

205 Va 699
Vol. II Pages 287-576
(In Two Volumes)

Record No. 5762

In the
Supreme Court of Appeals of Virginia
at Richmond

SOUTHERN RAILWAY COMPANY

v.

CITY OF RICHMOND, ET AL.

FROM THE LAW AND EQUITY COURT OF THE CITY OF RICHMOND

RULE 5:12 BRIEFS.

§5. NUMBER OF COPIES. Twenty-five copies of each brief shall be filed with the clerk of this Court and three copies shall be mailed or delivered by counsel to each other counsel as defined in Rule 1:13 on or before the day on which the brief is filed.

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

HOWARD G. TURNER, Clerk.

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

John Prussing

Would appreciate an appointment with you or your representative at time and place suitable to you to fully *discussed* this project. As Acting Chairman I can be reached at Governor's Office, Richmond.

Wilbur Walker, Acting Chairman,
William E. Spain, John B. Madden,
Henry Poehler, John W. Prussing,
Walter Dolbeare."

page 587] Mr. Spain: We offer this as Interveners' Exhibit No. A-19.

Note: So marked and filed.

Q. (By Mr. Spain) I now hand you a letter and ask you to read the heading and the typed portion of it.

A. (Reading)

"Southern Railway System
Washington 13, D. C.
October 28, 1960

"Mr. Wilbur Walker
c/o Governors Office
Richmond, Virginia
Dear Mr. Walker:

"Your telegram of the 28th regarding construction of yard on our line in Richmond.

"Our Operating Vice President, D. W. Brosnan, is handling this matter and I am forwarding your telegram to him so that the matter can be given attention.

Sincerely,

(Signed) Harry A. DeButts"

page 588] Q. (By Mr. Spain) What is the date of that?
A. October 28, 1960.

Mr. Spain: We offer that letter.

Note: The letter was marked Interveners' Exhibit No. A-20 and filed.

Q. (By Mr. Spain) Do you know when Mr. Brosnan came to see that committee in response to this telegram and this letter?

A. I believe it was November 30, 1960.

Q. Were you present at the meeting with him?

John Prussing

A. Yes I was.

Q. Where was the meeting held?

A. Held in the State Capitol.

Q. Do you remember who was present?

A. Mr. Brosnan and two other men, I believe, from the Southern Railway were present. Our committee included myself, and I believe Mr. Spain, Mr. Wilbur Walker, Mr. Henry A. Maurice, Mr. Madden, Mr. Dolbeare — I believe that covers it.

Q. Will you describe what was said and done by Mr. Brosnan at that meeting?

Mr. Gay: Excuse me. Would you please read the question?

page 589] Note: The question was read by the reporter.

A. We asked Mr. Brosnan, referring to the newspaper ad that the Southern Railway ran, whether after they had constructed two tracks as the ad stated, whether at a later date it would build more tracks. Mr. Brosnan said that no one could predict the future — it was entirely possible. He then discussed the inadequacy of the Belle Isle yard. We proposed to him that if the two additional tracks were put in and the rest of the land was devoted to a city park, we would consider dropping our opposition.

Q. What did he say to that?

A. Mr. Brosnan said he was not interested in a compromise; he believed our plan to do this was just a way of getting them to stop building their yard, and I remember that he said he was going to build his tracks regardless. I think those are the high points of the meeting.

Q. Was Mr. Brosnan ever seated during the meeting?

A. No he was not. He instructed us to sit down, but told us he would remain standing.

Q. How long did this meeting last?

page 590] A. I would say about half an hour.

Q. After saying he wasn't interested in any compromise, what did he do?

A. As I recall, that was the end of the meeting. I think he left then, as I recall.

Q. What would he say or do when members of the committee would try to speak to him?

A. It was my impression he was not interested in opinions of members of the committee.

John Prussing

Q. Was there any city official present at the meeting?

A. As I recall, no.

Q. When this plan and the ad, Exhibit J and Exhibit 18, were brought out and called to Mr. Brosnan's attention, what did he have to say about them, if anything?

A. Regarding the advertisement, he indicated that was written by John Rust. Regarding the map, sir, as I recall, he wondered how we happened to have it in our possession.

Q. Did Mr. Brosnan say the advertisement expressed his view as Operating Vice President or of his System?

A. My impression was he left the responsibility of the ad to Mr. Rust — it expressed Mr. Rust's view. That was my impression.

Q. He would not accept it as his own?

page 591] Mr. Gay: Object to that.

Mr. Spain: You are right. I should not have asked that.

Q. (By Mr. Spain) Did he at any time say that it expressed his view or that of his superior who sent him?

Mr. Gay: The witness has answered that question by saying the ad was put out by Mr. Rust who was the operating official of the road in charge of the matter at that time.

Mr. Spain: The exhibits show the man sent to deal with us was Mr. Brosnan.

The Court: I understand, gentlemen, he testified Mr. Brosnan said the advertisement was put out by Mr. Rust.

Mr. Spain: I suppose so. I was stating the same thing in a different way.

page 592] CROSS EXAMINATION

By Mr. Gay:

Q. When Mr. Brosnan expressed wonderment at this meeting where you had gotten this map, was he informed?

A. I think he was.

Q. What was he told?

A. I believe he was told it was given to us by the attorney for the Southern Railroad. That's my recollection.

Q. As evidence of the then plan of Southern Railway to use this property in the manner outlined in the advertisement you have identified? Isn't that a fact.

John Prussing

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A. Yes.

Q. Now you say at this meeting, having regard to this committee, that your committee made what I understood you to describe as a compromise proposal, which contemplated construction of the two additional tracks as shown on the plat, provided the company would give or dedicate the remainder of the property to the city as a park —

page 593 } A. One of our members made that proposal.

Q. And he also indicated that if that were acceptable, your committee would drop your opposition, I believe you said.

A. Yes. I don't know whether he was speaking for the committee or not. He was speaking for himself, so far as I know.

Q. Who made that statement?

A. I believe that was our co-chairman.

Q. Who was he?

A. Mr. Spain.

Q. And you say Mr. Brosnan said he wouldn't accept that kind of proposal?

A. Yes.

Q. You say that Mr. Brosnan came there with two other men. Could you be a little more specific and say who they were?

A. I think one of them might have been Mr. Rust but I am not sure, and one of them I think was a man from the Richmond operation — I am not sure of his name.

Q. Did you attend either or both of the meetings of the City Council at the time the matter of the amendment of the zoning ordinance was considered?

A. I did.

page 594 } Q. You attended both of them?

A. Yes, sir.

RE-DIRECT EXAMINATION

By Mr. Spain:

Q. Did you know Mr. Rust, or had you ever seen either of the two gentlemen who were with Mr. Brosnan before or since that time?

A. I have never seen Mr. Rust, before or since. I never saw the other man before. I might have seen him yesterday.

Walter I. Dolbeare

Q. Could you point him out, if he is in the courtroom?

A. I think he is the gentleman on the end. I am not sure.

Mr. Spain: Let the record show the witness pointed out Mr. Beard.

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page 596] WALTER I. DOLBEARE,
a witness called by and on behalf of the Inter-
veners, after being duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. Spain:

Q. Please state your name, age, residence and occupation.

A. Walter I. Dolbeare, 4108 Hillcrest Road. I am sixty years of age, and an employee of the Virginia Electric and Power Company.

Q. Do you live within the area shown on Exhibit 22 now on the board?

A. I do.

Q. Will you put a "D" on your house as shown on that exhibit?

Note: The witness did so.

Mr. Gay: Will you so frame a question as to let the witness identify where he lives?

A. 4108 Hillcrest Road, approximately one
page 597] hundred and fifty yards from Riverside Drive
and about two hundred yards from this de-
velopment.

Q. (By Mr. Spain) Mr. Dolbeare, how long have you lived there?

A. I have lived there since 1948. I was one of the very first people to occupy a house in Riverside Park.

Q. Did you personally make any effort to discover what was going on on the land shown in red on Exhibit 22 between July 1960 —

A. I was out of town a great deal of that time, so I didn't find out very much until it became noticeable in the papers. I did get the benefit of the ashes, the same as one of the other witnesses did.

Walter I. Dolbeare

Q. Mr. Dolbeare, what in your opinion would be the effect upon your property of the establishment of a railroad yard of eleven tracks for the making and breaking of trains, shipping and storage of cars, on the land proposed —

Mr. Gay: Just a moment.

Mr. Spain: I will change that — make it “enjoyment of the land.”

Mr. Gay: Now read the question.

The Court: Restate your question, Mr. Spain.

Mr. Spain: Just strike that.

page 598] Q. (By Mr. Spain) What in your opinion would be the effect upon the enjoyment of your home by the establishment of a railroad yard at the proposed location consisting of any number of tracks up to eleven, wherein trains would be made up, broken, shifted and stored without regard to the time?

A. It would decrease —

Mr. Gay: Same objection.

The Court: Overruled.

Mr. Gay: Exception.

A. (Continuing) It would decrease my enjoyment most considerably. Ever since the work has commenced and the trees were knocked down by the construction, the noise of the present railroad operation has increased very greatly because it is no longer deadened by the trees. Were there more tracks, the shifting, knocking about of cars and the noise thereof would be very much more uncomfortable to my ears.

Q. Can you see this yard from your home?

A. I can barely see it in the summer. I can see it from my side lawn, not directly from my house. One of my neighbor's houses is in the way. My principal problem is noise.

Q. Are you familiar with the telegram which has been introduced as Exhibit A-19?

page 599] A. Yes, sir, I saw it after it was sent.

Q. Are you familiar with the letter of Mr. DeButts, then President?

A. I saw this letter too.

Q. What exhibit is that?

Walter I. Dolbeare

A. This is Exhibit A-20, letter from the Southern Railway System, signed by Mr. DeButts.

Q. Are you familiar with Exhibit J, the advertisement published in the local newspapers?

A. Yes, sir, I saw that when it was issued in the newspaper.

Q. What was the first knowledge you had of what the railroad really proposed to do?

A. I believe the first knowledge I had was a newspaper article in the News Leader at about that time.

Q. About what time, sir?

A. In October 1960, I believe. I am not sure of the date.

Q. Are you a member of the Steering Committee of the Forest Hill-Woodland Heights Citizens Association?

A. I am, sir.

Q. Did you, as a member of the Steering Committee, attend a meeting in the State Capitol Building on November 30, 1960, at which Mr. Brosnan appeared in accordance with the letter from Mr. DeButts of October 28?

A. Yes, sir, I was present.

Q. Was any city official present?

A. No, sir, there was nobody there but the members of this Steering Committee and, I think, three gentlemen from the Southern Railway, Mr. Brosnan and two others.

Q. Do you know either of the other two?

A. No I do not. I have seen them both before, but not to identify them.

Q. Will you describe that meeting in your own words?

A. The meeting was a most uncomfortable meeting. Mr. Brosnan was, to say the least, not in the least bit cooperative with the group. He entered the meeting with his assistants behind him, and if I remember the first statement he made was to his assistants — "Get the names of these people." I think that set the key for the meeting. It was about as uncomfortable a meeting as I have ever been in with any person. I think that described it as best I can.

Q. Now, was Mr. Brosnan invited to be seated?

A. He was, and declined that invitation. He stood at the end of a table.

Q. Where were the other people who were present?

Henry A. Maurice, Jr.

A. The members of our group were seated
page 601] around a table and I think his two associates
were seated at side chairs in the room.

Q. Was Mr. Brosnan seated at any time during the meeting?

A. Not at any time.

Q. Tell us what he had to say?

A. I can remember only parts of the conversation with Mr. Brosnan. The various members of the committee asked him for an explanation of the question of whether or not there was going to be two tracks or any tracks or how many tracks — that question was raised. He made the statement that he was in effect not limiting the Southern Railway to anything. He made the flat statement this was a freight yard, was always going to a freight yard, and always had been a freight yard. That may not be his exact words, but that was the intention of his statement.

Q. When members of the committee attempted to speak to him, what would he say?

A. I can't remember exactly what he said, but let's say he was not cooperative.

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page 603] HENRY A. MAURICE, JR.,
a witness called by and on behalf of the Inter-
veners, after being duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. Spain:

Q. Please state your name, age, residence and occupation.

A. Henry A. Maurice, Jr., fifty-nine years old. I live at 1907 West Forty-Second Street. I am Associate Bridge Engineer for the Virginia Department of Highways, in the Bridge Department, and a photographer.

Q. You are also a member of the Virginia State Bar?

A. Yes.

Q. As shown on Exhibit No. 22, where is your house located with reference to the railroad yard, and upon finding it, I will ask you to place the letters "MA" on it, if you will.

Note: The witness did so.

Henry A. Maurice, Jr.

page 604] Q. Do you know how far that is from the proposed yard?

A. I would say that the end of the tracks that have a yard sign are just down below my house — possibly three-quarters of a block.

Q. Is that yard visible from your house?

A. No, sir. I can go down in the end of my yard and look down through the trees in the wintertime when the leaves have fallen and I can see the yard, but not in the summer when the leaves are on the trees.

Q. Can you hear the shifting that now goes on in the yard?

A. I hear it from time to time — especially when I am out on the side porch and working in the yard. My wife hears it more than I do.

Mr. Gay: We object to that.

A. (Continuing) Let me explain something. I am deaf in one ear and, therefore, I will not hear as much of the noise as the ordinary person. I am affected in the other ear too. I wanted to get that straight.

Q. (By Mr. Spain) Mr. Maurice, is it your opinion that the addition of tracks in the proposed yard from any number now existing, that is, two, up to eleven, covering an area of some sixteen acres where trains are made and broken, shifted and stored, without regard to time, will interfere with the enjoyment of your home?

Mr. Gay: Same objection.

The Court: Sustained as to form.

Mr. Spain: Your Honor, I am having a hard time getting this question in proper form.

The Court: I believe the question started off "Is it your opinion."

Mr. Spain: I believe so. Just strike the whole question.

Q. (By Mr. Spain) What effect, if any, would the addition of tracks on the sixteen acres shown in red on Exhibit 22, whereon trains would be made up and broken up, shifted and stored, have upon you in the enjoyment of your home?

Mr. Gay: Same objection.

Henry A. Maurice, Jr.

The Court: Same ruling.

A. I don't like it. I mean, I could live with it but I wouldn't like it, and also with the yard down there it would mess me up on getting to the river to go fishing. I go to the river and fish right much, and I have, during the years, taken hundreds of wild flower pictures in the bottom and have
page 606] sold some of them, so all in all it would affect me some.

Q. (By Mr. Spain) Mr. Maurice, is the river at this point susceptible to use for fishing?

A. People park down at the corner of my lot every weekend and at night and numerous times during the week lots of kids in the neighborhood go fishing in the river, and there is a path just off of Riverside Drive below the house. My house is right on the curve and right on the curve is a path going down at the road that the contractors cut out to get to work — cleared that with a bulldozer to get to work on the filling of the yard and so forth. That was an old path through the woods where we go over to the different holes and just above me is another path that goes off the drive and down into the holes which are in the river proper. The river comes through there and there are numerous islands. I would say on some Sundays hundreds of people are fishing up and down the river in that section.

Q. What kind of fish are available at that point?

A. The James River, from possibly the starting of that yard, which is a little dam to the river —

Q. Which end?

A. The lower end — Twenty-Fourth Street. I
page 607] would say from Twenty-Fourth up to Williams

Dam the James River is one of the best small-mouth bass streams in the state, and also there are lots of bream and yellow perch in that river.

Q. Have you ever lived near a railroad yard?

A. All my life. I was born at Eleventh and Perry Street, and Eleventh and Perry is four blocks above the old Southern yard and Southern shops which are — or I should say, were — at Seventh and Perry, because the shops have been torn down and most of the trains within the last two years — most of the tracks down there have been removed, but they were there at one time, and I would say there were twenty-five or thirty tracks through that yard. Straight over from me about three blocks would be the A. C. L. yard, and all

Henry A. Maurice, Jr.

the years I was growing up we heard the trains, both A. C. L. and Southern, at all times, day and night, and especially during World War I when they had so much freight coming through — both yards packed and jammed all the time. You just had to take it — wasn't any way out of it.

At that time there were lots of houses on the lower side — and when I say lower I mean the side on the lower side of Seventh Street. It doesn't run exactly north and south. You come over the Ninth Street Bridge and make a swing and go back to Hull, and the lower side would
page 608] be the river side, and at one time a lot of people lived on the lower side of Seventh Street and some on the upper, and nearly all the streets in that area, but if you go down there now you will find manufacturing has taken over. Everybody has moved out. Most of them moved out many years ago, and the area has gradually gone down.

Q. Mr. Maurice, are you familiar with the newspaper advertisement, Exhibit J, which has been introduced?

A. Yes, I saw it.

Q. Are you familiar with the telegram, Exhibit A-19, which has been introduced?

A. I saw the telegram after it was sent. I was at the meeting with the Executive Committee, or whatever we call it — the Steering Committee — when Mr. Walker was told to send the telegram to Mr. DeButts and ask him what the score was.

Q. Have you seen Exhibit A-20, the letter from Mr. DeButts dated October 28, 1960?

A. I saw that letter.

Q. Have you ever seen Mr. Brosnan, referred to in that letter?

A. Yes, he said he turned it over to Mr. Brosnan and if I remember correctly, he said Mr. Brosnan would contact us and come to see us.

page 609] Mr. Gay: I object to him saying what the letter said. The letter speaks for itself.

Q. Now, when did you see Mr. Brosnan?

A. I don't remember the exact date, but it was about thirty days later.

Q. Where did you see him?

A. I saw him over at the first floor of the Capitol.

Henry A. Maurice, Jr.

Q. I want you to describe that meeting in your own words.

A. Mr. Brosnan came down the hall and he had two fellows with him. One of them is here. I can't recall his name but he is sitting over there — he was with him.

Q. Let the records show Mr. Beard was pointed out. This gentleman over here?

A. Yes. I think the other was from Charlotte — anyway, it was two of them there. We introduced ourselves to Mr. Brosnan. He comes in and said to the two fellows with him, "Get the names and addresses of each of these men we have got to deal with." So then Mr. Brosnan walked around the table, one of these fellows on each side of the table, and we asked him to have a seat and make himself comfortable and we could all talk and find out what the score was, and

he said he never liked to talk to people sitting
page 610] down, he liked to go to the head of the table, so we told him he could go up to the head of the table, to have that seat up there, but he said he liked to stand up and talk. We didn't object — it was perfectly all right with us if he wanted to stand up.

So then he got up and told us, "Shoot the questions."

Someone asked him why was the Southern Railroad so secretive about the work they were doing in the yard, and Mr. Brosnan said, "Did you all try to find out about the work?" And someone said yes, members of the committee had contacted the City Building Inspector and they had also contacted the Southern Railroad and nobody had been able to find out anything at all. And he said, "Why didn't you contact the right people?"

I don't know whether it was Mr. Walker or who, but somebody said, "Mr. Brosnan, we sent a wire to Mr. De-Butts, the President, and I don't know who else to try and contact if he is not the right person."

Mr. Brosnan shrugged that off.

Mr. Gay: I object to that expression.

The Court: He can describe the physical appearance of the representatives, for what it is worth. Go ahead.

A. (Continuing) Let me think. He was asked a
page 611] number of other questions and he came out and said yes, there is going to be a railroad yard in there. He didn't say any definite number of tracks as I remember, but a yard plus the buildings to service diesels and so

Henry A. Maurice, Jr.

forth, and the equipment needed, and wasn't anybody going to stop him — not the City of Richmond nor the people down here — his business was to make money for the Southern Railroad and he was going to make it.

A lot of other questions were asked and something came up about the map and the two tracks and so on.

Q. You are talking about the map which has been introduced as Exhibit A-18 in the record?

A. That's right — the long one you had pulled out.

Q. What did he say about that?

A. I don't remember his exact words, but anyway we looked at the map and something was said about the two tracks on there and I think at the end you said to him, if I remember correctly — anyway it was said while the map was out and put up, you said to him, "Mr. Brosnan, if we let you put in the two extra tracks, don't fight it but let you put in the two extra tracks, will you deed the remaining property over to the city for a park?"

Q. What was his reply?

page 612] A. His reply was, "I will compromise with nobody. I will not promise you how many tracks we will put in or anything else. I am in business and if we need the tracks we will put them in."

I said, "Mr. Brosnan, I think it would be a mighty fine gesture if you would dedicate a part of that land as a park and get a nice big Southern Railroad engine and put it in there so the children in South Richmond could have a nice train like they have on the other side that the C. & O. gave them. I think it would be a fine thing for the city."

He said, "I don't care whether the City of Richmond ever gets anything, this place is not going to be a park if I can help it."

Q. What did he say, if anything, about the newspaper advertisement, Exhibit J?

A. I don't remember too much about this because just before that he shook his fist in my face and said something — shook his finger, rather. I don't remember too much about this.

One other thing I do remember though. I asked Mr. Brosnan — being an engineer, not on the railroad but an engineer with the Highway Department — I asked Mr. Brosnan, I said, "Mr. Brosnan, why spend all this money

Henry A. Maurice, Jr.

putting in a new yard at this location when you
page 613] have a yard known as Belle Isle yard down at
Lee Bridge and most of the tracks are below
Lee Bridge and I said, right now it has very few cars on it
and grass is growing between the tracks." I said, "With
these sixteen or seventeen tracks right close to your transfer
line at the A. C. L. you could use that, it seems to me."

He said, "We could use that with a little trouble, but
we want a great big brand new yard."

I said, "That doesn't look right to me to want to come in
a neighborhood and hurt the property, when you could use
the other yard."

And he said, "We are going to do what we can to get it
through."

It was a very disagreeable meeting, and as I told one
newspaper reporter —

Mr. Gay: Objection.

The Court: Sustained.

Q. (By Mr. Spain) Don't tell what you told the newspaper
reporter.

A. For the first time in my life, I met Khrushchev.

Q. Why did he shake his finger in your face?

A. I started to ask him a question and when I started to
ask it, he jumped up and said, "Don't get per-
page 614] sonal." I had no idea of getting personal.

Q. Did he ever have a seat during the meeting?

A. Never sat down during the meeting. He walked around
and pointed and hit the table with his fist, but never had a
seat.

Q. How long would you estimate it was the whole thing
took place?

A. I would say at least half an hour or forty minutes.

Q. When it was concluded, what did Mr. Brosnan do?

A. He turned to the two fellows with him and said, "Get
yourselves together — I've got something else to do" — and
strolled on out and they followed him.

The Court: Gentlemen, it is five minutes to one and I see
you have quite a few photographs. Possibly this would be
a good time to adjourn for lunch.

Mr. Eichner: May we take up another moment about the
photographs? We have a series of pictures taken of the
Belle Isle yard, and we have subpoenaed three police officers

Henry A. Maurice, Jr.

who took them. Counsel have suggested they might be willing to let them come in without the necessity of page 615] having the officers here to identify them. I will describe how they were taken, to the satisfaction of counsel, I trust, and have them marked for identification. They asked me to state what instructions were given to the police officers who took them.

At the time these were taken, the latter part of July, they were instructed to try to get out there as early as possible in the morning and again as late as possible in the evening, and take a shot each way off of Lee Bridge from the same location. The policemen were all working daytime. The idea was to confine it to one photographer, but they were told not to go at any particular time. Later on they were told to try to get there when the West Point train came in.

The question was asked were any photographs taken which are not in the two booklets, and my answer is no, with the exception of possibly one or two which didn't develop.

The Court: What is your suggestion? Do you want these marked for identification only?

Mr. Eichner: I understand on this basis they page 616] will concede they were taken by the gentlemen stated, on the dates and times stated, and I will agree to let them have them over the weekend and release the three police officers from subpoena.

Mr. Gay: That is in accordance with what we have agreed to do.

Mr. Eichner: The police officers referred to are William R. Blaylock, Jack B. Farmer and Billie L. Blaylock, as shown on the lists of the pictures.

Note: The booklets of photographs were marked for identification A and B and initialed by the reporter, SSP.

Note: Recessed for lunch, 1:00 p.m. to 2:15 p.m.

page 617]

FOURTH DAY

AFTERNOON SESSION

Richmond, Virginia
September 21, 1962

HENRY A. MAURICE, JR.,
resumed the stand for further testimony.

Henry A. Maurice, Jr.

DIRECT EXAMINATION (Continued)

Mr. Spain: Your Honor please, during the recess Mr. Pasco has examined certain photographs we now propose to introduce as interveners' exhibits, and as to the group I have in my hand there is no objection.

By Mr. Spain:

Q. Mr. Maurice, I hand you a photograph and ask you if you took it and if so, what it shows? I notice a note on the back of it. Who wrote the note?

page 618] A. I took the picture and wrote the note.

Q. What does the picture show?

A. This photograph shows the old Southern yards as they were — I have the date as being taken on February 3 or 4 — I took a hundred and some pictures and I don't know which were taken on Saturday or Sunday, but they were all on the same weekend.

Q. What year?

A. 1962.

Q. This year?

A. Yes — 1962 — this year.

Mr. Spain: We would like to introduce this photograph as Intervenors' Exhibit A-21.

Note: So marked and filed.

Q. I hand you another photograph and ask you what view it purports to show?

A. This shows — this was taken September 9, 1962, and it shows the new road that has been put in down through where the old Southern shops used to be, and the Southern yards, and it shows the tracks which have been moved and elevated, and also shows, I think it is a piggy-back loading platform — the equipment they have to the left of the picture.

page 619] Q. Is this the same view as the one previously introduced as an exhibit, taken some nine months later?

A. Yes. This is not taken from exactly the same place but looking in the same direction — down where the tracks used to be.

Henry A. Maurice, Jr.

Mr. Spain: I would like to introduce this second photograph as Interveners' Exhibit A-22.

Note: So marked and filed.

Q. I hand you another photograph and ask you to identify that.

A. This picture was taken on February 3 or 4, 1962, showing the site of the old Southern shops looking downstream and you can see some of the ties and so forth turned up when they pulled some of the tracks up.

Q. What else do you see in that picture?

A. Tracks down here, and the trees, and two office buildings or yard houses or yard buildings, and an oil tank.

Q. Does that picture accurately reflect the state of the growth of the trees and other growth in the yard at that time?

A. Yes, it was just like this when I took it.
page 620] This has grown up in there since they took the old shops out.

Mr. Spain: We offer that as Interveners' Exhibit A-23.

Note: So marked and filed.

Q. I show you another photograph and ask you does that show substantially the same view?

A. This photograph is looking in the same direction, showing the trees having been cleared away and the road put in, and the loading platform that has cans of oil or something on it, and the piggy-back platform — I think that's what it is — in the background.

Q. What date was it taken?

A. This picture was taken September 9, 1962.

Mr. Spain: We offer this as Interveners' Exhibit A-24.

Note: So marked and filed.

Q. I hand you another photograph and ask you what does that purport to show?

A. This picture was taken on the 3rd or 4th of February, and it was taken from the foot of Porter Street, and when

Henry A. Maurice, Jr.

I say the foot of Porter Street — Porter Street
page 621 } runs all the way down to the river so this was
taken out in the edge of the Southern yards looking
towards Ninth Street Bridge, and you can see in there
the marks of the ties where they were in the ground where
the different tracks went, and you can see some of the old
ties, it looks like, in the background, and also here is a yard
office and here is a parking lot for automobiles they have in
the center.

Mr. Spain: We offer this as Intervenors' Exhibit A-25.

Note: So marked and filed.

Q. I hand you an additional photograph and ask you what that shows?

A. Well, this picture was taken on February 3 or 4, 1962, and it is looking down through the Southern yards, looking south or downriver through the Southern yards, and you can see the old line where the railroad track came down and circled the old Southern shops, and you can see where the tracks from the old yards have been moved and are located to your left, and you can see the trees and some of the rails lying over to the side where they were turned up.

Mr. Spain: We offer this as Intervenors' Exhibit A-26.

page 622 } Note: So marked and filed.

Q. I hand you an additional photograph and ask you what does that represent?

A. This picture was taken February 3 or 4, 1962, and it was taken from the south end of the Lee Bridge, and it is a picture showing the cars in the Belle Isle yard and also the transfer track going up to the A. C. L. yards which is in the right background, and the trains are also on the A. C. L. yard tracks, and looking ahead you can see the City of Richmond. Tracks from this yard go straight down and go through the old Southern yard in the other picture we had.

Q. What time of day was that picture taken?

A. Between ten and eleven, if I remember correctly.

Q. Do you know what this yard is commonly called?

A. We used to call it the Belle Isle yard. I have no idea

Henry A. Maurice, Jr.

what the railroad calls it. We lived there all our life and we called it the Belle Isle yard.

Mr. Pasco: Your Honor, I don't think the notes ought to be attached and go in with the pictures.

Mr. Spain: We can pull those off.

page 623] The Court: Suppose you detach the notes on the back.

Mr. Spain: We can do that. We offer this as Interveners' Exhibit No. A-27.

Note: So marked and filed.

Q. (By Mr. Spain) I hand you another photograph and ask you to identify that?

A. This is a picture that was taken from almost the identical position as the other one on the same date, February 3 or 4, 1962, and this shows the transfer track running from the Belle Isle yard on upgrade to the A. C. L. tracks in the background on top of the picture, with trains on it, and the houses along the railroad street.

Mr. Spain: We offer that as Interveners' Exhibit No. A-28.

Note: So marked and filed.

Q. Now I offer you an additional photograph and ask you what does it indicate?

A. This picture was taken on February 3 or 4, 1962, and it was taken from the south end of the Robert E. Lee Bridge.

Q. Looking in which direction?

page 624] A. Looking upriver. I took a picture looking downriver and then walked across the bridge looking upriver at the same time, and this shows the tracks leading up to the proposed yards, and the proposed yards are just around the curve to the top of the picture, and the embankment has been filled in here and leveled off for a track to go in at a later date.

Mr. Spain: We offer that as Interveners' Exhibit No. A-29.

Note: So marked and filed.

Q. I hand you one other photograph and ask you what that represents?

Henry A. Maurice, Jr.

A. This picture was taken on February 3 or 4, 1962. It is a picture of the old Southern yards and it shows some of the few remaining tracks there — shows some tracks relocated and shows still some of the old ones in existence and in the foreground of the picture are ties and rails of tracks which have been pulled up and the heavy material piled to one side. It is looking downstream towards Hull Street.

Mr. Spain: We offer that as Interveners' Exhibit A-30.

Note: So marked and filed.

page 625 } Q. All right, Mr. Maurice — the next one?

A. This picture was taken on February 3 or 4, 1962, and it is a view of the old Southern yards taken from just below Seventh and Perry Street, looking down towards Hull Street, and you can see in it where the tracks were. At one time this whole yard through here was lined with tracks — don't know how many — twenty-five or thirty — and they continued almost down to Hull Street, and at the present date they have nearly all been removed.

Mr. Spain: We offer this as Interveners' Exhibit A-31.

Note: So marked and filed.

Q. Mr. Maurice, when you speak of the old Southern yards, where are they physically located in your mind?

A. The old Southern yards in my mind were located between possibly Seventh and McDonough, all the way down to nearly Hull Street, and start at Semmes Avenue.

Q. That's what you mean when you refer to the old Southern yards?

A. Yes.

Q. Come over here to the map on the board, Exhibit No. 18. Point out to His Honor what you consider the old Southern yards?

page 626 } Mr. Gay: Just a minute. How can what this witness considers to be a yard be material in this case?

The Court: I think perhaps, Mr. Spain, if he could do so, he could be asked to describe where the old tracks went,

Henry A. Maurice, Jr.

the area they were in, and then he can state what he calls it by way of identification. I think that would not be objectionable.

Q. (By Mr. Spain) What you have referred to in your several photographic exhibits as the old Southern yards, where are they located in Exhibit 18?

A. We usually thought of them starting in here (indicating on map), about the foot of McDonough Street and spreading on out down through here until they ran into the old icehouse here, and the others swung over and ran down to approximately Hull Street where they tie in together to either one or two tracks to go over Hull Street.

Mr. Spain: Have a seat. I have no further questions.

page 627] CROSS EXAMINATION

By Mr. Gay:

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page 630]

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Q. How did you get to the river to fish? I think you said you frequently went down there and a great many people went down there over the weekends.

A. You mean, where I lived —

Q. Where you live right now.

A. Well, sometimes I walk across the front yard and go over to the hill and drop down a path on that hill which comes almost to your yard sign. If I am going up the river, I walk up the Southern right-of-way tracks. If I am going down the river I go down the tracks and there are two or three paths that lead through the fill and go to the islands. Sometimes I will drive down to the bottom of the hill in my car and park it and get out and go through the old Beech or Berrywood Road, or the path in front of the park area where the Southern Railroad put the bulldozer in and cut out the road.

page 631] Q. And that's at —

A. At the foot of Hillcrest.

Q. You go across to the river at that place on some occasions and on some occasions you go down in the Forty-Second Street area?

A. That's right. I fish where the Belle Isle yard tracks

Mrs. Charles E. Hudson

cross.

Q. Whether you approach it from one way or the other, you have to go across the Southern Railway property, do you not?

A. That's true.

Q. Have you ever asked anybody's permission to go over there?

A. No, sir, I never asked anybody for permission to go over there.

Q. Do you know whether any of the people whom you say habitually fish there on weekends get Southern Railway's permission to use their property?

A. I don't know. I never asked them.

Q. Would you call that a trespass?

A. Well, let me put it this way —

Q. Would you call it a trespass or would you not call it a trespass?

A. I wouldn't call that any more of a trespass
page 632] than the Southern Railway trespassing on the
city land and putting in a sewer and cutting out
a road.

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page 634] MRS. CHARLES E. HUDSON,

a witness called by and on behalf of the Inter-
veners, after being duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. Spain:

Q. What is your name?

A. Mrs. Charles E. Hudson.

Q. Where do you live?

A. 4212 Riverside Drive.

Q. How long have you lived at 4212 Riverside Drive, Mrs. Hudson?

A. Thirteen years the first of December 1962.

Q. Looking at Exhibit 22 on the board, will you take a pencil and find your house and put an "H" on it?

Note: The witness did so.

Q. Mrs. Hudson, I ask you now what in your opinion, if

Mrs. Charles E. Hudson

any, would the building of a railroad yard upon the area containing sixteen acres shown in pink on Exhibit 22, wherein trains would be made up, broken up and cars page 635] would be shifted and stored, what effect, if any, would that have upon you in the enjoyment of your home?

Mr. Gay: Same objection.

The Court: Same ruling.

A. I think that there are several effects. The first is that the property will decrease in value —

Mr. Gay: Just a minute.

Mr. Spain: We agreed you can't answer as to value.

The Court: The last answer will be stricken out.

Mr. Spain: She indicated that was the first of several reasons.

A. (Continuing) The first will be that I will be disturbed by the noise. I already am disturbed oftentimes early in the morning by the bumping of trains. The second will be that my children will not have the environment that I sought for them when I built that house. There is bound to be a certain element we wouldn't want in our neighborhood. Had I wanted to live in a marshaling yard, I would have built the house on Seventh Street and watched the trains go up and down.

Q. When you say "early in the morning," page 636] what hours do you mean?

A. I mean about 4:30 or 5:00 o'clock in the morning; also around midnight at night and particularly on weekends the bumping — apparently they are shifting more cars or getting the cars to a siding or something. I live over a block from the proposed end of it and the view going down the drive is very depressing in the wintertime, with the foliage off. You see red clay and a couple of railroad tracks, and heretofore we have seen woods and patches of water.

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CROSS EXAMINATION

By Mr. Gay:

Q. Mrs. Hudson, 4212 Riverside Drive — is that just west

Mrs. Charles E. Hudson

of Forty-Second Street?

A. That's right.

Q. Slightly beyond the Southern Railway's property?

A. Yes, sir.

Q. You have lived there for thirteen years?

page 637] A. I have, and I lived on Hillcrest before then
for four years — 4311 Hillcrest.

Q. Have passenger and freight trains been operating up and down the company's property there during the whole of the time you have been a resident?

A. They have, but not to the extent — the noise has not been as great as it has recently.

Q. What do you mean — "recently?"

A. Within the last six months.

Q. Within the last six months?

A. Yes, sir.

Q. And these operations that you have described have, of course, been on the existing tracks that the Southern has on this property?

A. I suppose so, and I imagine that on the new tracks we get quite a bit of noise from the dropping off of certain cars on the newer tracks further down.

Q. You imagine that, you say?

A. I am pretty sure, because when I go to church, after a restless night, I see the cars there.

Q. What tracks do you see them on?

A. On the Southern.

Q. But what tracks?

A. At the foot of Ferncliff.

page 638] Q. What makes you think those tracks are new tracks?

A. I don't know that they are new but this has happened recently so I assumed.

Q. Why did you say they are new?

A. They are Southern's tracks.

Q. What different conditions obtain today that have not obtained during all or the greater part of the thirteen years you have lived there?

A. We have more noise than we had a year ago.

Q. Where do you think that comes from?

A. From the trains — the bumping of the cars. Maybe you have more traffic.

Q. That's speculation, isn't it?

A. I said "perhaps" you had.

Kenneth R. Higgins

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Mr. Eichner: Your Honor please, on behalf of the city I would like first to introduce two exhibits, one is page 639] a drawing with attached key showing in green certain property acquisitions by the City of Richmond between Riverside Drive and the Southern Railway right-of-way, copy of which has been given to counsel previously.

Mr. Gay: We would like the record to show we agree to the admission of this map solely for the purpose of identifying the area indicated in green as being the property owned by the city between Riverside Drive and our right-of-way, designated as certain parcels on the map. We are not admitting the map is evidence of any other fact.

Mr. Eichner: We also agree that the dates of acquisition indicated on the key were also stipulated, and this is offered solely for that purpose.

Mr. Gay: That is perfectly true.

Note: Map with key attached marked Defendant's Exhibit No. P and filed.

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page 659]

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KENNETH R. HIGGINS,
a witness called by and on behalf of the City, after being duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. Eichner:

Q. State your name and occupation.

A. Kenneth R. Higgins, landscape architect.

Q. How long have you been a landscape architect, Mr. Higgins?

A. Since about 1939.

Q. And where has your experience been, Mr. Higgins?

Kenneth R. Higgins

page 660 } A. The last fifteen years in Richmond, Virginia.

Q. And before that?

A. In Massachusetts and Bristol, Virginia.

Q. Where do you live?

A. Henrico — on Gaskins Road.

Q. Have you ever held any kind of position with the city government?

A. I have held an honorary position — a voluntary position.

Q. What was that?

A. Chairman of the Beautification Committee for about ten years until recently.

Q. What is that committee?

A. Council appointed a committee composed of fifteen people whose prime duty is to assist and advise the Planning Commission in areas of beautification in the city.

Q. Are you familiar with the area of Riverside Drive to the west of Lee Bridge?

A. Yes I am.

Q. Have you considered that as part of the Beautification Committee work?

A. Yes. I think the protection of the James River, *per se*, which is one of the finest natural features we have in the metropolitan complex composed of Chesterfield,
page 661 } Henrico and Richmond, is a very important phase of beautification.

Q. I call your attention to the exhibit which is on the board, City Exhibit P, which shows in the green area certain property acquired by the city. Do you have any familiarity with that acquisition of property?

A. This area here (indicating on map)?

Q. Yes.

A. As I recall, when Garland Wood was the City Planner, this whole area was gradually being acquired, as individual property owners requested building permits, the land was acquired for the purpose of creating a riverside parkway in this area here.

Q. Do you have any familiarity with the Master Plan, City Exhibit Q, insofar as it relates to that plan for a riverside parkway?

A. I am not an expert on the Master Plan, shall we say — but on the fine details of beautification perhaps so — but I do think there is a little bit too much in there for me to be an authority on it all.

Kenneth R. Higgins

Q. Do you know whether or not the Master Plan contemplates acquisitions such as are shown on City Exhibit P?

Mr. Gay: The Master Plan is the best evidence of that.
We object to the question.
page 662] The Court: Sustained.

Q. (By Mr. Eichner) All right. I will hand you this Master Plan, Mr. Higgins, City Exhibit Q, and ask you to turn, if you will, to page 236.

A. Right — Inter-connecting Parkways and Pleasure Drives.

Q. Read the paragraph on page 236 headed “River Drive.”

A. Third paragraph on the lefthand side — (Reading) —
“*River Drive*. Exceptional opportunities exist for the development of an outstanding river front drive along the south side of the James River. The city has long recognized such a need and has made much progress in carrying out the project. At the present time this drive is continuous from the Lee Bridge to a point west of the R. F. & P. Belt Line Bridge. Eventually the drive should extend westward to the Westham Bridge. Property lying between the drive and the river should be brought under public control in order to protect this property from uses which might be detrimental to use of the drive for pleasure driving.”

page 663] Q. Is that all there is under that item, Mr Higgins?

A. Yes, that's all.

Q. Now what are your views as a resident of the metropolitan area and particularly as a landscape architect on the importance of this riverside parkway?

Mr. Gay: Please read that question.

Note: The last question was read by the reporter.

Mr. Gay: I submit that the first part of that question relating to his views as a resident are irrelevant and immaterial. He doesn't show any identification to this area. However, I think his opinion as a landscape architect is admissible.

The Court: I think the objection is well taken — that part of the question which calls for his opinion as an individual.

Mr. Eichner: I accept that amendment.

Kenneth R. Higgins

Q. (By Mr. Eichner) Mr. Higgins, give your opinion as a landscape architect.

A. I will state my opinion as a landscape architect interested in metropolitan development, and that is that anything that might impede the eventual development of that parkway or the preservation of the natural beauty of the James River on either side will be detrimental in the long run.

Q. Detrimental to what?

A. Detrimental to the community adjacent, and detrimental to the use which the metropolitan area could make of this.

Q. What use would they make of it?

A. They could make a park out of this area (indicating on map), extending Forest Hill Park to compose the river parkway on the south side of the present Riverside Drive. This plan we are talking about now puts it on the north side, but there is a continuity there which would permit park development to the river frontage. As you know, to the consternation of most of us, there is very little access to this river for the accommodation of the general public. The terrain between Lee Bridge and Westham on that side is very difficult from Forty-Third Street west. It is reasonably well-accessed from the standpoint of vehicular traffic going towards Lee Bridge, but not in the other direction.

Secondly, this would be an ideal area for park development, with the river as part of the park.

Q. Are you talking about a manicured park in page 665] the nature of Byrd Park?

A. Not necessarily — something that could preserve the natural beauty of the area. It could easily be developed into a manicured park but I am afraid that would be prohibitive considering our maintenance fund. I am speaking as an individual who has come up against projects such as this and the difficulty in procuring sufficient maintenance funds, and if you get into a manicured park there we would have a tremendous maintenance problem. If we keep it as a natural area we would eliminate most of that expense.

It certainly seems to me to prevent encroachment by conditions that might be detrimental to it, we should certainly consider even the possibility of condemnation. I am talking about the long-range picture, now, because as we develop our program of water beautification we are eliminating a lot of the debris that goes into the river now. But the more things you add now complicates the problem as

Kenneth R. Higgins

time goes on, so I would personally like to see it maintained as a natural area of beauty.

Mr. Gay: Just one moment. Please read that last part of his answer.

Note: The last part of the last question was read by the reporter, beginning with the words, "It certainly page 666] seems to me to prevent encroachment * * * ."

CROSS EXAMINATION

By Mr. Gay:

Q. Mr. Higgins, are you familiar with this property that the Southern Railway proposes to improve?

A. I cannot recite you the metes and bounds of it, but I do know the area in which the Southern Railroad is anticipating placing some industrial development, yes.

Q. Have you ever been on the property?

A. I lived in Forest Hills for five years and I have walked down there over a number of years.

Q. It was very low and swampy land, was it not?

A. I would say there were conditions in certain areas it was low and swampy but that doesn't make any difference so far as development is concerned.

Q. When you say you want to preserve its natural beauty, it wouldn't be too much to say that a great deal of beautification would have to take place before this property could be classified as having any natural beauty, would page 667] it?

A. It all depends. People that come from a swampy area consider a swamp beautiful. It just depends on how people feel about it. I think we must consider this — the cross-section of natural architectonics and designed architectonics makes a composition together which we call beautiful. Do you want me to say how it ought to be created or the particulars of the plan?

Q. Excuse me. I don't want you to say anything more. You can stop.

A. All right. I am talking about, for example, the river itself. The river will always be there — the river will stay right there.

Q. Southern isn't building any yards on the river.

A. I know. You asked me whether an area which had

Kenneth R. Higgins

marshy, swampy conditions would be naturally beautiful. I would say that with a little cleaning up — yes. Actually, there has been a little debris in there and there might be areas where the water has pocketed, which would create some of these swampy conditions, but this is not unusual in a situation I would call natural beauty.

Q. Do you think it could be converted into an area of natural beauty without filling the whole area to page 668] some established usable level?

A. What do you mean by “usable level?” It could be under water and used to go swimming — that would be usable.

Q. In that event you would call it a lake and not a park, would you not?

A. There are lakes in parks and they are part of the natural beauty. I think I know what you are getting at. If it is a marsh, should you put your railroad in there? My feeling is that the natural trees and vegetation — in fact, if you take a botany class and the professor takes the class out on a field trip, he would take you there because he can find more naturally acclimated plants than he could almost any place else because of the seeds washing down the river. Williams Island is an example of that. This would also be an example of that. This particular situation could very easily be converted into a botanical garden. The natural architecture of the place I would like to see preserved, with, of course, some housekeeping involved.

Q. What do you mean by that?

A. We should divert the water that might be accumulating, with more than likely a little filling, to keep the water from stagnating, to prevent mosquito breeding.

Q. If the city acquired the property and developed it as an area of what you speak of as natural beauty, I take it it would be for the purpose of making it available to the public?

A. I imagine so. Anything the city has is available to the public.

Q. How would the public get to it?

A. By running a drive off of Riverside Drive.

Q. Running a drive off of Riverside Drive?

A. Yes. Do we have a topo map here?

Q. Yes, sir.

A. Where is it? Oh, I see. I will design a park for you now. I didn't know I was going to be called on to do this.

Kenneth R. Higgins

This area right down in here is accessible (indicating on map) — accessible down here. As we get here we get to a very precipitous area — here it is almost a cliff.

Q. To be more specific, the question I asked you is answerable only by the statement you would have to cross the facilities of the Southern Railway at some place. Is that not so?

A. I imagine you might have to.

Q. How would you get there otherwise?

A. Where does that get us? What are we trying to prove? Can't we go across your railroad?

Q. You certainly can't.

page 670 } A. In any form?

Q. Not without the Corporation Commission saying so, and you paying for it.

A. My feeling is this. In the event that we can't get to it, if we are trying to promote a park there, then I imagine we could take off the Lee Bridge — if we put a walkway down into this area and put natural style paths in there we could accomplish it from there. Then it would be a place you would have to restrict vehicular traffic and make it an area you could take children without vehicles marring the natural beauty.

Q. Do you figure it would be sound public policy to open a park —

Mr. Eichner: I object to the words "sound public policy." What does he mean by that?

Mr. Gay: Let me finish the question.

The Court: You may state your question, Mr. Gay.

Q. (By Mr. Gay) (Continuing) Do you think as an expert in beautification of municipal resources that it would be sound public policy to develop a park of the kind you have described to be used by public, a place to take children as you have just said, adjacent to a railroad right-page 671 } of-way — between it and the river?

A. I think the railroad could very easily be fenced out, and on top of that, this very natural beauty we are trying to preserve requires as little maintenance as anything, and consequently the idea of getting trucks down into here would not be necessary, so it would be a lot of pedestrian use of the area — although I would think the Southern Railway would be good enough to permit the public to go across.

Robert S. Hopson

Q. Do you think the Southern Railway could be reasonably expected to expose itself to the hazards of accidents along their right-of-way unless the property were adequately protected?

A. I imagine you could get over with a bridge.

Q. Your counsel hasn't advised you that the railroad right-of-way couldn't be crossed?

A. *Its* just exactly what I was saying — the laws are written to protect the railroad, but what laws are written to protect the individual living adjacent to public areas that might be cut off by the railroad? Those are things that to me would mean considerable. If I were going to develop the natural park, if the railroad said, "No, sir, you don't go across us; we are a law to ourselves" then I would say, "We will go around you." I would come off the Lee Bridge and put a set of steps between the railroad and the river to get to that land. So far as the natural beauty of the area is concerned, that might be an advantage because it would keep most of the people off, as far as that's concerned.

Q. If the object were to preserve this area as one of natural beauty, in such manner as not to disturb its present topography, so to speak, how would you protect it from flooding by the James River?

A. You couldn't.

Q. You would have to fill it?

A. Not necessary. The Willow Oaks Country Club floods occasionally and when it goes down they use it again. The land on the upper James floods regularly, and that's one of the greatest assets they have — it takes silt in and deposits it on the lowlands and those people have twelve or fifteen feet of topsoil up there. We have to figure this is a natural condition we can use during the clement seasons. We can just figure it is part of the natural seasonal conditions.

Q. You don't think periodic flooding would have any material effect on its usability as an area of natural beauty?

A. No, sir.

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page 673]

ROBERT S. HOPSON,

a witness called by and on behalf of the City,
after being duly sworn, testified as follows:

Robert S. Hopson

DIRECT EXAMINATION

By Mr. Eichner:

Q. State your name, address and occupation.

A. Robert S. Hopson, 1905 West Forty-Second Street, Director of Public Works, City of Richmond.

Q. How long have you been Director of Public Works for the City?

A. A little over eight years.

Q. What are the major divisions of the Department of Public Works?

A. We are divided into three major bureaus — business management, operations and engineering. The bureaus are then broken down into operations such as street and sewer maintenance, sewage treatment, airport operation, harbor operation, vehicle management and street refuse collection.

Engineering is broken down into service, design construction, preliminary engineering.

page 674] Q. Then your department is responsible for the sewer construction, among other things?

A. That's right.

Q. Are you familiar with sewage flowing into the James River in or near Reedy Creek?

A. You mean, raw sewage or storm sewage?

Q. Either or both.

A. Yes, that was covered by Mr. Talbot, our engineer.

Q. As far as raw or sanitary sewage is concerned?

A. That's right — it goes into the James River in the Reedy Creek area.

Q. Does it go into Reedy Creek or near it?

A. It goes through this system that was described.

Q. Does the City of Richmond have any plans to do away with this situation?

A. We are building interceptors up the river which is in a step effect. The interceptor system is from the main plant up to just past Hull Street, and money was appropriated in this year's capital budget to bring that plan to Twenty-Second Street. That was an item of \$650,000.00, I think, and next year's budget to continue to prolong the

page 675] sewer will be brought to Forty-Second Street — an item of somewhere around \$360,000.00, estimated, I think. The final stage of our program for the city itself would be in the following year, which would take it from Forty-Second Street on up to the city limits.

Q. Is that last step in any fiscal year?

Robert S. Hopson

A. Yes, all three of these steps are on our program in consecutive years.

Q. Would it be the 1964-65 fiscal year when you would take the plant to the city limits?

A. That is when the money would be available for plans and construction.

Q. As far as the raw sewage in the Reedy Creek area, will the construction of the interceptor between Twenty-Second and Forty-Second Streets take care of that situation?

A. That will pick up the Reedy Creek sewage.

Q. All the sewage that now goes into Reedy Creek?

A. That's right.

Q. Did you state that would be during the 1963-64 fiscal year?

A. That's right.

Q. What is an interceptor, Mr. Hopson?

A. A major trunk line which picks up a line of lateral smaller lines and takes them to our sewage treatment plant.

page 676] Q. Do you have any knowledge of alterations made in the city sewer or culvert in the Reedy Creek area near the Southern Railway property in the year 1960?

Mr. Gay: Please read that question, ma'am.

Note: The last question was read by the reporter.

Mr. Gay: I object to that and understand it is being introduced under Your Honor's ruling.

The Court: Yes, sir, sustained. Go ahead.

Mr. Eichner: Same exception to the ruling of the court.

Q. (By Mr. Eichner) Go ahead, Mr. Hopson.

A. These pictures that were presented — our engineer went into that — that was the first knowledge we had of it, through the neighbors and newspaper publicity at that time, and we then had these pictures made.

Q. I show you City Exhibit L. Are those the pictures you were talking about, or some of the pictures?

A. These are some we had made, I believe, in late October of 1960.

Q. Prior to the date those pictures were taken in Octo-

Robert S. Hopson

ber 1960, to the best of your personal knowledge, page 677] had any representative of the Southern Railway asked permission to move the city sewer or city culvert or to go on city property in any way?

A. Not to my knowledge.

Q. Does City Exhibit L indicate any of the work was done on property owned by the City of Richmond?

A. As has been pointed out, this drainage area here to the creek is in the Riverside Park area.

Q. Did you at my request make inquiry among other officials of your department to determine if any permission had been given for that work?

A. We checked that and found no one knew about this work until a few days previous to these pictures.

Q. Do you know whether or not permission was ever requested for this work?

A. None that our files show, and none that I know of personally.

Q. I call your attention to City Exhibit P on the board. Look at the green areas. You mentioned Riverside Park, I believe. What relationship do those green areas have to Riverside Park which you have mentioned?

A. What I was actually referring to — I don't know whether it officially ever took the name of Riverside Park, but what we always refer to as the area between page 678] Riverside Drive and the railroad tracks.

Q. Is that a parkway?

A. No. A parkway is a road. This is more or less a little park area of natural beauty.

CROSS EXAMINATION

By Mr. Gay:

Q. Mr. Hopson, the area on the map to which you just had your attention directed is really in large part only a hillside grown up with rather beautiful trees and generally a sort of rugged landscape?

A. Between the railroad and the present Riverside Drive, it is some cleared and some hillside — a good mixture of topographic areas.

Q. Your attention was directed to this Exhibit No. L, which is several photographs showing the flue through which Reedy Creek formerly flowed under the tracks of the Southern Railroad, and three culverts which have been

Robert S. Hopson

installed, and you were asked whether or not any city property was involved and what was done by the contractor there in installing these new flues. Is page 679] it or not a fact that a very small and also *de minimis* area of land was what you might call trespassed upon by the contractor in doing what was done?

A. Are you speaking relatively or of the amount? We think it is about thirty to fifty feet. Whether that is small or not depends upon the circumstances.

Q. That's all I asked. It is about thirty to fifty feet?

A. Apparently from visual observation it is about thirty to fifty feet.

Q. Would you say, as Director of Public Works, that the city has sustained any damage by reason of what was done there by installation of these three flues?

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page 680] A. In what way? What damage do you mean?

Q. (By Mr. Gay) I thought I said monetary damage but I may not have included that word. Please answer the question in the light of what I have just said — whether the city has in your opinion sustained any monetary damage by reason of what was done here.

A. Of course, we had no opportunity of inspecting this work as it was being installed and didn't know of this installation until afterwards. Whether it would or would not meet standards is a question that would have to be resolved by more adequate inspection. Actually, we don't have any metal pipes carrying sanitary sewage that have been approved in recent years. As far as monetary damage is concerned, I don't know. That's out of my field. I believe our engineer stated the three culverts as installed were approximately what was there before.

Q. In other words, the same capacity of Reedy Creek flow is available there now?

A. That's what he said and I have no quarrel with that.

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page 681]

CROSS EXAMINATION

By Mr. Spain:

H. Merrill Pasco

Q. Mr. Hopson, you are also familiar with the little road that cuts off at the foot of Hillcrest Road where it intersects Riverside Drive, are you not?

A. Yes — very close to this.

Q. What was done with that road?

A. Well, of course, as I say we came into the picture rather late and all I can say is from appearance. Whether that would stand up in court or not I don't know. It appears the road was slightly widened, but that's something — several months after the fact — would be rather difficult to sustain. I personally think it was widened slightly and maybe a tree or two knocked down. It shows evidence of that today.

