

COMMONWEALTH OF KENTUCKY
TRANSPORTATION CABINET
ADMINISTRATIVE ACTION NO 17-TRANC-0123

LD MANAGEMENT SIGNAGE

PETITIONER

vs.

TRANSPORTATION CABINET,
DEPARTMENT OF HIGHWAYS

RESPONDENT

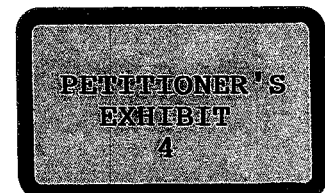
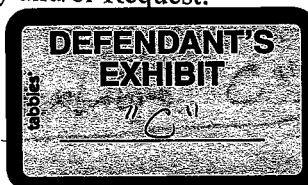
PETITIONER'S RESPONSES TO RESPONDENT'S FIRST SET OF
INTERROGATORIES AND REQUESTS FOR PRODUCTION OF
DOCUMENTS

Comes the Respondent, Transportation Cabinet, Department of Highways, ("Cabinet"),
by and through counsel, and hereby requests that the Petitioner, LD Management Signage
("LD"), respond to the following interrogatories and Requests for Production of Documents
within thirty (30) days from service hereof.

INSTRUCTIONS

Throughout these First Set of Interrogatories and Requests for Production of Documents,
reference to the "subject billboard" or "subject billboard advertising device" means that billboard
which is the subject of this administrative proceeding, and which is located in Larue County,
Kentucky, near I-65 at or around milepoint 76 KEPT #04-2017-00113.

INTERROGATORY NO. 1: Please state the name, address and phone number of each
and every person providing answers/responses to these Interrogatories and Requests for
Production of Documents, and if more than one person is responding, specify who is responding
to each individual Interrogatory and/or Request.



ANSWER: Pete Potenzini, 485 Stevenson Ave. Worthington, OH 43085, 614-885-2616

INTERROGATORY NO. 2: With respect to each individual responding hereto, please state the occupation, name of employer, title/position held, business address and phone number for each such person.

ANSWER: Marketing Director, LD Management Company, 110 E. Wilson Bridge Rd., Worthington, OH 43085, 614-259-4742

INTERROGATORY NO. 3: State the name of the owner of the subject billboard, as well as the owner of the real estate upon which the subject billboard is currently located.

ANSWER: The trailer is owned by LD Management Company. The real estate is owned by Arlene and Scott Quinones-Neel.

INTERROGATORY NO. 4: Has there ever been a one (1) year period of time pass, since its erection, wherein there has been no advertising displayed on the subject billboard?

("Advertising" includes notice that the device is for sale, rent or lease.)

ANSWER: No

INTERROGATORY NO. 5: Did LD make application for a permit for the erection of the subject billboard advertising device located near I-65 at or around milepoint 76 in Larue County, Kentucky? If your answer is in the affirmative, state who, specifically made, submitted and/or executed such application or permit, provide the date such application was submitted, to what

authority it was submitted and what action was taken by the authority with regard to such application.

ANSWER: No, because William McCraney, LD Management's media buyer, phoned the LaRue County Zoning and Planning Commission to inquire whether a permit was needed. The first time he called, he was told to call back. When he called a second time, he was told that if the structure on which the sign was placed was not a permanent one, and was outside 90 feet from the highway, no permit was required. Based on that information, we went ahead and placed the sign.

REQUEST NO. 1: If your answer to Interrogatory No. 5 is in the affirmative, in that an application for a billboard advertising device was made, please produce a copy of such application, together with any and all supporting documents which were tendered with said application to authority.

RESPONSE: N/A

INTERROGATORY NO. 6: Has the subject billboard been in need of substantial repair for at least the last one (1) year period prior to the date of this discovery request? If your answer is in the affirmative, describe, in detail, the nature of the need for repairs, whether the repairs have been performed, who made the repairs, how long the damage existed before the repairs were made, the cost of the repairs and when the repairs were completed.

ANSWER: No

INTERROGATORY NO. 7: Has the subject billboard had more than routine maintenance performed on it since the erection of same? If your answer is in the affirmative, state the nature of the maintenance performed, the cost of said maintenance, who performed said maintenance, when the maintenance was completed, and how long it took to perform said maintenance.

ANSWER: No

REQUEST NO. 2: If an application for a billboard advertising device was made, please produce a copy of any written response, acknowledgment, granting, denial, or otherwise by the authority with respect to said application.

RESPONSE: N/A

INTERROGATORY NO. 8: Is it the position of LD that the subject billboard is securely affixed to a substantial structure permanently attached to the ground? If your answer is in the affirmative, please describe with specificity how said structure is permanently attached to the ground. Also describe how the subject billboard is securely affixed to a substantial structure.

ANSWER: No

REQUEST NO. 3: If your answer to Interrogatory No. 8 is in the affirmative, please produce each and every document including, but not limited to, construction receipts, payroll records, cancelled checks, contract labor payments, contracts, vendor payments, etc., which evidence the subject placement / erection of the billboard advertising device.

RESPONSE: N/A

INTERROGATORY NO. 9: Is the subject billboard attached, or affixed, to a mobile device or structure which can be moved? If so, does said structure have wheels, and how does it move, i.e. does it have its own motor, or must it be pulled by a truck, semi-truck, wrecker or otherwise (please specify).

ANSWER: Yes. It is attached to a mobile storage trailer with wheels, but no motor, and must be pulled by a semi-truck

INTERROGATORY NO. 10: Prior to the erection/placement of the billboard advertising device, did any representative of LD meet with any representative(s) of the Cabinet to discuss whether or not the placement of the subject billboard advertising device, as it is currently located, was proposed to be in compliance with the Kentucky Revised Statutes, Kentucky Administrative Regulations, and all other requirements of Kentucky law? If your answer is in the affirmative, please state generally the nature of the conversation at any such meeting(s), the name of each and every individual who was present at any such meeting(s), as between the Petitioner and Respondent, the date of any such meeting or meetings, the location of any such meeting or meetings, and specifically state what agreement was alleged to have been made, if any.

ANSWER: No.

REQUEST NO. 4: If your answer to Interrogatory No. 10 is in the affirmative, please produce any and all documents evidencing any such meeting, or meetings, and any such written agreement which is alleged to have been entered into by and between the parties at any such meeting, or meetings, related thereto, if any.

RESPONSE: N/A

INTERROGATORY NO. 11: If the billboard is on a structure with wheels, state how many wheels, and what size wheels. Also specifically describe the structure, i.e. length, width, materials composition, etc.

ANSWER: The trailer is 48' x 9' and has four 22 ½ inch wheels

INTERROGATORY NO. 12: If the subject billboard advertising device has not been removed as of the date of your answers/responses herein, then please state each and every reason why, despite the request from the Cabinet to remove said device, same has not been accomplished.

ANSWER: While I defer to counsel on this point, it is my understanding that under 603 KAR 10:010, and Section 8 in particular, the sign is permitted to remain in place pending the disposition of the challenge to the order to remove it. In addition, and I again defer to counsel on this legal point, because the order is being challenged on constitutional and other legal grounds, forcing the sign to be removed at this point would violate LD's First Amendment rights and would impose a prior restraint.

REQUEST NO. 5: Please provide copies of each and every document, writing, email, letter, or other tangible form of written evidence, which supports the Petitioner's position that the subject billboard advertising device is at a location which is in compliance with the Kentucky Revised Statutes, Kentucky Administrative Regulations, and all other rules applicable to the

location and erection of billboard advertising devices.

RESPONSE: There are no responsive documents

INTERROGATORY NO. 13: If the billboard structure is a mobile device, state how long it would take to move the subject billboard a distance of only approximately 200 feet.

ANSWER: Once a semi-tractor is hitched to the trailer, which would take approximately 10 minutes, it would take approximately a minute or two to move it 200 feet.

INTERROGATORY NO. 14: What material is the actual sign/message itself made of, and how is it attached to the structure which holds it up? (i.e. is it a vinyl sign, painted, fabric, etc.)

ANSWER: The sign is made of vinyl and is riveted to the trailer.

INTERROGATORY NO. 15: State the names of each and every individual who was utilized, whether as an employee, independent contractor, or otherwise, who worked on the job site in the process of erecting / placing the subject billboard advertising device. With respect to each such individual, please provide his/her full name, address and telephone number where each such individual can be contacted. Please also specify whether each such individual, at the time of said construction, was an employee of LD or some other company (name said company), or was an independent contractor hired for the purpose of working on the project of erecting / placing the subject billboard advertising device.

