.:
 11 Q. And it looks like, it says, "Quality Assurance
 12 Program, the draft Quality Assurance Program
 13 has been reviewed and revised." Do you recall
 14 what that was referencing at the time?
 15 MR. DYER:
 16 A. Again, Dr. Cook and Dr. Parai were working on
 17 a quality assurance program and they were
 18 started to bring it to the--once they had, I
 19 think, pretty well a draft made, they would
 20 bring it--they started bring it to the site
 21 chief's meeting where I started to become
 22 involved.
 23 CHAYTOR, Q.C.:
 24 Q. So I take it at this point in time there was
 25 no program, no quality assurance program in

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1 place.
 2 MR. DYER:
 3 A. No official one, not that I know of.
 4 CHAYTOR, Q.C.:
 5 Q. And on page 4, under "New technology". "Mr.
 6 Barry Dyer has informed that the lab will
 7 adopt new technology from January to March of
 8 2004, therefore, there will be a slowdown of
 9 the technical work for some time. He also
 10 informed the consolidation of the technical
 11 lab, as well as need for a policy for billing
 12 immunoperoxidase technical work and return of
 13 the slides to the centre. The last issues
 14 will be discussed in a program meeting and a
 15 corporate-wide policy will be adopted." So
 16 the technology, I take it that's coming in, is
 17 that the -
 18 MR. DYER:
 19 A. That would be our validation, that was our
 20 period to validate the Ventana to see if we
 21 were going to use it.
 22 CHAYTOR, Q.C.:
 23 Q. Okay, and you are also informing regarding the
 24 consolidation then of the technical lab, so
 25 that's ongoing into -

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1 MR. DYER:
 2 A. Constant.
 3 CHAYTOR, Q.C.:
 4 Q. At that time as well, okay. And perhaps then,
 5 this brings us to December of '03, so tell us
 6 then when is the Ventana system acquired and
 7 what happened in terms of validating that
 8 system?
 9 MR. DYER:
 10 A. What happened was, so the Ventana came in, in
 11 late December, 2003 and it came down to its
 12 new site and so what happened was early, like
 13 I'm not sure, maybe the 3rd or 4th of January
 14 or sometime--in the first couple of weeks of
 15 January, the technical representative came in
 16 and what happened was when she arrived, I
 17 brought her up to our receiving area because
 18 that's where all the equipment was still
 19 boxed. We didn't touch anything when it came
 20 in and what had happened was she had a look at
 21 the boxes outside, because these were big, to
 22 make sure everything was okay and once it was,
 23 then the men who worked in receiving, then
 24 proceeded with her and me to bring the
 25 equipment down to the lab. We couldn't get it

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1 into the lab, of course, too big. So out in
 2 the hallway in the very back of the lab is
 3 where Carole started to dismantle the boxes
 4 and slowly take one piece at a time and she
 5 brought it into the lab. When she brought it
 6 into the lab, she, over the next couple of
 7 days, she set up the equipment and did
 8 whatever was required to do, like I think she
 9 was running a lot of solutions and that,
 10 cleaning everything out, doing the checks,
 11 making sure everything is up and running.
 12 Once everything was actually up and running, I
 13 think she did an actual system check and I
 14 know that because I watched her, using what is
 15 called an antibody vimentin. Once she did
 16 that and okayed everything, then she actually
 17 started the training, the training of the
 18 staff. So by that time, it was Ken--Ken was
 19 going to take on the lead role, he was out--
 20 it's not that he was our youngest tech, but he
 21 was the tech who wasn't going to retire too
 22 soon, whereas Mary and Les could soon retire,
 23 and actually in '03, I think they were at the
 24 age to go or pretty close. So Ken was picked
 25 to work on the validation and I have a little

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1 bit of knowledge about technology and
 2 equipment and all this stuff, so I also
 3 participated. So we started, she started step
 4 one and started teaching us all about the
 5 equipment and so she had manuals with her of
 6 the equipment and how to use it, but what
 7 would happen in the evenings, I would come
 8 back every evening and I would print off all
 9 the manuals, so like the system was a PC, so I
 10 printed off a training manual, I printed off a
 11 total operating manual and I also printed off--
 12 I created what I call the easy steps to using
 13 the benchmark, and what I did there was I took
 14 out the things that I didn't deem important as
 15 to how to operate this manual without going
 16 through a book this thick, so over the next
 17 few nights I did that, and every day, myself
 18 and Ken, she would give seminars on the
 19 machine, hands on, teaching us how to receive
 20 reagents, what the reagents were about, how to
 21 set up protocols.
 22 CHAYTOR, Q.C.:
 23 Q. And were Les and Mary part of that as well?
 24 MR. DYER:
 25 A. Les and Mary? On and off. We still had to

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1 maintain the running of the lab for immunos
 2 and at that time I believe there were still
 3 doing some grossing. So Mary and Les kept the
 4 lab going and myself and Ken learned the
 5 Ventana system. But there were periodic times
 6 when they got into certain things, like
 7 maintenance and that, that I would have them
 8 come down too and sit in for an hour, hour and
 9 a half lecture, and so that went on, I'm not
 10 sure if it was for like a week or a little
 11 over a week.
 12 CHAYTOR, Q.C.:
 13 Q. With the Ventana representative.
 14 MR. DYER:
 15 A. With the Ventana rep, yeah, she was there, I'm
 16 not sure if she might have been there two
 17 weeks in total and we even ran, like once we
 18 got through the training and felt comfortable,
 19 then we actually created some protocols and
 20 ran them just to get comfortable with the
 21 system.
 22 CHAYTOR, Q.C.:
 23 Q. And Mr. Green told us about receiving
 24 protocols from different hospitals across
 25 Canada?

