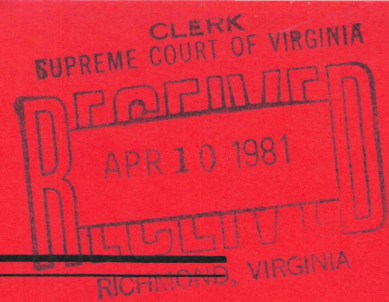
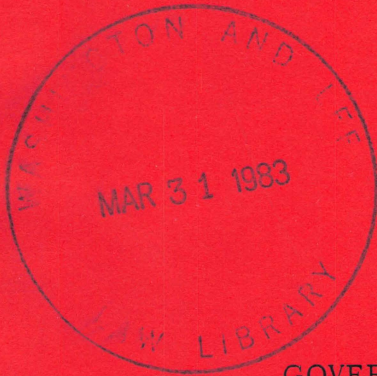


224 Va 720



IN THE
Supreme Court of Virginia
AT RICHMOND



RECORD NO. 801471

GOVERNMENT EMPLOYEES INSURANCE COMPANY
IN THE NAME OF JOHN DOE,

Appellant

v.c

ALMA M. GALLOP AND JOHN H. JAMES

Appellees

JOINT APPENDIX

Benjamin P. Lynch, Jr.
TAYLOR, GUSTIN, HARRIS,
FEARS & DAVIS
5735 Poplar Hall Drive
Norfolk, Virginia 23502

Counsel for Appellant

Norman Olitsky, Esq.
814 Citizens Trust Bldg.
Portsmouth, Virginia 23704

Counsel for Appellee
Gallop

George H. Gray, Esq.
P. O. Box 1545
Chesapeake, Va. 23320

Counsel for Appellee
James

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MOTION FOR JUDGMENT

The undersigned plaintiff, Alma M. Gallop, moves the Honorable Judges of the aforesaid Court for a judgment and award of execution against the defendant, John H. James, for the sum of Twenty Thousand Dollars (\$20,000.00), with interest from the 29th day of September, 1977, which sum of money is due the undersigned plaintiff from the defendant, for this, to-wit:

1. That heretofore to-wit: On the 29th day of September, 1977, the plaintiff, Alma M. Gallop, was operating and controlling a motor vehicle westbound out of the Elizabeth River Tunnel in the City of Portsmouth, Virginia.

2. That on said date, the defendant, John H. James, was operating and controlling a motor vehicle eastbound and approaching the Elizabeth River Tunnel in the City of Portsmouth, Virginia.

3. That as the result of the negligence of the defendant in the operation and control of his motor vehicle, the defendant's vehicle was caused to come into violent contact with the motor vehicle operated and controlled by the plaintiff, and as a result the plaintiff was caused to receive serious and permanent injuries.

4. That the plaintiff was caused to suffer, and she will in the future be caused to suffer, great physical pain and mental anguish.

10 Jan 1979
5.00
25.00
1.00
31.00
Dr. M. Edwards
Guin
001

5. That the plaintiff was caused to expend, and she will in the future be caused to expend, a large sum of money in an endeavor to be cured of said injuries.

6. That the plaintiff was caused to lose, and she will in the future be caused to lose, large sums of money which she would have otherwise earned.

7. That the plaintiff was caused to be unable, and she will in the future be unable, to perform her necessary and lawful affairs.

ALMA M. GALLOP

By 
Of Counsel

Norman Olitsky, p.q.
Olitsky & Olitsky
814 Citizens Trust Building
Portsmouth, Virginia 23704

ANSWER AND GROUNDS OF DEFENSE

Now comes the defendant, John H. James, by counsel, and for his answer and grounds of defense, says:

1. That he denies all of the allegations of the plaintiff's motion for judgment except that on or about the 29th day of September, 1977, he was the operator of a vehicle in the City of Portsmouth, Virginia, when it became involved in an accident.

2. That he denies that he was guilty of any negligence in the premises and denies that he was guilty of any negligence proximately causing injury to the plaintiff herein.

3. That, subject to the above, the sole proximate cause of the accident was due to the negligence of another.

4. That, subject to the above, the plaintiff was guilty of negligence which proximately contributed to cause her injuries, if any.

5. That he denies that the plaintiff sustained the injuries and damages set forth in her motion for judgment and denies that the plaintiff is entitled to recover any sum of

CIRCUIT COURT

PORTSMOUTH, VA.

FILED

2-15-79

WILLIAM M. EDMOND

Gilbert H. Wilson, Esquire
PRESTON, WILSON & LAMBERT
Suite 101, Beach Tower Building
Post Office Box 928
Virginia Beach, Virginia 23451

LAW OFFICES
PRESTON, WILSON,
LAMBERT & LAMBERT
VA. BEACH, VA.

JOHN H. JAMES

By *W. Wilson*
Of Counsel

I hereby certify that a true copy of the foregoing pleading was mailed to all counsel of record this 12th day of February, 1979.

AMENDED MOTION FOR JUDGMENT

The undersigned plaintiff, Alma M. Gallop, moves the Honorable Judges of the aforesaid Court for a judgment and award of execution against the defendants, John H. James and John Doe, for the sum of Twenty Thousand Dollars (\$20,000.00), with interest from the 29th day of September, 1977, which sum of money is due the undersigned plaintiff from the defendant, for this, to-wit:

1. That heretofore, to-wit: On the 29th day of September, 1977, the plaintiff, Alma M. Gallop, was operating and controlling a motor vehicle westbound out of the Elizabeth River Tunnel in the City of Portsmouth, Virginia.

2. That on said date, the defendants, John H. James and John Doe, were operating and controlling their motor vehicles on the approach road eastbound leading to the Elizabeth River Tunnel in the City of Portsmouth, Virginia.

3. That as a result of the negligence of the defendants in the operation and control of their motor vehicles, the vehicle driven by the defendant, John H. James, was caused to come into violent contact with the motor vehicle operated and controlled by the plaintiff, and as a result, the plaintiff was caused to receive serious and permanent injuries.

4. That the plaintiff was caused to suffer, and she will in the future be caused to suffer, great physical pain and mental anguish.

5. That the plaintiff was caused to expend, and she will in the future be caused to expend, a large sum of money in an endeavor to be cured of said injuries.

6. That the plaintiff was caused to lose, and she will in the future be caused to lose, large sums of money which she would have otherwise earned.

7. That the plaintiff was caused to be unable, and she will in the future be unable, to perform her necessary and lawful affairs.

ALMA M. GALLOP

By *Norman Olitsky*
Of Counsel

Norman Olitsky, p.q.
OLITSKY AND OLITSKY, P. C.
814 Citizens Trust Building
Portsmouth, Virginia 23704

3/1/59
I certify that on
I mailed/delivered a true copy of the foregoing pleading(s) to each counsel of record.
Norman Olitsky

1979
111015
WALTER H. ...
By *L K P*, D.C.
- 2 -
10

GROUND'S OF DEFENSE OF JOHN H. JAMES, DEFENDANT

For grounds of defense to plaintiff's amended motion for judgment or to so much thereof as it is deemed material response be made, the defendant, John H. James, states as follows:

1. The allegations of negligence and proximate cause on the part of defendant, John H. James, in paragraph 3 of plaintiff's amended motion for judgment are denied. The allegations of injuries and damages in the same paragraph are denied.

2. The allegations of paragraphs 4, 5, 6 and 7 of plaintiff's amended motion for judgment are denied.

3. At the time and place alleged in plaintiff's amended motion for judgment, plaintiff was negligent and her negligence was a proximate cause of the accident, injury and damage alleged.

4. Defendant, John H. James, will avail himself of any defense disclosed by the evidence or any incident of trial.

5. Defendant, John H. James, deserves the right to amend his grounds of defense at such time as may be advisable.

JOHN H. JAMES, Defendant

By George A. Gray
Of Counsel

George H. Gray, p.d.
Outland, Gray, O'Keefe and Hubbard
Attorneys at Law
112 Coastal Way
Post Office Box 1545
Chesapeake, Virginia 23320

CIRCUIT COURT
PORTSMOUTH, VA.

FILED

3-7-79

WALTER M. EDWARDS, CLERK

CERTIFICATE

I certify that a copy of this pleading was on March 6, D.C. 1979, mailed to each of the following:

Norman Olitsky, Esquire
814 Citizens Trust Building
Portsmouth, Virginia 23704

J. B. Browder, Registered Agent
Government Employees Insurance Company
1200 Ross Building
800 East Main Street
Richmond, Virginia 23219

George H Gray

CIRCUIT COURT
PORTSMOUTH, VA.

FILED

3-7-79

WALTER M. EDMONDS, CLERK

By *J C* D. E.

ANSWER AND GROUNDS OF DEFENSE OF JOHN DOE

Now comes Government Employees Insurance Company, having been served with a notice of Motion for Judgment in this suit, by counsel, and pursuant to Section 38.1-381(e) of the Code of Virginia, and without waiving any rights which it has to deny that it has issued any policy of automobile liability insurance affording coverage to the plaintiff for the matters alleged in this cause of action, and filing this pleading in the name of John Doe, defendant, says:

1. All of the allegations of plaintiff's Motion for Judgment are denied.
2. That it denies there is any John Doe operator as alleged in the plaintiff's Motion for Judgment.
3. That, subject to the above, it is denied there was any John Doe operator who was guilty of negligence proximately causing injury and/or damages to the plaintiff.
4. That, subject to the above, the plaintiff was guilty of negligence which proximately contributed to cause the injuries and damages he sustained, if any.
5. That the defendant, John Doe, denies that the plaintiff sustained the injuries and damages alleged in his

Motion for Judgment and Denies that plaintiff is entitled
to recover any sum of money from this defendant.

GOVERNMENT EMPLOYEES
INSURANCE COMPANY

In the Name of John Doe

By _____
Of Counsel

Benjamin P. Lynch, Jr.
TAYLOR, GUSTIN, HARRIS, FEARS & DAVIS
5735 Poplar Hall Drive
Norfolk, Virginia 23502

CERTIFICATION

I hereby certify that on this 19th day of March,
1979, a true copy of the foregoing pleading was mailed to
all counsel of record.

INTERROGATORIES

TO: John H. James
c/o George H. Gray
Attorney at Law
P. O. Box 1545
Chesapeake, Virginia 23320

The Plaintiff, Alma M. Gallop, by Counsel, hereby propounds the following Interrogatories to the Defendant, John H. James, pursuant to Rule 4:8 of the rules of the Supreme Court of Virginia, for answer within twenty-one (21) days after service thereof.

1. Was the motor vehicle in which you were driving at the time of the accident covered by a policy of liability insurance?
2. If the answer to the foregoing is in the affirmative, state the name of the insurance company insuring said automobile, policy number, and name of assured on said policy.
3. State when said policy became effective and when said policy expired.
4. State limits of liability for personal injury for each person and each accident.
5. State the names and addresses of all persons who were present at the scene of the accident immediately before, during, or after said accident.
6. State whether any photographs were taken of the scene of the accident or of any of the vehicles or persons involved in the

accident complained of, and if so, state the following: (a) names and addresses of the person(s) who took the photographs; (b) the names and addresses of the persons having possession of said photographs.

7. Have you ever caused to have taken any written, taped, recorded, or any type of statement? If so, (a) give the name and address of the person who took the statement described herein and who was present when the statement was made; (b) give the name and address of the person who now has possession of your statement.

8. State the names and addresses of all witnesses upon whom you intend to rely at the trial of this cause.

9. State whether or not you saw the plaintiff or his vehicle at any time prior to the collision. If your answer to the foregoing is in the affirmative, state (a) where the plaintiff's vehicle was located when you first observed same with reference to the point of the collision; (b) in your best judgment, the distance in number of feet separating the two vehicles from the time you first observed it; (c) in your best judgment, the speed in miles per hour of your vehicle at the time you first observed plaintiff's vehicle; (d) speed you were traveling at the time of the collision; (e) distances the vehicles traveled from the time of impact.

10. State the distance in number of feet the vehicle you operated traveled from the moment you first observed the plaintiff or his vehicle until the said collision.

11. State fully, specifically and in detail each and every act or thing done by you as the operator of the vehicle involved in the collision from the time you first observed plaintiff's vehicle until the time of the collision.

12. State whether or not the brakes on the vehicle owned or operated by you were applied prior to the collision. If you state the brakes were applied, state (a) in your best judgment, the speed in miles per hour that the said vehicle was traveling at the moment brakes were first applied, (b) whether or not the brakes slowed the speed of said vehicle, and if your vehicle did not slow when the brakes were applied, please state why.

13. State whether any horn or other signal was given by you as a warning to the plaintiff prior to the time of the collision.

14. Describe specifically and in detail the general mechanical condition of your motor vehicle. (a) State when, from whom, and where you acquired the said vehicle; (b) state when, where, and by whom vehicle was last inspected for mechanical defects prior to the time of the accident made the basis of this suit; (c) state when, where, and by whom the brakes of the said vehicle were inspected; (d) state when, where, and by whom the tires and wheels of said vehicle were last inspected prior to the time of the accident made the basis of this suit.

15. Did you make any statements in the presence of the plaintiff or other persons at the scene of the accident immediately following the occurrence of same? If so, state where, to whom, and what was said on the said occasion.

16. Did the plaintiff make any statement in your presence following the occurrence of the collision? If so, state when, where, and what was said on the said occasion.

17. State whether or not you left your motor vehicle where it finally came to rest immediately after the collision and if same was moved, advise by whom and where?

18. State if your motor vehicle was repaired immediately after the accident and by whom, giving the name and address and date of said repair.

19. You have alleged that plaintiff was guilty of negligence that proximately caused or contributed to the accident. State what facts said allegations have been based upon.

20. State the speed of your motor vehicle when you first observed the plaintiff's motor vehicle and the speed of your vehicle at the time of the collision.

21. State the total amount of damages sustained by your vehicle and by whom said estimate(s) were made.

22. State whether or not you have had any mechanical defects with your motor vehicle before the accident. If so, state time, place, when and where, and if your motor vehicle was involved in a prior collision.

23. State the name and address or information for the location of every person known to, or reasonably believed by you, your agents, attorneys, investigators, or other representatives, who have knowledge or information of any facts pertaining to this accident.

The preceding Interrogatories are to be regarded as continuing beyond the return date, and the defendant is requested to provide,

by way of supplementary answers thereto, any such additional information as may hereafter be obtained by the defendant which will augment or otherwise modify any answers now given to the foregoing Interrogatories as soon as possible after receipt of such information.

ALMA M. GALLOP

By

Alma M. Gallop
Counsel

Norman Olitsky, p.q.
814 Citizens Trust Bldg.
Portsmouth, Virginia

I certify that on 3/2/63
I mailed/delivered a true copy of the foregoing pleadings to the Clerk of the Court.
Alma M. Gallop

ANSWERS TO INTERROGATORIES

Answering seriatim the interrogatories previously propounded, the defendant, John H. James, states as follows:

1. Yes.

2. State Farm Mutual Automobile Insurance Company

2806 224 46C01

F. J. and J. H. James

3. Effective April 20, 1977, expired March 16, 1978

4. \$100,000 for each person/\$300,000 for each accident.

5. Plaintiff; investigating officer; Steven Wesley Brock, Elizabeth River Tunnel District Police; John Doe, name and address unknown; and defendant.

6. Yes.

(a) Polaroid pictures were taken of the vehicles involved by James Edwards of State Farm, 6371 Center Drive, Norfolk, Virginia 23502.

(b) These pictures are in the possession of my attorney.

(a)(1) Pictures were taken of defendant's vehicle by defendant's wife.

(b)(2) These pictures are in the possession of defendant.

7. Yes.

(a) A statement to James Edwards of State Farm on October 5, 1977, which was recorded.

(b) A copy of the transcription of the statement is in the possession of my attorney.

8. It is not known at this time what witnesses will be called to testify at trial but at least the following will be called:

Steven Wesley Brock
Elizabeth River Tunnel District Police
Norfolk, Virginia

D. B. Weeks, Sr.
Elizabeth River Tunnel District Police
Norfolk, Virginia

Frances L. James
309 Pennington Boulevard
Portsmouth, Virginia 23701

9. No.
10. N/A.
11. N/A.
12. Yes
 - (a) 30-35 miles per hour.
 - (b) Yes.
13. No.
14. Excellent
 - (a) 1972
Waters Pontiac
Portsmouth, Virginia
 - (b) June, 1977
Portsmouth, Virginia
Fink's Auto Service
 - (c) See (b) just above.
 - (d) See (b) just above.
15. No.
16. No.
17. Yes. It was later removed by the Tunnel Police to the Tunnel lot.
18. Car was not repaired. Cost of repairs would have exceeded value of car.

19. (a) Plaintiff was not keeping a proper lookout.
(b) Plaintiff did not have her car under proper control.
(c) Plaintiff turned her car to left when she should have turned her car to right just prior to the collision.

20. These are unknown.

21. See 18 above. No written estimate was made.

22. No.

23. See 8 above.


John H. James

Subscribed and sworn to before me this 18th day of April, 1979.

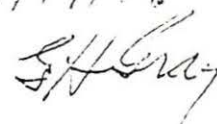

Notary Public

My commission expires:

8/12/79

George H. Gray, p.d.
Outland, Gray, O'Keefe and Hubbard
Attorneys at Law
112 Coastal Way
Post Office Box 1545
Chesapeake, Virginia 23320

I certify that a copy of the foregoing
pleading was mailed to each counsel of
record on 4/19/79



/

In assessing the damages to which ^{the plaintiff} ~~she~~ is entitled you may take into consideration any of the following which you believe from the evidence to have resulted from the collision:

1. Any bodily injuries sustained and the extent and duration thereof;
2. Any effect of any such injuries upon her health according to its degree and probable duration;
3. Any physical pain and mental anguish suffered by her in the past, and ^{physical pain} ~~any~~ which may be reasonably expected to be suffered by her in the future;
4. Any inconvenience and discomfort caused in the past.
5. Any doctors, hospital and medical expenses incurred in the past.
6. Any loss of earnings in the past by reason of being unable to work at her calling:

and from these as proven by the evidence your verdict should be for such sum as will fully and fairly compensate the plaintiff for the damages sustained by her as a result of the collision, not to exceed the sum sued for in the Motion for Judgment.

L-79-15
6/17/80
Doe
Callop v. Doe
granted
TRUB

a

The Court instructs the jury that:

A verdict must not be based in whole
or in part upon surmise, conjecture or sympathy
for either of the parties, but must be based
solely upon the evidence and the instructions
of the Court.

L-79-15
6/17/80
Gallo v. Doe
Grand
Jury

INSTRUCTION NO. B

The Court instructs the jury that damages are not presumed nor may they be based upon speculation, but must be proven; and the burden is upon the plaintiff to prove by a preponderance of the evidence each item and element of damage claimed, and unless such item or element of damage is proven by a preponderance of the evidence, then the plaintiff cannot recover for such item.

1-19-15
6/17/80
Gallo v. Doe
Grain
T. R. B.

INSTRUCTION NO. B - As offered

The Court instructs the jury that damages are not presumed nor may they be based upon speculation, but must be proven; and the burden is upon the plaintiff to prove by a preponderance of the evidence each item and element of damage claimed, and unless such item or element of damage is proven by a preponderance of the evidence, then the plaintiff cannot recover for such item.

And if the jury are uncertain as to whether any particular item of damage claimed was caused by the collision, or if it appears just as probable that any injury or element of damage complained of resulted from a cause other than the collision as that it did, then the plaintiff cannot recover for such injury or element of damage.

INSTRUCTION NO. 71

The Court instructs the jury that the mention by counsel of the amount plaintiff has sued for is not evidence in this case and should not be considered by you in arriving at the amount, if any, or your award.

