

1 THE STATE of OHIO,

: SS:

2 COUNTY of SUMMIT.

3 -----

4 IN THE COURT OF COMMON PLEAS

5 -----

6 DOROTHY S. MAYNARD, et al., :
7 plaintiffs, :

8 vs. : Case No.97 CV 01 0228

9 AKRON GENERAL MEDICAL
CENTER, et al.,
10 defendants.

11

12 Deposition of DIANE MUCITELLI, M.D., a
13 defendant herein, called by the plaintiffs for the
14 purpose of cross-examination pursuant to the Ohio Rules
15 of civil Procedure, taken before Constance Campbell, a
16 Notary Public within and for the State of Ohio, at the
17 offices of Emershaw, Mushkat & Schneier, 437 Quaker
18 Square, Akron, Ohio, on WEDNESDAY, JUNE 16TH, 1999,
19 commencing at 5:10 p.m. pursuant to agreement of
20 counsel.

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I N D E X

WITNESS:

DIANE MUCITELLI, M.D.

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MARKED

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DIANE MUCITELLI, M.D.

of lawful age, a defendant herein, called by the plaintiffs for the purpose of cross-examination pursuant to the Ohio Rules of Civil Procedure, being first duly sworn, as hereinafter certified, was examined and testified as follows:

MISS KOLIS: Doctor, you and ■
had the opportunity briefly to meet in the lobby. For the purposes of identification on the record my name is Donna Kolis, I'm the attorney who has been retained to represent Mr. and Mrs. Maynard in the lawsuit that was filed against you.

Doctor, before today have you had an opportunity to give a deposition?

THE WITNESS: No.

MISS KOLIS: This is your first deposition?

THE WITNESS: Very first one.

MISS KOLIS: I'm certain that before you arrived here you would have had an opportunity to confer with your counsel, she probably instructed you on the general rules of a deposition. ■
like to restate them for the record myself.

Do you realize you have an obligation to

1 answer each and every question orally?

2 THE WITNESS: Yes.

3 MISS KOLIS: That is important so
4 the court reporter doesn't interpret what you or I mean,
5 so we both have to communicate verbally.

6 Do you understand that if I ask you a
7 question, you answer it, ■ will presume that you
8 understood the question?

9 THE WITNESS: Yes, ■ understand
10 that.

11 MISS KOLIS: Do you understand
12 that the testimony that you are giving today is under
13 oath, just as if you were in a courtroom?

14 THE WITNESS: Yes, ■ understand.

15 MISS KOLIS: Do you understand
16 that the answers that you give today will be relied upon
17 by myself at the trial of this lawsuit, should we go to
18 trial?

19 THE WITNESS: ■ understand.

20 -----

21 CROSS-EXAMINATION

22 BY MISS KOLIS:

23 Q. Doctor, what is your current business address?

24 A. ■ work out of my home, 3410 Trade wind cove
25 because I'm a self-employed contract pathologist.

1 Q. Today is the first time, about 65 seconds ago, I
2 received your CV.

3 A. Correct.

4 Q. I don't usually like to spend a lot of time at a
5 deposition going over it, so I have a general idea in
6 speaking with you today let's go through your training
7 that led you to the profession as a pathologist.

8 A. Okay.

9 Q. where did you do your undergraduate work?

10 A. Utica College, medical technologist BS degree.

11 Q. Received your BS degree in medical technology in
12 1973 if I'm reading this correctly.

13 MISS KOLIS: I'm sorry no one
14 else has a copy to share.

15 MR. STRONG: That's all right.

16 Q. Did you then take a year off before you went to
17 medical school?

18 A. Not necessarily. Can I explain that?

19 Q. Absolutely.

20 A. At the time I was applying for medical school at
21 the University of Bologna, Italy. You have to have
22 Italian language courses performed in the united states
23 prior to entering medical school there, plus you would
24 have to have your degree by a certain time. I had
25 gotten my actual diploma by August.

1 Q. of 1973?

2 A. Yes, I had to wait another year before entering
3 into medical school so I practiced as a medical
4 technologist at Saint Luke's Hospital for that period of
5 a year before I went on to medical school.

6 Q. Saint Luke's Hospital where?

7 A. In Utica, New York where I was born.

8 Q. was there a particular reason that you chose to go
9 to medical school in Italy?

10 A. Yes. For one reason I considered all
11 possibilities of applying to medical school in the
12 united states, my background was medical technology, my
13 counselors geared me toward not going so much into
14 medical school. They felt I wasn't in a high powered
15 medical school like Harvard.

16 Q. You mean high powered undergraduate?

17 A. undergraduate, minimal chance of getting into
18 medical school in the united States. I looked at Italy
19 because of my heritage, I'm Italian, my grandparents are
20 from there, I applied to the University of Bologna,
21 Italy rather than Mexico for example.

22 Q. You began your education there in 1974?

23 A. That's correct.

24 Q. Were you in medical school for eight years?

25 A. Yes.

1 Q. Is that the normal course of medical education in
2 Italy?

3 A. No, it isn't, it's a six year program. They come
4 from high school, go right into medical school. They
5 graduate very young. when I went I didn't know the
6 language, it took --

7 Q. It took longer to get passing scores in the
8 classes due to --

9 A. No, the course situation there is like anatomy
10 will last two years. The thing is when you have a
11 language difficulty it takes longer to learn the
12 language and prepare for the examination, you go at your
13 own pace.

14 Q. You completed that education in 1982, correct?

15 A. Um-hum.

16 Q. You came back to the united states in 1983?

17 A. Right.

18 Q. Did a residency in anatomical and clinical
19 pathology?

20 A. That's correct.

21 Q. when you left medical school in Italy had you
22 determined at that point ultimately you would become a
23 pathologist?

24 A. Yes, I had already predetermined that.

25 Q. You did a four year residency at stony Brook; is

1 that right?

2 A. That's correct.

3 Q. Then you obtained a one year Fellowship at saint
4 John's Mercy Medical Center in Saint Louis?

5 A. Correct.

6 Q. Surgical pathology?

7 A. Anatomical -- called anatomical pathology with
8 cytopathology.

9 Q. You did an additional one year in obstetrical and
10 gynecology, pathology and cytology?

11 A. Yes.

12 Q. Past that did you have any additional specialty
13 training in pathology?

14 A. No.

15 Q. Doctor, are you Board certified?

16 A. Yes, I am Board certified ACP.

17 Q. when did you obtain that certification?

18 A. It would be in my CV, I want to make sure I get
19 the date.

20 Q. 1988?

21 A. Yes.

22 Q. Fair enough.

23 Doctor, are you currently licensed to
24 practice medicine in the State of Ohio?

25 A. Yes, I am.

1 Q. Do you hold licensure in any other states?

2 A. Yes, New York State and Missouri.

3 Q. Are the licenses current?

4 A. Yes, they are all current.

5 Q. Let's go through your work experience if we may.

6 If I'm reading this correctly, you have
7 got reverse order, I'll read the bottom of the page up,
8 July of '89 to June of '90 you were an associate
9 pathologist, director of hematology at Saint Thomas
10 Medical Center?

11 A. Yes, that's correct, associate pathologist at
12 Saint Thomas Medical center.

13 Q. Do you have some specialty training in hematology?

14 A. No, I don't. I was given that directorship by
15 Dr. Cox, William Cox.

16 Q. Fair enough,

17 A. He needed someone to fill in for that.

18 Q. You were doing clinical hematology, what was your
19 position as the director of hematology?

20 A. As a clinical hematopathologist I oversaw the
21 functioning of the department, review of slides that
22 came to me, that kind of thing for leukemia, peripheral
23 smears.

24 Q. You were doing the diagnostic evaluation of blood
25 samples, the smears specifically?

1 A. Yes, smears that came to me that were problem
2 cases.

3 Q. I think of the director of hematology as something
4 else, which is why I asked you that question.

5 You said you were there about a year?

6 A. To explain that further.

7 Q. sure.

8 A. As director of hematology in the subdivision of
9 laboratory medicine you are overseeing the daily
10 function, any problems that come through clinicians,
11 peripheral smear review, quality assurance, I oversaw
12 all that.

