

1980

Sharon Knight v. Daniel R. Leigh : Brief of Appellant

Utah Supreme Court

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IN THE SUPREME COURT
OF THE
STATE OF UTAH

SHARON KNIGHT, *

Plaintiff and Appellant, *

vs. *

DANIEL R. LEIGH, *

Deferdant and Respondent. *

Case No. ~~89984~~ ¹⁰⁸⁶⁷

BRIEF OF APPELLANT

Appeal from Judgment of the Second Judicial
District Court of Weber County, State of Utah,
the Honorable Calvin Gould presiding.

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FILED

APR 15 1980

IN THE SUPREME COURT
OF THE
STATE OF UTAH

SHARON KNIGHT, *
Plaintiff and Appellant, *
vs. * Case No. 69061
DANIEL R. LEIGH, *
Defendant and Respondent. *

BRIEF OF APPELLANT

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IN THE SUPREME COURT OF THE STATE OF UTAH

SHARON KNIGHT,	*	
Plaintiff and Appellant,	*	
vs.	*	Case No. 69061
DANIEL R. LEIGH,	*	
Defendant and Respondent.	*	

BRIEF OF APPELLANT

STATEMENT OF THE NATURE OF THE CASE

This is a personal injury action based upon the doctrine of negligence. Appellant, Plaintiff below, while driving her automobile through an intersection in Ogden, Utah, received injury to her person and property when Respondent, Defendant below, negligently drove his automobile into the front side of Appellants automobile. The incident described above occurred on the 28th day of October, 1977.

DISPOSITION IN THE LOWER COURT

This case was tried in the District Court of Weber County, State of Utah. The Honorable Calvin Gould, sitting without a jury, presided at the trial which occurred on the 4th day of December, 1979.

The court found the Appellant 100% negligent and

the proximate cause of the automobile accident giving rise to this suit and, therefore, denied her recovery against the Respondent.

RELIEF SOUGHT ON APPEAL

Sharon Knight, Appellant herein, seeks relief as follows:

1. A reversal of the trial court's decree of judgment based upon erroneous findings of fact and application of the law thereto.
2. Remand to the lower court for a determination of the Appellant's damages.

STATEMENT OF FACTS

In the early evening of October 28, 1977, Appellant was traveling south on Washington Boulevard in her 1965 Chevrolet. As she approached the intersection of Washington Boulevard, Second Street, and Harrisville Road (commonly known as "Five Points" See Schematic A), the semaphore in the intersection showed a red light for her directional flow of traffic. Appellant came to a complete stop behind one other vehicle and being in the left lane of traffic, prepared to make a left-hand turn to travel eastward up Second Street. Appellant, at this approximate time, activated her automobile's left directional signal.

When the semaphore regulating Appellant's lane of traffic turned green she slowly followed the automobile

in front of her into the intersection to await a safe moment to execute her turn. At the time the semaphore showed green in Appellant's lane of traffic, it showed green for northbound traffic on Washington Boulevard at the same intersection. All other lights in the intersection showed red.

When Appellants light turned amber, the northbound Washington Boulevard traffic slowed and stopped. This made it safe for the car in front of Appellant to execute a proper left-hand turn. That vehicle proceeded on its way eastward on Second Street. Thereafter, Appellant cautiously edged to the left while simultaneously keeping an eye out for any signs of oncoming northbound traffic. As Appellant's light changed to red she began to complete the execution of her turn. As she did so, Respondent was traveling in his vehicle northward on Washington Boulevard at a speed of approximately 30 to 50 miles per hour. As Respondent approached the Washington Boulevard, Second Street and Harrisville Road intersection, he was traveling in the far right-hand lane of traffic. Although the semaphore regulating his lane of traffic had shown amber and then red, he failed to slow down as he approached the intersection. He entered the intersection causing his vehicle to collide with that of the Appellant's as she was completing her eastbound turn.

The impact caused severe damage to Appellant's

vehicle and minor injury to her person. It occurred with such force that the windshield in Respondent's automobile popped out and landed on the road. It also caused beer and liquor bottles being carried in Respondent's vehicle to be strewn over the intersection.

Schematic No. 9 indicates the above-described paths of travel as well as the impact point of Appellant and Respondent's vehicles. It also illustrates the color of the semaphore lights in the intersection at the time of impact and the location of Appellant's witnesses at the time the collision occurred.

Schematics one through eight show the different phases of the semaphore at Second Street and Washington Boulevard.

POINT I

WITNESS DOREEN HALACY'S TESTIMONY WAS ACCURATE AS TO ALL MATERIAL POINTS OF FACT RELATING TO THE OCCURRENCE OF THE 28 OCTOBER 1977 ACCIDENT. THE COURT BELOW ERRED IN FINDING HER TESTIMONY UNRELIABLE.

The testimony of the witness Halacy is reliable and can be squared with the sequence of the lights and the physical movement of Appellant's vehicle while turning left from Washington Boulevard onto Second Street.

The court found that the above named witness' testimony was not reliable based upon the sequence of the lights and the movement of Appellant's vehicle; however, the court was clearly in error (See footnote in Memorandum

Decision).

Mrs. Doreen Halacy, an adult, who did not know either of the parties to the accident, was traveling west on Second Street immediately before the accident. As she approached the intersection, the light for her changed to red requiring her to stop. There were no westbound vehicles in front of hers stopped at the intersection. The accident occurred almost in front of her. She observed Appellant's vehicle, with its signal light on, signaling for a left-hand turn. She further testified that Appellant's vehicle was coming from Harrisville Road (transcript page 41 and 42, lines 30, 1-30). (Mrs. Halacy was incorrect as to the street Appellant's vehicle was coming from. As testified to by Appellant, she was traveling south on Washington Boulevard and was turning east onto Second Street.) However, at worst, her error was minimal because Appellant's vehicle was almost through its turn when the collision occurred. The final line of travel for vehicles turning east onto Second Street from Harrisville Road, as well as vehicles turning east onto Second Street from Washington Boulevard is the same. Also, Mrs. Halacy arrived at the intersection after Appellant's vehicle had entered the intersection and was making her turn. (Mrs. Halacy testified that the light just turned red when she arrived at the intersection. [Transcript page 41 lines 27-29]). Appellant testified that she entered the inter-

section on a green light and it turned amber while she was waiting to make her turn (transcript page 52, lines 25-30).

