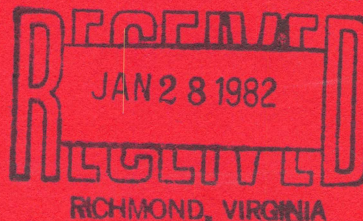


223 Va 609

IN THE
Supreme Court of Virginia

AT RICHMOND

CLERK
SUPREME COURT OF VIRGINIA



RECORD NO. 811394

ROBERT S. THORPE, JR.,

Appellant

v.

COMMONWEALTH OF VIRGINIA,

Appellee

APPENDIX

George P. Blackburn, Jr.
John C. Hale
DUVALL, BLACKBURN & HALE
4031 University Drive Suite 202
Fairfax, Virginia 22030

Counsel for Appellant

Jeffrey A. Spencer
Assistant Attorney General
101 North Eighth Street
Supreme Court Building
Richmond, Virginia 23219

Counsel for Appellee

TABLE OF CONTENTS

APPENDIX PAGES

1. INDICTMENT FILED NOVEMBER 17, 1980 -----	1
2. ORDER FILED FEBRUARY 3, 1981 -----	2
3. JURY INSTRUCTIONS	
a) Number 1 -----	4
b) Number 2 -----	5
c) Number 3 -----	6
d) Number 4 -----	7
e) Number C -----	8
f) Number E -----	9
g) Number G -----	10
4. ORDER FILED FEBRUARY 4, 1981 -----	11
5. ORDER FILED FEBRUARY 4, 1981 -----	13
6. ORDER FILED MAY 22, 1981 -----	14
7. ORDER FILED JUNE 26, 1981 -----	16
8. ASSIGNMENTS OF ERROR -----	17
9. EXCERPTS FROM TRANSCRIPT OF TRIAL BEFORE THE HONORABLE RICHARD J. JAMBORSKY, JUDGE, ON FEBRUARY 3, 1981	
a) Proceedings -----	18
b) Testimony of Pamela Blake -----	53
c) Testimony of Dr. James Beyer -----	60
d) Testimony of Thomas Merritt -----	64
e) Testimony of Elizabeth Conrad -----	67
f) Testimony of David Capozzoi -----	73
g) Testimony of Gary Haines -----	76
h) Testimony of Officer Grant Trounton -----	103
i) Testimony of Officer Cleveland -----	129
j) Testimony of Dave Stopper -----	134
k) Colloquy -----	139
l) Testimony of Officer Hank Hughes -----	144
m) Testimony of Brian Bellinger -----	171
n) Colloquy -----	182
o) Testimony of Robert S. Thorpe, Jr. -----	199
p) Colloquy -----	244
q) Testimony of Gary Haines -----	254
r) Testimony of Gary Sisson -----	257
s) Colloquy, Jury Instructions, etc. -----	261
10. COMMONWEALTH'S EXHIBITS	
a) Exhibit No. 1 - Map -----	292
b) Exhibit No. 2 - Map -----	293
c) Exhibit No. 3 - Map -----	294

d)	Exhibit No. 4 - Photo -----	295
e)	Exhibit No. 5 - Photo -----	296
f)	Exhibit No. 6 - Photo -----	297
g)	Exhibit No. 7 - Photo -----	298
h)	Exhibit No. 8 - Photo -----	299
i)	Exhibit No. 9 - Photo -----	300
j)	Exhibit No. 10 - Photo -----	301
k)	Exhibit No. 11 - Photo -----	302
l)	Exhibit No. 12 - Photo -----	303
m)	Exhibit No. 13 - Photo -----	304
n)	Exhibit No. 14 - Photo -----	305
o)	Exhibit No. 15 - Photo -----	306
p)	Exhibit No. 16 - Photo -----	307
q)	Exhibit No. 17 - Photo -----	308
r)	Exhibit No. 18 - Photo -----	309
s)	Exhibit No. 19 - Photo -----	310
t)	Exhibit No. 20 - Photo -----	311
u)	Exhibit No. 21 - Photo -----	312
v)	Exhibit No. 22 - Photo -----	313
w)	Exhibit No. 23 - Photo -----	314
x)	Exhibit No. 24 - Photo -----	315
y)	Exhibit No. 25 - Photo -----	316
z)	Exhibit No. 26 - Photo -----	317
aa)	Exhibit No. 27 - Photo -----	318
bb)	Exhibit No. 28 - Speedometer Calibration Check -----	319
cc)	Exhibit No. 29 and 30 - Receipts -----	320
dd)	Exhibit No. 31 - Receipt -----	321
ee)	Exhibit No. 32 - Ticket from Vulcan -----	321
ff)	Exhibit No. 33 and 34 - Tickets from Vulcan -----	322
gg)	Exhibit No. 35 and 36 - Tickets from Vulcan -----	323
hh)	Exhibit No. 37 and 38 - Tickets from Vulcan -----	324
ii)	Exhibit No. 39 and 40 - Tickets from Vulcan -----	325
jj)	Exhibit No. 41 and 42 - Tickets from Vulcan -----	326
kk)	Exhibit No. 43 - Ticket from Vulcan -----	327

11. DEFENDANT'S EXHIBITS

a)	Exhibit No. 1 - Photo -----	328
b)	Exhibit No. 2 - Photo -----	329
c)	Exhibit No. 3 - Photo -----	330
d)	Exhibit No. 4 - Photo -----	331
e)	Exhibit No. 5 - Photo -----	332
f)	Exhibit No. 6 - Photo -----	333
g)	Exhibit No. 7 - Photo -----	334
h)	Exhibit No. 8 - Photo -----	335
i)	Exhibit No. 9 - Photo -----	336
j)	Exhibit No. 10 - Photo -----	337
k)	Exhibit No. 11 - Statement -----	338

V I R G I N I A :

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

November 17, 1980

COMMONWEALTH OF VIRGINIA

vs.

ROBERT S. THORPE, JR.

INDICTMENT FOR

INVOLUNTARY MANSLAUGHTER

The Grand Jurors of the Commonwealth of Virginia, in and for the body of the County of Fairfax, and now attending the said Court at its November Term, 1980, charges that: On or about the 6th day of June, 1980, in the County of Fairfax, Robert S. Thorpe, Jr., did feloniously kill and slay Christopher James Gainer.

Va. Code Section 18.2-36

A True Bill

No True Bill

F O R E M A N

Witnesses subpoenaed, sworn and available to testify before the Grand Jury:

Off. G. H. Trouton, Fairfax County Police Dept.

V I R G I N I A :

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

COMMONWEALTH OF VIRGINIA) Indictment - Involuntary
) Manslaughter
vs.)
ROBERT S. THORPE, JR.) #32741

This 3rd day of February, 1981, came the Commonwealth, by her Attorney, and the Defendant, ROBERT S. THORPE, JR., who stands indicted for a felony, to-wit: involuntary manslaughter, appeared agreeably in accordance with his recognizance of bail, also appeared David H. Roehrenbeck, Counsel for the Defendant.

Thereupon, the Court Reporter was sworn.

Whereupon, the Defendant was arraigned upon the indictment returned herein, to which indictment the Defendant entered a plea of not guilty. Thereupon, came a jury of twenty veniremen, who were sworn and examined on their voir dire and found to be competent and qualified jurors, and the Attorney for the Commonwealth and the Attorney for the Defendant having each alternately, beginning with the Attorney for the Commonwealth, stricken from the said panel the names of four of the said veniremen, the remaining twelve, to-wit: Patricia Cooney, Laverne Jacobi, Thomson Hirst, Gregg Henry, Bessie Carter, Donald Hamlin, Peter Bros, Walter Gruber, Sara Fitzgerald, Raymond Bauman, Louise Fall and Andree Andriuk constituted the jury for the trial of the Defendant and were sworn the truth of and upon the premises to speak, and who heard opening statements of Counsel.

Thereupon, the jury heard all the evidence presented on behalf of the Commonwealth, and the Court being of the opinion

that this case could not be completed at a reasonable hour admonished the jurors as to their behavior during recess and continued this case to Wednesday, February 4, 1981, at 10:00 o'clock A.M.

Whereupon, Counsel for the Defendant moved the Court to strike the evidence presented on behalf of the Defendant, which motion the Court, upon hearing argument thereon, took under advisement.

The Defendant is hereby continued on bond.


JUDGE

INSTRUCTION NO. 1

The Court instructs the jury that the defendant is charged with the crime of involuntary manslaughter. The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime:

(1) That the defendant killed Christopher James Gainer; and

(2) That the killing, although unintended, was the direct result of negligence so great as to show a reckless disregard of human life.

If you find from the evidence that the Commonwealth has proven beyond a reasonable doubt each of the above elements of the offense as charged, then you shall find the defendant guilty and fix his punishment at:

(1) A term of imprisonment of not less than one (1) year nor more than five (5) years; or

(2) Confinement in jail for not more than twelve (12) months; or

(3) A fine of not more than \$1,000.00; or

(4) Confinement in jail for not more than twelve (12) months and a fine of not more than \$1,000.00.

If you find the Commonwealth has failed to prove any one or more of the elements of the offense beyond a reasonable doubt, then you shall find the defendant not guilty.

INSTRUCTION NO. 2

The Court instructs the jury that the defendant is presumed to be innocent. You should not assume the defendant is guilty because he has been indicted and is on trial. This presumption of innocence remains with the defendant throughout the trial and is enough to require you to find the defendant not guilty unless and until the Commonwealth proves each and every element of the offense beyond a reasonable doubt. This does not require proof beyond all possible doubt, nor is the Commonwealth required to disprove every conceivable circumstance of innocence. However, suspicion or probability of guilt is not enough for a conviction.

There is no burden on the defendant to produce any evidence.

A reasonable doubt is a doubt based on your sound judgment after a full and impartial consideration of all the evidence in the case.

INSTRUCTION NO. 3

The Court instructs the jury that you are the judges of the facts, the credibility of the witnesses and the weight of the evidence. You may consider the appearance and manner of the witnesses on the stand, their intelligence, their opportunity for knowing the truth and for having observed the things about which they testified, their interest in the outcome of the case, their bias, and, if any have been shown, their prior inconsistent statements. While you have no right to arbitrarily disregard believable testimony of any witness, you do have a right to discard or accept in whole or in part the testimony of any witness which you think is proper to discard or accept when you consider it in connection with the other evidence in the case. You are entitled to use your common sense in judging any testimony. From these things and all the other circumstances of the case, you may determine which witnesses are more believable and weigh their testimony accordingly.

INSTRUCTION NO. 4

The Court instructs the jury that if you believe that any witness has knowingly testified untruthfully as to any material fact in this case, you do not have to accept any of the testimony of that witness, or you may give that testimony such weight as you feel it is entitled.

INSTRUCTION NO. C

A driver of an automobile, having once given a hand, electrical or mechanical device signal must continue the course thus indicated, unless he alters the original signal and takes care that drivers of vehicles and pedestrians have seen and are aware of the change. And if you find that Christopher Gainer altered his original signal without exercising such care, and that the same was the proximate cause of his death, then you shall find the defendant not guilty.

INSTRUCTION NO. E

The fact that the defendant has been indicted by a grand jury is not evidence against him and you should not consider it.

INSTRUCTION NO. 6

The Court instructs the jury that there is no evidence before you that the weight of the gravel in the defendant's truck at the time of the accident was in excess of that allowed by Virginia law. And while you may consider the truck to be fully loaded, you are not to consider excess weight as a factor in this accident.

There is evidence before you that the defendant knew of the possibility that the weight of the gravel he was carrying was in excess of that allowed, and you may consider this fact as it effects his intent and state of mind at the time of the accident.

V I R G I N I A :

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

COMMONWEALTH OF VIRGINIA)	Indictment - Involuntary
)	Manslaughter
vs.)	
ROBERT S. THORPE, JR.)	#32741

This 4th day of February, 1981, came the Commonwealth, by her Attorney, and the Defendant, ROBERT S. THORPE, JR., who stands indicted for a felony, to-wit: involuntary manslaughter, appeared agreeably in accordance with his recognizance of bail, also appeared David H. Roehrenbeck, Counsel for the Defendant.

Thereupon, the Court Reporter was sworn.

Whereupon, the Court, after careful consideration, denied the Defendant's previous motion to strike the evidence presented on behalf of the Commonwealth.

Thereupon, the roll was called and the following jurors took their seats in the jury box, to-wit: Patricia Cooney, Laverne Jacobi, Thomson Hirst, Gregg Henry, Bessie Carter, Donald Hamlin, Peter Bros, Walter Gruber, Sara Fitzgerald, Raymond Bauman, Louise Fall and Andree Andriuk.

Whereupon, the jury heard all the evidence presented on behalf of the Defendant and rebuttal evidence on behalf of the Commonwealth.

The jury then received instructions of the Court, heard argument of Counsel and rebuttal argument on behalf of the Commonwealth and were sent to the jury room to consult upon their verdict, and after some time returned into Court and

rendered the following verdict, to-wit:

"We, the Jury, joined on the issue in the case of Commonwealth of Virginia, vs. Robert S. Thorpe, Jr., Defendant, find the Defendant guilty of involuntary manslaughter as charged in the indictment and fix punishment at \$1,000 fine + 6 mos in County jail.

/s/ Patricia L. Cooney
Foreman"

Thereupon, the jury was discharged.

Then Counsel for the Defendant made a motion that this case be referred to the District Probation Officer for his investigation and report before sentencing, which motion the Court granted, and this case is hereby continued to the 27th day of March, 1981, for said report and sentencing.

The Defendant is hereby continued on bond.


JUDGE

V I R G I N I A :

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

COMMONWEALTH OF VIRGINIA

) Indictment - Involuntary
Manslaughter

vs.

)

ROBERT S. THORPE, JR.

) #32741


It appearing to the Court, Mr. Gary Sisson, a witness subpoenaed on behalf of the Commonwealth, for the above styled action, was recognized by the Court on February 3, 1981, to appear at 10:00 a.m. on this date, and

It further appearing to the Court that Mr. Gary Sisson failed to appear at the time designated by this Court, and upon appearing at a later time, the Court, after hearing statements on behalf of the witness, doth find Mr. Gary Sisson in contempt of Court, it is hereby

ADJUDGED and ORDERED that Mr. Gary Sisson pay a fine of \$25.00.

The said fine now being paid, the witness is hereby released.

Entered this 4th day of February, 1981.


JUDGE

V I R G I N I A :

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

COMMONWEALTH OF VIRGINIA

vs.

ROBERT S. THORPE, JR.

) Indictment - Involuntary
Manslaughter

)

) #32741

This 22nd day of May, 1981, came the Commonwealth, by her Attorney, and the Defendant, ROBERT S. THORPE, JR., who stands convicted of a felony, to-wit: involuntary manslaughter, appeared agreeably in accordance with his recognizance of bail, also appeared David H. Roehrenbeck, Counsel for the Defendant.

Thereupon, the Court Reporter was sworn.

Whereupon, the Probation Officer of this Court, to whom this case had been previously referred for investigation, appeared in open Court with a written report, copies of which had previously been furnished to Counsel for the Defendant, Attorney for the Commonwealth, and the Court. Counsel for the Defendant then advised the Court that he had discussed the report with the Defendant and the Defendant was fully advised of the contents thereof.

Thereupon, the accused and his Counsel were given the right to cross-examine the Probation Officer as to any matter contained in said report, and to present any additional facts bearing upon the matter as he desired to present. The report of the Probation Officer is hereby filed and made a part of the record of this case.

Thereupon, it was demanded of him, ROBERT S. THORPE, JR., if anything he knew or had to say why the Court should not proceed to pass sentence and judgment upon him, and nothing being

offered or alleged in delay of judgment, it is ADJUDGED and ORDERED the Defendant serve six (6) months in the Fairfax County Adult Detention Center and that he pay a fine of \$1,000.00 and the costs of this case. The Court doth now suspend all of the said jail sentence conditioned upon the Defendant's good behavior and further conditioned upon the Defendant successfully completing the treatment program outlined by the National Center for Alternatives Institute. The said fine and costs are due and payable within a period of two years.

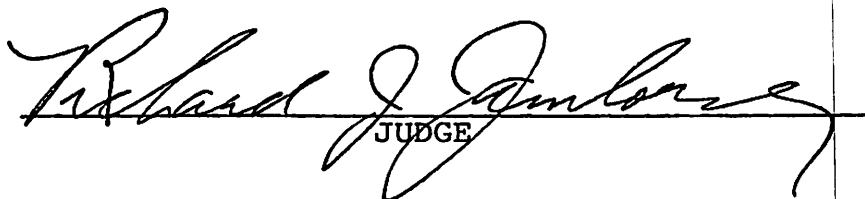
The Court proceeded to advise the Defendant of his right to appeal from the sentence heretofore imposed, including the right to have an attorney appointed for him and to have the attorney's fees, costs and expenses in connection with an appeal paid for him in the event he is financially unable to pay the same.

It is further ORDERED by the Court that in the event the Defendant or his Attorney files a notice of appeal, the transcript is to be prepared and is hereby made a part of the record of this case.

The Court certifies that the Defendant was present at all stages of this trial.

The fee of the Court Reporter who recorded the evidence and incidents of trial in this case is hereby assessed as costs in this case as provided in Sec. 19.2-165 of the 1950 Code of Virginia, as amended.

The Defendant is hereby released upon the aforesaid conditions.


JUDGE

V I R G I N I A :

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

COMMONWEALTH OF VIRGINIA

vs.

ROBERT S. THORPE, JR.

) Indictment - Involuntary
Manslaughter

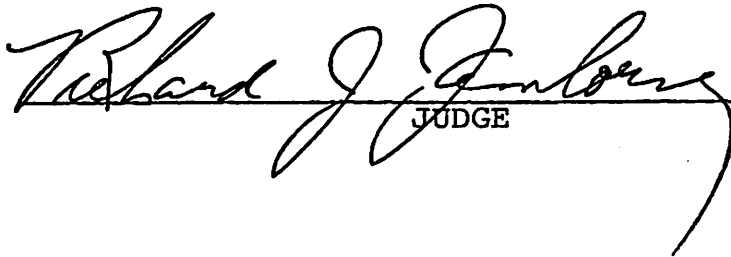
)

) #32741

This 26th day of June, 1981, came the Commonwealth, by her Attorney, and the Defendant, ROBERT S. THORPE, JR., who stands convicted of a felony, to-wit: involuntary manslaughter, appeared agreeably, also appeared Peter D. Greenspun, Counsel for the Defendant.

Thereupon, the Court Reporter was sworn.

This case having come on this day on the Defendant's motion for verdict notwithstanding the judgment of the jury or in the alternative for a new trial, and it appearing to the Court that this case is on appeal, the Court is of the opinion that the Court has no jurisdiction to hear the said motion, the motion is hereby removed from the docket.


JUDGE

ASSIGNMENTS OF ERROR

1. THE TRIAL COURT ERRED IN ALLOWING EXPERT EVIDENCE OF THE DEFENDANT'S SPEED AT THE TIME OF IMPACT BY USE OF AN EXPERT WITNESS IN ACCIDENT RECONSTRUCTION.

2. THE TRIAL COURT ERRED IN ALLOWING EVIDENCE OF THE GROSS WEIGHT OF THE DEFENDANT'S TRUCK AT THE TIME OF THE ACCIDENT.

3. THE TRIAL COURT ERRED BY ALLOWING EVIDENCE OF THE DEFENDANT'S DRIVING BEHAVIOR PRIOR TO THE ACCIDENT

4. THE VERDICT WAS CONTRARY TO THE LAW AND THE EVIDENCE PRESENTED BY THE COMMONWEALTH AND DEFENDANT.

VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

COMMONWEALTH OF VIRGINIA, :

-vs- :

Criminal No. 32741

ROBERT S. THORPE, JR., :

Defendant. :

Fairfax, Virginia

Tuesday, February 3, 1981

The above-entitled matter came on for hearing
before THE HONORABLE RICHARD J. JAMBORSKY, Judge, in and
for the Circuit Court of Fairfax County, Virginia,
commencing at 10:00 o'clock a.m.

APPEARANCES:

On behalf of the Commonwealth:

WILLIAM SCHEWE, ESQUIRE

On behalf of the Defendant:

DAVID ROEHRENBECK, ESQUIRE

- - -

C O N T E N T S

<u>Witness</u>	<u>Direct</u>	<u>Cross</u>	<u>Redirect</u>	<u>Recross</u>
Pamela Blake	53	58	59	-
Dr. James Beyer	60	-	-	-
Thomas Merritt	64	-	-	-
Elizabeth Conrad	67	69	72	-
David Capozzoi	73	-	-	-
Gary Haines	76	83	101	-
Officer Grant Trounton	103	127	-	-
Officer Cleveland	129	133	-	-
Officer Stopper	134	-	-	-
Officer Hank Hughes	144, 161	153, 168	170	-
Brian Bellinger	171	-	-	-

E X H I B I T S

<u>Commonwealth's</u>	<u>For Identification</u>	<u>In Evidence</u>
No. 1, 2, 3 (diagrams)	65	66
No. 4-27 (photographs)	111	111
No. 28 (Calibration sheet)	116	118
No. 29-31 (tickets)	138	-
No. 32-41, 43 (tickets)	171	183
No. 42 (ticket)	171	184
<u>Defendant's</u>		
No. 1 (photograph)	95	96

P R O C E E D I N G S

(The Court Reporter was first duly sworn by the Clerk of the Court.)

THE COURT: Commonwealth versus Robert S. Thorpe, Jr.

Are there any preliminary matters?

MR. ROEHRENBECK: There's no preliminary matters. I have a couple of motions, Your Honor, but they don't need to be taken up prior to him being arraigned.

THE COURT: Mr. Thorpe, would you raise your right hand, please.

(Whereupon, the defendant was duly sworn by the Clerk of the Court.)

THE COURT: You may be seated and I have some questions I'd like to ask you.

How old are you?

THE DEFENDANT: I'm twenty.

THE COURT: And, are you represented by Mr. Roehrenbeck?

THE DEFENDANT: Yes, sir.

THE COURT: Was he hired or was he appointed by the Court?

THE DEFENDANT: He was hired.

1 THE COURT: Are you satisfied with his services?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Are you prepared for trial today?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Have you assisted Mr. Roehrenbeck in
6 the preparation for trial?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Do you understand what you are
9 charged with?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Do you understand what the penalties
12 are?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Are you now or have you been within
15 the last three years under the care or treatment of a
16 psychiatrist or psychologist?

17 THE DEFENDANT: No, sir.

18 THE COURT: Do you fully understand the nature
19 of these proceedings?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Are you now or have you been within
22 the last 48 hours under the influence of any drugs or
23 alcohol?

1 THE DEFENDANT: No, sir.

2 THE COURT: In just a moment we're going to ask
3 how you plead. Is it your intention to plead not guilty?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Did you reach that decision after
6 fully discussing it with your lawyer?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Has anyone made any threats against
9 you to get you to enter a plea of not guilty or made any
10 promises of certain kinds of treatment to get you to plead
11 not guilty?

12 THE DEFENDANT: No, sir.

13 THE COURT: Have you done it freely and voluntarily?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: In the course of this trial today,
16 you are presumed to be innocent. You do not have to give
17 any testimony. In the event that you choose to testify,
18 however, you may be cross examined and if you have any prior
19 record of felony convictions as an adult or if you had
20 prior convictions as an adult of offenses that involve moral
21 turpitude, that is lying, cheating, or stealing, the
22 Commonwealth may bring the fact of your convictions, and
23 that's all, to the attention of the Jury. Do you understand

1 that?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Do you understand your right to
4 remain silent?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Would you stand, please.

7 THE CLERK: You are Robert S. Thorpe, Jr.?

8 THE DEFENDANT: Yes.

9 THE CLERK: You have been indicted with the
10 following words and figures, to-wit:

11 "The Grand Jurors of the Commonwealth of Virginia
12 in and for the body of the County of Fairfax and now
13 attending the said Court at its November Term, 1980,
14 charges that: On or about the 6th day of June, 1980, in
15 the County of Fairfax, Robert S. Thorpe, Jr. did feloniously
16 kill and slay Christopher James Gainer."

17 How do you plead?

18 THE DEFENDANT: Not guilty.

19 THE COURT: You may be seated.

20 Go ahead, Mr. Roehrenbeck.

21 MR. ROEHRENBECK: Your Honor, my motion has to do
22 with the limitation on the Commonwealth in opening argument.

23 Since the Jury isn't here, I'll bring it up in

1 Open Court. It's my understanding there's two pieces of
2 evidence that, I believe, are not relevant to the charge
3 here of involuntary manslaughter.

4 The first, I rely here on the preliminary hearing
5 in this matter, is evidence that the defendant, which was
6 brought up by another witness, passed two automobiles, in
7 one case, about a mile and a half south of the intersection
8 of the accident, and in another case, about a mile south of
9 the accident.

10 It is my belief that the cases are clear in that
11 this type of evidence would be irrelevant to what happened
12 a mile down the road.

13 THE COURT: How fast was he allegedly traveling?

14 MR. ROEHRENBECK: Allegedly, according to the
15 witnesses of the Commonwealth, he was traveling, I believe,
16 60 to 65. I think that was in the transcript.

17 THE COURT: So, this is something that occurred
18 within less than a minute or approximately a minute prior to--

19 MR. ROEHRENBECK: It would be about a minute,
20 Your Honor. The cases that reflect on that, there is a
21 series of them, Your Honor. They go all the way back
22 to '36. In the case of Grinstead against Mayhew, 167 Va.
23 19, which was a civil case, it was held that excessive

1 speed, a mile and a quarter from the scene of the accident,
2 was not of itself rise any inference of excessive speed at
3 the intersection or at the place where the accident
4 occurred.

5 Some of the cases have gone on and say it's
6 discretionary with the Court, but it's my feeling that
7 evidence of this man, a mile prior to the intersection,
8 either was speeding or passing another vehicle, would raise
9 no inference that he did that. He wasn't passing or speeding
10 when he got to the intersection.

11 In this case, you have a road that isn't a
12 straightaway. In any case, I think there is no doubt that
13 you can't see the intersection where the accident occurred
14 from the point in which this passing took place.

15 There's at least two or three curves between
16 that, and in fact, the evidence will show, that the witness
17 was stopped behind another car when he allegedly passed and
18 speeded 60 miles an hour.

19 My problem is it would influence and be prejudi-
20 cial to him in front of the Jury because somebody was
21 going 60, assuming he was a mile south of the intersection,
22 wouldn't necessarily follow that he was doing 60 miles an
23 hour at the intersection.

1 THE COURT: What's the speed limit on the road?

2 MR. ROEHRENBECK: Forty-five.

3 THE COURT: Is there any allegation of improper
4 passing in connection with the speed?

5 MR. ROEHRENBECK: Yeah, I believe there is an
6 allegation of improper passing a mile south of the inter-
7 section.

8 THE COURT: What's the allegation with respect
9 to the gross negligence or reckless disregard at the time
10 of the incident?

11 MR. ROEHRENBECK: I think at the point of the
12 intersection where the accident was that the allegation is
13 two-fold. Am I right, Mr. Schewe, one, passing the inter-
14 section and speed both --

15 MR. SCHEWE: There would be several allegations
16 in regard to that, Your Honor. If the Court wishes, I'll
17 recite those.

18 THE COURT: Go ahead and finish your argument,
19 Mr. Roehrenbeck.

20 MR. ROEHRENBECK: That's the first element of
21 irrelevance. I don't believe it would be prejudicial to
22 have Mr. Schewe arguing that in opening statement.

23 The other point is there is no doubt that my

1 client had a full load on his truck. There is an allega-
2 tion, and I assume it will be an attempt on the Commonwealth
3 to prove that he was some ton or ton and a half overweight.

4 The Court is aware a truck that is overweight is
5 a violation of the statute because of any damages. My
6 problem with that evidence is assuming that the Commonwealth
7 can prove -- with that evidence coming in, assuming that he
8 can get it in, Your Honor, unless he has an expert or some-
9 body that can show that the fact that the truck was over-
10 weight made a difference in the outcome, that it would be
11 relevant.

12 As a matter of fact, what happened, ultimately,
13 was this truck tipped over and the car was crushed and the
14 deceased was killed and as a result, I believe, that unless
15 there is some expert who can say that an increment of
16 overweight in this case, I believe it's between a ton and
17 two tons, would be a factor in causing that truck to fall
18 over, that it would be irrelevant.

19 I mean, the fact that the truck was loaded as
20 opposed to being unloaded, I suppose would be irrelevant
21 as general circumstances that the Jury could consider.
22 I believe the fact that it may have been a ton or two tons
23 overweight, it would be prejudicial to bring that out.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23

THE COURT: Do you have any other cases that you want me to refer to other than the one you just cited?

MR. ROEHRENBEEK: I'll rely on that one, Your Honor. There is obviously more moderate ones than that.

The third item I wanted to bring up, this is really for the record, of course, the Commonwealth has a right to keep the Jury on, to present a waiver of Jury. My understanding is the Commonwealth will not waive the Jury. I just want it on the record.

THE COURT: Mr. Schewe, does the Commonwealth waive a Jury?

MR. SCHEWE: No, Your Honor.

THE COURT: Go ahead.

MR. SCHEWE: On the first subject, Your Honor, involving the speed and the passing, I submit to the Court that what we're talking about is something that happened within about one minute prior to the accident.

There are several reasons why the Commonwealth wishes to bring out, to the attention of the Court and the Jury, number one, that is the reason or the main reason why two of my witnesses who witnessed the accident were first. Their attention was first drawn to this particular truck because this truck did pass them within a mile of the

1 accident passing over a double yellow line.

2 They will both estimate the speed at this time.

3 In addition to that, we will have further testimony as an
4 estimate of the speed by one of the same lay witnesses in
5 regard to the estimated speed at the time the truck entered
6 the intersection.

7 In addition to that, we intend to attempt to
8 qualify an expert to testify from his examination of the
9 scene. The scuff marks, the skid marks, the estimated
10 speed at the time of the initial impact inside the inter-
11 section.

12 I submit to the Court that under the case of
13 Interstate Veneer Co. against Edwards, 191 Va. 107 case,
14 they state that, this is the Court speaking, in King
15 against the Commonwealth, which is probably now the leading
16 case in Virginia on vehicular homicide at 217 Va. 60, and
17 they state in their holding, we upheld the Trial Court's
18 admission of evidence at least at three-quarters of a mile
19 from the place of the collision where another witness
20 testified to the same speed 400 yards from the accident
21 scene, and the physical fact evidenced high speed at impact.
22 And I submit to the Court that we have all three of those
23 things in this case.

1 We'll have testimony as to the speed three-
2 quarters of a mile, one mile away from the accident. The
3 continuing speed at the time he enters the intersection,
4 which is even closer than 400 yards.

5 In addition to that testimony, hopefully from an
6 expert witness, an expert that I would proffer to the Court
7 has qualified 26 times either in Virginia Courts or in
8 Federal Courts on accident reconstruction, including
9 qualifications in Fairfax County, who will testify from
10 his analysis of the accident that the speed at the initial
11 impact of the intersection was 54 miles an hour and I submit
12 to the Court that under that case, Interstate Veneer. In
13 addition to that, it goes to show the identity of the
14 witnesses will testify that they identified that truck on
15 the road, that it was the same truck involved in the
16 accident.

17 In other words, there are several reasons, if
18 nothing else, and I hesitate to use this because I know
19 it's no longer favoring the law, it really in a sense is
20 res gestae. It isn't all part of the same transaction.
21 It all happens within one minute. It's not as though the
22 Commonwealth wants to take the defendant's truck and go
23 six or seven miles down the road and say what he's doing

1 there to show that he's doing the same things, that's not
2 the theory at all.

3 I think we have seven good, strong, legal reasons
4 why we want that testimony to begin a mile and a half down
5 the road.

6 THE COURT: I deny your motion to exclude it.
7 Go ahead, Mr. Schewe.

8 MR. SCHEWE: I think the next question was the
9 overweight, Your Honor.

10 The Commonwealth's theory on the overweight is
11 not quite as Mr. Roehrenbeck has advised the Court. We're
12 not going to turn this into an overweight case. I think
13 that would be extremely confusing to everybody, including
14 myself, certainly confusing to the Jury.

15 Overweight, as the Court well knows, this is
16 very complicated prosecution. We don't intend to do
17 that, cloud the irony, but we intend -- what we do intend
18 to show is that truck was weighed at Vulcan Materials at
19 the quarry in Occoquan. We'll show that the defendant was
20 given a weight slip. He was weighed at that quarry and
21 given a weight slip that indicated what the weight of his
22 truck was. That weight will indicate, and this merely
23 goes to the notice to the defendant that he should have

1 been aware or was aware of the weight of his truck, and
2 we submit that the truck, it will show from the weight slip
3 that he was given, you know, put in his truck, that we
4 found in his truck, in addition to the one that we have
5 taken from the quarry on a subpoena duces tecum, we have
6 those people to verify the records that he should have been
7 aware that his truck was overweight or at least fully
8 loaded. And the theory here, Judge, is that anyone, any
9 reasonable man who is driving a truck that is either over-
10 loaded or fully loaded certainly has not necessarily a
11 higher duty, but from the standpoint of practicality
12 should be aware of what its weight is and conduct himself
13 on the highway according to the weight of the vehicle he's
14 driving.

15 I think that the weight of the truck in this
16 particular instance is going to be relevant as to what
17 we're talking about in a vehicular homicide case.

18 Involuntary manslaughter is a subjective standard directed
19 towards the defendant. Was it willful and wanton disregard
20 for a human life, and I submit to the Court that if the
21 defendant is aware that he is either fully loaded or
22 overloaded, that his conduct on the highway necessarily
23 must be altered to take into account the weight of his

1 vehicle when he uses it on the highway, and for that reason
2 I think it's most relevant.

3 THE COURT: Your point, you simply want the Jury
4 to know that the truck was what, fully loaded?

5 MR. SCHEWE: Fully loaded. What I have, Judge,
6 I have weight slips given to the defendant when he was
7 weighed out at the quarry on this particular load that he
8 was carrying.

9 THE COURT: Will the Jury find out that he was a
10 ton and a half over?

11 MR. SCHEWE: What I'm driving at, Judge, he was
12 aware or should have been aware that he was over.

13 THE COURT: Will the Jury know that he was a ton
14 and a half over, that that's a violation of Virginia law?

15 MR. SCHEWE: Yes, sir.

16 THE COURT: Mr. Roehrenbeck?

17 MR. ROEHRENBECK: Your Honor, I said I would
18 concede that it was fully loaded. Without any specific
19 evidence, that will be clear from the testimony of the
20 people at the accident that the gravel in the truck was
21 fully loaded, I think to the extent that it's loaded
22 because the empty or half full, Mr. Schewe's correct. My
23 point is the fact that it would be a ton or a ton and a half

1 over is totally irrelevant to whether or not this man is
2 guilty of the crime charged.

3 THE COURT: I sustain the defense's motion. You
4 may bring out to the Jury that the truck was fully loaded,
5 at least fully loaded, and that's it. And my reason for
6 sustaining the defense's objection is that without some
7 more testimony, I'm not going to have a Jury speculate
8 that a ton and a half is a causal connection that with
9 something that happened at the accident, it would be pure
10 speculation and I'm not sure that's within the realm of
11 ordinary knowledge that they can draw conclusions as to
12 what happened.

13 So, the point that the defendant knew his truck
14 was fully loaded is something the Jury may be made aware
15 of. The fact that the truck was fully loaded is something
16 the Jury can be made aware of. The fact that it was
17 overloaded in violation of the law and the extent that it
18 was overloaded, I sustain the defendant's objection.

19 MR. SCHEWE: If I could inquire from the Court,
20 if I was able to establish a connection between the ability
21 to control the truck and the weight of the truck, the
22 weight of the load --

23 THE COURT: Then I would reconsider my decision.

1 MR. SCHEWE: I've got an expert in the Court who's
2 as I indicated to the Court, I'll have to check with him
3 until I present that outside of the hearing of the Jury.
4 I, obviously, am going to do what the Court says.

5 THE COURT: I will reconsider if you have some
6 expert to tie it up.

7 MR. SCHEWE: One other point for clarification.
8 I'm not interested in proving that he was overweight in the
9 first place, what I'm interested in showing was that he had
10 knowledge of what his weight was. The problem I have with
11 the Court's ruling is I have some evidence to show what
12 his weight actually was, and that he was on notice that
13 he had that particular weight.

14 I'm not sure in regard to the Court's ruling
15 now --

16 THE COURT: The defense has conceded.

17 MR. ROEHRENBECK: I concede that, Your Honor.
18 I don't have any problem with him saying that he was
19 driving down the highway with a full load. What my objection is
20 is to anything else.

21 THE COURT: Are there any other preliminary
22 matters?

23 MR. ROEHRENBECK: No, Your Honor.

1 THE COURT: Okay, how are we doing with the
2 Jurors?

3 I have one question. What would you gentlemen
4 think if when I give the precautionary instructions to the
5 Jury, that I give them an instruction defining involuntary
6 manslaughter at the beginning of the trial in addition to
7 the end?

8 MR. ROEHRENBECK: I'd be all for it.

9 MR. SCHEWE: I have no objection whatsoever.
10 The more they're aware of --

11 MR. ROEHRENBECK: I think it is a problem,
12 particularly if they sat on a civil case. I think that
13 would be good.

14 THE COURT: Do you all have an instruction
15 prepared now that I might use?

16 MR. SCHEWE: I do, Your Honor. If I may approach
17 the Bench.

18 MR. ROEHRENBECK: I have one also.

19 MR. SCHEWE: I have the Model Jury Instruction.

20 MR. ROEHRENBECK: Your Honor, mine is the Model
21 Jury Instruction with one alteration.

22 MR. SCHEWE: I would advise the Court that there
23 was language --

1 (The following was had at the Bench, outside of
2 the hearing of Open Court.)

3 MR. SCHEWE: There is some alternate language
4 in the Model Jury Instruction in regard to doing a lawful
5 act and an unlawful one, but not in a felonious manner or
6 doing an unlawful act from my reading, and that an
7 alternate language that can be inserted in the instruction,
8 at least from the appearance of the model, in the model
9 pockets. My position is, and this is probably as much in
10 favor of the defendant as it is the prosecution, maybe
11 more. I have not used that language, and the reason for
12 that is in the King case which I have indicated, it appears
13 from everything, and I think Mr. Roehrenbeck would --

14 MR. ROEHRENBECK: That's a leading cause.

15 MR. SCHEWE: They specifically define what
16 involuntary manslaughter is and they don't use the language.
17 They say in that case we now define, and when they do that,
18 they use the language that I have used in my instruction,
19 and they don't use a legal act in an unlawful manner, and
20 all that I think that is merely confusing.

21 MR. ROEHRENBECK: My only point -- I'm sorry I
22 didn't give that to Mr. Schewe. The Model Instruction says
23 was the direct result of negligence so great as to show a

1 reckless disregard. The actual instruction in King was --
2 the only difference between my proposed instruction is, and
3 Mr. Schewe's is, they're both from Model Instructions.
4 However, I took the words here directly from the King case
5 and actually what was inserted was a direct result, and
6 here's a difference of negligence or so gross, wanton and
7 culpable as to show reckless disregard of human life.

8 In this instruction it shows disregard of human
9 life. I think the Model is deferrable. It doesn't put
10 this part in here which is directly out of the King case.
11 I think that clarifies it and tells the Jury what we're
12 talking about. In other words, it skips the negligence,
13 not to presuppose that those --

14 MR. SCHEWE: I don't want to argue. It really
15 raises a standard, I think it has a tendency to be redundant.

16 MR. ROEHRENBECK: That's what the Supreme Court
17 says in the case, that's a quote actually.

18 THE COURT: I like the language of the Model
19 Instruction because I think it is less confusing, but
20 what I would propose to do is to give this instruction at
21 the beginning, and I'll make a reference to -- not make a
22 reference to penalty, if you want me to.

23 MR. ROEHRENBECK: No.

1 MR. SCHEWE: I'll be going over my penalty in
2 voir dire, Judge.

3 THE COURT: Instruction No. 1.

4 (The hearing resumed within Open Court.)

5 THE BAILIFF: As I call your name, please come
6 forward.

7 MR. SCHEWE: Is it possible to go over the Jury
8 list before they start to put the Jury in the box?

9 THE COURT: (Nodding in the negative.)

10 THE BAILIFF: Wiley Counts.

11 Patricia Cooney.

12 Laverne Jacobi.

13 Ralph Compton.

14 Thomson Hirst.

15 Edward Clark.

16 Gregg Henry.

17 Bessie Carter.

18 Donald Hamlin.

19 Peter Bros.

20 Walter Gruber.

21 Earl Blaisdell.

22 Sara FitzGerald.

23 Raymond Bauman.

1 Louise Fall.

2 Billie Arrowood.

3 Leslie Eckert.

4 Andree Andriuk.

5 Nan Walsh.

6 Louis Aceto.

7 (Whereupon, the prospective Jurors were duly
8 sworn by the Clerk of the Court.)

9 THE COURT: Ladies and Gentlemen, we appreciate
10 your being with us this morning and the case that we're
11 going to try this morning is a criminal case.

12 I would like to introduce to you, first of all,
13 the accused, Mr. Robert S. Thorpe, Jr.

14 Now, Mr. Thorpe, would you face the Jury and
15 also face the back of the Courtroom, please. Thank you.

16 Mr. Thorpe is represented by Mr. David Roehrenbeck,
17 and the Commonwealth of Virginia this morning is represented
18 by Mr. William Schewe.

19 Now, what I'm about to tell you are allegations.
20 These are not facts. These are the matters at this stage
21 that the Commonwealth hopes to prove beyond a reasonable
22 doubt.

23 Mr. Thorpe is charged with involuntary manslaughter

1 which is a felony. The Commonwealth alleges that on or
2 about the 6th day of June, 1980, that Mr. Thorpe, in the
3 operation of a motor vehicle, did feloniously kill and
4 slay Mr. Christopher James Gainer.

5 Now, through the course of the trial we're going
6 to give you a definition of involuntary manslaughter later,
7 and it may be that if the attorneys to make an opening
8 statement, that they will go into more detail as to what
9 the allegations are and what the evidence is.

10 Right now, I instruct you that Mr. Thorpe, the
11 accused, is presumed to be innocent of this charge, and
12 that presumption of innocence goes with him throughout the
13 course of the entire trial and remains with him unless and
14 until the Commonwealth, upon whom the burden rests, proves
15 his guilt beyond a reasonable doubt.

16 I would like to know if any of you Ladies and
17 Gentlemen know or are any of you related to either Mr.
18 Schewe, Mr. Rochrenbeck, Mr. Thorpe, or Mr. Gainer or
19 members of his family?

20 THE JURY: (No response.)

21 THE COURT: Have any of you Ladies and Gentlemen
22 heard anything about this case, either this morning through
23 discussions, read anything about it in the newspaper, or

* * *

1 MR. ROEHRENBECK: Yes, Your Honor.

2 MR. SCHEWE: Yes, Your Honor.

3 THE COURT: I would like to tell all the witnesses
4 in this case that in just a few moments we're going to have
5 you wait outside. Do not discuss your testimony. Each
6 witness will be sworn just prior to the time that they
7 testify. When you're through giving your testimony, I am
8 going to ask the attorneys whether you may be excused or
9 whether you are subject to recall. If we tell you that you
10 are excused, you are free to come back into the Courtroom
11 and listen to this case or leave and go about your business;
12 but, if we tell you that you are subject to recall, then,
13 you must again wait outside and not discuss your testimony.

14 All right.

15 (Whereupon, all witnesses were excused from the
16 Courtroom.)

17 THE COURT: Mr. Schewe?

18 MR. SCHEWE: Ladies and Gentlemen of the Jury,
19 my name is Bill Schewe. I'm an Assistant Commonwealth
20 Attorney in Fairfax County. As I indicated to you before,
21 it will be my duty to present the facts in this case to
22 you and in a light that is most favorable to the Common-
23 wealth. What that means, and for some of you that have

1 already served on a criminal Jury, you may already under-
2 stand that this is in effect an adversary proceeding.

3 There will be presented to you basically, or can
4 be depending on what the defendant wants to do, two separate
5 theories presented to you, and both of them will be argued
6 to you, and I suspect argued to you vehemently.

7 It will be your job to decide which of the two
8 theories is the true theory. You may accept parts of both
9 or reject parts of both, as you please. I submit to you
10 that in all likelihood it will be a two-step process.

11 I submit to you that the first step obviously is
12 to determine the guilt or innocence of the defendant.
13 Should you determine that the defendant is guilty, it will
14 be your duty, then, to go further and fix the punishment,
15 and as indicated to you, the range of punishment is one to
16 five years in the penitentiary and in your discretion you
17 can reject the penalty time and you may punish the defendant
18 through the use of jail time up to 12 months and a fine of
19 up to \$1,000.

20 You can use either or you can use both.

21 I submit to you that you have an excellent range
22 to choose from. I submit to you that the range of penalty
23 was decided by the Commonwealth's Legislature. You're not

1 going to determine what the range is. You're stuck with it.
2 I'm stuck with it. The defendant is stuck with it. That's
3 the range you have to use.

4 Very briefly about the case. I submit to you now
5 there will be several witnesses, some of these witnesses are
6 going, only going to be asked one or two questions by the
7 Commonwealth because that's all they can offer.

8 This is an automobile accident case involving an
9 old model Mustang driven by Christopher James Gainer, a 15
10 year old boy.

11 The defendant who was involved in this accident
12 was driving a ten-wheel dump truck. I submit to you that
13 we will prove that dump truck was fully loaded at the time
14 the accident occurred, and basically, this is what happened.

15 There will be testimony from witnesses who
16 followed the defendant into the intersection. There will
17 be testimony from people who were at the intersection and
18 observed the accident as it happened. There will be further
19 testimony from the County Coroner who examined the body of
20 the deceased. He will testify as to the cause of death.

21 There will be additional testimony from a police
22 officer who examined the scene after the accident, and
23 there will be additional testimony from an expert who we

1 hope to qualify as an expert, who will tell you interesting
2 things about what he was able to determine from his analysis
3 and his investigation of the accident itself.

4 What happened very briefly is this. The
5 defendant is proceeding down 123 which is this road right
6 out here, about six or seven miles down that road in that
7 direction towards Occoquan. He had left the quarry at
8 Occoquan carrying bluestone and blue powder which you may
9 have seen before, it's bluestone, it's crushed stone. He
10 proceeded up 123 until he got to within a mile and a half
11 to two miles from the intersection of Clifton Road and 123.
12 Burke Lake Road also comes into 123 as you're going down
13 123 like this. In the same direction, the defendant was
14 coming, he was coming from a southerly direction up towards
15 this Courthouse on this very same road.

16 As the defendant comes up Burke Lake is on his
17 right. Clifton Road is on his left. There is a light at
18 that intersection. There will be testimony that there was
19 a light and that it was active at the time. There will be
20 further testimony as to what signs the defendant could or
21 should have seen as he approached this particular inter-
22 section. There will be testimony from two drivers who
23 encountered the defendant on the road and they will testify

1 for you that the defendant passed them, each one of them
2 on a double yellow line just prior to the accident, and
3 they will estimate from their observance as he passed them
4 on that road they will estimate the speed of his vehicle.

5 The testimony will be that the speed limit on
6 this road was 45 miles an hour. These two individuals will
7 testify that he was going in excess of 50 miles an hour.
8 These are both lay witnesses. They are not experts. All
9 they are going to do is estimate the best they can, what
10 they thought the speed was.

11 One witness in particular had an excellent view,
12 we submit, had an excellent view of this accident. He was
13 immediately behind the defendant as he went into the
14 intersection. The testimony will be that Christopher James
15 Gainer, driving an older model Mustang, was attempting to
16 execute a left-hand turn above 123 onto Clifton Road on
17 his way to his own home.

18 As the defendant approaches the intersection,
19 we submit, and we submit we'll prove at a high rate of
20 speed, that he attempted to pass the Gainer automobile and
21 proceed up 123. That's when he got to the intersection.
22 Mr. Gainer had activated his left-hand turn signal, that
23 the defendant, we submit, was in a hurry, that he attempted

1 to pass and go on up 123.

2 As he attempted to make that passing movement in
3 an intersection, Mr. Gainer who was not looking in his rear
4 view mirror to see anybody, to see if anybody was passing
5 on his left-hand side, started to make that left-hand turn.
6 At that point, the defendant had to swerve to the left and
7 in effect, apparently, we submit in an attempt to make, go
8 ahead and make a left-hand turn on Clifton to avoid the
9 accident.

10 There will be testimony that the truck went on up
11 on two wheels. That there was an impact side by side between
12 the Gainer vehicle and Mr. Thorpe's vehicle. That the two
13 vehicles went into the corner of the intersection, and at
14 that point the truck fell on top of the Gainer vehicle,
15 crushing Christopher Gainer.

16 The doctor will testify the cause of death was
17 asphyxiation. In other words, the roof of the car was
18 forced down on top of Mr. Gainer and he was unable to
19 breathe.

20 Now, basically, that's the testimony and that is
21 certainly a brief account of what we submit happened.

22 I submit that there will be, as I indicated,
23 several witnesses, many of whom will testify only, answer

1 one or two questions because that's all they can remember.
2 Several of them were in the car with Mr. Gainer. At the
3 time, there were five young people in that car at the time
4 of the accident.

5 Now, through various forms of shock, the trauma
6 of the accident, they only remember bits and pieces. We're
7 going to offer you those bits and pieces because we believe
8 they are relevant and because they are proper with exactly
9 what happened.

10 We'll submit to you when this case is over that
11 we will have proved beyond a reasonable doubt that this
12 defendant acted in such a reckless way as to have no regard
13 for human life, and that is the crux of the case.

14 I don't believe there is going to be any big
15 issue about the fact that Mr. Gainer died in this automobile
16 accident.

