Return to
FILE COPY
Clerk, Supreme Court of Appeals
Richmond, Va.

201 VA 522

Record No. 5020

In the Supreme Court of Appeals of Virginia at Richmond

MATA L. MOORE

v.

RODERIC W. LEWIS

FROM THE CIRCUIT COURT OF THE CITY OF NORFOLK

RULE 5:12—BRIEFS.

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

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

HOWARD G. TURNER, Clerk.

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

IN THE

Supreme Court of Appeals of Virginia

AT RICHMOND.

Record No. 5020

VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Wednesday the 29th day of April, 1959.

MATA L. MOORE, Plaintiff in Error,

against

RODERIC W. LEWIS, Defendant in Error.

From the Circuit Court of the City of Norfolk

Upon the petition of Mata L. Moore a writ of error is awarded her to a judgment rendered by the Circuit Court of the City of Norfolk on the 28th day of November, 1958, in a certain motion for judgment then therein depending wherein the said petitioner was plaintiff and Roderic W. Lewis and another were defendants; upon the petitioner, or some one for her, entering into bond with sufficient security before the clerk of the said circuit court in the penalty of three hundred dollars, with condition as the law directs.

RECORD

* * * * *

NOTICE OF APPEAL AND ASSIGNMENTS OF ERROR.

Pursuant to the rules of the Supreme Court of Appeals of Virginia, Rule 5, Section 4, the plaintiff hereby gives notice of her intention to apply to the Supreme Court of Appeals of Virginia for a Writ of Error to the judgment of said Court for the defendant, Roderic W. Lewis, in the above styled cause; and she hereby designates as the assignments of error in this case, the following, to-wit:

1. The Court erred in sustaining defendant's objection to plaintiff's testimony concerning the speed of defendant's automobile at the time of the collision.
2. The Court erred in striking out and in instructing the jury to disregard plaintiff's testimony concerning the speed of the defendant's automobile at the time of the collision.
3. The Court erred in refusing to grant instruction P.4. for the plaintiff.
4. The Court erred in refusing to grant instruction P.5a. for the plaintiff.
5. The Court erred in refusing to grant instruction P.8. as originally tendered for the plaintiff.
6. The Court erred in refusing to grant plaintiff's motion to set aside the verdict of the jury as being contrary to the law and the evidence.
7. The Court erred in entering judgment for the defendant, Roderic W. Lewis.

MATA L. MOORE,
By H. LEE KANTER
Of Counsel.

I certify that on Jan. 16, 1959 I mailed a true copy of the foregoing pleading to each counsel of record for the defendant.

H. LEE KANTER.

Filed Jan. 19, 1959.

T. A. W. GRAY, D. C.

* * * * *

page 9 } INSTRUCTION P.4.

The Court instructs the jury that if you believe from a preponderance of all of the evidence in this case that the defendant, Roderic W. Lewis, was driving his vehicle in excess of the speed limit on Tidewater Drive at the time and place of the collision, and that such excessive speed either caused or contributed to the collision, you should find your verdict for the plaintiff.

Refused.

C. H. J.

page 10 } INSTRUCTION P.5a.

The Court instructs the jury that if you believe from a preponderance of all of the evidence in this case that the defendant, Roderic W. Lewis, could have, in the exercise of reasonable care, avoided striking the vehicle of the late Mr. Moore by going around it, and negligently failed to do so, and that such failure either caused or contributed to the collision, then you should find your verdict for the plaintiff.

Refused.

C. H. J.

* * * * *

page 13 } INSTRUCTION P.8.

The Court instructs the jury that if you find your verdict for the plaintiff, then it shall be your duty to assess damages, and in doing so, you may take into consideration the following:

1. Doctor's bills incurred by the plaintiff for medical attention as a result of said injury, if any;
2. Bills incurred by the plaintiff for physiotherapy treatments, X-rays, medicines and drugs, orthopaedic appliance, and broken eye-glasses as a result of said injury, if any;
5. Physical pain and mental suffering endured by the plaintiff, if any, from the date of the accident to this date as a result of said injury, if any;
6. Physical pain and mental suffering which the plaintiff may reasonably be expected to endure in the future as a result of said injury, if any; and

7. Any effect of the injury upon her health according to the degree and probable duration of said injury, if any; and from these as proved by the evidence, assess such damages as will fairly and justly compensate the plaintiff for any injuries suffered, not to exceed the sum sued for in the motion for judgment.

Granted.

C. H. J.

* * * * *

page 20 } Virginia:

In the Circuit Court of the City of Norfolk, on the 28th day of November, in the year 1958.

This day came the parties, by counsel, and thereupon came a jury, to-wit: J. S. Silbis, Thomas J. Ashley, James F. Smith, Jr., Robert Riddick, John McPhaul, James C. Anderson and Frank Gilbert, who were sworn to well and truly try the issue joined, and having fully heard the evidence, upon the motion of said defendant Carl L. Lewis, by counsel, it is ordered that said plaintiff's evidence be stricken out and summary judgment entered for this said defendant. Whereupon it is considered by the Court that said plaintiff take nothing by her suit herein as to this said defendant and that said defendant go hence without day and recover against said plaintiff his costs about his defense in this behalf expended. And now having fully heard the argument of counsel the jury returned its verdict in the following words, to-wit: "We the Jury find in favor of the defendant." And thereupon said plaintiff, by counsel, moved the Court to set aside the verdict of the jury and grant her a new trial on the grounds that the same is contrary to the law and the evidence, which motion having been fully heard and maturely considered by the Court is overruled. Whereupon it is considered by the Court that said plaintiff take nothing by her suit herein as to said defendant, Roderic W. Lewis, and that said defendant go hence without day and recover against said plaintiff his costs about his defense in this behalf expended, to which actions of the Court said plaintiff duly excepted.

* * * * *

To: Messrs. Rixey & Rixey, Attorneys for the defendants:

PLEASE TAKE NOTICE, That on the 16th day of January, 1959, the undersigned will present to the Honorable Clyde H. Jacob, Judge of the Circuit Court of the City of Norfolk, Virginia, at the courthouse of said city, the stenographic report of the testimony and other proceedings of the trial of the above-entitled case for certification by said Judge, and will, on the same date, make application to the Clerk of said court for a transcript of the record in said case, for the purpose of presenting the same to the Supreme Court of Appeals of Virginia with a petition for a writ of error and *supersedeas* to the final judgment of the trial court in said case.

MATA L. MOORE
By H. LEE KANTER
Attorney.

Legal service of the above notice is hereby accepted, this 14 day of January, 1959.

E. PRYOR WORMINGTON
Attorney for the defendants.

page 2 }

* * * * *

TRANSCRIPT OF TESTIMONY.

Stenographic transcript of the testimony introduced and proceedings had upon the trial of the above-entitled case, in said court, on the 28th day of November, 1958, before the Honorable Clyde H. Jacob, Judge of said court, and a jury.

Appearances: Messrs. Kanter & Kanter (by Mr. H. Lee Kanter), Attorneys for the plaintiff.
Messrs. Rixey & Rixey (by Mr. E. Pryor Wormington), Attorneys for the defendants.

* * * * *

page 3 } (The reporter was sworn; a jury was examined on *voir dire*, impaneled and sworn; the witnesses were sworn and excluded on motion by Mr. Kanter; opening statements were made by counsel, and the following evidence was introduced:)

Roderic W. Lewis.

Mr. Kanter: I call the defendant driver, Roderic Lewis, as an adverse witness.

RODERIC W. LEWIS,
a defendant, called by the plaintiff as an adverse witness, and having been first duly sworn, testified as follows:

Examined by Mr. Kanter:

Q. Mr. Lewis, will you state your full name, please, sir?

A. Roderic W. Lewis.

Q. I am going to ask you to speak loudly enough so that His Honor and the gentlemen of the jury and all of us can hear you.

A. Roderic Winfred Lewis.

Q. And your age?

A. I am 25; will be 26 in December.

Q. And your address?

A. 3100 Hornsea Road.

Q. Where is that?

A. That is Norfolk County.

page 4 } Q. And your occupation?

A. I work for Colonial Stores.

Q. Beg pardon?

A. I work for Colonial Stores.

Q. And how long have you lived around here?

A. Approximately 14 years.

Q. Now, Mr. Lewis, you were driving the automobile involved in this collision on August 17, 1957, were you not, sir?

A. Right; that is right.

Q. And whose automobile was it?

A. The car was my dad's, was in my dad's name at the time.

Q. In your dad's name at the time?

A. At the time.

Q. Well, has it since been transferred to your name?

A. In January—no, in February—January it was transferred to my name.

Q. January of this past year?

A. No, January of '56—'57; '57 it was transferred.

Q. At the time this accident happened, the automobile belonged to you or did it belong to your father, Mr. Lewis?

A. I didn't—

Roderic W. Lewis.

Q. I say, did the automobile really belong to you or did it belong to your father?

page 5 } A. Well, he had paid the down payment on the car and I was driving the car most of the time and was going to have it transferred to my name later.

Q. And you were making the monthly payments on the automobile?

A. I was making payments; exactly.

Q. All right. Now, at the time of this accident, Mr. Lewis, where were you coming from?

A. I was coming from home where I live, the residence number that I just gave you.

Q. Where were you going to?

A. I was going to pick my wife up at Wards Corner.

Q. At Wards Corner?

A. At Wards Corner.

Q. About what time was this?

A. It was approximately 6:30, as I remember. It was approximately 6:30.

Q. And did you work on that day?

A. I had worked the night before.

Q. Were you driving on the business of your father at that time, Mr. Lewis?

A. I didn't understand what you—

Q. I say, were you doing anything for your father at the time?

A. No.

page 6 } Q. At the time that you were driving that automobile?

A. Not at all.

Q. Did you have the habit of keeping the automobile at your own house and using it just like it was your own?

A. Right. Where I had moved to I kept it most all the time.

Q. Does your father live with you?

A. No, he didn't.

Q. Did he live with you at that time?

A. Not at that time, no.

Q. And it was your habit, as I understand it, to keep the automobile just as if it were your own and use it as your own and it was in your father's name and later transferred to you?

A. That is right.

Roderic W. Lewis.

Q. And on this evening you were not running any errand for your father, Mr. Carl Lewis?

A. I hadn't even seen him all day. In fact, I hadn't seen him a few days before.

Q. And you were going from your home out to Wards Corner to pick up your wife?

A. That is right.

Q. Where were you all going? Where were you going from there?

A. I would be going back home, of course. I was page 7 } going back home after that.

Q. Well, did your wife work out at Wards Corner?

A. She was working then.

Q. Where was she working?

A. For Colonial Stores.

Q. And what time did she get off?

A. She got off at 7:00 that day; at 7:00.

Q. You were going to pick her up and bring her back home?

A. That is right.

Q. Was anybody in the car with you?

A. No. There was no one at all in the car.

Q. There was no passenger in the automobile with you at the time of the accident?

A. Not with me, no.

Q. Wasn't there a passenger sitting next to you in the automobile at the time of the accident?

A. There certainly was not.

Q. Mr. Lewis, you are certain that you were driving in that automobile alone at the time of this accident?

A. That is right.

Q. Nobody on the front seat on the right-hand side next to you?

A. Nobody with me.

Q. Following this accident, you got into the police page 8 } car with Officer Vaughan, the investigating officer, and Mr. *Lewis* who has since died, to discuss this accident, did you not?

A. That is right.

Q. And at that time did anybody get into your automobile?

A. I don't recall anybody getting in there at all.

Roderic W. Lewis.

Q. And you are certain that there was no passenger with you at the time you drove this automobile?

A. That is right. I was by myself.

Q. Now, Mr. Lewis, how many lanes did Tidewater Drive have?

A. Tidewater Drive has four lanes, two on each side of the center line.

Q. What?

A. Two on each side of the center line.

Q. A double white line divides the northbound from the southbound traffic?

A. That is right.

Q. In which direction were you heading on Tidewater Drive?

A. I was heading north.

Q. Towards Ocean View, Wards Corner?

A. Towards Wards Corner.

Q. What direction was Mr. Moore coming from?

page 9 } A. He was coming from east. He was heading west.

Q. Heading west? So that he—

A. Approximately west.

Q. So he was approaching you from your right-hand side?

A. That is right.

Q. What lane of travel, what lane of Tidewater Drive were you driving in at the time?

A. I was in the lefthand lane, towards the center line, towards the double line.

Q. In the inside lane?

A. Yes.

Q. Had you shifted lanes at all on Tidewater Drive say for a half mile preceding the time that this collision happened?

A. I imagine I did. I can't recall whether I did or not but I imagine sometime back I had but not at—not prior to the accident.

Q. In other words, at least for five or six hundred feet before this accident happened you continued in that same inside lane near the double white lines?

A. For how long?

Q. Say five or six hundred feet before the accident happened, a half block or a block?

A. I would say at least that far.

Roderic W. Lewis.

Q. You remember that bridge that is out there
page 10 } before you get to Shoop Avenue?
A. I do.

Q. At the time you came across that bridge, were you traveling in the inside lane, near the center line?

A. I don't recall what lane I was in at that time—

Q. Well—

A. —because that is quite a distance back from Shoop Avenue.

Q. It is about six or seven hundred feet back, isn't it?

A. That is right.

Q. Well, do you remember the little curve in the road in Tidewater Drive that is just the other side of the bridge, going towards Shoop Avenue?

A. On the other side of the bridge?

Q. Yes.

A. Where there is a stoplight now?

Q. No. As you come across the bridge going north towards Wards Corner, there is a curve in the road, a slight curve between the bridge and Shoop Avenue where this accident happened, is there not?

A. Between the bridge and Shoop Avenue?

Q. Yes.

A. There is a slight curve, yes.

Q. All right. Now, at the time that you came
page 11 } around that slight curve, what lane of Tidewater
Drive were you in then?

A. As I recall, I was in the left-hand lane at that time.

Q. How close to the center line of Tidewater Drive were your left wheels on your vehicle, Mr. Lewis?

A. How close to the double line?

Q. Yes.

A. Well, I—I wouldn't know exactly in inches how far it was.

Q. Well, was it a matter of inches or were you several feet away?

A. I was well off the line, I know that. That is all I can tell you. I can't tell you exactly how many inches or foot and a half or what.

Q. When was it that you first saw Mr. Moore's car?

A. His car was starting to come out of Shoop when I first saw it. That is when I applied the brakes.

Q. When you first saw his automobile, it was already out of Shoop Avenue?

Roderic W. Lewis.

A. It was starting to come out. He was on his way out.

Q. Beg pardon?

A It was on its way out; the front part of it was on its way out.

Q. I would like for you to step down to this page 12 } diagram if you will, show us just where Mr. Moore's automobile was when you first saw him.

A. All right.

Q. And let's take this street (indicating) as being Shoop and this (indicating) being Tidewater Drive; no, this is Tidewater Drive?

A. Right. I was going to put mine over here where I would be and say there is imaginary line right in here, because I don't believe it is any actual line; it is concrete there. And he was pulling out—well, we will say this is the center line, it is a double line right here; he was entering the first lane when I had seen him.

Q. Let me see if I understand it. His front wheels had crossed this line of intersection between Shoop and Tidewater Drive and were entering the first lane? That would be the lane that you were not traveling in?

A. That is the lane that I was not traveling in.

Q. In other words, the far right-hand lane on Tidewater Drive?

A. Yes.

Q. All right. How far away from the point of impact were you when you saw him first start out of Shoop Avenue there?

A. Well, let's see. I would say I was approximately at this point here, because it was approximately three car page 13 } lengths.

Q. In other words—

A. I was in this lane on this side.

Q. You say that you were three car lengths from the intersection of Shoop and Tidewater Drive when you first saw Mr. Moore's car pulling out of Shoop Avenue into Tidewater Drive?

A. That is right.

Q. Now, where did the impact take place, Mr. Lewis?

A. Well, as his car came out, he came out in a curving motion, naturally, because he was making a turn. And his car, just like you say, his front wheels was approximately on the center line at the time. He was just—just to the center line; that is where the accident—that is as it took place. And when I saw—when I saw him back here, naturally, the

immediate thing I did was to press my brakes and try to stop because I saw he was coming out in front of me. All right. As he pulled out, he pulled out in a curving motion; and my car skidded and hit—hit his approximately right in the door.

Q. Right in the door?

A. In the door. And I think that his car kind of skidded around from the impact of the accident. And as you said, there was—there was some damage done to his and quite a bit done to mine. In fact, I think more was done to mine, but you have to take into consideration that new cars

page 14 } aren't constructed as old ones were.

Q. All right. Now, Mr. Lewis, what speed were you traveling, going on Tidewater?

A. I was going from 25 to 30.

Q. 25 to 30 miles an hour?

A. Exactly.

Q. You were not going any faster than that yourself?

A. I wasn't going any faster than 30.

Q. Do you deny you were going between 40 and 50 miles an hour?

A. I do.

Q. And you say that you were approximately three car-lengths from that intersection when you saw him just coming out from Shoop Street?

A. Approximately that distance.

Q. And the impact occurred as his front wheels were just across the double white line making a left-hand turn into Tidewater Drive?

A. That is just about where he was sitting, just about.

Q. Did you turn your automobile in any direction in an effort to try to avoid striking him?

A. No, I didn't.

Q. You could not have gone around the right side of him?

A. I could not because the traffic was heavy on

page 15 } either side of me; going south and north there was right much traffic.