LE 79-15
6/17/80
Callahan v. Doe
Refused
RUB 3

B1

The Court instructs the jury that:

It is the duty of one who claims to have been injured by the negligent act of another to exercise reasonable care and diligence to avoid loss and to minimize or lessen the resulting damage, and to the extent that her damages are the result of her failure to exercise such care and diligence, she cannot recover.

And if you believe from the evidence that the plaintiff, after she was injured, failed to exercise reasonable care and diligence in an attempt to lessen the resulting damage to her, and that such failure enhanced her damages, then she cannot recover for such enhanced or increased damage.

6/17/80
L-79, 15
Callot "Doe
Refused
J. B. B

At this day came the parties by their Attorneys and Court convened as of its adjournment of Monday, June 16th, 1980, and the jurors sworn to try the issue joined in this case appeared in Court according to their adjournment and additional evidence being heard, and after defendants, John H. James and John Doe, rested, plaintiff, by counsel, moved the court to enter summary judgment against the defendant, John Doe, which motion being heard, the court doth sustain and the trial ordered to proceed on the question of damages only; whereupon, defendant, John H. James, moved to strike the plaintiff's evidence and enter summary judgment in his favor, and the plaintiff, Alma M. Gallop, opposed the motion, which motion was granted and summary judgment entered in favor of defendant, John H. James; whereupon, the trial proceeded against the defendant John Doe and after argument of counsel, the jury retired to their room to consult of their verdict and after sometime returned into Court having found the following verdict: "We, the jury find for the plaintiff and fix her damages at \$10.000, signed John Ashcroft, Jr., Foreman" .; whereupon, the defendant, John Doe, by counsel, moved the court to set the verdict of the jury aside and to grant him a new trial on the grounds that said verdict is contrary to the law and evidence and excessive and for errors of the court which motions being heard, the court doth overrule; It is therefore considered by the Court that the plaintiff recover of the defendant, John Doe, the sum of Ten Thousand (\$10,000.00) Dollars with interest thereon to be computed at the rate of eight per cent per annum from the 17th day of June, 1980, 'till paid and costs, to which action of the court the defendant, John Doe, by counsel, noted his exception.

024



6/17/80

NOTICE OF APPEAL

TO: Mr. Walter M. Edmonds, Clerk
Circuit Court of Portsmouth
Portsmouth Civic Center
Portsmouth, Virginia 23704

Counsel for Government Employees Insurance Company
in the name of John Doe hereby files Notice of Appeal from the
Judgment Order entered herein on the 17th day of June, 1980 in
the Circuit Court for the City of Portsmouth, Virginia.

A transcript of testimony and incidents of trial will
be filed hereafter.

GOVERNMENT EMPLOYEES INSURANCE
COMPANY IN THE NAME OF JOHN DOE

By Benjamin P. Lynch, Jr.
Of Counsel

Benjamin P. Lynch, Jr.
TAYLOR, GUSTIN, HARRIS, FEARS & DAVIS
5735 Poplar Hall Drive
Norfolk, Virginia 23502

I hereby certify that a true copy of the foregoing was
mailed this 7th day of July, 1980 to Norman Olitsky, 814 Citizens
Trust Building, Portsmouth, Virginia 23704 counsel for the
plaintiff and George Gray, P. O. Box 1545, Chesapeake, Virginia
23320, counsel for the defendant, John H. James.

Benjamin P. Lynch, Jr.

SUPREME COURT OF VIRGINIA

Government Employees Insurance
Company in the name of John Doe,

Appellant,

against Record No. 801471
 Circuit Court No. L-79-15

Alma M. Gallop and
John H. James,

Appellees.

ASSIGNMENT OF ERROR
OF
GOVERNMENT EMPLOYEES INSURANCE
COMPANY IN THE NAME OF JOHN DOE

- I. The Court erred in denying the jury the opportunity to rule on the negligence of the Defendants, James and Doe.
- II. The Court erred in refusing Instruction E.

1 THE COURT: Swear the court reporter in.

2
3 (Whereupon, the court reporter was sworn.)
4

5 THE COURT: Now, ladies and gentlemen of the
6 venire, the law action that you will hear this morning is that
7 of Alma M. Gallop, the plaintiff, versus John H. James and
8 John Doe.

9 Now, this is a motion for judgment for \$20,000.00
10 for personal injuries sustained, that's from the alleged
11 injuries involved, from an accident on September 29, 1977 in
12 the City of Portsmouth.

13 Now, the lady sitting closest to you is
14 Mrs. Marcia Olitsky who is one of the counsel for the plaintiff.
15 The plaintiff sits to her left, Mrs. Gallop, and to
16 Mrs. Gallop's left is Mr. Norman Olitsky, co-counsel, and this
17 is the firm of Olitsky & Olitsky.

18 To Mr. Olitsky's left is Mr. George H. Gray of
19 the law firm of Outland, Gray, O'Keefe & Hubbard and to his
20 left is the defendant, Mr. John H. James, who he represents,
21 and to Mr. James' left is Mr. Benjamin Lynch from the law firm
22 of Taylor, Gustin, Harris, Fears & Davis, representing John
23 Doe.
24
25

1 (Whereupon, the jury panel was called; the jury
2 was sworn on voir dire; the jury was questioned on voir dire;
3 they jury was selected by pre-emptory challenge.)
4

5 THE CLERK: All witnesses here to testify in the
6 case of Alma M. Gallop versus John H. James and John Doe,
7 please raise your right hands.
8

9 (Whereupon, all witnesses were sworn.)
10

11 (Whereupon, opening statements were made by
12 counsel.)
13

14 MR. CLITSKY: Your Honor, we would call
15 Mr. Weeks.
16

17
18 OFFICER DWAIN E. WEEKS, SR., called as a witness
19 on behalf of the Plaintiff, having been first duly sworn, was
20 examined and testified as follows:
21

22 DIRECT EXAMINATION

23 BY MR. CLITSKY:

24 Q. State your name, please, sir.

25 A. Officer Dwaine E. Weeks, Sr.

1 Q. Where do you live, Mr. Weeks?

2 A. I live at 1115 Holly Street, Chesapeake, Virginia.

3 Q. Now, Mr. Weeks, by whom are you employed? Who do

4 you work for at the present time?

5 A. Virginia Department of Highways and

6 Transportation assigned to Elizabeth River Toll Facilities.

7 Q. And how long have you been working there at the

8 Elizabeth River Facilities?

9 A. Since July 22, 1963.

10 Q. All right. Were you employed there on the

11 evening of September 28, 1977 and the morning thereafter of

12 September 28 around midnight?

13 A. Yes, I was.

14 Q. And what were your duties on the evening in

15 question, Officer?

16 A. I was on routine patrol working in that area of

17 the tunnel.

18 Q. When you say routine patrol, would you tell the

19 members of the jury what that consist of?

20 A. I work all accidents and breakdowns and stuff.

21 Q. All right. Was your attention called to any

22 accident occurring on September 28th or the 29th of 1977?

23 A. Yes, sir, it was.

24 Q. Would you tell us, please, sir, when did you

25 first receive a call?

1 A. It was approximately 12:05 a.m.

2 Q. Where were you when you received this call of an
3 accident?

4 A. I was in the tunnel, station four. Sergeant
5 Heath, he stopped and picked me up and told me I had a bad
6 accident at the Portsmouth open cut.

7 Q. Now, what did you, then, do when you received the
8 call?

9 A. Sergeant Heath and myself went to the scene and
10 observed what happened, and I tried to see who was hurt and
11 everything.

12 Q. Now, when you arrived on the scene, was that on
13 the Norfolk or Portsmouth side of the tunnel?

14 A. Portsmouth side of the tunnel.

15 Q. And would you tell us, sir, when you arrived,
16 what did you see; what did you observe?

17 A. I observed a Buick in the westbound lane going up
18 the interstate and a Pontiac Bonneville was coming into the
19 tunnel and crossed over and struck the Buick approximately
20 head-on.

21 Q. All right. Now, where this accident happened,
22 what is the speed limit?

23 A. I would say 35 miles an hour.

24 Q. What were the weather conditions?

25 A. The weather condition was dry.

1 Q. What was the flow of traffic; was it heavy,
2 medium or light or do you recall?

3 A. It was heavy going to Norfolk because the
4 Navyyard had just got off from work, Navyyard traffic had
5 started coming through.

6 Q. And the traffic coming from Norfolk going to
7 Portsmouth —

8 A. I'd say it was medium.

9 Q. Medium. Now, sir, would you tell us, when you
10 say east and west, which is east and which is west? Explain
11 that us to.

12 A. Westbound is going to Portsmouth.

13 Q. Westbound is going to Portsmouth coming from
14 Norfolk?

15 A. Yes, sir, and eastbound is going to Norfolk
16 coming from Portsmouth.

17 Q. Now, do you know which car Mrs. Gallop was
18 driving?

19 A. She was driving the Buick.

20 Q. Now, which direction was she going?

21 A. She was going westbound, going towards Portsmouth.

22 Q. All right, sir. Where was her car when you
23 arrived on the scene?

24 A. It was in the westbound lane to the Portsmouth
25 open cut.

1 Q. And that car, you say, was the Buick?

2 A. Yes, sir.

3 Q. And where was the other car, I believe you said,
4 was driven by whom?

5 A. Mr. James.

6 Q. Where was that car?

7 A. It was in the westbound lane, was headed
8 eastbound.

9 Q. All right, sir. Was there a photograph made of
10 the two cars and the scene?

11 A. Yes, sir.

12 Q. Do you have that photograph with you?

13 A. I have one.

14 Q. All right, sir.

15 THE COURT: Mr. James, his was a Pontiac?

16 THE WITNESS: Yes, sir, Bonneville Pontiac.

17

18 BY MR. OLITSKY:

19 Q. Officer, I hand you this photograph and ask you
20 can you identify that, sir?

21 A. Yes, I can.

22 Q. And does it accurately show the positions of the
23 automobiles driven by Mr. James and Mrs. Gallop that night of
24 the accident?

25 A. Yes, sir, it does.

1 MR. OLITSKY: Your Honor, we would like to
2 introduce this as a Plaintiff's Exhibit, please.

3 THE COURT: All right. Defense counsel seen it?

4 MR. OLITSKY: Yes, sir.

5 THE COURT: Now, this is outside of the tunnel,
6 isn't it?

7 THE WITNESS: Yes, Your Honor.

8 THE COURT: How far outside of the tunnel was it?

9 THE WITNESS: Right by the jeep shack, I'd say,
10 one hundred or two hundred feet from the jeep shack, to the
11 right of the guardrail, straight where you start in the tunnel.

12 THE COURT: Very well. The Plaintiff's Exhibit
13 will be received, admitted in evidence and identified as
14 Plaintiff's Exhibit Number One.

15
16 (Whereupon, the Photograph was marked and
17 received in evidence as Plaintiff's Exhibit No. 1.)

18

19 BY MR. OLITSKY:

20 Q. If you would step down here, I hand you this
21 photograph, so the members of the jury can see this. Would
22 you point out, please, sir, where the middle of the road is?

23 A. This is the middle of the road here. This is the
24 middle of the road right here where the double set of lines
25 are.

1 Q. All right. Would you tell us, sir, whose car is
2 this over there?

3 A. This is Mr. James' car, I mean, Mrs. Gallop's.
4 Mr. James' car is right here and Mr. James is sitting in the
5 back seat.

6 Q. And which car is this over here?

7 A. This is Mrs. Gallop's Buick here.

8 Q. Where her car is, is that the lane coming back
9 from Norfolk?

10 A. Yes, sir.

11 Q. In her proper lane?

12 A. Yes, sir.

13 Q. Now, sir, when you did arrive at the scene, did
14 you have occasion to speak to Mrs. Gallop at all?

15 A. No, sir, she was unconscious at the time.

16 Q. All right, sir. And where was she in her car at
17 that point in time?

18 A. She was laying across the front down almost in
19 the floorboard when I got there.

20 Q. Do you know who called the ambulance?

21 A. Not unless it was Bridge Patrolman Brock. I
22 couldn't tell you.

23 Q. Do you know how Mrs. Gallop left the scene of the
24 accident?

25 A. She left with Portsmouth Emergency Service and

1 was taken to Portsmouth General Hospital.

2 Q. How did she get out of her car; do you know?

3 A. Emergency ambulance crewmen. Portsmouth Police
4 opened -- got the door open and then the Portsmouth ambulance
5 crewmen carried her to the hospital.

6 Q. All right, sir. Now, where this accident
7 occurred, you say the speed limit, you thought, was 35 miles
8 an hour?

9 A. Yes, sir, it should be.

10 Q. All right. And where those two double yellow
11 lines is, there is some sort of median; is that what you call
12 it?

13 A. Yes, sir, cement median strip, and where the
14 double yellow lines is there is an opening for the emergency
15 vehicles to turn around and get in and out of the tunnel. It
16 would have been cement all the way down.

17 MR. OLITSKY: I have no further questions.

18 Answer these gentlemen, please, Officer Weeks.

19

20 CROSS-EXAMINATION

21 BY MR. GRAY:

22 Q. That area shown in the photograph where the chains
23 are actually has since that time been cemented in, has it not?

24 A. No, sir.

25 Q. It has not?

1 A. No, sir.

2 Q. Now, I notice this photograph here was taken by
3 the Portsmouth Police Department.

4 A. Yes, sir.

5 Q. Did they arrive at the scene before you did or
6 after?

7 A. We got there about the same time.

8 Q. And after the accident was over is when you wrote
9 up your report?

10 A. Yes, sir.

11 Q. I believe you said you don't know who called the
12 ambulance and you don't know how soon after the accident
13 occurred that the ambulance was called?

14 A. No, I can't recall.

15 Q. Officer Weeks, there is a ramp coming off of,
16 well, I don't know what street you would call it, but I guess
17 you would begin back at Court Street. You could come off
18 Court Street proceeding south and then turn west off of Court
19 to approach or go into the tunnel. Have I got my directions?

20 A. Yes, sir, and that is Ramp B.

21 Q. And that is Ramp B coming --

22 A. Into the tunnel.

23 Q. -- into the tunnel. Now, that Ramp B merges
24 with the lane of traffic coming toward the tunnel from off of
25 264?

1 A. Yes, sir.

2 Q. And I believe there's a solid line there where
3 those two lanes first come together; is that correct?

4 A. Yes, sir.

5 Q. Did you receive any information about a third
6 vehicle being involved?

7 MR. LYNCH: Your Honor, I object, leading.

8 THE COURT: I overrule the objection. I think he
9 can ask the question.

10 MR. GRAY: I'm not asking what the information
11 was, I was asking if he received information concerning a
12 third vehicle.

13 THE WITNESS: Yes, I did.

14
15 BY MR. GRAY:

16 Q. Do you know what happened to that third vehicle?

17 A. No, I don't.

18 MR. GRAY: All right. I have no further
19 questions. Thank you.

20

21 CROSS-EXAMINATION

22 BY MR. LYNCH:

23 Q. Officer Weeks, as I understand it, you did not
24 speak to either of the drivers, did you?

25 A. Well, I talked to Mrs. Gallop twice, once at the

1 hospital, she was kind of dazed; and then I talked to her when
2 she came by to get some stuff out of her car.

3 Q. All right. Both of the drivers had been removed
4 from the scene of the accident or were removed shortly after
5 you arrived at the scene?

6 A. They were removed shortly after I got there.

7 THE COURT: Both by ambulance?

8 THE WITNESS: Yes, sir, Your Honor.

9

10 BY MR. LYNCH:

11 Q. Now, you have talked about this Ramp B that comes
12 in roughly from Court Street, and you have also made a
13 reference to a jeep shack, I believe?

14 A. Yes, sir.

15 Q. This Ramp B or the lane of traffic that comes in
16 from Court Street comes around behind that jeep shack, doesn't
17 it?

18 A. Yes, sir.

19 Q. In addition to a jeep shack, is there some
20 facility there or room for an office or for a man to stay in?

21 A. There's across the street. It's a little small
22 green booth.

23 Q. So there's a small green booth that's across from
24 this Ramp B?

25 A. (Witness nods head affirmatively.)

1 Q. Is that right?

2 A. Yes, sir.

3 Q. Now, is there another ramp that comes into the
4 tunnel from Court Street?

5 A. That's for buses only, no traffic uses that.

6 Q. All right, sir. But there is, then, a third ramp
7 that comes in that is for the use of buses only?

8 A. Right, that's in front of the jeep shack.

9 Q. All right. Now, Officer Weeks, the first
10 photograph you have identified here was one that appears to
11 have been taken by the Portsmouth Police Department.

12 A. Yes, it was.

13 Q. All right. I hand you a second photograph and
14 ask you if you can identify that one?

15 A. Yes. This is another one that was taken at the
16 scene.

17 Q. All right. Now, is this also a photograph that
18 was taken by the Portsmouth Police Department?

19 A. Yes, it was.

20 Q. And I notice in there it appears, though, in this
21 photograph that you were there.

22 A. Yes, sir, I'm standing there in the center of it.

23 MR. LYNCH: You are standing in the center of it.

24 Your Honor, we would offer this as Exhibit One.

25 THE COURT: Very well. Picture of the two cars

1 will be received, admitted in evidence and identified as
2 Defendant Doe's Exhibit Number One.

3
4 (Whereupon, the Photograph was marked and
5 received in evidence as Defendant Doe's Exhibit No. 1.)
6

7 BY MR. LYNCH:

8 Q. Officer Weeks, I also hand you a sequence of
9 photographs, there are nine, I believe. Can you look at those
10 and can you identify those for us?

11 A. Yes. There is the Effingham Overpass and the
12 interstate approaching the tunnel, going down into the
13 downtown tunnel.

14 Q. And would those nine photographs reveal or show
15 the interstate from, you say, the Effingham Overpass going
16 down into the tunnel?

17 A. Yes, they will.

18 Q. All right. And will that be the direction coming
19 from Bowers Hill or out in that direction?

20 A. Yes, sir, be eastbound.

21 Q. All right, sir. And then finally an 3 by 10
22 photograph. Can you identify for us what is contained in that
23 photograph?

24 A. It shows Ramp B, which is here by the jeep shack,
25 and also shows Ramp I going into the tunnel.

1 Q. And Ramp I would be the one that the buses use?

2 A. No, sir, the ramp the buses use hasn't got a
3 number on it.

4 Q. Ramp I would be --

5 A. Interstate going eastbound into the tunnel.

6 MR. LYNCH: Your Honor, I would offer as Exhibit
7 Two the sequence of nine photographs.

8 THE COURT: Very well. The nine photographs in
9 sequence are received, admitted in evidence and identified as
10 Defendant Doe's Exhibit Number Two.

11

12 (Whereupon, the Nine Photographs were marked and
13 received in evidence as Defendant Doe's Exhibit No. 2.)

14

15 THE COURT: Eight by ten photograph received,
16 admitted in evidence and identified as Defendant Doe's Exhibit
17 Number Three.

18

19 (Whereupon, the 8 by 10 Photograph was marked and
20 received in evidence as Defendant Doe's Exhibit No. 3.)

21

22 THE COURT: This picture is showing where you
23 come out of the tunnel and come to Portsmouth?

24 MR. LYNCH: That would be going into the tunnel
25 coming from Portsmouth.

1 THE COURT: This is going into the tunnel from
2 the Portsmouth side?

3 MR. LYNCH: Yes, sir. I believe that the jeep
4 snack that he referred to is just over here in the corner.

5
6 BY MR. LYNCH:

7 Q. Now, Officer Weeks, I wonder if you would come
8 down with these photographs. The photograph that has been
9 marked as Exhibit Number One, would you explain to the jury
10 what's in that photograph?

