

Redacted
Version

COMMONWEALTH OF MASSACHUSETTS

NORFOLK, SS.

SUPERIOR COURT DEPARTMENT
NO. 2282-CR-00117

COMMONWEALTH OF
MASSACHUSETTS,
Plaintiff

V.

KAREN READ,
Defendant

**DEFENDANT KAREN READ'S MOTION TO DISMISS
FOR EXTRAORDINARY GOVERNMENTAL MISCONDUCT**

Now comes the defendant, Karen Read ("Ms. Read") and respectfully moves this Honorable Court pursuant to Article Twelve of the Massachusetts Declaration of Rights, the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution, and Mass. R. Crim. P. 14(c), to dismiss all charges with prejudice, on the basis of extraordinary governmental misconduct. See U.S. Const. amend. V; U.S. Const. amend. VI; U.S. Const. amend. XIV; Art. 12 of the Declaration of Rights of the Massachusetts Constitution; Mass. R. Crim. P. 14.

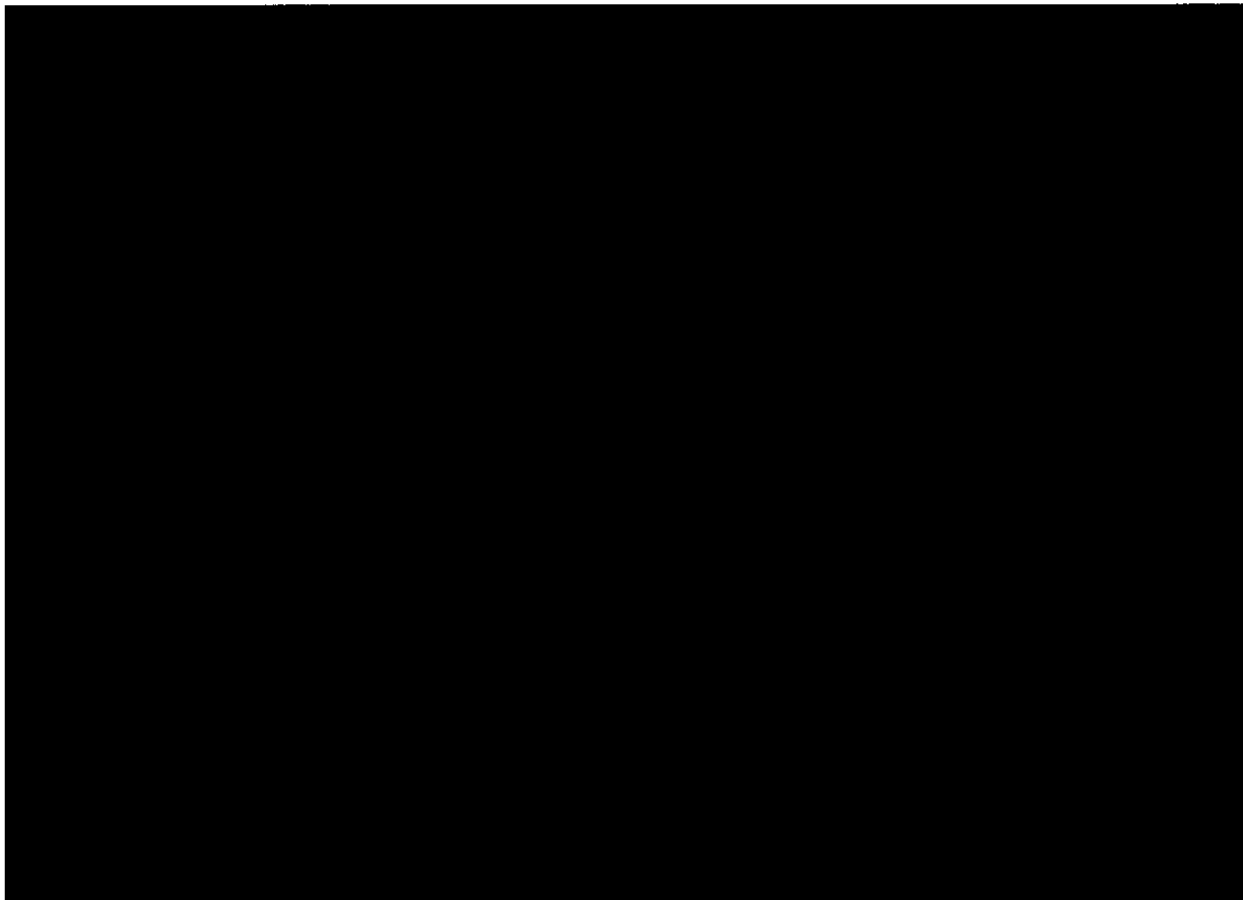
A prosecutor "may strike hard blows, but he is not at liberty to strike foul ones. It is as much his duty to refrain from improper methods calculated to produce a wrongful conviction as it is to use every legitimate means to bring about a just one." Berger v. United States, 295 U.S. 78, 88 (1935).

Throughout the course of these proceedings, Ms. Read has been severely prejudiced by the Commonwealth's pervasive misconduct. The Commonwealth has suppressed discoverable and exculpatory video surveillance footage from the Canton Police Department ("CPD"). It has provided piecemeal disclosure of some footage, most of which was disclosed after the trial started

and *after* the Commonwealth represented that “all” video footage had been provided to the defense. For reasons that remain unexplained, much of the video that has been disclosed is “missing” critical timeframes and evidence central to Ms. Read’s defense. Some of the video clearly appears altered or manipulated, as evidenced by people “appearing” and “disappearing” out of nowhere. At the first trial in this matter, Assistant District Attorney Adam Lally (“ADA Lally”) brazenly introduced “inverted” video and elicited patently false testimony from MSP Sergeant Yuriy Bukhenik (“Sgt. Bukhenik”) that the video was a fair and accurate depiction of critical events—in an attempt to falsely insinuate to the jury that no member of law enforcement ever approached, touched, or otherwise disturbed the right rear taillight of Ms. Read’s SUV. There can be no doubt that this video and false testimony was offered to mislead this Court, the jury, and the defense by making it appear that MSP Trooper Michael Proctor (“Trooper Proctor”) was standing next to the left rear taillight when the Commonwealth knew the exact opposite was true: Trooper Proctor was, in fact, standing directly next to the right rear taillight. Other sallyport video, which was unquestionably favorable to the defense because it would have severely discredited key witness Brian Higgins (“Higgins”) [REDACTED] [REDACTED] inexplicably was not disclosed to the defense until months after the first trial. To this day, the Commonwealth’s failure to explain the disturbing circumstances surrounding their disclosure of the exculpatory sallyport video, and why some video was suppressed from the defense at the first trial, has made a mockery of Ms. Read’s right to due process.

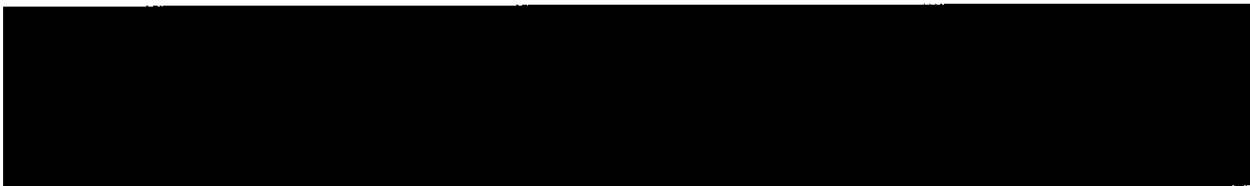
The Commonwealth exploited this Court’s order instructing the defense to disclose its impeachment material in advance of witnesses testifying. ADA Lally and MSP Lieutenant Brian Tully (“Lt. Tully”) huddled with key witness Jennifer McCabe (“McCabe”), mid-trial, prepped

her on how to explain why she never disclosed that she went to CPD Sergeant Michael Lank's ("Sgt. Lank") home one day after John O'Keefe's ("O'Keefe") death, and then suppressed exculpatory statements made by McCabe during that session until nearly a month after McCabe's testimony—at which point McCabe and other relevant witnesses were safely off the witness stand. If the Commonwealth had complied with their obligation to provide statements of witnesses before they testify, the defense would have been positioned to expose McCabe's material, inconsistent statements about her meeting with Sgt. Lank.



As a result of this extraordinary governmental misconduct, Ms. Read has been permanently and irreversibly denied her constitutional right to a fair trial. No remedy other than dismissal can adequately address the significant harm caused to Ms. Read and the injustice of

proceeding without the lost exculpatory evidence that was in the Commonwealth's possession—



Accordingly, the case against Ms. Read must be dismissed with prejudice.

I. **STATEMENT OF FACTS**

Ms. Read is accused of the following crimes arising out of the death of Officer O'Keefe: Murder in the Second Degree in violation of M. G. L. c. 265, § 1 (Count One); Manslaughter while under the Influence of Alcohol in violation of M. G. L. c. 265, § 13 ½ (Count Two); and Leaving the Scene of Personal Injury and Death in violation of M. G. L. c. 90, § 24(2)(a ½)(2) (Count Three). A months-long jury trial was held in this matter beginning on April 17, 2024. On June 25, 2024, the jury began deliberations. After the jury submitted a note to the Court indicating that the jury was at an impasse, the Court declared a mistrial on July 1, 2024.¹

The Commonwealth altered the course of the first trial in this case by destroying exculpatory evidence, withholding exculpatory evidence, and interfering with the jury—in a case in which the jury either voted to acquit or was deadlocked on the lesser(s) of one charge. There is no cure, short of dismissal with prejudice, that can remedy the serious constitutional and statutory

¹ In the days and weeks following the first trial, five deliberating jurors have come forward and indicated that they had unanimously acquitted Ms. Read on Counts One and Three and were hung only with respect to Count Two. They indicated that they did not believe they were permitted to report the unanimous decisions on Counts One and Three unless they were able to reach a unanimous verdict on all counts. Ms. Read's failure to address any claims of double jeopardy in the instant Motion to Dismiss shall not in any way be deemed or construed a waiver of those issues, which are presently pending before the United States District Court for the District of Massachusetts.

violations that have occurred in this case. The facts relating to the respective misconduct and discovery violations are set forth below.

A. FACTS RELATING TO THE DESTRUCTION AND WITHHOLDING OF EXCULPATORY CPD VIDEO SURVEILLANCE FOOTAGE

This Court is aware of the critical importance of the video surveillance footage from the CPD on January 29, 2022. The Commonwealth has produced dribs and drabs of various clips of video surveillance obtained from the CPD's ExacQ Vision DVR system from January 29, 2022—without any accompanying reports, evidence logs, or other documentation regarding the recovery and chain of custody of this evidence—on at least *four* separate occasions.

1. Relevant Discovery Orders

On February 2, 2022, the defense filed Defendant's Emergency Motion for Preservation of Evidence, including the preservation of all physical evidence (such as video surveillance footage) with the Stoughton District Court. Exhibit A, Feb. 2, 2022, Order on Motion to Preserve Evidence. At February 2, 2022 hearing, ADA Lally stated in open Court that he had reviewed the proposed order and had no objection to it. That same day, the District Court issued a preservation order for all physical evidence, which includes video surveillance footage. (*Id.*) In other words, *three days* after O'Keefe's death, the Commonwealth was aware of its affirmative obligation to preserve any and all video surveillance footage in its possession, custody or control (which included the CPD and/or Massachusetts State Police) and ADA Lally was required to notify law enforcement of this order.

On September 16, 2022, after Ms. Read's case was transferred to Norfolk Superior Court following her June 9, 2022 indictment, the defense filed a separate motion to compel the production of certain outstanding discovery, "including all crime scene photographs and/or videos taken in connection with this case...." See Exhibit B, October 5, 2022, Order on Defendant's

Motion to Compel. On October 5, 2022, this Court granted the motion to compel, in part, and ordered that the Commonwealth produce all video evidence and metadata associated with the videos on that date. (*Id.*)

2. Dates of Production and Facts Relating to Discovery and Constitutional Violations

The CPD's video surveillance footage has been in the Commonwealth's possession, custody, and control since January 29, 2022. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Notwithstanding this Court's October 5, 2022 discovery order compelling the production of all video evidence (and accompanying metadata) in the Commonwealth's possession, the Commonwealth and its agents withheld this exculpatory

evidence from the defense for more than two years—failing to disclose even the first (incomplete) batch of the footage until the eve of the first trial, on April 4, 2024.²

The Commonwealth has now produced four separate (incomplete) batches of video surveillance footage recorded at the CPD on January 29, 2022.

a. April 4, 2024 Production

On April 4, 2024, on the eve of the first trial in this matter, the Commonwealth for the first time disclosed (woefully incomplete) CPD video footage which consisted of video from the “CPD Main Driveway” and “CPD Sallyport Front Wall” cameras from January 29, 2022. See NOD XXXV. Curiously, the Sallyport Front Wall footage omitted a 42-minute interval at the *precise time* the SUV arrived at the sallyport garage. Exhibit D, 28 RT at 31:9-22; Exhibit E, Sallyport Front Wall Footage. The missing footage from the Sallyport Front Wall camera would have captured (a) a close-up of the condition of the SUV’s right rear taillight upon arrival at the CPD’s sallyport garage, (b) the individuals who had access to the right rear taillight, and (c) whether anyone removed taillight material from the SUV *before* the first piece of taillight evidence was recovered at 34 Fairview Road. Id. at 32:10-33:04. The condition of the right rear taillight of the Lexus SUV at the time it entered law enforcement’s custody is perhaps the most critical and highly-contested issue in this case. It is astounding – and convenient for the Commonwealth – that this seminal timeframe is missing from the Sallyport Front Wall Camera footage. Moreover, the data was not preserved in a forensically sound way – in violation of the February 2, 2022 Preservation Order – which means that the defense has been denied the ability to determine whether the Commonwealth deleted, altered, manipulated, or otherwise lost critical video evidence in its possession that it was obligated to preserve.

[REDACTED]
[REDACTED]

b. April 10, 2024 – The Commonwealth Files Its Certificate of Compliance

On April 10, 2024, the Commonwealth filed a certificate of compliance in which ADA Lally certified to this Court, six days before trial, that the Commonwealth, after “exercising reasonable inquiry” and due diligence “to the best of their ability, disclosed and made available *all items subject to discovery...*” Exhibit F, April 10, 2024, Certificate of Compliance (emphasis added). This representation was patently false. It strains credulity that ADA Lally, in light of his actual knowledge about the preservation order and existence of extensive sallyport video, would represent to the Court and to the defense that after “reasonable inquiry” he disclosed and made available all known discoverable material in his possession, custody, and control. At a minimum, rather than mislead the Court and the defense, ADA Lally was obligated to inform the Court and the defense that there was outstanding video surveillance footage.³ *See* Mass. R. of Prof. C. 3.4(d) (party may not “fail to make a reasonably diligent effort to comply with a legally proper discovery request”).

c. April 23, 2024 - The Commonwealth Produces Inverted Video Mid-Trial in Violation of Rule 14 and Attempts to Use That Video to Defraud the Jury into Believing That No One Approached or Touched or Otherwise Manipulated the Right Rear Taillight of Ms. Read’s SUV

██

██

██

██

██

³ ADA Lally was cognizant of other discoverable material that the Commonwealth did not disclose before certifying his compliance with his discovery obligations. Notably, when filing the Certificate of Compliance, he expressly represented that the “lone exception” of outstanding discoverable material was some evidence related to DNA testing and analysis. *See* Exhibit F.

[REDACTED]

On April 23, 2024, the Commonwealth produced additional footage from the CPD Sallyport Back Wall via a Sharelink entitled “Additional Sally Port Video Download Link.”⁴ No flash drive was presented to the defense. (Exhibit H, Inverted Sallyport Video.)

The Commonwealth subsequently exploited their mid-trial disclosure of this video surveillance footage as part of their attempt to convince the jury that nobody approached or touched the right rear taillight of Ms. Read’s vehicle after it entered the sallyport.

ADA Lally craftily elicited testimony from Sgt. Bukhenik that this interior sallyport camera was an accurate depiction of the sallyport and the SUV when it arrived at the CPD on January 29, 2022—and that, “as seen in the video,” no law enforcement officer approached the right rear taillight. Exhibit I, 26 RT at 166:15–167:8; Exhibit J, 27 RT at 93:3–11.

On cross examination, however, Sgt. Bukhenik’s testimony was exposed as profoundly misleading at best and perjurious at worst. It became apparent that the video surveillance footage displayed on direct examination *was inverted and a mirror image of reality*, critical facts which neither ADA Lally nor Sgt. Bukhenik saw fit to inform the Court, defense, or jury. Id. at 95:8-17, 99:8-14. In other words, this video made the left side of Ms. Read’s SUV appear to be the right,

⁴ The Commonwealth never filed a supplemental certificate of compliance.

and the right appear to be the left. Therefore, the video presented to the jury as “fair and accurate” appeared to show a person (Trooper Proctor) standing near the left rear taillight of the vehicle, when, in fact, Trooper Proctor was standing near the *right rear taillight* (i.e. the taillight at issue). Moreover, the inverted video does not capture the condition of the right rear taillight and it conceals Trooper Proctor’s presence by the right rear taillight. This leads to the inescapable conclusion that ADA Lally’s questions, Sgt. Bukhenik’s responses, and the deliberate introduction of inaccurate evidence was designed to perpetrate a fraud on the Court, the jury, and Ms. Read with respect to a critical issue in the case.

d. October 10, 2024 - The Commonwealth Produces Additional Exculpatory Video Surveillance Footage in Violation of *Brady* and Rule 14

Post-trial, on October 10, 2024, the Commonwealth again provided new footage, this time from the CPD “Church side exterior”, “First Floor Corridor”, “Rear Lot Main Side”, and “Rear Lot Cruiser side” cameras. See NOD XLVII. This footage shows Higgins arrive in the parking lot of the CPD at 1:26 a.m., enter the building, *and speak to some unidentified individual(s) on the phone as he is leaving the CPD at 1:34 a.m. (Exhibit K, Higgins “1-29-22 rear lot 1a-5a.exe”)* Significantly, this specifically-requested material and relevant evidence, which establishes that Higgins was on the phone with some unidentified individual at 1:34 a.m. as he left the CPD shortly after O’Keefe’s death, was suppressed until after the first trial. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

//

e. The Commonwealth Failed to Preserve Exculpatory Video Surveillance from January 29, 2022, In Violation of a Court Order and *Brady*

On November 8, 2024, while preparing for Ms. Read’s second trial and in response to the continued piecemeal production of video footage that had not been originally disclosed during the first trial, Attorney Elizabeth Little emailed Special District Attorney Hank Brennan (“ADA Brennan”) again requesting, *inter alia*, “[a]ll raw video footage from the CPD, which shall include but is not limited to all cameras capturing the interior of the CPD and/or the exterior of the CPD including all parking areas, entrances and exits, and garages between January 29, 2022, at 12 a.m. and January 29, 2022, at 11:59 p.m.” On November 25, 2024, ADA Brennan indicated via email that he would request that CPD provide all requested footage.

Ultimately, the defense requested access to the CPD DVR system and drives that hold recordings from the security camera system so that defense expert, Matthew Erickson, could obtain video files and corresponding log files from January 29, 2022, between 12:00 a.m. and 11:59 p.m. Upon reaching an agreement with the Commonwealth, Matthew Erickson visited the CPD on the morning of December 12, 2024, to image the DVR system. He then discovered—as the Commonwealth has since conceded—that the DVR system was programmed to automatically overwrite footage after 30 days, which means that the Commonwealth failed to preserve the specifically requested material and exculpatory footage relevant to Ms. Read’s case via standard forensic protocols, as they were obligated to do pursuant to the February 2, 2022, Preservation Order and October 5, 2022, Order Compelling the Discovery of All Videos and Related Metadata.

//

//

f. January 28, 2025 – The Commonwealth Produces More Exculpatory, Blurry Video Surveillance Footage Establishing That an Unidentified Person Approaches the Right Rear Taillight of the SUV as Soon as It Enters the Sallyport Garage

On January 28, 2025, the Commonwealth yet again turned over additional CPD surveillance footage from January 29, 2022, this time from an exterior camera depicting Ms. Read's SUV being brought into the sallyport garage. See NOD LVI; Exhibit M, "Main Driveway side exterior Sally Port_20220129_173500.exe". The footage, although blurry and grainy, appears to show an individual approach the right rear taillight of Ms. Read's SUV, immediately after the vehicle is brought into the sallyport garage, and then exit shortly thereafter. If this video were not blurred out, the surveillance feed would have captured *yet another* angle of the right rear taillight as it entered the sallyport garage. At a certain point, it defies logic that all CPD video surveillance footage coincidentally cuts out, blurs out, or becomes grainy at the precise time the right rear taillight of the Lexus SUV should be in frame upon its arrival at the sallyport. This angle of video surveillance is exculpatory and was withheld from the defense prior to the first trial.

B. FACTS RELATING TO THE COMMONWEALTH'S INTENTIONAL WITHHOLDING OF EXCULPATORY STATEMENTS MADE BY SEMINAL WITNESS JENNIFER MCCABE

McCabe is a key Commonwealth witness. Her credibility is critical to the Commonwealth's case. On February 2, 2022, mere days after O'Keefe's death, the MSP obtained and forensically imaged McCabe's cell phone. The forensic examination of McCabe's cell phone revealed significant exculpatory evidence supporting Ms. Read's third-party culpability defense, *inter alia*, establishing that McCabe googled "hos[sic] long to die in cold" at 2:27 a.m. on January 29, 2022, three hours before she supposedly "discovered" Mr. O'Keefe's hypothermic body in the snow on her brother-in-law, Brian Albert's, front lawn. McCabe then took steps to delete that one

search (out of more than 4,560 on her phone), along with nearly every communication made on her phone in the hours following O’Keefe’s death (only some of which were recoverable from her phone using forensic extraction software). The close and longstanding relationship between the Albert and McCabe families and the law enforcement officers assigned to investigate this case is central to Ms. Read’s third-party culpability defense.

CPD Sgt. Lank, a longtime friend of the Alberts, was the first officer to enter the Albert residence on the morning of January 29, 2022. In preparation for trial, the defense uncovered location information on McCabe’s cell phone which proved that she went to first-responding officer Sgt. Lank’s home on January 30, 2022—the day after O’Keefe’s death. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

On May 7, 2024, in accordance with this Court’s order that parties disclose all information to be used for impeachment purposes, Attorney Little emailed ADA Lally and ADA McLaughlin to provide location information from McCabe’s cell phone establishing that she went to Sgt. Lank’s house on January 30, 2022. Unbeknownst to the defense, ADA Lally and ADA McLaughlin shared this impeachment information with Lt. Tully.

On May 10, 2024, in a then-undocumented meeting, Lt. Tully, ADA Lally, and ADA McLaughlin met with McCabe shortly before she was scheduled to testify in the first trial. McCabe's materially inconsistent statement about meeting Sgt. Lank was not memorialized in any report or otherwise disclosed to the defense in advance of McCabe's testimony at trial in violation of *Brady*, *Giglio*, and Rule 14.

McCabe testified beginning on May 17, 2024. During cross-examination on May 21, 2024, she testified that she received a text from her sister, Nicole Albert, on January 29, 2022, stating "We'll get more info tomorrow. Don't want to text about it", to which she responded, "Right." (Exhibit O, 21 RT at 168:1-7.) When Ms. McCabe was asked whether anything significant happened the next day, January 30, 2022, McCabe volunteered the following story:

I went to the O'Keefe's house...On the way home Kerry Roberts' daughter is good friends with Michael Lank so we dropped her off at Michael Lank's house and Mike's wife came out of the house. Him and Kerry are friends and she, you know, jumped in the car and was consoling Kerry and asks how the O'Keefe's were doing, and you know, we talked to her.