17 The question for you alone is going to be whether
18 the conduct of the defendant, Mr. Thorpe, is so grossly
19 negligent that he had no care for the human life around
20 him and I submit to you that we'll prove that to you beyond
21 a reasonable doubt.

22 Thank you.

23 THE COURT: Mr. Rochrenbeck?

1 MR. ROEHRENBECK: Ladies and Gentlemen, we agree
2 with one thing, that Mr. Schewe said, this was certainly a
3 very bad tragedy, a 15-year old boy was killed in an auto-
4 mobile accident. I think we can all appreciate that those
5 of you that have children of that age or relatives of this
6 type of situation, but that's the only thing we agree on.

7 What our evidence will show is that Mr. Thorpe
8 was driving his truck, as Mr. Schewe said, in a northerly
9 direction. That, on the first occasion he mentioned about
10 passing somebody on a double yellow line, in fact, there
11 wasn't a double yellow line. It was marked chopped. Mr.
12 Thorpe's truck didn't go faster than 40 miles an hour
13 because it had a full load, and that's the maximum speed
14 it could go with a full load on a road like that.

15 When he approached the intersection where the
16 accident happened, which Mr. Schewe said is the inter-
17 section of 123 and Clifton Road is on your right, going
18 north, excuse me, on your left going north, and Burke Lake
19 Road is on your right. They intersect and change names at
20 123.

21 What actually occurred, and what we will show,
22 as Mr. Thorpe approached that intersection, he noticed the
23 Mustang, as Mr. Schewe mentioned, the Gainer Mustang had a

1 right turn signal on. He slowed down anyway because there is
2 a dog-leg going into that intersection, and a little bit of
3 a hill.

4 As he slowed down, he also noticed there was a
5 red light there, but as they approached, he being three,
6 four, five car lengths behind the Mustang, the light turned
7 green. The signal in front of the Gainer Mustang was on.
8 What happened, the Mustang went over partially, maybe
9 two-thirds to three-quarters off of the traveling portion
10 of the road and we'll have illustrations to show that the
11 Mustang actually went into the apron turning right on
12 Burke Lake Road, and that -- as it did that, and because he
13 had a green light, Mr. Thorpe speeded up a little from 30
14 to 35 miles an hour, that he was going, and perhaps, his
15 left right around the double yellow line.

16 There is no evidence of any cars coming in the
17 other direction. As he does that, as we all would do, we
18 sometimes might go over the center a little bit without
19 going all the way over to pass them. All of a sudden the
20 Mustang changed directions and also the right signal was
21 switched to the left signal. As it simultaneously, the
22 car began to turn back into 123 which meant that Mr. Thorpe
23 had one of three things he could do.

1 He could run into him broadside, try to go around
2 to the right or left and go down Clifton Road in a sense,
3 try to run parallel to the Mustang. Unfortunately, he
4 couldn't go around behind the Mustang because there were
5 cars at the intersection, and there wasn't enough room if
6 he continued in the direction, that is, to pass the Mustang
7 he would have hit it broadside and that would have also
8 been tragic.

9 He took the only course of action he had which
10 was to go down Clifton Road, hoping that he could avoid it,
11 hitting the Mustang, that is going parallel with the
12 Mustang and avoid an accident.

13 Unfortunately, because of Mr. Gainer, perhaps
14 his inexperience at age 15, having maneuvered this way,
15 he got put in the situation. In addition, you'll see
16 pictures and also testimony about Clifton Road at that
17 intersection. It's one of those country roads that has a
18 high crown in it and angles really steeply to the shoulder,
19 and we believe that in addition to Mr. Gainer's incorrect
20 use of his signals, that the reason that the truck fell
21 over is that it got on that crown and because he was in a
22 situation where he had to turn real quickly that caused
23 the tipping. The road was more of a -- this type of thing

1 once you get on an Interstate.

2 We believe this was a tragic accident, but we
3 believe that's exactly what it was, an accident.

4 We believe, and we submit that the evidence will
5 show that young Mr. Gainer incorrectly maneuvered his
6 signals causing my client to be put in a bad situation.

7 You'll hear testimony from Mr. Thorpe as to
8 that, and we'll also have some photographs from a pro-
9 fessional photographer. We'll submit through him to
10 illustrate to you the whole course of this event as to the
11 intersection, and I think after you've heard all of the
12 evidence, you'll make the same conclusion that I have,
13 and that is, this certainly was a tragedy, but that the
14 Commonwealth has not shown evidence beyond a reasonable
15 doubt or that it was gross to give this man a penitentiary
16 sentence or send him up the road with a felony.

17 I believe it was a tragic accident, and I just
18 ask the Jury to pay particular attention to all the
19 testimony and you'll only be able to reach one conclusion
20 and that is innocence.

21 Thank you.

22 THE COURT: Counsel mentioned your photographs,
23 and now let me explain to you the procedure we'll follow.

1 If you have photographs or diagrams or pictures, what I do
2 is, we'll stop the trial if they come into evidence and are
3 received by the Court, and we'll hand them to the Jury at
4 the time and stop all activity in the trial, and let the
5 Jury see it, and then we'll move on.

6 If you have written matters such as letters or
7 reports or those types of things, we don't stop. We'll
8 receive them and just move right on through and review it
9 later but pictures, photographs and diagrams, we'll make
10 an exception.

11 Who is your first witness, Mr. Schewe?

12 MR. SCHEWE: Pamela Blake.

13 Whereupon,

14 PAMELA BLAKE

15 was called as a witness by counsel for the Commonwealth, and
16 having been first duly sworn by the Clerk of the Court, was
17 examined and testified as follows:

18 DIRECT EXAMINATION

19 BY MR. SCHEWE:

20 Q Ma'am, would you state your name and your age
21 for the Ladies and Gentlemen of the Jury, please?

22 A Pamela Blake, and I'm 15 years old.

23 Q Pamela, directing your attention to the 6th day of

1 June, 1980, I'll ask you if you had occasion to be in the
2 company of Christopher James Gainer?

3 A. Yes, I did.

4 Q. And, while you were in Mr. Gainer's company, did
5 anything unusual happen to you?

6 A. No. I don't understand what you mean?

7 Q. Did you ever have occasion to be in a car with
8 Mr. Gainer?

9 A. Yeah.

10 Q. While you were in that car, did anything unusual
11 happen to you all?

12 A. Yes, we were in an accident.

13 Q. Where did that accident occur?

14 A. At the stop light at the intersection of Clifton
15 Road and 123.

16 Q. In what direction were you all headed when this
17 accident occurred?

18 A. I think --

19 THE COURT: Were you headed towards Fairfax or
20 away from Fairfax?

21 THE WITNESS: Heading away from Burke Lake.

22 BY MR. SCHEWE:

23 Q. Towards this Courthouse?

1 A. Yes.

2 Q. When you got to that intersection, were you aware
3 of where you all were going?

4 A. Yeah.

5 Q. Where were you going?

6 A. To Chris's house.

7 Q. Do you recollect whether -- where is Chris's
8 house, excuse me?

9 A. You just go on Clifton Road, that's all I know.

10 Q. In order to get to Chris's house, would you have
11 had to make a turn off of 123?

12 A. Yeah, you have to take a left.

13 Q. Left on Clifton Road?

14 A. Yeah.

15 Q. If you can recollect, when you approached the
16 intersection, were you aware at that time where you all
17 were going as you approached it?

18 A. Yes.

19 Q. Do you recollect in what direction, if any, Chris
20 maneuvered the car when you got into the intersection?

21 A. Left.

22 Q. Did he have occasion to go right at any time?

23 A. No.

1 Q Where were you sitting in the car?

2 A I was sitting behind the passenger seat.

3 Q Do you recollect whether or not Mr. Gainer had
4 activated a turning signal?

5 A No.

6 Q Let me ask you this. Do you recollect whether
7 or not -- let me ask you this.

8 When you had the accident, what kind of vehicle
9 was involved with Mr. Gainer's vehicle?

10 A A truck.

11 Q Can you describe what kind of truck it was?

12 A Big. It was blue, that's all I know.

13 Q When was the first time that you were aware of
14 the truck?

15 A When we had turned the corner and then I saw the
16 truck pass the front of the window. Then, I remember it
17 hitting the side, the right side or the left side of the
18 car, bumping into the side.

19 Q The truck was on your left?

20 A It was over here, yeah. The car was here and
21 it was right here (indicating).

22 Q You said there was contact made in the inter-
23 section?

1 A. No. After we turned onto the gravel road, like
2 we had to go off the road, and there was contact made on
3 the gravel road. It kind of hit the side of us.

4 Q. Like a sidesweep?

5 A. Yes.

6 Q. Did there come a time when there was further
7 contact between the Gainer vehicle and the truck?

8 A. Well, after it hit us, it just fell on top after
9 it hit us to the side.

10 Q. It fell on top?

11 A. Yes.

12 Q. Chris's car?

13 A. Yes.

14 Q. Chris was driving?

15 A. Yes.

16 Q. Did you have occasion to observe the driver of
17 the truck?

18 A. After I got out of the car, yeah.

19 Q. Is the driver of the truck in the Courtroom here
20 today?

21 A. Yeah.

22 Q. Would you point to him for the ladies and Gentlemen
23 of the Jury?

1 A. Right there in the glasses (indicating).

2 MR. SCHEWE: That's all the questions I have.

3 THE COURT: Mr. Roehrenbeck?

4 CROSS EXAMINATION

5 BY MR. ROEHCENBECK:

6 Q. Miss Blake, is it your testimony that the first
7 contact you recall that you had with the car you were in
8 with Chris was after you made a little bit of a turn, gotten
9 off the road?

10 A. Well, it was like after -- it was after we swerved
11 off to the side to avoid the truck. Yeah, he hit the side
12 of our side.

13 Q. You were already off 123?

14 A. Well --

15 Q. If you remember?

16 A. Yeah, I remember. I don't know how to say it.

17 It was like after we were turning, the truck kind of
18 swerved in front of us. I could see the front of the truck
19 and then he turned, swerved onto the gravel to avoid the
20 truck and then it hit the side of us.

21 Q. You have no recollection of seeing the truck
22 before all this happened in the intersection?

23 A. No.

1 MR. ROEHRENBECK: I don't have any further
2 questions.

3 REDIRECT EXAMINATION

4 BY MR. SCHEWE:

5 Q One last question.

6 When this contact was made, was it as you're
7 going down 123? Was the first contact on the left-hand
8 side of 123 or the right-hand side of 123?

9 A Left.

10 MR. SCHEWE: That's all I have.

11 THE COURT: May this witness be excused?

12 MR. SCHEWE: As far as the Commonwealth is
13 concerned.

14 MR. ROEHRENBECK: Yes, sir.

15 THE COURT: You are excused. Thank you for
16 coming.

17 (Witness excused.)

18 MR. SCHEWE: Your Honor, I'd ask the Bailiff to
19 call, if Mr. Roehrenbeck has no objection, I'd like to go
20 ahead and take Dr. Beyer out of order at this time unless
21 Mr. Roehrenbeck has some objection.

22 MR. ROEHRENBECK: No objection.

23 Your Honor, he is going to put on the doctor to

1 show the cause of death, but I will stipulate that the
2 person who died as a result was Christopher Gainer, and to
3 identity.

4 MR. SCHEWE: I accept the stipulation.

5 THE COURT: All right.

6 Whereupon,

7 DR. JAMES BEYER

8 was called as a witness by counsel for the Commonwealth, and
9 having been first duly sworn by the Clerk of the Court, was
10 examined and testified as follows:

11 DIRECT EXAMINATION

12 BY MR. SCHEWE:

13 Q. Would you state your full name and your occupation
14 for the Court?

15 A. Dr. James C. Beyer, Deputy Chief Medical Examiner
16 in charge of the Northern Virginia Division Office of the
17 Chief Medical Examiner.

18 Q. How long have you been so employed?

19 A. I've been a Medical Examiner since 1963.

20 MR. ROEHRENBECK: Your Honor, I'll stipulate to
21 the qualifications of Dr. Beyer as an expert witness.

22 THE COURT: You may either accept or --

23 MR. SCHEWE: I'll accept that, Your Honor.

1 BY MR. SCHEWE:

2 Q Dr. Beyer, directing your attention to June 7,
3 1980, I ask if you had occasion to examine the body of
4 one Christopher James Gainer?

5 A Yes. It was examined at 8:30 a.m. in the morning
6 at Fairfax Hospital.

7 Q Would you relate to the Ladies and Gentlemen of
8 the Jury what your findings were and how you went about
9 making those findings?

10 A The individual had dark congestion of the head,
11 face and neck with numerous small hemorrhages over the
12 forehead and upper face, and also in the soft tissues of
13 the eyes. There were abrasions on the left side of the head,
14 abrasions on the right side of the neck. There were
15 multiple superficial incised or slash-type wounds over the
16 left shoulder area, and there were multiple abrasions in
17 the left hip area and bruises or contusions in the anterior
18 aspect or front of the right thigh.

19 Internal examination revealed that there was a
20 fracture of one of the vertebrae or portion of the spine
21 in the lower neck area. This had caused some damage to
22 the underlying spinal cord. There was no evidence of any
23 other significant injuries.

1 Q Doctor, from your examination of the body, were
2 you able to determine a cause of death?

3 A Cause of death was ascribed to asphyxiation, to
4 compression, or a crushing force applied to his thorax or
5 chest.

6 Q Could you explain to the Jury exactly what you
7 mean by the asphyxiation and how that might have happened
8 in this particular case?

9 A Any asphyxiation is related to the inability of
10 the body to adequately oxygenate the blood in the lungs and
11 provide that oxygenated blood to the rest of the body.
12 This inability can be brought about in a couple of ways,
13 both mechanical and chemical.

14 One of the ways, however, is where you have a
15 compression or a force applied to the chest or thorax.
16 The chest can no longer expand, no longer can move. The
17 individual then can no longer breathe. He does not
18 provide oxygenated blood to the remainder of his body and
19 he dies of asphyxiation.

20 This is characteristically seen where one has an
21 individual who is in a ditch and the ditch collapses on
22 them and he has a crush or a compression of his thorax.
23 This is a similar mechanism in this individual.

1 Q I take it then, doctor, your position is that the-
2 I know you testified that asphyxiation was the cause of
3 death. It's your opinion, although, there was a fracture
4 in the neck that that was not the cause of death?

5 A That would be a contributing factor, but it was
6 not the primary factor.

7 MR. SCHEWE: All right, sir, no further questions.

8 THE COURT: Mr. Roehrenbeck?

9 MR. ROEHRENBECK: Your Honor, I have no questions
10 of the doctor.

11 THE COURT: May this witness be excused?

12 MR. SCHEWE: Yes, Your Honor.

13 THE COURT: You are excused. Thank you for
14 coming.

15 (Witness excused.)

16 THE COURT: Before you call your next witness,
17 let's take a break.

18 Ladies and Gentlemen, please don't discuss the
19 case or draw any conclusions at this stage. We're going
20 to take a 15 minute break. You are free to go downstairs
21 for refreshment. You may even leave the building. You may
22 make a telephone call. You may use your 15 minutes as you
23 see fit, but please don't discuss the case or remain in the

1 presence of anyone discussing it.

2 (Whereupon, at 11:25 o'clock a.m., a 15 minute
3 recess was taken.)

4 Whereupon,

5 THOMAS MERRITT

6 was called as a witness by counsel for the Commonwealth, and
7 having been first duly sworn by the Clerk of the Court, was
8 examined and testified as follows:

9 DIRECT EXAMINATION

10 BY MR. SCHEWE:

11 Q Sir, would you state your name and your occupation
12 for the Ladies and Gentlemen of the Jury?

13 A Thomas Merritt. I'm a Map Draftsman for Fairfax
14 County.

15 Q Now, Mr. Merritt, were you asked to prepare a
16 special map for this proceeding?

17 A Yes, sir, I was.

18 Q And, do you have it with you?

19 A Yes, sir, I do.

20 Q And, would you relate to the Ladies and Gentlemen
21 of the Jury exactly how you went about preparing those
22 documents?

23 A I was given the location of the accident and we

1 used aerial photography and had it blown up to a scale. We
2 used Virginia State Highway plans and combination of field
3 check and scale work and came up with a one inch equals
4 twenty-five foot drawing of the intersection.

5 THE COURT: What?

6 THE WITNESS: One inch equals twenty-five feet.
7 It's a standard scale that the Highway Department uses.

8 BY MR. SCHEWE:

9 Q Are these the documents that you just testified
10 about?

11 A Yes, sir.

12 Q Do they accurately reflect the condition of this
13 particular condition as of June 6, 1980?

14 A Yes, sir, they do.

15 MR. SCHEWE: Your Honor, I ask that these documents
16 be marked for identification.

17 THE COURT: Would you mark those for identifica-
18 tion as Commonwealth's Exhibits 1, 2, and 3.

19 (The documents referred to were marked
20 Commonwealth's Exhibits Nos. 1, 2, and
21 3, respectively, for identification.)

22 MR. SCHEWE: Your Honor, at this time I don't
23 believe there will be any objection. The Commonwealth

1 would move that they be entered into evidence as Common-
2 wealth's Exhibits No. 1 through 3.

3 MR. ROEHRENBECK: I have no objection.

4 THE COURT: I'll receive them.

5 (The documents referred to, having
6 been previously marked Commonwealth's
7 Exhibits Nos. 1, 2, and 3, for
8 identification, were received in
9 evidence.)

10 THE COURT: Do you have other questions of this
11 witness?

12 MR. SCHEWE: No, Your Honor, I do not.

13 THE COURT: Do you have any questions, Mr.
14 Roehrenbeck?

15 MR. ROEHRENBECK: No, Your Honor, I don't.

16 THE COURT: May he be excused?

17 MR. SCHEWE: Yes, Your Honor.

18 THE COURT: You're excused. Thank you for coming.

19 (Witness excused.)

20 THE COURT: All right, Mr. Schewe, who is your
21 next witness?

22 MR. SCHEWE: My next witness would be, Your
23 Honor, is Elizabeth Conrad.

1 Whereupon,

2 ELIZABETH CONRAD

3 was called as a witness by counsel for the Commonwealth, and
4 having been first duly sworn by the Clerk of the Court, was
5 examined and testified as follows:

6 DIRECT EXAMINATION

7 BY MR. SCHEWE:

8 Q Would you state your name and your age for the
9 Jury, please?

10 A Elizabeth Conrad, age 16.

11 Q Elizabeth, directing your attention to the 6th
12 day of June, 1980, I ask if you had occasion to be in the
13 company of Christopher James Gainer?

14 A Yes, I did.

15 Q Were you in an automobile with him that day?

16 A Yes.

17 Q Did you happen to be a passenger in a car driven
18 by him at the time an accident occurred?

19 A Yes.

20 Q Where did that accident occur?

21 A At the intersection of 123 and Clifton Road.

22 Q Is that located in Fairfax County?

23 A Yes.

1 Q Elizabeth, how long was Mr. Gainer's vehicle in
2 that intersection?

3 A Pardon me?

4 Q About how long was his car in that intersection
5 prior to his going right, left, or straight ahead?

6 A He waited for the stop light.

7 Q Did he have occasion to make a turn?

8 A Yes.

9 Q In which direction did he turn?

10 A Left.

11 Q And, just prior to his making that turn or prior
12 to his making that turn, did you have occasion to observe
13 whether or not he activated his turn signal?

14 A Yes.

15 Q Do you recollect in which direction he activated
16 the turn signal?

17 A Left.

18 MR. SCHEWE: That's all the questions I have.

19 One further question.

20 BY MR. SCHEWE:

21 Q If I could, do you recall whether he activated
22 his turn signals any more than one time?

23 A Just once.

1 Q To the left?

2 A Yeah.

3 MR. SCHEWE: Thank you.

4 CROSS EXAMINATION

5 BY MR. ROEHRENBECK:

6 Q Elizabeth, where were you sitting in the car at
7 the time?

8 A In the middle of the back seat.

9 Q Middle of the back seat, and how many other
10 passengers were in the car?

11 A Five. Well, four, including me.

12 Q You were in the middle of the back seat with who?

13 A Pardon me?

14 Q Who else was in the back seat with you?

15 A Don was on my left side and Pam was on my right
16 side.

17 Q Don?

18 A Don Sherman.

19 Q And Pam?

20 A Blake.

21 Q She was on the right side?

22 A Yes.

23 Q Who was in the front seat?

1 A. Dave Capozzoi.

2 Q And, he was a passenger and Chris was driving?

3 A. Right.

4 Q When you say to Mr. Schewe you saw him turning the
5 left signal on --

6 A. Yes.

7 Q -- what were you doing just before you went into
8 the intersection, were you talking?

9 A. We were laughing.

10 Q Gossiping, this type of thing?

11 A. Yeah.

12 Q When you say you remember he turned his left
13 signal, are you saying you saw a blinker on the dashboard?

14 A. Yeah, I saw his hand moving, going down.

15 Q You saw his hand go down just, you mean, it went
16 down like this or up like this?

17 A. Down like that.

18 Q Did you have occasion to actually look at the
19 dashboard?

20 A. No.

21 Q After that, in other words, can you say whether
22 or not you recall seeing a blinking light on the left or
23 right?

1 A. No.

2 Q. So, your recollection is a downward motion by his
3 hand?

4 A. Correct.

5 Q. Just prior to that, what were you doing?

6 A. What?

7 Q. Just prior to your noticing him going like that --

8 A. Pam was telling a joke.

9 Q. Were you looking at Pam, where were you looking?

10 A. At Chris. I turned around and I was laughing
11 and I turned around and noticed Chris.

12 Q. You noticed Chris after you were laughing and
13 talking to Pam?

14 A. Yeah.

15 Q. So, just before you saw him make a downward left
16 motion, you were looking away from him; is that correct?

17 A. Yeah.

18 Q. At the point you were looking at Pam, you
19 actually couldn't see Chris?

20 A. Right.

21 Q. And, that was immediately before you saw him go
22 like that (indicating)?

23 A. Right.

1 MR. ROEHRENBECK: I have nothing further.

2 THE COURT: Anything else?

3 REDIRECT EXAMINATION

4 BY MR. SCHEWE:

5 Q Elizabeth, do you recollect whether or not Chris
6 ever turned the car to the right?

7 A No, he didn't.

8 MR. SCHEWE: No further questions.

9 THE COURT: Do you drive?

10 THE WITNESS: Yes, I do.

11 THE COURT: How long have you been driving?

12 THE WITNESS: I got my license the day before the
13 accident. So, it was the 5th of June.

14 THE COURT: Thank you very much.

15 MR. SCHEWE: Your Honor, in light of your
16 question, could I ask one additional question?

17 THE COURT: Yes.

18 BY MR. SCHEWE:

19 Q Have you ever driven that car?

20 A No.

21 Q Were you familiar with how you activate turn
22 signals?

23 A Yeah.

1 Q How were turn signals activated in that car?

2 A Either push it down or up.

3 Q Which direction did he push it down, which
4 signal did it activate?

5 A Left.

6 THE COURT: Anything else?

7 MR. SCHEWE: No, sir.

8 THE COURT: Is this witness excused?

9 MR. SCHEWE: Yes.

10 THE COURT: You are free to leave, thank you.

11 (Witness excused.)

12 MR. SCHEWE: David Capozzoi.

13 Whereupon,

14 DAVID CAPOZZOI

15 was called as a witness by counsel for the Commonwealth, and
16 having been first duly sworn by the Clerk of the Court, was
17 examined and testified as follows:

18 DIRECT EXAMINATION

19 BY MR. SCHEWE:

20 Q Sir, would you state your name and your age for
21 the Jury, please?

22 A David Capozzoi, and I'm 16.

23 Q Would you spell your last name for us?

1 A. C-a-p-o-z-z-o-i.

2 Q Did you have occasion on June 6, 1980 to be in
3 an automobile driven by Chris Gainer?

4 A. Yes.

5 Q Did you happen to be in that car at the time the
6 accident occurred at Clifton Road and 123?

7 A. Yes.

8 Q Where were you sitting in the car, David?

9 A. In the right passenger seat.

10 Q What kind of vehicle made contact with Mr.
11 Gainer's vehicle, if any did?

12 A. It was a truck, a dump truck.

13 Q Do you recollect from which direction, from your
14 right or your left, that that truck approached the Gainer
15 vehicle?

16 A. It came up from behind and came around to the
17 left side.

18 Q And, after the accident was over, did you have
19 occasion to get out of the car?

20 A. Yes, sir.

21 Q How were you able to do that?

22 A. Through the window.

23 Q Just subsequent to the accident, did you have

1 occasion to observe the driver of the other vehicle?

2 A. Yes, he came up.

3 Q. Is he in the Courtroom here today?

4 A. Yes.

5 Q. Could you point him out for the Ladies and
6 Gentlemen of the Jury?

7 A. He's the guy sitting right there with glasses.

8 Q. What color jacket is the person that you're
9 pointing out wearing today?

10 A. Grey.

11 Q. That is the person at the end of the table?

12 A. Yes.

13 MR. SCHEWE: Let the record reflect that he
14 indicated the defendant.

15 No further questions.

16 THE COURT: Mr. Roehrenbeck?

17 MR. ROEHRENBECK: I have no questions, Your
18 Honor.

19 THE COURT: May this witness be excused?

20 MR. SCHEWE: Yes, Your Honor, he may.

21 THE COURT: You're excused. Thank you for coming.

22 (Witness excused.)

23 MR. SCHEWE: Gary Haines.

1 Whereupon,

2 GARY HAINES

3 was called as a witness by counsel for the Commonwealth, and
4 having been first duly sworn by the Clerk of the Court, was
5 examined and testified as follows:

6 DIRECT EXAMINATION

7 BY MR. SCHEWE:

8 Q Sir, would you state your name and your occupation
9 for the Ladies and Gentlemen of the Jury?

10 A Gary Robert Haines. I'm a Fairfax County Health
11 Inspector.

12 Q Mr. Haines, directing your attention to the 6th
13 day of June, 1980, I ask if you had occasion to be on Route
14 123 on that day?

15 A That's correct.

16 Q And, on that day, directing your attention to
17 about 3:15 in the afternoon of the 6th, did you have
18 occasion to observe anything unusual?

19 A Yes, I did.

20 Q What was that?

21 A I was on, actually on Lee Chapel Road, and I made
22 a right turn to 123 north. I looked left, the way was clear
23 although I did see a car coming. I made my turn and I

1 proceeded north on 123. At this time, I observed the car
2 behind me was closing rather rapidly and behind this car
3 was a dump truck.

4 As I approached Community Lane, approximately
5 three-tenths of a mile, I observed the dump truck pass the
6 vehicle behind me on the double yellow line. That put the
7 dump truck directly behind me.

8 Q How close behind you, Mr. Haines?

9 A He closed very rapidly behind me. I was doing
10 the speed limit or slightly over, and he was uncomfortably
11 close.

12 Q What was the posted speed limit?

13 A Forty-five miles per hour.

14 THE COURT: What was your answer?

15 THE WITNESS: Forty-five miles per hour.

16 BY MR. SCHEWE:

17 Q And your testimony was you were doing 45 plus?

18 A Probably 50.

19 Q What, if anything, had occurred at this time when
20 the truck was close to you? Can you estimate in feet how
21 close the truck was to you?

22 A Since he overtook me, I mean, he closed in on me
23 rather rapidly, he must have been going over 50 miles per

1 hour.

2 Q What happened when he closed on you rapidly, if
3 anything?

4 A Well, naturally I sped up somewhat. We proceeded
5 on down the road this way until we came to Burke Lake boat
6 ramp access road. There was a car actually almost at a
7 complete stop at 123 making a right-hand turn into the boat
8 ramp access area. Of course, I had to slow down almost to
9 a complete stop myself.

10 At that time, the dump truck passed again on
11 double yellow lines, my car. There was an oncoming car,
12 too, which was rather close, but he did make it back in.

13 Q I take it that the speed limit at that area is
14 still 45 miles an hour?

15 A Yes.

16 Q What happened at this point, if anything?

17 A I proceeded north on 123. I had an inspection
18 to do up the road. I accelerated and I approached the
19 truck. As we passed Burke Lake Park, the main part of the
20 park, as I approached the intersection of Clifton Road and
21 123, I observed a green Mustang stopped, apparently, at the
22 light, although, I couldn't swear whether it was red or
23 green.

1 The truck then swerved again across the double
2 yellow line, seemingly to pass the vehicle. The Mustang's
3 turn signal was visible to me.

4 Q Was he signalling left or right?

5 A Left-hand turn.

6 Q Let me ask you this, Mr. Maines, before you
7 continue. Could you estimate as the truck approached the
8 intersection or as it entered the intersection, could you
9 estimate the truck's speed at that time?

10 A He was doing in excess of 50 miles an hour.

11 Q And, approximately how close to the truck were
12 you at the time you made this observation?

13 A I was within a hundred yards.

14 Q Okay, let me ask you a few other things, if I
15 could.

16 How many lanes of traffic are there in that
17 intersection? In other words, how many lanes going in the
18 direction you were going?

19 A One north and one south.

20 Q And, were there any kinds of signs, any kinds of
21 warning signs or anything of that nature?

22 A There's a very large intersection warning sign
23 on the right-hand side of the road as you approach the

1 intersection.

2 Q What does that tell you?

3 A It shows a red light, a yellow light, and a
4 green light.

5 Q Had you noticed -- let me ask you this. Have
6 you been back to the scene of the accident?

7 A I drive that road frequently.

8 Q Can you tell the Ladies and Gentlemen of the Jury
9 whether it indicates as you come into that intersection
10 whether or not there is a passing zone in or around that
11 intersection?

12 A There is no passing zone.

13 Q As the truck entered the intersection, would
14 you describe for the Ladies and Gentlemen of the Jury what
15 you observed about the truck and the Mustang?

16 A Well, the truck and the Mustang were actually
17 side by side. The Mustang was attempting to make a left
18 turn onto Clifton Road. The truck was traveling, as I say,
19 in excess of 50 miles per hour, that is almost a 90 degree
20 turn. The truck slowly went up on two wheels. The Mustang,
21 seemingly, the driver tried to swerve his car as far away
22 from the car as possible, but the truck came over on top
23 of the Mustang crushing it.

1 Q Mr. Haines, as you approached the intersection,
2 did you have occasion to observe whether at any time,
3 at least in your view, the Mustang ever made a right-
4 hand turn signal?

5 A I never saw any right-hand turn signal.

6 Q Did you ever see the Mustang anyplace other
7 than in the paved portion of the road?

8 A When it finally came to rest, it was half on
9 and half off.

10 Q Was that as you were proceeding down 123? Was
11 that on the left-hand side of 123 or the right-hand?

12 A Left-hand side.

13 Q Did you ever see the Mustang on the right-hand
14 shoulder of the road?

15 A No.

16 Q From the time you first observed the truck
17 further down 123, I think you testified a mile or so,
18 did you ever lose sight of the truck?

19 A Not that I can recollect.

20 Q Did you have occasion to observe the driver
21 of the truck?

22 A I saw the driver of the truck get out of the
23 truck after it was overturned.

1 Q Is the driver of the truck in the Courtroom
2 here today?

3 A Yes, he is.

4 Q Could you point him out for the Ladies and
5 Gentlemen of the Jury?

6 A That man right there (indicating).

7 Q Is he wearing glasses or is he without glasses?

8 A I don't recall.

9 Q Is he with or without glasses presently?

10 A He's wearing glasses presently.

11 MR. SCHEWE: Let the record reflect that he
12 indicates the defendant.

13 BY MR. SCHEWE:

14 Q Mr. Haines, I show you what is marked Common-
15 wealth's Exhibit No. 3 and ask you if this looks familiar
16 to you?

17 A I'm having trouble orienting myself from an
18 aerial view. I think this is 123 north. This is Clifton
19 Road and this is Burke Lake Road.

20 Q This is an overlay. Does that help you any?

21 A Yes, that does.

22 Q Let me ask you this, Mr. Haines, as you
23 approach that intersection, can you estimate for the

1 Ladies and Gentlemen of the Jury, approximately when you
2 first get a full view of the intersection?

3 A It would actually be off this picture. There
4 is a curve that curves to the left as you approach the
5 intersection. It's approximately a quarter of a mile
6 from the intersection.

7 Q Does that curve, before you hit that curve,
8 does that curve obscure your view of the intersection?

9 A Prior to that curve, you wouldn't be able to
10 see the intersection.

11 Q And, you're estimating that you first get the
12 full view of about a quarter of a mile from the inter-
13 section?

14 A Approximately.

15 Q Did you ever see any signals of any kind from
16 the truck itself?

17 A I saw the truck's brake lights.

18 Q No turn signals right or left?

19 A No.

20 MR. SCHEWE: No further questions.

21 CROSS EXAMINATION

22 BY MR. ROEHRENBEC:

23 Q Mr. Haines, upon your entering or coming from

1 near the intersection, you said that you noticed that the
2 Mustang had a left blinker on; is that correct?

3 A. That is correct.

4 Q. When was the first time you saw the left blinker
5 or were you able to see a left blinker?

6 A. The truck actually crossed the double yellow
7 lines and it was coming alongside the Mustang.

8 Q. So, prior to what you observed, that is, the
9 truck crossing the double yellow line, you couldn't tell
10 whether there was another blinker on?

11 A. That's correct.

12 Q. It was a hidden view? It was from the back of
13 the Mustang?

14 A. Actually, as you approach that intersection, you
15 can see a car sitting at the light, but I don't recall
16 seeing a turn signal.

17 Q. Well, my question is, I guess you couldn't see
18 if the left blinker was on the Mustang, you couldn't see
19 the right blinker or the car at all until the truck
20 moved out of the way or crossed over; is that correct?

21 A. After the truck moved out of the way, if there
22 had been one, I could have seen it.

23 Q. After it moved, just before you were blinded by

1 the truck?

2 A. That's correct.

3 Q. Going into the intersection.

4 You also just testified that you never lost sight
5 of the truck?

6 A. I don't recall losing sight of the truck.

7 Q. Do you recall a prior hearing being asked
8 whether or not you lost sight of the truck and saying
9 that you thought you did briefly?

10 A. No, I don't recall saying that.

11 Q. Are you saying that you don't remember or are
12 you saying that you didn't say that?

13 A. I'm saying I didn't say that.

14 Q. Let me read to you from a transcript.

15 Question from me in the transcript, "So, then
16 you didn't see the truck from the time it passed you
17 until at least when you approached the intersection when
18 you speeded up? There was a time when you didn't see it?",
19 and your reply was, "Very briefly".

20 Does that refresh your recollection?

21 A. Can you go back prior to that? That doesn't.

22 Q. You don't remember saying that?

23 A. Can you read that, please?

1 Q. Certainly, I'd be glad to.

2 I'll put it in more context. The original
3 question was, from the point where he -- again, we're
4 talking about Mr. Thorpe, with the truck went around you,
5 which would be back at Burke, to the intersection is not a
6 straight line, is it, and your reply was, I don't think it
7 is, and then you were asked, all right, so, then, you
8 didn't see the truck from the time it passed you until at
9 least you approached the intersection when you speeded up.
10 There was a time when you didn't see it, that is, a truck,
11 and you said very briefly.

12 I guess my question is which way is it? Did you
13 lose sight of it briefly? Were you incorrect at the other
14 hearing? Or, does this refresh your memory?

15 A. I don't recall losing sight of the truck. It's
16 a possibility that I did. It's a possibility I didn't.
17 I couldn't swear to it either way.

18 Q. Do you remember replying where you last sighted
19 the truck very briefly? In other words, could you have
20 said that, but you don't remember saying that?

21 A. I don't remember saying it.

22 Q. But, you're not saying you didn't say it?

23 A. I don't recall using those words.

1 Q Now, going back to where you first got on the
2 highway, that is, 123, you turned right from Lee Chapel
3 Road; is that correct?

4 A That's correct.

5 Q I guess when you did that you didn't see any
6 traffic coming or, if you did, it was far enough away that
7 you saw no problem making a right-hand turn?

8 A I saw traffic coming, but it was far enough
9 away that I could make the turn.

10 Q After you made the right turn, I think it was
11 your testimony somewhere around Community Lane?

12 A That's correct.

13 Q Is that when the truck passed the car that was
14 immediately behind you?

15 A That's correct.

16 Q Now, you're familiar with the road because you
17 drive it every day; is that correct?

18 A Yes.

19 Q How does Community Lane intersect with 123?

20 A It intersects actually at two points. Actually
21 it's Old Ox Road and Community Lane. It's marked at
22 those points.

23 Q Old Ox Road being 123?

1 A. I think if you'll check the map, it says that
2 that loop is Old Ox Road and the main road is 123, and
3 Community Lane actually is the road that comes off of that
4 loop, but for all intents and purposes, the street addresses
5 are Community Lane on that loop.

6 Q. Describe for the Jury, if you will, how does
7 Community Lane go? It's not perpendicular with 123. It's
8 like a half moon?

9 A. That's correct.

10 Q. So, there's really two intersections that Community
11 Lane makes with 123?

12 A. Right.

13 Q. Was it between those two intersections where
14 Mr. Thorpe passed you?

15 A. No. It was prior.

16 Q. I'm sorry, not you but the car behind you?

17 A. It was prior to the first intersection as you're
18 going north.

19 Q. Now, let me ask you -- strike that.

20 As you hit the first intersection of Community
21 Lane, the road dips down, doesn't it? There's a little dip
22 in the road?

23 A. The road is Rolling at that point.

1 Q Between the two Community Lane intersections
2 going north, there's a dotted line for the driver; is that
3 correct?

4 A I don't recall.

5 Q You don't recall whether between the two
6 Community Lanes it's a dotted line or solid line?

7 A No, I don't.

8 Q But, you do recall -- you recall before that, it
9 isn't -- in other words, I guess my question is, where is
10 it dotted and where is it solid?

11 A The point that Mr. Thorpe passed is double yellow
12 lines. It's just prior to the first entrance into
13 Community Lane as you proceed north on 123.

14 Q How far behind you was the car that he passed
15 when he passed it, do you understand what I'm saying?

16 A Approximately 300 yards.

17 Q So, the car behind you that Mr. Thorpe passed
18 was 300 yards behind you; is that correct?

19 A That's correct. Approximately.

20 Q When he passed that car, where were you?

21 A I was at the 300 yards ahead of the car that he
22 passed.

23 Q Can you relate to where that would be relative

1 to the Community Lane intersection? In other words, were
2 you north of the second one, in between the two, or where?

3 A. I would have been approximately 50 feet before
4 the first entrance into Community Lane going north.

5 Q. But, you don't know whether the road is dotted
6 or solid between the two Community Lanes; is that correct?

7 A. I don't recall.

8 Q. When we get down to the gravel road, that's
9 about how far from Community Lane, if you can approximate?

10 A. From the part that Mr. Thorpe passed, it's
11 approximately one mile.

12 Q. To the gravel road?

13 A. That's correct.

14 Q. That's a road that is a boat ramp, I believe,
15 to Burke Lake?

16 A. It's a boat access ramp.

17 Q. I believe your testimony was that you had
18 stopped there, but another car was making a right turn
19 into the gravel road?

20 A. I nearly came to a stop.

21 Q. And, your testimony was that Mr. Thorpe, or his
22 truck, passed you at that point and correct me if I'm
23 wrong, I believe you said that you estimated the speed to

1 be in excess of 50, since you were going between 45 and 50;
2 is that true?

3 A. No, that's not what I said.

4 Q. What did you say?

5 A. Mr. Thorpe was going in excess of 50. Myself,
6 and now prior to this point when he first made his pass of
7 the car behind me which put him directly behind me, that
8 was some distance, that's a mile back down the road. If
9 my car was stopped, I couldn't possibly have been going 45
10 miles an hour or barely stopped.

11 Q. Now, I understand that. Didn't you say that you
12 estimated his speed when you were slowing down to be in
13 excess of 50?

14 A. I'm sure it was in excess of 50.

15 Q. Why is that?

16 A. It had been prior to that. He saw an oncoming
17 car. He had to make a very, very quick maneuver to avoid
18 having a head-on collision.

19 Q. So, you're basing your opinion on the speed of
20 the gravel road a mile prior to that?

21 A. I'm sorry?

22 Q. You were stopped; is that correct, at the gravel
23 road?

1 A. Nearly stopped.

2 Q. And, I think you said that prior to that, you
3 thought he was going in excess of 50 because when you were
4 traveling, you were going about that fast?

5 A. And, he was closing on me.

6 Q. My question is, since you were stopped at the
7 gravel road, are you basing the fact that he was going in
8 excess of 50, thereon, but you estimated him going further
9 back down on Community Lane?

10 A. I would base that more on an oncoming car, and
11 he's out on the wrong side of the road than prior speed.

12 Q. So, you're basing the speed on what side of the
13 road he's on?

14 A. It stands to reason if you have a car --

15 MR. ROEHRENBECK: Your Honor, I admonish the
16 witness to answer the question. He's starting to make
17 conclusions.

18 THE COURT: Ask the question again.

19 MR. ROEHRENBECK: I asked him.

20 THE COURT: Repeat it to him.

21 BY MR. ROEHRENBECK:

22 Q. He was basing the speed at the gravel road at
23 Burke Lake on the fact that the truck was on the wrong

1 side of the road?

2 THE COURT: Would you answer that yes or no?

3 THE WITNESS: No.

4 BY MR. ROEHRENBECK:

5 Q The question would be what were you basing your
6 estimation of the speed on the gravel road on?

7 A As I explained, there was an oncoming car
8 heading directly at the truck. The man had to pull back
9 in very quickly. He had to get around me. In order to do
10 so, he would have had to have been traveling at a very,
11 very great amount of speed.

12 Q Well, a great amount of speed is relative,
13 isn't it?

14 MR. SCHEWE: I think he's arguing with the
15 witness.

16 THE COURT: That's an objection. I overrule it.

17 BY MR. ROEHRENBECK:

18 Q You were stopped or about stopped. How fast do
19 you think you were going when you slowed down there?

20 A Five or ten miles an hour.

21 Q So, you can say that this man in the truck was
22 going faster than that?

23 A Certainly.

1 Q And, certainly you would agree that if you're
2 going five or ten miles an hour and somebody goes by at
3 forty or forty-five miles an hour, that's a pretty great
4 rate of speed, if you're almost standing still?

5 A There's a big difference between the two speeds.

6 Q Between five and ten and forty-five; is that
7 correct?

8 A Yes, sir.

9 Q I think you would agree, also, it's certainly
10 easier to estimate a speed if you're going the speed. It's
11 easier to estimate if somebody is going faster if they go
12 by you or close in on you?

13 A Can you rephrase that?

14 Q If you're going 40 or 50 miles an hour and a car
15 or a truck closes in on you, obviously they're going faster
16 than you?

17 A Right.

18 Q That doesn't mean their vehicle is going faster
19 than the one you're in if you're stopped and somebody goes
20 wheeling by you?

21 A They're still going faster than you are.

22 Q What you're saying is, when he went by the
23 gravel road, by you, he was going faster than you were at

1 that point?

2 A. Yes.

3 Q. A great deal faster, but you're not exactly
4 sure how fast at that point?

5 A. Right.

6 MR. ROEHRENBECK: Your Honor, I'd like to mark
7 this for identification.

8 THE COURT: Mark this as Defense Exhibit No. 1
9 for identification.

10 (The photograph referred to was marked
11 Defendant's Exhibit No. 1 for
12 identification.)

13 BY MR. ROEHRENBECK:

14 Q. Mr. Haines, let me show you a picture and if
15 you can recognize it, please tell me. If you can't, we
16 can't go any further. Do you recognize that picture?

17 A. Yes, I do.

18 Q. What is that a picture of?

19 A. To the right is the gravel access road. This
20 is the road as you proceed north on 123.

21 Q. So, this picture is looking north from the
22 gravel road?

23 A. Yes.

1 Q Does that picture accurately depict that scene
2 as you recall it, other than it's a winter scene rather
3 than a summer scene?

4 A Yes.

5 MR. ROEHRENBECK: Your Honor, I might add, I
6 have a photographer with some of these pictures, but in
7 that the witness identified it, I believe Mr. Schewe will
8 have no objection to the fact that the road and the markings
9 on the road were the same when this picture was taken than
10 they were in June. This happens to be a picture taken more
11 recently.

12 THE COURT: Are you moving that picture into
13 evidence?

14 MR. ROEHRENBECK: (Nodding in the affirmative.)

15 THE COURT: Any objection?

16 MR. SCHEWE: No.

17 THE COURT: Then I'll receive Defense Exhibit
18 No. 1.

19 (The photograph referred to, having
20 been previously marked Defendant's
21 Exhibit No. 1 for identification, was
22 received in evidence.)

23 BY MR. ROEHRENBECK:

1 Q Mr. Haines, if you can, I show it to the Ladies
2 and Gentlemen of the Jury, after you slowed down here and
3 his truck passed, and you said you had to get back over
4 here, did you lose sight of it here, of this curve here
5 that appears in the picture?

6 A As I said before, I don't recall.

7 Q I take it as soon as the car that was in front
8 of you took a right turn, you sped up?

9 A My appointment was further north on 123.

10 Q And, you resumed speed? About what speed, if
11 you recall?

12 A I was slowed down to five, ten miles an hour.
13 I wouldn't have accelerated back up to forty, fifty miles
14 an hour.

15 Q How long a time were you slowed down to wait
16 for the car to pass?

17 A The length of time it took him to execute his
18 turn.

19 Q Do you have any idea how long that was? Was it
20 three seconds, five seconds, ten seconds?

21 A Are you asking when I actually had to start
22 braking for the car?

23 Q No. What I'm interested in is how long a period

1 of time had you had to slow down to say five, ten miles an
2 hour in order for the car to make the right turn before you
3 could speed back up to resume normal speed?

4 A. If I was going 50 miles an hour, I slowed down.
5 I wasn't traveling, but only 5, 10 miles per hour for
6 seconds. I gradually slowed down and the car executed his
7 turn and I sped back up.

8 Q. Do you recall when you sped back up? You said
9 you didn't lose sight of the truck, where the truck was.
10 If you can, in this picture, I know it's hard to do, there's
11 a picture -- can you recall in that picture about how far
12 it was?

13 A. I can't say I didn't lose sight of the truck.
14 I don't recall if I did or not.

15 Q. So, it's possible in this stretch of road that
16 you could have lost sight of it?

17 A. That's quite possible.

18 Q. More materially or whatever when you resumed
19 speed. Do you recall what speed you got back up to?

20 A. Forty-five, fifty miles an hour.

21 Q. You said you're not sure. You lost sight of --
22 when is the next time you remember seeing the truck, after
23 you sped up?

1 A. In front of Burke Lake Park, the main part of
2 the road.

3 Q. How far from the gravel road, if you know?

4 A. I would estimate two-thirds of a mile.

5 Q. How far was the truck from you when you saw it
6 at that point?

7 A. When I first saw it at this point?

8 Q. Yeah.

9 A. Seeing how I don't remember, if I lost sight
10 of the truck or not --

11 Q. I know it's hard to remember. It's been a long
12 time ago. If you can remember how far the truck was when
13 you, again, saw it, you said you saw it at Burke Lake, so,
14 I assume you were someplace behind the entrance to Burke
15 Lake entrance?

16 A. I was about a hundred yards in front of Burke
17 Lake Park.

18 Q. So, you were gaining on the truck?

19 A. I was approximately a hundred yards when I
20 entered the intersection, too. So, I wouldn't say I was
21 gaining on the truck.

22 THE COURT: Do you have any other questions with
23 respect to that picture?

1 MR. ROEHRENBECK: No, I don't believe so, Your
2 Honor.

3 THE COURT: Would you stand so the Jury can see
4 the witness.

5 BY MR. ROEHRENBECK:

6 Q You said you thought you were a hundred yards
7 from the entrance to Burke Lake, correct?

8 A That's correct.

9 Q Also, a hundred yards from the intersection
10 where the accident occurred?

11 A Not actually where the accident occurred, but
12 as you approach the intersection.

13 Q But, at some point you're a hundred yards
14 behind the truck?

15 A At some point.

16 Q So, obviously, you had gained on the truck from
17 the gravel road; is that correct?

18 A That's correct.

19 Q So, it would be safe to assume between the
20 gravel road and the intersection, you were going faster
21 than the truck; is that correct?

22 A At some point.

23 Q Do you know how far it is from the gravel road

1 to the intersection?

2 A. Approximately nine-tenths of a mile.

3 MR. ROEHRENBECK: If the Court will indulge me
4 one second.

5 I don't have anything further, Your Honor.

6 THE COURT: Any redirect?

7 REDIRECT EXAMINATION

8 BY MR. SCHEWE:

9 Q. Mr. Haines, you also testified that this
10 accurately reflects the scene where the defendant passed
11 you; is that correct?

12 A. With one major exception. There is no oncoming
13 car in that picture.

14 Q. And, those are double yellow lines, are they not?

15 A. That's correct.

16 Q. Now, Mr. Roehrenbeck has gone over in some
17 detail with you about how you were able to determine or
18 estimate the speed of the defendant, approximately, at the
19 time he passed you. Did you have occasion to observe his
20 vehicle? Did you see the vehicle yourself?

21 A. As he passed me?

22 Q. Yes.

23 A. Yes.

1 Q Did you see him approaching in your rear view
2 mirror?

3 A Yes, very quickly.

4 Q Are those two of the bases from which you
5 estimated his speed?

6 A That would be a good basis, yes.

7 MR. SCHEWE: That's all I have.

8 THE COURT: May this witness be excused?

9 MR. SCHEWE: I would ask this witness to be
10 subject to recall.

11 THE COURT: You are subject to recall. If you
12 have a phone number which is within walking distance of
13 the Courthouse, you may leave it with the Commonwealth.
14 Thank you for coming.