The critical part of her testimony dealt with the color of the light for the Respondent as he entered the intersection. Mrs. Halacy testified that Respondent's light was red when he entered the intersection (transcript page 43, line 26). She further testified that all lights were red, except the light that controls Harrisville road, and that light was green. (See Schematic No. 5) (Transcript page 43, lines 28-30.) Mrs. Halacy was 100% correct as to the color of all the lights when the accident occurred, according to the sequence of lights as testified to by Harry Moore, the State Traffic Signal Supervisor for the Utah Department of Transportation (transcript pages 105-110). (The light schematics 1-8 attached depict the sequence of the lights as testified to by Mr. Moore.)

The reason Mrs. Halacy knew all the lights were red, except the one controlling eastbound traffic on Harrisville Road, is because she was very familiar with the intersection. She lived up the hill from Second Street and Washington Boulevard and traveled the street frequently. Also, she testified that all other vehicles traveling north on Washington Boulevard had stopped for several seconds before Respondent's vehicle had entered the intersection (transcript page 50 lines 15-30).

As the court can plainly determine, this is not

a normal intersection where the lights are green for east and westbound traffic when the lights are red for north and southbound traffic.

Because of Mrs. Halacy's position to observe the intersection, her knowledge of the correct light sequence and her unbiased testimony, her testimony is highly reliable. More important, her testimony is accurate in terms of the sequence of the lights and the color of the light when Respondent entered the intersection. I cannot see why the court below would find her testimony unreliable just because she was incorrect in believing that Appellant's vehicle approached the intersection from Harrisville Road and not Washington Boulevard.

The court was clearly in error in concluding that her testimony cannot be squared with the sequence of the lights and the physical movements of Appellant's vehicle. As this court can determine, her testimony clearly squares with the light sequence.

POINT II

WITNESS BARNES, THOUGH MISTAKEN AS TO THE COLOR OF THE LIGHT REGULATING HIS OWN LANE OF TRAFFIC, WAS ACCURATE AS TO THE COLOR OF THE SIGNAL REGULATING RESPONDENT'S LANE OF TRAFFIC.

Mr. James Barnes testimony should not have been declared unreliable by the court below. His testimony was accurate concerning the color of the light when Respondent's vehicle entered the intersection.

Mr. Barnes, age thirty, was traveling west on Second Street just prior to the accident. As he approached the light at Second and Washington it was red. He was required to wait until the light changed to red for northbound traffic before he could turn. He was unable to make a right-hand turn on the red light because of the traffic (transcript page 22, line 26). He testified that the light for westbound traffic on Second Street had changed to green before he turned, but that was incorrect. His light stayed red when the light for north and southbound traffic turned red. Because there is a different light sequence at this intersection than there is at a normal intersection, it is easy to see why Mr. Barnes thought the light for east and westbound traffic had changed to green.

The important part of his testimony was the reason he could not make a right-hand turn on a red light, and the length of time that had passed after his turn, but before the collision. The reason he could not make a right-hand turn on the red light was the heavy traffic flow moving north on Washington Boulevard. The Respondent testified that the traffic was heavy--not quite bumper to bumper. The heavy traffic flow can be attributed to the fact it was the early evening of the second weekend of the annual deer hunt. This creates a seasonally heavy traffic load on all major intersections in the Ogden area (transcript page 75 lines 15-24). Mr. Barnes waited for the

northbound traffic to be stopped by the red light before he could safely turn right.

Mr. Barnes testified he had completed his right turn and was traveling north on Washington Boulevard when the accident occurred. He heard screeching of brakes, tires squealing, and a subsequent collision. He looked into his rear view mirror and saw a vehicle flying across the intersection. Mr. Barnes testified that these events took approximately ten seconds (transcript page 34 lines 12-24). On cross-examination, when time was counted, he testified it took only six seconds (transcript page 38 line 38). The amber cycle at this particular intersection is four seconds in duration (transcript page 114 line 15).

As Mr. Barnes started his right turn, the vehicles traveling north on Washington Boulevard were stopping for the amber light. The accident did not occur until six to ten seconds had elapsed. At a minimum, the light had been red for two seconds before Respondent's vehicle entered the intersection.

POINT III

THE TESTIMONY OF RESPONDENT WAS HIGHLY INACCURATE AS TO THE FACTS SURROUNDING THE ACCIDENT. RESPONDENT'S TESTIMONY IS, THEREFORE, UNRELIABLE.

The court erred in finding that the Appellant was 100% negligent in causing the collision.

There was evidence before the court, not considering the fact of whether or not the Respondent ran a red

light, to find sufficient negligence on the part of the Respondent that a no cause of action should have been entered against him.

Respondent testified that there was approximately 200 yards (600 feet) between him and the cars that were entering the intersection at Second and Washington Boulevard just before the accident (transcript page 95 lines 6-7). That statement could not be correct in light of the following facts: (1) It was 6:20 p.m. on the Friday evening before the second weekend of deer hunting at a major intersection in Ogden, and, (2) Respondent had earlier testified that the traffic was not quite bumper to bumper. Traffic not quite bumper to bumper certainly would not have a 600 foot distance between vehicles. If Respondent was correct and there was 600 feet between his vehicle and the vehicles that were entering the intersection, then at 30 miles an hour Respondent's vehicle would have taken 13.3 seconds to enter the intersection. Clearly 13.3 seconds would have been sufficient time for both vehicles to execute their left-hand turns from Washington Boulevard onto Second Street.

When Respondent was questioned as to how much time had elapsed from when he first saw Appellant's vehicle and when the impact occurred, he testified five seconds (transcript page 95, lines 6-7). If that is correct, at 30 miles an hour, Respondent could have only

traveled 225 feet before the impact. A vehicle going 30 miles per hour on dry asphalt pavement can normally stop in 108 feet. This includes a 1 3/4 second reaction time. Therefore, Respondent should have had sufficient time to stop and avoid the collision.

On cross-examination Respondent testified that he was about 60 to 100 feet from the intersection when the first vehicle turned left (transcript page 96, lines 2-3).

If this testimony is correct, then at 30 miles an hour it would only take 1.3 seconds to travel 60 feet and 2.2 seconds to travel 100 feet; the Respondent would have impacted with the first vehicle turning left.

Respondent testified that a hazard had been created at the intersection by the number of vehicles that were trying to turn left from Washington Boulevard onto Harrisville Road. He further testified that he could not determine if there were any vehicles turning left from Washington Boulevard onto Second Street, and also felt that any such vehicles could not have observed him (transcript page 104). Respondent, while approaching this apparent hazard, did not slow his vehicle. A reasonable person approaching a recognizable hazard would have reduced his speed sufficiently to react properly in the event of unexpected problems. Respondent did not reduce his speed until he tried an emergency stop just prior to impact, which of course was too late.

