

VIRGINIA: IN THE CIRCUIT COURT FOR THE CITY OF CHESAPEAKE

\_\_\_\_\_  
RICARDO RIDDICK, Individually, :  
and RICARDO RIDDICK, by his :  
mother, next friend and :  
guardian, EVELYN ANDERSON, :  
Plaintiffs, :  
:

v. :

CASE NO.  
CL08-2871-00

HENRY D. PATTERSON, MD, et al., :  
Defendants. :  
\_\_\_\_\_ :

DEPOSITION UPON ORAL EXAMINATION  
DEBORAH CHALLENGER, RN

April 19, 2010 -- 8:00 a.m.

Hampton, Virginia

Old Dominion Reporting

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APPEARANCES: SHAPIRO, COOPER, LEWIS & APPLETON, P.C.  
By: James C. Lewis, Esquire,  
counsel for the Plaintiffs.

HANCOCK, DANIEL, JOHNSON & NAGLE, P.C.  
By: John R. Redmond, Esquire,  
counsel for Henry D. Patterson, MD,  
Defendant.

KAUFMAN & CANOLES, P.C.  
By: Megan Bradshaw, Esquire,  
counsel for Chesapeake Regional Medical  
Center, Defendant.

HUFF, POOLE & MAHONEY, P.C.  
By: M. Todd Gerber, Esquire, counsel for  
Deborah Challenger, RN, Defendant.

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EXAMINATION

DEBORAH CHALLENGER, RN

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1                   Deposition upon oral examination of Deborah  
2           Challenger, RN, taken before Shannon A. Crittenden-Mann, a  
3           Notary Public for the Commonwealth of Virginia at Large,  
4           pursuant to Notice and Agreement, commencing at 8:00 a.m. on  
5           April 19, 2010, at Sentara CarePlex Hospital, Hampton River  
6           Medical Arts Building, Conference Room A, 4000 Coliseum  
7           Drive, Hampton, Virginia, and these in accordance with the  
8           Rules of the Supreme Court of Virginia, 1950, as Amended.

9

10                   DEBORAH CHALLENGER, RN, called as a witness on  
11           discovery, after having been first duly sworn, was examined  
12           and testified as follows:

13

14           BY MR. LEWIS:

15                   Q       For the record, would you tell us your full name,  
16           please?

17                   A       Deborah Renee Challenger.

18                   Q       Ms. Challenger, have you ever had your deposition  
19           taken before?

20                   A       No.

21                   Q       And I will spend a little bit of time telling you  
22           some things that I'm sure Mr. Gerber has already told you.

23                   A       Okay.

24                   Q       My name is Jim Lewis. I represent a fellow named  
25           Ricardo Riddick in a lawsuit that he has filed through me

1       against Chesapeake General Hospital and Dr. Patterson in  
2       which he complains about a laparotomy sponge being left  
3       behind following a surgery that occurred at Chesapeake  
4       General Hospital back in, I think, June of '05. The medical  
5       records appear to indicate that you were somehow involved in  
6       that surgery, and so I'm here today to find out a little bit  
7       about you and your background, but mostly what you did and  
8       did not do during that surgical procedure.

9                   This young lady is here to write down  
10       everything you and I say to one another, so it is  
11       important -- as well as these other lawyers. It is  
12       important that we communicate in words and not nods, head  
13       gestures or hand movements.

14           A     Okay.

15           Q     She doesn't get that down very well. If I ask you  
16       a question that makes no sense to you, rather than guessing  
17       at what it is I want to know just tell me that my question  
18       made no sense and I will try to rephrase it in a way that it  
19       does. Fair enough?

20           A     Yes.

21           Q     What is your -- strike that.

22                   MR. LEWIS: Do you want me to -- are you  
23       going to stay on as counsel or are you going to  
24       bail?

25                   MR. GERBER: No, I am not going to remain in  
                    Old Dominion Reporting

1 the case beyond this deposition unless --

2 MR. LEWIS: There's a reason?

3 MR. GERBER: Unless there's a reason or  
4 unless she is somehow involved.

5

6 BY MR. LEWIS:

7 Q What's your address, Ms. Challenger?

8 A 1454 -- oh, I'm sorry.

9 MR. REDMOND: I'm sorry. Can you speak up?  
10 I can't hear you at all down here.

11 THE WITNESS: Yeah. I was going to give you  
12 my old address.

13 MR. LEWIS: He's deaf.

14 A Let's see. It's 6200 Oakengate Drive, Suffolk,  
15 Virginia 23435.

16

17 BY MR. LEWIS:

18 Q You're going to have talk louder than that,  
19 Ms. Challenger.

20 A Louder than that?

21 Q Yes, ma'am.

22 MR. REDMOND: I can't hear you at all down  
23 here.

24 A 6200 Oakengate Drive, Suffolk, Virginia 23435.

25

1 BY MR. LEWIS:

2 Q And a convenient daytime phone number?

3 A 722-9961, extension 3567.

4 Q And what is that phone number to?

5 A That is my work number.

6 Q And where do you currently work?

7 A At the VA Medical Center in Hampton.

8 Q In Hampton. What do you do there?

9 A I am a staff nurse in the operating room.

10 Q Briefly, Ms. Challenger, what's your educational  
11 background? Where did you graduate from high school?

12 A From Bethel High School.

13 MR. REDMOND: Will you speak up, please?

14 A Bethel High School here in Hampton.

15

16 BY MR. LEWIS:

17 Q What year?

18 A 1974.

19 Q And what formal education have you got since you  
20 graduated high school?

21 A I have completed my BSN at Hampton Institute.

22 Q Bachelor of science in nursing?

23 A Correct.

24 Q When did you get that degree?

25 A 1984.

1 Q Okay.

2 A And then I went on to work on my master's degree,  
3 then I completed 19 -- what year is that? Long time ago,  
4 '86.

5 Q What happened in 1986?

6 A I was working on a master's. I didn't finish.

7 Q You just stopped?

8 A Yes.

9 Q You stopped your educational experience at that  
10 time?

11 A Correct.

12 Q And since 1986 what have you done for a living?

13 A I've worked as a nurse.

14 Q Let's start with '86. Where was your first job  
15 after '86?

16 A After '86 I was still working at Hampton General.  
17 I started there in 1984.

18 Q And how long did you stay at Hampton General?

19 A Until 1989.

20 Q And where did you go then?

21 A I left there and went to Newport News General.

22 Q And how long did you stay there?

23 A For about a year.

24 Q What did you do at Newport News General?

25 A I was the director of surgical services.  
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1 Q When you left there where did you go?

2 A To DePaul Hospital.

3 Q And what did you do at DePaul?

4 A I was a staff nurse as well as a clinical  
5 coordinator.

6 Q Staff nurse meaning patient attendance, not  
7 operating room?

8 A No, in the operating room.

9 Q In the operating room?

10 A And a clinical coordinator in the operating room.

11 Q And how long did you stay at DePaul?

12 A About a year-and-a-half.

13 Q And where did you go when you left there?

14 A To the VA Medical Center.

15 Q In?

16 A Hampton.

17 Q Hampton?

18 A (Witness nods head affirmatively.)

19 Q From what year to what year were you at the VA  
20 Medical Center?

21 A From 1991 until present. January 1991 until  
22 present.

23 Q At some point in there you also worked at  
24 Chesapeake General?

25 A Yes.

1 Q From when to when?

2 A Chesapeake General was part time along with the VA  
3 Medical Center. I worked at Chesapeake in 2005 to 2006, to  
4 January of 2006.

5 Q When did you start? What month?

6 A It was in the spring. I'm not sure if it was  
7 March or April of 2005.

8 Q And it was a part-time position?

9 A Weekends.

10 Q Just weekends?

11 A Just Saturdays to be more precise.

12 Q How is it that you came to find a one-day-a-week  
13 job at Chesapeake General Hospital? And I ask the question,  
14 Ms. Challenger, just because it sounds a bit unusual to me.  
15 You had a full-time job at the Hampton VA Hospital?

16 A Yes.

17 Q Correct?

18 A That's correct.

19 Q Did you go looking for part-time work?

20 A I went looking for weekend work.

21 Q Weekend work, and you found a job at Chesapeake  
22 General Hospital one day a week, Saturdays?

23 A Correct.

24 Q Doing what?

25 A Working as a staff nurse, a circulating nurse in  
Old Dominion Reporting

1 the operating room.

2 Q Do you have a current recollection,  
3 Ms. Challenger, of participating in the surgery that  
4 Dr. Patterson performed on Ricardo Riddick looks like  
5 June 25th, 2005?

6 A Yes. I remember some of it.

7 Q And why is it that you can remember a surgical  
8 procedure that occurred five years ago?

9 A I can remember the patient.

10 Q Why?

11 A When I went up to introduce myself to the patient  
12 and his family members out in the preop holding area as you  
13 always do I introduced myself to the patient and his mother,  
14 and I began to ask him questions about the surgery he was  
15 going to have done, and he wasn't able to answer me. His  
16 mother had to answer the questions.