11 A. Well, this here is Mrs. Gallop's car here and
12 Mr. James' Pontiac sitting here; there is myself in the center;
13 and this is another Bridge Tunnel Patrolman, Brock.

14 Q. Now, in which lane are those vehicles located?

15 A. Mrs. Gallop is in the westbound lane, and the
16 front of this vehicle is also in the westbound lane, but it is
17 headed eastbound.

18 Q. And the westbound lane would be coming out of the
19 tunnel going towards Bowers Hill?

20 A. Yes, sir.

21 Q. Now, right between the hood and the windshield of
22 Mr. James' car appears to be a fence. Can you tell us what
23 that is?

24 A. That's the guardrail going down into the tunnel.

25 Q. So this was at a point after you were starting

1 down into the tunnel?

2 A. I'd say maybe about 25 or 30 feet just starting,
3 you know, down at the tunnel there, going into the tunnel.

4 Q. All right, sir. Now, I hand you a sequence of
5 photographs that have been marked as Exhibit Two and are
6 numbered one through nine on the reverse side. Can you tell
7 me what they show?

8 A. Yes. This is coming off of the Effingham
9 Overpass eastbound going down into the downtown tunnel.

10 Q. All right. Now, looking at this first photograph
11 there, it seems to be a road that goes off to the right. What
12 is that?

13 A. That goes down to Court Street.

14 Q. It goes -- is it Court Street?

15 A. It's Court Street.

16 Q. All right. That goes down to Court Street?

17 A. Court Street.

18 Q. And then the left lane here would be?

19 A. Going down into the tunnel.

20 Q. And that is what you call Ramp I?

21 A. Yes, sir.

22 Q. As we continue on to two through four, these
23 would be approaching -- getting closer to the tunnel?

24 A. Yes, they would.

25 Q. All right, sir. Now, this photograph that is

1 four on the reverse side, what does that show?

2 A. That shows the safety inspection station here.
3 This is the ramp where the trucks pull in for us to inspect
4 them, and on the left here is the lane continued on down into
5 the tunnel, Ramp I.

6 Q. Now, in the right-hand side of that picture,
7 there's a little shed. What is that?

8 A. That's the patrolman shed where we stay.

9 Q. And the jeep shack where you were, does that show?

10 A. This is on the far right, that's the big building.

11 Q. Now, the Ramp B that comes in from Court Street
12 would be where on that picture?

13 A. Be in between the jeep shack and this green booth.

14 Q. All right, sir. Now, continuing on through, I
15 would bring your attention to the last one, number nine, and
16 ask you what that shows?

17 A. It shows you have gone by Ramp B here approaching
18 the -- going into the tunnel.

19 Q. Now, there's a sign over here on the right down a
20 way, what is that?

21 A. It says merge left.

22 Q. This one down here?

23 A. Yeah, merge left, form single line.

24 Q. Form single line. And that would be some
25 distance down into the tunnel?

1 A. That would be, yeah, I'd say, at least a hundred
2 and fifty feet, two hundred feet.

3 Q. And is that the same form single line that shows
4 up in this Defendant's One photograph?

5 A. Yes, it is.

6 Q. Now, in the center there it appears that there is
7 a concrete median and then some rubber cones.

8 A. Yes, it is.

9 Q. What is that?

10 A. They are designed for trucks if they are too high
11 to go into the tunnel, but it didn't work out. You have two
12 of them. The accident happened at the second one down, which
13 is in the center of this picture.

14 Q. And so the accident occurred where those rubber
15 cones are in the center of that picture?

16 A. Yes, the second set of cones down here.

17 Q. I wonder if you would take my pen and circle that
18 for me?

19 A. (Witness complies with request.)

20 Q. All right, sir. Then I have one last one here
21 which has been marked Exhibit Three, and I ask you what that
22 shows?

23 A. This shows Ramp B and this is Ramp I eastbound
24 going into the tunnel.

25 Q. All right. Now, where is the bus ramp that you

1 talked about?

2 A. This is this ramp. You can see it coming around
3 right here by them trees there.

4 Q. And can you see in that photograph where the
5 rubber cones were, where you circled them on number nine here,
6 where the accident occurred?

7 A. No, the cars have them blocked here. This is the
8 first set right here.

9 Q. And can you tell us what kind of median that is;
10 is that a concrete median?

11 A. That's a cement median.

12 Q. Do you have any idea of the height of it?

13 A. I'd say about four inches, five inches.

14 Q. Can you tell us what the width of the travel lane
15 is?

16 A. It should be eleven feet.

17 Q. I'm talking about Ramp I.

18 A. Ramp I, that should be, I'd say, at least
19 fourteen feet 'cause this safety zone would be over here on
20 this side.

21 Q. But the travel portion of it ---

22 A. It would be fourteen feet, it should be.

23 MR. LYNCH: Return to the witness stand, if you
24 would.

25

1 BY MR. LYNCH:

2 Q. Now, as we talked about the sequence of
3 photographs one through nine, coming down off of the
4 interstate, is there anything along there, any obstructions to
5 visibility?

6 A. No, sir.

7 Q. Are there any obstructions to visibility?

8 A. No, sir.

9 Q. In your investigation, did you find any skid
10 marks?

11 A. Yes, I found Mr. James had been braking, I'd say,
12 about fifty to sixty feet of skid marks where he laid, you
13 know, solid rubber.

14 Q. Fifty to sixty feet?

15 A. Yes, sir.

16 Q. And where were they located?

17 A. This was in the eastbound lane and just as, you
18 know, he skidded into -- across the median strip.

19 Q. All right. But where was that located in
20 relation to where the car was?

21 A. That would be back about where the point of Ramp
22 B and I are.

23 Q. All right. Now, has that median been changed any
24 since this accident with those cut throughs?

25 A. No, sir.

1 Q. And you made some reference to a Portsmouth open
2 cut, I believe?

3 A. That's down behind Mrs. Gallop's car. That is
4 what we call the side to Portsmouth, open cut on the
5 Portsmouth side, just like the Norfolk side is called the
6 Norfolk open cut.

7 Q. Would that be the whole entrance from the mouth
8 of the tunnel out?

9 A. Yes, sir. That would be from where that
10 guardrail is going down.

11 Q. From the beginning of the guardrail?

12 A. Yes, sir, down into the mouth of the tunnel, that
13 is the Portsmouth open cut.

14 MR. LYNCH: Thank you, officer.

15 THE COURT: What was the full name of the overcut?

16 THE WITNESS: Portsmouth open cut.

17 THE COURT: Is that from the guardrail?

18 THE WITNESS: Yes, sir, down to the mouth of the
19 tunnel.

20 MR. LYNCH: I'm sorry. Is that word you used
21 open cut or over?

22 THE WITNESS: Open cut, not over cut.

23 THE COURT: That's the area where the accident
24 was or at least where the cars were when you went down there?

25 THE WITNESS: Yes, sir.

1 MR. GRAY: I will go ahead when the jurors finish
2 looking at the pictures, Your Honor.

3 THE COURT: All right.

4 MR. OLITSKY: May it please the Court, we have a
5 call from one of the physicians in Norfolk. He just finished
6 surgery at the hospital. He can either come over now or go to
7 his office and we can call and have him come over.

8 THE COURT: Well, however you would like to do it.

9 MR. OLITSKY: When do you contemplate breaking?

10 THE COURT: At quarter of one I plan on taking up
11 the matter of appointing counsel for certain people, so I was
12 going to, as far as this trial was concerned, I was going to
13 adjourn by quarter of one.

14 MR. OLITSKY: And then come back at approximately
15 what time, Your Honor?

16 THE COURT: Hopefully -- well, I don't know how
17 long it is going to take -- hopefully around two or a little
18 after.

19 MR. OLITSKY: May I tell the clerk?

20 THE COURT: Yes, sir.

21

22 CROSS-EXAMINATION (Continued)

23 BY MR. GRAY:

24 Q. Officer Weeks, you referred to some cones shown
25 in the photographs. Those cones were there when this accident

1 happened, were they not?

2 A. If I recall, I don't believe they were.

3 Q. Now, also, I hope I'm understanding correctly,
4 you said that the median strip has not been filled in since
5 this accident happened.

6 A. No, sir. They was planning on filling it in and
7 they never did it.

8 Q. Let me show you this photograph nine. Doesn't
9 that show the median strip filled in?

10 A. No, sir, that is not filled in. It is two
11 openings there.

12 THE COURT: Let me see that photograph, please,
13 sir, so I will know what you-all are talking about.

14 THE WITNESS: 'Cause on the midnight shift paddy
15 wagons turn in there and go to the patrol station when there
16 is no traffic.

17 THE COURT: All right, sir.

18

19 BY MR. GRAY:

20 Q. All right. Now I'm going to show you this
21 photograph Number Eight, and I can see two cones in there and
22 see that that area is not filled in in the median strip; that
23 is correct, isn't it?

24 A. Yes, sir.

25 Q. Is that where the accident happened?

1 A. No, sir, it happened further down on the other
2 side of where the cones are.

3 Q. Now, this is the photograph, you said, where the
4 accident happened.

5 A. Yes, sir.

6 Q. That's Number Nine on the back, and doesn't that
7 median strip show that it is filled in?

8 A. No, sir, it is not filled in.

9 THE COURT: Let me see that one.

10 MR. GRAY: The accident was down around these
11 cones he said.

12 THE COURT: In that area?

13 MR. GRAY: Yes, sir.

14 THE COURT: In that area. From the picture here,
15 there is the two white lines and then there is a wider space.
16 Is that just painted on the ground rather than being a median
17 strip?

18 THE WITNESS: No, sir, it is a median strip
19 running through there.

20 THE COURT: And where is it you say there isn't
21 any median strip? That is further down?

22 THE WITNESS: Yes, sir, there is two openings in
23 there.

24 THE COURT: In other words, the median strip
25 stops behind the cones that you circled?

1 THE WITNESS: Yes, sir, stopped before you get to
2 the cones, and on the other side it starts up again. There is
3 two openings on that median strip.

4 THE COURT: Okay.

5

6 BY MR. GRAY:

7 Q. Mr. Weeks, I need some help. Come down here
8 before the jury and let's see if we can get this straightened
9 out. Can you see where the end of my pencil is?

10 A. Yes, sir.

11 Q. Isn't that a median strip?

12 A. Yes, sir. Start from right here up.

13 Q. Yes, sir. And isn't that where it has been
14 recently filled in?

15 A. No, sir. This here was a stanchion pole. It has
16 been torn down.

17 Q. And this area where I'm running my pencil is not
18 where it was filled in?

19 A. That was filled in way before the accident
20 happened. See, it was, you know, a little bit wider, but it
21 is two openings there. It is still two openings there.

22 MR. GRAY: You can go back up there and have a
23 seat there.

24

25

1 BY MR. GRAY:

2 Q. All right. I will go at it another way. On
3 Plaintiff's Exhibit Number One there's a light sign over here
4 that I have got my pencil pointed to up in the upper right-
5 hand corner.

6 A. Yes, sir.

7 Q. And it is not clearly legible, but that sign, do
8 you recall what that sign says?

9 A. Form single lane.

10 Q. Form single lane?

11 A. Yes, sir.

12 Q. And the position of the automobile of Mrs. Gallop
13 and that of Mr. James would be what, about 25 or 30 feet west
14 of that sign?

15 A. Yes, sir, it would.

16 MR. GRAY: I have no further questions. Thank
17 you.

18 THE COURT: Mr. Lynch, do you have any questions?

19 MR. LYNCH: No, sir.

20 THE COURT: Thank you very much. You are excused
21 and you may stay or leave if you like. If you wish to remain,
22 you may stay in the courtroom.

23 MR. GRAY: Your Honor, one question.

24 Mr. Weeks, is there any speed limit on the Ramp B?

25 THE WITNESS: If it is, I can't recall. It should

1 be about 25 miles since it is an onramp coming into the tunnel.

2 MR. GRAY: All right. Thank you.

3

4 (Witness excused.)

5 * * *

6

7 MR. OLITSKY: I call Officer Brock, please, Your
8 Honor.

9

10

11 STEVEN W. BROCK, called as a witness on behalf of
12 the Plaintiff, having been first duly sworn, was examined and
13 testified as follows:

14

15 DIRECT EXAMINATION

16 BY MR. OLITSKY:

17 Q. State your name, please, sir?

18 A. Steven Wesley Brock.

19 Q. And Mr. Brock, where do you live?

20 A. 2134 Carrene Drive, Virginia Beach.

21 THE COURT: Is that B-r-o-c-k?

22 THE WITNESS: Yes, sir.

23

24

25

1 BY MR. OLITSKY:

2 Q. How old are you, Mr. Brock?

3 A. Twenty-four.

4 Q. Where are you presently employed?

5 A. East Coast Cycle Salvage Corporation.

6 Q. Now, in September of 1977, by whom were you
7 employed?

8 A. Virginia State Department of Highways.

9 Q. And where were you stationed on the evening of
10 September the 28th or early morning of September 29th, 1977?
11 Where were you working?

12 A. Downtown tunnel.

13 Q. Now, when you say the downtown tunnel, is
14 that -- which tunnel is that?

15 A. The one right over here.

16 Q. Is that the oldest tunnel?

17 A. The oldest.

18 Q. Now, which direction does that tunnel go, north,
19 east, south, west? Would you tell us, if you recall. Do you
20 know which direction?

21 A. Been too long.

22 Q. Okay. Too long. Now, do you recall what the
23 speed limit is there?

24 A. Thirty-five.

25 Q. All right. Now, the weather conditions on the

1 night -- Do you recall an accident occurring between the
2 automobiles driven by Mrs. Gallop and Mr. James?

3 A. Yes, sir.

4 Q. All right. Where were you immediately preceding
5 and during that accident; where were you standing?

6 A. On the station two, which is the Portsmouth side
7 of the tunnel.

8 Q. On the Portsmouth side of the tunnel, station two.
9 Now, where is station two?

10 A. That is the complete side of the tunnel over
11 there.

12 Q. Where were you standing?

13 A. By the jeep shack.

14 Q. By the jeep shack. All right, sir. I want you
15 to tell the members of the jury, did you see Mrs. Gallop,
16 which later turned out to be Mrs. Gallon, coming out of the
17 tunnel?

18 A. Yes, sir.

19 Q. From Norfolk?

20 A. Yes, sir.

21 Q. Was she in her proper lane?

22 A. Yes, sir.

23 Q. Tell us what happened.

24 A. Mr. James was coming off the interstate and an
25 unknown vehicle was coming from behind the jeep shack and

1 forced Mr. James over to the side where he hit the curb and it
2 resulted in a head-on collision.

3 Q. Now, when you say hit the curb, will you tell us,
4 does that curb separate the lanes going to and from Norfolk?

5 A. Yes, sir.

6 Q. And was Mrs. Gallop in her lane all during this
7 time?

8 A. Yes, sir.

9 Q. What then happened to Mr. James' vehicle when you
10 say he then went into the curb?

11 A. It flew up in the air and hit her head-on.

12 Q. All within her lane of travel?

13 A. Yes, sir.

14 Q. Did you speak to this lady immediately after the
15 accident?

16 A. She was incoherent.

17 Q. Incoherent. Do you recall what the weather
18 conditions were that night?

19 A. Beautiful.

20 MR. OLITSKY: Answer these gentlemen's questions.

CROSS-EXAMINATION

BY MR. GRAY:

Q. Could you describe the vehicle that came around there and forced Mr. James over the median strip?

A. It was a '72 to '74. I believe it was a Monte Carlo. It was maroon.

Q. Did that vehicle stop?

A. No, sir.

THE COURT: That vehicle go into the tunnel?

THE WITNESS: Yes, sir.

BY MR. GRAY:

Q. This ramp that this maroon vehicle came off from is called Ramp B?

A. Yes, sir.

Q. And could you give me any estimate of how fast that vehicle was going as it came off of that ramp into the lane that Mr. James was in?

A. I can't estimate his speed.

Q. Could you estimate it as being over any speed?

MR. LYNCH: Your Honor, I would object.

MR. GRAY: It is on cross-examination.

MR. LYNCH: Well, that was not gone into on direct examination. This is a witness that was called by Mr. Gray by subpoena here today, and I don't think that it is

1 a proper line of cross-examination, plus the fact that the
2 witness said that he couldn't estimate the speed.

3 THE COURT: I think he estimated the speed, said
4 he couldn't, wasn't going to estimate a certain speed. I
5 think that is reaching just a little too far myself.

6
7 BY MR. GRAY:

8 Q. Describe the movement of the automobile as it
9 rounded that curve?

10 A. It was sliding. When it finally came out of the
11 corner, it slid over to the emergency lane that we have there.

12 Q. Now, I'm going to show you a photograph and ask
13 you if that photograph which shows that little brown
14 automobile is Ramp B?

15 A. Yes, sir.

16 Q. And is that the ramp that this automobile came
17 out of, this maroon automobile?

18 A. Yes, sir.

19 Q. Come down here and stand in front of the jury, if
20 you will, please, and point out to the jury where this unknown
21 automobile or maroon automobile came from and what its
22 movements were.

23 A. From the brown car right here it come around
24 where this white line is, the safety zone there. See it, the
25 safety zone there? It skidded off that forcing the other car

1 out of his lane.

2 Q. Did this automobile, as it skidded there, did it
3 skid in any part of that safety zone?

4 A. Right across it.

5 Q. Right across the safety zone?

6 A. Yes, sir.

7 Q. I will show you another photograph and ask you if
8 you can identify that one and point out to the jury what that
9 shows.

10 A. Yes, sir. This is coming off of the interstate
11 into the tunnel. This is where Mr. James' car was coming down
12 into the tunnel off the interstate. This lane over here where
13 the white lines is coming out is where the unknown vehicle
14 come across.

15 MR. GRAY: You can have your seat back. Your
16 Honor, I would like to introduce these two photographs this
17 person testified to as showing the little brown automobile.

18 THE COURT: All right. Very well. The car
19 photographed, showing a little brown automobile going around,
20 apparently around the curve of the interstate, is received,
21 admitted in evidence and is identified as Defendant James'
22 Exhibit Number One.

23

24 (Whereupon, the Photograph was marked and
25 received in evidence as Defendant James' Exhibit No. 1.)

1 MR. GRAY: Your Honor, I have a second one that
2 identified the solid line in this photograph. I would like to
3 ask that be marked as an exhibit.

4 THE COURT: Very well. This photograph will be
5 received, admitted in evidence and is identified as Defendant
6 James' Exhibit Number Two.

7
8 (Whereupon, the Photograph was marked and
9 received in evidence as Defendant James' Exhibit No. 2.)
10

11 THE COURT: All right, sir. Now, I direct the
12 court reporter on the previous Defendant's Exhibits One, Two
13 and Three, that they be designated as the Defendant John Doe's
14 Exhibits.

15
16 BY MR. GRAY:

17 Q. Mr. Brock, I'm going to show you an exhibit,
18 Plaintiff's Exhibit Number One, and ask you if you can relate
19 that picture to a little snapshot I'm showing you here. What
20 I'm getting at is, the Plaintiff's Exhibit Number One shows a
21 break in the median strip.

22 A. Yes, sir.

23 Q. And can you relate that picture to the little
24 snapshot I have shown here which shows apparently this has
25 been filled in?

1 A. Yes, sir.

2 Q. Is that correct?

3 A. Yes, sir.

4 MR. GRAY: I would like to admit this as an
5 exhibit.

6 THE COURT: This photograph will be received,
7 admitted and is identified as Defendant James' Exhibit Number
8 Three.

9
10 (Whereupon, the Photograph was marked and
11 received in evidence as Defendant James' Exhibit No. 3.)