As this court can clearly determine, the Respondent was incorrect in his factual observation of the accident. However, the lower court did not find his testimony unreliable or find any negligence on his part. This is a clear error that this court is now asked to correct.

CONCLUSION

The facts and the points of dispute, and the argument presented to the court in the foregoing brief represents Appellant's position that the Honorable Court in and for Weber County erred in its finding of fact that Appellant's witnesses were unreliable and that Appellant must be charged with 100% of the negligence proximately causing the October 28, 1977, accident.

It is Appellant's submissions to this court that the court below erred in finding Appellant's witnesses unreliable. This error resulted in an improper interpretation of fact and a ruling adverse to Appellant.

Appellant seeks relief from the error of the court below by pointing out the following important points:

1. Witness Doreen Halacy was a highly competent witness. Her only error in recollecting the occurrences to which she testified was which road the Appellant's vehicle approached the Five Points intersection from. Whether the approach was from Harrisville Road, as Mrs. Halacy testified, or from Washington Boulevard, would have had no effect on the position of Appellant's vehicle at

the time of impact. The witness was correct as to all other facts pertinent to an accurate recount of the accident.

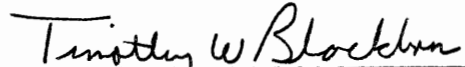
2. Witness Barnes was excusably incorrect regarding the color of the traffic signal regulating his own lane of traffic. Its color would have made no difference as to the legality of his own right-hand turn. Further, such a mistake is excusable due to the nature of the light sequence at the Five Points intersection. As to the color of Respondent's light, Mr. Barnes had to have been correct because of the light sequence and his description of the traffic flow. Therefore, as to all important points, Witness Barnes testimony was very accurate.

3. Respondent's testimony regarding the facts surrounding the accident could not have been correct. His distance and time estimates could not have been accurate. If they were, the accident of 28 October 1977 would not have occurred at all. Therefore, Respondent's recount of the facts is unreliable, not the testimonies of Mrs. Halacy or Mr. Barnes who represent the only objective witnesses in a position to observe and hear the accident.

It is therefore submitted to this Honorable Court that its relief sought should be granted reversing the trial court's decree of judgment by finding the Respondent, not the Appellant, 100% negligent, and remanding the

matter to the trial court for a determination of Appellant's damages.

Respectfully submitted,


TIMOTHY W. BLACKBURN
Attorney for Appellant

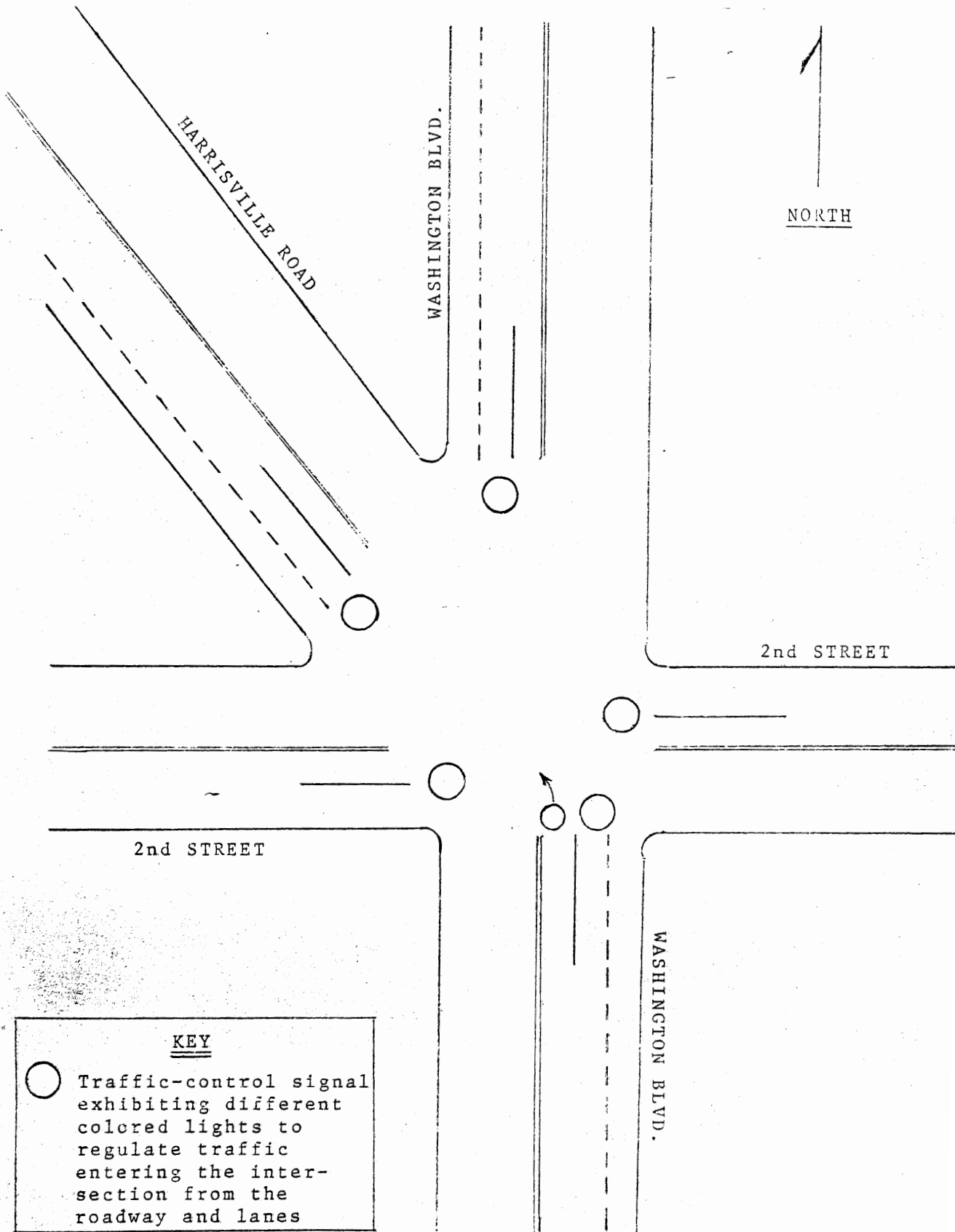
I certify that on the 14th day of April, 1980, I mailed a copy of the foregoing Brief of Appellant, U.S. mail, postage prepaid, and addressed to the Attorney for Respondent, John T. Caine, Esq., Legal Arts Building, 2568 Washington Boulevard, Ogden, Utah 84401.