17 Q Was he able to talk at all or were his answers  
18 just --

19 A Not appropriate.

20 Q -- confabulatory?

21 A I'm not sure I understand "confabulatory."

22 Q That's Mr. Redmond's word. No. He was -- his  
23 answers were sort of nonsensical?

24 A Yes.

25 Q And for that reason he sort of stands out?  
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1 A Yes.

2 Q And as I understand it, Ms. Challenger, the  
3 procedure that was performed that day was a cholecystectomy?

4 A Correct.

5 Q Started as a laparoscopic procedure and then was  
6 converted to an open?

7 A Right.

8 Q Do you remember the procedure itself?

9 A Very little.

10 MR. REDMOND: I'm sorry. You have to speak  
11 up.

12 A Very little.

13 MR. REDMOND: Very little.

14 THE WITNESS: I'm sorry. I need to speak  
15 louder. I'm sorry.

16

17 BY MR. LEWIS:

18 Q That's okay. There aren't very many quiet people  
19 in this room. You just happen to be one of them.

20 In preparation for coming here this morning,  
21 Ms. Challenger, have you gone back and reviewed any of the  
22 medical records that applied to that procedure?

23 A Yes.

24 Q What medical records have you reviewed?

25 A His chart, his surgery.

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1 Q Pretty much what I showed you earlier this  
2 morning?

3 A Yes.

4 MR. LEWIS: I suspect what we ought to do is  
5 to mark each one of these.

6  
7 (Chesapeake General Hospital Case Record, Page  
8 Three of Eight, was marked as Challenger Deposition  
9 Exhibit Number One.)

10

11 (Chesapeake General Hospital Case Record, Page  
12 Four of Eight, was marked as Challenger Deposition  
13 Exhibit Number Two.)

14

15 (Chesapeake General Hospital Case Record, Page  
16 Five of Eight, was marked as Challenger Deposition  
17 Exhibit Number Three.)

18

19 (Chesapeake General Hospital Case Record, Page  
20 Six of Eight, was marked as Challenger Deposition  
21 Exhibit Number Four.)

22

23 (Chesapeake General Hospital Case Record, Page  
24 Seven of Eight, was marked as Challenger Deposition  
25 Exhibit Number Five.)

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1                   (Operating Room Materials Count Sheet was marked  
2 as Challenger Deposition Exhibit Number Six.)

3  
4                   (Document Entitled "Basic Lap Set" was marked as  
5 Challenger Deposition Exhibit Number Seven.)

6  
7                   (Document Entitled "Basic Lap Set," Page Two of  
8 Two, was marked as Challenger Deposition Exhibit Number  
9 Eight.)

10  
11                   (Document Entitled "Intestinal Instruments" was  
12 marked as Challenger Deposition Exhibit Number Nine.)

13  
14 BY MR. LEWIS:

15           Q     Ms. Challenger, understand, if you will, the fact  
16 that I know absolutely nothing about how the surgical  
17 operation was conducted during this procedure, and what I'm  
18 here to find out from you is -- is how that was done. So if  
19 you would be so kind as to explain to me how this particular  
20 surgery was staffed starting with Dr. Patterson. We'll say  
21 he's the surgeon, and I assume he -- from what I can tell he  
22 was the only surgeon; correct?

23           A     Correct.

24           Q     Okay. How else -- how was this procedure staffed?

25           A     There was an anesthesiologist.

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1 Q Do you remember his or her name?

2 A Only after looking at the record.

3 Q And?

4 A Dr. Gellman.

5 Q Gellman?

6 A Gellman.

7 Q Okay.

8 A And there was a nurse anesthetist.

9 Q Named?

10 A Kathy -- I can't even think of her last name.

11 Q Okay.

12 A And myself as a circulating nurse, Pam Seeley.

13 Q What was Ms. Seeley's job?

14 A She was the scrub nurse.

15 Q Okay.

16 A Ed McLaughlin.

17 Q What was Mr. McLaughlin's job?

18 A Surgical assistant.

19 Q Okay.

20 A And Alan -- I don't remember Alan's last name.

21 Q Speak up.

22 A I don't remember Alan's last name.

23 Q And what was his job?

24 A Surgical assistant.

25 Q So we've got the surgeon, we have two surgical  
Old Dominion Reporting

1 assistants, we have a scrub nurse and a circulating nurse.

2 Is that it?

3 A Correct.

4 Q What I'd like for you to do is go through each one  
5 of those categories and explain for me your understanding of  
6 that individual's job duties. The two surgical assistants,  
7 did they have different duties between them or was their job  
8 a common job?

9 A For that particular case?

10 Q For that particular case?

11 A I'm not sure how much I can remember about that  
12 particular case that day.

13 Q That's okay. Tell me what you can.

14 A What I do remember is that there was only one  
15 surgical assistant initially on the case.

16 Q Okay. Who was it?

17 A And that one was Ed McLaughlin I believe.

18 Q All right.

19 A And then Alan joined as the case converted over.

20 Q Would he have been called in by Dr. Patterson?

21 A He would have been called in.

22 Q Because --

23 A We converted.

24 Q Because it was converted?

25 MR. REDMOND: I'm sorry. What was the  
Old Dominion Reporting

1 answer?

2 A Because we converted the case into an open case  
3 then the second person was called in.

4

5 BY MR. LEWIS:

6 Q What about the conversion necessitated a second  
7 physician's assistant being called in?

8 A Retraction is needed. When you have gone to an  
9 open case you need someone to retract.

10 Q As far as you know, Ms. Challenger, were all of  
11 the individuals in the operating room except Dr. Patterson  
12 employed by Chesapeake General Hospital?

13 A Yes.

14 Q Describe for me the duties of the scrub nurse. I  
15 think you said her name was Seeley?

16 A Yes.

17 Q Ms. Seeley, what was her job during this  
18 procedure?

19 A Her job was to come in the case and get whatever  
20 instruments that are needed for the case ready and to scrub  
21 and count before the patient comes in the room with myself.

22 MR. REDMOND: I'm sorry. Did I understand  
23 you said it was her job to count?

24 MR. LEWIS: Scrub and count.

25 MR. REDMOND: Scrub and count the  
Old Dominion Reporting

1 instruments?

2 THE WITNESS: Along with me.

3

4 BY MR. LEWIS:

5 Q Let's talk about that. As far as you're  
6 concerned, Ms. Challenger, what does scrub mean?

7 A Scrub, it means that you're passing the  
8 instruments to the doctor.

9 Q Is that in contrast to what you were doing?

10 A Yes.

11 Q You could not -- you were not allowed to pass  
12 instruments?

13 A No.

14 Q And is -- and what's the reason for that?

15 A Because I'm not sterile, and she is sterile.

16 Q That's what scrub means; correct?

17 A You have to be sterile.

18 Q All right. So you-all -- you and Ms. Seeley are  
19 in the operating room getting ready for this procedure to  
20 start. Describe for me the counting procedure. How is that  
21 done? First of all, what's counted? Second of all, how is  
22 it counted?

23 A Okay. May I see the record?

24 Q Certainly.

25 A For this case we counted initially. There's an  
Old Dominion Reporting

1 initial count.

2 Q If you could find that sheet for me and tell us  
3 what number it is.

4 A Six.

5 Q That's what our court reporter has marked as  
6 Exhibit Six?

7 A Yes.

8 MR. REDMOND: Can I see it?

9 MR. LEWIS: Yeah. Come on around.

10

11 BY MR. LEWIS:

12 Q And Exhibit Six is the initial count sheet?

13 A It is the count sheet for the case, and the  
14 initial count is on it.

15 Q Let me look over your shoulder if I may.

16 A And across the top you will see the initial counts  
17 of lap tapes being five, Raytecs ten, suture needles eight,  
18 three for the knife blades, one for other sharps.

19 Q Other sharps?

20 A Other sharps.

21 Q Okay.

22 A And a marking pen was one, and syringes also looks  
23 like a one.

24 Q Tell me what a lap tape is.

25 A It is a sponge that is used during surgery to  
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1 absorb blood, and it is always indicated with an x-ray  
2 detectable line through it.

3 Q So that if you were to x-ray it you would see a  
4 part of that sponge on the x-ray as a positive finding?

5 A Correct.

6 Q All right. What's a Raytec?

7 A A Raytec is a smaller four by four type sponge,  
8 but it is also used for absorption.

9 Q And what's the dimension of the lap tape, your  
10 best estimate?

11 MR. LEWIS: Did you bring me one?

12 MS. BRADSHAW: I did bring it.

13 MR. LEWIS: Say again.

14 MS. BRADSHAW: Yes, I have them.

15 MR. LEWIS: Well, why don't you pull it out  
16 and we'll get this witness to tell us whether or  
17 not it's an accurate specimen or not.

18 MR. REDMOND: Did we establish that is her  
19 handwriting?

20 MR. LEWIS: We have not yet. Thank you.

21

22 BY MR. LEWIS:

23 Q Can you tell, Ms. Challenger, whether this is a  
24 lap tape like the one that was used on Mr. Riddick's  
25 procedure?

1           A     It looks a little big for what we usually use,  
2     but, yes, it is a lap sponge.  They come in different -- in  
3     different sizes also.