12
13 THE COURT: This will be Defendant James' Exhibit
14 Number Four. Those first three -- let me have the first three
15 back.

16 We will call all of these Defendant John Doe's
17 exhibits.

18 THE COURT: All right. Now we have the John Doe
19 ones and we have the James -- Now, we are in good shape. This
20 last color photograph was apparently -- is that the same
21 little brown car that was in the other photograph?

22 MR. GRAY: That's a different one.

23 THE COURT: It looks like it is going down the
24 ramp. Now, okay. We now have three Defendant James' Exhibits,
25 three Defendant John Doe's Exhibits and two Plaintiff's

1 Exhibits.

2 MR. OLITSKY: Your Honor, wait. It is just one
3 for us.

4 THE COURT: I'm sorry. One, Right.

5 MR. OLITSKY: Thank you.

6 THE COURT: One Plaintiff's Exhibit.

7

8 BY MR. CRAY:

9 Q. Mr. Brock, I hand you Doe's Exhibit One and ask
10 you if you recognize yourself in that photograph?

11 A. Yes, sir.

12 Q. Where are you located?

13 A. At the rear door of Mrs. Gallop's car.

14 Q. Okay. When you say the maroon automobile which
15 came around that curve and slid across that safety zone, was
16 it leaning any?

17 A. Yes, sir.

18 Q. In the slide?

19 A. Yes, sir.

20 Q. Do you know whether or not Mr. James applied his
21 brakes?

22 A. Yes, sir.

23 Q. This may be difficult. Can you relate the point
24 in time at which Mr. James applied his brakes, with reference
25 to when that car came around there, where the position of that

1 car was when Mr. James applied his brakes?

2 A. The car was just about ready to cross the safety
3 zone when he started hitting his brakes.

4 Q. Could you make any estimate of Mr. James' speed?

5 A. No, sir.

6 Q. Was he moving with the flow of traffic?

7 A. Yes, sir.

8 Q. Was your attention attracted to this maroon
9 automobile before you saw the James' car?

10 A. Naturally all about the same time.

11 Q. All at one time?

12 A. Yes, sir.

13 Q. Did you hear any horn blow?

14 A. Yes, sir.

15 Q. Do you know which vehicle it was from, which the
16 horn came?

17 A. Mr. James.

18 Q. Was this about at the same time he applied brakes?

19 A. Yes, sir, it was the exact same time.

20 MR. GRAY: Thank you, Mr. Brock. Answer these
21 gentlemen.

22

23

24

25

CROSS-EXAMINATION

BY MR. LYNCH:

Q. Mr. Brock, do you know Mr. James or do you-all have mutual acquaintances?

A. No, sir.

Q. Have you spoken to Mr. James about this?

A. No, sir.

Q. Where were you located when you were observing this take place?

A. In front of the jeep shack, station two.

Q. All right. Well now, you said station two is the entire Portsmouth Plaza, right?

A. Correct.

Q. When you say that you were standing in front of the jeep shack, what part of the jeep shack were you standing in front of?

A. Right off the porch.

Q. Right off of the porch?

A. Yes, sir.

Q. And you would have been facing what direction?

A. Been facing the road going down into the tunnel.

Q. You would have been looking into the tunnel?

A. Yes, sir.

Q. Now, in this Defendants's Exhibit or Doe Exhibit Three, can you see the jeep shack as you referred to it?

1 A. I can see part of the porch.

2 Q. All right. Would that show the location where
3 you were at the time?

4 A. Yes, sir.

5 Q. Put an "X" on it, if you would, for me.

6 A. Sure. (Witness complies with request.)

7 Q. Put a circle around that so it can be found.

8 A. (Witness complies with request.)

9 Q. Were you standing up on the grass?

10 A. Yes, sir.

11 Q. And you were just looking into the tunnel?

12 A. Sort of straight out.

13 Q. All right. Now, this automobile that you said
14 was unknown would have come from behind you, wouldn't it?

15 A. Yes, sir.

16 Q. And Mr. James would have been coming from behind
17 you, wouldn't he?

18 A. Well, to my left.

19 Q. And to your rear?

20 A. Yeah.

21 Q. Where was James' car when you first saw it?

22 A. It would have been right about here.

23 Q. How about coming down in front of the jury, if
24 you would, and point out to them where he was.

25 First of all, point out to them where you were

1 standing.

2 A. Right here.

3 Q. And where was Mr. James when you first saw him?

4 A. Mr. James would have been right up this way,

5 still this way a little ways.

6 Q. Doesn't show on that picture?

7 A. No, sir.

8 Q. But it would be off of that picture?

9 A. Yes, sir.

10 Q. All right, sir. I hand you Doe Exhibit Two,

11 Number Five, does that help any? Can you see the jeep stuck

12 in that?

13 A. Yes, sir.

14 Q. Can you tell me where Mr. James was when you

15 first saw him?

16 A. Be right about here.

17 Q. All right. Now about putting a circle or pushing

18 a hole in that picture?

19 THE COURT: Mr. Lynch, what was the number of the

20 last exhibit?

21 MR. LYNCH: Doe Exhibit Two, Number Five.

22 MR. LYNCH: Put a circle around it on the back of

23 it where you punched a hole there and initial it.

24 THE WITNESS: (Witness complies with request.)

25

1 BY MR. LYNCH:

2 Q. And you say he was back up here when you first
3 saw him?

4 A. Yes, sir.

5 Q. What attracted your attention to his car?

6 A. Well, I heard the car coming from behind me and
7 winding up. I seen too many accidents. You can hear them
8 when they are coming around. I heard the car coming behind me
9 and I automatically looked up the intersection to see what was
10 coming and it was just about over with by then.

11 Q. Is that where James started applying his brakes?

12 A. He would be just a little beyond that before he
13 hit his brakes.

14 Q. Now, when he hit his brakes, what happened to his
15 car?

16 A. It skidded sideways.

17 Q. It skidded sideways. And after it skidded
18 sideways, what happened to it?

19 A. He hit the curb and the car went into the --

20 Q. The curb you would be talking about would be the
21 median?

22 A. Yes, sir.

23 Q. And would that be the median that shows up in
24 this Doe Exhibit Three?

25 A. Yes, sir. It would be right about here is where

1 he crossed.

2 Q. Let's turn that around so the jury can see it.
3 That would be -- where is the median?

4 A. Right here. This is the whole median.

5 Q. And you say about where he crossed, you pointed
6 it out. Would you punch a hole in the picture and mark that
7 for me.

8 A. (Witness complies with request.)

9 Q. And on the reverse, circle it and initial it.

10 A. All right. (Witness complies with request.)

11 Q. His car was sliding sideways at this point?

12 A. Yes, sir.

13 Q. And then he ran into the median; is that right?

14 A. Yes, sir.

15 Q. And became airborne?

16 A. Yes, sir.

17 Q. All four wheels off the ground?

18 A. Yes, sir.

19 Q. And then what happened?

20 A. He hit Mrs. Gallop's car head-on.

21 Q. Well, did he hit the ground and bounce before he
22 hit Mrs. Gallop?

23 A. The front wheels were starting to touch at this
24 point. He was still in the air. He was still in the air.
25 His front wheels were just touching.

1 THE COURT: You say that the James' car skidded
2 into the median strip and went into the air completely?

3 THE WITNESS: Yes, sir.

4 THE COURT: And came down and hit the plaintiff's
5 car?

6 THE WITNESS: Yes, sir.

7

8 BY MR. LYNCH:

9 Q. Now, in these two exhibits, one of them is
10 Plaintiff's One and one of them is John Doe One, there seems
11 to be a white line and then there appears to be another what
12 may be a white line or concrete there; what is that?

13 A. That's just -- it's a place cut out in the median
14 so that emergency vehicles can get through to pull cars out.

15 Q. All right. And that is what was there on the
16 night that this accident happened, isn't it?

17 A. Yes, sir.

18 Q. And Mr. James' car was in that crossover?

19 A. Yes, sir.

20 Q. Partially when it ended up; is that right?

21 A. Yes, sir.

22 Q. Now, in this Exhibit Doe Three, there appears to
23 be a break in the median in this one, doesn't it?

24 A. Yes, sir.

25 Q. And there's some cones in this break?

1 A. Yes, sir.

2 Q. Now, the break that we found the James' car in in
3 Doe One and Plaintiff's One, this would be the second break
4 going into the tunnel, wouldn't it, the first one shows up in
5 this picture Doe Three and then the second one where these
6 cars came to rest would be further down into the tunnel,
7 wouldn't it?

8 A. Yes, sir. Where this car is, there is a curb on
9 the other side of that car continuing.

10 Q. All right. There's a concrete median on the
11 other side of the James car that comes into the tunnel?

12 A. Yes, sir.

13 Q. Now, as you're coming out of the tunnel, there
14 would be two breaks or cut throughs, wasn't there?

15 A. Yes, sir.

16 Q. The first one where you found James' car here and
17 the second one that is shown up in this Doe Three photograph?

18 A. I believe there is only one cut through.

19 Q. I hand you what is Doe Exhibit Two, Number Eight,
20 and ask you if that helps you any in seeing those two cut
21 throughs?

22 A. (Witness nods head affirmatively.)

23 Q. You are shaking your head. That would be yes?

24 A. Yes, sir.

25 Q. So you would agree that there are two cut

1 throughs, wouldn't you?

2 A. Yes, sir.

3 Q. And the James' car that we have seen in these two
4 exhibits, Doe One and Plaintiff's One, are in the second cut
5 through that you see in that Doe Eight Exhibit, isn't it?

6 A. It is hard to tell by that picture.

7 Q. All right, sir. Now, when Mr. Gray handed you
8 one of these exhibits and asked about whether or not the
9 median had been filled in, you don't know that to be a fact,
10 do you?

11 A. No, I haven't worked there for a few years. The
12 one picture shows where it had been filled in.

13 Q. All right. And on this exhibit which is
14 Defendant James' Exhibit Two, you see this sign down here.
15 Are you familiar with that sign that says form single line?

16 A. Yes, sir.

17 Q. And that would be the same form single line sign
18 that shows up in this exhibit, Plaintiff's One, wouldn't it?

19 A. Yes, sir.

20 Q. And as a matter of fact, if you look through the
21 photograph Doe One here, through the area between Mr. James'
22 hood and his windshield, you see a fence in the background,
23 don't you?

24 A. Yes, sir.

25 Q. And that would be this same fence that runs along

1 the embankment there that shows up in this James' Exhibit Two,
2 wouldn't it?

3 A. Yes, sir.

4 Q. And that would show the concrete median in place,
5 wouldn't it?

6 A. Right.

7 Q. And where the impact occurred, this break in the
8 median that is shown in that exhibit you have, Plaintiff's One,
9 is the second break in the median that shows up in this James'
10 Exhibit Two, isn't it?

11 A. Yes, sir.

12 Q. You can take your seat back again. Thank you.
13 Now, Mr. Brock, when you are in there working in the tunnel
14 and out on the plaza, you are equipped with one of those
15 radios, you always have one hanging on you, don't you?

16 A. Yes, sir.

17 Q. When you saw this vehicle that you say went into
18 the tunnel, did you call ahead and tell them to stop it?

19 A. I called after I had called for an ambulance and
20 a fire truck and a wrecker.

21 Q. Okay. So how did you call for them?

22 A. On my way over to the accident, I just called
23 base one and told them that we had a head-on collision, I
24 needed the fire department, an ambulance and a wrecker. They
25 called back and said it is on the way. Then I called again

1 after I had got over by where the accident was and told them
2 to stop the traffic coming out and I never got a reply. By
3 that time I was too busy.

4 Q. So you saw all of this take place?

5 A. Yes, sir.

6 Q. You called ahead and told them to send a fire
7 truck, ambulance and police and all of that, said nothing
8 about this unknown vehicle?

9 A. Not until a few minutes afterwards.

10 Q. Then you walked over to where the accident
11 occurred, which must have been a couple hundred feet from
12 where you were?

13 A. Sir, I didn't do no walking that night.

14 Q. You ran over to where it was?

15 A. Right.

16 Q. A couple of hundred feet, wasn't it, anyway?

17 A. No, sir.

18 Q. It wasn't?

19 A. No, sir.

20 Q. And then did you talk with Mr. James then?

21 A. Yes, sir.

22 Q. And it was after you talked with Mr. James that
23 you called ahead?

24 A. No, sir.

25 Q. Any passengers in Mr. James' car?

1 A. Yes, sir.

2 Q. How many?

3 A. One.

4 Q. Where was he?

5 A. Front seat, passenger side.

6 Q. Where was he when you got there?

7 A. Front seat, passenger side.

8 Q. Was he awake?

9 A. Yes, sir.

10 Q. Out of the car?

11 A. No, sir.

12 Q. Had you seen him when you saw the car for the

13 first time?

14 A. No, sir.

15 Q. Did you see any skid marks from Mr. James' car?

16 A. I didn't notice.

17 Q. Can you give me any idea how long or for what

18 distance Mr. James' car was airborne?

19 A. It was from that first opening that we were

20 looking at to the time he hit, however far that is.

21 Q. All right. This automobile, this phantom vehicle

22 that you referred to, did it ever collide with Mr. James' car?

23 A. No, sir.

24 Q. Mr. James had, in fact, applied his brakes, was

25 sliding sideways, hit the curb and was airborne all before he

1 ever got to this safety area that you have talked about,
2 wasn't he?

3 A. He was right beside it.

4 Q. What is the safety zone that you referred to?

5 A. It's a white line going across two other white
6 lines separating the lanes.

7 Q. All right, sir. In this Exhibit D Three, Doe
8 Three, you have punched a hole as to where you believe
9 Mr. James to have gone airborne.

10 A. Yes, sir, that is where he struck the curb at.

11 Q. That would have been a point before the peak of
12 this grass median, wasn't it, wouldn't it be?

13 A. It would have been right at about the end of it.

14 Q. Right at about the end of it?

15 A. Yes, sir.

16 Q. About that time the phantom vehicle was in his
17 way in the tunnel?

18 A. He was in the lane at -- right up there where the
19 safety zone begins off at the end of the curve. He was
20 already across that, maybe one or two of his tires might have
21 still been touching that, that is how close they were there.

22 Q. Might have been touching the safety zone?

23 A. The safety zone. That would be his right-hand
24 tires.

25 Q. Tell me what time it was.

1 A. I don't know. I can't remember.

2 Q. This James' Exhibit Three where it showed the
3 concrete median, you can see the sign form single line?

4 A. Yes, sir.

5 Q. That was taken at a point closer to the tunnel
6 than where this accident occurred, wasn't it?

7 A. No, sir, that is right about where it was.

8 Q. That would be where the break stopped and the
9 median started again?

10 A. Yes, sir.

11 MR. GRAY: What exhibit number is that?

12 MR. LYNCH: That is James' Three.

13

14 BY MR. LYNCH:

15 Q. Now, did you see Mrs. Gallop at any time; where
16 was she?

17 A. She was on the floorboard of her car.

18 Q. Did you see her anymore after that?

19 A. Yes, sir.

20 Q. When?

21 A. About two hours after the accident.

22 Q. What were the circumstances?

23 A. Her and her husband were coming up to get the
24 groceries out of the back of her car.

25 Q. And where was she at that time?

077

1 A. She was in the passenger seat of his car.

2 Q. Did she get out?

3 A. No, sir.

4 THE COURT: Where had her car been taken at the
5 time?

6 THE WITNESS: To the sand lot, the sand lot up by
7 the office at the tunnel, by the toll lanes.

8

9 BY MR. LYNCH:

10 Q. How about Mrs. Gallop, did you see her before the
11 accident?

12 A. Not her personally. I seen her car.

13 Q. You saw her car?

14 A. Sure.

15 MR. LYNCH: All right. Answer these gentlemen if
16 they have any questions.

17 THE COURT: Did you make any effort to get the
18 license number of this mystery car as it went around?

19 THE WITNESS: No, sir.

20 THE COURT: Anything further of this gentleman?

21 MR. GRAY: Yes, sir.

22

23 CROSS-EXAMINATION (Continued)

24 BY MR. GRAY:

25 Q. Mr. Brock, you stated that you heard the car

1 coming, winding up, coming from your rear; which car was that
2 that you heard winding up?

3 A. That's John Doe's car.

4 Q. Now, I think I know what you mean by winding up
5 and perhaps the jury does, but would you put that in words so
6 we will have it in the record what you mean by winding up?

7 A. Steadily accelerating.

8 MR. GRAY: That's all I have. Thank you.

9 MR. OLITSKY: Let me ask you this, Mr. Brock.

10
11 REDIRECT EXAMINATION

12 BY MR. OLITSKY:

13 Q. To one of the questions you said that you saw
14 Mrs. Gallop in the floorboard of her car, but did you see her
15 car prior to the accident?

16 A. Yes, sir.

17 Q. All right. What was it doing?

18 A. Coming out of the tunnel.

19 Q. And do you know what speed Mrs. Gallop was
20 proceeding at?

21 A. No, sir.

22 Q. Was she within her lane?

23 A. Yes, sir.

24 Q. Did she remain within her lane the entire time up
25 until the time she was struck head-on?

1 A. Yes, sir.

2 MR. OLITSKY: I have no further questions.

3 THE COURT: All right. Officer Brock, you are
4 excused now. If you want to come back later, you may do so,
5 otherwise you can go your way.

6
7 (Witness excused.)

8 * * *

9
10 THE COURT: Gentlemen, I'm going to adjourn for
11 lunch now.

12 Now, Mrs. Farr and gentlemen, we are going to
13 adjourn for lunch, so please do not discuss this case with
14 anyone and do not allow anyone to discuss it with you, and
15 should anyone persist in doing so, advise the Court upon your
16 return. Should some of you jurors have your lunch together,
17 even though you are jurors, please do not discuss any of the
18 testimony you have heard before or any of the evidence
19 presented. Do not go to the scene where the accident took
20 place, and should you be exposed to any form of the news media,
21 disregard it until after the trial is over.

22 With those admonitions, you may be excused. We
23 will adjourn for lunch, and I will ask you if you will be back
24 please at quarter after two, and the jury is now excused for
25 lunch.

1 THE COURT: All right. Mr. Olitsky and
2 Mrs. Olitsky.

3 MR. OLITSKY: Good morning.

4 THE COURT: You may proceed. Good morning, Cathy.

5 MR. OLITSKY: We call Mrs. Gallop to the stand,
6 Your Honor, please.

7
8
9 ALMA GALLOP, called as a witness on her own
10 behalf, having been first duly sworn, was examined and
11 testified as follows:

12
13 DIRECT EXAMINATION

14 BY MR. OLITSKY:

15 Q. State your name, please.

16 A. Alma Gallop.

17 Q. Is that Miss or Mrs. Alma Gallop?

18 A. Mrs. Alma Gallop.

19 Q. And Mrs. Gallop, where do you live?

20 A. 4001 Spring Meadow Crescent, Chesapeake.

21 Q. What is your age, Mrs. Gallop?

22 A. Sixty-two.

23 Q. Now, were you employed back in September of 1977?

24 A. Yes, I worked.

25 Q. At the time of the accident, where were you

1 employed?

2 A. C&P Telephone Company, Norfolk.

3 Q. And how long have you been working for the C&P

4 Telephone Company in Norfolk? How long did you work for them?

5 A. Thirty-six years.

6 Q. Thirty-six years?

7 A. Yes.

8 Q. What type of work do you do at the C&P Telephone

9 Company?

10 A. House services.

11 Q. House services consist of what, Mrs. Gallop?

12 A. Straightening up offices, cleaning up offices.

13 Q. You mean cleaning, janitorial work?

14 A. Yes.

15 Q. Is that a job that you do how many days a week?

16 A. Five days a week.

17 Q. Five days a week. And when you say cleaning up

18 offices, could you tell us in general what type of work that

19 entails? What do you do?