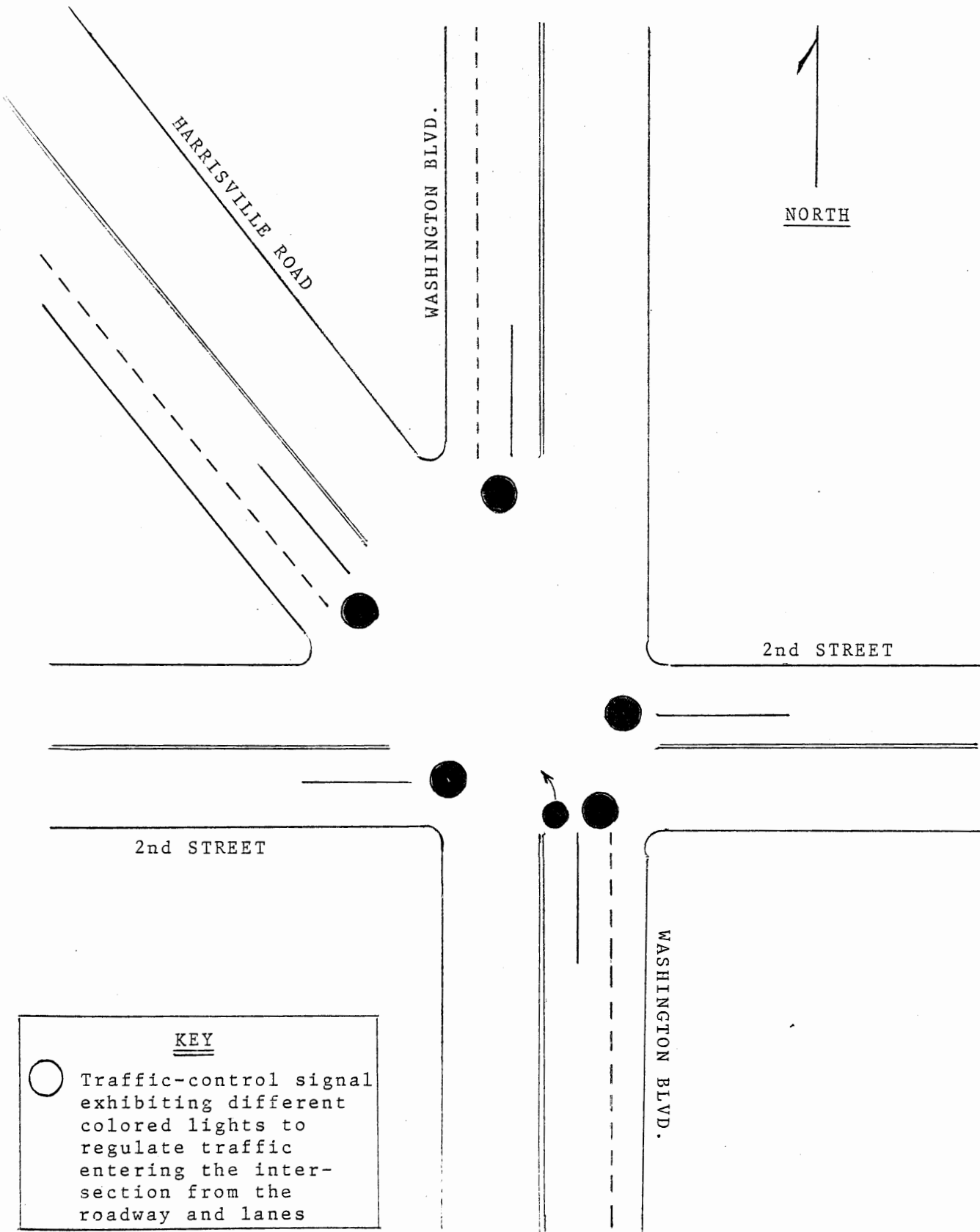
Secretary

APPENDIX

- SCHEMATIC A: Illustration showing "Five Points" intersection
- SCHEMATIC 1-8: Diagrams showing light sequence at "Five Points" intersection
- SCHEMATIC 9: Diagram showing vehicle positions of Appellant, Respondent, witness Halacy and witness Barnes

"FIVE POINTS" INTERSECTION





HARRISVILLE ROAD

WASHINGTON BLVD.