ANSWER: As noted earlier, William McCraney, of Three Leaf Productions, 12814

Ridgemoor Dr, Prospect KY, 502-693-3706, the media buyer, was involved in the initial inquiry concerning the placement of the sign. A driver for Rento Trailer Sales, Jeffersonville, IN 47130, 812-282-3200, whose name is not known, delivered the trailer to the location.

INTERROGATORY NO. 16: State the name, address, and phone number of any entity, or person, if other than LD, which physically constructed and/or erected and/or placed the subject billboard advertising device, providing the name, address, phone number and contact person of said entity. If more than one entity was involved, state the address, phone number and contact person, of each such entity.

ANSWER: See Answer to Interrogatory No. 15.

INTERROGATORY NO. 17: Who currently owns the structure where the subject billboard is located? If the owner is other than the Petitioner herein, please state the name, address, phone number and contact person of said owner.

ANSWER: LD Management Company.

INTERROGATORY NO. 18: Who currently owns the real estate where the subject billboard is located? If the owner is other than the Petitioner herein, please state the name, address, phone number and contact person of said owner.

ANSWER: Arlene and Scott Quinones-Neel, 514 Magnolia Street, Upton, KY 42784. 502-419-9183.

INTERROGATORY NO. 19: If the Petitioner does not own the site where the subject billboard is located, has there been a lease agreement entered into for the lease of the subject site? If your answer is in the affirmative, state the name, address, phone number and contact person for said lessor and lessee. Please provide the name, address and phone number of the individual / entity who leased and/or advertised on the subject billboard first after it was erected, and who/what currently advertises on the subject billboard?

ANSWER: The lease is between the property owners identified in Interrogatory 18 and LD Management Company.

REQUEST NO. 6: If your answer to Interrogatory No. 19 is in the affirmative, please produce a copy of the current lease agreement in effect, as well as any modifications, extensions and/or amendments, as well as copies of any prior or past lease agreements which may have expired.

RESPONSE: There is not a written lease. The rent paid is \$300/month.

INTERROGATORY NO. 20: Have you ever applied for renewal of a permit granted by the Cabinet with respect to the subject billboard?

ANSWER: No

REQUEST NO. 7: If your answer to Interrogatory No. 20 is in the affirmative, please produce a copy of any and all such applications for renewal of any such permit, including any and all supporting documentation submitted with same.

RESPONSE: N/A

REQUEST NO. 8: Please produce a copy of any advertising contract or agreement pertaining to the lease and/or advertising referenced in Interrogatory No. 19.

See Response to Request No. 6

INTERROGATORY NO. 21: Is the subject billboard an “advertising device” as defined by 603 KRS 3:080 Section 1(3)?

ANSWER: Yes

INTERROGATORY NO. 22: Is the subject billboard adjacent to I-65?

ANSWER: Yes

INTERROGATORY NO. 23: Is the subject billboard visible from I-65?

ANSWER: Yes

INTERROGATORY NO. 24: State, with specificity, each and every basis upon which you rely to support your claim that the Cabinet has engaged in selective enforcement with respect to the subject billboard advertising device?

ANSWER: Mr. McCraney observed numerous signs on trailers similar to the one at issue here along I-65 before and during the time that the sign was erected. After the Transportation Cabinet told us that the sign was illegal and directed us to remove it, these other signs remained

in place. Photographs of them were provided to the Transportation Cabinet, and our counsel outlined the basis of the selective enforcement in a letter to it. It was only after that information was provided that the other signs began to be removed. However, signs on trailers continue to exist along I-65, including signs for Phantom Fireworks that is present on I-65, south of Louisville, the Quilt Outlet, Deez Butts Barbecue, among others.

INTERROGATORY NO. 25: Please identify any and all other signs which you allege are similarly situated, and which you allege the Cabinet has taken no action against. For each such sign, list the location of each such sign, what is currently being advertised on the sign and whether the sign is similar, identical to, or in any way a likeness of the sign which is the subject of this administrative appeal.

ANSWER: See Answer to Interrogatory No. 24 and the associated documents.

INTERROGATORY NO. 26: State each and every basis that you are aware of to support your allegation that the Cabinet has selectively enforced certain billboards, but has not taken action in regard to other illegal signs.

ANSWER: See Answer to Interrogatory No. 24 and the associated documents

INTERROGATORY NO. 27: Identify each and every sign, specifically, which you allege the Cabinet has taken no action against, which signs are similarly situated to LD's sign which is the subject of this action.

ANSWER: See Answer to Interrogatory No. 24, and the associated documents.

INTERROGATORY NO. 28:

Have you spoken with any Cabinet representative or employee about any of those devices which you allege the Cabinet has neglected to take any action against? If your answer is in the affirmative, state the name, address, title and phone number of each such person, when that conversation(s) took place, where it/they took place, who was present at said conversation(s), and give a detailed summary of each such conversation, if any recording(s) of any such conversation was is/were made, produce a copy of same.

ANSWER: Our attorney communicated with information to the Transportation Cabinet

INTERROGATORY NO. 29: State each and every basis to support your allegation that the Cabinet has singled out LD for enforcement.

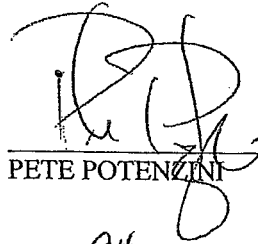
ANSWER: See answer to Interrogatory Nos. 24 and 28

INTERROGATORY NO. 30: State each and every basis to support your allegation that the Cabinet has allowed other entities / persons in the same class to violate the law, and state what law(s) they are alleged to be violating. Specify which signs are being allowed to violate the law, and state the name of the owner(s) of each such sign.

ANSWER: See answer to Interrogatory Nos. 24 and 28. The laws that these signs allegedly violated would be the same that the Transportation Cabinet has claimed LD has allegedly violated. Other than by way of the products advertised on the signs, I am unable to identify their owners.

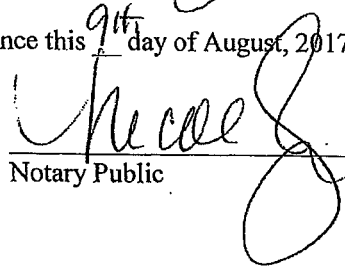
VERIFICATION

Pete Potenzini, agent of LD Management Company, states that he has read the foregoing Respondent's Responses to Respondent's First Set of Interrogatories and states that the answers are true as he verily believes.



PETE POTENZINI

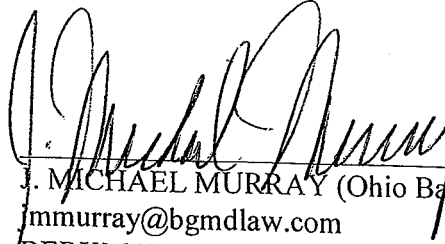
Sworn to and subscribed in my presence this 9th day of August, 2017



