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Clerk, Supreme Court of Appeals
Richmond, Va.

207 VA 503

Record No. 6243

In the
Supreme Court of Appeals of Virginia
at Richmond

JIM MAROULIS

v.

CLAYTON H. ELLIOTT, III, AN INFANT, ETC., ET AL.

FROM THE HUSTINGS COURT FOR THE CITY OF PORTSMOUTH

RULE 5:12 BRIEFS

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

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

HOWARD G. TURNER, Clerk.

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

IN THE

Supreme Court of Appeals of Virginia

AT RICHMOND.

Record No. 6243

VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Tuesday the 12th day of October, 1965.

JIM MAROULIS, Plaintiff in error,

against

CLAYTON H. ELLIOTT, III, AN INFANT UNDER THE AGE OF 21 YEARS, WHO SUES BY CLAYTON H. ELLIOTT, JR., HIS FATHER AND NEXT FRIEND, AND ALLEN B. SILBERT, Defendants in error.

From the Court of Hustings for the City of Portsmouth
Robert F. McMurran, Judge

Upon the petition of Jim Maroulis a writ of error is awarded him to a judgment rendered by the Court of Hustings for the City of Portsmouth on the 20th day of April, 1965, in a certain motion for judgment then therein depending wherein Clayton H. Elliott, III, an infant, etc., was plaintiff and the petitioner and others were defendants; upon the petitioner, or some one for him, entering into bond with sufficient security before the clerk of the said hustings court in the penalty of three hundred dollars, with condition as the law directs.

IN THE

Supreme Court of Appeals of Virginia

AT RICHMOND.

Record No. 6243

VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Wednesday the 27th day of April, 1966.

JIM MAROULIS, Plaintiff in error,

against Record No. 6243

CLAYTON H. ELLIOTT, III, AN INFANT, ETC., ET AL., Defendants in error.

and

JIM MAROULIS, Plaintiff in error,

against Record No. 6244

ERNEST P. GRETES, EXECUTOR, ETC., ET AL., Defendants in error.

JIM MAROULIS, Plaintiff in error,

against Record No. 6245

ERNEST P. GRETES, ADMINISTRATOR, ETC., ET AL., Defendants in error.

JIM MAROULIS, Plaintiff in error,

against Record No. 6246

GEORGE GEORGIADES, ETC., ET AL., Defendants in error.

JIM MAROULIS, Plaintiff in error,

against Record No. 6247

NICHOLAS GEORGIADES, ET AL., Defendants in error.

From the Hustings Court of the City of Portsmouth

This day came the parties, by counsel, and represented to the court that the issues involved in the cases of *Jim Maroulis* v. *Clayton H. Elliott, III, an infant, etc.,* Record No. 6243, *Jim Maroulis* v. *Ernest P. Gretes, Executor, etc., et al.,* Record No. 6244, *Jim Maroulis* v. *Ernest P. Gretes, Administrator, etc., et al.,* Record No. 6245, *Jim Maroulis* v. *George Georgiades, etc., et al.,* Record No. 6246, and *Jim Maroulis* v. *Nicholas Georgiades, et al.,* Record No. 6247, are identical and thereupon moved the court to hear only the case of *Jim Maroulis* v. *Clayton H. Elliott, III, an infant, etc.* with the agreement that the decision reached in this case will be controlling as to the remaining cases.

page 2] Upon mature consideration whereof, the motion is granted and it is ordered that the record in the case of *Jim Maroulis* v. *Clayton H. Elliott, III, an infant, etc., et al.,* be printed, and that the decisions to be rendered in the cases of *Jim Maroulis* v. *Ernest P. Gretes, Executor, etc., et al., Jim Maroulis* v. *Ernest P. Gretes, Administrator, etc., et al., Jim Maroulis* v. *George Georgiades, etc., et al.,* and *Jim Maroulis* v. *Nicholas Georgiades, et al.* shall be controlled by the decision in the case of *Jim Maroulis* v. *Clayton H. Elliott, III, an infant, etc.*

A Copy,

Teste:

H. G. TURNER, Clerk.

RECORD

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page 1]

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MOTION FOR JUDGMENT

Defendants.

Plaintiff, Clayton H. Elliott, III, an infant under the age of 21 years, who sues by Clayton H. Elliott, Jr., his Father and next friend, moves the Judge of the Court of Hustings for the City of Portsmouth, Virginia, for a judgment and award of execution against the defendants for the sum of FIVE HUNDRED THOUSAND ($500,000.00) DOLLARS, which sum of money is due the plaintiff from the defendants for this, to-wit:

1. That on the 3rd day of November, 1963, Thomas Chester LaFrage, deceased, owned, operated and *controled* a motor vehicle along Route 58 in the City of Chesapeake, Virginia.

2. That on said date the defendant, Allen B. Silbert, owned, operated and *controled* a motor vehicle along Route 58 in the City of Chesapeake, Virginia.

3. That on said date the defendant, Jim Maroulis, owned, operated and *controled* a motor vehicle along Route 58 in the City of Chesapeake, Virginia.

4. That on said date, Clayton H. Elliott, III

page 2] was lawfully and properly riding as a passenger in a motor vehicle which was operated by Demetra S. Gretes, along Route 58 in the City of Chesapeake, Virginia.

5. That as a result of the negligence of Thomas Chester LaFrage, Allen B. Silbert, and Jim Maroulis, in the operation and control of their respective motor vehicles, the plaintiff, Clayton H. Elliott, III, received very serious and permanent injuries.

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

7. That he was caused to be unable and will in the future

be unable to perform his necessary and lawful affairs.

8. That plaintiff will be caused to lose large sums of money which he would have otherwise earned upon reaching his majority, and his earning capacity has been extinguished.

9. That in addition to the above, plaintiff will be caused to expend large sums of money after reaching his majority in an endeavor to be healed and cured of said injuries.

10. That Wayland P. Britton qualified as Administrator of the Estate of Thomas Chester LaFrage, deceased, in the Clerk's Office of the Court of Hustings for the City of Portsmouth, Virginia, on the 4th day of December, 1963.

CLAYTON H. ELLIOTT, III, an infant, etc.
By STANLEY J. BANGEL
Of Counsel.

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Filed in the Clerk's Office the 5th day of December, 1963.

Teste:

JOHN R. PORTER, JR., Clerk
_____ D. C.

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ANSWER AND GROUNDS OF DEFENSE

Now comes the defendant, Jim Maroulis, and for his answer and grounds of defense to the Motion for Judgment filed herein against him, states as follows:

1. This defendant denies all acts of negligence alleged against him in the Motion for Judgment and further denies that any negligence on his part proximately caused or contributed to cause the injuries and damages of which the plaintiff complains.

2. This defendant is without knowledge or information

sufficient to form a belief as to the injuries and damages which the plaintiff sustained and therefore calls for strict proof thereof.

* * * * *

Back of page 40-A

The Court of Hustings
Filed 1963 Dec 27 PM 1 42

* * * * *

page 115] INSTRUCTION NO. 1

The Court instructs the jury that it was the duty of the defendants to exercise reasonable care:

1. To keep a proper lookout;
2. To keep their motor vehicles under proper control;
3. To operate their motor vehicles at a reasonable speed under the circumstances, traffic and conditions then and there existing, regardless of any posted speed limit.

And if you believe from a preponderance of the evidence that the defendants failed to exercise reasonable care in the performance of any one or more of the foregoing duties, then they were negligent, and if you further believe from such evidence that any such negligence was a proximate cause or proximately contributing cause of the collision and injuries and deaths, then you should find your verdicts in favor of the plaintiffs against the defendants, LaFrage, Silbert and Maroulis.

6/5/64
Granted & Ex
RFM

page 116] INSTRUCTION NO. 2

The Court instructs the jury that the duty to exercise reasonable care to keep a proper lookout requires not only the physical act of looking with reasonable care but reason-

ably prudent action to avoid the danger which a proper lookout would disclose. If a person looks and does not see what a reasonably prudent person would have seen under the circumstances in time to take the necessary precautions to avoid danger, he is as guilty of negligence as if he failed to maintain a lookout.

6/5/64
Granted & Ex
RFM

page 117] INSTRUCTION NO. 3

The Court instructs the jury that it is the duty of the driver of a motor vehicle to exercise reasonable care not to follow another motor vehicle more close than is reasonable and prudent, having due regard to the speed of the vehicles, and the traffic upon, and conditions of the highway at the time. If you believe from a preponderance of the evidence that the defendants, Silbert and Maroulis, failed to exercise reasonable care in the performance of the foregoing duty, then they were negligent. If you further believe from such evidence that any such negligence was a proximate cause or proximately contributing cause of the collision and injuries and deaths, then you should find your verdict in favor of the plaintiffs against Silbert and Maroulis.

6/5/64
Granted & Ex
RFM

page 118] INSTRUCTION NO. 4

The Court instructs the jury that the law does not undertake to apportion or balance the negligence of the defendants where two or more are at fault, nor to ascertain which one is more at fault, but a defendant is liable if he committed any act of negligence which proximately contributed to cause the collision.

6/5/64
Granted
RFM

page 119] INSTRUCTION NO. 5

The Court instructs the jury that the plaintiffs are free from contributory negligence as a matter of law.

6/5/64
Granted
RFM

page 120] INSTRUCTION NO. 6

The Court instructs the jury that if you find for the plaintiff, Clayton Elliott, III, then you should award him damages which are fair, just and adequate, and in assessing such damages, you may take into consideration:

1. Any bodily injury sustained, and the extent and duration thereof;
2. Any effect of any such injuries upon his health according to their degree and probable duration;
3. Any physical pain and mental anguish suffered by him in the past and any which may be reasonably expected to be suffered by him in the future;
4. Any disfigurement or deformity resulting to him and any humiliation or embarrassment associated therewith;
5. Any inconvenience or discomfort caused in the past, and any that will probably be caused in the future;
6. Any lessening of his earning capacity he may reasonably be expected to *sustained* in the future.

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

6/5/64
Granted
RFM

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page 125] INSTRUCTION NO. A

The Court instructs the jury that the mere fact that there has been an accident and that as a result thereof the pas-

sengers in the Gretes car were killed or injured does not of itself entitle the plaintiffs in these cases to recover from the defendants, Silbert and Maroulis. In order to recover in these cases against the defendants, Silbert or Maroulis, the burden is upon the plaintiffs to prove by a preponderance of the evidence that the defendants, Silbert or Maroulis, were negligent and that any such negligence on their part was a proximate cause or a proximate contributing cause of the collision, injuries and deaths.

And if the jury is of the opinion that any such negligence has not been proven by a preponderance of the evidence or if you believe that it is just as probable that the defendants, Silbert or Maroulis, were not guilty of any such negligence as it is that they were, then you shall return your verdict in favor of such defendants.

6/5/64
Granted
RFM

page 126] INSTRUCTION NO. C

The Court instructs the jury that it is incumbent on the plaintiffs not only to prove by the preponderance of the evidence that the defendants, Silbert or Maroulis, were negligent but also to prove by the preponderance of the evidence that any such negligence on their part was a proximate cause or a proximate contributing cause of the collision, i.e. that the collision was a natural and probable consequence of any such negligence. A person is not charged with foreseeing that which could not reasonably be expected to happen, nor for casualties which, though possible, were wholly improbable, nor for intervening efficient causes which could not have been reasonably foreseen. Therefore, even though you may believe from a preponderance of the evidence that the defendants, Silbert or Maroulis, were negligent, yet unless you further believe from a preponderance of the evidence that any such negligence was a proximate cause or a proximate contributing cause of the collision, you must find your verdict in favor of such defendants.

6/5/64
Granted & Ex
RFM

page 127] INSTRUCTION NO. B

The Court instructs the jury that "negligence" is the failure to exercise that degree of care that a reasonably prudent person would have exercised under the same or similar circumstances.

6/5/64
Granted
RFM

page 128] INSTRUCTION NO. D

The "proximate cause" of an event is a cause which, in natural and continuous sequence, unbroken by any efficient intervening cause, produces the event, and without which the event would not have occurred; it is an act or omission which immediately causes or fails to prevent the event; an act or omission occurring or concurring with another act, where, had it not happened, the event would not have occurred; provided such event could reasonably have been anticipated by a prudent man in the light of attendant circumstances.

6/5/64
Granted & Ex.
RFM

page 129] INSTRUCTION NO. E

The court instructs the jury that defendants, Silbert and Maroulis, in operating their automobiles had a right to assume and to act upon the assumption until the contrary appeared or in the exercise of reasonable care should have appeared to them that their lane of travel would be free from oncoming vehicles and obstructions.

6/5/64
Granted & Ex.
RFM

page 130] INSTRUCTION NO. F

The Court instructs the jury that if you believe from all

the evidence in this case that the defendant, Jim Maroulis, without prior fault on his part was confronted with a sudden emergency created by the operator of another motor vehicle, and that the defendant, Maroulis, acted as a person of ordinary prudence would have acted under the same circumstances, then he was not guilty of negligence even though you may believe his choice of action was not the wisest course, and your verdict should be for the defendant, Maroulis.

6/5/64
Granted & Ex.
RFM

page 131] INSTRUCTION NO. G

The Court instructs the jury that if you believe from all the evidence in this case that the defendant, Alan B. Silbert, without prior fault on his part struck the rear of the vehicle being operated by Mrs. Demetra S. Gretes because of a sudden emergency created by the operator of another motor vehicle, and that the defendant, Alan B. Silbert, acted as a person of ordinary prudence would have acted under the same circumstances, then in so doing he was not guilty of any negligence even though you may believe his choice of action was not the wisest course and your verdict should be for the defendant, Alan B. Silbert.

6/5/64
Granted
RFM

page 132] INSTRUCTION NO. I

The mention by counsel of the amount plaintiffs have sued for is not evidence in this case and should not be considered by you in arriving at the amount, if any, of your award.

6/5/64
Granted
RFM

page 133] INSTRUCTION NO. J

The Court instructs the jury that your verdict must not be

based upon surmise, suspicion or conjecture as to what the facts in this case may be and that it is your duty to try these cases without being influenced by sympathy and the jury is under the solemn obligation of oath to decide the case solely upon the law and the evidence which has been presented at the trial.

6/5/64
Granted
RFM

page 134] INSTRUCTION NO. K

The following Tables of speed and stopping distances show the results of experiments made with automobiles, unloaded except for the driver, equipped with four-wheel brakes, in good condition, on dry, hard, approximately level stretches of highway free from loose material.

These Tables create no presumption in law.

SPEED IN		AVERAGE STOPPING -DISTANCES		TOTAL STOPPING DISTANCES
Miles per Hour	Feet per Second	Auto Brakes (In Feet)	Average Driver Reaction Time (¾Second) (In Feet)	Autos (In Feet)
10	14.67	5	11	16
15	22.0	12	16	28
20	29.34	21	22	43
25	36.62	32	27	59
30	44.0	47	33	80
35	51.3	63	38	101
40	58.7	82	44	126
45	66.0	104	50	154
50	73.3	128	55	183
55	80.7	155	61	216
60	88.0	185	66	251
65	95.3	217	71	288
70	102.6	252	77	329
75	109.9	289	82	371
80	117.2	328	88	416
90	132.0	425	99	524
100	146.6	514	109	623

6/5/64
Granted
RFM

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page 136] INSTRUCTION NO. H

The Court instructs the jury that if you believe from all the evidence that the injuries and deaths of which the plaintiffs complain might have been due to either of two causes, for one of which the defendants, Silbert or Maroulis, might have been responsible, and for the other of which they were not responsible, and if the jury are unable to determine which of the two causes occasioned the injuries and deaths complained of, then the jury shall find their verdict in favor of the defendants, Silbert and Maroulis.

6/5/64
Refused
RFM

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page 148]

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Filed 12/8/64
RFM

page 149]

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GROUNDS OF MOTION FOR NEW TRIAL

Now comes the defendant, Jim Maroulis, and assigns the following grounds for his Motion for a New Trial heretofore made:

1. The Court erred in refusing to allow the defendant, Jim Maroulis, three pre-emptory strikes from the jury panel.

Over-ruled — RFM

2. The Court erred in permitting witness H. K. Wigfield to testify to conclusions with respect to the respective damage to the Gretes car and the Maroulis car.

Over-ruled — RFM

3. Counsel for plaintiffs improperly interjected into the trial the testimony of witness Gerald Hedge after the Court had ruled the same was inadmissible in evidence.

4. The Court erred in overruling defendant's motion for a mis-trial upon the grounds that Plaintiffs' counsel had interjected testimony of Gerald Hedge into the case after the Court had ruled such testimony objectionable and improper, the defendant, Maroulis, having been prejudiced thereby.

page 150] 5. The Court erred in overruling defendant's motion to strike out the plaintiffs evidence at the conclusion thereof and to enter summary judgment for the defendant, Maroulis, upon the following grounds:

(a) The evidence did not establish primary negligence on the part of the defendant, Maroulis, in the operation of his automobile.

(b) The evidence did not establish that negligence on the part of defendant, Maroulis, was a proximate cause of the accident.

(c) The evidence did not establish that the occurrence and the injuries sustained by the plaintiffs was an event which could reasonably have been foreseen by the defendant, Maroulis.

(d) There was no evidence that the injuries and damages sustained by the plaintiffs resulted from a collision between the automobile of the defendant, Maroulis, and the automobile in which the plaintiffs were riding.

6. The Court erred in overruling the defendant's motions made at the conclusion of all of the evidence to strike the plaintiffs evidence and to enter summary judgment for the defendant, Maroulis, upon the grounds assigned in Paragraph 5 above.

7. The Court erred in granting plaintiffs Instruction 1 upon grounds that the same was a finding instruction and did not give consideration to the doctrines of foreseeability and sudden emergency insofar as the defendant, Maroulis, was con-

cerned. The instruction was also erroneous as it did not differentiate between defendants with respect to their individual acts of negligence.

Over-ruled — RFM

8. The Court erred in granting plaintiffs Instruction 2 upon grounds that it instructed the jury that the defendant, Maroulis, was under an absolute duty to take precautions to avoid danger irrespective of whether or not a reasonable lookout on his part would have afforded him an page 151] opportunity to do so. This instruction was inapplicable under the facts established by the evidence.

9. The Court erred in granting plaintiffs Instruction 3 upon grounds that it was a finding instruction and did not take into account the doctrines of foreseeability and sudden emergency.

Over-ruled — RFM

10. The Court erred in refusing to grant defendant's Instruction H as there was substantial evidence that the injuries and damages complained of resulted from causes for which the defendant, Maroulis, was not responsible.

GROUNDS OF MOTION TO SET ASIDE VERDICT AS CONTRARY TO THE LAW AND THE EVIDENCE

Now comes the defendant, Jim Maroulis, by counsel, and assigns as grounds for his Motion to Set Aside the Verdict as contrary to the law and the evidence the following:

As to the plaintiffs:

1. The evidence established that the defendant, Maroulis, was not guilty of negligence as a matter of law.

2. The evidence established that any negligence on the part of the defendant, Maroulis, was not a proximate cause of the accident as a matter of law.

3. There was no evidence that the injuries and damages sustained by the plaintiffs resulted from a collision between the automobile of the defendant, Maroulis, and the automobile in which the plaintiffs were riding.

As to the co-defendant, Allen B. Silbert:

1. The evidence established that the co-defendant, Allen B. Silbert, was guilty of negligence as a matter of law.

2. The evidence established that negligence on the part of Allen B. Silbert proximately caused or contributed to cause the injuries and damages to the plaintiffs as a matter of law.

JIM MAROULIS
By BERRYMAN GREEN
His Attorney

* * * * *

page 153] THE COURT OF HUSTINGS
For The
CITY OF PORTSMOUTH
Portsmouth, Virginia
April 13, 1965

MR. ROBERT S. COHEN
MR. STANLEY J. BANGEL
MR. AUGUSTUS ANNINOS
MR. JOHN M. HOLLIS
MR. WILLIAM M. HARRIS
MR. BERRYMAN GREEN, IV

Re: *Clayton H. Elliott, III, an infant, etc., et als* v. *Wayland Britton, Administrator of the Estate of Thomas Chester LaFrage, Deceased, et als*

Gentlemen:

The Court is very grateful to all counsel in these cases for the able services rendered by them in their oral arguments on the motions after verdict and for their comprehensive briefs.

Plaintiff shall be considered in the singular or plural as the context requires.

The defendant, Jim Maroulis, has assigned ten grounds for his motion for a new trial and several grounds for his motion to set aside the verdict as contrary to the law and the evidence, which are set forth *seriatim* in the written memorandum filed December 8, 1964.

As to ground No. 1 the Court did not allow each defendant three pre-emptory strikes from the jury panel as it concluded that the word defendant used in the statute relating to pre-emptory challenges to jurors is a collective noun. Thus all defendants are allowed only three strikes collectively.

As to the admission and rejection of certain evidence, as stated in the motion, if any such did occur the Court feels that no harm or prejudice has been suffered by the defendants.

page 154] The points most strongly urged by the defendant, Jim Maroulis, are (1) the defendant was not guilty of any primary negligence and (2) even though the defendant was negligent, an intervening cause, which could not have reasonably been foreseen, came into active operation in producing the result.

The jury has found from the evidence that the defendant was negligent in either following the plaintiff too closely, failing to keep proper look out, failing to have his car under proper control or for other causes shown by the evidence. The evidence is sufficient to sustain the jury's conclusions on the question of the defendant's primary negligence.

The next contention of this defendant briefly stated is this: even though Maroulis was following the car in which plaintiffs were riding too closely, yet the deceased LaFrage was driving his automobile on the wrong side of the road and in the wrong direction; that the view of LaFrage's car was obscured by an automobile traveling in front of plaintiff's car, and the forward car suddenly turned from the line of the approaching LaFrage car, exposing the LeFrage car abruptly to the plaintiff. The appearance of the LaFrage car, so this defendant says, directly in front of the plaintiff's car was like "dropping a stone wall" on the highway, which event the defendant could not reasonably have foreseen. Hence the defendant contends "but for" the negligence of LaFrage the injuries of the *plaintiff's* would not have occurred.

No good purpose can be served by commenting on the many cases cited in the briefs filed herein. Suffice to say that the defendant *negligently* (jury's verdict) ran

page 155] into the rear of the plaintiff's car which had crashed into LaFrage's car and the combined action of the Maroulis and the LaFrage cars crushed the plaintiff's car causing the injuries. These injuries are indi-

visible as no one can say from the evidence whose negligence caused any of them.

From a reading of the cases cited, a general rule seems to be that one would be liable where his negligence continues to operate down to the point of the accident and proximately contributes thereto and the results of one's negligence can be reasonably foreseen, notwithstanding the causes of such accident are unforeseeable.

Maroulis in following too closely, i.e. negligently, should have reasonably foreseen that an accident might occur. His obligation under such circumstances was to protect the plaintiff against the risk of such an accident.

Moreover the question of proximately contributing or concurring negligence are matters for the determination by the jury. The Court is therefore of the opinion that the motions of Maroulis to set aside the verdicts or grant new trials should be over-ruled.

Likewise the similar motions of LaFrage's Administrator are over-ruled.

The Clerk will enter judgments on the various verdicts as of April 20, 1965 and will note the appropriate exceptions of the defendants.

If a stay of execution is desired please advise.

Yours very truly,
ROBT. F. McMURRAN, Judge

RFM:mvw

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page 155C]

Virginia: At the Court of Hustings for the City of Portsmouth held on the 20th day of April, 1965

* * * * *

This day came again the parties by their attorneys and the Court having fully heard the motion of the defendant, Wayland Britton, Administrator of Thomas C. LaFrage, and Jim Maroulis, heretofore made, to set aside the verdict of the jury heretofore rendered and to enter judgment in favor of Jim Maroulis or in lieu thereof to grant to Jim Maroulis a new trial on the grounds that the said verdict is contrary to the law and evidence, both of which motions the Court doth

overrule. It is therefore considered by the Court that the plaintiff recover from the defendants, Wayland Britton, Administrator of Thomas C. LaFrage, and Jim Maroulis, the sum of One Hundred Thousand Dollars ($100,000.00) with interest thereon to be computed at the rate of six percent per annum from the 5th day of June, 1964, until paid and his costs by him about his suit in this behalf expended, to which action of the Court the defendant, Wayland Britton, Administrator of Thomas C. LaFrage, and Jim Maroulis, by counsel, excepted.

page 155D] It further appearing to the Court that the jury did not find against Allen B. Silbert, it is ordered that a final judgment be entered in his behalf, to which action of the Court Jim Maroulis, by counsel, excepted.

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page 166]

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ASSIGNMENT OF ERROR

The defendant, Jim Maroulis, sets forth the following assignment of error:

1. The Trial Court erred in entering final judgment against the defendant, Jim Maroulis.
2. The Trial Court erred in refusing to allow the defendant, Jim Maroulis, three pre-emptory strikes from the jury panel.
3. The Trial Court erred in permitting witness H. K. Wigfield to testify to conclusions with respect to the damage to the automobiles involved in the accident out of which this case arose.

page 167] 4. The Trial Court erred in overruling defendant Jim Maroulis' motion for a mistrial upon grounds that plaintiff's counsel improperly injected into the trial testimony of witness Gerald Hedge after the Court had ruled that it was objectionable and improper and inadmissible in evidence.

5. The Trial Court erred in overruling defendant Jim Maroulis' motion to strike out the plaintiff's evidence at the conclusion thereof and to enter summary judgment for such defendant.
6. The Trial Court erred in overruling the defendant Jim

Maroulis' motion at the conclusion of all evidence to strike the plaintiff's evidence and to enter summary judgment for the defendant, Maroulis.

7. The Trial Court erred in granting plaintiff's instructions 1, 2 and 3.

8. The Trial Court erred in refusing to grant defendant Jim Maroulis' instruction H.

9. The Trial Court erred in overruling the defendant Jim Maroulis' motions to set aside the verdict and enter final judgment for the defendant, Jim Maroulis, or in the alternative to set aside the verdict and grant the said defendant a new trial.

10. The Trial Court erred in entering final judgment for the defendant, Allan B. Silbert.

BERRYMAN GREEN
Attorney for Jim Maroulis

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page 168A]

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THE COURT OF HUSTINGS

Filed 11 June 1965 A.M. 11:55

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page 12]

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Mr. Green: On behalf of the defendant, Maroulis, I request the Court to grant three strikes for this defendant individually from the jury panel.

Mr. Hollis: And on behalf of the defendant, Silbert, I make the same request, namely that we be granted three strikes for that defendant.

Mr. Harris: Same on the defendant, LaFrage.

The Court: The administrator?

Mr. Harris: Yes, sir.

The Court: My ruling in the past has been that the defendant shall have three strikes. I consider that to be used col-

lectively and not separately. Therefore, I will rule against you. I am now supported by the New Act of the General Assembly to go into effect.

Mr. Green: I would say this, that in this case there could be a conflict of interests between the defendants. In fact, there is a conflict, and for that basis, the purpose is to permit each defendant to have the three strikes. I don't think the mere multiplicity of the defendants in a suit should deprive a defendant of his own right provided by the statute.

Mr. Green: Note my exception to the Court's ruling.

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page 67B]

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RALPH ALLEN,

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

DIRECT EXAMINATION

page 68] By Mr. Bangel:

Q. State your name.

A. Ralph Allen.

Q. Mr. Allen, where do you live?

A. 301 Maycox Avenue, Norfolk, Virginia.

Q. What is your occupation?

A. Sales representative for the Allstate Insurance Company.

Q. Now, Mr. Allen, did you have occasion to witness a collision which occurred on the 3rd of November, 1963?

A. Yes, sir.

Q. Were you walking or riding, sir?

A. Riding.

Q. Where, sir, did you start your trip?

A. From Edenton, North Carolina, near Edenton.

Q. Were you riding in this caravan of automobiles?

A. Yes, sir.

Q. Do you know the people in the caravan?

Ralph Allen

A. I knew Mr. Kehayas and Mr. Pappas, and I knew of some of the others.

Q. Do you have any interest in this matter whatsoever?

A. I was there. I mean, my son belonged to the same scout troop and I was asked to come down and pick up

page 69] some of them.

Q. Do you have any interest in this case whatsoever?

A. No, sir.

Q. Tell us, if you will, in which direction was this caravan going?

A. East.

Q. On what highway?

A. Route 58.

Q. Will you describe Route 58?

A. A four lane highway, two eastbound lanes and two westbound lanes. It has got a solid double line down the middle.

Q. And you were proceeding easterly on this highway?

A. Yes, sir.

Q. In this caravan, which car were you in the caravan?

A. Number Six.

Q. The sixth car?

A. Yes, sir.

Q. Do you remember what cars were in front of you?

A. Mr. Chappell was directly in front of me. Mr. Maroulis was in front of him, Mr. Silbert in front of him, and Mrs. Gretes in front of him, and Mr. Kehayas was first.

page 70] Q. As you were going along, tell what you saw, what lane of traffic did this collision occur in?

A. On the inside lane next to the double line.

Q. How long had the caravan been in that lane?

A. It had just got into it about 300 or 400 yards down the road.

Q. Can you tell us, if you will, how close one of these cars were to each other?

A. Mr. Kehayas was about four or five car lengths ahead of Mrs. Gretes, and the other cars were bunched, I would say, about two car lengths apart.

Q. Tell us what you saw.

Ralph Allen

A. I saw the initial impact of the automobiles between Mrs. Gretes and Mr. LaFrage. The automobile looked like they went up in the air when I first saw it. I glanced in my rear vision mirror to see what was behind me, I knew I could get stopped and I went into the outside lane.

Q. Meaning what?

A. Next to the shoulder of the road.

The Court: To your right?

The Witness: Yes, sir, to my right.

When I looked back, the Silbert car was going across the highway into the ditch. Mr. Maroulis's car hit the Gretes car. At the time the rear end, it made an accordian

page 71] out of it, jumped back and hit the Chappell car.

By Mr. Bangel:

Q. All right, sir, now, how would you describe the impact between the Maroulis car and the rear of the Gretes car?

A. It was, I would say —

Mr. Green: Your Honor, that is an opinion of the witness.

The Court: I sustain the objection. Rephrase your question, Mr. Bangel.

By Mr. Bangel:

Q. As to time, how did it happen?

A. Instantaneously.

Q. I ask you, sir, if you recognize this picture?

A. Yes, sir, that is the Gretes automobile.

Mr. Green: I wonder if I could see that.

Is this one of the pictures or just a portion of it?

Mr. Bangel: We took out the dead bodies lying there.

Mr. Green: But do you have the original picture of this picture?

Mr. Bangel: Yes, sir.

page 72] Mr. Green: Your Honor, I think that under the circumstances this is obviously an enlargement and I don't know whether this represents the entire picture, or not. I do know that part of the car is cut off. I would like

to call on Mr. Bangel to produce the original picture.

Mr. Bangel: He has a picture in his file, but I would be glad to get mine out.