Q. Do you remember—

Mr. Wormington: Let him answer the question. Go on. Have you finished? Go ahead, repeat that, sir.

A. I said there was traffic on both sides, fairly heavy on the right and left.

Roderic W. Lewis.

By Mr. Kanter:

Q. You say there was traffic on the right-hand side of you, in the right-hand lane?

A. Well, not directly on the right but I didn't know exactly where the traffic was because when you see someone in front of you, you don't immediately curve to miss him and run into somebody else.

Q. As a matter of fact, wasn't the right-hand lane of Tidewater Drive completely clear, Mr. Lewis, at the time this accident took place and as you were approaching it after you crossed the bridge on Tidewater Drive?

A. Wasn't it clear?

Q. Yes, sir.

A. It had some traffic in it.

Q. Were there any automobiles between you as you crossed the bridge and came around that curve on Tidewater Drive and Shoop Avenue?

A. Were there any cars ahead of me?

Q. Ahead of you, either in your lane or in the
page 16 } right-hand lane.

A. There were some ahead but they weren't directly ahead of me. They were some distance up ahead of me.

Q. They had already gone by Shoop Avenue, had they not?

A. At the point when I got near Shoop Avenue they had passed Shoop Avenue; exactly.

Q. At the time you came around that curve some 300 feet from Shoop Avenue, had not those automobiles already passed by Shoop Avenue or were in the process of passing by?

A. At the curve? Well, I didn't pay any attention whether they had passed Shoop Avenue or not because at that time I didn't know what Shoop Avenue was from any other street. I didn't know it was a street even named Shoop Avenue.

Q. Besides those automobiles that were ahead of you as you just described, were there any other automobiles between your automobile and Shoop Avenue as you proceeded north from that curve towards Shoop?

A. There were none close by to me.

Q. None close by?

A. Not at the distance that we have to be careful in case one of them stopped, nobody was; traveling along about 30 miles an hour on the road.

Q. So, in essence, Mr. Lewis, the roadway from the curve which is south of Shoop Avenue to Shoop Avenue was clear

Roderic W. Lewis.

except for your car and Mr. Moore's car, is that
page 17 } not true?

A. Was clear?

Q. Yes.

A. I didn't say there wasn't any other cars. There was some other cars on the road.

Q. I realize you said that there were other cars but that they were a right good distance ahead of you?

A. Yes.

Q. And either just passing Shoop Avenue or had gone by?

A. There were some cars behind me to my right and directly behind me there, I think there were some cars directly behind me a little distance back.

Q. You remember that?

A. Well, I know that there was enough traffic on the road so that it wasn't clear.

Q. All right. Do you remember going into the police car with Officer Vaughan and Mr. Moore and yourself following the accident, Mr. Lewis?

A. I remember that.

Q. And at the time you talked with Officer Vaughan, did you not tell Officer Vaughan that you hadn't seen Mr. Moore's car at all until suddenly you looked and there it was right in front of you?

A. I said when I applied the brakes it was right in front of me; it was almost in front of me when I applied
page 18 } the brakes. I could see him—I could see that he was going to be in front of me. That is what I told him. I could see that he was—continued to come out so that he would be in front of me when I applied the brakes.

Q. Do you deny telling Officer Vaughan that as you approached Shoop Avenue in your lane, you did not see Mr. Moore's car at all until yo uwere about 40 or 50 feet away from the intersection, when you suddenly looked up and saw Mr. Moore's automobile in front of you?

A. I did not see him stop at the stop sign but I saw him as he was coming out of the road. I don't know whether he stopped or whether he continued to come out without stopping. I don't know but when I saw him he was starting to come out of Shoop Avenue.

Q. I ask you again, sir, did you not tell Officer Vaughan following this accident that you had not seen Mr. Moore's car at all until you were about 50 feet from the intersection,

when suddenly you looked up and saw this man right in front of you?

A. I saw him, I told him that I saw him about 50 feet back, right. But I didn't tell him I was directly in front of him, as I remember.

Q. You deny telling Officer Vaughan that?

A. I don't remember whether I told him that or not.

Q. Well, if Officer Vaughan said that you told
page 19 } him that, you would not contradict the officer in that respect, would you, Mr. Lewis?

A. Well, I couldn't deny his word, no; because possibly I could have told him that because I was shaken up, too, from the accident.

Mr. Kanter: No further questions.

The Court: Do you wish to ask him any questions now?

Mr. Wormington: No, Your Honor. If I may, I will recall him later.

OFFICER W. C. VAUGHAN,

called as a witness on behalf of the plaintiff, and having been first duly sworn, testified as follows:

Examined by Mr. Kanter:

Q. Will you state your full name, please, sir?

A. W. C. Vaughan.

Q. And what is your age?

A. 41.

Q. And your address?

A. 3909 Larkin Street.

Q. City of Norfolk?

A. City of Norfolk, yes, sir.

Q. And your occupation?

A. Police officer, City of Norfolk.

page 20 } Q. And as police officer for the City of Norfolk, what were your duties on August 17, 1957, Officer Vaughan?

A. I was assigned to accident investigation.

Q. How long had you been a member of the accident investigation bureau of the Norfolk police force?

A. I was in there seven and a half years as accident investigator.

Q. Exactly what are the duties of accident investigator, what do they entail?

Officer W. C. Vaughan.

A. The duties of an accident investigator is to respond to calls from your dispatchers and investigate accidents, various parts of the city.

Q. As such, approximately how many accidents would you say that you have investigated on an annual basis during the time that you spent in that position for the department?

A. Well, that is hard to—

The Court: If you don't know, just say so.

A. I don't know.

By Mr. Kanter:

Q. Can you approximate for us?

A. My monthly report usually—when I was in the accident car; I, of course, I am not there any more—run around 165 a month on an average.

Q. Were you trained specifically for the investigation of accidents, Officer Vaughan?

page 21 } A. Yes, sir.

Q. Now, Officer Vaughan, did you have occasion to investigate a collision between a 1957 Ford automobile driven by the late Mr. Moore and an automobile driven by Lewis on August 17, 1957, at the intersection of Shoop Avenue and Tidewater Drive in the city of Norfolk?

A. Yes, sir, I did.

Q. Do you remember approximately what time you arrived on the scene?

A. No, sir, I don't. My report shows—it has been blocked out here, the time of the accident; looks like 6:40 P. M. It must have been earlier.

Q. Was that the approximate time you arrived?

A. We get a call and it takes us usually ten, fifteen minutes to get to the scene of an accident.

Q. What were the weather conditions on the roadway as to that on that particular day?

A. The street was dry. The—it was clear and blacktop street.

Q. What were the conditions with respect to light or darkness at that time of day on August 17th?

A. According to my report it was daylight.

A Juror: I can't hear the officer.

Officer W. C. Vaughan.

A. Daylight according to this report.

page 22 } By Mr. Kanter:

Q. Speak loudly so the gentlemen can hear you.

A. Daylight.

Q. Daylight. Now, will you describe for the jury the makeup of Shoop Avenue and the makeup of Tidewater Drive?

A. Tidewater Drive is a north and south-bound street and Shoop Avenue is coming west-bound and comes to an end there at Tidewater Drive.

Q. What is the makeup of Shoop Avenue? How many lanes is it and what is it made up of?

A. Shoop Avenue?

Q. Yes, Shoop Avenue.

A. I believe Shoop Avenue is a two-lane street with parking to the curb.

Q. What is it, concrete or macadam? Blacktop?

A. If I recall, the intersection coming in there is concrete.

Q. How about Tidewater Drive? What is the makeup of that street? How many lanes is it? How is it marked off there and the—

A. Tidewater Drive is two lanes north and two lanes south.

Q. How is it divided in the middle, Officer Vaughan?

A. You have got a double line in some parts of it.

Q. Is there any traffic control at the intersection

page 23 } of Shoop Avenue and Tidewater Drive?

A. Stop sign at the intersection.

Q. What is that stop sign, for what traffic?

A. That is for your Shoop Avenue traffic.

Q. Shoop Avenue heading in what direction?

A. West.

Q. What is the speed limit on Tidewater Drive, Officer Vaughan—at that time; at that time with respect to this area?

A. Thirty miles an hour.

Q. When you arrived on the scene, Officer Vaughan, did you make your usual investigation as to the physical facts and question the parties involved?

A. Yes, sir, I did.

Q. What were the positions of the vehicles when you ar-

rived on the scene? And I would like it if you would, step down in front of the gentlemen of the jury and use these automobiles to illustrate. Use this east-west street as Shoop Avenue. Of course, we know you said it dead-ends here?

A. Yes.

Q. A stop sign over here and this is the north-south, Tidewater Drive. Now, when you arrived there, will you place the vehicles where you found them?

A. Traveling north on Tidewater Drive you have a double line in the center. The car operated by—(witness referring to paper)—Roderic Lewis was here at your double

page 24 } line. This comes to a dead end here. This car was about like that at the time (placing on diagram).

Q. Where are the double white lines on that diagram as far as you are concerned, Officer Vaughan? Are you using this whole street to represent the four lanes or just two lanes or what?

A. Your double line—this would be Tidewater Drive—your double line cuts your center out.

Q. What was the position of Mr. Moore's car with respect to those double white lines? Was it to the east, the Shoop Avenue side, or to the west of it on south-bound traffic for Tidewater?

A. That would be on—your double line would be going under the back of this car here would be—the impact, according to debris and your skid from here—this car had been struck at the door and knocked approximately five feet north. You have got your front end headed back in the south-bound lane and your rear end still in the north-bound.

Q. How much of this Moore vehicle had gotten across those double white lines into the south-bound traffic for Tidewater Drive, Officer Vaughan?

A. This Ford, '57 Ford operated by Charles Moore, had been struck in the left front door.

Q. I realize that. I say, how much of Mr. Moore's vehicle had gotten across the double white lines?

page 25 } A. Well, from your—front of his car to the door, I don't know, I didn't measure the distance.

Q. All right, sir. It would be, you say, from the front of his automobile to the door where the impact occurred?

A. Yes, sir, when the impact occurred.

Q. All right, sir. Now, did you have occasion to investigate the skid marks of one or both of the vehicles?

A. It was 34 feet of skid marks on the car operated by

Lewis. That is overall. Now, that is after the car had been moved. The total distance of the skid marks from where they first started to where they ended at the impact was 34 feet.

Q. All right. Were there any skid marks or other physical indications to show that the Moore car, this automobile, had been moved as a result of the impact?

A. Only your turning of your—your sideways skid, your tires.

Q. How much was that?

A. Approximately, if I remember correctly, I stepped that off two paces.

Q. What would be—

A. From the—well, it all depends; you usually use a three-foot pace if I remember correctly on that; but on the skid marks, I measured that with a tape measure.

page 26 } Q. All right, sir. Were there skid marks as a result of what you stepped off behind the Moore vehicle and, if so, how much? I would like for you—

A. There was no skid marks behind the Moore—

Q. No, I realize. You say no skid marks behind it but were there skid marks indicating that it had been moved sideways at all?

A. Your tire burns, as I said, the tire burns went that way approximately two paces. You use three foot, whatever you pace off, a stepping—

Q. A pace would be between two and three feet?

A. That is right.

Q. Will you tell us where the skid marks behind the Lewis automobile were in relation to the white lines? Could you tell what lane he had been traveling in?

A. He had been traveling in the lane—those skid marks was approximately a foot from the double line and he was on—went into an angle at the right at the point of impact, veered off.

Q. When you say double white line, that would be the inside lane closest to the center of the street?

A. That is right.

Q. Could you tell from the debris at the point of impact how close to the double white lines the actual impact took place, Officer Vaughan?

page 27 } A. Your debris was scattered.

Q. Yes?

A. And as I say, the skid marks run up within

Officer W. C. Vaughan.

approximately a foot from the double line. It was a heavy blow and your debris, I couldn't determine the exact spot that—

Q. Why do you say it was a heavy blow?

A. Well, it was a—your debris and all was heavy and—

Q. What about the damage to the automobiles?

A. I have listed left front—

Mr. Wormington: If Your Honor please.

The Court: The loss here, is that involved?

Mr. Kanter: The amount would not be involved.

By Mr. Kanter:

Q. What sort of damage? Don't mention any money. What sort of damage was there to each vehicle?

A. I have the Ford listed from the left rear door to the rear fender; and the '54 Mercury, complete left front end.

Q. That is Lewis's car the complete left front end and Moore's car from the center door to the rear?

A. From the left front door to the rear.

Q. Officer Vaughan, following the impact when you got there and had completed your measurements and so forth, did you talk to the parties, Mr. Lewis and Mr. Moore, in the presence of each other and, if so, where?

A. I talked to Mr. Moore and Mr. Lewis after we tried to straighten the traffic out some, got them over to page 28 } the radio car to get information for my report.

Q. Was there anybody else there at the time besides Mr. Moore and Mr. Lewis? What about passengers in the vehicles?

A. Mr. Moore's wife I believe was at the drugstore but at the time I talked to them I don't believe anybody was at the car except Mr. Moore and Mr. Lewis and some other man, I don't recall whether he was involved in the accident or not.

Q. Some other man. Where was this other man, Officer Vaughan?

A. By the car. If I remmber correctly, I got both of them, my police car, to get my information because I can't write standing up.

Q. When you say both of them, whom are you referring to?

A. The two drivers.

Q. How about this other man you say was there, where was that man?

Officer W. C. Vaughan.

A. Now, I don't recall; seems like it was one man at the time I talked to them but I don't—

Q. Where was that man, Officer Vaughan?

A. That is what I say. I don't recall exactly where he was at.

Q. Do you remember seeing that man at all in—

Mr. Wormington: I object, Your Honor. He is
page 29 } leading.

The Court: Objection sustained. He has already said he didn't know.

Mr. Kanter: Well, if Your Honor please, he was referring to *at* the time he was talking to him in the automobile.

Mr. Wormington: Your Honor, he is suggesting the answer now to the witness.

The Court: If this officer has told you something different and you were taken by surprise, you may ask him. But he hasn't told you anything. He has answered the question.

Mr. Kanter: I never asked the officer about it before; I am not surprised at all.

The Court: He has answered the question.

Mr. Kanter: I would like to ask this question, if Your Honor please.

By Mr. Kanter:

Q. Before you answer it, Officer Vaughen, let Mr. Wormington raise any objection he might. State whether or not at any time while you were out there investigating, you saw any gentleman sitting in Mr. Lewis's automobile.

Mr. Kanter: Do you have any objection?

Mr. Wormington: Yes, I do. He said he didn't know about this other man, didn't know where he was.

The Court: He said he thinks there might have
page 30 } been another man around there but where he was
he didn't know. Now, that would be contradiction.

Mr. Kanter: All right, sir. I will leave it at that.

By Mr. Kanter:

Q. Now, Officer Vaughan, with regard to your conversation; you say you questioned the two gentlemen, Mr. Moore and Mr. Lewis, in your police car following the accident?

A. That is right.

Officer W. C. Vaughan.

Q. All right. What if anything did Mr. Lewis tell you concerning the facts as to how the accident occurred?

A. Mr. Lewis said he was traveling north on Tidewater Drive and Mr. Moore said he was headed west, had stopped on Shoop Avenue to allow a couple of cars to go by and proceeded to make his left turn and then he was struck.

Q. What did Mr. Lewis tell you, if anything, sir?

A. Mr. Lewis said he was traveling north and it was approximately 50 feet before he saw the car, to the impact.

Q. I am sorry, sir; I didn't get that last response. What did Mr. Lewis tell you as to where he was when he saw Mr. Moore's car?

A. Mr. Lewis said he was approximately 50 feet before the impact he saw Mr. Moore's car.

Q. And where was Mr. Moore's car at that time, if he said that?

page 31 } A. I didn't ask him where. Just the—that was the information I received from each one of them from my accident report.

Mr. Kanter: Answer Mr. Wormington.

CROSS EXAMINATION.

By Mr. Wormington:

Q. Mr. Vaughan, Mr. Moore could drive his car away, could he not? Mr. Lewis's car had to be towed away? Wasn't that the situation?

A. Yes, sir. Mr. Moore was—

Q. His car could be driven?

A. Yes, sir.

Q. Now, you talked to Mr. Kanter about this accident before today? Haven't you?

A. Not only in traffic court.

Q. Beg pardon?

A. Not only in traffic court.

Q. I didn't understand you.

A. Only—

Q. Oh, in traffic court?

A. In traffic court.

Q. And, Mr. Vaughan, at this corner here I believe there is—this (indicating) would be the southeast corner. Isn't there a drugstore right on that corner there?

M. L. Tatterson, Jr.

A. Yes, sir. Yes, sir, you have got it on this
page 32 } southeast corner, drugstore sitting here and the
old pickle factory behind it; then dry cleaning
place on this corner and grocery store over there.

Q. And these lanes of Tidewater Drive, what is their width? Approximately about ten feet?

A. On the—you have got about—

Q. The lanes, what I am talking—

A. Approximately ten feet a lane.

Q. The standard, normal traffic lane width?

A. Yes, sir. Then you have got—I believe you can park a car along to the curb with your—

Q. So from the edge of the intersection here out to the point of impact, about 20 feet, roughly?

A. Well—

Q. I realize you probably didn't make these measurements.

Mr. Kanter: Let him answer.

A. From the intersection I believe with your lane here, I believe you would run approximately 25, maybe 30 feet from the intersection to the center.