Notary Public



NICOLE JONES
Notary Public
State of Ohio
My Commission Expires
November 20, 2021



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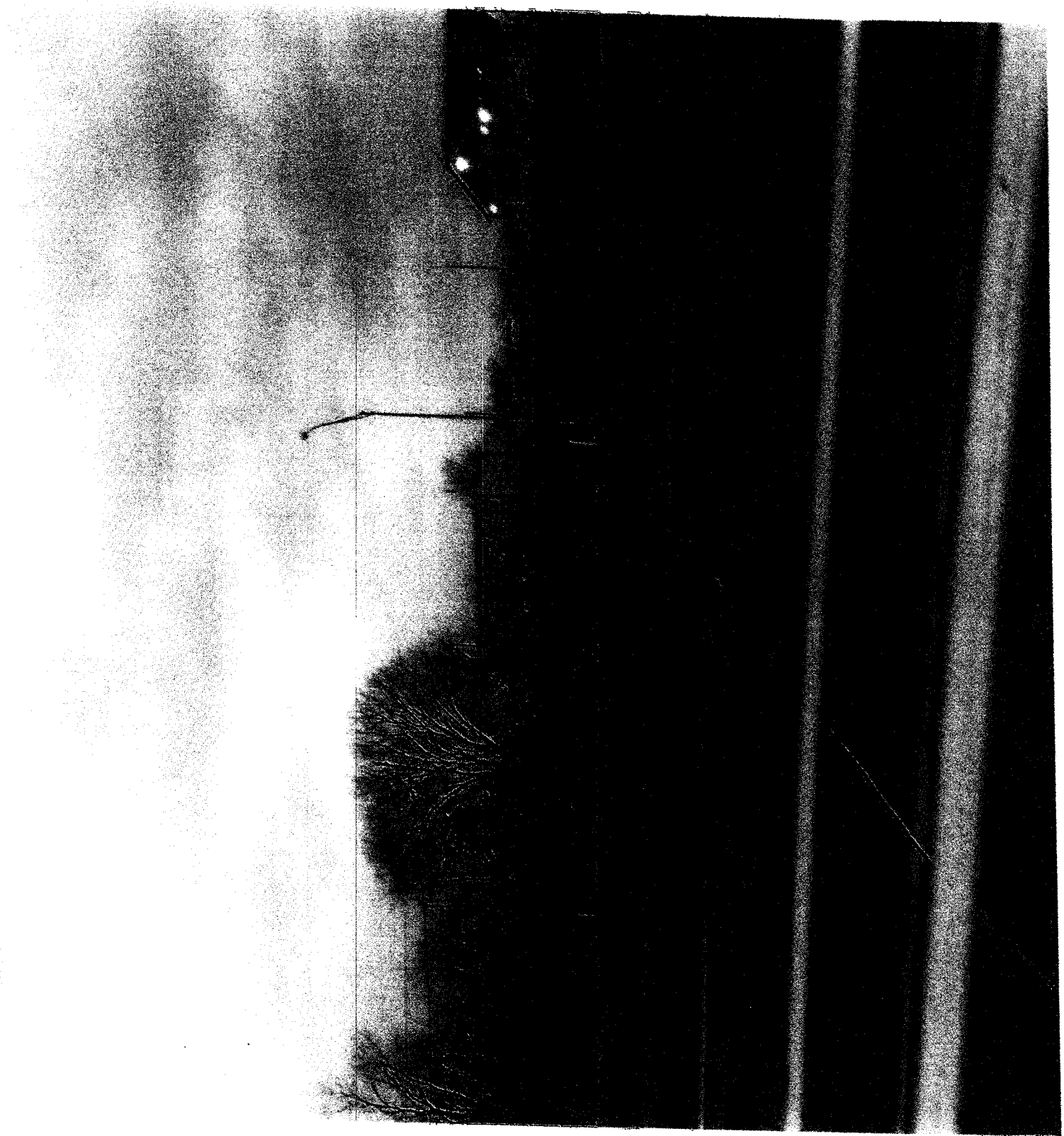
CERTIFICATE OF SERVICE

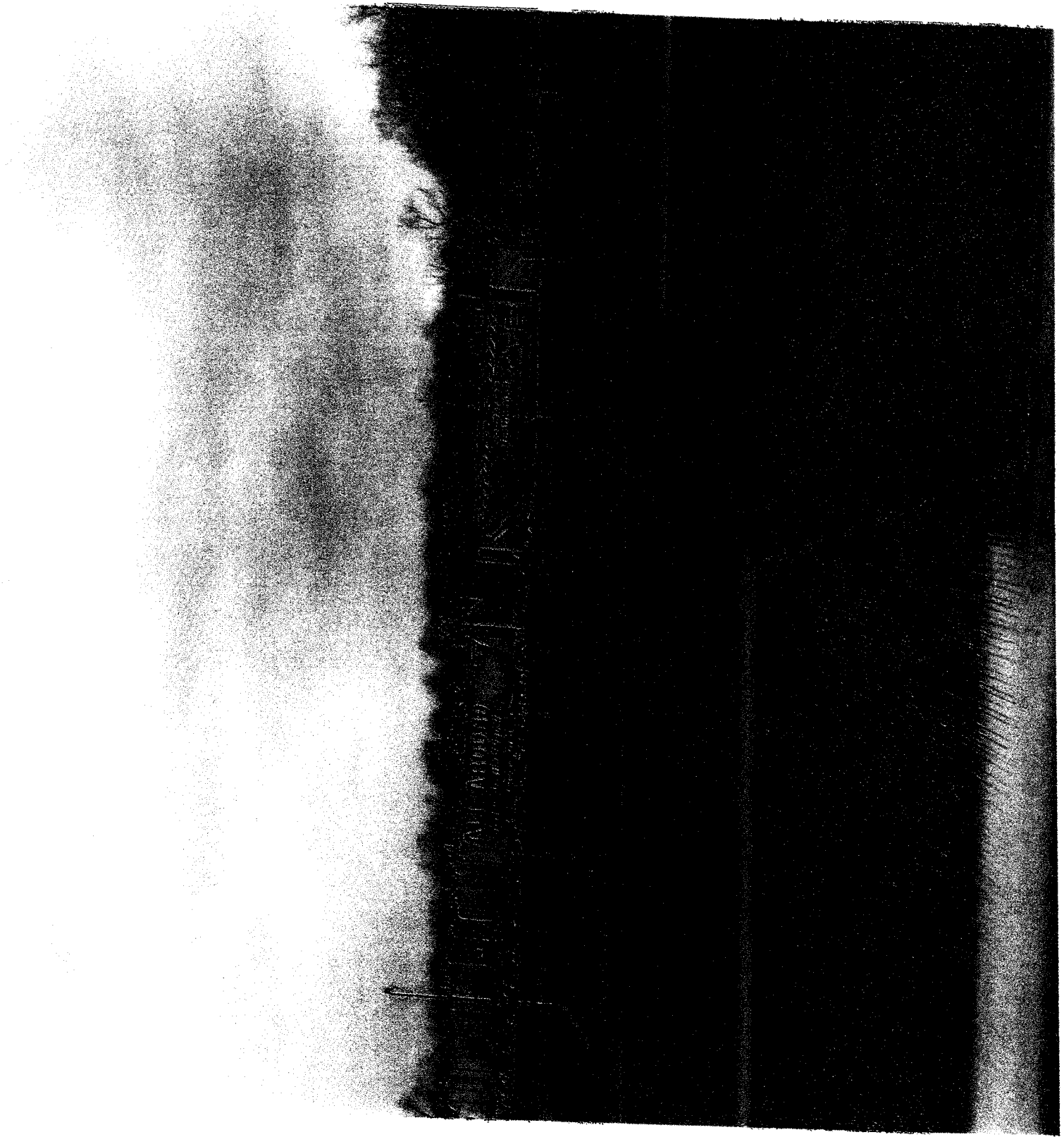
A copy of the foregoing Petitioner's Responses to Respondent's First Set of Interrogatories and Requests for Production of Documents was served on Honorable Clayton B. Patrick, counsel for Respondent, Patrick Law Firm 415 West Main Street, Frankfort, Kentucky 40601 via regular U.S. mail, sufficient postage prepaid, and by email at clay@patricklawky.com this 9th day of August 2017.