Mr. Green: I do not have a picture in my file, Mr. Bangel. I don't think I have — I will correct that.

Mr. Bangel: Here is the original. We would be glad to introduce this.

Mr. Green: Mr. Bangel, I would like to correct that. I do not have the original in my file. I would be glad to show what I do have.

Mr. Bangel: It was taken at the same time by the same photographer.

Mr. Green: Do I have it in my file?

Mr. Bangel: No, sir, you probably didn't choose to purchase it.

Do you want this along with it?

Mr. Green: No, if the picture was taken with it, I will agree with it.

The Court: Which automobile is this?

page 73] Mr. Bangel: The Gretes automobile.

The Court: This will be Elliott Exhibit Number 2.

(Whereupon, the foregoing photograph was received in evidence and marked for identification as Plaintiff Elliott Exhibit Number 2).

Mr. Bangel:: I think possibly if we hold it up we can all see it.

By Mr. Bangel:

Q. All right, sir, I hand you these two pictures and ask you if you recognize which automobile that is?

A. The Maroulis car.

Mr. Bangel: All right, we offer them in evidence, your Honor please.

The Court: Are these the same pictures?

Mr. Bangel: Yes, sir.

The Court: I will try to pin them together and make them

Elliott Exhibit Number 3.

(Whereupon, the foregoing photographs were received in evidence and marked for identification as Plaintiff Elliott Exhibit Number 3).

By Mr. Bangel:

Q. Mr. Allen, was anything in the right-hand lane or the lane next to the shoulder of the road to keep Mr. Maroulis from pulling over there?

page 74]

Mr. Green: I object to such a question as that — what Mr. Maroulis could do.

The Court: It is leading. I sustain the objection.

By Mr. Bangel:

Q. What, if anything, was in the right-hand lane?

A. Nothing.

Mr. Bangel: I have no further questions at this time. These gentlemen may have some.

CROSS EXAMINATION

By Mr. Hollis:

Q. Mr. Allen, when had you gone down to Edenton to pick up the boys?

A. This was my first trip.

Q. Had you gone down on Saturday, the preceding day?

A. No, sir, I went Sunday.

Q. Sunday afternoon?

A. Yes, sir.

Q. Now, at the time just before the accident occurred, I believe you testified that you were in the car following Dr. Chappell or Mr. Chappell?

page 75]

A. He is a chiropodist. I call him Dr. Chappell.

Q. You were following him?

A. Yes, sir.

Q. About how many car lengths were you driving behind his car?

Ralph Allen

A. Three or four.

Q. Then, he was following who?

A. Mr. Maroulis.

Q. He was behind Mr. Maroulis — and how many — strike that — and Mr. Maroulis was trailing Mr. Silbert?

A. Yes, sir.

Q. And Mr. Silbert was following Mrs. Gretes?

A. Right.

Q. So that the Silbert vehicle was three cars up ahead of you?

A. Right.

Q. And the Gretes car was four up ahead of you?

A. Right.

Q. All right, you were all in the same lane?

A. Yes, sir.

Q. Now, when you gave your estimate as to the distance between the Gretes and the Silbert cars, can you state with any certainty that that couldn't have been a different distance from what you say?

page 76] A. No, sir.

Q. In other words, it could have been different, couldn't it?

A. Well, I mean, it is an estimate. I say about two car lengths.

Q. But it could have been three?

A. I don't believe so.

Q. You don't think it could have been three?

A. No, sir.

Q. Would it have been four?

A. No, sir.

Q. Where were you looking just before the accident?

A. Right straight ahead.

Q. Now, what speed were you all going?

A. About 45 or 50 miles an hour. I didn't look at the speedometer, but I would estimate that.

Q. You estimate 45 to 50? All right, the car that ran head-on into Mrs. Gretes, did you see that car coming?

A. No, sir, I didn't see a thing until the impact.

Q. When the impact occurred, you say the cars went up in the air?

A. It looked like they raised up, yes, sir.

Q. Did they move or did they just stop?

A. It looked like it just stopped.

page 77] Q. Just stopped right on the highway?

A. Yes, sir.

Q. Right in front of Mr. Silbert?

A. Right.

Q. Do you know what happened to his car?

A. I know it went across the highway over into the ravine or ditch to the left.

Q. And do you know how it got there?

A. No, sir, I just know that it went there.

Q. Do you know whether or not this car struck the Gretes car?

A. No, sir, I do not.

Q. All right, now the photographs which you have identified were not taken showing the position of the cars at the time of the accident, were they?

A. This one—I believe, yes, sir, it is, I am pretty sure. I would like to see it again, if I may.

Q. Is this like the shoulder of the road here?

A. No, this car has been moved.

Q. Has been moved?

A. Yes, sir, it was more in the center, almost straddling both lanes of traffic. In other words, in a position like this. (Witness indicating).

Q. Running across the highway rather than straight up and down?

page 78] A. Yes, sir.

Q. And where was the LaFrage car?

A. It was straddling the same way.

Q. All right, let me show you this photograph and see if that represents the positions of those cars?

I hand you this smaller photograph first, Mr. Allen, and ask you if you would examine that and state whether or not it represents the position of the cars after the accident.

A. Yes, sir.

Q. All right, now, which car is which?

A. This is the Valiant.

Q. The Valiant—who was driving the Valiant?

Ralph Allen

A. Mr. LaFrage.
Q. The Valiant was operated by Mr. LaFrage?
A. Yes, sir.
This is the F-85.
Q. And the light colored car is what?
A. Mrs. Gretes' car.

Mr. Hollis: Your Honor, I would offer that as Silbert Exhibit 1.
The Court. Silbert Exhibit 1.

(Whereupon, the foregoing photograph was received in evidence and marked for identification as Defendant Silbert's Exhibit Number 1).

page 79] The Witness: I would like to make a statement. In other words, I did not go up—this is my automobile right here. (Witness indicating). When this accident happened, I had five boys in my car. I waited until there wasn't anything coming and I pulled my car into the filling station lot. When a man came from the filling station, I asked him if I could help and he said, "If you have got a weak stomach, don't go up there." And I went up to the Gretes car after everybody had been taken out and removed some of the luggage to the boy scout headquarters.

By Mr. Hollis:
Q. Mr. Allen, I hand you the photograph that you were just looking at, Silbert Exhibit Number 1, and ask you if you can identify this at the overpass there on Suffolk Highway as you are going towards Portsmouth and Norfolk.
A. That is the sign right there, sir, but the overpass I don't think you can see.
Q. This photograph was taken looking towards Portsmouth and away from Suffolk?
A. Yes, sir.
Q. I show you now another photograph and ask you if that was taken looking towards Suffolk and shows the scene of the accident?
page 80] A. Yes, sir.

Ralph Allen

Mr. Hollis: Did you see this, Mr. Green?
Mr. Green: Right.
Mr. Hollis: Your Honor, I would like to offer that.
The Court: All right, Silbert Exhibit Number 2.

(Whereupon, the foregoing photograph was received in evidence and marked for identification as Defendant Silbert's Exhibit Number 2).

By Mr. Hollis:
Q. Now, I hand you Silbert Exhibit Number 2, the large photograph—does Mr. Silbert's automobile appear on that photograph?
A. No, sir.
Q. Would you identify the cars which do appear that were involved in the accident?

Mr. Babalas: For the record, would you please identify the exhibits?
Mr. Hollis: Silbert Exhibit Number 2.
The Witness: There is the LaFrage car; that is the Gretes car; this is the Maroulis car; this is the Chappell car (Witness indicating).
Mr. Hollis: I wonder if we could put some letters on these cars. On the LaFrage car we will put an "L," on the Gretes car we will put a "G."
page 81] Mr. Anninos: Let him point out each one.
The Witness: That is the LaFrage car, (witness indicating), and that is the Gretes car, and this is the Maroulis car, and this is Dr. Chappell's car.

By Mr. Hollis:
Q. All right, you say Mr. Silbert's car does not appear?
A. No, sir.
Q. Where is Mr. Silbert's car with relation to this photograph?
A. To the right.
Q. Over there on the other side of the highway?
A. Right.
Q. And this photograph is looking toward Suffolk?

Ralph Allen

A. Right.

Q. Now, you have described the accident as occurring instantaneously? You don't mean by that that all of the cars came together at the same time, do you?

A. No.

Q. There was a very short interval of time between the crashes?

A. Yes, I mean it was very short.

Q. Right, a matter of seconds, would that be
page 82] correct?

A. Well, it happened awful fast, I know that.

Q. And the first collision was between the LaFrage car and the Gretes car; is that right?

A. Yes, sir.

Q. And you do not know whether Mr. Silbert struck the Gretes car, or not?

A. No.

Q. And then you saw the Maroulis car, you say, come into the Gretes car?

A. Yes, sir, when it did it rebounded.

Mr. Green: What was that?

The Witness: When it hit the Gretes car, it rebounded.

By Mr. Hollis:

Q. How far would you say you were from the point of impact at the time it occurred?

A. I wasn't very far, I was within seven or eight car lengths, I would imagine, by the time I got around in that lane.

Q. Were there any skid marks on the highway?

A. I don't know whether there were, or not.

Q. You did not see any?

A. No, sir.

Q. Did you look?

page 83] A. No, sir, I told you I stayed out away from it, only to go get that boy scout equipment.

Q. And did you observe that the Silbert car was down in the ditch and up against a tree?

A. Well, the only thing I could see, it was sitting up like

this. (Witness indicating). I could see the rear end of the Silbert car sticking up out of the ditch.

Q. All right, I have a photograph that I would like to show you. I hand you a photograph, Mr. Allen, and ask you if you can identify that as the position in which the Defendant Silbert's car ended up after the collision?

A. Yes, sir.

Mr. Hollis: All right, I would like to offer this.

The Court: Silbert's Exhibit Number 3.

(Whereupon, the foregoing photograph was received in evidence and marked for identification as Plaintiff Silbert's Exhibit Number 3).

Mr. Hollis: I have no further questions.

CROSS EXAMINATION

By Mr. Green:

Q. Mr. Allen, you had been, as you say, down to Edenton and you were on your way back in the caravan?

page 84] A. Yes, sir.

Q. You were next to the last car?

A. Yes, sir.

Q. And you had been traveling all the way from Edenton in this caravan before this accident occurred?

A. Yes, sir.

Q. You say that back about 300 yards or so before this accident happened, the whole caravan had gotten into the left lane?

A. Yes, sir.

Q. You were the sixth car back; is that correct?

A. Yes, sir.

Q. And you have told this jury that you testified that the distance between the Kehayas car and the Gretes car was three or four car lengths?

A. Yes, sir.

Q. And that the distance between the other cars in the caravan was how much? First of all, the distance between

the Gretes car and the Silbert car?

A. About two car lengths.

Q. And the distance between the Silbert car and the Maroulis car?

A. Two car lengths.

Q. And the distance between the Maroulis car and the Chappell car?

page 85] A. Two and one half.

Q. And the distance between the Chappell car and your car?

A. About four or five.

Q. And the distance between your car and Mr. Pappas' car?

A. He was quite a distance.

Q. You were in a line of traffic?

A. Yes, sir.

Q. And yet you were able to see the distance — you pinned down here the Maroulis car is two cars from you and the Kehayas car was six cars from you, and yet you can judge those distances right down the line between those two cars?

A. I said about two cars.

Q. But you were able to differentiate as you went along in those cars, not expecting an accident to happen — you certainly didn't expect it to happen?

A. No, sir, I didn't.

Q. And you were behind all those cars and you weren't particularly making any notes at that time?

A. No, sir, but I am in the insurance business. I see too many accidents coming in where they are following too close.

Q. You were back in the lane and following?

A. Yes, sir.

page 86] Q. You being in the insurance business and knowing what it involved, didn't you feel it necessary for you to get out of that caravan?

A. I didn't get out of it because my boy had just joined that troop and it was general procedure.

Q. You knew the general procedure and yet you were ready to stay and all these cars were sitting riding along together 45 or 50 miles an hour because your boy was a

member of the boy scout troop? You were going along behind?

A. I was far enough back, 4 or 5 car lengths between.

Q. Where did you stop your car?

A. Behind the Chappell car on the inside lane.

Q. Behind the Chappell car on the inside lane?

A. Yes, sir.

Q. Now, the Chappell car was ahead of you?

A. Yes, sir.

Q. Now, let's get down to facts and figures. You saw the impact between the Gretes car and the LaFrage car?

A. Yes, sir.

Q. You didn't know what had happened?

A. No, sir.

Q. What did you do?

A. I went into the right-hand lane.

Q. You went into the right-hand lane?

A. Yes, sir.

page 87] Q. Now, you had time enough to cut your car to the right and go on by?

A. To go on by what?

Q. To go by the car ahead of you?

A. I didn't go by the car ahead of me.

Q. Did you pass the accident in the right-hand lane?

A. No, sir.

Q. Where did you stop?

A. I stopped behind the Chappell car in the right-hand lane.

Q. The right-hand outside lane?

A. Yes, sir.

Q. Now, you are sure you stopped behind the Chappell car in the outside right-hand lane, no question about that?

A. Yes, sir.

Q. I show you a photograph — I show you a photograph and ask you if you can identify Dr. Chappell's car?

A. Yes, sir.

Q. Where is that automobile positioned, Mr. Allen?

A. In the left-hand lane.

Q. In the left-hand lane?

A. On the inside lane.

Ralph Allen

Q. I thought you stopped behind the Chappell
page 88] car in the right-hand lane?
A. I did. I was on this side of it.
Q. In the right-hand lane?
A. Yes, sir.
Q. Is that your car there?
A. No, sir, it is not.
Q. Whose is that?
A. I couldn't tell you.

Mr. Green: I would like to introduce that picture as Defendant Maroulis' Exhibit Number 1.

The Court: All right, let him mark the automobile — whose car he is pointing to and then I will mark it.

Mr. Green: Identify Mr. Chappell's car.

(Witness indicating).

The Court: All right, now I will mark the exhibit Maroulis Exhibit Number 1.

(Whereupon, the foregoing photograph was received in evidence and marked for identification as Defendant Maroulis Exhibit Number 1).

By Mr. Green:

Q. Why was it necessary for you to get in the right-hand lane, Mr. Allen?
A. I didn't know what was going to happen
page 89] next. I wanted to get out of the way.
Q. Did you stop in the lane or on the side of the road?
A. I stopped in the lane because there wasn't a car close enough behind me to keep me from stopping there.
Q. Now, you saw — at the time of the initial impact, you were in the left-hand lane behind Dr. Chappell's car, right?
A. Yes, sir.
Q. Which impact occurred next?
A. The next one I saw was the Maroulis car hit the Gretes car.

Ralph Allen

Q. Did you see the Silbert car?
A. I saw it go across the highway.
Q. You saw it go across the highway?
A. Yes, sir.
Q. Did you see the Kehayas car go across the highway?
A. No, sir.
Q. You didn't see that?
A. No, sir.
Q. Now, you were in position to see the distances of all these cars in front of you, the distance between them? Can you think of any reason you didn't see the Kehayas car go across the highway if you were in a position
page 90] to see everything in front of you?
A. I don't know why I didn't see the Kehayas car, but I didn't see it.
Q. Did you see Dr. Chappell's car hit Mr. Maroulis' car?
A. Mr. Maroulis' car rebounded and hit Dr. Chappell.
Q. In other words, Mr Maroulis' car hit the Gretes' car and rebounded, bounced back and hit the Chappell car? Was the Chappell car moving when this happened?
A No, it was slightly moving, but practically stopped.
Q. In other words, that damage there on the back of the Maroulis car occurred when the Maroulis car was coming backwards?
A. Well, when the cars collided, yes, sir, when it happened. It was coming backwards and hit Dr. Chappell's car and did that damage.
Q. Can you think of any reason if you were in a position to see the impact between the Gretes car and the Maroulis car and/or between the Maroulis car and the Silbert car, that you didn't see the impact between the Silbert car and the Gretes car?
A. No, sir, except if it was when I just glanced in the mirror to see what was behind me.
page 91] Q. And you did that to avoid running into the rear of the car in front of you; is that right?
A. No, sir.
Q. Dr. Chappell's car?
A. No, sir, because I was stopped behind Dr. Chappell's car. I would have stopped if I would have stayed in the

left lane, but I was afraid I would be hit in the rear.

Q. What kind of car did you have?

A. A 1961 Ford Fairlane 500.

Q. And what did you say the speed was of the caravan?

A. I would say about 45 or 50, I didn't look at the speedometer.

Q. You were all just proceeding along in a perfectly normal manner?

A. Yes, sir.

Mr. Anninos: If it please the Court, we object to that.

The Court: I sustain the objection.

By Mr. Green:

Q. Now, Mr. Allen, when is the first time that you discussed this case with anyone in regard to this trial here today?

A. Mr. Cohen called me day before yesterday

page 92] and asked me what I saw.

Q. And then, did you call Dr. Chappell?

A. No, sir.

Q. You had called Dr. Chappell before that?

A. No, sir.

Q When did you talk to Dr. Chappell?

A. I talked to Dr. Chappell Monday night at the boy scout meeting and asked him if he had been called and he said he had.

Q. He had, or he had not?

A. He had, by Mr. Cohen.

Q. And that was after you had been called by Mr. Cohen?

A. Yes, sir. And I asked Dr Chappell if he had been subpoenaed.

Q. Did he see the accident?

A. I guess he did, because he was in it.

Q. He told you he didn't see the accident because his hood flew up; is that right, Mr. Allen?

Mr. Anninos: What is he trying to elicit through this information? Dr. Chappell hasn't testified. We object to it.

The Court: I think it is on cross-examination, he can ask him.

Mr. Bangel: May I make this statement?

page 93] Certainly Mr. Green could not introduce through this witness what some other witness may have told him. It is grossly hearsay.

The Court: I overrule it.

The Witness: I was in a hurry. I took my son to the boy scout meeting Monday night. I was in a hurry, I had some work to do. I asked Dr. Chappell if he had talked to Mr. Cohen.

The Court: I don't think you can go into that.

By Mr. Green:

Q. Dr. Chappell told you he did not see the accident because his hood flew up, didn't he?

Mr. Anninos: I object, if your Honor please. I object.

The Court: I sustain the objection.

By Mr. Green:

Q. You did discuss it with Dr. Chappell?

A. I asked him —

Mr. Anninos: Just a moment, just answer, did you discuss it?

The Witness: Yes, I talked with him.

By Mr. Green:

page 94] Q. And since that time you talked with Mr. Cohen and the other lawyer sitting here at the counsel table?

A. Yes, sir.

Q. And you discussed it with me about five minutes before Court this morning?

A. Yes, sir.

Mr. Green: Your Honor, I would like to note my exception to the Court's ruling on the last objection.

The Court: All right.

Ralph Allen

By Mr. Green:

Q. Do you know what the sequence of the impacts were?

A. Mrs. Gretes' car and Mr. LaFrage's car, and then the next thing I saw Mr. Maroulis' car hit the Gretes car and came back, and then the Chappell car was hit.

Q. And by this time you could stop your car and get out of the way?

A. Yes, sir.

Mr. Green: That is all I have.

CROSS-EXAMINATION (Continued)

By Mr. Harris:

page 95] Q. Mr. Allen, on cross-examination, you have repeatedly referred to the LaFrage automobile. You did not identify the car that was involved at the time as the LaFrage automobile?

A. When the accident first happened?

Q. Yes.

A. No, sir.

Q. You haven't identified it of your own knowledge since then, have you, only what you have heard?

A. That is all.

Mr. Bangel: Excuse me, does he deny that the LaFrage car —

Mr. Harris: Wait just a minute.

By Mr. Harris:

Q. You have not identified it, yourself, have you?

A. No, not physically. I had seen the picture of it.

Q. And only by what you heard in the past have you identified it as the LaFrage car?

A. I understand Mr. LaFrage was driving the car.

Q. You understand from what somebody has told you or what you have read?

A. What I read.

page 96] *A. What I read.*

Mr. Harris: I move to strike any testimony as to the La-

Frage automobile as a part of the record.

The Court: Didn't this witness identify that the LaFrage car struck the Gretes car?

Mr. Harris: That is right, but no proper identification as yet.

The Court: I overrule your objection.

Mr. Harris: Exception.

Mr. Green: I have one further question.

The Court: All right.

By Mr. Green:

Q. Mr. Allen, you testified that you stopped your car in the right-hand lane behind Dr. Chappell?

A. Yes, sir.

Q. And you didn't observe any skid marks?

A. No, I didn't notice any. I saw them in the picture, but I didn't notice any.

Q. You got out of your car and although you may not have gone to the scene of the accident, you had some interest in what happened?

Mr. Babalas: I object. If he is going to question him — but this is a statement.

By Mr. Green:

page 97] Q. Go ahead and answer the question.

Mr. Babalas: I object.

Mr. Green: I withdraw the question.

By Mr. Green:

Q. You did not see any skid marks at the scene of the accident?

A. No, sir.

Q. Although your car was stopped directly behind Dr. Chappell in the right-hand lane?

Mr. Babalas: I object. That is not a question.

The Court: Just ask him the question.

Ralph Allen

By Mr. Green:

Q. Your car was stopped in the right-hand lane behind Mr. Chappell?

A. Yes, sir.

Q. You got out of your car after the accident?

A. After I put it in the filling station lot.

Q. And you didn't observe any skid marks?

A. No, sir, I was scared.

Mr. Green: I wonder if I could introduce that.

The Court: Any objection?

page 98] Mr. Bangel: No, sir.

The Court: Maroulis Exhibit Number 2.

(Whereupon, the foregoing photograph was received in evidence and marked for identification as Defendant Maroulis Exhibit Number 2).

By Mr. Green:

Q. Okay. Mr. Allen, how long was it after you saw the collision between the Gretes car and the LaFrage car that you saw the collision between the Maroulis car and the Gretes car?

A. I would say a second.

Q. A second?

A. Yes, sir.

Mr. Green: That is all I have for you.

Mr. Hollis: A couple of questions.

CROSS EXAMINATION (Continued)

By Mr. Hollis:

Q. In the interest of complete accuracy, you said you talked with all counsel at this table? You haven't talked with me before, have you?

A. No, sir, I didn't say that.

Q. You misunderstood that?

page 99] A. I meant —

Q. I understand. The only thing that I would like to clarify, that your statement concerning the distance

between these cars is an estimate, is it not?

A. It is an estimate, yes, sir.

Mr. Hollis: Thank you.

The Court: Anything else?

REDIRECT EXAMINATION

By Mr. Anninos:

Q. Mr. Allen, did I understand this next to the last question that was propounded to you by Mr. Green, the gentleman at the very end of this table, was your answer to the question that one second elapsed between the impact?

Mr. Green: Your Honor, I think this is the witness called by the plaintiff.

The Court: It is objectionable, and I presume on the grounds that he is attempting to lead his witness. Ask the question another way.

By Mr. Anninos:

Q. Mr. Allen, how would you describe for the benefit of the Court and the members of the jury the time that elapsed between the impact involving the LaFrage auto-
page 100] mobile and the Gretes automobile, and then the impact between the Gretes automobile and the Maroulis automobile, if any?

A. I mean, it happened fast, that is all. I mean, as far as second, I wasn't looking at my watch. I don't know, but I mean it happened.

Mr. Bangel: You snapped your fingers, for the record.

The Witness: Yes, it seemed like that to me.

By Mr. Anninos:

Q. Mr. Allen, have you at any time from the date of this collision until the present time, refused to discuss any knowledge that you have in connection with this accident with any counsel sitting at this table here?

A. No, sir.

Q. Now, when the vehicles moved from the right lane into the left lane, did you proceed to follow the car ahead of you?

A. Yes, sir.

Q. What vision did you have of the cars in this caravan as they proceeded to move from the right lane into the left lane?

A. You could see them all. I had been following them for practically an hour. I didn't see Mr. Kehayas' car when it actually pulled out. I was in the line and saw page 101] all the rest of them. I saw all the cars as we were coming in, up the road from Edenton.

Q. As they moved from the right lane into the left lane about 200 or 300 yards, I believe you stated, prior to this collision, could you see the space between the respective vehicles?

A. Yes, sir.

Mr. Anninos: That is all.

Mr. Green: Just a few more.

RECROSS EXAMINATION

By Mr. Green:

Q. This thing happened instantaneously, according to your description?

A. Yes, sir.

Q. During that period of time you were able to estimate the distance between all six cars ahead of you?

A. As we were coming down the road. I didn't estimate the distance instantaneously.

Q. That is just a general impression you had; is that correct?

A. That is the way we had been traveling all the way from Edenton.

Q. In this split second, you were able to ob- page 102] serve the Gretes and the LaFrage vehicles come together?

A. I saw them when they initially hit, yes, sir.

Q. You were able to look in your rear view mirror and get your car into the right-hand lane?

A. I glanced in my rear view mirror and I saw nothing behind me, and I put my car in the right-hand lane.

Officer H. K. Wigfield

Q. You were able to observe the impact between the Maroulis car and the Gretes car?

A. Yes, sir.

Q. And you were able to observe the Maroulis car bounce back and hit the Chappell car?

A. Yes, sir.

Mr. Green: That is all I have.

Mr. Bangel: Your Honor, he may be excused.

Mr. Green: Your Honor, I think he'd better remain.

The Court: All right, you are asked to remain. Go outside, but do not discuss this case with anyone.

(Witness excused).

Mr. Bangel: If your Honor please, Mr. Green, do you want to keep him here or may he be on call?

Mr. Green: He may be on call, it is all right page 103] with me.

OFFICER H. K. WIGFIELD,

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

DIRECT EXAMINATION

By Mr. Bangel:

Q. State your name, please.

A. H. K. Wigfield.

Q. And your occupation?

A. I am a police officer for the City of Chesapeake.

Q. Officer Wigfield, you have been a police officer for some time, have you not?

A. Yes, sir.

Q. Were you on duty November 3, 1963, when this collision occurred on Route 58?

A. I was, yes, I was.

Q. Did you, in your official capacity, investigate this collision?

A. I did.

Officer H. K. Wigfield

Q. About what time was it?

page 104] A. Four-fourteen p.m.

Q. What were the weather conditions?

A. It was clear and dry.

Q. Where did this collision occur, sir?

A. On Route 58, approximately a quarter of a mile west of the Atlantic Coastline Railroad.

Q. Will you describe Route 58 for us, please?

A. Route 58 is a four lane highway, two lanes east and two lanes west with a double yellow solid line dividing the lanes.

Q. When you arrived at the scene, had the vehicles been moved?

A. No, sir.

Q. Tell us who, if you will, were the drivers of the various vehicles involved in this collision?

A. Thomas Chester LaFrage, was driving a 1960 Valiant, four door sedan.

Q. Mrs. Gretes?

A. Mrs. Gretes was driving a 1963 Oldsmobile sedan. Mr. Allen Silbert, a 1960 Chevrolet four door sedan. Mr. Jim Maroulis, a 1963 Chevrolet sedan. Dr. Herman Chappell, a 1957 Ford sedan.

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

A. Yes, sir. This shows three cars that were in-

page 105] volved in this accident, the LaFrage car, the Gretes car, and the Maroulis car.

The Court: What is the last one?

The Witness: The Maroulis car.

Mr. Bangel: I wish to offer this in evidence.

The Court: This would be Elliott Exhibit Number 4.

(Whereupon, the foregoing photograph was received in evidence and marked for identification as Plaintiff Elliott Exhibit Number 4).

By Mr. Bangel:

Q. I wonder if you would, Officer, come down here just a second and point out to the jury the vehicles you are talking about?

A. The LaFrage—

The Court: Can you mark it on the picture some way?

Officer H. K. Wigfield

Mr. Bangel: Here is a pencil.
The Witness: This is the LaFrage vehicle, the Gretes vehicle, and the Maroulis vehicle.

(Witness indicating).

By Mr. Bangel:
Q. You have marked them with the first letter of
page 106] each name?
A. Yes.
Q. All right, now, what does this represent, sir?
A. That, sir, is the Silbert car. (Witness indicating).

Mr. Bangel: All right, we offer this in evidence, if your Honor please.
The Court: All right, Elliott Exhibit Number 5.

(Whereupon, the foregoing photograph was received in evidence and marked for identification as Plaintiff Elliott's Exhibit Number 5).

By Mr. Bangel:
Q. What does that reveal?
A. That is the Silbert car.
Q. The front of the Silbert car?
A. Yes.

Mr. Bangel: I offer this, if your Honor please.
The Court: Elliott Exhibit Number 6.

(Whereupon, the foregoing photograph was received in evidence and marked for identification as Plaintiff Elliott Exhibit Number 6).

By Mr. Bangel:
page 107] Q. Officer, did you have occasion to talk to Mr. Maroulis?
A. I did.
Q. What did he tell you happened, sir?
A. Well, he told me that he was traveling—that Mr. LaFrage was traveling west and crossed the dividing line on the highway and was proceeding west in the eastbound lane. He struck the Gretes car head-on.

Mr. Harris: I would object to anything regarding LaFrage at this time.

The Court: Who said that?
Mr. Bangel: Mr. Maroulis.

The Court: Of course, any statements Mr. Maroulis made would not bind anybody but Mr. Maroulis. I would instruct the jury that it would be binding on Mr. Maroulis alone.

By Mr. Bangel:
Q. Go ahead.
A. He struck the Gretes car head-on. The Silbert car was behind the Gretes car. Mr. Maroulis told me that Silbert swerved to the left and in an attempt to keep from hitting the Gretes car, however, he did strike the Gretes car. Mr. Maroulis hit the Silbert car, knocked it across the road into the ditch, and then he plowed into the back of the Gretes car.
page 108] Q. Did you see the damage to the vehicles?
A. I did.
Q. Describe the damage to the front of the Maroulis vehicle and the rear of the Gretes vehicle?
A. Well, the complete front of the Maroulis vehicle was damaged and the Gretes—
Q. Yes?
A. The complete rear of the Gretes vehicle was damaged, also.
Q. Was there any way of matching this damage, if anything?
A. The fact that it was to the right front of the Maroulis vehicle matched the dent or the accident to it—

Mr. Green: I don't know if that man could testify that as an expert or not—if he can describe the damage.
The Court: If he looked at it, I don't know. It would take an expert.
Mr. Green: If he said the damage matched the dents or dent?
The Court: If he observed it, he can testify.
Mr. Green: Note my exception.
The Witness: The damage matched the dents or dent.

By Mr. Bangel:
page 109] Q. With the Gretes vehicle?
A. Yes, sir.
Q. Did Mr. Maroulis tell you how fast he was going?
A. He said he didn't know.

Officer H. K. Wigfield

Q. How close was the Maroulis automobile from the rear of the Gretes automobile when you arrived there?

A. When I arrived they were—I don't think there was any more than four feet between them.

Mr. Bangel: You may inquire, gentlemen.

