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Record No. 4969

In the Supreme Court of Appeals of Virginia at Richmond

GEORGE J. CARROLL

v.

ROY ROBERTSON RICHARDSON, AN INFANT, &C.

FROM THE CIRCUIT COURT OF THE CITY OF SUFFOLK

RULE 5:12—BRIEFS.

§5. Number of Copies. Twenty-five copies of each brief shall be filed with the clerk of the Court, and at least three copies mailed or delivered to opposing counsel on or before the day on which the brief is filed.

§6. Size and Type. Briefs shall be nine inches in length and six inches in width, so as to conform in dimensions to the printed record, and shall be printed in type not less in size, as to height and width, than the type in which the record is printed. The record number of the case and the names and addresses of counsel submitting the brief shall be printed on the front cover.

HOWARD G. TURNER, Clerk.

Court opens at 9:30 a. m.; Adjourns at 1:00 p. m.

IN THE

Supreme Court of Appeals of Virginia

AT RICHMOND.

Record No. 4969

VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Wednesday the 26th day of November, 1958.

GEORGE J. CARROLL, Plaintiff in Error,

against

ROY ROBERTSON RICHARDSON, AN INFANT, &C., Defendant in Error.

From the Circuit Court of the City of Suffolk

Upon the petition of George J. Carroll a writ of error and *supersedeas* is awarded him to a judgment rendered by the Circuit Court of the City of Suffolk on the 11th day of June, 1958, in a certain motion for judgment then therein depending wherein Roy Robertson Richardson, an infant, etc., was plaintiff and the petitioner was defendant; upon the petitioner, or some one for him, entering into bond with sufficient security before the clerk of the said circuit court in the penalty of twelve thousand dollars, with condition as the law directs.

RECORD

* * * * *

Filed in the Clerk's Office the 9th day of January, 1957.

Teste:

WM. S. HOLLAND, Clerk
By AUDREY H. JOHNSON, D. C.

To George J. Carroll:

Plaintiff moves the Circuit Court of the City of Suffolk, Virginia, for judgment against you in the sum of Fifty Thousand ($50,000.00) Dollars, for this, to-wit:

(1) Prior to the 13th day of January, 1955, and ever since, you, jointly, with Louise Obici Memorial Hospital, Incorporated, operated and controlled a certain laboratory located in Louise Obici Memorial Hospital, in Nansemond County, Virginia, for which joint operation and control, you received a share of any and all monies paid by any person *useing* the services of said laboratory;

(2) On or about the 13th day of January, 1955, upon Roy A. Richardson, father of the infant plaintiff, agreeing to pay any and all charges of defendant, and said corporation therefor, (which charges were paid by Roy A. Richardson), plaintiff, Roy Robertson Richardson was admitted as a patient in said hospital for medical care and services to be rendered him by you and said hospital in said laboratory, which medical care and services you agreed to perform and it was your duty to perform with reasonable skill

page 2 } and care;

(3) Defendant undertook and agreed to extract blood from the plaintiff, in said laboratory for the purpose of making certain tests on said blood;

(4) Defendant carelessly and negligently selected, retained, and assigned for the purpose of withdrawing blood from said infant plaintiff, an agent and employee who was neither a qualified nurse nor a medical doctor and was incompetent and unqualified to perform said assigned task, which facts were known to the defendant;

(5) Said agent and employee, after being assigned and ordered so to do by defendant, did, in a careless, reckless and highly negligent manner, without using reasonable care and caution thereabout, extract blood from the body of the said

infant plaintiff, and as a proximate result thereof, said infant plaintiff lost consciousness, fell to the floor, broke his jaw, permanently lost many of his teeth, was permanently injured in and about his head, face, and body, externally and internally, suffered abrasions, contusions, concussions, lacerations, was permanently mutilated and disfigured, of which Roy Robertson Richardson suffered and will ever hence continue to suffer great physical pain, mental anguish, humiliation and embarrassment; and has been and will ever hence be required to have many painful operations to try and improve his said condition, resulting from said accident;

(6) As a further proximate result of your said negligence, planitiff will be required after becoming over twenty-one (21) years of age, to expend large sums of money for page 3 } the services of doctors, dentists, hospitalization, drugs, and medicines and other necessary services in order to attempt to cure his said injuries.

ROY ROBERTSON RICHARDSON,
AN INFANT WHO SUES BY HIS
FATHER AND NEXT FRIEND,
ROY A. RICHARDSON.
By E. C. FERGUSON, JR.
Of Counsel.

• • • • •

page 8 } INSTRUCTION P1.

The Court instructs the jury that if you find in favor of the Plaintiff then in ascertaining the amount of damages that he should be awarded you shall take into consideration the bodily injuries and disabilities sustained by him, if any, the permanent and temporary character thereof, if any, the inconvenience pain and suffering caused to the Plaintiff by said injuries, if any, and the impairment resulting from said injuries sustained by him as a result of the accident in question, if any, such damages, however, not to exceed the amount asked for in the motion for judgment.

Granted.

J. K. H.

page 9 } INSTRUCTION P-2.

The Court instructs the jury that if you believe by a pre-

ponderance of the evidence that the technician, Ann Bunch Jordan, was guilty of negligence which was the proximate cause of the injuries to the Plaintiff, then you should find for the Plaintiff against the Defendant, Dr. Carroll, and fix his damages in accordance with Instruction P-I, unless you shall further believe from the evidence that Plaintiff was guilty of negligence which proximately contributed thereto.

Granted.

J. K. H.

page 10 } INSTRUCTION P-3.

The Court instructs the jury that if the Defendant relies upon contributory negligence of the Plaintiff as a defense in this case, then such contributory negligence must be shown by a preponderance of the evidence.

Granted.

J. K. H.

page 11 } INSTRUCTION P-4.

The Court instructs the jury that it was the duty of the technician who withdrew blood from the Plaintiff to exert and to use in the extraction of blood from the Plaintiff such reasonable and ordinary skill and diligence as doctors and technicians practicing in similar localities use in the extraction of blood in like cases at approximately the same time of the accident in question, and if you, the jury, believe by a preponderance of the evidence that the technician failed so to do, then the Defendant is guilty of negligence.

Granted.

J. K. H.

page 12 } INSTRUCTION D-1.

The Court instructs the jury that the injury suffered by Roy Robertson Richardson raises no presumption of negligence on the part of Anne Bunch Jordan, or on the part of Dr. Carroll. The burden of proof is upon Roy Robertson Richardson to show by a preponderance of the evidence that

Anne Bunch Jordan was negligent, and that such negligence was the proximate cause of the fall by which Roy Robertson Richardson was injured, and if such negligence is not shown, the defendant, Dr. Carroll, is not liable for the injuries to Roy Robertson Richardson.

page 13 } INSTRUCTION D-2.

The Court instructs the jury that it was the duty of Roy Robertson Richardson to exercise ordinary care for his own safety, and that if he failed to use such care at the time a blood sample was taken from his arm this would constitute negligence on his part; and if the jury believe that such negligence on his part proximately contributed to the fall by which he was injured, he can not recover from Dr. Carroll.

Granted.

J. K. H.

page 14 } INSTRUCTION D-3.

The Court instructs the jury that a physician or technician is not an insurer of the patient and is only required to exercise the same degree of care and skill exercised by physicians and technicians in good standing engaged in the same general line of practice in the same locality and the same general vicinity. And if in this case the jury believe the technician who drew the blood sample exercised such degree of care and skill, the plaintiff should not recover.

page 15 } INSTRUCTION D-5.

The Court instructs the jury that if they believe from the evidence that the plaintiff in his own conduct or in his failure to make disclosures to the technician as to his physical condition at the time the blood was taken that an ordinarily prudent person would make under similar circumstances, the plaintiff was guilty of negligence, and if such negligence proximately contributed to his injury, then he can not recover.

Granted.

J. K. H.

page 16 } INSTRUCTION D-6.

The Court instructs the jury that where damages are claimed for injuries which may have resulted from one of several causes, for one of which the defendant is responsible, and for the others of which he is not responsible, the plaintiff must fail if his evidence does not show that his damages are produced by the cause for which the defendant is responsible. And the plaintiff must fail if it is just as probable that the damages were caused by one as by another, since the plaintiff is bound to make out his case by a preponderance of evidence.

The Court further instructs the jury that if they can not tell from a preponderance of the evidence, that is to their reasonable satisfaction, whether the injury was caused by negligence for which Dr. Carroll is responsible, or whether it was caused by contributory negligence for which Roy Robertson Richardson is responsible, or whether the injuries were brought on by some means which have not been proved, then the plaintiff should not recover.

Granted.

J. K. H.

page 17 } INSTRUCTION D-7.

The Court instructs the jury that if they believe from the evidence that the student technician, Anne Bunch Jordan, was guilty of negligence, yet if they further believe that Roy Robertson Richardson was guilty of negligence which proximately contributed to his injury, Roy Robertson Richardson can not recover for his injuries.

Granted.

J. K. H.

page 18 } INSTRUCTION D-4.

The Court instructs the jury that if Roy Robertson Richardson was subject to blanking out spells immediately preceeding the time the blood test was made and if his mother, Page H. Richardson, knew of such blanking out spells, it was their duty to tell the laboratory technician, or someone in charge of the pathology laboratory at Louise Obici Hospital of the occurence of such spells, and the failure to do so constituted contributory negligence on the part of Roy

Robertson Richardson, and if such negligence proximately contributed to the fall in which he was injured, Roy Robertson Richardson can not recover damages from Dr. Carroll.

Refused.

J. K. H.

* * * * *

page 20 } Virginia:

Circuit Court of the City of Suffolk, on Friday, the third day of January, in the year of our Lord, one thousand nine hundred and fifty-eight:

* * * * *

This day came again the parties, and their attorneys, and came again the jury, who, having been duly sworn to well and truly try the issue joined between the parties, pursuant to order entered in this action on yesterday, January 2, 1958, and after having fully heard the evidence, received the instruction of the Court, and having heard the argument of counsel, retired to their room to consider of their verdict, and after some time returned into Court with the following verdict, to-wit: "We the Jury find the verdict in favor of the Plaintiff in the amount of $10,000.00 damages. R. W. Dudley, Foreman."

Whereupon, counsel for the defendant moved the Court to set aside the verdict of the jury on the grounds that it is without sufficient evidence to support it, and contrary to the evidence in the case, and contrary to the law in the case, and on the ground that the verdict is excessive.

And the hearing on the said motion is hereby continued.

* * * * *

page 21 }

* * * * *

This day came the parties, by counsel, and the Court having heard arguments upon the motion heretofore made by the defendant to set aside the verdict in this cause, doth overrule said motion and sustain the verdict of the jury, and thereon doth render judgment that plaintiff recover of defendant the

sum of Ten Thousand ($10,000.00) Dollars, with legal interests thereon from January 3, 1958, until paid, and the costs of these proceedings, to which action of the Court defendant excepted, and the defendant having indicated his intentions to apply to the Supreme Court of Appeals for a writ of error and *supersedeas,* it is ordered that execution upon said judgment be suspended for a period of sixty days hence, upon defendant giving bond as required by law, in the penalty of $12,000.00.

Enter this 11th day of June, 1958.

JOHN K. HUTTON, Judge.

* * * * *

page 24 }

* * * * *

NOTICE OF APPEAL AND ASSIGNMENTS OF ERROR.

To William S. Holland, Clerk of the Circuit Court of the City of Suffolk, Virginia.

The defendant hereby gives notice of his intention to appeal to the Supreme Court of Appeals of Virginia from the final order entered June 11, 1958, in this action at law, by notice of motion for judgment, that he will apply for a writ of error and *supersedeas,* and assigns the following errors:

That the Court erred:

(1) In not striking out the evidence introduced for the plaintiff, upon motion of counsel for defendant, on the ground that such evidence shows the Pathological and Clinical Laboratories of Louise Obici Memorial Hospital, a corporation, were conducted by said corporation and by the defendant, George J. Carroll, as a joint enterprise or partnership, and said corporation was not joined as a party defendant in this action.

(2) In granting the motion made by plaintiff's counsel within the hearing of the jury trying this action that a nonsuit be taken in plaintiff's action against Louise Obici Memorial Hospital, a corporation, an action at law then pending in this Court and set for trial on the same day together with the trial in this action, both actions growing out

of the same circumstances, thereby giving the jury the implication that the hospital could not be liable for damages to plaintiff, but that defendant, Dr. George J. Carroll, might be liable to plaintiff.

(3) In not striking out the evidence introduced for the plaintiff, on the ground that no negligence was page 25 } proved for which the defendant is responsible, and on the further ground that plaintiff, Roy Robertson Richardson, was shown to have been guilty of contributory negligence as a matter of law.

(4) In not setting aside the verdict of the jury as contrary to the law and the evidence, without evidence to support it, and plainly wrong, and not entering final judgment for defendant, or granting a new trial, and in entering judgment for the plaintiff.

(5) In granting Instructions P-1 and P-2, offered by the plaintiff, this assignment being as to each of such instructions.

(6) In refusing to grant Instruction D-4, which was offered by defendant, and refused by the Court.

You are further requested to make up the record in this action promptly in accord with paragraph 5, of Rule 5:1, of the Supreme Court of Appeals of Virginia for appellate proceedings.

Respectfully,

GEORGE J. CARROLL
By MARSHALL ANDREWS
Counsel for defendant,
National Bank of Suffolk Building
Suffolk, Virginia.

Filed in the Clerk's Office of the Circuit Court of the City of Suffolk, Virginia August 6, 1958.

WM. S. HOLLAND, Clerk
By AUDREY H. JOHNSON, D. C.

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page 2 } Mr. Ferguson: Before we select the jury I'd like to say that there are two cases pending before the Court today, and as to the case against Louise Obici Memorial Hospital, we'd like to take a nonsuit and let the other

case against Doctor Carroll stand. We'll try that today for the reasons heretofore assigned to the pretrial conference.

* * * * *

The Court: Can you get along with two strikes apiece?
Mr. Ferguson: I can, Your Honor.
The Court: What about you Mr. Andrews?
Mr. Andrews: I can, yes, sir.
After seating of the jury panel, counsel for the plaintiff, Mr. Ferguson, made the following motion: I'd like to move for exclusion of the witnesses.
The motion was granted.
Counsel for both sides made opening argument.
Mr. Ferguson: Your Honor, at this time I'd like to introduce into evidence the agreement, which by agreement of counsel, was in existence between Doctor Carroll and Louise Obici Memorial Hospital at the time this incident occurred.
The Court: I'll make that Exhibit P-1.

page 3 }

* * * * *

GIBSON HOWELL,
a witness for the plaintiff, having first been duly sworn, took the stand and testified as follows:

Examined By Mr. Ferguson:
Q. What is your name, sir?
A. Gibson Howell.
Q. Where are you employed, sir?
A. Louise Obici Memorial Hospital.
Q. In what capacity?
A. As administrator.
Q. I hand you an agreement here which has just been marked Exhibit P-1 and ask you to glance at that, are you acquainted with that agreement between the hospital and Doctor Carroll?
A. Yes, sir.
Q. Now, at the time that this occurrence took place on the 13th day of January, 1955, would you simply tell the jury first was Doctor Carroll out there at the hospital at that time?

Gibson Howell.

A. I was out of town the day the incident oc-
page 4 } curred, so I would not be in a position to state.

Q. Now, what supervision, if any, did the hospital under that agreement take over the nurses and technicians in Doctor Carroll's department?

A. The hospital by agreement with Doctor Carroll pays the salaries of the technicians. He has, under the contractual agreement, the right of selection and of discharge. I suppose that answers your question.

Q. Who's responsible for their supervision of the work in that department?

A. The pathologist, Doctor Carroll.

Q. Who's responsible for selecting the methods and procedure used in this department?

A. The pathologist, Doctor Carroll.

Q. Who's responsible for seeing that the methods and procedures are carried out?

A. Doctor Carroll.

Q. Was there any control over the nurse by the hospital —over the technician?

A. The hospital in this program agrees to furnish room and board for the particular person that you are talking about—

Q. Did you know—

A. And uniforms.

Q. Who was the technician in the laboratory that
page 5 } took the blood of Roy Richardson? Do the hospital records show that, sir?

A. I don't—I can't give you the name right offhand, but she was a student in training at the time.

Q. She was not a registered nurse?

A. No, she was no registered nurse.

Mr. Andrews: Just a minute, Mr. Howell hasn't said whether or not he knows who did this work. I don't think he can be questioned about that.

The Court: Subject to later proof that she did the work, I'll permit the evidence to go in.

Examination By Mr. Ferguson Continued:

Q. I hand you a picture and ask you, is this the young lady, if you know her by face?

A. Yes, sir, I know her, the name had slipped me at the time; Miss Bunch.

Gibson Howell.

Q. Miss Bunch, is that the correct name?
A. Yes.
Q. Do you know whether at the time this took place that Doctor Carroll was actually receiving 40% of all gross receipts in this department under this agreement?
A. Yes, sir.

Mr. Ferguson: Your witness.

CROSS EXAMINATION.

page 6 } Examined By Mr. Andrews:
Q. The laboratory which has been mentioned is operated jointly by the hospital and by Doctor Carroll, is it not?
A. By definition the pathologist under the contract that has been presented agrees to furnish his professional services, in the medical sense, in the supervision and control of the laboratory in return for the percentage mentioned.
Q. Does the pathologist, in this case Doctor Carroll, confer with your hospital's board of directors from time to time as to the management of that department?
A. Not as to management; he has the right to confer. The relationship existing between Doctor Carroll and the hospital are usually handled in conference between my office and him.
Q. Are there conferences as to policies of that department?
A. Our conferences usually involved the question of salary scales and purchases of equipment.
Q. Is all of the equipment furnished by the hospital?
A. Yes, sir.
Q. And you said that this young lady did receive room and board and uniforms and instructions, is that considered compensation during that period?
page 7 } A. We furnish the same kind to these technicians under consideration as we do to student nurses. They live in the nurses' residence and these young ladies are subject to the same social control as to the coming in at certain times.
Q. Did the management of the hospital know the way in which Doctor Carroll's department was operated and the procedures used in taking blood tests and other tests in his department?
A. The management of the hospital is lay in the sense as contrasted to medical and, therefore, would only be in a

position to have a lay knowledge of the procedures to which you refer.

Q. Did they have such knowledge?

A. In the usual sense, yes.

Q. And did you as administrator have that knowledge?

A. I think so, sir.

Q. You have been administrator of other hospitals, have you not Mr. Howell?

A. One other.

Q. Did you and did the board of directors or other managing board of the hospital know that student technicians were allowed to make some tests of the nature of blood test, sometimes supervised and sometimes not?

page 8 } A. We knew the student technicians were allowed to make tests presupposed to be commensurate with their attained skill.

Mr. Andrews: That's all.

RE-DIRECT EXAMINATION.

Examination By Mr. Ferguson:

Q. Did you know or did the hospital know at that time that student technicians were giving blood tests or with drawing blood from patients without the supervision of a qualified technician or a qualified nurse, graduate technician, or graduate nurse, or without the supervision of a doctor?

Mr. Andrews: I object to that question; it is his witness on direct examination and in a situation such as this he is presupposing several things that have not been proved.

The Court: Didn't you pursue the same inquiry?

Mr. Andrews: Yes, sir.

The Court: You have asked if he was acquainted with the procedure, and now he's asked him on the same line of inquiry. I don't know what your objection would be to that.

Mr. Ferguson: I will break it down in three questions.

The Court: His objection is that your question presupposes a factual thing that has not been proved.

page 9 } That's the line of his objection. You suggest something in asking your question that counsel says has not yet been proved.

Mr. Ferguson: The reason I asked it is because Mr. Andrews just asked if he knew the blood—

Mrs. Page Richardson.

The Court: The line of inquiry is all right; very proper. You asked him if he knew that certain things existed and his objection is that you haven't proved that certain things existed.

Mr. Andrews: I note the objection if it's offered.

The Court: Go ahead.

Examination By Mr. Ferguson cont'd:

Q. Was any procedure for the extraction of blood by a student technician without supervision of either a registered nurse or a graduate technician or a medical doctor ever submitted to the hospital by Doctor Carroll?

A. No, sir.

• • • • •

page 40 } MRS. PAGE RICHARDSON,

a witness in behalf of the plaintiff, having been first duly sworn, took the stand and testified as follows:

Examined By Mr. Ferguson:

Q. What is your name?

A. Page Richardson.

Q. You are the mother of the plaintiff in this action?

A. Yes, sir.

Q. On January the 13th, did you take your son to the Pathology Department of the Louise Obici Memorial Hospital in Nansemond County?

A. Yes, sir.

Q. Why did you take your son out there; at whose request?

A. Dr. Edward Joyner.

Q. When you arrived at the hospital, would you tell the jury exactly what happened from the time you got into the hospital until the time of the injury to your son?

A. Well, we arrived at the hospital and stopped by the switchboard to ask where to go and not being familiar with the hospital, and she directed us to what was the laboratory, I believe, and we stepped to that door and found that they had an appointment for Bob. It was 8:30 in the morning and from there we went into the room next door

page 41 } to the laboratory, which was Dr. Carroll's office, I believe.

