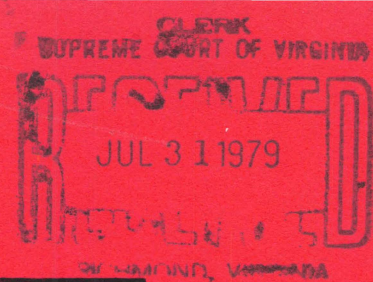


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IN THE

Supreme Court of Virginia

AT RICHMOND

RECORD NO. 790001

THE VIRGINIA HEART INSTITUTE, LTD.

Appellant

v.

NORTHSIDE ELECTRIC COMPANY, ET AL.

Appellees

JOINT APPENDIX
Volume II

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* Cannot Be Reasonably Reproduced but is on file in
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M. E. Williams - Cross

251.

1 A I can't tell you.

2 Q Now, was there a wind that night?

3 A Yes, sir.

4 Q From what quadrant?

5 A It was blowing from north to south.

6 Q How much wind would you say there was?

7 A According to the temperature, it was
8 extremely cold that night, so naturally the wind felt more
9 bitter than it would ordinarily, so I couldn't say.

10 Q But it was a noticeable wind?

11 A Yes, sir.

12 Q Now, a wind from the north quadrant, as
13 you have put it, would have had what effect on your flames?

14 A It would've carried the fire south.

15 Q And that's where you say it went?

16 A Yes, sir.

17 Q Now, let me ask it this way. This fire
18 took a long time to extinguish?

19 A Yes, sir.

20 Q Where was the last bit of fire in the
21 place to be put out according to your observation of it?

22 A That would be in the offices that are off
23 of the corridor, off the main corridor.

24 Q On the rear of the building, or the front
25 of the building?

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M. E. Williams - Cross

252.

- 1 A Throughout the center portion of it.
- 2 Q Was the ceiling above those offices burned
3 through?
- 4 A No, sir.
- 5 Q So this last bit of fire consisted of what
6 in there?
- 7 A I would say smoldering contents of the
8 building, and--
- 9 Q Not structural?
- 10 A Some of it was structural.
- 11 Q Whereabout in the structure was it?
- 12 A In the paneling and the studding that was
13 holding the paneling.
- 14 Q And above the doors?
- 15 A Yes, sir.
- 16 Q Around the doors?
- 17 A Around the doors, above the doors, and the
18 doors themselves.
- 19 Q When did you first go into the building
20 in point of time?
- 21 A I would say within an hour after I got
22 there.
- 23 Q That would mean then that somewhere around
24 2:00 in the morning perhaps?
- 25 A Roughly, yes, sir.

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M. E. Williams - Cross

253.

1 Q And at that time what area of the building
2 did you go in?

3 A I went in through the front door and into
4 the corridor and down to the north end of the building.

5 Q Was the fire all out down there at that
6 point?

7 A Yes, sir. Then I retraced my steps examin-
8 ing the offices as I came back down to the entire south end
9 of the building.

10 Q Now, let me ask you this question. If it
11 appears, Chief, that somebody drove by the place, stopped to
12 look at it with some care because of a direct interest in
13 the progress of the improvements and so on like that, noticed
14 a light burning in the upper level, the new construction
15 portion of it, and failed to notice anything amiss, would you
16 say that that is inconsistent with what you have testified to
17 as the way the fire progressed?

18 A When you speak of a light burning, you are
19 speaking of an electric light?

20 Q Electric, no evidence of fire seen.

21 A Due to the type of structure that you had
22 in this particular building, for those of you who have seen
23 it, it was built somewhat like, I would say, a fortress would
24 be built, it had very narrow, long windows on the first-floor
25 level, so it would be entirely possible for a fire to have

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M. E. Williams - Cross

254.

1 been burning inside--

2 Q With a flame?

3 A With a flame, and a person stopping in
4 front of the place looking into the building from an automo-
5 bile might not see it.

6 Q When then in point of time did the ceiling
7 joist burn through? Was that before or after 11:00?

8 A I would say that it burned before 11:00.

9 Q If the ceiling joist had burned through
10 before 11:00, there should have been fire visible above the
11 building, should there not?

12 A Not necessarily.

13 Q Why not?

14 A Because the air currents were flowing from
15 north to south, and they could have been taken up and con-
16 cealed within the ceiling of the first floor and the floor
17 of the second floor and carried in a southerly direction.

18 Q Which way did the joists run, north to
19 south or east to west?

20 A I would say that these joists--

21 Q Do you remember which way they ran?

22 A No, not positively.

23 Q If they ran from east to west, there would
24 be no travel north to south, would there?

25 A Not necessarily. It could come down and

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M. E. Williams - Cross

255.

1 come under the rafters, it could travel either way.

2 Q It's most likely that it was not exposed to
3 the breeze and would have traveled along the length of those
4 joists, is it not so?

5 A Yes, sir.

6 Q And it would have created its heat along
7 the length of that joist in that area above the ceiling and
8 up above it?

9 A Right.

10 Q And before it would penetrate below it had
11 to build up to a right severe intensity, isn't that true?

12 A It had to build up some pressure to come
13 out below, yes, sir.

14 Q Now, what kind of ceiling was in there?

15 MR. DOBBINS: Are you talking about flames
16 coming through?

17 MR. MARKS: I am talking about heat, flames,
18 smoke, products of combustion, or whatever.

19 Q Now, what kind of ceiling did they have in
20 there, Chief?

21 MR. DOBBINS: I am not sure the witness
22 understood the question.

23 MR. MARKS: I think he did.

24 A What you are saying is the flames would
25 travel parallel with the joists rather than across them?

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M. E. Williams - Cross

256.

1 Q Exactly.

2 A I say it's entirely possible for it to have
3 traveled either way.

4 Q I know that, but I didn't ask that question
5 at the time of the objection, you had already answered that
6 one. I asked you what kind of ceiling the place had in it
7 on the lower level.

8 A An acoustical ceiling.

9 Q This is an insulating-type ceiling?

10 A Yes.

11 Q Did it have insulation above it?

12 A I can't answer that.

13 Q Didn't you see any indication of insulation?

14 A I can't remember that this far back.

15 Q Well, if it had insulation below the conduit
16 and around the conduit, would that have protected the lower-
17 level ceiling?

18 A Depending on what type of insulation.

19 Q Well, let's assume it's rock wool or fiber-
20 glass--

21 MR. DOBBINS: Your Honor, this is just pure
22 speculation, no one has said there is any--

23 THE COURT: He has him on cross-examination,
24 the objection is overruled.

25 A Some of your so-called fireproof insulating

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M. E. Williams - Cross

257.

1 materials will definitely burn.

2 Q Yes, I understand.

3 A So, I am not familiar--

4 Q With what was there, so you can't say whether
5 it would or wouldn't protect it?

6 A No, sir.

7 Q But thickness of any kind does protect to a
8 degree, doesn't it?

9 A Yes, if it's a nonflammable material or non-
10 combustible material.

11 Q Isn't that the reason why you say it takes
12 a long time to burn through this thick joist, because the
13 thickness protects and prevents it from burning through for a
14 long time?

15 A Yes, it takes a longer time to burn through
16 the width of it or through the thickness of it than it does
17 across the other way.

18 Q By the same token, half-inch plywood will
19 be consumed and burned before a 2x6, wouldn't it?

20 A If it comes in contact with the flame, yes.

21 Q If the flame is in the area directly below
22 the plywood and confined in an area between the two ceiling
23 joists, doesn't it have access to the plywood immediately?

24 A We have got to remember the fact that the
25 joist had a hole burned through it.

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M. E. Williams - Cross

258.

- 1 Q Yes, sir. Where?
- 2 A Where the conduit came through.
- 3 Q How do you know it had a hole burned through
- 4 it?
- 5 A Because I saw it.
- 6 Q How big a hole?
- 7 A I would say something like this long from
- 8 the top of the joist all the way through.
- 9 Q Now, what was immediately above that?
- 10 MR. DOBBINS: Can the record show that he
- 11 indicated about--
- 12 THE COURT: Two, two and a half, three feet.
- 13 Q What was immediately above that hole?
- 14 A That would have been the floor of the
- 15 second floor.
- 16 Q The plywood?
- 17 A Yes, sir.
- 18 Q Now, Chief, let me ask you this question.
- 19 After the fire did you make any investigation of the alarm
- 20 system? Did you look at it?
- 21 A I can't answer that any more than to say
- 22 that I did examine it.
- 23 Q Did you find any unconnected wires in the
- 24 control box?
- 25 A Everything was connected and intact. The

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M. E. Williams - Cross

259.

1 only thing that I found that was at fault at all was where
2 something had fallen and bent the key that held the door
3 locked slightly.

4 Q That would have been in the dialer?

5 A Pardon me?

6 Q Is that in the control cabinet, or in the
7 dialer?

8 A In the control cabinet.

9 Q That was closed and locked?

10 A Yes, sir.

11 Q Something had fallen and broken or bent the
12 key?

13 A Yes.

14 Q And you found all the wiring inside intact?

15 A Yes.

16 Q Now, Chief, let me ask you this question.

17 Did you examine the wiring to the telephone dialer which is the
18 other component of the fire alarm system?

19 A Not being qualified in this area, I did not.

20 Q That is connected by wires to the control
21 center?

22 A Right.

23 Q And those wires were connected, right?

24 A So far as I know, they were. I did not
25 examine them.

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M. E. Williams - Cross

260.

1 Q You did not see any loose wires in the
2 control box?

3 A Because I am not qualified for this equip-
4 ment, so I didn't get into the technicalities of it.

5 Q But you can eyeball it, can't you?

6 A Yes.

7 Q And you did do that?

8 A Yes.

9 Q You didn't see anything hanging loose in
10 there in the way of wires?

11 A Not particularly, no.

12 Q Did you notice whether or not the alarm
13 bell was still on the wall?

14 A Yes, sir.

15 Q It was?

16 A Yes.

17 Q Now, where was the electrical service
18 entrance to the building, do you recall, Chief?

19 A That would have been on the north end of
20 the building, the other side of the furnace room.

21 Q North end of the building, the other side
22 of the furnace room?

23 A Yes.

24 Q This would be fairly close to where this
25 fire originated then, right?

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M. E. Williams - Cross

261.

1 A Yes, sir.

2 Q Are you sure you are right on that, Chief?

3 A As near as I remember, the power source
4 came into the back of the building on the north end.

5 Q Where did the telephone service come in,
6 do you know?

7 A I do not.

8 Q Do you know whether there were any overhead
9 telephone cables anywhere near the building?

10 A I don't remember that.

11 Q Do you know whether the telephone service
12 in the area was disconnected or immobilized by the forces of
13 this fire?

14 A I would have to answer that that there were
15 some telephone men on the scene later that morning.

16 Q Do you know where they were working?

17 A I do not.

18 Q They were just in the area?

19 A Right.

20 Q How late did you stay there in the morning,
21 Chief?

22 A I would have to estimate it was between
23 9 and 10 o'clock before I left the first time.

24 Q And you came back again later?

25 A Yes, sir.

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M. E. Williams - Cross

262.

1 Q I don't mean to inquire into the purpose
2 of your departure, but what did you come back for?

3 A Well, I actually left after the fire was
4 knocked down and totally under control to go home and change
5 clothes, eat breakfast, take a shower, and come back to the
6 scene. This is normal procedure.

7 Q But how long did that take? In other words,
8 how long were you absent from the location?

9 A Probably an hour and a half.

10 Q Now, do you have any idea as to why a
11 short circuit occurred in that electrical conduit?

12 A No, sir, I do not.

13 Q Do you know whether this was 240-volt
14 wiring in there or 115-volt wiring in that conduit?

15 A I do not.

16 Q Did you inquire?

17 A I did not.

18 Q What was the nature of the machines in the
19 viewing room?

20 A You will have to accept this at face value
21 from--

22 Q From your observation of it. I don't mean
23 for you to tell me exactly make, model, serial number, or
24 whatever, I just want to know what kind of machines were in
25 there.

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M. E. Williams - Cross

263.

1 A It was viewing machines that were designed
2 to view tapes that had been taken of people during treatment
3 or examination by a physician.

4 Q Was there any X-ray equipment in that room?

5 A Not to my knowledge.

6 Q Now, where with respect to the viewing
7 machines was this conduit located in which you say the fire
8 started? It was above that room, I know, but where with
9 respect to their physical location below?

10 A The machines would have been located like
11 this desk or tabletop here.

12 Q You are pointing to the reporter's desk on
13 your right?

14 A Right.

15 Q From the witness box?

16 A Yes, in the upper right-hand corner and
17 against the wall, which would be in the same position as this
18 wall behind me. That separated, as I understand it, an
19 examining room from the viewing room.

20 Q Go ahead from there.

21 A And this is where your heavy burning occurred
22 in your rafters.

23 Q Where were the machines then with respect to
24 that location of the so-called heavy burning in the rafters?

25 A They would have been immediately below that

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M. E. Williams - Cross

264.

1 and on the north wall.

2 Q Did you look at those machines with any
3 care?

4 A I examined the machines where they were
5 plugged into the wall, and--

6 Q Let me ask it this way then. Was there
7 evidence of burning on the plug-in portion, the electrical
8 wires?

9 A There was burning that had taken place as
10 a result of the fire, but I could not find any evidence of
11 burning such as arcing that you would find from a short cir-
12 cuit.

13 Q What was the general appearance of the
14 viewing machines themselves with respect to their exposure
15 to fire?

16 A Well, they were exposed to the fire whereby
17 they had become covered with debris that was from the falling
18 ceiling and burning timbers, this type thing.

19 Q So that things had fallen down on them?

20 A Yes, sir.

21 Q And this stuff had fallen from the upper
22 walls and ceiling, had it not?

23 A Yes, sir, but the machines were not bent
24 or damaged beyond let's say trash and debris from the ceiling
25 and the fire itself falling on them, burnt embers.

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M. E. Williams - Cross

265.

1 Q Now, you say there was some heating units
2 in the building. Where was the closest heating unit to the
3 place that you say the fire commenced?

4 A That would have been on the northwest end
5 of the building.

6 Q And where would that have been with respect
7 to the place that you found the heavy burning?

8 A That would have been quite some distance
9 from the furnace room.

10 Q So, you do not suspect the heating plant
11 of being involved in any way?

12 A No way at all.

13 Q How many heating plants were in the building?

14 A There were two, I think.

15 Q Are you sure there weren't three?

16 A I am not sure.

17 Q Now, do you know of your own knowledge the
18 extent to which the construction upstairs had gone before
19 the fire occurred?

20 A I couldn't answer that.

21 Q Do you know whether it was under roof, or
22 not?

23 A According to the contractor, it was under
24 roof.

25 Q But that had pretty well been decimated by

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M. E. Williams - Cross

266.

1 the time you got there?

2 A That's correct.

3 Q Had the upper structure itself been pretty
4 well decimated by the time you got there?

5 A Yes, sir.

6 Q So that there had been massive burning
7 above the level of the ceiling in the lower story of the
8 building which had taken place before your arrival?

9 A This is true.

10 Q Did the effect of the wind coming out of
11 the north quadrant have any significance on the spread of the
12 fire through that top story?

13 A Naturally it would push it in the direction
14 from which the wind was coming.

15 Q And wind increases the intensity of burning
16 too, doesn't it?

17 A Yes.

18 Q And doesn't cold have some bearing on what
19 goes on too?

20 A I would say no appreciable amount, no, sir.

21 Q I have been under the impression, and cor-
22 rect me if I am wrong, if heat is discharged into a cold area,
23 the force of the discharge is magnified, the pressure is less,
24 in other words, than if the area is warm, would that be right
25 or wrong?

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M. E. Williams - Cross

267.

1 A This is true because your heated air is not
2 meeting as much resistance in warm air as it would in cold
3 air.

4 Q So if there was warm air in the building
5 from the heating plants, and we assume there was because the
6 outside temperature was very cold, was it not?

7 A Yes, sir.

8 Q The pressures outside from the air would
9 have been less than the pressures inside, right or wrong?

10 A They would have been less.

11 Q So the tendency would have been for it to
12 go up, wouldn't it?

13 A Naturally, yes.

14 Q Do you know whether that's what happened in
15 this case?

16 A No, because of the interior heating of the
17 building your fire pressure could have come down through the
18 doors and other openings into the corridor because of the
19 heavy atmosphere and the cold air outside.

20 Q Now, suppose then that we are talking about
21 the area which is under the new construction but which has
22 not been sealed in, would that have that bearing, have that
23 effect?

24 A If the air was getting into that area, yes,
25 sir, it would.

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M. E. Williams - Cross

268.

1 Q What effect would it have?

2 A It would move the heat and flame and products
3 of combustion in the direction from which the wind was coming.

4 Q You mean in the direction towards which the
5 wind was going, don't you?

6 A No, the wind behind the fire is going to
7 push it.

8 Q So that's the direction in which it's
9 traveling, not the direction from which it's coming.

10 A I mean from the direction the wind is coming.

11 Q The wind is coming from the north?

12 A Right.

13 Q The spread of the fire was to the south?

14 A Right.

15 Q And is it not true that the wind helped
16 push the fire south?

17 A Yes, sir, it's bound to.

18 Q So that's the opposite from the direction
19 that the wind was coming?

20 A No, the wind was coming from the north,
21 it pushed the fire north to south.

22 Q Blowing towards the south?

23 A Right.

24 Q And the fire went with the wind to the
25 south?

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M. E. Williams - Cross

269.

1 A That's correct.

2 THE COURT: I think we have got that one
3 pretty well now.

4 MR. DOBBINS: I was getting confused.

5 Q Do you know, Chief, where or when in the
6 course of human events or what you observed that night the
7 telephone service to the building burned out?

8 A I can't answer that, I don't know.

9 Q Was there electricity on in the building
10 when you reached there?

11 A No, sir.

12 Q That was out?

13 A Yes, sir.

14 Q Do you know when it went out with respect
15 to the fire?

16 A I do not.

17 Q Are you experienced enough in electrical
18 matters to be able to express an opinion on what would happen
19 to the electrical service in the building if we have a short
20 circuit in the conduit of the type that you described?

21 A Normally--

22 THE COURT: Well, the first question was
23 are you experienced enough to answer it.

24 A I would qualify myself to say up to a certain
25 point, but I am not an electrical engineer, I am not an elec-

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M. E. Williams - Cross

270.

1 trician.

2 Q Have you observed what happens to the elec-
3 tric service in buildings when similar fires have occurred?

4 MR. DOBBINS: Is this just normal human
5 experience? If that's so, I object to that type of
6 question.

7 THE COURT: I haven't heard his answer yet.
8 What are you asking him now?

9 Q Have you observed what happens to the elec-
10 tric service in buildings when similar fires have occurred?

11 A Yes, I have observed that.

12 THE COURT: I have to overrule you on that.
13 This is certainly in keeping with his testimony of
14 what his experiences are.

15 MR. DOBBINS: At what point?

16 THE COURT: Well, he will have to get it in
17 beyond that. All we know is that he has observed
18 certain things, I don't know what the next question
19 is yet.

20 Q It's true, isn't it, Chief, that when you
21 get a smoldering fire of this kind the circuit breakers in
22 the main panel box throw?

23 A Let's say they are supposed to do that.

24 Q Now, what happens if they don't?

25 A You have continued heating of the wiring.

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M. E. Williams - Cross

271.

1 Q And you have got to have continued heating
2 of the wiring, don't you, before you get a fire? A flash
3 short normally is supposed to throw it out, isn't it?

4 A Normally it's supposed to, but I have seen
5 several instances where it did not.

6 Q So in this particular case would you say
7 that the circuit breaker failed to function, or not?

8 A I can't say whether the circuit breaker
9 failed to function before or during the fire.

10 Q Did you look at the circuit breakers in
11 the panel after the fire?

12 A No, sir, I did not.

13 Q In that case you can't answer that question,
14 I don't guess. Chief, I have one last question, and I think
15 I have it straight. You said it would take from three to five
16 yours to burn through those 2x8 or 2x10 joists?

17 A Right.

18 Q How long would it take to burn through the
19 half-inch plywood above those joists?

20 A It would take a considerable amount of time.

21 Q How much is a considerable amount of time?

22 A Let me finish my statement.

23 Q All right, sir.

24 A Depending on how much flame was exposed to
25 the plywood that you are speaking of.

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M. E. Williams - Cross

272.

1 THE COURT: Chief, assume in answering his
2 question that you have the same flame as you would
3 have exposed to the 2x8, exactly the same, just don't
4 make any difference between the two, just take them
5 as pieces of wood outside of the building.

6 MR. DOBBINS: May I interrupt Your Honor
7 just a moment? I suggest that that would depend on
8 whether or not the conduit is in contact with the
9 plywood or not.

10 THE COURT: That's another issue for the
11 jury. I am just saying that the question I want
12 answered, and Mr. Marks can come back to his, is
13 taking the same fire source and applying it to half-
14 inch or three-quarter inch plywood and taking the
15 same fire source and the same distance and everything
16 and applying it to 2x8 joists, how long would it take
17 that fire source which you saw it did to these joists,
18 how long would it take to burn up that plywood?

19 MR. DOBBINS: May I insert one other objec-
20 tion, Your Honor. If the plywood is laying flat or
21 in the same elevation and in the same longitudinal
22 position as the joists, I think that has a bearing
23 on it.

24 THE COURT: All right, with that qualifica-
25 tion, do you understand what I am asking?

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273.

1 THE WITNESS: Yes. The plywood in this
2 particular instance would have been laying flat.

3 THE COURT: All right.

4 THE WITNESS: The heat and flame production
5 would have been coming up from the bottom applying
6 itself to the flat surface of the plywood.

7 THE COURT: All right.

8 THE WITNESS: This would take, I would say,
9 20, 30 minutes to burn through half- or three-quarter
10 inch plywood.

11 MR. MARKS: That's what I was trying to find
12 out.

13 THE WITNESS: Because you have to accept the
14 fact that if you apply flame to a piece of plywood
15 and it's a flat surface, you are going to get the
16 spreading out of the flame, smoke, et cetera, in
17 this area along with the penetration of heat through
18 it. So, much of your heat will be dissipated through
19 the entire flat surface of the plywood rather than
20 just trying to go right straight up through it like
21 you would drill a hole.

22 Q Now, Chief, one last question. In order
23 for the upper level to become involved, the plywood had to
24 burn through, didn't it?

25 A Yes, sir.

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M. E. Williams - Cross/Redirect

274.

1 MR. MARKS: Okay, that's all.

2 THE COURT: Before you start, Mr. Heilig,
3 by prior arrangement with counsel Mr. Guedri had
4 to leave on a matter of importance. Mr. Rosenbaum,
5 you may sit at the counsel table.

6 MR. MARKS: Mr. Rosenbaum is not a defen-
7 dant, his wife is a defendant.

8 THE COURT: All right.

9 MR. DOBBINS: We are glad to have him here.

10 THE COURT: All right, Mr. Heilig.

11

12 REDIRECT EXAMINATION

13 BY MR. HEILIG:

14 Q Chief, you mentioned that when you got on
15 the scene the building was in flames, is that correct?

16 A That is true, yes, sir.

17 Q Now, were you present on the scene at the
18 time the main portion of the fire was attacked and thereafter
19 put out?

20 A They were in the process of attacking the
21 main portion of the fire when I got there.

22 Q And what part of the building was that in?

23 A That would have been in the north end of
24 the building at the first-floor level.

25 Q Now, where is the viewing room in location

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M. E. Williams - Redirect

275.

1 to where the main part of the fire was burning?

2 A The viewing room is in the north end of the
3 building where the main portion of the fire was burning.

4 Q Now, that viewing room, is that on the
5 corner of the building, or is that in the middle of the build-
6 ing, or where is it located?

7 A I would say that it's just off center in
8 the north end.

9 Q Do you recall whether or not the film view-
10 ing room had a window in it?

11 A I don't believe it had a window at all.

12 Q Now, after the main body of the fire was
13 extinguished, how long after that did you go into the room,
14 to the film viewing room?

15 A I would say within 30 minutes to an hour
16 at the most.

17 Q Is that when you first observed the ceiling
18 joist in the film viewing room?

19 A This is correct.

20 Q Was all the fire in the building out by
21 then?

22 A No, sir, there was still some smoldering
23 taking place in the various offices and other rooms attached
24 to the main corridor. This is what we would call smoldering
25 embers that had to be mopped up.

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276.

1 Q Was the particular joist in question as
2 shown in Plaintiff's Exhibit No. 10, was that still ablaze,
3 or had that been extinguished?

4 A That had been extinguished.

5 Q And, Chief, do you know approximately what
6 time it was when you entered the north end of the building
7 into the viewing room and first saw the joist?

8 A You mean after I first arrived on the scene?

9 Q Yes, what time did you first view that ceil-
10 ing joist, if you remember, your approximation?

11 A I would say just before 2 o'clock anyway.

12 MR. HEILIG: That's all the questions I
13 have.

14 THE COURT: What you are saying is that
15 main body of the fire, except for the smoldering
16 aspects and so forth, was contained an hour after
17 the engine companies arrived?

18 THE WITNESS: Yes.

19 THE COURT: Does that include the structures
20 up on the second floor, the new construction work as
21 well, whatever material had been up there or was up
22 there?

23 THE WITNESS: There was some of this material
24 still burning, such as your studding that was standing
25 up in the air, but we didn't concern ourselves too

1 much with that because it was just studding sticking
2 up in the air, burning couldn't hurt anything.

3 MR. HEILIG: I would like to see the blue-
4 print and then have that shown to the Chief, please.

5 MR. MARKS: If Your Honor please, this is
6 beyond the scope of the original examination and
7 beyond the scope of cross.

8 THE COURT: Well, let's see what it is.
9 I think if the interest of justice requires receiv-
10 ing it, I will allow it in.

11 BY MR. HEILIG: (Continuing)

12 Q Chief, can you tell me what that depicts?

13 THE COURT: We know what it is.

14 MR. HEILIG: I would like to have the Chief
15 just for the sake of the jury, Judge, mark with an
16 "X" the location of the film viewing room in the
17 north end of the building.

18 THE COURT: Can you locate it on that sche-
19 matic?

20 THE WITNESS: Let me see here.

21 MR. HEILIG: Your Honor, if I could orient
22 him with respect--

23 THE COURT: Let him orient himself, he's
24 on the stand on redirect examination.

25 THE WITNESS: This seems to be an electrical

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278.

1 diagram, but I can't depict the viewing room on this
2 particular drawing.

3 MR. HEILIG: Okay.

4 THE WITNESS: It must be on here someplace.

5 MR. HEILIG: Judge, I don't have any further
6 redirect.

7
8 RECROSS-EXAMINATION

9 BY MR. MARKS:

10 Q Chief, didn't you tell us when you got there
11 that the upper story was aflame?

12 A Yes, sir.

13 Q Fully aflame?

14 A Yes, sir.

15 Q When you arrived and during the early part
16 of your stay, were they fighting that fire as well as the
17 other fire?

18 A When you say the other fire, are you refer-
19 ring to the first floor?

20 Q Yes.

21 A Oh, yes.

22 Q Where were their hoses throwing water into
23 the first floor?

24 A They had hose line that had gone in through
25 the front door and the back door.

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M. E. Williams - Recross

279.

1 Q Now where was the water being thrown? Where
2 was the water going from those hoses?

3 A Into the entire interior of the first floor.

4 Q How was it getting there? There were parti-
5 tions and other things there, weren't there?

6 A There were men in there with lines and using
7 gas masks.

8 Q Did you actually see any hoses in the view-
9 ing room?

10 A Yes, sir.

11 Q When did you see them?

12 A When I went in on the first visit.

13 Q You don't know when they had been laid there,
14 do you?

15 A No, sir, I don't.

16 Q You don't know whether they were in there
17 at the time of your arrival or whether they went in later, do
18 you?

19 A They were in there at the time of my arrival.

20 Q In that room?

21 A Yes, sir.

22 Q How do you know?

23 A I saw them. I saw the hoses you are speak-
24 ing of.

25 Q When you went in there?

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M. E. Williams - Recross

280.

1 A Yes.

2 Q But that was an hour later?

3 A That's right.

4 Q I am talking about when you got there.

5 A No, I didn't go in that particular room.

6 Q You didn't see any hose extending into that
7 room with a nozzle on it and firemen fighting fire in that
8 room either?