By Mr. Wormington:

Q. That was where the approximate point of impact was?

A. Yes, approximately where your double line is.

Q. And these skid marks, as I understand, went fairly
straight right on down the left-hand lane up to the
page 33 } point of impact, curved just before the actual im-
pact?

A. (The witness nodded.) Just before the impact.

Q. And they were in the left-hand north-bound lane?

A. Yes, sir.

Mr. Wormington: I believe that is all.

M. L. TATTERSON, JR.,
called as a witness on behalf of the plaintiff, and having been first duly sworn, testified as follows:

Examined by Mr. Kanter:

Q. Will you state your full name, please, sir?

A. Melvin L. Tatterson.

M. L. Tatterson, Jr.

Q. And what is your age, sir?
A. 30.
Q. And your address?
A. I operate Tatterson's Body Works at 300 West 24th.
Q. How long have you been in that business, Mr. Tatterson?
A. Eleven years now, sir?
Q. Mr. Tatterson, did you have occasion to repair the automobile of the late Charles F. Moore?

Mr. Wormington: If Your Honor please, if we are going into the damage to the automobile of Mr. Moore, I submit that is entirely immaterial.

The Court: It is not included in the notice of page 34 } motion.

Mr. Wormington: This is a suit for personal injuries; it has actually nothing to do with the damage to Mr. Moore's car.

Mr. Kanter: If Your Honor please, I do not intend—

The Court: You may ask him did he repair an automobile for him and what was the nature of the damage.

Mr. Kanter: That is it, Your Honor, exactly.

By Mr. Kanter:

Q. Mr. Tatterson, please do not talk about any dollar amount of value or what it cost to fix the automobile. I would like for you, if you need to refresh your recollection with your repair sheet, do so and tell us what was the type and nature of the damage to—

By the Court:

Q. Where was the damage on the automobile, what part of the car?
A. Well, the damage was to the left side.

By Mr. Kanter:

Q. All right, sir. What items on the automobile were damaged in that area and from where did it extend, to where?
A. The two doors on the left side were replaced. And, of course, the rocker panel, that is the panel underneath the doors. And had minor damage to the front fender and the rear fender and the windshield was replaced and page 35 } the necessary parts relative to that, the moldings, so forth.
Q. And where was the point of impact?

Mr. Wormington: I object, Your Honor. He couldn't possibly know?

The Court: Objection sustained. He said it was necessary to replace the two doors on the left side.

By Mr. Kanter:

Q. All right, sir. Did the damage that you had to repair, Mr. Tatterson, indicate a slight, moderate or heavy blow to the automobile?

Mr. Wormington: Objection. He couldn't possibly tell.

The Court: Objection sustained. All he can say is what he saw, not his opinion as to how severe it was.

Mr. Kanter: All right, sir. I have no further questions.

Mr. Wormington: I have no questions.

LEO THOMAS,

called as a witness on behalf of the plaintiff, and having been first duly sworn, testified as follows:

Examined by Mr. Kanter:

Q. Will you state your full name, please, sir?

A. Leo Thomas.

Q. What is your age?

page 36 } A. 33.

Q. Your address?

A. 2821 Dunkirk Avenue.

Q. Speak if you will, please, a little bit louder so the gentlemen can hear you and His Honor can hear you. And your occupation?

A. Civil Service.

Q. Mr. Thomas, are you related to Mrs. Moore, the plaintiff in this case?

A. Yes. She is my mother-in-law.

Q. Are you married to Mrs. Thomas, Mrs. Moore's daughter?

A. That is right.

Q. At the time of this accident, Mr. Thomas, were you all residing with Mrs. Moore and her late husband?

A. Yes.

Q. On the particular evening in question, Mr. Thomas, did you have occasion to go the scene of the accident and, if so, how and why?

A. Well, they were on their way to a bowling banquet and so were we. We went in another car.

Leo Thomas.

Q. When you say "we," who is "we"?
A. Another couple, friends of my—my wife and myself and another couple.

Q. And how long did you leave the house after
page 37 } Mr. and Mrs. Moore left the house?

A. Between five and ten minutes.
Q. Did you take the same route that they did to go to Carl Parker's in South Norfolk?
A. Yes.
Q. About how long after the accident happened did you get there, Mr. Thomas?
A. It was between five and ten minutes.
Q. Mr. Thomas, upon arriving at the scene, did you have occasion to examine the positions of the automobiles and where they were and the physical damage in the street and see what was going on?
A. Yes.
Q. What did you do when you first got there?
A. When I first got there. I saw that—I saw my father-in-law standing out in the street talking to an officer. So we stopped.
Q. Speak a little louder, please, because I can't hear you myself; I know the gentlemen of the jury can't.
A. When we stopped I went over to see—to see my father-in-law. I saw him and I asked him if he was all right. Then I asked him—

Mr. Wormington: If Your Honor please, I object to any conversation.
The Court: Just say what you saw.

page 38 } By Mr. Kanter:

Q. Say what you saw, but don't say what conversation you had with anybody, what you asked them or what they told you. You saw your father-in-law in the street and after talking with him, what did you do then?
A. I went over to see my mother-in-law.
Q. And where was she at the time?
A. She was in the drugstore.
Q. Mrs. Moore here?
A. That is right.
Q. What arrangements, if any, did you make in connection with Mrs. Moore?

Leo Thomas.

A. Well, these friends were with me and I saw that they took her to the hospital.

Q. Did you go to the hospital with Mrs. Moore or did you stay behind at the scene of the accident?

A. I stayed behind.

Q. After Mrs. Moore left for the hospital with your friends, what did you do then, Mr. Thomas?

A. I went back over and examined the cars.

Q. Mr. Thomas, will you step down and use that diagram if you will, please, sir, and show the gentlemen of the jury exactly what you saw. So far, we have used this north and south direction as Tidewater Drive and this east-west direction as Shoop Street, the stop sign being over on

page 39 } this corner. Of course, this highway is four lanes with the double lines running down the middle, two lanes going north and two south. All right, sir; now take those automobiles and exactly where was your later father-in-law's automobile when you got to the scene, Mr. Thomas?

A. When I got there his front wheels of his car was past the double line separated, dividing the center of the road, of the highway.

Q. Beg pardon?

A. The center of the highway.

Q. All right, sir. Where was Mr. Lewis's automobile?

A. Mr. Lewis's automobile was stopped a short distance from—maybe five or six feet from—or maybe a little more; not to exceed ten feet from Mr. Moore's car.

Q. The two automobiles were not resting together when you were there, Mr. Thomas?

A. No.

Q. Did you have occasion to examine the physical debris in the street to determine just where the impact took place, what part of Mr. Moore's car was damaged and what part of Mr. Lewis's car, and where?

A. The front end of Mr. Lewis's car was damaged and he had struck Mr. Moore's car in the driver's—at the driver's side, in the door.

Q. Put your finger where that is, please.

page 40 } A. (Complying) Right in the middle of the door.

Q. Were there any skid marks in the street that you were able to observe, Mr. Thomas, and did observe?

A. Yes.

Q. Will you tell us about those, please, sir?

Leo Thomas.

A. Yes. Mr. Lewis's car—of course, after the police officers measured the skid marks, I think they were 34 feet.

Q. Did you see those yourself?

A. Yes.

Q. Go ahead. Were there any skid marks on the other car, side skid; if so, where were they, in what direction heading?

A. Yes. There was about five feet of skid marks on Mr. Moore's car and—where the car had moved sideways.

Q. Sideways, in a northerly direction?

A. That is right.

Q. Towards Ocean View. All right, sir. Now, Mr. Thomas, who all was out there at the scene when you got there with respect to any police officials, your mother-in-law, father-in-law, Mr. Lewis, anybody else, in connection with the accident? Who was there?

A. Well, only the police officers and Mr. and Mrs. Moore and, of course, there were several spectators by then.

Q. State whether or not—

page 41 } Mr. Wormington: I object to any leading question. "State whether or not you saw," and I submit that is leading.

The Court: You may ask him what he did see.

Mr. Kanter: I am not suggesting any answer, Your Honor.

The Court: Frankly, Mr. Kanter, all this testimony is encumbering the record. The defendant himself has absolutely described the situation as the officer described it and these others, so there is no dispute about this business of location.

Mr. Kanter: No, this is something else, Your Honor.

By Mr. Kanter:

Q. Mr. Thomas, what if anything did you observe about anyone else being with Mr. Lewis?

Mr. Wormington: I object to that, Your Honor.

The Court: You describe by name or position who was there and you ask him was anybody else there.

Mr. Kanter: I didn't ask him that, Your Honor.

By Mr. Kanter:

Q. I will ask you again, will you name all of the persons, Mr. Thomas, that you saw present in connection with the

Moore automobile, the Lewis automobile and any police officials, plus your own party.

Mr. Wormington: I object, Your Honor. He page 42 } has already answered that.

Mr. Kanter: I don't believe he has.

Mr. Wormington: He just finished answering that question, Your Honor. He said he remembered seeing the police officer there and Mr. and Mrs. Moore and Mr. Lewis.

The Court: That was in response to sort of a leading question.

Mr. Wormington: Yes, sir.

The Court: Mr. Kanter enumerated those people, and he had a perfect right to ask him was anybody else there.

By Mr. Kanter:

Q. Was there anybody else there, Mr. Thomas?

A. There was someone riding with Mr. Lewis. He was sitting in his car. I think he had injured his leg slightly.

Q. Now, I ask you, Mr. Thomas, are you certain of that fact?

A. Yes.

The Court: Just a minute. He wasn't there until five minutes after the accident was over. He can't possibly say who was riding with the man.

By Mr. Kanter:

Q. All right, sir. Mr. Thomas, I will ask you how did you get your information concerning a man—did you page 43 } see this man in the front seat of the Lewis automobile?

A. Yes. He was—the door was open. He was sitting in the car with his foot on—towards—his leg was resting outside of the car. The door of the car was open.

Q. When did you see him sitting in the front seat of Lewis's car?

A. Immediately after I arrived.

Q. And how did you get any information concerning the man having hurt his leg?

A. The police officer asked him if he would like to go to the hospital.

Q. Did you hear the police officer ask him that?

A. Yes, sir.

Leo Thomas.

Q. And what did the man say?
A. He says didn't—I couldn't—don't remember exact words but he said he wasn't hurt that bad.
Q. Did you ever see that man before in your life, Mr. Thomas, this man who was sitting on the front seat of Lewis's car?
A. No.
Q. Have you seen him since?
A. No.
Q. Is he here today?
A. I didn't look at his face. I couldn't swear to it that he is here.
page 44 } Q. Would you recognize him again, Mr. Thomas, if you did see him?

Mr. Wormington: If Your Honor please, he just finished saying he didn't see his face, couldn't recognize—

By Mr. Kanter:
Q. If you can't, answer no. Would you recognize him if you saw him again?

The Court: You ask would he recognize a person whose face he doesn't remember at all. Recognition comes from the face, ordinarily.

By Mr. Kanter:
Q. I take it, then, that you did not look at this man's face at all, Mr. Thomas?
A. Well, I may have glanced at him but I didn't concentrate on his face by any means.
Q. Did you have any conversation at all with this man?
A. No.
Q. Where was it that you heard the police officer ask him whether or not he wanted to go to the hospital?
A. He was there at the car.
Q. Beg pardon?
A. There by the car.
Q. Which car?
A. The Lewis's car.
page 45 } Q. And did you hear any conversation between the police officer and this man who was sitting in that car, before he asked him whether or not he wanted to go to the hospital or after?
A. No.

Dr. George G. Hollins.

Mr. Wormington: I object, Your Honor. In the first place, this is straight hearsay and has absolutely nothing to do with the accident.

The Court: Objection sustained.

By Mr. Kanter:

Q. I will leave off that. Now, Mr. Thomas, how long have you and your wife—

Mr. Kanter: If Your Honor please, Dr. Hollins has come in and I know he is busy. He told me he had a busy schedule. I would like to take Mr. Thomas off the stand.

The Court: What other testimony are you looking for from him?

Mr. Kanter: It has to do with Mrs. Moore's physical situation following the accident.

The Court: All right. Step down.

Mr. Kanter: If you will, Mr. Thomas, go out in the hall and remain there.

page 46 } (Mr. Kanter at this point putting a chart on an easel before the jury.)

Mr. Wormington: If Your Honor please, I object to this display here before the doctor is going to use this.

Mr. Kanter: I am not going to display anything until he gets to it, Mr. Wormington.

DR. GEORGE G. HOLLINS,

called as a witness on behalf of the plaintiff, and having been first duly sworn, testified as follows:

Examined by Mr. Kanter:

Q. Doctor, will you state your full name, please, sir?

A. Dr. George G. Hollins.

Q. And your age?

A. 47.

Q. Your address?

A. Office address is Wainwright Building; home, 1145 Hanover Avenue.

Q. And your occupation, sir?

A. Physician, specializing in orthopedic surgery.

Q. Will you state for the gentlemen of the jury where you were trained and your schooling and the societies that you belong to?

Dr. George G. Hollins.

The Court: Mr. Kanter, you have a perfect right to go into that but the doctor has qualified here as an ex-
page 47 } pert in his profession as well as in all other courts in this area. If you will stipulate—

Mr. Wormington: I have no earthly—

The Court: Not burden the record with the number of universities and his degrees.

Mr. Kanter: All right. I just wanted to make it clear that he qualifies as an expert and is so regarded in all the courts of this area.

The Court: Qualified as an expert.

By Mr. Kanter:

Q. Dr. Hollins, did you have occasion to see Mrs. Mata Moore, who is sitting here on my left; and, if so, when first?

A. Yes. I did see her and I first saw her on September 4, 1957.

Q. How many times, Dr. Hollins, have you seen Mrs. Moore since that time?

A. Do you have my bill there to refresh my memory on?

Q. I do, Doctor, and I will introduce it at the conclusion of the testimony. You may use that to refresh your recollection (handing to witness).

A. 24 times.

Q. Dr. Hollins, will you state for the Court and the gentlemen of the jury exactly what injuries, if any, you had found Mrs. Moore suffered when you examined her on
page 48 } September 4, 1957?

A. First of all, she had injury to her neck which was a sprain of the cervical and upper dorsal spine, which is the part of the spine in the neck and the upper back; and strain of the muscles of the neck and—running out to the shoulders. And then she had injury to the left knee which was first of all, was called a bursitis or infrapatella bursitis, which is sometimes known as a housemaid's knee but in her case this was a localized swelling over the—

Q. Doctor, we will come back to each of those, if you please, to go into them; but first I would like for you if you will to enumerate the injuries to the gentlemen of the jury. The neck and the knee and what is there if there is anything else?

A. And multiple contusions and abrasions of both upper and lower extremities and her left eyebrow.

Dr. George G. Hollins.

Q. What if anything else in connection with the knee?

A. As developed in later visits, she had an aggravation of an old knee injury.

Q. What is the name of that, sir?

A. Well, she had chondromalacia of the patella.

Q. All right. Now, Dr. Hollins, with regard first to the contusions and abrasions in order to get those out of there, will you explain to the gentlemen of the jury where they were located and just what their nature was and when

page 49 } they were cured, if they were cured?

A. Well, contusions are bruises, and abrasions are scratches and scraped places on the skin. This was over the knees, over both knees and both arms. And there was a laceration over the left eye, rather than abrasion. And then there were small lacerations on both knees, cuts on both knees.

Q. Any other bruises, abrasions, about her body, Doctor; if so, where?

A. I believe that covers it.

Q. All right, sir. Have they since the accident been cured?

A. Yes.

Q. She is suffering no disability so far as they are concerned now?

A. That is correct.

Q. Now, Doctor, with regard to the injury to her neck and upper back that you described, will you state to the gentlemen of the jury just what the medical definition is, in laymen's terms, of a strain? What is a strain?

A. Well, a strain is a stretching or rupture of muscle fibers.

Q. How is that different from a sprain?

A. A sprain applies to ligaments, is a rupture partial or complete of ligaments.

Q. Let me see if I have got that straight. A

page 50 } strain is muscles and sprain, ligaments—or *vice versa?*

A. The way you said it. A strain is muscles and sprain is ligaments.

Q. All right, sir. Now, Dr. Hollins, with regard to this sprain and strain of her cervical spine and the upper back that you have described, and her neck, have you in consultation with me prior to this testimony, had occasion to examine

certain medical drawings of the neck and that area affected in this particular type of—

Mr. Kanter: Do you want to see this?
Mr. Wormington: Yes. What is it?
Mr. Kanter: Pictures of the ligaments and muscles of the neck.
Mr. Wormington: Your Honor, I don't see any particular purpose in a lot of painted diagrams.
Mr. Kanter: Judge, I realize that Mr. Wormington would like not to use it but I think—
The Court: It is entirely up to the doctor, not the lawyers. If he feels that it would be of any assistance to him, he may use it. If he doesn't, he may not.

By Mr. Kanter:
Q. Doctor, you have seen this muscle chart and this chart that I am holding in my left hand, in consultation with me, have you not, sir?
A. Yes.
page 51 } Q. Do you feel that these chest would be of any material aid to you in describing and showing to the jury the nature of the injury that Mrs. Moore had?
A. Yes. I think it would show more clearly the location of her injury.

