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SUPREME COURT OF VIRGINIA
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IN THE

Supreme Court of Virginia

AT RICHMOND

RECORD No. 730970

RUTH BICKLEY, ADM'X. OF THE ESTATE OF
RONALD LELAND BICKLEY, DECEASED — Appellant

V.

LILA FARMER,
LOUISA COUNTY SCHOOL BOARD,
JAMES KENNETH PERKINS, and
JAMES KENNETH PERKINS & W. D. PERKINS,
A PARTNERSHIP, TRADING AS
W. D. PERKINS & SON, — Appellee

APPENDIX

Higginbotham & Puryear
Orange, Virginia 22960
Attorneys for Appellant

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MOTION FOR JUDGMENT
(Filed 2/15/72)

The Plaintiff moves the Court for judgment against the Defendants, jointly and severally, on the grounds, and in the amount, as hereinafter set forth:

1. The Plaintiff duly qualified as Administratrix of the Estate of Ronald Leland Bickley, in the Clerk's Office of this Court, on February 14, 1972.

2. On or about the 27th day of August, 1971, the Plaintiff's decedent boarded a school bus operated by the Defendant, Lila Farmer, while acting as a duly authorized agent, servant and employee of the Defendant, Louisa County School Board, and the Defendant, the said Lila Farmer, while acting in the scope of her employment, as aforesaid, directed that the Plaintiff's decedent, who was an infant child, age 7, to get off the school bus, that the Plaintiff's decedent had boarded the wrong bus.

3. The said Defendant, Lila Farmer, while acting as agent, servant and employee, and in the scope of her employment, as aforesaid, negligently failed to maintain a proper lookout, to give a proper warning signal light to approaching traffic that she was discharging a student from her bus, and without giving any signal or light for approaching traffic, she pulled her bus off at a slow rate of speed from the location from which she had discharged the infant, Plaintiff's decedent, and before the said infant, Plaintiff's decedent,

had returned to a point of safety from being discharged from said bus.

4. It was raining at the time the said infant, Plaintiff's decedent, was discharged from said bus, as aforesaid, and the Defendant, the said Lila Farmer, while acting as agent, servant and employee, as aforesaid, for the Defendant, Louisa County School Board, should have known that the infant, Plaintiff's decedent, would not remain on the side of the road, but would have to leave to go to a place of shelter, and had the Defendant, Lila Farmer, made a proper lookout, she would have observed that the nearest place of shelter was on the opposite side of the road, that would require the infant, Plaintiff's decedent, to cross the public road from the side to which the infant, Plaintiff's decedent, had been discharged by the Defendant, Lila Farmer, as aforesaid.

5. The Defendant, Lila Farmer, while acting as agent, servant and employee of the Louisa County School Board, as aforesaid, negligently and unlawfully failed to maintain a proper lookout, failed to put on and leave on the proper signal light on said bus until students discharged from said bus had cleared the public highway, failed to put out a flagman to assist children, and, particularly, the infant, Plaintiff's decedent, in crossing the public highway, and failed to operate her vehicle in a reasonable and proper manner, all such actions on the part of the Defendant, Lila Farmer, while acting as agent, servant and employee for the Defendant, Louisa County School Board, as aforesaid, constituted negligence.

6. At the same time and place, the Defendant, James Kenneth Perkins, was operating a 1969 GMC Pickup Truck in an easterly direction on the said public highway where the infant, Plaintiff's decedent, had been discharged, as aforesaid, the public highway being Route #250, a busy and well traveled public road, the Defendant, James Kenneth Perkins, was operating the said motor vehicle, that was owned by the Defendant, W. D. Perkins & Son, a partnership, and for whom the said James Kenneth Perkins was acting as agent and partner at the time he drove said vehicle, as aforesaid.

7. The said James Kenneth Perkins, while acting as agent and partner of the Defendant, W. D. Perkins & Son, a partnership, failed to maintain proper lookout, failed to keep his vehicle under proper control, drove his vehicle at an excessive rate of speed under traffic conditions existing at the time, drove his vehicle without proper lights or equipment, all of which actions on the part of the said Defendant, James Kenneth Perkins, while acting as agent and partner of the Defendant, W. D. Perkins & Son, constituted negligence on the part of the said James Kenneth Perkins.

8. As a result of the said unlawful and negligent acts on the part of each of said Defendants, while acting as aforesaid, the vehicle operated by the said James Kenneth Perkins, struck the infant, Plaintiff's decedent, Ronald Leland Bickley, as he was leaving from the side of the road to which he had been wrongfully, unlawfully and negligently discharged by the Defendant, Lila Farmer, acting as

aforesaid, knocking the child a great distance after it was struck, causing the said infant, Plaintiff's decedent, such serious injuries that the said infant, Plaintiff's decedent, was instantly killed, all of which was a result of the said unlawful, wrongful and negligent acts of the said Defendants, James Kenneth Perkins and Lila Farmer, while acting as aforesaid, for which, each of said Defendants, jointly and severally, are liable to the Plaintiff.

9. The Plaintiff's decedent was survived by his father, Eugene Bickley; his mother, Ruth Bickley; his sister, Debra Bickley, and his twin brother, Donald C. Bickley, age 7, who was, also, seriously injured in said accident.

10. As a result of said injuries, and in endeavoring to save the life of the Plaintiff's decedent, medical expenses were incurred by the Plaintiff, in the amount of approximately $500.00, and as a result of the death of Plaintiff's decedent, funeral expenses were incurred in the amount of $1,463.90, and further, as a result of the death, the Plaintiff sustained damages for solace in the amount of $25,000.00, and the dependents of Plaintiff's decedent sustained financial or pecuniary loss in the amount of $50,000.00.

WHEREFORE, the Plaintiff demands judgment against the Defendants, jointly and severally, in the sum of Seventy-Seven Thousand Dollars ($77,000.00), plus interest and her costs in this behalf expended.

RUTH BICKLEY, ADMINISTRATRIX OF THE ESTATE OF RONALD LELAND BICKLEY, DECEASED.

By: _____
Her Counsel

W. W. Whitlock, p.q.

Mineral, Virginia 23117

GROUNDS OF DEFENSE OF LILA FARMER AND LOUISA COUNTY SCHOOL BOARD
(Filed 2/26/72)

Comes now the defendants, Lila Farmer and Louisa County School Board (County School Board of Louisa County), by Counsel, and for their Grounds of Defense to the Motion for Judgment, filed in the above action, say:

(1) They do not know whether the facts alleged in Item (1) exist or not.

(2) It is admitted that plaintiff's decedent attempted to board the school bus operated by the defendant, Lila Farmer, for the defendant Louisa County School Board, but that such attempt to board the bus was in error on the part of the plaintiff's decedent. When this was determined, the defendant, Lila Farmer informed the plaintiff's decedent that he was on the wrong bus and that he should wait at the bus pick-up on the north side of the road, a place of safety, for the next bus.

(3) That the allegations of negligence alleged in Item (3) are denied. It is alleged that the defendant, Lila Farmer, did maintain a proper lookout and gave all proper warnings and signals.

(4) The allegations of negligence alleged in Item (4) are denied. It is denied that the defendant, Lila Farmer, knew that plaintiff's decedent would not remain on the north side of the road and would cross the road to the south side. It is denied that the nearest place of shelter was on the south side of the road.

(5) All acts of negligence alleged in Item (5) are denied. The defendant, Lila Farmer, did keep a proper lookout and gave all proper signals. It was not necessary to put out a flagman because the children were on the north side of the road, the right-hand side of the bus, and it was not necessary to cross the highway to either board the bus or leave the bus. The children were being picked up to go to school and were not returning home.

(6) The allegations of Item (6) are admitted, except that plaintiff's decedent had been discharged from this bus. Plaintiff's decedent was not discharged from the bus because he never became a passenger on the bus.

(7) The allegations of Item (7) are admitted. It is alleged that if the death of plaintiff's decedent was caused by negligence of anyone, it was the defendant, James Kenneth Perkins.

(8) The allegations of negligence as to these defendants in Item (8) are denied.

(9) It is not known whether the facts alleged in Item (9) exist or not.

(10) The damages claimed in Item (10) are unreasonable, excessive, and unlawful.

(11) All acts of negligence on the part of these defendants are denied.

(12) It is alleged that these defendants are not indebted to the plaintiff in any amount.

(13) The accident was unavoidable insofar as these defendants are concerned.

(14) The accident was caused by the negligence of persons other than these defendants.

(15) The death of the plaintiff's decedent was caused by the negligence of the decedent.

(16) The correct corporate name of the Louisa County School Board is County School Board of Louisa County.

LILA FARMER, AND LOUISA
COUNTY SCHOOL BOARD

By Counsel

s/ Robert E. Taylor
Robert E. Taylor, Taylor Michie & Callaghan
Counsel
601 E. Market Street
Charlottesville, Virginia

GROUNDS OF DEFENSE OF JAMES KENNETH PERKINS AND JAMES KENNETH PERKINS AND W. D. PERKINS TRADING AS W. D. PERKINS & SON.

(Filed 3/3/72)

1. These defendants have no knowledge of the allegations of paragraph numbered 1. of the Motion for Judgment and call for strict proof of same.

2. These defendants have no knowledge of the allegations of paragraph numbered 2. of the Motion for Judgment.

3. These defendants admit the allegations of paragraph numbered 3. of the Motion for Judgment.

4. These defendants admit the allegations of paragraph numbered 4. of the Motion for Judgment, except that these defendants would deny that plaintiff's decedent was required to cross the road.

5. These defendants admit the allegations of paragraph numbered 5. of the Motion for Judgment.

6. These defendants admit that James Kenneth Perkins was operating a 1969 GMC Pickup Truck in an easterly direction on Route 250, and that the said vehicle was owned by W. D. Perkins and Son, a partnership, and that he was then acting as an agent of the partnership, but these defendants deny all other allegations of paragraph numbered 6. of the Motion for Judgment.

7. These defendants deny the allegations of paragraph numbered 7. of the Motion for Judgment.

8. These defendants deny all allegations relating to them in paragraph numbered 8. of the Motion for Judgment and admit the allegations charged against the co-defendants and admit that the plaintiff's decedent collided with these defendants' vehicle.

9. These defendants have no knowledge of the allegations in paragraph numbered 9. of the Motion for Judgment and call for strict proof of same.

10. These defendants have no knowledge of the allegations of paragraph numbered 10. of the Motion for Judgment and call for strict proof of same.

11. These defendants deny that they are obligated to the plaintiff in any manner or in any amount.

12. These defendants allege and charge that the plaintiff's decedent was guilty of negligence which was the sole proximate cause of the collision and plaintiff's decedent death.

13. In the alternative, these defendants allege and charge that the co-defendants were guilty of negligence which was the sole proximate cause of the plaintiff's decedent death.

14. In the further alternative, these defendants allege and charge that plaintiff's decedent death was caused by the concurring negligence of plaintiff's decedent and the co-defendants.

15. Without admitting any negligence, but specifically denying same, these defendants allege and charge the plaintiff's decedent was guilty of negligence which sufficiently contributed the

cause of plaintiff's decedent's death.

16. In the further alternative, these defendants state that insofar as they are concerned plaintiff's injuries and death were brought about by an unavoidable accident without fault on the part of these defendants.

TRIAL BY JURY IS DEMANDED.

James Kenneth Perkins,
James Kenneth Perkins & W. D. Perkins
Trading As W. D. Perkins & Son

By Counsel

s/ J. Calvitt Clarke, Jr.
J. Calvitt Clarke, Jr.
Sands, Anderson, Marks & Clarke
1420 Fidelity Building
Ninth and Main Streets
Richmond, Virginia 23219

PLAINTIFF'S INTERROGATORY #7
(Filed 3/21/72)

7. If you allege that any other party was guilty of negligence which caused or contributed to this accident, state the facts relied upon to establish this, giving complete details.

ANSWER TO INTERROGATORY #7 BY
DEFENDANT, JAMES K. PERKINS
(Filed 5/2/72)

7. The school bus driver did not exercise reasonable care or observe her statutory duties in respect to the deceased.

ANSWER TO INTERROGATORY #7 BY
DEFENDANT, LILA FARMER
(Filed 5/2/72)

(7) If any person is guilty of negligence it was the defendant James Kenneth Perkins who was operating the vehicle that struck and killed Ronald Leland Bickley. This defendant was not an eyewitness and does not know the facts of the accident of her own knowledge.