CROSS EXAMINATION

By Mr. Hollis:

Q. Mr. Wigfield, what is the speed limit on that highway?

A. Fifty-five.

Q. Did you say that the Elliott Exhibit Number 6 shows the front of the Silbert car?

A. That is right.

Q. All right, now, this was taken after the car had been moved from the scene?

A. Yes.

Q. And the Silbert car was actually across the road down in the ditch when you arrived at the scene?

page 110] A. Yes.

Q. And it was up against a tree, was it not?

A. Yes, sir.

Q. Do you know whether the damage to the front of this car corresponded with the tree?

A. Yes, sir.

Q. It did?

A. It was still against the tree.

Q. And the damage on the front of the Silbert car did not correspond with the damage to the back of the Gretes car?

A. Except for the right front fender. The tree did it to that.

Mr. Green: I object to that, the same line of testimony as I did before.

The Court: I sustain the objection on that. I don't see how it could possibly—I sustain the objection.

By Mr. Hollis:

Q. That objection was to the—

The Court: Not the tree, to the fender.

Mr. Hollis: The testimony about the tree imprint was admissible—I would like for the jury to understand that.

Officer H. K. Wigfield

page 111] By Mr. Hollis:

Q. Now, Mr. Wigfield, when you arrived, the LaFrage car and the Gretes car were still together, were they not?

A. Yes, sir.

Q. And how long have you been investigating automobile accidents?

A. Oh, for about a year and a half.

Q. I see. From your observation of those two automobiles, would you have been in a position to state what the impact was between those two cars?

Mr. Bangel: If your Honor please, that would be objectionable.

The Court: I think it would be too. I sustain your objection.

By Mr. Hollis:

Q. When you arrived on the scene, was Mr. LaFrage there?

A. He was.

Q. What was his condition?

A. He was in the front seat of the car.

Q. Was he alive?

A. No, sir.

Q. He was dead?

page 112] A. Yes, sir. I can't say that for sure. I felt of his pulse, but I am not a doctor, sir.

Q. He was dead before you left the scene?

A. Well, I thought he was dead, yes, sir. But like I say, I am not a doctor.

Q. In conjunction with your investigation, did you observe any skid marks on the highway?

A. Yes, sir, there were skid marks.

Q. Were you able to determine from which cars they came?

A. It was quite hard to do because of the fact that after the skid marks were made the cars were twisted around different directions due to the impact. And we did measure skid marks, but I couldn't swear which car made which.

Q. Did you ascertain whether there were any serious injuries to anyone in the Silbert vehicle?

Mr. Anninos: Isn't that a medical opinion?

The Court: If anyone made a complaint to him from the Silbert car.

Officer H. K. Wigfield

The Witness: Yes, sir.

Mr. Bangel: Wouldn't that be immaterial to this case?

The Court: He is on cross-examination. I think he can inquire.

Mr. Babalas: I have no objection to it.

page 113] The Witness: Allen Silbert, age 35, white male. He had lacerations—this is not the hospital record—lacerations of the chin and pains in the left knee and elbow.

By Mr. Hollis:

Q. And he was the driver of the car?

A. Yes, sir.

Mr. Hollis: All right, thank you, Mr. Wigfield.

CROSS-EXAMINATION (Continued)

By Mr. Green:

Q. Mr. Wigfield, in the area where this happened, what was the surface of the road?

A. Blacktop.

Q. The road was dry, I believe?

A. Yes, sir.

Q. Hard surface?

A. Yes, sir.

Q. And it was approximately level, was it not?

A. Yes, sir.

Q. And the highway was free of loose material, was it not?

A. Yes, sir.

page 114] Q. Now, Officer Wigfield, those are notes you made at the scene of the accident?

A. This is my copy of the accident report.

Q. Is that the only information you have?

A. Yes, sir.

Q. You have no other notes other than your accident report?

A. A list of witnesses.

Q. Did you make any other notes at the scene of the accident?

A. No, sir.

Q. There was a great deal of confusion there at the scene, was there not.

A. Well, I did have some scratch paper in my pocket that I made notes on, but after we made the accident report I don't know what happened to it.

Officer H. K. Wigfield

Q. This accident happened on November 3, 1964?
A. 1963.
Q. Since then you have investigated a number of other accidents, have you not?
A. Yes, sir.
Q. Now, when was this accident report that you have here completed?
A. This one?
Q. Yes.
page 515] A. This was completed, oh, well, I quit work at 12:00 and it was filed before then.
Q. That same day?
A. Yes, sir.
Q. This accident report and the information recorded thereto would be fairly accurate as to time and place, would it not?
A. Yes, sir.
Q. I wonder if you would refer to your accident report and your notes—

Mr. Green: I am not going to introduce the accident report. I am asking him to refer to his notes.
Mr. Anninos: I don't think you should permit him to do indirectly what the statute prohibits a doctor from doing directly.
The Court: You understand he was referring to his notes.

By Mr. Green:
Q. Referring to those notes, and you have designated in your report or notes the LaFrage vehicle was Vehicle Number 1?
A. In my report.
Q. And the Gretes car was Number 2?
page 116] A. Yes, sir.
Q. And the Silbert car was Number 3?
A. Correct.
Q. And the Maroulis car was Number 4?
A. Yes, sir.
Q. And the Chappell car Number 5?
A. Yes, sir.
Q. Now, I believe in those notes you said that Vehicle Number 1 had hit Number 2 head-on?

Mr. Babalas: Your Honor, if he is trying to impeach this officer, there is a way of laying a foundation for it, and I object to this method of doing it?

Officer H. K. Wigfield

The Court: I sustain your objection.

By Mr. Green:

Q. Will you review your notes you made at the time or immediately after this accident and tell me from those notes if there is any notation on there of the Maroulis vehicle having hit the Gretes vehicle?

A. There is not.

Q. There is not?

A. No.

Q. That would have been a material matter, would it not, Officer?

page 117] Mr. Babalas: I object again.

The Court: I sustain the objection.

Mr. Green: Your Honor, I think his notes are proper for refreshing this witness' recollection.

The Court: Ask him if those notes accurately reflect.

By Mr. Green:

Q. Would these notes accurately reflect what your investigation was of the accident at that time?

A. Not completely.

Q. Officer Wigfield, your notes did show the impact between the LaFrage car and the Gretes car; isn't that correct?

A. Yes, sir.

Q. They do show an impact between the Silbert car and the Gretes car?

A. Would you repeat that question again?

Q. Your notes do show an impact between this Silbert car and the Gretes car?

A. You mean in the diagram?

Q. No, in your notes, your written notes.

A. Yes, sir, Silbert did hit Number 2 in my notes.

Q. Your notes do show that impact between the Maroulis car and the Silbert car?

page 118] The Court: Are you asking that in the form of a question?

Mr. Green: Yes, sir.

The Witness: Between the Maroulis car and the Silbert car?

Officer H. K. Wigfield

By Mr. Green:
Q. Yes, sir.
A. My notes do not state that.
Q. Look again, Officer. I think you will find that the—

Mr. Anninos: If your Honor please, we object.
Mr. Green: Number 3 was the Silbert car.
Mr. Anninos: He is looking at what he is not supposed to.
The Court: Let him come up here and examine him from the witness stand. Let him look up here.

By Mr. Green:
Q. All right.
A. That says there that the Silbert car, Number 2, which was the Gretes car.

Mr. Babalas: Your Honor, I hate to object to the form of questions by Mr. Green, but he has a lot of latitude
page 119] in cross-examination, but they should still be in the form of questions.

By Mr. Green:
Q. Do your notes show any impact between the Silbert car and the Maroulis car?

Mr. Anninos: Now, I think at this point, if your Honor please, he ought to refer to notes as such, and not to any accident report filed with the Division of Motor Vehicles.
The Court: As to the notes made by that officer.

By Mr. Green:
Q. Your notes show impact between the Silbert car and the Maroulis car?
A. Yes, sir.
Q. Did your notes show an impact between the Chappell car and the Maroulis car?
A. Yes, sir.
Q. Your notes show an impact between the Maroulis car and the Gretes car?
A. They do not.
Q. Officer Wigfield, when and where did you talk with Mr. Maroulis?
A. I talked to him at the scene of the accident,
page 120] right in the vicinity of my police car, which it must have been probably by the time we got the

injured taken away—it must have been about a half hour or so after the accident occurred.

Q. Now about a half an hour after the accident occurred?

A. Approximately, that is just a rough guess.

Q. Who else did you talk to at that time?

A. All the drivers except the ones deceased.

Q. And had everyone been removed from the scene at that time?

A. You mean the deceased?

Q. Yes.

A. No, sir.

Q. So, you were talking to all the drivers at one time?

A. That is the way you usually do. I am sure it was that way.

Q. How many of them were there?

A. Well, we had Mr. Silbert, Mr. Maroulis, and Mr. Chappell. Mrs. Gretes, I didn't talk to her because she was—

Q. Did you talk to any of the other witnesses?

A. Yes, sir, I talked — I have a list of six. And I talked to several more besides that.

page 121] Q. Was that all at this same investigation?

A. You mean did I talk to the witnesses in front of the drivers?

Q. Yes.

A. I can't say that I did. I don't remember.

Q. Did you make any written notes or anything there at that time?

A. Yes, I made a few little scratch notes just to see if the drivers were telling me the same as the witnesses.

Q. And you didn't have any regular accident report form there?

A. Yes, sir. When I go to an accident I use one of these forms. I just make a scratch outline on it and retype it and destroy the other.

Q. So this would be a fairly accurate description, then, of what your investigation revealed?

A. Yes, sir.

Q. Now, with respect to speed, Mr. Wigfield, I believe your notes have a notation on there that the speed of the Maroulis vehicle was 40 miles an hour, do they not?

A. It says unknown.

Q. Unknown?

A. Yes, sir.

Q. All right.

A. Age 40. You are looking at the wrong one.
page 122] Q. What is the speed limit there?
A. Fifty-five.
Q. Can you identify this vehicle—

Mr. Babalas: Mr. Green, can I see those?
Mr. Green: Oh, yes, I am sorry. I beg your pardon.

By Mr. Green:
Q. Can you identify this vehicle, Mr. Wigfield?
A. That is the Maroulis car.
Q. The Maroulis car?
A. Yes.

Mr. Green: I wonder if I could introduce that.
The Court: Maroulis Exhibit Number 3.

(Whereupon, the foregoing photograph was received in evidence and marked for identification as Maroulis Exhibit Number 3).

By Mr. Green:
Q. The rear of the Maroulis car?
A. Yes, sir.
Q. And I hand you this picture and ask you if you can identify that.
A. That is the Chappell car.

Mr. Green: I wish to offer this.
The Court: Maroulis Exhibit Number 4.

page 123] (Whereupon, the foregoing photograph was received in evidence and marked for identification as Maroulis Exhibit Number 4).

The Court: Gentlemen, may I suggest at the introduction of these pictures before the jury, that you mark this, which car it is. When they get them in the jury room, they won't know what car it is.
Mr. Green: Your Honor, on the top of this picture I will write "Maroulis."
The Court: All right.
Mr. Green: And on the top of this one, "Chappell."
If your Honor please, may I identify these cars as the

Chappell car and the Maroulis car?

Your Honor, here is one, the Silbert car, that is not marked.

The Court: Of course, the record will depict what is there, but the jury won't know.

Mr. Green: Your Honor, may I mark it the LaFrage car?

The Court: Hasn't it got a mark on it?

Mr. Green: No, sir, it has not. (Indicating).

The Court: Anything else now, gentlemen?

Mr. Green: I think that is all.

Mr. Bangel: I have no further questions.

page 124] Mr. Hollis: I have one further question.

By Mr. Hollis:

Q. Mr. Wigfield, what do your notes reflect as to the speed of the Silbert vehicle?

Mr. Bangel: Objection. It is a self serving declaration.

The Court: No objection was made to the others.

Mr. Bangel: We have a right to ask what one defendant told the other, but this would be a self serving declaration.

The Court: I sustain the objection.

Mr. Hollis: Exception.

By Mr. Green:

Q. Officer Wigfield, Mrs. Maroulis was hurt in this accident, was she not?

A. Yes, sir.

Q. Now, are you sure that Mr. Maroulis was at the scene when you got there?

A. I talked to him.

Q. You are positive it was Mr. Maroulis that you talked with?

A. Unless he has an identical twin.

page 125] Q. You are sure you talked with him at the scene and not at the hospital?

A. I talked to him both places. I know I talked to him at the scene and I think I saw him at the hospital, also.

Q. How long after the accident did you arrive there?

A. I would say maybe five or six minutes, just a rough guess.

Q. Do you remember how Mrs. Maroulis was taken from

the scene of the accident?

A. No, I don't.

Q. Do you know if anybody else in Mr. Maroulis' car was injured?

A. Well, I have a list of the names. I wouldn't know if they were in the Maroulis car, or not.

Q. Do you know whether Mr. Maroulis was injured?

A. No, sir, according to my list of injured, no, sir.

Mr. Green: That is all I have.

REDIRECT EXAMINATION

By Mr. Babalas:

Q. Will you look at those notes and tell—I want to make sure if Mr. Jim Maroulis was hurt or told you page 126] if he was hurt?

A. If he was, he didn't say anything about it.

Mr. Babalas: That is all I have.

RECROSS EXAMINATION

By Mr. Green:

Q. Did you ask him?

A. I don't know whether I asked him, but the first thing I ascertain when I arrive at an accident is to ask who is hurt. And I tried to get them to the hospital as quickly as possible.

Q. But your notes don't contain any reference to Mr. Maroulis?

A. No, sir.

Mr. Green: That is all I have.

REDIRECT EXAMINATION

By Mr. Babalas:

Q. Do your notes reflect anything about Allen Silbert being hurt?

A. Yes, sir.

Mr. Babalas: That is all.

Mr. Hollis: This is repetitious. I object to
page 127] it.

The Court: Have you been over it before?

Mr. Babalas: As to Mr. Silbert?

Mr. Hollis: It is repetitious.

RECROSS EXAMINATION

By Mr. Green:

Q. Mr. Wigfield, you looked at the driver's license of the respective drivers, did you not?

A. Yes, sir.

Q. And did you take the names from the driver's license?

A. Yes, sir.

Q. Do you have—I believe Jim Maroulis?

A. I am not sure. I took the names from the driver's license. I did see the identification to get the number from it.

Q. But you have investigated your notes, that the name, was Jim Maroulis, did you not?

A. Yes, sir.

Q. Did you see this license, or not?

A. If it wasn't this particular one, it was a duplicate.

Q. But that is the license that you saw?

page 128] A. Yes, sir.

Q. And that was the name listed thereon?

A. James Maroulis.

Mr. Green: Your Honor, I want to introduce this.

Mr. Anninos: Can he stipulate, then, that Mr. Jim and Mr. James Maroulis are one and the same person?

Mr. Green: His nickname is Jim, and his real name is James.

Mr. Anninos: The same person?

Mr. Babalas: I have no objection.

By Mr. Green:

Q. Are you sure you didn't obtain his name from someone

else to get the name Jim Maroulis?

A. I had to see the license to get the number. He didn't know his number. I do this frequently. It is a bad habit, but during the course of time when I am writing a summons or maybe something, somebody standing around, and they call him Jim, I find myself writing a nickname on a summons. It happens all the time.

REDIRECT EXAMINATION

page 129] By Mr. Bangel:

Q. You do have the license number down there on that?

A. Yes, sir.

By Mr. Babalas:

Q. One more question. The LaFrage license — or do you have his license and operator's permit on that report?

A. I have the operator's license number.

Q. Where did you get that license from?

A. I took it out of his pocket. He was lying on the side of the road. I removed his wallet out of his pocket. I got my information and put the wallet back in his pocket.

Mr. Babalas: I have no more questions.

REDIRECT EXAMINATION

By Mr. Bangel:

Q. That was the driver of the Valiant?

A. Yes, sir.

The Court: I would like to ask one question. Was anyone in the LaFrage car besides the driver?

The Witness: No, sir.

Mr. Hollis: May he be excused?

page 130] Mr. Bangel: I have no objection to the officer and the photographer being excused.

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GERALD HEDGE,
called as a witness on behalf of the plaintiffs, Gretes, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Babalas:

Q. Would you state your name?

A. Gerald W. Hedge.

Q. Where do you live, Mr. Hedge?

A. Route 3, Box 195, Chesapeake.

Q. What is your occupation?

page 149] A. Aircraft Instrument Mechanic.

Q. Where do you work?

A. Norfolk Naval Air Station.

Q. Do you recall an accident that occurred on November 3, 1963, on Sunday, at approximately 4:15 in the afternoon?

A. Yes, sir, I do.

Q. Can you tell us where you were on that Sunday afternoon around the time of the accident?

A. I was on my way from Suffolk to Norfolk, over to my home in Chesapeake.

Q. Were you walking or riding?

A. No, sir, I was driving my automobile.

Q. Who was in the automobile with you?

A. My wife and two children.

Q. Can you tell us approximately where this accident took place on Route 58?

A. I don't recall the name of the truck stop, but it was between the truck stop and the Portsmouth Airport.

Q. Prior to that truck stop that you refer to, did you have occasion to see a caravan — a convoy of automobiles?

A. Yes, sir, I did.

Q. How far before the scene of the accident was this?

A. Oh, I don't know, maybe a couple of miles.

page 150] Q. And at the time that you first noticed them, in what lane of traffic was the caravan?

Gerald Hedge

A. The caravan, as you call it, was in the center line next to the white line, the center line.

Q. And can you tell us what lane you were in?

A. I was in the lane next to the shoulder approaching Portsmouth.

Q. And prior to the scene of the accident, did you move your vehicle from one lane to the other?

A. Yes, sir, I did. If I may, I would like to tell you about this.

Q. Tell us.

A. On the way from Suffolk, there was a lady in front of me in another automobile and I was behind her. And I fell in behind her just at the weighing station outside of Suffolk and I stayed behind her. And on up the road a little piece as we were coming towards Portsmouth, these automobiles passed me on my left. And as soon as they passed me turned into the right-hand lane or the lane next to the shoulder on the way to Portsmouth, six or seven of these automobiles. And they came in between me and the lady that I had been following.

Q. Can you tell me what distance each of those six or seven vehicles were from each other at that point?

Mr. Hollis: One moment. I do not think when he says at that point that he has established anything
page 151] with relationship to where this accident occurred.

Mr. Babalas: Strike the question.

By Mr. Babalas:

Q. Now, tell us what happened after that.

A. After this, the automobiles began coming up behind me, also normal traffic. And I was sandwiched in between these automobiles that had the boy scouts in them and the automobiles behind me. And when these automobiles with the scouts in them cut in front of me, the last one that entered in, in order to let them in, I removed my foot from the gas, but not to the point I had to put my brake on. So, I stayed in the line a few seconds or maybe a minute until I noticed these cars approaching to my rear. So, I became sandwiched in like this.

Gerald Hedge

I didn't like to follow anybody so close and these automobiles behind me, so the automobiles at this time, all of us were doing between 45 and 50. So the lane next to the center line was clear. Nobody was in this lane at all. So I pulled into the lane next to the center line and proceeded to pass these automobiles, the ones with the scouts in them and the lady I had previously been following.

Q. This lady that you had been following, do you know how many people were in her car?

A. No, sir, I can't say for sure. I remember

page 152] one child or small person — anyhow, I believe it was a child.

Q. Can you tell us whether or not there was anyone in that car that had on a boy scout uniform?

A. No, I can't.

Q. Can you tell us, when you started to pass the vehicles with the boy scouts in them, what was your speed?

A. Between 45 and 50.

Q. Can you tell us, the vehicles with the boy scouts in them, what was their speed?

A. They had passed me, but not the lady — I would say 40 to 45.

Q. When you started to pass them, what, then, did you do?

A. As I pulled to the center lane and passed them, at no time did I exceed 55, and it took me, because of not speeding up any more than I did, it took me a little bit of time to pass them.

Q. Can you tell us, if you know, what the distances were between the vehicles that had the boy scouts in them —

Mr. Hollis: If your Honor please, I would object to the question. He still has not related it.

The Court: How far from the scene of the accident?

By Mr. Babalas:

page 153] Q. How far was this from where the accident took place when you started to pass?

A. At the time I started to passing?

Q. Yes.

Gerald Hedge

A. I don't know the distance, I would say a half a minute driving time at that speed, approximately.

Q. How far would you say you were from the truck stop on Route 58, if you know?

A. No, sir, I couldn't say in distance, but I would say it took me about a minute from the time I started passing until I got to the truck stop.

Q. As you passed them, then tell us what happened.

Mr. Hollis: I object.

The Court: He asked what happened.

Mr. Babalas: I withdraw my question as to distance.

By Mr. Babalas:

Q. Mr. Hedge, what happened after you started passing the vehicles with boy scouts in them?

A. After I passed them, now, you mean?

Q. Yes.

A. After I got in front of them, I would say the lead car maybe a hundred feet, or so, I looked in my rear view mirror and at that point the third automobile in line and page 154] the second automobile pulled into the same lane I was in and proceeded to pass the two automobiles in front of him. As he cleared — I can't say he cleared the first automobile, but as he cleared the second automobile, in turn, came out into the passing lane and proceeded to follow him. And as the second automobile got into the passing lane, three or four additional automobiles, which was in the line next to the shoulder, proceeded into the passing lane and proceeded to pass the lady I had been following all of this time.

Now, as I got maybe 300 or 400 feet in front of all of them, my wife screamed, and I looked in front. She screamed, she said something about there was an automobile coming towards me and I looked up in front of me and I saw this automobile bearing down on us in the same lane. And there was a good bit of distance between him and me and I thought that he was probably going to pull off on the shoulder of the road on the Portsmouth bound lane, so I didn't do anything at that time.

Maybe a second or two later, I saw that he was remaining in the lane which he was in and that at no time from the time I spotted him did he veer from the lane he was in. He neither crossed the line on either side of his automobile. And as I approached closer to him, I turned into the right lane next to the shoulder on the Portsmouth bound lane and he passed me in the lane next to the center line, which was the wrong lane for him.

page 155] And I don't know, a few seconds later, or maybe a fraction of a second, I looked in my rear view mirror and I just said to myself and maybe aloud, I don't remember, that there was going to be one heck of an accident because the man couldn't possibly miss hitting someone. But he was still remaining, going down the center of the lane just like he had been throughout the time I had first spotted him. And at that time, there were two lanes of traffic going towards Portsmouth and also lanes, both lanes, going toward Suffolk had automobiles in them. And like I said, just maybe a few seconds or so, a short period of time, this man, who was following me, the first man in the convoy at that particular time, must have looked and saw him and he veered from his lane across the Suffolk bound traffic off the shoulder of the road on the Suffolk bound lane.

Q. That would have been to his left?

A. To his left, yes, sir.

Q. Then, what did you see?

A. As soon as he moved out of the lane, and I mean almost at the same time, he hit this automobile square on, just as square as if he had been parking his automobile, maybe, and his automobile, all four wheels completely left the pavement. And it seemed to be suspended there for a second, and the lady, or the automobile that he hit, did the same thing. Her automobile jumped up in the air.

page 156] I believe I will be correct in saying the front end of hers went up in the air and all four wheels on it completely left the pavement. And at this time — at no time did I put my brakes on. I just took my foot off the gas feed. I started to stop and my wife said, "We will go on up to the truck stop up there." Because we go down this road every Sunday and she remembered. And

I proceeded up to the truck stop, the first one on the right after the Portsmouth Airport. I went — I pulled into the truck stop and called the police. I forgot the State didn't have control of the road any longer and I called the State Police first. They informed me they had no authority, to call the Chesapeake Police, which I did. And she said, "Yes, we already know about it."

As I came out, the cars were starting to build up. People had been stopped. So I got in my car and proceeded home. And when I did so, I called the police to give them my name and address, because the first time they never asked me my name.

Q. The cars that you first testified to that you had started to pass, as you say, the half a minute before — before the accident, can you tell us if you noticed the distance between those cars as you passed them?

A. Well, sir, I remember one thing distinctly.

Mr. Green: I object to the question as being too far remote in time and distance.

The Court: If you can put the cars up to the page 157] scene of the accident.

Mr. Bangel: This is immediately before the accident.

Mr. Hollis: The witness said he could not answer the question.

Mr. Babalas: Strike the question.

The Court: The question has been struck from the record.

By Mr. Babalas:

Q. Now, Mr. Hedge, the vehicle or vehicles that were involved in this accident, were they the same vehicles, or not, that you had passed with the boy scouts in them shortly before the accident?

A. The only way I could answer that would be by the way they pulled out of this line of traffic to pass, and I would say yes.

Q. And can you tell us when you passed them before the scene of the accident, did you notice the distance between those vehicles?

Gerald Hedge

A. Yes, sir, they were following entirely —

Mr. Green: I object to the question. I think what we are concerned with here is the proposition of how far the cars were apart at the scene of the accident. This wit-
page 158] ness has testified that after he passed these cars he noticed in his rear view mirror, he noticed other cars passing and pulling out in the lane. I submit it is improper in view of the circumstances as related by the witness.

Mr. Babalas: Let me rephrase the question.

By Mr. Babalas:

Q. Mr. Hedge, the vehicles that you say you saw started to pass immediately before the accident that had the boy scouts in them, can you tell us what the distance was between those vehicles?

A. Yes, sir, I would say they were —

Mr. Hollis: If your Honor please, Mr. Babalas is putting words — immediately does not change the testimony that he has passed them a half a minute before that.

The Court: Unless he knows, the witness knows, the witness knows at that time, about the time the accident happened, the distance between them, I don't think it would be proper. If I understood this witness, he said he passed, he said, a convoy, and passed them and moved up about 300 feet ahead of them. Didn't I understand you to say that?

The Witness: Yes, sir.

Mr. Babalas: He moved up 300 feet?

page 159] The Court: That is what I understood him to say. There was no indication at that time, at that point where he was at the time of the scene of the accident.

Mr. Bangel: If your Honor please, as I understood this witness' testimony, he said he passed this caravan of automobiles and it took him approximately a half a minute to pass them. As he was going along, when he got to a point approximately 300 feet in front of the caravan, he saw this car coming toward him and he dodged that car. And he saw

that car go on and strike the second car in the line, because one pulled out to the left. Is that your testimony?

The Witness: Yes, sir.

Mr. Green: I object to Mr. Bangel testifying in this case and asking leading questions. I think it is highly improper.

Mr. Bangel: I haven't misquoted him.

Mr. Green: I think it is up to the jury.

The Court: At the present time I will sustain the objection.

Mr. Bangel: We save the point.

Mr. Anninos: Exception.

By Mr. Babalas:

page 160] Q. Mr. Hedge, you testified earlier about these vehicles that had passed you?

A. Yes, sir.

Q. When you started to pass those vehicles, can you tell us how long it took you to pass those vehicles?

A. No, not exactly. I would say probably 20 or 30 seconds, something in that neighborhood.

Q. After you had passed those vehicles, how far ahead of that caravan did you get before the accident happened?

A. Approximately 300 to 400 feet.

Q. Now, as you started to pass those vehicles with the boy scouts, can you tell us what the distance was between the vehicles in which the boy scouts were?

Mr. Green: If your Honor please, Mr. Babalas has asked the very same question that you sustained the objection on.

Mr. Hollis: And he has left all the time it took that car to get that far ahead and to get the caravan out of the left lane.

The Court: We are trying to get at the crux of the case. We are all trying to get it.

Mr. Babalas: That is what I am trying to do. I can't see any thing more proximate than a witness to this convoy.

The Court: Suppose you approach the bench.

page 161] (Whereupon, there was a discussion off the record).

The Court: I sustain the objection.

Mr. Bangel: We note our exception.
Mr. Babalas: That is all.
Mr. Bangel: I would like to ask some questions.

By Mr. Bangel:

Q. Mr. Hedge, I understood you to say that you passed this caravan of automobiles?

A. Yes, sir.

Q. From the time that you passed it, how long was it in time or distance was it before the automobile that was in the wrong lane struck one of the cars?

A. I am sorry, I can't give you a direct answer, maybe three seconds, just a short time.

Q. All right, sir, then, what was the distance between those vehicles when you passed them?

A. They were about 15 to 20 feet —

Mr. Green: I think the Court has ruled.

The Court: The Court has ruled, unless he can show they were in the same position at the time of the accident, it is not admissible.

By Mr. Bangel:

page 162] Q. About 15 or 20 feet apart?

A. Yes, sir, the length of an automobile.

Mr. Green: Your Honor, the Court has ruled.

The Court: I ruled it is not admissible unless there is evidence to show they remained in that position up until the time of the accident.

Mr. Green: Mr. Bangel elicited the witness' answer over the Court's ruling.

Mr. Bangel: If you will give me an opportunity —

By Mr. Bangel:

Q. Sir, did these automobiles change their position any time before that accident?

A. As they pulled from the lane next to the shoulder into the passing lane, the only change that I noticed was the car who was Number 3 in the shoulder lane, he pulled out first.

So that would have made the first automobile in the convoy change positions, so that they were the only two, I believe, that changed position.

Q. All right, sir, did the other vehicles behind the Gretes vehicle change position with relation to distance that they were following.

The Court: If he can testify.

The Witness: No, sir, I couldn't testify to that.

page 163] By Mr. Bangel:

Q. Did the speed of those vehicles change in any way?

A. Not much. For that reason, as the automobiles hit head-on, as I could see in my rear view mirror, they were parallel to this automobile.

Mr. Green: If your Honor please, that is a conclusion of the witness. I submit it is improper.

The Court: I sustain the objection.

Mr. Bangel: Your Honor —

The Court: He was saying that he was looking through a rear view mirror and that was the best he could do.

Mr. Bangel: Yes, sir, it was the best he could see as he was telling you.

The Court: I want him to testify as to the facts, and that is not fact, not to what you think occurred, not any conclusions you might draw.

The Witness: If you will excuse me, please, now, I said, if I recall it properly, the best I could see in my rear view mirror, the car that was hit — excuse me, the car that turned to the left across the Portsmouth lane was approximately parallel with the automobile he was trying or attempting to pass. So, he certainly didn't increase his speed very much.

page 164] Mr. Green: Your Honor, there again, that is a conclusion of the witness. He is not relating facts, he is relating conclusions.

The Court: He is just saying the head car that turned off was riding parallel to the car he was attempting to pass.

I see no objection to that.

Mr. Green: Your Honor, there is a matter I would like to take up with the Court at this time in regard to this witness' prior testimony.

The Court: All right, do you think we'd better retire to the jury room?

(Whereupon, the Court and counsel retired from the court room).

(In Chambers).

Mr. Green: Your Honor, I would like to move at this time for a mistrial in view of what was recently developed as to the witness' testimony as to the distance between the automobiles in question. I think that the Court's ruling was made amply clear at the time the questions were propounded to this witness by Mr. Babalas, and that the intention of the Court was clear. Thereafter, Mr. Bangel asked this witness the identical question which had been asked by Mr. Babalas, and at that time drew an answer from the witness, which had been ruled out as objectionable by the Court page 165] prior to that time. That evidence is now before the jury.

