223 Va. 41
CLERK
SUPREME COURT OF VIRGINIA
RECEIVED
SEP 01 1981
RICHMOND, VIRGINIA

3

IN THE

Supreme Court of Virginia

AT RICHMOND

RECORD NO. 810953

EARL CLANTON, JR.,

Appellant,

v.

COMMONWEALTH OF VIRGINIA,

Appellee.

APPENDIX

Timothy J. Hauler
ELLIOTT, DeBOER & HAULER, LTD.
105 Valley Road
Post Office Box 428
Colonial Heights, Virginia 23834

Counsel for Appellant

APPELLATE PRINTING SERVICES, INC., HERITAGE BLDG., RICHMOND, VA. (804) 643-7789

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☒ Resident
☐ Non-resident

RECEIVED

COMMONWEALTH OF VIRGINIA
DEPARTMENT OF HEALTH
OFFICE OF THE CHIEF MEDICAL EXAMINER
CENTRAL DISTRICT
9 NORTH 14TH STREET
RICHMOND, VIRGINIA 23219
PHONE (804) 786-3174

REPORT OF INVESTIGATION BY MEDICAL EXAMINER

NOV 1980 RECEIVED Richmond, Va.

DECEDENT Wilhemina Smith (First name, Middle name, Last name) AGE: 39 RACE: X SEX: F

ADDRESS 1025 A. Crater Rd (Number and Street) M W (S) D OCCUPATION: Teacher

Petersburg Va 23803 (City or County, Zip Code) SSN 244-24-6454 EMPLOYER

TYPE OF DEATH: (Check one only)

Sudden in apparent health ☐ Suspicious ☐ Violent or Unnatural ☒
Unattended by physician ☐ Unusual ☐ Means:
In prison, jail, or police custody ☐

	Last Seen Alive	Injury or Illness	Death	Medical Examiner Notified	View of Body	Police Notified
DATE			11-16-80	11/16/80	11/16/80	
TIME			12:30PM	2:30PM	9:00PM	

If Motor Vehicle Accident Check One Of The Following
DRIVER ☐
PASSENGER ☐
PEDESTRIAN ☐

NOTIFICATION BY: City Police OFFICIAL TITLE
Address

	LOCATION	CITY OR COUNTY	TYPE OF PREMISES (E.G., HIGHWAY, ETC.)
INJURY OR ONSET OF ILLNESS	1025 A. Crater Rd	Petersburg Va	Apt. Bld
DEATH	"	"	"
VIEWING OF BODY BY MEDICAL EXAMINER	Tucker Funeral Home		

DESCRIPTION OF BODY

Clothed X Unclothed ☐ Partly Clothed ☐
Hair Color ____ Beard ____ Mustache ____
Pupils: R ____ L ____ Eyes: Color ____
Body Heat ____ Scars, Tattoos, etc. ____

	NOSE	MOUTH	EARS
Blood			
Froth			
Other (Sand, dirt water, etc.)			

WEIGHT 162 LENGTH 5-7

RIGOR: Jaw ☐ Neck ☐ Arms ☐ Legs ☐ Complete ☐

LIVOR: Color ____ Anterior ☐ Posterior ☐ Lateral ☐ Regional ____

NON FATAL WOUNDS: Abrasion ☐ Burn ☐ Contusion ☐ Stab ☐ Gunshot ☐ Incised ☐ Laceration ☐ Fracture ☐
DISTRIBUTION: Scalp ☐ Chest ☐ Face ☐ Neck ☐ Arms ☐ Back ☐ Abdomen ☐ Legs ☐

FATAL WOUNDS (GUNSHOT, STAB, ETC.)	SIZE	SHAPE	LOCATION	PLANE, LINE OR DIRECTION

CAUSE OF DEATH:	MANNER OF DEATH: (Check one only)	AUTOPSY: Yes ☒ No ☐
Ligature Strangulation	Accident ☐ Suicide ☐ Homicide ☒ Natural ☐ Undetermined ☐ Pending ☐	AUTHORIZED BY: MC Pathologist Dr Jeffrey Autopsy No. L-00-80

I hereby declare that after receiving notice of the death described herein I took charge of the body and made inquiries regarding the cause and manner of death in accordance with Section 32-31.18, Code of Virginia as amended; and that the information contained herein regarding such death is correct to the best of my knowledge and belief.

11-20-80	Petersburg	O. B. Page
Date	*City of Country of Appointment*	*Signature of Medical Examiner*

A TRUE COPY: NOV 26 1980

Assistant Chief Medical Examiner

CME Form No. 1 Revised 1/76

C 96500

1980 December 9 Filed. ESC, Dpty. Clk.

MEDICAL ATTENTION AND HOSPITAL OR INSTITUTIONAL CARE:

NAME OF PHYSICIAN OR INSTITUTION	ADDRESS	DIAGNOSIS	DAT

CIRCUMSTANCES OF DEATH:

	NAME	Official Title or Relationship to Decedent	ADDRESS
FOUND DEAD BY			
LAST SEEN ALIVE BY			
WITNESSES TO INJURY OR ILLNESS AND DEATH			

NARRATIVE SUMMARY OF CIRCUMSTANCES SURROUNDING DEATH:

This woman was strangled with a belt wrapped tightly around her neck and left on her after she had died. She had multiple stab wounds of face and neck

DECEDENT _____

S REPORT IS A PRELIMINARY REPORT
FINAL REPORT WILL BE SENT AFTER
TOXICOLOGIC, MICROSCOPIC, AND OTHER
TS ARE COMPLETED

600-80
Date 11-17-80
Time 3:30 PM

COMMONWEALTH OF VIRGINIA
DEPARTMENT OF HEALTH
OFFICE OF THE CHIEF MEDICAL EXAMINER
CENTRAL DISTRICT
9 NORTH 14TH STREET
RICHMOND, VIRGINIA 23219
PHONE: (804) 786-3174

RECEIVED DEC 1 1980

RECEIVED NOV 1980 OFFICE OF THE CHIEF MEDICAL EXAMINER Richmond, Va.

REPORT OF AUTOPSY

Commonwealth's Attorney

DECEDENT Wilhelmina (First) Smith (Last)

Autopsy Authorized by: T. B. Pope, M. D., M. E. - Petersburg

Body Identified by: Michael Winfried Tucker's Funeral Home

Persons Present at Autopsy: Deputy Sheriff B.L. Brewer (Albemarle Co.). R. Smith E. Washington

Rigor: complete X jaw ____ neck ____ arms ____ legs ____
Livor: color purple distribution: posterior
Age 30's Race B Sex F Length 67&1/2" Weight 167 lbs. Eyes brown Pupils: R ____ L ____
Hair black Mustache no Beard no Circumcised n/a Body Heat cold

Clothing, Personal Effects; External wounds, scars, tattoos, other identifying features:

Clothed in: tan print blouse with 6 buttons, the 4th and 6th buttons are buttoned; brown sla which are buttoned; no shoes or stockings; brassiere.
External examination: blood splatters on seat, bloody drip marks between breasts and tan sy thetic belt ligature wrapped tightly about neck (will not admit a finger under it). Hands a bagged. Wrist watch on left wrist, slight depression mark with adherent fuzzy hair and ques tionable shiny secretion dorsum of left wrist; right 5th fifth long fingernail chipped and superficial cutting wound of right 4th finger, dorsal surface.

Pathologic Diagnoses:

Ligature, doubly wound, tight about neck (belt).
  Marginal abrasion.
  Petechial hemorrhages and subpetechial hemorrhages and subconjunctival hemorrhages of eye
  Focal hemorrhage posterior aspect right wing of hyoid bone.
Multiple stab wounds, neck and face.
Contusions of left lateral neck.
  No hyoid fracture; no thyroid cartilage fracture.
Recent meal in stomach, brown granular meat and thin narrow fragmented white food resemblin fragmented french fries.
Contusions of lateral margins of tongue (bite).
Chip of right 5th fingernail.
Gold tie earring fastener recovered from right labia majora.

Toxicology:

Cause of Death: LIGATURE STRANGULATION

Provisional Report X
Final Report ____

The facts stated herein are true and correct to the best of my knowledge and belief.

11-17-80	O.C.M.E. - Richmond	
Date Signed	Place of Autopsy	Signature of Pathologist
		M. F. Fierro, M. D.

NOV 2 6 1980

A COPY TESTE:

Assistant Chief Medical Examiner

CME FORM NO. 10, REVISED 1/76

1980 December 9 Filed. ESC, Dpty. Clk.

GROSS DESCRIPTION

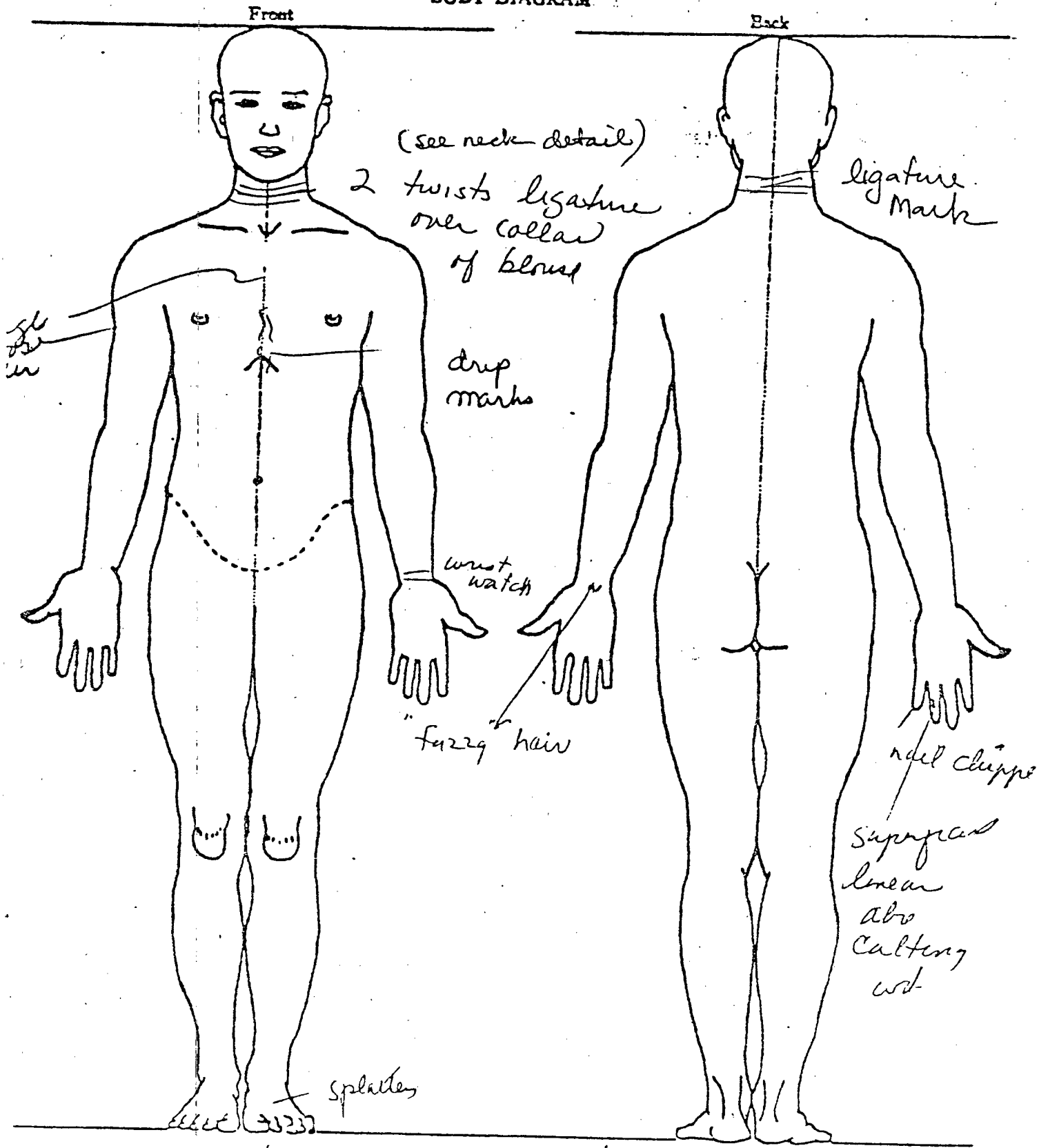
SKIN:	- Face shows freckles with a few petechial hemorrhages and marked suffusion at ligature.
PLEURA:	- Interlobar petechiae all lobes.
PERITONEUM:	- Within normal limits.
PERICARDIUM:	- Within normal limits.
Serous Cavities:	- Within normal limits.
Heart:	- Coronary arteries, valves and myocardium are within normal limits. The heart weighs 280 gs.
AORTA:	- Within normal limits.
LUNGS:	- 790 gs. Slight marginal emphysema, congestion.
LIVER:	- 1100 gs. Congestion.
GALLBLADDER:	- 2 ml of amber bile. No stones.
SPLEEN:	- 90 gs. Within normal limits.
PANCREAS:	- Within normal limits.
ADRENAL GLANDS:	- Within normal limits.
G. I. TRACT:	- Esophagus, no contusions; stomach contains 200 ml of undigested gastric cont with granular brown meat and whitish, firm, linear julienne food resembling fragmented french fries present. Small and large bowels within normal limits The appendix is present; no pickle identified.
Kidneys:	- Right and left, each 100 gs and within normal limits.
BLADDER:	- Contracted, small and no injuries. No urine.
INTERNAL GENITALIA:	- Blooded cervical os, ovaries and tubes are within normal limits. No injury t vault. Myometrium within normal limits. The endometrium appears menstrual.
NECK ORGANS:	- Hyoid intact with a single area of focal hemorrhage to the right posterior w of the hyoid, no thyroid cartilage fractures. No injuries to strap muscles. single area of hemorrhage measuring 1&1/2 x 5/8" underlying the 1/2" deep by 1/4" long stab wound of the anterior neck. Marked abrasion along the ligatur
Brain & Meninges:	- 1190 gs. Focal subarachnoid hemorrhage 2 x 2 cm of the right frontal floor.
SKULL:	- No fracture of jaw. Hemorrhage below the alveolar ridge on the left along th canine and first tooth. Lips free of abrasion and lacerations. The tongue sh 1 x 1/2" contusion of the lateral margin on the right and left corresponding teeth contusions. Moderate temporal bone hemorrhages, bilateral.
VERTEBRAE:	- No fractures.
RIBS:	- No fractures.
PELVIS:	- No fractures.
EXTREMITIES:	- Chip of right 5th fingernail. Splash marks on bare feet. Toenails painted.

OTHER LABORATORY PROCEDURES: TOXICOLOGY ☒ BACTERIOLOGY ☐ DENTAL CHART ☐ X-RAY ☐ FINGER-PRINT
PHOTOGRAPHY ☒ SEROLOGY ☒ FORENSIC SCIENCE ☒ PERK and Trace

DISPOSITION OF EVIDENCE

TYPE (Clothing, Bullets, Etc.)	NAME OF RECIPIENT	ADDRESS	OFFICIAL TITLE	DATE
Clothing	O.C.M.E.			11-17-8
PERK	D.C.L.B.F.S.			11-17-8

BODY DIAGRAM



Decedent's Height 67½ inches

Name Wilhelmina Smith

Examined By [illegible] Date 11/12/80

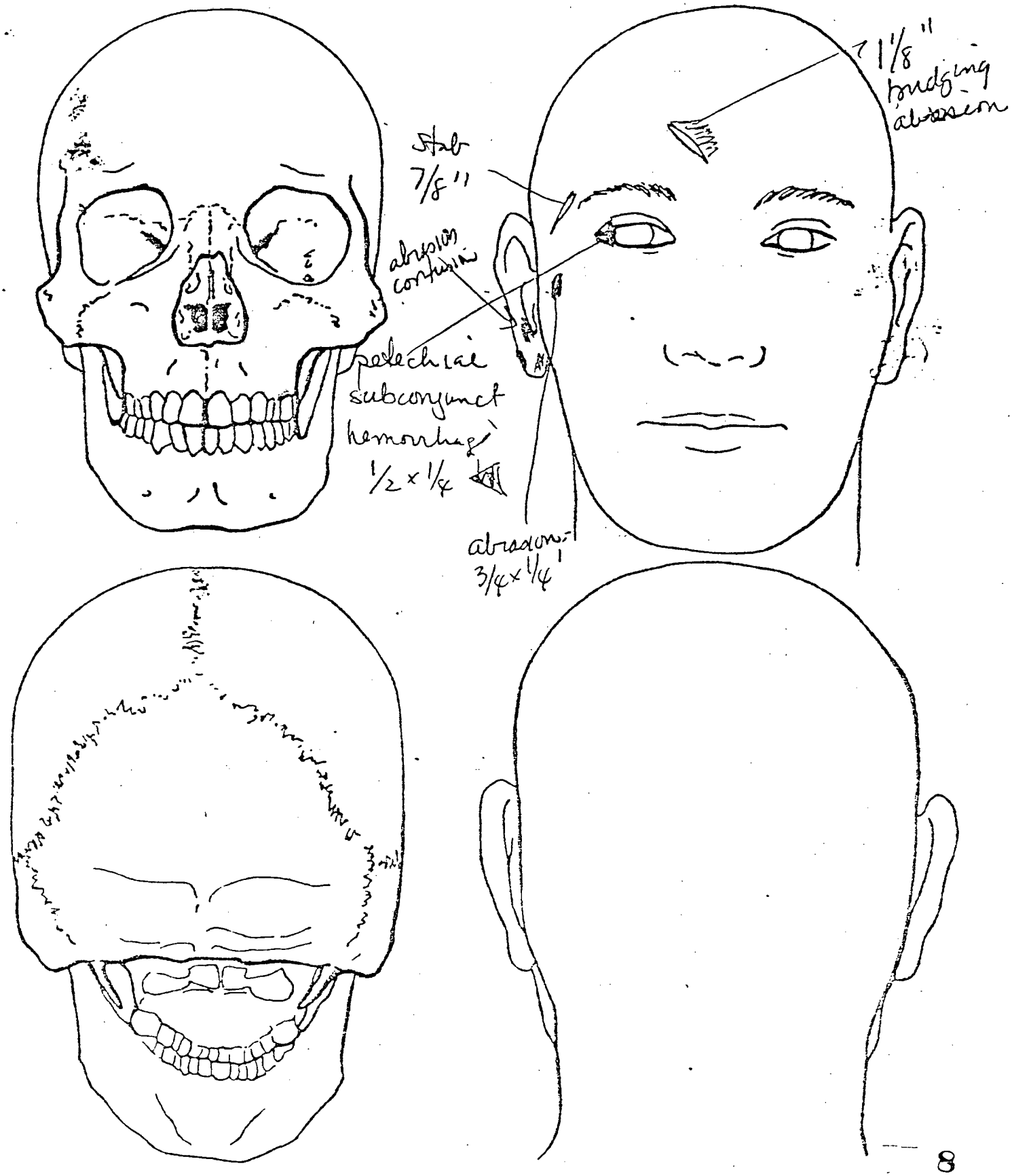
600-80

COMMONWEALTH OF VIRGINIA
OFFICE OF THE CHIEF MEDICAL EXAMINER
CME Form 101

Head, surface and skeletal anatomy, anterior and posterior views.

Name Wilhelmina Smith Autopsy No. 600-80

Age 30's Race B Sex F Date 11/17/80

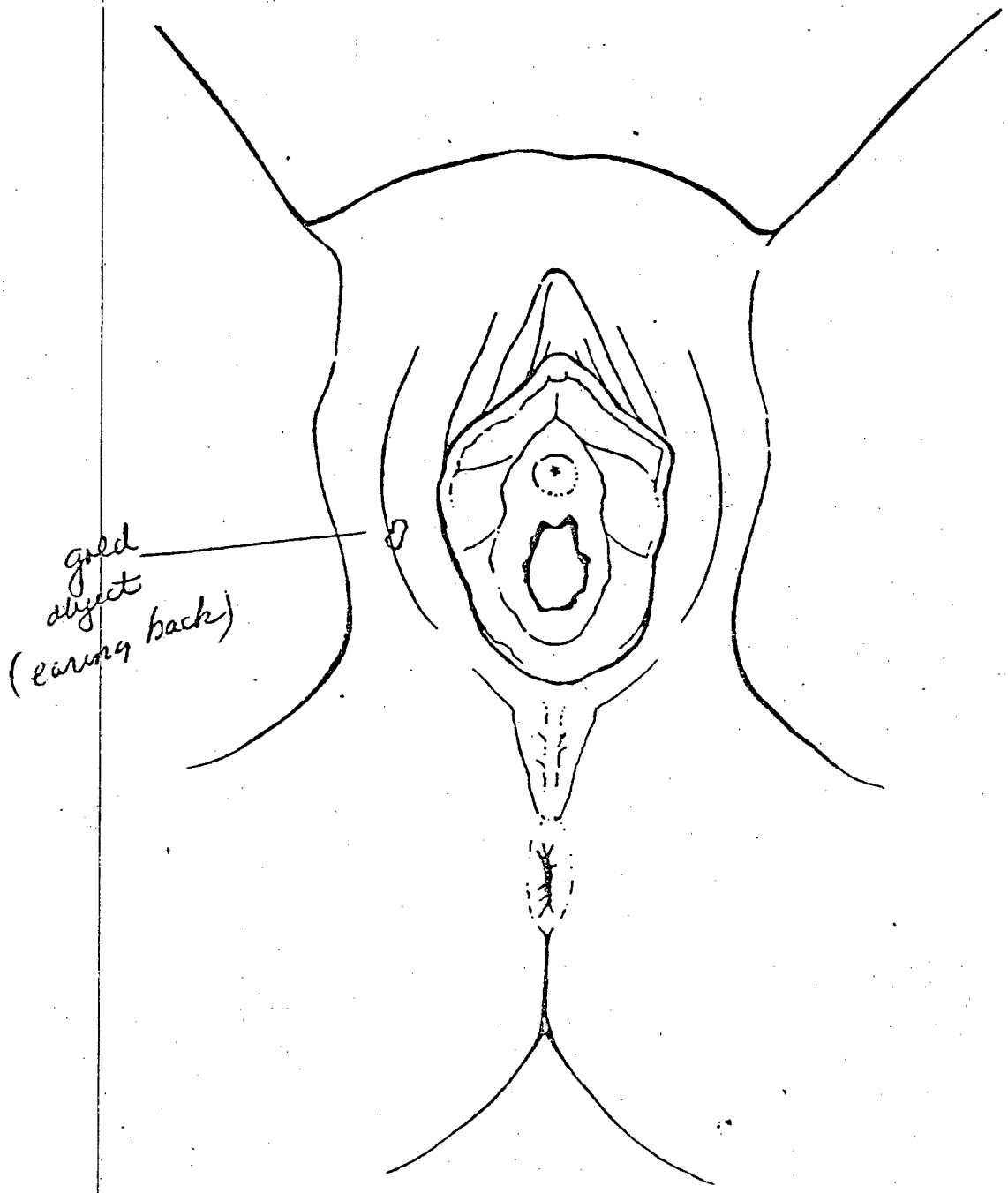


Cat. No. 44-1-014-00

Perineum, female.