INSTRUCTION #14 (Granted) HHP
(Filed 6/15/73)

The Court instructs the jury that if from the evidence and other instructions of the Court you find your verdict in favor of the plaintiff, you may award damages with reference to the following:

1. Such sum as to you may seem fair and just, not to exceed $25,000.00, by way of solace for sorrow, suffering and mental anguish occasioned by the death of the decedent, Ronald Leland Bickley, to be divided among each of the following persons:

Edward Eugene Bickley, father

Ruth Blair Bickley, mother

Deborah Bickley, sister

Donald C. Bickley, brother

2. The funeral expenses of the decedent, Ronald Leland Bickley, not to exceed $500.00, and any actual medical or ambulance service expenses incurred by, or on behalf of the decedent, because of the accident.

INSTRUCTION #18 (Granted) HHP
(Filed 6/15/73)

THE Court instructs the Jury that Virginia law recognized that some accidents are unavoidable in that they would have occurred despite the exercise of reasonable care by the operator of the motor vehicle. If you believe from the evidence in this case that the accident was unavoidable as to the defendants, and was not caused by negligence on their part, then you should find your verdict for the said defendants.

INSTRUCTION #22 (Granted) HHP
(Filed 6/15/73)

The Court instructs the jury that a person seeking to recover for the death of another must himself or herself be free of negligence which proximately caused or contributed to cause the death.

The Court further instructs the jury that Mr. and Mrs. Bickley each had a duty to exercise ordinary care for the safety of Ronald Leland Bickley. If you believe from the evidence that either Mr. or Mrs. Bickley were guilty of negligence which was the sole proximate cause or efficiently contributed to cause the accident resulting in Ronald's death, then the one, or both, so causing are not entitled to recover from any defendant in this action, but this would not bar the other statutory beneficiaries from recovering.

INSTRUCTION #23 (Granted) HHP
(Filed 6/15/73)

If you believe from the evidence that the defendant, James Kenneth Perkins, did not see, and by the exercise of ordinary care could not have seen, Ronald Leland Bickley, in close proximity to the street, and that Ronald Leland Bickley, suddenly entered the street from behind an obstruction into the path of the defendant's oncoming vehicle and so closely thereto that the defendant, James Kenneth Perkins, had no reasonable opportunity to avoid striking Roland Leland Bickley, after seeing him, and that the defendant, James Kenneth Perkins, was otherwise exercising ordinary care, then you shall return your verdict in favor of the defendants, James Kenneth Perkins and W. D. Perkins and Sons.

INSTRUCTION #1C (Refused) HHP
(Filed 6/15/73)

THE COURT INSTRUCTS THE JURY that the mere presence of a school bus upon the highway in the act of loading or unloading children is sufficient to charge the operator of an approaching vehicle who saw or by the exercise of reasonable care could have seen such school bus so loading or unloading children with knowledge that children may run across the highway in front of his vehicle.

(After proofreading the Appendix, page 17 was eliminated.)

INSTRUCTION #9A (Refused) HHP
(Filed 6/15/73)

The Court instructs the jury that a highway is defined as the entire width between the boundary lines of every way or place of whatever nature open to the use of the public for purposes of vehicular travel in this State, and that a shoulder is that part of a highway between the portion regularly travelled by vehicular traffic and the lateral curb line or ditch.

JUDGMENT APPEALED FROM (ORDER)
(Filed 7/19/73)

On June 14, 1973 came the plaintiff in person and by counsel and the defendants in person and by counsel.

And thereupon came a jury, James Nester, Willard T. Carter, James T. Bibb, E. H. Nininger, Edna Cameron, William E. Scruggs and Edgar Ray Loy, who were sworn well and truly to try the issue joined in this case; and the trial of the case commenced and at the conclusion of the plaintiff's evidence all defendants, by their respective counsel, moved the court to strike the plaintiff's evidence as to each defendant and to enter summary judgment for each defendant, all of which motions the court overruled, to which action of the court each defendant objected and excepted; and thereupon the trial proceeded and at the conclusion of all of the evidence all defendants, by their respective counsel, moved the court to strike the plaintiff's evidence as to each defendant and to enter summary judgment for each defendant, all of which motions the court overruled, to which action of the court each defendant objected and excepted; and the trial of the case being not completed on June 14, 1973, the matter was adjourned to June 15, 1973, at which date came the same jury and the trial resumed, and at the conclusion of the evidence the court did thereupon instruct the jury as to the law and the jury heard argument of counsel and thereupon the jury retired to the jury room to consider of its verdict and after some time returned to the court-

room and delivered its verdict as follows:

> "We, the jury, on the issues joined, find for the plaintiff against the defendant, Lila Farmer and Louisa County School Board, and find for the defendant, James Kenneth Perkins and James Kenneth Perkins and W. D. Perkins, trading as W. D. Perkins & Son.
>
> "We assess damages at ($2500.00) Two Thousand Five Hundred Dollars. We direct that the damage be apportioned as follows:
>
> "Funeral expenses for Ronald Leland Bickley -$ 500.00
> (Sister) Deborah Bickley - 1000.00
> (Brother) Donald C. Bickley - 1000.00
>
> Edgar Ray Loy, Foreman
> 6/15/73"

After the court received and read the verdict, the plaintiff, by counsel, moved the court to poll the jury, whereupon the Clerk called each juror by name and the court asked each juror if that was his verdict to which question each juror answered in the affirmative.

Thereupon the plaintiff moved the court to set aside the verdict on the ground that the verdict was inadequate, that the verdict allowed no recovery to the decedent's mother or father, that the amount allowed the decedent's brother and sister was inadequate, that the court improperly instructed the jury and that the verdict was contrary to the law and the evidence and without evidence to support it, and all other grounds and objections preserved and saved by the Plaintiff during the course of the trial; and the court did over-

rule said motion and entered judgment on the verdict, to which action of the court the plaintiff objected and excepted.

It is therefore considered of the court that the plaintiff recover of the defendants, Lila Farmer and Louisa County School Board, the sum of Twenty Five Hundred ($2500.00) Dollars plus her reasonable costs herein expended plus interest from June 15, 1973 until paid and it is further considered of the Court that the plaintiff take nothing of the defendants James Kenneth Perkins, and James Kenneth Perkins & W. D. Perkins, a partnership trading as W. D. Perkins & Son recover from the plaintiff their reasonable costs herein expended.

And it is further Ordered by the court that the administrator pay the sum of Five Hundred ($500.00) Dollars, after deduction of attorney's fees of 33 1/3 per cent thereof as counsel fees to Edward E. Bickley to reimburse him for funeral expenses incurred on behalf of the decedent and that the administrator pay to Edward E. Bickley and Ruth Bickley, parents and natural guardians of Deborah Bickley the sum of One Thousand ($1,000.00) Dollars less attorney's fees of 33 1/3 per cent of said sum who shall expend the said balance of Six Hundred Sixty-Six and 66/100 ($666.66) Dollars for the education, maintenance and support of Deborah Bickley and the administrator pay to Edward E. Bickley and Ruth Bickley, parents and natural guardians of Donald C. Bickley the sum of One Thousand ($1000.00) Dollars less attorney's fees of 33 1/3

per cent of said sum who shall expend the said balance of Six Hundred Sixty-Six and 66/100 ($666.66) Dollars for the education, maintenance and support of Donald C. Bickley.

And the plaintiff having indicated an intention to apply to the Supreme Court of Virginia for a writ of error, it is ORDERED that the execution of this judgment be, and it hereby is, suspended for such time allowed for presentation of petition for a writ of error and if the writ of error is granted, thereafter until the case is decided by the Supreme Court of Virginia, conditioned on the plaintiff giving bond with surety satisfactory to the Clerk in accordance with Sect. 8-477 of the Code of Virginia.

It is the further ORDER of this Court that pursuant to Rule 5:9 that the transcript of the trial become a part of the record when the transcript is filed in the office of the Clerk within 60 days after entry of this Order.

Enter: s/ Harold H. Purcell
Judge

Date: 7-19-73

Seen:

s/ J. Calvitt Clarke, Jr.
Counsel for James Kenneth Perkins,
and James Kenneth Perkins and W. D.
Perkins, a partnership trading as
W. D. Perkins & Son

s/ Robert E. Taylor
Counsel for Lila Farmer and Louisa
County School Board

Seen and objected to:

s/ S. Page Higginbotham
Counsel for Plaintiff

NOTICE OF APPEAL AND ASSIGNMENTS OF ERROR
(Filed 8/14/73)

Notice is hereby given pursuant to Rule 5:6 of the Supreme Court of Virginia that the Plaintiff, Ruth Bickley, Administratrix of the Estate of Ronald L. Bickley, deceased, appeals the final judgment entered in this action on July 19, 1973, and will apply to the Supreme Court of Virginia for a Writ of Error and Supersedeas.

The following errors are assigned:

1. The verdict as to the Defendants James K. Perkins and James K. Perkins and W. D. Perkins, T/A W. D. Perkins & Son, is contrary to the law and the evidence and without evidence to support it and is plainly wrong and the Court erred in not setting the judgment aside and granting a new trial on the sole issue as to Perkins, et al, and on damages as to Farmer, et al.

2. The verdict is contrary to the law and the evidence and without evidence to support it and is plainly wrong as to the Defendants Lila Farmer and the Louisa County School Board; it is grossly inadequate as to Deborah Bickley and Donald C. Bickley, sister and brother of the deceased, and erroneous in that it allowed nothing to Ruth Bickley and Eugene Bickley, mother and father of the deceased, and the Court erred in sustaining the verdict as to damages and in not granting a new trial on the sole issue of damages.

3. The Court erred in refusing to grant Instruction 1A

(#1 as offered by the Plaintiff). This instruction correctly states the law as to the duty of a driver approaching a school bus taking on or discharging passengers.

4. The Court erred in refusing to grant Instruction 1B (#3 as offered by the Plaintiff). This instruction sets forth the statutory duty imposed upon a driver approaching a school bus.

5. The Court erred in refusing to grant Instruction 1C (#5 as offered by the Plaintiff). This instruction is a correct statement of the law as to the knowledge imparted to the operator of a vehicle upon seeing a school bus loading or discharging children, and his duties in relation thereto.

6. The Court erred in refusing to grant Instruction 9A defining the word, "highway". The definition is taken from the statute. The evidence in Plaintiff's theory of the case required a correct statement of the law as to the meaning of the word, "Highway".

7. The Court erred in granting Instruction 18. This is not a case of unavoidable accident.

8. The Court erred in granting Instruction 22. There was no evidence that Ruth Bickley or Eugene Bickley, mother and father of the deceased, were guilty of negligence nor was their negligence pleaded, nor was it supported by the evidence and it was contrary to the position taken by the Defendants in their Interrogatories. The pleading and evidence do not support this instruction.

9. The Court erred in granting Instruction 23. This instruction conflicts with other instructions; it ignores the duty to stop for a school bus; it is not supported by the evidence; it is a finding instruction; it does not contain all elements necessary for a Defendant's verdict; it is argumentative, confusing, misleading, and emphasizes a part of the evidence; and invades the province of the jury by containing factual evidence of the Defendants.

10. The Court erred when it prohibited counsel for the Plaintiff from conferring or in any way communicating with W. W. Whitlock, Esq., former counsel for the Plaintiff, during the course of the trial. This action of the Court was prejudicial to the Plaintiff and prevented her from properly presenting her case.

11. The Court erred in allowing Trooper J. W. Chaney to testify concerning brakes and skid marks as set forth on Pages 91 and 92 of the transcript.

A transcript of the testimony and other incidents of the case has been filed with the Clerk of the CircuitCourt of Louisa County, pursuant to the Order of this Court.

EXCERPTS FROM TRANSCRIPT OF TRIAL PROCEEDINGS
(Filed 8/7/73)

Lila Farmer, Defendant, called as an adverse witness:

(T 30) * * *

Q. Now, you were driving the bus on this occasion, were you not? A. Yes. I was.

Q. And before you had been driving the bus what, about six weeks? A. Yes, sir.

Q. And before you undertook to drive the bus, you received certain instructions, did you not? A. Yes, I did.

Q. And you received a manual; did you not, from the School Board? A. Yes, I did.

Q. As to how you should drive the bus and how you should let children on and off the Bus? A. Yes, sir.

Q. Now, it was raining on that morning in question; was it not? A. Yes.

* * *

Q. Are you familiar with that area there near the Bickley home? A. Yes, I am.

Q. And you can see a long ways both east and west from the Bickley home; can't you? A. Yes. sir.

Q. And you were driving towards Ferncliff; were you not? A. Yes.

Q. And as you came down the road you turned your lights on; is that right? A. Yes, sir.

Q. And the Bickley children and the other children crossed the road ahead of you; isn't that right? A. Yes, sir.

Q. Do you remember? A. Yes, I remember.

* * *

(T 33)

Q. Now, the three Bickley children got on the bus; did they not? A. Yes, sir.

Q. Now, you had been told, and you had read in the manual that when children get on and off the bus that you are supposed to stay there until they clear the road; isn't that right? A. No. I was not told that.