4           Q     If the ones that you used on Mr. Riddick were  
5     smaller than the thing -- than the one I've put in front of  
6     you, can you estimate for me what size it was?

7           A     From here to there.  (Witness indicating.)

8           Q     So approximately one quarter of the size of what  
9     I've got in front of you?

10           MR. REDMOND:  I think that was -- I think  
11     that's a fair description.

12           A     Yes.

13

14     BY MR. LEWIS:

15           Q     Okay.  And Mr. Redmond brought up a good point a  
16     moment ago.  Whose handwriting are the entries in Exhibit  
17     Number Six?

18           A     They are mine, and I'm not sure who else's.

19           Q     So there's -- more than one person has made  
20     entries on this page?

21           A     Yes.

22           Q     Before I get to the part about asking you to tell  
23     me which entries are yours and which entries are someone  
24     else's, tell me the process by which the initial count is  
25     determined and entered on that page.  Y'all are standing

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1 around in the operating room. I have a general idea of what  
2 operating rooms look like, but how do you and Ms. Seeley go  
3 about the process of writing those numbers in?

4 A Ms. Seeley is sterile as you say. She's scrubbed  
5 with a gown on and so she's there counting the sterile  
6 sponges and Raytecs, and she counts them off to me and she  
7 pulls them apart so that you can visualize them and see, and  
8 I verify what she's counting.

9 Q You're watching her?

10 A I'm watching her as she counts.

11 Q Who's making the entries?

12 A I am.

13 Q All right. Now, so each one of these numbers on  
14 the initial count are your numbers?

15 A Correct.

16 MR. REDMOND: Ma'am, you said the Raytec.  
17 Is that what you just said is true for the lap  
18 tape also? I think you only said Raytec.

19 THE WITNESS: I'm not sure what your  
20 question is.

21 MR. REDMOND: I think your answer there you  
22 only used the word "Raytec" in the --

23 THE WITNESS: All of the Raytecs, laps on  
24 the initial counts, the marking pen, the sutures,  
25 the things that I initially said on the initial

1 count.

2 MR. REDMOND: Right. All the same way?

3 THE WITNESS: Right.

4 MR. REDMOND: Because you only said Raytec  
5 in your answer. I didn't hear anything but  
6 Raytec when you were talking about --

7 THE WITNESS: How we went about counting  
8 them?

9 MR. REDMOND: Right.

10 THE WITNESS: We went about counting each  
11 one of them in the same way.

12 MR. REDMOND: Thank you. I really am having  
13 trouble hearing you.

14 THE WITNESS: Okay.

15

16 BY MR. LEWIS:

17 Q Now, let's just stick with the column lap tapes  
18 for the moment.

19 A Okay.

20 Q Beneath the box that says initial count there is a  
21 column and a several numbers have been written in there.  
22 Can you explain what that is intended to tell the reader?

23 A This is intended to say that there has been laps  
24 added to the initial count.

25 Q So there's a plus five that appears beneath the  
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1 initial count, and then it's totaled to equal ten?

2 A Yes.

3 Q Then there's another plus five, and it's retotaled  
4 to equal 15?

5 A Yes.

6 Q Are those your entries as well?

7 A These are definitely not my entries.

8 Q Well, let's start with the first plus five. Is  
9 that you?

10 A I believe it is mine.

11 Q And then the totaled -- the subtotal of ten, is  
12 that also you?

13 A Yes.

14 Q And then someone else has written another plus  
15 five and a new subtotal of 15?

16 A Correct.

17 Q Who would that have been?

18 A I don't know. It has initials. I don't know.

19 Q Well, the choices are going to be the two  
20 physicians or the two surgical assistants and Ms. Seeley and  
21 Dr. Patterson. Is it --

22 A No.

23 Q Tell me what I missed.

24 A There's oftentimes people come in the room to  
25 help. Other nurses can come in the room, so I could not

1 speculate on who that might be.

2 Q So you just simply cannot tell me who wrote the  
3 second plus five and the -- the second subtotal of 15?

4 A No, I can't.

5 Q All right. Let's go over to Raytec. Do I take it  
6 for the lack of entries beneath the initial count that no  
7 additional Raytecs were used in this procedure?

8 A Yes.

9 Q And under suture needles we started off with  
10 eight; correct?

11 A Correct.

12 Q And then someone wrote in there plus ten with a  
13 new subtotal of 18?

14 A Correct.

15 Q Is that your -- are those two your entries?

16 A Yes.

17 Q Then there's a plus one with a new subtotal of 19.  
18 Is that your entries -- are those your entries?

19 A It looks like it.

20 Q Then there's another plus ten with a new subtotal  
21 of 29. Are those two yours?

22 A I believe it is.

23 Q Can you read the next -- the entry under the 29?  
24 Is that a plus eight?

25 A Plus eight.

1 Q But it looks like the next subtotal is 39 or is  
2 that 37?

3 A Looks like 37.

4 Q Thirty-seven, are those two your entries?

5 A I believe so.

6 Q Then there is -- what's the next entry under 37?

7 A Plus eight.

8 Q And the new subtotal of 45?

9 A Correct.

10 Q All right. And there were no additional knife  
11 blades used; correct?

12 A Correct.

13 Q And there were no other additional other sharps  
14 used?

15 A Correct.

16 Q What is a kittner?

17 A Kittner is often referred to as a peanut. It is  
18 used for very small dissections.

19 Q Is it a sharp instrument?

20 A No. It's a little sponge, but it's very, very  
21 tiny. It looks sort of like a peanut, so some people call  
22 it a peanut or kittner. It is a kittner dissector. It is  
23 used to dissect vessels.

24 Q And we started out with none and then we brought  
25 five in?

1 A Right.

2 Q For a subtotal of five?

3 A Yes.

4 Q Are those two your entries?

5 A No.

6 Q And do you have any idea whose entries they are?

7 A No.

8 Q All right. Down at the bottom of each one of  
9 these columns there are three boxes. The first one says  
10 first, the second one says second, and the third one says  
11 final. Am I reading that correctly?

12 A Yes.

13 Q And what are -- for this procedure on this day  
14 what were those three boxes intended to be used for?

15 A The first count would have been the count when the  
16 doctor begins to close the patient.

17 Q Explain for me how that happens. I am Nurse  
18 Challenger and I'm standing there doing whatever it is I'm  
19 supposed to be doing as a circulating nurse. Does  
20 Dr. Patterson announce that he's getting ready to close or  
21 can you-all just tell from watching what he's up to?

22 A No. You can tell.

23 Q You can tell?

24 A (Witness nods head affirmatively.)

25 Q And so you, without prompting, go through the  
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1 process of establishing the first count? He doesn't ask you  
2 to do it is what I mean?

3 A No, he does not ask you to do it.

4 Q Tell me how the first count is performed.

5 A The first count is performed -- the counts are  
6 always done the same way, the same fashion. You start at  
7 the field where the doctor is.

8 Q At the operative field?

9 A At the operative field. If he actually has  
10 sponges that are in the patient you have to count those and  
11 you work your way away from the sterile field to whatever is  
12 not sterile.

13 Q And who's doing that in this procedure?

14 A The scrub person.

15 Q And is that Ms. Seeley?

16 A Yes.

17 Q Does Ms. Seeley actually reach into the patient's  
18 body and start taking sponges out or does the doctor do  
19 that?

20 A The doctor does it.

21 Q And what does he do with them when he takes them  
22 out?

23 A He lies them on the patient most often.

24 Q And so she starts there and she starts pulling --  
25 she picks it up?

1 A Yes.

2 Q And what does she do with it?

3 A She picks them up and she puts them in a bucket.

4 Q And as she does that does she -- does she announce  
5 the count, one, two or do you just watch and keep track of  
6 it yourself?

7 A No. She does not count them as she's putting them  
8 in the bucket unless we're counting.

9 Q Okay. You lost me.

10 A Because as the case is going on they're removing  
11 and putting sponges, so that process goes on without  
12 counting them every time.

13 Q Okay. We're now at the time for the first count.

14 A Correct.

15 Q All right. How does that process start?

16 A When the doctor begins to close the patient a  
17 count is initiated by either myself or the scrub nurse,  
18 either one of us. If I am not, you know, observing what's  
19 going on then she can say that, you know, it's time to  
20 count, but it can be either one of us.

21 Q But the process is announced so that every body  
22 knows, okay, we're doing a first count; correct?

23 A Yes. Every one knows that you're counting.

24 MR. REDMOND: Who actually says? Who  
25 announces?

1 THE WITNESS: Either one of the two nurses.

2

3 BY MR. LEWIS:

4 Q Do you remember who announced in this case?

5 A No.

6 Q Tell me how that first count is physically done.

7 A The scrub person -- may I use this as an example?

8 Q Certainly. Absolutely.

9 A Let's say this is the patient. This board is the  
10 patient.

11 Q That's a yellow pad.

12 A And this is his abdomen.

13 Q That's a baggy.

14 A And then there's sponges maybe hanging out on the  
15 sides, and so she will visibly touch whatever it is she can  
16 see, sponges. She will visibly one, two, three, four, so  
17 forth until she's complete with counting everything on the  
18 field.