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1 MR. DYER:
 2 A. We had protocols from the west and central as
 3 to how they actually--for protocols to give us
 4 ideas.
 5 CHAYTOR, Q.C.:
 6 Q. And you adopted your own on that.
 7 MR. DYER:
 8 A. But we would try to adopt our own first and
 9 only if we really had--if we struggled, we
 10 felt then we would go and try their protocols.
 11 CHAYTOR, Q.C.:
 12 Q. And was any pathologist involved in this?
 13 MR. DYER:
 14 A. In terms of the actual technical learning?
 15 No.
 16 CHAYTOR, Q.C.:
 17 Q. In terms of validating then the machinery, in
 18 terms of the results afterwards?
 19 MR. DYER:
 20 A. Once we started the actual validation, we
 21 would use our current controls that we had in
 22 the system and we would actually--and we would
 23 start running them to try and identify a
 24 proper protocol.
 25 CHAYTOR, Q.C.:

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1 Q. Okay, so you took the controls which had been
 2 produced -
 3 MR. DYER:
 4 A. From the DAKO.
 5 CHAYTOR, Q.C.:
 6 Q. From the DAKO system and that's what you used
 7 to validate the Ventana system?
 8 MR. DYER:
 9 A. Yes, the same controls we were currently
 10 using.
 11 CHAYTOR, Q.C.:
 12 Q. Okay, and was there any concern that that
 13 tissue would not have been processed the same
 14 way as what would be coming out of the Ventana
 15 system, in terms of, for example, the antigen
 16 retrieval process? Was there any concern that
 17 the control tissue would have been put through
 18 a different process?
 19 MR. DYER:
 20 A. No, the control itself was still put through
 21 the same process, but now we were setting up a
 22 brand new system, so we would do different
 23 protocols. Am I answering the question right?
 24 CHAYTOR, Q.C.:
 25 Q. Okay, so you took--when you said you used the

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1 same controls that were used for DAKO, I guess
 2 that's what I'm not understanding. What
 3 exactly -
 4 MR. DYER:
 5 A. Oh. Well, see the controls that we were
 6 currently on the DAKO system was what the
 7 pathologists were interpreting. So we took
 8 those exact same controls to work on the
 9 Ventana system to get the same result.
 10 CHAYTOR, Q.C.:
 11 Q. Yes, okay.
 12 MR. DYER:
 13 A. That would be our goal.
 14 CHAYTOR, Q.C.:
 15 Q. So you identified blocks which would be
 16 suitable to use for controls?
 17 MR. DYER:
 18 A. Correct, and that was done, again, by
 19 pathologists.
 20 CHAYTOR, Q.C.:
 21 Q. Okay, sorry.
 22 MR. DYER:
 23 A. So then what we would do was--so then we
 24 would--so first of all, we would actually
 25 start running protocols to identify what would

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1 be a good protocol and we would bring the
 2 slides out to pathologists to read or to
 3 interpret.
 4 CHAYTOR, Q.C.:
 5 Q. Okay, and was there any concern, in terms of
 6 the technologists? Did any of the
 7 technologists have particular difficulty in
 8 trying to learn the new system?
 9 MR. DYER:
 10 A. The system was very user friendly. Again,
 11 Mary, Mary was a little nervous or a little
 12 wary of computers, but by March, she was well
 13 trained also.
 14 CHAYTOR, Q.C.:
 15 Q. Okay, by March?
 16 MR. DYER:
 17 A. By March, yes.
 18 CHAYTOR, Q.C.:
 19 Q. And as her manager, did you have any concern
 20 that she might not be ready or not able to
 21 carry out the system?
 22 MR. DYER:
 23 A. Not at all.
 24 CHAYTOR, Q.C.:
 25 Q. So you felt comfortable that she and the

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1 others were -
 2 MR. DYER:
 3 A. Very much so.
 4 CHAYTOR, Q.C.:
 5 Q. - were well trained and able to run the
 6 Ventana system?
 7 MR. DYER:
 8 A. Yes, and again, the idea was to teach them
 9 troubleshooting of the machine and that's what
 10 I trained them--that's what Carol trained and
 11 that's what I also, and Ken also trained. In
 12 one week, for the week of March 1st, I
 13 believe--where, Ken was going to be the main
 14 user, key operator, he was going down to the
 15 Ventana, down to Arizona, to also train, and I
 16 tagged along to also go.
 17 CHAYTOR, Q.C.:
 18 Q. So you went to Arizona for the training as
 19 well?
 20 MR. DYER:
 21 A. Yes, we spent, I think it was Monday to
 22 Friday, a full week of training, and they gave
 23 us opportunity, we actually brought--I know I
 24 brought down a lot of my own slides to try,
 25 because HER2/neu was something that we weren't

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1 doing on automation and FISH, fluorescence in
 2 situ hybridization, and so I brought those
 3 with me too, just to see what the capability
 4 would be, and the results were fantastic.
 5 CHAYTOR, Q.C.:
 6 Q. Was there any--when the Ventana system was
 7 introduced, was there any change to the ER or
 8 PR clone that was being utilized?
 9 MR. DYER:
 10 A. Not at first. While we were testing the
 11 system, we continued to use the DAKO
 12 antibodies, but I think, again, when it comes
 13 to standardization, one big component that was
 14 offered by Ventana was predilute antibodies.
 15 CHAYTOR, Q.C.:
 16 Q. Yes.
 17 MR. DYER:
 18 A. So that's an antibody that was already QC'ed
 19 at the company and came in, and that's where I
 20 really would like to go. So what happened was
 21 sometime in March--we only started validating
 22 in February for the actual ER, I believe, or
 23 maybe late February, but in March is when the
 24 predilutes actually came in, and the
 25 predilute, I believe, for the ER was

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1 different, their clone was different. So what
 2 we did then was we went through another range
 3 of validations, using that different clone on
 4 our current controls to see if we could use
 5 the--to see if their predilutes would be
 6 satisfied, we would be happy with them.
 7 CHAYTOR, Q.C.:
 8 Q. And which pathologist would have assisted you
 9 in that regard?
 10 MR. DYER:
 11 A. Again, the--in what regard?
 12 CHAYTOR, Q.C.:
 13 Q. In terms of validating the new clone.
 14 MR. DYER:
 15 A. What pathologists were available at the time.
 16 CHAYTOR, Q.C.:
 17 Q. So where's Dr. Ejeckam in this picture? Is he
 18 still -
 19 MR. DYER:
 20 A. Dr. Ejeckam was involved also.
 21 CHAYTOR, Q.C.:
 22 Q. But he's not overseeing -
 23 MR. DYER:
 24 A. But he wasn't -
 25 CHAYTOR, Q.C.:

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1 Q. - the IHC lab at this point?
 2 MR. DYER:
 3 A. Oh, he was overseeing the lab, yes, but he--
 4 but not all slides went to him. We were
 5 bringing the slides to whatever pathologist
 6 was available at the time.
 7 CHAYTOR, Q.C.:
 8 Q. So there wasn't one pathologist assigned to
 9 assist in this matter?
 10 MR. DYER:
 11 A. No.
 12 CHAYTOR, Q.C.:
 13 Q. Why not? Why wouldn't Dr. Ejeckam have been
 14 the person?
 15 MR. DYER:
 16 A. I don't--that's a good question, you know, and
 17 I don't know. I know when we were setting up
 18 the system, pathologists were coming in very
 19 excited to want to see the new system, and I
 20 think, you know, whoever was open, we would
 21 just go right to them, but Dr. Ejeckam also
 22 viewed a lot of the slides and he also helped
 23 us a lot with the controls at that time. Like
 24 he was really involved with identifying
 25 controls for us. So he was involved with the

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1 system, but I don't think he--I know he didn't
 2 review all the slides. I mean, we did a lot,
 3 we did a lot of slides for the overall
 4 validation.
 5 CHAYTOR, Q.C.:
 6 Q. Okay, and if we could have, please, P-2357?
 7 I'm sorry, Commissioner, I don't think I asked
 8 to have that one entered. These are new
 9 documents that we received over the weekend.
 10 It's P-2357.
 11 THE COMMISSIONER:
 12 Q. Can you repeat that number again?
 13 CHAYTOR, Q.C.:
 14 Q. P-2357, if we could have that entered?
 15 THE COMMISSIONER:
 16 Q. Just 57?
 17 CHAYTOR, Q.C.:
 18 Q. 2357.
 19 THE COMMISSIONER:
 20 Q. Not 8? That one was reserved as well. You
 21 said these are documents -
 22 CHAYTOR, Q.C.:
 23 Q. Oh yes, yeah, P-2357, yes, not 8.
 24 THE COMMISSIONER:
 25 Q. Okay, P-2357?

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1 CHAYTOR, Q.C.:

2 Q. That's correct.

3 THE COMMISSIONER:

4 Q. Entered.

5 EXHIBIT ENTERED AND MARKED EXHIBIT P-2357

6 CHAYTOR, Q.C.:

7 Q. Thank you, and it might take a while to bring

8 it up. This is 173 pages, I think, this

9 exhibit. Ah, it's pretty fast. And perhaps

10 you could just give us as a quick education on

11 this, Mr. Dyer, and tell us what these

12 documents are and if you wish to pass through

13 a number of the pages, you can just click in

14 the arrow at top and I don't need to tell that

15 to someone who's so astute on computers, do I?

16 MR. DYER:

17 A. I'm not--I'll leave it in your hands. This is

18 a completed staining run. So it tells us the

19 run number, the instrument we used, and the

20 instrument type, run operator, administrator,

21 when the run started, when was the run

22 completed, if it was delayed. Like you can

23 delay a start when it comes to the Ventana

24 system, just like with the DAKO, so if I

25 wanted to--if it was 5:00 in the evening, I

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1 can set up a run overnight and when I come in

2 8:00 tomorrow morning, I just got to take them

3 off. So I can delay the system.

4 Then you have your reagent usage detail

5 and this is true--really what you see here is

6 your detection kit, copper, hydrogen peroxide,

7 DAB, SA biotin and inhibitor, and then you

8 also see your vimentin, which is your

9 antibody. So it just tells you serial number,

10 tests dispensed, how many are remaining in

11 that container, what the life is, the lot

12 numbers and when they will be expired.

13 Then you have a protocol detail and this

14 detail tells you slide position and then the

15 products of slide position 1, 3, 5, 7 and then

16 it tells you the other protocol you ran,

17 protocol number. Usually a number will come

18 up there and then if you want to identify your

19 case, your block ID or your slide, what it is,

20 you can print these out and you can make a

21 comment on staining, if it's positive or

22 negative, and you can make background comments

23 and then you can sign it off.

24 CHAYTOR, Q.C.:

25 Q. Okay, and so this was a form brought in, was

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1 it, for the -

2 MR. DYER:

3 A. This is built right into the Ventana system.

4 CHAYTOR, Q.C.:

5 Q. On the Ventana system.

6 MR. DYER:

7 A. This automatically generated every time you

8 run a report, or I mean, run a--do a run.

9 CHAYTOR, Q.C.:

10 Q. When you do a run?

11 MR. DYER:

12 A. Yes.

13 CHAYTOR, Q.C.:

14 Q. Okay, and then what do we have on page two?

15 MR. DYER:

16 A. On page two is--okay, this is the extended

17 report. So what it's telling me is, again,

18 run number, instrument, type, administrator,

19 delay start, and then we come down to the

20 actual detailed report. So position one, the

21 protocol was called VIM install and it tells

22 you exactly what's dropped on that slide. So

23 it actually tells you specifically what was

24 dropped on each individual slide.

25 CHAYTOR, Q.C.:

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1 Q. Okay.

2 MR. DYER:

3 A. Based on the antibody or the detection kit

4 used.

5 CHAYTOR, Q.C.:

6 Q. Okay, and this will tell up here then when the

7 run started?

8 MR. DYER:

9 A. Yes.

10 CHAYTOR, Q.C.:

11 Q. 5:10 p.m. on January 15th, 2004 and completed

12 January 16th, 2004 at 7:28 a.m.

13 MR. DYER:

14 A. So that was the delayed start.

15 CHAYTOR, Q.C.:

16 Q. So that ran overnight?

17 MR. DYER:

18 A. Yes.

19 CHAYTOR, Q.C.:

20 Q. Okay, and so then the--so I take it then

21 someone would come in in the morning and this

22 could be printed off and this would give you

23 your details?