20 A. Put paper towels and hand towels in the bathrooms,

21 tissues, dust desks, see that the operators get what they need

22 and supplies.

23 Q. All right. And is this the same type of work

24 that you have been doing for the entire 36 years for the C&P

25 Telephone Company?

1 A. Yes.

2 Q. Now, Mrs. Gallop, the condition of your health
3 right before the accident, would you tell us, were you under a
4 doctor's care or anything of that nature at the time of the
5 accident right prior to the automobile accident?

6 A. No.

7 Q. All right. Now, Mrs. Gallop, on the evening of
8 September 28, 1977, were you working? Did you work that night?

9 A. Yes, I did.

10 Q. And do you recall what time of the day or night
11 you went to work? What were your hours?

12 A. Three to eleven-thirty.

13 Q. And the offices of the Telephone Company are
14 located where, Mrs. Gallop?

15 A. 120 and 136 Bute Street.

16 Q. In Norfolk?

17 A. In Norfolk.

18 Q. Now, how did you get over to work that day?

19 A. I drove.

20 Q. Now, when you got off, what time was it that you
21 got off work?

22 A. Eleven-thirty.

23 Q. And when you got off at 11:30, what did you then
24 do? How did you get to your car?

25 A. We have security guards that walk all employees

1 to their cars and see that they are locked.

2 Q. All right. When you walked to your car, what
3 distance did you have to walk from the Telephone Company to
4 the parking lot?

5 A. I'd say around a half block.

6 Q. And then you drove -- what was your destination,
7 where were you going?

8 A. Over to --

9 Q. Were you going home?

10 A. I was going home.

11 Q. And how would you get to your home?

12 A. Leave the Telephone Company, drive down Bute
13 Street to Brambleton Avenue, from Brambleton Avenue up to
14 Saint Paul and then through the tunnel.

15 Q. All right. Now, Mrs. Gallop, what were the
16 weather conditions that night?

17 A. It was fair.

18 Q. Was the traffic conditions light, heavy or
19 moderate going through the tunnel and going back to Portsmouth?

20 A. Going back to Portsmouth it was light. Going
21 through the tunnel it was moderate.

22 Q. All right. Now, I want you to tell us,
23 Mrs. Gallop, as you were coming out of the tunnel on the
24 Portsmouth side, tell us please what happened.

25 A. I saw this car coming and I heard a loud brake

1 like an airplane zoom, he was coming straight at me. The
2 lights was lit up like Portsmouth was lit up.

3 Q. And what lane were you in when this car was
4 headed towards you?

5 A. I was in the left lane.

6 Q. In the left lane going back into Portsmouth?

7 A. Going back into Portsmouth.

8 Q. All right. Now, how many lanes are there on your
9 side of the road?

10 A. Two.

11 Q. What was your speed at the time; do you recall?

12 A. Around 30 miles.

13 Q. Now, when you first saw these lights of the other
14 car, where was that car when you first saw it?

15 A. About near where the little house is.

16 Q. And was it in its proper lane?

17 A. Yes.

18 Q. It was on the other side of the median?

19 A. Yes, it was on the other side of the median.

20 Q. Now, when the car came towards you in your lane,
21 what did you do?

22 A. I didn't have time to do anything.

23 Q. I see.

24 A. It happened so fast.

25 Q. What happened after that; do you remember?

1 A. As it hit me, the car went up into the air and I
2 come down. I was under the steering wheel when it went up and
3 it gave me a chance to get loose and I fell over in the floor
4 of the car.

5 Q. I see. Now, did you see any other
6 automobiles in addition to the car that you say that had the
7 lights on and came over and struck you head-on?

8 A. The lights was right in my face. I couldn't see
9 anything but just the man coming straight at me.

10 Q. I see. Now, after you were thrown down, you say,
11 on the floor of the car, what's the next thing that you recall,
12 Mrs. Gallop?

13 A. The police came to the car and said, "Don't move,
14 we will try to get you some help."

15 Q. Do you know how long you had to stay there?

16 A. Wasn't but a little while.

17 Q. And do you know who got you out of the automobile?

18 A. No, I don't.

19 Q. Do you know when you got out of the car, what
20 were you taken to or where did you go?

21 A. They put me on a stretcher and took me to Norfolk
22 General Hospital.

23 Q. To which hospital?

24 A. I meant Portsmouth General Hospital.

25 ~~Q. All right. Just relax. All right. So you were~~

1 Q. I see. All right.

2 MR. OLITSKY: Could I have those bottles?

3 THE COURT: Gentlemen, let me call something to
4 your attention. The exhibit, that speaks for itself, as far
5 as the amount of prescription drugs, and I don't see any point
6 in going into all this about the bottles and where you took
7 them or what. It is just the amount down there for the
8 prescriptions. If she paid more, it is not in evidence.

9 MR. LYNCH: All right.

10

11 BY MR. LYNCH:

12 Q. Now, Mrs. Gallop, what time was it when you got
13 ori that night?

14 A. Eleven-thirty.

15 Q. Eleven-thirty?

16 A. Yes.

17 Q. And did you make any stops between there and the
18 time this incident occurred, significant stops other than for
19 stop signs or traffic lights, what have you?

20 A. No.

21 Q. Now, you were coming up out of the tunnel on your
22 way home; is that right?

23 A. Right.

24 Q. Was there any traffic immediately ahead of you?

25 A. I didn't notice any.

1 Q. You were in the lane so that you would continue
2 up on the interstate; is that right?

3 A. Right.

4 Q. All right. Now, had you gotten to the point
5 where it peels off to come back onto Court Street or to
6 Crawford Street or come back towards the river?

7 A. I don't think so.

8 Q. All right. Where was the other car, and I
9 believe that you indicated that you first saw Mr. James' car
10 at a little house?

11 A. Yes.

12 Q. Is that right?

13 A. Yes.

14 Q. All right. His automobile, then, was in the
15 proper lane; is that it?

16 A. Right.

17 Q. You saw nothing unusual about it?

18 A. No.

19 Q. Was there any automobile between you and his car
20 at that time?

21 A. I didn't see it.

22 Q. No cars between you and his car?

23 A. I didn't see one.

24 Q. You saw his car, though?

25 A. Yes.

1 Q. All right. And from that point on did you ever
2 see any car come ahead of him?

3 A. No.

4 Q. Did you ever see any lights come over and any car
5 that almost struck him?

6 A. No.

7 Q. Did you see any cars cut in front of him or head
8 into the tunnel ahead of him?

9 A. Didn't have time to see anything. I heard brakes.

10 Q. All right. But at this point now, his automobile
11 hadn't applied brakes, had it, when you saw it up at the guard
12 house?

13 A. No.

14 Q. All right. Now, did you ever see any other cars
15 in the vicinity of his car?

16 A. No.

17 Q. The guard house was some little distance away
18 from you, wasn't it, when you first saw his lights?

19 A. Yes.

20 Q. You have any idea what the distance was?

21 A. Maybe two or three car lengths.

22 Q. Now, did you see his automobile go into a slide?

23 A. No, I just heard his brakes and zoom, he was
24 coming straight at me.

25 Q. You heard his brakes and zoom. When you heard

1 his brakes, did you look aside, did you see any car pass you?
2 A. His lights were in my eyes like Portsmouth was
3 lite up and I couldn't see anything but lights coming at me.
4 Q. Did you see his car come sideways and slide down
5 the interstate sideways?
6 A. No.
7 Q. Did you see his car go airborne?
8 A. I saw that.
9 Q. Did you see any other cars around at that time?
10 A. No. When his car went airborne, it come straight
11 at me and I was looking right in his headlights.
12 Q. When his car went airborne, the front of it went
13 in the air?
14 A. Zoom, right into my front end.
15 Q. Yes, ma'am, but if what Mr. Brock told us was
16 right, he said the car was airborne for some distance. Did
17 you see that?
18 A. His car was straight at me.
19 Q. All right.
20 A. His headlights were right in my eyes.
21 Q. Now, back in May of 1979 when I questioned you
22 about this, you never told us anything about any headlights at
23 that time, did you?
24 MR. OLITSKY: Your Honor, I'm going to object to
25 that unless he can say that he asked her about some

1 headlights and how he asked her and what happened.

2 THE COURT: I sustain the objection. You have to
3 lay a proper foundation if you are going to do that.
4

5 BY MR. LYNCH:

6 Q. You were asked on that occasion whether or not
7 you saw any cars around, weren't you?

8 A. Yes.

9 Q. And you said no, you didn't; correct?

10 A. That's right.

11 Q. You never said anything about not being able to
12 see because of any headlights, did you?

13 A. You didn't ask me anything about headlights, did
14 you?

15 Q. But when I asked you if there were any cars
16 around you answered no. Page 11, question: "Now, did you see
17 any other cars around him?" Your answer, "No, I didn't."

18 MR. OLITSKY: Your Honor, I'm going to object to
19 that. Excuse me. I'm going to object because he has asked
20 her that three times and she kept saying she saw no other cars.
21 He is asking her again.

22 MR. LYNCH: I would like to know if she did or
23 didn't.

24 THE COURT: Ask the question once and get the
25 answer and then proceed to something else. This is just

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MR. LYNCH: I have no questions.

MR. OLITSKY: I have no questions.

THE COURT: You may step down. Thank you, sir.
You are excused. You may stay or leave, if you like. If you
wish to remain you may stay in the courtroom.

THE WITNESS: No, I'm going home. Two days is
long enough.

(Witness excused.)

* * *

MR. GRAY: Mr. James, would you take the stand,
please.

JOHN H. JAMES, called as a witness on his own
behalf, having been first duly sworn, was examined and
testified as follows:

DIRECT EXAMINATION

BY MR. GRAY:

Q. State your full name, sir.

A. John H. James.

Q. And how old are you, Mr. James?

A. Fifty-two.

1 Q. Where do you reside?
2 A. 309 Penton Boulevard, Portsmouth.
3 Q. With whom do you reside?
4 A. Wife, Frances.
5 Q. And where are you employed?
6 A. Was for Ford Motor Company. I got laid off in
7 December.
8 Q. This past December you were laid off?
9 A. Yes, sir, uh-huh.
10 Q. At the time this accident occurred, you were
11 employed at the Ford Motor Company?
12 A. About the same amount, I think I was.
13 Q. Wait a minute. You didn't hear what I said.
14 When the accident happened, were you employed at Ford Motor
15 Company?
16 A. Yes, sir.
17 Q. How long had you been employed at Ford Motor
18 Company before the accident?
19 A. Since August of '76, I believe.
20 Q. All right. Now, how long had Irvin Lane been
21 riding with you to work, before the accident?
22 A. It is really hard to say. Probably for several
23 months at least.
24 Q. All right. Now, on the evening this accident
25 happened, were you on time?

1 A. Yes, sir.

2 Q. All right. Now, where did you get on the
3 interstate?

4 A. Tower Mall.

5 Q. And then did you proceed toward the tunnel?

6 A. Yes, sir. Uh-huh.

7 Q. When you reached the area of the tunnel there,
8 can you tell us what your speed was?

9 A. Well, just before I left the interstate --
10 highway, probably 55 miles an hour.

11 Q. How about when you got down in the area of the
12 tunnel?

13 A. I slowed down to about 30, 35.

14 Q. All right. Did you, then, proceed to go toward
15 where the tunnel entrance was?

16 A. Yes, sir.

17 Q. And what occurred?

18 A. Well, the next thing I seen, you know, I always
19 watched out to the right, cars entering from the right, and I
20 didn't see anything the first time when I got up to just about
21 where the guard shack is at, then I saw this car coming in
22 from my right at a high rate of speed.

23 Q. And what did it do?

24 A. Well, he crossed the double line, you know, that
25 double line that goes down to the tunnel, I don't know how

1 many feet, and it happened so fast, that I just didn't have
2 time to do much except hit the brakes, you know, and blew my
3 horn.

4 Q. Is that what you did?

5 A. Yes, sir.

6 Q. Now, did that automobile come over into your lane?

7 A. Definitely.

8 Q. Do you know whether that automobile came in
9 contact with you or not?

10 A. I thought so.

11 Q. Well, when it came over there, did you attempt to
12 avoid it?

13 A. Yes, sir, I sure did.

14 Q. And what happened?

15 A. Well, that's when I hit the brakes, you know, to
16 start blowing the horn and from then on I don't know really
17 what happened until after the crash.

18 Q. Do you recall hitting the median strip?

19 A. No, sir, I sure don't.

20 Q. Were you shocked or dazed or anything like that?

21 A. Yeah. Well, I was scared and shook up.

22 Q. Did you go to the hospital?

23 A. Yes. Yes, sir.

24 MR. GRAY: Answer these gentlemen, Mr. James.

25 CROSS-EXAMINATION

1 BY MR. LYNCH:

2 Q. Mr. James, approaching the tunnel here, you have
3 a clear shot and can see that whole plaza and everything from
4 about Effingham Street or can't you?

5 A. Right.

6 Q. As I understand it, as you came down that stretch
7 from the Effingham Street Overpass right on down to the tunnel,
8 you never saw this supposed automobile until it was right
9 there at you; is that it?

10 A. That is exactly right.

11 Q. What is the distance that separated you from that
12 car when you first saw it?

13 A. Oh, 30 feet.

14 Q. Thirty feet?

15 A. (Witness nods head affirmatively.)

16 Q. Once before you said 15 to 20 feet. Would that
17 be right?

18 A. Right, something like that.

19 Q. And where was that car? Was it off to your side,
20 was it ahead of you or what?

21 A. Well, I would say the first time, you know, when
22 I first seen it, he was -- the front of my car was just about
23 even with the front of his the way he was coming, at a high
24 rate of speed. It is really hard to say.

25 Q. All right. So you didn't see his car at all

1 until it was right then. When you say his car, the front of
2 his car was even with the front of your car, and there was
3 somewhere between 15 and 30 feet separating you, then he would
4 have been 15 to 30 feet of the right of you but even?

5 A. No, sir, I didn't mean it that way.

6 Q. How do you mean it?

7 A. The first time I seen him he had not crossed the
8 double line.

9 Q. Had not?

10 A. No.

11 Q. And he was 15 to 30 feet away from you?

12 A. I'd say 15 to 30 feet.

13 Q. And where was his automobile in relationship to
14 yours? Was it beside it, was he ahead of you?

15 A. He was over to the side of me, to the right.

16 Q. And so your cars would have been almost parallel,
17 the front end of his car even with the front end of your car,
18 and he was 15 to 30 feet to your right?

19 A. Yes, uh-huh.

20 Q. And he hadn't crossed the double line?

21 A. He hadn't crossed the double line yet.

22 Q. What kind of double line are you talking about?

23 A. It is not a double line, it is a solid line.

24 Q. All right. Had you already passed the checker
25 board where it is angled across what they, some people, called

1 the safety zone?

2 A. That, I cannot say.

3 Q. Had he started down in towards the tunnel?

4 A. He had just made his turn.

5 THE COURT: You refer to this solid line. Do you
6 mean if you cross that you go into a safety zone area?

7 THE WITNESS: When you cross that safety zone line
8 you come into the main flow of traffic coming from the
9 interstate -- highway.

10 THE COURT: That's eastbound traffic?

11 THE WITNESS: That's right, eastbound. In other
12 words, over in my lane.

13

14 BY MR. LYNCH:

15 Q. I hand you two photographs here. They are Doe's
16 Exhibit Two, Numbers Seven and Eight. Can you identify in
17 either one of those pictures the double line you are talking
18 about?

19 A. I guess it must be this line right here back
20 further this way west. I think it is more of a solid line
21 than this, like this.

22 Q. Come down to the jury and let's show them which
23 line you are talking about. This is Doe Exhibit Number Two,
24 Eight. Where is the double line?

25 A. Well, the double line, I think -- It don't show

1 up in this picture. It is not a double line, it is a solid
2 line. It is further back this way, further west.

3 Q. Well, I'm handing you Doe's Exhibit Two, Number
4 Seven. Can you see it in that picture?

5 A. Oh, here. It is right here. This is it right
6 here. This is the line right here. I thought it was solid
7 but it is really two lines right there. This is the main flow
8 of traffic here and it is the main road.

9 Q. All right. Had this other automobile already
10 gotten down to where it was on the other side of what you
11 called the double line, the white line?

12 A. No. When I first saw his automobile it was back
13 over here somewhere, right over in here.

14 Q. And where were you?

15 A. I was along in here somewhere.

16 Q. His car was going -- leading on into the tunnel?

17 A. No, his car hadn't started into the tunnel yet.

18 Q. And it hadn't crossed the white line?

19 A. That's right, he hadn't crossed the white line
20 yet when it -- first time I seen him.

21 Q. And that is when you slammed on the brakes?

22 A. Well, I didn't slam on the brakes until he
23 started, looked like he was coming over into my lane. Until
24 he did start over in my lane, that is when I hit the brakes
25 and started blowing my horn.

1 MR. GRAY: Let him go back up there.

2

3 BY MR. LYNCH:

4 Q. If you had just accelerated a little bit, you
5 would have been on in the tunnel ahead of him.

6 MR. GRAY: Your Honor, I object to that question,
7 if he had accelerated. I object to that.

8 THE COURT: I don't know. Let him go ahead and
9 answer it.

10

11 BY MR. LYNCH:

12 Q. Sir.

13 A. If I had done what now?

14 Q. If you had accelerated just a bit, you would have
15 been on in the tunnel ahead of him?

16 A. No.

17 Q. You wouldn't have?

18 A. No.

19 Q. Now, you say that you applied your brakes?

20 A. Applied brakes, blew my horn.

21 Q. When you first saw him he was properly in his
22 lane, you had no inclination at that time he was going to move
23 out of his lane, did you?

24 A. Well, not the first time I seen him I didn't, no.

25 Q. And how far did you travel after that before you

1 changed your opinion or your mind?

2 A. That is hard to say. I don't know.

3 Q. You say that that car struck you?

4 A. I thought so.

5 Q. I see. What made you think that?

6 A. Well, that caused me to lose control of my car.

7 Q. I see. What part of your car did he strike?

8 A. Somewhere in the front.

9 Q. Somewhere in the front?

10 A. Yeah, around the front bumper. The front fender.

11 Q. Wasn't any damage on the right front of your car,

12 was it, other than the front end?

13 A. The bumper was peeled back.

14 Q. Now, did you go across the median?

15 A. Well, that's what the picture shows. Right?

16 Q. Yes, sir, that would appear to be what the

17 pictures show.

18 A. I don't know what happened after I lost control

19 of the car.

20 Q. You agree today that your car struck Mrs. Gallop

21 in her lane?

22 A. I'm not agreeing to anything. I don't know what

23 happened after I lost control of the car.

24 Q. Well, have you ever said that she came over into

25 your lane and struck you?

1 A. I certainly did not, no.

2 Q. Did you apply your brakes before this car struck

3 you?

4 A. That, I don't know.

5 Q. Did your car slide sideways?

6 A. I don't remember.

7 Q. Did your car ever go completely in the air?

8 A. Well, in my opinion I would have had to be

9 traveling at a high rate of speed for my car to ever went in

10 the air and been airborne, more than 35 miles an hour any way.

11 Q. You heard Mr. Brock testify that your car was

12 airborne. You disagree with that?