(*Id.* at 170:8-17.) She testified that she was at the house for approximately an hour and that she "might have ran in to go to the bathroom." (*Id.* at 171:18-19, 172:3.) [REDACTED]

[REDACTED] on cross at trial was the first time McCabe mentioned going to Sgt. Lank's home on January 30, 2022. When pressed further, she admitted that she had discussed this issue at a meeting "a couple of weeks [prior] at the DA's office." (*Id.* at 172:10-17.) She testified that at the meeting at the DA's office, "I was told, I was asked, oh, were you at Michael Lank's on the 30th." (*Id.* at 177:4-5.) She admitted that "at first I said, No, I've never been to his house. Then I thought about it and I said, Oh, my gosh, yes, I did go there and that was the extent of the conversation." (*Id.* at 179:7-12.) She further testified that (1) Tully

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]d

[REDACTED]

[REDACTED]

II. ARGUMENT

A. THE COMMONWEALTH HAS ENGAGED IN NUMEROUS RULE 14 DISCOVERY VIOLATIONS AND CONSTITUTIONAL VIOLATIONS UNDER *BRADY V. MARYLAND* AND ITS PROGENY

Ms. Read's constitutional rights to effective assistance of counsel and to due process under the law, as guaranteed by Article Twelve of the Massachusetts Declaration of Rights and the Sixth and Fourteenth Amendments to the United States Constitution require that the Commonwealth disclose certain evidence in advance of trial. See Art. 12 of the Declaration of Rights of the Massachusetts Constitution; U.S. Const. amend. VI; U.S. Const. amend. XIV; see

also Commonwealth v. Matis, 446 Mass. 632, 633–634 (2006) (quoting Commonwealth v. Mitchell, 444 Mass. 786, 795 (2005)) (Defendants have an “unquestioned right, under the Sixth Amendment and art. 12 of the Massachusetts Declaration of Rights, to obtain relevant evidence that bears on the question of his guilt or innocence or which otherwise helps his defense. . .”).

Pursuant to Brady v. Maryland and its progeny, defense counsel is entitled as a matter of due process to all evidence that is “favorable to the accused” and “material either to guilt or to punishment”, including “impeachment evidence,” and evidence necessary to “place the witness in his proper setting and put the weight of his testimony and his credibility to a test.” United States v. Bagley, 473 U.S. 667, 676 (1985); Alford v. U.S., 282 U.S. 687, 692 (1931). *Brady* disclosure also extends to disclosure of information useful to the defense to attack the reliability of the police investigation and “the police methods employed in assembling the case.” Kyles v. Whitley, 514 U.S. 419 (1995), citing Lindsey v. King, 769 F.2d 1034, 1042 (1985).

In addition to her constitutional rights, Ms. Read also has a statutory right to obtain evidence in advance of trial and prepare her defense. Massachusetts Rules of Criminal Procedure clearly state that the Commonwealth *must* provide certain mandatory and automatic discovery of evidence within the “possession, custody, or control” of the Commonwealth to the defense in order to meet its mandatory discovery obligations. Mass. R. Crim. P. 14(a)(1)(A), as amended, 444 Mass. 1501 (2005). Information subject to such mandatory discovery includes all “[m]aterial and relevant police reports, photographs, tangible objects, all intended exhibits, reports of physical examinations of any person or of scientific tests or experiments, and statements of persons the party intends to call as witnesses.” Mass. R. Crim. P. 14(a)(1)(A)(vii). The

Commonwealth is also required to provide “[a]ny facts of an exculpatory nature.”⁵ Mass. R. Crim. P. 14(a)(1)(A)(iii) (emphasis added).

The Rules also state that “the defendant may move. . . for discovery of other material and relevant evidence not required by subdivision (a)(1).” Mass. R. Crim. P. 14(a)(2). Here, on February 2, 2022, the Commonwealth was ordered to preserve all physical evidence, including video surveillance footage in Stoughton District Court. Exhibit A. Subsequently, on October 5, 2022, this Court ordered the Commonwealth to produce all videos in connection with the case and associated metadata. Exhibit B.

Notably, this prosecutorial duty to produce evidence covered by Rule 14 extends beyond just the prosecutor, to all agents of the Commonwealth, including police. See Mass. R. Crim. P. 14(a)(1)(A) (“The prosecutor shall disclose [information covered by mandatory discovery]. . . provided it is in the possession, custody or control of the prosecutor, persons under the prosecutor's direction or control, or persons who have participated in investigating or evaluating the case and either regularly report to the prosecutor's office or have done so in the case.”); Commonwealth v. Sleeper, 435 Mass. 581, 605 (2002) (quoting Commonwealth v. Tucceri, 412 Mass. 401, 407 (1992)) (“A prosecutor's duty [to disclose exculpatory evidence] extends. . . [to evidence] in the possession of the police who participated in the investigation and presentation of the case.”); see also Commonwealth v. Beal, 429 Mass. 530, 531–532 (1999); Graham v. Dist. Att'y for Hampden Dist., 493 Mass. 348, 361–62 (2024).

⁵ See Reporters' Notes to Mass. R. Crim. P. 14(a)(1)(A)(iii) (“This provision requires the prosecution to provide automatic discovery of any facts of an exculpatory nature. It derives from the constitutional requirement established in Brady v. Maryland, 373 U.S. 83 (1963), that the suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or punishment, irrespective of the good faith or bad faith of the prosecution. . . . This duty is also an ethical one, imposed on the prosecution by S. J. C. Rule 3:07, R. P. C. 3.8(d).”) (internal citations and quotations omitted).

As set forth herein, the Commonwealth has repeatedly violated its discovery obligations under Brady v. Maryland and its progeny and Rule 14.

1. The Commonwealth's Production of the April 23, 2024, Inverted Video from the CPD Sallyport Garage Violated Rule 14 and this Court's October 5, 2022, Order Compelling the Production of Video Evidence

First, the Commonwealth violated Rule 14 and this Court's October 5, 2022, Order Compelling the Production of Video Evidence by withholding the inverted video from the Canton sallyport until after the start of trial and after the Commonwealth had already filed its Certificate of Compliance on April 23, 2024. *See* Mass. R. Crim. P. 14(a)(2). At best, the inverted video had been in the Commonwealth's constructive possession since January 29, 2022. At worst, this video evidence was intentionally manipulated and inverted by the Commonwealth and its agents sometime thereafter in an effort to defraud the jury into believing that no law enforcement officer approached the right rear taillight of the defendant's SUV upon its arrival in the CPD's sallyport. Either way, the Commonwealth's production of the inverted video—in the middle of trial and after it had filed its Certificate of Compliance—violated Rule 14.

2. The Commonwealth Violated Rule 14 and *Brady* by Withholding Exculpatory Impeachment Evidence Establishing Higgins Was Speaking to Some Unidentified Individual on the Phone at the CPD at 1:34 a.m. on January 29, 2022

After trial in this matter, on October 10, 2024, the Commonwealth produced previously withheld video surveillance from the CPD's church side exterior and rear lot cameras, which show, *inter alia*, Higgins arrive in the parking lot of the CPD at 1:26 a.m., enter the CPD, *and speak to some unidentified individual(s) on the phone as he is leaving the CPD at 1:34 a.m.* (Exhibit I.) The Commonwealth, namely ADA Lally and ADA McLaughlin, suppressed exculpatory impeachment evidence, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Any evidence which “tend[s] to impeach the credibility of a key prosecution witness...is clearly exculpatory.” Commonwealth v. Harwood, 432 Mass. 290, 296 (2000) (quoting Commonwealth v. Neal, 392 Mass. 1, 11 (1984)). This exculpatory video surveillance footage was in the Commonwealth’s custody and control since January 29, 2022—and, at the time of trial, was in ADA Lally and ADA McLaughlin’s *actual possession*. By withholding this exculpatory evidence—and failing to produce this information until after trial—ADA Lally and ADA McLaughlin violated Ms. Read’s constitutional rights as set forth in Brady v. Maryland, 373 U.S. 83 (1963) and its progeny, Mass. R. Crim. P. 14(a)(1)(A)(iii) [mandating disclosure of exculpatory evidence], this Court’s October 5, 2022, Order Compelling the Production of Video Evidence, and the ethical duties imposed on prosecutors by S. J. C. Rule 3:07, R. Prof. C. 3.8(d).

3. The Commonwealth Violated Rule 14 and *Brady* by Withholding Exculpatory Video Surveillance Footage Establishing that an Unidentified Person Had Unfettered Access to Ms. Read’s Right Rear Taillight of the SUV Immediately After Its Arrival in the Canton Sallyport Garage

Just last month, on January 28, 2025, the Commonwealth provided additional CPD surveillance footage from January 29, 2022, this time from an exterior camera depicting Ms. Read’s SUV as it was driven into the CPD sallyport garage. Exhibit M. This camera angle should have had a clear and unobstructed view of Ms. Read’s taillight as it was driven into the Canton sallyport garage—however, yet again, the footage is too blurry and grainy to make out the condition of the taillight. *Notwithstanding that fact, the footage is exculpatory and shows an individual approach the right rear taillight of Ms. Read’s SUV immediately after the vehicle is brought into the sallyport, and then exit shortly thereafter.* This video surveillance footage has been in the Commonwealth’s possession since January 29, 2022, and was withheld from the

defense for three years—and only produced *after* trial in this matter. This video surveillance footage directly contradicts Sgt. Bukhenik’s false testimony at trial, in which he claimed that video surveillance footage established that no one from law enforcement approached the right rear taillight of Ms. Read’s vehicle. Ms. Read’s defense at trial in this matter was that law enforcement removed taillight material from the Lexus SUV and planted the evidence at 34 Fairview Road. Notably, no taillight material was found at the crime scene until after the Massachusetts State Police took custody of Ms. Read’s vehicle and *after* it arrived at the CPD sallyport. Any evidence which “tend[s] to impeach the credibility of a key prosecution witness...is clearly exculpatory.” Harwood, 432 Mass. at 296 (quoting Neal, 392 Mass. at 11). As such, ADA Lally and ADA McLaughlin violated Ms. Read’s constitutional rights as set forth in Brady v. Maryland, 373 U.S. 83 (1963) and its progeny, Mass. R. Crim. P. 14(a)(1)(A)(iii) [mandating disclosure of exculpatory evidence], this Court’s October 5, 2022 Order Compelling the Production of Video Evidence, and the ethical duties imposed on prosecutors by S. J. C. Rule 3:07, R. P. C. 3.8(d) by withholding this video surveillance footage from the defense at trial.

4. The Commonwealth Failed to Preserve Exculpatory Evidence in Violation of a Court Order

The CPD and the Norfolk County District Attorney’s Office failed to preserve material and exculpatory video surveillance footage and associated logs in violation of the Stoughton District Court’s February 2, 2022 Preservation Order, and this Court’s October 5, 2022 Order Compelling the Discovery of All Videos in the Commonwealth’s Possession and Related Metadata. Moreover, the metadata and log files underpinning the CPD surveillance footage from January 29, 2022, are clearly exculpatory and thus, the Commonwealth had a constitutional and statutory obligation to preserve the original surveillance footage from the CPD in its entirety.

To be clear, the condition of the right rear taillight of the SUV at the time it entered law enforcement custody is perhaps one of the most critical and highly-contested issues in this case. The footage that has been produced by the Commonwealth is rife with issues that call into question its accuracy and forensic viability of the CPD's video surveillance footage obtained from the sallyport on January 29, 2022—the Commonwealth has produced numerous video files without any way to verify their authenticity. These video files include a file capturing the interior of the sallyport garage with a 42-minute gap missing at the precise time that the feed would have showed an unobstructed view of the right rear taillight of Ms. Read's 6,000 pound SUV as it entered the CPD sallyport garage, in spite of the fact that the Commonwealth claims the video surveillance feed is motion-activated; the mid-trial production of an inverted video produced by the CPD in an attempt to save face for the gap in footage, which improperly depicts right as left, and left as right, and falsely suggests that no one from law enforcement approached the right rear taillight; and a blurred out video that obstructs what would otherwise be another clear view of the right rear taillight of the SUV as it entered the sallyport garage on January 29, 2022. It is not a coincidence that none of the many cameras in the CPD's sallyport garage captured the condition of the right rear taillight upon its arrival at the CPD—and before the first pieces of taillight lens material were recovered by law enforcement at 34 Fairview Road. The fact that the Commonwealth and its agent, the CPD, failed to preserve the footage in a forensically sound way and allowed critical evidence to be destroyed is not a coincidence – and goes to the heart of Ms. Read's defense and the credibility of some of the Commonwealth's most central witnesses.

Even if ADA Lally was not actually aware of the footage, a reasonable prosecutor exercising due diligence *would have been aware*. ADA Lally had an ethical, statutory, and constitutional obligation to obtain this footage. See Reporters' Notes to Mass. R. Crim. P. 14

(citing Commonwealth v. Martin, 427 Mass. 816 , 823-24 (1998); Commonwealth v. Baldwin, 385 Mass. 165 , 177 n. 12 (1982); Kyles v. Whitley, 514 U.S. 419 (1995)) (“Evidence in possession of the police is *Brady* material even if the prosecutor is unaware of it, so the prosecutor has a constitutional duty of inquiry.”). Following the February 2, 2022 preservation order, ADA Lally should have—and a diligent prosecutor *would* have—promptly notified CPD to preserve any existing footage and inquired about whether the DVR system overwrites or deletes old data. The certificate of compliance ADA Lally signed and filed with this Court specifically includes a representation that the prosecution made a “reasonable inquiry” to disclose and make available all discoverable evidence. ADA Lally did anything but, and the Commonwealth is responsible for the resulting loss of this critical exculpatory evidence, which cannot be cured short of a dismissal of the case.

5. The Commonwealth Withheld Exculpatory Statements by McCabe in Flagrant Violation of Its Obligations Under *Brady* and Rule 14

The Commonwealth withheld the May 10, 2024, exculpatory statement of McCabe—in which she denied traveling to the personal residence of first responding officer Sgt. Lank on January 30, 2022, the day after O’Keefe’s death, and then claimed she went there with Kerry Roberts to “pick up” Roberts’ daughter. Clearly, the Commonwealth was required, pursuant to their Rule 14 discovery obligations, to disclose the false statement made by McCabe to Lt. Tully regarding her visit to Sgt. Lank’s house. Rule 14 requires automatic production of all “statements of persons the [Commonwealth] intends to call as witnesses,” and “any facts of an exculpatory nature.” Mass. R. Crim. P. 14(a)(1)(A). The Commonwealth’s decision to preemptively reveal impeachment evidence, uncovered by the defense, to McCabe in advance of her trial testimony—and then withhold her exculpatory statements to law enforcement—is a clear-cut violation of the Commonwealth’s constitutional obligations under *Brady* and its progeny.

B. THE COMMONWEALTH'S EGREGIOUS AND REPEATED DISCOVERY AND BRADY VIOLATIONS REQUIRE DISMISSAL OF THIS CASE WITH PREJUDICE

When the Commonwealth fails to comply with its discovery obligations, the Court has the ability to impose remedial sanctions. See Mass. R. Crim. P. 14(c)(1), effective Jan. 1, 2016 (“For failure to comply with any discovery order issued or imposed pursuant to this rule, the court may make a further order for discovery, grant a continuance, or enter such other order as it deems just under the circumstances.”); Mass. R. Crim. P. 14.2(j)(1), effective Mar. 1, 2025 (Clarifying that permissible orders “includ[e] . . . *dismissal of charges with or without prejudice*. . . .”) (emphasis added). Such remedies can include “the exclusion of evidence,” Commonwealth v. Sanford, 460 Mass. 441, 445 (2011), and even “dismissal of the criminal charge,” Commonwealth v. Cronk, 396 Mass. 194, 198 (1985) (quoting Commonwealth v. Douzanis, 384 Mass. 434, 436 (1981)) (internal quotation marks omitted); see also Commonwealth v. Dilworth, 494 Mass. 579, 592 (2024) (quoting Douzanis, 384 Mass. at 436) (“There is no question. . . that, on failure of the Commonwealth to comply with a lawful discovery order, [a] judge may impose appropriate sanctions, which may include dismissal of the criminal charge[s].”).

Dismissal is appropriate as a remedial sanction as a way to “cur[e] any prejudice caused by the violation of a discovery obligation and ensur[e] a fair trial.” Dilworth, 494 Mass. at 592 (quoting Commonwealth v. Carney, 458 Mass. 418, 428 (2010)); see also Cronk, 396 Mass. at 198; Commonwealth v. Lam Hue To, 391 Mass. 301, 314 (1984) (“Such a drastic remedy would be appropriate where failure to comply with discovery procedures results in irreparable harm to a defendant that prevents the possibility of a fair trial”). The Supreme Judicial Court has “identified [t]wo parallel legal principles governing when [dismissal] might be necessary, balancing the rights of defendants against the necessity for preserving society's interest in the

administration of justice.” Bridgeman v. District Att’y for Suffolk District, 476 Mass. 298, 316 (2017) (quoting Cronk, 396 Mass. at 198–199).

First, “[w]here the prosecutor fails to disclose evidence the defendant is entitled to receive and the defendant is prejudiced by the failure to disclose, a motion to dismiss should [] be allowed [when the defendant can make] a showing of irreparable harm to the defendant’s opportunity to obtain a fair trial.” Cronk, 396 Mass. at 198 (citing Commonwealth v. Light, 394 Mass. 112, 115–116 (1985); Lam Hue To, 391 Mass. at 314). Alternatively, “prosecutorial misconduct that is egregious, deliberate, and intentional, or that results in a violation of constitutional rights, may give rise to presumptive prejudice. In such circumstances, dismissal would be appropriate if needed “to create a climate adverse to repetition of that misconduct that would not otherwise exist.” Bridgeman, 476 Mass. at 317 (2017) (quoting Commonwealth v. Lewin, 405 Mass. 566, 587 (1989)).

1. DISMISSAL IS THE ONLY APPROPRIATE REMEDY FOR THE COMMONWEALTH’S EGREGIOUS AND REPEATED NON-COMPLIANCE WITH ITS DISCOVERY OBLIGATIONS

Given the extreme governmental misconduct in this case, and the irreparable nature of the harm to Ms. Read as a result, dismissal is appropriate and necessary under both legal principles outlined by the Supreme Judicial Court.

- a. The Commonwealth has failed to disclose evidence that it was obligated to disclose to Ms. Read, which severely prejudiced her, such that a fair trial is not possible.**

Here, Ms. Read has been irreparably prejudiced by the Commonwealth’s discovery violations in this case. The first trial resulted in a hung jury precisely because this was a close case. Had the Commonwealth produced the exculpatory footage and exculpatory statements to which Ms. Read was constitutionally and statutorily entitled, the result of the trial may very well have been different. Instead, the Commonwealth engaged in *repeated* instances of withholding

exculpatory information from the defense in a concerted effort to undermine the defense's ability to effectively confront and cross-examine the Commonwealth's seminal witnesses in this case, including Sgt. Bukhenik, McCabe, and Higgins. See U.S. Const. amend. VI.

Moreover, the Commonwealth's continued piecemeal production of exculpatory video footage which has, by definition, been in the Commonwealth's possession since January 29, 2022—is a flagrant violation of the Commonwealth's constitutional and statutory obligations under Rule 14 and *Brady*. It is well established that “suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution.” Brady v. Maryland, 373 U.S. 83, 87 (1963). The Commonwealth may not withhold such evidence from the defense; to do so is not only a discovery violation, under Rule 14, but also a constitutional violation. See id.; Mass. R. Crim. P. 14(c); U.S. Const. amend. VI; U.S. Const. amend. XIV; Art. 12 of the Declaration of Rights of the Massachusetts Constitution.

Furthermore, the Commonwealth's gamesmanship in withholding the exculpatory video surveillance footage from the CPD—and failing to properly preserve this exculpatory evidence—has irreparably harmed Ms. Read. To this day, the Commonwealth has not produced all of the video surveillance footage recorded at the CPD on January 29, 2022—numerous camera angles and large swaths of time are missing. As a result of the Commonwealth's failure to appropriately image and preserve this evidence, video surveillance footage which should have captured the condition of Ms. Read's right rear taillight at the time it was taken into police custody *from multiple cameras at multiple angles* has now been destroyed forever. Absent the destruction of this evidence, which has been in the possession of the Commonwealth and its agents since January 29, 2022, the defense would have conclusive evidence that Ms. Read's taillight was

cracked—not shattered—when it arrived at the conflicted CPD on January 29, 2022. If the taillight was largely intact and only “cracked” rather than shattered and missing 47 pieces—as Dighton Police Officer Sergeant Barros testified he observed earlier that day (after the Commonwealth claimed Ms. Read had struck Mr. O’Keefe)—that evidence would establish Ms. Read’s innocence and be case-ending for the Commonwealth. *It should not be lost on this Court that this video surveillance was destroyed in the Commonwealth’s possession in direct violation of a preservation order.* As result, Ms. Read is left without the ability to forensically examine the CPD’s DVR system to determine whether the many random clips produced by the Commonwealth in discovery have been altered, manipulated, or tampered with—and whether other clips have been destroyed.⁶ The Commonwealth’s failure to preserve and produce this exculpatory evidence, which includes the destruction of all original and native video surveillance footage and the accompanying log files, has irreparably harmed Ms. Read. There is no lesser sanction that can cure the Commonwealth’s failures to preserve this evidence; exclusion of the video surveillance footage at trial would undermine Ms. Read’s defense because the footage itself is exculpatory. Indeed, the very nature of the evidence is such that its exclusion *harms* rather than helps Ms. Read. The exculpatory evidence to which Ms. Read is constitutionally entitled is permanently lost. Therefore, the Commonwealth’s misconduct can be remedied only by dismissal of the case.

//

//

⁶ Unsurprisingly, the Commonwealth is utterly unable to establish any chain of custody for the footage, let alone explain how it had come to be inverted. Unlike the other video surveillance obtained by MSP in this case, the CPD video surveillance footage was never logged into evidence, there are no reports documenting the recovery of the evidence, and there is no documentation regarding its chain of custody.

b. Even if this Court disagrees that Ms. Read has been irreparably harmed, the Commonwealth's misconduct gives rise to presumptive prejudice that warrants dismissal.

The misconduct by the Commonwealth in this case was “egregious, deliberate, and intentional.” These were not innocent mistakes. The repeated and flagrant discovery violations engaged in by the Commonwealth and its agents were intentional and designed to bring about a wrongful conviction. Here, at trial, ADA Lally, the Commonwealth, and its agents intentionally withheld video surveillance footage from January 29, 2022. The Commonwealth sprung inverted surveillance footage on the defense in the middle of trial, in violation of Rule 14 as well as its Certificate of Compliance, and then it compounded the violations by attempting to perpetrate a fraud on this Court and the jury. By knowingly eliciting false testimony from Sgt. Bukhenik on direct examination, the Commonwealth violated the ethical prohibition against presenting knowingly false evidence to the trier of fact. The inverted footage of Ms. Read’s vehicle from this interior sallyport camera was an unquestionably a false account of the true facts, and the Commonwealth passed it off as an accurate depiction of the SUV when it arrived at the CPD on January 29, 2022—and that, “as seen in the video,” no law enforcement officer approached the right rear taillight. Exhibit I, 26 RT at 166:15–167:8; Exhibit J, 27 RT at 93:3–11. The Commonwealth’s deliberate attempt to use discovery violations to its advantage in an effort to perpetrate a fraud on the jury is the precise type of conduct that requires dismissal.

Moreover, both ADA Lally and ADA McLaughlin were caught withholding exculpatory information from the defense at the first trial. The Commonwealth’s underhanded decision to surreptitiously reveal impeachment evidence to McCabe in advance of her trial testimony—and then withhold her exculpatory statements to law enforcement—is a gross violation of the Commonwealth’s constitutional obligations under *Brady* and its progeny. Even after trial, ADA Brennan located exculpatory video surveillance footage, which was withheld from the defense at

the first trial, and established that Higgins made a phone call at 1:34 a.m. outside of the CPD.

This exculpatory impeachment material was never turned over to the defense [REDACTED]

[REDACTED] The Commonwealth's repeated violations of its constitutional and statutory discovery obligations were calculated and intentional—and were done in an effort to secure a conviction at all costs rather than pursue the truth.

Indeed, as discussed above, the Commonwealth's misconduct has resulted in a violation of Ms. Read's constitutional rights, so as to give rise to presumptive prejudice. The discovery violations in this case constitute a *Brady* violation, and thus violate Ms. Read's due process rights. See *Brady*, 373 U.S. at 87. "To establish a violation of the rule of *Brady v. Maryland*, [], as incorporated [into Rule 14], the defendant must demonstrate upon review that evidence actually existed; that evidence would have tended to exculpate him; and that the Commonwealth failed to disclose it upon proper request. . . ." See Reporters' Notes to Mass. R. Crim. P. 14 (internal citations omitted). As discussed above in Part II.A., all three prongs of the *Brady* inquiry are met in this case.

Given that these facts give rise to presumptive prejudice and considering the need "to create a climate adverse to repetition of that misconduct," *Bridgeman*, 476 Mass. at 317 (2017) (quoting *Lewin*, 405 Mass. at 587), this case should be dismissed. To allow this case to proceed to trial would create a climate in which these types of flagrant constitutional and statutory violations are regarded as permissible. Such an outcome cannot be tolerated by this Court.