Mr. Kanter: Can you gentlemen (to the jury) see from where you are? Can you see on that back row, sir?
A Juror: I can't see it, sir.
Mr. Kanter: I am sorry, sir. You can't see it?
The Juror: No.
Mr. Kanter: Let me see.
A Juror: Yes, I can see it now.
Mr. Kanter: How about the other gentlemen?
A Juror: Move this table.
Mr. Kanter: You want me to move this out of the way? (Doing so)

By Mr. Kanter:
Q. Now, Dr. Hollins, I ask you, sir, you defined a strain and a sprain as involving respectively the ligaments and the muscles of the particular area involved, and I am going to ask you, sir, if you will, step down and use this as you desire

in order to explain to the gentlemen of the jury exactly what the type of injury was that Mrs. Moore received to her neck; and point out what those areas shown on the chart are, if you will.

page 52 } A. These red areas indicate muscles that are frequently involved in this type of injury, being strained. Under—this is the sternocleidomastoid muscle and this is the trapezius muscle. Underneath these, in black, is an outline of the seven vertebrae that make up the cervical spine. And the—it is not shown on here but where her injury was primarily was from the fifth—this is (counting) one, two, three, four, five—fifth cervical vertebrae down, including the sixth, seventh and the first dorsal, and then not shown here the second and third dorsal vertebrae in the upper back which we call the dorsal spine.

Q. Doctor, excuse me, sir. I realize they are not shown on that. Are those dorsal vertebrae shown on this chart? If they are, sir, you might supplement that with this chart.

A. A portion of the vertebrae are shown here. The spinous processes which—this is seen from the back, of course; and on the black there is, as outlined, the processes or projecting pieces of bone that project backwards, and they are shown here. In the neck they are covered by this—in the neck they don't show here because they are covered by this strong ligamentum nuchae, but it does show the dorsal spine and the last cervical vertebrae and then first, second and third dorsal down to this point (indicating).

Q. Doctor, will you take this chair. If you will,

page 53 } take that and you may turn those and show if you will, please, the gentlemen of the jury, exactly what happens to these muscles and ligaments in the injury that Mrs. Moore had.

A. These—this muscle, I already gave this, the name, don't see any need to repeat that. As the head is snapped backwards, is put under strain and some of the fibers are stretched. And then the head goes in the opposite direction (turning pages in the collection of pictures before the jury).

Q. That (indicating) is back to the norm?

A. Back to the normal. (Turning page.) And then the trapezius muscle back here comes under strain. Of course, the main injury she had, though, was to the ligaments beneath the muscles, which are not illustrated except that they join all these vertebrae. And I might perhaps make a little

Dr. George G. Hollins.

sketch on the blackboard would be sort of a help, or just show here—the interspinous ligaments between the posterior spinous processes and then ligaments that surround the disc which is this space in between the vertebrae is scapular ligaments, annular, low spine, and then larger ligaments which run down in front as well as in back of the bodies of these vertebrae which are the rectangular—They look rectangular here but they are really oval in shape looking from the top down.

Q. These ligaments are shown on one of these charts. Does that show what you are trying to show, Doctor, in any way? (Indicating)

page 54 } A. No, but it does give a different view from the back rather than the side, showing in this case there are transverse processes attached to each vertebrae, also.

Q. What exactly, in laymen's language that the ordinary fellow who isn't a doctor can understand, happens to these muscles and ligaments, Doctor, when the head is snapped as shown on those diagrams?

A. The muscles are strained and the ligaments are stretched and some of the fibers are ruptured.

Q. Well now, exactly what is the healing process that takes place in the human body in order to cure these stretched and ruptured ligaments and muscles?

A. Well, where the natural rupturing of the ligaments, nature repairs those by filling in the interval with scar tissue.

Q. And what is that called?

A. Cicatrix.

Q. What are the properties, Doctor, of that cicatrix in relation to our original muscles and ligaments that we have before we are hurt?

A. It is scar tissue and doesn't have the elastic properties that the original ligaments have, and strength.

Q. You say it lacks the elasticity and strength of the original muscle. What effect if any does that have on the neck of a person who has received one of these

page 55 } types of injuries?

A. I don't understand. Effect when? Immediately?

Q. I say what effect if any with regard to motion, with regard to any possible recurring type of injury or any other effect medically that it might have?

Dr. George G. Hollins.

A. Well, I don't think in time it would have any effect. Of course, there would be the—they would not be quite the same as they were originally.

Mr. Kanter: Take that seat for a minute, Mrs. Moore. I am going to ask you if you will to take off your coat and step around here please, next to the doctor. (The plaintiff complying.)

By Mr. Kanter:

Q. Doctor, I will ask you first to show us where this intrapatella bursitis of the left knee took place in Mrs. Moore; and try to tell us in language that all of us can understand exactly what that is, sir, rather than using medical terms.

A. This is something that was present when I first examined her and cleared up some weeks following. But it was a localized area of swelling about this point. This is her kneecap, the patella, and then there is a patella ligament which runs from the patella down to the bone here, which is the tibia. And this swelling was right over this ligament called infrapatella because it is below the patella.

page 56 } Q. What is there in the body at that point that makes that happen, Doctor? Explain it in lay language what happens.

A. Well, the bursitis refers to a bursar, which is a little sac lined with a thin membrane of tissue which normally contains just a few drops of fluid. And when that is struck a severe enough blow it causes some hemorrhage and fluid to form inside the sac and make it distend and, of course, this appearance of swelling.

Q. Was that present in Mrs. Moore when you saw her?

A. Yes.

Q. And you say that cleared up later on?

A. Yes.

Q. Do you consider that particular injury cured as of this time, Dr. Hollins?

A. Yes.

Q. All right, sir. Now, I ask you to point out; first, before you point it out, explain to the gentlemen of the jury in lay terms what this chondromalacia is. Exactly what is it, Doctor?

A. That is a—to begin with, it is used mainly in reference to the kneecap, the patella, which is more prone to have it. The under surface of the kneecap has to glide on the other bones.

Dr. George G. Hollins.

Q. Why is that?

A. The knee is smooth to eliminate, reduce fric-
page 57 } tion. It is covered with—

Q. You mean friction of the knee joint, when I swing my knee like that (demonstrating)?

A. Yes.

Q. In other words, it is gliding smoothly rather than grinding against something rough?

A. That is right. Normally the under surface of the kneecap is covered with a smooth glistening substance called cartilage and this condition is applied to the cartilage when it becomes degenerated and the appearance then is roughened; on looking at it, it has lost its shiny appearance, is dull in color and is roughened in texture.

Q. All right, Doctor. What in the history of Mrs. Moore had any effect on that, if anything, and exactly what did you find when you examined her and what is her situation with regard to that now?

A. She gave a history of a previous injury to her knee.

Q. You may use your notes to refresh any recollection on that, Doctor.

A. Well, it was approximately four years before this one she received last year; and that initiated this condition in the knee and she had—

Q. Did chondromalacia come from trauma, Doctor?

A. It can be due to one trauma or it can be due
page 58 } to multiple trauma of wear and tear.

Q. All right; go ahead. The history indicated she had had that you say several years before this accident?

A. Yes.

Q. All right. Go ahead, sir.

A. And since this last accident she had not immediately but sometime later she began having symptoms caused by this chondromalacia, and with some pain in her knee; and examination showed coarse, leathery feeling on moving the knee, with a palpation of the kneecap.

Q. How do you treat that chondromalacia, Dr. Hollins, if you can?

A. Well, if it is a mild degree as in her case mainly—rather, of varying intensity because it hasn't been continuously causing symptoms, injecting the knee with hydrocortone and exercises and using an elastic bandage control the symptoms when they are more noticeable to the patient.

Dr. George G. Hollins.

Q. Have you prescribed that treatment for her in this case?

A. Yes.

Q. How about the bursitis of the knee? How did you treat that, Doctor?

A. I will have to refer to my notes a minute. (Consulting notes) That was just with local heat to it.

Q. Does that make the swelling go down?

page 59 } A. Yes, helps absorb the swelling.

Q. You said the bursitis is cured. What is her condition now with respect to the chondromalacia and when if at all do you expect it to be cured?

A. Well, that is something that is not cured. The condition there of the cartilage continues because cartilage does not—is not replaced by nature unless it is treated surgically; the only way to get rid of the chondromalacia is to—which is not necessary in her case but it is possible to operate on it and to remove all the old cartilage and then from the bone up, new cartilage then will grow.

Q. Without that, the condition is a permanent one?

A. Yes.

Q. Is it progressive, retrogressive or does it stay about the same?

A. Well, it may either stay about the same or be slowly progressing.

Q. Does it retrogress so that it would go away eventually?

A. The symptoms come and go but the condition itself stays.

Q. Now, Doctor, you may resume your chair. What is the nature of the treatment that you prescribe and did prescribe for Mrs. Moore in this case with regard to her neck and upper back injury?

page 60 } A. Chiefly use of a collar to support her neck and reduce the amount of motion in the neck.

Q. Let me ask you this at that point, sir: Why in this type of cases is it necessary, as you say, to reduce the amount of motion? Can you show us with this picture what would happen if you didn't reduce the amount of motion?

A. Well, perhaps the jury remembers the pictures there with the head waved backward and then forward, that in those positions it puts not only the muscles but especially the ligaments, which were chiefly injured here, on a stretch. And if you keep pulling on those, you can imagine how that

delays their recovery, and also is more likely to produce some later effects from having a greater amount of scar tissue formed.

Q. What other treatment besides immobilization with the Thomas's collar did you use in this case, Doctor?

A. Yes, physical therapy treatments with heat and massage and—

Q. Did Mrs. Moore take those under your direction at De Paul, Doctor?

A. Yes, she did.

Q. And what is the purpose of that type of treatment?

A. That is to help the—relieve the tension in the muscles and to increase the circulation in the vessels around the injured area.

page 61 } Q. Doctor, what effect, if any, does the type of injuries that you have described; that is, the neck and the back and the knee, in this case have on Mrs. Moore with regard to her normal activity and motion?

A. Well, the knee occasionally and the neck more of the time, of course, reduce the amount of activities she was both capable of and also that she should do.

Q. All right, Doctor. What if any percentage of disability from her normal activity would you give Mrs. Moore as a result of these injuries from the time of the accident when you saw her until the present day?

A. Well, of course, it was a greater amount of disability in the beginning and gradually lessening and also varying to some extent from time to time as—

Q. What would you feel would be the reasonable amount of disability that she would have had on the average, if you can so rate her, sir?

A. Well, that would be hard to make any accurate average but I think at first she had about 25 percent and gradually improving from that.

Q. When do you expect her, Doctor, to be cured from her neck and back injury? From this time on, how long do you think it will take before she will be cured in that?

A. Well, I can't give any definite time on that. These symptoms tend to persist for a long time; usually, page 62 } or frequently, a year or more than a year; sometimes up to two years.

Q. Within what limits of time that you would feel—or do you feel, first, that Mrs. Moore will eventually recover from her neck injury?

A. Yes.

Dr. George G. Hollins.

Q. Or is it permanent in nature?
A. No. I believe she will recover.
Q. All right, sir. In what period of time do you feel, within reasonable monthly time, that she would be cured from her neck injury?
A. Well then, I could give it in an interval of between two months and a year from now.
Q. During that time, what if any will be her percentage of disability from normal activity?
A. Probably ten percent on down.
Q. Doctor, I have your bill here, sir, in the amount of $140 for treatment to date and I ask you if that is your charge to date, sir?
A. Yes.

Mr. Kanter: If Your Honor please, I should like to mark it Plaintiff's Exhibit 1.
The Court: Plaintiff's Exhibit 1.

(The statement referred to was marked Plaintiff's Exhibit 1.)

page 63 } By Mr. Kanter:
Q. What do you feel would be a reasonable amount to cover Mrs. Moore's anticipated medical expense in your office, if any?
A. I think $50 at the most.

CROSS EXAMINATION.

By Mr. Wormington:
Q. Dr. Hollins, as I understand it, she had a bursitis; that has completely cleared up, is that correct?
A. Yes.
Q. She had some bruises and sprains, and so forth, aside from her back; also cleared up?
A. The bruises and—
Q. —contusions?
A. —abrasions and lacerations.
Q. And she had a pre-existing injury to her knee that was aggravated by this accident, is that correct?
A. Yes.
Q. Is the injury to her knee back to the state that it was in before this last accident, or can you tell?
A. Well, at the last time I saw her I believe it was, but

during the time I have been treating her, though there has been some variation, and it may—she may have symptoms again.

Q. At this time, I take it, it is back where it
page 64 } was before this second accident as far as you can tell?

A. As far as I can tell, yes.

Q. So then as far as this second accident is concerned, she has no further knee injury at this time as far as you can tell?

A. Except for what I said that—

Q. I said except for the pre-existing—

Mr. Kanter: Let him answer the question, Mr. Wormington.

By Mr. Wormington:

Q. Is that right, Doctor, or not? Is my statement a fair one or not?

A. At the last visit she was apparently back to where she was but since it varied before, it may flare up again.

Q. But that is an unknown factor at this time?

A. Yes.

Q. And she is still complaining about her back, isn't she?

A. It is her neck and upper back.

Q. That is what you all call a whiplash injury?

A. Yes.

Q. And you specialize in that, don't you, Doctor?

Mr. Kanter: I object to that, if Your Honor please. That is an outrageous statement by counsel. He is an orthopedic surgeon and specializes in anything to do with
page 65 } orthopedic surgery, not in—

The Court: Well, if he specializes in it, he ought to know more than the man who doesn't specialize.

Mr. Wormington: It is perfectly—

Mr. Kanter: I think the implication to the jury is what is unfair, not the words of the question.

Mr. Wormington: Your Honor, is that question proper or not, sir?

The Court: You object to it?

Mr. Kanter: I do.

The Court: I overrule the objection.

Mr. Wormington: Would you answer the question Doctor?

Dr. George G. Hollins.

A. I would have to answer that it is one of the conditions which I specialize in.

By Mr. Wormington:

Q. How many of these whiplash injuries have you treated over the past year, Doctor, approximately?

A. I don't have any figures on that.

Q. I realize you couldn't give me exactly but your approximate estimate?

A. Well, it is a great number. I would say over 50.

Q. And of that number, how many involve litigation, Doctor?

Mr. Kanter: Your Honor, I am going to ob-
page 66 } ject to that.

The Court: Objection sustained. It is all right to ask him as to his speciality but to attempt to cross examine him about each case he has handled I think is immaterial to the issue here.

By Mr. Wormington:

Q. Don't answer this, Doctor, until the Court passes on it. Have you had any of these whiplash cases where the patients have sought medical attention after the litigation has ceased?

Mr. Kanter: I object to that, sir.

The Court: Objection sustained.

Mr. Kanter: And, if Your Honor please, I have only this to say. If Mr. Wormington intends to pursue this line of questioning, I respectfully ask the Court to let the jury go into the jury room, because I think he is attempting to do unfairly what he knows he cannot do, sir.

By Mr. Wormington:

Q. Are there any objective symptons now, Doctor, that you can find as far as the neck injury is concerned?

A. Witness consulting file.) No. No, there haven't been in the—(witness still consulting file).

The Court: Any other questions?

Mr. Wormington: I am waiting for him to
page 67 } finish his answer.

The Court: His answer was no.

A. Well, at the last visit, there were not.

Dr. George G. Hollins.

By Mr. Wormington:

Q. And by objective symptons is meant something that you can determine for yourself rather than relying on what the patient tells you, isn't it?

A. Yes, that is correct.

Q. Isn't that substantially the definition of that term?

A. Yes.

Q. In other words, somebody has a cut on his finger; you can look at it and see the blood and you know it is cut. But something like pain, perhaps, or something of that sort, you have to rely on what the patient tells you rather than what you think yourself by your own senses; is that correct?

A. Yes. That is correct.

Q. And she has no such objective symptoms now that you can find for yourself?

A. Yes.

Q. She does not have any?

A. What you say is correct.

Q. And on October 3rd you reported to Mr. Kanter that she would be much better when this suit was over?

Mr. Kanter: If Your Honor please, I object
page 68 } to that.

Mr. Wormington: I think that is a perfectly proper question, Your Honor.

Mr. Kanter: I am going to ask Your Honor to excuse the jury if Mr. Wormington is going to carry on like this in asking questions that he knows are not—

Mr. Wormington: I am asking what the doctor reported to Mr. Kanter concerning the condition of his patient.

The Court: That is perfectly all right if you seek to contradict something he said on the stand.

Mr. Wormington: No, sir. I am speaking of an opinion of the doctor.

The Court: If he had made a prior inconsistent statement that is different from his testimony here today, it is proper; whether it is in writing or whether it is verbal, it would be deemed a prior inconsistent statement and that is the only way you can get it in.

Mr. Wormington: If Your Honor please, I am speaking of what he is reporting about this patient's condition, his own patient.

The Court: You propose to show that what he said then is different from what he said on the stand now?

Mr. Wormington: No, sir. I am asking him if he didn't make such a statement.

page 69 } The Court: Objection sustained.

Mr. Wormington: All right, sir. No further questions.

RE-DIRECT EXAMINATION.

By Mr. Kanter:

Q. Doctor, just two questions. What were the objective symptoms that you found in Mrs. Moore earlier in treatment?

A. Well, at some of her visits there was some limitation of motion in her neck in one direction, caused by transient muscle spasm.

Q. And they are things that you can actually see and feel concerning this type of neck injury?

A. Yes.

Q. Now with regard to this knee injury, you say that she is back to about the position that she was before—

The Court: We are not going to encumber the record. He has said what he said. Now you have him repeating what he said.

Mr. Kanter: All right, sir. Strike that out. I won't go into that, Your Honor. That is all.