NORTH

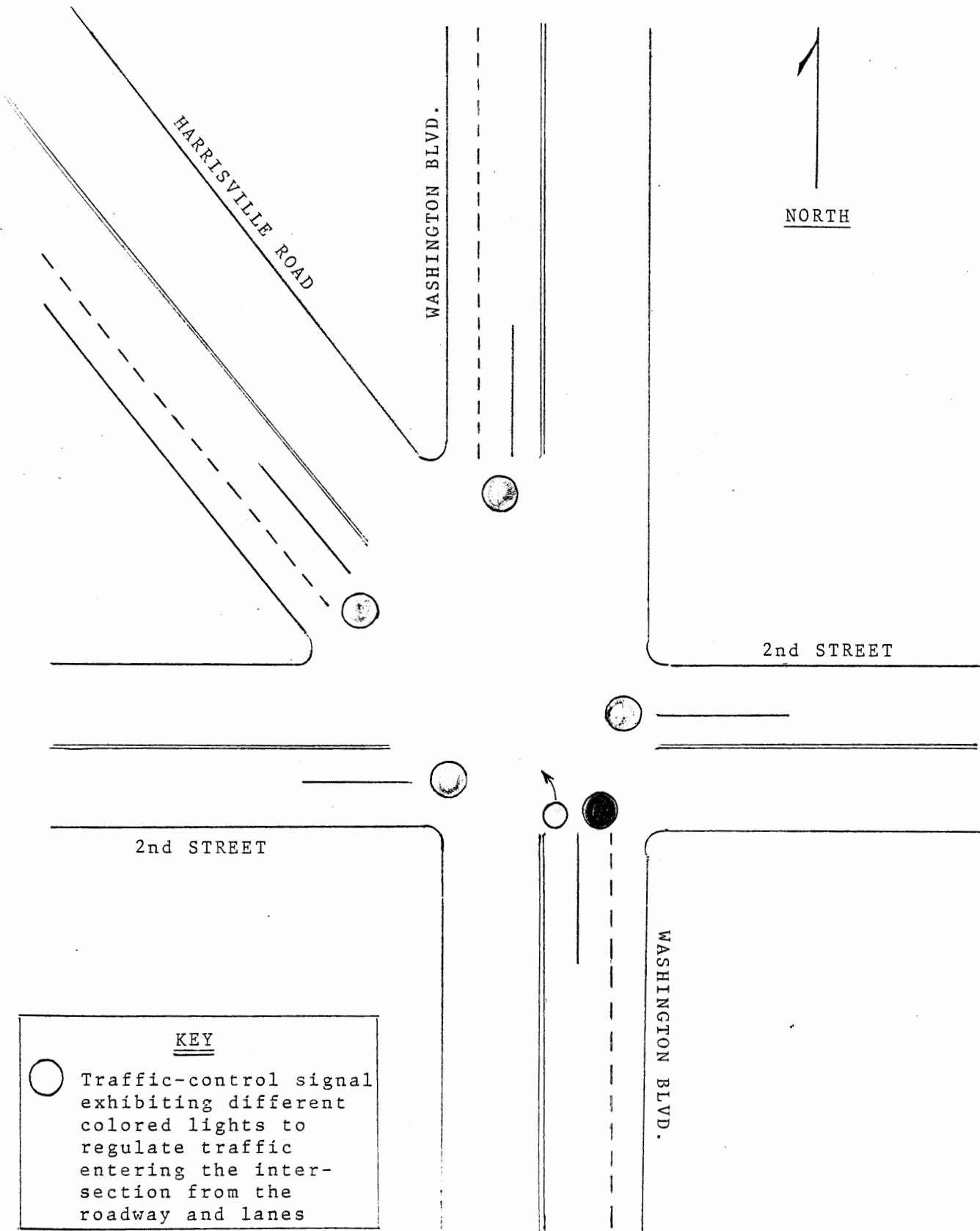
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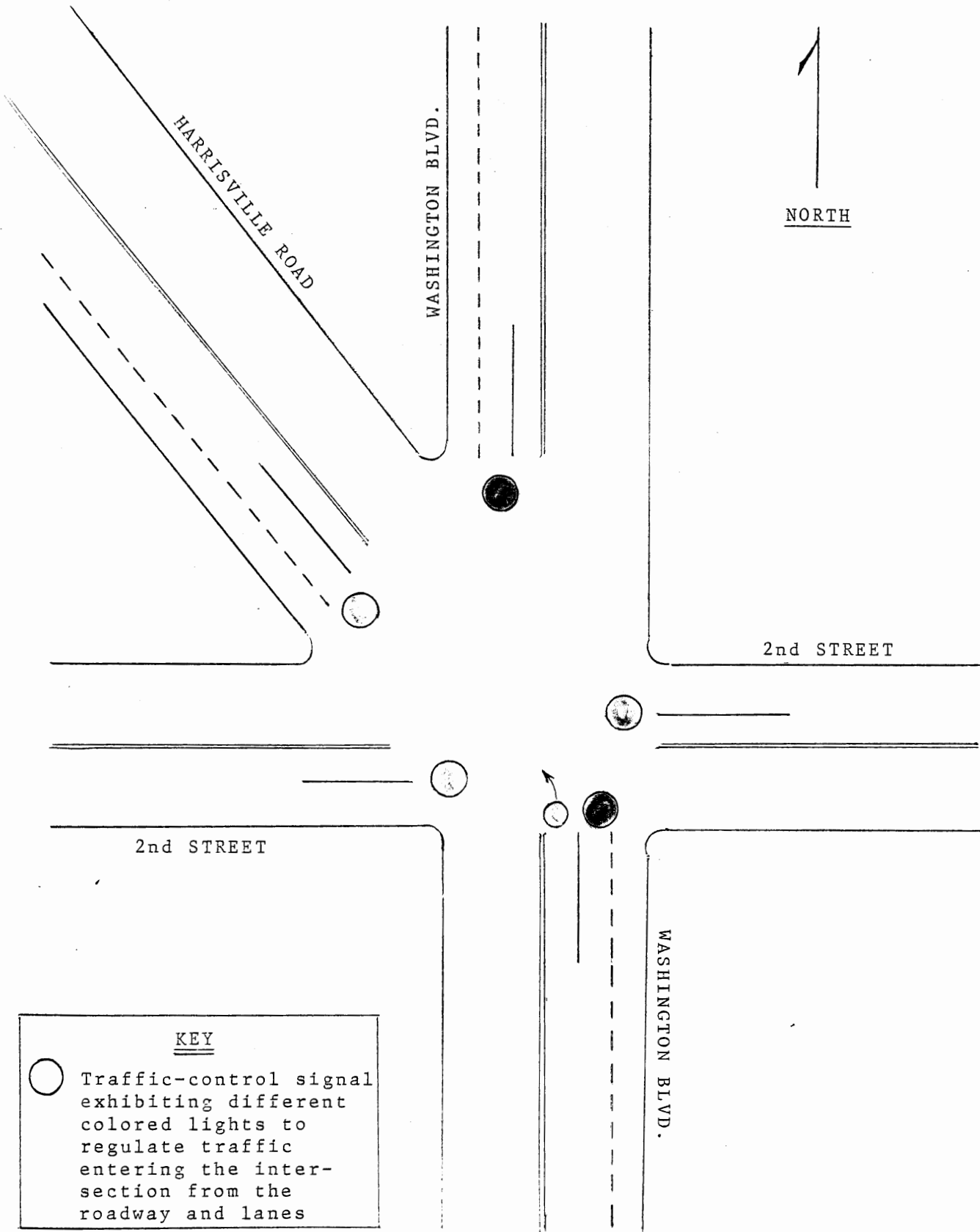
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KEY