The Commonwealth's clear, repeated, and intentional failure to comply with discovery orders requires an appropriate remedy in this case. Because the discovery violations concern a failure to produce and preserve exculpatory evidence, and because exclusion cannot remedy the violation, the *only* appropriate remedy is dismissal of the case. Because of the Commonwealth's

egregious misconduct—including repeated and intentional delays in providing discovery, the withholding of material and exculpatory evidence, and failure to comply with court orders regarding discovery—Ms. Read’s constitutional right to a fair trial has been irreparably and irreversibly harmed. No proceeding against her can satisfy the constitutional requirements of a fair trial. The defendant therefore respectfully requests this Honorable Court to order that the case be dismissed with prejudice.

C. DISMISSAL IS THE ONLY APPROPRIATE REMEDY FOR THE VIOLATION OF MS. READ’S SIXTH AMENDMENT RIGHT TO TRIAL BY AN IMPARTIAL JURY

Additionally, dismissal of this case is also required to remedy the violation of Ms. Read’s Sixth Amendment right to an impartial jury, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Notably, a juror may never be dismissed because of their views on the case or for reasons having to do with their relationships with other jurors; instead, jurors may only be dismissed for “reasons personal to the juror” that have nothing to do with those views on the case or relationships with other jurors. See, e.g., Commonwealth v. Tiscione, 482 Mass. 485, 489 (2019) ; Commonwealth v. Rodriguez, 63 Mass. App. Ct. 660, 674 (2005); Commonwealth v. Garcia, 84 Mass. App. Ct. 760, 767 (2014); Commonwealth v. Peppicelli, 70 Mass. App. Ct. 87, 94 (2007); Commonwealth v. Williams, 486 Mass. 646, 652 (2021); see also M. G. L. c. 234A, § 39; Mass. R. Crim. P. 20(d)(3). Dismissing a juror because of their views violates a defendant’s Sixth Amendment right to an impartial jury. See United States v. Laffitte, 121 F.4th 472, 488 (4th Cir. 2024); United States v. Thomas, 116 F.3d 606, 620-25 (2d Cir. 1997); United States v. Kemp, 500 F.3d 257, 303-04 (3d Cir. 2007); United States v. Ozomaro, 44 F.4th 538, 544-46 (6th Cir. 2022); United States v. Symington, 195 F.3d 1080, 1085-88 (9th Cir. 1999); United States v. Abbell, 271 F.3d 1286, 1302-04 (11th Cir. 2001). [REDACTED]

[REDACTED] Jury tampering such as this is presumptively prejudicial, see Remmer v. United States, 347 U.S. 227 (1954), and triggers a burden on the government to prove that the tampering was harmless to the defendant. The Commonwealth cannot do so here.

[REDACTED]

[REDACTED]

[REDACTED] As per Massachusetts law, courts do have the discretion to dismiss jurors when doing so would be “in the best interests of justice.” M. G. L. c. 234A, § 39. Judges can do this at any time during the trial process, although the procedural burden and standard vary at various stages. *Id.* Post-empanelment but pre-deliberation, if a judge is alerted to potential misconduct of or affecting jurors, the judge first “determine[s] whether the material. . . raises a serious question of possible prejudice.” Commonwealth v. Tennison, 440 Mass. 553, 557 (2003) (quoting Commonwealth v. Jackson, 376 Mass. 790, 800 (1978)). If she so determines, she **must** then hold a hearing to inquire further into the alleged misconduct. See e.g., *id.*; Tiscione, 482 Mass. at 489; Garcia, 84 Mass. App. Ct. at 766.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Ultimately, Ms. Read's Sixth Amendment right to an impartial jury entitles her to certain procedural protections when it comes to dismissal of jurors. Those procedural protections were not provided here. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] These constitutional violations, along with

the egregious discovery violations discussed above, demonstrate the inherent unfairness of the proceedings against Ms. Read and warrant dismissal of the case against her.

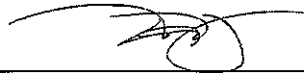
CONCLUSION

For the above reasons, Ms. Read respectfully requests that this Honorable Court grant Defendant's Motion to Dismiss for Extraordinary Governmental Misconduct with prejudice. Although dismissal is required and appropriate under the circumstances, in the alternative, the defense seeks and is entitled to an evidentiary hearing on these issues attendant to the *Brady* violations and juror interference. That evidentiary hearing will require testimony from a number of witnesses, including but not limited to: ADA Lally, ADA McLaughlin, ADA Brennan, Lt. Tully, Chief Rafferty, Trooper Proctor, Sgt. Bukhenik, Coleen Crawford, other members of the CPD, and Lt. Fanning.

Respectfully Submitted
For the Defendant Karen Read,
By her attorneys,



Alan J. Jackson, Esq., Pro Hac Vice
Elizabeth S. Little, Esq., Pro Hac Vice
Werksman Jackson & Quinn LLP
888 West Sixth Street, Fourth Floor
Los Angeles, CA 90017
T. (213) 688-0460
F. (213) 624-1942



David R. Yannetti, Esq.
BBO #555713
44 School St.
Suite 1000A
Boston, MA 02108
(617) 338-6006
law@davidyannetti.com



Robert J. Alessi, Esq., (PHV2033918NY)
DLA Piper LLP (US)
1251 Avenue of the Americas
New York, NY 10020
Tel: (212) 335-4500
Fax: (212) 335-4501
robert.alessi@us.dlapiper.com

Dated: February 21, 2025

CERTIFICATE OF SERVICE

I, Attorney Elizabeth Little, do hereby certify that I served the Defendant's Karen Read's Motion to Dismiss for Extraordinary Governmental Misconduct by emailing a copy on February 21, 2025 to Norfolk County Special Assistant District Attorney Hank Brennan at hank.brennan@mass.gov.

Date: Feb. 21, 2025

/s/ Elizabeth Little
Elizabeth S. Little, Esq., Pro Hac Vice
Werksman Jackson & Quinn LLP
888 West Sixth Street, Fourth Floor
Los Angeles, CA 90017
T. (213) 688-0460
F. (213) 624-1942

redacted
version

COMMONWEALTH OF MASSACHUSETTS

NORFOLK, SS.

SUPERIOR COURT DEPARTMENT
NO. 2282-CR-00117

COMMONWEALTH OF
MASSACHUSETTS,
Plaintiff

V.

KAREN READ,
Defendant

**AFFIDAVIT OF ALAN J. JACKSON, ESQ. IN SUPPORT OF DEFENDANT KAREN
READ'S MOTION TO DISMISS FOR EXTRAORDINARY GOVERNMENTAL
MISCONDUCT**

I, Alan J. Jackson, Esq., under oath, do depose and state as follows:

1. I am a Partner at the firm Werksman Jackson & Quinn. I represent Defendant Karen Read, *Pro Hac Vice*.
2. I submit this affidavit on personal knowledge in support of Defendant Karen Read's Motion to Dismiss for Extraordinary Governmental Misconduct.
3. I have reviewed all of the discovery produced by the Commonwealth in connection with this case. There is significant exculpatory evidence, which has been in the Commonwealth's possession since January 29, 2022, and was withheld from the defense at the first trial.
4. The facts set forth in the instant Motion to Dismiss for Extraordinary Governmental Misconduct are true and correct to the best of my knowledge.

5. Attached hereto as Exhibit A, is a true and correct copy of the Stoughton District Court's February 2, 2022, Order Allowing Defendant's Emergency Motion for Preservation of Evidence.

6. Attached hereto as Exhibit B, is a true and correct copy of this Court's October 5, 2022 Order Allowing, in part, Defendant's Motion to Compel Discovery.

7. [REDACTED]

8. Attached hereto as Exhibit D, Exhibit I, Exhibit J, Exhibit O, and Exhibit S, are true and correct copies of excerpts of transcripts from the first trial in *Commonwealth v. Karen Read*.

9. Attached hereto as Exhibit E, Exhibit H, Exhibit K, and Exhibit M, are true and correct copies of video surveillance footage from the Canton Police Department captured on January 29, 2022, which were produced in discovery by the Commonwealth on April 4, 2024, April 23, 2024, October 10, 2024, and January 28, 2025, respectively.

10. Attached hereto as Exhibit F, is a copy of the Commonwealth's Certificate of Compliance, which was filed in this Court on April 10, 2024.

11. [REDACTED]

12. Attached hereto as Exhibit P, is a true and correct copy of Lt. Brian Tully's May 29, 2024, Report memorializing his May 10, 2024 Interview with Jennifer McCabe, which was not

produced to the defense until June 4, 2024, as part of NOD XLV. This report was not produced until after Jennifer McCabe had already testified for the Commonwealth.

13. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

14. [REDACTED]

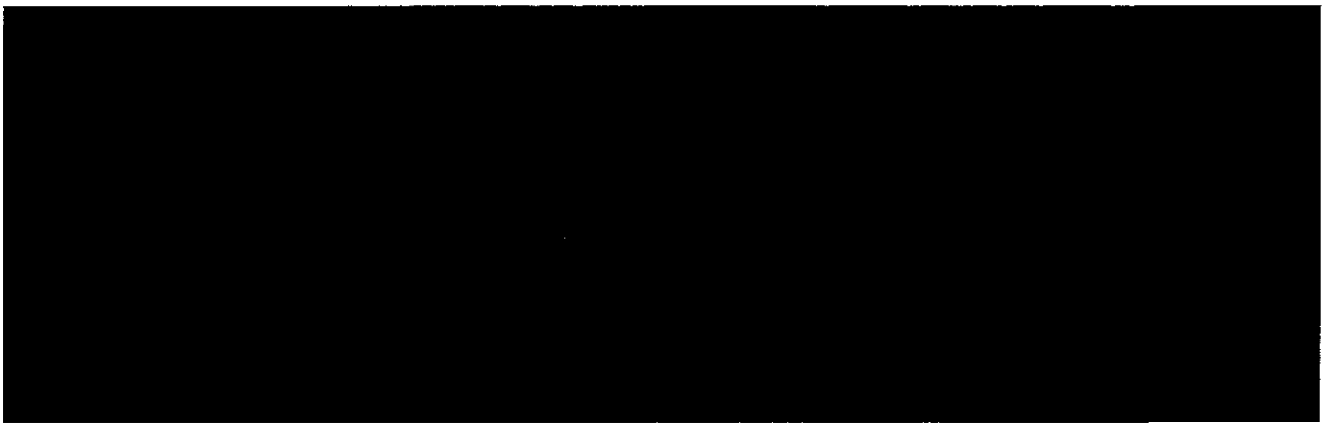
[REDACTED]

[REDACTED]

[REDACTED]

15. On October 10, 2024, after trial in this matter had concluded, the Commonwealth produced additional exculpatory video surveillance footage from the Canton Police Department establishing that Brian Higgins made a phone call to some unidentified individual on January 29, 2022, at 1:34 a.m. This video surveillance footage, which is attached hereto as Exhibit K, was not produced by the Commonwealth until after trial on October 10, 2024, in connection with NOD XLVII. Special Prosecuting Attorney Hank Brennan indicated that he located this video footage on some sort of electronic device in a box that was in the actual possession of the Norfolk County District Attorney's Office while he was conducting his review of the discovery in this case.

16. The defense has set forth credible and unassailable evidence establishing that the Commonwealth has engaged in numerous and egregious *Brady* violations throughout the pendency of this case. The Commonwealth's repeated constitutional and discovery violations, which have ultimately resulted in the permanent destruction of exculpatory evidence, has caused Ms. Read to suffer irreparable harm and a fair trial is simply not possible.



18. Ms. Read has suffered numerous and egregious constitutional violations as a result of the Commonwealth's brazen discovery and constitutional violations and juror interference, which denied Ms. Read her Sixth Amendment right to a fair trial by an impartial jury. The interests of justice require that this Court exercise its discretion to dismiss this case with prejudice. In the alternative, the defense respectfully requests that this Court grant an evidentiary hearing, such that the defense can call witnesses to further establish, through sworn testimony, that *Brady* violations and juror interference have occurred in this case.

SIGNED and SWORN to under the pains and penalties of perjury this 21st day of February 2025.



Alan J. Jackson, Esq.

EXHIBIT A

COMMONWEALTH OF MASSACHUSETTS

NORFOLK, SS.

DISTRICT COURT DEPARTMENT
STOUGHTON DIVISION
NO. 2255-CR-606

COMMONWEALTH OF
MASSACHUSETTS,
Plaintiff

V.

KAREN READ,
Defendant

Date	2/2/22
MOTION/ALLOWED/DENIED	
Justice	

**DEFENDANT'S EMERGENCY MOTION FOR
PRESERVATION OF EVIDENCE**

Now comes the defendant, Karen Read, and hereby moves this Honorable Court to order the Commonwealth to preserve the following evidence in connection with this matter:

1. All notes of any law enforcement official, police officer and/or state trooper of any and all witness interviews, including any notes of anything the defendant is alleged to have said. The defendant is specifically requesting this Court to order that such notes are not to be destroyed upon the completion of police reports;
2. All notes any law enforcement official, police officer and/or state trooper regarding this investigation. The defendant is specifically requesting this Court to order that such notes are not to be destroyed upon the completion of police reports;

RECEIVED
STOUGHTON DISTRICT COURT

FEB. 2 2022

CLERK MAGISTRATE

3. All turret tapes from any local police department and the Massachusetts State Police regarding this matter, from the first time the police were contacted to the arrest of the defendant;
4. All 911 recordings regarding this matter;
5. All trace evidence, including but not limited to fingerprints, DNA evidence, blood, saliva and any other bodily fluids. The defendant is specifically moving this Court to order that no exhaustive testing should be performed on any evidence in connection with this case without the Commonwealth giving prior notice to the defendant and allowing the defendant to object;
6. All physical evidence, including anything present on or near the decedent at the time his body was discovered, anything found at the alleged crime scene.

As grounds therefore, the Defendant states that said notes may contain exculpatory evidence to which the Defendant would be entitled. *See* Mass. R. Crim. Proc. 14(a)(1)(C). *See also* Brady v. Maryland, 373 U.S. 83 (1963). The defendant also states that without an order of preservation at this early juncture, the Commonwealth would be held to a lesser standard of preservation, prejudicing the defendant. *See* Commonwealth v. O'Neal, 93 Mass. App. Ct. 189 (2018), Commonwealth v. Heath, 89 Mass. App. Ct. 328 (2016), Commonwealth v. Williams, 455 Mass. 706 (2010), Commonwealth v. Sasville, 35 Mass. Ct. 15 (1993).

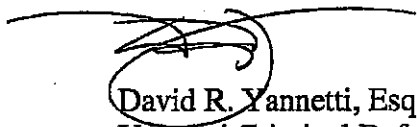
Wherefore, the Defendant respectfully requests that this Honorable Court allow this emergency motion for preservation of evidence.

RECEIVED
STOUGHTON DISTRICT COURT

FEB 2 2022

CLERK MAGISTRATE

Respectfully Submitted
For the Defendant,
Karen Read,
by her attorney,



David R. Yannetti, Esq.
Yannetti Criminal Defense Law Firm
44 School Street
Suite 1000A
Boston, MA 02108
(617) 338-6006
BBO #555713

Dated: February 2, 2022

RECEIVED
STOUGHTON DISTRICT COURT

FEB 2 2022

CLERK MAGISTRATE

COMMONWEALTH OF MASSACHUSETTS

NORFOLK, SS.

DISTRICT COURT DEPARTMENT
STOUGHTON DIVISION
NO. 2255-CR-

COMMONWEALTH OF
MASSACHUSETTS,
Plaintiff

V.

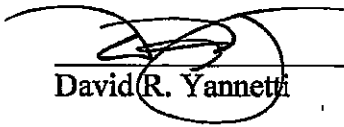
KAREN READ,
Defendant

**AFFIDAVIT OF COUNSEL IN SUPPORT OF
DEFENDANT'S EMERGENCY MOTION FOR
PRESERVATION OF EVIDENCE**

I, David R. Yannetti, do hereby depose and state that the following is true to the best of my knowledge information and belief:

1. I am an attorney licensed to practice in Massachusetts since December 20, 1989. My office address is 44 School Street, Suite 1000A, Boston, MA 02108. On January 29, 2022, I was retained to represent the defendant, Karen Read, regarding the above-captioned matter.
2. The requests for preservation of evidence made within this motion are reasonable and would prevent the destruction of potentially exculpatory evidence.
3. I believe that it is in the interests of justice for this court to allow this motion.

So sworn under the pains and penalties of perjury this 2nd day of February, 2022,


David R. Yannetti

RECEIVED
STOUGHTON DISTRICT COURT
FEB 2 2022
CLERK MAGISTRATE

CERTIFICATE OF SERVICE

I, Attorney David R. Yannetti, do hereby certify that today I served the attached
"Defendant's Emergency Motion for Preservation of Evidence" upon the Commonwealth
by handing a copy this date to a Norfolk County Assistant District Attorney in the
Stoughton District Court.



David R. Yannetti, Esq.

2/2/22

Date

EXHIBIT B

22

COMMONWEALTH OF MASSACHUSETTS

NORFOLK, SS.

SUPERIOR COURT DEPARTMENT
NO. 2282-CR-00117

COMMONWEALTH OF
MASSACHUSETTS,
Plaintiff

V.

KAREN READ,
Defendant

RECEIVED & FILED
2022 SEP 16 PM 3:51
CLERK OF THE COURTS
NORFOLK COUNTY

DEFENDANT'S MOTION TO COMPEL DISCOVERY

Now comes the defendant, Karen Read ("Ms. Read", or "the Defendant"), and respectfully moves this Honorable Court pursuant to Mass. R. Crim. P. 14, to compel the Commonwealth to provide the following documents and information:

1. All documents relating to chain of custody and/or the logging of evidence prepared by law enforcement in connection with this case, including but not limited to evidence obtained by the Canton Police Department and/or the Massachusetts State Police.
2. All 9-1-1 call logs and dispatch records for this incident.
3. All call logs, tapes, and complete recordings of all 9-1-1 calls relating to the incident, including a complete copy of the initial 9-1-1 call made by Jennifer McCabe at 6:04 a.m. on January 29, 2022.¹
4. All crime scene photographs and/or videos taken in connection with this case, including but not limited to photographs documenting the purported recovery of pieces of white and red plastic outside the residence located at 34 Fairview Road on January 29, 2022, and February 4, 2022, including the metadata associated with these photographs and videos.²

¹ The defense has an incomplete recording of the initial 9-1-1 call placed by Jennifer McCabe on January 29, 2022, at approximately 6:04 a.m. We are therefore requesting a copy of the entire audio recording of this phone call.

² On June 10, 2022, the Commonwealth filed the Commonwealth's Notice of Discovery I, which included an itemized list of discovery and materials, which were purportedly produced to defense

Allowed as to #s 1, 2, 3, 4, 5, 12, 13, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000.

5. Photographs of all physical evidence collected in connection with this case, including the metadata associated with those photographs.
6. All communications between and among any law enforcement agents from the Canton Police Department and/or the Massachusetts State Police (on the one hand), and any of the percipient witnesses in this case, including but not limited to Brian Albert, Nicole Albert, Jennifer McCabe, Matthew McCabe, Brian Higgins, Caitlin Albert, Colin Albert, Ryan Nagel, Julie Nagel, Kerry Roberts, and/or Julie Albert between January 29, 2022, and present. This should include a record of all calls, text messages, emails, and/or messages sent between and among these individuals through any applications.
7. All communications between Trooper Proctor and any of the percipient witnesses in this case, including but not limited to Brian Albert, Nicole Albert, Jennifer McCabe, Matthew McCabe, Brian Higgins, Caitlin Albert, Colin Albert, Ryan Nagel, Julie Nagel, Kerry Roberts, and/or Julie Albert. This should include a record of all calls, text messages, emails, and/or messages sent between and among these individuals through any applications.
8. All communications between Canton Chief of Police Ken Berkowitz and any of the percipient witnesses in this case, including but not limited to Brian Albert, Nicole Albert, Jennifer McCabe, Matthew McCabe, Brian Higgins, Caitlin Albert, Colin Albert, Ryan Nagel, Julie Nagel, Kerry Roberts, and/or Julie Albert. This should include a record of all calls, text messages, emails, and/or messages sent between and among these individuals through any applications.
9. All communications between Det. Lt. Brian Tully and any of the percipient witnesses in this case, including but not limited to Brian Albert, Nicole Albert, Jennifer McCabe,

counsel on that date. These items were purportedly placed on a flash drive by State Police Trooper Michael D. Proctor ("Trooper Proctor") and turned over to defense counsel on June 10, 2022. According to the Commonwealth's Notice of Discovery I, the flash drive was supposed to contain 127 items of discovery, including, *inter alia*, Item 18 – Copy of Canton Police Department Scene Photos (18 Pages), and Item 19 – Copy of supplemental Canton Police Department scene photos from 2/04/22, (2 pages). However, upon downloading the items of evidence from the flash drive, evidence item numbers 18 and 19 were missing. All other items of discovery were produced as described in the Commonwealth's Notice of Discovery I. Thus, to date, the defense still does not have critical crime scene photos documenting the evidence that was supposedly recovered in connection with this case.

Matthew McCabe, Brian Higgins, Caitlin Albert, Colin Albert, Ryan Nagel, Julie Nagel, Kerry Roberts, and/or Julie Albert. This should include a record of all calls, text messages, emails, and/or messages sent between and among these individuals through any applications.

10. All communications between and among any law enforcement agents from the Massachusetts State Police (on the one hand), and any law enforcement agents from the Canton Police Department (on the other hand) between January 29, 2022, at 7:59 a.m. and present concerning the investigation into the death of Mr. John O'Keefe.
11. A complete set of the exhibits presented to the grand jury in this case. This should include identification of how those exhibits were marked, such that defense counsel can determine what documents were shown to the grand jurors in this case.³
12. A copy of all Ring video surveillance footage stored on Mr. O'Keefe's device, which captures the exterior of his residence located at 1 Meadows Ave. between January 28, 2022, and February 3, 2022. Jan 29, 2022 BSC
13. A copy of any receipts obtained from CF McCarthy's and/or the Waterfall Bar & Grille obtained by law enforcement in connection with this case.
14. Written confirmation from law enforcement as to whether the digital timestamps on photographs taken in connection with this case are accurate and correct, including but not limited to all crime scene photographs and videos taken using the (1) Nikon 6 (with lens: Nikkor Z 24-200mm f/4-6.3 VR), and (2) Nike D750. In the event that the date and times of any of the photographs taken in connection with this case are incorrect, please immediately provide written confirmation as to the calibration of those devices such that an accurate time can be obtained and/or calculated.
15. Identification of the unnamed female witness described as one of Brian Albert, Jr.'s "girlfriends," who was present at the Albert's residence located at 34 Fairview Road on January 29, 2022. At the grand jury, Brian Higgins testified that Brian Albert, Jr., was home with "two girlfriends" that night celebrating his birthday. One of the girls was subsequently identified as Julie Nagel, the other was never named. (See April 28, 2022

³ To date, the defense has not received the Grand Jury Exhibits identified as 18, 19, 48, 75, 82-84, 103, and 124-127, in any form.

Grand Jury Minutes at pp. 59-60). The defendant is requesting that this Court order the Commonwealth to provide a name, address and date of birth for that witness.

All of the above-requested documents and information constitute "material and relevant evidence . . . within the possession, custody, or control of the prosecutor or persons under his direction and control." Mass R. P. 14(a)(2). For the foregoing reasons, the defendant respectfully requests that this Honorable Court allow this motion for discovery.

Respectfully Submitted,
For the Defendant,
Karen Read
By her attorney,



David R. Yannetti, Esq.
Yannetti Criminal Defense Law Firm
44 School Street
Suite 1000A
Boston, MA 02108
(617) 338-6006
BBO #555713
law@davidyannetti.com

September 15, 2022

COMMONWEALTH OF MASSACHUSETTS

NORFOLK, SS.

SUPERIOR COURT
NO. 2282-CR-0117

COMMONWEALTH OF
MASSACHUSETTS,
Plaintiff

V.

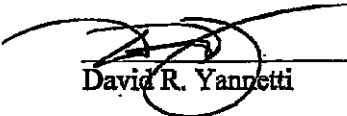
KAREN READ,
Defendant

**AFFIDAVIT OF COUNSEL IN SUPPORT OF
DEFENDANT'S MOTION TO COMPEL DISCOVERY**

I, David R. Yannetti, do hereby depose and state that the following is true to the best of my knowledge, information and belief:

1. I am an attorney licensed to practice in Massachusetts since December 20, 1989. My office address is 44 School Street, Suite 1000A, Boston, MA 02108. On January 29, 2022, I was retained to represent the defendant, Karen Read, regarding circumstances giving rise to the above-captioned matter.
2. I believe that the requests I have made in this motion are reasonable, and supported by Massachusetts Rule of Criminal Procedure 14, as well as relevant case law.
3. I believe that it is in the interests of justice for this court to allow this motion.