9 A No. I saw a hose going in the front door
10 at that time, but not in the viewing room.

11 Q Did you see any hoses throwing water up on
12 the upper level?

13 A Yes, they had hoses applying water from the
14 outside.

15 Q From the outside onto the roof and onto the
16 upper level, is that correct?

17 A Yes.

18 Q How long did it take them to get the upper
19 level out?

20 A Well, a very short period of time because
21 it was very accessible to the fire lines that were surrounding
22 the building from the outside.

23 Q How long would you say it was before it was
24 reduced to a point where it was just some standing 2x4's
25 smoldering?

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M. E. Williams - Recross

281.

1 A 15, 20 minutes, I would say.
2 Q But it was consumed completely?
3 A Yes.
4 Q It was burned up before ~~it~~ it was put out?
5 A I would say so, yes.
6 Q Or burned out before it was put out, which-
7 ever is the correct terminology?
8 A Yes.
9 MR. MARKS: That's all I have.
10 THE COURT: May the Chief be excused?
11 MR. HEILIG: Yes, sir.
12 MR. MARKS: As far as I am concerned, he
13 may.
14 THE COURT: You are excused, Chief.
15
16

17 WITNESS STOOD DOWN
18
19 THE COURT: Ladies and gentlemen, we will be
20 going to lunch about 1:00, so we will take about a
21 five-minute break at this point.
22
23 NOTE: At this point a brief recess is
24 taken; at the conclusion of which the case continues
25 as follows:

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THE COURT: Call your next witness.

MR. HEILIG: Mr. Mantifel.

ANDREW PERSHING MANTIFEL, a witness called
by the attorneys for the plaintiff, first being duly sworn,
testifies and states:

DIRECT EXAMINATION

BY MR. HEILIG:

Q All right, sir, would you state your full
name, please.

A My name is Andrew Pershing Mantifel.

Q Where do you live, sir?

A Eden Prairie, Minnesota.

Q Andy, what is your educational background?

A I am a high school graduate, and a graduate
of Control Data Institute.

Q Are you presently employed?

A Yes, I am.

Q Where are you employed?

A A company called MTS.

Q Where is that located?

A Eden Prairie, Minnesota.

Q What is the nature of the business of the
MTS Corporation?

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A. P. Mantifel - Direct

283.

1 A We make electrical devices, test equipment,
2 such as collision testers for Ford Motor Company, and other
3 major test devices, whatever the customer requires.

4 Q What capacity are you employed there in?

5 A I am a special assembler, I work alongside
6 with the engineer on special units that he wants built for
7 just say one job, one-of-a-kind type things.

8 Q And prior to your employment with MTS,
9 where were you employed?

10 A I was employed for a company called Electro
11 Component Systems Incorporated.

12 Q Where are they located?

13 A St. Louis Park, Minnesota.

14 Q In what capacity were you employed with
15 them?

16 A I was the head technician.

17 Q I didn't hear what you said.

18 A I was the head electrical technician.

19 Q How long had you been doing that for
20 Electro Component Systems?

21 A For a year.

22 Q Now, did you have occasion at my request to
23 test a certain piece of equipment?

24 A Yes, I did.

25 Q What is the nature of the business of ECS?

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A. P. Mantifel - Direct

284.

1 A We made burglar alarms, dialing burglar
2 alarms.

3 Q You say you did at my request examine a
4 piece of equipment, is that correct?

5 A Yes, I did.

6 Q All right, sir, can you identify that,
7 please.

8 A Yes, sir, this is the piece of equipment
9 you had me check while I was at Electro Component Systems.

10 MR. HEILIG: Judge, could we have that
11 marked?

12 MR. MARKS: Judge, until it's identified in
13 some better way than the fact that he was asked to
14 check it, I would be forced to object to it.

15 THE COURT: I am going to give it a number
16 so we can talk about it, but I can't receive it at
17 this point until we know what it is.

18 MR. HEILIG: Yes, sir.

19 THE COURT: It will be marked for identifica-
20 tion as Plaintiff's Exhibit 18.

21 Q How did you receive that piece of equipment,
22 and what is it, and identify it for the jury.

23 A We received it through Federal Express, and
24 it is a dialing unit, 2-channel dialer, it's called the 150S-2
25 that Electro Component Systems makes; at the time though

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1 it was made by LSI.

2 MR. HEILIG: Judge, what is the exhibit num-
3 ber on the dialer, the one single piece?

4 THE COURT: No. 6.

5 Q Look at Exhibit No. 6, is that the piece
6 of equipment that is depicted on that brochure?

7 A No, sir.

8 Q What are the differences?

9 A This one is basically the same except for
10 it has built-in batteries. Other than that they are tech-
11 nically pretty much the same.

12 THE COURT: Which has built-in batteries?

13 THE WITNESS: This one has built-in bat-
14 teries; this one the customer has to supply his own
15 and attach it to these two wires.

16 THE COURT: The first "this one" was
17 Exhibit No. 6, and the other "this one" that has
18 to be attached was the actual No. 18.

19 Q Now, would you, using the dialer, if you
20 like, would you explain to the ladies and gentlemen of the
21 jury very briefly how the dialer operates.

22 A Okay. This dialer contains its own power,
23 all it has to have is a closed contact to cross two terminals,
24 just the same as a piece of wire touching two contacts. From
25 there it will engage the dialer, and then this tape will move.

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1 This is a continuous tape, and on the tape is a message.
2 First it has a sequence of numbers that it dials according
3 to what the customer wants, and then the message saying there
4 is a fire or there is a burglary. After it's gone through
5 this it can hang up the phone and dial again anywhere from
6 one up to ten times on one tape. Then at the end of the
7 sequence it hits a metal foil and the tape will stop, and
8 then it's ready to go again, nothing has to be done to the
9 dialer to get it to move again. This goes across a regular
10 phone line.

11 Q Did you test this unit pursuant to my
12 request?

13 A Yes, I did.

14 Q Tell us what test you performed.

15 A Okay. All we did is first give it a visual
16 inspection. Then I put it through the regular test at the
17 production unit. I applied power to the unit, and I put it
18 across an actual phone line, and I tripped the fire side of
19 this unit just by putting a closed piece of wire across it,
20 and all the voltages on the unit were good, and it did dial
21 a number and it did give a message and it did operate fine on
22 the power source.

23 THE COURT: What was the power source?

24 THE WITNESS: I used AC, and we have an AC
25 transformer. Also, we have batteries, we have the

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1 same as a battery supply, just supplies DC power.

2 Q Did it function as well off batteries as
3 it did AC?

4 A Yes, it did.

5 Q Did you prepare this piece of paper here?

6 A Yes, this is a piece of paper that the
7 company uses for the customers in getting a custom-order tape.

8 Q Would you pass it to the Judge so he can
9 mark that Exhibit 19.

10 MR. MARKS: May I look at this, if Your
11 Honor please?

12 THE COURT: Yes, sir.

13 MR. MARKS: Your Honor, the dating on this
14 is February 8th, 1978.

15 THE COURT: Yes, sir.

16 MR. DOBBINS: That's when he tested it.

17 THE WITNESS: This is not what the customer
18 filled out, this is one that I filled out.

19 MR. MARKS: Okay.

20 Q Now, what does that piece of paper represent?

21 A Well, on here it has a certain amount of
22 numbers, four numbers on this one, and then a message, and
23 this is the message that was on this tape, I wrote it down
24 as I listened to the tape on this unit as it was running, and
25 I did understand the tape across the phone lines, I didn't

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288.

1 listen directly to the unit, but it was as it was going across
2 the phone I listened to it.

3 Q And what did you do with the words you heard
4 through your ears?

5 A Well, I wrote them down on a similar sheet,
6 and then this was what was copied off of that sheet.

7 Q Now, what does that sheet have on it with
8 respect to the dialer?

9 A This sheet would say that the message was
10 "Stand by for an emergency message, stand by for an emergency
11 message, stand by for an emergency message. This is a recorded
12 message reporting that a fire is taking place at Dr. Baird's,
13 located at 102 Berrington Street. This message will repeat
14 in approximately two minutes."

15 Q Is that exactly what you heard?

16 A It would be to that order, yes.

17 MR. MARKS: Well, is it what he heard, or
18 isn't it?

19 THE WITNESS: Well, this was recopied. It
20 may have said Dr. Baird's residence, it was definitely
21 saying that there was a fire taking place at Dr.
22 Baird's located at 102 Berrington Street, and that
23 the message would be repeated, and it dialed two sets
24 of numbers, each number twice.

25 Q Now, does it depict on this sheet, Andy,

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1 what numbers the machine would have dialed?

2 A Yes, it does.

3 Q Tell us what they were.

4 A The first number is 649-9111. The second
5 number it dialed was 359-6692, and then it dialed the first
6 number over again, and then it dialed the second number over
7 again.

8 THE COURT: What was the second number it
9 dialed?

10 THE WITNESS: 359-6692.

11 THE COURT: And the first number?

12 THE WITNESS: 649-9111.

13 MR. HEILIG: That's all the questions I
14 have of this witness, Judge.

15
16 CROSS-EXAMINATION

17 BY MR. MARKS:

18 Q Mr. Mantifel, what happens if it gets a
19 busy signal on the first number it dials?

20 A That's it, it gets a busy signal. The unit
21 doesn't know any difference, it will still dial and just give
22 a message to a busy signal.

23 Q What if it gets a busy signal on the second
24 one?

25 A The same thing.

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290.

1 Q But what if it gets a busy signal on the
2 main line exchange?

3 A The same, it doesn't know whether it's busy,
4 answered, or not.

5 Q It can't tell?

6 A Can't tell.

7 Q Now, going on back from that, are you posi-
8 tive, Mr. Mantifel, that the numbers you found on the tape
9 were 649-9111 and 359-6692?

10 A Yes, sir, we sent them through a verifier,
11 telephone number verifier.

12 Q Was there any third number on the tape, or
13 were you confined to twice the two?

14 A Twice the two.

15 Q There is no third number on the tape at all?

16 A Not on the fire channel.

17 Q Is there a third number on the intrusion
18 channel?

19 A I don't know, I couldn't get to the intru-
20 sion channel.

21 Q Do you know to whom those numbers were
22 assigned, Mr. Mantifel?

23 A No, sir, I don't, I didn't even know if
24 they were real numbers.

25 Q You say you got it by Federal Express?

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A. P. Mantifel - Cross

291.

1 A Federal Express.

2 Q Who sent it to you?

3 A Mr. John Heilig.

4 Q And do you know where it had been before
5 you got it?

6 A No, sir.

7 Q You don't know anything more about it than
8 that's what you looked at?

9 A That's it, and the fact that it had been
10 through something that would cause heat and smoke on it.

11 Q Now, let me ask you this question. Did
12 that dialer have any capability of reaching 649-9110?

13 A Not the way it was set up, no.

14 Q How about 649-9117?

15 A No, sir.

16 Q How about 649-9118?

17 A No, sir.

18 Q How about 649-9119?

19 A No, sir.

20 Q So, it couldn't have reached any one of
21 those numbers the way it was set up, it would have gone to
22 649-9111?

23 A That's right.

24 Q Now, what sets that thing in motion? When
25 it's properly installed, it comes in a case, doesn't it?

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1 A Yes, sir.

2 Q Is there any switch on the case to throw it
3 out of service?

4 A Not on the outside case, no, sir.

5 Q Where is the switch that throws it out of
6 service?

7 A It's right here. This is located inside
8 the cabinet. This switch thrown into test would allow the
9 tape to run through once, and it would verbally come out of
10 this speaker, it wouldn't go across the phone lines, so the
11 person would hear the message, you would hear it dialing the
12 numbers and the message. After it stopped once the unit
13 would not run again until thrown out of test. As long as it's
14 in test it will not run.

15 Q Let me ask you this question, sir. Would
16 that apply to the intrusion aspect of it as well?

17 A Yes, sir.

18 Q In order to prevent the intrusion alarm
19 from going to wherever it was supposed to go that same switch
20 would do it?

21 A Yes, sir.

22 Q Let me ask you this question. Let's assume
23 that someone inadvertently sets off an intrusion alarm which
24 ordinarily would utilize this piece of equipment to call a
25 number or two, and they didn't want it to call the number or

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A. P. Mantifel - Cross

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1 two, would they just flip that switch?

2 A Well, the only way they could do it is to
3 break open the box if it's locked.

4 Q Isn't there a key lock on it?

5 A There is a key lock on it, yes.

6 Q If the key is in the lock, what then?

7 A If the key is in the lock, then he would
8 just have to turn open the lock and flip the switch.

9 Q And you say that this immobilizes the entire
10 dialer until somebody goes back there and resets the switch?

11 A That's right.

12 Q And with the switch in test position after
13 the initial tape is played through the speaker, you get nothing
14 more forever, is that right?

15 A As long as it's in test it won't go.

16 Q Until you turn it back onto service?

17 A Back into normal, correct.

18 Q It's not a spring-loaded one?

19 A No.

20 Q You don't have to hold your finger on it
21 or anything?

22 A No, sir.

23 Q Now, you say this one required high-line
24 service or 115-volt service, or batteries?

25 A Yes. There is a transformer that brings

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A.. P. Mantifel - Cross

294.

1 the 115 down to 16 on this one, down to 16.5 volts AC, and
2 then there are also standby batteries in the unit.

3 Q They are in the case behind the door that is
4 opened by the key?

5 A That's is correct.

6 Q Have you seen the cabinet out of which that
7 was taken?

8 A No, sir.

9 Q You don't know who took it out?

10 A No, sir.

11 Q Or when it was taken out?

12 A No, sir.

13 Q Or where it was after it was taken out and
14 before you got it?

15 A No, sir.

16 Q What sort of batteries does the customer
17 supply for this unit?

18 A Well, it requires three 6-volt batteries,
19 they are just common batteries that they have, I think they
20 are called--

21 Q Lantern batteries?

22 A Yes, it is a lantern battery.

23 Q It's an oblong battery?

24 A No, it's a long square battery. The oblong
25 I believe is 12 volts.

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295.

1 Q There is room in the cabinet for three of
2 those?

3 A Yes, sir, the three fit right behind this
4 gap.

5 Q Now, are they wired in series, or in
6 parallel?

7 A Series.

8 Q If one battery is bad, does it affect the
9 capacity of the thing to send?

10 A The unit will run off of 12 volts, and the
11 three batteries together give you 18, so the unit will run
12 off up to 12 volts.

13 Q So that is there an automatic throw-over
14 situation so that if the 115-volt service is interrupted it
15 goes automatically on battery?

16 A That's right.

17 Q And how long does it stay on the batteries?

18 A Until the 115 is continued.

19 Q It automatically switches back when the
20 115 comes back into it, is that correct?

21 A That is correct.

22 Q And as I believe I understood you to say,
23 this is dependent upon the availability of telephone line
24 service to the ultimate destination for it to operate?

25 A Correct.

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1 Q If it has no telephone line service avail-
2 able to it or if the reset switch or the test switch that
3 you mentioned there had been thrown and not thrown back, you
4 have no capability, is that correct?

5 A That is correct.

6 Q Would that test switch in there, if it is
7 thrown to "off," have any effect upon an alarm bell in a
8 building?

9 A No, sir.

10 Q You are no longer with the people who
11 manufacture this machine?

12 A That is correct.

13 Q Where did you make your test?

14 A I was still working at the company when
15 this test was performed.

16 Q You were still there in February of 1978?

17 A Yes, sir.

18 Q When did you leave there?

19 A I believe it was in April.

20 Q And how long were you at Electro Systems
21 all told your entire employment there?

22 A One year.

23 Q Were you employed in the capacity of head
24 electrical technician the entire time that you were there?

25 A Yes, sir.

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297.

1 Q That's what you were hired as, and that's
2 what you left as?

3 A Yes, sir.

4 Q What is involved in the burglary or intru-
5 sion alarm side of that thing? Does it work the same way as
6 the fire channel?

7 A The same way, just a different relay, there
8 are two different relays.

9 Q And two different sets of tape?

10 A No, sir. This head has the same capacity
11 as an 8-track tape. If you just hit the button you change
12 your head position on this one.

13 Q In other words, it shifts from one to the
14 other depending on what the nature of the alarm is?

15 A Correct.

16 Q And it has the capacity to sense that and
17 say this is a burglary alarm if the control panel to which it
18 is connected says so?

19 A That is correct.

20 Q Or if it gets the impulse on the other side,
21 it knows that that is a fire alarm and this then shifts up or
22 down on the tape recording?

23 A Well, the head doesn't exactly shift, there
24 are two different points on the head, it just picks one or
25 the other.

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A. P. Mantifel - Cross

298.

1 Q Two different contacts?

2 A Right.

3 Q It's like shifting a typewriter from
4 capitals to lower case?

5 A Not exactly.

6 Q I mean the same idea though?

7 A Yes. The head is not mechanical, it's
8 electrical.

9 Q I understand, but the end result is the
10 same?

11 A Correct.

12 Q How long is the total length of the tape
13 from end to end on the fire side?

14 A They are all custom-made.

15 Q Well, how long is this one?

16 A I didn't time it. It would be about five
17 minutes.

18 Q And you have "Stand by for an emergency
19 message" repeated three times?

20 A Yes, that's our standard procedure.

21 Q Well, that's what you said this one said.

22 A I said it generally said that.

23 Q Well, did you say this one said it?

24 A Yes, this would be generally in that area.

25 I don't recall back in February if it repeated it three times

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1 or not.

2 Q Does it wait for an answer, or does it keep
3 right on going with "This is a recorded message reporting a
4 fire"?

5 A That's exactly what it will do, that's why
6 it usually is repeated three times so as to give the person
7 the time to answer the phone.

8 Q How often will it dial the number?

9 A In this case it dials the number twice,
10 each number twice.

11 Q But it dials one in between, does it not?

12 A Yes.

13 Q In other words, it will go to 649-9111
14 first?

15 A Correct.

16 Q It would go then to 359-6692?

17 A Correct.

18 Q Then it would go back to 649-9111?

19 A Right.

20 Q And then it would flop back over to 359-6692?

21 A Correct.

22 Q And it would repeat the message at each time
23 it flopped back, is that correct?

24 A Correct.

25 Q So, how long is the initial message on the

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300.

1 tape? How long does it take?

2 A The message would take approximately a
3 minute.

4 Q Then it dials the next number when it gets
5 through with that, correct?

6 A Right.

7 Q And speaks for another minute, approximately?

8 A Yes.

9 Q Then it dials the first number all over
10 again and repeats the one-minute message, and then it dials
11 the second number all over again and repeats it again, so it's
12 those four one-minute messages on the tape, right?

13 A Pretty much so, yes.

14 Q Plus the "Standby for an emergency message,"
15 and "This is a recorded message reporting that a fire"--

16 A Well, that would all be within the minute
17 span.

18 Q It goes back all over that as well?

19 A Yes, sir.

20 Q If it gets no answer at all, what happens?

21 A It says the message. It will just say the
22 message whether there is a ring there or not.

23 Q It just automatically speaks regardless
24 of whether anybody picks up the phone and regardless of
25 whether there is a line available or regardless of a busy

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301.

1 signal or whatever it might be?

2 A That is right.

3 Q Does it have any method of calling atten-
4 tion to the fact that its message has not gone through?

5 A No, sir.

6 Q There is no mechanism by which one can tell
7 by looking at it whether the message has gone through or not?

8 A No, sir.

9 Q Is there any way in which one owning one
10 of those pieces of equipment can look at it and tell whether
11 the batteries are fresh, or whether they are gone?

12 A Well, a person just looking at it?

13 Q Yes.

14 A Well, no. A good battery can look bad and
15 a bad battery can look good.

16 Q You can't tell anything, there is no indi-
17 cator on there that says that you have got no voltage, not
18 enough voltage on the battery side?

19 A That's correct.

20 Q Is there any indicator on there that tells
21 you whether it's flopped over to battery operation?

22 A No.

23 Q There is no little light that comes on that
24 says that you are now on batteries?

25 A No.

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A. P. Mantifel - Cross

302.

1 Q Now, in the middle of the front on Plain-
2 tiff's Exhibit 6 there is a little thing. What is that?

3 A I don't know what you are talking about.

4 Q This here.

5 A That's not on this unit. That replaced
6 the speaker, it's a headphone jack. It's just the same as
7 a speaker jack, and you can just plug a speaker into that to
8 listen to what the tape was saying.

9 Q In other words, that exhibit then has a
10 headphone jack on it, and this one has the speaker, is that
11 correct?

12 A That's correct.

13 Q Do you know, Mr. Mantifel, what the first
14 channel on that thing was used for?

15 A The first channel?

16 Q Yes.

17 A It would have been burglary. No, I am
18 sorry, I can't say that. No, I don't know what the first
19 channel was used for.

20 Q Do you know whether the first channel had
21 more than the same numbers, or different numbers? Is it
22 possible that the first channel called numbers other than
23 649-9111 and 359-6692?

24 A Could you repeat that, please?

25 Q Is it possible that channel No. 1 when in

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A. P. Mantifel - Cross

303.

1 use could call any numbers other than 649-9111 and 359-6692?

2 A Channel 1?

3 Q Yes.

4 A At the time, it could have, yes. I don't
5 know what was on that side of the tape.

6 Q How could it do it?

7 A Just by having a different number on the
8 tape.

9 Q I see. So there is something that picks
10 up the number from the tape and says call 649-9111 now?

11 A Can I explain the tape?

12 Q Yes, do that.

13 A The tape has a signal on there, and
14 actually what it is is 500 cycles approximately, and what this
15 cycle does is pick up that phone line that's the same as if
16 you lift the phone off the receiver, and then what we do to
17 dial a number is break that. If we break that three times,
18 break that cycle so it goes down to zero three times, what
19 you get is the number 3 dialed. Okay. If you break it
20 four times, you get the same as the number 4. Now, when the
21 person is speaking to hold the phone, in other words, so it
22 doesn't hang up, there is 200 cycles in the background that
23 the person can't hear, and these cycles are all the phone
24 depends on to be held onto. So if the tape is programmed to
25 dial a certain number, that is what it dials.

A. P. Mantifel - Cross/Redirect

304.

1 Q In other words, it's possible for this one
2 to have dialed a third number then on the burglary side and
3 not on the fire side, is that correct?

4 A That's correct, if the number was on the
5 tape.

6 Q But you are satisfied that there was no
7 third number on the fire tape from your investigation?

8 A That's correct.

9 MR. MARKS: I have no further questions.

10
11 REDIRECT EXAMINATION

12 BY MR. HEILIG:

13 Q At the time you performed your test on this
14 unit, what would have had to be done, in your opinion, to the
15 dialer to bring it up to factory standard?

16 A To bring it up to factory standard? Probably
17 replace just one relay, and then clean it up pretty much, and
18 put covers on these.

19 Q Then if it was clean-looking, it would be
20 ready to go?

21 A Yes, just fix those four things. Also,
22 plus a melted relay, it did function, but from its appearance
23 it would be replaced.

24 MR. HEILIG: That's all.

A. P. Mantifel - Recross

305.

RECROSS-EXAMINATION

BY MR. MARKS:

Q What do the covers do?

A The covers were just a protection for the contacts.

Q Well, do you know what became of those covers?

A No, I don't.

Q They weren't on it when it got to you?

A That's right.

MR. MARKS: That's all I have.

THE COURT: May Mr. Mantifel be excused, gentlemen?

MR. HEILIG: Yes, Your Honor.

WITNESS STOOD DOWN

THE COURT: Who is your next witness?

MR. HEILIG: Mr. Rigsbee.

THE COURT: Now, are you offering this as an exhibit?

MR. HEILIG: I will as soon as I can connect it up.

NOTE: The witness is sworn.

1
2 WILLIAM RIGSBEE, JR., a witness called by
3 the attorneys for the plaintiff, first being duly sworn,
4 testifies and states:

5 DIRECT EXAMINATION

6 BY MR. DOBBINS:

7 Q Would you state your name and address,
8 please, sir.

9 A William Rigsbee, Jr.

10 Q Where do you live, Mr. Rigsbee?

11 A I live at 119 Kilrenny Road, Midlothian,
12 Virginia.

13 MR. MARKS: What's that road again?

14 THE WITNESS: Kilrenny, K-i-l-r-e-n-n-y.

15 Q Mr. Rigsbee, by whom are you employed?

16 A I am employed by St. Paul Fire & Marine
17 Insurance Company.

18 Q Now, do you have any knowledge of a fire
19 which took place at 102 Berrington Street at the Virginia
20 Heart Institute in December of 1975?

21 A Yes, sir.

22 Q After the fire did you visit the premises
23 on Berrington Street?

24 A Yes, sir.

25 Q When did you do that?

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W. Rigsbee - Direct

307.

1 A It was the morning of the fire, I would say
2 sometime between 8 and 10 o'clock a.m.

3 Q At that time did you have occasion to
4 examine the dialer system? Do you know what I am talking
5 about, a dialer?

6 A Yes, sir, I think it was in the southeast
7 room in the building there was a dialer on the wall at the
8 time.

9 Q I show you now what is purported to be
10 LSI Model 150S-2 instrument, and ask you if you have ever
11 seen that and if you recognize it.

12 A Yes, sir.

13 Q Where have you seen it?

14 A I saw it at the Virginia Heart Institute.

15 Q When?

16 A On December 19th, 1975.

17 Q Now Mr. Rigsbee, did you cause it to be
18 removed?

19 A Yes, sir. I had it delivered to my office,
20 and in turn Mr. Heilig picked it up from me.

21 Q You don't know what Mr. Heilig did with it
22 afterwards?

23 A I understand he sent it to the manufacturer
24 for testing.

25 MR. DOBBINS: Answer Mr. Marks' questions.

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W. Rigsbee - Cross

308.

CROSS-EXAMINATION

BY MR. MARKS:

Q Mr. Rigsbee, why did you go over there that morning?

A The St. Paul Fire & Marine Insurance carried the insurance on the building at that time.

Q And who did you get to actually take this piece of equipment out?

A An electrician by the name of Pat Ward, who delivered it to me.

Q Where did you get him?

A He was listed in the yellow pages of the phone book.

Q You called him and asked him to take it out and bring it to you?

A He didn't bring it to me that particular day, I asked him to hold it for me.

Q How long did he hold it?

A It was a matter of several months because at the time of the fire I was primarily concerned at that point with establishing where the origin of the fire was and how much damage was done.

Q Well, when did he get it out of there, do you know?

A I think it was probably in March, I am not

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W. Rigsbee - Cross

309.

1 sure.

2 Q March?

3 A Probably February.

4 Q February or March of 1976, you mean?

5 A February of '76, if I remember correctly.

6 The building at that time had been boarded up.

7 Q It was in a cabinet or a case of some kind,
8 wasn't it?

9 A I think it was a metal cabinet, yes, sir.

10 Q Did you look at the cabinet at all?

11 A Yes, sir, I did.

12 Q What, if anything, did you find pasted on
13 the outside of the door of the cabinet?

14 A Mr. Marks, I can't remember, it was three
15 years ago.

16 Q Did you find anything pasted on the outside
17 of the door of that cabinet?

18 A I cannot remember.

19 Q Did the cabinet have a key in it, in the
20 lock?

21 A I don't remember. I remember there was a
22 key lock, but whether it had a key in it or not, I don't
23 recall.

24 Q Was the cabinet open, or shut?

25 A When I saw it it was open.

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W. Rigsbee - Cross

310.

- 1 Q Did you look at the wiring to the cabinet?
- 2 A I looked into it, yes, sir.
- 3 Q Did you see any broken or disconnected wires?
- 4 A No, sir. At the time I was not looking for
- 5 any.
- 6 Q Did you see any whether you looked for them
- 7 or not?
- 8 A No, sir.
- 9 Q Did you also look at the alarm control
- 10 panel which was also in a cabinet in that immediate vicinity?
- 11 A The only item I recall looking at was just
- 12 that.
- 13 Q Just the dialer?
- 14 A Yes.
- 15 Q You didn't look at the control cabinet?
- 16 A I remember looking in the box, and I remember
- 17 of course seeing the dialer, and I remember having that in my
- 18 office, so at this point I don't remember studying the thing.
- 19 Q Did you make any tests or have your elec-
- 20 trician make any tests to see if the electric wiring to this
- 21 thing was intact?
- 22 A He stated to me that in order to do any
- 23 testing on the equipment he would have to have the schematics.
- 24 I wrote for the schematics, but I never received them.
- 25 Q So he did not make any testing and you didn't

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311.

1 do any personally?

2 A I did not do any personally, and if he did
3 any testing on it he did not have the schematics, so it was
4 more of just looking at it and going over it.

5 Q Do you know what tools he used to get it
6 out of there?

7 A No, sir.

8 Q I am going to call to your particular atten-
9 tion what looks like a brand-new piece of red wire with bright
10 copper on it sticking out from one of the contact points in
11 there. Was that on it when you got it?

