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Richmond, Va.

# Record No. 5198

## In the Supreme Court of Appeals of Virginia at Richmond

## JACK MONROE CHRISTIAN

v.

## COMMONWEALTH OF VIRGINIA

FROM THE CORPORATION COURT OF THE CITY OF WINCHESTER

### RULE 5:12—BRIEFS

§5. Number of Copies. Twenty-five copies of each brief shall be filed with the clerk of the Court, and at least three copies mailed or delivered to opposing counsel on or before the day on which the brief is filed.

§6. Size and Type. Briefs shall be nine inches in length and six inches in width, so as to conform in dimensions to the printed record, and shall be printed in type not less in size, as to height and width, than the type in which the record is printed. The record number of the case and the names and addresses of counsel submitting the brief shall be printed on the front cover.

HOWARD G. TURNER, Clerk.

Court opens at 9:30 a. m.; Adjourns at 1:00 p. m.

IN THE

# Supreme Court of Appeals of Virginia

AT RICHMOND.

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## Record No. 5198

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VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Wednesday the 8th day of June, 1960.

JACK MONROE CHRISTIAN, Plaintiff in Error,

*against*

COMMONWEALTH OF VIRGINIA, Defendant in Error.

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From the Corporation Court of the City of Winchester

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Upon the petition of Jack Monroe Christian a writ of error and *supersedeas* is awarded him to a judgment rendered by the Corporation Court of the City of Winchester on the 18th day of January, 1960, in a prosecution by the Commonwealth against the said petitioner for a felony, but said *supersedeas*, however, is not to operate to discharge the petitioner from custody, if in custody, or to release his bond if out on bail.

# RECORD

* * * * *

## INDICTMENT FOR FELONY.

We, the Grand Jurors of the Commonwealth of Virginia, in and for the body of the City of Winchester, and now attending the Corporation Court for said City at its June Term, 1959, upon our oaths present that on or about the 14th day of June, 1959, within the Corporate Limits of the City of Winchester, one Jack Monroe Christian did feloniously kill and murder one John D. Cox, Jr., against the peace and dignity of the Commonwealth.

Witnesses:

LT. WARNER RUDOLPH

(on back)

We, the jury, find the accused guilty of murder in the first degree and fix his punishment by confinement in the State Penitentiary for a term of 30 years.

Signed

HOWARD H. SHOCKEY
Foreman.

Dec. 17, 1959.

Filed in Clerk's Office of Corporation Court for City of Winchester, Va., December 17th 1959.

P. J. MARSHALL, Clerk.

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## ORDER.

On the 22nd day of June, 1959, came the accused in custody of the jailor and came also the attorney for the Common-

wealth, who prosecutes in this behalf, and the accused being charged in an indictment for felony in that he did unlawfully and feloniously kill and murder one John D. Cox, this case came on for arraignment.

Whereupon, the Court did inquire of the accused if he was represented by counsel or if he had sufficient funds with which to employ counsel, and the accused did answer in the negative; and

Thereupon, the Court doth adjudge and order that Peter K. McKee, Esquire, and David G. Simpson, Esquire, attorneys practicing before this Court, be and they are hereby designated and appointed to represent and defend the said Jack Monroe Christian; and

Whereupon, the accused and his counsel did consider the charge against the accused and, after some time, did advise the Court that the accused was ready for arraignment; and

Whereupon, the Clerk did read to the accused the charge that he did feloniously kill and murder one John D. Cox, as contained in the indictment against him, and did ask the accused how did he say to the charge of murder contained in the indictment, and the accused did answer and say that he was not guilty; and

Thereupon, the Court doth adjudge and order that the trial of this case be and the same is hereby set at ten o'clock (10:00) a. m., on the 15th day of July, 1959, before a felony venire, and this case is hereby continued to the 15th day of July, 1959.

The said Jack Monroe Christian is hereby remanded to the custody of the City Sergeant.

ELLIOTT MARSHALL, Judge.

The above order was received and recorded June 22, 1959.

P. J. MARSHALL, Clerk.

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MOTION.

Now comes the defendant, by counsel, and represents unto the Court as follows:

1. That he is an indigent defendant charged with a felony, to-wit: murder.

2. That on June 22, 1959 Peter K. McKee, Esq., and David G. Simpson, Esq., were appointed by this Court to represent this defendant.

3. That upon arraignment on June 22, 1959 this defendant pleaded not guilty to the indictment charging him with murder.

4. That this defendant has been advised and verily believes that he is in need of and entitled to a psychiatric examination by a psychiatrist of his own choosing.

5. Defendant believes that he is entitled to have such examination conducted where there are proper facilities and where accommodations are conducive to a proper examination, and that the County Jail in which the defendant is incarcerated does not have such facilities or accommodations.

6. That this defendant is without funds with which to employ the proper personnel to perform such examination, but has been advised and believes that such examination is available at nominal cost at the Northwestern Psychiatric Clinic, Winchester, Virginia.

7. This defendant has been advised that his court appointed counsel are willing to have the cost of such
page 7 } examination and the cost of providing adequate guards deducted from whatever fee is awarded them by this Court.

8. Defendant is further advised that the Chief of Police of Winchester, Virginia has agreed to furnish such guards as may be necessary upon authorization by this Court or the Commonwealth's Attorney for the City of Winchester, Virginia.

9. Defendant has further been advised that a prior oral motion for such examination and authorization has been denied him by this Court, and that it is in his interest to set forth his motion in writing and to have such motion and any order pertaining thereto made a part of the record of his case.

WHEREFORE, the defendant moves the Corporation Court for the City of Winchester, Virginia that he be allowed to be examined by a psychiatrist of his own choosing and that the Court authorize that he be taken from the County Jail under adequate guard to the Northwestern Psychiatric Clinic, Winchester, Virginia at such time or times as may be prescribed by the examining physician.

JACK CHRISTIAN
By PETER K. McKEE
Counsel.

Filed in Clerks' Office of Corporation Court for City of Winchester, Va., July 7th 1959.

P. J. MARSHALL, Clerk.

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* * * * *

ORDER.

On the 7th day of July, 1959, came the defendant, Jack Monroe Christian, by counsel, and also came the Commonwealth of Virginia by Dabney W. Watts, Commonwealth's Attorney, and moved the Court that he be allowed to be examined by a psychiatrist of his own choosing and that the Court authorize that he be taken from the County jail under adequate guard to the Northwestern Psychiatric Clinic, Winchester, Virginia, at such time or times as may be prescribed by the examining physician, and it was argued by counsel.

It appearing to the Court that the ends of justice so require, it is, therefore, adjudged and ordered that G. G. Baker, City Sergeant of the City of Winchester, Virginia, shall be given the authority to remove the said defendant, Jack Monroe Christian, from the County jail under adequate guard to the Northwestern Psychiatric Clinic, Winchester, Virginia, at such time or times as may be prescribed by the examining physician, provided, however, that the said G. G. Baker shall have the responsibility of holding the defendant safe from escape.

And upon further motion of the defendant, it not being opposed by the Commonwealth, it is further adjudged and ordered that this case be and it hereby is continued *sine die.*

Enter.

ELLIOTT MARSHALL, Judge.

The above order was received and recorded July 7, 1959.

P. J. MARSHALL, Clerk.

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## ORDER.

On the 16th day of September, 1959, came the accused in custody of the jailor, and came also the attorneys for the accused and the attorney for the Commonwealth, who prosecutes in this behalf, and the accused having entered his plea of not guilty to an indictment for felony charging that he did unlawfully and feloniously kill and murder one John D. Cox, this case came on upon motion of the accused by counsel.

Whereupon, counsel for the accused did move the Court to commit the said accused to Central State Hospital at Petersburg, Virginia, for observation and report to this Court as to his mental condition, to which motion the Commonwealth did consent; and

Thereupon, the Court doth adjudge and order that the said Jack Monroe Christian be and he is hereby committed to Central State Hospital, Petersburg, Virginia, for observation, and the Superintendent of said hospital is hereby directed to cause an investigation and report to be made and filed with the papers in this Court on the mental condition of the said Jack Monroe Christian at the present time and as to his mental condition on the 14th day of June, 1959, the date on which occurred the offense charged against the said Jack Monroe Christian.

The Court doth further adjudge and order that the said Jack Monroe Christian be and he is hereby remanded to the custody of the City Sergeant to await transportation to Central State Hospital, Petersburg, Virginia, and

page 16 } the said Sergeant for the City of Winchester, Virginia, or his agent, and one guard are hereby authorized and directed to transport the said Jack Monroe Christian to Central State Hospital, Petersburg, Virginia, and to deliver him into the custody of the Superintendent of said hospital, and the said City Sergeant, or his agent, and one guard shall be entitled to one meal each as expenses in the transportation of said prisoner and their return to Winchester.

ELLIOTT MARSHALL, Judge.

The above order was received and recorded September 16, 1959.

P. J. MARSHALL, Clerk.

* * * * *

page 20 } COMMONWEALTH OF VIRGINIA
DEPARTMENT OF
MENTAL HYGIENE AND HOSPITALS
CENTRAL STATE HOSPITAL
PETERSBURG, VIRGINIA

Theodore G. Denton, M. D.
Superintendent
Acting

F. W. Gwaltney
Administrative
Director

November 5, 1959.

Honorable Elliott Marshall, Judge
Corporation Court of the City of Winchester
Front Royal, Virginia

*Re*: CHRISTIAN, Jack Monroe
Reg. No. 45511
Ref. 703 M-11

Dear Judge Marshall:

The above-named 23 year old male was admitted to this hospital on September 22, 1959, having been charged with murder. He was sent here for report regarding his mental condition at the present time and at the time of the commission of the alleged offense.

After evaluation by our staff, it is our opinion that under a strict interpretation of the M'Naghten rule the patient is now responsible and probably was responsible at the time of the offense. However, this patient is suffering from a mental illness of long standing, and this illness was a predisposing factor in the commission of the crime. We are also of the opinion that this patient needs to be institutionalized as his mental condition renders it impossible to predict whether he will act in an assaultive manner again in the future. At the present time, this patient is able to cooperate with his counsel in his own defense, and therefore, he should be returned to court for disposition of his case.

We would appreciate it if you would send us a copy of the disposition made on this patient in order to complete our files.

I respectfully submit our staff's evaluation and recommendation and await further orders of your court.

Yours very truly,

THEODORE G. DENTON, M. D.
Acting Superintendent.

WH/ddb

cc. to: Mr. Peyton J. Marshall, Clerk
Mr. Dabney W. Watts, Commonwealth's Attorney
Hiram W. Davis, M. D., Commissioner
Mr. David G. Simpson, Attorney at Law

Filed in Clerk's Office of Corporation Court for City of Winchester, Va., November 7th 1959.

P. J. MARSHALL, Clerk.

* * * * *

page 34 } INSTRUCTION.

The Court instructs the jury that in this case the defendant contends that he was insane at the time the crime was committed. The law excuses the commission of crime if the defendant was insane to the degree defined below.

Every person is presumed to be sane. The burden is upon the defendant to prove his insanity by the evidence to the satisfaction of the jury.

In order for the defendant to be excused for his crime, he must prove by the evidence to the satisfaction of the jury that, although capable of distinguishing between right and wrong and knowing the nature and consequence of his act, he was forced to commit the crime by an impulse which grew out of some mental disease affecting his will power, and such disease had so impaired his mind that he was totally deprived of the mental power to control or restrain his act. This irresistible impulse is to be distinguished from mere passion or overwhelming emotion or from frenzy arising solely from the passion of anger and jealousy.

If the jury is satisfied by the evidence that the defendant was insane as defined above at the time the crime was committed, they will render their verdict in the following form:

"We, the jury, find the defendant not guilty by reason of insanity."

Refused.

E. M.

* * * * *

page 36 } INSTRUCTION 1.

The Court instructs the jury that you are the sole and exclusive judges of the facts of this case, the weight of the evidence and the credibility of the witnesses who have testified. It is the duty of the jury to determine whether you believe or disbelieve the testimony of each witness in whole or in part.

In determining the credibility and weight to be given to the testimony of each witness, the jury should consider his interest, bias or prejudice, if any appear; his appearance and demeanor while testifying; the likelihood or unlikelihood of the truth of his testimony; his opportunity to know that of which he testifies; and from these and all other facts and circumstances of the case, the jury should determine whether to believe or disbelieve in whole or in part the testimony of any witness.

If the jury believe that any witness has knowingly testified falsely as to a material fact, you may disregard his testimony in its entirety or give it such weight as to you it appears such testimony is entitled.

The jury has no right arbitrarily to reject the testimony of any witness; the testimony of all witnesses should be considered in connection with all other facts and circumstances of the case in determining the credibility and weight to be given to such testimony.

Granted.

E. M.

page 37 } INSTRUCTION 2.

The Court instructs the jury that in this case, as in all criminal prosecutions, the defendant is presumed to be innocent until his guilt is established by the evidence beyond a reasonable doubt, and to the exclusion of every reasonable hypothesis of innocence.

The burden of proof is upon the Commonwealth to establish every material fact necessary for conviction by the evidence beyond a reasonable doubt.

This presumption of innocence applies at every stage of the case until or unless the Commonwealth has established every material fact necessary for conviction by the evidence beyond a reasonable doubt.

If, after a fair and impartial consideration of all of the evidence the jury entertain a reasonable doubt of the existence of any material fact necessary for conviction, the jury must find the defendant not guilty. If the jury are satisfied by the evidence beyond a reasonable doubt of the existence of every material fact necessary for conviction, they must find the defendant guilty.

If a set of facts or circumstances should be susceptible of two or more reasonable interpretations, any one of which interpretations points to the innocence of the defendant, the jury must accept that interpretation pointing to his innocence in arriving at their conclusion to be drawn from such set of facts or circumstances.

Granted.

E. M.

page 38 } INSTRUCTION 3.

The Court instructs the jury that every homicide is presumed to be murder in the second degree, and the burden of proving the elements necessary to elevate the crime to murder in the first degree is upon the Commonwealth but, on the other hand, in order to reduce the offense from murder in the second degree to manslaughter, the burden is upon the defendant. However, this burden of the defendant is satisfied if the jury, upon consideration of all facts and circumstances, have a reasonable doubt as to whether the killing was done with malice.

Granted.

E. M.

page 39 } INSTRUCTION 4.

When it is proven that a killing was done with a deadly weapon previously in the possession of the slayer, the jury may find the accused guilty of murder in the first degree unless

the other facts and circumstances create in their minds a reasonable doubt as to whether the killing was done with malice, deliberation, or premeditation.

Granted.

E. M.

page 40 } INSTRUCTION NO. 5.

The Court instructs the jury that to constitute a wilful, deliberate and premeditated killing, constituting murder in the first degree, it is not necessary that an intention to kill should exist for any particular length of time prior to the actual killing; it is only necessary that said intention should come into existence for the first time at the time of such killing or at any time previous thereto.

Granted.

E. M.

page 41 } INSTRUCTION NO. 7.

In this case the accused contends that he was insane at the time the crime was committed. The law excuses the commission of crime if the accused was insane to the degree defined below.

Every person is presumed to be *same*. The burden is upon the accused to prove his insanity by the evidence to the satisfaction of the jury.

In order for the accused to be excused for his crime, he must prove by the evidence to the satisfaction of the jury:

(1) That he was mentally incapable of knowing the nature and consequence of his act, or

(2) That he had insufficient mentality to distinguish between right and wrong, or

(3) That, although capable of distinguishing between right and wrong and knowing the nature and consequence of his act, he was forced to commit the crime by an impulse which he was powerless to control in consequence of *an* disease of the mind. This irresistible impulse must not be one inspired by emotion, passion or frenzy produced by anger, hatred, jealousy or other cause alone, but must be the result of a disease of the mind which totally deprived him of the mental power to control or restrain his act.

If the jury are satisfied by the evidence that the accused was insane as defined above at the time the crime was committed, they will render their verdict in the following form: "We, the jury, do find the accused not guilty by reason of insanity."

Granted.

E. M.

page 42 } INSTRUCTION NO. 8.

The Court instructs the jury that if they should believe from the evidence beyond a reasonable doubt that the accused killed John D. Cox, Jr., as charged in the indictment, and if they should believe from the evidence that at the time of the killing he knew the nature and consequence of his act, and knew that it was wrong and was not forced to commit the crime by an impulse which he was powerless to control in consequence of a disease of the mind, but by an impulse inspired by emotion, passion or frenzy produced solely by jealousy, anger or other emotion, then they should find him guilty of one of the crimes charged in the indictment.

Granted.

E. M.

page 43 } INSTRUCTION NO. 9.

The Court instructs the jury that if you believe from the evidence beyond a reasonable doubt that the accused, Jack Monroe Christian, is guilty of wilfully, deliberately and premeditatedly killing the said John D. Cox, Jr., with malice aforethought, then the jury should find the accused guilty of the murder in first degree of the said John D. Cox, Jr., and fix his punishment by confinement in the State Penitentiary for life or for any term of years not less than twenty (20) years.

If the jury believe from the evidence beyond a reasonable doubt that the accused, Jack Monroe Christian, is guilty of killing the said John D. Cox, Jr., with malice aforethought, but that such are not convinced by the evidence beyond a reasonable doubt act was done wilfully, deliberately and premeditatedly, then the jury should find the accused guilty of murder in second degree of the said John D. Cox, Jr., and fix his

punishment by confinement in the State Penitentiary for not less than five (5) nor more than twenty (20) years.

If the jury believe from the evidence beyond a reasonable doubt that the accused, Jack Monroe Christian, is guilty of killing the said John D. Cox, Jr., without malice or premeditation, but in the heat of sudden passion, with more than slight provocation, or while engaged in mutual combat, then the jury should find the accused guilty of the voluntary manslaughter of the said John D. Cox, Jr., and fix his punishment by confinement in the State Penitentiary for not less than one (1) nor more than five (5) years.

Granted.

E. M.

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page 44 }

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ORDER.

On the 17th day of December, 1959, came the accused in custody of the jailor and came also the attorneys for the accused and the attorney for the Commonwealth, who prosecutes in this behalf, and the accused having previously entered his plea of not guilty to an indictment for the felonious killing and murdering of one John D. Cox, this case came on for trial before a felony jury.