RE-CROSS EXAMINATION

By Mr. Gay:

Q. Looking at the road as a means of access to the area, along the right-of-way, would you say the facility
page 682] had been improved or otherwise?

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A. I think the widening of the road and such as that in there can perform no useful function so far as the city were concerned, so I don't know that it increased the value of our property. It may be, from the trespass, it may have decreased it. That, again, would be an appraisal problem I have no knowledge of. I am not in that field.

Q. If the city had to get down to this flue that carried Reedy Creek, or get down there to repair or give attention to sewer lines in there, wouldn't the improvement and widening of the road render the area more accessible to the city employees?

A. I don't believe so in this particular instance, because we have never had any complaint and apparently our men are able to get down there adequately with what was there before.

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page 689] H. MERRILL PASCO,
called as an adverse witness by the City, after
being duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. Eichner:

Q. For the record, please state your full name.

H. Merrill Pasco

A. H. Merrill Pasco.

Q. You are Assistant Division Counsel for the Southern Railway Company for the Richmond Division, are you not?

A. Yes.

Q. Did you attend a meeting in the office of the City Manager on November 8, 1960?

A. I don't recall a meeting on November 8. I recall one on October 31. There may have been a subsequent one but I have no present recollection.

Q. Do you recall a meeting in the City Manager's office with Mr. Kidd of Southern Railway, a representative of the City Attorney's office and the City Building Inspector?

A. I thought that was October 31. I know there was a meeting with those gentlemen.

Q. Only one meeting that you recall?

page 690] A. I recall only one meeting.

Q. Could you be mistaken as to the date?

A. I certainly could.

Q. Do you recall stating at that time that Southern Railway Company sought your advice as to the application of the city zoning ordinance which is the subject of this suit, and the proposed improvement which is the subject of this suit?

A. No, I don't recall that.

Q. Did you state at that meeting you had reached no conclusion as to whether the zoning ordinance prohibits the proposed construction on the property in question?

Mr. Gay: Objection, Your Honor, as being irrelevant. His opinion cannot change the rights of the plaintiff.

The Court: What is the purpose of this, Mr. Eichner?

Mr. Eichner: We took the position, with which our friends disagreed, that the zoning ordinance prohibited this. We think the complaint is made in the suit in various fashions that we came along after this filling operation and part of the construction was commenced and invoked the provisions of the ordinance. To the extent that work was
page 691] done prior to ascertaining what the zoning requirements are, we submit it is a self-imposed hardship.

The Court: Would not the 1960 ordinance stand or fall, depending on factors that bore on its validity? I don't see how counsel's opinion of it at that time would relate to the question.

George W. Cheadle

Mr. Gay: If he values counsel's opinion on the subject, I would respectfully ask that he swear me and put me on the witness stand.

The Court: I think whether that ordinance was or was not valid is something that is going to have to depend on examination of the ordinance itself in the light of the requirements.

Mr. Eichner: I certainly agree with that as a general proposition, but I think this is one bit of evidence that is relevant — whether there was a self-imposed hardship in going ahead.

The Court: Regardless of his opinion, if they thought at that time it was invalid and it turns out to be valid, they suffer the consequences, regardless of what the attorney's opinion was.

page 692] Mr. Eichner: That's certainly true.

The Court: If the ordinance was invalid at that time, they were all right. I don't feel that has any relevancy.

Mr. Eichner: We respectfully except to the ruling of the court. Could we have the answer, Mr. Pasco, if you recall it, for the record?

A. I don't recall discussing any legal questions with the city, but I do recall at that meeting we made it clear we had not come there to discuss legal conclusions but to find out what was bothering the City Manager.

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page 693] GEORGE W. CHEADLE,
a witness called by and on behalf of the City,
after being duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. Eichner:

Q. Your name and occupation?

A. George W. Cheadle, Assistant to the City Manager, City of Richmond.

Q. What was your occupation in November 1960?

A. The same.

Q. Did you attend a meeting in the City Manager's office on November 8, 1960, at which Mr. Pasco, who has just

George W. Cheadle

testified, was present?

A. I did.

Q. Who else was present, if you recall?

A. Mr. Kidd of the Southern Railway; the Building Commissioner, Mr. Wharton; and a representative of the City Attorney's office.

Q. Do you recall whether Mr. Pasco made any comment on whether he had reached a conclusion on the page 694] applicability of the zoning ordinance to the property which is the subject of this suit?

Mr. Gay: Object to the question.

The Court: Sustained. You may go ahead and put it in the record.

Mr. Eichner: We respectfully except.

A. (Continuing) Yes, I do recall it.

Q. (By Mr. Eichner) What was his statement?

A. He stated that the railroad had asked him for advice as to the application of the zoning, but that he had reached no conclusion.

Q. How does it happen you have a recollection on this point?

A. It is the custom in such cases where I sit in on meetings, either with the City Manager, or in the capacity of representing the City Manager, for the record and for the file, following such a meeting to make a memorandum with a copy of it to the file, which I did in this case.

Q. On what date did you do that in this instance?

A. The following day.

Q. What date was that?

A. November 9, 1960.

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page 718]

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Washington, D. C.
September 11, 1962

Deposition of D. W. BROSNAN taken by counsel for Defendant before Anthony S. Pastnyck, Notary Public in and

D. W. Brosnan

for the District of Columbia, pursuant to notice, commencing at 2:00 o'clock p.m. on Tuesday, September 11, 1962, in the offices of the Plaintiff at Fifteenth *And* K Streets, N. W., Washington, D. C.

APPEARANCES:

Thomas B. Gay, Esq.,
and
H. Merrill Pasco, Esq.,
In behalf of the Plaintiff.

James A. Eichner, Esq.,
In behalf of the Defendant.

Also Present:

Henry L. Walker, Esq., General Counsel for Southern Railway Company.

Dep.
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PROCEEDINGS

Thereupon,

D. W. BROSNAN,
was called as a witness by counsel for Defendant and having been first duly sworn, was examined and testified as follows:

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EXAMINATION BY COUNSEL FOR DEFENDANT

By Mr. Eichner:

Q. For the record, Mr. Brosnan, would you state your name and title?

A. D. W. Brosnan. I am President of Southern Railway Company.

Q. And what was your position with the company in 1960?

A. Well, at what time, sir?

Q. During all of 1960.

A. All right. Prior to and until November 1, 1960, I was

D. W. Brosnan

Vice President in charge of operations. On
Dep. November 1, 1960 I became Executive Vice Pres-
page 720] ident and had been Vice President for Operations
since January 1, 1952.

Q. Would you state the general duties of Vice President for Operations and his general range of authority?

A. The Vice President in Charge of Operations — I mean, it is what it says. He has charge of all the Company's physical property; the operation of trains over its properties.

Q. Specifically in connection with the design and construction of yards, is that within the responsibility of the Vice President for Operations?

A. He does not *necessarily* design the yards but it is his function to pass on the needs for yard construction and the type of designs that are worked out and on the cost of the yard.

Q. The Vice President in Charge of or for Operations would then be in general charge of the planning for the location and nature of a yard, would he not?

A. It would be done under his direction, yes.

Q. And who would do the actual designing under him?

A. It would depend — it might be done by the General Manager of whichever Division or it might be the
Dep. Chief Engineer —

page 721] Q. Well, would that be the General Manager for one of your Divisions or regions?

A. For the Division, yes.

Q. And whose office I believe would be in Richmond?

A. In the case here that would come from Charlotte, North Carolina.

Q. And how many Divisions would that include?

A. At that time, three divisions, the *Easter*, Western and Central. At the present time we have two Eastern Lines and Western Lines — his territory comprises some seven Divisions.

Q. That includes the Richmond Division?

A. That includes the Richmond Division.

Q. Now, when you were Vice President for Operations in 1960, Mr. Brosnan, you were in direct personal charge of the yard project in Richmond which is the subject of this suit, were you not?

A. Yes.

Q. And you are familiar with the land in controversy?

D. W. Brosnan

A. Yes.

Dep. Q. Which consisted of approximately 16 acres
page 722] in South Richmond, roughly from opposite 26th
Street to opposite 42nd Street?

A. Yes. Well, I am familiar with it. I don't know every detail of it, but I am the man who directed that the yard be extended and who passed on the plans that were drawn.

Q. You recently examined the plat showing the property, have you not?

A. Well, I looked at it, yes. I didn't go into any study of it.

Q. But you are aware —

A. I know where it is.

Q. We are talking of approximately 7-1/2 acres acquired back in 1917 and an additional slightly less than 9 acres which southern acquired from Virginia Electric and Power Company in 1960?

A. Right.

Q. You know what land we are talking about?

A. Right, but there is some land that goes to our original right-of-way, too, some of the land for the tracks

Dep. is on —

page 723] Q. From now on we are talking about this land which I have just described.

A. The point I wanted to make is that all of the yard, all of the tracks would not rest on this land. Some of them would rest on land we have owned since the construction of the railroad.

Q. But I just want to make clear, Mr. Brosnan, that you don't misunderstand the parcels that are involved in this suit.

A. Right. But I was afraid you were under the misapprehension all the trackage would be built on these two parcels of land. As a matter of fact, some of it would rest on land which was acquired almost 100 years ago.

Q. Well, this suit, Mr. Brosnan, is to deal only with these two parcels which I have described.

A. Oh, I see.

Q. And how many tracks does Southern propose to build on these two parcels of land?

A. I beg pardon?

Q. How many tracks do you or Southern propose to

D. W. Brosnan

build on these two parcels of land?

A. How many do we?

Dep.

Q. Yes, sir.

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A. Ultimately we propose to carry, to build — let me count them here (consulting documents). Ultimately we propose to build 11 tracks.

Q. That would be 11 in addition to the existing right-of-way which consisted of 2 tracks, is that correct?

A. The 11 — the right-of-way does not concern those — it is 11 in addition to the existing 2 tracks, which would make a total of 13.

Q. Yes, sir. And would all these tracks be parallel to the existing right-of-way tracks?

A. Approximately so. You might for all practical purposes say they are. They vary slightly, but if we looked at them, you couldn't tell it.

Q. What kind of yard would be built with these 11 tracks proposed?

A. This yard is what is known in railroad parlance as a flat switching yard, which is the same type yard which we have at Belle Isle at the present time.

Q. By that you mean the cars would move by switching engines rather than by gravity?

Dep.

A. Correct.

page 725]

Q. How soon does Southern propose to build 11 tracks on this property?

A. Well, at the time we made our plan we thought that we ought to have at that time a need immediately for 5 tracks. We thought that within a reasonable time thereafter we would need with the load we could see coming, that we would need all 11. At one time I would say we could temporarily build only 2 of the tracks but in season we will go on and build the rest of them.

Q. Mr. Brosnan, you said at the time you made this plan. What time is that you are referring to?

A. Well, we started studies on this in 1953.

Q. By "we" you mean the operations department of the railroad?

A. Well, while in Richmond I concluded that — in viewing our property there I concluded that our yard was what I believe was referred to locally as the South Richmond Yard — that it was unsafe and inadequate.

Q. Mr. Brosnan, with your consent we might —

A. I directed we acquire property with the view of ex-

D. W. Brosnan

tending the Belle Isle Yard westward.

Q. And this was in 1953?

Dep. A. Yes, that is when it started.

page 726] Q. A project of this magnitude would have
to be approved by the board of directors?

A. No. Well —

Q. And then the decision is up to the Operating Vice President — or who makes the decision?

A. The Operating Vice President makes the decision and it does require approval of the President to get the money. It doesn't require Board approval.

Q. And when did the President approve this project?

A. Well, my recollection of it is that I discussed it with him along about that time and he authorized me to proceed.

Q. About 1953?

A. In 1953.

Q. And who was that — Mr. DeButts?

A. That is right, Harry DeButts.

Q. Now, Mr. Brosnan, when you were Vice President for Operations did you go to Richmond to talk with a group of residents of South Richmond concerning this yard project?

Dep. A. I had a meeting in the fall of 1960 with some
page 727] people in the State House at Richmond, if that is
what you refer to.

Q. Would that be on November 30, 1960? Does that sound about right?

A. Well, — (consulting documents) — yes, that was apparently on November 30, 1960. I met with seven people.

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Dep.
page 728]

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Q. Mr. Brosnan, was it suggested to you that Southern restrict its expansion to two tracks and dedicate the rest of the land there as a park?

Dep. A. It was not. As a matter of fact, there were
page 729] one or two of the gentlemen there, whose names escape me at the moment, who — this was a roundtable discussion of the entire project, it wasn't an appearance where I got up and made a speech, I went there to answer questions, which I did — and there were at least two of the men,

D. W. Brosnan

whose names elude me, who seemed interested in trying to find some way to settle the affair, and in the discussion as I recall I was asked if we would build all the tracks at the time and I told them we did not contemplate that, and they wanted to know how many and I told them we would build two tracks at this time. They wanted to know if we would — they asked the question, someone present — I believe it was a lawyer, I am not certain of that, but I believe some lawyer asked that who was present, some man who was a lawyer. If I recall correctly he wanted to know if we would agree to restrict the operations to two-track and deed the rest of the land to the City for a park and I told him we would not, we couldn't do that, that the two tracks would take care of it for a very short while and we would then have to go on to construction later, that we needed

Dep. the land for our own purposes and couldn't give
page 730] it away because of that, and it was not a safe place to have a park anyway.

Q. Did you state that Southern could get along with its present Belle Isle yards with a little trouble but that you wanted a bigger yard?

A. No, that is not a correct statement at all. As a matter of fact, this entire — all of these tracks represented nothing more than an extension of Belle Isle Yard westward, an extension of Belle Isle yard which has been there for years, in a westward direction and, obviously, we could not get along with Belle Isle Yard with a couple of tracks when what was contemplated was an extension of the yard.

Mr. Eichner: We, of course, will move to strike some of this matter as not responsive to the question, at the appropriate time.

By Mr. Eichner:

Q. Did you say at this meeting with these citizens, Mr. Brosnan, that the only interest you had in constructing this new *facilities* was to save money for the Southern Railway Company?

A. I did not. I said that we had an interest in the money, the time it took to switch the trains, and the safety
Dep. of our employees.

page 731] Q. Did you state one reason for this extension was to make the present yard facilities available for sale or lease?

A. I did not, and that is not a true statement.

Q. I see. In a flat yard such as is contemplated, what

D. W. Brosnan

facilities in addition to tracks do you contemplate putting there?

A. Well, we would have moved the yard office westwardly some distance, the existing Belle Isle yard office, when we extended the track in Belle Isle, we would have moved the yard office westwardly, and that would have probably constituted the principal building.

Q. In addition to buildings, what facilities would be there for communication?

A. Well, we would have radio, of course, which is there anyhow on our engines, we already have radio on our engines.

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EXAMINATION BY COUNSEL FOR PLAINTIFF

By Mr. Gay:

Q. Mr. Brosnan, you stated in answer to one Dep. of the questions of the City Attorney that it was page 732] not the purpose of the company in proposing the new yard to make available all or some part of this yard for sale. Can you elaborate on that?

A. Yes, I will.

Q. Would you say something about the chronological relation between your studies of this matter in 1953, when you say you began to study the then condition of the yard and what if any connection it had with the ultimate sale of the property?

Mr. Eichner: Excuse me. I object as going outside the scope of the direct examination. If you make Mr. Brosnan your witness we will consent to your going outside of it.

Mr. Gay: Well, I prefer to cross-examine on the facts you sought to elicit from the witness and if I am examining him improperly on cross-examination —

Mr. Eichner: Without argument we will say our direct examination was directed to certain statements we heard he had made — but go ahead, sir.

The Witness: In 1952, Southern was at that time engaged

D. W. Brosnan

in modifying its yards over all its System to accommodate the needs for more modern train operation and the safety of its employees and a better service to the public; to effect lower cost and reflect that in rates — also to improve the time required to perform the service. In season I had visited Richmond and in 1953 while in Richmond I made a thorough walking check of our facilities in the City of Richmond through the yards on foot and examined in detail the operations.

At that time we had two yards; one, the so-called South Richmond Yard which was in the vicinity of Hull Street and the Atlantic Coast Line Railroad crossing between the two with a collection of stub-ended tracks, that is, with a switch at only one end, that required the handling of all cars switched into it twice instead of once, and it had some sharp turns and created to my mind a question as to the safety of our employees doing the work —

By Mr. Gay:

Q. If I may interrupt: Isn't it true also that the main track intercepted the middle of the yard and —

A. That is correct, the main line did run into the middle of the yard. Do you wish me to continue?

Dep. Q. Please.

page 734] A. A good many years prior to 1953 away back in the past a yard had been built at a point called Belle Isle which due to the configuration of the land and the river made it necessary to have the tracks very short in length — but this was an improvement over Hull Street Yard because it did have access from both ends with other tracks, as contrasted to a stub-end yard.

The delays in switching freight with the then available yard facilities at Richmond, the cost of it, and the hazard to our employees due to the excessive amount of switching and reswitching that was required, which caused probably twice the number of movements with the yard engines than should have been necessary to perform the switching, caused me to determine that the best interest of Southern Railway and its service to the public and the safety of its employees required that we make changes in the yard.

Accordingly I walked westward from Belle Isle Yard along our tracks, where at that time we had two tracks, one of which was even then used in vard service, and one of which was the main track. We concluded, my asso-

D. W. Brosnan

Dep. ciates and I on the ground at that time that we
page 735] extend this yard. I authorized them to begin
 the acquisition of necessary land. We of course
then expected at that time to extend the — to build the
new tracks which would extend Belle Isle Yard in a land-
ward direction, that is, away from the river on the opposite
side of our main track from the river.

At that same time I directed that they quit using the
South Richmond Yard as a matter of safety and as a time-
consuming uneconomic operation.

It then developed that the land that we needed was owned
by the City of Richmond. As I recall we approached the
City and we, our people, with a view of obtaining the
land — and the City declined to make the land available.

Q. That was in 1953?

A. That was in 1955 that we finally had our turndown
from the City on that land. As I have said, we were develop-
ing yards at quite a few places on our Railroad, some of
them very large yards, and our engineering talent, they
were pretty well committed — in fact, over-committed,
with all the work that we needed to do.

So the project dragged from a time standpoint,
Dep. but finally in, I think it was 1960, we managed to
page 736] work out a trade with the Virginia Electric
 Power Company for a piece of their land right
alongside our main tracks just west of Belle Isle Yard in
exchange for a piece of our land in the general vicinity of
Alexandria, as I recall it on an even exchange basis.

The yard was redesigned on that side of the main track,
and when I say “redesigned” I mean the extension of
Belle Isle Yard was redesigned on that side, the river side
of the main track.

We proceeded with it. Our people proceeded to let a
contract for grading and I directed that they grade the
entire area while they were at it because we could do it
more cheaply in one operation than we could coming back
two or three times because of the cost of moving the con-
tractor's heavy equipment to the site and then off of it,
since we realized that the contractor, who was from the
State of Georgia, that when he brought the equipment from
there, it was a costly move. The reason he got the work
is he was the low bidder. It made good business sense to
grade the property and do it all at one time.

D. W. Brosnan

Dep. At that time as I have indicated we contemplated the construction of four or five tracks which later page 737] would help us to achieve some of the objectives we had, we felt that two tracks should take care of the immediate requirement but that we would in time be forced to construct, in a short while be forced to construct four or five tracks and then within a matter of a few years all of the tracks. And that is the history of this.

It is just a matter of fact that the number of movements by the yard engines in doing the switching would probably be at least half, which would reduce the cost, reduce the hazards to the employees and, as a matter of fact, from the standpoint of some outsiders, would even reduce any noise factor that might be present.

Q. One other question, Mr. Brosnan. When did you open negotiations with Reynolds Metal Company which eventuated in a sale of part of the Richmond yard to that company?

A. We started — Reynolds approached us in the latter part of January 1959 and we had our first *meetings* with them with regard to the sale of the yard property to them or a portion of it in February of 1959.

Q. You spoke of having told the local operators at Richmond to stop using the South Richmond Yard in 1953. Would you clarify that statement if you think it needs clarification? What type of use were you speaking of?

Dep. of? page 738] A. Well, I meant switching of cars and what we call train switching, switching cars to put them in station order to build an outbound train. We continued to store cars in the yard for storage purposes — we did not have enough track room in Belle Isle to store the cars so we switched them in Belle Isle and shoved them down into so-called Richmond Yard for storage. It was largely to overcome these factors that we planned in 1953 to go on with the extension of Belle Isle Yard in a westward direction.

The people that I gave these instructions to were General Manager Rust and the man who was at that time superintendent of the Richmond Division, C. K. Carter.

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Rudolph C. Brauer

FURTHER EXAMINATION BY COUNSEL FOR
DEFENDANT

By Mr. Eichner:

Q. By train switching do you mean classifying and marshalling, are those the proper terms?

A. Classifying is I think a better term and more descriptive. It means taking a bunch of cars with mixed destinations and switching them together in some order so that you can put them in an outbound train and operate a train out so that the road crews can handle the train with some dispatch and some intelligence.

Q. Now, you stated that in 1953, Mr. Brosnan, you told the Richmond people, you told Mr. Rust and Mr. Carter to stop using the South Richmond yards for switching, but you continued to use it for storage of cars, I believe you stated. When was it determined to remove the tracks in South Richmond yard?

A. I cannot answer that. My concern there was with regard to our yard operations and, frankly, we were not on a system-wide basis.

Q. What are your plans for the South Richmond Yard now that the tracks have been removed for the most part?

A. My understanding is that a portion of it has been sold to the Reynolds Metals Company.

Q. How about the remainder of it?

A. The remainder of it we will likely sell for some industrial use, something that will probably make some jobs in Richmond.

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page 741] RUDOLPH C. BRAUER,
a witness called by and on behalf of the City,
after being duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. Eichner:

Q. Please state your name, address and occupation.

A. Rudolph C. Brauer, 1612 Princeton Road, Richmond.
I am Assistant Director of City Planning.

Q. How long have you held that position, Mr. Brauer?

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A. I don't recall the exact time of the appointment. It was probably about 1958 or 1959.

Q. How long have you had any connection with City Planning?

A. I was in the position of Assistant City Planner from July 1949, and the title was changed to Assistant Director, I think about 1958.

Q. Will you review briefly your other work experience with the City of Richmond?

page 742] A. My first employment was in 1915 with the then City Engineer's office which afterwards became the Department of Public Works. I was there until 1921 and returned in 1927. In 1940 when the City Planning Commission was first organized I assisted the Secretary of the City Planning Commission, who was the Assistant Director of Public Works, in carrying on the technical work of the Commission, and that continued until 1949 when I joined the staff of the Planning Commission.

Q. Do you hold any title with the Planning Commission yourself?

A. The Planning Commission has elected me as Secretary of the Commission.

Q. What are your duties as Secretary?

A. To prepare the minutes and prepare all the correspondence between the Commission and the Council and any other official correspondence.

Q. What are your general or usual duties, aside from that, as Assistant Director of Planning?

A. Administrative work in carrying on the work of the office, and some technical assistance in preparing reports.

Q. Now, Mr. Brauer, what was the first major project that the Planning Commission engaged in or
page 743] adopted after its organization in 1940?

A. After its organization they began the preparation of a Master Plan. They employed Harland Bartholomew and Associates to study the city and prepare a plan. This was broken down into various stages and special reports were written on each of those and reviewed by special committees of the Planning Commission, and finally, after review and approval of the separate items, it was combined into one report and adopted by the Planning Commission. It was then referred to Council and finally adopted by Council.

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Q. I would like for you to take a look at City Exhibit Q and see if you can identify that.

A. Yes, this is the Master Plan for the physical development of the city which was adopted by Council on July 12, 1946.

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page 745]

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Q. (By Mr. Eichner) I refer you to one of the introductory pages headed "Acknowledgments" in City Exhibit Q and ask you what the report itself states as to the source of information concerning transportation by rail or by any other means.

A. (Reading) "The agencies, groups and associations that thus aided the Commission are as follows: * * *." They then list Federal Public Roads Administration and others, and "Transportation Interests, including rail, air, and water."

Q. Can you state from looking at City Exhibit Q on what date it was adopted by the Planning Commission?

A. This has in its front here an ordinance approved July 12, 1946, approving the Master Plan for the City of Richmond adopted by the Planning Commission.

Q. Do you find a resolution of the Planning Commission on about the third or fourth printed page?

A. Yes. This was addressed to the "Honorable Mayor and City Council, Richmond, Virginia" and is signed by Charles L. Reed, Chairman, dated November 29, 1945.

Q. On what date does that state the Master Plan was adopted?

A. On Monday, November 12, 1945.

Q. Now, Mr. Brauer, I want to refer you to page 746] page 165 of Defendant's Exhibit Q. Do you have an extra copy you can read, while the court follows this?

A. Yes.

Q. Please use your copy and return the exhibit to the court.

A. Yes, I will be glad to do that.

Mr. Eichner: Your Honor please, I would like to read into the record those portions of the Master Plan commence-

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ing at page 165 and running through 172, as indicating data that had been collected by the officials charged with planning and zoning with reference to railroad transportation facilities in their consideration of this plan. Perhaps we can do this by having it copied.

Mr. Gay: Does that include the map?

Mr. Eichner: I would like to include by reference the plate referred to there, and in particular Plate 46 opposite page 166; Plate 47 opposite page 168; and Plates 48 and 49 opposite pages 172 and 174.

The Court: The reporter is directed to copy the indicated portion of the text into the record.

page 747] Note: Pages 165 through 172 of Defendant's Exhibit Q read as follows:

Chapter VI

TRANSPORTATION FACILITIES

Modern civilization is increasingly complex. Each city must have freedom of access not merely to surrounding territory, but to all parts of the nation and to cities in other parts of the world. It is important that all channels of communication be improved and easily available so that the products of commerce and industry, foodstuffs, and goods of whatever kind may move expeditiously and economically. Transportation is a most vital part of modern city life. Undue restriction means impairment of the economic and social welfare of the community.

For many years, practically all movement of passengers and of freight took place upon the railroads. Richmond early enjoyed the advantage of a highly developed system of railroads and terminals. In most respects, the railroad structure is quite adequate to meet the city's needs, as was so well demonstrated during the period of the added burden imposed upon the railroads by the war emergency. Relatively few additional improvements will be needed to meet future needs of the city. Most important of
page 748] these needed improvements will be the separation of certain street and railroad grade intersections. Many grade separation structures have been built and, broadly speaking, the railroads have been well adjusted to the physical structure of the city. Such additional improvements as may be needed will be the result of future

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community growth.

In recent years, the rapid development of the motor vehicle and of the paved highway has caused rapid development of passenger and freight transportation by motor bus and motor truck. This has had the effect of creating many additional problems in cities, such as new forms of street pavement, traffic regulations, and public safety controls. Our cities were not designed for the motor age and many re-adjustments have been made necessary. This form of transportation has become an established part of our national economy and may continue to grow in volume and, as such, must be regulated and controlled so that it may take its proper place in community development.

With the deepening of the James River channel and the construction of the Deep Water Terminal, Richmond is in an *excellent position to develop more rapidly as a seaport of considerable importance*. Waterborne commerce will probably take on increasing significance in the economy of the post-war period.

page 749] In the past few years there has been an astonishing growth in air transportation. This will be stimulated greatly by improvements, that grow out of the war experience. Whereas, air transport has consisted largely of passenger transportation, it may be expected that both passenger, express, and freight traffic by air will be increased immeasurably after the war.

If Richmond is to grow and prosper, it must have adequate terminals and facilities for each of these forms of transportation — *railroad*, motor, water, and air. Their location, design, and *operation must be such* that they may be *easily expanded and developed*. However, it is important, also, that they do not arbitrarily obstruct the most satisfactory physical development of the city. It is the object of this chapter to consider plans for the expansion of transportation facilities so that they can be coordinated to the best advantage with the physical development of the city.

EXISTING RAILROAD FACILITIES

The City of Richmond is served by five trunk line railroads; namely, the Richmond, Fredericksburg and Potomac Railroad; the Chesapeake and Ohio Railway; the Atlantic Coast Line Railroad; the Seaboard Air Line Railway;

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and the Southern Railway. These give Rich-
 page 750] mond direct access to over 20,000 road miles
 of railroads. Through the Richmond, Fredericks-
 burg and Potomac's connection with the Pennsylvania, and
 the Baltimore and Ohio systems, an additional 16,000 miles
 are made accessible to the city.

In general, the existing railroad facilities are well located
 within the city. The majority of the lines are located in the
 valleys and in low-lying land, which is more adaptable for
 industrial than for residential development. Likewise, the
 terminal facilities are generally well located in relation to
 either elements of the city's structure.

The following is a brief summary of the major facilities
 of each railroad.

SOUTHERN RAILWAY COMPANY

Richmond is the terminal for the Southern Railway lines
 between Richmond and Danville, and between Richmond
 and West Point, Virginia. These are branch line operations
 and only one freight train on this railroad operates through
 the city, all other freight or passenger trains beginning
 or terminating here.

Freight Operation

The Southern operates one through freight train and
 three local freight trains, inbound and outbound, daily. The
 inbound trains are one from the north and three
 page 751] from the south. The outbound trains are one
 to the north and three to the south.

Both local and through perishable freight are handled
 at Richmond. This business amounts to 25 cars per month,
 and five cars per month are iced on the 14th Street track.

The engine terminals are located at the foot of McDonough
 in South Richmond, between 2nd and 6th Streets. At this
 point is located a 22-stall roundhouse and machine shop
 for making necessary running repairs.

The Southern Railway makes light repairs on cars at
 Richmond, the repair tracks having a capacity of 20 cars.

Freight Classification

Inbound classification of cars is performed at the Belle
 Isle Yard in South Richmond, where capacity is provided
 for 269 cars. The outbound classification is performed at

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the South Richmond Yard, which yard has a capacity of 160 cars.

City classification is performed at two yards: the Ship Yard located at 17th and Dock Streets, having a capacity of 165 cars; and the 28th Street Yard located at 28th and Dock Streets, having a capacity of 149 cars.

There are about 150 inbound cars per day and 150 outbound cars per day classified in these yards.

page 752] *Freight Interchange*

The Southern Railway interchanges cars with all of the other railroads in the district.

Interchange with the R. F. & P. is handled through the A. C. L. About 65 cars per day are interchanged with the A. C. L. (including cars to the R. F. & P.) at the Belle Isle Yard.

About 30 cars per day are interchanged with the Seaboard on tracks at the foot of Stockton Street in South Richmond.

Seventy-five cars per day are interchanged with the C. & O. at Park Siding in East Richmond.

Freight House

The Southern Railway freight house is located at 14th and Canal Streets. It is a one-story brick structure, 40 ft. by 480 ft. There are six house tracks with a combined capacity of 62 cars. The freight house handles about 20 cars per day.

The type of freight handled, both inbound and outbound, is miscellaneous in nature and amounts to about 150 tons per day. The Southern provides store-door pickup and delivery service.

Team Tracks

The team tracks are located at 14th Street and page 753] at Virginia Street. They have a capacity of 35 cars. There are three parallel tracks at 14th Street and one at Virginia Street, with two 60 foot driveways. These yards handle about 20 cars per day (inbound and outbound) of miscellaneous freight.

Passenger Depot

The Southern Railway operates its own passenger depot at 2nd and Hull Streets. It has waiting rooms for both

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white and colored, with seating capacity of 50 passengers each. Adequate facilities are provided for express and mail. There is but one station track.

The coach yard, with a capacity of 15 cars, is located at the South Richmond Yard, a distance of a quarter of a mile from the station. Ample facilities are available for cleaning and servicing the passenger coaches.

There are no regular scheduled through passenger trains, all trains being made up at Richmond. The regular scheduled trains consist of two inbound and two outbound per day. Unscheduled trains vary from one to three per day.

Industrial

The Southern Railway serves 116 industries in the Richmond district. This business amounts to 150 cars per day, to and from the industries.

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ADEQUACY OF EXISTING FACILITIES

The majority of the railroad facilities in Richmond are adequate for existing and probable future requirements. Furthermore, the majority of the lines are located so as to have ample available property for *future expansion* of facilities, either adjacent to the existing facilities, or in relatively close proximity to them. Along the several railroads, the distances from the railroad facilities within the highly developed sections of the city to less congested points along the railroads are relatively short, so that when the limit of expansion of these closer-in facilities is reached, expansion can take place at other points with very little effect on operating efficiency.

page 769 }

SUGGESTED IMPROVEMENTS IN RAILROAD FACILITIES

Main Line and Terminal Facilities

The railroads serving Richmond are generally well related to the existing and proposed future development of the city. The majority of them are located in valleys where they serve

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industrial development, do not conflict with residential areas and, also, facilitate the separation of crossings with important major thoroughfares. None of the main lines of the five railroads in Richmond cross each other at grade. This condition aids the efficient operation of the existing facilities.

The five railroads radiate from the city in different directions, which further eliminates the need for consolidation of main line routes. The Atlantic Coast Line and Seaboard south of the James River are the only paralleling routes. Existing development along these lines is such that their consolidation would afford no particular advantage to the city.

The studies further indicated that the terminal facilities, especially the freight and passenger facilities, were well related to the existing and future development of the city.

The majority of freight houses and team tracks
page 770] are within a reasonable distance of the commercial and industrial areas and can be readily reached by the existing and proposed major street system. The majority of the yard facilities appear adequate for existing as well as for probable future requirements, and no changes or extensions are recommended at this time. Furthermore, several of the yards are so located that they could be extended readily if unexpected developments should necessitate enlargements or extensions, and indeed some extensions were made under pressure of war conditions.

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Mr. Eichner: I refer now to Chapter III of the
page 773] Master Plan, Defendant's Exhibit Q, commencing on page 83, entitled "Land Use and Zoning," and I would like to read into the record pages 83 through the first paragraph on page 87, the text only, but incorporating the tables mentioned by reference.

In addition, paragraphs numbered 6 and 7 on pages 89 and 90. Also, beginning at the paragraph headed "Future Land Use Requirements" on page 91, to the end of the first paragraph on page 92, and incorporating by reference Table 34 on page 91, as well as Table 32 previously mentioned on page 86.

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Note: The indicated portions of the text of Defendant's Exhibit Q read as follows:

Chapter III

LAND USE AND ZONING

As American cities go, Richmond is a relatively old community. Over a period of two centuries the city has grown from a pioneer settlement into a metropolis of more than 200,000 persons, and, with annexation of the new areas from Henrico and Chesterfield Counties, an area of 39.89 square miles. In common with that of other large American cities, this growth has been largely dictated by the needs of the moment, land speculation and individual interests taking precedence over the community welfare. The evolution of the present city, therefore, has resulted in much haphazard and misdirected development, in the intermingling of heterogeneous and incompatible uses such as stores and industries in residential neighborhoods and scattered residences in industrial sections.

This failure of American cities to coordinate and control the various elements comprising the urban community has brought about not only depreciated and unsatisfactory home neighborhoods but increased difficulty and waste in the provision of essential urban services.

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It is essential to the economic and civic welfare of Richmond that steps be taken now to reverse these past trends and to reshape the present community into a well-balanced and efficient urban structure. With completion of the population studies, a broad pattern of future growth and population distribution was prepared. The various phases of the Comprehensive City Plan must be designed to provide the physical setting and necessary controls for effecting an efficient and harmonious relationship between this population and essential community facilities. One of the first and most important steps toward bringing about this relationship is the coordination of various urban uses such as residences, commerce, and industries through the preparation and adoption of an up-to-date zoning ordinance in scale with present and future community requirements.

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This has recently been accomplished through adoption and approval of the new zoning ordinance on May 19, 1943.

Zoning is concerned with regulating the use of buildings and land, the heights of buildings, the density of population, and the amount of open space around structures. It cannot be used to control the architecture or appearance of individual buildings and the cost and materials of construction, nor can it be used for racial segregation. Richmond's ordinance is based on the Virginia zoning enabling act, which reads in part as follows:

page 776] "Such regulations shall be made in accordance with a comprehensive plan, and designed to lessen congestion in the streets, to secure safety from fire, panic and other dangers, to promote health and the general welfare; to provide adequate light and air; to prevent the overcrowding of land to avoid undue concentration of population; to facilitate the adequate provision of transportation, water, sewerage, schools, parks and other public requirements.

"Such regulations shall be made with reasonable consideration, among other things, to the character of the district and its peculiar suitability for particular uses, and with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout the city or town."

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EXISTING LAND USES

The Land Use Survey

In order to analyze land use conditions in Richmond, it was necessary to make a field inspection of every parcel of land in the old city and the areas annexed from Henrico and Chesterfield Counties at the beginning of 1942. From this field information maps were prepared on a suitable scale to show the use of all property within this area, as well as building heights and present densities in lot area per family throughout the city. Additional maps were prepared to show the location of light and heavy industries. Computations

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were made of the areas devoted to each use as well as the frontage of stores and other commercial property and the lot area per family in all residential development. These computations were then assembled by blocks and by census tracts in the 1941 city and by annexation parcels in the new areas.

In making the field check of land use in page 779] Richmond, several preliminary operations were necessary. Since there were in existence no maps suitable for the graphic presentation in color of these data, the Department of Public Works made available blank tracings of maps in their files on a 400' scale and detailed a draftsman to insert the street names on these twenty-five sheets comprising the total area of the 1942 city. In the meantime, block maps were secured showing each parcel of property in the old city, and these maps were carefully checked against existing records such as the insurance atlas and city directory and the use of each lot indicated thereon in color. These maps were then rechecked in the field as to any changes, new buildings, the number of families in each residential structure, and the type of business or industry.

From these field data new maps of Richmond were prepared to indicate on a 400' scale the boundaries of every piece of property within the 1942 city. These maps served as a base for the graphic recording of the various land use information. From these field sheets also all computations were made to show the areal extent of various land uses throughout the city and the residential densities.

For purposes of the present survey, land uses in Richmond were divided into the following classifications:

page 780] 1. Single family residences.

2. Two-family residences.

3. Multiple dwelling, including apartment buildings and residences of three or more family units, boarding and rooming houses, fraternities, etc. A separate identification was used for four-family dwellings.

4. Commerce, including retail stores, offices, small shops, funeral homes, filling stations, etc.

5. Light industry, unobnoxious manufacturing, public garages, wholesale stores, warehouses, etc.

6. Heavy industry, foundries, packing plants, automobile graveyards, and other industries obnoxious because of the emission of odor, dust, noise, smoke, etc.

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7. Public and semi-public property such as schools, churches, institutions, cemeteries, etc.

8. Railroads.

9. Parks and playgrounds.

10. Vacant land, land used for no urban purpose, including undeveloped and agricultural property.

page 781 } 11. Streets and alleys.

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The intrusion of commerce and industry into residential neighborhoods has also been very detrimental to many sections of the city, especially in the east and certain parts of the western city. The city has very few well developed trading centers outside the central business district, although individual scattered stores are quite numerous.

The effect of Richmond's unusual topography on the city's structure is apparent from the land use maps. While the city prior to annexation was very compactly and closely developed, there are many relatively large vacant areas which are topographically undesirable or incapable of development. Those sections of low-lying land in and surrounding the

Shockoe Valley and the Bacon's Quarter Branch
page 783 } Valley are either vacant or used for railroad and industrial purposes.

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6. *Railroads and Industry.* Railroads and industry occupy 12.5% or one-eighth of the total developed area of the city. Heavy industries are located principally along the railroads which follow Shockoe Valley, along the R. F. & P. west of Lombardy Street and in the old community of Manchester south and west of the James River. Light industries are found chiefly in the area surrounding the central business district, along the north bank of the James River east of Shockoe

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Valley, surrounding the heavier manufacturing
 page 785] in South Richmond and northwest of Broad Street
 and the Boulevard. Industrial development has
 also occurred in the general vicinity of Maury Cemetery west
 of Jefferson Davis Highway.

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page 786] **FUTURE LAND USE
 REQUIREMENTS**

The population studies indicated that Richmond will probably have a future population of 243,750 persons within the 1942 city limits. Assuming that the ratio between population and land area will remain very nearly constant, it is possible to estimate the amount of land which will be needed for various urban purposes by this future population.

These estimates are shown in Table No. 34, which is based on the ratios of existing areas per 100 persons determined by the land use survey. It is apparent from the total of 6.92 acres of developed land per 100 persons in Richmond that the present city is very compact. Comparison of the areas in Richmond with averages found in the 22 other cities reveals some variation, particularly in the dwelling areas and streets. However, the ratio of park development is exactly the same and the total areas devoted to combined railroad and industrial purposes are quite similar. While Richmond has larger ratios of area used for public and semi-public development and for commerce, the proportion of streets per 100 persons here is considerably lower than the average of these 22 cities.

In making these estimates of future land use requirements,
 it was assumed that all areas would increase in
 page 787] proportion to the population with two exceptions.

An accepted standard for park and playground facilities in the American community is one acre per 100 persons, and it was, therefore, assumed that the city should anticipate meeting this standard through the future acquisition of 1,408 acres properly distributed to satisfy future recreational requirements. It was also assumed that the present railroad development was sufficient in area and that no increase would be necessary in the future. The present water area of the city has been kept constant in all computations.

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Q. Now referring again, if you will, Mr. Brauer, to City Exhibit Q, the 1946 Master Plan, I refer you to page 235, the portion headed "System of Parkways" — and under that section I call your attention on page 236 to the paragraph headed "River Drive." Would you read that paragraph, sir?

A. (Reading)

"River Drive. Exceptional opportunities exist for the development of an outstanding river front drive along the south side of the James River. The city has long recognized such a need and has made much progress in carrying out the project. At the present time this drive is continuous from the Lee Bridge to a point west of the R. F. & P. Belt Line Bridge. Eventually the drive should extend westward to the Westham Bridge. Property lying between the drive and the river should be brought under public control in order to protect this property from uses which might be detrimental to the use of the drive for pleasure driving."

page 793] Q. Are you personally familiar with the acquisition of city property shown in green on City Exhibit P on the board?

A. I would have had experience in most of the acquisitions of such property over the last fifteen or twenty years. I don't recall anything particular about some of that area shown in green — but I do know some has been acquired by the city by deed.

Q. Does this have any connection with the River Drive proposal you just read?

A. It was in light of that and some of the acquisition was prompted by this goal set out in the Master Plan.

Q. How far back, to your knowledge, does the concept of a River Parkway go?

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page 794] A. During the thirties we prepared a plan for the acquisition of the actual drive which has been constructed and that was the first action that was taken to bring about this drive. The exact date in the thirties I cannot say.

Q. Was there supposed to be anything special about this Riverside Drive development?

A. It was conceived primarily as a scenic drive and not as a traffic-carrying street especially, although it does carry a good deal of traffic.

Q. What scenery would be involved?

A. The James River is the most scenic item there and anything that would obstruct the view or destroy the view and beauty of the James River would be detrimental to the drive.

Q. Next I hand you a document entitled "Land Use and Community Facilities" and ask if you can identify that?

A. This was prepared for the City Planning Commission by Ladislav Segoe and Associates.

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Q. (By Mr. Eichner) Was this work done for the City Planning Commission?

A. That's right, under contract between the City Planning Commission and Ladislav Segoe and Associates.

Q. Who is Ladislav Segoe and Associates?

A. A firm of city planning consultants with considerable reputation, employed by the City Planning Commission for this job.

Q. What was the purpose of this study?

A. Its purpose was twofold — to amend and bring up to date the major street plan and make a study of land use and community facilities and to have that future land use plan for the city.

Q. What relationship would this Segoe study have to the 1946 Master Plan?

A. To amend the major street plan, particularly, because the population explosion it envisioned had already taken place. The city had grown much more rapidly than had been anticipated in the early forties and for that reason it was

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thought well to study the street plan and bring it up to date
with the population explosion that had taken
page 796] place in the city and surrounding territory.

Mr. Eichner: I offer this Segoe report as Defendant's Exhibit W.

Note: So marked and filed.

Q. (By Mr. Eichner) I refer you to page 68 of Defendant's Exhibit W, the 1951 Segoe report, and ask you to read the paragraph headed "Parkways."

A. (Reading)

"*Parkways* desirably should give access to and connect the larger park and play areas, located where possible along the banks of streams and through other scenically attractive areas. In certain cases, these parkways may be used to reclaim the banks of streams. They always embellish the section through which they pass."

Q. Read the following paragraph too, please.

A. (Reading)

"*Land reserves* are open areas, often containing unusual
natural features which give the locality much of
page 797] its character — such as stream banks, wooded sections and steep hillsides. Most of these may be of little value for building development, are frequently abused by dumping, squatters, etc., and thus give rise to problems unless publicly controlled. Such areas need not necessarily be acquired by the public, but should be protected by regulations or other means from despoilation and preserved for the benefit of the public. Building development should be prevented in such of these areas as are unsuitable for this purpose, due to topography, difficult drainage or other reasons; only agricultural uses or, at the most, very open types of uses should be permitted."

Q. What action was taken by the Planning Commission on the Segoe report?

A. This report was not adopted by the Planning Commission. It was read and reviewed but not adopted.

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page 800] Q. (By Mr. Eichner) Now, did Ladislav Segoe and Associates make any other recommendations in or around 1951?

A. They prepared a Trafficways Plan, so-called, which was a revision of the Major Street Plan section of the original Master Plan. That was adopted by the Planning Commission and approved by Council.

Q. I hand you a resolution of City Council dated September 24, 1951, with a plat attached to it, and ask if you can identify that? Can you identify that paper, Mr. Brauer?

A. Yes. This is the 1951 Trafficways Plan as approved by the Planning Commission on September 5, 1951.

Q. What was the date of the councilmanic action?

A. Council adopted it September 24, 1951.

Q. What is the effect of this with reference to the Master Plan of 1946?

A. The resolution of Council reads:

“BE IT RESOLVED BY THE COUNCIL OF THE CITY OF RICHMOND: That the amendments, extensions or additions to the Master Plan for the City of Richmond adopted by the City Planning Commission on September page 801] 5, 1951, as set forth in the attested copy of the resolution of the Commission, accompanied by a copy of the amendments, alterations, extensions or additions thereto, adopted by the Commission and certified to the Council by it, attached to the draft of this resolution is hereby adopted.”

In other words, this became the official Major Street Plan of the city in place of the one which had been adopted in 1946.

Mr. Eichner: I offer that resolution and attached plat as Defendant's Exhibit X.

Note: So marked and filed.

Q. (By Mr. Eichner) You referred to this as the Trafficways Plan.

A. That was the designation of it.

Q. I want you to take a look at Defendant's Exhibit X, Mr. Brauer, and I refer you to the key at the bottom and to Riverside Drive. Would you mark that with this blue pencil? An arrow drawn to it will suffice.

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Note: The witness did so

page 802]

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A. The Riverside Drive, as it was constructed and as it was proposed, was indicated along the south bank of the James River as a parkway.

Q. All right, sir. Now, Mr. Brauer, how long did the Trafficways Plan of 1951 stay in effect?

A. It was superseded by a new set of plats which were prepared by Harland Bartholomew and Associates and adopted by Council in April 1959.

Q. I hand you a copy of the ordinance of April 27, 1959, with attached map, Plate No. 20, and ask you if that is the document to which you refer?

A. This is the ordinance which adopted the revision of the 1951 Trafficways Plan and it has one of the three plates which were adopted by this ordinance. There was one plate which showed the central business district, and another plate which showed the area beyond the city limits, and this plate shows the major street plan within the City of Richmond and it shows the riverside parkway along the general location of the present Riverside Drive.

page 803] Mr. Eichner: I offer this as Defendant's Exhibit Y.

Note: So marked and filed.

Q. (By Mr. Eichner) I ask you to take this blue pencil and draw another arrow to Riverside Drive.

Note: The witness did so.

Q. (By Mr. Eichner) You referred to the report prepared by Harland Bartholomew and Associates. I hand you a document entitled "A Report Upon Major Streets and Highways" and ask you if that is the report to which you have just referred?

A. That is the report, sir.

Q. Was this adopted by the Planning Commission as part of the Major Street and Highway Plan?

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A. No it was not. This was used in studying the report. The only thing adopted by the Planning Commission was the three plates which were referred to Council and approved by Council.

Q. Were these plates originally found in the report in front of you?

A. Yes, sir, Plates 20, 21 and 22 in this report by Bartholomew.

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Mr. Eichner: I offer the Major Street and Highway Plan of Harland Bartholomew and Associates as Defendant's Exhibit Z, with the understanding that we will consider only that portion that relates to Defendant's Exhibit Y.

The Court: That will be all right.

Q. (By Mr. Eichner) Mr. Brauer, do you identify that as a copy of the report?

A. Yes.

Note: Marked Defendant's Exhibit Z and filed.

Q. (By Mr. Eichner) I refer you to page 9 of Defendant's Exhibit Z and ask you to read that portion headed "Parkways," ending with the first paragraph on page 10.

A. (Reading)

"Parkways

"An original purpose of parkways was to provide an attractive drive for the motorist. Generally, they were designed to connect large parks and to make
page 806] them readily accessible from all parts of the urban area. This is still a valid purpose. The 1942 Major Street Plan showed a system of parkways that included the Boulevard, Monument Avenue, Brookland Parkway, Richmond-Henrico Turnpike, Riverside Drive, and an outer circumferential pleasure drive; the 1951 Trafficways Plan included as its system of parkways parallel to and on both sides of the James River, Laburnum Avenue, and the Richmond-Henrico Turnpike.

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“The American Association of State Highway Officials defines a parkway as ‘An arterial highway for non-commercial traffic, with full or partial control of access, and usually located within a park or ribbon of parklike development.’ While certain proposed parkways will need to be designed to carry large volumes of traffic, the following additional characteristics should be incorporated into their design: maximum right-of-way to enable screen planting of trees and shrubs; wide variable width of median strips to separate opposing roadways; cross sections that provided maximum conformity with existing topography and with a minimum of cuts and fills.

“The 1942 and 1951 plans proposed a system
page 807] of parks and pleasure drives; these proposals
never materialized but are generally as valid today as when they were proposed. Moreover, the need for them will continue to increase rather than decrease in order to provide badly needed routes to the south and east. The section of this report on proposed major streets includes a brief description of parkways proposed herein.”

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page 808]

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Q. (By Mr. Eichner) Turn to page 34 of the Major Streets and Highways Plan. Can you identify the plate opposite page 34?

A. That is one of the plates which was adopted
page 809] by Council as part of the revised Major Streets Plan.

Q. Is that the same as City Exhibit Y?

A. There may have been some slight changes made in the course of the study. I am not ready to say.

Q. So far as the portion labeled “Riverside Parkway?”

A. There is no change in there. I think there was a change down around Harwood Street.

Q. Would you read the third paragraph on page 34?

A. (Reading)

“The proposed major street and highway plan is presented on Plates 20, 21, and 22, supported by recommended cross

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sections on Plate 23 and the tabulation of major streets and highways found in the Appendix. The plan outlines a major street and highway system that is designed to provide reasonable circulation for the urban area's entire population, and to adequately serve all the various urban land uses of Richmond. It is a sound and workable plan based not on idealistic or theoretical reasonings, but instead on a careful assessment of the actual facts and future traffic demands. The plan is for a long-range period — to the year 1980. It is recognized that the future growth of the urban area may require such a system before or after the year 1980."

Q. When was the next study done by Harland Bartholomew and Associates for the City of Richmond?

A. Next was the revision of the 1943 zoning ordinance.

Q. Do you know when this study commenced?

A. The contract with Mr. Bartholomew was dated April 30, 1956.

Q. I hand you now a document entitled "Population Land Use and Zoning." Can you identify that?

A. That was the plan which was prepared by Mr. Bartholomew in accordance with his contract with the city, and was dated December 1956.

Mr. Eichner: I offer that document as Defendant's Exhibit AA.

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Note: Marked Defendant's Exhibit AA and filed.

page 811] Q. (By Mr. Eichner) Now, Mr. Brauer, I want to refer you to Defendant's Exhibit AA and I ask you generally to describe what this document is supposed to be. It is not the text of the zoning ordinance, is it?

A. No it is not the text of the zoning ordinance. It has background information on which the zoning ordinance and the district boundaries were established. It shows the population growth and population density and land use — all of the background information that would be necessary for preparation of the zoning ordinance.

Q. I refer you to Table 10 opposite page 33 of Defendant's Exhibit AA and ask you to describe that.

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A. This shows the land use and the present zoning, breaking up the City of Richmond into various categories.

Q. By "present zoning" you mean —

A. That was under the 1943 zoning.

Q. Under "Present Land Use" what was the area of railroad property covered?

A. 749.67 acres.

Q. What percentage of the area of the city did that comprise?

A. 2.9 percent.

Q. How about the column headed "1942 Land Use?"

A. That lists 738.7 acres — and again, 2.9 percent.

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page 813]

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Q. (By Mr. Eichner) Now, Mr. Brauer, I hand you a document entitled "Proposed Revised Zoning Ordinance" and ask you to identify that.

A. Yes. This was the ordinance which the consultant presented to the Planning Commission and which in its revised form was finally adopted by Council.

Q. What consultant was that?

A. Harland Bartholomew and Associates.

Q. What was the date this proposed revised zoning ordinance was given to the Commission?

A. March 1957.

Mr. Eichner: I offer that as Defendant's Exhibit BB.

Note: So marked and filed.

page 814] Q. (By Mr. Eichner) Now referring to Exhibit BB, I would like to refer you to page 11 and ask you to tell us what Article III of the proposed revised zoning ordinance involves.

A. Article III, page 11 — that has the use regulations for the R-1, R-2, R-3 and R-4 Single-Family Dwelling Districts.

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page 815]

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Q. (By Mr. Eichner) Read Section 2 of Article III, the Single-Family Dwelling Districts.

A. (Reading)

“*Section 2. Use Regulations.* A building or premises shall be used only for the following purposes:

“1. Single-Family Dwellings.

“2. Parks, recreational areas and uses incidental thereto owned and operated by the City of Richmond.

“3. Private, non-commercial recreational areas, swimming pools, athletic fields and community center buildings operated by partnerships, associations, organizations or corporations not for profit, the exclusive use of which is limited to members of such partnerships, associations, organizations and corporations and their guests upon the following terms and conditions: * * *.”

page 816]

Q. (By Mr. Eichner) Skip to the next category, if you will.

A. (Continuing to read)

“4. Public schools, elementary and high, and private schools having curricula the same as ordinarily given in public schools.

“5. Churches and other places of worship, but not including rescue missions or temporary revival tents.

“6. Golf courses, except miniature course or practice driving tees operated for commercial purposes.

“7. Home occupations.

“8. Truck gardens and the propagation and cultivation of plants only, when said plants or produce are not offered for sale on the premises.

“9. Transportation rights-of-way.

page 817] “10. Temporary buildings for the construction industry which are incidental to erection of permitted structures and which shall be removed upon completion of the construction work.

“11. Parking area for permitted uses.

“12. One temporary sign not exceeding eight square feet in area, or signs aggregating not to exceed eight square feet

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in area, appertaining to the lease, hire or sale of the building or premises on which the sign is displayed.

“13. Church bulletin boards not exceeding 20 square feet in area placed so as not to interfere with vision of traffic.

“14. Signs for display of the name of educational institutions, not exceeding an aggregate of 20 square feet in area.

“15. Accessory buildings or uses including a private garage, customarily incidental to permitted uses, but not involving the conduct of a business and which comply with the regulations set forth in Article XV.”

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page 819]

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Q. Now I refer you to page 32 through 36 inclusive of Defendant's Exhibit BB and ask you what Article XIII is?

A. Article XIII has to do with the M-2 Heavy Industrial District, and Section 2 lists the use regulations: page 820] “A building or premises shall be used only for the following purposes: * * *.” Then it lists a number of items and on page 35, among others, it lists “railroad yard, roundhouse, repair and overhaul shops.”