13 Q. Fair enough.

14 July, '90 to October, '95 you had a
15 position with Good Samaritan Hospital in Cincinnati, can
16 you explain that, what that was about?

17 A. After I left Saint Thomas I contacted a locum
18 tenens agency to help me find a job. They put me into
19 that particular locum job for a period of time. I was
20 in a period of transition.

21 I left after the full year at saint
22 Thomas, I left. I was interviewing at actually academic
23 places. I gave interviews as case western, went to Ohio
24 State, Kansas city, Missouri to give lectures, to apply
25 for a job.

1 MISS HEIDLOFF: ■ think you answered
2 the question, what did you do at Good Samaritan in
3 Cincinnati.

4 Q. From July to October you were essentially on
5 temporary placement looking for permanent employment; is
6 that a fair enough way to state that?

7 A. Yes.

8 Q. In October of 1990 you obtained a position as an
9 associate pathologist and once again director of
10 hematology at the Akron General Medical Center?

11 A. Yes, that's correct.

12 Q. Who was your employer from October of '90 through
13 July of 1996?

14 A. You have to break up that period of time. From
15 1990 through -- I'm trying to remember the actual date
16 when we became a corporation.

17 At a certain point in time which ■
18 believe was in 1994, 1990 to '93 I was an employee of
19 the hospital, Akron General Medical Center. Thereafter
20 in 1994 ■ became an employee of Akron Pathology
21 Associates.

22 Q. From '94 through '96, July of '96, you were an
23 employee of Akron Pathology Associates?

24 A. Can you repeat that, please.

25 Q. I'm trying to restate as I'm following along, not

1 writing notes. Sometime in 1994 through July of 1996
2 you were an employee of Akron Pathology Associates, not
3 an employee of Akron General Hospital?

4 A. Exactly, yes.

5 Q. Your employment with Akron Pathology Associates
6 came to an end in July of 1996 if I'm reading this
7 correctly?

8 A. That's correct.

9 Q. Can you tell me why you left that practice?

10 A. I did not leave.

11 Q. Was your position -- probably not a good way --
12 were you terminated from that group?

13 A. I was voted out on July 3, 1996 in a private
14 meeting held on that day at 12:07 p.m.

15 Q. As a result of being voted out -- please forgive
16 me, I try not to make this long, this is all background
17 information that I need.

18 were you a voting member of the
19 corporation at that time?

20 A. Yes.

21 Q. Were you a shareholder?

22 A. Yes, shareholder, voting member.

23 Q. Did you have a title in the corporation?

24 A. Yes, I did.

25 Q. what was your title?

- 1 A. Assistant to the vice-president.
- 2 Q. who was the vice-president at that time?
- 3 A. Dr. Scott shorten.
- 4 Q. As a result of your being voted out of the
5 corporation, did you initiate any litigation against
6 Akron Pathology Associates?
- 7 A. No, I did not.
- 8 Q. Can you tell me why you were voted out of the
9 practice?
- 10 A. There was no cause given to me. It states that
11 there was no cause given to me.
- 12 Q. You received a letter, did you receive
13 notification of your termination by letter?
- 14 A. Yes, I did, later, after the July 3rd meeting.
- 15 Q. Did the letter simply say we took a vote, we voted
16 you out of the corporation?
- 17 A. That is exactly what it says.
- 18 Q. Doesn't give a reason?
- 19 A. No reason at all.
- 20 Q. Doctor, other than the instant lawsuit where you
21 are a defendant, have you ever been sued before?
- 22 A. Yes, I have.
- 23 Q. I gather your counsel will want a continuing
24 objection, that is fine.
- 25 How many times prior to?

1 MISS HEIDLÖFF: Thank you.

2 MISS KOLIS: ■ know it's late, I
3 thought I would get it on the record.

4 MISS HEIDLÖFF: Objection.

5 Q. How many times previously have you been sued?

6 A. can you rephrase that because are you saying you
7 want the cases that have already been determined? I
8 don't understand.

9 Q. Let me try to ask it -- good thing that you bring
10 this up now.

11 A. Some are pending, some aren't.

12 Q. If I ask you a question you do not understand, you
13 are absolutely entitled to ask me to rephrase the
14 question, clarify what it is you don't know. Likewise
15 if at any point you want to confer with your attorney,
16 say you want to talk to your lawyer.

17 Prior to this lawsuit, prior to the
18 event that occurred in February of 1996, were you ever
19 previously sued?

20 A. Yes, in one case.

21 Q. was that case here in Summit County or was it some
22 place else?

23 A. No, in Summit County.

24 Q. Was that litigation resolved?

25 A. Yes, it was, it was settled.

1 Q. wild guess on my part, did that litigation as best
2 you recall involve your reading of a slide?

3 A. Yes, **it** did.

4 Q. Was **it** a tissue slide or was **it** a blood slide
5 issue?

6 A. No, a tissue slide. Multiple slides, tissue
7 slides.

8 Q. Do you happen to recall the name of the plaintiff?

9 A. Yes, **I** do.

10 Q. could you tell me the plaintiff's name?

11 A. Hardly can forget that, Marybeth Abram.

12 Q. Do you happen to remember who represented her? **I** f
13 you don't, it's not important.

14 A. I don't know who the person was that represented,
15 no. I don't think that was told to me.

16 Q. It's okay.

17 MISS HEIDLOFF: It's okay.

18 Q. General information is good enough.

19 **I**n addition to this lawsuit, have you
20 also subsequently been sued for medical negligence
21 after?

22 A. Yes, **I** have. I have a pending case.

23 Q. One other pending case?

24 A. Plus this one.

25 Q. That is also here in Summit county?

1 A. Yes.

2 Q. Does that have to do with the misread of a tissue
3 slide also?

4 A. Yes, it does.

5 Q. In terms of your publications, Doctor, I see you
6 have listed four, I guess I'm counting those correctly,
7 do any of the publications that you have authored deal
8 directly with the issues that present themselves in the
9 interpretation of the slides in question in this case?

10 A. No, they don't.

11 Q. Do you profess to have any special expertise above
12 and beyond your Fellowship training in the reading of
13 biliary tree tissue slides?

14 A. No, I don't.

15 Q. Recently within the past few days I received a
16 letter from your attorney identifying an expert witness
17 on your behalf, do you know who your identified expert
18 is?

19 A. Yes, I'm aware of the name.

20 Q. who is that?

21 A. My lawyer told me Dr. Nadia, Dr. Nadia, LKC.

22 Q. Do you have a previous relationship with
23 Dr. Nadia outside this case?

24 A. Any previous?

25 Q. Do you know Dr. Nadia professionally?

1 A. Yes, I do.

2 Q. when did you get to know her?

3 A. when I took the Board examination in 1988, we were
4 acquaintances at the Board examination.

5 Q. was she an examiner or taking the Boards?

6 A. she was taking the Boards the same time I was.

7 Q. You have a collegial relationship because you were
8 both preparing for the Boards?

9 A. We were both there preparing for the Boards,
10 taking the exam.

11 MR. CULLEN: off the record.

12 -----

13 (Discussion had off the record.)

14 -----

15 Q. Doctor, you want to clarify that you did not have
16 a personal relationship with Dr. Nadia?

17 A. No, correct, I did not. I mean I never saw her
18 after the Board examination.

19 Q. You encountered her when you were taking your
20 Board examination and that is the last?

21 A. That is the last.

22 Q. I have some questions to ask you about answers I
23 received to interrogatories. could be I'm misreading, I
24 needed to know this.

25 I had inquired as to whether or not you

1 were covered by liability insurance at the time of this
2 event. The time of the event we will use calendar year
3 1996, as I recall it the surgery was February 22nd, that
4 would have been the date of your initial pathology read;
5 do you agree with that?

6 A. Yes.

7 MISS HEIDLOFF: Again, continuing
8 objection as to the existence of insurance.

9 MISS KOLIS: Your objection is
10 noted. I need to ask you some questions.

11 Q. I did not receive a copy of the declarations page
12 or policies themselves; do you have those in your
13 possession?