Q. Who was present at that time?

A. Well, at the time I didn't know Miss Bunch, I believe she was, but she was there and I believe there was another

woman in the laboratory, but I didn't meet her or have an exchange of words with her or anything. Miss Bunch come out and went into Dr. Carroll's office with us. His secretary was present at the time and seated behind the desk.

Q. Did you know her?

A. Yes, I knew her.

Q. What is her name?

A. I don't know, but she was a Wilson and she lived here in Suffolk, but she's a Mrs. Somebody now. I don't really know. I knew her as Wilson.

Q. What occurred when you got in the office?

A. I took a seat at the end of a little table, which was up against the wall, and Bob took a seat beyond the table.

Q. How did he seat himself at that time?

A. He seated himself straddle the chair with the back of the chair in front of him. My back was to the wall and his side was toward the wall.

Q. Did anyone at that time give him any instructions as to how he was to sit, or what he was to do?

A. No.

Q. What happened next?

page 42 } A. She busied herself, Miss Bunch, at the table with the needles and whatnot, and he rolled up his sleeve and she took the blood from the arm. As she removed the needle; she turned to the table to put the needle down, my eye somewhat followed her, she was between us and as she turned her side to him to put the needle down, he fell, he, chair and all, on the floor practically at my feet.

Q. The chair went over and he went over, did the nurse ask him any questions or ask you anv in any way?

A. There was no question of any kind.

Q. Did the nurse give him any instructions of any kind—what to do?

A. No.

Q. Did she ask him if he would change his position in the chair?

A. No.

Q. Did Dr. Carroll ever even come into the room?

A. Dr. Carroll came into the room after Bob had fallen: I didn't know Dr. Carroll. I had to ask someone who he was.

Q. Did you see him after the accident occurred?

A. After the accident?

Q. How were the parties—could you see what was going on with Bob at the time the nurse was extracting the blood?

Mrs. Page Richardson.

A. She was between us. He was seated and I was seated and she was standing. She was between us. I
page 43 } was facing this way and he was facing just as he is facing now, and she was working between us. I was holding his jacket on my left.

Q. What kind of floor was there in that room?

A. Marble. So far as I could tell. it was very hard. It was quite a racket when he and the chair went over.

Q. Now, what type chair was that that he was seated in?

A. It was a metal chair, if I remember right, and a upholstered seat and a piece of upholstery across the back.

Q. Did it have any arms?

A. No.

Q. That's the reason he was able to straddle the chair?

A. He was straddled the chair with his arm up on the back of the chair.

Q. Was the chair out in the open or was the chair placed close to a table or any object, or just describe the location of the chair?

A. It was near the table, but it was out in the floor.

Q. Out in the floor?

A. That's right.

Q. What was the nurse doing or technician doing, if you know, when she turned away from him as soon as she had extracted the blood?

A. So far as I know, she turned and appeared
page 44 } to be putting the needle down or taking, or whatever she'd be doing to the needle. She was facing the wall and the table at the time he fell.

Q. Did the nurse say anything about waiting for the doctor?

A. No.

Q. Or did you know whether the doctor had given instructions or not?

A. No.

Q. Did he give any instructions while you were there?

A. No, I didn't see him until after Bob had fallen.

Q. Did the nurse at any time after the extraction or before the extraction give Bob any instructions of any kind as to what to do?

A. She did not.

Mr. Ferguson: All right, your witness.

Mrs. Page Richardson.

CROSS EXAMINATION.

Examined By Mr. Andrews:

Q. How old was Roy at the time?

A. He was seventeen.

Q. Was he nearer his eighteenth birthday?

page 45 } A. It was nearer his eighteenth birthday.

Q. Had he finished high school?

A. No, sir, he was still in high school. He was a senior.

Q. Did he play football during that year?

A. Yes, he did.

Q. What is his general physical condition and what was it at that time?

A. At that time he was not well; that was my reason for having him out there. He had been sick for two weeks, but not in bed.

Q. What was the nature of the sickness?

A. That's what we were trying to determine.

Q. Dr. Edward Joyner told you to take him out to the hospital?

A. That's right.

Q. You didn't take any instructions from Dr. Joyner out there, did you?

A. No, I did not.

Q. What did you request when you went out there?

A. They had already had the order for a blood sugar test and a stomach x-ray; I didn't have to take an order or anything or give them instructions of any kind.

Q. The stomach x-ray had not been taken?

A. No, it had not.

page 46 } Q. Then he was to go on to school after that?

A. He was going on to school that very morning.

Q. What time in the morning was it?

A. Eight-thirty was the time of the appointment.

Q. Whom did you talk with when you went to the laboratory?

A. Miss Bunch is the only one we had conversation with. I did not know her then. I did not know her by name.

Q. You didn't see Dr. Carroll at all when you went there?

A. I did not.

Q. Did Miss Bunch give the instructions for the blood test or not?

A. What do you mean by giving instructions; she did the blood test.

Mrs. Page Richardson.

Mr. Andrews: Eliminate that question, please.

Q. Did Dr. Carroll's secretary, Mrs. Panton, give any order about the blood test?

A. I don't believe so. The appointment was on the clipboard in the laboratory and she checked that and we went into Dr. Carroll's office. So far as I know, she had it there.

Q. Did you see Mrs. Gladys C. Barnes, who was the laboratory technician in charge there?

A. It is possible she was in the laboratory. I stated a while ago, I believe, there was another person in
page 47 } there, but she did not come into the office when he took—when Miss Bunch was giving him the blood test. I didn't see her in there at all. She wasn't in there.

Q. Mrs. Richardson, naturally, there was some excitement; I think it only fair to tell you that we intend to show by Mrs. Barnes that she was in the room where the blood test—that she came into the room and went out of the room while that work was being done. Now, don't you recall that she did come into the room?

A. I do not.

Q. What was that?

A. I do not recall she was there.

Q. Can you say positively she wasn't there?

A. Well, what with the excitement we had at the time he fell and immediately afterwards, I could not say positively that she was not there, but I am almost positive she wasn't. I have no recollection of any one being there, except Miss Bunch and Dr. Carroll's secretary with whom I talked. Dr. Carroll's secretary certainly, she had no part in the blood test. She did not supervise it. If she had, I would have known she was there.

Q. She didn't supervise it in the sense that she took the instrument which took the blood, but didn't she come into that room so that she could see the blood taken?

A. I don't think so. I don't remember seeing
page 48 } her until this morning.

Q. You do think there was naturally some excitement at the time after he fell?

A. There certainly was.

Q. Did you have any conversation with the laboratory technician, Mrs. Gladys C. Barnes, before the blood test was taken?

A. Not that I know of, no. We went to the laboratory, as I told you, and I believe there was another person in there,

but Miss Bunch is the only person that I have any recollection of having any conversation with.

Q. Miss Anne Bunch is now Mrs. Jordan and if I refer to her as Mrs. Jordan, it's not with intent to confuse you at all. I may call her Anne Bunch Jordan, I will try to do that so there will be no mistake about that. Did either you or your son, Roy, tell Mrs. Jordan of any condition that Roy might have had?

A. I don't believe so. We were talking to Miss Bunch, and as I said, I knew Dr. Carroll's secretary, and as I said, she didn't question me. She didn't fill out any questionnaire on his illness or anything of that kind and I don't believe we went into that.

Q. There was a small table against the wall, wasn't it?

A. That's right.

page 49 } Q. And there was a chair where the table was. Will that be all right?

Counsel for the defendant placed a straight back chair near the table.

A. Yes, sir.

Q. Then was that straight back chair, such as described, on this side of the table?

A. No, sir, Bob was facing away—I don't know where it was when he went in the room. I was on this side of the table in that position and he was there.

Q. After the blood was taken, didn't you get up from the chair and go to the doorway?

A. I was still on the chair when he fell.

Q. Well, then, you got up and went toward the doorway?

A. No, I got up after he fell. I did not get up and walk to the door after she took the blood, because, you see, when he fell, he almost hit my feet.

Q. Which arm was the blood taken from?

A. Well, now, from memory I couldn't tell you that. He said it was taken from the right arm. He's left-handed and any time he's ever had shots or anything of that kind, if you're right-handed they put it in your left arm, so she put it in his right arm. I had no reason to remember which arm.

page 50 } Q. Didn't he sit in the chair himself?

A. So far as I know he walked in there and sit down. He wasn't on his feet.

Q. Didn't he turn the chair to whatever position it was when he sat down? Didn't he do that himself?

A. So far as I know, he did.

Mrs. Page Richardson.

Q. Sitting in the chair, didn't he extend his right arm on the table?

A. He did not. He rested it on the back of the chair, because he was straddled the chair with the back of the chair up in front of him.

Q. Well, now, how would he rest his arm; there were two arms on the chair?

A. It was a straight chair.

Q. How would he rest his arms?

A. So far as I know, he laid his arm up on the back. He was sitting straddled the chair. He did not rest it on the table.

Q. Where was the basket with the tubes and instruments?

A. Those things were on the table.

Q. And you can't say whether or not the laboratory technician, Mrs. Barnes, came in that room or not?

A. I don't believe she did, but I couldn't swear page 51 } to it.

Q. Did Mrs. Jordan say anything to Roy after the blood sample was taken?

A. If she did, I couldn't tell what she said. She removed the needle and turned to the table to put it down. She did not give him any instructions.

Q. We expect to show by Mrs. Jordan that after the blood sample was taken, she took his arm like this and put a gauze or something of that kind over the place where the blood was taken and asked him, asked Roy, how he felt, did you hear that?

A. I could not tell you whether she did or not. I did not hear any instructions as to what to do or don't; she was between us. Her back was to me.

Q. We'll show that Roy answered: "Okay," or "fine" or similar words, did you hear such response on the part of Roy?

A. No.

Q. After she took the blood—after she made those remarks, we intend to show that she turned momentarily to put the blood in the basket and make the necessary test or do the necessary work that has to be done there, that's correct, isn't it?

A. Yes, she turned to the table.

Q. Then did you have your eyes on Roy all the time?

A. I did not at that time—the moment when he fell I did

Mrs. Page Richardson.

page 52 } not know whether he stood or whether he was sitting. As she turned, he fell and I followed her with my eyes. You can see—you can look at a person and not have your eyes directly glued on them.

Q. Well, then you couldn't say, having taken your eyes off him for the moment, you couldn't say whether he fell out of the chair or whether he stood up and fell?

A. I could not.

Q. Could you tell anything more about it until you saw him after he had fallen on the floor?

A. No.

Q. After he had fallen and you could see that he was injured, didn't you make some remark to the people present?

A. Yes, I did.

Q. What was the remark?

A. I said, "Oh, I wish we'd let him lie down," and Miss Bunch's answer to me was, "They tell us not to do that." That stuck with me because she didn't say, "Oh, I wish so too," or anything of that kind. She said, "They tell us not to do that."

Q. Had you requested that he lie down?

A. I had not.

Q. Didn't you, as a matter of fact, say right there in that room immediately after he fell on the floor that, "It's not your fault; I should have told you that he's had fainting spells."

page 53 } A. No, he never fainted but once before in his life and I never made such a statement.

Q. Didn't you make that same statement in the next room which Dr. Carroll's office?

A. Dr. Carroll's office was the room we were in. That's the only room we were in.

Q. There were two rooms?

A. I was just in one room.

Q. Isn't there a room next to the laboratory and isn't the next room to that one the one in which the blood was taken?

A. The blood was taken in only one room that we were in. I wasn't in but one room. I didn't go into the laboratory; I stood at the door. I didn't go to another room; I went from that room to the emergency room.

Q. While you were there on the first floor in one of those rooms, whether it was in the blood room or the one next to it, didn't you make the statement to Dr. Carroll that he had been subject to fainting spells or was subject to fainting spells?

Mrs. Page Richardson.

A. I did not. He never fainted but once in his life.
Q. But he was subject to fainting spells?
A. There was no reason for my saying such a thing.
Q. From the room where the blood was taken, where did you go?
page 54 } A. Well, as you said, there was quite a bit of excitement after he fell and as I remember, I went from that room to the emergency room. They took Bob on a stretcher to the emergency room and put him on a table in there and Dr. Ellison came in. Dr. Carroll was there, but Dr. Ellison took care of him. I asked Dr. Ellison who Dr. Carroll was; I did not know him.
Q. Where did you see Dr. Ellison, downstairs or upstairs?
A. Downstairs. He came right into the room that the blood was taken in. He took care of Bob right there on the floor. Dr. Carroll, I think, came in and a colored boy came and put him on a stretcher and as soon as they could get to the point where they could, he was bleeding, they took him to another—they took him to what I assume was the emergency room in the hospital to sew up his chin.
Q. Did you see Anne Bunch in the emergency room?
A. I don't remember seeing her any more after the blood test.
Q. In all of the confusion in this room, could you say whether you saw her again or not?
A. I could not.
Q. Didn't you, as a matter of fact, tell or state in the emergency room that it was not the fault of anybody at the hospital?
page 55 } A. I don't believe I did.

Mr. Andrews: That's all.

RE-DIRECT EXAMINATION.

Examined By Mr. Ferguson:
Q. If any supervision had taken place in that room by Mrs. Gladys C. Barnes, would you have known about it?
A. I believe I would.

Mr. Ferguson: That's all.

Roy Robertson Richardson.

RE-CROSS EXAMINATION.

Examined By Mr. Andrews:

Q. You don't deny that she came into the room?

A. I could not say positively that she did not step in the room and step out when this was going on. If she supervised it, I would have known it.

Q. If she came into the room, she could have seen what was taking place, couldn't she?

A. She would have had to get close in order to see—

Q. If she came to the door, she could see, page 56 } couldn't she?

A. Well, she could have seen that there were four people in there; I don't know whether she could have seen much more or not, Mr. Andrews.

RE-DIRECT EXAMINATION.

Examined By Mr. Ferguson:

Q. If she came in the room, as Mr. Andrews suggests, did she stay in the room for any appreciable length of time?

A. No, sir, because I don't remember that she was in there at all. If she had been in there, she would have been close enough for me to have seen her.

Mr. Ferguson: All right, that's all.

ROY ROBERTSON RICHARDSON,

having been first duly sworn, took the stand and testified as follows:

page 57 } Examined By Mr. Ferguson:

Q. What is your name?

A. Bob Richardson.

Q. When were you born?

A. March 30, 1937.

Q. On January 13, 1955, pursuant to the request of Dr. Edward C. Joyner, did you go to the Pathology Department of the Louise Obici Memorial Hospital in Nansemond County, Virginia?

A. Yes, sir.

Q. With whom did you go?

A. My mother.

Roy Robertson Richardson.

Q. Would you mind telling the jury what happened from the time you got out there at the Pathology Department until the time this accident occurred?

A. We stopped at the switchboard and asked where we were supposed to go, because we were not sure.

Q. Where did you go then?

A. We went down to Dr. Carroll's office.

Q. Dr. Carroll's office?

A. Yes, sir.

Q. Now, what happened in Dr. Carroll's office?

A. Miss Bunch looked up the appointment and found it was for 8:30 that morning.

Q. Did you have anything to do with the making of the appointment?

page 58 } A. No, sir. Dr. Joyner made the appointment for me.

Q. What happened after that? What did you do?

A. When we went to the room, I sat down in one of those chairs.

Q. What kind of chair?

A. It was a straight back chair.

Q. Did it have a low back or high back?

A. It was about medium, I'd say.

Q. And how did you set yourself in the chair?

A. I straddled it. I had the back like this and I straddled it backwards.

Q. What position in the room was the chair? Was it next to any other furniture?

A. It was to the side of a table.

Q. How far from the table was it?

A. I'd say about a chair length.

Q. Now, who was the young lady that took the blood from you?

A. Miss Bunch.

Q. Miss Bunch?

A. Yes, sir.

Q. Now, did she give you any instructions when she was ready to take the blood?

A. The only thing she told me to do was to roll up my sleeve.

page 59 } Q. Which arm?

A. My right arm.

Q. What did she do then?

A. She started taking the blood out then.

Roy Robertson Richardson.

Q. Where did she insert the needle?

A. Right here in the bend of my arm.

Q. How large a blood test was it that she took from your arm?

A. I'd say a syringe—I'd say the necessary amount to take the blood test, I guess.

Q. At that time did the nurse give you any instructions whatsoever?

A. The only thing she told me to do was roll my sleeve up.

Q. Did she ever give you any instructions whatsoever?

A. No, sir.

Q. Did she make any inquiries from you?

A. No, sir.

Q. As to how you feel or what your condition was?

A. No, sir.

Q. All right, now what happened after she took the blood from your arm?

A. She took the needle back out and turned to put it on the table, and when she did, I stood straight up.

Q. And what happened then?

page 60 } A. I started rolling my sleeve down and that's all I remember. I went out on my feet.

Q. Is that the time you fainted?

A. Yes, sir.

Q. Was she looking at that time?

A. She was turned toward the table. I don't think she or Mother were looking right at me.

Q. Did the secretary sitting in there at the typewriter, did she see you?

A. She saw me standing up.

Q. Did this secretary give you any instructions as to keep seated in the chair?

A. No, sir.

Q. Did anybody in that room give you any instructions as to what to do?

A. No, sir. The only thing she told me to do was to roll my sleeve up just before she took the blood.

Q. Did you know there was any reason why you couldn't stand up?

A. No, sir. It was the natural thing to do; I thought she was finished so I stood up.

Q. You've never had any medical training, have you?

A. No, sir.

Roy Robertson Richardson.

Q. Now, after this occurred, what was the next thing that you remember?

page 61 } A. You mean after I fainted?

Q. Yes.

A. I don't remember too much after that. When I came to, I remember seeing the people standing around. I was on my back. I fell face first and they had turned me over and I just remember seeing blurred faces. I was kind of coming and going, and I don't remember anything then.

Q. What was your condition at that time; what do you remember then?

A. I was stunned; I didn't know—it felt like I had a mouthful of rocks and I was bleeding. I knew I was bleeding, but I couldn't figure out what caused it or what happened. I just didn't know.

Q. How long was it after that before you knew what happened to you?

A. I guess before my head really cleared up, it was a day or two; I just didn't know anything.

Q. Do you remember what kind of floor they had in the laboratory?

A. It was a hard marble floor.

Q. Marble floor?

A. Yes, sir.

Q. Now, at any time after you seated yourself there, did anybody tell you to get out of that chair?

A. No, sir.

page 62 } Q. Did anybody attempt to get you to change your position?

A. No, sir.

Q. Now, you say it was a few days after that before you knew what was going on?

A. That's right.

Q. How long did you stay in the hospital then?

A. You mean after I fell?

Q. Yes.

A. I guess it was about eight days.

Q. Will you tell the jury whether your injuries were painful or not?

A. Yes, sir, I felt like I had lost my mind sometime. I think the first night they had to put a rack up beside the bed, because I was completely out of my mind; yelling, and everything, and I swallowed a lot of blood during that time.

Q. How long did this condition go on?

Roy Robertson Richardson.

A. Well, I felt like that the whole time—it was very painful and they didn't wire my mouth together at first; they were waiting to make sure my head cleared up. I had a slight concussion and I lost my sight.

Q. How long was that that you couldn't see?

A. For the better part of that day; the rest of that day.

Q. Now, after you got out of the hospital some
page 63 } eight days later, where did you go?

A. I went home.

Q. You stayed home?

A. Yes, sir, I didn't go right back to school.

Q. When did Dr. Norfleet wire the teeth?

A. He wired the teeth about two or three days after I fell.

Q. While you were still in the hospital?

A. I was still in the hospital; in the dental room.

Q. When he wired your teeth, how did you do? What effect did it have on you?

A. He clamped my mouth completely. He shut my mouth so I couldn't take anything to eat at all. It stayed that way for about five weeks and that was really painful.

Q. How did you eat?

A. I lived on liquids and food that was ground so fine it was like liquid.

Q. That was for a period of four or five weeks?

A. Yes, sir. I couldn't open my mouth at all; it was completely shut.

Q. When did he take the clamps off your mouth?

A. I'd say it was about five weeks after he put them on.

Q. He did that in his office downtown?

A. Yes, sir.

page 64 } Q. What took place after that in the dental treatment of your mouth?

A. Well, see, I was still in high school and he said it was going to be a mighty painful procedure to fix all the teeth back normal so he treated them with a little bit of some stuff —I don't know what it was.

Q. What did you do during that period that your teeth were broken; what did you eat during that period?

A. I had only soft things; I couldn't eat hardly any meat or anything. I eat very soft things.

Q. How long did that condition exist?

A. That lasted until I graduated in June—June 10. Dr. Norfleet started immediately—as soon as I got out of high school and worked on them the whole summer, until before I went to college.

Roy Robertson Richardson.

Q. Would you tell the jury how often during that period that you went to Dr. Norfleet or got him to work on your teeth?

A. About three or four times a week.

Q. Right on through from June through October?

A. From June until I went to school, 13 September.

Q. What effect did this have on you physically?

A. I lost about forty pounds from the time I fell until I got completely straight so that I could eat again. I weighed about one hundred and eighty pounds when I went page 65 } to the hospital and I got down to about a hundred and forty during that time. It was very painful.