Q. (By the court) Let me ask you, in what category was that?

A. M-2, Heavy Industrial.

Q. (By Mr. Eichner) I refer you to page A-19 of Exhibit BB and ask you what that page is a part of?

A. This is a summary of use regulations and it shows the various use districts in which those uses are permitted.

Q. How is that indicated?

A. The use is listed and across the top of the page are the various classifications, beginning with R-1, Single-Family, and running through M-2, Heavy Industrial, and by a cross-mark it indicates the district in which such use is permitted.

Q. What page is that?

A. Page A-19.

Q. What is said with reference to railroads?

A. “Railroad yard, roundhouse, repair and overhaul shops” — that indicates it is only in the M-2 Heavy Industry

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District, such use is permitted.

page 821] Q. Take a look at Defendant's Exhibit T, which is the 1960 zoning ordinance, and I will ask you to refer to the M-2 Heavy Industrial uses section of that exhibit, please, which I believe is Section 39-43.

A. Section 39-43 is the use regulations for M-2 Heavy Industrial District.

Q. Generally speaking, how does that section as enacted by the Council differ from the text of the proposed revised zoning ordinance which you have just read?

A. This is rather all-inclusive. It says, "The regulations set forth in this article are — "

Q. Excuse me. It is not necessary to read it.

What is the main redrafting change that has taken place there?

A. Instead of listing numerous uses, this ordinance merely stated that anything could be put in this district, any use at all, with the exception, first, of residential uses, and, second, of certain uses which would have to go to Council for special permits, those nuisance uses which would be emitting smoke or odors, so they would have to have special approval of Council, but other than those, any use would be permitted there.

Q. So the change was, instead of listing permitted uses, it lists additional prohibited uses. Would that be an accurate statement?

page 822] A. Yes — any use not permitted in any other district, with the limitations mentioned.

Q. I refer you to Section 39-4 of Defendant's Exhibit T. What did the 1960 ordinance do in relation to the boundaries of the various districts?

A. Section 39-4 adopted an atlas or series of maps entitled "District Maps 1960" on which the various boundaries of the various districts were set forth.

Q. Look at City Exhibit U. Is that a copy of that?

A. I haven't seen it.

Q. Let him have City Exhibit U.

A. Yes — this is a set of the district maps of 1960.

Q. Were the district maps of 1960 the same maps that existed under the 1943 zoning ordinance as amended?

A. The district maps of 1960 were the same boundaries, but the designations were changed from A, B, C, D to R-1, M-1 and so forth. The same district boundaries were there and the same relative uses, but the designation was changed to

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correspond with the new ordinance.

Q. Did the Bartholomew recommendations also include changes in the district boundaries?

A. Yes, there were a number of descriptive page 823] boundary changes, but they were made at a subsequent time. The first change was to amend the ordinance and retain the district boundaries as they were, and at a later date amend the boundaries.

Q. I hand you an ordinance dated December 11, 1961, with attached pamphlet entitled "District Maps 1961, Zoning" and ask you what this is?

A. These were the district maps which were adopted in December 1961 to become effective January 1, 1962, and these were the amended boundaries which the Planning Commission approved after they had held public hearings.

Mr. Eichner: We offer that, Your Honor, as Defendant's Exhibit CC.

Note: So marked and filed.

Q. (By Mr. Eichner) How were the public hearings conducted on the alterations of the district boundaries?

A. They were conducted by various sections of the city with publicity — though not legal notice in the paper — but publicity through the news media, and various persons came in and discussed the districts in which they were interested and this resulted in some official amendments in the boundaries as originally proposed by the Commission.

page 824] Q. Do your minutes of the meeting show any appearance by *Southern Railway* to suggest changes in the boundaries?

A. I find none in there, nor do I recall any representative attending the meetings.

Q. Do you recall on what dates these meetings were held?

A. I do not recall the dates. They were in the Spring of 1961, if I recall.

Q. I hand you what appears to be the minutes of the Planning Commission and ask you to identify those. Tell the court on what dates the Commission held hearings on boundary district changes for the southside area?

A. The southside area was held on May 24, 1961.

Q. Any other dates?

A. June 30, 1961 shows a reference to many locations in South Richmond.

A. Howe Todd

Q. Any other date?

A. July 17, 1961, shows a reference to Thirty-Second Street between Springhill and Stonewall.

Q. Any dates other than those?

A. August 7, 1961, shows some action on Jefferson-Davis Highway, and again on Riverside Drive and Semmes Avenue.

page 825 } Q. Do any of those minutes to which you have referred indicate any appearance by Southern Railway to request a change in any of the boundaries?

A. No, sir.

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page 838 } A. HOWE TODD,
a witness called by and on behalf of the City,
after being duly sworn, testified as follows:

DIRECT EXAMINATION

Q. State your name, residence and occupation.

A. A. Howe Todd, 1600 Wilmington Avenue, Richmond. I am Director of City Planning.

Q. How long have you been working with city planning, Mr. Todd?

A. Since about 1960.

Q. For the City of Richmond?

A. No. I started with the City of Richmond in 1947 in the Planning Office; in 1958 I became Director of the Regional Planning Commission and came back with the City Planning Commission in 1960.

Q. Did you have any previous experience in city planning, before you came with the city the first time?

A. No. I had a degree from Lehigh in Civil Engineering, and a Masters from M.I.T. in Civil Engineering.

Q. State briefly your experience, the type of
page 839 } studies you have been engaged with, and what
associations you are a member of in the planning
field.

A. The associations include the American Institute of Planners; the American Society of Planning Officials; American Civic and Planning Associations; and am Past-President of the Virginia Civic and Planning Association.

When I was with the State of Virginia I worked as an

A. Howe Todd

engineer in planning and authored the zoning ordinance for Vinton, Virginia. In the city planning field, I have worked on a wide variety of planning reports and studies. I was on the project of the 1951 Segoe study, representing the staff in that project. I have done work on open space and park areas for the Regional Planning Commission, and as Director of the city office I have just completed a rather comprehensive revision of the Master Plan of the City of Richmond. This is still in a preliminary state — has not gone beyond the review of the Planning Commission.

Q. What is the relationship between the Master Plan of the city and the zoning ordinance?

A. The keystone of the planning venture would be the Master Plan, which is supposed to be the report and documents and maps which would portray the future of the city, what the future of the city should be, and spell out policies and goals and objectives for future development. The
page 840] tools which are available to carry out the objectives of such a plan include the zoning ordinance, so the zoning ordinance, as I stated, is a tool whereby you accomplish the objectives of the Master Plan.

Q. Are you familiar with the neighborhood of Riverside Drive between Forty-Second and Twenty-Second Streets?

A. Very familiar with it.

Q. Describe that neighborhood.

A. This particular neighborhood is a rather quiet residential neighborhood zoned for two-family and single-family houses, on a hightop hill overlooking the James River and the skyline of the city to the east. Riverside Drive runs along the northern boundary of this residential neighborhood and then the land drops rather steeply to the banks of the James River.

Q. Are you familiar with the property between Twenty-Sixth and Forty-Second Street, between the Southern Railway right-of-way and the river in this neighborhood?

A. Yes, sir. I was last on that land about at the time of this controversy, when it first came up, and walked down through that land at that time.

Q. Have you had any personal experience with the conditions resulting from the operation of railroad yards?

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A. The usual knowledge of marshaling yard
page 841] operations. In fact, I was rather surprised when

I had to move in the city, when I became Director
of City Planning and located in Ginter Park — I was rather
surprised to find you can hear very clearly at night the men
speaking over the loud speaker, and the noises which came
from that distant yard all the way to my home in Ginter Park.

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Q. (By Mr. Eichner) Without waiving our objection made
to the railroad's testimony, what yard were you talking
about?

A. This was the Acca yard.

page 842] Q. How far away from your home is that?

A. Three-quarters of a mile to a mile.

Q. In addition to the sounds you have described, do you
hear any noises from the movement of any trains?

Mr. Gay: Don't lead him.

A. I can only say the usual sounds you would hear — loud
speaker blaring, railroad engines signaling with their whistles,
and the clash of the shifting of the freight trains.

Q. What is standard zoning practice with reference to
railroad switching, classification and storage yards, Mr.
Todd?

A. In my experience, I have never known any ordinance
which placed these uses other than in industrial categories.
The character of this kind of operation is such that it would
not be compatible with other uses in other districts. Particu-
larly today with the piggy-back operations coming into more
constant use, you would expect increased traffic in these
marshaling yards and they would be improperly located if
placed in districts other than industrial.

Q. Under standard practices of zoning ordinances, what
type of uses are ordinarily permitted in one-family residence
districts?

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page 844]

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A. The uses permitted in single-family residence districts
are normally single-family residences and other uses which

A. Howe Todd

are judged acceptable, comparable and compatible in these kinds of areas, including churches and school houses, and to take care of the obvious need of certain public utility functions, the ordinance includes normally a railroad right-of-way but not a marshaling yard or switching yard or roundhouse, and so forth.

Q. Are you familiar with the plans of the City of Richmond for the development of Riverside Parkway described by Mr. Brauer this morning?

A. Yes, sir.

Q. Are you familiar with the documents which he identified and which were introduced?

A. Yes, sir.

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page 845]

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Q. (By Mr. Eichner) What did you have to do with the 1951 Segoe report, Mr. Todd?

A. I was assigned to that project as a Senior Planner for the staff, working under the Project Manager for page 846] Mr. Segoe. The point I was trying to make was that the planning staff and the Planning Commission continued to use the recommendations of this report in their letters of recommendation to City Council, referring to the recommendations of the Segoe study by name of the report, for several years after it was produced, even though the Planning Commission did not adopt it. They did, however, continue to base recommendations upon it. When I participated later in the studies of zoning under Mr. Bartholomew, as far as zoning boundaries were concerned; the staff and Planning Commission were asked to revise the recommendations of Bartholomew and we did use to a considerable extent the recommendations of the Segoe land use study, and as Director of Planning I think it was one of the best planning studies the city has ever received from consultants.

I just wanted to get it across to the judge that although not officially sanctioned, it was used to a considerable extent as the basis for recommendations to the planning staff and to the Council.

A. Howe Todd

page 847] By The Court:

Q. You mean by that certain portions of it you did use in preparing your revision that was adopted? You used certain parts of it, although you didn't adopt it in its entirety? Is that what you mean?

A. The traffic use portion was adopted; the land use and community facilities was not adopted. I might say the reason it was not adopted was because by public recommendation the people voted down the "ugly ditch" through Richmond, and that was the framework on which it was built.

Q. Did the Planning Commission use a part of the Segoe report, although it was not officially adopted as such? Did they use part of that in subsequent recommendations to the Planning Commission or to the City Council?

A. Not by specifying line or page number.

Q. But did they use the data in there subsequently?

A. The subject matter of the maps of the Segoe study was a consideration by the planning staff and the Planning Committee in revising the boundary lines of the districts. It was one of many considerations, and in letters to Council on zoning recommendations for years, concerning day to day ordinary amendments, the letters would refer page 848] to the recommendations of this unofficial report as a basis for the recommendations.

The Court: I think under those circumstances the court erred in excluding that. I misunderstood the former testimony I thought the report had been rejected and not used at all. If, in fact, although not adopted, if in fact part of the data in that report was later used by the City Planning Commission, then I think those sections that have been referred to this morning properly should have been admitted.

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The Court: I will admit such sections of the Segoe report as the evidence from this witness might establish were used by the Commission in their later deliberations and accepted by them, although not officially.

Mr. Eichner: I again tender the Segoe report page 849] as Defendant's Exhibit W, which was the original designation.

The Court: It will be accepted subject to the same limitation, that you will have to designate what parts and examine the witness as to the parts you intend to rely on.

A. Howe Todd

Note: Defendant's Exhibit W filed in evidence.

Q. (By Mr. Eichner) Take a look at Defendant's Exhibit W, Mr. Todd. I refer you particularly to page 68, under the heading "Parkways." Would you be kind enough to read that?

A. (Reading)

"*Parkways* desirably should give access to and connect the larger park and play areas, located where possible along the banks of streams and through other scenically attractive areas. In certain cases, these parkways may be used to reclaim the banks of streams. They always embellish the section through which they pass."

page 850] Q. Are you familiar with the acquisition of the property shown on Defendant's Exhibit P on the board?

A. Generally, yes, sir.

Q. Is that in connection with the Riverside Parkway project?

A. Yes, sir.

Q. Do you have anything to add to what you have just read from the Segoe report on the desirability or advisability of such a parkway?

A. Yes. I think that the potential of a parkway along this section of the James River is pretty obvious to those who are concerned about the development of parkways for Richmond. This is the only section in central Richmond which doesn't have the land zoned industrial adjacent to the river. This area has a real potential because of the islands which are scenic and attractive. It would be foolish to acquire the land in green, which is very steep and unusable, and not continue the acquisition to make the land all the way to the river as a parkway development. Forest Hill Park adjoins and connects to this land, and I recall in the regional plan of parks and open spaces which was developed, great emphasis was placed on parkways and development of stream valleys. In our current revision which our staff is developing, it is envisioned to run a parkway from

page 851] Reedy Creek up Forest Hill Avenue to the Junior-Senior High School on Crutchfield, which would afford the opportunity to connect nature trails all the way down Reedy Creek through Forest Hill Park and into the parkway along the James River.

Q. Assuming no access at all over the Southern Rail-

A. Howe Todd

way right-of-way to the subject property, the sixteen acres between the right-of-way and the river, would this fit into the parkway plan in any way — if there were no access to it?

A. As far as scenic value and vista are concerned, *access would have no effect for the pleasure drive*. It would be jarring to the pleasure drive and attractiveness of the scenic quality of the area, to permit a marshaling yard there, but if it were left in its natural state it would not hurt the pleasure drive and the scenic aspect of it at all.

Q. Assuming access by pedestrian underpass or overpass over the property of the railway, what type of development would you envision?

A. I have always envisioned there would go into the bottom along the James River — not necessarily just that strip only, but in fact all the way from Huguenot Bridge, connecting Williams Island and some of the other large lowland park areas that are there, right on down to the heart of Richmond, and if you could obtain access page 852] across the railway — and I have always assumed you could — you could use it for bridle paths, natural trails and pedestrian walkways and so on, right next to the river, in fact.

Q. You have mentioned that in your opinion the Industrial classification is proper for railroad yards. Do you know what the zoning of all railroad yards in the City of Richmond is?

A. They are all in the Industrial Districts.

Q. What category of Industrial Districts?

A. M-1 and M-2.

Q. Are those indicated on the 1961 District maps, Defendant's Exhibit CC?

A. To the best of my knowledge, yes, sir.

Q. Have you examined the zoning maps to determine that?

A. Yes, sir.

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Q. (By Mr. Eichner) What is spot zoning, Mr. Todd?

A. Spot zoning would be rezoning a parcel of land of any size — it could be very small or extremely large page 853] — for the peculiar benefit of the landowner, to the detriment of the general community. When I say to the detriment of the general community, it would not be in conformance with the plan and not in the best interest of the welfare of the community to do so.

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Q. If the sixteen acres here involved were rezoned into Industrial, would that in your opinion constitute spot zoning?

A. Yes in my opinion it would because it is not in conformity with the plan or ordinance in this vicinity, and it would be detrimental to the neighborhood and community, and apparently it would be for the sole benefit of the property owner.

Q. To the railway, you mean?

A. To the railway.

Q. In your opinion, what effect would the creation on this tract of land of a railroad yard of anywhere from three to eleven tracks, to be used for switching cars and other railroad purposes — what effect would this have on the creation of a convenient, attractive and harmonious community?

A. I don't see how you could create an attractive, harmonious community with the railroad yards there.

Q. What effect do you think it would have on page 854] the creation of healthy surroundings for family life?

A. I would imagine the railroad yards would be very dangerous to children and very detrimental to a residential area. This is the very reason, in fact, they are not included in residential areas.

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page 858] JULIAN W. TARRANT,
a witness called by and on behalf of the City,
after being duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. Eichner:

Q. Please, sir, state you name, address and occupation or profession.

A. Julian Tarrant, 900 West Thirty-First Street, Richmond. I am a city planning consultant.

Q. State how long you have been in city planning.

A. My experience in city planning goes back more than thirty-five years.

Q. Will you summarize that experience, please?

A. Well, I have served a number of years — about six or seven years, with other planning consultants in their

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organizations. I served for five years as a planning director or chief of planning in the city planning offices of two different cities, Detroit, Michigan, and Stockton, California.

I had four years of responsible experience in
page 858] city planning offices in Oklahoma and Missouri.

I had five years in responsible charge of the Regional Office of the National Resources Planning Board, which is no longer in existence, with offices being in Dallas, Texas, and covering four states in that area. I have had fourteen years in private practice in the consulting field, of which twelve years has been here in Richmond.

Q. With what firm have you been associated in Richmond?

A. During my practice in Richmond with my own office, I have also been associated in part and still am with the firm of Ladislas Segoe and Associates of Cincinnati.

Q. Is that the firm which wrote the Land Use and Community Facilities report, Defendant's Exhibit W?

A. Yes it is.

Q. Have you ever worked for Harland Bartholomew and Associates, Mr. Tarrant?

A. Yes. I started my career with Harland Bartholomew and Associates and served with that firm for approximately seven years.

Q. Have you had any experience in planning in relation to railroads?

A. Considerably.

Q. Will you outline that experience, please?

page 860] A. Well, during this experience of a number of years I have been involved in the preparation of comprehensive city or county plans, for basic elements of those plans, for some twenty-five or more different cities, and in practically every case one of the important ingredients in the studies and in the master plans for those places has, of course, been railroads. I don't think there was ever any community that didn't have some railroads and did not involve some question about railroad facilities in relation to the rest of the city's growth. In addition, with our general coverage, I was involved in at least three specific studies of the railroad facilities as part of comprehensive plans, being at Stockton, California, Tulsa, Oklahoma and Detroit, Michigan. Also, I have had some special experience with railroads and their requirements. As a matter of fact, right now I am working with the R. F. & P. Railroad in the development of some industrial properties that they have at

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the Acca yard location, planning an industrial park, as we call it — that is, an area for new industries and related industries in relationship to their current revision of their terminal and yard facilities at that location.

Q. Have you drafted or assisted in the drafting of any zoning ordinances?

A. Yes — twenty different zoning ordinances throughout the United States over the past thirty-five years.
page 861] Q. Can you give some examples in Virginia?

A. Yes. I was the consultant in preparing the new zoning ordinance for Henrico County, for Chesterfield County, which has not yet been adopted, for the City of Lynchburg, the City of Falls Church, the City of Franklin (which was a town at that time), County of Southampton, Town of Leesburg — and maybe one or two others I don't recall offhand.

Q. I hand you a paper dated September 20, 1962, and ask if you prepared that as a summary of your qualifications for this case?

A. Yes, sir, that is correct.

Q. I offer that as Exhibit FF.

Note: Marked Defendant's Exhibit FF and filed.

Q. Mr. Tarrant, are you familiar with the sixteen acre tract where the Southern Railway right-of-way and the James River have been shown on Plaintiff's Exhibit No. 2?

A. Yes I am quite familiar with it.

Q. Are you familiar with the neighborhood south of Riverside Drive between approximately Twenty-Second and Forty-Second Streets?

A. Yes, indeed. I live in that neighborhood.

Q. Will you describe that neighborhood?
page 862] A. I would say that the neighborhood is one of the more substantial and more stablized residential areas of the city. It represents what we call a well-stabilized residential neighborhood, not showing any signs of deterioration over a period of years. It remains in a healthy condition, as evidenced by new residential construction throughout its period of life, right up to quite recent months, and a high degree of owner-occupancy in the homes, good maintenance and many other assets. The neighborhood is influenced primarily, the quality of the neighborhood is influenced by the open spaces to which it

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is related, primarily the river and the entire gorge through this area which includes, of course, the bottom lands and the bluffs, the woodlands, the valley, the side valley and other open spaces, and the wildlife that goes along with that. We have a great many song birds and other forms of small wildlife which add to the attractiveness of the neighborhood. Forest Hill Park is one of the chief assets, typical of the effect of the open spaces on the entire neighborhood. I would say the neighborhood is anchored down by the entire river gorge in this area, because further to the south across Semmes Avenue the character and quality of the neighborhood is different and it is changing.

Q. How many blocks from Riverside Drive is Semmes Avenue?

page 863] A. I believe it is five blocks.

Q. Go ahead.

A. Some places it is four and some places five — it varies because of the different block arrangements. In the area south of Semmes Avenue there has been since my residence there I have observed a change in the character of that neighborhood which is gradually gravitating westward and northward up towards Semmes Avenue. Now this effect has not spread across Semmes Avenue into the Woodland Heights and related residential sections primarily because of the stabilizing influence of the river and the open spaces.

Q. You have heard most of the testimony in this case, have you not?

A. I believe so, yes, sir.

Q. You heard the description by Mr. MacLeod of the proposed use of the subject property by the Southern Railway?

A. I am not sure whether I heard his testimony or not, but I believe I understand what has been proposed.

Q. Are you familiar with the type of operations that are conducted on railroad switching yards, such as for example Belle Isle?

A. Yes, I am quite familiar with the operation of railroad yards of all kinds and all sizes, from the largest
page 864] to the smallest. I have observed many of these yards in operation and particularly the Southern Railway yard on Belle Isle, and have been on and in and around such yards, not only these but many others and have had to investigate them and understand their operations in order to understand their effect on residential and

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other types of developments in the cities which I have had to study, which is part of the knowledge that a qualified city planner must have — the general knowledge of the characteristics of railroad operations, as well as every other industry and transportation media.

Q. Are you familiar with the portions of Defendant's Exhibit Q which were referred to this morning by Mr. Brauer, the Master Plan of 1946?

A. Yes, sir.

Q. Are you familiar with the river parkway concept that has been referred to in the Master Plan and in the Trafficways Plan, Defendant's Exhibit X, and the Major Streets and Highways Plan, Defendant's Exhibit Y?

A. Yes, sir.

Q. How does this sixteen acre tract in question fit into that plan?

A. That tract would be an integral part of an extended park or parkway along the river which was recommended in the 1951 Segoe report and also in subsequent page 865] plans. As a matter of fact, it would be about the heart of it — a very necessary part of a satisfactory and usable park along the river shores and adjacent lands.

Q. Now assuming no access were available from Riverside Drive across the Southern Railway right-of-way to this property, would it still serve a useful purpose as part of this river parkway plan?

A. Yes indeed. It would be essential to preserve the natural open character of that entire river valley.

Q. Assuming access over the right-of-way, either pedestrian or vehicular, what additional use in connection with the parkway plan could be made of this property?

A. Many uses of a recreational nature could be made of all of the lands along the James River, from Riverside Drive to the water's edge, and including some of the islands in the river, for a variety of purposes, among which might be the sheer access to and enjoyment of the water.

The portion of the James River from above the Beltline railway bridge down to Mayo's Island, let's say, constitutes the gorge of the river, and in that stretch of about two and a half miles the river drops in elevation some seventy feet. It is a series of rapids or falls and this constitutes the fall line of the James River. The river above that point

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and below the other point is not the same at all.
page 866] Below the falls the river is a relatively placid
area of tidewater and navigation, and above the
Beltline bridge the river levels out again and becomes
an area of fairly still waters suitable for boating and the
like. This particular stretch is unique and it is in the heart
of Richmond and has tremendous recreational potentialities
which any other city would be most jealous of, if they had
it, and would develop to the maximum. There are many
types of uses that can be made aside from getting to the
water and enjoying the contemplation of the water through
the rocks and small falls and rivulets. For instance, the
woodlands through the area form an attraction for a great
many people, to walk through and sit and have picnics and
enjoy in many ways. There would be opportunity for horse-
back riding, hiking, and, of course, fishing in the waters,
which I understand have very exceptional and unusual
fishing qualities, and a great many other ways in which
people would enjoy the water and shores along the river
in their own various ways. This would not be the kind of park,
for example, that Forest Hill Park is for the most part,
which consists of clipped lawns and tennis courts and ball
diamonds, but a naturalist park — a type of park which the
city needs very much.

Q. Is there any other land similarly situated which the
city could use for such a purpose?

page 867] A. No other land on the bank of the James
River except further upstream.

Q. Now, Mr. Tarrant, assuming on the subject property
there were built a flat railroad switching yard of up to
eleven tracks, what effect in your opinion would this have
on the maintaining of an attractive, convenient and harmoni-
ous community?

A. In my opinion, such a development would change the
character of this entire residential area; it would introduce
a use that would not be in harmony with the residential
atmosphere; it would begin to depreciate the area as a living
community by introducing an incompatible use, with all
of its attendant objections, such as noise, lights and the
kinds of traffic it would attract to it — not only these, but
also many intangible effects which would be reflected on
the desirability of the adjacent residential areas as a place
in which to live. I think — in fact, I know from experience
and from studying many cities throughout the country that

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railroad yards constitute one of the most serious blighting influences you can have in a residential area.

Q. How do you define a blighting influence?

A. A blighting influence is one that tends to depreciate a residential area to the point where eventually it becomes a slum, and of course the city is spending a great deal of money now, along with the federal government, in trying to eliminate a great many of these slum areas, and the federal government is so much concerned with this matter that it is making available a great amount of money as "match money" to assist cities in eliminating blighted areas, but one of the conditions attached to the grants and loans for that purpose is that the city do something more than just eliminate what is already there, but take measures of various kinds to arrest the spread of blight into additional areas so we don't keep on repeating ourselves with the mistakes that have been made in the past.

It is my opinion that the introduction of a railroad yard in this area would be the beginning of a blighting effect on this neighborhood which is now substantial and stabilized.

Q. What if, for the time being, only about three tracks were constructed there north of the present right-of-way?

A. Three tracks in addition to the two existing tracks I would regard as the beginning of a yard, and a yard of any kind or size other than simply the running tracks within the existing right-of-way would constitute a deteriorating influence to a certain degree.

Q. Define spot zoning, Mr. Tarrant?

page 869] A. Spot zoning is the zoning of a limited area of property for a particular use, primarily for a single owner, out of relationship to other uses of a similar nature and incompatible with the previous overall character of the surrounding area. It might be defined also as a detached misplaced use.

Q. In your opinion if the sixteen acres in controversy here were rezoned Industrial, under the Richmond zoning ordinance, would that constitute spot zoning?

A. Yes, I would classify it as such.

Q. Now, Mr. Tarrant, I would like you to take a look at Defendant's Exhibit W, and tell the court what part, if any, you had in the preparation of that plan?

A. This is the so-called Segoe Land Use Plan of 1951. I was in responsible charge of preparing this study and the plans and report. I was the project manager.

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Q. Does this report contain your own personal recommendations as a planner?

A. Yes, it reflects mine and I understand those of others.

Q. Now I refer you to a plate in the back of the book in the envelope, Defendant's Exhibit W. Would you pull that out please, Mr. Tarrant, and describe it? That is called Plate 8, I believe. Perhaps we had better tack it up on the board.

Now, Mr. Tarrant, is this a part of the Segoe Report of 1951 — this Plate 8?

A. Yes, sir, it is.

Q. Was this Plate 8 prepared under your supervision?

A. Yes.

Mr. Eichner: Your Honor please, I would like to offer that as an additional exhibit because of the separation of it from the booklet — although it is really a part of Exhibit W.

The Court: I will mark it Defendant's Exhibit GG.

Note: So marked and filed.

Q. (By Mr. Eichner) Referring to Defendant's Exhibit GG on the board, Mr. Tarrant, would you explain the key to the colors and *crosshatching* and so on that you see there?

A. The title of the map is "General Land Use Plan" and it purports to portray the recommended pattern of the development for the city and surrounding area, extending out into the two counties some distance — what might be called the metropolitan area. The classifications of development indicated by this plan are expressed in rather general terms. This is not as precise and detailed as the zoning map — somewhat more generalized. The classifications are industrial areas, both light and heavy; commercial areas, neighborhood, central business, community and general; and then under the heading of miscellaneous, the map shows areas for institutions, cemeteries, open areas, parks and recreation areas, and then it shows conservation areas.

Q. What color are the park and recreation areas?

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A. A shade of green, further identified by a textural pattern suggesting small trees.

Q. Will you point to Forest Hill Park?

A. Right here (indicating on map).

Q. Mark that with the blue pencil — mark it “F. H.”

Note: The witness did so.

Q. Now, how does Exhibit GG, the Segoe Land Use Plan, treat the area between Riverside Drive and the James River, roughly between Twenty-Second and Forty-Second Streets?

A. The plan shows either existing or proposed — there is no distinction between the two — park area all the way along the south bank of the James River from about Twenty-Second Street past Forest Hill Park up past the Boulevard and all the way up to Powhite Creek, and then following Powhite Creek to the vicinity of Bon Air — a continuous parkway, if you please, for that entire distance.

Q. Is Plate 8, Exhibit GG, intended to show page 873] the exact boundaries or general boundaries or what?

A. It is intended to show rather generalized boundaries. In fact, that statement was made in the text of the report, with the intention that more exact boundaries would be determined from time to time after more detailed plans of different parts of the city might be developed.

Q. How are industrial areas indicated on that plan?

A. They are shown in two shades of blue — light and dark blue. The light blue represents light industrial areas and the dark blue heavy industrial.

Q. That's all for the map for the time being. In your opinion, based on your experience, under standard zoning practice, what is the type of zoning district in which railroad marshaling, switching and classification or storage yards are to be grouped?

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A. Railroad yards are invariably placed in industrial districts.

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page 874] Q. (By Mr. Eichner) For what reason?

A. Because of their character. They are more like other industries. They are industrial in character. They have the undesirable aspects of other industries and in zoning, of course, uses are grouped together which are of like nature. That is the very purpose of zoning, of course, and railroad yards are associated functionally, as a rule, and in their character, with other types of industry. Therefore, almost without exception that I can think of, they are zoned along with other industries in the industrial zones.

Q. Are you familiar with the zoning of railroad yards in Henrico and Chesterfield Counties?

A. Yes, sir.

Q. How are they zoned?

A. In Henrico County, railroad yards are prohibited in all the districts except the M-2 Heavy Industrial District, if I am correct. I can look it up here. Yes, I am correct — M-2 Heavy Industrial.

Q. Do you know how the Acca yards in Henrico County are zoned?

A. The adjacent lands in Henrico County, those adjacent to the Acca yards, are zoned M-2 Heavy Industry.

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Q. (By Mr. Eichner) How about the Acca yards themselves?

A. I misunderstood the question. The yards themselves are zoned M-2.

Q. And the C. & O. yards — they are zoned M-2 Industrial?

A. Yes, M-2 also.

Q. I hand you a map, Mr. Tarrant — I hand you four maps, labeled Section Sheet 95, Section Sheet 96, Section Sheet 17 and Section Sheet 10, each one labeled "Zoning Map" and bearing the certificate of the clerk of Henrico County Board of Supervisors, and ask if you can identify these maps?

A. Yes, sir, these are copies of the official zoning maps of Henrico County.

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Mr. Eichner: I offer these four maps collectively as Defendant's Exhibit HH.

Note: So marked and filed.

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Q. (By Mr. Eichner) Will you answer that question, Mr. Tarrant? How are the railroad yards in both Henrico and Chesterfield zoned, if you know?

A. To my knowledge, they are all in the industrial zones.

Q. Referring to Defendant's Exhibit HH, the four Henrico zoning maps, in response to the inquiry from Mr. Gay as to what yards we are talking about, please identify on there the railroad yards in the county.

The Court: Suppose you have him do that with a red pencil.

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Note: The witness marked on the exhibit with red crayon.

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Q. Do you know whether the Henrico or Chesterfield ordinances permit yards of this nature in residential districts?

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A. They prohibit yards in residential districts.

Q. Now, Mr. Tarrant, with reference to Defendant's Exhibit W, the 1951 Segoe report, have you any other portions of it to comment on?

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page 879] A. Yes. I would like to call the court's attention to certain recommendations and findings in the report with respect to the park and recreation area facilities of the city and their adequacy at the time of this survey.

Q. Please refer to these provisions by page number.

A. The page to which I have reference is page 65 and as reported there we find at the time of our study there was a total of one thousand five hundred and eighty acres of existing parks, playgrounds and other recreational areas in the metropolitan area, including in the study portions of the two counties, of which one thousand two hundred and thirty-one acres were in the city proper. Now in order to measure the adequacy of that acreage, we compare it with the population. May I please correct myself? We give the generally accepted and standard ratio that ought to be provided of park area in proportion to population, citing the figure that is universally used among park and city planners alike — at least ten acres of park area per one thousand population.

Now if the 1960 population figure for the city is used, then there would be only 3.9 acres of park area per thousand population for the metropolitan area, and only 5.6 acres within the city limits per thousand population of the city's population, whereas the standard is ten; so that
page 880] the deficiency in the city was about forty per cent at that time, and in the metropolitan area there was a need, we found, of about two and a half times the existing park area to serve the 1960 population, not to mention the population that is to come in the decade ahead, so the recommendations in the Master Plan were based on this finding of deficiency and the realization as the city continues to grow it will not only need to make up this deficiency but provide for the future population, and we were planning for some twenty to thirty years ahead.

That was the essence of the finding in this report as to the adequacy of park facilities in the city and adjacent areas.

Q. Now I refer you to page 66 of Defendant's Exhibit W, Mr. Tarrant, and call your attention in particular to the last two paragraphs on that page. Would you read those, please?

A. (Reading)

"Extensive pleasure drives circling the city, merely for recreational driving, are no longer considered necessary.

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Parkways or pleasure drives should be provided, however, extending from various parts of the city to the large out-lying recreation areas, and along particularly scenic routes, to afford access to a variety of recreation spots along the way.

“The 1946 plan of neighborhood parks and playgrounds recognized the principle that these facilities should desirably be joined with the elementary schools and that each such educational-recreational unit should serve a specific neighborhood. The boundaries of such neighborhoods, however, were not clearly defined. In the present Land Use Plan a definite system of neighborhood units and sub-communities has been devised in relation to school locations, major thoroughfares, housing types and densities, and other related factors, and some changes in the number and location of schools are proposed — as described hereinbefore. Consequently, adjustments in the 1946 recreation areas plan also become necessary in order to coordinate this with the new plans for land use, thoroughfares, and schools.”

Q. I refer you now to page 68 of the same exhibit and ask you to read and to comment on the paragraph beginning “Parkways.”

A. (Reading)

page 882] “*Parkways* desirably should give access to and connect the larger park and play areas, located where possible along the banks of streams and through other scenically attractive areas. In certain cases, these parkways may be used to reclaim the banks of streams. They always embellish the section through which they pass.”

Q. Mr. Tarrant, is there in that report a plan of proposed recreation areas which you and the other members of the staff recommended?

A. Yes there is.

Q. How is that described and how is it located on Exhibit W?

A. Plate 20 which follows page 73 of the text.

Q. Does that give some kind of name or designation to the area we are considering?

A. Yes. It identifies three sections of the area you are considering as a park along Riverside Drive.

Q. And how does it identify them?

A. One is identified by name, Forest Hill Park, and two others by key symbols on the map, which are referring either to a list of these sites in the upper righthand corner

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of the map, or some of them to a table in the
page 883] appendix of the report which is Table 11, "Ex-
isting Park and Recreation Areas."

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Q. The sixteen acre tract we are concerned with, is that indicated specifically or generally as part of this plan of recreation area, this Plate 20?

A. The sixteen acre tract is not identified separately from the rest of the property in the whole river valley there between about Twenty-Second Street and the Boulevard or beyond, but property approximately that location is identified by the symbol S-4, which refers in Table 11 to an area already owned by the city known as Riverside Park, part of the area already acquired by the city and known as Riverside Park, and another section of this park strip is identified by the symbol S-41 which is listed in Table 11 as River Hills Park.

Q. Do you have anything else to add concerning Exhibit W?

A. I might point out that these three existing areas of park land in this stretch of the river, Forest Hill Park and Riverside Park and River Hills Park, together comprise a
total of one hundred and thirty-one acres of
page 884] city-owned land already acquired for park purposes.

Q. How do the areas designated as Industrial on Plate 8, Exhibit GG, compare with the present zoning of industrial districts in the area of South Richmond at and near the present Southern Railway yards?

A. I have examined the city's zoning maps and found they are substantially in agreement with the recommendation of our land use plan as to industrial zoning in these areas.

CROSS EXAMINATION

By Mr. Gay:

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Q. Coming to and from work, Mr. Tarrant, do you come over what is known as the Lee Bridge?

A. Yes, sir.

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Q. How long have you been doing that?

A. Oh, approximately twelve years.

Q. I take it, then, that you are pretty familiar with what goes on in the Belle Isle yard of Southern Railroad, are you?

A. Yes.

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Q. Do you know where the shifting operations of that road that lead into and out of this yard have been conducted over the past ten or twelve years?

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A. I suppose you mean the switching of cars into the yard.

Q. From the west end.

A. From the west end? Recently, at least, they have been conducted in the vicinity of Lee Bridge — partly under the bridge and partly a little to the west and partly a little to the east.

Q. How long has that operation gone on, to your knowledge?

A. I cannot tell you precisely. I have not kept any record of it.

Q. I will ask you to look at Plaintiff's Exhibit 18, Mr. Tarrant, and I call your attention to what is shown there as Lee Bridge.

A. Yes, sir.

Q. Accepting that as a correct indication of the location of the Lee Bridge, with reference to the Belle Isle yard, is it not a fact that a substantial part of the trackage that leads into the switching leads of the yard lie west
page 888] of Lee Bridge?

A. Yes, I would say that the yard leads are west of Lee Bridge, generally speaking.

Q. I will ask you to look at City's Exhibit CC, which is attached to the ordinance of December 11, 1961, which contains, as I understand it, a small scale showing of various zoning areas in the city, and will ask you to state if what

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is shown here as R-6 doesn't take in a substantial amount of trackage that is presently operated in connection with the use of Belle Isle yard?

A. Yes.

Q. If your answer is correct, and it appears to be correct, is your prior statement that railroad yards are always zoned M-2 Industrial incorrect?

A. To my knowledge they are zoned Industrial, in the zoning ordinances with which I have had anything to do. I, of course, had nothing to do with this ordinance.

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page 889] Q. (By Mr. Gay) To the extent that this area zoning appears as a part of the city zoning ordinance, it departs from and is different from what you know to be the general history and custom in that respect. Is that true?

A. To answer your question, no — because I wouldn't call the leads — they are not really part of the yard. They are in the right-of-way. They are not part of the yard itself but they are leads to the yard. I wouldn't call them part of the yard itself.

Q. You do not propose to be an authority on engineering and construction, do you?

A. I studied Civil Engineering, yes, sir.

Q. Do you think that answers my question?

A. I am not a professional construction engineer, no, sir. I am not that, but I do know something about railroad layouts and operations and I did study Civil Engineering in which you had to learn about railroads.

Q. Am I to understand your answer to my prior question to be that in your opinion, with the qualifications you have just expressed, you do not consider the trackage of the Southern Railway shown there as zoned R-6 —

Mr. Eichner: The witness has already answered.

page 890] Q. (By Mr. Gay, continuing) — to be a part of the Belle Isle yard?

The Court: Overruled.

A. I believe I stated and I will restate it — that I do not regard your yard leads as part of the yard itself. The yard itself is in the Industrial District. The yard leads are in

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the running right-of-way of the railroad and those are in the R-6 Residential District, as is the rest of the right-of-way from here to the city limits (indicating on map).

Q. Will you, in light of your engineering experience, tell the court how you can get into a yard if you don't have leads?

A. I am not saying you don't need leads. You certainly do need leads.

Q. If you need them as part of the yard, are you making the distinction from an engineering standpoint that they are not part of the yard?

A. I simply said they are not part of the yard proper. To be part of the yard proper it has to be equipped for car storage, coupling together and uncoupling, and other operations carried on and that, as I said, is in the Industrial District.

Q. You don't think the trackage necessary to page 891] make use of that part of it which you have described would be considered, in your judgment, a part of the yard?

A. I would call it an appendage of the yard, perhaps.

Q. If you don't regard that type of construction as part of the yard, and therefore objectionable under your general description of the undesirability of railroad yards, I take it you would consider the extension of those tracks along the company's right-of-way up into this area as properly classified as Residential?

A. I don't think that I expressed the view that the operation of switching movements over yard leads is not objectionable. It is objectionable. The fact it is located in a residential district is the only question, as I recall, I was asked to answer, and to that extent the use is non-conforming in the residential district.

Q. You have said you had engineering experience. Will you explain to the court, when Southern Railroad brings a train in from Danville and wants to break it up for classification purposes, where these shifting movements would have to be on this trackage layout?

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page 892] A. Well, I think that question presupposes the necessity of using this Belle Isle yard for the breaking up or making up of trains that arrive over the line from Danville or somewhere.

Q. (By Mr. Gay) I ask you to make that supposition and

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answer the question.

A. If those trains are to be broken up and classified at this yard, then it is necessary to have a train receiving track for the parking of the train as it arrives from which the train can be broken up, certainly.

Q. Isn't it also true that in the breaking up process, you have shifting back and forth on the main tracks that feed into the yard?

A. Yes.

Q. All of these M-2 Industrial areas that you have been speaking of as comprehending railroad yards were incorporated in the city's zoning Master Plan in the light of existing conditions, were they not?

A. Yes, existing conditions certainly were taken into account in preparing the city's Master Plan — some of these existing conditions extending back for a hundred years, perhaps.

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Q. You say this is between Forty-Second and Twenty-Second Streets, and I interpreted your answer to mean back to Forest Hill Avenue or Semmes Avenue, page 894] that there had developed a stabilized and substantial neighborhood in the community there?

A. Yes, sir.

Q. You say that this quality of the neighborhood, or these characteristics of it, are influenced by the *open areas and wildlife* in the neighborhood. Is that correct?

A. Yes, sir.

Q. Just what do you mean by open areas, Mr. Tarrant? Has anything that you have heard testified to in this case lead you to believe that the Southern Railroad's plans would in any way militate against the open area north of this right-of-way and generally north of the neighborhood you have been describing?

A. By open area I was referring to the natural woodlands and parklands and water areas that existed there prior to the operations of the railroad. in clearing out woodlands and starting construction of the yard. I am speaking of

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naturalistic open areas.

Q. I will ask you to assume as a fact, for the purpose of the question I am about to ask you, that the Southern Railway was advised it had the right to go there and fill and grade this property without violating any provisions of the city zoning ordinance, and no permit for that type of work was required. If that is true, and what has
page 895] been done is grading and filling, has that in your opinion in any way destroyed the open area surrounding this property you say add to its desirability?

A. It has to a degree reduced the naturalistic open area, that is, the area of naturalistic open areas.

Q. Assuming again for the purpose of my question that what the Southern Railway did do they had a perfect right to do, then that part of the open area which you say no longer exists by reason of this filling could no longer be looked to as a normal and natural advantage of this community, could it?

Mr. Eichner: Counsel is misquoting the witness. He said open areas in the naturalistic form.

Q. (By Mr. Gay) Add that to the question — open area in naturalistic form.

A. That area could recover into a natural wild area if left alone.

Q. By that you mean if the Southern Railroad does not elect to let this property be used or stand idle, in deference to what might be in some futuristic plan of the city to develop this property as a naturalistic park. Isn't that true?

page 896] A. What I said was that if left alone it would grow up again in a naturalistic growth — left alone by whoever owns it and for whatever purpose. I am saying the naturalistic qualities have not been irrevocably destroyed.

Q. To prevent that result from occurring, the owner would have to refrain from using his property for what might be considered any proper purpose, would it not — any permitted purpose?

A. The owner would have to refrain from developing it for some industrial or railroad purpose. As to its propriety I am not qualified to pass on that.

Q. Is it your idea that this naturalistic quality that inheres

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in this particular location is a part of what I think you called the James River gorge?

A. Yes.

Q. (Continuing) I haven't finished my question — this quality that inheres in this particular location is something that the owners of it should be expected to let just stand there and remain in *status quo* in order that the community as a whole might enjoy its benefits?

A. I don't think it is the responsibility of the various owners of property in there to maintain their land in its native naturalistic condition forever. The city has proposed to acquire those lands and conserve them in that page 897] shape.

Q. When?

A. I can't tell you when. I can't speak for the city. The city has already acquired several tracts of land in there and I believe has adopted a policy to acquire additional lands or offered to acquire additional lands.

Q. These acquisitions in that area have all been between what is improved as Riverside Drive, as distinguished from what is loosely termed here "parkway" and the south line of the right-of-way of the Southern Railway, have they not?

A. I cannot testify as to exactly what lands the city has acquired. I haven't examined those maps.

Q. Would you look at the map here on the board? The city has offered that map I now show you as Exhibit P, as evidence of its ownership of the land shown in green between the right-of-way of the Southern Railway and Riverside Drive. Can you identify that area on the plat?

A. You are referring to this entire colored area in green?

Q. Yes.

A. Yes.

Q. The city has proved that it has acquired that property. Have you not any knowledge of its efforts to page 898] acquire from the Southern Railroad or any other source property north of the right-of-way and which constitutes part of this gorge, notwithstanding these various recommendations of the City Planning Commission introduced in evidence here today?

A. I believe I am correct in my understanding that the city has taken action to acquire some of the property north of the railroad, between the railroad and the river.

Q. Wasn't that actually taken either at the time of or

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subsequent to the adoption of this ordinance primarily in question here?

A. I believe it was, but there always has to be a beginning in these things.

Q. It was a pretty late beginning, wasn't it? What was the date of the first planning studies that were made in the City of Richmond with the objective of setting up a master plan for the future development of the City? Do you know?

A. I am sorry. That goes back before my connection with the city. I couldn't tell you.

Q. You mean to say that as the city planning consultant today, you have no familiarity with the history of the city planning that has been going on here for the last twenty or twenty-five years?

A. I didn't say that. I certainly do have some page 899] familiarity with the history. I am quite familiar with the Bartholomew Master Plan studies made in the 40's and with that report, but the planning of the parkway and the parks along the south shore of the James River began long before that, I believe. I can't tell you when was the first.

Q. You think it began long before that, and yet so far as you know the city has made no attempt to acquire any property north of the line of the Southern Railway right-of-way and through this area you speak of as the James River gorge — made no effort to acquire any of that until 1960 when this controversy arose?

A. I don't know of any direct effort to acquire the land, or that there was ever any occasion for it.

Q. This naturalistic park development that you envision here, would that be just something to look at from afar or would it be of such nature that access would be expected to be had into it by reasonable means?

A. Desirably, public access to the land right up to the water should be had. The chief attraction, of course, is the water and people have a great desire to get to the water and enjoy it, as evidenced by many examples. Some of our finest parks we have in the United States are waterfront parks. As a matter of fact, the largest park in the park system of the City of Detroit is known as Belle

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page 900] Isle Park — interestingly enough — located in the middle of the Detroit River completely surrounded by water, and the only access is by bridge. The same thing can be said for many cities. Chicago is famous for Grant Park and Lincoln Park and some of the other parks built along the lakeshores, and those give the people the right of access to and enjoyment of the waters of those lakes.

Q. Do you know of your very wide and obviously extended experience — do you know of any so-called natural beauty park that has been owned and developed by the city that lies between the right-of-way of a railroad and the bank of a river?

A. Offhand I can't think of exactly that situation, but we do have many parks throughout the country —

Q. I don't think that has any bearing —

Mr. Eichner: Let him finish.

Mr. Gay: If he confines himself to answering my question.

A. (Continuing) — that do have both water frontage and either adjoin or include railroad locations.

Q. (By Mr. Gay) That isn't the question I put to you. I asked you if you knew, in your broad experience, of any location where a city or other form of municipal page 901] government had undertaken to either acquire or develop from the standpoint of natural beauty an area that lay completely between the right-of-way of a mainline railroad and the bank of a river?

A. I cannot name one right offhand.

Q. All right, sir. Have you ever been on this property?

A. Oh, yes, sir.

Q. It appears in evidence here that at its widest point it is two hundred and fifty feet in the western end and maybe equally so about midcenter, and depresses down to fifty or fifty-five feet at its eastern end, and approximately thirty-six hundred feet long. I repeat the same question I just asked you. Do you know of any city with whose planning you are familiar, that has either undertaken to acquire or to develop as a natural park an area of land of those dimensions and situated between a mainline right-of-way of a railroad and the bank of a river?

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A. I cannot recall any exactly comparable situation because this is a unique situation. I don't know of any other location that is exactly the same as this, or that involves exactly the same size property. The property must be viewed, not the sixteen acres alone, as though it were detached from everything else, I think it has to be treated in its context with all the adjacent lands up the river and including the hills and bluffs or slopes between Riverside Drive and the railroad, all of which put together would constitute a desirable park, with the railroad of course coming through it.

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Q. Let's move on a little bit from this natural beauty, rustic, unmanicured type of development that I think you have described. Do you think it would be, as a city planner, a prudent and wise thing to develop for such a purpose property of this kind whose use would be limited to that and no more than that?

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A. Yes I do. I think there is a very great need for a park of this kind in the city, particularly in the heart of the city as this would be, and the need will continue to increase as the adjacent areas become more extensively developed with apartment houses and other types of development.

Q. That answer envisions and deals with a usefulness that involves no usefulness except beauty, to look at. Is that correct?

A. Let me be sure I understand — is this predicated on

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the assumption there will be no access to the property?

Q. I am coming to that in a minute. I am trying to find out what you consider to be the narrowest possible use that could be made of this property in your judgment as a planner, and I understood you to say if it had no other page 905] use, it would be justified purely as an area to look upon as a beautiful landscape or natural landscape.

A. Well, I would say that the minimum purpose of acquiring the property and its justification for public ownership would be to conserve and preserve the natural conditions that exist along the James River, including the plants, islands, cliffs, the old quarries, the terrain, and particularly the tree growth and undergrowth that exists in a natural habitat that has been handed down to the citizens of today from many years back, and that ought to be handed on, to preserve its natural state for whatever future uses might desirably be made of it, even if just to preserve what is there.

Q. Suppose in the judgment of the City Council that visionary aspect were not considered to be either politically or economically feasible and they would not spend public moneys except for property for which the citizens would get some practical use — looking at it in that sense, would the matter of access have any weight in influencing the answer to the question of whether under those circumstances you, as a city planner, feel it is a feasible thing to do?

A. I would recommend the acquisition of the property by the city whether there was access to it or not for conservation purposes.

Q. If for nothing else?
page 906] A. If for nothing else.

Q. Suppose City Council would not accept that recommendation, for either political or economic reasons, and would decide we are going to buy it only if we can use it for public benefit, and by that I mean, have access to it — would you feel that the presence of the Southern Railway right-of-way throughout the entire length of this property would have any bearing on its usefulness as a park?

A. The right-of-way would not impair its usefulness as a conservation area, or a park for active public use. There are many examples of railroads running through park areas or along the edge, As a matter of fact, in planning cities,

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planning for redevelopment or further development of existing cities, we very frequently recommend park developments along railroads, particularly as a means of redeveloping some of the slum areas, old residential areas that have deteriorated to the point they need to be cleaned out through a slum clearance project and that are not suitable as use for residential areas, and with the need for park and recreational space being so great, city planners frequently recommended that these areas be used for park developments. Some of our most successful parks in the United States do have railroads in them.

Q. You said a moment ago you knew of no page 907] instance in which such an area was bounded by a railroad track on one side and a river on the other, the railroad track from a physical standpoint preventing access to it, which I take it, if you want to go that far in your opinion, would contemplate some means of access to the property, would it not?

A. I would certainly hope there would be found a means of access to the park. I cannot conceive of any area having its potential not being made accessible by one means or another, but I have, as a matter of fact, thought of one or two instances where you do have parks between a railroad and a river, and two or three are in Washington. Let me correct myself on that. One of these is on the Virginia side of the Potomac River across from Washington, D. C., where there is a line of the Pennsylvania Railroad and a very narrow strip of the George Washington Parkway and then the Potomac River. On the other side of the Potomac River above Georgetown there is a strip of national parkway, a rather narrow strip that was originally the old C. & O. Canal and is now part of the national parkway system, and there is a railroad adjacent to that.

Q. Wasn't the first property you referred to made land?

A. I don't believe it was made land, the part I am thinking of. Some part was, but the part I am thinking page 908] of in the vicinity of Rosslyn is rather steep and rocky land. It certainly was not made — it is very rocky and has very old trees.

Q. The Pennsylvania Railroad operation there is not a mainline operation, is it?

A. It is a branch line just like your line here.

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Q. (By Mr. Gay) I believe you said that you thought the property — departing from your concept of its natural beauty, could be used for picnicking and hiking and fishing and horseback riding and so on. How would you contemplate carrying out those uses unless some means were provided to cross the right-of-way of the Southern?

A. Well, I would say that some access across the Southern Railroad would be most desirable in order to develop those uses. I never thought it was not possible to get across the railroad by one means or another, particularly by bridges.

Q. Assuming that the approval of the State Corporation Commission would have to be had for any cross-page 909] ing of this property, and assuming that for any such purpose as you have indicated a grade crossing would not be permitted, you would be left with the necessity for an overhead structure, would you not?

A. I would prefer an overhead structure and would recommend such as part of the development plan for this parcel.

Q. You think an overhead structure, for which you certainly would have to have a clearance adequate to prevent obstruction to the railroad's trains, would be a safe means of having horseback riders and vehicular traffic go over there?

A. It would be the safest method. That is the method used in many parks where it is necessary to cross a railroad.

Q. You say that this proposed development, as you understand it, would change the characteristics of the community, introduce an incompatible use. How far is the present Belle Isle yard of the Southern from this general neighborhood that you have described?

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A. I am not sure what I said to begin with, but if we consider the neighborhood begins approximately at about Twenty-Fourth Street, then the Belle Isle yard property would be about five blocks, I guess it is to the east of that — that is, beyond Cowardin Avenue.

Q. Just a moment — when you say the Belle Isle yard

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property — go ahead. I will not interrupt you. You say five blocks?

A. Doesn't that answer your question?

Q. I believe it does. What would be your answer to a similar question in respect to the Coast Line yards?

A. The Coast Line yards? I presume you mean the one at Cowardin Avenue.

Q. Yes — just above the Southern's yards.

A. Yes, sir, that would be about the same distance.

Q. Now, from your residence at Thirty-First Street, do you hear or did you hear up until the last year or so shifting and other car movements and yard operations at the Belle Isle yard?

A. We did not hear anything that occurred at page 911] the Belle Isle yard. The first we did hear was trains on the right-of-way below us.

Q. And they were being shifted back and forth, to make up or break up trains, to go into the Belle Isle yard?

A. We could hear the trains come in and stop, and then we could hear them being broken up, but they don't switch cars in and out of the yard from that far away — simply the incoming trains as near as I could ascertain, because there are only two tracks at that point.

Q. But you did hear noises incident to the breaking up of an incoming train and making up an outgoing train from the yard?

A. Yes, we could hear those noises.

Q. Have they increased to any extent up to this time?

A. They have increased in the last few years, yes.

Q. In intensity or frequency?

A. We have become more aware of them, now whether that is because of intensity or frequency I cannot say.

Q. Your assumption that the plan of the Southern Railroad to develop this sixteen acres of land in a manner consistent with what it thinks its public duties require and its operating needs make necessary would introduce page 912] an incompatible use in this neighborhood —

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Q. (By Mr. Gay, continuing) — is predicated upon how much of a yard operation is contemplated?

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A. I would say that anything more than existing activities on the railroad would constitute certainly a serious infringement on the residential area, and the more that activity is increased by the addition of more tracks and increased operation on the tracks, the more detrimental it is going to be.

Q. You were asked about spot zoning. I understood you to say, broadly speaking, it involved an incompatible use with the surrounding area. Is that a fair statement of what you said?