24 MR. DYER:

25 A. If you--you can print it off or just read it

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1 on screen.
 2 CHAYTOR, Q.C.:
 3 Q. Or just read it on the screen?
 4 MR. DYER:
 5 A. If you read some of my notes, I was anti
 6 paper. I believe in everything's on screen.
 7 Read it on the screen.
 8 CHAYTOR, Q.C.:
 9 Q. Okay, and these are then different run
 10 reports, I take it?
 11 MR. DYER:
 12 A. Yeah, that's all from the same run. It's just
 13 telling you each position that the slide was--
 14 each slide position, so it describes every
 15 single position and what was done, what was
 16 decanted or dropped.
 17 CHAYTOR, Q.C.:
 18 Q. Okay, and again this is January, mid January
 19 2004, so was this--what's happening here, is
 20 this part of the validation of the Ventana
 21 machine?
 22 MR. DYER:
 23 A. This would be the final check that the
 24 technical expert did before we actually
 25 started operating. So I believe what she did,

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1 she ran these and then she interpreted each
 2 slide to ensure that the intensity change--I
 3 believe what she did is she changed each
 4 protocol by four minutes and to determine--and
 5 she did a reading to determine that the actual
 6 stain intensity was increasing, the
 7 specificity and sensitivity was actually
 8 occurring, and then she gave us permission,
 9 gave us a go once that was done.
 10 CHAYTOR, Q.C.:
 11 Q. Did she indicate any problem or that she had
 12 noticed any concern or problems with your
 13 slides, the quality of the slides?
 14 MR. DYER:
 15 A. She didn't read the quality of our slides.
 16 CHAYTOR, Q.C.:
 17 Q. In terms of any fixation issues that may or
 18 may not be apparent, did she make any comment
 19 on that?
 20 MR. DYER:
 21 A. She didn't. Again, I don't think she actually
 22 read any of our slides.
 23 CHAYTOR, Q.C.:
 24 Q. Okay.
 25 MR. DYER:

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1 A. So she wouldn't have seen any of our patient
 2 tissue.
 3 CHAYTOR, Q.C.:
 4 Q. So the slides would have been taken to a
 5 pathologist?
 6 MR. DYER:
 7 A. No, these here, I believe that she brought in
 8 her own.
 9 CHAYTOR, Q.C.:
 10 Q. I'm sorry, she brought her own slides?
 11 MR. DYER:
 12 A. Yes, because this is all just -
 13 CHAYTOR, Q.C.:
 14 Q. These are her slides?
 15 MR. DYER:
 16 A. These are her slides for validation of the
 17 system.
 18 CHAYTOR, Q.C.:
 19 Q. Okay.
 20 THE COMMISSIONER:
 21 Q. So that system was not validated on slides
 22 generated within your institution?
 23 MR. DYER:
 24 A. No, for the actual technical, for her?
 25 THE COMMISSIONER:

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1 Q. Yes.
 2 MR. DYER:
 3 A. No, I don't think they were. I do not believe
 4 they were ours. I can't truly remember, but I
 5 don't think they were ours.
 6 THE COMMISSIONER:
 7 Q. Okay, thank you.
 8 CHAYTOR, Q.C.:
 9 Q. So what she did that week, she brought her own
 10 slides, and -
 11 MR. DYER:
 12 A. Yes, to see that--because I think they were
 13 her own QC slides to determine that the system
 14 was performing to a specific standard.
 15 CHAYTOR, Q.C.:
 16 Q. Were the protocols set up according to her
 17 slides then?
 18 MR. DYER:
 19 A. Yes. No, just this one protocol, VIM install.
 20 Just this one protocol she did for the purpose
 21 of making sure the system was performing the
 22 way it should perform.
 23 CHAYTOR, Q.C.:
 24 Q. Okay, and -
 25 MR. DYER:

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1 A. It had nothing to do with our validation.
 2 CHAYTOR, Q.C.:
 3 Q. Okay, so that came after she's--she's come and
 4 gone, showed you how to use the system?
 5 MR. DYER:
 6 A. No, she's still here.
 7 CHAYTOR, Q.C.:
 8 Q. Yes.
 9 MR. DYER:
 10 A. But she now--she's now telling us that, you
 11 know, based on their QC, this system is now
 12 operational to run.
 13 CHAYTOR, Q.C.:
 14 Q. Okay.
 15 MR. DYER:
 16 A. So then we did a few while she was here, just
 17 to make sure we were doing it properly.
 18 CHAYTOR, Q.C.:
 19 Q. Okay, and when you did a few, you used your
 20 own slides?
 21 MR. DYER:
 22 A. Yes.
 23 CHAYTOR, Q.C.:
 24 Q. Well then, and I'm not sure, is this just more
 25 of the same or do you want to -

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1 MR. DYER:
 2 A. No, all this stuff you're seeing now is all
 3 validations that we actually started doing on
 4 the system.
 5 CHAYTOR, Q.C.:
 6 Q. Okay, with different reagents?
 7 MR. DYER:
 8 A. With different protocols using ER/PR.
 9 CHAYTOR, Q.C.:
 10 Q. Okay, so these are all ER/PR?
 11 MR. DYER:
 12 A. Yes, everything you got is related to ER/PR.
 13 CHAYTOR, Q.C.:
 14 Q. Just ER/PR?
 15 MR. DYER:
 16 A. Just ER/PR, up to March 31st.
 17 CHAYTOR, Q.C.:
 18 Q. Of 2004?
 19 MR. DYER:
 20 A. Of 2004. At the same time, you will see some
 21 different antibodies there because we weren't
 22 just running ER/PR at the time.
 23 CHAYTOR, Q.C.:
 24 Q. Okay, and in going through them, this whole
 25 process, did you run into any particular

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1 concerns or problems?
 2 MR. DYER:
 3 A. Not that I'm aware of. Again, you know, we
 4 were running the ER/PRs using the DAKO system,
 5 I mean, using the DAKO antibody.
 6 CHAYTOR, Q.C.:
 7 Q. Yes.
 8 MR. DYER:
 9 A. But as we were--as we ran low, we would start
 10 changing over to predilutes.
 11 CHAYTOR, Q.C.:
 12 Q. And again -
 13 MR. DYER:
 14 A. Which is what the goal was with this Ventana
 15 system.
 16 CHAYTOR, Q.C.:
 17 Q. And there was a separate validation done, you
 18 said, for that, when you switched to your
 19 predilute?
 20 MR. DYER:
 21 A. Yes. Yes, if you go to February or if you go
 22 to March 15th or 16th, you will see we started
 23 getting into the -
 24 MR. SIMMONS:
 25 Q. Excuse me, you can open the bookmarks from