19 Q But she does not remove them?

20 A She does not remove them.

21 Q She just physically touches it and announces a  
22 sequential number?

23 A Correct.

24 Q Okay.

25 A And then she moves away from the patient to her  
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1 back table where there's often more sponges on her sterile  
2 field. She has to have a field on which she works on, and  
3 then she counts the remaining of her sponges.

4 Q The same way, just touching them and announcing a  
5 sequential number?

6 A Touching them and announcing them in a sequential  
7 form, and if there's any left in the bucket or in the room  
8 then I count those remaining and she verbalizes -- she  
9 witnesses that with me.

10 Q You mean if there are any outside of the sterile  
11 field?

12 A Correct.

13 Q All right. And that would be what, in a bucket?

14 A In a bucket or it could be in a plastic bag  
15 hanging where they've already been placed.

16 Q And in this case, Ms. Challenger, when that was  
17 done the number 15 was recorded in the first count box;  
18 correct?

19 A Correct.

20 Q And is that your hand?

21 A I don't know.

22 Q You can't tell one way or the other?

23 A No.

24 Q There's also a box there that says second. In  
25 this particular surgical procedure what was that box

1 intended to be used for?

2 A That would be used when the doctor is on the  
3 subcutaneous layer, the layer next to the skin.

4 Q And a recount occurs?

5 A A recount occurs.

6 Q Was that done in Mr. Riddick's case?

7 A Not -- no.

8 Q And can you tell me why?

9 A No, I cannot tell you why.

10 Q Is it unusual for there to be no second count?

11 A No, it is not really unusual because it is a --  
12 because the final count that we counted is actually the  
13 count we used for the subcutaneous layer.

14 Q This form appears to have a box for there to be  
15 three counts?

16 A Yes.

17 Q Number one, number two and final?

18 A Let me explain that to you.

19 Q Yes, ma'am.

20 A On some cases if you are doing deeper body  
21 cavities then you need to do three and a final count, such  
22 as a hysterectomy. There is a vaginal wall, then there's  
23 peritoneum, then there's subcutaneous. So because of the  
24 fact that this one there's not three -- it's not a deeper  
25 vault.

1 Q There aren't three levels?

2 A Right.

3 Q There's only two?

4 A Right.

5 Q Or actually the way this is set up, what, there's  
6 two?

7 A Right.

8 Q So for that reason count number two basically  
9 became the final count?

10 A Correct.

11 Q All right. Now, let's talk about the final count  
12 in this case. How is the final count performed? You've  
13 told me how the first count's done, and we've done that.  
14 And I take it because you came up with the number 15 that  
15 you were operating under the assumption that all the sponges  
16 that had gone into this patient were accounted for as of the  
17 first count?

18 A Correct.

19 Q How about the second count, tell me how -- how it  
20 is performed.

21 A By this time you have gotten down to the  
22 subcutaneous layer, the layer next to the skin.

23 Q You're referring to what Dr. Patterson is doing in  
24 the surgical field?

25 A Right.

1 Q Okay.

2 A So the scrub person goes to the field and she  
3 still looks around for any scrubs -- for any lap sponges or  
4 any anything right at the patient. However, the layers have  
5 been closed so that the subcutaneous layer is the one right  
6 next to the skin and you can visualize then. It would be  
7 clear to see anything at the subcutaneous layer, so she  
8 still begins to count from what she's looking at at the  
9 field and she works her way back. She uses the same  
10 process, but we have closed up everything except the subQ  
11 layer.

12 Q Does she again reach out and actually touch?

13 A Yes.

14 Q Does she remove them from the field or does she  
15 leave them where they be?

16 A If the doctor's still using them then she would  
17 not.

18 Q Do you remember in this case whether she left any  
19 or whether she removed them all?

20 A No, I don't remember.

21 Q In any event, when the lap tapes were counted a  
22 second time the same number was arrived at between you and  
23 Ms. Seeley, and that is 15?

24 A Fifteen was arrived at.

25 Q Okay. What was wrong with my question? You did  
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1 not agree with it the way you crafted your answer.

2 A Yes. I'm not sure who arrived at it.

3 Q Who wrote that 15 in the final box?

4 A I don't know.

5 Q You can't tell me if it's yours or someone else's?

6 A No.

7 Q Can you tell me who came up with the number 15?

8 A No.

9 Q It wasn't -- it wasn't you and Ms. Seeley working  
10 together like you described for me in coming up with the 15  
11 on your first count?

12 A It may have been.

13 Q Well, are there scenarios, Ms. Challenger, where  
14 just one of you performs the final count without observation  
15 or participation by the other?

16 A No. The count would have been done by two people.

17 Q And in this case who are my -- who are on my list  
18 of candidates?

19 A Anyone that is not scrubbed.

20 Q Okay. Who was in the room -- anyone that's not  
21 scrubbed. Why would Ms. Seeley be excluded from the  
22 process?

23 A Could be anyone -- Ms. Seeley and anyone who is  
24 not scrubbed.

25 Q And who would that list of people have been on  
Old Dominion Reporting

1 this procedure? Nurse Challenger, who else?

2 A Nurse Challenger, anyone who was not scrubbed  
3 along with Nurse Challenger.

4 Q Can you tell from reviewing the records or in any  
5 other method who those individuals were?

6 A Well, I do know that a surgical assistant joined  
7 the surgery after it was in the process.

8 Q That's the fellow you told me about earlier?

9 A That's true.

10 Q And he wasn't scrubbed?

11 A Initially, no.

12 Q Okay.

13 A And I'm not sure if there was anyone else who came  
14 in the room. I just know that this is not my signature or  
15 my number fives.

16 MR. REDMOND: You're talking about in the  
17 column of lap tape, the two last two fives?

18

19 BY MR. LEWIS:

20 Q Yeah. Which -- the last plus five with the  
21 subtotal of 15?

22 A Yes.

23 Q Is not your handwriting?

24 A Right.

25 Q So that tells us there's somebody else in the  
Old Dominion Reporting

1 operating room who's not scrubbed?

2 A Yes.

3 Q Because a scrubbed person is not going to be  
4 making entries on Exhibit Six?

5 A Yes.

6 Q All right. I just want to make sure I understand,  
7 Ms. Challenger, what you can and cannot tell me. Did you  
8 participate in the final count that concluded we had  
9 accounted for all 15 sponges?

10 A Quite frankly it's been so long ago I cannot  
11 remember.

12 Q You don't know one way or the other?

13 A No.

14 Q And Exhibit Six does not give you any help in  
15 understanding that answer?

16 A It confuses it.

17 Q Tell me why.

18 A Because of the fact that I see other entries here.

19 Q Let's continue down the page, Ms. Challenger.  
20 Under initial count you're noted as the circulating nurse.  
21 Your name is written in there; correct?

22 A Correct.

23 Q Is that your handwriting?

24 A Yes, it is.

25 Q And under second count your name is written in  
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1           there; correct?

2           A       That's correct.

3           Q       But there was no second count as defined by the  
4           count columns; correct?

5           A       Correct.

6           Q       And can you explain that discrepancy for me?

7           A       No, I cannot.

8           Q       Is that your handwriting --

9           A       Yes.

10          Q       -- where your name appears under second count?

11          A       Yes.

12          Q       Why did you write it in there if there was no  
13          second count?

14          A       I can't tell you that answer.

15          Q       And under final count you have again written your  
16          name in as the circulating nurse; correct?

17          A       That is correct.

18          Q       But it is your testimony this morning that that  
19          does not establish that you participated in the final count?

20          A       It establishes that I was a part of the count.

21          Q       So you were a part of the process that arrived at  
22          the number 15 that we see in the final box?

23          A       I was part of the process.

24          Q       You just can't tell me who else was part of the  
25          process?

1 A Correct.

2 Q Could have been Ms. Seeley?

3 A No.

4 Q Couldn't have been Ms. Seeley?

5 A No.

6 Q Could have been one of the surgical assistants?

7 A Could have been.

8 Q And could have been someone else whose name is not  
9 identified in the medical record?

10 MR. GERBER: Jim, I want to make sure I'm  
11 clear with your question.

12 MR. LEWIS: Yes, sir.

13 MR. GERBER: You're asking her who else  
14 participated in writing in the form or who else  
15 participated in the count itself?

16 MR. LEWIS: In the count itself.

17 MR. GERBER: Because I think she's already  
18 said Ms. Seeley participated -- would have  
19 participated in the count, but I got the sense  
20 you were asking about who may have participated  
21 such that they wrote in the record.

22

23 BY MR. LEWIS:

24 Q Yeah. I think that's probably what you thought I  
25 was asking you too, and it was not intended to be. Let's

1 not worry about who wrote anything down here. Let's just  
2 talk about who participated in the process that resulted in  
3 whoever wrote it writing the number 15 in final, okay. You  
4 were part of that process?