Q. Did it effect you after you left Dr. Norfleet's office?

A. Yes, sir, after I went to his office, I wouldn't be able to sleep. Sometime when I went home it would almost drive me crazy. I had to take medicine so that I could sleep.

Q. How long did this last?

A. I'd say during the summer, just about the whole summer until I got ready to go back.

Q. You say he completed the work some time in September, is that right?

A. Yes, sir.

Q. What effect, if any, does hot or cold liquids and other foods have as far as pain is concerned?

A. I can't eat anything like ice cream or anything cold. I don't bother with anything cold. I can't eat anything that's very hot; it will give me a headache.

Q. You have to eat foods neither cold nor hot, is that right?

A. Kind of in-between.

Q. Can you stand anything hot like coffee?

A. No, sir.

Q. Can you drink iced tea?

A. Not very often; ice hurts me too much.

page 66 } Q. How does the pain affect you when you drink hot liquids—when you do—just tell the jury.

A. It is a kind of aching feeling up here, especially on this side where most of the work was done.

Q. Is that still true at the present time if you eat or drink anything hot or cold?

A. Yes, sir.

Q. How long did you miss from school?

A. I'm not sure. I believe it was about three weeks, because I had to stay home from school after I got out of the hospital.

Roy Robertson Richardson.

Q. Were you working during the summertime?
A. Yes, sir, I was helping out at the Drive-In Theatre.
Q. You helped your father at the Drive-In Theatre?
A. Yes, sir.
Q. Did he pay you for that?
A. Yes, sir.
Q. How much did he pay you a week?
A. I don't remember exactly how much it was.
Q. He gave you what he wanted to, is that it?
A. Yes, sir.
Q. Does it affect you in your eating now, your teeth, so far as eating now?
A. Well, it takes me longer to eat; I can't chew
page 67 } anything that's tough on this side, steaks or anything.
Q. Which side?
A. The right side.
Q. Steaks or anything like that?
A. That's right.

Mr. Ferguson: Your witness.

CROSS EXAMINATION.

Examined By Dr. Andrews:
Q. You say you weighed about one hundred eighty pounds when you went out to the hospital?
A. Yes, sir.
Q. It was early in January, or in the middle of January; the previous fall you had played football, hadn't you?
A. Yes, sir.
Q. You had been in right good physical condition up to the time you went out to the hospital?
A. Yes, sir.
Q. Do you know what these blood tests and other things were being made for?
A. I had a strange sickness; I couldn't figure out what it was and the tests were to try to figure out what it
page 68 } was.
Q. Did you tell anybody at the hospital that, when you went out there, Bob?
A. No, sir.
Q. Did your mother tell anybody that at the hospital?
A. No, sir.

Roy Robertson Richardson.

Q. Did you have any sort of communication from Dr. Joyner to that effect?

A. Not that I know of. Now, I'm not sure about that, because I don't remember.

Q. Now, where was the chair in which you sat when you got into the room where the blood was taken?

A. It was beside the table.

Q. Was it against the wall? If this was a wall, was it against the wall or like that?

A. I'm not positive; I think it was.

Q. It faced out in the room that way?

A. Yes, sir.

Q. The back was like this?

A. I think so, yes, sir.

Q. What did you do with the chair?

A. I straddled it. I kind of pulled it around a little bit—it was at the end and I pulled it around to the side and straddled it.

Q. Then what did you do?

A. Then I rolled my sleeve up and put my arm
page 69 } up on the back.

Q. Were you near the end of the table?

A. About a chair length.

Q. Who was in the room at the time?

A. Dr. Carroll's secretary and my mother and myself and Miss Bunch.

Q. Had you seen Dr. Carroll at all at that time?

A. No, sir, I didn't know him.

Q. You didn't have any communication with him then before the blood test was taken?

A. Not at all.

Q. Did you talk with the laboratory technician when you went to the hospital?

A. Who was that?

Q. That was Mrs. Gladys C. Barnes; she was out there then and she's there now.

A. I think I may have spoken to her.

Q. Well, you saw her about the same time you saw Anne Bunch Jordan, didn't you?

A. Yes, sir, I guess so.

Q. Do you remember clearly up until the time the blood was taken from your arm? Is your recollection clear on that, Bob?

A. Before, you mean?

Roy Robertson Richardson.

Q. Before.

page 70 } A. Not clearly, just about though, I'd say.

Q. Do you recall that Mrs. Barnes, the technician, came into the room where the blood was being taken?

A. No, sir.

Q. Do you recall whether she did come in or not?

A. She didn't actually come into the room. I spoke to her in the other room. It was the laboratory or something adjoining that room.

Q. I understand that, but didn't Mrs. Barnes come into the room while the blood was being taken from your arm?

A. She wasn't in there while the blood was being taken from my arm. She did come to the door, but she didn't come all the way in.

Q. Didn't she come to the door so she could see what Anne Bunch Jordan was doing to your arm?

A. She wasn't there long enough to tell; she stopped and spoke and went on back.

Q. She could have stayed there long enough to see the blood taken?

A. You mean the whole procedure?

Q. I mean the taking of the blood?

A. No, sir, not long enough to see all of it taken, sir.

How long was that?

A. A minute or a half a minute. She stuck her

page 71 } head in the door and went on back.

Q. She could have seen what Anne Bunch Jordan was doing?

A. I guess she would be able to see what she was doing, yes, sir.

Q. What was on the table, Bob, the table by the chair in which you were sitting?

A. The little basket with whatever equipment was necessary.

Q. After Mrs. Jordan took the blood in the syringe, what did she do?

A. She turned to the table to put the syringe down, or do whatever you are supposed to do with it.

Q. Did she give you any kind of gauze or pad or put anything on your arm?

A. A little piece of cotton where the blood was taken.

Q. Did she take your arm and put it together or turn your arm any?

A. Just pulled it up like this.

Roy Robertson Richardson.

Q. I mean to say, close your arm?
A. Like this, with a piece of cotton in it.
Q. Did she say anything to you?
A. No, sir, she turned and put that needle down.
Q. Now, we intend to show that she did say something to you, Bob. I want to refresh your memory. I want
page 72 } to be fair about it, didn't she say something to you at that time?
A. No, sir, she didn't have time to, because she turned as soon as she took the needle out I stood up.
Q. As she was closing your arm, didn't she say to you, "Do you feel all right"?
A. No, sir.
Q. And didn't you say to her, "Okay," or "Fine," or something of that nature?
A. I didn't say anything; I stood up.
Q. Well, did you stand up right then or did you stand when she turned to the basket?
A. I stood up as soon as she turned.
Q. My question was just as she put the cotton or gauze on your arm and closed it to some extent and told you to hold it there—did she tell you to hold the gauze there?
A. Yes, sir.
Q. Didn't she ask you how you felt?
A. No, sir.
Q. Then what did she do?
A. She turned to the table.
Q. And weren't you sitting in the chair when she turned to the table?
A. Yes, sir, as she turned I stood straight up and started to roll my sleeve back down.
Q. And she didn't tell you to stand up, did she?
page 73 } A. She didn't tell me anything one way or the other.
Q. What made you stand up?
A. I guess it was natural impulse.
Q. You felt all right, didn't you?
A. Yes, sir.
Q. How long did you stand up?
A. I can't say for sure, because I don't remember. I remember standing up and that's all.
Q. What did you do with the chair when you stood?
A. The chair was there up, and when I stood the chair was still there. The chair fell with me when I fell. In

other words, I didn't stand—I stood straight up. I didn't take a step one way or the other.

Q. How long did you stand?

A. It couldn't have been very long.

Q. She didn't see you stand up, did she?

A. Who's that?

Q. Miss Bunch.

A. I don't think she did; I think she was still turned toward the table.

Q. Was she doing work with the blood in the basket on the table?

A. That I couldn't say. I couldn't say what she was doing, because she was between me and the table.

Q. Well, the basket with the instruments and
page 74 } tubes was on the table?

A. Yes, sir.

Q. And you couldn't say how long you stood up?

A. Couldn't have been long.

Q. Well, what happened?

A. When I stood up?

Q. Yes.

A. I must have fainted standing up on my feet, because I don't remember falling. I don't even remember falling, but I must have fainted while standing up.

Q. What is the first thing you remember after that, Bob?

A. A mob of people were standing around looking at me and I could halfway tell who they were and couldn't; I was kind of dazed.

Q. Were you still there on the floor or had you been moved?

A. I was on the floor on my back.

Q. Do you know why you were sent out to the hospital?

A. I knew I was supposed to have a blood test and stomach x-rays.

Q. Why did you go to Dr. Joyner?

A. I went to Dr. Joyner to be checked over to see if he could find anything wrong with me, which I found he couldn't.

He couldn't find anything wrong.

page 75 } Q. You went to him to be checked over to find if anything was wrong with you, was there anything that prompted your visit to Dr. Joyner?

A. Yes, sir, I had been feeling bad for about a week or two.

Q. Could you tell her you had been feeling bad?

Roy Robertson Richardson.

A. I felt run-down and tired; all I wanted to do was go to bed and sleep.

Q. Had you been going ahead with exercise of any kind after the football season that previous fall?

A. No, sir.

Q. How long before you went out to the hospital had you been feeling bad?

A. About ten days.

Q. I think I asked you whether you told anybody at the hospital there and you said, "I didn't."

A. I didn't, because I didn't know anything about it; I couldn't figure out what it was.

Mr. Andrews: That's all. Wait, I do have just one more question.

Q. In response to one of Mr. Ferguson's questions you said, "I stood straight up," and then a little later you said, "I figured she had finished." Mrs. Jordan didn't tell you she had finished, did she?

A. She didn't tell me anything one way or the page 76 } other; see, I just stood up.

Q. She didn't tell you to stand up?

A. No, sir, she didn't tell me anything. She did put the bandage or gauze on my arm and told me to hold it up for a while.

Q. Was that the last thing she told you?

A. She put the gauze on there and held it up and told me to hold it there.

Q. She never did tell you she was finished?

A. No, sir, she didn't say one thing one way or the other.

Mr. Andrews: That's all.

RE-DIRECT EXAMINATION.

Examined by Mr. Ferguson:

Q. If she had asked you to remain seated, would you have remained seated?

A. Yes, sir.

Mr. Ferguson: That's all.

page 77 } ROY A. RICHARDSON,
having been first duly sworn, took the stand and testified as follows:

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Examined by Mr. Andrews:

Q. Mr. Richardson, do you know why Bob went or was sent to the hospital?

A. Bob had not been feeling well from about a day or two after Christmas. Dr. Joyner had examined him and had not found anything of a particular nature and suggested that he go to the hospital to have a blood sugar test and stomach x-ray to see if there was anything wrong with him
page 82 } that needed attention.

Q. Do you know of any particular instructions that were sent by Dr. Joyner to the hospital?

A. I do not.

Q. Do you know of any test that he was to receive except the usual blood test that you mentioned and the stomach test?

A. I assume that the normal report that would be made from such test would have been given to Dr. Joyner.

Q. I understood you to say you were out of town; you did not go out there with him?

A. I was in town that particular morning. I did not go to the hospital with him. I arrived before he was ever—he had to have some stitches taken.

Q. The blood test had been taken?

A. Yes, sir. The blood test had been taken and the injury had taken place and he was in the emergency room.

Mr. Andrews: That's all.

RE-DIRECT EXAMINATION.

Examined by Mr. Ferguson:

Q. Would you mind pointing out to the jury
page 83 } there, if you can see, the scar that still remains under his chin?

A. It is right under there. As I understand it, that came when he fell; the impact. He did not cut or hit anything on the way down.

Dr. George J. Carroll.

Q. What—approximately how long is that scar?

Mr. Andrews: I—

Mr. Ferguson: I want to show there's about an inch scar on his chin; I don't think there's anything wrong with that. Do you have any objections to that going into the record, Mr. Andrews?

Mr. Andrews: Nope, but I object to Mr. Richardson testifying; that's a matter for the young man or the doctor to testify to.

The Court: Maybe he can take a yardstick and measure it.

Mr. Ferguson: Thank you.

Mr. Andrews: Note an exception to that.

The Court: Exception to what?

Mr. Andrews: That evidence should be by the medical witness about the scar.

The Court: Sure, you may take an exception.

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page 84 } DR. GEORGE J. CARROLL,

the defendant, having been first duly sworn, took the stand and testified as follows:

Examined by Mr. Woodward:

Q. You are Dr. George J. Carroll and you reside at 117 Linden Avenue, in Suffolk, and you have been practicing medicine in the city of Suffolk for a number of years?

A. That's correct.

Q. What are your medical qualifications, Doctor?

A. Clark University, A degree in 1939. George Washington University School of Medicine, MD degree in 1944. Internship Wooster City Hospital '44 to '45. Resident Pathologist, Sibley Hospital, Washington, D. C. '48 to '49. Resident Pathologist, Veterans Hospital, Washington, D. C. '49 to '50. Assistant Pathologist, District of Columbia Hospital, '50 to '51. Associate Pathologist, District of Columbia General Hospital. Instructor in Pathology, Georgetown University Medical School, School of Dentistry, 1950 to 1952. Instructor in laboratory medicine, American University, 1950 to 1951.

Q. Some of your qualifications are overlapping honors?

A. Teaching.

Dr. George J. Carroll.

Q. You've had a good bit of experience as pathologist?
A. Yes, sir.
Q. And you have been at Obici Hospital since
page 85 } 1952?
A. I came here from Washington.
Q. So that it may be sufficiently said that you have been actively engaged in medicine and particularly pathology since 1945?
A. Earlier than that, because I was medical technician from 1941 to 1944.
Q. And so you've had large and varied experience in this field?
A. That's correct.
Q. Now, Roy Robertson Richardson was your patient on the day in which the accident occurred at the Obici Hospital?
A. No, sir, not necessarily.
Q. What were the actual facts?
A. I didn't know Mr. Richardson, infant, had been referred to the hospital until the accident occurred, so that I at no time had any medical control of him.
Q. Well, he was—you have a contract arrangement with the hospital whereby you get forty per cent of the gross and you are actively in charge, presumably in active charge of the Department of Pathology?
A. That's correct.
Q. And accident transaction which occurred in that department was yours along with the Obici Hospital?
A. That's correct.
page 86 } Q. Now, who was assistant in this department that day?
A. You mean in the—
Q. In your department where the boy was brought?
A. As I recall, Mrs. Barnes and Mrs. Jordan, a Mrs. Aaron, who is now in Texas, Miss Jones, who's now in Florida, and I believe at the time we had two night technicians, whom I don't recall.
Q. Who was present with Richardson at the time of this incident in question? I mean, who actually took the blood test?
A. Miss Anne Bunch.
Q. Is she a registered nurse?
A. No, sir.
Q. What's her qualifications?

Dr. George J. Carroll.

A. She came to me as a training student; to train with me in a fifteen months course, which would qualify her as a laboratory assistant.

Q. Well, then, she was, of course, in training?

A. That's correct.

Q. So that she was what you call an apprentice?

A. Not, well, in a broad sense perhaps, but I won't classify her as an apprentice, no, sir.

Q. How long had she been engaged in this course at the time?

A. A little over six months.

page 87 } Q. And it was a fifteen months course?

A. That's correct.

Q. At the time Mr. Richardson received his injury, do you know who was present at that time?

A. Do I know?

Q. Yes, sir, who was actually present?

A. In the room?

Q. Yes, sir, do you know how many of your own knowledge?

A. Of my own knowledge?

Q. Yes, sir.

A. I only know by hearsay.

The Court: That wouldn't be of your own knowledge.

Q. Now, this young lady that you have referred to as taking the blood test was there at your request or at least by your superior's?

A. Well, as part of the laboratory, she happened to be the one who was assigned the job at the particular time.

Q. And you, as contractor with Obici Hospital, were actually the head of that department?

A. Yes, sir, that's correct.

Q. Now, in your varied experiences in hospitals as an intern, you had occasion to have all kinds and classes of patients brought to you suffering from injuries and whatnot?

page 88 } A. That's correct.

Q. You know, as a matter of course, that some people faint from the sight of blood, don't you?

A. That's correct.

Q. And some faint from the fear or in a fear of something that's going to be done to them?

A. That's correct.

Dr. George J. Carroll.

Q. And some faint from vaccination and withdrawal of blood and things of that nature?

A. That's true.

Q. Now, as to what precautions were taken against that in the withdrawal of blood from Mr. Richardson, you don't of your own knowledge know?

A. Only as I have trained the girls as to what we accept, the standard procedure in our laboratory, realizing those things do happen. They are things that are normally to be guarded against unless you have good reason to the contrary. They are instructed as to the same, but the incidents are relatively low so that under the ordinary circumstances my people will pick out anybody who has an ability to faint, which is ordinarily the signs and symptoms which occur during the withdrawal of blood.

Q. Do you know what history was obtained from the young man with reference to that?

A. There was no history sent in with him.

page 89 } Q. You didn't obtain any from him?

A. No, sir, I did not see the patient.

Q. Your trainee didn't obtain any?

A. I don't know. Not to my knowledge.

Q. You hadn't had any come to your knowledge by history written up on the record in the hospital?

A. No, sir, that was taken of Mr. Richardson that day.

Q. You mean the history chart?

A. History to faint or not to faint; I had no knowledge of that.

Q. So when your trainee entered upon this duty of extracting or withdrawing the blood by the puncture of a needle or whatever the procedure is, why she went at it without the inquiry and without making any precautions at all as to whether or not he would faint?

A. I don't think that's true. We've had patients faint before and they have all been instructed as to what to do with a person they think is a potential fainter.

Q. Well, that's a matter of almost common knowledge, isn't it?

A. Well, it's more than that with us, because we actually handle the people who do the fainting.

Q. And you see that quite frequently?

A. Not too frequently. I had the opportunity during—

page 90 } when I was a technician I drew approximately five hundred bloods a week for two years and I guess possibly in that group one out of a thou-

Dr. George J. Carroll.

sand or one a week or one every other week might faint.

Q. That would be a fair average, one every week or one every two weeks?

A. Of course, that depends on the number.

Q. That's apt to happen to a grown man weighing two hundred and fifty pounds and healthy as it is apt to happen to a pregnant woman, isn't it?

A. With some reservations. There's a susceptibility of fainting. I'm not a psychiatrist.

Q. So far as you are personally concerned, you were not there and you made no precautions of your own or took none of your own against the possibility that the boy might faint?

A. No, sir.

Q. And so far as what your trainee did is concerned, you have no knowledeg except hearsay?

A. Except in my—as how she had been trained to handle routine patients, which included the problem of somebody fainting.

Q. Well, is it fair to say then that your trainee had been instructed as to precautionary methods to be taken against the incidents of fainting?

A. She had been instructed as to what to do
page 91 } when and if somebody did faint, because there's no
way of telling when and if somebody would suddenly faint.

Q. If there's no way of predicting this, then it's a matter of hazard as who will faint and who will not?

A. By the relatively low percentage.

Q. I say it's a matter of hazard as to who will and who will not faint?

A. I suppose you could say that.

Q. To guard against that, all you would have to do is have the patient lie down, isn't it?

A. Not always, because sometimes they'll faint when lying down.

Q. Well, there's no possibility of falling or anything of that kind when they are lying down and they faint?

A. No.

Q. And your reaction in cases of that kind is either by time or something like ammonia or something of that kind?

A. That's correct.

Q. Doctor, this patient, personally you had not checked him?

Dr. George J. Carroll.

A. I had not been asked to check him. If I'd been asked to check him, I would have. You see, as part of the hospital laboratory in a community of our size, there are many patients that are referred to me personally to consult as to blood diseases, but because of the hospital with the page 92 } laboratory facilities and the impracticability of every physician running his own laboratory, we have a certain number of what we call 'out-patient blood test' which I perform as a service to practicing physicians in the community and unless specifically asked, I do not see all the patients; although, I do review all the reports before it goes to the doctor.

Q. We get back then to this, that this boy was trusted with a six months trainee in your department, that's right, isn't it?

A. That's correct.

Mr. Woodward: That's all.

CROSS EXAMINATION.

Examined By Mr. Andrews:

Q. How long have you been connected with Obici Hospital?

A. For about five years.

Q. Is any of the personnel in your department employed by you?

A. No, sir.

Q. Are they on your payroll in any way?

A. No, sir.

page 93 } Q. Who does pay them?

A. Hospital.

Q. Who keeps the books?

A. Hospital.

Q. Who sends out the bills?

A. The hospital.

Q. And in this particular instance, did the bill go from your office or the hospital office?

A. From the hospital.

Q. Do you have complete authority to hire and discharge personnel?

A. With some reservation; not complete.

Q. What are those reservations?

A. The administration would not argue with my hiring and firing as long as I stayed within the budget. Any in-

crease in salary or creation of a new position would require conference with the administration, which would require clarification or approval from the Board of Directors, I am sure.

Q. Is your department out there, the Pathology Department, jointly operated by you and the hospital?

A. If you look at it from that point of view, it is.

Q. How long had this young lady, who was then Miss Bunch, been at the hospital as an employee?

A. Six months; going into her seventh month.

Q. What was her training during that time?

page 94 } A. She was given classroom work and was given supervision by myself and the other technicians in the laboratory relative to the performance of laboratory procedure.