12 A I think so.

13 Q You didn't do anything to it after you got
14 it?

15 A No, sir, it stayed in the file cabinet right
16 behind me.

17 Q Do you know what became of the dust covers
18 that were over those contacts?

19 A No, sir.

20 Q They were off when you got them?

21 A This is the way I received it.

22 Q And you kept it in a filing cabinet, did you
23 say, behind you?

24 A Behind my desk in a filing cabinet.

25 Q And you had it for how long?

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W. Rigsbee - Cross

312.

1 A I would say three months, maybe.

2 Q And you gave it to Mr. Heilig?

3 A Yes, sir.

4 Q Do you remember when you gave it to him?

5 A No, sir.

6 Q Was it as far along as February of this
7 year that you gave it to him?

8 A Yes, sir.

9 Q Well, if you got it in February or March of
10 1976, you had it for nearly two years, didn't you?

11 A I can't recall the exact date or how long
12 I have had it, but I think when I first received it it was
13 either in a drawer in my desk or right behind my desk, and
14 that's where it stayed.

15 Q Was the cabinet locked in which you kept it?

16 A No, sir. My desk was, but the cabinet is
17 not.

18 Q How did the electrician get into the build-
19 ing, or do you know?

20 A I think he pulled some plywood off the door
21 at the time.

22 Q It was pretty well nailed up shut, wasn't
23 it?

24 A Well, for the most part, I would say, yes,
25 sir. I think somebody would have to take a crowbar or hammer

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313.

1 to get into it.

2 Q Did you authorize him to do that in your
3 behalf?

4 A I asked him to go get it, yes, sir.

5 Q And he went and got it?

6 A Yes, sir.

7 Q Where is his place of business?

8 A I do not know now.

9 Q You don't know where his place of business
10 was then?

11 A I have it in my file, yes, sir.

12 Q Do you have your file with you?

13 A No, sir, I do not.

14 Q How far away from this 102 Berrington Street
15 address was it?

16 A His office?

17 Q His office.

18 A I don't know.

19 Q You don't know how much travel he had to go
20 to get there and how much he had to go to get back, and you
21 don't know whether his office was in his home or elsewhere?

22 A No, sir, I don't know where his office was
23 at the time I called him. There was an address, but I don't
24 have it committed to memory.

25 Q Did you cause any tests of any kind to be

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314.

1 made on the dialer yourself before you gave it to Mr. Heilig?

2 A Only what Mr. Ward did in looking at it.

3 Q He told you that he couldn't test it?

4 A He said he would have to have the sche-
5 matics in order to run a test on it.

6 Q Apparently he didn't do much testing. To
7 whom did you write for the schematics?

8 A I think I wrote to our office in St. Paul,
9 Minnesota, and asked them to attempt to obtain the schematics
10 there.

11 Q You didn't write directly to the manu-
12 facturer?

13 A I can't remember.

14 Q At the time you were there on the 19th,
15 what was the general condition of the premises, Mr. Rigsbee,
16 with respect to accessibility on your part?

17 A Well, at the time I arrived I think some of
18 the fire trucks were still there. It was extremely cold,
19 windy, and I recall that water was freezing on my camera.

20 Q Did you take pictures?

21 A Yes, sir, of the building.

22 Q Did you take any pictures of the telephone
23 dialer in place?

24 A No, sir.

25 Q How about of the alarm control panel in place?

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W. Rigsbee - Cross

315.

1 A No, sir.

2 Q How about the alarm bell in place?

3 A No, sir.

4 Q Let me ask you this. How did you happen to
5 send the electrician to get the dialer and nothing else,
6 dialing mechanism and nothing else?

7 A I determined through various sources that
8 the dialer apparently had not called the emergency communica-
9 tions system. I did not know this upon my initial investiga-
10 tion.

11 Q Do you know why it didn't call it?

12 A Not at this point, no, sir. I have never
13 seen the report from the manufacturer.

14 MR. MARKS: Mr. Rigsbee, that's all I have,
15 sir.

16 MR. DOBBINS: We have no further questions,
17 but I offer this as an exhibit.

18 MR. MARKS: That's all right, I will let it
19 come in.

20 THE COURT: All right, I will admit that
21 into evidence as Exhibit 18.

22 May this witness be excused?

23 MR. DOBBINS: Yes, sir.

24

25

WITNESS STOOD DOWN

305

1 JURY PRESENT

2 THE COURT: All right, Mr. Marks.

3 MR. MARKS: Recall Chief Emmett Williams.

4 MR. DOBBINS: I understand that Mr. Marks
5 has called Chief Williams as his witness?

6 MR. MARKS: I don't know, he's your witness,
7 you put him on.

8 MR. DOBBINS: It makes a difference.

9 THE COURT: He used the word "recall."

10 MR. DOBBINS: That's the reason I made that
11 point.

12 MR. MARKS: I am recalling him for addi-
13 tional examination.

14 THE COURT: I think he was calling him for
15 additional cross-examination was what his purpose was
16 at this point.

17 MR. MARKS: Exactly.

18
19 MELVIN E. WILLIAMS, a witness recalled by
20 the attorney for the defendant, having been previously sworn,
21 testifies and states:

22 DIRECT EXAMINATION

23 BY MR. MARKS:

24 Q Chief, in the course of your investigation
25 of this fire and of your investigation to determine causation

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M. E. Williams - Direct

324.

1 and other things, did you have occasion to embody your find-
2 ings in a written formal report to your Department of Fire
3 Prevention?

4 A Yes, sir.

5 Q I hand you a paper which seems to have been
6 dated January 6th, 1976, and I will ask you whether or not
7 that is your report.

8 A Yes, sir, it is.

9 Q Will you read the conclusion reached down
10 at the bottom out loud, please.

11 A This fire believed to have started in the
12 film viewing room at the ceiling level possibly due to a
13 short circuit or some malfunction in the electrical wiring.
14 The fire seems to have burned through the ceiling at this
15 point, spread to the second floor which was under construction.
16 It also spread in a horizontal direction over the entire
17 first floor.

18 MR. MARKS: All right, sir. We will offer
19 that in evidence.

20 MR. DOBBINS: No objection.

21 THE COURT: All right, sir, this is Defen-
22 dant's Exhibit No. 2.

23 MR. MARKS: I have no further questions of
24 the Chief.

25 THE COURT: Thank you, Chief, and you are
free to go.

~~WITNESS STOOD DOWN~~

1
2 THE COURT: Next witness, Mr. Marks.

3 MR. MARKS: If Your Honor please, I would
4 like to offer at this time the official weather
5 record for the date in question which is included
6 in a summary report for the month of December 1975
7 over the signature of William H. Haggard, director
8 of the National Climatological Center, certifying
9 that it is an official record of his department.

10 MR. DOBBINS: No objection.

11 THE COURT: All right, Defendant's Exhibit
12 No. 3.

13 MR. MARKS: Now, I would like to put on my
14 next witness, Mr. Charles Morris.

15 NOTE: The witness is sworn.

16
17 CHARLES AUBREY MORRIS, a witness called by
18 the attorney for the defendants, first being duly sworn,
19 testifies and states:

20 DIRECT EXAMINATION

21 BY MR. MARKS:

22 Q Mr. Morris, will you tell us your full name,
23 please.

24 A Charles Aubrey Morris.

25 Q Where do you live, sir?

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C. A. Morris - Direct

326.

- 1 A 1432 Clarkson.
- 2 Q What's your business?
- 3 A I am an electrician.
- 4 Q Where are you employed at this moment, and
- 5 in what capacity?
- 6 A I am employed at M.H.E. Contractors as a
- 7 general foreman.
- 8 Q Is that an electrical contractor?
- 9 A Yes, sir.
- 10 Q Now, in 1975, specifically the month of
- 11 December, where were you employed?
- 12 A Northside Electric.
- 13 Q Did you have a particular foreman on whose
- 14 crew you worked?
- 15 A Yes, I worked for Mr. Ed Pulley.
- 16 Q In what capacity were you employed? Were
- 17 you an electrician, or a helper, or what were you?
- 18 A Apprentice electrician.
- 19 Q How long in December of 1975 had you been
- 20 an apprentice electrician, sir?
- 21 A Three years.
- 22 Q Do you recall whether or not in conjunction
- 23 with Mr. Pulley you and he performed certain work on the
- 24 premises of the Virginia Heart Institute on Berrington Street
- 25 in the City of Richmond?

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327.

1 A Yes, sir.

2 Q Directing your particular attention to
3 December 18th, 1975, which is the day before a fire broke
4 out in the early morning hours of the 19th, were you there
5 on that date?

6 A Yes, I was.

7 Q Did you yourself do anything to the fire
8 alarm control panel, the bell, or the telephone dialer?

9 MR. DOBBINS: Objection to the leading
10 quality of the question. I think he might ask him
11 what he did do.

12 MR. MARKS: I don't consider it leading,
13 if Your Honor please.

14 THE COURT: I don't think that's leading
15 in this case. The objection is overruled.

16 MR. DOBBINS: Exception.

17 Q All right, you may answer the question, Mr.
18 Morris.

19 A No, sir, I didn't.

20 Q Did you see anybody else do anything to the
21 control panel bell or dialer?

22 A No, sir, I wasn't even working in there.

23 Q Where were you working?

24 A On the second floor.

25 Q The whole time?

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328.

1 A Yes, sir.

2 Q Had the control panel and components and
3 other things that were to go into the fire and burglar alarm
4 system for that new addition been delivered to the premises
5 by that day?

6 A Not to my knowledge.

7 Q Did you work on any part of the fire alarm
8 system that day?

9 A No, sir.

10 MR. MARKS: You may take the witness, Mr.
11 Dobbins.

12
13 CROSS-EXAMINATION

14 BY MR. DOBBINS:

15 Q What time did you get there that morning,
16 Mr. Morris?

17 A Approximately 7 o'clock.

18 Q And did Mr. Pulley get there at the same
19 time?

20 A Yes, sir.

21 Q You say you worked upstairs on the second
22 floor the full day?

23 A Yes, sir.

24 Q How did you get up there?

25 A There was a ladder going through an addition,

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C. A. Morris - Cross

329.

1 where the addition was put on, they were going to put a
2 stairway in the back so we went up the ladder.

3 Q Did you stay up there all day?

4 A Yes, sir.

5 Q You didn't come down for lunch or anything
6 of that nature?

7 A I think we came down for lunch.

8 Q Did you come down at all to do any work on
9 the first floor?

10 A No, sir.

11 Q Was Mr. Pulley with you all day?

12 A Yes, sir.

13 Q Did he come downstairs at any time, that is
14 on the first floor, that you know of, or do you know?

15 A Well, he came down at lunchtime, and he may
16 have come down to go get some material.

17 Q So, he did come downstairs, he wasn't in
18 next to you all day long, was he?

19 A Well, he was in that vicinity.

20 Q He was in the building?

21 A Yes, sir.

22 Q In other words, he was in the building
23 either on the first floor, the second floor, or out on the
24 grounds?

25 A Well, he was either on the second floor or

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C. A. Morris - Cross

330.

1 going out to get some material and then back to the second
2 floor.

3 Q When he went downstairs, you don't know
4 where he went, do you?

5 A No, sir.

6 Q What time did you leave there?

7 A I am not sure.

8 Q Did you leave with Mr. Pulley?

9 A Yes, I did.

10 Q When you left, did Mr. Pulley go down, did
11 the two of you go down the ladder?

12 A Yes, sir.

13 Q Did Mr. Pulley then go inside the building?

14 A No, sir.

15 Q The first floor?

16 A No, sir.

17 Q He did not?

18 A No, sir.

19 Q When you left prior to leaving, did you
20 secure the building in any way? That is, what do you do as
21 an electrician when you finish a day's work?

22 A Well, as a rule you get up all the equipment,
23 material that you have out, and in this case where the general
24 contractor is on the job we usually get our stuff that pertains
25 to us and leave.

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C. A. Morris - Cross

331.

1 Q Do you check to see that there are no open
2 electrical circuits or anything of that nature if you are
3 working with electricity?

4 A As a rule, we do not leave any open circuits
5 anytime you work on them.

6 Q Do you check before you leave to make sure
7 that that's not done?

8 A If there are any open circuits you should
9 know about it, and you take care of those immediately whether
10 you are in the process of leaving or whether you are going to
11 be there the rest of the day or not.

12 Q Have you ever worked on an alarm system of
13 any kind before?

14 A Yes, sir.

15 Q When you work on an alarm system, what kind
16 of wires do you use to install the sensors, the detectors?

17 A It depends on the system.

18 Q Is it high-voltage wire, or low-voltage
19 wire?

20 A That depends on the system also.

21 Q Do you know the system that was going to be
22 installed in the second floor of the Virginia Heart Institute?

23 A No, sir.

24 Q Now, you said that you didn't think any of
25 the material had been delivered prior to the fire, did you say

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C. A. Morris - Cross

332.

1 that?

2 A Yes, sir.

3 Q Do you know that it had not been delivered?

4 A I personally had not handled any of it or
5 seen any of it.

6 Q What kind of work were you doing up there
7 that day?

8 A General lighting and receptacle.

9 Q Say that again.

10 A The general lighting and receptacles on the
11 second floor.

12 Q What does that entail? What do you do?

13 A Convenience outlets, wall sockets, lighting
14 fixtures.

15 Q Pulling in wires?

16 A Yes, sir.

17 Q Do you use drills and saws and things of
18 that nature?

19 A Yes, sir.

20 Q Did you do any that day?

21 A I am sure I did.

22 Q Those are electric appliances?

23 A Yes, sir.

24 Q How would you get power to those appliances?

25 A Usually from an existing receptacle or

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C. A. Morris - Cross

333.

1 temporary power or something.

2 Q How did you do it on the day of December the
3 18th in the Virginia Heart Institute?

4 A There was temporary power on the second
5 floor for the lights and receptacles, and we was using that
6 power.

7 Q What is temporary power?

8 A- It means that there was power there, but it
9 was not going to be the permanent power when the building was
10 completed.

11 Q Where does that power come from?

12 A Well, as I remember, I think it came out of
13 the service panel.

14 Q Where is the service panel?

15 A It was on the rear of the building.

16 Q So, what do you do when you are taking
17 power from a service panel to have a temporary power connec-
18 tion? What do you go through to do that? Some of us are not
19 electricians.

20 A Well, as well as I remember, there was a
21 panel to be set on the second floor that all the power for
22 the general lights and receptacles was to be fed off that,
23 and I believe that panel was energized, and we was using a
24 temporary receptacle that we had put in that panel to plug
25 cords into.

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C. A. Morris - Cross

334.

1 Q Now, when you are connecting a line into
2 the panel in order to take it up to the second floor, do you
3 have to cut off the power to do that?

4 A As a rule, yes, sir.

5 Q If you don't cut off the power, what happens?

6 A It's impossible to work on.

7 Q It's impossible to work on?

8 A It's not impossible, but generally as a
9 safety precaution you cut it off.

10 Q Did you have anything to do with connecting
11 the temporary power?

12 A I don't remember doing it.

13 Q You don't remember doing it?

14 A No, sir.

15 Q If you had done it would you have cut the
16 power off?

17 A It would depend on the situation.

18 Q What situation would it be that you would
19 not cut it off?

20 A If it was something in the building that
21 you couldn't turn off for some reason, that you couldn't
22 interrupt the main power, then you would have to work it
23 while it was hot.

24 Q Was there something in this building that
25 you couldn't turn--

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C. A. Morris - Cross

335.

1 A I don't remember connecting the temporary
2 power.

3 Q If you didn't do it, who would have done it?
4 Mr. Pulley?

5 A I don't know who did it.

6 Q Say that again?

7 A I don't know who did it.

8 Q Were there any other electricians besides
9 you and Mr. Pulley there on the scene at any time at this
10 building that you know of?

11 A Not that I know of.

12 Q Did any other person besides you work with
13 Mr. Pulley on this job throughout the entire period?

14 A No, sir.

15 Q Now, when you went up on the second floor,
16 during the day did you hear any bells ringing?

17 A No, sir.

18 Q No alarm bells at all?

19 A No, sir.

20 Q Do you know whether Mr. Pulley heard any
21 alarm bells? Did he say so to you, or not?

22 A He didn't say to me if he heard any.

23 Q Are you familiar with the intrusion system
24 which was on the Virginia Heart Institute on the first floor?

25 A No, sir.

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C. A. Morris - Cross

336.

1 Q Do you know anything about any key recep-
2 tacles at the front and back door that deactivate the system
3 at all?

4 A Well, I know that there was one there.

5 Q How do you know that there was one there?

6 A Well, I have heard it discussed, and also
7 I seen one over top of the door when we were going up and
8 down the ladder.

9 Q You saw one over the door? What was its
10 condition sitting over the door?

11 A I don't understand the question.

12 Q Was it loose, or stuck in the door, or over
13 the door, or what was it doing there?

14 A On that particular day I believe it had
15 been stuck over the door.

16 Q When you say "stuck over the door," this
17 door that you are talking about was a permanent door that was
18 originally in the back of the Heart Institute, is that correct?

19 A Yes, sir.

20 Q And when it was stuck over the door, where
21 would it be placed over the door? Wasn't the door flush with
22 the wall?

23 A Yes, sir, but as I remember the framing was
24 being torn out there for a new door to be installed, and this
25 device had just been removed from the surface of the door and

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C. A. Morris - Cross

337.

1 was laying up above the ceiling there.

2 Q It was not underneath the building, it was
3 up above the ceiling, is that your memory?

4 A Up above the door.

5 Q Was it connected, or disconnected? Could
6 you see that it was a key receptacle?

7 A Yes, sir, you could see that connected, it
8 looked like just the mounting part of the device had been
9 removed.

10 Q Did the device have any lights on it, red,
11 green, or white?

12 A No, sir.

13 Q You have no recollection of any lights?

14 A No, sir.

15 Q Was it placed in such a way that you could
16 see it if you had any lights on?

17 A Yes, sir, I think I could have.

18 Q Now, you said that they were doing something
19 to the door. What is your recollection of what was being
20 done to that rear door?

21 A I believe the door facing was removed, and
22 they were in the process of tearing the door down, taking it
23 out.

24 Q Were they working on the door to your recol-
25 lection on December the 18th?

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C. A. Morris - Cross

338.

1 A I don't remember.

2 Q What other people were there? Were there
3 any other workmen or any other contractors there on the 16th
4 of December?

5 A There was other people there.

6 Q Do you remember whether Century Construction
7 Company was there?

8 A Yes, sir.

9 Q Mr. Cliff Mahone, the foreman, do you know
10 him?

11 A Yes, sir.

12 Q Was he there?

13 A Yes, sir.

14 Q Did you see him on the second floor?

15 A Yes, sir.

16 Q Did you see him on the first floor?

17 A I didn't go on the first floor.

18 Q Did you see him on the ground?

19 A Yes, sir.

20 Q Where was he at the time? Was he at the
21 back door that was being replaced or changed?

22 A Which time during the day, sir?

23 Q Anytime.

24 A I seen him all over the job during the day.

25 Q Did you see him at any time there at the

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C. A. Morris - Cross

339.

1 back door that was being relocated?

2 A Yes, sir.

3 Q Were there any other people with him?

4 A Yes, sir.

5 Q Some of his workmen?

6 A Yes, sir.

7 Q Mr. Pulley?

8 A I didn't see Mr. Pulley there.

9 Q At that time were they working on the door?

10 Were they around the door?

11 A Yes, sir.

12 Q Did you have anything to do with moving the
13 key receptacle that you said you saw up above the door?

14 A No, sir.

15 Q Is that part of the electrical system, as
16 far as you know?

17 A Part of the electrical system?

18 Q Yes.

19 A It's an electrical device, yes.

20 Q Do you know when that receptacle was taken
21 from its place where it was originally inserted and put over
22 the door?

23 A I don't recall.

24 Q Was it that day?

25 A I'm not sure.

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C. A. Morris - Cross

340.

1 Q Was it as much previous as three weeks?

2 A I can't recollect exactly when it was
3 removed.

4 Q But you are sure you did see the receptacle
5 above the door on the 18th of December, the last day that
6 you were on the job before the fire?

7 A Yes, sir.

8 Q Now, had you ever worked in the first floor
9 at all during this particular period in December of 1975?

10 A I don't remember being on the first floor.

11 Q Do you have any recollection of moving a
12 light fixture which was in one of the bathrooms downstairs?

13 A Yes, sir.

14 Q And when did you do that?

15 A I don't remember.

16 Q Was it on December the 18th, or do you know?

17 A I don't know.

18 Q Now, Mr. Morris, is it your testimony that
19 you don't know who moved that receptacle and put it over the
20 door, the back door?

21 A Yes, sir. I didn't move it myself.

22 Q You don't today recall that Mr. Pulley
23 removed it?

24 A I didn't see Mr. Pulley remove it.

25 Q Do you have any recollection that he did

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C. A. Morris - Cross

341.

1 move it?

2 A I am under the impression that he did move
3 it.

4 Q What gave you that impression?

5 A Well, being an electric device I would
6 assume that he would be the one to move it.

7 Q Did you have any occasion to work on this
8 building at any other period of time, that is in 1972 or 1973?

9 A No, sir.

10 Q You weren't with Mr. Pulley if he was there
11 then?

12 A No, sir, I wasn't.

13 Q When you begin work on a project of this
14 sort, is it the normal thing for an electrician to go in and
15 see what the electrical setup is, that is where the control
16 panels and things of that nature are?

17 A You mean on the new part of the job?

18 Q New or old.

19 A Pardon me?

20 Q Did you go inside and take a look with Mr.
21 Pulley to see where the control panels were in the building
22 or what kind of equipment was in there?

23 A I don't recall.

24 Q You don't know whether you went in or not?

25 A No.

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C. A. Morris - Cross

342.

1 Q Do you have any recollection of seeing the
2 control panel or a dialer for an alarm system, burglary or
3 fire alarm?

4 A I don't remember seeing it.

5 Q You do, or do not?

6 A I do not.

7 Q And you didn't hear any bells at all that
8 day?

9 A No, sir.

10 Q Would you have heard it if there had been?
11 Do you know what a 65-decibel bell is?

12 A No, sir.

13 Q But you were sawing and drilling up in the
14 second floor during the day?

15 A Yes, sir.

16 Q Were there any openings between the second
17 floor and the first floor that you know of?

18 A I don't remember any.

19 Q Any openings in the floor?

20 A I don't remember any.

21 Q No holes drilled in the floor?

22 A No, sir.

23 Q Where in particular were you working during
24 the day? Were you in the north end of the building, or south
25 end of the building, front, or the back? I am talking about

C. A. Morris - Cross/Redirect

343.

1 the second floor.

2 A I was all over the second floor.

3 Q And pulling wires in the north end as well
4 as the south end?

5 A I was working in both ends. I don't
6 remember exactly what I was doing that day, sir.

7 MR. DOBBINS: Thank you, Mr. Morris.

8

9 REDIRECT EXAMINATION

10 BY MR. MARKS:

11 Q Mr. Morris, how long had that current been
12 up there available, the 115-volt current been available up on
13 the second floor? Was it put up that day, or sometime earlier?

14 A It was put up sometime earlier. We was
15 about to finish up the second floor as far as roughing in the
16 lights and receptacles, and we was using it all along.

17 MR. MARKS: Thank you.

18 MR. DOBBINS: One further question.

19

20 RECROSS-EXAMINATION

21 BY MR. DOBBINS:

22 Q Mr. Morris, you said there was power up
23 there that day for the tools, electric tools that you used,
24 and were there any light fixtures up there?

25 A There wasn't any lights burning up there,

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C. A. Morris - Recross

344.

1 permanent lights, none of those were installed.

2 Q Were there any temporary sockets for light-
3 ing for people working in the building?

4 A Yes, sir.

5 Q How many of those?

6 A Well, as I remember, I can only be positive
7 of one.

8 Q And did that have a bulb in it?

9 A Yes, sir.

10 Q I want to ask the right question. And was
11 it burning during the day that you could see?

12 A Yes, sir.

13 MR. DOBBINS: Thank you.

14 MR. MARKS: Nothing further. He may be
15 excused.

16 THE COURT: All right, Mr. Morris, you are
17 excused.

18

19

WITNESS STOOD DOWN

20

21

MR. MARKS: Mr. Pulley.

22

23

24

25

EDWARD ARNOLD PULLEY, a witness called by
the attorney for the defendant, first being duly sworn, testi-
fies and states:

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E. A. Pulley - Direct

345.

DIRECT EXAMINATION

BY MR. MARKS:

Q Mr. Pulley, would you tell us your full name, please.

A Edward Arnold Pulley.

Q Where do you live, sir?

A In Midlothian.

Q Street address?

A 12200 Lucks Lane.

Q Are you employed?

A Yes, sir.

Q Where?

A Northside Electric.

Q How long have you been with Northside Electric?

A 13 years.

Q Are you an electrician?

A Yes, sir.

Q What is your status with Northside Electric as far as your job title is concerned?

A Journeyman electrician.

Q Do you have anybody that works with you or over whom you exert supervision perhaps?

A Yes, sir.

Q How long have you been doing that kind of

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E. A. Pulley - Direct

346.

1 thing for Northside?

2 A 12 years.

3 Q Do you have your city card?

4 A Yes, sir.

5 Q How long have you had that?

6 A 12 years.

7 Q Mr. Pulley, I believe you were instrumental,
8 were you not, in running the electric service for the Virginia
9 Heart Institute at the time in 1972-73 when the remodeling
10 took place?

11 A Yes, sir.

12 Q I am going to ask you what voltage electri-
13 cal circuits went up to the north end of the building.

14 A 230-volt circuits, and 110-volt circuits.

15 Q Both kinds?

16 A Yes, sir.

17 Q Was that wiring conduit wiring, or was it
18 open wiring?

19 A In conduit.

20 Q Do you recall the amperage of the breakers
21 on that, particularly the 230-volt service?

22 A 20-amp breakers.

23 Q All the way around?

24 A Yes, sir.

25 Q Now, directing your attention to the

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E. A. Pulley - Direct

347.

1 remodeling job that took place there in 1975, were you there
2 for that purpose?

3 A Yes, sir.

4 Q Was anyone else there with you at any time
5 from Northside Electric?

6 A Yes, sir.

7 Q Who would that have been?

8 A Charles Morris.

9 Q Anybody else besides Mr. Morris?

10 A No, sir.

11 Q Were you in charge of the job, or was he?

12 A I was.

13 Q Mr. Pulley, if you can recall, when was the
14 temporary service run to the second floor of the premises for
15 use during construction?

16 A It wasn't too long after the job was started,
17 I don't remember the dates. We had temporary service up on
18 the second floor there for lights and drills and so forth.

19 Q Did other people besides you and your helper
20 use it?

21 A Yes, sir.

22 Q What other people were working in the build-
23 ing, let us say, on the 18th, if you know?

24 A There was a crew from Century Construction,
25 also insulators, and I think some duct people putting in the

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1 duct work.

2 Q That would be heating?

3 A Yes, sir.

4 Q There was, I believe, a new panel on the
5 lighting service installed on the second floor, is that
6 right?

7 A Yes, sir.

8 Q When had that been put in?

9 A Probably a month prior to the 18th of
10 December.

11 Q Was that panel energized or hot?

12 A Yes, sir.

13 Q What was taken off of that panel in the
14 way of circuits on the second floor?

15 A We had installed temporary lighting out of
16 that new panel, plus some convenience outlets.

17 Q Out of that new panel?

18 A Yes, sir.

19 Q Had any of the permanent wiring or permanent
20 lighting or permanent receptacles been energized out of that
21 panel?

22 A No, sir.

23 Q Now, the plan for the structure contemplated,
24 I believe, at that time an extension of the alarm system to
25 the second floor?

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1 A That's correct.

2 Q What status had that reached on the day of
3 the 18th, the day before the fire?

4 A We had pulled in most of the conductors that
5 went from the panel out to their locations on the second floor.

6 Q This was the low-voltage wires?

7 A Yes, sir.

8 Q Was there to be a subsidiary panel on the
9 second floor, as far as you know?

10 A Yes, sir.

11 Q Had that been delivered to the job?

12 A No, sir.

13 Q Was any connection made between the low-
14 voltage wiring and the new addition and the alarm system
15 downstairs?

16 A No, sir.

17 Q How was that connection to be made going
18 by the plans and whatever?

19 A It would have been low-voltage wiring from
20 the new panel down to the existing panel.

21 Q And how would that be carried down there?
22 Would you drill holes and run it through the holes, or run
23 through conduit, or how?