Q. You haven't been told that? A. I was told that if a child is standing on the opposite direction in which I am coming, I am to flag them on and flag them off.

Q. Yes. Well, now you say the Bickley children come from their home; you saw them come from that house; didn't you? A. No, I didn't.

Q. Well, did you see them as you came down the road? A. When I saw them, they were standing on the right-hand side of the road.

Q. Well, were you watching? A. Yes, sir.

Q. And you didn't see them cross the road in front of you? A. No, I did not.

Q. Now, you told the three Bickley children to get off the bus; didn't you? A. Yes, I did.

Q. And you could see the Bickley home right across the street from these children; couldn't you? A. Yes, sir.

Q. And you knew it was raining? A. Yes, sir.

Q. Did you inquire of the Bickley children where they lived? A. No, I did not.

Q. Did you put out a flagman to help the children across the road? A. No, I didn't.

Q. You have had instructions on how a flagman should operate; haven't you? A. Yes, sir.

Q. And a flagman is supposed to go to the front of the bus; isn't he? A. Yes, sir.

Q. And he's supposed to go about ten feet in front of the bus; isn't he? A. Yes, sir.

Q. And then what is he supposed next to do? A. He's supposed to hold the flag for a student until he crosses the road.

Q. Crosses the road. That wasn't done in this case; was it? A. No, it wasn't.

Q. Then when you pulled off in your bus, you knew that these children had not cleared -- were still on the highway? A. Yes, sir.

Q. And you never saw the Perkins vehicle; did you? A. Well, I can't say that I did see it, because it's like any other automobile going down the road that morning. I don't remember.

Q. Well, you mean with children there on the side of the road you wouldn't have noticed a vehicle coming in the opposite direction? A. I would have known if he was standing still.

Q. I see. Well, had you been letting the children off the school bus then, ordinarily you would put a flagman out; is that right? A. Yes, sir.

Q. But you didn't think that where these children were getting off the wrong bus that it was necessary? A. I didn't think it was necessary, because I didn't know they lived on the other side of the road.

Q. Well, there was no house on the side of the road that they were standing? A. There is a house on the other side.

Q. But the closest house is on the other side of the road; isn't it? A. Well, sir, I think that that's a matter of opinion.

Q. A matter of opinion.

Now, you had trouble when you started off in the bus; didn't you? You scraped your gears? A. Not as I remember.

Q. How far had you gotten when these children were struck? A. Well, sir, I don't know, because I didn't know they were struck until later that day.

Q. Well, did it ever occur to you that the children might live on the other side of the road; they might run across the road; and therefore you should use the flagman? A. No, it didn't.

Q. You didn't even think about that? A. No, I did not.

Q. Well, had you known the children lived -- were going to cross the road, would you have put out a flagman? A. If I had of known.

Q. Well, why didn't you inquire? A. Well, sir, I didn't think that was my policy. My policy was to inquire and determine that they were not to catch my bus, that they were to catch the next one.

Q. Well, you were taught that you have a responsibility to all school children that get on your bus; weren't you? A. No.

Q. To look out for them? A. I don't understand what you mean.

Q. And you tell this jury that you never saw the Perkins vehicle? A. I am not telling the jury that I never saw the Perkins vehicle. I am telling them that I don't remember it.

Q. Well, had you seen the Perkins vehicle, would you have put out a flag? A. When?

Q. To stop it, so it wouldn't hit the children. A. Not if I asked the children to wait on the side of the road for the next bus, no, I wouldn't have.

Q. Did you tell them to wait on the side of the road? A. I asked them to wait for the next bus.

Q. But you didn't tell them to wait on the side of the road; did you? A. Yes, I did.

Q. You told them they were on the wrong bus; didn't you? A. Yes, I did.

Q. Well, the next bus actually came from the west; didn't it, their bus? A. I don't know which way that bus came.

Q. Well, if you didn't know it was coming from the east, whether it was coming from the east or west, then you didn't know whether they had to cross the street or not; did you? A. To my knowledge at that time, to my understanding, the bus was supposed to be coming in the same direction that I came.

Q. Well, did you know when the bus was going to come? A. No, I didn't.

Q. You didn't know whether it was going to be a half hour? A. Well, I knew it had to be in a matter of a few minutes, because we all had schedules to go by.

Q. But you didn't know when it was going to come? A. The exact time, no.

Q. Well, did you expect the children to stand out in the rain? A. Yes, I did.

Q. Stand out in the rain. Well, now, according to the training that you received, do you leave your blinking light on until all children have cleared the highway? A. Under what circumstances?

Q. Well, when you are letting children off the bus. A. I leave them on until I usually change to second gear. Then I cut them off.

Q. But you don't start your bus to moving until all children clear the highway; do you? A. No, I don't.

* * *

Cross-examination by Mr. Clarke:

(T 40)

* * *

Q. And what sort of training did you have in your -- for driving a school bus? Did you go to classes? A. Well, yes, I did.

Q. What did they tell you in the classes about who was responsible for the safety of children? A. The bus driver is responsible for the children from the time she picks them up in the morning until the time she leaves them in the afternoon.

Q. Well, they tell you it's your primary responsibility to watch out for the children when the children are out there to catch the school bus; isn't that right? A. It's my primary responsibility to watch all the children. They are my responsibility while they are on the school bus, not while they are off.

Q. Well, isn't it a fact, though, that as Mr. Higginbotham was asking you, that you have regulations about how to handle them getting off and that you are not supposed to pull off until they are all clear of the highway and you are supposed to use a flagman to get them across the road, and things like that? A. Well, then I misunderstood your question.

Q. Well, what I am saying is they taught you that it's the school bus driver's responsibility to take care of the children not only while they are physically on the bus itself, but also when

they are on the side of the road or getting across the road, and things like that, insofar as you can; isn't that right? A. Yes, sir.

* * *

Further cross-examination by Mr. Clarke:

(T 44)

Q. I want to get it clear what you are saying now. Did you say that when you pulled off, you turned your lights off? A. After I started off.

Q. Well, does that mean when forward motion of your bus started? A. Yes, sir.

* * *

Q. Did all three of the Bickley children get on the bus, on your bus? A. I think so.

Q. And so you told all three of them that they had to get off and wait for another bus? A. I told one little boy to get off, and the others followed.

Q. Did you find out later that the other bus, the grade school bus did not come up behind you, or wasn't going in the same direction that you were? A. No, I didn't.

Q. Do you know to this day whether it did? A. No, sir.

* * *

Q. Did you tell the children to stay on the side of the road, or didn't you? A. Yes, I did.

Q. So that the children knew from you that they weren't to cross the road? A. Yes. sir.

* * *

Redirect examination by Mr. Higginbotham:

(T 45) Q. This is the book that you studied, regulations governing transportation? A. Yes.

Q. Well, did you have a teacher? A. Yes, I did.

Q. Well, did your teacher advise you of this: "When

taking on or discharging pupils along the highway, a stop shall be made in the right-hand lane and shall be made only at designated points when the bus can be clearly seen from safe distances from both direction."

Were you told that? A. Yes.

Q. "The driver shall keep the school bus warning lights in operation to warn approaching traffic to stop and allow pupils who must cross the highway to do so in safety."

Were you told that? A. Yes, sir.

Q. "Pupils who must cross the road shall be required to cross in front of the bus."

Were you told that? A. Yes, sir.

Q. Well, now, these children -- did you see these children start towards the front of the bus? A. No, I didn't.

Q. Did you look to see what happened to them? A. When I looked at them, they were standing on the side of the road.

Q. Then were you told that they shall be required to walk to a point ten feet in front of the bus, stop before leaving, and await a signal from the bus driver to start across? A. Yes, sir.

Q. You were taught that? A. Yes.

Q. Now, you were also taught the duties of a safety patrolman; is that right? A. Yes, sir.

Q. And you had a safety patrolman on this bus; did you not? A. Yes, sir.

Q. And he was on the bus at the time that you saw him? A. Yes, sir.

Q. And you were taught that when pupils are being discharged from the bus, the safety patrolman shall lead the way to a point ten to fifteen feet in front of the bus, directly in front of the left-front wheel of the bus.

You were taught that; weren't you? A. Yes, sir.

Q. And that the safety patrolman shall hold a red flag across the center of the roadway, and the pupils shall stay behind him.

You were taught that; weren't you? A. Yes, sir.

Q. Upon signal from the driver, the pupils shall cross, the patrolman shall return to the bus.

Is that right? You were taught that? A. Yes.

Q. And you never asked the patrolman to get off the bus and look after these children? A. No, sir.

Q. And how old is this patrolman? A. Thirteen or fourteen.

Q. He was one of the larger boys on the bus? A. Yes, he was.

* * *

Recross-Examination by Mr. Taylor:

(T 49) * * *

Q. Looking east from the point of the accident towards the way you were coming from, is there a dip in the road? A. Yes, there is.

Q. Would that prevent you from seeing down the road when a vehicle is in the dip? A. Yes, sir.

Q. Now, did you see the group of children cross the road from what is the south side to the north side where they were standing? A. No, I did not.

Q. Did you know the Bickley children? A. No, I don't.

Q. Did you know where the Bickley home was located? A. No. As far as I knew, I didn't think anybody lived in that house. At least, I didn't know anybody lived in that home until after the accident.

* * *

Q. Now, when you saw these -- were these children on your right-hand side or left-hand side as you were proceeding? A. On my right side.

Q. Were they standing on the shoulder or in the highway? A. They were standing on the shoulder.

Q. Do you know the width of the shoulder at that point? The north shoulder? A. No, I don't.

Q. You put on your blinker lights and came to a stop; is that correct? A. Yes, sir.

Q. How do you put on your lights without opening the door? A. Well, it's a little catch so that when you pull the door

open, unless you push that catch down a little bit, the lights come on.

Q. You do that with the same handle that you open the door? A. Yes, sir.

Q. And how do you open the door? A. You just pull it open.

Q. Pushing the handle further? A. Yes, sir.

Q. That would be away from you, the driver; would it not? A. Yes, It's on my right.

Q. And when you close the door, can you close it without turning off the lights? A. Yes, you can.

Q. But when you pull the lever completely towards the driver's seat, does that both close the door and turn off the light? A. You pull it completely towards the glass, all the way off.

Q. Now, where were you -- well, first, what grade children were you supposed to pick up on this day? A. I was supposed to pick up from the sixth to the twelfth.

Q. Sixth through twelfth grades? A. Yes, sir.

Q. Is that what they call intermediate and high school children? A. Yes, sir.

Q. Were you supposed to pick up any elementary school children? A. No, I am not.

Q. Does your bus go to the elementary school? A. No, it does not.

Q. Where did it go? Where did it go? A. It went to A. P. Richardson, to the intermediate school.

Q. Was that the end of your route? A. Yes, it is.

Q. Now, how did you know that these children -- the Bickley children I am referring to -- were not supposed to be on your bus? A. Well, I knew immediately when they got on between the other children that they were too small to be in the sixth grade.

Q. Do you recall whether you asked them what grade they were in or not? A. Yes, I did.

Q. And what did they say? A. I think one of them told me they were in the second grade.

Q. That was one of the little boys? A. Yes, sir.

Q. Did they ever get on the bus and take seats? A. Not to my knowledge, they did not take a seat.

Q. Where did you stop them? Where were they when you stopped them? A. Right beside of me.

Q. Right beside the driver's seat? A. Yes, sir.

Q. Now, let me see the book you were using.
Now, Mr. Higgenbotham was asking you about a patrolman, and under recommended practices, starting on page 8 of the manual, and also the same as in the state law, the use of safety patrolmen is defined at bus stops, and doesn't that refer if pupils must cross the road? A. Yes, sir.

Q. So that putting a patrolman out, or flagman -- whatever you want to call him -- or both, only applies when children are required to cross the road either to get on the bus or to get off the bus; is that correct? A. Yes.

* * *

Q. When you last saw the two children that did not get on the bus, where were they? A. They were standing on the shoulder of the road.