14 A. Of what policy?

15 Q. The policy of insurance from PIE in existence at
16 the time of this incident?

17 A. I don't understand the question because I had a
18 tail policy in July, '96.

19 Q. We will get to that.

20 A. Are you talking about before?

21 Q. prior to the time that you were terminated from
22 the corporation you were insured by a policy of
23 insurance underwritten by PIE Mutual Insurance Company,
24 correct?

25 A. Correct.

1 Q. The response to general questions I asked about
2 was available insurance was PIE Mutual Insurance for
3 1 million/3 million?

4 A. That's my tail policy.

5 Q. That's your tail policy you are referring to?

6 A. Yes, that became about September 1, 1996.

7 Q. You purchased a tail policy when you left the
8 corporation, one million primary, correct, 3 million
9 excess?

10 A. Correct.

11 Q. were you the only named insured on that policy?

12 A. Yes, on the tail policy I was.

13 Q. That sort of clarifies something I was confused
14 about. I would request by and through you to your
15 attorney, that I be provided with a copy of the
16 declarations pages and actual policy itself.

17 A. From PIE?

18 Q. Yes. I know if you can't get it, your lawyer can.

19 A. I have the original tail coverage from PIE which
20 is now worthless, I sent it to your office.

21 MISS HEIDLOFF: I don't think I have
22 the whole policy.

23 A. I have it at home, I can look for it.

24 Q. I request in any fashion it comes to me within the
25 next 14 to 21 calendar days, I be provided a copy of the

1 tail policy.

2 A. You want the original PIE policy?

3 Q. Not the original, a copy is sufficient with the
4 coverage and the declarations page showing the amount of
5 coverage you had available.

6 A. Yes, there are two pages to it.

7 Q. we will get to the issues in this case, believe it
8 or not at long last.

9 Prior to coming here today, Doctor, what
10 material did you review, if any, in preparation of
11 answering my questions?

12 A. say that again, please.

13 Q. what material did you review, if any, in
14 anticipation of questions I might ask?

15 A. The only thing I prepared yesterday, I met with my
16 lawyers.

17 Q. ■ don't want to know what the conversations were.

18 A. Just preparation.

19 Q. Let me ask it a different way: Did you review the
20 original slides in this case yesterday?

21 A. ■ did not, no.

22 Q. when is the last time you had the opportunity to
23 review those slides?

24 A. when the surgery occurred in 19 -- when did
25 Mrs. Maynard have her surgery, '96?

1 Q. Yes.

2 A. That is the last time I saw them.

3 Q. The last time you personally reviewed those
4 pathology slides?

5 A. Yes.

6 Q. Have you reviewed any medical records since the
7 time I initiated this lawsuit?

8 A. No, I have not. Not at all.

9 Q. Have you reviewed the written reports which were
10 prepared by yourself in February of 1996 of the slides?

11 A. Repeat that question again.

12 Q. sure. Have you reviewed the written reports which
13 were generated by yourself in February of 1996?

14 A. Yes, I did because I performed the surgical
15 pathology report at that time. Yes, I did.

16 Q. Have you reviewed them since we filed the lawsuit?

17 A. on several occasions in different years.

18 Q. That's fine. You have had an opportunity to look
19 at those?

20 A. Yes.

21 Q. Have you had an opportunity to review their
22 revised read that was signed by Dr. Scott shorten?

23 A. Yes. Again, on several occasions, in different
24 years.

25 Q. Have you had an opportunity to, since I initiated

1 the litigation but before today, to review the pathology
2 reading that was generated from the Cleveland clinic
3 Foundation on those same slides?

4 A. I recall from seeing the Cleveland clinic report
5 when I was with another lawyer, before the collapse of
6 PIE, yes, a long time ago.

7 Q. A long time ago you saw that?

8 A. I saw the Cleveland clinic report a long time ago.

9 Q. Have you at any time before I filed -- since I
10 filed the lawsuit, before today, reviewed the letter
11 from the pathologist at the Mayo Clinic reviewing his
12 review of the slides of Mrs. Maynard's surgery?

13 A. I saw the report a couple years ago I would say.

14 Q. It's been a while?

15 A. It's been a while since I have seen that report.

16 Q. You reviewed none of Mrs. Maynard's postsurgical
17 medical treatment records?

18 A. I have not read those, no.

19 Q. This is probably not the order I was going to ask
20 the question, since I learned some information today, it
21 appears to me based upon the documents that I have in my
22 possession, specifically the revised reading, that an
23 issue arose as to the correctness of your interpretation
24 both of the frozen section and then the final section,
25 but not until sometime in August of 1996, does that seem

1 accurate to you?

2 A. For me to answer that question, I'm unable to
3 because I was not there. I was gone, ■ had been
4 released from the group on July 3, 1996, so ■ didn't
5 know. I don't know what happened after that, so it's
6 hard for me to answer that question.

7 Q. I will try the best that ■ can to elicit this
8 information.

9 when did you become aware that
10 Dr. Shorten believed that the slides had been misread?

11 A. The first time I learned of it was with a lawyer,
12 Mr. David Best, who was representing all the doctors
13 involved in the case for PIE. That was before PIE went
14 bankrupt, between '96 or '97, that's when I learned.

15 MISS HEIDLOFF: You don't have to
16 repeat anything that was said in conversations with your
17 attorney.

18 MISS KOLIS: Correct.

19 THE WITNESS: No, ■ was showing
20 what she was asking.

21 Q. I will go over it, I want to make sure I
22 understand the answer.

23 It is your testimony today that after
24 Dr. Shorten made a determination that the slides may
25 have been misread, you were not informed of that?

1 A. No, I was not.

2 Q. So you didn't come back in to reread the slides?

3 A. No, did not at all.

4 MISS HEIDLOFF: To clarify the
5 question, you mean while she was still working with the
6 group?

7 Q. I was going to ask that question next. The
8 question presently on the record is at any time after
9 July 3, 1996 you were not invited back to the hospital
10 premises to rereview the intraoperative and then final
11 slides?

12 A. No, I was never asked to come back, no.

13 Q. No one made you aware?

14 A. I only became aware when the lawsuit was filed,
15 Mr. David Best informed me.

16 Q. At any time after the surgery of February 22,
17 1996, but before you were terminated from the group in
18 July of 1996, did you have occasion to rereview the
19 intraoperative and then the final sections of these
20 slides?

21 A. By microscope?

22 Q. Yes.

23 A. No, I did not.

24 Q. To ask a question directly, which is always a good
25 place to go when you don't want a deposition to last

1 forever, do you disagree with Dr. shorten's
2 interpretation of the slides in this case?

3 A. ■ do disagree.

4 Q. Do you disagree with the Cleveland Clinic
5 Foundation's reading of the slides?

6 A. ■ disagree with the Cleveland clinic.

7 Q. After this lawsuit was filed, while you were
8 represented by another attorney, did you at that time
9 have an opportunity to once again look at the slides?

10 A. with Mr. David Best prior to when the lawsuit was
11 initiated. He invited me to his office to help his
12 legal assistant to pick out slides from the Maynard
13 case. In that instance I had to help the legal
14 assistant pick the exact slides that needed to be sent
15 to --

16 MISS HEIDLOFF: Stop. At this point
17 we're getting pretty close to attorney/client work
18 product.

19 MISS KOLIS: ■ wasn't searching
20 for that answer. Let's back up, see if I think I
21 misheard you or you might have misstated something. I
22 try to clarify the record, believe it or not, whenever
23 it is humanly possible.

24 Q. The first time you saw the slides was in office of
25 Attorney David Best, first time subsequent to the

1 surgery?

2 A. February of '96, right.

3 Q. Did you misspeak when you said prior to the
4 litigation?

5 A. I don't understand.

6 MISS HEIDLOFF: Before the lawsuit
7 was filed?

8 Q. You said before the lawsuit was filed you saw the
9 slides in David Best's office?

10 A. No, after the lawsuit.

11 Q. I wanted to clarify.

12 A. I'm confused.

13 Q. It wasn't until after the lawsuit was filed that
14 you saw the slides in David Best's office?

15 A. Yes.

16 Q. Fair enough.

17 when you were in Mr. Best's office were
18 you then able to rereview the slides?