Whereupon, the veniremen heretofore duly drawn and summoned were called by the Clerk and sworn and examined upon the *Voir Dire* by the Court; and two veniremen indicating that they had formed such an opinion as to the outcome of this case that they could not give fair and impartial consideration to any evidence produced, the Court excused the two veniremen as being disqualified to sit as jurors in this case; and

Whereupon, the accused by counsel did examine the veniremen upon the *Voir Dire,* and the Court and counsel for the accused and counsel for the Commonwealth being satisfied that the remaining veniremen were satisfactory, the *Voir Dire* was concluded and twenty (20) jurors were accepted by the Court as being qualified and free from exception to serve as jurors upon the trial of the accused; and

Whereupon, the attorney for the Commonwealth and the attorneys for the accused did advise the Court that each would waive one pre-emptory challenge, and the Court did hold that it was not necessary to summon additional *veniermen*, and the Commonwealth did then strike three (3) names from the said panel of twenty (20) jurors and the accused did also strike three (3) names, and there remained the following: Reba S. Massie, R. L. Chaplin, Roland

page 45 } Keller, Howard Shockey, Harry Ridgeway, Ross E. Knee, Madeline B. Myers, Gardiner W. Headley, Sebert Smith, Tom A. Morrison, W. C. Luttrell and Stewart Bell, Jr., who were duly sworn to well and truly try and true deliverance make between the Commonwealth and the accused at the Bar, whom they shall have in charge and a true verdict render according to the evidence, so help them God; and

Thereupon, the Clerk did charge the jury thus sworn and impanelled; and the attorney for the Commonwealth did make his opening statement to the jury wherein he stated that the Commonwealth would produce evidence upon which the jury would be asked to render a verdict of murder in the first degree against the accused but that the Commonwealth would not ask the death penalty upon such conviction; and counsel for the accused did make his opening statement to the jury wherein it was stated that the accused would rely upon the defense of temporary insanity by reason of the acts of the accused being the result of an irresistible impulse on the part of the accused; and

Whereupon, evidence was then introduced on behalf of the Commonwealth, and during the testimony of the medical examiner, the second witness called on behalf of the Commonwealth, evidence was adduced that the name of the victim was John D. Cox, Jr., and as the indictment named the victim as John D. Cox, a variance between the proof and the indictment was perceived; and

Whereupon, the Commonwealth did move the Court for leave to amend the indictment by inserting the designation of "Jr." after the name of the victim in the indictment, and the Court and counsel for the accused did retire to the Chambers of the Court to be heard on the motion, and, in chambers, the accused did consent to the motion that the indictment be so amended; and

Thereupon, the Court doth adjudge and order that the indictment be and the same is hereby amended to read

page 46 } "that on or about the 14th day of June, 1959, within the Corporate Limits of the City of Winchester, one Jack Monroe Christian did feloniously kill and murder

one John D. Cox, Jr., against the peace and dignity of the Commonwealth;" and

Whereupon, the Court and counsel for the accused did return to the Court Room and the accused was arraigned upon the indictment so amended by the Clerk, who read to the accused the charge contained in the indictment as amended against him, and did ask the accused how did he say to the charge of murder against him, and the accused did answer and say that he was not guilty; and

Thereupon, the jury were sworn to well and truly try and true deliverance make between the Commonwealth and the accused at the bar, whom they shall have in charge, and a true verdict render according to the evidence, so help them God; and the Clerk did charge the jury thus sworn, and the taking of evidence was continued, and the medical examiner was further questioned on direct examination and cross examination, and other witnesses were called on behalf of the Commonwealth, and the Commonwealth did rest its case; and

Whereupon, the accused by counsel did move the Court, in chambers, to strike the evidence of the Commonwealth upon the ground that such evidence was insufficient to show a case of first degree murder against the accused inasmuch as the evidence showed that the accused did act in self defense, and the Court did hear argument upon the motion; and

Thereupon, the Court doth adjudge and order that the motion on behalf of the accused to strike the evidence of the Commonwealth as being insufficient to show a case of murder in the first degree be and the same is hereby overruled and denied, to which ruling of the Court the accused by counsel did note his exception; and

page 47 } Whereupon, evidence was introduced on behalf of the accused, at the conclusion of which the accused did rest his case; and the Commonwealth did rest its case; and

Whereupon, the accused by counsel did renew his motion to the Court, in chambers, to strike the evidence of the Commonwealth, first, upon the ground that the evidence introduced on behalf of the accused to show that the accused acted upon an irresistible impulse by which he was temporarily insane, was not controverted by any evidence introduced on behalf of the Commonwealth; and, second, to strike the evidence of the Commonwealth relating to murder in the first degree for the reason that such evidence was insufficient to substantiate a verdict of murder in the first degree, and the motion was argued; and

Thereupon, the Court doth adjudge and order that the motion on behalf of the accused to strike the evidence of the

Commonwealth be and the same is hereby overruled and denied, to which ruling of the Court the accused by counsel did note his exception; and

Whereupon, the Court and counsel for the accused and the attorney for the Commonwealth did retire from the Court Room to prepare the instructions and, after some time, the instructions being completed, the Court did charge the jury upon the instructions, and the jury heard the arguments of the attorney for the Commonwealth and the attorneys for the accused; and the jury did then retire to consider their verdict; and

Whereupon, after some time, the jury did return to the Court Room and, upon advising the Court that they had not yet reached a decision but that the jury had two (2) questions to put to the Court, the jury inquired: (1) that in the event a verdict was reached, did the jury fix the punishment, and the Court did answer in the affirmative; and (2) that in the event the jury reached a verdict that the accused page 48 } was not guilty by reason of insanity, did the jury make any recommendation in that connection, and the Court did answer in the negative, and advised the jury that they would merely render their verdict as set forth in Instruction No. 7 that the accused was not guilty by reason of insanity; and

Whereupon, the jury did retire to further consider of their verdict, and after some time were called back, and the Court having the consent of the attorney for the Commonwealth and the attorneys for the accused, did read to the jury the statute of Virginia law concerning the disposition of a person found by a jury not guilty of the offense charged against him by reason of insanity; and

Whereupon, the jury did retire to consider further of their verdict and, after some time, did return to the Court Room, and being asked by the Clerk if they had reached a verdict, they did answer in the affirmative; and the verdict was handed to the Clerk, who read: "We, the jury, find the accused guilty of murder in the first degree and fix his punishment by confinement in the State Penitentiary for a term of 30 years. /S/ Howard H. Shockey, Foreman. Dec. 17, 1959"; and

Thereupon, the Court doth adjudge and order that the verdict be accepted and recorded; and

Whereupon, the Court did thank the jury for their attendance upon the Court and did discharge the jury from further attendance upon the Court at this time; and

Whereupon, the defendant by counsel did move the Court to set aside the verdict as being contrary to the law and the evidence, and upon further grounds to be stated later; and

Thereupon, the Court doth adjudge and order that this case be and the same is hereby continued to 11 o'clock, a. m., on the 28th day of December, 1959, for argument page 49 } upon the motion to set aside the verdict as made on behalf of the accused by counsel.

The said Jack Monroe Christian be and he is hereby remanded to the custody of the City Sergeant.

And the Court did then adjourn.

ELLIOTT MARSHALL, Judge.

The above order was received and recorded December 18, 1959.

P. J. MARSHALL, Clerk.

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ORDER.

On the 18th day of January, 1960, came the defendant in custody of the jailor and came also counsel for the defendant and the attorney for the Commonwealth, who prosecutes in this behalf, and the defendant having been previously found guilty by verdict of the jury of murder in the first degree, and his punishment fixed at thirty (30) years in the State Penitentiary, this case came on to be heard upon motion to set aside the verdict as being contrary to the law and the evidence in that (1) the jury did arbitrarily disregard testimony of the psychiatrist introduced on behalf of the defendant as to the mental condition of the defendant; (2) it was error to grant Instruction No. 4 in the form and language in which it was offered; (3) it was error to grant Instruction No. 5 because it took from the jury the determination of whether the offense committed by the defendant was first degree murder; and (4) the granting of Instructions Nos. 7 and 8 on behalf of the Commonwealth was error because such instructions were confusing and misleading to the jury in that they set forth the test of the defendant's knowing right and wrong as well as the test of the result of irresistable impulse when the defendant only relied upon the latter and there was no evidence as to the former.

Whereupon, the Court did hear argument upon the motion; and

Thereupon, after full consideration, the Court doth adjudge and order that the motion of the defendant by counsel to set aside the verdict of the jury upon the ground of its being contrary to the law and the evidence be and the same is hereby overruled and denied; and

page 53 } Whereupon, the defendant by counsel did move the Court to suspend imposition of sentence upon the defendant and to commit the defendant to Central State Hospital, Petersburg, Virginia, for treatment; and

Thereupon, the Court doth adjudge and order that the motion of the defendant by counsel to suspend imposition of sentence be and the same is hereby overruled and denied; and

Whereupon, the Court did inquire of the defendant if he had ought to say why judgment and sentence should not now be imposed against him, and the defendant did answer in the negative; and

Thereupon, the Court doth adjudge and order that, in accordance with the verdict of the jury, the said Jack Monroe Christian is guilty of murder in the first degree of John D. Cox, Jr., and in accordance with the verdict of the jury, the Court doth fix his punishment by confinement in the State Penitentiary for a period of thirty (30) years, and the said Jack Monroe Christian shall pay the costs of this prosecution.

The said Jack Monroe Christian be and he is hereby remanded to the custody of the City Sergeant to await transfer to the proper penal authorities to commence the serving of the sentence herein imposed, the said Jack Monroe Christian being entitled to 218 days credit upon the serving of the sentence herein imposed for the time spent incarcerated while awaiting disposition of the charge against him.

ELLIOTT MARSHALL, Judge.

The above order was received and recorded January 18, 1960.

P. J. MARSHALL, Clerk.

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## NOTICE OF APPEAL AND ASSIGNMENTS OF ERROR.

To: P. J. Marshall, Clerk of the Corporation Court of the City of Winchester, Virginia:

Notice is hereby given that Jack Monroe Christian appeals in this case and will apply for a writ of error.

### ASSIGNMENTS OF ERROR.

The following are the errors assigned. The Corporation Court erred:

1. In refusing to set aside the verdict as contrary to the law and evidence in that the evidence conclusively showed that the defendant was insane;
2. In granting Instructions Nos. 4, 5, 7 and 8 of the Commonwealth, this assignment being as to each of such instructions; and
3. In refusing the defendant's instruction on insanity as a defense.

JACK MONROE CHRISTIAN
By DAVID G. SIMPSON
Counsel.

Filed in Clerk's Office of Corporation Court for City of Winchester, Va., January 29th 1960.

P. J. MARSHALL, Clerk.

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### AFFIDAVIT.

This day personally appeared before me, the undersigned, a Notary Public, in and for the County aforesaid, in the State of Virginia, Jack Monroe Christian, who after being first duly sworn, deposes and says, that he is financially unable to pay or secure to be paid, costs of printing the record in the Supreme Court of Appeals in Virginia, in the cause, wherein he is the petitioner and the Commonwealth of Virginia is the defendant, and prays that the printing shall be done as if the

costs had been paid, and that the Clerk shall not be required to account for and pay the same into the State Treasury.

JACK MONROE CHRISTIAN.

Subscribed and sworn to me this 25th day of January, 1960.

JESSIE M. THOMPSON
Notary Public.

I, Elliott Marshall, Judge designate of the Corporation Court for the City of Winchester, Virginia, do hereby certify to the Clerk of the Supreme Court of Appeals of
page 58 } Virginia, that I approve the foregoing affidavit, and upon investigation, am of the opinion that Jack Monroe Christian is financially unable to pay or secure to be paid the cost of printing the record of the case therein mentioned.

ELLIOTT MARSHALL
Judge Designate
Corporation Court for the City of
Winchester, Virginia.

Filed in Clerk's Office of Corporation Court for City of Winchester, Va., January 29th 1960.

P. J. MARSHALL, Clerk.

* * * * *

page 2 }

* * * * *

Winchester, Virginia
Thursday, December 17, 1959

The above-entitled matter came on to be heard, pursuant to notice, at 10:00 o'clock a.m.,

Before: Honorable Elliott Marshall, Judge and a jury.

Appearances: Dabney Watts, esquire, for the Commonwealth.
David G. Simpson, esquire, and Peter McKee, esquire, for the Defendant.

page 3 } PROCEEDINGS.

The Court: Call the venire, please.

(A venire was called.)

The Reporter was sworn.)

The Court: Are counsel satisfied with the array?
Mr. Watts: Yes, sir.
Mr. Simpson: Yes, sir.
The Court: Swear the venire.

(The jury was duly impaneled and sworn.)

The Court: Ladies and gentlemen, the case to be tried this morning is a criminal prosecution brought on behalf of the Commonwealth against the accused, Jack Monroe Christian.

The indictment charges that on the 14th of June, 1959, the accused did kill and murder one John D. Cox.

Are any of you related blood or marriage to either of those, Jack Monroe Christian or John D. Cox?

Have any of you formed or expressed any opinions as to the guilt or innocence of the accused as to what the outcome of the case should be?

Mrs. Long: I am employed at the home of Dr. John B. McKee who is the father of Mr. McKee, and we have discussed the trial previously.

The Court: What is your name?

Mrs. Long: Lucille Long.

page 4 } The Court: Have a seat.

Have you formed or expressed such a conviction as to the guilt or innocence of the accused that it could not be removed by fairly and impartially considering the evidence in this case?

Mrs. Long: Not necessarily so.

The Court: The Court finds that the venireman is qualified.

Any question of this venireman?

Mr. Watts: Yes, sir.

What do you mean by "not necessarily so"?

Mrs. Long: We just discussed; we just discussed.

Mr. Watts: Would your relationship with the family so influence your decision in the case—

Mrs. Long: Yes, it would; yes, it would.

The Court: Just what do you mean by that, your relationship in the family of—

Mrs. Long: Mr. McKee is his lawyer, of course, and I wouldn't think that I would be qualified to serve on a jury.

The Court: Just have a seat.

You mean to say that you cannot decide the case one way or another just because you work for Mr. McKee's family?

Mrs. Long: Oh, I haven't decided it.

page 5 } The Court: Would that influence you in your decision?

*Mr.* Long: Well, I suppose it could.

The Court: To what extent?

Mr. McKee: If the Court please, I discussed this case before Mrs. Long was picked for the jury. I discussed the case with her at some length at times, and I am afraid that I said things to her which of course would not be admissible at this trial and I so informed Mr. Watts some time ago, as soon as she was picked, when I discovered her on the jury and informed him she was on the jury and I thought it would be better if she were removed. I think it probably would be under the circumstances.

The Court: Very well; I will excuse the venireman. You may leave the jury box.

(Mrs. Long left the jury box.)

The Court: Was there another?

Mr. Cather: One of my good colored friends happens to work for me and we have discussed this case somewhat and in all probability it might influence my verdict. I couldn't say absolutely that it would or that it would not but in all probability it could.

The Court: Have you formed such an opinion that you do not believe that you could fairly and impartially

page 6 } hear the evidence?

Mr. Cather: That would be right hard to say. I know from what he has told me and several others of my good colored friends have told me it easily could have some effect on any verdict that I might decide on.

The Court: What you are saying is that you have formed such a conviction as to what the outcome of the case should be that you cannot fairly and impartially consider the evidence in the case?

Mr. Cather: I would be afraid to sit on it and from what I have discussed and what I have been told by those that I discussed it with that it might very well influence my verdict.

The Court: Do you gentlemen have any questions of this witness?

Mr. Watts: I have none.
The Court: You may leave the jury box.

(Mr. Cather left the jury box.)

The Court: Are any of you conscious of any prejudice or bias for or against the accused?
The Court is content.
Any further questions, gentlemen?
Mr. Watts: The Commonwealth has none.
Mr. Simpson: Counsel for the defendant would like to conduct a voir dire of the jury.
page 7 } The Court: I asked you gentlemen if you had any questions.
Mr. McKee: I am sorry.
The Court: I am very sorry; I understand you did not desire to ask questions.
Mr. Simpson: Ladies and gentlemen, we should like to ask you a few questions about this case and the defense offered, not for a personal motive but to be sure that we are able to secure an impartial and disinterested jury.
I am sure you realize this is important. In the last analysis, you are the judges of this case.
Have any of you ever sat as a juror on a criminal case before?

(Showing of five hands.)

Mr. Simpson: Those of you who have ever sat in a criminal case before, have you ever sat when the charge is murder?

(Showing of one hand.)

Mr. Simpson: Do any of you know, either personally or by reputation, the defendant, Jack Christian?
Could all of you give the defendant the same fair trial since he is charged with murder as you would if he was charged with any other offense?
Ladies and gentlemen, the defense to be offered today for this defendant is one of insanity, or temporary
page 8 } insanity or irresistible impulse.
Do any of you feel that you cannot give the same fair, impartial trial since this is the defense as if the defense were self-defense or alibi?
Mr. Watts: If the Court please, I don't believe that is a proper question to bring before the venire.

The Court: The objection is overruled.

Mr. Simpson: I take it by your silence you feel you would be able to give the same fair trial considering the nature of this defense.

The defense is satisfied, Your Honor.

The Court: Have you any questions, Mr. Watts?

Mr. Watts: No, sir.

The Court: May I see counsel?

(At a bench conference, the following occurred):

The Court: Would each of you waive one challenge?

Mr. Watts: Yes, sir.

Mr. Simpson: Yes, sir.

The Court: Thank you, gentlemen.

(Proceedings were resumed in due course.)

The Court: Submit the list.

(The list was submitted.)

The Court: Counsel ready?

Mr. Watts: Yes, sir.

If the Court please, I would like to have the page 9 } witnesses recognized and sworn.

The Court: You desire them to be excluded?

Mr. Watts: No, sir.

The Court: Call the witnesses, please. Have them recognized and sworn.

(Witnesses were recognized and sworn.)

## OPENING STATEMENT ON BEHALF OF THE COMMONWEALTH

Mr. Watts: If the Court please, ladies and gentlemen of the jury, the case to be tried today is that of Commonwealth versus Jack Monroe Christian who is charged with the felonious murder and slaying of John D. Cox.

Now, the evidence will show that on the 14th day of June, 1959, which was a Sunday, in the afternoon, and early evening of that day, the defendant approached the intersection there of Kearn Street, right across Kearn Street from Ritter's Variety Store.

If you all are familiar with the location of Ritter's Variety Store, the evidence will show that the defendant had been

in there that day; that across the street is located, for those of you who do not know, on the north side of Kearn Street, about half a block east of Kent Street—Kearn Street intersects with Kent Street, and Ritter's Variety Store is about half a block east on Kearn Street.

The evidence will show that the defendant had been in there that day and gotten some beer and then that across
page 10 } the street was the house and home of several of the witnesses here today and there in the back yard there is a tree which is almost directly across from Ritter's store.

That Doleman, Newsome and John Cox were there at the back of this house near the back porch and under the tree there in the back yard of this house when the defendant came up.

The evidence will show that those gathered there spoke to the defendant and he spoke to all of them but to John Cox, the victim in this case, and that Cox stated to the defendant, Christian: "Just because you owe me thirty cents doesn't mean you have to speak to me."

Then an argument ensued from that point.

And that the defendant told Cox, "Well, just because you have killed one man, you are not going to be able to run all over me, too."

And in the progress of this argument, the defendant left and went to his home.

Now, his home is on Fremont Street. Fremont Street is the first street east of Kent Street that intersects Kearn Street from the north.

There is, I believe, a street that does come in from the south into Kearn Street but does not cross it, and Fremont Street is actually about a block and a half or almost two normal blocks east of Kent Street.

page 11 } Next to Ritter's Variety Store there is an open field. There is a path beaten across this field, across the corner there, which people take, taking a short cut to houses located north of Kearn Street on Fremont Street.

That the defendant took that course. The place that he lived was on the east side of Fremont Street and some distance below its, north of its intersection with Kearn Street.

That the defendant left this gathering and moved across the field, across this path, cutting the corner there to his home.

The others stood there.

In a few minutes he came running back across this field and as he got to the corner, the pathway that cuts diagonally across that corner, then hits the corner of the Ritter Building as it comes back, that path comes back into Kearn Street.

That as he got about to the corner of the Ritter Variety Store which now you will recall is across the street from where this group is standing, the defendant pulls out a butcher knife and runs across the street and the victim jumped behind a tree.

He stabs the victim, the evidence will show, in the chest at that point.

That the victim ran down Kearn Street toward
page 12 } Kent Street with the defendant in pursuit and that as he ran, as he pursued the victim, the evidence will show he stabbed him again in the back.

The evidence will show that the victim reached Kent Street and crossed Kent Street to the west side.

Now, Kearn Street comes into Kent Street right at Zuckerman's Junk Yard, if you know it. It has a fence around it.

Now, the victim fell then on the west shoulder of Kent Street and a little bit north of the interesection of Kearn Street with Kent Street.

The evidence will show that when he fell there the defendant pursued him, went up to him, turned him over, and stabbed him again on the ground there. And then he leaned down to ascertain, if he could, whether his heart was beating or not and then kicked the victim.

The evidence will show that then he also told someone to call for an ambulance and no one moved there. The crowd, of course, had been gathering.

The time of this offense is about 7:30, June 14. Of course, it was not actually dark at that point. A crowd had begun gathering. The police were called.

When the police arrived, quite a few had gathered.

The evidence will show that the police began inquiring around and ascertaining who had committed this
page 13 } offense and that the defendant came up to the police and told them, "I did it," and they asked him where the weapon was and he took the police and showed them where he had thrown the weapon.

The evidence will show that he made a statement admitting this offense.

It will be upon this offense that the Commonwealth will ask that, and we believe the evidence will show that, it is a *premediated,* a deliberate and willful killing of John Cox.

And upon this evidence we will ask that you find a verdict of guilty of murder in the first degree. We will not, however, ask for the death penalty.

I thank you.

## OPENING STATEMENT ON BEHALF OF THE DEFENDANT.

Mr. McKee: May it please the Court, Mr. Watts, ladies and gentlemen of the jury, my name is Pete McKee. I am co-counsel since Mr. Simpson and I are here to defend the accused, Jack Monroe Christian, in this charge which has been placed against him.

Mr. Watts has told you that the charge is murder.

As you already know, the defense is insanity.

The evidence will show, as Mr. Watts has told you, that a senseless and violent killing took place.

The evidence will also show that the man who
page 14 } committed this act was not mentally responsible; that he was sick.

You will hear the testimony of a great many witnesses for the Commonwealth who will tell you in detail as to the violence and the senselessness of this act and we want you to listen very carefully to that evidence and get as clear a picture as possible of just exactly how senseless it was.

Mr. Watts: If the Court please, I think he is arguing when he uses the word "senseless". That is for the jury to determine from the evidence.

The Court: The objection is overruled.

Mr. McKee: You will also hear evidence on behalf of the defense from the accused, from Dr. Basil Roebuck of this town, psychiatrist; from Dr. John Hamman of Central State Hospital, Petersburg, psychiatrist; from Mrs. Florence Farley, psychologist, and from Mrs. Robert Green, psychologist.

These people will testify as to the mental condition of this man at the time of this act.

This testimony should be listened to very carefully.

I cannot go into the law at this time and the Court will instruct you as to what the law is at the close of the evidence. But we would appreciate, and we know that you will listen very carefully to everything that is said by these physicians,
everything that is said by the witnesses to the
page 15 } act.

We know that when you retire to your jury room at the conclusion of the evidence, you will arrive at the only verdict possible, that is, that this man was not criminally responsible at the time the act was committed.

Mr. Watts: Mr. Hildebrend.

Whereupon,

FREDERICK E. HILDEBREND,

was called as a witness by counsel on behalf of the Commonwealth and, having been first duly sworn, was examined and testified on his oath as follows:

DIRECT EXAMINATION.

By Mr. Watts:

Q. Will you state your name, please?

A. Frederick E. Hildebrend.

Q. Your occupation?

A. Winchester Police Department.

Q. Now, Mr. Hildebrend, did you have occasion, were you working on June 14, 1959?

A. Yes, sir.

Q. What shift were you working?

A. The second shift, four to twelve.

Q. Did you have occasion on that day to see the defendant, Jack Monroe Christian?

A. Yes, sir.

page 16 } Q. What were the circumstances?