Q. On the same side that they were when they got on the bus? A. On the right side.

Q. Did you know that they were going to run across the road? A. No, I didn't.

Q. When did you first -- when were you first informed, first knew, that the Bickley child, children, had been in an accident? A. Approximately 12:00 that day.

Q. Where were you when you were informed of that? A. In the principal's office at school.

* * *

Recross examination by Mr. Clarke:

(T 55)

Q. This flagman thing, this was the first day of school; was it not, Mrs. Farmer? A. Yes, it was.

Q. And you would not know whether the child was to cross the road or not, because it was the first day of school, unless you asked them; isn't that correct? A. Yes, sir.

* * *

James Kenneth Perkins, Defendant, called as an adverse witness:

(T 56)

* * *

Q. And what is your age? A. Thirty-eight years.

Q. And you were familiar with the Bickleys? A. I knew Mr. Bickley very well. I did not know his wife too well at the time of the accident.

Q. You knew the little boy that had got killed? A. I had seen the children now, thinking about it, once or twice in the local store.

Q. Very small? A. Yes.

Q. They were very small? A. At the time I had seen them, they were very small.

Q. Now, you were traveling west -- excuse me -- east on 250; were you not? A. Yes, sir.

Q. And you had left the store there at Ferncliff? A. Yes, sir.

* * *

Q. And you were by yourself? A. Yes, sir.

Q. And you were in a pickup truck? A. Yes, sir.

Q. And when you left the store, would you tell the jury that the bus was already stopped? A. Yes, sir, it was, before I walked to my truck. A friend of mine and myself were standing talking on the porch of the store under the eaves on the roof, because it was raining; and we saw the bus parked and made a remark about

the lights being on.

I believe he told me that it was the first day of school for Louisa. Being from Fluvanna, I wasn't familiar.

Q. And you say it was raining? A. Yes, it was raining some.

Q. Now, as you went down the road, did you have your windshield wipers on? A. Yes, sir.

Q. And you saw this bus on the side of the road? A. Yes, sir. I had been watching it before I went to the truck.

Q. You saw the lights blinking? A. Yes, sir. Both of them.

Q. And when you got up close to the bus, what happened? A. I was watching the lights. They went out. The bus was in motion, slow motion, and it kept on going, and I had started to slow down before the lights went out. After they went out and the bus was in motion, I proceeded on.

Q. Now, Mr. Perkins, there is a good sight distance there; is there not? A. Yes, sir.

Q. And you were able to see on the right-hand side of the bus? A. No, sir.

Q. Well, you were up the road a quarter to a half a mile away; weren't you? A. To start with, yes, sir.

Q. And as you went down the road, the bus was in front of you on a long, straight stretch? A. Yes, sir.

Q. And you could see the other side of the bus as the door opened and closed? A. I could not see the door of the bus. It was close to this bank. Right along the bank was a used car lot.

Q. Well, if these children ran towards the front of the bus, if you had been watching, you could have seen them; couldn't you? A. No, sir.

Q. And if they had run towards the back of the bus, you would also have seen them? A. No, sir.

Q. The bus is high off the ground; isn't it? A. Yes, sir.

Q. And you could see feet under the bus; can't you? A. Not when you are traveling away from it.

Q. How about when you are traveling towards it? A. Well, when you are travling towards it, the bus is sitting here and you are sitting up looking down, I would say. I would say the bus was not over twelve inches off the ground, I wouldn't think. I wouldn't think you could see it.

Q. Mr. Perkins, you say you have been a patrolman? A. Yes, sir. I served for five years in one capacity or another in Fluvanna County high schools.

Q. And you knew that once the school bus lights went on, that everybody was supposed to stop at that point until the school bus left and the children cleared the road? A. Yes, sir.

* * *

Q. Did you see the Bickley family standing on the right-hand side of the road? A. No, sir.

Q. You didn't see Mrs. Bickley standing out there? Q. I wasn't watching close, no, sir.

Q. How far, Mr. Perkins, would you say that the bus had moved before you struck the child? A. That would be hard for me to estimate it.

Q. Estimate it the best you can, sir. A. I would say I was nearing the front of the bus, close to it, at the time I saw the oldest girl near the center of the road.

Q. You were approaching the front of the bus? A. Yes, sir.

Q. At that point, how far had the bus moved? A. I could not say. Maybe several bus lengths, or one, at least, probably.

Q. You mean you had the -- you mean, the bus had moved far enough for you to -- the bus is how long? A. I imagine around forty feet. I don't know.

Q. Well, would you tell this jury then that the children didn't run out from behind the bus? A. They did run out from behind the bus.

* * *

Q. Did the children run out from behind the bus? A. Yes, sir.

Q. At the time they ran from behind the bus, the bus had moved how far? A. I cannot give you an accurate estimate, but I was watching the bus, and after it cut the lights out, started in motion, I looked ahead. The road was clear.

Q. Now, you say the little girl got across the road? A. Yes, sir. She apparently did. I didn't hit her.

Q. Now, you hit both of the boys? A. Yes, sir.

Q. How much skid marks did you leave? A. I do not know. I did not check. I tried to assist the family and leave the truck where it was parked after the accident until the trooper arrived and he investigated.

Q. You don't know anything about your skid marks? A. No, sir. No, sir. The road was wet. I don't know if there were any.

Q. And at the time of the impact, it was raining? A. Yes, sir.

Q. What part of your truck struck Ronnie? A. My left front fender struck him. At least, he struck it. He was looking straight in the windshield at me at the time he hit the fender, and I saw him when he hit the road backwards and bounced onto the side of the road.

Q. Which part of your truck struck Donnie? A. He caught about 8 to 10 inches of the right-hand front fender and bumper.

Q. And he rolled, didn't he? A. I could not even see him at the time he hit, but the marks on the truck clearly showed it due to the fact that it had light colored red mud on it, which had been softened by the rain everywhere after anything had touched it, which you could plainly see.

Q. What was Mrs. Farmer doing as she pulled away? A. I don't know.

Q. Did you see her? A. I saw the bus. I didn't see her,

no, sir.

Q. And any other vehicle went by? A. No, sir. I didn't see them until after the accident.

* * *

Cross examination by Mr. Taylor:

(T 65)

Q. Mr. Perkins, did I understand you to say that there were no children in front of the bus as you approached it? A. No, sir. I didn't see any in front of the bus.

Q. When the school bus pulled out from the stopped position and went forward, and the lights went off, was there anything unusual or abnormal about the procedure of the bus in doing those movements? A. I could not tell anything.

Q. It came out in a regular manner? A. That's correct, on that side of the road.

Q. And in its right-hand lane? A. Yes, sir.

Q. Which was the westbound lane? A. Yes, sir. Yes, sir.

* * *

Cross examination by Mr. Clarke:

(T 66) * * *

Q. Now, these -- this bus; was it on the hard surface or on the shoulder as you approached it? A. The bus that was picking up the children?

Q. Yes. A. It was on the -- in his right-hand side lane.

* * *

Q. And did you realize that in the morning is the pick up time for students? A. Certainly.

Q. And you were familiar with the regulations about students getting on the bus and crossing roads to cross in front of the bus? A. Well, I served as lieutenant on the patrol in Fluvanna County School, plus I served as a patrolman. Substitute for two

years and then a regular patrolman for two years.

Q. I said were you aware of the fact that the children who were going to cross the road are required to cross in front of the bus? A. Yes, sir.

Q. And to have a flagman? A. That's right.

Q. All right, sir.

Well, let me ask you this: how much of the westbound lane of 250 did the bus fill up at the time? Did it fill up about the whole lane? A. Approximately, yes. I imagine maybe a foot on each side of it. I don't know how much it filled up. According to the width of the bus.

Q. And you say the oldest Bickley child was on the center line? A. Near the center of the road.

Q. When you first saw them? A. Yes.

* * *

Redirect examination by Mr. Higginbotham:

Q. Mr. Perkins, you stated that you are familiar with the rule that children are supposed to cross in front of the bus? A. Yes, sir.

Q. Are you familiar with the rule that provides that you must stop until all children clear the highway? A. Yes.

* * *

Recross examination by Mr. Clarke:

Q. Mr. Perkins, were there any children in the highway when you approached the bus? A. I never saw a child anywhere until the moment I saw the girl up near the center of the road at the rear of the bus.

Q. And that was after the light had gone off and the bus had moved forward? A. That's right.

Q. You saw no children in the highway while the bus was stopped with the lights? A. No, sir. I even looked before I got to the bus, thinking I would see children coming down the bank from the Vayo house, and I never saw any children board the bus or get off

the bus.

Q. You never saw any in the highway? A. No, sir.

Further redirect examination by Mr. Higginbotham:

Q. On the right-hand side? A. No, sir.

Q. You didn't see anybody? A. No, sir. Nobody but the bus.

* * *

Trooper J. W. Chaney, Plaintiff's witness - direct examination by Mr. Higginbotham:

(T 71) * * *

Q. Trooper Chaney, did you investigate this accident? A. Yes, I did.

Q. What time did you arrive? A. I arrived approximately 7:50 a.m. in the morning.

Q. 7:50 a.m.? A. Yes.

Q. What was the condition of the weather? A. It was raining very hard. I believe it was still raining very hard when I got there.

Q. Trooper Chaney, generally, would you describe the situation with reference to the road there, very briefly? A. The road was wet. It was a slight grade, straight, traffic lanes were marked. It's open country. It's a blacktop surface there. The road is 24 foot wide.

Q. And what is the sight distance in either direction? A. In distance?

Q. Yes. A. I don't know exactly how far, but it -- you can see for a long distance in either direction. You can see from there all the way to Ferncliff's store, which is approximately half a mile, a little better. That's looking west.

Looking east, you can see, I'd say, almost a mile or better.

Q. Now, what marks did you find on the highway when you got there? A. None.

* * *

(T 75)

* * *

Q. Did Mr. Perkins make any statement as to what occurred? A. Yes, sir. Let's see. I questioned Mr. Perkins there at the scene, and he stated to me that he had left the store at Ferncliff, proceeding east on Route 250.

He stated he saw the bus stopped at the Bickley house, at the location, and had slowed -- and that he had slowed down and was prior to coming to a full stop. He stated upon getting closer to the bus, the driver of the bus cut the red lights off and pulled off. When the bus pulled off, he stated he took his foot off the brakes and started to proceed by the bus. As he did, the -- as he met, I believe he stated to me, his front end would have been close to the front end of the school bus --

Q. At what point? A. About this time, the children, when his front end was close to the front end of the school bus, the children ran from behind the bus. He stated he applied his brakes, one of the little girls -- he said the girl made it across, but he struck both of the boys. He stated that he struck Donnie with his right front bumper and Ronnie with his left. He stated both children were struck approximately at the same time.

* * *

Cross examination by Mr. Taylor:

(T 77) * * *

Q. What is the width of the northern shoulder at that point? A. The northern shoulder?

Q. Yes, sir. Where the children were standing. A. It's 10 foot wide.

Q. 10 foot shoulder? A. Yes, sir.

Q. And you said the road was 24 foot wide? A. Yes, sir.

Q. That's the hard surface, you mean? A. That's the hard surface portion.

Q. Now, going up to the scene a little bit more, sir, the

Bickley house is on the south side of the road; is that correct? A. Yes, sir, it is.

Q. Was there a residence on the north side of the road near where these children were standing? A. There's a used car lot there. I don't know if there is a house in there or not. I have never really paid that close attention to it.

* * *

Q. Trooper, I hand you a picture marked Defendants' Exhibit 1, a small picture. Does that show the buildings on the north side of Route 250 at the point of the accident? A. Yes, sir.

Q. And it shows two residences there, I believe; is that correct? A. I am not sure whether they are residences or not.

Q. Two buildings? A. Two buildings.

* * *

THE COURT: Call the next one D-6. It doesn't make any difference what you call them as long as you identify them. A. All right, D-6 is a shot standing in the middle of the road just below the Bickley home looking west on Route 250, looking towards the store.

In fact, you can see the store in the background.

* * *

Cross examination resumed by Mr. Taylor:

(T 85) Q. Does D-6 show buildings and cars on the north side of the road? A. It shows buildings and cars. It shows one building and car, yes.

Q. D-7, what does that show, Sir? A. D-7 is just above the Bickley home looking east on Route 250. You can see the Ferncliff Auto Sales, which would be on the left-hand side of the picture on the north shoulder of the highway.

* * *

Q. Does this show the north shoulder opposite the Bickley home? A. Yes, sir.

Q. D-8, sir, what does that show? A. D-8 was taken --

it would have been just across from the auto sales looking west on 250. The Bickley home would be on the south shoulder, the left side of the picture.