Q. Had she observed the taking of blood for tests similar to the one that was taken this day?

A. From her first day.

Q. And had she been allowed to take those blood samples herself, or tests?

A. Yes, sir.

Q. How long had she been taking those samples by herself?

A. For approximately a month. For the first two or three months we let them observe and allow them under supervision to take blood from patients who have good veins, and then in the second two to three months under supervision we let them draw blood on their own. At the end of five to six months, depending upon the capability of any particular student, we allow them to draw blood by themselves.

Q. Do you know what kind of veins Roy Richardson had at the time he was out there?

A. I have no idea.

Q. Who was her immediate superior on that day?

A. I was.

Q. Did you also have in your office a laboratory technician?

A. Yes, sir.

page 95 } Q. What was her name?

A. Mrs. Barnes.

Q. Was she on duty that day?

A. She was.

Q. Do you know whether she was in the room or went in the room while Miss Bunch was taking the blood sample from Mr. Richardson?

A. She said she was.

Dr. George J. Carroll.

Mr. Ferguson: I object to that and move that it be stricken.

The Court: I sustain the objection and strike it from the record.

Examination By Mr. Andrews Continued:

Q. I understood you to say that you were not requested personally to check this man or make this blood test or check young Richardson?

A. That's correct.

Q. Well, now, what is usually done in situations of that kind when you as a physician have general charge of the laboratory?

A. The patient—the physician usually calls the laboratory and makes a reservation for the performance of
page 96 } any one specific test. There are certain particular tests over which I must have direct control, but on routine analysis the experienced technician will make a reservation and the patient will come in and have the blood taken by either one of the students or one of the technicians who happens to be on duty. That sample is run, the results are given to me to see whether or not they check. Should there be any abnormal findings, then I usually will contact the doctor to find out whether or not they should do anything more since the reason for performing these tests is a joint venture with the physician to work as a team to get at a diagnosis of any one particular patient.

Q. What kind of test was requested of your office in this case?

Mr. Ferguson: We object to that; what was requested of his office.

The Court: I can't say whether it came under his definition of routine tests or not. He may say so.

A. It was a routine request for blood sugar and a complete blood count.

Examination By Mr. Andrews Continued:

Q. There were two things that were requested?

A. That's correct.

page 97 } Q. Would either of those come under your personal supervision as to tests unless specifically requested?

A. No, sir.

Dr. George J. Carroll.

Q. Were they specifically requested of you?
A. Not to my knowledge.
Q. Actually what were the results of the tests?
A. They were normal.
Q. Was Mr. Richardson an out-patient?
A. Yes, sir.
Q. How long had the laboratory technician been under your supervision?

Mr. Ferguson: We object to that.
Mr. Andrews: I withdraw the question. I think I can go into it, but it's not necessary at this time.

Examination By Mr. Andrews Continued:
Q. Was any case history sent to you or your office in connection with Mr. Richardson?
A. No, sir.
Q. Did you see Mr. Richardson's mother after the injury took place?
A. I did.
Q. Where did you see her?
A. In the office; the blood-letting room which
page 98 } is a combination secretary's office and blood-letting room.
Q. How long was that after the accident?
A. I heard the fall and I was one of the first in the room.
Q. Was she in the room at some point when you went in?
A. Yes, sir. She told—
Mr. Ferguson: We object to that, Your Honor. It's not binding upon the child except as maybe impeachment of the witness.
The Court: If she said anything at the time it would be part of the *res gestae*. If he heard her at that time, it would be typical *res gestae*.
A. She said that we should not blame ourselves for the accident; that her boy had fainted before and that she should have called it to our attention.

Mr. Woodward: I move that be stricken. That's not part of the *res gestae*. That's a question of opinion.
The Court: I am reserving opinion on your motion that that be stricken as not strictly within the *res gestae* rule.

Dr. George J. Carroll.

Examination By Mr. Andrews Continued:

Q. Was that in response to a question to her or did she volunteer that to you?

A. It was voluntary.

page 99 } Q. Who else was present?

A. Miss Bunch, Mrs. Barnes and my previous secretary, Mrs. Panton.

Q. Where's Mrs. Panton?

A. She's in North Carolina.

Q. Do you know where in North Carolina?

A. I know it's in Charlotte, or Asheville, one or the other.

Q. Did Miss Bunch, now Mrs. Jordan, continue to work at the hospital?

A. Yes, sir.

Q. Did she continue to work in your department?

A. Yes, sir.

Q. Would you tell whether her work was satisfactory or not?

Mr. Woodward: We object to that. It's not a question of whether it was satisfactory or not. It's a question of what happened then.

The Court: Are you talking about competence? Any evidence bears on competence.

Mr. Woodward: At the time of the evidence.

The Court: Evidence before and after would bear on competence. That means one's skill, ability. I should think he could give that before and after. It would be a limited period of time. You would judge competence of

page 100 } a person—of course, every person may be negligent but you are talking about competence.

Mr. Andrews: He stated before that she was a very competent student. Do you know how long she remained in the employment of your department.

A. She completed her training course and then went to work for a friend of mine in Portsmouth; where she's been ever since.

Q. Is that a hospital or some kind of institution or a private doctor's office?

A. In the Portsmouth General Hospital.

Q. Do you know the name of the doctor with whom she's working at the Portsmouth General Hospital now?

A. Dr. Elvin Long.

Dr. George J. Carroll.

Q. I should have asked you at the beginning, does the Obici Hospital conduct a student training program?

A. You mean in laboratory medicine?

Q. Nurses' training.

A. Yes, sir.

Q. Do they have a course of instructions in laboratory techniques, and so forth, in connection with that school?

A. No, sir, I give a course to the nursing school, but it's not in laboratory techniques.

Q. Did you instruct this particular young lady, Miss Bunch, now Mrs. Jordan?

page 101 } Mr. Woodward: On what?

Mr. Andrews: You let me ask the question.

Mr. Woodward: I object to the question; it's too broad.

Q. What was the nature of that instruction which you say you gave her?

A. The nature of the instructions is a combined instruction course in which all the laboratory technicians and myself participate, which trains these boys or girls as they may be, to perform routine laboratory procedures.

Q. What kind of student did Miss Bunch prove to be?

A. An excellent student.

Q. Are you familiar as head of the Pathology Department with the procedures generally followed by physicians in the Suffolk community and this general vicinity as to the taking of blood samples and other routine checks of that nature made in pathology laboratories?

A. I know the general trend of most of the major hospitals in the area.

Q. What is that?

A. It's sitting a patient in the chair the same as we do. It's not customary to lie a patient down to take blood in any hospital that I know of.

Q. Is it customary to go into the case history unless there is something called to the attention of the doctor or the technician?

page 102 } A. No, sir.

Q. Was that usual accepted procedure followed in the case of Mr. Richardson?

Mr. Ferguson: I object to that. He's testified he wasn't even present.

The Court: If he wasn't there, obviously your question—

Mr. Woodward: We move that it be stricken.

The Court: I strike it.

Dr. George J. Carroll.

Mr. Andrews: I think he nodded his head.

Examination By Mr. Andrews Continued:

Q. What did Miss Bunch have to do in the usual course of procedure after she had taken the blood sample?

A. Well, the procedure which was called for on the Richardson boy was a blood sugar and a complete blood count. This requires the withdrawal of somewhere between five and ten CC's of blood, a portion of which is placed into a test tube containing chemicals in order to prevent it from clotting. A remaining portion was placed on a glass slide from which dilutions are made into bisects for the performances of blood—red counts and white counts. Another small amount is placed on three or four glass slides on which slides are made and stained to study by color the normalty of the particular cells; either the red or white cells. This
page 103 } whole procedure has to be done fairly rapidly in that if the blood is not gotten the plasma—the blood will clot and likewise none of it is put on slides. So clotting will take place and throw normal clots out of normal range. This takes place in three or four minutes, which just about makes for a normal individual clotting time.

Q. All that has to be done within a space of several minutes?

A. That's correct.

Q. Can you produce at this time the kind of apparatus—the equipment that has to be used by the nurse in taking the blood sample?

A. I have one in my car.

Mr. Andrews: Well, I don't, Your Honor, I want to question him about it, but we can proceed now.

The Court: Is there any question here—gentlemen, I haven't heard any hint that improper apparatus was employed.

Mr. Andrews: No, sir.

The Court: Well, that seems not to be in issue.

Mr. Andrews: I was going to show—he's called as an adverse witness.

The Court: He's your witness now.

Mr. Andrews: I know he is, but I was trying to save time at this time.

The Court: You may proceed at this time for whatever is proper and admissible testimony.

page 104 } Mr. Andrews: There's no question about the equipment or anything. I was going to show to

Dr. George J. Carroll.

the Court and jury what the equipment was and they could see what he means by taking time to do this. Now, I can do that at the completion of this testimony now or when I call him as a witness.

The Court: I think you can show, if you wish, the type apparatus used in extracting blood from the arm. You may do that.

Mr. Andrews: Let me continue, Your Honor, until I finish my questioning and then you may want to take one or two minutes and he can get the apparatus. Right now I think we can save time if we go ahead.

Examination By Mr. Andrews Continued:

Q. Did Miss Bunch have occasion to go from the laboratory or the room in which the blood was taken to another part of the hospital where young Mr. Richardson was after the injury?

A. She did.

Q. What was the occasion of her going?

A. After he was admitted to the hospital or after he had the accident, I called Dr. Ellison myself and turned the case over to him and after he was admitted to the hospital, we had another request from the floor to repeat—
page 105 } for a repeat blood count; I believe it was a repeat. It was another laboratory test; in any event, I'm not exactly sure what it was at the time, but it was another repeat laboratory test and I made Miss Bunch, for psychological reasons, go up to Mr. Richardson's room and retake a sample of blood at that particular time, because she was upset and psychologically I thought it would be the best way to help her; to show her that I had confidence in her and she did that.

Q. And was the blood taken by this test used for examination?

A. Yes, sir.

Q. Mr. Richardson was an out-patient until he was admitted to the hospital after the injury?

A. That's correct.

Q. Did Miss Bunch continue to work that day?

A. She did.

Q. Could you tell what is the incidents of fainting or having to let a person lie down for such a test as were taken on Mr. Richardson in your department at Obici Hospital?

Dr. George J. Carroll.

Mr. Woodward: He's already testified on that subject, Your Honor.

Mr. Andrews: I don't think he has. He testified to it generally.

The Court: His actual testimony was one out of a thousand, or one about a week at a time when they page 106 } were taking a great many.

A. Taking a great many in the Army, but that's not in our hospital.

Mr. Andrews: This question has reference to this hospital at this time.

A. We have approximately two or three a year.

Q. Do you know how many you had while Miss Bunch was there?

A. No, sir, I have no idea.

Mr. Andrews: That's all I have.

RE-DIRECT EXAMINATION.

Examined By Mr. Woodward:

Q. Doctor, on the question of competency, you have testified that it takes fifteen months for one of these trainees to reach proficiency, that's true, isn't it?

A. Well, the entire course takes fifteen months.

Q. And so competency which you were speaking of is that she had seven out of fifteen months of training in this course at the time you trusted her with the work?

A. That's right, but she had to satisfy me that she had enough training to be able to take blood. I felt page 107 } she was competent to stick a person and draw the blood out.

Q. Your trainee would certainly—should, I might say, be able to detect ordinary signs of fainting by looking at the person's face?

A. Not always; sometimes.

Q. Well, fainting is caused by blood leaving the brain?

A. That's correct.

Q. So that shows in the face and shows them to be anemic or bloodless in the face at the time?

A. But depending on the individual; within a second or two, or three, or four, depending on the patient.

Q. Well, now, of course, you don't know how quick this boy fainted?

Dr. George J. Carroll.

A. Only from what I heard from the testimony this morning from the boy himself.

Q. Nevertheless, he was sent out to the hospital to you since you're head of that department he'd come under your observation and administration?

A. No, I don't think so. In this particular case he wasn't sent out to the hospital to me.

Q. He wasn't sent to that department?

A. He was sent to my department.

Q. Who sent him there?

A. Dr. Edward Joyner.

page 108 } Q. He's on your Board?

A. He's on our staff.

Q. He knew you had charge of the Pathology Department?

A. That's correct.

Q. And the reason he sent him there was to have your services?

A. Indirectly.

Q. It was based on your being head of the department?

A. My interpretation of her competence.

Q. What you have testified to was done is nothing more than finding the vein and plunging in the needle as refers to what takes place after you have taken the blood?

A. You mean in what the technician does with the sample; that's correct.

Q. But there were no precautions taken with reference to fainting hazards that go along with these blood tests?

A. That's right. Actually from the practical point of view I have found from my personal experience over sixteen years that it's best not to tell the patient or ask the patient or suggest it. Often the suggesion of fainting has such a psychological impact that it will cause a person to faint. There's a definite psychological background; therefore, the mere suggestion of that will start a person fainting who ordinarily would have no trouble.

page 109 } Q. Seeing that to be the case, wouldn't it be within the ordinary whelm of prudence to advise a person what to do; that you were going to take a blood test from him?

A. Well, I just stated, I don't think it's absolutely necessary to; for the very reason I stated.

Q. Well, some patients you have to lie down for it?

A. Possibly children because they are hard to handle.

Q. How about people in their mature years?

Dr. George J. Carroll.

A. Mostly we don't unless they are aged or senile.

Q. Fact of the business is most of the people you take blood tests from are already in bed?

A. No, we have a fair out-patient business.

Q. Don't you have to take blood tests of most of the patients every day?

A. That's correct.

Q. Most of these patients are already in bed?

A. That's right, but if that patient happened to be sitting in a chair, he would not be put to bed for the blood test.

Q. The fact that the patient is sitting in a chair has nothing to do with whether he gets up and walks around or not?

A. No.

Q. Unless he has some instructions?

A. I don't quite get it.

page 110 } Q. You don't give instructions to keep them seated?

A. You mean house-patients?

Q. I mean out-patients that come in there.

A. Do we give instructions as to be seated?

Q. I mean remain seated during or afterwards.

A. They are seated during the blood test.

Q. The fainting then comes either during the taking of the test or immediately afterwards?

A. It can come as long as a half an hour afterwards.

Q. I mean within a few minutes?

A. No, sir, I have seen it come as long as thirty minutes afterwards.

Q. Why does the nurse stay there for any particular time?

A. If she does, she stays until the work is done and the patient is asked how he feels and if the patient says he feels all right, she sends him home or back to the physician.

Q. Was this Miss Bunch there to take training and become a registered nurse or simply to become a technician?

A. She was sent there to be trained as a laboratory assistant.

Q. Do you know what her educational qualifications were?

A. Yes, sir.

Q. What were they?

page 111 } A. High school graduate with excellent grades; with courses in biology and chemistry.

Q. Is it customary in your department where a person is seated to have that person remain seated for a few minutes?

A. I have done so in some instances, but I have forgotten personally to do so when I was a technician.

Dr. George J. Carroll.

Q. In fact they were seated to reduce incidence of fainting as well as falling, wouldn't it?

A. It would certainly reduce the incidence of falling; I don't know as it would reduce the incidence of fainting.

Mr. Woodward: That's all.

Mr. Woodward: That's it.

Mr. Ferguson: Go ahead, Mr. Andrews.

Mr. Andrews: Is that the case? I think we'll have some legal matters if you want to dismiss the jury for a few minutes.

The Court: Well, gentlemen, the jury will retire.

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Mr. Andrews: If Your Honor please, at this time I move that you strike the evidence of the plaintiff as not being sufficient to support any verdict other than one for the defendant. First, I would say that they have shown if this arrangement was anything, it was a joint enterprise.

page 112 } They have sued only Doctor Carroll. The notice of Motion against him is against him only. Of course, I am well aware that there was another action pending against Louise Obici Memorial Hospital. Actually that action was brought before the action against Doctor Carroll. In the Notice of Motion against Dr. Carroll it is alleged they are jointly operating that laboratory. So, you have a suit against him only, not against them jointly and the separate suits which had been brought and which were not consolidated but were merely directed to be here.

The Court: Well, in the interest of time, move on to your next point, because I will not sustain you on that; certainly not at this junction. I've heard about that before and I certainly will not.

Mr. Andrews: I note an exception.

The Court: Move on.

Mr. Andrews: We get to the action against Dr. Carroll on the grounds of negligence for which he's responsible; which can be the only grounds for this suit. Now, in the pretrial conferences they have said that the negligence to be relied on was that the nurse was incompetent. I don't think that there has been any evidence that the nurse was incompetent. If she was competent then there wouldn't be enough to go to the jury on that count; on that score.

The Court: It seems to me this situation
page 113 } exists with respect to the defendant. The hospital having been a defendant and that case having been non-suited—having been taken, if I understand it's a charitable hospital, if it were held to be a charitable hospital the only allegation that you could maintain in the case would be that she was incompetent, but that has been dropped out of the picture, I believe, at this junction. Now, with respect to Dr. Carroll, if the nurse were guilty of no negligence shown by the plaintiff then whether she would have been regarded as a competent or incompetent servant would have no particular hearing in the case. I assume that would be correct if she was guilty of negligence then that ends the matter in that respect. What I am trying to say, the issue really is, is not the nurse competent? Isn't that really the issue of the case?

Mr. Andrews: That's certainly one of them. That's what I mentioned but—

The Court: What I'm most concerned about is not, was she competent or incompetent, the question is negligence as applied to this case we're now trying. As applied to the hospital, the question of competence or incompetence is a legal —I mean as one ground for recovery would be very pertinent inquiry, very pertinent.

Mr. Andrews: One other thing in that connection is that she's an employee of the hospital as shown here by their testimony and by Dr. Carroll when called that
page 114 } she's an employee of the hospital.

The Court: You heard Mr. Howell; he took a little different view. Of course, that was a written contract which will explain itself. Mr. Gibson Howell said that he had the power to hire and fire and they only dealt with salaries. That was his testimony and I don't know that that has been refuted in any way by Dr. Carroll; I don't think so. The contract itself indicates as much. The written contract which I have read.

Mr. Andrews: Well, the second ground which I say that we want to get to now, and I certainly agree with you that they did not, Dr. Carroll or his department did not inquire about his condition, Mr. Richardson's condition. They made no inquiry about his physical condition nor about his medical records and that they should have found out he was subject to fainting spells. Now, Your Honor, there's not one thing been shown to you to prove that he's been subject to fainting spells. It was not called to the attention of anybody in that department of the hospital.

The Court: If I understand the testimony thus far, I be-

lieve that his mother testified here that he had the fainting spells—perhaps he had fainted once in his lifetime, that's correct, isn't it? The young man testified as to no fainting spells, isn't that correct? So there's no record here that there's been a lot of fainting spells on the part of this
page 115 } young man.

Mr. Andrews: What was the meaning of that in the pre-trial conference? What was the reason of looking up his medical records?

The Court: I will talk about the records here, Mr. Andrews.

Mr. Andrews: But that's what she said, so I say there was no duty there to inquire about his medical record and apparently if they had made an inquiry, it wouldn't have been disclosed that—

The Court: Isn't the question—Mr. Andrews, may I ask you this question: Is it your theory that the liability would depend upon whether or not the nurse took the usual precautions ordinarily taken in this community in the accepted practice of routine work of taking blood? Isn't that, roughly speaking, the real point?

Mr. Andrews: That's pretty close. There may be variations that you might consider, but that's just about it, yes, sir. That's just about the question and Dr. Carroll has been called and has showed what the usual and accepted procedure is in this community; in this city, and in the general community and he said that's what he found and what he knew to be the accepted method in larger fields and I mean by that more embracing territory. That's what he said and there's no evidence whatsoever that that has not been done,
page 116 } and so they haven't offered any evidence of negligence.

The Court: What have you to say, of the evidence you have introduced about the accepted practice in cases of this kind?

Mr. Ferguson: First, in this particular type of case we have to simply show he has to use ordinary care; that's something which a layman can understand. Two, there are certain types of cases which the courts consistently held that it doesn't eliminate because of the fact it's merely a doctor if there are certain things that he should know not only a doctor but a layman, then he's required to use the same degree of care a layman would use. If I know, or I'm in control of apparatus and I know that certain sequences of events takes place within a certain period of time, then if I can, with the use of ordinary care foresee that occurrence which may take place and

the subsequent results therefrom and I, in the use of ordinary care, can prevent that by using some method then I am under a duty to use that method to—

The Court: What method were you suggesting; none has been proved. What method were you suggesting?

Mr. Ferguson: Let me finish my argument and I will tell you. The doctor has testified in this case that he knew one out of a thousand would faint; he knew that as a doctor. He knew that they are going to faint and he admitted that when people faint they are are liable to be injured. Now, page 117 } too, he said to this Court and told this Court that if the patient remained seated that the likelihood of injury to the patient would be reduced. Now, in this particular case, Your Honor, we have the evidence that the Richardson boy was only seventeen years old at that time, that he had no reason to say anything. He put himself in their hands.

The Court: That would be the same thing if an older person put himself in their hands. He is about seventeen or eighteen years old.