19 MISS HEIDLOFF: Just answer yes or
20 no, it's a yes or no question.

21 A. It wasn't with Mr. Best at all with the slides.

22 Q. You don't have to be with Mr. Best. In Mr. Best's
23 office you were --

24 A. It wasn't in his office, in a separate office of
25 that legal firm.

1 Q. when you had an opportunity to meet with a
2 representative of Mr. Best's law firm to look at the
3 slides, were you able to actually then rereview the
4 slides at that time?

5 A. Yes, because he had a microscope there.

6 Q. That is the question, you had a microscope with
7 you?

8 A. Yes.

9 MISS HEIDLOFF: That is the answer
10 to the question.

11 Q. Is it your testimony today that your rereview of
12 the slides in question did not change your mind as to
13 the accuracy of your preliminary, then final pathology
14 reads?

15 MR. CULLEN: Objection to that
16 question. Go ahead.

17 A. can you repeat that again?

18 Q. ■ asked you about three questions ago if you
19 disagree with Dr. shorten and the Cleveland Clinic, you
20 said that you do?

21 A. Right,

22 Q. So I'm now asking you when you had an opportunity
23 to look at the slides again -- let me back it this way.

24 At the time you looked at the slides
25 with your microscope did you have available to you the

1 revision made by Dr. Scott Shorten and the Cleveland
2 Clinic?

3 A. No, I did not. ■ just had my original surgical
4 pathology report.

5 Q. At that point you had not seen?

6 A. NO.

7 Q. Since the time you have seen their interpretation
8 of those slides, have you once again looked at the
9 slides under a microscope?

10 A. No, only that time.

11 Q. One time and one time only?

12 A. One time I did that.

13 Q. Did you understand at the time that you looked at
14 these slides under a microscope what the nature of the
15 alleged misread was?

16 A. ■ understood, yes.

17 Q. what was your understanding?

18 MISS HEIDLOFF: objection, you can
19 answer. Go ahead and answer.

20 A. ■ was informed by Mr. Best --

21 MISS HEIDLOFF: No, you don't want
22 to say anything you were told by your lawyer. Did you
23 have an understanding?

24 A. Yes, I had an understanding there was a misread on
25 frozen section diagnosis, that is all.

1 Q. So at that time did you simply review the frozen
2 section or did you review the final section that matched
3 with the frozen also?

4 A. I reviewed the entire case.

5 Q. Fair enough.

6 You've indicated I think pretty plainly
7 you've not relooked at the medical records themselves?

8 A. No, I have not.

9 Q. As you sit here today, do you have a recollection
10 of why you were going to be asked to read additional
11 slides on February 22, 1996?

12 A. I was the surgical pathologist doing frozen
13 section diagnosis that day.

14 Q. Let's talk a little bit about how Akron Pathology
15 was organized at that time.

16 Did you within the group have a
17 specialty?

18 A. Did I have a specialty?

19 Q. Right.

20 A. My specialty was gynecological and obstetrical
21 pathology, that is my specialty.

22 Q. At the time of this particular surgery on
23 February 22, 1996 -- this is because I'm tired I should
24 never schedule depositions this late in the day -- you
25 indicated that your specialty was obstetrical and

1 gynecological pathology; is it fair to say however you
2 would be assigned on some days to do other than
3 obstetrics and gynecological pathology?

4 A. No, I did everything. General surgical pathology,
5 I do everything. I had that specialty background as an
6 added plus.

7 Q. You were assigned to surgical pathology?

8 A. Exactly.

9 Q. what was the situation, you rotated days with
10 other members of your group?

11 A. That is exactly right.

12 Q. You received a schedule as to --

13 A. Received a schedule.

14 Q. when you received the schedule were you told what
15 the indication for surgery was, what it was you might be
16 looking for?

17 A. At Akron General there is a pre-op surgical sheet
18 that comes to the laboratory, on that sheet at times
19 there is indicated will be frozen section, indicated by
20 the surgeon, then written on the surgery schedule.

21 Q. Before --

22 A. You have an idea.

23 Q. -- you have an idea what the surgery is for and
24 what kind of pathology you may be looking for; that's a
25 fair statement?

1 A. That's correct.

2 Q. Those are the clinical indications that you get?

3 A. um-hum.

4 Q. On any particular day when you are scheduled to do
5 surgical pathology, was it your practice to discuss up
6 coming surgical cases with the surgeon who was going to
7 be performing the surgery?

8 A. No. Not a procedure, no.

9 Q. I'm trying to find out how you got your work
10 assignments, knew what the indications were?

11 A. It was scheduled, written by Dr. Shorten to each
12 member of the group.

13 Q. Prior to Mrs. Maynard's surgery when you were
14 doing intraoperative frozen pathology reads would you
15 have known what diagnostic testing she had undergone
16 prior to the surgery?

17 A. No, I did not. I would not know.

18 Q. would you know the results of any other forms of
19 cytology examinations that had been performed?

20 A. I knew of cytology performed on a bile duct lesion
21 because we get a printout of all previous cytopathology
22 with a frozen on a sheet that comes to the laboratory.

23 Q. That was my question.

24 A. I knew of the cytology and negative cytologies.

25 Q. Is that something you happen to independently

1 remember?

2 A. Yes, because I do cytopathology.

3 Q. Were you involved in the cytopathology on this
4 patient prior to the intraoperative frozen sections?

5 A. Not that I recall. I don't personally remember
6 signing out any particular cytopathology on this
7 patient.

8 Q. Fair enough.

9 As you sit here today do you remember
10 what the purpose of this planned surgery was?

11 A. The purpose as far as I know was obstructive
12 jaundice.

13 Q. You would have been evaluating tissue samples to
14 confirm or deny I guess is -- I don't like confirm or
15 deny -- the existence of cholangiocarcinoma?

16 A. The presence or absence of tumor is more
17 appropriate I would think.

18 Q. Sorry. You had been aware of a diagnosis of a
19 polypoid mass, that's what they would have told you?

20 A. I was not told that. I didn't know polypoid mass.

21 Q. You didn't?

22 A. (Indicating negatively.)

23 Q. You have a clear vision as you sit here of the
24 pre-operative surgical indication sheet?

25 A. On the pre-op sheet that is generated by Akron

1 General that comes from the Department of Surgery it had
2 Mrs. Maynard's name, the actual surgical procedure that
3 was going to be done, based on frozen section, bile
4 duct, I can't remember exactly what the surgery schedule
5 said.

6 Q. That is why I'm asking, you haven't reviewed these
7 records, correct?

8 A. No, I don't remember.

9 Q. You don't have them?

10 A. I don't have them in my possession to recall that.

11 Q. I'm asking if you have a specific recollection of
12 what the indication was for the procedure, planned
13 surgery, whether it was an exploratory procedure?

14 A. I knew it was exploratory, it said on the sheet it
15 was an exploratory procedure with possible whipple.
16 Exploratory laparotomy, possible whipple, frozen
17 section. Do not quote me, I don't have that sheet in
18 front of me. This is like two years ago, it's a sheet
19 generated by the hospital computer system. I don't have
20 that in my possession at all.

21 Q. As a general matter, at that time, I'm only asking
22 what you knew at that time, were the surgical request
23 sheets filed in the pathology department after the
24 procedures?

25 A. what do you mean by surgical requests, I don't

1 understand that?

2 Q. You described how you would know what your job
3 would be on a certain day, the patient's name, the
4 planned surgery, exploratory, confirmatory, whatever,
5 what you were going to be doing, you remember frozen
6 section.

7 Did those sheets go back to some record
8 keeping place in the pathology department, if you know?

9 A. I can't recall. It's been such a long time ago.

10 MISS KOLIS: ■ someone here
11 representing Akron Pathology?

12 MISS HEIDLOFF: I do.

13 MISS KOLIS: I'm sorry, ■ didn't
14 mean that to be impertinent.

15 a. The procedure at the time -- it's been a long
16 time, it's going to take me a while to remember. when ■
17 did -- you are talking when ■ did the frozen section?

