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IN THE

Supreme Court of Virginia

AT RICHMOND

RECORD NO. 801026

FORD MOTOR COMPANY, et al,

Appellant,

v.

CONSTANCE K. BARTHOLOMEW,

Appellee.

JOINT APPENDIX

Volume II

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10 BY MR. FIEDLER:

11 Q. Mr. Southerly, I have asked you questions

12 earlier. I have brought you to the point on October 22nd,

13 1976. Were you working at the Giant on Route 50? Is

14 that not correct?

15 A. Yes, sir.

16 Q. You were working in parcel pick-up?

17 A. Yes, sir.

18 Q. At that point I believe I asked you a

19 question regarding -- as to what you observed of anything

20 of an unusual nature on that day at that particular time

21 in the afternoon.

22 A. Okay, I was standing inside the double doors

23 in the glass and I looked out and noticed Mrs. Bartholomew

1 there was loading packages into her car into the back

2 seat and so I started out the double doors to give her

3 a hand with them. But by the time I got to the out door,

4 the car was beginning to move and she was struggling,

5 trying to get into the front seat to stop the car as she

6 was --

7 Q. Which direction was the car moving, if you
8 can recall?
9 A. The car was moving in a reverse direction.

12 Q. When you first saw Mrs. Bartholomew at
13 your car, where were you located?
14 A. I was standing inside here, inside the glass
15 there.
16 Q. Now was there anything obstructing your
17 view to her car?
18 A. No, sir.
19 Q. Was Mrs. Bartholomew's car two-door or
20 four-door?
21 A. It was a four-door.
22 Q. Which doors, if any, were open?
23 A. These two doors here on this side, the driver's

1 side.

2 Q. Was there any kind of a rail around the

3 parcel pick-up area?

4 A. Yes, sir, there was a rail all the way

5 around here.

6 Q. What is the topography of the lot

7 directly in front of the store? Is it level, slopy,

8 hilly? What is the --

9 A. There is a slight downgrade there. It

10 comes down in this direction --

11 Q. Why don't you make hash marks --

12 A. (The witness complied.)

13 Q. -- okay, with an arrow.

14 A. -- in the topography.

15 Q. Well, when you saw Mrs. Bartholomew at the

16 car, what was she doing?

17 A. She was putting bags in this back seat here.

18 Q. Do you recall approximately how many bags,

19 if any, she got into the car prior to anything occurring

20 other than her putting the bags into the car?

21 A. I believe it was three bags.

22 Q. Were they all in the rear seat?

23 A. Yes, sir.

1 Q. Was there anything in the front -- anyone
2 in the front seat that you could see?
3 A. I couldn't see, but I know the baby was
4 there.
5 Q. How do you know that?
6 A. She had the baby in the store with her
7 and he was -- he was definitely not in the back seat.
8 Q. Now when you say she had the baby in the
9 store with her, was that while she was shopping?
10 A. Yes, sir.
11 Q. What was the next thing you observed?
12 A. I came out the door here after I saw her
13 and by the time I reached here where I could see her again--
14 this was obstructed here -- the car was moving backwards
15 in this direction.
16 Q. Did you see it from when it was standing
17 still ? You did see --
18 A. I saw her putting -- yes, from the first
19 time I saw her, she was putting bags in the back seat
20 and the car was stopped there.
21 Q. Did you actually see the car start to move
22 backwards?
23 A. No. It was moving by the time I came through

1 the door.

2 Q. Did you see Mrs. Bartholomew when you

3 came through the door?

4 A. Yes, she was trying to get into the front

5 of the car.

6 Q. Into the front driver's seat?

7 A. Yes, sir.

8 Q. What, if anything, happened when she was

9 trying to get into the front driver's seat that you

10 observed?

11 A. She was knocked down.

12 Q. Did you actually see her go under any part

13 of the car?

14 A. I honestly don't remember. If I did see it,

15 I don't recall. It happened so fast that I was watching

16 where the car was going more than what happened to her.

17 Q. Now in your observation of the situation,

18 did the car travel down the slope or did it travel

19 traverse to the slope of the lot?

20 A. Okay, as I said, it sloped down. I am not

21 familiar with the word traverse.

22 Q. Across.

23 A. Okay. Across is -- it went across the parking

1 lot like that, not down the incline.

2 Q. What did you see next, if anything?

3 A. I saw it collide with a parked car here

4 and that car was pushed into this other car that was

5 there.

6 Q. Now when it collided with the first car,

7 did Mrs. Bartholomew's car come to a halt or was it

8 still moving after it hit the first car?

9 A. It moved this car into the next car. It

10 was against the first car and still moving into the second.

11 It didn't bounce. It pushed. It pushed the first car

12 into the second.

13 Q. Do you recall seeing Mrs. Bartholomew after

14 you observed the cars -- her strike this first car?

15 A. She did eventually get down to the car and

16 get her baby.

17 Q. Do you recall how she got down there?

18 A. Not clearly, no. I don't know what I did even

19 next. I don't know whether I went up to the car or whether

20 I went back inside to call an ambulance or -- you know,

21 I have no recollection.

23 Going back to when you saw the car moving,

1 did the car pick up any speed, to the best of your
2 observation, or did it continue at a steady pace as it
3 was going across the lot?
4 A. No, it seemed to pick up speed.

10 Q. Do I understand that you were there and
11 initially you glanced out the window and saw the car
12 stopped--
13 A. Yes, sir.
14 Q. -- and the lady putting bags in the back?
15 A. Yes, sir.
16 Q. The car was stopped at that time?
17 A. Yes, sir.

2 Q. When you walked that ten feet and looked
3 again, you saw the car moving?
4 A. Yes, sir.
5 Q. Was it moving slowly?
6 A. No, sir; not -- well--

7 Q. A walking speed?

8 A. No, sir. It was as if it was in gear.

9 Q. How could you describe the speed? Can you

10 describe the speed?

17 THE WITNESS: Okay. It was slow probably;

18 just a few miles an hour.

19 BY MR. LEWIS:

20 Q. How far -- what was the total distance it

21 moved?

22 A. Before impact with the first car, approximately

23 30 feet.

12 Q. Did the car run over her?

13 A. I do not recollect.

14 Q. You didn't see that, did you?

15 A. If I did see it, I didn't -- it didn't strike

16 me.

21 Q. Well, if you saw a car run over somebody,
22 wouldn't it stick in your mind, don't you think?
23 A. You would think it would, but it all happened
1 very quickly and you can overlook some things as to
2 where you are thinking. At the time, I was thinking
3 go after the car rather than what was happening to
4 Mrs. Bartholomew.

11 Q. Then this lot is sloped down away from
12 the store, is it not?
13 A. Slightly, yes.
14 Q. Then isn't it sloped both ways, both down
15 toward Hillwood and down toward Route 50?
16 A. Not—slightly on the Hillwood Avenue side.
17 Q. Slopes slightly downward that way, isn't
18 it?
19 A. But not right in front of the store. It
20 slopes after it gets beyond the buildings.

12 BY MR. DUNN:

13 Q. For the record, Mr. Martin, would you state
14 your full name?

15 A. James L. Martin.

16 Q. Mr. Martin, would you state your current
17 employer and your current job position?

18 A. My present employer is Ford Motor Company.
19 My present position is Manager of Safety Reliability and
20 Warranty Analysis Department within Chassis Engineering.

21 Q. How long have you held that position?

22 A. I have had my present position in various
23 departmental title structures for approximately the last
1 eight years.

2 Q. When were you first employed by Ford Motor
3 Company?

4 A. In 1946.

5 Q. Would you state very briefly the extent
6 of your formal education?

7 A. Yes. I graduated from the University of Detroit
8 High School in 1944. I attended approximately three years
9 at the University of Detroit and Wayne State University
10 in mechanical engineering. That comprises my formal
11 education. I attended various classes at Wayne State
12 University since that time.

13 Q. Is it correct, then, that you have no formal
14 degree?
15 A. That is correct.

15 Q. Mr. Martin, are you aware of any other
16 changes in the Lincoln-Mercury Division owner manuals
17 concerning park, and the placement of the gear lever in the
18 park position, following this memorandum?
19 A. No, I am not.

18 Q. Let's move on. Mr. Martin, I would like to
19 show you a memorandum that you certainly are more likely
20 to be familiar with since it purports to have your
21 signature ; a memorandum dated June 30, 1971 to
22 several named individuals, the first being Mr. H. A. Nichol.
23 It is signed by Mr. D. R. Dixon and concurred in by J. L.

1 Martin, Manager.

2 Are you ready?

3 A. Yes, sir.

4 Q. Mr. Martin, is that your signature at the

5 bottom of the page?

6 A. Yes, sir.

16 Q. Mr. Martin, at the top right-hand corner

17 of this memorandum in capital letters are the words, quote,

18 NOT TO BE DUPLICATED, unquote, underlined and then a

19 space and then capital letters, quote: PLEASE FORWARD

20 PERSONALLY AND RETURN TO CHASSIS SAFETY SYSTEMS FILE,

21 unquote.

22 Did you type that or have that typed at

23 the top?

1 A. I can't recall having it typed or whether

2 it was put on there. The intent of the note is to see

3 that the letter didn't -- was returned to us, that it

4 didn't float around in the system someplace.

9 Q. As I started to say, the memorandum shows
10 a diagram of the shift lever with the detent plate. While
11 obviously not to scale, is this diagram of the detent
12 plate a diagram that would show the insert plate regardless
13 of the type of transmission used on the particular vehicle?
14 A. I believe it is the general patterns within
15 transmissions that this is the type of plate which is
16 commonly used, yes.
17 Q. I appreciate your following my rather
18 inartfully worded question. I will see if I can hone it
19 down and try again. Would this diagram of the insert plate
20 have any changes in it depending upon the type of transmission
21 that the vehicle had?
22 A. Yes, it could.
23 Q. What kind of changes in this period of time,
1 1971, what type of changes would be there?
2 A. I don't know.
3 Q. The memorandum states in part, quote: Present
4 customer usage patterns indicate that this condition of
5 careless shift lever actuation is occurring frequently
6 in the field with actual high accident incidence.
7 What is meant by the term present customer
8 usage patterns?

9 A. I am not sure. I would say that it appears
10 from the reports that the customer usage pattern design
11 here refers to the complaints that we were receiving at
12 the time of the careless shift-- careless shift levers
13 actuation or misplacement of the lever. The pattern
14 seemed to be that way.
15 Q. Are you able to recall how many customer
16 complaints or customer statements you had received prior
17 to this memorandum?
18 A. It was approximately five or six a month we
19 were getting.
20 Q. Five or six a month over what period of time?
21 A. Over the model year of 19 -- calendar year
22 1971. It was recorded approximately five to six a month.
23 Q. Mr. Martin, had the insert plate been changed
1 in any way for the model year 1971?
2 A. Not to my knowledge, no.
3 Q. To your knowledge, this was the same shift
4 lever design that had been used for prior years, at least
5 say the two prior years, 1970 and 1969?
6 A. I believe so.
7 Q. The memorandum -- the portion I read, and
8 I read it in part, quote --this condition of careless
9

10 shift lever actuation, unquote-- the designation of quote,
11 careless shift lever actuation, unquote, in your concurrence,
12 did you mean driver error, driver fault?
13 A. Yes.
14 Q. What led to the conclusion that this condition
15 was caused by driver error?
16 A. The reports we were receiving in the meetings
17 that Mr. Dixon attended.
18 Q. The last paragraph of the memorandum uses the
19 term, quote, forward design and development, unquote.
20 Quote: It is recommended that forward design and development
21 be directed toward a feasible alternative, unquote, et
22 cetera.

16 At the time that you concurred in this
17 memorandum, were you aware of any alternatives that might
18 provide that goal?
19 A. I can't recall -- think of any, no.
20 Q. Did you subsequently become aware of
21 alternatives which were considered as a result of or
22 subsequent to this memorandum?
23 A. Yes.

1 Q. Could you briefly state what those
2 alternatives were?
3 A. Well, there were several proposals made,
4 considerations-- that some consideration be made towards
5 a design which could reduce the potential for an
6 operator of making an error and placing the lever into
7 the proper park position and they included revising
8 the land between park and reverse so as to provide a
9 tapered surface that the shift lever might slide down
10 the land into the park slot.
11 The second proposal involved a wider
12 land between park and reverse and a third means of
13 reducing the error was a proposal that suggested a
14 notch on the top of the land between the park and the
15 reverse detent.

20 Q. Are you sure whether any of these alternatives
21 were ever adopted?
22 A. No, they were not adopted for various reasons.
23 The principal reason that none were accepted was because the--

1 A. Not the exact period of time, no. It was
2 in the model year of '71.
3 Q. You say the model year of '71. In terms
4 of months and calendar years, what is that period of
5 time?
6 A. That would be during the calendar year
7 of 1971.

21 Q. Do you know from your own information whether
22 the three alternatives considered and rejected in 1971
23 were subsequently reconsidered?
1 A. Yes, I understand that they were.
2 Q. Do you know what period of time they were
3 reconsidered?
4 A. In the period of 1978, I believe.
5 Q. Do you know the results of the reconsideration
6 of these alternatives?
7 A. It is my understanding again they were found
8 to be ineffective and not positive in their improvement.
9 Q. Were you involved in the reconsideration
10 directly yourself in 1978?
11 A. No, no, I was not.

11 Q. The memorandum refers to the 1972 Cadillac
12 gear shift. For this period of time, did you have any
13 personal knowledge about the steering column arrangement
14 on the '72 Cadillac?
15 A. Not personally, no.
16 Q. The last paragraph of the memorandum refers
17 to in capital letters, quote: THE TRANSMISSION DIVISION,
18 unquote. Subsequent to this memorandum, did you participate
19 in any meetings with anyone from the transmission division
20 to discuss Ford designs concerning the park-reverse detent?
21 A. No, I did not.
22 Q. Did anyone under you at your direction
23 participate with the transmission division?
1 A. No.

23 Q. Did you have any -- or did your organization
1 people under you have any responsibility regarding
2 investigation of these complaints that were reported
3 at these problem meetings?

4 A. No, we did not. Our principal responsibility
5 was to be sure that the information was properly gathered
6 and turned over to the proper individuals for their
7 evaluation and investigation.
8 Q. That is why these memos that we have
9 discussed were prepared and forwarded to Mr. Bryant and
10 others?
11 A. That is correct, yes.

7 A. The information received on the -- which
8 resulted in subsequent investigations at that time showed
9 that the allegation of jumping from park to reverse was
10 not accurate, that in fact, the vehicle was improperly parked
11 and the lever had slipped into reverse gear,
12 causing the vehicle to go into reverse gear.
13 Q. The report you got from product problem
14 meetings were that this condition was caused by the
15 carelessness of the driver?
16 A. That is correct, sir, yes.

17 Q. Let me ask you -- you were asked about one
18 of these memos and the comment about the memo about the
19 '72 Cadillac--the comment that the shift travel from
20 park to reverse is greater than in the Ford vehicles.
21 A. Yes.
22 Q. Is this what you were talking about, their
23 wide land?

1 A. Yes, sir. That was described as a wider
2 land.
3 Q. This is one of the things that was reported
4 to you, had been investigated, is the possibility of
5 making the land wider?
6 A. Yes.
7 Q. This was rejected, as you indicated, I believe.
8 Am I correct in that the wider the land, the more chance
9 would happen that the operator would put it on the land?
10 A. More opportunity for misplacement of the
11 lever and subsequent falling of the lever into the reverse
12 gear.
13 Q. Now you were also asked about and shown a
14 January 13 document signed or apparently signed by A. T.
15 Bryant. This is the same Mr. Bryant who was in the
16 Steering Column Design?

17 A. Yes, sir.

18 Q. It mentions a study committee in the

19 considerations of the wider land and the --

20 A. They are proposals that they were looking

21 at.

22 Q. Proposals. Were you advised whether or not

23 they were looked at and investigated at that time?

1 A. Not at that particular time, no.

1 Q. On cross examination you have testified

2 that all of the reports coming back from the Product

3 Problem Committee indicated that the reverse to park

4 phenomenon could be attributed completely to carelessness

5 on the part of the driver. Is that correct?

6 A. I believe I testified that from park to

7 reverse.

8 Q. I am sorry, park to reverse. Having received

9 those reports, did you make any recommendations to any

10 group or any person concerning any further changes in the

11 owner's manual to bring this to the attention of drivers?

12 A. No, I did not.

13 RECROSS EXAMINATION

14 BY MR. LEWIS:

15 Q As I understand it, it was not your position

16 to make recommendations as to changes. It was your job

17 to pass on, disseminate the information that you received?

18 A That is correct. Our responsibility in this

19 area was to determine which information was valuable and

20 to pass this to the appropriate department for investigation

21 and design consideration. We were an informing group in

22 that possible function.

23 MR. LEWIS: I have nothing further.

1 REDIRECT EXAMINATION

2 BY MR. DUNN:

3 Q In fact, Mr. Martin, didn't you make

4 recommendations to others?

5 A Not really. While we were requesting that

6 the design departments consider some means of reducing

7 really the error that we saw through some method of

8 reducing potential for error in the use of the mechanism.

9 Q. Mr. Martin, didn't your subordinate,
10 Mr. Dixon in his April 19, 1971 memorandum, make a
11 recommendation concerning the driver's manual and in
12 addition to the driver's manual --
13 A. Yes, he did.
14 Q. So in fact your department, either directly
15 or through your subordinates, could have made recommendations
16 concerning changes in the driver's manual?
17 A. We could have proposed a change, I presume,
18 yes.

4 Q. Were there any further changes of which
5 you were aware --
6 A. Not to my knowledge.
7 Q. -- made or recommended by you or your department?
8 A. Not that I recall.
9 MR. LEWIS: You mean other than what we
10 discussed here today?
11 MR. DUNN: Other than the one owner's
12 change mentioned in Plaintiff's Deposition Number 1.

13 MR. LEWIS: In the owner's manual?

14 MR. DUNN: Right.

15 MR. LEWIS: Okay.

16 MR. DUNN: No further questions.

17 THE COURT: What is the status of those

18 witnesses that we were going to take out of turn?

1 BY MR. DUNN:

2 Q. Mr. Dixon, for the record would you state your

3 name and address?

4 A. Douglas Dixon, 2251 Horseshoe Drive, West

5 Bloomfield, Michigan 48033.

6 Q. Who is your current employer and what position

7 do you hold with that company?

8 A. Ford Motor Company. I'm a Principle Staff

9 Engineer.

10 Q. How long have you been employed by Ford, Mr.

11 Dixon?

12 A. Approximately sixteen years.

13 Q. That would be since 1963?

14 A. Yes, sir.

15 Q. What is the extent of your formal education

16 and what credentials in the way of academics do you hold?

17 A. I have a Bachelor of Science and a Master of

18 Science Degree in Mechanical Engineering from Wayne State

19 University.

20 Q. Would you state briefly positions you have held

21 and the departments you have been in since joining Ford in

22 1963?

23 A. I joined Ford in '63 as Development Engineer in

1 the Lincoln-Thunderbird development department. I was then
2 in the climate-control heating and air conditioning
3 department.

1 Q. I would like to show you a memo previously
2 marked as Plaintiff's Deposition No. 1, dated April 19, 1971.
3 Because of poor copy we have retyped it so it is a two page
4 document and ask you to look at it?
5 A. Yes.
6 Q. Is that your signature, Mr. Dixon -- Mr. Dixon,
7 on the original copy?
8 A. Yes, sir, it is. On the original copy.
9 Q. Do you recall what prompted you to suggest this
10 change in the owner manual?
11 A. As I recall we recommended this change to make
12 sure that the Lincoln-Mercury owner manual would be
13 equivalent to the Ford Division owner manual and to make
14 sure that positive statements were made that whenever the
15 car was parked to be sure that the selector lever is in the
16 "P" position.

17 Q. At the time that you signed this memorandum
18 did you become aware of complaints concerning the "park"
19 position on Lincoln vehicles?
20 A. I had been attending the problem review meeting
21 for several weeks and we were getting mostly unconfirmed
22 reports that customers were complaining that vehicles would
23 jump from "park" to "reverse" and of course whenever our
1 engineers, where we would get a case where we'd try to
2 confirm this condition, we could not. The car would seem
3 to be functioning perfectly normally and the customer in
4 fact would agree it is fine now. So we were unable to
5 determine any problem but we felt as a customer measure we
6 should do whatever we could to make it very clear in the
7 owner's manual that he should have the car in the "park"
8 position.
9 Q. Do you know from your own knowledge whether in
10 fact the Lincoln-Mercury Division owner's manual was changed
11 as a result of this memorandum?
12 A. To the best of my knowledge I believe it was.
13 If I recall at the time it was changed based on the
14 recommendation.

23 Q. In the period of time, March '71 to December '71,

1 when you were attending these meetings which dealt with,

2 presumedly among other things, the "park" to "reverse"

3 problem; did you have occasions to speak with any customers

4 directly yourself?

5 A. I did not speak with any customers directly.

11 Q. Mr. Dixon, in the period of time that you were

12 attending the problem review meetings did any recommendation

13 ever come to your attention concerning the deletion of the

14 letters "ark" from the steering column gear designation?