Mr. Ferguson: But he has no medical experience one way or the other about fainting. He had no medical training. He didn't know one out of a thousand people would faint. There's no evidence that he had that knowledge; which the doctor had and the nurses had. He stated that he went in there and the only thing that she told—that this nurse told him; and I think we'll all conclude that she's his agent. She told him to pull his sleeve up, which he did, and she put a piece of cotton there and said—and pulled his arm up. That's the only instructions that she gave him. Now, Your Honor, if it's only one person in a thousand that you can save his face from being disfigured, one person in a thousand, or one or two a week, is it too much to ask in the exercise of ordinary reasonable care that they tell the patient to remain seated for a while? The doctor said the nurse stays there for three or four minutes afterward, during which time he page 118 } said usually you can see if there's any change in the patient's face to tell whether he's fainting. He even said the nurse should ask how does he feel. Now, in this particular case, from the plaintiff's evidence he was not even asked how he felt. He was not asked anything. The doctor said the usual and ordinary procedure is to ask how you feel. There is no evidence in this case that she did anything or said anything other than, "Pull your arm up."

The Court: Let me ask you this question, at that point suppose she's asked—is there any suggestion of evidence that he felt any other way other than normal? Did she get a suggestion that he didn't feel so well?

Dr. Edward D. Levy.

Mr. Ferguson: Yes, sir, Dr. Carroll said that he kept that nurse there for three or four minutes. What was the purpose of keeping the nurse there for three or four minutes in the usual procedure if she's not going to be observing the patient?

The Court: If she's going out of a room, what value is she to the patient?

Mr. Ferguson: In this particular case this was a boy and I except to the Court's rule that there's no difference between a seventeen year old and a twenty-one year old. I think there's a difference. I want to go into this point. I think it's vital. The doctor said—and I made that clear, that if that patient was told to sit and the patient sat in response to
page 119 } that simple request, which is not a difficult thing for the nurse to do, that the injury probably would not have occurred.

Mr. Andrews: I must interrupt. He said the incidence would not be as much.

Mr. Ferguson: I think he can take judicial notice that in sitting it would not be as great.

The Court: I think it would decrease incidence of falling; not fainting.

Mr. Ferguson: Now, in this particular case, to me it's very important, they never asked anything or said anything and yet they had knowledge that a number of those people are going to faint. Here's a boy seventeen years old, he doesn't know how many people are going to faint, but the doctor says in his medical practice he knows that at least one out of a thousand is going to faint. If you know something and are able to foretell, shouldn't—

The Court: I will cut this short with this remark. This is a motion made at the conclusion of the plaintiff's evidence which is equivalent to demurring to the evidence and I will overrule the motion.

Mr. Andrews: I note an exception to the ruling of the Court.
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DR. EDWARD D. LEVY,

a witness on behalf of the defendant, having been first duly sworn, took the stand and testified as follows:

Dr. Edward D. Levy.

Examined By Mr. Andrews:

Q. Will you please state your name, age and occupation?

A. Dr. Edward D. Levy, age forty-two, and I am assistant clinical pathologist at the Norfolk General Hospital.

Q. Would you tell the Court something of your medical background and educational background and experience?

A. Yes, sir. I had my undergraduate training at Harvard University. It was Duke University Graduate School where I got my Masters Degree in Biochemical Science and I later got my M.D. Degree in 1942 from Duke University Medical School. I was an instructor in medicine and biochemistry at Duke University Medical School in 1943 and 1944. I was in the U. S. Navy as a Medical Laboratory Officer. U. S. Military Government Hospital Number 205 from 1944 to 1946. I was resident in medicine at Duke Medical School
page 121 } before going into the Navy; I missed that. Then following the war, I was a staff physician at the North Carolina State Sanatorium and director of the laboratory there 1946 to '47. Since 1947 I have been the director of laboratories at Norfolk General Hospital. 1949 I was the director of the Red Cross Blood Bank, Tidewater Blood Bank in Norfolk. Since 1954 I have been the clinical pathologist and laboratory director of Norfolk Community Hospital.

Q. Are you at present director of the laboratory at Norfolk General Hospital?

A. That's right.

Q. Laboratorian, I should say?

A. That's right.

Q. Do you have charge of taking of blood for blood tests and things of that nature at your laboratory?

A. Yes, sir.

Q. How long have you been engaged in the—in this particular kind of work?

A. Well, since 1947 I have been doing that at Norfolk General Hospital.

Q. Before that time, were you familiar with the established practices of taking blood for blood tests?

A. Yes, sir.

Q. What is the practice in your laboratory as to the taking of blood for blood tests and analysis? How is it
page 122 } done? How is it done on a patient who comes to the laboratory; an out-patient?

A. When an out-patient comes to the laboratory, as a rule,

Dr. Edward D. Levy.

we have a chair like this and the patient sits in the chair and we use either the left or right arm. We use the arm that has a good vein. We pick the arm and the vein is entered with a needle and syringe.

Q. And this is the procedure in your hospital?

A. Yes, sir.

Q. Who uses that needle?

A. The technician who is drawing blood; whoever—whichever department it goes to. It may be hematology technician. It may be chemistry technician. It may be blood bank technician. It may be one of the students in those departments. We have students who are training in those departments.

Q. Do students who have had training take that blood alone?

A. Oh, yes, sir. After a student has been trained and we think they are qualified, we let them draw blood.

Q. Is there anything unusual about students whom you consider qualified being allowed to draw blood?

A. No, sir, it happens at the Norfolk General Hospital every day. We have six students in the laboratory and I'd say of the six, five right now draw blood routinely. The other is a new student who will, as soon as she's

page 123 } ready, and I think qualified, I'll let her draw blood. We couldn't do the work of the hospital without the students helping.

Q. Who trains those students?

A. Students are trained by pathologists and technologists.

Q. Is it usual for you as a doctor—as a pathologist to supervise the taking of blood for an out-patient coming to the hospital?

A. No, sir, I wouldn't be able to take care of all the work for the hospital if I had to supervise each patient that has blood drawn. For instance, in a day there probably would be twenty-five bloods drawn in the laboratory during the course of the day. It would be very unusual for me to supervise individually a case. If the laboratory technician is unable to enter the vein or unable to draw the blood and the hematologist was unable to draw the blood, they might call me then, but not very generally.

Q. In what cases do you supervise the taking of blood?

A. If there be a child, young child, an infant; we have one person who we consider well-trained to do this. If that child came in and this person wasn't there, I probably would draw that blood, but it would be very unusual if I did, because the technologist is there on the job.

Dr. Edward D. Levy.

Q. Would there be anything unusual about a technician or student who is properly qualified after your training to take the blood from a young man normal and physical in appearance, seventeen years of age and approaching—nearing his eighteenth birthday, would there be anything unusual about that?

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A. No, sir. Practically all of the blood is drawn by technologists or students at Norfolk General Hospital.

Q. What can you tell the Court about the incidence of fainting when blood is taken in that way?

A. It's something which can occur. I don't know the exact percentage of people who would faint, but I'd say there are people who, when they see a needle and syringe, will get what you call a slight vasomotor reaction and they may get a little dizzy and do a little perspiring and they may feel faint, and of those people occasionally one will pitch over and faint. Usually right after the blood is drawn, I have seen this.

Q. Do they show some signs such as you have described before they faint?

A. Not usually; it's a very sudden thing.

Q. When does the perspiring and other things that you have mentioned, when do they occur?

A. Usually occurs either right after the needle is put in the vein or sometimes five minutes later. We had a patient —we had an incident, which comes to my mind, of a man and his girl friend who came for a blood virology for marriage license and blood was drawn on both of them and they walked out and when they got around the corner, the man pitched over right on the floor of the Norfolk General Hospital. This was about five minutes afterwards. We had one case where a man had a vena puncture, blood was drawn from his arm, he walked to the front of the hospital, got halfway through the laboratory and fell down to the floor.

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Q. What does the technician, or student technician do after the blood is drawn from the vein?

A. Draws the blood, puts it in a receptacle, puts a cotton pledget on the arm and either folds it up like this, or has the patient hold it out; depends on which student it is. Both methods are used. One method is to put the pledget like this, and fold the arm up, and the other is to put the pledget here and hold the arm out like that.

Q. Does the technician or student technician have to turn his eyes away from the patient when that is done?

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A. Usually you draw the blood into the syringe, pull the needle out and as they do put the pledget on and say, "Will you hold your arm up like this," and they turn and put it in the receptacle. They have to turn away to put it in the proper receptacle, because blood has to be handled a certain way after drawn. It may be mixed with some chemical to prevent it from clotting.

Q. Is there any more a technician should — or student technician should do after the blood is taken and
page 126 } she has turned to the table, if no sign or indication of fainting has taken place, is there anything else at that point that the technician, or student technician, should do?

A. Usually just say, "Thank you; that's all," and that patient will get up and walk out. As a rule, this whole thing takes from about three to five minutes. This is the whole procedure. They may give him a receipt for the work, but they do nothing else. The patient holds his arm up for a reasonable period, anywhere from three to five minutes, and then takes—usually he takes the pledget off by himself and then goes on about his business.

Q. Can you give any percentage of patients who faint or don't faint immediately after blood is taken?

A. It would be hard to do, because it's a variable factor. If you deal with people at certain times of the day they may be more liable to feel faint. If a man after working all day at manual labor, he might be tired and at that time he might have more of a tendency to feel faint then. You don't know. Some people will faint at the sight of blood, or the idea of having blood drawn will produce a vasomotor reaction. It's hard to say what percentage do like that. We see it. It certainly has happened.

Q. Is it exceptional?

A. No, I think this is one of the things that occurs. I don't think every patient does it. I think that
page 127 } occasionally a patient who is like this will come in and will pitch over and faint. I used to see this very often in first year of medical school when I was teaching. I have seen this during vena puncture. The needle is put in the vein and I have seen the fellow get pale and pitch over.

Q. But even if those things do occur, is it your idea of the accepted practice to take the blood from the vein of the persons without requiring them to lie down or advising

Dr. Edward D. Levy.

them to lie down, is it customary and usual at the hospital with which you are associated to take the blood from persons sitting in chairs?

A. That's our routine procedure. In both our present hospital and in the new hospital there's a room where a chair is set up the same way. If a patient says to us, "I faint when blood is drawn," or "I have fainted in the past," we'll take that person down to the blood bank where we have a bed and will let him lie down, but I don't think we do that—maybe once a month. Just about all the blood is drawn with the patient sitting in a chair in the hematology laboratory.

Q. Is that the accepted method of taking blood in this vicinity?

A. Yes, sir.

Q. Or the vicinity of Norfolk, in Norfolk and the vicinity of Norfolk?

A. I would say so. I visit many hospitals
page 128 } around here and I have been associated with
many where there's a Red Cross Blood program
and this is routine procedure.

Mr. Andrews That's all.

CROSS EXAMINATION.

Examined by Mr. Ferguson:

Q. As you say, it's one of the things that occurs, the fainting?

A. Yes, sir, it can occur.

Q. And you as a doctor know that and can predict that in some of your patients they are going to faint?

A. It's so infrequent. You know a lot of things happen to a patient. I think lying a patient down on the bed—

Q. I didn't ask you that question. I say it's one of the things that you think can occur?

A. Oh, yes, it can.

Q. So, as a result of that, you as a doctor should be able to use ordinary care, at least ordinary and reasonable care to see that your patient is protected against the danger which you can foresee, is that correct?

A. If I see a patient who says he gets excited about drawing blood or that he's fainted in the past, then I
page 129 } would take extra care with that patient, yes,
sir.

Dr. Edward D. Levy.

Q. What about the patient who's never had blood drawn before, do you ask him anything?

A. No, we observe them and we can tell usually from observation.

Q. So you can tell when they are going to faint by observing the patient?

A. Not all—we think we can. We look at them and if they—

The Court: Would you mind, for the benefit of the Court, putting the question as to what precautions are ordinarily taken?

Examination by Mr. Ferguson Continued:

Q. You stated that one of the ordinary precautions that is taken when drawing blood is to set them in a chair like this, is that right?

A. That's right.

Q. And to describe for the benefit of the record, this is a chair which has an arm on it, does it not?

A. Yes, sir, with arms around it.

Q. Now, may I ask you in the course of ordinary procedure do you take a straight chair, perfectly straight, with no arms on it of any nature whatsoever and set
page 130 } the patient facing backwards in the chair?

Mr. Andrews: I object to that question. There's no evidence whatsoever that the patient was seated backwards by anyone here. Mr. Richardson was not seated; he sat. He took the chair and turned it around.

The Court: He was seated backwards.

Mr. Ferguson: Normally, do you let a patient sit straddle a chair—

A. Will you show me what you mean, sir?

Q. I can't, because I don't have a chair that has no arms.

A. It is a straight chair with no arms?

Q. Yes, sir. Is it ordinary and customary that you allow the blood test to be taken with a patient sitting in a chair of this type with an arm stuck over in this manner?

A. It's not customary, but I have seen it done. In the Navy they just line up like that and occasionally—

Dr. Edward D. Levy.

Mr. Ferguson: Just answer my question.

The Court: Did the record show it was over the back of the chair?

Mr. Ferguson: He stated it was over the back of the chair and Mrs. Richardson testified that it was over the back of the chair also.

page 131 } Examination by Mr. Ferguson Continued:

Q. Is that customary and ordinary method in this vicinity?

A. No, sir.

Q. Now, Doctor, the chair that's ordinarily used has arms on it, isn't that correct?

A. Usually the chair has arms on it like that but it depends on what's available.

Q. But that acts ordinarily as additional protection to the patient, does it not?

A. I haven't thought about it, because this doesn't occur very often.

Q. Doctor, after that, what instructions does the nurse give to the patient who's coming in that's never had a blood test, do you tell that patient anything at all?

A. No, sir, once the blood is drawn the pledget is placed on the arm and the arm is held up like this, or like this, and then they are allowed to go.

Q. You testified previously that the paient usually faints right after the blood is drawn?

A. I said the patient can faint or usually faints some time after the vein has been stuck; after the needle has been withdrawn.

page 132 } Q. You also testified that the patient usually is left sitting in the chair for a period of three to five minutes afterward, is that correct?

A. Yes, sir.

Q. You do not allow the patient to rise after that?

A. After three to five minutes he can go.

Q. So the patient is usually told to remain seated until the little bandage you are talking about is taken off, is that correct?

A. That's right.

Q. Some three to five minutes later?

A. Yes, sir.

Dr. Edward D. Levy.

RE-DIRECT EXAMINATION.

Examination by Mr. Andrews:

Q. You say the patient is told or does he sit there until told?

A. He sits there and by that time the blood is mixed, then he is allowed to go.

Q. You would assume he would sit there?

Mr. Ferguson: This is his witness, he can't cross examine his own witness.

page 133 } Examination by Mr. Andrews Continued:

Q. There's nothing unusual about using a straight chair like this, is there?

A. No, we have several chairs in the blood bank and in the hospital we have a straight chair which we use frequently to draw blood. We have a chair something like this in the hematology department and we have an arm chair in there.

Q. So if there was a table beside the chair for the patient, would that be a proper method of procedure?

A. Yes, sir, it would be all right to use a straight chair; many people do. Many people use straight back chairs by a table. That is routine procedure at the Norfolk General Hospital. At the Norfolk General Hospital they have this type of setup, where there's a chair and table right by it.

Q. In response to a question by Mr. Ferguson, you stated that the nurse does not tell the patient anything, is that correct?

Mr. Ferguson: That's not what he said, Your Honor, I'm not going to let him change the witness's testimony.

The Court: He stated on cross examination that she did tell him to sit there.

A. May I clarify my statement? Usually the patient sits there after the blood is drawn and the pledget cotton is on his arm and then the technologist, or student, page 134 } as the case may be, says, "Well, we're through with you, Mr. Jones," or may just nod to him and he gets up and leaves. Every patient is handled a little differently; there is no set routine for her to follow per patient.

Dr. Marvin Francis Sherrill.

The Court: The question has been all along, whether or not the patient is advised to sit for a few minutes after the cotton has been placed on the arm.

A. Well, they're asked to sit there.

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page 135 } DR. MARVIN FRANCIS SHERRILL,
a witness in behalf of the defendant, having been first duly sworn, took the stand and testified as follows:

Examined by Mr. Andrews:

Q. Please state your name, age and occupation.

A. Marvin Francis Sherrill, thirty-eight years of age and I'm the pathologist and laboratory director at the Riverside Hospital, Newport News.

Q. Would you state your educational and medical background please?

A. Yes, sir. I graduated from the University of Texas with a B. A. Degree in 1940. From the University of Texas Medical School, M. D. Degree in 1943. I had special training in pathology at Mercy Hospital, San Diego, California, U. S. Navy Hospital, San Diego, California. At the University Medical School in Berkeley; at the Armed Forces Institute in Pathology in Washington, D. C., where I finished and was certified as a pathologist in 1954.

Q. And you are presently pathologist and laboratory director at the Riverside Hospital in Newport News?

A. Yes, sir.

Q. You have general charge of the taking of blood for blood tests in Riverside Hospital?

A. Well, I am responsible for the laboratory,
page 136 } but I rarely do this myself.

Q. How do you have those blood samples taken?

A. We have technicians and laboratory aides, as we call them, who do that specific job for us.

Q. In your laboratory what are laboratory aides?

A. Well, in our laboratory we have some girls who are not trained technicians, that is, they are not certified to do the laboratory test work, but have been trained in some of the lesser jobs, one of which we have is our blood checking system and we call them laboratory aides; it's a title used at Riverside.

Dr. Marvin Francis Sherrill.

Q. After training, are those laboratory aides allowed to take blood by themselves?

A. Yes, sir.

Q. What about the frequency of their taking blood?

A. Oh, probably two or three hundred times a day, I'd say.

Q. Do they take the blood without any supervision at the time they actually take it?

A. Once they have been trained, yes. We train them to do that by themselves so that our technicians and more skilled people can do the other work that has to be done in the laboratory.

Q. Will you tell this jury what procedure you generally follow, what procedure you or either the doctor
page 137 } or the technician or the laboratory aide follows in taking ordinary blood sample from the patient?

A. In the laboratory where patients come to us, if they walk, we have in our front office what we call a checking table which is just an ordinary white kitchen-type table with a chair alongside and we have the patient sit down in this chair and put his arm out on the table where the needles, syringes and tubes for putting the blood in are. Our technician or aide or whoever happens to be at the table at that time will insert the needle in the patient's vein and draw the proper amount of blood, put it in the tube and clean off the area and put a little pledget on it and let them go.

Q. Well, after the blood is taken and it's still in the syringe, what is the next thing that the laboratory aide or technician does?

A. Usually the blood samples have to be placed in tubes of various types depending on the test we are going to run, and as soon as she draws the blood out of the vein she has to get it into the tube before it clots and she will put it in there as quickly as possible before it clots in the syringe.

Q. Would the laboratory technician or laboratory aide have to take her eye off the patient while doing that? Putting the blood in the tubes and so forth?

A. I suppose so. The table is right there, I
page 138 } mean you would see the person if they were there, but they would have to turn away from the patient, yes, to get it in the tube and so forth.

Q. You would have to look at what you were doing in order to take care of the blood properly?

Dr. Marvin Francis Sherrill.

A. Yes, sir.

Q. Is it generally accepted, this method of taking blood in the peninsula area, Newport News, Hampton, and that vicinity, to take the samples while the patient is sitting in a chair such as you have described, is that the usual method?

A. In all the hospitals that I've been in around here, that's the way they do it.

Q. Is it usual to have a person lie down while the blood is being taken?

A. Not for this type of thing; not unless there is some special reason. If that happened to us, we'd have to go somewhere else to do it. We don't even have a bed in our laboratory.

Q. Where there was no special reason and in case a person came to the hospital as an out-patient, if there's no reason assigned for having that person lie down, would it be usual to have him lie down?

A. No, sir, we wouldn't have the patient lie down; there's no place for it in our laboratory.

page 139 } Q. Could you tell me anything about the incidence of fainting while or immediately following the taking of blood?

A. I don't know what the exact statistics would be, but it happens to us, I'd say, several times a week. Some are faints or has a tendency to faint following a needle puncture like that.

Q. Where would they be at that time when they fainted?

A. Right there in the chair. They'd begin to turn a little pale and sweat. As soon as we notice that, we stop everything and tend to that person. We have the person lean forward in the chair with the technician there to sort of help them get their heads down so that the blood pressure goes back up again. That's what usually causes that. We keep smelling salts, and so forth, there and we would just work with that person until they come around and if they are still wobbly and can't navigate too well, we have them step outside the laboratory to a ramp which is outside the laboratory with chairs and couches on there and have them wait there until they get back on their feet again. This is usually a temporary thing; it only lasts a minute or two, depending on the person. If it is a very nervous person, sometimes we may have to leave that person there for a longer period of time. On one or two occasions, as I can recall, we've had to call an intern to come to see the patient and give him a

page 140 } little stimulation to get him up and going again, but nothing serious has ever happened out of it.

Q. So it hasn't been considered serious enough to have anything other than a chair and table and basket with the instruments?

A. No, sir, except that one occupational hazard; some people just faint. I did it one time myself; you can't predict it.

Q. Is it customary to have one or more than one attendant whether it's the student or laboratory technician taking the blood, is it customary to have more than one person connected with your department present when the blood is being taken?