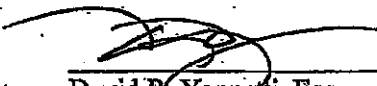
So sworn under the pains and penalties of perjury this 15th day of September, 2022,



David R. Yannetti

CERTIFICATE OF SERVICE

I, Attorney David R. Yannetti, do hereby certify that today I served the attached
"Defendant's Motion to Compel Discovery" upon the Commonwealth by sending a copy
via e-mail this date to Norfolk County Assistant District Attorney Adam Lally at
adam.lally@state.ma.us.



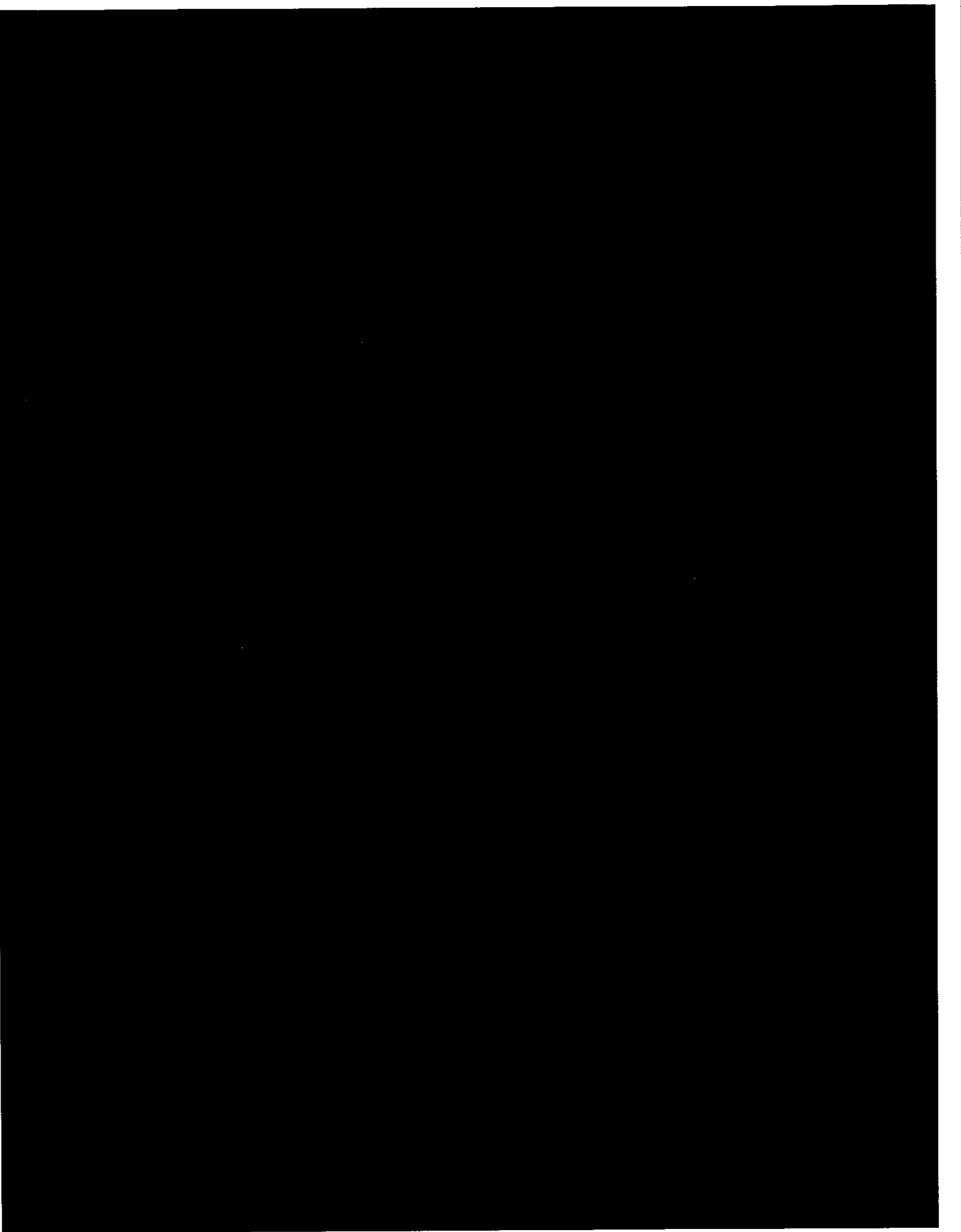
David R. Yannetti, Esq.

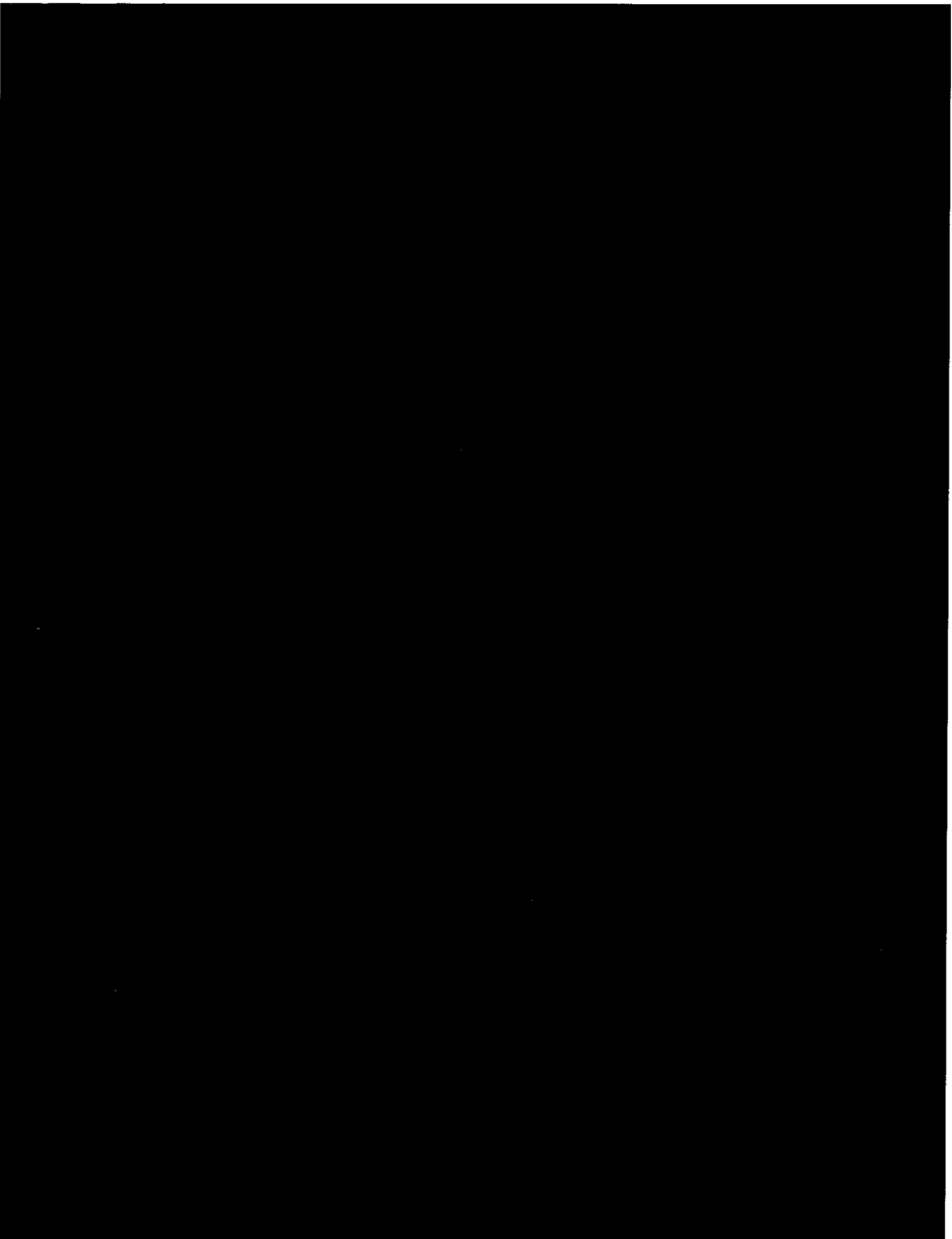
9/15/22

Date

EXHIBIT C







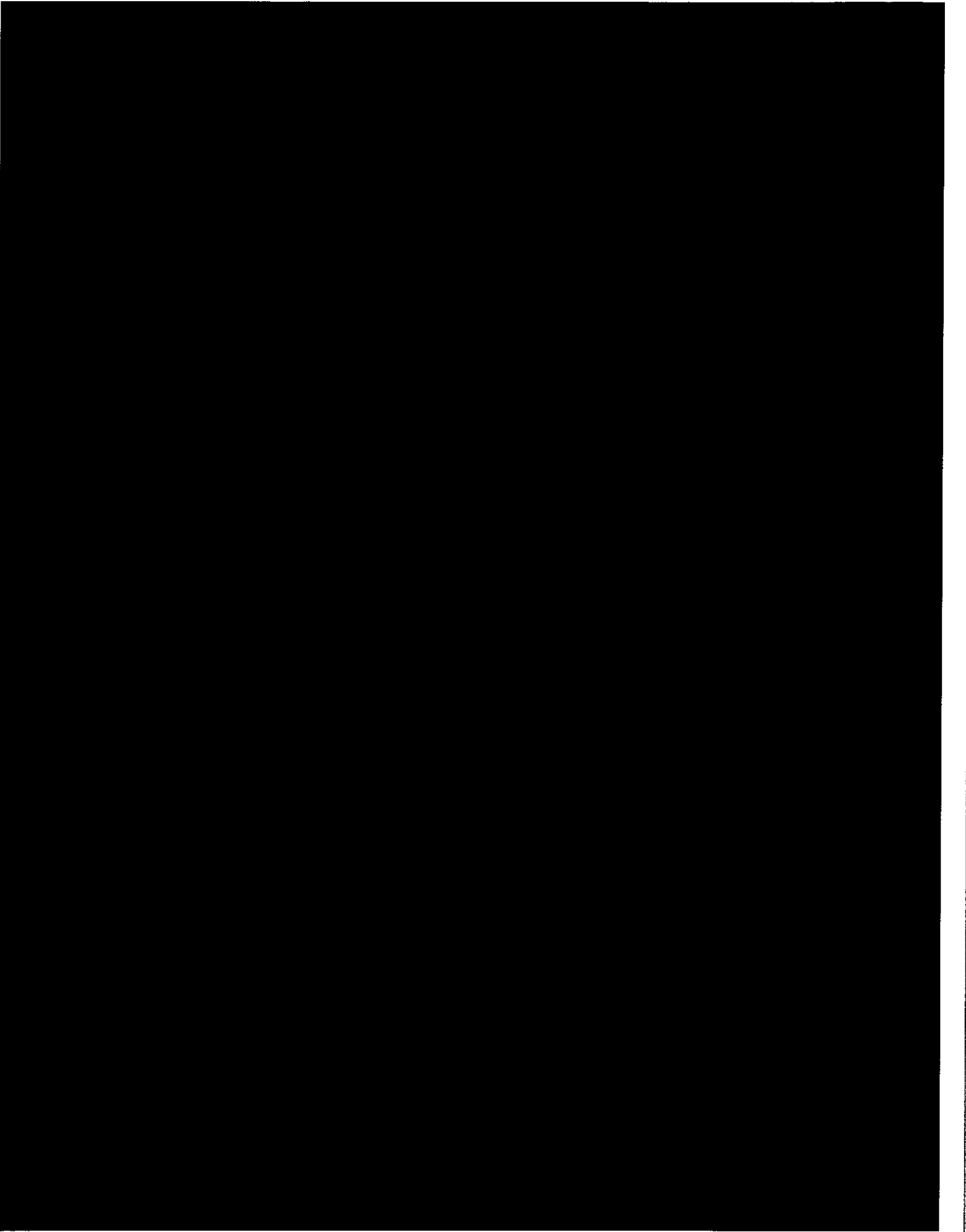


EXHIBIT D

Volume: XXVIII
Pages: 74
Exhibits: (See Index)

COMMONWEALTH OF MASSACHUSETTS

NORFOLK, SS.

SUPERIOR COURT DEPARTMENT
OF THE TRIAL COURT

* * * * *
COMMONWEALTH OF MASSACHUSETTS
vs. Indictment No.
KAREN READ 2282CR00117
* * * * *

Day 28 - Trial with Jury
Before the Honorable Beverly Cannone

EXCERPT - CONTINUED TESTIMONY OF YURIY BUKHENIK

APPEARANCES:

For The Commonwealth:
BY: Adam Lally
Laura McLaughlin
Assistants District Attorney

For Karen Read:
BY: Alan Jackson
David Yannetti
Elizabeth Little
Attorneys at Law

Norfolk Superior Courthouse
Dedham, Massachusetts
Monday, June 10, 2024

Paula M. Mills
Retired Certified Court Reporter
and Court Transcriptionist

1 video that just ran from 5:07 and a few seconds until
2 it was just paused?

3 A I did watch the video.

4 Q And how much time would you estimate elapsed
5 as we just watched that video in realtime?

6 A Fifteen seconds, maybe.

7 Q Okay. And do you see something in the
8 foreground that just sort of appeared there next to
9 that antique police car?

10 A It appears that the SUV has now pulled into
11 the sally port. There is an individual standing behind
12 the SUV.

13 Q And do you see what the time of day is on that
14 timer?

15 A I do not.

16 Q Can you see that it's paused at 5:50, 5-0, and
17 46 seconds?

18 A I cannot.

19 MR. JACKSON: This is the last time that I
20 would ask -- unfortunately, I cannot zoom on this,
21 Your Honor. With the Court's permission, may the
22 sergeant make one more trip to the screen to give
23 us the exact time that this is paused?

24 THE COURT: This is the last time. Sergeant,
25 would you please?

1 THE WITNESS: Thank you, Your Honor.

2 (Witness complies.)

3 BY MR. JACKSON:

4 Q What was the time that -- what is the
5 timestamp where the video was paused?

6 A 5:50:46.

7 Q 5:50 and 46 p.m., correct?

8 A That's correct.

9 Q So it appears that this video in about 15
10 seconds jumps 42 minutes to the 5:50 mark, correct?

11 A I don't know how much it jumps.

12 Q Well, from 5:08 approximately to 5:50
13 approximately, how much time is that?

14 A Approximately 48.

15 Q Forty-two minutes, right?

16 A Excuse me. Forty-two.

17 Q That's okay. And Ms. Read's vehicle which
18 shows the right rear taillight portion just appears,
19 correct, at 5:50?

20 A There is a vehicle that appears. There
21 appears to be an individual standing behind the
22 vehicle. It's not just the taillight that appears.

23 Q But, Sergeant, the exact time that would show
24 what Trooper Proctor was doing at the right rear
25 taillight, that is missing?

1 MR. LALLY: Objection.

2 THE COURT: Sustained.

3 BY MR. JACKSON:

4 Q The exact time that would show the person who
5 you identified on Wednesday as being Trooper Proctor,
6 that video is not there, correct?

7 MR. LALLY: Objection.

8 THE COURT: Sustained.

9 BY MR. JACKSON:

10 Q This video, Sergeant, you will agree, if that
11 42-minute period existed, that would have shown -- that
12 would have been the only video that would establish the
13 actual condition of the taillight the moment the SUV
14 arrived in police custody in that sally port, correct?

15 MR. LALLY: Objection.

16 THE COURT: You can ask that differently.

17 BY MR. JACKSON:

18 Q Is there any other video other than this one
19 that would show the exact condition of that taillight
20 as it pulled into the driveway, into the sally port, or
21 is this the only one?

22 A From that location?

23 Q Correct.

24 A That is the video that captures that time
25 frame.

1 Q And that is also the video that captures that
2 area of the car, correct, the right rear portion of the
3 car?

4 A Correct.

5 Q And that 42 minutes from when the car arrived
6 until 5:50 in the evening, that portion is missing,
7 correct?

8 A It's not missing. It's just not recorded.

9 Q It's not there, Sergeant Bukhenik. I'm not
10 splitting words with you, splitting hairs. It's not
11 there. It's gone, correct?

12 A It's not on the screen, no.

13 Q It's not anywhere, is it?

14 A I do not know.

15 MR. JACKSON: That's all I have, Your Honor.

16 THE COURT: Mr. Lally?

17 MR. LALLY: Thank you, Your Honor.

18 REDIRECT EXAMINATION

19 BY MR. LALLY:

20 Q Good morning, Sergeant.

21 A Good morning, sir.

22 Q So how this video was played before the jury
23 on Wednesday during your direct testimony, the
24 condition of that video, the view of that video, that's
25 how you received it from the Canton Police Department,

1 correct?

2 A That's correct.

3 Q So nothing was done to alter it, change it in
4 any way, shape or form from when you received it to
5 when it was played before the jury?

6 MR. JACKSON: Objection.

7 THE COURT: Sustained. You can't lead,
8 Mr. Lally.

9 MR. LALLY: Sure.

10 BY MR. LALLY:

11 Q What, if anything, was done to alter or change
12 that video between the time that you received it to the
13 time that it was played before the jury?

14 MR. JACKSON: Objection.

15 THE COURT: Ask it differently.

16 BY MR. LALLY:

17 Q As far as the condition when you received it
18 and the condition when it was played for the jury, what
19 was different?

20 A There was no manipulation, alteration of the
21 video between --

22 MR. JACKSON: Objection.

23 THE COURT: I'll allow the answer.

24 THE WITNESS: -- between when we received it
25 from the Canton Police Department, when I played it

VIDEO Ex. E: Okeefe Sallyport 1-29-22 5p -12a
USB FLASH DRIVE

EXHIBIT E

EXHIBIT F

COMMONWEALTH OF MASSACHUSETTS

NORFOLK, SS.

**SUPERIOR COURT DEPARTMENT
DOCKET NO. 2282CR0117**

COMMONWEALTH

v.

KAREN READ

COMMONWEALTH'S CERTIFICATE OF COMPLIANCE

In accordance with Mass. R. Crim. P. 14(a)(3), the Commonwealth indicates to this Court that to the best of its knowledge and after reasonable inquiry, it has disclosed and made available all items subject to discovery pursuant to Mass. R. Crim. P.

14(a)(1)(A) or court order. The identity of each item provided is as follows: See *Commonwealth's Notices of Discovery I through XXXVI*. The Commonwealth further recognizes its ongoing and continuing duty to disclose any and all discovery material obtained hereafter. This filing is made with the present lone exception of material still undergoing mitochondrial DNA testing at the BODE Technologies Lab.

For the Commonwealth,

MICHAEL W. MORRISSEY
District Attorney

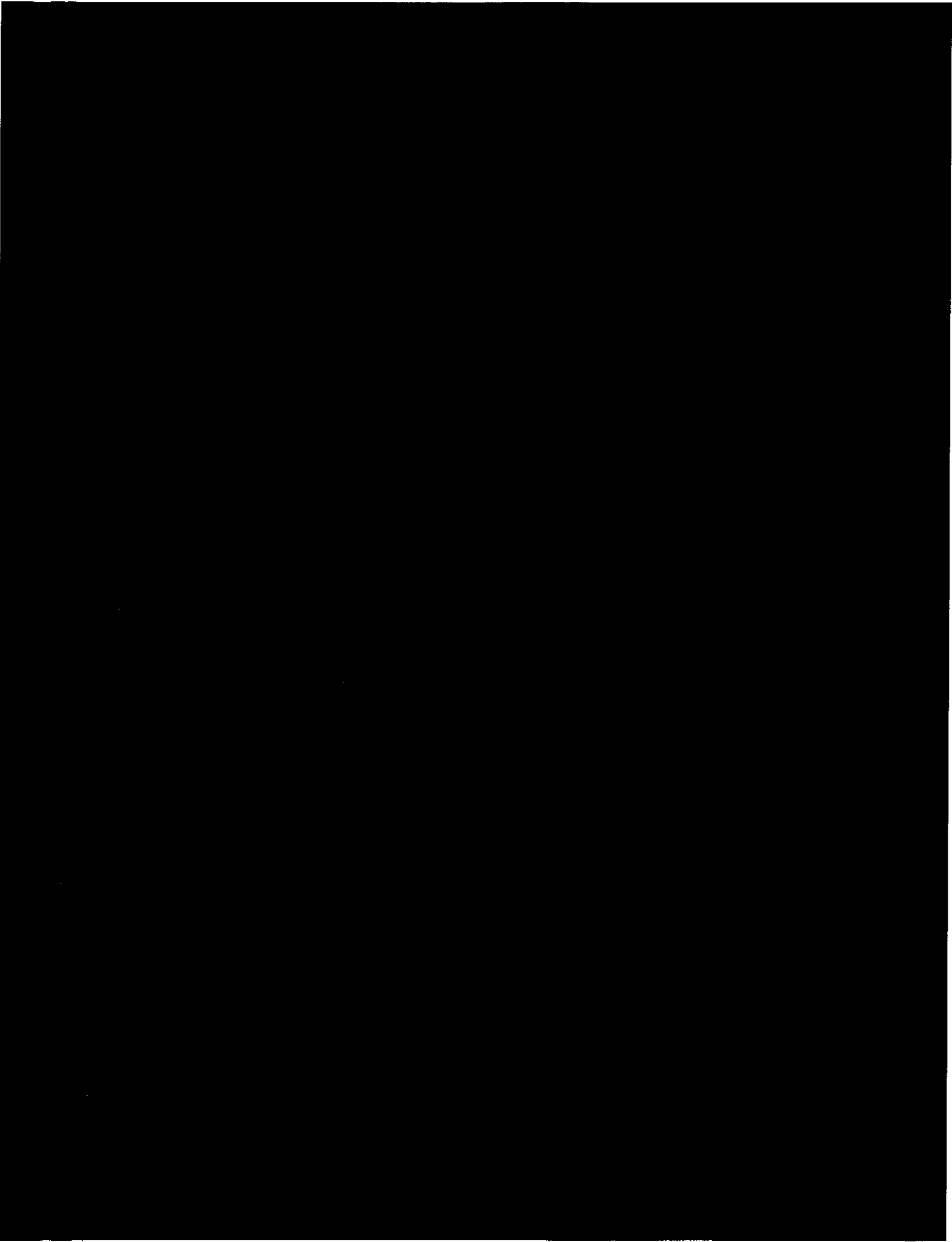
By:

/s/ Adam C. Lally

Adam C. Lally
Assistant District Attorney
Norfolk County

Date: April 10, 2024

EXHIBIT G



VIDEO Ex. H: Interior Sally Port back wall_20220129_172900
USB FLASH DRIVE

EXHIBIT H

EXHIBIT I

Volume: XXVI
Pages: 317
Exhibits: (See Index)

COMMONWEALTH OF MASSACHUSETTS

NORFOLK, SS.

SUPERIOR COURT DEPARTMENT
OF THE TRIAL COURT

* * * * *
COMMONWEALTH OF MASSACHUSETTS
vs. Indictment No.
KAREN READ 2282CR00117
* * * * *

Day 26 - Trial with Jury
Before the Honorable Beverly Cannone

APPEARANCES:

For The Commonwealth:
BY: Adam Lally
Laura McLaughlin
Assistants District Attorney

For Karen Read:
BY: Alan Jackson
David Yannetti
Elizabeth Little
Attorneys at Law

Norfolk Superior Courthouse
Dedham, Massachusetts
Wednesday, June 5, 2024

Paula M. Mills
Retired Certified Court Reporter
and Court Transcriptionist

1 MR. LALLY: Your Honor, may I approach?

2 THE COURT: Yes.

3 BY MR. LALLY:

4 Q Showing you another disk, sir, I'd just ask
5 you to review that and look up when you're finished.

6 A (Witness complies.)

7 Q And do you recognize that, sir?

8 A Yes, I do.

9 Q And does that contain the video that you were
10 just testifying about as far as the arrival of the
11 vehicle at the Canton Police Department sally port
12 garage?

13 A Yes, it is.

14 MR. LALLY: May I approach, Your Honor?

15 THE COURT: Yes.

16 MR. LALLY: The Commonwealth would seek to
17 introduce and admit as the next exhibit.

18 MR. JACKSON: No objection, Your Honor.

19 (Whereupon, disk with Canton Police Department
20 sally port video was entered and marked Exhibit
21 No. 446 in Evidence.)

22 BY MR. LALLY:

23 Q Now, Sergeant, before we get to that video, if
24 I could just ask, if you know, approximately what time
25 was it that you left Dighton, following that tow truck

1 back to the Canton Police Department?

2 A We left Dighton approximately 4:15, 4:20. And
3 we followed the vehicle back to Canton, arriving
4 probably around 5:30 or so, p.m.