13 A. Yes, sir, I sure do.

14 MR. LYNCH: Thank you, Mr. James.

15

16 CROSS-EXAMINATION

17 BY MR. OLITSKY:

18 Q. Mr. James, just a few questions, sir.

19 I take it, then, that you never saw Mrs. Gallop's

20 car before the impact occurred?

21 A. No, sir, I sure didn't.

22 Q. So you don't know where she was?

23 A. No.

24 Q. And also, I believe you stated, after you saw the

25 pictures you saw, that you were in her lane with the two cars

1 immediately after the collision?

2 A. Well, yes, sir, according to the picture, right.

3 Q. You are not saying that the pictures are
4 incorrect, are you?

5 A. No, sir. No, sir.

6 MR. OLITSKY: All right. I have no further
7 questions.

8 MR. GRAY: Come down, Mr. James.

9

10 (Witness excused.)

11 * * *

12

13 THE COURT: Anything further, Mr. Gray?

14 MR. GRAY: No, sir.

15 THE COURT: Defendant James rest?

16 MR. LYNCH: I have no evidence.

17 THE COURT: You have no evidence. All right. All
18 parties rested at 12:53.

19 Any rebuttal by the plaintiff?

20 MR. OLITSKY: No, sir, Your Honor. We are ready
21 for the instructions to the Court.

22 THE COURT: All right. Now, Mrs. Farr and
23 gentlemen, we are going to adjourn for lunch at this time.
24 It's a little before one and I will ask you if you will please
25 try to be back by 2:30 in which will resume the trial of this

1 MR. GRAY: Your Honor, I have a motion also.

2
3 (Witness excused.)

4 * * *

5
6 THE COURT: We will all step in the conference
7 room now.

8 THE COURT: Now, Mrs. Farr and gentlemen, I have
9 a few matters to take up. You-all can move around and stretch
10 your legs a little and please don't leave.

11
12
13 PROCEEDINGS HELD IN CHAMBERS OUT OF THE PRESENCE OF
14 THE JURY

15
16 MR. GRAY: As I understand it, John Doe doesn't
17 have any evidence to put on.

18 MR. OLITSKY: Do you have any evidence to put on,
19 Benjie?

20 MR. LYNCH: I don't know. I had Mr. Lane here.

21 MR. OLITSKY: Well, maybe my motion is going to
22 be a bit early. I was going to move for summary judgment
23 against John Doe based on that question having been presented,
24 John Doe not being here, and no witnesses on behalf of John
25 Doe and it surely has been proven by the witnesses, the sole

1 eyewitness up until to now, the two eyewitnesses to the
2 accident, one of course being Mrs. Gallop, who said she didn't
3 see any motor vehicle; the other witness being Mr. Brock, the
4 former security guard, that testified there was another car
5 that forced John James over.

6 Your question -- I agreed with your question. It
7 is unfortunate he didn't get that license number, what have
8 you, being there was so many accidents as it is in that area,
9 what he didn't do or do. The facts are, he said that another
10 car forced John James over the median and into the wrong lane
11 and I would submit, sir, based upon that evidence, that the
12 Court grant summary judgment against John Doe with, of course,
13 the question of damages to be decided by the jury.

14 MR. LYNCH: Judge, to respond to that, I think
15 that it is very significant that we listen to Mrs. Gallop
16 speak. Mrs. Gallop says that she saw John James' automobile
17 when it was back by the guard shack. At that time she saw no
18 other automobiles in the vicinity. She said she saw no
19 automobile going into the tunnel ahead of John James, no
20 vehicle ahead of him. She saw his lights, she did not ever
21 see another automobile come from anywhere. Very clearly I
22 asked her if she ever saw any other cars around him. "No, I
23 didn't." Did you ever see any cars cut in front of him or go
24 into the tunnel ahead of him. "No, I didn't." Were you aware
25 of any other cars around him. "No, I didn't." And I think that

1 when we look at the Massie versus Firmin Case where they
2 say no litigant can successfully ask a court to believe or to
3 go on anything that they haven't produced, they can't rise any
4 higher than their own case.

5 Now, when you say generally that the plaintiff
6 can't rise higher than their own case and can rely upon other
7 evidence so long as it is not inconsistent with what they have
8 said, I would submit to the Court that it is inconsistent with
9 what Mr. Brock says. It is inconsistent with what Mrs. Gallop
10 says for certainly she's right there. If that automobile had
11 come screeching around the corner, she would see it. She is
12 right in the vantage point. It would have come between her
13 and Mr. James' car, and yet she has never seen that, and I
14 don't think that we can say that this phantom vehicle existed
15 or that it was guilty of negligence as a matter of law. And I
16 think what Mr. Brock says, is that Mr. Brock does not tell us
17 that this automobile, if it was there, that it almost caused
18 an accident or that it caused John James to have to go over
19 into the other lane.

20 Now, what Mr. Brock does tell us is that in this
21 Exhibit Two Number Five, that he puts an "X" mark as to where
22 the James vehicle was when this unknown vehicle was supposed
23 to have been going around the corner and heading into the
24 tunnel.

25 Now, if that is where the James vehicle was, then

1 it is no way that the unknown vehicle could have forced his
2 car that distance away, could have slowed, and the other car
3 would have been long gone into the tunnel and would not have
4 caused any near collision or caused John James to take any
5 evasive action. What they tell us is that John James slammed
6 on his brakes, lost control of his car and was sliding
7 sideways, hit the median strip, where the hole is in that
8 photograph, which I think is Doe's Exhibit Three, and that at
9 that point the James vehicle went airborne. At that point it
10 will be noticed that the James vehicle still has not gotten to
11 the safety zone, the line painted on the road, the two lanes,
12 or however you want to identify the area where the unknown
13 vehicle was supposed to have gone. So that based upon
14 Mr. Brock's testimony, that all of that took place before we
15 ever get up here to the interstate, certainly cannot conclude,
16 make us reach a conclusion conclusively, that the unknown
17 driver existed or that he was negligent or that he in any way
18 caused this accident.

19 THE COURT: Maybe I'm mistaken. It's a funny
20 thing, though, but when George asked her the question
21 initially, I thought I heard her say before she went into her
22 testimony about being blinded and couldn't see anything, I
23 thought I heard her say that James was forced over by another
24 car, which in light of her later testimony must have been
25 hearsay. Did anybody else hear that?

1 MR. OLITSKY: What I think, Judge, if I may,
2 wasn't that the question where George was reading from
3 Dr. Mason's report and --

4 MR. GRAY: I asked her if she did not tell
5 Dr. Mason that, and she said yes, she did.

6 MR. OLITSKY: I don't recall what the answer was.

7 THE COURT: But then, of course, the rest of the
8 testimony, as I understand it, was this car and the lights
9 were right in her face and piled right down on her.

10 Now, frankly, Benny, I don't believe that's a
11 Massie Firmstone situation where a person is absolutely
12 blinded and it's a physical impossibility to see. We don't
13 know what she -- none of us really know exactly where she was
14 the instant it happened, and as we stand right now, we do have
15 the testimony of Brock that there was a phantom car and it did
16 come around and go through a safety zone and speed on into the
17 tunnel.

18 MR. LYNCH: Your Honor, I submit to you and I
19 think that it is a jury question. I think that there is room
20 for reasonable minds to differ on it as to whether or not
21 there was negligence on the part of that car and whether or
22 not that negligence was a proximate cause of the collision
23 that came about.

24 Now, I think that Mrs. Gallop was in a position
25 to have seen. She comes up today and she says that she was

1 blinded, which again, I think that she has said before
2 emphatically, no I didn't see, and today she says there were
3 lights that caused her not to be able to see and that makes a
4 jury question as to how they want to accept that, but I
5 certainly don't believe that we are at a point where
6 reasonable minds could not differ on it.

7 MR. OLITSKY: Your Honor, I would submit to you
8 that there is no evidence at all other than what we have
9 submitted and presented to the Court at this point in time,
10 and I also agree with the Court that it isn't Massie versus
11 Firmstone, not at all. In other words, what I'm submitting to
12 the Court is that Mrs. Gallop would be bound by any testimony
13 that is not in conflict with what she says, is my
14 understanding of it, and she can rise no higher than what that
15 evidence is, and he is not refuting the evidence of Officer
16 Brock any whatsoever.

17 In other words, Officer Brock's testimony stands
18 unimpeached by anyone and because of that, that is why I made
19 the motion for summary judgment because without any
20 equivocation, she said that phantom car -- George asked her,
21 he said, I don't know the correct words, and then he said it
22 was accelerating quickly and there were actions said before
23 she saw it, it forced Mr. James over and for that reason that
24 evidence is not in conflict with what Mrs. Gallop says.

25 All Mrs. Gallop is saying even from the

1 deposition and at the trial, if even she didn't say anything
2 about lights before, she always said she didn't know if there
3 were cars or not, she never saw any. So I think Mrs. Gallop
4 is bound by the testimony of Mr. Brock and Mr. Brock's
5 testimony is unimpeached that the Doe car caused the collision
6 and that is why we made the motion for summary judgment.

7 THE COURT: George, what do you say?

8 MR. GRAY: Your Honor, it is to my benefit to say
9 what I'm going to say to you now, but I believe this, I'm
10 going to be candid with the Court. I agree with what
11 Mr. Olitsky has to say, first of all.

12 Obviously it is not a Massie against Firststone
13 rule because if you accept Mr. Lynch's argument, if a person
14 was asleep in the automobile as a passenger, he didn't see
15 what happened, he wouldn't know what happened. If there is an
16 explanation for a plaintiff not seeing what is there occurring,
17 then it is not Massie against Firststone. She is coming up out
18 of a tunnel and she sees the automobile of James in its proper
19 lane not doing anything wrong, and then all of a sudden she
20 doesn't know why, the automobile is then coming at her with
21 lights shining in her eyes.

22 Now, that is not Massie against Firststone. That
23 is an explanation, so as I say, it is to my benefit to agree
24 with Mr. Olitsky, but I do, I think it is there. There is no
25 evidence in the case that impeaches, contradicts or in any way

1 otherwise takes anything away from Officer Brock, and I think
2 that Mr. Olitsky's motion ought to be sustained, and I have
3 another motion, a motion on my behalf, and that is, that the
4 evidence be struck as to James because Massie against
5 Firmstone says you can't rise any higher than your own case.
6 You are entitled to the benefit of other evidence as long as
7 it does not conflict with your own, and certainly anything
8 that Officer Brock testified to is not in conflict with
9 anything that Mrs. Gallop testified to. In fact, I think the
10 two merge together quite well because Mrs. Gallop testified
11 that she saw the automobile of James in its own lane, nothing
12 unusual about it, that was a question that was asked her,
13 there was nothing unusual about it. There was nothing to
14 indicate that anything was wrong; there has been no speed
15 established on the part of the James automobile, and then we
16 have the officer who says he doesn't know, he didn't know any
17 of the parties, he was standing there within, I don't remember
18 whether he said the distance or not, but you can look at the
19 pictures and see the distance, how close he is standing there.
20 His attention is attracted by the automobile coming into this
21 curve where the brown car is, and he would not estimate the
22 speed, he said he couldn't estimate the speed of that car, but
23 that car came into that curve and slid across those broken
24 white lines, not broken, but solid lines, the checked lines,
25 the safety zone, slid across that safety zone, into the lane

1 of travel that Mr. James was in and forced Mr. James across
2 the lane.

3 Now, when the plaintiff establishes that a
4 defendant has come across the center of the road and collided,
5 the plaintiff has made out a prima facie case; however, when
6 the plaintiff or the defendant puts on an explanation, when
7 the plaintiff also at the same time puts on evidence from
8 another witness as to why that defendant came across the
9 center of the road, then that absolves the defendant of
10 negligence because there is an explanation. That takes away
11 the prima facie case that would be ordinarily present when you
12 have a person going across the center of the road because the
13 plaintiff hears, in this instance by this witness, Brock, who,
14 as I say, he didn't know anybody other than he saw the
15 accident. He has explained James' presence across that center
16 of that road, and under the circumstances, the plaintiff has
17 not proved a case of negligence against James. What she has
18 done is proved a case without any contradiction of negligence
19 on John Doe which caused the accident. I can't state it any
20 better than that.

21 MR. LYNCH: Judge, to respond to that from
22 Mr. Gray's point, if you were to accept for argument sake
23 negligence on the part of John Doe, I think that Mr. Brock who
24 establishes or who is the evidence of John Doe, puts us on the
25 fact that Mr. James was at such a distance away that John Doe

1 should not have bothered him, that he slammed on brakes and
2 lost control of his car. It is not a matter that John Doe
3 forced him over, but it is a matter that he lost control of
4 his car when it was sliding sideways down the interstate, hit
5 the median, was airborne for a distance, what, he couldn't
6 identify, but looking at the pictures there has got to be some
7 20 to 50 feet before he ever came down into Mrs. Gallop's lane.

8 Certainly the jury could conclude that Mr. James
9 was not keeping a proper lookout to have seen this automobile
10 that would have intersected from his right, and if a vehicle
11 entering, if they were entering at approximately the same time,
12 the vehicle to the right would be given the right-of-way.
13 Mr. James was not even keeping a proper lookout not to have
14 seen the automobile in order to do something about it.

15 We haven't heard from Mr. James yet, but even not
16 hearing from him, in this situation, he should have been able
17 to see him. Mr. James apparently didn't have his vehicle under
18 proper control, and while we have nobody to put any speed on
19 him, we have nobody to put any speed on the John Doe vehicle.
20 The fact that he slid sideways some 50 to 60 feet of skid
21 marks Officer Weeks said existed, apparently sideways, then to
22 hit the median strip, then to become airborne some 20 to 50
23 feet and then to collide with the cars, to do that kind of
24 damage that shows up in those exhibits, certainly is ground
25 enough for the jury to conclude that there was excessive speed,

1 so I certainly would submit to the Court that there has been
2 adequate evidence from the plaintiff's standpoint to show
3 negligence on the part of John James.

4 THE COURT: Well, does the Olitsky firm wish to
5 reply to Mr. Gray at all?

6 MR. OLITSKY: No, sir, Your Honor.

7 THE COURT: Well, now, here are the notes I took
8 of Officer Steven W. Brock's testimony, and I will admit this
9 can't compare with the court reporter's but at least it is
10 something.

11 According to my notes, Officer Brock was at
12 station number two by the jeep shack and he saw the defendant
13 James' car and plaintiff, Gallops. Brock says the weather was
14 beautiful; Brock says a car came around going into the tunnel
15 which forced defendant James into the westbound lane and he
16 struck Mrs. Gallop's car head-on. The John Loe car was
17 sliding as it came around the curve, parens, a maroon auto,
18 parens, and skidded across the safety zone. Officer Brock
19 says defendant James hit his brakes just as the John Doe car
20 started to cross the safety zone. Defendant James moving with
21 the flow of traffic, but Officer Brock couldn't estimate the
22 speed; Officer Brock says defendant James also blew his horn.
23 Officer Brock says when defendant James hit his brakes he
24 skidded sideways. Officer Brock says James' car hit the
25 median strip and went completely into the air and came down

1 and hit plaintiff's car in the westbound lane. Officer Brock
2 says he first called for an ambulance, fire truck and wrecker.
3 After then he called ahead to the gate to stop the mystery car.
4 That is the notes I have on what happened.

5 MR. LYNCH: I think that is pretty close to
6 summary, Judge, and then on the cross-examination we got into
7 the pictures and I think that the pictures were marked and in
8 that Defendant Doe's Exhibit Three, he put a hole through the
9 picture as to where the vehicle was when it hit the median
10 strip and went airborne, and in the Exhibit Two, I think, it's
11 Number Five there, he marked an "X" on the picture as to where
12 the James vehicle was when he first saw it. I think that the
13 Court looking at those would see that all of that activity
14 took place before he ever got to the intersection where the
15 John Doe vehicle was supposed to have been.

16 MR. GRAY: You can't get away from the testimony
17 of Brock, though. The John Doe vehicle forced him across the
18 road. Nothing is any clearer than that. It is stated time
19 and again that he was forced into the oncoming lane by this
20 vehicle which came around and skid across. Your notes were
21 better than mine, Judge, but I did have that he explained
22 winding up is what the Doe vehicle was doing, and he described
23 that as he was steadily accelerating coming around that curve
24 and going through sliding across the safety zone, and you
25 refresh my recollection, he said that James applied his brakes

1 and blew his horn about the time that the Doe vehicle started
2 into that safety zone.

3 MR. OLITSKY: Your Honor, excuse me, George.

4 MR. GRAY: I'm finished.

5 MR. OLITSKY: Your Honor, I would like to say the
6 only thing that we would submit as far as Mr. Gray's position
7 is concerned is what, in my mind bothers me, is the physical
8 evidence.

9 In other words, if the physical evidence in and
10 of itself does raise some question as to what Officer Brock
11 said who testified at the trial, that if my notes reflect
12 correctly, that it was some time ago, he wasn't too sure, but
13 as to certain things -- but as to these particular points he
14 was certain of.

15 I would submit to the Court that the physical
16 evidence, and there is no evidence other than the physical
17 evidence as to what the car was doing driven by James, would
18 then of course be -- it would have to be, we submit to the
19 Court, a jury decision as to whether or not he was or was not
20 negligent. Just because the car came around the circle, what
21 would another driver have done?

22 In other words, he was on a -- the picture shows
23 he is coming down. There is testimony that traffic was heavy
24 coming from the shipyard. Now, right off the bat that lets
25 you know there is an awful lot of traffic coming into the

1 eastbound lanes, putting all traffic on 264 up there on the
2 interstate on notice. All right. What would a driver do?
3 There's a zone there at 55 miles an hour and then it breaks
4 down to 35 and there is only one lane coming in.

5 Now, it could very easily be argued from the
6 evidence in and of itself, even though Brock said a car came
7 over, what about Mr. James when the car came over. He had
8 ample time as the evidence from the photographs show to slow
9 down, to stop. Why is it that he lost control of the car? It
10 wasn't slippery or wet out there. There is a question. In
11 other words, it is not surmise or premise, it is the actual
12 things that happened that could make that a jury question as
13 far as John James is concerned.

14 MR. LYNCH: And at this point we have only the
15 plaintiff's evidence to consider, and I think that the
16 plaintiff's evidence is certainly adequate to present a jury
17 question.

18 THE COURT: Well, going back to the theory which
19 everybody seems to agree, as far as John Doe is concerned, you
20 don't have a Massie Hirstone situation, and then when you get
21 to the defendant James now, the testimony there, the only
22 testimony, because Alma Gallop couldn't see, according to her,
23 she was blinded, and the only evidence as to James is what the
24 plaintiff has put on and what the Plaintiff has put on, I mean,
25 your own witness says he was forced off the road and lost

1 control and jumped over the median strip and crashed in so, I
2 mean, if Doe isn't a jury question, by the same token, I don't
3 see how James is a jury question.

4 The question that goes through my mind at the
5 moment and the decision that I'm trying to make is whether or
6 not there's any necessity to go any further with this matter
7 and with the idea that when you rested completely, that the
8 plaintiff would be renewing the same motions you have made.

9 MR. OLITSKY: From what I understand, it is only
10 Mr. James and a passenger that didn't see anything that
11 Mr. Gray may put on.

12 MR. GRAY: That is correct.

13 MR. LYNCH: Well, of course, from my
14 standpoint --

15 THE COURT: I don't know whether Benjie is going
16 to put on anything. I don't think he is but I don't know.

17 MR. LYNCH: I think it is premature as to John
18 Doe, but that is not a big thing, Judge, but I think that the
19 evidence is here that --

20 THE COURT: I think what I'm going to do right at
21 this stage is to overrule the motions, all motions, and we
22 will go back in there and I presume George will put Mr. James
23 on and I presume that Benny won't put anybody on, then we will
24 come back here and I will resolve this case.