5 A Yes.

6 Q Ms. Seeley was part of that process?

7 A Yes.

8 Q And there may have been someone else involved as  
9 well?

10 A Yes.

11 Q You just don't know who?

12 A Yes.

13 Q Fair enough. What I would like for you to do,  
14 Ms. Challenger, is just go through the other pages that you  
15 marked for me as ones that -- what I asked you to do before  
16 the deposition started was to go through this group of  
17 medical records and put a yellow sticker on every page that  
18 you had some involvement in making the entries on either  
19 with a pen or pencil or electronically, and you've done that  
20 for me?

21 A Yes.

22 Q Our court reporter has written numbers on each of  
23 them. Let's go to Exhibit Number One. Take a look at that,  
24 and I'm going to look over your shoulder if that's okay.

25 MR. REDMOND: Excuse me, Jim. Before you do  
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1           that can I borrow the exhibit we've been looking  
2           at?

3           MR. LEWIS:   Yes.

4           MR. REDMOND:   The count sheet.

5           MR. LEWIS:   Yes.

6           MR. REDMOND:   And you're going to mark all  
7           these?

8           MR. LEWIS:   Yes, they're all going to be  
9           attached.  Do you want me to just take it out?

10          MR. REDMOND:   Yes.  They're not in any  
11          particular order?

12          MR. LEWIS:   No, they're not obviously.  
13          They're in the order they showed up in my  
14          notebook.

15  
16                       (There was an off-the-record discussion, after  
17                       which, testimony continues as follows:)

18

19       BY MR. LEWIS:

20           Q       Ms. Challenger, what I'm going to ask you to do is  
21           go through each one of these that you put a sticker on.  
22           They'll have a number on them.  Just refer to them by number  
23           and tell me what that page represents, and we're now looking  
24           at number one.

25           A       Number one represents the staff that was on the  
                          Old Dominion Reporting

1 case as well as the diagnosis.

2 Q The staff is -- at the top we got Annie?

3 A I'm sorry.

4 Q Go ahead.

5 A There's only a portion of number one that applies  
6 to me, and that is the bottom where she has written number  
7 one.

8 Q Okay.

9 A Where you see OR staff --

10 Q Yes.

11 A -- Intraop, that before does not involve me.

12 Q What is that above? What does it involve? Is  
13 that the prior procedure?

14 A It looks like same day admission unit is where  
15 they go before they come to surgery.

16 Q Okay. The bottom part of the page it says "02  
17 Intraop Page 01, OR staff"?

18 A Correct.

19 Q And it tells us his diagnosis is obstructive  
20 jaundice?

21 A Yes, then it gives the anesthesia providers, the  
22 OR staff, myself.

23 Q That's your name and Pam Seeley?

24 A Yes.

25 Q Okay. Now, we're going to Exhibit Number Two.  
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1           A     Number Two.

2           Q     Is that a continuation of Exhibit Number One?

3           A     Yes.

4           Q     Okay.

5           A     It also has the name of the patient as well as the  
6     staff.

7           Q     We see --

8           A     Ed McLaughlin at the top and Alan Smith, Deborah  
9     Challenger, and over to the right it describes what our  
10    roles are.

11          Q     And who makes the entries on Exhibit Number Two,  
12    Ms. Challenger, if you know?

13          A     I do.

14          Q     You do. I had understood earlier that Alan Smith  
15    came in as a result of this procedure being converted to an  
16    open, is that correct, or was he there -- from looking at  
17    Exhibit Two was he there from the beginning?

18          A     Looking at Exhibit Two he came in because he's SA2  
19    rather than SA1, and quite frankly, I know that there was a  
20    surgical assistant in the room scrubbed with Dr. Patterson.  
21    Without looking at this record I would not be able to tell  
22    you which one was which.

23          Q     Fair enough. So you don't know whether  
24    Mr. McLaughlin started or Mr. Smith started?

25          A     Well, looking at the record it looks like  
                  Old Dominion Reporting

1           McLaughlin started, okay. The next section -- and then it  
2           has resident no, and sales reps no.

3           Q       Do sales reps routinely participate in surgical  
4           procedures?

5           A       Yes. They came in, but they're not scrubbed.  
6           They don't participate in the procedure.

7           Q       They watch?

8           A       They observe.

9           Q       And advise?

10          A       They watch and advise. They don't participate in  
11          the surgery.

12          Q       Okay.

13          A       I guess I should have asked you how did you define  
14          "participate," okay. Intraop, Page Two --

15          Q       Yes, ma'am.

16          A       -- this tells a time that the setup began for the  
17          case.

18          Q       11:30 a.m.?

19          A       Yes, and then it ended at 11:35.

20          Q       Tell me this, Ms. Challenger, how are you actually  
21          making these entries? Is this -- is this a computer  
22          station?

23          A       Yes. Yes.

24          Q       And so you're just typing into a field on the  
25          screen?

1 A Correct.

2 Q And later that -- those fields are converted into  
3 pages like the ones we're looking at?

4 A Yes.

5 Q Do you participate in that process or is that done  
6 by some other process? And when I say that process, I mean  
7 converting your computer field to a piece of paper?

8 A Yes, I participate in that process.

9 Q You print it out?

10 A Yes.

11 Q At what stage? After the --

12 A After the patient has gone to recovery room.

13 Q Fair enough. Back to Exhibit Number Two, what  
14 else does this tell us?

15 A The time in the OR, SAU out in OR 11:43.

16 Q What's SAU mean?

17 A Same day -- I'm not sure. Same day admission  
18 unit. Same day admission unit I believe.

19 Q And what does 11:43 tell us, that he came into  
20 the --

21 A OR.

22 Q Into the OR at 11:43, okay.

23 A Identity confirmed, yes. By whom? It's BW.

24 Q Do you know who that is?

25 A No.

1 Q All right.

2 A Consent verified, yes; allergies confirmed, yes;  
3 latex, no; NPO, isolation, the H and P, history and  
4 physical, anesthesia begins at 11:43.

5 Q Let's go back up to consent verified. You put a  
6 "yes" there. Can you tell me how you verified Mr. Riddick's  
7 consent to this procedure?

8 A That there was a consent on the chart for the  
9 surgery.

10 Q A piece of paper that appeared to bear someone's  
11 signature?

12 A Yes, and I always ask the patient what it is that  
13 he's going to have done.

14 Q But Mr. Riddick was not of himself?

15 A So then his mother spoke up and told me.

16 Q Fair enough.

17 A Where are we? Isolation N/A, H and P, anesthesia  
18 begins at 11:43, surgery in at 11:55.

19 Q That means Dr. Patterson came in at 11:55?

20 A Yes.

21 Q Okay.

22 A Patient secured on the bed, yes, and admission  
23 status was inpatient, and then we're at O2 Intraop,  
24 Page Three, and it's more of the patient positioning and the  
25 devices used in which he's being positioned.

1 Q Okay.

2 A Positioned by DRC and EM.

3 Q Do you know who they are?

4 A Deborah Challenger and Ed McLaughlin.

5 Q Okay.

6 A Shave, prep, no; skin prep, yes; skip prep by DRC.

7 That would be myself.

8 Q Page number -- Exhibit Number Three?

9 A Oh, I'm sorry.

10 Q Is a continuation of one and two?

11 A Yes.

12 Q All right.

13 A The prep solution used.

14 Q Alcohol?

15 A Alcohol, and start time delay, no. Time out

16 verification was done at 12:04.

17 Q What's that?

18 A That is when we stop and identify the patient and

19 the procedure that we're going to do before the surgeon

20 makes an incision.

21 Q Okay.

22 A Then the incision time is at 12:06, and the next

23 section is a Flowtron cautery; Flowtron stockings, no. A

24 bovie was used and it tells the settings, 35 to 35, and it

25 says it was applied by DRC. That would be myself.

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1 Q And what does "applied by" mean? What did you  
2 actually do with a bovie?

3 A There is a pad that you use for coagulation. All  
4 current has to have a contact so it won't burn the patient.

5 Q Okay.

6 A And I placed the pad on the patient.

7 Q Fine. Please continue.

8 A X-rays taken, no. Section Two, Page Five,  
9 tourniquet, no. It doesn't say, but I know a tourniquet was  
10 not used on a gallbladder.

11 Q I would think not.

12 A Laser was not used.

13 Q And Exhibit Four is a continuation of one, two and  
14 three?

15 A Yes, and then we have the temperature, fluids and  
16 medications. Saline 3000 cc; warm irrigation; cell saver,  
17 no; Bair Hugger, no.

18 Q What's a Bair Hugger?

19 A Bair Hugger is a warming device that you use to  
20 warm a patient.

21 Q Okay. Genius name.

22 A Type and cross blood available, N/A, then we get  
23 down to medications. There's none there. Drain types,  
24 specimen, yes, and it is one permanent specimen. It is a  
25 gallbladder. Cultures none. Implants there's none.