You can also see the store in the background at the end of the highway there.

* * *

Q. East of the point of the accident on Route 250, for a vehicle going west, would it go into, momentarily into, a dip; or where the road is right much lower than the road on either side of it? A. How far east?

Q. About half a mile east, I'd say? A. Yes.

Q. Now, would that obscure the vision momentarily going west of a vehicle? A. Repeat it again. I am trying to think. I am trying to pinpoint exactly where you are talking about. I think I have got the pinpoint of a dip and all.

Q. You say there is a dip in the road approximately a half a mile east of the scene of the accident? A. Yes, sir.

Q. If a car going west went into that dip, would it obscure momentarily the vision heading west? A. Would he be able to see a vehicle west of him?

Q. Yes, anything. Could he see the road west of him? A. Yes. You do momentarily lose vision in that dip.

* * *

Cross examination by Mr. Clarke:

* * *

Q. And has it been your experience during that eight and a half years that when the highway is wet that you don't find skid marks? A. Yes.

* * *

Frank Vayo, Plaintiff's witness - direct examination by Mr. Higginbotham:

(T 98) * * *

Q. And were you one of the pupils, students that got on the bus on the morning in question? A. Yes.

Q. What was the weather conditions that morning? A. It was raining. It wasn't raining real hard when we got on the bus, but it had been.

* * *

Q. Now, before you got on the bus, where did you go? A. I went over to the Bickley residence and waited for the bus.

* * *

Q. And would it have been six people crossing the road, or seven, or eight? A. Seven.

Q. What happened when the bus got to you? A. Everybody started getting on it, and then the Bickley children got back off the bus, and I just got back on and didn't see anything else after that.

* * *

Q. Pulled off as soon as you got on?
Did you know anything happened? A. No, sir.

* * *

Cross examination by Mr. Taylor:

(T 102) * * *

Q. Where do you live? A. Right across from the Bickley house.

Q. Is your home on the north side of Route 250 where this accident happened? A. Yes, sir.

Q. Is there also a used car lot there? A. Yes, sir.

* * *

Q. Now, where were Mr. and Mrs. Bickley and Mrs. Baker at that time? A. They were in the front room of their house when we went out to cross the road.

* * *

Q. But the children didn't -- the three Bickley children did not get on the bus? A. They didn't go past the driver.

Q. Didn't go past the driver? A. No.

Q. Inside the bus, you mean? A. They just went up to the driver.

Q. They went up to what's called the stairwell; didn't they? A. Yes.

Q. They never did get on and take a seat on the bus; did they? A. No, sir, not that I know of.

Q. Now, then, the rest of the children got on the bus? A. Yes, sir.

Q. And the bus pulled on off.

There were lights on the bus when it came up to the stopping point? A. Yes, sir.

* * *

Q. Mr. Vayo , on November 12, 1971, which was the November after this accident, do you remember giving a statement in Louisa in which you said: "We saw the bus come down the bill and go into the bottom. We then crossed the road to board the bus."

Do you recall making that statement? A. Yes, sir. The bus was in the bottom when we started crossing.

* * *

Debra Bickley, Plaintiff's witness - direct examination by Mr. Higginbotham:

(T 110) * * *

Q. All right, Debbie, how old were you when this accident took place? A. Ten.

* * *

Q. Who had come over to your house? A. Cindy Baker, Gary Vayo, John Vayo, Frank Vayo; and there was Donnie, Ronnie and me, and Gregory Melton.

Q. And who else was there? A. And Mrs. Baker and Mamma and Daddy. That's all.

* * *

Q. What did you do after you crossed the road? A. The bus pulled up, and we all got on, and the bus driver took hold of Donnie's arm and she asked him what grade he was in.

Q. Wait a minute. Wait. Say it again now. A. The bus driver -- we all got on, and the bus driver took Donnie by the arm and asked him what grade he was in.

He said, "second."

She said that he didn't belong on that bus, and we were to wait for the next bus, so we got off, and we walked toward the front of the bus, and it pulled off, so we walked to the back and crossed the road.

Q. Why did you walk towards the front of the bus. A. Sir?

Q. Why did you walk towards the front of the bus? A. Because there was supposed to be a flagman to flag us across.

Q. I see. And did you cross in front of the bus? A. No, sir.

Q. Why? A. Because she pulled off.

Q. And then what did you do? Q. We went toward the back and crossed the road.

Q. What happened when you started across the road? A. I don't understand.

Q. What happened when you started across the road? A. Nothing. We just crossed it. We just went across. We looked both ways.

Q. Go ahead and tell the jury what happened. A. And we all three went across, and I got on the other side, and I told the boys, I said, "that truck almost hit me; did it you, boys?" And I looked back, and they weren't there, and they were on the ground. That's all what happened.

* * *

Q. Tell us about the relationship between you and Ronnie. A. We were close. We loved each other very much, and all. We played together.

Q. What things did you do together? A. Well, I read them books, and we played in the sand, swings, and went swimming, and stuff like that.

Cross examination by Mr. Taylor:

(T 116) Q. Debbie, when you were in the house with this group of children, just before you left to take the bus, where was your mother and father? A. Before somebody said the bus was coming?

Q. Before you left the house? A. They were sitting on the couch.

Q. And Mrs. Baker was with them? A. Yes.

Q. Now, when you all left the house to cross the road, did your mother and father come out into the yard? A. They stood in the doorway.

Q. Stood in the doorway? A. Yes.

Q. Were they standing there when the bus came to a stop; do you know? A. Yes, sir, they were.

* * *

Q. Well, before this accident, didn't you catch the elementary school bus on the side of the house, on the side of the road that your house was on? A. Yes, sir.

Q. And you had done that for five -- four years? A. Yes, sir.

Q. Now, when the bus pulled off, you were standing on the shoulder of the road; weren't you? A. The shoulder?

Q. The shoulder. A. I don't know what that means.

Q. The shoulder of the road is on the side of the road. In this particular instance, it has some grass probably and some gravel and dirt. It doesn't have the hard surface. A. Yes, sir.

Q. You were standing off of the hard surface? A. Yes,

sir.

* * *

Q. And weren't you standing about opposite the doorway of the bus when it pulled off? A. The opposite of the doorway?

Q. Right near the doorway of the bus when it pulled off. A. No, we walked towards the front to cross.

Q. Then you came back? A. Yes.

Q. But when the bus pulled off, you were about near the doorway; were you not? A. No. We went almost just a few steps to the edge of the bus.

Q. Well, where were you in connection with the front of the bus and the rear of the bus? A. Well, we were almost at the front, just a couple of steps right before the front.

Q. Near the front of the bus? A. Yes, sir.

Cross examination by Mr. Clarke:

Q. Did I understand you to say that then you walked back? You said a minute ago you walked to the front; then you walked back; and the bus pulled off. Is that right? A. Yes, sir.

Q. How far back did you walk before the bus pulled off? A. How much to the front before it pulled off?

Q. To the back. To the back. A. Oh, we didn't go to the back until it pulled off.

Q. I understand, but you said that you walked towards the front of the bus, and then you walked towards the back of the bus, and then the bus pulled off, and I was wondering how far back you went. A. No. We walked towards the front of the bus. The bus pulled off, so we went to the back.

Q. I see. Well, did you go towards the back, or did the back of the bus come to you? A. Well, a little of both. The back come to us, and we took a few steps up to the back.

Q. I see. That's maybe where I got mixed up. Now, was your mother and father still standing in the

doorway when you started back across the street? A. She was on the sidewalk.

Q. She was on the sidewalk when you started to cross the highway back over towards your house? A. Yes.

Q. Is that right? A. Yes.

Q. When you all -- I believe you told Mr. Taylor here a minute ago that in the years previous when you had been in elementary school you caught the bus on your side of the road? A. Yes, sir.

Q. Is that right? Did you all expect -- did you expect your younger brothers to catch the bus on your side of the road that morning? A. Well, we had heard from a lot of people and just talking about that, we would all ride the same bus, so we just crossed the road so we wouldn't have to have a flagman or nothing else.

Q. Was there some uncertainty about what bus you people were supposed to get? A. Not really. People had told us, and we heard.

Q. Had anybody personally told you?

I am not talking about what you heard from your parents. I am talking about what you personally heard. A. Over the phone, yes.

Q. Who had called you over the phone? A. Lisa Luck.

Q. Pardon me? A. Lisa Luck.

Q. Is that a school official? A. No. She's a friend of mine.

Q. Oh, I see. But it wasn't anybody from the school? A. No.

Q. Do you know whether your mother got a call from anybody at the school? A. No. I don't know.

Q. Did you have a raincoat on? A. No, sir.

Q. Did your brothers have any raincoats on? A. No, sir.

Q. Was it raining out? A. Yes, sir.

Q. Now, you all were off of the hard surface of the road where the bus pulled off; is that right? A. Yes, sir.

Q. And did you step off, or were you always on the hard -- off of the hard surface of the road? A. After we had crossed, yes.

Q. So that you never did get on the hard surface of the road until you started to cross the road behind the bus; is that right? A. Yes, sir. Yes, sir.

Q. Now, can you tell me how you started across the road? Did you run? A. Well, just not really running or walking. Walking fast.

Q. Well, you walk pretty fast when it's raining and you want to get back in the house out of the rain? A. Yes.

Q. Right? A. Yes.

Q. I see. And as a matter of fact, you all had been standing out there some time while the kids were getting sorted out, and your brother got on the bus and had to talk to the bus driver, and she had to talk to him, and that sort of thing. So you were getting pretty wet out there; weren't you? A. I was right behind him. He was up right by the bus driver's chair, like; and I was on the second step and Ron was on the first.

Q. I see. So that you got on the bus too? A. Yes.

Q. Now, where was Mrs. Baker? Did she come outside, too? A. After the accident, she did, but she was standing in the doorway.

Q. But neither Mrs. Baker nor your mother nor your father came across the road with you all? A. No, sir.

Q. To see about the bus and to see about you getting on the right bus? A. No, sir.

Q. Now, when you were in school, in elementary -- well, let me ask you this: your brother was going into the second grade; is that right? A. Yes, sir.

Q. Now, in the first grade, did they teach your brother about safety regulations and buses and crossing the street? A. Yes.

Q. And you and he had talked about that? You say you all were close? A. Yes. We didn't really talk about it.

Q. Pardon me? A. We didn't really talk about it, but they knew.

Q. I see. They knew that they were not supposed to cross the road without looking both ways? A. Yes, sir.

Q. And you know your brothers were old enough and smart enough to know that he wasn't supposed to cross the road without looking both ways? A. Yes, sir.

Q. And you were, too; were you not? A. Yes, sir.

Q. And did you look both ways before you stepped out in front of the truck? A. Yes, sir.

Q. What did you do when you looked toward Ferncliff? A. I didn't see nothing.

Q. Well, how did you say to your brothers that you almost got hit by the truck if you didn't see the truck? A. The exact words?

Q. Pardon me? A. You mean after I got across the road?

Q. Yes, ma'am. A. Well, I said, "that truck almost hit me. Didn't it --"

Q. I know, but if you say you didn't see it, how did you know it almost hit you? A. Because I felt the wind swish by as it went out of the way.

Q. How did you know it was a truck if you just felt the wind? How did you know it was a truck? A. Because when I looked back, it was stopped.

Q. But you did look to your right along the left-hand side of the bus, and didn't see anything? A. No.

Q. Were you telling the jury there wasn't anything there, Debbie? A. I am not telling them it wasn't there, but I didn't see it.

Q. I see. You and your brother knew you weren't supposed to go out in the road without seeing that the way was clear and

and no traffic was coming; isn't that right? A. Yes, sir.

* * *

Norma Baker, Plaintiff's witness - direct examination by Mr. Higginbotham:

(T 129) * * *

Q. Mrs. Baker, on the morning in question, you had been over to the Bickley home? A. Yes.

Q. Why had you been over to the Bickley home? A. I took my daughter over there to meet the bus.

Q. Now, tell what you saw and heard with reference to the bus.

* * *

A. (Continuing) Well, when the school bus came, the children went across the road.

Q. How did they -- what brought it to your attention that the school bus was coming? A. Well, the children had been looking out the door every few minutes to see if the bus was coming.

Q. Did anybody make any comment about the bus? A. Someone said the bus was coming, so they all went out of the house.

Q. What did you do? A. We stood in the doorway.

Q. What did Mrs. Bickley do? A. She went out on the sidewalk.

Q. Now, when you say, "sidewalk", you mean the walk to the house? A. They have got a sidewalk in front of their house to the road.