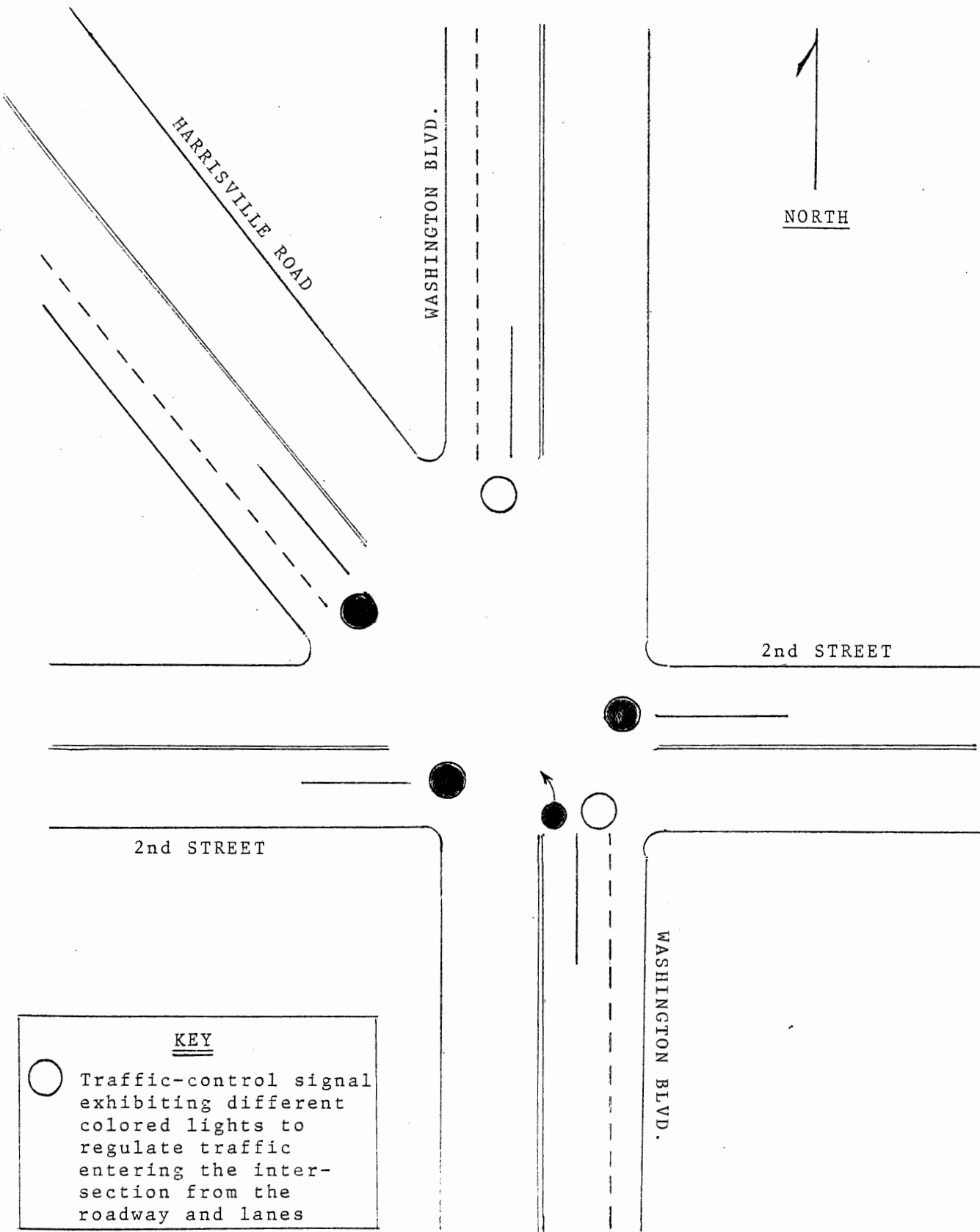
○ Traffic-control signal exhibiting different colored lights to regulate traffic entering the intersection from the roadway and lanes

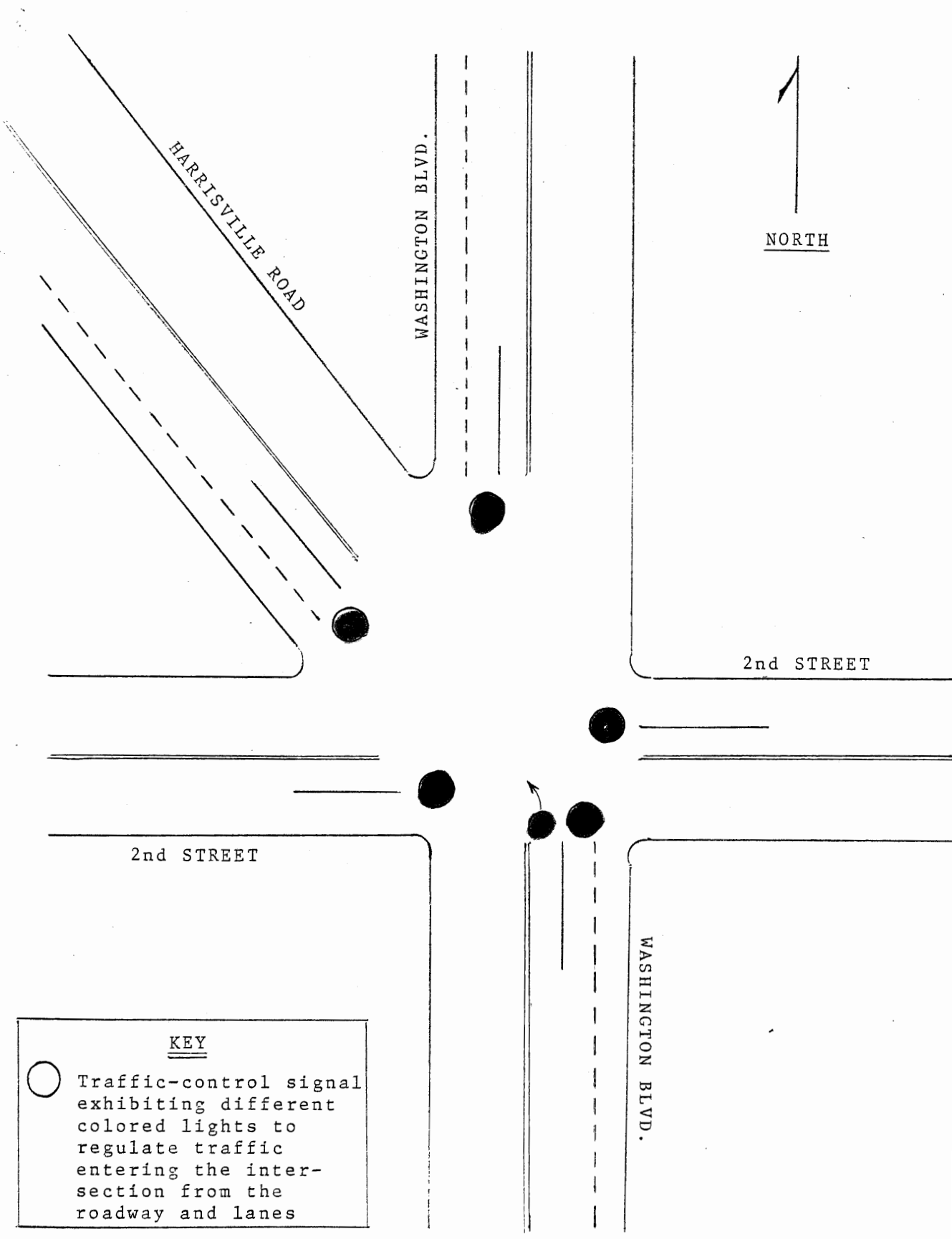




KEY

○ Traffic-control signal exhibiting different colored lights to regulate traffic entering the intersection from the roadway and lanes





HARRISVILLE ROAD

WASHINGTON BLVD.