A. No, sir, we don't; just that one person who has been certified by us as being capable of doing that work.

Mr. Andrews: Thank you, sir.

CROSS EXAMINATION.

Examined by Mr. Ferguson:

Q. The chair, the usual procedure that you have outlined to him, is the chair up next to a table?

A. Yes, sir.

page 141 } Q. And the patient stays here in this manner and the blood is taken, is it usually customary practice in Newport News to allow a patient to be sitting in a chair with their arm like this, is that usual and customary procedure?

A. Well, no, that's not the way we usually do it.

The Court: For the record, you better say—

Mr. Ferguson: This is sitting facing the back of the chair with the arm from which the blood is being taken extended over the back of the chair which has no arms, but a back to it.

A. We don't do that as a routine.

Q. You say you have seen patients, who are about to faint, go out of the hospital several times?

A. I was guessing, because my office is right next to this area and I frequently get a call to come out there and help revive a patient.

Dr. Marvin Francis Sherrill.

Q. So as a result of your knowing that two or three people are going to faint a week there, you in the exercise of ordinary and reasonable care take certain precautions to see that your patient is not injured, do you not, sir?

A. Well, our technicians are trained to realize that people are going to faint—

Mr. Ferguson: Well—

Mr. Andrews: Let him answer.

Mr. Ferguson: Have you finished?

A. I was going to say, they are trained to realize this thing does occur; it happens to a lot of them and
page 142 } we teach them what the basic signs of shock are and if somebody's going to fall out of the chair, I tell them to catch them, don't let them fall.

Mr. Ferguson: All right, thank you very much.

RE-DIRECT EXAMINATION.

Examined by Mr. Andrews:

Q. But you don't have but one person there?

A. Generally only one, if some one else happened to be there, it's just coincidental and that—

Mr. Ferguson: We object to him leading his witness.

Q. You have stated, have you not, that the person has to take his eye off the patient to take care of the blood that's been taken?

Mr. Ferguson: I am going to object to that; he did not state that.

The Court: The question is in the form of leading, if you will restate it.

Mr. Andrews: There's no need to restate it.

Examination by Mr. Andrews Continued:

Q. Does the laboratory assistant or the tech-
page 143 } nician, the person who takes the blood have to take his eye off the patient momentarily to look after the blood, that is the putting in the tubes, or doing whatever is necessary to it?

Anne Bunch Jordan.

A. Yes, sir, they would, because they have to put this needle through a smaller rubber stopper in the top of the tube which has a vacuum in it and they have to watch what they are doing or they won't get the stuff in the tube and might mess it up.

Q. Is it possible for the person to faint during the interim?

A. Yes, sir, it is.

Q. Before the nurse could get back to him?

Mr. Woodward: He's arguing his case.

Mr. Andrews: I withdraw that last question. That's all.

Mr. Ferguson: I have no further questions.

ANNE BUNCH JORDAN,

a witness on behalf of the defendant, having been first duly sworn, took the stand and testified as follows:

Examined by Mr. Andrews:

Q. State your name, please.

page 144 } A. Anne Bunch Jordan.

Q. Your age?

A. Twenty.

Q. Where do you live?

A. Portsmouth, Virginia.

Q. What's your occupation?

A. Laboratory technician.

Q. Were you employed at Louise Obici Hospital in January, 1955, when Mr. Roy Robertson Richardson *come* thereas an out-patient?

A. Yes.

Q. Do you recall seeing him on that day?

A. Yes, sir.

Q. How long had you been at Obici Hospital?

A. Well, I went there in July of '54.

Q. And in what status did you go there?

A. As a student.

Q. And what sort of student were you? What was your work?

A. Laboratory student.

Q. As what?

A. Student technician.

Q. How long did you study as a student technician?

Anne Bunch Jordan.

A. The whole time, you mean?

Q. Yes.

page 145 } A. Fifteen months.

Q. Well, on the day that Mr. Richardson came there, how long had you been at the hospital?

A. It was around six or seven months, somewhere—it was from July until January, I think.

Q. Prior to that day, had you been taking blood samples by yourself on some occasions?

A. Yes.

Q. How long would you say you had been doing that?

A. Approximately a month or a month and a half.

Q. Who was your immediate superior at the time? Whom were you working under?

A. Dr. Carroll.

Q. Was there anyone in the laboratory under whom you were working also?

A. Yes, sir, it was also Mrs. Barnes. I mean she supervised all the time.

Q. Is Mrs. Barnes still at the hospital?

A. Yes, sir.

Q. Employed by the hospital?

A. Yes, sir.

Q. Is she here today, do you know?

A. Yes, sir.

Q. Did you know Mr. Richardson, this young man, before that day?

page 146 } A. No, I had just heard of him.

Q. As an out-patient, did you have any instructions as to taking blood for blood analysis for him?

A. Yes, sir, he came to the laboratory and Mrs. Barnes took the requisition that he had—that the doctor had given him and she looked at it and said there was nothing on it that I couldn't do; that I was qualified, so she told me to go on and get the blood.

Mr. Woodward: What was that?

Mr. Andrews: He came as an out-patient to the laboratory and Mrs. Barnes received the requisition he had from the doctor and she looked at it and said it was not anything on there that she couldn't do; that Miss Bunch was qualified and therefore she was ordered to take the blood from Mr. Richardson.

Mr. Woodward: Are you going to put that in evidence?

Anne Bunch Jordan.

Mr. Andrews: Yes.
Mr. Woodward: All right.

Examination by Mr. Andrews Continued:
Q. Did you have any particular instructions about Mr. Richardson as to how to take the sample?
A. No, sir.
Q. Did you have any instructions that it was to
page 147 } be done by a doctor; in a doctor's presence?
A. No, sir.
Q. Did you have anything called to your attention that there should be anything more than a routine taking of the blood sample?
A. No, sir.
Q. What was Mr. Richardson's appearance that day?
A. I didn't see anything like he was maybe feeling bad or anything.
Q. Did he look like he was feeling well?
A. Yes, sir.
Q. Did he say anything about not feeling well?
A. No.
Q. Who was with him when he came to the hospital, if anyone was.
A. His mother, Mrs. Richardson.
Q. Did he have some sort of paper or written instructions about it or a requisition as you call it?
A. He had a requisition from the doctor stating the type of blood work to be taken.
Q. And was there any special instruction on there?
A. No, sir.
Q. Where was the blood sample taken?
A. Out of his arm.
Q. I mean with reference to the place where it
page 148 } was taken?
A. In the laboratory room that we have for out-patients.
Q. Who was present?
A. His mother and Dr. Carroll's secretary.
Q. Do you remember her name?
A. No, I don't. Mrs. Barnes and Mr. Richardson and myself.
Q. How much of the time was Mrs. Barnes in the room?
A. I don't remember; I know she came in while he was in there and she went back out.

Anne Bunch Jordan.

Q. Did she come in while you were taking the blood sample?
A. Yes, she came in when I was getting ready to start.

Mr. Woodward: What did you say?

A. She came in before I started.

Examination by Mr. Andrews Continued:
Q. Did she come in before you got the syringe to start?
A. That's right.
Q. Tell the Court and jury where Mr. Richardson was, where you stood, and where this metal receptacle was.
A. He was on the left of the table—we had a table similar to this one with equipment on it, he was to the
page 149 } left and I took the blood, I think it was from his right arm. It was leaning on the table. I took the blood and told him to fold up his arm and I asked him if he felt okay, and he replied "okay," or "fine," or I don't know the exact words, and I turned to put the blood in the tube and that's when I heard the crash.
Q. Where did he sit, in a chair?
A. Yes, sir.
Q. Was, if you can consider that window as a door, where was the chair in which he sat?
A. If that was the door?
Q. If that was the door to the room, where would the chair and where would the table be?
A. The chair would be approximately where you have it now.
Q. And the table would be as if it was pulled around here?

Mr. Ferguson: Let her do it.

Examination by Mr. Andrews Continued:
Q. Where should you pull this table?
A. You should put the table right in between—right here.
Q. Like this?
A. Yes.
page 150 } Q. Did Mr. Richardson sit in the chair?
A. Yes.
Q. You say you took the blood out of his right arm?

Anne Bunch Jordan.

A. Yes, sir.
Q. And where was his arm?
A. It was leaning against the table.
Q. After the blood was taken, what did you do?
A. I asked him to fold his arm to stop it from bleeding and asked how he felt.
Q. Did he take his arm off the table then?
A. Yes, he folded it up.
Q. Did you see him put it back on the table?
A. No, I didn't.
Q. When was the last time you observed him sitting in the chair?
A. When I completed the taking of his blood.
Q. Then what did you do?
A. I turned to put the blood in the tube. It has to be done quickly to keep it from clotting.
Q. If the table was right here, you took the blood and turned, did you turn to—
A. No, the table was here.

The Court: You haven't drawn the table where she said it was.
Mr. Andrews: Excuse me, is that what you mean?

page 151 } A. Yes, sir.
Q. Now, what did you do after you took the blood?
A. I turned to put it in the tube. The basket was up more this way.
Q. Show these gentlemen here what you have to do with the blood. Is that right, or should it be turned?
A. The receptacle should be this way.
Q. All right, show these gentlemen what you had to do with the blood after it was taken?
A. All I had to do was take the needle off the syringe to keep the blood from being hemolyzed and then take it and shift it to the tube slowly.
Q. Then what else did you do?
A. Well, while I was doing this is when I heard him fall; I heard the crash.
Q. Did you see him get up from the chair?
A. No.
Q. You don't know how he fell?
A. No.
Q. Where was his mother, Mrs. Richardson, at the time?

Anne Bunch Jordan.

A. She was standing over on the right of the room close to the door.

Q. Did you hear her say anything when you heard the crash?

page 152 } A. Yes, she said, "I should have told you he had fainting spells," or something; I don't know the exact words. I know she said, "I should have told you he had fainting spells."

Q. Did anyone come in the room there?

A. Yes, soon Dr. Carroll was there and Mrs. Barnes, she went back out and came back in again with a towel and I grabbed a cloth and started putting cold water and everything on it.

Q. What was done with young Mr. Richardson then?

A. He was admitted to the hospital.

Q. And where was he taken?

A. I don't remember what floor.

Q. Well, did you see him again?

A. Yes, I had to go back up later and get some blood work from him.

Q. Was his mother there then?

A. Yes, she was.

Q. Do you recall who else was there, if anyone else was?

A. No, I don't.

Q. Did she make a statement about it at that time?

A. Yes, she did.

Q. What did she say?

page 153 } A. She told me not to blame myself or anybody; it was just one of those things that happened, and she should have told me, she said, that he had fainting spells.

Mr. Ferguson: We move to strike.

The Court: That wouldn't bind the plaintiff.

Mr. Andrews: I think it was so near in point of time; I think it would be part of the *res gestae.*

The Court: I rule against you on that. I overrule that.

At this time examination by Mr. Andrews was continued:

Q. Did you close his arm or tell him to close his arm?

A. I told him to fold it.

Q. Did he do it?

A. Yes, he did.

Q. Did you say anything to him at that time or ask him anything?

Anne Bunch Jordan.

A. I asked him how he felt.
Q. What did he say?
A. "Okay," or "fine," or something; I don't know the exact words.
Q. Then you say you turned away—

Mr. Ferguson: We object to him leading the witness. The witness has just answered.

Examination by Mr. Andrews Continued:
Q. What did you do immediately after you told him that?
page 154
A. I turned to put the blood in the tube.

Mr. Andrews: That's all.

CROSS EXAMINATION.

Examined by Mr. Ferguson:
Q. If this is the arrangement of the room, was this a wall over here?
A. That's right.
Q. Is everything that you outlined there just exactly the way it was sitting at the time?
A. As far as I can remember, yes.
Q. As a matter of fact, the boy wasn't sitting this way, was he? Was he turned around in the chair? Wasn't the chair turned around like this?
A. I don't remember.
Q. If he had been turned around like this, is this the ordinary usual way that you take blood tests with a person seated backwards and to the table like this?
A. No.
Q. I see. So, you think the chair was sitting this way in the room. Now, for purposes of the record, the table is back against the door with the chair when you are facing the table to the right of the table with the back of the chair up to what would be the wall.
page 155

Mr. Ferguson: I have no further questions.

Anne Bunch Jordan.

RE-DIRECT EXAMINATION.

Examined by Mr. Andrews:

Q. Did you tell this young man how to sit in the chair?

A. No, I didn't.

Q. Where was the chair—what was the position of the chair when he came in the room?

A. I don't remember.

Q. Do you remember whether it was facing outward or inward?

A. I think it was facing outward.

Q. Was it facing as it's facing now?

A. Yes.

Q. Did you tell him to get up from the chair?

A. No, I didn't.

Q. Did you know that he was going to get up from the chair at that moment?

page 156 } Mr. Woodward: We object on the grounds he's leading the witness. We'd like to get along, but we don't want to get along that way.

Examination by Mr. Andrews Continued:

Q. What work are you doing now?

A. Laboratory technician.

Q. Is it the same kind of work you were doing at Obici Hospital?

A. Yes, sir.

Q. What doctor are you working for now?

A. Dr. Allen P. Long.

Q. While you were out there at Obici doing that particular kind of work, did anyone faint while a blood test was being made?

A. You mean any besides Mr. Richardson?

Q. Yes.

A. I recall only one.

Q. Well, what age person was that?

A. A little girl, maybe six or seven.

Q. Did she show signs of fainting?

A. Yes, she did.

Mr. Woodward: We object to that.

Anne Bunch Jordan.

The Court: I don't know how far you will go
page 157 } to have her recount the whole situation of this little girl fainting.

Mr. Andrews: I'm not going into it.

Q. Do you know of any other person fainting at Obici Hospital while blood was being taken for tests other than Mr. Richardson and the little girl, do you know any other one?

A. Not in my work; I don't recall anyone fainting on me.

Q. Have you known of anyone fainting at Portsmouth General Hospital while that work was being done; while you've been working over there?

A. No, sir.

Mr. Woodward: We object.

The Court: She could answer whether or not anyone had fainted, if she knows.

Mr. Woodward: It depends on her knowledge.

Examination by Mr. Andrews Continued:

Q. You heard the question, have you that information as to whether anyone has fainted while blood was being taken at Portsmouth General Hospital since you have been working in the laboratory there?

A. No.

Mr. Andrews: That's all.

page 158 } RE-CROSS EXAMINATION.

Examined by Mr. Ferguson:

Q. You have just testified the whole time you had been out there that you didn't know anything about anybody fainting and right after this occurred a boy fainted out there—a boy by the name of Joe Wiggins?

A. I don't remember.

Q. Do you deny that?

A. Yes, I do.

Q. You deny the boy fainted and fell out there, or do you deny knowledge of it?

A. I deny knowledge of it.

Q. The truth of the matter is, you don't know who fainted out there, do you?

A. No, sir, I don't.

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page 159 } GLADYS C. BARNES,

a witness on behalf of the defendant, having been first duly sworn, took the stand and testified as follows:

Examined by Mr. Andrews:

Q. Please state your name.

A. Gladys C. Barnes.

Q. Your age?

A. Thirty-five.

Q. Your occupation?

A. Laboratory technician.

Q. Were you employed at Louise Obici Memorial Hospital on January 13, 1955, when Mr. Roy Robertson Richardson came there as an out-patient?

A. Yes, sir.

Q. How long had you been connected with the hospital at that time?

A. Five years.

Q. What training had you had at that point and what was your position there at that time?

A. I was doing tissue work. I was tissue technician.

Q. You were technician at that time?

page 160 } A. Yes, sir.

Q. How much training had you had?

A. Oh, let me see, I had twenty-two months laboratory school and I had had additional six months refresher course in bacteriology.

Q. Did you have general charge of the taking of blood samples at the pathology laboratory at Obici Hospital at that time?

A. I always assisted the students at any time I could in any duties they performed.

Q. Was Anne—Miss Anne Bunch then, now Mrs. Jordan, at the hospital at that time as a student?

A. Yes, sir.

Q. Do you know now how long she had been there at that time?

A. Six months.

Q. Do you know what training she had during that period?

A. She had had training in the different departments;

hematology, urinalysis, practical and theoretical blood checking samples from the patients on the floor, and also in the out-patient department. Right offhand, I think that's about all she had been instructed.

Q. You say she had been instructed on how to take blood samples?

page 161 } A. Yes, sir.

Q. Do you know how long she had been taking blood samples?

A. Well, she had been on her own about a month and a half, but she had collected samples off and on with some other technician or superintendent advising her or either Dr. Carroll.

Q. Had you supervised taking blood samples by her on some occasions?

A. Yes, sir.

Q. Would you tell the nature of her work, whether it was good or not?

A. She was a very capable girl; did her work thoroughly.

Q. Tell what happened when Mr. Richardson came out there that day, or how he was sent, and so forth.

A. As best I remember, the little Richardson boy, with Mrs. Richardson, came into the main laboratory with a slip from Dr. Edward Joyner requesting this blood sugar and a blood count on him, and I asked Miss Bunch if she would collect the sample and she got the collecting basket and went to the blood collecting room.

Q. Is that what's used, the blood collection basket?

A. That is one, yes, sir, but we use a wire basket instead of this particular one.

page 162 } Q. Is this similar to that?

A. It's similar to that, except it has a handle.

Q. Was there any special instruction on the request slip sent you by his physician?

A. No, sir.

Q. What physician was that? Who sent him?

A. Dr. Edward Joyner.

Q. Did Dr. Carroll see the young man at all before the blood sample was taken?

A. No, sir.

Q. You did see him, did you not?

A. I saw the child, yes.

Q. Do you know how old he was at that time?

A. No, sir, I don't.

Gladys C. Barnes.

Q. How was his appearance at that time?

A. He was—seeing him today, he was quite a bit smaller than he is now; he wasn't as stout.

Q. I mean, did he look like he was well that day?

A. I didn't observe him that closely, because I had no reason to.

Q. Did you go in the room where the blood sample was being taken, while it was being taken?

A. Yes, sir.

Q. What was the occasion of your going in there?

page 163 } A. In the blood collecting room, we have a little filing cabinet where we file paraffin sections and I went to look for a block to do some recuts for Dr. Carroll and I was looking at that and trying to observe Miss Bunch at the same time.

Q. Did you observe her?

A. Yes, sir.

Q. Who else was in the room?

A. Mrs. Panton, Dr. Carroll's secretary at that time, Miss Bunch, Mrs. Richardson, and the child.

Q. Well, tell these gentlemen the position of the people and what you observed of the taking of blood by Miss Bunch.

A. Well, as best I can remember; I don't remember exactly how the child was in the chair. I just remember his arm on the table; his right arm and I remember Mrs. Richardson was standing inside the door in the blood collecting room. Mrs. Panton was at the desk typing and I was over by the metal cabinets and Miss Bunch, of course, was standing to approach the child's arm.

Q. Could you see Roy Richardson and Miss Bunch at the same time?

A. Yes.

Q. When you looked, tell the jury what you saw and what Miss Bunch did.

page 164 } A. Anne picked the needle and syringe from the collecting basket and put a tourniquet around the child's arm, made a puncture and asked him to fold up his arm; which is the customary way to do. Then she turned to her basket to put her blood in the specified tubes after collection.

Q. Was Roy Richardson sitting in the chair at that time?

A. He was sitting down.

Q. Was he sitting in a chair?

Gladys C. Barnes.

A. Yes, sir, same chair.

Q. Did you see him release his arm, or did you see anything after she told him to close his arm?

A. I don't remember that I'm right on this, but it seems to me I saw the child pull his sleeve down and button his cuff, but I am not positive of that.

Q. Did you see him get up out of the chair?

A. No, sir, I turned to go out in the corridor.

Q. Did he take his arm off the table after she closed his arm?

A. I can't remember whether he lifted it up or just left it in that position.

Q. I think you said you left the room after you saw the sample taken?

A. Yes, sir.

Q. Was he still sitting in the chair?

A. As best I can remember, the child was still
page 165 } sitting down.

Q. Then what happened within your experience at that time?

A. Well, I was going back to the main laboratory to continue my duties in the main laboratory and I heard the thud and I turned around and picked up a towel and went charging back to the room. Miss Bunch put a wet towel on the boy's face and first aid was applied. I saw some blood around his mouth, and of course, Mrs. Richardson was upset and I helped her to get to Dr. Carroll's office.

Q. Did you—Miss Bunch while taking—after she had taken the blood and closed the arm, did you hear her say anything to Mr. Richardson?

A. She asked if he felt all right and he made some remark, "I'm okay," or something; I don't remember the exact words.

Q. You heard that?

A. Yes, sir.

Q. After you went into the hall, where were you going?

A. Back in the main lab where I was working.

Q. How far down the hall is that?

A. I just don't know.

Q. You heard the noise?

A. Yes, sir.

Q. Was Mrs. Richardson in the blood room, or
page 166 } collecting room where young Roy was when you
got back there?

Gladys C. Barnes.

A. I don't think—I think I met her in the hall coming out of the blood collecting room, but I'm not sure.

Q. Did you hear her say anything?

A. Oh, yes.

Q. Tell what she did say.

A. I, of course, I was apologizing that Miss Bunch felt sorry he was hurt and things of that nature and she made the remark—

Mr. Ferguson: We object to this once again, and it's been sustained.