24 A It would be open wiring to a point outside
25 the building, and then conduit down the outside of the build-

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1 ing, and then again back in open wiring.

2 Q Under the building?

3 A Yes, sir.

4 Q How much of that had been completed?

5 A We had the wiring from the new location on
6 the second floor, and the conduit installed down the outside
7 of the building, and the wire was rolled up at that point
8 waiting to tie it into the new panel when the time came.

9 Q Had any of the sensors, the ionization
10 detectors, smoke detectors, heat detectors, and other type
11 of detection devices come on the job and been installed
12 upstairs?

13 A No, sir.

14 Q Had you in connection with what you had done
15 done any work whatsoever on the detectors on the lower level?

16 MR. DOBBINS: Objection.

17 A No, sir.

18 MR. DOBBINS: I want to go along with him,
19 but I think Mr. Marks is leading the witness, and
20 I would object to the leading fashion.

21 THE COURT: I am sorry, Mr. Dobbins, I have
22 to overrule that, I don't think that is leading. I
23 think the witness has answered the question.

24 Q Mr. Pulley, there has been some mention of
25 a key-operated switch on the rear door of the premises.

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1 Had you done anything with that?

2 A Yes, sir.

3 Q When had you done it?

4 A If I recollect, it was sometime prior to the
5 18th.

6 Q And what had you done to it?

7 A That switch had to be removed to allow for
8 the new rear stairs to go into the building, and I had taken
9 that key-operated switch and rolled it up and temporarily
10 fastened it up underneath the building to be picked up at a
11 later time.

12 Q Reinstalled, you mean?

13 A Yes, sir.

14 Q Do you remember where you put it?

15 A Yes, sir.

16 Q Whereabouts?

17 A It was an open beam, wood beam right up
18 under the existing rear door, and I rolled it up and fastened
19 it right to that beam.

20 Q Was it taped?

21 A Yes, sir, I think I had some tape around
22 it.

23 Q And on the 18th, what, if anything, did you
24 yourself do in the way of work on the first floor of the
25 premises?

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1 A I don't recollect any work being done by
2 us on the first floor.

3 Q There has been some mention of a light on
4 the first floor having been moved or removed for some purpose
5 or another. Do you know about that, and if so, when was that
6 done?

7 A This was done several weeks prior to the
8 18th. The opening that had to be cut into the first-floor
9 roof to allow for the stairway to go in, the conduit was in
10 the way there and we had to reroute the conduit.

11 Q And was that accomplished?

12 A Yes, sir.

13 Q Was that light or whatever substitute light
14 was on that circuit back in service at the time on the 18th?

15 A Yes, sir.

16 Q Did you hear any fire alarms on the 18th?

17 A No, sir.

18 Q Did you perform any operation of any kind
19 on either the alarm bell, or the control panel for the alarm
20 system, or the telephone dialer on that date?

21 A No, sir.

22 Q You are familiar with what I mean by those
23 devices, are you not?

24 A Yes.

25 Q And it is true, is it not, that you had done

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1 the wiring to those boxes in 1972-73?

2 A Yes.

3 Q Had you wired this control panel itself
4 inside, or what had you done in connection with it?

5 A The only thing we had done was supply the
6 conductors to the panel.

7 Q What do you mean by "supply the conductors
8 to the panel"? Bear in mind, Mr. Pulley, that none of these
9 ladies and gentlemen over here are familiar with electrical
10 terms, and I don't know that the lawyers are.

11 A We had run all of the wires from the
12 detectors back to the panel on the first floor.

13 Q That would be the low-voltage wires?

14 A Yes, sir.

15 Q Now, had you also run any high-voltage
16 wiring?

17 A Yes, sir.

18 Q Regular-voltage wire, I should say?

19 A Yes.

20 Q Had you made any connections inside the
21 panel box at all?

22 A No, sir.

23 Q Now, how about the dialer, did you run
24 service to that in any way?

25 A The dialer, I am pretty sure it was supplied

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1 with 110-volt circuit to the dialer, and we did run that
2 circuit to the dialer.

3 Q Did you have anything to do with connecting
4 the dialer to the panel?

5 A No, sir.

6 Q Do you know who did that work?

7 A Yes.

8 Q Who did the work, and who did the work
9 connecting up inside?

10 A Yes.

11 Q Who did?

12 A James Newell.

13 Q He was the supplier of that equipment,
14 was he not?

15 A Yes, sir.

16 Q Did he come on the premises to do the work?

17 A Yes.

18 Q Mr. Pulley, what time of day did you finish
19 up on the 18th over there on Berrington Street?

20 A Somewhere around 2 o'clock.

21 Q And where did you go from there?

22 A I had another call to make at a residence.

23 Q Had the components for the upstairs alarm
24 system other than the wiring come to the job at the time you
25 left?

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1 A No.

2 Q When you left, was work of other contractors
3 being done on the premises?

4 A Yes, sir.

5 Q Were any of the people connected with the
6 Heart Institute on the premises?

7 A Yes.

8 Q What did you do, if anything, at the time
9 you left with respect to securing the premises?

10 A We just gathered our materials and tools,
11 and we left then. We really didn't do anything.

12 Q Did you report to anybody, specifically Mr.
13 Mahone, that you were leaving?

14 A He was aware, I think, that we were leaving.

15 MR. MARKS: I think that's all.

16

17 CROSS-EXAMINATION

18 BY MR. DOBBINS:

19 Q Mr. Pulley, you got there, I think you said,
20 about 7:00 or 7:30 in the morning?

21 A Yes, sir.

22 Q And left about 2:00?

23 A Close to that.

24 Q Thereabouts?

25 A Yes.

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1 Q Did Mr. Morris get there about the same
2 time, or did you come together?

3 A He rode with me.

4 Q And you left together?

5 A Yes.

6 Q How many times during the day did you go
7 into the first floor of the institute that day on December
8 the 18th?

9 A I don't recollect going inside the building
10 at all on the first floor.

11 Q Are you saying that you don't remember going
12 in, or are you saying that you know you did not go in?

13 A I did not go in.

14 Q Now, your testimony was that you heard no
15 bells or alarms ringing?

16 A That's correct.

17 Q You do know what the alarm bell is on the
18 intrusion system, don't you, and the fire system?

19 A Yes, sir.

20 Q And where was that located?

21 A It was located in the secretary's office
22 in the south end of the building.

23 Q Is that above her desk?

24 A Over on an adjacent wall.

25 Q And you do know where the control panel for

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1 the alarm system and dialer were mounted, don't you?

2 A Yes, sir.

3 Q Where were they?

4 A In the room right behind the bell.

5 Q Right off of the secretary's desk?

6 A Yes.

7 Q That's Miss Carolyn Sheffield, do you
8 remember her?

9 A Yes.

10 Q Do you remember her from the 1972 work as
11 well?

12 A Yes.

13 Q And you knew Dr. Baird, didn't you?

14 A Yes, sir.

15 Q You knew him from the 1972 work and again
16 on the 1975 work?

17 A That's correct.

18 Q And you are well acquainted with Mr. Clif-
19 ford Mahone?

20 A Yes.

21 Q I understand you to say a moment ago in
22 response to Mr. Marks' question that some of the low-voltage
23 wire already had been put in, is that right, for the alarm
24 system on the second floor?

25 A Yes.

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1 Q So you did have the wire there to do that
2 with?

3 A Yes.

4 Q And tell me again what you did with that
5 wire, how far you had gone with the installation of the wiring.

6 A We had probably 95 percent of the low-voltage
7 wire installed.

8 Q Would that be strung up in the ceiling
9 through the various joists and beams to the locations where
10 they were to be set?

11 A Yes, sir.

12 Q Who made the determination as to where they
13 were going to be set?

14 A That was on a set of drawings that we had
15 to work by.

16 Q Do you know who prepared those drawings?

17 A No, sir.

18 Q Now, those wires that were through the
19 joists and beams on the second floor, you were ultimately to
20 attach the sensors or detectors to them, is that correct?

21 A Yes.

22 Q Now, where was the other end of those wires
23 to go?

24 A In a new panel that was to be installed on
25 the second floor.

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1 Q And did they actually lead to that panel?

2 A Yes, sir.

3 Q And they were there in the panel on the 18th?

4 A They were in the location of the panel, the
5 panel wasn't there.

6 Q So, they were there waiting to be connected
7 up?

8 A That's correct.

9 Q I believe you said something about some
10 wires going underneath the building and coming back up in the
11 first floor. Tell me what you meant by that again.

12 A The conductors, the low-voltage conductors--

13 Q When you say "conductors," you are talking
14 about wires?

15 A Yes, sir. The wires from the second-floor
16 panel were to tie into the existing first-floor panel. The
17 wires had been run across the ceiling of the second floor,
18 down the outside wall, and were laying underneath the building
19 that were to be picked up at a later date and run into the
20 existing panel, fire alarm panel.

21 Q I am a little bit confused, Mr. Pulley. I
22 thought you said those wires came to where the new control
23 panel was going to be and stopped there. Now you say that
24 they went outside and went on down and were underneath.

25 A The wires from the detectors that were on the

E. A. Pulley - Cross

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1 second floor stopped at a location on the second floor where
2 a new panel was to be installed. To tie this new panel in
3 with the existing panel it took some additional wires from
4 the second-floor panel down to the existing first-floor panel.

5 Q To connect panel to panel?

6 A That's right.

7 Q And you had taken those down the outside of
8 the building and underneath the building and over to the
9 control panel room?

10 A They were down the outside of the building
11 and rolled up at the underside of the first floor, just rolled
12 up there to be carried into the existing panel at a later
13 time.

14 Q How long had you been working on the wires
15 for the alarm system, how many days?

16 A Sir?

17 Q How many days?

18 A Probably better than a week.

19 Q And isn't it true that you were working on
20 them on the 18th as well as the high-voltage wires?

21 A Yes, sir.

22 Q Now, you said that you knew Carolyn Shef-
23 field. Miss Sheffield has testified that she spoke to you on
24 the first floor on the morning of the 18th. You have no
25 recollection of that?

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1 A I don't remember it.

2 Q Do you deny it, or just don't remember it?

3 A I don't remember.

4 Q And you know Dr. Baird?

5 A Yes.

6 Q Dr. Baird has testified that he talked to
7 you on the morning of the 18th as well. Do you not remember
8 that?

9 A Not on the 18th, I don't remember.

10 Q Do you deny it, or you just don't remember?

11 A I don't remember.

12 Q So would it be true to say, Mr. Pulley,
13 that you just don't remember whether you were on the first
14 floor of the building on the 18th?

15 A No, I wasn't on the first floor.

16 Q Do you have any recollection of talking
17 to Mr. Mahone on the first floor of the building on the
18 morning of the 18th prior to noon?

19 A Not on the first floor. Right at the back
20 door of the first floor.

21 Q Well, what was the occasion of talking to
22 Mr. Mahone? Just passing the time of day, or what?

23 A I don't remember any specific conversation.

24 Q Do you or do you not recall Mr. Mahone tell-
25 ing you that the alarm system bells were going off and were

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E. - A. Pulley - Cross

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1 disturbing the patients?

2 A Not Mr. Mahone, no, sir.

3 Q Who do you remember telling you that?

4 A No one told me.

5 Q Do you have any recollection of the police
6 coming to the building that day?

7 A I never saw the police, no.

8 Q And you heard no bells all day long?

9 A No, sir.

10 Q Would you have recognized the alarm bell
11 if you had heard it?

12 A Yes, sir.

13 Q What type of tools were you using in the
14 second floor during the day? Power tools?

15 A Yes, sir, we had some power tools.

16 Q Power saws and power drills?

17 A Drills.

18 Q Using them to go through the joists and the
19 beams and whatever?

20 A Yes, sir.

21 Q Was the upstairs closed up?

22 A It had an outside wall, yes, sir.

23 Q Did it have a ceiling, a roof?

24 A Yes, it had a roof.

25 Q Did it have windows in it? Had the windows

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E. A. Pulley - Cross

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1 been installed?

2 A I don't think so, I think they had plastic
3 over them.

4 Q They were covered?

5 A Yes, sir.

6 Q Mr. Pulley, you are familiar with the lay-
7 out of the Heart Institute, aren't you, or at that time?

8 A Yes, sir.

9 Q And prior to starting your work there do
10 you make an inspection to see what's there, what kind of
11 electrical equipment is there, and whether or not you can
12 interrupt power, or anything of that nature?

13 A I already knew what was on the job.

14 Q You knew from three years previous?

15 A Yes, sir.

16 Q You didn't require to see if there were any
17 changes, or anything of that nature?

18 A I didn't ask any specific questions, no.

19 Q Did you make an inspection at all? Did you
20 go in and around and see where the control panels were located?

21 A I had been in on the first floor.

22 Q During this 1975 period?

23 A Yes, sir.

24 Q I presume you went in the room where the
25 alarm panels and dialer were located, mounted?

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E. A. Pulley - Cross

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1 A Yes, sir, I had been in that room.

2 Q What other electrical controls were in that
3 room, if you know?

4 A That was all that I remember being in there.

5 Q On December 18th, 1975, did you get any
6 complaint about any light fixtures or electrical difficulty
7 in that room that the control panel and the dialer were
8 located in?

9 A No, sir.

10 Q On the 18th did you touch the dialer or
11 the control panel at all?

12 A No, sir.

13 Q Recognizing that your answer is that you
14 did not, is there any other reason why you would have gone in
15 that room that day?

16 A No, sir.

17 Q The key receptacle that you said that you
18 had something to do with on the back door, what was the
19 purpose of that receptacle?

20 A If you entered the building after it was
21 secured it was a key-operated switch that would let you pass
22 through the door without setting the alarm system off, and
23 in the evening or at a time when you locked up you could lock
24 this switch to secure the building.

25 Q Now, why was it dislocated from the place

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1 where it was in 1972 or '73 to the place where it was on the
2 day of the fire? Why was it moved?

3 A The entrance to the second floor was a
4 stairway at that back door. The existing door that was on
5 the first floor was in the way of construction for the stair-
6 way, and this door switch was taken out to allow for the
7 construction of the stairway and the second-floor entrance.

8 Q Did you change the wiring or disconnect and
9 reconnect that wiring at all when you did that?

10 A No, sir.

11 Q I think you said you rolled it up and put
12 it underneath the building?

13 A Yes, sir.

14 Q Now, did you see it at all on the 18th?

15 A On the 18th?

16 Q Yes.

17 A I didn't actually look at it for any reason.

18 Q Mr. Morris has testified that on the 18th
19 it was up over the door. Your testimony is it was underneath
20 the door, is that so?

21 A Yes, sir, at the left of the existing door.

22 Q Can you say that you just did not see it
23 on the 18th, or you know it was not above the door?

24 A I know it was not above the door.

25 Q So Mr. Morris was wrong. Now, again to test

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1 your recollection, Mr. Pulley, do you have any recollection
2 at all on the morning of the 18th of telling anybody at the
3 Virginia Heart Institute that you planned to work on the
4 alarm system that day and the alarms might go off?

5 A Not on the 18th. I had mentioned previously
6 a week or a couple weeks prior to that that we would be work-
7 ing on the back door alarm system. I told the girl, the
8 secretary, that I was going to take this key switch out, and
9 for some reason it may send an alarm downtown, and I had her
10 call so they would be aware downtown that we may be setting
11 it off.

12 Q Mr. Mahone has testified that you did the
13 work on that receptacle on the 18th. Your testimony is
14 entirely different, you say it was three weeks before that?

15 A I can't remember exactly, but I am sure it
16 was sometime prior to the 18th, I don't remember exact times.

17 Q You are having difficulty remembering when
18 you did it?

19 A The exact date, I don't recall.

20 Q Now when you left the building that day with
21 Mr. Morris somewhere around 2 o'clock, did you have any routine
22 as far as securing the place for any electrical difficulties
23 before you left?

24 A No, sir.

25 Q You just picked up and left?

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1 A Yes, sir.

2 Q You didn't go into the first floor and re-
3 connect the alarm system at all?

4 A I didn't disconnect it.

5 Q So, you certainly didn't reconnect it?

6 A That's correct.

7 Q Now, you said earlier in your testimony that
8 when you left you were sure that there were people from the
9 Heart Institute still on the first floor, is that right?

10 A Yes, sir.

11 Q How did you know that?

12 A The back door had, I believe, a piece of
13 plastic, and at nighttime a piece of plywood was nailed over
14 the opening, and during the daytime the plywood was removed,
15 and I think it was just a piece of plastic to keep the cold
16 out that was there, and you could see people moving about on
17 the inside.

18 Q Did you come down on the ladder?

19 A Yes, it was an extension ladder laying up
20 to the second floor.

21 Q And you could look through the plastic and
22 see that there were people still in there?

23 A Not unless they were walking around in the
24 hallway to the back door.

25 Q But you saw them that day?

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1 A I saw some people in there that day.

2 Q As you were leaving?

3 A Not exactly when I walked out, but I had
4 seen them in there that day.

5 Q So, you really don't know whether they were
6 in there when you left or not, do you?

7 A That's correct.

8 Q That was just another of your recollections.
9 Now, Mr. Pulley, you had already installed the 115-volt panel
10 on the second floor, is that right?

11 A That's correct.

12 Q And where did you get the power for that
13 panel?

14 A The service to the building was on the rear
15 south corner, and we had done some work on the service itself
16 to accommodate the new panel on the second floor, and the
17 conduit ran up the wall across to the second-floor panel.

18 Q So, you had a permanent high-voltage supply
19 of power on the second floor on the 18th of December?

20 A Yes, sir.

21 Q And it was not just a temporary wire pulled
22 from the control panel on the first floor?

23 A I didn't have any wires coming out of the
24 control panel on the first floor.

25 THE COURT: Did you mean to ask him about the

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1 energy panel on the rear of the building?

2 MR. DOBBINS: Yes.

3 THE COURT: You shifted ground there. You
4 may have gotten an answer responsive to your ques-
5 tion, but I don't know whether your question is what
6 you meant. You asked him whether or not he ran any
7 wires from the control panel on the first floor, and
8 he answered you that he didn't because the control
9 panel is the security system.

10 MR. DOBBINS: I didn't mean the control
11 system.

12 MR. MARKS: That's what I think we want to
13 clear up.

14 THE COURT: What you mean to ask him about
15 is from the service panel at the rear of the building.

16 Q From the service panel, did you have a wire
17 going up from that up to the panel on the second floor?

18 A That was permanently installed in a conduit.

19 Q Already up there?

20 A Yes, sir.

21 Q Now, did you install that?

22 A Yes.

23 Q And how long had that been installed?

24 A That had been in for several weeks.

25 Q When you did that, did you disconnect the

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1 power? Do you put that in when the wires are hot coming into
2 the building, or do you cut it off, or what, the Vepco power?

3 A I believe Vepco put in a new meter, and at
4 that time we tied in the new service that was going to the
5 second floor into the existing equipment on the rear of the
6 building.

7 Q Well, was that during the daytime?

8 A Yes.

9 THE COURT: Really, Mr. Dobbins, three weeks
10 before the day of the fire, what was done with
11 respect to cutting on or off the power is really
12 quite irrelevant, and I don't think it justifies the
13 time it takes to try this case.

14 MR. DOBBINS: I just want to ask him one
15 question, whether at that time he had to disconnect
16 the power.

17 THE COURT: What is the relevancy of it?

18 MR. DOBBINS: I am interested to find out
19 whether any alarm went off when he cut the power off.

20 THE COURT: All right.

21 A I didn't cut the power off myself. I don't
22 remember if Vepco cut it off to do their work or not.

23 Q Did any alarm bells go off that day?

24 A I didn't hear any, no, sir.

25 Q Did you hear any alarm bells go off through

E. A. Pulley - Cross

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1 the entire period that you were on the job?

2 A No.

3 Q Were there any other electricians on this
4 job besides you and Mr. Morris at all?

5 A No.

6 MR. DOBBINS: No further questions.

7

8 REDIRECT EXAMINATION

9 BY MR. MARKS:

10 Q Mr. Pulley, your connections to the existing
11 service, were they on the outside or on the inside of the
12 building?

13 A The new power service to the second floor
14 was on the outside of the building.

15 Q And it came from there and led to a panel,
16 an interior panel on the second floor?

17 A That's correct.

18 Q Where was that located with respect to the
19 stairwell that was going to have some stairs in it sooner or
20 later?

21 A Right straight at the top of the stairs on
22 a wall.

23 Q And where were the convenience outlets located
24 that you had installed for temporary use of power tools and
25 things of that kind? Were they somewhere else?

E. A. Pulley - Redirect

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1 A Directly underneath the new panel on the
2 second floor.

3 Q Was there any wallboard, Sheetrock, plaster,
4 lathe, or whatever you want to call it on the studs on the
5 second floor?

6 A No.

7 Q That hadn't been put in at all?

8 A No, sir.

9 Q You had an open structure with a lot of
10 open members going up from place to place?

11 A Yes.

12 Q And you mentioned a little while ago that
13 somebody was installing duct work in there. Did that involve
14 cutting holes in the existing structure to get back down to
15 the heating plants that were in there?

16 A Yes, sir.

17 Q Do you know whether any of those had been
18 cut?

19 A I didn't pay any attention to them cutting
20 those holes.

21 Q That is not in your line of work at all?

22 A No.

23 Q What kind of insulation were they putting
24 up there on the second floor, do you know?

25 A Fiberglass, I believe.

E. A. Pulley - Redirect

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1 Q Do you know what had been put in at the
2 time of remodeling in '72, if any?

3 A The type of insulation?

4 Q Yes.

5 A I don't remember.

6 Q Was the wiring from the outside of the
7 building where you picked up the service in conduit, or was
8 it open, or what was it?

9 A In conduit.

10 Q All the way to the panel board?

11 A Yes, sir, the high-voltage power.

12 Q Was there any physical connection on the
13 inside of the building between the wiring that you and Mr.
14 Morris had put in in the new addition on the second level
15 and the existing electrical service downstairs?

16 A No, sir.

17 Q Was there ever going to be?

18 A The fire alarm system would have eventually
19 been connected together.

20 Q How about the high-voltage 115 and 230?

21 A No, sir.

22 Q That wasn't going to be downstairs at all?

23 A No.

24 Q You say that Mr. Morris rode with you to
25 the job?

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1 A Yes, sir.

2 Q And left the job with you and went away
3 from the job?

4 A That's correct.

5 Q Is that the customary way that you traveled
6 with him when he's working with you?

7 A Yes.

8 Q Do you have a company truck?

9 A Yes.

10 Q When did you learn about the fire, Mr.
11 Pulley?

12 A The morning after I heard something on the
13 radio, and I didn't catch it all, and I wasn't aware of it
14 until we got to the job site.

15 Q So you drove up there planning to go to
16 work?

17 A That's correct.

18 Q What did you find when you got there, and
19 about what time would that have been?

20 A Between 7:00 and 7:30. The fire people
21 were there cleaning up.

22 Q You didn't go to work that day?

23 A Yes. They brought in a trailer, and as much
24 as possible was salvaged out of the fire, and we connected the
25 trailer up to a temporary service.

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1 Q What kind of trailer would that have been?
2 A It was like a mobile trailer.
3 Q You mean one of these mobile home type
4 things or mobile office?
5 A Mobile office, yes.
6 Q And that was whose?
7 A I think it belonged to Century Construction.
8 Q And you connected that to the wiring in
9 some way?
10 A Yes, sir.
11 Q Do you remember where you brought the
12 service to this trailer from on the 19th?
13 A Vepco was there and set a new pole, and we
14 connected a new service to the trailer.
15 Q Did you do any work inside the old structure
16 that day?
17 A No, we weren't allowed in.
18 Q So you didn't go in at all?
19 A No, sir.
20 MR. MARKS: Okay, that's all.
21 MR. DOBBINS: Nothing further.
22 THE COURT: All right, Mr. Pulley, you may
23 step down.
24
25

WITNESS STOOD DOWN

1
2 MR. MARKS: I want to recall Dr. Baird for
3 a minute.

4
5 CHARLES L. BAIRD, JR., a witness recalled
6 by the attorney for the defendants, having been previously
7 sworn, testifies and states:

8 DIRECT EXAMINATION

9 BY MR. MARKS:

10 Q Dr. Baird, are you familiar with the loca-
11 tion and appearance of the cabinet containing the telephone
12 dialer as it was before the fire?

13 A Yes.

14 Q It had a key, did it not?

15 A That's correct.

16 Q Did the key stay in the lock?

17 A That's correct.

18 Q Was it in the lock after the fire?

19 A I actually didn't inspect it.

20 Q You didn't see it, okay. Was there any
21 legend of any kind pasted on the door of the cabinet?

22 A I believe there were some instructions, but
23 I don't recall the exact wording.

24 Q Weren't they instructions as to how to turn
25 the dialer off using that test switch?

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C. L. Baird - Direct

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1 A I believe those instructions were inside.

2 Q Inside?

3 A I believe so.

4 Q Was your employees' attention directed to
5 those instructions in case they came in and forgot to activate
6 the switch?

7 A Yes.

8 Q So they all knew how to do it?

9 A That's correct.

10 MR. MARKS: Nothing further.

11 MR. DOBBINS: No questions.

12 THE COURT: All right, you may step down.

13

14 WITNESS STOOD DOWN

15

16 MR. MARKS: We rest.

17 THE COURT: All right, gentlemen, let me
18 ask you all to approach the bench, please.

19

20 NOTE: At this point a brief off-the-record
21 discussion is had between the Court and Counsel out
22 of the hearing of the jury; at the conclusion of
23 which the case continues as follows:

24

25

1 JURY OUT

2 effect.

3 THE COURT: But we don't know what was
4 there. As a matter of fact, there is some dispute,
5 and there was no counter evidence as to whether or
6 not there was any insulation. You asked him the
7 question, but I didn't hear any follow-up evidence
8 that there was or wasn't, he just said that he didn't
9 see it or evidence of it being there.

10 MR. MARKS: I think then we are back down
11 to the point of how much delay can we say this evi-
12 dence would permit a jury to find and could find
13 before the Fire Department would normally have been
14 called and before the message got through, and what
15 would have been the state of affairs on a very cold
16 night with a wind shown by the table to have been
17 somewhere in the neighborhood of 8 miles an hour
18 out of the northwest blowing outdoors? What would
19 have been the harvest, in other words, had everything
20 done exactly what it was supposed to do.

21 I am assuming the worst here, I am assuming
22 that there is enough evidence, and I don't think
23 there is, to go to the jury whether Pulley put it
24 out of service or not.

25 THE COURT: Well, we will come back to that,

1 JURY OUT

2 that may be more critical than this.

3 MR. MARKS: I think it is, probably. But,
4 in any event, we don't have any way to tell what the
5 condition would have been. It would be pure
6 speculation on the part of the jury to be able to
7 tell how far along this fire would have been under
8 this evidence as to when it was picked up, when it
9 should've been picked up, when it should have been
10 transmitted.

11 If you remember, there is absolutely no
12 evidence to determine whether or not the failure of
13 the dialer to operate was the action of the Baird
14 employees in throwing this test switch, which I
15 believe Miss Sheffield said they knew how to do,
16 and Dr. Baird said they knew how to do, to keep that
17 thing from going back on in the early part of the
18 day, and then failing to cut it back on later.
19 Now, that would take the data completely out of
20 service, as Mr. Mantifel has said.

21 I think the inference is just as good, one
22 way or the other in that connection, so I don't know
23 that we can speculate too thoroughly on anything
24 that Pulley did as to having put the dialer out of
25 operation particularly when there is no disconnection

1 JURY OUT

2 of the dialer visible anywhere, no evidence that it
3 was disconnected, no evidence that the current was
4 cut off from it, and no evidence that Pulley touched
5 it one way or the other.

6 So, again, we are in a situation of what
7 is the cause of the dialer's failure to get through.
8 Was it the telephone system being busy? Was it the
9 bad programming of the numbers? Was it the test
10 switch thrown by an employee to prevent the police
11 from coming or the Fire Department from responding
12 to a false alarm? Or, was it some other cause that
13 we don't know about, perhaps a mechanical malfunc-
14 tion of some of the equipment ahead of the dialer,
15 as to which no examination or test had been made?

16 So, it leaves it purely up to a question of
17 surmise and conjecture both as to causation and as
18 to time.

19 Now, in Virginia, Judge, there has been one
20 case that touches somewhat on this point, Ocean View
21 Improvement Corp. vs. Norfolk and Western Railway
22 Corp., which is a case somewhat similar to this.
23 The major thrust of the Court's opinion does not
24 deal with proximate cause, it deals with the ques-
25 tion of negligence.