15 Do you recall any such recommendation during your tenure

16 on the committee?

17 A. As I recall that was one of the things that --

18 one of the items that was discussed.

19 Q. It was discussed. Do you recall any

20 recommendation coming out of those discussions? If you

21 recall?

22 A. I believe that it was -- one of the

23 recommendations that I had was to remove the letters "ark"

1 from the word "park" so that leaving just the letter "p"
2 it would be a more specific indication of the "park" position
3 for the customer.
4 Q. I think you may have answered that but what is
5 the purpose of the recommendation of deleting the letters?
6 A. By deleting the letters "ark" there would be
7 a more specific indication of the "park" position. The
8 "park" position would then be indicated by only the letter
9 "p" which would have a narrower width than the letters
10 "park".

19 Q. Do you know whether this recommendation was
20 adopted and in fact the letters "ark" were subsequently
21 dropped?
22 A. I believe it was dropped.

4 Q. Mr. Dixon, I would like to show you a document
5 marked Plaintiff's Deposition Exhibit No. 3, dated June 30,
6 1971, and ask you to examine it.

7 A. Yes, sir.

8 Q. Is that your signature at the bottom, D. R.

9 Dixon?

10 A. Yes, it is.

11 Q. Are you the author of the memorandum?

12 A. Yes, I am.

15 you were addressing the memo; the positions of the four

16 individuals?

17 A. I believe Mr. Nichol was Mr. Martin's boss and

18 Mr. Jurosek was Mr. Nichol's boss. Mr. Fadow was Mr.

19 Bryant's boss and Mr. Bryant was responsible for the

20 steering column department. Mr. Fadow also reported to

21 Mr. Jurosek, as I recall.

22 Q. In the upper right hand corner typed in

23 capitals is the term, quote, NOT TO BE DUPLICATED, unquote.

1 That is underlined and then a space followed by -- all in

2 caps -- quote, PLEASE FORWARD PERSONALLY AND RETURN TO

3 CHASSIS SAFETY SYSTEM FILE, unquote. Did you put that

4 on the memorandum?

5 A. I could not recall having that put on the memo.

6 Q. Based upon your prior testimony is it fair to

7 say that you have been on the problem review committee

8 approximately two or three months at the time this

11 Q. Do you recall how many complaints had been
12 brought to your attention at this time concerning the
13 problem of shift lever placement improperly in "park" and
14 then slipping into "reverse"? How many of those kinds of
15 complaints had come to your attention in this two to three
16 month period of time prior to writing this memo?
17 A. I cannot remember an absolute number. We would
18 sometimes get one a meeting, sometimes two a meeting and
19 sometimes none a meeting. I can't remember the absolute
20 number as of June 30th.

22 concerning feasible alternatives to remedy the problem as
23 the memorandum was written?
1 A. No, sir. I knew of no feasible alternative
2 at the time the memorandum was written or I would
3 have probably more specifically suggested that particular
4 remedy.
5 Q. The first paragraph under quote, present
6 condition, unquote, of the memorandum states in the
7 interior portion of that sentence, quote, this condition of
8 careless shift lever actuation is occurring frequently with

9 actual high accident incidents, unquote. The
10 characterization of careless shift lever actuation, what led
11 you to conclude that the shift lever actuation was in fact
12 being carelessly performed by drivers?
13 A. The fact that the reported instances of jump
14 from "park" to "reverse" could not be confirmed. In other
15 words, there is no problem and so this led to this
16 hypothesis, if you will, of this phenomenon. There is no
17 other explanation but customer carelessness. It's
18 impossible, of course, in any specific time to know what
19 happened at that particular instance because it could not
20 be confirmed before or after. And as I mentioned previously
21 in those instances that I am aware of where they attempted
22 to confirm them the customers themselves would say, quote,
23 everything seems to be fine now, unquote, and actually be
1 embarrassed for bringing the subject up.
2 Q. Having concluded that the incidents arose from
3 driver carelessness did you recommend any further changes
4 in the owner's manual? I said, quote, further changes,
5 unquote. I mean any changes beyond or in addition to the
6 change recommended in your April 1971 memorandum?
7 MR. LEWIS: And that being the manual include
8 the words to the operator, be sure that it is placed in the
9 "p" position. Anything more than that are you talking
10 about?

11 MR. DUNN: Yes.

12 BY MR. DUNN:

13 Q. Were any further recommendations made concerning

14 the owner's manual?

15 A. That was the only recommendation. That

16 communication contained the only recommendation that I

17 recall being made.

9 Q. Have you had any design or safety, or any other

10 type of experience with the transmission department or

11 division?

12 A. No.

22 A. Yes, sir.

23 Q. Do you recall writing any other memorandum on

1 the subject of shift lever and transmission engaging "park"

2 to "reverse" between your June '71 memorandum, which I have

3 just shown you as Plaintiff's Exhibit No. 3, and this

4 document dated December 8, 1971?

5 A. I don't recall any other memorandum. This
6 memorandum is incomplete as it stands. There is an
7 attachment of Ms. Applegarth's letter.
8 Q. Let me show you Plaintiff's Exhibit No. 5. It
9 is two pages. One is a bad copy of the original and one
10 which is a retype of the original and ask if that is the
11 correct attachment?
12 A. Yes, sir. As I recall this is the attachment
13 that went with the December 8th communication.

18 Q. Did you do any follow-up conversation, written
19 inquiries, communication of any kind directly with Ms.
20 Applegarth?
22 THE WITNESS: No.

10 A. Ford Motor Company had purchased a 1972 Cadillac
11 and I was able to sit in the vehicle in one of our garages
12 and observe the shift lever operation.

13 Q. From your observation is it correct that you
14 concluded that the shift land had a greater distance from
15 "park" to "reverse"?
16 A. I don't know what you mean by the, quote, land,
17 unquote. There was definitely a greater margin between
18 "park" and "reverse" but I was not able to observe any of
19 the internal workings of the mechanism.

5 Q. Does the fact that you mentioned a joint
6 consideration with the transmission division, does that
7 evidence the fact that transmission changes might have to
8 be made, or you would at least need their expertise to
9 consider any design changes?
10 A. Yes, sir. I felt it was possible depending on
11 the design considerations that were being made there. The
12 transmission linkage could be affected which would be in
13 the area of responsibility of the transmission division and
14 that there might have to be joint input to this particular
15 change. We would be in areas of responsibility that were
16 not covered by Mr. Bryant in the chassis division and that's
17 why that was mentioned.

4 Q. Did you over the course of attending these
5 product problem meetings determine whether or not any
6 investigation by Ford people ever found, in fact, a situation
7 where a car was put in the "park" position and then jump
8 from that position to "reverse"?
9 A. No. I am not aware of any case where we were
10 able to confirm that condition.
11 Q. And if the investigations by the people who
12 investigated these complaints -- excuse me -- what did the
13 investigations by the people who investigated these
14 complaints show?
15 A. It generally showed that the car was perfectly
16 normal.
17 Q. Anything wrong with them mechanically?
18 A. No.
19 Q. What was the problem in these reported "park"
20 to "reverse" jumping to -- jumping from "park" to
21 "reverse"?
22 A. The best we could determine it was customer
23 carelessness in not getting the shift lever properly in
1 the "park" position to begin with.
2 Q. And, in fact, was it reported at these meetings
3 that the customers acknowledged that this was what was
4 happening?
5 A. That was what we heard, yes.

8 Q. Now you in case this comes up in the sentence
9 under, quote, present condition, end of quote, you've
10 indicated in your report that the report from the customer,
11 quote, indicates that this condition of careless shift lever
12 actuation is occurring frequently in the field, unquote;
13 what are we talking about frequently? How many reports
14 were you all getting? Do you have any recollection of that
15 period of time how many reports per month?
16 A. We were getting very few reports on absolute
17 number of basis. Maybe one or two or three a month. That
18 type of thing.
19 Q. This was in June of 1971?
20 A. Yes.
21 Q. And this is what is meant by -- this is
22 occurring frequently?
23 A. Yes, sir. Actually this group of reported
1 incidents was more frequent than any other problem reported
2 so it is just relative to this committee meeting I attended.

12 Q. Now going on in that same sentence you indicate
13 that this was happening frequently and you've described
14 what frequently meant, quote, with high actual -- accident
15 incidents, end of quote. What does that mean?

16 A. Well, what I meant there was in this, just this
17 group, this population where a customer would carelessly
18 place the shift lever in an improper position that in that
19 case an accident might be likely because it wasn't in
20 "park", there was a possibility the vehicle could move and
21 of course, then you would have an accident. It would have
22 to have to hit a curb or something to stop the vehicle.

2 Q. When you were receiving these reports that it
3 was entirely customer carelessness did you make any
4 recommendations concerning further additions to the owner's
5 manual to really highlight or bring this to the driver's
6 attention?
7 MR. LEWIS: You mean other than the
8 recommendation that the driver place the gear shift in "p"?
9 MR. DUNN: We're talking about a later period
10 of time when the incidents, by the memo, seems to be
11 increasing. I was simply asking whether he made any
12 recommendation beyond the change suggestion in the April
13 19, 1971 memo.
14 THE WITNESS: No, sir. It may not have gotten
15 into the actual owner's manual by the -- by these later
16 periods. It would be put in as soon as possible.

13 Q So, in fact, your recollection that the
14 incidents were one to three per month in June and up to six
15 in December is actually substantiation for your statement
16 in the opening sentence of your December 8th memo, that
17 there is an increasing number of customer complaint letters;
18 is that correct?
19 A As I recall we were getting a few more during
20 that period in October or November than during the
21 preceding time. I said sometimes there would be one a
22 meeting, sometimes none a meeting and then sometimes we'd
23 get two or three a meeting.

15 First, Your Honor, we have a brief in support of
16 our motion to strike on the liability issue which I would
17 like to present to the Court. Basically, our motion is
18 based on three Virginia cases: The case of Turner versus
19 Manning, which is reported in 216 VA and in that same
20 volume which is a 1975 case; there is another products
21 liability case, Logan versus Montgomery Ward Company,
22 Incorporated; and finally there is a case coming out of
23 the circuit court of Arlington known as Featherall versus
1 Firestone Tire which has not been reported in our advance
2 sheets as yet, but it's at 252 SE 2nd 358. I anticipate in
3 that case representing one of the parties.
4 Basically the law in Virginia does not require
5 a manufacturer to design and market an accident proof case.
6 The only duty of the manufacturer is to produce a
7 reasonably safe vehicle and it does not have to produce an
8 accident free vehicle.
9 I believe the cases of law indicate that a
10 manufacturer does not have to imagine a possible thing that
11 might happen but his only duty is to comply with the state
12 of art in producing the vehicle or a piece of equipment that
13 is reasonably or adept -- is reasonably safe for its
14 intended use.

15 And I don't believe in this case there is any
16 evidence other than the testimony of Mr. Devine, his
17 generalities that the vehicle was unsafe. Although I don't
18 know how the Court will react to this but I don't think that
19 Mr. Devine's testimony is credible considering the entire
20 testimony as a whole.
21 I know normally these matters are left to the
22 discretion -- or matter of weight to be considered by the
23 jury but I really have some questions whether his testimony

14 Now in this case we took a lot of pains to bring
15 out the fact that a person can tell when a vehicle is placed
16 in the "park" detent. Ms. Bartholomew said she could; she
17 checked it frequently and in fact at one time in her
18 testimony as my recollection, she said at the time at the
19 Giant she put it in "park", tested it and it was in "park".
20 And in addition to that she put on her brake -- her foot
21 brake or emergency brake.
22 I believe this is her testimony and I believe
23 in her testimony here in court -- we haven't gotten to her

1 deposition or that representation in the depostion -- but
2 I believe in my recollection of her testimony here in court
3 was emphatically that it was in "park" gear.
4 Now this is something that -- this is something
5 that certainly is well within the knowledge of an operator
6 who drives a car. I brought out from her that prior to
7 this accident at the Giant that she had owned the car for
8 three or four years at that time. She had driven other cars
9 and was well experienced in the operation of the column
10 shift lever.
11 And I don't know more to say than just what I
12 believe the law is and I believe her testimony is that --
13 her testimony, her statements unequivocally stated that
14 the car was in "park" and the brake was on.
15 The expert witness was allowed to answer that
16 question with that preface but then he changed that preface.
17 We eventually got his testimony and I don't think there is
18 any dispute about this; his position is if the vehicle is
19 in "park", in fact, and the brake is on the vehicle will not
20 move unless the operator or someone else moves that shift
21 lever up and puts it in another gear.
22 I believe this is the law and that's what the
23 evidence is. I think that based on that we respectfully
1 would move the Court strike the Plaintiff's evidence on
2 the liability issue.

19 The other point raised by Mr. Lewis that there--
20 that the Massey versus Flintstone case -- sometimes I want
21 to call it -- is an archaic distortion of ones common sense
22 in a case like this.
23 The case refers to where the plaintiff's
1 evidence is inconsistent with its alleged theory. Here
2 the plaintiff's evidence is being distorted when it is said
3 that she said that it was the whole way in "park".
4 That evidence must be looked at in light of the
5 full evidence in the case, which is that she certainly
6 believed that it was in "park" but that it was not. That is
7 what the whole case is about; an illusory "park" position.
8 In Mr. Lewis' own memo on the bottom of page
9 six he refers to it as the near "park" position.
10 Plaintiff's own expert admits that she could not have
11 properly placed the column shift lever in order to a
12 slippage from near "park" to "reverse". Therefore Plaintiff
13 must have misplaced the shift column lever in an
14 unforeseeable manner.
15 That is what his argument is to get his motion
16 to strike across is that this was unforeseeable. The
17 record is just laden with evidence, although -- I don't
18 know if Your Honor has looked at all of those documents that

19 came in with Dixon's deposition but it is laden with
20 evidence that it was certainly foreseeable back in '71,
21 and they had so much notice that they even considered the
22 number of accidents high -- the number of reports high
23 and the incidents of accidents high.
1 So that we can't say it was unforeseeable at the
2 time they manufacturered Ms. Bartholomew's car. It
3 certainly was -- the problem of near "park" or illusory
4 "park" was known to them.
5 The actions they took in our opinion were a
6 reckless disregard of the rights of the Plaintiff and
7 others. The remedies that Mr. Lewis referred to when
8 removing the letters "ark" and concluding that it was
9 customer error and that they should just put a notice in
10 the manual that says to be certain shift lever is in "park",
11 Your Honor, I would say is equivalent of trying to cure
12 cancer with an aspirin. It was certainly a reckless
13 disregard. It reminds me of the statement -- which I hope
14 to use to the jury -- so if you hear it twice, please
15 forgive me. I heard Professor Lambert one time say that on
16 warning that telling your neighbors to keep off the grass
17 is instruction. It does not warn them that you put your
18 pet cobra out on the lawn to have his lunch.

19 That's what they did in this case, Your Honor,
20 telling the operators not to put the -- to be certain to
21 put the shift lever in "park". It's the equivalent of an
22 instruction, not a warning. They certainly had a duty to
23 do more than that.
1 It was a reckless disregard. A type of
2 corporate stonewalling, if you please. And we think the
3 issue is certainly still open on punitive damages.
4 I would also state, Your Honor, that at this
5 point a motion to strike punitive damages is premature.
6 If we are correct that we ought to go forward, frequently
7 the evidence that comes out out of the Defendants'
8 themselves is further evidence of a willful, reckless
9 disregard for the Plaintiff's rights to warrant punitive
10 damages.
11 So in any event I think that should be taken
12 under advisement at this point. The deposition of Dixon
13 says that the incidents were at a greater rate than other
14 problems.
15 One of the problems that concerns me, Your
16 Honor, in hearing this motion at this point is the dullness
17 of reading the deposition of these very very important
18 documents in this case just slipping in, which I think

19 builds very strongly our case, on notice to Ford on
20 foreseeable and punitive damages might not be considered by
21 these motions.
22 If you are anywhere near inclined to grant
23 the Defendant's motion I wish you would read those documents
1 before you did.

12 BY MR. LEWIS:
13 Q. Would you state your name for the ladies and
14 gentlemen of the jury, please.
15 A. Alfred T. Bryant.
16 Q. And where do you reside, sir?
17 A. I reside in Oak Rapids, Michigan.
18 Q. Will you tell the ladies and gentleman of the
19 jury if you were ever employed by Ford Motor Company?
20 A. Yes. I was employed by the Ford Motor Company
21 for 37.7 years.
22 Q. Tell us if you will when you commenced work and
23 what capacity?

1 A. I commenced working for the company as a
2 draftsman in May of 1941, although I was associated with the
3 company from September of 1935 as a trade school student.
4 Q. What was your age when you started with the
5 company?
6 A. When I started as a trade school student I was
7 thirteen years old.
8 Q. Now, tell the ladies and gentlemen of the jury,
9 if you will, what is your formal education beyond trade
10 school?
11 A. Beyond the trade school I have the Apprentice
12 School Certificate from Ford. I have a certificate -- no.
13 I have a high school diploma from Northern Evening School.
14 I have a degree, Bachelor of Science degree in Mechanical
15 Engineering and a Bachelor of Science degree in Industrial
16 Management.

3 A. Transmission controls in my design responsibility
4 meant down to the lever on the outside of the transmission.
5 The lever is designed by transmission engineering and
6 released by transmission engineering.

7 Q. Let me see if we can clarify this. This has
8 been introduced as not being an applicable casing for a
9 transmission. Now you're talking about your function in
10 design was from the steering column and the shift lever down
11 to the lever that goes into this casing -- this transmission
12 casing?
13 (Witness leaves stand.)
14 A. This is the lever (indicating) that shifts the
15 transmission. I take up at this point (indicating). From
16 this point inward the transmission engineering took over.

did there come a time that you retired from the
2 Ford Motor Company?
3 A. Yes.
4 Q. And when was that, sir?
5 A. That was in March of this year. March of 1979.
6 Q. In the area of design of components of the
7 steering column and the linkage -- what I'm talking about is
8 leading from the column lever down to the arm going into the
9 transmission; in designing those components do you have to
10 be aware of the overall system?

11 A. We are -- I was responsible for that system.
12 My department was responsible. No one man could do the
13 job myself.
14 Q. What I'm asking you, in designing, for instance
15 the gate insert plate; does that have to tie into the
16 whole system? Do you have to know the whole system?
17 A. We know the whole system up to the transmission
18 point. We leave the inside of the transmission to the
19 transmission experts.
20 Q. Now, I would like to show you this piece of
21 paper which has been marked as Plaintiff's Exhibit No. 21,
22 and introduced by the Plaintiff, and ask you if you to read
23 the content of that.
1 (Brief pause.)
2 A. Yes, sir.
3 Q. Are any of the persons -- or one of the two
4 persons who signed that working for you at the time?
5 A. Mr. King and Mr. Alexandrowicz were.
6 Q. Rather than read the content of the letter
7 would you just summarize and tell the ladies and gentlemen
8 of the jury what the letter is about.
9 A. This is a letter to our service department
10 asking them to put in the division -- in the Mercury Division
11 owner's manual the words regarding the "park" position.

12 And were asking to reemphasize that the "park" position is
13 "p". It was a styling type of thing that they had a big
14 red "p" and a little "ark" afterward on certain car models
15 of ours. So we wanted that reemphasized on the automatics.

8 Q And was that done subsequent to this letter of
9 '71, if you know?
10 A To my memory it was done.
11 Q Now, I show you next another exhibit introduced
12 by the Plaintiff, which is numbered 22. Look at that and
13 familiarize yourself with the content.
14 (Brief pause.)
15 A Yes.
16 Q And does that -- is that two page document,
17 letter of May 3, 1971, signed by you?
18 A Yes, sir.
19 Q Again, if you will, without reading it verbatim
20 tell the ladies and gentlemen of the jury, if you will, what
21 that letter is about, what it contains and the background.
22 A Well we had had forty-two field problems
23 reported when we dug into our history back through the '68

1 model, which would include ten million automobiles. And
2 to identify it further we asked our field service engineers --
3 we alerted them to look and see because we could see no
4 reason why this should happen in the steering column system.
5 Q. What are we talking about this could happen?
6 What was these forty-two reports; what were they about?
7 A. Well, when we receive a field report it's
8 filled out by the person in the garage. Sometimes we just
9 did a check on it, sometimes the words on it are not clear.
10 Sometimes we can't even -- it's not even legible.
11 So when we receive something of that nature we
12 go to our field service engineers. They in particular will
13 work with the dealership and very closely with the customer
14 to identify anything that could be a problem.
15 Q. This problem we're discussing here is a report
16 of a shift lever jumping out of "park" problem?
17 A. The shift lever cannot jump out of "park". The
18 words in here express what the report said. But the shift
19 lever cannot jump out of "park".
20 A. After that report and the report in this letter,
21 what -- was there any investigation done at that time?
22 A. Yes. The field service engineers were alerted
23 and they reported back no problem at this time, to my
1 knowledge.