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1 that. Each run is bookmarked, so you can
 2 click on the date and then go right to the
 3 start of that run.
 4 MR. DYER:
 5 A. The last few days in March, like try the 26th.
 6 I believe that might have been a good one,
 7 24th, 25th, 26th, all those times. So here we
 8 are. So if you look at this sheet, you can
 9 see--so based on--we were doing some AE1 to
 10 AE3's, but if you read the usage, you'll see
 11 again what's on that--what's there is the
 12 actual detection kit, and then the actual
 13 antibodies that we used. So if you look at
 14 number eight and number nine, number eight is
 15 the PGR clone 16 and number nine is the anti
 16 ER 6F11. So they're the two, they are two
 17 clones or they were the two predilutes that we
 18 brought in, and if you come down a little bit
 19 further--oh, I mean, scroll down a little bit
 20 further, you will see, here's protocols that
 21 we started to set up. So if you look at
 22 number eight to number 15, they were
 23 protocols.
 24 And what we did was, it was a lot of work
 25 to create a different protocol every single

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1 time, so we did the same thing that Carol
 2 taught us. If you actually look at this, you
 3 see PR mild 32, PR mild 32, that's a protocol
 4 recreated, but that doesn't mean that they're
 5 all the same. So what we would do is we would
 6 create a protocol PR and then we would start
 7 off with 32 and then what would happen is we
 8 would change--then we would print out that
 9 actual bar coded slide label and put it on a
 10 slide and then we would go in and change it by
 11 four minutes and go to 28 and then we would do
 12 that and we would actually identify on the
 13 slide what the actual times were, based on our
 14 slide position. If you look at, it's the same
 15 thing as Carol, when you go back to the
 16 beginning, she had 40 protocols for VIM
 17 install and it's all the same word, but every
 18 protocol is actually different.
 19 CHAYTOR, Q.C.:
 20 Q. Why wouldn't you just call them PR mild 28?
 21 MR. DYER:
 22 A. It would take -- I think we only had 900 -- we
 23 only had 900 spaces for protocols and we did
 24 hundreds and hundreds and it would -- we would
 25 quickly use them up. If you go through, you

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1 will see that we did do that for some, but it
 2 was using up a lot of the space.
 3 CHAYTOR, Q.C.:
 4 Q. Okay.
 5 MR. DYER:
 6 A. Like I said --
 7 COMMISSIONER:
 8 Q. Just to make sure I understand this, you're
 9 saying that if we go from number 8, 9, 10, and
 10 11, all of which if one just reads, the
 11 letters and numbers like alike; in fact, if
 12 you go within them, there are slight
 13 differences in the protocol?
 14 MR. DYER:
 15 A. Yes.
 16 CHAYTOR, Q.C.:
 17 Q. Okay, and then you would bring the slides to
 18 whatever pathologist was available and --
 19 MR. DYER:
 20 A. They would review.
 21 CHAYTOR, Q.C.:
 22 Q. They would review and tell you which they
 23 preferred or which they thought were the
 24 better quality?
 25 MR. DYER:

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1 A. Yes.
 2 COMMISSIONER:
 3 Q. And would you then delete the others?
 4 MR. DYER:
 5 A. Yes.
 6 CHAYTOR, Q.C.:
 7 Q. And stick with if it's PR mild 32, or if it's
 8 28, that's the one you go with/
 9 MR. DYER:
 10 A. Yes.
 11 CHAYTOR, Q.C.:
 12 Q. And that's the one then that's programmed into
 13 the system?
 14 MR. DYER:
 15 A. Yes, and then you will see a protocol number.
 16 CHAYTOR, Q.C.:
 17 Q. How many -- for ER and PR, how many tests, how
 18 many slides -- how many tests, I guess, were
 19 run, how many different protocols were run and
 20 how many slides in each protocol?
 21 MR. DYER:
 22 A. I can't be that specific.
 23 CHAYTOR, Q.C.:
 24 Q. Are you able to tell me whether it was four or
 25 five slides for each protocol or 50 slides for

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1 each protocol?
 2 MR. DYER:
 3 A. No, we would just run our control.
 4 CHAYTOR, Q.C.:
 5 Q. So you would run --
 6 MR. DYER:
 7 A. We would use the same control for different
 8 protocols.
 9 CHAYTOR, Q.C.:
 10 Q. So you would run one slide for each protocol?
 11 MR. DYER:
 12 A. Yes.
 13 CHAYTOR, Q.C.:
 14 Q. Okay, so one slide for each protocol, and how
 15 many different protocols do you recall?
 16 MR. DYER:
 17 A. I can't give you --
 18 CHAYTOR, Q.C.:
 19 Q. Without telling me exactly.
 20 MR. DYER:
 21 A. I can't give an exact number, but if we go
 22 through between the DAKO and the Ventana --
 23 CHAYTOR, Q.C.:
 24 Q. Uh-hm.
 25 MR. DYER:

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1 A. I believe overall it's over 150.
 2 CHAYTOR, Q.C.:
 3 Q. Okay, different protocols?
 4 MR. DYER:
 5 A. Well, no, like protocols or parallel runs
 6 based on a protocol that was selected. We ran
 7 quite a few, a lot actually.
 8 CHAYTOR, Q.C.:
 9 Q. And you were trying to get -- in running the
 10 two parallel runs between the DAKO and the
 11 Ventana, you're trying to get the Ventana to
 12 produce a similar result as the DAKO?
 13 MR. DYER:
 14 A. Yes.
 15 CHAYTOR, Q.C.:
 16 Q. Okay, and so the first thing you did, and tell
 17 me if that's not right, the first thing you
 18 did was the actual validation on the Ventana
 19 to come up with which slides the pathologists
 20 thought were the best. So you come up with
 21 the protocol that they thought was the best
 22 for ER? Let's just stick with ER.
 23 MR. DYER:
 24 A. Yes.
 25 CHAYTOR, Q.C.:

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1 Q. And then you would take that and then do a
 2 parallel run with what the DAKO was producing?
 3 MR. DYER:
 4 A. Yes.
 5 CHAYTOR, Q.C.:
 6 Q. And then there might be further adjustments
 7 needed?
 8 MR. DYER:
 9 A. Yes.
 10 CHAYTOR, Q.C.:
 11 Q. Were there any discrepancies? Did you notice
 12 discrepancies between what Ventana was
 13 producing and what DAKO was producing?
 14 MR. DYER:
 15 A. In terms of positive and negative, I was never
 16 ever informed of a discrepancy. However, in
 17 the Ventana it was definitely -- the comments
 18 were "definitely much sharper, much crisper,
 19 much stronger".
 20 CHAYTOR, Q.C.:
 21 Q. So when you brought those slides to compare,
 22 you would bring the DAKO and the Ventana slide
 23 to a pathologist?
 24 MR. DYER:
 25 A. I didn't do that myself. That's what Ken told