1 JURY OUT

2 But, I call to the attention of the Court
3 the fact that in that case Norfolk and Western
4 Railway Corporation was charged with keeping the
5 Fire Department from getting to Ocean View Amusement
6 Park in time to put out a fire on a winter's night
7 and with the wind blowing. The judge of the Law and
8 Chancery Court, Judge Paige, struck the evidence on
9 the grounds that no proximate causation had been
10 shown.

11 THE COURT: Well, if the Court spoke to
12 that it must have been dicta because the headnotes
13 don't indicate that that was the ruling of the
14 Supreme Court.

15 MR. MARKS: If the Court will look over at
16 the very end of the opinion, "Since we hold that
17 defendant was not guilty of negligence, the question
18 of proximate cause becomes moot. However, upon a
19 consideration of the entire record, we find that
20 the evidence adduced relating to proximate cause
21 was too speculative and lacked sufficient probative
22 value to sustain a verdict," which I think is a
23 direct holding and not a dicta.

24 THE COURT: Well, it depends upon what you
25 call dicta. If it's rationale that does have to be

1 JURY OUT

2 made to decide the case, I suppose it would be
3 strong dicta as opposed to weak dicta, but it is
4 dicta.

5 MR. MARKS: It was not the rationale of
6 the decision, it was one of those famous remarks
7 that I must say I have seen in some of the opinions,
8 and I think the late Justice Holt was the author of
9 some of them: We have no regret about reaching this
10 conclusion on some technical ground because we don't
11 think that the facts supported the plaintiff in any
12 event, or words to that effect.

13 The second case is Alco Products, Inc.
14 v. Eazor Express, Inc., which is a Third Circuit
15 United States Court of Appeals case, and in that
16 case a truck backed into the supply pipe for a
17 sprinkler system and disabled the sprinkler system,
18 and that night before it could be repaired a fire
19 burned the thing down.

20 Now, it's conceded that the truck driver
21 shouldn't have backed into the pipe. The question
22 of proximate cause was directly before the Court.
23 The Court held, "There was no proof of the origin
24 or nature of the fire. There was no proof of the
25 potential effectiveness of the sprinkler system,

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either generally or in relation to the fire in question." It does say that the sprinkler system was more than 40 years old. "There was no proof of its actual operation other than the discharge of water from one sprinkler head in 1924," which is comparable, I expect, to the one time that this alarm system did operate in '73. And the conclusion, "In these circumstances, any conclusion that, but for the break caused by the defendant, the sprinkler system would in fact have controlled the fire could have been based only upon unwarranted speculation. Therefore, the ruling that, on the question of causation, the plaintiff had not established a sufficient case for submission to the jury must be sustained." Unfortunately, the lower court's opinion is not reported, so I couldn't get it.

The next case that I want to point out for the Court is Hale v. Fawcett in 214 Va. 583 which deals with this damage issue that we have been talking about. In that case 75 percent of the damage to the plaintiff's crop was done by cattle, but there was no evidence to enable the jury to form a reasonable estimate of what portion of the damage was caused by the cattle the defendant was responsible

JURY OUT

for and what part was caused by some other cattle that he was not responsible for. The Court held that the judgment of the lower court had to be reversed and summary judgment should have been entered for the defendant in that case.

Now, so much for that part of it. There is an annotation dealing with the responsibility of the suppliers of alarm systems which can be found in 165 ALR following the case of Vastola v. Connecticut Protective System which I have handed the Court. This deals with loss by burglary and the failure of the burglar alarm to operate. Unfortunately I couldn't find a comparable thing for fires, but the summary at the head of the annotation is this: "In the comparatively few cases dealing with the question indicated by the title to the present annotation, it has been held without exception that a person furnishing, installing, or maintaining an automatic burglar alarm or watchman supervisory system is not liable for a burglary loss sustained by one to whom such service is furnished, even though there was negligence in the installation or maintenance of the service, or there was a breach of contract with respect to the service to be furnished, upon the

1 JURY OUT

2 theory that such negligence or breach is not the
3 proximate cause of the loss." That case is outlined
4 there, and that's all the authority that I am going
5 to cite on that side of my motion.

6 To get to the other branch of the motion,
7 which is the limitation of actions portion of it,
8 it seems to me without much question that the case
9 of Carva Foods v. Dawley in 202 Va. at 543 and the
10 authorities there cited, including among other
11 things the Richmond Redevelopment and Housing
12 Authority v. Laburnum in 195 Va. 827 relied upon
13 by the Court as supportive of its findings, and
14 further including Cover v. Critcher, and Mumpower v.
15 Bristol.

16 This speaks to the one-year statute apply-
17 ing for the failure of Mr. Dawley to furnish Carva
18 with protection in the form of an insurance policy
19 covering the sprinkler loss, and the Court says
20 this about the facts: "Carva's property was not
21 damaged when the insurance policy was issued without
22 full sprinkler leakage coverage. Its property was
23 damaged when water was discharged from the sprinkler
24 system as the result of a windstorm. Dawley was not
25 instrumental in causing the windstorm, nor was he

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responsible for its results. The damages would not have occurred except for the happening of a severe windstorm, an intervening event which might have never happened. They were the indirect and consequential results of the wrong charged to Dawley."

In Travelers v. Turner the Court reiterates that position in a situation in which the failure to supply an automobile liability insurance was the question. They say, "Turner was guilty of negligence or constructive fraud," that is the charge, "in failing to effect a liability insurance policy on Harter's automobile which could cover the risks contemplated by the parties beginning at the time agreed upon. The damage to Harter," the insured, "did not occur when the insurance policy was not issued effecting coverage on the date agreed upon. The damage occurred at a subsequent time because of an intervening event, Harter's negligence in the operation of his car, which might never have occurred. In these circumstances we hold that the action was on a claim of a personal nature for indirect and consequential damages to Harter's estate and was not assignable." That's what the court said on that.

Under those circumstances we think we are

*P 5:10
but 5:15
Hear 5:15
to 4:45*

415.

JURY OUT

in the same ball park right here. I earnestly submit that this record shows here that if there was any wrong committed, if one has been proven, occurred no later than December 18th, 1975, and that was not brought within one year thereafter, and there is no evidence in the record nor in the file to indicate any basis for recovery.

So on all those bases I should like to submit that this isn't a case to go to the jury at all. We have no proximate cause other than speculation and conjecture either as to causation, as to negligence, or as to the damage amount. Nor do we have the action within the year which is required by 8-24.

THE COURT: In connection with your case dealing with the cattle, I have forgotten which one it was, Hale, wasn't the evidence in this case, perhaps not strong evidence, wasn't the evidence in this case that had the fire been discovered in the normal course of events, that the damages would have been minimal, and then that was amplified to several hundred dollars, wasn't that Chief Williams' testimony?

MR. MARKS: No, I don't think that's quite

JURY OUT

THE COURT: All right, gentlemen, on the question of the statute of limitations which must of necessity precede anything else, without going into any long explanation, the Court is convinced that neither the Laburnum case nor the case of Carva Food Corporation vs. Dawley at 202 Va. 543 and Travelers Insurance Company vs. Turner at 211 Va. 552 are directly applicable to the facts of this case. The language in the Travelers case, particularly taken in context of that case, which puts it out of context with this case, would suggest an application when it talks about the fact of an intervening act occurring which might not have happened. Here we have an intervening act, a fire, and granted that fire may never have happened, in which case the failure to connect the alarm system would in and of itself have resulted in no damage to anyone.

The similar language is used in Dawley, but another statement is made in Dawley which I think is significant and on which the Court will overrule the plea of the statute of limitations, and that is as follows: "Carva's property was not damaged when the insurance policy was issued without full sprinkler leakage coverage. Its property was

JURY OUT

1
2 damaged when water was discharged from the sprinkler
3 system as the result of a windstorm. Dawley was not
4 instrumental in causing the windstorm, nor was he
5 responsible for its results. The damages would not
6 have occurred except for the happening of a severe
7 windstorm, an intervening event which might have
8 never happened. They were the indirect and conse-
9 quential results of the wrong charged to Dawley."

10 Under the facts in this case, if the case
11 can properly go to the jury on the issue of liability,
12 it cannot be said in this case like Dawley that the
13 actions charged to the defendant were not responsible
14 for the results of this act, they would have been
15 directly responsible, and therefore I do not find
16 this to be the type of indirect damage that is
17 referred to in those two cases.

18 With respect to the case itself, the Court
19 would make this analysis before I make any ruling.
20 The evidence may well raise a fair inference that
21 the Northside employees, Mr. Pulley, undertook to
22 take some action that would prevent the bell from
23 ringing, that's all he was asked to do. That evi-
24 dence, standing alone, and that inference from that
25 evidence that he did in fact leave Dr. Baird and go

JURY OUT

somewhere and do something in order to prevent the bell from ringing, would not standing by itself support a jury issue that he disabled the fire system, either the fire detectors' ability to respond to the control panel or the dialer's ability to communicate that information to the emergency fire communications system.

To replace that gap the plaintiff offers the testimony of the fire emergency people themselves, that they did not receive a dial. There is no evidence from the plaintiff, any direct evidence from the plaintiff as to why they didn't receive a dial. There is no evidence from the fire chief or from any of the people who investigated this fire that they got to the fire later and found that the manpower source was disconnected, that the dialer switch had been put into a position that it wouldn't dial, or that any tampering had been done to the system.

What the plaintiff seeks to have inferred from the fact that the call didn't get into the Fire Department is that it must necessarily by inference be because the system was dismantled and otherwise ineffective, not just generally, but due to the conduct of the defendant, that is that it was

1 JURY OUT

2 ineffective because it had been disconnected and had
3 not been reconnected.

4 At the same time the plaintiff's evidence
5 on that score particularly, if not on other issues,
6 put forth in its own case, not on any evidence put
7 on by the defendant, at least a half dozen different
8 possibilities under which the dialer system would
9 also not reach the Fire Department and sound the
10 alarm.

11 Furthermore, you have in the case that the
12 evidence is thin, at least, if not totally deficient,
13 in showing how much damage would have been sustained
14 by the plaintiff had the system been reconnected.
15 In that area we have the problems of we don't know,
16 except what Chief Williams tells us, and that isn't
17 conclusive. We don't know at what point in time
18 this fire at the origin that he gives, which is the
19 only evidence of origin, would have reached a point
20 where it would have communicated information to the
21 sensors in the ceiling of the viewing room or any
22 other room where the fire detection system was.
23 There was no fire detection system upstairs.

24 Gentlemen, I suppose we ought to put it at
25 the Ivory soap level on this motion, 99-44/100 per-

JURY OUT

cent, I believe is what Ivory has always said. However, based on that .56 of a percent, and the Supreme Court's announced position with regard to jury verdicts and finality, I am, with some deep misgivings, going to overrule the motion to strike at this time.

I will tell you, in all candor, gentlemen, that if the jury should bring back a verdict in this case in favor of the plaintiff, I am going to have to look very hard at a motion to set aside, but I have enough data in my mind on the questions of inferences and what these inferences mean in terms of jury issues to let this case go to them, and I hope we can make proper instructions, and I won't guarantee that either, we will see, and I will give them an opportunity to resolve this issue on these facts assuming that they are legally entitled to, and I will simply have to take a long look at it at that point to see if I have allowed error by not granting this motion.

But, at this point I am going to overrule the motion to strike the evidence and will submit this case on proper instructions to the jury on Monday morning at 10 o'clock.

Gentlemen, I am too tired to fool with

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* 459.

1 October 2, 1978

2
3 NOTE: At this point the October 2nd, 1978
4 portion of the case begins in the absence of the
5 jury as follows:

6 JURY OUT

7 MR. MARKS: Before we start on the instruc-
8 tions, I would want to renew at the conclusion of
9 all the evidence the motions I made at the end of
10 the plaintiff's case by reservation, which brings
11 into the picture the final testimony of Chief Wil-
12 liams, the final testimony of Dr. Baird, the final
13 testimony of Mr. Pulley, and the final testimony of
14 Mr. Morris in support of our position. I want to
15 bring to the attention of the Court in that connec-
16 tion one other thing which I have been thinking
17 about all weekend, and I think it may be the .56 per-
18 cent you were talking about. There is no heat or
19 smoke detector in the room where the fire started,
20 I can prove it.

21 THE COURT: Let's hear it.

22 MR. MARKS: Okay. Here is the proposal for
23 the equipment that went into the system in 1975,
24 12 DT smoke detectors and 6 DT thermal detectors.
25 The smoke detectors are SD, and the thermal detectors

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JURY OUT

Question: Now, about what time was it that the alarm bell did go off and followed by the police officer's arrival, do you know that? Answer: No."

So, she may have said that, he can argue that, but she came along and corrected it. I personally got the impression when she was talking in response to Mr. Marks that she had no idea of ever saying that, to imply that the Heart people had shut the thing off, she or somebody else.

MR. MARKS: This is what I am referring to.

THE COURT: Yes.

MR. MARKS: I didn't accuse her of shutting it off.

MR. DOBBINS: Now, she was asked, "Did you ever have occasion to adjust or fool with that alarm system in any way? Answer: No." That's Carolyn.

THE COURT: All right, gentlemen, the motion to strike the evidence is denied. The location of or there not being a unit located in that room doesn't prove or disprove anything with respect to the fire detection capability, that's a jury issue, as far as I am concerned. I have already indicated to you that I have great concern in other areas about causation, but not in this area. The fact that

1 JURY OUT

2 there wasn't one in the room poses a very strong
3 argument in support of one of Mr. Marks' instruc-
4 tions that I propose to give and lets the jury
5 decide whether or not this fire could've burned
6 undetected if the system had been on and operative,
7 and if it could have then the defendant's negligence
8 would be moot.

9 The testimony of the witnesses certainly
10 gives an inference that the people there did de-
11 activate the bell, but the evidence on the whole in
12 relation to the system is that it can be done with-
13 out disarming the system permanently, that it can
14 be done temporarily. That's the point of it, to
15 get in and shut off the bell and stop the thing from
16 operating. The testimony in this case establishes
17 that this can be done without having to turn it off.

18 Now, they might have turned it off and
19 forgotten to put it back, the plaintiffs may be the
20 one who deactivated their own system, and that's a
21 fair inference for the jury, but the motion is over-
22 ruled.

23 Now, let's turn--

24 MR. MARKS: May I add one thing, I don't
25 want to argue with you, of course, but furthermore

* 468.

1 JURY OUT

2 intrusion, that's what it's there for.

3 There is also a button, as I recall the
4 testimony, on--

5 THE COURT: I asked the question repeatedly,
6 if somebody comes in and holds a thing up against
7 the ceiling and makes the fire go off deliberately,
8 that they can't stop the bell or the police coming
9 or anything else, everything has got to happen until
10 hell freezes over? I don't believe it, I am sorry,
11 but I don't think the evidence reveals that.

12 MR. MARKS: I think it does. That's just
13 a difference of opinion.

14 THE COURT: Unfortunately mine prevails.

15 MR. MARKS: I agree with you, it certainly
16 does.

17 THE COURT: All right, gentlemen, before
18 we give any new instructions at this time let's take
19 a look at some of the ones we have got here. I am
20 having some typed from scratch and some retyped, and
21 they ought to be here in just a moment. If you kept
22 the instructions in the same sequence that you gave
23 them to me, I put some pencil notations on them, so
24 we will try to refer to them in that order. Let me
25 take up with respect to both of you some instructions

* 470.

JURY OUT

or that any act performed by such employees prevented the fire alarm system from alerting the authorities to the presence of a fire, and so forth. Again, I think that has the same problem to it. I am going to go on and mark these "A" and "C" so that we will know what we are referring to.

MR. MARKS: I am going to object to the ruling.

THE COURT: "D," and you may want to discuss this one. I have got another instruction in here, but this is the one that in order for the plaintiff to recover it must prove by a preponderance of the evidence that the defendants' employee Pulley, was guilty of inactivating the fire alarm system in the plaintiff's premises and of failing to reactivate it, and so on. I have got two instructions that are rather lengthy that are being prepared and I hope are going to cover the waterfront with respect to duty and the negligence of respective parties on both negligence and contributory negligence. The instruction will tell the jury that the plaintiff has the burden of proving that the defendant deactivated the system and that it failed to use reasonable care to reactivate the system, and if it did so then that's

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2 negligence, if it failed to use reasonable care.
3 That's one I will get to in a minute, and if they
4 believe from the evidence that that was the proximate
5 cause, then it shall find in favor of the plaintiff.

6 The other instruction tells the jury that
7 on contributory negligence, that the plaintiff had
8 certain duties to protect its property, and that if
9 it failed to exercise reasonable care in that regard
10 and that was a proximate cause of the fire, that they
11 would find in favor of the defendant.

12 I think this one here is going to be covered
13 satisfactorily in the other instructions.

14 MR. MARKS: After I see the other instruc-
15 tions I can comment, but as of now I think this is
16 proper.

17 THE COURT: All right, I am going to mark
18 it "D, refused," and then we will come back to it
19 later and you can put your reasons in the record.

20 MR. MARKS: I will save the objection now.

21 THE COURT: Yes, and I will let you put
22 your reasons in later on these particular ones. We
23 may want to come back to "D."

24 Now, "F," which is the VJI instruction on
25 surmise, I have got a little shorter version of that

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that we have bifurcated off the damage issue, but we haven't bifurcated off the causation issue. What we have bifurcated off is the quantity issue, so some damages are still part of this trial.

MR. MARKS: Yes, I think that's true.

THE COURT: Because that completes the cause of action. You can't just ignore damages and find negligence in the abstract, they have got to find negligence with resulting damage. They don't have to find the quantum of that damage.

MR. MARKS: That's correct, they don't have to go with dollars or whatever.

THE COURT: Well, I am open to suggestions to modify this. I had not coped with this problem. I am afraid I've got this in several other instructions.

MR. DOBBINS: May I suggest, Judge, the greater weight of the evidence that the defendants were negligent and that the defendants' negligence was the proximate cause of losses sustained by the plaintiff in the fire resulting from the failure of the fire detection system to operate.

THE COURT: That, I think, is in keeping with what they have to find because that gives the

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2 causation issue to them on whether or not the losses
3 did in fact result from the failure of the system
4 as opposed to some other cause.

5 MR. MARKS: The language he is using tells
6 them rather than getting them to find it.

7 THE COURT: It tells them that the plain-
8 tiff has the burden of proving these things, that's
9 all it tells them. Give the language to me again,
10 Mr. Dobbins.

11 MR. DOBBINS: The plaintiff has the burden
12 of proving by the greater weight of the evidence
13 that the defendants were negligent and that the
14 defendants' negligence was the proximate cause of
15 losses sustained by the plaintiff in the fire
16 resulting from the failure of the fire detection
17 system to operate in time to have-- in time-- re-
18 sulting in the failure to operate.

19 THE COURT: Don't get too complicated.
20 Failure of the fire detection system. No, that's
21 not true though because the fire detection system
22 could not operate properly for reasons other than
23 the defendants' negligence. Let me study on that
24 a minute. This may seem cumbersome the way I am
25 doing it here, but it avoids us having to repeat

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2 ourselves sixteen different times on sixteen dif-
3 ferent issues. This instruction which would be
4 added, realizing all instructions are read as a
5 whole and not as one continuous charge, not as
6 separate entities, would say this: "In other instruc-
7 tions of the Court reference is made to losses sus-
8 tained by plaintiff in the fire. In order to find
9 for the plaintiff, you must find from the greater
10 weight of the evidence that the plaintiff sustained
11 some damage or loss to its property as a proximate
12 result of the fire detection system not functioning
13 because it had been deactivated and not reactivated
14 by the defendants."

15 MR. DOBBINS: I think that's agreeable.

16 THE COURT: That would encompass all
17 instructions that talk about losses sustained in
18 the fire and would be overriding in terms of legal
19 principle. Let me type this one up and we will go
20 on.

21 MR. MARKS: Okay.

22 THE COURT: That's the gut of it.

23 MR. MARKS: That's where it sits.

24 MR. DOBBINS: I will buy that.

25 ~~THE COURT: All right, gentlemen, subject~~

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2 to that qualification, then I propose to give that
3 instruction on the plaintiff's burden of proof. I
4 am trying to get some of these housekeeping instruc-
5 tions out of the way before we get into some of the
6 gut ones.

7 MR. MARKS: I would like to very much sug-
8 gest that you put an "if any."

9 THE COURT: I don't think it's necessary,
10 and I am not going to put it there. I am not going
11 to put it in the defendants' instructions, it's
12 implicit in the instruction, and I am going to
13 refuse to put that in. They have obviously got to
14 find them negligent to start with, and once they
15 have done that then there is no "if any" to it.

16 MR. MARKS: It's traditional, and I have
17 always asked for it.

18 THE COURT: No, I am not going to do that.

19 MR. MARKS: I will save the objection.

20 THE COURT: Then this is the defendants
21 claiming contrib and their burden on that. Do you
22 gentlemen want to get into a discussion before we
23 look at the form of this instruction about the
24 concept of contributory negligence?

25 MR. DOBBINS: I object to any instruction

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on contributory negligence. I don't see that there is any evidence whatsoever of that here.

THE COURT: I do, so let me hear from you-all. I think there is evidence, but I will hear you on that.

MR. DOBBINS: I can't remember any evidence of contributory negligence other than the fact that the employees had been instructed as to how to cut off the dialer. Now, there's no evidence whatsoever that they did.

THE COURT: Let me tell you what I think is the evidence because we are going to get to it in spades when it comes to duties on the plaintiff. If there are inferences in the case that can be drawn, which I doubt, as to the defendants' negligence, then there are certainly inferences on the plaintiff because the jury may properly infer from this evidence that Dr. Baird, having wanted the bell off, could have on his own or by his employees gotten it off. They had access to the box, they knew how to cut it off, and they knew how to deactivate the system, so there is just as much an inference that they did as the defendant did. If there isn't any for them, then there isn't any for the defendant,

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2 and I am willing to do it that way and we would be
3 through.

4 MR. DOBBINS: This would be so, except for
5 the fact that the evidence is plain that Dr. Baird
6 then went to Pulley and said, do something about it,
7 and Pulley said, I will. Now, there is no evidence
8 that Pulley came back and said, no, you do something
9 about it.

10 THE COURT: But there is also no evidence
11 that Pulley did anything about it, and that's one
12 of the problems in the case.

13 MR. MARKS: On top of that you have also
14 got this aspect of the case. It would seem to me,
15 and I would urge it at least with respect to the
16 contrib factor, that if Dr. Baird asked them to do
17 something to get that system out of existence or
18 out of commission and then went merrily on his way
19 rejoicing without checking to see that it got back
20 on again, there is an inference of negligence there.

21 THE COURT: The instruction that I have
22 drawn up, which I will show you in a moment, charges
23 the plaintiff with the duty of reactivating that
24 system if it knew or reasonably should have known
25 that it was deactivated or inoperative. Furthermore,

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2 it charges the plaintiff with the duty of reporting
3 the fire to the Fire Department if it knew or reason-
4 ably should have known that a fire had commenced,
5 and this comes from the evidence of Chief Williams
6 who puts the origin of the fire at 9 o'clock.

7 Now, I know that the testimony was given
8 from Williams, who was trying to be a ball carrier,
9 that the building was so constructed that it would
10 be hard to see it, but the fire he described, which
11 was in the advanced stages by 11 o'clock, to be
12 sure, I think, the jury may well infer that a prop-
13 erty owner in premises at that time might well have
14 been in a position to have discovered that fire,
15 and if he could have, there is nothing in the evi-
16 dence that prevents the jury, if we are going to let
17 them speculate anyway, from deciding that he could
18 have notified the Fire Department and gotten the
19 fire under control before it reached the rapid-burn
20 stage.

21 MR. DOBBINS: If you take that position of
22 it, Judge, then you are putting the duty to have him
23 go around and inspect the place to look to see
24 whether there is any fire.

25 THE COURT: Mr. Marks may argue that, and

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you may argue the contrary, but that's what reasonable care is. He didn't have a duty to go by there at all, but he did go by there. I will leave it up to the jury.

MR. DOBBINS: But he saw nothing.

THE COURT: Well, that's what he said.

MR. DOBBINS: That's all the evidence there is.

THE COURT: I will be darned if there is because Chief Williams gives the jury the right to believe that he should have seen something had he been the least attentive of the property. You can't have your cake and eat it too. You can't have the fire starting at 9 o'clock and give all the detailed evidence about how it burned, where it started, or anything else, and then say, well, there is no reason to think that anybody looking at the building at this point would've realize it. Smoke is smoke, and it comes out of a building. I am going to give it.

MR. DOBBINS: I am going to except to it.

THE COURT: I am going to give this one on contrib. Here is the one we just did that tries to cure the losses sustained in the fire situation, and

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2 THE COURT: And reasonable care and ordinary
3 care is just like the one I just gave. I have
4 already given that on another sheet, and preponderance
5 of the evidence is the same thing. I gave that on
6 the other sheet.

7 MR. MARKS: Let's see where we are.

8 THE COURT: They are withdrawing their
9 definitional instructions that we have already
10 given, and this covers the plaintiff instructions
11 up to this point.

12 Now, let's take a look at the remaining
13 instructions of the defendant, there are three of
14 them, I have them labeled "B," "E," and "H" but
15 you don't have them labeled that way. The first one
16 tells the jury that if the evidence established
17 with equal or greater probability that the failure
18 of the alarm--

19 MR. DOBBINS: These are the new ones,
20 Judge?

21 THE COURT: These are the ones he just
22 submitted. It was the second one in the list if
23 you kept them in the order you got them. It's the
24 instruction about eight lines long.

25 MR. DOBBINS: All right, I have it.

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THE COURT: I propose to give that instruction.

MR. MARKS: That's "B"?

THE COURT: Yes. I think that in all fairness that is correct, and I don't think any other instructions cover it. Actually, what that really is in concept is one half of the old burden of proof instruction revised.

MR. MARKS: I used to put it on the bottom of the burden of proof instruction.

THE COURT: I am going to give that one, it is your "B." It will be numbered something different, I have to number these in sequence, and I don't know what order I want them in yet. When I come back I will have my little pencil notes that I will make reference to so that you will know how to get back to it.

The definition of proximate cause, you both submitted, that's "H" by my listing on the defendants, and I am going to give it. I am going to give this one as opposed to the other one. It doesn't make any difference. That's the definition of proximate cause, and I am glad I am not a juror because I couldn't figure it out if I tried, but I

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will give it anyway.

Then the last one to look at from the defendant's position at the moment is the one that tells them, and this would be about the fifth one if your set is in the same order as mine, it's the only one we haven't considered, and it's the one that says, "The Court instructs the jury that there is no evidence in this case to connect the activities of the defendants' employees with causing the fire to ignite." That's the gut of the instruction, and I frankly think that the jury has to know that.

MR. DOBBINS: I don't object to that to that point.

THE COURT: Okay.

MR. DOBBINS: I don't object to it to that point.

THE COURT: The last sentence may give you a problem.

MR. DOBBINS: It does, I don't think there is evidence of that.

THE COURT: I think there is evidence of that. That's where we get to what we just talked about, about the location of the detectors, where the fire began, where it burned through the plywood

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2 and got outside, all that is incorporated in the
3 last sentence, and I think it is a fair issue to
4 the jury on the evidence to decide whether or not
5 the detection system, if it were working, would not
6 have detected this fire. Certainly there is evi-
7 dence to indicate that it would have, and there is
8 also evidence to indicate that it would not have.

9 MR. DOBBINS: I have to respectfully object
10 to it and disagree with Your Honor. I don't believe
11 there's any evidence that the fire was of such a
12 nature to be undetected until it reached major pro-
13 portions.

14 THE COURT: Well, you have noted your
15 objection. That's "E" now and I will give you a
16 number on it later.

17 MR. MARKS: I have two new ones.

18 THE COURT: I am going to give you mine
19 first, and we will go to yours second. I have worked
20 long and hard on these, so I want you to take a look
21 at them.

22 MR. MARKS: I think it tells the story.
23 I am willing to have it that way.

24 THE COURT: It's as close as I could come
25 after several false starts to try to assess what the

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duty was and what the violation of the duty was. It does require both the procedure of deactivation and the failure to reactivate, and proximate cause. Conceptually I think it fits the case, and I don't see anything wrong with the language.

MR. MARKS: I don't either.

THE COURT: It puts the burden where it is.

MR. DOBBINS: All right, sir.

THE COURT: While you are thinking about that, before we give it, let me give you the other one, the other side of the coin. This is the contribution which is the plaintiff's duty, which I know you object to, but we are looking at the form now.