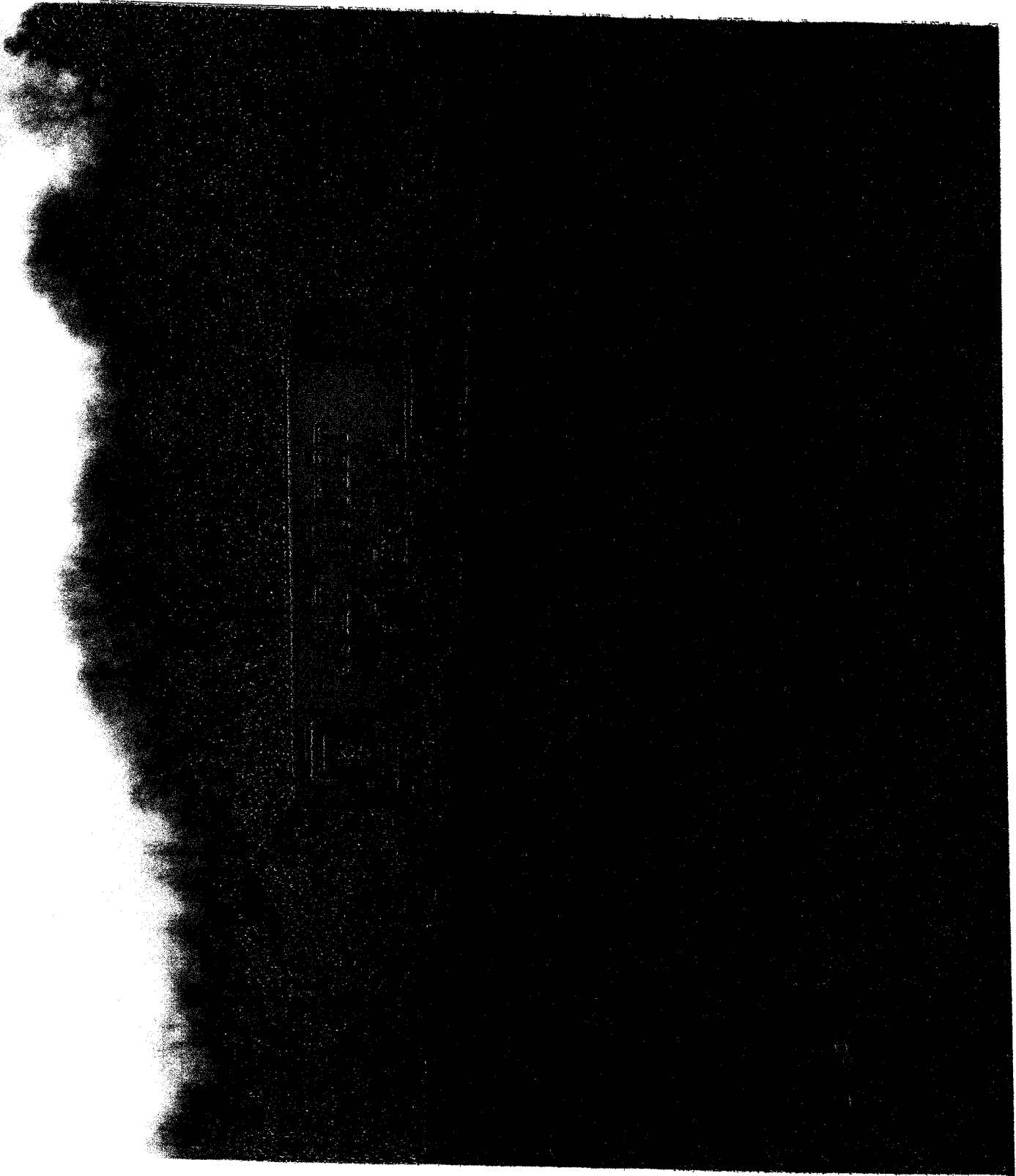
A handwritten signature in black ink, appearing to read "J. Michael Murray", is written over a horizontal line.

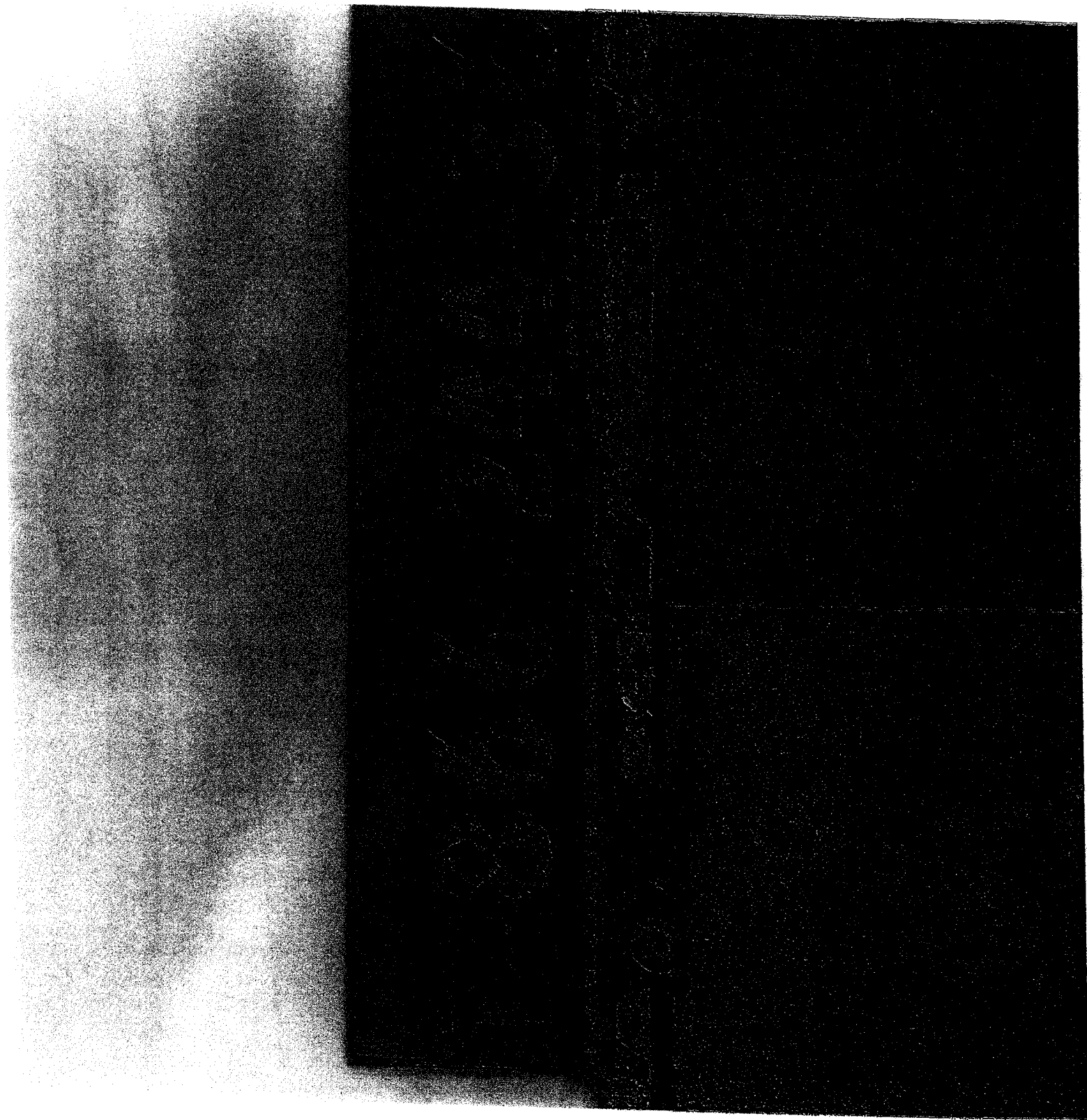
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BERKMAN, GORDON, MURRAY & DeVAN