A. I don't recall my exact words but something of that sort.

Q. Does that fairly express the thought you had?

A. I understood that, yes, sir.

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page 917] Q. (By Mr. Gay) Mr. Tarrant, aside from the question of noise that might emanate from any railroad operations on the property, I take it your principal concern in connection with the idea of a park of natural beauty would be the view of it that people along Riverside Drive passing on the drive, and people who live there, would have of the area. Is that correct?

A. The view would certainly be an important aspect.

Q. Isn't it true that so far as the protection of the view is concerned that some form of screening growth or trees or woods or some growth could be developed along the north line of Riverside Drive or in the area between it and the Southern Railway tracks that would completely screen the appearance of this yard from Riverside Drive and the adjacent houses, and yet permit an adequate view of the river, equal to what they have now?

A. I don't believe so, sir. There is already a natural growth of various trees and undergrowth in that space.

Q. As a matter of fact, at certain seasons of the year that growth there completely shuts off the view of everything there, does it not?

A. Not completely. There are openings and gaps and there ought to be along any scenic drive, so you can

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page 918] get some view of the distance. There need to be some openings and gaps. In the wintertime, trees are bare of leaves and you can see through the trees to the railroad tracks and this clearing on the railroad and it is in full view of people driving along the drive and the homes in that area.

Q. If adequate evergreens were placed along there in the way of a screen, that condition would be prevented, would it not?

A. If adequate screening could be developed, of course, it would screen out the railroad yard, but experience shows it is almost impossible to develop an adequate greenery screen except with large forest trees and that would ultimately screen out the view of the river and the gorge, which is part of the whole scene.

Q. I think you said you had been on this property in question.

A. Yes.

Q. Are you sufficiently familiar with it to know how flood conditions affect it?

A. Yes, I think so.

Q. It is subject to periodic flooding, is it not?

A. Once in a great while there is some partial flooding of the lowlands, or there was, prior to the filling.
page 919] Q. When it is flooded, because of its relation to this James River gorge that you spoke of, the water passes through there very rapidly, does it not?

A. It runs off very quickly because of the fall of the river. It doesn't stand.

Q. So there is no basis for any effective comparison of this area on the river with the upstream portion where the lowlands are flooded because of the wide diffusion of water and slowness of its movement, which produces silt and other deposits, is there?

A. It is not the same, no, sir.

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RE-DIRECT EXAMINATION

By Mr. Eichner:

Q. Mr. Tarrant, in answer to questions from Mr. Gay about the recommendations of the Master Plan based on existing conditions, would you say this is an accurate statement —

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that the Master Plan or other plans are based on existing conditions only?

page 920 } A. Not existing conditions only, no — not by any means. Existing conditions are only one of a whole series of circumstances that are taken into account in devising a land use plan or zoning maps.

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page 922 } Q. (By Mr. Eichner) Will you answer that question, Mr. Tarrant, with reference to the Master Plan of 1946?

A. Excuse me, but on the Master Plan of 1946, of course, I had nothing to do with that.

Q. But you are familiar with it?

A. I am familiar with it, yes.

Q. With reference to that, would you say existing conditions were the only consideration upon which these recommendations were based?

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A. I read the report of the 1946 plan and found many other considerations had been taken into account.

Q. (By Mr. Eichner) Did those considerations include projected future growth?

A. Yes, sir.

Q. Is that also true of the land use plan of 1951 on which you worked, and the Bartholomew Report of 1957?

page 923 } A. It certainly was so with respect to the 1951 plan on which I worked, and I have found in the report on the subsequent plan that that plan also took these other factors into account.

Q. (By Mr. Gay) Did you take into consideration the future growth and Southern Railway's need for yard facilities?

A. We did, insofar as we could get any information on them, and we got none.

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page 925] Mr. Eichner: I offer as Exhibits JJ and KK respectively, the series of photographs taken between July 30, 1962, and September 5, 1962. These were left with counsel over the weekend, Your Honor will recall, and we stipulate it is correctly stated who took these pictures from the Lee Bridge.

We offer as Defendant's Exhibit JJ photographs Nos. 1 through 24.

Note: So marked and filed.

Mr. Eichner: We offer as Defendant's Exhibit KK the second group of photographs, Nos. 25 through 49 inclusive.

Note: So marked and filed.

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G. GRAHAM LANCASTER,
a witness called by and on behalf of the City, after being
duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. Eichner:

Q. Please state your full name, age, residence and occupation.

A. G. Graham Lancaster; sixty-six years old; I live at 3 Glenbrooke Circle East, Richmond.

Q. What is your occupation, sir?

A. I am a partly retired civil engineer.

Q. Party retired? Will you explain that
page 931] please?

A. I do some consulting work — no more than I can help.

Q. State your experience and education.

A. I was graduated from V.P.I. as a civil engineer in 1918 and from there I went into the Air Service of the United States Army and was a Lieutenant in the Air Service.

G. Graham Lancaster

After that, I went to work with the C. & O. Railroad Company in January 1919, and worked for the C. & O. up until about 1949, with the exception of some time spent with government construction work and in the Navy.

Q. Mr. Lancaster, will you review your experience with the C. & O. during that period you have indicated?

A. I started out as a rodman, instrument man, resident engineer, district engineer, special engineer, assistant to the chief engineer.

Q. What were your responsibilities in these jobs?

A. I was supervisor of design and construction of facilities on the railroad.

Q. What kind of facilities, Mr. Lancaster?

A. Yards, tunnels, bridges, buildings, docks, loading facilities, coal-handling plants, grain elevators.

Q. What areas were you working in for the C. & O. — what geographical areas?

page 932] A. I was located in Richmond for the first two or three years, and at Newport News, Virginia, Clifton Forge, Chicago, Cincinnati, Huntington, and back to Richmond.

Q. Did you ever work for the Southern Railway Company?

A. Yes.

Q. When was that?

A. One year prior to going to V.P.I. and two vacation periods while I was at V.P.I.

Q. What kind of work did you do?

A. Rodman and transitman.

Q. What lines of the Southern did you work on?

A. First at Richmond, working on the Danville Division, and then at Manassas on the line from Manassas to Harrisonburg.

Q. State your wartime construction experience. Was it all in the Navy?

A. Yes, I was an officer in the Navy Civil Engineer Corps attached to Construction Battalion and spent thirteen months in Iceland building an airport and other Navy facilities, and then I was moved to the Admiralty Islands where we built the advance base for the invasion of the Philippine Islands, and after that was completed I moved to Okinawa and we built the Navy bases for the invasion forces into Japan.

G. Graham Lancaster

page 933] Q. Did you have any commands with the Navy Civil Engineer Corps?

A. Yes. I was Commanding Officer of the Ninth Construction Battalion, and Commanding Officer of the Thirty-Fourth Regiment and Executive Officer of the Eleventh Brigade.

Q. What was your highest Navy rank?

A. Spot-promoted Captain; permanent Commander.

Q. Did you return to the C. & O. after your service in the Navy?

A. I returned to the C. & O. after the War and built the coal-handling facilities at Newport News.

Q. What was your title at that time?

A. Assistant Engineer.

Q. And after you retired from the C. & O. in 1949, what did you do after that?

A. I was employed by the Orinoco Mining Company in Venezuela.

Q. What was your title with that company?

A. I started as chief engineer, promoted to resident manager and vice president of operations.

Q. Would you describe your experience in Venezuela?

A. Yes. We located, designed and built one hundred and twenty miles of first class railroad designed for
page 934] hauling twenty million tons of iron ore a year, building mining facilities, houses, docks, offices, warehouses, water and sewer plants.

Q. What were your responsibilities, if any, in addition to supervising the construction of this railroad?

A. I transfigured the construction into operation, and operated the facilities for about a year.

Q. Now when did the Venezuela job end, Mr. Lancaster?

A. Latter part of 1955.

Q. What was your experience after the end of that project?

A. After 1955 I went to Jamaica and was employed by an aluminum company to design and estimate an aluminum railroad about thirty-four miles long with facilities for loading aluminum.

Q. Have you had any other railroad construction experience after that?

A. I was employed by Trujillo of the Dominican Republic to design a sugar cane railroad and locate it and make the estimate of costs.

Q. Were you charged with the construction of that?

A. No, it never was constructed.

G. Graham Lancaster

page 935] Q. But you designed it?

A. I designed and located it.

Q. Have you had any other experience in any other South American countries?

A. I was employed by Colonel Perez Jiminez, who was at that time the President of Venezuela, in designing and locating an iron ore railroad from the mines at El Tueno to the Orinoco River, but he was thrown out of the country and that ended that job.

Q. How long a railroad was that?

A. Eighty-five miles.

Q. How about Peru? Have you had any experience in Peru?

A. Yes. I designed a railroad to haul copper concentrate for the Newmont Mining Company. I designed and located about a hundred miles, as I recall, and a highway of some length.

Q. Have you done any consulting work any place in Richmond since you retired from the C. & O.?

A. Minor jobs. I have done some drafting and survey work for some local people in my area, and I did some work for a *Pittsburg* company for some mining facilities in Canada.

Q. Mr. Lancaster, I will ask you first to look page 936] at Plaintiff's Exhibit No. 18 on the board, and ask if you have seen a copy of that?

A. Yes, sir.

Q. Where did you get a copy of that?

A. You gave it to me last Thursday.

Q. And are you familiar with the color keys on here — what the red and black and yellow lines indicate?

A. Yes.

Q. Would you describe what they indicate, as you understand it?

A. Most of the black lines indicate existing tracks; these red lines (indicating on map) indicate tracks that were to replace some abandoned yards in here; the yellow indicates the property sold, as I understand it, to Reynolds Metals Company.

Q. Are you familiar with the fact most of the tracks shown by black lines in the South Richmond yard have been removed?

A. They have been abandoned.

G. Graham Lancaster

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page 937] A. (Continuing) Some of them have been abandoned.

Q. (By Mr. Eichner) Have you seen the South Richmond yard recently?

A. Yes. Last Friday I spent four or five hours walking over the property.

Q. I call your attention now to Plaintiff's Exhibit 22 and will ask if you are familiar with that?

A. Yes.

Q. I also gave you a copy of that Thursday?

A. Yes.

Q. Would you indicate by pointing to Plaintiff's Exhibit 22 what part of it you have personally examined?

A. I walked from the Westover Hills Bridge to Hull Street and back (indicating on map).

Q. All right. You may resume your seat. I would like to show you Plaintiff's Exhibits 16, 24 and 23, and ask if you are familiar with those documents?

A. Yes, sir.

Q. Did I also give you copies of those last Thursday?

A. Yes, sir.

Q. Are you familiar, Mr. Lancaster, with the 23-page document which is the prepared testimony of Mr. Mac-Leod?

page 938] A. Yes, sir.

Q. Did you get a copy of that at the same time you got copies of these other documents?

A. Yes.

Q. Have you studied all of these documents I have just mentioned?

A. Yes.

Q. Now, in your opinion, Mr. Lancaster, what are the factors to be considered in designing a railroad switching yard or classification yard?

A. The number of trains arriving and departing, the number of classifications those trains have to be switched to, and also the interchange problem.

Q. What is the interchange problem?

A. The number of cars to be transferred from one railroad to another railroad.

Q. What did you do in the way of analyzing the data contained in the documents I have just referred to?

G. Graham Lancaster

A. Well, I prepared a chart plotting the hours in the day on one side and the number of cars per train on the other side, along with the number of cars in each train during the years 1959, 1960, 1961 and 1962 — the average number of cars in each train. I have also shown the percentage of eighty-car trains for Train No. 56 page 939] and No. 57. Apparently the other trains did not have any trains of that length. I have shown the number of one hundred-car trains in those two trains for the years 1959, 1960, 1961 and 1962. I have shown the maximum yearly (daily) average for Sunday, Tuesday, Thursday, Saturday, Monday, Wednesday and Friday, of cars arriving and departing, and then I have included the average for all cars.

Q. What is the source of the data from which you made these computations?

A. The train arrivals and departing were taken from two sources — one was Mr. MacLeod's testimony and the other was the timetable which you furnished me.

Q. How about the number of cars per train?

A. They were taken from Exhibits 23 and 24.

Q. How on the chart which you have prepared there, how did you indicate the hours of the day?

A. Well, the hours of the day are indicated along the top horizontal line showing 12 and 24, which is an entire day, and the number of cars indicated on the lefthand side, up and down.

Q. You have indicated at the bottom "Maximum (yearly) daily average." What do you mean by the maximum?

A. Well, in each of the years that I have statistics, that is, 1959 through 1962, I have used the longest train rather than the average.

page 940] Q. You mean the highest average for any of those years?

A. Yes.

Mr. Eichner: I offer this document as Defendant's Exhibit MM.

G. Graham Lancaster

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Note: Chart which was produced and identified by the witness was marked Defendant's Exhibit MM and filed.

Q. (By Mr. Eichner) Looking at Defendant's Exhibit MM, Mr. Lancaster, what are the notations "4 ½ hours daily" and "2 ½ hours daily" and so on that are indicated just below the top of the exhibit?

A. That is the average time interval between trains arriving and departing.

page 942] Q. How did you arrive at the average time?

A. I used the arrival and departure time as stated in Mr. MacLeod's testimony.

Q. So, for example, for Train No. 56, which is the first one reading from the left — where have you plotted its average arrival time?

A. At four o'clock.

Q. And what is that the average of?

A. As I recall, he said it would come in between three and five.

Q. You may refer to your copy of Mr. MacLeod's testimony, if you wish.

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Q. (By Mr. Eichner) Looking at Train 56 there, you relied on testimony it would arrive between three and five a.m., I believe you just said?

A. What page is that on?

page 943] Q. Referring to page 5 of Mr. MacLeod's testimony, the prepared testimony — the last paragraph on that page.

A. All right.

Q. For Train No. 56 — that's where you got your average time?

A. Yes, sir.

Q. And is the same true of the other average arrival and departure times you plotted on Defendant's Exhibit MM?

A. Yes.

G. Graham Lancaster

The Court: Mr. Eichner, I am not sure I understand this. I understand his dot over the arrival here, I take it, that dot indicates the time in connection with the hours up at the top, the arrival hours, What does the "LY" mean?

The Witness: That is "LV" — leave. It shows arrive and leave.

Mr. Eichner: Your Honor, "AR" is arrive and "LV" is leave.

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page 944] Q. (By Mr. Eichner) Looking below to the text where it shows four and a half hours daily and so on, explain those intervals.

A. On the chart?

Q. Yes.

A. I have shown four and a half hours each day between the leaving of Train 57 and the arrival of Train 56.

Q. What is your average leaving time for Train 57?

A. Eleven-thirty. I found in several places in here — in this prepared testimony — he says No. 57 left around eleven-thirty.

Q. And then the next arrival was — ?

A. No. 57 would leave at eleven-thirty and then the next morning between three and five No. 56 would arrive.

Q. And your interval between those, as shown on Exhibit MM — ?

A. Four and a half hours.

Q. What is the next interval between leaving or arrival of these trains?

A. The next train leaving would be Train No. 22 and that would be two and a half hours later daily than the arrival of Train No. 56.

page 945] Q. What is the next interval?

A. The leaving of Train 61 would be two and a half hours interval on Monday, Wednesday and Friday, but No. 61 doesn't run on Tuesday, Thursday and Saturday, so it would be eight and a half hours between the leaving of Train No. 22 and the arrival of Train No. 21.

Q. That is on Tuesdays, Thursdays, Saturdays and Sundays?

A. Yes.

Q. And the next interval between Train No. 21 and the next train?

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A. The interval between the arrival of Train No. 21 and the arrival of Train No. 62 on Tuesdays, Thursdays and Saturdays would be two and a half hours, but the interval between the arrival of Train 21 and the leaving of No. 57 would be eight and a half hours on Mondays, Wednesdays, and Fridays.

Q. Now, Mr. Lancaster, you have referred, I think, to the number of trains averaging eighty cars or more, and the number of trains averaging one hundred cars or more. Would you tell the court how those are indicated on your Exhibit MM?

A. On the lefthand side opposite the figures eighty. I don't think you can read it on the reproduction page 946] copy. Train No. 56 in 1959 — these are eighty-car trains — there were forty-two eighty-car trains in 1959; in 1960, one hundred and three eighty-car trains; in 1961, fifty-eight eighty-car trains; 1962, thirteen eighty-car trains. That is for the first half of 1962.

Q. What was the number of that train?

A. Train No. 56.

Q. What is the dot to the right of those?

A. That's on the eighty cars or more.

Q. And the dot to the right of those figures you have described?

A. It is at least eighty cars — not eighty cars or more. The same applies to the one hundred-car trains.

Q. And the dot to the right of those figures?

A. That is placed opposite the one hundred-car trains.

Q. All right, sir. Coming down to the figures you have at the bottom, you have "Maximum (Yearly) Daily Average, Sunday." What is the figure you have there?

A. Two hundred thirteen.

Q. And how was that computed?

A. That was computed from the Southern Railway exhibits, taking the number of cars arriving and dividing by the number of days, the number of cars arriving page 947] in the year and dividing by the number of days the train operated.

Q. What number of days did you use for computing that particular figure?

A. I used three hundred and sixty-five, which is a year. but I have found this morning this is erroneous. It should be around three hundred and sixty days. I found the trains actually didn't run every day during the year. The exhibit

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shows the train ran a few days too much.

Q. How did you compute the next item "T.T.S.?"

A. That means, Tuesday, Thursday and Saturday — the same way.

Q. What is the figure there?

A. Two hundred and forty-five cars.

Q. And that is the average per day for those days?

A. Yes.

Q. And "M.W.F." means Monday, Wednesday and Friday?

A. Yes.

Q. Your average number of cars per day on the bottom there, what is that figure?

A. That's the average cars per day over the last half of 1959 to the first half of 1962.

Q. And what is that figure?

page 948] A. Two hundred and thirty-nine. That may be a few cars over that when the figures are revised to show the actual days the train operated rather than using the figure three hundred sixty-five.

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Q. (By Mr. Eichner) If you used the overall average, Mr. Lancaster, would your average figures you have computed be higher or lower?

A. Something less.

Q. How about if you used the most recent figures for the first half of 1962?

A. They would be considerably less.

Q. Considerably less. Now did you recompute these averages on the basis of the actual number of trains that ran per year according to the plaintiff's exhibits?

A. I am in the middle of doing that. I am just about done.

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Q. What is the parenthetical data under Trains 61 and 62?

A. I have started recomputing, using the actual trains in the year, and these are the revised figures for these two trains, which increases it several cars. This was based

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on trains running three times a week continuously through the year.

Q. You mean, the data outside the parentheses?

A. Yes — and these were based on the actual days the train ran.

Q. By that you mean the figures in the parentheses?

A. Yes.

Q. (By Mr. Gay) You mean, the number of cars?

A. Yes. That was just done this morning. I haven't had time to finish.

The Court: Do I understand from that, Mr. Eichner, the figures in parentheses are his final figures?
page 950 } Mr. Eichner: Yes, based on the actual number of days — three hundred and sixty rather than three hundred and sixty-five for the year. Before the testimony is complete I will ask Mr. Lancaster to complete his computations and add the parenthetical data to the other figures there.

The Court: I see. Go ahead.

Q. (By Mr. Eichner) Now, Mr. Lancaster, are you familiar with the prepared testimony of Mr. MacLeod stating the average number of cars per day handled through the Belle Isle yard is three hundred and seventy-five?

A. Yes, sir.

Q. How does that check with your computations, based on the railway's figures?

A. It doesn't check with what I have computed. He may have included handling cars twice, but I cannot arrive at any figure close to that.

Q. Your figure as shown by Exhibit MM — ?

A. Two hundred thirty-nine cars, more or less.

Q. Based on trains running every day as scheduled?

A. Yes, sir.

Q. I understand you will come up with a revised figure shortly?
page 951 }

A. Yes. It will be somewhat higher than what is shown.

Q. Yes, sir, but now again, if your averages were based on the overall average for the period July 1959 to June 1962 rather than the highest average, then the figures you have shown, two hundred thirty-nine average number of cars handled per day, would that be higher or lower?

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A. That would be somewhat less.

Q. And if you used data for the first half of 1962 only, would that figure be higher or lower?

A. I don't know. It depends on the cars. I will have to look at this. In 1962 there were fewer cars than the average. In fact, that was the low figure. In fact, 1962 was the low figure in each instance except on Train No. 57.

Q. Low average daily figure?

A. Yes.

Q. Now after consulting these documents and viewing the property, Mr. Lancaster, did you prepare any drawings?

A. Yes.

Q. Would you produce what you drew up and describe them?

A. Yes — right here.

page 952] Q. Which one would you like to discuss first?

A. Well, both of them take more or less the same amount of discussion. The reason I made two of them — this drawing here is a straight line diagram of no scale — it is roughly a lengthwise scale on the horizontal. The scale is highly distorted in order that you may have the whole thing before you and look at it at one time.

Q. I notice in the lower righthand corner some initials —

A. My initials are there. I drew it and the young city engineer named Churchill traced it.

Q. What did Mr. Churchill do other than tracing?

A. That's all.

Q. Where was the work done?

A. At my house.

Q. Was Mr. Churchill working under your supervision?

A. Yes. I was with him the entire time.

Mr. Eichner: I offer the document entitled "Line Diagram" as Defendant's Exhibit NN.

The Court: Have you gentlemen seen this?

Mr. Gay: We are looking at it right now.

page 953] The Court: Mr. Eichner, did I understand Exhibit NN which is being offered now, purports to show this as how it would look if the tracks were all in a straight line?

Mr. Eichner: No, sir, not at all. I guess you might call this a schematic drawing. Mr. Lancaster can explain better than I.

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The Witness: No. It represents a diagram that is utterly distorted to scale. It is squeezed together and extended up and down, so you can visualize the whole yard at one time.

The Court: It has no relation to the actual topography at all, does it?

The Witness: No. It just shows what tracks can be extended and how long.

Mr. Eichner: We offer that as Exhibit NN.

Note: So marked and filed.

Q. (By Mr. Eichner) Now, Mr. Lancaster, the other drawing which you have prepared, do you have the original of that?

A. Yes, sir.

Q. This is labeled "Proposed Addition and Extension, Southern Railway Yards." Who drew that?

A. I drew that — at least, I drew the extensions and additions. The balance was traced from the page 954] Southern Railway map which you furnished me.

Q. By Mr. Churchill?

A. No — I did that. I didn't draw this entire thing. I traced it myself from the existing tracks as are there now. I added the extensions and additions I have shown in red myself, and then the entire thing was traced by Churchill.

Q. Where did you get the existing tracks from?

A. I copied those from the Southern Railway map you furnished me.

Q. This large map here on the board?

A. Yes, sir.

Q. Referring to Plaintiff's Exhibit 18.

A. That was used entirely as a basis for the work I have done.

Mr. Eichner: I offer the last drawing referred to as Defendant's Exhibit OO.

Note: So marked and filed.

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Q. (By Mr. Eichner) Now, Mr. Lancaster, would you ex-

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plain these two exhibits, NN and OO, which are page 955] on the board?

A. I think the explanation will be the same for either one. I see no reason to try to describe both of them.

Q. All right, sir.

A. The existing South Richmond yard is here in this location (indicating on drawing) and it does consist of some bad curves. With the acquisition of this property which formerly belonged to the Southern from Reynolds Metals Company, the alignment could be considerably improved and a lot of central angles eliminated. Six of these tracks could be extended to the Ninth Street Bridge. Under the Ninth Street Bridge now there are three tracks but there is sufficient clearance under the bridge to hold four tracks.

Q. You are referring to Exhibit OO?

A. Yes, sir, the scale drawing. Between the Ninth Street Bridge and the A. C. L. Railroad, two tracks could be extended on to the single track tunnel under the Coast Line, and the classification yard they now use could be extended on to the west or south, I guess it is.

Q. We have been referring to it as west here.

A. West. There is clearance under the Lee Bridge — there is a possibility of putting nine tracks under there.

There is one hundred and thirty feet clearance page 956] more or less to the track between the arch abutments on Ninth Street Bridge. However, I have indicated two of the short tracks could be extended and two of the long tracks could be extended, to give a length of twenty-five hundred feet approximately, for two or three of the tracks.

Q. On Exhibit OO, Mr. Lancaster, how have you indicated existing tracks, proposed new tracks, and existing tracks proposed to be relocated or removed?

A. I have shown in red the proposed new tracks. I have shown in black the existing tracks to remain and in dotted lines the existing tracks to be shifted or abandoned.

Q. That is the dotted black lines?

A. Yes.

Q. When you refer to the classification yard, you are pointing to the Belle Isle yard.

A. I meant them both — the entire thing.

Q. Go ahead, sir.

A. I propose after extending the three tracks in the Belle Isle yard to extend the switching lead for the same amount

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so the switching lead will be approximately the same length it is now, or to hold seventy-five cars.

Q. Indicate with a pointer how far you propose to extend the switching lead?

A. It has to be up here to this point (indicating on drawing), practically to the end of the property you call the James River property — maybe a thousand feet from the western end.

Q. Is that on the existing eighty-foot right-of-way?

A. Yes.

Q. Incidentally, how many tracks do you think could be added to the existing eighty-foot right-of-way?

A. It would accommodate five.

Q. A total of five, you mean?

A. Yes, unless there was a tremendous amount of filling or cutting to be done and you would have to provide for that. I don't think it is here now, but I think you can put five tracks here the way it is. I haven't made a survey but just visually looking at it — in other words, where the land is approximately level five tracks could be put on the eighty-foot right-of-way.

Q. All right, sir. Go ahead.

A. The principal disadvantage I see of this plan is the fact there is a short piece of single track under the A. C. L. yard. If that were not there, there would be two running tracks or a double track from the clear connection with the mainline over the river to the far west end.

Q. Your plans contemplate keeping a single track through the tunnel under the A. C. L. line, do they not?

A. Yes, sir.

Q. Referring to the South Richmond yard, do you feel that your plan could be accomplished without acquiring back from the Reynolds Metals Company any of that property which Southern sold them?

A. Yes, but it would still have the undesirable curvature in the yard.

Q. How could that curvature be eliminated?

A. By the acquisition of part of the land that is now sold to Reynolds Metals Company.

Q. Is it your opinion that the sale of that land has materially interfered with the Southern's capacity for improving its yard?

A. Yes, I believe it has.

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Q. Now, Mr. Lancaster, referring to the South Richmond yard again, what do you propose there in the way of tracks?

A. Well, we propose to extend — there are at present four short yard tracks. I propose to extend all four of those tracks roughly to Ninth Street Bridge and add two additional tracks.

Q. What would be the total tracks there then?

A. Six.

page 959] Q. Now would you refer to Defendant's Exhibit NN, the line diagram, and explain briefly the tables you have put on that?

A. Well, I have shown for Belle Isle yard the track proposed and the clear length in feet, that is, the part of the track that would hold cars without interfering with clearances or turnout. Then I have shown the car capacity of each track, on which I estimated the average car as fifty feet, which I understand is what the Southern uses. I have always used forty-five feet myself, which would show considerably more cars.

Q. Would you explain what is in the box on the left?

A. Yard tracks, other than through or thoroughfare or running tracks, or mainline.

Q. Have you indicated the number of yard tracks in the sketch of Belle Isle yard on Exhibit NN?

A. Yes.

Q. What are the footage figures indicated up there in the Belle Isle yard portion of the sketch?

A. That is the clear length in feet.

Q. In other words, the tract number and clear length in feet are the same in the table and on the sketch?

A. Yes.

page 960] Q. Now confining yourself to the column headed "Car Capacity 50 ft. Cars," Mr. Lancaster, does that contemplate the existing or proposed revised capacity of these tracks?

A. That will be the total length of the tracks when and if extended.

Q. What is the total shown two hundred eighty-seven down there at the bottom of that column?

A. That's the total capacity of the yard, assuming fifty-foot cars. The Southern Railway's map showed the capacity of the yard to be two hundred and twenty cars, which is an additional sixty-seven cars provided on the yard.

Q. As to the existing capacity of the Belle Isle yard, are

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you accepting Mr. MacLeod's testimony on that?

A. Yes. I roughly checked it and it is right.

Q. All right. Moving on to the box on the right, Defendant's Exhibit NN, entitled "South Richmond Yard," explain the figures you have placed in that box?

A. I have shown there main track extension, which would be a track in the bend to the east of the mainline connection over the river. The through track extension is a sort of tail track, and then there is yard track one, two, three and four. I have shown the total car capacity as proposed, two hundred and eighteen cars. The Southern Rail-
page 961] way figures an existing capacity of sixty-five cars, which would be an additional capacity of one hundred and fifty-three cars.

Q. Now referring to the box in the center entitled "Total Proposed Additional Capacity of Terminal," please tell us what those various items indicate.

A. That indicates in the Belle Isle yard there are sixty-seven car-lengths added; in the South Richmond yard there are one hundred and fifty-three car-lengths added; the thoroughfare track or running track, ten cars; the switching lead, seventy-five cars; total additional capacity, three hundred and five cars.

Q. Now on Exhibit NN as well as Exhibit OO, you are following the same key as to black and red lines, are you?

A. Yes.

Q. The red lines mean what you propose to do?

A. Yes.

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A. (Continuing) I would like to change that. They are not identical. On the diagram there is no indication of any tracks to be moved or shifted or
page 962] abandoned. That is on the line diagram.

Q. (By Mr. Eichner) Are the red lines the same on both — what they are supposed to indicate?

A. Yes.

Q. What is the track in both the Belle Isle yard and the South Richmond yard which you have labeled on Defendant's Exhibit NN and also on Defendant's Exhibit OO as a "thorofare track?"

A. What did you ask about it?

Q. What is that track?

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A. That's the through running track that is not supposed to be blocked by switching or other movements, and should be open at all times for through use.

Q. Under this proposed plan, how would the classification of trains be handled?

A. There is a switching lead provided at the west or south end of the yard.

Q. Which yard?

A. Belle Isle yard, which is long enough to handle the longest train that comes in, or more.

Q. (By Mr. Gay) You mean the west side?

A. Yes, sir, the west side.

Q. (By Mr. Eichner) Is that the present page 963] switching lead?

A. The present switching lead which is proposed to be extended and it would be approximately the same track. You could switch two short trains at one time, or one long train. Tracks Nos. 1, 2 and 3 take care of fifty-five, fifty-four and forty-seven car-lengths and at any time these tracks could be extended further to the west, if it was desired, and if future business would justify it.

Q. On Exhibit OO, Mr. Lancaster, to the left, you have the notation below the right-of-way "Present main track to become side track" and you have the notation "3500 ft. track extension to become main track." Will you explain those proposals?

A. Well, actually it takes three tracks to do the business I have planned, and the fact that one of them is now the switching lead and one is now the main track would not have any effect. You could build one track on the river side and then you could use them any way you desired.

Q. How about the testimony to the effect that the line to West Point which goes across the river on the bridge near the South Richmond yard runs through the center of these yards? What are your comments on the problems presented by that?

A. It is unfortunate it does, but I see no page 964] reason they can't pull the trains coming from and going to West Point and back them in on the tail through track or tail main track. The tracks will be long enough to hold any trains that go to and from West Point.

Q. Which track is that?

A. The track I have labeled here "Tail Thorofare Track" and "Tail Main Track."

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Q. Is that on the South Richmond yard — Exhibit OO?

A. Yes.

Q. Your proposal as explained in these two exhibits, Mr. Lancaster, anticipates considerable use of the South Richmond yard property. Do you feel that the removal of tracks in that area has contributed to any extent to lessening the storage capacity of the Richmond terminal of the Southern Railway?

A. As I understand Mr. MacLeod's testimony, he says the principal inadequacy that exists in the yard now is the lack of storage tracks and classification tracks. If that is a fact, I propose to add considerable trackage to that, which would eliminate that objection.

Q. Would you say that the removal that has taken place in the South Richmond yard of tracks has contributed substantially —

page 965] Mr. Gay: Don't lead the witness.

The Court: One moment. About the last question, Mr. Lancaster, does your proposal envision the reacquisition of some of the property sold to Reynolds Metals Company?

A. Yes, sir.

Q. (By Mr. Eichner) As to reacquisition of that property, is that necessary to improve the South Richmond yard?

A. It is necessary to improve the alignment. It is not necessary to provide the facilities.

Q. In view of what you have just said, what has been the effect on the storage capacity of the Richmond terminal of the Southern Railway of the removal of the tracks on the old South Richmond yard?

A. Well, it has decreased the storage capacity.

Q. In your opinion, based on your experience and your examination of the plaintiff's exhibits you have referred to, Mr. Lancaster, is the proposal which you have outlined in Defendant's Exhibit NN and OO adequate to serve the needs of Southern Railway Company in Richmond?

A. Yes.

Q. In your opinion, is the proposal which you have outlined adequate to handle a substantial increase
page 966] in traffic volume?

A. Yes.

Q. In addition to what you have outlined in Exhibits OO and NN, have you any additional recommendation for future improvements if there should be a great increase in volume

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of traffic?

A. Yes, a double track and third track from the A. C. L. tunnel.

Q. Do you think you could put three tracks through there?

A. You could put as many tracks as it would justify.

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Q. Assuming your yard rebuilt in the fashion which you have just outlined in Exhibits NN and OO and in your testimony, would the addition of still more tracks on the present eighty-foot right-of-way to the west offer any additional improvement?

A. If the traffic would justify it, if it increased enough, it could probably be a receiving or forwarding track along the eighty-foot right-of-way to the end of the proposed yard.

Q. You may take your seat if you wish. Referring you again to the prepared testimony of Mr. MacLeod, page 19, the last paragraph, you will note Mr. MacLeod said, "The immediate needs of the company would require construction at the present time of two or three tracks," and he refers to track six thousand feet in length from the west end of the Belle Isle yard to the extreme west end of the Riverside Drive property — what you have described up there as the James River property, and the other two tracks, minimum length of thirty-five hundred feet running the full length of the James River property. What is your comment on what those proposed additions would do to solve Southern's problems?

A. As I see the Southern's problem, it is receiving and forwarding track, and I believe as the yard has
page 968] been proposed here it will provide those receiving and forwarding tracks, with the extension of the passing siding and the extension of the switching lead which I have provided. I think that would be adequate to serve the needs unless the traffic were markedly increased.

Q. Your proposals include substantially that same thing, do they not?

A. One track, yes.

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Q. One track?

A. Yes.

Q. Assuming that the addition were made of the three tracks as mentioned on pages 19 and 20 of the prepared testimony, two with a minimum length of thirty-five hundred feet, and one the length of six thousand feet, could these be incorporated within the present eighty-foot right-of-way?

A. The present right-of-way will accommodate five tracks. He proposes to put three. There are two there now.

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page 969] Q. (By Mr. Eichner) Mr. Lancaster, have you read the September 11 deposition of Mr. Brosnan, President of the Southern Railway?

A. Yes.

Q. You are familiar with what he said in there concerning the eleven tracks on the James River property or the River-side Drive property ?

A. Yes.

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Q. (By Mr. Eichner) In your opinion, based on experience and examination of the exhibits and examination of the property, is it necessary for Southern Railway Company, to provide efficient economic service, to add eleven tracks on the sixteen acre James River property?

A. No, not with the traffic at the present time — or with some increase in the traffic they would probably not need to.

Q. In your opinion, based on what you know about this Southern Railway situation here, from the exhibits, do you think their present facilities are sufficient to provide adequate service in view of their traffic volume you have studied?

A. I think considerable expense could be saved and a more efficient operation provided over and above what they have now.

Q. You think the proposal which you have outlined would increase the efficiency and economy of the operation in Richmond?

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A. Yes, I think so.

page 971] Q. Do you think the proposal you have outlined would provide a more economical and efficient operation, even anticipating a substantial increase in traffic?

A. Yes.

Q. In your opinion, is the addition of any tracks to the north of the present eighty-foot right-of-way and onto the sixteen acre James River property necessary in order to enable Southern Railway Company to provide efficient economic service — any number of tracks?

A. I propose to add one on the right-of-way.

Q. But my question was —

A. Oh, no, I don't think so.

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Note: Brief recess.

Mr. Eichner: Your Honor please, Mr. Lancaster has done some further computations here and I would like him to add a couple of items to Defendant's Exhibit MM.

The Court: Very well.

Q. (By Mr. Eichner) Mr. Lancaster, in Defendant's Exhibit MM, the figures at the top of Trains 56, 22, 21 and 57, would you add in parenthesis on that exhibit the average number of cars shown by computation from the page 975] actual number of trains shown to have operated under each of those?

A. You want me to put that down on here?

Q. Yes, sir.

A. All right.

Note: The witness made additional notations on Defendant's Exhibit MM.

Q. (By Mr. Eichner) Now the figures in parentheses which you have added on Defendant's Exhibit MM show the actual average daily number of cars on each train indicated. Is that correct?

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A. Yes.

Q. Now, Mr. Lancaster, referring back to Defendant's Exhibit OO on the board, I call your attention to the red line you have drawn for proposed track additions to the west of the Lee Bridge. Would you review again what use you propose to be made of those tracks?

A. There will be one track in addition to the present tracks, which would be used as a switching lead.

Q. Is that labeled "switching lead" on there?

A. Yes.

Q. Otherwise, would it retain the existing tracks?

A. Yes, the existing tracks would remain. I page 976] might answer this way — there are two tracks there now — one sidetrack and one mainline. There is proposed to have three tracks there which will be one mainline, one sidetrack and one switching lead, not necessarily in that order.

Q. What would be the operation carried out on these three tracks?

A. The switching lead would be used to the west of the classification yard, in order to pull a train in there and switch these cars back to the classification track according to the number of kinds of classification.

Q. Would the full train come in on this switching lead?

A. Yes, I presume it would.

Q. How far into the Belle Isle yard property would the train go before stopping and being broken up?

Mr. Gay: I submit that depends on the length of the train.

Q. (By Mr. Eichner, continuing) Assuming a one hundred-car train.

A. Assuming a one hundred-car train, the end car would be pushed down into one track and, of course, the whole train would have to go in to cut one or twenty cars off, pull the train back to the switch, and so on.

page 977] Q. The mainline track, what would that be used for?

A. The mainline track presumably is not used for classification, but there is a lot of spare time between trains and it could be used to classify a second train, or the sidetrack.

Q. What would the sidetrack be used for?

A. I have extended the sidetrack through the entire yard and called it a through track or thoroughfare track or

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running track — any name you want to call it.

Q. Assuming on the present right-of-way one through track and one sidetrack, if there was stoppage and storage of trains and a certain amount of switching and uncoupling there, would there be any substantial effect under your proposal in the use of the tracks on the right-of-way west of the Lee Bridge?

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A. The usage would be practically identical with what they use now, except that the work would extend a little further to the west.

page 978] Q. About how much further?

A. I propose to extend the switching lead thirty-five hundred feet to hold seventy cars, more or less.

Q. That would be thirty-five hundred feet west of the present end of the triple track?

A. Present end of the classification yard.

Q. (By the court) Where would that be in relation to the western end of the railroad property we are concerned with here?

A. The switching lead stops approximately here (indicating on drawing), approximately at the beginning of the James River property or the east end of the James River property. I propose to extend the switching lead to the west end or nearly to the west end.

Q. (By Mr. Eichner) During your years with the C. & O. Railway, were you familiar with the length of trains the C. & O. ran in and out and through Richmond?

A. Ten years ago, yes.

Q. Ten years ago? How long were the trains the C. & O. was running?

A. They were running hundred-car trains with steam engines.

Q. Do you know how long are the trains they run this past year?

page 979] A. I understand they run more than that, but I can't say for sure.

Q. When you were working for the C. & O., did you have any occasion to lengthen sidings?

A. Yes.

Q. State when you were doing this work and how long the sidings were approximately?

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A. The sidings were a mile and a half or two miles, more or less. We figured forty-five feet to a car, and one hundred and fifty or two hundred feet to the engine, and forty feet to the caboose and three hundred feet for couplings, and maybe had a crossing on top of that.

Q. How long would the siding be?

A. Mile and a half.

Q. How many cars would that accommodate?

A. Maybe one hundred and sixty cars.

Q. For what period were you lengthening the sidings to that extent?

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Q. (By Mr. Eichner) Now, Mr. Lancaster, in your opinion if the Southern Railway Company were to construct an eleven-track flat switching yard on the sixteen acre James River property in controversy, either with or without additional tracks on the present right-of-way, in view of the present traffic and a reasonable increase in traffic, if that were assumed, would it be necessary for the Southern Railway to retain the present Belle Isle yard as a classification yard?

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A. In all probability, a very efficient classification yard could be built on the James River property and with that in view you might be able to abandon some of the
page 981] Belle Isle yard.

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CROSS EXAMINATION

By Mr. Spain:

Q. Mr. Lancaster, will you tell us approximately how far east of the western terminus of the James River property of sixteen acres your proposed lead would stop?

A. Roughly a thousand feet east of the western end (in-

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dicating on drawing).

Q. Now going to Exhibit 22 which I believe we can see here on the board, you say you are familiar with the Brosnan testimony of the proposal of an eleven-track flat page 982] yard there?

A. Yes.

Q. Aside from that, what in your opinion would be the most tracks that could be gotten in that property?

A. I haven't measured that out there.

Q. Will you do so?

A. (Measuring with scale) It is around two hundred feet.

Q. May I tell you that the testimony is at its widest point it is two hundred and fifty feet wide?

A. Did you ask me how many tracks could be put on two hundred and fifty feet?

Q. Yes.

A. Eighteen tracks — seventeen or eighteen tracks.

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page 983] . CROSS EXAMINATION

By Mr. Gay:

Q. Does your last answer contemplate eighteen tracks all of which would be in the clear?

A. I don't quite understand that.

Q. You would put eighteen tracks on a two hundred and fifty foot wide piece of ground — of what length?

A. I will have to measure that. There is room enough for eighteen tracks crossways.

Q. You mean lengthwise?

A. No, sir, athwartship.

Q. Athwartship on how long a piece of property?

A. You want me to measure that for you?

Q. Yes, sir, because I think without that the answer is meaningless.

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Q. I asked you were you treating this area you say you could put eighteen tracks of two hundred feet in width, as the width of the yard without regard to the length of the

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area and without regard to the clearance of the tracks?

A. You can put eighteen tracks across there of at least one foot, but I will have to measure to tell you how long they would be.

page 992 } Q. Please do so.

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A. (measuring with scale on diagram) About twenty-four hundred feet.

Q. (By Mr. Gay) Does that give proper allowance for clearance of cars at the end of each track in the yard?

A. I was just going on rough length. It may vary three or four hundred feet one way or the other. I have to lay it out and measure it that way.

Q. You stated that the factors which you considered as proper considerations in designing a yard, as I understood your answer, were the number of trains it would have to accommodate, the number of classifications of cars to be made, and the number of cars to be transferred to connecting lines. Were those all the factors you had in mind?

A. No — the number of cars on each train.

Q. Now in light of your broad experience, isn't it a fact that any classification yard has got to have receiving facilities at one end and delivering facilities at the other?

page 993 } A. Not necessarily. They could be alongside — adjacent.

Q. You mean, they could be on either side of the classification tracks?

A. Yes, sir.

Q. As distinguished from at either end of the classification tracks?

A. Yes, sir. It depends on the topography of the country you are working in.

Q. That prompts me to ask you is it good railroad construction to have a flat yard or so-called flat shifting yard constructed at a grade?

A. I don't quite understand that.

Q. On a grade?

A. On a grade? The grade should be designed so that when the cars are pushed in they will roll to the end and stop.

Q. That would be a stub-end yard, would it not?

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A. No — the cars are moved on skates and you just move the skates and go about your business.

Q. You have designed a yard you kick cars into and they roll to the other end by gravity?

A. Unless you had car riders.

Q. You mean, named cars?

page 994] A. Yes.

Q. You couldn't classify them from the other end when you roll them out, could you?

A. You can classify on the other end if you had enough tracks or switching lengths you can get to. You can classify from both ends with the proper number of tracks.

Q. And adequate lead facilities?

A. And lead facilities.

Q. Your redesign of the South Richmond yard, as I understood you, was to reflect the switching capacity of that area, was it not?

A. Yes.

Q. And you didn't visualize its use on any such plan as you propose as a classification yard?

A. No, sir.

Q. And to use it in the manner you propose would contemplate reacquisition by the company of the property sold to Reynolds Metals?

A. If it is straight like that, the same capacity could be provided by missing the Reynolds property, but the yard would include the undesirable curvature you have there at the present time.

Q. That is an undesirable feature, even for a storage yard?

page 995] A. Of course.

Q. And you would not construct it on that basis if it were left to your judgment?

A. Curves in the yard or curves anywhere are not too good.

Q. They are dangerous to operation, are they not?

A. Yes, sir, they are dangerous.

Q. And you, as an expert in such matters, would not feel justified in designing a yard with that feature, would you?

A. No. But the feature exists at present.

Q. I don't understand to what you refer.

A. The curvature.

Q. The curvature exists today?

A. Yes, sir.

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Q. If you use this South Richmond yard as you have redesigned it, and you wanted to move out cars standing on it for storage purposes, if you took them out of the east end, you would have to operate over Hull Street, would you not?

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page 996]

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A. Yes.

Q. And the larger number of cars or more frequent movements you had to make would be a corresponding interruption of vehicular traffic on Hull Street, would it not?

A. Yes.

Q. I notice you have introduced two additional tracks to the west of the South Richmond yard which you contemplate could be constructed by an increase in the size of the tunnel or other open area that the company now uses under the Ninth Street Bridge. Is that correct?

A. Yes.

Q. East or west?

A. You will have to ask the question again.

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A. I haven't answered that, no. There are two tracks under the Ninth Street Bridge at present, and I propose to put four tracks under there.

page 997] Q. Do you think that could be constructed without the acquisition of any additional area for clearance?

A. I am not quite sure. It might be a little tight clearance in the rock. You might have to take up some of that in there where that takes a little more property. I couldn't answer that.

Q. How much time did you spend in this area, Mr. Lancaster?

A. Half a day.

Q. When I say "this area" I am directing your attention to the South Richmond yard.

A. Yes — one half a day. I was there about twelve-thirty

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and stayed until about five o'clock.

Q. Was that the time you walked from the extreme end of the property to Hull Street?

A. Yes, sir. I have only been there twice. I was there once before for half an hour.

Q. Is it your opinion that the passage of the mainline track from Richmond to West Point, which the plat shows springs out at about the center of the South Richmond yard, as you redesigned it, would not be an undesirable feature of it?

A. It would be more desirable if it were not in the center.

page 998] Q. If you had the problem of designing a storage yard for Southern Railway, would you pick a spot where it was intersected near the middle of the mainline track operation?

A. You couldn't pick your spot there. You have the bridge over the James River and you can't change that very well without considerable expense. You have Hull Street and you are stuck with that unless you had an overpass for that. If this is where you are going to build your yard, I think generally this is the best that can be done. Maybe somebody else could make it better — I don't know.

Q. Exhibit OO which you filed is your conception of what might be done with these facilities?

A. Economically.

Q. But you do regard the presence of the mainline track running through the middle of this storage facility an undesirable feature from the standpoint of the safe and efficient operation of the yard, do you not?

A. I wouldn't say it runs through. It runs through the side and adjoins at the middle.

Q. Look at your Exhibit OO and tell me, in the light of the legend which you show, the straight black line shows existing tracks, where you project the existing track in the area west of the yard through the yard and into page 999] the main track operation to West Point?

A. This is the black line here — for the present track (indicating on drawing) —

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Q. (By Mr. Gay) Point out to the court on the board there, please, where the mainline track presently enters the

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yard from the west, where it is presently constructed, and what your plan contemplates doing with it.

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A. It enters Belle Isle yard from the west, near Lee Bridge.

Q. I am asking you solely about the South Richmond yard.

A. It enters South Richmond yard about the center of the Reynolds Metals property.

Q. You mean, the mainline comes in from the east at that point?

A. You asked me from the west?

page 1000 } Q. I asked you from the reverse direction — from the west. Look at your map where it comes under the Ninth Street Bridge and see if I understand correctly — here is the existing track, shown in black lines (indicating on drawing)?

A. Yes, sir.

Q. Now this is obviously one of the mainline tracks, is it not?

A. That is correct.

Q. Where do you carry that facility through this yard and into the curvature that goes over the bridge to the James River?

A. On the north side.

Q. You cross over the other tracks?

A. No, sir, you don't cross over. You start at the A. C. L. tunnel.

Q. You are going to switch the mainline northerly?

A. Yes, sir. The mainline will be the north track.

Q. I see. And then you have three switching leads off of it, haven't you, at that point?

A. Three tracks off of that, yes, sir.

Q. Do you regard that as a very desirable condition from an operating standpoint?

page 1001 } A. Very desirable — very desirable. I will have to explain one thing. This map is made on a one inch equals two hundred feet scale, which is a very small scale to adequately and properly make a detailed design of yards.

Q. Did you make any computation to determine the degree of curvature in the two curves or the extended reverse cur-

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vature that your plan contemplates?

A. No, I have no reverse curve.

Q. Aren't those two curves which your plan visualizes reverse to each other?

A. That's not the definition of a reverse curve.

Q. I will ask you to please just answer my question. The reporter will read it to you.

Note: The last question was read by the reporter.

A. Yes.

Q. Do you regard that as a desirable and safe type of railroad construction?

A. It would be better if it wasn't there, but it is perfectly safe to operate it as I have shown.

Q. With the attendant risk of operation you have mentioned?

A. All operations have risk.

page 1002] Q. And a yard operated on a reverse curve would have peculiar risk, would it not?

A. I think that would have some risk, yes.

Q. Did you make any computations in laying out this so-called South Richmond switching yard of the degree of curvature it reflects in these two curves?

A. No, I didn't measure that, but it is about a eight to twelve degree curve. I am guessing. The turnouts are probably twelve degree curves — no more than that.

Q. Do you know whether there is any present grade in that yard?

A. No, sir, I don't know what the grade is.

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Q. (By Mr. Gay) I am speaking, of course, of the South Richmond yard.

A. I don't know what the grade on any of your tracks is. It is not too much — at least it didn't look like much.

Q. Moving westwardly on this Exhibit OO, I believe you stated there was a one hundred and thirty foot
page 1003] clearance at the west throat of the Belle Isle yard under the present Lee Bridge.

A. I didn't say that exactly. I said it was one hundred and thirty feet of normal to the tracks. It is one hundred and eighty-five feet from abutments along that bridge. Normal to the tracks would be about one hundred and thirty feet.

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Q. When you say "normal to the tracks" you mean that much free area on which tracks could be constructed, do you?

A. Yes, sir.

Q. From that point west on your Exhibit OO, I notice you projected, as shown in red lines, two tracks that run — for the present line of my examination — to what is shown on the plat as "present switching lead." Is that correct?

A. Yes, sir.

Q. Is the track nearest the river the mainline track as extended from the South Richmond yard and under the Coast Line abutment through this yard?

A. That is proposed to be the mainline.

Q. That is what you propose as a mainline track?

A. Yes, sir.

Q. That track that we are now talking about page 1004] — it is the one nearest the river shown in red as projected all the way along your exhibit up to that point, which would scale about four or five hundred feet from the west end of the subject property —

A. About nine hundred feet.

Q. Nine hundred feet, you say?

A. Yes, sir.

Q. That would be the mainline operation?

A. Yes, that was proposed to be the mainline.

Q. Under your proposed plan?

A. Yes, sir.

Q. Which of the two tracks shown with a black line for the distance from the point marked "present switching lead" is the present mainline track?

A. The one to the north.

Q. The one nearest the river?

A. Yes.

Q. And as I read your map you said the present main track is to become a side track?

A. Yes, sir.

Q. And the present sidetrack, which is southerly of those tracks, is to become a switching lead?

A. Yes, sir.

Q. And that extends, does it not, practically

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page 1005] to the end of the property in the west?

A. It extends further than that.

Q. You are looking at the east. I am talking about the west.

A. It extends to about nine hundred feet east of the end of the property.

Q. You gave me that distance in respect to what you proposed as the main track extending nearest the river.

A. That's the same distance.

Q. Well, doesn't the southernmost of these three tracks which you indicate on here as "present side track to become switching lead" — doesn't that extend up to within less than two hundred feet from the end of the property?

A. Yes, sir.

Q. So, under your plan, if it is feasible from an operating standpoint, you contemplate the use of that track for switching purposes to move cars into the Belle Isle yard?

A. Yes, sir.

Q. Does that theory of design conform with what is generally accepted as a properly designed yard, namely, a receiving track, classification tracks and a delivery track facility?

A. Somewhat. You will have three tracks in the right-of-way at this point. You could use them interchangeably as receiving or forwarding tracks, due to the fact you have considerable time between scheduled trains. It is no reason that either one of these lines couldn't be used interchangeably — mainline, sidetrack and switching lead.

Q. And all three of them extend — one of them, which is designated in red as a thirty-five hundred foot track extension which is to become the mainline, would go alongside the property in question within nine hundred feet of its western end. Is that correct?

A. Yes, sir.

Q. And the present main track, which you say would become a sidetrack, that goes throughout the whole length of the property?

A. Up to within a hundred feet or so.

Q. I am talking about the middle track — the present main track that runs the whole length of the property.

A. Within two hundred feet of the western end.

Q. There is one track there now that goes the whole length of the property.

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A. That would be the main track.

Q. That would be the main track?

A. Yes, sir.

Q. And that, you say, would be a facility usable for making up trains?

page 1007] A. No, sir, I said for receiving and forwarding trains.

Q. Which is an essential incident of a yard operation, is it not?

A. Yes, sir.

Q. Mr. Lancaster, I want to read to you from Article 5, Section 39-12, subparagraph 9 of the zoning ordinance of the City of Richmond, as amended, now in force.

The Court: What exhibit is that?

Mr. Eichner: Exhibit T.

Q. (By Mr. Gay, continuing) I quote:

“Right-of-way and easements for public transportation and public utilities, but not including railroad yards or yards for marshalling or classifying railroad cars, tracks for storage or parking of railroad cars or trains of cars.”

Would you tell the court whether, in your opinion, as an expert in such matters, what you have proposed would come within the language of the ordinance I have just read you?

A. Yes, it would.

page 1008] Mr. Gay: Your Honor, I move that all of this testimony be stricken out, in view of the last answer of the witness.

Mr. Eichner: The form of the question was designed to make him answer as to whether this came within the right-of-way. I submit it was confusing to the witness.

The Court: I will overrule the objection at this time. This was the December ordinance you were reading from? If, in fact, that ordinance might be held invalid, we still have the problem of the language in the earlier ordinance that permitted the use of rights-of-way — I forget the exact language — but I think the court has to come to a determination of the meaning of that language, depending on what counsel has to say in their briefs and the evidence, but I will overrule the objection at this time. If it develops that the plan

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that this witness has proposed is in fact an illegal operation under the language of the previous ordinances, then it is entirely possible your objection might be good, but I do not feel I can pass on that at this time. I will overrule you at this time.

page 1009] Mr. Gay: We respectfully take an exception to Your Honor's ruling.

Q. (By Mr. Gay) I believe you stated in answer to counsel's question in connection with your general consideration of the adequacy of the present facilities that five tracks might be constructed on the existing right-of-way. Is that correct?

A. I stipulated if it was level.

Q. Assuming that the eighty-foot right-of-way which extends westerly from Belle Isle yard past the subject property is on a comparatively level grade, is that your answer to my question?

A. Yes, it is physically possible to build five tracks you could operate trains on within the eighty-foot right-of-way.

Q. You say you walked this right-of-way both ways?

A. Yes, sir.

Q. And in the light of that observation you express the opinion that the eighty-foot right-of-way is adequate to construct five tracks?