(At this point there was a brief recess, after which the following occurred:)

page 70 } LEO THOMAS,

resumed the stand and testified further as follows:

By Mr. Kanter:

Q. Mr. Thomas, when you arrived on the scene about five or ten minutes after it happened, how many police officers were out there?

A. There was at least three, maybe four.

Q. At the time that you saw this police officer ask a man who was sitting in the righthand front seat of Lewis's car whether or not he wanted to go to the hospital for his leg, where was Officer Vaughan at that time?

A. He was in the—in his car with Mr. Moore and another man.

Leo Thomas.

Q. Do you know the name of the policeman that asked this gentleman on the front seat of Lewis's car whether or not he wanted to go to the hospital?

A. No, sir.

Q. Had you ever seen him before?

A. No.

Q. Have you ever seen him since?

A. (The witness shook his head.)

Q. All right. Now, Mr. Thomas, how long were you and Mrs. Thomas—that is Mrs. Moore's daughter—living with Mrs. Moore before this time? How long have you

page 71 } all been living with her?

A. Well, we have been there six years. We are still there.

Q. Were you all living with her and her late husband at the time that she was involved in the first accident back in 1954?

A. Yes.

Q. And prior to the first accident, Mr. Thomas, what had been Mrs. Moore's general physical and emotional condition, before the first accident?

A. Good.

Q. After the first accident, Mr. Thomas, how had Mrs. Moore been affected, if at all, by the injuries she received in 1954?

A. Well, immediately after the accident she had trouble with her knee, but that had improved considerably. In fact, she—

Q. What sort of trouble was she having with her knee before she was involved in this accident in August of 1957? What sort of trouble did she have with her knee between the first accident and the second accident?

A. Will, it ached her at times.

Q. Was there any improvement that you were able to see yourself between the first accident and the second accident, Mr. Thomas?

A. Oh, yes, very much so.

page 72 } Q. Her knee had improved some?

A. Yes, sir.

Q. Did she still have trouble with it at the time of the second accident?

A. Occasionally; once in awhile.

Mr. Wormington: This man is not a doctor. I don't see how he can testify.

The Court: It would be what she had told him.
Mr. Kanter: No, I asked what he physically saw.
The Court: He has a right to say he saw her trouble; something different from normal.

By Mr. Kanter:
Q. How about after the second accident, Mr. Thomas? What if any change did you yourself observe in your mother-in-law after August of 1957?
A. Well, she complained constantly about her neck, for one thing, especially when she would—

Mr. Wormington: I object; it is self-serving.
Mr. Kanter: I am not asking what she told you.
Mr. Wormington: Just a second.
The Court: Objection sustained.
Mr. Kanter: Properly so.

By Mr. Kanter:
Q. I asked you what you yourself were able to see, Mr. Thomas, not anything Mrs. Moore told you. What
page 73 } were you able to see, if any difference between her before the second accident in August of 1957 and since that time?
A. Well, she become more nervous, for one thing. Seemed like little things would mostly upset her.
Q. Were you able to observe anything at all about her knee?
A. Yes. She said she was having treatments, taking treatments for her knee.

The Court: She said she was having treatments for her knee.
Mr. Kanter: Yes.
The Court: That is hearsay.

A. She was.

Mr. Kanter: No further questions.

CROSS EXAMINATION.

By Mr. Wormington:
Q. During the recess you talked to Mr. Kanter about this business of the man sitting in Mr. Lewis's car, didn't you?

Leo Thomas.

A. No.
Q. Didn't have any conversation with Mr. Kanter at all during the noon recess?
A. Yes, sir.
Q. During the recess?
A. Yes, I did.
page 74 } Q. Don't look at him and watch him nod; you look at me, answer the questions. You did have a conversation with him, didn't you?
A. Yes.
Q. And you talked to him about whether there was more than one police officer out there, didn't you?
A. No.
Q. You didn't; nothing said about that?
A. (The witness shook his head.)
Q. All right. As I understand, you saw somebody sitting in Mr. Lewis's car?
A. That is right.
Q. Where were you then when you saw somebody sitting in Mr. Lewis's car?
A. I was there at the scene of the accident?
Q. Yes, sir, but where at the scene of the accident?
A. I was standing close to the car.
Q. How close to the car were you? Five feet? 100 feet? 10 feet?
A. Probably five, maybe ten.
Q. About five feet from the car?
A. Yes, sir.
Q. And you say you saw this man sitting on the right front of the Lewis automobile?
A. Right.
page 75 } Q. Is that right?
A. That is right.
Q. You don't know who that man was?
A. No.
Q. Never saw him before, haven't seen him since?
A. No.
Q. Didn't look at his face, so you couldn't recognize him?
A. I couldn't recognize him.
Q. As far as you know, it could have been Mr. Lewis here, couldn't it, because you don't know who it was, do you?
A. That is right.
Q. And it could just as well have been Mr. Lewis, this young man sitting here, as it could have been I or Mr. Kanter or anybody else, couldn't it?

Leo Thomas.

A. Certainly.
Q. Is that right?
A. That is right.
Q. If you were about five feet from his car, you couldn't possibly know who if anyone was in the police car sitting about a half block away, could you?
A. Yes, I saw them in the car. It wasn't a half block away.

Mr. Kanter: Let him answer.

page 76 } By Mr. Wormington:
Q. You looked, you say?
A. The police car wasn't half a block away.
Q. How far away was it?
A. It was very close to the corner.
A. How far?
A. Approximately, maybe ten feet from Mr. Moore's car.
Q. About ten feet from Mr. Moore's car?
A. Right.
Q. Well now, Mr. Thomas, this car of Mr. Moore's was out here in the middle of the intersection, wasn't it?
A. Right.
Q. And where was this police car? About ten feet away, sitting out there in the middle of the street, too?
A. That is right. It was parked parallel.
Q. Right here in the middle of the street?
A. It wasn't parked like that.

Mr. Kanter: Come down—

By Mr. Wormington:
Q. Come down, show us where it was.
A. Parked like this (indicating).
Q. Right in the middle of the intersection?
A. That is right.
Q. Or in the middle of the street?
A. (The witness nodded.)
page 77 } Q. All right.

The Court: Stand down.
Mr. Wormington: I haven't finished.

By Mr. Wormington:
Q. You said that this man that was in the automobile sitting there, complained of his leg hurting?

Leo Thomas.

A. He was sitting there; he wasn't complaining. Somebody asked him if he was hurt. He said he hurt his leg and then police officer asked him—

Q. Which police officer?

Mr. Kanter: Let him finish.

Mr. Wormington: He did finish.

Mr. Kanter: No, he didn't.

By Mr. Wormington:

Q. What is the rest of your answer? Police officer what?

A. Asked him if he would like to go to the hospital. He said no, he wasn't hurt that bad.

Q. And which police officer was that, sir?

A. I couldn't identify him.

Q. Was it Mr. Vaughan?

A. I don't think so but I couldn't identify him.

Q. But he said that he hurt his leg, is that right, but he didn't want to go to the hospital?

A. That is right.

page 78 } Q. Now, the steering wheel on Mr. Lewis's car was jammed up, messed up, wasn't it?

A. I don't recall.

Q. You don't know.

Mr. Wormington: All right, sir. No further.

RE-DIRECT EXAMINATION.

By Mr. Kanter:

Q. Mr. Thomas, before you came in this room this morning the first time to testify on this stand, had you talked to me at all concerning the man sitting on the front seat with his leg hurt?

A. No.

Q. Before you came in the first time to testify?

A. No.

Q. From the time that we got over here in the courtroom this morning, while you were sitting outside, until the sheriff called you in here?

A. No.

Q. Did you, sir?

A. No.

Mr. Kanter: All right.

The Court: Stand down.

page 79 } MATA L. MOORE.

the plaintiff, having been first duly sworn, testified as follows:

Examined by Mr. Kanter:

Q. Now, Mrs. Moore, I am going to ask you, if you will please, to speak loudly so that His Honor and the gentlemen of the jury and Mr. Wormington and I can all hear you.

A. I will try.

Q. Because the courtroom is big and there is noise outside.

A. I speak very low, anyway, and I will try to remember.

Q. Mrs. Moore, what is your full name?

A. Mata Louise Moore.

Q. How old are you?

A. 62.

Q. And where do you live?

A. 2821 Dunkirk Avenue—2821 Dunkirk Avenue.

Q. Where is that? In what city?

A. That is in Lafayette Terrace—Lafayette Terrace.

Q. What city?

A. Norfolk.

Q. Speak loudly. I have got to get you to shout out because I can't hear you and I know the gentlemen of the jury can't. Now, Mrs. Moore, how long have you lived around Norfolk?

A. Approximately 25 years.

page 80 } Q. And at the time that this accident happened in August of 1957, whom were you living with?

A. I was living with my husband, and my daughter and son and family was living with me.

Q. Mrs. Moore, your husband has died since this accident happened, has he not?

A. Yes, sir.

Q. And that is why he, of course, is not here. Mrs. Moore, where were you and your husband going on the day that this accident happened?

A. We were on our way to Carl Parker's, to a bowling banquet.

Q. That is all right. You just relax, Mrs. Moore, and just tell the gentlemen exactly what happened as I ask you the questions. Where is Carl Parker's?

A. It is in South Norfolk.

Q. What route, Mrs. Moore, did you and your husband take from your home on Dominick Avenue to the corner where the accident happened?

A. Dunkirk. We left—

Q. I am sorry; Dunkirk Avenue.

Mata L. Moore.

A. We left Dunkirk Avenue down—we made a right-hand turn onto Shoop.

Q. You came down Dunkirk?

A. Dunkirk going towards town, coming to-
page 81 } wards town.

Q. To Shoop?

A. To Shoop.

Q. And turned right on Shoop?

A. That is right.

Q. Where were you going as you were coming up Shoop Street?

A. We was going towards town on Shoop.

Q. What was the intention of your husband to do when he got up to the corner of Tidewater Drive and Shoop?

A. Well, his intention was to stop because there is a stop sign there, and we did.

Q. What was he going to do after he stopped?

A. Well, he stopped; there was a car coming and he stopped to look.

Q. Which way were you all going to head on Tidewater Drive, Mrs. Moore?

A. Oh, we was heading west.

Q. No, I said—

A. I am sorry.

Q. Listen to my question. Now, I say, which way was your husband going to turn on Tidewater Drive?

A. He was making a left turn on Tidewater Drive to go south.

Q. Now, as you came up to the corner of Shoop Avenue and Tidewater Drive, is there any sort of traffic con-
page 82 } trol on that corner, Mrs. Moore?

A. The stop sign.

Q. And where is that stop sign?

A. That is on Shoop Avenue.

Q. For what traffic is that stop sign?

A. For Shoop Avenue traffic.

Q. When you came up to the corner, what did your husband do?

A. He stopped.

Q. And did any cars pass before the Lewis car came along?

A. There was one car went by. He stopped the first time. The second time he started up but there was another car coming and he stopped again.

Q. These two cars that passed your husband by while he

was stopped on Shoop Avenue, Mrs. Moore, in what lane of Tidewater Drive were they riding in?

A. In the right-hand on their side, on the outside lane.

Q. Would that be the lane that is closest to the center of the street?

A. No.

Q. Or the lane closest to you?

A. Closest to us.

Q. You say there were two cars?

A. Yes, sir.

page 83 } Q. —that he let pass. Did you see the automobile that struck your husband's car, Mrs. Moore, and that eventually you found out Mr. Lewis was driving?

A. Yes, sir.

Q. When was it that you first saw it?

A. Well, we saw that about a half a block away.

Q. Is there anything up the road in Tidewater Drive, any sort of physical thing in the road on Tidewater Drive where he was coming from, that you could say he was there or near there?

A. No, sir.

Q. About how far away from Shoop Avenue was he when you first saw him?

A. About 300 feet, I would say.

Q. Mrs. Moore, what did your husband do then?

A. Well, he was—started to make his turn, naturally, when we—he thought he had plenty of time and I did, too.

Mr. Wormington: I object to that. She can't possibly know what her husband thought.

The Witness: No, but I know—

Mr. Wormington: Just a moment.

The Witness: I know my husband.

The Court: Sustained.

By Mr. Kanter:

Q. You can't say what your husband thought; page 84 } how about you?

A. Well, I saw the car and I thought I had plenty of time; if I hadn't I would have said something.

Q. When was it that you saw the car the second time, Mrs. Moore?

A. Well, that I would judge would be about 50 feet, coming right at us.

Q. Beg pardon?

Mata L. Moore.

A. About 50 feet.

Q. When you first saw the car you said about half a block away from Shoop Avenue, were you able to tell what speed Mr. Lewis was going at that time, Mrs. Moore?

A. No, I could not.

Q. How about when you saw it the second time when he was about 50 feet away from you; how fast did he look?

A. That looked like he was coming fast.

Q. How fast was he going?

A. I would judge 40 to 50 miles an hour.

Q. How long have you been driving in automobiles in Norfolk, Mrs. Moore?

A. I don't drive; I am learning. But I have been riding a long time.

Mr. Wormington: If Your Honor please, I object, then. She doesn't drive a car; how she can gauge speed—

The Witness: I have been learning since.

page 85 } Mr. Wormington: What is that?

Mr. Kanter: If Your Honor please—

By Mr. Kanter:

Q. Have you driven in automobiles, riding with your husband or anyone else, Mrs. Moore, during the last year that your husband was alive?

A. Riding with him?

Q. Yes.

A. Certainly.

Q. Well, how were you able to judge the speed of Mr. Lewis's car, Mrs. Moore?

A. Well, I think any of us can judge speed to a certain extent.

Mr. Wormington: My objection still stands.

The Court: Objection sustained. I think the expressions going fast or slowly have been ruled on by the Supreme Court; and I don't think any person who doesn't drive an automobile ought to be passing on the speed of another car, because it is not the function of a passenger in an automobile to watch the speedometer.

Mr. Kanter: No, Your Honor, but she has testified, if it please the Court, that she has been a passenger in an automobile over the years with her husband, has driven in auto-

mobiles, and I think she would be competent to
page 86 } judge the speed of an automobile, and that her
testimony—

The Court: In years past I have been a passenger on a train many times but I am unable to even suggest how fast the speed was. I would know that it was going fast or slowly but I wouldn't dare say it was going 55 miles or 100 miles.

Mr. Kanter: I think, if Your Honor please, there would be something to that in judging the speed of a train because most of us don't ride on trains frequently. Here she said she has been driving in automobiles 24 years with her husband.

The Court: I don't think anybody riding on a train every day could judge the speed of a train, or an automobile, either, except that they would know they were going faster than usual or more slowly than usual. I don't think it is proper evidence unless she is familiar with the operation of automobiles, and the jury will disregard it.

Mr. Kanter: I respectfully note an exception to Your Honor's ruling.

By Mr. Kanter:

Q. Mrs. Moore, how far out in Tidewater Drive had your husband gotten when this impact took place?

A. Well, he had crossed, his front wheels, the front end of
the car was across the double line.

page 87 } Q. He had started to make his turn on Tidewater
Drive?

A. (The witness nodded.) To complete it, in his—

Q. At the time you were sitting on Shoop Avenue, looked to the south, saw Lewis's car some 300 feet away, was there anything in the street or on Tidewater Drive between your husband's automobile and Mr. Lewis's car that would have prevented either your husband from seeing him or him from seeing you?

A. No, sir.

Q. Are you certain there were no other cars in either lane of Tidewater?

A. I am.

Q. Was the right-hand lane behind your husband's car free of traffic at the time your husband got out across the double white lines?

A. Now, how is that?

Mata L. Moore.

Q. I say was this right-hand lane of Tidewater Drive clear of traffic when your husband had gotten his car over the double white lines?

A. Yes, sir.

Q. Was there anything that would have prevented Mr. Lewis from going around your husband on the right-hand side?

A. Not to my knowledge and not to my sight.

Q. What part of Mr. Lewis's automobile hit what part of your automobile?

page 88 } A. The front of his car hit our door, front door.

Q. The front of his car hit what?

A. The back part of our front door.

Q. What happened following the impact, Mrs. Moore?

A. Well, I know I was just—I don't know what happened to me. I was just cut and bruised and my neck was hurt.

Q. What is the next thing you remember, following the crash, Mrs. Moore?

A. Well, the first thing I knew, I was just bloody and I didn't know—I didn't realize nothing, I just saw the blood, I knew I was hurt and they took me out to the drugstore and—

Q. Who took you out?

A. I don't know.

Q. They took you to the drugstore?

A. Yes, sir.

Q. And then where did they take you from there?

A. The hospital.

Q. Did they give you any treatment at the hospital, Mrs. Moore?

A. They just checked me over. Of course, they had already bandaged up my wounds before I got there and they left those.

Q. You did not remain at the hospital?

A. No, sir.

page 89 } Q. What sort of injury did you receive in this accident, Mrs. Moore?

A. Well, my left knee was cut. My left eye. Both knees were cut.

Q. Did anything happen to your glasses?

A. And my glasses were broken, and this arm was—was a knot, big knot here, and big bruise, I judge about that large (indicating); and I was bruised on the left side.

Mata L. Moore.