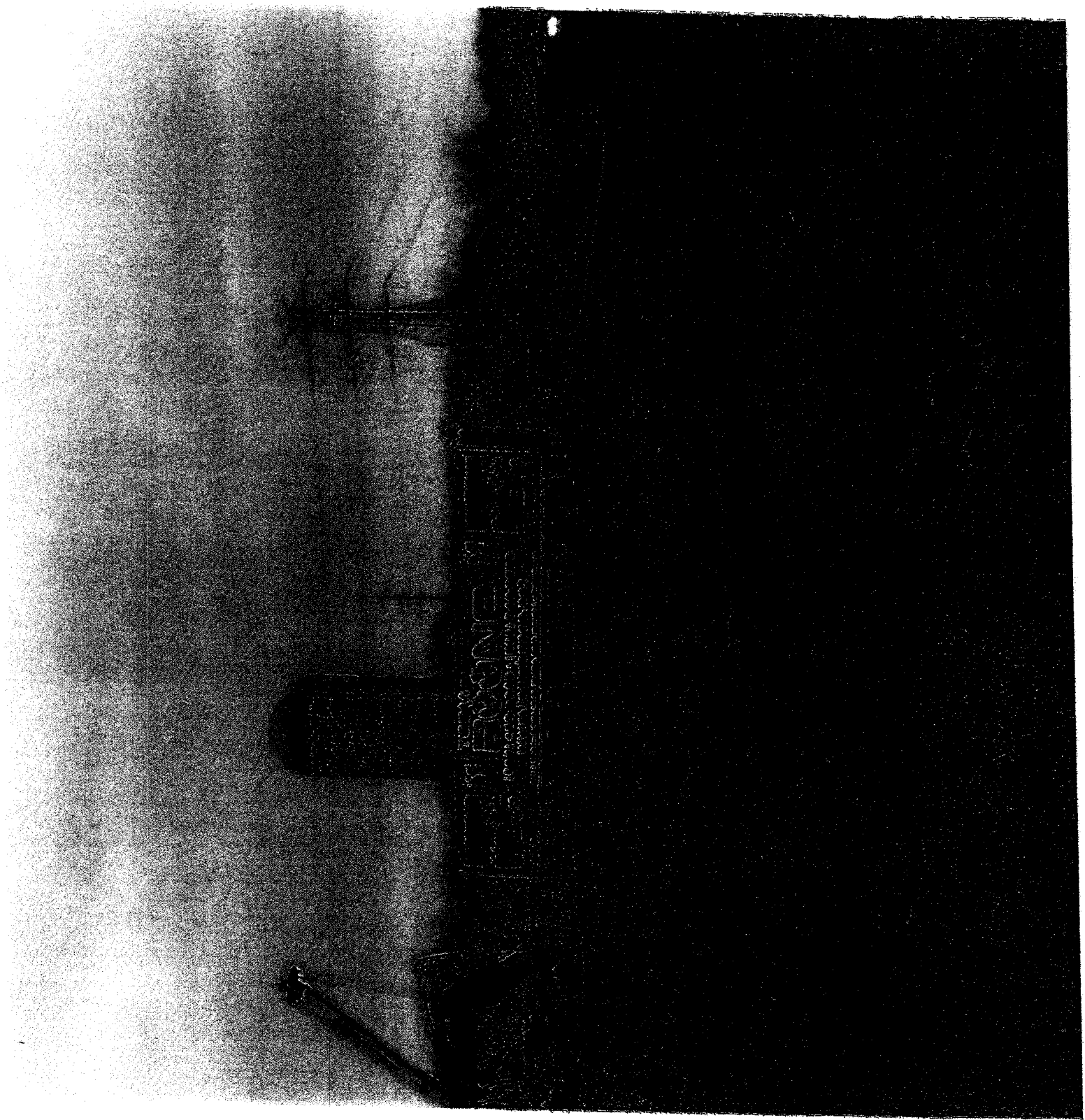
One of the Attorneys for Petitioner



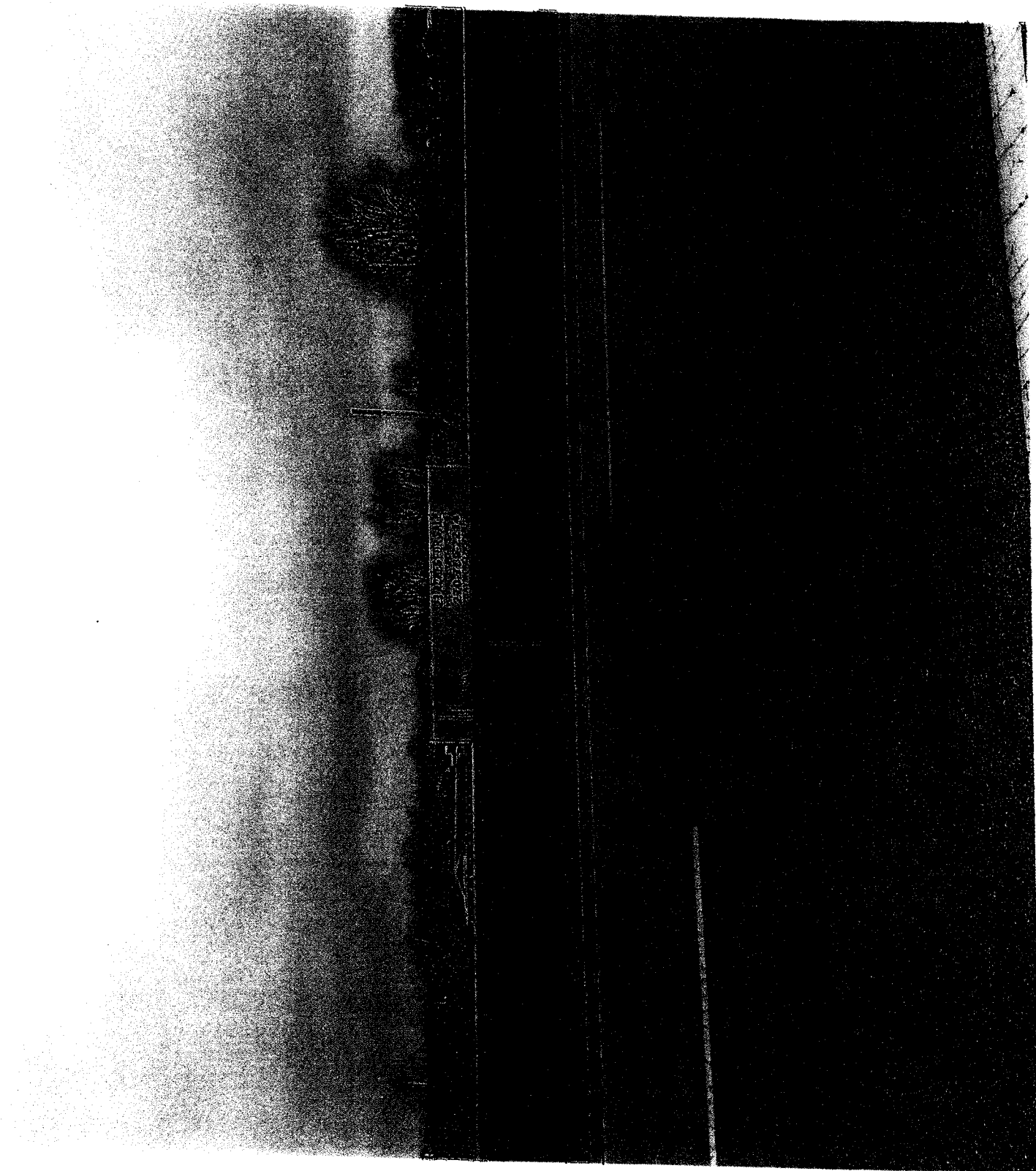