A. Generally, yes. I didn't make a minute survey, but in general terms it could be put there. There may be some cuts or fills that have to be put on the south side, but on the north side it is already filled.

Q. To just what conditions in the South Richmond yard did you direct your thought when you said that rearrangement could be made of the company's facilities there without reacquiring the Reynolds Metals property?

A. What I meant by that was the same yard capacity could be provided as I now propose with reduction in curvature, by increasing the curvature and not reacquiring the land from Reynolds Metals. It would be more curvature than exists on my proposed plan but not any more than exists presently.

Q. To put it a little differently, it would be more of a reverse curve in the tracks, would it not?

A. Three curves there — two going one way and one going the other.

Q. That is worse than a reverse curve, is it not?

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A. We call a reverse curve one that goes one way and runs directly into another curve going the other way, with no appreciable space in between.

Q. How do you feel that the sale to the Reynolds Metals Company of this property materially affected the company's use of this land for yard storage facilities?

A. I feel that if the capacity of the yard has page 1011] to be increased, you could design a much better layout by taking a corner of the property that the Reynolds Metals Company now owns.

Q. In your opinion, is it desirable or undesirable to have your storage yard adjacent or immediately connected with your classification yard?

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A. I don't see that that's too important. Your storage yard should be in a location where the least amount of switching would be involved.

Q. To the extent that it is separated from connection with one end or the other of your classification yard, it loses its usefulness as a storage yard, does it not?

A. I don't think so. You don't switch any to the South Richmond yard as a classification yard at the present time, and in Mr. MacLeod's testimony he said the principal inadequacy of the South Richmond yard now is the fact that there are not enough storage tracks and not enough storage room. Taking this in view I have redesigned the yard so there will be adequate storage room in the South Richmond yard.

Q. The yard is in its present location and page 1012] nothing can change that.

A. That's right.

Q. In your opinion, as an experienced engineer, is it a desirable thing to develop your storage facilities at a point substantially away from your classification facilities?

A. No it isn't. If you have a big field and plenty of room to build it, you couldn't build it like this.

Q. I see. As I understood, you visualized the Southern's problem in South Richmond as involving receiving and forwarding tracks. I think that's what you said.

A. And classification.

Q. Well, the receiving and forwarding facilities are usable in connection with the classification yard, are they not?

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A. Yes, sir.

Q. Is it, in your opinion, a sound engineering approach to the best use of the Belle Isle yard to have the receiving facilities projected west of Lee Bridge as you have designed them?

A. Yes, with the amount of traffic you have at the present time.

Q. Yet, the forwarding and storage facilities that you visualize would be east of the Belle Isle yard on the present South Richmond, yard, would they not?

page 1013] A. They could be on the thoroughfare track or on yard track No. 1. It doesn't necessarily have to be the entire yard. With yard track No. 1 and yard track No. 2 it would be easy to switch.

Q. What is the purpose of showing six tracks if you don't think they would be necessary or desirable in connection with the company's needs?

Mr. Eichner: Where are the six tracks?

Mr. Gay: In the South Richmond yard — that's what I am talking about.

A. In connection with railroad operation, there are many more cars you have to handle that are not in through train operation — extra cars and camp cars and work equipment. I saw no other place to put these — and besides it might be desirable to have some excess storage capacity.

Q. Is this South Richmond yard as you redesigned it intended to take care of that type of car?

A. As I have redesigned the South Richmond yard it gives storage over and above what you have need for at the present time.

Q. Insofar as you would use this as a storage yard for cars moving in and out of Richmond, in the ordinary sense of the word, to carry freight, you would have page 1014] to carry them from the classification yard eastwardly into it, and then when you would want to take them back out, you would have to go back to the South Richmond yard and bring them back into the classification yard, would you not?

A. That's exactly right, yes.

Q. Do you regard that as either an economical or sound engineering practice?

A. It is the best you can do.

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Q. To the extent that the company would want to use these facilities to the west of Lee Bridge for storage, that difficulty could be obviated, could it not?

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page 1015]

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A. You refer to "these facilities" and that confuses me.

Q. (By Mr. Gay) Change it to "its facilities."

A. I don't know how you could help that. I don't know how you could rearrange it.

Q. We will let it go. I do not consider that an answer to my question, but we will pass on. You have stated, in your opinion it was not necessary for the company to utilize this sixteen acres for the construction of additional facilities. Would you think there might be an honest difference of opinion on the part of management and yourself in that respect?

A. Of course.

Q. Have you any reason to question the honesty and judgment of the Southern Railway in attempting to develop this property?

A. None at all.

page 1016] Q. Is it fair to assume in your opinion in deciding upon this plan they did so in the light of what they regarded as the best interests of the company?

A. I think they did.

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page 1018]

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By Mr. Gay:

Q. Let's come back a minute, now, please, Mr. Lancaster, to your graphs or statistical comparisons, Exhibit MM. You have shown on this exhibit the Southern Railway's Belle Isle yard averages three hundred and seventy-five cars per day. I take it you referred to the sentence in Mr. MacLeod's testimony, "The average number of cars —."

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Mr. Eichner: What page?

Q. (By Mr. Gay, continuing) This is on page 9. "The average number of cars handled daily at Belle Isle is 375 cars." And your computations you arrived at an average figure of two hundred and thirty-nine cars per day. Is that correct?

A. Yes.

Q. Now in computing your average, did you consider anything but the cars arriving in Richmond and those leaving Richmond?

A. Yes, sir.

Q. What else did you consider?

page 1019] A. The interchange and the through trains.

Q. Just the through trains?

A. No. I considered those arriving and leaving on these trains, as shown in the exhibit.

Q. Arrivals, departures and interchanges?

A. Yes.

Q. Of the trains numbered as shown on your exhibit?

A. Yes.

Q. Did you consider any cars handled in shifting operations in and out of Belle Isle yard?

A. No, sir.

Q. Did you have access to information that might have enabled you to include that number of cars in determining your average?

A. I had access to these three exhibits — No. 23 and 16 and, I believe, No. 24. That was the only access I had. I don't know how many cars were handled more than once.

Q. To the extent that cars were handled more than once in shifting operations in and out of Belle Isle yard or into the so-called South Richmond yard, the averages are not comparable, are they?

A. My averages are these — the averages of the trains arriving — all cars arriving and leaving Rich-
page 1020] mond. Any additional switchings of those trains were not included in the averages.

Q. So that the difference between two hundred and thirty-nine and three hundred and seventy-five could conceivably be made up by the type of operation you did not include?

A. Probably so. I mean, I know somewhere he might have included cars handled more than once.

Q. Do you know how many shifting engines are used in the

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company's operations in the city?

A. I don't know for a fact. No, I don't know that for a fact.

Q. Would you explain a little more clearly to me the two little tabulations appearing on the lefthand side about the middle of Exhibit MM? The *abbreviations* on my copy are not intelligible and I want to know what that purports to show.

A. That shows the number of trains in each year that were eighty-cars or more.

Q. In other words, on Train No. 59 there were forty-two?

A. No, sir, in the year 1959 —

Q. There were forty-two such trains?

A. Yes, sir.

page 1021] Q. And so on down the tabulation through 1962?

A. Yes, sir.

Q. For the first half of 1962, I take it?

A. The last half of 1959, full 1960, full 1961, first half of 1962.

Q. And the next set of figures contains comparable data in respect to one hundred-car trains?

A. Yes, sir.

Q. Are you sufficiently familiar with inbound or outbound traffic into Richmond to be able to testify to the extent to which cars have to be classified and the number of classification tracks that might be necessary to meet the traffic demands in and out of Richmond?

A. I know generally how many classifications you have, as stated in Mr. MacLeod's testimony. I knew the interchange tracks were there and I knew how many there were and from that I generally assumed the tracks were more than sufficient, particularly with some short tracks which are desirable for a classification yard as well as long tracks.

Q. To take an illustration, one of these eighty-car trains that came into Richmond in 1959 — where under your design of the classification yard layout on your Exhibit OO would you handle those cars?

A. You want me to describe it from the time
page 1022] the train pulls in?

Q. Yes, sir, I do.

A. The train would probably pull in on any one of the three tracks to the west of the yard. It could pull in on the mainline, it could pull in on the switching lead, or it could

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pull in on the sidetrack. If that train had eighty cars — very few of them had eighty cars but we will assume it had eighty cars in it —

Q. That's what I asked you to assume.

A. There would probably be classification for the interchange tracks, maybe three or four classifications for the three or four yards north of the river — I don't recall the names of the yards now but at least three or four for those — you would probably have a classification for the old freight house. It would depend on the length of those cuts which tracks you would pull into. If you had short cuts you would use the short tracks; if you had long cuts you would use the long tracks. From that general information I determined the number and length of the classification tracks in the Belle Isle yard were ample.

Q. Take the reverse operation — where would you assemble your train of cars originating from connections from the Fourteenth Street freight yard, the Twenty-Eighth Street freight yard, and what is generally
page 1023] spoken of as the "ship yard?"

A. Depending on the time between arriving and departing trains, it would depend on where you would put them. You could take them up into the South Richmond yard or you could pull them out on the receiving tracks. As I said before, the three main tracks west of Belle Isle yard could be used interchangeably for receiving and forwarding, depending on the time of day and the interval between trains. There are several places you could put them.

Q. The time element permitting, your plan contemplates or at least permits the use of the three tracks west of Belle Isle as a forwarding yard as well as a receiving yard?

A. Yes, sir.

Q. What would you do with the trains coming in from West Point? Where would you receive them and classify them with respect to where they were going?

A. The trains from West Point could be pulled in on the mainline over the river on the bridge and, as I recall, they are about sixty-car lengths and they could be pulled in on the mainline and backed into the extension to the thoroughfare track or the extension to the mainline and there await such time as to switch the trains or classify the trains. The
train would have to be pulled back "plumb"

page 1024] through the thoroughfare track to the west end.

Q. You would carry it through the Belle Isle

G. Graham Lancaster

yard, and then pull it all the way back?

A. Yes. Switching from the east end in the Belle Isle yard would be permissible only at certain times due to the fact that is a single track through the A. C. L. tunnel. Trains could be switched on the east end of this yard at times, but other times they could not be, due to the fact they would block the main track.

Q. Was it your purpose in referring to these one hundred and sixty-car trains which you said were operated by the C. & O. —

A. I was asked the question, sir.

Q. What was the question you were asked, if you recall it?

A. I don't recall. I was asked the length of trains that were handled by steam engines on the C. & O. during my days with the railroad, as I recall it. I am not so sure that's right.

Q. Isn't it a fact trains of one hundred and sixty cars could be handled on the C. & O. Railroad because of the grade factor that is favorable towards eastbound movement?

A. Yes, that's a fact but they do handle long trains over the other side of the mountains. The length of train any engine can haul depends on the tractive effort of the engine and the grade.

Q. You can handle a lot more cars on a zero grade than on a three percent grade?

A. Generally it is how many cars you get started.

Q. As a practical matter, though, and speaking generally in its relation to the length of trains presently operated on railroads, is it not a fact that dieselization of locomotive power has greatly increased the capacity of railroads to haul long trains?

A. It has increased the capacity and cut down the expense. I think the expense is just about as much a part of that as anything else.

Q. It has proved capable, hasn't it?

A. It has proved capable. You can keep adding units to diesels. If you add another unit to steam, you have to have another crew. Of course, with steam you could add as much as you do to diesels, but it wouldn't be economical.

Q. As an experienced engineer you would not advise that kind of operation, would you?

A. No, sir.

Richard A. Chandler

Q. I understood you to refer to your Exhibit NN as being a diagram distorted to scale. How do the page 1926] lengths of the fifteen tracks that you have embodied in your sketch of the Belle Isle yard compare with the length of the existing tracks in the yard?

A. They are longer — generally the ones shown in red are longer.

Q. Are the others the same?

A. The ones in black are the same. I have shown the extensions to the yards by red pencil. Where there is no red, the tracks remain the same as the present system.

Q. Have you made any computations of the lineal trackage that would have to be added to these combined facilities if your plan, Exhibit OO, were put into effect?

A. No — except we could take the lengths as shown in the chart and to that distance from the point of switching clearance would have to be added in each case. It could be done, but I didn't do that.

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page 1027] RICHARD A. CHANDLER,
a witness called by and on behalf of the City,
after being duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. Eichner:

Q. State your name, residence and occupation.

A. Richard A. Chandler, 5005 West Franklin Street; Assessor of Real Estate for the City of Richmond.

Q. How long have you been Assessor of Real Estate for the City of Richmond?

A. I have been Assessor since 1956.

Q. State briefly your education and work experience.

A. I am a graduate of the University of Richmond with a degree in Economics and have done several years of graduate work in Real Estate and Finance. I started work with the Prudential Insurance Company in the Mortgage Loan and Real Estate Investment Department, until 1950 when I came with the city as a Real Estate Appraiser, and advanced from

Richard A. Chandler

Real Estate Appraiser to Deputy Assessor and
page 1028] then to Assessor. There was a two-year interval
in which I was recalled, due to the Korean War,
and spent those two years at sea.

Q. To cut this short a bit, I hand you a two-page type-written document and ask you if that is a summary of your qualifications you have prepared at my request?

A. Yes, sir.

Mr. Eichner: I offer that as the next city exhibit.

Note: Marked Defendant's Exhibit No. PP and filed.

The exhibit reads as follows:

"QUALIFICATIONS
OF
RICHARD A. CHANDLER

"Experience:

"Twelve years experience in real estate including appraising, mortgage loans, supervisor appraiser, teaching and assessment administration. Appraisals made include residential, apartments, commercial, office buildings and industrial properties.

page 1029] "1948-50 Mortgage Loans, Mortgage Loan
and Real Estate Investment Department, Prudential Insurance Company, Richmond, Virginia

"1950-56 Appraiser and Deputy Assessor, Office of Assessor of Real Estate, Richmond, Virginia

"Since 1956 Assessor of Real Estate, Office of Assessor of Real Estate, Richmond, Virginia

"Since 1958 Instructor and Lecturer for Assessor's Schools at University of Virginia, University of Maryland, University of Minnesota, University of Georgia and International Conferences on Assessment Administration

"Since 1960 Instructor in Real Estate and Real Estate Appraisals, Richmond Professional Institute of College of William and Mary

"Author of several professional articles published by the

Richard A. Chandler

International Association of Assessing Officers page 1030] and the Appraisal Institute of Canada: 'Demonstration Appraisal of a Warehouse.' 1958; 'Use of Capitalized Income to Determine Assessed Values,' 1959; 'Market Value and Equity Every Year,' 1960

"Education:

"Graduate of University of Richmond, with B. A. "Post graduate courses at University of Richmond in Real Estate and Finance leading to M. S. (1 year).

"Completed Real Estate Appraisal Course I and Course II of the American Institute of Real Estate Appraisers at Harvard University and Syracuse University respectively.

"Clientele:

"City of Richmond, Virginia

"Morton G. Thalhimier, Inc., Richmond, Virginia

"International Association of Assessing Offices, Chicago, Illinois

"Virginia Association of Assessing Officers, Richmond, Virginia.

"Various individuals.

page 1031] *"Membership:*

"Senior member, International Society of Residential Appraisers; Chairman, Admission's Committee, Richmond Chapter

"Executive Board, International Association of Assessing Officers

"President, Virginia Association of Assessing Officers

"Affiliate member of the Real Estate Board of Richmond, Virginia."

Q. (By Mr. Eichner) Now, Mr. Chandler, are you familiar with the area between Twenty-Second and Forty-Second Street on Riverside Drive, and other areas shown on Interveners' Exhibits A-15 and A-16?

A. Yes, sir, I am.

Q. Do you have any idea why those particular properties were chosen for preparation and exhibit in this case?

A. I believe these were all the properties — not all of them, but the ones we could get shots of from the Riverside

Richard A. Chandler

Drive area. They were the ones we felt might be
page 1032] affected by the installation of a railroad yard
in this area.

Q. Do you have a map showing those properties which you
feel are within the area which might be affected?

A. Yes, sir, I do.

Q. In what manner have you indicated on that map the
properties studied?

A. On this map we have put the house number and our file
number of the block within which the properties are. The
house numbers are put in red ink.

Mr. Eichner: Your Honor please, we offer that as City
Exhibit QQ.

Note: Map consisting of two sheets, stapled together,
marked Defendant's Exhibit QQ and filed.

Q. (By Mr. Eichner) How did you happen to choose these
particular properties shown on Exhibit QQ?

A. They were in our estimate, a conservative estimate, of
the homes that would be affected by a switching yard or
marshaling yard in the area between Twenty-Sixth and Forty-
Second Streets.

Q. And back how far?

A. We didn't go back any further than one block south of
Riverside Drive in order to remain conservative.
page 1033] Q. Have you read the prepared testimony of
Mr. MacLeod, those portions concerning the im-
mediately proposed facilities?

A. Yes, sir.

Q. Have you read that portion of the deposition of Mr.
Brosnan relating to the proposal to establish an eleven-track
switching yard?

A. Yes, sir.

Q. Do you have any personal familiarity with the sound
or other effects of a railroad yard?

A. Well, as a child I grew up on Church Hill and the Fulton
Yard, as we called it, is about a mile or a mile and a half
from the area I grew up in — Chimborazo Park on Church
Hill — and the noises we are familiar with are simply the
clanging together of cars as they are switched and the bull-
horns or loud speaker system and, of course, the engine
signals.

Richard A. Chandler

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page 1034]

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Q. (By Mr. Eichner) Mr. Chandler, what in your opinion would be the effect on values of the properties indicated on Exhibit QQ of the addition of eleven tracks on page 1035] the railway property between its right-of-way and the James River, with which you are familiar, in the conduct of railroad switching operations and the movements of cars on those tracks without regard to limit as to time of day as to its operation?

A. There would be on those properties certainly a lessening in value. We happen to call it depreciation. It is a form of accrued depreciation which we call economic obsolescence.

Q. Are you familiar with these textbooks which were mentioned earlier in the trial — first, “The Appraisal of Real Estate” by the American Institute of Real Estate Appraisers?

A. Yes, sir.

Q. I refer you, Mr. Chandler, to page 204 of that book, and ask if you will read the portion entitled “Components of Depreciation?”

Mr. Gay: Aren’t we just offering cumulative evidence? Prior witnesses have read from the Encyclopedia and also this textbook.

Q. (By Mr. Eichner) Did you hear the portions read by the previous witness?

A. Either Mr. Bagby or Mr. Thalhimer.

Q. Do you agree with the statements contained page 1036] in the portions quoted by those witnesses?

A. Yes, sir, I do.

Q. How about the volume entitled “Encyclopedia of Real Estate Appraising” — are you familiar with that book?

A. Yes, sir.

Q. Did you hear the portions which were read the other day?

A. I heard Mr. Bagby.

Q. Can you agree with the conclusions of that text on pages 162, 163 and 164?

A. Yes, sir, I certainly do.

Richard A. Chandler

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Q. (By Mr. Eichner) What kind of obsolescence did you say this depreciation was called?

A. Economic obsolescence, which is a form of page 1037] accrued depreciation, which is normally caused by things extraneous to the property or outside the property itself. Economic obsolescence is created by inharmonious uses, people or property.

Q. Is the railroad use proposed, which I have described, in your opinion such an inharmonious use?

A. A railroad yard in this area would certainly be an inharmonious use to the neighborhood in general.

Q. Referring again to the testimony of Mr. MacLeod and the proposed immediate addition of two or three tracks and the conduct of railroad operations on these additional tracks without regard to time of day, in your opinion would that have any effect on the properties indicated on Exhibit QQ?

A. Yes, sir, the effect would be approximately the same. There would still be economic obsolescence present — the mere existence of a yard there — and there would be a lessening of value of the properties we have marked on the maps.

Q. Would it make any difference how many tracks were added to the railroad property?

A. Not to any measurable degree, so long as the switching operation was being conducted. It would be hard to draw a distinction between three and eleven tracks as page 1038] to how much the property has lessened in value.

Q. Would the extent to which use was made of these tracks make any difference as far as the degree of economic obsolescence you expect to occur?

A. If the tracks were put in and were not used at all, there is a possibility that economic obsolescence may not be so severe all at once, but the very existence of them there would create such a doubt in the public's mind as to lessen the properties' desirability. It would be my judgment that economic obsolescence would still be there, because the public would be hesitant to buy property in an area where there were tracks that were used, or had been used, or were planned to be used as a marshaling yard or switching yard operation.

Q. Do you think the demand for purchase of properties shown on Exhibit QQ would be increased or decreased by the addition of tracks on the property of the Southern Railway?

Richard A. Chandler

A. It would be lessened, of course, because desirability would be less. There would be less demand.

Q. What is the effect on market value, Mr. Chandler, of the lessening of demand?

A. Any time you have property which has lessening demand and less economic desirability, you ultimately end up with a loss in market value.

page 1039] Q. If some or all of the properties indicated on Exhibit QQ and Exhibits A-15 and A-16 were less attractive to a higher percentage of potential buyers, what would that indicate to you as an experienced real estate appraiser?

A. If these properties were less attractive to more people, there again that seems to me to be simply saying you have a lesser demand for these properties resulting from their being more undesirable and in that event it certainly is reflecting some form of depreciation which is a loss in value.

Q. Referring to the properties shown on Exhibits A-15 and A-16, Mr. Chandler, do you know when that property was last assessed?

A. Yes, sir. As a matter of fact we reassess all properties every year, so technically these properties were reassessed as of January 1, 1962. However, the appraisals are not changed every year. I think these properties changed assessments in two different years. I think some of these properties, it seems to me, changed January 1, 1961, which resulted from an appraisal sometime during 1960, and some of the other properties here, the assessments were changed on January 1, 1962, which resulted from reappraisals conducted during 1961.

Q. Now when you say technically they are re-
page 1040] assessed every year, all properties are reassessed every year, you don't mean all property is reappraised every year, do you?

A. Yes, sir, we review them every year. We can't change assessments every year, but we make assessments and conduct reviews and analyze information we can gather from the market to see if our assessments need changing.

Q. Generally speaking and referring again to the properties shown on Exhibits A-15 and A-16 which you have in front of you, in January 1961 and January 1962 were the appraised values of these properties increased or decreased?

A. In practically every case they were increased.

Q. What was the basis for this, or what was the reason for

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the increase?

A. Our studies revealed that the market value of the properties had increased. One of the indications was they were bringing much more on the market at that time than the assessments indicated, so in reappraising the properties we came up with higher assessed values than we had previously.

Q. You say the fair market value was higher than previously. What factor predominated in determining that fair market value was, in fact, higher?

A. The measure we use on residential property such as this is sales — sales of these properties as well
page 1041] as comparable property. They are checked in large part by the cost approach.

Q. What is that?

A. You estimate the reproduction cost, less accrued depreciation, and add the land value, and then you use sales to find out what similar property has been bringing.

Q. Did you employ any other approach in determining value for the reassessment of these properties?

A. Yes, sir, the rental approach. In the rental approach, you capitalize the rental value of the property. This is used to some extent on single-family properties, but it is not used to a great extent because most of the property of this kind is owner-occupied and we don't have a wealth of information on which to use this rental approach, but we do when we can.

Q. Would it be fair to state that in the majority of cases of property of this kind, you use what you have outlined as the cost and market value approach?

A. Yes, sir — more commonly called the market data approach.

Q. When was the last previous adjustment of assessment on those properties previous to 1961 and 1962?

A. To the best of my recollection, January 1, 1956 was the last time they were changed.

page 1042] Q. In your opinion what does this general increase in fair market value between 1956 and 1960-61 indicate as to the character of the neighborhood?

A. It indicates to us that the neighborhood — we classify neighborhoods as either growing, stable or declining. Normally, a neighborhood in the first stages of development is growing. After that the neighborhood stays for a long period of time in a stable condition wherein prices will continue to enhance, and it is only where you find values begin to decline you call it a declining neighborhood. This particular neigh-

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borhood, we call this a good stable neighborhood that is allowing prices to advance. It is not a growing neighborhood; it is pretty well built up; but it is an area where the homes are continuing to advance in value and price.

Q. So a stable neighborhood does not necessarily indicate static market value, I take it?

A. No, sir, it certainly does not.

Q. Did any owner of any of the properties shown on Exhibits A-15 and A-16 complain about the increases which were made effective January 1, 1961 or January 1, 1962, in the assessed value of their property?

A. Yes, sir. We invariably get a few calls regarding increased assessments, and we received our share. Actually we received more than our share from this im-
page 1043] mediate neighborhood. We did not have so many formal interviews as we had quite a group to visit the office inquiring about the assessments we had made, and we also had quite a few telephone calls. I went out there and made a talk to a civic group or association. They had heard a switching yard was going in this area and they were wondering why we attempted to change the assessment in the face of this railroad facility. We didn't know anything about the railroad's activities — we had heard nothing except what we read in the paper. Certainly the evidence from the market didn't indicate any decline in value at that time.

Q. What do you mean — “the evidence from the market?”

A. In examining the sales at the time we made the appraisals we couldn't find any decline in the value of these properties. Some of our studies were made prior to the newspaper publicity, but we were still faced with the fact the railroad yard was not there and we couldn't find out if it was going there — simply some things we read in the paper indicated there was some thought of a railroad yard going in there.

Q. Do you know about what time in 1960 this newspaper publicity you speak of came to your attention?

A. It was October or November of 1960 was
page 1044] when we had the first news of it.

Q. With reference to the 1961 assessment changes, what time during 1960 were the appraisals made on which those changes were made?

A. Middle of the summer — July or August.

Q. Prior to the newspaper publicity you referred to?

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A. Yes, sir.

Q. Did you change any of the assessments as a result of these protests you say you had?

A. We possibly changed some of the assessments on account of the protests, but not due to the probability of a switching yard going into this area, and we did not simply because we had no information to prove that a railroad yard was going in. We wouldn't have known how much economic obsolescence there was at that time and it simply wasn't shown that a railroad yard was there — the railroad yard simply was not there.

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page 1045]

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Q. (By Mr. Eichner) Do you know what you would do about assessments in the area if a railroad switching yard should be built on the subject property?

A. Yes, sir. The man we have detailed to this area would begin an extensive study of any evidence we could gather from the market, sales, for example, or rental prices, and from this we would attempt to deduce how much loss in value had occurred from the noise of the railroad yard and the other undesirable features of it, and once we were able to determine the amount of loss in value, then we would attempt to correct the assessments.

Q. Now, turning to those homes shown on Exhibit QQ on which the assessments were changed effective January 1, 1962, do you know approximately what dates the appraisals were made on which those changes were based?

A. I believe they all were in what we would call the summer months — July, August, September.

Q. What year?

page 1046] A. 1961.

Q. Would you say generally that the changes in assessments as a result of those appraisals were upward or downward?

A. Those were generally upward.

Q. And did you again experience complaints concerning the upward changes?

A. Yes, sir, we did, principally on the same grounds.

Richard A. Chandler

I had better not say “principally” — people find many reasons to complain about increased assessments but certainly the large part were due to apprehensions or worries about an encroaching railroad yard in the immediate neighborhood.

Q. In your opinion does the mere apprehension of fear of a future railroad yard in a certain area, such as we are concerned with here, have any effect on market value?

A. Eventually, yes — apprehension about a neighborhood, if it gets to the general buying public. This too could be termed economic obsolescence. If a neighborhood loses its appeal because of the concern of the buying public because of what is liable to come to this neighborhood, it could ultimately result in prices of these homes being lessened.

Q. In your opinion, does mere apprehension of the introduction of a future inharmonious influence
page 1047] have any effect on the willingness of the owner to sell, or on the willingness of the potential buyer to buy in the neighborhood feared to be affected by such an element?

A. Generally, owners will vary. Some are likely to move out immediately, but we find the bulk of them would prefer to stay there and stand by to see if they can't get the best deal they can, or hoping the inharmonious use will not materialize. On the other hand, buyers are extremely reluctant to buy into an area where there is the likelihood of an inharmonious use being introduced into the neighborhood.

Q. And does that attitude on the part of the buyer have any effect on the market value of the properties?

A. Yes, sir, it does. It will lessen market value.

Q. But you don't think it has enough of an effect on the market value of the properties to decrease the figure at which they are assessed?

A. Not yet, Mr. Eichner. We haven't had enough evidence yet to measure the amount of this economic obsolescence — as of this date at any rate.

Q. Now, Mr. Chandler, would you compare the effect of an inharmonious element such as a railroad yard on a single-family dwelling and upon a modern air conditioned apartment building?

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page 1048] A. The rental property, generally speaking, will not suffer from the same inharmonious uses as single-family homes. For one thing, tenants normally are not bothered by the same inharmonious uses. In fact, it might not be an inharmonious use for an apartment building, whereas it might be for a residential property. Obviously, a tenant realizes he can rent the property and if a condition arises that would affect the residential neighborhood and ultimately affect his enjoyment of the property, he can move out. He has made no more investment than a year's rent, whereas the owner-occupant has a much larger investment.

Q. How about the physical construction of these two types of buildings? Does that have any influence on how it might be affected?

A. Normally, if an apartment building is air conditioned, it is reasonably soundproof. In many cases the windows are not movable so that they may not be opened at all — or if they can be opened, in many cases they stay closed — either with heat in the wintertime or air conditioning in the summertime. That makes these buildings reasonably soundproof. Certainly, they would suffer less from noise than would a single-family home.

Q. Are you aware of any apartment buildings presently under construction or constructed in the past
page 1049] three or four years which are not air conditioned and of soundproof construction in the City of Richmond?

Mr. Gay: The question should be directed to this particular area.

Q. (By Mr. Eichner, continuing) In the Riverside Drive area, to the east of Forty-Second Street.

A. The only two I know — one is completed and one under construction, and both are fully air conditioned buildings.

Q. Are you aware of any vacant lots facing Riverside Drive between Twenty-Sixth and Forty-Second Streets?

A. Yes, sir, our investigation showed, I believe, there are some, as I recall.

Q. Which side of Riverside Drive are these lots you refer to?

A. It would be the south side of Riverside Drive.

Q. Are these vacant lots on the south side of Riverside

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Drive in your opinion presently suitable for single-family dwellings?

A. Most of them are, yes, sir. I will have to check to be sure — I have the information on them right here. Yes, sir, with the exception of one or two I would say page 1050] they are all buildable.

Q. Why are those one or two not buildable?

A. I would have to go to my records. Frankly, I think I recall one that may have been too small.

Q. In your opinion, if a railroad yard should be built on the subject property, would these vacant lots you have just mentioned, on the south side of Riverside Drive, be more or less suitable for single-family dwellings?

A. Less suitable, because economic obsolescence affects both land and improvements.

CROSS EXAMINATION

By Mr. Spain:

Q. The testimony so far, Mr. Chandler, has been confined to the houses shown on Exhibits A-15 and A-16. Do you mean by that to intimate to the court no other property would be affected by such a railroad yard as has been described — except those houses?

A. No, sir. There are two things I would like to mention.

One. I want to say we put on the plats I have page 1051] the properties between Twenty-Fourth and Forty-Second as being in our judgment a conservative estimate of the properties that would be affected. We did that because we wanted to be conservative. Now it is entirely possible that this economic obsolescence could go straight back from Riverside Drive — I don't think it would go further east or west, but it is entirely possible it would extend further south.

Q. How far south might it extend, in your estimate?

A. It couldn't go any further than Semmes, but whether it would get to Semmes I don't know. I simply haven't studied it that closely. It is entirely possible it could get to Semmes but I haven't made that close a study of it as yet.

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Richard A. Chandler

page 1052]

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Q. (By Mr. Spain) Do you have an opinion as to whether this adverse influence would extend back more than one block from Riverside Drive towards the south?

A. Yes, sir, I have an opinion. Here again we didn't back it up with any real study, but we do feel this could become a blight that could extend as far south as Semmes Avenue, but on these plats we confined ourselves to those properties fronting on Riverside Drive because we knew they would be affected.

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page 1053] CROSS EXAMINATION

By Mr. Gay:

Q. Mr. Chandler, I believe you said that there were three methods commonly employed by you and your staff in assessing property for tax purposes, namely, cost and market value and rental approach. Am I right in that?

A. We call it the cost approach, market data approach, and income approach, all of which will be correlated into an estimate of market value.

Q. You said that notwithstanding the protests from a number of citizens in this immediate area, the 1961 and 1962 assessments were too high, you knew nothing that would warrant you in reducing them?

A. That is correct. In our judgment we felt it would have been improper to reduce them based on evidence we had at that time.

Q. Now if this property, 4101 Hillcrest Road, owned by Joseph A. and Margaret B. Terry, and presently assessed at nineteen thousand dollars, were for reasons unknown to you, sold by Mr. and Mrs. Terry for fifteen thousand dollars, what would be your basis for assuming that the price differential was attributable to this in-

page 1054] harmonious element this yard would bring into the community?

A. I wouldn't make that assumption immediately, until we had investigated the circumstances surrounding the sale.

Q. You mean you would go to Mr. and Mrs. Terry and ask why they sold at that reduced price?

A. More than likely we would approach the agent first.

Richard A. Chandler

Q. Suppose you were told that was their business, not yours?

A. Normally we are not told that.

Q. But supposing you were told that, what would you then do?

A. In that event, we would go to the seller, if the agent told us that, and then we would go to the buyer. Somewhere or other we would get the information.

Q. You would get the information as to why the property was sold at a four thousand dollar differential, you say?

A. We would certainly try, Mr. Gay.

Q. I understand you to say that, but suppose they told you, "Well, we needed the money and we found another place at fifteen thousand that suits our family and our other requirements beautifully, so we took it?"

page 1055] A. That being the case and not knowing any different, and that being the only sale in the area, we would lay no significance to that at all. One sale doesn't make the market, but if we had a series of sales in the area, all of which were substantially below value or assessments or previous sale prices, then I think we could draw the conclusion these sales were reflecting some form of depreciation — which we call economic obsolescence.

Q. Would you just assume it reflected the injection of an inharmonious atmosphere into the community which had brought about economic obsolescence?

A. Here again, Mr. Gay, we would make every effort to find out the reason for these deflated prices, from the participating brokers, neighbors, buyers or sellers, and from this information we would then deduce to what it is attributable.

Q. Suppose you were to find out it was due to a cause unrelated to this inharmonious element being brought into the community — what would you do?

A. It would still reflect it in the assessment.

Q. It would reflect a reduction in the assessment?

A. If there was a lessening in market value, we would have to reflect it.

page 1056] Q. These two apartments on Riverside Drive you said would not, in your opinion, be affected by the inharmonious element of a railroad yard as much as single-family dwellings. Is that correct?

A. That is correct, yes, sir.

Q. And you said that was true, as I understood it, be-

Rudolph C. Brauer

cause of the air conditioning of the premises and the fact if a tenant didn't like it he could move?

A. That's generally true with rental property, as opposed to owner-occupied property.

Q. Are you familiar with the two locations well enough to tell the court whether or not the yards of the A. C. L. Railroad and the Belle Isle yard of Southern Railroad are not plainly visible from these two locations?

A. I checked that location, and couldn't see them. I couldn't see railroad yards from the two buildings.

Q. Where were you standing?

A. On the top floor — one of them — and I got as far up as the workmen would allow me on the one under construction, plus the fact the view —

Q. Excuse me. Could you see the subject property from either one of them?

Mr. Spain: Excuse me, Mr. Gay. It was
page 1057] obvious the witness wanted to add something.
Let him finish.

The Court: You may finish, Mr. Chandler. You may make any observation you desire.

A. (Continuing) A view from an apartment building is not necessarily a detracting influence for a tenant.

Q. (By Mr. Gay) You mean people don't rent apartments in apartment buildings with the idea of the attractiveness of the view they may have from their windows?

A. Yes, sir, as a general rule. I simply say it doesn't have the same influence as it would from residential property.

Q. But it might have a great deal more, might it not?

A. You take 5100 Monument Avenue. You wouldn't build a single-family home on that property because all you would have is a view of Willow Lawn shopping center, but that view is no detracting factor to 5100 Monument. It certainly would be a detraction for a home in that location.

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page 1060] RUDOLPH C. BRAUER,
recalled to the stand for cross examination,
testified further as follows:

CROSS EXAMINATION

By Mr. Gay:

Rudolph C. Brauer

Q. Mr. Brauer, would you take before you a copy of the Master Plan to which you referred in your direct testimony?

A. Yes, sir, I have it.

Q. You were asked by counsel for the city to identify for the purpose of future use in this case, as a part of the city's evidence, that part of the text under the caption of "Transportation Facilities" commencing on page 165 and running through page 172, were you not?

A. Yes, sir.

Q. I would like for you to read into the record as part of your cross examination the first paragraph appearing under the caption "Transportation Facilities" appearing on page 165.

A. (Reading)

page 1061] "Modern civilization is increasingly complex.

Each city must have freedom of access not merely to surrounding territory, but to all parts of the nation and to cities in other parts of the world. It is important that all channels of communication be improved and easily available so that the products of commerce and industry, foodstuffs, and goods of whatever kind may move expeditiously and economically. Transportation is a most vital part of modern city life. Undue restriction means impairment of the economic and social welfare of the community."

Q. Now, as a specialist in city planning, do you subscribe to those statements as being a wise exposition of the problems of city planning?

A. First, I don't think I *quality* as a specialist in city planning, but I think the general statement there is certainly true.

Q. Now would you turn to page 166 and read the first paragraph in the lefthand column beginning with the words "In general?"

A. (Reading)

"In general, the existing railroad facilities are well located within the city. The majority of the lines are
page 1062] located in the valleys and in low-lying land,
which is more adaptable for industrial than
for residential development. Likewise, the terminal facilities are generally well located in relation to other elements of the city's structure."

Q. Would you say that the language from which you have just quoted, that the railroad facilities are located in

Rudolph C. Brauer

valleys and low-lying land and therefore more adaptable for industrial development, could be fairly applied to the terrain occupied by the right-of-way of the Southern Railway west of its Belle Isle yard and the property involved in this suit?

Mr. Eichner: Counsel is outside the scope of direct examination. Mr. Brauer was merely identifying the various documents and causing certain portions to be read. He was not examined as an expert on the subject matter of this controversy.

The Court: I don't recall exactly the scope, but as I recall he made reference to the portion of the Master Plan encompassed in these pages 165 through 172, did he not?

Mr. Eichner: Yes, sir, but he was not asked page 1063] his opinion on any of these matters.

The Court: Overruled. I think this is within the scope.

Mr. Eichner: Respectfully except, and we think the witness is the railway's witness from now on.

Mr. Gay: We object to that.

The Court: Overruled. You are still cross examining.

A. This states a majority of the lines, rather than the facilities, are located in the valleys and low-lying land, which is more adaptable for industrial than residential development. As a general statement that is generally true.

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page 1064]

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Q. (By Mr. Gay) I will be glad to put the question another way. Is not that language peculiarly adapted, or may it not be particularly related to the topography of the land on which Southern Railway's right-of-way is located west of the Belle Isle yard and the sixteen acres involved in this suit?

A. I don't know that it is more particularly applicable to that than many other pieces of railroad property in the city.

Q. I am not asking you to compare it with other pieces

Rudolph C. Brauer

of railroad property in the city. I am asking you to say whether or not in your opinion the statement in the Master Plan which you have just read cannot be fairly said to be peculiarly or particularly applicable or fairly applicable to the topography of the land in question?

A. I would say fairly applicable, but not particularly applicable.

page 1065] Q. All right, sir. Now I ask you to turn to page 172 of the Master Plan under the general caption "Adequacy of Existing Facilities" and read that paragraph into the record if you will.

A. (Reading)

"The majority of the railroad facilities in Richmond are adequate for existing and probable future requirements. Furthermore, the majority of the lines are located so as to have ample available property for future expansion of facilities either adjacent to the existing facilities, or in relatively close proximity to them. Along the several railroads, the distances from the railroad facilities within the highly developed sections of the city to less congested points along the railroads are relatively short, so that when the limit of expansion of these closer-in facilities is reached, expansion can take place at other points with very little effect on operating efficiency."

Q. Now would you not say that the property involved in this suit is so adjacent to the existing facilities of the plaintiff at Belle Isle yard as to be within the concept of the text of this part of the Master Plan?

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A. It could probably apply to this or to other properties. I see no special application to this particular property.

Q. (By Mr. Gay) You don't think that the property in question is either adjacent to existing facilities or in such close proximity to them as to be within the concept of the Master Plan, as it is stated here?

A. The concept of the Master Plan or the statement, as I understand it here, the consultant was stating that within reasonable dispositions the railroad facilities could be expanded, but not picking any particular place for those expansions.

Q. You don't think the authors of this plan were just talking in a vacuum, do you?

Rudolph C. Brauer

A. No, they were not talking in a vacuum.

Q. Don't they start off with the specific statement, "The majority of the railroad facilities in Richmond page 1067] are adequate for existing and probable future requirements?" And don't they then go on and say, "* * * the majority of the lines are located so as to have ample available property for future expansion of facilities, either adjacent to the existing facilities, or in relatively close proximity to them?" Isn't that language peculiarly applicable to the Southern Railway situation on the south bank of the James River?

A. It could be applicable to that, and probably to many other places. What I am trying to say is I don't see in this any specific mention of the Southern Railway's facilities.

Q. You don't have to be too smart not to see the Southern Railway mention by name in that, but as a person experienced in planning, can you imagine the authors of the Master Plan didn't have a location such as that in mind when they put that in there?

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A. They may have had that in mind and they may not. I have no means of judging.

Q. (By Mr. Gay) When you say you have page 1068] no means of judging, are you professing to believe that the authors of the Master Plan did not make a study of the physical existing facilities of the railroads and their potential needs for expansion when they wrote that in the plan?

A. I am sure that they did.

Q. That's what I wanted to find out. Please read the last paragraph in the next column on page 172 — starting in the middle of the paragraph with the words "The majority of the yard facilities * * *."

A. (Reading)

"The majority of the yard facilities appear adequate for existing as well as for probable future requirements, and no changes or extensions are recommended at this time. Furthermore, several of the yards are so located that they could be extended readily if unexpected developments should necessitate enlargements or extensions, and indeed some extensions were made under pressure of war conditions."

Q. Isn't the last sentence of what you just read *peculiarly*

A. Howe Todd

applicable to the Southern Railway property involved in this case?

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page 1069]

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A. I don't think it is *peculiarly* applicable at all. It says, "Furthermore, several of the yards are so located that they could be extended readily if unexpected developments should necessitate enlargements or extensions, and indeed some extensions were made under pressure of war conditions." Now, just what expansions were made under pressure of war conditions?

Q. (By Mr. Gay) That isn't what I asked you, Mr. Brauer. I direct your attention to the statement that several of the yards are so located they could be extended readily if unexpected developments should necessitate enlargements.

A. And they are so located, I guess.

Q. You mean the yards of the Southern Railway are so located?

page 1070] A. Probably so.

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A. HOWE TODD,
resumed the stand for further testimony:

CROSS EXAMINATION

By Mr. Gay:

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page 1104]

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Q. Did you hear Mr. Higgins testify in this case?

A. No, sir.

A. Howe Todd

page 1105] Q. Mr. Higgins visualized this area of land between the right-of-way of the Southern Railroad and the south bank of the James River as an area which should be preserved for its natural beauty, as distinguished from a park facility such as Forest Hill Park, and when being questioned by me as to possible approaches to such a park he said that a stairway or walkway might be constructed from Lee Bridge down to what he assumed to be City property between the Southern right-of-way and the south bank of the James River. Would you regard that, in the light of your experience as a City Planner, as a practical or prudent method of employing this property, as a natural City park?

A. I remember when Council, since I have recently become Director, was studying the question of the weed ordinance of the City and the question came up before the Council of the impact this would have on the City's operation, of the climbing weeds on all City-owned land, and I made the point at that time that there were some park areas that should not be maintained as Forest Hill and this is one of the areas that I mentioned. It would be ridiculous, in my opinion, to go to Riverside Drive and try to mow and clip the steep banks of that natural area and maintain it as the kind of park that we would have in Forest Hill or Bryan or Byrd Park, so I think the idea of it being a scenic and natural wilderness kind of park is very page 1106] logical.

The question of the stairs down from Lee Bridge I cannot answer, because I have never considered this and I would want to look at the situation to be able to say whether it is practical or not. I have never heard that proposal before.

Q. Well, you are familiar with Lee Bridge, are you not?

A. Yes, sir, I think so.

Q. Is it not the main traffic artery, carries the vehicular traffic through Richmond on Route No. 1?

A. It is.

Q. And it is a very actively used thoroughfare, is it not?

A. Definitely.

Q. In the light of that circumstance would you feel, as a City Planner, that an approach to this property such as Mr. Higgins has visualized would be a practical and feasible thing to do?

A. Again, I am not sure where the stairs enter. It seems

A. Howe Todd

to me there should be better places to provide access to the bottom, I will say that much. In my opinion there should be better points of access. I can't even visualize what is below Lee Bridge right there, Mr. Gay. I can picture Lee Bridge at the top but I can't picture the ground
page 1107] immediately under Lee Bridge that the stairs would rest on, or the relationship to the tracks or the river, so I am at a loss in knowing the situation.

Q. Ignoring what would be at the foot of the stairs — in that sense I mean on what property they would rest and what approach that means would provide to the property, and confining your answer to what I direct your attention, that is, the extensive use of Lee Bridge at this point — I will ask you to state whether you would regard such a facility as a prudent and proper method of developing this park for rural park purposes?

A. Mr. Gay, if you mean the stairs should come off of the bridge structure, I would say it would seem to me to be a bad location. However, immediately off the abutment of the bridge at the beginning of Riverside Drive could be a very logical place for some parking along the top and a bridge running down the bank of the steep slope there.

Q. That would entail, however, crossing the right-of-way of the Southern Railroad, would it not?

A. To get to the edge of the river, I presume, yes, sir.

Q. Your attention was directed to the property shown in green on the plat, City Exhibit P, and showing in green, as I have said, the property presently owned
page 1198] by the City south of the Southern Railway right-of-way and north of Riverside Drive, and you stated in your opinion it would have been foolish to acquire what the City has already acquired there and not have in mind taking in the Southern Railway property. Did I correctly understand your direct testimony?

A. The words "taking in" worry me.

Q. Or acquiring.

A. Certainly, yes, protect the rest of the area which is necessary for the total development of the objective.

Q. Do you know when this property presently owned by the City, which this map refers to, was acquired?

A. It was not any one date and I don't know the exact date but it was spread over, I would imagine, ten or fifteen years, as I recall.

Q. Prior to the introduction of an ordinance which was

A. Howe Todd

adopted by Council shortly after the rezoning ordinance, involving among other things property involved in this case, do you know of any efforts the City has ever made to acquire this property of the Southern Railway north of the —

A. Yes. I was not a Director but in the early years when I was with the City — I would guess in the early 1950's — I recall cases of purchase or attempted purchase to prevent the building — when a building permit came page 1109] on the property between the Southern Railway and Riverside Drive, as I recall.

Q. Well, that is between the Southern Railway and Riverside Drive?

A. Yes, sir, in the general area.

Q. The property I was directing your attention to was the property north of the right-of-way and south of the James River.

A. No, sir, I do not recall any efforts to buy that land.

Q. You said that the practice of spot zoning was for the owner's benefit but, generally speaking, against the interest of the neighborhood. Is that a fair statement of what your direct testimony was?

A. That is in summary, yes, sir.

Q. Isn't it a fact, Mr. Todd, that the City Council has the power and does, in fact, from time to time, amend the zoning ordinance so as to permit what you call spot zoning and that the Board of Zoning Appeals may, under its charter power, grant variances for which property is zoned, for uses that are contrary to those already in the neighborhood?

A. Mr. Gay, that is true, but you are confusing — I don't know whether you understand zoning enough to know the difference between a variance and an ex- page 1110] ception and an amendment and spot zoning. and I don't know whether to go into detail of each of those to explain, if that is what you want. These are all different actions and spot zoning is illegal and so determined by the courts. If the Council should amend, through its action in Council, a small area or any piece of land, which would be spot zoning, a citizen or someone could take it to court and it would be thrown out if it is found to be spot zoning, if it is an illegal action.

A. Howe Todd

page 1112]

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Q. (By Mr. Gay) You also stated, in answer to a question from the City Attorney, that rezoning of the property involved in this suit would, in your opinion, cause an inharmonious use to be brought into this zone, R-6 or R-4, whatever it is, area?

A. Yes, sir.

Q. And that is your opinion?

A. That is my opinion.

Q. Do you customarily attend the meetings of the Council where zoning matters are to be considered?

A. I have to speak on every zoning matter that comes before Council and recommend what the Planning Commission has determined shall be the Planning Commission's recommendation. This does not always involve my recommendation.

Q. Is it fair to say that you also attend all
page 1113] meetings of the Planning Commission and give them the benefit of your advice and study on problems before them?

A. Yes, sir.

Q. Now if Southern Railway had applied to the City Council prior to the adoption of the amendment of December, 1960 for rezoning of this subject property, upon the assumption that Subparagraph 9 of Section 39-12, reading "Right-of-way and easement for public transportation and for public utilities" did not permit such a use as it proposes to make of the property, would it have been your position that such a rezoning would have had the effect that you described; that is, an inharmonious condition would have been created in this community?

A. In 1960 I would have gone through the procedure of visiting the property and reviewing the property and checking the consultant's recommendations which were then in our office but which had not been adopted, and making other studies and reaching a conclusion and recommending this conclusion to the Planning Commission. Having considered this matter since that time and since the question has been raised by the railroad people I believe my recommendations would have been to disapprove such a change to industrial purposes.

A. Howe Todd

Q. So if you had the opportunity, as I take it you have
availed yourself of the opportunity to make the
page 1114 } kind of study you now visualize, it would have
then been your recommendation to the Planning
Commission and through it to Council to disapprove an
application for rezoning of this property so as to permit
its use, notwithstanding the provisions of the ordinance
I have just read to you?

A. I presume you mean industrial zoning. That is what
I interpret that question to mean, to change it to industrial
zoning so a railroad yard could go in there, and I just
stated I think my recommendation at that time would have
been disapproved and is contrary to the Master Plan and
policy of the City and goals and objectives of the City
pertaining to that land.

Q. And you would have, I take it in what you consider
to be the proper discharge of your duties, opposed an
amendment to the zoning ordinance by Council?

A. I think I would, with reasons.

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Q. Mr. Todd, may I direct your attention to the map,
City Exhibit OO, which was introduced in evidence on
yesterday by Mr. Lancaster. Did you hear his testi-
mony?

page 1121 } A. No, sir.

Q. Well, I call your attention to the fact
that the legend on the map shows, in red, tracks which he
proposes could be constructed as a part of the plan which
he has devised for the utilization of the existing facilities of
Southern Railway, thus making unnecessary the use of the
sixteen acres as a classification or other yard. I will ask
you to say whether, looking at this map, and what Mr.
Lancaster has proposed to do, namely, to add two additional
tracks to the present three tracks immediately west of
Lee Bridge down to a point marked "present switching
lead" where those tracks would converge into three tracks,
and an additional track of 3500 foot extension from that
point, that is, from the switching lead that I have just

A. Howe Todd

referred to, westward to within 900 feet of the west end of the company's property and which track he would regard as a main track; convert the present side track to a switching lead and the present main track to become a side track, and I will ask you to say whether, as a City Planner, you would consider such a future use of that property west of the Lee Bridge as within, or as a permitted use under, the present language of the zoning ordinance as amended?

Mr. Eichner: The question is objected to as calling for a legal conclusion; also it is not relevant to any issue in the pleadings.

page 1122 } The Court: Well, there was a motion made yesterday to strike all of the testimony of the witness on the grounds that it appeared from his testimony that it would have been an illegal procedure and having read the ordinance, the witness testified that while he was not an expert on ordinances or zoning, that it appeared to him from the language that his plan would entail a violation. The motion to strike I overruled. I think this witness is more qualified to pass on whether it was a violation than the witness yesterday. I am going to overrule the objection.

Mr. Eichner: We respectfully except.

A. Of course, the interpretation and enforcement of the zoning law is the responsibility of the Commissioner of Buildings. However, I am not sure I understand the words on your side tracks and switching track, but if it is a switching yard or marshalling yard, I would say it would be contrary to single-family residential zoning.

Q. (By Mr. Gay) Mr. Lancaster testified that the purpose of increasing the number of tracks immediately west of Lee Bridge down to what is shown on his plat as a present switching lead, and adding another track so that
page 1123 } the present side track could become a switching lead and would be used —

A. What is a switching lead, Mr. Gay?

Q. Just a moment. — as a switching lead and could be used for that purpose up to within two or three hundred feet of the west end of the property and that those tracks as so designed would be available for switching trains into the Belle Isle Yard for the purpose of the classification. Now in the

A. *Howe Todd*

light of that testimony what is your answer?

Mr. Eichner: If Your Honor please, I think the testimony has been misstated to some extent, Mr. Lancaster having stated that the tracks proposed by him on the right-of-way, both the existing one and the proposed new or relocated ones, would be used interchangeably.

Mr. Gay: If they are used at all is what I am concerned about and I think that is the legal effect of it; if they would be used at all for the purpose that Mr. Lancaster has planned. I am asking this witness whether in his opinion, as a City Planner, he would regard that as a violation of the existing zoning ordinance.

A. The zoning ordinance mentions as not to be permitted in a residential district “marshalling or class-
page 1124] ifying railroad cars, tracks for storage or parking railroad cars or trains of cars, freight depots or stations, loading platforms, trainsheds, car or locomotive shops, motor vehicle repair shops or storage yards.” If any of those are in a residential district then it would not be legal.

Q. Mr. Todd, if it has appeared or should appear from testimony subsequently to be introduced in this case that Southern Railway has been making substantially the same use of the right-of-way west of Lee Bridge as that visualized by Mr. Lancaster, but only on two tracks, as distinguished from the three, for a period of years, I take it your answer would be the same as to the violation of the ordinance as it existed prior to the December 12, 1960 amendment, would it not?

A. If it is a legal, non-conforming use, Mr. Gay, it may continue. It may not be enlarged but it may be continued.

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RE-DIRECT EXAMINATION

By Mr. Eichner:

Q. Mr. Todd, I refer you to Defendant’s Exhibit AA, the Bartholomew report representing provisions of the zoning

A. Howe Todd

ordinance. When was that recommendation — when was that received by the Planning Commission?

A. March, 1957.

Q. And did the Bartholomew report deal both with the proposed text and proposed district boundaries?

A. Yes, sir, it did.

Q. Now between the time the Bartholomew report was received and the time the ordinance was enacted, December of 1961, adopting the 1961 District Maps, Exhibit CC, to your knowledge was any effect made by the Southern
page 1128] Railway Company to have the district lines extended so as to include the subject property in an industrial district?

A. No, sir.

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Q. (By Mr. Eichner) Now if you would, Mr. Todd, will you look at Defendant's Exhibit Q, the 1946 Master Plan. I refer you, sir, to about the third page, unnumbered, letter of transmittal from the Commission to the Council, and ask you to read the first paragraph of the quoted resolution which is the first "whereas" paragraph.

A. "Whereas, pursuant to the provisions of an ordinance approved July 12, 1940 concerning the City Planning Commission, the Commission has caused to be prepared a Master Plan for the physical development of the City of Richmond together with accompanying maps, plates and
page 1129] descriptive matter intended to form parts of the plan;"

Q. Now would you skip down to the final paragraph.

A. "Now Therefore Be It Resolved, that the City Planning Commission hereby officially adopts the said Master Plan for the physical development of the city, sometimes referred to therein as the comprehensive plan, and orders the same printed and attested copy of the said plan to be certified to the City Council with the Commission's recommendation for adoption and approval and an attested copy certified to both the clerk of the Chancery Court of the City of Richmond and the clerk of the Hustings Court, Part 2, of the City of Richmond."