Name Wilhelmina Smith Autopsy No. 600-80

Age 30's Race B Sex F Date 11/17/80



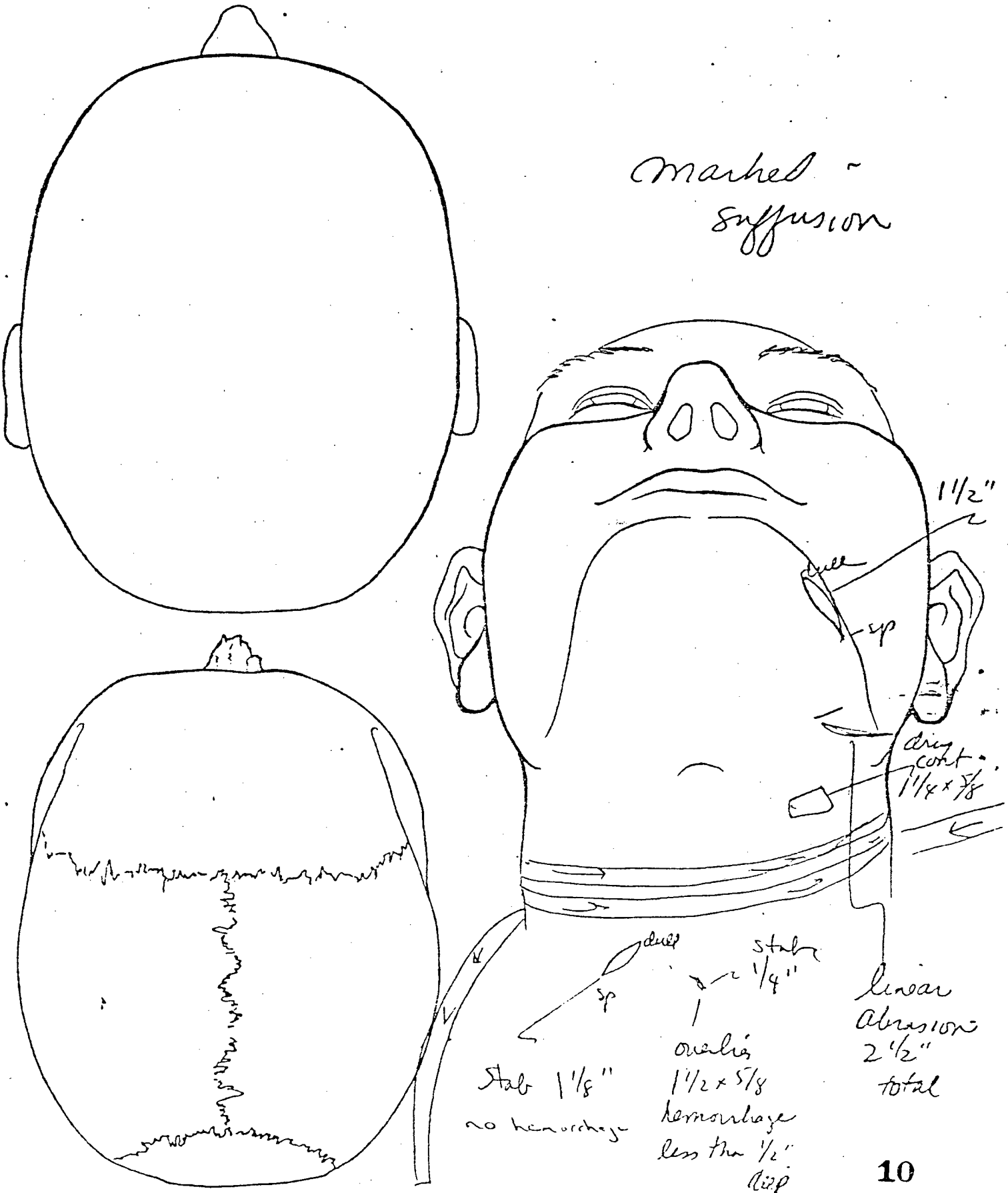
Cat. No. 44-1-004-00

600-80

Head, surface and skeletal anatomy, superior view. Inferior view of neck.

Name Wilhelmina Smith Autopsy No. 600-80

Age 30's Race B Sex F Date 11/12/80



Cat. No. 44-1-016-00

DATE: DECEMBER 18th, 1980

CITY OF PETERSBURG,
COMMONWEALTH OF VIRGINIA, } To Wit

IN THE CIRCUIT COURT OF SAID CITY

The Grand Jurors of the Commonwealth of Virginia, in and for the body of the City of Petersburg, and now attending the said court, upon their oaths, present that

.....EARL CLANTON, JR.....

on or about the 16th day of November in the year Nineteen Hundred and Eighty in the said city, and within the jurisdiction of the said court, did commit capital murder, by the wilful, deliberate and premeditated killing of Wilhemina Smith in the commission of robbery while armed with a deadly weapon.

Va. Code Sec. 18.2-31(d)

against the peace and dignity of the Commonwealth of Virginia.

Upon the testimony of

Sgt. Batts
Sgt. Eilert,

Sworn in Court and sent to the Grand Jury to give evidence.

Clerk

VIRGINIA

Circuit Court
City of Petersburg

Commonwealth of Virginia

VS } INDICTMENT FOR
A Felony

EARL CLANTON, JR. Cont'd

No. 1

(MURDER)

A TRUE BILL

Mary L. Cole
FOREMAN

Sidney Barney
COMMONWEALTH'S ATTORNEY

DATE: DECEMBER 18, 1980

CITY OF PETERSBURG,
COMMONWEALTH OF VIRGINIA, } To Wit

IN THE CIRCUIT COURT OF SAID CITY

The Grand Jurors of the Commonwealth of Virginia, in and for the body of the City of Petersburg, and now attending the said court, upon their oaths, present that

.....EARL CLANTON, JR.....

on or about the 16th day of November in the year Nineteen Hundred and Eighty in the said city, and within the jurisdiction of the said court, did rob Wilhemina Smith of United States currency in the amount of Eight Dollars _____

Va. Code Sec. 18.2-58

against the peace and dignity of the Commonwealth of Virginia.

Upon the testimony of
Sgt. Batts,
Sgt. Eilert,

Sworn in Court and sent to the Grand Jury to give evidence. _____ Clerk

VIRGINIA

Circuit Court
City of Petersburg

D. **Commonwealth of Virginia**

VS } INDICTMENT FOR

A Felony

EARL CLANTON, JR.,

No. 2

(ROBBERY)

A TRUE BILL

FOREMAN

Sidney Barney
COMMONWEALTH'S ATTORNEY

V I R G I N I A :

IN THE CIRCUIT COURT OF THE CITY OF PETERSBURG

COMMONWEALTH OF VIRGINIA

v.

EARL CLANTON, JR.

MOTION FOR CHANGE OF VENUE

Now comes your Defendant herein, Earl Clanton, Jr., by and through counsel, and moves this Honorable Court to enter an Order granting a change of venue for the Defendant's trial, currently scheduled for disposition before a jury on Thursday, March 12, 1981 at 10:00 a.m.

As and for grounds for the instant motion, your Defendant, Earl Clanton, Jr., respectfully represents unto this Court that:

1. On or about November 16, 1980, the charges presently pending against your Defendant were certified by the Judge of the General District Court of the City of Petersburg to the Grand Jury for the Circuit Court of the City of Petersburg; and

2. That on or about December 18, 1980, the Grand Jury for the Circuit Court of the City of Petersburg returned an indictment against your Defendant, charging him with capital murder and robbery in violation of Sections 18.2-31(d) and 18.2-58, Code of Virginia, 1950 (as amended), respectively; and

3. That since November 16, 1980, the date of the occurrences giving rise to the charges pending against your Defendant, the Progress-Index, a newspaper of general circulation within the City of Petersburg has printed numerous stories about the alleged criminal activity occurring on November 16, 1980 in attributing responsibility for those events to your Defendant herein; and

4. That said newspaper stories, a copy of which are attached hereto and incorporated herein by reference, have encompassed evidence to be presented by the prosecution and provided certain editorial comments which are biased

against your Defendant; and

5. That said newspaper stories have been presented by the Progress-Index in the manner such as to imply that your Defendant is responsible and culpable for the events giving rise to the charges against him; and

6. That said newspaper stories have been written in a manner as to be inflammatory to a jury impaneled to hear these charge so as to deny to your Defendant the right to be tried by a fair and impartial jury as guaranteed to him by the Sixth Amendment to the United States Constitution; and

7. That because of said newspaper accounts, the citizenry of this community are biased and prejudice against your Defendant and therefore to make him stand trial in this community would deprive him of life and liberty without due process of law in contravention of the Fifth Amendment to the United States Constitution.

WHEREFORE, your Defendant herein, Earl Clanton, Jr., by and through counsel, requests that an Order be entered removing the trial which is currently scheduled as indicated above to another city or county, and for such other and further relief as may be just and proper.

EARL CLANTON, JR.

Earl Clanton Jr.

By Counsel

Timothy J. Hauler, J.D., p.d.
Elliott, Deboer & Hauler, Ltd.
105 Valley Road, P. O. Box 428
Colonial Heights, Virginia 23834

CERTIFICATE

I hereby certify that a true copy of the foregoing Motion for Change of Venue was hand delivered to Gregory Welsh, Deputy Commonwealth's Attorney, at the Office of the Commonwealth's Attorney, Courthouse Hill, Petersburg, Virginia 23803, this 27th day of February, 1981.

Timothy J. Hauler, J.D.

The Progress-Index

State

Monday, November 17, 1980

Petersburg Librarian Murdered

Death Stuns Friends, Co-Workers

By RUTH RICHEY
Progress-Index Staff Writer

PETERSBURG — The murder of an elementary school librarian Sunday morning has left some of her co-workers, friends and neighbors incredulous and scared.

The body of Wilhelmina Smith, 38, was found about noon Sunday. She had been stabbed and apparently strangled following a struggle in her Crater Square Apartment, according to police reports.

Miss Smith had been a librarian in the city for 15 years.

"Anytime something like this happens it's tragic, but in the broad daylight in a nice apartment complex it's hard to believe," said A.P. Hill Elementary School Principal Nelson Ramsey.

Police have arrested two suspects, one of whom lived right across the hall from Miss Smith's apartment.

"She was an excellent librarian, very conscientious, a very quiet person. She kind of kept to herself, a very private person," Ramsey said today.

A neighbor and co-worker also described her as "very nice, very quiet ... She never bothered anybody." The fifth grade teacher also pointed out the irony in her friend's death. She said that Miss Smith had just had a deadbolt installed on her door Wednesday following a break-in Tuesday night.

The co-worker, who said she was afraid to have her name used in the paper because she lives at the apartments, said she also had a dead bolt put on her door. Both women were nervous after the robbery and wanted the added protection of the lock.

"It seems like something needs to be done security-wise," the co-worker said. "Anytime you have a murder in broad daylight ... It's just kind of unbelievable." The teacher said it makes her feel "very shakey, uncertain" about living at the complex.

Library aide Sharry Hill said that Miss Smith "was easy to work with, nice to the students and everything. Just nice all together."

Like Miss Smith's co-worker and neighbor, Miss Hill said that Miss Smith usually never discussed her private life with them, just school business. "She never talked to me about her friends," Miss Hill says.

One close friend, however, was too shaken up to report to work today, Ramsey said.

Many of the students at the school "have heard it on the news," Ramsey said. "They come in and ask, 'Is it true that Miss Smith is dead?' "

"Everyone just looks like they don't know what to say," Miss Hill said.

Ramsey said that Miss Hill had asked for Wednesday afternoon off to have the lock installed.

Miss Hill said that she acted "kind of quiet that day" after a number of items were stolen from her apartment, including a color television, portable radio and stereo equipment.

Miss Smith's mother, sister, aunt and nephew from her hometown, Turkey, N.C., were examing the victim's belongings this morning to determine if anything was missing from her apartment.

"Right now they're just trying to get over the shock," said one investigator.

A next door neighbor said he was asleep at the time Miss Hill is thought to have been murdered. He said that he had only seen the woman about three times since he moved into his apartment in September.

"Everyone really is just scared, you know," said the Virginia State University student, who did not want his named used. "I stay with two girls here and they (the burgler) may try getting in here ..."

Special Phot

Miss Wilhelmina Smith

Scholarship Fund Memory Of Librarian

PETERSBURG — A scholarship fund has been established for an elementary school librarian who was murdered last week.

The Les Etoiles, a civic and social club, will collect donations for the scholarship award to be made in the memory of Wilhelmina Smith. Miss Smith was murdered in her home. She was a member of the club.

The fund will be awarded to a student majoring in library sciences and educational media. To send a contribution or for more information write: The Wilhelmina Smith Memorial Scholarship Fund, care of Les Etoiles Civic-Social Club, Virginia State University Federal Credit Union, Box 50, Petersburg, Va. 23803.

Wilhelmina Smith
Memorial Fund

School Librarian Fo... Two Arrested At Scene Of Crime

By KENT BOOTY
Progress-Index Staff Writer

PETERSBURG — A man and a woman have been arrested and charged with murder following the fatal stabbing of a school librarian Sunday.

The body of Wilhelmina Smith, 38, was found around noon Sunday in her Crater Square apartment at 14-E Crater Square, police said. Ms. Smith, who was pronounced dead at the scene, had been stabbed and was also found with a cord tied around her neck, said Patrolman Michael J. Hess, who found the woman along with Patrolman J.J. Chandler.

Earl Clanton Jr., 26, formerly of Persimmon Court, and Natalie M. Lawrerance, 23, of Crater Square Apartments, were arrested at the apartment and charged with murder. Clanton is being held without bond in the Petersburg Correctional Center and Ms. Lawrence is being held in lieu of $20,000 cash bond.

Clanton escaped from custody April 18 while being tried on a malicious wounding charge in Petersburg Circuit Court. He was found guilty of unlawful wounding, a lesser felony, and sentenced to four years in prison.

A capias (or warrant) was issued for Clanton's arrest following his disappearance from court. He is also being charged with the escape.

Sources said that Clanton, who is believed to have been living in Delaware, had been seen recently in Petersburg.

He and Ms. Lawrerance were scheduled to be arraigned in General District Court this morning.

Police were summoned to Ms. Smith's apartment after neighbors heard a scream, Hess said. She had been seen going into her apartment about five minutes prior to that time, he added.

Police are reportedly trying to determine if the stabbing is related to a break-in at Ms. Smith's apartment Wednesday night. Sgt. Steve A. Batts, who is handling the investigation, could not be reached for comment this morning.

See DEATH On Page 3

Richmond Times-Dispatch
Section B

Woman Convicted In Petersburg Death

By James Ezzell
Times-Dispatch State Staff

PETERSBURG—Natalie M. Lawrence was found guilty late yesterday of two misdemeanor counts of being an accessory after the fact in the slaying and robbery of a city school librarian Nov. 16.

A circuit court jury of five women and seven men deliberated for three hours before returning the verdicts.

Ms. Lawrence, 21, of Petersburg was charged with first-degree murder and robbery in the strangulation and stabbing of Wilhelmina Smith, 38, the librarian at A.P. Hill Elementary School.

The slaying occurred in Ms. Smith's apartment in the Crater Square apartments on South Crater Road.

The jury fixed Ms. Lawrence's punishment at 12 months in jail and a $1,000 fine on each count.

Judge Oliver A. Pollard Jr. imposed the sentence and ordered that the terms run consecutively, rather than concurrently. Ms. Lawrence's attorney, Harry A. Goodman Jr. of Richmond, asked for concurrent terms.

Assistant Commonwealth's Attorney Gregory Welsh had sought a first-degree murder conviction. He had urged the jury to show Ms. Lawrence no

Continued on Page 4, Col. 1

Petersburg Woman Found Guilty in Strangulation

Continued From First Page

mercy.

The jury was given three choices: It could have found her guilty of first-degree murder, which would have meant a sentence of 20 years to life; guilty of being an accessory after the fact; or not guilty.

Ms. Lawrence's co-defendant, Earl Clanton Jr., 28, of Petersburg, who is charged with capital murder and robbery in the incident, faces a jury trial beginning March 12 in Circuit Court.

Testimony yesterday indicated that it was Clanton who strangled and stabbed Ms. Smith minutes after she entered her apartment following a shopping trip.

Ms. Lawrence lived in an apartment across from Ms. Smith's, and, according to a taped statement entered into evidence yesterday, Clanton was living with Ms. Lawrence when the crimes took place.

Ms. Smith's body was found in a bedroom of her apartment by police, responding to a call from a neighbor who reported hearing screams from Ms. Smith's apartment.

Police said they found Ms. Lawrence and, later, discovered Clanton beneath a bed in another room. His clothes were covered with blood, they said.

Ms. Lawrence did not testify yesterday, nor were any witnesses offered by the attorney. She had pleaded not guilty to both charges.

Goodman had argued earlier in the day that the only evidence presented to implicate his client was her taped statement.

In the statement, which ran for 20 minutes, Ms. Lawrence said Clanton had said he was going to Ms. Smith's apartment to kill her because he needed money.

Ms. Lawrence said it was after Ms. Smith entered her apartment that she heard screams and a few minutes later saw Clanton standing in the Smith doorway, motioning for her to come into the apartment.

In the statement, Ms. Lawrence said that on Clanton's instructions, she began going through the victim's purses, looking for money, knowing that the woman was dead.

Ms. Lawrence said that when police arrived, she first tried to stall them while Clanton tried to hide. When she let them in, she told the two policemen to look in the bedroom and that a woman was dead.

Medical testimony yesterday said Ms. Smith died from strangulation. A cord was found around her neck. She also had been stabbed in the neck.

At the time of the slaying, Clanton was a fugitive. He had escaped April 15 while awaiting trial on a malicious wounding charge in Circuit Court.

Grand Jury Returns 59 Indictments

By KENT BOOTY
Progress-Index Staff Writer

PETERSBURG — A Circuit Court grand jury last Thursday returned 59 felony indictments against 26 persons.

Natalie M. Lawrence, 21, of Crater Square Apartments, was indicted for first-degree murder and robbery in connection with the strangling and stabbling death of Wilhelmina Smith on Nov. 16 last year.

In a related development, March 12-13 was set as the trial date for Earl Clanton Jr., 26, who is charged with capital murder and robbery in the death of Miss Smith, a 38-year-old school librarian who lived across the hall from Ms. Lawrence. Clanton was indicted on the two charges last month.

Robert L. Jackson, 32, of the first block of St. Mark Street, was indicted for murder in the shooting death of Joseph Byrd Jr. Byrd, 53, of 809 N. Gillfield Dr., was shot twice on Nov. 16 and died at Petersburg General Hospital Dec. 19. Jackson was also indicted for felonious use of a gun.

Three men from the Washington, D.C., area were indicted on four charges each stemming from a break-in at Merhout Jewelers at Walnut Mall on Dec. 5.

Julius Prince, 20, of Oxon Hill, Md., and Leonard D. Zanders, 20, and Michael L. Zanders, 18, both of Washington, were indicted on two charges of statutory burglary, one grand larceny charge and a charge of possession of burglary tools. They are charged with breaking into the mall and then the jewelry store, and taking watches and jewelry.

Kenneth S. Walters, 20, of the 20th ADS at Fort Lee, was indicted on a charge of involuntary manslaughter in connection with an accident on County Drive Nov. 26 in which Stephen P. Hawk, 17, was killed.

Stanley D. Hargraves, 25, of the 600 block of Gilliam Street, was indicted in the armed robbery of two employees at Dalton's Jewelers on Dec. 3. Hargraves was indicted for two counts or robbery and two counts of felonious use of a gun.

John K. Eppes, 20, of the 1400 block of Halifax Street, was indicted for grand larceny in connection with the unusual theft of a funeral home hearse on Dec. 19. Eppes is charged with stealing a 1976 Cadillac hearse belonging to the James M. Wilkerson Funeral Home. The hearse was recovered in Norfolk a few days later.

The other persons indicted, and the alleged offenses for which they were indicted, are as follows:

Milton Jackson, 28, of the 2200 block of Richmond Avenue, receiving stolen goods on Dec. 5.

Anthony W. Simmons, 19, of Surfside Beach, S.C., cashing two forged checks, Sept. 18 and Sept. 25.

Virginia L. Dull, age and address unknown, receiving money from the earnings of a female prostitute on Nov. 22.

Peter Collins, 48, of the 200 block of North Carolina Avenue, writing a worthless check on Oct. 23.

Tommy B. Daniel, 22, of the 100 block of Lee Avenue, Colonial Heights, five charges of statutory burglary in connection with breaking into trailers of Bradlees Store on Dec. 4.

Kevin E. Whelan, 18, of the first block of Franklin Street, was indicted on the same five charges as Daniel.

Frederick L. Davis, 20, of the 100 block of South West Street, receiving stolen goods on Dec. 11.

Agnes M. Tapper, of the 1000 block of East Broadway, Hopewell, attempted sodomy on Nov. 22.

Tony Fitzgerald, 28, of the 400 block of Hinton Street, maliciously injuring Roy Payne on Dec. 12.

Vantony A. Jenkins, 22, of the 200 block of St. Andrew Street, robbing Elizabeth Smelley, an employee of Sears, of an undetermined amount of money on Nov. 26.