Q. And what else?
A. My neck and back was injured.
Q. Did you go to see a doctor as a result of those injuries, Mrs. Moore?
A. I did when I began to suffer from them.
Q. Whom did you see?
A. Dr. Hollins.
Q. Have you been under his treatment since that time?
A. I have.
Q. Mrs. Moore, under his direction did you take physiotherapy treatments at De Paul Hospital?
A. Yes, sir.
Q. These are bills, Mrs. Moore, that you received from De Paul Hospital for your physiotherapy treatments?
A. Yes.

Mr. Kanter: I should like to mark those as Plaintiff's Exhibits 2 and 3, Your Honor.

page 90 } (The bills referred to were marked Plaintiff's Exhibits 2 and 3.)

By Mr. Kanter:
Q. Did you get new glasses for those broken in the accident?
A. Yes, sir.
Q. Beg pardon?
A. Yes, sir.
Q. Is this the receipt from the Salasky—
A. Yes, sir.
Q. —Optical Company?
A. Yes, sir.

Mr. Kanter: I should like to introduce that, if Your Honor please, Plaintiff's Exhibit 4.

(The receipt referred to was marked Plaintiff's Exhibit 4.)

By Mr. Kanter:
Q. Were X-rays taken by Dr. Eley?
A. Yes, sir.
Q. Under Dr. Hollins' direction?
A. Yes, sir.
Q. Is this the receipt that you have from that, Mrs. Moore?

Mata L. Moore.

A. Yes, sir.

Mr. Kanter: I offer that, Your Honor, as No. 5.

page 91 } (The receipt referred to was marked Plaintiff's Exhibit 5.)

By Mr. Kanter:
Q. Mrs. Moore, did you purchase the orthopedic collar that Dr. Hollins described and wear that as a result of this accident?
A. Yes, sir.
Q. Is this the receipt for that?
A. Yes, sir.

Mr. Kanter: I introduce that, Your Honor, Plaintiff's Exhibit 6.

(The receipt referred to was marked Plaintiff's Exhibit 6.)

By Mr. Kanter:
Q. Mrs. Moore, have you had to take certain drugs and medicines because of your injuries, since the accident?
A. I have.
Q. How much have you spent on drugs and medicines for the treatment of those injuries, since the accident?
A. Well, I haven't kept count of all of them but I imagine it is around approximately $50.
Q. Are these (indicating) some of the receipts that you have—
A. That is some of them.
Q. These are not all of them, though?
page 92 } A. No. I didn't keep them. I didn't think about it.
Q. Beg pardon?
A. I just found those sticking around.
Q. You did not keep the others?
A. No, sir; refills.

Mr. Kanter: I introduce that.

(The receipts referred to were marked Plaintiff's Exhibit 7.)

Mata L. Moore.

By Mr. Kanter:

Q. Do you feel, Mrs. Moore, that the $50 you spent on medicines is a reasonable estimate—

A. Yes, sir.

Q. —since August 1957?

A. (The witness nodded.)

Q. Mrs. Moore, where do you work?

A. With Grant's.

Q. How much do you earn there a week, on the average?

A. $34 a week.

Q. How many times have you seen Dr. Hollins? Was his statement correct that it has been 23 times?

A. As far as I know because I haven't really kept a record.

Q. Do those bills from De Paul Hospital represent 30 treatments at the rate of $5 and two $4 treatments?

A. That is right.

page 93 } Q. How much time, Mrs. Moore, did you lose from work as a result of those treatments? How many hours did you take in going to the hospital each time and in going to see Dr. Hollins? I know you can't say that to the minute but approximately.

A. Well, that is a lot of waiting time and going time. And if you include all of that, I imagine it would take three hours a day each trip, for each one.

Q. How much did you earn down at Grant's, Mrs. Moore?

A. A dollar an hour.

Q. You were paid at the rate of a dollar an hour?

A. That is right.

Q. Would you have been at work at Grant's during the time—

A. Yes, sir.

Q. —that you went to the doctor's, had it not been necessary for you to go?

A. Yes, sir.

Q. Mrs. Moore, were you injured in a previous accident?

A. Yes, sir.

Q. And when was that?

A. That was December 9, 1954.

Q. Were you injured in any place in that accident, Mrs. Moore, that has been in any way connected with this second accident of August 1957?

page 94 } A. Well, I had so many the first one, but to my knowledge my knee is the only thing that was really hurt.

Mata L. Moore.

Q. Your knee had continued to give you trouble from the time of the first accident?
A. To a certain extent, yes.
Q. It varied at times?
A. That is right.
Q. Some more severe and some less?
A. That is right.
Q. How has the knee been since the accident, Mrs. Moore?
A. Well, I have been having quite a bit of trouble with it.

Mr. Wormington: What is the answer?

By Mr. Kanter:
Q. Speak a little louder.
A. I have been having more trouble with it.
Q. In what way, Mrs. Moore?
A. Well, that is hard for me to tell you or anyone because you don't feel the aches. But it just hurts and pains.
Q. What sort of treatment have you taken for your knee from Dr. Hollins?
A. Taken exercise and shots.
Q. How about the treatment for your neck, Mrs. page 95 } Moore?
A. I have taken those therapy treatments and shots also in my neck.
Q. How is your neck getting along now?
A. Well, my neck still bothers me, and I don't like to say it but it does.
Q. Has it improved since the accident?
A. You can't feel my pains.
Q. Has it?
A. No, it has not.
Q. How about your knee?
A. Now, don't get me wrong. My neck does not bother me too much all the time, but it—other times it does.
Q. When is the time that it bothers you, Mrs. Moore?
A. Well, if I use my neck, my muscles and my shoulders and I get exhausted, my neck hurts extremely.
Q. How about your knee?
A. Well, that hurts some, too, but—(the witness nodded).
Q. Has that improved since the accident happened?
A. It has improved some.
Q. How about the bruises that you suffered?
A. They are all right.

Mata L. Moore.

Q. They are gone, cured?
A. They are gone.
Q. How about the bursitis of the knee that Dr.
page 96 } Hollins—
A. Well now, that is still there some.
Q. The pain is still there some?
A. That is right.
Q. Do you know whether that is connected with the bursitis, Mrs. Moore?
A. I don't know because I don't know medical—nothing about medicine.

Mr. Kanter: Answer Mr. Wormington.

CROSS EXAMINATION.

By Mr. Wormington:
Q. Mrs. Moore, are you having more trouble with your knee now than you had after the first accident?
A. Yes, sir.
Q. So I take it that Dr. Hollins is incorrect in stating that you don't have any symptoms of any extra trouble with your knee now?
A. No.
Q. You mean he is incorrect in that?
A. He is not—I do have some trouble with it.
Q. In other words, he is wrong, then, about that?
A. Well, he is if he says I don't have any trouble because I do have trouble. I mean in aches.

Mr. Kanter: I object to this. I don't think Dr. Hollins said Mrs. Moore—
The Witness: He said it was back to normal.
page 97 } Mr. Kanter: Just a minute. If Your Honor please, I think if the record were read it would show that Dr. Hollins said that at his last visit she appeared to have no symptoms, it is something that comes and goes.
The Court: The jury heard every word that Dr. Hollins said.
The Witness: That is right.
The Court: There is no evidence of any pain now but he did say it might flare up. That is what he said.
Mr. Kanter: That is correct.
The Witness: Well, that—(the witness nodded).

Mata L. Moore.

By Mr. Wormington:

Q. Mrs. Moore, you said you lost about three hours a day, time from your work, was that your estimate, in the times that you went to the doctor, took your physiotherapy treatments?

A. Well, yes.

Q. Approximately?

A. That is right.

Q. But you didn't lose any money? They didn't dock you any pay because you went to the hospital?

Mr. Kanter: I object to that. She said she would have been down there at work, working and earning a dollar an hour if she hadn't been to the doctor. I think it is admissible, anyway, even—

page 98 } The Court: Damages for personal injuries, a special damage is to make a person whole, not let him make a profit.

Mr. Kanter: Right.

The Court: If she lost nothing and she paid nothing like insurance or anything like that; where she paid for it, she would have it but I think where she hasn't lost anything, she can't recover. Otherwise she would make a profit. She would be compensated in the proper case for injuries, special damages but—

Mr. Kanter: That is true. She isn't, of course, attempting to make a profit.

The Court: If she is due anything for going back and forth and the jury should give her money for that, that would be something they should do.

Mr. Wormington: Is the question proper?

The Court: Yes.

Mr. Wormington: Would you answer that, please?

The Witness: Sir?

Mr. Wormington: Would you answer that question, please?

The Witness: Ask it.

Mr. Wormington: What?

The Witness: You ask the question to me; ask it

page 99 } again.

Mr. Wormington: Miss Alfriend, would you read the question back to her, please.

The Court: To save a little time—

By the Court:

Q. Did they pay you at Grant's? Did your employer pay you?

Mata L. Moore.

A. They pay me the actual hours I work. If I lose time—
Q. Have you lost it, then?
A. All the way I can get it is to take a doctor's certificate, which I have not asked for.

By Mr. Wormington:
Q. In other words, you could get it back; if you took a doctor's certificate to show you have been to see a doctor, you would get paid, is that right?
A. Well, if we lose certain amount of time, if I am out, if I lose time from work and out of work long enough that I am under a doctor's care, I can take a doctor's certificate and get paid for it but—
Q. You never did ask for it?
A. I have never asked. I don't know whether that is in their manual if you take off to go to a doctor. I haven't inquired.
Q. You didn't ask Dr. Hollins for a doctor's certificate, did you?
page 100 } A. No, I haven't.
Q. You made no effort to get this money back?
A. I haven't.

Mr. Kanter: She hasn't said she couldn't get it back; she said she didn't know.

By Mr. Wormington:
Q. Mrs. Moore, after this accident did your back start hurting you right away?
A. My neck began to hurt.
Q. Your neck?
A. (The witness nodded.) Approximately—well, it began to hurt. I mean that night I didn't know what happened to me.
Q. Did it get worse or get better?
A. It got worse.
Q. Was it a bad pain? Did it hurt a lot?
A. Yes, it is a bad pain.
Q. But you waited until September 4th before you saw the doctor, didn't you, for the first time?
A. Yes, sir, because—
Q. What?
A. Yes, sir, because I don't go to the doctors if I am not—
Q. You don't what?

Mata L. Moore.

A. I don't like to go to doctors.

page 101 } Q. You waited from August 17th until September 4th before you saw the doctor for the first time?

A. Yes, sir.

Q. Is that right?

A. That is right.

Q. As a matter of fact, you went to him at Mr. Kanter's suggestion, didn't you? Don't look at Mr. Kanter, you look at me.

A. Well—

Q. Isn't that right?

A. No, sir.

Q. Didn't Dr. Hollins in his first report to Mr. Kanter state—

Mr. Kanter: I object to that. Dr. Hollins isn't here and she wouldn't know what he stated in the first report. It is an attempt to use a piece of hearsay, Your Honor. I object to it.

The Court: Objection sustained.

By Mr. Wormington:

Q. You say you went to Dr. Hollins on your own hook?

A. Well, I called him up and made appointment.

Q. After Mr. Kanter suggested that you do so, isn't that right?

A. I didn't go to Mr. Kanter for a doctor.

Q. I understand you didn't but didn't he sug-

page 102 } gest that you go to see Dr. Hollins?

A. No, sir.

Q. Didn't he suggest that you go to see a doctor?

A. Yes, he did.

Q. You hadn't seen a doctor until then, had you?

A. I went to the clinic, yes.

Q. Mrs. Moore, you say there was no traffic in that right-hand lane heading north, this lane here?

A. No.

Q. That was empty. And you say your husband came up here to the edge of the intersection and stopped and a car was coming, he started up and stopped again, let that car go by and he started up again and the second car came by and he stopped the second time?

A. That is right.

Q. Then he started up the third time, is that right?

Mata L. Moore.

A. Yes, sir.

Q. And when he started up that third time is when you saw Mr. Lewis down here about 300 feet away?

A. Yes, sir.

Q. Is that right?

A. Yes, sir.

Q. What kind of car was your husband driving?

A. '57 Ford.

Q. '57 Ford?

page 103 } A. Yes, sir.

Q. With automatic transmission?

A. Yes, sir.

Q. And your husband crossed two traffic lanes, went about 20 or 25 feet and was hit, wasn't he?

A. Well, he was hit; right there.

Q. He started up here when Mr. Lewis was about 300 feet away and he moved about in that position (indicating) and got hit, didn't he?

A. Judging that distance.

Q. Isn't that right?

A. Yes, sir.

Q. So that he went across two traffic lanes, didn't he? That was the distance he went from the edge of the intersection out to here (indicating), isn't that right?

A. He was across one and part of the other.

Q. That is not quite two, then?

A. That is not quite two.

Q. And that distance is about 20 or 25 feet, isn't it?

A. I imagine so.

Q. And you tell this jury that in the time it took your husband to cross or move his car 20 or 25 feet, that Mr. Lewis's car traveled 300 feet?

A. I said approximately 300. You say I am no judge, I am no judge of speed; I couldn't be accurate on

page 104 } distance. But I should judge—

Q. As a matter of fact, you didn't see Mr. Lewis's car until he was about 50 feet away, did you?

A. Oh, I saw before that, sir.

Q. Your husband stopped for two cars and they went by, didn't they?

A. That is right.

Q. And he could have stayed stopped another second or two and this other car would have gone by—Mr. Lewis's—wouldn't it?

A. Well, not—no, he had plenty of time to go by.

Mata L. Moore.

Q. But you didn't, did you?
A. No, because he was speeding.
Q. And he traveled 300 feet while your husband traveled about 25 feet, is that right?
A. Well, my husband was going very slowly.
Q. How slowly was he going?
A. Well, you know he had stopped, you know you don't go very fast starting up.
Q. All you have got to do in a Ford with automatic transmission is just pull down on the accelerator?
A. I realize that, sir, but my husband is not a fast driver.
Q. You say he was 300 feet away when you first saw him?
A. I said approximately.
page 105 } Q. Approximately; I realize all of these are approximations, Mrs. Moore. And you thought there was plenty of time to get out there ahead of him, make a left turn in front of this car, didn't you?
A. Yes, sir.
Q. But as a matter of fact, you didn't have plenty of time, did you?
A. We would have if he had been going at a normal rate of speed, sir.
Q. That is not my question.
A. I know.
Q. You can let your lawyer argue the case.

Mr. Kanter: If Your Honor please, I object to that type of statement on the part of Mr. Wormington.
The Court: Just refrain from making statements of that kind.
Mr. Wormington: All right, sir.

By Mr. Wormington:
Q. You, as a matter of fact, didn't have ample time to make that turn, did you?
A. I still say we did.
Q. You still think you had plenty of time—
A. Yes, sir.
Q. —to make it, but you did have an accident, didn't you?
page 106 } A. Yes, sir.

Mr. Wormington: All right. No further questions.

Officer W. C. Vaughan.

Mr. Kanter: I should like to recall Officer Vaughan, please.

(Mr. Kanter approached the bench.)

Mr. Wormington: What is that?
Mr. Kanter: I am going to introduce the speed chart. It is in the Virginia code; to offer it as evidence.
Mr. Wormington: All right.
Mr. Kantor: I should like to mark that, if Your Honor please, as plaintiff's next exhibit.
The Court: No. 8.

(The document referred to was marked Plaintiff's Exhibit 8.)

OFFICER W. C. VAUGHAN,
recalled, testified further as follows:

Examined by Mr. Kanter:
Q. Officer Vaughan, you testified that the speed limit out there on Tidewater Drive at that point was 30 miles an hour when this accident happened?
A. That is right.
Q. How many officers were out there at the time of the accident with you, Officer Vaughan, investigating?
page 107 } A. Officer Culler was working traffic, and two cars—two men from Ocean View had stopped and give us a hand for a short while. There was four of us that I remember on the scene.
Q. So there were four police officers assisting in the investigation, including yourself?
A. Well, I was the investigator, and traffic was handled by George Culler and the other two officers volunteered, stopped for—momentarily, I don't know how long they were there but—(sentence not completed).
Q. All right, sir. Now, Officer Vaughan, are you familiar with the speed chart? That is, the stopping and starting distances of motor vehicles, that a motor vehicle will travel so many feet per second and you can stop in so many feet traveling at a certain speed?
A. Not—not the one that you have in the books, Mr. Kanter.
Q. Beg pardon?
A. Not the ones you have in the book, no. We have a speed chart we go by that is put out by the National Northwestern

Officer W. C. Vaughan.

Institute, which is put out in a different setup than that.

Q. Is that speed chart with which you are familiar the same as the distances and times traveled that you see on that piece of paper which is part of the Virginia page 108 } code?

A. This is not the type speed chart we go by. We have got one by the Northwestern Institute, traffic institute, is put out—drag factors and skid and different setup from this.

Q. Are the distances and times shown on that chart the same as the distances and times on the chart that you are familiar with, Officer Vaughan?

A. No. We are trained in a different section from that.

The Court: Let me have it.

(Plaintiff's Exhibit 8 returned to the Court.)

By Mr. Kanter:

Q. Do you have your other chart with you?

A. No, sir.

Mr. Kanter: Well, if Your Honor please, of course the chart speaks for itself.

The Court: You will have to put in some evidence to get this in. You had better read the last part yourself; put on evidence that that was the condition.

Mr. Wormington: Let me see that.

Mr. Kanter: This is the state code.

Mr. Wormington: I understand that. (Examining) I have no objection to its going in evidence, Your Honor. I am perfectly willing to stipulate.

The Court: It is predicated, however, on four-wheel brakes, a clear day and dry surface.

page 109 } Mr. Wormington: To save the Court time, if it is agreeable with the Court I am perfectly willing for Mr. Kanter to put it in by stipulation.