Q. Would you look just inside the front at the copy of the ordinance of July 12, 1946 which is annexed to this exhibit and would you read the paragraph numbered 1 of that ordinance?

A. Howe Todd

A. "BE IT ORDAINED BY THE COUNCIL OF THE CITY OF RICHMOND:

"1. That the Master Plan for the City of Richmond prepared and adopted by the City Planning Commission and attached to the draft of this ordinance be hereby approved."

Q. What, in your opinion, is meant in there by the "Master Plan?" Is it the text of that volume, the page 1130] various plates and maps that are in it, or both, or what?

A. It is all; it is this entire volume, text and plates. I can enlarge a little on that. The text is necessary in order to more clearly define policy and objectives. Many of the policy intents of the plan cannot easily be placed on a plate.

Q. At the end of the planning ordinance you read, reference was made to certified copies of this to clerks of court. Would you refer to the back of Exhibit Q and state what appears there, the very back of that volume, sir?

A. "I, E. E. Warriner, Clerk of the Chancery Court of the City of Richmond, do certify that the foregoing document entitled 'A Master Plan for the Physical Development of the City,' filed in my Office by the City Planning Commission of the City of Richmond on the 10th day of April, 1946.

"Given under my hand this 21st day of September, 1962. E. E. Warriner, Clerk."

Q. Is there another certification in there?

A. Another from Charles R. Purdy, clerk of the Hustings Court of the City of Richmond.

Q. What was the name of that court again?

A. Hustings Court, Part II.

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Q. (By Mr. Eichner) Referring again, Mr. Todd, to the Bartholomew report of 1957, Defendant's Exhibit AA, do you know how Bartholomew and Associates recommended the subject property, sixteen acre tract of the Southern Railway, to be zoned?

A. Yes, sir, single-family zoning. There has never been any other recommendation for zoning on this subject property

A. Howe Todd

since the very first zoning ordinance.

Q. Prior to the adoption of the 1961 ordinance adopting the new district maps, Exhibit CC, did the Planning Commission and its staff consider the recommendations of Bartholomew and Associates as to the districts — the boundary lines of the various districts?

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A. Your Honor, the original recommendation of the consultants concerning zoning were bogged down due to the problems of the text, primarily. Many different associations and agencies and service groups and civic organizations and the architect and real estate boards throughout the city went to great detail and efforts in reviewing and making recommendations to the Planning Commission concerning this zoning ordinance, both the text and the maps, and that is why, although the original recommendations were in 1957, it was 1960 and '61 before anything was accomplished. Primarily, the text was the difficult portion because some of the major changes were made in the text and after the text was amended and the maps were left as they were at that time. We changed first only the text. Such a time period had elapsed since the original recommendations of the consultants — the toll road had been completed and many changes had been accomplished through Council action — that the original map recommendations of the consultants were no longer up to date and proper and so the planning staff, working with the Planning Commission after I became Director, went over page 1133] each of the section sheets very, very carefully, analyzed each of the neighborhoods in the blocks, and revised our recommendations concerning the maps. Public hearings were held;

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A. (Continuing) We reached the point where the Planning Staff and Commission was reviewing very carefully these recommendations and making changes. We held the public hearings and many industries came, such as A. H. Robins, the

George Weir Wilson

G. E. M. property, trucking terminals at Holly Springs Road, and objected to our recommendations and upon reconsideration by the Planning Commission some of these page 1135] industrial tracts were changed from our original recommendations. This property, along with the residential property adjoining it, was carefully analyzed by the Planning Commission before the final recommendations were sent over to Council.

Q. (By Mr. Eichner) With reference to the subject property, then, the Bartholomew recommendation was carried into effect, was it not?

A. Yes, sir.

Q. Now, one minor matter. On cross examination, in response to a question from Mr. Gay, I understood you to state that before you were Director of Planning you were working with the consultants' report. I want to clear up what report you were talking about. Was it Exhibit AA, the Bartholomew report?

A. Yes, sir, as a member of the Planning Staff, not the Director. I was present during some of the discussions and reviewed the recommendations and discussed with the consultants some of the recommendations they were making, both text and maps.

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page 1144] GEORGE WEIR WILSON,
a witness called by and on behalf of the plaintiff, in rebuttal, after being duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. Pasco:

Q. Will you state your name and residence, please?

A. George Weir Wilson, 7200 Jahnke Road in Chesterfield County.

Q. What is your profession, sir?

A. I am a consultant landscape architect and land planner.

Q. How long have you lived in Richmond?

A. Well, since January, 1939; that makes it about 23 years or so.

Q. Will you tell us of your experience and professional training, if any, for land planning and landscape architecture.

George Weir Wilson

A. Well, sir, that goes back many years. I guess I will have to go back to my actual professional engagement which started after getting through the University of Illinois in 1922 and that is forty years and, of course, my page 1145 } daddy was in the same business so I was actually brought up in this field. In the course of forty years I had approximately ten years with one of the largest and oldest landscape architects in Boston and also he was a regional planner, and for about five years in my own business, about five more; then I went with the government as an associate landscape architect in the National Park Service where I designed and had supervision of construction of state parks in Vermont and New Hampshire and Massachusetts. That involved areas up to several thousand acres. Then there was a little Army stretch in there where I was concerned mainly with the design and construction and operation of Army bases in Virginia and some up into Pennsylvania and after that I went with the Veterans Administration Hospital in the design of hospital grounds and site planner for public housing for five years or so and was Director of Planning and Development for the Recreation Board in Washington, for the D. C. Government where I got into recreation areas and, of course, on the Urban Renewal Committee in Washington. Almost five years I have been with the Federal Housing Administration as a Chief Planner for the State of Virginia, covering the West Virginia office in Charleston and occasionally on special assignments into Maryland and into Washington and as of two weeks ago I decided to retire but I have so much work now I don't know where to start.

page 1146 } Q. You are in private practice now in Richmond?

A. I have my private practice, have my private practice office in Richmond and one in Charleston, West Virginia.

Q. What rank did you retire from the Armed Services with, sir?

A. Well, I had retired — when you reach the age of sixty you are retired and I happened to be a Lt. Colonel.

Q. Colonel, are you familiar with what is known as Riverside Drive in South Richmond?

A. Yes, I am quite familiar because I use the drive quite frequently to go to my home on Jahnke Road and I used to do it when I lived around Forty-Second Street, Forty-Third Street. I guess I have been doing that for twenty-odd years.

Q. I call you attention to the map on the board which is

George Weir Wilson

the Plaintiff's Exhibit 22 and tell you that the area in red between 26th Street and 42nd Street, north of the Southern Railway line, is the property involved in this case and owned by the Southern Railway Company. I ask you whether or not you are generally familiar with that property?

A. Yes, I was familiar with that property before any filling had been done and, of course, I am familiar
page 1147] with it now. Not only that, but from the Lee Bridge as far as the Westover Bridge, I am quite familiar with that whole section.

Q. Colonel, it is in evidence in this case that the Southern Railway plans to build from ten to eleven railway tracks on this property with a yarding of trains and cuts of cars and switching of cars and there is evidence in this case of the City's plan to develop Riverside Drive as a parkway. Limiting your consideration and answer to the matter of parkways, would you tell us whether or not the location of these additional tracks on the property to which I have just referred would affect, in your opinion, the development of Riverside Drive as a parkway?

A. Well, sir, I have given that particular question considered thought and I might answer the question this way, that with the summer and winter seasons it is quite important that there would have to be some sort of — there should be an evergreen all-year-round screen of various heights, depending on the need from various locations of obliterating or obscuring the track area. Now there are a dozen things or more you could use to do that but I was thinking of areas there where it may be only necessary to have something that would stay within a designed space or where a plant reaches its
page 1148] optimum up to, say, from four feet to maybe five or something like that. In other words, it should be just high enough to obscure that operation in there and I feel, in my opinion, again, that if this is skillfully done that as far as obscuring the railroad operation, all that clay area that I see now which I used as a guide, that could be totally obscured.

Q. Would, in your opinion, the screening of this area affect the development of Riverside Drive as a parkway or detract from it?

A. I would like to confine that area to where you widen out. I mean, this wider area and —

Q. Between what streets is that?

A. I expect about 26th, 27th Street — somewhere in here

George Weir Wilson

(indicating) — to about in here.

Q. What is that further point? What street is that further point?

Q. Twenty-sixth Street — somewhere in there; About Twenty-sixth Street.

Q. East?

A. — to about almost 42nd Street — west.

Q. I didn't mean to interrupt. You said that you wished to confine your statement to that?

A. This (indicating on map). I don't know whether I should go further in answering the question.

page 1149] Q. You just answer my question as to whether you feel this screening would affect the development of Riverside Drive in this area as a parkway?

A. No, sir, I do not. I think with the horizontal and vertical curves in there and you are down into near a hundred elevation that you have nothing to look at anyway so with the natural screening *affect* or rather nice parkway planting, I don't think you would ever know the yard was there visually.

Q. Are you speaking from Riverside Drive when you say "visually?"

A. West from Riverside Drive and also from the residences that are on the south side.

Q. One other question, what type of media would you use for this screening effect?

A. Well, I expect that I would like to, if I was doing it, I would probably go into the native hollies, for one thing, the yaupon holly, apple holly, and inkberry, which is another holly, and I think that perhaps some hemlocks in spots there when you wanted a little more height, and I would even go into perhaps things like gross leaf privet here and there where is was necessary, I think every hundred feet or two hundred feet, would change your planting and it would be —

should be viewed, of course, from the residences
page 1150] across the street and also from the parkway and

to me I just think that — or in my opinion it could be actually obscured and I would like to add this, that in this area in here (indicating on map) you get down into a hundred elevation in here and then you look, this road is rather winding and you are pretty busy —

Q. By "this road" you mean Riverside Drive?

A. Riverside Drive; Riverside Drive is rather winding. I think you are quite busy when you start winding through here and even if you could see through here (indicating)

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you have about, oh, at least 1200 feet or a quarter of a mile of pretty heavy trees, islands in here, and so that actually when you look out there is nothing to see. You can't see the river in contrast with, say, from this "off" at Lee Bridge and perhaps at 42nd Street and on up to Southcliff.

Q. If you were developing the area between Lee Bridge and the Boulevard Bridge as a parkway along Riverside Drive, would you provide any vistas out towards the river?

A. No, just looking at the area from that angle, I think — may I get over on this side — (indicating on map) — as you get off the Lee Bridge on this pull-off here you have a rather — during low water you have a rather interesting rock formation and you also get a good shot up the river. Now that to me is a real vantage point. Then there is a little stretch in here about 25th, 24th Street, right in here, page 1151] that you might open up a little bit but you are running into island obstruction in here so actually the next vantage point on this parkway would be at 42nd Street. There is a little pull-off here and there is a little area in here that I had the experience, I guess ten or twelve years ago, with Mr. Denison who similarly bought this property to build a house. I think there is a viewpoint in here, then from here on to about four or eight hundred feet, plus or minus, there is a terrific view into Maymont and Carillon, although you can't see very much. You have to peek through the leaves now to see it, but it has quite a flare. Then you start going downhill and around until you get to about Southcliff and then around Prince George Road where it hits Riverside Drive; there is another possible opening there, so I think you have about four good openings and perhaps there might be one right there where 30th and Ferncliff abut, but there may be a little opening in here which you go down and I think would add interest to the parkway to retain that, but from here on (indicating on map) you are looking at a blank wall, you are looking at 1200 feet or a quarter of a mile of tree growth, so as I said before, the skill in handling this thing would be to pick the appropriate plants and certainly add a lot to the existing florae. I might add this, right this minute with a nominal labor force, I mean, these vistas could page 1152] be opened and actually get some benefit of this drive now but in through here it would mean actually getting the screening so high that it would obliterate from this point to that point (indicating on map), looking in that direction, and I would see no objection or, actually, it

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would be perhaps an asset if it was done skillfully but I say on these four, possibly five points, that is your parkway.

Mr. Pasco: That is all. Thank you.

CROSS EXAMINATION

By Mr. Eichner:

Q. Colonel Wilson, if you will, take a look, please, at Plaintiff's 22. Towards the end of your testimony there you were pointing, I think, about the middle of the railway property and talking about that as a good proposed vista, were you not? You said a "hump right here." Where did you mean "right here?"

A. Let me go over that again. This is a good shot.

Q. Would you state the street numbers as you go along?

A. That is I would say, a little pull-off here just west of the Lee Bridge.

page 1153 } Q. Pull-off area, pull-up area; you mean parking area?

A. I don't know whether the city owns that or not but it is a little place where you can pull off.

Q. Yes, sir. Go ahead.

A. It seems to bulge out here. (Indicating on map) I think there is a wall there. Then there may be a little shot here but I don't believe it would be big enough.

Q. What street, sir, is that?

A. That is about around 24th Street. You might get a little shot in here but I think it would be so inconsequential that for moving vehicles it would be better to leave it alone because you have got to have a big enough area to get a view when you are driving, say, 25 or 30 miles an hour. Something 100 feet, going 25 miles an hour, is of no value, so what I would say is actually between 24th and 25th Street until you get all the way to 42nd I don't think you would have a great deal to look at.

Q. Just a moment ago, sir, you were pointing about the middle of the railway property which I guess would be 30th or something like that and said that had possibilities for development as a vista. Is that where you were referring to right there?

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A. Where Ferncliff — I guess it is Ferncliff page 1154] in there — there is a slight pull-off. It might be a tiny shot and it might go off into this — into this direction here (indicating).

Q. Whether it is a tiny shot or a nice big shot would depend on to what extent you clear the trees away, would it not?

A. No, not particularly, because you are actually, as I recall, getting down to your hundred — elevation 100. When you get down to elevation 100, then you are stymied by all this island composition right in here and I think that you have to get up to at least — this, I think, is around 120 and this just happens to have a real good shot, but you can't actually see into the river area until you get up to almost 140.

Q. But you can see the islands at that point, if you like looking at islands, can't you?

A. Well, actually, you are not seeing islands. All you are seeing is these big plane trees sticking up.

Q. If they are cut down, you would get a vista, would you not?

A. Well, I think, in my opinion, that this group of islands in here (indicating on map) some of them I know are subject to flooding but I think would make probably a terrific bird sanctuary or something like that but I think page 1155] to actually cut this thing here I think would be rather expensive and it would be much more appropriate to take the little — the shot that you have and enlarge on that and try to cut through in here because you wouldn't see anything. You have got these islands and trees and that little shot in here. Now there is another thing, too, on this road, this parkway. We are talking about "parkway" but there is apparently — I don't know, they may have cross sections, they may have a new alignment, they may have more to go with it, but my idea of a parkway and that of everybody here would be all different concepts.

Q. Well, "parkway" is a way of a park, isn't it?

A. Yes, it might be a parkway, it might be to relieve traffic or it may be scenic. Now when you get into the scenic end of it I don't believe this is truly a scenic driveway, parkway, until you develop these important vantage points. I would like to say this, I would say between here and here (indicating on map), regardless of whether this operation was in here, if I was designing it I would not feature this area in here.

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The Court: Could you designate by street the area you are talking about, for the record?

A. Well, roughly, I would say from 24th Street page 1156] to 25th Street and not until I reached elevation 140, about 42nd Street.

Q. (By Mr. Eichner) Now, Colonel Wilson, you say you would not feature that area if you were planning it; you would be much less likely to feature it if there was a railroad yard there than if there was — you would be less likely to feature that as a view if there was a railroad yard there than if there was not a railroad yard?

A. You mean I would be less likely to feature it?

Q. Yes, sir.

A. There are one or two reasons.

Q. Could you just answer yes or no?

Note: The question was read by the reporter.

The Court: If you can answer that yes or no, then you can elaborate on your answer.

A. I am very thick on this. I would be less likely to feature it if a yard was there?

Q. (By Mr. Eichner) Yes, sir, than if it were not there.

A. Well, I would like to answer it this way, I wouldn't feature it at all. I mean in this particular area here because of the elevation.

page 1157] Q. But would it be less likely or more likely you would feature it if the railroad yard was there?

A. If the railroad yard was not there would I feature it?

Q. Would you be more or less likely to feature it if the railroad yard was there than if it were not there?

A. In this particular area — that is a yes or no answer and I am going to say that regardless of this particular operation here that I would not feature this area. Is that a yes or no answer?

Q. I don't think it is. Would not the presence of a railroad yard have some effect on your decision whether to create a vista or not?

A. Well, there is no vista.

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Q. (By Mr. Eichner) Your proposal, Colonel Wilson, for creating a screen along there with holly and hemlock and so on, which I believe you said would effectively block the sight of the railroad yard; it would even more effectively block the sight of the river, would it not?

page 1158] A. No, sir, you can't see the river here. (Indicating on map) I mean, you just don't get a view of the river from the Riverside Parkway out, you cannot see the river.

Q. All right, sir. Now how about up at 42nd Street there? That is where it is supposed to run to.

A. When you get up to 140 elevation, which is this thing, (indicating) you are up right here so when you hit this 42nd Street area you are up high enough where you can see over all these trees and into the water and then across to Maymont, across to the Carillon and on the other side of the river.

Q. The screen you mentioned would take twenty or thirty-odd years to grow, would it not?

A. No, sir; no, I think the area that was subject to screening; and it is not a great distance and if you have gone over this where you go down and away from the river entirely, I think the screening part would be from probably 29th Street and maybe a little farther on to where it gets almost to this area here where the houses are overlooking this, this area. (Indicating)

Now these houses are up right high, that is 120; again you get up into 140 so you are looking over this whole thing.

Now there is a little stretch in here where I would page 1159] certainly recommend a —

Q. What point?

Mr. Gay: Where is "here?"

A. Around 30th Street, 29th Street, 28th Street; let's go in there.

Q. (By Mr. Eichner) How high is that?

A. It is 150; 125 through there.

Q. That is pretty high?

A. That is pretty high, so actually to do the planting I would certainly recommend that it would follow the north side of the parkway drive. In other words, the situation is this, that when you are looking in this direction and if you have something in front of you, say that high or this high (indicating); I mean, that obscures even this gentleman right here, see, (demonstrating height) and that is the kind of planting you would have to do there and there are many, many things that

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you could use.

Mr. Eichner: Thank you. That is all.

CROSS EXAMINATION

By Mr. Spain:

Q. May I ask you first, do you mean to tell the Court that one living, say, 4207 Hillcrest Road cannot page 1160] in the wintertime see this whole area, the islands, the rivulets, the skyline of Richmond, including the Medical College Hospital, the City Hall here? You can see it from here, can't you? (Indicating on map)

A. You can see it from — let's see, I did see it from —

Q. You are familiar with the drive?

A. I am talking about this right here, from here and in here and you are looking over. Well, that is where you come in, in doing a screening job that will not shut out — you are shutting out the foreground and featuring the distant views.

Q. How far into these islands north of the James River or Riverside property in question — how far north of the Riverside property in question would the rivulets, the rapids, and the islands be shut out?

Mr. Pasco: By what?

Q. (By Mr. Spain) By your screening.

A. Well, that would be just as high as to shut out this portion of it.

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A. For instance, any screen from any of these page 1161] residential areas would be the objective and I hope that is done, would be to shut out everything in this foreground in here; from then on it could be exposed.

Q. (By Mr. Spain) If that were effective from here (indicating) what would it do to the view of the people who live back on the higher ground and who, say, are looking out of their second story windows?

A. Well, again that is a matter of getting the planting, the various heights, like, for instance, it might be hemlock, yaupon holly that would grow higher, or Virginia pine.

George Weir Wilson

Q. In order to make it effective, then, for people living at 4207 Hillcrest Road, looking out their second story window, it would have to be higher than for people driving along the drive?

A. Yes, sir.

Q. As you got it higher to take care of the people back here (indicating map) you would prevent the view of those along the parkway into the islands and the rivulets and rapids, would you not?

A. Well, you have an angle in here that is going this way, it is going towards the river, and this would have to be high enough to obscure that.

Q. Take a look at this house right here and, page 1162] say, from the second story window — I want to designate the house I am speaking about with a “W” for Walker.

A. That is a two-story frame?

Q. Stucco. Are you familiar with it?

A. I know it is there, I am familiar with it.

Q. Tell me how far that house is from the railroad.

A. Well, I think that is 200 feet to the inch there, it looks to me like 200 feet or something like that.

Q. Now if people who lived in that house were in the second floor, how high would you have to build your screen in order to shield out this yard?

A. Well, I think we are talking about parkways and I would rather confine my remarks to the parkways. If someone gets on top of the roof or on the second story, I think that is something they may have to live with.

Q. All of your screen does not take into consideration, really, the people living in the houses between 42nd and 24th Street?

A. Yes, I walked up on the porches of some of these places and looked down. I'd say “How high would a screen be there?” I would say “Shoulder high or this high” (indicating height) so it is very easy to determine page 1163] that because when you stand up on these steep porches you look down and you'd say, “Well, over on the other side of the road it would have to be five feet to screen that whole thing out.” That is the way I determined it.

Q. Five feet?

A. Four feet in some places.

Q. Do you think a five-foot screen would screen out the view

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of the people living in the houses between 29th and 30th on Riverside Drive?

A. Twenty-ninth and Thirtieth?

Q. Yes, sir, if they were looking out their —

A. I think it is mostly a story and a half there, is that right?

Q. Yes, sir.

A. I went up on the porches of some of those and then visualized what would have to be done here and then again it would have to be high enough to shut out this view.

Q. Because this side of the drive, that is, the south side, is in many places much higher than the north side?

A. Oh, yes, yes.

Q. You are familiar with the fact that the City already, at about the end of 42nd Street, has created a parking area to the north of the drive for a vista principally page 1164] of the Maymont section and the skyline of Richmond, are you not?

A. I am not familiar with that but I think it is a very salient point, particularly here. (Indicating on map.)

Q. Where did you say you were familiar with the property that someone had acquired?

A. Well, let's see, this is 42nd Street; my good friend Mr. *Denniston* and his wife bought a little piece of property in here and, actually, the Batte boys were up, and this has been about ten or twelve years ago and I worked with the architect on the orientation.

Q. Are you familiar with the fact that the City acquire that property from your good friend?

A. I happened to see it in the records, yes, sir.

Q. You know that ten or twelve years ago when your friend planned a house on that site that the City acquired the property for the parkway?

A. Well, I knew there was going to be a parkway there.

Q. That was ten or twelve years ago?

A. Yes, sir.

Q. Now, Colonel Wilson, I believe you con- page 1165] fined yourself to view only. You take no account of any noise or lights or any other thing that might happen in there?

A. Yes, sir.

Q. Where on 42nd or 43rd did you live?

A. Well, let's see, I was in Judge Jewett's house, that is 4320.

George Weir Wilson

Q. That is about one block off of Forest Hill?

A. No, that is on Forest Hill.

Q. Where else in there did you live?

A. I think in there, (indicating on map), Mr. Sowers who was with the paper dye —

Q. That is south of Forest Hill, going away from this property?

A. Yes, sir. I just mentioned I lived there.

Q. When you said 42nd and 43rd you didn't mean 42nd and 43rd as shown on this map?

A. What I am talking about, any street I am talking about, the intersection of Riverside Drive and the various streets that are designated there.

Q. My point is that you lived on Forest Hill Avenue and south of Forest Hill Avenue and not in the area in question?

A. That is right, yes.

Q. You say this clear area, by such a screen page 1166] as you propose, could be totally obscured?

A. Yes, sir.

Q. You could do the same thing with a galvanized solid fence, couldn't you?

A. I don't believe in the business I am in that I would recommend it.

Q. But you could do it with a fence, couldn't you?

A. Oh, yes, sir.

Q. Now you didn't mean to intimate to the Court that the houses located on Riverside Drive between 42nd and 24th Streets, and on Hillcrest Road, Ferncliff Road, Hillcrest Road extended, were all located at the hundred foot level, did you?

A. Oh, no. Let me get this thing again. For instance, this area here, you are going up to 150, you see; this is park, you see.

Q. Now that area is Ferncliff Road?

A. Yes, sir.

Q. And that is one block south of Riverside?

A. It is practically a couple of hundred feet there, back, and, of course, this is park property here. (Indicating on map).

George Weir Wilson

Q. You say you are very familiar with this page 1167] area?

A. Yes, I got all the smell and everything else down there yesterday, it was a terrific stench.

Q. Do you mean to tell the Court that in wintertime you can't see these islands and rivulets north of the property, or in summertime you can't see them?

A. Well, you certainly can't see it in the summer. Now in winter, of course, when the leaves are all off I am sure you can see back into the island area and, however, again with injecting a rather interesting combination of plant material in here, in my opinion, it would be better to actually close that in rather than to try to get into the island view because it is a very busy street.

Q. What you are saying is that you would prefer the interesting view of the plant material to the rapids, rivulets and islands?

A. No, sir, I know that country fairly well and, first off, maybe during a flood you might get some rapids but it was mighty sluggish yesterday, it was mighty smelly yesterday and I wouldn't want any part of that; I mean, I wouldn't want to go back there again just for fun.

Q. Would you think that the establishment of a railroad yard in the area proposed would be harmonious with the surrounding community?

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Q. (By Mr. Spain) Will you answer the question if we confine it to a switching yard of eleven tracks from the standpoint of vista?

A. Well, sir, I think I have said this before, that the screening, if done skillfully and considered, it wouldn't make any difference as far as the vistas are concerned or the potential views or the development of views; it wouldn't make any difference.

Q. And you, as a landscape architect and planner, just would omit any vista between 24th and 42nd Street?

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A. May I refer to the map, please? All right, on 24th Street you are going down, in a way. What you are looking at, you are looking at a fence here, that is what you are looking at into this property here (indicating on map) and then you start coming around a little bit and getting to about 28th Street and then you are getting down to near your hundred elevation. Now when you get down to a hundred elevation you have got nothing to look at. See, here is your hundred running through here. Now you just don't have anything through here to look at.

page 1170 } Q. All right, but moving back less than half a block it goes to what?

A. Well, it goes up to 125.

Q. And moving less than a half a block southwardly, or back, it goes to what?

A. Then, for instance, these —

Q. Answer this, please.

A. What was the question?

Q. And moving back less than half a block from the 125 foot elevation between 29th and 30th Street south of Riverside, it goes to what?

A. It goes to 150. See, here is your 150 contour here; here is 125; it goes around like this and anything back of this, for instance, this group in here (indicating on map) — I think these people here are the ones you are concerned with; when you get back to 150 these houses obstruct the view of anything, it doesn't make any difference.

Q. What does this figure indicate to you, pointing to a spot south of Riverside Drive between 29th and 30th?

A. That looks like an elevation mark of 120.

Q. On the drive at that point?

A. Right.

Q. And it is not a hundred, is it?

page 1171 } A. That is right, but then you are going away from the river. See, you have got to consider that, you are not even heading or looking at the view, you are looking towards this big —

Q. You mean if you are driving a car and tending to your business you are not looking at the river, but if you parked your car and wanted to look at the river what would be the situation, or if you are walking or a passenger in the car?

A. So you want to get out of the car?

Q. No, sir, you can just be a passenger.

A. Be a passenger? Well, how could you — it is just un-

George Weir Wilson

natural to look this way when you are going this way. (Indicating)

Q. You mean for passengers?

A. Yes, I think so.

Q. They don't look out of the side windows of cars?

A. Yes, I expect they do, but anyway your view is out this way. (Indicating) what do you see? I mean, you are obscured by the island trees and the trees here and all that. This wiggly street in here or wiggly parkway, they happen to leave me cold to this alignment, because of the terrain, and in my opinion, when you get into a situation
page 1172] like that, you have got to think of the driver as well as the passengers.

Q. Who are you thinking of?

A. I am thinking, for instance, when you are traveling this road, and it is right fast right now, you had better keep your mind on your business here. (Indicating on map.)

Q. That is, the driver?

A. The driver.

Q. But you are not talking about the passengers, are you?

A. Well, let's suppose you cut a vista right in through here, that would mean taking out all these trees and exposing this thing. I think that would be a very unrealistic view point.

Q. Would you say that a driver driving around Fountain Lake in a circular motion in high traffic at night would prevent his passengers from enjoying the fountain?

A. You mean at Byrd Park?

Q. Yes, sir.

A. No, no.

Q. Wouldn't the same be true of passengers in a car here?

A. Yes, but tell me what you can see.

page 1173] Q. Are you familiar with 30th Street where it intersects Riverside Drive?

A. 30th Street? Yes, that is where Ferncliff —

Q. Isn't that exactly where you said on direct examination a vista could be created?

A. Well, it would have to be a mighty small one.

Q. Why?

A. Because of the terrain and there might be a shot out this way. (Indicating)

Q. Can you say if it is or is not now a vista?

A. No. Nearly all of this — I think it is a crying shame that all this whole parkway area — I mean, you are just shutting out everything with the existing trees. You have to

J. W. Kidd

really peek around to get any of the views.

Q. In the summer?

A. Yes.

Q. But not in the winter?

A. Well, that is so in the winter.

Mr. Spain: That is all.

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J. W. KIDD,

a witness called by and on behalf of the plaintiff, in rebuttal,
after being duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. Pasco:

Q. Would you state your name and residence, please?

A. J. W. Kidd; Charlotte, North Carolina.

Q. What is your profession, Mr. Kidd?

A. Assistant Chief Engineer, Southern.

Q. You work for Southern Railway?

page 1178] A. Yes, sir.

Q. And describe briefly what your duties in
that position are.

A. They consist mostly of construction and maintenance;
construction and engineering and some maintenance.

Q. For what part of the railroad?

A. For the line's eastern territory, from Washington to
Atlanta.

Q. Does that include the Richmond Division?

A. It does.

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Q. (By Mr. Pasco) Are you familiar with the grading and
filling that has been done to the property which is the subject
of this case?

A. I am.

J. W. Kidd

Q. Who did the grading and filling?

A. The grading and filling was done by Columbus Construction Company of Columbus, Georgia.

Q. Who supervised it for the Southern Railway?

A. I did.

Q. Can you tell us the cost to the Southern Railway Company for this work?

Mr. Eichner: If Your Honor please, I think this is not proper rebuttal and there is no evidence on this by the defense.

The Court: What about that, Mr. Pasco?

Mr. Pasco: If Your Honor please, as I recall, the City's contention was that this property — some of the page 1181] testimony of the City was that the property should be graded and filled if going to be used for the kind of park that some of the witnesses talked about and I want to show through this witness what it would cost to grade and fill the property to the extent it has been.

Mr. Eichner: If Your Honor please, there is no testimony that grading and filling of the remainder would be desirable, much less necessary to use it for the park purposes that have been described.

The Court: I think there was testimony, it seems to me there is testimony that some future grading and filling would be desirable. I don't know whether it was necessary.

Mr. Spain: But there is no comparison that can be made as to the extent, assuming that Your Honor is correct and I respectfully disagree, but let's assume Your Honor is correct, it wouldn't necessarily bear any relationship whatever with the type of grading and filling that the railroad has done for the purpose of establishing a switching yard and, therefore, our position is that the only objective page 1182] to get this testimony in is to impress upon the court how much the railroad has already spent there and that is not admissible.

The Court: I am going to admit it if there is evidence and, frankly, I don't recall. It may be that I am confused now with some of the railroad's evidence but I am going to admit it and if it does develop that that is the only purpose for which it would be considered, that is, the expense of the railroad up to this point, then I will not consider it. I will overrule it in that event.

J. W. Kidd

Mr. Eichner: Exception.

Mr. Spain: Exception.

A. The cost of clearing and grubbing, baring embankments, drainage, was \$149,467.00.

Q. (By Mr. Pasco) Now, Mr. Kidd —

Mr. Spain: Just one moment. We would like to move to *exclude* the evidence offered by the railroad since the question asked — or the answer to the last question — since the question asked was “What was the cost of filling?” The witness went beyond that and spoke about clearing, which would not have been necessary under our position even assuming the Court is right in thinking that we put on evidence that some filling might be necessary. The clearing wouldn’t be necessary and, perhaps, other items asked for. The witness went far beyond the question.

The Court: I am going to admit it, Mr. Spain. It seems to me that Mr. Tarrant, or whoever it was, testified in some areas here that what he considered as the future development of the parkway, when undertaken, that there would have to be some drainage and I believe he said which might entail also some clearing. I am going to admit that.

Mr. Spain: Exception.

Q. (By Mr. Pasco) What would you estimate, Mr. Kidd, the percentage of the sixteen-acre tract if it had been filled today?

A. I would estimate that the percentage would run right around fifty to sixty percent.

Q. Does that answer relate to surface area or cubic yardage?

A. To cubic yardage only.

Q. What would be your estimate on the percentage of surface area if filled today?

page 1184 } A. I would say it was in the neighborhood of the same amount.

Q. Now what tracks, if any, were you authorized to build on this property, Mr. Kidd?

A. None.

Q. What were you authorized to do?

A. I was only told or authorized to fill the property.

Q. Have you at our request prepared a map showing the tracks now in use as a part of the Belle Isle operation?

J. W. Kidd

A. I have, sir.

Q. Do you have more than one copy of it?

A. Yes, sir.

Q. This is the one copy you have?

A. I have more copies.

Q. Would you get one?

Mr. Pasco: If Your Honor please, I would like to state that our purpose in offering this map when we do is to provide a map that shows the area west of Belle Isle bridge in one continuous picture, showing the tracks as they actually exist as a basis for subsequent testimony as to page 1185] what is being done up there at this time. We don't believe any map now in evidence actually shows that situation clearly.

Q. (By Mr. Pasco) This map which I hand you is the map to which you just referred?

A. Yes, sir.

Q. And what do the red lines on it show?

A. The red lines show Belle Isle yard.

Q. As it exists at what time?

A. As it exists now, with the exception of a temporary track.

Q. What temporary track are you referring to?

A. That was a temporary track put in for filling.

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Note: Marked Plaintiff's Exhibit No. 27 and filed.

Q. (By Mr. Pasco) Just one or two other questions on this map, Mr. Kidd. What are the heavy black lines with an occasional short dash?

A. That indicates the right-of-way.

Q. And looking west of Reedy Creek I notice that the right-of-way runs out to the river.
page 1186] A. Yes, sir.

Q. Why is that, sir?

A. That was acquired in 1917 and has been known as our right-of-way since that time.

Q. By whom?

A. By Southern Railway.

The Court: Mr. Pasco, did I understand that answer to mean that the entire right-of-way, as it exists; that is, the

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sixty foot right-of-way, has existed since 1917 or is there a certain portion of it?

Mr. Pasco: The portion west of Reedy Creek goes down to the river and I asked him why he showed that part of the right-of-way and his answer was to that question.

Q. (By Mr. Pasco) Mr. Kidd, have you had an opportunity to study and review the two plans introduced by Mr. Lancaster yesterday as "NN" and "OO?"

A. Yes, sir.

Q. Would you refer to the Plan "OO" that is on the board and make such comments with respect to its engineering features as you wish? Let the locations you point to be identified.

A. Beginning at Hull Street and proceeding page 1187] west, the track as proposed on the north side of the existing four tracks there now cannot be put in for the reason it is only thirteen feet from the center line of the present track to the edge of the canal and that is our right-of-way line. The track on the south side in the same location, if we put that track in there we do away with any connection or any business that we may get from Reynolds Warehouse No. 4. It will eliminate that track.

Q. I'm sorry, I didn't hear that.

A. It will eliminate the tracks to Reynolds Warehouse No. 4.

Q. Where is Reynolds Warehouse No. 4?

A. Right in this area. (Indicating on map.)

Q. Can you identify that by street location?

A. That, I would say, is probably 800 or 1000 feet west of Hull Street. I have calculated the curve and this curve runs about sixteen degrees and thirty minutes.

Q. At what point is that?

A. Opposite the point where the main line from West Point comes into the yard, the proposed yard, at this point. (Indicating on map.)

Q. What is the significance of the sixteen degree curve?

A. Well, it is very bad as far as maintenance page 1188] of the track and it will prevent seeing.

Q. Seeing in operation, you mean?

A. Seeing for anything standing on adjacent tracks; it would be bad for operation. We do not put that sort of thing in the yard if there is any possible way out of it at all.

Q. All right, sir.

A. At 7th Street up here, that is approximately a thirteen-

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degree curve.

Q. What is the significance of a thirteen-degree curve?

A. The same significance would apply to the thirteen as it would to the sixteen; 16-30. There are two openings under the overhead bridge at 7th Street. Those openings, each one, are 30 feet wide. If you put two tracks through each side of the opening, 7th Street, you will not have standard clearance on each side to the center pier or the abutments. As to the south end — I mean, not the south but the east end of Belle Isle yard there is noted on this drawing here a connection shown in red. If those connections were put in as switches to stub-end tracks or extension of tracks; if those switches were put in, you would foul the clearance on the first one next to the main line and the distance in page 1189] here is not sufficient to help us out any as far as additional track is concerned on this one. (Indicating on map.)

Q. "This one," you mean which track?

A. The lower one shown extended in red on the south side, the south section of the yard.

By Mr. Eichner:

Q. Mr. Kidd, there are numbers on those tracks. Would you mind referring to the number when you mention one?

A. I will try to, sir. I can't see how that under the Lee Street Bridge any such connection as proposed can be made.

Q. Excuse me, sir, if you don't mind, could we go back to the previous question you had and identify, by number of track, what you were talking about?

A. The number of the track is No. 12 that I referred to there.

By Mr. Gay:

Q. That is on the east end of the Belle Isle yard?

A. That is right. I do not see how it is possible to make the connections to tracks as shown in red under Lee Street Bridge, for this reason: for the last four years I have been attempting to make some reasonable plan to page 1190] straighten out these tracks through here and I have yet to come up with anything that I thought was feasible.

By Mr. Pasco:

Q. Could you tell us with respect to each of those tracks marked in red under the Lee Bridge why you consider that what Mr. Lancaster has proposed is not feasible?

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A. Taking Track 3, extending that westward as he has shown, Track 3, 4, 5, he has a switch in the Coast Line interchange track in the same lead. Those four switches are within 200 feet. In any parallel track where the connection with the main line, any tracks that are parallel, it takes about, oh, fourteen foot centers, about 174 feet to get in the clear. You can put a switch closer than that for the next track to form a ladder but that track cannot be — the switch to the next track cannot be put any closer than approximately 80 to 90 feet from the first switch spoken of. It is impossible to get this arrangement as shown, on this basis. We have a cross-over shown here of about 100 feet.

Q. Where is that located, Mr. Kidd?

A. That is just east of Lee Bridge.

Q. On which tracks?

A. Between the Coast Line interchange track and the ladder of the yard.

Q. How long should that be?

page 1191] A. With the tracks parallel it should be at least 174 feet. That is not taking into consideration the curvature as shown.

Q. In your opinion is the one that Mr. Lancaster planned here feasible?

A. No, sir.

Q. From an engineering standpoint I am asking.

A. It is not feasible and stay on our right-of-way, and another thing, if you excavate and attempt to extend this master switch westward you get off our right-of-way. We only have seventeen feet at the east end of Lee Bridge from the center line of the Coast Line connection. On the far side where the tracks —

Q. Just a second, that 17 feet runs from the Coast Line connection south to what point?

A. That is what I am getting at now. It is not consistent with the center line. In other words, 17 feet on the east side and ten feet on the west side where the switches are shown to come back in to the parallel tracks, that does not give you but an average of about $13\frac{1}{2}$ feet to make any track changes that you might want to make.

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Q. How many tracks are in there now, do you
page 1192] recall?

A. In the yard?

Q. No, at this point you just measured.

A. It is shown on that drawing there. I do not — there are eight tracks underneath the bridge. Part of those eight tracks is switches coming off underneath the bridge.

Q. What in your opinion is the maximum capacity of tracks that could be placed at that point?

A. The maximum capacity?

Q. The maximum number of tracks?

A. The situation that exists there now, no more than there is now at present.

Q. All right, sir, direct your attention back to Exhibit OO and let us have whatever comments you have.

A. If any attempt is made to clear up the situation as shown here, it is going to be necessary that we get off the property —

Q. You are pointing to the Lee Bridge area still?

A. Yes — get off the property and get into solid rock which is right next to the foundation of Lee Bridge and I doubt very seriously if anybody wants to shoot close to the foundation of Lee Bridge.

Q. By “shoot” you mean blasting?

page 1193] A. Blast the rock out. On the north side of these tracks there is shown five tracks —

Q. You are still in the Lee Bridge area, I believe?

A. That is immediately west of the Lee Bridge area. If those five tracks are put in, from a point just west — correction, it will be necessary to put in a retaining wall to confine that fill. That retaining wall, from a point just west of the track to the Old Dominion Iron Works, will be off our right-of-way there for some four or five hundred feet, as much as five or six feet. We have a retaining wall in there now that ranges about — measures 35 feet to the center line of the present main line, from Lee Bridge to the Old Dominion spur.

Q. Is that on your right-of-way ?

A. Yes, sir.

Q. (By Mr. Eichner) You say 35 feet from the center of the right-of-way?

A. Center of the main track which is the center of the right-of-way lines.

Q. (By Mr. Eichner) That is the northernmost track?

A. Yes, sir, the track center will have to be 14 feet center

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to center. You will have to provide at least
page 1194] ten feet from the center of that track, that last
track, to the edge of any obstruction, any change
in the shoulder of the fills, and then beyond that provide the
retaining wall and depending on the design you cannot hope
to keep that retaining wall entirely on the right-of-way be-
cause it is not possible.

Q. (By Mr. Pasco) What makes it impossible?

A. Due to the fact that you do not have enough distance
or right-of-way to do so, we only have forty feet.

Q. (By Mr. Eichner) Sir, what point did you refer to there
when you said forty feet?

A. Just from a point just west of the Old Dominion con-
nection.

Q. (By Mr. Gay) Mr. Lancaster said he had forty feet
from the north of the center line, the main line.

A. In other words, I have got forty feet from the present
northern-most track to the river. As to the connection to
the Old Dominion Iron Works, if this connection is made,
the second track will be right over the end abutment to the
connection of the Old Dominion Iron Works. It will call for
the removal of at least one span and remodeling at least 150
or 200 feet of bridge on out into the river.

page 1195] By Mr. Pasco:

Q. That is the bridge over the Belle Isle land?

A. It is.

Q. Who owns that bridge, do you know?

A. The Old Dominion Iron Works are the present owners
of that plant.

Q. All right, sir.

A. Going on to the curve and from there on it is feasible.

Q. From an engineering point of View? Directing your
attention, Mr. Kidd, to the part of Exhibit OO that involves
the tracks that run through the corner of the property sold
to the Reynolds Metals Company there seems to be con-
siderable tangents there between the curves. Have you made
any observation on the ground?

A. I have, sir. You notice this bridge? (Indicating on
map.)

Q. Which bridge?

A. The 7th Street underpass; you have got to tailor all
your design if you expect to get through that. There is not
available the amount of tangents as shown here and it will

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not be over four or five hundred feet long.

Q. How long is it shown now?

page 1196] A. It is shown about 950 feet. I will check
that with the scale.

Q. That is all right.

By Mr. Eichner:

Q. What did you say was not available? You said something was not available.

A. There is not 950 feet of tangents available between the two curves.

Q. Between the ACL tunnel?

A. No, not between the ACL tunnel.

Q. (By Mr. Pasco) By "tangent" you mean straight track, I believe?

A. That is right.

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page 1197]

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By Mr. Pasco:

Q. You have some designations on here, R-3, R-4, C-2 and M-2. What are those?

A. Those are zoning references I took from the zoning maps and they are my interpretation from the zoning maps from which they were taken.

Q. As applied to the properties on which those figures stand?

page 1198] A. That is right.

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By Mr. Eichner:

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page 1199]

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Q. You stated that you supervised the execution of the grading and filling contract for whatever company that was, the Georgia Company, Columbus Construction Company, and that that \$149,000.00 dollar figure included all the work done under the contract, is that right, including the grading, filling

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and drainage and also sewer work, did it not?

A. That is right.

Q. And it included the work done on property owned by the City of Richmond, as well as the property owned by the Southern Railway Company, did it not?

A. City of Richmond?

Q. Yes.

A. Will you clarify that for me, please, sir?

Q. Certainly. (Going to map on the board.) Looking at Plaintiff's Exhibit 22, Mr. Kidd, is this Reedy Creek? (Indicating on map.)

A. This is Reedy Creek right here. (Indicating)

Q. Would you mark that with an "R" where you say Reedy Creek is on the red portion of the subject property? That is the present location of Reedy Creek, is that correct?

A. That is right.

page 1200 } Q. And is this dotted line the former location of Reedy Creek, just to the right of the "R" you have put on the map?

A. I think it is, sir, I wouldn't be positive of that.

Q. Now the City property I am referring to, sir, is just south of what you have labeled "right-of-way line" on Exhibit 22. The question was, did the contract you refer to include doing of work on that City property just south of that right-of-way line?

A. As far as doing work on the City's property, the only work that was performed other than the little road down in here was a bulldozer got off here (indicating on map) and it inadvertently got off of the forty foot right-of-way a total of fifteen feet and got stuck.

Q. And the moving of the City sewer was inadvertent as well?

A. No, the City sewer was done by me.

Q. In other words, you change that last answer?

A. You said property, I misunderstood you.

Q. Well, I mean the property of the City of Richmond south of Southern Railway right-of-way line; that is what I mean.

page 1201 } A. South of the Southern Railway right-of-way line?

Q. Yes, sir.

A. Are you referring to the sewer south of the Southern Railway right-of-way line now, sir?

Q. Yes, sir.

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A. There was no work performed on any City sewer outside of the right-of-way line.

Q. How about the Reedy Creek south of the right-of-way line, was that not relocated?

A. Reedy Creek was relocated westwardly a little bit.

Q. On the City property?

A. The fifteen feet I spoke of a few minutes ago.

Q. That was part of the contract?

A. It was not part of the contract because I told the contractor personally, myself, to stay away from the forty foot — to go no further than the 40 foot line. He disobeyed my instructions and got on the City property.

Q. You were supervising it all the time?

A. I was supervising it all the time, but I wasn't there when the thing happened. I apologized to the City Attorney for that mistake.

page 1202] Q. But you did not notify anybody in the City Government prior to that work?

A. I did not.

Q. You did not apologize until the Southern Railway was called by the City Manager and asked about it, did you?

A. Sir?

Q. When did you apologize for doing that?

A. In a meeting held, I think, the last of October, attended by the attorney and the Assistant City Manager, I believe.

Q. You also attended a meeting there on November 8, 1960, did you not?

A. I don't recall that meeting.

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page 1203]

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By Mr. Eichner:

Q. When was this work done on Reedy Creek on City property?

A. As well as I can determine, it was about the first of October. I do not have a complete diary of when the work was done but it was done sometime about the first of October, 1960. I could be wrong a week or two, one way or the other.

Q. Now you stated, Mr. Kidd, that you were authorized to fill this land and do whatever other work was necessary in

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connection with it but you were not authorized to build any tracks?

A. That is correct, sir.

Q. You were authorized to draw plans for putting tracks on the property, were you not?

A. I was authorized to prepare study plans.

Q. And you did, in fact, prepare some plans?

A. I did, yes, sir.

Q. How many different plans?

A. I don't know. That has been going on
page 1204] since '56 and so on, rearrangement of yard
facilities; I can't say how many I prepared.

Q. Referring to the 16 acre railroad property that is in controversy here, you prepared one plan showing two tracks; one showing four and one showing eleven, did you not?

A. I have prepared numerous plans, let me put it that way.

Q. You heard Mr. Beard's testimony he had seen plans for four tracks and eleven tracks?

A. Those were study plans.

Q. So your office did prepare such plans?

A. They did.

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page 1205]

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By Mr. Eichner:

Q. Mr. Kidd, you made reference, I think referring to Mr. Lancaster's plan, Exhibit OO, concerning a 16 degree curve?

page 1206] A. That is right, sir.

Q. What do you consider normal maintenance of a curve? What degree curve do you consider normal maintenance?

A. We are not allowed in any of our designs of yards at the present time or have not been in the last few years to design a yard with that type of curvature in it. As to normal maintenance for a curve, that is something that is indeterminate, as far as I am concerned.

Q. What is the degree of curvature on the No. 8 turn-out?

A. Approximately 12 degrees.

Q. Now what degree of curve can a diesel locomotive take?

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A. It depends on the type of diesel.

Q. How about the type of switcher that is in use in the Southern yards here in Richmond?

A. I don't know the number of those. The mechanical sketch on those locomotives are prepared by numbers. I could not attempt to make an answer to that.

Q. Well, *let's* tell me what degree of curvature the various types of yard locomotives Southern uses can take.

A. I have not that information available.

page 1207] Q. You do not know? What would be the maximum for a yard locomotive?

A. That I can't tell you, sir.

Q. How about road locomotive?

A. Road locomotive? It depends on the type, again.

Q. I see. You don't know anything about the type of locomotive in use here?

A. I know about the type of locomotive in use, yes, sir, but I can't give you the curvature on every different type of locomotive or what is used in Richmond.

Q. Now referring again, Mr. Kidd, to Exhibit OO, as I remember your testimony you started with your various objections to the east and moved towards the west, did you not?

A. That is correct, sir.

Q. As I understood you to say, at the east end of the South Richmond yard, as shown on there, your main objection was the northern-most track which is labeled "tail main track" on Exhibit OO, is that correct?

A. That is correct, sir.

Q. And your objection was that the right of way owned by the Southern Railway was not wide enough at some point to build that track?

A. Not at some point, but for a distance of
page 1208] approximately 400 feet along in here on this canal. (Indicating on map.)

Q. Four hundred feet from the end of that track?

A. The track has not been staked out on the ground. It is an approximation just like this sketch is.

Q. Does the Southern Railway property line go all the way to the canal?

A. The property line goes to the bank of the canal.

Q. So there would be plenty of land with a wall built in there, would there not?

A. You could not build a wall in the canal without permis-

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sion from the owners of the canal.

Q. Who were they?

A. That I can't answer.

Q. But assuming that the right to build there could be acquired, then that would eliminate that objection, would it not?

A. There again I can't answer that question for the reason I don't know what would be involved in that right or what collateral provisions would be necessary as far as that right is concerned.

Q. The same track could be located to the page 1209] south at the east end of the South Richmond yard, could it not?

A. At the south, sir?

Q. Instead of being on the northern-most track at that point at the east end of the South Richmond yard, it could be relocated as the southern-most track or below the southern-most track, could it not?

A. In other words, I assume you are speaking of taking the track off next to the canal and applying it on the south alongside of the proposed track in red?

Q. Yes.

A. There again you will destroy trackage rights to enter Reynolds Metals.

Q. Destroy trackage rights?

A. Destroy tracks going into Reynolds Metals.

Q. That could be relocated, couldn't it?

A. No, sir.

Q. Why?

A. Not to serve Reynolds as they are set up.

Q. But it could be moved, couldn't it?

A. Could be moved?

Q. Yes.

A. Could be moved but it would serve no page 1210] purpose.

Q. You mean the only way you can serve Reynolds Metals is the way it is set up now?

A. The way it is set up now is a request by Reynolds Metals some four years ago that the track be put in that location, that it fits their building and it has to remain so.

Q. The question was, could it not also serve Reynolds Metals if it were in some other location?

A. That I can't say because I wouldn't attempt to ascertain what Reynolds Metals would want.

Q. Without reference to what Reynolds Metals would want,

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it certainly could be relocated, couldn't it?

A. I can't say.

Q. You don't know enough about it?

A. Yes, sir, I know plenty about it but I couldn't say that.

Q. Now referring again to Exhibit OO, Mr. Kidd, and the proposed tracks under Lee Bridge, Mr. Lancaster has designed seven tracks to it, all going under Lee Bridge, has he not?

A. The way I count it, it is nine.

Q. Now as I understood your direct testimony, you thought it was impossible to get that many tracks under page 1211 } there?

A. I don't say it is impossible to get the tracks under there; I say it is impossible to get them on the right-of-way and not do some excavation next to the pier of Lee Bridge.

Q. Let's leave out the excavation for just a moment. The Southern Railway right-of-way is certainly sufficiently wide, is it not?

A. Not for the tracks as designed.

Q. How wide is the width of the right-of-way normal to the tracks at that point?

A. Normal to the tracks?

Q. Yes, sir.

A. What tracks, please, sir.

Q. What is the total right-of-way width perpendicular to the tracks under the bridge?

A. Perpendicular to the tracks? There again I would have to ask for clarification of which track you are thinking about being perpendicular to.

Q. The main line track.

A. The only way I can give you an answer to that is to scale it.

Q. You don't know the measurements of the right-of-way?

A. I do not know the measurements of the page 1212 } right-of-way like you frame the question.

Q. Can you scale it on your Exhibit 27?

A. I can.

The Court: You mean as it goes under Ninth Street Bridge?

Mr. Eichner: No, sir, Lee Bridge.

The Court: As it goes under Lee Bridge?

Mr. Eichner: Yes, sir.

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A. At the center line of Lee Bridge on the south side, that right-of-way is 140 feet, which includes the bank of the river. If I understand it, the Lee Bridge runs approximately north and south. All right, I measured from the point on Lee Bridge at the center line of Lee Bridge on the south end to the right-of-way line on the bank of the river.

Q. (By Mr. Eichner) Now how many tracks can be constructed on a 140 foot right-of-way?

A. That depends on the curvature, arrangement of lanterns, location of switches and any other —

Q. I am talking about parallel tracks at the location shown.

A. Parallel tracks at the location shown, I can't answer that right at this time.

Q. How soon do you think you can answer it?

A. I would have to figure on — make a sketch
page 1213 } of the thing and figure it out in light of what
is there.

Q. Well, then, you stated a little while ago, didn't you, that you required 14 feet of right-of-way for each track?

A. No, sir —

Q. Fourteen feet between track centers, isn't that what you stated?

A. That is what I stated.

Q. That is for main line type width, isn't it?

A. No, sir.

Q. Isn't the standard 13 feet for yard tracks?

A. No, sir.

Q. Well, assuming, now, that is 14 feet, you can get ten tracks on there, couldn't you?

A. No, sir.

Q. Why?

A. For the simple reason you have to allow for cuts and fills, the bank of the river and necessary walkways and drainage on each side.

The Court: Mr. Eichner, one minute, I don't know what he means by the measurement. Does he mean the center of one rail to the center of the other rail?

Q. (By Mr. Eichner) By that you mean from

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page 1214] the center of the track, don't you? That is to say, the point an equal distance between two rails, isn't that correct?

A. That is correct.

The Court: To the same point on the second track?

Q. (By Mr. Eichner) That is what you meant, isn't it?

A. Your gauge on the track is fourteen feet, eight and a half inches; it is half-way between the two rails, or seven feet, four and a quarter inches.

Q. At this point we are talking about, Mr. Kidd, right under Lee Bridge, that point is shown here, isn't it, on Plaintiff's Exhibit 21?

A. That is correct, sir, a portion of it.

Q. Yes, sir. Now where is the excavation of rock you were talking about that would have to be made on the south side of the right-of-way?

A. It would come — this is rock here; this is rock here. (Indicating) The bridge excavation, when they built this pier, was excavated straight in or drilled out for each individual column. This is all solid ledge of rock from here all the way through up this way in each side of Lee Bridge. (Indicating)

Q. How far does that run?

page 1215] A. That runs approximately a thousand feet.

Q. With modern construction methods that rock could be removed sufficiently to widen the right-of-way, could it not?

A. That would be off of the right-of-way.

Q. Let's eliminate the right-of-way, let's answer the question. With modern construction methods this rock could be removed, could it not?