11 Q What is meant in your letter, "Investigate the
12 ramp angles for parking problem."?
13 A Well that would be the -- what we asked the
14 transmission people to investigate their transmissions.
15 Q All right, sir.
16 A In other words, the people referred to in this
17 letter are my department and the transmission department.
18 We wanted them to go back to their parts and we went back
19 to our parts to see if the quality or anything had slipped
20 on it. And that, I know, was brought back with a negative
21 answer.
22 Q In other words, what did you find that your
23 quality control showed?
1 A The quality control showed we were to blue
2 print. The parts were functioning as they were meant to do.
3 Q This letter also mentions the word "ark". What
4 was done? Is this the same thing you talked about earlier?
5 A Yes, sir.
6 Q Is there anything else on there that --
7 A Well, the pink problem -- the pink problem was
8 the system we used in Ford Motor Company to get clarification
9 within our top management for a change. That's the only
10 other thing that is significant in there.

11 Q. And just what was that change? I think we've
12 covered it but just to be sure.
13 A. The change, we removed the "ark" from the
14 printal. And this was done with no change except to remove
15 the letters.
16 Q. I'm not sure whether everyone knows what
17 printal is.
18 A. Printal is the little lens that you look at
19 when you shift your automatic transmission. It's got the
20 letters on it for identifying where you are in your shift
21 mode. It has "park", "drive", "reverse", "one" and "two".
22 Q. Why was the "ark" removed?
23 A. They "ark" was removed to be positive that there
1 could be no misinterpretation by anybody as to where the
2 pointer should be. But we've got to remember that the
3 pointer is an indicator.
4 When you shift your transmission automatically
5 you don't look at your pointer you go by feel. But the
6 pointer is an indicator and it is accurate.
7 Q. Now next I want to show you another exhibit
8 introduced by the Plaintiff which is marked number 23,
9 and ask you to take a moment to familiarize yourself with
10 it.

11 (Brief pause.)

12 A. Yes.

13 Q. All right. Tell us what this is.

14 A. It speaks for itself. Present customer

15 usage patterns, indicates that this decision -- this

16 condition of careless shift lever actuation is occurring

17 frequently in the field. In other words, when you shift

18 into "park" you go up, you lift your shift lever up, you

19 go forward and it takes a definite drop.

20 You are then in the notch and there is no way

21 that that column will come out of "park" unless you put

22 your hand back on that lever, you put it up and lift it up.

23 This sketch here shows that some customers were lifting it

1 up over the "reverse" notch and pushing it part way but not

2 all the way over to the "p" on the printal or into the

3 notch. Your -- very definitely the lever drops. You can

4 feel the drop. It will make a noise when it drops. It

5 will go "clunk" into the bottom of that notch when it does

6 go in.

22 Q. You stated that you explored ramping, I believe,

23 of the land between -- from "park", I mean from "reverse"

9 Q. Why would you look into that? Why would you --

10 A. Well like I explained that is a flat surface now

11 and you slide it across it. We thought maybe we could get

12 enough ramp on it that it would fall and automatically hit

13 the bottom of the notch.

14 But the land -- the materials combined with the

15 length of the land would not do that. So therefore after

16 our tryout in the vehicle and examination in my office of

17 it it just was not feasible and it could have -- it didn't

18 help the customer.

19 Further, if you brought it up and the customer

20 that was trying to do it right felt the slight drop, he

21 could be mislead that he's in "park" and he wouldn't be.

22 So that is why we did not put it in.

3 Q. In addition to that -- you might have answered

4 this. Did you find whether or not the tang --

5 A. The tang was also chamferred in our experiment.

6 Q. And did that have any -- was it any benefit did

7 you find from --

8 A. No, there was no benefit from it. You've got

9 two pieces of steel that are sheared and rubbing together
10 they will just hang.
11 Q. In other words, it would not slide down?
12 A. It would not slide down.

19 Q. As we are going from June to January, I ask
20 you next to look at a document introduced as number 25.
21 (Brief pause.)
22 A. Very well.
23 Q. What is this letter; who is it from and who is
1 to?
2 A. It is addressed to -- the spelling is wrong --
3 Mr. Guterman, who was my chief engineer at that time, I
4 believe. It is just advising him of the problem and it's
5 just advising him of what we are doing. And we have
6 already discussed what I have done. I would be glad to
7 go over it again.
8 Q. No need to do that. I want to ask you; in
9 addition to mentioning these ones you mentioned, did you
10 investigate making the land between "reverse" and "park"
11 wider?

12 A. Yes. Our opinion was making the land wider
13 made it worse from the standpoint of our customer. If he
14 could not push over the land that we had by making it wider
15 we invited him to not do it because we were making him push
16 the lever further.
17 And remember when you're pushing this lever
18 you're arm is in the up position where you don't have the
19 control that you would coming down.
20 Q. In other words, the wider the land you felt
21 would increase the probability or possibility of someone
22 having --
23 A. I didn't have any doubts. The wider the land
1 the more possibility it was for the malfunction that the
2 customer was causing by not using the linkage properly.

19 Q. In addition to your investigation was this
20 investigated by others?
21 A. Yes, sir.
22 Q. Is this a report to Mr. Guterman concerning
23 these investigations?

1 A. This does not cover all of the points of the
2 investigation. I had my design engineers -- excuse the
3 possessiveness. But when they worked for you they do
4 something much more thorough than when they work for somebody
5 else.
6 And I had the design engineer go out and
7 investigate several of these cases with the people. And
8 the people admitted to the design engineer --

19 THE WITNESS: My design engineers, in each case
20 they investigated -- the customer when it was demonstrated
21 to them the feel going into the notch agreed that the car
22 had not been put all the way into the "parking" notch.
23 BY MR. LEWIS:
1 Q. Now, let me refer specifically to the last
2 paragraph there. There is some mention of a study package,
3 study committee?
4 A. Yes.
5 Q. A meeting of February 1, '72.
6 A. Yes.

7 Q. What connection did you have with that study
8 committee?
9 A. I was chairman of the study committee. The
10 study committee was put together by the transmission and
11 chassis division. Each design manager chaired the study
12 committee. It was our chance to explain to manufacturing
13 purchasing, timing, and scheduling any change we were going
14 to make or we were thinking of making.
15 This permitted us to get the manufacturing and
16 purchasing input before the change was released rather than
17 after the fact of having to go back and review and redo the
18 drawings.
19 We had planned to put the inserted plate -- the
20 tapered inserted plate in on 2/1 if our experiment was
21 successful. It was not successful so therefore it never
22 went into the committee.
23 Q. These modifications that you all studied they
1 were -- you didn't have the meeting because you found they
2 weren't feasible?
3 A. The meeting was held but this was not put into
4 the meeting because it was not feasible. The meeting was
5 held each week regardless.
6 Q. Mr. Bryant, let me show you another document
7 that's been marked as Plaintiff's Exhibit No. 19, take a
8 few minutes to check that over and familiarize yourself with
9 it.

10 (Brief pause.)

11 A. Yes.

12 Q. Does that indicate that you are a recipient of

13 one of the copies of this correspondence?

14 A. Yes, sir.

15 Q. And it's dated January 19, 1972?

16 A. Yes.

17 Q. Let me ask you what the second page is; what is

18 that?

19 A. The second page is what we call a "want list".

20 There are several names for it. That's what we call it;

21 a "want list".

22 It is sent by our chief engineer to the chief

23 engineer of the vehicle office and the chief engineer of

1 research. We are asking them to look at these particular

2 projects to see if they have any idea or suggestion that

3 they can give us on it.

4 Q. What is the goal of this sheet; what are you

5 trying to do? What is the company trying to do with that

6 "want list"?

7 A. This "want list" is trying to improve whatever

8 we have as feasible.

9 Q. Let me ask you this. In your consideration of

10 design changes that you looked into and you have already

11 discussed, was the cost of stamping a different type plate,

12 or whatever it might have been, was that ever involved in
13 your decision?
14 A. Is it permissible for me to object. I have
15 never lost any change requests that I wanted in an
16 automobile. If my immediate supervisor disagreed he has
17 a boss. I went to him. If the both of them disagreed I
18 then took it to the vehicle office. And anything that I
19 thought was needed in the automobile was put in the
20 automobile as long as it was under my control.
21 Q. You mean regardless of what it cost?
22 A. Yes, sir. The cost was never a factor when
23 safety was involved, or anything else. Now if it was a
1 whim of mine, yes, I would lose.

23 Q. Does that document reflect when the "ark" was
1 removed from the printal?
2 A. This is a change request and this does remove
3 the "ark" from the printal. Whether it's the original one
4 or not I could not say.
5 Q. What is the date of that document?
6 A. It's date 5/27/71. There is one more
7 significant thing there. They have their production prints
8 on the same day.

9 Q. What does that indicate that they had their
10 production prints on that day?
11 A. They had full go ahead to proceed with the
12 change.
13 MR. LEWIS: I would like to put that into
14 evidence.
15 THE COURT: It's received as Defendant's No. 2.

21 Q. As a result of your investigation of any
22 possible changes that might assist a careless operator did
23 you seek information from any other sources in the company
1 for any other suggestions -- some suggestions from
2 different sources in the company?
3 A. At the time we looked at the competition.
4 Q. What did you find?
5 A. The Cadillac was wider and that was the wrong
6 way to go, which I've explained, and that's all that I can
7 remember.

6 Q All right. It was not your responsibility to
7 know anything that went past that manual lever on the
8 outside of the transmission case, isn't that true?
9 A That's true.

18 Q. Mr. Bryant, you were asked if there was anyone
19 from Transmission at your study committee meeting and you
20 indicated that there were not.
21 A. That's correct.
22 Q. What was that study committee?
23 A. The study committee was strictly for the steering
1 column, and it was for presenting any design or manufac-
2 turing changes, initially, so that everybody could
3 understand it.

11 Q. Would you state your name for the ladies and
12 gentlemen of the jury, please?
13 A. Frederick W. King, the Third.
14 Q. Where do you reside?
15 A. Northfield, Michigan.
16 Q. By whom are you employed, sir?
17 A. Ford Motor Company.
18 Q. Tell the ladies and gentlemen of the jury, if
19 you will, your educational background.
20 A. I have a Bachelor of Science in mechanical
21 engineering from Bucknell University.
22 Q. When did you obtain that degree?
23 A. 1965.

8 Q. Where did you go to graduate school?
9 A. Drexel University -- excuse me, Drexel Institute
10 of Technology in Philadelphia.
11 Q. How long did you attend graduate school?
12 A. About a year and a half.
13 Q. What field of study were you in at that time?

14 A. That was also mechanical engineering.

15 Q. Have you been continuously employed by the Ford

16 Motor Company since 1965?

17 A. Except for two years in the military service, yes.

18 Q. Tell the ladies and gentlemen, if you will,

19 what you have done with the Ford Motor Company since 1965,

20 excluding the time that you were in the military service.

21 A. I started in steering column engineering, and

22 essentially have been in that area since I started with

23 the Ford Motor Company.

13 Q. I show you a document that is marked Plaintiff's

14 Exhibit Number 21, dated April 19, 1971. Would you take a

15 moment and look at that, Mr. King, and familiarize yourself

16 with its contents, please?

17 A. (The witness complied with the request.)

18 Yes, I'm familiar with this.

19 Q. Tell the ladies and gentlemen of the jury, with-

20 out reading it verbatim, what that is and the background

21 and what was done.

22 A. One of the things that Doug Dixon and I perceived

23 that might help people understand how to operate their

1 Ford vehicles better, would be to put some very explicit
2 instructions in the owner's manual. The letter that Doug
3 and I signed, essentially accomplished putting those
4 instructions -- or at least getting consistent instructions
5 into all of the owner's manuals.
6 Q When you say "consistent", what do you mean
7 by that?
8 A Well, some of the owner's manuals -- I think,
9 probably in 1971 -- didn't all have instructions to set the
10 parking brake everytime you left the vehicle. We wanted
11 to be sure that that was in all of the owner's manuals and
12 that it read the same way in all the owner's manuals for
13 each different car line.
14 Q The content of that letter, was that a recommen-
15 dation for a change in the manual of the Lincoln-Mercury
16 automobiles?
17 A It was more of a direction to make a change,
18 rather than a recommendation.
19 Q Tell us what the specific direction was, to be
20 put into the manual.
21 A The words that we wanted to put in -- it says,
22 "add to the part description on driving with the select-
23 shift transmission section" -- the words that we wanted to

1 go in there were, "whenever the car is parked, be sure
2 the selector lever is in the P position; set your parking
3 brake everytime you leave the car."
4 Q. Do you have any notes to indicate when that
5 change was effectuated, or when it was put into the Lincoln
6 Continental owner's manual?
7 A. I'm quite sure they all went in with the first
8 printing of the owner's manuals for the 1972 vehicles.
9 Q. Thank you.
10 Do you have any independent recollection that
11 far back, in 1971, whether you and Mr. Dixon had anything
12 to do with the letters involving the word, P-A-R-K (spelling)?
13 A. Yes, we did.
14 Q. Tell the ladies and gentlemen of the jury, if
15 you will, what you and Mr. Dixon considered or did in that
16 regard.
17 A. One of the things that Mr. Dixon and I were
18 concerned with is that, on what we call our cluster
19 printal display, we spelled out the whole word "park". The
20 P was a large letter and the letters A, R and K were
21 smaller letters, but the entire word was displayed there.
22 The actual "park" position, that is, the point
23 where the needle, the indicator needle, would align with

1 the "park" position was over the letter A of the word "park."
2 And we were concerned that some people might presume that
3 if they reached any point on that word "park" -- perhaps
4 the K -- that their transmission would properly be in park.
5 So to eliminate that potential, we decided that
6 we should take off the letters A, R and K, and move the
7 letter P over to where the A formerly was, because that
8 was the correct "park" position, and eliminate any
9 possibility that a customer would perceive that the
10 entire width of that word "park" was a "park" position.
11 Q What is your recollection as to when that
12 change was made?
13 A As far as I know, it was made also at the start
14 of the 1972-model production.
15 Q Thank you.
16 MR. LEWIS: May I see Exhibit Number 20, please?
17 BY MR. LEWIS:
18 Q Mr. King, let me show you another document,
19 which has been marked as Plaintiff's Exhibit 20. Take a
20 few moments, or as much time as necessary, to review that
21 and familiarize yourself with it.
22 A I'm familiar with it.
23 Q When was that done?

1 A. Midsummer of 1978 is when I put that together.

2 Q. Regarding paragraphs one and two, basically

3 that's what you've just told us, with reference to the

4 P and the A, R and K; is that correct?

5 A. Yes.

6 Q. This is a memorandum to the files, it's indicated.

7 A. Yes.

8 Q. For what purpose?

9 A. Our Ford Automotive Safety Office asked me to

10 jot down my thoughts and recollections, to help them under-

11 stand the letters that Mr. Dixon and Mr. Bryant had written

12 during the 1971 period. Since I was still in that area

13 and had been in the area during that time, they asked me

14 because they felt that I would be able to recollect some

15 of those things, to help them understand the background

16 of those letters.

17 Q. That's the Mr. Dixon and Mr. Bryant letters of

18 '71 you're talking about?

19 A. Yes.

20 Q. Now, let's go to the third paragraph. Without

21 reading it verbatim, what did you do in that regard?

22 A. The one that starts off "discussion with?"

23 Q. Yes, sir.

1 A. Since I didn't have any real good, firsthand
2 knowledge of the actions described in that last paragraph
3 as I did in the first two paragraphs, I talked to both
4 Mr. Alexandrowicz and Mr. Notestine, who I knew had been
5 involved in some of the designwork at that time, and tried
6 to recollect from both my own memory and through them, the
7 design approaches that they either considered or looked
8 at or worked on during that period.
9 Q. Does the memorandum indicate the types of things
10 that they considered?
11 A. Yes. There were two things that were considered.
12 One was to put an angle or a radius on the insert plate; the
13 other was to make the distance between the "reverse" and
14 "park" positions the width that the General Motors positions
15 were.
16 Q. Is what we're talking about here the wider land;
17 does that make sense to you?
18 A. Oh yes.
19 Q. We've been using that term here.
20 A. Yes.
21 Q. What did you record, or what did you find?
22 A. Well, I didn't get personally involved in the
23 angle or ramp insert. One of the things that we considered

1 was, as I mentioned, to make the land wider. You have to
2 understand that there's a tendency in the automobile
3 industry to look at your competition and understand their
4 design approach and consider if you're overlooking something.
5 We looked at the General Motors design and
6 considered adopting that as our own.
7 Q. Mr. Bryant, Al Bryant, was the gentleman in
8 charge of you at the time, your group there?
9 A. Yes.
10 Q. And do you remember working personally with him
11 regarding the wide land?
12 A. No.
13 Q. What was decided about the wide land, based on
14 your inquiries?
15 A. Well, the biggest concern that we had with it
16 was that we couldn't convince ourselves that it would help
17 customers improve or increase their perception that they
18 had placed the lever properly in the "park" position.
19 We were also concerned that, because it would be
20 wider, it might provide a greater area to place the lever
21 up on that land, rather than putting it in the proper
22 position.
23 Q. And how about the angle or the ramps?

1 A. I really didn't get involved in that. I knew
2 that it was being done. That's why I called Mr. Alexandrowicz,
3 because I knew that he was probably as intimately involved
4 in that as anybody. But I really didn't have any personal
5 knowledge of what was done on that.

21 Q. Going on down to the last paragraph there, I
22 guess the best way to handle this would be to read the
23 last sentence, if you will, of your memo to file.
1 A. It says, "I just believe that the actions taken
2 in the owner's manual and the printal displays are the
3 only effective means known to reduce operator error,
4 although I couldn't find any significant documentation
5 on this point."
6 Q. What do you mean by that?
7 A. Well, as I mentioned, one of the things that
8 were considered was to make that land the same width as
9 the General Motors width. We were concerned that if we
10 did that, there might be a greater tendency for people to
11 leave the lever up on top of that, and perhaps increase
12 whatever problem frequency the customer might experience.

13 We couldn't see any advantage to doing that
14 because it didn't appear to us that whatever that width is
15 would either encourage or discourage people from
16 accomplishing the park-engagement operation correctly.
17 Because we couldn't see any clear advantage and
18 we did see a potential disadvantage, there really wouldn't
19 be any point in proceeding with something like that.

4 Q When you say that you looked at the GM design,
5 you looked at all of the GM insert plates?
6 A I don't know how many insert plates GM had
7 at the time.

10 A We were looking at a characteristic on one of
11 the plates.
12 Q The characteristic was the longer land?
13 A Yes.

14 Q. Did you get in touch with some of your
15 professional colleagues at GM and say, are you having
16 reports of people placing the tang on the land?
17 A. No.
18 Q. Do you know whether the longer land at GM is
19 resulting in more cases, or less cases, of people leaving
20 the tang up on the land?
21 A. I don't know.
22 Q. You don't know?
23 A. No, I don't.
1 Q. Don't you think that was important to find out,
2 Mr. King?
3 A. I'm not sure that they would even know.
4 Q. You knew at Ford, didn't you?
5 A. Yes, we knew.
6 Q. You knew because you were getting customer
7 complaints; isn't that so?
8 A. Yes, we were.
9 Q. If GM were getting customer complaints, they
10 would know too, wouldn't they?
11 A. I'm not sure about that.
12 Q. Referring to Exhibit Number 21, you said that
13 you felt that that was a direction to make a change rather
14 than a recommendation?

15 A. Yes.

16 Q. Do you have that in front of you?

17 A. No, I don't; but I remember the words.

18 Q. You're making a distinction between the words

19 "direction" and "recommendation", sir?

20 A. I just wanted to clarify that when we said,

21 "please immediately add", that that was more a directive

22 than words that I would use for a recommendation.

23 Q. Would you classify it as a warning?

1 A. I think it's accurately stated. It says,

2 "please immediately add."

3 Q. Other than discussing this change in the land

4 with Mr. Alexandrowicz, over the three or four weeks that

5 you considered it, did you make any empirical investigation

6 at all of what a longer land would do?

7 A. No. It was our judgment that you could look at

8 that type of design and make the kind of quantitative, or

9 qualitative at least, judgments that you would want to

10 make, as opposed to a perhaps more empirical analysis that

11 you would want to do of a ramp insert.

12 Q. Would it be fair to characterize what you did,

13 Mr. King, was consider and talk about this longer land, and

14 conclude that it was more likely to hang up on there if it

15 were wider than if it were narrow?

16 A. That was one of the concerns that we had, that
17 it might be more likely. But, as I mentioned, we were
18 also concerned that it probably would not help.
19 Q. Mr. King, let me ask you a question. Is the
20 concern that the tang hangs up on there, or that it falls
21 off of there into reverse?
22 A. Well, I think that the concern, accurately
23 stated, is that the customer places it on the land rather
1 than placing it in the pocket.

21 Q. In addition to you and Mr. Alexandrowicz, were
22 there other design engineers reporting to Mr. Bryant
23 regarding these matters?
1 A. Yes.

10 A. Robert Everson.

11 Q. Where do you reside, Mr. Everson?

12 A. Rochester, Michigan.

13 Q. What is your profession?

14 A. Engineer, Ford Motor Company.

15 Q. Will you tell the ladies and gentlemen of the

16 jury your educational background; where did you go to high

17 school?, and pick it up from there.