15 MR. SCHEWE: Before I call my next witness,
16 could we approach the Bench for a moment?

17 THE COURT: Yes.

18 (The following was had at the Bench, outside
19 of the hearing of the Jury.)

20 MR. SCHEWE: I'm not wearing a watch. I merely
21 wanted to advise the Court that my next three witnesses are
22 all going to be -- there is no way I can avoid -- all have
23 to be tied together. They are the three police officers

1 who made all the measurements. I have some concern
2 whether I can get all three of them on prior to lunch or
3 not.

4 THE COURT: Well, if it doesn't hurt you, if
5 you don't, because I have a meeting at 1:00. So, we'll
6 break at 1:00.

7 MR. SCHEWE: I'll try to get them in.

8 THE COURT: If we interrupt at a logical place--

9 MR. SCHEWE: If the Court has no objection,
10 I'll put my main officer on first and then use the other
11 two to tie the rest of it up. I wanted to just advise the
12 Court.

13 (The hearing resumed within the hearing of the
14 Jury.)

15 MR. SCHEWE: Officer Trounton.

16 Whereupon,

17 OFFICER GRANT TROUNTON
18 was called as a witness by counsel for the Commonwealth, and
19 having been first duly sworn by the Clerk of the Court,
20 was examined and testified as follows:

21 DIRECT EXAMINATION

22 BY MR. SCHEWE:

23 Q You are Officer Grant Trounton of the Fairfax

1 County Police Department?

2 A. Yes, sir.

3 Q. You're now an investigator, are you not?

4 A. Yes, sir.

5 Q. Directing your attention to the 6th day of June,
6 1980, I ask if you were employed by the Fairfax County
7 Police Department at that time?

8 A. Yes, sir, I was.

9 Q. Directing your attention to approximately 3:20,
10 3:25 on the 6th of June, did you have occasion to arrive at
11 the intersection of Clifton Road and 123?

12 A. Yes, sir.

13 Q. And, would you relate to the Ladies and
14 Gentlemen of the Jury what you observed when you first
15 arrived on the scene?

16 A. Yes, sir. Just to the shoulder of the road
17 from the middle of the intersection of Clifton Road, Burke
18 Lake Road and Route 123, Ox Road, there was a ten-wheel
19 blue, GMC, 1979 dump truck on its right side, totally
20 turned over on the right side. It appeared that it had
21 been carrying a load which had been dumped when it fell
22 over.

23 It was sitting approximately three feet to the

1 left of a Mustang, a green Mustang, which had the entire
2 top section of the vehicle crushed down. I approached the
3 vehicle. There were some bystanders near to see if they
4 could assist.

5 The people that were in the vehicle, I could
6 see three young ladies in the rear of the vehicle and I was
7 advised that there was a driver behind the wheel of the
8 vehicle.

9 At this time, I tried to see if I could see
10 this driver behind the wheel to assist in any way and due
11 to the wreckage all being crushed down in that area, I was
12 not able to even see the driver of the vehicle that was
13 inside.

14 Q Now, Investigator Trounton, did you have
15 occasion to, while you were at the scene, to seek out the
16 driver of the other vehicle?

17 A Yes, I did.

18 Q Did he identify himself to you?

19 A An unknown bystander in the area pointed out
20 to me the driver, and I approached Mr. Thorne and asked
21 him if he was, in fact, the driver and he acknowledged that
22 he was.

23 Q Now, I take it that at the time you approached

1 the driver -- is the driver in the Courtroom here today?

2 A. Yes, he is.

3 Q. Would you point him out for the Ladies and
4 Gentlemen of the Jury?

5 A. Yes, sir, the defendant.

6 Q. Is he wearing glasses? Is he wearing glasses
7 today?

8 A. Yes, sir.

9 Q. Let the record reflect that the investigator
10 was indicating the defendant..

11 Now, at the time that you talked to Mr. Thorpe,
12 were you aware of the actual condition of the Gainer boy?

13 A. No.

14 Q. Was Mr. Thorpe under arrest at that time?

15 A. No, he wasn't.

16 Q. Was he handcuffed?

17 A. No, sir.

18 Q. Where was it that you had occasion to have a
19 conversation with him?

20 A. Due to the confusion in the intersection after
21 my initial contact with him, I said well, let's walk over
22 towards my cruiser, which was on the other side of the
23 intersection. And while we crossed the intersection over

1 towards my cruiser, we had a little bit of a conversation.
2 I just generally questioned him as to what happened.

3 Q And, I take it the crux of the investigation
4 had not centered on him at that point?

5 A No, sir.

6 Q Did you have occasion to place him in the
7 cruiser?

8 A Yes.

9 Q Were the doors to the cruiser open or shut?

10 A Open.

11 Q Was he free to leave?

12 A Yes, sir.

13 Q What did he tell you about the accident?

14 A He told me he was northbound on 123 and that he
15 believed the Mustang was going to turn right. He began to
16 pass it on the left and at that time the Mustang moved to
17 the left and he tried to avoid the Mustang.

18 Q Had he indicated to you exactly where he was
19 going when the accident occurred?

20 A I asked him whether he was turning or going
21 straight northbound through the intersection and he
22 related to me that he was going northbound straight through
23 the intersection.

1 Q Now, did there come a time when photographs of
2 the accident scene were taken?

3 A Yes, sir.

4 Q Do you have those photographs with you?

5 A Yes, sir.

6 Q Could you produce those for me, please.

7 Would you go through these -- let me do this,
8 please, Investigator.

9 I ask that this series of photographs be marked
10 for identification purposes.

11 THE COURT: What is the Commonwealth's next
12 number?

13 THE CLERK: Number 4.

14 THE COURT: We'll start with 4 and go through
15 in that fashion.

16 MR. ROMIRENBECK: Your Honor, in regards to
17 Commonwealth's exhibits marked for identification 4 through
18 23, I have no objection.

19 The only thing I would ask the officer is, were
20 these pictures taken when you got there? That's how you
21 found the scene?

22 THE COURT: How soon after the crash were the
23 pictures taken?

1 THE WITNESS: Within an hour, I believe.

2 MR. ROEHRENBECK: Was anything changed from the
3 time of the crash until the time that the pictures were
4 taken?

5 THE WITNESS: No, sir. There may be things
6 that weren't where the accident -- such as a measuring
7 tape in the photo, but the pictures were taken as I found
8 the scene, yes, sir.

9 THE COURT: Any other voir dire, Mr. Roehrenbeck?

10 MR. ROEHRENBECK: No, Your Honor.

11 THE COURT: Those exhibits marked Commonwealth's
12 Exhibits 4 through 27 will be entered into evidence as
13 Commonwealth's Exhibits 4 through 27. I will receive
14 without objection 4 through 23.

15 MR. ROEHRENBECK: Your Honor, I don't have any
16 objection to -- I believe it's 24 through 27. I assume,
17 obviously, that they were taken after the dump truck or
18 the tow truck --

19 THE COURT: Are you going to ask specific
20 questions on these?

21 MR. SCHEWE: (Nodding in the affirmative.)

22 THE COURT: All right, then, we'll have you
23 ask those questions first, then show them to the Jury.

1 BY MR. SCHEWE:

2 Q I show you these photographs. First I'll show
3 you 24 through 27 and ask you approximately how long after
4 the accident were those photographs taken, Investigator?

5 A Approximately at an hour to an hour and a half.
6 This one I'm looking at here where the dirt was being loaded
7 back into the truck --

8 Q For what purposes was it being loaded back
9 into the truck?

10 A So we could take the truck to the State scales
11 on Interstate 66 and weigh the truck on the loading end.

12 Q And, all the photographs, let me just ask you
13 some general questions about the photographs. All of the
14 photographs where there is depicted a large dump truck, is
15 that the vehicle that the defendant was driving at the
16 time of the accident?

17 A Yes, sir.

18 Q And, all the photographs that depict the
19 wreckage of an old Mustang, was that the car that Mr.
20 Gainer was driving?

21 A That's correct.

22 THE COURT: Do you have any other questions on
23 these?

1 MR. SCHEWE: Not on the photographs, Your Honor.

2 (The photographs referred to were
3 marked Commonwealth's Exhibits Nos.
4 4 through 27 for identification, and
5 were received in evidence.)

6 BY MR. SCHEWE:

7 Q Investigator Trounton, I would like to ask you a
8 few general things about the intersection as you saw it on
9 June the 6th. Did you have occasion on the date of the
10 accident to observe the approach that Mr. Gainer's car
11 and Mr. Thorpe's truck took when they approached the
12 intersection?

13 A Yes, sir.

14 Q And, what, if any, traffic signs did you
15 observe as you approached that intersection?

16 A In the northbound lanes, 756 feet prior to the
17 traffic light, there is a State Highway warning sign for
18 a traffic light ahead.

19 Q When you observed the entrance to the inter-
20 section and that stretch of road, prior to the intersection
21 as both the victim and the defendant approached the inter-
22 section, did you observe any signs which indicated passing
23 was allowed?

1 A. Yes, sir.

2 Q. Were there any signs?

3 A. There were signs, if we want to call the lines
4 on a highway as a sign that there was no passing allowed.

5 Q. Did you observe any sign that indicated whether
6 or not it was a passing zone?

7 A. There was no indication of a passing zone.

8 Q. And, that stretch of road from, specifically
9 the stretch of road from Lee Chapel to Clifton on 123, can
10 you testify as to what the speed limit is on that road?

11 A. Yes, sir.

12 Q. What is it?

13 A. Forty-five miles per hour.

14 Q. Is it posted as forty-five?

15 A. Yes, sir.

16 Q. Is it posted in such a manner that a driver
17 can observe it readily?

18 A. Yes, sir.

19 Q. Now, while on the scene, were there other
20 police officers present?

21 A. Yes.

22 Q. With their help, did you have an opportunity
23 to take measurements at that intersection?

1 A. Yes.

2 Q. Specifically, what did you measure?

3 A. We measured distance of scuff marks that
4 appeared to have been left by the truck.

5 Q. Now, in describing these scuff marks,
6 Investigator, I'll show you what's been marked as
7 Commonwealth's Exhibits Nos. 6, 5, 4, and 7. So, that
8 would be 4, 5, 6, and 7, and ask if the scuff marks that
9 you are talking about are depicted in those photographs?

10 A. Yes, sir.

11 Q. And, would you relate to the Ladies and Gentle-
12 men of the Jury how you went about measuring that skid
13 mark or scuff mark?

14 A. Yes, sir. Officer Cleveland, using a roller-
15 tape measuring device, measured the length of four scuff
16 marks that were visible on the surface, aided with Officer
17 Stopper and myself. I measured the scuff marks with the
18 intent to get an arc measurement from them. This is used
19 for mathematically figuring out the speed of a vehicle.

20 Q. Actually, how many measurements did you take
21 of the scuff marks?

22 A. Two. Officer Cleveland and Officer Stopper
23 took measurements and myself, yes, sir.

1 Q Which end of the tape did you hold?

2 A I read the tape for the distance.

3 Q Can you testify here today as to where Officer
4 Cleveland was holding the tape when you were at the other
5 end?

6 A That was Stopper when we measured. Officer
7 Cleveland, when he took the distance measurements, he did
8 that on his own with a rollertape. It's a one-man operation.

9 Q Then, I take it you would be able to testify
10 on the arc measurement, was that the one that you did?

11 A Yes, sir, that's correct.

12 Q What was the distance of the arc measurement?

13 A I'd have to refer to my notes. There's more
14 than one measurement on there.

15 Q Would you please let me ask you this. Were
16 those notes taken contemporaneously to the actual measuring
17 of the scuff marks?

18 A Right at the time the measurements would be
19 taken and then recorded.

20 Q Would you relate to the Ladies and Gentlemen
21 of the Jury what those measurements were, please?

22 A We took two arc measurements, the first one
23 outlining 50 feet of the scuff marks. We took a piece of

1 rope and drew a taut line from one point to the arc to 50
2 feet down the arc. What this does is like it would be like
3 a string on a bow and arrow. The bow part would be the
4 skids and the strings would be the piece of rope.

5 We laid down from this piece of rope, re-
6 measured inwards toward the curved scuff mark, the first
7 one being seven feet, ten inches. The next one was eight
8 feet, ten inches, and the next one was nine feet, eight
9 inches and a half.

10 Those measurements were from one hundred feet
11 on the distance of the scuffs.

12 We also did another one utilizing the last 50
13 feet of visible scuff marks that were left by the tires.
14 On those measurements, we received measurements of two
15 feet, six inches; three feet, ten inches and a half; five
16 feet and six inches.

17 Q Investigator, did you have occasion to take
18 any other measurements at the scene besides the arc
19 measurements of the scuff marks and then that curve line
20 measurement that you testified Officer Cleveland took?

21 A I personally did not take any other measurements.
22 Officer Stopper took measurements to place the position,
23 the resting position of the vehicles, and Officer

1 Cleveland also took measurements to coordinate the position
2 of the vehicles at rest.

3 Q Now, Investigator Trounton, have you had occasion
4 to take measurements in regard to certain distances on 123?

5 A Yes, sir.

6 Q How did you go about taking those measurements?

7 A I took different measurements from various
8 reference points south of the accident, using the odometer
9 on a calibrated speedometer on a police cruiser.

10 Q Do you have that calibration of that cruiser
11 with you today?

12 A Yes, sir.

13 Q And, you were using Vehicle No. 443?

14 A Yes.

15 Q When was this done?

16 A Yesterday, sir.

17 MR. ROEHRENBECK: I have no objection.

18 THE COURT: Okay, I'll receive -- is Common-
19 wealth's next exhibit 28?

20 (The document referred to was marked
21 Commonwealth's Exhibit No. 28 for
22 identification.)

23 THE COURT: Let's take a break for lunch.

1 Don't discuss the case. Don't draw any conclusions or
2 remain in the presence of anyone discussing it. We'll
3 return again at 2:05.

4 (Whereupon, at 1:00 o'clock p.m., a luncheon
5 recess was taken.)
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23

AFTERNOON SESSION

(2:05 p.m.)

1 THE COURT: Ask the Jury to come back.

2 (Whereupon, the Jury returned to the Courtroom.)

3 THE COURT: Mr. Schewe, we're at the point
4 where there were certain distances measured.

5 MR. SCHEWE: Thank you.

6 THE COURT: Mr. Schewe, a calibration sheet has
7 been marked. Has that been moved in?

8 MR. SCHEWE: I would move it in at this time.

9 THE COURT: I receive Commonwealth's next
10 exhibit which is Exhibit No. 23. Go ahead.

11 (The document referred to, having been
12 previously marked Commonwealth's
13 Exhibit No. 23 for identification,
14 was received in evidence.)

15 Whereupon,

16 OFFICER GRANT TROUNTON

17 resumed the stand, and was further examined and testified
18 as follows:

19 DIRECT EXAMINATION (Resumed)

20 BY MR. SCHEWE:

21 Q Investigator Troughton, you've testified, I
22 believe, that you used Vehicle No. 443 in order to measure
23

1 some distances.

2 Would you relate for the Ladies and Gentlemen
3 of the Jury precisely what distances you did measure?

4 A. Yes, sir.

5 Q. If you need to refer to your notes -- let me
6 ask you this, were those notes made contemporaneously to
7 your taking these particular measurements?

8 A. Yes.

9 Q. Would you relate what measurements you took
10 and what these distances were, please?

11 A. Yes, sir. Traveling the roadway northbound on
12 Route 123, I started at Lee Chapel Road which is south of
13 the accident scene. From Lee Chapel Road, I measured to
14 the ramp entrance to the Burke Lake Park Marina. It's a
15 dirt road that goes over to the road again. Prior to the
16 accident scene, this distance was .125 miles on the odometer.

17 I measured the total distance from Lee Chapel
18 Road to the intersection where the accident occurred. I
19 measured 2.25 miles. I measured from the ramp from Burke
20 Lake Park to the accident scene and got an even one mile.

21 I measured from the 45 mile per hour sign to Lee Chapel
22 Road and it sets about 80 yards north of Lee Chapel Road.

23 I measured from the warning sign just prior to

1 the intersection indicating that there was a traffic light
2 ahead, and that was 756 feet on that measurement.

3 I used a rollertape, a hand-held tape that you
4 measure off of on a wheel that I rolled on the roadway pave-
5 ment to the intersection and that was 756 feet.

6 Q Is that the sum total involving 123?

7 A Yes. I have other detailed measurements as far
8 as how long the roadway markings went along each piece of
9 marking, such as double yellow line passing areas. I
10 measured how long each one of these sections were.

11 The double yellow lines leading up to the
12 accident scene. I measured from .25, I believe .25, which
13 is two and a half-tenths of a mile. So, my odometer was
14 reading between two and the three when I read that.

15 Q So, that's a quarter of a mile?

16 A Yes, sir.

17 Q Let me ask you this, Investigator, that distance
18 that you measured from the signal warning sign, and I
19 believe you testified at 756 feet --

20 A Yes, sir.

21 Q -- is that approximately the same place where
22 the intersection first comes into view?

23 A Yes, it is.

1 Q So, it's 756 feet. In other words, you have a
2 view of the intersection at 756 feet away from the inter-
3 section itself?

4 A That's correct.

5 Q Now, subsequent to the accident, did you have
6 occasion to run a test involving skids?

7 A Yes, sir.

8 Q Do you recollect when you did that test?

9 A If I can refer to my notes?

10 Q Yes, sir.

11 A On August 12, 1980.

12 Q And, exactly, what did you do?

13 A I took the Fairfax County police cruiser, marked
14 cruiser, calibrated my speedometer, ran northbound on 123
15 into the same piece of roadway that the accident occurred
16 at the same section of the road where the scuff marks were
17 laid by the truck. I laid a skid down in the cruiser at 45
18 miles per hour.

19 Subsequent to that, I measured the skids.

20 Q How did you go about measuring those skids?

21 A With a rollertape.

22 Q What were the lengths of the measurement?

23 MR. ROEHRENBECK: Your Honor, at this point, I

1 have to enter an objection.

2 THE COURT: Sustained.

3 MR. ROEHRENBECK: May counsel be heard at the
4 Bench?

5 THE COURT: I sustain the objection.

6 The reason being comparisons. Mr. Schewe, I
7 take it that you're interested in comparisons, is that
8 what you're attempting to do?

9 MR. SCHEWE: I'm not going to have this witness
10 testify as to comparisons.

11 THE COURT: Well, at any rate, I sustain the
12 objection. Maybe we'll accept some proffer outside of the
13 presence of the Jury. My understanding of the law is this
14 information is not to be considered by the Court or the
15 Jury.

16 Go ahead with your next question.

17 MR. SCHEWE: I could -- could we approach the
18 Bench for a moment, Your Honor?

19 THE COURT: Sure.

20 (The following was heard at the Bench, outside
21 of the hearing of the Jury.)

22 MR. SCHEWE: I guess I should give a clarification
23 of what my motion is. That is, the information that

1 Investigator Troughton collected was given to my expert
2 witness who can testify as to what value it was to him,
3 how he used it, and what calculations he arrived at, you
4 know, he used, and what figures he arrived at based on those
5 calculations.

6 He can testify to the Court as to the relation-
7 ship between the defendant's -- between their vehicle and a
8 truck or any other vehicle, and I think he can testify to
9 the satisfaction of the Court. He's prepared to make those
10 statements.

11 THE COURT: Well, for right now, you're going
12 to let this officer testify to information he gathered, he
13 gave to someone else?

14 MR. SCHEWE: Right.

15 THE COURT: Are you concerned about the fact
16 that they want to say that if a police cruiser does some-
17 thing --

18 MR. ROEHRENBECK: My objection, Your Honor, is
19 that anything that a police cruiser would have tested would
20 have no relevance to a dump truck full of gravel.

21 THE COURT: That's my conclusion, but I'll keep
22 an open mind on it.

23 MR. SCHEWE: The problem I am going to have,

1 Judge, if I don't have the information, if I haven't got
2 into evidence, I can't ask the expert, the expert, I
3 believe, can't satisfy the Court.

4 MR. ROEHRENBECK: As far as I know, the expert's
5 never tested a truck like this, unless he has something I
6 don't know.

7 MR. SCHEWE: The expert can testify to the
8 formula that is used, that is nationally recognized. The
9 only thing we're checking for here is the resistance test of
10 the surface of the road which can be tested in any vehicle.

11 THE COURT: How many questions are you going to
12 ask him about the police cruiser?

13 MR. SCHEWE: All I'm going to ask him is what
14 the length of the skid was and did he give it to anybody and
15 that's it.

16 THE COURT: What's he going to say the length is?

17 MR. SCHEWE: I don't know.

18 THE COURT: Would you ask him very quietly and
19 come back and tell me.

20 MR. SCHEWE: They are used by accident recon-
21 structionists. There is a drag coefficient that can be
22 used with any form of test vehicles. In other words, what
23 we're trying to establish is the abrasiveness of the road.

1 It has nothing to do with the vehicles.

2 THE COURT: Did you get the answer from the
3 length? What is it?

4 MR. SCHEWE: There is a whole series I can show
5 the Court. There are five measurements.

6 THE COURT: If you want to have them, write them
7 down. We'll accept it as a proffer. Then, I'll listen to
8 your argument. After I have heard the expert's testimony
9 as to how it is that the Jury can hear that, I'll keep an
10 open mind.

11 MR. SCHEWE: I appreciate that.

12 MR. ROEHRENBECK: What you're saying, write it
13 down as a proffer and not testify?

14 THE COURT: I don't want the Jury to hear it
15 right now.

16 MR. ROEHRENBECK: I understand.

17 MR. SCHEWE: That would be the proffer.

18 THE COURT: Okay. I have before me something
19 dated August 12, 1980, Cruiser 456 at 45 miles per hour,
20 temperature 72 degrees fahrenheit just received from Mr.
21 Schewe from the witness outside of the hearing of the jury
22 and I will accept this temporarily so that Mr. Schewe may
23 have an opportunity to have the expert witness testify

1 outside the presence of the Jury how it is that an accident
2 reconstruction there can be comparisons between a police
3 cruiser and a dump truck represented by the Commonwealth to
4 be a ton and a half overloaded. Okay.

5 MR. SCHEWE: (Nodding in the affirmative.)

6 Thank you, Judge.

7 Would I be permitted at this time to ask the
8 Investigator where he got his information?

9 THE COURT: You may establish that in the
10 presence of the Jury.

11 MR. ROEHRENBECK: That's all he can ask him.

12 (The hearing resumed within the hearing of the
13 Jury.)

14 BY MR. SCHEWE:

15 Q Investigator, after you got your results from
16 your tests, did you have occasion to communicate those
17 results to anyone else?

18 A Yes, sir.

19 Q Who was that person?

20 A Officer Hank Hughes of the Fairfax County
21 Police Department.

22 THE COURT: How do you spell his last name?

23 I'm sorry, just give the name again.

1 THE WITNESS: Hughes, with a g-h.

2 THE COURT: I'm sorry, thank you.

3 BY MR. SCHEWE:

4 Q Just one final question.

5 Investigator, at the time of the accident and
6 at the time that you spoke with Mr. Thorpe, were you in
7 uniform with your badge displayed?

8 A Yes, sir.

9 MR. SCHEWE: That's all the questions I have
10 of this police officer.

11 THE COURT: Mr. Roehrenbeck?

12 CROSS EXAMINATION

13 BY MR. ROEHRENBECK:

14 Q Investigator Trounton, you said at the scene of
15 the accident that Mr. Thorpe identified himself as the
16 driver of the other vehicle? Didn't he come up and tell you
17 that?

18 A I recall an unknown bystander pointing out the
19 driver to me, and said, I think he realized that it was a
20 lot of confusion at the scene, and I had located the driver.
21 He said he's over there. We met and --

22 Q He readily admitted that he was the driver of
23 the dump truck?

1 A. Yes, there was no problem there.

2 Q. I think you testified before lunch that he had
3 told you that he thought the Mustang was going right; is
4 that correct?

5 A. Yes, sir.

6 Q. Did he tell you orally that he had seen a
7 signal or was it just a real brief conversation?

8 A. It was said -- he said something to the effect,
9 I can't quote him to the effect, he believed the vehicle was
10 going right and based on that, started to pass it on the
11 left and go around.

12 Q. Did you ask him or did you ask him whether he
13 could go back to the cruiser and write a statement out?

14 A. We were walking towards the cruiser. He was
15 relating to me generally what happened, and I asked him if
16 he would give me a statement, that's correct.

17 He took a seat in the rear of the cruiser. He
18 was free to get up and leave and do whatever he wanted to.

19 THE COURT: How soon after the crash itself
20 did he make the statement to you, and in walking over to
21 the cruiser, how much time elapsed?

22 THE WITNESS: I would say between five and ten
23 minutes at a maximum. I had initially just checked to see

1 if there was anything I could do for the victims in the
2 vehicle. Then, immediately, I made contact with him and
3 we walked over to the cruiser in just a matter of minutes
4 that had elapsed,, and I had arrived immediately after the
5 crash.

6 BY MR. ROEHRENBECK:

7 Q So, after you asked him -- I'm not trying to
8 imply, but after you asked him if he wanted to go make a
9 statement, you went back to your business, I assume?

10 A Right. He was sitting there with a pencil and
11 paper and I went back to investigate the accident.

12 MR. ROEHRENBECK: Your Honor, I don't think I
13 have any other questions.

14 THE COURT: Anything else, Mr. Schewe?

15 MR. SCHEWE: No, Your Honor. I would ask that
16 this witness be subject to recall.

17 THE COURT: You're subject to recall. Thank you.

18 MR. SCHEWE: Officer Cleveland will be the
19 Commonwealth's next witness.

20 Whereupon,

21 OFFICER CLEVELAND

22 was called as a witness by counsel for the Commonwealth, and
23 having been first duly sworn by the Clerk of the Court, was

1 examined and testified as follows:

2 DIRECT EXAMINATION

3 BY MR. SCHEWE:

4 Q You are Officer Cleveland of the Fairfax County
5 Police Department?

6 A Yes, sir.

7 Q Officer, were you so employed on June 6, 1980?

8 A Yes, sir.

9 Q On that date, did you have occasion to respond
10 to the intersection of Clifton Road and 123?

11 A Yes, sir.

12 Q Would you relate to the Ladies and Gentlemen of
13 the Jury what you did, if anything, when you arrived at that
14 scene?

15 A Upon responding to the scene, I got with the
16 officer handling the case. I assisted him in whatever way
17 he needed at this time, which was at the time, he was
18 interviewing witnesses, and getting the basic facts of the
19 accident case.

20 I did some measurements for him and turned that
21 information over to him.

22 Q What kind of measurements did you take, Officer?

23 A The initial measurements I took were the scuff

1 marks that were on the roadway leading in the northbound
2 lane of 123 going onto Clifton Road itself.

3 Q Would you relate to the Jury how you went
4 about taking that measurement, please?

5 A I used -- in our investigation, we have a
6 rollertape that we use that we measure off the scuff marks
7 or skid marks, whatever they may be, at an accident scene.

8 Q Did you follow the curve of the scuff mark?
9 Is that how you did your measurement?

10 A Yes, sir, from beginning to end where we didn't
11 have any scuff marks showing.

12 Q Where did the scuff marks lead you?

13 A Up into the vicinity where the two vehicles
14 were resting themselves on Clifton Road.

15 Q Would you relate to the Ladies and Gentlemen of
16 the Jury what the length of those skid marks were?

17 A Referring back to my notes, to the accident
18 scene --

19 Q Were those notes made contemporaneous with
20 the measurements?

21 A Yes, sir.

22 What I did for Officer Trounton, I measured
23 them in numerical order of 1, 2, 3, 4, showing the scuff

1 marks as they go around the curve. My first measurement of
2 the first scuff mark was 90 feet, 4 inches, 93 feet, six
3 inches, for the second, 91 feet, 10 inches for the third
4 one, and the last one was 103 feet, 10 inches.

5 Q I apologize, Officer, I intended to write those
6 down. Would you repeat those for me slowly.

7 A The first scuff mark, it was measured at 90
8 feet, 4 inches. The second one, 93 feet, 6 inches; the
9 third one was 91 feet, 10 inches; and the last one was
10 103 feet, 10 inches.

11 Q Now, you've testified to four different skid
12 marks. I'd like to ask you, Officer, how you identified
13 them or separated them in your own mind, one from the
14 other?

15 In other words, you testified there were four
16 of them. When you are talking about the length of each,
17 let me show you some photographs and ask if you can
18 recollect in what order you measured those skid marks?

19 A Going from what I've got in my notes, it's
20 number one, roughly, followed this way, number two, three,
21 and four.

22 Q So, you measured them from left to right as
23 they are shown in the picture?

1 A. Yes, sir.

2 MR. SCHEWE: Thank you, your witness.

3 CROSS EXAMINATION

4 BY MR. ROEHRENBECK:

5 Q Officer, I think you're referring to Common-
6 wealth's Exhibit No. 5 when you were testifying for Mr.
7 Schewe.

8 The only question I have is how do you measure
9 when it's on a curve? What do you do, take a small ink --

10 A. Our tape measure is the roller itself, and it's
11 based on the two foot around the circumference of the roller-
12 tape itself, and the measurements are included inside the
13 windows. It measures off at a hundred feet every time the
14 bell would ring off, it would be a hundred feet when from
15 the start to the finish, when you come to the end of the
16 measurement, you take the measurement in the windows itself,
17 and add on whatever else is additional of the circumference
18 on the final wheel and add them together and get your final
19 measurement.

20 MR. ROEHRENBECK: Thank You. I believe I have
21 no further questions of this officer.

22 MR. SCHEWE: No further questions.

23 THE COURT: May he be excused?

1 MR. SCHEWE: Yes, Your Honor.

2 THE COURT: You are excused. Thank you for
3 coming.

4 (Witness excused.)

5 MR. SCHEWE: Officer Dave Stopper.

6 Whereupon,

7 OFFICER DAVE STOPPER

8 was called as a witness by counsel for the Commonwealth, and
9 having been first duly sworn by the Clerk of the Court, was
10 examined and testified as follows:

11 DIRECT EXAMINATION

12 BY MR. SCHEWE:

13 Q You are Officer Dave Stopper of the Fairfax
14 County Police Department?

15 A Yes, sir.

16 Q Officer Stopper, were you so employed on the
17 6th day of June, 1980?

18 A Yes, sir.

19 Q Officer Stopper, did you have occasion to
20 respond to the intersection of Clifton Road and 123 on that
21 date?

22 A Yes, I did.

23 Q Approximately what time did you arrive on the

1 scene?

2 A. I don't recall the exact time I arrived. It
3 was about 15 minutes after the initial call, but I don't
4 recall the exact time.

5 Q. While you were there, did you have occasion to
6 notice a '79 GMC truck, blue in color?

7 A. Yes, sir, a dump truck.

8 Q. Did you have occasion to examine that truck?

9 A. Yes, I did.

10 Q. And, did you have occasion to take measurements
11 of that truck?

12 A. Yes, sir, I did.

13 Q. And, you indicated to me at another time that
14 you had put your notes on the back of a document. Could
15 you tell me what document that was?

16 A. It was a weigh-in document from the weighing
17 station on Route 66.

18 Q. Is this the document?

19 A. Yes, that is it. It should have my initials
20 on the left side. That's it.

21 Q. Are your notes on that document?

22 A. Yes, they are.

23 Q. Now, would you relate to the Ladies and Gentlemen

1 of the Jury how you went about measuring this particular
2 truck?

3 A. This was after the accident. The truck was
4 towed to the I-66 weighing station and there I took
5 measurements of the truck. This was done with a steel tape.

6 Q. For what purpose?

7 A. Wheel base of the truck.

8 Q. What purpose did you measure the wheel base?

9 A. To determine the legal maximum limits the
10 truck could hold.

11 Q. Do you go through any other calculations, for
12 instance, number of axles to determine what the maximum
13 weight of the truck should carry?

14 A. Yes.

15 Q. Did you do that?

16 A. Yes.

17 Q. How many axles were on the truck?

18 A. Three axles, one single, and a tandem.

19 Q. What was the wheel base of the truck?

20 A. Eighteen feet, one inch.

21 Q. And, based on your knowledge of the truck, what
22 is the maximum weight that such a truck could carry?

23 MR. ROEDERBECK: Your Honor, I object to that.

1 MR. SCHEWE: If there's an objection, I can
2 merely ask the Court to take judicial notice of the
3 statute which says the same thing. That's all I'm asking
4 for is what the legal maximum weight that the truck can
5 carry to give the Jury some idea of how much this truck can
6 weigh.

7 THE COURT: I overrule the objection.

8 THE WITNESS: A little less than 25 tons,
9 49,500 pounds is the legal limit by the Virginia Code.

10 BY MR. SCHEWE:

11 Q. Officer Stopper, did you have occasion to take
12 any other measurements at the scene?

13 A. Yes, I did.

14 Q. What were those measurements?

15 A. I took measurements and assisted Officer
16 Trouton in taking measurements of the yellow marks after
17 the vehicle started to slide sideways.

18 Q. I take it that Officer Trouton or, now,
19 Investigator Trouton was the one that recorded those?

20 A. Yes, he did.

21 MR. SCHEWE: No further questions.

22 THE COURT: Mr. Roehrenbeck?

23 MR. ROEHRENBECK: I have no questions.

1 THE COURT: May Officer Stopper be excused?

2 MR. SCHEWE: I ask that he be subject to recall
3 as well.

4 THE COURT: You are subject to recall. Thank
5 you.

6 MR. SCHEWE: I have one additional question,
7 if the Court would please. I'm sorry.

8 BY MR. SCHEWE:

9 Q Officer Stopper, I am going to show you two
10 documents. Before I do that, excuse me, I'd like to have
11 these three tickets marked for identification.

12 THE COURT: They'll be marked for identification
13 as Commonwealth's Exhibits Nos. 29, 30, and 31.

14 (The documents referred to were marked
15 Commonwealth's Exhibits Nos. 29,
16 30 and 31 for identification.)

17 BY MR. SCHEWE:

18 Q Officer, I show you these three documents and
19 ask if you can identify them, please?

20 A This is a Vulcan Materials Company receipt.
21 The first one is indicated customer's duplicate copy.

22 Q I don't want you to testify anything about
23 what's on the tickets. The only thing I want you to

1 testify to is if you can identify them.

2 A. I saw them in the cab. One indicated customer's
3 copy, under customer's duplicate copy, and holder's copy.
4 They appear to be carbons. The three of them I found in
5 the dash area of the truck as it was lying on the side and
6 I retrieved them from the truck.

7 Q. I believe you testified that the customer copy
8 was still there?

9 A. Yes.

10 Q. What does that indicate to you?

11 MR. ROEHRENBECK: I object, Your Honor, to that.

12 THE COURT: Sustained.

13 MR. SCHEWE: I'll withdraw it. That's all I
14 have.

15 THE COURT: Do you have any questions?

16 MR. ROEHRENBECK: No, Your Honor.

17 THE COURT: You are subject to recall. Thank
18 you.

19 MR. SCHEWE: At this time, the Commonwealth
20 would call Officer Hank Hughes.

21 THE COURT: Ladies and Gentlemen, we're going
22 to ask that you excuse us for a few moments. We have some
23 matters that we're going to take up outside your presence

1 and we'll ask that you go upstairs. Thank you.

2 (The Jury retired from Open Court.)

3 THE COURT: Let me make sure that I understand
4 what the issues are before we get into this.

5 First of all, is there going to be a quarrel
6 as to whether or not this next witness is an expert so far
7 as being able to reconstruct?

8 MR. ROEHRENBECK: Your Honor, I believe he's
9 qualified in other things, but not in Fairfax, but I'm
10 not sure because I wasn't aware of him until this morning
11 how he's qualified.

12 MR. SCHEWE: I can make a proffer to the Court
13 and counsel if the Court wishes.

14 THE COURT: All right.

15 MR. SCHEWE: I advise the Court that this
16 particular witness has qualified as an expert on 26 separate
17 occasions. He has been qualified in Arlington County Circuit
18 and Alexandria Circuit Court and the United States District
19 Court for the Eastern District. He has also qualified
20 approximately four years ago in this Circuit Court. He
21 has qualified as an expert, as an accident reconstructionist
22 several times in the District Court of Fairfax County, one
23 to my knowledge in the Circuit Court four years ago.

1 THE COURT: What sort of training?

2 MR. SCHEWE: Specialized training is a total
3 of 1,400 hours. I'm trying to read -- he's given me the
4 information and I'm having a hard time making out the
5 abbreviations, Your Honor. Courses on accident recon-
6 struction, on the scene accident investigation, trans-
7 portation, Safety Center advanced accident investigation.
8 Courses in headlamps and tires. Another course in
9 advanced technical -- it reads advanced technical and I
10 can't make out the rest of it.

11 THE COURT: Let's move on into this.

12 We'll assume they would qualify.

13 Tell me what the issues are that he's going to
14 express an opinion on.

15 MR. SCHEWE: He's going to express an opinion,
16 Your Honor, on two things. Your Honor, I believe one
17 will be based on the information that he took at the
18 scene. He will testify that he also was on the scene.
19 On the basis of the measurements of the scuff marks he
20 will testify he can reconstruct the speed of the vehicle
21 based on that.

22 In addition to that, I believe, that he will
23 be able to testify for the Court and for the Jury as to

1 the relationship between the weight of an individual
2 vehicle and its ability to maneuver and handle which was
3 an issue brought up in the motion in limine, and obviously
4 the Commonwealth attempt to try and tie together the weight
5 of the truck and its ability to maneuver.

6 THE COURT: Those are the two things he will
7 testify to?

8 MR. SCHEWE: Yes, sir. I believe those are
9 the only two things he would express his opinion on.

10 THE COURT: Then, tell me why it's necessary
11 for him to have the figures that Investigator Trounton
12 took with respect to the police cruiser at 45 miles per
13 hour?

14 MR. SCHEWE: In order for him to -- all he
15 needs in that -- what they're trying to get is what is
16 called a drag coefficient. A drag coefficient runs to the
17 abrasiveness or the resistance with which the road surface
18 will give to any vehicle.

19 In other words, you can test its resistance
20 against tires, but with any vehicle, and he can explain
21 how he can take the different weights of the vehicles and
22 arrive at the drag coefficient.

23 In other words, when we ran the test, the test

1 skid, that was not to test any vehicle at all. It was
2 merely to test the actual road surface because the road
3 surface itself and its abrasives tendency, its resistance
4 to tires, rubber, will remain the same.

5 In other words, he can calculate for the Court
6 and the Jury exactly how that fits in from place to place.
7 So, the test was in regard to the road surface, not to a
8 particular vehicle, and he can, I believe, convince the
9 Court that it really makes no difference what kind of
10 vehicle is used once he has the vehicle, the same road
11 surface, which we have testimony that it was the same road
12 surface, and he can equate by weight what the drag
13 coefficient would be.

14 THE COURT: I propose that we bring him in
15 and that he be examined and cross examined, and then, I'll
16 listed to your legal argument on whether or not the Jury
17 should hear it.

18 All right?

19 MR. SCHEWE: Does the Court wish me to qualify
20 him as a witness at this time?

21 THE COURT: I don't think we need to go into
22 that.

23 MR. ROEHRENBECK: I think he qualifies generally.

1 Whereupon,

2 OFFICER HANK HUGHES

3 was called as a witness by counsel for the Commonwealth, and
4 having been first duly sworn by the Clerk of the Court, was
5 examined and testified as follows:

6 DIRECT EXAMINATION

7 BY MR. SCHEWE:

8 Q You are Officer Hank Hughes of the Fairfax
9 County Police Department?

10 A Yes, sir, I am.

11 Q Officer Hughes, did there come a time when you
12 were asked to work with specific figures that were
13 involved in an automobile accident that occurred at
14 Clifton Road and 123?

15 A Yes, sir, there was.

16 Q And, specifically what information were you
17 given?

18 Let me ask you this, did you have occasion to
19 be on the scene where that accident occurred?

20 A Yes, sir. It was approximately a month after
21 the accident had occurred, I did visit the scene.

22 Q And, specifically what information were you
23 given with which to work?

1 A. Officer Trounton, who was the primary investigat-
2 ing officer, had taken measurements of the accident scene
3 to include the roadway positions of the vehicle and other
4 physical evidence that was found at the scene. He gave me
5 his field notes and field diagram to work with.

6 Q. And, did he have occasion to run a special
7 kind of test for you?

8 A. Yes, sir, he did.

9 Q. What did that test involve?

10 A. The test we ran was what we call a cofactor
11 or coefficient test that was for the specific purpose of
12 determining the drag factor, the relationship of the
13 amount of skid resistance offered by the roadway to the
14 vehicle.

15 Q. I take it the test is actually a testing of
16 the road surface as opposed to any particular vehicle?

17 A. Yes, sir, it is.

18 Q. Let me ask you this. I think it's probably
19 evident to you that the vehicle in question involved in
20 this accident was a dump truck?

21 A. Yes, sir, it was.

22 Q. How can you square the fact that the vehicle
23 in question is a dump truck, at least a fully loaded one?

1 truck in regards to the fact that Officer Crounion
2 apparently, used a police cruiser to run his test? Can
3 you explain to the Court how you can get a drag coefficient
4 that would apply to a fully loaded dump truck?

5 A Yes, sir. The size and weight of the vehicle
6 when determining the drag factors is not relevant.
7 Different size and weight vehicles would correspond. An
8 example that might be a hundred pound person's body when
9 dragged across a roadway would equate to the drag factor,
10 would equate to the same as a bicycle passenger car. A
11 dump truck, for that matter even a fire truck, there is a
12 direct correlation base. The drag factor is derived from
13 principle of physics or law of physics called work energy
14 formula, and the way you do it, pressing down on the roadway
15 divided by the amount of energy expressed in pounds or
16 weight divided, you get a fraction. That fraction is in
17 turn, for the purposes of mathematics, converted to a deci-
18 mal. If you put a 100 pound weight on the road and took 75
19 pounds to drag it, convert it to a fraction, and divide it,
20 it would be three-quarters or expressed as a percentage.
21 It would be .75. The same thing applies to a dump truck.

22 Say you have a 10,000 pound truck and it took
23 750 pounds of energy moving correlation would be the same,

1 the fraction reduced would be three-quarters or 75 percent.

2 Q So, through mathematics and the use of laws
3 of physics, can you testify as to a reasonable scientific
4 certainty, after having received the information involving
5 the test cruiser, can you testify to a reasonable scientific
6 certainty as to the drag factor involved on a fully loaded
7 dump truck?

8 A Yes, sir, that's possible.

9 Q Once you have received the test results as to
10 the drag factor or drag coefficient or whatever, how does
11 that apply to the information that you received as far
12 as the measurements involving the scuff marks?

13 A Sir, based on Officer Frounton's preliminary
14 investigation, his field sketch and notes, and also the
15 photographs that were taken at the accident scene, the
16 types of tire marks found there, with what we call scuff
17 marks or yellow marks, basically there are two types of
18 tires made. Skid marks caused by non-rotation of the
19 tires and yellow marks caused by rotation of the tires
20 usually as a result of a situation where the forward
21 momentum of the vehicle is in a curved or arc-like
22 movement, and centrifical force is sufficient to cause
23 that vehicle to break traction.

1 In this particular case, because of the
2 characteristics of the type of tire marks, there were
3 scuff marks, identified as scuff marks, specifically what
4 we call a yaw mark, and it calls for a specific type of
5 calculation to determine the minimum speed.

6 Q Is that a particular equation that you use?

7 A Yes, sir, it is.

8 Q And, in other words, based on the information
9 that you received and Investigator Trounion's preliminary
10 investigation and the measurements he took, plus the
11 information that he gave to you in regard to his test
12 skid, you can testify to a reasonable degree of scientific
13 certainty as to what the speed of the vehicle was?

14 A Based on the information that was available,
15 I can give you a definite answer as far as absolute
16 minimum speed prior to impact.

17 I cannot give you the impact speed, but an
18 absolute minimum speed prior to impact.

19 Q Just prior to impact?

20 A Yes.

21 Q That would be to a reasonable degree of
22 scientific certainty?

23 A I'm sorry?

1 Q That would be your testimony to a reasonable
2 degree of scientific certainty?

3 A Yes.

4 Q Using the laws of physics and mathematics?

5 A Yes, sir.

6 Q Now, on another area, Officer, in regard to --
7 let me ask you this. Can you testify or state an opinion
8 based on the weight of the vehicle or in this case the
9 load in a dump truck as to its ability to handle and
10 maneuver?

11 A Yes, sir.

12 Q How would you go about doing that?

13 A All vehicles, passenger or commercial vehicles,
14 are designed with suspension systems to accommodate a load,
15 either passengers or a combination of passengers and a
16 carload. These suspension systems are designed primarily
17 with weight and also the position of the weight in mind.
18 An example of that might be the suspension system on a
19 school bus would be considerably different than that of a
20 suspension system on a passenger car, basically, because
21 of the way that the vehicle has to accommodate different
22 amounts of weight in different places.

23 Q Now, you've talked a great deal already about

1 suspension systems. What can you tell the Court, if
2 anything, about the suspension system used on this particu-
3 lar truck in this accident? Are you familiar with that
4 suspension system?

5 A. Generally.

6 Q. Did you have an opportunity to examine the
7 truck?

8 A. No, sir, I did not.

9 Q. If you were asked to testify as to what kind
10 of suspension system it has, what would you say?

11 A. Well, with regard to the suspension system
12 that vehicle, like all others, is designed to accommodate
13 a specific weight load, whether it be passenger or a car,
14 but basically we're talking about weight and the direction
15 of weight on that vehicle.

16 If the weight direction is proper, the suspension
17 system will function properly. When the vehicle is
18 traveling in a forward, rearward motion, however, if that
19 is altered for any reason, for example, an improperly loaded
20 car or overweight car or, for that matter, in some cases
21 it might be underweight and that vehicle goes into a skid
22 or some mechanical or driver-initiated problem, it could
23 cause it to go out of control, but the weight of the

1 vehicle and suspension system go hand in hand in design.

2 Q Now, in regard to a dump truck that is over-
3 loaded, what would you be able to testify in regard to the
4 impact of an overloaded dump truck and its ability to
5 maneuver and handle?

6 A The handling characteristics of the dump truck,
7 if it were overloaded or for that matter if the weight of
8 the load was overbalanced or shifted, would significantly
9 call for the center of gravity or the center of -- well,
10 should I say, for instance an overloaded dump truck because
11 you're talking about volume and weight would raise the
12 center of gravel itself in the dump truck and make it
13 susceptible for turning over, or, for that matter, or going
14 into a type of driving maneuver, commonly referred to as a
15 fishtail. Anytime a vehicle -- the rear portion of a
16 vehicle goes from one side to the other in excess of five
17 to seven degrees, there's a good possibility that the
18 vehicle's sliding sideways, which was the case from the
19 accident that we're talking about today or it could cause
20 it to turn over, depending on the speed and some of the
21 characteristics of the roadway.

22 Q Does the degree of overload have any bearing
23 on what's going to happen? For example, if you used the

1 term generally, if a truck is overloaded, these things
2 are possible to happen. Does it also depend on how much
3 of an overload? There must be limits that a truck can
4 handle if it goes one pound over, obviously, there is not
5 going to be a problem?

6 A. Yes, sir.

7 Q. How do you know at what point it is a problem
8 as far as an overload is concerned?

9 A. The braking characteristics, when you're
10 talking about any vehicle, when it decelerates, there is a
11 weight transfer from the back axle to the front axle of
12 the vehicle. In a rapid deceleration or a panic stop
13 situation, that weight transfers, takes place in a matter
14 of seconds. The weight in and of itself would cause a
15 more rapid weight transfer. The position of the weight
16 within the bed of the truck would cause the weight or the
17 center of the mass to shift and as a result of that, it
18 would redirect the vehicle or cause it to go into a
19 different direction it initially might have been traveling.

20 THE COURT: What's the alleged overload in
21 this case?

22 MR. SCHEWE: I'm calculating it right now.

23 I believe, correct me if I am wrong, it was 49,500, is that

his testimony as to --

THE COURT: Forty-nine thousand, 500 pounds?

MR. SCHWE: I have a figure of 4,060 pounds.

THE COURT: Four thousand sixty what?

MR. SCHWE: Four thousand sixty pounds.

THE COURT: Overweight?

MR. ROEHRENBECK: My figure is a ton and a half.

MR. SCHWE: I am basing it on the information.

So far, I haven't been able to admit -- I merely had

Officer Stopper testify to the weight ticket. According

to the total weight ticket, we have a weight of 53,560

and we have a statutory limit of 49,500. So, we're talking

a little over two tons.

THE COURT: Well, are you able to say with a

reasonable degree of scientific certainty that that

specific overload would aid and cause the fishtail movement

that you described?

THE WITNESS: Yes, sir, I would say it would.

THE COURT: Go ahead, Mr. Schwe.

MR. SCHWE: That's all I have.

THE COURT: You may cross examine.

CROSS EXAMINATION

BY MR. ROEHRENBECK:

1 Q Officer, you just testified that, I think,
2 before you got to the specific weight that the direction
3 of the gravel or whatever the load is on the back of the
4 truck would have a lot to do with that, that is, correct
5 me if I heard you wrong, a truck could be underweight, but
6 if the gravel was in the wrong place in the back of the
7 truck, it could cause the truck to either lose control
8 or fall over, that is like on one side or in the back or
9 in the front; is that correct?

10 A No, sir, that's not right:

11 Q Isn't that what you said?

12 A Well, I understood the question to be the
13 handling characteristics of the vehicle. It would be
14 different depending on whether it was unloaded, partially
15 loaded, loaded to the maximum capacity or overloaded.

16 A vehicle carrying the weight that it was
17 designed to carry should function properly. If it were
18 overloaded, the weight transfer of the vehicle, as well as
19 the weight direction, would be a significant contributing
20 factor to whether or not the driver lost control.