18 Q. Doctor, if you don't know, don't venture a guess.

19 a. This is not a guess. when ■ do a frozen section
20 at Akron General, it comes with a piece of paper from
21 surgery. with bile duct tumor ■ don't remember exactly
22 how it came. It's a requisition slip, the frozen
23 section specimen comes in a container. we had a logbook
24 right there near the frozen section table, we recorded
25 every frozen we did, the diagnosis. Those logbooks are

1 kept in the Department of Pathology.

2 Q. There you go.

3 A. That's what you want?

4 Q. Exactly.

5 A. That is the only thing I recall.

6 Q. If I want to see what happened as to the results
7 preliminarily of your investigation of the tissue
8 slides, there is a logbook which existed at that time?

9 A. Yes, there is.

10 Q. A permanent logbook, after you finished logging
11 you would take it, put it somewhere in the department,
12 correct?

13 A. Yes, it was kept in a secure place.

14 Q. Thanks, I appreciate the answer.

15 A. I didn't understand initially what you were --

16 Q. Because ■ didn't ask a great question, that is
17 okay.

18 All right, Doctor, did you bring with
19 you today a copy of your reading in this case?

20 A. Did I bring a copy?

21 Q. Right.

22 A. No. I just brought this letter saying where the
23 deposition is.

24 Q. You don't have one for reference?

25 A. No.

1 MISS HEIDLOFF: ■ have one if you
2 are going to be asking questions.

3 MISS KOLIS: Probably will.

4 A. I didn't bring one with me, no.

5 Q. Do you recall that the specimens that you prepared
6 in this particular matter, the intraoperative frozen
7 section slides, the final slides were grouped into five
8 parts; does that sound familiar to you?

9 A. I remember multiple parts to the case.

10 Q. You might want to look at your original report.

11 A. ■ know there are multiple parts.

12 Q. To refresh your memory -- ■'■ give you a few
13 minutes to refresh your memory.

14 Doctor, are you looking at the original
15 report or the corrected report?

16 A. I'm looking at my original report.

17 Q. May ■ see?

18 A. It's in -- you've got all the reports on top of
19 one another.

20 Q. It is confusing.

21 A. It's confusing. The gross is here, the micro
22 begins there, the diagnosis follows there.

23 MISS HEIDLOFF: what page are you in
24 that for the record, page 6? No, I've got something
25 different, never mind.

1 Q. Just to be sure, we're not going to go with this
2 right now, I want to make sure you had it so we're clear
3 on the record. The report you have in your possession
4 to review or to answer questions from is the one dated
5 September 24, 1996, 10:04 a.m.; is that right, at the
6 top?

7 A. Yes.

8 Q. ■ I understand this, I'm trying to do this
9 logically, this is a compendium, is my word, original
10 report?

11 A. And pages that follow, correct.

12 Q. Then it has a corrected reading by Dr. shorten; am
13 ■ correct?

14 A. That's correct.

15 Q. contained within this set of documents, I don't
16 know that everybody has been provided at least one with
17 this set, I don't know if you've got it or not,
18 contained within this particular document that we're
19 looking at, which is 13 pages, there are if you want
20 to --

21 MISS HEIDLOFF: we've only got 11
22 pages. I see the two pages are an addition, okay.

23 Q. on page 10, a jump off point here for myself, this
24 is page 10.

25 A. Yes.

1 Q. Page 9 in the typed section, it's page 10 on the
2 facts section, you have to go back one. You have a
3 different page 9 than I do, which is a document I'm
4 looking at which we may copy and mark, there are
5 references listed following a comment section regarding
6 the slides; do you follow where I'm reading from?

7 A. Yes.

8 Q. Doctor, did you not rewrite this section with
9 these references?

10 A. No, they were all done when I did the report.

11 Q. To say the least this has been confusing.

12 At the time you wrote your original
13 report --

14 A. This was all there.

15 Q. Back in February of 1996 you wrote comments and
16 you actually added reference sources to your comments?

17 A. That's right.

18 Q. May I inquire why you found it necessary to refer
19 to reference sources in commenting on these particular
20 slides?

21 A. Because I found the lesion of Mrs. Maynard
22 intriguing, very interesting, I approached the specimen
23 very academically.

24 Q. when you found it intriguing, very interesting,
25 explain to me to the best of your ability what thought

1 process you were going through.

2 A. I wanted to -- my thought process on the case is
3 to offer as much information to the clinician about the
4 entity or lesion I found.

5 Q. Did you find it necessary at the time you reviewed
6 the frozen section and final sections of Mrs. Maynard's
7 pathology to refer to reference material to confirm your
8 diagnosis, your pathological histological diagnosis?

9 A. No, I did not use it to confirm a diagnosis. I
10 actually used the reference for the Department of
11 surgery because they used a teaching conference to
12 provide information to the surgeon, that he can go pull
13 articles on.

14 Q. so the references in your pathology report, your
15 original report are included for the purpose of
16 educating the surgeon; is that accurate?

17 A. Yes, providing additional details about the case
18 to the surgeon.

19 Q. In what manner would you attempt to educate the
20 surgeon by these references?

21 A. If he should want to read them, it's up to the
22 individual.

23 Q. I'm probably just not making myself very clear.
24 The surgeon would be educated by these articles in what
25 regard, how to read pathology?

1 A. NO.

2 Q. Then what would be the purpose?

3 A. Some of these articles, if you let me look some of
4 them referring to Annals of Surgery, go over the
5 technique of surgical procedure that is used in this
6 type of carcinoma, as well as in Cancer, the treatments.
7 I provide those for clinical purposes for the surgeon.
8 They also discuss surgical techniques in the articles.
9 That's what I mean, they don't want to know about the
10 pathology.

11 Q. suffice it to say, see if you agree with me, at
12 the point you would have dictated these references the
13 surgical procedure for the polypoid mass that you
14 diagnosed as infiltrating adenocarcinoma had already
15 been performed; is that right, do you agree with that?

16 A. I don't understand your question. The diagnosis
17 you are saying is what? I don't understand the
18 question.

19 Q. Intraoperatively on frozen section you determined
20 based upon one specimen there was a malignancy?

21 A. On the frozen section, that's correct.

22 Q. You told me that these references talk about
23 surgery for these carcinomas, et cetera, I'm
24 paraphrasing, your complete answer is in the record,
25 right?

1 A. Um-hum.

2 Q. Do you agree with me at the point at which you
3 dictated and related the references the surgery for this
4 carcinoma had already been performed?

5 A. That is correct, yes.

6 Q. would there have been a reason you thought you
7 should further educate the surgeon as to the potential
8 surgical techniques?

9 A. It was a research matter on the case, research, my
10 thoroughness on the case.

11 Q. Please articulate what you mean by research, your
12 thoroughness?

13 A. Investigating the nature of the lesion, quoting
14 articles there to support such an entity in such an
15 area.

16 Q. what was the diagnostic criteria to confirm
17 cholangiocarcinoma?

18 A. Diagnostic criteria, that is a very general
19 statement. The diagnosis of cholangiocarcinoma is based
20 on tissue diagnosis, you have to look at both
21 cytological and architectural slides. severe atypia,
22 also some tumors are extremely well differentiated.
23 There is a broad spectrum to look to of well
24 differentiated to poorly differentiated.

25 Q. My question for you is, what are the diagnostic

1 criteria for confirming?

2 A. Architectural patterns of the tumor, cytological
3 features.

4 Q. what architectural pattern would you be looking
5 for in the extrahepatic bile duct?

6 A. Haphazard arrangement.

7 Q. Anything else other than haphazardly arranged that
8 is consistent with a carcinoma?

9 MISS HEIDLOFF: I'm sorry, I lost
10 that.

11 MISS KOLIS: Read that back.

12 -----

13 (Question read.)

14 -----

15 A. Not to my knowledge, not to me.

16 Q. You have had the opportunity to read the revision
17 of Dr. Shorten; is that correct? Have you had an
18 opportunity to speak with him personally about the
19 revision?

20 A. No.

21 Q. You've not spoken with him since you left, to
22 today?

23 A. No, I've not spoken at all.

24 Q. Doctor, what are the parameters of being able to
25 make a good pathologic or histologic slide diagnosis

1 from tissue; do you know what I'm asking?