NORTH

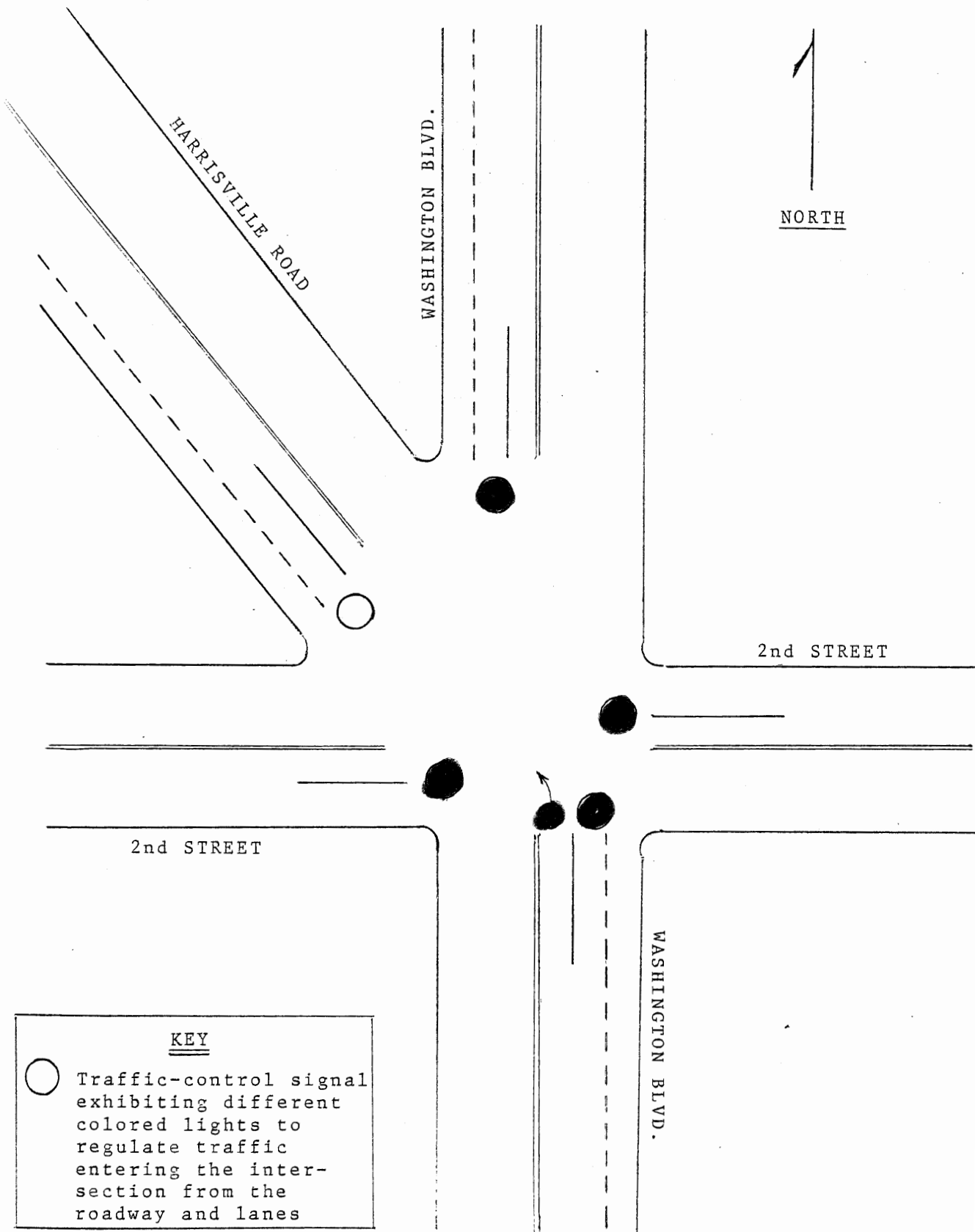
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2nd STREET

WASHINGTON BLVD.

KEY

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HARRISVILLE ROAD

WASHINGTON BLVD.