MR. MARKS: I think your second paragraph is not right, Judge, on this one.

THE COURT: In what respect?

MR. MARKS: I should probably say that it should stay like it is, but I am not going to do that. That the plaintiff failed to use reasonable care to report the fire would be fine, but I don't think there would be any reason to suppose that the good doctor should run into the building and re-activate the system if he saw a fire. I wouldn't have done it, and if I saw a fire in there I myself

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would have gone to the nearest call box.

THE COURT: Well, I didn't really intend the instruction to mean that he would run in and reactive it.

MR. MARKS: How could he do it otherwise after he knew that the fire commenced?

THE COURT: He couldn't.

MR. DOBBINS: I think he is right about that.

MR. MARKS: That's the point.

THE COURT: Well, I didn't intend for that to apply the way it is, I intended for the reaction to apply to the first sentence and the reporting to apply to the second sentence.

MR. MARKS: I think if you put it up there, that they failed to use ordinary care to reactivate it in the first instance if they knew it was out, and that would be before they left for the day--

THE COURT: I can correct it this way. Let me try this way. I am going to move the thing up and adjust the position, that will do it. "Should have known that its fire detection and alarm system was deactivated or inoperative and failed to use reasonable care to reactivate the system, or that plaintiff

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2 knew or reasonably should have known that a fire
3 had commenced at its premises and that plaintiff
4 failed to use reasonable care to report the fire,
5 then the plaintiff was negligent." That puts them
6 in the adjusted position.

7 Now, there is another problem in here I
8 just saw because of our earlier conversation. The
9 last line is not right, and I will be doggoned how
10 I am going to handle this one. We gave the defini-
11 tion of what losses sustained in the fire mean, we
12 just wrote that up a minute ago, and I am not sure
13 with that definition that this last line is right.
14 What we are saying here is that if the plaintiff's
15 negligence was a proximate cause of its losses sus-
16 tained in the fire, then you find for the defendant.
17 Now, its losses sustained in the fire would be those
18 losses brought about by the defendant. Yes, I guess
19 that's right, deactivating the system and failing to
20 reactivate the system.

21 MR. DOBBINS: I am going to object to the
22 whole instruction in the first place, but there is
23 another element that is omitted from this instruction,
24 and that is that if the defendants deactivated it,
25 then I believe the plaintiff has a right to rely on

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2 them to reactivate it or tell them that it was de-
3 activated, and in what way, and then if they failed
4 to do anything about it--

5 MR. MARKS: Doesn't your whole case rest
6 upon the fact that Dr. Baird says do something to
7 keep it from happening, and that Pulley--

8 THE COURT: Furthermore that he assumes
9 that he did so, and furthermore he failed to assume
10 that he did something else?

11 MR. MARKS: Well, didn't he have a duty to
12 in the exercise of reasonable care for the protection
13 of his own building check to see whether it was or
14 was not in operation when he left the premises?

15 THE COURT: You are really getting into a
16 right to assume instruction, and I don't think it
17 fits in this case because in order for it to come in
18 there has to be a known fact, and these witnesses
19 never have known if this was done. If they knew as
20 a positive fact that the system had been deactivated,
21 then I think your point is well taken, they would
22 have a right then, and I would give an instruction,
23 they would have a right to rely upon the defendants'
24 having done it to protect them from negligence them-
25 selves, knowing that he has done it, and having the

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2 right to expect him to put it back.

3 MR. DOBBINS: I think it's even stronger,
4 Judge, if they don't know at the time.

5 THE COURT: I will let you argue it, but
6 I am not going to put that concept in this case, I
7 think we have got enough problems. I'm going to
8 leave it like it is.

9 MR. DOBBINS: I object to it for that
10 reason. Now, I had another objection to it. The
11 fact that he failed to report the fire at a time
12 when the fire was already out of control and had
13 caused the damage, whether it's 11:15 or whenever,
14 Judge, is not sufficient in my judgment.

15 THE COURT: Well, that's the way I put it.
16 I agree with you, and it's hard to know how to
17 handle that because of what we know and don't know
18 about the fire itself, but I just said "commenced"
19 and I did that on purpose. I avoided incipient,
20 smoldering, smoke and flame, and just said commenced.

21 Now, I think this jury has enough sense to
22 know that it's not reasonable that it would not be
23 negligence if the fire was an open conflagration and
24 he didn't take some action. In fact, you and I both
25 know that if he saw an open conflagration he would

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damn well have reported it.

MR. DOBBINS: He would have been required to report it if he had some notice, and he wouldn't have had notice if it was smoldering or in the incipient stage unless he went inside and looked around.

THE COURT: But that brings us back to the other testimony of Chief Williams, and I simply did not ignore that testimony, I think it's still in issue, I'm not going to say as a matter of law, but I think the jury has a right to look at that question and decide for themselves based on your own evidence whether or not a reasonable person looking at the building as he was with enough attention to see a light, I never understood the significance of that light--

MR. DOBBINS: It showed that the current was on.

THE COURT: I guess that's what it was, but he looked close enough to testify at least twice about the light, and if he looked that close, with a fire described by Chief Williams, I think a jury has a right to decide that he overlooked the obvious, that his building was on fire. I frankly don't think

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2 it was at 11 o'clock, but that's not my judgment.
3 I think Chief Williams is totally wrong, but that's
4 what he said, the fire started at 9 o'clock.

5 MR. DOBBINS: But the point I would make,
6 Judge, is that if the fire is in such a stage that
7 it could be seen by any person using ordinary care
8 if he had that duty, which I doubt that he had, then
9 by that time the fire was at a point that his damages
10 would already have been sustained.

11 THE COURT: Well, I probably in light of
12 all this should be hearing from Mr. Marks more in
13 objection to this because what I may be doing is
14 giving you error to appeal on, which you ought to
15 cherish in this case, but I am going to give it.

16 MR. DOBBINS: Note my exception.

17 THE COURT: Now, let me see the ones that
18 you have dreamed up over the weekend.

19 MR. MARKS: Here they are.

20 THE COURT: All right, the first one I am
21 looking at is the long one that Mr. Marks submitted.
22 This has two paragraphs. I won't give the first
23 paragraph because it's comment on the evidence,
24 which I just don't do. The second paragraph, how-
25 ever, as I indicated in the trial on Friday I would

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2 consider giving, and I would like to hear some com-
3 ment on that.

4 MR. DOBBINS: Well, I would object to that.
5 My objection to the last paragraph is that the defen-
6 dants have just as much a right to look at it as we
7 did, it was not in our absolute control. Pulley
8 himself said he was on the scene the following
9 morning helping to clean up and clear up, and there
10 was nothing to prevent him from going in there and
11 looking at it at all.

12 MR. MARKS: His direct and undenied testi-
13 mony was that the plaintiff wouldn't let him in.
14 He couldn't get in the building the next morning,
15 and he said so in so many words.

16 MR. DOBBINS: Was that the evidence?

17 MR. MARKS: Absolutely.

18 THE COURT: He did not go in the property
19 the next day.

20 MR. MARKS: He was not permitted, he wasn't
21 allowed in, the property was secured by the Fire
22 Department. He worked outside and put up a new line,
23 but he never went back on the premises.

24 MR. DOBBINS: Well, he never said he made
25 any effort to get in there.

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1
2 THE COURT: He said that he could not get
3 in because it was locked to him, secured, he was not
4 allowed in.

5 MR. HEILIG: They brought in another
6 trailer.

7 THE COURT: Brought in another trailer,
8 and they worked on the outside to put up new poles
9 outside. They did not work inside the premises.

10 MR. DOBBINS: He told us he tried to salvage
11 material, wasn't that his testimony, that he tried
12 to salvage some material?

13 MR. MARKS: Yes, he salvaged some material,
14 but there were no materials salvageable in the build-
15 ing, it was all his stuff on the outside.

16 MR. DOBBINS: I don't think there is any
17 exclusive control situation here, Judge, and I don't
18 believe he's entitled to it, and I think you are
19 putting a burden on us that we should have--

20 MR. MARKS: You got the dialer out of there,
21 didn't you?

22 MR. DOBBINS: Sure.

23 MR. MARKS: You did not get either the
24 control cabinet or the bell.

25 MR. DOBBINS: You can argue that.

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THE COURT: Well, that's what this instruction is intending to do. I am going to give the second paragraph, but I am not going to give the first.

MR. DOBBINS: Note my exception to the giving of the second paragraph of that.

THE COURT: The next one is comment on the evidence, Mr. Marks, and I am going to refuse that.

MR. MARKS: I am going to object to the refusal.

THE COURT: All right, we will label that for refusal purposes as "B." I am going to also mark the other refused as tendered, and I will have it retyped.

MR. MARKS: I am going to note another objection.

MR. DOBBINS: I want to make one other objection as to the second paragraph of that tendered instruction. This would put the burden on the plaintiff to have gotten out every bit of material that had anything to do with the alarm system. I think this gives the jury a right to reach an inference that they shouldn't be entitled to, and I think it is objectionable.

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the effort and the presentation that has been done
in this case.

Court will stand adjourned until the jury
returns.

NOTE: At this point the Judge leaves the
courtroom; whereupon counsel dictate their exceptions
to the instructions as follows:

MR. MARKS: The defendant objects to the
giving of any instruction which would permit the
jury in this case to find for the plaintiff, for all
of the reasons assigned by the defendant in argument
of its motion to strike at the conclusion of the
plaintiff's case as reserved, and at the conclusion
of all the evidence; and particularly objects to the
refusal of the Court to give its Instruction B which
deals with the cutoff of the automatic dialer by a
plaintiff's employee rather than by the defendant
and tells the jury that if this was the cause of the
failure of the dialer to operate, then the defendant
was not negligent and the plaintiff was.

The defendant objects to the refusal of
the Court to give its instruction Letter A as tendered
because that deals with the probabilities as applied

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to the facts in the case and was fully warranted by the evidence, and the instruction given on one or more causes does not take its place or accomplish the same purpose.

The defendant also objects to the refusal of the Court to give Instruction C which told the jury that there was no direct evidence that Northside Electric's people deactivated the alarm so as to prevent the fire alarm system from alerting the authorities, and speaks of the necessity to overcome by circumstantial evidence the sworn denials of Pulley and Morris that any such thing was done, which I think was fully warranted by the evidence.

The Court also refused over the objection of the defendant, and we reiterate that objection, the instruction tendered by the defendant to the effect that the plaintiff had under its control the alarm panel and the bell as well as the dialer and could have produced direct evidence as to what conditions were found inside there. The Court did give the second part of that instruction but refused the first paragraph as tendered, and we except to that, that was Instruction E.

The Court also gave over the objection of

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the defendant the instruction permitting the jury in Instruction No. 7 to find that if the plaintiff sustained some damage or loss as a result of the alarm system to function it could find in favor of the plaintiff if they further believed that it had been deactivated and not reactivated by the defendants, which I believe is contradictory to some of the other instructions and is not warranted by the facts and has no support in the evidence.

The Court gave over the objection of the defense Instruction No. 10 which was a finding instruction, and there is no evidence to support it, it is contrary actually to the greater weight of the evidence without question, and it rests completely in surmise, conjecture, and speculation as to the findings therein required.

That's all I have.

MR. DOBBINS: The plaintiff objects and excepts to the giving of any instructions which deal with the contributory negligence of the plaintiff on the grounds that the evidence does not disclose contributory negligence, and for the other reasons which were advanced in the argument at the time the instructions were being offered.

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The plaintiff objects to the giving by the Court over the plaintiff's objection Instruction No. 5 in that this instruction is confusing in the light of Instruction No. 7, and fails to instruct the jury on the plaintiff's complete theory of the case by not referring to the disconnection and failure to reconnect the alarm system as opposed to the loss as generically stated by the instruction.

The plaintiff objects to the giving of Instruction No. 6 over the objection voiced orally by counsel in that it deals with contributory negligence and there is no evidence which would support a finding of contributory negligence.

The plaintiff objects to the giving of Instruction No. 7 over the objection voiced orally and for the reasons so voiced.

The plaintiff objects to the failure of the Court to give Instruction P-3 tendered by the plaintiff with respect to circumstantial evidence, and the giving of Instruction No. 8 which fails to completely define the principle of law dealing with circumstantial evidence.

The plaintiff objects to the giving of Instruction No. 9 over the verbal objection of the

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plaintiff voiced at the time that the instructions were argued in that it prejudicially raises a presumption that the plaintiff had evidence in its control and failed to produce it, when the material which the instruction apparently would relate to was in the equal control of the defendants as well and there was no evidence that the plaintiff had any knowledge that this material was relevant and necessary until after the fire had destroyed it. Moreover, there is no evidence that the plaintiff has withheld in any way any such material.

The plaintiff objects to the giving of Instruction No. 10 for the reason that it contains an element of contributory negligence and because it does not fully apprise the jury of the plaintiff's theory of its case.

The plaintiff objects to the refusal of the Court to give Instruction P-1 as tendered, that instruction being the proper and appropriate statement of the plaintiff's theory of the case.

The plaintiff objects to the giving of Instruction No. 11 over its oral objection in that it relates to contributory negligence generally; and that it would improperly provide a finding

JURY OUT

instruction in the event the plaintiff knew or should have known that the alarm system was inactive or inoperative, there being no evidence of that fact; and that it provides a contributory finding instruction on the basis of the failure of the plaintiff to notify the Fire Department if the plaintiff knew or should have known that a fire had commenced, and there being no evidence of that; in failing to include as a part of the instruction the right of the plaintiff to rely on the defendant to have reactivated the system in that the defendant's employee fully knew or should have known that the deactivation of the system created a risk of loss to the plaintiff; the instruction is further defective in that there is no evidence that the plaintiff or its employees or agents had any knowledge as to in what manner the system had been deactivated or how to reactivate it.

The plaintiff objects to the giving of Instruction No. 12 over the objections voiced verbally on the grounds that it is dependent on contributory negligence, there being no evidence of that.

The plaintiff objects to the giving of Instruction No. 13 in that it comments on the evidence

JURY OUT

and improperly emphasizes the defendants' contentions that the plaintiff's losses were due to causes other than the defendants deactivating and failure to re-activate the system.

The plaintiff objects to the Court's giving Instruction No. 14 over objections voiced verbally during the colloquy in that the jury was properly instructed that there was no evidence that the defendants' employees ignited the fire, but that the rest of the instruction, being the second and third sentences, were improper. The second sentence contains a restatement of the plaintiff's burden of proof and is not complete and is confusing and is contradictory. The third sentence of Instruction 14 is based on the proposition for which there is no evidence in the case, and that is to say that there is no evidence that the fire was of such nature as to be undetected by the alarm system until it reached major proportions, and the giving of such an instruction was prejudicial to the plaintiff.

That's all.

NOTE: At this point counsel complete their exceptions to the instructions; whereupon at 3:02 the jury is returned to the courtroom and the case continues as follows:

Virginia:

In the Circuit Court of the City of Richmond, Division 1,

THE 28th DAY OF September 19 78

VIRGINIA HEART INSTITUTE, LTD.

Plaintiff

v.

A-808

NORTHSIDE ELECTRIC COMPANY,

CHARLES MILHISER, II,

JOSEPH B. GUEDRI, JR.,

CLAIRE M. ROSENBAUM, and

MILDRED M. HELTZER

Defendants

O R D E R

This day came the parties by counsel and defendants' motion to separate the liability and damage issues of this case, and was argued by counsel.

Upon consideration whereof and for good cause shown, it is ORDERED that the damage questions in this case set for trial September 28, 1978, are severed from the case to be concluded at another time.

It is further ORDERED that this severance includes the special plea filed by the defendants which raises the question of whether or not certain contractual arrangements between the parties precludes the plaintiff from recovering damages or any part thereof, to which action of the court counsel for the plaintiff objected.

Enter: 9/28/78

Ward

INSTRUCTION NO. 1

The plaintiff, Virginia Heart Institute, Ltd., claims that it is entitled to recover money damages from the defendants Northside Electric Company and others, because the defendants were negligent and that this negligence proximately caused the losses sustained by the plaintiff in the fire.

The defendants deny these claims.

Also, the defendants claim that the plaintiff cannot recover because the plaintiff was itself negligent, and this negligence proximately caused or contributed to cause the losses sustained in the fire.

The plaintiff denies these claims.

Given
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INSTRUCTION NO. 2 (

Your verdict must not be based in whole or in part upon surmise, conjecture or sympathy for anyone. It must be based solely upon the evidence and the instructions of the Court.

G. W.
W. W.

INSTRUCTION NO. 3

You are the sole judges of the weight of the evidence and of the credibility of the witnesses. You have the right to discard or accept the testimony, or any part thereof, of any witness, which testimony you regard proper to discard or accept; but you have no right arbitrarily to disregard the credible testimony of a witness. In determining the credibility of witnesses, you may take into consideration the following: demeanor on the witness stand; apparent candor or fairness; bias, if any; intelligence; interest, or lack of it, in the outcome of the case; opportunity, or lack of it, for knowing the truth and for having observed the facts testified to; any prior inconsistent statements if proven by the evidence.

Given
W

INSTRUCTION NO. 4

The term "preponderance of the evidence" does not necessarily mean the greater number of witnesses, but means the greater weight of all the evidence. It is that evidence which is most convincing and satisfactory to the minds of the jury. The testimony of one witness in whom the jury has confidence may constitute a preponderance.

"Negligence" is the failure to do what a reasonable and prudent person would ordinarily have done under the circumstances of the situation, or doing what such a person would not have done under the existing circumstances.

"Reasonable care" or "Ordinary care" is a relative term, and varies with the nature and character of the situation to which it is applied. The amount or degree of diligence and caution which is necessary to constitute reasonable or ordinary care depends upon the circumstances and the particular surroundings of each specific case. The test is that degree of care which an ordinarily prudent person would exercise under the same or similar circumstances to avoid injury to another.

*Garn
man*

INSTRUCTION NO. 4-A

The "proximate cause" of an event is a cause which, in natural and continuous sequence, unbroken by any efficient intervening cause, produces the event, and without which the event would not have occurred. It is an act or omission which immediately causes or fails to prevent the event; an act or omission occurring or concurring with another act, without which the event would not have occurred, notwithstanding such other act; provided such event could reasonably have been anticipated by a prudent man in the light of attendant circumstances.

Given

INSTRUCTION NO. 5

The plaintiff has the burden of proving by the greater weight of the evidence that the defendants were negligent and that the defendants' negligence was the proximate cause of the losses sustained by the plaintiff in the fire.

Fisher
ms

INSTRUCTION NO. 6

Where the defendants claim contributory negligence as a defense, they have the burden of proving by the greater weight of the evidence that the plaintiff was negligent and that this negligence was a proximate cause of the plaintiff's losses sustained in the fire.

*Given
w2w*

INSTRUCTION NO. 9

The Court tells you that where one party to a legal controversy has within his control evidence material to the matters in issue and does not produce it, there arises a presumption that its effect, if produced, would be against the party withholding it.

G. v. n.

INSTRUCTION NO. 10

If the defendants deactivated or rendered inoperative the fire detection and alarm system at plaintiff's premises on December 18, 1975, then the defendants had a duty to use reasonable care to restore said system to its prior condition. Therefore, if you believe from the greater weight of the evidence that:

(1) the defendants deactivated or rendered inoperative the fire detection and alarm system in plaintiff's premises on December 18, 1975; and

(2) the defendants failed to use reasonable care to restore said system to its prior condition, then the defendants were negligent.

And if you further believe from the greater weight of the evidence that the defendants' negligence, if any, was a proximate cause of the losses sustained by the plaintiff in the fire, then, unless you believe from the greater weight of the evidence that the plaintiff was also guilty of negligence which was a proximate cause of its losses, you shall find your verdict for the plaintiff.

G. W. W. W.

INSTRUCTION NO. 11

The plaintiff, as owner of the property, had a duty to use reasonable care to protect its property from dangers of which it knew or of which it should reasonably have known; specifically, the plaintiff had a duty to use reasonable care to reactivate its fire detection and alarm system if it knew or reasonably should have known that said system was deactivated or inoperative, and to notify the fire department if it knew or reasonably should have known that a fire had commenced.

Therefore, if you believe from the greater weight of the evidence that the plaintiff knew or reasonably should have known that its fire detection and alarm system was deactivated or inoperative and failed to use reasonable care to reactivate the system, or that plaintiff knew or reasonably should have known that a fire had commenced at its premises and that plaintiff failed to use reasonable care to report the fire, then the plaintiff was negligent.

And if you further believe that the plaintiff's negligence, if any, was a proximate cause of its losses sustained in the fire, then you shall find your verdict for the defendants.

G. A. W.

INSTRUCTION NO. 12

The law does not apportion or balance the negligence of the plaintiff and the defendants if they are negligent in order to determine which one is more negligent.

Therefore, if you believe from the evidence that the defendants were negligent and that such negligence was a proximate cause of the losses sustained by plaintiff in the fire but that the plaintiff was also negligent and that such negligence proximately contributed to the cause of its losses, then your verdict shall be in favor of the defendants.

*Given
was*

INSTRUCTION NO. 13

~~the evidence has established with equal or greater probability that the failure of the alarm system to operate, if it failed, was due to a cause or causes for which defendants were not responsible, as it is that the defendants' employees caused the failure by deactivating the system, if they did, then the Court instructs you that the plaintiff has failed to bear the burden of proof required of it by the law, and your verdict must be in favor of the defendants.~~ If the evidence has established with equal or greater probability that the failure of the alarm system to operate, if it failed, was due to a cause or causes for which defendants were not responsible, as it is that the defendants' employees caused the failure by deactivating the system, if they did, then the Court instructs you that the plaintiff has failed to bear the burden of proof required of it by the law, and your verdict must be in favor of the defendants.

*Given
now*

1 JURY OUT

2 and got outside, all that is incorporated in the
3 last sentence, and I think it is a fair issue to
4 the jury on the evidence to decide whether or not
5 the detection system, if it were working, would not
6 have detected this fire. Certainly there is evi-
7 dence to indicate that it would have, and there is
8 also evidence to indicate that it would not have.

9 MR. DOBBINS: I have to respectfully object
10 to it and disagree with Your Honor. I don't believe
11 there's any evidence that the fire was of such a
12 nature to be undetected until it reached major pro-
13 portions.

14 THE COURT: Well, you have noted your
15 objection. That's "E" now and I will give you a
16 number on it later.

17 MR. MARKS: I have two new ones.

18 THE COURT: I am going to give you mine
19 first, and we will go to yours second. I have worked
20 long and hard on these, so I want you to take a look
21 at them.

22 MR. MARKS: I think it tells the story.
23 I am willing to have it that way.

24 THE COURT: It's as close as I could come
25 after several false starts to try to assess what the

INSTRUCTION NO. E

The Court instructs the jury that under the evidence in this case the plaintiff or its representatives had possession of the premises on Berrington Street, including the alarm bell and the alarm control panel as well as the automatic dialer. It could have inspected or caused the inspection of the bell and the control cabinet and have produced direct evidence as to the condition found both as to the presence or absence of connections to the batteries in both units and as to the presence or absence of the wiring connections between the control cabinet and the dialer, and also as the connections of each to the wiring in the building which provided the house current to these devices.

The Court tells you that where one party to a legal controversy has within his control evidence material to the matters in issue and does not produce it, there arises a presumption that its effect, if produced, would be against the party withholding it.

Refused now

Virginia:

In the Circuit Court of the City of Richmond, Division 1,

THE 2nd DAY OF October 19 78

VIRGINIA HEART INSTITUTE, LTD.

Plaintiff

v.

A-808

NORTHSIDE ELECTRIC COMPANY, et al.

Defendants

O R D E R

This day again came the parties by counsel and came also the jury pursuant to their adjournment on September 29, 1978.

The defendants by counsel renewed the motion to strike the plaintiff's evidence on the same grounds, which motion was denied and to which action of the court counsel for the defendants objected.

After receiving instructions from the court and hearing arguments of counsel the jury retired to their room to consult of their verdict and after some time returned into court with the following verdict:

We, the jury, on the issues joined, find
for the defendants.

Foreman

Clifton McDaniel

Whereupon the plaintiff moved to set aside the verdict of the jury for reasons stated in the record, which motion was denied and to which action of the court counsel for the plaintiff objected.

It is, therefore, ordered that the plaintiff take nothing and that judgment be entered in favor of the defendant.

It is further ORDERED that the transcript of the trial of this action be, and it hereby is, a part of the record.

Enter: 10/2/78
W. H. Smith

NOTICE OF APPEAL

The Petitioner, Virginia Heart Institute, Ltd., by counsel, pursuant to Rule 5:6 of the Rules of the Supreme Court of Virginia, hereby respectfully states that it is aggrieved by a Final Order of the Circuit Court of the City of Richmond, Division I, entered on October 2, 1978, and hereby gives Notice of Appeal from the said Final Order.

A transcript of the testimony of the trial in this cause will be filed hereafter with the Clerk of the Circuit Court of the City of Richmond, Division I.

VIRGINIA HEART INSTITUTE, LTD.

By John A. Heilig
Of Counsel

HOWARD W. DOBBINS
JOHN A. HEILIG
Wallerstein, Goode & Dobbins
1011 East Main Street
Richmond, Virginia 23219

CERTIFICATE

This is to certify that on the 31st day of October, 1978, a true copy of this Notice of Appeal was mailed, postage prepaid, to Edward A. Marks, Jr., 9th and Main Streets, Suite 1420, Fidelity Bankers Building, Richmond, Virginia 23219.

RECEIVED & FILED

OCT 31 1978

EDWARD G. KLUED, Clerk

BY John A. Heilig

ASSIGNMENTS OF ERROR

Comes now the appellant, by counsel, pursuant to Rule 5:21 of the Rules of the Supreme Court of Virginia and files the following assignments of error in connection with the final order entered October 2, 1978 in the Circuit Court of the City of Richmond, Division I, dismissing the appellant's cause and granting judgment in favor of the appellees:

1. The Court erred in granting instruction number 9, which instruction, having been given without proper evidence to support same, prejudiced the appellant in that said instruction implied to the jury that the appellant had within its exclusive knowledge and control certain material evidence which it did not produce at trial.

2. The Court further erred in granting instruction number 9 in that there was no evidence adduced at trial to support a finding that the appellant withheld any such evidence, or that any such evidence to which the instruction apparently related was, in fact, material.

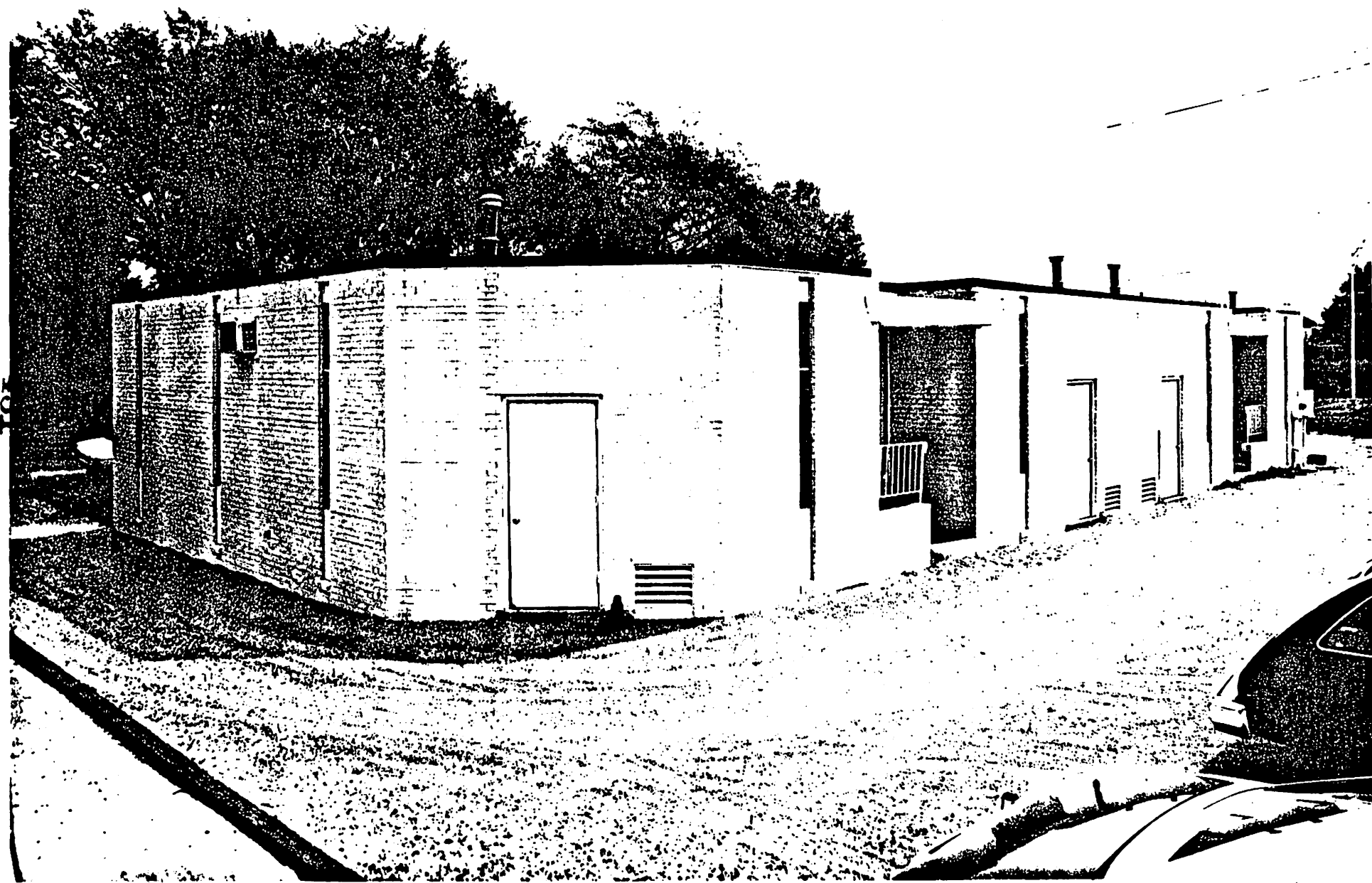
3. The Court erred in granting instruction number 11 in that it imposed upon the appellant, without proper evidence, the following duties: (1) a duty to know that its alarm system was deactivated or inoperative (2) a duty to reconnect or reactivate said alarm system if the appellant knew or reasonably should have known that the alarm system was deactivated or inoperative and (3) a duty to report the fire if the appellant knew or should have known that a fire had commenced on its premises.