I submit, your Honor, that that should constitute — that this evidence could be very prejudicial to the defendant in this case and under the circumstances should constitute grounds for a mistrial.

Mr. Hollis: On behalf of the defendant, Silbert, I join in that motion.

Mr. Harris: I second the motion.

The Court: Well, gentlemen, if this witness does not clear the matter up as to whether he can positively say what the distance was at the time of the accident, I am going to strike the evidence and direct the jury to disregard it. I will overrule your motion for a mistrial.

Mr Green: Under the circumstances which occurred, I don't believe the Court instructing the jury at this point to disregard it would solve the problem. Of course, the information, under the circumstances, the evidence had been kept

out by the Court, there had been no answer and thereafter the identical question was propounded and the witness drew an answer over an objection that your Honor had sustained on three previous occasions, as I recall.

Mr. Bangel: If your Honor please, in connection with your ruling, unless we can show by this wit-
page 166] ness the exact position of the automobiles at the time —

The Court: I didn't say exact, I said approximately.

Mr. Bangel: The approximate position of the automobiles at the time of the accident. May I say this, I respectfully submit this witness can testify as to what he observed, what occurred immediately before this collision, when you use the word, "immediately," speaking of 10 or 15 seconds before this collision occurred.

He has testified that he passed this caravan of automobiles 15 or 20 feet apart when he passed them. That they then pulled into the left lane that he used to pass them. I expect to ask this witness what their position was at that time, because he said that when he got about 300 feet in front of them, he was confronted by this LaFrage vehicle. We respectfully submit that the jury has a right to infer the distance that the vehicles were from one another at the time of the impact from their position they were in 15 or 20 seconds before the impact.

It is true it is not direct, positive evidence at the moment of impact, but we have the witness saying that the
page 167] vehicles did not change speed as far as he is concerned, and certainly it is proper evidence for the jury to consider the position they were in at the moment of impact. Our Supreme Court has held that in cases where a vehicle passed a mile before the collision and that vehicle was going 75 or 80 miles an hour, that a witness can testify as to the speed when he passed them. It was probative evidence to go before a jury to infer the speed he was going at the time of the collision.

I submit it is proper for this witness to tell what he thought immediately preceding the accident.

The Court: I will go along with you, but this witness has testified after he passed this caravan that not the lead car

pulled over into the left lane, but either the second or third car. Then, Car Number 2 dropped in behind that one.

Mr. Babalas: You are missing the point. That was not a part of the caravan. If you remember, he said he was sandwiched between a lady and the caravan, therefore, the second car was the lead car of the caravan.

Mr. Hollis: He said the third car was the one that pulled out.

Mr. Babalas: That is right. There were two cars not a part of the caravan.

page 168] Mr. Bangel: I will ask him to clear it up.

Mr. Green: Your Honor, I think the Court's ruling was amply clear on it and I think Mr. Bangel took advantage of the Court's ruling to ask that question, under the circumstances. I think it is grossly prejudicial to these defendants under those circumstances. Here you have a situation where this witness says it took him 20 seconds to pass a caravan and he had then gotten 300 feet ahead, that he passed, as I recall, a half a minute driving time, a half a minute's driving time from the scene of the accident to tell he observed this car up ahead. And in that time, the cars behind him were shifting, regardless of which cars they were. Under those circumstances, I submit that this testimony is improper.

Mr. Anninos: Judge, we emphasize the half a minute, a car going 60 miles an hour.

The Court: It is traveling a half a mile a half a minute.

Mr. Anninos: He says less than 60 miles.

The Court: About 55, he said he speeded up to 55.

Mr. Hollis: May I add one thing. From his own testimony he has said that the cars changed their position

page 169] from the time that he is testifying to. He has said that they changed their position. How he could put them back in that same position when he is a half a mile away —

The Court: Let me tell you now. I think the jury has understood this situation as well as all counsel. I think they understand the situation, how far these cars were apart. When he passed has no probative value. I think they understand this just as well as counsel. I think by proper examina-

tion and cross examination of this witness the jury will understand.

And I will instruct them as to what the distance was they were apart, some time before the accident, is of no probative value to what distance they were at the time of the accident.

Mr. Green: Under no circumstances the evidence shouldn't be in. That is the basis of the other ruling.

The Court: That was the basis of it, because I don't think it had probative value.

Mr. Bangel: We think it does have probative value where a jury can draw a proper inference. I could state some cases where the speed —

The Court: Probably there are other facts in those cases there, a time between the time those cars passed
page 170] and the time of the collision and all of that in there.

Mr. Bangel: We have that here in this case.

The Court: I don't know — not distance on and so forth, no evidence.

Mr. Bangel: We have the evidence that the distance wasn't over a half a mile.

The Court: I overrule your motion for a mistrial.

Mr. Hollis: Note my exception.

Mr. Green: Note my exception.

(Whereupon, the Court and counsel returned to the Court room).

By Mr. Bangel:

Q. Mr. Hedge, I want to get this completely clear in my mind.

The Court: I don't think it would be necessary for you to repeat the testimony, Mr. Bangel.

Mr. Bangel: I am not. I am going to ask him some questions.

By Mr. Bangel:

Q. Now, as I understood — let me ask you this — the auto-

mobile that you passed, that caravan, what did that consist of?

A. You mean who was in the automobiles?

page 171] Q. Yes.

A. Well, as far as I knew who was driving, I know one automobile was being driven by a man and one by a woman. And all of them had boy scouts in them.

Q. Now, when you passed these automobiles, did you observe the distance between one or the other?

A. Yes, sir, I did.

Mr. Green: Your Honor —

Mr. Bangel: I asked him did he observe that distance. I haven't asked him distance at this point.

By Mr. Bangel:

Q. And after you passed those automobiles, I understood you to say you got how far in front of them before you noticed this vehicle coming down the road?

A. Around 300 feet, maybe 400.

Q. After you passed these vehicles, what did they do as far as changing lanes?

A. As I said, the third automobile proceeded to pull into the passing lane and the second automobile turned out after him. The other automobiles proceeded into the passing lane.

Q. When you say the third automobile, what do you mean by that?

A. As they passed, the first automobile that

page 172] passed me was driven by a lady, and then I can't say who was driving it — I know the last automobile in the convoy was being driven by a man. As I passed them, I refer to Car Number 1, the lady whom I had been following.

Q. That car was not in the caravan?

A. Was not in the caravan. The second automobile was, and I refer to the first as the lady or the first car in the caravan driven by a lady, and the third automobile is the second automobile in the caravan.

Q. I see. So, you say they pulled out in the left lane?

A. Yes, sir.

Q. Did you see the others pull out in the left lane?
A. Do you mean the others in the convoy?
Q. Yes.
A. Yes, sir, I can't say that all of them did.
Q. Did you see the position they maintained behind one another as they pulled out?
A. You mean —
Q. Distance between?
A. No, sir, I couldn't say.
Q. Then, did you observe those automobiles change their position in any way after they pulled out in the left lane?

page 173] A. After they pulled in the left lane, no, sir.
Q. Were you in a position to tell the distance between those automobiles when they were in the left lane?
A. No, sir, I could not.
Q. All right, sir, how far from the scene of this accident — did their speed change any from the time they changed from the right to the left lane?
A. As I said before, I don't believe so because they never actually passed the first car that I assume they set out to pass. They seemed to run parallel to it.
Q. Now, how far in distance was this before this collision occurred?

Mr. Hollis: If your Honor please, I don't think the question is clear.
The Court: I think you'd better rephrase it.

By Mr. Bangel:
Q. How far in distance from the time they pulled into the left lane until the impact occurred?
A. If I get you right —

The Court: Do you mean that the lead car got into the left lane before the impact or how far they had gotten?

By Mr. Bangel:
page 174] Q. How far had the caravan gotten into the left lane before they were struck by this car?

Did it take place a mile and a half or a mile or a quarter of a mile — what distance?

A. About all they did was actually change lanes. And as I said, the first two cars in the convoy changed position, and they just seemed to run parallel to each other, and I would say probably not even a hundred feet.

Q. What was the distance between those vehicles before they changed lanes?

A. As I passed them?

Mr. Green: Your Honor, we are getting back to the identical thing that was amply ruled on. I think the witness has testified that he does not know their distance at the ime.

Mr. Bangel: Your Honor, our position is that if he passed these automobiles in a very short distance before this accident happened and these automobiles changed from right to left lane, but before he passed them he observed the distance between those vehicles and he immediately pulled into the left lane, the collision occurred a short time after that, he would have a right to tell the jury what distance they were traveling between each other shortly before the accident.

page 175] The Court: I understood the witness to say that he couldn't tell the distance between the cars when the accident occurred.

Mr. Bangel: That is right.

The Court: I also understood him to say that in front of this caravan was a lady driving an automobile, and behind it the first car in the caravan was driven by a lady. And he noticed in his rear view mirror that the third car in line, which was the second car in the caravan, pulled out into the left lane; is that correct?

The Witness: Yes, sir, it is.

The Court: After he pulled out, then the lady was driving in the caravan dropped in behind. Did I understand him to say, then, that he could not tell the distance between those cars at that time — did I understand you to say so?

The Witness: When I looked in my rear view mirror, no, sir, I could not say.

The Court: I sustained his objection that the distance

apart was not proper before they moved in the left lane.

Mr. Babalas: Note my exception.

Mr. Anninos: Note my exception.

Mr. Bangel: Exception.

page 176] Mr. Anninos: We have no further questions.

Mr. Green: Your Honor, in regard to any instructions you might give to the jury, I think this would be the proper time.

The Court: I don't think it is the proper time.

CROSS EXAMINATION

By Mr. Harris:

Q. Mr. Hedge, you say someone passed you traveling toward Suffolk and in the wrong lane. Do you recall the make of car?

A. No, sir, it was a blue automobile, I believe, and I thought a Ford.

Q. And you were barely able to move over into the right lane before that car passed you?

A. I could have moved sooner, but I remained because I thought it was going to pull off to his left which would put him on the shoulder of the road. I was proceeding down, so I waited for a second or half a second, or so before I moved in.

Q. I take it when you first saw him he was in the same lane you were in?

A. That is correct.

page 177] Q. Approximately how far away would you say he was at that time?

A. I am sorry, I was a little upset at the time. He was in front of me. I do remember thinking, well, now, maybe he is going to the left so I'd better not move until I decide what he is going to do.

Q. It wasn't a case where you looked up and immediately you had to take an emergency?

A. No, sir, it was not. He was in front of me a little distance.

Q. Would it be a block or a half a block?

A. A block, or something like that.

Gerald Hedge

Q. You moved to the right, but no further?

A. No, I didn't have to leave the road, no, sir, because he remained in the same lane.

Q. You must have tried to look at him when he went past?

A. Yes, I looked at his automobile.

Q. Could you tell whether it was a man driving it?

A. A man.

Q. Were you able in that short a time to tell what his condition was or where he was looking?

A. No, sir, all I could see was that he was behind the steering wheel, sitting, no more.

page 178] Q. At that time, you were what, 300 feet in front of the last car you had passed?

A. Approximately.

Mr. Harris: That is all.

By Mr. Hollis:

Q. Mr. Hedge, why were you in the left-hand lane, the inside lane?

A. Because I had just passed the automobile, and actually, the reason I stayed in the left was because nobody was pushing me or gaining on me and I was going to proceed in that lane because I was making a right turn to come towards Norfolk at the overpass.

Q. The left-hand lane is the one you take going toward Norfolk?

A. Yes, sir.

Q. And if you are going to Portsmouth you take the right lane?

A. Yes, sir.

Q. And that takes you under the overpass?

A. Yes, sir.

Q. The car that you have described was a blue Ford that was coming down in your lane? Is that the same car that ultimately collided with the automobile in back of you?

A. Yes, sir, it is.

page 179] Q. Are you able to estimate the speed of that car at the time of the collision?

A. No, I would say that he was probably going 40 or 45, definitely not over the speed limit, in my estimation.

Q. Now, do you know how many cars were in the caravan?

A. No, sir, I can't say for sure, six or seven, I would imagine.

Q. Do you know whether any of them, more than one of them were being driven by a lady?

A. No, as I said before, I could only say that two of them were driven — one of them, the first one, was driven by a lady and the last one by a man. The others I can't say.

Q. So, you don't know which car in that caravan was which, as far as the drivers were concerned?

A. You mean as they were hit, at the scene of the accident?

Q. At the time of the accident.

A. No, I would say the lady was hit, because as I said, the lady was in the first or in front of the convoy and then they started to pass the lady I had been following. The second automobile came into the passing lane first, or, excuse me, the third car came in first, and the second car —

Q. I think we understand that. What I am

page 180] asking you, at the time you passed these cars, you don't know which driver was driving which car in this caravan, do you?

A. Except for the first and last.

Q. The first car?

A. And the last car.

Q. Who was driving the last car?

A. A man.

Mr. Hollis: A man, all right, thank you.

By Mr. Green:

Q. Mr. Hedge, you don't know the drivers of the car, but could you describe the automobiles in the caravan and the make and color of them?

A. No, sir, I could not. I seem to be wanting to recall that one of them was a station wagon, but I couldn't say that. I couldn't say what model or make they were, recent make, most of them.

Q. What kind of a car were you driving?

A. A 1963 Chevy II.

Q. And you say that the speed of this automobile that was in the wrong lane appeared to be about 40 or 45 miles an hour?

A. Yes, sir. Now, I will tell you this. He didn't seem to be passing the people that were in the lane bound for Suffolk. Maybe slightly, but not much.

page 181] Q. In other words, riding along beside them?

A. Yes, sir, riding along beside them.

Q. So, there was traffic in the lanes going to Suffolk and there was traffic in the outside lane coming towards Norfolk?

A. Yes, sir, at the moment of impact, yes, sir.

Q. What was your speed, Mr. Hedge?

A. As I said, it was between 45 or 50. Now, as I pulled into the passing lane to pass, I naturally gained a little speed, between 50 and 55, some places, because as I said, it took a little time to pass the automobiles.

Q. And you say when these two automobiles hit they both went up in the air?

A. Yes, sir, the automobile that was Suffolk bound that was in the wrong lane, all four wheels of his automobile seemed to leave the road. And the second automobile and/or the automobile that he hit also left the road.

Q. Those cars stopped right at the point of impact, did they?

A. To say that they moved 50 or 75 feet, no. They were relatively in the same position.

Q. They were relatively in the same position?

A. Yes, sir.

Q. Do you know — you were 300 feet ahead of the first automobile in the caravan?

page 182] A. Yes, sir.

Q. When you swerved out?

A. Repeat that, please.

Q. You were about 300 or 400 feet ahead of the caravan when you swerved to the right?

A. Yes, sir.

Q. And then did you see the first automobile in the caravan veer off to the left?

A. Yes, sir, I did.

Gerald Hedge

Q. In your rear view mirror?
A. Yes, sir.
Q. How long after that was it that the impact occurred?
A. Just a fraction of a second.

Mr. Green: That is all I have.
Mr. Hollis: I have one other question.

By Mr. Hollis:
Q. Did you see any other cars swerve to avoid the one that was coming in the wrong lane?
A. Yes, sir — I assume, now, that it was the lady I had been following, I do not know.

The Court: We don't want any assumptions.
The Witness: Well, sir, it was the first car in the right-hand lane next to the shoulder, proceeding to
page 183] Portsmouth. She swerved, or the automobile swerved to the right.

By Mr. Hollis:
Q. Was this car in front of your car or in back of you?
A. Parallel — excuse me, she was parallel to the car that was hit. At the time I turned to the right lane, she was the first automobile behind me, or the automobile was the first car behind me.
Q. Did you observe any other automobiles in the left lane, the lane you were traveling in, other than the one you have already described? Did you see any other automobile swerve to get out of the way of this car?
A. Yes, sir, I did.
Q. Where was that car, or these cars?
A. The automobile, the second automobile that swerved to the left was the first automobile behind the car that was hit.
Q. The first car behind the one that was hit?
A. Yes, sir, it would have been the third automobile in the convoy.
Q. Did you see any other cars swerve to either the right or the left to get out of the way?

Gerald Hedge

A. Well, vaguely, the second automobile in the
page 184] outside lane or next to the shoulder in the
Portsmouth bound lane swerved, but I don't
believe he even had to leave the road.

Q. Was this car in front of you?

A. Behind me.

Q. You saw no other automobile in front of you swerve?

A. Yes, sir, there was one automobile in front of me.

Q. Which lane was that in?

A. I couldn't say because he was in front of me a good distance, and I couldn't say which way he swerved, but I believe he was in the inside lane and swerved to the right lane as I did. But he was a good distance in front of me, probably up as far as the truck stop or maybe a little before you get to the truck stop, but a good distance in front of me. And I figured—

Mr. Anninos: I object to the conjecture.

The Court: I sustain the objection. Tell what you know, not what you think might have happened.

The Witness: Okay, I will put it like this. At approximately the same time I saw the automobile in the wrong lane, I also saw another automobile in front of me who had swerved.

page 185] By Mr. Hollis:

Q. Before that car swerved, had you seen the car that was coming in the wrong lane?

A. No, sir, I saw them both at approximately the same time.

Mr. Hollis: Thank you.

REDIRECT EXAMINATION

By Mr. Babalas:

Q. Mr. Hedge, at this time of the afternoon, was it a sunny day, or not?

A. Yes, if I recall it properly, the sun was rather low.

Q. Now, when you looked through the rear view mirror and saw the two cars come together, the car coming to

you and the other car in the caravan, you said you saw another car swerve to the left. Can you tell me whether this was all at the same time that you saw this?

A. Almost spontaneously, yes, sir.

Q. And this car that swerved to the left at the time of the impact, where did it go?

A. Well, sir, he proceeded across the Suffolk bound lanes, both of them onto the shoulder of the road, towards the feeder ditch and hit a tree —

page 186] Q. Can you tell us from your observation with what force he went to the left or speed?

A. He hit the tree with such force that his hood flew up on his automobile.

Mr. Babalas: I have no more questions.

Mr. Bangel: If your Honor please, in accordance with your Honor's ruling, we would like to put in the record what this witness would testify to at the distance between those two vehicles when he passed them before this accident. Can we do it now in chambers or stipulate?

Mr. Green: Mr. Bangel, you asked him the question over the Court's objection.

Mr. Babalas: Don't go into that.

The Court: You can put it in. Did you want to put it in at this time?

Mr. Bangel: Let me see if we agree on it and if we can, I will vouch for it.

Mr. Hollis: Your Honor, I would like to ask this witness some more questions before he steps down.

The Court: All right.

Mr. Bangel: If your Honor please, everyone but Mr. Green would agree with me.

The Court: Wait a minute, Mr. Bangel, I don't think that is proper. I think if you want to state it

page 187] you should come up to the bench and state it.

(Whereupon, there was a discussion off the record).

The Court: All right, Mr. Hollis.

Gerald Hedge

RECROSS EXAMINATION

By Mr. Hollis:

Q. Mr. Hedge, did I understand you to say that after the accident occurred that you did not return to the scene?

A. No, sir, I did not.

Q. Do you mean you did not return to the scene?

A. I did not return to the scene.

Q. You continued on to what was the Frank's Truck Stop that you made the call from?

A. I believe it is Frank's, I don't know the name for sure, but it was the first truck stop after the accident.

Q. You also said that the car went down the ditch and hit the tree and the hood flew up? I show you Silbert's Exhibit Number 3 and ask you, this photograph, and ask you if that is the car that hit the tree?

A. I couldn't say.

Q. You couldn't say?

A. No, sir, because the one that I saw did not page 188] continue down into the ditch as this picture shows.

Q. In other words, there was some other car that went on off the road and hit a tree?

A. Yes, sir.

Q. Not the one that you see there?

A. No, sir, not according to this picture.

Q. The car you saw is not the one in this photograph?

A. I can't say that, but the car I saw was up on the shoulder, not down so far.

Q. You couldn't see the hood on the car in this photograph, whether it was up or down?

A. I don't believe so.

Q. You say you saw a car swerve off the road at about the same time you saw the crash? You didn't say the same time the car you saw swerve off was after the collision?

A. Which one are you talking about?

Q. How many cars did you see swerve?

A. Two.

Q. Two?

A. Yes, sir.

Q. All the way across the road?

Gerald Hedge

A. All the way across the Suffolk bound lane, off the shoulder.

Q. Both of them in back of you?

page 189] A. Yes, sir. The one that was in front was not involved in the actual collision.

Q. That was in front of the car that was struck?

A. Yes, sir.

Q. Let's talk about the one that was in back. The car that was struck, you say, I believe that was the car in back of the car that was struck that actually went across the left side of the road and off?

A. Yes, sir, onto the grass shoulder.

Q. Did that car, what you saw of that car, did you see it strike anything?

A. I saw him hit a tree.

Q. Did you see him hit anything else?

A. No, sir, I did not.

Q. When he went off to the left was after the head-on collision of the other two cars?

A. Just after.

Q. But it was after?

A. Yes, sir.

Mr. Hollins: All right, thank you.

By Mr. Green:

Q. Mr. Hedge, did you go back to the scene of the accident after you had been up to Frank's Truck Stop.

A. No, I did not.

page 190] Q. Did you at a subsequent time identify yourself to the police officer?

A. Excuse me?

Q. Did you at a subsequent time identify yourself to the police officer as a witness?

A. Well, what I did, I continued to my mother's house and I called the State Police first and found out it was wrong and called the Chesapeake Police. After I remained at my mother's house a few minutes — I had something to deliver to them. I was within a quarter of a mile of the Chesapeake Police Station, the Court House, so I proceeded home. And as soon as I arrived at my home, I called the police station at Chesapeake.

Gerald Hedge

I identified myself to a lady that answered the telephone, that I was a witness to the accident, and explained to her that at the time I called the police and returned to my automobile the cars had piled up so many people at the scene that I proceeded home. Now, when I initially called the police they didn't take my name or telephone number or address or anything. So, as soon as I arrived at my home I called them and explained this to them. She said, "Just a minute." And she let me speak to somebody — she called him by name, I could hear her talking to him. And I heard him reply something, I don't know what he said, but anyhow, she took my name, address and telephone number and informed me that the investigating officer was still at the scene and that they would
page 191] want to contact me later on.

Q. Did he ever contct you?

A. No, he did not.

Mr. Green: All right, that is all I have. Thank you very much.

(Witness excused).

The Court: Gentlemen, did you know that Dr. Kunkle has walked into the Court room? Did you want him excluded from the Court room?

Mr. Anninos: No, sir.

Call Dr. Kunkle.

(Witness excused).

Mr. Anninos: Call Dr. Dodson.

Mr. Anninos: Dr. Dodson, answer these gentle-
page 192] men's questions or any questions his Honor may propound to you.

Mr. Hollis: I have no questions.

Mr. Green: I have no questions.

Mr. Harris: I have no questions.

Mr. Bangel: I have no questions.

The Court: Doctor, you may be excused.

(Witness excused).

The Court: I think we have been sitting here about two hours. We will take a five minute recess.

(Whereupon, a short recess was taken).

(In Chambers)

Mr. Bangel: If your Honor please, at this time I would like to vouch for the record as to what Mr. Hedge would have testified to in relation to the distance between the automobiles in the caravan. He would have testified that they were 15 to 20 feet apart.

The Court: When apart?

Mr. Bangel: When he passed them shortly be-
page 193] fore the collision.

Mr. Green: Your Honor, while we are here, with reference to that voucher of Mr. Bangel's—

Mr. Hollis: Excuse me, I think it should be more definitive —when he passed them shortly before the accident—you mean at the time he testified to shortly before the accident?

Mr. Bangel: Yes.

Mr. Green: I think the defendant—I think it is already in the record on that, but at the time that Mr. Bangel was seeking to get this testimony in and the Court excluded it, he announced to the Court, according to my recollection, that he would like to tender a voucher of proof as to what the witness would testify to. Mr. Bangel approached me and I advised him that insofar as this 15 to 20 feet was concerned, that I thought the witness had already testified to that, that I was not in a position to vouch for anything else that the witness might say. At that point Mr. Bangel announced before the jury and everyone, according to my recollection of the words, and I think it is in the record, that everyone had stipulated to it except Mr. Green and so on, but further, according to my understanding, after the exchange of informa-
tion of counsel before the jury, it could only give
page 194] the impression to the Court after I had contin-
ually objected to such testimony and that the Court had sustained me, that I was in the position of keeping out evidence or excluding evidence by not agreeing to something that I know nothing about. That, combined with prior exchange of counsel before the Court with respect to the testimony of the witness and the distance involved, I feel could only prejudice the jury again, and I approached the bench at that time and brought it to the attention of the Court. I think the Court advised me at that time that the matter should be taken up at the recess and on that I would make a further motion for a mistrial.

The Court: I thought that when Mr. Bangel made the

statement, I stopped him. I attempted to stop him and I told both of you to approach the bench. You both approached the bench because I didn't think counsel should make further statement in the presence of the jury. I did not understand at that time that you were attempting to make a motion for a mistrial.

Mr. Green: Yes, sir, that was the reason.

The Court: I thought Mr. Bangel was trying to say that he wanted to put in the record at that time, that minute, to put in the record what the witness would testify to. And I said to wait until the recess.

page 195] Mr. Green: That is why I approached the bench and you said to wait until the recess.

The Court: I didn't understand, but I don't think what has been said would be in any way prejudicial, and, therefore, I overrule the motion.

Mr. Green: Note my exception.

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FRANCES HEDGE,

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

DIRECT EXAMINATION

page 196] By Mr. Babalas:

Q. Please state your name.

A. Frances Hedge.

Q. And where do you live, Mrs. Hedge?

A. In Great Bridge.

Q. And you are married?

A. Yes.

Q. On November 3, 1963, did you witness an accident that occurred on Route 58 in Chesapeake?

A. Yes, sir.

Q. And about what time was that, if you remember?

A. I would say between four and five.

Q. And on that date where had you and your husband been?

A. We had been between Suffolk and Whaleyville.

Q. And can you tell us what occurred on the ride back from Suffolk pertaining to a convoy or caravan of boy scouts?

A. Well, we were driving along, about two of us, and all of

a sudden these cars started catching up with us and we didn't notice, really, at first, but then they kept going into the right lane. They kept going into the right lane and this one kind of cut off my husband. And he said, "What in the world did they want to get into that lane for so fast." And we noticed they were boy scouts and we noticed they were

page 197] following each other.

Q. How many vehicles would you say were following one after the other?

A. Oh, goodness, I would say that passed us, six or seven.

Q. Now, did you follow those six or seven vehicles?

A. For a little while and then my husband, my husband doesn't like to drive that close. They were awfully close together, which then they moved into the right lane and he proceeded to go into the left lane.

Q. Are you referring to it by left lane, next to the center line?

A. Yes, sir, next to the traffic coming this way.

Q. Then, your husband started to proceed to pass them? Tell us what happened as you started to pass these vehicles. Did you notice any of the vehicles or any of the occupants?

A. Yes, I don't know why, but I noticed quite a few of them. I noticed the lady that was driving. I could describe her.

Q. Describe her for us.

A. She was very attractive. I thought she was probably in her early thirties and she had real dark hair. And I noticed it was pulled back. She wore it back, I guess, in a bun or French twist, or something. And I noticed a child

page 198] in the front seat with her, a boy, and the rest of them, most of them was adults in the front of the cars. Then, there was another car with a man, a big man. Rather, he was tall. He sat up high in the seat and his shoulders were wide. And another one with a man, with an older man, I would say, between 50 and 60.

Q. Now, as your husband started to pass the vehicles of the convoy, can you tell us approximately what speed your husband attained to pass them?

A. I would say 55. They weren't going fast. As I say, they were following each other and the lead car wasn't going over 55, if that fast.

Q. Now, did your husband succeed in passing the convoy of vehicles?

A. Yes.

Q. Tell us in your own words what happened after he passed

the lead vehicle?

A. Well, as we moved on around, of course, the sun was sitting behind us and I guess it threw a glare in front of us. And as we passed them he was still in the left lane and I looked up and saw this car coming towards us. And I screamed and he saw it, too. And I guess it was just an instant, because it happened so fast.

But he made sure the man was coming straight. He didn't know what the man was doing, he said so. He page 199] turned as soon as he found out which lane the man was going to stay in, he turned to his right to get out of his way.

Q. At that moment when he turned to his right, what did you do?

A. I followed his car, why, I don't know. I followed his car as he came past us. I followed him back to see—

Q. Mrs. Hedge, as you followed this car back, do you recall the color of that car you followed back that had been in your lane of traffic?

A. No, but I noticed the man.

Q. As you followed that car, when you say back, would that be in the direction of Suffolk?

A. Yes, he was going towards Suffolk in the wrong lane.

Q. Did you notice anything in the left lane coming in the same direction you were coming? Did you notice any vehicles, for example?

A. You mean in front of us or behind us?

Q. Behind you.

A. As soon as I turned the cars going back—as soon as my eye—he had cleared us, I saw his car going and both lanes of traffic, just nothing but cars meeting him.

Q. Now, can you tell us anything about the vehicles in the left lane going in the same direction you were page 200] and to your rear? Can you tell whether or not they were the same vehicles in which the boy scouts were in?

A. Yes, in fact, my husband and I when we got home, we even knew which one he had hit, because he hit the ones that had pulled out.

Q. When you say, "yes," what do you mean by, "Yes, the vehicles in the left lane?" Which ones were there?

A. We deducted that the lady was the second one.

Q. No, I don't want you to tell who was in what' car, but the cars you saw in the left lane when you turned around, can

you tell us whether or not they were the cars the boy scouts were in?

A. Yes.

Q. Yes, what?

A. Yes, we could.

Q. Were they the boy scout vehicles?

A. Yes, they were the boy scout vehicles.

Q. At that moment when you looked back and could you tell the distance between the vehicles that the boy scouts were in?

A. You mean how close they were driving?

Q. Yes.

A. They were awfully close, you could tell, because when the impact—as I say, I kept my eye on his car because I knew he was going to hit somebody. The two cars in

page 201] front, one went to the right as soon as they saw him.

Mr. Green: Your Honor, I object to the testimony. I think it is based on conclusions of the witness.

The Court: I overrule your objection.

By Mr. Babalas:

Q. Now, one car went to the right?

A. Right.

Q. By right, would that be to the right of your right, the way you were traveling?

A. Yes, one went to the right and one went to the left.

Q. Now, before the impact, and you said awful close, can you tell us in your own opinion how close those vehicles were that were traveling in the inside lane, traveling in the direction of Norfolk?

Mr. Hollis: Objection. You asked for an opinion.

The Court: I think he means an estimation.

By Mr. Babalas:

Q. Can you estimate distance between the boy scout cars as they were proceeding in the same direction you were and just before, the moment before the collision?

A. I would say not over a car length. All I could

page 202] see was two strings of cars coming and they looked all bunched together to me.

Q. When you say a car length, how many feet would a car length be?

A. I would say 20 feet.

Q. Now, when you looked back and you were watching the car going west that had been in your lane of traffic, tell us from that moment on what you saw in your own words.