Mr. Kanter: I should like to make sure that the record is clear. I want to ask one or two questions.

By Mr. Kanter:

Q. Was the road free from loose gravel out there, Officer Vaughan?

A. Yes, sir.

Officer W. C. Vaughan.

Q. Was the surface of the road in good condition, no holes, bumps?
A. Yes, sir.
Q. I am speaking now of Tidewater Drive. Was the road wet or dry?
A. It was dry.
Q. Was the road, Tidewater Drive, hard or soft substance?
A. That is—you have got your blacktop, tar and gravel I believe.
Q. Is that a hard substance?
A. Hard surface.
Q. Do you know what kind of—I will leave that. That is in by stipulation. I have no further questions of Officer Vaughan.

page 110 } CROSS EXAMINATION.

By Mr. Wormington:
Q. Mr. Vaughan, as I understand the situation, there were some other officers out there at the scene assisting you but you were the officer that actually made the investigation, weren't you?
A. Yes, sir.
Q. That was your job?
A. Yes, sir.
Q. And part of your job obviously enough was to talk to the various people involved, get that information about how it happened, who was there and what their versions of the accident were and whether anyone was injured, is that right?
A. That is right.
Q. Did anybody make any complaint to you of being injured?
A. Other than Mrs. Moore was supposed to be in the drugstore is the *onliest* injury that I have any recollection of.
Q. That is the only thing you had. If someone else had made some complaint of being injured, either to you or some of the other officers, you would have known about it?
A. Well, the other officers probably might not but to myself I would have known.
Q. You would have known about it. It wasn't
page 111 } part of your job in the investigation to find out whether or not somebody was hurt or whether or not anyone was hurt in the accident, whether they talked to another officer or not?

Officer W. C. Vaughan.

A. Yes, sir; yes, sir, but—

Q. So you would have normally asked the various people if they were hurt, wouldn't you?

A. Yes, sir. I asked the—as stated and testified to, that Mrs. Moore was in the drugstore and that is the *onliest* one that was.

Q. Didn't you ask young Lewis here if he wanted to have any medical attention, he told you no?

A. Yes, sir.

Q. Isn't that right?

A. Yes, sir.

Q. And he told you his leg was hurt?

A. I also asked Mr. Moore.

Q. Yes, sir. He refused, you understood that he refused medical attention, too?

A. Yes, sir.

Q. As a matter of fact, this young man said his leg hurt, he didn't want or need any medical attention, didn't want to go to the hospital?

A. He didn't want to go to the hospital, that is right.

Q. If there had been any passenger in Mr. Lewis's car, you would have known about it?

page 112 } A. That was my job, Mr. Wormington, making investigation.

Q. You had no record or recollection, either one, of anybody being in the car with Mr. Lewis at all, had you?

A. Not to my recollection, no, sir.

Q. Now, Mr. Vaughan, you mentioned a different type of chart that you accident investigators go by to determine the stopping distances and lengths of skid marks and that sort of thing, is that right?

A. Yes, sir.

Q. Is that different from this one?

A. Yes, sir.

Q. Could you determine from this chart that you use and did you normally do in your accident work, determine what the apparent speed of cars was by the length of their skid marks?

A. Yes, sir.

Q. Did you make such an investigation in this particular accident?

A. The 34 feet of skid marks on our chart—not counting the impact—would indicate about 26 miles per hour speed.

Q. The total stopping distance in this chart here for 30 miles an hour—that is including the reaction time—is 80

feet, isn't it? Would you check that and see if that isn't correct? That is the reaction time and also the
page 113 } stopping time?

A. That is what is here, yes, sir.

Q. Isn't that what that chart shows?

A. Yes, sir. As I say, this is a different one from what we go by.

Mr. Wormington: No further.

RE-DIRECT EXAMINATION.

By Mr. Kanter:

Q. I notice, Officer Vaughan, that you qualified your determination of the speed of Mr. Lewis; you said you determined that there would be about 26 miles an hour speed not counting the impact?

A. That is right; 34 feet—

Q. Right. Tell the—

Mr. Wormington: Let him finish the answer.

Mr. Kanter: All right. I will.

By Mr. Kanter:

Q. Tell the gentlemen of the jury just what you meant by not counting the impact, what does that 34 feet mean as far as stopping goes and then how the impact would affect it?

A. That is what I just tried to say, said.

Q. Go ahead, sir.

A. 34 feet if I am driving down the street according to our chart now, the way we test it, if I apply my brakes and I leave 34 feet of skid marks, our chart will show 26
page 114 } miles an hour speed.

Q. That is without any impact?

A. That is giving your drag factor and without any impact.

Q. What effect would impact have on that, Officer Vaughan?

A. That is something that we—

By the Court:

Q. Impossible to answer?

A. That is right.

By Mr. Kanter:

Q. Let me see if I understand this, Officer Vaughan. Your

speed chart would show that if you are riding down the street and suddenly slammed on your brakes, if you were going 26 miles an hour your car would skid to a stop at the end of 34 feet?

A. It varies a little on that, too.

Q. All right; maybe 33 or 35 feet?

A. On an average, 33 to 36 feet has been proven on our charts to run in the neighborhood of 35 to 37 miles an hour—I mean 25 to 27 miles an hour.

Q. And that is without anything in front of the car to stop it?

A. That is right.

Q. That means it would come to a stop by it-
page 115 } self?

A. That is right.

Q. And you testified on your other examination that the damage to these cars was very heavy?

A. The left side of one of them and the complete front end of the other one.

Q. And that the burn marks in the road on the rear tires of Mr. Moore's car indicated that the automobile had been shoved sideways five feet, two paces or five feet?

A. Approximately five feet or two paces, which—

Q. Not skidded this way (indicating) but that when he was hit broadside it had shoved his car five feet to the north?

A. That is right.

The Court: How many other witnesses?

Mr. Kanter: The plaintiff rests, Your Honor.

The Court: Gentlemen, come back at 2:00 o'clock.

Mr. Wormington: Your Honor, I didn't mean to interrupt the Court but I have a young man here whom I would like to put on very much, who came over from Hampton and he is losing time from work and I wondered, in view of that, sir, if you could indulge me to the extent of that one witness. I don't think he will take long.

The Court: Can you get through in five minutes?

Mr. Wormington: I think so, Your Honor.

page 116 } The Court: Bring him in.

Mr. Kanter: Is that that so-called independent witness? Because if it is, Your Honor, I know my cross examination is going to take more than five minutes.

Mr. Wormington: Not "so-called," Your Honor; he is an independent witness. But, as I say, I had some difficulty—of

course, I subpoenaed the young man but he is losing time from his work in Hampton. He has come over here from Hampton.

The Court: These gentlemen are losing time from their work, too.

Mr. Kanter: Judge, in my cross examination I want to be able to cross examine this man fully, sir.

Mr. Wormington: As I say, it is just this one witness, Your Honor. That was the only purpose that I had in—

The Court: Let him come on.

W. SHELLEY HENDERSON,

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

Examined by Mr. Wormington:

Q. Your name is Shelley Henderson, is it not?

A. That is correct, sir.

Q. How old are you, Mr. Henderson?

page 117 } A. I am 20.

Mr. Kanter: Speak up loudly so I can hear you.

A. All right. 20 years old.

By Mr. Wormington:

Q. You are going to have to speak up a little louder than that.

A. I am 20.

Q. We have all got to hear you. Are you married?

A. No, sir.

Q. Where do you live, Mr. Henderson?

A. 3033 Cromwell Road.

Q. Here in the city of Norfolk?

A. Yes, sir.

Q. Now, Mr. Henderson, before this accident with which we are dealing, which occurred I believe on August 17, 1957, did you ever know Mr. Lewis there, either father or son, either of those two gentlemen?

A. No, sir. I had never met him.

Q. Have you seen either of those two gentlemen since the accident?

A. No, sir, I haven't.

Q. Is this the first time you have seen them?

W. Shelley Henderson.

A. Yes, sir, it is.

Q. Did you witness this accident, Mr. Henderson?

A. I did.

page 18 } Q. And how did Mr. Lewis here know of your existence and the fact that you witnessed the accident?

A. Well, after the accident had happened, Mr. Lewis was standing beside his car and there was a fellow that came from across the street out of his house, he was sounding off that Mr. Lewis was speeding, that it was his fault, he had seen the whole thing. Well, to the best of my knowledge, that man wasn't out of his house at the time. As far as I know, I am the only car that was behind Mr. Lewis when it happened. All the other traffic had already passed when this other car pulled out in front of him.

Q. What did you do as a result of that?

A. Well, when I heard this man sounding off about this boy was responsible for the accident, well, I just went over to him and I gave him my name, address and telephone number.

Q. You told him you saw the accident?

A. I told him I saw the accident.

Q. Did you actually see the accident?

A. Yes, sir, I did.

Q. Suppose you come down here. We have been using this diagram as the scene of this accident. As I understand it, Shoop Avenue doesn't cross here, it is a T intersection, isn't that right?

A. That is right.

page 119 } Q. We have been using this (indicating) for Tidewater Drive and this (indicating) for Shoop Avenue.

A. That is correct.

Q. And while the streets are here on this diagram the same width, am I correct that Tidewater Drive is four lanes and this is just the normal two-lane street?

A. That is right.

Q. Now, before anything happened, which way were you going on which street?

A. I was going north on Tidewater. I was going to turn on Shoop.

Q. Going to turn into Shoop?

A. Yes, sir.

Q. Take this red car, use that as your car (indicating toy

car), and show us which way you were going there on that diagram. Now, north would be this way?

A. I was going in this direction and I was going to take a right turn onto Shoop.

Q. Well now, when you were some distance back from the intersection before you had gotten anywhere near it, what was your approximate speed?

A. Well, when I came—the zone drops in there from 35 after you cross the bridge to 30. There is a sign posted right at the service station that is there now. The service station at the time it wasn't there, it was under construction I believe where they were getting ready to build

page 120 } it. And right through here is a 30-mile zone all the way down Tidewater. I started to slowing down to make this turn, and Mr. Lewis's car was right alongside of me when I started slowing down. And as I got—I guess I was about 100 feet or less from the corner, well, Mr. Lewis, his car went on past me. I was slowing down.

Q. He was going faster than you were, then?

A. Yes, he was going—because I was slowing down. He must have been going around 30 miles an hour, when this other car came right out of this Shoop Avenue.

Q. Did you see the car come out?

A. I said I saw it, yes, sir. He didn't stop because he just came right out; and Mr. Lewis, he tried to stop but it was just too quick for him to stop.

Q. Can you give us any idea approximately the distance that Mr. Lewis's car was from the intersection when this other car shot out here as you described?

A. It couldn't have been more than two carlengths at the most. I would say roughly around 30 feet.

The Court: Have a seat, sir.

By Mr. Wormington:

Q. When the car came out in the path of Mr. Lewis's car, what did his car do, if you could tell?

A. Well, he tried—he tried to stop. When he hit this other car, it turned his car to the left side of Tide-

page 121 } water Drive. In other words, he tried to stop, he definitely did, but this other car had just pulled out in front of him so fast that I know it was impossible for him to stop.

W. Shelley Henderson.

Q. Now, what did you do after the accident happened?

Mr. Wormington: Would you ask the plaintiff not to make any comments, Your Honor? She is contradicting the witness here.

The Court: Counsel is requested to tell his client not to make facial expressions.

By Mr. Wormington:

Q. After the accident happened, Mr. Henderson, what did you do, sir?

A. Well, I backed my car up and put it on the side of the road off, away, out of traffic. Then I went up there to see just what had happened, if anybody was hurt.

Q. Was anybody in the car with Mr. Lewis at any time you saw him or was he by himself?

A. No, he was by himself.

Q. Do you have any interest in the outcome of this suit one way or the other, Mr. Henderson?

A. No, sir. It doesn't mean a thing to me. I just want to see that the right thing is done, that is all.

Mr. Wormington: Answer Mr. Kanter.

page 122 } CROSS EXAMINATION.

By Mr. Kanter:

Q. What is your full name, sir?

A. William Shelley Henderson.

Q. Where do you live, Mr. Henderson?

A. 3033 Cromwell Road.

Q. Is that here in the city of Norfolk?

A. Yes, sir.

Q. Counsel mentioned that you were subpoenaed in Hampton. Are you in Hampton now?

A. Well, yes, sir. I am working over there now.

Q. Beg pardon?

A. I am working over there now, yes, sir.

Q. What sort of work do you do?

A. I am in the delicatessen and manager of Giant Food Stores, the Newmarket Shopping Center.

Q. Delicatessen manager for the Giant Food Stores in Newmarket and Hampton?

A. That is right.

W. Shelley Henderson.

Q. What sort of work were you doing in August of 1957, Mr. Henderson?

A. Well, at that time I was working as a cashier in the Giant Food Stores down on Tidewater Drive, in the Southern Shopping Center.

Q. Is that where you were headed when this
page 123 } accident happened?

A. No, sir. I was headed home.

Q. Where do you live?

A. I live in Ballentine Place, on Cromwell Road.

Q. Ballentine Place and Cromwell—in Cromwell Road?

A. Yes, sir. Cromwell Road runs through Ballentine Place.

Q. You said you were going to turn right on Shoop Street here?

A. That is correct.

Q. Where would that take you?

A. That would take me down the Chesapeake Boulevard and I could then go down Chesapeake Boulevard right on down to Lafeyette Boulevard by the substation and turn right, go two blocks and be at my home.

Q. Now, Mr. Henderson, you said that you were driving an automobile behind Mr. Lewis here?

A. Well, I wasn't behind him until he came—he passed me.

Q. He came by you?

A. He came by me when I was slowing down. Up to that time he was behind me.

Q. How far were you from the intersection when you slowed down?

A. I was approximately half a block when I
page 124 } started slowing down.

Q. You were about a half a block away from the accident when you started to slow down?

A. Yes, sir.

Q. And it was at that time you say that Mr. Lewis came by your car?

A. He came by my car, that is right.

Q. And you say that back here at the service station, between the bridge and the curve in the road, the speed limit is 35 miles an hour?

A. On the opposite—on the other side of the bridge where you come out of the underpass at the railroad and that zone area is 35 miles an hour.

Q. Where does this zone change?

W. Shelley Henderson.

A. It changes right after you pass the Flying A Service Station, the sign—

Q. That is just as you cross over the bridge?

A. It is about a block after you cross over the bridge, It is right in front of Durkee's Florist.

Q. So, in other words, there is the bridge and then about a block after you get from the bridge the speed zone changes?

A. That is right.

Q. Just as you go by the Flying A Service Station?

A. That is right.

page 125 } Q. You say you were about half a block; when did you change from 35 to 30?

A. I changed from 35 to 30 before I came over the bridge.

Q. In other words, you slowed down first when you came over the bridge and you were going 35 then and shifted to 30?

A. I dropped to 30, yes, sir.

Q. And then as you came along down over the bridge by the Flying A restaurant—

A. It is not a restaurant, it is a service station.

Q. —Flying A Service Station, you say that the speed limit there changed to 30 miles an hour?

A. It changes right there at the service station.

Q. So you were just going about the speed limit of 30 miles an hour as you came to the speed sign, so that you stayed within the limit?

A. That is right. Lewis was behind me at that time.

Q. Lewis was behind you at that time?

A. That is right.

Q. And then you say you came up from the service station until you were about a half a block away from Shoop Avenue, when you started to slow down again?

A. I was slowing down to take that corner, yes, sir.

Q. When you were half a block away from it?

A. That is right.

page 126 } Q. You didn't really slow down a half block away from this corner to take that turn, did you, sir?

A. I did. I told you I did.

Q. As a matter of fact, you slowed down from 35 to 30 when you crossed that bridge, when you saw that 30-mile speed sign at the Flying A station, isn't that right?

A. I slowed down when I came over the bridge and when I got past that sign and I was about half a block from that

corner, I was slowing down. Because I can't take that corner doing 30 miles an hour.

Q. But yet you slowed down from 35 to 30 to get within the limit and you say as you were that half block away, that is when Mr. Lewis passed you?

A. That is right. He wasn't speeding, though.

Q. All right, now; I am going to ask you, then, Mr. Henderson: If you had slowed down from 35 to 30 when you came across that bridge and he passed you when you were half a block away from that corner, wasn't it necessary that he was going by you faster than 30 miles an hour?

A. No, it was not.

Q. Well, you said that you were just—

A. If I was slowing down from 30 miles an hour to take that corner—

Q. You said you started—

Mr. Wormington: Let him answer the question.

page 127 } A. I—

Mr. Wormington: Let him answer the question. If Your Honor please, he keeps interrupting this witness. I submit he has a right—

The Court: I think the witness is taking care of himself very well.

Mr. Wormington: All right.

By Mr. Kanter:

Q. I ask you this: You say when you were half a block away you started to slow down?

A. That is right.

Q. And at that time just before you came across the bridge you came from 35 to 30?

A. I was doing 35 when I came across the bridge and I slowed down to 30.

Q. And when you were half a block away you were going to slow down again?

A. I did.

Q. And that is when Lewis passed you?

A. He passed me right about that time.

Q. Just about when you were half a block away from the accident, just as you started to slow down to take the corner?

A. That is right.

W. Shelley Henderson.

Q. Now, I ask you this, Mr. Henderson: If you
page 128 } were going 30 miles an hour that half a block away
from the accident and had just started to slow down to come to that corner, wouldn't it have been necessary that Lewis was going more than 30 miles an hour when he passed you?