Q. A walk from their house to the road? A. Yes.

Q. Now, go ahead and tell the Court and the jury the best you can what you saw and heard from that point on. A. Well, the children started to get on the bus. I seen the bus driver reach back and caught ahold of the arm of one of the boys. I don't know which boy it was.

Q. You say she reached back? A. He was just passing her.

Q. All right. A. And she said something to him, and then the three children got back off the bus.

Q. All right, go ahead. A. And I seen Debbie and one of the boys. It looked like they were walking towards the front of the bus, and then the bus started to leave, and the children turned around to the back of the bus.

Q. The children turned around and did what? A. Went to the back of the bus.

Q. Went to the back of the bus? A. Yes.

Q. All right, then, what happened? A. They went to come across the road.

Q. All right, go ahead. A. And the truck was coming down the road, and we heard it hit.

Q. What kind of noise did you hear? A. Well, later that morning, we went to the hospital, and I heard this noise, and it was -- it sounded like when it hit the children, and it was like a paper letter opener hit.

Q. Like what? A. It's a paper letter opener.

Q. Yes. A. That's what it sounded like to me.

Q. What was the next thing you say? A. Then I saw Ronnie. Ronnie was flying through the air.

Q. What? A. Ronnie was --

Q. You say you saw Ronnie fly through the air? A. Yes.

Q. How high did he go up in the air? A. He went above the truck.

Q. He went up over the truck? A. Yes.

Q. Did you see any flagman? A. No.

Q. Do you know how fast the truck was going? A. It would be kind of hard to say.

* * *

Cross examination by Mr. Taylor:

(T 132)

Q. Mrs. Baker, you said that Mrs. Bickley left the home and went out onto the sidewalk, and I believe you said this is a walk that runs from the house to the edge of the road ; is that correct, ma'am? A. Well, right to the highway, the pavement there.

Q. It runs out to the pavement? A. Oh, yes.

Q. All right, where did Mr. Bickley go. A. Who?

Q. Mr. Bickley. A. He was standing in the doorway.

Q. Now, when the bus pulled off, where was Mrs. Bickley standing in reference to the road, 250? How close was she to it? A. A few feet. Maybe 5 or 10 feet.

Q. 5 or 10 feet from the south edge of Route 250; is that correct? A. (Witness nodded head.)

* * *

Cross examination by Mr. Clarke:

(T 134) * * *

Q. And when did Mrs. Bickley come out of the house? Did she come out of the house after the bus started to pull off? A. No.

Q. Pardon me? A. She was out before that.

Q. I beg your pardon? A. She was out of the house before that.

Q. Well, how long before that? Did she go out with the students, or later? A. Just right after they went out.

Q. Pardon? A. Right after the children went out, she went out.

Q. I see. Did she ever go over on the other side of the road to see about their getting on the bus properly? A. No. No.

Q. She did not? She just stood out there?

Did the children have rain gear on, raincoats on? A. No.

Q. Was it raining? A. Yes.

* * *

Edward Eugene Bickley, Plaintiff's witness - direct examination by Mr. Higginbotham:

(T 137) * * *

Q. Now, Mr. Bickley, you were present the morning this happened; were you not? A. Yes, sir.

Q. How did you happen to be present? A. Well, I work a 4 to 12 shift, and I am home every morning at that time of morning.

Q. What did you do about what bus your children were to get on? A. You don't know. You just stand, wait until somebody comes along and picks you up. You are not notified which bus to ride. You catch the first thing that will pick you up.

Q. Do you know why your children went on this bus? A. Well --

Q. Started to go on. A. Well, just neighborhood talk and everything that happened; they would be riding the same bus. So after it was raining and all like that, the children in the neighborhood came to my house to wait for the bus, because my children were the smallest.

We had always heard that if you live within so many feet of each other, that you all have to be at one stop, anyhow. That was just neighborhood talk.

Q. Neighborhood talk? A. Yes.

Q. Now, what bus did it turn out that these children eventually -- your children eventually were on? A. It was supposed to have rode with Mr. Hinson, Bus 33, we found out after the accident.

Q. And it came which way? A. It came from the west going east on Route 250.

Q. And the children got onto your side of the road? A. They would have, yes.

Q. Would have. All right. Now, tell what you saw and heard after all these people gathered at your home? A. Well, we were all sitting around talking, waiting, everybody looking first one way and then the other for which way the bus was coming.

So finally, someone saw the bus coming from the east going west, so they hollered, "here comes the bus," and they all went out the door.

Well, my wife and Mrs. Baker and I got up. My wife went on out in the yard, and Mrs. Baker and I stood in the doorway. They went on across the road.

Q. Where was the bus at that time; do you know? A. It was approximately 75 yards down the road with its lights blinking.

Q. Could you see it? A. Yes, sir.

Q. Where was the bus when the children first started across the road? A. Maybe 100 yards, but the lights were blinking when they entered the hard surface.

Q. And what was the sight -- what was the vision between the bus and the children when they crossed the road? A. Perfect vision. I mean, other than misting rain is all.

Q. Now, then, go ahead and tell the Court and the jury what happened next. A. Well, the bus pulled up to them and stopped, and they got on the school bus. I don't know exactly which order the older ones got on, but one of the twins was the first of my three that got on, and the bus driver stopped him.

I don't know what she said to him. She was talking to him. However, he got off, walked off, and the other two came on behind him.

So the little girl and one of them started to the front of the bus, and they got -- you could see their feet underneath the bus going, and they got into the tire. Of course, that blocked the view then, and the bus pulled off.

Q. You say that was as far towards the front of the bus as the tires? A. Yes. I say the tires hid them then, and then when the bus pulled off they came to the back, and then all three of them -- the little girl and the two boys was following them in the back of the bus as the bus was going on.

Q. And what manner did they start across the road? A. Well, Debra was first, and Donnie was second, and Ronnie was third.

Q. And what speed were they coming? A. Well, it

wasn't no hard run, but it was stepping pretty fast on account of it being raining, misting rain.

Q. Misting rain, and were they running? A. Not at a full speed, but they were walking real fast.

Q. Now, how far had the bus gone when the impact took place? A. Approximately 30 feet. Probably the length of a bus, maybe.

Q. The bus traveled the length of the bus? A. Right.

* * *

Q. What did you see between the truck and the children? A. Well, the children came around the back of the bus where the little girl looked. She was moving while she looked; and when she looked, I looked up the highway; and at that time I saw the truck coming.

Q. How far was the truck away? A. It was just past my mail box.

Q. How far is that away? A. Maybe -- well, from my mail box to the -- where they come exactly across the road was maybe 40 feet.

Q. 40 feet? A. That's between 30 and 40 feet. 40 at the most.

Q. All right, go ahead. A. And approximately that time the truck hit its brakes. We heard a loud thump, and Donnie come rolling on the ground towards the yard, and Ronald went up in the air and over, and went straight down. And Jimmy went on down off the road, and he stopped and came running back up the road, and Donnie was trying to get on his feet, and I made him sit down because I didn't know what was wrong.

At that time, Jimmy got up to me, and I went -- I told him to stay with Donnie and Ruth, and I went across the road to Ronnie, and he was just laying there, and he wasn't moving.

And then Jimmy came over to me to see how he was, and I told him I thought he was dead, and so Jimmy got down, and he moaned; and, of course, then after he moaned, I got Jimmy to go back to where Ruth was at to keep her over there so she wouldn't come over to where he was at.

Then I remember Mrs. Baker say she was going to call the rescue squad, and I don't remember much more until the end of

the day.

Q. You don't remember much more of that day? A. No. I don't even remember how I got to Charlottesville hospital.

Q. How was that? A. I said I don't even remember how I got to the hospital.

Q. What did you see Mrs. Farmer do from the time that she first came in sight until she left? A. Well, soon after she came in sight, she pulled her blinkers on the bus. They were working.

She drove on up and stopped. The children got on. She stopped and talked to them. They got off.

She pulled on off, because she had pulled off -- she missed one gear. She scraped the gears on the school bus, because it was just a -- it wasn't a real loud scrape, but then it went right on in. She went on and kept on moving. She never did stop after the accident.

Q. Now, you stated that the children got as far as the front wheel? A. Yes. They went out of sight behind the front wheel.

Q. And at what point, how long after that was it before the bus pulled off? A. It pulled off just about the time they went, both of them went out of sight behind the wheel.

Q. Behind the front wheel? A. Yes.

Now, Mr. Perkins was coming from the direction of Ferncliff; is that right? A. Yes.

Q. Would you tell the Court and the jury what view Mr. Perkins had of the children as they walked towards the front of the bus?

* * *

THE COURT: Well, I think you can certainly ask him if there was anything between Mr. Perkins and the children.

BY MR. HIGGINBOTHAM:

Q. All right, that's a good way to ask it. A. No, sir, there wasn't. Not at the front of the bus, but there was when they went to the back.

* * *

Q. Now, Mr. Bickley, will you describe the premises there, your premises with the house with reference to where the bus stopped to pick up the children, and the Vayo premises, and the other premises on the other side of the road. A. Well, the bus stopped directly in front of my walkway and driveway, and the Vayo's house is approximately -- the edge of the house starts just about where the east side of my yard starts on the opposite side of the road; and on down about 75 feet is the Vayo driveway.

Across from that is the mail box; and as you go into the driveway, you go into the edge of the garage and office, Ferncliff Auto Sales.

Q. On the opposite side of the road where the children were standing, is there any driveway? A. No, sir.

Q. Now, Mr. Bickley, will you tell the Court and the jury the type of boy Ronnie was? A. Well, he was jolly. He always was trying to grin, carry on jokes, and fun type. He was easy to get along with with most any children in the neighborhood.

Q. What were his activities? A. Feed the dog once a day. They played a lot.

Q. Now, what was the relationship between Ronnie and his mother? A. Very close.

Q. What was the relationship between Ronnie and Donnie? A. They were extremely close. Whatever one done, the other one usually done, too. They would also insist on dressing alike, going the same places and doing the same things.

Q. Were they twins? A. Yes, sir.

Q. Were they identical twins? A. Yes. sir.

Q. What was the relationship between Ronnie and his sister? A. They were close. All three of them got along extremely well.

Q. Would you state the manner in which your family has missed this child? A. Quite a bit. It still upsets us any time we get talking about it.

Q. How long do you think it will take you to get over it? A. Probably never.

Q. Do you know anything at all about this little boy that

was not on the positive side? Anything unattractive about this boy? A. No, sir.

* * *

(A photograph of the three Bickley children was marked Plaintiff's Exhibit No. 1 and received in evidence.)

* * *

Cross examination by Mr. Taylor:

Q. Mr. Bickley, as I understand it, you came to the doorway, but you did not go out of the house on this occasion? A. No, sir.

Q. That is until after the accident? A. Until afterwards, right.

Q. And you saw all you have told us here about the bus and the truck and the children from your position in the doorway? A. Yes, sir.

Q. Now, your daughter stated that she was going into the fifth grade at this school session, so she had been going to school four years prior to this; had she not? A. Yes, sir.

Q. And she went to the elementary school of Louisa County? A. That's right.

Q. And during that four years, didn't she catch the bus on your side of the road? A. Yes, sir.

Q. Now, your son, Ronald, and his twin brother had completed the first grade; had they not? A. Yes, sir.

Q. Was his record good in the first grade, Ronald? A. Yes.

Q. Good student? A. Yes, sir.

Q. Now, the year prior to this accident, the school year prior to this accident, didn't he catch the school bus to the elementary school for the first grade on the south side of the road? A. Yes, sir.

* * *

Cross examination by Mr. Clarke:

Q. Mr. Bickley, did your children have rainwear on that morning? A. No, sir.

Q. And I believe that you testified at the beginning of your counsel's questions that you didn't know what bus the school kids were supposed to get on? A. That's correct.

Q. Isn't that right? So you knew at the time that you sent them out that there was a possibility that they wouldn't catch the bus that was pulling up there; is that right? A. Well, yes. When they went out, we didn't.

Q. And there wasn't any question but what you and your wife were of the same mind on that; is there? A. That's why we were standing there in the door to see if they were going to get on.

Q. Neither one of you went across the road to see if they were getting on the right bus? A. No.

Q. And Debbie and your little boy were very close, you say? A. Yes, sir.

Q. And Debbie would be in the position to know what your little boy knew about what his teaching and learning in that first year of school on safety would have been; wouldn't she? A. She should have been, yes.