Mr. Andrews: It has not been sustained.

The Court: Ask the question again, will you, Mr. Andrews?

Examination by Mr. Andrews Continued:

Q. When you heard the noise before you got to the laboratory, you say you returned immediately to the blood collecting room, and did you see Mrs. Richardson as you were returning to that room?

A. Yes, sir.

Q. And did you hear her say anything at that time?

A. She made the remark that for us not to blame yourselves. We were apologizing for what had happened to the child and she made the statement that for us not

page 167 } to worry about it, because it was her fault; she knew he had fainting spells.

Mr. Ferguson: I want to strike that. Irrespective of the relationship of this case of this boy, if he wants to use it purely for impeachment, he may do it or on collateral matters, but as to this, I can't see that it has any bearing on the boy even if you assume it was true.

The Court: This fits very much in the category of the objection that was made; that is a question of whether or not the statement, "It was my fault," comes within a rule of *res gestae* as a conclusion as distinguished from the statement of a fact, and I told you I will hear you on that. That's on the question of saying, "I'm to blame" or "You are to blame." I told you some time back that I would listen to you on that.

Mr. Andrews: She said, "It's not your fault, I should have told you."

The Court: Well, it's not your fault, it's my fault.

Mr. Andrews: I think it's part of the *res gestae.*

Gladys C. Barnes.

The Court: I will hear you on whether or not there was negligence involved. It will not be determined solely by that, but I will hear you on that later. I don't want to talk in front of the jury and I'd like for you to make your objections and let's go ahead.

page 168 } Examination by Mr. Andrews Continued:

Q. Did you consider that Miss Bunch had taken the blood in a proper manner when you left the room?

A. Yes, sir.

Mr. Ferguson: I'm going to object to that.

The Court: She can say the manner in which she took the blood and if that manner was in accord with the usual and customary manner in which blood is taken. If you will reframe your question in that way, you will avoid objection.

Examination by Mr. Andrews Continued:

Q. Did she take the blood in the usual manner in which it was taken at Louise Obici Hospital at that time?

A. Yes, sir.

Q. Are you continuing to take blood in this manner?

A. Yes, sir.

* * * * *

The following incident of trial occurred:

page 168-A } The jury retired from the courtroom. The Court asked counsel to remain and asked counsel for defendant how much further testimony he would have. Mr. Andrews indicated that he had very little more testimony to be taken. The court stated that he deemed it wise preliminary to counsel drafting instructions, to discuss the evidence presented. The Court stated that he felt the evidence of Doctor Levy, among other evidence, was highly important to the plaintiff's case, and discussed with counsel the drafting of instructions consistent with the evidence presented. Counsel discussed with the Court the evidence presented and tentative instructions based thereon. Defendant renewed his motion to strike the plaintiff's evidence, which motion the Court denied, the Court stating that it felt that upon all the evidence the question of the defendant's negligence should be submitted to the jury.

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Time is now 10:05 A. M., January 3, 1958.

At this time Gladys C. Barnes, again took the stand and testified as follows:

Examined by Mr. Andrews:

Q. When the recess was taken yesterday, I think you said that you had gone in the room where the blood was being taken and saw the blood being taken and saw Miss Anne Bunch, now Mrs. Jordan, put the pad on the patient's arm—right arm and have him close it?

A. Yes, sir.

Q. Is that correct?

A. Yes, sir.

Q. How long did that part of the procedure take?

A. You mean by the time—

Q. No, from the time she started with the syringe and took the blood and folded his arm and put the syringe over there and folded his arm?

page 170 } A. Possibly two or three minutes.

Q. Did you see her then turn to the table to take care of—

Mr. Ferguson: I let him lead her to start off, it's his witness.

Examination by Mr. Andrews Continued:

Q. What did she do after the blood was taken?

A. After she got the blood in the syringe—the little table was off to the side; and she turned and put her blood in the tube which she had to have for the work from Dr. Joyner.

Q. What did she had to do with the blood?

A. She had to do a blood sugar and also a complete blood count.

Q. How long—what does she do in order to get that?

A. She had to have a sample of unclotted blood and also she got her count directly from the blood before it clotted.

Q. Was all that to be done while the patient, Mr. Richardson, was sitting in the chair?

A. It had to be completed before the blood clotted; which is approximately from three to five minutes.

Gladys C. Barnes.

Q. What would be the procedure normally of—
page 171 } in this case how much time would it have required?

A. I think you can get a complete blood count out in from two to three minutes before the blood clots.

Q. And the whole procedure, I mean from the time the blood—from the time the syringe is picked up to be put into the patient's arm and transferred to the tubes and the pad put on the arm and the test made, what would you state that time to be?

A. Well, if you're fortunate enough to get the vein on the first puncture, you can do in five minutes the complete procedure.

Q. Who usually takes charge of the pad or gauze that is put on the patient's arm?

A. We always, when checking our count and getting a count after folding the patient's arm, if we are doing a complete count we try to do the count and observe the patient at the same time, because we're told to watch for fainting and numerous things that might give forewarning. They don't always break out in cold sweats or anything, but numerous times they will.

Q. Do you receive instructions, or did you receive instructions from the doctor as to that procedure generally?

A. No, sir.

Q. Well, I mean in your training?

A. In our training, yes, sir.

page 172 } Q. And did Mrs. Jordan receive those instructions from the doctor, in this case, Dr. Carroll?

A. Yes, sir.

Q. Did she receive instructions from you?

A. She received instructions from all the technicians who were working with her or teaching her to collect blood samples.

Q. Did you yourself teach her that way?

A. Yes, sir.

Q. Now, describe the pad or gauze that is put on the arm?

A. Well, usually we use cotton ball with alcohol and hold the patient's arm in this position.

Q. What is the purpose of that?

A. That is to stop the continuous bleeding. If you hold it down, it will continue to bleed.

Q. Does the nurse usually take that pad or gauze from the patient?

Gladys C. Barnes.

A. Sometimes yes, sometimes we don't.

Q. What happens when you don't?

A. We ask the patient if he's feeling all right, then we observe the arm and sometimes they take it off themselves.

Q. Are they told to take it off themselves?

A. No, sir. If they remove it, they remove it on their own. We ask them to fold their arm and hold page 173 } it up. We ask them to hold their arm up and then not unless they remove it—the cotton on their arm, we always check it.

Q. In this case would it have been the usual thing for Miss Bunch to have taken the pad from Mr. Richardson's arm?

A. No, sir, not necessarily. We usually do in out-patients always.

Q. Then in the case of out-patients, it would have been the usual thing for her to have taken it?

A. Yes, sir.

Mr. Andrews: All right.

CROSS EXAMINATION.

Examined by Mr. Ferguson:

Q. Let me ask you this, is it true that a certain number of people out there will faint? Were you taught that when you were in training?

A. Oh, yes, sir, we're always cautioned to observe the patient closely.

Q. Were you acquainted with the fact that as a technician that you can expect some patients to faint?

A. Yes, sir.

Q. And safeguard against that, is that correct?

page 174 } A. That's right.

Q. Now how long did it take—strike that. Mrs. Jordan has testified when she stuck the syringe up into Mr. Richardson's arm that she withdrew it and as soon as she withdrew it she placed it on the table and turned and Mr. Richardson evidently fell during that period, is that what happened?

A. Not from the time she left the patient's arm until she put the blood sample in, he had not fallen.

Q. When did he fall?

A. It was, I think, after she had completed her work and turned—

Gladys C. Barnes.

Q. Do you mean she turned away and didn't observe him from three to five minutes?

A. You always observe the patient from the time you're getting your count out because you have to.

Q. Was Mrs. Jordan's answer incorrect when she said she turned and he fell almost immediately, was she wrong on that?

A. I don't think so.

Q. Three to five minutes is a right long time, isn't it?

A. You might consider it.

Q. Did she turn away from the patient more than is normal—but you say she turned from him from three
page 175 } to five minutes?

Mr. Andrews: I object to that question. I don't think it's a fair question, because it's based on premise for which there is no reason. He can simply ask her what she did. It isn't a question based on premise.

The Court: What was your question?

Mr. Ferguson: I asked, did she not turn from the patient according to this woman's testimony for a period of three to five minutes, is that correct?

A. Well, I don't know exactly how to explain.

The Court: He asked her if this woman didn't turn from three to five minutes, what's your objection?

Mr. Andrews: My objection is this, that she says—

The Court: What's your objection to that question? She's on cross examination.

Mr. Andrews: I understand, Your Honor, but she has said previously that when—

The Court: Suppose he asked her the same question twice—I will permit the question. What would your objection really be?

Mr. Andrews: She testified that she went out of the room after Miss Bunch turned to the table.

The Court: Let her answer that; she can answer the question.

page 176 } Examination by Mr. Ferguson Continued:

Q. Let me get at it this way, when did you leave the room?

A. It was after Miss Bunch had taken the blood from the vein and had turned to administer her blood in the tube.

Q. And how far did you walk?

A. Well, it's just a short distance from there to the door and down the corridor, and that's when I heard him fall. It was after I had gotten to the main lab, which was two doors down.

Q. That's about forty feet, approximately, and you walked about that distance and you heard him fall, do you mean to tell the jury it took from three to five minutes for you to walk forty feet? Do you mean to say it took three to five minutes for you to walk that distance?

Mr. Andrews: I object to that question as irrelevant and immaterial. She has just stated that this procedure—

The Court: Your objection is overruled.

A. I don't know how long it took me.

Q. You don't know how long it took?

A. I don't.

Q. Now, in your examination previously you testified that after Mr. Richardson fell that you went in and talked to Mrs. Richardson; and you and Miss Bunch, Mrs. Jordan, were apologizing to Mrs. Richardson for the injury to the child, why, if you hadn't done anything wrong, were you apologizing to her?

page 177

A. We always do that.

Q. You mean if the fault or blame was on the other party, you go out and apologize for the injury to the child?

A. I most definitely do; that's the least courtesy I can show.

The Court: Is the language of the apology in evidence here?

Mr. Ferguson: Yes, sir; they apologized; they were sorry they hurt her child.

The Court: Is it in evidence?

Mr. Ferguson: It's in the evidence.

A. We were sorry that the child fell.

The Court: Go ahead.

Roy Robertson Richardson.

RE-DIRECT EXAMINATION.

Examined by Mr. Andrews:

Q. What did you say to Mrs. Richardson? What were the words you used in the apology, in what you called an apology?

page 178 } A. I remember I particularly stated we were sorry that he fell and were in hopes that there was no permanent damage to the child.

Q. Did you say anything to indicate that you felt responsible for his falling?

A. I don't think so.

Q. Did you mean to?

A. No, sir.

* * * * *

Q. Let me ask you this question, Obici Memorial Hospital is a large, modern hospital, is that correct?

A. Yes, sir.

Q. In the city of Suffolk?

page 179 } A. Yes, sir.

Q. It's well-equipped?

A. Yes, sir.

Q. And it's well-staffed?

A. Yes, sir.

Q. Well-trained doctors?

A. Yes, sir.

Q. And the standard in this community is as good as it is in other similar communities in Virginia, is it not?

A. Yes, sir.

Mr. Ferguson: All right, that's all.

* * * * *

ROY ROBERTSON RICHARDSON,

having been previously sworn, took the stand and testified as follows:

Examined by Mr. Andrews:

page 180 } Q. Did you go to see Dr. Edward C. Joyner for professional reasons?

A. Yes, sir.

Roy Robertson Richardson.

Q. He was your doctor before January 13, 1955, the date you had your fall?
A. Yes, sir; I had been to see him before.
Q. Is he your family doctor?
A. Yes, sir.
Q. How long has he been your family doctor?
A. Every since I was born; since about 1937.
Q. Immediately within the period of several months prior to January 13, 1955, how many times did you go to see him?
A. You mean within a year?
Q. I'll bring it up a little nearer than that, say, from the first of November, 1954?
A. I may have been to him about three times for physicals or shots or things of that nature.
Q. Do you remember how many times?
A. No, sir, not specifically.
Q. What kind of shots were they?
A. Seems like I had to go to him for a tetanus shot one time for dog bite.
Q. Was a needle used in giving you the shot?
A. Yes, sir.
Q. Do you remember where the needle was
page 181 } put?
A. In my right arm.
Q. Do you remember who applied the needle?
A. I believe it was Mrs. Snooks, his nurse, she was at that time; she's not now.
Q. That was done in Dr. Joyner's office?
A. Yes, sir.
Q. What was your position when the needle was applied?
A. I was sitting down.
Q. Were you sitting in a chair or how were you sitting?
A. It was a metal chair.
Q. Wasn't it a straight chair, or was it a straight chair?
A. Not completely straight.
Q. It was not an arm chair, was it?
A. Seems like to me the doctor had an arm chair with an attachment for a pan, or something.
Q. Are you certain about that?
A. I'm not positive.
Q. Has any blood been taken from your arm at Dr. Joyner's office for any reason prior to January 13, 1955?

Roy Robertson Richardson.

A. No, sir; I have only had those small tests where they stick you in your finger; that's what I meant. I never had any drawn from my arm.

Q. I asked if you had any blood taken from your hand, arm, or any part of your body at Dr. Joyner's office prior to January 13, 1955?

page 182 }

A. From my finger, but I don't consider that an appreciable amount.

Mr. Andrews: That's something the Court can pass on; just—I just asked you to answer the question; I'm not trying to confuse you. I'm trying to find out what was done. Then some blood was taken from your finger at his office?

A. Yes, sir.

The Court: That's what he said.

Examination by Mr. Andrews Continued:

Q. Do you know what position in which you were placed when that was taken?

A. I'm not sure about that, that was a long time ago.

Q. You know whether you sat in a chair or not?

A. I can't say for sure. I was right small then.

Q. All right, sir, if I brought the thing up to November, say, from November 1, 1954 and you say you were in his office two or three times between then and January 13?

A. Yes, sir.

Q. Well, will you tell us what caused you to go to see Dr. Joyner?

A. Well, I went to get a shot one time.

Q. What kind of shot?

page 183 }

A. Tetanus shot; I'm pretty sure it was.

Q. Was that during the period of November 1, 1954, to January 13, 1955?

A. I am pretty sure it was, if it wasn't, it was right near that time.

Q. What did you go for the other times?

A. I went for a physical once.

Q. What was the occasion for going for the physical?

A. I went up there to see if he could find anything wrong with me at the time I was feeling bad.

Q. Could you tell what date that was?

A. No, sir, it was some time in January. It was right after the first of December or in January, 1955.

Roy Robertson Richardson.

Q. It was then shortly before you went to Obici Hospital on the occasion we're talking about, January 13, 1955?

A. Yes, sir.

Q. Why did you go—to see why you were feeling bad?

A. I figured maybe he'd be able to find out.

Q. In what way had you been feeling bad?

A. I had just been feeling bad; I didn't have any energy. I wanted to sleep all the time.

Q. What did you tell Dr. Joyner your symptoms were?

A. I told him I was—I felt like whenever I got to going good I'd wear out too easily. I got tired too easily. I wondered if he could help me.

page 184 } Q. Did you tell him of having some kind of blanking out spells?

A. I didn't have blanking out—

Q. I say, did you say to him you had something like blanking out spells?

A. No, sir, I told him I had an odd feeling and I couldn't describe it.

Q. Did you describe the feeling to him?

A. I never could actually describe it to anybody.

Q. Can you describe it now?

A. It was a feeling of being completely tired and worn out.

Q. Did you tell Dr. Joyner that you had lapse of memory or that you got tired to the extent that you wouldn't remember exactly what went on?

A. No, sir, I never have had any lapse in memory.

Q. Can you, in your own words, tell the Court now what you did tell Dr. Joyner?

A. Well, I went up there and told him I had been feeling bad in school, that I just didn't feel exactly right and I didn't know exactly what it was, and it—and that it had been bothering me for a right good while and would he see if he could find what it was.

Q. What did you mean by a right good little while?

A. I guess it was about a week before I went to

page 185 } see him.

Q. How many times did you go from the tail end of December, as you said, until January 13, 1955?

A. I'm not sure about it, but I think I went twice, but I'm not positive.

Q. Do you recall what tests, if any, he made at those times?

A. I think he took my blood pressure, checked my heartbeat, checked my eyes, and such as that.

Mr. Andrews: That's all.
Mr. Ferguson: That's all. Come down.

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DR. EDWARD C. JOYNER,
a witness on behalf of the defendant, after having been first duly sworn, took the stand and testified as follows:

Examined by Mr. Andrews:
Q. For the record, would you state your name, age, and occupation?
A. Dr. Edward C. Joyner, fifty-four years of
page 186 } age, physician in general practice.
Q. How long have you practiced in the city of Suffolk?
A. Since August 1, 1930.
Q. And you've been physician for this family since then?
A. Yes, sir.
Q. Since 1930, have you been consulted from time to time during the relationship by Mr. Roy Robertson Richardson?
A. Yes, sir.
Q. Did Mr. Roy Robertson Richardson by himself or with either or both of his parents come to your office to consult you between the period or during the period of several months prior to January 13, 1955?
A. Well, he was up there off and on different times, yes, sir. Well, for different things though.
Q. I'm going to ask you what did he come for, you say he was there at different times, what did he come for?
A. Well, just how far back do you want?
Q. I said for several months preceding January 13, 1955, the day of this accident.
A. 1954, January, 1955, several months before that. I was trying to figure out several months; it was around February. I saw him February 11th, 1954, and removed a splinter from his hand. On July 24, 1954, I saw him after
he had had an injury on the Norfolk & Western
page 187 } train, which he was first treated, as I understand,
in the hospital emergency room, and the next

day I saw him at the office. Do you want to know anything about that?

Q. Not at that point.

A. On the 13th of August, 1954, I saw him for a football examination. That's an examination required before they play football, and on January 5, 1955, I saw him for stomach trouble, simulated chronic appendix. At that time I took a blood count, which was normal, a hemoglobin, his blood pressure was normal, and then on 12 January, 1955, he came up complaining of some blanking out spells in which he couldn't remember things good. At that time his blood was a hundred and twenty over seventy. Then I did not see him again until May, 1955, which was after the time you want, I suppose.

Q. On January 5, you say you took a blood count.

A. I took a hemoglobin count. I didn't take a complete blood count; I stuck his finger.

Q. Did you take any blood from the finger?

A. I took a drop.

Q. How was it taken?

A. By taking the finger and sticking it with a needle and taking the drop of blood up into what we call a spencer, with a spencer hemoglobin arm puncture to compare by coloring.

Q. What was his position when you took the blood at that time? Was he standing or in a chair?

page 188 } A. He was sitting in a chair; straight chair that we have by the table.

Q. And who took the blood?

A. Miss Snooks, office assistant.

Q. Have you ever had occasion to take blood—a blood sample from his vein or arm in your office?

A. I don't recall such. I have no record of such; I don't believe.

Q. But that day, January 5, 1955, you took the necessary blood from his finger?

A. I checked hemoglobin.

Q. And you had him sit in a straight chair?

A. That's right.

Q. That's the way you usually handle those things, isn't it?

A. That's right.

Q. On January 12, you said that he complained to you of blanking out spells, stating that he could not remember

well, or could not remember, will you tell the Court just what he told you?

A. Well, as best I can remember, he said he had these feelings—funny feelings in his head in which he couldn't remember and he just couldn't describe it completely and I took the blood count and blood pressure to see if they were any of the cause, and which I didn't find it in
page 189 } that. He just said he felt like things went away from him; he couldn't remember.

Mr. Andrews: That's all.

CROSS EXAMINATION.

Examined by Mr. Ferguson:

Q. He said he couldn't remember, is that right, doctor?

A. He said he couldn't remember things for a few minutes.

Q. Never claimed to you that he fell on his face, did he?

A. No, not to my knowledge.

Q. I said, he never claimed he fainted and fell on his face?

A. No, he didn't claim that to me.

MISSOURI WOOLFORD RAINE,
a witness on behalf of the defendant, having been
page 190 } first duly sworn, took the stand and testified as follows:

Examined by Mr. Andrews:

Q. For the record, will you tell us your name, age and occupation?

A. Missouri Woolford Raine, age forty-nine.

Q. What's your address and occupation?

A. I'm technician at Lakeview Clinic?

Q. How long have you been technician at Lakeview Clinic?

A. Well, it's been a period of off and on. I went there before the hospital closed. I was at Lakeview and when the hospital closed, I was at Obici for five months and then I went back, but I've been there steadily since January 1st, 1953.

Q. Is it a part of your duties at Lakeview Clinic to take blood samples from patients?

A. Yes, sir.

Q. Will you tell the procedure that you follow in doing that?

A. Well, the patient sits in the chair by the table, we put the tourniquet around the patient's arm, look for the vein, stick the vein, draw the blood and take the tourniquet off. We use a piece of cotton with alcohol to put that over the place after withdrawing the needle, and tell the patient to bend their arm.

page 191 } Q. What sort of chair do you use?