5 Q Thank you, sir.

6 MR. LALLY: Your Honor, with the Court's
7 permission, if we could publish that video before
8 the jury?

9 THE COURT: Okay.

10 (Whereupon, the video is played.)

11 MR. LALLY: Ms. Gilman, if you could just
12 pause there for a moment.

13 (Whereupon, the video is paused.)

14 BY MR. LALLY:

15 Q I direct your attention now to the video up on
16 the screen. Just for orientation purposes again, first
17 of all, do you recognize what's depicted in this video?

18 A Yes, I do.

19 Q And what do you recognize it to be?

20 A That is the sally port two-bay garage at
21 Canton Police Department with the antique Canton
22 cruiser on the bottom of the screen and the open spot
23 for a vehicle in the middle of the screen with the
24 four-wheel drive all-terrain vehicle at the top.

25 Q Now, as far as, again, orientation purposes,

1 the driveway that the jury just witnessed in the prior
2 exhibit, is that to the left of the screen, the right
3 of the screen or something else, if you know?

4 A The driveway is to the right of the screen.

5 Q And this vehicle, the defendant's vehicle, was
6 sort of taken into the garage from the opposite side or
7 to the left of the screen; is that correct?

8 A Correct.

9 MR. LALLY: Ms. Gilman, if you could play it.

10 MR. JACKSON: Your Honor, may we approach
11 briefly?

12 THE COURT: Okay.

13 (SEALED SIDEBAR.)

14 THE COURT: Jurors, ordinarily, we'd take a
15 short afternoon break on our long days in about a
16 half an hour but I think the better use of our time
17 is to give you a 10-minute break now and then we'll
18 go straight through until 4:00 o'clock. If anybody
19 needs a break at 3:15, just raise your hand.

20 (Whereupon, the jury is escorted from the courtroom
21 for a brief recess.)

22 (SEALED SIDEBAR CONTINUES.)

23 MR. LALLY: Your Honor, may the witness leave
24 the stand just for a moment?

25 THE WITNESS: Thank you, Your Honor.

1 THE COURT: We'll see you back here in about
2 10 minutes.

3 THE COURT: So you want us to watch this now?

4 MR. JACKSON: If it please the Court, yes.
5 Your Honor, may I get just a little closer?

6 THE COURT: Sure. Can we turn out the lights?
7 (Whereupon, the video is played.)

8 THE COURT: Is that the end of it, Mr. Lally?

9 MR. LALLY: I believe so, yes.

10 THE COURT: Is that the end of it, Ms. Gilman?

11 MS. GILMAN: Yes.

12 THE COURT: All right. Lights on, please.
13 Thank you.

14 So I have a copy of the printed docket. On
15 4/24, Paper No. 347 is the Commonwealth's notice of
16 discovery XL. I just asked Mr. McDermott to print
17 it. We will need that. That was before we
18 impaneled. That was the day, I believe, with the
19 long motion in limine.

20 All right. So we'll take a five-minute break.
21 Okay?

22 MR. LALLY: Thank you, Your Honor.

23 (Whereupon, a brief recess is taken.)

24 (Court resumes.)

25 (Defendant present. Jury present.)

EXHIBIT J

Volume: XXVII
Pages: 161
Exhibits: (See Index)

COMMONWEALTH OF MASSACHUSETTS

NORFOLK, SS.

SUPERIOR COURT DEPARTMENT
OF THE TRIAL COURT

* * * * *
COMMONWEALTH OF MASSACHUSETTS
vs. Indictment No.
KAREN READ 2282CR00117
* * * * *

Day 27 - Trial with Jury
Before the Honorable Beverly Cannone

APPEARANCES:

For The Commonwealth:
BY: Adam Lally
Laura McLaughlin
Assistants District Attorney

For Karen Read:
BY: Alan Jackson
David Yannetti
Elizabeth Little
Attorneys at Law

Norfolk Superior Courthouse
Dedham, Massachusetts
Thursday, June 6, 2024

Paula M. Mills
Retired Certified Court Reporter
and Court Transcriptionist

1 I believe.

2 Q And what was discussed generally?

3 A Generally, we discussed portions of the case
4 that I would be presenting.

5 Q Did you write a report about your
6 communications with Mr. Lally?

7 A No, I did not.

8 Q Okay. Were you shown any of the videos that
9 you've seen here in anticipation of your testimony?

10 A Not during the first meeting. I did review a
11 video during the second time.

12 Q Okay. And that video that you did see the
13 second time was the interior video of the sally port
14 that we saw yesterday, correct?

15 A I'm just trying to remember exactly what video
16 I saw. I had reviewed videos outside of our meetings.
17 So I don't remember exactly what video Mr. Lally showed
18 me.

19 Q But you do recall seeing the video that you
20 saw yesterday, the sort of clear one that has the crime
21 scene tape being put up and all that? You have seen
22 that one before?

23 A Yes.

24 Q And that was with Mr. Lally, correct?

25 A That is not correct because I do not recall

1 when I saw that video or what video I saw with
2 Mr. Lally.

3 Q I see. All right. I'd like to talk about
4 that Exhibit 446 for a second, and then I'll show it to
5 you.

6 You indicated that the video that you -- all
7 the videos, everything that you saw yesterday, was true
8 and accurate, correct, based on your memory of the
9 events that were memorialized in the video?

10 A The video captures events taking place in
11 accurate fashion, yes.

12 Q In an accurate fashion. All right. That's
13 what I wanted to find out.

14 And, after you watched the video, I think you
15 were asked by Mr. Lally does the video show you or
16 Trooper Proctor having access to or messing with in any
17 way that right rear taillight in any fashion. And you
18 said, never.

19 A I was asked if at any point Trooper Proctor
20 and I had come into contact, I believe, or touched the
21 vehicle and that portion of the vehicle. And I said,
22 never, we never touched the vehicle prior to it being
23 properly processed with a search warrant.

24 Q And that was the -- specifically, his question
25 was to, and his answer was to, the right rear portion

1 of the vehicle, right? The right rear taillight?

2 A The right rear damaged taillight.

3 MR. JACKSON: With the Court's permission, I'd
4 like to play a portion of Exhibit 446.

5 THE COURT: All right.

6 MR. JACKSON: Before we begin playing it,
7 Mr. Bates, if you wouldn't mind, may I inquire of
8 the witness, Your Honor, just to lay a foundation?

9 THE COURT: Yes.

10 BY MR. JACKSON:

11 Q Sergeant, do you recognize this as being the
12 video that we saw yesterday?

13 A It does look accurate, yes.

14 Q Okay. I just wanted to make sure we were on
15 the same page. This is 446, just so you have it in
16 mind if I reference that.

17 MR. JACKSON: Mr. Bates, if you could play
18 that and I think to runtime 1:20.

19 (Whereupon, the video is played.)

20 MR. JACKSON: Pause it.

21 (Whereupon, the video is paused.)

22 BY MR. JACKSON:

23 Q Do you recognize that as the video we saw
24 yesterday?

25 A Yes, I do.

1 MR. JACKSON: Very briefly, if you could move
2 to time of day to 5:37:05.

3 With the Court's permission, can we play this
4 point?

5 THE COURT: Yes.

6 (Whereupon, the video is played.)

7 BY MR. JACKSON:

8 Q All right. That shows the vehicle coming into
9 the sally port. And we are looking at which side of
10 the vehicle?

11 A So that is the driver's side of the vehicle.
12 What that video depicts is a mirror collection.
13 Although mirrors are accurate representation of what
14 you are seeing, it's just inverted. So that is the
15 driver's side of the vehicle. I do not know why it is
16 inverted, but that's the way it was presented,
17 collected and presented, from Canton Police.

18 Q Can you see a timestamp or a time and date
19 stamp on the bottom of that? It's in blue.

20 A I cannot, no.

21 Q Okay. Does it appear that that time and date
22 stamp, if you can't read every letter on it, that that
23 is in correct order? In other words, that's not
24 inverted?

25 A I cannot read it, no.

1 MR. JACKSON: Let's go and play this for a
2 second.

3 (Whereupon, the video is played.)

4 BY MR. JACKSON:

5 Q Who is that that just got out of the car?

6 A I do not know. I think that's the tow truck
7 driver. He would have the only access to the vehicle.
8 We did not touch the vehicle.

9 Q Who's that on the left?

10 A I missed it. I was looking down at the laser
11 pointer. I do not know. I know for a fact I'm the
12 gentleman that's wearing a dark, olive drab state
13 police baseball-style hat; and Trooper Mike Proctor is
14 wearing a winter hat.

15 Q Trooper Proctor is wearing what?

16 A A winter hat.

17 MR. JACKSON: Can you back that up just a
18 little bit? That was playing and I didn't realize
19 it was playing while you were talking.

20 Okay. Stop.

21 (Whereupon, the video is paused.)

22 BY MR. JACKSON:

23 Q Yesterday when you testified, you indicated
24 that the two individuals in this scene were you and
25 Trooper Proctor, correct?

1 A That is not correct. There was two
2 individuals in the rear of the vehicle I shined my
3 light to. That was me and Trooper Proctor.

4 Q Do you see Trooper Proctor toward the back or
5 the rear of the vehicle there?

6 A I can't tell because of the -- where the head
7 is. I just know that Trooper Proctor was wearing a
8 black hat.

9 Q Which the person in the video to the left to
10 the rear of the car is wearing a black hat, correct?

11 A I can't tell. I don't want to be locked into
12 a statement where later on you show me that it's
13 somebody else magically. I can't testify to that.

14 Q There's no magic about this. It's your
15 testimony. I'm just asking you what you see.

16 A I don't see that, no.

17 MR. JACKSON: Let's go ahead and play it at
18 this point.

19 (Whereupon, the video is played.)

20 MR. JACKSON: Pause.

21 Q Do you see the person toward the back of the
22 vehicle walking toward the opposite side of the SUV?

23 A I do.

24 Q What area does he appear to be going to?

25 A He appears to be going towards the rear

1 passenger side of the vehicle, although it does not
2 appear so because the video is inverted, a mirror
3 image. That's where he's going.

4 Q And, Sergeant Bukhenik, you testified for at
5 least a half an hour about this video yesterday,
6 correct?

7 A I'm sorry. It was a long day. I don't know
8 the timing of how long I testified.

9 Q You significantly testified about this video
10 yesterday; did you not?

11 A I testified about this video.

12 Q And you testified that it was true and
13 accurate, correct?

14 A Correct.

15 Q And you testified it was reflective of your
16 observations of what was happening in that sally port
17 that evening, correct?

18 A I testified that this is an accurate scene and
19 collection of video evidence from the sally port.

20 Q And, as that truck sits in that sally port
21 just like this, it appears from all perspective that
22 what we are looking at is the passenger side of the
23 car, and that right rear taillight is right there,
24 shining in our face, correct, from this perspective?

25 A I'm sorry. Can you repeat the question?

1 Q From this perspective, from the perspective
2 that the jurors are looking at, from all indications,
3 that would appear to be the right side of the truck,
4 the passenger side of the truck. And that taillight
5 that you can see is the right rear taillight from this
6 perspective, correct?

7 A The way it presents itself, yes.

8 Q And yesterday during the entirety of your
9 questioning by Mr. Lally, not once did you mention that
10 this video is actually completely inverted, correct?

11 A I did not, no.

12 Q Mr. Lally didn't ask you if it was inverted,
13 correct?

14 A That's correct.

15 Q And, if I hadn't gotten up here and begun
16 questioning you, that would be left uncorrected,
17 correct?

18 MR. LALLY: Objection.

19 THE COURT: Sustained.

20 BY MR. JACKSON:

21 Q The person with the winter cap appears to walk
22 directly to what ultimately should be the right rear
23 taillight of this car, correct?

24 A That's the vicinity, yes.

25 MR. JACKSON: Okay. Let's go ahead and play

1 this.

2 (Whereupon, the video is played.)

3 MR. JACKSON: Pause it.

4 Q I'd like you to pay attention to the right
5 rear of this car. And I know we are completely
6 backward. But at the far corner of the car, do you see
7 a person's head there?

8 A It appears as if someone is still there.

9 Q And that person is located at or near what
10 portion of the car?

11 A In real life or as it's depicted?

12 Q Is the person the -- in real life near the
13 right rear taillight of the car?

14 A Yes.

15 Q As a matter of fact, standing there, hovering
16 around there, correct?

17 A We don't know the distance that they are in
18 proximity to the actual vehicle. We just know that
19 they are behind the vehicle.

20 Q Well, it looks like it's pretty close, doesn't
21 it, Sergeant?

22 MR. LALLY: Objection.

23 THE COURT: Sustained.

24 BY MR. JACKSON:

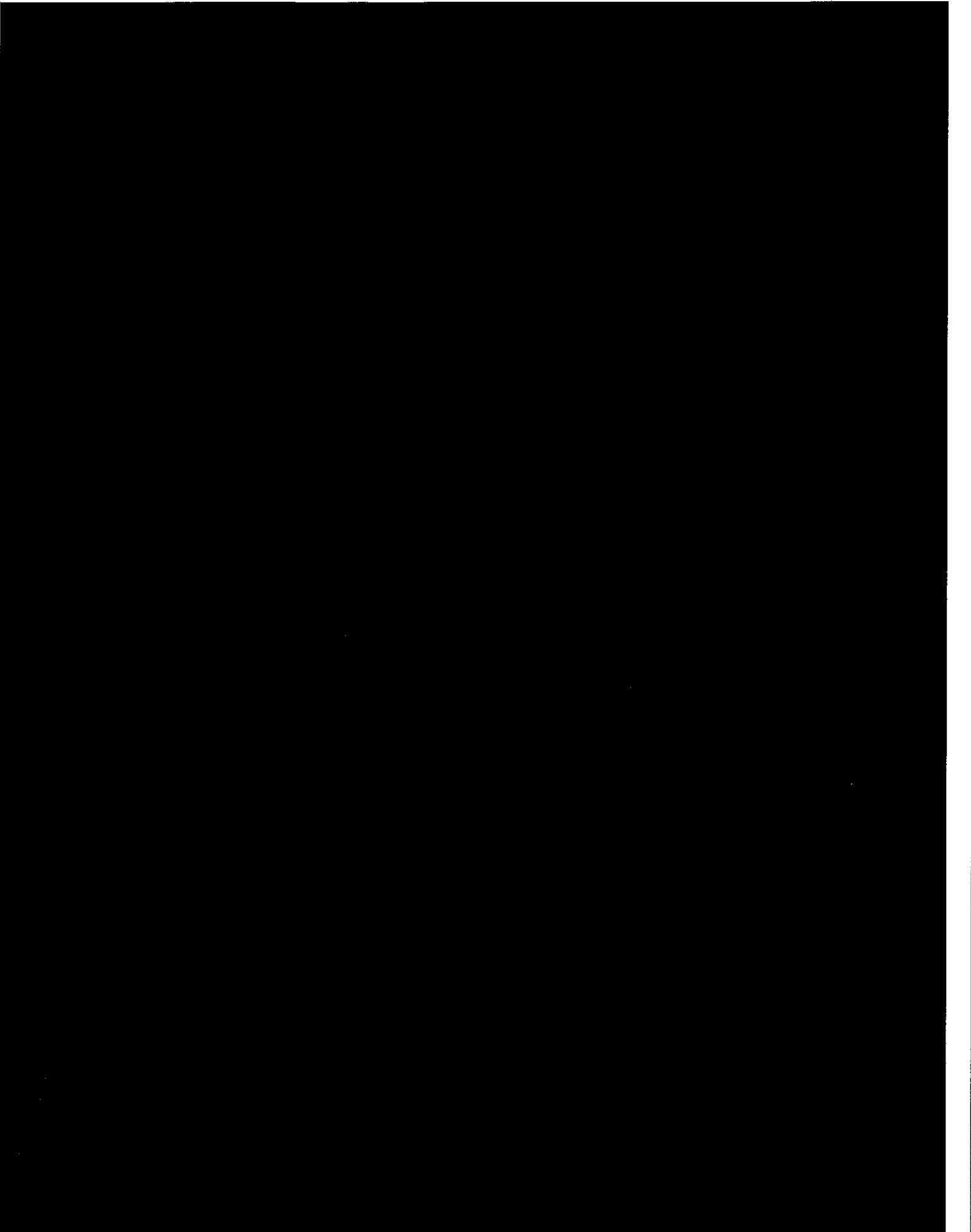
25 Q Doesn't that look like he's in close proximity

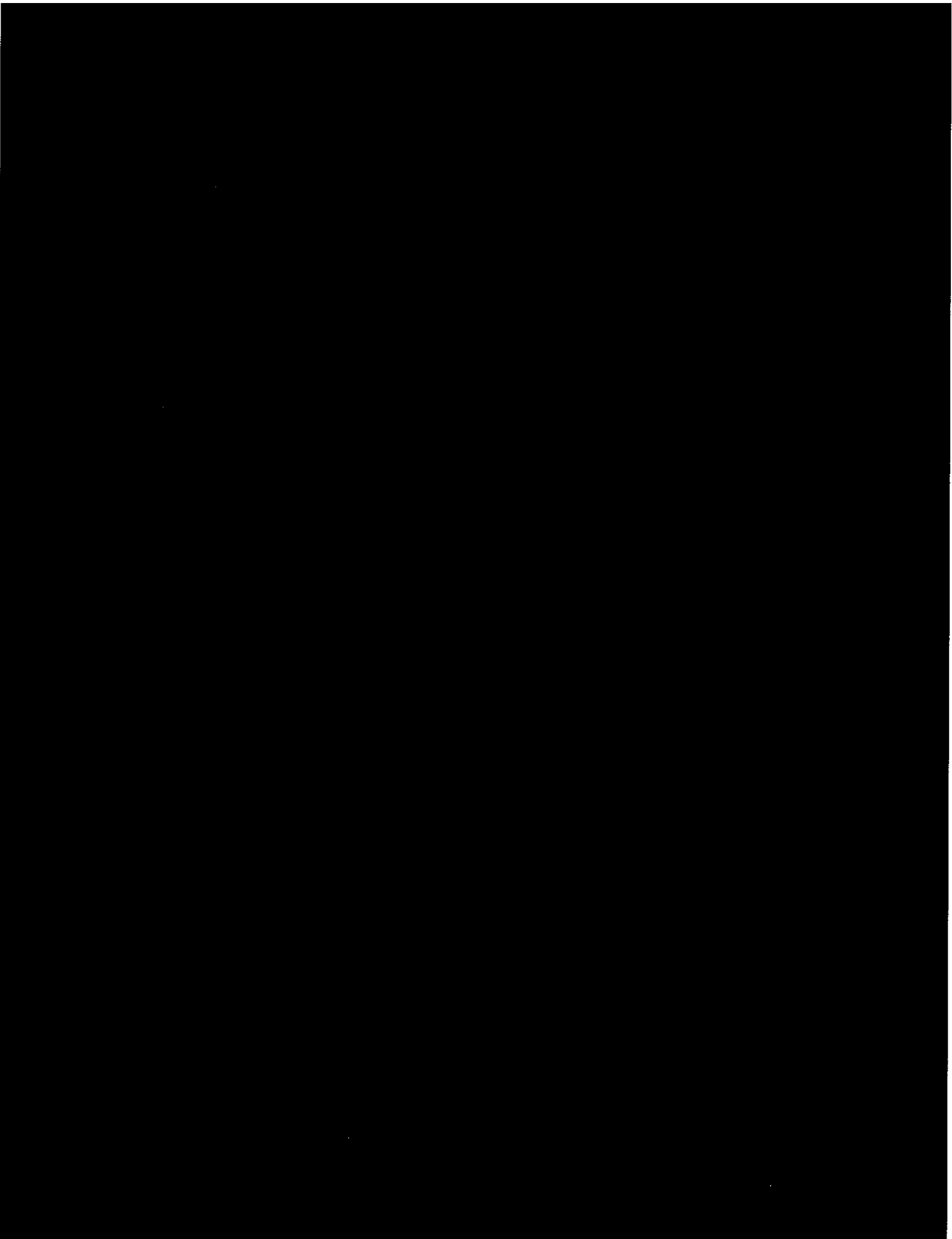
VIDEO Ex. K: 1-29-22 rear lot 1a-5a
USB FLASH DRIVE