25 MR. OLITSKY: All right. Shall we do it now?

1 You want him to put James on?

2 MR. GRAY: I'm going to put Evans on first.

3 THE COURT: That will be all right.

4

5

6 PROCEEDINGS HELD IN THE COURTROOM IN THE PRESENCE

7

OF THE JURY

8

9 MR. GRAY: Your Honor, I would like to call the
10 passenger in Mr. James' automobile, Irvin E. Lane is his name.
11 I was calling him Evans but his name is Lane.

12

13

14 IRVIN LANE, called as a witness on behalf of the
15 Defendant James, having been first duly sworn, was examined
16 and testified as follows:

17

18

DIRECT EXAMINATION

19

BY MR. GRAY:

20

Q. State your name, sir.

21

A. Irvin lane.

22

Q. And Mr. Lane, how old are you?

23

A. Twenty-nine.

24

Q. Where do you live?

25

A. Portsmouth.

1 case.

2 Let me admonish you again not to discuss the case
3 with anyone or let anyone discuss it with you, and should you
4 find yourself in a position where that request is made, advise
5 the Court upon your return. Do not go to the scene of the
6 accident and if you are exposed to any form of the news media,
7 disregard it until after the time of trial. With those
8 admonitions in mind, we will now retire for lunch.

9
10 (Whereupon, the jury was excused for lunch at
11 12:53 p.m.)
12

13 PROCEEDINGS IN CHAMBERS OUT OF THE PRESENCE OF THE JURY
14

15 THE COURT: All right. Now, all the evidence is
16 in.

17 MR. CRAY: Judge, I want to renew my motion to
18 strike the plaintiff's evidence as to John James for the
19 reasons previously stated, there is nothing that has been
20 said in the testimony altering anything that was said
21 previously so far as the plaintiff's case against John James
22 is concerned.

23 MR. CLITSKY: And I would, Your Honor, renew my
24 motion for summary judgment against John Joe for reasons
25 previously given and also to hold John James in for reasons

1 previously given.

2 THE COURT: All right.

3 MR. LYNCH: Judge, I think that it is important
4 we look at this. John James says that the first time he ever
5 saw this automobile, they were side by side with somewhere
6 between 15 and 30 feet separating them. Certainly if that's
7 the situation, they are both entering this intersection at the
8 same time or about the same time, if you take the evidence
9 most favorable to him, and this other vehicle is to the right,
10 so he has got a duty to yield to that vehicle. I think --

11 THE COURT: I don't think James has got any duty
12 the yield. That is not my experience going through that
13 tunnel.

14 MR. LYNCH: Judge, it is an intersection. I
15 realize it is not a straight intersection.

16 MR. GRAY: That's a solid line.

17 MR. LYNCH: But at any rate, I think we also have
18 Mr. James who has not seen --

19 THE COURT: Isn't there a yield sign?

20 MR. OLITSKY: You have to wait and hope and pray.

21 MR. GRAY: That is for -- The yield sign is for
22 John Doe.

23 MR. LYNCH: No, it is a yield for buses.

24 THE COURT: It is a yield for John Doe and the
25 eastbound traffic into the tunnel.

1 MR. LYNCH: No, let me get the pictures.
2 MR. OLITSKY: I thought you had to yield.
3 THE COURT: There is no need to get the pictures.
4 I mean, I have been through there both ways.
5 MR. LYNCH: It is a sign that says yield to buses,
6 Judge, where he said that it was a third ramp where the buses
7 came through and the B Ramp.
8 THE COURT: The buses have the private route
9 through there.
10 THE COURT: And that's a sign on the B ramp.
11 You can't go where the buses go.
12 MR. LYNCH: And there's a sign on the B Ramp that
13 says yield to buses which are using that other ramp, but
14 Mr. James, I think, and certainly by his own testimony has
15 said that he hasn't seen this automobile at all until it's
16 right there. He never saw it come across the line in to him.
17 He can't say where it was that he sensed that there was any
18 danger. I think that he comes across strong when he says that
19 if his car went completely airborne he would have had to be
20 speeding, and Mr. Brock, the man who said there was a John Doe
21 vehicle, is the man that says Mr. James' car was completely
22 airborne, and I think that it raises a jury question as to
23 whether or not Mr. Brock was keeping his vehicle under proper
24 control, whether he was keeping a proper lookout.
25 THE COURT: Not Brock.

1 MR. LYNCH: I'm sorry. Mr. James was keeping his
2 vehicle under proper control, whether he was keeping a proper
3 lookout and whether he was operating at a reasonable speed,
4 under the circumstances with apparently a car entering from
5 the right.

6 THE COURT: Everybody through?

7 MR. GRAY: I'm finished.

8 THE COURT: All right. I'm going to first of all,
9 take up the Olitsky motion on behalf of the plaintiff and I'm
10 going to sustain the motion as to the Defendant, John Doe, and
11 enter summary judgment and proceed on the question of damages
12 only.

13 I'm going to overrule the Olitsky motion as to
14 the Defendant, James. I'm going to sustain the motion of
15 Mr. Gray as to his client, the Defendant, James.

16 MR. LYNCH: Note our exception.

17 THE COURT: Very well.

18 Okay. We will all be back at 2:30.

19 MR. OLITSKY: Judge, I guess, then, that lets
20 Mr. Gray out and then that one instruction.

21 THE COURT: George is out. You have got an
22 instruction on damages only and finding for the plaintiff you
23 will affix your damages to whatever you say the instruction
24 should be.

25 THE COURT: Right.

1 MR. OLITSKY: What time do you want us back?

2 THE COURT: I'd say about 2:30, and we will slip
3 in here for just a minute and we will discuss the amount of
4 time to take up.

5 MRS. OLITSKY: Do you want us before then?

6 THE COURT: I don't expect to be back by 2:30.

7
8 (Whereupon, a luncheon recess was had at
9 1:06 p.m. to return at 2:30 p.m.)

10
11 (Whereupon, instructions were given to the jury.)

12
13 EXCEPTIONS TO THE INSTRUCTIONS ON BEHALF OF THE
14 DEFENDANT, DOE

15
16 MR. LYNCE: On behalf of John Doe, exception is
17 taken to the granting of Instruction One in that there was no
18 evidence to support subparagraph three that there would be any
19 physical pain or mental anguish in the medical testimony.

20 Further, in order to allow the jury to consider
21 physical pain in the future, it would open the door for
22 speculation, as there has been no evidence to indicate that
23 the plaintiff could be expected to sustain or suffer physical
24 pain in the future or for what period of time such would be
25 expected to be sustained.

1 On direct examination Dr. Durica was asked about
2 futures and indicated that he would not give an opinion as to
3 futures, and further the testimony of Dr. Mason was to the
4 effect that she had been discharged as fully recovered on
5 December the 2nd, 1977.

6 Two refused. Exception is taken to the Court's
7 refusal to grant Instruction C as the medical testimony
8 presented by the plaintiff indicated that the plaintiff had
9 suffered from arthritic conditions that pre-existed this
10 accident, and the treatments that had been rendered by
11 Dr. Durica having been for the arthritic condition, therefore,
12 it was or should have been a jury issue for the jury to decide
13 whether or not those treatments were as a result of the
14 accident or were caused by the pre-existing condition.

15 Exception is taken to the refusal of Instruction
16 D as the Defendant, Doe was entitled to have the jury to
17 consider whether or not it was necessary for the plaintiff to
18 consider any medical treatments that were sought in light of
19 her discharge by Dr. Mason; and exception is taken to the
20 Court's refusal to grant Instruction E in that the plaintiff
21 has been allowed to mention the amount sued for as well as the
22 mentioning of that amount in the initial opening statement
23 made by the Court, and it could easily be concluded by the
24 Court that this is an amount that has been sanctioned by the
25 Court or sanctioned by the Court as an amount that is to be

1 considered by the jury, and the defendant has not been allowed
2 to present to the jury any evidence or any statement to the
3 effect that the amount sued for is not evidence to be
4 considered by the Court but is only the maximum amount which
5 the plaintiff can recover.

6
7 (Whereupon, the jury knocked on the door at
8 4:08 p.m.)

9
10 THE COURT: Have the jury come in.

11
12 (Whereupon, the jury was brought back in.)

13
14 THE BAILIFF: Mrs. Farr and gentlemen of the
15 jury, this is your verdict of Alma M. Gallop vs. John Doe?
16 The verdict is: We the jury find for the plaintiff and fix
17 her damages at \$10,000.00, signed John Ashcroft, Jr., foreman.

18 Mrs. Farr and gentlemen of the jury, so say you
19 all?

20
21 (All jurors replied in the affirmative.)

22
23 MR. LYNCH: Your Honor, I wonder if we might have
24 the jury poled.

25 THE COURT: Pole the jury, please.

1 (Whereupon, the jurors were poled.)

2

3 THE COURT: All right. Now, Mrs. Farr and
4 gentlemen, you-all have concluded your labors for the day and
5 for this trial. You will not be needed tomorrow, Wednesday
6 the 18th, so tomorrow night you can call in and see whether or
7 not we need you Thursday.

8 I thank you very much for your services and you
9 are now excused.

10

11 (Whereupon, the jury was excused at 4:13 p.m.)

12

13 THE COURT: Before you proceed, do you mind if
14 that one juror sits in the courtroom?

15 MR. LYNCH: No, sir, I don't.

16 THE COURT: All right, sir. Mr. Lynch, you have a
17 motion?

18 MR. LYNCH: Yes, sir, I do, Your Honor. I would
19 move to set aside the jury's verdict as being contrary to the
20 law and the evidence as excessive due to the errors of the
21 Court during the course of the trial ^{and} in the granting of
22 instructions and ask the Court that a new trial be granted on
23 all issues. This is a motion, Your Honor, that I'm sure that
24 you hear at the close of every case but by the party that has
25 been unsuccessful at the hands of the jury. I think that this

1 is a motion that I don't take lightly.

2 Issue has been taken with the Court's ruling as
3 to the releasing of Mr. James. I think that it would be very
4 appropriate to have the transcript of Mr. Brock's testimony
5 again so that it could be considered with the photographs and
6 the pictures that were introduced as I believe the evidence,
7 the physical evidence, as well as the testimony of Mr. Brock,
8 were substantial, at least as I recall it, and that seems to
9 be somewhat different from the way the Court saw it as to the
10 negligence of Mr. James, as Mr. James' testimony was, that if
11 his car was completely airborne he must have been exceeding
12 the speed limit or speeding or something to that effect, and
13 the testimony of Mr. Brock was that this automobile went into
14 a slide, skidded, hit the median, was airborne for some
15 distance, and I believe that the jury could well have
16 concluded that even if there was a John Doe there and even if
17 John Doe had gone into the tunnel, that Mr. James could have
18 stopped his automobile or should have been able to slow his
19 automobile to avoid any problems or difficulty, but that
20 instead he was unable to control it, lost control and was
21 airborne as Mr. Brock said for some distance.

22 And therefore, I would ask that in consideration of the
23 motion, that we be allowed to get Mr. Brock's testimony for
24 the Court to review along that line.

25 THE COURT: Do you have anything?

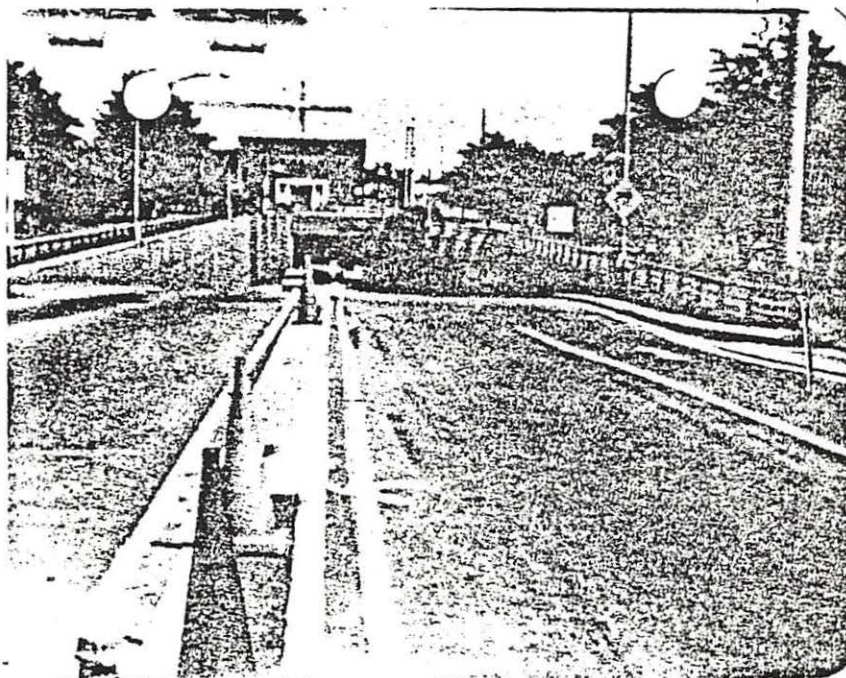
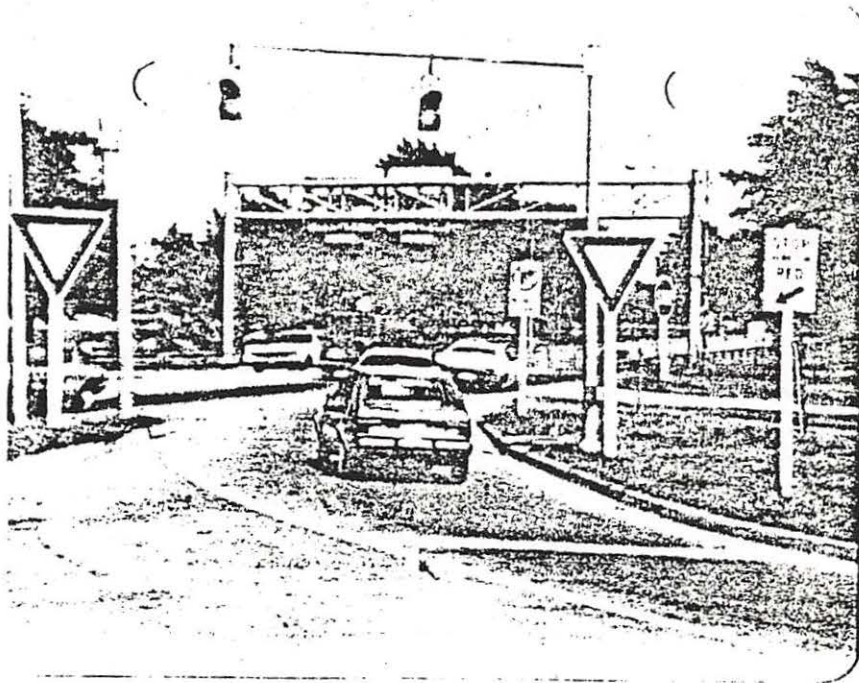
1 MR. OLITSKY: Your Honor, I have nothing further.
2 We have gone through these motions previously and the Court
3 ruled on them. We ask that you sustain the verdict of the
4 jury.

5 THE COURT: Very well then. As far as
6 Mr. Lynch's motion on behalf of the Defendant, John Doe, the
7 Court overrules the motion. The Court then of the opinion
8 that the matter was purely a jury question, the real points
9 were gone over thoroughly at the time and I don't see where
10 anything would be gained by having Officer Brock's testimony
11 typed up and rehashing it again and again. I say it was
12 purely a jury question and I see no point in considering or
13 reconsidering the instructions once I went over them and took
14 ample time, didn't rush through them, and the motion
15 concerning the sustaining by the Court of Mr. Gray's motion to
16 strike the plaintiff's evidence regarding the Defendant, James
17 is one that I feel after going into the matter thoroughly was
18 properly made. I feel that the jury has performed its
19 function, and it is my judgment there has been no error.

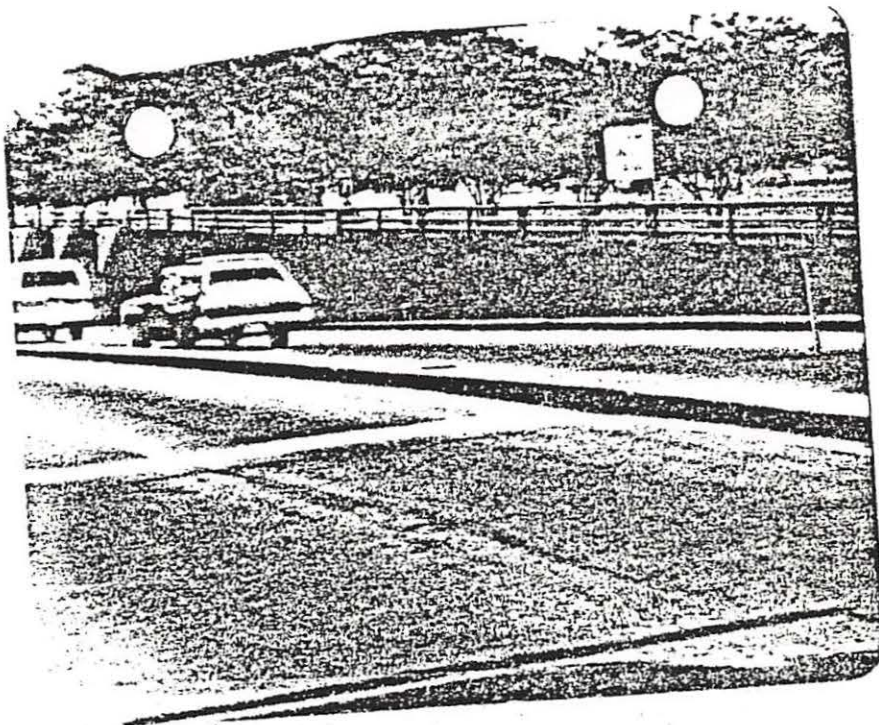
20 Therefore, I'm going to enter judgment on the
21 verdict for \$10,000.00 plus interest per day, per annum, until
22 paid, plus costs, and I will note that Mr. Lynch has noted his
23 exception to the ruling of the Court.