2 MISS HEIDLOFF: I object because I
3 don't know.

4 MISS KOLIS: she might know.

5 A. Repeat the question.

6 Q. sure.

7 Basically you are a pathologist, you are
8 performing pathology?

9 A. Um-hum.

10 Q. You are not taking out the sections to be
11 evaluated?

12 A. Right.

13 Q. You agree with that. In order for you to make a
14 firm diagnosis that is not susceptible to question, what
15 do you like to see in your slides? This is a general
16 question, not in a carcinoma necessarily.

17 MISS HEIDLOFF: ■ understand the
18 question now.

19 A. You are saying -- I don't quite understand the
20 question. Are you saying how do ■ arrive at a
21 pathologic diagnosis based on what I see?

22 Q. what should the sample look like for you to be
23 able to come to a firm diagnosis?

24 MISS HEIDLOFF: May ■ be of help?

25 A. Are you talking a big specimen or little specimen?

1 Q. Let's withdraw **it**.

2 A. I don't understand.

3 Q. would you agree with me a good specimen to be able
4 to make an appropriate diagnosis should be large enough
5 for you to examine under the microscope for its defects
6 or its changes?

7 A. No, not necessarily. Often a frozen section
8 diagnosis can be made on a small biopsy or on the actual
9 tissue, the gross specimen, the actual resected specimen
10 as well.

11 Q. A good specimen is one that the edges are not
12 necessarily disrupted?

13 A. I agree, not disrupted or burnt.

14 Q. This particular instance, do you have a
15 recollection as to whether or not frozen section C which
16 is the slide which you diagnosed as having a carcinoma
17 in **it** had disrupted edges?

18 A. It did not.

19 Q. How do you know that?

20 A. Because I looked at the slide, I recall looking at
21 **it**, didn't notice any disrupted features at the edges.

22 Q. In extracting the tissue which ultimately became
23 frozen section C, do you know what type of
24 instrumentation was used on that sample?

25 A. I do not because I did not take the specimen.

1 Q. Are you able to speak with the surgeon as you are
2 doing frozen section analysis if you have any question?

3 A. Yes, I was in the operating room on that
4 particular part C with Dr. Guyton, I was in the
5 operating room.

6 Q. Explain to me how that happens, you are in the
7 operating room at that time, are you there for the whole
8 frozen section?

9 A. I was not. The initial frozen came to me that
10 were negative. He called me to the operating room which
11 I was glad because it's very good to go to the operating
12 room, you can see the x-ray, he went over the x-ray with
13 me, he was going to show me his next attempt to take the
14 next critical biopsy for part C that was going to become
15 part C, called me into the operating room to get part C
16 of the specimen.

17 Q. Did he call you in for advice or just to simply be
18 there?

19 MR. CULLEN: objection.

20 A. He didn't call me for advice.

21 Q. I'm confused. why did he call you to be there for
22 section C?

23 MR. CULLEN: objection. Go
24 ahead.

25 A. He called me into the room, the initial frozens

1 were negative. so he had to call me in the room because
2 he wanted me to see where he thought the lesion was.
3 That is when he asked me, he wanted me to come to the
4 operating room.

5 Q. As a general rule to confirm without doubt the
6 existence of carcinoma, we will confine ourselves to
7 this area, we're talking an extrahepatic duct, would you
8 agree that in general to make the diagnosis that the
9 slides adjacent to the tissue sample should also be
10 unequivocal?

11 A. The actual tissue adjacent to where the lesion was
12 taken?

13 Q. Correct.

14 A. Yes, it should be.

15 Q. In this case did you have unequivocal slides from
16 tissue adjacent to frozen section C?

17 A. There was at the site of the bile stricture.

18 Q. can you indicate for me what slide represents the
19 finding you are now discussing?

20 MISS HEIDLOFF: Take your time to
21 look at your report if you need to.

22 Q. Absolutely.

23 A. You have to go back to my gross description. The
24 ampulla is open to expose the bile duct where a
25 stricture site is identified. This strictured site in

1 the bile duct lies distally that is within the
2 intrapancreatic portion of the common bile duct. The
3 bile duct shows distally a granular, tan and nodular
4 mucousal surface 2.0 centimeters in diameter. The
5 distal common bile duct at this site shows a markedly
6 thickened fibrotic wall, which may represent an area
7 involved by tumor. very firm, indurated, that is where
8 I suspect there was tumor. Permanent sections of this
9 area were submitted.

10 Q. Do you know what the permanent section number was?

11 A. Yes. If I look in my report. They should
12 indicate that. It's not in order here, wait. section
13 G22-G24.

14 Q. Are you aware that both Dr. Shorten, the Cleveland
15 Clinic and the Mayo Clinic have read G22 to G24 as not
16 being consistent with a malignancy?

17 A. I saw the Cleveland clinic report. I would have
18 to look at it. see if they actually reviewed those
19 slides, I don't know.

20 Q. Doctor, you said you had an opportunity to, in the
21 past, to review the slides, do you know how many slides
22 there are start to finish in this particular -- for this
23 particular patient?

24 A. I would have to count them all.

25 Q. Is there some place in there you could easily

identify for yourself the number of slides actually
2 done?

3 A. On each individual part it tells you the number of
4 slides for each part.

5 Q. ■ the total --

6 A. No, we don't arrive at a total.

7 Q. I'm going to make you do something dangerous, if ■
8 told you there was 58 slides does that sound correct to
9 you?

10 MISS HEIDLOFF: Are we talking
11 approximation?

12 MISS KOLIS: No, we're talking
13 specifically there were 58 slides.

14 MISS HEIDLOFF: ■ guess we're going
15 to have to count them.

16 A. I don't agree with that, I think there was more
17 than 58.

18 Q. You do?

19 A. Because there are multiple parts, there is
20 multiple parts, that case was lengthy. Parted G alone
21 had 33 slides. Look how many parts to the specimen
22 there are. You have to count each one.

23 Q. You think there were more than 58?

24 A. oh, yeah, H had two slides, I had two slides.

25 Q. One section had a large number.

1 A. Part G is an actual resected specimen, part F had
2 some slides, part E had 1 through 7.

3 MISS HEIDLOFF: wait for a question.
4 ■ don't think there is one.

5 A. You have to total them, there has to be more than
6 58.

7 Q. I'm going to show you the Cleveland clinic final
8 diagnosis, it will show what was reviewed on the second
9 page. I'm representing what it is, it's a certified
10 document they sent it to me indicating what they
11 reviewed. Does it not say gross they examined G6
12 through G23, G24, through G25.

13 A. Yes, they say G25.

14 MISS HEIDLOFF: ■ think we can agree
15 on what the document says.

16 A. Yes.

17 Q. That indicates in a document which the Cleveland
18 clinic certified to me that they did review G22 through
19 G24, would you agree that is what the document purports
20 to say?

21 MISS HEIDLOFF: Objection. You can
22 answer.

23 A. Yeah, it shows what they reviewed.

24 Q. From the front can you agree with me they did not
25 find malignancy on those final specimen slides?

1 A. As I'm looking at the report now there is no
2 indication that they did.

3 Q. Fair enough, Doctor, thank you.

4 Had you ever prior to the time you had
5 done Mrs. Maynard's case had the opportunity to evaluate
6 for a cholangiocarcinoma in this particular location,
7 this particular location in the biliary tract?

8 A. Rephrase that. At that institution?

9 Q. Anywhere up to February 22, 1996 had you had the
10 opportunity to evaluate this kind of pathology?

11 A. Yes.

12 Q. on how many occasions?

13 A. My recollection, from residency training, could be
14 anywhere from 10 to 15 cases.

15 Q. Evaluating the frozen section, I note from your
16 original report there seems to be an indication you
17 called in another pathologist; is that an accurate
18 statement?

19 A. At the actual time I was doing the frozen section
20 a number of my members were looking, at that time two
21 members, I can't recall who they were.

22 Q. I'm paraphrasing, can you look in your report, my
23 recollection which is very old and tired at the moment
24 was that somewhere contained within your original report
25 is a sentence or statement that says, for Q and A

1 purposes Dr. -- I'm not going to venture to guess as to
2 the pronunciation.