Q. So if she said that he knew that he wasn't supposed to cross the road without looking for vehicles, and things like that, you would think she had been right about that? A. That's correct.

Q. And you say he was a bright boy? A. Yes.

Q. So there is no question in your mind that he had the capacity to know that he wasn't supposed to run or walk fast out in the road from behind an object without seeing whether there was traffic? A. Well, now, on the morning of the accident, being the first day of school, they were awful nervous. All three of my children were, and most of the others in the school, too.

Q. Well, he had been taught that the whole year at school before not to run out in the road from behind objects, hadn't he? A. Yes, but a seven year old child, you know --

Q. Well, you knew that --

Mr. Higginbotham: Let him answer the question.

BY MR. CLARKE:

Q. That's all right. You say what child -- A. A seven year old child doesn't act in his mind as fast as you or me would.

Q. Well, Mr. Bickley, you knew that that morning when he went out there to catch the bus; didn't you? A. Yes.

Q. Now, Mr. Bickley, you say that Jim came back to where it happened. You are talking about Mr. Perkins; is that right? A. That's right.

Q. James Perkins; isn't that right? A. Yes.

Q. And he was helping you and trying to comfort your wife and trying to help you with your boys, and so forth? A. That's right.

Q. And later on, as you were getting ready to leave for Charlottesville after the rescue squad had gone with your children, you and he talked about it, and you told him not to worry; it wasn't his fault, or words to that effect; didn't you? A. I don't know.

Q. Pardon me? A. I don't know.

Q. Well, you don't deny that you said that; do you? A. I don't say that I did say it either.

Q. Well, you don't deny that you said it? A. I don't say I did say it either.

Q. Well, just answer the question.
Do you or do you not deny that you said it? A. I do not deny it either.

Q. Do you deny that you said the same thing to him several times in the hospital when he came up to Charlottesville to be with you? A. No, sir.

Q. Sir? A. No, sir. I don't deny it.

* * *

John Vayo, Plaintiff's witness - direct examination by Mr. Higginbotham:

(T 155) * * *

Q. How old are you, John? A. Fourteen.

Q. How old? A. Fourteen.

Q. Fourteen. And you were one of them that went across the road that morning to get on the bus in front of the Bickley home; is that right? A. Yes, sir.

* * *

Q. Do you know whether or not any of the Bickley children got on the bus? A. I don't think they got very far.

Q. Pardon? A. I don't think they got on with us.

Q. Well, where were -- what happened to the Bickley children? A. She stopped them.

Q. Who stopped them? A. The bus driver.

Q. All right. Did you hear what the bus driver said? A. She told them they had to catch the next bus.

Q. Told them they had to catch the next bus? A. Yes.

Q. And what did the Bickley children do? A. I don't know. I got in back of the bus and sat down by then.

* * *

Donald Bickley, Plaintiff's witness - direct examination by Mr. Higginbotham:

(T 160) * * *

Q. And how old were you when this accident took place? A. Seven.

* * *

Q. Now, what did you all do when you got over on the other side? A. We waited until the school bus stopped.

Q. All right, go ahead. A. And then we got -- they, the Vayos, got on the bus.

Q. What was that, now? Who all got on the bus? A. I don't know who got on first, but Gary and John and Gregg and Cindy got on, and it was me, Sissy and Ronnie, and Frank was behind us.

Q. Frank was behind you? A. Yes.

Q. And what happened when you all got on the bus? A. The bus driver stopped me and asked me what grade I was in.

Q. What did you tell her? A. I said I was going into second.

Q. You were going into second. What did she say? A. She said, "You have to wait for the next bus."

Q. So what did you do? A. I got off the bus.

Q. What did Ronnie do? A. He got off, too.

Q. And your sister got off too? A. Yes.

Q. Then what did you all do? A. We started to the front, and then the bus started moving, and we went to the back of the bus.

Q. Then what did you do? A. We crossed the road.

Q. And what happened? A. I don't remember.

* * *

Ruth Bickley, Plaintiff - direct examination by Mr. Higginbotham:

(T 164)

Q. All right, Mrs. Bickley, are you the mother of Ronnie? A. Yes, sir.

Q. You were there when this happened? A. Yes, sir.

Q. Tell what you saw and heard from the time that these children came across the road with all the other ones? A. Well, they were all a little bit nervous sitting in the living room. Every now and then someone would run to the door to see if the bus was

coming, and one of the children said -- one of them hollered, "the bus is coming." And they went outside.

Q. Who hollered, "the bus is coming"? A. I don't remember which one of the children hollered it, and I went outside behind them and stood on the sidewalk.

Q. And why did you go outside? A. I guess I was a little nervous about them starting school too. I don't know. I just went out.

Q. Do you know what bus they were to ride? A. Well, everybody in the neighborhood that said everybody rode the same bus that year, so they all come to our house, and they all went out to catch the same bus.

Q. Where was the -- describe the manner in which they went across the road. A. They all went out, it looked like, single file, going across the road.

Q. Where was the bus at that time? A. About to the trailer court when I seen the bus.

The lights -- when it got to the mail box, the lights on the bus was blinking. They was still going across the road at that time.

Q. And when it got to what mail box? A. The Vayo's mail box.

Q. What was the view between the bus and the children that went across the road? A. It looked clear, except it was raining. You know, there was nothing -- I couldn't see anything coming either way except for the bus.

Q. Now, what happened after the bus came and stopped? A. Some of the children got on the bus, and the bus driver stopped one of my children. I don't know which one. And all of a sudden, they started getting off. My three got off the bus, and it looked like they started towards the front of the bus.

Q. How do you know that? A. I could see their feet underneath the bus, and the bus started moving.

Q. Do you know how far they got towards the front? A. I couldn't see the feet any more, so I took it to be they were by the front wheel of the bus.

Q. And then what happened? A. Then I could see their feet moving back towards the back of the bus, and Debbie was just a little way in front of the boys, and they started to cross the road. They were walking kind of fast coming across the road.

Q. Then what happened? A. All I know is they got hit.

Q. You don't remember the details? A. No, sir.

Q. Now, Mrs. Bickley, just as briefly as you can, for the benefit of the jury, tell us what kind of little boy Ronnie was. A. To me, they were angels.

Of course, all little boys are mischievous, but I don't know; they were just good boys. Always playing, and having fun.

Debbie would read to them. They thought they were something when they went in first grade and went to read. They came home and read to me and showed me how good they were in school.

And the teachers -- I went over and talked to them several times that year, and they said they were just really good students.

They separated them that year. We didn't like that, because they came from school and they would cry a little bit because they hadn't been together. They just didn't like to be apart. They'd do better when they were together.

They separated them when they sent to school.

Q. Were they twins? A. Yes, sir.

Q. How close were they? Did they resemble one another? A. We couldn't tell them apart all the time. They liked to trick us, and they did many times.

Q. They what? A. They liked to trick us. They tried to make us think one was the other one, which they got by with several times. They were just exactly alike. Both of them were red-headed and blue eyed. Wasn't but a pound difference in the weight.

Q. When did you first notice they were going to get hit? A. I don't remember when I knew it. All I know is I remember seeing them laying on the side of the road.

Q. What was the relationship, Mrs. Bickley, between this little child and his father? A. They were really close. All boys are close to the father, I guess; but they just really worshiped

their father. Both of them did.

Well, all three of the children do.

Q. You don't want to tell the jury how you miss the child? A. How can you describe how you miss a child?

You can look at Donnie and you will say, well, if Ronnie was still here, he would be just exactly like him; but you can't describe how you miss one.

At least, I can't. If somebody can, I'd like to hear how you describe it.

Cross examination by Mr. Taylor:

(T 169) Q. Mrs. Bickley, as I understand it, when the children left the house, you went behind them and went to the end of the sidewalk? A. Yes, sir. I went to the end of our sidewalk.

Q. And that is near the south edge of the hard surface of Route 250? A. I don't know south from west, but I know it was --

Q. All right, well, near the edge? A. Near the gravel right by the highway, and I stood right there.

Q. By your house? A. On the edge of the sidewalk.

Q. So when the children, or some of them, attempted -- your children, I mean -- attempted to get on the bus, the bus was between you and the children; was it not? A. Yes, sir.

Q. Now, you say that the children got off? A. Yes.

Q. Your children got off? A. Yes.

Q. And they walked toward the front? A. Yes.

Q. And you think they walked towards the front wheel? A. Yes, sir.

Q. Well, how far is it from the doorway of the bus that they got off of and the front wheel? A. I don't know. Four or five feet, you know. Children stepping up. I don't know how far it is.

Q. And how did you see them? A. I seen their feet underneath the bus.

Cross examination by Mr. Clarke:

(T 171)

Q. Mrs. Bickley, were Debbie and Ronnie pretty close? A. Yes.

Q. And Debbie was close enough to him to know pretty much about what he was learning in school? A. Yes.

Q. And if she says that he had learned in school about the danger of going out, walking fast out on the highway from behind some object, why she'd be right about that? A. Yes, sir. I expect she would.

Q. Pardon? A. I expect she would, yes.

Q. And from your observing at that time, your son was old enough and intelligent enough to know that; wasn't he? A. He was probably old enough to understand to a certain extent.

Of course, all children get nervous every now and then, worry about things. They were nervous going to school. It was their second year.

Q. Well, you, as that child's mother, would have a greater ability to know when he was nervous and -- A. Yes. He was nervous.

Q. And you would be more -- A. He told me several times that morning he didn't really want to go to school, and I said, "well, you have to."

Q. I see. Then you, above everybody else, would know if he might be inattentive to something because of nervousness; isn't that correct? A. Yes. Yes.

Q. Did you put raincoats on them that morning? A. No, sir. They don't like to wear raincoats.

Q. I see. And they were going to school? A. Yes, sir.

Q. And do you agree with your husband that you had not received any instructions from the County, and you did not know what bus they were supposed to go on? A. We don't. We don't never know what bus they ride.

Q. So that you knew there was a good chance that they would not be going to school on that bus? A. Well, it was a pos-

sibility, but we had, you know, from the neighborhood, everybody had said everybody was going to ride the same bus.

Q. I know, but you are saying now to the jury that you did know, or you didn't know? A. We weren't positive, no.

Q. Pardon? A. We weren't positive either way.

Q. So then you knew that there was a good chance that they would have to get off that bus and wait for another? A. I guess you would say so, but I was under the understanding that they all rode the same bus.

Q. Well, in prior years the bus that they had caught had gone in the opposite direction; had it not? A. Yes, sir.

Q. And that had been true for the first five years that your daughter had been in school? A. First four.

Q. Ma'am? A. First four years.

Q. Well, for four years, and it had been true for the year before when your twins went to school; isn't that right? A. The first year they went to school, yes.

Q. So outside of neighborhood gossip, you had no reason to believe that they would be riding on any bus? A. Oh, we didn't get official notice, if that's what you mean, no. We didn't know.

Q. Let me finish the question.

Outside the neighborhood gossip, you had no reason to believe that they would be riding on the bus that we have been talking about? A. We didn't get any official word that they wouldn't.

* * *

Alton Hope, Defendants' witness - direct examination by Mr. Taylor:

(T 190) * * *

Q. Were you on the school bus when this accident happened to the Bickley children? A. Yes, sir.

* * *

Q. Now, were you on the bus before it arrived at the Bickley house? A. Yes, sir.

Q. Where were you sitting on the bus? A. The second seat.

Q. Second seat? A. Yes.

* * *

Q. As you came out on 250, Route 250, before you stopped, as you came down the road, did you see this group of children cross the road? A. No, sir. I didn't see them cross the road, but when I seen, they was already across.

Q. They were on the shoulder of the road when you saw them? A. Yes, sir.

Q. Now, did Mrs. Farmer stop the bus? A. Yes, sir. She stopped the bus to let them on. She put on a stop.

Q. And what did she tell the Bickley boys? A. At first she asked him what grade he was in, and they told her, and she told them this is not the bus to ride. Stand on the side of the road and the other bus would come to pick them up.

* * *

Matilda Timberlake, Defendants' witness - direct examination by Mr. Taylor:

(T 194) * * *

Q. Were you on the school bus the morning that the children were injured? A. Yes, sir.

* * *

Q. As you approached the Bickley home, and before Mrs. Farmer stopped for the group of children, did you see the group of children cross the road? A. No, sir.

Q. Mrs. Farmer did stop to pick them up; did she not? A. Yes, sir.

Q. And what occurred there? A. Well, she stopped the bus; the two little boys stood on the two steps of the bus; and she

asked them what grade were they in; and they said they were in the second grade; and she told them, "get off here and wait for your other bus; it will be along in a few minutes."