A. I don't believe so.

Q. You don't really know how fast he was going, do you?

A. I don't think he was doing over 30 miles an hour. I said that and I will stick by it.

Q. Who was this fellow that came running out of the house across the street, to the accident and started telling this man, "You have been speeding down Tidewater Drive"?

A. I don't know his name but he lives right across the street from the Globe Cut Rate it is. He is a redhead fellow.

Q. You never saw him before?

A. I have never seen him before in my life except when I have driven by there I have seen him out in front of the cleaner's, waiting for a bus.

Q. What exactly did he say to Lewis when he came out across the street?

A. He didn't say nothing to Lewis. He came out there, he was using what you call purple, saying he saw everything, this boy was responsible for it, he was speeding.

Q. Which boy?

A. Mr. Lewis.

Q. What did he say to Lewis?

page 129 } A. He didn't say nothing to Lewis. He was
just blabbing off to everybody.

Q. Who is "everybody"?

A. There was a crowd gathered around the accident after it happened. At the time Mr. Lewis hit Mr. Moore's car, all the other traffic had gone by. I was the only car behind Mr. Lewis when that accident happened.

Q. Did this man blabber that purple word you said to the police officer?

A. I didn't hear him talking to Officer Vaughan.

Q. You did not hear this man talking to Officer Vaughan?

A. I didn't hear him talking to him but I understand he did.

Q. Did you talk to Officer Vaughan?

A. No, I didn't.

Q. Why didn't you give Officer Vaughan your name as a witness to this accident, Henderson?

Roderic W. Lewis.

A. I gave my name to Mr. Lewis. At the time I didn't think—

Q. Didn't you hear Officer Vaughan ask if there were any witnesses to that accident around there at that time?

A. I did not. He was on the opposite side of the street telling people to stay away from it.

Q. As a matter of fact, Henderson, you were driving in the right front seat with Lewis in that car, weren't
page 130 } you?

A. You seem to have all the answers. Why don't you tell me?

Mr. Kanter: I have no further questions.

The Court: Stand down. The jury will recess until 2:15. Do not have any conversation with anyone other than yourselves about this case.

Mr. Wormington: Your Honor, may this witness be excused now?

The Court: You may go.

(Thereupon, Court adjourned for lunch.)

page 131 } AFTERNOON SESSION.

(Met pursuant to the morning session, with the same parties present as heretofore noted.)

RODERIC W. LEWIS,
recalled, testified further in his own behalf as follows:

Examined by Mr. Wormington:

Q. Mr. Lewis, at the time this accident happened, was anybody in the car with you or not?

A. There was no one in the car. There was no one in the car, no.

Q. Before this accident occurred, had you ever seen or known Mr. Henderson?

A. Before the accident I had not seen or heard or even after the accident I had not talked to him even over the phone.

Q. What was the only contact or let's put it this way: What contacts did you have with him, contact or contacts if there were more than one?

A. I didn't have any kind of contact except when the accident occurred, he—

Roderic W. Lewis.

Q. And what was that contact?

A. Well, he walked up to me and told me that somebody was giving their opinion of the accident that really hadn't seen the accident and told me he would be glad to appear as a witness if I needed him and give me his name

page 132 } and address.

Q. Have you seen him since that time other than today in court?

A. I had not seen him before.

Q. Were you in any way injured in the accident?

A. My knee was slightly injured. It was skinned and bruised but I could walk.

Q. Did you have any conversation with any of the police officers at the scene about your injury?

A. They only asked me if I was hurt and needed to go to the hospital. I told them I hurt my knee but I didn't think that I needed to go to the hospital.

Q. All right. And where were you when that conversation took place?

A. I was sitting in my car.

Q. What part of your car?

A. In the right-hand side on the seat.

Q. Why on the right?

A. Because, well, the steering wheel was bent to begin with, and then also by moving over to the right-hand side I could pull my pants' leg up better and look at my knee to see how bad it was hurt.

Mr. Wormington: Answer Mr. Kanter.

page 133 } CROSS EXAMINATION.

By Mr. Kanter:

Q. Mr. Lewis, who was this redheaded man that came out after the crash and was berating you and telling you that it was your fault because you were speeding?

A. I don't even know who he was. All I know that he lived close there because I heard him say that he was in the house at the time and he said he heard the noise from the accident and he came over there.

Q. Said he lived in the house, you heard him say he was in the house at the time?

A. I didn't hear him say he was in the house. He said

he was at his house and heard the noise from the accident.

Q. I thought you just said a moment ago that you said that he was in the house and heard the noise of the accident. Now, which did he tell you?

A. Well, if I did—

Q. Was he at his house or in the house?

A. If I said that he was in the house I am mistaken because he said he was at the house. He didn't say he was inside or outside.

Q. Why did he tell you that?

A. He didn't tell me. He was talking to the other people. I didn't hear what he said to them but I saw him talking to them.

page 134 } Q. He didn't, as Henderson said, use purple blabber in talking to you and telling you that you were speeding down Tidewater Drive?

A. He didn't say a whole lot to me. He just come over and looked at me and then started walking off and talking to other people about what happened.

Q. And you didn't have any conversation with that man?

A. I didn't talk to him enough to find out what—whether he—

Q. Do you know who he was?

A. I don't know.

Q. Have you ever seen him before?

A. It seems that I had seen him before but I couldn't say for sure.

Q. What exactly did he say to you?

A. He just walked over and said—asked me was I hurt or something, and that is about all he said and walked off and started talking to the other people.

Q. He wasn't cursing?

A. No, didn't curse at me.

Q. Did you hear him cursing at all?

A. I didn't actually hear him curse, no.

Q. Well, could Henderson have been mistaken about hearing him curse like he said he did?

A. Well, I don't know because I don't know

page 135 } what he heard.

Q. Did you hear him talk about the speed you were traveling down Tidewater Drive?

A. I heard him say something in the nature that I was going fast.

Roderic W. Lewis.

Q. Did you pass another car when you were about half a block away from the scene, as Henderson said?

A. I passed—I passed a car I believe but I couldn't be sure because I didn't pay that much attention to that car that was on the side of me, but I knew that there was traffic in the other lane.

Q. Lewis, it is my understanding that you deny that Henderson was traveling with you as a passenger?

A. That is right.

Q. Did you appear in the Traffic Court in the City of Norfolk following this accident?

A. I did.

Q. To testify as a witness?

A. I did.

Q. And did you not state before His Honor, Judge Hitchings, at that time that the passenger in your automobile was out of the city and that is why he was not able to be in the courtroom?

A. I did not.

Q. You deny that?

page 136 } A. I did not say there was somebody—I did not say there was anybody in the car with me.

Q. You deny that you stated to His Honor when he asked you where the gentleman was that was with you, that you said to him that he was out of town?

A. I didn't say there was a gentleman with me.

Q. And you never knew this man Henderson before?

A. I never knew him before.

Q. Never have seen him since?

A. Never seen him since, until today.

Q. But you do remember passing the car about a half a block from the scene of the accident?

A. It may have been that much and it may not have been a half a block.

Mr. Kanter: All right, sir. Come down.

Mr. Wormington: That is the defendant's case, Your Honor. We rest.

Mr. Kanter: One witness, Mr. Thomas. Will you step up to the stand, please, sir.

Mr. Wormington: If Your Honor please—

The Court: That is rebuttal?

Mr. Kanter: Yes, sir, rebuttal.

page 137 } LEO THOMAS,
recalled, testified further as follows:

Examined by Mr. Kanter:

Q. Mr. Thomas, I ask you one question, sir: Where was this young gentleman, Mr. Lewis, when you heard a police officer ask some person sitting on the front seat of Lewis's car whether or not he wanted to go to the hospital?

Mr. Wormington: He has already testified to that, Your Honor. This isn't rebuttal evidence.

A. There was one—

Mr. Wormington: Just a moment, sir.
The Court: Let's see what he will say now. Go ahead.
Mr. Wormington: All right.

By Mr. Kanter:

Q. Where was Mr. Lewis, this boy, when you saw the police officer ask some person whether or not he wanted to go to the hospital, Mr. Thomas?

A. I don't know where Lewis was. It could have been him sitting on the seat and could not have been, but there was someone in the police car.

Q. You do not know whether it was Mr. Lewis or some other gentleman?

A. No.

(The following occurred in the judge's cham-
page 138 } bers, in the absence of the jury:)

Mr. Wormington: Counsel for the defendants moves to strike the evidence as to both defendants, Roderic W. Lewis and Carl L. Lewis, and it is my understanding that the Court grants the motion as to Carl Lewis, the titled owner of the car and overrules the motion as to Roderic Lewis, the driver of the car, to which action of the Court the defendant, Roderic W. Lewis, excepts.

(In the courtroom, the Court read the instructions to the jury, exceptions having been previously noted by counsel to the respective instructions, as follows:)

Mr. Kanter: The plaintiff objects and excepts to the action of the Court in its refusal to grant Instruction P-4 on the

ground, No. 1, that the plaintiff testified that the defendant's vehicle was traveling between 40 and 50 miles an hour immediately prior to the impact; and, secondly, on the ground that even if her evidence is inadmissible, then on the testimony of Officer Vaughen, which indicated that 34 feet was the stopping distance for 26 miles of speed without impact, and which would indicate here that where the automobile was stopped by terrific impact it would have gone substantially beyond the 34 feet, the jury would have the right to infer that the car was being driven in excess of 30 miles an hour.

page 139 } The plaintiff objects and excepts to the action of the Court in its refusal to grant Instruction P-5-A, on the ground that Mrs. Moore testified that the street to the right of plaintiff's vehicle was clear and that in the exercise of reasonable care the defendant could have gone around plaintiff's vehicle to the right, and there was sufficient evidence in the record to substantiate the instruction, which is a proper statement of the law.

The plaintiff objects and excepts to the action of the Court in refusing to grant Instruction P-8 as originally tendered, and striking out paragraphs three and four since plaintiff testified that with respect to her loss of earnings, if she had not had to visit the doctor and take physiotherapy treatments at the hospital she would have worked and received pay at the rate of a dollar per hour. With regard to paragraph four, Dr. Hollins testified that the plaintiff had a disability from her normal activities of 25 per cent from the time of the accident to date, and from 10 per cent diminishing to zero from this date, anywhere from two to twelve months henceforth; that her deprivation from carrying on her normal activities is a proper item of damages and should have been submitted.

page 140 } Mr. Wormington: The defendant objects and excepts to the action of the Court in granting Instruction P-2, on the grounds that there is no evidence of any lack of lookout on the part of the defendant Roderic Lewis.

The defendant objects and excepts to the action of the Court in granting Instruction P-3 on the grounds that there was no evidence of any lack of control on the part of the defendant, Roderic Lewis.

The defendant objects and excepts to the action of the Court in granting Instruction P-7, on the grounds that this is an expression of the scintilla doctrine and, as such, is not a proper instruction.

Mr. Kanter: The plaintiff objects and excepts to the action of the Court in granting Instruction A for the defendant, on the grounds that the instruction should properly contain the plaintiff's theory of the case that if the accident were caused by the concurring negligence of the two drivers, the plaintiff would be entitled to recover.

The same objection and exception to the action of the Court in granting Defendant's Instructions B and C.

On the granting of Instruction D, the plaintiff objects and excepts to the action of the Court in that the last paragraph is superfluous and confusing because it states the law correctly in the first paragraph that if the defendant Lewis acted with ordinary care the plaintiff cannot recover, but then goes on to say, "and such is true if the
page 141 } accident were caused by the sole negligence of Mr. Moore," which I submit is confusing to the jury.

(The case was then argued by counsel and the jury retired to consider its verdict.)

page 142 } JUDGE'S CERTIFICATE.

I, Clyde H. Jacob, Judge of the Circuit Court of the City of Norfolk, Virginia, do hereby certify that the foregoing is a true and correct transcript of the testimony and proceedings of the case of Mata L. Moore *v.* Roderic W. Lewis and Carl L. Lewis, tried in said court on the 28th day of November, 1958, and includes all the testimony offered, the motons and objections of the parties, the rulings of the Court and the exceptions of the parties, and all other proceedings of said trial.

I further certify that the exhibits offered in evidence, as described by the foregoing record, and designated as Plaintiff's Exhibits 1 to 8, inclusive, are all of the exhibits offered upon said trial, and the originals thereof have been initialed by me for the purpose of identification.

I further certify that said transcript was presented to me for certification and signed within sixty days after the final order in said cause, and that the attorneys for the defendants had reasonable notice in writing of the time and place at which the same would be tendered for certification.

Given under my hand this 16th day of January, 1959.

CLYDE H. JACOB, Judge.

page 143 } CLERK'S CERTIFICATE.

I, W. Robertson Hanckel, Clerk of the Circuit Court of the City of Norfolk, Virginia, do hereby certify that the foregoing transcript of testimony and other proceedings of the trial of the case of Mata L. Moore *v.* Roderic W. Lewis and Carl L. Lewis, duly certified by the Judge of said court, together with the original exhibits offered upon the trial of said case, identified by the initials of said judge, was filed in my office on the 16 day of January, 1959.

W. ROBERTSON HANCKEL, Clerk
By T. A. W. GRAY, D. C.

A Copy—Teste:

H. G. TURNER, Clerk.

INDEX TO RECORD

	Page
Writ of Error Awarded	1
Record	2
Notice of Appeal and Assignments of Error	2
Instructions	3
Judgment—November 28, 1958	4
Notice	4
Witnesses:	
Roderic W. Lewis	6, 81
Officer W. C. Vaughan	15, 67
M. L. Tatterson, Jr.	23
Leo Thomas	25, 45, 85
Dr. George G. Hollins	31
Mata L. Moore	51
W. Shelley Henderson	73
Proceedings	85
Certificates	87

RULE 5:12—BRIEFS

§1. Form and Contents of Appellant's Brief. The opening brief of appellant shall contain:

(a) A subject index and table of citations with cases alphabetically arranged. The citation of Virginia cases shall be to the official Virginia Reports and, in addition, may refer to other reports containing such cases.

(b) A brief statement of the material proceedings in the lower court, the errors assigned and the questions involved in the appeal.

(c) A clear and concise statement of the facts, with references to the pages of the printed record when there is any possibility that the other side may question the statement. When the facts are in dispute the brief shall so state.

(d) With respect to each assignment of error relied on, the principles of law, the argument and the authorities shall be stated in one place and not scattered through the brief.

(e) The signature of at least one attorney practicing in this Court, and his address.

§2. Form and Contents of Appellee's Brief. The brief for the appellee shall contain:

(a) A subject index and table of citations with cases alphabetically arranged. Citations of Virginia cases must refer to the Virginia Reports and, in addition, may refer to other reports containing such cases.

(b) A statement of the case and of the points involved, if the appellee disagrees with the statement of appellant.

(c) A statement of the facts which are necessary to correct or amplify the statement in appellant's brief in so far as it is deemed erroneous or inadequate, with appropriate references to the pages of the record.

(d) Argument in support of the position of appellee.

The brief shall be signed by at least one attorney practicing in this Court, giving his address.

§3. Reply Brief. The reply brief (if any) of the appellant shall contain all the authorities relied on by him not referred to in his opening brief. In other respects it shall conform to the requirements for appellee's brief.

§4. Time of Filing. As soon as the estimated cost of printing the record is paid by the appellant, the clerk shall forthwith proceed to have printed a sufficient number of copies of record or the designated parts. Upon receipt of the printed copies or of the substituted copies allowed in lieu of printed copies under Rule 5:2, the clerk shall forthwith mark the filing date on each copy and transmit three copies of the printed record to each counsel of record, or notify each counsel of record of the filing date of the substituted copies.

(a) If the petition for appeal is adopted as the opening brief, the brief of the appellee shall be filed in the clerk's office within thirty-five days after the date the printed copies of the record, or the substituted copies allowed under Rule 5:2, are filed in the clerk's office. If the petition for appeal is not so adopted, the opening brief of the appellant shall be filed in the clerk's office within thirty-five days after the date printed copies of the record, or the substituted copies allowed under Rule 5:2, are filed in the clerk's office, and the brief of the appellee shall be filed in the clerk's office within thirty-five days after the opening brief of the appellant is filed in the clerk's office.

(b) Within fourteen days after the brief of the appellee is filed in the clerk's office, the appellant may file a reply brief in the clerk's office. The case will be called at a session of the Court commencing after the expiration of the fourteen days unless counsel agree that it be called at a session of the Court commencing at an earlier time; provided, however, that a criminal case may be called at the next session if the Commonwealth's brief is filed at least fourteen days prior to the calling of the case, in which event the reply brief for the appellant shall be filed not later than the day before the case is called. This paragraph does not extend the time allowed by paragraph (a) above for the filing of the appellant's brief.

(c) With the consent of the Chief Justice or the Court, counsel for opposing parties may file with the clerk a written stipulation changing the time for filing briefs in any case; provided, however, that all briefs must be filed not later than the day before such case is to be heard.

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

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

§7. Effect of Noncompliance. If neither party has filed a brief in compliance with the requirements of this rule, the Court will not hear oral argument. If one party has but the other has not filed such a brief, the party in default will not be heard orally.

CLERK
SUPREME COURT OF APPEALS
RECEIVED
AUG 13 1959
RECEIVED
RICHMOND, VIRGINIA