1 Q Now, we're on five, and that again is a  
2 continuation of what we were watching before?

3 A Yes.

4 Q Now, on five at the top --

5 A It has his name.

6 Q His name, and then the next heading is entitled  
7 "OR counts"?

8 A Yes.

9 Q And the first entry is final sponge count correct  
10 and someone has typed in "yes." Who made that entry?

11 A Probably myself.

12 Q And final sharp miscellaneous count, yes. You  
13 made that entry as well?

14 A Yes.

15 Q Final instrument count yes, same question, same  
16 answer?

17 A Yes.

18 Q Down at the bottom of that section it says surgeon  
19 notified, and you wrote in "yes"?

20 A Where do you see that?

21 Q Here.

22 A Oh, uh-huh. Correct.

23 Q And what does that mean, Ms. Challenger?

24 A That the surgeon has been notified that the counts  
25 are correct.

1 Q And the conclusion that the counts are correct are  
2 as documented in Exhibit Six that we looked at earlier?

3 A That is correct.

4 Q All right. When would you have made the entries  
5 on Exhibit Five? After -- was this while Ms. Riddick was  
6 still in the operating room or would this have been  
7 something that you entered after he was removed?

8 A I probably made it while he was in the room.

9 Q Bottom half of Exhibit Six, what is that?

10 A The bottom half looks like it includes dressings,  
11 any local anesthesia that was used and the end of case, and  
12 it has four by fours, a Conform dressing, estimated blood  
13 loss, procedure stop time 1327. Surgeon is out of the room  
14 at 1330. Anesthesia ending time is 1340. Patient out at  
15 1340, transferred to PACU.

16 Q Once Mr. Riddick is transferred to PACU does he  
17 cease being your responsibility?

18 A After someone has accepted him and we have gotten  
19 vital signs from a recovery room nurse then they take on --  
20 we give them a report and then he ceases being -- after  
21 she's taken on the person.

22 Q That report is verbal?

23 A Yes.

24 Q And that report tells the people in the PACU what?

25 A The type of surgery he had, the type of dressing,  
Old Dominion Reporting

1 blood loss and all those things. Myself in conjunction with  
2 anesthesia gives a report.

3 Q Okay. Go ahead.

4 A What else is on here? This one doesn't have a  
5 number.

6 Q Should it?

7 A No. Then the next one is --

8 Q We're on Exhibit Seven. What is that?

9 A That is an instrument count.

10 Q Hold on. Well, it looks like it's preprinted?

11 A Yes.

12 Q Let's just -- for example, let's use Balfour  
13 retractor because that's the first one, and that's  
14 preprinted with the number one appearing in the column that  
15 says quota; correct?

16 A Correct.

17 Q What is that? What is -- what is the number one  
18 intended to tell the reader?

19 A That there is a Balfour retractor that comes on  
20 this tray.

21 Q This, Exhibit Number Seven, describes in part the  
22 surgical tray that is provided to Dr. Patterson and the  
23 surgical team?

24 A Yes.

25 Q Now, over to the right of -- let's just stick with  
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1 Balfour retractor. Over to the right under OR initial  
2 someone has written four in there. What does that mean?

3 A There's four pieces to the Balfour retractor.

4 Q Four components that make up one Balfour  
5 retractor?

6 A Correct.

7 Q There's also a far right-hand column. The title  
8 of it appears to have been somewhat obliterated by the  
9 copying process. Do you know what that column says?

10 A No, I do not.

11 Q Do you fill this sheet out, Exhibit Number Seven?

12 A Yes.

13 Q And is there a reason why you can't tell me what's  
14 in that right-hand column if you're the one who filled it  
15 out?

16 A I can't read it.

17 Q Neither can I. I was hoping you remembered.

18 Anything on Exhibit Number Seven make any reference to  
19 operative lap pads, sponges, those types of things or are  
20 they all just surgical instruments?

21 A On Exhibit Seven, no.

22 Q Okay. Let's go to eight. Same question. We got  
23 any lap pads or sponges on Exhibit Eight?

24 A No.

25 Q Down at the bottom of Exhibit Eight it appears  
Old Dominion Reporting

1 that there's an initial RN signature and a final RN  
2 signature; correct?

3 A Yes.

4 Q Are either of those yours?

5 A No.

6 Q Can you tell me who they are?

7 A No.

8 Q Let's go to Exhibit Nine. What is Exhibit Nine?

9 A They are more instruments.

10 Q And does that document bear your signature or your  
11 initials?

12 A No.

13 Q Is that document reflective of documentation  
14 confirming the accuracy of any sponge or lap pad counts?

15 A No.

16 Q With Exhibit Nine, Nurse Challenger, have we now  
17 reviewed every document in the group that I showed you that  
18 you participated in making entries on?

19 A Yes.

20 Q Are there any other documents that you're aware of  
21 in this patient's chart that are reflective of the process  
22 of making sure that all of the operative sponges and lap  
23 pads were accounted for before his abdomen was closed?

24 A Would you ask the question again?

25 Q Sure would, and I'll do it a little differently.  
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1 My goal this morning -- one of my goals is to make sure that  
2 you and I have discussed every document in this fellow's  
3 medical record that refers to the process that goes on in  
4 making sure that you get all the sponges out of this guy  
5 before he's closed up that went in during the surgery. You  
6 with me?

7 A Yes.

8 Q Are there any documents that you're aware of in  
9 Mr. Riddick's medical chart that refer to that process that  
10 you and I have not talked about?

11 A I don't believe so.

12 MR. LEWIS: Mr. Redmond?

13

14 BY MR. REDMOND:

15 Q Ms. Challenger, as I mentioned earlier, I  
16 represent Dr. Patterson in the case. I just have a few  
17 additional questions, and I apologize if some of them are  
18 repetitive. I have this cold and my ear is still blocked up  
19 a little bit, so I'm not hearing things as well as I usually  
20 do.

21 A Okay.

22 Q I'm going to take you back to the operating  
23 materials -- operating room materials count sheet, and I  
24 think we called this Exhibit Six if I remember right.

25 MR. LEWIS: Should be written on there.

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1 BY MR. REDMOND:

2 Q Yeah. There's a Number Six at the bottom  
3 right-hand corner even though it was the first document we  
4 talked about. I'm going to focus your attention to the top,  
5 very top of the sheet almost cut off. There's some numbers  
6 and it looks like some letters. Do you see that?

7 A Yes.

8 Q Can you tell whose handwriting that is?

9 A Looks like mine.

10 Q Can you read that for me?

11 A 11:43.

12 Q And what's that meant to -- what's that supposed  
13 to mean?

14 A That means to me that that's the time that we went  
15 in the room.

16 Q And how about adjacent to that?

17 A That's the time that we opened.

18 Q And what does that say?

19 A 12:48.

20 Q All right. And then underneath 11:43 there's  
21 something else written. What's that?

22 A I think it's 12:06.

23 Q And what's that represent?

24 A The incision time.

25 Q Let's get down to these series of columns with  
Old Dominion Reporting

1 things written in and lap tapes, Raytec and so forth, and I  
2 want to bring you over to the column that says "other  
3 sharps." Do you see that?

4 A Yes.

5 Q All right. It looks to me like somebody's written  
6 in something under the phrase "other sharps." Do you see  
7 that?

8 A Yes.

9 Q All right. What is that? Can you tell?

10 A No, I can't really tell what that is. I'm trying  
11 to decipher that. I can't tell.

12 Q Can you tell whether it's your handwriting or not?

13 A It looks like it.

14 Q All right. Let's go down into the column under  
15 lap tapes, the very last number 15, there's a circle around  
16 it.

17 A Yes.

18 Q All right. What's the circle supposed to mean?  
19 What's it there for?

20 A I don't know. Sometimes people put the circles  
21 there when they add to establish that that's the last --  
22 that was the last count for that.

23 Q The final number?

24 A That was the final number for that.

25 Q Okay. Because in the next -- or two columns over  
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1 under suture needles I see a circle not at the end but  
2 actually the second number written in so that wouldn't be at  
3 the last?

4 A No. It doesn't have to be -- it's the last thing  
5 that has to be added so you may see circles on count sheets.  
6 As you add them you circle them. As you add them you circle  
7 them. That's the last thing that has been added. Does not  
8 necessarily mean it's the last thing that has been added.

9 Q I'm having trouble understanding that difference.

10 MR. GERBER: It's a running total.

11 A It's a running total, and let's say it's 25 and  
12 then the next person that comes along they add a five and  
13 then they'll put 30 and a circle because that's the last  
14 thing that was added there. They just put circles because  
15 it's a habit for some people. Some people put circles, and  
16 some people do not put circles.

17

18 BY MR. REDMOND:

19 Q Do you?

20 A Sometimes I do, but most often I don't.

21 Q Do you know whether in the lap tapes column that  
22 circle around 15 is yours?

23 A No -- the circle?

24 Q Yes, ma'am.

25 A No, I don't know whether it's mine.

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1 Q How about in the column that says suture needles,  
2 do you know whether that circle's yours?

3 A No, I don't.

4 Q I was a little unclear. I understood that the  
5 plus five in the lap tapes column is not yours, not your  
6 handwriting? True?

7 A Correct.

8 Q It looks like there's some mark next to the five  
9 and somebody else's initials I guess, but I don't know. Do  
10 you have any idea whether that's -- what that might be?