21 Q Now, in this particular case, you never
22 examined the truck in question; is that correct?

23 A No, sir, I did not.

1 Q So, you have no idea what the suspension
2 system on that truck was at the time of the accident such
3 as shocks and these types of things?

4 A That's correct.

5 Q You never examined the tires at the time of the
6 accident, for example, to tell what kind of tread or
7 anything like that was on there?

8 A No, sir, it didn't have any significance.

9 Q Okay. Going back to the drag coefficient test,
10 and I think I understood the concept. In other words, the
11 bigger the object, the more force needed to stop it in this
12 case. So, what you're saying is that the skid marks wouldn't
13 vary?

14 A The heavier the object.

15 Q Right, the heavier the object, the greater
16 force is to stop it. Hence, it would go up proportionately
17 assuming you had 900 pounds to stop, a thousand. You'd
18 have 9,000 to stop, 10,000 over 90,000 to stop 100,000,
19 but the results on the road would be the same?

20 A That's correct.

21 Q Does that not depend on the fact that a vehicle,
22 again any vehicle, when the brakes are applied, that where-
23 ever the brakes are applied, the back tires stop?

1 A. No, sir.

2 Q. Are you telling the Court that on a regular
3 automobile, when you put the brakes on, the wheels are
4 going forward?

5 A. They should be locked up.

6 Q. On a truck when the brakes are applied, the
7 wheels don't necessarily stop?

8 A. If they're adjusted properly, they should.

9 Q. Are you aware of some trucks that when the
10 brakes are put on on purpose they don't lock completely
11 because the nature of the business, that is, the truck
12 with the load, if the brakes locked at 15 miles an hour,
13 whatever it is, the truck will lose control?

14 A. The only exception to that is a tractor-trailer.
15 In some instances in a tractor-trailer, drivers disconnect
16 the tractor's brakes. On this these engage the tractor
17 brakes.

18 Q. Did you ever test the brakes on this vehicle to
19 see whether the vehicle's brakes locked on impact on the
20 brakes or not?

21 A. No, sir, I did not.

22 Q. In fact, you never made any tests of Mr.
23 Thorpe's vehicle whatsoever?

1 A No, sir, I didn't.

2 Q So, what you're testifying to are the general
3 laws of physics that generally would apply to any object
4 or any vehicle?

5 A Yes, sir, that's correct.

6 MR. ROEHRENBECK: I don't have anything further.

7 THE COURT: With respect to the opinion that you
8 expressed on the issue of the overload, was it necessary
9 for you to examine the suspension of the particular truck
10 in question in order to reach your opinion?

11 THE WITNESS: No, sir, it isn't.

12 THE COURT: Why?

13 THE WITNESS: Well, the basic attitude of the
14 vehicle in terms of vehicle dynamics is the same on any
15 vehicle. Basically, what was relevant or is relevant, I
16 should say, and that applies to all vehicles whether it be
17 a bicycle, truck, or whatever, is a vehicle traveling at a
18 constant speed or for that matter slow deceleration or
19 acceleration, generally travel on level plane.

20 If the suspension system is operated properly,
21 even not the additive of the vehicle might shift, but the
22 car or truck will travel without interruption in terms of
23 weight transfer. However, any time deceleration occurs

1 rapidly, the weight transfer occurs from the rear axle to
2 the front axle. The weight in the rear of the vehicle was
3 reduced somewhat and stacked on the front axle.

4 As a matter of fact, you think back to some skid
5 marks you might have seen on a roadway, you'll notice that--
6 well, you'll notice the tire marks that appear to be two
7 parallel lines, and other tire marks that appear to be wide,
8 solid marks, about the width of the tire. That's caused as
9 a result of the super heating of the front tires. When
10 the vehicle initially starts to slide, all four tires
11 slide naturally, or depending on how many brakes are in
12 service, each one of the braking services that is applied,
13 however, because of that weight transfer, if the increased
14 weight on the front axle, the front tires super heat, that
15 heat is a form of energy and it has to go somewhere and it
16 can't go into the pavement or not much of it is absorbed
17 in the pavement. So, it pushes straight up to the tire and
18 causing a cupping action. That's why the skid marks appear
19 to be those two lines, but that weight transfer occurs in
20 any type of motor vehicle, regardless of what it might be.

21 THE COURT: Do you have any questions of this
22 witness?

23 MR. SCHEWE: I don't believe so.

1 THE COURT: I'll be happy to listen to your
2 legal argument on whether or not he should be permitted
3 to testify to both issues, the skid marks and the speed
4 and the effect of the overload.

5 MR. ROEHRENBECK: Your Honor, I think it's clear
6 that Officer Hughes is a qualified expert, but I also think
7 it's clear that there's too many parameters involved in a
8 situation like this.

9 He never measured the truck. He never measured
10 the brakes, never measured the wheels, never measured the
11 suspension system.

12 In order for him to testify what the minimum
13 speed is based on his calculations, I think it's fairly
14 obvious without doing that or at least using a truck that
15 has been shown in evidence, that's similar to that truck,
16 would be pure speculation as to what the speed is.

17 He's asking the Court to believe whether I drive
18 it into an intersection with a truck with new tires or old
19 tires, new suspension or old suspension or whatever, the
20 situation is, that it's going to be the same skid marks at
21 the same speed, and without being a scientific expert
22 myself, I think that's clearly speculative as far as the
23 weight goes.

1 Again, the same argument would apply if the
2 suspension on the back of a truck were loose. The truck
3 would turn over a certain way. If the cab was loose or
4 the carrier of the gravel was loose, the same thing. Again,
5 he's qualified as an expert, but certainly isn't a physicist
6 or engineer.

7 I think there are too many variables that he
8 hasn't test or nobody on the police department has tested
9 to be able to testify that to the Jury because they're
10 going to take what he says as the gospel truth. There are
11 too many factors that exist that have not been checked
12 out on that particular truck.

13 THE COURT: First of all, with respect to the
14 speed, I overrule the defendant's objection to conclude that
15 the expert may give his opinion, and I note that the test
16 that was run by the cruiser is different from those cases
17 which the Virginia Supreme Court has decided which it said
18 that vehicles have to be similar because in most cases the
19 tests were for vehicles, and I note in this instance that
20 the purpose of the test was not to test the vehicle, but
21 to test the surface of the road.

22 I conclude that the overweight of the vehicle is
23 relevant and I overrule the defendant's objection of having

1 the overload made available to the Jury and I further con-
2 clude that this officer may give an expert opinion with
3 respect to the effect of the overload. And I conclude that
4 the argument that defense counsel made is appropriate for
5 the Jury in attacking the expert's opinion, but they're not
6 sufficient to exclude him.

7 Would you ask the Jury to come back, please.

8 (Whereupon, the Jury returned to Open Court.)

9 DIRECT EXAMINATION (Resumed)

10 BY MR. SCHEWE:

11 Q You are Officer Hank Hughes of the Fairfax County
12 Police Department?

13 A Yes, sir, I am.

14 Q Officer, I'd like to ask you a few questions
15 about your background, if I could, please.

16 How long have you been employed with Fairfax
17 County Police Department?

18 A Approximately nine years.

19 Q What station are you assigned to currently?

20 A Chantilly District Station.

21 Q Would you describe for the Ladies and Gentlemen
22 of the Jury what your duties are?

23 A Presently I'm assigned as a field training officer

1 in enacting reconstruction specialists.

2 Q Would you relate to the Jury what, if any,
3 specialized training in regard to accident reconstruction
4 you have had?

5 A Yes, sir. I've had approximately 1,400 hours in
6 specialized training. I've attended basic, advanced training
7 in advanced schools, the Virginia Commonwealth University.
8 I've attended the Northwestern Institute of Technical
9 Reconstruction School. I'm presently an instructor at the
10 Northern Virginia Academy, and I've been a guest instructor
11 at Northwestern.

12 Q Have you had any -- in regards to accident
13 reconstruction, have you had any articles published?

14 A Yes, sir, I have had three articles published.

15 Q And, your general related training, if you could
16 go over that briefly?

17 A In terms of practical experience, I've investigated
18 approximately 2,600 accidents. I've spent a considerable
19 period of time assisting the State crash investigation team
20 on reconstruction projects from the Northern Virginia area,
21 and I presently conduct several role call training sessions
22 each year for our department as well as the smaller depart-
23 ments in the area.

1 Q Approximately how many times, if at all, have
2 you qualified in the past to testify as an expert witness
3 on accident reconstruction?

4 A Approximately 23 times.

5 Q Have you qualified in this County?

6 A Yes, sir.

7 Q Have you qualified in Alexandria?

8 A Yes, sir.

9 Q Arlington?

10 A Yes.

11 Q In the U. S. Federal Courts?

12 A Yes.

13 Q Now, would you relate to the Ladies and Gentlemen
14 of the Jury exactly what an accident reconstruction expert
15 does and what information and principles his opinions are
16 based on?

17 A Yes, sir. A reconstruction specialist's job
18 is primarily looking into all of the primary and secondary
19 causation factors involved in a motor vehicle traffic
20 accident. Generally, there are three causations, people
21 factors, people vehicles, and environment.

22 My job as a reconstruction specialist is to look
23 at each one of those three things prior to, during, and

1 after an accident, and then, from physical evidence, the
2 statements of witnesses and facts, along with physics in
3 terms of vehicle dynamics, to reconstruct what happened
4 just prior to, during, and after the crash.

5 Q Specifically, in regard to the ability to deter-
6 mine the speed of the vehicles involved in an accident,
7 what factors go into making such a determination, officer?

8 A Vehicle dynamics or speed estimates are culled
9 and actual reconstructions are based on the laws of physics.
10 As a matter of fact, it's not a new thing, Sir Isaac Newton
11 has developed the theories, what are now the laws of
12 science back in the 1600's, but the first three basic laws
13 of physics apply as well as some basic arithmetic, algebra,
14 and trigonometry.

15 Q Now, in regard to -- let me ask you this. Did
16 you become involved in an analysis involving an accident
17 that occurred at 123 and Clifton Road on the 6th of June,
18 1980?

19 A Yes, sir, I did.

20 Q And, what, if any, information were you given as
21 to this in regards to this accident and who gave it to you?

22 A I was contacted by Investigator Grant Trounton
23 from the Springfield District Station. He conducted and

1 completed preliminary investigation of a fatal accident
2 that occurred at that location on that date.

3 He asked me if I would go over some of the material
4 with him and, if at all possible, assist him in recon-
5 structing exactly what happened with regard to the three
6 areas of that, outline of the people's vehicles and the
7 environment.

8 Q At your suggestion, did Investigator Trounton
9 run a --

10 THE COURT: Would you all come up to the Bench?

11 (The following was had at the Bench, outside of
12 the hearing of the Jury.)

13 THE COURT: Mr. Schewe, please make sure the
14 witness does not state anything about the cause of the
15 accident. All right? He keeps using those three causes.
16 So, I caution you. The only thing he's giving an opinion
17 on is what the speed was and what the overload was.

18 MR. SCHEWE: If you'd like me to, I'll caution
19 him right now.

20 THE COURT: All right, would you do it quietly.

21 (The hearing resumed in Open Court.)

22 BY MR. SCHEWE:

23 Q What, if any, information involving facts and

1 figures, figures in particular, what figures did you receive
2 from Investigator Trounton in regard to this particular
3 accident?

4 A. Investigator Trounton gave me some measurements,
5 field measurements that he made at the accident scene,
6 specifically measurements of yard type scuff marks.

7 The officer gave me some figures and information
8 on drag factor tests that he conducted at the scene.

9 Q. Now, based on those figures, the figures from
10 the field investigation, from what Investigator Trounton
11 conducted, and the skid tests that he conducted, can you
12 testify to a reasonable degree of scientific certainty as
13 to the speed of the vehicle at the time just prior to
14 impact?

15 A. I was able to establish a minimum speed, yes, sir.

16 Q. What was that minimum speed?

17 A. The minimum speed prior to impact was 54.03 miles
18 per hour.

19 Q. When you say minimum speed just prior to impact,
20 how just prior to impact are we talking about, officer?

21 A. I'm not sure I understand.

22 Q. Well, you said just prior to impact, how much
23 prior to impact are you talking about?

1 A Well, within milliseconds. I'm sure it was a
2 very short period of time.

3 Q Less than one second?

4 A I would think so, yes.

5 Q Now, let me ask you a few general questions in
6 regard to the weight of a vehicle.

7 Are you familiar with what kind of truck was
8 involved in this case?

9 A Yes, sir, it was a dump truck.

10 Q And, you're familiar with the number of axles?

11 A Yes, sir.

12 Q Now, can you testify for the Ladies and Gentlemen
13 of the Jury as to what, if any, impact a vehicle that is
14 overloaded -- in other words, what impact on the vehicle,
15 its ability to maneuver and handle would be brought on if a
16 dump truck, in this case, is overloaded?

17 A Handling the dump truck under those circumstances
18 wouldn't be much more difficult, basically, because of the
19 increased weight and also the effect of the possibility that
20 the weight might shift the position of the weight in the
21 vehicle. It wouldn't make it much more difficult to control.

22 Q And, can you testify to a reasonable degree of
23 scientific certainty that regardless of whether or not

1 where the -- how a load is situated, that the fact that the
2 vehicle is overloaded would have some impact on its handling?

3 A. Yes, sir, it would.

4 MR. SCHWE: That's all the questions I have of
5 this witness.

6 CROSS EXAMINATION

7 BY MR. ROEHRENBECK:

8 Q. Officer Hughes, in response to that last question,
9 I believe you stated that if a truck was overweight, that
10 regardless of how the weight was distributed it could have
11 an impact on the driver's ability to maneuver; is that
12 correct?

13 A. Yes, sir.

14 Q. Wouldn't it also be true that if the load that
15 was being carried was placed one way or the other, that
16 also would have an impact?

17 A. It could alter, yes, sir.

18 Q. For example, if we're hauling gravel and it was
19 all -- say in the center as opposed to being evenly distri-
20 buted, there would be a difference in the physical effect,
21 would there not be?

22 A. Yes, sir, but I would have to qualify that by
23 saying depending upon the weight. If it was less than the

1 weight than it was designed to carry not being appreciable
2 in excess of --

3 Q But, it could have an effect nevertheless if it
4 was right at or under the weight?

5 A Yes, sir.

6 Q So, that the factors other than overweight would
7 be the distribution of a load, I assume; is that correct?

8 A Yes, sir.

9 Q And, I think you have to also say that the condi-
10 tion of the brakes would have some bearing on somebody's
11 ability to maneuver a vehicle; is that correct?

12 A Yes, sir.

13 Q As would other factors such as tires and
14 suspension and things of that nature?

15 A No, sir, they would not. Tires and suspension
16 wouldn't have any effect on it.

17 Q Are you saying, then, that if the vehicle had
18 bald tires as opposed to new tires, there wouldn't be any
19 difference in maneuverability?

20 A No, sir. When you're talking about deceleration
21 under those circumstances --

22 Q Well, my question is as to the maneuverability
23 or control, not skid marks or this type of thing?

1 A. In terms of control, if you had bald tires, yes.

2 Q. So, when you're saying that overweight, an over-
3 weight vehicle would have an impact, you're saying that it's
4 one -- every impact that could be involved in one's ability
5 to control a vehicle; isn't that correct?

6 A. Yes.

7 MR. ROEHRENBECK: Your Honor, I don't believe I
8 have any further questions.

9 MR. SCHEWE: One question on redirect, Your Honor.

10 REDIRECT EXAMINATION

11 BY MR. SCHEWE:

12 Q. Officer Hughes, let's assume for a moment that a
13 load in a truck -- let's say it's overloaded, let's say at
14 the same time that it's perfectly distributed just the way
15 it should be distributed, would the fact that it was over-
16 weight still have an impact on the handling of the truck?

17 A. Yes, sir, it would.

18 MR. SCHEWE: That's all I have.

19 THE COURT: Is there anything else of this witness?

20 MR. SCHEWE: No, Your Honor.

21 THE COURT: Thank you.

22 MR. SCHEWE: Brian Bellinger.

23 Your Honor, at this time I have some documents that

1 I would ask to be marked.

2 THE COURT: Would you mark them as Commonwealth's
3 next exhibits.

4 (The documents referred to were marked
5 Commonwealth's Exhibits Nos. 32
6 through 43 for identification.)

7 Whereupon,

8 BRIAN BELLINGER

9 was called as a witness by counsel for the Commonwealth, and
10 having been first duly sworn by the Clerk of the Court, was
11 examined and testified as follows:

12 DIRECT EXAMINATION

13 BY MR. SCHWE:

14 Q Would you state your name and occupation for the
15 Court and Ladies and Gentlemen of the Jury, please?

16 A Brian Bellinger, plant clerk at Vulcan Materials
17 in Occoquan, Virginia.

18 Q Would you describe briefly for the Jury what
19 your duties are at Vulcan?

20 A I take care of all deliveries, that is, tickets
21 that are taken, brought from the quarry at Occoquan. We
22 keep them for three years and they're in my control.

23 Q And, then, I take it that you are the custodian

1 of the records of all those delivery slips?

2 A. That's correct.

3 Q I show you these three documents and ask if you
4 can identify them for me, please?

5 A. Those are our tickets. They come in five different
6 sections. These are the copies that the trucker gets.

7 Q And, he gets all three copies?

8 A. Yes, he does. One copy when he gets to the job,
9 he retains one copy. The other two, when he gets to the job,
10 they are retained by the foreman on the job.

11 Q Can you look at these and tell me if there is a
12 customer copy among these?

13 A. Yes, there is.

14 Q What does that indicate to you, the fact that
15 there is a customer copy there?

16 A. The customer is paying for the --

17 Q Let me ask you this -- let me withdraw that
18 question.

19 What usually happens with the customer copy?

20 A. The foreman on the job gets it.

21 Q In other words, the truck, when he delivers the
22 load, gives the customer copy to the customer?

23 A. Right.

1 Q I show you this document which is marked for
2 identification, Commonwealth's 43, and ask if you can
3 identify that?

4 A It's our permanent file copy at Vulcan Materials,
5 one of the five belongs with these three.

6 Q And, can you check the serial numbers on those
7 and see if they match with the three that you have in your
8 hand?

9 A Yes, they match.

10 Q Can you tell from looking at the tickets whose
11 truck that load was in?

12 A Thorpe's.

13 Q Which Thorpe, there are two.

14 A Thorpe, Jr.

15 Q Let me show you the rest of these slips and ask
16 if you can tell which load, if you could tell me that, that
17 truck goes to? In other words, is there some order in which
18 the tickets are issued to a particular driver?

19 A These tickets are printed in sequence as the truck
20 goes across the scales.

21 Q Let me ask you this. Are those in a particular
22 sequence now?

23 A Right now?

1 Q Yes, sir. I mean, are they sequential, are the
2 numbers --

3 A No. There is no way they can have them unless
4 he's the only one hauling that day.

5 Q What I'm asking, those are all -- can you examine
6 those and tell me whether or not those are all tickets from
7 Robert Thorpe, Jr. on the 6th of June?

8 A Yes, they are.

9 Q And, I take it that the lower numbers would
10 indicate that those loads were carried earlier in the day?

11 A That's correct.

12 Q And, would you go through those yellow slips and
13 pick out the one that is the highest number, and is that
14 the same ticket that matches up with the three that I
15 showed you originally, the three white copies?

16 A No, it's not. This is the highest one. I'm
17 sorry, yes.

18 Q That's the one that matches with the other three
19 white copies; is that correct?

20 A That's correct.

21 Q Does that indicate to you that was Mr. Thorpe's
22 last load of the day, at least through Vulcan?

23 A Yes.

1 Q Can you testify to that for certain?

2 A Yes, I can.

3 Q Now, I give you a piece of paper and a pen and
4 ask you to -- let me ask you this. This number on the right,
5 this 3560, what does that indicate?

6 A Net weight.

7 Q Is that the net weight of the truck empty?

8 A That's the weight of the load that he was carrying
9 of the material. Subtract --

10 Q That's just the material?

11 A Material itself, yes.

12 Q And, the number on the right-hand side which I
13 believe is 17,700?

14 A 17,700.

15 Q Would you add those two together for me, please?

16 MR. ROEHRENBECK: At this point I am going to make
17 an objection. I think we should maybe approach the Bench.

18 THE COURT: All right, come on up.

19 (The following was had at the Bench, outside of
20 the hearing of the Jury.)

21 MR. ROEHRENBECK: Your Honor, there is a Court
22 order in the file. There is a motion for discovery that I
23 filed and in that motion, which I believe was -- I can't

1 remember which Judge signed it -- the Commonwealth was
2 supposed to supply to me copies of all these documents by
3 the 9th of January.

4 Quite frankly, I have never seen these documents
5 and it would be my position that they're inadmissible because
6 I haven't had a chance to look at them.

7 Mr. Schewe didn't get them until -- Mr. Schewe
8 didn't receive them until today. I realize it wasn't the
9 Commonwealth's fault that he didn't personally have them
10 into possession, but -- number one.

11 Number two, in the motion for discovery we were
12 granted in the order and the order stipulates that I had
13 access to see these documents by the 9th of January, and I've
14 never seen them.

15 THE COURT: Are those tickets that were given to
16 the defendant, allegedly given to the defendant?

17 MR. ROEHRENBECK: They were tickets allegedly
18 found in the defendant's truck with the exception of the
19 yellow copy which Vulcan keeps down there, but I imagine
20 that the three he already testified to are the ones that
21 were already taken at the time of the accident.

22 THE COURT: Mr. Schewe, would you like to respond?

23 MR. SCHEWE: I would, Your Honor. These tickets,

1 number one, were taken -- the first three, the white tickets
2 that I had Officer Stopper identify that he took from the
3 cab of the truck were in the defendant's control. The copy
4 of the ticket which, I think, defense well knows was in the
5 custody of Vulcan the whole time.

6 The only way I was able to get these tickets,
7 particularly the yellow copies, was to subpoena duces tecum
8 which Judge Griffith signed for me last week.

9 I made Mr. Roehrenbeck aware of the fact through
10 serving it with a subpoena duces tecum that I would be in
11 possession prior to trial of those tickets.

12 As soon as I was in the possession of those
13 documents, I made them available to Mr. Roehrenbeck.

14 Now, I didn't get them until first thing this
15 morning and I made them available to him at that time.

16 MR. ROEHRENBECK: I'm not accusing Mr. Schewe of
17 doing anything wrong. It may not be his personal fault
18 because of Court process, but I haven't had a chance to see
19 them. My only point is that the order specified January 9th,
20 and without -- nobody obviously did anything on purpose.
21 I feel my client has been prejudiced by the fact that we
22 haven't been able to see them.

23 THE COURT: How have you been prejudiced?

1 MR. ROEHRENBECK: Because I don't know what's
2 on those. They took the copies at the time of the accident.
3 They were taken out of the truck. I never saw them.
4 Vulcan isn't going to give them to me.

5 THE COURT: Now that you have seen that informa-
6 tion this morning, are you prejudiced? What prejudice have
7 you suffered as a result of this morning?

8 MR. ROEHRENBECK: I haven't had an adequate
9 amount of time to discuss them with my client. There may
10 be some problems with them.

11 THE COURT: Well, first of all, I do not see the
12 order in the file. That doesn't mean that the order wasn't
13 entered, but I don't see it.

14 Secondly, I deny your motion to exclude it.

15 Third, I'll hold this witness subject to recall
16 or hold all the other Commonwealth's witnesses subject to
17 recall so that you may recall them tomorrow if necessary
18 after you've had an opportunity to go over these specific
19 documents with your client.

20 MR. ROEHRENBECK: That won't be necessary. I'll
21 inform the Court, I wouldn't inconvenience them if I had a
22 chance to talk to them.

23 (Whereupon, the hearing resumed in Open Court.)

1 MR. ROEHRENBECK: Your Honor, there's one other
2 item I would like to bring to the Court's attention.

3 THE COURT: Ladies and Gentlemen, let's take a
4 break. Please don't discuss the case or draw any conclusions
5 and would you report back at twenty minutes to four.

6 (The Jury retired from Open Court.)

7 MR. ROEHRENBECK: Your Honor, the other objection,
8 and Mr. Schewe may be able to cure this, I don't know.

9 I would have an objection of any witness of
10 reading the weight of the vehicle at this particular time
11 for two reasons.

12 One, I think that witness would have to be one
13 who actually weighed the vehicle at Vulcan and can testify,
14 whoever, over this either by past recollection, recorded
15 or refreshing his memory that he recalled the particular
16 weight being on that truck.

17 Number two, assuming that they have such a witness,
18 I would object to any testimony as to the weight until at
19 which some time they have a calibration and a person who
20 would have calibrated that scale to show that that scale at
21 Vulcan is accurate.

22 It's a private corporation scale. It's not one
23 of the scales on the highway and it would be my position

1 that they would actually have to have the person who
2 calibrated the scale here.

3 As the Court may know, in overweight cases where
4 they use the permanent scales, they do it without the actual
5 person who calibrated, but by bringing a person sworn to
6 under oath, my position would be two-fold. They would have
7 to establish the calibration of accuracy by the person who
8 calibrated it, and also a witness, being a person who
9 recalled weighing the vehicle at the time.

10 THE COURT: First of all, with respect to having
11 the person who weighed the vehicle, I overrule your
12 objection following the ruling of Nealy versus Johnson.
13 The Commonwealth establishing that it was a business record
14 would be very simple in regarding temperature or time or
15 a particular function or something such as that, but it's
16 not an opinion. What would be admissible, and I'd be happy
17 to listen to Mr. Schewe's response for establishing the
18 accuracy of the scale.

19 MR. SCHEWE: Your Honor, the position the
20 Commonwealth has is this, and I believe I attempted to --
21 at least attempted to address this subject in response to
22 the defendant's motion in limine.

23 The position of the Commonwealth is that these

1 particular tickets were handed to the defendant. They
2 were given to him. They showed him what his overall weight
3 was. What we're trying to establish is not, in fact, that
4 the truck was overweight.

5 THE COURT: I understand your point. I overrule
6 your objection and I'll be happy to give the Jury a similar
7 kind of instruction if you want to prepare it, and that is,
8 that we're not concerned about the truth of the matter
9 asserted, but the notice that the defendant had with respect
10 to what's possibly a condition of the truck.

11 MR. ROEHRENBEEK: The only problem I have is that
12 assuming his knowledge is -- assuming that the weight is
13 accurate --

14 THE COURT: Well, I think that so far as use being
15 concerned, if he's given notice that his truck is a ton and
16 a half over, he may say those scales are not accurate, and
17 haven't been tested.

18 So, I'm going to disregard it or he may behave in
19 certain ways as a result of it, but as the Commonwealth
20 introduces it, and puts it to me that it's not for the
21 truth of the matter asserted, I think your objection will be
22 overruled, but I will give an instruction to the Jury if you
23 prepare it.

1 We'll start again at twenty of.

2 (Whereupon, at 3:35 o'clock p.m., a short recess
3 was taken.)

4 THE COURT: Ask the Jury to come back.

5 (Whereupon, the Jury returned to Open Court.)

6 THE COURT: Go ahead, Mr. Schewe.

7 MR. SCHEWE: Thank you, Your Honor. I think
8 where I left off, I asked you if you would take that piece
9 of paper and add those two figures together and --

10 THE WITNESS: 53,560.

11 BY MR. SCHEWE:

12 Q That's 53 --

13 A 560 pounds.

14 MR. SCHEWE: Thank you. That's all the questions
15 I have.

16 MR. ROEHRENBECK: No questions.

17 THE COURT: May this witness be excused?

18 MR. SCHEWE: Yes, Your Honor, he may.

19 THE COURT: You are excused. Thank you for
20 coming.

21 (Witness excused.)

22 MR. SCHEWE: That's the Commonwealth's case, sir.

23 THE COURT: All right. Mr. Roehrenbeck?

1 MR. ROEHRENBECCK: Your Honor, I would have a motion
2 at this time.

3 THE COURT: Would you come back up to the Bench.

4 MR. SCHEWE: Before we do, I would like to move
5 these into evidence at this time.

6 THE COURT: I'll receive them as the next exhibits,
7 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, and 43.

8 MR. SCHEWE: 42 and 43?

9 THE COURT: I don't see 42.

10 (The documents referred to, having been
11 previously marked Commonwealth's
12 Exhibits Nos. 32 through 41 and 43
13 for identification, were received in
14 evidence.)

15 THE COURT: I want to thank you for your attention
16 today and your patience with us when we had a number of
17 different matters come up. We're going to excuse you now
18 for the rest of the day. Please don't discuss the case
19 tonight with members of your family. Don't draw any
20 conclusions and we will start again at 10:00 o'clock tomorrow
21 morning. Thank you.

22 I also receive 42.
23

1 (The document referred to, having been
2 previously marked Commonwealth's
3 Exhibit No. 42 for identification,
4 was received in evidence.)

5 (The Jury retired from Open Court.)

6 THE COURT: Okay, go ahead, Mr. Rochrenbeck.

7 MR. ROCHRENBECK: Your Honor, at this point the
8 defense will move to strike the Commonwealth's evidence.

9 As the Court is aware, the Court has heard other
10 cases to this nature.

11 MR. SCHEWE: If I could interrupt at this point.
12 Rather than have Mr. Rochrenbeck go through this entire
13 drill, I would like to voice an objection to make any motion
14 to strike at this time and I have case law that would indi-
15 cate that the Court is now -- now based on the fact that
16 Mr. Rochrenbeck has entered evidence in the Commonwealth's
17 case, that the Court now is in a position to make a ruling
18 on the motion to strike and that the appropriate time to
19 hear a motion to strike would be at the conclusion of all
20 of the evidence at this point, and I do have case authority
21 to support that.

22 THE COURT: Not a Virginia--

23 MR. SCHEWE: Yes, sir, two Virginia cases.

1 THE COURT: All right.

2 MR. SCHEWE: Tolly against the Commonwealth at
3 216 Va. 341, and Hargraves against the Commonwealth, 219
4 Va. 604, and basically what those two cases both stand for
5 is that once the defense has entered evidence in the
6 Commonwealth's case, the appropriate time for the Court to
7 hear a motion to strike would be at the conclusion of all
8 of the evidence. The cases are basically on all fours.

9 THE COURT: Does it have to be something that
10 really goes to the heart of the issue?

11 MR. SCHEWE: I don't recollect that language being
12 in there, Your Honor.

13 THE COURT: May I see those cases?

14 MR. SCHEWE: Yes, sir.

15 MR. ROEHRENBECK: Your Honor, that's my recollec-
16 tion. I think the only evidence that the defense puts in
17 a picture -- right, I recall that.

18 THE COURT: You all excuse me just for a moment.

19 MR. SCHEWE: Yes, sir.

20 THE COURT: Well, neither one of those cases give
21 an explanation as to what the item of evidence was or why,
22 and the general evidence, or general rule has been that if
23 the states have adopted this rule as that is, if it is

1 together, that goes to the merits of the case, that it is
2 inappropriate to let someone move to strike after they have
3 tried to get in something on the merits.

4 I can't tell from either one of these cases
5 whether that's the case here or not, but I do know in this
6 particular case that the order of proof does rest with the
7 Trial Court and that pictures are worth a thousand words
8 and that if the defendant wants to introduce a photograph
9 that relates to a particular item of clarification with
10 respect to the photograph that the Commonwealth has
11 introduced, that he shouldn't be penalized. By that, by
12 being denied a motion to strike.

13 So, I conclude that what he introduced goes to
14 merits and is not barred from the motion to strike.

15 MR. SCHEWE: Before Mr. Rochrenbeck continues,
16 if I could have the Court's indulgence, would the Court be
17 willing to call in the witnesses and recognize them for
18 tomorrow so I don't hold them up any further?

19 THE COURT: Sure.

20 Mr. Schewe has finished introducing the evidence
21 on behalf of the Commonwealth. I am now about to hear a
22 motion to strike from the defendant. So, we're not going
23 to hear anymore witnesses tonight. It is my understanding

1 that some of you may be called as rebuttal witnesses, that's
2 why you are subject to recall. So, I instruct you to appear
3 tomorrow morning at 10:00 o'clock.

4 Those of you that have convenient offices here
5 and can make any arrangements with Mr. Schewe where you can
6 meet, so the Jury doesn't have to wait for you, otherwise
7 we expect to see you at 10:00. You are free to leave.
8 Thank you very much for being here today and your patience.

9 (Whereupon, the witnesses were excused.)

10 THE COURT: Go ahead, Mr. Roehrenbeck.

11 MR. ROEHLRENBECK: Your Honor, as I stated, I
12 would move to strike the Commonwealth's case and I do that
13 based on a series of cases. The most famous or controlling
14 which was King versus the Commonwealth, 217 Va. 601, which
15 was decided in 1977.

16 That case made it clear which before was not clear
17 that in order to sustain a conviction of involuntary man-
18 slaughter, the Commonwealth not merely had to prove that
19 the deceased was killed as a proximate result of negligence
20 or ordinary lack of care, but that it was a result of total
21 disregard for human life. In fact, the language of that
22 case defined involuntary manslaughter as the accident or
23 unintentional killing. There was a proximate result of

1 negligence, of gross, wanton, inculpable as a show of
2 reckless disregard of human life.

3 In that case, if the Court is familiar with it,
4 it was a situation where, I believe the car didn't have his
5 headlamps on. There was some evidence of speed and the
6 Supreme Court threw that out, but the trier of fact said
7 excessive speed and lack of headlamps and as a result,
8 somebody was killed, and the person was convicted and that
9 was the result of the King case that came down saying that
10 the conviction couldn't be sustained on that evidence.

11 I think that's analogous of this situation. If
12 you take the Commonwealth at its best light, which the Court
13 must do at this point, the only really credible evidence
14 is the expert opinion of Officer Hughes placing a minimum
15 speed of 54 to this. In this case, it was 45. It was 9
16 miles over the limit which is a statutory violation of
17 speed.

18 The only other evidence was the testimony of
19 Investigator -- excuse me, of Mr. Haines, who testified
20 that he noticed the truck crossing the double yellow line
21 at the intersection.

22 As the Court recalls, he made that testimony as
23 to the speed of the truck, but the really incredible speed,

1 testimony he gave was the point back at Community Lane as
2 he was traveling, as he said 45 to 50, and Mr. Thorpe's
3 truck came upon quickly.

4 As the Court recalls, his testimony was that he
5 was standing still at the Burke Lake ramp road, and though
6 he could say that Mr. Thorpe was going faster than he was,
7 he really couldn't say how fast.

8 As the Court also recalls on cross examination,
9 he was -- he testified that he did lose some track of the
10 truck, although he didn't recall when, and that going into
11 the intersection of the accident, he was a hundred yards
12 behind him as well as Burke Lake.

13 He also testified that he went 45 miles an hour
14 which would mean that for him to gain on the defendant and
15 catch up to him that close, if you believe his testimony,
16 the defendant would have to go less than 45 miles an hour.

17 So, I would say his testimony is not something
18 that the Court can rely on, that the Commonwealth can.
19 So, what we really have is a possible violation of two
20 statutes, one speeding, going nine miles over the limit,
21 or two, the crossing or passing or whatever occurred at an
22 intersection which, I believe, at 46.1-190(e) or (d) I
23 believe is a violation of reckless driving.

1 THE COURT: And, what about the idea that the
2 truck is overloaded to the point that it's more difficult
3 to handle and that the defendant knew that. Drawing all
4 the reasonable inferences from the Commonwealth's testimony,
5 do you think that's a factor the Court ought to consider?

6 MR. ROEHRENBECK: I don't think it's a factor
7 because like the other two, because the other two are
8 different situations.

9 I know this isn't a civil case, but evidence of
10 speed or crossing over the double yellow line is shown to
11 be proximate cause of an accident would be enough to find
12 against the moving party, against the person who caused
13 injury or the death. Overweight, it's nothing specific.
14 Of course the Court knows I objected to the admissibility,
15 but the point is, the fact that it was not able to be
16 maneuvered quite as easily, overweight is a circumstance,
17 but it's not something that is a violation of a statute
18 that raises the presumption of any negligence or any lack
19 of due care.

20 Certainly, it's something that the Jury can
21 consider, but it's not even on the level of going too
22 fast or going across the double yellow line.

23 If it were, it would certainly be something

1 either written out statute-wise or case law, showing that
2 you -- true, we've had an officer testify to the effect of
3 the maneuverability, and he also testified that 15 other
4 things could affect it and of course, that's something that
5 the Jury can consider, but the problem I have is we have a
6 case here simply at this point of negligence against Mr.
7 Thorpe, and certainly the evidence at this point shows him
8 to be at fault since we've put on no evidence, but I think
9 that the King case makes it clear that when you're dealing
10 with a felony, a criminal felony conviction, we're not
11 trying a civil case, we're acting in a situation of gross
12 disregard.

13 If he had been going 85 miles an hour or evidence
14 that he had been intoxicated or something like this, I think
15 the Commonwealth would sustain its burden, but the only
16 violations that decided were ones that the Courts never
17 held to be involuntary manslaughter.

18 In fact, they cited in the King case Richardson
19 versus Commonwealth which is an older case, 192 Va. 55,
20 which made it clear the fact that there were one or more
21 violations of the reckless driving statute did not raise
22 the case to that of manslaughter. It stated that that
23 case when they paraphrase on page 606 on King, that it had

1 to be something so flagrant, culpable, and wanton to show
2 utter disregard, again of the statute, and I think that the
3 law is, it's not whether there is one, two or three, but
4 whether you've got a gross disregard type of situation.
5 I see no evidence of that.

6 If you take the officer's evidence that it was a
7 ton or two over, that's not very much. I mean, that sounds
8 like a lot to the Jury. If you look at the tickets, there
9 was -- it wasn't quite a bit, there is no evidence that the
10 gravel was over the top or anything of that nature. We
11 have no evidence at this point to explain to the Jury and
12 the Court exactly what that -- how that overweight came to
13 be, but I don't think at this point it should be anything
14 of significance to the Court.

15 I think what we're dealing with, Your Honor, we're
16 dealing with at this point, it looks like the Commonwealth
17 made out a good case for a plaintiff in a civil case, and
18 that's about it, but we're dealing here with a criminal
19 felony and I think the reason the Supreme Court in our
20 State made it so high, it is not an intentional offense,
21 it's not like most criminal offenses where there's intent
22 or implied intent. I think for that reason our State is
23 very strict on criminal prosecution.

1 I believe in Maryland of a negligence homicide
2 where that all that has to be shown is that negligence has
3 to be shown in proximate cause of death. I think Virginia
4 is the hardest one for the Commonwealth to get a conviction.
5 I don't think the evidence at this point can sustain a
6 motion to strike.

7 THE COURT: Mr. Schewe?

8 MR. SCHEWE: Your Honor, my reading of the King
9 case is a little different from Mr. Rochrenbeck's in that
10 what the Supreme Court of Virginia did in King, they took
11 the evidence of speeding and also evidence that the
12 defendant in that case was not using headlights, but merely
13 running lights on a country road. They, in effect, over-
14 ruled the Trial Judge in regard to the evidence of
15 excessive speed which left the Supreme Court of Virginia
16 in the position of having the only evidence that could
17 potentially rise to willful and wanton disregard for human
18 life was the fact that this young lady was running at some
19 speed without her headlights, and that was all they had
20 left. They had rejected the evidence and indicated that
21 the Trial Court had no evidence to support their conclusion
22 that there was excessive speed, and based on that decision,
23 the Court being left only with the headlight violation,

1 determined that the mere fact of running without headlights
2 is ordinary negligence and no more.

3 I submit to the Court that's not the case here
4 at all. The case here is that we have a specific instance
5 of reckless driving which did not exist in the King case.
6 We have very, very solid evidence in regard to high speed,
7 and in this case, 54 miles an hour, and what the defendant
8 believed to be an overloaded truck in an intersection
9 passing in an intersection, and the uncontradicted testimony
10 to this point is that the individual, he was attempting
11 to pass, was attempting to execute a left-hand turn, and
12 that the people behind that truck saw him signalling that
13 left-hand turn and yet, the defendant still tried to pass
14 on the left-hand side.

15 I submit that that certainly is a great deal
16 more than ordinary negligence, and in addition to that,
17 the Commonwealth has shown evidence, for instance, there
18 is testimony that the truck went up on two wheels.

19 I submit to the Court that makes out a pretty
20 strong case for failure to maintain the vehicle in addition
21 to two specific instances of crossing a double yellow line
22 in order to pass just prior to the time of the accident
23 occurring, and I submit to the Court that something very

1 interesting in the King case was Justice Poff's
2 descent in which he cited a case where the Supreme Court
3 has said in a prior case where the evidence was that the
4 defendant, and they upheld this case, that the defendant
5 was on the wrong side of the road with his headlights off,
6 and they said that two separate traffic violations could
7 rise high enough and that it depended on all the facts and
8 circumstances, and I submit to the Court that we're still
9 left with a situation where this individual by testimony
10 is doing 54 miles an hour in a 45 mile zone in an inter-
11 section, passing on the left side of a vehicle attempting
12 to make a left-hand turn in an overloaded dump truck. And
13 I think that's a great deal more than the Court had to work
14 with in the King case, and I submit that with all incon-
15 veniences running for the Commonwealth at this time,
16 certainly we have made out a prima facie case.

17 I agree with Mr. Rochenbeck the standard is very
18 high, but I think this is a prima facie case of gross
19 negligence.

20 THE COURT: Preparing for trial of the case this
21 morning, I had an opportunity to look at some of the cases
22 and I do agree that the standard is high. Right now, I'm
23 leaning toward the idea that I would probably deny your

1 motion, but I would like to review the facts in several
2 of the cases before I give you a ruling on it. So, I'll
3 give you a ruling in the morning.

4 (Whereupon, at 4:10 o'clock p.m., the hearing
5 in the above-entitled matter was recessed, to reconvene
6 at 10:00 o'clock a.m., February 4, 1981.)
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23

1 VIRGINIA:

2 IN THE CIRCUIT COURT OF FAIRFAX COUNTY

3 - - - - - x
4 COMMONWEALTH OF VIRGINIA, :

5 -vs- :

Criminal No. 32741

6 ROBERT S. THORPE, JR., :

7 Defendant. :

8 - - - - - x

9 Fairfax, Virginia

10 Tuesday, February 3, 1981

11
12 The above-entitled matter came on for hearing
13 before THE HONORABLE RICHARD J. JAMBORSKY, Judge, in and
14 for the Circuit Court of Fairfax County, Virginia,
15 commencing at 10:00 o'clock a.m.

16 APPEARANCES:

17 On behalf of the Commonwealth:

18 WILLIAM SCHEWE, ESQUIRE

19 On behalf of the Defendant:

20 DAVID ROEHRENBECK, ESQUIRE
21
22
23

C O N T E N T S

<u>Witness</u>	<u>Direct</u>	<u>Cross</u>	<u>Redirect</u>	<u>Recross</u>
Robert S. Thorpe, Jr.	199	224	240	243
Gary Haines	254	-	-	-
Gary Sisson	257	259	-	-

E X H I B I T S

<u>Defendant's</u>	<u>For Identification</u>	<u>In Evidence</u>
No. 2 (photograph)	207	208
No. 3, 5 (photographs)	210	212
No. 6, 7 (photographs)	214	216
No. 4 (photograph)	215	215
No. 8, 9, 10 (photographs)	219	220
No. 11 (statement)	241	241

P R O C E E D I N G S

(The Court Reporter, J. Michelle Kennon, was duly sworn by the Clerk of the Court.)

THE COURT: Mr. Roehrenbeck, I deny your motion to strike. Ask the Jury to come back.

(The Jury returned to Open Court.)

THE COURT: Okay, who's your first witness?

MR. ROEHRENBECK: I call the defendant, Your Honor.

THE COURT: Would you come up, please.
Whereupon,

ROBERT S. THORPE, JR.,
the defendant, was called as a witness by and in his own behalf, and having been first duly sworn by the Clerk of the Court, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. ROEHRENBECK:

Q Please give your full name to the Ladies and Gentlemen of the Jury?

A Robert Samuel Thorpe, Jr.

Q How old are you?

A Twenty.

Q What do you do for a living?

1 A. I drive a truck.

2 Q. You own your own truck?

3 A. Yes, sir.

4 Q. Making payments on it?

5 A. Yes, sir.

6 Q. Where do you live?

7 A. I live with my parents in Woodbridge.

8 Q. Woodbridge. Have you ever been convicted or even
9 charged with any criminal offense?

10 A. No, sir.

11 Q. Have you ever been convicted of reckless driving?

12 A. No, sir.

13 Q. Ever been convicted of driving a truck overweight?

14 A. No, sir.

15 Q. Robert, you go by Robert or Robbie?

16 A. Robbie.

17 Q. You're a junior; is that correct?

18 A. Yes, sir.

19 Q. Directing your attention to the day in question,
20 which is June 6th of last year, 1980, do you recall being
21 at the quarry, the Vulcan quarry that day?

22 A. Yes, sir.

23 Q. Had you made some runs of this stone they

1 described as blue stone on that day?

2 A Yes, sir.

3 Q Where had you run prior to the running which the
4 accident occurred, where had you taken stone?

5 A I had taken a load to a job called Chesterfield
6 Mews which is Route 50 in Fairfax.

7 Q Was that where you were going when this accident
8 occurred?

9 A Yes, sir.

10 Q Now, directing your attention to the quarry there
11 just before you pulled out to go on your way up 123, would
12 you tell the Ladies and Gentlemen of the Jury how you load
13 your truck, or how the truck is loaded?

14 A Well, when you are told what type of stone to get,
15 where the truck is pulled in the machine, it's called a
16 pug mill, and it's like a bin that holds the stone and you
17 pull your truck underneath and the stone drops from the bin
18 into the truck and you load some on the front and then you
19 pull forward and load some on the back, and when you think
20 that you have enough stone, the amount you want, you have
21 to blow your horn and the man controlling the bin cuts off
22 the stone.

23 Q How can you tell whether you've got enough stone?

1 A. You have to guess.

2 Q. And, this particular truck, I believe there was
3 testimony you're allowed a gross amount of how much?

4 A. 49,500.

5 Q. And, your truck weighs about -- do you recall?

6 A. It weighs 17,700.

7 Q. So, you're trying to estimate the difference?

8 A. Yes, sir.

9 Q. And, on this occasion when -- did there come a
10 time that you blew the horn?

11 A. Yes.

12 Q. To signify to stop filling it?

13 A. Yes, sir.

14 Q. At that point, were you trying to put an extra
15 amount on there?

16 A. No, sir.

17 Q. Let me ask you this. Assuming that you had an
18 extra amount and you delivered it to where you were con-
19 tracted to go, do you get -- how much extra money do you
20 get for say, an extra ton?

21 MR. SCHEWE: Objection.

22 THE COURT: Overruled.

23 THE DEFENDANT: The way we were paid, we are paid.

1 by the ton of stone delivered to the job and the jobs
2 usually range from \$1.50 to \$1.80 per ton, and one ton
3 over would mean \$1.50 extra money.

4 Q \$1.80. You don't know exactly how much at the
5 time?

6 A No, sir.

7 Q So, two tons would be twice that; is that correct?

8 A Yes, sir.

9 Q Now, there came a time, I guess, you left the
10 pug mill, after you leave that you go through a scale; is
11 that correct?

12 A Yes, sir.

13 MR. SCHEWE: Objection, he's leading the witness.
14 He's asking for yes or no answers.

15 BY MR. ROEHRENBECK:

16 Q Where do you go after the pug mill?

17 A We pull up on the scales where the dispatcher is
18 and he'll stamp a ticket showing us the weight of our truck.

19 Q On the occasion that you left to go to Chester-
20 field Mews when the accident happened, did that occur?

21 A Yes, sir.

22 Q Were you given a ticket at that time?

23 A Yes, sir.

1 Q When they give you the ticket, do they give you
2 more than one copy?

3 A Yes, sir.

4 Q And, on this occasion, how many did they give you?

5 A Three copies.

6 Q I show you what's been introduced as evidence by
7 the Commonwealth as Exhibit 29 and 30 and 31 and ask if
8 those are the tickets that you were handed by the dispatcher?

9 A Yes, sir.

10 Q What weight is indicated on the ticket as far as
11 what you were carrying?

12 A 35,860 pounds.

13 Q Robbie, that indicates that you were over what
14 you ought to be carrying; isn't that correct?

15 A Yes, sir.

16 Q Can you tell the Ladies and Gentlemen of the Jury
17 when you went to the scales at that weight, why you didn't
18 turn around or go back or whatever?

19 A Well, I was taking from former knowledge that I had
20 that when the truck is weighed at a State inspection.

21 Q You're talking about the one like on 66?

22 A 95, that the State weigh man there will allow you
23 five percent of your gross weight which is -- my gross weight

1 is 49,500. He would allow me five percent of that and add
2 that on to the 49,500. So, I have some notes -- can I use
3 those?

4 Q If you calculate it on your own, what would that
5 be?

6 A Can I use my notes?

7 Q Do you have notes that you worked out on your own?

8 A Yes, sir.

9 Q And, what does that figure turn out to be?

10 A The five percent that was allowed would be 2,475
11 pounds added to the 49,500 pounds, that would make my total
12 gross weight 51,975 pounds.

13 Q According to the ticket -- anyway, your total
14 gross weight would have been how much on that ticket?

15 A It was 53,560 pounds.

16 Q Okay. Now, directing your attention to the trip
17 north, that is, up 123, do you recall approaching the inter-
18 section of Community Lane?

19 A Yes, sir.

20 Q How many Community Lanes are there?

21 A Community Lane has two entrances on 123. It's a
22 semi-circle type thing.

23 Q Prior to getting to that area, can you estimate

1 how fast you were going?