A. Well, I turned, as I say, to follow him. And one car went to the right and one went to the left. He went head-on with the second car.

Q. By the second car, you mean the car going towards Norfolk?

A. Yes.

Q. And what did you see?

A. Both cars as he hit head-on, or it looked to me head-on, both cars went up in the air and it looked—smoke, dirt, steam or what-have-you, then both cars seemed to come back down and then her car went back up the second time.

Q. Why did her car go back up the second time?

A. I guess because the other people back of her hit her.

Mr. Hollis: If your Honor please, the answer—the witness said, "I guess."

The Court: I will ask you to please tell what page 203] you actually saw.

The Witness: The car went up twice.

By Mr. Babalas:

Q. And can you tell us what happpened the moment that the impact occurred and the car was in the air the second time?

Mr. Babalas: Strike the question.

By Mr. Babalas:

Q. When you looked back, you saw the first collision?

A. Yes.

Q. Tell us what you saw the moment of impact, in your own words.

A. Well, as I say, both cars went up in the air. His car came back down and hers, I don't know if it got all the way down because his was in the way, and then her car went back up in the air the second time and it wasn't as high as it was the first time.

Q. The car that had been going west in your lane of

traffic, did it go up a second time?

A. No, it did not go up a second time.

Mr. Babalas: I have no further questions.

page 204] CROSS EXAMINATION

By Mr. Harris:

Q. Mrs. Hedge, as you saw the car coming towards you in your lane of travel, I believe you said?

A. Yes.

Q. Approximately how far away was it the first time you saw it?

A. Oh, I would say when I saw it—I would say I saw it about 300 feet in front of us first. Because I didn't scream then, because I didn't realize he was on our side.

Q. That is 300 feet, you didn't realize he was on your side?

A. No, I saw the sun glaring on the windshield.

Q. Approximately how far away was that car when you did realize it was on your side, in your lane?

A. Oh, let's see—I would say maybe 150 feet.

Q. At that point did you scream?

A. Yes.

Q. And then your husband moved over into the right lane; is that correct?

A. Yes.

Q. And you kept your eye on the person driving that car?

page 205] A. Yes, sir.

Q. The sun was right on that person's face?

Mr. Anninos: How can she tell that, may it please the Court.

Mr. Harris: I am asking her if she can. This is cross examination.

The Court: What is your objection?

Mr. Anninos: We object to the question as being impossible for this witness to answer, whether the sun was shining on a person's face. It can shine in the general area —

By Mr. Harris:

Q. Was the sun shining in the general area towards his face? Did you see his face?

A. I could see his face.

Q. Could you tell whether he had his eyes open or closed?

A. No, he was sitting real straight behind the steering wheel, sitting straight.

Q. Did he appear to be looking where he was going?

The Court: If she can tell.

By Mr. Harris:

Q. Did he have his eyes open?

page 206] A. I don't know, but he had his head down.

Q. His head down?

A. Not way down, but he had his head down like this (witness indicating), sitting just like this.

Q. Could you tell the approximate speed of that car as it went past you?

A. I would say 40 or 45 miles an hour.

Mr. Harris: That is all.

By Mr. Hollis:

Q. Mrs. Hedge—

Mr. Harris: One other question.

By Mr. Harris:

Q. Did that car ever veer from that lane?

A. No, he stayed.

Q. He went right straight on?

A. Yes, sir, he was driving perfect if he had been in the right lane.

By Mr. Hollis:

Q. Now, what speed was your car going, Mrs. Hedge, as you went away from the accident?

A. You mean when we saw him, when we passed him?

Q. When you first saw the LaFrage vehicle, or

page 207] whatever car it was coming towards you?

A. I would say 55, because we had just passed the group of cars.

Q. After you passed, did your husband continue to drive in that direction?

A. Well, as soon as he passed us, and as I say, we saw the accident. We, of course, commented. I said, "There is people killed. Let's call the police." And he stepped on the gas and we were at the telephone in a matter of seconds.

Q. He did stop the car before the accident occurred?

Frances Hedge

A. No.

Q. How far were you from the accident at the time it did occur?

A. I would say 300 feet.

Q. About the length of a football field?

A. I am not familiar with football fields, I am sorry. I am with 300 feet.

Q. And you were in the right-hand lane?

A. We passed him.

Q. At the time the accident occurred?

A. No, we were in the left-hand lane and went back into the right, going to the right to Norfolk. When we were in the left lane, we went in the right lane to pass him.

page 208] Q. Then after you passed him, after he passed you, did you continue in the right lane or did you go back into the left lane?

A. No, we continued in the right lane because that is where the telephone was. We knew there was a building over there.

Q. At the time the accident occurred, your husband was driving down the right lane and you were approximately 300 feet from the scene of the accident; is that right?

A. Yes.

Q. Is that right?

A. Yes.

Q. And the sun was shining in your eyes as you looked back?

A. It wasn't shining at all—the sun shining in my eyes. You know, there is trees on both sides of the road.

Q. The sun was not shining in your eyes?

A. No.

Q. Were you able to tell—you were on the same highway they were on — and you tell this jury that you can say what distance there was between the cars in the caravan at this point?

A. I said the cars in the caravan, as I looked back there were two streams of traffic coming It was one bunch of cars, it seemed to me.

page 209] Q. So, you do not know what the distance was between the cars following each other at that time?

A. They looked to me to be a car length apart and they were not very far apart because that woman did not turn her wheels. One, all of a sudden, went one way and one the other and her car wheels stayed exactly the same in the road. She

didn't even know what hit her.

Q. What does that have to do, may I ask, with the distance those cars were apart?

Mr. Anninos: I think the witness is entitled to explain. It was responsive to the previous question.

The Court: Go ahead.

The Witness: I think you are asking me my opinion and I give it to you to the best of my ability. That is what it seemed to me.

By Mr. Hollis:

Q. Let's see if we are talking about the same car. I am asking you about the distance between the automobiles in the scout group proceeding in the same direction you were at the time the accident happened. This is the distance I am asking you about. You say one car was following another and you were 300 feet or 100 yards away? And you tell the jury that you can see and tell the distance between the cars?

A. And another thing in 300 feet, remember,
page 210] we had slowed down and they were still moving
at 55. So, by the time they got up there, we might not have been 300 feet.

Q. You said you were 300 feet, were you?

A. At the time he passed us, yes, sir.

Q. How many feet were you from the accident at the time it happened?

A. I am not sure. It wasn't over 300 feet. It could have been less, because as I say, as he passed us, the traffic was slowing down, the traffic moving 55 or 50 was moving up. When I looked back, all I could see was two lanes of traffic heading for him and all these moving towards him.

Q. And you describe that as two bunches of cars?

A. Yes, sir, it looked like two bunches to me.

Q. You couldn't tell how much distance it was between the bunches of cars, between each one?

A. To me a bunch doesn't have much distance, I am sorry.

Q. Now, at the time these two cars did collide head-on, did they come to a stop or did they go off in some direction?

A. No, when they came to — went up like this, of course,

the time it swerved was about a car length; is that correct?

A. I know what you mean, I was trying to think back. I can't say. I know it wasn't too long when one car went one way and one the other that they hit and they hit head-on. She didn't have time, evidently, to see, but, of course, —

Q. I understand that, but you testified when you looked back, that these cars were all traveling approximately a car length apart?

A. I say they were in a bunch.

Q. Did you mean a bunch or a car length apart?

A. I would say not more than a car length apart. They were not more than a car length apart.

Q. That is what I am asking you. That at the time they were approaching and you were looking back, that the lady's car and the first car in the caravan were approximately a car length apart; is that correct?

A. As far as — yes, in my judgment.

Q. And then that first car veered off?

A. Yes.

Q. And then the impact occurred almost immediately of the oncoming car and the lady's car?

A. Everything happened so suddenly, in seconds.

Q. And then you saw her car, you said, go up

page 215] in the air twice?

A. Yes, sir.

Q. And then it came to rest?

A. Yes.

Q. Now, you didn't see the car behind the lady's go off to the left?

A. No, I was looking at her.

Q. Now, you said that you all — well, first of all, could you estimate the speed of those cars in that caravan?

A. No one was speeding, I would say, not over 50 because we passed them around 55 and passed them quite easily. And no one was speeding.

Q. And there was a considerable amount of traffic that day, at that time?

A. There wasn't so much traffic until the caravan caught up with us and then there was traffic.

Q. Traffic coming and going?

A. Oh, yes.

Q. In all lanes?

A. Now, there wasn't — I didn't see anyone in front of us. There wasn't too much traffic that day, especially going to Norfolk — quite a bit going to Suffolk, there seemed to be.

Q. And you didn't see anything that happened behind the lady's car?

A. No, I did not.

page 216] Q. Now, was the last car in the caravan approximately the same distance from the car in front of it as you testified to, one car length?

A. I don't know about the last, because as I say, my eyes, as I looked back, I saw all these cars coming towards him and I kept my eye on his car. So, I don't know what the cars behind did, or all I know when it was all over, there was cars all over the place, there seemed to be. What the last car was doing I have no idea because I didn't see them.

Q. Could you estimate the distance between the cars in the right-hand lane?

A. I don't think so because I was sitting next to the driver. You don't see that right-hand as good as you do the left. If you could see that, you would have to turn completely around to be able to see the right-*hnnd.*

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PETER PAPPAS,

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

DIRECT EXAMINATION

By Mr. Anninos:

Q. State your full name, please, sir.

A. Peter Pappas.

Q. And where do you live, Mr. Pappas?

A. 1637 Cougar Avenue, Norfolk, Virginia.

Peter Pappas

Q. What is your occupation?

A. Insurance agent.

Q. Mr. Pappas, what is your connection with the boy scout troop known as the 193?

A. I am the Assistant Scoutmaster.

Q. Who is the Scoutmaster?

A. Antonio Kehayas.

Q. Were you the Assistant Scoutmaster on
page 222] November 3, 1963, when an accident happened
on Route 58?

A. Yes, sir.

Q. And who sponsors this troop of boy scouts known as 193?

A. The Greek Orthodox Church in Norfolk.

Q. Is it restricted to just children of the Greek Orthodox Faith?

A. No, sir, anyone in the neighborhood that wishes to join the boy scouts can join.

Q. I take it, then, you have members of the troop who are of religious denominations other than the Greek Orthodox?

A. Yes, sir.

Q. Directing your attention to Saturday, November 2, 1963, Mr. Pappas, I ask you if you had occasion to take this troop to North Carolina?

A. Yes, sir.

Q. For what purpose?

A. The regular weekly camping trips we go to, we go on the week-ends. We left on Saturday morning and went to Eastern North Carolina.

Q. What did you do there with the boy scouts?

A. Camped for the week-end, the boys camp out and cook, like out in the woods, the regular things for boy scouts.

Q. The regular job to instruct the children?

A. Yes, sir.

page 223] Q. What is the approximate age of the group
of the boy scouts in your troop?

A. They have to be eleven. They go anywhere from eleven to sixteen as a normal run. We have some boys that stay longer than sixteen, but that is *regular*.

Q. On the following day, Sunday, November 3, some time

in the early afternoon, where were you taking these boy scouts?

A. Back home.

Q. To where?

A. To Norfolk, to the church.

Q. Now, before leaving, did you have occasion to instruct the other automobiles in the manner in which they were going to follow each other to Norfolk, Virginia?

A. I didn't instruct them, but Tony Kehayas was going to lead off and I was going to bring up the rear.

Q. How many cars made up this caravan?

A. Seven.

Q. And you were the —

A. Seventh car.

Q. Who was the lead car?

A. Tony Kehayas.

Q. Will you tell us from that order back to you, the names of the drivers, if you know?

A. Tony Kehayas in the lead; Demi Gretes was
page 224] number two; Allen Silbert, number three; Jimmy
Maroulis, number four; Doctor Herman Chappel, number five. Mr. Allen was number six, and I was the last one.

Q. What route did you take leaving Edenton to travel east?

A. I don't know the route number by itself. The only road that comes from that direction where we camped at Bennetts Mill Pond. I don't know what the number is. It goes to Suffolk.

Q. Did you ultimately reach the highway known as highway 58?

A. Yes, sir.

Q. How many lanes does highway 58 have in the area where this collision occurred?

A. Four lanes.

Q. What lane before this collision happened — what lane was the caravan traveling in?

A. The right lane.

Q. And did this caravan have occasion to deviate from the right lane?

Peter Pappas

A. Yes, sir, we were getting ready to approach the Bowers Hill overpass, the overpass to go over to where the fertilizer plant is and the underpass goes into Portsmouth. So we had to get into the second lane to take the overpass to get to Norfolk.

page 225] Q. You refer to the second lane, would that be the left lane, the lane nearest the center of the highway?

A. Yes, sir.

Q. Now about how far back of the point of the collision did you get in to the left lane from the right lane, approximately?

A. From where the accident happened?

Q. Yes.

A. How far back?

Q. Yes.

A. We had just started getting in that lane. I don't know, about a half a mile, I guess.

Q. Now, what was the speed of this caravan before you moved in the left lane?

A. We were doing about 55 miles an hour.

Q. What was the speed of the caravan after you got into it there, into the left lane?

A. About the same thing.

Q. Fifty-five?

A. Fifty-five.

Q. Were you able to determine the distance between the automobiles in the caravan after you got out into the left lane?

A. About two car lengths apart.

Q. How far were you apart or behind the Allen car?

page 226] A. I was about four car lengths behind. In fact Mr. Allen, he had some space too. He had about three or four car lengths between him also. He and I were kind of lagging behind a little bit.

Q. Now, as you proceeded into the left lane at the speed that you indicated, Mr. Pappas, what happened?

A. After we were in the second lane?

Q. In the left lane.

A. We were driving along and I heard this loud noise and

I could see a car that kind of came up in the air and swing around to the right kind of, kind of up off the ground, this car, the car that hit Deme Gretes.

Q. To whose right?

A. To my right. It was just up in the air and swung around this way (indicating), you know, the car swinging around like that.

Q. To what position did that car that you say swung to the right ultimately come to rest, into what lane?

A. In the first lane, the right lane.

Q. Would that be the right lane nearest the shoulder of the road?

A. Nearest the shoulder, yes.

Q. What did you do?

A. I stopped immediately.

Q. In what side of the road?

page 227] A. I pulled over to the right as close to the accident as I could get to help, to do what I could to help.

Q. Was there anything in the right lane going east to prevent the cars in your caravan from turning to the right?

A. I don't believe so, because I could see the car when it swung around there and I didn't see any other cars, you know, before this car that swung around. I don't think there was anything.

Q. Did you have any difficulty in turning your car to the right?

A. No, sir.

Q. Did you see the movement of the Allen automobile immediately ahead of you?

A. He was shooting to the right also.

Q. Were you involved in this collision?

A. No, sir.

Q. Was he, Mr. Allen, involved in it?

A. No, sir.

Q. After this collision occurred, Mr. Pappas, what assistance, if any, did you render to any of the injured parties?

A. I went to Deme Gretes' car and tried to open the doors. I couldn't open the doors, they were jammed shut. And we

went around the car trying to open the doors and
page 228] we couldn't get any doors open. Finally we got
a crow bar from somewhere and I was over on the passengers side with Tony Kehayas. He was trying to open the doors. Someone on the other side finally got the other door open. The kids were hollering. Someone opened the door to the driver's side and I went to help them. And we finally got the door open and got the Elliott boy out. We did get Deme out and reached to get Petey.

Q. Who is Petey?

A. Petey Gretes. He was in the seat belt, you know, tied in there. Well, I was pulling out and I didn't know he was already dead and somebody grabbed me. They just left him there.

Q. Mr. Pappas, I take it you were very close to these children?

A. Yes, sir.

Q. Did you, sometime immediately following this collision, have occasion to talk to Mr. Silbert, one of the operators of the automobiles involved in this collision?

A. Yes, sir.

Q. And where was this conversation?

A. Right there at the accident.

The Court: At the accident?

The Witness: Yes, sir.

Mr. Anninos: Did you want to object?

Mr. Hollis: I was waiting to see how long
page 229] after the accident.

By Mr. Anninos:

Q. Was this immediately after the accident?

A. I mean after the accident, but after we were getting everybody, you know, together and helping the people injured to get to the hospital.

Q. What conversation — relate what Mr. *Sibert* told you at the scene of this collision as to how this collision happened.

A. He said that Deme had a head on —

Q. Who is Deme?

A. Deme Gretes. That he tried to avoid hitting her and

he went off to the left. And he was hit in the rear too. Jimmy Maroulis had hit him in the rear and he went to the left. He kind of careened off the Gretes car and wound up in the ditch on the left-hand side.

Q. Did he say to you whether or not his automobile came in contact with the rear of the Gretes automobile?

A. I believe he did say he hit that, yes, sir.

Q. Did you have occasion to talk with the other operator of the car, Mr. Maroulis?

A. Yes, sir.

Q. And did Mr. Maroulis tell you how this collision occurred at the scene of this collision?

A. How it what — what happened?

page 230] Q. What did he tell you?

A. He hit Allen Silbert and then ran into the Gretes car after that.

Q. Who ran into the Gretes car?

A. Jimmy Maroulis.

Q. Did Mr. Silbert tell you what first brought his attention to the accident?

A. No. Deme Gretes was trying to put her brakes on to stop.

Q. What were the weather conditions on this particular afternoon, Mr. Pappas?

A. They were clear.

Q. What was the road condition in relation to weather, dry, or what?

A. Dry.

Q. What was the visibility existing at the time of this collision?

A. It was clear.

Mr. Anninos: Answer these gentlemen or any questions his Honor may propound to you.

Mr. Harris: I have no questions.

CROSS EXAMINATION

By Mr. Hollis:

page 231] Q. Mr. Pappas, you were the last car in the caravan, as I understand it?

Peter Pappas

A. Yes, sir.

Q. And how many cars ahead of you was Mr. Silbert's car?

A. Well — four cars ahead.

Q. Four? And that would mean Mrs. Gretes was five ahead of you?

A. Yes, sir.

Q. Do you know the distance between Mr. Kehayas' car and Mrs. Gretes' car just before the accident?

A. All approximately two car lengths apart.

Q. When you say approximately, could it have been three?

A. No, it would probably be closer to one.

Q. Probably closer to one? You don't think it could be more than that?

A. No, I know that Mr. Allen and I had slightly more space and I was concerned about it being close, but there were no traffic lights on the road.

Q. You could tell the distance between the car ahead of you?

A. Yes, sir.

Q. Which was Mr. Allen?

A. Yes, sir.

page 232] Q. And the car ahead of him which was Doctor Chappel.

Q. Then you could see ahead of Doctor Chapel's car?

A. No, we had just swung into that lane.

Q. You said a half a mile?

A. Yes.

Q. You could see the distance?

A. At the time we swung across there I could see.

Q. You are not talking about the time of the accident?

A. No, sir, I know I couldn't.

Q. You could not see?

A. No.

Q. You are talking about the time before the accident happened?

A. Yes, sir.

Q. When you got in the same line they were in, you could not see the distance between the cars?

A. No, sir.

Q. All right, now at that time that you could see the distance, was there ample room between the Gretes car and the Silbert car, for Mr. Silbert to have stopped in normal circumstances?

Mr. Anninos: I object, may it please the
page 233] Court.

The Court: I sustain the objection. It calls for a conclusion.

By Mr. Hollis:

Q. Now, when the head-on collision did occur between Mrs. Gretes' automobile and the LaFrage car, those cars came to a complete stop, did they not?

A. I don't know, sir. All I could see was the car that I understand was Mr. LaFrage swinging around to the right and his rear tires, you know, like on a wheel, he just came together. I saw the car swing around in the air and bounce.

Q. As far as you know they came to a dead stop?

A. I couldn't see that.

Q. You couldn't see that?

A. All I could see was the car, the Valiant that swung to the right.

Q. Now you say the speed was approximately how much?

A. Fifty-five miles an hour.

Q. Had you looked at your speedometer?

A. No, sir, I knew I wasn't exceeding the speed limit — very cautious, but I know we were doing close to the limit there.

Q. Close to it?

page 234] A. Yes, sir.

Q. It could have been less?

A. Yes, sir.

Q. Now after the accident when you went to the car, Mr. Pappas, did you also notice whether the trunk was open or closed at that time on Mrs. Gretes' automobile?

A. It was partially open.

Q. Partially open?

A. Yes, sir, the reason I recall was that later on the boys wanted to get some of their equipment out of the trunk and

it wasn't all of the way out. They got some of their things out.

Q. Could you estimate about how far up it was when you first saw it?

A. Just about this much (witness indicating.)

Q. About a foot and a half or two feet?

A. Something like that.

Q. Now, you say that Mr. Silbert talked with you after the accident? And I believe you stated that he told you that he tried to avoid Mrs. Gretes' car?

A. Yes, sir.

Q. And he went to the left?

A. Yes, sir.

Q. And that he careened off the car?

A. Yes, sir.

page 235] Q. Did he tell you he was struck himself?

A. He said he was hit in the rear, yes, sir.

Q. Do you recall the position of Mr. Silbert's car in the ditch with relation to Mrs. Gretes' car? Was his car just about directly across the road from hers?

A. Yes, sir, — you mean abreast of it?

Q. Yes.

A. I think it was just about abreast of it, yes, sir. It was in the ditch, you know, hanging up.

Q. If you stood on the other side of the road and looked directly across you would have seen the LaFrage car, Mrs. Gretes' car and then over in the ditch you would have seen Mr. Silbert's car?

A. Yes, sir.

Q. Therefore it was not down the road from the scene of the accident?

A. No, sir.

Mr. Hollis: All right, thank you.

By Mr. Green:

Q. Mr. Pappas, when and where did you talk to Mr. Maroulis after the accident?

A. Right there when they were telling us — no, when we were all saying what happened, why they couldn't stop.

Peter Pappas

Q. When? Right immediately after the accident?

page 236] A. No, sir, because I was helping getting the people out of the Gretes car and I went over to help Jim and his wife. His wife was hurt also.

Q. Who was that?

A. Jim Maroulis' wife. In fact he had lost his glasses and he couldn't see.

Q. Mr. Maroulis had lost his glasses in the accident and couldn't see at all?

A. He had difficulty seeing, yes ,sir.

Q. Now, you were the last car in the line; isn't that right?

A. Yes, sir.

Q. And when you saw all this up ahead of you, you saw that impact, you were able to cut to the right?

A. Yes, sir.

Q. You had right much difficulty in doing that, didn't you, Mr. Pappas?

A. I don't recall.

Q. Do you recall telling Mr. Hollis and myself when you talked to us that you couldn't pay attention to what was going on because you had plenty of trouble trying to get yourself out of it?

A. No, to get out to the right.

Q. In other words you were met with a situation up ahead and had to cut to the right?

page 237] A. Yes, sir.

Q. You, of course there were a number of cars in between you and the initial impact?

A. Yes, sir.

Q. Now, this caravan had come all the way from Edenton?

A. Yes, sir.

Q. And it had made stops along the way, had it not?

A. No, we hadn't stopped except for traffic lights.

Q. That is what I mean, traffic lights? And there hadn't been any accidents up until that point?

A. No, sir.

Q. Up until this occurred?

A. No, sir.

Q. Now, did you see any of the cars in the caravan change

position very shortly before this accident occurred?

A. All of us went into the left lane.

Q. I understand that. Did you, for instance, did you see Mr. Kehayas' car pass Mrs. Gretes' car?

A. He was already ahead of her car.

Q. Ahead all the way?

A. Yes, sir, he was the first car.

Q. To your knowledge none of the cars in that caravan changed position?

page 238] A. No, sir.

Q. None of them had — they had all been in the same position all the way up there?

A. Yes, sir.

Q. None of them had passed?

A. No, sir.

Q. Did you see Mr. and Mrs. Hedge's car?

A. I don't know who they are.

Q. Anyway, you are pretty positive that none of those cars in that caravan changed positions?

A. No, sir.

Q. Now, did you observe the cars at the scene, Mr. Pappas?

A. Yes, sir.

Q. I hand you a photograph, Mr. Pappas, and ask you if you can identify on that photograph, if it depicts generally the scene?

A. Yes, sir, this is Allen *Silberts'* car. This is the Gretes car. This is Jimmy Maroulis, and that must be Doctor Chappel's car. I can't see very well. May I mark those?

Mr. Bangel: Yes.

Mr. Green: I want to *intorduce* this.

The Court: Maroulis Exhibit #5.

(Whereupon the foregoing photograph was received in evidence and marked for identification as Defendant Maroulis Exhibit #5.)

page 239] By Mr. Green:

Q. Now, I hand you another photograph, Maroulis Exhibit Number 3, and ask if that depicts the damage

to the rear of the Maroulis car?

A. It appears to be the Maroulis car, yes, sir.

Q. And I hand you this photograph, Maroulis Exhibit Number 4, and ask you if that shows the damage on the Chappel car?

A. Yes, sir, that is Doctor Chappel's car.

The Court: Put on each car the initial representing the car as shown on the picture.

Mr. Green: Yes, sir, it is going to be pretty hard to do. I think I will just draw an arrow on down.

The Court: All right, that is all right. Draw an arrow.

By Mr. Green:

Q. Now, you say that the caravan was proceeding as directed by Mr. Kehayas? In other words he had lined the things up.

A. Yes, sir. Well, he said he was going to take the lead and I was going to bring up the rear.

Q. And for the rest of the cars to fall in between?

page 240] A. Yes, sir.

Q. Had you done this on previous occasions, Mr. Pappas?

A. No, sir, but — what happened —

Mr. Anninos: I think he ought to say when.

The Court: I don't see whether it is material whether he did this on previous occasions. I sustain the objection.

By Mr. Green:

Q. Where did you stop your car, Mr. Pappas?

A. Right almost as close to the Gretes car as I could, practically just back of it.

Q. On the shoulder?

A. Yes, sir.

Q. What kind of car was it, Mr. Pappas?

A. Chevrolet.

Q. Did you put your brakes on as soon as you saw the intitial impact?

A. Yes, sir.
Q. And swung to the right?
A. Yes, sir.
Q. Is that your car there shown in that photograph, Mr. Pappas?
A. This looks like my car, yes, sir, over here.

page 241] Mr. Green: Referring to Maroulis Exhibit Number 1, and I assume that I can point it out to the jury without having the witness —
Mr. Babalas: Mark it, Mr. Green.
Mr. Green: All right.
Mr. Bangel: That line should go all the way down. The car is way below that line.

By Mr. Green:
Q. Now, Mr. Pappas, you did not observe any — you did not observe any of the accident impacts other than the initial impact?
A. I didn't hear you.
Q. You didn't observe any of the accidents other than the initial impact?
A. Only the Valiant.
Q. You were behind Mr. Allen?
A. Yes, sir.
Q. And you took exactly the same action Mr. Allen did as far as pulling over and trying to stop?
A. Yes, sir.

Mr. Green: Thank you, Mr. Pappas, that is all.
Mr. Hollis: Your Honor, just two more questions.

page 242] By Mr. Hollis:
Q. Mr. Pappas, do you recall shortly before the accident occurred passing any automobiles?
A. Did we pass any automobiles?
Q. Yes.
A. Yes, sir, we probably did.
Q. You were the last car in the caravan?
A. Yes, sir.
Q. Did you turn in and cut off any car?

Mr. Babalas: I object, whether he cut off or not. He doesn't know whether he cut off a car or not. That is just somebody else's impression. You are asking for an opinion.

The Court: We don't know where you are talking about.

Mr. Babalas: I object.

The Court: This caravan is coming all the way from Edenton.

By Mr. Hollis:

Q. Shortly before the accident do you recall the witness, Hedge —

Mr. Babalas: I object to this entire statement and argument by Mr. Hollis.

page 243] By Mr. Hollis:

Q. Now, Mr. Pappas, you were in the left lane at the time the accident happened?

A. The second lane?

Q. Yes.

A. Yes, sir.

Q. The left inside lane? Before that you were travelling in the right-hand lane?

A. Yes, sir.

Q. Now, before you last got in the right-hand lane had you passed an automobile going in the same direction you were going?

A. I don't recall, I probably did. I know we passed some automobiles, but I don't recall any incident where I did specifically.

Q. Do you recall cutting anybody off?

A. No, sir.

Q. Do you recall while you were travelling in the right lane just before going out into the left lane, whether the cars of the caravan were travelling at a distance of 15 feet apart?

A. Which cars?

Q. The cars in the caravan?

A. Fifteen feet?

Q. Fifteen feet.

page 244] A. They were approximately two car lengths apart.

Q. So they would not be fifteen feet apart?
A. Hardly. I am sure it was more than fifteen feet.

Mr. Hollis: All right.
Mr. Green: One further question.

By Mr. Green:
Q. At the time you last observed these cars you testified they were two car lengths apart?
A. Yes, sir.
Q. Two car lengths between the Kehayas car and the Gretes car?
A. Yes, sir.
Q. And two right on back down the line?
A. Yes, sir.
Q. So Mrs. Gretes was following the Kehayas car approximately the same distance as the others?
A. Yes, sir.

REDIRECT EXAMINATION

By Mr. Anninos:
Q. Mr. Pappas, what is the approximate length of a car that you have mentioned?
page 245] A. A car length is about 20 feet.
Q. Now, from the time — I believe you stated that when you were in the right lane next to the right shoulder of the road that the caravan was going approximately 55 miles an hour?
A. Yes, sir.
Q. Was that speed maintained when you turned into the left lane?
A. Yes, sir.
Q. Was it maintained up until the time of this collision?
A. Yes, sir.
Q. And were the positions of the cars maintained in the same manner when they were in the right lane?

Mr. Hollis: Mr. Anninos is leading the witness. It is his own witness.
The Court: I overrule your objection.

By Mr. Anninos:

Q. Was the position of the automobiles in the caravan maintained in a similar position that they were in in the right lane?

A. I assume they were. I saw no change.

Q. You saw no change?

A. That I could see.

page 246] RECROSS EXAMINATION

By Mr. Hollis:

Q. When you refer to position, you mean the lead car, the Kehayas car and the Gretes car and so on?

A. Yes, sir.

Q. You are not talking about the distance between yours?

A. No, sir.

Mr. Hollis: Thank you.

By Mr. Green:

Q. Mr. Pappas, all these people operating these automobiles had children who were Boy Scouts of their own?

A. Except myself.

Q. You were the only one in the caravan who didn't have their own children in the car?

A. Yes, sir.

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Mr. Green: Your Honor, on behalf of the defendant, Maroulis, I move the Court to strike the plaintiff, all plaintiff's evidence, and enter summary judgment for the defendant, Maroulis, on four separate grounds.

(Whereupon the foregoing motion was argued by Mr. Green, on behalf of the defendant, Maroulis.)