11 A It looks like someone's initials.

12 Q Do you recognize those initials?

13 A No, I don't.

14 Q I was a little unclear when Mr. Lewis was asking  
15 you questions. The universe of people that would write --  
16 whose initials that could be who might write in that column  
17 would be you, Pam Seeley?

18 A No.

19 Q Okay. Just you?

20 A Myself and anyone who is not scrubbed.

21 Q And I never -- I'm not sure I ever understood who  
22 might those other people be.

23 A Not be scrubbed?

24 Q Right.

25 A It would be anyone who happened to come in the  
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1 room to help at a time when the doctor is asking for  
2 something and I may be busy doing something else, and so  
3 that could be anyone who is in the room as a part of the  
4 team that's not scrubbed at that time or someone from  
5 outside that room.

6 Q Just passing through essentially?

7 A Essentially passing through.

8 MR. LEWIS: Out in the hall.

9 A No. Often they come in to give you a break or  
10 something.

11

12 BY MR. REDMOND:

13 Q I understand. Well, of the people we know who  
14 were in the room, the only person that was unscrubbed would  
15 be Pam Seeley?

16 MR. LEWIS: No. She was scrubbed.

17 A No. She was scrubbed.

18

19 BY MR. REDMOND:

20 Q I'm sorry. I got that backwards. You were  
21 unscrubbed?

22 A Correct.

23 Q Who else was unscrubbed in the room?

24 A And at some point the second surgical assistant  
25 was unscrubbed.

1 Q Whether that was Alan or the other guy we're not  
2 sure which?

3 A Well, it appears to be that it was Alan that was  
4 unscrubbed.

5 Q So the people we know at least that were in the  
6 room operating room, those initials would most likely be you  
7 or Alan, and we know it's not you; right?

8 A I know that these fives are not mine.

9 Q Okay. That only leaves Alan of the people in the  
10 room? I mean, just using the logic; right?

11 A Of the people that we know about that's in the  
12 room.

13 Q Right. Is there any way for us to know who may  
14 have come through but wasn't originally in the room?

15 A I can't remember.

16 Q Of the documents that you reviewed -- the other  
17 documents that you reviewed with Mr. Lewis a few moments ago  
18 did that help you in any way to identify who this passing  
19 person could have been?

20 A No.

21 Q Would it be common for somebody to -- who's not  
22 otherwise documented in the chart come into the room or  
23 through the room to make an entry on the sponge count sheet?

24 A Yes.

25 Q That would be common?

1           A     Uh-huh.  It is my responsibility to document  
2           anybody that comes in the room though.

3           Q     And, well, you're telling me that you didn't  
4           document somebody in the room that came through?

5           A     Obviously or -- or not.

6           Q     We can't find it documented anywhere.

7           A     No.  No, we cannot.

8           Q     True?  True?

9           A     Oh, yes.  I'm sorry.

10          Q     That's okay.

11          A     I didn't --

12          Q     She has to have a verbal answer from you.

13          A     Yes.

14          Q     In these boxes, the bottom of the page where your  
15          signature is under circulating nurse, adjacent to that is a  
16          row of boxes under scrub nurse.  Okay?

17          A     Uh-huh.

18          Q     That would be Pam Seeley in this case?

19          A     Uh-huh.

20          Q     True?

21          A     Correct.

22          Q     All right.  What's the purpose of this second row  
23          of boxes?  Would that be so that the scrub nurse would  
24          correlate and check off on what you've counted?

25          A     I guess it would be to verify what I've counted,

1 but how could she do that if she's scrubbed?

2 Q Well, that's what I'm wondering. What would be  
3 the point of this box that said scrub nurse with these lines  
4 for somebody to sign unless it was there for somebody to  
5 verify the count? Can you think of any reason other than  
6 that?

7 A No.

8 Q In other cases where you've acted as a circulating  
9 nurse would there usually be somebody who would fill in with  
10 the signature under the scrub nurse category or not?

11 A No.

12 Q It usually was blank?

13 A Yes.

14 Q Then I guess on the form as we see stuff written  
15 down there's no way we can tell who verified or correlated  
16 the count with you; right?

17 A Correct.

18 Q But I think you told us that you would have  
19 counted together?

20 A Yes. That's correct.

21 Q All right. And the other counter would be who?

22 A The scrub person.

23 Q Here Pam Seeley?

24 A Correct.

25 Q I'm just trying to figure some of this stuff out.  
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1 Also on this form above the boxes we were just talking about  
2 on the left-hand column there's a line that says "counts" in  
3 bold. Do you see that?

4 A Yes.

5 Q All right. And then next to it it has two boxes  
6 that can be checked, one of two that can be checked. One  
7 box says "correct," the other box says "incorrect." Right?

8 A Correct.

9 Q Neither of those boxes are checked. You see that?

10 A Yes.

11 Q Do you know why that would be?

12 A No, I can't tell you why.

13 Q Is one of those supposed to be checked?

14 A Yes.

15 Q And who -- who would -- whose job would it be to  
16 check one of the boxes?

17 A Myself.

18 Q The next line underneath that says "surgeon  
19 notified of counts." You see that?

20 A Yes.

21 Q And, again, it has two boxes. One says "yes," one  
22 says "no." One of those boxes is supposed to be checked?

23 A Correct. Yes.

24 Q Do you know why none of them were -- either was  
25 checked?

1           A     No.

2           Q     And would that be your job or could it be somebody  
3 else's job?

4           A     Mine.

5           Q     On the column under suture needles there are a  
6 number of entries where it looks like it's either written  
7 over or a little harder to read. Do you see those?

8           A     Yes.

9           Q     Like under 19 there's something written in under  
10 that. I can't make it out. I guess it must be a ten since  
11 the next number is 29, but can you tell what else is written  
12 there?

13          A     Looks like plus ten.

14          Q     And is that your handwriting?

15          A     Yes.

16          Q     Okay. Then the very last number in that column is  
17 a 45, but it looks like it might have been something else  
18 underneath there or there's something underneath there. Can  
19 you tell if there is? I'm talking about this little thing  
20 right there.

21          A     Yes, it does.

22          Q     Okay. And can you tell what's underneath?

23          A     Thirty something.

24          Q     Is that your handwriting?

25          A     Underneath?

1 Q Either underneath or over top on the 45?

2 A I certainly can't tell about what's underneath,  
3 but it looks like 45 is.

4 Q Okay. Appreciate that. Have you talked to Pam  
5 Seeley at all after you were aware there was a lawsuit?

6 A No.

7 Q The paycheck you would get as a nurse working at  
8 Chesapeake General would that be from Chesapeake General?

9 A Yes.

10 Q All right. And the hours that you were scheduled  
11 on Saturdays were they always the same hours or did they  
12 vary sometimes?

13 A They were the same.

14 Q What was your usual shift?

15 A 7:00 to 3:00.

16 Q Give me just a second here. Do you remember the  
17 name of the person who hired you at Chesapeake General? I  
18 know it's a long shot, but you might.

19 A Meryl Wilson I think.

20 Q Meryl?

21 A Meryl Wilson.

22 Q And do you know -- it was a long shot. How about  
23 that?

24 A I think that's her name.

25 Q What was the position that she had? Do you know  
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1 the title of her position?

2 A I'll say she was the OR nurse manager. I'm not  
3 sure if that's her official title but --

4 Q Mr. Lewis claims that -- and it seems at least to  
5 be the case -- that there was a sponge that was retained in  
6 Mr. Riddick. That's sort of the whole lawsuit here. Do you  
7 have any idea how that happened when the sponge count sheet  
8 is correct?

9 A No, I don't.

10 MR. REDMOND: She's not going to testify to  
11 anything like that I assume; right? Megan, is  
12 she going to give any explanation?

13 MS. BRADSHAW: You might want to talk to her  
14 attorney.

15 MR. GERBER: I'm not a defendant in the  
16 case. She's not here as anything but a factual  
17 witness. Whether she's identified by any one of  
18 you-all as an expert is up to you-all, but as far  
19 as I'm concerned she's a factual witness.

20 MR. REDMOND: That's why I asked Megan. I'm  
21 not going to ask any more questions as long as  
22 she's not going to offer some theory.

23

24 BY MR. REDMOND:

25 Q I understand from your last answer you don't  
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1 really know. I just want to make sure that's the end of it.  
2 You don't have any theory that you can think of how this  
3 came about; do you?

4 A No.

5 MR. REDMOND: That's good enough for me.  
6 Thank you.

7 THE WITNESS: You're welcome.

8

9 BY MR. LEWIS:

10 Q Let me ask you this, Ms. Challenger, is there any  
11 other way that a sponge could have been left in this fellow  
12 other than a mistake made during the count?

13 MR. GERBER: Jim, I'm going to object to  
14 that question at this point because she's not had  
15 the benefit of understanding and appreciating all  
16 of the facts and circumstances that may lead up  
17 to this or even what followed to be able to offer  
18 that opinion.