2 A. I was going between 25 to 35 miles per hour.

3 Q. Before you got to the intersection?

4 A. Yes, before the intersection.

5 Q. Why is that?

6 A. I was behind a slower vehicle in front of me.

7 Q. Before you got behind the slower vehicle, how
8 fast, can you estimate?

9 A. Between 40 and 45.

10 Q. Could you have been going faster than 45?

11 A. No, sir.

12 Q. Why is that?

13 A. My truck will not run faster than that 45 with a
14 full load of gravel.

15 Q. No doubt you had a full load; is that correct?

16 A. Yes, sir.

17 Q. You said you were behind an automobile going 25
18 or 30?

19 A. Yes, sir.

20 Q. Did there come a time that you passed that auto-
21 mobile?

22 A. Yes, sir.

23 Q. And, do you recall where it was that you passed it?

1 A I passed him in between the two entrances of
2 Community Lane.

3 Q What kind of markings are in the road between
4 those two?

5 A Broken lines.

6 (The document referred to was marked
7 Defendant's Exhibit No. 2 for
8 identification.)

9 BY MR. ROEHRENBECK:

10 Q Broken lines.

11 I want to show you a picture that's been marked for
12 identification as Defendant's Exhibit No. 2 and ask if you
13 can identify this picture?

14 A Yes, sir. This is looking north on 123. This is
15 the intersection between Community Lane and 123.

16 Q Part of the picture this way is where?

17 A This is ten feet north of the first Community Lane
18 entrance.

19 Q Would you mark -- if the Court will indulge me
20 to have him mark it where on that drawing with a "C" that
21 the other Community Lane enters, just mark it in red..

22 A (The witness complied.)

23 Q And, as best as you can estimate, you said you

1 passed between the two. Would you mark with slash marks
2 where you recall the two areas on that road where you passed,
3 or the one area? In other words, from where to where you
4 passed the vehicle with a slash mark?

5 A. (The witness complied.)

6 MR. ROEHRENBECK: Your Honor, on the Court's
7 ruling, I would give this to the Jury and move it into
8 evidence as Defense Exhibit No. 2. I don't believe there
9 is any objection to the authenticity of it.

10 MR. SCHEWE: There is no objection.

11 THE COURT: Very well, we'll receive Defense
12 Exhibit No. 2.

13 (The photograph referred to, having
14 been previously marked Defendant's
15 Exhibit No. 2 for identification, was
16 received in evidence.)

17 BY MR. ROEHRENBECK:

18 Q Now, Robbie, do you recall an intersection with
19 123 that's been described in the testimony as a boat ramp
20 or gravel road near Burke Lake?

21 A. Yes, sir.

22 Q Do you recall passing that intersection on that
23 day, that gravel road?

1 A I do recall passing it.

2 Q Do you recall going by that gravel road?

3 A No, sir. I know I had to pass it, but I don't
4 recall.

5 Q I don't mean passing somebody, I mean going by the
6 gravel road or not?

7 A Do I recall going by it? No, I don't.

8 Q Do you recall passing anybody at that point?

9 A No, sir.

10 Q Let me show you what's already been introduced
11 as evidence as Defense Exhibit No. 1 and ask you if you can
12 identify this picture?

13 A This is looking north on 123 and on the right is
14 the boat ramp.

15 MR. ROEHRENBECK: Your Honor, I believe this has
16 already been viewed by the Jury.

17 BY MR. ROEHRENBECK:

18 Q So, you have no recollection of passing anybody
19 at this point?

20 A No, sir.

21 Q As you continued down the road, did there come a
22 time that you recall approaching the intersection where
23 the accident happened?

1 A Yes, sir.

2 Q And, can you describe what that approach is or
3 how it's curved or whatever?

4 A When you come to where the intersection is, there
5 is a sharp turn that hides the height where you cannot see
6 the light, and the light sits on an uphill grade from that
7 turn.

8 Q Prior to coming to that approach, can you estimate
9 what speed you were going?

10 A I was going between 40 and 45.

11 Q Again, how do you know you weren't going over 45?

12 A Because I know the speed my truck will run when
13 it has a load of gravel on it.

14 Q Let me show you what's been marked for identifica-
15 tion as Defense Exhibit, I believe 3 and 4. Excuse me,
16 Your Honor, it would be Exhibits 3 and 5.

17 (The photographs referred to were
18 marked Defendant's Exhibits Nos. 3
19 and 5 for identification.)

20 BY MR. ROCHRENBECK:

21 Q I ask if you can identify these pictures. Start
22 with what's been identified as Defendant's Exhibit No. 3.

23 A This is a picture of looking north on 123.

1 It shows the turn approaching the intersection and the
2 second picture is the same as the first one except that you
3 can see around the turn to the stop light.

4 Q You're referring to Defense Exhibit No. 5 on that
5 one; is that correct?

6 A Yes, sir.

7 Q So, one is after the other?

8 A Yes, sir, that one is first.

9 Q Which one is further south?

10 A No. 3 is further south.

11 MR. ROEHRENBECK: Your Honor, perhaps we can have
12 the Jury view it. I'm going to have him do some markings on
13 one of these pictures, but they might want to look at it
14 first.

15 THE COURT: Any objection to 3 and 5?

16 MR. SCHEWE: I advise the Court I have seen all
17 of the photographs. I don't have any objection to their
18 authenticity.

19 THE COURT: Very well. I receive 3 and 5. So
20 it will make sense, we'll let them start with 3, which is
21 the one they see further south, and then 5.

22

23

1 (The photographs referred to, having
2 been previously marked Defendant's
3 Exhibits Nos. 3 and 5 for identifica-
4 tion, were received in evidence.)

5 BY MR. ROEHRENBECK:

6 Q Robbie, do you know where the entrance to Burke
7 Lake is?

8 A Yes, sir.

9 Q As you came by that, did any other cars pull out
10 of that road?

11 A Yes, sir. A green Mustang.

12 Q What was that?

13 A Green Mustang.

14 Q Which ended up being the Mustang that was in the
15 accident?

16 A Yes, sir.

17 Q How far behind the Mustang do you recall being
18 going into the turn that's illustrated in Defense Exhibits
19 3 and 5?

20 A I believe somewhere between three, four, and five
21 car lengths. I'm not exact.

22 Q And, directing your attention to Defense Exhibit
23 No. 5, can you point out and describe, since some of the

1 people of the Jury are way back there, going into that
2 turn where you were and where the Mustang was?

3 THE COURT: You may get down from the box and go
4 over and stand in the center of the Jury box so they can
5 all see.

6 THE DEFENDANT: On approaching the intersection,
7 I was approximately out where this sign is (indicating), and
8 the Mustang was in front of me and he was about halfway
9 between the intersection and the sign.

10 BY MR. ROEHRENBECK:

11 Q What, if any, signals were on the back of the
12 Mustang at that point?

13 A He had a right-hand turn signal.

14 Q Don't tell me, okay.

15 What did you do after you observed the right-hand
16 turn signal?

17 A I began to slow up because the light was red at
18 the time and upon approaching Burke Lake Road, when the car
19 was starting to make a right-hand turn --

20 Q You can go back there because we need another
21 picture.

22 A Do you want me to continue?

23 Q Let me show you some pictures here so we can

1 illustrate -- I show you what's been marked as Defense
2 Exhibits Nos. 7 and 6 and ask if you can identify those
3 pictures.

4 (The photographs referred to were marked
5 Defendant's Exhibits Nos. 6 and 7 for
6 identification.)

7 THE WITNESS: Number 4 is a picture of 123 looking
8 south on 123 at the intersection.

9 BY MR. ROEHRENBECK:

10 Q Would you go down and show the Jury where you were
11 and where the Mustang was when you first noticed the right
12 signal on that picture?

13 THE COURT: Would you clarify, again, the direction
14 of the picture. I'm confused as to which direction.

15 THE DEFENDANT: This is south on 123 facing the
16 opposite way I was going. I was going north.

17 BY MR. ROEHRENBECK:

18 Q What's your vantage point?

19 A This is the other side of the intersection.

20 Q Which intersection?

21 A Clifton Road and Burke Lake.

22 Q In other words, you're looking back?

23 A Yes, and Burke Lake is on the left.

1 Q Okay.

2 A And, in this picture which is looking south, I was
3 approximately here where the sign is, and the Mustang was
4 in between me and the intersection.

5 MR. ROEHRENBECK: Again, if there's no objection,
6 I move into evidence Defense Exhibit No. 4.

7 MR. SCHEWE: No objection.

8 (The photograph referred to was marked
9 Defendant's Exhibit No. 4 for
10 identification, and was received in
11 evidence.)

12 THE COURT: Was there any member of the Jury who
13 did not get a chance to see this picture fully when it was
14 down?

15 All right, no affirmative answers. Go ahead.

16 BY MR. ROEHRENBECK:

17 Q I show you two other pictures marked Defense
18 Exhibits 6 and 7 and ask if you can identify these pictures
19 and please tell the Court and the members of the Jury the
20 direction of what you're coming and so forth so they will
21 know?

22 A Picture number 6 is north on 123 approaching the
23 intersection of Burke Lake and Clifton Road. Burke Lake

1 on the right. Number 7 is the same picture north on 123
2 and approaching the intersection, but it is further south
3 of the intersection than the first one.

4 Q 7 and 6 are the same except 7 is further south?

5 A Yes, sir.

6 MR. ROEHRENBECK: Your Honor, I would like to
7 move these into evidence and perhaps the Jury can look at
8 them because I will use them as an illustration, and it
9 would be better if they look at them before I do.

10 THE COURT: Any objection?

11 MR. SCHEWE: No objection.

12 THE COURT: All right, I'll receive 6 and 7 and
13 let them see 7 first.

14 (The photographs referred to, having
15 been previously marked Defendant's
16 Exhibits Nos. 6 and 7 for
17 identification, were received in
18 evidence.)

19 BY MR. ROEHRENBECK:

20 Q Robbie, let me direct your attention to what has
21 been introduced now as Defense Exhibit No. 7 and I would
22 ask you to describe to the members of the Jury what
23 occurred in terms of this picture. What occurred with the

1 Mustang?

2 THE COURT: You may get down and go back over.

3 BY MR. ROEHRENBECK:

4 Q Take this red pen and as best you can estimate
5 the position of the Mustang?

6 He stated that the Mustang had a right turn
7 signal between the sign. Would you show the members of the
8 Jury where the Mustang was with the right signal on in that
9 picture?

10 A In this picture, the back of the Mustang would be
11 right here in this area (indicating). This is where the
12 back of the Mustang was with the right turn signal on.

13 Q When you saw the right turn signal on at that
14 point, what did you do?

15 A I was behind the Mustang and I brought the front
16 wheel of my truck over the yellow line so as not to have
17 to make a complete stop on the car, just enough to give
18 him some room to get off the road.

19 Q Then what happened?

20 A Then, as I was coming up alongside the Mustang,
21 I saw him, instead of making his turn fully, come as to
22 go catty-corner across the road here and put on a left
23 turn signal and come back across the road about where these

1 lines are into the double yellow lines.

2 Q When you saw that, what did you do?

3 A When I saw this, I hit my brakes, but the truck
4 would not stop when you hit the brakes on a big truck like
5 that.

6 Q The brakes on your truck, what happened?

7 A The pedal goes to the floor and has pressure,
8 but the brakes will not lock up.

9 Q Why is that?

10 A To keep your load from shifting forward. If
11 you hit your brakes very suddenly, everything would come
12 forward over the cab of the truck. Upon that, I looked to
13 the right and there was a car sitting at the intersection
14 at the light. So, I could not go to the right. So, I
15 tried to avoid hitting the car broadside. As it came back
16 across, I attempted to turn down Clifton Road which is on
17 the left. As I got to Clifton Road -- Clifton Road has a
18 bad rise in it, it's like a house's roof. As I got into
19 there, the truck started to come up on its side and
20 eventually rolled over onto the shoulder of the road.

21 MR. ROEHRENBECK: Your Honor, if there is no
22 objection, I'd like to reshow the picture to the Jury..

23 THE COURT: All right, go ahead.

1 (The photographs referred to were
2 marked Defendant's Exhibits Nos. 8,
3 9, and 10 for identification.)

4 BY MR. ROEHRENBECK:

5 Q Let me show you the last three pictures here,
6 Robbie, and ask if you can identify each of them. They've
7 been marked for identification as Defense Exhibits 8, 9,
8 and 10.

9 Let's start with number 8. Could you tell the
10 members of the Jury what that picture depicts?

11 A This is a picture when you're on Clifton Road
12 looking back towards Burke Lake Road and the intersection
13 looking across the intersection.

14 Q Before you go on, is that the road where the
15 accident occurred?

16 A This is the road at Clifton Road.

17 Q Is that where the truck ended up on the Mustang?

18 A Yes, sir, about right in there (indicating).

19 Q Make an X about where you recall that truck
20 ending up with the Mustang, a large X. And, Defense
21 Exhibit No. 9 is what?

22 A Number 9 is also a picture of the same Clifton
23 Road looking back across the intersection towards Burke

1 Lake Road.

2 Number 10 is a picture standing in the middle
3 of the intersection facing down Clifton Road.

4 Q It's the direction of the vehicle that it was
5 going; is that correct?

6 A Yes, sir.

7 MR. ROEHRENBECK: Your Honor, I would move this
8 into evidence, Defense Exhibits 8, 9, and 10.

9 THE COURT: Any objection?

10 MR. SCHEWE: No, sir.

11 THE COURT: Very well, I receive 8, 9, and 10.

12 (The photographs referred to, having
13 been previously marked Defendant's
14 Exhibits Nos. 8, 9, and 10 for
15 identification, were received in
16 evidence.)

17 BY MR. ROEHRENBECK:

18 Q Robbie, after you were forced to make that turn
19 down there, what happened down Clifton Road, what do you
20 recall?

21 A Well, I recall as I started to make the turn, that
22 the truck was kind of leaning and I recall it starting to
23 go over, but I don't recall it actually landing. I guess

1 I was kind of knocked out.

2 Q Unconscious? Do you recall being unconscious?

3 A Yes, sir.

4 Q What is the next thing you remember?

5 A Well, I remember I woke up or whatever it was and
6 climbed out of the truck. I was laying against the
7 passenger side window. It was on the ground and I climbed
8 out of the truck and came around to the side of the truck
9 to where the car was at, and I remember that the truck
10 wasn't laying on the car, that the gravel was on top of the
11 car and that the rear wheels were spinning on the car and
12 the motor was running.

13 Q Was anybody outside of the car, the Mustang?

14 A Yes, sir. I remember seeing the other persons
15 in the car. I can't remember her name.

16 Q Was it a young man or young lady?

17 A Yes, sir. I remember going to the door and asking
18 the driver inside if he could reach the keys to cut off the
19 engine and he replied no, he could not reach the keys and
20 I remember asking the girls if they were okay and they were
21 scared and they were just saying that they wanted to get out
22 of the car and there were people stopping, passer-bys, to
23 try to assist and some men opened the hood and pulled the

1 hood off the car to stop the motor.

2 Q You're talking about a private citizen or police
3 or what?

4 A Private citizen.

5 Q People just passing by, as far as you know?

6 A Yes, sir.

7 Q What happened after that, anybody else arrive?

8 A I remember they were trying to get the door open.
9 They had crowbars and hammers. This is the passenger side.
10 They had crowbars and hammers. They were trying to pry the
11 passenger side door open. They got the door open, but could
12 not get inside the car to where the driver or the other
13 people were at. I remember a County Sheriff then arrived
14 on the scene and he called for the police and the ambulance
15 and everything, and I just kind of backed out of the way,
16 not to be in the way of anything.

17 Q Where did you go?

18 A I was sitting on -- there's a cement drain thing
19 there on the shoulder of the road and I was --

20 Q Did there come a time that some County police
21 officer arrived?

22 A Yes, sir.

23 Q Do you know who Officer Trounton is?

1 A Yes, sir. I approached him when he was standing
2 there because -- well, really he was the closest one around.
3 I approached him and told him I was the driver of the truck
4 because no one had seen or bothered to ask him to find out
5 who was driving the truck.

6 Q So, did you tell them what happened?

7 A Well, we walked back to his car which was across
8 the road and we just kind of briefly talked a little bit,
9 and when we got to the car he told me to sit in the back
10 and relax, and he handed me a sheet of paper and asked me
11 to write down what happened on the sheet of paper and to
12 sign the bottom and to swear to it and sign the bottom that
13 it was true.

14 Q Is that what you did?

15 A Yes, sir.

16 Q I assume that there came a time later that he
17 read you your rights and this type of thing?

18 A Yes, sir, that was after the ambulance and
19 everyone left.

20 Q After the ambulance left?

21 A Yes, sir.

22 Q Now, there is no doubt, Robbie, this was an
23 obviously tragic thing for anybody to go through. This

1 happened back in June. Can you tell the Ladies and Gentle-
2 men of the Jury what, if any, effect it's had on you?

3 MR. SCHEWE: I'm going to object to that. I don't
4 know how that's relevant today, Your Honor.

5 THE COURT: Well, since we don't have bifurcated
6 trials and juries have to impose sentences as well as guilt,
7 it has some bearing on sentence and the litigation should be
8 defined with guilt. Go ahead, you may answer the question.

9 THE DEFENDANT: Well, I'd like to say that I'm
10 very sorry that the accident did happen and that an accident
11 of this nature is something, it's hard for anyone to live
12 with, but it's something that I will have to live with and
13 something that I will never be able to forget.

14 MR. ROEHRENBECK: Your witness.

15 CROSS EXAMINATION

16 BY MR. SCHEWE:

17 Q Mr. Thorpe, you indicated to the Ladies and
18 Gentlemen of the Jury that this is going to be something
19 very difficult for you to live with the rest of your life?
20 A Yes, sir.

21 Q But, from hearing you testify, I get the distinct
22 impression that you don't believe any of this was your
23 fault; isn't that correct?

1 A. Excuse me, I don't believe --

2 Q Aren't you testifying to this Jury that in effect
3 you are not at fault in this particular accident?

4 A. Yes, sir.

5 Q Then, why are you having such a difficult time
6 living with it if you're not at fault?

7 A. When there is a death and you're involved in it --

8 Q Then you have a doubt --

9 MR. ROEHRENBECK: I'm going to object.

10 THE COURT: Overruled.

11 THE DEFENDANT: I was in the accident. There were
12 two people to the accident. There wasn't one person
13 involved in it.

14 BY MR. SCHEWE:

15 Q But, your testimony here today is that this
16 young 15 year old boy made a right-hand turn or almost
17 completed a right-hand turn with a right-hand turn signal
18 and, in effect, completely changed directions right across
19 the face of your truck?

20 A. Yes, sir.

21 Q So, in effect, your testimony was there wasn't a
22 thing you could do about it; isn't that right?

23 A. Yes, sir.

1 Q And yet you have, still have some difficulty
2 living with the fact that when all things considered, it
3 wasn't your fault at all? You still have trouble with it?

4 A Yes, sir.

5 Q I see.

6 Now, let me ask you a few specific questions,
7 Mr. Thorpe. Mr. Roehrenbeck asked you about two different
8 instances where you could have passed someone on a double
9 yellow line; is that correct?

10 MR. ROEHRENBECK: Your Honor, I think that's
11 incorrect. I think the record would show there was one
12 incident where he could at the gravel road.

13 THE COURT: At any rate, if the witness doesn't
14 recall or understand, he can say so. As far as your
15 objection is concerned, it's overruled.

16 BY MR. SCHEWE:

17 Q The first instance that Mr. Roehrenbeck asked
18 you about, he asked you whether that road that comes into
19 123 in two different places, what's the name of that road?

20 A Community Lane.

21 Q And, he asked you whether you had occasion to
22 pass anyone on a double yellow line in that general area;
23 isn't that correct?

1 A. Yes, sir.

2 Q. And, you testified that the only passing you did
3 in that specific area was on a broken double yellow line?

4 A. Yes, sir.

5 Q. And, you don't recollect -- you do recollect Mr.
6 Haines testifying that at the Burke Lake boat ramp that
7 you passed him on a double yellow line there, do you
8 recollect that is his testimony?

9 A. Yes, I remember him saying that.

10 Q. It's your testimony you don't recollect that at
11 all?

12 A. Yes, sir. I don't remember one way or the other.
13 I can't --

14 Q. Don't you think it's a little strange that you
15 would not recollect one way or the other whether or not
16 you passed somebody on a yellow double line like that?

17 A. I don't know if it's strange or not. I just
18 don't remember.

19 Q. Now, it's your testimony that that truck won't
20 do anymore than 40, 45 miles an hour when it's loaded; is
21 that correct?

22 A. Yes, sir.

23 Q. And, does the maximum speed of that truck, does

1 it go down as the load goes up?

2 A. Yes, sir.

3 Q. So, in other words, if you were overloaded, you
4 probably couldn't even do 45; is that correct?

5 A. It depends on how much overload.

6 Q. Let's say two tons overload.

7 A. Two tons, maybe one mile per hour difference.

8 Q. Maybe one mile per hour per ton or two tons?

9 A. Yes, I guess so.

10 Q. Do you ever drive that truck on interstate
11 highways?

12 A. Yes, sir.

13 Q. It's your testimony still, even on interstate
14 highways, you don't do more than 45 miles an hour when
15 you're loaded?

16 A. Yes, sir.

17 Q. Now, when you got that truck weighed at the
18 scales at Vulcan that day, let me ask you this, that is a
19 brand new truck, is it not?

20 A. Yes, sir.

21 Q. 1979 Chevrolet?

22 A. GMC, sir.

23 Q. All right, sir, and it's your testimony that

1 you're the one that decides how much bluestone goes in the
2 back of that truck?

3 A. Yes, sir.

4 Q. So, you were the one that blew your horn and
5 stopped him from putting anymore bluestone in there?

6 A. When I'd blow my horn, it takes them a couple of
7 seconds, it's not exactly that amount.

8 Q. Now, let me ask you this. They hand you the
9 ticket to tell you what your weight is. Did you read that
10 ticket on that day?

11 A. Yes, sir.

12 Q. So, you were aware of what the weight on that
13 ticket said, are you not?

14 A. Yes, sir.

15 Q. That's correct. So, you were aware according to
16 those scales you were overweight?

17 A. Yes, sir.

18 Q. And you testified that you were aware of the
19 fact that the station master at either 66 or I-95 will
20 give you a five percent tolerance; isn't that correct?

21 A. Yes, sir.

22 Q. But, you were still aware, even with the five
23 percent tolerance, you were still over?

1 A. Yes, sir.

2 Q. So, you were aware you were driving an overloaded
3 truck?

4 A. Yes, sir, but it's not overloaded a whole lot.

5 Q. But, it was overloaded?

6 A. Yes, sir.

7 Q. Thank you. Mr. Thorpe, do you have any reason
8 to doubt the accuracy of the scales?

9 A. At Vulcan?

10 Q. Yes, sir.

11 A. Yes, sir.

12 Q. You did. Why did you have reason to doubt the
13 accuracy of the scales?

14 A. Because the scales, they are never accurate.

15 Q. Would it surprise you to know those scales had
16 been recalibrated in April of 1980 by the State?

17 A. No, sir.

18 Q. It wouldn't surprise you?

19 A. They have been recalibrated on numerous amounts
20 of times.

21 Q. But, as recently as 59 days prior to the day of
22 the accident, they were calibrated. Were you aware of that?

23 A. No, sir.

1 Q You were not aware of that?

2 A (Nodding in the negative.)

3 Q Now, obviously, Mr. Thorpe, that was your last
4 run of the day because of the accident?

5 A Yes, sir.

6 Q Would that have been the last run of the day for
7 you anyway?

8 A Yes, sir.

9 Q Wasn't it a Friday afternoon?

10 A Yes, sir.

11 Q Were you in a hurry to get home?

12 A No, sir.

13 Q Let me ask you this, Mr. Thorpe. Had you anti-
14 cipated making that run, that particular run?

15 A I anticipated?

16 Q In other words, isn't it a fact when you got back
17 to work, they told you you would have to go make one more
18 run that day?

19 A Yes, sir.

20 Q Were you upset about that?

21 A No, sir.

22 Q You weren't upset about making one more run when
23 you have gotten off early from work?

1 A. I decide when I want to get off. If I didn't
2 want to make that load, I wouldn't have to.

3 Q. So, you volunteered to make that last run.

4 Now, you've testified, have you not, as you
5 approached the 123 and Clifton Road intersection that there
6 is a sharp turn to the left?

7 A. Yes, sir.

8 Q. What do you consider a sharp turn, Mr. Thorpe?

9 A. Well, it's a sharp turn when you're driving a
10 dump truck every turn is a sharp turn.

11 Q. How many degrees would you say the turn is?

12 A. It's not exactly 90, I wouldn't believe.

13 Q. Well, 90 degrees would be a right angle turn?

14 A. Yes, sir.

15 Q. So, it wasn't 90 degrees?

16 A. Maybe 75, I'm not very good at that.

17 Q. 75, is that what you're saying?

18 A. I'm not sure what angle would be what.

19 Q. Let me see if I can refresh your recollection.

20 MR. ROEHRENBECK: Your Honor, I think the
21 picture speaks for itself. He's not a mathematician.
22 There are three pictures, the Jury can tell how sharp it is.

23 THE COURT: I overrule the objection.

1 MR. ROEHRENBECK: We're arguing about something--

2 THE COURT: Overrule your objection.

3 BY MR. SCHWE:

4 Q I show you what is marked Defense Exhibit No. 3,
5 Mr. Thorpe, does that look like 90 degrees to you?

6 A No, sir.

7 Q What does it look like to you?

8 A I guess 75. Is 75 shorter or longer?

9 Q Shorter would be more gradual, 45 would be half
10 of 90.

11 A Sharper turn.

12 Q No, less sharp. If this is 90, this is 45, okay?

13 A So I guess maybe 75.

14 Q So, you think that's a 75 degree turn.

15 Now, can you estimate for the Ladies and Gentlemen
16 of the Jury, I take it that because of that turn you were
17 actually blinded from that intersection; isn't that correct?

18 A Yes, sir.

19 Q And, can you estimate for the Ladies and Gentlemen
20 of the Jury at about what distance that intersection comes
21 into view for you?

22 A Explain it again?

23 Q In other words, when you come around that turn,

1 all of a sudden you can see the intersection, right?

2 A. Yes, sir.

3 Q. About how far away from the intersection does
4 that occur?

5 A. I don't know. I'm not sure.

6 Q. Would 756 feet surprise you?

7 A. No, sir.

8 Q. Okay. So, let's say for the moment, anyway, that
9 once you made that turn, you had an additional 756 feet to
10 travel once you cleared that turn. You had a full view of
11 the intersection for a length of 756 feet?

12 A. Yes, sir.

13 Q. And, your testimony is that at that point you
14 were doing 40, 45 miles an hour; is that correct?

15 A. No, sir, that was before going into the turn.

16 Q. About what speed were you doing after you had
17 completed going through that curve?

18 A. Thirty to thirty-five.

19 Q. Now, you're doing 30 to 35. How long does it
20 take you to stop your truck, your truck at 30 miles an
21 hour, Mr. Thorpe?

22 A. I'm not exactly sure in the amount of feet. I
23 really couldn't say. I never measured it or anything like

1 that.

2 Q Now, your testimony is that as you come through
3 that curve, you're now doing 30, 35 miles an hour and your
4 testimony is that that's when you first see that green
5 Mustang; is that correct?

6 A No, sir, I first seen it coming out of Burke
7 Lake Park.

8 Q And, he pulled out in front of you?

9 A Yes, sir.

10 Q And, about how far ahead of you was he?

11 A When he pulled out, maybe six car lengths or so.

12 Q Did he stay about that distance in front of you?

13 A I guess, yes, sir.

14 Q And, is it your testimony that he stayed say
15 six car lengths in front of you up until the time he
16 actually came into the intersection?

17 A No, sir.

18 Q Did he get further ahead of you or was he closer?

19 A He was closer.

20 Q So, he was only three or four car lengths ahead
21 of you when he flipped on his right-hand signal as if he was
22 going to make a right-hand turn on Burke Lake Road?

23 A Yes, sir.

1 Q Your testimony is that you're now three to four
2 car lengths behind him and that he appears to you to be
3 about to execute a turn onto Burke Lake Road; is that right?

4 A Yes, sir.

5 Q So, you're three to four car lengths behind him
6 which is what? Do you want to say 15 feet per car length?

7 A I'm not sure.

8 Q You have no idea. Okay, then can you approximate
9 for the Jury how far in front of you, in feet, he was?

10 A At which time?

11 Q At the time that he begins to execute a right-hand
12 turn into Burke Lake Road?

13 A A right-hand turn, in feet, maybe 45, 50 feet.

14 Q That would be three, four car lengths. Your
15 testimony is that he put the right-hand turn signal on,
16 he swings over onto the shoulder of the road?

17 A He wasn't all the way on Burke Lake Road.

18 Q But, he actually made the front of his car,
19 according to your testimony, actually got in Burke Lake
20 Road?

21 A Yes, sir.

22 Q Then your testimony is you're only 45 feet behind
23 him at 30, 35 miles an hour. He manages, in effect, what

1 amounts to a U-turn, right?

2 A. It really wasn't a U-turn. He went alongside --

3 Q. And, then, but instead of going to Burke Lake,
4 he swings the car around and cuts across in front of you
5 and goes out like he's going to go to Clifton Road?

6 A. Yes, sir.

7 Q. He does that all in 45 feet between you and him?

8 A. Yes, sir.

9 Q. I see. As you saw him make this movement in
10 front of you, Mr. Thorpe, did you apply your brakes?

11 A. Yes, sir.

12 Q. And, approximately what speed were you doing
13 then, do you think?

14 A. When I seen him start to turn, between 30 and 25.

15 Q. So, now you're down to about 25 miles an hour;
16 is that correct?

17 A. Yes, sir. I slowed down because he had his
18 signal down. I was trying to downshift my truck.

19 Q. You were swinging left to try to avoid him?

20 A. Yes, sir.

21 Q. The crown in the intersection, that high part
22 that you're talking about, is that in the middle of the
23 intersection? Is that the highest point?

1 A Yes, sir, I believe so.

2 Q You're swinging left?

3 A Yes, sir.

4 Q So, that as you're swinging left like this, it
5 falls away from the center of the intersection, right?

6 A Yes, sir.

7 Q But, when the truck flips over, it flips over to
8 the right, not to the left; isn't that correct?

9 A Yes, sir.

10 Q If your truck is on an angle like this, right
11 just like this, and you're turning left as well, right?

12 A Yes, sir.

13 Q Wouldn't it make more sense to you that the truck
14 would have fallen over to the left-hand side as opposed to
15 the right-hand side since you're turning left and the
16 downhill slope is to the left?

17 A The way it happened, when the truck got into the
18 middle of Clifton Road, I made the left -- the front wheels
19 I couldn't -- you know, make a perfect 90-degree left-hand
20 turn. The front wheels were over the line into the lane
21 that you would normally turn in on and when it did, the
22 truck shifted. The front shifted down pulling all the
23 weight which is mainly loaded on the front of the truck

1 because it's required, that shifted over and caused it to
2 come over.

3 Q To the right?

4 A Shifted over to the right, causing it to come
5 over.

6 Q So, the truck was more like this than like this?

7 A Yes, sir.

8 Q Although the hill goes down in the other direction?

9 A Yes, sir.

10 Q I see.

11 A No, the hill goes the way the truck rolled, also.

12 Q Mr. Thorpe, you testified that Investigator
13 Trounton asked you to make a written statement for him?

14 A Yes, sir.

15 Q And you testified that you did that?

16 A Yes, sir.

17 Q Whatever happened to that written statement?

18 A Mr. Roehrenbeck has it.

19 MR. ROEHRENBECK: It's right here, Your Honor.

20 THE COURT: Well, instead of having you testify--
21 who has it?

22 THE DEFENDANT: Mr. Roehrenbeck.

23 THE COURT: Go ahead with your next question.

1 BY MR. SCHEWE:

2 Q I take it you never gave it to Investigator
3 Trounton?

4 A No, sir.

5 MR. SCHEWE: That's all I have.

6 REDIRECT EXAMINATION

7 BY MR. ROEHRENBECK:

8 Q Robbie, you said you never gave a statement to
9 Officer Trounton, did he ever --

10 A Yes, sir.

11 Q Did he ever ask you for it?

12 A Yes, sir.

13 Q Where was it when he asked you for it?

14 A We were sitting in the police cruiser. He was
15 in the front and I was in the back.

16 Q Where was it then?

17 A It was across Burke Lake Road.

18 Q Where was the statement? Had you written a
19 statement?

20 A I had it in my hand, yes, sir.

21 Q Let me show you this document and ask if you can
22 identify it?

23 A This is the statement I made at the time of the

1 accident.

2 MR. ROEHRENBECK: I move this into evidence as
3 Defense Exhibit No. --

4 THE COURT: Any objection?

5 MR. SCHEWE: I'd object. I don't know --

6 THE COURT: I overrule the objection.

7 MR. ROEHRENBECK: Defense Exhibit No. 11.

8 (The document referred to was marked
9 Defendant's Exhibit No. 11 for
10 identification, and was received
11 in evidence.)

12 BY MR. ROEHRENBECK:

13 Q Mr. Schewe asked you whether or not at the time
14 you left the scales whether you were aware -- he asked
15 whether you knew it was calibrated and whether you knew
16 it was correct, and you said you thought it was not. What
17 made you think it wasn't correct?

18 A As anyone that works there would know, those
19 scales have a history of being inaccurate at times. They're
20 never exactly right. When you get mud on there, that --

21 Q Let me ask you this. How do they, and I don't
22 think this has been testified to, how do they weigh the
23 load?

1 In other words, how do they arrive at how much
2 is on the back of the truck?

3 A. You pull the truck onto the scales, and they set
4 a bar with your empty weight, what the truck weighs empty.

5 Q. When you go in in the morning or whenever you do
6 that?

7 A. Yes, we get an empty weight every Monday and
8 Thursday.

9 Q. When you say empty weight, you mean without cargo?

10 A. Yes, sir.

11 Q. Does that take into consideration whether you
12 have a full tank of gas or not?

13 A. No, sir.

14 Q. How much gas does a truck like that carry?

15 A. It carries 100 gallons.

16 Q. So, whatever the weight is on that Monday morning,
17 that's what they weigh; is that correct?

18 A. Yes, sir.

19 Q. When you get the truck loaded up, you go back
20 through there?

21 A. Yes, sir.

22 Q. How do they calculate the gross weight?

23 In other words, as to how much you arrive at as

1 to what's in the truck?

2 A. They set the scales with the weight that you had
3 when you were empty.

4 Q. How many bars do they have there to set it?

5 A. Three bars and each one has a slide weight on it
6 which sets your empty weight, and when they set your empty
7 weight, that subtracts the empty weight of the truck from
8 the gross weight of the truck which is loaded on and what's
9 left over is the amount of the load.

10 Q. So, the empty amount is depending upon the empty
11 weight they set?

12 A. Yes, sir.

13 MR. ROEHRENBECK: I don't have any other questions.

14 THE COURT: Mr. Schewe?

15 MR. SCHEWE: Your Honor, I do have one.

16 RECROSS EXAMINATION

17 BY MR. SCHEWE:

18 Q. You said that you made a written statement. Why
19 didn't you give it -- is it your testimony Investigator
20 Trounton never asked you for the statement?

21 A. He asked me for it.

22 Q. What did you do?

23 A. I kept it. He said I have a right to speak to an

1 attorney and I don't have to give it.

2 Q Based on that, although you drew it, you weren't
3 going to give it to him?

4 A Okay, I told him that and he said okay, yes, that's
5 fine.

6 THE COURT: Anything else?

7 MR. ROEHRENBECK: No, sir.

8 MR. SCHEWE: No, Your Honor.

9 THE COURT: Thank you. You may step down.

10 Do you have any other evidence?

11 MR. ROEHRENBECK: Your Honor, the defense rests.

12 THE COURT: Mr. Schewe?

13 MR. SCHEWE: I have at least one rebuttal witness,
14 Your Honor.

15 Gary Sisson.

16 (The following was had at the Bench, outside of
17 the hearing of the Jury.)

18 MR. SCHEWE: Mr. Sisson, who was one of the
19 witnesses who was called in at the end of the day yesterday
20 and the Court advised him to be back in Court at 10:00
21 o'clock this morning, isn't here. I would like a short
22 recess so I could see if I can locate him, and he is a key
23 witness in this case.

1 THE COURT: Have you all exchanged instructions
2 yet?

3 MR. SCHEWE: I can do that.

4 THE COURT: Would you number your's and would
5 you letter your's.

6 MR. ROEHRENBECK: Letter mine?

7 THE COURT: And, start getting the instructions
8 exchanged and we'll take a -- we'll recess until twenty of.
9 That will be a 30 minute recess and I'll simply tell the
10 Jury we're trying to locate a witness. Any objection to
11 that?

12 MR. ROEHRENBECK: No, Your Honor, it's a reasonable
13 time.

14 THE COURT: All right.

15 (The hearing resumed in Open Court.)

16 THE COURT: Ladies and Gentlemen, one of the
17 witnesses is not here and we're going to attempt to find
18 the witness. So, we're going to take a break now and we'll
19 start again at twenty of.

20 Don't discuss the case or draw conclusions, but
21 you are free to go downstairs for refreshments.

22 (Whereupon, at 11:10 o'clock a.m., a recess was
23 taken.)

1 THE COURT: It's my understanding that the
2 Commonwealth has contacted that missing witness and that
3 missing witness is coming, but is not here yet. So, we're
4 going to take up the instructions so we don't waste any
5 time.

6 Mr. Schewe, in the Commonwealth's instructions,
7 why is it necessary to refer to the specific law violations?

8 MR. SCHEWE: I merely -- you mean as far as the
9 instructions themselves?

10 THE COURT: Yes.

11 MR. SCHEWE: Well, I'm in a position with this
12 Jury where I have certainly alleged that some of the things
13 that this defendant did are improper. I don't want to
14 leave them thinking that it may be improper, but they
15 don't know whether that has any impact or not, and I think
16 for that reason -- I think I'm going to leave them at a
17 rather confused state if I don't state for them exactly
18 what those specific instances are, and I'm more concerned
19 about the confusion.

20 If the Court has a problem with that, my
21 position would be that as long as I can argue them because
22 I think I'm entitled to do that.

23 I'd be willing to consider withdrawing the

1 instructions if I'm allowed to argue.

2 THE COURT: When we define involuntary manslaughter
3 as being negligence so great to show a reckless disregard
4 of human life, then isn't the argument crossing over a
5 double yellow line is negligent or speeding is negligent
6 or following too close is negligent?

7 MR. SCHEWE: You think they should read that way?

8 THE COURT: No, I'm just asking you if that's
9 not the argument?

10 MR. SCHEWE: It is the argument, and I think
11 there is case law, specifically in King and several of the
12 cases around King that says point-blank that speeding, for
13 instance, is an instance of negligence.

14 THE COURT: Mr. Roehrenbeck?

15 MR. ROEHRENBECK: Your Honor, I believe they're
16 misleading, and they might confuse the Jury to believe if
17 you find that these were violations, that follows that it
18 was necessarily gross negligence, I think that they should
19 not be given. I don't think he can seclude from arguing
20 specific instances and saying those types of behavior,
21 whether regardless, whether they're statutory violations,
22 may add up to that in his position. I think if you put
23 them in the instructions, that this is the Court saying

1 that those things are gross negligence.

2 THE COURT: I agree with the defense, but you're
3 free to argue those instances, and have them draw such
4 conclusions.

5 MR. ROEHRENBECK: Which instructions, No. 5, 6,
6 7, and 8?

7 THE COURT: I deny 5, I deny 6, I deny 7, and I
8 deny 8.

9 All right, Mr. Roehrenbeck. What's the authority
10 for the proposition that reckless driving and improper
11 driving are all lesser included offenses with involuntary
12 manslaughter?

13 MR. ROEHRENBECK: Well, I don't believe, and I
14 don't think there is any cases since King on reckless
15 driving, and I think, in fact, the authority -- I
16 believe they're before King, say that reckless driving
17 isn't a lesser included. The reason I put this there is
18 because in this case I believe it follows. If the Jury
19 can't find him guilty of gross negligence, they certainly
20 can find him guilty of driving a vehicle in a manner to
21 endanger life, liberty, or property. That is, reckless
22 driving is really involuntary manslaughter with a lesser
23 degree of negligence and with no death.

1 THE COURT: I deny A, and I deny B.

2 Mr. Schewe, would you like to be heard on C?

3 MR. SCHEWE: I would, Your Honor. I think I'm
4 being -- I think Mr. Roehrenbeck now stands in the same
5 position I just did in regard to an instruction as to now
6 we're saying what we've already said that I can't draw a
7 specific instance of conduct in regard to the defendant.

8 Mr. Roehrenbeck now stands before the Court asking
9 the Court to allow an instruction on the dead victim on his
10 driving behavior, and I think that in my mind it isn't
11 fair that I'm not allowed to advise the Jury of specific
12 instances regarding the defendant. Then, certainly the
13 defense, when I have a victim who is now dead and cannot
14 defend himself anyway, to allow them to put in an instruc-
15 tion regarding Mr. Gainer's driving behavior.

16 THE COURT: Mr. Roehrenbeck?

17 MR. ROEHRENBEEK: I believe the difference is,
18 as opposed to the situation Mr. Schewe had on his instruc-
19 tions which were a series of things over the course of this
20 incident. This particular instruction is -- which is
21 number C by the defense, if the Jury were to find that true,
22 it would follow. They would have to find him not guilty
23 because it would be an intervening cause and I believe

1 there is authority.

2 THE COURT: I understand your argument.

3 Mr. Schewe, in each one of those statutory
4 violations, a statutory violation in and of itself is not
5 gross negligence or negligence so great as to constitute
6 a willful disregard of human life.

7 The cases point that out consistently. So, the
8 fear about giving those specific instructions, it says this
9 violates the statute. The fear for the Jury is going to
10 conclude that it does violate the statute that that's
11 gross negligence.

12 In this particular instance, it's a different
13 circumstance. This is the defendant's theory of the case
14 and it would be true if the Jury accepts this, and they
15 couldn't find the defendant guilty of involuntary man-
16 slaughter.

17 MR. SCHEWE: Well, is the Court taking the position
18 that this is an intervening cause because --

19 THE COURT: I'm not saying it's an intervening
20 cause. It depends on what the Jury decides.

21 MR. SCHEWE: But, I think there is case law to
22 support the proposition if it is not an intervening cause,
23 then they are not entitled to the instruction because

1 contributory negligence has no place in a manslaughter
2 case, and I think that's what this instruction says is
3 that he has contributory negligence, and if it is that,
4 it is not a defense, and there is case law on that point.

5 THE COURT: I agree with you that contributory
6 negligence is not a defense in an involuntary manslaughter
7 case. I'm not sure that this is what this instruction says.

8 MR. ROEHRENBECK: Your Honor, this is a proximate
9 cause -- not a proximate cause, I think it would be
10 written that way. It would mean intervening. I think it's
11 clear that's what it is. I think the Jury would have to
12 believe that to find him not guilty on this instruction --

13 THE COURT: Okay, I grant C.

14 So, I'm granting Instruction number 1 for the
15 Commonwealth. I grant Instruction number 2 for the Common-
16 wealth, Instruction 3, and Instruction 4.

17 MR. SCHEWE: Your Honor, I would ask to be
18 allowed to preserve the right to withdraw 4, depending on
19 what my rebuttal witness says from the witness stand. I
20 merely would like to advise the Court of that now.

21 THE COURT: All right. I grant E. F is a
22 duplication.

23 MR. ROEHRENBECK: D is a duplication also.

1 THE COURT: Right. Do you withdraw F and D?

2 MR. ROEHRENBECK: They're already covered, Your
3 Honor.

4 THE COURT: Yes, sir, they are.

5 MR. ROEHRENBECK: Okay.

6 THE COURT: Do you want to be heard on G, Mr.
7 Schewe?

8 MR. SCHEWE: My understanding is that's the
9 position the Commonwealth wished to take all along because--

10 THE COURT: I grant G.

11 MR. SCHEWE: I haven't proved factually that the
12 truck was, in fact, overweight, and I think I have proved
13 that he had notice and I don't have an objection to that.

14 THE COURT: Okay. Well, have you had any word
15 from your witness?

16 MR. SCHEWE: I just received this note, Your
17 Honor. I believe it's from Investigator Trounion. It
18 says that Sisson is enroute. His estimated arrival is from
19 12:00 to 12:15.

20 MR. ROEHRENBECK: I object to wait any longer
21 for a witness. Even though I realize it's a Court order,
22 not a subpoena.

23 THE COURT: Do you have another witness you could

1 call for us?

2 MR. SCHEWE: I do, Your Honor. I could call
3 Mr. Haines back to the stand very briefly.

4 The only thing I say to the Court in regard to
5 Mr. Sisson is that Mr. Sisson was standing right here, you
6 know, about 12 hours ago and was face to face instructed by
7 the Court to be here at 10:00 o'clock. I think I have some
8 right to rely on that.

9 THE COURT: I think you do too.

10 MR. ROEHRENBECK: Your Honor, just to be clear
11 on the instructions, am I correct that the ones that will
12 be read will be Commonwealth's 1, 2, and 3, and 4, and
13 Defense C, E, and G?

14 THE COURT: Yes. Well, let's ask the Jury to
15 come back and get started and hope the witness shows up.

16 (Whereupon, the Jury returned to Open Court.)

17 THE COURT: Okay, Mr. Schewe.

18 MR. SCHEWE: Gary Haines.

19 THE COURT: Ladies and Gentlemen, if any of you
20 cannot hear, please raise your hands during the course of
21 the testimony. This witness has been previously sworn.

22 Have a seat.

23

1 Whercupon,

2 GARY HAINES

3 resumed the stand, and was further examined and testified
4 as follows:

5 DIRECT EXAMINATION

6 BY MR. SCHEWE:

7 Q Mr. Haines, directing your attention once again
8 back to the 6th of June, 1980, and recalling your testimony
9 from yesterday when you testified that you observed Mr.
10 Thorpe's truck pass a vehicle other than your own, do you
11 recollect that testimony?

12 A Yes, I do.

13 Q Would you state for the Jury what you observed
14 about that other vehicle and Mr. Thorpe's truck?

15 THE COURT: Would you repeat your question.

16 BY MR. SCHEWE:

17 Q Regarding your testimony from yesterday involving
18 a car and Mr. Thorpe's truck, a car other than your own,
19 would you relate to the Jury what you observed about that
20 other car and Mr. Thorpe's truck?

21 MR. ROEHRENBECK: I object, Your Honor. I think--

22 (The following was had at the Bench, outside of
23 the hearing of the Jury.)

1 THE COURT: This man was called on direct
2 evidence by the Commonwealth and was cross examined and on
3 redirect, and unless Mr. Schewe can prove something differ-
4 ent that on a different circumstance it would be inadmissible
5 to go back over the same thing.

6 Isn't he simply going to repeat the same thing?

7 MR. SCHEWE: I am going to ask if he had any
8 reason he could be incorrect in his observation.

9 THE COURT: I sustain the objection. That's not
10 rebuttal. I sustain the objection.

11 Does he have anything new to rebut, to say that
12 would be in refutation?

13 MR. SCHEWE: No, just merely that the two issues --
14 one was the car and the other was the position of the
15 victim's car that was in the accident which he testified to.

16 THE COURT: I sustain the objection.

17 MR. SCHEWE: I have no other questions to ask
18 this witness.

19 THE COURT: All right.

20 (The hearing resumed in Open Court.)

21 THE COURT: Ladies and Gentlemen of the Jury, I
22 sustain the defendant's objection to the questions of this
23 witness because it was not rebutting, it was simply a

1 repetition of what the witness said yesterday.

2 We'll be recessed until the witness shows up.

3 You all are free to -- well, for the sake of time,
4 I hate to inconvenience you, but I think it would be better
5 for you to remain together upstairs so we can get started
6 promptly as soon as the witness comes.

7 (Whereupon, at 12:00 o'clock noon, a recess was
8 taken.)

9 MR. SCHEWE: Judge, I merely advise the Court
10 that this is the only witness I intend to call.

11 THE COURT: Mr. Sisson would you approach the
12 Bench, please.

13 How old are you?

14 THE WITNESS: Twenty-four.

15 THE COURT: And, you were in Court last evening
16 when I instructed you to be here at 10:00 o'clock?

17 THE WITNESS: Yes, sir.

18 THE COURT: Do you realize you kept 12 Jurors,
19 the attorneys, the defendant, the Court all waiting since
20 11:05? Is there any reason that you can give the Court as
21 to why you should not be held in contempt for your failure
22 not to comply with the Court's order?

23 THE WITNESS: I was -- I work downtown. I tried

1 my best to get here.

2 THE COURT: The Court finds you in contempt and
3 charges you a fine of \$25. You may take care of the fine
4 at the conclusion of Court today.

5 You may come up here.

6 Is this your next witness?

7 MR. SCHEWE: Yes, Your Honor.

8 (Whereupon, the Jury returned to Open Court.)

9 THE COURT: Ladies and Gentlemen, this witness
10 was just sworn prior to your coming downstairs. So, he is
11 under oath. Go ahead.

12 Whereupon,

13 GARY SISSON

14 was called as a witness by counsel for the Commonwealth, and
15 having been first duly sworn by the Clerk of the Court, was
16 examined and testified as follows:

17 DIRECT EXAMINATION

18 BY MR. SCHEWE:

19 Q Sir, would you state your name and your occupation
20 for the Court?

21 A Gary Sisson, masonry laborer.

22 Q Mr. Sisson, directing your attention to June 6,
23 1980, I ask if you had occasion to be traveling on Route 123

1 in Fairfax County on that day?

2 A. Yes, sir.

3 Q. On that date, did you have occasion to observe a
4 blue dump truck?

5 A. Yes, sir.

6 Q. Where did you first see the dump truck?

7 A. Well, I came from Silverbrook right to 123. I
8 looked both ways and didn't see no automobile. I made a
9 right on 123. The next thing I know the dump truck is
10 right on my bumper.