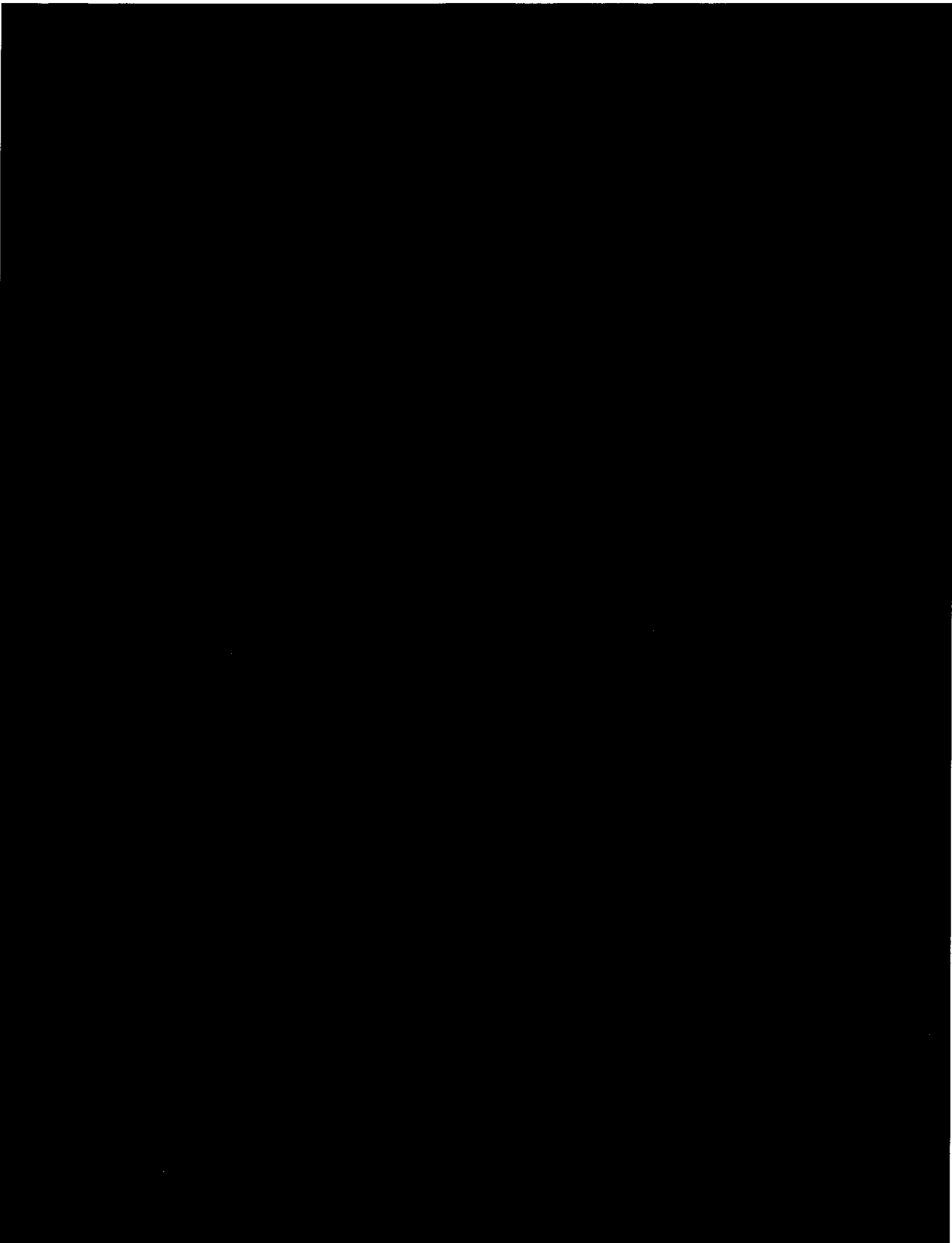
EXHIBIT K

EXHIBIT L





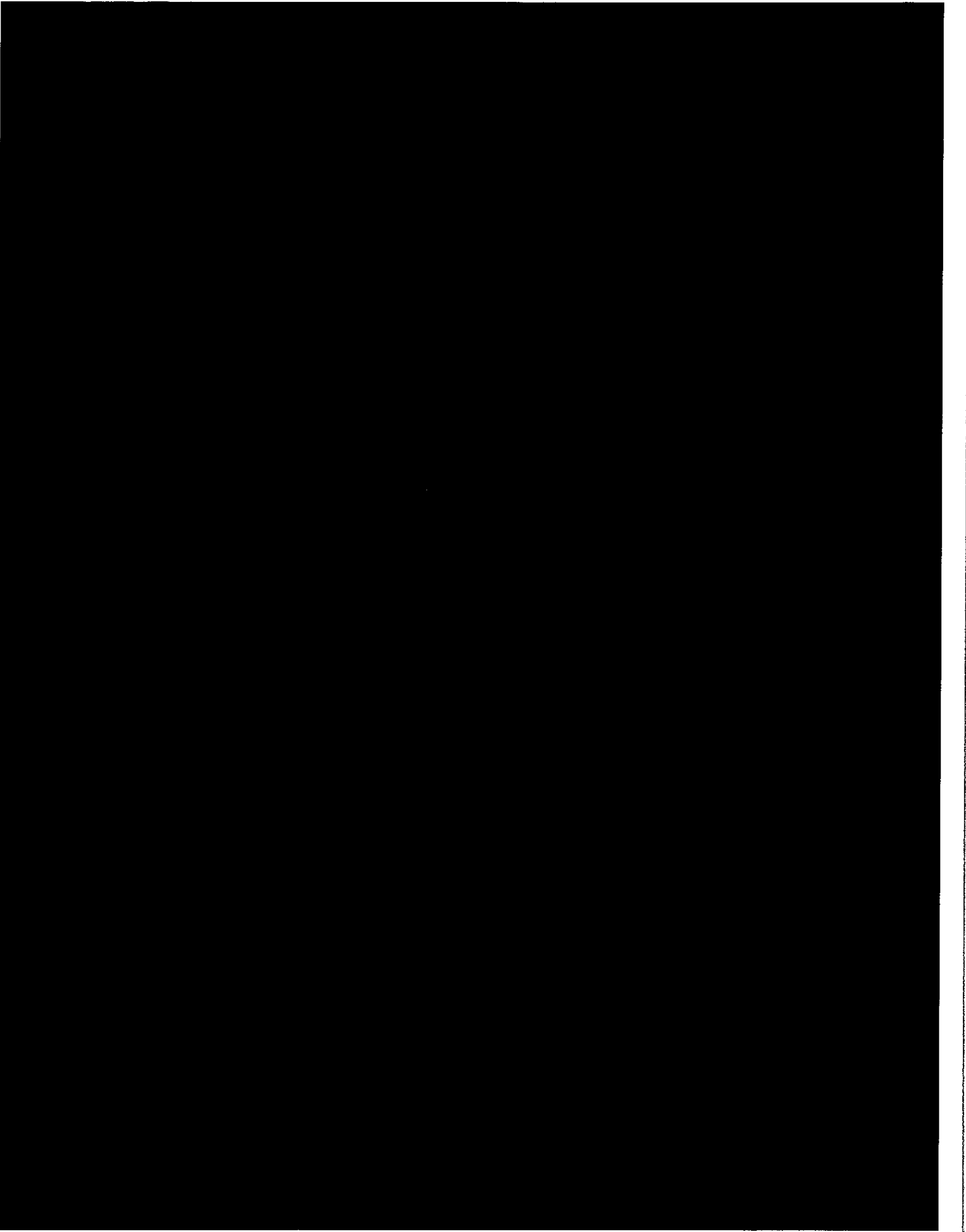


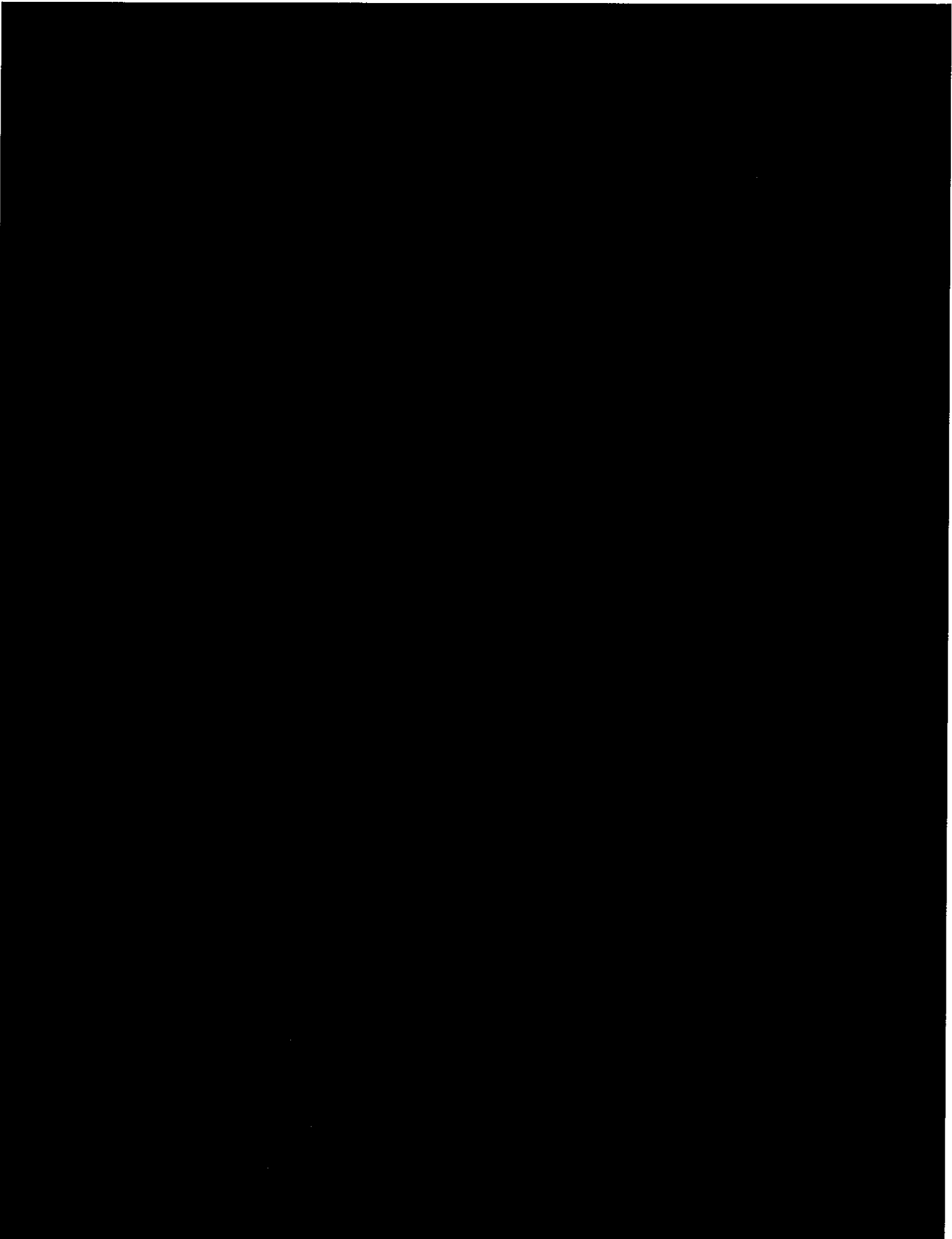


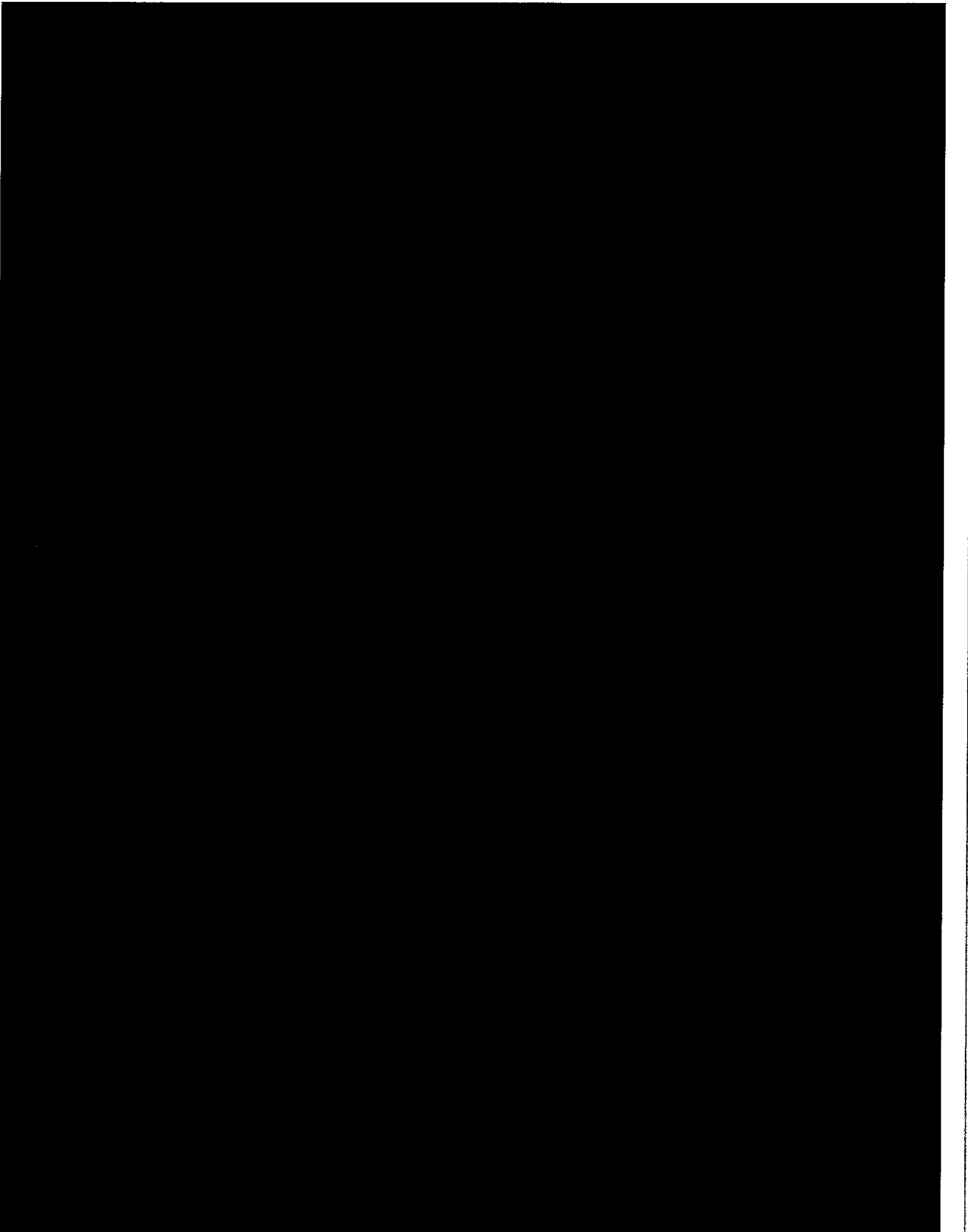
VIDEO Ex. M: Main Driveway side exterior
Sally Port_20220129_173500 USB FLASH DRIVE

EXHIBIT M

EXHIBIT N







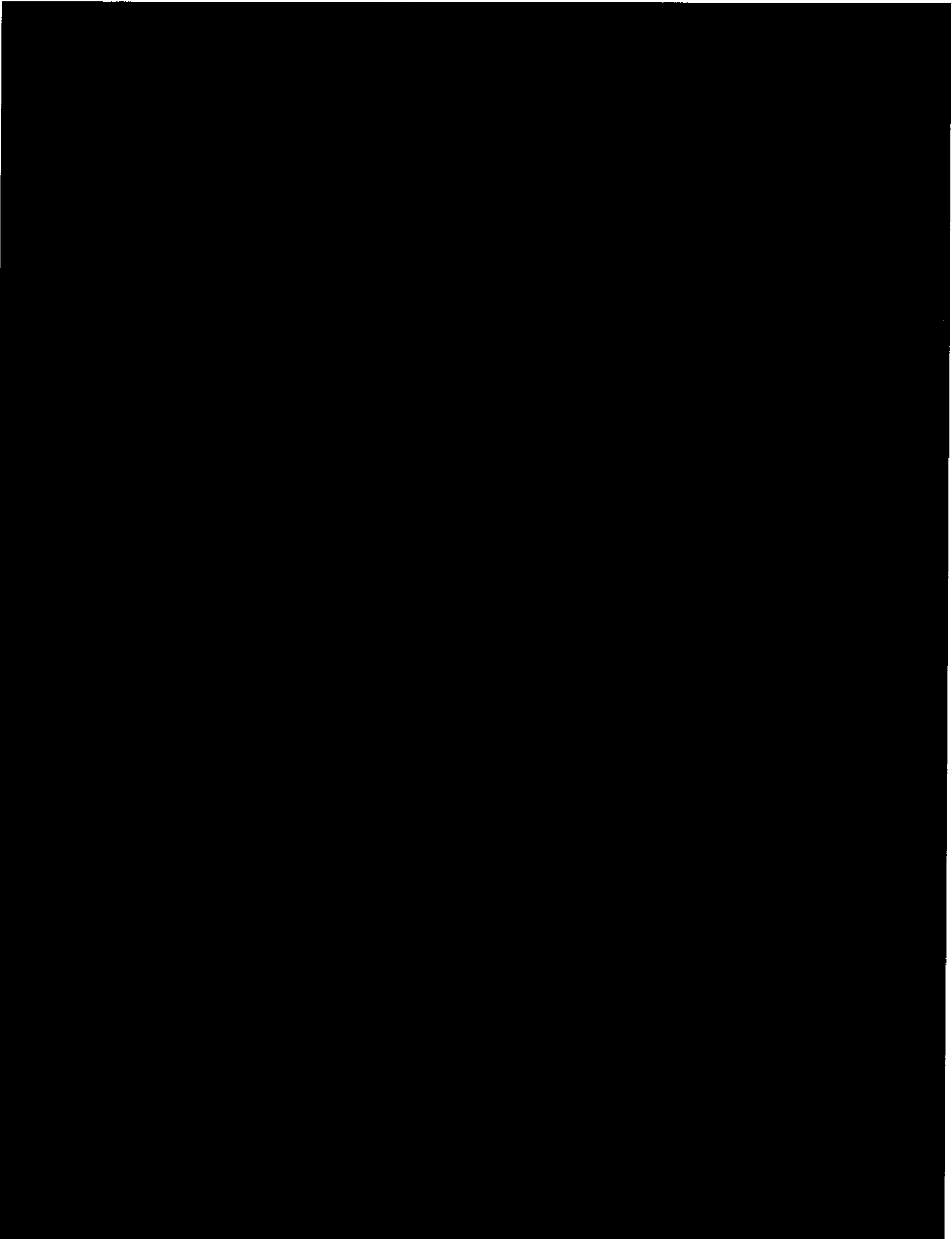


EXHIBIT O

Volume: 21
Pages: 224
Exhibits: 96-97
Id: None

COMMONWEALTH OF MASSACHUSETTS

Norfolk, ss.

SUPERIOR COURT
DEPARTMENT OF
THE TRIAL COURT

* * * * *

COMMONWEALTH

vs.

Criminal Docket No. 2282CR00117

KAREN READ

* * * * *

JURY TRIAL
BEFORE THE HONORABLE BEVERLY CANNONE

TESTIMONY OF JENNIFER MCCABE

Tuesday
May 21, 2024
Courtroom 25
Norfolk Superior Court
Dedham, Massachusetts

Diane Cercone, Certified Court Reporter

1 and over and over and over again you're
2 reporting to this tight group: Nicole,
3 Brian Albert, your husband, how Kerry is
4 doing in her stories to the police, aren't
5 you, over and over and over?

6 A I am telling them --

7 Q Yes or no?

8 A -- what is going on. I wouldn't say,
9 well, let's count them. Was there four of
10 them. You're saying over and over and
11 over and over, it's a bit extreme.

12 Q I see. So you take issue with the way
13 that I phrased over and over and over?

14 A Well, it's misleading, I believe.

15 Q I see. Okay, so let me see if I can try
16 this in a non-misleading way, Ms. McCabe.

17 A Okay.

18 Q So at least one of us, I'll withdraw it.
19 You consistently reported back to the
20 group how Kerry Roberts was doing with the
21 police, didn't you?

22 A I would update them after Kerry saw and
23 spoke to the police. Again, we were all
24 trying to figure out what had happened to
25 John.

1 Q There's yet another text from Brian's
2 wife, Nicole on January 29th and this is
3 on page 2226, and she says, Quote, We'll
4 get more info tomorrow. Don't want to
5 text about it. End quote. And then you
6 texted, Right, correct?

7 A Correct.

8 Q What's that about?

9 MR. LALLY: Objection.

10 THE COURT: I'll allow it.

11 A We decided that we would talk on the
12 phone. My children look on my phone. Her
13 children look on her phone. We were
14 working with the police. I was sharing
15 information in everything that had
16 happened.

17 We didn't want it to leave our
18 little circle because we were trying to
19 figure out what happened and we're not
20 going to go running around letting people
21 see, Oh, my gosh, they think this might
22 have happened or that might have happened.
23 It was nothing more than let's not text
24 about it.

25 Q So you wanted to keep it in your words, in

1 your little circle, correct?

2 A Correct, I didn't want it all out there
3 what we had thought had happened. I was
4 going to let the police do their job.

5 Q So by definition the info that Nicole
6 Albert was talking about, that needed to
7 be kept very tight, very secret, correct?

8 A We needed the police to do their job so we
9 weren't --

10 Q You wanted your text and Nicole wanted her
11 text and the group wanted their text to be
12 kept secret and private, isn't that right?

13 A Not secret and private. We just weren't
14 going to communicate certain things over
15 text.

16 Q Did you give or did anybody give you any
17 private information the next day on
18 January 30th?

19 A Did anyone give me private information?

20 Q Sure, let me put it in context. That text
21 from Nicole Albert, we'll get info, we'll
22 get more info tomorrow. I don't want to
23 text about it. That was on the 29th,
24 right --

25 A Okay.

1 Q -- that you saw? Did you get additional
2 info on the 30th, the next day?

3 A I have no idea.

4 Q Did anything significant happen on January
5 30th in connection with this case, any
6 meetings? Any get-togethers? Anything
7 that you can think of?

8 A I went to the O'Keefe's house.

9 Q Other than that, anything else?

10 A On the way home Kerry Roberts' daughter is
11 good friends with Michael Lank so we
12 dropped her off at Michael Lank's house
13 and Mike's wife came out of the house.
14 Him and Kerry are friends and she, you
15 know, jumped in the car and was consoling
16 Kerry and asks how the O'Keefe's were
17 doing, and you know, we talked to her.

18 Q So you pulled up to Michael Lank's house
19 on the 30th, that's never been reported
20 has it?

21 A I guess I never thought much of it.

22 Q You never thought about reporting the fact
23 that one of the first responding officers
24 on the case working for the Canton P.D.
25 which is conflicted off the case, you had

1 a meeting with, and it wasn't reported the
2 next day?

3 A I didn't meet with Michael Lank.

4 Q I see. You pulled up in the car. Tell me
5 about that again? You pulled up in the
6 car and what happened?

7 A And her daughter went into the house.

8 Q Okay, and then, you just drove away?

9 A No, Michael's wife came out of the house.

10 Q Okay, and you all had a conversation about
11 what?

12 A She got in the car and her and Kerry are
13 friends and she was checking on Kerry, and
14 you know, just saying Oh, my God, this is
15 so crazy, you know, just checking in on
16 the O'Keefe's.

17 Q How long did that take?

18 A Kerry is a talker so it could have been an
19 hour.

20 Q It could have been an hour standing
21 outside?

22 A Sitting in the car.

23 Q Sitting in the car on February 30th, never
24 came in the house?

25 A Not February 30th.

1 Q I'm sorry, I said February 30, January 30,
2 never went in the house?

3 A I might have ran in to go to the bathroom.

4 Q It's the back end of a blizzard, it's
5 freezing cold outside?

6 A Uh-huh.

7 Q Sitting in the car for an hour?

8 A The car was running. Kerry, they were
9 talking. It's her friend.

10 Q Did you have any conversation before your
11 testimony today with anybody about you
12 going to Michael Lank's house on January
13 30, anybody?

14 A Yes.

15 Q Tell me about that. Who was it and when?

16 A It was a couple of weeks ago at the DA's
17 office.

18 Q The DA's office had an interview with you,
19 correct?

20 A Not an interview. They just explained
21 this process.

22 Q I mean, a conversation, how about that?

23 A Yes.

24 Q You met with the DA's office, who did you
25 meet with?

1 A Mr. Lally, Ms. McLaughlin, Steven Nelson,
2 Trooper Brian Tully, I believe, oh, and
3 another woman. I can't remember her name,
4 unfortunately.

5 Q Someone from the DA's office?

6 A Yes.

7 Q Beland?

8 A No.

9 Q Lynne Beland?

10 A No, she's here today. She works with
11 Steve Nelson.

12 Q Oh, but an employee of the DA's office?

13 A Yes.

14 Q It sounds like a pretty big meeting?

15 A I wouldn't call it a big meeting. It was
16 what, five of them.

17 Q Five of them and then you, right?

18 A My daughter Ally came with me, also.

19 Q The meeting is getting bigger? Anybody
20 else?

21 A No, we both went.

22 Q Was Ally in the room when you were, I was
23 going to say interviewed but you take
24 issue with every word I use, when you were
25 talked to by the DA?

1 A Ally and I were both in the room when they
2 received, when they went over everything,
3 you know, how this all works because this
4 is all brand new to us and then they asked
5 me to leave the room.

6 Q You were about to say and I lost the end
7 of that sentence, when they received what?

8 A I didn't mean the word received.

9 Q Did you receive anything?

10 A No, I looked at my grand jury notes.

11 Q Now at this meeting was anybody taking
12 notes?

13 A No.

14 Q You have a bunch of lawyers and the DA and
15 nobody has a notepad in front of them,
16 like notes?

17 A I believe Mr. Lally had a number of
18 folders on the table.

19 Q Taking notes?

20 A No, I do not believe anyone was taking
21 notes. It was a casual meeting to explain
22 this process.

23 Q Was that meeting recorded in any way that
24 you're aware of?

25 A No.

1 Q How long did the meeting last?

2 A Ally and I were probably in the room, I
3 don't know, approximately twenty minutes,
4 then I left and they spoke with her and
5 then I went back in and they spoke with
6 me.

7 Q How long did they speak with you?

8 A Honestly, maybe a half hour, hour.

9 Q During that half hour to an hour did they
10 go over with you what they expected your
11 testimony to be?

12 A They never spoke about what they expected
13 my testimony to be. They just showed me
14 some pictures that might be shown. I
15 listened to the 911.

16 Q What pictures?

17 A Just of the house and how I'd be asked to
18 you know, show, okay, we're going to show
19 a picture of the house, you'll have a
20 laser.

21 Q Ms. McCabe, when you started this
22 conversation it was because you said in
23 answer to my question, was anything ever
24 brought up to you about this meeting at
25 Mike's house.

1 A Uh-huh.

2 Q You said yes.

3 A Uh-huh.

4 Q So obviously they did talk to you about
5 your testimony, it wasn't just about the
6 process, correct?

7 A I asked what discovery had been turned in
8 in regard to me.

9 Q So you wanted to prepare to make sure that
10 you knew what you might be asked on cross-
11 examination, correct?

12 A I wanted to know what was coming, yes.

13 Q And you knew that one of the things that
14 was coming after this meet, well, let me
15 ask it a different way.

16 During this meeting did Mr. Lally
17 tell you that one of the things that's
18 going to be coming is you had an off the
19 books meeting at Lank's house for 45
20 minutes, did he tell you that?

21 A No, that's not how I was told.

22 Q Did he tell you that the defense had
23 uncovered a report that established that
24 you were actually at Michael Lank's house
25 for 45 minutes that had never been

1 reported to the defense or the prosecution
2 before the phone extraction had been done,
3 did he tell you that?

4 A I was told, I was asked, oh, were you at
5 Michael Lank's on the 30th.

6 Q So you had a lot of time to come up with a
7 story about why you were at Michael
8 Lank's, correct?

9 MR. LALLY: Objection.

10 THE COURT: I'll allow it.

11 A I didn't need time to make up a story
12 because I have the truth of why we went.

13 Q And the truth according to you is you
14 pulled up at Michael Lank's house, the
15 first responding officer and friend of the
16 Alberts, had a meeting with him the next
17 day that was never reported to anybody for
18 any purpose?

19 A I --

20 Q You just met with his wife out in the car
21 while the car was running for 45 minutes
22 to an hour, that's your story?

23 A It's not a story. It's the truth. Kerry
24 dropped her daughter off. The wife came
25 out. Kerry is a talker. They started

1 talking. A tragedy had happened the day
2 before.

3 Q It is interesting, would you not agree,
4 that the day before you have this off the
5 books meeting at Michael Lank's house
6 Nicole Albert says, we'll get more info
7 tomorrow, meaning the very day you show up
8 at Lank's house?