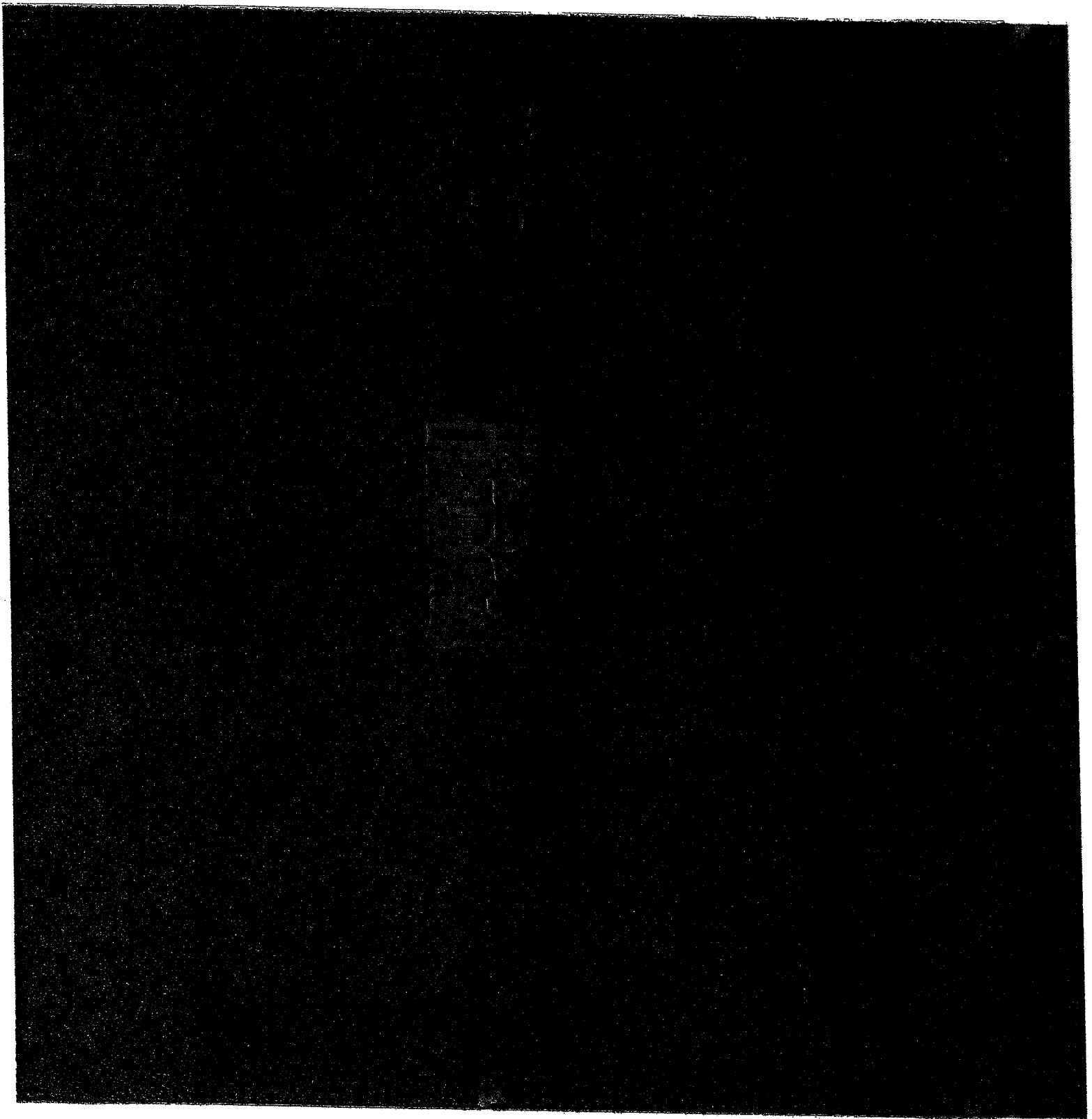


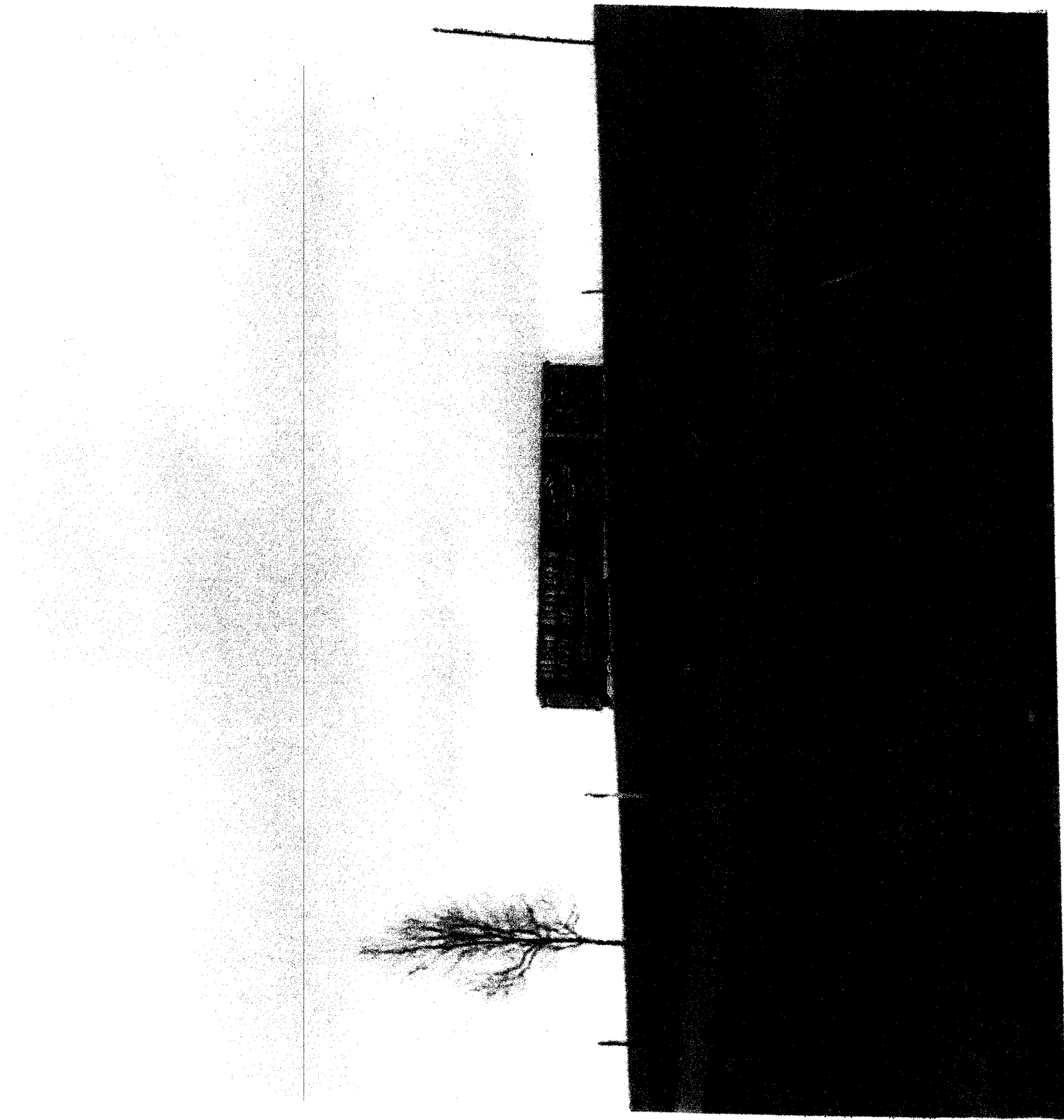


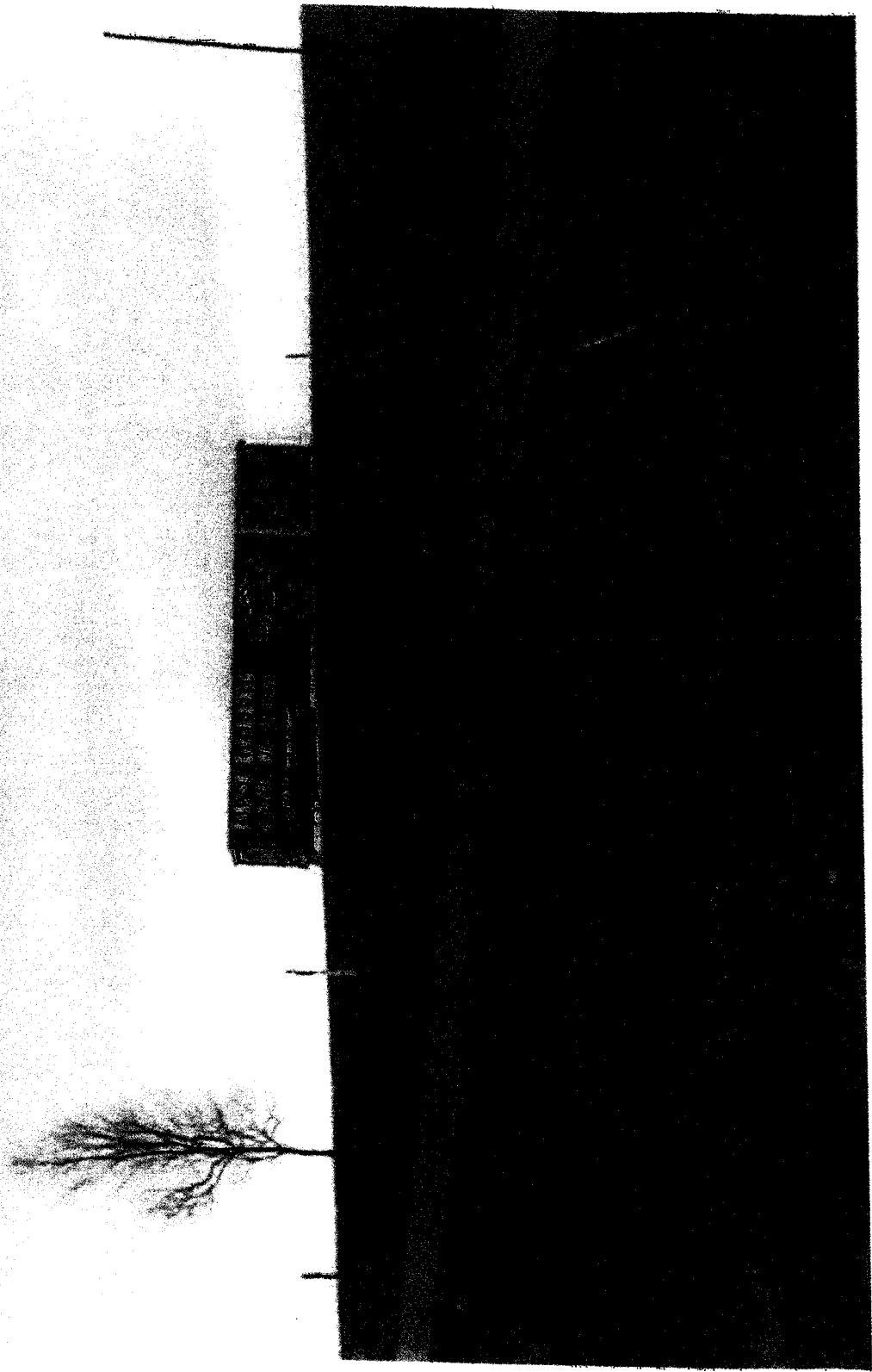


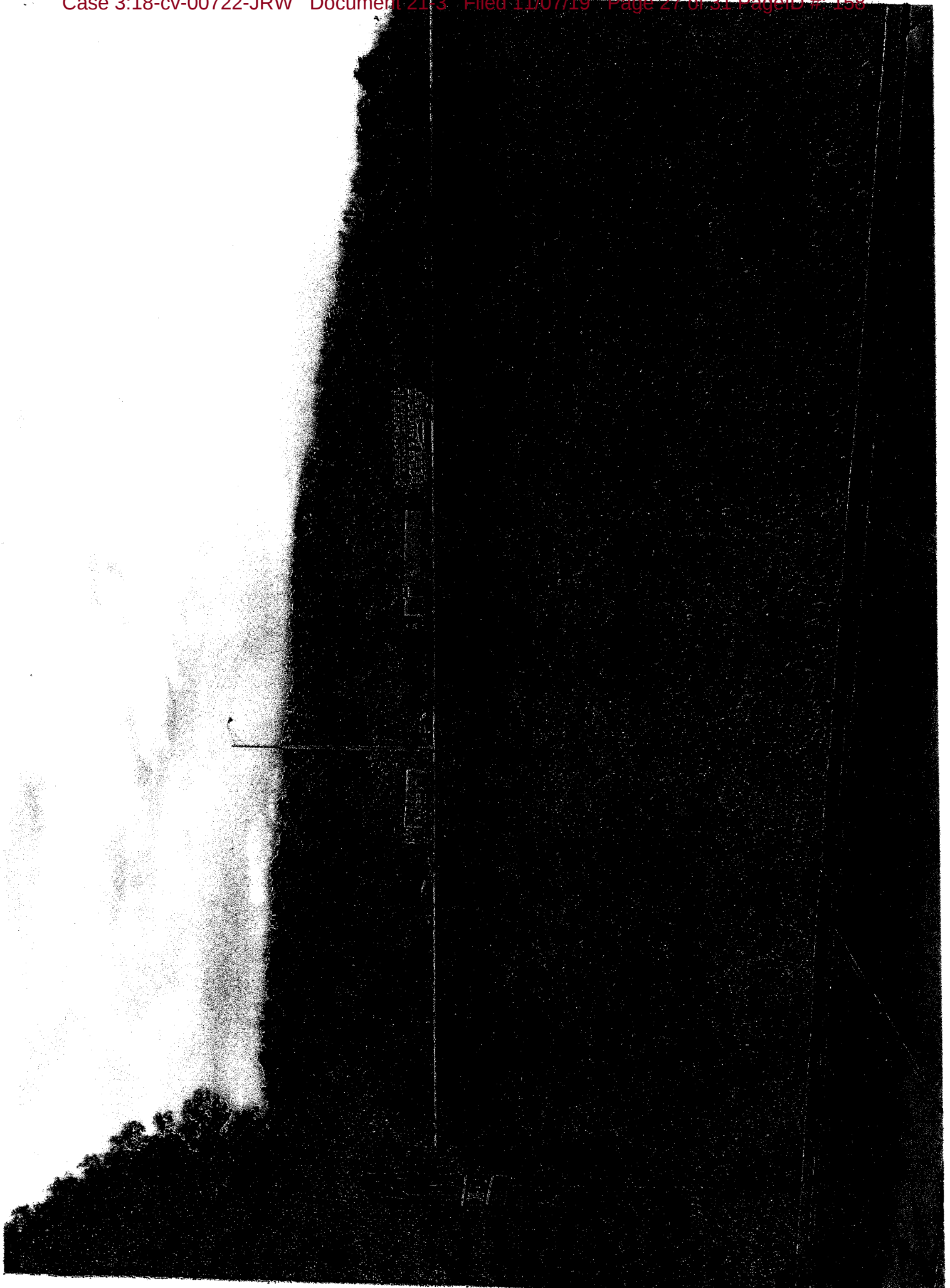