A. Yes, but expensive.

Q. It would cost a lot of money?

A. Yes, sir.

Q. The Southern Railway, of course, could acquire a right-of-way there, could it not?

A. It could, I suppose, I don't know.

Q. You know the Southern Railway has the right of eminent domain, don't you?

A. I understood from my legal counsel that they have.

Q. I imagine you have drawn a few plats for the condemning of land, too, haven't you, or you supervised the drawing of

J. W. Kidd

them?

A. I can't recall one right now.

Q. Assuming, now, that if you acquired some additional right-of-way just to the south of the Lee Bridge under — excuse me, just south of the present right-of-way page 1216] underneath the south end of the Lee Bridge, you could put in ten tracks there, couldn't you?

A. I wouldn't make that statement.

Q. Could you put in eight tracks?

A. By acquiring additional right-of-way and straightening that lead out it might be possible. I wouldn't want to say for sure.

Q. And with a retaining wall, now, on the north side of the right-of-way at that point you wouldn't have any problem with the right-of-way on that side, would you?

A. Yes, sir.

Q. What would be the problem?

A. The problem is that you have now only room enough for two tracks additionally and then ten foot berm and then that leaves you only two feet on the right-of-way to construct a retaining wall, which in my book is impossible.

Q. Just west of the Lee Bridge Southern Railway has recently constructed a retaining wall, has it not?

A. Yes, sir, I built that wall.

Q. And that wall could have been built a little farther, a few more feet to the north, could it not?

A. I would not ask my superiors to go into the expense of spending \$150,000.00 to — that is just a rough page 1217] guess of what the wall would be for the additional track.

Q. You mean that installing that wall a few feet to the north of where you actually did install it would cost an additional \$150,000.00?

A. I didn't say that, I said it would cost about another \$100,000.00 to do it, in addition to the about forty we have already spent; that is a rough estimate.

Q. Looking again, if you will, Mr. Kidd, at Exhibit OO, Mr. Lancaster's plan up there, I call your attention to the Belle Isle yard, tracks No. 3, 4 and 5.

A. All right, sir.

Q. Now if you eliminated the extensions Mr. Lancaster has indicated in red on there, how many car lengths would you cut off of the capacity of the yard?

A. I don't understand that question, sir, I am sorry.

J. W. Kidd

Q. All right, sir, looking at that Exhibit OO you found tracks 3, 4 and 5 as they are numbered there in the Belle Isle section, have you not?

A. Yes, sir.

Q. You see the portion in red just to the east of the Lee Bridge?

A. Yes, sir.

Q. Assuming, now, Mr. Kidd, that that red page 1218] section I just referred to there were eliminated, to what extent would that reduce the number of cars of the yard that those tracks could hold?

A. I can't answer that.

Q. Would you scale off those three red lines I just referred to?

A. Will you tell me, show me on the drawing here just what you have reference to, please, sir?

Q. Surely. I ask you to take tracks 3, 4 and 5 and on each of them measure off the red portion of each of those tracks until they come to an end, until they meet the second curved track.

A. I will have to ask this, sir, if you will, that on this plan it is not definite enough for me to establish the clearance point on any track.

Q. Just do the best you can.

A. This is not a true answer and can't be.

Q. It is true, of course, but it is much harder to design on a 200 foot to one-inch scale than a 100 foot to one-inch scale.

A. It takes at least no more than a fifty foot scale. On the basis of 50-foot cars No. 5 is 150 feet or three cars, the best I can scale it.

Q. All right, sir. How about No. 4?
page 1219] A. No. 4 cannot be any greater than that.

Q. Three cars?

A. That is right.

Q. And how about No. 3?

A. You might possibly get four cars.

Q. So, in other words, by eliminating those three portions in red which you have just measured, the capacity of those tracks would be reduced by approximately ten cars, the best you can figure it?

A. Approximately, best I can figure it.

Q. That certainly would not significantly affect the feasibility of this plan, would it, by eliminating ten cars?

J. W. Kidd

Mr. Gay: He hasn't said anything about the feasibility of the plan. He predicated it on the number of cars operating on these tracks. We are talking about the physical layout of the tracks.

Mr. Eichner: Mr. Kidd testified, of course, that the plan is unfeasible at this point.

Mr. Pasco: From an engineering point of view only, I believe his answer was.

The Court: Didn't he testify on direct examination that the distance between the switches that that would allow for would make it unfeasible?

Mr. Eichner: He certainly did.

The Court: I think this would be relevant on that.

Q. (By Mr. Eichner) So if we eliminate those extensions of tracks 3, 4, and 5 you just measured that would remove your objection as to the switch point there, would it not, as to the crossover and the interchange track?

A. I have never found — I will have to qualify that statement. I can't make it because I don't know. From the detail that is shown on this 200-foot drawing I cannot determine just exactly what is going to happen.

Q. Now elimination of those three tracks, that is to say, elimination of the red portions of those three tracks which you have just measured, those portions which pass under the Lee Bridge, that would remove your objection that the number of tracks shown cannot be fitted under the Lee Bridge, would it not?

A. I would not so say. If you threw away the crossover and relocation of the ACL, I don't see where I could make a statement that it would eliminate my objection from an engineering standpoint.

Q. I thought you said eight tracks was too much at that point? Didn't you say that?

A. Sir?

Q. Didn't you say eight tracks shown there were too many?

A. I don't recall that.

Q. Is eight tracks too many at that point?

A. I can't say that eight tracks — I have never been able to develop a ladder and a turnout arrangement that is any better than what we have in there now and stay within our right-of-way. That is as much as I can say. I cannot determine on this plan, by taking off one crossover, one

J. W. Kidd

switch or three tracks and leaving the rest of the plan in — it is impossible for me to give you a direct answer on that, sir.

Q. If you leave the tracks as they go under the Lee Bridge just as they are at present; you are familiar with that, of course?

A. Yes, sir.

Q. That would only eliminate ten cars that the number of tracks in the Belle Isle yard could accommodate, would it not?

A. I am sorry, you will have to clarify that for me.

Q. All right. Let's assume, now, that we page 1222] leave the tracks just the way they are as they go under the Lee Bridge.

A. Yes, sir.

Q. Tracks No. 3, 4 and 5 on Exhibit OO; then the only change, as far as length of track is concerned, would be the elimination of those three red lines which you have just measured, isn't that right?

A. And now you are talking about making the Coast Line — still holding the Coast Line where it is?

Q. Yes, sir.

A. I wouldn't say that because I don't know. The ladder arrangement has got to be worked out in detail according to the exhibit prepared.

By The Court:

Q. Mr. Kidd, when you refer to ladder arrangement, you mean where the different tracks take off of the main track?

A. The ladder arrangement, Your Honor, is a track that comes off of a parallel track and then goes around the yard and other tracks take off from that.

By Mr. Eichner:

Q. I believe you objected, if my memory serves me correctly, Mr. Kidd, on Exhibit OO again, Mr. Lancaster's plan, again at the south end of Lee Bridge, you objected to the crossover to the Atlantic Coast Line interchange track, did you not?

A. Yes, sir.

Q. What was your objection there, sir?

A. My objection to that is it would cross over, as shown, 100 feet long and I have never seen a crossover put in on tracks 13 feet on center, 100 feet; it is impossible.

J. W. Kidd

Q. How long should it be?

A. If the tracks were parallel the crossover on No. 8 should be 174 feet.

Q. 174?

A. That is with your tracks parallel and no curvature.

Q. So if the crossover shown on Exhibit OO were lengthened to 175, 180 feet, that would correct the objection?

A. No, sir.

Q. Why not?

A. You would get into other switch layouts you would disturb.

Q. You could move those switch layouts to the east?

A. No.

Q. Why?

page 1224] A. I couldn't tell you we could use them to the east until I staked out the whole ladder.

Q. How many tracks would be affected where the switches might have to be moved?

A. I can't tell you that under this plan because it is of not enough detail for me to tell you.

Q. It certainly doesn't affect more than the tracks which open up to the east of the crossover, does it?

A. I can't say that, either, because the location of the switch determines the track centers on the tracks beyond that point.

Q. Let's assume, though, for a minute, looking again at Mr. Lancaster's plan, Exhibit OO; assuming, now, that you move the switches on the tracks numbered on Exhibit OO, eight through fifteen, inclusive; assuming, now, that you did find it feasible to move those eastwardly, then there would be no problem getting a 175-foot crossover to the interchange track, would it?

A. As I said before, I can't tell you that for the reason I have not laid out the ladder or the arrangements he has proposed.

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page 1225]

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CROSS EXAMINATION

By Mr. Spain:

Q. Mr. Kidd, how many plans did you say you had drawn for the use of the sixteen acre Riverside property?

J. W. Kidd

A. I did not state I had drawn any particular number. I said I had drawn several study plans, sir.

Q. Did you ever identify the one that we know as Exhibit A-18 shown as to two-track plan?

A. That plan was prepared under my supervision.

Q. You have seen it?

A. I have, sir.

Q. And you think that it would be impossible to put Mr. Lancaster's plan into operation? Is that what you are telling the Court?

A. Without further details as to the layout of the ladders and so on, I will say it will be.

Q. And that is colored by the light of the fact that you have, over a period of years, concentrated your efforts into making study plans in the area of the Riverside Drive land, is it not?

A. I don't quite understand the question, sir.

page 1226] Q. Have you ever been asked to make any other study except on the sixteen acres that we are talking about?

A. The study for the rearrangement of the switches, if you are referring to that, in Lee Bridge, was done by me, by direction to my men.

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DIRECT EXAMINATION

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Q. (By Mr. Pasco) I believe my question was what these dotted lines shown on here to the west of Reedy Creek, within your right-of-way line, indicate.

A. They indicate tracks that were constructed a number of years ago and were removed a number of years ago.

Q. Do you know what use was made of those tracks?

J. W. Kidd

A. That I can't say, sir, because I don't know what they were used for.

Q. Now when you talk about laying out a ladder what do you mean? Is that office work or field work?

A. Well, it is both.

Q. Laying it on the ground and your drawing board?

A. It is a detailed survey of what is there now and then a preparation of a proposal to correct anything that is wrong or a proposal to make changes in that ladder.

Q. Mr. Spain asked you about this two-track plan. How many tracks altogether is included on that plan in the property west of Lee Bridge?

A. I believe there is a total of four, sir.

page 1232] Q. Do you know if that is the plan that is referred to in the newspaper advertisements that have been admitted into evidence here?

A. I can't answer that, sir, I don't know that.

Mr. Pasco: That is all.

RE-CROSS EXAMINATION

By Mr. Eichner:

Q. A total of four, you said, on this two-track plan, including the two present tracks within the 80-foot right-of-way?

A. They will, if the plan as shown contemplates the two tracks that are there now and two more tracks, making a total of four.

Q. Still it would be only two on the present right-of-way under that plan and two outside of the present right — well, now, you have a different definition of right-of-way than we do; two within the 80-foot right-of-way?

A. I recognize no 80-foot right-of-way in that from Reedy Creek west.

Q. Two extending 80 feet north of the south line of your right-of-way?

page 1233] A. I will have to study that.

Q. Look at Exhibit 22, if you would, please. Let me say the original right-of-way of Southern Railway prior to the acquisition of land in 1960 and 1957 —

A. I don't recognize it.

Q. Let us talk about — look there around Reedy Creek, Mr. Kidd, on Exhibit 22, and look at the southern edge of the Southern Railway right-of-way.

J. W. Kidd

A. Yes, sir.

Q. Now 80 feet north of that southern edge of the right-of-way; (indicating) now the plan, the two existing tracks, of course, are within that 80 feet I just described, are they not?

A. The existing tracks? I would like to see the exhibit please, sir, of that.

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By Mr. Eichner:

Q. Mr. Kidd, I put Exhibit A-18 on the board. I call your attention to the Reedy Creek area. Now the page 1234] present location of tracks as you have indicated it here is, of course, the dotted lines indicated at that point, is that correct (Indicating)

A. Between these two points here. (Indicating)

Q. Yes, sir.

A. And again back in here.

Q. So this plan, then, actually as it appeared at this time, sir, contemplated a slight southward movement of the two existing tracks, did it not?

A. In the curved portions only.

Q. And, in addition, to the north of those two tracks are two tracks almost parallel or parallel?

A. Yes, sir.

Q. And the right-of-way line is indicated in the same manner as on your Exhibit 27, is it not?

A. Yes, sir.

Q. Now we get down —

A. Except that is right-of-way here, too. (Indicating)

Q. As far as the key you used, the solid line with the dot, is that correct?

A. Yes, sir.

Q. Now when you get to the east end of the subject property, is it correct to say that this plan, Exhibit page 1235] A-18, shows the two additional tracks on or off of this 80 foot width?

A. East?

Q. When you get east — excuse me, sir, when you get to the west of the east end of the property involved in this suit?

A. That exact east end, the tracks are proposed within the 80-foot right-of-way, going east.

Q. Going westward, how about that?

J. W. Kidd

A. The tracks proposed westward transfers and goes to the north.

Q. And are both those tracks more than 80 feet from the south end of the right-of-way?

A. The outside track is more than 80 feet.

Q. The inside track is less than 80 feet?

A. It is.

Q. And the use proposed on there as auxiliary tracks, what does that indicate?

A. Auxiliary tracks?

Q. Yes, sir.

A. Means additional tracks.

Q. What does "auxiliary" mean?

A. Additional.

Q. For switching purposes?

page 1236] A. I can't say that, I am not an operating man.

Q. One other thing on Exhibit A-18, I notice up just to the west of Lee Bridge you have "rock" indicated by a sort of cross-hatching in here, do you not?

A. That is right.

Q. That is the rock you referred to before, is it not?

A. That is correct, sir.

Q. And it does not extend continuously a thousand feet west of Lee Bridge, does it?

A. It does; there is various heights in here. One place it is down about the top of the rail and there would have to be top of the rock removed to get it.

Q. That is not indicated on this plan, A-18?

A. This is indicated as a rock bank all the way around but did not indicate the removal of such rock as in here now.

Q. Now, Mr. Kidd, this A-18 states on it the following date: "June 15, 1960, revised November 4, 1960." Can you recall what revision was made November 4, 1960?

A. I cannot.

Q. Do you recall how many tracks were on it when this plan was originally drawn June 15, 1960?

A. I cannot, sir.

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O. R. Bailey

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O. R. BAILEY,

a witness called by and on behalf of the plaintiff,
in rebuttal, after being duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. Pasco:

Q. Will you state your name and residence, please?

A. My name is O. R. Bailey; I reside at 5118 Boscobel Avenue, Richmond, Virginia.

Q. By whom are you employed?

A. By Southern Railway Company.

Q. And for how long have you been employed by the Southern Railway Company?

A. Forty-two years.

Q. Where has most of your work taken place?

A. It's been equally divided between the city or station at which I was first employed, and Richmond, Virginia, with the slight vacancy in-between, so to speak. I entered the service with the Southern Railway Company at Winston-Salem, North Carolina, March 16, 1920 as a clerk in the local freight agency. I filled various clerical positions in both yard and agency until 1929 when on September 1st of
page 1239] that year I was appointed Assistant Freight Agent at Winston-Salem, a position I held until November, 1932. I then transferred to service as Yard Clerk; later, clerk in the local agency again and during the year 1934 I went into yard work parttime as a relief Yard Master.

Not too long thereafter I was assigned to a position as Chief Yardmaster which I held until October 30, 1938. On November 1, 1938 I was transferred to the Richmond, Virginia terminal as General Yardmaster. I remained in that position until March 16, 1944 on which date I was transferred to the Charlotte, North Carolina terminal, a position I filled until August, 1946. Thereafter, I served as a traveling Safety Supervisor until January 15, 1947. Effective January 16, 1947 I returned to the Richmond terminal as General Yardmaster and have filled that position to date.

Q. What are the responsibilities and duties of a Yardmaster at Richmond?

A. To take responsibility for and supervise the switching operations within the terminal limits which constitutes the switching of inbound trains, breaking them up, in railroad terminology; the classification and building of outbound trains; the handling of carload freight and interchange to

O. R. Bailey

and from our connections at Richmond; the transportation of
carload freight and empty cars from point to
page 1240] point within the terminal limits and the serving
of industries and team tracks including our
freight house located therein.

Q. Have you ever lived in the area of the sixteen acres involved in this case?

A. Yes, sir, when I brought my family to Richmond initially, during December, 1938, we were fortunate enough to obtain a residence at what was then 2900 Ferncliff Road, now 2900 Riverside Drive. When we moved, the street Ferncliff terminated at 29th Street.

Q. How long did you live there?

A. The family moved to Charlotte in April, 1944.

Q. Mr. Bailey, where is your office in Richmond?

A. At approximately the foot of Perry Street in South Richmond.

Q. Within what yard facility of the railroad is that?

A. Within what is known as the South Richmond yard area.

Q. Which end of the South Richmond area?

A. About the center.

Q. Where do you perform your classification work today?

A. We perform our classification work at
page 1241] Belle Isle.

Q. How often do you get over to Belle Isle, Mr. Bailey?

A. That varies, based on many requirements. In addition to my other duties I supervise the clerical force, the maintenance of records, the handling of correspondence, many public contacts. I go to Belle Isle yard, based on weight of operation, necessity and so forth, usually about twice a day, once in the morning and once in the afternoon or early evening.

Q. Are you familiar with that part of the yard extending west of Lee Bridge?

A. Oh, yes, sir, I have ridden over it on yard engines; I have walked it innumerable times.

Q. Directing your attention to the classification tracks in Belle Isle yard, is the volume of cars in that yard at a fairly fixed level or does it fluctuate?

A. No, it fluctuates, based on arrival and departure of trains, sequence of what we call transfer movements from Belle Isle to other sections of the terminal, and the reverse.

Q. Is the yard ever completely filled with cars?

O. R. Bailey

A. No, sir.

Q. Why not?

page 1242] A. Frankly, if it were completely filled, our operations would be completely stymied, we couldn't afford to have it filled because the yard — a classification yard level full, so to speak, is no longer a classification yard but a storage yard in its entirety.

Q. Could you tell us what the peak periods of Belle Isle yard classification tracks are?

A. Well, there are several peaks of varying degrees. I will start, if I may, with the beginning of the day's operations. Well, I will say this, terminal operations are divided into three shifts, roughly 7:00 to 8:00 a.m. at the beginning; 3:00 to 4:00 p.m. as to the ending of the first shift. The second shift is connected as to sequence of switch-engine operations and other employees, from 3:00 p.m. to 4:00 p.m. and the third shift, so-called connection, 11:00 p.m. to 12:00 midnight. Our first peak at Belle Isle is roughly between 4:00 and 7:00 a.m. This peak is a little greater on certain days of the week than on others; for example, we have a local freight train arriving in Richmond during the afternoon or evening of each Tuesday, Thursday and Saturday that, of course, is not evident on Monday, Wednesday, Friday or Sunday.

Q. You gave the hours 4:00 to 7:00; are you talking about daylight saving or standard time?

page 1243] A. I am speaking of standard time because during the periods of daylight saving time that we have had in Richmond for the past two years, the railroads all, insofar as I know, certainly Southern, have continued to operate on eastern standard time so all the hours I might use would be based on that.

Q. Standard time?

A. Yes, sir, on eastern standard time.

Q. Proceed with your discussion of this peak period.

A. The peak period on the so-called first shift, 4:00 to 7:00, with the variances I have mentioned, begins roughly at 4:00 o'clock through the departure of our local freight train to West Point, Virginia, departing from Belle Isle 6:45 to 7:00. The second peak period and the second as to degree of intensity comes between 9:00 a.m. and 11:30 a.m. to 12:00 noon and sometimes extends a little beyond that, depending on the overall weight of the operation. The greatest peak is that in the evening hours, created by the movement of cars from industrial territory and from interchanges into Belle Isle

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yard for our night through-freight train No. 57 and has its beginning between 5:00 and 5:30 p.m. and naturally its ending with the completion of the Train 57 and its departure.

Mr. Spain: At what time?

page 1244] A. Between 11:00 and 11:30 p.m., if you are speaking of the departure of No. 57. I might add that the train from West Point arriving Belle Isle for switching during that particular switch or tour of duty is generally between 3:00 and 5:00 p.m.

Q. (By Mr. Pasco) What goes on in the yard between these peak periods, Mr. Bailey?

A. Between the peak periods?

Q. Yes, sir.

A. Well, I would have to detail that somewhat. Of course, there are periods of the day between the peaks when there is no activity at all there because of the necessity, there being no positive need for the engines in that locale at that time, they being engaged in transfer work; that is, moving of cars from Belle Isle to other sections of the yard and also engaged in industrial, required industrial service in certain territories at certain hours of the day and/or night.

Q. The yard is roughly inactive except during these peak periods you described?

A. That is true.

Q. Mr. Bailey, have you had an opportunity to review the photographs as introduced as "JJ" and "KK" of the City?

A. Yes, sir, I have.

page 1245] Mr. Pasco: Before I ask you about these I would like to ask counsel if we can understand that the times listed on the back of these photographs relate to daylight saving time. They were taken during a period when daylight saving time was applicable and I assume our officer was operating on that basis.

Mr. Eichner: I assume we can stipulate that.

Mr. Pasco: If we may, and understand that Mr. Bailey is talking about standard time, we wouldn't have to repeat it in the record.

Mr. Eichner: We are on daylight time on the photographs.

Mr. Pasco: On the photographs.

The Witness: In other words, each time represented there would be one hour earlier as far as we are concerned in our operations.

O. R. Bailey

Q. (By Mr. Pasco) Mr. Bailey, I hand you Exhibit JJ, consisting of a number of pictures taken from Lee Bridge east and west and ask you if you can tell us what Photograph No. 1 shows?

Mr. Pasco: If Your Honor please, I believe it page 1246] would be well if this witness stand where you could see his testimony, and counsel, also. (The witness stood before the Bench.)

A. This particular photograph — and I will designate them, if I may, 1 Land 1-R —

Q. When were they taken, first?

A. This particular photograph was taken at 2:15 p.m., July 30, 1962. Photograph 1-L gives a view of Belle Isle yard east of Lee Bridge.

Mr. Gay: You gave the time there, Mr. Bailey. Do you mean standard?

A. I am using our time. The photograph designation is 3:15 p.m.; our comparable time would be 2:15 p.m.

The Court: You will translate their time into railroad time as you go along?

A. I will be glad to do that. This particular photograph — and, Your Honor, the track to the left along the river bank is the main line. The tracks are numbered then from the main line northward to the lead track at the outside of the yard, beginning with No. 1.

Q. (By Mr. Eichner) Northward, Did you say?

A. I beg your pardon, southward, towards the ACL Railways and Riverside Drive. Of course, Tracks No. 1, 2 and 3 are at this hour open. Track No. 4 contains a page 1246-A] number of gondolas, ten to be exact, 52 feet in length, of Southern Railway ownership, known as mill type, which are at Richmond for the purpose of filling orders for the loading of scrap iron at Richmond, logs at West Point and any other loading for which we might receive an order for that particular type of equipment.

Q. (By Mr. Eichner) May I interrupt to clarify a question? Track No. 1 is the one immediately to the south of the main track?

A. They are numbered in their continuity from the main

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line southward.

Q. (By Mr. Eichner) So Track No. 1 would be the second track from the left in this picture?

A. 1, 2, 3, 4, 5, 6 and so on. I might add that because of a clearance problem we do have some missing tracks but we still use the numbers as they were originally. For example, this Number 11 track and No. 12 track is no more, has not been since, well, for more years than I have been in Richmond. The next track is 13, 14, 17, 19 and what appears to be a track here is actually a double-end lead around the south side of the yard and not used generally for classification purposes. No. 5 track contains one carload of wood, one tank car and five cars of coal for West Point, Virginia that arrived on our No. 56 that morning.

page 1247] No. 7 track contains four loaded boxcars for the South Richmond territory. In addition, it contains three — I am getting a little far over — it contains one tank car; four loaded boxcars and one covered hopper for the South Richmond territory. No. 9 track contains three cars for Train 57, one boxcar hold and two 40-foot high-side gondolas for use in filling orders.

No. 13 track contains nine empty boxcars for use in filling orders at Richmond, West Point and other points on the line where needed when ordered. No. 17 track contains two boxcars for the same reason. No. 19 track at this time is open and the lead is open.

By Mr. Pasco:

Q. Was this picture taken at what you consider a peak period in the Belle Isle classification?

A. No, sir, it was not. No. 56 has been switched. All cars arriving on No. 56 and from ACL in the morning interchange have been classified and moved from Belle Isle yard to interchange and to other industrial areas on the terminal, which includes South Richmond, the Shipyard, 28th Street yard and cars interchanged to the C. & O.

Q. The train to West Point for the day left at the time this picture was taken?

A. The train for West Point left at 7:00
page 1248] o'clock that morning. However, I did not record that information particularly except in those instances where the photograph represented a morning period.

Q. Look at the picture on the other side.

A. The Picture 1-R is a view of Belle Isle yard, including the engine receiving track, the switching lead and the main

O. R. Bailey

line west of Lee Bridge. It also shows the bridge serving, as was said here this morning, the Old Dominion Iron and Steel Company which is a subsidiary of the present parent firm, the Recony Corporation.

Mr. Gay: That is on Belle Isle, is it not?

A. Yes, sir.

By Mr. Pasco:

Q. Will you tell us why you have a car of loaded wood in this yard at 2:15 in the afternoon, not during a peak period?

A. Those two cars of wood, together with the coal for West Point and other loads for West Point that I have named in this track, arrived on our No. 56.

Q. What time, if you know?

A. Yes, sir, I have that information here. Our No. 56 arrived at Richmond at 3:10 a.m. on the morning of July 30th.

page 1249 } Q. When did the train to West Point leave?

A. And the train to West Point departed at 7:00 o'clock. Of course, the train to West Point blocked the yard after being made up insofar as any access from the switching-in was concerned and we could not begin to switch 56 until after departure of No. 22 to West Point.

Q. Is that the reason those cars on the second track in the picture are in the yard at this time?

A. That is correct.

Q. And they are being delayed how long getting to West Point?

A. They are being delayed a day. In addition, of course, this being a Monday, our local freight train to Danville was also made up in this yard on that particular morning, set out on the main track for a 9:00 o'clock a.m. departure before we could begin the switching of our No. 56.

Q. Is it customary to have empty cars standing waiting for orders on your classification tracks?

A. Yes, sir, the orders are filled from Belle Isle and for the most part they are placed in road trains at that point. Of course, Richmond is distantly located from our north-south operation. It is necessary that we have empties brought to

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Richmond because at certain seasons of the
page 1250] year we do not unload and make empty sufficient
cars within this area to supply our own needs
at Richmond and to supply the needs of the pulpmill, The
Chesapeake Corporation at West Point and some of the
stations purely local along the line.

Q. You need these empty cars in the classification yard?

A. Yes, sir.

Q. Will you go on to the second pictures and tell us when
they were taken?

A. The second photographs, the first numbered 2-L, also
shows a view —

Q. When was it taken, first?

A. I was going to follow that in sequence. This photograph
was made 9:15 a.m., eastern daylight saving time, July 31st;
8:15 a.m. eastern standard time. It also shows a view of the
classification section of Belle Isle yard east of Lee Bridge.

Q. Would you say that was taken during a peak period?

A. No, sir, I would not.

Q. Will you tell us what cars are in the yard there, please?

A. Track No. 2 contains six or more empty
page 1251] wood-rack cars for orders. When I say “or
more,” naturally the west end of the track —

Q. That is all right.

A. No. 3 contains three R.F.&P. assigned empty boxcars
for movement from 28th Street yard for American Tobacco
Company. They were received from the ACL Railway. No.
4 track contains ten 52-foot gondolas for the filling of orders.
No. 6 contains one empty box, one empty refrigerator and
one empty boxcar to be forwarded on our Train 57 that same
evening.

Q. That is the train to Danville, I believe?

A. Yes, sir. No. 7 track contains one empty boxcar for
South Richmond. To amplify, that was lined up for some
order received during the morning, during early morning
hours and will be moved late in the morning. No. 9 track
contains one box hold; two high-side gondolas for orders and
then another box-load hold.

Q. What do you mean by “hold?”

A. Those cars could be held for any of a number of reasons.
I can't pinpoint those two cars here. They could be held for

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payment of freight charges, or they could be loaded on the previous day and billing not yet received from page 1252 } the shipper and we would consider that a "No-bill" or "Order notify," which would call for an order of sight draft and payment from our cashier.

Q. Is it necessary for you to keep those cars on the tracks?

A. Particularly hold cars. If they are out-bound cars, when they are ready to move they are going from that point; if they are "to notify" cars or patrons unknown to us and we still have to determine place of delivery or designation. It could be to ACL, Seaboard, C & O, or placement on our own rail, so we keep it there because it is more accessible to effect delivery to any of those sections or interchanges.

Q. What is the next?

A. No. 11 is one box load for the C & O that was pulled from a local industry after midnight. I have reason to believe it came from the Albemarle Paper Company. No. 13 contains two empty boxcars to fill orders. On this particular date and at this time our No. 56 had arrived at 3:10 a.m.; No. 22 had departed at 7:00 o'clock a.m. and I would say at this hour — well, in fact, I can say when I get to the next photograph what was going on.

The photograph on the opposite page, 2-R —

Q. Let me ask you, these notes you are referring to, where did you get those?

page 1253 } A. I searched them out from various and sundry records, train switch lists, some means of identifying these cars, basically, because it can well be seen from the semi-aerial position that it would be almost an impossibility except in rare cases, to identify any of them by car initial and number.

Q. You made those notes yourself from records in your office or the Superintendent's office?

A. Yes, sir. The photograph 2-R, taken the same date and time, July 31, 9:15 a.m., Eastern Daylight Saving Time; 8:15 a.m. Eastern Standard Time is a view of the classification and train yard receiving sections including the switching lead of Belle Isle west of the Lee Bridge, and it shows a yard engine with cars attached which I know were removed from Train 56 and brought to this location for switching and to the various classification tracks in the yard. The bridge of the Recony Corporation, of course, is vacant.

Now the next two photographs, if I may say, and then identify them 3-L and 3-R, were both taken on July 31 at 4:00

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o'clock p.m. eastern daylight saving time or 3:00 o'clock p.m. eastern standard time. Photograph 3-R, to the left, is a view of the classification section of Belle Isle Yard page 1254] east of Robert E. Lee Bridge. On this particular date our train No. 21 from West Point — I failed to get that on this particular card. If I may stop for a moment, I do have the arrival on that particular date. I *inadvertently* missed it in some manner — July 31st, No. 21 arrived Richmond at 4:30 p.m.

Q. Had not arrived yet?

A. And does not appear on this picture — had not arrived. Track No. 2 contains a total of six empty woodrack cars to fill orders.

Q. I don't believe the particular number — it is a group of cars?

A. Yes.

Q. What is the next one?

A. Contains three pulpwood — West Point; ten empty 52-foot gondolas.

Q. What is that cut of cars destined for?

A. One, two and three cars of pulpwood are for West Point; the ten empty gondolas are on fill orders.

Q. What train did the pulpwood cars come in on?

A. The pulpwood cars were in on 56. I have already given that time. I will repeat it, however — at 3:10 a.m.

Q. Why didn't they go out on Train 22?

page 1255] A. Because No. 56 was not switched prior to the departure of No. 22 and it will be noted that the same three — no, the same three cars are not in that particular photograph, because of Train 22 blocking the lead and flow to the classification yard.

Q. Where do you yard Train 56 until you can get it in after 22 is gone?

A. Train No. 56 in that train yarding section of Belle Isle Yard, beginning at Forty-Second Street, is known locally as long-siding.

Q. What is the third set of cars?

A. The cars in Track No. 6 are one empty boxcar, one empty refrigerator, three empty boxcars for No. 57. No. 9 track —

Q. You say they are for Train 57? When do you begin making up Train 57?

A. In some parts, beginning roughly at four o'clock p.m. We do receive from interchange, particularly Seaboard and

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C. & O. and from industry in the South Richmond area, some cars that are available to us at South Richmond at train changing time — in other words, at three o'clock p.m. — that are switched out and brought to Belle Isle Yard, but the real building of No. 57 and the availability of cars begins first with the arrival of No. 21, if that train arrives prior to five a.m., and insofar as local industry is concerned, at the close of their business day — roughly between five and six p.m.

Q. What is the fourth set of cars?

A. Those cars in No. 9 track consist of one box-load hold' —

Q. They are all hold cars?

A. — and the two high-side gondola cars, and another hold car. No. 13 contains eight 50-foot empty boxcars to fill orders and the remainder of the yard, of course, is open at that time.

The photograph to the right, No. 2-R, made, of course, at the same time and date, is a view of the classification section of Belle Isle Yard.

Q. The same view as No. 2-L, is it not?

A. Yes, sir.

Q. Is there anything significant about that you want to comment on?

A. The only difference is that the bridge serving the Recony Corporation is occupied by two cars; one, a gondola loaded with steel or pipe, similar material for delivery to this firm, and the other containing a flat car loaded with missile tanks or tubes, destined Charlotte, North Carolina, which moved on our No. 57 that same evening at eleven-thirty p.m.

Q. You make deliveries over at the Belle Isle Recony Plant?

A. No, we do not. The Recony Corporation owns and operates their own switch engines. The ownership of the bridge is vested in that corporation and the only service we perform is to place cars in the Belle Isle Yard end of this bridge over a "D" rail from which point they pick up the cars themselves.

Q. This first car you say is empty?

A. No, sir, that is an inbound load we placed.

Q. And the next is outbound?

A. Yes, sir, and it may seem peculiar in that the two cars would be there at the same time, but there are two different subsidiary firms that receive cars similarly and it is not

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unusual, after we placed an inbound load, for them to shove an outbound load to our end of the bridge for us to pick up. In other words, they are letting us do the shipping.

Q. When you pick up this, do you have to move the inbound car and that involves movement along your tracks west of the Lee Bridge?

A. Yes, sir.

Q. All right, sir.

A. The next pair of photographs were made —

page 1258] Mr. Pasco: There are seven sets in this book.

A. (Continuing) — were made at 9:20 a.m., eastern daylight time, August 1, 1962, or 8:20 a.m., eastern standard time. The photograph 4-L represents a view of that portion of the classification section of Belle Isle Yard east of Robert E. Lee Bridge and the cars generally are as follows:

Track 2, eleven empty wood-rack cars to fill orders;

Track 3, two cars of cement for Southern Materials Corporation in the 28th Street area.

Q. Why are they in the yard at this time?

A. These cars arrived on our No. 62 the evening before.

Q. What are they waiting for?

A. We are not able during the make-up of our No. 57, because of space restrictions, to bring No. 62 into the yard and switch it until after departure of our No. 57 which on this date departed at 11:45 p.m. This train was switched at midnight which was too late to get the cars into the territory where the receiver is located.

Q. You have to make those movements at night?

A. No, sir. We make them both day and night, depending on the availability of the cars and the necessity for service at the plant.

page 1259] No. 4, ten 53-foot gondolas to fill orders;

No. 6, eight cars for South Richmond Yard and Seaboard from No. 62, 7/31 to No. 56, Coast Line interchange on the morning of the 1st. The cars in this particular track from Train No. 62 are there for the same reason as those in No. 3 track.

No. 9 is an empty assigned boxcar from Reynolds Metals Company for No. 57, two hold cars and two high-side gondolas for orders. The cut leading to the yard was brought from South Richmond Yard and shoved into this track temporarily

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by the morning yard engine and I make that statement because I am able to identify the second car, the Seaboard boxcar, as having been loaded by Albemarle Paper Company for the C. & O. and the remainder of the cars came out of industrial territories in various parts of the plant after midnight — the remainder of the yard to the right.

Q. Is this to stop cars fouling the other tracks?

A. That is not customary but it is done and apparently was done in this case to enable the engine to get on our No. 56 for some special cars because in the picture to the right the engine with No. 56, the cab leading, can be seen coming down the main line preparatory to linking the crossover switches to the lead and entering the yard at that
page 1260] point, so I can only say the conductor had some good reason for leaving them in that position.

It is not generally customary.

Photograph 4-R, in addition to my comments about the yard engine shoving down the main line, shows in the foreground on the track to the left which is the A. C. L. interchange Track No. 2, cars which we have delivered to A. C. L. sometime subsequent to midnight.

Q. Coast Line will come in and get those cars with their engine?

A. Yes, sir, along with others that will be delivered along with Train No. 56. The photograph to the right shows a car of missile tubes from the Recony Corporation which I know moved on our No. 57 that same evening at 11:45 p.m.

Q. The cars have been switched away from there?

A. Yes, sir, in all probability. I have no means of identifying it by number as a second car. They were loading several cars of this material. In fact, they are loading them with a degree of regularity.

Mr. Gay: Just a minute, please. Will you let the witness suspend for just a minute?

Note: Brief recess.

page 1261] Q. (By Mr. Pasco) Will you proceed with pictures No. 5?

A. Let's make sure they were both made at the same time — made on August first at four-ten p.m., eastern daylight saving time, or three-ten p.m., eastern standard time. The photograph No. 5 to the left is a view of the classification section of Belle Isle Yard east of Robert E. Lee Bridge. No.

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2 track contains eight empty wood-rack cars for orders; No. 4 track contains one box load, West Point, ten empty 52-foot gondolas to fill orders. The car for West Point, of course, arrived on our No. 56 that same morning and did not make No. 22 for the reason heretofore given — No. 22 was made up and lapping the yard at the south end.

Q. The south end?

A. I beg your pardon — west end. It is inadvertent to speak of timetable directions. I have tried to avoid it. No. 9 track contains one empty boxcar for No. 57. That is one of our newer type super-cushioned under-frame boxcars in the service of Reynolds Metals Company between Listerhill, Alabama and Richmond, Virginia.

No. 14 track contains seven empty boxcars to fill orders. The remainder of that section of the yard is open. Our No. 21 arrived on this date at four o'clock p.m. eastern standard time and, of course, does not appear in the page 1262] photograph for that reason. Our No. 57 departed from Richmond at 11:45 p.m.

Picture No. 5-R to the right is a view of the portion of the classification section, lead and/or train yard facilities west of Lee Bridge. The cars in the photograph —

Q. That is the same explanation on the Recony track?

A. Anything there is either an inbound load or empty release, or an outbound load at any time.

Q. Can you detect anything different?

A. Yes, sir. The upper or west end of the so-called connection track, that is the terminology we give it, it is a continuation of the passing track eastward and of the A. C. L. interchange westward, intersected by two crossovers and it consists of six cars of wood that arrived on our No. 56 that morning and did not make Train No. 22.

Q. Why are they yarded up at that end of the track, Mr. Bailey?

A. Invariably when we have a cut of certain type of cars or several cuts for a single destination that can be switched at this point and/or yarded at this point then that keeps that many cars out of the needed space in the classification yard and by the same token in making up the page 1263] West Point local on the following morning these cars are more readily accessible in that particular location than they would be in the classification yard, although there are times when an equal number of cars would appear in the classification yard because they

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happen to stand in our inbound train with other cars interspersed.

Q. All right, sir. Move along to the next photograph.

A. Photograph 6-L and 6-R were made on August 2nd at 9:05 a.m., eastern daylight saving time, or 8:05 a.m., eastern standard time.

Q. Start with the tracks and tell us what is on them.

A. Well, that is a relief (indicating on photograph). Track No. 2 contains eight 40-foot empty woodrack cars for orders;

Track No. 9 contains — beg your pardon — Track No. 4 contains one box load. I am crossed up here. May I start over with respect to everything after the date and time of the photographs on August 2nd?

No. 2 track contains thirteen empty wood-racks to fill orders;

No. 3 track, one box load for 28th Street yard.
page 1264] Q. Why is that standing at this time of day?

A. I have to determine, which I cannot, the source. It could have come from the A. C. L. Railway and in all probability did, to be in that location at this hour.

Q. Would it be switched out during the day in a normal procedure?

A. It would be moved to the 28th Street yard during the day.

Q. What is the next cut of cars?

A. The next cut of cars is five 52-foot gondolas to fill orders. No. 11 track contains two empty boxcars going to the C. & O., in, as we term it, "home route."

No. 14 contains one empty boxcar with which to fill orders;

No. 17 contains eleven wood-rack empties, and —

Q. Are those held for order or destined for some particular train?

A. Held to fill orders — and the yard engine to the right is on the lead. He has attached to his engine two empty gondolas followed by two empty wood-rack cars and I would state by the position of the engine and the direction that he is shoving back to the scale to light weigh these

page 1265] particular empties. We do periodically have to re-light weigh or determine correct tare weight on each car and stencil that information on each side of the car.

Q. Before you leave that picture I will ask whether or not it will be feasible in your opinion to yard these empties west of Lee Bridge?

A. If we had track space to do so it would be very feasible

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and very advantageous to us because it would enable us to clear the classification yard of all but cars that are moving currently and we would be able to switch out needed cars from these so-called storage tracks nearby with much less consumption of time than is necessary to switch them out here when you couple, into the interference with normal classification operations that are created by the presence of these cars in the yard.

Q. Any thing significant in No. 6-R?

A. No, sir, except that I can see the yard foreman and a member of his crew awaiting the return of the engine. I would have to say, then, that they have completed the weighing of these cars and are now en route to the lead. The following logical movement would be to go to the rear of No. 56 and get the first cut and bring it back down the lead to this point for switching.

Q. Do I understand your testimony that No. 56 is up at the end of the yard?

A. Yes, sir. No. 56 arrived at 3:35 a.m., and is in long-siding which is not visible in this photograph.

Q. Let's go on to No. 7.

A. Photographs No. 7 were made on August 2, at 3:50 p.m., eastern daylight saving time, 2:50 p.m., eastern standard time. The photograph to the left, of course, is a view of the east end of the classification section of Belle Isle Yard. I am unable to reconcile yard conditions with date and time of photograph. Train No. 21, August 2, arrived 2:50 p.m., eastern standard time, and should have appeared on the mainline at this time, and does not. If I may move for a moment to Photograph No. 7-R, I am unable to reconcile the cars and the conditions at this hour and on this date.

Now my check into the records — and I will amplify by pointing out that these two particular cars are of a new type that we term the tobacco hogshead car — they are more than eighty feet in length and they are used in certain services and the only two of those cars that I could find received on an inbound train are from A. C. L., as these cars are being shoved into the A. C. L. interchange track, followed by cars that I could reasonably recognize by type and loading as to boxcars, pulpwood cars loaded with wood and empty gondolas, arrived in Belle Isle yard on our Train No. 56 at 5:10 a.m., Sunday, August 5.

I further pinpointed that by identifying two members of the yard crew, the yard foreman to the left, a member of

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his crew to the right — beg pardon — and a member of his crew to the left. These two men are members of an assigned regular relief crew whose tours of duty are varied and who are not assigned to work morning hours on Thursday, August 2, but assigned to morning hours on Sunday, August 5. The sequence of the cars from the switch list of Train 56 and the location of the men proves to me beyond a shadow of a doubt that this photograph was taken sometime during the morning of Sunday, August 5, and not on August 2.

(The witness returned to the witness chair.)

Q. Have you examined all the photographs in both Exhibit JJ and KK?

A. Yes, sir, I have.

Q. Do you find any photograph in either book that was taken during what you consider a peak hour at Belle Isle yard?

A. I did not make specific notes.

Q. Will you look at it now?

A. I can tell in just one moment, sir. Insofar as the first group are concerned, I would say that all the
page 1268] photographs are taken during relatively the
lightest period of our day as concerns first and second shifts.

Q. That is Exhibit JJ?

A. Yes, sir.

Q. I ask you the same question with respect to Exhibit KK.

A. The same is true of the second group.

Q. Mr. Bailey, I direct your attention to the map which is on the board, Defendant's Exhibit 27, I believe. From your familiarity with the tracks do you consider that those red lines indicate the tracks over which you operate these switching operations that you described?

A. They do, sir.

Q. How far west do the red lines go?

A. To approximately the foot or what might be termed the foot of 42nd Street.

Q. What sort of track facility do you have at that point?

A. We have a track known locally as long-siding which is the train receiving section or track of Belle Isle yard. It continues from the entrance switch at the foot of 42nd Street.

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Q. You have an entrance switch at the foot of 42nd Street?

page 1269] A. Yes, sir, to the point of connection at switch leading off the other track, roughly at the foot of 22nd Street. In addition, the second track shown nearest the river is our main line.

Q. What function does the entrance switch perform?

A. Well, the entrance switch is used for the entrance and yarding of trains from Danville.

Q. Then the entrance switch is the connection between the main line and the long-siding?

A. That is correct.

Q. Will you tell us, please, to the extent that you know, what railroad movements or train operations go on at or about this entrance switch at 42nd Street during a normal day's work?

A. Of course, initially or basically, the stopping of trains at this location, and, as we term it, the opening of the switch, the train pulling in to the clear point or to the extent the clear point is possible, based on the length of the train as concerns the capacity of the track which for yarding purposes is 85 cars between the switching lead and the pumphouse crossover and the clear point at this point.

Q. The first movement is Train 57 coming into the entrance switch and stopping?

page 1270] A. Train 56 in the early morning hours, if you are speaking in terms of the beginning of the day, they start there — Train 56 from Danville coming into Richmond between three and five a.m.

Q. After that train stops, what is the next rail movement that goes on up at the entrance switch at 42nd Street?

A. Well, infrequently, more often, less often, during the week from three to five times, normally, it is necessary for a yard engine, sometimes between three and six a.m., to proceed from Belle Isle Yard westward to this point, make coupling to the caboose in the rear of this train and set out certain special cars; they may be perishables, merchandise to be placed at the freight station, or they may be cars which we have been requested or instructed the previous day to give preferred handling to some industry who cannot continue the operation without it.

Ordinarily, these movements are not of a classification nature in that the engine will couple to the cars and make a cut ahead of the needed car, back out to the main line, shove

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that car and/or cars to this point on the main line and then we store the car next to his engine, including the caboose, to this location; close the switch, couple to the cars on the main line and move eastward to whatever designation may be in mind.

page 1271] In addition, continuing into the morning hours, the classification engine, beginning roughly at 9:00 o'clock a.m., following the departure of our No. 22 to West Point and/or the departure of our local freight train No. 61 to Danville about 9:00 a.m. on Monday, Wednesday and Friday, proceed to this point and there pick up and pull out a representative cut of cars from the rear of this train.

Q. What do you mean by "representative?"

A. I mean by "representative" he has a switch list showing the continuity of the cars and the order and the train, their destination. It may be expedient to pick up as many as 35 or 40 cars because of the standing of the cars in the train.

On the other hand, it may be deemed wiser to only pick up 40 or 25; some cuts as they switch, so to speak, for every car. In other cuts you may be lucky enough to make only two or three switches in that number or greater number of cars.

Q. The make-up of every train is different?

A. That is correct, both inbound and outbound. Following this he returns eastward to the lead and to the classification tracks and/or to the ACL interchange, depending on their destination, following which he returns to this point and/or to this point. I add "this point" based on length
page 1272] of train and first pickup, it is entirely possible he may have cleared this leg of the pass track.

(Indicating)

Q. What is the yardage to which you have pointed?

A. This is known to us as the south crossover. It is a means of moving to and from or between the main line and the train yarding track in both directions for any purpose that may be required and it is located at approximately the foot of 6th Street, from this point if not from this. (Indicating)

Q. By "this" you mean what?

A. South crossover.

Q. "That point if not from this," what is the other "this?"

A. I mean by that, as I have stated, in his first pull he cleared this leg of the pass track, there would be no necessity of traveling this extra distance to get the second cut of cars.

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Q. To connect the distance from the engine switch?

A. Yes, sir, from this point to this point, he could come in at this point (indicating) and —

Q. By "This point" you mean what? The record will not indicate.

A. You come in at the south crossover to the page 1273] receiving track from which point he would proceed through the receiving track to the switching lead at the foot of 22nd Street and there classify the car. In some instances where standing of cars and the total number make it advisable and expedient, he will perform some preliminary switching at this point, the foot of 22nd Street, pumphouse crossover, foot of 22nd Street, where he may perform some preliminary switching and does on occasion.

If I may amplify that section, the train might contain 25 cars of coal for a certain destination or 25 cars of tobacco for the C & O or ACL or possibly Seaboard; where he is making what we term a two-way switch and putting these cars of quantity in these outside tracks, setting the remainder of the cut back to the switching lead and proceeding with them to Belle Isle yard section and there switching them into the classification tracks, has the dual effect of keeping that many cars out of the classification yard unnecessarily and at the same time permits direct delivery of cars to the Coast Line without the necessity of going to the crossover switches if they be Coast Line cars or if they be C & O cars which have to be transported in a cross-town cut, which would entail doubling or bringing out of the yard cars that would be moved in that transfer cut in their continuity of cut-off

page 1274] and, consequently, the C & O cut is usually the rear of that particular cross-town cut, then he can pick these cars up from this point and add them to the remainder of the cars which have been doubled together and save the time, wear and tear on the locomotive, the consumption of fuel and other factors that would be necessary to drag those additional cars out of the yard and bring them back from a yard track and couple them to these cars.

In many instances where the lead section of the cut completely filled the track, he would have to double this long cut to a second track before he could pull out and couple to the head of the cut in, say, No. 3 track, so it can be readily seen what is involved in that type of switching that is performed here insofar as overall saving time is concerned.

Now that covers the first shift with the exception — that

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covers the first shift in its entirety.

Now as to the second shift —

Q. When does the second shift start?

A. Insofar as the engine work at Belle Isle yard is concerned, 3:00 o'clock p.m., except Sunday. An entirely different yard crew does the work at Belle Isle yard on Sunday and that shift begins at 3:55 p.m.

Q. Now the switching you have described up until now took place during what hours?
page 1275] A. First, between 4:00 and 7:00 a.m.; second, between roughly 9:00 a.m. and 1:00 p.m., more or less, depending —

Mr. Spain: Didn't you say 11:30 to noon? Didn't you say awhile ago 11:30 to noon?

A. Yes, it is roughly in that area because it will vary with the volume of traffic on the train.

By Mr. Pasco:

Q. Go ahead with the third train and tell us what switching movements take place along this track.

A. The second shift, the movement to pumphouse crossover at the foot of 22nd Street in connection with the switching of cars brought from other sections of the yard for Train 57 and/or for delivery to ACL and in connection with the switching of interchanges received from the ACL containing cars for Train 57 and/or various industrial areas on Southern Railway. The principal switching on the second shift here is in connection with the pulling of cars from the ACL interchange which are brought into this section between south crossover at the foot of 26th Street and the pumphouse crossover to the foot of 22nd Street for certain required mechanical inspections before they can be switched. That covers cars received in interchange.

There are certain required inspections that
page 1276] have to be made to these cars by federal law that forces the use of a certain local equipped with runways and other facilities available to the inspectors.

In addition, while we have stated and it is generally known that we do not switch No. 62 until after midnight because of the building of 57, there are occurrences where we have the same situation arise with respect to that train that we have with respect to No. 56. While that is a local on-line pickup train it does bring some cars out of Danville and infrequently we have a car, and logically, coming out of Danville it will

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be on or near the caboose that we have the same request for special service on that we might have on a car for 56. I would say it would not be quite as frequent as concerns 62 but it could happen. Of course, it could not be as frequent because the train does not operate as often.

Q. That involves the movement of switching to what point?

A. To the foot of 42nd Street at the entrance switch because we yard No. 62 in this leg of the train yarding track between the foot of 42nd Street and the foot of 26th Street. That south crossover as we have —

Q. Log of what? You said between the leg of what?

A. "Of the train yarding track" is what I page 1277] said, sir, beginning at 42nd Street to south crossover and between, because of the necessity of keeping this leg of the track between 26th Street on the west, pumphouse crossover at the foot of 22nd Street on the east open for these inspections that I have just spoken of for Train 57 and to permit the switch engine movements that are necessary south of pumphouse crossover in the building of 57.

Q. You mean west, I guess, on the compass?

A. Yes, sir, west, in the building of our Train 57. These movements, of course, would in part be the — as we term them — the doubling of over-movements of various classifications for Train 57 in the Belle Isle yard that are brought out, of necessity, and cuts attached to each other and handled westward on this lead until the train is complete and in a single unit. So the principal switching in these respective areas at the entrance switch to the pass track or the train yarding track at the foot of 42nd Street, and as described at south crossover at the foot of 26th Street and at the pumphouse crossover for 22nd Street are as described. Now in addition —

By The Court:

Q. What are those three streets again where the switching takes place? 42nd Street is the furthest west?

A. Yes, sir.

page 1278] Q. And the southern crossover is where?

A. At the foot of 26th Street, and the pumphouse crossover at the foot of 22nd Street, so that just about covers the switching other than the — that is, the actual switching within all of those areas.

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By Mr. Pasco:

Q. Mr. Bailey, what type of switching movements are these that take place at these points? Are the cars connected to the locomotives or not?

A. At the entrance switch to the train yarding track at the foot of 42nd Street, with rare exceptions the switching there would be what we would term pull-out and shove-in with the engine still attached. There would be generally no cutting off of cars with a switchman riding in free motion or the cutting off of cars in free motion to roll into and make contact with cars that have been previously set up on the main line.

Q. How about at the south crossover?

A. At south crossover there *should* be some switching of both types, dependent on the nature of the cars and the number of switches necessary at this point to accomplish a particular purpose. There would be some shove-out, pull-out, shove-in and some cut-off and free motion movement at this location.

page 1279 } Q. Will you tell us whether there has been any change in the pattern of switching that goes on in this area in recent years?

A. There has been none to my knowledge in the past, I'd say, five years; train operation has remained about the same, represented at the same time of day with about the same requirements or with intermittent exceptions with request for special service.

Q. What would you say with respect to the volume of switching that goes on in this area in the last four or five years?

A. With the exception of seasonal variations I don't think there have been any wide deviations.

Q. You heard the testimony of some of the citizens living over there that there was more switching and noise there in recent months?

A. Yes, sir.

Q. How do you explain that?

A. By saying, first, as I have stated, there has been no increase in the volume of switching, the total number of movements around the clock in the last five years. The only answer I could give, there would be the possibility of the person giving this testimony having, for reasons known to herself,

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become more aware of this noise recently and
page 1280] probably is listening for it.

Q. Do your switch engines make use of their whistle and bell in this area?

A. Only on what we would term in case of emergency. The only whistle signals I can visualize being blown anywhere in this area would be in those cases where an engine has set a cut out, we will say, to the main line and, bear in mind, the engine is attached to the rear or west end and the shoving movement is where the car is leading from this point and/or this point (indicating) into Belle Isle yard. It is necessary to give the engineer a signal to go in either direction, back up or go ahead or stop, as the case may be.

Visibility might be a factor in daytime and, of course, it would be a factor at night if a switchman happened to inadvertently locate himself so that when his signal was given it could not be clearly understood by the engineer as to what he wanted him to do. In that case he would blow four short blasts of the whistle to attract the attention that he did not understand the signal.

Q. Is that a regular occurrence?

A. No, that is a very infrequent occurrence in my opinion and from my knowledge and I would say it is created, as I stated, by some emergency or error.

Q. How about the bell on the engine?
page 1281] A. There is no reason for sounding the bell in that locality at all.

Q. Did you testify with respect to the switching done in this area on the third shift or track?

A. Beg pardon?

Q. Did you testify with respect to the switching done in this area on the third shift or track, as you call it?

A. Yes, sir, I spoke of getting the cars out of 56 between, roughly 4:00 and 6:00 a.m., special cars, including perishables, and, as I stated, that occurred not too frequently; I'd say three or four times a week, and then in addition to Tuesday, Thursday and Saturday, 62 pulled from, or shoved through, as the case may be, the passing track to the classification yard from this point between the entrance switch to the train yard track at the foot of 42nd Street and south cross-over at the foot of 26th Street.

Q. Are you familiar with the one additional long track and two additional short tracks about which Mr. MacLeod testified he would like to build at this time?

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A. Yes, sir.