4. The Court further erred in giving instruction number 11 in that it improperly and prejudicially imposed a duty upon the appellant to reconnect or reactivate the alarm system when there

was no evidence adduced at trial to indicate in what manner the appellees had disconnected or deactivated same.

5. The Court further erred in giving instruction number 11 in that it failed to include as part of the instruction the appellant's right to rely on the appellee's duty to reconnect or reactivate the alarm system.

6. The Court erred in granting instruction numbers 6, 10, 11 and 12, all dealing with the appellant's contributory negligence in that the evidence adduced at trial disclosed no ground to support such a finding.

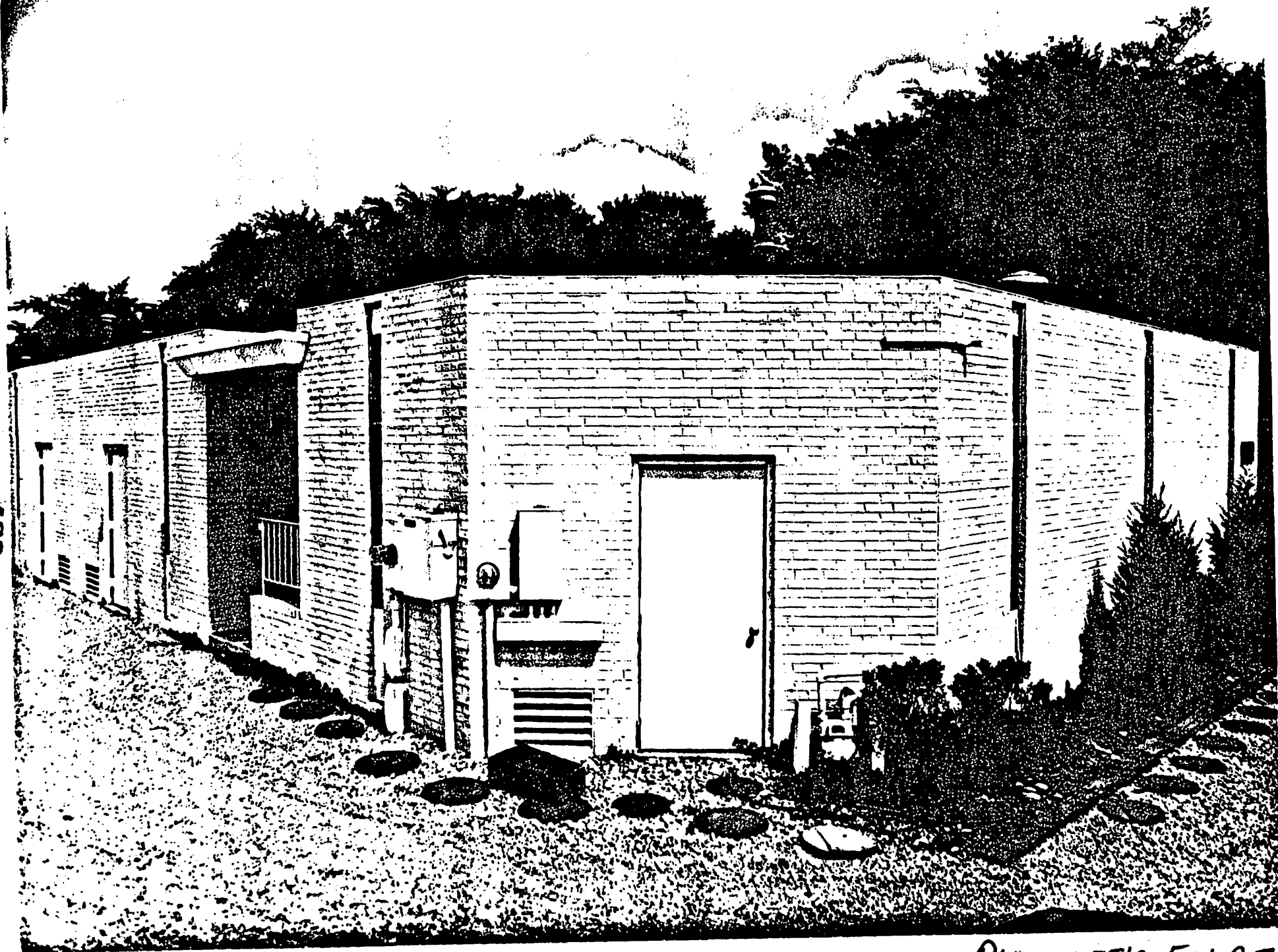


PLAINTIFF'S EXHIBIT 1

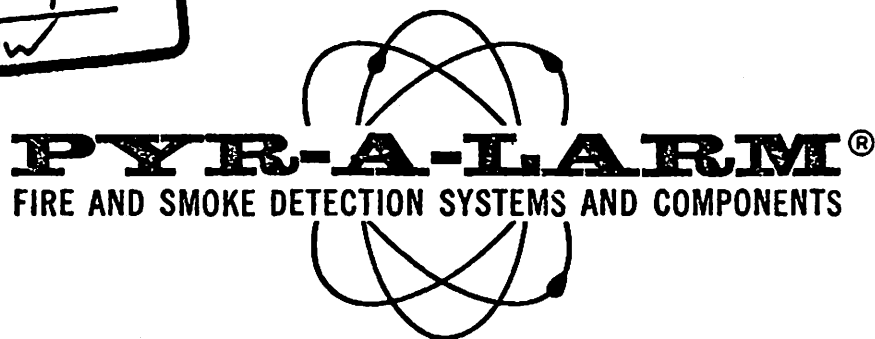
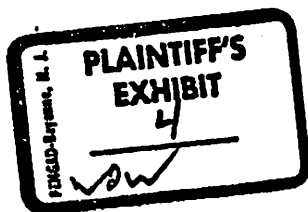


PLAINTIFF'S EXHIBIT 2

433

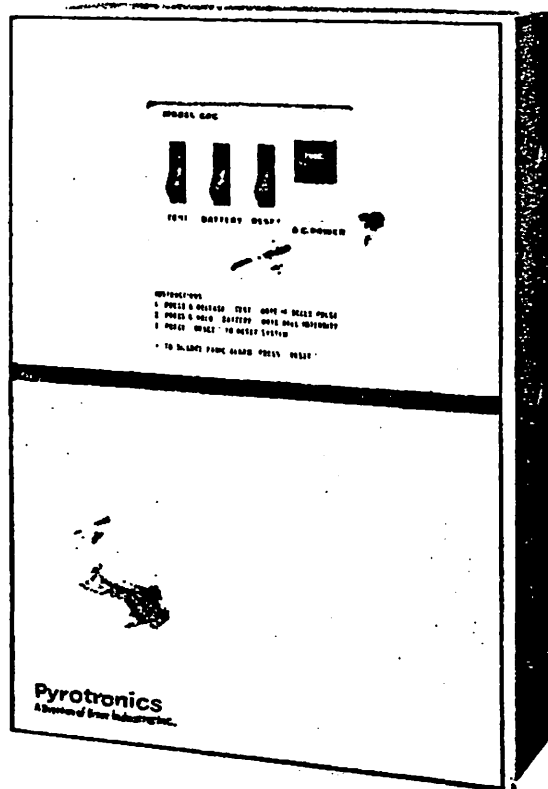


PLAINTIFF'S EXHIBIT 3



Model CRC Fire and Intrusion Detection System

INSTALLATION MANUAL



Model CRC
Panel



Pyrotronics A Division of Baker Industries, Inc. 8 Ridgedale Avenue, Cedar Knolls, New Jersey 07927

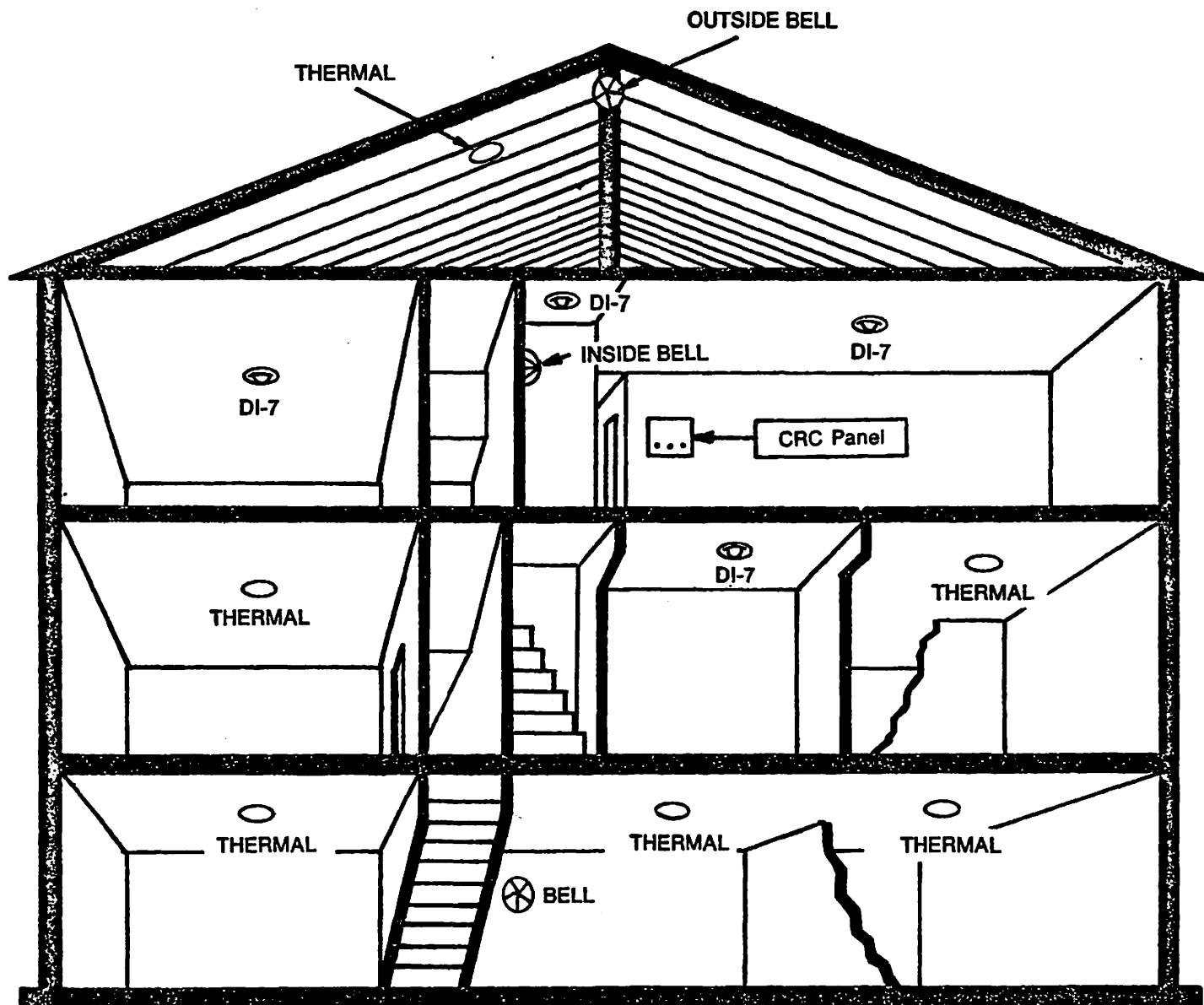


Fig. 1

I. EQUIPMENT PLACEMENT

A. CONTROL PANEL

The Model CRC Control Panel should be located in an area where it will receive frequent surveillance. It should also be within hearing range of the occupants so the trouble buzzer will be recognized if activated.

The exact location will vary depending upon the design of the residence. A typical location would be a frequented area such as near or in the master bedroom where it can be checked daily but not visible to a point of access. (Ref. Fig. #1)

B. AUDIBLES

An Audible Alarm should be located in an area where it will be capable of awaking the occupants with the bedroom doors closed, and, if possible, be heard throughout the house during non-sleeping hours. Depending upon the size and layout of the house, a second audible may be used to alert neighbors so they can report the fire or intrusion and offer assistance. (Ref. Fig. #1)

C. FIRE

1. A minimum of two DI-7 ionization detectors are recommended by Pyrotronics for the average home; however, the Model CRC Control Panel has a capacity of ten. One should be placed in the sleeping area hall and the other in the access or main hall. This placement will offer minimum early warning coverage. In addition to the above two detectors, the ideal plan would be to add a DI-7 detector to each sleeping room. (Ref. Fig. #1)

2. Thermal detectors are required by NFPA #74 and should be added to various rooms, crawl spaces and storage areas as required. Some suggestions are offered in floor plans, Figure 1.

D. INTRUSION

1. **Control Station** — The number of stations used will depend mainly on the size and design of the house. Generally speaking, two should be sufficient. One to be placed adjacent to the main door for going and coming and a second in or near the master bedroom for arming the system when retiring for the night.

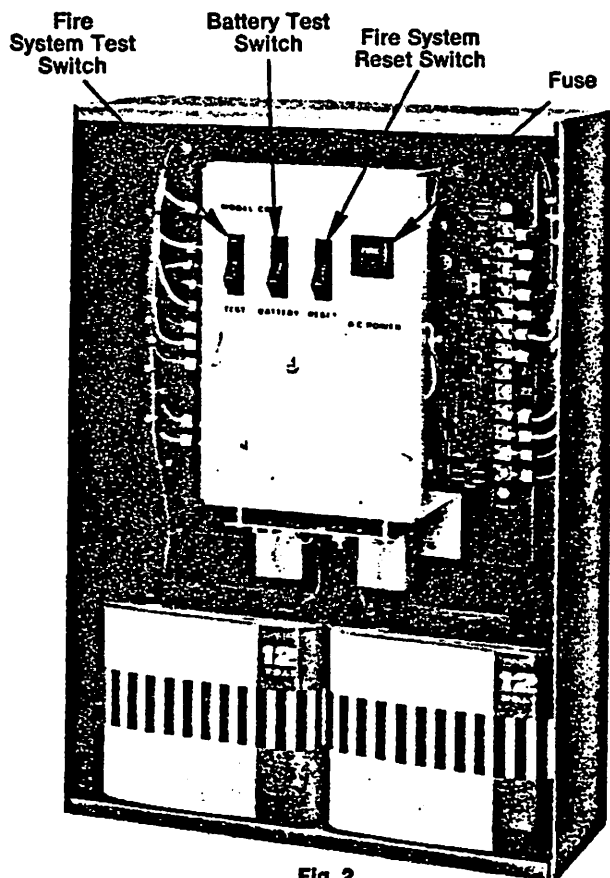


Fig. 2

2. **Panic Button** — One or more may be used depending upon the requirements of the home owner. It may be installed individually or as a part of the control station. Suggested locations would be the control station by the main door and the master bedroom.

3. **Detection Contacts** — The number and types of contacts needed will depend entirely upon the degree of protection the home owner requires. All entry doors including the basement door should be protected and this is usually done with either plunger or magnetic type contacts that activate when the door is opened. If the windows are protected, magnetic type contacts are used. If only specific windows and/or doors are protected, then additional booby trap type detectors, such as, pressure mats, photo-electric beams, etc., may be placed in areas of egress within the house, such as, internal doorways, hallways, foot of stairways, etc. Each home must be treated individually and engineered accordingly. The various types of protection circuit devices are separately listed for use in this type system.

II. CONTROL PANEL MOUNTING

The Model CRC Control Panel is designed for surface mounting. Four $\frac{3}{16}$ " dia. holes are provided in the back of the casing for mounting directly to the wall. Care should be taken to assure a secure mounting. Molly type anchors may be used but at least part of the unit should be anchored firmly with wood screws to a stud.

There are seven knockouts provided for wiring purposes. Two each are located in the top and each side and one in the rear of the casing. For detailed wiring information see Section IV. (Ref. Fig. #3)

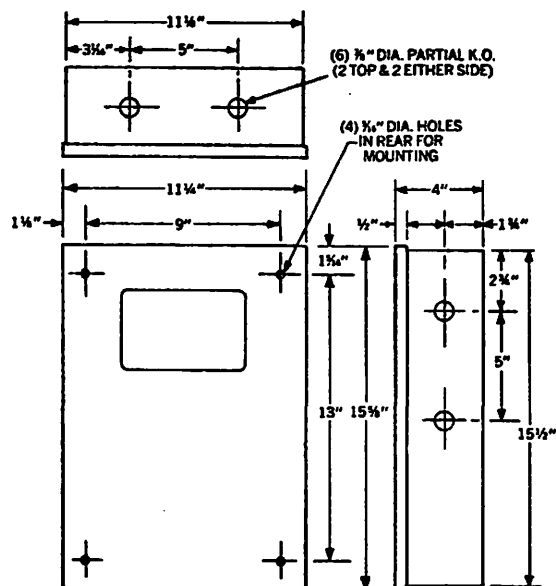


Fig. 3

III. COMPONENTS (SPACING & MOUNTING INFORMATION)

A. AUDIBLES

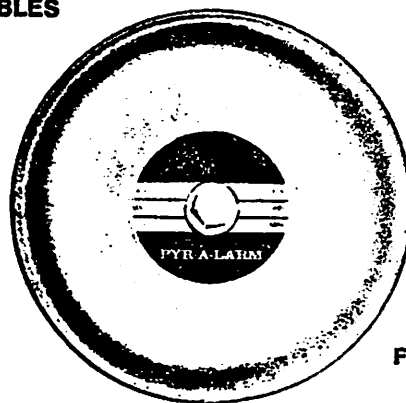


Fig. 4

1. Coverage

The choice of Audible Alarm Bells is shown in the following chart:

Application	Bell Model	Gong Size inches	Rated Current ma
Indoor	BR-624	6	60
Indoor	BR-1024	10	60
Outdoor	BR-1024 with WBK-1	10	60
Tamperproof	BR-1024T	10	60

One indoor bell should be sufficient for the average house and should be located such that it is clearly audible in all bedrooms with the doors closed. A second indoor bell may be required for a larger house or for the basement area such as a game room or work shop where noise could render the first bell inaudible.

When an outdoor bell is required, the BR-1024 bell is used with a Model WBK-1 Weatherproof Bell Kit or a BR-1024T tamperproof outside bell may be substituted.

Any combination of the above listed bells may be used as long as the maximum circuit current of 200 ma (three bells) is not exceeded.

2. Mounting

The indoor alarm bell may be mounted either directly to the wall surface or to an electrical box.

The outdoor alarm bell should be mounted as illustrated in Figure 5.

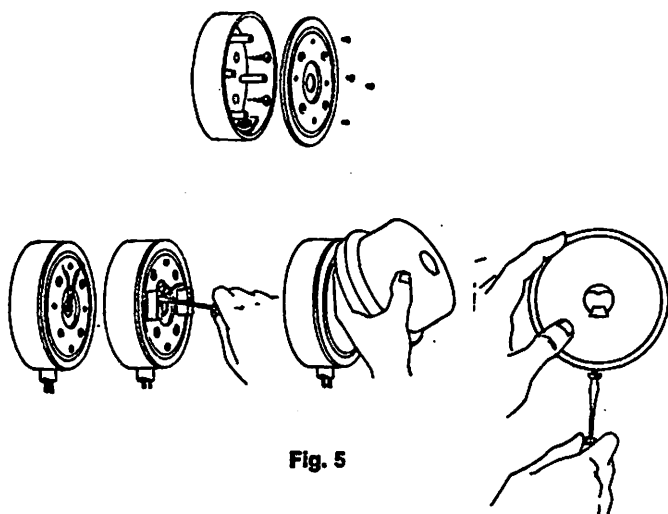


Fig. 5

WEATHERPROOF BELL KIT

The Kit consists of a special conduit box, conduit box cover with rubber seals and attaching screws. The bell mounting plate attaches to the conduit box cover making a tight, weatherproof seal. After wiring in the mounting plate terminals, the bell plugs into the mounting plate terminals and is secured with one screw.

B. FIRE

1. Model DI-7 Ionization Detector Fig. 6



a. Coverage — Normal coverage for the DI-7 detector is 900 square feet or an area 30' x 30'. This coverage is based on a smooth ceiling without any obstructions. From a practical standpoint, one detector per room should suffice.

The detector should never be placed in the direct flow of air from either a cooling or heating vent. It may be placed close to air exhaust vent where it will receive a reasonable sample of air from throughout the room.

b. Mounting — (Refer Fig. # 7) The DI-7 detector is designed for surface mounting in one of three ways:

Direct to Ceiling — Hole is drilled in ceiling to accommodate detector circuit wire. Connections are made. Base is then mounted directly to ceiling with screws.

With Electrical Box — Standard 3" electrical box is installed either in ceiling or on surface. Wire accordingly. Adapter must be used and is secured to box. Detector base is then wired to circuit and mounted to adapter with machine screws.

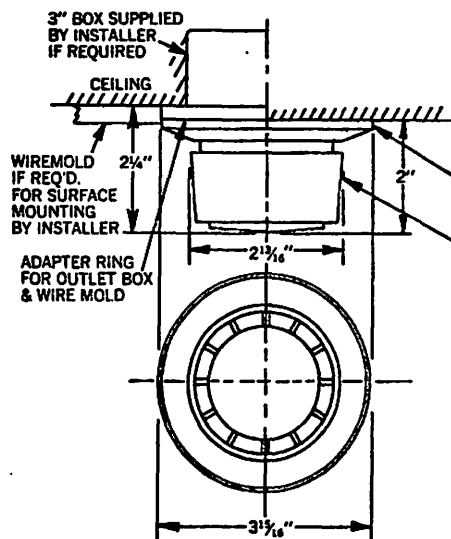


Fig. 7

With Wire Mold — a special adapter is available for mounting the detector when wire mold is used.

2. Thermal Detectors

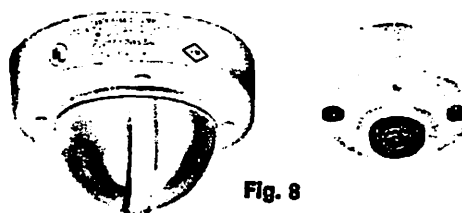


Fig. 8

a. Coverage

Model #	Type	Rating	Coverage	Location
DT-5F135	Fixed Temp.	135°F	30' x 30'	General
DT-5F175	Fixed Temp.	175°F	30' x 30'	Attic & Kitchen
DT-5F212	Fixed Temp.	212°F	30' x 30'	Attic & Kitchen
DT-1R135*	Fixed Temp. & Rate of Rise	135°F	50' x 50'	General
DT-1R180*	Fixed Temp. & Rate of Rise	180°F	50' x 50'	General

*Denotes Self-Restoring Models

Note: Coverage based on smooth ceiling without obstructions.

b. Mounting — All of the above models of thermal detectors are designed for surface mounting. They may be mounted either directly to the surface or to a 3" electrical box. (First three detectors listed require an adapter plate for electrical box mounting.) (Ref. Fig. # 9)

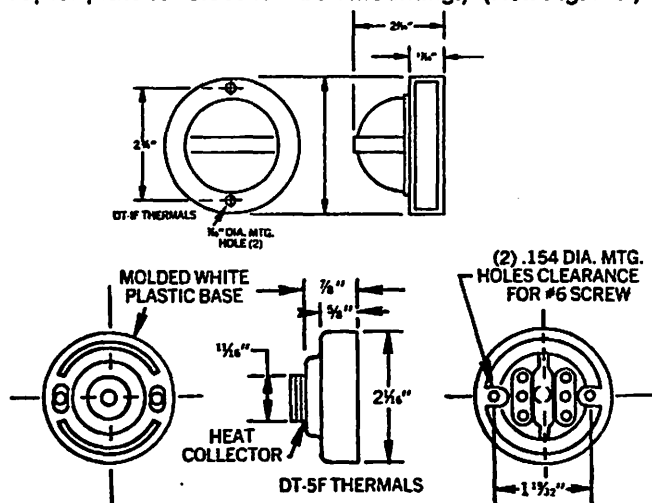


Fig. 9

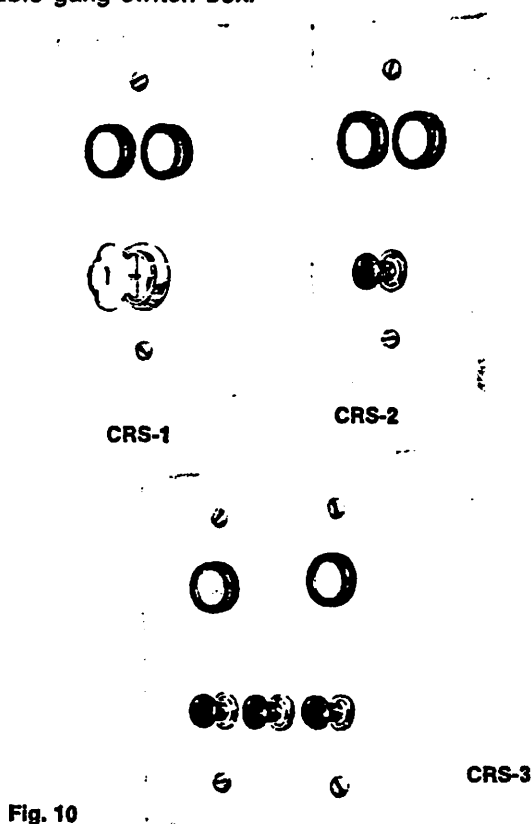
C. INTRUSION

1. **Control Stations** — Generally speaking, two control stations are sufficient for the average home. One should be adjacent to the door most commonly used when leaving or entering the house. This does not necessarily mean the front door, as some people will use the back door, or in some cases a door leading to the garage.

A second station should be placed in or near the master bedroom.

Additional control stations may be desired which would be up to the discretion of the home owner. A large rambling type house could very easily require three or four stations. Each installation should be treated as an individual case and designed accordingly. (Ref. Fig. #10)

A single gang switch box should be used for mounting the models CRS-1 and CRS-2 while the CRS-3 requires a double gang switch box.



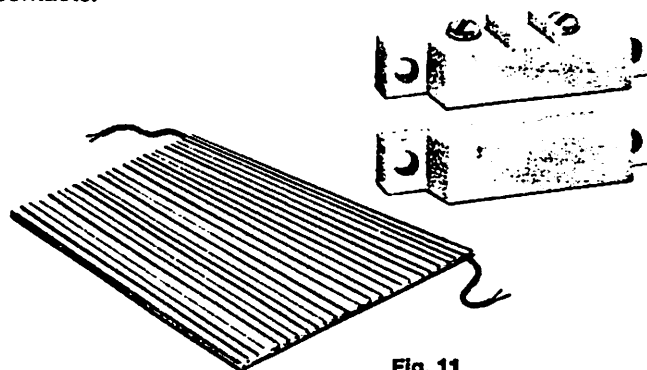
2. **Panic Button** — There is no rule-of-thumb pertaining to the number or placement of panic buttons. They might be an integral part of the control station whose placement would dictate the location or individual buttons that could be placed throughout the house at the discretion of the home owner. Two suggested locations would be at the front door which could be opened unsuspectingly to face an undesirable person or in the master bedroom for use at night when a prowler might be spotted outside of the house.