9 A Again, I never spoke with Mike Lank at his
10 house. It was not an off the books
11 meeting. It was Kerry dropping her
12 daughter at one of her good friend's house
13 whose husband happens to be a Canton cop.
14 That is what it is. That is the truth.

15 Q And a large coincidence, you'd agree?

16 MR. LALLY: Objection.

17 THE COURT: Sustained.

18 MR. JACKSON: May I have just a
19 moment, your Honor?

20 THE COURT: Yes.

21 Q (By Mr. Jackson) By the way, what did Mr.
22 Lally show you in respect to this issue
23 about this meeting at Michael Lank's
24 house?

25 A He showed me nothing.

1 Q He just told you about it?

2 A Brian Tully told me.

3 Q Okay, what did Mr. Tully tell you, if you
4 recall, what exactly did he tell you about
5 this meeting about this Michael Lank
6 issue?

7 A He said, Did you go to Michael Lank's on
8 January 30th, and at first I said, No,
9 I've never been to his house. Then I
10 thought about it and I said, Oh, my gosh,
11 yes, I did go there and that was the
12 extent of the conversation.

13 Q You said, Yeah, I did go there and he
14 didn't ask a follow-up like what the heck
15 were you doing at Michael Lank's house
16 that day after this issue, this incident?

17 MR. LALLY: Objection.

18 THE COURT: I'll allow it.

19 Q (By Mr. Jackson) He didn't ask a follow-
20 up to that?

21 A I do not believe he did.

22 Q So, Trooper Tully had you come down for an
23 interview. He confronted you with a fact
24 that had never been disclosed before, to
25 wit, you showed up at Michael Lank's house

1 and when you said, Yeah, Oh, yeah, hang
2 on, I think your words were, Oh, my gosh,
3 yeah, I think I did go there, and he
4 didn't ask a follow-up question?

5 A He was there.

6 Q Yes or no?

7 A You're spinning all of this.

8 Q Ma'am, I do a lot of things.

9 A Yeah.

10 Q I don't spin. There's a judge here to
11 make sure I don't spin. I'm asking you a
12 question. It's very direct.

13 A I do not believe he asked me a follow-up
14 question.

15 Q So that was the end of that conversation
16 about Michael Lank, correct?

17 A Correct.

18 Q Mr. Lally didn't have any follow-up
19 questions?

20 A I don't believe Mr. Lally was in the room.

21 Q I thought you said Mr. Lally, Ms.
22 McLaughlin?

23 A They were. They might have not been in
24 the room at that time.

25 Q I see. So Mr. Lally just happened to

EXHIBIT P



MAURA T. HEALEY
GOVERNOR

KIMBERLEY DRISCOLL
LIEUTENANT GOVERNOR

TERRENCE M. REIDY
SECRETARY

The Commonwealth of Massachusetts

Department of State Police

Division of Investigative Services
Norfolk County State Police Detective Unit
45 Shawmut Road, Canton, MA 02021

May 29, 2024



JOHN E. MAWN JR.
COLONEL/SUPERINTENDENT

JOHN D. PINKHAM
DEPUTY SUPERINTENDENT

TO: First Assistant District Lynn Beland, Norfolk DAO

FROM: Detective Lieutenant Brian Tully #3520

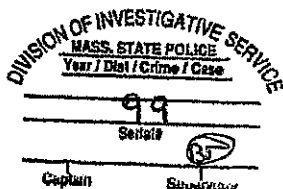
SUBJECT: Meeting with Jennifer and Matthew McCabe

CASE: 2022-112-33

1. On May 10, 2024, Jennifer and Matthew McCabe arrived at the office of the Norfolk District Attorney's Office. Jennifer was provided a copy of her Grand Jury testimony regarding Commonwealth v Karen Read. Matthew was provided a copy of his testimony. They read the transcripts in a conference room and returned the documents.

2. Jennifer requested to listen to her 911 call to Canton Police on January 29, 2022. I played the audio file. Jennifer and Matthew requested to watch the Canton Police cruiser camera video that depicts them both on the morning of January 29, 2022. I played the portion of the cruiser camera that depicts the McCabes on that date.

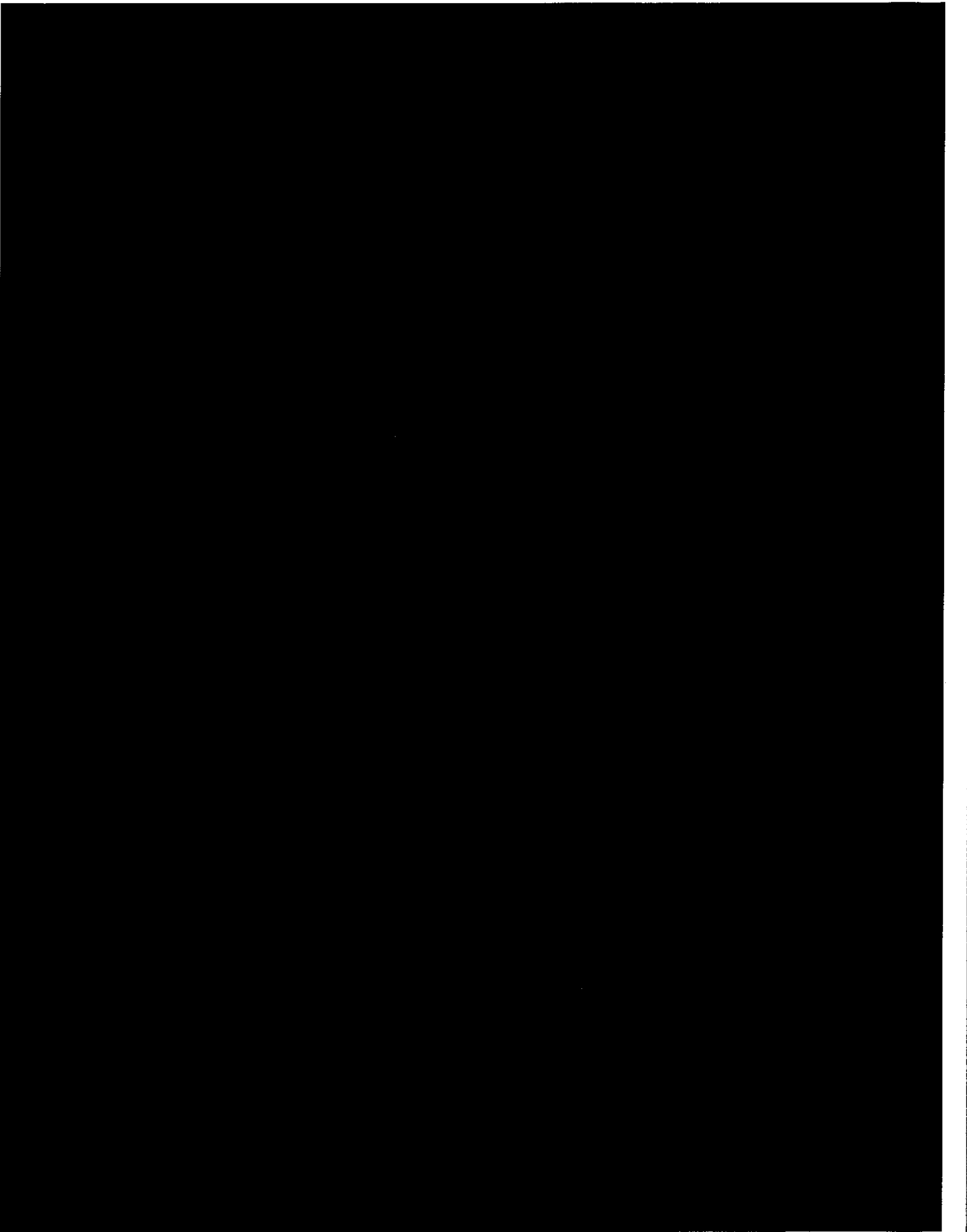
3. I asked Jennifer why her cell phone would have been in the area of the residence of Michael Lank, Canton Police Sergeant, on January 30, 2022. Jennifer stated she was with Kerry Roberts who was picking up her daughter at the residence. Jennifer stated she did not speak with Michael Lank while at the residence.

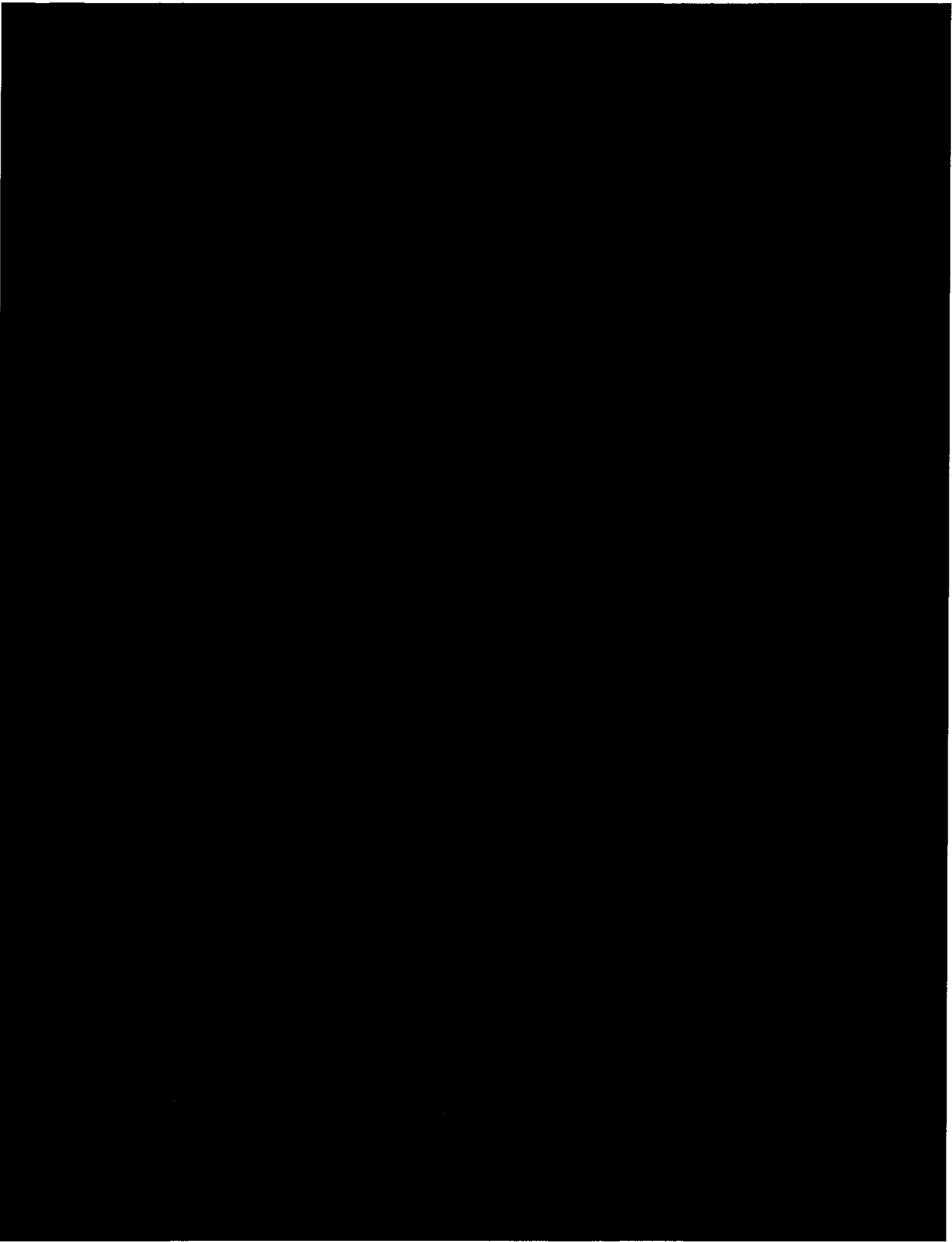


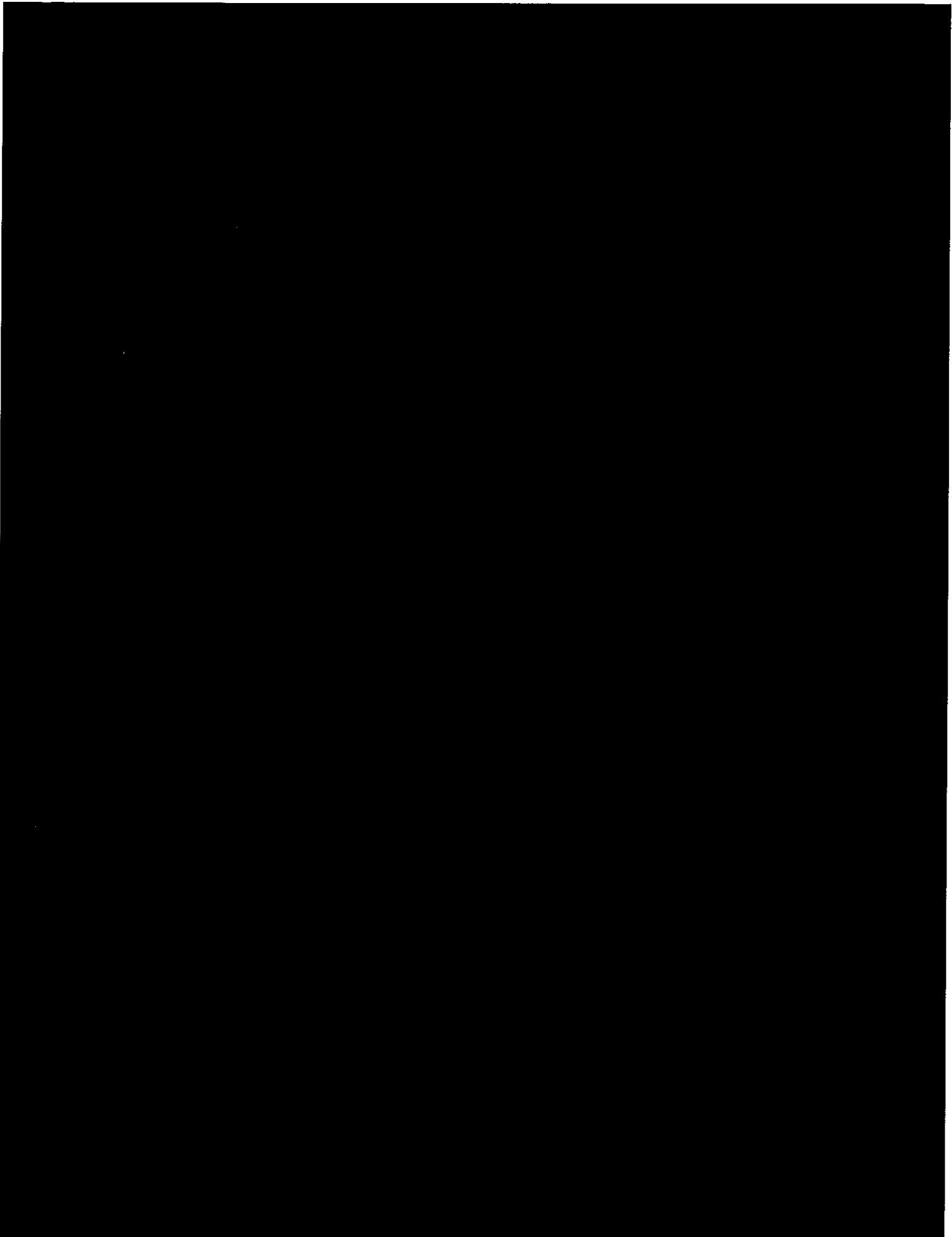
Respectfully Submitted,

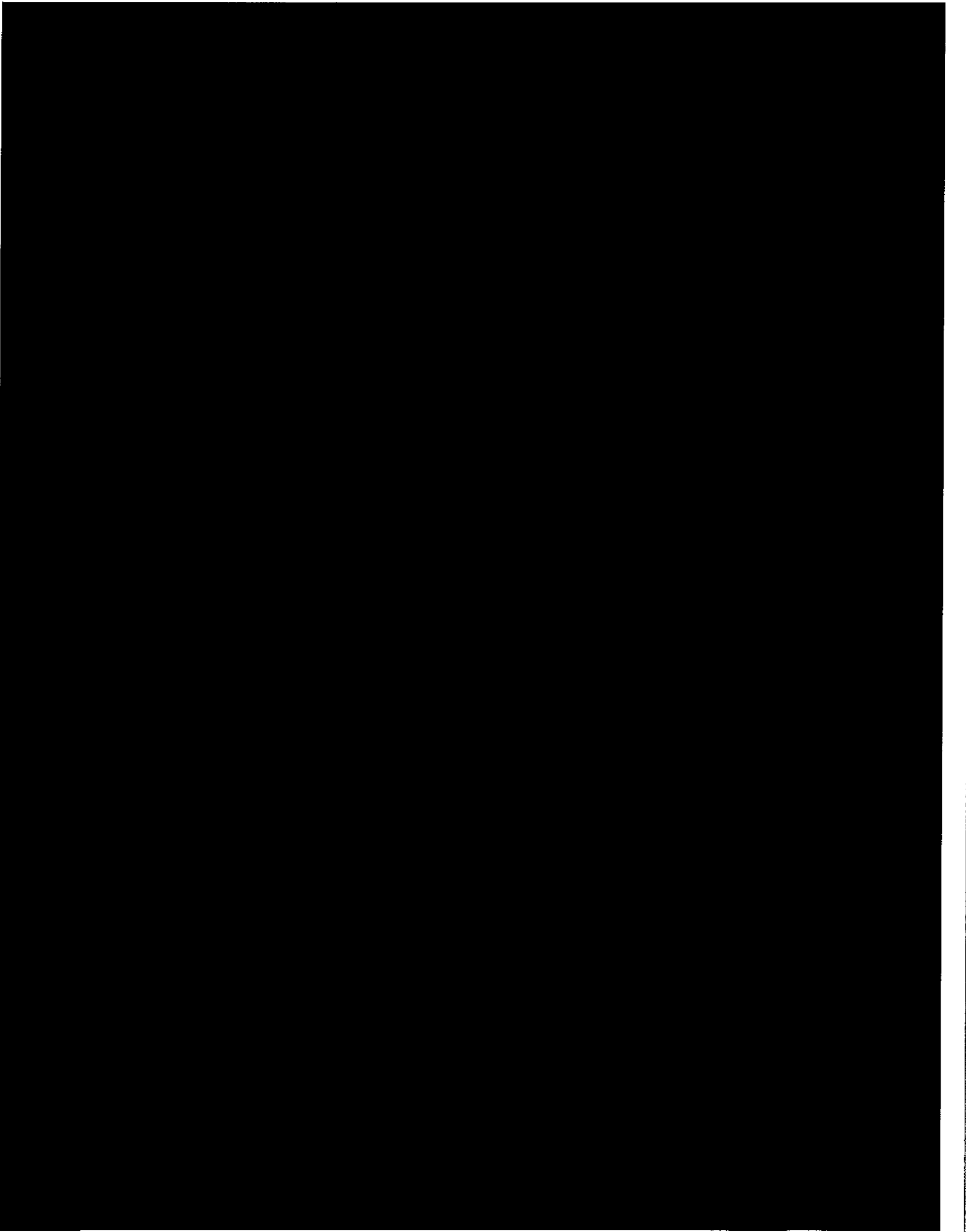
Brian Tully #3520
Detective Lieutenant, Norfolk SPDU

