

1 THE COURT: Defense.

2 MR. STEPHENSON: (Inaudible.)

3 (Counsel returns to trial tables.)

4 Okay, members of the jury, when I gave you the
5 instruction on contributory negligence which is also
6 covered in the written instructions, it's the Defendant
7 has the burden of proving by preponderance of the
8 evidence that the Plaintiff's negligent was the cause of
9 an injury.

10 If I said it was the Plaintiff's burden I
11 apologize.

12 Now, at the end of all argument I'll have some

1 anything about how it happened is the Plaintiff, Mr. [redacted] You testified that before [redacted]

1 employee at the time this accident happened. They admit
2 that he was acting within the scope of his employment
3 with them on this particular day. And they admit that he
4 was the only driver that they had that was in the
5 vicinity of this intersection and this accident at the
6 time of this accident; around 12:00.

7 And what's Mr. Quade tell you? That yes, he
8 could have been in this area because he goes through
9 there all the time. He lives right by there. That's how
10 he goes home. He can tell you that he usually comes
11 through this intersection but he can't tell you if that's
12 what he did on March 13th, 2006.

13 He can't tell you if he went straight on March,
14 2000 -- March 13th. He can't tell you is he used a turn
15 signal on March 13th. He can't tell you whether Ted
16 Ervin's car was there on March 13th. He can't tell you
17 if Ms. Young's car was there on March 13th.

18 Mr. Quade has nothing to say about how this
19 accident happened other than what he normally does which
20 he can't say happened in -- on this day.

21 And the reason I'm talking about that is is you
22 just heard the instructions that the Court gave. The
23 Judge talked about witness testimony and how do ya -- how

[Redacted]

... these kind of decision

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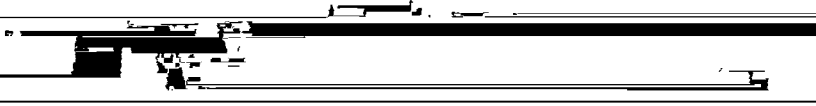
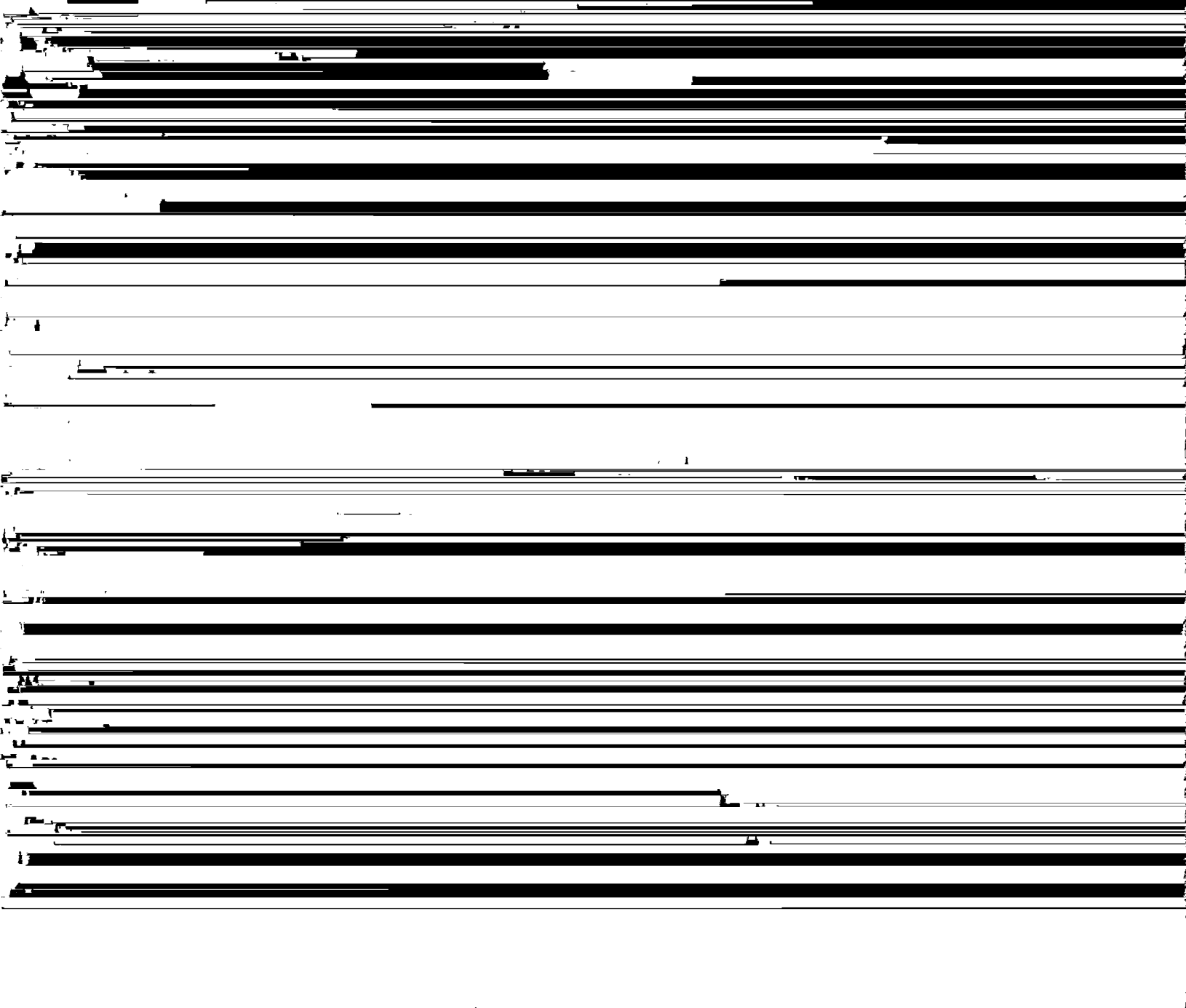
1 All he said was is that he had to estimate the
2 distances because he's not an engineer and he didn't have
3 access to the exact measurements. But that when he did