A. At approximately 7:30 that evening I was in the Dispatcher's office and received a call from a lady that stated that there had been a stabbing at the intersection of North Kemp and Kearn Street.

Officer Dunn and myself answered the call.

When we arrived at the scene, we found the victim lying on the west side of North Kemp Street just north of Kearn Street.

Q. What was his position?

A. Face up, laying on his back.

Q. Did you ascertain any life in the victim?

A. He appeared to me to be dead.

Q. Did you know the victim?

A. No, sir, I did not.

Q. Did you ascertain who was responsible for the—could you see blood or anything?

A. His chest and face was covered with blood, yes, sir.

Q. Did you ascertain who had been responsible for the condition of the victim?

A. Officer Dunn and myself asked several people in the crowd if they had seen what happened. No one seemed to know exactly who had done it. The defendant walked up to me and he said, "I did it."

page 17 } Q. Is that Jack Monroe Christian sitting here today?

A. Yes, sir.

*Frederick E. Hildebrend.*

Q. Who walked up to you?
A. Yes, sir.
Q. What did you do then?
A. We placed him under arrest and I asked him what he had done with the weapon he had used.
Q. Did he tell you?
A. He said, "I will show you." He took us just north of Kearn Street, the house on the corner which is a double house, 504 North Kent. Beside the house there was a woodpile. He took us back to the woodpile and showed us the knife which was lying in the pile of wood.
Q. He identified that as the weapon?
A. Yes, sir.
Q. Did you pick it up?
A. Yes, sir, I did.
Q. I hand you this knife and ask you if you can identify it?
A. Yes, sir, this is the knife.
Q. Is that the knife that the defendant, Jack Monroe Christian, pointed out to you as the one he used?
A. Yes, it is.

The Court: You gentlemen waive further identification?
Mr. Simpson: We do not need any more.
page 18 } The Court: They are willing to admit the knife in evidence.
Mr. Watts: I wish to offer this knife as Commonwealth's Exhibit No. 1.

(The knife was thereupon marked for identification as Commonwealth's Exhibit No. 1 and received in evidence.)

By Mr. Watts:
Q. What did you do then?
A. We put the defendant in the patrol car and brought him to the station, police station.
Q. Did he make any further statement to you concerning the offense, either in the police car or at the station?
A. Well, there is one thing I remember very distinctly. He asked me if the victim had died?
A. I told him that I didn't know; we hadn't gotten a report from the hospital. He stated that, "I hoped he had."
Q. He stated he hoped he had died?
A. Yes, sir.

*Victor Franklin Albright.*

Q. Now, the corner of Kent and Kearn Street, is that located within the city of Winchester, Virginia?
A. Yes, sir, it is.

Mr. Watts: That is all.

CROSS EXAMINATION.

page 19 } By Mr. McKee:
Q. Officer Hildebrend, I didn't hear that last answer. Did you state that the defendant said that he hoped that Cox had died?
A. He didn't say I hope that Cox had died. He said that "I hoped he had."
Q. He had died. Thank you, sir.
Did you examine the body very closely?
A. No, sir, I didn't.
Q. Did you examine the knife wounds?
A. No, sir, I did not.
Q. Did you determine whether there were any wounds in the back of the victim?
A. I did not, no, sir. The rescue squad pulled in just behind us and they were working on him.

Mr. *MxKee*: No further questions.
Mr. Watts: That is all.

(Witness excused.)

page 20 } Whereupon,

VICTOR FRANKLIN ALBRIGHT,
was called as a witness by counsel on behalf of the Commonwealth and, having been first duly sworn, was examined and testified on his oath as follows:

DIRECT EXAMINATION.

By Mr. Watts:
Q. Will you please state your name?
A. Victor Franklin Albright.
Q. Your profession?
A. Surgeon and physician.
Q. Are you also medical examiner for the city of Winchester and Frederick County?

*Victor Franklin Albright.*

A. I am.

Q. Did you have occasion to view John Cox in June of 1959?

A. I did.

Q. Do you recall what day that was?

A. What day?

Q. Yes, sir.

A. It was June 14.

Q. Where did you see him?

A. In the morgue of the Winchester Memorial Hospital.

Q. He was dead at that time?

A. He was.

page 21 } Q. Did you examine the body?

A. I did.

Q. Did you observe any wounds upon the body?

A. He had two wounds on his body. The first, which was in front, I described as being in the second left interspace, which is between the second and third ribs.

Q. Can you point upon your chest or body where that is, please, sir?

A. Well, it is approximately here (indicating). This was in what we call the mid-clavicular line or the middle of the collarbone, as you draw a line down through it.

This wound was approximately one inch long, and, on probing it, it angled downward and toward the mid-line.

He also had a superficial laceration in the back at the level of the 12th thoracic vertebra. This did not penetrate the deeper tissues.

Q. Could you ascertain what was the cause of death?

A. The cause of death apparently was from internal hemorrhages with the lungs being punctured and the heart also, very probably.

Q. Was that a result of the wound in the chest?

A. I would say, yes.

Q. Would such a wound have been made by an instrument of this nature (indicating)?

A. Yes, I believe it could.

page 22 } Q. The wound in the chest that caused the hemorrhaging which caused death?

A. That is correct.

Q. Did you ascertain the victim's name?

A. Yes, I did.

Q. What was that?

A. John D. Cox, Junior.

*Victor Franklin Albright.*

Mr. Watts: That is all.

CROSS EXAMINATION.

By Mr. McKee:

Q. Doctor, how deep was the wound in this man's chest?

A. I would say in the neighborhood of five to six inches.

Q. Had the ribs been, could you tell whether or not the ribs in the victim had been struck by the instrument as it passed into his body?

A. No, I could not.

Q. Did the wound appear to be the result of a single plunge of a knife or other instrument, or the result of more than one plunge?

A. It appeared to be one single stab wound.

Q. One single stab wound. Now, the wound on his back, how long was that?

A. I would say it was three-quarters of an inch long.

Q. You say it was a superficial wound? How page 23 } deep would it be?

A. About half an inch.

Q. I believe you testified, Doctor, that the lungs had been punctured and possibly or probably the heart. Could you be sure whether or not the heart had been punctured?

A. I could not without a post mortem examination. I could not be absolutely sure about that.

Q. Was there a post mortem done?

A. No, there was not.

Mr. Watts: That is all; thank you.

The Court: May I see counsel, please?

(At a bench conference the following occurred.)

Mr. Simpson: If the Court please, in a charge of second degree murder, the burden is upon the Common- page 24 } wealth to raise it to first degree. But the indictment must allege first degree murder. He is only charged in the indictment with second degree murder.

The Court: Is that correct?

Mr. Watts: He is charged with murder, Your Honor. I think under the indictment we can assume it is incumbent upon the Commonwealth to show premeditation.

The Court: May I see the indictment?

Are these the exact words of the statute?

Mr. Watts: Yes, sir.

The Court: You allege "unlawfully." I thought it said "unlawfully." I am talking about the form of the indictment.

(The ladies and gentlemen who were excused from the jury box were then excused from further attendance on the Court and not required to return for any service on this term of Court.)

The Court: It is charged that John D. Cox—

Mr. Watts: I left it off. I would like to amend it to read, Junior. It is Junior. There is no Senior here because his name is Junior.

Actually, I think he has a Junior on it.

Mr. McKee: Did you say, Junior?

Mr. Watts: Yes.

The Court: I don't know whether you can amend it.

page 25 } (Counsel and the Reporter retired from the bench.)

The Court: Members of the jury, there will be a short recess. You may leave the jury box but of course you must not discuss this case in the presence of any person and you must not permit any person to discuss the case in your presence during your absence from the courtroom.

In addition to that, I will ask you not to talk to the lawyers or the witnesses or the interested parties on any subject until after the case is concluded.

You must not permit any outside influence to be brought to bear upon you in arriving at your verdict.

If there should be any newspaper articles about this case, don't read them until after the case is over.

This Court will now recess for about five minutes.

(The Court, counsel and the Reporter and the defendant retired to chambers.)

In Chambers.

Mr. Watts: My instructions have "Junior" in them.

The Court: But you have proved now that—it is in the record now, you see—

Mr Watts: Well, we can prove by the police that is the only one in this vicinity.

The Court: Well, there might be some other vicinity.

Mr. Watts: There is no surprise to them. It can
page 26 } be amended to read, Junior.

Mr. McKee: We have no objection to that.

The Court: If you amend it, we have to start all over again.

You are certain that that is his real name? You are certain that it is, Junior?

Mr. Watts: Yes, sir.

The Court: There is no question about that, gentlemen?

Mr. Watts: That is the way his name was—

Mr. Simpson: The only name we have known him by is John Cox.

Mr. Watts: He was tried in this court as John D. Cox, Junior.

The Court: You are willing to concede that this man is John—

Mr. Simpson: Same man, yes, sir.

The Court: That he is John D. Cox, Junior?

Mr. McKee: Yes, sir.

The Court: You desire to amend the indictment?

Mr. Watts: Yes, sir, I desire to.

The Court: Motion to amend is granted. Is there any objection?

Mr. McKee: No objection.

The Court: All right.

page 27 } Will you amend the indictment?

He will have to be rearraigned.

Mr. Watts: But it isn't necessary that—

Mr. Simpson: To keep the record straight, we had better start from scratch on the proof.

The Court: Mr. Watts, this is a dangerous situation. It should have been done prior to the time that the jury was drawn. He will have to be recharged. The Clerk will have to recharge him again on this indictment.

He will have to be rearraigned and the clerk can recharge him.

I think that it is fairly safe. I am not sure, but I think it is fairly safe.

Mr. Watts: Can we have the clerk come in here and arraign him?

The Court: No, sir, it will be done in open court.

See if the jury are ready.

Mr. Watts: Would the Court explain to the jury what happened?

The Court: Oh, yes.

*Victor Franklin Albright.*

(Proceedings were resumed in open court.)

(The defendant was arraigned and plead not guilty and recharged.)

(The jury was re-sworn.)

The Court: Let me see the indictment.

page 28 } Ladies and gentlemen, what has just occurred might cause you some puzzlement. I think it is due you to explain just what has happened.

Of course, errors creep in, no matter how careful and diligent we are. There is no way that we can avoid errors. In this instance, the indictment named the deceased as John D. Cox when the evidence of this witness was that the deceased's name was John D. Cox, Junior.

Now, of course, they could be two different persons, so the evidence was contrary to the indictment.

Under the law, we have to very formal and careful in what we do. So the Commonwealth's Attorney amended the indictment to charge that the victim was John D. Cox, Junior.

Now, that necessitated, under the law, just commencing all over again and we have to go through these formalities again. I hope you will not be impatient with us. Everybody is subject to mistakes and inadvertences.

RE-DIRECT EXAMINATION.

By Mr. Watts:

Q. Now, Doctor, John D. Cox, Junior, dies of wounds you have described?

A. That is correct.

Q. The wound in the chest?

A. Yes, sir.

page 29 } Q. That was made by an instrument of that nature shown to you?

A. Yes.

Q. This knife?

A. Yes.

Mr. Watts: That is all.

Mr. McKee: No questions.

Mr. Watts: If there is no objection, I would like to have the witness excused.

The Court: Any objection?

*James H. Doleman.*

Mr. McKee: No objection.

The Court: You are excused from further attendance upon the Court.

The Witness: Thank you, sir.

(Witness excused.)

Whereupon,

JAMES H. DOLEMAN,

was called as a witness by counsel on behalf of the Commonwealth and, having been first duly sworn, was examined and testified on his oath as follows:

DIRECT EXAMINATION.

By Mr. Watts:

Q. Will you please state your name?

A. James H. Doleman.

Q. Where do you live?

page 30 } A. 450 North Kemp.

Q. Were you present on June 14, 1959, when an incident occurred across the street from Ritter's store?

A. I was there.

Q. Who was there with you?

A. Well, there was Julius Newsome.

Q. Who else?

A. Frank Ash.

Q. Who else?

A. There was John standing there.

Q. John who?

A. John Cox.

Q. Just where were you all standing?

A. I was standing on the porch, myself. The rest of the boys in the back yard.

Q. Is that house at the intersection of Kemp and Kearn Streets?

A. Yes, it is.

Q. And you were at the back of it?

A. Yes, sir.

Q. Is that the back of that house almost across, directly across the street from Ritter's store?

A. Yes, it is.

*James H. Doleman.*

Mr. Simpson: Objection, Your Honor. He is leading the witness.

page 31 } The Court: Is there any vice in it? From your opening statement, I didn't think there was any quarrel with where this incident occurred.

Mr. Simpson: Objection withdrawn.

The Court: You are willing to withdraw the objection? Don't lead the witness, Mr. Watts.

By Mr. Watts:

Q. While you all were standing there, did you have occasion to see Jack Monroe Christian?

A. He happened up while they were standing there in the back yard and he spoke to all of us except John. That is, when John spoke back to him and said, "You don't have to stop speaking to me because of thirty cents."

Q. What else occurred?

A. Well, they had words, back one and another, and Jack mentioned, just because you killed one man don't mean you can get away with everything. That is all I remember.

Q. What then happened?

A. Well, Jack started towards, well, started across the field. I don't know where he went.

Q. Does he live in that direction?

A. Well, I think he lives on Fremont.

Q. Is there a field there next to Ritter's store?

A. Yes, there is.

page 32 } Q. Do you cross that field towards Fremont Street?

A. Yes.

Q. Did you see him after that?

A. Well, he started back across the field. I went in the house.

Q. That is the last you saw of him?

A. That is the last I saw of him.

Mr. Watts: That is all.

## CROSS EXAMINATION.

By Mr. McKee:

Q. Mr. Doleman, did you see the actual crime?

A. No, I did not.

Q. You did not. You stated that Christian said to John

Cox, "Just because you killed someone, you can't get away with killing another?"

A. He didn't mention that way. He didn't say, killed another. Just because you killed one person, you can't get by with everything.

Q. What did he mean by that, do you know?

A. I don't know.

Q. Had Cox killed anyone before?

A. I really don't know whether he did or not. I heard. I don't know whether he did.

Q. Did you or anyone else say anything to Jack Christian before he left?

page 33 } A. No, not as I know of. I know that I didn't. Not as I remember.

Q. Did anybody say, kid him, or say anything at all to him?

A. No.

Q. Do you know whether or not John Cox has ever been convicted of killing somebody?

A. I heard that he did.

Mr. McKee: No further questions.

Mr. Watts: That is all.

(Witness steps down.)

Mr. Watts: Julius Newsome.

Whereupon,

JULIUS NEWSOME,

was called as a witness by counsel on behalf of the Commonwealth and, having been first duly sworn, was examined and testified on his oath as follows:

DIRECT EXAMINATION.

By Mr. Watts:

Q. Will you please state your name?

A. Julius Newsome.

Q. Where do you live?

A. 450 North Kemp.

Q. Do you mind speaking a little louder so the jury can

*Julius Newsome.*

hear?

page 34 } A. 450 North Kemp.

Q. Is that at the corner of Kemp and Kearn Streets?

A. Yes, sir.

Q. Were you with John Cox on June 14, 1959?

A. Yes, sir.

Q. Where?

A. Standing right there on the back of the house, me and him and Frank Ash and Jessie—standing on the back.

Q. And what occurred as you all were there?

A. What do you mean?

Q. Did you see Jack Monroe Christian while you were standing back there?

A. Yes, sir. When he come around the corner, like I told you, me and him play all the time. He come around the corner. I called him from where I was. I asked him about it, helping me to buy a fifth, bottle of wine, and he spoke to all of them and then is when John starts arguing at him, told him, say, you don't have to speak to me because you owe me thirty cents—just like that.

Q. What then happened?

A. As I said, Jack told him, said, he said, you know, just bunk—and so he said that and John Cox told him, said, "I will blow your brains out," just like that, and run his hand in his back pocket. And Jack told him, says, "You killed Nixon Carter; I ain't going to let you kill me."

page 35 } Just like that.

So Jack told him—John told him he would blow his brains out and John Cox run his hand in his back pocket and Jack told him to wait until he get back. That is when he run across the lot and come back.

Q. Wait a minute. Right at that point, he left and went across the lot there next to Ritter's store?

A. Yes, sir, went across the lot to his house.

Q. Where he lives?

A. Yes, sir.

Q. Over on Fremont Street?

A. Yes, sir.

Q. Then did Cox pull anything out of his pocket while they were talking?

A. Well, when he run his hand in his back pocket, Jack run home. He told Jack he was going to blow his brains out. He run his hand in his back pocket and Jack told him to wait until he come back and Jack run across the lot.

*Julius Newsome.*

Q. Did you see Jack later?

A. Yes, sir, he come back. Jack come back and when he come back he come across the lot there and the boy jumped behind a tree. That is when he hit him with the knife, and he starts down the street and he hit him again with the knife.

Q. As you saw him coming back across the lot, did he have anything in his hand?

page 36 } A. No, sir, he didn't have nothing in his hand until he got to the corner of Miss Ritter's. That is when he pulled the knife out.

Q. That was across the street from where you all were standing?

A. Right across from where we were standing.

Q. And then what did he do?

A. He run across there and boy jumped behind the tree. That is when Jack hit him with the knife.

Q. Who jumped?

A. Jack Carpenter jumped behind the tree. As he jumped behind the tree, that is when he hit him with the knife and started down the street again and Jack hit him again with the knife.

Q. Who started down the street?

A. Jack Cox.

Q. We just have to get this all together, please. That is why I am asking you in stages how it happened.

Did Jack follow him down the street?

A. Well, just as he started down the street, just as I told you, he started down the street, I saw Jack hit him again with the knife, just as I told you. I don't know whether he stabbed him in the back or where. But he jumped behind the tree. Then before he left, he hit him with the knife and started down the street and then I went on

page 37 } around and when I got around the front I seen the boy laying there by the Zuckerman trailer.

Q. That is on the west side of Kemp Street?

A. That's right. Jack was not bothering the boy. He is the one who started arguing with Jack.

Q. Is that the knife that he had?

A. I didn't pay much attention to what kind of knife it was.

Q. You couldn't say?

A. No, I couldn't say.

Q. But you did see him have a knife in his hand?

A. Yes, I saw the knife but I couldn't say what kind of

knife it was. I didn't pay that much attention, what kind of knife it was.

Mr. Watts: That is all.

## CROSS EXAMINATION.

By Mr. McKee:

Q. Julius, when was the first time you saw Jack Christian that day?

A. I saw him that morning when he passed my house, was going down the street.

Q. When did you next see him after that time?

A. Well, I didn't see him no more until then.

Q. Had you seen him in front of Ritter's prior
page 38 } to that time?

A. No, I didn't.

Q. Now, you stated that Cox hollered at Jack first, is that correct?

A. He told Jack when I was asking Jack about giving me enough money—we was going to get a fifth of wine—Jack had spoke to all of us before Jack gets to speak to him. He told Jack, "You don't have to speak to me because you owe me thirty cents."

Q. Did he say it in an unfriendly manner?

A. He just said, "You don't have to speak to me because you owe me thirty cents," just like that.

Q. You say that Jack replied to him, just because he killed Nathan Carter, he wasn't to hurt him?

A. "I am not going to let you hurt me."

John Cox told him, "I will blow," you know, "your brains out," and run his hand in his back pocket.

Jack told him to wait until he come back.

Q. Did Jack appear to be frightened of him?

A. Well, I don't know he seemed to be frightened of him or not, but he told him to wait until he come back.

Q. He did appear to be upset?

A. Well, I don't know whether he seemed to be upset or what.

Q. Did Jack walk away or did he run away?

A. Well, he walked over across from Mrs. Rit-
page 39 } ter's; then he started running across the lot.

Q. Ran across the lot?

A. He come running back.

Q. About how long was he gone?

*Julius Newsome.*

A. Oh, about five minutes, something like that.

Q. Now, when he came running back, did he stop running at any time before he got to Cox?

A. No, he didn't stop running until he got over across the street.

Q. When did he pull the knife out?

A. As he got to the corner of Mrs. Ritter's.

Q. How did he hold the knife as he approached Cox?

A. I didn't pay that much attention, how he hold—

Q. Did he have it up like this?

A. No, he didn't have his hand up.

Q. Did he say anything or make any noise?

A. He hollered when he got to the corner of Mrs. Ritter's; that is when he come out with the knife.

Q. Did he say anything when he hollered, or just make a—

A. He just hollered and run across the street. The boy jumped behind the tree and that is when he hit him.

Q. Would the holler be more of a scream or yell?

A. No, he just hollered, just as he run across the street. He just hollered and the boy run across the street page 40 } and just as he got by the board, the boy jumped behind the tree and he hit him with the knife.

Q. Did you see him chase Cox down the street later?

A. I saw him chase him down just as he passed from where we were standing.

Q. Did you see him strike him again?

A. I saw him hit at him with the knife. I couldn't say whether he hit him with the knife but I saw him hit at him with the knife. That is when I went around the house and that is when I seen the boy laying over there by the tree.

RE-DIRECT EXAMINATION.

By Mr. Watts:

Q. Jack didn't come at you or anybody else, did he?

A. No, he attempted to do nothing to nobody else.

Q. Just went for John?

A. That's right.

Mr. Watts: That is all.