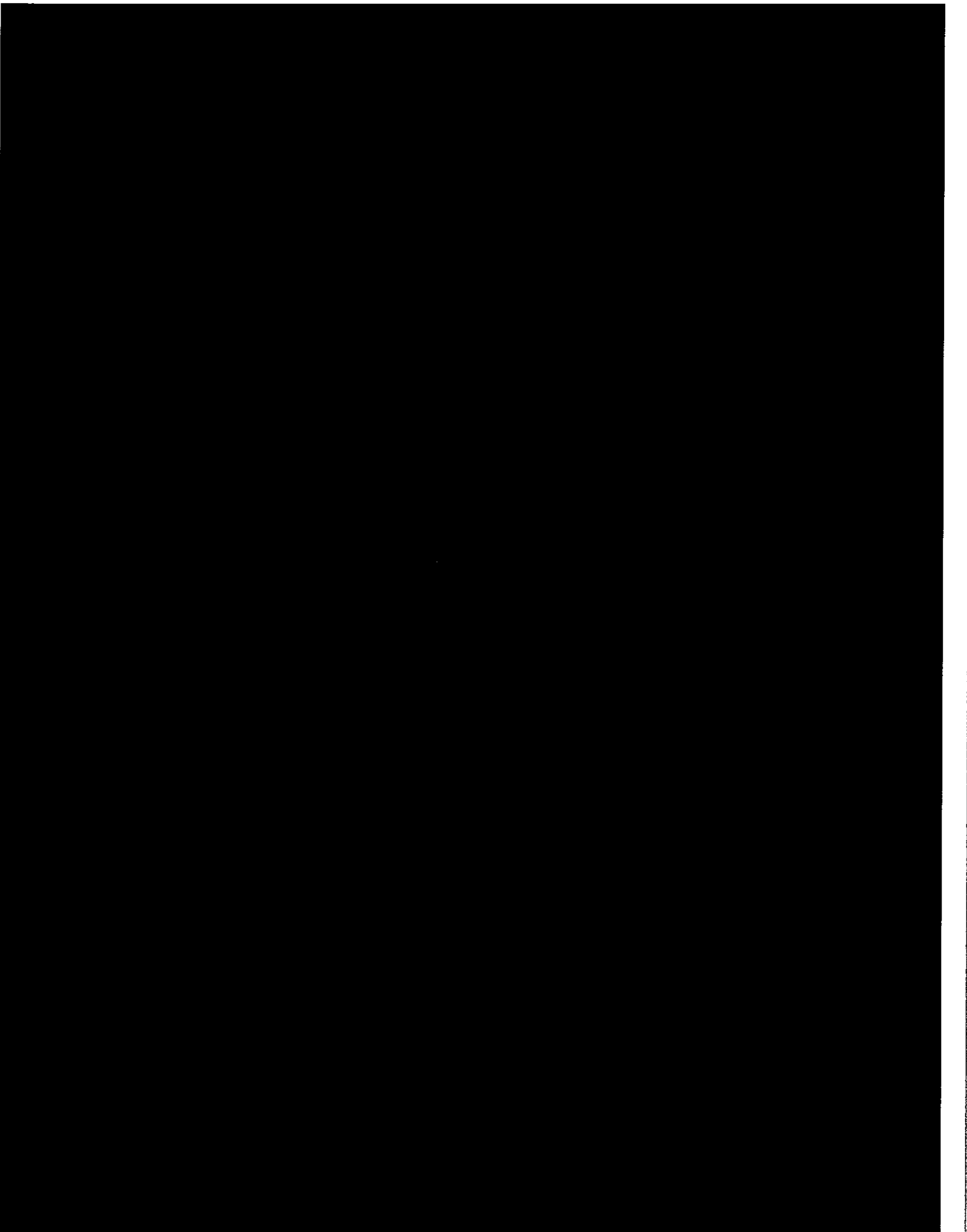
EXHIBIT Q











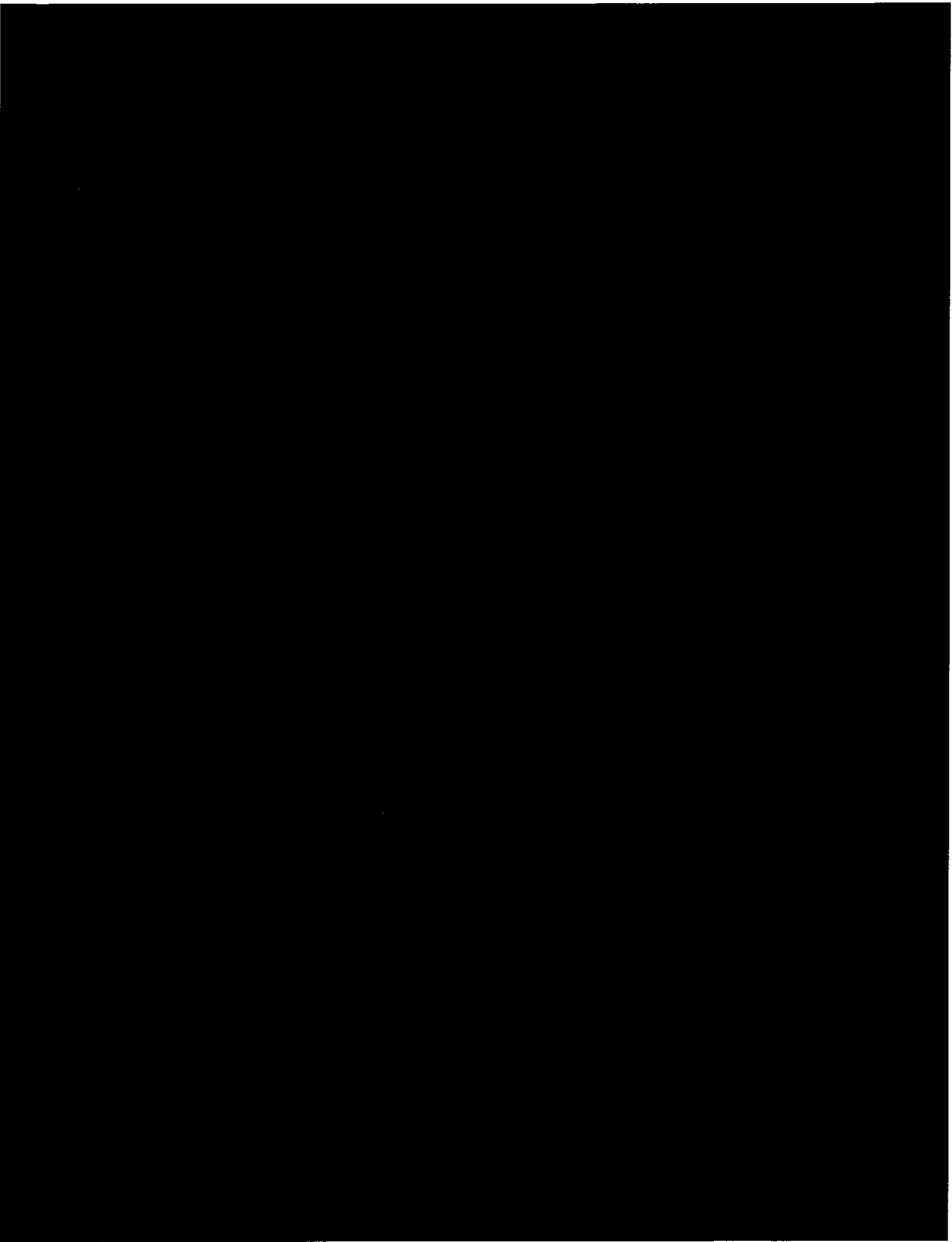
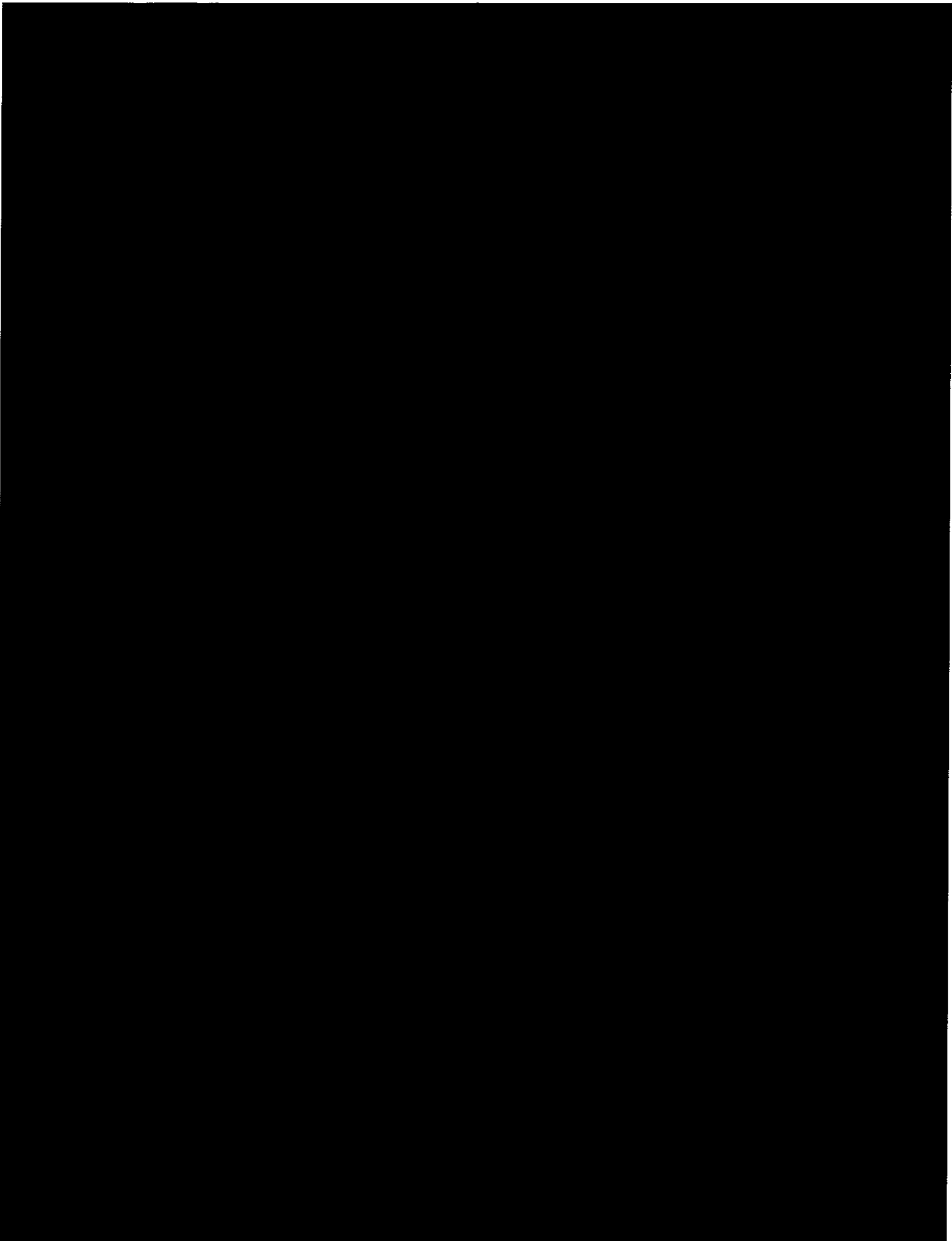
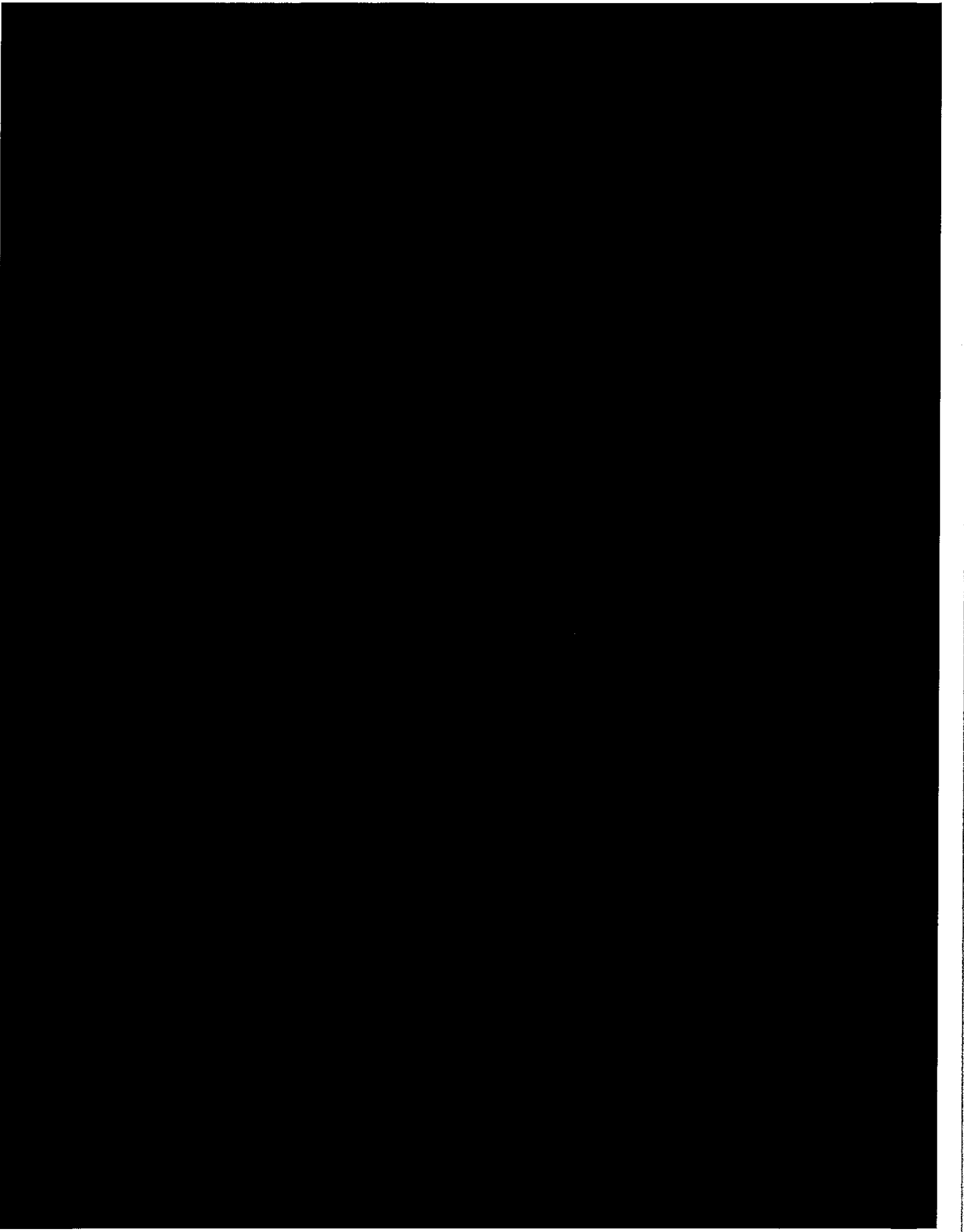
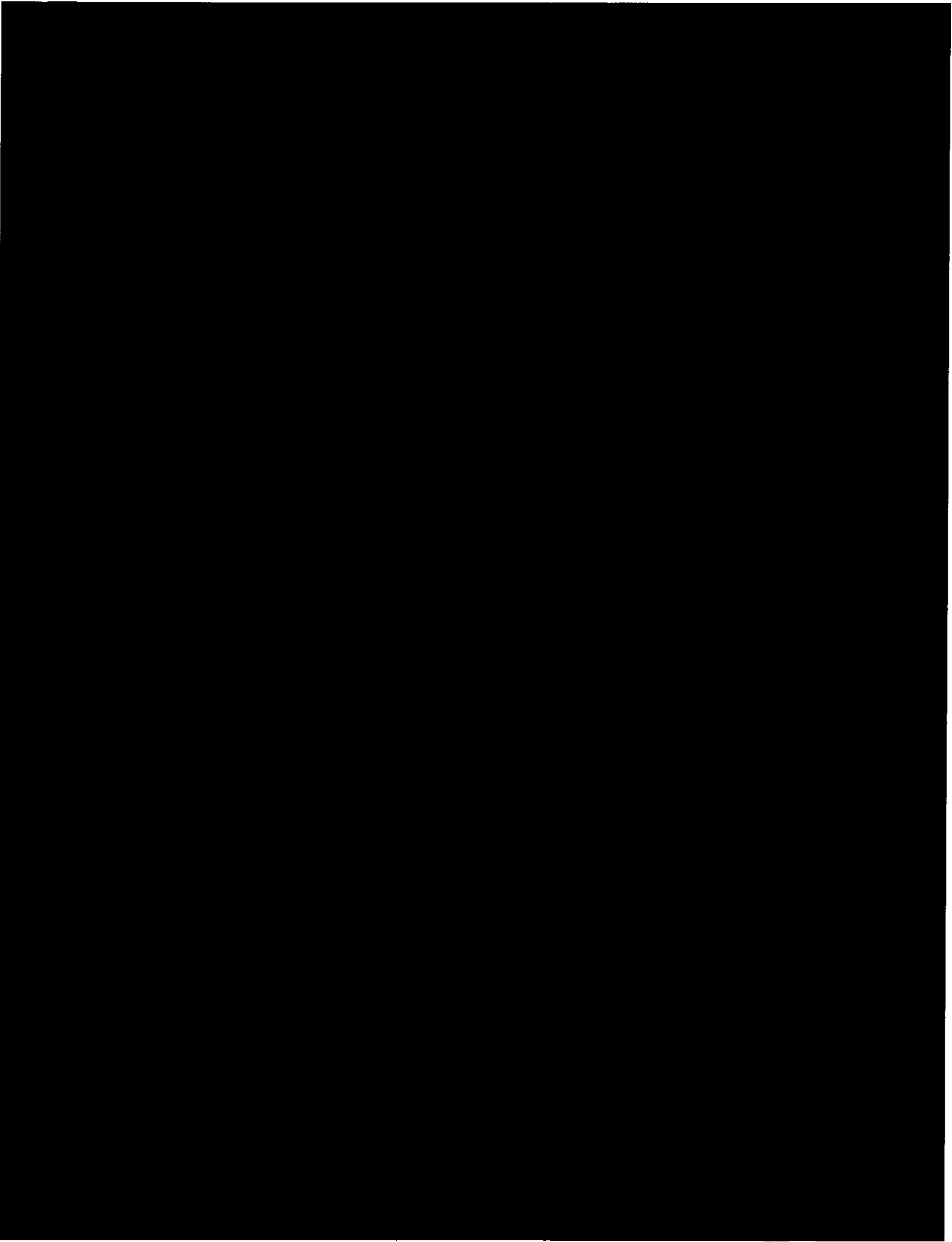
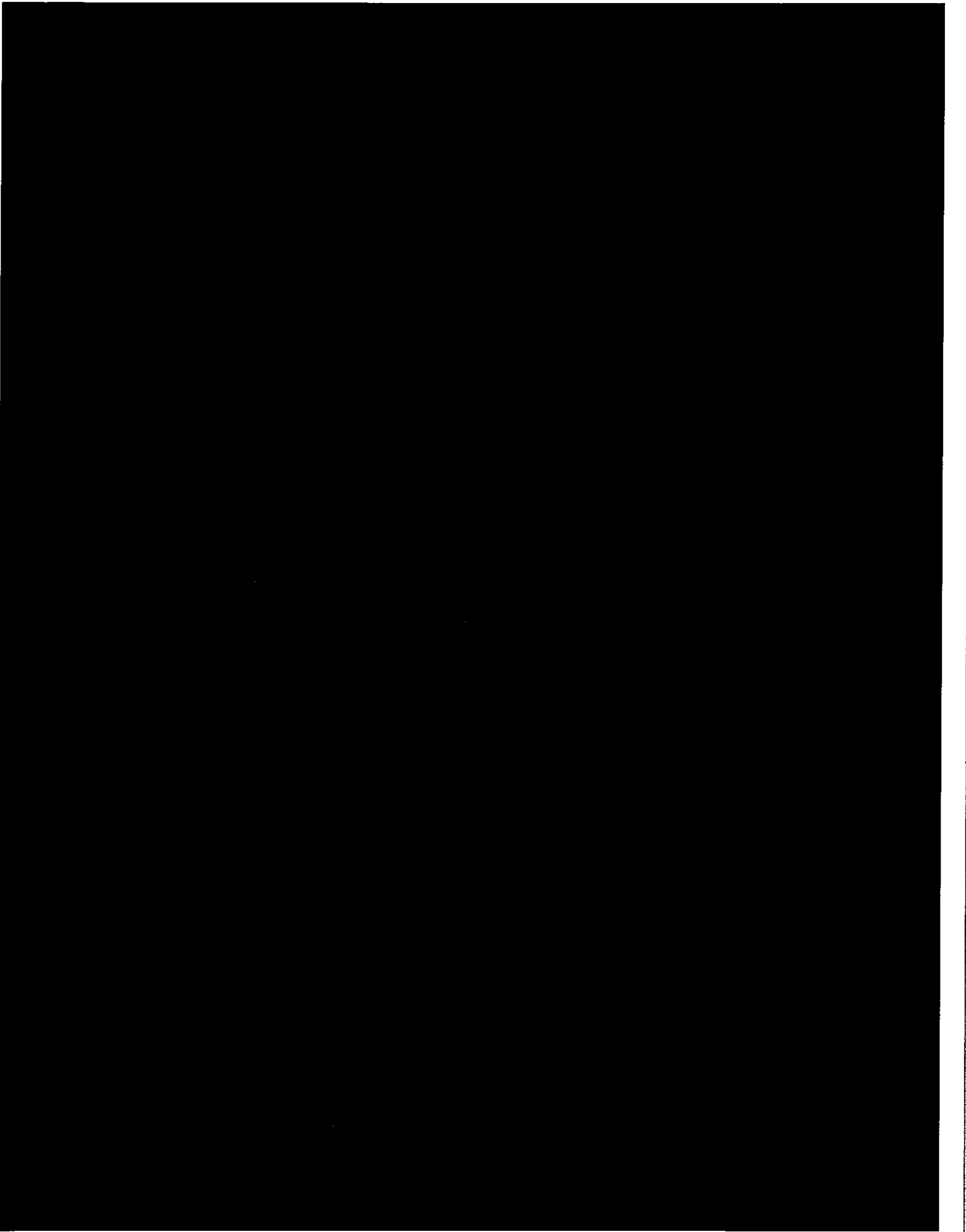


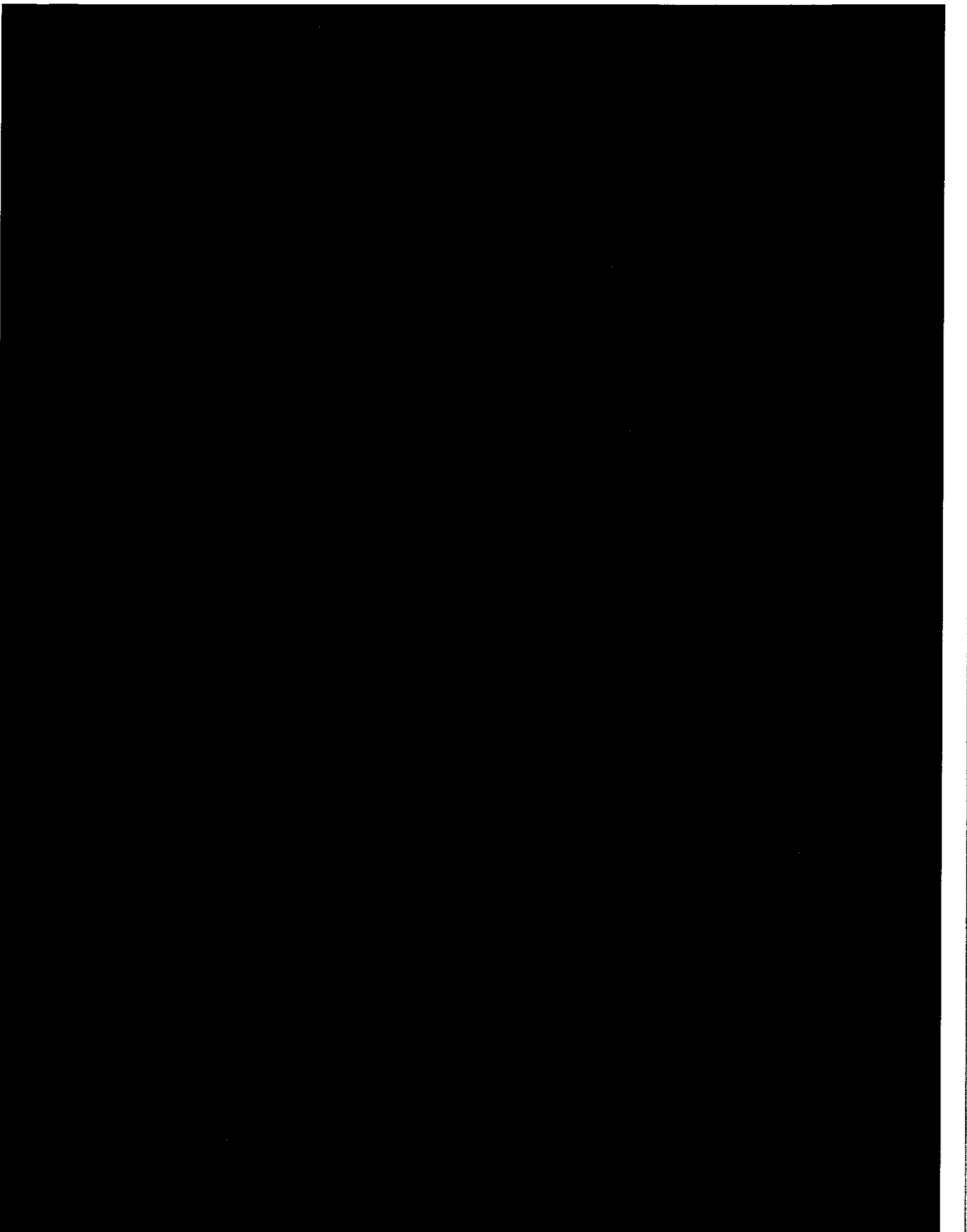
EXHIBIT R











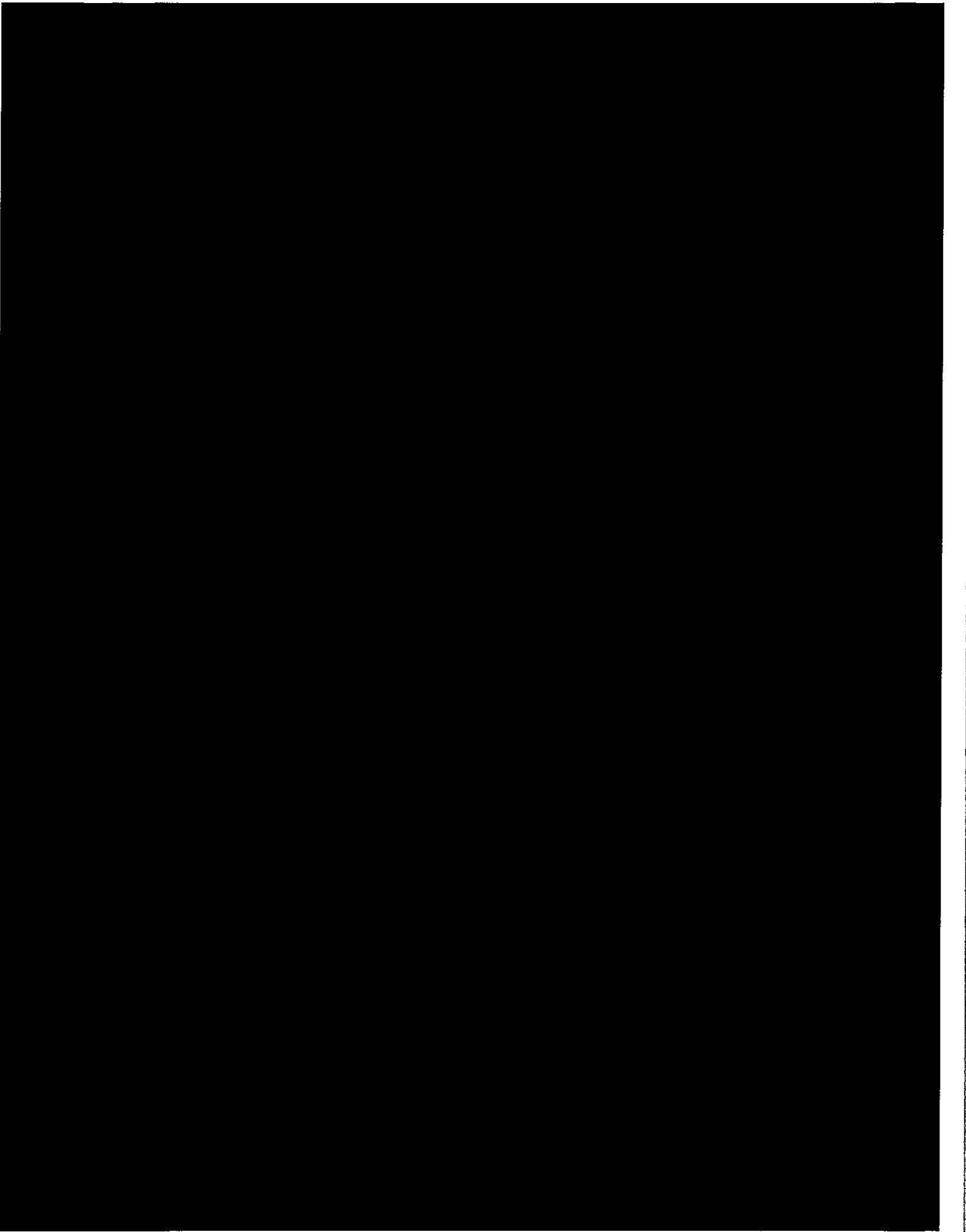


EXHIBIT S