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1 me. As things come off, I would just bring
 2 them as I had them, but, yes, we would bring
 3 them to the pathologist.
 4 CHAYTOR, Q.C.:
 5 Q. But what feedback you received was that
 6 pathologists were commenting the Ventana was
 7 much crisper, much stronger, and the result
 8 were much crisper and much stronger?
 9 MR. DYER:
 10 A. Yes.
 11 CHAYTOR, Q.C.:
 12 Q. But nobody actually said, well, I've got
 13 different results?
 14 MR. DYER:
 15 A. I've never heard that comment. All I've heard
 16 was again, you know, that the results -- not
 17 the results, but the stain quality itself was
 18 much better.
 19 CHAYTOR, Q.C.:
 20 Q. Were you checking the controls?
 21 MR. DYER:
 22 A. Myself?
 23 CHAYTOR, Q.C.:
 24 Q. You or Ken through the process, were you
 25 checking?

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1 MR. DYER:
 2 A. Looking at these controls, yes.
 3 CHAYTOR, Q.C.:
 4 Q. And were you seeing any problems with the
 5 controls?
 6 MR. DYER:
 7 A. Again I wasn't qualified to actually identify
 8 nuclear staining when it came to ER/PR. All I
 9 identified was -- you know, was it brown stain
 10 or not.
 11 CHAYTOR, Q.C.:
 12 Q. Were you seeing any difference in what you
 13 were seeing in terms of the intensity of the
 14 stain?
 15 MR. DYER:
 16 A. I think -- I think I might have seen a
 17 stronger intensity, yes.
 18 CHAYTOR, Q.C.:
 19 Q. On the Ventana?
 20 MR. DYER:
 21 A. yes.
 22 COMMISSIONER:
 23 Q. Sorry, but can I just interrupt while the
 24 question is running through my head. When you
 25 say you compared the DAKO to the Ventana, the

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1 comparison was just for results, correct?
 2 MR. DYER:
 3 A. Just for the quality of stain, not actual
 4 results themselves.
 5 COMMISSIONER:
 6 Q. Well, that's what I'm trying to get at because
 7 as I understand in the validation process when
 8 the DAKO originally came in and they compared
 9 the results on the DAKO to what they had been
 10 getting by the prior method, which, in fact,
 11 destroyed the tissue, correct, and now when
 12 the Ventana comes in, you compare the Ventana
 13 to the DAKO?
 14 MR. DYER:
 15 A. Yes.
 16 COMMISSIONER:
 17 Q. And tell me what the purpose of that is?
 18 MR. DYER:
 19 A. What was the purpose of --
 20 COMMISSIONER:
 21 Q. What's the purpose of going through that
 22 comparison process?
 23 MR. DYER:
 24 A. To see if the stain was the same, to see how
 25 close the stain would be.

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1 COMMISSIONER:
 2 Q. So when you're validating the DAKO, you assume
 3 your old stains were correct, and when you're
 4 validating the Ventana, you assume the DAKO is
 5 acting correctly?
 6 MR. DYER:
 7 A. Is correct?
 8 COMMISSIONER:
 9 Q. Yes.
 10 MR. DYER:
 11 A. Yes.
 12 COMMISSIONER:
 13 Q. Okay, and in this case, as I understand it,
 14 you're saying that the Ventana results were
 15 sufficiently like the DAKO to be considered to
 16 be okay?
 17 MR. DYER:
 18 A. I think so, yes.
 19 COMMISSIONER:
 20 Q. And have the added benefit that the slides
 21 themselves produced a crisper stain, etc, etc?
 22 MR. DYER:
 23 A. Yes.
 24 COMMISSIONER:
 25 Q. All right, thank you.

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1 CHAYTOR, Q.C.:
 2 Q. Were there any adjustments made to what was
 3 being produced by the Ventana to make it more
 4 like what was coming from the DAKO?
 5 MR. DYER:
 6 A. No, I think the Ventana always appeared to be
 7 much more intense. Again we worked out a
 8 protocol and used that protocol.
 9 CHAYTOR, Q.C.:
 10 Q. And throughout that whole process in terms of
 11 any comparison between the two systems, no
 12 alarm bells went off for anyone or no major
 13 concerns or discrepancies were brought
 14 forward?
 15 MR. DYER:
 16 A. Again I don't think the -- I can't ever recall
 17 a physician actually sitting down and grading
 18 the control. I don't think that ever
 19 happened. I think they just looked at it for
 20 positivity to see if it worked.
 21 CHAYTOR, Q.C.:
 22 Q. And the pathologist that you went on one day
 23 with one particular protocol and the
 24 pathologist you went to the next day with a
 25 different protocol may not have been one and

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1 the same?
 2 MR. DYER:
 3 A. True, although I think for the ER/PR -- I'm
 4 not quite sure, but I think for the ER/PR our
 5 tendency was to go with Dr. Robb.
 6 CHAYTOR, Q.C.:
 7 Q. Dr. Robb?
 8 MR. DYER:
 9 A. Yes, he did a lot of research and a lot of,
 10 like, ER/PR, HER-2-neu and FISH. He was
 11 involved with a lot of that. So for some
 12 reason, he stands out as per the ER/PR, but it
 13 may not be. That's just -- for some reason he
 14 truly stands out.
 15 CHAYTOR, Q.C.:
 16 Q. Do you know what research Dr. Robb was doing
 17 on ER/PR?
 18 MR. DYER:
 19 A. Not in detail, no, I'm not sure, but I know he
 20 did have -- when we were involved with some of
 21 our ER/PRs -- no, when we were involved with
 22 our HER-2-neu, he had a huge spreadsheet of a
 23 lot of patients that he did ER/PR, HER-2-neu,
 24 and FISH, to follow up on. So he was doing
 25 his FISH to mark off his HER-2-neu's. So we