The Court: If there is no objection, this witness can be excused.

Mr. McKee: No objection.

The Court: You are excused from further attendance upon the Court.

(Witness excused).

Mr. Watts: If there is no objection I would like to have the previous witness excused, too.

page 41 } The Court: All right.

(The witness Doleman was excused.)

Whereupon,

ANN DELANCEY,

was called as a witness by counsel on behalf of the Commonwealth and, having been first duly sworn, was examined and testified on her oath as follows:

DIRECT EXAMINATION.

By Mr. Watts:

Q. Will you please state your name?

A. Ann Delancey.

Q. Where do you live, Ann?

A. 430 Haddy's Road.

Q. Do you think you could speak a little louder so the jury can hear you?

A. Yes.

Q. Do you know John Cox?

A. I know of him.

Q. Did you know him?

A. I just know of him, that's all.

Q. Would you know him when you see him?

A. I know him when I see him.

Q. Did you happen to see him on June 14, 1959?

A. Yes, sir, I did.

Q. Do you know Jack Christian?

page 42 } A. Yes, I do.

Q. Did you see him on June 14, 1959?

A. I saw him that evening,.

Q. Where did you see him?

A. When I seen him, he was coming down from Ritter's store.

Q. What was he doing?

A. He was just coming down the road, walking like ordinary person.

Q. Who is that?

A. That was Jack.

*Ann Delancey.*

Q. Did you see him later?

A. Yes, I seen him later after the other, but I didn't know what it was all about.

Q. Did you see John that evening?

A. Yes, sir, I seen John that evening and that morning.

Q. Where did you see him that evening?

A. That evening I saw him over there lying on the side.

Q. Laying on the side of Kemp Street?

A. Kemp Street.

Q. By Zuckerman's Junk Yard?

A. Junk Yard.

Q. Did you see Jack go over to him?

A. It was long time after that before Jack went
page 43 } over to him. He was over there for about, I'd say for about half a minute or something like that. Then he was trying to get up and he couldn't get up.

Q. What did Jack do?

A. Bunch of the boys and people behind him, and he was just walking like he wasn't mad, just like mostly he was sicker than mad.

Q. What did he do?

A. He went over there and then he took his feet and kind of shoved him a little bit.

Q. Shoved John?

A. Yes, sir.

Q. What else did he do?

A. Well, he turned him over and then he reached down and by that time Susie and them called me and told me to—

Q. Did Jack have a knife?

A. I never did—I mean, I just seen half a knift because so many people was around him.

Mr. Watts: Now, if the Court please, I would like to see the Court in chambers.

In Chambers.

Mr. Watts: This girl is making different statements than she has made and signed.

The Court: She has taken him by surprise and he desires to ask leading questions.

page 44 } Mr. Simpson: No objection.

Mr. Watts: If the Court please, she made a statement to Lieutenant Rudolph and put her mark on it.

The Court: You cannot impeach her. You can refresh

her memory, attack her credibility if she has made different statements but you cannot impeach her by that.

Mr. Watts: That is all I want to do, to show previous inconsistent statements.

The Court: What you are going to do is try to show that what she says is attacking his credibility.

Mr. Watts: That is right.

(Proceedings were resumed in open court.)

By Mr. Watts:

Q. Now, Ann, you talked, did you not, to Lieutenant Rudolph?

A. Yes, I did.

Q. Now, you talked to him about what you saw that evening, did you not?

A. Yes, sir.

Mr. Simpson: Objection, Your Honor. Is counsel going to try to impeach his own witness?

The Court: No, it would have to be—

By Mr. Watts:

Q. You talked to me about this matter of seeing John Cox lying over there in front of Zuckerman's, page 45 } didn't you?

A. Yes, sir.

Q. Did you tell me that you saw Jack stab John with a knife?

A. I said I seen him stooping down and he turned him over.

Q. And did you not say you saw him plunge a knife into him as he was lying there on the ground?

A. Everybody gets stabbed got to get stabbed with a knife.

Q. You saw—

A. I didn't exactly see.

Q. You told us you saw it, did you not?

A. I said he turned him over.

Q. And you say he stabbed him?

A. Yes, sir.

Mr. McKee: If the Court please, she has answered the question.

The Court: I think she has answered the question.

*Warren Rudolph.*

Counsel is now seeking to impeach the credibility of this witness. Anything she says now is not evidence. It just goes to her credibility.

By Mr. Watts:

Q. Lieutenant Rudolph was with me at the time you talked with me?

A. Mr. Rudolph was not in there when you and page 46 } me was in there together. Wasn't nobody—I can't call his name—big, fat police and another little guy, Mr. Rudolph.

Q. Mr. Fogle?

A. I don't know his name.

Q. Now, you saw Jack kick John as he lay on the street there, is that right?

A. That's right.

Mr. Watts: That is all.

Mr. McKee: No questions.

The Court: That is all. Next witness, please.

(Witness steps down.)

Whereupon,

WARREN RUDOLPH,

was called as a witness by counsel on behalf of the Commonwealth and, having been first duly sworn, was examined and testified on his oath as follows:

DIRECT EXAMINATION.

By Mr. Watts:

Q. Will you please state your name?

A. Warren Rudolph.

Q. What is your occupation?

A. Lieutenant, Winchester Police Department.

Q. Did you have occasion to go to the intersection of Kearn and Kemp Streets on the evening of June 14, 1959?

A. Yes, sir.

page 47 } Q. Who went with you?

A. There were several officers working that time with me. I believe Officer Hildebrend is the one that went with me when I went back the second time.

Q. Did you take pictures?

*Warren Rudolph.*

A. Yes, sir.
Q. At that time?
A. Yes, sir.
Q. What was the locality of the picture you took?
A. I took several pictures at the general vicinity of North Kemp and East Kearn Street.
Q. Is that near Zuckerman's Junk Yard?
A. Yes, sir, it is right in front of it.
Q. Do you have those pictures?
A. Yes, sir, three of them.
Q. Is that a picture of the scene? Could you tell where that scene is located?
A. Yes, sir, that was taken from the—I was standing on the southeast corner of Kemp and Kearn. This picture is taken looking sort of northwest.
Q. And that is a little north of the intersection, then, on the west side of Kemp Street, is that right?
A. That is the view in the photo. I was actually standing south of the intersection when I took it but it shows the view northwest of the intersection.

page 48 } Mr. Watts: I would like to introduce that.
The Court: Commonwealth's No. 2.

(The photograph referred to was thereupon marked for identification as Commonwealth's Exhibit No. 2.)

By Mr. Watts:
Q. Lieutenant Rudolph, did you later have occasion to step off from the rear of 450 North Kemp Street westward to this point across the street?
A. Yes, sir, I did that yesterday.
Q. How far was that?
A. Forty-nine steps.
Q. Are your steps three feet?
A. Approximately, plus or minus a few inches.
Q. Now, did you talk to Jack Monroe Christian on the 14th day of June, 1959?
A. Yes, sir.
Q. Where did you talk with him?
A. In the identification room at the Police Department.
Q. Did you advise him of his rights with regard to him talking to you?
A. Yes, sir.

*Warren Rudolph.*

The Court: Have you gentlemen seen the statement?
Mr. Simpson: Yes.
page 49 } The Court: Any objection to its admission?
Mr. Simpson: No objection.
The Court: You need not prove it, then.

By Mr. Watts:
Q. Did you take a statement from the defendant, Jack Monroe Christian?
A. Yes, sir, I did.
Q. Was that statement read to him?
A. Yes, sir.
Q. Did he read it?
A. Yes, sir.
Q. Did he sign it?
A. Yes, sir. Also signed a statement that he had read it.
Q. Do you have that statement with you?
A. Yes, sir. I have the original.
Q. Will you read it, please?
A. "June 14, 1959.

"I, Jack Monroe Christian, age 23, of 26 Fremont Street, Winchester, make the following statement of my own free will and accord to Lieutenant Warren Rudolph and Officer Lynnwood Dunn whom I know to be police officers.
"No threats or promises have been used against me and it is the truth.
page 50 } "I have also been told that I am charged with murder and have had a warrant served on me by Captain Ritter, charging me with that offense.
"I have been told by Captain Ritter as well as by Lieutenant Rudolph that I may have a lawyer if I desire and may use the phone to call a lawyer or my family. Nevertheless, I make the following voluntary statement:

"Around 6 o'clock I was going home. I had two dollars in my pocket. I stopped in Ritter's Variety Store on Kearn Street. I bought a Black Label beer and a pack of shoestrings.
"Monty Ash and John Cox walked up to me and asked me for Cox's thirty cents which I owed him. That was just outside of Ritter's store when he asked me that. I told him I had 68 cents left and that I wasn't going to pay him until I got paid next Friday.

*Warren Rudolph.*

"So I was talking to Monty and he wanted to borrow a nickel or a dime. I told him I wouldn't loan him anything.

"Cox said, 'Keep the money, that's it.'

"I went home and drank my beer and put my shoestring in my shoe. I came back to Steve's Lunch and went in there and spent a dollar on a pint of whiskey and I drank the whiskey and some beer. Then I was going back

page 51 } home.

"On the way back home I met Cox on Kearn Street near Ritter's Variety Store. He started talking about, I owed him thirty cents, and so he said he was going to take it. I told him the only way to take it was to kill me. So I killed him. What I mean is, I told him the only way to take it was to kill me and he ran his hand into his front left-hand pocket. So I figured he had a knife, so I ran home and got mine. I had a butcher knife.

"After I got the knife, I came back down on Kearn Street. I never said anything to him but I walked up to him. I said, 'Cox, you aren't taking any money from me.' He still had his hand in his pocket and looked as if he was ready to pull his knife out if he had a knife. I figured he was pulling a knife, so I pulled mine. I figure I stabbed him in the chest.

"After I stabbed him, he threw his hands up in the air. I figure I stabbed him again. I am not sure. It only took me a few seconds to run home and get my knife. I never saw any knife that Cox may have had.

"I went to the eighth grade in school. I have read the above statement and it has been read to me. It is true and correct."

Then he wrote in his own handwriting:

page 52 } "The above is true."

Signed it, Jack Christian.

Then he added the following:

"I want to change it to, I just put a dollar on the whiskey to get some of it to drink. I didn't actually buy it in Steve's.

"Also, it took me longer than a few seconds to go get the knife but only a couple of minutes."

He initialed that at the bottom.

*Warren Rudolph.*

Mr. Watts: I would like to introduce that as Commonwealth's Exhibit No. 3.

The Court: Without objection, so admitted.

(The document referred to was thereby marked Commonwealth's Exhibit No. 3 and received in evidence.)

By Mr. Watts:

Q. Where is the location of Kemp and Kearn Streets?

A. It is in the northeast section of Winchester, approximately five blocks from Boscawen Street out here and two blocks east.

Q. Within the city limits?

A. Yes, sir.

Q. Now, did you investigate further this incident?

A. The following day, yes, sir.

Q. Did you, during the investigation of this talk
page 53 } to Ann Delancey?

A. Yes, sir.

Q. What statement did she make to you with reference to seeing John Cox and Jack Monroe Christian on June 14, 1959?

A. She stated that she had seen Christian turn Cox over and stab him in the chest after he was laying on the ground in front of Zuckerman's Junk Yard.

Q. Now, did you know John Cox, Junior?

A. I knew him by sight, yes, sir.

Q. Did you go to the morgue and view the victim?

A. Yes, sir.

Q. Could you identify the victim?

A. It was the same man as I knew as John Cox, yes, sir.

Q. John Cox, Junior, you saw there at the morgue?

A. Mr. Watts, I never knew about the word "Junior," on the end. I just knew him as John Cox. I can't answer that.

Q. You have a card in your records at the police station on the man you saw at the morgue?

A. Yes, sir, but I do not recall whether that has "Junior" on it, or not.

Q. Was he the same man that was involved in the death of Nathan Carter?

page 54 } A. Yes, sir.

Mr. Watts: That is all.

*Frederick E. Hildebrend.*

CROSS EXAMINATION.

By Mr. McKee:

Q. Lieutenant Rudolph, how was he involved in the death of Nathan Carter?

A. He was charged with either murder or manslaughter, sir. I don't recall which, but he was responsible for the death of Nathan Carter.

Q. Was he convicted of killing Nathan Carter?

A. He was convicted. I don't recall the sentence he got.

Mr. McKee: No further questions.

(Witness steps down.)

Whereupon,

FREDERICK E. HILDEBREND,

was recalled as a witness by counsel on behalf of the Commonwealth and, having been previously duly sworn, was examined and testified further as follows:

DIRECT EXAMINATION.

By Mr. Watts:

Q. Officer Hildebrend, can you identify that picture?

A. Yes, sir, the smaller spot is where the victim is lying when we arrived at the scene.

Q. That is where the victim, John Cox, was lying
page 55 } when you arrived at the scene on Kemp Street, is
that correct?

A. Yes, sir.

Mr. Watts: That is all.

Mr. McKee: No questions.

(Witness steps down.)

Mr. Watts: I would like to have a moment, if the Court please.

If the Court please, it will take me a few minutes. I am sorry to delay the Court by virtue of this mixup. I feel that I need a little more time. This will be my last witness.

Will the Court excuse me?

*Warren Rudolph.*

(A short recess was taken.)

Mr. Watts: If the Court please, I would like to recall Lieutenant Rudolph.

Whereupon,

WARREN RUDOLPH,

was recalled as a witness by counsel on behalf of the Commonwealth and, having been previously duly sworn, was examined and testified further as follows:

DIRECT EXAMINATION.

By Mr. Watts:

Q. Lieutenant Rudolph, did you have occasion to take the fingerprints of John D. Cox, Junior?

page 56 } A. Yes, I fingerprinted him on the original card.

Q. When was that?

A. The date was April 22, 1957. It was the case involving Nathan Carter.

Q. Did you get his full name at that time?

A. Yes, sir. I have the fingerprint card here that I prepared.

Q. What was his name?

A. The name as he gave it to me then was John D. Cox, Junior.

Q. That is the same man you saw in the morgue on June 14, 1959?

A. Yes, sir, this is the same man I knew by sight.

Mr. Watts: That is all.

Mr. McKee: I would like to move that that be put in evidence. He has referred to it.

The Court: Do you desire to offer it?

Mr. Watts: No, sir.

The Court: Do you?

Mr. Simpson: Yes, sir, Your Honor: we do.

The Court: They offer it. You can call the witness later on. It is now an exhibit, Mr. Watts.

Mr. Watts: If they want to offer it, I have no objection.

The Court: Make it Defendant's Exhibit No. 1.

*Meredith Wilkinson Green.*

page 57 } (The card referred to was thereupon marked Defendant's Exhibit No. 1 and received in evidence.)

The Court: Without objection, the witness is excused.
Mr. Watts: The commonwealth rests.
Mr. McKee: If the Court please, defendant moves to strike the Commonwealth's evidence and wishes to be heard.
The Court: Ladies and gentlemen of the jury, remember my former admonitions not to discuss the case in the presence of any person and not to permit any pwerson to discuss the case in your presence during your absence from the courtroom.
This Court will now recess for about five minutes.

In Chambers.

Mr. Simpson: If the Court please, counsel for defendant moves to strike the evidence on the ground that the evidence of the Commonwealth, especially the evidence of Julius Newsome, I think it was, shows that this was brought on by the deceased, John Cox, and there was a threat to kill and, to use his words, to blow his head off, and the evidence of the Commonwealth itself shows that it was an act of self defense.
There would not have been time for any premeditation. All the witnesses of the Commonwealth have testified, although there was a lapse of time, it was very short, and that this was all brought on by the deceased and through
page 58 } the threats of the deceased and the deceased made overt acts and threats to the defendant and he acted in self-defense.
The Court: Is that all?
The motion is overruled.
Mr. Simpson: I would like to note an exception.
The Court: Exception noted.

(Proceedings were resumed in open court.)

Whereupon,

MEREDITH WILKINSON GREEN,
was called as a witness by counsel on behalf of defendant and, having been first duly sworn, was examined and testified as follows:

*Meredith Wilkinson Green.*

DIRECT EXAMINATION.

By Mr. Simpson:

Q. Will you state your full name, please?

A. Meredith Wilkinson Green.

Q. Where do you live?

A. 435 Mosby Street, Winchester.

Q. What is your profession, Mrs. Green?

A. I am a psychologist.

Q. As a psychologist, are you duly certified to practice in the State of Virginia?

A. Yes.

Q. Would you state briefly to the Court and to page 59 } the jury your training as a psychologist?

A. I have my Ph. D. in psychology from Columbia University. I worked for a period of about three years, Medical College of Virginia; worked as a senior psychologist for New York State; and worked as a consultant psychologist for three years at the Mayo Clinic.

At present I work two days a week in Martinsburg Guidance Clinic and also teach psychology to student nurses here at the hospital.

Q. As a psychologist, are you familiar with the Bender-Gestalt test?

A. Yes, I am.

Q. Is this a test that is used, normally used by psychologists in their battery of tests?

A. Yes, it is.

Q. Would you explain to the Court and to the jury, please, how this test is administered and just what it consists of?

A. The Bender-Gestalt is a test consisting of about ten designs which are given to the subject, the person taking the test, and he is asked to copy these designs. By the way in which he copies these designs, when you examine them later on, you get a suggestion at times of organic brain damage. It is not definite, but it gives you clues to follow with other tests.

page 60 } By the perseveration—by the perseveration I mean the fact that he continues to execute the design over and over again, or distorts it in some peculiar way which normal people do not do.

Q. Now, are you also familiar with the draw-a-person test?

A. Yes.

*Meredith Wilkinson Green.*

Q. Is this a test that is normally used by psychologists in the battery of tests that they give patients?

A. Used very often.

Q. Would you explain how this test is given?

A. The subject is asked to draw a person. They usually protest a good bit and don't like the idea. After they have drawn the person you ask them to describe who this person might be, try to get them to talk about the person that they have drawn. This is a personal test. You are interested in what they do to distort this person, how realistically they draw the person.

If they give a fairly accurate drawing proportionally, you are interested in their answers to the questions, whether they hesitate to answer some of the material or whether they go over into extra details in the material. All of this is added into the personality evaluation of the person.

Q. As a psychologist, are you also familiar with
page 61 } the word association tests?

A. The word association test?

Q. Word association, yes.

A. Yes.

Q. Would you mind explaining how this is administered in the technique?

A. There are a number of these word association tests but the general technique is the same in all of them. The subject is presented with words and asked to give the first word that comes to his mind after the word is given to him. His answers, such as dark-light, night-day, Monday-Sunday, are common responses.

When the subject gives responses which are peculiar or when such responses as mother or child, or something else, is a response to which he cannot answer, or gives a very peculiar answer, this gives a lead to some of the things that are disturbing him and which he cannot handle easily as he does the common material.

Q. Now, would you also explain, I believe it is, the Rothschild ink blot?

A. Rohrschach. This is the hardest one to explain. It is a test consisting of ten cards which were originally made up by dropping some ink on a piece of paper and folding the paper over and opening it up. These have been doctored up
some and they have been standardized. Now they
page 62 } are handed to the subject and he is asked to tell
what this looks like to him. He has been told that there is no right answer; there is no wrong answer. It is

*Meredith Wilkinson Green.*

just straight imagination. His responses are then compared with what we expect the so-called normal person to give. By statistical analysis, they have found that certain subjects tend to give one type of response; certain other types of people tend to give other responses. You get a good indication of the subject's maturity, impulsive behavior, his control, his use of his intelligence and his creativity from this test.

Q. Finally, would you explain, please, the Wechsler-Dalton intelligence?

A. Wechsler-Dalton intelligence scale is a standardized test of intelligence consisting of ten sub-tests.

The sub-scores on these sub-tests are averaged and then compared with the standardized scores for his age in the test norms.

There are lots of intelligence tests but the Wechsler-Dalton scale is the best known or best accepted adult individual intelligence test.

Q. Are these tests that are accepted by all phychologists throughout the United States as being standard, valid tests?

A. They are accepted by and used by psychologists in clinics all over the country.

page 63 } Q. Does a psychological evaluation rest solely on the results and interpretations of these tests?

Is there something, are interviews conducted by watching him performing these tests?

A. I think what you are asking is that more than just the scoring goes into it—

Q. Yes.

A. There is a good bit more: The way that the subject reacts to your questions, his attitude, his effort, his motivation, attention, all these things are noted.

Then, usually after the testing, most *psycholigists* will follow this with an interview period in which certain leads that they obtain from the testing are followed in the interview and more material obtained from the subject, filling in the ideas that you got from your testing.

Q. Now, you have not conducted any tests with the defendant, have you?

A. No.

Mr. Simpson: Thank you very much.

Mr. Watts: Well, if the Court please, I would like to know the relevance of this testimony.

Mr. Simpson: Laying the foundation for psychologists who have conducted these tests.