11 Q. How fast were you traveling at the time the dump
12 truck was on your bumper?

13 A. Forty, forty-five.

14 Q. What, if anything, happened while the dump truck--
15 what did you do when you realized --

16 A. I definitely speeded up and figured he'd slow
17 down, which he didn't, so, I went down. I probably speeded
18 up to 50, 55, slowed down to the speed limit, and he kept
19 on my bumper and then he passed me.

20 Q. Did you happen to notice whether there were any
21 lines of any kind?

22 A. Definitely a double line.

23 Q. Double line?

1 A Yes, sir.

2 Q Is that a solid line or broken line?

3 A Solid line.

4 Q Did you have occasion to come upon the inter-
5 section of Clifton Road and 123?

6 A Yes, sir.

7 Q And, did you have occasion to notice whether
8 there were any vehicles in the intersection?

9 A Yes.

10 Q And, what kind of vehicle was there?

11 A A Mustang was at the intersection taking a left-
12 hand turn.

13 Q Okay. Did you have occasion to notice whether
14 that Mustang was on the right-hand side of the road?

15 A The only time I noticed was when he was trying to
16 avoid the dump truck from hitting it.

17 Q Could you tell whether it was 123 from Burke Lake?

18 A 123 turning left.

19 Q So, it was 123 making a left?

20 A (Nodding in the affirmative.)

21 MR. SCHEWE: That's all I have.

22 CROSS EXAMINATION

23 BY MR. ROEHRENBECK:

1 Q Is it Sisson, S-i-s-s-o-n?

2 A Right.

3 Q When you approached Clifton Road, was there another
4 car or vehicle between you and the intersection?

5 A Yes.

6 Q What kind of car was that, do you recall?

7 A I was too busy looking at the dump truck, I
8 couldn't make that out.

9 Q What did you see, a left-hand turn signal? Did
10 you see a left-hand turn signal or a left hand movement by
11 the car in the intersection?

12 A No, sir. Like I said the dump truck was, you
13 know, when I saw the Mustang, he was avoiding the dump truck.
14 I didn't see no turn signal, no.

15 Q You couldn't see any signals because you couldn't
16 see the car at first or you just saw the truck?

17 A No, I saw the car and the truck.

18 Q Where was the car?

19 A Avoiding the dump truck.

20 Q Were they already over on the left-hand side of the
21 highway?

22 A As far as I know, the car was in the street right
23 in the middle of the street, and the truck came out. He

1 didn't realize the truck was there. He was trying to get
2 out of the way.

3 Q Tell me what you saw?

4 A That's what I saw. I saw the truck and car at the
5 same time.

6 THE COURT: Where were they when you saw them?

7 THE WITNESS: In the road, both of them.

8 BY MR. ROEHRENBECK:

9 Q Was it there already movement by the vehicles to
10 the left or were they going this way or --

11 A Both of them were taking a left turn on Clifton
12 Road, on Clifton Road.

13 THE COURT: Any redirect?

14 MR. SCHEWE: No.

15 THE COURT: May this witness be excused?

16 MR. SCHEWE: Yes, sir.

17 THE COURT: You're free to leave after you take
18 care of the other matter.

19 (Witness excused.)

20 THE COURT: Is there any other evidence or
21 testimony?

22 MR. SCHEWE: Not from the Commonwealth.

23 MR. ROEHRENBECK: No, Your Honor.

1 THE COURT: Ladies and Gentlemen, the Court
2 instructs the Jury that the fact that the defendant has
3 been indicted by the Grand Jury is not evidence against him
4 and you should not consider it.

5 The Court instructs the Jury that the defendant
6 is presumed to be innocent. You should not assume the
7 defendant is guilty because he has been indicted and is
8 on trial. This presumption of innocence remains with the
9 defendant throughout the trial and is enough to require
10 you to find the defendant not guilty unless and until the
11 Commonwealth proves each and every element of the offense
12 beyond a reasonable doubt. This does not require proof
13 beyond all possible doubt, nor does the Commonwealth require
14 to disprove every conceivable circumstance of innocence.
15 However, suspicion or probability of guilt is not enough
16 for a conviction. There is no burden on the defendant to
17 produce any evidence. A reasonable doubt is a doubt based
18 on your sound judgment after a full and impartial consider-
19 ation of all the evidence in the case.

20 The Court instructs the Jury that you are the
21 judges of the facts, the credibility of the witnesses, and
22 the weight of the evidence. You may consider the appearance
23 and manner of the witnesses on the stand, their intelligence,

1 their opportunity for knowing the truth and for having
2 observed the things about which they testified, their
3 interest in the outcome of the case, their bias, and if any
4 have been shown, their prior inconsistent statements.

5 While you have no right to arbitrarily disregard believable
6 testimony of any witness, you do have a right to discard
7 or accept in whole or in part the testimony of any witness
8 which you think is proper to discard or accept when you
9 consider it in connection with the other evidence in the
10 case.

11 You are entitled to use your common sense in
12 judging any testimony. From these things and all the other
13 circumstances of the case, you may determine which witnesses
14 are more believable and weigh their testimony accordingly.

15 The Court instructs the Jury that the defendant
16 is charged with a crime of involuntary manslaughter. The
17 Commonwealth must prove beyond a reasonable doubt each of the
18 following elements of that crime.

19 One, that the defendant killed Christopher James
20 Gainer, and two, that the killing, although unintended, was
21 the direct result of negligence so great as to show a
22 reckless disregard of human life. If you find from the
23 evidence that the Commonwealth has proven beyond a reasonable

1 doubt each of the above elements of the offense as charged,
2 then you shall find the defendant guilty and fix his
3 punishment at one, a term of imprisonment of not less than
4 one year nor more than five years, or two, confinement in
5 jail for not more than twelve months, or three, a fine of
6 not more than \$1,000, or four, confinement in jail for not
7 more than twelve months and a fine of not more than \$1,000.
8 If you find the Commonwealth has failed to prove any one or
9 more of the elements of the offense beyond a reasonable
10 doubt, then you shall find the defendant not guilty.

11 A driver of an automobile having once given a
12 hand, electrical, or mechanical device signal must continue
13 the course thus indicated unless he alters the original
14 signal and takes care that drivers of vehicles and pede-
15 strians are seeing and are aware of the change, and if you
16 find that Christopher Gainer altered his original signal
17 without exercising such care and that the same was the
18 proximate cause of his death, then you shall find the
19 defendant not guilty.

20 The Court instructs the Jury that there is no
21 evidence before you that the weight of the gravel within
22 the defendant's truck at the time of the accident was in
23 excess of that allowed by Virginia law, and while you may

1 consider the truck to be fully loaded, you are not to
2 consider excess weight as a factor in this accident. There
3 is evidence before you that the defendant knew of the
4 possibility that the weight of the gravel he was carrying
5 was in excess of that allowed, and you may consider this
6 fact as it affects his intent and state of mind at the time
7 of the accident.

8 The Court instructs the Jury that if you believe
9 that any witness has knowingly testified untruthfully as to
10 any material fact in this case, you do not have to accept
11 any of the testimony of that witness or you may give that
12 testimony such weight as you feel it is entitled.

13 MR. SCHEWE: May it please the Court, Ladies and
14 Gentlemen of the Jury. I would like to take this opportunity
15 to thank you for your attention and I'd be the first to
16 admit that some of the testimony has been a little confusing,
17 and we certainly have been going on in great length as to
18 numbers, figures, distances, times, and I suspect you may
19 be a little confused. The only thing I can suggest to you
20 now is that all of the exhibits, all of the photographs will
21 be with you in the Jury room when you deliberate. Feel
22 free to go back to those, refer to those if you have any
23 doubts about any of the things that you feel that they

1 indicate to you.

2 As we had indicated in the beginning of this
3 case, it is an involuntary manslaughter case and I think I
4 went over with you the penalties, and I'm going to speak
5 very briefly on the penalty at all. The Legislature on
6 this kind of case has given you an incredible amount of
7 latitude should you determine that the defendant is guilty,
8 and how you're going to treat him, and I would be the first
9 to admit that I had some sympathy for the defendant when
10 I heard him testify, but I submit to you that you not get
11 too carried away with that, the sympathy that you're going
12 to direct to the defendant, and I'm not going to argue
13 with you that he doesn't deserve some. He is a 20 year
14 old man. At the time he did this, he was 19. He's still
15 responsible for whatever acts he committed, but I'd like you
16 to consider the fact that a 15 year old boy died as a result
17 of this accident, and when you consider sympathy in this
18 case and you're thinking about the defendant, think about
19 Christopher James Gainer who is now dead at age 15, and
20 think about that very carefully.

21 The defendant has taken the position, and it
22 certainly is clear on cross examination that this was all
23 Mr. Gainer's fault, and I submit to you Mr. Gainer is not

1 here to defend his actions, he's dead. So, consider that.
2 What the Commonwealth was able to present to you today was
3 witnesses other than Mr. Gainer, certainly who we would love
4 to have Mr. Gainer to testify for you as to exactly what he
5 did, but that's not possible.

6 What we have is people who were in the car with
7 him who testified to what he did, how the car moved. We
8 have additional people who observed the accident.

9 Now, these people aren't friends of Mr. Gainer's,
10 they're not friends of Mr. Thorpe's. They are people who
11 just happened to be there at the time.

12 The testimony of Mr. Haines contradicts across
13 the board everything that the defendant has said. He said
14 the speed was 50, 55 miles an hour, not 40 or 45, and I
15 submit to you in regard to speed that the defendant has
16 testified that a brand new dump truck wouldn't do any more
17 than 40 or 45 miles an hour.

18 Now, I can't say that isn't true. I submit to
19 you that you will be allowed to use your collective wisdom
20 when you go back in that Jury room, and decide whether a
21 brand new dump truck, whether the credibility of that
22 witness, that defendant is accurate that a dump truck
23 wouldn't do any more than 40, 45 miles an hour, whether it's

1 loaded or not. I submit to you that it would.

2 Now, we have a lot of testimony as to speed.
3 Everybody has testified that the speed of the truck was in
4 excess of 45 miles an hour, and I submit to you that that
5 is, in effect, an act of negligence. That's excessive
6 speed, that's one thing that the defendant did wrong.

7 We have the testimony of an expert witness who
8 took all the figures from all the measurements at the
9 scene of the accident and he has testified for you to a
10 reasonable scientific certainty that the speed of the truck
11 just prior to impact in that intersection was a minimum,
12 a minimum, Ladies and Gentlemen, of 54 miles an hour.

13 The defendant's testimony is that he was doing
14 25, and I submit to you that someone is wrong, and I submit
15 to you that that someone is the defendant.

16 I submit to you that Officer Hughes has no reason
17 to come in here and give you a lot of nonsense, a lot
18 of mumbo-jumbo and a lot of information that is false. I
19 submit to you that the defendant does. It's his trial.
20 None of these other witnesses are on trial today, and that
21 the instructions that you get on the credibility of the
22 witnesses goes over reasons why people would not tell the
23 truth. Read that instruction very carefully.

1 In addition to the speed, we have the evidence
2 that the defendant knew or should have known, certainly had
3 the information he needed to show that he was overweight.
4 We have expert testimony from Officer Hughes that regardless
5 of how the weight was set in that truck, the fact that the
6 truck was overloaded or the fact that the defendant knew
7 it was overloaded should have put him on notice to drive
8 with additional care because he knew or should have known
9 that the truck was overweight and that that would impact
10 on his ability to handle that truck. I submit to you that's
11 another thing the defendant did wrong.

12 The testimony, if you believe the Commonwealth's
13 witnesses, and those are all the witnesses in this case,
14 save one, the defendant, that is that Mr. Gainer's car was
15 at the intersection in the middle of the intersection in a
16 routine manner was attempting to execute a left-hand turn.
17 As he attempted to execute that left-hand turn, the
18 defendant's truck came up into the intersection at an
19 excessive rate of speed, a minimum of 54, and attempted to
20 pass Mr. Gainer's car on the left-hand side, and that when
21 he did that, he lost control of his truck. This is, by
22 the way, a 25 ton truck, and there are 25 tons moving on
23 that highway at this time, and that the truck goes up on

1 two wheels. The two cars leave the road. The truck falls
2 on top of the Gainer car and Mr. Gainer is killed. That
3 is passing in an intersection. That is another thing the
4 defendant has done wrong.

5 Leading up to the accident itself, we have
6 testimony from two independent witnesses, once again, with
7 no stake in this case whatsoever, who testified that the
8 defendant was speeding on Route 123 and that he passed two
9 separate vehicles on a double solid yellow line; two more
10 things the defendant did wrong.

11 Mr. Sisson just testified to you that the
12 defendant's speed when he was on his bumper and probably
13 following too close to Mr. Sisson's vehicle, was 50 or 55
14 and that he stayed on his bumper until he passed him. A few
15 more things the defendant did wrong.

16 What I am trying to say to you all is this. You
17 take everything that the defendant did in this case,
18 particularly attempting to pass an overloaded dump truck or
19 a truck he believed was overloaded, in an intersection when
20 someone is already in that intersection executing a left-
21 hand turn is reckless. I submit to you it fits the
22 standard and the standard is this, that the killing, although
23 unintended, and we have no argument with that, there's no

1 question that the defendant did not intend to kill
2 Christopher Gainer. We're not arguing that to you. What
3 we're saying is that his behavior, that the death was the
4 direct result of negligence so great as to show reckless
5 requisite disregard for human life, and I submit to you
6 that is precisely what he did. He took a big truck fully
7 loaded, at least with his knowledge, that it was overloaded
8 and went flying into an intersection at an excessive rate
9 of speed and killed Christopher Gainer. And I submit to
10 you there is no doubt about Mr. Gainer being dead, and
11 there is no doubt that Mr. Gainer died in that accident.

12 So, element number one in your finding instruction
13 is clear, Gainer died in that accident, and it was the
14 defendant's truck that did it, and that is, the defendant
15 killed Christopher James Gainer. Number one, we have
16 established that.

17 The question is, and the question for you all to
18 consider is, was this reckless disregard for human life.

19 Now, I submit to you that had this been done in
20 a passenger vehicle, it would be a fairly close case. I
21 submit to you that that would be reckless disregard whether
22 it was a truck or not, but Ladies and Gentlemen, we're
23 not talking about a truck and I'm not going to argue to you

1 that the defendant actually has a higher duty simply
2 because he drives a truck, but his duty is tied to the
3 practical situation that he's in, all of the circumstances
4 surrounding them. It's a subjective standard to the
5 defendant whether he was acting in this particular manner
6 and I submit to you that on all the facts, that's exactly
7 what he did. He took a 25 ton truck at a high speed and
8 went into an intersection. He had 756 feet to view that
9 intersection, to view that car in front of him, and I
10 submit to you that he had all the time in the world. He
11 could have stopped that truck. He could have slowed down
12 that truck so that even if what he says is true, and that
13 Gainer did that while maneuvering in the intersection, he
14 could have still stopped.

15 Now, as to what the defendant says, the defendant
16 tells you number one, this wild story about Gainer driving
17 into the intersection turning to the right and swinging all
18 the way back across the intersection. He says he did that.
19 Gainer executed this fancy maneuver in front of him when
20 he was only three or four car lengths in front of the
21 truck. I submit to you that he would have had about one
22 second to make that maneuver. He would have had to get
23 off that road and swing around and go in the other direction

1 right out in front of that truck, and he would have had one
2 second to do it, and I submit to you that if that is what
3 happened, the truck would have hit the Gainer vehicle
4 broadside in the middle of the intersection, not the way
5 we've showed you the accident happened with the two vehicles
6 going parallel like this, and the truck falling over on top
7 of it and killing Gainer. So, I submit to you that's just
8 not the way it happened.

9 The witnesses in the car testified that car never
10 was to the right and never on the Burke Lake Road at all.
11 The witnesses who observed the accident said the same
12 thing, that the car was making a routine left-hand turn,
13 that's all. Now, that goes not just to what happened in
14 this accident, but to the credibility of the defendant
15 himself.

16 Another thing that goes to the credibility of the
17 defendant he denied, clearly denied on cross examination
18 having ever passed anybody on a double solid yellow line,
19 and what does Mr. Sisson come in here and tell you, he
20 comes in and tells you that no doubt about it, he passed
21 me on a double yellow line and not only was he going a lot
22 more than 45, he was doing 50 to 55. The defendant says
23 his truck won't do that. Mr. Sisson had an opportunity

1 to observe the speed. He realized the truck was right on
2 his bumper. He sped up hoping the truck would leave him
3 alone or back off on him a little bit. He said at 50 or
4 55, the truck is still right on my bumper. One more thing
5 that goes to the credibility of the defendant to tell you
6 the truth, and I submit to you that not a single witness
7 the Commonwealth has put on the stand has any reason to
8 tell you anything but the truth, and I submit to you that's
9 exactly what they have done, and I submit to you through
10 their testimony they have proved to you beyond a reasonable
11 doubt that the defendant is guilty of involuntary manslaughter
12 er and I ask you to return that verdict.

13 Thank you.

14 MR. ROEHRENBECK: Ladies and Gentlemen, I would
15 also like to express my appreciation in being patient.
16 These things are trying on you people as much as they are
17 on the Court. Mr. Schewe mentioned this was a tragic
18 situation. I mentioned it at the beginning of the trial.
19 It certainly was a tragedy. What I don't want you to do
20 is mix up the fact that it was a tragedy with some type
21 of retribution against this man here who stands before you,
22 age 20 years old, with no prior record, not even a traffic
23 record of note as he testified to mix up some kind of

1 retribution to this finding of this Court because we're
2 not here to compensate the poor family, the Gainers, that's
3 another action that can be done in a civil action for
4 compensation for wrongful death.

5 We're here to find out whether or not that man
6 has violated a felony statute of the State.

7 It is a tragedy and hard job for anybody besides
8 that, but I'm going to ask you to consider very carefully
9 the instruction and it's hard to interpret it without using
10 common knowledge, but there really is a difference and I
11 know some of you have been involved personally or as Jurors
12 in a civil action where a person is suing another person
13 in an automobile accident because of negligence. This
14 isn't that.

15 What I'm trying to tell you is that even if you
16 found Mr. Thorpe negligent, which I don't believe he is,
17 that wouldn't be enough. It's got to be total disregard,
18 reckless disregard or whatever in a criminal case to convict.
19 Why is that? Well, because if a man gets found guilty in a
20 civil case and owes money, he's got insurance or whatever.
21 He has to live with it, but a felony is something that
22 somebody carries for the rest of their life. You are
23 convicted of a felony, you don't vote. It's something you

1 can never erase. It's something whatever you do, whatever
2 livelihood, it has to stick and a lot of cases are denied
3 access to certain professions or certain jobs. This has
4 not to do with the fact that it is something which you
5 should consider as a reason the Legislature and the case
6 law has made it a high standard on the State to prove this
7 type of situation, and I ask you before I go into what I
8 think the facts are, to consider that when you go back
9 there, that that level is so high to protect somebody like
10 that because the law doesn't want somebody to be convicted
11 of such a heinous offense for anything, just ordinary
12 negligence or carelessness.

13 Mr. Schewe made a number of points that he says
14 the evidence shows that Mr. Thorpe was grossly negligent.

15 Let's take a look at each of those items. He
16 mentioned that the people in the car, there were two girls
17 that testified in the car. I believe one girl's name was
18 Pamela and the other one was Elizabeth. Be that as it may,
19 one girl even testified she didn't see any blinkers one way
20 or the other. She recalled the car not going to the right,
21 but she remembered it going to the left when the accident
22 happened. Elizabeth, the second girl that testified, she
23 said she remembered Mr. Gainer making a left blinker turn.

1 She thought right before that she was busy talking and
2 laughing with Pam. I ask you to use your common sense.
3 It's a car full of teenagers driving down the road. They
4 don't have any reason to believe, they're not going to think
5 a tragedy is going to be coming. Those two girls weren't
6 lying. Their recollection this long after they remember
7 the car going to the left, and the truck fuel on them,
8 probably the worst thing that has ever happened to them,
9 but I don't think their testimony leaves any credence to the
10 testimony to the fact that the car didn't go to the right.

11 I don't believe, therefore, it's inconsistent with
12 Robbie Thorpe's testimony of what he did when he got to that
13 intersection.

14 Mr. Schewe, the Commonwealth, makes a big statement
15 about Mr. Haines. Well, you recall Mr. Haines' testimony.
16 He testified that there was a car behind him, passed prior
17 to Community Lane which, I believe, there was testimony that
18 was about a mile and a half, at least, from the intersection.

19 Mr. Sisson, you heard from last, also testified
20 to that. Mr. Thorpe said yeah, I passed a car, he recalled;
21 but his testimony and you can see in the picture there
22 marked as an exhibit, that it was between the two Community
23 Lanes which, of course, is a dotted yellow line.

1 Mr. Haines said he was 300 yards in front of
2 Mr. Thorpe. So, he easily could be mistaken exactly where
3 that happened behind him, but let's say that you believe
4 that Robbie here was incorrect, that he really passed the
5 car before he got there, what in the world does somebody
6 have to do a mile and a half from the intersection.

7 Now, you might say well, gee, maybe the truck
8 kept going that way. Let's look at Mr. Haines' testimony.
9 He said when they got to Burke Lake Road, the gravel road,
10 he slowed to five, ten miles an hour and that Mr. Thorpe's
11 truck went by him there over the double yellow line, and he
12 didn't think he lost track of the truck. I asked him on
13 cross examination, referring to an earlier hearing, didn't
14 he testify that he missed it, briefly, or had it out of his
15 sight. As you remember, I introduced that picture showing
16 a northward shot from that gravel road, and that picture
17 illustrated some points. It curved out of sight. He said
18 no, he didn't recall losing sight of the truck. He
19 testified that the truck went around him at a high rate of
20 speed which he thought, I think, originally was 50 or 60
21 miles an hour, but on cross examination he wasn't sure
22 because he was stopped. Then he testified he sped back up
23 to 40 miles an hour after the car in front of him turned

1 into the gravel road. Yet, he was going 45 miles an hour
2 from there which was a mile by the police officer's
3 testimony to Clifton Road and yet, he was 100 yards away
4 when the accident happened.

5 Now, if he was going 45 miles an hour and he was
6 almost stopped and Mr. Thorpe went around him and went up
7 to the intersection, he was only a hundred yards. Obviously
8 Mr. Thorpe had to be going around 30 miles an hour, either
9 that or Mr. Haines was going 80. How in the world would he
10 have caught up in a hundred yards, in a mile's course of
11 travel.

12 So, I ask you to take his testimony at face value.
13 Obviously Mr. Haines is not lying. He doesn't have anything
14 against Robbie Thorpe. He doesn't know nor does he have
15 any connection with the prosecution of this case, but this
16 has been eight months ago and he's trying as best he can to
17 remember what happened, and he obviously doesn't remember
18 that well if he can make those types of statements that he
19 was going 45 and caught up to him within a hundred yards.
20 Nevertheless, wherever he was, even near the intersection,
21 the only thing he said he saw was a left signal of the
22 Mustang which is not inconsistent with what Robbie Thorpe
23 said. He said at some point there was a left signal, but

1 the car maneuvered over back in front of him.

2 I would submit that Mr. Haines' testimony, if
3 taken in light with these distances and mileages, he
4 probably got there about the time the cars were going down
5 the road, down Clifton Road, and I don't think there is an
6 inconsistency with the Commonwealth or the defense that
7 they did go down Clifton Road, and the truck fell on the
8 Mustang.

9 The contention is what happened before. If you
10 take that testimony at that point, there is absolutely no
11 evidence contrary to his testimony that the car went at
12 least partially off of 123 with the right blinker. There
13 has not been one witness for the Commonwealth that said
14 that they didn't see a right blinker.

15 Mr. Haines had a truck before him and so did
16 Mr. Sisson who said when he got there, the truck had
17 already gone on Clifton Road.

18 As far as Mr. Sisson and Mr. Haines' testimony,
19 they don't add or subtract anything. They don't do a thing.

20 Now, the Commonwealth made a lot to do about the
21 testimony of Officer Hughes, and I'll be the first to admit
22 Officer Hughes is obviously an expert. He was qualified
23 as a legal expert which means in the law he's allowed to

1 give an opinion.

2 It doesn't mean that his opinion is the gospel
3 truth. It's an opinion. Most witnesses can only state
4 observations or facts that they know. They can't give an
5 opinion. A doctor can give an opinion about medicine and
6 an engineer about engineering, and so forth. A person who's
7 been trained as he has as a reconstruction specialist or
8 perhaps a physicist can give an opinion, and you'll recall
9 his testimony and that of the testimony of the police
10 officer that did the measurements, that it was based on
11 those facts, that is what he was given by the other officer,
12 but he also testified on cross examination that he never had
13 the opportunity or did test this particular vehicle that
14 Robbie Thorpe was driving, that is, he has no knowledge of
15 the brakes, the tires, or the suspension or anything of that
16 nature. And I ask you to use your common sense. Obviously,
17 there are other factors other than skid marks or coefficient
18 drag factors as he testified to that would have to do with
19 the speed of the vehicle.

20 Now, this doesn't mean that his total of 54 miles
21 an hour is necessarily off, but it could be tendered by
22 that Robbie's testimony was he slowed down when the car
23 looked like it was going right. He sped up a little bit.

1 He thought it was 35, let's say he was wrong, and he was
2 going 40 or maybe 45. There's only a 9 mile hour -- even
3 if you accept as the gospel truth Officer Hughes' testimony,
4 and I ask you not to do that. It was a strong opinion,
5 but there were facts. He didn't decide given that point
6 nine miles an hour is certainly a far cry from negligence,
7 excuse me, from gross negligence and we're talking gross
8 negligence and speed or reckless disregard. We're talking
9 80 miles an hour or something of this nature. Eighty miles
10 an hour wouldn't even be stopped on the beltway for a
11 speeding ticket. There's another thing that comes into
12 this that Mr. Schewe mentioned, and the instruction, I know
13 it's a hard distinction to make, but you need to think that
14 there's never been any evidence that the truck was over-
15 weight in the sense that the Commonwealth didn't produce
16 calibration and so forth, that it was -- there was a ticket
17 given to Mr. Thorpe, and the reason that evidence was
18 allowed in was supposedly to show some kind of intent on
19 his part to violate the law, but you heard his testimony
20 of how they put gravel on the truck.

21 They go under this pug mill thing and blow a horn
22 and he said he tried to get it as close as possible and
23 that when the horn blows, that it takes a couple of seconds

1 before it is cut off and that he's aware of this. In
2 addition to that, if he was stopped on the usual scales,
3 there's one up here at 66, and one down in Prince William
4 County on 95, that the State people there, the troopers or
5 whatever, always give the truckers a five percent leeway.
6 If you take that calculation and add it to his 49,500, I
7 think was the testimony, that was allowed on an 18 foot
8 wheelbase truck, he really was only over a thousand -- a
9 little bit in excess of a thousand pounds which sounds
10 like a lot, but you're talking about a vehicle that has
11 49,000 pounds on it. If you compare that, that's a small
12 margin. And, the additional testimony was that he, assuming
13 that he had a ton or two tons extra on the truck, he would
14 make a grand total of between \$5.00 and \$5.50. Is somebody
15 for \$3 or \$4 going to put extra weight on a truck to make
16 more money? What other possible motivation would a trucker
17 have than to make more money, certainly \$3 isn't going to
18 make any difference. I don't care what your economic
19 situation is. I know that's a ridiculous thought that that
20 would be the case.

21 Mr. Schewe says that the testimony of the
22 defendant, that it's a wild story, that it was made up.
23 I ask you to use your common sense. Is it anymore wild

1 to think of somebody doing something as crazy as trying to
2 pass a car with a left signal in a left lane and I ask you
3 to take notice, this man has no record. He's testified
4 he's never been charged, convicted of any type of a crime,
5 not just a felony, but not reckless driving, not overweight,
6 not anything of that type of nature and the Commonwealth
7 would have you to believe that this guy was driving like
8 crazy, going through all these things and he comes here.
9 It's unfortunate, you know, that this young man was killed.
10 Obviously, he's testified that he was sorry and that it's
11 really bothering him.

12 Mr. Schewe says gentleman, if it isn't your fault,
13 why are you upset? How could you be upset about something
14 that isn't your fault? I submit, that's a ridiculous way
15 of looking at it. If you're driving down the road and
16 somebody runs out in front of you and gets killed, and it's
17 not your fault, you're not going to feel bad. If you're
18 ever involved in an accident and somebody is seriously
19 injured or killed, it's going to bother you. It's going
20 to weigh on you for a long time.

21 This man has lived with this since then. He's
22 coming here to tell you what he recalls happening. You
23 heard his testimony. You heard the cross examination. I ask

1 you, it speaks for itself. This man was telling the truth.
2 There was no evasion on his part. He answered not only
3 my questions because he's my witness and my client, but
4 Mr. Schewe's, and Mr. Schewe tried very significantly
5 because that's his job to impeach his testimony and I
6 submit that he failed.

7 Ladies and Gentlemen, to convict Mr. Thorpe on
8 this evidence of a crime of this nature, a felony offense,
9 on an offense that calls for total or reckless disregard
10 of human life has exceeded, would be tragically exceeded
11 by this young man that was killed. This young 15 year old
12 who probably hasn't been driving very long. And that as it
13 may, I don't think we're in a situation here, an eye for
14 an eye or a tooth for a tooth, I would ask you in your
15 good conscience to do justice and find him not guilty.

16 THE COURT: Mr. Schewe?

17 MR. SCHEWE: Ladies and Gentlemen, because the
18 Commonwealth carries the burden, I get one last opportunity
19 to speak to you and I'll make it very brief.

20 I submit that I warned you that the plea from the
21 defense was going to be for sympathy. I asked you if, as I
22 did in the beginning, as I did when I closed, to consider
23 the 15 year old boy who is dead. I would admit to you that

1 Mr. Thorpe is facing a possible felony conviction. Mr.
2 Gainer doesn't even get that opportunity. He doesn't get
3 anymore opportunities. So, when you consider sympathy,
4 consider Mr. Gainer. Consider his family. This isn't an
5 eye for eye or tooth for tooth, we're not asking you for
6 money for the Gainer family. Mr. Roehrenbeck is correct.
7 I don't represent Mr. Gainer. I do represent the Common-
8 wealth of Virginia and there's a law that says if you act
9 in a reckless manner in regards to human life, that you are
10 to be punished for it. That's why we're here and that's
11 the only reason why we're here and I submit to you that
12 we've proved that. It's just a few things that Mr.
13 Roehrenbeck has said to you.

14 Number one, he said you don't have to believe
15 those girls. Well, those girls happened to be two people
16 that were in the car. I submit to you that you have to give
17 them great weight. They were there and one testified that
18 she saw Mr. Gainer activate that left turn signal. No one
19 saw him activate a right-hand turn signal.

20 I submit that because there was no right-hand
21 turn to begin with. Every single Commonwealth witness
22 said the same thing. They never saw that car go to the right
23 at all, and I submit to you if it had, it would have been

1 absolutely impossible for the Gainer vehicle to get over
2 on the right and come all the way back across in a period
3 where that truck is traveling in a 30, 35 mile an hour and
4 is only 45 feet away.

5 Ladies and Gentlemen of the Jury, use your common
6 sense. Is that possible? I submit to you that it's not.

7 Apparently Mr. Roehrenbeck has you believing
8 Mr. Haines is either lying or blind. I submit to you that
9 he's neither. I submit to you that what he said to you is
10 the truth. He was in a pretty good position to observe
11 what happened at that intersection. He was the first car
12 behind the truck. Mr. Sisson was the second car behind the
13 truck. Both of them testified that the victim, Mr. Gainer,
14 was executing a routine left-hand turn. He didn't say
15 anything about him being on the right, and they were asked
16 did you ever see him on the right, no. No one except the
17 defendant saw Mr. Gainer do that.

18 As far as Officer Hughes' testimony, Mr.
19 Roehrenbeck on cross examination, and now in argument has
20 said well, the expert didn't know anything about tires,
21 didn't know anything about brakes, didn't know anything
22 about suspension. All those things would be very important
23 if there was anything wrong with them, and I submit to you

1 you have no evidence whatsoever that there was anything
2 wrong with any of those things, and the testimony from the
3 expert was if all those things were working properly, then
4 my statements to you, my figures to you are accurate, and
5 I submit to you that the defendant has taken the stand.
6 Not a word, there wasn't anything wrong with that truck.

7 If you think for a second that the defendant
8 would take the stand that there was something wrong with
9 his truck, he wouldn't tell you today.

10 I submit to you that that truck was in good
11 working order. If it is, then you can rely, if you wish,
12 on what Officer Hughes has told you. He's got no reason
13 to tell you anything else.

14 Now, the overweight. Well, it was only a couple
15 thousand pounds, but the defendant got on the stand and
16 said well, you know, I get that five percent total, and I
17 asked him on cross examination, you knew you were over five
18 percent, didn't you, and he said yeah, I did consider that.

19 The last thing I want you to consider is what
20 Mr. Rochrenbeck told you all along about common sense.
21 Does it make common sense? Is it good common sense for
22 the defendant to have done what he did, allegedly did? I
23 submit to you it is not. That is why we're here talking

1 about reckless behavior, that's not common sense. It's
2 reckless behavior, and that's what we're saying he did. I
3 submit to you we proved it, and I ask you to return that
4 verdict I asked you for before, guilty.

5 THE COURT: Ladies and Gentlemen, we would like
6 for you to retire. You'll have the exhibits. You'll have
7 the verdict forms, one finding the defendant not guilty and
8 one finding him guilty and fixing his punishment, and the
9 place where you fix punishment and the instructions of the
10 Court. I suggest that you first select a foreperson. Once
11 you have selected a foreperson, then you're going to be
12 free to decide.

13 In the course of your deliberations, when you
14 want to take a break for lunch, how long you want to take
15 or what procedure you want to follow. All I ask is that
16 you let us know, that you may not discuss the case unless
17 all members of the Jury are present in the Jury room at the
18 same time, and if you break, then please remember that
19 with the number of witnesses here today that you are to
20 remain aloof from the people involved in the case, and if
21 you hear the case being discussed, bring it to my attention.

22 Thank you very much for your attention.

23 (Whereupon, the Jury retired to the Jury room.)

1 THE COURT: Ask the Jury to come down.

2 (Whereupon, the Jury returned to Open Court.)

3 THE CLERK: Members of the Jury, have you reached
4 a verdict?

5 THE FOREPERSON: We have.

6 THE CLERK: Is the verdict unanimous?

7 THE FOREPERSON: Yes, ma'am.

8 THE CLERK: We, the Jury, joined on the issue in
9 the case of Commonwealth of Virginia versus Robert S.
10 Thorpe, Jr., defendant, find the defendant guilty of
11 involuntary manslaughter as charged in the indictment, and
12 fix his punishment at a \$1,000 fine plus six months in the
13 County jail. Patricia L. Cooney, Foreman.

14 THE COURT: Are there any motions while the Jury
15 is still present?

16 MR. SCHEWE: Not by the Commonwealth.

17 THE COURT: Ladies and Gentlemen, I want to thank
18 you for your service. We appreciate the attention that you
19 gave to the case. I know it was a difficult case for you
20 and thank you. You are excused, and I want to talk to one
21 Juror, not about this case, but about her service causing
22 some problems. Miss Cooney, would you come up.

23 (Whereupon, the Court consulted with Miss Cooney.)

1 (Whereupon, the Jury retired from Open Court.)

2 THE COURT: All right, are there any other
3 motions?

4 MR. ROEHRENBECK: Your Honor, I would have a
5 motion for a pre-sentence report.

6 THE COURT: Very well, this case will come back
7 for sentencing on March the 27th at 10:00 o'clock.

8 MR. ROEHRENBECK: I ask that bond be continued
9 also, Your Honor.

10 MR. SCHEWE: I don't object to that.

11 THE COURT: The bond is continued.

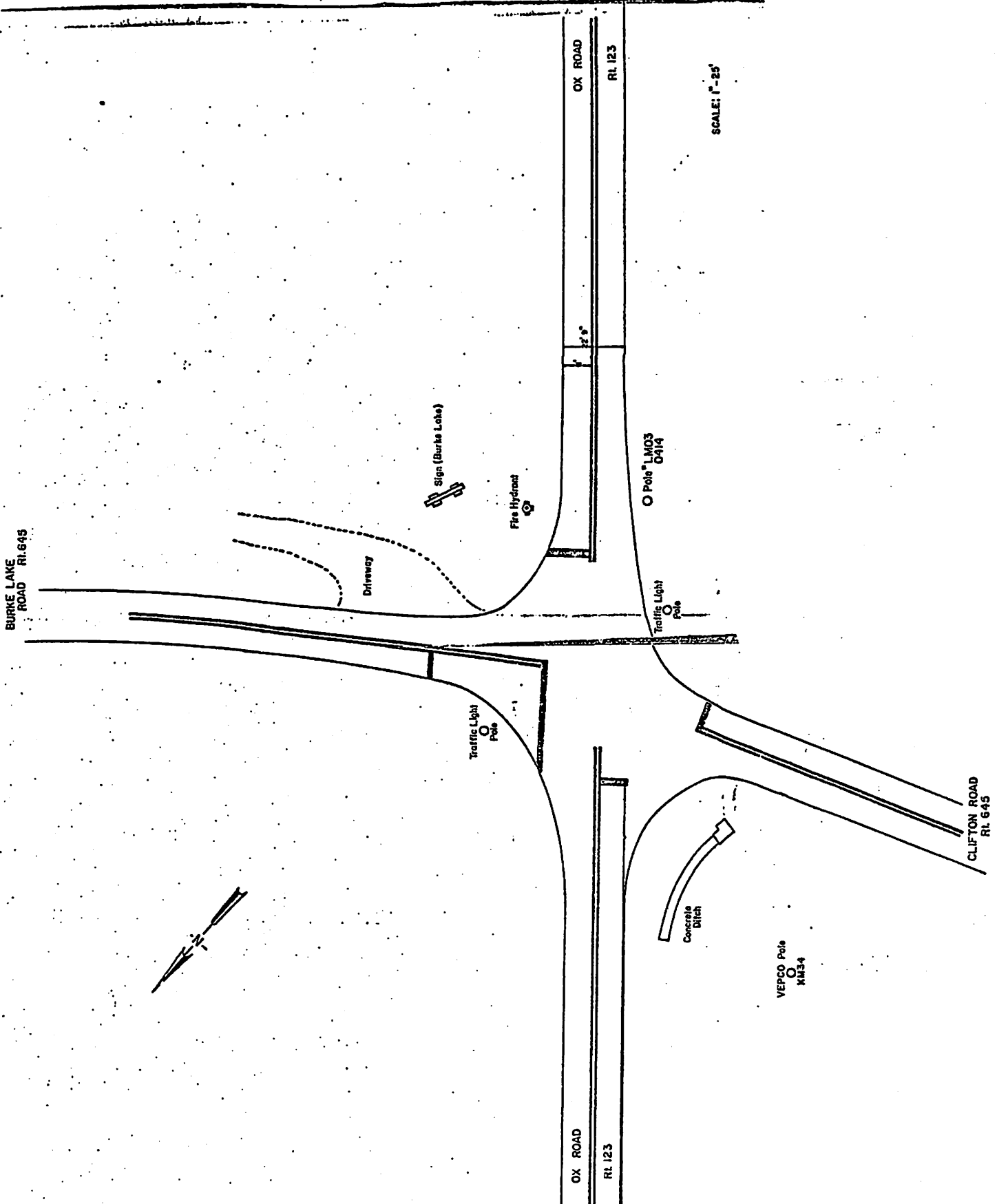
12 Mr. Thorpe, would you please come up and give
13 some information to the Clerk.

14 MR. SCHEWE: Your Honor, may I be excused. I
15 have another Judge waiting downstairs.

16 THE COURT: Surely. Very well, it is continued.

17 (Whereupon, at 2:40 o'clock p.m., the hearing
18 in the above-entitled matter was concluded.)
19
20
21
22
23

Commonwealth Ex #1



Commonwealth of H2

BURKE LAKE
ROAD Rt. 645

Sign (Burke Lake)

Fire Hydrant

OX ROAD

Rt. 123

O Pole LM03
0414

Traffic Light
Pole

SCALE: 1"=25'

Driveway

Traffic Light
Pole

OX ROAD

Rt. 123

CLIFTON ROAD
Rt. 645

COMMONWEALTH EXHIBIT 3

MAP

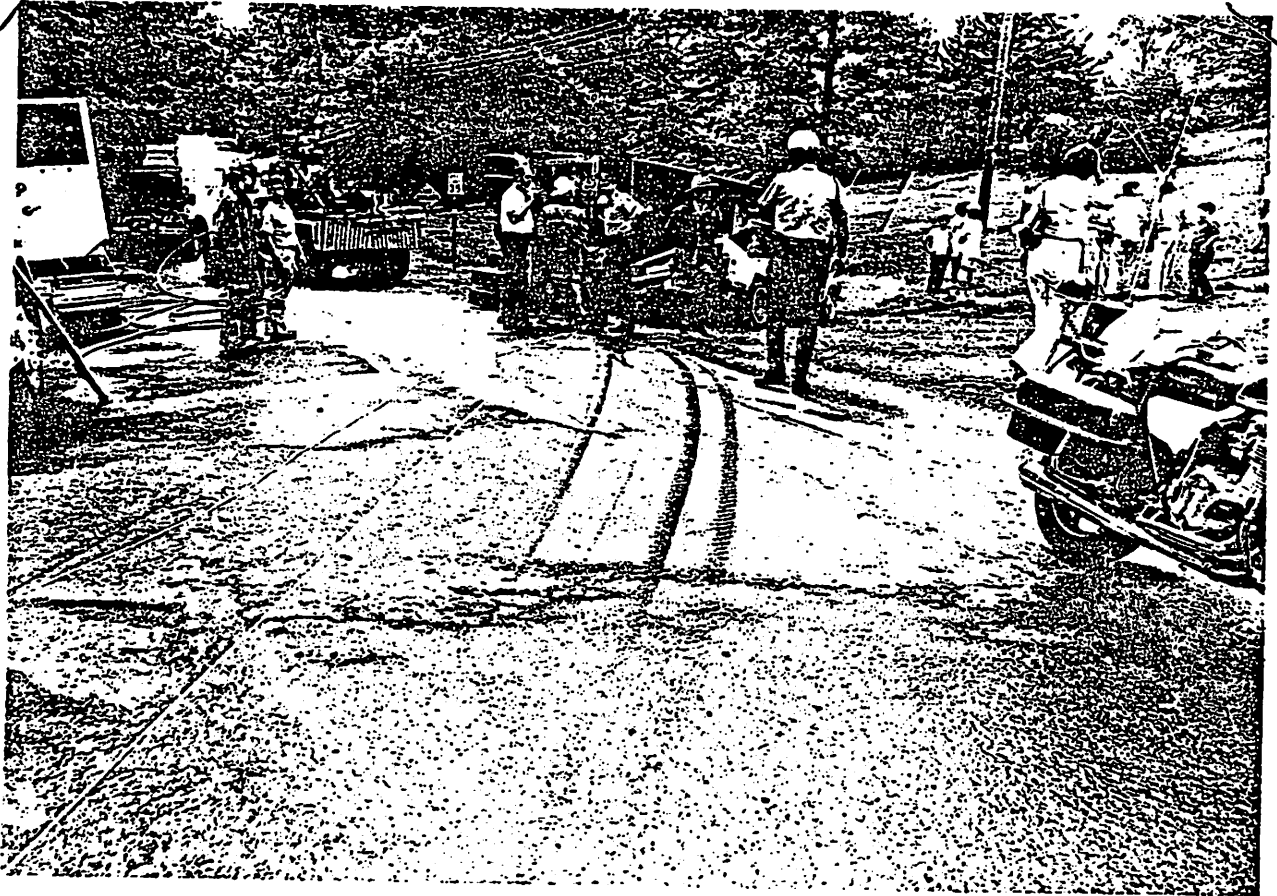
PRINTERS NOTE:

The above mentioned exhibit can not be reasonably reproduced. This exhibit may be found in the record filed in the Clerk's office, Supreme Court of Virginia.