1 again we're back to the instructions that the Judge gave,
2 he did what a reasonable person would have done. He was
3 traveling at a constant speed in his turn lane when a
4 very large vehicle that he thought was full of a
5 flammable liquid came over. He did what a reasonable
6 person would do which is he went in the opposite

to the right as quickly as he could

1 was involved in this accident. You're gonna have to
2 determine whether there's something she could have done
3 to have avoided the accident. I -- I -- I can't guide

1 talked to Ms. Young the main thing that I really wanted
2 ~~to~~ ~~get across to~~ you folks is that she backed up what Mr.



1 you're gonna -- if you're gonna get into one of these
2 turn lanes you've gotta cross that dividing line. You've
3 gotta go from a through lane into a turn lane. And the
4 instructions the Court just gave you say that when you
5 have to do that you can (unintelligible) change lanes
6 here when it's safe to do so. You gotta make sure it's
7 safe to do so before you do it.

8 And what's more likely than not that happened

1 jump over into the next lane. He'd have no reason to do
2 that and if he was gonna get into that lane he would be
3 in the wrong place because he has to make a right after
4 he makes this turn.

5 So Mr. Ervin's got no reason to ever be in this
6 left-most lane unless something forces him into it which
7 would be the truck that Ms. Young didn't see before the
8 accident but when Mr. Ervin pointed it out to her at the
9 light she saw it and she admitted that too.

10 So, we know that a Baltimore Tank Lines vehicle
11 was there. We know that it came into Mr. Ervin's lane
12 and we know that that caused the accident. I'd submit to
13 you that that's what more likely than not and I'd ask you
14 when you fill out that Verdict Sheet what it should say,
15 it should say that Baltimore Tank Lines was negligent and

1 burden to show that that's more likely than not if the
2 accident happened the way he says it did.

3 If any of the Defendant's want to argue that
4 Mr. Ervin was contributorily negligent, that burden
5 shifts to them. They have to show you by preponderance
6 of the evidence that he was contributorily negligent.
7 And I submit to you that they can't do that because
8 nobody saw what happened except for Mr. Ervin. And in
9 the absence of any direct evidence that he was negligent
10 you should find that he wasn't.

11 So I'm gonna ask you to render a verdict that

negligent and that their

there's nothing that contradicts it.