A. A straight chair.

Q. Are there any arms on it?

A. No, sir.

Q. Do you apply a pad or gauze to the arm after the blood is taken?

A. It's a piece of cotton soaked in alcohol.

Q. Who applies it?

A. I do, or whoever withdraws the blood.

Q. Who usually takes that gauze or pad when you're completed?

A. The technician.

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page 192 } DR. GEORGE J. CARROLL,

having been previously sworn, took the stand and testified as follows:

Examined by Mr. Andrews:

Q. Will you tell the Court the procedure that you follow in taking blood samples in the laboratory or in your department at Obici Hospital?

A. Now, you want me—I take very few blood samples myself. Do you want to know what I instruct my people to do?

Q. What do you instruct your people to do?

A. We have—

Mr. Ferguson: If this is what he is bringing him back for, we have been all through that.

The Court: It's a question of established procedure. I assume—suppose that's what you follow. What is the standard procedure accepted and recognized procedure and I would assume that he instructs his people in the standard and recognized and accepted procedure in it and I assume he does. I don't know that I get the point of your objection.

Mr. Ferguson: He's been through this once; I don't see

any point of going through it again.

page 193 } The Court: Have you been through that?

Mr. Andrews: He was called as an adverse witness.

The Court: It is a question of whether he has testified with respect to that matter.

Mr. Andrews: I will withdraw the question that I asked and I am going to ask him next, what is the established procedure.

The Court: You understand when he's on the witness stand, he's there for things he has not covered and nothing else.

Mr. Andrews: In the interest of time, I will withdraw that.

The Court: All right.

Examination by Mr. Andews continued:

Q. Again, what is the standard procedure in this vicinity and in this general area as to taking blood samples from patients in the pathology departments of hospitals or clinics?

A. I can only speak for our own hospital and those I am associated with, because it may vary slightly from hospital to hospital, although I think in general the approach is the same as in our hospital.

Q. Well, go ahead and tell what that is.

A. Well, a table similar to this with a straight

page 194 } back chair, the technicians who have been trained seat the patient. The arm is placed on the table, vein is entered as has been demonstrated. The needle is withdrawn with the syringe of blood and a pledget of cotton is placed over the arm. The arm is either bent for pressure or elevated. The patient is asked how they feel. The technician has been trained to observe his patient during the procedure and as she turns she usually takes the pledget off, although as on occasionally is the case, the patient will be examining the arm themselves and in a minute they take it off and it stops bleeding, which is a matter of several minutes. Then they get up and leave.

Q. Is it usual for the technician or student technician to take the pad or gauze from the arm of the patient?

A. Usually, yes.

Q. In view of your experience as medical student, your three years working as a technician, and your later work

as a pathologist and graduate student in pathology, and the teaching that you do along with your employment, what do you say is the incidents that is as to percentage of fainting in the taking of blood samples?

A. That's a variable factor and I can't answer that directly, because it would vary with the type patients and the type of situation.

Q. But taking it as an overall experience—

page 195 } Mr. Ferguson: I object. He has been through this once before and he testified to one in a thousand was a percentage he gave on his original examination—about one a week.

The Court: Is that his testimony?

Witness: I didn't say one a week.

Mr. Ferguson: Two or three a year, or one in a thousand; that's what he's already testified to and he's been through all that.

The Court: Well, go ahead.

Examination By Mr. Andrews Continued:

Q. What is your answer?

A. Well, it's essentially the same. It is a variable factor and only—the only statistics you can get are based on our own experience and in our own hospital; last year we had approximately two or three.

Q. In the last year?

A. That's right.

Q. Now, can you tell the fainting usually occurs, if it does occur?

A. Usually, but not always.

Q. I said, can you tell at what point during the procedure the fainting occurs, if it does occur?

A. No.

page 196 } Q. I don't think you understand my question. At what time during the procedure does most of the fainting occur, that is, from the time the blood is taken—until the time the patient is dismissed?

A. They usually occur—the high percentage of cases occur when the needle is being removed from the vein.

Q. That's what I meant to ask. Can you give the percentage that occurs—faintings that occur by that time?

A. In my experience, ninety eight per cent of the cases will occur by that time.

Dr. George J. Carroll.

Q. Are there any signs given by the patient by that time?
A. Usually, but not always.
Q. Well, what are those usual signs?
A. Weakness, sweating—just an overall appearance that you sense from doing a number of tests on these people, some of which are objective things in which you can suspect something is going to happen to that particular patient.
Q. Should the technician observe those signs?
A. Yes, sir.
Q. Are they observable in ninety-eight per cent of the cases in your experience from the time the syringe is withdrawn from the vein?
A. In my experience, that's correct.
Q. Then what are the other two per cent, when do they occur?
page 197 } A. They are usually what I classify as a delayed reaction, and usually that can occur anywhere from the time which we have gone into to as long as I stated yesterday—to as long as one patient, as long as thirty minutes later.
Q. Do you consider the cause of fainting to be psychological or pathological?
A. It's a combination, psychological and physiological. Actually you get a nervous stimulation which in part is psychological and that's been proved psychologically. Then there's the decrease of blood to the brain which causes the fainting spell.
Q. As far as you know, are you following the procedure in your department at Obici Hospital in the taking of blood that is followed in hospitals and clinics in this vicinity and general area?
A. As far as I know.
Q. And it's actually the procedure which you have followed for sixteen years; one you were taught?
A. Yes, sir.
Q. Is it the one you have taught your technicians and student technicians?
A. It is.
Q. Do you go through that procedure with them in their training?
A. We certainly do.
page 198 } Q. Do you have technicians go through that procedure with the students who are going to become technicians?

Dr. George J. Carroll.

A. I do.

Q. How long does that procedure take, usually?

A. Well, again, it's a variable thing, depending on how much blood that's got to be taken. If we have a patient that has a number of procedures, it will take longer. For an average blood count and one chemistry, it will take anywhere from one to two minutes depending, again on how available the vein is.

Q. Do you tell your technicians and student technicians to take that much time in the procedure?

A. They learn to adjust to the needs of the amount of blood that we think, so that in some instances if a larger amount is taken, it will take seven or eight minutes. I think the average we spend with a patient would be around five minutes.

Q. Do you, or the technicians or student technicians give any instructions to the patient himself?

A. In what way?

Q. I mean as to what to do during the procedure?

A. No, sir.

Q. Do you usually—

A. Except when they come in as out-patients we have them be seated and ask them to place their arm
page 199 } on the table and then go through the procedure.
When the average patient comes in he knows that he's going to have a blood specimen taken and whether it will be from the finger or vein, so they are prepared for it.

Q. Does the technician, or student technician usually tell the patient when he can get up and leave?

A. Not in our laboratories, it's a combination of factors in which she—by the time she has finished putting the specimen into the test tube, the patient—either she then takes the pledget down or the patient has already done so and by that time if the patient has not fainted, there's no problem and we let them go on their way.

Q. The student—strike that. The technician or student technician indicates to the patient when he can go, does he not?

A. Generally.

Mr. Andrews: That's all.

Mr. Ferguson: No questions.

Mr. Andrews: There's a legal matter that I want to present to the Court at this time. I would request that you let

the jury have a brief recess subject to being called. I think it would save us some time.

The Court: The jury will retire.

page 200 } At this time the jury withdrew from the courtroom.

Mr. Andrews: If you will recall after the recess was announced yesterday and the jury had been allowed to go, you discussed with counsel what was the testimony of Dr. Levy. Dr. Levy is available as a witness this morning. He's here in the courthouse. He has not been—of course, hasn't been in the courtroom. I know from what he told me in conversation that his testimony is not that which plaintiff's counsel concluded.

The Court: His testimony here is what the record shows. Whatever his testimony is, is what's in the record and I can't expunge it from the record.

Mr. Andrews: I'm not asking that.

The Court: I don't know, sir, what you do ask.

Mr. Andrews: I am getting to that, Your Honor.

The Court: Do you want to recall that witness?

Mr. Andrews: Yes.

The Court: Well, recall him.

Mr. Andrews: All right, sir.

The Court: Bring the jury back and you call your own witness.

Mr. Ferguson: The witnesses are separated and I want to know if the witnesses have been talked to since the trial yesterday; since we talked about this case? If

page 201 } the defendant himself has talked to him, I don't think he ought to be allowed to tell what everybody else testified to and let him change his testimony.

The Court: Bring your witness in, sir, and we can bring it out on examination.

At this time the jury again took its place in the jury box.

DR. EDWARD LEVY,

a witness on behalf of the defendant, after having been previously sworn, took the stand and testified as follows:

Examined By Mr. Andrews:

Q. Dr. Levy, what instructions do you give to your laboratory technicians and student technicians or assistants in the taking of blood samples at Norfolk General Hospital?

Dr. Edward Levy.

Mr. Ferguson: I want to object to that. That has been gone through.

The Court: He's testified on this. If he wishes to change his testimony, he may do so. I allowed him to recall him. Doctor, go ahead.

page 202 } Examined By Mr. Andrews Continued:

Q. Doctor, do you understand the question?

A. You want to know what instructions we give our technicians and student technicians regarding the drawing of blood. Well, we tell them to bring the patient to this chair which we have, which is in the laboratory, and the patient is seated at the chair. The technician is told to clean the arm with alcohol and then to take a needle and syringe and to enter the vein. After inspecting the arms, usually one suitable vein is found. They are told to enter the vein. They are told to draw the blood and then following that a put of pledget of cotton on the arm and fold the arm up. Then they are told to dispose of the blood into the proper receptacle and then they are told after that's done to go back and to inspect the arm for bleeding and they are told that the procedure takes roughly around three to five minutes. The inspect the arm and then the arm is inspected if there's no bleeding they allow the patient to go.

Q. Are they instructed that that is the—

Mr. Ferguson: I'm going to object to what they are instructed to. This man is medically qualified. He's testified once.

Mr. Andrews: Is the patient given any instructions?

A. The patient is told to sit at the chair and
page 203 } then a vena section is drawn; the blood is drawn
from the arm.

Q. Who usually takes the pad or pledget from the arm when the procedure is completed?

A. Well, sometimes the technician will take it; sometimes the patient himself. If you have a person who is in a hurry or hyperactive, he may get up and take it off and look himself, that's done.

Q. Are the patients instructed to stay any particular length of time?

A. No, sir. The technician doesn't talk to the patient

about how long to stay. The technician draws the blood, puts it in the receptacle, looks at the arm and then the patient is allowed to go.

Q. Does the technician tell the patient when it's time to go, or indicate it's time to go?

Mr. Ferguson: I object.

The Court: You may not ask an expert a leading question.

Examination By Mr. Andrews Continued:

Q. But the technician, or student technician, does not tell the patient?

Mr. Ferguson: I object again. Mr. Andrews knows how to ask a question that's not leading.

The Court: Go ahead.

page 204 } Examination By Mr. Andrews Continued:

Q. What was the answer?

A. No, sir; the technician does not tell the patient how long to stay or any particular length of time. He doesn't talk to the patient any more than is necessary. He may reassure the patient that this isn't going to hurt.

Q. Could you say that in the occurrence of faintings while or when blood is taken, when is it most likely to occur?

A. Usually, most likely it occurs just after the blood is drawn.

Q. Is the method of procedure which you have just described the one followed in this general area?

A. There are wide variations which are permitted in this area. I am sure every doctor has different instructions to his technical help and every technician has a different technique. Sometimes a technician varies his technique with different patients. As a rule in our hospital, this is done. In other hospitals it's perfectly possible to put the patient down to draw the blood from the arm, put the pledget of cotton on and the technician walks away to another part of the room and does the work and the patient may say to the technician, "Are you through?" and the technician says, "Yep" and the patient gets up and walks away. Sometimes
page 205 } the patient walks away with the pledget of cotton on his arm. This is done.

Q. As a hypothetical question, if that procedure is followed, the procedure such as you described as being done in

your hospital, if that is followed at Louise Obici Memorial Hospital, does that comply or does that meet the requirements of the procedure usually followed in this area, if that is done?

A. Yes, sir.

Mr. Andrews: That's all.

RE-CROSS EXAMINATION.

Examined By Mr. Ferguson:

Q. Dr. Levy, you testified here yesterday under oath, did you not?

A. Yes, sir.

Q. You testified that you were acquainted with the general customs in this area?

A. That's right.

Q. And general practice procedure, is that correct?

A. Yes, sir.

Q. And you testified yesterday, just as you did today, that the fainting usually occurs just after the blood is

page 206 } withdrawn, did you not, sir?

A. There are various—may I qualify that? Usually if the patient is going to faint, it's after the needle is in the vein and after it comes out from the vein, but as I explained yesterday, there are sometimes delayed reactions which occur at varying times. The patient usually does not faint beforehand. I think I have never seen a patient walk in to have blood drawn who fainted beforehand.

Q. And you testified yesterday that in order to safeguard against that, they were usually kept seated for a period of three to five minutes afterwards?

A. We instruct the technician that the procedure we'd like to have is to have the patient there for about three to five minutes.

Q. And you testified yesterday that the patient was told to remain seated for that period, did you not?

A. I don't think I did, sir. I said the technician was instructed to take that long; I did not say that the technician told the patient how long to stay there, because we tell the technician not to talk to him about the procedure because it makes the patient nervous.

Q. Does it make the patient nervous not to tell him how long to sit there, Doctor?

A. If I told you to sit here three to five minutes, you may

Dr. Edward Levy.

get disturbed, because this thing becomes more
page 207 } of an operation than you expect at first.

Q. You were released as a witness yesterday from this trial, were you not, sir?

A. Yes, sir.

Q. And after that, to whom did you talk before you were recalled back here and before you testified in this chair today?

A. Who did I talk with in this building, you mean?

Q. Did you talk to Mr. Andrews, counsel for the defendant?

A. I talked to Mr. Andrews last night and today.

Q. Did you talk to Dr. Carroll too, the defendant?

A. Yes, sir.

Q. So you talked to both of them in between the time you were separated as a witness, is that correct?

A. Yes, sir.

Mr. Ferguson: I am going to make a motion to strike his testimony. The witnesses were separated and for that expressed purpose, and the witness was taken out and in between—

The Court: I don't think you want to make—

Mr. Ferguson: I'd like to make a motion out of the presence of the jury.

At this time the jury withdrew from the court-
page 208 } room.

Mr. Ferguson: Your Honor, at request of both counsel in this case, the witnesses were separated. They were not supposed to talk to any of the other witnesses in this case. This witness, after he was brought back on the witness stand, admitted he talked to counsel. He admitted he talked to the defendant himself, who is a witness in this case and testified.

The Court: He testified yesterday.

Mr. Ferguson: He testified twice and under those circumstances I ask that the witness' testimony be stricken; there's no point of separating them if that's going to occur.

Mr. Andrews: That separation was because the witnesses—

The Court: Because they didn't want the witnesses together and talking.

Mr. Andrews: I talked to this gentleman, this doctor, to find out what his understanding of what his testimony was.

The Court: That was the question he asked. The question raised was that two witnesses talked to Dr. Carroll and

Dr. Edward Levy.

this witness here after the witnesses were excluded from the courtroom and the case was adjourned overnight.

Mr. Andrews: That's right. They didn't talk.

A. I called Dr. Carroll and asked if he wanted me to do anything further in the case. He requested that I appear a few days ago as a witness. I asked him last night if there was anything further I could do in this case.

page 209 } The Court: Was that the only discussion you had about this case?

A. Yes, sir.

The Court: You didn't discuss his testimony?

A. I did not. I told him I would be glad to do anything I could in this case and his lawyer called back some time thirty minutes later following that.

The Court: All right, I deny your motion, sir.

Mr. Ferguson: I save the point, Your Honor.

Mr. Ferguson: That's all.

Mr. Andrews: That's all I have.

* * * * *

At this time counsel for the defendant made the following motion in the absence of the jury:

Your Honor, I renew the motion to strike the evidence made at the conclusion of plaintiff's evidence and make a motion to strike all of the evidence at the con-
page 210 } clusion of the case or that is the conclusion of all the evidence on the ground that there's not sufficient evidence before the Court to support any verdict in favor of the plaintiff, and that for legal reasons no verdict against the defendant in this case could be allowed to stand. I renew the motion previously made and make it again. I renew the motion previously made that the case be dismissed, because Louise Obici Memorial Hospital has not been made a party.

The Court: The motion is denied.

Mr. Andrews: I had not completed about the hospital. I had not completed that.

The Court: I deny the motion to dismiss.

Mr. Andrews: When I said Louise Obici Memorial Hospital I—this is a nonjoinder of parties.

* * * * *

Mr. Andrews: Counsel for the defendant objects to the language at the conclusion of instruction P-1 that such damages however not to exceed the amount asked for in the motion for judgment on the ground that it should not include reference to amount of damages. Counsel for the defendant objects to the granting of Instruction P-2 on the ground that at the conclusion thereof it should be stated that page 211 } the jury should find for the defendant if it finds, that plaintiff was guilty of negligence which contributed proximately to his injury. Counsel for the defendant excepts to the ruling of the Court in refusing to grant Instruction D-4 on the ground that Page H. Richardson stated she took her son to the hospital and was present in the room when the blood was taken from his arm, and it was her duty, as well as the duty of her son, to tell the technician that the plaintiff was subject to fainting spells, or blanking out spells.

* * * * *

Mr. Andrews: Your Honor, counsel for the defendant moves the Court to set aside the verdict of the jury on the ground that it's without sufficient evidence to support it and contrary to evidence in this case, and contrary to the law in this case.

* * * * *

A Copy—Teste:

H. G. TURNER, Clerk.

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RULE 5:12—BRIEFS

§1. Form and Contents of Appellant's Brief. The opening brief of appellant shall contain:

(a) A subject index and table of citations with cases alphabetically arranged. The citation of Virginia cases shall be to the official Virginia Reports and, in addition, may refer to other reports containing such cases.

(b) A brief statement of the material proceedings in the lower court, the errors assigned and the questions involved in the appeal.

(c) A clear and concise statement of the facts, with references to the pages of the printed record when there is any possibility that the other side may question the statement. When the facts are in dispute the brief shall so state.

(d) With respect to each assignment of error relied on, the principles of law, the argument and the authorities shall be stated in one place and not scattered through the brief.

(e) The signature of at least one attorney practicing in this Court, and his address.

§2. Form and Contents of Appellee's Brief. The brief for the appellee shall contain:

(a) A subject index and table of citations with cases alphabetically arranged. Citations of Virginia cases must refer to the Virginia Reports and, in addition, may refer to other reports containing such cases.

(b) A statement of the case and of the points involved, if the appellee disagrees with the statement of appellant.

(c) A statement of the facts which are necessary to correct or amplify the statement in appellant's brief in so far as it is deemed erroneous or inadequate, with appropriate references to the pages of the record.

(d) Argument in support of the position of appellee.

The brief shall be signed by at least one attorney practicing in this Court, giving his address.

§3. Reply Brief. The reply brief (if any) of the appellant shall contain all the authorities relied on by him not referred to in his opening brief. In other respects it shall conform to the requirements for appellee's brief.

§4. Time of Filing. As soon as the estimated cost of printing the record is paid by the appellant, the clerk shall forthwith proceed to have printed a sufficient number of copies of record or the designated parts. Upon receipt of the printed copies or of the substituted copies allowed in lieu of printed copies under Rule 5:2, the clerk shall forthwith mark the filing date on each copy and transmit three copies of the printed record to each counsel of record, or notify each counsel of record of the filing date of the substituted copies.

(a) If the petition for appeal is adopted as the opening brief, the brief of the appellee shall be filed in the clerk's office within thirty-five days after the date the printed copies of the record, or the substituted copies allowed under Rule 5:2, are filed in the clerk's office. If the petition for appeal is not so adopted, the opening brief of the appellant shall be filed in the clerk's office within thirty-five days after the date printed copies of the record, or the substituted copies allowed under Rule 5:2, are filed in the clerk's office, and the brief of the appellee shall be filed in the clerk's office within thirty-five days after the opening brief of the appellant is filed in the clerk's office.

(b) Within fourteen days after the brief of the appellee is filed in the clerk's office, the appellant may file a reply brief in the clerk's office. The case will be called at a session of the Court commencing after the expiration of the fourteen days unless counsel agree that it be called at a session of the Court commencing at an earlier time; provided, however, that a criminal case may be called at the next session if the Commonwealth's brief is filed at least fourteen days prior to the calling of the case, in which event the reply brief for the appellant shall be filed not later than the day before the case is called. This paragraph does not extend the time allowed by paragraph (a) above for the filing of the appellant's brief.

(c) With the consent of the Chief Justice or the Court, counsel for opposing parties may file with the clerk a written stipulation changing the time for filing briefs in any case; provided, however, that all briefs must be filed not later than the day before such case is to be heard.

§5. Number of Copies. Twenty-five copies of each brief shall be filed with the clerk of the Court, and at least three copies mailed or delivered to opposing counsel on or before the day on which the brief is filed.

§6. Size and Type. Briefs shall be nine inches in length and six inches in width, so as to conform in dimensions to the printed record, and shall be printed in type not less in size, as to height and width, than the type in which the record is printed. The record number of the case and the names and addresses of counsel submitting the brief shall be printed on the front cover.

§7. Effect of Noncompliance. If neither party has filed a brief in compliance with the requirements of this rule, the Court will not hear oral argument. If one party has but the other has not filed such a brief, the party in default will not be heard orally.

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