18 A. High school -- I went to high school in

19 Portsmouth, Virginia. I subsequently went to college at

20 Virginia State College and graduated with a B.S. Degree in

21 physics. Subsequent to that, I went to -- by way of a

22 teaching fellowship, I went to the University of Michigan

23 and I received a Master of Science Degree in physics at the

1 University of Michigan in 1969.

2 Q. And then would you tell us where you were

3 employed?

4 A. I am employed at Ford Motor Company in Dearborn,

5 Michigan, in the Design Analysis Department.

20 A. As you can see here (indicating), at the base of

21 the steering column you have what we call at Ford Motor

22 Company the bell crank assembly. This is the linkage that

23 gets you from the steering column, over to the transmission

1 case (indicating.) You can also see a number of grommets.

2 Q. Let's see if we can turn it a little more.

3 A. Right. There are approximately -- well, there

4 are six grommets on here, but for the purposes of this

5 demonstration here we're talking about four grommets. These

6 are plastic bushings and they are used in this linkage

7 design and system to isolate noise from this (indicating)

8 column, because if you had no bushings or pins in here,

9 the engine noise, by way of all this metal, would be

10 transferred up the column, into the passenger compartment,

11 and it would be objectionable to the persons inside.

13 Now, this bolt that you see on the output side

14 of the transmission (indicating) is something that I had

15 put on because I just wanted to demonstrate that, if you

16 are in park and you are latched, and you put some load on

17 the transmission -- for instance, if it's parked on an

18 incline or something, there is no way it's going to come

19 out (indicating.)

20 And that was about 150 pound feet of torque

21 that I was putting on there, and it's just going to stay

22 latched.

23 Q. If the shift lever is properly put in the parking

1 gear, you've demonstrated that it won't come out. What
2 does it take to get it out of the parking gate?
3 A. Pull it back (indicating), and push it down
4 (indicating.) That's what it takes.

9 Q. Now, when I contacted you, Mr. Everson, did I
10 advise you that a complaint had been made about one of the
11 bushings being in some damaged condition?
12 A. You certainly did. And I expressed the opinion
13 at that point in time, that no missing bushing in the
14 linkage -- no single missing bushing in the linkage would
15 cause you to not be able to get into park.
16 Q. And did I ask you to put this machine together
17 with a grommet that was broken?
18 A. You certainly did.
19 Q. And have you done that?
20 A. It's been in there all the time (indicating.)
21 Q. Now let's turn it around and show the ladies
22 and gentlemen of the jury the grommet that is broken. If
23 you will, point that out, please.

1 A. The grommet that you see here at the base of
2 the steering column is completely severed; it's in two parts.
3 Now, if this particular grommet were completely missing,
4 then this red lever would fall out of there. There would
5 be no way you could operate the transmission.
6 Now, if that lever were out of there, and you
7 went to start the car, the car could not start in gear,
8 given the fact that this neutral switch is field-set in
9 the nominal position. That means that you can only start
10 the car either in park or in neutral.
11 So, if this (indicating) lever is not here
12 (indicating), you cannot shift and you will not go anywhere
13 although the car will start.
14 Q. Is this the broken grommet that was initially
15 reported by Mr. Divine as being the cause of the problem?
16 A. That's correct.
17 Q. That's why you put it in there?
18 A. That's correct. I wanted to simulate what was
19 conveyed to me by your office. Now, I went an additional
20 step and I completely removed all of the material, but I
21 put a piece of wire on the front side so that I could get
22 complete metal-to-metal contact between this (indicating)
23 lever, which is welded to the base of the steering column,

1 and this (indicating) bell crank lever, this shift rod
2 here (indicating.) And even with that particular configura-
3 tion, I was still able to latch in park.
4 Q. What you have demonstrated now, of course, is
5 with a broken grommet?
6 A. That's correct; completely severed in two parts.

15 Q. Is there any regulation or standard, or who sets
16 the positioning of "park", "reverse", "neutral", "drive"
17 and "low?"
18 A. That's a federal requirement. The federal
19 government sets that standard, or did set that standard,
20 so that all of the manufacturers show the same kind of
21 pattern.

8 Mr. Everson, do you have an opinion, based upon
9 your knowledge, training and experience and investigation,
10 based upon a reasonable degree of engineering probability,
11 of whether or not this system, this transmission system of
12 the C-6, is reasonably fit for its intended purpose to be

13 used in an automobile?

14 A. Yes, I do.

15 Q. What is that opinion?

16 A. The opinion is that if the selector lever is

17 latched in the "park" notch of the insert plate, it will

17 Q. Do you have an opinion, based upon your know-

18 ledge, training, experience and investigation, and upon a

19 reasonable degree of engineering probability, that this is

20 a good and safe design of a transmission, and in compliance

21 with the state of the art at the time of its manufacture

22 for the 1973 Lincoln Continental?

23 A. Yes, I do.

1 Q. What is your opinion?

2 A. My opinion is that this particular transmission

3 design and system was at the state of the art and is still

4 at the state of the art. By that I mean that the linkage

5 system that you see here (indicating) was designed for the

6 1973 Lincoln and is still designed for the 1979 and 1980

7 Lincolns.

8 That is, we haven't changed anything. This

9 (indicating) is the state of the art.

10 Q. How does this compare with General Motors and
11 Chrysler?
12 A. To my knowledge, the industry uses the same kind
13 of arrangement. They use the same kind of insert plate;
14 they use a similar system of linkage; and to my knowledge,
15 they use a similar system of inner manual levers.
16 Q. Can a person, though carelessness or intentionally,
17 put the tang up on the land of the insert plate?
18 A. Absolutely.
19 Q. Can they do it with a General Motors product?
20 A. Yes.
21 Q. And a Chrysler product?
22 A. Yes.
23 I might add that one additional thing I did not
1 touch on is, I believe the statement was made earlier on,
2 that the emergency brake could not be set in the neutral
3 position. And I can demonstrate quite readily, on this
4 particular setup and on the plaintiff's car, that there
5 are two positions that the emergency brake can be set in;
6 one is "park" and the other is "neutral."

5 Q. Do you have an opinion, based upon a reasonable
6 degree of engineering probability, as to whether or not
7 this 1973 Lincoln Continental was unreasonably dangerous
8 for use as an automobile?
9 A. Yes, I do.
10 Q. What is that opinion?
11 A. My opinion is that it was not unreasonably
12 dangerous for its intended use; in fact, it was safe for
13 its intended use. It met the state of the art.
14 Q. What do you mean by "state of the art?"
15 A. That is the full intent -- the full, if you will
16 standard or technology at that point in time. We couldn't
17 find any better way of doing it at that point in time, or
18 to this day.

22 Q. Mr. Everson, in connection with my request to
23 you for assistance, did I ask you to go down to the Giant
1 parking lot where this was reported to have occurred?
2 A. Yes, you did.
3 Q. What did you do when you went down there?
4 A. I had a --
5 Q. What did I ask you to do?

6 A. You asked me to take measurements of the grade
7 of the parking lot and generally get familiar with the
8 layout.
9 Q. Accordingly, did I ask you to take any type of
10 instrument to make any measurements?
11 A. Yes, you did.
12 Q. And what type of instruments did you take?
13 A. It was an angle-finder; it's called an
14 inclinometer and it's used to measure angles or slopes.

18 Q. Did you make measurements on both sides of the
19 parcel pickup -- I'll put it this way: If you were standing
20 in front of the store, looking at the store, did you make
21 a measurement at the right end of the parcel-pickup lane
22 as well as the left side?
23 A. Yes, I did.
1 Q. And for a parallel direction in front of the
2 store, parallel --
3 A. Yes, I did.
4 Q. Tell the ladies and gentlemen of the jury your
5 findings.
6 A. I found that the slope in the parking lot was

7 minimally at four degrees and maximally at four and a half
8 degrees.

11 Q. And I want to be sure, without wasting a lot
12 of time -- if this tablet was the store, you were taking
13 it this (indicating) way; is that correct?
14 A. Both directions. I turned the angle-finder
15 toward the store, and parallel to the store.
16 Q. And the slope this (indicating) way was how much;
17 was that the four and a half, or the four degrees?
18 A. It's kind of misleading. Because of the flatness
19 on some of the areas, the slope would be almost imperceptible.
20 But what I'm telling you is that if you placed the inclinom-
21 eter, running with the grade to the store, the minimum angle
22 that you would measure is four degrees and the maximum angle
23 that you would measure is four and a half degrees.

8 Q. Is the effect of an operator putting the tang
9 up on the land, between park and reverse -- would that
10 basically have the same effect as the vehicle being in
11 neutral?

12 A. Yes, it could have.

13 Q. That is, assuming that the brake isn't on?

14 A. That's right.

15 Q. Now, do you have an opinion, based upon a

16 reasonable degree of engineering probability, as to

17 whether or not a vehicle, weighing the amount that it did,

18 if left in a neutral position, would, on a grade of four

19 to four and a half degrees, eventually commence to roll?

20 A. Yes, I do.

21 Q. What is that opinion?

22 A. My opinion is that, dependent upon the position

23 of the vehicle, it may very well roll. It depends on the

1 exact position of the vehicle with respect to the grade.

2 In this particular case, there is no certainty of how long

3 the vehicle would stay on the grade, simply because the

4 grade runs transverse to the location of the store.

5 Q. Would any activity with the car encourage or

6 start it to roll, or have a tendency to do so?

7 A. Certainly.

8 Q. Such as what type of activity?

9 A. Any kind of force input; slamming the door or

10 opening the door, shaking the car, putting groceries in

11 and that sort of thing.

15 Q. Mr. Everson, is it your opinion that the shorter
16 land is better than the longer land?
17 A. It is my opinion that the shorter land is a
18 better design than the longer land, yes.
19 Q. Do you consider yourself an applications engineer?
20 A. No. My title is design engineer.
21 Q. You're a design engineer?
22 A. Yes, I am.
23 Q. Would it be fair to say, Mr. Everson, that one
1 of the tests of whether something is of good design is
2 whether or not it works the way it's supposed to; empirical
3 data, go out into the field and see how it's working?
4 A. Yes, to some extent you do generate feedback
5 from the field on your product.
6 Q. Have you seen the comparison between the GM
7 feedback and the Ford feedback, Mr. Everson?
8 A. I have not.
9 Q. Isn't that important to you before you would
10 come into this court of law to testify?
11 A. I don't know whether it is or not. I consider
12 that (indicating) to be of very good design. And, by the

13 way, I might add that in no position I've had within the
14 company have I ever had responsibility for designing trans-
15 mission linkages or transmission conponents.

7 Q. Now, earlier, on your direct exam, you said
8 that a person could put the tang on the land between park
9 and reverse if he was careless, I believe the word was.
10 A. I don't remember saying that, but you can
11 position the tang on the land.
12 Q. And that can be done through inadvertence; isn't
13 that true?
14 A. Oh, absolutely.
15 Q. Without intention?
16 A. Yes.
17 Q. And that's not what you intend your customers
18 to do; isn't that true?
19 A. That's true.
20 Q. Do you know of any warning in the Ford manual
21 that tells them not to do that?
22 A. No warning in the Ford manual that tells them
23 not to do it, but there is a statement in the Ford manual,

1 I believe, that says to put the selector lever in the park
2 position and set the brake.
3 Q Is that an instruction, or a warning?
4 A That's an instruction.

21 A. William Alexander Barr.

22 Q. Where do you reside?

23 A. Gibson Island, Maryland.

1 Q. And what is your profession?

2 A. I am an engineer. Right now I am, and have been

3 since 1958, a member of the faculty of the Naval Academy.

4 Q. What do you do as a member of the faculty at

5 the Naval Academy?

6 A. Teach engineering courses.

7 Q. I'm sorry, did you say how long you've been

8 doing that?

9 A. Since 1958.

10 Q. Tell the ladies and gentlemen of the jury your

11 background and training.

12 A. I got a B.S. in mechanical engineering in 1948

13 from the University of Virginia; an M.S. in mechanical

14 engineering from V.P.I. in 1951. I am a registered

15 engineer in Virginia and in Maryland.

16 Q. What is an M.S.?

17 A. Master of Science.

2 Q. Mr. Barr, at my request, did you make some
3 examinations into the Ford C-6 transmission?
4 A. Yes.
5 Q. Approximately when did I engage you and ask you
6 to study the transmission of the C-6 Lincoln Continental?
7 A. The initial contact was a statement from you
8 in the late spring, I think. I really didn't get the
9 assignment until about August, I guess; around the first
10 of August.
11 Q. Have you, since that time, examined this
12 transmission system?
13 A. Yes, I have.

17 THE WITNESS: Yes, that's right; yes, I did.
18 BY MR. LEWIS:
19 Q. Have you also looked into and examined other
20 transmissions, of either Chrysler or of General Motors?
21 A. Yes, I have.
22 Q. You were in the courtroom as the description of
23 how this transmission system works was made by Mr. Everson?

1 A. Yes.

2 Q. And did you hear that description?

3 A. I did.

4 Q. And without going through that again, do you

5 agree that that's the way this system works?

6 A. Yes.

7 Q. What is the purpose of the gate insert plate

8 up in this general area right here (indicating)?

9 A. It's to hold the shifting lever in that position

10 so that it can't be moved out -- so that it won't be moved

11 out; it can be moved out.

12 Q. What holds it in that gate?

13 A. There is a spring that pushes -- holds the tang

14 in the gate, behind the tang, just behind the --

15 Q. Coming down into it?

16 A. Yes -- well, no, I think it's actually built intc

17 the column but a spring forces the tang into the gate.

18 Q. Now, did I ask you to make some tests?

19 A. Yes.

20 Q. What tests did I ask you to make concerning

21 this and other model transmissions?

22 A. To make tests to determine the torque required

23 to -- let me back up a minute -- to put the lever on the

1 land, the shifting lever on the land, not in the parking
2 slot, and then to determine the amount of energy required
3 to move it into reverse.
4 Q. Now let me see if I understand. You did tests
5 and you intentionally put the tang of the shift lever up
6 on the land --
7 A. Yes.
8 Q. -- and then tested the torque or effort needed
9 to move that tang from that position into reverse?
10 A. That's correct.
11 Q. How do you express that measurement?
12 A. Since it's torque, it would be inch pounds.
13 Q. Did you compare this C-6 with other transmissions,
14 make the measurements on other transmissions of other
15 manufacturers?
16 A. Yes.
17 Q. What other manufacturers?
18 A. One Chrysler product and several of GM.
19 Q. How many C-6s did you examine?
20 A. I think it was five. "Tested", I think, is a
21 better word, and there were five.
22 Q. Can you tell us -- if I can ask you to get your
23 notes out -- how many General Motors products you tested

1 with that same condition?

2 A. Six -- seven.

3 Q. What model cars did you test that had the C-6

4 transmission, what makes?

5 A. A 1973 Mercury Marquis with a 400-cubic-inch

6 engine. A 1974 Lincoln Mark IV. A 1972 Lincoln. A 1973

7 Lincoln. And there was one other Lincoln that we attempted

8 to measure but apparently a spring was broken and it took

9 no force to move it into reverse.

10 Q. How about the General Motors products; what

11 model cars were they?

12 A. A 1976 Cadillac deVille. A 1972 Cadillac, and

13 I'm not sure what model. A 1973 Cadillac. A 1972 Olds

14 Ninety-Eight. A 1972 Buick Sportswagon with 350-cubic-inch

15 engine. And I have one with a 1971 Chevrolet Nova, 307-

16 cubic-inch engine.

17 Q. Did you find any of the GM products that had

18 the same phenomenom as to movement as the one Ford product?

19 A. It actually took less effort to move it into

20 reverse.

8 Q. Give the ladies and gentlemen of the jury the

9 results of your test on the C-6.

10 A. On the C-6 I found -- probably the maximum and
11 minimum inch pounds of torque would be best.
12 The minimum inch pounds of torque was 42.8;
13 the maximum, 62.2 -- 61.2. I'm sorry.
14 Q. That's the inch pounds of effort or torque that
15 it would take to make that tang start to move along the
16 land?
17 A. That is correct.
18 Q. Now, what measurements did you get for the
19 General Motors products?
20 A. For the General Motors, I got a minimum, in
21 the 1972 Olds Ninety-Eight, of 15.2 inch pounds, and the
22 maximum seems to be the 1976 Cadillac deVille, 30.4 inch
23 pounds of torque.
1 Q. In other words, the range was 15.2 inch pounds
2 up to a maximum of 30?
3 A. 30.4, yes.
4 Q. Inch pounds?
5 A. Yes.
6 Q. In other words, it took considerably less torque
7 to move the tang across the land in the General Motors
8 products?
9 A. That is correct.
10 Q. How about the Chrysler products?

11 A. The Chrysler was a 1973 Imperial with a 400-cubic-
12 inch engine. That one required 62.3, maximum, inch pounds
13 of torque to start it to move.

5 Q. What did you do to gain your knowledge and
6 experience and study of these transmissions?
7 A. Attempting to set the ones that I was testing;
8 some 15 of them, I think, all told.
9 Q. Did you read manuals or any literature on the
10 transmissions of the various companies?
11 A. I have read them, not all of them at this time,
12 but I don't think there's much information of that nature
13 in them.
14 Q. How long have you had knowledge or experience
15 in transmissions?
16 A. Automatic transmissions?
17 Q. Yes, sir, automatic transmissions.
18 A. I would think, 20 years.

13 Q Mr. Barr, do you have an opinion, based upon
14 your knowledge, training, experience, testing and investiga-
15 tion, and based upon a reasonable degree of engineering
16 probability, whether or not a wider land in the column
17 insert plate than in the Ford C-6, would have any effect on
18 a reasonable operator in making an error and placing the
19 tang of the shift lever on the land between park and
20 reverse?
21 A Yes.
22 Q And would you tell the ladies and gentlemen of
23 the jury what your opinion is?
1 A That it is easier to place it on the longer land;
2 there is more area to place it on.
3 Q Dr. Barr, do you have an opinion, based upon
4 your knowledge, training, experience, investigation and
5 testing, and based upon a reasonable degree of engineering
6 probability, as to whether or not the amount of inch pounds
7 of effort or torque required to move the tang of the shift
8 column lever off the land, into either park or reverse,
9 would have any bearing on the tendency of the tang to move
10 from the land?
11 A Yes.
12 Q What is that opinion?

13 A. That the amount of force required would be
14 proportionate to these torques that I have found. Therefore,
15 GM, from my standpoint, would be easier to move off of the
16 land and drop into reverse than in the Ford Motor Company
17 product or the Chrysler.
18 Q. Mr. Barr, do you have, again, an opinion, based
19 upon your training, experience, testing, and based of
20 course upon a reasonable degree of engineering probability,
21 as to whether or not the C-6 transmission is reasonably
22 fit for its intended use in an automobile?
23 A. Yes.
1 Q. And what is that opinion?
2 A. I think it is fit.
3 Q. Why do you say that?
4 A. It's the state of the art. It's comparable --
5 or actually, from the standpoint of the amount of energy
6 required to force it into neutral -- to cause it to go
7 into neutral from reverse, I would think is safer.
8 Q. Do you have an opinion, again based upon your
9 knowledge, training, experience, and of course based upon
10 a reasonable degree of engineering probability, as to
11 whether or not the 1973 Lincoln Continental is unreasonably
12 dangerous to be used as an automobile or a private passenger
13 car?

14 A. Yes.

15 Q. What is your opinion?

16 A. That this transmission and shifting mechanism is

17 not dangerous.

18 Q. Why do you say that?

19 A. Because of the test results that I obtained and

20 compared to GM and Chrysler.

15 Q. Mr. Barr, I believe you said that it was easier

16 to place it on the longer land; those were your words, I

17 believe.

18 A. Yes.

19 Q. Is it more likely to place it on the longer land?

20 A. I think it follows, yes.

21 Q. Mr. Barr, the energy required for the C-6 was

22 two to three times higher than the energy required for

23 General Motors, to move that shift lever; isn't that true?

1 A. The torque was, yes.

2 Q. The torque was. And, sir, doesn't that vary,

3 too, by the length of the lever, the shift lever on --

4 A. No. The torque -- all of my measurements were
5 made at eight inches from the diameter, so I can use either
6 force or torque.