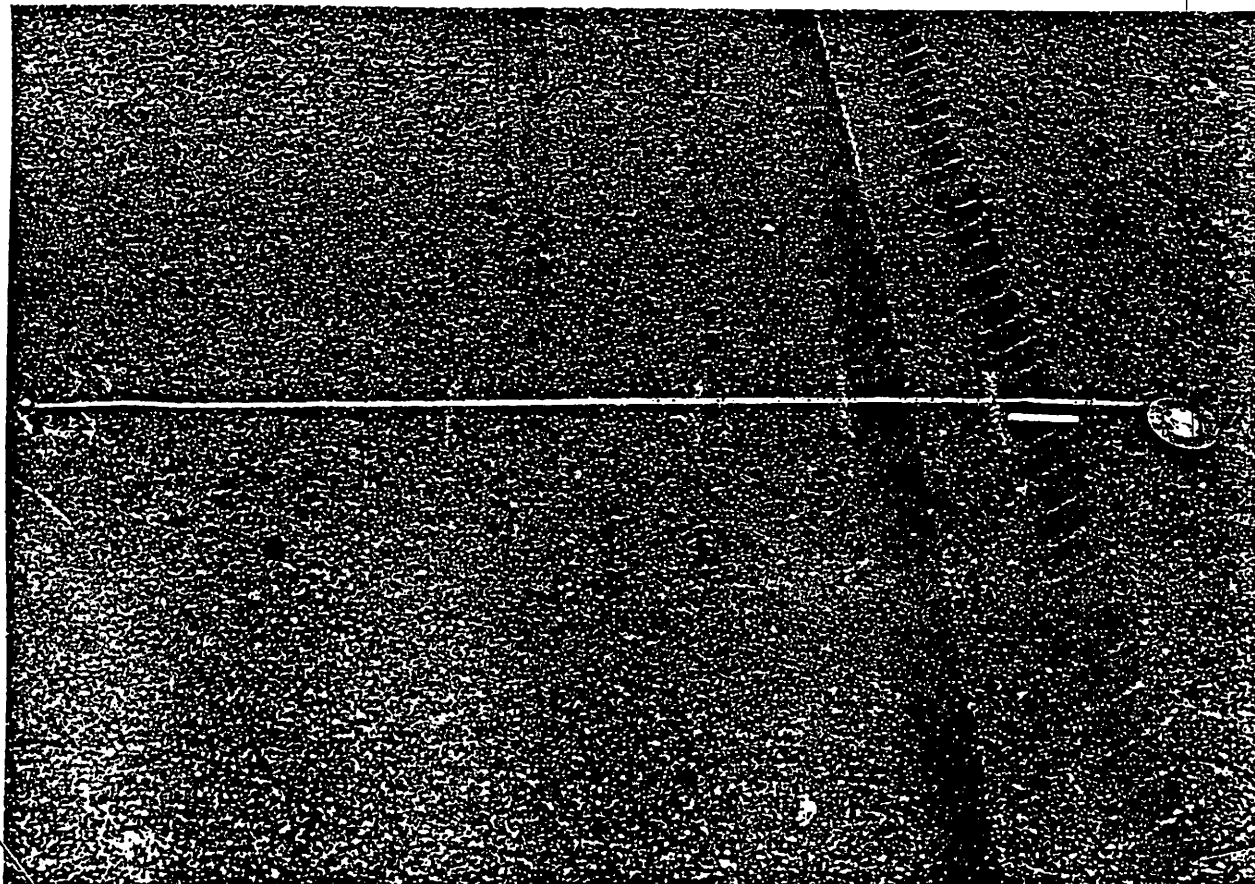
COMMONWEALTH EXHIBIT #4



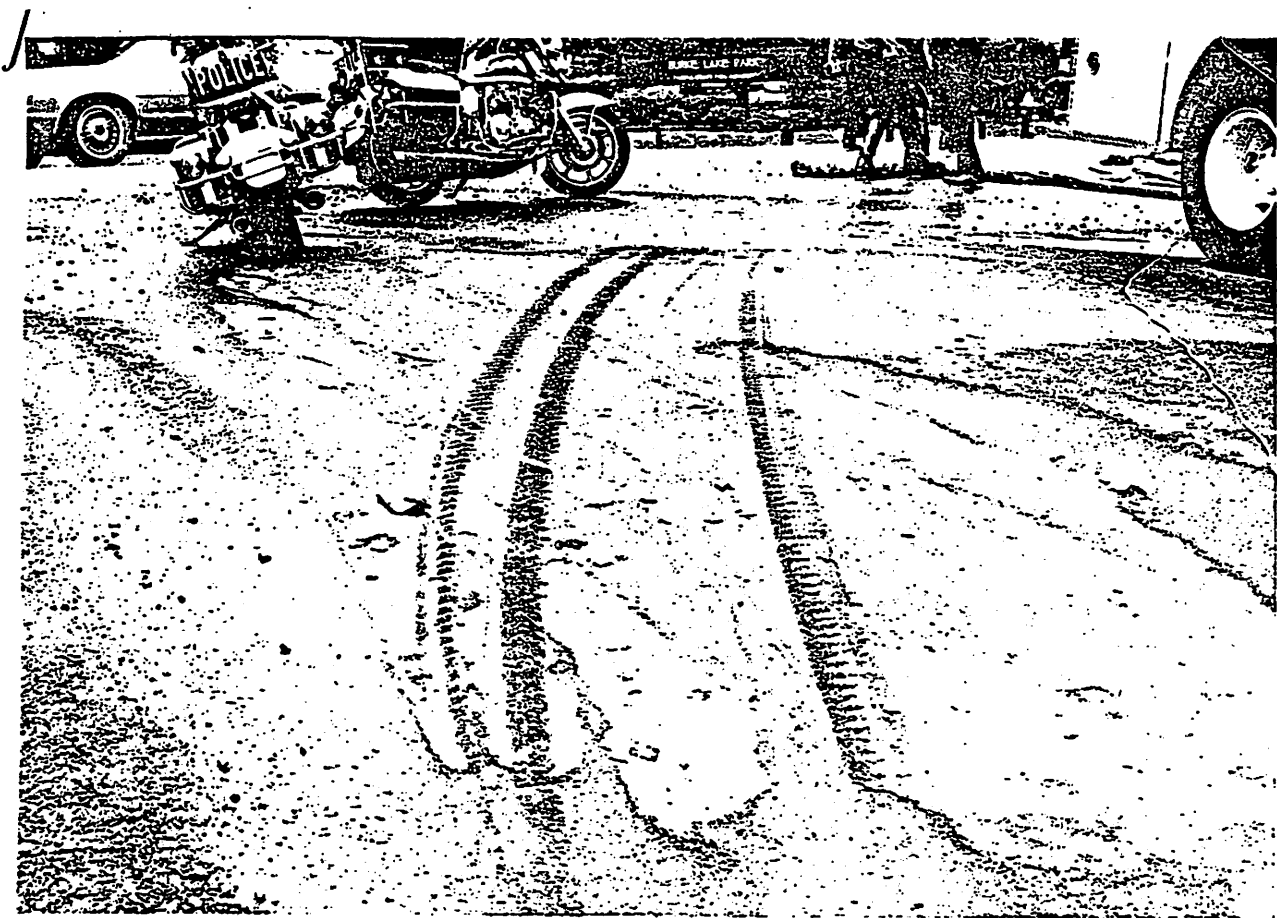
COMMONWEALTH EXHIBIT #5



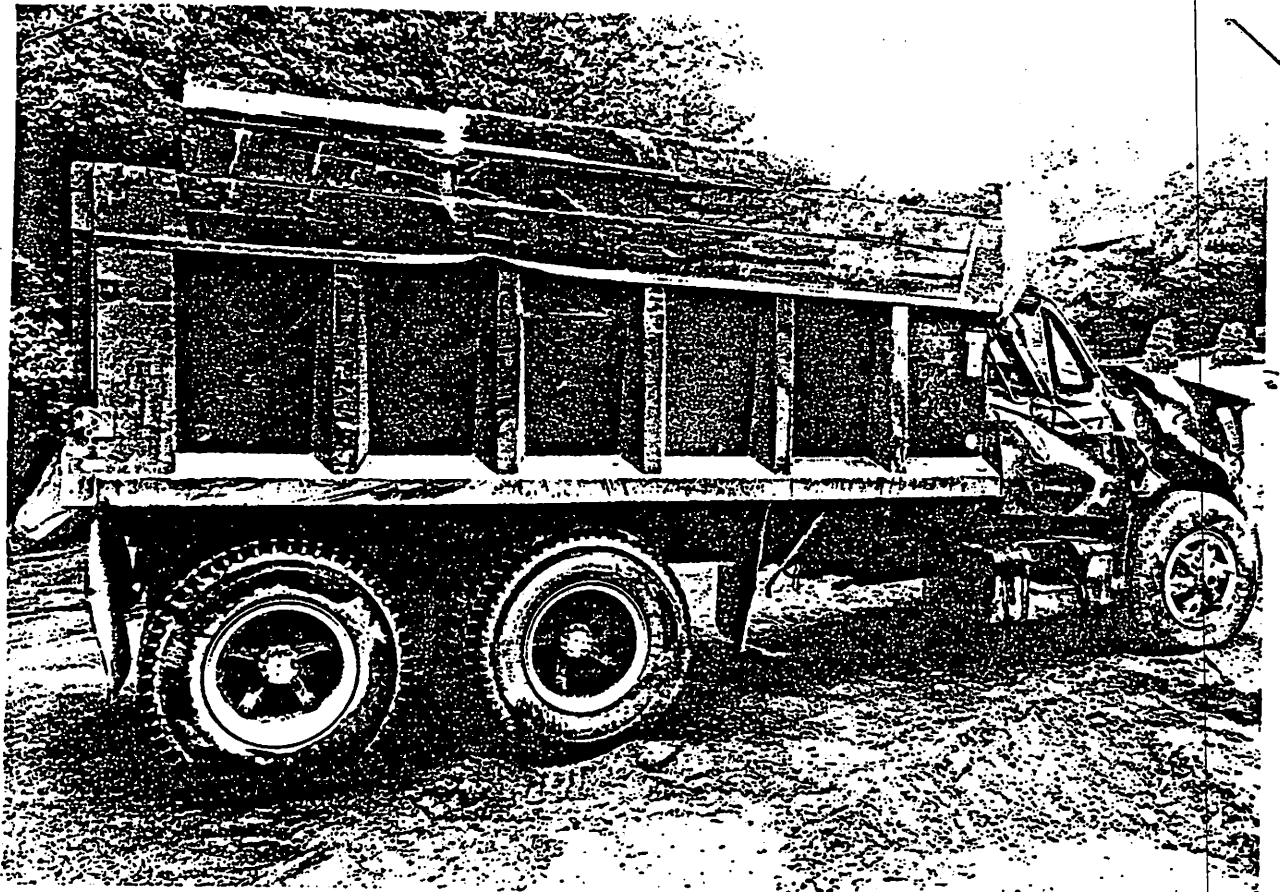
COMMONWEALTH EXHIBIT #6



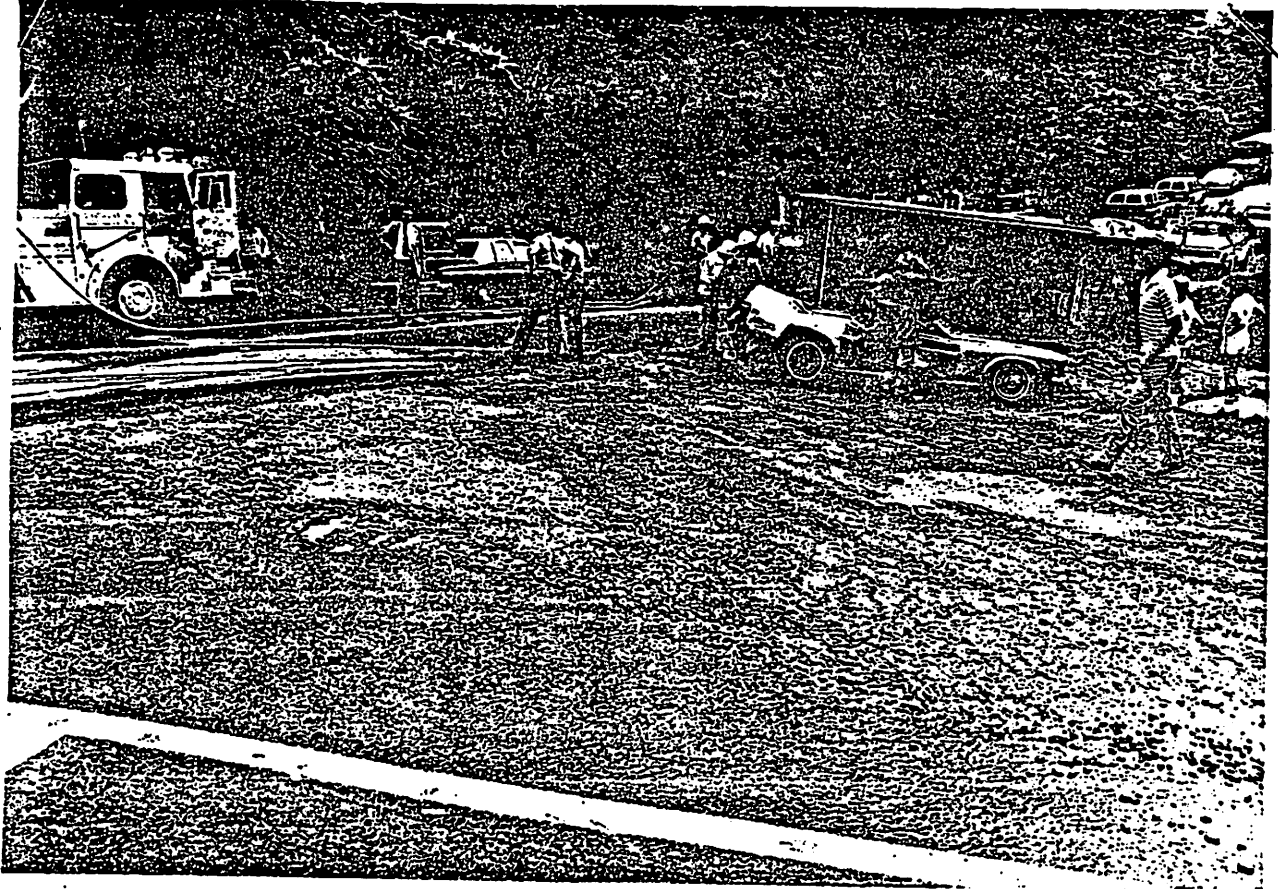
COMMONWEALTH EXHIBIT #7



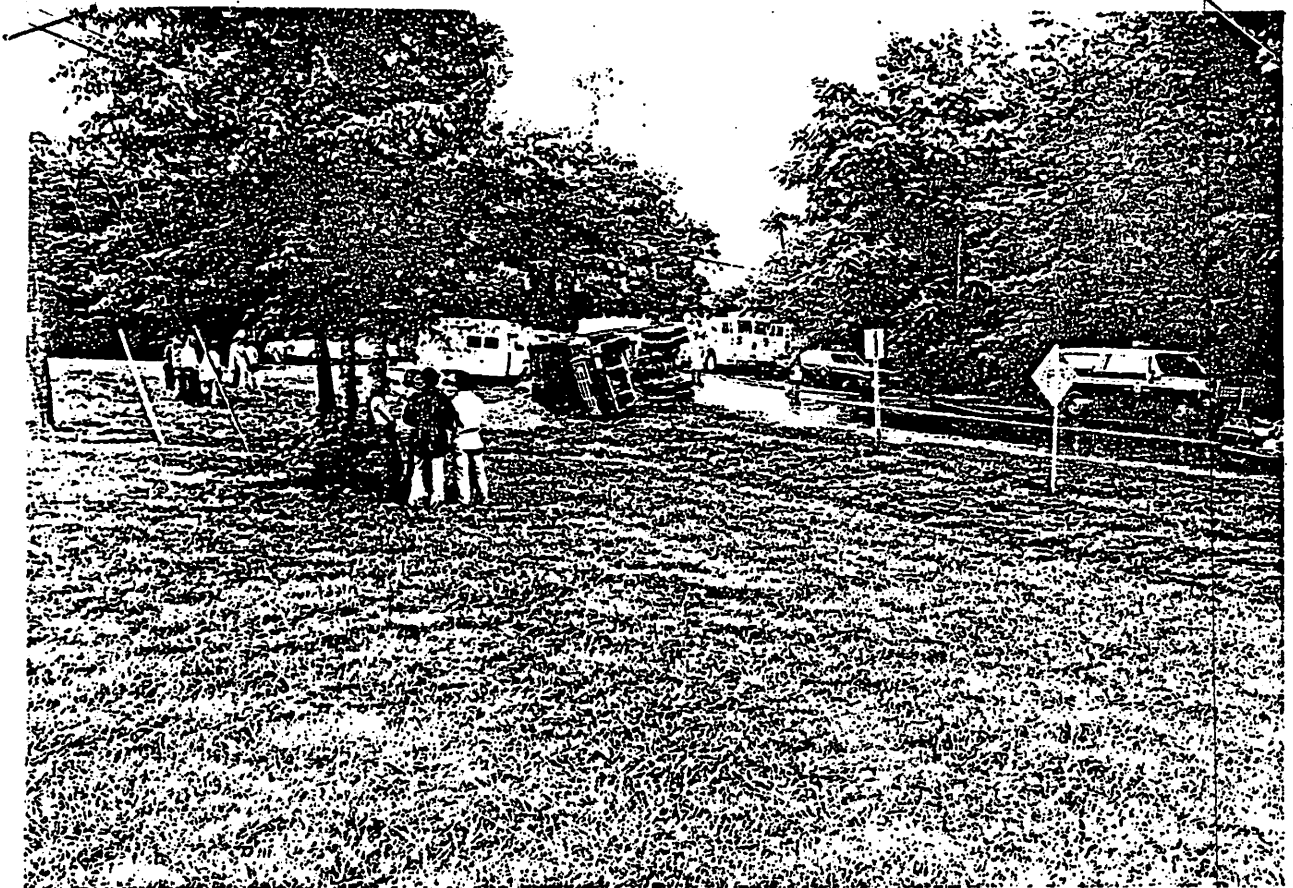
COMMONWEALTH EXHIBIT #8



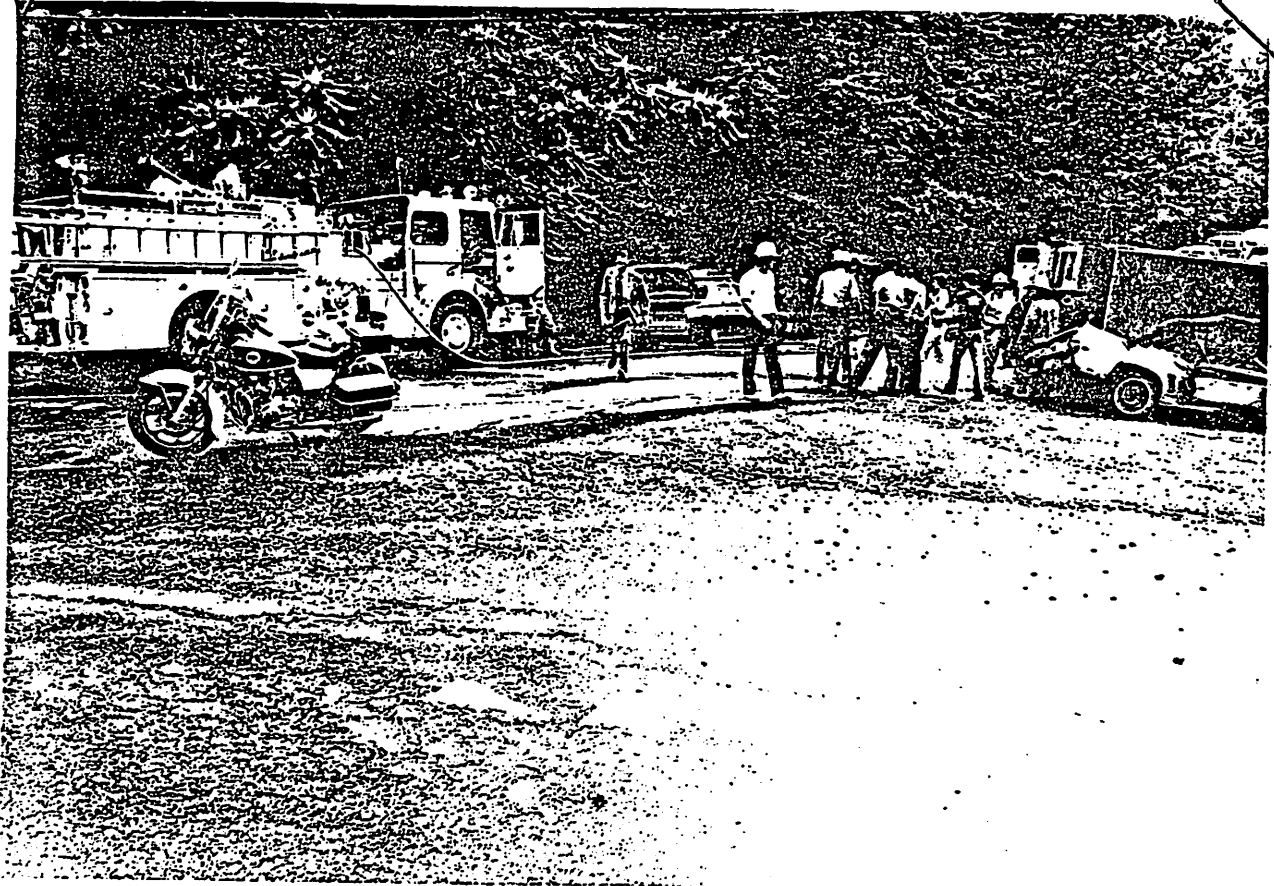
COMMONWEALTH EXHIBIT #9



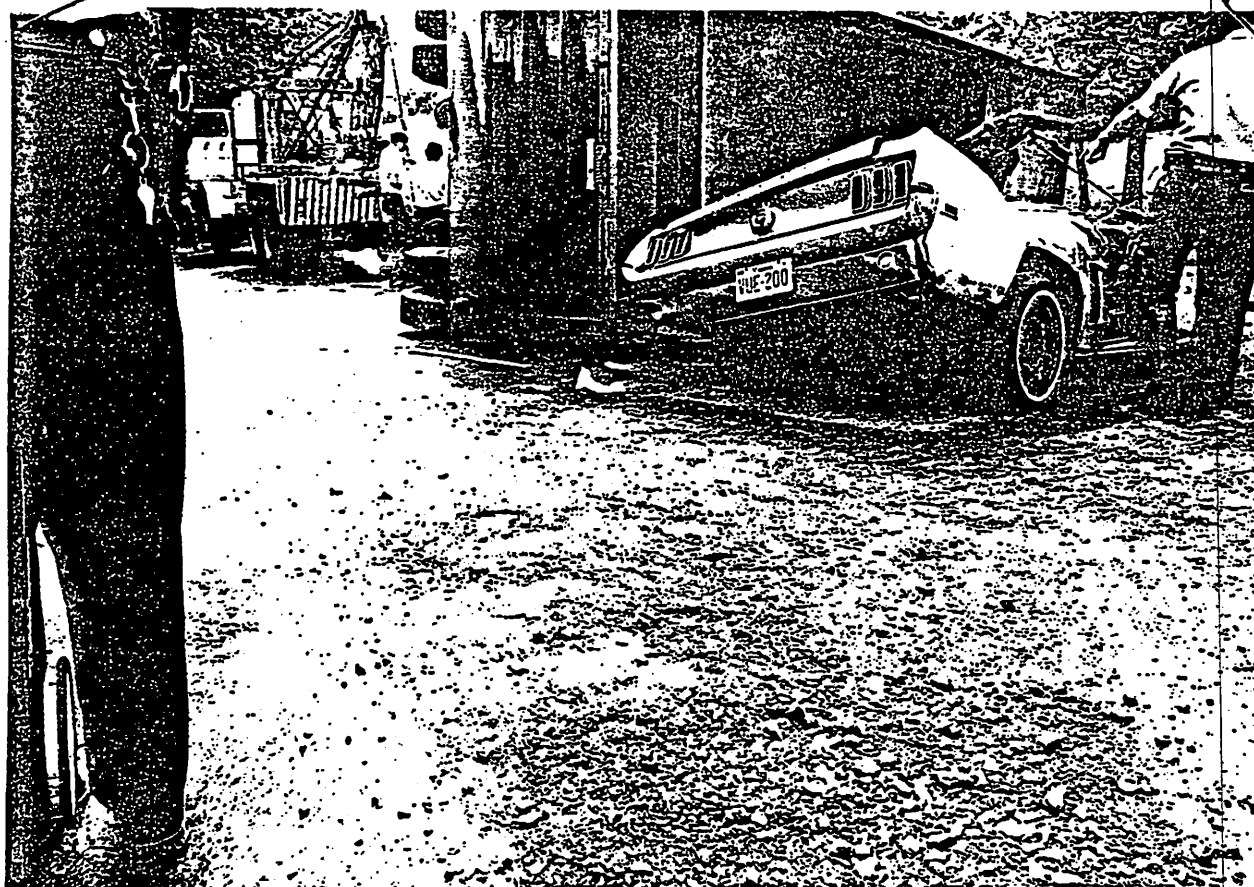
COMMONWEALTH EXHIBIT #10



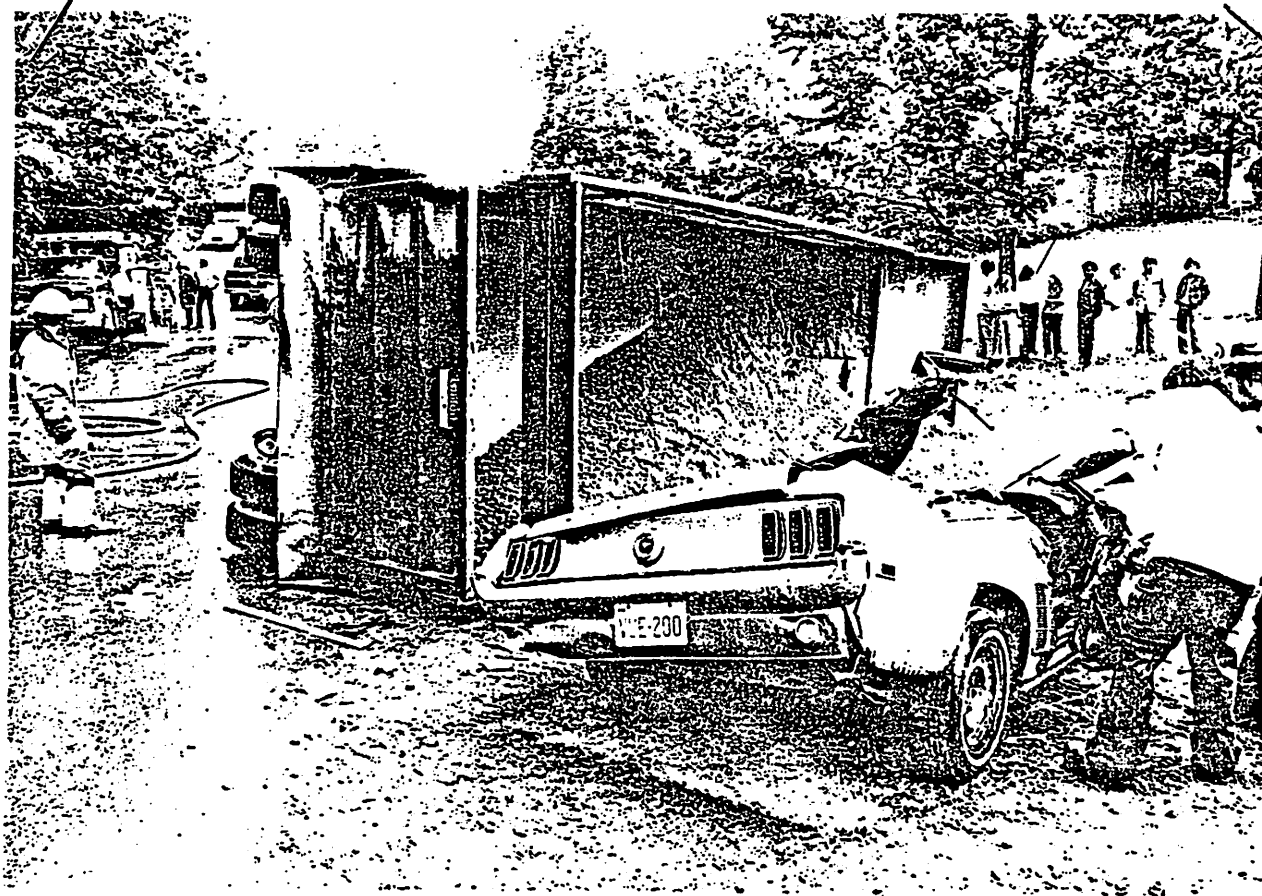
COMMONWEALTH EXHIBIT #11



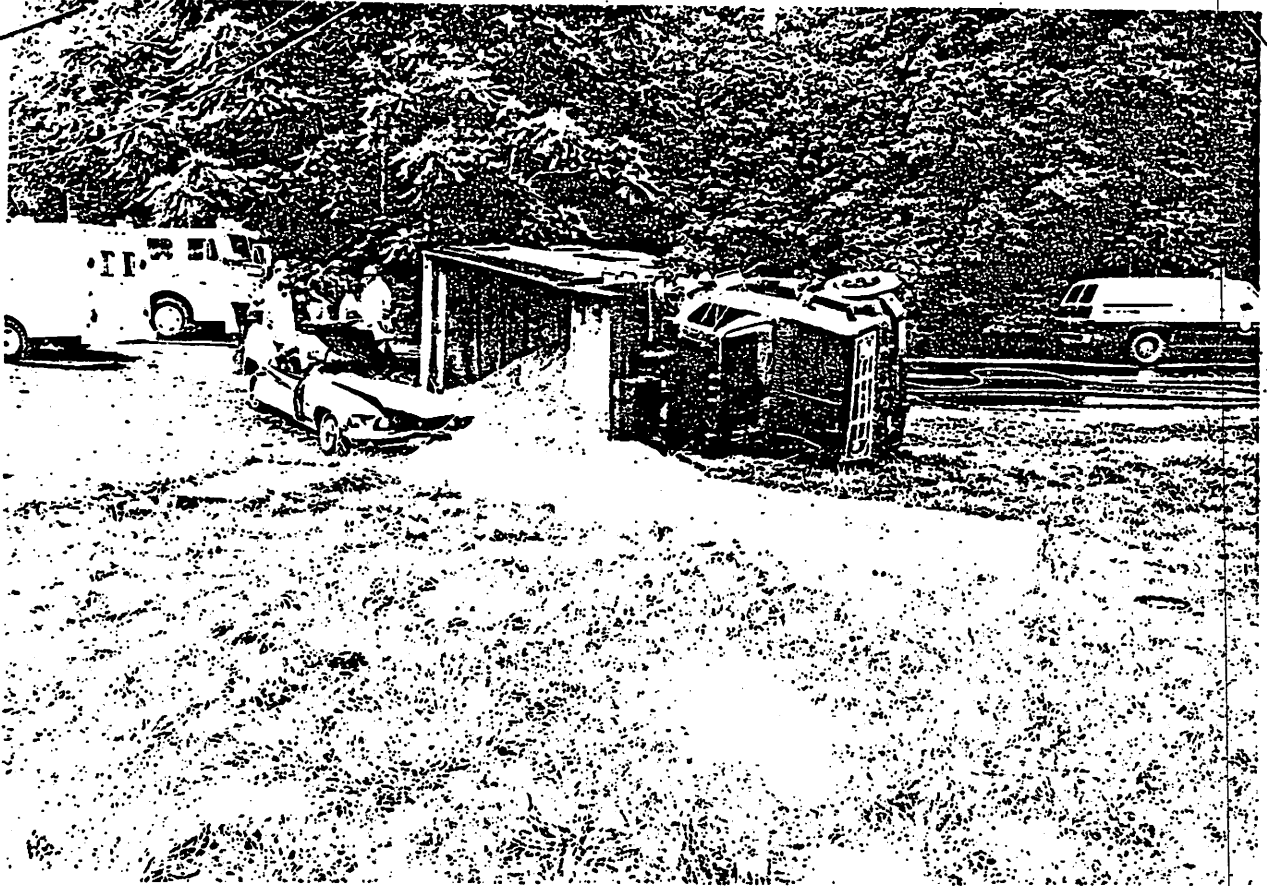
COMMONWEALTH EXHIBIT #12

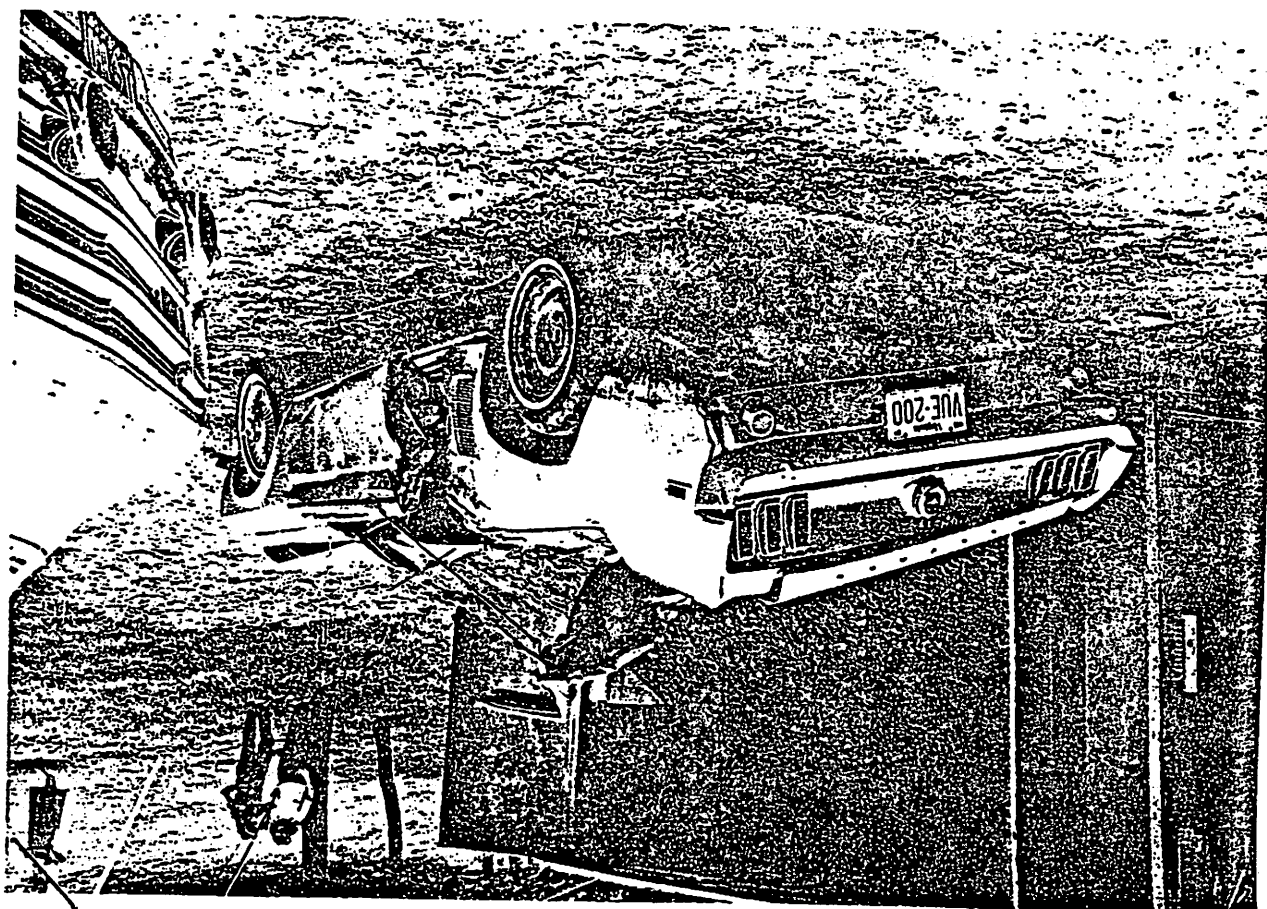


COMMONWEALTH EXHIBIT #13



COMMONWEALTH EXHIBIT #14



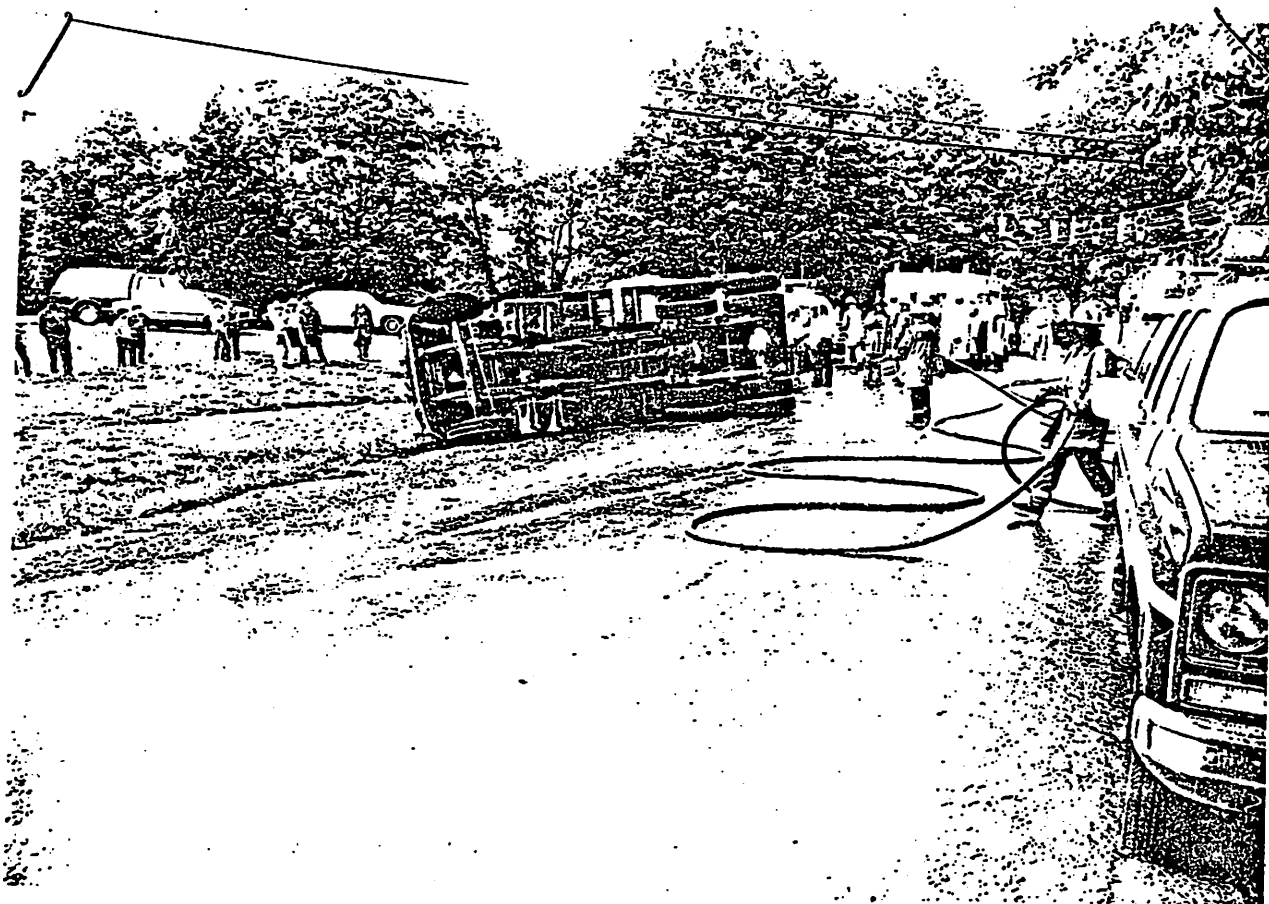


COMMONWEALTH EXHIBIT #15

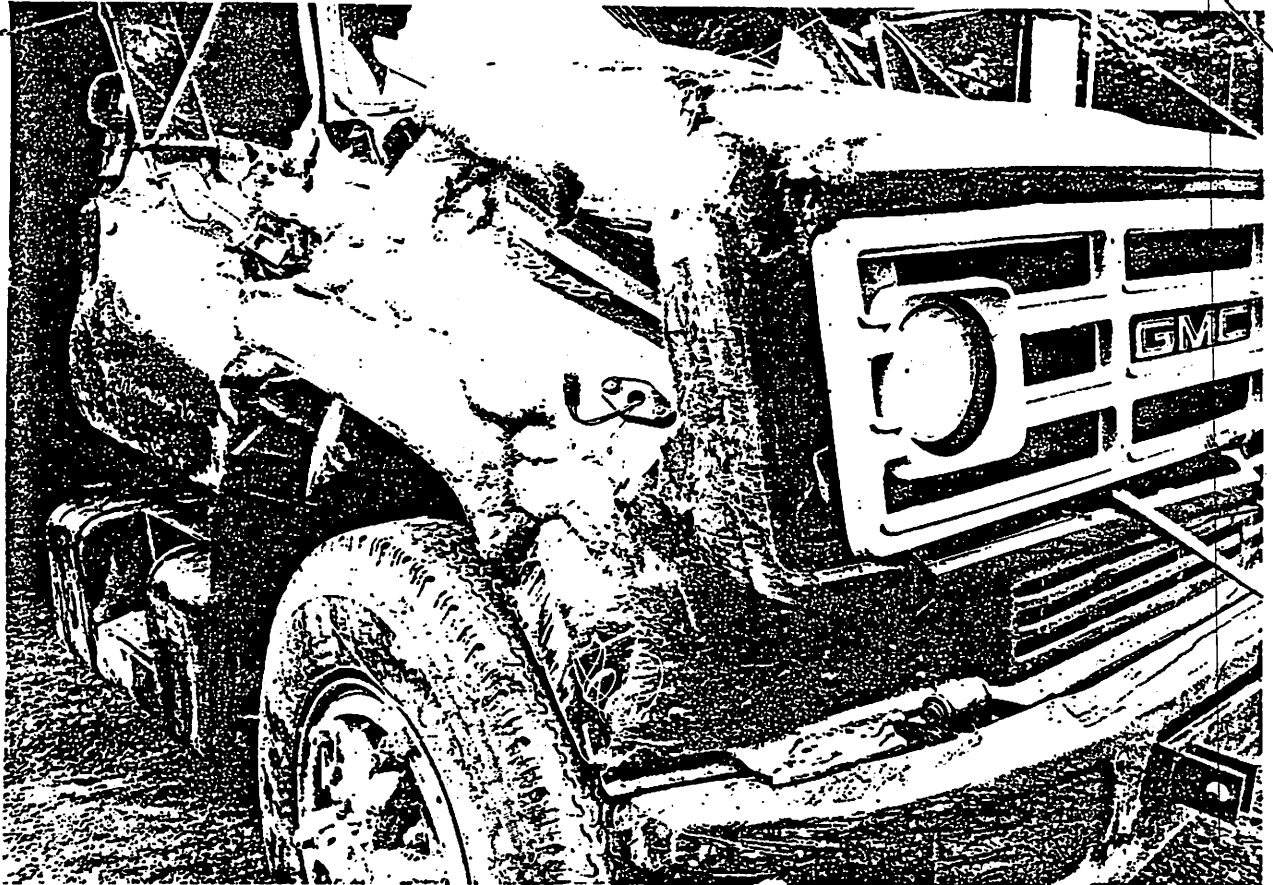
COMMONWEALTH EXHIBIT #16



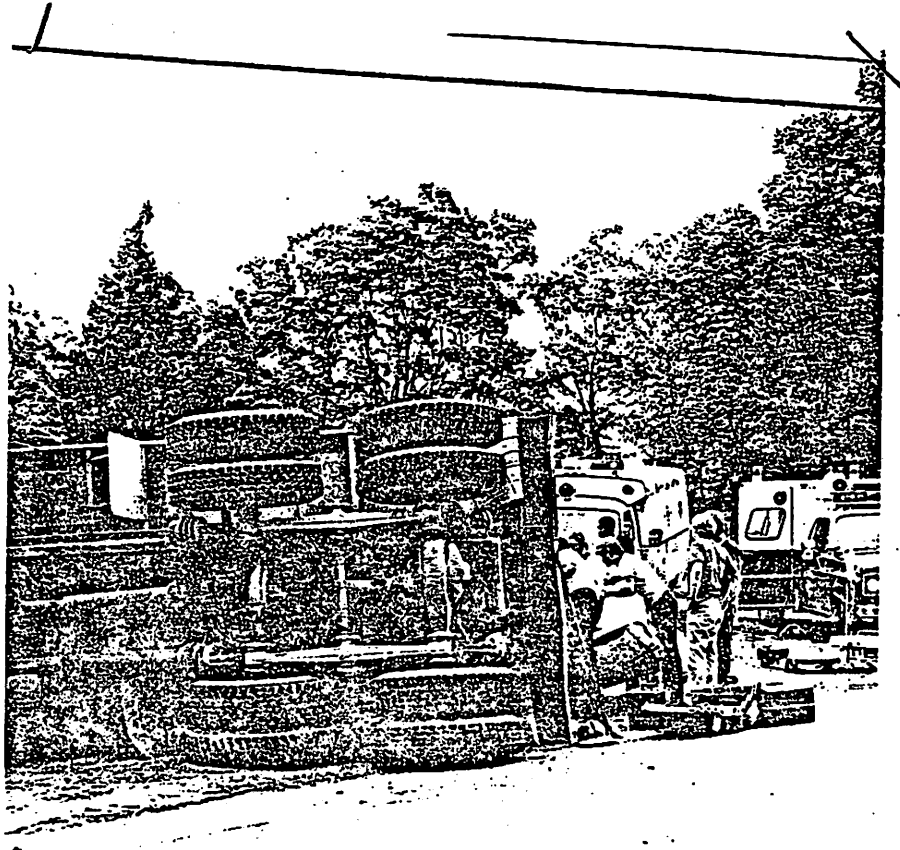
COMMONWEALTH EXHIBIT #17



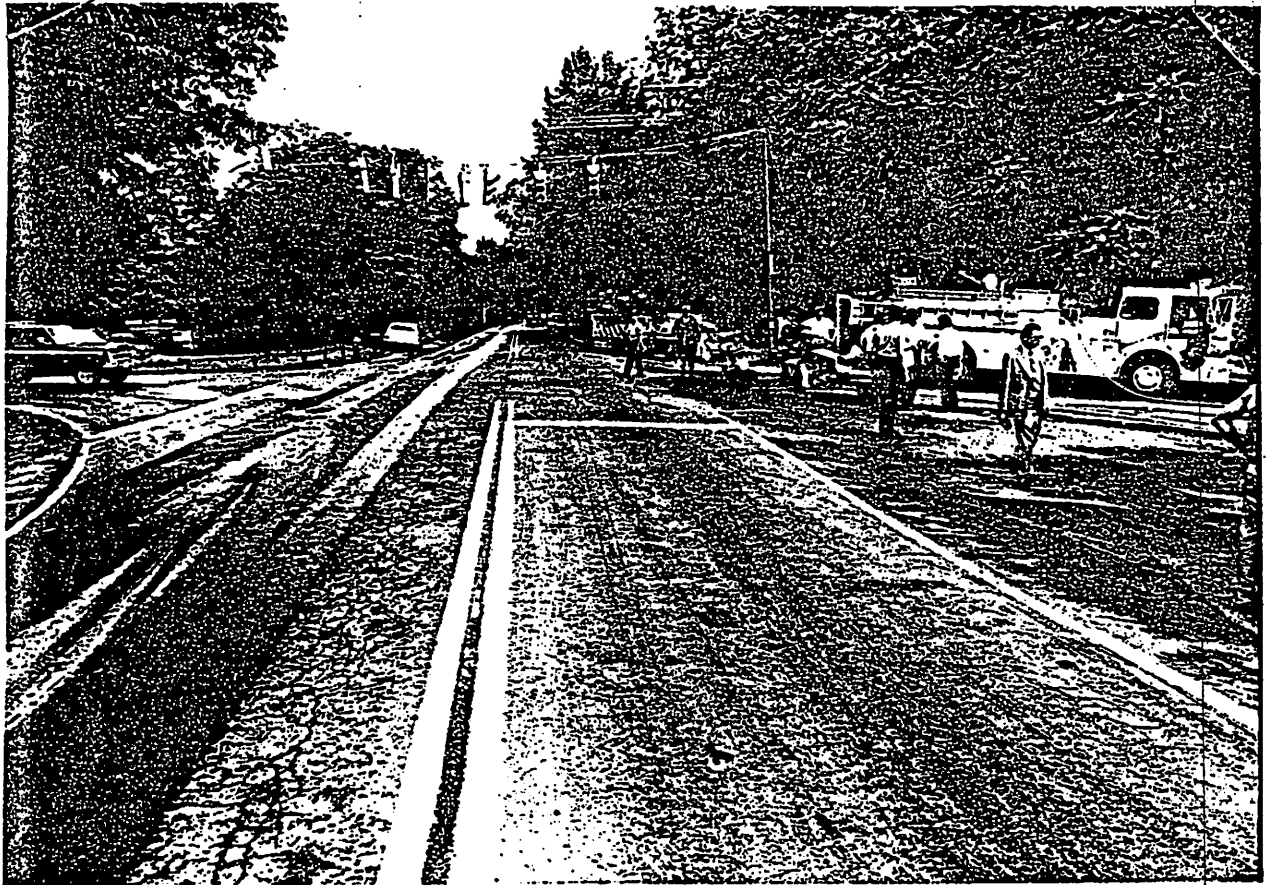
COMMONWEALTH EXHIBIT #18



COMMONWEALTH EXHIBIT #19



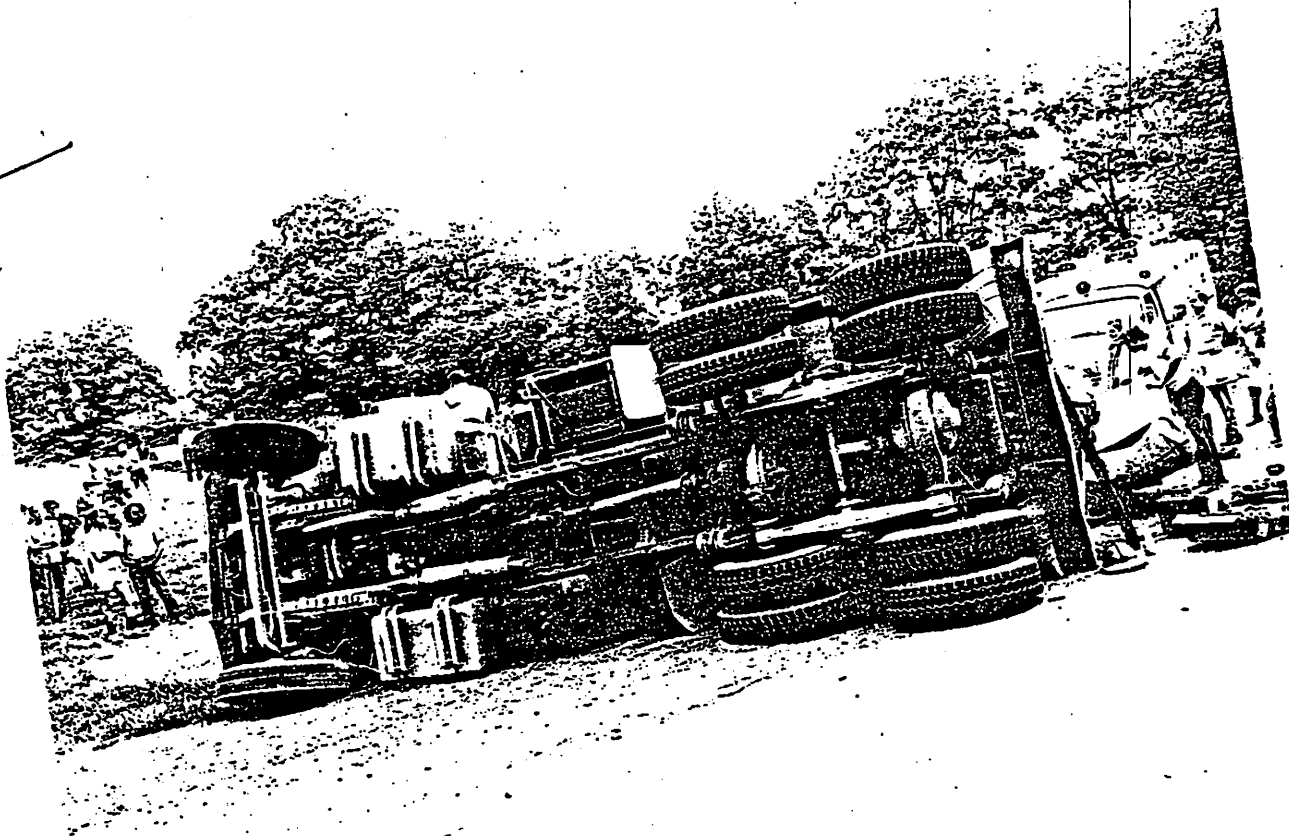
COMMONWEALTH EXHIBIT #20



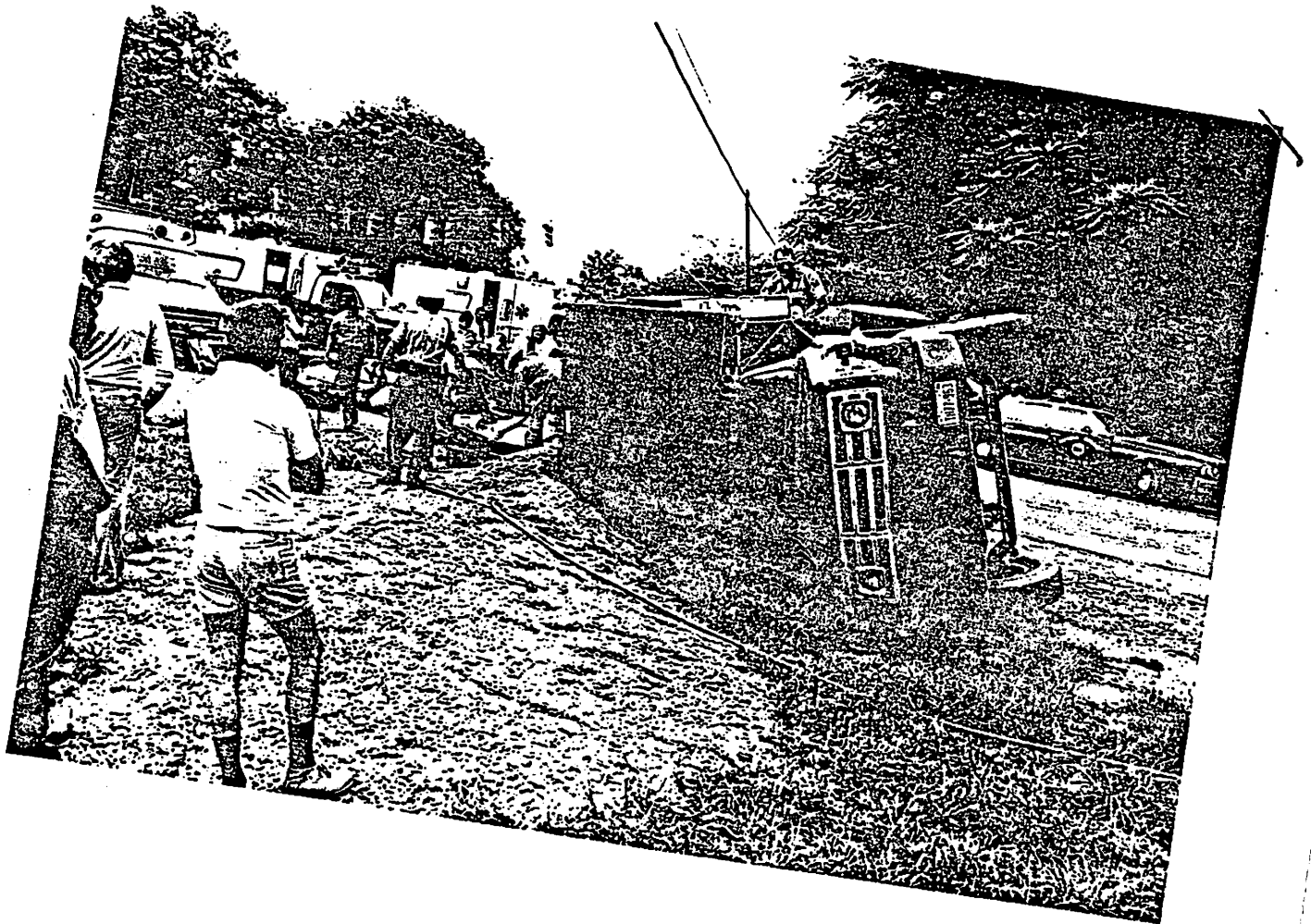
COMMONWEALTH EXHIBIT #21

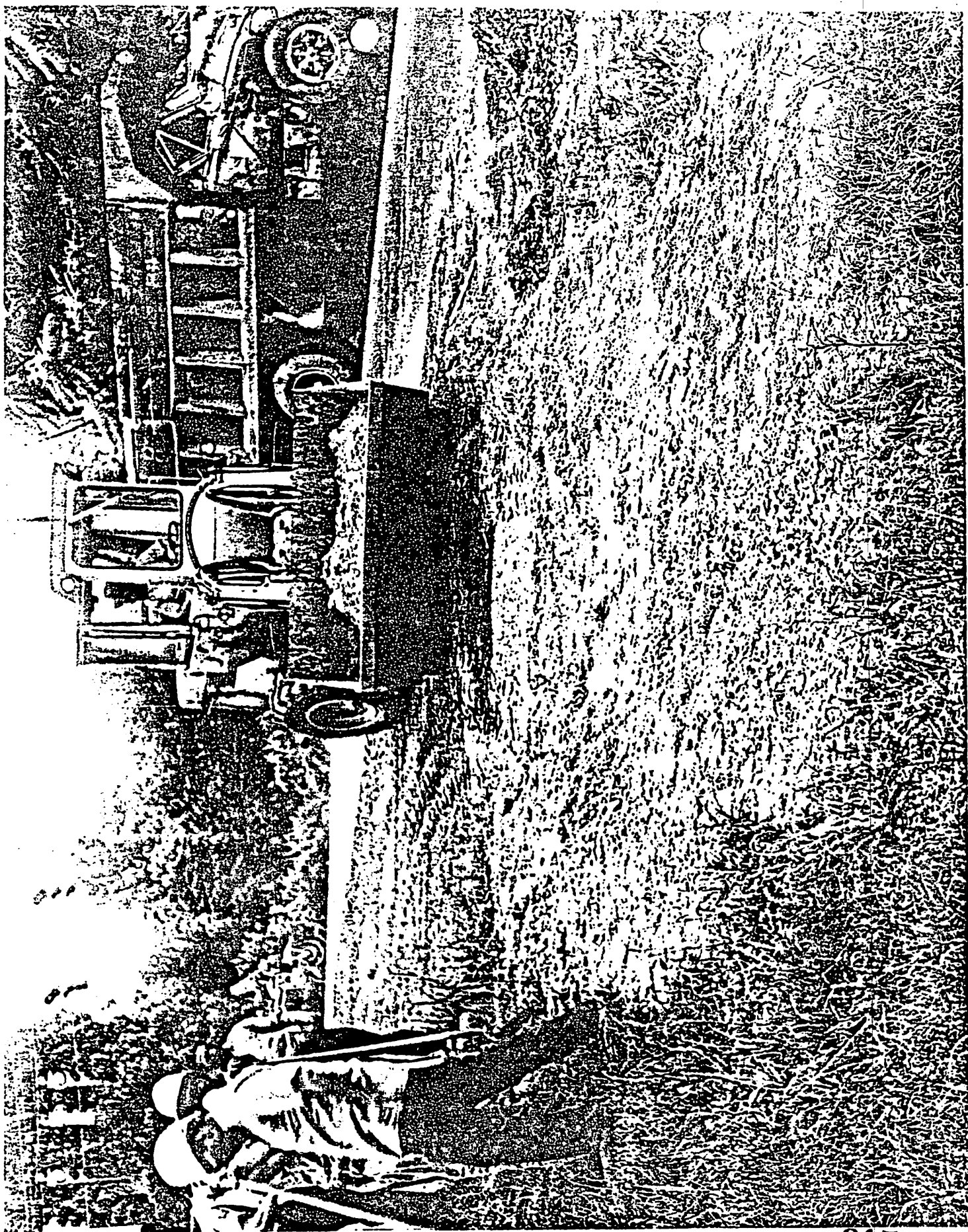


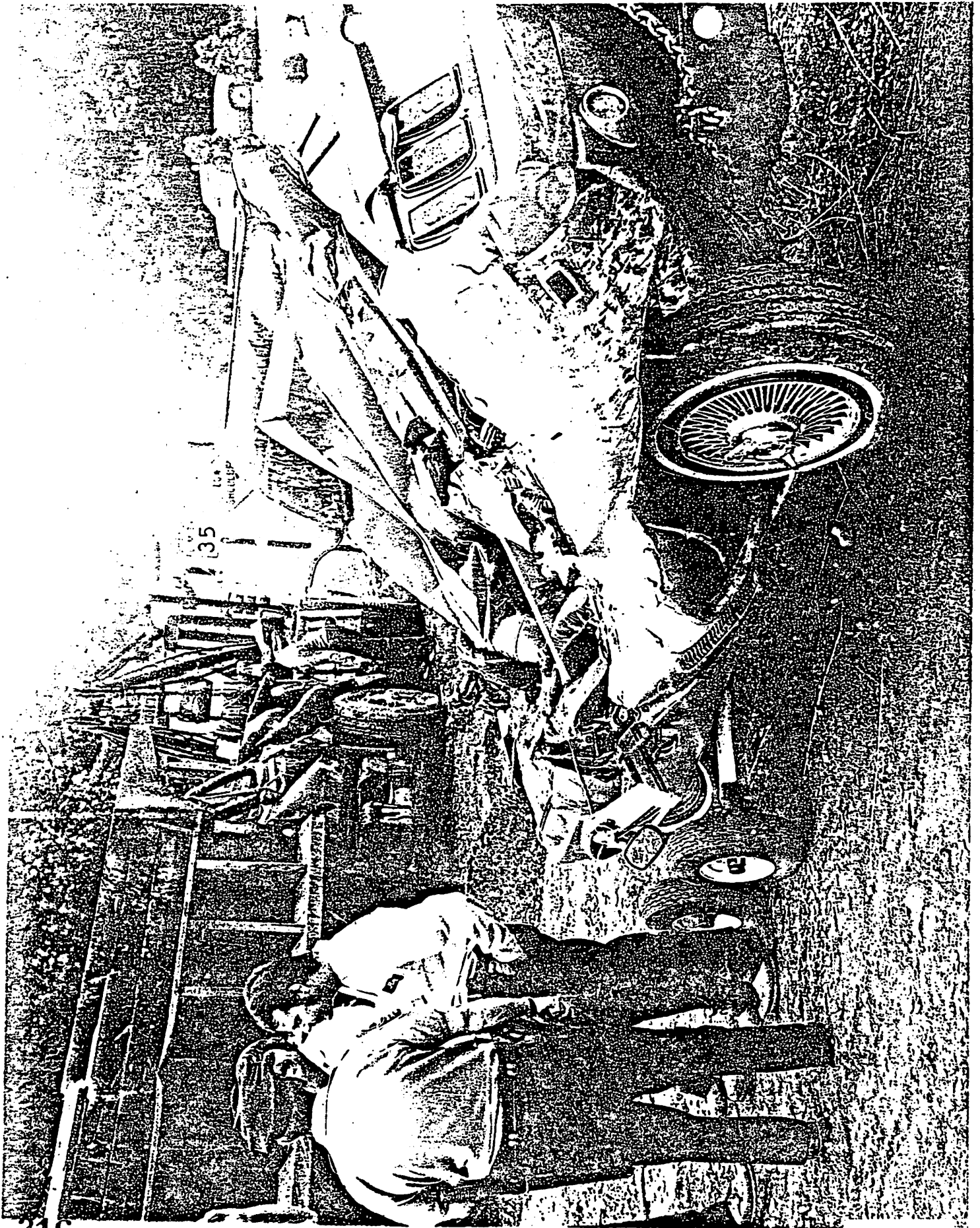
COMMONWEALTH EXHIBIT #22

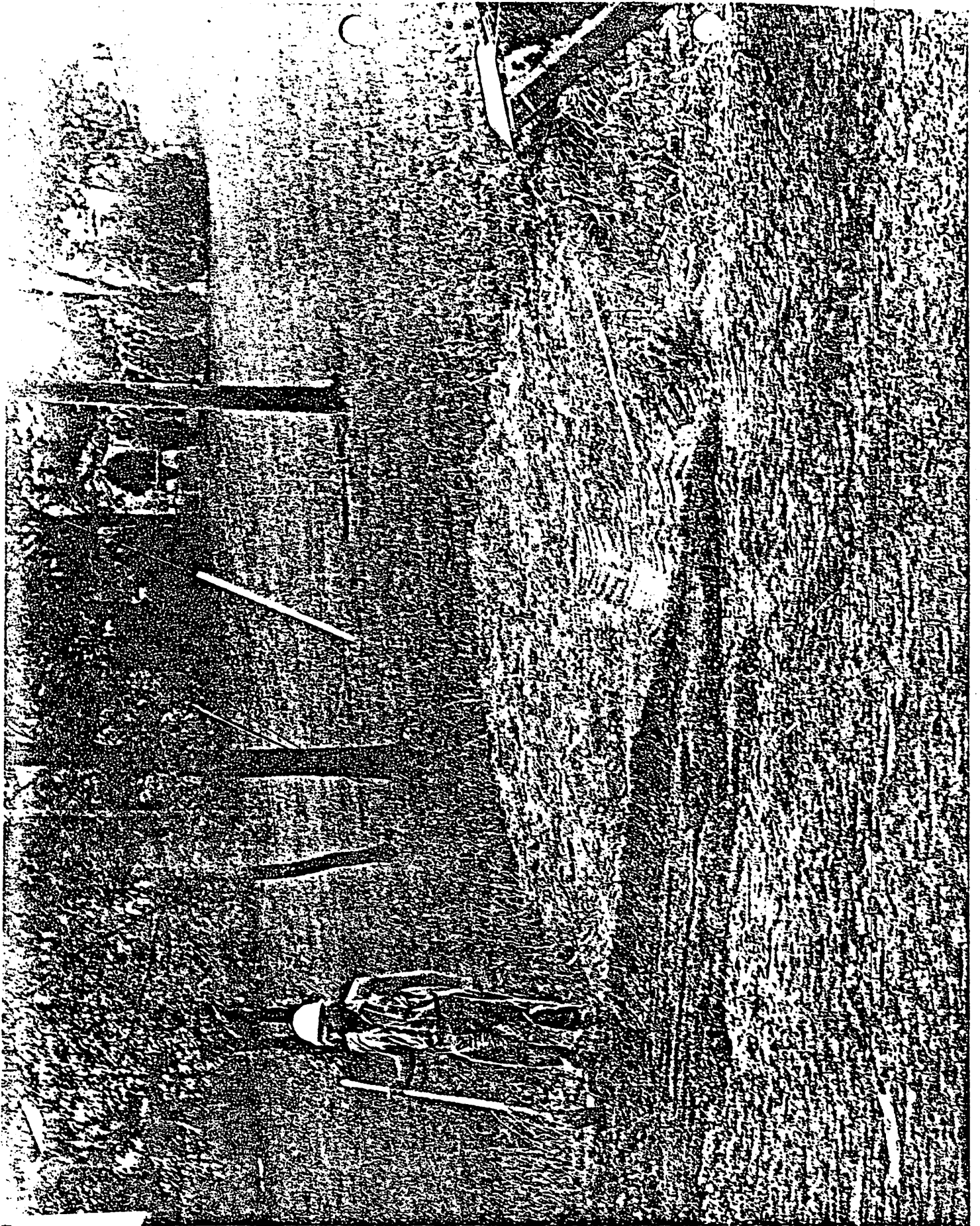


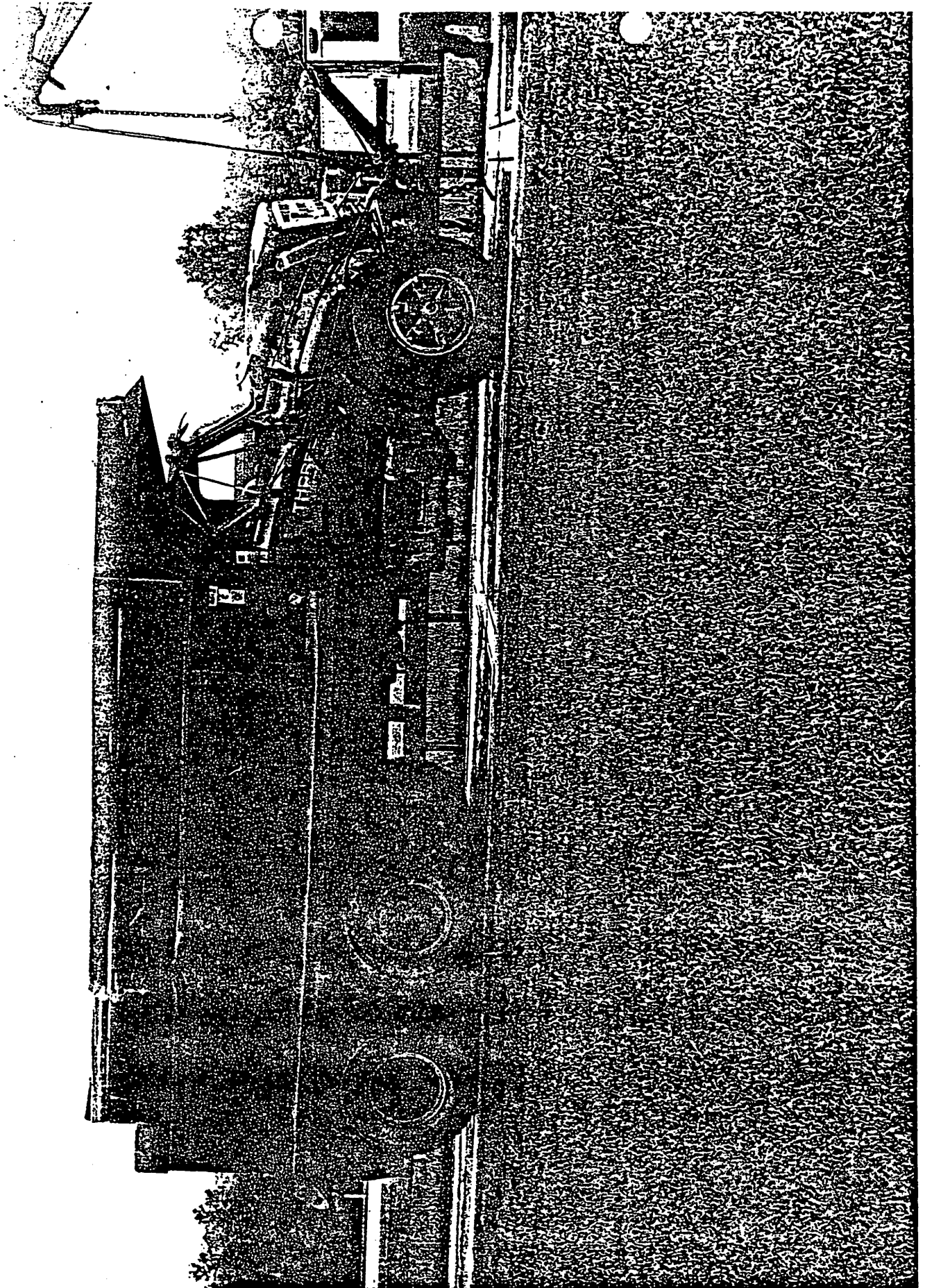
COMMONWEALTH EXHIBIT #23











COUNTY OF FAIRFAX

Equipment Management Transportation Agency

SPEEDOMETER CALIBRATION CHECK

COMMONWEALTH EXHIBIT #28

Vehicle Number 443

Date Checked 10/28/80

Type Vehicle marked Cruiser

Make Ford

Year 1978

SPEEDOMETER READING SPEED-MASTER READING

30 30

40 40

50 50

60 60

70 70

80 80

Odometer reading 44950

Location (circle one)

Jermantown

Newington

Tire Size H R 78 X 15

This is to verify that the above speedometer was checked on the above date and the readings (as indicated) are accurate and true

10/28/80

Date

Paul Bradshaw

Mechanic

State of Virginia,

to-wit:

County of Fairfax,

I, the undersigned, a Notary Public in and for the County aforesaid, State of

Virginis, do hereby certify that Paul Bradshaw whose name is

signed to the foregoing and hereunto annexed calibration check, has this day personally

appeared before me and made oath that the matters and things stated therein are true

to his knowledge, information and belief.

Given under my hand this 28th day of Octo, 1980

My commission expires 3/8/83

Signed George W. Manaford

C/W #28
CR 32741 2-3-81

COMMONWEALTH EXHIBIT #29

DELIVERY TICKET

MIDEAST DIVISION

Vulcan Materials Company

QUARRY NO.

301

FOR PRINTING SCALE		FOR MANUAL SCALE					
NET WEIGHT							
3580 LBS	LBS.	GROSS					0
		TARE	1770				0
							0
		NET					0
TONS		@\$	PER TON				
SIZE	24A						
			SALES TAX				
CASH RECEIVED			TOTAL SALE				

DATE

6.6

EO

CUSTOMER'S ORDER NO.

SOLD TO

ADDRESS

TRUCK NO.

TIME DEPARTED

HAULED BY

WEIGHED BY

RECEIVED BY

CS-300

CR 32741
2-3-81

30735

CUSTOMER'S DUPLICATE COPY

COMMONWEALTH EXHIBIT #30

DELIVERY TICKET

MIDEAST DIVISION

Vulcan Materials Company

QUARRY NO.

301

FOR PRINTING SCALE		FOR MANUAL SCALE					
NET WEIGHT							
3586 LBS	LBS.	GROSS					0
		TARE	1770				0
							0
		NET					0
TONS		@\$	PER TON				
SIZE	24A						
			SALES TAX				
CASH RECEIVED			TOTAL SALE				

DATE

6.6

EO

CUSTOMER'S ORDER NO.

SOLD TO

ADDRESS

TRUCK NO.

TIME DEPARTED

HAULED BY

WEIGHED BY

RECEIVED BY

CS-300

CR 32741
2-3-81

30735

HAULERS COPY

COMMONWEALTH EXHIBIT #31

QUARRY NO. 301

FOR PRINTING SCALE

NET WEIGHT

378600

FOR MANUAL SCALE

GROSS

TARE

NET

0

0

0

TONS

SIZE 21A

CASH RECEIVED

DATE 6-6

CUSTOMER'S ORDER NO.

SOLD TO

ADDRESS

TRUCK NO.

TIME DEPARTED

HAULED BY

WEIGHED BY

RECEIVED BY

30735 C/W 31

COMMONWEALTH EXHIBIT #32

QUARRY NO. 301

FOR PRINTING SCALE

NET WEIGHT

378600

FOR MANUAL SCALE

GROSS

TARE

NET

0

0

0

TONS

SIZE 21A

CASH RECEIVED

DATE 6-6

CUSTOMER'S ORDER NO.

SOLD TO Sam Taylor

ADDRESS Glenwood Manor

TRUCK NO.

TIME DEPARTED 10

HAULED BY 12

WEIGHED BY 4

RECEIVED BY

30348 C/W 32

COMMONWEALTH EXHIBIT #33

DELIVERY TICKET

MIDEAST DIVISION

Vulcan Materials CompanyQUARRY NO. 301

FOR PRINTING SCALE

NET WEIGHT

348200

LBS.

FOR MANUAL SCALE

GROSS

0

TARE

0

NET

0

TONS

@\$

PER TON

SIZE

21A

SALES TAX

CASH RECEIVED

TOTAL SALE

DATE

6-6

19

CUSTOMER'S ORDER NO.

SOLD TO

ADDRESS

TRUCK NO.

TIME DEPARTED

HAULED BY

WEIGHED BY

RECEIVED BY

30372

C/W 33

CS-300

CR 32741

2-3-81

PERMANENT FILE COPY (BY CUSTOMER)

COMMONWEALTH EXHIBIT #34

DELIVERY TICKET

MIDEAST DIVISION

Vulcan Materials CompanyQUARRY NO. 301

FOR PRINTING SCALE

NET WEIGHT

380400

LBS.

FOR MANUAL SCALE

GROSS

0

TARE

0

NET

0

TONS

@\$

PER TON

SIZE

21A

SALES TAX

CASH RECEIVED

TOTAL SALE

DATE

6-6

20

CUSTOMER'S ORDER NO.

SOLD TO

ADDRESS

TRUCK NO.

TIME DEPARTED

HAULED BY

WEIGHED BY

RECEIVED BY

30401

C/W 34

CS-300

CR 32741

2-3-81

PERMANENT FILE COPY (BY CUSTOMER)

COMMONWEALTH EXHIBIT #35

COMMONWEALTH EXHIBIT #36

DELIVERY TICKET

MIDEAST DIVISION

Vulcan Materials Company

QUARRY NO. 301

FOR PRINTING SCALE

NET WEIGHT

3776 LBS

FOR MANUAL SCALE

GROSS

0

TARE

0

NET

0

TONS

@\$

PER TON

SIZE

SALES TAX

TOTAL SALE

DATE

CUSTOMER'S ORDER NO.

SOLD TO

ADDRESS

TRUCK NO.

HAULED BY

WEIGHED BY

RECEIVED BY

CR 32741

CS-300 2-3-81

30428

CLW 35

PERMANENT FILE COPY (BY CUSTOMER)

DELIVERY TICKET

MIDEAST DIVISION

Vulcan Materials Company

QUARRY NO. 301

FOR PRINTING SCALE

NET WEIGHT

3620 LBS

FOR MANUAL SCALE

GROSS

0