And they said, "okay."

And then she closed the door. When we left, they were still standing on the right-hand side.

Q. Where were they standing? A. Straight across from the Vayo's house on the right-hand side.

Q. Were they on the shoulder of the road? A. Yes, sir.

Q. Do you know where they were standing relative to the door? Were they in front of the door or behind the door? A. I don't know.

Q. Could you see them standing there as the bus pulled off? A. Yes, sir.

Q. And they were on the shoulder of the road? A. Yes, sir.

* * *

Roy Hopkins, Defendants' witness - direct examination by Mr. Taylor:

(T 202) * * *

Q. What is your occupation? A. Director of Transportation for the Louisa County School System.

Q. Were you in that position on August 27, 1971? A. Yes, I was.

* * *

Q. And where was it heading? A. This bus was set up to take intermediate and high school students to the intermediate school where the high school students were transferred to another bus and taken to high school. This included the sixth through the twelfth grades.

Q. Did it go to the elementary school? A. No, sir.

Q. Was there another bus on this route for the elementary school? A. Yes, sir. We have a complete duplication,

duplicate system in the County. One that handles the first through the fifth, and another bus that handles the sixth through the twelfth.

On this particular route, and other routes in the County, there was another unit handling the elementary students.

* * *

Q. I hand you a pamphlet entitled, "Regulations Governing Pupil Transportation and Minimum Standards of School Buses in Virginia, " put out by the Department of Education, dated April 19, 1969.

Are they the regulations that were in effect at the time of this accident? A. Yes, sir. This is a manual that covers our operation.

Q. Now, I refer you to page 9 of the regulations. It's under the title on page 8 of recommended practices; and on page 9, is item 7, is the use of a safety patrolman; and I ask you to explain those regulations as to the use of safety patrolmen or flagmen. A. I could best explain it by reading the paragraph which sets up this particular precaution, and then make any effort to explain it if it's necessary.

Q. Will you read it, please? A. Yes, sir. Item 7 under recommended practices reads:

"The use of safety patrolmen at school bus stops, at railroad grade crossings and when backing a school bus is of paramount importance, (very much importance.) They should be trained to aid the bus driver in these instances as follows: (a) when pupils are being picked up by the bus. If pupils must cross the road to the bus stop, and have not crossed before the arrival of the bus, the safety patrolman should take a position 10 to 15 feet in front of the left front wheel, holding the red flag across the center of the roadway. Upon signal from the driver, the pupils shall cross and the patrolman shall reenter the bus with them."

Q. Go ahead. A. One other paragraph that pertains to the discharge of pupils:

"When pupils are being discharged from the bus. The safety patrolman shall lead the way to a point 10 to 15 feet in front of the bus, directly in front of the left front wheel of the bus. He or she shall hold the red flag across the center of the roadway, and the pupils shall stay behind him. Upon signal from the driver, the pupils shall cross, the patrolman shall reenter the bus - shall return to the bus and reenter it properly."

* * *

Cross examination by Mr. Higginbotham:

(T 217) * * *

Q. And the flagman helps every child get across the road and gets off the bus? A. I don't think you could say every child crosses the road, because doesn't everybody have to cross the road, Mr. Higginbotham. We only use the flags approximately 50 per cent of the times a bus will let students off.

Q. How about every child who wants to cross the road to get to his home? A. If it's a known fact, if it's been set up with the driver and he knows a person is required to go across the road, then we request that they use the flag, yes. This is on the recommendation from the State Board of Education that we recommend this practice.

* * *

Q. So the parents find out the best way they can, and the children too? A. The year before last -- the year previous to the time of this accident, we had a change in a good many of our bus routes within Louisa County. At that time, we ran it in the papers where we -- what changes we were making, what school zones would be set up, and so forth.

This past time, this past year or the year we are speaking of in question that the accident happened, no change in bus route whatsoever. So there was no need to do any elaborate amount of advertisement or any lengthy references to any changes.

Q. Well, the bus that was supposed to pick up the children came from Ferncliff; didn't it? A. Yes, sir. As it had in previous years.

Q. So the children did have to cross the road? A. No.

Q. So they could get on that bus from the north side of the road; couldn't they? A. The bus that was designated to pick up the Bickley children would have stopped in front of their house as it had the previous years before this. They would not have to cross the road.

Q. No. I say that these children on this particular morning had to cross the road, back across the road to get on the

right bus after they put them off? A. They would have. If they were to load the proper bus, they would have to.

Q. Yes. All right. A. I would say that each of our drivers have no knowledge of -- normally, they will have no knowledge of where another bus would operate. I would think Mrs. Farmer wouldn't have had knowledge in this case of what other bus would have been picking the students up, other than that she would know that would be an elementary bus.

* * *

Roy Poindexter, Defendants' witness - direct examination by Mr. Clarke:

(T 221) * * *

Q. And do you know the defendant, Mr. Perkins here? A. Yes, I do.

Q. Did you see him on the morning of this accident? A. Yes, sir.

Q. Where did you all meet up? A. At Ferncliff Store.

Q. Is that Ferncliff Superette they call it? A. Right.

Q. And was that just by chance you happened to meet him there? A. That's right.

Q. And where were you all when you were together there? A. Standing out front on the platform.

Q. Is there kind of a platform there? A. Yes, standing on that.

Q. Could you see down in the bottom of that place where the Vayo Motor Company is, the Ferncliff Motor Company? A. You can see down the road. You can't see the Motor Company.

Q. Yes, sir. But you can see that part of the road; can't you? A. Yes.

Q. And at the time that you all were standing there and just before Mr. Bickley left, did you see the school bus down in there? A. Yes.

Q. Did it have its flashing lights on? A. Yes.

Q. And then did Mr. Bickley leave -- Mr. Perkins, I'm sorry. Did Mr. Perkins leave? A. He left the store.

Q. Yes, sir, and then he drove on down that way? A. That's right.

Q. All right, sir. And what next did you know about it? A. Well, when I sent somebody by, and I went by.

Q. This was after the accident you sent somebody up there? A. After. That's right.

Q. And when you went down there, how long were you there? A. I don't know. I guess fifteen, twenty minutes. Maybe longer.

Q. And were you at any time in the presence of Mr. Bickley and Mr. Perkins when they had a conversation? A. Yes. After the rescue ambulance left.

Q. All right. Tell me what was -- how the conversation came about. A. Well, he was fixing to leave, to go to the hospital.

Q. Who is he? A. Mr. Bickley.

Q. All right, sir. A. And James walked over and told him he was sorry that things happened, and Bickley said, "well, don't worry about it; you couldn't help it." And that's all there is to it. So he went on, and I took Jimmy home.

Q. He said Mr. Perkins couldn't help it? A. That's right.

* * *

Edward Eugene Bickley, Plaintiff's witness in rebuttal - direct examination by Mr. Higginbotham:

(T 227)

Q. Mr. Bickley, it has been testified here that you made a statement right down on the scene.

THE COURT: I can't hear you, Mr. Higginbotham.

MR. HIGGINBOTHAM: I'm sorry.

Q. Made the statement to Mr. Poindexter that Mr. Perkins couldn't help it, and you say you don't remember whether you made that statement? A. Not for sure. I could have.

* * *

ARGUMENT AND OBJECTION ON REFUSED INSTRUCTION #1C

(T 249)

* * *

THE COURT: Well, I can't give this instruction. I don't think that's the law.

MR. HIGGINBOTHAM: Judge, it was given in the Thomas case.

THE COURT: I don't think that is the law, Mr. Higginbotham.

I am going to mark this one as 1-C refused.

MR. HIGGINBOTHAM: We note our exception. It was taken exactly from the Thomas case.

THE COURT: All right. You need something to go up on.

* * *

ARGUMENT ON REFUSED INSTRUCTION #9A

(T 273)

* * *

MR. CLARKE: Well, he's trying to claim that the children were in the highway.

MR. HIGGINBOTHAM: Were on the highway. They were. Of course, they were.

MR. TAYLOR: In the ordinary sense of the word --

MR. CLARKE: It's both defendants' position that the

children were on the shoulder of the highway and not on the highway, and therefore were clear of the highway; and the contemplation of that statute, which says you can't move the bus off until they are clear of the highway, or my man couldn't pass until they were clear of the highway. I mean, that's the crux of the thing, as I understood. I mean, he is saying that if they are on the shoulder of the road, they are still in the highway --

THE COURT: And that you can't pass.

MR. CLARKE: And that you can't pass. I think that's contrary to the legislative intent where the legislature specifically tells people they have got to walk on the shoulder.

MR. HIGGINBOTHAM, Or if you pass, you pass at your peril.

THE COURT: I don't believe that, Mr. Higginbotham. 9-A refused.

MR. HIGGINBOTHAM: Does the Court say that I can't argue that the shoulder is part of the highway?

THE COURT: I don't think that when children are on the shoulder of the road and the bus has moved on, that somebody can't go on down the highway. I think that would be stretching a point to say that.

MR. HIGGINBOTHAM, Well, we note the exception.

THE COURT: I understand.

MR. HIGGINBOTHAM: We note the exception for the reason that the statute says that the motorist shall stop and remain stopped until all children clear the highway, and the only way we know what the highway is is what the statute says, and the statute says that the shoulder is part of the highway, and that the duty not to hit a child on the shoulder is just as great as not to hit him when he is on the hard surface.

* * *

OBJECTION TO INSTRUCTION # 18

(T 297)

* * *

MR. HIGGINBOTHAM: Judge, I am going to object to that. This is not a case of an unavoidable accident. It's a case that the accident was caused by --

THE COURT: I question that too, Mr. Higginbotham; but I am inclined to think that they are entitled to it.

I am afraid if I don't do that, the Supreme Court would say that that was error.

I question that. That thought entered into my mind, but I believe the Supreme Court would say it would be error not to submit that principle to the jury in this case.

MR. HIGGINBOTHAM: We refer to the case of Over v. Ennis, 209 Va. 210. Also, the case at 204 Va. 634, for the reasons stated in those cases.

THE COURT: All right.

* * *

OBJECTION TO INSTRUCTION #22

(T 314)

* * *

MR. TAYLOR: I ask for the same instruction. I join Mr. Clark in asking for it.

* * *

MR. HIGGINBOTHAM: Your Honor, we note an exception to that instruction.

THE COURT: I thought you already had.

MR. HIGGINBOTHAM: Well, I want to state, though, on the grounds that there is no allegation in the pleadings that Mr. Bickley and Mrs. Bickley were guilty of negligence that caused this accident; and, therefore, they did not come to court prepared to defend any such charge; and I didn't come to court prepared to defend any such charge. I had no knowledge of it, and, therefore, an instruction on an issue not raised by the pleadings is improper; and, furthermore, that there is no evidence that either Mr. or Mrs. Bickley were negligent.

On the further ground that the instruction would be improper.

* * *

OBJECTION TO INSTRUCTION #23

(T 320) * * *

MR. HIGGINBOTHAM: I am going to object and except on the grounds that he's pulling out part of the evidence and related the instruction to only a part of the evidence. It's a finding instruction, and it completely ignores the school bus issue in the case and the duty of Mr. Perkins upon seeing the school bus.

* * *

DEFENDANTS' EXHIBIT #6

Unable to reproduce.

DEFENDANTS' EXHIBIT #7

Unable to reproduce.

DEFENDANTS' EXHIBIT #8

Unable to reproduce.

CERTIFICATE

The undersigned, S. Page Higginbotham, an Attorney qualified to practice in the Supreme Court of Virginia, doth hereby certify that on this, the 1st day of March, 1974, Rule 5:49 has been complied with by filing 25 copies of this Appendix to Brief and 25 copies of the Brief with the Clerk of the Supreme Court of Virginia, and by mailing 3 copies of this Appendix to Brief and 3 copies of the Brief to: 1) Robert E. Taylor, Esq., of Taylor, Michie & Callaghan, P. O. Box 298, Charlottesville, Virginia, Counsel of record for Lila Farmer and the County School Board of Louisa County, Virginia, Appellee; and by mailing 3 copies of this Appendix to Brief and 3 copies of the Brief to: 2) J. Calvitt Clarke, Jr., Esq., of Sands, Anderson, Marks & Clarke, P. O. Box 1998, Richmond, Virginia 23216, Counsel of record for James K. Perkins and James K. Perkins and W. D. Perkins, T/A W. D. Perkins & Son, Appellee.

S. Page Higginbotham

S. Page Higginbotham