John A. Willis Jr., 22, of the 200 block of High Street, was also indicted for the Sears robbery and also for felonious use of a gun.

Marty C. Jones, 22, of the 600 block of North South Street, larceny after having been convicted of petty larceny on at least two previous occasions. He is charged with the larceny of a pair of jeans from the Jeans Shack on Aug. 27.

Willie T. Lesane, 57, of the 1800 block of West Clara Drive, unlawfully injuring Roy Jordan on Dec. 31.

William McCray, 26, of the 200 block of North Carolina Avenue, the attempted robbery of John Randall, of Randall's Grocery Store, on Nov. 26, and also the attempted murder of Randall, felonious use of a gun and possession of a sawed-off shotgun.

Robert Miller, 31, of the 500 block of West Washington Street, obtaining money by false pretenses on Sept. 23.

Sam M. Shumate Jr., 23, of Collinsville, Va., three charges of grand larceny. He is charged with taking cash, watches and silver plates from Franklin Garland on Oct. 17, three rings from Garland on Nov. 10 and rings and necklaces from Garland on Nov. 18.

Richard A. Spence, 37, of the 300 block of Glenwood Court, breaking into the home of Dorthea Robinson on Jan. 4, taking silver and antiques, and felonious use of a gun.

Gerald S. Venable, 25, of the 600 block of Wythe Street, robbing Harold Simmons, of Simmons Grocery, on Dec. 24 and grand larceny from Simmons Grocery.

Jury Certifies Charge

By KENT BOOTY
Progress-Index Staff Writer

PETERSBURG — A first-degree murder charge against Earl Clanton Jr., who is charged with strangling and stabbing a school librarian to death on Nov. 16, was certified Monday to the grand jury.

General District Court Judge James F. D'Alton Jr. certified a murder charge against Clanton, 26, of Persimmon Court, who is charged with killing Wilhelmina Smith in her Crater Square Apartment. Mrs. Smith, a 38-year-old librarian at A.P. Hill Elementary School, was found around noon Nov. 16 after she had been stabbed and strangled. She was pronounced dead at the scene.

Clanton, who is being held without bond in the Petersburg Correctional Center, was arrested inside the Smith apartment along with Natalie M. Lawrence, 23, who lived across the hall from Mrs. Smith. Ms. Lawrence, who is also being charged with murder, will appear in General District Court Dec. 19. Her bond has been reduced from $20,000 to $10,000.

The grand jury will convene again on Dec. 18, at which time it is expected that Clanton will be indicted for the murder. An official at the city jail said that he is wanted by the state of New Jersey for an alleged parole violation.

Shortly after Clanton appeared in General District Court Monday, he was taken to Circuit Court where Judge Oliver A. Pollard Jr. formally sentenced him to four years in prison on an unlawful wounding charge.

Clanton escaped from custody April 18 while being tried on a malicious wounding charge. The jury eventually found Clanton guilty of unlawful wounding, a lesser felony, and sentenced him to four years in prison.

Jury Finds Woman Guilty In School Librarian's Death

By KENT BOOTY
Progress-Index Staff Writer

PETERSBURG — Natalie M. Lawrence, who had been charged with first-degree murder and robbery in the strangulation death of a school librarian last November, was convicted of two lesser misdemeanor charges in Circuit Court Friday.

The seven-man, five-woman jury deliberated for three hours Friday afternoon before finding Ms. Lawrence guilty of being an accessory after the murder and an accessory after the robbery. She was sentenced to 12 months in jail and a $1,000 fine on each charge.

Ms. Lawrence, 21, had been charged with taking part in the unusually brutal strangulation and stabbing death of Wilhelmina Smith in her Crater Square Apartment on Nov. 16. Miss Smith, a 38-year-old librarian at A.P. Hill Elementary School, lived across the hall from Ms. Lawrence.

The person who is charged with actually mrudering Miss Smith — Earl Clanton Jr., 26, who was living with Ms. Lawrence — is scheduled to stand trial [illegible] capital murder charge.

Assistant Commonwealth's Attorney Gregory Welsh, however, had argued that Ms. Lawrence was a willing participant in the incident and served as a "look-out" for Clanton.

"It is the commonwealth's position that she was a principal in the second degree both before and after the facty (murder) — [illegible] Welsh said.

A "principal in the second degree" is someone who doesn't actually commit a crime but who is present and aids or assists that act, according to Virginia statutes. The jury, however, refused to find Ms. Lawrence guilty of the felony charge of being an accessory before either crime.

Defense attorney Harvey A. Goodman, of Richmond, offered a different view of Ms. Lawrence's culpability. "She was in the wrong place at the wrong time with the wrong man," he told the jury.

Both Ms. Lawrence and Clanton were arrested inside Miss Smith's blood-spattered apartment around 12:30 p.m. on Nov. 16. Miss Smith's body was found on the floor of her bedroom, while Clanton was hiding under a bed in another bedroom.

Dr. Marcella F. Fierro, a deputy State Medical Examiner, testified that Miss Smith, who died from strangulation, also suffered stab wounds on the face and neck. A thin leather belt from her coat had been wound tightly around her neck.

According to Welsh, Ms. Lawrence went with Clanton when he intercepted Miss Smith in the hallway as she returned home that afternoon. Willie Acox, who lives in an apartment below Miss Smith's testified that he heard a woman in the hall pleading with a man to leave her alone, and then heard the slamming of a door and a muffled scream. He also said that he didn't see anyone enter or leave Miss Smith's apartment until the police arrived.

Goodman, on the other hand, argued that his client was in her own apartment during the attack on Miss Smith and went to Smith's apartment only after she heard screaming and had been summoned there by Clanton. He cited a taped statement she gave to detectives at police headquarters in early December.

In that statement, which was played during the trial, Ms. Lawrence told detectives, "He (Clanton) told me he was going to kill her (Miss Smith)" shortly before she came home. "I really didn't think he was doing to do it (kill her)," she later added.

Ms. Lawrence, who didn't testify, told police that Clanton killed the librarian because he disliked her. "(Clanton) said he needed some money and didn't like her," she said, adding that Clanton said he intended to [illegible] her to death.

The tape also includes statements in which Ms. Lawrence admitted looking out the window in Miss Smith's apartment to check for police and then stalling two police officers when they arrived.

Patrolman Jerry J. Chandler, who along with Patrolman Michael J. Hess was the first officer to reach the apartment, testified that Ms. Lawrence told the [illegible] officers she was taking a shower and made them wait a few minutes before opening the door.

Ms. Lawrence and Clanton were charged with robbing Miss Smith of $8. According to testimony, $8 in bills that were found in Clanton's pocket contained bloodstains that were later discovered to be Miss Smith's blood. Also, Clanton's blood-stained fingerprint was found in Miss Smith's checkbook.

Ms. Lawrence admitted to looking for money in several pocketbooks on a closet shelf after Clanton ordered her to do so, but apparently she didn't find any money.

Welsh repeatedly referred to the brutality and seemingly cold-blooded nature of the slaying.

"You see these kinds of things on TV, but this is as cold-blooded an act as any television program could portray," he told the jury. "He (Clanton) simply told Natalie that he was going to go over there (Miss Smith's apartment) and choke her to death. It's absolutely horrible."

Goodman said, however, that although the evidence tended to incriminate Clanton, "There is not one scintilla of evidence to tie Miss Lawrence to this crime." He also told the jury that even if she actually believed Clanton was going to kill Miss Smith, "What could she (Ms. Lawrence) have done?"

Clanton Indicted Here For Capital Murder

PETERSBURG — Earl Clanton Jr., who is accused of strangling and stabbing a school librarian to death last month, was indicted Thursday by a Circuit Court grand jury for capital murder.

Clanton, 26, of Persimmon Court, was also indicted for robbery in connection with the Nov. 16 incident in which Wilhelmina Smith was murdered in her Crater Square Apartment. According to the indictment, Clanton is charged with robbing Miss Smith of $8.

Miss Smith, a 38-year-old librarian at A.P. Hill Elementary School, was found around noon Nov. 16 by police in her bedroom. She had been strangled with a cord around her neck and stabbed several times in what police and court officials have described as an unusually brutal slaying.

Clanton, who was sentenced Dec. 8 to a four-year prison term for unlawfully wounding a Petersburg youth in February, was arrested inside Miss Smith's apartment along with Natalie M. Lawrence, who lived across the hall. Ms. Lawrence, 23, who has also been charged with murder, was scheduled to appear in General District Court this morning.

Prince George attorney William F. Binford Jr. was appointed Thursday to represent Clanton, who is being held without bond in the Petersburg Correctional Center. Ms. Lawrence is being held in lieu of $10,000 bond.

According to the Code of Virginia, the "willful, deliberate and premeditated" killing of another person during the commission of a robbery constitutes capital murder. If convicted of the charge, Clanton could face the death penalty.

A trial date will be set when the grand jury again convenes on Jan. 15.

Jury Finds Woman Guilty In School Librarian's Death

By KENT BOOTY
Progress-Index Staff Writer

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The seven-man, five-woman jury deliberated for three hours Friday afternoon before finding Ms. Lawrence guilty of being an accessory after the murder and an accessory after the robbery. She was sentenced to 12 months in jail and a $1,000 fine on each charge.

Ms. Lawrence, 21, had been charged with taking part in the unusually brutal strangulation and stabbing death of Wilhelmina Smith in her Crater Square Apartment on Nov. 16. Miss Smith, a 38-year-old librarian at A.P. Hill Elementary School, lived across the hall from Ms. Lawrence.

The person who is charged with actually mrudering Miss Smith — Earl Clanton Jr., 26, who was living with Ms. Lawrence — is scheduled to stand trial March 12 on a capital murder charge.

Assistant Commonwealth's Attorney Gregory Welsh, however, had argued that Ms. Lawrence was a willing participant in the incident and served as a "look-out" for Clanton.

"It is the commonwealth's position that she was a principal in the second degree both before and after the fact (murder) . . . She admits that she was a look-out," Welsh said.

A "principal in the second degree" is someone who doesn't actually commit a crime but who is present and aids or assists that act, according to Virginia statutes. The jury, however, refused to find Ms. Lawrence guilty of the felony charge of being an accessory before either crime.

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Dr. Marcella F. Fierro, a deputy State Medical Examiner, testified that Miss Smith, who died from strangulation, also suffered stab wounds on the face and neck. A thin leather belt from her coat had been wound tightly around her neck.

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Defendant's Exhibit No. 1

Filed March 6, 1981

[illegible], Judge

INSTRUCTION NO. 1

The defendant is presumed to be innocent. You should not assume that the defendant is guilty because he has been indicted and is on trial. This presumption of innocence remains with the defendant throughout the trial and is enough to require you to find the defendant not guilty unless and until the Commonwealth proves each and every element of the offense beyond a reasonable doubt. This does not require proof beyond all possible doubt, nor is the Commonwealth required to disprove every conceivable circumstance of innocence. However, suspicion or probability of guilt is not enough for a conviction.

A reasonable doubt is a doubt based on your sound judgment after a full and impartial consideration of all the evidence in the case.

given 3-12-81

Daniel Roberts

Judge

INSTRUCTION NO. 2

You are the Judges of the credibility of the witnesses and the weight of the evidence. You may consider the appearance and manner of the witnesses on the stand, their intelligence, their opportunity for knowing the truth and for having observed the things about which they testified, their interest in the outcome of the case, their bias, and, if any has been shown, their prior inconsistent statements. While you have no right to arbitrarily disregard believable testimony of any witness, you do have a right to discard or accept in whole or in part the testimony of any witnesses which you think is proper to discard or accept when you consider it in connection with the other evidence in the case. You are entitled to use your common sense in judging any testimony. From these things and all other circumstances of the case, you may determine which witnesses are more believable and weigh their testimony accordingly.

Given: 3-12-81
Dennis Callan
Judge

INSTRUCTION NO. 3

If you believe that any witness has knowingly testified untruthfully as to any material fact in this case, you do not have to accept any of the testimony of that witness, or you may give that testimony such weight as you feel it is entitled.

3-12-81.

INSTRUCTION NO. 4

The Court instructs the Jury that proof of the defendant's prior convictions of felonies may be considered by the Jury as affecting his credibility, but it does not render the defendant incompetent to testify.

Given 3-12-81
Dennis Pollard
Judge

INSTRUCTION NO. 5

It is not necessary that facts be proved by direct evidence, for they may also be proved by circumstantial evidence. You may convict the defendant on circumstantial evidence alone, or on circumstantial evidence combined with other evidence, if you believe from all the evidence that the defendant is guilty beyond a reasonable doubt.

However, when the Commonwealth relies upon circumstantial evidence you should consider such evidence with great care and caution. The circumstances proved must be consistent with guilt and inconsistent with innocence. It is not sufficient that the circumstances proved create a suspicion of guilt, however strong, or even a probability of guilt.

The evidence as a whole must exclude every reasonable theory of innocence.

Given 3-12-81

INSTRUCTION NO. 6

The defendant is charged with the crime of capital murder. The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime:

(1) That the defendant killed Wilhemina Smith; and,
(2) That the killing was willful, deliberate and premeditated; and,
(3) That the killing occurred during the commission of robbery while the defendant was armed with a deadly weapon.

If you find from the evidence that the Commonwealth has proven beyond a reasonable doubt each of the above elements of the offense as charged, then you shall find the defendant guilty of capital murder, and you shall return your verdict to the court and receive further evidence and instructions before fixing the punishment.

If you find that the Commonwealth has failed to prove any one or more of the elements of capital murder beyond a reasonable doubt, then you shall consider whether he is guilty of first degree murder. The Commonwealth must prove beyond a reasonable doubt each of the following elements of first degree murder:

(1) That the defendant killed Wilhemina Smith; and,
(2) That the killing was malicious; and,
(3) That the killing was willful, deliberate and premeditated

If you find from the evidence that the Commonwealth has proven beyond a reasonable doubt each of the above elements, then you shall find the defendant guilty of first degree murder and fix his punishment at:

(1) Imprisonment for life; or,
(2) A term of imprisonment of not less than twenty years.

If you find that the Commonwealth has failed to prove first degree murder, then you shall consider whether the defendant is guilty of first degree felony murder. The Commonwealth must prove beyond a reasonable doubt each of the following elements of first degree felony murder:

(1) That the defendant killed Wilhemina Smith; and,
(2) That the killing was malicious; and,
(3) That the killing occurred in the commission of, or attempt to commit robbery.

If you find from the evidence that the Commonwealth has proven beyond a reasonable doubt each of the above elements, then you shall find the defendant guilty of first degree felony murder and fix his punishment at:

(1) Imprisonment for life; or,
(2) A term of imprisonment of not less than twenty years.

If you find that the Commonwealth has failed to prove either capital murder, first degree murder, or first degree felony murder, then you shall find the defendant not guilty of murder.

Given 3-12-81

INSTRUCTION NO. 7

Willful, deliberate, and premeditated means the adoption of a specific intent to kill. The intent to kill must come into existence at some time before the killing, but need not exist for any particular length of time.

Given 3-12-81

INSTRUCTION NO. 8

You may infer malice from the deliberate use of a deadly weapon, in the absence of evidence to the contrary.

A "deadly weapon" is any object or instrument, not a part of the human body, that is likely to cause death or great bodily injury because of the manner, and under the circumstances, in which it is used.

Given 3-14-81

INSTRUCTION NO. 9

Murder during the commission of a robbery occurs where the killing is so closely related to the robbery in time, place, and causal connection as to make it a part of the same criminal enterprise.

INSTRUCTION NO. 10

To prove the charge of murder the Commonwealth does not have to prove a motive for the killing. The presence or absence of a motive may be considered in arriving at your verdict.

INSTRUCTION NO. 11

Maliciously means intentionally doing a wrongful act to another without legal excuse or justification. Malice implies that the mind of the actor is under the control of reason. It excludes heat of passion. Malice and heat of passion cannot co-exist. It includes not only anger, hatred or revenge, but every unlawful or unjustifiable motive.

INSTRUCTION NO. 12

The defendant is charged with the crime of Robbery. If you find the defendant guilty of capital murder or first degree felony murder, then you must find him not guilty of robbery because robbery is one of the elements of those crimes. If you find the defendant guilty of first degree murder or not guilty of murder, then you shall consider whether he is guilty of robbery. The Commonwealth must prove beyond a reasonable doubt each of the following elements of robbery:

(1) That the defendant intended to steal; and,
(2) That United States currency was taken; and,
(3) That the taking was from Wilhemina Smith or in her presence; and,
(4) That the taking was against the will of Wilhemina Smith; and,
(5) That the taking was accomplished by violence to Wilhemina Smith;

If you find from the evidence that the Commonwealth has proven beyond a reasonable doubt each of the above elements, then you shall find the defendant guilty of robbery and fix his punishment at:

(1) Imprisonment for life; or,
(2) A term of imprisonment of not less than five (5) years.

If you find that the Commonwealth has failed to prove robbery, then you shall consider whether he is guilty of attempted robbery. The Commonwealth must prove beyond a reasonable doubt each of the following elements of attempted robbery:

(1) That the defendant intended to commit robbery; and
(2) That the defendantdid a direct act toward the commission of the robbery which amounted to the beginning of the actual commission of the robbery

If you find from the evidence that the Commonwealth has proven beyond a reasonable doubt each of the above elements, then you shall

find the defendant guilty of attempted robbery and fix his punishment at a term of imprisonment of not less than two (2) nor more than ten (10) years.

If you find that the Commonwealth has failed to prove either robbery or attempted robbery, then you shall find the defendant not guilty of robbery.

CERTIFICATE

I, Walter L. Parrish, Clerk of the Circuit Court of the City of Petersburg, Virginia, hereby certify that the original of this instruction was verbatimly read by the Judge of this Court in this case, and has been ~~mis~~2placed; see Transcript, Page 367, Line 10.

Walter L. Parrish, Clerk

INSTRUCTION NO. 13

The intent required to be proven in an attempted crime is the specific intent in the person's mind to commit the particular crime for which the attempt is charged. In determining whether the intent has been proven, you may consider the conduct of the person involved and all the circumstances revealed by the evidence.

3-12-81

INSTRUCTION NO. 14

I. WE, the Jury, find the defendant guilty of capital murder, as defined by Instruction No. 6.

Tommy L. Mizzell

FOREMAN

OR

WE, the Jury, find the defendant guilty of first degree murder, as defined by Instruction No. 6, and do ascertain his punishment to be:

(a) Confinement in the penitentiary for _____.

_____

FOREMAN

OR

WE, the Jury, find the defendant guilty of first degree felony murder, as defined by Instruction No. 6, and do ascertain his punishment to be:

(a) Confinement in the penitentiary for _____.

_____

FOREMAN

OR

We, the Jury, find the defendant not guilty of murder.

_____

FOREMAN

II. We, the Jury, find the defendant guilty of Robbery, as defined by Instruction No. 12, and do ascertain his punishment to be:

(a) Confinement in the penitentiary for _____

_____

FOREMAN

OR

We, the Jury, find the defendant guilty of attempted robbery as defined by Instruction No. 12, and do ascertain his punishment to be:

(a) Confinement in the penitentiary for _____YEARS;

_____

FOREMAN

OR

We, the Jury, find the defendant not guilty of robbery.

_____

FOREMAN

The verdicts must be agreed upon by each and every member of the Jury.

INSTRUCTION NO. 7.

You have convicted the defendant of an offense which may be punished by death. You must decide whether the defendant shall be sentenced to death or to life imprisonment. Before the penalty can be fixed at death, the Commonwealth must prove beyond a reasonable doubt at least one of the following two alternatives:

> (1) That, after consideration of his past criminal record, there is a probability that he would commit criminal acts of violence that would constitute a continuing serious threat to society; or,
> (2) That his conduct in committing the offense was outrageously or wantonly vile, horrible or inhuman, in that it involved torture, depravity of mind or aggravated battery to the victim beyond the minimum necessary to accomplish the act of murder.

If you find from the evidence that the Commonwealth has proven beyond a reasonable doubt either of the two alternatives, then you may fix the punishment of the defendant at death or if you believe from all the evidence that the death penalty is not justified, then you shall fix the punishment of the defendant at life imprisonment.

If the Commonwealth has failed to prove either alternative beyond a reasonable doubt, then you shall fix the punishment of the defendant at life imprisonment.

INSTRUCTION NO. B

Depravity of mind is a degree of moral turpitude which surpasses that found in the definitions of malice and premeditation given in other instructions of the court.

Moral turpitude implies an act of baseness or deficiency in the duties which one person owes to another or to society in general, which is contrary to the usual, accepted and customary rule of right and duty which a person should follow.

3-13-81

INSTRUCTION NO. C

A battery is any bodily hurt, however slight, done to another in an angry, rude or vengeful manner.

An aggravated battery is a battery which, qualitatively and quantitatively, is more than the minimum necessary to accomplish an act of murder.

3-12-81

CROSS OUT ANY P AGRAPH, WORD OR PHRASE WHI YOU DO NOT FIND BEYOND A REASONABLE DOUBT

INSTRUCTION NO. D

We, the Jury, on the issue joined, having found the defendant guilty of the willful, deliberate and premeditated murder of Wilhemina Smith in the commission of robbery while armed with a deadly weapon and having found that,

after consideration of his past criminal record that there is a probability that he would commit criminal acts of violence that would constitute a continuing serious threat to society,

and/or

his conduct in committing the offense is outrageously or wantonly vile, horrible or inhuman in that it involved (torture), (depravity of mind) or (aggravated battery to the victim beyond the minimum necessary to accomplish the act of murder)

and having considered the evidence in mitigation of the offense, unanimously fix his punishment at death.

James L Mizelle
FOREMAN
Foreman

OR

We, the Jury, on the issue joined, having found the defendant guilty of the willful, deliberate and premeditated murder of Wilhemina Smith in the commission of robbery while armed with a deadly weapon, and having considered all of the evidence in aggravation and mitigation of such offense, fix his punishment at imprisonment for life.

FOREMAN

Given 3-13-81

VIRGINIA: IN THE CIRCUIT COURT OF THE CITY OF PETERSBURG,

MAY 1, 1981.