*Jack Monroe Christian.*

A. Yes, five brothers and two sisters living, one dead.
Q. Do you know as a child how you were nursed?
A. I was a breast baby.
Q. Is your father living?
A. No, he is not.
Q. When did he die?
A. 1949.
Q. How did he die?
A. He killed hisself.
Q. How did he kill himself?
A. He shot hisself with a shotgun.
Q. Did you get along with your father?
A. I got along with him at times.
Q. Did he ever beat you?
A. Yes, he did.
page 66 } Q. Do you recall anything happening to you when you were about fifteen years old?
A. I got beat pretty bad one night.
Q. What were the circumstances of this beating?
A. Well, my brother beated another fellow from out of town and, well they came up looking for him to beat him but they couldn't find him so they found me; so they beat me severe.
Q. Between the ages of, say, fifteen and nineteen, do you recall having any fears or apprehensions?
A. Well, I was kind of feared somebody was going to hurt me or get me, some things like that.
Q. Did you ever have any fear of killing yourself?
A. Couple of times, yes.
Q. Recently, while you were in jail, did you consider taking your own life?
A. Yes, I did.
Q. How far did you go in school?
A. I went to the eighth grade.
Q. Were you ever a member of the Armed Forces?
A. I was in the Air Force.
Q. When did you go in the Air Force?
A. Joined Air Force in 1954.
Q. How old were you?
A. I was seventeen.
page 67 } Q. When were you discharged?
A. I was discharged in December '55.
Q. What type of discharge did you receive?
A. I received undesirable.

*Jack Monroe Christian.*

Mr. Watts: Wouldn't they be—

The Court: For additional evidence, apparently.

You will tie it up? You gentlemen assure me
page 64 } you will tie it up later?

I think it is irrelevant up to this time.

Anything further?

CROSS EXAMINATION.

By Mr. Watts:

Q. These tests show primarily the intellect and level of the patient, do they not?

A. If you take the complete battery that he has given, they deal with both intelligence and personality.

Q. And personality.

A. The Wechsler is the only one that deals specifically with intelligence. The rest of them are mainly focused on personality with the exception of the Bender.

Mr. Watts: That is all.

The Court: The witness is excused from further attendance upon the Court.

(Witness excused.)

The Court: Next witness.

Whereupon,

JACK MONROE CHRISTIAN,

the defendant, was called as a witness in his own behalf and, having been first duly sworn, was examined and testified on his oath as follows:

DIRECT EXAMINATION.

page 65 } By Mr. Simpson:

Q. You are Jack Monroe Christian, the defendant in this case, are you not?

A. Yes, sir.

Q. How old are you, Jack?

A. Twenty-three.

Q. Will you speak a little louder?

A. Twenty-three.

Q. Do you have any brothers or sisters?

*Jack Monroe Christian.*

A. Yes, I did.

page 69 } Q. Had you ever had any trouble with him before?

A. No, I haven't.

Q. Did you know his reputation in the community?

A. Yes, I did.

Q. What was that reputation?

A. He killed a man.

Q. Do you know who he killed?

A. Killed Nathan Carter.

Q. Do you know how he killed him?

A. Killed him witha knife.

Q. Did you know Monty Ash—was it Frank or Monty Ash?

A. It was Monty with him that morning, yes.

Q. Pardon?

A. Monty.

Q. Monty was there that morning?

A. Yes, sir.

Q. What happened when you met them?

A. One of them punched the other. I was walking off of Steves porch. They started following me up the street. I went up the street, when to Ritters. I bought a beer and bought a pack of shoestrings.

As I was going from Ritters they ran up behind me—wait a minute, I want to talk to you—so then Cox asked me for the thirty cents that I owed him.

page 70 } Q. Did you owe him thirty cents?

A. No, I didn't. I was in the pool room one night and I was shooting pool. So he was in the back table and he was shooting pool.

So I showed him how to hold a stick. So then I went out on the porch, tired to borrow thirty cents from some fellows to go to the movies.

He told me he would give me thirty cents if I learned him how to shoot pool.

I told him I would make him the best pool shooter in Winchester. That was about two or three weeks before.

I said, forget it.

So, that morning he come running up there and he asked me for the money. I told him, I said, "I am pretty low on money today," and I said, "I need what I have to try to go to West Virginia."

So anyway, Monty Ash, he took and got between me and away from me going home. So then after I finished talking to Cox he told me he going to get it one way or the other today.

*Jack Monroe Christian.*

Q. Do you know why this type of discharge was given to you?

A. Given to me because I kept going AWOL.

Q. You did go AWOL?

A. Yes, I did.

Q. Did you go AWOL more than once?

A. Yes, I did.

Q. Did you ever think that you would get caught?

A. Yes.

Q. Did it bother you?

A. No.

Q. Why was it you went AWOL?

A. I wanted to get away from everything; sometimes the things was complicated.

Q. After your discharge and before the crime with which you are charged occurred, what did you do?

A. I did odd jobs and worked at One-Hour Martinizing Sunshine Dry Cleaners in Fredericksburg, Picadilly Cleaners, and I worked at Robinson's Ice Plant off and on.

Q. Did you work on the day of June 14, 1959, the day this crime was committed?

page 68 } A. Yes, I did.

Q. Where did you work?

A. I worked at Robinson's Ice Plant.

Q. What did you do when you got off from work?

A. Got off from work and I went home and changed my clothes, went back down.

Q. Would you speak a little louder, a little slower, please?

A. I got off from work around one. I went home to change my clothes. I changed my clothes and went down to Steve's to see if I see any fellows that were going across the mountains to go to West Virginia.

Q. Where is Steve's?

A. Steve's is on Kent Street.

Q. And you went down to Steve's?

A. That's right.

Q. Did you go in Steve's?

A. Yes, I did.

Q. What did you do in Steve's?

A. I went in Steve's. I didn't see nobody around my age so I left.

As I was leaving Steve's, Monty Ash and John Cox was on the pool room porch standing down there talking.

Q. Did you know John Cox?

*Jack Monroe Christian.*

A. Well, after that he was down on Kent Street so I went down on Kent to see what happened.

Q. Before this?

A. Well, all I know, he says something about he is going to do something to me. That is when I got scared and started running.

Q. Do you remember going home and getting a knife?

A. I remember going home but I don't remember getting a knife.

Q. Do you remember running back?

page 73 } A. I remember running, I ran. I do remember running.

Q. Do you remember stabbing Cox?

A. I stabbed, I think—I stabbed him once, stabbed him but once. I don't remember stabbing him the second time.

Q. Now, you remember being questioned by the police?

A. Yes.

Q. Do you remember making a statement to them?

A. Yes, I did.

Q. Do you remember telling the police that: "After I got a knife I came back down on Kearn Street and I walked up to him. I said, 'Cox, you aren't taking any money from me.'" Do you remember saying that to Cox?

A. I can't say I remember saying it to Cox. I say so many things that I don't remember exactly what all I did say.

Q. Do you remember saying it to the police?

A. I think I do remember saying it to the police but I don't remember exactly everything I did say.

Mr. Simpson: I believe that is all.

CROSS EXAMINATION.

By Mr. Watts:

Q. Jack, you say you got to feeling your beer so you thought you would go home?

A. Yes, sir.

Q. You were feeling it?

page 74 } A. Yes, sir.

Q. What you had had to drink?

A. Yes, sir.

Q. Now, you like beer right much?

A. Yes, sir.

Q. Have you ever been unable to buy it?

A. At times, yes, sir.

*Jack Monroe Christian.*

Q. Who said that?
A. That was Cox.
So after turning away from him, Monty Ash blocked my way and told me if I move over here he is going to hit me in the mouth.
page 71 } Q. Did you know Monty Ash?
A. I know Monty.
Q. Did you know his reputation in the community?
A. Yes, I did.
Q. What was that?
A. He was a thief.
So I told him I wasn't going to loan him no money. I didn't want no trouble out of him.
So he winked at Cox and Cox started walking up behind me with his hand in his pocket. So I bypassed Monty Ash and ran across the field to home.
So I stayed home and Mr. Round came out. I didn't see him on the corner.
Q. You say you stayed at home?
A. Yes, I went home and drunk my beer and stayed at home.
So I came back then a little later on and I went down Steve's and drank a couple of beers.
Q. This was after your first encounter with Cox and Monty?
A. That's right. So then, well, I started feeling this beer, so that then I started back home because my sister called me up and I was talking to her. So as I started back home I started around the corner where Cox and them was all up on the corner. I don't know who, exactly who all
page 72 } were up there but they were laughing and carrying on.
And anyway, Cox asked somebody for money and I don't know exactly what he said. He looked like he started toward me so that made me scared and I got scared of him. I thought he was going to hurt me. That is when I started running. I got scared and started running. I don't know exactly what happened.
Q. What did you do after Cox came toward you or said something to you?
A. I don't know if he said anything to me or not.
Q. But you got scared?
A. I was scared.
Q. And then what did you do?
A. Well, after that?
Q. Yes.

*Jack Monroe Christian.*

A. No, I didn't. I told him I would pay him
page 76 } the thirty cents.

Q. You resented his asking you about it?

A. No, I didn't.

Q. But you thought he was going to take it from you?

A. I thought he was going to hurt me.

Q. Nobody touched you, did they?

A. I ran.

Q. Before you ran, nobody touched you, did they?

A. They was walking up on me.

Q. Well, now, you were there across the street from Ritter's store, is that right?

A. That's right.

Q. And you remember going, running and getting the knife?

A. I remember running home. I don't remember getting the knife or not.

Q. And you came back to where you had been talking to John and Monty, did you not?

A. Yes, I did.

Q. And you remember running back?

A. Yes, sir.

Q. You had the knife then, did you not?

A. I think I did.

Q. You knew you had the knife, didn't you?
page 77 } A. Yes, I did.

Q. Now, the only person that you were concerned with was John, wasn't it?

A. I don't know.

Q. You didn't strike at Monty, did you?

A. I didn't see Monty. I don't know if I seen him or not.

Q. Did you see Julius?

A. I don't remember seeing him.

Q. Did you see Jimmie?

A. I don't know. I didn't see them.

Q. Just saw John?

A. I seen two people standing there. They was hollering and carrying on and laughing.

Q. That upset you?

A. It bothered me.

Q. But one of them you knew to be John?

A. That's right.

Q. Now, you remembered, you say, talking to the police later that night?

A. Yes.

*Jack Monroe Christian.*

Q. Did you go into the store and take any beer when you were not able to buy?
A. No, sir.
Q. Why?
A. Well, I never had to have it that bad.
Q. You knew it was wrong to take it, too, didn't you?
A. That's right.
Q. And you knew that if you took the beer that didn't belong to you, you would be punished for it, didn't you?
A. That's right.
Q. Now, you didn't like the armed services, the discipline in the armed services, did you?
A. That's right.
Q. You didn't like it?
A. That's right.
Q. It reminded you about your father?
A. At times.
Q. Strict punishment?
page 75 } A. Yes.
Q. Had rules to live by?
A. Yes.
Q. You didn't particularly care for that way of living, is that right? You liked to be on your own?
A. That's right.
Q. So you left the camp whenever you could?
A. That's right.
Q. But you knew that was wrong, too, didn't you?
A. Yes.
Q. And now you just got in an argument with Cox about this thirty cents, didn't you?
A. Yes.
Q. And you told him you would pay him the next pay day, didn't you?
A. I told him that Sunday I would pay him the following Friday when I get paid.
Q. But actually, you sort of resented his saying you owed him thirty cents since you thought you had taught him how to shoot pool, is that right?
A. No, I didn't. I didn't show him how to shoot pool. Only gave him one lesson. He wouldn't come back in.
Q. You thought you had earned the thirty cents?
A. No, I didn't.
Q. So you thought you owed him the thirty cents?

*Basil Enoch Roebuck.*

Q. Do you remember telling the police, do you remember seeing John lying on the street there?
A. I seen him on the street.
Q. You went up to him, didn't you?
page 78 } A. I ran over to see what was going on. If he was there.
Q. When the police arrived you told them you did it, is that right?
A. Yes.
Q. Showed them where you put the knife?
A. Yes.

Mr. Watts: That is all.

(Witness steps down.)

Whereupon,

BASIL ENOCH ROEBUCK,

was called as a witness by counsel on behalf of the defendant and, having been first duly sworn, was examined and testified on his oath as follows:

DIRECT EXAMINATION.

By Mr. Simpson:
Q. Please state your name?
A. Basil Enoch Roebuck.
Q. What is your profession, Doctor?
A. I am a psychiatrist.
Q. Are you licensed to practice in the State of Virginia?
A. Yes, sir.
Q. Would you outline briefly your training as a psychiatrist?
page 79 } A. Well, I graduated in medicine from Durham University in England in 1945.
I had my psychiatric training at Leeds University in England.
I obtained my diploma in psychiatry there in 1953.
Since that time I have been in the United States and at first was on the staff of the University of North Carolina at Chapel Hill in the Department of Psychiatry and also worked for the State of North Carolina.
I came to Virginia in 1954 and since coming to Virginia I

*Basil Enoch Roebuck.*

was Director of Training and Research for Eastern State Hospital in Williamsburg.

I was associate in psychiatry and neurology of the Medical College of Virginia.

I came to Winchester last year and here I am Director of the Northwestern Guidance Center and I am in private practice in psychiatry.

Q. Dr. Roebuck, did you see the defendant, Jack Christian, on August 22, 1959?

A. Yes, I did.

Q. And at that time was it your suggestion that he be committed for prolonged observation?

A. Yes, it was.

Q. You know that he was committed at Central State Hospital?

page 80 } A. Yes, I know he was.

Q. Have you read the report of Dr. William Hamman, the psychiatrist?

A. Yes.

Q. And you know that this patient was diagnosed as a chronic undifferentiated schizophrenic?

Mr. Watts: I object to that.

The Court: Objection sustained. Strike it from the record.

Mr. Simpson: May we approach the bench?

(At a bench conference the following occurred:)

Mr. Simpson: If the Court please, I would like to go ahead and question Dr. Roebuck on certain mental diseases rather than to have to call him back after my witnesses have come here from Central State.

I can assure the Court that this will be substantiated; that I will tie it up.

Mr. Watts: He can ask him about diseases; he can't say he knows this man has been determined that.

The Court: He wants to define that. Don't these doctors know how to define these diseases?

Mr. Simpson: Yes, sir.

The Court: Why do you want him to do it?

Mr. Watts: Well,—

Mr. Simpson: I would like to have some testi-
page 81 } mony from this man, Your Honor. I assure the Court that it is going to be all tied together.

The Court: You want him to define certain—

Mr. Simpson: Yes, sir.

The Court: Let me see that report.

Mr. Watts: I do not know. That is not Dr. Hamman's report.

The Court: Where is it?

Mr. Simpson: I have a copy of it.

Mr. Watts: I have not seen it.

Mr. Simpson: His diagnosis is on the last page.

The Court: You want him to define ambulatory schizophrenia?

Mr. Simpson: Yes, sir. That is not all I am going to ask him, no, sir.

The Court: What else?

Mr. Simpson: I would like to ask him some questions about this disease.

The Court: You mean this doctor will not be able to—

Mr. McKee: He will be here.

The Court: He will not be able to testify? He does not know about what these diseases are?

Mr. Simpson: Yes, sir, he will, but I think I am entitled to have another doctor testify.

page 82 } The Court: I do not know; I do not think so. There isn't any issue, unless you have some issue. Is there any issue as to the terminology, the meaning of the terminology?

Mr. Watts: Lord, no; no, sir.

Mr. McKee: If the Court please, Dr. *Roebuch* cannot answer a hypothetical question based on facts of this case without his going into this disease somewhat and he is not the one who made the diagnosis.

The Court: You had better have this other witness.

Mr. Simpson: Then we would like to recess for lunch until he is here.

The Court: Do you have other witnesses?

Mr. Simpson: Others are on the way here from Central State Hospital.

The Court: You have no other witnesses except these other two?

Mr. Simpson: That are on the way up here and should have been here by now—have not arrived.

The Court: Do you have any objection to recessing for lunch?

Mr. Watts: No, sir. I would like to cross examine the witness and ask him about that report he made August 22nd.

*Basil Enoch Roebuck.*

Mr. Simpson: I am going to recall the witness
page 83 } at that time.
The Court: You can cross examine him on that.
Mr. Watts: You are going to recall him about that report?
Mr. Simpson: Yes.

(The examination was continued following the bench conference.)

CROSS EXAMINATION.

By Mr. Watts:

Q. Now, Dr. Roebuck, you did interview this defendant on August 22, 1959?

A. Yes, sir, that is correct.

Q. At that time you made a report?

A. Yes, I did.

Q. In part of that report you stated, one of your observations at that time was, that he behaved normally?

A. Would you mind if I refresh my memory by looking at it?

Q. Please do.

A. Maybe it would save time if you could tell me where that was.

Q. In the second paragraph, last sentence.

A. The second paragraph?

Q. Yes, sir.

A. Oh, yes. Would you repeat your question to
page 84 } me again?
Q. I said, at that time, in connection with your examination, he behaved in a normal fashion, you observed?

A. Well, he was cooperative in the interview. His behavior was friendly towards me and I made the observation in the same sentence that he appeared to be rather vague.

Now, I wouldn't like that statement to be taken to mean that he was normal entirely at the time. I mean, this out of context with the rest of the report might give a misleading idea.

Q. You did make that observation, did you not?

A. This is part of the report, not that he was normal, but that he acted in a normal fashion.

Q. That he did on that day?

A. On that day, yes, sir.

Mr. Watts: That is all.

*Basil Enoch Roebuck.*

RE-DIRECT EXAMINATION.

By Mr. Simpson:

Q. Dr. Roebuck, in the last paragraph of that same report I believe you stated that within the bounds of possibility that the act was done in an *irrestible* impulse?

Mr. Watts: I object, if the Court please.

The Court: I think that you opened it up, Mr. Watts. You see, you say that the doctor reported that his
page 85 } behavior was perfectly normal.

Mr. Watts: On that day, yes, sir.

The Court: I think it opens the examination on the entire report.

He may explain what he meant by that.

By Mr. Simpson:

Q. I repeat that in the last paragraph of your report you stated that it seems quite within the bounds of possibility that this act was done in a moment *if* irresistible impulse, is that correct?

A. That is correct, yes.

Mr. Simpson: I have no further questions at this time.

RE-CROSS EXAMINATION.

By Mr. Watts:

Q. That was based upon the history of the incident that he gave you?

A. No, sir, not entirely. I had seen previous psychiatric reports on this man.

Q. At this time, on August 22, 1959?

A. Prior to my seeing him he was seen by my psychiatric social worker in the Northwestern Guidance Center. I had discussed the case with him. I couldn't state with any certainty whether I had had the Army report before then or not. I thought that I had it at the time.

page 86 } Q. Even in the last paragraph on page 2 you said it would be well to have that report. So evidently you had not seen that at that time, had you—last paragraph of page 2.

A. That is correct. I must not have seen it by that time. But I—the patient had been seen in the clinic before I saw him myself.

*Florence Farley.*

Q. Of course, just as it was a possibility, it could have happened that way, there was a possibility it couldn't too, was there not?

A. Well, of course that is obvious, yes. It would be possible both ways.

Mr. Watts: That is all.

Mr. Simpson: I have no further questions of the witness at this time, Your Honor.

I would like to move that we recess for lunch.

The Court: Doctor, you are excused from the witness stand.

(Witness steps down.)

The Court: Ladies and gentlemen of the jury, we will recess for lunch at this time. Fifty-five minutes would be enough, wouldn't it, if we would come back at a quarter after one? Could you come back by a quarter after one? That will give you fifty-five minutes.

Ladies and gentlemen, let me remind you that you must not discuss the case in the presence of any person and you must not permit any person to discuss the case in your
page 87 } presence during your absence from the courtroom.

Let me explain why I tell you that every time you leave. I am sure you do not need to be reminded, but the law requires that I remind the jury of these things before they leave the jury box on each occasion.

So please do not be impatient about it. You will hear it again.

This Court will now recess until 1:15.

(Whereupon, at 12:25 o'clock p.m. the luncheon recess was taken.)

page 88 }

* * * * *

Whereupon,

FLORENCE FARLEY,

was called as a witness by counsel on behalf of the defendant and, having been first duly sworn, was examined and testified on her oath as follows:

*Florence Farley.*

He, in some instances, is able to think clearly but this is a very fluctuating type of thinking process.

We also found some indecisiveness in thinking, some vagueness in thinking, along with distortion of reality.

Emotionally, we found him to be quite flattened, withdrawn from people, an individual who more or less is an isolate, if you like, but in spite of this withdrawn kind of flattened behavior that he revealed he is an individual who suffers tremendously inwardly, That is, he has very strong, aggressive and self-destructive impulses or feelings that for the most part of all his energy is spent in trying to control.

page 91 } He used various methods of controlling these impulses, withdrawing from things, again being by himself in this type of behavior.

We also found that he was a very dependent individual who really is not able to come to grips with reality and with reality problems.

Q. While there, did he express any, or did you learn of any dreams that he had had?

A. Yes, we did.

Q. What were those dreams?

Mr. Watts: If the Court please, I don't know that dreams enter into this.

Mr. Simpson: If the Court please, this is evidence upon which the diagnosis is made and based. I think it is admissible.

The Court: It would be hearsay at this point.

Mr. Simpson: Hearsay, Your Honor, but it is not offered as primary evidence but only evidence upon which a diagnosis is based.

The Court: I understand, but wouldn't you have to tie it up by showing the actual existence of these dreams?

Mr. McKee: If the Court please, I don't think so. We are not offering the dreams for the truth of the content.