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The Court: Let's see, gentlemen, of course I have already ruled that the motion for the LaFrage car, that is the motion to strike, has already been overruled. So far admittedly he was guilty of negligence, driving in the wrong lane. Now, one of the points, both the Silbert and the Maroulis counsel make is that they are attempting to imply the "But for" rule as the causing of this accident. But that rule, as I understand it, is one of exclusion, that it excludes all other causes that may have brought about the injuries of these parties. Now, if I understand this evidence correctly, that if the jury believes that the Maroulis and the Silbert cars were guilty of any negligence that was a material and substantial factor in causing the injuries received to these parties, then the jury should pass on that and not the Court.

Now, whether it is going to believe that it was the cause of these injuries or was not or a question of proximate causes generally a jury question, and I feel that under the evidence that this matter should be left to the jury to determine under the evidence and under the instructions. So I will have to overrule your motion.

page 259] Mr. Green: Note our exception on all grounds.

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DOUGLAS HALLETT,

called as a witness on behalf of *defendant's,* having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Hollis:

Q. State your name and address, please.

A. Douglas Hallett, 74 Manteo Street, Norfolk, Virginia.

Q. Directing your attention to November 3, 1963, between 4:00 and 4:30 in the afternoon, were you a passenger in an automobile on Route 58, on the Suffolk highway?

A. Yes, I was.

Q. Who was driving the car?

page 260] A. Thomas Terry.

Q. And is Mr. Terry now dead, having been killed in an accident at work?

A. Correct.

Q. He was electrocuted, I believe?

A. Correct.

Q. Where were you coming from and going to?

A. Coming from Suffolk. We had been on a fishing trip and going home.

Q. Approximately what speed was the car in which you were riding going?

A. I would say around 50 or 55.

Q. Now, did anything unusual occur as you neared the railroad overpass on Route 58?

A. We had to get out of the way of an oncoming car.

Q. Did you see that car coming?

A. Not until it was right up on me.

Q. What did Mr. Terry, the driver of your car, do at that time?

A. He swerved to the right.

Q. Did you observe any other automobiles swerving to avoid this car?

A. No, sir, no.

Q. Can you tell the jury what happened after

page 261] your car swerved?

A. We stopped and went back to the accident.

Q. And what accident had occurred?

A. This car that went past us hit the car that was behind us or that we had just passed.

Q. The car that went past you — can you describe that car?

A. It was a green car.

Q. And can you describe the car it struck?

A. No, it was a light colored Oldsmobile, I think it was, I'm not sure.

Q. The car that went past you, did you notice anything about its speed at the time it went past you?

A. I couldn't be sure, but he wasn't exceeding the speed limit.

Q. He was not? Did you hear any sound as that car went past you?

A. No, sir, I didn't.

Q. Did you notice anything about the engine?

A. No, sir, I didn't.

Q. You did not, all right. Now after the accident occurred you say you went back to the scene?

A. Correct.

Q. Did you observe an automobile over on the left-hand side of the highway off the road?

page 262] A. Yes, sir.

Q. And what kind of car was it?

A. It was a white Chevrolet.

Q. Did you notice where the front of that car was?

A. He was facing down into the ditch.

Q. Did you see whether or not it was up against anything?

A. No, sir, I didn't.

Q. Did you help remove the driver from the *Green* car that had gone past you?

A. Yes, sir.

Q. And did you observe anything in the car at that time?

Mr. Harris: Just a minute, if your Honor please, I am going to object to this, to anything that was found in the car at the time.

The Court: What is your question — did you see anything in the car?

Mr. Hollis: Yes, sir, did he observe anything in the car.

The Court: I will overrule your objection.

The Witness: I am not too sure, but it seems like it was — this car, that I seen beer cans.

page 263] Mr. Harris: I move to strike it, your Honor.

The Witness: I am not positive, but I believe it was in his car that I seen beer cans.

The Court: In whose car was it?

Mr. Hollis: In Mr. LaFrage's car.

The Court: Wait a minute.

Mr. Hollis: He said it was a green car that he had passed from which he removed the body.

The Court: I overrule your objection.

By Mr. Hollis:
Q. Were those cans empty or full?
A. I do not know.

Mr. Hollis: All right.

CROSS EXAMINATION

By Mr. Bangel:
Q. Let me ask you this. You say your name is Mr. Hallett?
A. Correct.
Q. Mr. Hallett, you were on Route 58 when this collision occurred?
A. Correct.
Q. And I assume then you saw the caravan or
page 264] cars bunched together?
A. I didn't pay any attention.
Q. Were you in a position to tell us how close they were together, right on top of each other?
A. No, sir.
Q. You are not in a position to do that?
A. No, sir.

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ALLEN B. SILBERT,

a defendant, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Hollis:
Q. State your name and address, please.
A. Allen B. Silbert, 6211 New Jersey Avenue.
Q. Where do you work, Mr. Silbert?
A. Down at GEX in Norfolk.

Allen B. Silbert

Q. Directing your attention to November 2 of 1963, on that date did you go down to North Carolina with a group of Boy Scouts?

A. Yes, I did.

page 266] Q. Did you stay there overnight?

A. Yes, sir, I did.

Q. Then on November 3 you left North Carolina to return to Norfolk; is that correct?

A. Right.

Q. Who was riding in your car at that time?

A. I was the driver. My son Craig was beside me, a boy by the name of Vishniavsky was in the front. In the back was Hobbs, Kessel and Smith.

Q. About how old were these boys, if you know?

A. Between 11 and 13, I would say.

Q. All right, now how did you come back, by what road?

A. We came by the Suffolk highway, past Suffolk, going into Norfolk on Route 58.

Q. Now, between 4:00 and 4:30, did an accident occur in which you were involved?

A. Yes, sir, it did.

Q. Tell the jury exactly what happened in your own words, starting just from before the occurrence of the accident.

A. Well, we started to pull out into the left lane, close to the double yellow line. It was then that the car in front of me was struck by another car and I immediately stepped on the brake and started to turn to the left in order

page 267] to avoid the accident. Do you want more than that?

Q. Yes. Go ahead.

A. I stepped on the brake and turned to the left, and the car in front of me was turned a little facing into the first lane when I glanced off of her and I came to a stop. And it was at that time that somebody hit me from behind and forced me across to the other side of the road.

Q. Now, you were travelling in a caravan of Boy Scouts, were you not?

A. Yes, I was.

Q. And there were seven cars in the group?

A. That is right.

Q. You were driving behind whose car?
A. Mrs. Gretes.
Q. And how far were you behind her automobile?
A. I would say between three and four cars.

The Court: How much?
The Witness: Three to four cars.

By Mr. Hollis:
Q. Car lengths?
A. Yes.
Q. Now, did you see the car coming which struck her?
A. No, I did not.
page 268] Q. What was the first thing unusual that you noticed?
A. I didn't see anything until the impact.
Q. Then when the impact occurred, what did you do?
A. I immediately stepped on my brakes and started to turn to the left to avoid it.
Q. You said that you did strike her car?
A. Yes, I did.
Q. Would you describe the impact between your car and Mrs. Gretes' car?
A. It was very slight actually, because of the accident it stopped right there. No one in my car was hurt. And I would have had some injury to my headlight and possibly my fender.
Q. What did happen after that?
A. Well, then I got hit from behind and I went across the street down the embankment into a tree.
Q. Were you injured in the accident?
A. Yes, I was.
Q. At what point?
A. When I hit the tree.
Q. What was the nature of your injury?
A. I had stitches underneath my chin and my knee and my shoulder.
page 269] Q. What speed were you traveling just before the accident occurred?
A. Between 40 and 45.

Allen B. Silbert

Q. All right, sir, do you know what speed Mrs. Gretes' car was traveling?

A. No, I don't.

Q. Do you know where the car which struck her car head on came from?

A. No, I don't know where it came from. I didn't see it. All I saw, it came in at this type of an angle to the front of her car. (Witness indicating.)

Q. Do you know whether or not Mrs. Gretes' brake lights went on before the accident occurred?

A. I did not see them.

Q. During the course of your trip back had you been following Mrs. Gretes the entire time?

A. I would say so, yes.

Q. Do you recall whether she put on her brakes on any occasion?

A. Yes, she did.

Q. Did you stop on each of those occasions?

A. Yes, sir, yes.

Mr. Anninos: Is that material, prior occasions, what he did?

The Court: I sustain the objection.

page 270] Mr. Hollis: Witness with you.

CROSS EXAMINATION

By Mr. Bangel:

Q. Mr. Silbert, did I understand you to say that you had followed behind Mrs. Gretes' automobile so many, many miles?

A. I would say so.

Q. And I understood you to say that you were going 45 miles an hour before this accident?

A. That is right.

Q. You don't know how fast Mrs. Gretes was going?

A. No.

Q. Do you know where Mr. Kehayas' automobile was?

A. No, I didn't see him.

Q. You never saw Mr. Kehayas' automobile?

A. At the time of the collision?

Q. Yes, sir.
A. No, I did not.
Q. Do you know where it was before the collision?
A. I assume he was up front.
Q. In front of Mrs. Gretes, you knew that?
A. Yes.

Q. Do you mean to tell us that you didn't see
page 271] his automobile pull to the left across the double *white* line to avoid the LaFrage automobile?

A. No, I did not.
Q. You didn't see that at all?
A. No.
Q. There wasn't anything to keep you from seeing it if you were keeping a proper look out?
A. It might have been if the LaFrage automobile was coming at this angle.
Q. You did not see the LaFrage automobile?
A. I saw it at impact.
Q. There was nothing to prevent you from seeing the Kehayas car if you were keeping a proper look out?
A. I did not see the Kehayas car.
Q. You didn't see it?
A. I did not see it.
Q. Who were you talking to before this accident?
A. I was not talking to anyone.
Q. Were you listening to the radio?
A. No, sir.
Q. Did you have your window up or down?
A. I don't remember.
Q. Now, you say you were about three to four car lengths behind Mrs. Gretes' automobile?

A. That is right.
page 272] Q. Going 40 to 45 miles per hour?
A. That is right.

Q. That would be 45 to 60 feet, would you say?
A. It all depends how long a car is.
Q. That would be a fair estimate?
A. Forty-five — no, I think it would be longer.
Q. Forty-five, fifty, or fifty-five feet?
A. Four car lengths?

Allen B. Silbert

Q. How many feet could you stop your automobile going 45 miles an hour on a hard surface road, dry, free of debris?

A. Under normal conditions?

Q. Yes, sir.

A. I have no idea.

Q. You have no idea whatsoever?

A. No, sir.

Q. You know you couldn't stop your automobile in three to four car lengths, don't you, going 45 miles an hour?

A. No, I don't know.

Q. You thought it was all right to be behind her, in your opinion, three to four car lengths?

A. I would say so, yes.

Q. Now, do you know how far the cars were from you in back of you?

page 273] A. No, I do not.

Q. You weren't paying any attention to those cars at all, were you?

A. No, sir.

Q. You say that your automobile struck the rear of Mrs. Gretes' automobile?

A. That is right.

Q. You struck it with the right front of your automobile, didn't you?

A. That is right.

Q. You further made the statement that no one in your automobile would not have been hurt if it had not been knocked in the tree?

A. Right.

Q. Did you check to see if anyone was hurt when you struck the rear of the Gretes' automobile?

A. I know I wasn't.

Q. I am speaking about the other people in your automobile?

A. No.

Q. Then that statement that you made could be in error?

A. It could be, but I believe it to be a true statement.

Q. But you don't know, you couldn't say?

page 274] A. No, sir, honestly say, I couldn't honestly say.

Allen B. Silbert

Q. Now, you saw the automobiles after the accident, didn't you?

A. No, I did not.

Q. You didn't see Mrs. Gretes' automobile after the accident?

A. No, sir.

Q. Do you mean to tell us that you can't tell whether that is her car or not?

A. No, sir, I couldn't.

Q. And you standing right out there?

A. After I hit the tree I was bleeding and very dazed and trying to help my boy who was hysterical.

Q. You were standing right out on the highway, weren't you?

A. I was standing on it at the top of the bank.

Q. Weren't you?

A. Yes, I was standing on it at the top of the bank.

Q. Isn't this you standing right here?

A. That is correct.

Q. Weren't you looking in the direction of the Gretes automobile?

A. I may have, but it didn't register.

page 275] Q. Can you explain to us what did that tremendous damage to the Gretes automobile?

A. No, I cannot.

Q. You cannot explain how it got there?

A. No, sir.

Q. It wasn't like that before she was hit by the LaFrage vehicle, was it?

A. No.

Q. So this had to be done in this collision?

A. Correct.

Q. You say that you had struck the back of the Gretes automobile and had come to a complete stop after striking it?

A. Yes, sir.

Q. And while stopped you were hit a very, very heavy blow on the back of your car?

A. Correct.

Q. By Mr. Maroulis' automobile?

A. I don't know.

Q. Wasn't Mr. Maroulis's automobile behind you?

A. Yes, it was.

Q. Were you hit by the car behind you?

A. I can't honestly say it was the car behind me. I got hit from behind.

Q. You and Mr. Maroulis are friends?

page 276] A. I talk to him occasionally, we are not friends.

Q. Didn't you testify previously that while you were stopped that you were hit by Mr. Maroulis's vehicle and your answer was "Yes" under oath? Your lawyer Mr. Hollis was there and the Court Reporter, on the 25th of March, 1964?

A. If I made this statement I assumed it was Mr. Maroulis. He was in back of me.

Q. Are you still assuming this?

A. I assume that.

Q. You know he was behind you, don't you?

A. Yes.

Q. This blow was a very heavy blow that hit you?

A. It threw me across the highway, yes.

Q. It was so hard that from a dead stopped position it knocked you completely across the highway in the street?

A. That is right.

Q. And did the damage to the front of your car, the damage shown by the tree?

A. Yes.

Q. So that your automobile was a total loss?

A. That is right.

Mr. Bangel: I have no further questions.

Mr. Babalas: I have no questions.

page 277] CROSS EXAMINATION (Further)

By Mr. Green:

Q. Mr. Silbert, you did not know the distance between your car and the Maroulis car, did you?

A. No, I did not.

Q. You were paying attention to what was ahead of you?

A. That is right.

Q. Now, I think you testified that you struck the rear of the Gretes car?

A. Yes.

Q. Now, after you hit the Gretes car, you say, you brought your car to a stop and you were hit by Mr. Maroulis' car? Did your car again hit the Gretes car?

A. I don't know.

Q. You don't know?

A. No, it happened instantaneously, I don't know.

Q. Haven't you previously testified, Mr. Silbert, that your car did not again hit the Gretes car?

A. I think I stated that it bounced off.

Q. So you don't know at this time whether it knocked you back into the Gretes car or not?

A. (No audible answer.)

Mr. Anninos: That is what he said, your Honor, page 278] he doesn't know.

By Mr. Green:

Q. All right, I won't pursue it any further.

Mr. Silbert, you said you were dazed in the accident?

A. Yes, I was.

Q. What was the general condition of the people around there at the time who had been involved in this accident?

A. I would say dazed.

Q. It was pretty much of a shock for everybody?

A. Yes, it was.

Q. Do you recall talking to Mr. Pappas at the scene of the accident?

A. No, I don't. I may have, I don't remember.

Q. Do you recall talking to the Police Officer at the scene of the accident?

A. I remember telling the Police Officer — he asked me how fast I was going and I told him.

Q. That is all he asked you?

A. That is all I can remember.

Q. And you don't remember talking to Mr. Pappas at all?

A. I spoke to a few people but I can't specifically

say.

page 279] Q. It was just mass confusion around there at that time, was it not?

A. That is right.

Q. Now, after you were hit by the Maroulis car, you don't know what happened after that? You just wound up across the road?

A. That is right, sir.

Q. Do you know the distance that there was between the Kehayas car and the Gretes car before the impact?

A. No, sir.

Q. What happened when the impact occurred between the Gretes car and the LaFrage car with respect to the movements of those vehicles? Did they stop at the point of impact or what?

A. It seemed to me that it came to a sudden stop and it seemed to come over this way towards my right. Now that was the reason I turned to the left.

Q. It came across to the right?

A. Yes.

Q. So you were headed — you had gotten by the Gretes vehicle at an angle when you were hit by Mr. Maroulis; is that right?

A. I can't remember what the angle was when I got hit.

Q. But your car was hit square in the rear?

A. I can't tell you that either. All I know I

page 280] *I* got hit from behind.

Q. Do you know whether — did *you* car leave any skid marks, do you know?

A. I don't know.

Mr. Green: That is all, thank you, Mr. Silbert.

By Mr. Babalas:

Q. Mr. Silbert, then that LaFrage picture that shows the damage to the rear of Mrs. Gretes' car could have been caused by your car?

A. Definitely not.

Q. You don't know?

A. I didn't hit it that hard, sir.

Allen B. Silbert

Q. You said you were in shock?
A. After I hit the tree.
Q. You first hit the Gretes car?
A. That is right.
Q. And you said you came to a dead stop?
A. That is right.
Q. And you had your foot on the brake, did you?
A. At the time?
Q. Yes.
A. I don't remember.
Q. And then you got hit from the rear with a tremendous blow; is that correct?

page 281] A. That is right.

Q. Can you tell whether or not you went back into the Gretes car or not?

A. I think I stated that I did not go back into the Gretes car.

Q. I don't know what you stated. I want to know what happened?

A. I would say no.

Q. Can you tell us that your car, as a matter of fact, didn't cause the damage to the rear of the Gretes car?

A. That is right.

Q. You can say that as a fact?

A. Yes.

Q. All right, now you got struck from a car in the rear and today you tell us you do not know whose car it was?

A. I assume it was the one back of me.

Q. As a matter of fact you don't know that as a fact?

A. No.

Mr. Hollis: That is what he said.

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By Mr. Babalas:

Q. Mr. Silbert, you were in shock after you struck a tree,

you stated, in one of the answers?

A. Yes.

Q. Then you don't even know the damage to the front end of your car, whether it was caused by striking the tree or striking the Gretes vehicle, do you?

A. I know that we hit the tree with a very, very heavy force.

page 296] Mr. Babalas: I have no further questions.

By Mr. Bangel:

Q. Mr. Silbert, let me ask you this. As I understand, you have said three different things on this point, and I want to get your final answer.

Mr. Hollis: Your Honor, I don't think that Mr. Bangel's editorial remarks are a part of a question.

The Court: Ask your question without remarks.

By Mr. Bangel:

Q. When the Maroulis car hit you in the rear did it knock your car into the Gretes car?

A. No.

Q. Now, you are saying emphatically, no?

A. That is right.

Q. Previously in response to Mr. Hollis' question you said you didn't know — which time were you right?

A. I would say now.

Q. Are you guessing?

A. I am not guessing. I would say definitely no.

Q. When you answered Mr. Hollis you didn't know, you had made a mistake?

A. You will have to excuse me. I have never
page 297] testified in Court before.

Q. The answer is, you made a mistake?

A. I did not go back into the Gretes car.

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AAHUM VISHNIAVSKY,
called as a witness on behalf of the defendant Silbert, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Hollis:

Q. What is your name?

A. A-a-h-u-m V-i-s-h-n-i-a-v-s-k-y

Q. What do they call you?

A. Humi.

Q. How old are you, Humi?

A. Thirteen and a half.

Q. Where do you live?

A. 215 Glen Echo Drive.

Q. Is that in Norfolk?

page 298] A. Yes, sir.

Q. And which school do you attend?

A. Northside Junior High School.

Q. What grade are you in?

A. Eighth.

Q. Were you riding as a passenger in Mr. Silbert's automobile on November 3 of last year when an accident occurred on the Suffolk highway?

A. Yes, sir.

Q. Where were you in the car?

A. On the front seat near the window, the right window.

Q. In which direction were you looking just before the accident occurred?

A. Forward.

Q. Now, would you tell these ladies and gentlemen of the jury what you saw, Humi, and what happened?

A. We were going down the road and someone said the Gretes car stopped and we heard a crash and heard — saw the Gretes car in the air. And the car started coming closer to us and then I heard brakes and we stopped and then I felt something hit us, hurting us in the back. And we kept on going and went down a ditch and we hit a tree. And then we stopped.

Q. Now, were you hurt in this accident?

A. I just got a little bump on my head.

page 299] Q. You just got a little bump on your head? Do you know when you got the bump on your head?

A. When we hit the tree.

Q. When you hit the tree?

A. Yes, sir.

Q. Do you know whether — did you feel any impact when you went up towards Mrs. *Gretes* car and after you got there?

A. No, sir.

Q. And then your car was hit from the rear and went across the road; is that right?

A. Yes, sir.

Q. What did you say that you hurt your head on?

A. The dashboard.

Q. Now, when Mrs. *Gretes* car was hit, tell these ladies and gentlemen of the jury what happened to it?

A. It just stopped and I saw debris flying in the air and the car, our car coming forward. And then we stopped. So I went forward and I didn't see anymore.

Q. Mrs. *Gretes* car did stop when it was hit?

A. Yes.

Mr. Anninos: If your Honor please, he has been over it twice. Mr. Hollis is now testifying for the third time.

The Court: I sustain the objection.

page 300] CROSS EXAMINATION

By Mr. Anninos:

Q. Who was in the front seat with you?

A. Craig, sitting by me, and Mr. Silbert.

Q. Who was in the back seat?

A. Larry Smith, Kenny, and Cecil Hobbs.

Q. You were looking straight ahead?

A. Yes, sir.

Q. What car was in front of you, Mr. *Silberts'* car, the car that you were in?

A. The Gretes car.

Aahum Vishniavsky

Q. Who was in front of that car?
A. Mr. *Kehayas* car.
Q. Just before this happened did you see what happened to Mr. *Kehayas* car?
A. No, sir.
Q. You say you didn't see that car?
A. No, sir.
Q. Yet you were looking straight ahead?
A. Yes, sir.
Q. Your vision was clear?
A. Yes, sir.
Q. It was a clear day?
A. Yes, sir.
page 301] Q. Do you have any explanation of why you didn't see the Kehayas car?
A. It happened so fast, we turned off.
Q. But you saw the Gretes car?
A. Yes, sir.
Q. And you didn't see the other car?
A. No, sir.
Q. You didn't know whether it went to the left or to the right — I am talking about Mr. *Kehayas* car?
A. At that time I didn't see it.
Q. At that time?
A. No, sir.
Q. You say that Mr. Silbert struck the rear of Mrs. *Gretes* car?
A. Well, I don't remember any impact. We struck. I don't remember if we struck it.
Q. You don't know.
A. No, sir, I didn't feel any impact.
Q. You don't know one way or another, if there was an impact?
A. I didn't feel any.
Q. But do you know if there was an impact?
A. No, sir, I don't know if there was.
Q. You don't know if there was? Was the rear end of your car struck in the rear?
page 302] A. Yes, sir.
Q. Do you know who did this?

A. Mr. Maroulis.
Q. He was immediately behind you?
A. Yes, sir.
Q. And close up to you?
A. I don't know that.
Q. You weren't looking behind?
A. No, sir.
Q. And were you looking ahead?
A. Yes, sir.
Q. You were right close up to Mrs. *Gretes* car?
A. Before the accident happened —
Q. At that time?
A. Well, we stopped pretty close to it.
Q. How close?
A. I don't know, because I was down near the floor then.

Mr. Anninos: That is all I have.

REDIRECT EXAMINATION

By Mr. Hollis:
Q. You mean before Mrs. Gretes' car was struck, how far was Mr. Silbert's car behind her?

page 303] Mr. Anninos: I object to the leading question. It is his witness.
The Court: I don't think the question is leading.
Mr. Hollis: How far, your Honor.
The Court: If you know?
The Witness: Between — about 7 or 8 car lengths, I guess.

By Mr. Hollis:
Q. All right, do you know what speed Mr. *Silberts* car was going?
A. No, sir, but we were following the same speed of Mrs. *Gretes* car.

RECROSS EXAMINATION

By Mr. Bangel:
Q. You say 7 or 8 car lengths behind?

A. Yes, sir.

Q. Who have you talked to about this?

A. Well, we were travelling, and I think it was — the way I figured it out. I was walking down the street and say that is the way I figured it out, a car length.

Q. About from me to you?

page 304] A. About a car length from me.

Q. And you say you were 7 or 8 of these?

A. Yes, sir.

Q. Way down the road?

A. Not too far.

Q. Going far enough for Mr. Silbert to have stopped if he had been paying attention?

A. Yes, sir.

Q. But he didn't pay attention and he struck the back of Mrs. *Gretes* car?

A. That I don't know.

Q. But if he struck the Gretes car he had room enough —

Mr. Hollis: Your Honor.

The Court: If the young man knows.

(Whereupon the foregoing questions and answers were read by the reporter.)

By Mr. Bangel:

Q. In your opinion he had room enough to have stopped if he had been paying attention; is that right?

Mr. Hollis: Your Honor, that is the question I objected to.

The Court: I sustain the objection.

Mr. Bangel: All right, I have no further

page 305] questions.

By Mr. Babalas:

Q. Son, you were in the front seat with Mr. Silbert. Tell us who else was seated there?

A. Mr. *Silberts'* son, Craig.

Q. How old is his son?

A. I think he is twelve.

Q. How big a boy is he?
A. A little smaller than me.
Q. How small are you — how much do you weigh?
A. Around 95 pounds.
Q. Who else was sitting in the front?
A. Just me and Craig.
Q. Where was Mr. Silbert?
A. In the *drivers* seat.
Q. And Mrs. Silbert?
A. She wasn't with us.

* * * * *

CRAIG SILBERT,

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

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DIRECT EXAMINATION

By Mr. Hollis:
Q. State your name, please?
A. Craig Steven Silbert.
Q. How old are you, Craig?
A. Eleven and a half.
Q. Where do you go to school?
A. Stewart School.
Q. Is Mr. Allen Silbert your father?
A. Yes, sir, he is.
Q. Do you remember on November 3 of last year, you were riding in a car with your father when an accident happened?
A. Yes, sir.
Q. Where were you riding in the car?
A. Next to my father in the middle.
Q. In the front seat in the middle?
A. Yes, sir.
Q. Now, did you have any seat belts in your car?
A. No, sir.
Q. Do you remember an accident happening?
A. Now would you tell these ladies and gentlemen of the jury what you saw from just before

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that accident happened until it did happen? Tell them everything you know about it.

A. Only the accident?

Q. Yes, sir.

A. We were driving along and all of a sudden the car in front of us hit something, I didn't know what at the time. And it seemed to go up, and all of a sudden my father's car seemed to suddenly slow very fast. And he swerved to the left and then something hit us from the back in the car, and sent us across the highway and then down into a ditch where we hit a tree.

Q. Were you injured in the accident at all?

A. I had bruises on my left arm and my thigh.

Q. Do you know when you got those?

A. Going down into the ditch. When we hit the tree I bumped against the dashboard.

Q. Had you hit the dashboard before you went down in the ditch?

A. No, sir.

Q. All right, now do you know how far before Mrs. *Gretes* car was struck — do you know how far your father was driving behind her?

A. No, sir.

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JAMES MAROULIS,

a defendant, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Green:

Q. Mr. Maroulis, face the jury and speak to everyone so they can hear you.

Mr. Maroulis, please state your name and age, please, sir.

James Maroulis

A. James Maroulis, age 41.
Q. And where do you live, Mr. Maroulis?
A. 710 West 34th Street in Norfolk.
Q. Where are you employed, Mr. Maroulis?
A. At the Norfolk Naval Shipyard.
Q. In what capacity?
A. I am an engineer.
Q. How long have you been employed in the Shipyard?
A. Over 15 years.

Q. Now, I believe you are a member of the page 309] Greek Orthodox Church in Norfolk, are you not?

A. Yes, sir.
Q. What does your family consist of?
A. My wife and two boys.
Q. How old are the boys?
A. One is 13 now, and the little one is 8.
Q. Now, are you connected with the Boy Scout activities at the Greek Orthodox Church?
A. Yes, sir, I am on the troop committee.
Q. On the troop committee?
A. Yes, sir.
Q. How long have you been on the troop committee?
A. It's been several years now.
Q. Did you take part in the Boy Scout activities there in and at the church?
A. I do occasionally.
Q. I believe your son was one of the Boy Scouts that had gone to Edenton, North Carolina on the weekend this accident occurred; is that true?
A. Yes.
Q. When had those boys gone down there, do you recall?
A. They left Saturday morning.
Q. Who did they go down there with?

A. With Mr. Kehayas for one, and several of page 310] the cars.

Q. He was a Scout Master, was he not?
A. Yes.
Q. And Mr. Pappas was the Assistant Scout Master?
A. Yes, sir.
Q. What time did they go down?

A. I would say they left about maybe 7:00 o'clock in the morning, something like that.

Q. Now, had you been requested by anyone to go down to Edenton on Sunday on November 3, to pick these boys up?

A. Mr. Kehayas asked me if I could go down Sunday and pick some of the boys up.

Q. Did you go down there?

A. Yes, sir.

Q. What time did you leave Norfolk, do you recall?

A. A little after one.

Q. How far is it from Norfolk to Edenton?

A. I would say about 65 miles.

Q. When you went down there who went with you?

A. I had my wife, my sister-in-law, and my little boy.

Q. And when you got down there what did you do when you got to Edenton?

A. Well, I put a few bags in the car, camping bags, and I took my boy with me.

page 311] Q. So that left 5 of you in the car coming back?

A. Yes, sir.

Q. Now, what arrangements were made about coming back? Did you all line up in any particular manner? Tell the jury about that, if you will?

A. Mr. Kehayas was going to lead the group and Mr. Pappas was going to bring up the rear and we fell in between.

Q. Now, do you know what time it was when you left Edenton?

A. I would say it was about a quarter to three, something like that.

Q. And you knew your way back to the Greek Orthodox Church, did you not?

A. Yes, sir.

Q. Is that where you were going to rendezvous when you got back to Norfolk?

A. Yes, sir.

Q. Did the caravan stop anywhere along the way before it got to Suffolk, do you recall?

A. Do you mean stop on the road, stop off?

Q. No, stop for lights or traffic lights or anything?

A. We slowed down but I don't remember any traffic lights.

Q. You came through Suffolk?

page 312] A. Yes.

Q. Now, how far was it, do you recall, Mr. Maroulis, before the impact, that the automobiles in this caravan got in the left-hand lane of Route 58?

A. How far — I don't —

Q. After you left Suffolk, I believe you proceeded in the right-hand lane?

A. Yes.

Q. Then there came a time that you shifted over to the left-hand lane; is that correct?

A. Yes.

Q. How far was this from the scene of the accident, do you have any idea of this distance?

A. I would say about a half a mile.

Q. Now, at that time, at that point, whose automobile were you following?

A. Mr. *Silberts.*

Q. And what was the distance you were, approximately, between your car and Mr. Silbert's car?

A. I would say about four car lengths.

Q. Now, could you tell the distance between the cars up ahead of you?

A. No, not very well, no, sir.

Q. Could you see the distance between Mrs. Gretes' car and Mr. Kehayas' car?

page 313] A. No, sir.