NORTH

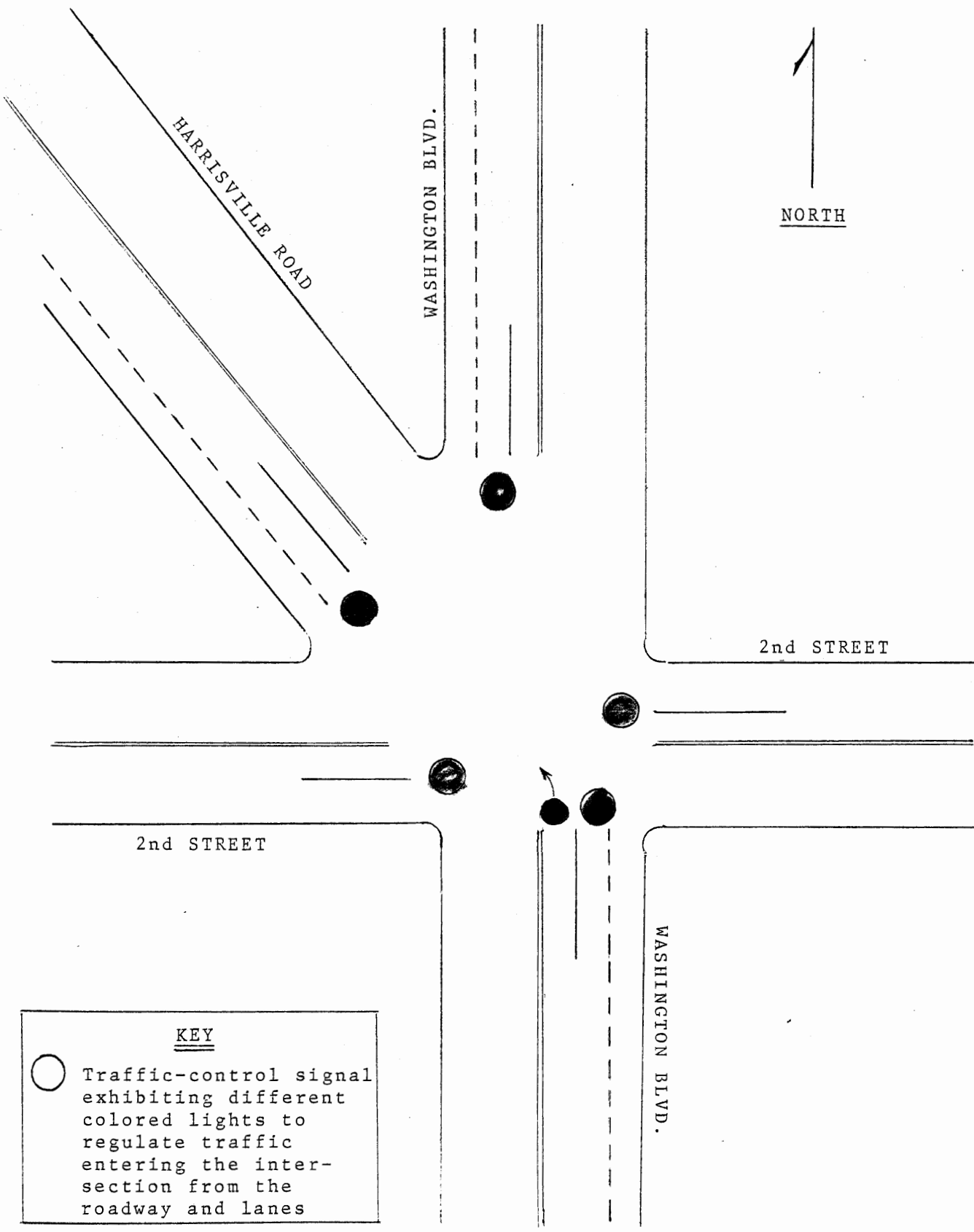
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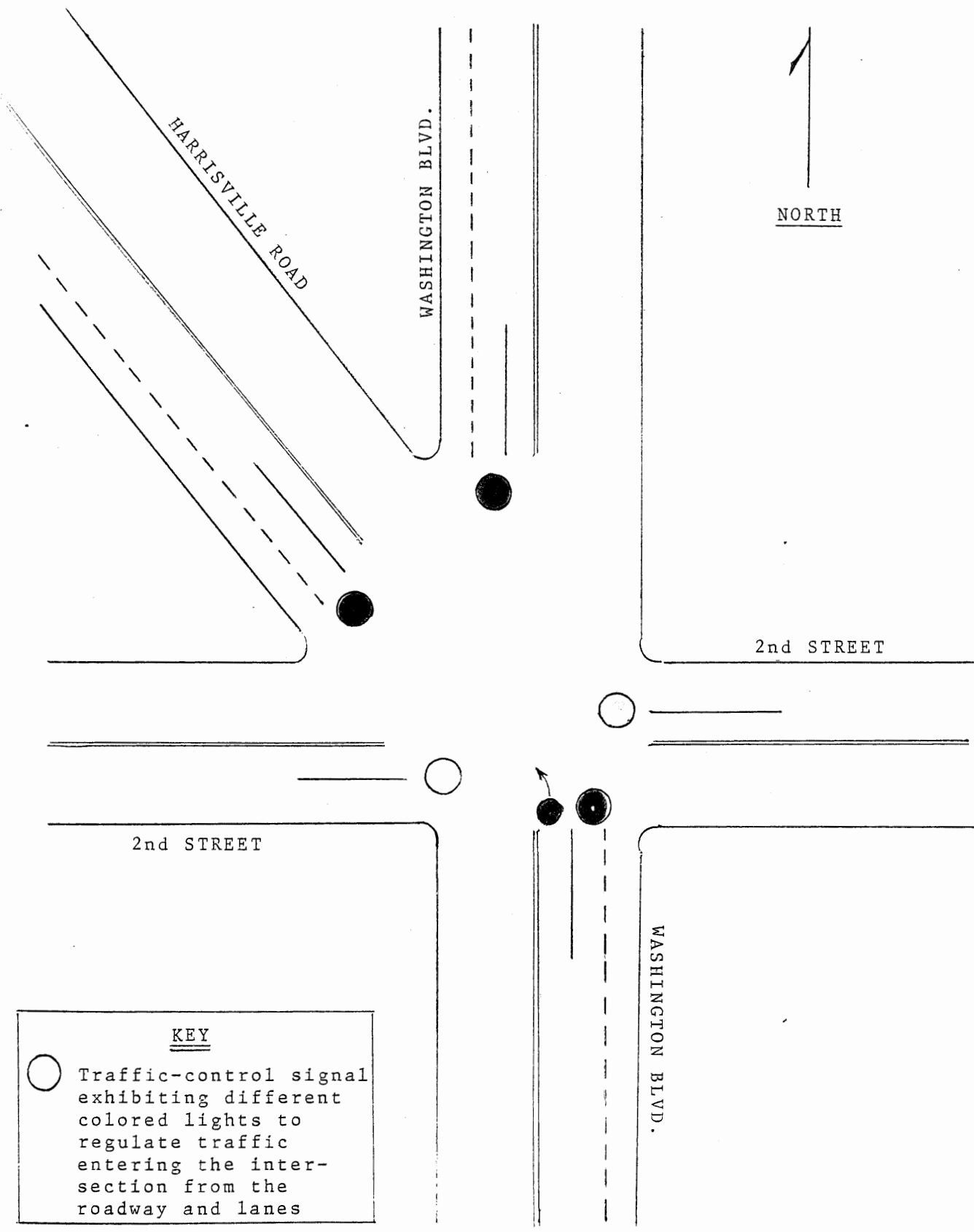
2nd STREET

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HARRISVILLE ROAD

WASHINGTON BLVD.

NORTH

2nd STREET

2nd STREET

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KEY

○ Traffic-control signal exhibiting different colored lights to regulate traffic entering the intersection from the roadway and lanes