The Court: I understand, but there must be some evidence that they were experienced, must there not? Such a conclusion to be drawn could not be drawn from hearsay.

page 92 } Mr. McKee: It certainly would be admissible for this witness to testify as to the fact that he related that he had had dreams, to her.

The Court: Well, it would not have evidentiary value unless the statement were true, unless she could show that in some manner, that the statement was true, or offer some evidence as to such effect. Isn't that the situation?

*Florence Farley.*

DIRECT EXAMINATION.

By Mr. Simpson:

Q. Would you state your name, please?

A. Florence Farley.

Q. Miss Farley, what is your profession?

page 89 } A. Clinical psychologist.

Q. Are you certified to practice in Virginia?

A. Yes.

Q. What has been your training in psychology?

A. I have a master of science degree in psychology with further graduate work on a Ph.D. degree and I have completed one year of recognized internship.

Q. Where are you presently employed?

A. Central State Hospital.

Q. What is your position there?

A. I am the chief psychologist there.

Q. Did you examine or supervise the examination of Jack Christian, the defendant in this case?

A. Yes, I supervised the work on his case.

Q. Did this examination consist of both tests and interviews?

A. Yes.

Q. Where was this examination performed?

A. At Central State Hospital in the maximum security section.

Q. Was the patient given the Bender-Gestalt test and the draw-a-person and word association and ink blot tests?

A. Yes, he was.

Q. And the adult intelligence scale?

A. Yes.

page 90 } Q. By whom were the results of these tests and interviews correlated and interpreted?

A. By me.

Q. Based on these tests and interviews, do you have an opinion as to the mental state of the defendant?

A. I have.

Q. Would you care to state that opinion and explain, please, the basis for this opinion?

A. Our evaluation on Mr. Christian revealed that he was an individual with, who functioned usually on a low normal or low average level of intelligence.

His thinking was greatly affected by tremendous anxiety from which he suffers most of the time. He did, during the examination.

*Florence Farley.*

A. Schitzophrenic reaction, chronic undifferentiated type.

page 94 } Mr. Simpson: I can have her explain but I would rather wait and have Dr. Hamman explain this.

But if you want, I will have her explain it now.

Mr. Watts: Better have her explain it.

By Mr. Simpson:

Q. Would you explain briefly what this diagnosis is?

A. It is a form of a mental disorder which is characterized by changes in thinking, changes in affect or in feeling, or emotion, and changes in one's, alterations in one's interpersonal relationships or understanding of reality.

Q. Now, Mrs. Farley, I ask you to assume a 23-year-old Negro male. This Negro male was one of eight children. He felt that his father hated him because he was the only one of the children who was breast-fed. He has an intense fear. When the boy was thirteen, he committed suicide, his father committed suicide.

The boy himself has an intense fear of being hurt by others and at about the age of fifteen he was set upon by some other man and severely beaten.

Between the ages of fifteen and nineteen he had definite fears of people wanting to kill him and wanting to kill himself.

Recently, while incarcerated in jail, he wanted to kill himself but did not do so.

page 95 } He stopped school in the 9th grade and at the age of seventeen entered the Air Force.

In 1955 he was given an undesirable discharge due to the fact that he had gone AWOL several times. He would go AWOL just because he wanted to go home and did not worry about being caught.

After his discharge from the service he worked at odd jobs and very often would—he would work at odd jobs.

On June 14, 1959, after getting off from work, he was stopped on the street by two Negroes and one of whom demanded repayment of an alleged 33-cent loan. The reputation of both of these men was known to him. He knew that one had recently stabbed another man to death.

Fearing some bodily injury this 23-year-old Negro male ran home. Later in the same day, as he was walking from Steve's in the city of Winchester, Virginia, he was seen by these two men and some other man. They began yelling and

*Florence Farley.*

Mr. Watts: Yes, sir.

By Mr. Simpson:
Q. Was any sexual disturbance revealed, Mrs. Farley?
A. Yes.

Mr. Watts: Again, Your Honor, it is not relevant to this issue, I don't believe.
The Court: The objection is overruled.

By Mr. Simpson:
Q. Were any paranoid features noted?

Mr. Watts: Just a minute. He had better explain what that is.
Mr. Simpson: I would like to ask a question and—
Mr. Watts: It is leading.
The Court: You desire a definition of that, paranoid?
Mr. Watts: Yes. He is leading her there.
The Court: I don't think it is a leading question.
Perhaps you had better tell him what you mean
page 93 } by paranoid.
Mr. Simpson can tell. You know the definition?
Mr. Simpson: I would prefer—
The Court: Very well.
Would you give the definition of paranoia?
The Witness: Paranoid feelings are feelings which are not based on actuality or on reality. They are misinterpretations and distortions that the individual might have which will not really have any basis in what has happened to him. They will be, they will over-think about things and they will over-exaggerate things that might occur; and they will be tremendously suspicious and carry a chip on their shoulder because they do misinterpret so much.

By Mr. Simpson:
Q. Were any of these features noted in the patient?
A. We found Mr. Christian to be tremendously suspicious and an overly sensitive individual which are some of the elements of a paranoid.
Q. Was a diagnosis made of his illness?
A. Yes, there was.
Q. Do you know what that diagnosis was?
A. Yes, I do.
Q. What was it?

*Florence Farley.*

Q. Do you have an opinion as to whether or not this act was one of an impulse, an act as a result of an impulse?
A. I think that it is highly possible that it was.
Q. Do you have an opinion as to whether or not the schizophrenic could have resisted this impulse?
A. Yes.
Q. What is that opinion?
A. I seriously doubt that he could have.

Mr. Simpson: I believe that is all.

page 98 } CROSS EXAMINATION.

By Mr. Watts:
Q. Mrs. Farley, these disturbances observed in the defendant are emotional disturbances, aren't they?
A. Yes.
Q. And they are emphasized by reason of his low level intellect, are they not?
A. No.
Q. He does have a low level intellect, you say?
A. No, I said he functions on a low average level of intelligence.
Q. What is that? Did you ascertain his level, intelligence level?
A. He has normal intelligence.
Q. Normal intelligence?
A. Yes.
Q. Now, then, from your observation, from your testimony in regard to your conclusions as to these reports, is a person of this type not accentuated into action by alcohol and drinking?
A. That is possible.
Q. So, had he been drinking that day, he again would have magnified circumstances at that time beyond the reality of the situation, would he not?
A. I think that it would have had an influence
page 99 } but *but* I am not certain how much of an influence.
Q. Alcohol does affect people having the symptoms of this man?
A. To varying degrees, yes.
Q. Now, you say he was isolated and possessed an isolated and flattened personality and withdrew and withdraws within himself considerably, is that correct?
A. That is true.

laughing at him. He became frightened and started running. He ran home, there secured a knife, ran back, and upon approaching one of the individuals, let out a yell and stabbed this man to death.

On September 22, 1959, this Negro male was admitted to Central State Hospital in Petersburg for observation. There he was interviewed and given psychological tests consisting of the Bender-Gestalt test, draw-a-person test, word
page 96 } association test, Rohrschach tests and Wechsler-Dalton intelligence-scale test.

Since conscious destructive feelings were expressed, and as a result of the interviews and tests it was found that this Negro male was functioning intelligently on a low level, with potential for high level, he is markedly immature, excessively dependent.

There is lack of self-confidence, feeling of insecurity and inferiority and fear of responsibility.

Aggressive impulses to injure others are present and are controlled at times. At times this control is relinquished.

The patient has a poor inter-personal relation but has some potential for improvement.

Sexual disturbance is revealed.

Intense anxiety, depression, compulsion and guilt feelings exist.

Paranoid features were strongly noted. His illness was diagnosed as schizophrenic reaction, chronic, undifferentiated type.

Now, Mrs. Farley, assuming these facts to be true, do you have an opinion based on reasonable certainty and from a psychological and psychologists's point of view, as to whether or not this schizophrenic Negro male was suffering from some mental disease affecting his will power at the
page 97 } time these events occurred?

A. I do.

Q. What is that opinion?

A. That, yes.

Q. Do you have an opinion based on reasonable certainty and from a psychological point of view about the mental condition of this schizophrenic at the time these events occurred?

A. Yes.

Q. What is that opinion?

A. I feel that this was a greatly disturbed individual who had reawakened within him all of the fears and anxieties and that he had been experiencing for a great portion of his life. I think that at this point he was quite disturbed.

*Florence Farley.*

Q. And a person of this defendant's classification knows right and wrong, does he not?

A. Yes.

Q. And the difference between them?

A. Yes.

Q. He knows that wrong is wrong acts and are subject to punishment?

A. Yes.

Q. And the degree of his violence is transitory, too, is it not? It may exist one day and not another?

A. Maybe the behavior would be different from day to day.

Q. Much of the reaction to these tests that you have come up with or superintended find their origin in the mistreatment he has had in his earlier life, is that correct?

A. Partially in terms of the way he viewed the behavior of others around him and understood them, was able to understand them.

Q. And he is of such a type or classification that he would resent anyone laughing at him or to suppose

page 102 } people were laughing at him?

A. That he would resent?

Q. Suppose on the basis that he knew that someone was laughing at him he would resent, his characteristic indicates he would resent that highly?

A. That's possible.

Mr. Watts: That is all.

RE-DIRECT EXAMINATION.

By Mr. Simpson:

Q. Mrs. Farley, going back to my hypothetical question of the 23-year-old schizophrenic Negro male, do you have an opinion as to whether or not such impulses as you talked about could be distinguished from mere passion or overwhelming emotions not growing out of or connected with a disease of the mind?

A. Yes.

Q. What is that opinion?

A. That this is not passion or overwhelming emotions, that this type of impulse that does come from the disorder that the individuals' possess.

Q. Do you have an opinion whether such impulses would be inspired by emotion, passion or frenzy?

*Florence Farley.*

Q. Now, a person of that nature, then, when confronted with fear, escapes. He is not likely to come back to that source of fear, is he?

A. Well, I think it depends on whether or not the individual carries fear within him. Exactly what his actions would be, that we would have to consider from that standpoint.

Q. His fear of destruction of others who frighten him is an emotional characteristic, is it not?

A. I cannot understand that. I don't follow that question.

Q. I say, that his desire or inclination to destruction, you said, he had some inclination to self-destruction.

A. Yes.

Q. And he could also from fear have inclination to destruction of others than himself, could he not?

A. Yes.

page 100 } Q. If that would be particularly in a person of this category, would materialize where the person is the source of the fear and domination that he believes that person would have over him, is that right?

A. I am sorry—

Q. We may not be so clear.

A. No, I can't quite understand that.

Q. You are dealing with emotions, are you not?

A. We are dealing with a personality.

Q. Based on emotions?

A. Based on—no, no. We are dealing with a total personality.

Q. In which the play of emotions have varying degrees in each person?

A. Yes.

Q. In this person it is highly affected by his emotions?

A. By his feelings.

Q. What is the difference between feelings and emotions?

A. I think what has happened here is that I was going along one train and you were using a word I use all the time in a different way. So let me see if I can reconstruct.

If you could ask me again what you were saying, because I didn't quite follow you—

page 101 } Q. The end result of violence in this individual arises from his fear and fright, does it not?

A. Among other things, many other things.

Q. They are emotional characteristics, fear and fright, are they not?

A. Yes, you may define them as emotions.

Mr. Watts: That is all.
Mr. Simpson: Thank you, Mrs. Farley.

(Witness steps down.)

Whereupon,

WILBUR A. HAMMAN,

was called as a witness by counsel on behalf of defendant and, having been first duly sworn, was examined and testified on his oath as follows:

DIRECT EXAMINATION.

By Mr. Simpson:
Q. Would you state your name, please?
A. Wilbur A. Hamman.
page 105 } Q. What is your profession?
A. I am practicing psychiatry at Central State Hospital.
Q. Dr. Hamman, what has been your training?
A. Well, I graduated from college in 1950 with Bachelor of Arts degree in psychology. I graduated from the University Medical School, University of Chicago Medical School, in 1955.
Since then I have been at Crownsville State Hospital for about two years, in Maryland. I was in charge of the criminal building there. I also was in charge of all of the criminal evaluations, and since June of this year I have been in charge of all of the criminal evaluations at Central State Hospital.
Q. Did you conduct an examination of the defendant?
A. Yes, I did.
Q. When and where was that examination conducted?
A. The patient was in the hospital between September 22 and December 13 and actually the examination was completed by November 5.
Q. What did this examination consist of?
A. Well, under my direct examination, the patient had a physical examination, laboratory tests for his blood and urine, skull X-rays and electroencephalogram. This is a brain wave test to see if there is any possibility of brain
page 106 } damage.
I also had our social workers investigate the

*Florence Farley.*

A. Inspired? Would you read that again, please?

Q. Do you have an opinion as to whether such impulses would be inspired or produced by emotion or

page 103 } passion or frenzy or anger?

A. They would be produced from within the individual. I am not very certain what you are saying.

Q. I used the words, emotion, passion, anger, as opposed to arising from some mental disease.

A. I think that it would arise from some mental disease.

Mr. Simpson: I have no further questions.

RE-CROSS EXAMINATION.

By Mr. Watts:

Q. That is not a permanent mental disease?

A. I didn't hear that.

Q. Is that a permanent mental disease or what you call transitory, temporary?

A. Oh, no, it is not a temporary disorder. It is a disorder that would need treatment before you could tell one way or the other.

Q. It does not exist daily?

A. Yes, the disorder, the schizophrenic disorder exists in the individual.

Q. What triggers his action, something from without that angers him?

A. It would be a combination. It would be more than any one factor that could trigger any of his behavior

page 104 } activity.

Q. Without any adverse elements from without, he is not likely to exhibit any characteristics of violence?

A. Oh, no; I could not say that because schizophrenic individuals are extremely unpredictable.

Q. The outward elements are what set off their reactions, are they not?

A. They take their—

Q. The outward elements are the things that set off their reactions within?

A. Not always, no, not always.

Q. But can you decide, then, when it is and when it isn't the outward elements?

A. Well, to some extent, I imagine that you can.

*Wilbur A. Hamman.*

By anxiety, we mean a tremendous fear that something will happen. Perhaps he cannot identify what it is. But these things have been going on for a long time.

page 108 } However, there is a sort of a thin shell of reality surrounding these people so they are not as easily recognized as being sick as some of the more severe forms of insanity.

Q. Upon what do you base your diagnosis?

A. Well, from the social history we learned this boy, this man as a boy, had always been different. I would like to digress and say in terms of the cause of his condition, we do not know what causes a lot of these psychiatric conditions any more than a cardiologist knows what causes a coronary. I mean, in terms of the basic beginning of it.

But this boy was considered different from a very early age.

His father always considered him different. He apparently was a management problem and the father did beat him more than other people.

At the age of thirteen, the father committed suicide.

Now, I think it is quite justified to speculate that this boy disliked his father because the father beat him and had hostile feelings toward the father and the father committing suicide was really quite a problem because the boy must have unconsciously felt he wished him dead and now he is dead—I am a murderer.

At the age of fifteen, he began to wish he were dead. He began to think he wanted to commit suicide. He

page 109 } began to have tremendous fears of killing himself.

When he went into the Army, he got along all right at first. Then he went AWOL, with no apparent reason. There was no rationale behind this.

If you talked to him then, and I have read the report by the Army psychiatrist, and if you talked to him about it now he cannot give you an intelligent answer. He has no idea why he was doing this.

So I think this in itself demonstrates a disorder of thinking.

He has expressed at that time tremendous fears for his own destruction, whether he would be destroyed.

He has also expressed on numerous occasions that he was afraid he would destroy or kill or hurt somebody else.

Now, schizophrenia has probably three major characteristics. There is a disorder of thought.

*Wilbur A. Hamman.*

family situation to try to get a longitudinal study of this boy's development.

I requested the psychology department to evaluate him from the standpoint of psychological testing and I interviewed him myself rather extensively on several occasions.

Q. What were the results of these examination?

A. Well, the physical examinations and the laboratory examinations and the X-rays were normal.

I ordered the electroencephalogram because Dr. Roebuck had raised the question as to whether he might have suffered some organic brain damage back in, oh, at the age of fifteen. But according to our results, there is no evidence of organic brain damage.

The social, now, taking the three together, this to me is from the psychological standpoint, the three bases of any evaluation of a patient, taking my psychiatric interviews and psychological tests and the social history in composite, it was my opinion that we were dealing with a boy who was severely emotionally disturbed, and I am using this word "emotionally" and I will qualify it later, and that he had been severely emotionally *distrurbed* for a long period of time.

Q. Is he suffering from any mental disease or
page 107 } condition that is known to psychiatry?

A. Yes, he is.

Q. Would you please describe it, his condition?

A. Well, I would first like to explain that for diagnoses in the State of Virginia we have to fit diagnoses into prearranged coded slots. In other words, there is a slot for this and a slot for this and there are many psychiatric conditions that do not come under these slots.

Now, Mrs. Farley has already testified that we made a diagnosis of chronic undifferentiated schizophrenia. It just so happens that the condition that this boy is suffering from from a rather severe form of ambulatory schizophrenia. This comes under that heading. This boy is actually suffering condition was first described by Dr. Gregory Zylberg at Johns-Hopkins in 1941 and is generally accepted by the profession today as a clinical entity.

The ambulatory schizophrenic shows disorder in his thinking, disorder in his perception—that is, he doesn't see things the way most people see them. He will distort them, usually against himself. He shows a disorder and mood. He has a great deal more anxiety than the normal individual.

I want to qualify "anxiety," too.

*Wilbur A. Hamman.*

I have always pointed out that this boy cannot give intelligent answers in many ways because of his confused thinking.

Also, he has a disorder in the way he looks at the world.

In other words, he will look at a person and say: "Oh, oh, that guy is going to hurt me," whether the guy would hurt him or not.

In other words, he distorts reality. This is page 110 } coming out of him. He has a disorder of affect.

This is mood or emotion which is with us from day to day except that in this guy is tearing himself inside out all the time one day after another.

After he got out of the Army, he was described by his relatives as being easily argumentative and becoming quite upset when he became argumentative.

On the other hand, on other occasions, he would, if an argument was going start, or if he thought an argument was going to start, whether it was going to start or not, he would go off into the corner and tremble all over for five or ten minutes because he did not want to get involved in anything because he was afraid of what he would do.

Q. Doctor, if the patient is not given proper medical treatment and given the same circumstances under which the present crime was committed, in your opinion would he be likely to commit such a crime again?

A. In similar circumstances—

Mr. Watts: If the Court please, I don't know whether that is a valid question in this case.

The Court: What is the relevance of that?

Mr. Simpson: Showing, Your Honor, further elaboration on the patient's mental condition; and that this is not just a—the Commonwealth has tried to—

The Court: I think if that is the purpose of it page 111 } it is admissible.

Mr. Simpson: The Commonwealth has tried to show—

The Court: I think that if that is the purpose of it it is admissible.

Mr. Simpson: That is the purpose.

The Court: Very well; objection overruled.

The Witness: I am inclined to think he would. I think he needs to be in a hospital for a period of treatment, probably for a long period of time.

*Wilbur A. Hamman.*

I think that given the same circumstances, something would happen.

It might not be the identical thing, but something would happen.

I mean, after all, he told the Army psychiatrist three years ago that he was afraid that he would kill somebody but nobody paid any attention to him. He knew it. No one else seemed to.

Q. Doctor, I ask you to assume a Negro male, twenty-three years old. This Negro male was one of eight children who all his life was a behavior problem. He feels that his father hated him.

Mr. Watts: If the Court please, I believe that these people examined this man and the hypothetical question to them is unnecessary.

Mr. Simpson: If the Court please, I—

page 112 } The Court: Mr. Watts is willing to waive the hypothetical and permit the doctor to express his opinion. Do you agree with that, Mr. Simpson?

Mr. Simpson: Yes, sir, if he is willing to waive.

The Court: Just ask for his opinion then.

By Mr. Simpson:

Q. Doctor, you are familiar with the circumstances surrounding the commission of the crime with which the patient is charged?

A. Yes, I am.

Q. Do you have an opinion based on reasonable certainty and from a medical and psychiatric point of view as to whether or not the patient was suffering from some mental disease affecting his willpower at the time these events occurred?

A. Yes, I think he was.

Q. What is that opinion?

A. He was, definitely.

Q. Do you have an opinion as to whether or not he was able to distinguish right and wrong and to know the nature and consequence of his act?

A. Well, this is a real hooker, whether he knew the consequences of his act at the time he committed the act. I don't know. Most probably he did.

Certainly, immediately afterwards he was

page 113 } aware of the consequences of his act and certainly aware of the difference between right and wrong.

*Wilbur A. Hamman.*

CROSS EXAMINATION.

By Mr. Watts:

Q. Now, Doctor, what is the significance of the phrase, ambulatory, before the diagnosis or as part of the
page 115 } diagnosis?

A. This means that these people are withdrawn, disturbed, terribly emotionally upset, and yet many of them are able to ambulate—that is, function on a marginal level in society.

Q. They only then occasionally fall below that, then?

A. They often have an acute episode, many acute episodes, which will last from four to six weeks, and recover, or they may have an episode which puts them in a hospital for the rest of their life.

Q. Now, you are familiar with the psychologist's conclusions as to the personality of this defendant?

A. Yes.

Q. Is it not likely that one having the isolated and withdrawn personality of this defendant, that once he escapes from a source of fear that he will not return to it?