3 A. Ann Cavaney.

4 Q. was called in to evaluate the slides. Maybe I'm
5 misstating?

6 A. Misstating.

7 Q. Tell me what **it** actually says.

8 MISS HEIDLOFF: can you give a page
9 number.

10 A. Yes, I'm trying to find, I know what you are
11 talking about.

12 Q. I need someone to manage my documents.

13 A. This report is so haphazard.

14 MISS HEIDLOFF: Got **it**. This **is**
15 really not accurate. This here is too confusing, this
16 document to me.

17 Q. Why don't you make **it** unconfusing. First of all,
18 did another pathologist from Akron Pathology on
19 February 22, 1996 look at the intraoperative frozen
20 section with you?

21 A. Yes. **It** was Anne Caveny.

22 Q. In what context or why was she looking at the
23 intraoperative frozen section with you?

24 A. It was she was -- when we do a frozen section on a
25 lesion, we usually confirm **it** with a second pathologist.

1 I used Anne Caveny, she was available at the time the
2 frozen section was occurring, the other pathologist
3 there.

4 Q. Anne Caveny is a member of Akron Pathology?

5 A. Associates.

6 Q. Associates. Anne Caveny was not then looking at
7 these intraoperative frozen sections as part of her
8 obligation to Akron General Medical Center; is that
9 correct?

10 MISS HEIDLOFF: If you know.

11 Q. Do you know what ask I'm asking you?

12 A. We all work with the obligation to Akron General.

13 Q. Then I better rephrase that, it was a poorly asked
14 question.

15 The hospital did not require that you
16 have another pathologist come in and do a second read on
17 your intraoperative frozen sections; is that an accurate
18 statement?

19 A. Yes, that was accurate, that is our policy.

20 Q. The group had the policy of having another
21 pathologist come in and look at the frozen section; is
22 that right?

23 A. Um-hum.

24 Q. why, if you know, why did you pick that particular
25 doctor to come in and look at the intraoperative frozen?

1 A. she was the only one available most likely. Not
2 everybody is in their office. ■ remember getting her,
3 she was available in her office, that is most likely
4 from what I recall,

5 Q. Am ■ understanding your testimony, each and every
6 time there is an intraoperative frozen section two
7 people from your group look at it?

8 A. NO.

9 Q. Then I probably did misunderstand. Under what
10 circumstances does that come about?

11 A. It comes about when you want to show a lesion, a
12 difficult lesion in frozen section.

13 Q. Why would you have defined this as a difficult
14 lesion?

15 A. Because there was a lot of inflammation in the
16 wall. I felt that I needed to show, to see if she
17 agreed with the cytologic atypia that was occurring in
18 the wall with mitosis and haphazard arrangement.

19 Q. Can haphazard arrangement occur because of
20 inflammation itself?

21 MISS HEIDLOFF: objection.

22 Q. I'm asking you as a pathologist?

23 A. No, you can have an inflammation with tumor. Plus
24 I thought the lesion was extremely well differentiated,
25 something like that you want to confirm with another

1 colleague in the department.

2 Q. what led you to the belief on frozen slide to say
3 it was extremely well differentiated?

4 A. Cytological appearance of the gland. The amount
5 of cytoplasm, the nucleus, the size of the nucleus.

6 Q. Talking about the frozen section, not the
7 permanent?

8 A. Frozen section.

9 Q. when you were examining these frozen sections did
10 you first take the slide, put it on low power? Sounds
11 stupid.

12 A. I do. I do every frozen low power, proceed to
13 high power.

14 Q. To what magnification do you do high powers?

15 A. High power?

16 Q. 400?

17 A. 40X. Basically 40X. Low power I start out with
18 five, whatever kind of scope, five or 10.

19 Q. Doctor, this is what I would like to -- your
20 attorney kindly returned the slides today. It's like a
21 hot potato, I don't know that I want them either. They
22 always get lost. Not necessarily in this case.

23 I would like to indicate what I have
24 done, you can accept my representation, at some point
25 you guys can say I didn't do what I said I did. This is

1 what I've done: At my request my expert took the
2 original slides, photographed the slides that were in
3 question, frozen section G22 through 24 that you
4 identified as confirmatory. Final diagnosis is first.
5 We turned them into slides. After we had those film
6 slides we blew them up into photographs because I knew I
7 wasn't going to bring a microscope. If you brought a
8 microscope nobody else at the table could see it. Each
9 thing I show I'll tell you what it is, we will have the
10 court reporter mark it, I'll attach it to your depo,
11 your attorney can evaluate it. ■ have questions I need
12 to ask about each of these, okay?

13 MISS HEIDLUFF: Not knowing how they
14 were prepared and so forth, I will object to the entire
15 line of questioning. There may be some questions to
16 which we will have additional objections. I'm not sure
17 that the doctor can answer all these questions without
18 knowing some of the methodology used to do this. Let's
19 see if we can do that.

20 Q. would you agree with me, Doctor, you can take a
21 slide, you can photograph the slide, turn it into a
22 photographic slide?

23 A. Yes.

24 Q. That's how pictures appear in textbooks?

25 A. Correct.

1 Q. we can't put the slide itself in the textbook.

2 I'm going to see if this seems remotely familiar. I can
3 assure you I only had one set of slides in my life. The
4 first photograph I have is frozen section 3, this is the
5 top of the -- this is the slide, I'll show you this, the
6 same thing. We can mark it as Exhibit A. These are
7 simply copies, they are copies of pictures.

8 A. There is I think on the slide.

9 Q. You can see where the -- I think that is down that
10 way. I will represent to you that is a photograph of
11 that particular slide, section 3, taken at low power,
12 okay?

13 A. um-hum.

14 Q. Do you recognize the microscopic slide upon which
15 you base the diagnosis of malignancy?

16 A. No, I don't.

17 Q. what about it makes you not able to recognize it?

18 A. Too pale. The stain quality is pale, you can't
19 see anything.

20 Q. on this you can't tell something better from the
21 slide?

22 A. You have to look at the original slide. That
23 doesn't tell me anything, it's a blob -- you can't see
24 anything. Doesn't give you any detail, I can't see.
25 You can't see anything. I don't see anything there, how

1 can you tell anything? I can't.

2 Q. So your testimony is you would be incapable of
3 answering questions based on the slide or photograph of
4 the slide?

5 A. ■ have to see the actual tissue slide prepared in
6 a histology lab to make a diagnosis from that.

7 Q. Here is what I suggest that we do --

8 A. That would be impossible. You would have to
9 project those,

10 Q. Project the slide?

11 A. Even if projectable they might not show up. You
12 can't see.

13 Q. So the record is clear, based upon what ■ am
14 attempting to present to you, you are saying you
15 wouldn't be able to answer questions about those, what
16 you need to see is the original slides?

17 A. (Indicating affirmatively.)

18 Q. My suggestion is that -- I'm surprised by your
19 answer. In any event, what we should do is reconvene at
20 a time when I have access to a microscope and slides,
21 then I'll ask you the questions. It's an easy way for
22 me to do it.

23 A. ■ can't answer questions from something like that.

24 MR. CULLEN: ■ don't object to
25 that, do you object?

1 MR. STRONG: (Indicating
2 negatively.)

3 MR. CULLEN: Do you object?

4 MISS HEIDLÖFF: ■ guess not if it's
5 not a problem to you, no. what is your purpose, maybe
6 we can solve it in -- off the record.

7 -----

8 (Discussion had off the record.)

9 -----

10 Q. Doctor, you are aware of structures that are
11 contained within the extrahepatic duct that can mimic a
12 carcinoma in terms of appearance?

13 A. Sure, benign things that can mimic cancer.

14 Q. what are those?

15 A. Entrapped benign gland in the reparative process.

16 Q. Anything else particularly in the region where you
17 eventually made this diagnosis, what glandular structure
18 are you aware of in that region that could be mistaken?

19 A. Bile ducts, benign glands.

20 MISS KOLIS: ■ don't have any
21 further questions for today.

22 MR. CULLEN: ■ may or may not
23 have further questions if we are going to reconvene. I
24 would prefer to ask my questions upon the completion of
25 your questions. Do you have a problem with that?