Q. Would the construction of those tracks, if permitted, increase — first, tell us how you would use those tracks in connection with your movements?

page 1282] A. Well, of course, the third track would mean —

Q. That third track starts when, 11:00 p.m.?

A. 11:00 p.m. I said the third track; in other words, the second or the third long track that you speak of as being proposed would be used interchangeably, perhaps, based on conditions, with the present long track between the main line and Riverside Drive for yarding inbound trains from Danville. One of the two remaining tracks, either the main line or the proposed track, would, of course, have to be kept open as a thoroughfare to provide a means of engines moving from this area to this, or the reverse when the other two tracks were occupied. Then the third track or the proposed new track would be used for the final makeup of trains 57, 61 —

Mr. Eichner: Would you mind repeating that?

A. Trains 57, 61 would be used for the yarding after make-up; I should add awaiting departure of Trains 57 and 61 to Danville and/or Train 22 to West Point. That would be a matter of conditions at the yard as to which particular train would be made up in that track.

Q. (By Mr. Eichner) To which track were you just referring?

A. I was referring to either the main line or the proposed new track. In other words, we will have three
page 1283] identical tracks there and we will make a selection as to which will be a thoroughfare or open track and as to the use made of the other two. That use may be interchangeable as between inbound train and outbound.

By Mr. Pasco:

Q. Do you have a thoroughfare track now?

A. We have the main line and are forced to keep that open for the purpose I just named. We have to have some means of getting from a constructed train to the roundhouse with a yard engine and some means of getting the road engine from the roundhouse to Belle Isle, be it a southbound train or —

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Q. Where would you yard the empties you now have to yard in your classification yard?

A. Only these two tracks; I would have to continue to yard them where they are.

Q. Suppose two additional 3500-foot tracks were built along the property in question here, as Mr. MacLeod testified you would like to build, what use would make of those?

A. Westward from a point opposite south crossover or thereabouts, at the foot of 42nd Street westward to a westward track or tracks at the west end.

Q. What use would you make of those tracks?

A. Those two tracks could be used for the page 1284] temporary — we don't like to speak of storage but that is what it is, in effect, the temporary holding of empty equipment, for the filling of orders. Some of it is good surplus of certain types at certain seasons of the year, particularly open-top equipment; and for the holding of what we term shop cars; that is, cars that have fulfilled their usefulness and are to be held for final shop disposition, perhaps destruction or rebuilding and in addition we have certain hold cars that occupy a track.

Some of the short tracks create as much interference with the classification of trains sometimes as that same track would level full, and we could yard such cars, hold cars, no-bill, cars awaiting disposition, freight charges, bills of lading and so on.

Q. Mr. Bailey, if you were able to construct this additional long track and two tracks of 3500 feet, tell us whether or not there would be any new types of noises occurring in this area involved in this lawsuit.

A. No, sir, in my opinion there would not. The nature of the switching and the noise created thereby would be about as it is now. For the location there might be a little more frequency, not too much; might be more movement here but the nature of the movements and noise level should remain about the same from here, west.

page 1285] Q. "Here, west," you mean what point?

A. From the point at which we now — to the south crossover west.

Q. (By Mr. Eichner) May I interrupt a minute? A moment ago, Mr. Bailey, you were saying 3500-foot tracks would be built from a point opposite 42nd Street.

A. No, from a point — the last remark I made was the two proposed tracks which we would presumably store empties

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to extend from a point near south crossover at the foot of 26th Street. I may have inadvertently said 42nd.

Q. (By Mr. Eichner) I understood you to say 42nd.

A. And extending westward at the foot of 42nd Street.

Mr. Eichner: All right.

Mr. Pasco: I have no further questions.

By The Court:

Q. Mr. Bailey, let me ask you one thing. Do I understand that one of your main problems with the Belle Isle yard now is that you feel that that should be available to you exclusively for classification and now under your present facilities you have to use it for temporary holding and storage?

A. Yes, sir, that is correct. What is really needed is a classification yard to be used as such only, not a page 1286] combination classification yard, train receiving yard and train forwarding yard in one cramped location. What we need to do is be able to clear everything from our Belle Isle yard to accomplish our purpose and speed our operation and permit the earlier switching of trains so there will be nothing in this yard during the classification of a train or the building of a train except those cars that arrive on the inbound train or depart on the outbound train.

Of course, there would be momentary exceptions to that because intermixed with cars for the train from an interchange you might receive cars that should go to this location and they might have to remain there a short time until the switching is completed but it would be very little problem because of the nature of the connections, the long tracks, the level area, and the immediate proximity of the proposed tracks and their accessibility to an engine working in this area to get from here to there to dispose of empties or to get empties and it would be preferable in my opinion, based on the arrangement of the tracks, to switch out empties needed from the 26th Street end, rather than going all the way down to the 42nd Street end.

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page 1287] CROSS EXAMINATION

By Mr. Spain:

Q. Mr. Bailey, how long has it been since you lived on Ferneliff Road which is now a part of Riverside Drive?

A. When I moved from there it was Riverside Drive. The

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family actually moved from there during the month of April, 1944.

Q. The area in there and particularly on Riverside Drive to the west of Forest Hill Park has built up considerably since you left there?

A. It certainly has, yes, sir.

Q. If you are allowed to put the tracks in which you have talked about, there won't be any new types of noises but just more of the same type?

A. That is what I intended, yes, sir.

Q. Do I sometimes see parked on the side track or the southern track there now carloads of pulpwood that are left standing from all day Saturday and all day Sunday?

A. You may see cars of pulpwood on those days but you don't see the same cars of pulpwood.

Q. Do they stand pretty much all day on those two days sometimes?

page 1288 } A. Yes, they do, pulpwood arriving on 56 too late for forwarding to West Point that morning, under conditions of switching 56.

Q. I am talking about what you call south crossover and 42nd Street.

A. I don't have any knowledge of pulpwood standing in that location all day.

Q. Do you have any knowledge of pulpwood standing opposite the little road at the foot of Hillcrest Road all day on Saturdays and Sundays at times?

A. No, sir, only until the train is switched. The train is, of necessity, switched sometimes later on Saturday and Sunday than other days of the week, bearing in mind that we have a variance in our operation on Saturday and Sunday.

Q. You are telling the Court as a fact that the same cars are not left there at times in the identical spots for 24 hours?

A. No, sir, not at that location.

Q. Now if the railroad is allowed to put its switching yard in the Riverside property, will that change the peak hours of your activity?

A. Well, of course, personally I have no knowledge of a proposed new yard at that location.

page 1289 } Q. Well, assuming that one was put there?

A. That depends, I would have to see the plans; it depends entirely on how the yards were laid out, how they could lay it out, from which direction the lead or ladder tracks ran at each end, how the grade was con-

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structed. As to whether there would be an increase in switches at the 42nd Street end of what you speak of as the new yard or whether the increase in switching, if there be any, be at the 26th Street end, I couldn't say unless I knew more about the yard.

Q. You have been here several days?

A. Yes.

Q. You heard of an eleven-track flat yard for switching proposed?

A. Yes, sir, but I have seen no plan as to how its lead would be laid out.

Q. Assuming it came from either end, that wouldn't change your peak time of shifting any, would it?

A. No, the peak time, frankly, would have to be developed after.

Q. Let's take your peak time; as I understand, your greatest is from 5:00 to 11:30 at night?

A. Yes, sir.

Q. Right at the present time?

A. That's right.

page 1290] Q. What is your next greatest peak?

A. Between 9:00 and 11:30 a.m. We speak of peak time, I would like to amplify. There are two factors involved in peak activity; that is, peak as to total number of cars and peak switching activity.

Q. You say your greatest is from 5:00 to 11:30 p.m.?

A. Yes, sir.

Q. And then your other time, your next is from 4:00 a.m. to 7:00 a.m.?

A. Roughly that, yes, sir.

Q. So you would say that you have between your two peak periods, ending at 11:30 p.m. and commencing at 4:00 a.m., that is only a four and a half hour differential, isn't it?

A. That is right.

Q. There is no reason you have to believe that that would change?

A. No, sir, any more than I have reason to believe that it will not.

Q. Well, assuming that it does not change and remains as it is now on your schedules, and your yard operations are put

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A. Yes, sir.

Q. So you have a substantial decline there in that traffic during that period, would you say?

A. I'd say that.

Q. And the decline continued into the first half of 1962 as indicated by the comparable statistics for that period?

The Court: What is the first year, Mr. Eichner?

Mr. Eichner: 1958, Your Honor.

Q. (By Mr. Eichner) For the first half of the year 1962, for example, I believe we had 1,968 total forest products, total number of cars moving through Richmond. Would that figure be correct? About the third page from the end there.

A. First six months of '62?

page 1300] Q. Yes, sir.

A. Carload traffic moving through Richmond, first six months of '62?

Q. Projecting that figure throughout the entire year you have still further decline from last year?

A. Yes, sir.

Q. The shipment of wood to West Point by truck is increasing, is it not?

A. I understand there are some shipments to West Point by truck.

Q. And that accounts, I take it, for the decline in this figure?

A. Well, also I understand that there are intermittent periods, based on the availability of wood when there is much wood into West Point, by water.

Q. I would like to hand you these pictures again, Defendant's Exhibit JJ and KK, Mr. Bailey. As I remember, Picture No. 7, you were testifying yesterday about a couple tobacco hogshead boxcars which you saw in the right-hand photograph there which, I think, you described as over eighty feet in length. These are the type of cars that have a capacity of three standard 42-foot boxcars, do they not?

A. Approximately that, yes, sir.

Q. And the trend of Southern Railway to
page 1301] longer and larger cars means that to the extent
you follow that trend the same amount of freight
can be carried on a smaller number of cars and, accordingly,
a shorter train for the same amount of freight, isn't that
correct?

A. That is basically correct, yes, sir.

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Q. And that is certainly true of the so-called "Big John" coal hopper car, is it not?

A. Yes, sir.

Q. Which replaces two or more conventional hoppers?

A. Yes, sir.

Q. You don't see any "Big John" cars in those pictures, do you?

A. No, sir, I do not. The movement of such equipment into Richmond to the present time has been spasmodic and relatively small.

Q. The longest track in the Belle Isle Yard, with the exception of the through track is No. 1, is it not?

A. Yes, sir.

Q. And the next longest, I take it, would be No. 2 and so on, proceeding southward in the yard?

A. Yes, sir.

Q. Yesterday when you were going over these pictures, the first seven, and describing them to the Court, page 1302] you observed, I think, that the camera was unable to take in all of the cars shown in the track at any of those times?

A. Yes.

Q. And that, therefore, there are more cars on some of those tracks than are actually shown in the picture?

A. That is true.

Q. I would like to call your attention to Exhibit JJ, please, Picture No. 12, and I will refer from now on — just the left-hand picture, sir. What kind of cars are there on Track No. 2 there? Perhaps you had better stand in front of the Bench, if you don't mind. (The witness stood in front of the Bench.)

A. Cars on Track No. 2 are our system woodrack cars for the loading of pulpwood.

Q. These are the kind used on the West Point, are they not, primarily?

A. Yes, sir, they are.

Q. Could you count those for us?

A. Either 19 or 20.

Q. And could you estimate how many might be this side of the end of the picture that do not appear in the picture?

A. Only if I knew that the track was completely filled. I'd

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say there would be space for between two and
page 1303] three more.

Q. And is there space also at the end of track,
as far as you can tell?

A. Knowing the location of the protective derail, I would
say no.

Q. Now would you look at Picture No. 24 which I think
is in that same exhibit. Take a look at Track No. 1, if you
would. That is the second from the left in the picture, I
think?

A. Yes, sir.

Q. Would you mind counting those cars?

A. Twenty.

Q. And then would you take Exhibit KK here, please, Mr.
Bailey, and look at Picture 41. Track No. 2 there has the same
kind of cars on it, does it not?

A. It does.

Q. How many do you see there that are within the picture?

A. Twenty-two.

Q. And I will ask you the same question about Picture No.
22 — correction, No. 47, Track No. 1.

A. Number of cars in Track No. 1?

Q. That is the second track from the left, sir.

A. Yes, sir; visible, 21.

page 1304] Q. And what would you estimate would be the
total if that track was fully occupied?

A. Between one and two more.

Q. Yes, sir. All right, thank you.

(The witness returned to the witness chair.)

Q. Your classification problem with Belle Isle Yard would
be materially improved, would it not, by increasing the storage
capacity of the yard?

A. That is true.

Q. And if the yard tracks 1, 2 and 3 were extended west-
ward so that they could hold a total of about 150 additional
cars, that would help you quite a bit, would it not? A total of
150 cars, not additional cars.

A. It depends entirely on what is meant by the word "help."
The extension of tracks 1, 2 and 3 or either one of them, I
assume you mean completely through from the east end of
the yard westward?

Q. Westward to a certain degree, yes, sir.

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A. They would have the effect — even one track in that location, as best I can visualize, would have the effect of creating a most undesirable situation for us insofar as lead switching at the west end of the Belle Isle classification section of that yard is concerned in that three of your tracks would be blocked at that point.

page 1305] Q. That could be taken care of by extending the lead, couldn't it — switching lead?

A. Only to the degree that you would have to do double switching. You would certainly have to have a form of lead or connection somewhere in the vicinity of where the rear of your trains would stand; basically below, I would say, at what we term the pumphouse crossover at the foot of 22nd Street. Certainly, I could see no efficiency to be gained by partial switching a quarter of a mile from the present ladder at the immediate west end of Belle Isle Yard.

Q. What if additional crossovers were put in on the tracks just west of the Lee Bridge?

A. Well, the crossovers would have an advantage and at the same time an off-setting disadvantage. First, it would be necessary to send switch engines to the head or rear of the train to open such crossovers; secondly, where that portion of the proposed long track paralleled the switching lead would create many difficulties and/or hazards for us in performing the switching there. If the ground employees, members of the yard crew, are to pass signals for any distance covering a reasonable cut of cars being handled by the engine, ranging from 20 to 35 cars, and the fact that same of the tracks springing from the ladder at the west end of the classification section of Belle Isle Yard
page 1306] curved to the right, the presence of cars on adjacent tracks, particularly on the river side, would make it extremely difficult to give and relay — in our terminology, pass hand signals from the point at which switches are aligned and the cars cut off or released in their classification sequence. In addition, at that location, because of the factor which in my opinion cannot be altered, nor would it be reasonable to do so, of the yard crew, of course, consisting of a limited number of men adequate to carry on our switching operations. During actual classifications one of these men is engaged along the ladder track in aligning switches and catching cars for the purpose of mounting to the brake platform, applying handbrakes to control their speed as they enter the tracks for which intended.

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into the area known as the Riverside area, wouldn't it, in addition to the noises you now have on your two page 1291 } tracks plus whatever noises are carried on from those operations in Belle Isle yard, be transferred up to this yard?

A. To a degree, yes.

Q. Then it would increase greatly, you would say, the noise under those circumstances?

A. I wouldn't say to what degree because from what you have told me and what I have heard here, I understand that the proposed new yard would be a flat yard whereas Belle Isle yard is heavily inclined, therefore the degree of noise and switching boxcars would be considerably less. To what degree, I am unable to say.

Q. What kind of communications do you use on these switching operations in the Belle Isle yard now?

A. Well, we use several. We use a medium of clerks and telephones. We also at times use yard telephones and loud-speaker system from an amplifier and microphone located at the yard at South Richmond.

Q. That is commonly referred to in the railroad as a squawk box?

A. I have heard them referred to. I wouldn't select any particular terminology.

Q. If I suggest bull horn for one and squawk box for another, have you heard those?

A. Yes, sir, I have.

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RE-DIRECT EXAMINATION

By Mr. Pasco:

Q. Mr. Bailey, with respect to the Defendant's Exhibits, JJ and KK, being photographs of the railway facilities, have you examined each of those photographs?

A. Yes, sir, I have.

Q. Tell the Court whether or not you are prepared to make the same description with respect to each photograph that

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you did with respect to the first seven yesterday.

A. I am in a position to do so.

Q. Now, Mr. Bailey, if the company is permitted to construct the three additional tracks about which Mr. MacLeod testified, would this change your plan of switching operations in Belle Isle Yard?

A. It will, sir.

Q. Will you state what that would be?

A. It will have the effect, based on my thinking and planning, of changing the sequence of the switching operations and the so-called peak periods, which I have previously described in my testimony yesterday, to a two period peak, one beginning with the arrival of our Train 56 from Danville roughly between 3:00 a.m. and 6:00 a.m., in connection with the switching of that train, and the building of our train to West Point, No. 22, leaving Belle Isle Yard 6:45 a.m. to 7:00 a.m., instead of — and replacing that peak period which I have described as roughly between 9:00 a.m. and 11:30 to 12:00 a.m. It will be eliminating or absorbing, so to speak, the previous peak between 4:00 and 7:00 a.m.

Secondly, insofar as the third peak previously described between 5:00 p.m. and 11:00 to 11:30 p.m., ending with the completion of the building of our Train 57, we hope to change, by the speeding of the operations, that peak to a three-hour period, four-hour period, beginning at 5:00 o'clock p.m. with the availability of cars that have to be collected from industry and from interchange, Train 57 and the cars to be handled from our inbound Train 21 and ending between 8:00 and 9:00 p.m. During other periods of the day there will, of course, of necessity be some switching in the classification yard at Belle Isle in connection with late interchanges, out-of-routine interchange or the movement of certain cars to and from other units of the entire terminal for later disposition and forwarding.

Q. Mr. Bailey, would the reduction of three peaks to two peaks, as you just described in the operation of the yard, have any effect on the switching that you would contemplate doing at 42nd Street — 25th Street and 42nd Street?

A. It would have no effect on changing the type of switching at those particular locations, just change the period of the day in which the switching now performed at those points, as previously described, would be accomplished. In other words, in the overall there would be a slight reduction that I mentioned in connection with the previously described peak

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between 4:00 and roughly 7:00 a.m.

Mr. Pasco: All right, sir, that is all.

By The Court:

Q. Let me ask you this. Do I understand that that proposed operation would eliminate, from all practical standpoints, the night operations?

page 1296] A. No, sir, it would have the effect of increasing the operation between 3:00 and 7:00 a.m., roughly, or 6:00 a.m., to the extent that that particular operation is now performed in connection with the switching of our Train 56 from Danville between 9:00 a.m. and 11:30 a.m. to 12:00 noon. The same type and pattern of switching would be accomplished but at a different time of the day.

CROSS EXAMINATION

By Mr. Eichner:

Q. Mr. Bailey, you mentioned making up in the Belle Isle Yard the train for West Point; that was formerly classified in the South Richmond yard, was it not?

A. No.

Q. You never made up the West Point train in the —

A. Never in the history of the plant, to my knowledge, not the train to West Point.

Q. Where would the train for West Point —

A. We did at one time switch the train in part at South Richmond and certain segments of it, for the ACL and points not concerned with delivery in the South Richmond area or, for building into our trains to Danville, were carried to Belle Isle, whereas the entire train is handled at Belle Isle at this time.

page 1297] Q. But the incoming train at West Point at that time, that is a functional classification, is it not?

A. Yes.

Q. Do you know when that operation stopped?

A. Well, it is hard for me to pinpoint it now. Beginning with the gradual movement out of South Richmond yard in 1953 the train was at times — we have short lengths and when it contained a predominance of cars of a storage nature that it was necessary for operating reasons on that particular day to yard a portion of them in Belle Isle Yard, the train

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was at that time yarded and switched from, in most part, the James River Bridge in South Richmond and certain other parts of the train carried to Belle Isle.

Q. Now yesterday you were discussing these cars loaded with pulpwood mostly destined for West Point?

A. That is true. We do have some pulpwood come to Richmond for delivery to other connections; not a great deal, but some.

Q. The main consignee of that is the Chesapeake Corporation of West Point?

A. That is correct.

Q. It is a fact that that is about the only pulpwood delivery between Richmond and West Point, is it not?

A. It is the only one, yes, sir.

page 1298] Q. And that comes into Richmond from the west, does it not?

A. In most part. Some pulpwood is loaded on and comes from the C & O Railway at Richmond and also from the R.F.&P. at Richmond. A considerable number of cars are loaded on the R.F.&P. and come to us by way of the railway interchange.

Q. I would like for you to take a look at Plaintiff's Exhibit 16, Statistics compiled by Mr. Timmons, and call your attention in particular to the fourth page of that exhibit which deals, I believe, with carload traffic — I think, maybe, the fifth page — carload traffic moving through Richmond during the year 1958. Do you have that, sir? Have you located it?

A. Yes, sir.

Q. Now the Item 4, Products of Forest, would you say that insofar as the Richmond operation is concerned that item is primarily made up of this pulpwood for West Point?

A. Yes, sir, I would.

Q. And you had a total, adding the interstate and intrastate there, I would say, of 5,817 carloads during the year 1958?

A. Yes, sir.

page 1299] Q. Now I would like to refer you to about the seventh page from the rear, the same statistics, sir, for the year '61.

A. Year '51?

Q. 1961, sir, "Carload Traffic Moving Through Richmond," again Item 4, Products of Forest, and there you would have a total interstate and intrastate, I have it 4,291 cars moving through Richmond in 1961? Is that correct?

Donald H. MacLeod

Mr. MacLeod just testified.

Note: Marked Plaintiff's Exhibit No. 28 and filed.

By Mr. Pasco:

Q. Mr. MacLeod, how does the average of all freight trains running between Richmond and Danville on the Southern Railway Company, for the period January 1, 1961 to September 6, 1962 compare with the national average page 1315] and the southern regional average?

A. To address myself particularly to Page 2 by way of explanation, the caption is "AVERAGE FREIGHT TRAIN SPEED." The average speed of freight trains in 1961 was 19.9 miles per hour. The average, of course, is considerably below actual running speeds because it includes all stops made for switching, picking up and setting out of the cars and so forth. The 1926 to 1930 average of the United States was 12.8 miles per hour, and for the southern region, 18.0 miles per hour. For the period which I have already stated, for the period January 1, 1961 to September 6, 1962, the average freight train speed between Danville and Richmond was 18.7 miles per hour or seven-tenths above the 18.0 for the southern region in the United States.

In 1962 the average speed was 18.2, which was two-tenths above the average in the southern region of the United States; 1961 was 19.2, which was 1.2% higher than the southern region for that same year.

Q. Mr. MacLeod, have you had an opportunity to examine from an operating point of view Mr. Lancaster's plans embodied in the City's Exhibits NN and OO, I believe?

A. I have sir.

Q. Would you comment on your observations at this time?

page 1316] A. To begin with, from the testimony of Mr. Lancaster, this sketch (indicating on map) was prepared from — as I understood Mr. Lancaster's testimony, from walking from 42nd Street to Hull Street and return, in approximately one-half day, and another short trip for a few minutes back to the South Richmond location. It was also prepared, as I understood from the testimony presented here, without the knowledge of the operations of the Southern Railway System, the Richmond Division or the yard operation here in Richmond. I understand also that this map was made without the benefit of a field survey so it is somewhat

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what I would expect, in all due respect to Mr. Lancaster, from the time and the knowledge of the physical plant and the knowledge of operations that went into this print or sketch — to begin with, Mr. Lancaster, in his plan, has reestablished the South Richmond yard. As pointed out by Mr. Kidd it could not be put in as shown directly on this print. He would have to follow, while not exactly or nearly, the configuration of the former South Richmond yard. That is No. 1.

No. 2 is we do not need this much track, storage track in Richmond yard. We have sufficient storage track at Richmond yard now for our purposes. We also, in moving these tracks back into South Richmond yard, page 1317] really puts us in the same position we were before we took it up. We took it up primarily because we felt these tracks were unsafe, where a series of stub-end track and even the ones that were not stub-end necessitated the movement back and forth across Hull Street which is undesirable. This yard is on a one percent grade. The curvature, as outlined by Mr. Lancaster, was from 13 to 16 degrees. We moved out of South Richmond yard to avoid the delay that we were having in switching due to the excessive curvature and the way this yard lay with relationship to our main line to West Point, among other things. As you will notice, the main line will enter approximately the center of this yard. As pointed out by Mr. Kidd we did not have sufficient room on this plan to put this track shown on the north side of the present tracks due to lack of room. To put additional tracks on the south side would interfere with the industries located there.

By the Court:

Q. Let me ask you, what would be the purpose of those tracks, anyway? You have just indicated that your present use of the South Richmond yard accommodates all the storage of that type that you need.

A. That is correct, sir.

Q. So the additional tracks wouldn't serve any purpose?

page 1318] A. That is true, that is my first point. Actually, they are redundant but I wanted to point out again, as I did in my testimony, the reasons we considered them at all, why they are undesirable. I think that is enough because, to move on, Mr. Lancaster showed in his print four tracks under 7th Avenue Bridge. To provide the proper

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clearance it would not be feasible to do that.

To move on, we have the ACL tunnel where our real facilities today are and where we are primarily concerned. Mr. Lancaster has shown actually four through tracks, one thoroughfare and the extension of these three track to a point from Lee Bridge up to about 22nd Street. The net result of this is the elimination of this, really of three classification tracks. These tracks, I presume, he intended to be used for the yarding of trains, building of trains and storage of cars. I would like to point this out, that that would leave out this ladder — incidentally, as Mr. Kidd pointed out, this ladder could not be put in as shown. It could be put in but by so doing you would shorten the remaining tracks that we have here now.

By “ladder,” Your Honor, this is a ladder (indicating on map). You see, those tracks spring from a ladder track. This is a ladder. (indicating on map) Of course, this page 1319] ladder extends on up through here and we can make use of all these tracks. As pointed out by Mr. Kidd, this distance as shown on this sketch is entirely too short to put this ladder in. It could be put in by moving the ladder, the switches, back this way, the purpose of which would result in the shortening of the tracks we now have.

He has shown four switches there in a distance of about 200 feet. This would have to move that much distance again. (Indicating) By so doing you just shorten the remaining classification tracks that were there. As far as the extension of one track all the way through, I can find no fault. We certainly need a thoroughfare. He has shown one on this print of it also. As pointed out by Mr. Kidd, we would have difficulties in putting this plan into effect without a detailed on-the-ground survey as to what could be done. We do know what effect it would have on the Old Dominion track. In short, this is certainly an attempt to improve the situation but without the knowledge that Mr. Bailey has and the other people that are located on the Richmond Division and deal with these facilities, this plan is not satisfactory.

(The witness returned to the witness chair.)

By Mr. Pasco:

Q. Mr. MacLeod, devoting your attention to the one long

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track and two additional tracks that you would
page 1320 } desire to put in at this time, if permitted to do
so, would you describe the optimum result from
the use of those tracks as you envision it?

Mr. Eichner: You are talking about the tracks of Mr. Macleod's testimony?

Mr. Pasco: Yes.

A. This has been pointed out. Beginning this cycle at midnight we have one through train into Richmond; this train arrives from about 3:00 a.m. on up to 4:00, 5:00 or 6:00 a.m.

This train, regardless of its length, whether it be fifty cars or 150 cars, has all the cars that are going to West Point, to local points between here and West Point, to interchange points at Richmond and, of course, to industries here at Richmond, whether they be loads or empties. What we would like to do, plan to do, is when this train arrives, to begin immediately and have that train switched. There is no reason — if we have a place to yard trains and build trains in this area and to keep these classification tracks open, there is no reason that Train 56 should not be switched out, at least within three hours after the train arrives. Thereupon, immediately Train 22 would be built. He should have all the cars that came in on Train 56. That is not the case now as
has been pointed out a good many times.

page 1321 } On the days that he operates 61 any through
cars that came through on 56 going back to
local stations would be in Train 61 that would be built. We have yard engines going on duty at 7:00 o'clock and at 7:55 due to industrial and interchange work in Richmond. All cars destined to industries and destined to interchange points, of course, should be in those yard cuts, with the exception of the empties left over which would be in this area and any hold cars, that was pointed out; and, incidentally, that is not an everyday occurrence. After this 22 departs and the engine at 7:00 a.m. departs and the 7:55 engine departs and Train 61 departs, there should be no cars, absolutely no cars anywhere except the empties up in this area. (Indicating) That is the optimum situation and that is what we want to do. That would, of course, eliminate this peak period that we have from 9:00 to 12:00 a.m., as Mr. Bailey pointed out, which is the result now of switching this Train 56 after Train 22 and 61 have been built. This train should be switched

O. R. Bailey

One member of the crew is stationed at the release end of each cut of cars for the purpose of cutting those cars off in their proper order. The conductor, with the switch list in his hand directing the movement at Belle Isle, stations himself at a point in most part directly west of Robert E. Lee bridge, sometimes on and sometimes north of the main line, to relay signals both to his engineer, as they are given by the switchman during the actual pin pulling, as we term it, or cutting the cars off and at the same time giving hand signals to the field man who is along the lead as to how
page 1307] he should align the switches from the ladder track to the next track for which the following car is intended. Consequently, there would be considerable difficulty there with a long train standing in that area for that reason.

Q. Your present switching lead is too short, isn't it?

A. Well, the present switching lead spans the present track so I couldn't say it is too short. I mean, the present ladder track — no, the switching lead itself is not too short. I am speaking of cars being switched from the switching lead along the ladder track along the various classification tracks in the yard. The switching lead is ample to hold the normal cut that we feel it reasonably safe and feasible to handle with an engine at any one time, roughly 30 cars. We can exceed that by continuing beyond the pumphouse crossover.

Q. Isn't it desirable to have your switching lead have the capacity of a full train?

A. No, it isn't desirable to have the switching lead itself the capacity of an entire train. I will say that our present switching lead, that portion of it containing a normal pre-selected cut of from 20 to 35 cars, would be that hand signals being passed from cut-off point to engineer would
page 1308] be difficult and the vision would be impeded by the presence of a train standing on the adjacent track between the switching lead and the river.

Q. But you wouldn't have a radio, walkie-talkie type radio?

A. I haven't had any experience with the use of radio, walkie-talkie operation; that is a question I couldn't answer from firsthand information.

Mr. Eichner: I have no further questions.

By The Court:

Q. Let me ask you this, did I understand your last testi-

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mony correctly? Your switching lead now is as far away from the Belle Isle classification yard as it could effectively be, under your present system of signaling?

A. Yes, sir, the only advantage that would be gained from an extended switching lead would be for the physical characteristics of the area to be such that more tracks could be added between the river and the Coast Line Railroad and the length of the ladder track extended. The only operation that I can think of at that particular location that would require that and make it advantageous to have a longer switching lead would be where the type trains handled consisted of multitudinous through-movements in large sections of 25, 30 or 40 cars where you would dispose of them in the classification yard temporarily by shoving them off rather
page 1309] than performing what we term switching or cutting off cars, either individually or in small groups.

The Court: Thank you.

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page 1310] DONALD H. MacLEOD,
a witness called by and on behalf of the plaintiff, in rebuttal, being duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. Pasco:

Q. You are the Mr. MacLeod who testified on direct presentation of the plaintiff's case, I believe? Mr. MacLeod, what plans, if any, does the Southern Railway Company have for the use of Belle Isle Yard in the future?

A. We plan to use it as a classification yard.

Q. Do you know of any plans to dispose of any part of it?

A. I do not.

Q. Have you ever heard it discussed?

A. I have not. If any such plan were afoot I would certainly be aware of it.

Q. Directing your attention to the City's Exhibits No. 4 through 13, being a series of daily train sheets introduced, and the testimony of Mr. Beard concerning on-line delays, I would like to ask you —

Mr. Eichner: Excuse me — how did you identify those?

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Mr. Pasco: Intervener's, I did say City — Intervener's A-4 through 13.

page 1311] Q. (By Mr. Pasco) I will ask you if you had a chance to look at these?

A. I have.

Q. What comments do you have, if any, with respect to those delays that seem to be reflected on those sheets?

A. The delays are concerned with local trains 61 and 62 and through freight trains 56 and 57. The delays, insofar as the local freight trains are concerned, deal primarily with so-called housekeeping on railroads; primarily, in these particular instances unloading cross-ties and ballast, anywhere from an hour to two hours a day. It is approximately 145 miles between Danville and Richmond. This crew is paid eleven hours and fifteen minutes for this run. They normally take about eight to nine hours on this run, so when we have the necessary roadway work to do we use the local freight train. This is universal in the railroad industry. The alternative, of course, is to call a five-man crew with an engine; one, two, three or four cars of ballast, and go west from Richmond for seven miles, unload the ballast, and come back. That is the alternative of doing this work with the local freight train. Of course, the local freight train does all the switching at each station between its alternates. This is also
page 1312] universal in railroad. My point is that the delays shown on these train sheets are peculiar to the industry. They introduced approximately fifteen train sheets out of a number of about 608.

Q. What do you mean, "608?"

A. 608 train sheets.

Q. That were produced here?

A. That were produced here for the Court, so far as the delays to Trains 56 and 57, which was reflected primarily in engine difficulties, difficulties with locomotives. We have 903 locomotives on Southern's property and I get the report each morning as to the mechanical difficulties that we have with these locomotives. That involves all delays whether it is ten minutes' delay or whether it is ten hours. The average number of motor failures or delays that I get each morning will range from none to seven or eight.

Q. Mr. MacLeod, have you prepared or had prepared under your supervision since you last testified, a statement showing the hourly averages of time consumed by freight trains and

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the average freight train speed between Richmond and Danville for the period January 1, 1961 through September 6, 1962?

A. I have, sir.

Q. I hand you what appears to be the original of such a statement and ask you if you will state briefly page 1313] how this was prepared and what it reflects?

A. This is a statement showing the hourly average of time consumed by freight trains and the average freight train speed between Richmond, Virginia and Danville, Virginia for a period from January 1, 1961 to September 6, 1962. The average freight train speed for this period, for Train 57, 6.47 hours; the average time for Train 61 was 9.01 hours; the average time for Train 56 was 5.99 hours; the average speed for Train 62 — average time for Train 62 was 8:41 hours. The average for all trains, local and through freight, was 7:50 hours.

Q. I believe all your figures up to this time relate to hours rather than speed, do they not?

A. That is correct. The average speed for all trains between Danville and Richmond, in both directions, of course, for the period January 1, 1961 to September 6, 1962, was 18.7 miles per hour.

Q. I believe that is the period covered by the train sheets produced here pursuant to the City's request?

A. Yes, it is.

Q. Directing your attention to the second page of this exhibit, will you tell us what that is?

A. The following is taken from Page 43 of Railroad Information, 1962 Edition, published by the page 1314] Association of Southeastern Railroads, 1710 H. Street N.W., Washington 6, D. C.

Q. Are you familiar with that publication, Mr. MacLeod?

A. I am.

Q. Is it recognized as authoritative in the industry?

A. It is.

Q. Is it a regular publication?

A. It is.

Q. This second page, then, is a duplication of Page 43 of that booklet for September, is that right?

A. That is correct.

Mr. Pasco: If Your Honor please, we would like to offer as the plaintiff's next exhibit this two-page schedule to which

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first, (indicating) and then all of these cars, Train 22, 61, the two yard trains and the interchange cars, all the cars that arrive on this train should go into those. At the present time there is simply not enough room at the classification end of Belle Isle Yard to do that. If that were done you can easily see there would be no mid-morning peak
page 1322] because all the cars would have been switched and departed Belle Isle Yard.

To move on around the day, afternoon, these jobs that went on duty at 7:00 a.m. and 7:55 a.m. go off duty in eight hours. They come back at 3:00 and 3:55 p.m. That should be except for what cars the Coast Line would have put in here. (Indicating) The cars that arrive on these yard cuts or yard trains coming back at 3:55, of course, would be your first cars entering this yard. Of course, the next train would be your first cars entering this yard. Of course, the next train would be your Train 21 from West Point from 2:00 to 4:00, as late as 5:00 or 6:00; 2:00 to 4:00 on the average. The cars that these morning yard cuts brought back, cars that came in on 21, of course, are either destined to interchange to points in Richmond or to points from Richmond to Danville and beyond, and so forth.

Now these engines that go out in the afternoon, 3:00 and 3:55 p.m., go to industries that normally close down at 5:00 o'clock; that is an average time. Any cars that have been made loaded, made empty, those engines go to these industries and get them.

Now the ideal situation, what we are driving for, what I am driving for, is to have this Train 57 depart with these cars as soon as possible. I would prefer that that train leave here 8:00 or 8:30, if we have the proper facilities.
page 1323] ties. There is no reason not to get these cars that have been made empty and loaded in Richmond back over to Belle Isle and into Train 57 and out of Richmond. The cars remaining, of course, will be the cars for 61 the following morning, if 61 ran, or the few cars for 22 going to West Point or some interchange cars that would be delivered by 3:00 and 3:55 jobs before midnight which now, of course, we don't always do. That is the optimum situation which means that really you will have two times of the day where we would have heavy switching, and I mean heavy switching, concentrated switching in this area, and that is from the time 56 arrives, whether it is 3:00 o'clock on, for about a three or three and a half hour period, and from

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about 5:00 or 6:00 o'clock to 8:30 and 9:00 o'clock at night and after 57 leaves there should be very, very few cars left, just the ones that have been made here in Richmond, received in interchange and destined in each direction for only two locals and perhaps other industries here in Richmond. After the switching is completed of 56, as I pointed out previously, there shouldn't be any cars there except the empties which we plan to put up here at the eastern end near this crossover where we have to come to do most of our switching, anyway.

Mr. Pasco: Thank you. I have no further questions.

page 1324] By The Court:

Q. Let me ask you one question. Turn that back to the "OO." Mr. MacLeod, in addition to all the other drawbacks that you have indicated that exist insofar as any use, except just limited use of Richmond yard, the curvature problem and so forth, is the fact that there is just the single line just at the east end of the Belle Isle Yard, just a single line connecting the two? Is that also any problem?

A. Absolutely, Your Honor. We call it a gauntlet on the railroad; it is really so obvious that I overlooked it.

Q. I understand your contention is that that can't be remedied because of the topographical situation?

A. No, sir, I did say that this could be done at great expense.

CROSS EXAMINATION

By Mr. Eichner:

Q. That is the ideal situation just described?

A. That is what we intend to do with these new facilities.

Q. As far as the disposition or discontinuance of operations in South Richmond yard is required, you
page 1325] didn't mention what Mr. Brosnan said at the end of his deposition, and I quote, "The remainder of it we will likely sell for some industrial use, something that will probably make some jobs in Richmond." That, of course, is not a consideration, is it?

A. I am sure at that time he had that in mind. Since that time, as I testified, I have taken a large portion of this area and converted it to a Piggyback area at some \$60,000.00 expense and I plan to use a large portion of South Richmond yard for Piggyback facilities; in fact, I already have, and

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for the parking of vehicles in connection with it.

Q. Which, of course, would be a completely new operation for Southern in this area?

A. As I pointed out in my testimony, we have yet to receive our first Piggyback in Richmond but we are ready.

Q. Referring to your Exhibit 28, Mr. MacLeod, you have some averages here for the United States and southern region. Southern region, geographically, does not include Richmond but statistically it does, correct?

A. Yes, sir, the southern region is south of the Potomac and Ohio Rivers and east of the Mississippi.

Q. What is the average speed of trains on your main line between Washington and Atlanta?

A. I have never calculated that.

page 1326] Q. Substantially faster than this, is it not?

A. It is faster, yes, sir. I wouldn't say substantially because I have not calculated it. We have possibly 40 or 50 local freight trains which would greatly influence the figure but having not calculated, I couldn't say. I would think it would be larger but not substantially, maybe one or two points.

Q. Now this book, your source, Railroad Information, 1962 Edition, which you say is an authoritative text, is it any more authoritative than the '61 edition I showed you a few days ago which you did not sanction?

A. As I recall, Mr. Eichner, you referred to a publication by the Southeastern Presidents' Conference which I don't believe I recognized.

Q. Well, we won't pursue that. Plaintiff's Exhibit 18, that is the plat on the bottom up there, Mr. MacLeod. That was made from a survey?

A. Yes, sir.

Q. Did you hear Mr. Lancaster testify he used it in preparing his map?

A. Yes, I did.

Q. The Southern Railway is mainly interested as far as improving its terminal facilities and competing for the southbound traffic with the Coast Line and Seaboard, is it not?

page 1327] A. No, sir. As I pointed out in my testimony, our main competition is with the trucks and our problem with rates. If we can get our rate problem straightened out it will go a long ways to equalizing this truck situation and I expect a large increase in business not only in

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Richmond but all over the system. I also mentioned barges. Of course, they come under the same rate proposition.

Q. But you are competitive with the Coast Line and the Seaboard between here and Atlanta, Jacksonville, Columbia, Charleston, such points as those, are you not?

A. Yes, sir.

Q. One other thing, we were having a little difficulty last time you testified determining whether there was a main line or branch line between here and Danville. I asked you whether you knew, in the reports of the State Corporation Commission, the Southern, referred to as the Richmond-Danville operation, was a branch or main line. Since that time I suppose you have seen Defendant's Exhibit LL. Now do you know how it refers to it in those reports?

A. That is correct, yes.

Q. How does it refer to it?

A. I cannot say. I did not prepare this — from my own answer, that is. I operate the railroad and as far as I am concerned it is a main line.

page 1328 } Q. Take a look at "LL" and look down the
column that is headed "Main or Branch" and
opposite "Dundee, Virginia to West Point, Virginia," how
many miles is that?

A. It shows 178.78.

Q. What symbol is opposite that in the column headed
"Main or Branch?"

A. "B"

Q. What symbol is opposite the line from "Seminary
Junction, Virginia to the North Carolina State Line?"

A. "M"

Q. Meaning "Main?"

A. Right.

Q. There is no comparison in the volume of traffic between the main line from Alexandria down to the North Carolina state line and southward, and the Richmond to Danville to West Point line, is it?

A. The traffic over the line between Washington to Atlanta is considerably heavier than the traffic from Danville to Richmond.

Q. Still passenger trains on that line?

A. Yes, sir, around 15 or 20.

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Q. How many trains a day each way, say, just between Alexandria and the North Carolina line?

A. Of course, you will have to appreciate page 1329] that from Washington to Orange the C & O operates those, which increases the traffic considerably.

Q. How about the Southern trains only?

A. We operate more trains in Virginia from Alexandria to Danville than we do from Danville to West Point.

Q. How many trains a day south from Washington; freight trains, that is?

A. We have two regulars, 153 and 155.

Q. How many extras?

A. That depends on the day. We usually run an extra out of Alexandria two or three days a week.

Q. Just one?

A. That's right, No. 57.

Q. Northbound, how about that?

A. About the same.

Q. Do you know anything about the average length of those freight trains from Washington south, on the Southern?

A. I could not give you an average. That could easily be calculated. Train 153 will run from 100 to 150 cars; No. 155 from around 75 to 125.

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page 1330] CROSS EXAMINATION

By Mr. Spain:

Q. Mr. MacLeod, you said, in answer to Mr. Eichner's question, that when Mr. Brosnan said "The remainder of it," referring to the South Richmond yard, "we will likely sell for some industrial use, something that will probably make jobs in Richmond," that was his plan at that time but since then you had made arrangements for other uses?

A. I can only assume that was his plan, that is what he indicated. I have since changed those plans.

Q. You have changed them on him?

A. I have changed the plans.

Mr. Gay: I object to that question.

The Court: Yes, sir, only to the form of the question.

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Q. (By Mr. Spain) All right, sir, you have since changed those plans?

A. I have, sir.

Q. Do you know when he testified to that?

A. No, sir, I don't exactly.

Q. If I show you that this deposition was taken on the 11th of this month and this is the 28th, and we have been in trial here now for nearly two weeks, do you say page 1331] you changed those plans since then?

A. I can only assume when he abandoned — from this deposition, when he abandoned the South Richmond yard, he planned to use it for industrial purposes.

Q. He said so as late as the 11th of September, didn't he?

Mr. Gay: He wasn't saying that was the plan as of the 11th of September.

Mr. Eichner: The deposition speaks for itself.

A. I can only assume that is what he meant.

The Court: I think this witness can only testify to what he has done and what plans he has made.

Q. (By Mr. Spain) Have you changed any plans of the railroad since September 11th?

A. A good many, yes, sir.

Q. What, for instance? Referring to South Richmond yard?

A. Oh, no, sir.

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page 1333]

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Q. (By Mr. Spain) Would you say that the exhibits introduced as A-4 through 13 by the interveners are not representative of the rest of that bundle of daily train work sheets?

A. Yes, sir, I would say they are not representative.

Q. Have you examined every one of them?

A. Not every one, no, sir. I have very quickly leafed through the "Remarks" column.

Q. You have not examined them?

A. I have very quickly leafed through, Your Honor, in

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the lefthand bottom corner, the remarks on those sheets there, with some other extras on them, of course, but —

Q. You have not seen fit to introduce any of them to contradict the type of information revealed on Exhibits A-4 through 13, have you?

A. No, sir.

Q. How long has Southern yard been where it is now established, approximately?

A. To which yard do you refer?

Q. Southern's South Richmond yard.

page 1334] A. It is my understanding it was there prior to the Civil War.

Q. Are war times considered peak times on railroads?

Mr. Gay: What war are you speaking of?

Mr. Spain: Any war.

Q. (By Mr. Spain) Were World War I and II considered peak times on railroads?

A. Absolutely.

Q. In fact, they strained the railroads to utmost capacity, did they not?

A. I can't answer that because I wasn't railroading in World War I and II but I understand the railroads accounted for themselves very well.

Q. How long have you been with the Southern, did you say?

A. Since 1950.

Q. And railroads prior to that time?

A. I graduated from the University of Tennessee in December 1949 and went to work for the Southern in February, 1950.

Q. That is the first railroad you ever worked for?

A. Yes, sir.

page 1335] Q. Were you there during the Korean War?

A. Yes, sir.

Q. Was any increased capacity put on the railroad during that time?

A. No, sir, we hardly noticed that there was any difference at all.

Q. Mr. MacLeod, you understand Southern acquitted itself very well in World War II with its present capacities?

Mr. Gay: I object to that question.

The Court: Objection overruled. I expect that is directed

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to showing the adequacy of the facilities but at that time there is no comparison of what the demands were at that time and this, but go ahead.

Note: The last question was read by the reporter.

A. System-wide we did very well, I understand; I was not there.

Q. (By Mr. Spain) That is, with the facilities that you now have plus that portion of South Richmond yard which has been sold?

A. I am speaking of the system as a whole. What transpired in Richmond during World War II I have not page 1336] the faintest idea.

Q. If the system as a whole did very well, do you include the Richmond-Danville line?

A. The Richmond-Danville line is certainly a part of the Southern Railway system.

Q. You don't deny that one of the factors in abandoning the South Richmond yard is to make the property or part of it available for sale, do you?

A. That was the result rather than a purpose. We moved our South Richmond yard for the reasons that I have enumerated twice and as a result of moving out this property became available, part of which has been sold to Reynolds; a large portion of which I have used for Piggyback facilities and some remaining portion which I will be glad to show anybody that wants to use it.

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page 1338]

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Q. (By Mr. Spain) During all the time you were with Southern was there any effort to straighten out any of its tracks in the southern yard?

Mr. Gay: Which yard are you speaking of?

Mr. Spain: To me it is always southern —

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page 1339] South Richmond yard.

Mr. Gay: You are not the witness.

Note: The last question was read by the reporter.

A. Not to my knowledge. I simply can't answer that accurately.

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RE-DIRECT EXAMINATION

By Mr. Pasco:

Q. Mr. MacLeod, with respect to counsel's question on the Piggyback installation, the view was taken, it was apparent there was a lot of circular road around part of this property leading to the Piggyback facilities; is that part of the Piggyback facilities?

A. Yes, sir.

Q. Is it necessary to have a road of that type in connection with the facilities?

A. Your Honor, this track in red is the track that was constructed for the Piggyback operation. We have over that track a gantry crane that can travel up and down for six or eight car lengths and remove trailers or load trailers onto and off of the railway cars.

page 1340] Q. You are pointing to Exhibit 18, is that right?

A. That is correct, and I am talking about the former Southern Railway shop area. All of the buildings in the Southern Railway shop area have been removed. I enumerated these buildings in my previous testimony. The road that has been built into this Piggyback facility comes from Perry Street along the Southern, across a track and northward, parallel to Southern Railway's property, across the main track and generally follows the so-called loop track around to the Piggyback facility on both sides with a large parking area southwest of the Piggyback facility here and also a large vacant area opposite Semmes, McDonough and Perry Streets, north of our right-of-way line which can be — and I am speaking of property other than what is shown in yellow, in this area (indicating), which is really left for industrial development and parking Piggyback equipment if and when it gets to that large an operation.

Donald H. MacLeod

Q. You spoke about getting your rate problem straightened out in connection with competition; are you referring to the elimination of the minimum rates?

A. That is right.

Q. Explain briefly what that is and I will be
page 1341] through.

A. The minimum number — rate legislation is now before Congress, a bill —

Mr. Eichner: I object to this, it is not relevant.

The Court: He has already referred to it in his previous testimony. Go ahead.

A. The legislation that we are speaking of are two bills before the Congress at this time, one before the Senate and one before the House of Representatives, dealing with the minimum rate on bulk commodities and refers specifically to the fact that the barges and trucks are not now regulated on those commodities which include agricultural commodities; it only becomes regulated when it is put into a railroad car. This bill would permit the minimum rate to be quoted by either barge, truck or rail carrier, subject, of course, to the anti-trust laws.

Mr. Pasco: That is all. Thank you, sir.

RE-CROSS EXAMINATION

By Mr. Eichner:

Q. This Piggyback thing, it is actually Piggyback or trailer on train operation of Seaboard and Coast Line that bothers you most about the competition here, isn't it?

page 1342] A. No, sir, that is not necessarily true. We interchange with these two railroads all over our system and my main interest is getting the traffic back on the rails, regardless of what railroad it is.

Q. All right, sir. As far as the minimum rate legislation, that deals mainly with grain, does it not?

A. No, sir, that is one of the bulk commodities. We also have a case before the courts regarding the Interstate Commerce Commission's ruling enjoining us from quoting low rates on grain from points west of the Mississippi to points in the south. That is now in the courts.

Wilbur Walker

Mr. Eichner: No further questions.

By The Court:

Q. Mr. MacLeod, let me clear one thing up. One of your problems, as I understand, in connection with your Belle Isle Yard, is that it is being cluttered up by cars that you have to store there sometime and takes up that space so you can't use it for classification. Now you use the South Richmond yard for storage of some sort. Do I understand that the reason you can't store these cars that are stored from time to time in the Belle Isle yard in South Richmond is because it is sort of a short-time storage, so to speak, in the Belle Isle Yard? In other words, do you just put the ones in South

Richmond that are going to be left there for a page 1343] longer period of time?

A. No, sir, these three tracks we have in South Richmond yard are used for the reclassification and storage, temporary storage of cars for this South Richmond area. This is a small secondary yard to serve this area.

The Court: I see. All right, sir.

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page 1344]

WILBUR WALKER,

a witness called by and on behalf of the interveners, in surrebuttal, after being duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. Spain:

Q. What is your name?

A. Wilbur Walker.

Q. What is your occupation?

A. Secretary of the American Legion, Department of Virginia.

Q. Where do you live, Mr. Walker?

A. 2806 Riverside Drive.

Q. Will you take the pointer there and point out your house? You can go up to the map. I believe it is already identified with a "W." If not, put a "W" on it.

A. Already identified, I believe, between 28th and 29th on

Wilbur Walker

Riverside Drive and it is identified by a "W."

Q. Were you in the courtroom yesterday when Mr. Bailey testified?

A. Yes, sir.

Q. Do you know Mr. Bailey?

page 1345 } A. Yes, sir. I believe we were neighbors for several years.

Q. How long have you been living at the address referred to?

A. Eleven years.

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page 1346 }

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Q. (By Mr. Spain) Can you tell us whether or not bells are used for signalling on the Southern tracks in the area between 24th Street and 42nd Street?

A. I do not know the purpose for which they are used; however, quite frequently in the operation of the trains along that area, with which I am familiar, they have a bell on the engine which goes cling, cling, cling, cling, and seems to gain momentum as the train gains momentum. What the use of it is I do not know but we do hear that quite frequently, sometimes during the day and generally around 11:00 or 11:30 in the evening. That is not every night. Of course, I am not there every night but quite frequently they do use a bell in that particular area.

Q. Can you say whether they use whistle-signalling from the engines?

A. Occasionally they do; only last night they used one.

Q. Is this bell a frequent or an infrequent sort of thing?

Mr. Gay: He said "quite frequently."

Mr. Spain: You are correct, sir.

Q. (By Mr. Spain) Did you hear the testimony of Colonel Wilson?

page 1347 } A. Yes, sir.

Q. Have you made any observations since hearing his testimony to determine if the type of hedge proposed by him would effectively cut out the view of the railroad and permit a view of any other portion of the river or islands therein?

Wilbur Walker

Mr. Gay: I object, Your Honor. I don't want to put words in counsel's mouth but I don't recall that the plaintiff's witness used the word "hedge" at any time.

Q. (By Mr. Spain) Well, "screen," he used. He did use the words "hedges" and "hollies" and so on, but a screen as projected by Mr. Wilson would effectively cut out the view of the railroad from your house and yet permit the views that you have there of the river and the islands and the other vistas that you now enjoy?

Mr. Gay: May I have the question read?

Note: The last two questions were read by the reporter.

A. I heard the testimony, yes, sir.

Q. (By Mr. Spain) Now answer the last question.

A. If I recall, Colonel Wilson spoke in terms of a hedge and he indicated about chest level in his testimony. From my property, last night I stuck a stake up which was approximately six feet and such a hedge as he — or foliage — as he described would not obstruct the view of the proposed railroad yard or the area which is now clear from my property and, naturally, from other properties on the same level and in the same vicinity. It would take possibly an eighteen-foot hedge to actually accomplish from that area what he was talking about.

Q. And what would an eighteen-foot screen do to that view?

A. From my property, which I think is ideal under the present circumstances — not at the present time because of the foliage but during the winter months we can see the entire skyline of Richmond over to the Riverview Cemetery, clean up the river most to the Westover Hills Bridge, the Carillon. I have thoroughly enjoyed the view of the canals or the waterways between the islands down there. We have observed deer down there at times; there were, until the railroad went in and did their work, quite a number of flocks of quail which was enjoyable, and the rapids there are scenic to those people living in that particular area. A screen of that nature would naturally deprive us of that which we have enjoyed and hope to continue to enjoy.

Mr. Spain: That is all.

Wilbur Walker

page 1349] CROSS EXAMINATION

By Mr. Gay:

Q. Where were you standing on your property, Mr. Walker, when you testified that the type of screen that Colonel Wilson described would not cut out the view of the Southern Railway property?

A. On my front porch.

Q. You say it would take an eighteen-foot screen effectively to do that?

A. Yes, sir.

Q. Your residence is at the corner or approximately at the corner of 29th Street and Riverside Drive, is it not?

A. Yes, sir.

Q. If an eighteen-foot screen were constructed there, do I understand you to say that that would effectively obstruct your view of the Southern Railway property but leave available the view across the river and into metropolitan Richmond?

A. Yes, sir, it would.

Mr. Gay: That is all. Thank you.

Q. (By Mr. Spain) Would that be so if you went to the second story of your house?

page 1350] A. No, sir.

★ ★ ★ ★ ★

By The Court:

Q. Mr. Bailey, I would like to ask, and you can answer this from where you are, but on yesterday, according to your testimony, as I understand, there are three points west of Belle Isle now, points where considerable switching operations are performed and I forget the names but one at the far western end — well, the location of them is not the question I wanted to ask him, but how long have those operations been constructed?

Mr. Bailey: To my knowledge since I first came to the Richmond Terminal on November 1, 1938.

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A Copy—Teste:

H. G. TURNER, Clerk.

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