19 MR. LEWIS: Are you telling her not to  
20 answer?

21 MR. GERBER: No. She can go ahead.

22 MS. BRADSHAW: And I'll just put an  
23 objection on the record. The same objection.

24 MR. LEWIS: That's fine.

25

1 BY MR. LEWIS:

2 Q Do you remember my question, Ms. Challenger?

3 A Start over again, please.

4 Q Okay. I want you to take as a given that -- I  
5 can't remember how many months later, but I can figure it  
6 out if you want me to -- Mr. Riddick came back in the  
7 hospital, was opened up and a sponge approximating what I'm  
8 holding in my hand was found inside of his abdomen. I want  
9 you to also assume that Dr. Patterson has already testified  
10 that that sponge was left in him during the procedure you  
11 and I have been talking about.

12 A Uh-huh.

13 Q My question is, as far as you know, is there any  
14 explanation for how that sponge was left behind other than a  
15 mistake being made by the people in the operating room  
16 performing the final sponge count?

17 MR. GERBER: Jim, can I fix your question  
18 then I won't have an objection to it?

19 MR. LEWIS: Yes.

20 MR. GERBER: Which is, is she aware of any  
21 facts that may exist?

22 MR. LEWIS: However you want to phrase it.  
23 You know what to I want know.

24 MR. GERBER: That may exist -- that may  
25 exist to indicate this happened in some other way

1 as opposed to does she have an opinion as to what  
2 the other ways may be?

3 MR. LEWIS: Fine.

4 MR. GERBER: So are you aware of any facts  
5 that exist that would allow you to conclude that  
6 this happened in any other way other than the  
7 scenario described by Mr. Lewis?

8 THE WITNESS: No.

9

10 BY MR. LEWIS:

11 Q Can you -- and I think Mr. Redmond asked you this,  
12 and if he did I apologize for asking it again. Why didn't  
13 you fill in count correct or count incorrect?

14 A I don't know.

15 Q And why didn't you fill in surgeon notified of  
16 count?

17 A I don't know.

18 MR. GERBER: And, Jim, we're talking about  
19 Exhibit Six you pointed to because it is filled  
20 in other places in the record?

21 MR. REDMOND: In fairness she did testify to  
22 that on another record.

23 MR. LEWIS: No. I agree. Here's what I'm  
24 going to do, rather than conclude this deposition  
25 I'm going to continue it for one very narrow

1           purpose, and that is I want to see the original  
2           of Exhibit Six, and if that raises a couple of  
3           additional questions -- this is the original?

4           MR. GERBER:  It's a colored copy of the  
5           original.

6           MR. LEWIS:  Well, let's mark it.

7           MR. GERBER:  If that will satisfy you.

8           MR. LEWIS:  It may.

9           MR. GERBER:  And we can conclude today.

10          MR. LEWIS:  It may.  I appreciate you  
11          whipping it out so timely.

12          MR. GERBER:  Don't want to come back, and I  
13          don't want Ms. Challenger to have to come back.

14          MR. LEWIS:  I know Ms. Challenger doesn't  
15          want to come back.

16          MR. REDMOND:  The sheet itself is this same  
17          color?  It's not canary colored or anything like  
18          that?

19          MR. GERBER:  I am told that is an exact  
20          color copy of what's in the chart.

21          MR. REDMOND:  Including the background color  
22          best you know?

23          MR. GERBER:  Best I know, and I've got to  
24          believe it's an accurate copy because of the  
25          blue.

1 MR. REDMOND: The blue.

2 MR. GERBER: Yeah.

3 MR. LEWIS: Let's make it 6-A.

4

5 (Color Copy of Operating Room Materials Count  
6 Sheet was marked as Challenger Deposition Exhibit  
7 Number 6-A.)

8

9 BY MR. LEWIS:

10 Q Ms. Challenger, Mr. Gerber had kindly produced  
11 what has now been marked 6-A, which is a color copy of what  
12 you and I have been talking about earlier today as six, and  
13 it looks like the words "open" --

14 A Cholecystectomy.

15 Q -- "cholecystectomy" was written on the top in a  
16 pen with different color. Do you agree with that  
17 observation?

18 A Yes.

19 Q Can you explain that for me?

20 A Explain?

21 Q Why it's in a different color than the words "lap  
22 chole" next to it or the date 6/25 of '05?

23 A It's a different pen.

24 Q That's a great answer. Is it your handwriting?

25 MR. REDMOND: You can tell he's been to law  
Old Dominion Reporting

1 school.

2

3 BY MR. LEWIS:

4 Q Is the blue in your hand on the top your  
5 handwriting?

6 A Yes.

7 Q Why did you use another pen?

8 A I don't know.

9 Q Was the entry made on 6/25 of '05  
10 contemporaneously with the other entries?

11 A Yes.

12 Q And the only other place I see you used that pen  
13 or somebody did is under suture needles column?

14 A Yes.

15 Q That entry that Mr. Redmond was asking you about  
16 earlier, the 45 that appears on the column is in blue?

17 A Yes.

18 Q Is it written over a different number?

19 A Yes.

20 Q What number is it written over?

21 A Thirty, looks like, four to me.

22 Q And can you explain that write-over for me?

23 A Because the entry above it was something else  
24 perhaps. Do you see right above the 45 there is the eight,  
25 but above that there is -- is that a --

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1 Q I think we said earlier it was 37 even though it's  
2 unclear. We got to that number by deduction.

3 A Right, but I mean under it. See under there?

4 Q Plus eight?

5 A No. Under it.

6 MR. GERBER: No.

7

8 BY MR. LEWIS:

9 Q I see. I see.

10 A Under the 37.

11 Q Can you explain that for me?

12 A It looks like a 30.

13 Q Are they your entries?

14 A As far as I know.

15 Q Do you have any recollection as to what was going  
16 on there? Poorly worded question, but you understand what  
17 I'm asking you?

18 A No, I don't have any recollection as to what was  
19 going on other than the fact that trying to get the suture  
20 correct.

21 Q Well, since this isn't a retained suture case I'm  
22 not going to waste a lot of your time with it, but it looks  
23 like you went back and changed the numbers?

24 A Right.

25 Q Can you tell me why?

1           A     The numbers were --

2                   MR. GERBER:  And if you don't remember,  
3           Deborah, you just tell them.

4           A     I really don't.

5

6           BY MR. LEWIS:

7                   Q     Fair enough.  How about the bottom final count  
8           under suture needles it looks like you took a blue pen and  
9           wrote over what had already been written in with a black  
10          one; is that correct?

11          A     Yes.

12          Q     And can you tell me why you did that?

13                   MR. GERBER:  Jim, it appears on the black  
14          and white copies there are initials next to that  
15          one as well if you want to ask her about that.

16

17          BY MR. LEWIS:

18                   Q     Oh, they sure do.  Do you know whose initials  
19          those are?

20          A     It looks like my initials.

21                   Q     So you went back and wrote something over the  
22          original entry and initialed it.  Am I reading that  
23          correctly?

24          A     Correct.

25                   Q     Can you tell me why you did that?

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1           A     Because when you -- when I make an error on a  
2 chart I initial it. If I'm correcting it I make an initial  
3 to indicate that I'm the one that has done that.

4           Q     So what you're telling me as I understand it,  
5 Ms. Challenger, is that you determined that your suture  
6 needle count entry was incorrect. You came back and  
7 corrected it and initialed it?

8           A     No. Incorrect, no.

9           MR. GERBER: Jim, I'm going to object to the  
10 question anyway. I don't know that you  
11 established that the number that's underneath was  
12 initially hers.

13  
14 BY MR. LEWIS:

15          Q     Was the number underneath initially yours?

16          A     Which number? Oh, the bottom -- the one on the  
17 bottom?

18          Q     Down here. Final count there's a number written  
19 in black and then overwritten in blue. Was the number  
20 originally written in black your number, your entry?

21          A     I don't know.

22          Q     But the overwrite in blue is?

23          A     Yes.

24          Q     And was the overwrite an action by you to correct  
25 what you determined to have been an incorrect number

1 initially? Were you fixing a wrong number?

2 A Fixing a wrong number?

3 Q Poorly worded. Was the original entry incorrect?

4 A It must have been if I changed it.

5 Q Do you have a recollection, Ms. Challenger, as to  
6 how that happened?

7 A No.

8 MR. LEWIS: I think I'm done. Mr. Redmond?

9 MR. REDMOND: No more questions from me,  
10 ma'am. Thank you.

11 MR. LEWIS: Thank you for your time,  
12 Ms. Challenger.

13 MR. GERBER: We will read and sign.

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15 (The witness was excused.)

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1 COMMONWEALTH OF VIRGINIA AT LARGE, To-Wit:

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I, Shannon A. Crittenden-Mann, a Notary  
Public in and for the Commonwealth of Virginia at  
Large, whose commission expires May 31, 2012, certify  
that the foregoing deposition of DEBORAH CHALLENGER, RN,  
was duly taken and sworn to before me at  
the time and place for the purpose in the caption  
mentioned, and that the foregoing is a true and  
correct transcript to the best of my ability of the  
testimony given by the witness.

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I further certify that I am not a relative or  
employee of attorney or counsel of any of the parties  
or financially interested in the action.

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Given under my hand this \_\_\_\_\_ day of  
\_\_\_\_\_, \_\_\_\_\_.

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Notary Public

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Registration No. 217036

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