Commonwealth

v. Felony (No. 1) - Murder - Convicted Capital Murder
(F315-80)

Earl Clanton, Jr. (DOB 6/1/54), Defendant

This day came the Attorney for the Commonwealth and Earl Clanton, Jr., who stands convicted of a felony, to-wit: capital murder (by jury on March 13, 1981), was again led to the bar in the custody of the jailer of this Court, and came also Timothy J. Hauler, his attorney heretofore appointed.

And the Probation Officer of this Court, to whom this case had been previously referred for investigation, appeared in open court with a written report, which report he had presented to the Court, and a copy thereof was delivered to counsel for the defendant at least five (5) days prior thereto.

Thereupon, the defendant and his counsel were given the right to cross-examine the Probation Officer as to any matter contained in the said report and to present any additional facts bearing upon the matter as they desired to present. The report of the Probation Officer is accordingly filed as a part of the record in this case.

Whereupon, the Court taking into consideration all of the evidence in the case, the report of the Probation Officer, the additional facts as were presented by the defendant, and the arguments of counsel, and it being demanded of the defendant if anything for himself he had or knew to say why judgment should not be pronounced against him according to law, and

5/13/81 TR & Copy S.P.

there being nothing offered or alleged in delay of judgment, the Court doth confirm the verdict of the jury finding the defendant guilty of capital murder, as charged in the indictment, and adjudges that the sentence of death is appropriate and just, and sentences the defendant to death as by the Jury ascertained.

It is therefore ORDERED that the defendant be remanded to the custody of the Director of the Department of Corrections, to be transported to the penitentiary of the Commonwealth of Virginia and there, on the 5th day of August, 1981, at 7:00 a.m., to be put to death in the manner prescribed by law, unless this sentence is stayed or modified according to law.

The attorney for the defendant moved the Court to sentence the defendant to life imprisonment, on grounds stated in the record, which motion was overruled.

It is further ORDERED that the transcript be made a part of the record in this case, and that the record of these proceedings, including the transcript of the evidence and incidents of trial, be transmitted to the Supreme Court of Virginia for review within ten (10) days after receiving the said transcript.

The Court Reporter is directed to prepare and deliver to the attorney for the defendant a copy of the transcript to be delivered by him to the defendant, at no cost to the defendant.

The Court then informed the defendant that the judgment of this Court would be reviewed on the record by the Supreme Court of Virginia. The Court further informed the defendant of his right to appeal to the Supreme Court of Virginia for which

purposes the Court doth appoint Timothy J. Hauler to represent him and to protect his rights, both on review and on appeal.

The Court certifies that at all times during the trial of this case the defendant was personally present and his attorney was likewise personally present and capably represented the defendant.

And the defendant is remanded to the custody of the Director of the Department of Corrections.

* * * *

Enter this:

May 1, 1981

Judge

Entered: Common Law Order Book

Vol. , Page

V I R G I N I A :

IN THE CIRCUIT COURT OF THE CITY OF PETERSBURG

COMMONWEALTH OF VIRGINIA

v.

EARL CLANTON, JR.

NOTICE OF APPEAL

Now comes the Defendant herein, Earl Clanton, Jr., by and through counsel, pursuant to Rule 5:6, Rules of the Supreme Court of Virginia, and files with the Clerk of this Honorable Court his Notice of Appeal of the final judgment of this Court rendered on March 13, 1981, wherein he was convicted of capital murder in violation of §18.2-31(d), Code of Virginia, 1950 (as amended), and was sentenced to the death penalty by a jury; said jury verdict was approved and imposed by the Judge of the Circuit Court of the City of Petersburg on May 1, 1981.

In submitting the instant Notice of Appeal, your Defendant states that he intends to rely on the transcript of proceedings, statements of facts, testimony and other incidents of this cause as developed in the trial Court to be hereinafter filed in accordance with Rule 5:9, Rules of the Supreme Court of Virginia.

EARL CLANTON, JR.

Earl Clanton Jr

By Counsel

Timothy J. Hauler, J.D., p.d.
Elliott, DeBoer & Hauler, Ltd.
105 Valley Road, P. O. Box 428
Colonial Heights, Virginia 23834

1981 May 7 Filed.
H.L.P., Clk.

Copy
SUPREME COURT OF VIRGINIA
RECEIVED
JUN 29 1981
RICHMOND, VIRGINIA

IN THE SUPREME COURT
OF VIRGINIA

EARL CLANTON, JR.,	)	
Appellant,	)	
v.	)	ASSIGNMENTS OF ERROR
COMMONWEALTH OF VIRGINIA,	)	
Appellee.	)	

Now comes your Appellant herein, Earl Clanton, Jr., by and through counsel, and assigns the following errors:

1. The trial court erred in denying the Appellant's/Defendant's Motion for Change of Venue, or in the alternative, a Change of Venire which constituted a denial of due process of law.

2. The trial court erred in admitting into evidence over the Appellant's/Defendant's objection numerous gruesome and gory photographs of the decedent, which inflamed the passion and prejudice of the jury.

3. The trial court erred in admitting into evidence over the objection of the Appellant/Defendant the report of the pathologist.

4. The trial court erred in failing to give a sua sponte cautionary instruction to the jury based upon improper closing argument by the Commonwealth Attorney.

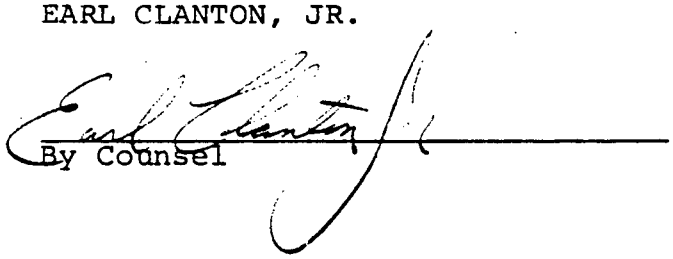
5. The trial court erred in failing to instruct the jury regarding parole in this case after being queried by the jury on this issue during the course of their deliberations.

6. The sentence of death was imposed under the influence of passion, prejudice and other arbitrary factors as a result of

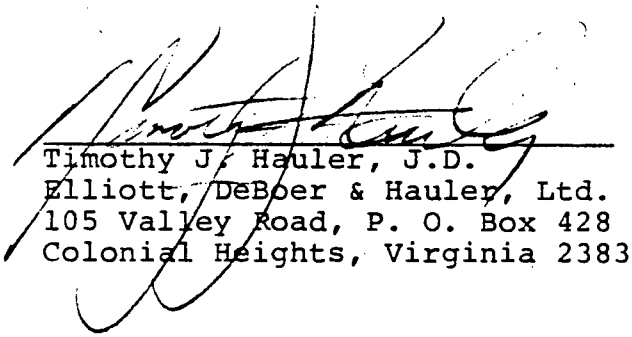
an overly broad and vague construction of Virginia's capital murder statute and that said sentence of death is excessive and disproportionate to the penalty imposed in similar cases.

Respectfully submitted,

EARL CLANTON, JR.



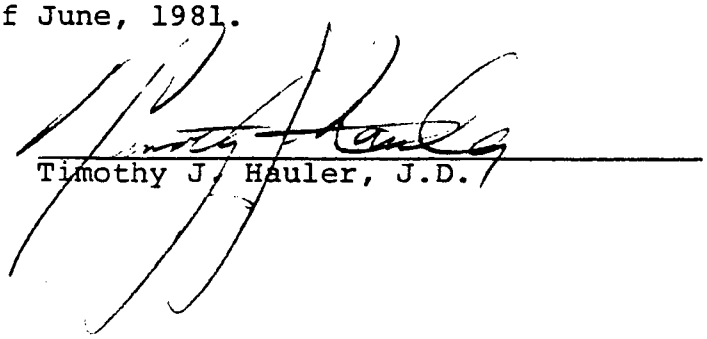
By Counsel



Timothy J. Hauler, J.D.
Elliott, DeBoer & Hauler, Ltd.
105 Valley Road, P. O. Box 428
Colonial Heights, Virginia 23834

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Assignments of Error was mailed postage prepaid, to Thomas D. Bagwell, Assistant Attorney General, counsel of record for the Appellee at Criminal Division, 900 Fidelity Building, 830 East Main Street, Richmond, Virginia 23219, this 26th day of June, 1981.



Timothy J. Hauler, J.D.

6-8-81

JAMES T. HENDRICK & ASSOCIATES
2827 OAKLAND AVE.
RICHMOND, VIRGINIA 23228

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF PETERSBURG

COMMONWEALTH

v.

EARL CLANTON, JR.

Transcript of the evidence and other incidents of the above which was phonographically recorded out of the presence of the Court Reporter on March 6, 1981 on motion for change of venue, on March 12 and 13, 1981 on the merits of the case, and on May 1, 1981 on post-sentence report. Sentencing on May 1, 1981.

APPEARANCES:

Gregory Welsh,
Attorney for the Commonwealth

Timothy J. Hauler, Jr.,
Attorney for the Defendant

Hearing on motion for change of venue on March 6, 1981

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No witnesses

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No witnesses or exhibits

NOTE: Hearing on motion for change of venue on the 6th day of March, 1981 before the Honorable Oliver A. Pollard, Jr., Judge.

PRESENT: Gregory Welsh,
Attorney for the Commonwealth

Timothy J. Hauler, Jr.,
Attorney for the Defendant

Earl Clanton, Jr.,
Defendant

THE COURT: All right, Mr. Hauler?

MR. HAULER: Good morning, Your Honor. If it please the Court, the defense on behalf of Mr. Earl Clanton, Jr. would respectfully move this Court for a change of venue for the trial of this case presently scheduled for March 12th and 13th based on what is felt to be undue and prejudicial publicity which is contended by the defense to have created a bias within this community so as to prohibit a fair trial of the defendant on the charges in chief. We would submit to

1 Your Honor, and I believe the attorney for the Common-
2 wealth is willing to stipulate the fact that these
3 articles in fact are genuine articles from the Prog-
4 ress Index, a number of articles which have run in the
5 Progress Index, which is a newspaper of general circu-
6 lation within this community, since November 17th of
7 1980. We believe as is set forth in the written motion
8 submitted to the Court that these newspaper articles
9 have presented certain facts and have impliedly sug-
10 gested the guilt or culpability of the defendant in the
11 crimes for which he is charged so as to be a matter of
12 prejudice to any jury that this Court might empanel.
13 I'd ask that these be collectively marked as a defense
14 exhibit submitted to the Court.
15 MR. WELSH: Judge, I believe one or two of
16 those articles are from the Richmond Times-Dispatch
17 but other than that, we have no problem with the fact
18 that they did appear in the local newspapers.
19 THE COURT: All right.
20
21
22
23
24 EXHIBIT: Defense Exhibit 1, newspaper

articles regarding defendant which ran in the Progress Index and in the Richmond Times-Dispatch.

MR. HAULER: If it please the Court, Your Honor, I would further submit in support of the motion, or I should say I've been unable to secure any affidavits that are normally presented for a change of venue, if the Court is not favorably inclined to grant this motion, we would ask that the motion likewise be reserved for the possibility of a change of venire at such time as voir dire is conducted of the jury panel.

THE COURT: Now, quite frankly, Mr. Hauler, I think this is -- what you last mentioned is the preferred way of handling it. Your motion is based on the assumption that all potential jurors have read the articles that you've mentioned. In the past I think the best way of handling it, we'll call the jurors in, we'll question them thoroughly, and I think in this case we should take them probably instead of the usual seven at a time, two at a time to give us a full oppor-

1 tunity to observe and question the potential jurors.
2 If it appears that a jury can't be found because of
3 prior fixed opinions and so forth, then we can certain-
4 ly change at that time - continue the case and change
5 the venire or the venue. Now, of course, I conclude my
6 remarks by saying it's preferable to try cases in the
7 jurisdictions in which crimes occur and that we are re-
8 quired to do this unless it can be shown that we can-
9 not find the impartial jurors required by law. And the
10 fact that people read newspapers does not render them
11 improper jurors. It's only if they can't be impartial
12 or if they've already formed fixed opinions. So I
13 don't see any way to determine that without questioning
14 the jurors that are called from the jury rolls in the
15 normal fashion. So your motion will be denied but you
16 can renew it if after questioning the jury panel we
17 have any sort of problem.
18 MR. HAULER: Yes, sir.
19 THE COURT: All right.
20 MR. HAULER: I'd ask that the Court respect-
21 fully note counsel's exception to the ruling.
22 THE COURT: All right.
23
24 HEARING CONCLUDED.

NOTE: Hearing on the 12th and 13th of March, 1981 before the Honorable Oliver A. Pollard, Jr., Judge.

PRESENT: Gregory Welsh,
Sidney Barney and
R. H. Cooley, Jr.,
Attorneys for the Commonwealth

Timothy J. Hauler, Jr.,
Attorney for the Defendant

Earl Clanton, Jr.,
Defendant

THE COURT: All right, Mr. Parker, we have the jurors that have previously been pulled and listed in the order in which they were taken from the box. I'd like them brought up three at a time. So will you bring the first three up and have them face the bench? (pause) Just a minute. First, Mr. Parrish, advise Mr. Clanton as to his rights to the jurors.

THE CLERK: The jury now to be called

THE COURT: Mr. Hauler and Mr. Welsh, if you want to come up and flank the bench so you can watch the jurors as they're being questioned, come on up.

MR. WELSH: Yes, sir. Thank you.

THE COURT: Both of you can stay over there or one on either side; either way you want to do it.

MR. PARKER: Just come forward, please, and stand in front of the bench here. (pause) Just stand right there, facing up there.

THE COURT: All right, Mr. Parrish, swear them in, please.

MR. PARRISH: Do each of you swear that you'll make true and perfect answers to such questions as the Court will now propound to you, so help you God?

THE COURT: I guess so we'll know who you are and the attorneys will know which ones you are, your name is what?

MR. JACKSON: William Jackson.

THE COURT: This is Mr. Jackson. All right. And you are?

MS. LAURA S. GREEN: Laura S. Green.

THE COURT: Laura S. Green. And --

1 MR. NELSON: (Inaudible) Nelson.

2 THE COURT: Mr. Nelson. All right, the de-
3 fendant to be tried today is Earl Clanton, Jr. He's
4 charged with the murder and robbery of Wilhelmina
5 Smith on November 16th of last year. Are any of you
6 related by blood or by marriage to the defendant, Earl
7 Clanton, Jr.? Give me an answer each time so we'll
8 know where we stand.

9 ALL THREE: No.

10 THE COURT: Are any of you related by blood or
11 by marriage to the deceased, Wilhelmina Smith?

12 ALL THREE: No.

13 THE COURT: Now, there's another person charged
14 along with Mr. Clanton, Natalie Lawrence. Do any of
15 you know or are any of you related by blood or by
16 marriage to Natalie Lawrence?

17 ALL THREE: No.

18 THE COURT: Do any of you know Mr. Clanton or
19 did you know Wilhelmina Smith?

20 ALL THREE: No.

21 THE COURT: All right. Now, this is Mr. Haul-
22 er who will be representing the defendant, Earl Clanton.
23 And this is Mr. Welsh who is from the Commonwealth
24 Attorney's Office who will be representing the State.

1 Are any of you clients, friends or acquaintances of
2 either Mr. Hauler or Mr. Welsh?
3 ALL THREE: No.
4 THE COURT: All right. Now, do any of you have
5 any relatives or friends who are connected in any way
6 with law enforcement as a police officer, member of
7 the Commonwealth Attorney's Office, anything of that
8 sort?
9 ALL THREE: No.
10 THE COURT: All right. Now, do any of you feel
11 that you would accept the testimony of any police
12 officer, law enforcement official, or any person act-
13 ing in an official capacity for the State more readily
14 than you would any other witness merely because of his
15 position as such an official?
16 ALL THREE: No.
17 THE COURT: All right. Do any of you have any
18 interest in the trial or the outcome of this particular
19 case?
20 ALL THREE: No.
21 THE COURT: All right. Now, have any of you
22 acquired any information about the alleged offenses
23 or about the accused, Earl Clanton, from the news media
24 or from any other source?

1 ALL THREE: No.

2 THE COURT: You know nothing about the case

3 at all?

4 ALL THREE: No.

5 THE COURT: All right. And have you expressed

6 or formed any opinions concerning the guilt or the

7 innocence of Earl Clanton, Jr.?

8 ALL THREE: No.

9 THE COURT: All right. Do any of you have any

10 bias or prejudice against the accused, Earl Clanton,

11 Jr., or against the State of Virginia?

12 ALL THREE: No.

13 THE COURT: Now, do all of you accept the rule

14 of law that any defendant in a criminal case is pre-

15 sumed to be innocent until the State proves his guilt

16 beyond a reasonable doubt? (pause) Do you all believe

17 that that's correct?

18 ALL THREE: Yes.

19 THE COURT: And understand that? All right.

20 Do you accept the rule of law that the State must prove

21 the defendant's guilt and that the defendant does not

22 have to prove his innocence?

23 ALL THREE: Yes.

24 THE COURT: All right. Do you have any health

1 problems or any business reasons that would make it
2 difficult for you to devote your full attention to this
3 case?
4 ALL THREE: No.
5 THE COURT: Do you believe that you are able to
6 sit in judgment of this defendant and remain fully im-
7 partial and keep an open mind until all the evidence
8 has been placed before you?
9 ALL THREE: Yes.
10 THE COURT: All right. The defendant, as I've
11 said, in this case is charged with capital murder and
12 robbery. In a capital murder trial, the jury after
13 hearing all of the evidence and the Court's instructions
14 on the law, will first have to decide whether the de-
15 fendant is guilty of capital murder or some lesser of-
16 fense lesser than capital murder or whether he's not
17 guilty. Now, if the jury determines that he's guilty
18 of capital murder, there will then be a separate hear-
19 ing and you will have to at the separate hearing decide
20 whether he should receive the death sentence or a sen-
21 tence of life imprisonment. Now, do any of you three
22 have any religious or conscientious scruples or objec-
23 tions which would prevent you from considering the
24 death penalty in a proper case?

1 ALL THREE: No.

2 THE COURT: All right. Now, I take it that all
3 of you feel then, to make sure, that if the proper case
4 is put before you, you would consider the death penalty?
5 That doesn't mean you'd necessarily give it.

6 ALL THREE: Yes.

7 THE COURT: All right. Now, do any of you feel
8 that in each and every case,regardless of the facts,
9 where a person has been convicted of murder,that they
10 should receive the death penalty?

11 MS. GREEN: No.

12 MR. NELSON: No.

13 MR. JACKSON: Yes.

14 THE COURT: In every case?

15 MR. JACKSON: Yes.

16 THE COURT: All right. To make sure now, Mr.
17 Jackson, --

18 MR. JACKSON: Yes, sir.

19 THE COURT: -- now, what I've just said is, to
20 make sure, in every case of murder where the person is
21 proven guilty, regardless of the circumstances or the
22 type of murder, you feel that they should receive the
23 death penalty?

24 MR. JACKSON: The way I see it, they should --

1 THE COURT: All right.

2 MR. JACKSON: -- if they're guilty.

3 THE COURT: Well, (pause) I think we'll have
4 to strike him for cause, Mr. Welsh, unless you'd like
5 to ask further questions. You see, the law doesn't
6 provide for it in every case or even consider it in
7 every case and that's why we have to make sure. And if
8 you feel so strongly about it, Mr. Jackson, that you
9 think everybody who is convicted of murder should be
10 put to death, then if that is your belief --

11 MR. JACKSON: If they're guilty they should.

12 THE COURT: All right. All right, then, I'm
13 going to strike Mr. Jackson for cause. Thank you, Mr.
14 Jackson. Now, the others feel that you would consider
15 the case and all of the circumstances and do not feel
16 the death penalty is warranted in every case, is this
17 correct?

18 REMAINING TWO: Yes.

19 THE COURT: All right. But, again, you feel
20 like in the proper case, you would consider it?

21 REMAINING TWO: Yes.

22 THE COURT: All right. All right, the defendant
23 is also charged with robbery. The jury must decide the
24 guilt or innocence on that charge in addition to the

murder. Now, if you find him guilty, you would have to fix a penitentiary sentence between five years and life imprisonment. Do you have any religious, moral or other beliefs that would prevent you from passing judgment on the defendant if he's proven guilty of the robbery?

REMAINING TWO: No.

THE COURT: Now, lastly, the last question, do you have any reason whatsoever to believe that you cannot give the defendant, Earl Clanton, Jr., as well as the State of Virginia a fair and impartial trial and base any decision or verdict that you might reach solely upon the law and the evidence presented to you in this Courtroom?

REMAINING TWO: No.

THE COURT: All right. Do you have any additional questions, Mr. Hauler?

MR. HAULER: No, sir, I don't.

THE COURT: All right. Are you satisfied with the responses?

MR. HAULER: Yes, sir.

THE COURT: All right. Have Mr. Nelson and Ms. Green go in the jury room. (pause) All right, pull three more, Mr. Parker. Where is Mr. Parker?

1 MR. PARKER: Just come forward, please, and
2 stand facing the Judge. (pause)
3 THE COURT: All right, Mr. Parrish.
4 MR. PARRISH: Do each of you swear that you'll
5 make true and perfect answers to such questions as the
6 Court will now propound to you, so help you God?
7 ALL THREE: Yes.
8 THE COURT: Let me have each of your names.
9 What is your name?
10 MS. BROWN: Mabel Elizabeth Brown.
11 THE COURT: All right, Mabel Elizabeth Brown.
12 All right.
13 MS. MAYES: Virginia Kathleen Mayes.
14 THE COURT: Virginia Kathleen Mayes, all right.
15 And your name?
16 MR. BROCKWELL: Willie Harold Brockwell.
17 THE COURT: Willie Harold Brockwell. All
18 right, the defendant to be tried today is Earl Clanton,
19 Jr. He is charged with capital murder and the robbery
20 of Wilhelmina Smith on November 16th of last year. Are
21 you related by blood or by marriage or do you know the
22 defendant in this case, Earl Clanton, Jr.?
23 ALL THREE: No.
24 THE COURT: All right. Another person was

1 charged along with Mr. Clanton in this case named
2 Natalie Lawrence. Are any of you related to Natalie
3 Lawrence or do any of you know Natalie Lawrence?
4 ALL THREE: No.
5 THE COURT: The deceased, Wilhelmina Smith,
6 are any of you related by blood or by marriage or do
7 any of you know Wilhelmina Smith?
8 ALL THREE: No.
9 THE COURT: All right, now, this is Mr. Hauler
10 who is representing Mr. Clanton in this trial. This is
11 Mr. Welsh from the Commonwealth Attorney's Office who
12 is representing the State of Virginia in this case.
13 Are any of you clients, friends or acquaintances of Mr.
14 Hauler or of Mr. Welsh?
15 ALL THREE: No.
16 THE COURT: All right. Do any of you have any
17 friends or relatives who are connected in any way with
18 any law enforcement agency?
19 ALL THREE: No.
20 THE COURT: All right. Do any of you feel
21 that you would accept the testimony of a police offi-
22 cer, law enforcement official, or any person acting in
23 an official capacity for the State more readily than
24 any other witness merely because he holds such a posi-

1 tion?