A. Well, this would depend on how he perceived it at the time. I have a very strong impression that he felt that he was so delusioned, and by delusion I mean a false belief—that his delusional system usually isn't too strong had reached such intensity at this time that he felt that he had to eliminate this source of threat to himself or he would be killed himself.

Since he has always been afraid he was going to die, this magnified this fear.

page 116 } Q. Now, in this classification, when one of this classification acts or is unable to resist the impulse act, is that directed at anyone or any one individual?

A. It was directed at the source of the threat this time or the source of the imagined threat.

Q. If one acts upon irresistible impulse, the act is upon friend or foe indiscriminately?

A. No. An irresistible impulse, the person would act out violently against a real or imagined threat. The point is that the threat would be real to the patient whether it might be imaginary to any onlooker, but he would have a definite goal in mind. I can't say in mind, because I don't think he was thinking that clearly, but there would be a definite goal.

Mr. Watts: I believe that is all.

*Wilbur A. Hamman.*

Q. Do you have an opinion as to the mental state of the patient at the time these events occurred?

A. Yes.

Q. What is that opinion?

A. I think he was suffering from, I think he was extremely mentally and emotionally disturbed and unable to control his behavior.

Q. Do you have an opinion as to whether or not the act in question was one of impulse?

A. Yes.

Q. What is that opinion?

A. I think it was.

Q. Do you have an opinion as to whether or not the patient could have resisted this impulse?

A. I don't believe he could have in these circumstances.

Q. Do you have an opinion as to whether the patient's mind was so impaired by mental disease that he was totally deprived of the mental power to control or restrain his act?

A. Yes, I think he was.

Q. Do you have an opinion as to whether or not these impulses could be distinguished from mere passion or overwhelming emotions, not growing out of or connected with any disease of the mind.

page 114

A. I think I have already alluded to this, but definitely they are distinguished from this.

Mr. Watts: I do not understand that answer.

The Witness: Well, definitely, what was going on in this man at the time it was happening had very little to do with emotion or extreme emotion or passion.

By Mr. Simpson:

Q. Doctor, would the fact that the patient was intoxicated or had been drinking at the time affect your opinion, your previously stated opinion?

A. No.

Q. In your opinion, Doctor, would the fact that a policeman was present at the time and place that these events occurred, would have deterred this man from—

A. In the mental condition in which he—

Mr. Watts: If the Court please, I don't know that that—

The Court: What is the relevancy of that?

Mr. Simpson: I withdraw the question.

I have no further questions.

BASIL ENOCH ROEBUCK,

was recalled as a witness by counsel on behalf of defendant and, having been previously duly sworn, was examined and testified further as follows:

DIRECT EXAMINATION.

By Mr. Simpson:

Q. Dr. Roebuck, as a psychiatrist you have studied the disease called schizophrenia?

A. Yes, sir.

Q. Have you personally treated many such cases?

A. Yes, a great many.

Q. Are there several types of schizophrenia?

A. Yes, there are.

Q. Do all cases of schizophrenia cause the sufferer to be mentally ill?

A. Yes, they do.

Q. Is a person suffering from schizophrenia liable to show obvious mental disturbances at all times?

A. No, not at all times. It is perfectly possible that to an untrained person, a person suffering from schizophrenia could appear to be quite normal. But of course, for some of the time they appear to be quite normal.

Q. Then it is possible that a person could be
page 119 } walking the street and to all appearances normal
and behaving normally and still be a schizophrenic?

A. That would be correct.

Q. Is it possible to predict with reasonable certainty what the behavior of a schizophrenic will be if he is not at the time under medical care?

A. No, I don't think it is.

Q. Could such a person lose control over his actions?

A. Yes.

Q. Could this happen suddenly and without warning?

A. Yes, it could.

Q. Do such sudden changes in behavior often happen in schizophrenics?

A. Yes, it is well known that sudden changes like that often occur. I think this is why they have to, for the community's sake, be kept under observation and, if need be, in a mental hospital.

Q. Do all schizophrenics get violent?

A. No.

Q. Do some schizophrenics get violent?

A. Yes, on occasions.

*Wilbur A. Hamman.*

RE-DIRECT EXAMINATION.

By Mr. Simpson:

Q. Dr. Hamman, both in direct and cross examination, you used the word, emotion or emotional. How do you use that word—in the normal, every-day sense?

A. No. Emotions in the normal, every-day sense, we speak that I am in love with somebody, or I hate somebody. It may be transitory. Or you may be in love with someone for a long time.

For one thing, I should have qualified this boy's
page 117 } emotions are distorted. They are distorted in
that they are, I would rather use the term, feelings, actually as feelings that something would happen to him. He has a fear of his own impulses. He has had these for a long time.

I am using emotions in this sense.

Q. One final question, Doctor. You are employed by the Commonwealth of Virginia, are you not?

A. That's true.

Mr. Simpson: I believe that is all.

The Court: Any further questions?

Mr. Watts: Just a moment, if Your Honor please.

RE-CROSS EXAMINATION.

By Mr. Watts:

Q. It was your conclusion that from your examination of this defendant that he was responsible at the time the offense occurred?

A. No, I said, under a strict interpretation of the McNaughton rule he knew the difference between right and wrong and most probably the nature and quality of his act.

Q. Had he not, you would not have recommended his returning to Winchester?

A. If I felt that he did not know either the right from wrong, or the nature and quality of his act I would not have recommended that he return to court.

The Court: You may be excused.

page 118 } (Witness excused.)

Whereupon,

*Basil Enoch Roebuck.*

The Court: Would you permit him to express an opinion without the repetition of this lengthy hypothetical question?

Mr. Watts: This is a little different from the other.

Mr. Simpson: This is a little different. This is only one paragraph.

The Court: I am sorry. You started out in page 122 } the same language as the other.

Mr. Simpson: Yes, sir.

And that the schizophrenic, being unable to meet the debt, felt himself in danger of attack from his creditor. Prior to committing the homicide, the schizophrenic was noted to be acting in an unusual manner and at the time of the assault his violence appeared to be totally unrestrained.

Assuming these propositions, can you say with reasonable certainty anything about the mental condition of the schizophrenic at the time these events occurred?

The Witness: Yes, I think so.

By Mr. Simpson:

Q. Would you please state your opinion?

A. I think that his actions, of course, would not make sense to a normal person. I think that these would be things that were done as a result of an insane impulse. In other words, they were probably the result of his mental disorder.

Q. Would he have been suffering from a mental disease?

A. Would he have been?

Q. Yes.

A. Yes, I thought you said he was.

Q. Would you state your opinion as to whether the assailant could have resisted this impulse?

page 123 } A. No, I don't think he could.

Mr. Simpson: That is all.

CROSS EXAMINATION.

By Mr. Watts:

Q. Doctor, you are basing your opinion upon the grossness and excessiveness of the act done?

A. This was depicted as a gross and excessive act. Yes, I think so.

Q. You then are basing your conclusion upon the act itself?

A. I am sorry, I didn't quite follow you.

*Basil Enoch Roebuck.*

Q. Do external circumstances sometimes precipitate such violence?

A. Yes, I think they do.

page 120 } Q. I would like to ask you to assume a schizophrenic individual is at large in the community and not under treatment and that he is afraid of or aggravated by another person. Would this circumstance be liable to cause the latter person to become the object of an outburst of violent behavior on the part of the schizophrenic?

A. Yes, I think it could.

Q. Would the schizophrenic be able to control his actions at this time?

A. No, because I think that under the circumstances you mentioned he would be acting in the way he did because of his diseased mind.

Q. Could he form the intent to carry out such an attack?

A. Yes, he could.

Q. Would he be able to distinguish right from wrong?

A. This is very difficult to answer. I think under the conditions you mention where you have a sick individual who performs an impulsive act like this, as a result of his sickness, I think one could honestly say, no.

Q. Is chronic undifferentiated schizophrenia a particular type of subdivision of this illness about which you have testified?

A. Yes, it is.

Q. Would all opinions that you have expressed apply to chronic undifferentiated?

page 121 } A. Yes, they would apply to any of the subdivisions of schizophrenia.

Q. Now, assume that a person with chronic undifferentiated schizophrenia has attacked and killed another man and that the dead man himself was a violent person who had a criminal record and conviction for homicide; and before the homicide was perpetrated, the deceased had demanded the repayment of a debt from the schizophrenic.

The Court: May I interrupt?

Doctor, you have been in the courtroom and heard this hypothetical question propounded previously, have you not?

The Witness: Yes, I heard it.

The Court: Did you hear the hypothetical question propounded to these other witnesses?

The Witness: I did. I don't know whether it is the same hypothetical question.

WARREN RUDOLPH,

was called as a witness by counsel on behalf of defendant and, having been previously duly sworn, was examined and testified further as follows:

DIRECT EXAMINATION.

By Mr. McKee:

Q. Lieutenant, how long after this act had occurred did you interview the defendant?

A. Approximately an hour and a half.

Q. Had he been drinking?

A. He had been drinking. To what extent I don't know, but he had been drinking.

Q. Did he appear to you to be intoxicated?

A. Well, he had been drinking. I don't think he was particularly under the influence of it.

Q. Would you describe his demeanor? Was he dazed or was he alert?

A. The only thing that I can particularly recall about his demeanor that didn't seem quite right was that when I would ask him a question there would be a time lag of maybe fifteen or twenty seconds before he would answer. He would tend to sit and look at the other side of the room and page 126 } suddenly turn around and answer me. But when he did answer me, the answer was completely coherent.

Mr. McKee: That is all.

CROSS EXAMINATION.

By Mr. Watts:

Q. Now, you have interviewed other defendants charged with the crime of murder or other heinous crimes, have you not?

A. Yes, sir.

Q. Was his reaction at that time any different from others you have interviewed?

A. Not particularly, no, sir.

Q. And he understood your questions to him?

A. Yes, sir. When he would answer the answer was completely coherent. It made sense, but there was just a time lag as I mentioned.

Q. He was calm at the time you interviewed him that evening?

*Basil Enoch Roebuck.*

Q. I say, you are basing your conclusions, your statements here as to whether he is suffering from mental illness and able to control his volition by virtue of the degree of the enormity of the act committed?

A. No, I don't think that is true.

Q. Sir?

A. I don't think that is true. Certainly the act committed did have, well, a very bizarre aspect. I know that. But I think that even leaving that out, we have to recognize that for many years this man had been ill; that this was known; it had been documented; and in his condition, of course, he would be liable to unpredictable behavior just the same as anybody suffering from this disease.

Q. But what you have said, you say it applies
page 124 } to some in varying degrees, does it, the reactions of these persons having this ailment?

A. Of course, there is a wide range of variation, yes.

Q. As to what reaction this man would do, you do not know?

A. Well, my acquaintance with this particular case is rather brief and because I did not feel that I had sufficient opportunity to reach a very definitive conclusion, it was my recommendation that he should be observed in an in-patient setting.

Therefore, I leave conclusions about the particular case to the others who studied it.

Q. You have been giving your conclusions as to the generalities and not the particular?

A. This is to the disease in general rather than to this particular case.

Mr. Watts: That is all. Thank you.

Mr. Simpson: Thank you.

I ask that this witness be excused.

The Court: Any objection?

Mr. Watts: No, sir.

The Court: The witness is excused from further attendance upon the Court.

(Witness excused.)

page 125 } Mr. McKee: Lieutenant Rudolph.

Whereupon,

*Wilbur A. Hamman.*

So this would certainly fit in with the picture presented by Mr. Christian.

Mr. Simpson: Thank you.
Mr. Watts: One minute, if you please, sir.
I do not have any questions.
The Court: That is all.

(Witness steps down.)

The Court: Next witness, please.
Mr. Simpson: Defense rests.
The Court: Defense rests.
Mr. Watts: The Commonwealth rests.
The Court: The Commonwealth rests.
Members of the jury, we will have a recess while the instructions are prepared. I cannot tell you how long it will be but I assure we will make it just as brief a time as possible.
You may leave the jury box. Again, as the law requires, I must admonish you not to discuss the case in the
page 128A } presence of any person and not to permit any person to discuss the case in your presence during your absence from the jury box.

In Chambers.

The Court: All right, Mr. Simpson.
Mr. Simpson: Counsel for defense again renews its motion to strike the evidence of the Commonwealth on the grounds that the evidence of the defense as a matter of law is sufficient to rebut the presumption of insanity and the evidence of the defense on the issue of sanity is uncontradicted and therefore you have to rebut the presumption of insanity.
The Court: The motion is overruled.
Mr. Simpson: Note my exception.
The Court: Exception noted.

page 129 } This Court will now recess.

In Chambers.

(During a discussion of instructions, the following occurred:)

Mr. McKee: We object to that instruction in that the

A. He wasn't ranting or raving or anything, no, sir. He was talking normal.

Mr. Watts: That is all.
Mr. McKee: No further questions.
Mr. Simpson: I would like to recall Dr. Hamman.

Whereupon,

WILBUR A. HAMMAN,

page 127 } was recalled as a witness by counsel on behalf of defendant and having been previously duly sworn, was examined and testified further as follows:

DIRECT EXAMINATION.

By Mr. Simpson:

Q. Doctor, you have previously expressed your opinion as to the mental condition of the defendant at the time that he committed these acts.

A. Yes.

Q. Would the fact that two hours later he was talking in a coherent manner, save a time lag in the answering of a question, affect your opinion any?

A. This time lag is important. This is something we have picked up with him in our own interviews, that I picked up with him in interviewing. It is, the term is, blocking. What this means is, if you ask a person something or they are talking about something and suddenly the subject is so painful they unconsciously, beyond their conscious will, block out saying anything. Then, maybe after twenty seconds or so, or maybe ten minutes or maybe twenty years, it can vary, they are able to let this through.

But I think this is rather significant in itself.

As I say, no, this person had relieved the cause of his overwhelming tension.

I wonder if he was really aware, although he was able to

page 128 } answer questions, I *wan't* there so I can't say what he was aware of—I really cannot comment too much except to say that a person with this type of disorder could have an acute psychotic exacerbation and then sink back to their normal level of functioning which means, stay away from me, leave me alone, because I might hurt you; but I will answer questions but they are painful so it is going to take me a while to answer them.

a knife was used and by showing that he killed the man the Commonwealth is saying we have satisfied all the requirements. It might very well mislead the jury.

The Court: If it does not appear from the evidence of the Commonwealth to show extenuating circumstances surrounding said killing—again, that instruction, where is the one that I give? Again, I think this is the instruction.

Mr. Watts: I would like to get that typed.

As I understand the business of the use of a deadly weapon—

Mr. McKee: I would like to object to the instruction on the ground that it might mislead the jury.

The Court: I do not think that does.

Mr. McKee: Not that instruction, but I think this one does.

The Court: I was going to substitute that.

Mr. Simpson: If the Court please, I do not
page 132 } know, but it seems to be in conflict with the instruction.

The Court: I do not think so. I understand this is a preliminary draft but it does represent an accumulated—

Mr. Watts: If I had seen them I would have used them.

The Court: Doesn't use the word, *prima facie*. It just tells the jury, killed with deadly weapon in the possession of the slayer.

Mr. Simpson: We object to it, Your Honor.

(Whereupon, proceedings were resumed in open Court.)

The Court: Is counsel ready?

Mr. Watts: Yes, sir.

Mr. Simpson: Defense is ready.

The Court: Ladies and gentlemen of the jury, I am now about to read to the jury the Court's written instructions which will govern you as to the law in this case.

As you all know, of course, nothing that I have to say in these written instructions should be taken by the jury as indication of what I may think of the facts of the case or the weight and credibility of the evidence or the guilt or innocence of the accused because those are matters solely for the jury to decide.

It is the duty of the jury to decide what the facts of the case are from the evidence that you hear on the wit-
page 133 } ness stand and from that alone. Then, applying the law as outlined in the Court's written instructions to the facts that you find from the evidence you arrive at your verdict and decision in the case.

language of paragraph 5 could mislead the jury in that it says, the consequence of an actual disease of the mind.

I believe that the jury might well construe that to mean an organic as opposed to a disease which is recognized by the psychiatric profession as a real disease of the mind.

In other words, if you give them this, they would have to believe that there was an organic or degenerative disease of the mind.

The Court: Well, this is the language of the Court of Appeals, that case that you read.

Mr. McKee: No, sir, not quite.

Mr. Simpson: It is a definition of irresistible impulse, Your Honor.

The Court: Don't they say, actual disease of the mind?

Mr. Simpson: No, sir.

page 130 } Mr. Watts: Yes, sir, the other cases do if that one does not.

The Court: You cited the case that I had in mind.

Mr. Simpson: That is the case.

The Court: This is the latest case on the subject.

Mr. Watts: They did not allow such an instruction to go.

The Court: No.

It has to be by disease—so impaired by disease.

These other cases said, actual disease of the mind, as I recall it, didn't they?

Mr. Simpson: No, sir.

The Court: What did they say?

Mr. Simpson: The case of *Thurmond* v. *Commonwealth,* the instruction, the actual instruction given, and the words inserted by the trial court, was that he did not possess will-power sufficient to restrain his impulse arising from a diseased mind. And those are the words inserted by the trial court and approved by the Court of Appeals.

The Court: Diseased mind.

Mr. Simpson: We object to the word "actual."

The Court: I will strike the word "actual."

Mr. Simpson: If the Court please, I think the first part of the instruction is inapplicable in this case.

page 131 } Exception to letting it go, about knowing right from wrong.

Mr. McKee: Note our objection to the insertion in the instruction of the definition of right and wrong and to the refusal of our instruction.

On this instruction we object to this on the ground that it says, burden of going forward with the evidence. But that places the burden upon the accused merely by showing that

I will now read the instructions to you.

Instruction No. 1: The Court instructs the jury that you are the sole and exclusive judges of the facts of this case, the weight of the evidence and credibility of the witnesses who have testified.

It is the duty of the jury to determine whether you believe or disbelieve the testimony of each witness in whole or in part.

In determining the credibility and weight to be given to the testimony of each witness, the jury shall consider its interest, bias, or prejudice, if any appear; his appearance and demeanor while testifying, the likelihood or unlikelihood of the truth of his testimony, his opportunity to know that of which he testifies, and from these and all other facts and circumstances of the case the jury should determine whether to believe or disbelieve in whole or in part the testimony of any witness.

If the jury believes that any witness has knowingly testified falsely to a material fact, you may disregard his testimony in its entirety or give it such weight as to you it appears such testimony is entitled.

page 134 } The jury has no right arbitrarily to reject the testimony of any witness. The testimony of all witnesses should be considered in connection with all other facts and circumstances of the case in determining the credibility which is to be given to such testimony.

Instruction No. 2: The Court instructs the jury that in this case, as in all criminal prosecutions, the accused is presumed to be innocent until his guilt is established by the evidence beyond a reasonable doubt and to the exclusion of every reasonable hypothesis of innocence.

The burden is upon the Commonwealth to establish every material fact necessary for conviction by the evidence beyond a reasonable doubt. This presumption of innocence applies at every stage of the case until or unless the Commonwealth has established every material fact necessary for conviction by the evidence beyond a reasonable doubt.

If, after a fair and impartial consideration of all the evidence, the jury entertain a reasonable doubt of the existence of any material fact necessary for conviction, the jury must find the defendant not guilty.

If the jury are satisfied by the evidence beyond a reasonable doubt of the existence of every material fact necessary for conviction, they must find the defendant guilty.

If a set of facts or circumstances should be susceptible

of two or more reasonable interpretations, any
page 135 } one of which interpretations points to the innocence of the defendant, the jury must accept that interpretation pointing to his innocence in arriving at their conclusion to be drawn from such set of facts or circumstances.

Instruction No. 3: The Court instructs the jury that every homicide is presumed to be murder in the second degree and the burden of proving the elements necessary to elevate the crime to murder in the first degree is upon the Commonwealth. But on the other hand, in order to reduce the offense from murder in the second degree to manslaughter, the burden is upon the defendant.

However, this burden of the defendant is satisfied if the jury, upon consideration of all the facts and circumstances, have a reasonable doubt as to whether the killing was done with malice.

Instruction No. 4: When it is proven that a killing was done with a deadly weapon previously in the possession of the slayer, the jury may find the accused guilty of murder in the first degree unless the other facts and circumstances create in their minds a reasonable doubt as to whether the killing was done with malice, deliberation, or premeditation.

Instruction No. 5: The Court instructs the jury that to constitute a willful, deliberate and premeditated killing, constituting murder in the first degree, it is not necessary that an intention to kill should exist for any particular
page 136 } length of time prior to the killing. It is only necessary that said intention should come into existence for the first time at the time of such killing or at any time previous thereto.

Instruction No. 6: The Court instructs the jury that any willful, deliberate and premeditated killing is murder in the first degree and that if the Commonwealth proves that a mortal wound has been inflicted—that was an instruction erroneously. I will have to exclude that instruction. There is a substitute for it, Mr. Watts.

Instruction No. 7: In this case, the accused contends that he was insane at the time the crime was committed. The law excuses the commission of crime if the accused was insane to the degree defined below.