9 Q. Don't you think that it would be important for
10 you to know, before you come into this court of law,
11 whether there are more of these indicents of Ford tangs
12 being placed on lands than there are of GM tangs being
13 placed on lands, and more incidents of Ford tangs falling
14 off into reverse, to the factor of perhaps ten times over
15 GM; does that surprise you, Mr. Barr?
16 A. No, I -- the reason that I didn't was that I
17 understand that if we -- in this case, I gather that -- and
18 I've got to go into what I have heard --
19 MR. LEWIS: Not what you've heard; just from
20 your investigation of this particular case.
21 THE WITNESS: All right. It's information that
22 I gathered about this case that made me realize that those
23 reports resulted, really, from what has been going on.
1 BY MR. COHEN:
2 Q. Do you mean the large number of reports of

3 incidents of transmissions being reported by their owners
4 slipping into reverse; is that what you're talking about?
5 A. The large number of Fords, yes.
6 Q. May I see your notes, please, Mr. Barr?
7 A. Yes.
8 Q. Did you prepare a written report, Mr. Barr?
9 A. No, I didn't.
10 Q. Why not?
11 A. I wasn't asked to.
12 Q. Isn't that rather unusual, to be employed and
13 not to prepare a written report?
14 A. No, because a lot of this data was just collected
15 at the end of last week and I didn't have time.
16 Q. I see that Mr. Bancroft, Mr. Lewis' co-counsel,
17 in his letter to you of September 19th asked you to check
18 whether the ignition key comes out of the lock mechanism
19 when the vehicle is in some other mode other than park.
20 Did you do that?
21 A. Yes.
22 Q. Did you report on that here today?
23 A. I haven't, no. I haven't been asked.
1 Q. Check and document indicator positions to ensure
2 proper needle alignment; did you do that?
3 A. Yes.

4 Q. Did you report on it here today?

5 A. No.

6 Q. Check to see if park gear will hold on inclines;

7 did you do that?

8 A. I did.

9 Q. Did you report on that here today?

10 A. Rather briefly, yes.

22 Here we are talking about relatively few
23 claims in comparison with the number of vehicles and the
1 number of times that thing is used; the number of times
2 that transmission is put into Park is literally in the
3 billions.

20 THE WITNESS: If you look at the results here
21 from the standpoint, from the light of a normal warranty
22 claim by a manufacturer, it's not significant when you
23 consider the numbers. I told the Court earlier. You consider
1 the number of times that transmission all the way across the
2 country is put in Park everyday the number of accidents
3 are not significant.

15 THE COURT: He wants to give testimony he has
16 read that there have been other incidents throughout the
17 United States where this has happened and as a result of
18 his having read those he believes this rebuts the

19 testimony of Mr. Everson yesterday.

20 MR. COHEN: That there weren't very many --

21 First Mr. Everson said there weren't very many --

22 MR. LEWIS: He didn't say that.

23 THE COURT: Wait just a moment.

1 MR. COHEN: He intimated there weren't

2 very many when I asked him if he could think of others.

3 And he said, Let me think, sort of intimating there was

4 only one other and said he had heard of another.

5 Mr. Lewis in his opening statement said I

6 think something about six a month.

7 It's important we think the Jury not be led

8 to think the numbers are that small.

9 THE COURT: Is he going to give the numbers?

10 MR. COHEN: Yes.

11 THE COURT: What is the specific number you're

12 going to testify to?

13 THE WITNESS: The summary that I have:

14 seven hundred seventy-seven accidents; two hundred fifty-nine

15 injuries and twenty-three fatalities over a period of

16 1970 to 1978.

17 THE COURT: So that really is the issue for

18 the Court to decide, whether or not he may based on that
19 press release whether he may testify that his opinion is
20 based on those figures that he obtained from the press
21 release.

11 Q The Ford witnesses testified and Mr. Everson
12 particularly demonstrated if the thing were all the way in
13 Park it couldn't come out, put the torque wrench on there.
14 Does that have anything to do with what you hypothesize
15 happened in Mrs. Bartholomew's case?
16 A No.
17 Q Why not?
18 A As far as I'm concerned in my own opinion is
19 that Ford is absolutely correct. That transmission will not
20 slip out of Park. I think that is absolutely correct.
21 Mr. Everson demonstrated it on the model. I have never
22 known personally of a case where the transmission was
23 actually in Park in the full sense of the word where it
1 slipped out.
2 Q Can you demonstrate to the Judge a situation
3 you think occurred on the Bartholomew vehicle with this
4 machine?

5 A. I'll try.

6 MR. LEWIS: How in the world can he do that

7 here in a Courtroom without a car, without a slope,

8 without anything else. I mean, he --

9 MR. COHEN: It all goes to the weight, Your

10 Honor.

11 THE COURT: Wait just a minute.

12 MR. COHEN: I apologize.

13 MR. LEWIS: I really don't know where we're

14 going with all of this. In fact, it sounds exactly like

15 what we've been saying. But I don't know what the purpose

16 of demonstrating what happened on a slope with this machine

17 not on a slope, not with the doors and not with loading

18 groceries into it or anything else. It is not similar in

19 the cases of experiments. The law in Virginia on

20 experiments, they have got to be almost or essentially

21 identical to the situation at the time. And I just don't

22 think it would be proper to say -- He's already testified.

23 I've said what I've said about attacking one of our witnesses

1 but I don't believe he's saying he's attacking any of

2 our witnesses. I don't believe his testimony would be

3 proper as rebuttal.

4 THE COURT: So far as his demonstrating

5 on this land he believes the shift was, to establish what

6 he claims the illusory position, he may do that.

7 MR. COHEN: Do you want to see him do that?

8 THE COURT: No. I take it he will do it.

9 MR. LEWIS: I will say for the record

10 respectfully, Your Honor, I don't know anything more

11 speculative than this where the Plaintiff herself has

12 equivocally stated, positively the tang was in the Park

13 position and to allow a witness, this almost gets into a

14 soothsayer or a fortune teller to say it wasn't in there,

15 I'll tell you where it was. That land, whether it be GM

16 land, a Chrysler land or Ford land has certain width.

17 How can he tell you where the land was.

18 THE COURT: So far as argument to the Jury,

19 you may argue that to the Jury.

20 So far as rebuttal, this is defense exhibit

21 3 and it was demonstrated to the Jury yesterday with respect

22 to the use of it and its workings and I think it is proper

23 rebuttal for the expert for the Plaintiff to show on the

1 very exhibit his theory of the case as where that 'illusory'

2 Park position is. So, I overrule your objection.

3 MR. LEWIS: I do want to rely on the

4 Massey versus Firmstone cases.

5 THE COURT: I understand your point on that.

6 I just don't think it's applicable to these circumstances.

9 MR. LEWIS: That is correct. And you know
10 I'll tell you right now, Judge, if we get into this it's
11 probably going to take two or three weeks. I am serious.
12 I am really serious because the volumes that are -- If he
13 wants to pick out two or three letters or three or four
14 or five or six I know for a fact there are over fifty
15 thousand pages Ford has furnished. I don't know how many
16 thousands of pages GM and Chrysler have furnished. But
17 this has been going on for two and a half years and to
18 take out two or three, whatever the number is -- This is
19 an expert's testimony. What is an expert? What does an
20 expert testify to? His opinion. We have in our State you
21 can't even read into a civil negligence case the report
22 of another doctor who you even talked to on the telephone.
23 You can't do that. There is a case in Virginia that says
1 you can't do that. You can't refer to another doctor's
2 opinion and read it in. And what in the world is this
3 man doing? He is going to take selectively two or three
4 cases or letters --

11 MR. LEWIS: If we want to go into it any
12 further we'll get down to does he know how many are C6,

13 does he know how many are Lincolns, does he know anything
14 else. I respectfully say to the Court I don't believe he
15 does. This is a throw up figure he is going to take.
16 What difference would it be if he read it in the newspaper?
17 Really, what difference would it be? If he went over there
18 and got some information from them and they've been sitting
19 in the Courtroom, these people. Somebody gives him
20 something. I mean, we're talking about an expert witness
21 whose expertise should be based on his knowledge not based
22 on anything else. And I think as rebuttal what are we
23 rebutting. This is proffered as a rebuttal witness and he

1 is rebutting something that somebody else wrote that he
2 extracted and he's going to say -- Your Honor, we've been
3 a long day, a long time and I just respectfully say I
4 don't understand the rationale for this. I respectfully
5 strongly state our objection. It's going to lead into
6 things I think will be lengthy. And I think Mr. Cohen has
7 presented his case. He's presented his issues of notice,
8 whatever he wants to call it, before this car was built and
9 now to call this man back as a rebuttal witness I think is
10 improper and I object to it.
11 THE COURT: Well, I will give you a ruling
12 shortly on the very ultimate question.

13 But so far as whether it's proper rebuttal,
14 I have ruled it is proper rebuttal. It is proper rebuttal
15 of Mr. Everson's testimony of yesterday, Mr. Everson's
16 examination and statements with respect to whether or not
17 he considered incidents of malfunction, misfunction or
18 whatever it is and the fact he did not feel it was that
19 necessary for him to do that in reaching an opinion. And
20 this witness is rebutting that and saying, Yes, he does
21 think he needs to consider those things. So, I think it's
22 proper rebuttal.
23 I think he may also give that demonstration
1 with respect to the placement of the shift and what he
2 considers to be the illusory part position.
3 Whether or not he can refer to the specific
4 figures and cases and incidents as contained in that press
5 release and supported by this data is the issue I'm not
6 ruling on right this second but I will have a ruling for
7 you very shortly and cite the authority that will support
8 whatever conclusion I reach.

16 THE COURT: At the outset the Court was asked
17 to rule on whether other similar incidents similar to Mrs.

18 Bartholomew's and found in Government report occurring
19 before and after '76 would be admissible and the Court's
20 ruling initially was no, that was inadmissible. But
21 after looking at McCormick the Court did modify its
22 ruling to the extent such evidence could be admissible
23 depending on what it was offered for.

1 Again, the Court was asked to rule on the
2 admissibility of data from a Government Agency. The
3 Court deferred ruling and asked for a specific peice of
4 evidence or testimony to be presented so the Court would
5 have a specific item to rule on.

6 In response to that a release under seal, a
7 Government release under seal, was offered as a Complainant's
8 Exhibit. The Court understanding the purpose of that was
9 to prove the truth of the matter asserted and that there
10 were a certain number of incidents involving a C6
11 transmission. The Court refused it. The Court concluded
12 it was not a Government report; it was, in fact, a press
13 release and it was hearsay to the third degree.

14 Now, in rebuttal an expert wants to testify
15 his opinion is based on the information contained in the
16 previously refused exhibit and he has read some of the
17 details in back of some of the incidents referred to in the
18 previously refused exhibit. The Court sustained the
19 objection to his referring to the specific number of

20 complaints, accidents and fatalities contained in the
21 Government press release.
22 In reaching that decision the Court relies on
23 the law of evidence in Virginia by Friend, Expert Witnesses;
1 McCormick on Evidence, Expert Opinion, Section 15 and the
2 Virginia cases cited in Friend.
3 The expert in rebuttal may tell the Jury
4 his opinion is based on reports of similar incidents
5 reported to Ford, if, in fact, his opinion is so based.
6 The fact there were complaints made to Ford is in evidence
7 and not in dispute. He may give numbers if he can, so far
8 as they are related to Ford and if challenged on it on
9 cross examination.
10 Do you have any questions about the Court's
11 ruling so far as the guide lines are concerned?
12 MR. COHEN: Not about the Court's ruling.
13 But I'd like to have a minute or two with Mr. Devine to
14 make sure he understands.
15 MR. LEWIS: Well, I certainly do, I really
16 don't know what the Court -- I basically understand what
17 the Court has ruled. But do I understand Mr. Devine can
18 read or can report what he has read somewhere else about
19 this matter in the NH -- NHTSA file?
20 THE COURT: No. I am saying in this trial

21 he has sat through the trial and heard the people testify.
22 Mr. Bryant from Ford testified there were customer
23 complaints. There are some exhibits in evidence that
1 specifically refer to customer complaints. Based on that
2 since he has been here if he has an opinion based on the
3 fact there were similar complaints and incidents he may
4 testify as to that. If he has any information of Ford
5 complaints to Ford, that he is familiar with, that Ford
6 knows about, that were given to Ford, he may testify as to
7 those.
8 MR. LEWIS: Personal knowledge of this?
9 THE COURT: Yes. If he is familiar with it.
10 MR. LEWIS: The Court says familiar. You know,
11 that is what I was concerned about. Familiar, if he
12 knows personally, fine; if he reads or somebody else told
13 him, I mean, that could be familiar in another context or
14 what I was concerned with.
15 THE COURT: He may not give numbers unless he
16 is cross examined on it. If he is cross examined on it
17 then he may give numbers.
18 MR. LEWIS: Let me ask you if I might for
19 instruction from the Court: I still go back to a comment I
20 made earlier about information and numbers. I have two
21 positions. The first position is there should be no

22 testimony as to any of the complaints, I mean, subsequent
23 to the production of this car. That is the first.

1 THE COURT: Well, I think I previously
2 ruled on that and I overruled your objection to that.
3 MR. LEWIS: The second one was that there
4 would be no recordation or no testimony about complaints
5 beyond the accident. I thought -- and clarify me -- that
6 the Court sustained that objection on the grounds after
7 the accident there is no way in the world the Defendant
8 could do anything at all to correct the situation or
9 anything else.
10 THE COURT: It depends on what it is being
11 offered for, Mr. Lewis. We're going back in a circle and
12 I know it's difficult for everyone but we are just going
13 in a circle. Obviously, if it were coming in to try to
14 prove, to prove a particular occurrence or something on the
15 basis of something that occurred after the accident, an
16 ordinary tort case, that would be inadmissible. If they
17 come in and establish there is a C6 transmission which
18 has been in effect for over a certain number of years and
19 they are giving testimony with respect to whether that
20 design is negligent or not then if it is still in effect
21 and if there are still consequences occurring I think it
22 has a bearing.
23 MR. LEWIS: I don't see --

19 MR. LEWIS: I'll be frank to say I am confused
20 about that point and for the record that I do object to
21 any such testimony at all on notice, negligence or
22 punitive damages, anything that happened after the date
23 of the accident. Thank you, sir.

5 Before I do I want to make sure I understand
6 something about the Court's ruling. He will be able to
7 testify he is familiar with other incidents, he's heard them
8 testified to here in Court and alluded to by some of the
9 witnesses yesterday and he is familiar with them also by
10 looking at reports filed by Ford in which these incidents
11 are reported. Is that correct? That is personal
12 familiarity that Your Honor is ruling is acceptable.
13 MR. LEWIS: Personal familiarity is that
14 eliminates hearsay; in other words, the press release is
15 not admissible but if he goes over there and looks at a
16 letter that makes him personally familiar? I don't
17 understand.

18 THE COURT: If he has looked at what Ford has
19 provided, where Ford says this is so, that is not hearsay.
20 Is it?
21 MR. LEWIS: Yes, sir.
22 THE COURT: How is it hearsay?
23 MR. LEWIS: What was it furnished in response
1 to? There are all kinds of responses made to Ford. I
2 guarantee the Court, I guarantee the Court there are at
3 least fifty thousand pages that has nothing to do with this
4 case or anything else. I am honestly serious that it
5 will probably take ten days if we get into this to go
6 through these documents. They are picking two - three -
7 four pieces of paper out of fifty thousand pages.
8 MR. COHEN: We're not going to pick out any
9 individual ones.
10 THE COURT: That is not going to happen.
11 MR. LEWIS: I think if they pick out two or
12 three I think we have got the right to go into the back-
13 ground as to why that was.
14 THE COURT: If he tries to gives examples I
15 certainly agree with you.
16 MR. LEWIS: But Your Honor, what you are
17 saying, as I understand it, is just because he goes over to
18 somewhere and sees a piece of paper that has Ford letterhead

19 on it that makes him eligible to testify as to that's
20 Ford's position. I just don't understand.
21 THE COURT: Mr. Lewis, that is not what I
22 ruled and it doesn't make him eligible to testify that is
23 Ford's position. Okay. I've made the ruling as best I can.
1 Please don't hesitate to object.

7 THE COURT: May I ask a question.
8 In listening to the testimony of expert
9 witnesses yesterday, direct your attention to the
10 testimony of one of Ford's experts with respect to whether
11 or not it was necessary to consider whether incidents
12 similar to Mrs. Bartholomew's had occurred in deciding
13 whether or not this was or was not a safe system. Do you
14 recall such testimony?
15 THE WITNESS: I recall testimony on the
16 part of the witnesses in regard to accidents that had
17 occurred.
18 THE COURT: Did you take into account similar
19 incidents in arriving at your opinion?
20 THE WITNESS: Oh, yes, sir.
21 THE COURT: Did you think it was necessary?
22 THE WITNESS: Yes, sir.
23 THE COURT: Go ahead, Mr. Cohen.

1 BY MR. COHEN:

2 Q Explain to the Court and the Jury why you

3 thought that was necessary.

4 A An engineered product —

5 MR. LEWIS: I don't understand exactly where

6 we are. But I think for the record I would object because

7 I think the gentleman has expressed his opinion and the

8 Ford people and Mr. Barr have expressed their opinion and

9 I don't think this is rebuttal, to go back and say anything

10 else about -- He's testified to his opinion.

11 THE COURT: I overrule your objection.

12 Go ahead.

6 Q Tell the Court and the Jury why you think the

7 fact there were similar incidents similar to the one

8 reported by Mrs. Bartholomew is significant in reaching

9 your opinion.

10 A To evaluate the adequacy of a design, whether

11 it is safe or whether it is unsafe, you can't do this on a

12 purely empirical basis. You can't look at a piece of

13 equipment and say, That's beautiful, That is safe. You have

14 to test it. Not just test it in the laboratory but put

15 it in the hands of people in the field and if there are
16 accidents with it then you conceivably have a problem and
17 the design may not be adequate and may not be safe and
18 may not be proper for the use to which it is put. So, you
19 have to evaluate the success or failure of this particular
20 design and the only way that I know of to be absolutely
21 sure of the adequacy of the design is to see how it works
22 in the field, how people use it, the success with which
23 they use it and the failure with which they use it.
1 Q Did you look into that?
2 A Yes, I did.
3 Q Without getting into any specific numbers,
4 Mr. Devine, what did you find?
5 A I found in addition to the incidents that
6 were mentioned in the testimony yesterday that Ford
7 Company has listed in material I have seen --
8 MR. LEWIS: I want to object to that.
9 THE COURT: Overruled. Go ahead.
10 THE WITNESS: Numbers of incidents that were
11 carefully detailed and spelled out with all the dates and
12 the times and places and the occurrences and the people
13 and the damage that resulted and the injuries that
14 resulted and so forth. And there were a number of those.

20 Q Tell the Court and the Jury in a general way
21 what was involved in the data you saw that was helpful to
22 you in evaluating the lack of safeness of the C6
23 transmission system.

1 A The incidents described, of course, are
2 recorded accident incidents. Let me put it that way.
3 Some resulted in accidents and so forth, recorded
4 incidents where the Ford C6 transmission reportedly slipped
5 into Reverse. Now, the subject of the material and the
6 reports and so forth is slipping from Park to Reverse. But
7 the Ford people demonstrated yesterday completely to my
8 satisfaction and I was aware of it prior to that that this
9 transmission put firmly and solidly in Park will not slip
10 out of Park. I don't think there is a question of that.
11 As far as I was concerned, it's never been a point. The
12 point I have is that it is possible and the design of the
13 transmission is such that it leads people to accidently
14 put the tang on the land between Reverse and Park and in
15 that position the transmission can slip into Reverse.
16 And the recorded incidents that I have read from the Ford
17 literature directed to National Highway Transportation
18 Safety, NHTSA, lists these accidents, lists these incidents
19 -- I'm sorry -- some of which resulted in accidents and
20 some which resulted in injuries. And there are in my

21 opinion a large number and this is what helped me arrive
22 at a conclusion the transmission is not safe.
23 Q Mr. Devine, you saw Mr. Everson demonstrate
1 on Defendant's Exhibit Number 3, this piece of equipment
2 here, how it could not slip out of Park and we had no
3 problem with that. Would you come down and demonstrate
4 to the Jury please on Defendant's Exhibit 3 your opinion
5 of what you believe happened in the Bartholomew vehicle.
6 MR. LEWIS: Well, for the record I don't
7 think accident reconstruction has been --
8 THE COURT: So far as the wording of the
9 question is concerned I sustain the objection.
10 BY MR. COHEN:
11 Q Could you demonstrate on Defendant's
12 Exhibit 3 the relationship between the placing of the
13 tang on the land between Park and Reverse and the
14 relationship in the transmission with the rooster column
15 and demonstrate to the Jury -- Well, demonstrate to the
16 Jury how that exhibit further corroborates, if it does,
17 how that exhibit further corroborates your testimony that
18 it is unsafe.
19 A Yes, sir. I will try.
20 THE COURT: You may describe what you do at
21 the time you do it.
22 MR. LEWIS: Your Honor, this is a lawyer's
23 objection. Further corroborates is not rebuttal. That was

1 the question and that the whole purpose of this, this is
2 going back over the same thing we went over before. The
3 question, further corroborates, is not rebuttal.
4 THE COURT: I wish he had not used that
5 term, further corroborates. But at any rate, I conclude
6 it is rebuttal and I overrule the objection.
7 MR. LEWIS: I certainly object.

9 MR. LEWIS: Let the record show he's moving
10 the shift lever, moving it back and forth.
11 BY MR. COHEN:
12 Q I wish you wouldn't have done that.
13 MR. LEWIS: But he is.

23 THE COURT: Is it now in a position, Mr. Cohen,
1 you want the Jury to see after Mr. Devine has touched it?
2 BY MR. COHEN:
3 Q Is that satisfactory to you, Mr. Devine, for

4 the demonstration?