24 MR. LYNCH: Thank you, sir.

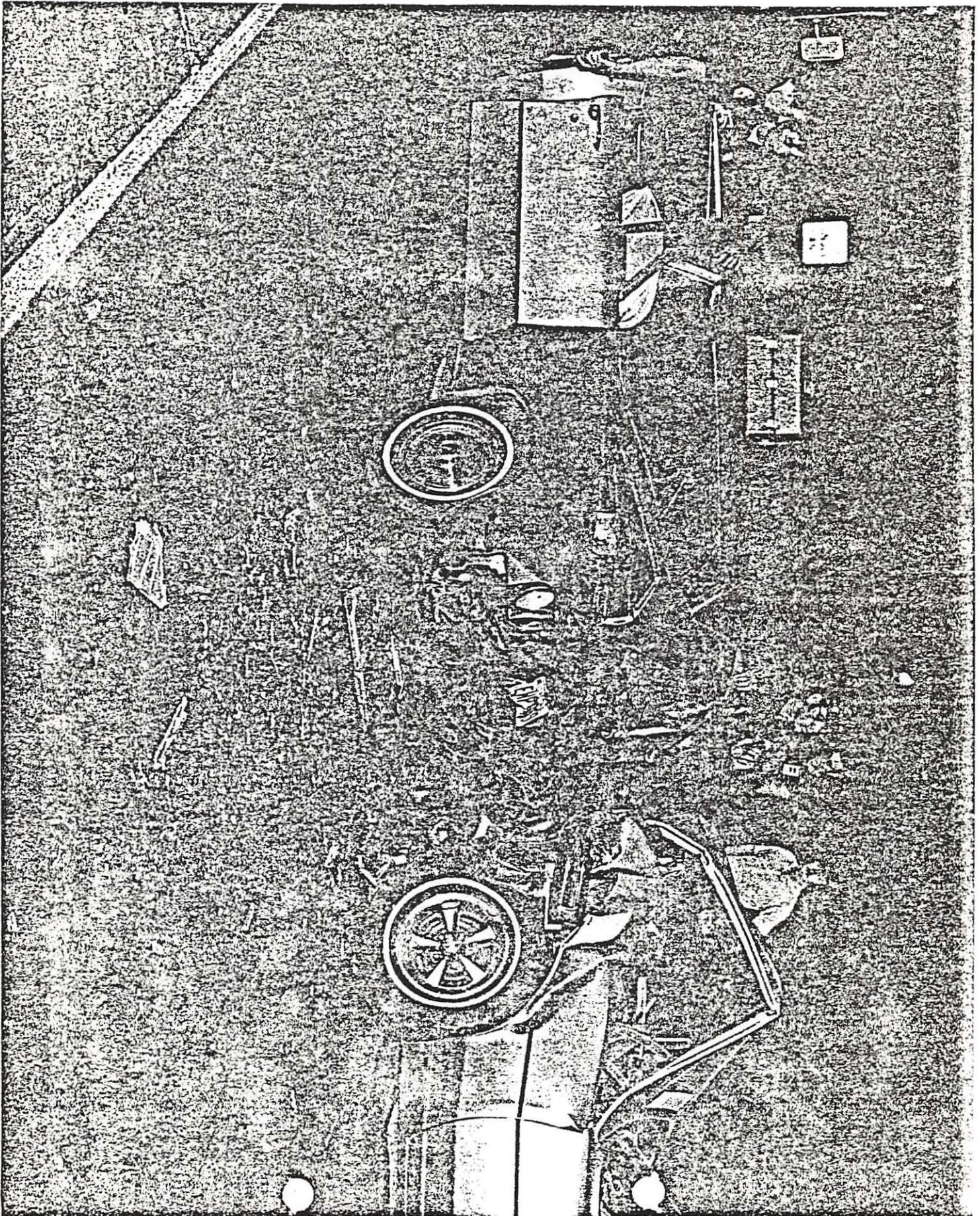
25 MR. OLITSKY: Thank you, Your Honor.

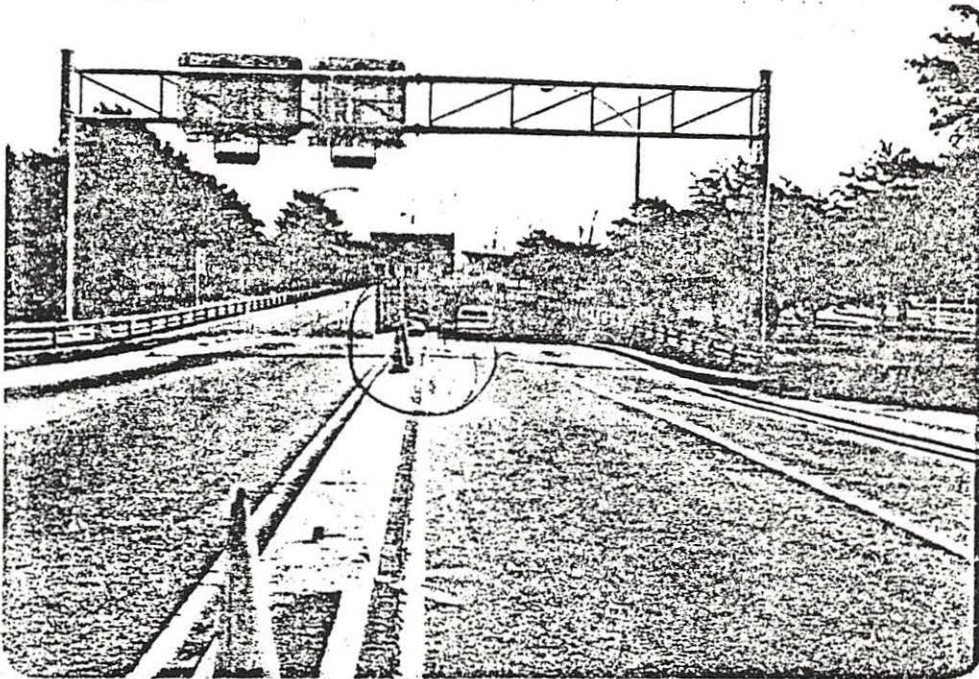


Defendant James
130 Exhibits 1 and 2



Defendant James
Exhibit 3

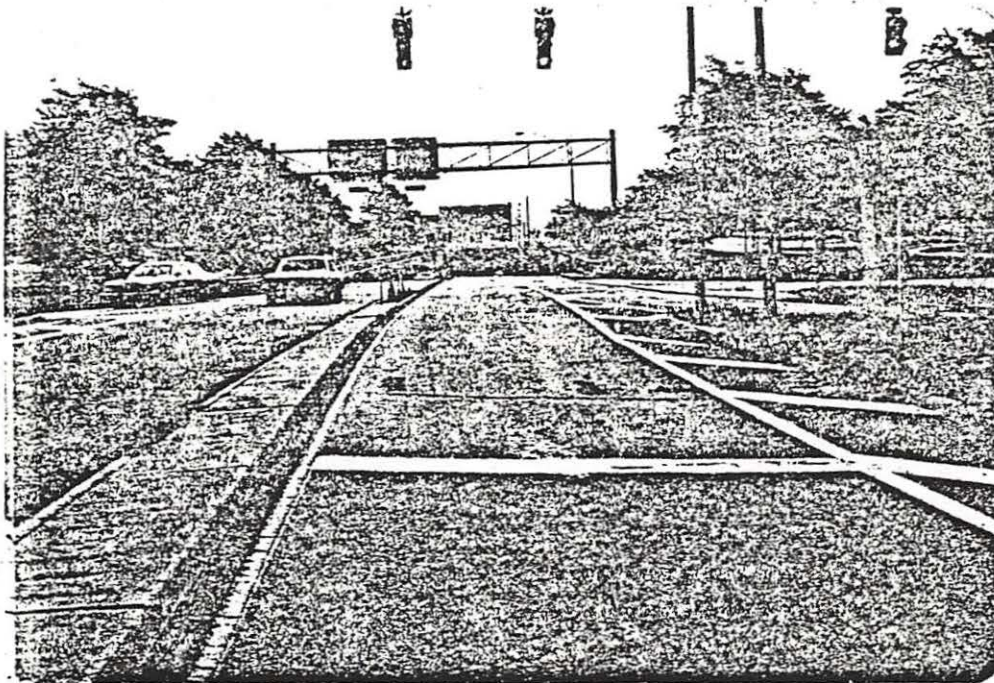




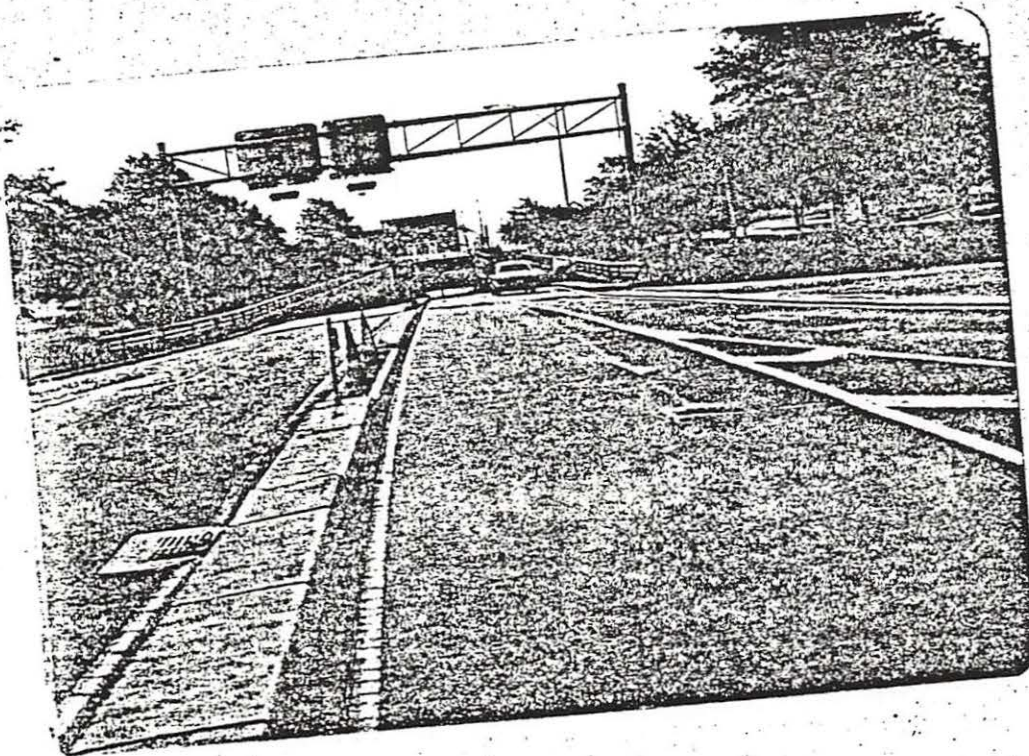
OFFICE OF
WALTER M. EDMONDS
CLERK OF THE CIRCUIT COURT
P. O. DRAWER 1217
PORTSMOUTH, VA. 23705

Doe Exhibit 2 (9)

John Doe Case No. *L-79-15*
Defendant's Exhibit # *2*
Date *6/16/80*
Judge *P. H. B.*



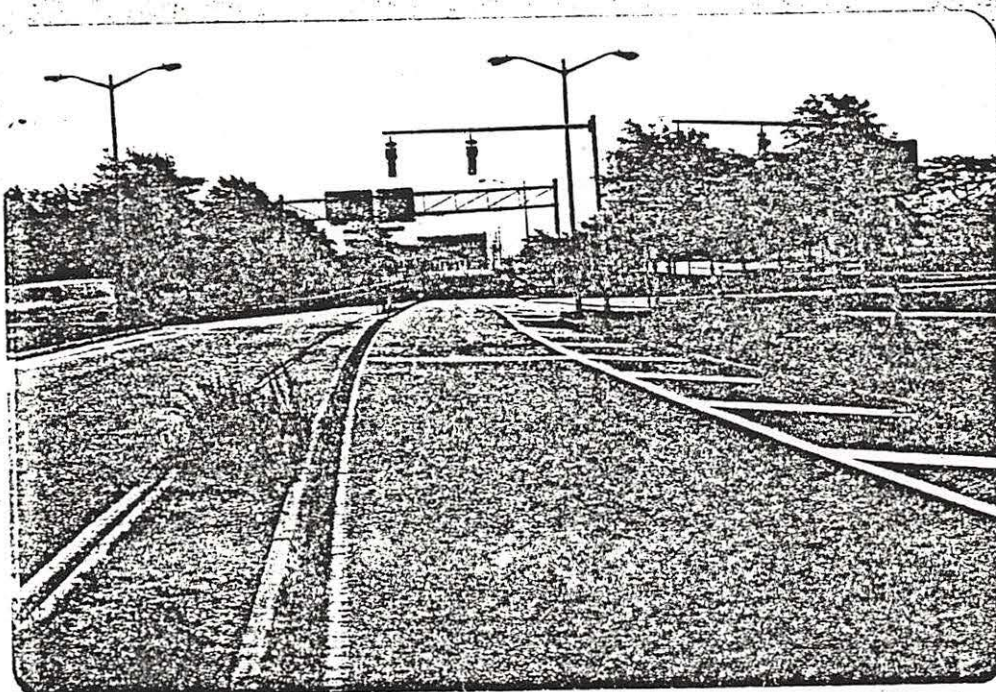
Doe Exhibit 2 (7)



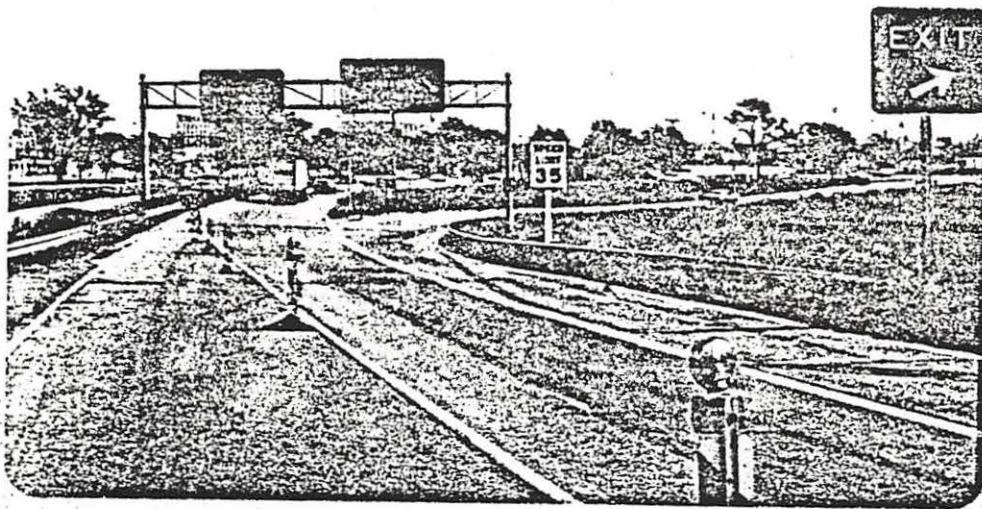
Doe Exhibit 2 (8)



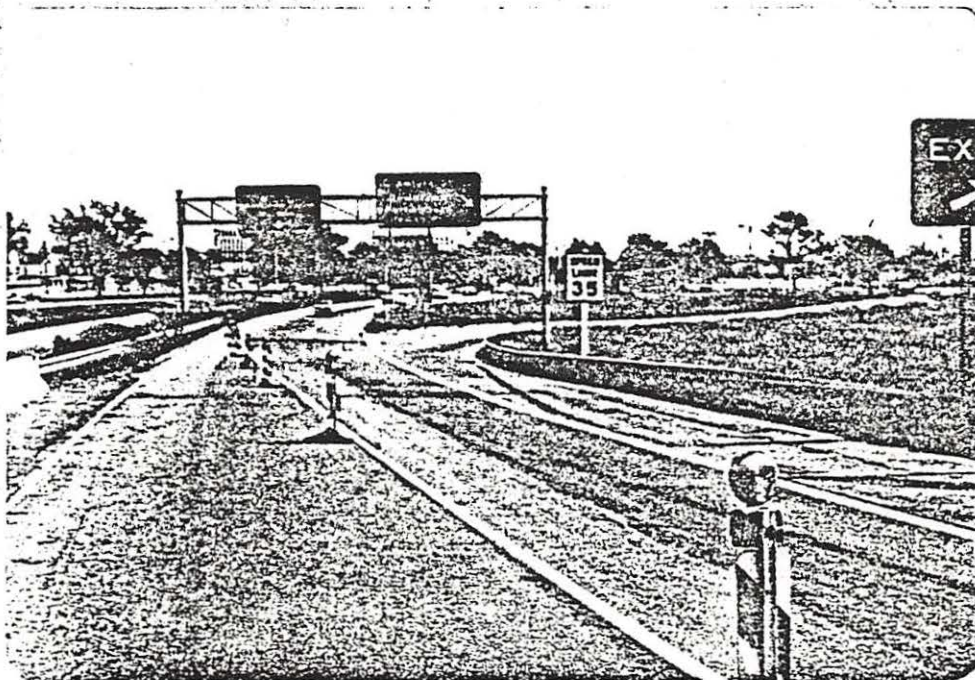
Doe Exhibit 2 (5)



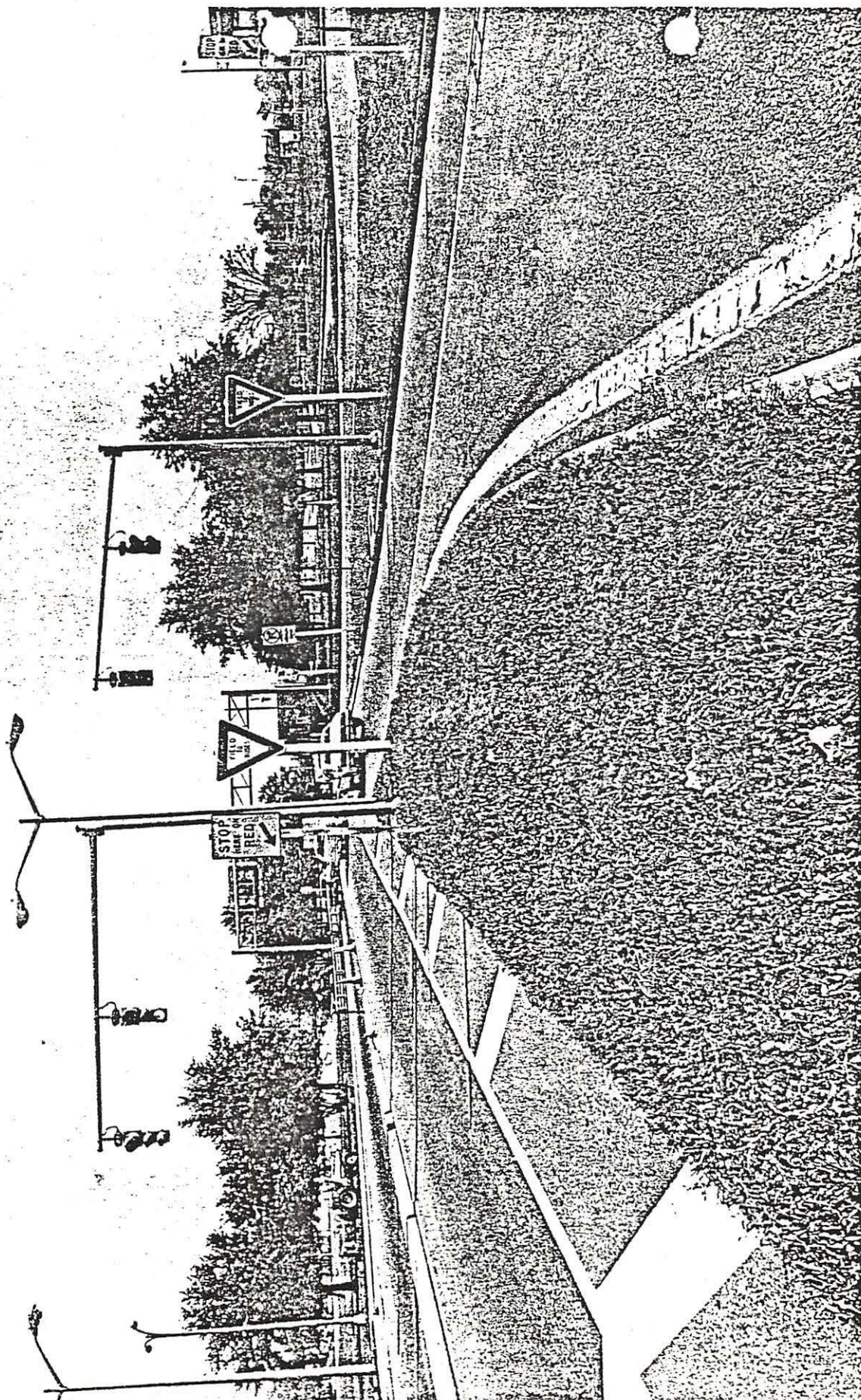
Doe Exhibit 2 (6)



Doe Exhibit 2 (1)



Doe Exhibit 2 (2)



Doe Exhibit 3