1 MISS HEIDLOFF: ■ don't have a
2 problem. I don't want to have her rehash everything
3 with you, go into other things.

4 MISS KOLIS: Nope.

5 MISS HEIDLOFF: If we confine your
6 questioning to the slides, anything that arises from
7 that, you can go ahead.

8 MR. CULLEN: ■ won't confine
9 myself to the slides.

10 MISS HEIDLOFF: I understand.

11 MR. STRONG: ■ don't have any
12 questions.

13 MISS KOLIS: ■ have a couple more
14 then at least so we don't waste time on them later.

15 THE WITNESS: would the coming,
16 reviewing the slides happen quickly enough?

17 MISS KOLIS: Yes, we just have to
18 find a facility to do that.

19 BY MISS KOLIS:

20 Q. If I understand what is on your CV, I didn't ask
21 you about, after you left Akron Pathology, from December
22 of '96 through February of '97 once again with a
23 temporary -- ■ hate to call it a temporary placement
24 agency -- on temporary placement as a pathologist,
25 correct?

1 A. I was working for Medical Associates.

2 Q. At Mercy Medical Center?

3 A. No. I contacted, Medical Associates who was a
4 locum tenens agency, they find locum jobs. At the time
5 they didn't find anything, I found the locum tenens work
6 at Timken Mercy because I knew Dr. Gerald Marty, he told
7 me about possible work there.

8 Q. So you worked there for a couple of months?

9 A. That's correct. Doing contracted locum tenens
10 fill in. It was a fill in type thing.

11 Q. Between February and July of 1997 you did not work
12 as a pathologist?

13 A. No, that is correct, right. I was looking for a
14 position.

15 Q. From July of 1997 until June of 1998 you were a
16 staff pathologist at the Knox Community Hospital?

17 A. Yes, part-time basis.

18 Q. You were doing surgical pathology?

19 A. Yes, I was in frozen sections.

20 Q. How did that position come to end?

21 A. I decided I didn't want to commute four hours
22 every day. I did a year of the contract.

23 Q. You drove from Akron to Mount Vernon?

24 A. Canton to Mount Vernon, yes, three to four times a
25 week, sometimes seven days. when he was gone I would do

1 the coverage for the week, ■ would drive back and forth
2 six days.

3 Q. June, 1998 to present, June of 1999, what have you
4 done for employment?

5 A. Contract pathology work for four days at Mount
6 Sinai in September only.

7 I'm currently interviewing at places for
8 a position. I had an interview last week at Firelands
9 Hospital, next week ■ should be interviewing at the
10 Medical College of Toledo clinical pathology, academic
11 position. I'm currently seeking employment.

12 MISS KOLIS: we will mark this
13 Plaintiffs' Exhibit A, it's the only exhibit that we
14 have, that way everybody gets a copy of the CV.

15 should we not even worry about waiver
16 since we're going to reconvene?

17 MISS HEIDLOFF: Yes.

18 MR. CULLEN: It's my
19 understanding we will reconvene to conclude questioning,
20 if I have questions I'll be able to inquire.

21 MISS HEIDLOFF: Correct.

22 THE WITNESS: we're going to look
23 at slides.

24 MISS KOLIS: Look at slides, ■'■■
25 ask you questions.

1 MISS HEIDLOFF: More questions on --
2 THE WITNESS: On the entire case
3 or about slides?
4 MISS KOLIS: About slides.
5 THE WITNESS: Any slides?
6 MISS KOLIS: Right.
7 MISS HEIDLOFF: About slides. There
8 may be additional questions the attorneys for other
9 parties may have, I don't anticipate as long as we have
10 been today.

11

12 (Plaintiffs' Exhibit A marked for identification.)

13

14

15 (Deposition adjourned.)

16

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1 The State of Ohio, :

2 County of Cuyahoga. : CERTIFICATE:

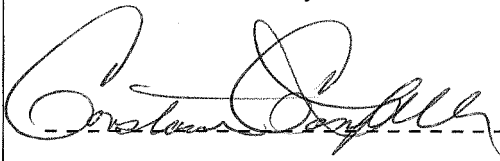
3 ■ Constance Campbell, Notary Public within and for
4 the State of Ohio, do hereby certify that the within
5 named witness, DANE MUCTELL, M.D. was by me first
6 duly sworn to testify the truth in the cause aforesaid;
7 that the testimony then given was reduced by me to
8 stenotypy in the presence of said witness, subsequently
9 transcribed onto a computer under my direction, and that
10 the foregoing is a true and correct transcript of the
11 testimony so given as aforesaid.

12 ■ do further certify that this deposition was taken
13 at the time and place as specified in the foregoing
14 caption, and that ■ am not a relative, counsel or
15 attorney of either party, or otherwise interested in the
16 outcome of this action.

17 IN WITNESS WHEREOF, ■ have hereunto set my hand and
18 affixed my seal of office at Cleveland, Ohio,
19 this 22nd day of June, 1999.

20

21

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22

Constance Campbell, stenographic Reporter,

23

Notary Public/State of Ohio.

24

Commission expiration: January 14, 2003.

25

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	<u>NOTATION</u> Part I Deposition - June 16, 99	<u>PAGE/LINE</u>
1		
2		
3	undergraduate school not medical school	7/line 15
4	AP/CP. Not ACP	9/line 16
5	1990 to 1992 I was an employee.	12/line 18
6	IN 1993 - I became an employee.	20/line 20
7	DR Nadia Al-Kaisi	17/line 21
8	Yes, about September 1, 1996. delete ^{poor grammar,} became.	20/line 6A
9	14/16	21/line 24
10	recall seeing No from poor grammar.	23/line 4A
11	NO I SAID NO. ?	25/line 22/23
12	yes, MR Best - had microscope there.	28/line 8
13	A microscope Not yours (see #12)	28/line 25
14	surgical sheet NOT frozen sheet	37/line 22
15	three years ago - NOT 2 years	34/line 18
16	it's in a complex order	37/line 18
17	in my thought process - left blank.	40/line 2
18	because they have a teaching conference	40/line 11
19	look for: from well differentiated to poorly differentiated.	72/line 23
20	The initial frozens were negative	46/line 9A

21 I have read the foregoing transcript and
 22 the same is true and accurate.

23
 24 Diane Mucitelli, MD 8/16/99

25 DIANE MUCITELLI, M.D.

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NOTATION continued - June 16 99 Deposition Part I PAGE / LINE

sections G22-G24 48 / 12

It was she, DR. Anne Carey who looked at the frozen mitotic figures 52 / 24

Permanent section NOT frozen section 54 / line 18

entrapped benign glands in a reparative process 55 / line 8

Review of slides 59 / line 15

yes, I was doing Surgical Pathology and frozen sections 60 / line 16

anatomical pathology, academic position (END of June 16, 99 Deposition) @ / 19.

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PART II July 29, 99

Deposition - continued -

biopsies page 74 / line 12

malignant glioma - A mistake by court reporter. page 74 / 14

within page 76 / 2

that is a cytologic feature of malignancy. " 76 / 4

malignant cells within the glioma. (no) 78 / 14.

malignant glandular structures. (no and) 85 / 12

No, G33 NOT G24. 86 / 2

The surface is very well differentiated. There is a haphazard or disordered arrangement of malignant-appearing glands. 87 / 24

I have read the foregoing transcript and the same is true and accurate.

(line 24 does not make sense)

- poor organization of the sentence - on page 87 - line 24)

Diane R Mucitelli MD
8/16/99

Diane Mucitelli 8/16/99

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outpouchings	88 / 3
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Nucleoli	90 / 20
is a fibrous edematous stroma	91 / 11
associated with a benign structure	91 / 12
there are aggregates of cells - haphazardly	91 / 18
an inflamed desmoplastic stroma	91 / 21
discohesive cells - which are malignant	91 / 22
July only - last time I saw ^{DR} Caveny	92 / 24
malignant.	93 / 3
DR Caveny	93 / 11
to show it if -	93 / 20 and
The case is thought to be Malignant	93 / 21
the malignant area in the permanent sections.	93 / 23

I have read the foregoing transcript and the same is true and accurate.

Diane M'UCITELLI 8/16/99

DIANE M'UCITELLI, M.D.