5 A. I'm sorry. I didn't understand.

6 Q. Is it satisfactory now for your demonstration?

7 A. I don't know. The thing is we are looking at

8 an instance that happens once out of a million times or a

9 couple of million times. To try to set this thing up to

10 duplicate that is a trial and error process, sir.

11 THE COURT: If that is the case I am going to

12 entertain another objection as to whether you want to do

13 it.

14 MR. LEWIS: I do so object.

15 THE COURT: I sustain the objection.

16 MR. LEWIS: Thank you.

17 MR. COHEN: I'd like to exclaim surprise and

18 approach the Bnech.

19 MR. LEWIS: Surprise at his own witness.

20 (The following was heard at the Bench, and was

21 outside the hearing of the Jury.)

22 MR. LEWIS: Unless you want the witness

23 excused --

1 THE COURT: Do you want me to excuse the
2 witness?
3 MR. COHEN: That is all right.
4 I express some concern because he said it
5 happens once in a million times.
6 THE COURT: Once in a million times and it's
7 a trial and error situation. It suggests to me what he is
8 doing is something so speculative it has no probative
9 weight.
10 MR. COHEN: I think we ought to ask him outside
11 the hearing of the Jury whether that was a cavalier
12 remark. I think it was. He said nothing to me before. I
13 really think it. I don't think there's been any study
14 made as to the frequency and I don't think he's talking
15 about once in a million times. I think it happens more
16 frequently than that. We demonstrated here. It happened
17 about eight out of ten times.
18 THE COURT: Go ahead, Mr. Lewis.
19 MR. LEWIS: This is rebuttal. The man has
20 testified and then wants a recess to correct his testimony.
21 MR. COHEN: I just thought it was a faultly
22 remark. I realize it's my own witness but I should be
23 given the opportunity to rehabilitate him.

1 THE COURT: The reason I ruled it was proper
2 rebuttal was because Mr. Everson yesterday gave a
3 demonstration as to how that functions to show you couldn't
4 get it out of Park, which is in controversy, and further to
5 demonstrate how that works. I concluded it would be
6 proper rebuttal to show on that very same exhibit that if
7 the Plaintiff was able to show it that there was the
8 illusory part which would slip into Reverse, the exhibit
9 was set up, the expert witness was there, the Jury saw it,
10 and then the witness himself says, It happens once in a
11 million times and it's a trial and error situation.
12 MR. COHEN: I think he's meaning trial and
13 error to get it into position, how it really happens in
14 real life. That is what he meant by trial and error. It's
15 hard to set it purposefully. It's trial and error. You
16 got to make some trial and error to set it purposefully.
17 That is what he was talking about. It's not trial and
18 error. People don't do this purposefully. They do it from
19 inadvertence. To set up the demonstration in Court you got
20 to do some trial and error to duplicate what customers are
21 doing inadvertently.
22 MR. LEWIS: Once in a million - two million
23 times is what he said. It doesn't make any difference

1 whether he's trying to or not trying to. I have never
2 heard of a person allowed to recess and re-route the
3 expert witness, particularly on rebuttal, testimony I
4 objected. And here we go and there it is and now he wants
5 a recess to help him out.
6 MR. COHEN: I'm not talking about a recess.
7 MR. LEWIS: This isn't an average witness.
8 He's an expert witness. He said he studied these problems
9 since 1976.
10 MR. COHEN: Not since 1976.
11 MR. LEWIS: Yes, he had.
12 THE COURT: Did you have anything else?
13 MR. BANCROFT: He already stated he thinks
14 these systems are all remarkable. He's just corroborated
15 that statement right here and it wasn't a cavalier
16 statement at all.
17 THE COURT: I conclude there is no probative
18 value in the demonstration. He's made the statement. I'm
19 not going to let you go over it.
20 MR. COHEN: Your Honor, would you witness the
21 demonstration outside the hearing of the Jury and re-
22 consider its probative value. It will take thirty seconds
23 more to finish it please.

1 MR. LEWIS: I object. This is another
2 attempt to reconsider it, is all it is. This is live.
3 This is a case. This is a live trial.
4 MR. COHEN: Your Honor, I think you're
5 speculating about what he meant by trial and error. I think
6 you ought to ask him.
7 MR. LEWIS: Is trial and error something an
8 expert --
9 THE COURT: Okay.
10 MR. COHEN: It does take trial and error to
11 set the demonstration up. That's a little unfair.
12 THE COURT: Have a seat.
13 (The following resumed within the hearing of
14 the Jury.)
15 THE COURT: Would you all go upstairs please.
16 (The Jury was excluded from the Courtroom, and
17 the following resumed outside the hearing of the Jury.)
18 MR. LEWIS: For the record I'll say after the
19 comment was made it was moved --
20 MR. COHEN: It was moved after I touched it.
21 THE COURT: I am aware of that. That is
22 accurate.
23 THE COURT: Go ahead, Mr. Cohen.

1 BY MR. COHEN:

2 Q Mr. Devine, you used the expression, it's

3 trial and error. Would you elaborate to the Court what

4 you meant by that when you said that.

5 A Certainly. In the testing I did of the real

6 cars I found that by trial and error I could get the tang

7 to hang up on the land between Park and Reverse. Each time

8 that I did that I slammed the door of the car, bumped the

9 steering wheel trying to see whether the unit would slip

10 into Park or would slip into Reverse. Sometimes it would

11 slip into Reverse. I never had it slip into Park. But

12 sometimes it would stay on the land and not move; in which

13 case I would move it a little more and see -- what I was

14 trying to do is duplicate what I felt the operator was

15 doing when the transmission supposedly hung up or when the

16 land was on the position -- or when the tang was on the

17 land between Reverse and Park. It's not a thing that

18 happens every day.

19 Q You used the expression, one in a million --

20 MR. LEWIS: Just a moment. I think the

21 questions are proper but I don't think insinuations or

22 suggestions are proper. I think a direct question is

23 proper.

19 If this thing works as it did before the
20 parking brake released. The detent roller is now in full
21 Reverse position and the tang may or may not be -- At
22 that time it slipped off in Reverse. This does happen with
23 the tang still on the land and have the transmission slip
1 into Reverse and the brake release.
2 Q Would you try and do that again.
3 As I said, sometimes you have to do it two or
4 three times to get it to hang up.
5 A. The reason I fiddled with it before is --
6 Q. It's not up --
7 There it is.
8 A. Do you want me to do it again?
9 Q It's sort of there. It's not into Reverse yet.
10 A. Well, if it were in Reverse --
11 MR. LEWIS: Well --
12 BY MR. COHEN:
13 Q Explain that, Mr. Devine. If it were in
14 Reverse what?
15 A. If it were in full Reverse the parking brake
16 would be released.
17 Q Where is it on there?
18 A. (Indicating.)

19 MR. LEWIS: Where is it?

20 THE WITNESS: It slipped off again. I don't

21 think this is particularly significant.

22 BY MR. COHEN:

23 Q There it is.

1 Would you set the brake again.

2 A It's still on the land.

3 Q It's still on the land now.

4 THE COURT: I am going to let the Jury see it,

5 Mr. Lewis may make such argument or cross examination

6 on the witness' earlier statements as he deems appropriate.

7 THE WITNESS: Can I speak to you.

8 THE COURT: Is it about your testimony?

9 THE WITNESS: Yes, sir.

10 THE COURT: Go ahead.

11 Mr. Lewis, you can listen.

12 THE WITNESS: The thing concerns me when the

13 detent roller is on top of the notch if it goes far enough

14 over, as I explained it before, you can slam the door and

15 so forth and it would stay there and, of course, this could

16 be demonstrated to the Jury too. But I didn't want to have

17 one shot at it and have it hang up and not do what it does

18 on one demonstration.

19 THE COURT: Mr. Cohen, you better explain to

20 me what it is you want the witness to do.

21 MR. COHEN: I want him to do what he just did

22 with you. It may two or three times to show the different

23 variations: one, that it can stay with the tang held up on

1 the land; two, that the tang can fall off; three -- what

2 was the other thing?

3 THE WITNESS: It can stay there.

4 MR. COHEN: It would just stay there. It

5 might not go down when he slams the door. We'll admit all

6 of those are possible.

7 MR. LEWIS: I agree. Everything in the world

8 is possible.

9 THE COURT: Okay. Ask the Jury to come back.

10 MR. LEWIS: The Court please, I continue my

11 objection. I do not feel this is rebuttal, and particularly

12 after the statement of the witness as to the probability

13 of this happening once in a million or two million times.

14 I just don't think there is any probative value at all.

15 I just don't think it's fair.

16 THE COURT: I think it's a very close

17 question as to whether it has probative value. And in

18 doubt I'm going to let the Jury consider it, let you argue to

19 the Jury and let them draw their own conclusions from the

20 experts' statements.

11 (The Jury returned to the Courtroom, and the
12 following resumed within the hearing of the Jury.)
13 BY MR. COHEN:
14 Q Mr. Devine, would you go ahead with the
15 demonstration as you were doing.
16 THE COURT: So far as spectators are
17 concerned,please don't have any talking at all because it's
18 difficult to hear with this thing on and each member of the
19 Jury must hear without any interference from spectators.
20 Go ahead.
21 THE WITNESS: I placed the tang of the
22 selector lever -- yes, the tang of the selector lever on
23 the land between Park and Reverse, as you saw it before.
1 The roller on the detent spring is near the top of the
2 notch between Park and Reverse and if I simulate slamming
3 the door I want you to notice the parking brake should
4 release; the detent roller will roll into Reverse; the
5 selector lever may or may not drop into the Reverse position.
6 MR. COHEN: May we have the Jury see this
7 please?
8 THE COURT: Yes. Any Jurors who want to may

9 come down and look if you choose to.

10 THE WITNESS: I will simulate slamming the

11 door of the car. Notice the emergency brake released. And

12 if you look, the detent roller came down off that slope or

13 off the peak into the notch between -- into the Reverse

14 notch and the shift lever was still --

15 MR. LEWIS: You just moved the shift lever,

16 didn't you?

17 THE WITNESS: Yes, sir. I wanted to

18 demonstrate the shift lever was still -- had its tang on

19 the land between Reverse and Park.

20 BY MR. COHEN:

21 Q Do you want to unplug that for a minute.

22 You've tried doing this several times since

23 last night and this morning and today, Mr. Devine?

1 A Yes, sir.

2 Q Now, will you tell the Jury please the

3 different things that occurred when you tried doing the

4 experiment, how many different ways it ended up?

5 MR. LEWIS: Is this rebuttal?

6 THE COURT: Yes. I overrule your objection.

7 THE WITNESS: Well, the same operation I did

8 on live cars to try the same thing and this duplicates

9 that very well in that when you put the shift lever tang

10 on the land it depends where it finally comes to rest on
11 the land as to what happens. In the first case we
12 demonstrated here today the shift lever, actually the tang
13 dropped into Reverse and the emergency brake released and
14 the transmission was then in full Reverse. And if the car
15 had been complete in operation it would have gone into
16 Reverse and if there was nothing in its way it would have
17 backed up
18 The second thing that can happen, as you saw
19 demonstrated, you can place the tang on the land in such a
20 position that when you slam a door, bump the steering wheel
21 or whatever, the same thing happens, that the transmission
22 slips into Reverse and the emergency brake is released
23 and in some cases the shift lever tang will also drop into
1 Reverse.
2 There is still a third condition that exists
3 and that is you can again have the tang on the land, you
4 slam the door, you have the emergency brake on, you slam
5 the door and nothing happens. In other words, the system
6 is stable at that point. And you get away with it at that
7 time.
8 So, it is possible for the average operator
9 to have placed the shift lever in the wrong position and
10 still not have had a problem. It's a very delicate sort

11 of positioning of that shift lever which results in this
12 thing we witnessed here.
13 Q What is your opinion of that delicateness in
14 a design for safety?
15 MR. LEWIS: The Court please, is this
16 rebuttal?
17 THE COURT: I sustain the objection.
18 BY MR. COHEN:
19 Q Mr. Devine, you heard Mr. Bryant testify, the
20 engineer from the Steering Wheel Department of Ford?
21 A Yes, sir.
22 Q Did you hear him say that what the parameters
23 of his responbility were?
1 A Yes, I did.
2 Q Where was that from?
3 A Well, he had very specific responsibilities and
4 as far as the transmission linkages were concerned, as he
5 explained, his responsibilities stopped at the point where
6 the linkage ties into the manual lever on the side of the
7 transmission and he was not concerned with what went on
8 inside the transmission as long as fulfilled his function
9 of properly positioning that manual lever with the
10 equipment he designed and was responsible for.
11 Q That was up in the steering column?

12 A Yes, sir.

13 Q Can one evaluate the problem that was presented

14 to Mr. Bryant the way he did? Was it proper for him to

15 evaluate the problem without getting together with the trans-

16 mission people to determine what was happening down inside the

17 transmission when the customer was reporting that they felt

18 the shift lever was jumping from Park to Reverse?

19 A From my experience in engineering from an

20 applications standpoint you need to look at the entire

21 system to evaluate it and to properly apply it.

22 Does that answer your question?

23 Q Yes, it does.

1 Was the state of the art available in 1971

2 to Ford to avoid this type of delicate unsafe condition?

3 MR. LEWIS: Objection to the form of the

4 question.

5 THE COURT: I overrule the objection.

6 You may answer.

7 THE WITNESS: I believe it was. Yes, sir.

8 BY MR. COHEN:

9 Q Will you tell the Court and the Jury what

10 that would have required?

11 A The transmission designs that I've looked at

12 which are, of course, basically this Ford C6 design and the

13 General Motors design have the difference we've discussed
14 and have discussed throughout the trial and that is the
15 Ford land between Park and Reverse is smaller, shorter than
16 the land the General Motors car has. The testimony in the
17 past day or two has indicated that the Ford personnel in
18 examining that land for the General Motors car had
19 decided the opportunity of the tang hanging up or being
20 erroneously placed on the langer land would be greater than
21 it would be on the shorter land and therefore it would not
22 benefit the safe operation of the transmission. They
23 testified I believe that also to modify the Ford
1 transmission to actually test the benefit or the
2 detriment of the longer land would have been a very
3 substantial undertaking and they decided not to do it.
4 It's my opinion that the General Motors longer
5 land encourages the operator to go the whole way into Park.
6 Also, the longer land, if the operator doesn't quite reach
7 Park would have the same effect we demonstrated here of
8 nothing happening because the odds of it getting farther
9 over the center are greater than with the longer land I
10 feel in my opinion than falling short of the center of the
11 land with the attendant likelihood -- Well, I don't want
12 to take everybody's time with a bunch of technical
13 description. But the substance is it is still my opinion,

14 as it was before, that the design of the Ford transmission
15 does encourage the reasonably prudent operator to place
16 that tang on the land between Park and Reverse and with the
17 subsequent possibility of the system slipping into Reverse
18 and causing damage and injury.
19 Q What about down in the transmission? What
20 change, if any, would have been necessary down in there if
21 you made a longer land?
22 A. The rooster column would have had to been
23 modified, of course, similar to the General Motors rooster
1 column you've seen through the course of the trial. The
2 distance between the Park and Reverse in the notches in
3 the rooster column would have to be widened out to
4 accommodate the longer land up in the insert plate in the
5 steering column because the substance or the effect of this
6 system we have here is just as though the rooster column
7 were hooked directly on the end of a shaft and when you
8 move the transmission lever the rooster column moves right
9 along with it; the linkages create that effect. So, when
10 there's a movement in the shift arm selector there's, of
11 course, corresponding movement in the rooster column.
12 So, in order to do this, to make a longer land, you would
13 have to make a wider land -- a longer distance between the

14 two notches on the rooster column. There probably would be
15 other changes in the transmission required too.

21 Q Let's go back a little bit and see if I recall
22 your testimony a couple of days ago. I believe Mr. Snead,
23 who used to be sitting here at the table, asked you a
1 question when you felt you became an expert in transmissions
2 and didn't you say about three months ago?
3 A Yes, sir.
4 Q And you heard Mr. Bryant testify, did you not?
5 A Yes, I did.
6 Q Thirty-seven point seven years with Ford Motor
7 Company. Right?
8 A Yes, sir.
9 Q So, you're telling the ladies and gentlemen
10 of the Jury you know more about it than he does? Is that
11 what you're saying?
12 A No, sir.

20 MR. LEWIS: Defendant's Number 1 please.
21 I hate to go over all this again, Your Honor,

22 but let's start again.

23 BY MR. LEWIS:

1 Q Down in the transmission you said there are

2 two problems, in your judgement there were two problems

3 in this transmission. One was the rooster column and the

4 other was the width of the land. Right?

5 A Well, Mr. Lewis, what I thought I said was

6 that it was my opinion that the transmission, the design of

7 the transmission led the operators to place the tang on the

8 land between Park and Reverse.

9 Q Try to answer my question and then I'm sure

10 Mr. Cohen will ask you some more.

11 Didn't you testify on the first day of this

12 trial that this was the proper rooster column? This was a

13 GM rooster column and that the peak was higher and that made

14 it safer and -- Is that correct?

15 A No, sir.

16 Q You did not say that?

17 A No, sir.

18 Q Why did you show us the rooster column?

19 A I did say that was a rooster column from a

20 General Motors transmission and I did say that the peak

21 between the two notches did represent a wider area between

22 the two notches. I also said it appeared to me as though the

23 peak would encourage the transmission to slip from the peak

1 down into Park more so than the Ford transmission. I think
2 that is what I said, sir.
3 Q Let me ask you this very simply: Did you
4 place any importance on the peak? Did you tell the ladies
5 and gentlemen of the Jury on your first day of testimony
6 the peak was important, it was higher and it would encourage
7 it to go into Reverse?
8 MR. COHEN: Into Reverse?
9 BY MR. LEWIS:
10 Q Into Park and Reverse. The peak was the
11 important part in the rooster column here?
12 A I don't think -- I certainly did not intend
13 to emphasize the peak.
14 Q Did you mention the peak?
15 A Yes, I did.
16 Q Why did you mention the peak?
17 A Simply because it varies from the Ford C6
18 transmission.
19 Q It varies from the Ford and therefore since
20 this has a peak and Ford doesn't that was a point to you.
21 Is that right?
22 A It certainly is a point.
23 Q Did you learn overnight from your first day in

1 testimony when you used that peak that the two -- the other
2 two GM rooster columns don't have a peak, they don't even
3 have a ridge as high as the Ford?
4 A. That's right.
5 Q. You learned that overnight, didn't you?
6 A. No. I did not. I knew that.
7 Q. Why didn't you tell the ladies and gentlemen
8 of the Jury that?
9 A. I didn't think it was appropriate.
10 Q. You didn't.
11 This isn't the rooster column that is used in
12 the equivalent of the Lincoln Continental, is it?
13 A. No, sir.
14 Q. The one that is used in the Lincoln Continental
15 -- I beg your pardon -- the Cadillac, which is equivalent
16 to the Lincoln Continental does not have a peak?
17 A. No, it doesn't.
18 Q. In fact, it's flat?
19 A. Yes, it is.
20 Q. The Ford one is rounded, not quite as much as
21 a peak, but rounded. It's higher than the GM, isn't it?
22 A. The Ford is higher than the GM?
23 Q. Cadillac versus Lincoln Continental? Do you

1 want to take a look at it?

2 A. I'll be glad to but I don't think I understand

3 your question, Mr. Lewis.

4 Q. I'm talking about this area between Park

5 and Reverse on the GM; it is flat. On the Ford it is

6 higher and rounded, is it not?

7 A. On the Ford rooster column the peaks are all

8 the same height. Is that what you are talking about?

9 Q. Right. It's a height. And on the Cadillac

10 it's flat, isn't it?

11 A. Yes. The height of the flat portion is the

12 same as the height of the peaks on the turbomatic 400.

13 Q. Have you got a Cadillac rooster column for the

14 1973 model?

15 A. No, sir.

16 Q. It is flat, is it not?

17 A. Yes, sir, it is.

18 Q. Are you telling us the Lincoln Continental is

19 also flat?

20 A. No.

21 Q. It is rounded. It doesn't go quite as high

22 but it is rounded, isn't it?

23 A. It looks relatively sharp to me.

1 Q Well, do you want to come down here and take a
2 look?
3 A I'm very familiar with it. I'll be glad to.
4 Q I thought you ought to be.
5 It is rounded. It is not flat, is it?
6 A Mr. Lewis, it is not flat. That is correct.
7 Q And the Cadillac is flat for the same year?
8 A For the spacer between the Reverse and Park
9 detent, yes, sir.
10 Q Yes, sir. That is exactly --
11 You have looked at this and would you concede
12 it's a true replica of a '73 Lincoln Continental?
13 A By the statement of the Ford people it is.
14 Q Do you know that or not? Are you relying on
15 their statements? Are you relying on your inspection and
16 knowledge in the field?
17 A Mr. Lewis, I'm ninety-nine point nine per cent
18 certain it is.
19 Q Have you ever seen one?
20 A Yes, I have.
21 Q Do you have any difficulties answering my
22 question?
23 A A little, simply because I am not absolutely

1 positive. I'm ninety-nine point nine per cent positive.