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1 know -- I know he had a lot of experience in
 2 that.
 3 CHAYTOR, Q.C.:
 4 Q. And did Dr. Robb ever bring to your attention
 5 any concerns he had with ER and PR tests?
 6 MR. DYER:
 7 A. No.
 8 CHAYTOR, Q.C.:
 9 Q. Is there anything else then about the
 10 validation of bringing on the Ventana System
 11 that you think needs explaining or anything
 12 else?
 13 MR. DYER:
 14 A. There may be a couple of points that may be
 15 important.
 16 CHAYTOR, Q.C.:
 17 Q. Okay.
 18 MR. DYER:
 19 A. The main point or the main difference between
 20 the Ventana System and the actual DAKO System
 21 was the antigen retrieval. I started to alert
 22 to it in that letter from Dan.
 23 CHAYTOR, Q.C.:
 24 Q. Yes.
 25 MR. DYER:

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1 A. But the antigen retrieval system used in the
 2 DAKO was the citrate buffer pH 6, and the
 3 antigen retrieval used on the Ventana was the
 4 EDA -- high antigen retrieval, EDA, pH of 8 or
 5 8.4. So if you look back here now, I think
 6 that's what was making such a tremendous
 7 difference in the actual stain.
 8 CHAYTOR, Q.C.:
 9 Q. The higher pH?
 10 MR. DYER:
 11 A. Yes.
 12 CHAYTOR, Q.C.:
 13 Q. Okay. You said there were a couple of points
 14 that you --
 15 MR. DYER:
 16 A. No, sorry, that was the big one.
 17 CHAYTOR, Q.C.:
 18 Q. That's the big one.
 19 MR. DYER:
 20 A. That was my main point. Other than that,
 21 everything was standardized.
 22 CHAYTOR, Q.C.:
 23 Q. Okay.
 24 MR. DYER:
 25 A. As I think Ken might have explained, there was

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1 no more boiling of water or anything like
 2 that. There were 20 positions on this new
 3 bench mark, and each one is a self-contained
 4 oven. So when you put -- the actual -- how
 5 can I explain it? The actual treatment of the
 6 tissue was identical from the point of
 7 deparaffinization right to the counter stain,
 8 whereas prior there were many variations and
 9 many attacks at that tissue, whereas now you
 10 just took your tissue once it's dried, put it
 11 on, and you took it off, done. A big
 12 difference.
 13 CHAYTOR, Q.C.:
 14 Q. Okay.
 15 MR. DYER:
 16 A. I think you mentioned that when Carole from
 17 Ventana was in attendance for the first week
 18 or so, she showed you maintenance on the
 19 machine?
 20 MR. DYER:
 21 A. Yes, she did.
 22 CHAYTOR, Q.C.:
 23 Q. And what maintenance the machine needed?
 24 MR. DYER:
 25 A. Yes.

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1 CHAYTOR, Q.C.:
 2 Q. And you invited all the technologists to come
 3 to those seminars?
 4 MR. DYER:
 5 A. Yes.
 6 CHAYTOR, Q.C.:
 7 Q. And was the maintenance being carried out on
 8 the Ventana machine?
 9 MR. DYER:
 10 A. Not all the time, I found out.
 11 CHAYTOR, Q.C.:
 12 Q. Okay, and when did you realize that was not
 13 occurring?
 14 MR. DYER:
 15 A. Oh, when Carole came in in 2005.
 16 CHAYTOR, Q.C.:
 17 Q. So that's her visit in August, 2005?
 18 MR. DYER:
 19 A. Yes, yes.
 20 CHAYTOR, Q.C.:
 21 Q. Okay. After the Ventana was put in place, did
 22 you make any inquiries as to whether or not
 23 the maintenance was being carried out?
 24 MR. DYER:
 25 A. I don't think we actually monitored it. I

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1 think I relied on the techs to do it. It was
 2 a part of the protocol and it was actually
 3 built into the system. So, like, you would go
 4 on the PC. You call up daily and just tick it
 5 off, call up weekly and tick it off, monthly,
 6 as you're doing it. So what we decided to do
 7 was I just printed off a full year of all
 8 these types of maintenance and posted them on
 9 the wall, that it was mandatory to sign off
 10 every day.
 11 CHAYTOR, Q.C.:
 12 Q. Okay, and that was implemented after --
 13 MR. DYER:
 14 A. Carole, in August of '05.
 15 CHAYTOR, Q.C.:
 16 Q. In August, 2005?
 17 MR. DYER:
 18 A. Yes.
 19 CHAYTOR, Q.C.:
 20 Q. Okay. Is there anything else then on this
 21 exhibit before we leave it?
 22 MR. DYER:
 23 A. No, I think -- I think everything you have
 24 there is all the same. It just shows more and
 25 more ERs and PRs as you get further and

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1 further.
 2 CHAYTOR, Q.C.:
 3 Q. Okay. If we could have then, please, P-1913.
 4 This is another meeting of site chiefs and
 5 divisional manager; Dr. Cook, Parai, and Robb,
 6 and you're absent from this meeting, but there
 7 is a discussion here that I just wanted to
 8 bring to your attention. Under 4.2, new
 9 technology, "The immunoperoxidase stainer
 10 appears to be working generally well.
 11 However, there continues to be some problems
 12 with estrogen and progesterone receptors".
 13 What is -- do you know what's being referred
 14 to there?
 15 MR. DYER:
 16 A. I don't know why that's said, you know.
 17 CHAYTOR, Q.C.:
 18 Q. Were you aware of that, and again this is now
 19 March 31st, 2004, and I understand the machine
 20 becomes operational the next day?
 21 MR. DYER:
 22 A. No, I didn't -- honestly I didn't think we
 23 were having any issues with the ER and PR on
 24 the Ventana System.
 25 CHAYTOR, Q.C.:

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1 Q. So who in attendance at this meeting; Dr.
 2 Cook, Parai, and Robb, who would be mentioning
 3 that? What would the source of that
 4 information be/
 5 MR. DYER:
 6 A. I would imagine Dr. Cook.
 7 CHAYTOR, Q.C.:
 8 Q. Was Dr. Cook involved in the process?
 9 MR. DYER:
 10 A. No.
 11 CHAYTOR, Q.C.:
 12 Q. Would it be Dr. Parai, as site chief?
 13 MR. DYER:
 14 A. It could -- I guess it could be, but I don't
 15 know.
 16 CHAYTOR, Q.C.:
 17 Q. Or would it be Dr. Robb? You said you brought
 18 most of your slides to Dr. Robb for ER/PR.
 19 MR. DYER:
 20 A. My interpretation after our last run on March
 21 31st, everything was great with ER/PR. That
 22 was my interpretation.
 23 CHAYTOR, Q.C.:
 24 Q. So and --
 25 MR. DYER:

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1 A. I don't know why one of them would have said
 2 it. Well, obviously, they must have had an
 3 issue with it, but if they did, it wasn't
 4 brought to me.
 5 CHAYTOR, Q.C.:
 6 Q. It was never brought to your attention?
 7 MR. DYER:
 8 A. It doesn't sound familiar, no.
 9 CHAYTOR, Q.C.:
 10 Q. And you were the person doing the validation
 11 of --
 12 MR. DYER:
 13 A. I was involved with it.
 14 CHAYTOR, Q.C.:
 15 Q. Yes, you and Mr. Green?
 16 MR. DYER:
 17 A. Yes.
 18 CHAYTOR, Q.C.:
 19 Q. And whatever pathologist.
 20 MR. DYER:
 21 A. Yes. Even Mary and Les as they were training,
 22 if you go through some of those, you'll see
 23 even their name up there because we slowly but
 24 surely brought them into the picture also.
 25 CHAYTOR, Q.C.:

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1 Q. Did you have any problems at all with ER/PR?
 2 Was there anything that stood out about ER/PR
 3 in trying to validate it as opposed to the
 4 other antibodies?
 5 MR. DYER:
 6 A. I don't think so. I don't think we had issues
 7 with it.
 8 CHAYTOR, Q.C.:
 9 Q. And this says there continues to be some
 10 problems with estrogen and progesterone
 11 receptors. After Dr. Ejeckam's adjustments in
 12 the spring of 2003, this is now a year later,
 13 the end of March, 2004, were you aware of any
 14 further problems with estrogen and
 15 progesterone receptors?
 16 MR. DYER:
 17 A. None.
 18 CHAYTOR, Q.C.:
 19 Q. And I believe Dr. Cook was shown this during
 20 his evidence and he thought it had something
 21 to do with the validation of ER and PR and
 22 bringing the new system on. And it is listed
 23 under new technology, but there's nothing that
 24 stands out in your memory that there was any
 25 issue in validating ER and PR?

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1 MR. DYER:
 2 A. None whatsoever.
 3 CHAYTOR, Q.C.:
 4 Q. And the Ventana was brought on stream April
 5 1st, the next day.
 6 MR. DYER:
 7 A. April/May it was brought on stream.
 8 CHAYTOR, Q.C.:
 9 Q. And did you recall having, after March 31st,
 10 having to go back and do any further tweaking
 11 with ER and PR?
 12 MR. DYER:
 13 A. No.
 14 CHAYTOR, Q.C.:
 15 Q. And if we were to look through Exhibit P-2357
 16 for those dates, the first of April, would we
 17 see anything additional?
 18 MR. DYER:
 19 A. I don't think so; I don't think you would.
 20 CHAYTOR, Q.C.:
 21 Q. This only goes as far as March 31st.
 22 MR. DYER:
 23 A. Oh, they're all there; there was eight
 24 binders. No, we were up and running.
 25 CHAYTOR, Q.C.:

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1 Q. So, you were done March 31st?
 2 MR. DYER:
 3 A. Not all validation, but we were done with
 4 ER/PR.
 5 MR. DYER:
 6 A. ER/PR was done?
 7 MR. DYER:
 8 A. Yes.
 9 CHAYTOR, Q.C.:
 10 Q. Okay.
 11 THE COMMISSIONER:
 12 Q. Ms. Chaytor, wherever you can find a
 13 convenient spot to break.
 14 CHAYTOR, Q.C.:
 15 Q. Okay, thank you. Around the same time that
 16 your bringing on the Ventana, was there a
 17 labour strike around that spring?
 18 MR. DYER:
 19 A. April.
 20 CHAYTOR, Q.C.:
 21 Q. April.
 22 MR. DYER:
 23 A. Yes.
 24 CHAYTOR, Q.C.:
 25 Q. So, tell us about that and what happened to

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1 the IHC service during the labour strike.
 2 MR. DYER:
 3 A. What happened with IHC service was, well, I
 4 was the manager, so I covered pathology.
 5 Requests would come in. If they were actually
 6 validated on the Ventana system, for the first
 7 two days, I believe, I would perform them,
 8 but after that, I didn't have time and what
 9 happened was the techs were actually put on a
 10 rotation through an agreement with the Union
 11 and every time there was an immuno they came
 12 in.
 13 CHAYTOR, Q.C.:
 14 Q. Okay. So, you actually ran though the -
 15 MR. DYER:
 16 A. I may have ran a couple of cases for the first
 17 day or two.
 18 CHAYTOR, Q.C.:
 19 Q. Okay. And those were run on the Ventana
 20 system?
 21 MR. DYER:
 22 A. Yes.
 23 CHAYTOR, Q.C.:
 24 Q. Okay. And was there any difficulties
 25 encountered in doing that? Did you have -

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1 MR. DYER:
2 A. No.
3 CHAYTOR, Q.C.:
4 Q. Didn't run into any problems?
5 MR. DYER:
6 A. No.
7 CHAYTOR, Q.C.:
8 Q. And are you aware of any issues or problems
9 with the runs that were done during that time
10 period?
11 MR. DYER:
12 A. I haven't been informed of any.
13 CHAYTOR, Q.C.:
14 Q. Okay. I'm about to go into a new area. So,
15 this would be a convenient time.
16 THE COMMISSIONER:
17 Q. All right then, we'll break until tomorrow
18 morning at 9:30. Thank you.
19 Upon conclusion.

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1 CERTIFICATE
2 I, Judy Moss, hereby certify that the foregoing is
3 a true and correct transcript in the matter of the
4 Commission of Inquiry on Hormone Receptor Testing,
5 heard on the 21st day of July, A.D., 2008 before
6 the Honourable Justice Margaret A. Cameron,
7 Commissioner, at the Commission of Inquiry, St.
8 John's, Newfoundland and Labrador and was
9 transcribed by me to the best of my ability by
10 means of a sound apparatus.
11 Dated at St. John's, Newfoundland and Labrador
12 this 21st day of July, A.D., 2008
13 Judy Moss

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