2 ALL THREE: No.

3 THE COURT: All right. Do any of you have any

4 interest in the trial or the outcome of this case?

5 ALL THREE: No.

6 THE COURT: All right. Have any of you ac-

7 quired any information about the alleged offenses or

8 about Mr. Clanton from the news media or from any other

9 sources?

10 ALL THREE: Yes, I've read the paper.

11 THE COURT: All right, now, one at a time.

12 Now, I believe it was Ms. Brown first. Ms. Brown,

13 based on what you've read, have you formed any fixed

14 opinions concerning the guilt or the innocence of Mr.

15 Clanton?

16 MS. BROWN: No.

17 THE COURT: All right. And you may have an

18 impression but whatever you've learned, would that

19 yield to what takes place in this Courtroom and the

20 evidence and law presented to you? In other words,

21 could you base your decision not on what you've read,

22 seen or heard but only on what you hear in this Court-

23 room in terms of evidence and the law? (pause) Well,

24 what I'm asking you now, can you (pause) -- you say you

1 have not formed any definite opinions from what you've
2 read. Then I'm asking you can you then base your
3 decision only on what you hear in this Courtroom today
4 and not on what you've previously read?
5 MS. BROWN: Yes.
6 THE COURT: That's what I want to know. All
7 right, Ms. Mayes. Again, the same questions. Based
8 on what you've read in the newspapers, have you formed
9 any fixed opinions concerning the guilt or the inno-
10 cence of Mr. Clanton?
11 MS. MAYES: I don't know. I kind of think I
12 have.
13 THE COURT: Well, let's be sure. You're en-
14 titled to form impressions --
15 MS. MAYES: Well, I think I have.
16 THE COURT: All right. You don't think that
17 you could base your decision on what happens in the
18 Court?
19 MS. MAYES: No, sir.
20 THE COURT: All right. I'll strike Ms. Mayes
21 for cause. Thank you. All right, Mr. Brockwell, the
22 same question. Based on what you've read in the papers,
23 have you formed any fixed opinion concerning the guilt
24 or innocence of the accused or could you base any de-

1 cision or judgment solely on what you hear in this
2 Courtroom in terms of the evidence presented to you
3 and the law?
4 MR. BROCKWELL: Uh huh.
5 THE COURT: "Uh huh" meaning that --
6 MR. BROCKWELL: I can do it.
7 THE COURT: In other words, you have then no
8 definite fixed opinions?
9 MR. BROCKWELL: No.
10 THE COURT: All right. Now, to the two of
11 you, do either of you have any bias or prejudice
12 against the defendant in this case, Earl Clanton, Jr.,
13 or against the State of Virginia?
14 REMAINING TWO: No.
15 THE COURT: All right. Do you accept the rule
16 of law that a defendant is presumed to be innocent
17 until the State proves his guilt beyond a reasonable
18 doubt?
19 REMAINING TWO: Yes.
20 THE COURT: Do you accept the rule of law that
21 the State must prove the defendant's guilt and the
22 defendant does not have to prove his innocence?
23 REMAINING TWO: Yes.
24 THE COURT: Do you have any health problems or

business reasons that would make it difficult for you to devote your full attention to this trial?

REMAINING TWO: No.

THE COURT: All right. Do you believe that you're each able to sit in judgment of this defendant and remain totally impartial until all the evidence is presented to you in this case?

REMAINING TWO: Yes.

THE COURT: All right. Now, as I've said, the defendant is charged with capital murder and robbery. In a capital murder trial, the jury, after hearing the evidence and the Court's instructions on the law, will first have to decide whether the defendant is guilty of capital murder, some lesser offense, or not guilty. If the jury finds the defendant is guilty of capital murder, the jury will then have to decide whether to impose the death sentence or a term of life imprisonment. Now, do you have any religious or conscientious scruples or objections which would prevent you from considering the death sentence in a proper case?

REMAINING TWO: No.

THE COURT: All right. Now, do you feel that in each and every case, regardless of the facts, if a person is convicted of murder that he should receive

1 the death sentence? (pause) In every case. Now,
2 what I'm asking you, this is a little difficult to
3 follow, the law lays down strict guidelines which
4 we'll have to get into at the end of the trial as to
5 what a jury may consider before a death sentence can
6 be imposed, and it can only be in a proper case. I
7 have to make sure that you would consider and then
8 you would get -- of a life sentence, the death case --
9 ah, sentence in a proper case, but also I'm going to
10 have to make sure that you don't just think that every-
11 body who's convicted of any murder should automatically
12 get a death sentence, and that's what I'm asking. And,
13 again, do you feel that any person convicted, regard-
14 less of the circumstances or the facts of the case,
15 should receive the death sentence for murder?
16 REMAINING TWO: No.
17 THE COURT: Now, that's what I -- it's -- it's
18 hard to follow. Are you satisfied with that, Mr.
19 Hauler?
20 MR. HAULER: Yes, sir.
21 THE COURT: All right. The defendant is also
22 charged with robbery, as I've pointed out. If you're
23 on this jury, you must also decide the guilt or the
24 innocence of Mr. Clanton on the charge of robbery, and

if you find him guilty beyond a reasonable doubt, then you'll have to fix his punishment at between five years in the penitentiary and life imprisonment. Are there any religious, moral or other beliefs that would prevent you from passing judgment on this defendant if he's proven guilty of the robbery?

REMAINING TWO: No.

THE COURT: All right, your last question, do you have any reason to believe that you cannot give the defendant, Earl Clanton, Jr., and the State of Virginia a fair and impartial trial and base any decision or verdict that you might reach solely upon the law and the evidence presented to you in this Courtroom? Any problems at all?

REMAINING TWO: No.

THE COURT: All right. Thank you. Take those two to the jury room, Mr. Parker. (pause) All right, call three more in.

MR. PARKER: Please come forward and face the bench.

THE COURT: All right, Mr. Parrish.

MR. PARRISH: Do each of you swear that you'll make true and perfect answers to such questions as the Court will now propound to you, so help you God?

1 ALL THREE: Yes.

2 THE COURT: And so the attorneys will know,

3 your name is?

4 MR. MEYERS: Keith Meyers.

5 THE COURT: And your name is?

6 MS. HYMAN: Evelyn Hyman.

7 THE COURT: And your name is?

8 MR. SMITH: James Andrew Smith.

9 THE COURT: James Andrew Smith, all right.

10 Now, the defendant to be tried today, Earl Clanton,

11 Jr., is charged with the capital murder and robbery of

12 Wilhelmina Smith on November 16th of last year. Are

13 any of you related by blood or by marriage to the de-

14 fendant in this case, Earl Clanton, Jr.?

15 ALL THREE: No.

16 THE COURT: Do any of you know Mr. Clanton?

17 ALL THREE: No.

18 THE COURT: All right. Are any of you related

19 by blood or by marriage to the other person charged

20 with Mr. Clanton, Natalie Lawrence?

21 ALL THREE: No.

22 THE COURT: Do any of you know Natalie Lawrence?

23 ALL THREE: No.

24 THE COURT: All right. Do any of you know or

1 were any of you related at all to the deceased, Wilhel-
2 mina Smith?
3 ALL THREE: No.
4 THE COURT: All right. This is Mr. Hauler who
5 will be representing Mr. Clanton in this trial. This
6 is Mr. Welsh who will be representing the State in this
7 trial. Are any of you clients, friends or acquain-
8 tances of Mr. Hauler or of Mr. Welsh?
9 MR. MEYERS: Yes, sir.
10 THE COURT: You are. Which one?
11 MR. MEYERS: I'm acquainted with both of them.
12 I know Mr. Welsh better.
13 THE COURT: All right. Now, Mr. Meyers, I will
14 have to ask you, does your acquaintanceship with --
15 would your acquaintanceship with Mr. Welsh in any way
16 affect your ability to listen to the evidence and the
17 law in this case and base your decision on that evi-
18 dence and law and in no way relate it to your acquain-
19 tanceship with Mr. Welsh?
20 MR. MEYERS: It would not affect me. I
21 couldn't -- I've forgotten which way to answer the
22 question.
23 THE COURT: Well, (pause) the answer you gave
24 is what I want. It would not -- your acquaintanceship

1 would not in any way affect your decision --

2 MR. MEYERS: No, sir.

3 THE COURT: -- in this case is what I want to

4 find out.

5 MR. MEYERS: No.

6 THE COURT: And the same for Mr. Hauler?

7 MR. MEYERS: No, sir. It would not.

8 MR. WELSH: Judge, Mr. Smith also indicated a

9 "yes," I believe, to that?

10 MR. SMITH: No, I don't know you.

11 MR. WELSH: Oh, you didn't? I'm sorry.

12 MR. SMITH: That's all right.

13 THE COURT: Now, do any of you have any rela-

14 tives or friends who are connected in any way to law

15 enforcement such as a police officer or member of the

16 Commonwealth Attorney's Office or anything of that

17 sort?

18 ALL THREE: No.

19 THE COURT: All right. Now, do you feel that

20 you would accept the testimony of a police officer, a

21 law enforcement official, or any other person appearing

22 on behalf of the State more readily than you would the

23 testimony of any other witness merely because he holds

24 such a position?

1 ALL THREE: No.

2 THE COURT: Do any of you have any interest in
3 the trial or the outcome of this case? (pause) Yes,
4 ma'am?

5 MS. HYMAN: Yes.

6 THE COURT: All right. Do you have an inter-
7 est you mean? What I mean by that, a personal inter-
8 est in the case other than --

9 MS. HYMAN: No, sir.

10 THE COURT: Okay. All right. Have any of you
11 acquired any information about the murder and the rob-
12 bery or about the accused, Earl Clanton, from the news
13 media or from any other source?

14 MR. MEYERS: No more than to be aware of the
15 case.

16 THE COURT: All right. Now, based on what,
17 Mr. Meyers, I believe that you've either seen, heard
18 or read, have you formed any fixed opinions concerning
19 the guilt or the innocence of Mr. Clanton?

20 MR. MEYERS: No, sir.

21 THE COURT: All right. Then I take it none
22 of you have expressed or formed any definite opinions
23 concerning guilt or innocence of Mr. Clanton in this
24 case?

1 ALL THREE: No.

2 THE COURT: All right. Do any of you have any
3 bias or prejudice against the accused in this case,
4 Earl Clanton, Jr., or against the State of Virginia?

5 ALL THREE: No.

6 THE COURT: Do all three of you accept the
7 rule of law that the defendant in any criminal case
8 is presumed to be innocent until the State proves his
9 guilt beyond a reasonable doubt? Do you accept that
10 rule of law? In other words, what we're saying is
11 that in any criminal case the defendant comes into
12 court and you have to treat him as if he's not guilty
13 at that stage. The law presumes he's not guilty and
14 the burden is upon the State, the Commonwealth of
15 Virginia, to prove his guilt beyond a reasonable doubt.
16 What I'm asking is do you accept that as a correct
17 principle of law? In other words, just because he's
18 charged, he's not guilty. We have to start off pre-
19 suming that he's not guilty and the State has to prove
20 his guilt. This is what I'm saying. Do you agree with
21 that?

22 ALL THREE: Yes.

23 THE COURT: Do you accept the rule of law that
24 the State must prove the defendant's guilt and that the

1 defendant does not have to prove his own innocence?
2 Do you accept that rule of law?
3 ALL THREE: Yes, sir.
4 THE COURT: All right. Do any of the three of
5 you have any health problems or business reasons that
6 would make it difficult for you to devote your full
7 attention to this trial?
8 MR. SMITH: I have a little cold, that's all.
9 THE COURT: Well, that's all right. (laugh)
10 MS. HYMAN: I have arthritis.
11 THE COURT: You have no hearing difficulties,
12 anything like that, that would keep you from keeping up
13 with this case?
14 ALL THREE: No.
15 THE COURT: Do you believe that you are able
16 to sit in judgment of this defendant and remain totally
17 impartial until all of the evidence has been presented
18 to you and the case has been completed and then make up
19 your minds? Do you think you all could do that?
20 ALL THREE: Yes.
21 THE COURT: All right. Now, in this case, as
22 I've told you, the defendant is charged with capital
23 murder and robbery. In a capital murder case, the jury,
24 after hearing the evidence and the instructions of the

1 Court as to the law of the case must first decide
2 whether the defendant is guilty and if he is guilty,
3 is he guilty of capital murder or some lesser degree of
4 criminal involvement or whether he's not guilty. If
5 the jury decides that he's guilty of capital murder,
6 you will then have a second decision of whether he
7 should be given the death sentence or life imprisonment.
8 Do any of you have any religious or conscientious
9 scruples or objections that would prevent you from con-
10 sidering the death sentence in a proper case?
11 ALL THREE: No, sir.
12 THE COURT: All right. Now, on the other side
13 of that, do you necessarily feel that in every case
14 where there's a murder, regardless of the circumstances,
15 that it should be a death sentence?
16 MR. MEYERS AND MS. HYMAN: No, sir.
17 MR. SMITH: Yes, sir.
18 THE COURT: You think in every case of any
19 murder, there should be the death sentence?
20 MR. SMITH: I guess it all depends.
21 THE COURT: Well, you see, this is a difficult
22 thing to get across and a difficult one, I'm sure, for
23 you to make up your mind on. We want to make certain
24 we would have jurors who if there's a proper case for

1 it that would consider the death sentence, but we also
2 want to make sure that we don't have jurors who in every
3 case of murder, regardless of what happened, and regard-
4 less of the background of the person, would vote for
5 the death sentence. Do you understand what I'm saying?
6 MR. SMITH: Yes, sir.
7 THE COURT: And, again, and I don't want to put
8 you in a difficult spot, I just want an honest answer,
9 do you feel that in every case, regardless of the facts,
10 that a person convicted of murder should receive the
11 death sentence?
12 MR. SMITH: (pause) No.
13 THE COURT: All right. And do you think that
14 you would consider the law fully if we get to that
15 point before you would impose such a sentence?
16 MR. SMITH: (No audible reply)
17 THE COURT: All right. Mr. Hauler?
18 MR. HAULER: Judge, I'm a little bit concerned.
19 I understand the answers he's given and certainly the
20 answers would pass muster for the question asked.
21 I'm (pause) -- I don't know that --
22 THE COURT: Would you want to ask him any addi-
23 tional questions?
24 MR. HAULER: (pause) I'd just ask one question.

1 THE COURT: Yeah. Go ahead.

2 MR. HAULER: Mr. Smith, do you have any notions
3 as to what type of case, murder case, should require
4 the death sentence?

5 MR. SMITH: Yes.

6 MR. HAULER: What would those be, sir?

7 MR. SMITH: (pause) Like you just go out and
8 kill somebody, I guess, defending yourself, you know,
9 though. (pause) On that basis.

10 THE COURT: All right, is what you're saying
11 then, Mr. Smith, in any case where you don't have some-
12 thing like self-defense or something and you kill some-
13 body that you should get the death sentence?

14 MR. SMITH: Yes.

15 THE COURT: All right. Then I'll strike him
16 for cause. Thank you, Mr. Smith. (pause) All right,
17 --

18 MR. WELSH: Your Honor?

19 THE COURT: Yeah?

20 MR. WELSH: Did Ms. Hyman answer that she
21 could consider the death penalty?

22 THE COURT: I thought she did.

23 MR. WELSH: I'm sorry, I --

24 MS. HYMAN: Yes.

1 THE COURT: Yes, she did. She said in a
2 proper case, she could consider it. All right, Ms.
3 Hyman and Mr. Meyers, the defendant is also charged
4 with robbery. If you were to find him guilty on that
5 charge, you would have to fix a sentence of between
6 five years in the penitentiary and life imprisonment.
7 Do you have any religious, moral or other beliefs that
8 would prevent you from passing judgment on the defend-
9 ant if he's proven guilty?
10 REMAINING TWO: No, sir.
11 THE COURT: All right. And, lastly, do you
12 have any reason whatsoever to believe that you cannot
13 give Earl Clanton, Jr. as well as the State of Virginia
14 a fair and impartial trial and base any decision or
15 verdict you might reach solely upon the evidence and
16 the law presented to you in this Courtroom? Do you have
17 any hesitation or problems whatsoever? Ms. Hyman, do
18 you know of any reason why you are not able to serve?
19 MS. HYMAN: No.
20 MR. MEYERS: (Answered no)
21 THE COURT: All right. Thank you. Mr. Parker,
22 take these two to the jury room. (pause)
23 MR. PARKER: Come forward, please, and stand in
24 front of the bench.

1 THE COURT: All right, Mr. Parrish.

2 MR. PARRISH: Do each of you swear that you'll
3 make true and perfect answers to such questions as the
4 Court may now propound to you, so help you God?

5 ALL THREE: Yes.

6 THE COURT: All right, just so the attorneys
7 and everyone will know who you are, what is your name,
8 sir?

9 MR. PERKINS: John Franklin Perkins.

10 THE COURT: Mr. Perkins. All right. And your
11 name?

12 MS. MAINS: Mabel L. Mains.

13 THE COURT: Mabel Mains. All right, thank
14 you. And your name?

15 MR. MIZELL: James Louis Mizell.

16 THE COURT: All right, Mr. Mizell. (pause) All
17 right, the defendant to be tried today, Earl Clanton,
18 Jr., is charged with capital murder in the robbery of
19 Wilhelmina Smith on November 16th, 1980. Are any of
20 you related by blood or by marriage to the defendant,
21 Earl Clanton, Jr., or do any of you know Earl Clanton,
22 Jr.?

23 ALL THREE: No.

24 THE COURT: There was another individual charged

1 along with Mr. Clanton named Natalie Lawrence. Are any
2 of you related to Ms. Lawrence or do any of you know
3 Natalie Lawrence?
4 ALL THREE: No.
5 THE COURT: Are any of you related by blood or
6 by marriage or do any of you know the deceased, Wilhel-
7 mina Smith?
8 ALL THREE: No.
9 THE COURT: Now, this is Mr. Hauler, who will be
10 representing Mr. Clanton in this case. This is Mr.
11 Welsh, who will be representing the State of Virginia
12 in this case. Are any of you clients, friends or ac-
13 quaintances of Mr. Hauler or Mr. Welsh?
14 ALL THREE: No.
15 THE COURT: Do any of you have any relatives or
16 friends who are connected in any way with law enforce-
17 ment?
18 ALL THREE: No.
19 THE COURT: Do you feel that you would accept
20 the testimony in any case of a police officer, law
21 enforcement official or any person acting in an offi-
22 cial capacity for the State more readily than you would
23 the evidence of any other witness merely because of
24 their position?

1 ALL THREE: No.

2 THE COURT: All right. Do any of you have any
3 interest in the trial or the outcome of this particular
4 case?

5 ALL THREE: No.

6 THE COURT: All right. Have you acquired any
7 information about the alleged offenses or the accused,
8 Earl Clanton, from the news media or from any other
9 sources?

10 ALL THREE: No.

11 THE COURT: All right. Have any of you ex-
12 pressed or formed any opinions concerning the guilt or
13 the innocence of Earl Clanton, Jr.?

14 ALL THREE: No.

15 THE COURT: Do any of you have any bias or
16 prejudice against Earl Clanton, Jr. or the State of
17 Virginia?

18 ALL THREE: No.

19 THE COURT: Do you all three accept the rule of
20 law that an accused in a criminal case is presumed to
21 be innocent and he stays that way until the State proves
22 his guilt beyond a reasonable doubt? Do you accept
23 that?

24 ALL THREE: Yes.

1 THE COURT: Do you also accept the rule of law
2 that the State must prove the defendant's guilt and the
3 defendant does not have to prove his innocence?
4 ALL THREE: Yes.
5 THE COURT: Do any of the three of you have any
6 health problems or business reasons that would prevent
7 your devoting your full time and attention to this case?
8 ALL THREE: No.
9 THE COURT: Do you believe yourself able to sit
10 in judgment on Mr. Clanton and remain totally impartial
11 until all the evidence has been presented and the case
12 has been concluded and then make your decision?
13 ALL THREE: Yes.
14 THE COURT: As I've said, the defendant is
15 charged with capital murder and robbery. In a capital
16 murder trial, the jury, after hearing all the evidence
17 and the instructions of the Court that gives you the
18 law of the case, must first make a determination whether
19 the defendant is guilty of capital murder or whether
20 he's guilty of some lesser offense or whether he's not
21 guilty. If the jury decides that he is guilty of cap-
22 ital murder, they will have to make a second determina-
23 tion and that is simply whether he receives the death
24 sentence or life imprisonment for that capital murder.