Q. Prior to the impact, did you see any members — any cars in the caravan change position?

A. Immediately prior to it?

Q. To the impact.

A. I did see Mr. *Kehayas* car go off to the left.

Q. I mean — not when the accident occurred, before the impact. But as you came down the road did you see any cars in the caravan switch positions?

A. No, sir.

Q. What was the first indication that you had that anything — prior to the impact how fast were you travelling, do you know?

A. I would say about 45 miles an hour.

Q. Were you traveling at the same speed that the caravan was travelling?

A. Yes, sir.

Q. What was the first indication that you had that anything was wrong up ahead?

A. I saw Mr. Kehayas' car go to the left.

Q. What did you do at that time?

A. I tried to apply my brakes.

Q. Did you get your brakes on?

A. Well, not really. I did apply them but everything happened so fast.

page 314] Q. Now, what did you do — what did you see happen up ahead of you?

A. Just about everything came to a standstill.

Q. Did you see the LaFrage car prior to the time it hit the Grètes car?

A. No, sir.

Q. What is the first thing you saw — describe to the jury in your own words.

A. The only — the first thing I saw was, like I said, Mr. *Kehayas* car coming on the wrong lane or took off on the left, in other words. And I assumed there was trouble ahead. And I started to apply my brakes.

Q. Then what happened next?

A. The first thing I knew everything stopped. There was a big bang and that was it. I mean, everything happened instantaneously.

Q. Now, what happened next — I mean, you hit something, did you not?

A. I did hit the Silbert car.

Q. All right.

A. And then, as I did I was hit in the rear and then I was thrown back and that is when I lost my glasses.

Q. Now, you wear glasses, do you not?

A. Yes, sir.

Q. What is the condition of your eyes without

page 315] your glasses, Mr. Maroulis?

A. I can't see too good. Everything seems to be blurry, everything blurred.

James Maroulis

Q. Can you see at all without your glasses?

A. Without?

Q. Yes.

A. Not unless it is very close, no, sir.

Q. You say that you hit the Silbert automobile?

A. Yes, sir.

Q. And then you were hit by the automobile behind you; is that correct?

A. Right.

Q. When did your glasses fly off, which impact?

A. When I was hit from the rear my head went back and they just flew in the back seat.

Q. Did you get any other injuries in that accident?

A. Yes, I was bruised in the stomach and I just sprained my thumb a little bit.

Q. Was your wife injured?

A. Yes, sir.

Q. How about your sister-in-law.

A. She was bruised up a little bit.

Q. How about the children?

A. Bruised on the legs.

Q. Now, what did you do after the accident — let me ask you this first of all — after you were hit by the Chappell car, do you know what happened next?

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A. No, because I couldn't see without my glasses.

Q. Now, did your automobile leave any skid marks — were your tires skidding at the time this impact occurred?

A. It appeared they were. I didn't look at the tire marks at the time of the accident.

Q. Did you try to do anything else besides put your brakes on?

A. I tried to go to the left to keep away, to see if I could get away from the cars in front of me.

Q. Could you go to your right?

A. No, sir, I don't believe so, because there were cars coming and I didn't have time to turn and look for cars on that side.

Q. After this accident where did your car wind up?

A. It wound up — part of it was on the left side of the

middle of the double line.

Q. I show you this picture, Mr. Maroulis, marked Silbert's Exhibit #2, and ask you if you can show the jury your automobile. And I ask you if that depicts the position that your car wound up in?

A. Let's see — yes, sir, it is back — right here. (Witness indicating)

page 317] Q. Right here?

A. Yes, sir.

Q. Mr. Maroulis, I hand you Maroulis Exhibit #3 and ask you if you can identify that?

A. That is the back end of my automobile, sir.

Q. I hand you Maroulis Exhibit #4 and ask you if you can identify that automobile?

A. That appears to be the front end of the Chappell automobile.

Q. Now, Mr. Maroulis, after the impact of the Chappell car with your car do you know whether you hit the Gretes car or not?

A. No, sir, I don't believe I did.

Q. Why do you say that, Mr. Maroulis?

A. Because I didn't feel another impact. When I found my glasses and put them on I was a distance away from it.

Q. Now, what was your concern after the accident happened? Tell the jury what you did immediately after the accident happened.

A. Well, I looked at my wife and children, of course. I was a little in a daze myself, a little shocked by it and she was dazed. And I noticed her hand was swollen, her ankle was swollen, and she seemed to be bleeding a little at the mouth.

Q. Now, did you have some problem with your

page 318] glasses?

A. You mean —

Q. Finding them?

A. Yes, I couldn't find them. I felt around and couldn't find them. My boys found them in the back end of the car.

Q. Do you recall talking to Mr. Pappas at the scene of the accident?

A. No, sir, I don't.

Q. Do you recall talking with the Police Officer at the scene

of the accident?

A. No, sir.

Q. When did you see the Police Officer?

A. It was at the hospital in the evening.

Q. And what questions did the Police Officer ask you at that time?

A. Someone came up and said they wanted my license number. I just handed it to them and he took the number and gave it back to me and that was it.

Q. Did they ask you any questions about how the accident occurred or anything?

A. No, sir.

Q. Your automobile, I believe, was equipped with four wheel brakes?

A. Yes, sir.

page 319] Q. Were your brakes in good condition?

A. Yes, sir.

Q. When the impacts occurred between the LaFrage automobile and the Gretes automobile did you see them move forward any or what?

Mr. Anninos: It is a leading question. It is his witness.

The Court: Reframe the question. Restate the question.

By Mr. Green:

Q. How did the LaFrage automobile and the Gretes automobile come together?

A. I don't know, I didn't see that.

Q. What is the first thing you saw after the impact?

A. The only thing I saw in front of me was Mr. Silbert's car came to a stop. In other words, just about everything came to a stop.

Q. All right, sir —

A. And that is about — I mean at that point — you mean right before the impact?

Q. When did you leave the scene of the accident, Mr. Maroulis?

A. About ten *of* fifteen minutes after the accident.

page 320] Q. And how did you leave?

A. They took my wife in the ambulance and I

went with her.

Q. In the ambulance?

A. Yes, sir.

Mr. Green: Answer any questions these gentlemen may have.

CROSS EXAMINATION

By Mr. Anninos:

Q. Mr. Maroulis, I believe you stated to Mr. Green just a moment ago that after the impact with Mr. Chappell's car that you lost your glasses?

A. Yes.

Q. And from that time on you did not know what had happened?

A. I didn't say that, from that time on. I said just for a few minutes until I found them.

Q. From the time you lost your glasses until a few minutes when you found them, you didn't know what was going on because of a certain condition that you have with your eyes; is that correct?

A. Yes.

Q. Now, actually then you were holding the
page 321] steering wheel in your car from that time just hoping for the best, not being able to see in front of you?

A. No, because when we hit I stopped. The car stopped when we hit.

Q. When you hit — when what hit?

A. When my car hit the Silbert car we came to a stop.

Q. Yes? But I thought you were struck by Doctor Chappell?

A. I said after the Silbert car.

Q. All right, you came to a stop after you hit the Silbert car?

A. Yes.

Q. And then you were struck by Doctor Chappell in the rear?

A. Right?

Q. With a severe impact?

A. Right.

Q. And that impact caused you to lose your glasses?

A. Yes.

Q. From that moment on until a few minutes later when you had gotten out of your car, you don't know what happened?

A. I mean — it was a few minutes when I lost

page 322] my glasses — I am trying to get it —

Q. All right. In other words from the —

A. Well, I wasn't blank out, no.

Q. I understand.

A. As far as vision I couldn't see in front of me, no.

Q. That is exactly what I am driving at. Because of certain conditions with your eyes you could not see in front of you after your glasses fell off?

A. Yes.

Q. So therefore you cannot account to this Court and this jury as to the movement of your automobile insofar as any forward motion is concerned, and you can't account as to the movement of the Silbert automobile following the loss of your glasses, or the Gretes automobile, for that matter; is that correct, sir?

A. You have asked me three questions in one.

Q. I will put it all in one and say from the moment your glasses fell off, because of your inability to see you could not account — you cannot account today or at that time as to the movement of your automobile in relation to the front end of your car and in relation to the rear end of the Silbert automobile in relation to the Gretes *auotmobile*? Isn't that a fair statement?

A. I am trying to understand your question now.

page 323] Q. I will rephrase it, sir. And I am not trying in any way to mislead you.

Could you see anything in front of you after you dropped your glasses?

A. No.

Q. All right, sir, now not being able to see you cannot account to this jury as to the movement of the automobile ahead of you as as to the movement of the front end of your car in relation to the highway?

A. Well, I can't account for the automobile in front of me,

but as far as the movement I still had my foot on the brake and I don't believe the car moved much if anything.

Q. You don't know that, you are speculating, not being able to see?

A. No, I didn't see it move.

Q. All right, you didn't see it move. You didn't see the LaFrage automobile?

A. No, I didn't.

Q. You didn't see Mr. LaFrage come over in the wrong lane on the highway?

A. No.

Q. Did you see the Kehayas automobile?

A. Yes, I did.

Q. You saw it deviate from the lane it was in into the left lane or the wrong lane going west?

page 324] A. Yes.

Q. And then you saw the Silbert automobile following the impact of the Gretes and the LaFrage automobile hit the rear of Mrs. Gretes?

A. No, I did not see the Silbert car hit.

Q. You don't know whether it hit the rear end?

A. No, sir, I don't.

Q. Did you hit the rear end of the Silbert car?

A. Yes.

Q. Was there damage done to your car, the front end?

A. Yes, there was.

Q. The damage that was shown to you on your exhibits by your counsel, the front end of your car, that came about as a results of you hitting the rear of the Silbert automobile?

A. As far as I could tell it did.

Q. It did?

Mr. Green: He said as far as he could tell.

By Mr. Anninos:

Q. Let me ask you this. Did you have any damage to the front end of your car before this accident?

A. No, I didn't.

Q. The damage shown on this picture being all

page 325] the damage that was sustained to the front end of your car from the collision; is that correct?

A. That is from hitting the Silbert car?

Q. All right.

A. Yes, sir.

Q. Now, I would like for you to clear up another phase of this collision, Mr. Maroulis, and that is to tell us if you know, from your own knowledge, from seeing it yourself, whether or not the front end of your car or any part of your car came in contact with the car that was operated by Mrs. Gretes — if you know?

A. No, it did not.

Q. It did not?

A. (No audible answer.)

Q. Are you certain?

A. To the best of my knowledge.

Q. Could you be mistaken about that?

A. Well, it is possible but as far as I can tell, I did not.

Q. You say it is possible that you did?

A. Well —

Q. Let me ask you this. Do you know Mr. Peter Pappas?

A. Yes.

Q. Does Mr. Peter Pappas have anything page 326] against you?

A. No.

Q. Do you know the Officer that investigated this case, Mr. Wigfield?

A. No, I didn't know him before.

Q. Do you happen to know him from his investigation in this case?

A. No, I don't remember him because at the time I saw the Police Officer there was two or three there.

Q. Do you know to your knowledge, does Officer Wigfield have anything against you?

A. No, I don't know the man.

Q. Then he wouldn't have anything against you?

A. No.

Q. Do you know Mr. Allen, the gentleman in the sixth car in the caravan?

A. No, I didn't know him until I saw him here.

Q. Do you know he was in the sixth car on the caravan on the day of the collision?

A. Not on the day of the collision. I heard somebody mention his name but that is all.

Q. I believe you saw him when he testified here in Court?

A. Yes.

Q. Do you know of any reason why he would
page 327] have anything against you?

A. I don't know of any personal reason.

Mr. Anninos: That is all I have.

By Mr. Bangel:

Q. Mr. Maroulis, let me see if I understand you correctly. Do I understand you to say definitely and emphatically that the front of your automobile did not strike the rear of Mrs. *Gretes* automobile?

A. No, sir, it did not.

Q. All right, so you are emphatic, definite, that the front of your car didn't strike the rear of Mrs. Gretes?

A. To the best of my knowledge, it did not.

Q. You say that, sir, because you know if your car struck that a tremendous blow on the back, that you were following too close?

Mr. Green: That calls for a conclusion and highly improper.

The Court: I think it is argumentative.

Mr. Bangel: I want to know the motive.

The Court: Show it the proper way.

By Mr. Bangel:

Q. The front of your automobile, you contend, was badly damaged, wasn't it, demolished?

page 328] A. Yes, it appears to be.

Q. Therefore it must have struck something a tremendous blow; is that right?

A. Yes.

Q. And you are denying it struck the Gretes automobile, the car this lady was driving?

A. I am saying to the best of my knowledge, because as I said, I hit the Silbert car.

Q. Well, now —

Mr. Green: Let him finish.

The Witness: I said I hit the Silbert car with a blow and then I was hit in the rear and when I was hit in the rear my glasses came off and I couldn't see in front of me. However I did not feel the car move but when I did find my glasses and put them on there was a space in between, about a car length. The car in front of me had disappeared.

By Mr. Bangel:

Q. Mr. Maroulis, do you remember testifying under oath on the 25th of March, 1964, in which Mr. Green, your attorney was present?

A. Yes.

Q. A court reporter was there and you raised your hand and took oath?

page 329] A. Yes.

Q. The same oath you took today?

A. Yes.

Q. Do you remember being asked whether or not your automobile struck the back of Mrs. *Gretes* automobile and you said it definitely did not touch it?

A. I believe I said it did not.

Q. And you said it positively did not; is that right, sir?

A. I don't know whether I said positively. I said I did not.

Q. You said you never touched it?

A. To the best of my knowledge; that is right.

Q. Can you say to the best of your knowledge it never touched it or did you say definitely, emphatically it did not touch it?

A. No, sir, if I remember what I said, to the best of my knowledge I said I never touched it.

Q. Is that what you are telling this jury?

A. I probably said I didn't touch it.

Q. Emphatically, the answer was, "No, I did not touch it," is that right?

A. It could have been.

Q. Now, you have heard Mr. Allen testify, didn't you?

page 330] A. Yes, sir.

Q. Did you know what he was going to say?

James Maroulis

A. No.

Q. You heard Mr. Pappas testify?

A. Yes.

Q. And you heard the Officer testify?

A. Yes.

Q. And you have seen this picture of all the damage to Mrs. *Gretes* automobile?

A. Yes.

Q. And now you are saying you don't know whether you did or didn't?

A. I said to the best of my knowledge. I didn't say definitely.

Q. Mr. Maroulis, did your car strike the Gretes automobile so hard that it bounced back into the Chappell automobile?

A. No, it never did bounce back.

Q. It never bounced back at all?

A. No, sir.

Q. Mr. Allen didn't wear glasses, did he?

A. No, I don't know.

Q. His glasses weren't knocked off?

Mr. Green: Mr. Allen, as far as Mr. Allen wearing glasses, I think he had glasses too at the time page 331] he testified.

By Mr. Bangel:

Q. I said, this man didn't, Mr. Allen, didn't wear glasses?

A. No, he didn't.

Q. If your automobile struck the rear of Mrs. *Gretes* automobile a severe blow, you realize that you would have been following too close?

Mr. Green: Your Honor, that calls for a pure and simple conclusion that the jury is called upon to make and the witness is not.

Mr. Bangel: Our Court of Appeals has held that no one is any better to know than this man.

The Court: You are predicating your statement on what?

By Mr. Bangel:

Q. Let's assume for a moment—let me put it this way.

If you had your car under proper control and following at a proper distance behind the vehicles, your car would not have struck Mrs. *Gretes* car?

Mr. Green: I object. That is a question that the jury is called upon to decide.

The Court: I sustain the objection.

page 332] Mr. Bangel: We save the point.

Can I approach it some other way as to the form of the question. I don't want to disobey your Honor's ruling.

The Court: Approach it any way you see fit.

By Mr. Bangel:

Q. Mr. Maroulis, assume for a moment that your car hit the back of Mrs. *Gretes* automobile. Will you assume that?

A. Just as an assumption?

Q. Yes.

A. I guess I could.

Q. If your car hit the back of her car a tremendous blow you will concede to me that you were following too close?

Mr. Green: I object. That is ultimately the question the jury is supposed to decide.

The Court: I sustain the objection.

Mr. Bangel: Thank you, sir, I have no further questions.

By Mr. Babalas:

Q. Mr. Maroulis, you recall testifying in that discovery deposition back in March, and how long did that

page 333] discovery deposition take?

A. I would say—I never did time it but it took about—you mean for my portion of it?

Q. Your portion.

A. Maybe it took an hour, I don't recall.

Q. Have you read your discovery deposition since that time?

A. I have glanced through it, that is all.

Q. How long ago?

A. Oh, it's been a week, what day—it might have been

five or six days ago.

Q. And have you read it since that time or glanced through it again?

A. No, sir.

Q. Now, why did you have to read it?

A. Sir?

Q. Why did you have to read it?

A. I just thought I would look at it if I could.

Q. For what purpose would you have to read your discovery deposition?

A. No definite purpose.

Q. Was it to refresh your memory as to what happened the day of the accident?

A. No, sir.

Q. And then you just had no reason at all?

page 334] Did you have a copy of this discovery deposition at your home so you could glance through it?

A. No.

Q. How did you happen to read it?

A. I just happened to be at the attorney's office.

Q. And you therefore have refreshed everything that you have testified to in this discovery deposition, and you know what is in there?

A. Still not exactly. Like I said I just thumbed through it.

Q. Did you ever through the hour of testimony state one time that your glasses had come off of your head?

Mr. Green: Your Honor, this is not proper examination. Unless Mr. Babalas can show that in the discovery, can show he was asked some question about whether his glasses flew off, he has no right to come in here and ask this witness if he testified to something in the deposition that he was never asked. And I call upon Mr. Babalas to point out in the deposition where he was asked about his glasses and as to his response.

Mr. Babalas: I asked him if in that long deposition did he mention anything in the answers as to whether his glasses came off his head.

The Court: I overrule your objection.

page 335] By Mr. Babalas:

Q. Did you, Mr. Maroulis, did you tell us that?

A. I don't definitely remember.

Q. You don't remember whether you did or not?

A. No, I don't.

Q. Would it have been very, very important, Mr. Maroulis, if your glasses had come off, to have told the people that asked you last March of 1964 so they could ascertain how this accident happened? Do you feel it would have been important?

A. Well, it might have been, I don't know.

Q. Mr. Maroulis, do you remember being questioned as follows:

"Q. Your physical condition wasn't impaired in any way as a result of the injury that you claim you sustained after this accident insofar as your ability to recollect the events that took place?"

And your answer was.

"A. You mean if I was physically handicapped after the accident?

Q. Yes.

A. No."

Now, what did that mean to you by physically handicapped?

A. I assume that this meant that if I had blanked out or had a form of head injury that would stop me

page 336] from remembering or prevent me from remembering what happened.

Q. When your glasses came off your head, Mr. Maroulis—you have told us that you can't see at all? Wouldn't that be like a blackout, Mr. Maroulis, without your glasses?

A. Well, it wouldn't—what I mean by a blackout, something you don't remember.

Q. Now, did you strike the Silbert car before you got struck by the Chappell car?

A. Yes.

Q. And the Chappell car struck you second?

A. Yes.

Q. When you struck the Silbert car, tell us how severe a blow did you strike the Silbert car? Describe it to this jury.

A. Well, let me see if I can recollect now. It was a blow—

I mean I didn't, we were coming to an abrupt stop and I would say it was a good blow.

Q. By a good blow, just describe a good blow to me, Mr. Maroulis. Would you describe it as severe?

A. Well, what — I don't know exactly what you mean by severe in your opinion.

Q. Mr. Maroulis, was your car a total loss?

A. Yes, it was.

Q. A complete total loss?

page 337] A. Yes.

Q. And when you struck the Silbert car you struck it a good blow—by good, would you refer to it as a simple blow or a severe blow?

A. I don't mean like a pushed in fender or anything like that, no.

Q. You hit it a good lick, didn't you, Mr. Maroulis?

A. Yes, I hit it a good lick.

Q. When you looked up and saw the sudden stop in front of you did you then immediately strike the Silbert car?

A. When I saw the — pardon me, I didn't get you.

Q. When you looked ahead and saw the wall or the stopping of vehicles did you immediately strike the Silbert car?

A. It was almost instantaneously, yes.

Q. How instantaneously—show me, describe it?

A. I didn't time it.

Q. Was it like the snapping of my fingers?

A. Just about, yes.

Q. From the time you saw the stopping of the cars until the time you hit the Silbert car?

A. From the time I saw it stopping, yes.

Q. Did you get injured when you struck the Silbert car?

page 338] A. Well, I got—but I don't know when it was when I hit the Silbert car or—

Q. When did you feel that you got injured?

A. When the cars were stopped I felt a little pain on my stomach.

Q. Was it because of the blow from the Chappell car that you got injured and your glasses flew off, or was it because of the running into the back of the Silbert car?

A. I didn't see it go off then, but when I looked up later I saw it across the way.

Mr. Hollis: All right.

page 342] REDIRECT EXAMINATION

By Mr. Green:

Q. Mr. Maroulis, I wonder if you would take your glasses off — are they the same glasses you were wearing?

Tell the jury how far you can see, away out?

A. This lady is blurred to me.

Q. This lady on the end?

A. Yes, sir.

Mr. Anninos: Let the record show approximately 6 to 7 feet between the witness and the lady.

By Mr. Green:

Q. Is your driving license restricted to wearing glasses?

A. Yes, sir.

Q. You are restricted to wearing glasses?

A. Yes, sir.

Q. Are you nearsighted or farsighted?

A. Nearsighted.

Mr. Anninos: I just noticed that he has handed the glasses of this witness to the jury panel.

The Court: I don't think that is improper.

Mr. Anninos: It is highly improper. I don't see it, your Honor.

page 343] Mr. Bangel: We are willing to stipulate that he has very poor eyesight.

RECROSS EXAMINATION

By Mr. Babalas:

Q. Mr. Maroulis, where did you find your glasses?

A. My children found them in the back seat.

Q. How long after the accident?

A. I would say it was about a couple of minutes.
Q. And in the meantime you had gotten out of your car?
A. No, I did not. I stayed right there.

* * * * *

page 344] ALICE MAROULIS,

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

DIRECT EXAMINATION

By Mr. Green:

Q. Mrs. Maroulis, speak up and look at the jury so they can understand and hear what you have to say.

Please tell us your full name.

A. Alice Maroulis.

Q. And who is your husband?

A. Jimmy Maroulis.

Q. Where do you live?

A. 710 West 34th Street.

Q. And I believe you have two sons, do you not?

A. Yes, I do.

Q. Are you active in the Greek Orthodox Church in Norfolk?

A. Yes, sir, I am.

Q. And I believe you were with your husband on the day this accident occurred, were you not?

A. Yes, sir, I was.

Q. Who was in the car with you?

A. My two sons and my sister, Mrs. Christo, page 345] Pete and Johnny.

Q. Where were you seated in the car?

A. In the front.

Q. Who was sitting beside you?

A. My sister, Mrs. Christo.

Q. And I believe your two sons were in the back seat, were they not?

A. Yes, sir, they were.

Alice Maroulis

Q. Will you tell the jury what you were doing and what you saw, in your own words, as you came up to and were involved in this collision?

A. Sir, I was talking. I had turned to talk to my sister and Jimmy said, "We are going to hit," or something like that.

And I turned around and I said, "Oh my God." And we hit Mr. Silbert's car and then we got hit right again, right in the back, and I was hurting. And that is all I can remember.

Q. How were you hurt in the accident?

A. My arm and my leg, and my face was bleeding.

Q. And you were taken to the hospital, were you not?

A. Yes, sir, I was.

Q. How long were you hospitalized?

A. Ten days.

page 346] Q. Ten days?

A. Yes, sir.

Q. You were taken by ambulance, were you not?

A. Yes, sir.

Q. Now, did you see — were you paying any attention to what the cars were doing before the accident, or did you see anything that went on ahead?

A. No, sir, I didn't.

Q. What is the first impressions that you had or what was the first indication that you had there was going to be an accident?

A. I don't know because I was talking with my sister. I mean, we were just going like a normal Sunday afternoon ride and I was talking with my sister. And then when Jimmy said, "We are going to hit," or something like that, I turned around. And I saw that we hit Mr. Silbert's car and then we were hit immediately from behind and that is all I know, sir.

Q. Do you know what happened after you were hit from behind?

A. No, sir, I don't.

Q. Were you knocked unconscious?

A. I don't know what happened to me. I don't know anything after that.

Q. Do you know whether your car had stopped or not before it was hit by the Chappell car?

page 347] A. I don't remember. I don't know, because we were hit — we were hit instantaneously. By the time we hit Mr. Chappell's car — I am sorry, Mr. Silbert's car, we were hit from behind. It was so fast that I don't know what happened because I was hurt.

Q. Do you recall ever hitting the Gretes car, your car ever hitting Mrs. *Gretes* car.

A. No, sir, I don't.

Q. Do you recall talking to anyone at the scene of the accident after the accident?

A. No, I didn't.

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PETE MAROULIS,

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

DIRECT EXAMINATION

By Mr. Green:

Q. All right, son, if you will talk right into the microphone and tell the jury, talk to the jury so they will be able to see you. Tell them your name.

A. Pete Maroulis.

Q. How old are you?

A. Thirteen.

Q. And I believe Jim Maroulis is your father,

page 350] is he not?

A. Yes, sir.

Q. You are a member of the Greek Orthodox Church, are you not?

A. Yes, sir.

Q. And you are a member of the Boy Scout *troup*?
A. Yes, sir.
Q. How long have you been a member?
A. About two years.
Q. Where do you go to school?
A. James Monroe.
Q. What grade are you in now?
A. Seventh.
Q. Now, you had gone down to Edenton, North Carolina, with the Boy Scouts on this trip, had you not?
A. Yes, sir.
Q. Who did you go down with?
A. I went down with Mrs. Gretes.
Q. And your father came to pick you up on Sunday?
A. Yes, sir.
Q. Where were you seated in the automobile just before this accident occurred?
A. I was sitting in the back, in the right-hand corner.
Q. The right-hand corner?
page 351] A. Yes.
Q. Who was with you in the back seat?
A. My brother.
Q. Who was sitting in the front seat, Pete?
A. My aunt and my mother and my father.
Q. Tell the jury in your own words exactly what you saw and what you know about this accident.
A. I heard a big noise at first and then I looked up and then I saw Mr. Silbert's car going and Mrs. Gretes' car and my father slammed on brakes. And we went into Mr. Silbert's car and then the man in back of us hit us. And then I hit my head on the seat and that is all I remember.
Q. That is all you remember?
A. Yes, sir.

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HERMAN CHAPEL,

called as a witness in rebuttal, having been first duly sworn was examined and testified as follows:

Herman Chapel

DIRECT EXAMINATION (rebuttal)

By Mr. Babalas:

Q. Please state your name.

A. Herman Chapel.

Q. What is your occupation?

A. I am a podiatrist.

Q. Where do you live?

A. 308 North Shore Road.

Q. November 3, 1963, Doctor Chapel, were you in a procession of vehicles that were headed back to the City of Norfolk coming from Edenton on a Scouting trip?

page 353] A. Yes, I was.

Q. And can you tell us, did you witness an accident that occurred on that day?

A. Yes.

Q. Can you tell us what happened just prior to the accident, in your own words, that did you see?

A. Well, the first thing I saw or heard at the same time was a muffled explosion, dust and glass flying, whereupon I immediately put on my brakes.

Q. What did you see ahead of you?

A. Cars (indicating) in collision.

Q. Who was in front of you?

A. In front of me was Mr. Maroulis' car.

Q. In front of Mr. Maroulis' car who was next?

A. Mr. Silbert.

Q. And in front of that was who?

A. I believe that was the Gretes car.

Q. After this collision that you saw, that you indicated with your hands and spoke about, what then next happened?

A. Well, I put on my brakes and threw my arm up because I had four boys in the back seat. And as I was approaching the Maroulis car it bounced back and I collided with him and he collided with me.

Q. Which bounced back, Doctor Chapel?

page 354] A. Yes.

Q. Who bounced back?

A. The Maroulis car.

Q. How far would you say that the Maroulis car bounced back?

A. Several feet.

Q. What happened at the time that you and his car collided?

A. The hood went up in front of me. My hood went completely up and the doors were jammed. We couldn't get out of the car until we were helped.

Mr. Babalas: I have no more questions.

CROSS EXAMINATION

By Mr. Green:

Q. Doctor Chapel, you were following Mr. Maroulis?

A. Yes.

Q. How far were you behind him?

A. I would say about three car lengths.

Q. About three car lengths?

A. I was.

Q. You were about the same distance between him that the cars — the rest of the cars were separated?

A. I would say it seemed that way on the trip.

page 355] Q. You saw Mr. Maroulis strike the Silbert car; is that right?

A. I don't know.

Q. Did you see Mr. Maroulis' car strike the Silbert car?

A. I didn't see the actual hitting of any. I saw the conglomeration of cars.

Q. Had you brought your automobile to a stop at the time you were involved in the accident?

A. I don't believe so. I was coming to a stop but I was amazed at the rebound I got.

Q. You were amazed at the rebound of Mr. Maroulis' car?

A. Yes.

Q. You were almost at a stop?

A. I say almost at a stop. I wouldn't say I had stopped because I don't think I had.

Q. You had gone from a forward motion to a backward motion; is that right?

A. I suppose.

Q. Mr. Maroulis was going forward the last time you saw him?

A. Yes.
Q. And then you say he was coming backward?
A. Yes.
page 356] Q. You were almost at a stop?
A. Yes.
Q. I hand you a picture and ask you if that is the rear end of Maroulis car?
A. That is it.
Q. That is the rear end of Mr. Maroulis' car; is that right?
A. Yes.

Mr. Green: I am referring to Maroulis Exhibit #3.

By Mr. Green:
Q. And I hand you Maroulis Exhibit #2 and ask you if that shows your car and the Maroulis car?
A. Yes.
Q. Were your brakes skidding all this time, Doctor?
A. I am pretty sure they were.
Q. And does this show your car, Doctor, Maroulis Exhibit #4?
A. This does, this is my car.
Q. How fast was he coming backwards, Doctor?
A. I really don't know.
Q. Everything happened pretty quick, didn't it?
A. It was very fast.
page 357] Q. Just over like that, with a clap? (Indicating)
A. Very fast.
Q. There was a lot of confusion?
A. What?
Q. A lot of confusion?
A. Afterwards, yes, sir, we had considerable confusion afterwards.
Q. Did you see Mr. Silbert's car going across the road?
A. I saw it going across the road but I thought it had turned to go across the road.
Q. Did you see Mr. Kehayas' car go across the road?
A. No.
Q. What was your speed, do you know, Doctor?

A. I would say around 45.

Mr. Green: That is all I have. Thank you, Doctor Chapel.

By Mr. Hollis:

Q. Did you see Mr. Silbert's car go across the road before you collided with Mr. Maroulis' car.

A. I don't know.

Mr. Hollis: Thank you.