3. Contacts

a. **Window contacts** are usually the magnetic type and may be used to protect all windows or only specific ones such as a ground floor nursery or room containing valuables. Protected windows will depend upon the degree and type of protection required.

b. **Doors** — A plunger or magnetic type contact is generally used on all doors that open to the outside which could include a door leading to an attached garage where the garage is an unprotected area. In the event of an unprotected basement, then the door leading to it should be protected.

c. **Special Contacts** — a wide variety of special contacts are available, such as, pressure mats, photoelectric cells, etc. Such special types are used on a 'booby trap' basis where only specific windows and/or doors of the house are protected, then key spots within the house are booby trapped, i.e., a pressure pad under a rug at the foot of the stairs, or in the main hall, a photo cell in a passage or arch leading from one room to another. In other words, areas that demand passage from one part of the house to another that an intruder would have to use should be booby trapped with one of these special contacts.



IV. WIRING INSTALLATION FOR SYSTEM

(Ref. Fig. #12)

Note: To avoid any possibility of cross coupling between circuits, do not run household power lines in parallel with wiring of detector circuits or intrusion contact circuits. Do not connect the battery until step #7 of the checkout procedure.

a. INPUT POWER

Primary power wiring shall be subject to local codes. There are two options for primary power: (a) Option #1, 120 volt, 60 Hz, input; or Option #2, use of low voltage (24 volt, 60 Hz) limited energy transformer. See Figure #12 for terminal connections.

For Option 1, 120 volt operation, a cord connected installation is acceptable provided the installation is connected to a receptacle not subject to loss of power by a wall switch. A restraining means shall be used at the plug-in. (Ref. NFPA Standard #74, para. 2013).

For Option 2, a low voltage, limited energy transformer, No. BE-8981-LCL35 is mounted at a 120 Vac receptacle not subject to loss of power by a wall switch. The output wiring from the transformer shall be either approved "limited energy cable" or wired in accordance with Article 725, Class I of the National Electrical Code, NFPA #70.

b. AUDIBLE DEVICES

Run the audible device lines in accordance with wiring diagram, using 18 gauge wire. The wiring shall be either limited energy cable or wired in accordance with Article 725, Class I of the National Electrical Code, NFPA #70. The length one way of 2 conductor cable must not exceed 250 feet to insure satisfactory audible power.

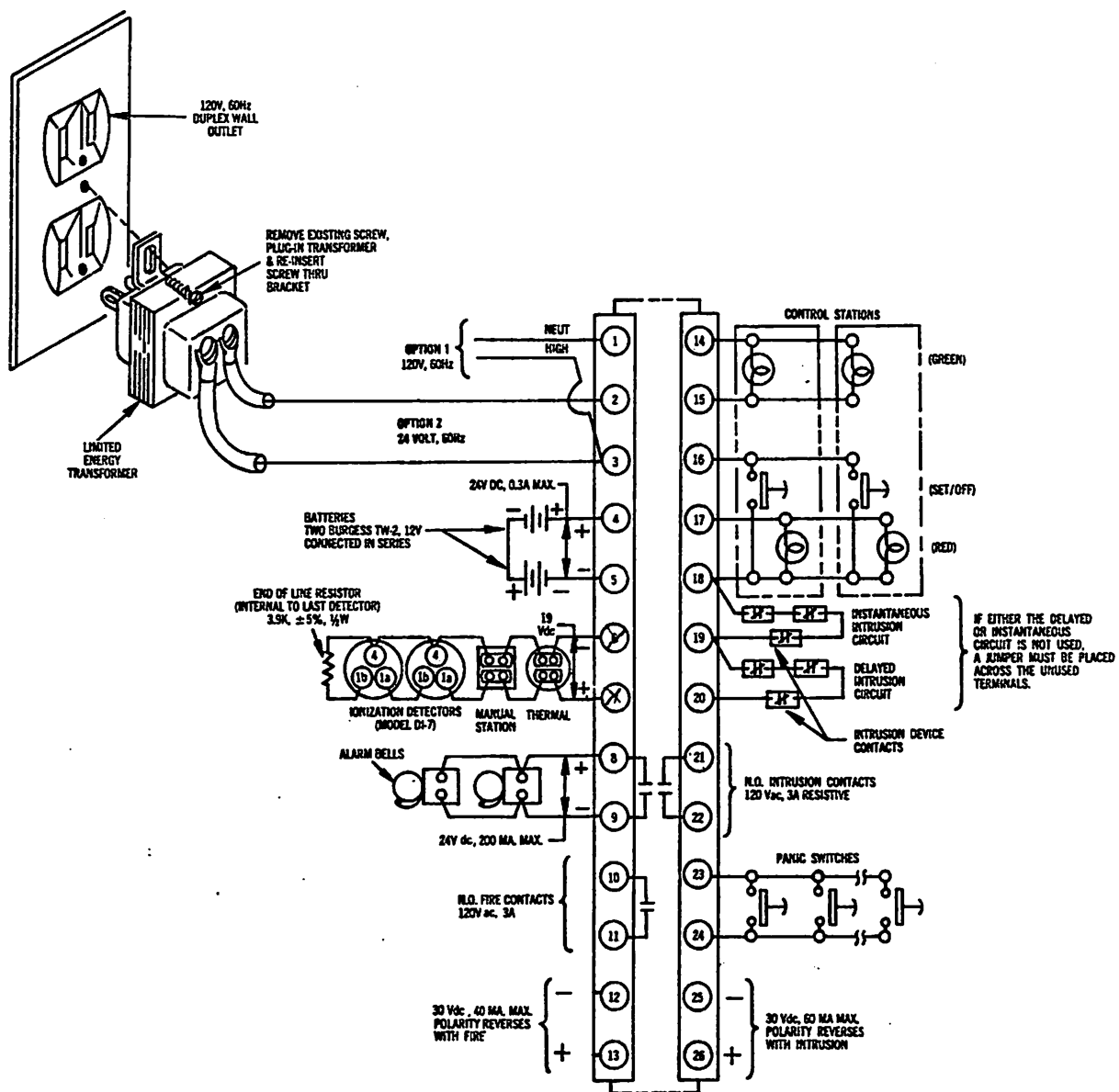


Fig. 12

The audible devices shall not require greater than a total of 200 MA. d.c. current drain from the control panel.

c. FIRE DETECTOR CIRCUIT

The wiring leading to the bases is continuously supervised by a small current flowing through it and the end-of-line resistor (3.9K) mounted in the base of the last detector. In order to keep this supervision complete, NO PARALLEL BRANCHING OF WIRES IS PERMISSIBLE. Every base except the last will have one set of incoming and one set of outgoing wires.

Run wire in accordance with the wiring diagram. All wiring must be continuous, no splices, solder connections or other type connections are permissible. The detector circuit wiring shall be either approved "Limited Energy Cable" or wired in accordance with Article 725, Class I of the National Electrical Code, NFPA #70.

d. INTRUSION CONTACT CIRCUITS AND PANIC SWITCH CIRCUIT

Wiring for intrusion contacts should be run as indicated in wiring diagram, (Figure #13), using 18 ga. wire. It shall be either approved "limited energy cable" or wired in accordance with Article 725, Class II of the National Electrical Code, NFPA #70.

e. CONTROL STATION

Run the control station wire as indicated in wiring diagram (Figure #12), using a minimum of 22 ga. wire. The wiring should be either approved "limited energy cable" or wired in accordance with Article 725, Class II of the National Electrical Code, NFPA #70.

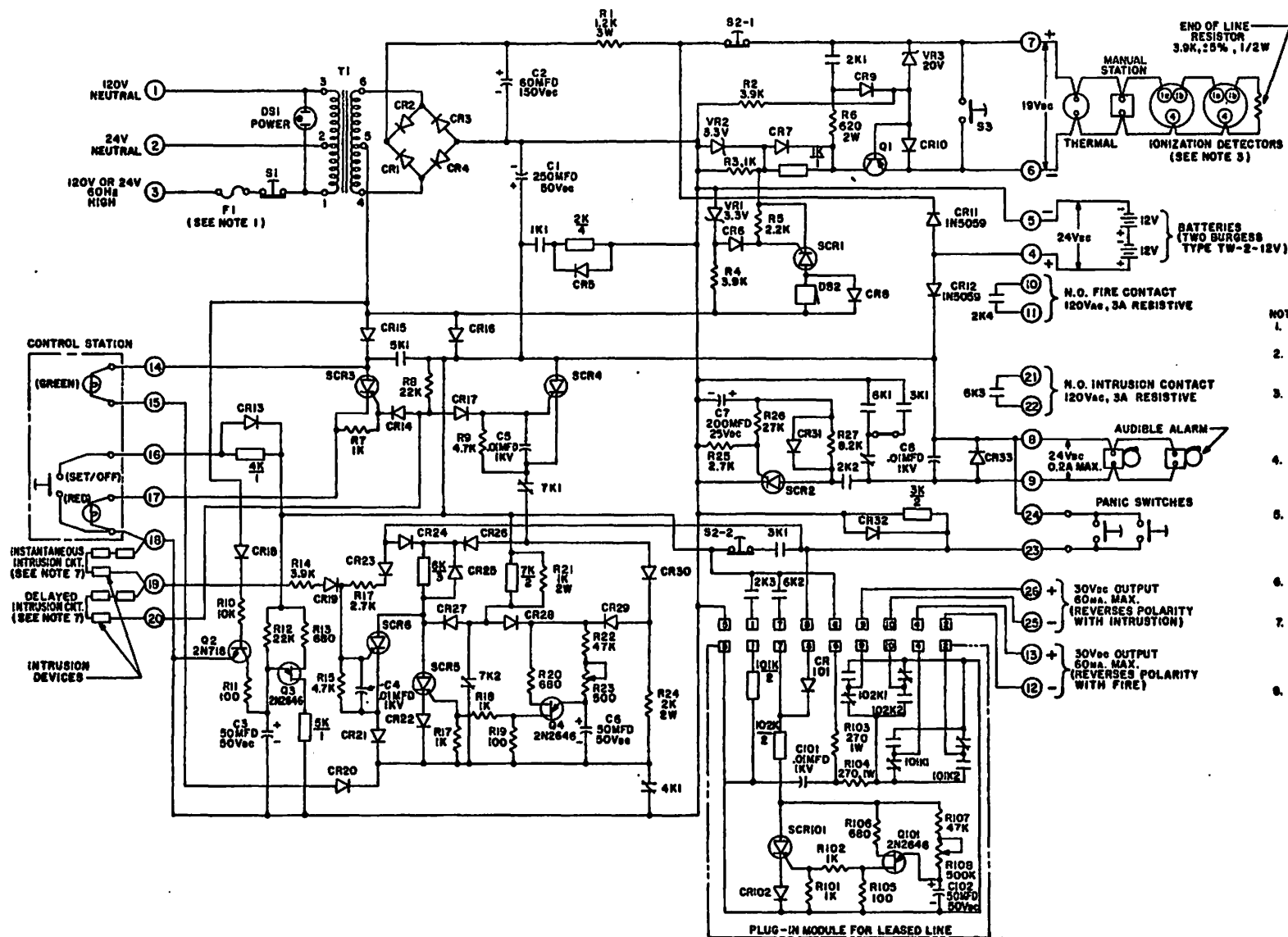
V. SYSTEM WIRING CHECKOUT PROCEDURE

Follow the System Wiring Checkout Chart below to establish correct interconnections. Note: Do not connect battery until Step 7.

SYSTEM WIRING CHECKOUT CHART

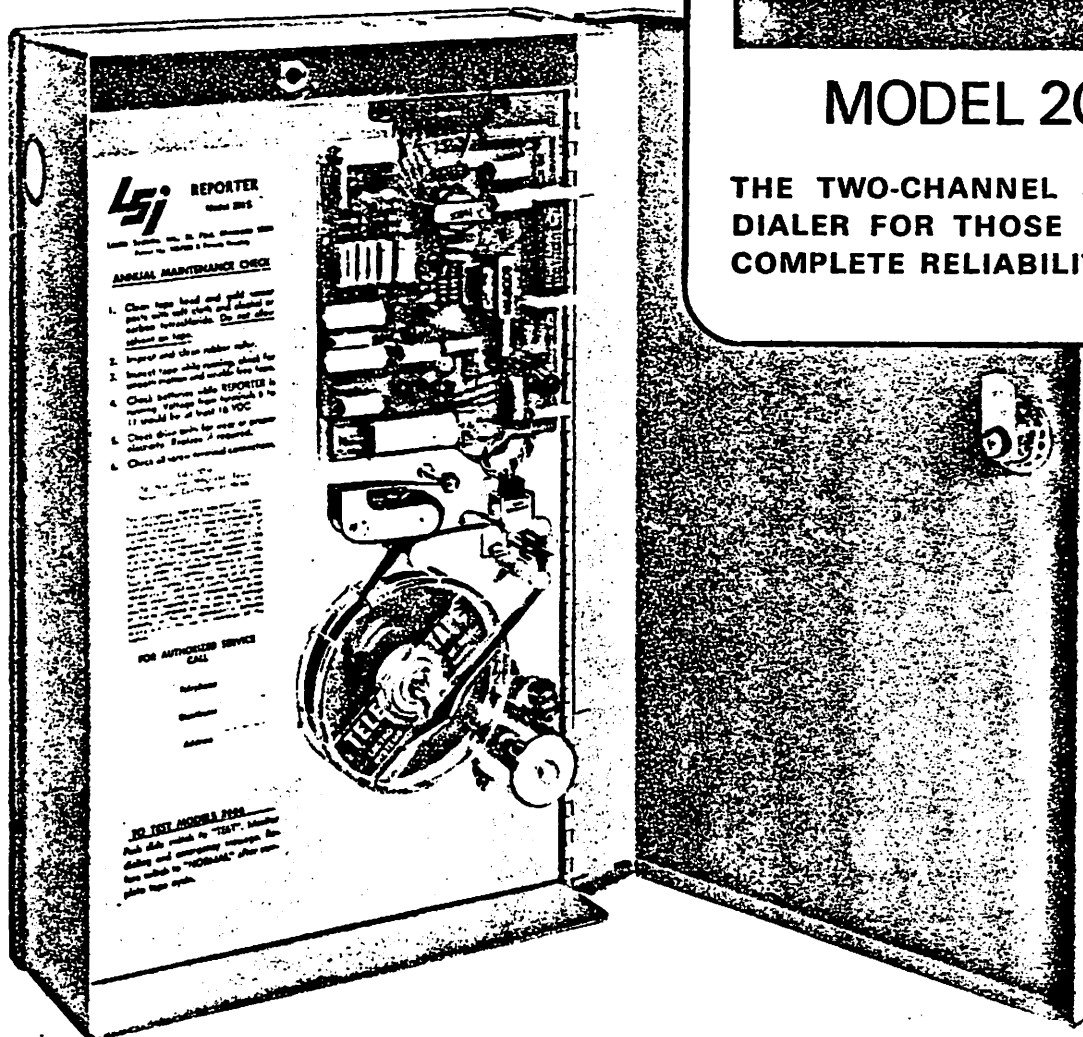
TEST	RESULT	LIKELY WIRING ERROR FOR ABNORMAL CONDITIONS
1. Apply ac power to Panel	System shall be normal. That is, no audible sound and power lamp should be "on."	(a) Power Lamp Off — Check input power wiring & fuses. (b) System Alarms — Pulsating audible; Check for shorted detector line or incorrect polarity to detectors. Continuous audible; Check for open circuit within intrusion contact wiring. (c) Trouble buzzer sounds — Check for end-of-line resistor or open detector line.
2. Remove & Replace each DI-7 Detector one at a time	Trouble buzzer will sound while a detector is removed.	(a) Buzzer does not sound — Check that the 3.9K ohm resistor is installed at end of detector line or for miswiring of base.
3. Blow smoke into each detector & reset system after each detector's firing with Reset Switch	The audible alarm sounds after smoke is sensed.	(a) No audible alarm — Check audible alarm wiring and detector circuit wiring. (b) A detector does not fire — Check wiring to the detector. (c) Power lamp goes out — Check for shorted audible alarm circuit & then replace fuse.
4. Open and close each protected window and door with Intrusion System unarmed.	Red lamp at control station should be "on" only when door or window is open.	(a) Red lamp not "on" — Check wiring of control station and intrusion circuit.
5. With red lamp "off," arm the system at the control station. (Repeat this test for each control station).	Green lamp at control station should turn "on."	(a) No green lamp — Check lamp and arming switch circuit.
6. With red lamp "on" (door open) arm the system at the control station. (Repeat test at each control station.)	Green lamp goes "on" and system alarms after approximately 15 seconds delay.	(a) If an immediate alarm is received — the door has been incorrectly wired into the instantaneous intrusion circuit.
7. Connect Battery (per diagram) Momentarily depress "Test" switch, then hold down battery switch.	System alarm bells should operate on battery power — Note: ac power lamp is "off."	(a) Bells do not ring on battery — Check polarity of battery connections.
8. Push Panic Button	System Alarm Bells should ring instantaneously and continuously.	(a) Bells do not ring — Check wiring and connections of Panic Button Circuit.

Note: If control station lamp is flashing, it indicates that ac power input has been lost.



- NOTES:
1. FUSE RATING: 1 AMP FOR 120VAC INPUT
3 AMP FOR 24VAC INPUT
 2. UNLESS OTHERWISE SPECIFIED ALL RESISTOR VALUES IN OHMS, 2 5%, 1/2 WATT.
 3. A MAXIMUM OF 10 MODEL DI-7 IONIZATION DETECTORS MAY BE CONNECTED AS SHOWN WITH END OF LINE RESISTOR CONNECTED AT LAST DETECTOR.
 4. SWITCH DESIGNATION:
S1 BATTERY
S2 RESET
S3 TEST
 5. RELAY NOTATION:
2K, RELAY DESIGNATION;
2, NUMBER OF POLES
2K1- FIRST POLE OF RELAY 2K
2K2-SECOND POLE OF RELAY 2K
 6. CIRCUIT SHOWN IN NORMAL CONDITION WITH INTRUSION CIRCUIT SET (RELAY 7K IS ENERGIZED).
 7. IF EITHER THE DELAYED OR INSTANTANEOUS INTRUSION CIRCUIT IS NOT USED, A JUMPER MUST BE PLACED ACROSS THE UNUSED CIRCUIT TERMINALS.
 8. REFERENCES:
ASSEMBLY----- 600-115600 D
ASSEMBLY----- 600 115600 D

Fig. 13



LSI REPORTER

MODEL 200S

THE TWO-CHANNEL SLAVE-TYPE
DIALER FOR THOSE WHO WANT
COMPLETE RELIABILITY



THE ORIGINAL NAME IN TELEPHONE DIALERS

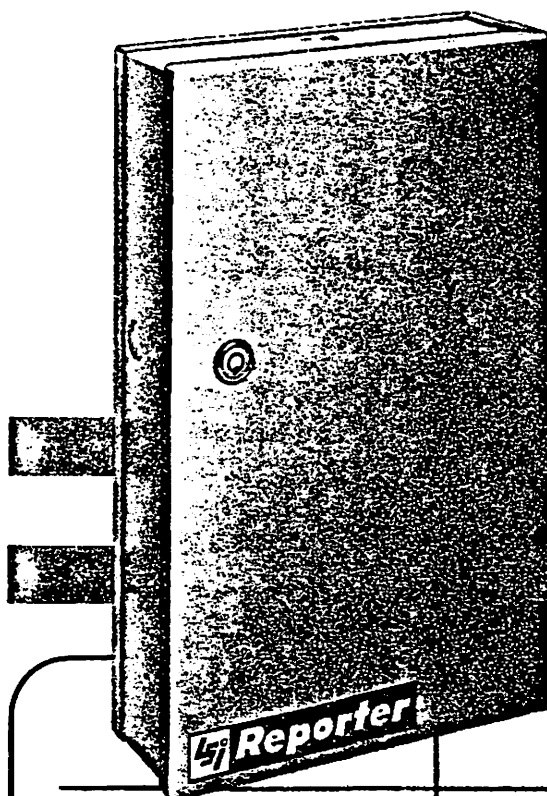
LECTRO SYSTEMS, INC.

The REPORTER Model 200-S is the product of ten years of field experience and know-how from the company which developed the first emergency dialer. That's why it has become a standard for quality and reliability.

The Model 200-S accepts momentary or continuous contact closures on both channels. It can monitor virtually any condition — fire or heat, break-in or hold-up, water pressure, humidity or failure of boilers, freezers and other equipment. It is designed for self-contained operation as a silent alarm but can be installed as a slave to a local alarm control panel. This makes the Model 200-S perfect for upgrading existing systems.

The Model 200-S carries as many as 5 one-minute messages on each channel. Shut-down is automatic to eliminate the possibility of motor burn-out or the need to reset. It will not interfere with or tie up telephone circuits.

REPORTER 200-S has a job-proven tape transport system that won't spill, jam or break tape, NiCad battery standby which provides 18 VDC, priority channel switching, automatic AC-to-DC crossover, bell contacts, heavy duty construction — in fact, all the features you look for when you need absolute confidence in a telephone dialer.



SPECIFICATIONS

MODEL 200-S TWO CHANNEL TELEPHONE DIALER

FEATURES . . .

- priority channel switching
- dual channel reporting
- local bell contacts
- NiCad standby power
- tested tape transport
- locking cabinet
- automatic reset
- five-minute cycle
- totally accurate dialing
- self-aligning tape path

INPUT

N.O. (momentary or continuous closure) channel 1 and 2; max. resistance 500 ohms.

OUTPUT

Bell — unpowered contacts @ 1 amp.
Telephone — two channel, direct line connection or 18 VDC for dial pulse coupler (either KS20008 L1 or KS20445).

POWER SUPPLY

Primary, 117 VAC 60 Hz supplying 500 m.a.
Standby, constant-charge nickle-cadmium batteries @ 18 VDC; power consumption in quiescent mode, none; in alarm mode w/o coupler, 300 m.a.

TAPE DECK

Self stripping, nonflattening capstan and roller assembly and self-aligning tape path prevent jamming, spilling and breakage; polyester base computer grade tape is carried in a free-loop type magazine; tape cycle is 5 minutes with automatic shut-down and reset.

DIMENSIONS

15.75" X 9.25" X 3.25"; shipping wt. 18 lb.
16 gauge steel cabinet with locking door and full hinge.

OPTIONS

Coupler cord and connector, Model LS-10 TeleSensor, telephone line seizure, also available with handle as a demonstrator.



There is a complete family of REPORTER dialers — single and dual channel, with and without alarm controls. For more complete information on the dependable REPORTER line write or call:

LECTRO SYSTEMS, INC.

1245 PIERCE BUTLER ROUTE • ST. PAUL, MINN. 55104

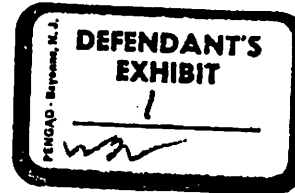
James R. Newell Company

P. O. Box 2972, Richmond, Virginia, 23235 (703) 272-6653

232-0175

November 6, 1972

NORTHSIDE ELECTRIC COMPANY
713 West Broad Street
Richmond, Virginia



Subject: Berrington Street
Medical Center
Fire Alarm & Intrusion System

Gentlemen:

This is to confirm our quotation to furnish and supervise the installation of the subject systems. We propose to furnish the following equipment:

1-CRC, Pyrotronic's, Inc. Panel
12-DI-7 Smoke Detectors
6-DT Thermal Detectors
4-Ademco Model 39 Magnetic Switches
2-Remote Control Stations
1-Alarm Bell
1-Lectro Systems Automatic Dialer
1M feet Cable

All for the sum of ONE THOUSAND ONE HUNDRED SEVENTYFIVE DOLLARS (\$1,175.00)

Under this proposal we agree to wire all control equipment.

Equipment is available from Richmond stock.

The terms of this proposal are net thirty days.

Thank you for your interest in Pyrotronic's, Inc. equipment and for this opportunity to be of service.

Very truly yours,

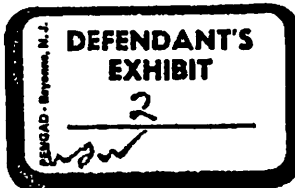
JAMES R. NEWELL COMPANY

James R. Newell
James R. Newell

This proposal is accepted:

By: _____ Date 11-7-72

Your Order # 6376



FIRES INVESTIGATED

Cencus Tract 408.

LOCATION: 102 Berrington Street

DATE OF FIRE: December 19, 1975. TIME: 0107 Hrs.

DATE OF REPORT: January 6, 1976.

REASON FOR INVESTIGATION: Multi - Alarm. To determine the fire cause.

OCCUPANT: Virginia Heart Institute Inc.

INJURED: None

PERSONS INTERVIEWED: Chief J.S. Riggsbee, Gordon Small 3538 Floyd Ave. and
John Tighe of Century Construction Co.

PICTURES TAKEN: YES NO x POLICE REPORT: YES NO

SUBJECT	SEX	RACE	DOB
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ARRESTS	SEX	RACE	DOB
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DISPOSITION _____

REMARKS: This fire is believed to have started in the film viewing room at the
celing level. Possibly due to a short or, some malfunction in the electrical
wireing. The fire seemd to have burned through the celing at this point and spread
to the second floor which was under construction. It also spread in a horizontal
direction over the entire first floor.

CAUSE OF FIRE: (Explain, use reverse side if necessary)_____

Circle Correct Cause

Cause of fire was (1) Accidental (2) Incompetent (3) Undetermined

445

M. E. Williams

HOUR		SAT. CHAIR		CEILING		WIND		TEMPERATURE		WIND		TEMPERATURE		WIND		TEMPERATURE		WIND		TEMPERATURE		WIND																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																												
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NOTES

CEILING COLUMN-
LINE INDICATES AN UNLIT CEILING

WEATHER COLUMN-

4	TEARWOO
7	THUNDERSTORM
8	SQUALL
9	RAIN
20	RAIN SHOWERS
21	FREZZING RAIN
22	DRIZZLE
23	FREZZING DRIZZLE
24	SNOW
25	SNOW PELLETS
26	ICE CRYSTALS
27	SNOW SHOWERS
28	SNOW GRAINS
29	ICE PELLETS
30	HAIR
31	FOG
32	ICE FOG
33	GROUND FOG
34	BLOWING DUST
35	BLOWING SAND
36	BLOWING SNOW
37	BLOWING SPRAY
38	SMOKE
39	HAZE
40	DUST

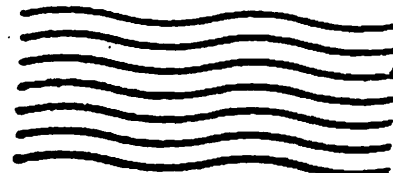
MINO COLUMNS-

DIRECTIONS ARE THOSE FROM WHICH THE WIND BLOWS. INDICATED IN TENS OF DEGREES FROM TRUE NORTH: 1.E., 09 FOR EAST. 18 FOR SOUTH. 27 FOR WEST. ENTRY OF 00 IN THE DIRECTION COLUMN INDICATES CALM.

SPEED IS EXPRESSED IN KNOTS.
MULTIPLY BY 1.15 TO CONVERT
TO MILES PER HOUR.

**DEFENDANT'S
EXHIBIT**

TINGAO • LYONS, N.J.



FIRST CLASS

U.S. DEPARTMENT OF COMMERCE
NATIONAL CLIMATIC CENTER
FEDERAL BUILDING
ASHEVILLE, N.C. 28801

AN EQUAL OPPORTUNITY EMPLOYER

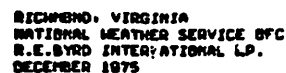
POSTAGE AND FEES PAID
U.S. DEPARTMENT OF COMMERCE

210

Edward A. Marks Jr.
PO Box 1998
Richmond Va 23216

446





LATITUDE 37° 30' N LONGITUDE 77° 20' W ELEVATION (GROUND) 164 FT. STANDARD TIME USED: EASTERN LEAN 015740

HOURLY PRECIPITATION (WATER EQUIVALENT IN INCHES)430