1 Now, do any of you have any religious or conscientious
2 scruples or objections which would prevent you from
3 considering the death sentence in a proper case?
4 (pause) How about you?
5 MS. MAINS: (pause) Yes.
6 THE COURT: In other words, you do not feel
7 that you could consider the death sentence in any case?
8 MS. MAINS: No.
9 THE COURT: All right. Then, Ms. Mains, we'll
10 strike you for cause. Mr. Parker. (pause) All right,
11 Mr. Mizell and Mr. Perkins, you've indicated you would
12 consider the death sentence in any case. On the other
13 hand, do you feel like in each and every case where a
14 person is convicted of murder that they should receive
15 the death sentence? Or do you think they should --
16 ore more fairly, would you consider (pause) -- let me
17 put it this way. If you get to the point where you
18 convict of capital murder and we have the separate hear-
19 ing and all the facts are put on as to background and
20 so forth of the defendant, whether it's in his favor or
21 not in his favor, and at that time you would have to
22 decide whether you think the death sentence should be
23 given or whether a life sentence should be given. What
24 I'm asking you, would you consider both the death sen-

1 tence and the life imprisonment rather than the death
2 sentence, or do you necessarily feel that in any case
3 where a person has been convicted of murder they should
4 be put to death?
5 MR. PERKINS: I feel like if the crime justi-
6 fies death --
7 THE COURT: Well, --
8 MR. PERKINS: -- (inaudible)
9 THE COURT: -- but you would consider everything
10 and you would not -- what I'm saying, I think you're
11 giving the right answer, you're not necessarily saying
12 the death sentence --
13 MR. PERKINS: No. No.
14 THE COURT: -- but if you think it's the proper
15 case, yes.
16 MR. PERKINS: Right.
17 MR. MIZELL: Same here.
18 THE COURT: And that's the same for you, all
19 right. Mr. Hauler? (pause) I find no problem with
20 those two responses.
21 MR. HAULER: No, sir.
22 THE COURT: Also, gentlemen, he's also charged
23 with robbery. If you were to find him guilty beyond a
24 reasonable doubt of that crime, you'd also have to

1 determine a sentence if he's guilty between five years
2 in the penitentiary and life imprisonment. Do you have
3 any religious, moral or other beliefs that would prevent
4 you from passing judgment on the defendant if he's
5 proven guilty?
6 REMAINING TWO: No.
7 THE COURT: And, lastly, are there any reasons
8 whatsoever that you might have to feel that you cannot
9 give the defendant, Earl Clanton, as well as the State
10 of Virginia a fair and impartial trial and base any
11 decision or verdict that you might reach solely upon
12 the evidence and the law presented to you in this
13 Courtroom?
14 REMAINING TWO: Yes.
15 THE COURT: All right, Mr. Parker, seat these
16 two then. Take these two to the jury room. (pause)
17 MR. HAULER: Your Honor, if it please the
18 Court,--
19 THE COURT: Excuse me.
20 MR. HAULER: -- I was uncertain with regard to
21 the response given by Mr. Perkins to the question re-
22 garding media coverage, and prior exposure to media
23 coverage.
24 THE COURT: I thought they all three said they

1 were not aware of information concerning the case.

2 MR. PERKINS: (Inaudible)

3 THE COURT: Well, --

4 MR. PERKINS: (Inaudible)

5 THE COURT: -- based on what you've read, have

6 you formed any fixed opinions or is your mind open con-

7 cerning guilt or innocence?

8 MR. PERKINS: My mind's open.

9 THE COURT: All right, --

10 MR. HAULER: Thank you.

11 THE COURT: -- thank you, Mr. Perkins. (pause)

12 MR. PARKER: Come forward here and stand facing

13 the bench.

14 THE COURT: Mr. Parrish?

15 MR. PARRISH: Do each of you swear that you'll

16 make true and perfect answers to such questions as the

17 Court may now propound to you, so help you God?

18 ALL THREE: Yes.

19 THE COURT: All right, so the lawyers and every-

20 body will know who you are, what is your name?

21 MS. DUDLEY: Ruthie Doyle Dudley.

22 THE COURT: All right, Ms. Dudley.

23 MR. BROWN: Paul A. -- Paul Archer Brown.

24 THE COURT: All right.

1 MS. BROWN: Rhoda Howsen Brown.

2 THE COURT: All right. Are ya'll related?

3 MS. BROWN: No.

4 THE COURT: Okay. All right, the defendant in
5 this case, Earl Clanton, Jr., is charged with the cap-
6 ital murder and the robbery of Wilhelmina Smith on
7 November 16th of 1980. Are any of you related by blood
8 or by marriage or do any of you know the defendant in
9 this case, Earl Clanton, Jr.?

10 ALL THREE: No.

11 THE COURT: All right. There was another indi-
12 vidual charged along with Mr. Clanton whose name was
13 Natalie Lawrence. Are any of you related in any way or
14 do any of you know Natalie Lawrence?

15 ALL THREE: No.

16 THE COURT: Were any of you related in any way
17 or do any of you know the deceased, Wilhelmina Smith?

18 MS. DUDLEY: I do. She was my friend.

19 THE COURT: All right, and how well did you
20 know her?

21 MS. DUDLEY: I worked with her for eight years
22 at Peabody in the Library during the summer. She was
23 employed at A. P. Hill but she substituted --

24 THE COURT: Do you feel that this acquaintance-

1 ship with Ms. Smith would render it difficult for you
2 to sit on this jury --
3 MS. DUDLEY: It would. It --
4 THE COURT: -- and be fair to Mr. Clanton?
5 MS. DUDLEY: -- definitely would.
6 THE COURT: All right, I'll strike you for
7 cause. (pause) Now, to the other two, this is Mr.
8 Hauler who will be representing Mr. Clanton in this
9 case. This is Mr. Welsh who will be representing the
10 State of Virginia in this case. Are either one of you
11 clients, friends or acquaintances of Mr. Hauler or of
12 Mr. Welsh?
13 REMAINING TWO: No.
14 THE COURT: All right. Do either of you have
15 any relatives or friends who are connected in any way
16 to law enforcement?
17 REMAINING TWO: No.
18 THE COURT: Do either of you feel that you
19 would accept the testimony of a police officer, law
20 enforcement official or any person acting in an offi-
21 cial capacity for the State more readily than you would
22 the testimony of any other witness merely because of
23 his position?
24 REMAINING TWO: No.

1 THE COURT: All right. Do either of you have
2 any interest in the trial or the outcome of this case?
3 REMAINING TWO: No.
4 THE COURT: Have either of you acquired any in-
5 formation about the alleged offenses or the accused
6 from the news media or from any other source?
7 MS. BROWN: Only what I've read in the news-
8 paper.
9 THE COURT: All right, and based on what you've
10 read, have you formed any fixed opinions concerning
11 the guilt or the innocence of Mr. Clanton or could you
12 make up your mind based on what you hear in this Court-
13 room?
14 MS. BROWN: I feel that I would have a fixed
15 opinion on what I've read and heard.
16 THE COURT: And you don't think -- let me put
17 it this way. You're entitled to an impression. In
18 other words, you could have some thoughts about it,
19 but the requirement that we have to make sure that you
20 can meet is could that impression or idea that you may
21 have gotten from what you've read take a back seat, in
22 so many words, to what the evidence is in this Court-
23 room and the law that you're given in this Courtroom,
24 or do you think you've already made up your mind abso-

1 lutely?

2 MS. BROWN: I feel as though I have already

3 made up my mind.

4 THE COURT: All right. Then Ms. Brown, I'll

5 have to strike you for cause. (pause) All right, have

6 you expressed or formed any opinions concerning the

7 guilt or innocence of Mr. Clanton?

8 MR. BROWN: No, I haven't.

9 THE COURT: Do you have any bias or prejudice

10 against the accused, Earl Clanton, or the State of

11 Virginia?

12 MR. BROWN: No, I don't.

13 THE COURT: Do you accept the rule of law that

14 the defendant is presumed to be innocent until the

15 State proves his guilt?

16 MR. BROWN: Yes.

17 THE COURT: All right. Do you also accept the

18 rule of law that the State must prove the defendant's

19 guilt and that the defendant does not have to estab-

20 lish his innocence?

21 MR. BROWN: Yes.

22 THE COURT: All right. Do you believe that you

23 are able to sit in judgment on this defendant and re-

24 main totally impartial until all the evidence is in and

1 the case is completed?

2 MR. BROWN: Yes.

3 THE COURT: All right. As I've said, the de-
4 fendant is charged with capital murder and robbery. In
5 a capital murder trial, the jury listens to the evi-
6 dence and the instructions of the Court which give you
7 the law. The jury will then have to determine whether
8 the defendant is guilty of capital murder or some les-
9 ser crime or whether he's not guilty. If the jury
10 decides that he's guilty of capital murder, there will
11 be a second hearing at which the jury has one of two
12 decisions to make - either to impose the death sentence
13 or life imprisonment. Now, do you have any religious
14 or conscientious scruples or objections which would
15 prevent you from considering the death penalty in a
16 proper case? That doesn't mean you'd automatically
17 give it but if you think it's proper in the proper case,
18 would you consider giving the death penalty?

19 MR. BROWN: I don't think so.

20 THE COURT: You don't think under any circum-
21 stances you could do that?

22 MR. BROWN: No, sir.

23 THE COURT: All right, I'll have to strike you.
24 Thank you. (pause)

1 MR. PARKER: Please come forward and stand here
2 facing the Judge.
3 THE COURT: All right, Mr. Parrish.
4 MR. PARRISH: Do each of you swear that you will
5 make true and perfect answers to such questions as the
6 Court may now propound to you, so help you God?
7 ALL THREE: Yes.
8 THE COURT: All right, so that the attorneys
9 will know and everybody will know, what is your name,
10 sir?
11 MR. TURNER: David Turner.
12 THE COURT: David Turner. All right. And
13 your name?
14 MR. LONGWORTH: Jim Longworth.
15 THE COURT: Jim Longworth. All right.
16 MS. DIXON: Henrietta Dixon.
17 THE COURT: (pause) Now, the case to be tried
18 today is -- the defendant, rather, is Earl Clanton,
19 Jr. He's charged with the capital murder and robbery
20 of Wilhelmina Smith on November 16th of last year.
21 Are any of you related by blood or by marriage or do
22 you know the defendant in this case, Earl Clanton, Jr.?
23 ALL THREE: No.
24 THE COURT: All right. There was another party

1 charged with Mr. Clanton and her name was Natalie
2 Lawrence. Are any of you related in any way or do you
3 know Natalie Lawrence?
4 ALL THREE: No.
5 THE COURT: All right. Are any of you related
6 to or do any of you -- did any of you know the deceased,
7 Wilhelmina Smith?
8 ALL THREE: No.
9 THE COURT: This is Mr. Hauler over here on my
10 left. He's representing Mr. Clanton in this case.
11 This is Mr. Welsh who's representing the State of Vir-
12 ginia. Are any of you clients, friends or acquaintances
13 of Mr. Hauler or of Mr. Welsh?
14 MR. TURNER: No.
15 MS. DIXON: No.
16 MR. LONGWORTH: (?) I've run into Mr. Welsh
17 before but --
18 THE COURT: Are you a close friend?
19 MR. LONGWORTH: Just acquaintance. That's all.
20 THE COURT: Right. Would your acquaintance-
21 ship with Mr. Welsh in any way affect your impartiality
22 in this case?
23 MR. LONGWORTH: No, sir.
24 THE COURT: All right. Do any of you have any

1 relatives or friends who might be in any way connected
2 with law enforcement?
3 ALL THREE: No.
4 THE COURT: All right. Do any of you feel that
5 you would accept the testimony of a police officer,
6 law enforcement official or any person acting in an
7 official capacity for the State more readily than you
8 would the testimony of any other witness merely because
9 of his position?
10 ALL THREE: No.
11 THE COURT: Do any of you have any interest in
12 the trial or the outcome of this case?
13 ALL THREE: No.
14 THE COURT: All right. Have any of you ac-
15 quired any information about the alleged offense or
16 about the accused, Earl Clanton, Jr., from the news
17 media or from any other source?
18 MS. DIXON: The newspaper.
19 THE COURT: All right. First, you. Based on
20 what you may have read, have you formed any fixed
21 opinions concerning the guilt or the innocence of Mr.
22 Clanton or could you -- or is it just an impression
23 of something that would yield to the evidence present-
24 ed in this Courtroom?

1 MR. LONGWORTH: (?) Just being exposed to the
2 wire services --
3 THE COURT: But you've made no definite opinions
4 concerning it?
5 MR. LONGWORTH: No.
6 THE COURT: And the same question.
7 MS. DIXON: No, sir.
8 THE COURT: The same answer?
9 MS. DIXON: Yes.
10 THE COURT: All right. Do any of the three of
11 you have any bias or prejudice against the accused in
12 this case, Earl Clanton, Jr., or the State of Virginia?
13 ALL THREE: No.
14 THE COURT: Do all of you accept the rule of
15 law that any criminal defendant is presumed to be
16 innocent until the State proves his guilt beyond a
17 reasonable doubt?
18 ALL THREE: Yes.
19 THE COURT: Do you also accept the rule of law
20 that the State must prove the defendant's guilt and the
21 defendant does not have to prove his innocence?
22 ALL THREE: Yes.
23 THE COURT: All right. Do any of the three of
24 you have any health problems or any business reasons

1 that would make it difficult for you to devote your full
2 attention to this case?
3 MR. LONGWORTH: (?) For this day only or for
4 an extended period --
5 THE COURT: Well, it could possibly go to
6 tomorrow.
7 MR. LONGWORTH: I do. I have a small business
8 that I operate and I've had a contract with a large
9 company for the three months now and the job is due
10 tomorrow. I mean it's supposed to be done tomorrow
11 in Williamsburg. If I'm not there, we have to forfeit
12 that contract. So the Sheriff's Office informed me
13 that they would need me for today only. Originally,
14 it was supposed to be March --
15 THE COURT: Well, the Sheriff's Office should-
16 n't have told you that in the first place.
17 MR. LONGWORTH: In other words, I'd have no
18 one to go in my place. This business contract would be
19 forfeited if I can't be there.
20 THE COURT: Well, they don't anticipate that it
21 will probably run more than at the most tomorrow morn-
22 ing but we don't want you sitting on the jury and be
23 worried about your problems that way or to rush into
24 decision because of that. But on the other hand, quite

1 frankly, we need people who are able to sit on a jury
2 and qualified jurors. We have to balance the problems.
3 And most people who serve on juries really have other
4 things they would like to be doing. We realize that.
5 What I want to know is if you do end up on this jury,
6 could you go ahead knowing that you may be here through
7 tomorrow morning even?
8 MR. LONGWORTH: I think knowing the jeopardy of
9 what it would cost me in a business that's run by two
10 people, it would concern me greatly if it got (pause)
11 -- if I was here tomorrow morning. Ah, (pause) --
12 THE COURT: All right. Well, --
13 MR. LONGWORTH: -- (inaudible) recourse --
14 THE COURT: -- I'm going to allow him temporar-
15 ily to step aside, Mr. Parker. We're getting short and
16 we may have to see what we can do about that.
17 MR. PARKER: This way.
18 THE COURT: All right. The defendant in this
19 case, as I have said, is charged with capital murder
20 and robbery, and in a capital murder case, the jury,
21 after hearing the evidence presented and instructions
22 of the Court which simply give you the law in the case,
23 must first determine if they feel the defendant is
24 guilty of capital murder or some lesser offense or

1 whether he's not guilty. Now, if he's found guilty of
2 capital murder, the jury has to consider a second time
3 and that consideration would be limited to whether the
4 death sentence should be imposed or whether a life sen-
5 tence should be imposed. Now, do either of the two of
6 you have any religious or conscientious scruples or ob-
7 jections which would prevent you from considering the
8 death penalty in a proper case?
9 REMAINING TWO: No.
10 THE COURT: All right. On the other hand, do
11 you feel like that in every case where a murder is prov-
12 en that regardless of the facts and the background of
13 the defendant, there should be a death sentence, or
14 do you think there should be some lesser sentence in
15 some cases?
16 MS. DIXON: It depends on the circumstances, --
17 THE COURT: Fine.
18 MS. DIXON: -- (inaudible)
19 MR. TURNER: (No audible reply)
20 THE COURT: All right. Now, he's also charged
21 with robbery. In that case, you must decide guilt or
22 innocence and if you find him guilty, you must fix a
23 penitentiary sentence between five years and life. Do
24 you have any religious, moral or other beliefs that

would prevent you from passing judgment on the defendant in the robbery case if he's proven guilty?

REMAINING TWO: No.

THE COURT: And lastly, do have any reasons to feel or believe that you cannot give both the State and Mr. Clanton a fair and impartial trial and base any decision or verdict that you might reach solely upon the evidence and the law presented to you in this Courtroom? Do you have any problems whatsoever?

REMAINING TWO: No.

THE COURT: All right. Thank you. Mr. Parker, seat these two then. (pause) (At this time, Judge Pollard has an off-record discussion with Mr. Parker)

MR. PARKER: Just stand right here and face the Judge.

THE COURT: All right, Mr. Parrish.

MR. PARRISH: Do each of you swear that you'll make true and perfect answers to such questions as the Court may now propound to you, so help you God?

ALL THREE: Yes.

THE COURT: All right, so the attorneys and everybody will know who you are, could I have your name, please?

MS. JONES: Rosemary Jones.

THE COURT: Rosemary Jones. All right?

MR. JOHNSON: Raymond Johnson, Jr.

THE COURT: Raymond Marlin Johnson.

MS. BOSTON: Mabel Boston.

THE COURT: All right. The defendant to be tried today is Earl Clanton, Jr. and he's charged with the murder and robbery of Wilhelmina Smith on November 16th of 1980. Are any of you related by blood or by marriage to Earl Clanton, Jr. or do you know Earl Clanton, Jr.?

ALL THREE: No.

THE COURT: There was another party charged along with Mr. Clanton named Natalie Lawrence. Do any of you know Ms. Lawrence or are you related to her in any way?

ALL THREE: No.

THE COURT: Are any of you related in any way or did any of you know the deceased, Wilhelmina Smith?

ALL THREE: No.

THE COURT: All right. This is Mr. Hauler right here and he is representing Earl Clanton in this case. This is Mr. Welsh who is representing the State of Virginia. Are any of you clients, friends or acquaintances of Mr. Hauler or of Mr. Welsh?

1 ALL THREE: No.

2 THE COURT: Okay. Do any of you -- any of the
3 three of you have any relatives or friends who are in
4 any way connected with law enforcement?

5 ALL THREE: No.

6 THE COURT: All right. Do you feel like you
7 would accept the testimony of a police officer, law
8 enforcement official or any person acting in an offi-
9 cial capacity more readily than you would the testimony
10 of any other witness merely because of their position?

11 ALL THREE: No.

12 THE COURT: All right. Do any of you have any
13 interest in the trial or the outcome of this case?

14 ALL THREE: No.

15 THE COURT: All right. Have any of you ac-
16 quired any information? In other words, have you
17 heard, seen or read anything about this case from the
18 news media or from any other source?

19 MS. BOSTON: I read it in the paper.

20 MR. JOHNSON: (Inaudible)

21 MS. JONES: (Inaudible)

22 THE COURT: Now, one at a time. Based on what
23 you've read in the paper, what you might have read,
24 seen or heard, have you formed any fixed opinions con-

1 cerning whether or not Mr. Clanton is guilty of these
2 charges?
3 MS. BOSTON: I think so.
4 THE COURT: Uh huh.
5 MS. BOSTON: I think I have.
6 THE COURT: Now, what I need to know and the
7 crucial question is is it just an impression or what
8 you might think at this point and could you base your
9 decision on what you hear in this Courtroom or have you
10 already made up your mind and --
11 MS. BOSTON: I've already -- I think I've al-
12 ready made up my mind by reading.
13 THE COURT: All right. We'll strike you for
14 cause. Thank you. And Mr. Johnson, the same question.
15 You may have read the paper and formed an impression or
16 you might think what have happened. What I need to
17 know, is this an absolute opinion or fixed opinion or
18 would it yield to the evidence and the law presented to
19 you in this Courtroom?
20 MR. JOHNSON: I would look at the evidence.
21 THE COURT: And make up your mind based on what
22 you hear?
23 MR. JOHNSON: Yes, sir, on what I hear.
24 THE COURT: Fine. And (pause) --

1 MR. PARKER: (whispers) Ms. Jones.

2 THE COURT: Ms. Jones, yeah. I've got it mixed
3 up. Ms. Jones, the same question. If you've read,
4 seen or heard anything, have you formed any fixed
5 opinions --

6 MS. JONES: I read it --

7 THE COURT: -- or can you base your decision
8 based on what you hear in this Courtroom?

9 MS. JONES: I can because I just read it in the
10 paper, just glanced at it.

11 THE COURT: Right. Fine. All right. do either
12 of the two of you have any bias or prejudice against
13 the accused in this case, Earl Clanton, Jr., or the
14 State of Virginia?

15 REMAINING TWO: No.

16 THE COURT: Do you both accept the rule of law
17 that any criminal defendant is presumed to be innocent
18 until the State proves his guilt beyond a reasonable
19 doubt?

20 REMAINING TWO: Yes.

21 THE COURT: Do you also accept the rule of law
22 that the State must prove the defendant's guilt and the
23 defendant does not have to prove his own innocence?

24 REMAINING TWO: Yes.

1 THE COURT: All right. Do either of you have
2 any health problems or any business reasons that would
3 make it difficult for you to devote your full attention
4 to this case?
5 REMAINING TWO: No.
6 THE COURT: Now, the defendant in this case is
7 charged with capital murder and robbery. In a capital
8 murder case, the jury must first listen to all the evi-
9 dence and the instructions of the Court which give the
10 law of the case and then make a decision as to whether
11 the defendant is guilty or capital murder or some les-
12 ser offense than capital murder or not guilty. If the
13 jury finds the defendant guilty of capital murder, then
14 they'll have a separate hearing at which they have to
15 determine one of two things, either that the defendant
16 should receive the death sentence or life imprisonment.
17 Do either of you have any religious or conscientious
18 scruples or objections that would make it impossible
19 or prevent you from considering the death penalty if a
20 proper case is established?
21 MR. JOHNSON: No.
22 MS. JONES: Well, I think it would depend on the
23 case.
24 THE COURT: Well, that's fine. That's what you

1 -- that's proper. In other words, all we can ask is
2 that you consider it if a proper case. But we also
3 insist that you also consider alternatives. Then I
4 take it that you do not feel that in each and every
5 case, regardless of the facts, that the death sentence
6 should be imposed?
7 REMAINING TWO: No.
8 THE COURT: But you feel like -- well, (pause)
9 I'm saying do you feel that in every case where a mur-
10 der is proved, regardless of the facts and circumstan-
11 ces and regardless of the background of the people in-
12 volved, that the person should receive the death penal-
13 ty?
14 REMAINING TWO: No.
15 THE COURT: Okay. But then you do feel you
16 would consider it in a proper case?
17 REMAINING TWO: Yes.
18 THE COURT: Fine. All right, the defendant is
19 also charged with robbery. If you were to find him
20 guilty of the robbery charge, you would have to fix a
21 punishment between five years in the penitentiary and
22 life imprisonment. Do you have any religious, moral
23 or other beliefs that would prevent you from passing
24 judgment on the defendant if he is proven guilty of

1 that charge?