GOLF & WATER EXHIBIT
HOTEL & RESTAURANT

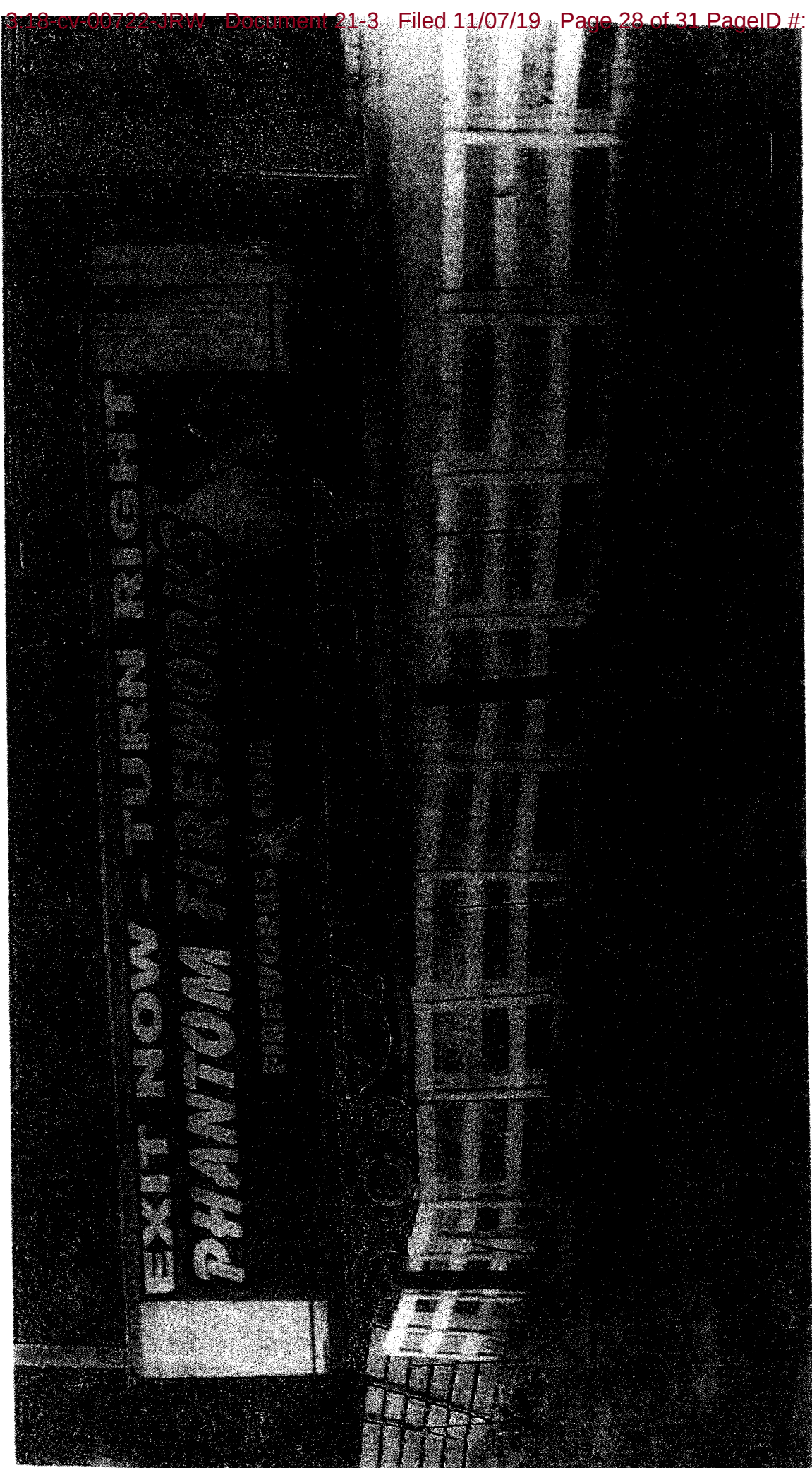
SS COMPANY TOWN
HOCKEY CASTLE SHOW