TARE

0

NET

0

TONS

@\$

PER TON

SIZE

SALES TAX

TOTAL SALE

CASH RECEIVED

DATE

CUSTOMER'S ORDER NO.

SOLD TO

ADDRESS

TRUCK NO.

HAULED BY

WEIGHED BY

RECEIVED BY

CR 32741

CS-300 2-3-81

30467

CLW 36

COMMONWEALTH EXHIBIT #37

COMMONWEALTH EXHIBIT #38

DELIVERY TICKET **6**

MIDEAST DIVISION

Vulcan Materials CompanyQUARRY NO. **301**

FOR PRINTING SCALE		FOR MANUAL SCALE				
NET WEIGHT						
3726 LBS.	LBS.	GROSS				0
		TARE				0
		NET				0
TONS		@ \$	PER TON			
SIZE 21X		SALES TAX				
CASH RECEIVED		TOTAL SALE				

DATE **6-6** 19 **80**

CUSTOMER'S ORDER NO.

SOLD TO **General Lumber**ADDRESS **Yellow Wood**TRUCK NO. **12**TIME DEPARTED **10:39**HAULED BY **12**WEIGHED BY **4**

RECEIVED BY

CR 32741**30498**CS-300 **2-3-81**

PERMANENT FILE COPY (BY CUSTOMER)

clw 37DELIVERY TICKET **36**

MIDEAST DIVISION

Vulcan Materials CompanyQUARRY NO. **301**

FOR PRINTING SCALE		FOR MANUAL SCALE				
NET WEIGHT						
3762 LBS.	LBS.	GROSS				0
		TARE				0
		NET				0
TONS		@ \$	PER TON			
SIZE 21X		SALES TAX				
CASH RECEIVED		TOTAL SALE				

DATE **6-6** 19 **80**

CUSTOMER'S ORDER NO.

SOLD TO **Long Lumber**ADDRESS **Glennwood Manor**TRUCK NO. **72**TIME DEPARTED **11:08**HAULED BY **72**WEIGHED BY **4**

RECEIVED BY

CR 32741**30512**CS-300 **2-3-81**

PERMANENT FILE COPY (BY CUSTOMER)

clw 38

DELIVERY TICKET

MIDEAST DIVISION

Vulcan Materials CompanyQUARRY NO. 301

FOR PRINTING SCALE

FOR MANUAL SCALE

NET WEIGHT

3814 LBS

GROSS

1770

0

TARE

0

NET

0

TONS

@ \$

PER TON

SIZE

SALES TAX

CASH RECEIVED

TOTAL SALE

DATE

6-6

19

80

CUSTOMER'S
ORDER NO.

SOLD TO

ADDRESS

TRUCK NO.

TIME
DEPARTED

HAULED BY

WEIGHED BY

RECEIVED BY

DELIVERY TICKET

MIDEAST DIVISION

Vulcan Materials CompanyQUARRY NO. 301

FOR PRINTING SCALE

FOR MANUAL SCALE

NET WEIGHT

3952 LBS

GROSS

177

0

TARE

0

NET

0

TONS

@ \$

PER TON

SIZE

SALES TAX

CASH RECEIVED

TOTAL SALE

DATE

6-6

19

80

CUSTOMER'S
ORDER NO.

SOLD TO

ADDRESS

TRUCK NO.

TIME
DEPARTED

HAULED BY

WEIGHED BY

RECEIVED BY

DELIVERY TICKET
MIDEAST DIVISION 36

Vulcan Materials Company

QUARRY NO. 301

FOR PRINTING SCALE		FOR MANUAL SCALE			
NET WEIGHT					
3570	LBS.	GROSS			0
		TARE		122	0
		NET			0
TONS		@ \$	PER TON		
SIZE <u>2 1/4</u>		SALES TAX			
CASH RECEIVED		TOTAL SALE			
DATE <u>66</u> <u>10</u> 19 <u>80</u>					
CUSTOMER'S ORDER NO. <u>30642</u>					
SOLD TO <u>Berkshire Cater School</u>					
ADDRESS <u>Berkshire Cater School</u>					
TRUCK NO. <u>72</u>		TIME DEPARTED <u>12:31</u>			
HAULED BY <u>D</u>					
WEIGHED BY <u>D</u>					
RECEIVED BY <u>CR 32741</u> <u>30642</u>					
CS-300 <u>2-3-81</u> <u>C/W 41</u>					
PERMANENT FILE COPY (BY CUSTOMER)					

DELIVERY TICKET
MIDEAST DIVISION 2

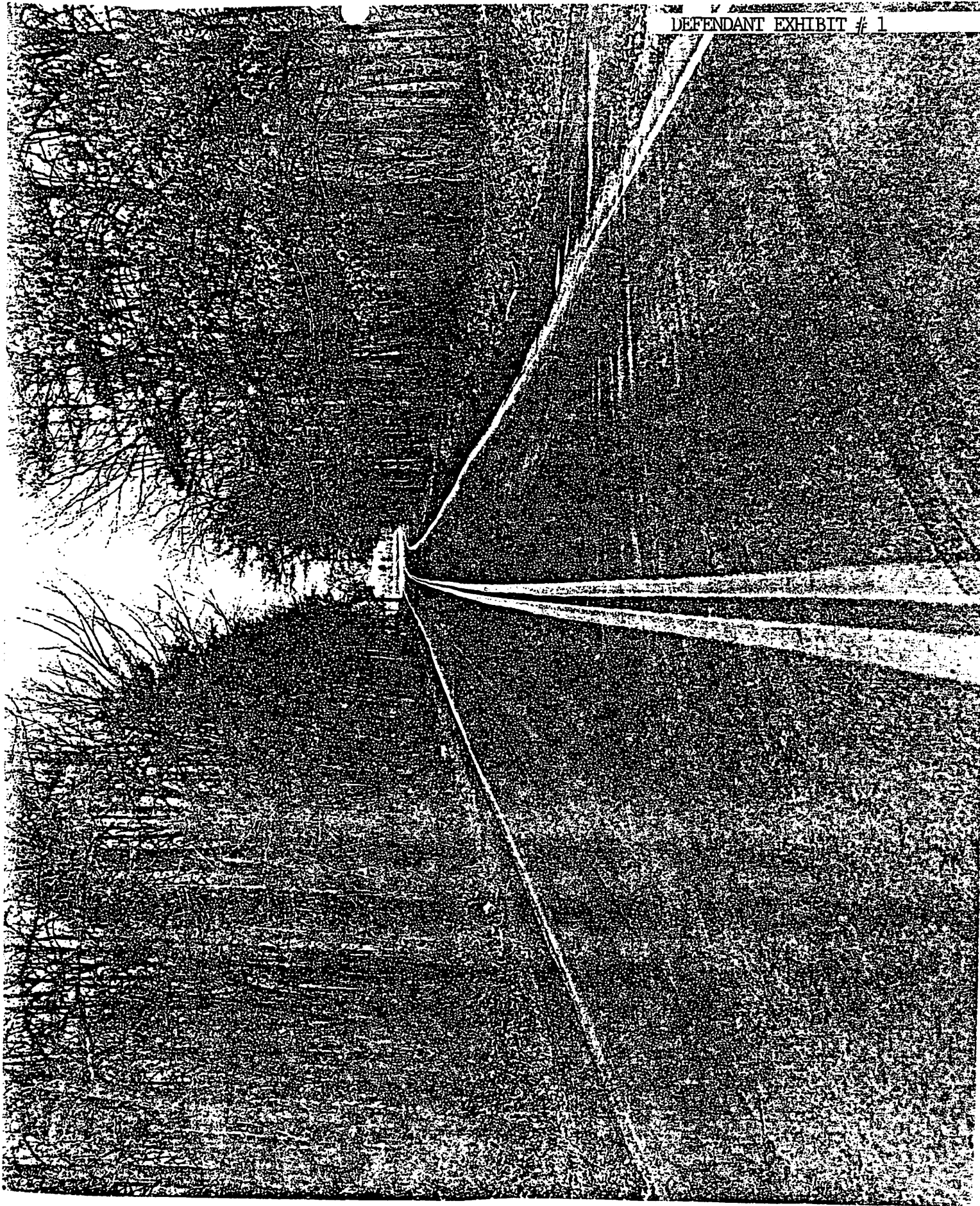
Vulcan Materials Company

QUARRY NO. 301

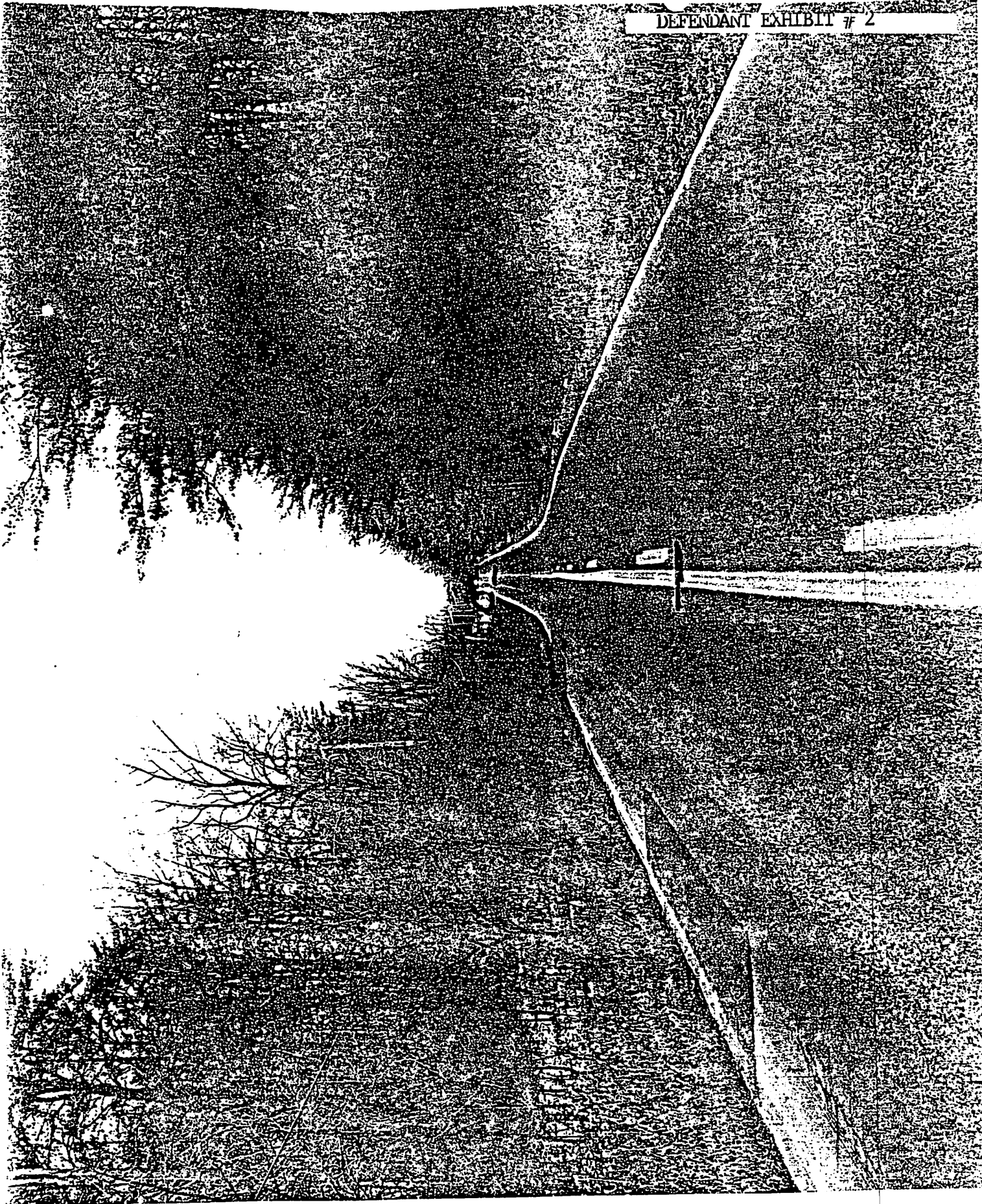
FOR PRINTING SCALE		FOR MANUAL SCALE			
NET WEIGHT					
3494	LBS.	GROSS			0
		TARE		1170	0
		NET			0
TONS		@ \$	PER TON		
SIZE <u>2 1/4</u>		SALES TAX			
CASH RECEIVED		TOTAL SALE			
DATE <u>66</u> <u>10</u> 19 <u>80</u>					
CUSTOMER'S ORDER NO. <u>30732</u>					
SOLD TO <u>Westmore Assoc</u>					
ADDRESS <u>Chesterfield News</u>					
TRUCK NO. <u>72</u>		TIME DEPARTED <u>1:35</u>			
HAULED BY <u>D</u>					
WEIGHED BY <u>D</u>					
RECEIVED BY <u>CR 32741</u> <u>30732</u>					
CS-300 <u>2-3-81</u> <u>C/W 42</u>					
PERMANENT FILE COPY (BY CUSTOMER)					

COMMONWEALTH EXHIBIT #43

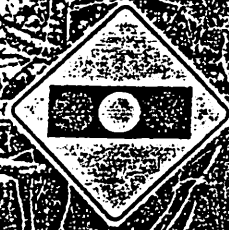
MIDEAST DIVISION									
Vulcan Materials Company									
QUARRY NO. <u>301</u>									
FOR PRINTING SCALE					FOR MANUAL SCALE				
NET WEIGHT					GROSS				
<u>3586</u>					0				
					TARE				
					0				
NET					0				
TONS					PER TON				
SIZE <u>2 1/4</u>					SALES TAX				
CASH RECEIVED					TOTAL SALE				
DATE <u>6-6</u> <u>85</u>									
CUSTOMER'S ORDER NO.									
SOLD TO: <u>Westmore Assoc</u>									
ADDRESS: <u>Chesleyfield News</u>									
TRUCK NO. <u>FD</u> TIME DEPARTED									
HAULED BY: <u>4</u>									
WEIGHED BY:									



DEFENDANT EXHIBIT # 2

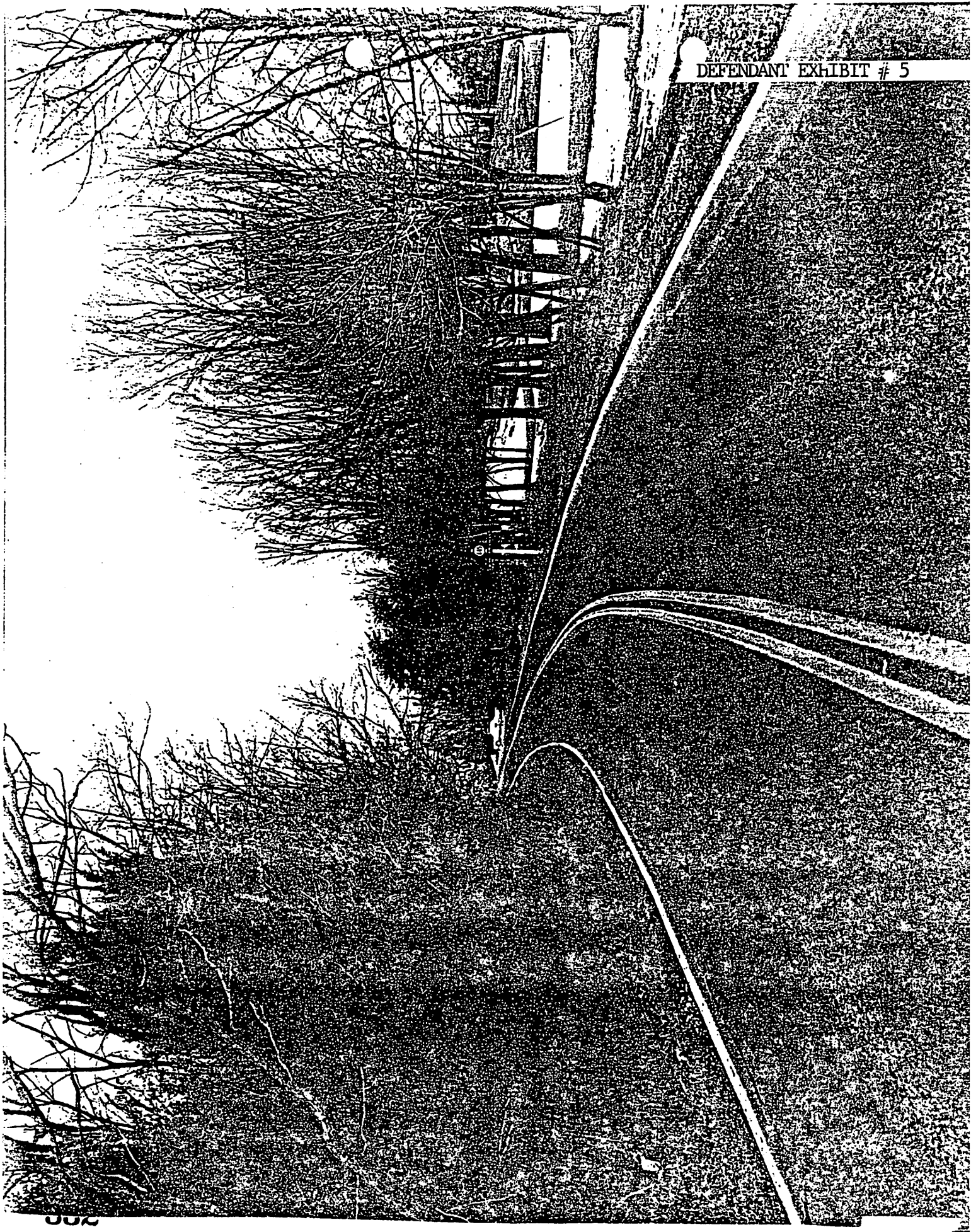


DEFENDANT EXHIBIT # 2

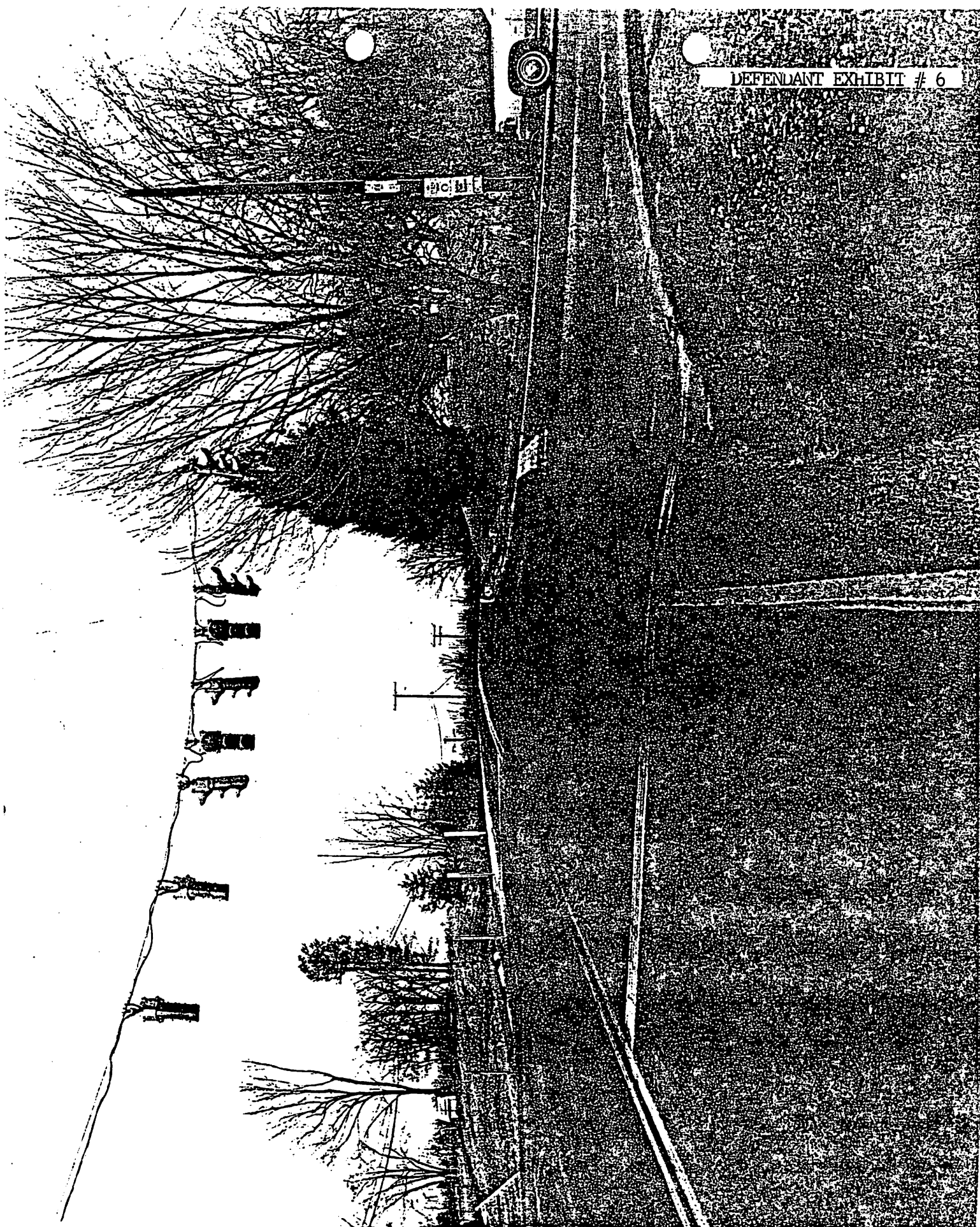


DEFENDANT EXHIBIT # 4

DEFENDANT EXHIBIT # 5

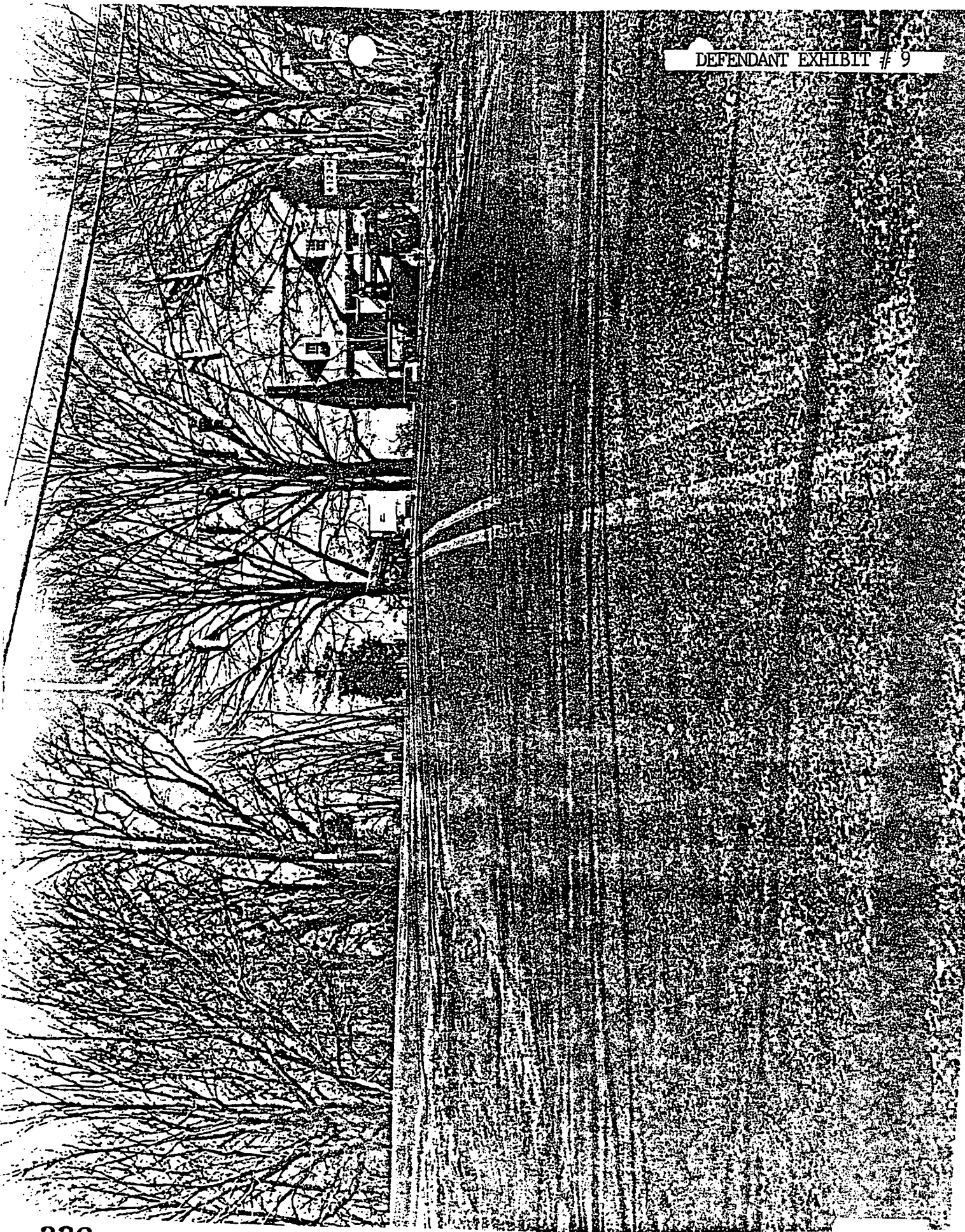


DEFENDANT EXHIBIT # 6



DEFENDANT EXHIBIT # 7

DEFENDANT EXHIBIT # 8



DEFENDANT EXHIBIT # 10

Def. # 11
CR 32741
2-4-81

DEFENDANT EXHIBIT #11

I was about 50 Feet behind a mustang going north on 123 approaching the stoplight at 123 & Burke Lake Rd. Going to Route 50 in Fairfax driving a 1979 Gmc Dump Truck, I was slowing down for the traffic which had just turned ~~off~~ ^{left} from ~~the~~ the light which ~~was~~ ^{had} been about 2 or 3 minutes before. When I saw the mustang put on a right hand turning signal and go to the right when ~~the~~ ~~the~~ I saw the signal and ~~the~~ ~~the~~ when the driver changed his signal to make a left ^{on} ^{her} and cut across the yellow line in front of me. I attempted to go the right to avoid the car but traffic was sitting on Burke lake Rd. So I tried to go the left and hoping I could keep from hitting the mustang that had cut in front of me my truck tilted over and I could not stop it there was too much of a lean. At the time of —

the accident I was about 30 mph
because of the grade at the
light. ~~and~~

I was coming from Occouan Quarry
hauling gravel. Going to Route
50 in Fairfax. A job called
Chesterfield Mews. By taking 123
straight up to 50 through Fairfax.

Robert S. Thayer 3412 Old Bridge Rd., Woodbridge, VA
494-5419