2 REMAINING TWO: No.

3 THE COURT: And lastly, do you have any reason

4 whatsoever to believe that you cannot give the defend-

5 ant as well as the State of Virginia a fair and im-

6 partial trial and base any decision or verdict that you

7 might reach solely upon the law and the evidence pre-

8 sented to you in this Courtroom? Do you have any hes-

9 itations or problems whatsoever?

10 REMAINING TWO: No.

11 THE COURT: All right. Thank you. Seat these

12 two, Mr. Parker. (pause) All right, Mr. Parrish.

13 MR. PARRISH: Do each of you swear that you will

14 make true and perfect answers to such questions as the

15 Court may now propound to you, so help you God?

16 ALL THREE: Yes.

17 THE COURT: So everybody will know who you are,

18 could I have your name, please?

19 MR. HARRIS: General Harris.

20 THE COURT: General Harris. All right, and

21 your name?

22 MR. STITH: Victor D. Stith.

23 THE COURT: Mr. Stith. All right, and your

24 name?

1 MS. DeBREZENI: Fila DeBrezeni.

2 THE COURT: How do you spell your last name?

3 MS. DeBREZENI: D-e-B-r-e-z-e-n-i.

4 THE COURT: All right. Got it. All right,

5 fine. The defendant to be tried in this case today is

6 Earl Clanton, Jr. He is charged with the capital mur-

7 der and robbery of Wilhelmina Smith on November 16th

8 of 1980. Are any of you related by blood or by marri-

9 age or do you know the defendant in this case, Earl

10 Clanton, Jr.?

11 ALL THREE: No.

12 THE COURT: There's another party charged along

13 with Mr. Clanton named Natalie Lawrence. Are any of

14 you related to her or do you know her? Do you know her?

15 MR. HARRIS: Yes.

16 THE COURT: All right. And as a friend or

17 just how would you describe your acquaintance?

18 MR. HARRIS: Just a friend. She's kin to my

19 niece, --

20 THE COURT: Uh huh.

21 MR. HARRIS: -- (inaudible)

22 THE COURT: And do you feel like your decision

23 in this case or your ability to judge the evidence

24 would be swayed by your knowledge of her if she testi-

1 fies and would you be inclined to believe her or not
2 believe her because you know her?
3 MR. HARRIS: Because I knew her, I mean, I've
4 had hard feelings.
5 THE COURT: You say you have or you don't?
6 MR. HARRIS: I don't.
7 THE COURT: You don't have hard feelings.
8 But do you feel like you'd believe her, whatever she
9 tells you, because you already know her, or do you
10 think you could judge her testimony fairly?
11 MR. HARRIS: I really can't say on that.
12 THE COURT: You think then knowing her might
13 -- you might be more inclined to believe her testimony
14 because you know her?
15 MR. HARRIS: Yes, sir.
16 THE COURT: All right. Then we'll strike him
17 for cause, Mr. Parker. Thank you, Mr. Harris. (pause)
18 Are either one of you related by blood or by marriage
19 or did you know the deceased in this case, Wilhelmina
20 Smith?
21 MR. STITH: Ms. Smith was a librarian --
22 THE COURT: Right.
23 MR. STITH: -- for two of my children --
24 THE COURT: Right.

1 MR. STITH: -- at the school.

2 THE COURT: Did you know her well yourself, Mr.

3 Stith?

4 MR. STITH: No, I didn't know her too well. I

5 didn't --

6 THE COURT: All right, now, the question we

7 really have to get to is do you think the fact that

8 she was a librarian for your children would make it

9 difficult for you to be fair in this case to Mr. Clanton

10 or could you listen to the evidence fairly and base

11 your decision on the evidence and the law as if you

12 didn't know Ms. Smith?

13 MR. STITH: (long pause) I don't know. That's

14 kind of hard. So far as I recognize of Ms. Smith that

15 she was a very fair and fine lady.

16 THE COURT: Well, I think everybody will agree

17 with that, but what I'm asking you, do you think know-

18 ing her would prevent you from listening to the evi-

19 dence presented in the case and the law and deciding

20 whether Earl Clanton, Jr. is guilty or not? Would be

21 in any way influenced because you thought well of Ms.

22 Smith. That's what we really have to decide.

23 MR. STITH: No, I don't think it would.

24 THE COURT: Right. I understand what you're

1 saying - you thought a lot of her, but what we've got
2 to know is whether that feeling would in any way affect
3 your ability to listen fairly to the evidence.
4 MR. STITH: No.
5 THE COURT: All right. Thank you. Now, this is
6 Mr. Hauler who'll be representing Mr. Clanton in this
7 case, and this is Mr. Welsh who'll be representing the
8 State of Virginia in this case. Are either one of you
9 clients, friends or acquaintances of Mr. Hauler or of
10 Mr. Welsh?
11 REMAINING TWO: No.
12 THE COURT: Do either one of you have any rela-
13 tives or friends who are in any way connected with law
14 enforcement, either as a police officer or anything of
15 that sort?
16 REMAINING TWO: No.
17 THE COURT: Now, do you feel like you would
18 accept the testimony of a police officer, a law enforce-
19 ment official, or any person acting on behalf of the
20 State merely because he is such a police officer, or
21 would you believe his testimony more than any other
22 witness just because of the position he holds?
23 REMAINING TWO: No.
24 THE COURT: All right. Do you have any interest

1 in the trial or the outcome of this particular case?
2 REMAINING TWO: No.
3 THE COURT: All right. Have either of you ac-
4 quired any information from the news media, radio, or
5 any other source concerning the offenses placed --
6 charges placed against Mr. Clanton or about Mr. Clanton
7 himself?
8 REMAINING TWO: (No audible reply)
9 THE COURT: All right. Have either of you
10 expressed or formed any opinions concerning whether or
11 not Mr. Clanton is guilty of the charges placed against
12 him?
13 REMAINING TWO: No.
14 THE COURT: Do either of you have any bias or
15 prejudice against the accused, Earl Clanton, Jr., or
16 the State of Virginia?
17 REMAINING TWO: No.
18 THE COURT: Do both of you accept the rule of
19 law that any person who is charged with a crime is
20 presumed to be innocent and is considered innocent
21 until the State proves his guilt? Do you believe that?
22 REMAINING TWO: Yes.
23 THE COURT: Do you also accept the rule of law
24 or believe that the State must prove the defendant's

1 guilt and the defendant does not have to prove his
2 innocence? That the State must prove him guilty, in
3 other words?
4 REMAINING TWO: Yes.
5 THE COURT: All right. Do either of you have
6 any health reasons or business reasons that would make
7 it hard for you to devote your full attention to this
8 case?
9 MR. STITH: Well, (pause) I am retired on dis-
10 ability, which now at times -- at the time I was re-
11 tired, I was (pause) -- was very at times slow in
12 speech and sometimes thoughts as well. And at times
13 it could be a factor, could --
14 THE COURT: You think that you may possibly
15 have difficulty in keeping up with the evidence and --
16 MR. STITH: At times.
17 THE COURT: This is something you'll have to
18 tell us, Mr. Stith, whether --
19 MR. STITH: Yes, well, at times I could (pause)
20 -- could be a little affected by that.
21 THE COURT: Uh huh. We'll just have to rely
22 on your judgment for that. So your answer is that,
23 yes, you do feel like it would be a problem, (pause)
24 or a possible problem?

1 MR. STITH: It's pos -- it could be possible.
2 THE COURT: Uh huh. Well, you're not able to
3 -- (pause) well, of course, you'd be sitting in the
4 jury box and the witnesses would testify. You'd have
5 to listen to what they say. You'd have to make up your
6 mind as to what you believe and what you don't believe
7 and then pass judgment on it, but you think you might
8 have a problem?
9 MR. STITH: It could be.
10 THE COURT: All right. We'll strike Mr. Stith.
11 Thank you, Mr. Stith. (pause) Now we're down to you.
12 Now, the defendant in this case is charged with capital
13 murder and robbery. In a capital murder trial, the
14 jury must first listen to the evidence and the instruc-
15 tions of the Court which give you the law of the case.
16 The jury will then have to decide, first, whether or
17 not the defendant is guilty of capital murder or some
18 lesser offense, or whether he's not guilty. If the
19 jury decides that he's guilty of capital murder, the
20 jury will then have a second consideration and that is
21 whether to impose the death sentence or life imprison-
22 ment. Do you have any religious, conscientious scrup-
23 les or any objections that would prevent you from con-
24 sidering the death sentence in a proper case?

1 MS. DeBREZENI: No; I mean I am (inaudible)
2 THE COURT: All right, in other words, but
3 what you're saying is that you would consider it if a
4 proper case is shown?
5 MS. DeBREZENI: Well, I will do the right
6 thing, you know, no matter which (pause) -- which
7 (inaudible), you know. If I think he's guilty, I will
8 vote guilty; if I think he's innocent, I will (inaudi-
9 ble) --
10 THE COURT: I know. All right. Well, --
11 MS. DeBREZENI: -- (inaudible)
12 THE COURT: -- (pause) fine. I understand
13 and I think you're right. All right, beyond the guilt
14 or innocence, though, in this case where what we call
15 capital murder is charged, if that's proven then the
16 jury will have to decide, each member, --
17 MS. DeBREZENI: Yes.
18 THE COURT: -- whether to vote for life impris-
19 onment or the death sentence. And what I'm saying is
20 is your mind open as to both of these --
21 MS. DeBREZENI: (Inaudible)
22 THE COURT: -- and would you consider a life
23 sentence if you thought that was best --
24 MS. DeBREZENI: Uh huh, I would.

1 THE COURT: -- and would you consider the
2 death sentence if you thought that was best?
3 MS. DeBREZENI: I would, too.
4 THE COURT: All right. Now, do you know of any
5 reason whatsoever why you are not in a position to give
6 the defendant a fair and impartial trial as well as the
7 State and base any verdict that you might reach only
8 upon the evidence and the law presented to you in this
9 Courtroom? Do you have any problems whatsoever?
10 MS. DeBREZENI: No.
11 THE COURT: All right. Fine. Thank you.
12 Mr. Parker, she may be --
13 MR. HAULER: Your Honor, if it please the
14 Court, I believe the Court has omitted asking the ques-
15 tion with regard to the death sentence in every murder
16 case.
17 THE COURT: Well, I've told her would she con-
18 sider it both ways and she said yes.
19 MS. DeBREZENI: I understand.
20 THE COURT: Yeah. She said -- well, --
21 MS. DeBREZENI: (Inaudible)
22 THE COURT: The answer was implicit when she
23 said that she would consider both alternatives, so --
24 MR. HAULER: I understand. But the Court has

1 heretofore in the voir dire of the other jurors asked
2 if they felt that --
3 THE COURT: Mr. Hauler -- Mr. Parker, have her
4 come back out. (pause) The attorney wants to ask you
5 one more question and that is do you feel that in every
6 case, regardless of the facts and circumstances, if a
7 person is convicted of murder that they should be given
8 the death sentence? (pause) Or --
9 MS. DeBREZENI: Oh, no, --
10 THE COURT: -- do you think it depends on the
11 circumstances?
12 MS. DeBREZENI: Sure. (Inaudible)
13 THE COURT: Yeah, I knew what you meant. Go
14 ahead. That's all right. Thank you.
15
16
17
18
19 NOTE: At this time, the Court
20 recessed briefly.
21
22
23
24

1 THE COURT: All right.

2 MR. PARKER: Come forward, please, and stand

3 here facing the Court. (pause)

4 THE COURT: All right, Mr. Parrish.

5 MR. PARRISH: Do each of you swear that you'll

6 make true and perfect answers to such questions as the

7 Court may now propound to you, so help you God?

8 ALL THREE: Yes.

9 THE COURT: All right, the defendant in this

10 case, Earl Clanton, Jr., is charged with the capital

11 murder and robbery of Wilhelmina Smith on November 16th

12 of last year. Are any of you related by blood or by

13 marriage or do any of you know the defendant in this

14 case, Earl Clanton, Jr.?

15 ALL THREE: No.

16 THE COURT: There is another individual charged,

17 Natalie Lawrence. Are any of you related in any way

18 or do any of you know Natalie Lawrence?

19 ALL THREE: No.

20 THE COURT: Were any of you related or did any

21 of you know the deceased individual, Wilhelmina Smith?

22 ALL THREE: No.

23 MR. PARKER: Your Honor, could we refer to

24 their names?

1 THE COURT: Yeah. I'm sorry. So the attorneys
2 will know which ones you are. What is your name, sir?
3 MR. CHILES: David Chiles.
4 THE COURT: David (pause) Chiles.
5 MR. CHILES: Chiles, C-h-i-l-e-s.
6 THE COURT: Oh, here it is, yeah. And your
7 name?
8 MR. EDWARDS: Hubert Edwards.
9 THE COURT: Hubert Edwards. And your name?
10 MS. ESNAULT: Mary Esnault.
11 THE COURT: Ms. Esnault. All right.
12 (pause) This is Mr. Hauler who will be representing
13 Mr. Clanton in this case and this is Mr. Welsh who will
14 be representing the State of Virginia in this case.
15 Are any of you clients, friends or acquaintances of Mr.
16 Hauler or of Mr. Welsh?
17 ALL THREE: No.
18 THE COURT: Do any of you have any relatives
19 or friends who are connected in any way with any law
20 enforcement agency?
21 MR. EDWARDS: I have a nephew who is a police
22 officer.
23 THE COURT: All right, now, do you feel -- is
24 he testifying in this case? What is his name?

1 MR. EDWARDS: I don't know. Marks.

2 THE COURT: Marks. Is he --

3 MR. WELSH: No.

4 THE COURT: He's not testifying in this case.

5 All right, assuming that your nephew is not testifying

6 in this case, would the fact that he is on the police

7 force in any way affect your ability to hear this case

8 impartially?

9 MR. EDWARDS: I don't see why it should.

10 THE COURT: All right. And all three of you,

11 do you feel that you would accept the testimony of a

12 police officer, law enforcement official, or any person

13 acting in an official capacity more readily than you

14 would the testimony of any other witness merely because

15 he has such a position?

16 MR. EDWARDS: I don't know.

17 REMAINING TWO: (Not audible)

18 THE COURT: The question is if -- would you be-

19 lieve the testimony of a police officer, for instance,

20 just because he is a police officer (pause) --

21 MRS. ESNAULT: Uh uh.

22 THE COURT: -- or would you judge it the same

23 as you would the testimony of any other witness?

24 MR. EDWARDS: I'd judge it the same.

1 REMAINING TWO: Yes.

2 THE COURT: All right. Do you have any interest
3 in the trial or the outcome of this case?

4 ALL THREE: No.

5 THE COURT: Have any of you acquired any infor-
6 mation from the news media or from any other sources
7 concerning the crimes involved here or the accused,
8 Earl Clanton, Jr.?

9 MR. EDWARDS: I've read all of the articles
10 that have been in the paper.

11 THE COURT: All right, based on what you've
12 read, have you formed any fixed opinions concerning the
13 guilt or the innocence or could you make that decision
14 in this Court based on what the evidence is and the
15 law presented to you?

16 MR. EDWARDS: (pause) I don't know. I guess
17 all of us kind of come to a conclusion --

18 THE COURT: Well, --

19 MR. EDWARDS: -- when we read about something --

20 THE COURT: -- you're entitled --

21 MR. EDWARDS: -- like this but --

22 THE COURT: -- to read the paper.

23 MR. EDWARDS: -- I think --

24 THE COURT: We can't ask you --

1 MR. EDWARDS: -- I think you'd learn quite a
2 bit more here than you would from a paper.
3 THE COURT: Right. What I'm really asking you
4 is can you just assure us that whatever decision you
5 reach, whether it be innocent or guilty, that that
6 decision will be based on the evidence presented in
7 this Courtroom and not on what --
8 MR. EDWARDS: Oh, yes. Oh, yes.
9 THE COURT: -- you've seen. That's what we
10 really want to know.
11 MR. EDWARDS: Yes, sir.
12 THE COURT: Did you say you read something
13 about it, too?
14 MS. ESNAULT: Just read it in the paper.
15 THE COURT: And the same question, do you think
16 you could render your decision based on what you are
17 presented with in this Courtroom and not from what you
18 might have read?
19 MS. ESNAULT: Yes.
20 THE COURT: And did you say you'd read some-
21 thing?
22 MR. CHILES: Possibly I have but I can't really
23 --
24 THE COURT: Yeah. The same question then.

1 Have you formed or expressed any opinions concerning
2 guilt or innocence?
3 MR. CHILES: No.
4 THE COURT: Fine.
5 MR. CHILES: I'd like to be sure if it's right
6 (inaudible)
7 THE COURT: Right. Okay. Do any of the three
8 of you have any bias or prejudice against the accused
9 in this case, Earl Clanton, Jr., or the State of Vir-
10 ginia?
11 ALL THREE: No.
12 THE COURT: Do all of you accept the rule of
13 law that any defendant is presumed to be innocent and
14 he remains in that status until the State proves his
15 guilt beyond a reasonable doubt? Do you all accept
16 that?
17 ALL THREE: Yes.
18 THE COURT: Do you also accept the rule of law
19 that the State must prove the defendant's guilt and
20 the defendant does not have to establish his innocence?
21 ALL THREE: Yes.
22 THE COURT: He has no obligation to prove his
23 innocence but the State must prove his guilt. This is
24 what I'm saying. Do any of you have any health prob-

1 lems or any business reasons why you're not able to
2 devote your full attention to this case?
3 ALL THREE: No.
4 THE COURT: All right. As I've said, this is a
5 capital murder and robbery case. In a capital murder
6 trial, the jury must first listen to the evidence and
7 the instructions of the Court which give you the law
8 and you must decide whether the defendant is guilty of
9 capital murder or some lesser offense or whether he is
10 not guilty. If the jury decides he is guilty of capit-
11 al murder, then a second decision has to be reached and
12 that is whether the defendant should receive the death
13 sentence or life imprisonment. Now, what I need to
14 know, do any of you have any religious or conscientious
15 scruples or objections that would prevent you from con-
16 sidering the death case in a proper case -- the death
17 sentence?
18 ALL THREE: No.
19 THE COURT: And on the other hand, the alterna-
20 tive question is do you feel like that in every case
21 regardless of the circumstances and the background of
22 the people where a person is convicted of murder that
23 there should be a death sentence?
24 ALL THREE: No.

1 THE COURT: In other words then, you think
2 it would depend on the particular case involved?
3 Do all three of you feel this way?
4 ALL THREE: Yes.
5 THE COURT: All right. The defendant is also
6 charged with the crime of robbery. In that case, the
7 jury must determine guilt or innocence, and if they
8 determine that he's guilty of that, they must determine
9 a sentence of between five years in the penitentiary
10 and life. Do any of you have any reasons at all why
11 you could not pass judgment on that sentence as well,
12 on that crime as well?
13 ALL THREE: No.
14 THE COURT: And, lastly, do you have any reasons
15 whatsoever to feel or believe that you cannot give the
16 State and the defendant, Earl Clanton, Jr., a fair and
17 impartial trial and base any decision or verdict that
18 you might reach solely upon the evidence and the law
19 presented to you in this Courtroom? Do you all feel
20 you can do that?
21 ALL THREE: Yes.
22 THE COURT: All right, Mr. Parker, seat these
23 three. (pause)
24 MR. PARKER: Come forward, please, and stand

1 here in front of the Judge.

2 THE COURT: All right, Mr. Parrish.

3 MR. PARRISH: Do each of you swear that you'll

4 make true and perfect answers to such questions as the

5 Court may now propound to you, so help you God?

6 ALL THREE: Yes.

7 THE COURT: So the attorneys will have your

8 names, your name is what?

9 MS. DAVIES: John Davies.

10 THE COURT: And your name is?

11 MR. DIGGS: William Diggs.

12 THE COURT: And --

13 MR. WILLIAMS: Paul Williams.

14 THE COURT: Paul Williams. (pause) Have you

15 sworn them in, Mr. Parrish?

16 MR. PARRISH: Yes.

17 THE COURT: All right. The defendant to be

18 tried in this case today is Earl Clanton, Jr. He's

19 charged with the capital murder and the robbery of

20 Wilhelmina Smith on November 16th of 1980. Are any of

21 you related by blood or by marriage to the defendant in

22 this case, Earl Clanton, Jr., or do any of you know

23 Earl Clanton, Jr.?

24 ALL THREE: No.

1 THE COURT: There's another individual charged
2 in this case, Natalie Lawrence. Are any of you related
3 in any way or do any of you know Natalie Lawrence?
4 ALL THREE: No.
5 THE COURT: The individual that was killed,
6 Wilhelmina Smith, are any of you related in any way to
7 Wilehlmina Smith or did you know her?
8 ALL THREE: No.
9 THE COURT: Mr. Williams, are you the one who
10 told me on another jury that you could not pass judg-
11 ment in any case you told me?
12 MR. WILLIAMS: Yes.
13 THE COURT: Yeah. You were supposed -- you're
14 excused. Have him excused, Mr. Parker. (pause) Yeah,
15 he'll tell you where to go. (pause) All right, gentle-
16 men, to the other two of you, this is Mr. Timothy
17 Hauler here who will be representing Earl Clanton in
18 this case. Mr. Welsh is here representing the Common-
19 wealth's Attorney. Are either one of you clients,
20 friends or acquaintances of Mr. Hauler or of Mr. Welsh?
21 REMAINING TWO: No.
22 THE COURT: All right. Mr. Hauler, the last
23 gentleman in the case the other day said that he could
24 not pass judgment on anybody in any case, so he was not

1 supposed to be back on any case.
2 MR. HAULER: All right, sir.
3 THE COURT: Now, do either one of you have any
4 relatives or friends who are connected in any way to
5 law enforcement?
6 REMAINING TWO: No.
7 THE COURT: All right. Do you feel that you
8 would accept the testimony of a police officer, law
9 enforcement official -- yes, sir?
10 MR. DIGGS: My wife have a -- her sister have a
11 son, Yates.
12 THE COURT: On the police force?
13 MR. DIGGS: Yes, sir.
14 THE COURT: All right. And what's his last
15 name?
16 MR. DIGGS: Yates.
17 MR. WELSH: Officer Yates is not involved.
18 THE COURT: Not to testify in this case, all
19 right. Assuming that --
20 MR. DAVIES: Ah, Judge, --
21 THE COURT: Yeah?
22 MR. DAVIES: -- I have a man working for me
23 whose son is on the police force.
24 THE COURT: And what's his name?