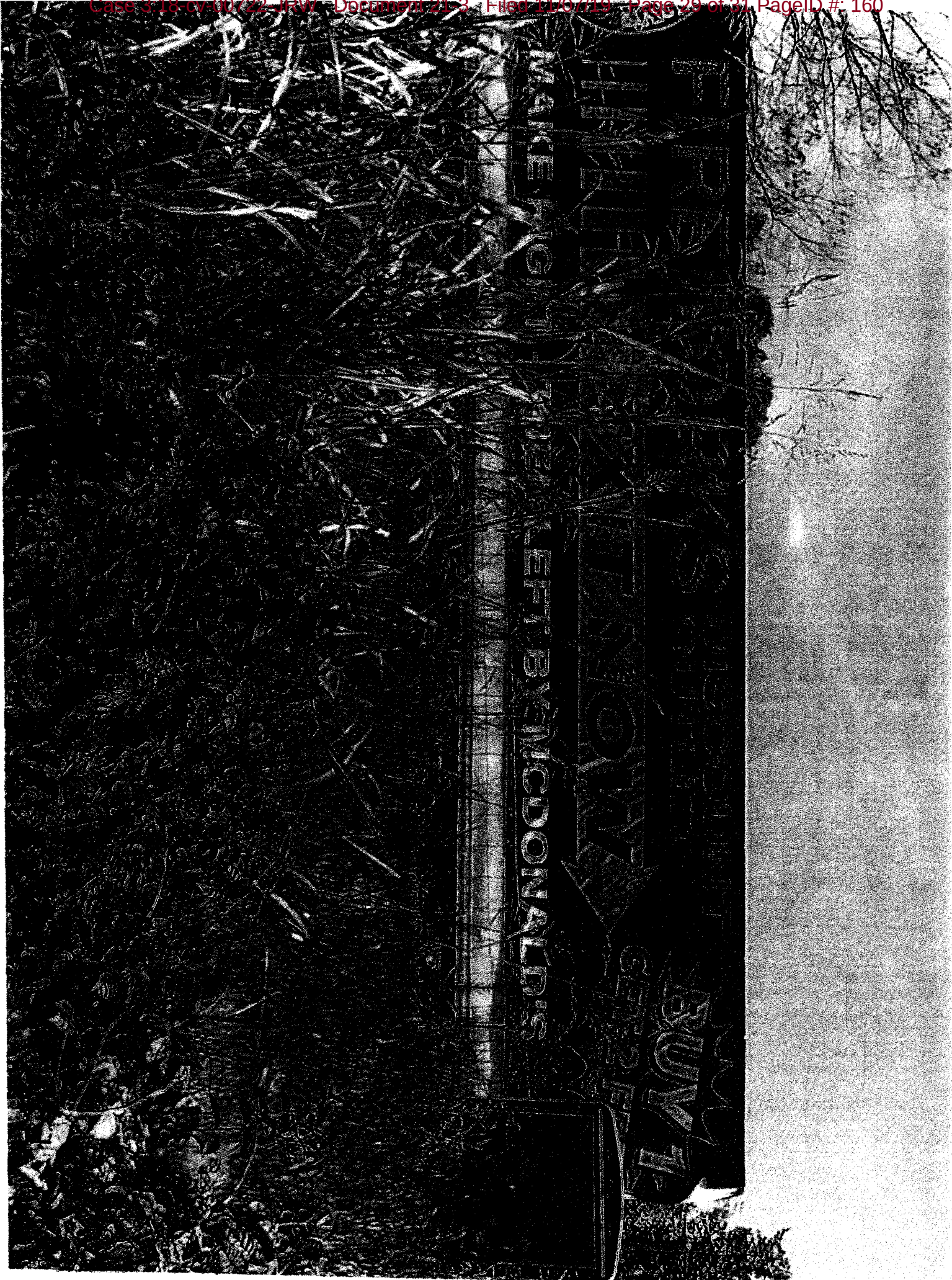


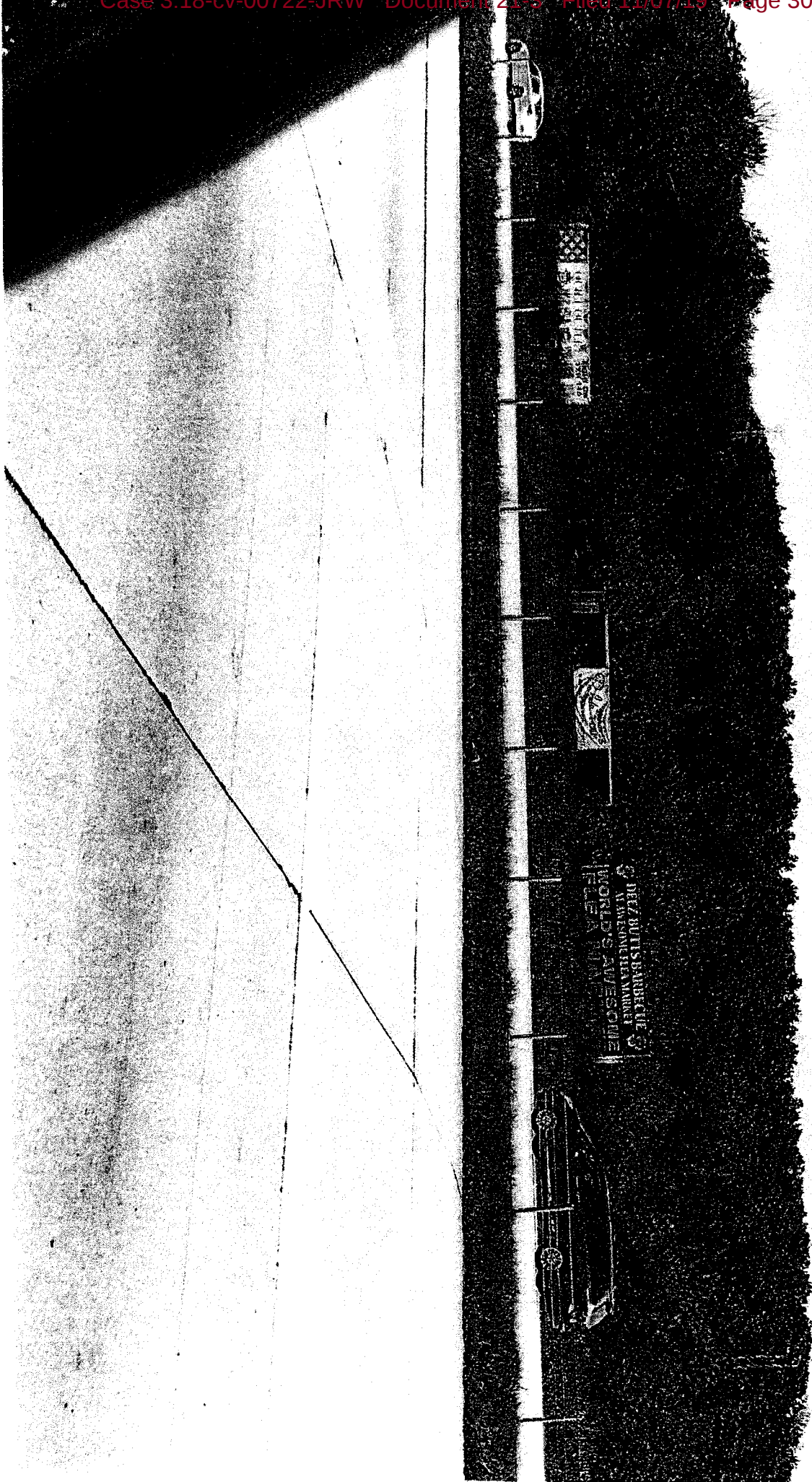
















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