The Witness: I really don't.

page 358] By Mr. Green:

Q. Did you see Mr. Maroulis' car hit Mrs. Gretes' car?

A. I wouldn't say that I did.

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page 5A]

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DR. WALTER W. SAWYER, JR.,

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

DIRECT EXAMINATION

By Mr. Bangel:

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

A. Walter W. Sawyer, Jr., sir.

Q. And your occupation?

A. I am a physician practicing in the specialty of neurological surgery in the City of Norfolk, sir.

Q. Dr. Sawyer, from what medical schools did you graduate?

A. I graduated from Temple University in Philadelphia.

Q. And where did you interne?

A. At Temple University Hospital, sir.

Dr. Walter W. Sawyer, Jr.

Q. Doctor, did you specialize in any particular
page 6A] branch of medicine after you became a doctor?
A. I have specialized in neurological surgery.

Q. What is neurological surgery?

A. This has to do with the diagnosis of, treatment, both medical and surgical, of diseases of the brain and spinal cord and central nervous system, aside from nervousness.

Q. Doctor, what particular training did you have for your specialty?

A. I had — after my internship two years in the Navy as a Medical Officer, two years of general surgery residency at De Paul Hospital, a year of neurological surgery and a year of pathology as the resident at Norfolk General Hospital, a year and a half residency at the University of Virginia in neurological surgery and a year and a half at McGuire Veterans' Hospital, residence in neurological surgery. And I have been practicing my specialty in the City of Norfolk since 1957.

Q. Are you on the staff of any hospitals, and if so, state which.

A. On the staff of Norfolk General, DePaul Hospital and Community Hospital in Norfolk, and I have courtesy privileges at Maryview Hospital and Portsmouth General Hospital in Portsmouth.

Q. What medical societies do you belong to?

A. I belong to the Norfolk County Medical
page 7A] Society the Medical Society of Virginia, the
Seaboard Medical Association, and the Southeastern Medical Association, sir.

Q. Doctor, did you have occasion to see and treat Clayton H. Elliott, III, for injuries he received as a result of a collision which occurred on the 3rd of November, 1963?

A. Yes, I did, sir.

Q. Where did you see him, Doctor?

A. I originally saw him at Maryview Hospital on the 3rd day of November of 1963.

Q. What history was given to you at that time, sir?

A. The history that I obtained, that this boy was a passenger in an automobile that was involved in a multiple car collision. He was said to have been conscious when he

Dr. Walter W. Sawyer, Jr.

was brought to the emergency room at about 5:00 p.m., and I saw him about 7:00 p.m. He became unconscious shortly afterwards and remained so. And he was unconscious at the time I saw him.

Q. What did your examination reveal of this young man?

A. It revealed a well-developed, well-nourished, white male who was unconscious. He moved to some degree on painful stimulus.

Q. What do you mean by painful stimulus?

A. This is by pinching or sticking with a pin, that sort of thing, sir.

page 8A] Q. All right, sir.

A. There was rather marked swelling over the forehead and around both eyes and both cheeks. He had bled some from the nose but there was no active bleeding from the nose at this time. His eardrums were intact but appeared slightly dusky. There was no Battle Sign. That is a sign with which one has a bruising back of the ears.

I was unable to palpate any skull defects. The neck was supple. The blood pressure was 150/80, and the pulse was 80 and regular. There was marked swelling about the right foot. The left pupil measured three millimeters and reacted sluggishly to light. And I was unable to visualize the right pupil because of the marked swelling about the eye.

Q. You could not see the eye at all?

A. I could not see the eye at all. He moved all extremities slightly on painful stimulus. The Deep Tendon Reflexes were equal and active in the upper extremities and equal and very hyperactive in the lower extremities. There was bilateral sustained ankle clonus and bilateral Babinski Signs.

Q. Were there X-rays taken of this child, sir?

A. X-rays were made of the skull and these revealed a fracture line extending from the right fronto-temporal region across the upper frontal region to the opposite side and there was very slight depression, which went

page 9A] all the way across the head.

Q. What was your impression, sir, at that time?

A. It was my impression that the patient had a slightly depressed fracture of the frontal bone, a severe brain injury

and a possible subdural hematoma.

Q. Because of the patient's condition at that time, and because of your impression and diagnosis at that time, what did you do, sir?

A. He was taken to the operating room and operated on that evening. At that time we put holes through the skull in both mid-parietal region and the right occipital region, the right side of the back. He had a small subdural clot which was evacuated from the left side and a very large liquid and semi-solid clot was evacuated from the right side.

Q. The left side of the brain, sir?

A. The left side of the brain.

Q. And the large clot was from the right side of the brain?

A. That is right.

There was considerable swelling of the brain. And following surgery, he was transferred to the ward and his condition was felt to be poor and his prognosis was guarded.

Q. What do you mean by that, that his prognosis was guarded?

A. It was very problematic as to whether he would live at the time. Frequent observations were made of his vital signs, blood pressure and pulse and movement of the extremities and that sort of thing. He was put on antibiotics and Dilantin, which is a medication to control any possible seizures. And he was fed by fluid in the vein.

page 10A]

Q. Doctor, how did you reach his brain to operate on it?

A. These are made through an incision through the skull down on the left of the skull and then a hole is bored through the skull. It is really a brace and bit type of apparatus that is used. Then there is a covering which is called the dura covering. This was opened by cutting through it with a knife and at this time that exposed the surface of the brain.

Q. All right, sir, Doctor, because of this child's critical condition — go right ahead and tell us what was done next.

A. On the next day his blood pressure and pulse and so forth were stable. He was moving all of his extremities with equal and good power. And on the 6th, which was three days after the injury, feeding was started by naso-gastric tube, a tube going through the nose down into the stomach. And he

was fed liquid feedings through this tube.

Q. Excuse me a minute, Doctor. Doctor, does this represent a picture of this young lad lying in the hopital?

page 11A] A. Yes, this shows the tube in place where the feeding is going on.

Mr. Green: Who took this picture?

Mr. Bangel: This was taken about five weeks after the accident by an investigator from our office.

Mr. Green: Do you have the date?

Mr. Bangel: Sometime in December.

Mr. Green: Can you find the date?

The Court: Plaintiff's Elliott Exhibit Number One.

(Whereupon, the foregoing photograph was received in evidence and marked for identification as Plaintiff Elliott Exhibit No. 1.)

By Mr. Bangel:

Q. Doctor, these tubes were inserted through the nose?

A. Through the nose to the esophagus and to the stomach.

Q. What is the purpose?

A. In order to feed him.

Q. What other tubes were necessary for you to put in this child?

A. A tube in the bladder in order — the purpose actually to keep the bed dry and also to prevent any

page 12A] stimuli that a full bladder might produce.

Q. Were there any other tubes used?

A. Originally we did feed him by intravenous tubes by a needle through the vein, bottles of glucose.

Q. Doctor, do you recall whether it was necessary to do a cutdown on this child?

A. Yes, sir, I do not recall which ankle but I do know we did a cutdown.

Q. Tell the Jury about this.

A. This is done by making an incision over the inside of the ankle and picking up a large vein there and putting a tube into that vein for the purpose of feeding intravenous fluid.

Dr. Walter W. Sawyer, Jr.

Q. Doctor, I notice this picture of this child has the tube you describe. And he has this area here where there is no hair. Is that one the area where you made the hole in the skull?

A. Yes, sir.

Q. Why is it he has these stocking-like things on his hands and arms?

A. For the purpose of preventing him from scratching himself or from injuring his hands by beating them against the railing or that sort of thing.

Q. What is this tube from, coming out from the sheet? What is that?

page 13A] A. The tube, it is the catheter through the penis into the bladder.

Q. Go ahead and tell us the course of this young lad.

A. Dr. Hollowell was the one who took care of the tube within the bladder. I had him take care of this particular problem. I also asked Dr. C. N. Psimas to follow him from a medical standpoint over the next several days. The boy had periods of being restless and combative. This was controlled by sodium luminal, which is a drug similar to phenobarbital.

Q. Doctor, did the child know what he was doing at this time or was he comatose?

A. No, he did not know what he was doing.

His sutures were removed six days after the injury and the wounds were healing properly. On this date the patient would carry out one or two simple commands that one might give him. Dr. MacPhail was asked to see the patient at this time in regard to his eyes. On the 10th day of November of 1963, the patient was less responsive.

Q. What does that indicate, that he became less responsive?

A. It would usually mean that there has been probably more pressure within the skull, more pressure in the brain at the time.

Q. Pressure being built up from swelling?

page 14A] A. That is correct, sir. At this time he was started on urea solution, in order to combat this swelling of his brain. A lumbar puncture was done on

the 13th of November which revealed an opening pressure of 300.

Q. Tell us what a lumbar puncture is and how it is done and what is the purpose of it?

A. First let me say the opening pressure of 300 is almost twice normal. A lumbar puncture is done with a person on their side usually. The area of skin in the back at the level where the belt would come is numbed with novocaine or a similar solution. A spinal needle is inserted into the spinal canal and the canal, which holds the spinal cord, and also contains the spinal fluid, which is in direct communication with the spinal fluid circulating around the brain.

We attached what we call a manometer, which is a measuring device. And a column of spinal fluid will come up into the measuring device to a certain level. And in this particular case it came up to 300. As I say, this is almost twice the normal pressure.

Q. Was it necessary to do a repeat lumbar puncture this time?

A. We repeated it on the 27th. And at that time the opening pressure was 220.

Q. Taking a needle in the back in the spinal column itself?

page 15A] A. In the spinal canal itself.

Q. Go right ahead.

A. At this time it was thought that we would try to begin to sit him up at times. On the 29th of November he seemed to be trying to open his eyes, at times. And over the next two weeks, the patient had periods of being quite restless and uncooperative and this was controlled by proper medications. Another lumbar puncture was done on December 9, 1963, which revealed an opening pressure of 160 which is normal. Oral feeding was begun and the tube feeding was stopped on the 14th of December, 1963. On the 17th of December, 1963, the patient began to walk. He was cooperative to some extent.

Q. Began to walk?

A. Began to walk with help, sir. It was noted at this time that there was divergence of the eyes. In other words the eyes were pointing outward. He was started on physical

therapy on December 26, 1963, and he tolerated this very nicely. Over a period of couple of weeks he showed rather marked improvement as far as being able to walk short distances without aid. He had some difficulty with his balance but this gradually improved and he was discharged from the hospital on the 18th of January, 1964.

Q. He was in the hospital then from November 3rd, all of November, all of December, and January 18, I believe you said?

page 16A] A. I believe that is correct.

Q. What is your final diagnosis of this patient?

A. Depressed fracture of frontal bone of skull; bilateral sub-dural hemotoma; severe brain injury; multiple facial injuries; fracture of right fourth and fifth metatarsal bones. These were my diagnoses at the time of discharge.

Q. All right, sir, Doctor, was any medication prescribed for this young child when he was discharged?

A. Yes, sir, he was placed at the time of his discharge, he was continued on Dilantin Sodium, grains of one and one-half, four times a day, vitamins three times a day, and phenobarbital, one-half grain at bedtime as needed.

Q. When was the next time you saw this child and where?

A. In my office on the 31st day of January, 1964. At that time he was receiving physical therapy three times a week at the Naval Hospital. He had been seen by one of the eye physicians at the Naval Hospital and would be followed by him. The mother stated that he was doing "pretty good." He was eating well and sleeping well and had been taking exercises which had been prescribed for him at home.

Q. What did your examination reveal at the time?

A. Well-developed, well-nourished, cooperative, alert, white male. His memory span was not complete by any means.

page 17A] His speech was slightly hesitant, but clear. He got about slowly, taking short and shuffling steps. He was wearing a patch over one eye. The operative wounds of the head were nicely healed. There was slight depression of the right frontal bone in the forehead region. The neck was supple. The cranial nerves were normal and intact except for inability to converge the eyes.

Dr. Walter W. Sawyer, Jr.

There was no papilledena. The visual fields were full. Cerebellar tests revealed slight generalized wavering with his eyes closed. The finger to nose test was tremulous bilaterally but on target. There was slight clumsiness for rapid movements of the hand. Motor power seemed good. Sensation was intact throughout. The Deep Tendon Reflexes were equal and hyperactive. There was no Babinski Sign.

Q. When did you next see this child?

A. On the 5th day of March in my office. He had started instruction with a home teacher about three weeks previously and the teacher was working with him about two hours a day. At this time his thinking was slightly slow and when talking he repeats — he would repeat the same sentence quite frequently. And he was also somewhat facetious at times. He was somewhat slow in retaining things which he had been taught the day before. His recall for past events seemed to be pretty good. In talking, he tends to skip from one subject to another. He had been eating well but it took him about twice as long a time to eat as everyone else. He was continuing on the same medications.

page 18A] Q. What did your examination reveal, Doctor, at that time?

A. It was essentially the same as on my previous examination, but as I stated here in my letter, "It should be pointed out that there is not only an inability to converge the eyes but also when Clayton looks straight ahead the left eye rotates outward which causes him to have rather severe double vision."

At this time I made arrangements for Dr. Clare to see this patient, as he followed Clayton with me in the hospital.

Q. Doctor — go ahead.

A. I also made arrangements for a brain-wave test at this time.

Q. All right, sir, when did you next see Clayton Elliott?

A. The next time was on the 9th day of April. At that time his mother said that he was progressing very nicely. He was still receiving home teaching three times a week for two hours each day. He did not have any particular headaches. He was taking the same medicines and he had been working with models and mechanical drawings to stimulate his think-

ing and the dexterity of the hands.

Q. What did your examination reveal?

page 19A] A. At that time he was again well-developed, well-nourished, cooperative, alert, white male. He did not remember the accident that he had been in. He was talking much better and putting words more in sentences at this time. He was still somewhat facetious but certainly less so than he had been. Examination of the head revealed the operative wound to be healing nicely. He walked with a slight unsteady gait but this seemed to have improved. Examination of the cranial nerves were again as previously reported, the inability to smell and the inability to converge the eyes. The Rhomberg test was negative. Motor power was relatively good throughout and sensation was intact. The Deep Tendon Reflexes were equal and hyperactive throughout. There was no Babinski Sign and no ankle clonus.

Q. What was the result of the electroencephalogram?

A. Abnormal tracing.

Q. Let me ask you this, if I may. In your opinion had this child — state whether or not this child has had a permanent brain injury.

A. It is my feeling that he has, sir.

Q. Doctor, how does this permanent brain injury manifest itself, sir?

page 20A] A. First of all, as far as the brain-wave tests were concerned, it would seem to indicate that this boy has epilepsy which is being controlled by medications which he is on. He has a deviation of his eyes, he has the loss of sense of smell, difficulty in walking straight, and some facetiousness, or rather supercilious attitudes at times.

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page 24A]

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DR. JOSEPH C. MacPHAIL,

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

Dr. Joseph C. MacPhail

DIRECT EXAMINATION

By Mr. Bangel:

Q. State your name, please.

A. Joseph C. MacPhail.

Q. What is your occupation?

A. I am a physician specializing in ophthamology and disease.

Q. Dr. MacPhail, what medical school did you graduate from?

A. The University of Colorado.

Q. Briefly, as the hour is growing late, you say you specialize in ophthamology?

A. Yes, sir.

page 25A] Q. What is that, sir?

A. That is the study and treatment of eye diseases.

Q. That is your total specialty, the treatment of the eyes?

A. That is right.

Q. Doctor, you are on the staff of the local hospitals?

A. Both hospitals.

Q. And belong to a number of medical societies?

A. Yes, sir.

Q. And have been following your specialty for a number of years?

A. Yes, sir.

Q. Did you have occasion to see Clayton Elliott, III, for injuries received on November 3, 1963?

A. Yes, I saw him November 10th.

Q. Where did you see him, Doctor?

A. At Maryview Hospital.

Q. Doctor, what was his condition when you saw him?

A. Well, he was restless, he would not respond to direct questions and he, of course, was in bandages and also tubes in his nose.

Q. Would you say his condition was bad, critical or how?

page 26A] A. Well, it wasn't good.

Q. All right, sir, did you examine him, sir?

A. Yes, sir.

Dr. Joseph C. MacPhail

Q. What did your examination reveal?

A. Well, he had considerable swelling of his eyes due to the injury that he received, from the skull injury. And I examined the back of his eyes on the fundus and found that he had some swelling of the optic discs, indicating some edema or pressure in the brain.

Q. All right, sir, go right ahead and tell us about this patient as far as you are concerned.

A. I followed him for about a week in the hospital examining this particular phase. And I was called to see him again about the 12th or about the 19th of December, at which time his general condition had improved. But at this time his eyes were beginning to, or had diverged, and he couldn't converge his eyes at all.

Q. What did this cause, if anything, Doctor?

A. This caused double vision, indicated by the fact that he held one eyelid closed, one or the other.

Q. What treatment did you recommend to try to help eliminate that double vision?

A. I suggested that he wear an eye patch on one eye.

Q. Completely cover up one eye?

page 27A] A. Yes.

Q. Doctor, when is the last time you saw this child?

A. I saw him in the office on May 28th.

Q. Of this year?

A. Yes.

Q. What was his condition at this time, Doctor, with reference to the eyes?

A. His eyes still were divergent, he still had double vision requiring the patch.

Q. Is that permanent, Doctor?

A. Yes.

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DR. FRED BRYAN CLARE,
called as a witness on behalf of the plaintiff, Elliott, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Bangel:

Q. State your name, please.

A. Fred Bryan Clare.

Q. And your occupation?

A. Neurosurgeon.

Q. Dr. Clare, from what medical school did you graduate?

A. The University of Illinois.

Q. When did you graduate, sir?

A. In 1942.

Q. Do you specialize in any particular branch of medicine?

A. Neurological surgery.

Q. What is neurological surgery?

A. Surgery of the brain and spinal cord and nervous system.

page 33A] Q. What training did you have for your specialty?

A. Well, I had — I got my degree in neurophysiology, my interneship, a year of general surgery, four years of neurosurgical residency and two years of limited practice.

Q. Doctor, did you serve in the military service?

A. Yes, I was in the United States Navy.

Q. And did you serve in this area?

A. I was at the Naval Hospital for ten years in charge of neurosurgery there.

Q. You were the Chief in neurosurgery at the Naval Hospital in Portsmouth?

A. That is correct.

Q. You retired from the Navy — what rank do you have, sir?

A. Captain.

Q. Doctor Clare, are you on the staff of any hospitals now?

A. Maryview Hospital, DePaul, Norfolk General and Leigh Memorial, I think.

Q. All right, Dr. Clare, have you done any writing in con-

nection with your specialty?

A. Yes, sir, just articles.

Q. Have you done any teaching in connection with your specialty?

A. Yes.

page 34A] Q. Dr. Clare, what medical societies do you belong to?

A. The American Medical Society, the Medical Society of Virginia, the Southern Neurological Society, the Harvard Cushing Society. I believe that is all.

Q. You are a fellow in some society?

A. On the American College of Surgeons, I am sorry.

Q. The American College of Surgeons?

A. Yes.

Q. Dr. Clare, did you have occasion to see and treat Clayton H. Elliott, III, this child?

A. I did.

Q. Where did you see him?

A. I saw him at Maryview Hospital.

Q. Here in Portsmouth?

A. In Portsmouth.

Q. Doctor, tell us if you will what you observed

A. I was called to see Clayton Elliott on the 15th of November. Dr. Sawyer had asked me to see him on consultation and follow him with Dr. Sawyer, because of the comatose condition and because of the fact that he had some signs of increased intercranial pressure. And there was a question of which was the right way to go about handling his case from then on.

page 35A] And we just sort of felt — he felt he wanted another man to talk about it with.

Q. Is that usual or unusual? Does that reflect the child's condition in any way?

A. Yes, the child's condition was certainly serious to critical and when that is the case it is not unusual for two neurosurgeons to get together and try to map out the best course of action.

Q. Doctor, tell us, if you will, what your notes reflect about this child. You may refer to your notes and tell us all about it.

Dr. Fred Bryan Clare

A. I think I can tell you pretty accurately without notes. He was in a comatose condition, he was not paralyzed in his arms or legs but he could not be aroused. He could not be made to respond sensibly to any sort of a request. He would withdraw an arm or a leg on painful stimuli. That would be if you stuck him with a pin or pinched him real hard, he would pull back from that. This is a reflex matter. It is a way we have of telling whether a person is paralyzed or not.

His eyes were closed, probably due to a bilateral. That is the paralysis of the muscles that control the eyelids on both sides. He had a cast on his right leg, he had multiple depressions of the skull that were detectible

page 36A] by feeling of the skull. And it could be seen that there was an operative scar over each one of these.

He had a tube in for feeding and a catheter for the drainage. And I think that is reasonably accurate except in real medical terms —

Mr. Harris: Speak up.

The Witness: I think it reasonably accurate except in detailed medical terms, his general condition.

By Mr. Bangel:

Q. What was your impression of this child based on, Doctor?

A. My impression was based upon what I saw and the history available, that he had a severe brain injury. And whether or not he would pull out of this was very questionable.

Q. Doctor, have you examined the child since he left the hospital?

A. I have.

Q. What effect has the severe brain injury had on this child?

A. As near as I could tell from my examination and the results of the tests that I ordered on him, I would feel the largest effect that is noticed is *a* inappropriate mental aspect to his personality. He would laugh inappro-

page 37A] priately at times when there is really nothing funny to laugh about. His intelligence seemed

to be good, but his judgment of finer things was definitely off. His sense of balance was a bit off. He had some paralysis of eye muscles and he had an electroencephalogram that was grossly abnormal.

Q. What is that, Doctor?

A. That is a brain-wave test that is taken to show the pattern of the firing of the brain cells. And it is used to detect a blood clot or brain tumor and also used most commonly as a help in the diagnosis in epilepsy.

Q. Have you made a diagnosis in this case as far as epilepsy is concerned?

A. I would feel this boy probably has epilepsy. I think the only way you could possibly tell would be to take him off the medication and see if he would convulse. But I don't think medically it would be a sensible way of handling the case.

Q. How about the smell?

A. His sense of smell was gone. And that, I am sure, was a permanent loss after this length of time.

Q. Doctor, what would happen, in your opinion, if his medication — if he didn't take them?

A. I would say in all probability he would have convulsions.

Q. A convulsion is what?

page 38A] A. A seizure or blackout spell in which a patient throws an epileptic fit.

Q. Doctor, in order to show the Jury where he was operated on I am going to ask that this child be brought in just for a second. I will get him.

I wonder if you could come up here?

Doctor, come down here and help us show the Jury where he was operated on, please.

A. Oh, Butch, how many holes have you got in your head?

I think it is one occipital back here on the right (witness indicating), another in the parietal area, another one on the left side over here.

Q. Doctor, could you tell us, if you will, why it is necessary for him to wear the eye patch?

A. That is because he has double vision. If you don't have a patch on one eye the muscles are not coordinated properly.

Q. Doctor, is this condition permanent?

A. As far as we can tell it will be.

Q. Doctor, in order to reach his brain to operate on it, was it necessary to remove the bone?

A. It was necessary to remove a plug of bone, you might say, in each of these regions. Fortunately, his particular type of clot that he had was of a liquid nature so it
page 39A] was not necessary to remove a whole big piece of skull to get at the clot.

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DR. GEORGE N. PSIMAS,

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

DIRECT EXAMINATION

By Mr. Bangel:

Q. State your name, please.

A. Dr. George N. Psimas.

Q. And your occupation?

A. I am an orthopedic surgeon.

Q. Dr. Psimas, from what medical school did you graduate?

page 40A] A. The University of Virginia.

The Court: Gentlemen, won't you all concede that these gentlemen are well qualified?

Mr. Harris: Yes, sir.

Mr. Hollis: Yes, sir.

Mr. Green: Yes, sir.

By Mr. Bangel:

Q. What is the practice of orthopedics, Doctor?

A. That is the practice of medicine that has to do with the care and treatment and injuries and diseases of the bones and joints of the body.

Q. Doctor, were you called in to treat this child, Clayton Elliott, III, for his orthopedic problems?

A. Yes, I was.

Q. Tell us, if you will, what you found.

A. His primary problem, as far as I was concerned, was the fracture of the foot involving more specifically, the two bones of the foot, the fourth and fifth metatarsals.

Q. Doctor, I believe you took some X-rays of him?

A. Yes, I did.

Q. I wonder if we could show them to the Jury?

A. These are not the original X-rays.

Q. Go ahead and describe it, if you will, Doctor.

page 41A] A. The metatarsal in this area of the foot there are five long bones in the foot that bear the front part of the arch and these are called the metatarsals. And the fourth and fifth ones are those that go to the fourth and fifth toes.

Q. Doctor, what type of fracture did he have?

A. They were comminuted fractures, the kind broken in so many pieces.

Q. Doctor, did you treat this condition?

A. Yes. Of course this was secondary to the quite serious injury that he had sustained.

Q. All right, sir. These fractures of the foot, did they heal?

A. They have healed.

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DR. JOHN W. HOLLOWELL,

called as a witness on behalf of the plaintiff,

page 42A] Elliott, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Bangel:

Q. State your name, please.

A. John W. Hollowell.

Q. And your occupation?

A. Physician.

Q. Doctor Hollowell, what medical school did you graduate from?

Dr. John W. Hollowell

A. The University of Virginia.
Q. What specialty do you have, if any?
A. Urology.
Q. What is urology?
A. A specialty that deals with the diseases of the kidney and bladder.

The Court: Will you all stipulate he is a competent physician, well qualified?
Mr. Harris: Yes, sir.
M. Green: Yes, sir.
Mr. Hollis: Yes, sir.

By Mr. Bangel:

Q. Did you see and treat Clayton H. Elliott, III, for the injuries he sustained in a collision on November 3, 1963?

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A. Yes, sir.
Q. Where did you see him?
A. Maryview Hospital.
Q. What was his condition when you saw him?
A. He was unconscious and specifically I was called to him *him* because of a urinary problem he had.
Q. Tell us about that.
A. He was unconscious, in a coma and writhing about the bed and had been unable to adequately empty his bladder of urine. And because of this he had become secondarily infected and I was called to relieve him of the urine and help him with that problem until such time he could take over himself.
Q. How did you relieve him?
A. This child had a stricture he had been born with, a deformity of the little penis which had been corrected surgically and had nothing to do with the accident. But because of this operation he had a stricture, an abnormally small urethra and a normal sized catheter could not go in to relieve him. And that is why I was called. I passed the catheter, a small one, and withdrew the urine and left it for a length of time.

Q. This catheter went through the penis into where?

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A. Into the bladder.

Q. Where would it empty?

A. Outside. Once we get it hooked up we empty into a drainage tube, a bladder on the floor.

Q. Why was this done?

A. An unconscious patient who is not alert enough to know when to empty the bladder, will develop a stagnation of the bladder and that gets infected and has an adverse effect on the bladder. And for a patient that remains comatose for a long period of time — we didn't know whether this child would ever wake up. We can drain, sometimes a week and sometimes a month.

Q. Doctor, was it necessary to change this catheter tube?

A. Yes, we changed it periodically, about once a week.

Q. Had he, prior to you seeing him, developed an infection?

A. Yes, he had pyuria. He had pus in the urine when I saw him.

Q. I believe you continued to treat him while he was in the hospital?

A. Yes.

page 45A] Q. Doctor, while you are on the witness stand, tell us, if you will, what effect did his unconsciousness have on his ability to — his bowels?

A. Well, a person who is unconscious usually, well, you have to do all those things for him that he can't do for himself. Not only from the standpoint of giving him food and nourishment to keep him alive and see if he is breathing properly, if he is obstructed and you have to get rid of the urine for him, too, if he is not alert enough to do it. And to see that he has a reasonable evacuation of the bowels.

But that was not my problem. But I worked with him and the Chief Nurse to the patient. And I helped him with the problem of constipation and gave him special drugs to soften the bowel movements. And sometimes we had to go in by hand and extract his hard stool.

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Mr. Green: The defendant Maroulis moves the Court to

strike all of the plaintiff's evidence and enter summary judgment for the defendant, Maroulis, on the grounds previously stated. And further moves to strike the evidence of the defendant LaFrage, on the grounds that the evidence clearly shows that Mr. LaFrage was guilty of negligence which was a proximate cause of the accident. There is no evidence in the record whatsoever to refute that. It is the Court's duty to strike it, as a matter of law that Mr. LaFrage was guilty of negligence.

The Court: As to your motions, both Mr. Silbert and Mr. Maroulis respective motions, the Court overrules it.

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Mr. Green: Note my exception and for the exception I would like to submit an instruction for the Court's refusal.

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Mr. Green: The defendant, Maroulis, objects and excepts to the action of the Court in granting instruction #1 as offered by the plaintiff, upon the ground that the instruction does not take into account the foreseeability which would be required before the defendant Maroulis could

page 367] be charged with liability under the instruction; the instruction further does not take into account the sudden emergency doctrine which the defendant states is applicable to the case; and further objection is made upon the grounds that the instruction is confusing in that it tells the jury that it refers to all defendants collectively without differentiating between the individual defendant and implies

that if they find they must find against all defendants or none of the defendants.

The defendant, Maroulis, objects and excepts to the action of the Court in granting instruction #2, with respect to the language "If a person looks and does not see what a reasonably prudent person would have seen under the circumstances in time to take the necessary precautions to avoid danger," the instruction does not take into account the situation in which a person could be maintaining a proper lookout and still would not have an opportunity to avoid some danger that lay ahead. In other words this instruction makes the defendant an insurer of his being able to avoid danger.

The instruction, in essence, makes an individual an insurer of his being able to stop or take the necessary precautions to avoid danger irrespective of when such danger page 368] would have been disclosed by a reasonable lookout.

The defendant, Maroulis, objects and excepts to the action of the Court in granting instruction #3 as offered by the plaintiffs, upon the grounds that the instruction does not apply in a case of this nature where the evidence discloses that the defendant could not have anticipated what occurred in front of him, and that the instruction does not take into account when the instruction is a finding instruction, this instruction is a finding instruction and does not take into account the foreseeability nor does it take into account the sudden emergency doctrine the defendant contends would be applicable in the case.

The defendant, Maroulis, objects and excepts to the action of the Court in its refusal to grant instruction "H" as offered by the defendant, Maroulis, upon the grounds that the defendant would be entitled to such instruction under the evidence and under their theory of the case, that the accident did not proximately result from any negligence on their part, but from the intervening and superseding negligence of the defendant, LaFrage. It is the contention of the defendant that this instruction should have been granted under the evidence, under the rational of the case of *Lane* vs. *Hampton* and other Virginia cases.

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Mr. Green: Your Honor, I would like to move the Court to set aside the verdict in all of the cases and enter judgment not withstanding the verdict, for the defendant, Jim Maroulis, or in the alternative to set aside the verdict and grant a new trial and set a new trial based upon further grounds that the verdict in the Maroulis case is not according to the law and the evidence.

* * * * *

A Copy—Teste:

H. G. TURNER, Clerk.

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