2 Q Isn't it pure common sense that the farther --
3 the wider that land the farther you have to move it,
4 particularly if you're careless, isn't it more of a chance
5 to leave it up on the land than on a harrower land?
6 A. Mr. Lewis, it's my opinion that the likelihood
7 of the transmission selector lever being placed on the land--
8 Q First of all, can you answer my question?
9 MR. COHEN: He's answering.
10 THE WITNESS: I'm trying to answer, sir.
11 BY MR. LEWIS:
12 Q Can you answer it either yes or no and then
13 explain it?
14 Isn't it more likely if a wider land the
15 chances are more likely you will leave the tang up on the
16 land, if it's a wider land?
17 A. In my opinion it is not more likely.
18 Q Why do you say that?
19 A. Because I feel the longer distance the lever
20 has to travel and the wider land encourages the operator to
21 make that extra motion and to reach the Park position.
22 Q We're only talking about an eighth of an inch?
23 A. You are at the insert level but not at the

1 motion at the end of the shift lever.

2 Q Right. Where does the land end up? It's on

3 the insert plate. It's not up here, is it? That is what

4 we're talking about.

5 A The operator's hand motion is out at the end

6 of the shift lever.

7 Q But you go down. That is a down motion.

8 You heard Mr. Bryant say that, didn't you?

9 A Say what?

10 Q Didn't you hear Mr. Bryant, Al Bryant, say, If

11 you go down it might be a tendency but going up you even

12 have to make more effort going up? Does that make sense to

13 you?

14 A That you have to use more effort going up?

15 Q Yes.

16 A Yes, sir.

17 Q So, you don't get a momentum. If you get any

18 momentum it would be going down.

19 A Again, Mr. Lewis, this is a matter of opinion.

20 And obviously --

21 Q You got your opinion. Mr. Bryant's got his

22 opinion.

23 A Yes, sir.

1 Q And Mr. Bryant has been in the automobile
2 business for thirty-seven point seven years and you became
3 an expert three months ago?
4 A. Yes, sir.
5 Q Let me ask you this: Regardless of what else
6 we say, if we call this the land and I don't care how wide it
7 is, whether it's one inch or one foot, if you -- no matter
8 what system it is you can put it right up on the end, can't
9 you?
10 A. I believe so. Yes, sir.
11 Q The same thing is going to happen, no matter
12 whether the land is one foot or one inch?
13 A. Yes. I think so.
14 Q It can fall into Reverse or fall into Park,
15 depending on which side of the land the operator leaves it
16 up there on?
17 A. Yes, sir.
18 Q If you take the care -- If the operator takes
19 the care to put the selector column in the proper gear it
20 is not going to jump out, is it?
21 A. If it's put into Park it would not jump out,
22 if put in properly.
23 Q No question in your mind about that?

1 A. No, sir, none.

2 Q. No question in your mind no one from Ford,

3 Mr. Bryant, Mr. King or anybody else, has said if the

4 operator is careless and leaves it up there, depending on

5 where they leave it, it could either fall into Park or

6 Reverse, isn't that true?

7 A. I'm not sure the reference to Mr. --

8 Q. King. Okay. Well, eliminate Mr. King.

9 A. I don't remember that being stated but I don't

10 see anything the matter with the statement.

11 Q. This is true whether you are driving an

12 automatic shift made by Chrysler, General Motors or Ford,

13 isn't it true?

14 A. If you can hang the lever up, yes, I think so.

15 Q. I would rather -- There is no hang involved,

16 is it?

17 A. No. It is placed on the land. That is correct.

18 Q. If you don't take the care to slide it over

19 far enough, if you end it up right on the corner there,

20 this being Park, this being Reverse, if you land it up on

21 the corner the same thing is going to happen no matter how

22 wide the land and no matter who manufactures the system.

23 Is that correct?

1 A. I'm not sure because I did not investigate the
2 Chrysler.
3 Q. The GM will do it, won't it?
4 A. GM and Ford, yes, sir.

17 THE WITNESS: Yes, sir. I thought I
18 understood the question. I thought Mr. Lewis asked me
19 whether if you place the tang of the transmission lever on
20 the edge of the land in the General Motors and on the Ford
21 whether it would likely, whether it could slip off in
22 either case and yes, it could. But I'd like to explain that
23 again. My opinion, firm opinion, I might say is in the case
1 of the Ford the design of that transmission linkage leads
2 the operator to place the tang on that position, if you
3 like, on the land and it does it more so than the GM
4 transmission.
5 BY MR. LEWIS:
6 Q. You mean because the Ford land is narrower
7 there's more chance the operator will leave it up on the
8 land?
9 A. It's the total design of the thing, Mr. Lewis.

12 Q You heard Mr. Barr testify yesterday. I
13 believe you were in the Courtroom, were you not?
14 A. Yes, I was.
15 Q He's a professor he states at the Naval
16 Academy where he teaches engineering. Is that correct?
17 A. He said he was, yes, sir.

3 Q He told you, did he not, or he told us that
4 he made measurements about the inch pounds of effort, not
5 up here at the handle but inch pounds of effort down here
6 on the land it would take to move the tang. You understood
7 him, didn't you?
8 A. I thought I did, yes, sir.
9 Q Didn't he say his tests showed it took less
10 effort to cause the tang to go across the GM land than the
11 Ford?
12 A. Yes, he did in the direction from Park to
13 Reverse. In other words, he mentioned apparently the
14 resistance of the lever moving it from the Park direction

15 towards the Reverse direction on the land, yes, sir.

16 Q What that means is that regardless of where

17 you put your hand the torque or the force, effort necessary,

18 torque in inch pounds down with the tang on the land would

19 take more inch pounds or more torque to cause that tang

20 to move in the Ford product than in the General Motors

21 product based on his tests?

22 A Yes, sir.

23 Q Have you ever made such tests?

1 A No, I haven't.

2 I might also say that when you measure that

3 force moving the lever down towards the Reverse position

4 you could assume particularly if the tests were made in a

5 static condition, that is without the automobile in

6 operation, that the same difference would exist, which

7 would mean it would take more effort to move the Ford

8 transmission lever to Park.

9 I didn't run the tests so I really can't

10 comment.

11 Q That was the test that did indicate it did

12 take more effort down here to cause the tang to cross the

13 land into either Park or Reverse, didn't it?

14 A He said it took more effort, more force, more

15 torque, however you want to measure it, to move from the
16 Park direction if you will with the tang placed on the land,
17 to move from the Park direction down towards the Reverse
18 direction. What I said as a corollary is if the transmission
19 were static, the car not operating, it would also take
20 proportionally the same difference in effort to move the GM
21 transmission or the Ford transmission into Park. In other
22 words, it's harder to put the Ford into Park than it is the
23 General Motors is what he proved.

1 Q He measured it both ways, didn't he?
2 A I did not understand him to have done that.
3 Q Is that right?
4 A As I heard his testimony I understood he
5 moved it only from the land --
6 Q Well, the land is flat, isn't it?
7 A Yes, sir.
8 Q But you have made no tests whatsoever?
9 A No, sir.

11 THE COURT: Any motions before we get to
12 instructions?
13 MR. LEWIS: Yes, I do.
14 I would like to reassert -- I'm not going to
15 argue the whole thing but I still feel the same way and for
16 the sake of the record I'll put it on the record, about
17 the Massey versus Firmstone theory.
18 But I respectfully say to the Court after
19 the Court has now heard the testimony of Mr. Bryant and Mr.
20 King that memos or reports were put in, depositions, all
21 that directing my attention concisely to the Court -- and
22 I know the Court has read this and I doubt anything I say
23 has any bearing on the Court's decision. But the Court now
1 just heard Mr. Bryant and what the Ford Motor Company did
2 to respond to the field complaints that they heard about
3 before this car was made. My motion is directed to
4 punitive damages.
5 I have spent quite a few hours during this
6 trial, along with Mr. Bancroft, and there are very few
7 cases on punitive damages in products liability cases,
8 extremely few. They all usually involve toxic substances.
9 There is knowledge before the product is put in the market
10 that it is toxic and they've gone ahead and done it anyway.

11 Now, in this case here we have a situation
12 which is expressed by the Plaintiff's expert as something
13 that happened once in a million or two million times. It
14 is done by driver action. For lack of making Mr. Cohen
15 upset I won't call it carelessness or negligence but it is
16 done by driver action.
17 The question I believe in punitive damages in
18 a case like this is whether or not at the time that vehicle
19 was designed it met the state of the art. I don't believe,
20 I really don't believe there's any evidence contrary to
21 that. I think our evidence is it did. I really don't think
22 there's any evidence of Mr. Devine contrary to that that is
23 really going to -- really going to implied warranty and
1 negligence.
2 But I'm arguing it on the point of punitive
3 damages. Certainly in a situation like this does this
4 measure up to the requirement under our case law of
5 wanton, wilfull, malicious activities. The last case in
6 Virginia involved a false arrest case, as the Court knows.
7 Well, not the last case but I think the most important
8 case to consider, is the Pig case. That's a case where the
9 lady was arrested in the store. She begged the people to
10 take her out to her car. Her husband and family were
11 sitting in a car with a receipt for the goods they were

12 arresting her for that she had purchased a couple of hours
13 earlier. She pleaded with them and she had broken English
14 and they wouldn't do it. The store representatives would
15 not do it. They arrested her, fingerprinted her and I'm
16 not sure if they put her in jail. I think so. But I don't
17 remember that much about it. There was a big verdict
18 against the lady on punitive damages. And our Court set it
19 aside, saying it did not meet the standard of punitive
20 damages.
21 In this case I respectfully say to the Court,
22 as respectfully as I can, where is there any evidence of
23 malicious conduct, conscious disregard of anything? The
1 only testimony, including Mr. Cohen's witnesses taken by
2 depositions, he said they reacted, they reacted,
3 investigated and explored a better alternative. They
4 couldn't find one but they did. To date there really
5 hasn't been a better -- Well, a wider land has been
6 suggested but there certainly is evidence the systems are
7 remarkable.
8 I don't want to belabor the point. I really
9 don't. But I sincerely urge upon the Court that our
10 position on punitive damages and we're talking about a
11 volatile situation. There's a large corporation. I think,
12 and I know the Court knows, the Defendant certainly has

13 rights too and I'd be the last person in the world to
14 deny Plaintiff a right on a legitimate issue but I
15 respectfully say to the Court I don't believe under the
16 evidence in this case there's a legitimate, viable issue
17 on punitive damages and I repsectfully ask the Court to
18 strike that count.
19 MR. DUNN: When this motion was raised at the
20 conclusion of the Plaintiff's case Mr. Cohen remarked that
21 leaving the matter open for the Defendant's case would
22 perhaps be appropriate for further evidence of punitive
23 claim to come before the Court. I submit to Your Honor that
1 has, in fact, been the case.
2 A lot of emphasis has been placed by
3 Ford on these two changes, the one change in the owner's
4 manual and the one change removing 'ARK' from the PRNDL.
5 Your Honor, the exhibits show these changes both occurred
6 in April, 1971 before the memo showing the increasing rate
7 of incidents, before the memo where Mr. Dixon sounded the
8 alarm. I quote in his June 30, 1971 memo, Present
9 customer usage patterns indicate that this condition of
10 careless shift lever actuation is occurring frequently in
11 the field with actual high accident incidents. That, Your
12 Honor, was notice it was going on.

13 The two changes we have heard about, as I
14 stated, occurred before this memorandum. Exhibit Number 24,
15 December 8, 1971 memorandum, Mr. Dixon raises the problem,
16 Again the purpose of this letter is to alert you to the
17 increasing number of customer complaint letters pertaining to
18 the transmission control operation and recommend
19 consideration of a design revision. Again, he is sounding
20 the alarm with an awareness of the incidents. And this is a
21 sounding of the alarm and a call, a plea, for action, if
22 you will, after these prior changes.
23 These changes were not subsequent to or in
1 consequence of these pleas to alarm but were much prior to.
2 And the rate of incidents the testimony was from the
3 deposition the incidents were going up. In June they were
4 one or two a month coming into that committee. By
5 December they are up to six a month.
6 Now, what real consideration went on here,
7 Your Honor? I submit it was not very much. Mr. King said
8 he thought the whole process occurred over a two or three
9 week period of time. Everything seems to have been done
10 very informally. There is no evidence there was any real
11 coordination with the Transmission Division. The whole
12 thing was thrown out on some sort of informal basis by
13 Mr. Bryant and one of three other colleagues.

14 Mr. Bryant testified that cost would never
15 be a consideration in a design alternative, consideration.
16 That is how he testified. Yet in his memorandum of
17 January 13, 1972 he concludes by saying, We plan to have the
18 first proposal formulated into a study package for the
19 Study Committee by 2/1/72. Let me break to say, we know
20 from the testimony there was never a proposal presented to
21 the Study Committee. It got lost along the way. The
22 memo continues, Based on cost, based on cost, the first
23 priority, cost and vehicle trial we will determine if the
1 first proposal is satisfactory. If this is satisfactory
2 the second proposal will not be pursued past the lay-out
3 steps.
4 Your Honor, there has been no further
5 testimony by Ford concerning any reconsideration of the
6 design subsequent to this fleeting consideration in late
7 1971 - early 1972, despite the reported continued
8 incidents. There has been no testimony concerning any
9 warning by Ford. Perhaps it would be one thing if Ford
10 decided for cost reason or whatever not to change the
11 design but, Your Honor, they never even gave a warning.
12 Mrs. Bartholomew bought her vehicle in 1973. This incident
13 happened in 1976. Years and years for Ford to come out
14 with some sort of warning.

15 Your Honor, we are not saying this is wilfull
16 conduct but it was in conscious disregard of the rights of
17 others and that is certainly one of the standards for
18 punitive damages. It would appear, Your Honor, from the
19 testimony that when it became apparent there would be
20 changes involved in changing the geometry that any changes
21 on the land would get beyond just the steering column. I
22 believe the Jury can conclude that the idea was simply
23 dropped along the way.
1 What we've heard is simply -- I think the
2 Jury is free to conclude simply puffing and after the
3 fact conclusion of things that, in fact, did not go on
4 in any substantive fashion.
5 Mr. King's testimony was really relating what
6 someone else had told him about the things, quote, we
7 had considered. I don't believe Mr. King really testified
8 of any substantive experimentation or work he did.
9 For these reasons, Your Honor, we submit
10 there certainly is sufficient evidence in the record for
11 there to be punitive damages claim and for that punitive
12 damages claim to be considered by the Jury.

1

2 THE COURT: When this case started out the

3 representation was made in opening statement and in the

4 pleadings that there was a conscious corporate decision

5 made by Ford that it would be cheaper to go ahead and not

6 make any change in this system and pay off claims than it

7 would be to change the design.

8 And so, I listened very carefully for the

9 evidence and looked at the exhibits very carefully to

10 see whether or not that came up.

11 Initially there was also the impression

12 that -- perhaps this was the Court's fault -- that there

13 was the initial impression we were dealing with some

14 transmission where it jumped out of Park when it was

15 idling and went into Reverse and rolled away, which was

16 of great concern to the Court. It turns out it doesn't

17 jump out of Park at all; in fact, it won't come out of

18 Park but that if you make an error in driving and don't

19 put it all the way up into Park there is a danger it will

20 go down into Reverse and that can happen. And you can

21 even demonstrate it once in a million or two million times.

22 If Ford gets together and considers that design

23 with all the people involved in it and concludes they are

1 not going to change that design, at best it shows they
2 were negligent; at best it shows they made an error in
3 judgement; at best it shows maybe they were stupid. But,
4 it doesn't show they did anything wilfully, wantonly or
5 maliciously. No matter how I look at those exhibits I
6 cannot find evidence that would justify putting the
7 punitive damage claim to that Jury. It would simply
8 invite speculation.
9 And in fact, the evidence was to the
10 contrary, that cost was not a factor, that that did not
11 enter into the decision.
12 So, I grant the motion to strike the claim
13 for punitive damages.
14 From a philosophical standpoint I carefully
15 considered the arguments submitted by Mr. Cohen and I
16 think it makes a persuasive case but in corporate
17 irresponsibility or corporate avarice there is no reason
18 there shouldn't be punitive damage in products liability
19 cases.
20 But the evidence in this case I don't think
21 comes anywhere near that. I don't think it even
22 approaches it. I think it's a serious question whether
23 there is even any liability but I am not the Jury. It is a

1 Jury question. I think particularly in view of the
2 experts' testimony, both your expert and the expert of
3 the Defendants, even the neligence question is a close
4 one.
5 MR. DUNN: Your Honor, in reciting the
6 standards you did not state anything about the
7 conscious disregard of the rights of others.
8 THE COURT: Okay. I state it now. I don't
9 think you have demonstrated they had made a decision that
10 wonton, wilfull, malicious or in conscious disregard of
11 the rights of others.

2 THE COURT: Grant 2.

3 3?

4 MR. LEWIS: Objection.

5 THE COURT: What is the basis of your

6 objection?

7 MR. LEWIS: No circumstantial evidence here.

8 It is all direct evidence.

9 THE COURT: Who is going to argue the

10 instructions? Are you?

11 MR. DUNN: Yes, Your Honor.

12 Your Honor, there is circumstantial evidence

13 in the testimony of Mr. Sutterly. In fact, the expert

14 testimony there is.

15 THE COURT: I would overrule your objection

16 and I grant 3.

1 THE COURT: Okay. I grant 15.

2 MR. LEWIS: What, will the Court tell me

3 what's been done to it? I had some under, I mean,

4 delineation and all that.

5 THE COURT: This is the way it reads as I

6 have it. "If you believe from a preponderance of the

7 evidence that the defendant was negligent, then an

8 intervening cause such as the conduct of Dave Piles

9 Lincoln Mercury does not operate to exempt them from

10 such"-- Should be exempt it, is that not true?

11 MR. DUNN: Yes.

12 THE COURT: "... exempt it from liability,"

13 et cetera.

14 MR. LEWIS: Well, in that case, I don't think

15 that is correct. I don't think that is a correct

16 statement of the law.

17 THE COURT: Okay.

18 MR. LEWIS: In other words, what we are

19 saying here is what they are going to argue is the

20 foreseeability of some garage making a mistake, which

21 I don't think is an issue in this case any more. I

22 just don't see the applicability of this.

23 THE COURT: If that is, then you are not

1 going to make any reference to Dave Piles in your
2 argument?
3 MR. LEWIS: Let's leave it in.
4 THE COURT: All right, but I am changing
5 the his to its. Okay?
6 MR. DUNN: Yes, Your Honor. Thank you.
7 MR. LEWIS: In fact, I will tell you, I
8 will withdraw that. I won't make any mention of Dave
9 Piles if the Court withdraws it.
10 THE COURT: Is that agreeable?
11 MR. DUNN: That's okay. In light of that
12 representation, Your Honor, we will withdraw number 15.
13 THE COURT: 15 is withdrawn.

22 THE COURT: Grant 19.

23 20?

1 MR. LEWIS: I don't know what this has to

2 do --

3 THE COURT: What does this relate to?

4 MR. DUNN: Your Honor, our concern here was

5 on the issue of subsequent design considerations after

6 this period of 1972 and also any warranties. The only

7 warning we have heard about was the one change in the

8 manual in early '71. If there were further warnings,

9 certainly I think that Ford would have brought them to

10 the jury's attention. That is the reason for that

11 instruction.

12 THE COURT: Okay. Do you object to 20?

13 MR. LEWIS: Yes, sir.

14 THE COURT: I deny 20.

15 MR. DUNN: Note my exception for the reasons

16 stated, Your Honor.

17 THE COURT: Okay.

18 MR. DUNN: Your Honor, simply for the
19 record, the balance of these instructions were submitted
20 I don't believe we need to take. I will present
21 argument, but these are instructions that really the
22 Court has already ruled on. The primary issues to 21,
23 22, 23, 24 and 25 go to the strict liability claim. I
1 believe the Court has ruled that there is no such cause
2 of action in Virginia.
3 THE COURT: That's 21 through 25?
4 MR. DUNN: Yes, Your Honor.
5 THE COURT: All right. You want me to deny
6 each one of them, and you can state for the record your
7 objection or exception?
8 MR. DUNN: Yes, Your Honor, perhaps direct,
9 that's the best way.
10 THE COURT: I deny 21, 22, 23, 24 and 25.
11 MR. DUNN: For the record, let me simply
12 state that instructions 21 through 25 relate to a strict
13 liability and cause of action definitions and contents
14 of that cause of action. Each is applicable and is a
15 statement of the strict liability, cause of action. I
16 would note my exception to the Court's denial.

17 THE COURT: All right. And I am about to
18 deny 26. You want to state your exception and reasons?
19 MR. DUNN: For the reasons stated prior to
20 lunch, Your Honor, and in argument on the motion to
21 strike the punitive damage claim, plaintiff believes
22 that instruction 26 and instruction 27 are appropriate
23 and should be given to the jury. Note my exception.
1 Particularly for the reason, Your Honor, that plaintiff
2 submits there was sufficient evidence of conscious
3 disregard of the rights of the plaintiff in the actions
4 and inactions of Ford.
5 THE COURT: Okay. I deny 26 and 27.