Every person is presumed to be sane. The burden is upon the accused to prove his insanity by the evidence to the satisfaction of the jury. In order for the accused to be excused for his crime he must prove by the evidence to the satisfaction of the jury, first, that he was mentally incapable of knowing the nature and consequence of his act; or, second, that he

Instruction No. 9: The Court instructs the jury that if you should believe from the evidence beyond a reasonable doubt the accused, Jack Monroe Christian, is guilty of willfully, deliberately and premeditatively killing the said John D. Cox, Jr., with malice aforethought, then the jury should find the accused guilty of murder in the first degree of the said John D. Cox, Junior, and fix his punishment by confinement in the penitentiary for life or for any term not less than twenty years.

page 139 } If the jury believe from the evidence beyond a reasonable doubt that the accused, Jack Monroe Christian, is guilty of killing the said John D. Cox, Junior, with malice aforethought—gentlemen, an error has crept in. I have delineated in pencil the words—I will have to read it over—

If the jury believe from the evidence beyond a reasonable doubt that the accused, Jack Monroe Christian, is guilty of killing the said John D. Cox, Junior, with malice aforethought, but they are not convinced from the evidence beyond a reasonable doubt that the act was done willfully, deliberately and premeditatively, then the jury should find the accused guilty of murder in the second degree and fix his punishment by confinement in the State penitentiary for not less than five nor more than twenty years.

If the jury believe from the evidence beyond a reasonable doubt that the accused, Jack Monroe Christian, is guilty of killing the said John D. Cox, Junior, without malice or premeditation, but in the heat of sudden passion with more than slight provocation, or while engaged in mutual combat, then the jury should find the *jury* guilty of voluntary manslaughter of the said John D. Cox, Junior, and fix his punishment by confinement in the penitentiary for not less than one nor more than five years.

page 140 } Ladies and gentlemen, if you cannot read my handwriting, you will have to come back and I will read it to you.

Is counsel ready?

Mr. Watts: If the Court please, ladies and gentlemen of the jury, you have listened most attentively today to the evidence produced at this trial and now it becomes the duty of the Commonwealth and of the defense to summarize that evidence and to argue in order that you may reach a verdict.

Now, we have seen from the evidence today that on June 14, 1959, a Sunday afternoon, around 7:30, the defendant had been drinking beer, he said, to the extent that he said that he began feeling that beer and that as he was on his way home he was met by these two people, one of them the victim,

had insufficient mentality to distinguish between right and wrong; or, third, that although capable of distinguishing between right and wrong and knowing the nature and consequence of his act, he was forced to commit the crime by an impulse which he was powerless to control in consequence of an actual disease of the mind.

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We will strike out "actual" because we strike it out in the other paragraph. The reason for that is that counsel are afraid the jury might misinterpret the term "disease of the mind."

"Disease of the mind" is a mental disease, not necessarily a physical disease, but a mental disease. Any mental disease is what is contemplated.

Now, I will read that sentence over again so that it will be intelligible.

Third, that although capable of distinguishing between right and wrong, and knowing the nature and consequence of his act, he was forced to commit the crime by an impulse which he was powerless to control in consequence of a disease of the mind. This irresistable impulse must not be one inspired by emotion, passion, or frenzy produced by anger, hatred, jealousy or other cause alone but must be the result of a disease of the mind which totally deprived him of the mental power to control or restrain his act.

If the jury are satisfied by the evidence that the accused was insane as defined above at the time the crime was committed, they will render their verdict in the following form:

"We, the jury, do find the accused not guilty by reason of insanity."

page 138 }

Instruction No. 8: The Court instructs the jury that if they should believe from the evidence beyond a reasonable doubt that the accused killed John D. Cox, Junior, as charged in the indictment, and if they should believe from the evidence that at the time of the killing he knew the nature and consequence of his act and knew that it was wrong, and he was not forced to commit the crime by an impulse which he was powerless to control and in consequence of an actual disease of the mind—strike out "actual"—I think I have explained that to the jury—and knew that it was wrong and was not forced to commit the crime by an impulse which he was powerless to control, in consequence of a disease of the mind, but by an impulse inspired by emotion, passion, or frenzy produced solely by jealously, anger, or other emotion, then they should find him guilty of one of the crimes charged in the indictment.

to Mr. Simpson, I would like to review very briefly the evidence. I think it speaks for itself.

I think when you return to your jury room if you will take Instruction 7, which is the heart of this case, and read it very carefully you will come to the only conclusion that you can come to in this case.

That instruction says, every person is presumed to be sane. The burden is upon the accused to prove his insanity by the evidence to the satisfaction of the jury.

It goes on to say in paragraph 3 that although capable of distinguishing between right and wrong and knowing the nature and consequence of his act, even if he knows these things, he was forced to commit the crime by an impulse which he was powerless to control in consequence of a disease of the mind.

page 143 } If you find that this act was the result of the consequence of the disease of the mind, you must acquit this man. You are duty bound to acquit this man and I know you will all do your duty.

The evidence in this case, there is not one shred of it which is not perfectly consistent and it is inconsistent with anything else other than irrepressible impulse.

Look at the knife, the very weapon. This knife was plunged six inches into the chest of a man by this slender youth. Six inches. Look at the blade, bent. Obviously this was done with tremendous force, tremendous energy. It was done in a frenzy.

I think there is little disagreement there among all the witnesses of the Commonwealth, this was an act of frenzy. He came running down the street and he screamed and he raised the knife and plunged it into this man's chest.

There are only two possible things that could have been going on in his mind at this time. Either he was insane and this was an act of revenge, the motive being he owed the man 30 cents and they had an argument, or he was insane, that he was under an impulse which he could not resist.

Now, if he was insane, if he was under this impulse, he would have acted exactly as he did. He would have come

page 144 } running and screaming. He would later, after the crime was completed, after the man was dead, he would have stood there and calm now, released, this great fear which he had in his inner mind gone, as Dr. Hamman told you—this was the one thing which he had to get rid of. This was a mental self-defense.

This man that he killed was a known knife man, a known slayer. The man the Commonwealth's own witnesses said

and asked about a loan of 30 cents, a repayment of this loan.

The defendant tells you he did not consider it a loan in the first place. He thought he had earned it by showing the victim how to shoot pool; that thereafter he went along and ran into the victim and some others again later and again was requested for the 30 cents.

An argument ensued about the defendant not speaking to the victim.

That argument, ladies and gentlemen, is the beginning of this sequence of events which led to the killing of John D. Cox, Junior.

The defendant said, well, I know just because
page 141 } you have killed someone else, you are not going
to walk all over me—and you heard the testimony of Newsome, how then the defendant took off across the field and went to his house some distance away and was gone for some length of time and returned and with a knife in his hand, this knife, stabbed the victim, stabbed him once behind the tree and then the victim threw his hands up and ran down toward Kent Street, the defendant following him, and he was cut again.

You have heard, too, that the victim finally fell on the west side of Kent Street and that the defendant went up to him at that time and abused the victim.

You have heard Lieutenant Rudolph testify that the defendant made a statement to them, to him, that evening in the police station. Here that statement is, as rational and normal as anything in the world.

And that even the police officers said when they went to the scene before the victim had been removed by the rescue squad, the defendant came up to him and told him, "I did it."

And then later, at the police station, on inquiring of the police officer, is he dead, and I hope that he is—did I kill him? I hope that I did—

That is the evidence in this case. The defendant engaging there in an argument with the victim and the victim said, "I will blow your head off." And he says, "Wait a minute.
Wait until I come back."
page 142 } That is the evidence. Willfully, he went over to
his home and found this knife and returned and plunged it into the body of the victim, causing his death, that the Commonwealth says beyond all reasonable doubt is murder in the first degree, and that this defendant should pay with punishment of such a crime by confinement in the State penitentiary for sixty years of his life.

I thank you.

Mr. McKee: Ladies and gentlemen, before I yield the floor

The defense of irresistible impulse is a difficult one to present in the technique of presentation to the jury. A jury is called upon to sit and to understand testimony of people who are talking in another world at the time, and this is a problem.

However, I think that the evidence clearly shows that this boy was motivated by irresistible impulse.

I think that only if you are unwilling to accept the defense of irresistible impulse can you find him guilty.

Ladies and gentlemen, this has been a very unusual case in many respects.

First, an unusual defense is offered.

Second, there has been little or no cross examination. We are almost through with this case. Normally, a homicide trial can go on for two or three days, and one of the things that draws a homicide trial out is cross examination.

The only purpose of cross examination is to resolve conflicts and to try to sift out the truth from what the witnesses say, and this is the unusual feature of this case.

page 147 } There is no real conflict of evidence, hence no need for cross examination.

All of the evidence clearly shows a violent, unusual killing, and all the evidence clearly shows without contradiction that this was the act of a sick boy acting under what is legally known as an irresistible impulse.

Now, juries are urged to consider the evidence and I do urge you to, but I also urge you just as strongly to consider the lack of evidence in this case.

Consider the absence and the total lack of any evidence whatsoever by the State with regard to this boy's mental condition. Not one witness for the Commonwealth has taken the stand and said anything about this boy's mental condition.

Now, ladies and gentlemen of the jury, the Commonwealth has at its disposal the funds and the means to bring psychiatrists and physicians and psychologists by the dozens to examine this boy and to testify in court but not one, not one has taken the stand for the Commonwealth today.

It is customary at this time for counsel for the defense to talk to the jury, quite often at length, about the presumption of innocence and the fact that this boy is presumed to be innocent until proven guilty beyond all reasonable doubt.

I do not mean by my words or my conduct to

page 148 } slight this presumption of innocence. I feel very strongly that it is one of the cornerstones upon which modern civilized society rests today.

But however wonderful and however marvelous the presumption of innocence is, it is not applicable here.

that, man came up and "I am going to blow your head off," put his hand in his pocket.

This boy, to a rational person, this wouldn't mean much, but to this boy whose mind is so clouded with fear, it meant he had to kill or be killed.

This obviously is not self-defense as we would recognize it.

The words are no excuse to kill another man. They are no excuse to assault a man. But if this man's mind was so constituted that to him this created a need to destroy, then he under the law is not guilty and every shred of testimony on the question of sanity has been in his behalf.

The Commonwealth's own doctors, men employed by the State to examine this man, they examined him, they came up here and they testified and they testified that at the time he committed this act he was acting under an irresistible impulse.

page 145 } Mr. Watts is in a very unfortunate position. He is forced to rely on the fact that the act was committed and the fact that the law presumes a man to be sane.

We are in a position where we have to present evidence to convince you that he was not sane. All of the evidence presented today was to the effect that he was not sane.

All the evidence you have to consider is to the effect that he was not sane and under those circumstances, ladies and gentlemen, I don't feel that any other verdict would be justifiable under the law in the case.

One last thing:

Mr. Watts, under the rules of our Court, has the right to speak both first and last so when he gets up and he has finished and carries on with his argument, the fact that we don't get up and carry on with our argument later is not because we would not love to do it, but because we are precluded from doing it.

I am sure you are all very glad of that.

I think that if you do go to your room and sit down and look at that Instruction and try to your best ability to follow it conscientiously, you can only arrive at one verdict.

Thank you.

Mr. Simpson: If it please the Court, ladies and gentlemen of the jury, it has been almost seven months since

page 146 } Peter McKee and myself assumed the responsibility of this trial and I must admit it has been seven months of some anxiety, anxiety not connected with the fact of this whole unfortunate affair, but anxiety as to the nature and the quality of the defense which is offered.

that it is an apology, that they needed to apologize for that defense, what then is the soundness of that defense?

Certainly they do not have to apologize for the work they have done for each one of us knows that they have spent long, arduous hours in the preparation of the defense of this case and they are most capable counsel.

But now, ladies and gentlemen, they tell you, and you may wonder why it is, then, you say that these people come in here and say that this man is acting under an impulse. That is what they say he is doing, acting under an impulse because every word that they have said is their own opinion. That is just their opinion.

You, ladies and gentlemen of the jury, are to decide the fact of whether or not this man acted under irresistible impulse. They cannot say conclusively that he was acting under an irresistible impulse. It is merely their opinion.

And why do we say the jury must decide that fact?

Because, insanity itself is easy to feign and hard to prove. That is what it is.

page 151 } Just consider it now, and every circumstance that they emphasize is for your consideration is the atrocious-looking weapon that was used, the manner in which it was plunged into that man's body, and chasing him down the street and plunging it into him as he ran.

Look at those things. That is senseless. No reason in that.

Ladies and gentlemen of the jury, is every murder founded upon reason? Of you and me sitting in judgment upon it?

Do you yourself ever have an idea of what reason there is for a murder with a gun, with a knife, or with anything?

You cannot look to the enormity of the crime, the atrociousness of the offense.

To say whether or not, and say that those things point out that this man acted under irresistible impulse. That is not the test for if it were the test half the murderers who have stepped into a court of law would then be entitled to freedom.

Insanity is easy to feign and hard to prove and our system of jurisprudence says that the jury shall determine the fact of whether or not a man is insane at the time of the offense and the irresistible impulse amounts to insanity if it exists.

page 152 } Now, one suffering under an irresistible impulse, does he stand there before a person and say, "Wait a minute, I will be back in just a minute," and go off a distance and stay some time and obtain the weapon and come back?

No premeditation, they say.

Why, his very words, "Wait a minute until I get back,"—

This boy killed John Cox and we do not contend that he did not. If you are unwilling to accept the defense of irresistible impulse then you should find him guilty and we would not ask you to do otherwise.

I say, unwilling to accept this defense. You recall that earlier this morning I questioned you on your belief and on your feeling to this defense. Unwilling, because this is the only way that you could, that fair-minded men and women could find this boy guilty because all of the evidence is to the contrary. All of the evidence is that this boy was legally, both legally and mentally insane.

Where is the motive? There is none.

Without it, ladies and gentlemen, this was a senseless act of a diseased mind, which it was, a senseless act of a diseased mind wandering around in the dark someplace, compelled by some force which still perhaps we have not the knowledge or the insight into life to thoroughly understand.

It was the most purposeless, most causeless, most senseless act, most senseless crime ever committed in this
page 149 } city.

There are not physicians enough in the world to convince any thoughtful, fair-minded man or woman that this boy was sane.

Imprisonment—will this prevent other senseless men and women from killing? No more than prior imprisonments prevented this.

Was his act one of deliberation, premeditation, or was he compelled by some such force as Dr. Hamman and Dr. Roebuck have told the Court?

Now, I realize that where responsibility is divided among twelve it is easy to say, away with him. But, ladies and gentlemen, I am pleading for life, for understanding, for intelligence and for courage, for the intelligence to see and recognize and to know disease when and where it exists.

For the understanding to know that we don't stamp out disease by killing or imprisoning the body of a mind wherein it dwells; and the courage to stand by those convictions.

You ladies and gentlemen, you stand between the past and the future. You can send this boy to prison but in doing so you will turn your face to the past. I am pleading for the future, the future when by reason and judgment and understanding and faith we can learn that all life is
page 150 } worth saving and worth helping.

Thank you.

Mr. Watts: If the Court please, ladies and gentlemen of the jury, the defense seems to be in a way of apologizing for the defense they have offered today. Yet if they consider

You decide the facts.

As I said previously, they cannot say conclusively that this man was under any irresistible impulse at the time that this man was stabbed. Yet they sit here and tell you that he is a man withdrawn, that when an argument started, even, just listen to this testimony—When an argument starts he went off into a corner.

Do you think if this man was acting under an irresistible impulse that day with the nature that they say that he is ill with, that he would have stood up to that fellow who said, "I will blow your brains out," and said, "Wait a minute," and go off and return? That is contrary to the very things they said were indicative in this man, demonstrative in this man, and they are contrary to the very fact that he wanted to kill John Cox and he was to be sure that he did it and he went home and got the knife and came back and killed him.

No reason, no motive? Cox had accused him of not speaking to him because he owed Cox 30 cents and Cox said he was going to take it, he said. He said he wasn't going
page 155 } to take it. Right here in his statement he started talking about, I owed him thirty cents, so he said he was going to take it. I told him the only way he was to take it was to kill me. So I killed him. There it is, on the night of this offense, in the statement he made.

No motive? There it is.

Now, there is that one thin line between sanity and insanity, they say. It is sort of like two or three people talking, or two people, one says to his wife: "Throughout the world, I think everybody in it is crazy but me and thee and sometimes I think thee a little queer."

You all have to decide the fact of the insanity. These doctors can only give you their opinions and not a one of them was present on the day this offense occurred.

How did they reach their opinions? By basing it on norms, standards, averages, what happens in interview after interview over a number of numerous cases, they tell you. That is the way they reach their conclusions.

But every person is different. They may react differently from the norm or the average. That is why it is left up to you all to decide the fact of insanity or whether this man acted under an irresistible impulse, for that irresistible impulse to amount to insanity.

Mr. McKee: If the Court please, I think Mr. Watts may unintentially be misleading the jury.

page 156 } The Court: I don't think you ought to abbreviate the Instruction. You would have to read

he has decided then and there with "Wait a minute," I am going to kill this man, but I don't have the weapon at hand. I have got to go get it. There it is at home.

So off across the field he trots, picks up the weapon and comes back with it in his shirt and then when he gets close to him he grabs it out and crosses the street and plunges it into the man.

One suffering under irresistible impulse would have grabbed a rock, a stone, a brick, a plank, anything at hand when this man said, "I will blow your head off," and conked him in the head right then and there and done away with him if he were acting under irresistible impulse.

That, ladies and gentlemen of the jury, is the greatest circumstance to be considered in this case.

Where were the witnesses for the Commonwealth? Why, the very man from Central State Hospital said, "Yes, I consider he was responsible, knowing right from wrong, or I wouldn't have said he was ready to come back to Court."

Now, he is ready to stand trial.

page 153 } Mr. Simpson: I think that is a misinterpretation of the evidence.

The Court: That might conceivably mislead the jury.

Ladies and gentlemen of the jury, there are three definitions of insanity.

The first two are concerned with what we lawyers call the McNaughton rule. That is the difference between right and wrong. There is no contention in this case by the defendant, actually, that he is insane under the first two, the McNaughton rule, the first two items.

However, the jury, I think, are entitled to know the definitions.

Now, if Mr. Watts—I am sure he did not intend to do it—but if he did, if there is any intimation in the minds of the jury that there is an issue as to those two tests, I will relieve you of that. There is no issue in the case as to the mentality of the accused under the first two sets in Instruction No. 7.

I am sorry, Mr. Watts, but I am afraid you might unknowingly—

Mr. Watts: I didn't mean to create any misinterpretation at all but what I am trying to say is this: The irresistible impulse theory is even more difficult to prove than plain law insanity. It is merely opinion evidence. You could

page 154 } bring doctors in from now until next week and their opinion is entitled to no more weight than the opinion of those who have testified here today, and yet it is the opinion of those who have testified here today, merely opinion.

Now, this irresistible impulse theory or rather
page 158 } the question of sanity, you must be more convinced than just having a reasonable doubt as to this man's sanity. You must be satisfied that he acted from an irresistible impulse springing from a disease of the mind. The fact you may have a doubt as to his sanity is not enough. You have got to be satisfied.

I thank you.

The Court: Ladies and gentlemen of the jury, you will have your foreman write your verdict in your own language on the back of the indictment and sign it with his or her name as foreman and bring it back into the Court as soon as you are ready.

The jury will now retire and consider of their verdict.

The Court will recess.

(Whereupon, at 3.40 o'clock p.m., the jury retired to consider of their verdict.)

A Copy—Teste:

H. G. TURNER, Clerk.

the whole instruction from your reciting the law as to irresistible impulse.

If you mean to say that he didn't have all the elements in there, in that statement—

Mr. Watts: If I misquoted—

Mr. McKee: I was more concerned with his statement that everything the doctors say is just opinion and that they are the triers of fact and why it is so.

The Court: He said that quite frequently and you have not objected previously.

Mr. McKee: I didn't object previously because he did not make the subsequent statement he just made now as to why their evidence is opinion. That is, he said their evidence is opinion because they have to follow norms and standards.

Well, that is not the case at all. I would like to have the Court explain why their evidence is opinion, why all medicine is opinion.

The Court: Isn't that perfectly obvious to you? There would be no other way for a person to determine the mentality of an individual other than under the tests that the doctors have formulated and the conferences and observations that they make when in this case the accused was in the Central State Hospital and was observed daily by them there.

page 157 } That is the only way that a doctor—I doubt whether the jury should be told that. That is the only way that a doctor can formulate any opinion as to a person's mentality. It is from observations and tests.

Mr. Watts: Now, Instruction No. 8. The Court instructed the jury that if they shall believe from the evidence beyond a reasonable doubt that the accused killed John D. Cox, Junior, as charged in the *indicement,* and if they should believe from the evidence that at the time of the killing he knew the nature and consequence of his act and knew that it was wrong, and was not forced to commit the crime by an impulse which he was powerless to control in consequence of a disease of the mind, but an impulse inspired by emotion, passion, or frenzy produced solely by jealousy, anger or other emotion, then they should find him guilty of one of the charges, one of the crimes charged in the indictment; and having heard the evidence as to the circumstances existing at that moment, that started the sequence of events, you are to determine whether it was an irresistible impulse or whether the sequence was started by some other emotion itself; and we sav that the evidence is fully, has been fully shown here that he has killed this man, stabbed him with malice aforethought, premeditation, willfully and deliberately.

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