13 All right. Is there any objection to D?

14 MR. DUNN: Which number?

15 THE COURT: D.

16 MR. DUNN: Yes, Your Honor

7 MR. DUNN: The Court has ruled that Massey

8 against Firnstone is inapplicable in this case and for

9 that reason I think a particular instruction on it would

10 only be confusing to the jury. If the Court is, however,

11 inclined to grant it, it should be granted in full.

12 There's part B to the suggested instruction and Section

13 10.07 I have not written -- I have written out on a

14 piece of paper, Your Honor. Mr. Lewis has given us part.

15 THE COURT: Okay. Is there anything else?

16 I am about to deny D.

17 MR. LEWIS: Deny D?

18 THE COURT: Yes, sir.

19 MR. LEWIS: Well, this is a correct

20 statement of the law.

21 THE COURT: Is this your Massey v. Firnstone

22 instruction?

23 MR. LEWIS: Yes, sir.

1 THE COURT: I am consistenly holding that
2 that doesn't apply to this case.
3 MR. LEWIS: Well, I can understand the
4 Court's ruling on a motion to strike or things of that
5 nature, but I think it has a jury instruction. This is
6 the law. I don't think there is any doubt that this is
7 the law. Now, if the jury believes this, you know, I
8 don't care what anybody else believes. If the jury
9 believes this, I think she's bound by her testimony.

15 THE COURT: I don't deny for a moment that
16 it is a correct statement of the law, but what I am
17 concerned about is whether or not that law may be
18 applied to the facts of this case.
19 MR. LEWIS: Based on the testimony of the
20 plaintiff unequivocably that she put the car in park.
21 There is no other testimony. Now, her -- The only way
22 that we are entitled to that. Now, her expert, over my
23 objection, says, no, she really didn't. She thought in

1 her mind that she did, but we are entitled to that. That
2 is the law.
3 They can argue. I think they can argue
4 that she didn't, but, Your Honor, what it says is this.
5 A plaintiff cannot rise above her own testimony, no
6 matter what other witnesses she brings in. She has
7 said unequivocably that she was in park gear.

1 But if we grant or if we propose an instruction that is
2 a true principle of the law that is applicable, without
3 the Court deciding whether or not it is on the factual
4 basis, and that is the whole point. I think under the
5 facts of this case it is applicable. Now, I think it
6 would be truly, I think it would be abusive discretion
7 for the Court to say, I am deciding that there is no
8 issue here.
9 THE COURT: I don't think the Court is
10 exercising discretion. I think that it is inapplicable
11 to the issues of this case, and I deny it.

P's Dep #7

EXHIBIT P-7 3-27-79

CHASSIS DIVISION

Inter Office Communication

Product Development Group

January 19, 1972

Mr. J. D. Collins
Mr. J. D. Velte

cc Mr. R. A. Armstrong
Mr. W. J. Beechner
Mr. W. M. Bristor
Mr. A. T. Bryant
Mr. R. C. Collins
Mr. W. J. Digneit
Mr. E. E. Eagenlocker
Mr. E. B. Jones
Mr. M. L. Jurosek
Mr. E. A. Nickel
Mr. D. W. Pontius
Mr. W. E. Swigart
Mr. O. K. Walthall
Mr. W. L. Weber

Subject: 1976 Ford Car Reliability Program

Our current reliability judgements and recommended program actions on items affecting Chassis Division Product Engineering Office are summarized on the attachments, per your request.

J. W. Guterman

Attachments

PL 419
11/14/79.
Law 43347

392 PLAINTIFF'S EXH. 19

PLAINTIFF'S EXHIBIT NO. 15

7

Item	Div.	Current $/100	Poten. Reduc.	Cfd. Level	Por. Design Cost Effect	Recommend for Incl. in Program	Remarks
1) Relocate lock-up lampcat belt warning light switch from column to transmission.	Chassis & Trans.	1.04 (1972-1/2)	.60	90%	0	Yes	- Complex tolerance stack-up on present column location requires critical AAD switch adjustment. - May be required to meet FMVSS 30 by 1974 or 1976 (collapse effect)
2) Locate PRNDL on column rather than in cluster	Prod. Plnng. & Chassis	2.30	.10	100%	$ .75 Dec.	Yes	- Eliminates adjustment of PRNDL relative to column (current AAD operation) - PRNDL mounting can be simplified to snap-on design.
3) Pre-set Front Suspension	Chassis & Components	---	---	50%	($2.80) Inc.	---	- Alignment reliability improvement est. required by Component Engineering. - Tighter frame and suspension tolerances are req'd. (approx. 1/2 present tolerances) - New frame design required.
4) Eliminate two-piece steering column shrouds	Chassis & BEO	.007	0	50%	$ .15 Dec.	Yes	- Only 50% confidence - a Two-Piece shroud may be req'd to meet FMVSS #208.
5) Separate Turn Signal and Stop Lamp Circuits	Chassis & BEO	2.60	.15	100%	$ .14 Dec.	Yes	- May be mandated by future FMVSS #108 (Docket 69-19). - Costs and repairs for Chassis Division components only.
6) Relocate hazard warning switch from steering column to instrument panel.	Chassis & BEO	2.60	.25	100%	$ .23 Dec.	Yes	- Costs and repairs for Chassis Division components only.
7) Redesign column detent plate between park and reverse position to insure the trans. will not jump out of park position when customers do not fully engage present park slot in detent	Chassis	.10	.09	75%	($ .03) Inc.	Yes	- Customer relations is receiving letters from dissatisfied customers.

Intra Company

Product Development Group

May 3, 1971

W. R. DANCE
PHONE 322-2628

RECEIVED
MAY 4 1971
RELIABILITY & RESIDENT ENGRG. DEPT.

Mr. M. L. Jurosek

cc G. E. Adams
J. E. Dancer
J. S. Seward
D. R. Veazey

Subject: Significant Events Report for the Week Ending April 30, 1971

Listed below are the significant events for the Powertrain Installation Department.

Major Program Items

1971

Ford/Mercury/Lincoln

PRNDL Identification

Mr. Alexandrowicz and the writer met with Messrs. R. W. Smith, G. Schulz, and Vern Petersen of T&C on April 29, 1971 to review the shift lever jumping out of park problem reported from the field. To date 42 field problems dating back to 1968 have been reported. T&C agreed to notify their field engineers and report to the Powertrain Department any problems they encountered. This will assist us in further identifying the problem. They also agreed to investigate the ramp angles for the parking pall in all transmissions and the brazing of the manual lever on the transmission. In view of the implications of the field that some customers do not push the shift lever fully in park, a request for Pink Problems has been issued to remove the letters "a r k" from the park position on the PRNDL lens. This then clearly identifies with the pointer where the lever should be to insure park engagement. To date Chassis has been unsuccessful in getting the Vehicle Office to accept this problem.

PI422 PS

Law 43347
11-14-79

PLAINTIFF'S EXH. 22

Administrative

Eight draftsman have been transferred to the Advanced Vehicle Group to work on the new column task force. Upon selection of the Unit Supervisor by Mr. Nickel, the ninth draftsman will be selected and transferred to the group.

A requisition for three Design Engineers for the 1973 Bumper Program have been processed and upon final approval engineers will be hired for these positions.

A. T. Bryant

A. T. Bryant

NOT TO BE DUPLICATED

(ASE FORWARD PERSONALLY
AND RETURN TO CHASSIS SAFETY
SYSTEMS FILE.

Inter Office Communication

Product Development Group

June 30, 1971

P's Dept. 3

Mr. H. A. Nickol 7/1
Mr. M. L. Jurcsuck 7/2
Mr. P. D. Fadow 7/6
Mr. A. T. Bryant 7/1

Subject: Steering Column Transmission Control Detents

Current Chassis shift lever detent design permits transmission lever placement on a "land" between a positive park position and reverse position with the possibility of vehicle vibration moving the lever from park to reverse in an unattended vehicle.

Shift lever-spring loaded against INSERT PLATE ~~PANEL~~ in improper position which appears to customer as proper.

Present Condition

Present customer usage patterns indicate that this condition of careless shift lever actuation is occurring frequently in the field with actual high accident incidence.

It is recommended that forward design and development be directed toward a feasible alternative which positively positions shift lever in park or reverse, to prevent a false sense of security as to transmission position.

Pl. 423 RPO
Law 433417
11-14-75

D. R. Dixon, Principal Engineer
Chassis Safety Systems Department

Concurred: L. Martin, Manager

PLAINTIFF'S EXH. 23
396

PLAINTIFF'S EXHIBIT
NO. 1 (4)

P's Dep't 4

Ford

Inter Office Communication

Product Development Group

December 8, 1971

Mr. A. T. Bryant

cc J. W. Guterman
H. A. Nickol
C. K. Walthall

Subject: Shift Lever and Transmission Engagement
Park to Reverse

The purpose of this letter is to alert you to the increasing number of customer complaint letters pertaining to the transmission control operation and recommend consideration of a design revision. The primary mode of an alleged performance problem occurs when the customer leaves the vehicle with the engine running, thinking he has moved shift lever into "park" position, and the transmission subsequently engages in reverse. We are now receiving approximately six letters per month of this type.

The attached customer letter from Mrs. Leo Applegarth is typical of those received. The conclusion that the "reverse" to "park" detent travel is marginal deserves consideration as the 1972 Cadillac shift travel from "park" to "reverse" is noticeably greater than that noted on Ford vehicles.

It is requested that any design, tooling and cost implications of an increased travel for "reverse" to "park" detent be established jointly with the Transmission Division for possible incorporation in forward designs.

D. R. Dixon, Principal Engr.
Chassis Safety Engrg. Dept.

Concur: J. L. Martin, Manager

Attachment

Pl Exh 24 RDS

PLAINTIFF'S EXH. 24

397

LCW 43347

PLAINTIFF'S EXHIBIT NO. 2

P's Dep #5

June 9, 1971

Ford Motor Co.
Detroit, Michigan

Dear Sir:

I am just recovering from an experience in which I do not believe I was entirely responsible. If there is some engineering flaw which is correctible, I am sure you would want to correct it.

We own a 1970 Mercury, purchased December 18th with approximately 3500 miles on it.

I drove it down the driveway last Thursday, wanted to get out at the street, put the car in park and proceeded to get out. The next thing I knew I was thrown to the ground. Fortunately, I did have the presence of mind to roll or I would have been run over. The car proceeded backing up our driveway for about 150 feet when and where veered and ran into a tree that stopt it. My husband was home, saw part of the accident, his reaction was to run to the car, door still open "the darned thing is in 'park'". Obviously, the engine was in reverse, but the lever was in 'park'. There must be too small a margin for that position.

I have driven many thousands of miles and this is my first 'lapse'. I am so glad no child was behind or near and could have been killed.

I am certain that if this can be corrected, you will do it.

Sincerely,

Mrs. Leo Applegarth

EXHIBIT
P-
3-27-79

[illegible]

June 2, [illegible]

[illegible] Co.
[illegible], Michigan

Gentlemen:

[illegible] I am enclosing [illegible]. If there is some [illegible] which is correctible, I am sure you would want to [illegible] it.

[illegible] Mr. [illegible], [illegible] [illegible] approximately [illegible] miles [illegible].

I [illegible] it [illegible] [illegible] to get me at the school, [illegible] and [illegible] to get me. [illegible] to the [illegible] to roll [illegible] I would have been [illegible]. [illegible] preceded [illegible] [illegible] [illegible]

P's Dep #6

FORD

Inter Office Communication

Project Development Group

January 13, 1972

Mr. J. W. Gaterman

cc A. W. Alexandrowicz
J. L. Marlin
O. K. Walthall

Subject: Shift Lever and Transmission Engagement - Park to Reverse

Reference: Mr. D. R. Dixon's Communication of 12-8-71, Same Subject

The purpose of this communication is to inform you of the action being taken on the subject problem. Our investigation of service complaints and complaint vehicles shows that this problem is the result of the customer not placing the shift lever in the detent plate slot, for the park position. When the shift lever is not placed in the slot, engine vibration can cause the lever to fall back into the reverse position and result in the car moving rearward.

The basic linkage design is such that we have linkage stretch to insure we always pull the transmission fully into the park detent prior to reaching the slot in the detent plate. To eliminate the condition where the customer does not fully reach the slot in the detent plate, we are investigating two alternate designs. One design which can be incorporated without transmission change is to angle the detent plate between reverse and park and also angle the tang of the shift lever. This will result in the shift lever always having to climb uphill to slip back into reverse when not fully engaged in the park slot. In addition, the two angular surfaces will automatically hold whereas the present flat surfaces can slip due to engine vribration.

The second approach which would require a transmission revision increases the angular travel between reverse and park. This will give us a larger land to work with and permit us to incorporate a double step on the detent plate to catch the lever if it should not be placed in the slot by the customer.

We plan to have the first proposal formulated into a study package for the Study Committee by 2-1-72. Based on cost and vehicle tryout, we will determine if the first proposal is satisfactory. If this is satisfactory, the second proposal will not be pursued past the layout steps.

/s/
A. T. Bryant

Pl 425 RD

Law 43347
11-14-79

PLAINTIFF'S EXH. 25

6

Inter Office Communication

Product Development Group

January 13, 1972

Mr. J. W. Gaterman

cc A. W. Alexandrowicz
J. L. Byrlin
O. K. Hellwall

Subject: Shift Lever and Transmission Engagement - Park to Reverse

Reference: Mr. D. R. Dixon's Communication of 12-8-71, Same Subject

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The second approach which would require a transmission revision increases the angular travel between reverse and park. This will give us a larger lead to work with and permit us to incorporate a double step on the detent plate to catch the lever if it should not be placed in the slot by the customer.

We plan to have the first proposal formulated into a study package for the Study Committee by 2-1-72. Based on cost and vehicle layout, we will determine if the first proposal is satisfactory. If this is satisfactory, the second proposal will not be pursued past the layout stage.

A. T. Bryant

Id. P. # 26
Law 43347
11-15-79

U.S. DEPARTMENT OF TRANSPORTATION
NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION

refused

I HEREBY CERTIFY that the annexed is a true copy of a "U.S. Department of Transportation News: Consumer Advisory," dated August 29, 1978 and entitled, "DOT Issues Warning on Ford Transmission Problems"

on file in the Office of Defects Investigation, National Highway Traffic Safety Administration

Signed and dated at Washington, D.C.

this 14th day of November, 19 79

by Robert Pavlovic

Chief, Defects Information Systems Division
(Title)

I HEREBY CERTIFY that Robert Pavlovic

who signed the foregoing certificate, is now, and was at the time of signing, Chief, Defects Information Systems Division

and that full faith and credit should be given his certificate as such.

IN WITNESS WHEREOF, I have hereunto subscribed my name, and caused the seal of the Department of Transportation to be affixed this 14th *day of* November, *one thousand nine hundred and* seventy nine

For the SECRETARY OF TRANSPORTATION

Carlotta D. Bailey
Carlotta D. Bailey
NHTSA Records Officer
Certifying Officer

HS Form 126
June

PLAINTIFF'S EXH. 26

U.S. Department of Transportation
news:

Office of Public and Consumer Affairs
Washington, D.C. 20590

FILE COPY

CONSUMER ADVISORY

FOR RELEASE TUESDAY
August 29, 1978

NHTSA 85-78 (Ames)
Tel. No. (202) 426-0670

DOT ISSUES WARNING ON FORD TRANSMISSION PROBLEMS

The U.S. Department of Transportation issued a Consumer Advisory today warning owners of certain Ford Motor Co. vehicles equipped with automatic transmissions to take precautions when parking their vehicles.

The warning came from the department's National Highway Traffic Safety Administration (NHTSA) which is conducting a formal defect investigation involving certain 1970 through 1978 Ford Motor Co. passenger cars and light trucks. The NHTSA has reports of 777 accidents, 259 injuries and 23 fatalities allegedly caused by automatic transmissions jumping from "Park" into "Reverse" gear. The investigation involves an estimated 9 million Ford vehicles equipped with C6 or FMX transmissions.

The NHTSA also urged owners who have experienced this problem to report it promptly to the federal safety agency. The NHTSA would prefer to receive letters which summarize specific details about the problems experienced by the owner with the make, model and year of the vehicle, and where possible, the Vehicle Identification Number which is located on the dashboard. If owners are unable to write, they are urged to call the agency's toll-free auto safety hotline on 800-424-9393 (Washington, D.C. metropolitan area, 426-0123) with their information.

Precautions to be taken include turning off the engine, pushing the gear selector all the way to the "Park" position and pulling on the selector lever (without raising the lever) to make sure it is secured, and setting the parking brake. Vehicles should never be left unattended with their engines running -- not even for the brief period it may take to leave the vehicle to close a garage door, make a pickup at a store or check the mailbox at the end of your driveway.

Joan Claybrook, NHTSA administrator said "we are pursuing this investigation on a priority basis and plan to complete it in the very near future. But at this time we want to report that a problem may exist between the Park and Reverse positions on the transmission gear selector system, leading the driver to erroneously believe the transmission is in Park. There is a tendency to slip into reverse gear because of engine vibration or even the closing of a door, if the transmission is not firmly engaged in the Park position."

Analysis of the problem by NHTSA indicates that the tendency of the transmission to slip into Reverse is increased if the shifting linkage between the gear selector and the transmission is not properly adjusted.

# # # # # # # # # # # # #

U.S. DEPARTMENT OF TRANSPORTATION
NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION
Washington, D.C. 20590

Official Business
PENALTY FOR PRIVATE USE, $300

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DOT 517

FIRST CLASS

U.S. MAIL

INNER DETENT LEVER COMPARISON

REVERSE TO PARK TRAVEL

FORD | GM | CHRYS.

1D Def 1
11/14/79 Kauo 43347

DEFENDANT'S EXH. 1

[ ] LOCAL [X] PROFESSIONAL | [ ] EMERGENCY [X] NORM. [ ] RUSH [ ] URGENT | [X] YES [ ] NO

TITLE: Long Transmission Control Selector Ind.

DATE: 7-27-71 AA

[signature] | PHONE NO. 20695 | DEPARTMENT AND DIVISION: Instrument Cluster & General Parts Division | 5-27-71

REFERENCE: ORIGINAL EXPLANATORY CHANGE • PRODUCT LETTER, PROBLEM REPORT, ETC.

Problem # 2ACP-027

PRODUCT LINES AND PLANTS AFFECTED

Mark IV / Lincoln - 1972

DESCRIPTION OF CHANGE

Remove letters "ARK" from word "Park" on transmission selector dial.

CONSIDERATIONS NECESSITATING CHANGE

Customer dissatisfaction - see problem report #2ACP027. With indicator pointing at "K" on park, transmission can actually be in reverse.

"Ok to tool" issued 5-27-71

PINK REPORT #31

ENGINEERING RECOMMENDATION

Improve as written

G.P.D.	Chassis	[ ] SERVICE AFFECTED	[ ] EXPORT AFFECTED	[X] CONTROL TO REP.

[X] YES [ ] NO	STOCK-DISPOSITION (USE / SCRAP / REWORK): S ROUGH; S FINISHED; R ASSEMBLIES; R SERVICE; NOT AFFECTED	EST. ENGINEERING RELEASE DATE: 6-2-71	CHANGE RELEASE NO.: CFCA - C5AA - CVAA - PA - 967278
TOOLING AFFECTED: [X] YES [ ] NO		CHANGE TO BE EFFECTIVE: [X] MODEL 1972	
PARTS AFFECTED: [ ] YES [X] NO		[ ] A.S.A.P.	

CHECK ONE: CHANGE APPROVED	CHANGE DISAPPROVED	CHECK ONE: CHANGE APPROVED	CHANGE DISAPPROVED
E. F. Sumner 5-27-71			
SIGNATURE / DATE: E. F. Sumner for M.J. Gaynier 5-27-71		CHIEF ENGR. OR DESIGNATED ENGR. REP. / DATE	
SIGNATURE / DATE: B. A. Kure 5/27/71		CHIEF ENGR. OR DESIGNATED ENGR. REP. / DATE	
SIGNATURE / DATE: D. C. Long 5-27-71		CHIEF ENGR. OR DESIGNATED ENGR. REP. / DATE	
SIGNATURE / DATE: [signature] 6/1/71		CHIEF ENGR. OR DESIGNATED ENGR. REP. / DATE	
SIGNATURE / DATE		SIGNATURE / DATE	
SIGNATURE / DATE		SIGNATURE / DATE	

[ ] SUPPLEMENTS [ ] REPLACES | ESTIMATED PIECE PRICE PER CHANGE | ESTIMATED TOOLING COST | [illegible]

CHECK ONE: CHANGE APPROVED	CHANGE DISAPPROVED	CHANGE APPROVED
—		
CHANGE COORDINATOR / DATE		CHANGE COORDINATOR / DATE
SIGNATURE / DATE		SIGNATURE / DATE

[illegible] PRIOR EDITIONS MAY NOT BE USED

Def # 2 [illegible]

DEFENDANT'S EXH 2

Law 43347 11-15-79