1 MR. DAVIES: Oscar.

2 THE COURT: Is he connected --

3 MR. WELSH: (Inaudible)

4 THE COURT: Assuming that these two individuals
5 that you know are not going to testify in this case,
6 would the fact that you have this acquaintanceship as
7 you've described in any way affect your judgment in
8 this case?

9 REMAINING TWO: No.

10 THE COURT: All right. Now, back to the ques-
11 tion I was asking. Do you feel that you would accept
12 the testimony of a police officer, a law enforcement
13 official, or somebody appearing on behalf of the State
14 more readily than you would the testimony of any other
15 witness merely because of the position he holds as
16 such police officer and so forth or would you judge his
17 testimony the same as any other witness? That's what
18 I'm asking. (pause) To ask you another way, I'm say-
19 ing if a police officer appeared before you if you were
20 to sit on a jury, would you believe him any more than
21 you would any other witness just because he's a police
22 officer? Or would you judge his testimony the same as
23 anybody else?

24 MR. DAVIES: I'd judge it the same as anyone

else's.

THE COURT: Right. Do you agree with that?

MR. DIGGS: When he's talking?

THE COURT: Yeah. I'm saying would you believe him just because he's a police officer or would you listen to him and decide whether you believe him just as if he was anybody else other than a police officer. Do you understand my question?

MR. DIGGS: Yes.

THE COURT: Yeah. All right. Do either one of you have any interest in the trial or the outcome of this case? In other words, do you have any personal interest in this case?

REMAINING TWO: No.

THE COURT: All right. Have either one of you acquired any information from the news media or from any other source concerning the crimes charged against Mr. Clanton or any information about Mr. Clanton himself?

REMAINING TWO: No.

THE COURT: Have either one of you made up your mind or formed any fixed opinions concerning whether or not Mr. Clanton is guilty or innocent of the charges placed against him?

1 REMAINING TWO: No.

2 THE COURT: All right. Now, do either one of
3 you have any bias or prejudice against the accused,
4 Earl Clanton, or against the State of Virginia?

5 REMAINING TWO: No.

6 THE COURT: All right, now, do you both accept
7 the rule of law that any defendant is presumed to be
8 innocent until such time as the State proves his guilt?
9 Do you accept that?

10 REMAINING TWO: Yes.

11 THE COURT: Do you also accept the rule of law
12 that the State must not only prove the defendant's
13 guilt but that the defendant has no obligation to es-
14 tablish his innocence? In other words, the burden is
15 upon the State and not upon the defendant. Do you
16 accept that?

17 REMAINING TWO: Yes.

18 THE COURT: All right. And the defendant in
19 this case is charged with capital murder and robbery.
20 In a capital murder case, the jury listens to the
21 evidence and instructions of the Court which give the
22 law of the case and the jury would then first have to
23 decide whether they think the defendant is guilty of
24 capital murder or whether they think he's guilty of a

1 lesser offense than capital murder or whether they
2 think he's not guilty. If the jury decides that the
3 defendant is guilty of capital murder, then the jury
4 will have to have a second hearing and decide whether
5 the defendant should receive the death sentence or life
6 imprisonment. Now, do either of you have any religious
7 or conscientious scruples or objections that would pre-
8 vent you from considering the death sentence if a proper
9 case is established?
10 REMAINING TWO: No.
11 THE COURT: All right. On the other hand, do
12 you feel that in every case, regardless of the circum-
13 stances and the background of the individuals, that
14 where there's a murder that the person involved should
15 get the death sentence, or do you think it depends on
16 the circumstances?
17 REMAINING TWO: It depends on the circumstances.
18 THE COURT: All right. Now, he's also charged
19 with robbery, the defendant in this case, and you must
20 decide his guilt or innocence on that charge as well as
21 the murder. If you decide he's guilty, you would have
22 to impose a punishment between five years in the peni-
23 tentiary and life. Do you have any religious, moral
24 or other beliefs that would prevent you from passing

1 judgment on that charge?

2 MR. DAVIES: (No audible reply)

3 MR. DIGGS: I guess so. (pause) I mean no,

4 sir.

5 THE COURT: No, right. I understand what

6 you're -- . All right, now, the last question is are

7 there any reasons that either one of you have that make

8 you feel that you should not sit on this jury and that

9 you cannot give the defendant as well as the State a

10 fair and impartial trial, and do both of you feel that

11 you can base your decision or your verdict solely upon

12 the evidence and the law presented to you in this Court-

13 room?

14 MR. DAVIES: Yes.

15 THE COURT: Do you feel the same way, that you

16 can give a fair and impartial trial and that whatever

17 verdict you voted for will be based on the evidence

18 that you hear in this Courtroom and the law that you

19 hear in this Courtroom and not on something else?

20 That's what I'm asking you.

21 MR. DIGGS: Well, to my knowledge, you know.

22 I didn't -- never was up high in school, you know.

23 THE COURT: Well, that's all right. I mean

24 but you -- there's no reason why you can't be fair to

1 the State in this case or Mr. Clanton that you know of?
2 MR. DIGGS: Not to my knowledge.
3 THE COURT: All right, that's what I want to
4 know. Right. All right, seat these two, Mr. Parker.
5 (pause)
6 MR. PARKER: Come forward, please, and stand
7 here facing the bench.
8 THE COURT: All right, Mr. Parrish, swear them
9 in, please.
10 MR. PARRISH: Do each of you swear that you'll
11 make true and perfect answers to such questions as the
12 Court may now propound to you, so help you God?
13 ALL THREE: Yes.
14 THE COURT: All right, so we'll know who you
15 are, may I have your name, please?
16 MR. RIDLEY: James Ridley.
17 THE COURT: You're Mr. Ridley. All right.
18 And your name?
19 MR. RAINEY: Charlie F. Rainey.
20 THE COURT: Rainey. Mr. Rainey. All right.
21 And your name?
22 MS. LEWIS: Ann Lewis.
23 THE COURT: Ann Lewis. All right, the defend-
24 ant to be tried today is Earl Clanton, Jr. He is

1 charged with the capital murder and robbery of Wilhel-
2 mina Smith on November 16th of last year. Are any of
3 the three of you related by blood or by marriage or do
4 you know the defendant in this case, Earl Clanton, Jr.?
5 ALL THREE: No.
6 THE COURT: Another individual is charged and
7 her name is Natalie Lawrence. Are you related to in
8 any way or do you know that individual, Natalie Law-
9 rence?
10 ALL THREE: No.
11 THE COURT: All right, the individual who is
12 deceased, Wilhelmina Smith, are any of you related by
13 blood or by marriage or did you know Wilhelmina Smith?
14 ALL THREE: No.
15 THE COURT: This gentleman is Mr. Hauler who
16 will be representing Mr. Clanton in this case. This is
17 Mr. Welsh who will be representing the State of Vir-
18 ginia in this case. Are any of you a client, friend
19 or acquaintance of Mr. Hauler or of Mr. Welsh?
20 ALL THREE: No.
21 THE COURT: All right. Do any of you have any
22 relatives or close friends who are connected in any way
23 with law enforcement?
24 ALL THREE: No.

1 THE COURT: Do you feel that you would accept
2 the testimony of a police officer, law enforcement
3 official or anyone appearing on behalf of the State in
4 an official capacity more readily than you would any
5 other witness merely because of the position they hold,
6 or do you think you would judge them the same as any
7 other witness?
8 ALL THREE: The same.
9 THE COURT: All right. Do any of you have any
10 interest in the trial of this case?
11 ALL THREE: No.
12 THE COURT: Have any of you acquired any infor-
13 mation either from the news media or from any other
14 source concerning the charges placed against Mr. Clan-
15 ton or about Mr. Clanton himself?
16 MR. RIDLEY: Nothing but what was in the paper
17 at the time.
18 THE COURT: Right, Mr. Ridley, but based on
19 what you've read, have you formed any fixed opinions
20 or would you be able to decide the case on what happens
21 in this Courtroom and what you're told in this Court-
22 room?
23 MR. RIDLEY: Right.
24 THE COURT: All right. All right, then, to the

1 three of you, have you expressed or formed any opinions
2 concerning the guilt or the innocence of Mr. Clanton?
3 ALL THREE: No.
4 THE COURT: All right. Do the three of you
5 have any bias or prejudice against the State of Vir-
6 ginia or the accused in this case, Earl Clanton, Jr.?
7 ALL THREE: No.
8 THE COURT: Do you all accept the rule of law
9 that any defendant who comes into a criminal case is
10 presumed to be innocent and the State must prove his
11 guilt? Do you accept that?
12 ALL THREE: Yes.
13 THE COURT: Do you also accept the rule of law
14 that not only must the State prove the defendant's
15 guilt but that the defendant has no obligation to prove
16 his innocence? Do you accept that? In other words,
17 the burden of proof is entirely upon the State.
18 ALL THREE: Yes.
19 THE COURT: All right. Do any of the three of
20 you have any health problems or any business reasons
21 that would prevent you from devoting your full atten-
22 tion to this trial?
23 ALL THREE: No.
24 THE COURT: All right. Now, as I've said, the

1 defendant is charged with capital murder. In any cap-
2 ital murder case, the jury must listen to the evidence
3 and listen to the law given to you by the Court in the
4 form of its instructions and decide first whether or
5 not the defendant is guilty of capital murder or whether
6 he's guilty of some lesser offense or whether he's not
7 guilty. If the jury decides he's guilty of capital
8 murder, a second hearing takes place at the conclusion
9 of which the jury has one of two decisions, either they
10 decide he should receive the death sentence or he
11 should receive life imprisonment. Now, do any of the
12 three of you have any religious or any conscientious
13 scruples or objections to considering the death sen-
14 tence if a proper case is established by the State?
15 Mr. Ridley?
16 MR. RIDLEY: I don't know. This is the first
17 time this has ever come up to me.
18 THE COURT: Well, it is for most people. What
19 we're saying, the law is very careful to allow the
20 death sentence in only a very few cases, really, and
21 the jury would have to determine certain things in order
22 to vote for the death sentence. All I'm asking you is
23 if you're told the laws of the State and if the facts
24 are laid before you and if it's a proper case estab-

1 lished by the Commonwealth, would you consider the
2 death penalty, not meaning you'd necessarily do it but
3 would you consider it as one alternative if the proper
4 case were established by the State? That's what I'm
5 really asking you. All right. And you, the same
6 thing?
7 MS. LEWIS: I don't know.
8 THE COURT: You'll have to tell us. I mean
9 what I need to know is (pause) are you saying that you
10 could not under any circumstances vote for the death
11 sentence?
12 MS. LEWIS: No, I could under certain circum-
13 stances.
14 THE COURT: You could under certain circum-
15 stances. That's all I'm asking you. Because the
16 State has to prove those certain circumstances. All
17 right. But you do feel like under certain circumstan-
18 ces, if you were instructed and the evidence was there,
19 that you would consider it?
20 MS. LEWIS: Possibly.
21 THE COURT: All right. All I want you to be
22 able to tell me is that you're not in a position where
23 you're saying that absolutely you would never vote for
24 the death penalty.

1 MS. LEWIS: No, not absolutely.

2 THE COURT: All right, fine. Now, on the other
3 hand, I think you've already given me the answer to
4 this by implication in the first answer, do any of the
5 three of you feel that in every case of murder, regard-
6 less of the circumstances or regardless of the back-
7 ground of the people, there should be a death sentence?
8 (pause) All right, --

9 ALL THREE: (Inaudible)

10 THE COURT: What I'm saying is (pause) --
11 you've all said in a proper case, you would consider
12 the death sentence. Now, I'm asking you that do any of
13 the three of you think in any case where murder is
14 proven, no matter what the background or the circum-
15 stances of the crime of a person that they should re-
16 ceive the death sentence?

17 MR. RAINEY: I do.

18 THE COURT: You do think in every case?

19 MR. RAINEY: Yeah. Yeah.

20 THE COURT: You take it you don't?

21 MS. LEWIS: No.

22 THE COURT: And Mr. Ridley, you don't?

23 MR. RIDLEY: No.

24 THE COURT: But you feel like regardless of the

1 circumstances, in every case where a person is convicted
2 of murder they should get the death sentence?
3 MR. RAINEY: I feel as though he should be
4 punished.
5 THE COURT: I know, but, you see, in this case,
6 if you get to capital murder, you're going to have a
7 choice between life imprisonment or death. What I want
8 to make sure is that you're not automatically programmed
9 for a death sentence regardless of the circumstances.
10 MR. RAINEY: No, I'm not automatically for the
11 death sentence.
12 THE COURT: You're not automatically?
13 MR. RAINEY: Not for the death sentence.
14 THE COURT: So are you telling me then that
15 even if you get to the point where you find him guilty
16 of capital murder, although you would consider the
17 death sentence, you would also consider life imprison-
18 ment?
19 MR. RAINEY: Yeah.
20 THE COURT: All right. Now, he's also charged
21 with robbery and in that case, you would have to decide
22 whether he's innocent or whether he's guilty, and if
23 he's guilty, you would have to impose a punishment
24 between five years in the penitentiary and life impris-

1 onment. Do any of you have any religious or moral
2 belief or any other belief that would prevent you from
3 passing judgment on the defendant in that case if he's
4 proven guilty?
5 ALL THREE: No.
6 THE COURT: And, lastly, do you have any reason
7 whatsoever to feel like you should not sit on the jury,
8 and what I mean is that you cannot give the defendant
9 -- you feel like you cannot give the defendant or the
10 State a fair and impartial trial and base your decision
11 solely on the evidence and the law presented to you?
12 Do any of you feel like you cannot do that, or do all
13 of you feel like you can give a fair trial?
14 MR. RIDLEY: Well, I don't know because as I
15 got ready -- getting ready to come down here this morn-
16 ing, I have a pickup truck and the side window was
17 busted in that and tool box and all stolen, and --
18 before I got ready to come down here, so I'm kind of
19 I don't know, I --
20 THE COURT: Well, you'll have plenty of time
21 to settle down. Mr. Ridley, all I'm asking --
22 MR. RIDLEY: (Inaudible)
23 THE COURT: Yeah. I don't blame you for being
24 mad about that. What I'm asking you, the bottom line

is do you think that on this case you could sit in that jury and base your decision on the testimony of the witnesses that tell you what took place and the law that we give you and not be concerned with anything else?

MR. RIDLEY: Just listen to what I (pause) -- my belief of what I hear?

THE COURT: Yeah.

MR. RIDLEY: Right.

THE COURT: Right. Okay. All right, seat these three, Mr. Parker.

MR. PARKER: This way, please.

MR. PARRISH: Your Honor, that's 21.

THE COURT: You want -- wait a minute. The first two called will be the 19th and 20th individuals. Do you still think we ought to go ahead and try to get an alternate? Mr. Parker, do we have any more potential --

MR. PARKER: Yes, sir.

THE COURT: How many do we have?

MR. PARKER: Mr. Hill, check and see how many we have.

THE COURT: Who was the last one called? (pause) Mr. Ridley then will be the first one on the

1 alternate. All right, take those in then and (pause)
2 --
3 MR. PARRISH: That will be 21 jurors now.
4 THE COURT: So we'll need to try to qualify --
5 MR. WELSH: So Mr. Ridley was the last one so
6 he's Number 21 then.
7 MR. PARRISH: Yeah.
8 THE COURT: We'll need to try to qualify
9 (inaudible)
10 MR. WELSH: We need two more then.
11 THE COURT: Yeah. All right.
12 MR. WELSH: Do you want this? (long pause)
13 MR. PARKER: Come this way, please. Stand
14 right here and face the bench.
15 THE COURT: Swear them in.
16 MR. PARRISH: Do each of you swear that you'll
17 make true and perfect answers to such questions as the
18 Court may now propound to you, so help you God?
19 ALL THREE: Yes.
20 THE COURT: So the attorneys will know, your
21 name is?
22 MR. PURYEAR: Edward Puryear.
23 THE COURT: And your name is?
24 MR. DOUGHTY: Timothy E. Doughty.

1 THE COURT: Last name is?

2 MR. DOUGHTY: Doughty.

3 THE COURT: Dodie, D-o-d-i-e?

4 MR. DOUGHTY: D-o-u-g-h-t-y.

5 THE COURT: Oh. (pause) All right, the de-
6 fendant to be tried today is Earl Clanton, Jr. He's
7 charged with the murder and robbery of Wilhelmina
8 Smith on November 16th, 1980. Are either one of you
9 related by blood or by marriage or do you know the de-
10 fendant in this case, Earl Clanton, Jr.?

11 BOTH TWO: No.

12 THE COURT: All right, there's another individ-
13 ual charged, Natalie Lawrence. Are either of you re-
14 lated in any way or do you know that individual, Nata-
15 lie Lawrence?

16 BOTH TWO: No.

17 THE COURT: The deceased individual, Wilhelmina
18 Smith, were either of you related to Ms. Smith or did
19 you know her in any way?

20 BOTH TWO: No.

21 THE COURT: This gentleman, Mr. Hauler, will
22 be representing Mr. Clanton in this case. This is Mr.
23 Welsh who will be representing the State of Virginia.
24 Are either of you a client, friend or acquaintance of

1 Mr. Hauler or of Mr. Welsh?

2 BOTH TWO: No.

3 THE COURT: Do either of you have any relatives

4 or friends who are connected in any way to law enforce-

5 ment?

6 BOTH TWO: No.

7 THE COURT: All right. Do either of you feel

8 that you would accept the testimony of a police officer,

9 a law enforcement official or any other person acting

10 in an official capacity more readily than you would the

11 testimony of another witness merely because he is such

12 an official?

13 BOTH TWO: No.

14 THE COURT: All right. Do either of you have

15 any interest in the trial or the outcome of this case?

16 BOTH TWO: No.

17 THE COURT: All right. Have either of you ac-

18 quired any information about the alleged offenses or

19 about the defendant, Earl Clanton, Jr., from the news

20 media or from any other source?

21 MR. DOUGHTY: Can I ask a question?

22 THE COURT: Yeah.

23 MR. DOUGHTY: Did this happen up in -- up in

24 the apartments on Crater Road?

1 THE COURT: Yeah. Have you read about it in
2 the paper?
3 MR. DOUGHTY: Yes.
4 THE COURT: And the next question would be
5 based on what you've read, Mr. Doughty, have you ex-
6 pressed or formed any fixed opinions concerning whether
7 Mr. Clanton is guilty or innocent or do you think you
8 could base your decision if you were to sit on this
9 jury solely upon the evidence and the law presented to
10 you in this Courtroom?
11 MR. DOUGHTY: Uhm, (pause) the first question,
12 yes.
13 THE COURT: The first question is that you've
14 fixed -- you've formed an opinion?
15 MR. DOUGHTY: Uh huh.
16 THE COURT: Well, then, what I want to know is
17 is it an absolute opinion or would it yield to what you
18 hear in the Courtroom? In other words, the bottom line
19 here, could you sit and listen to all the witnesses and
20 the law and base your decision on whether he is inno-
21 cent or guilty on what you hear in the Courtroom and
22 not base it on what you might have read in the papers?
23 MR. DOUGHTY: I could, yes.
24 THE COURT: Well, you have to give us a yes or

1 no.

2 MR. DOUGHTY: Yes.

3 THE COURT: All right. Mr. Puryear, you said

4 you didn't -- hadn't read (pause) -- or did you say you

5 had read something about it or not?

6 MR. PURYEAR: I read it in the paper but I

7 haven't formed any opinion.

8 THE COURT: Fine. All right, now, do either

9 one of you have any bias or prejudice against the

10 State of Virginia or the accused in this case, Earl

11 Clanton, Jr.?

12 BOTH TWO: No.

13 THE COURT: Do you both accept the rule of law

14 that any defendant in a criminal case is presumed to

15 be innocent and the State must prove his guilt?

16 BOTH TWO: Yes.

17 THE COURT: Do you also accept the rule of law

18 that not only must the State prove the guilt of the

19 defendant but that the defendant has no obligation to

20 prove his innocence? In other words, the burden is

21 upon the State to prove the case?

22 BOTH TWO: Yes.

23 THE COURT: All right. Do either of you have

24 any health problems or business reasons that would

1 prevent you from devoting your attention to this case?
2 To keep you from concentrating on this case?
3 BOTH TWO: No.
4 THE COURT: All right. Now, as I've said, the
5 defendant is charged with capital murder. In any capit-
6 al murder case, the jury will listen to the evidence
7 and the instructions of the Court and will have to de-
8 cide first whether they think the defendant is guilty
9 of capital murder, whether he's guilty of some lesser
10 offense, or whether he's not guilty. If the jury
11 reaches the point where they find him guilty of capital
12 murder, there will be a second hearing and then the
13 jury will have to determine, based on the information
14 at that hearing, whether the death sentence should be
15 imposed or whether life imprisonment should be imposed.
16 Now, I would ask do either one of you have any relig-
17 ious or conscientious scruples or objections that would
18 prevent you from considering the death penalty in a
19 proper case?
20 BOTH TWO: No.
21 THE COURT: All right. On the other hand, do
22 you feel that in every case where a person is convicted
23 of murder, regardless of the circumstances or back-
24 ground of that person or the circumstances of the

1 murder, that they should automatically receive the
2 death penalty?
3 BOTH TWO: No.
4 THE COURT: All right. In other words, you
5 both are saying then that you would base your judgment
6 on whether it would be life imprisonment or death on
7 the particular circumstances of that case?
8 BOTH TWO: That's right.
9 THE COURT: All right. Now, the defendant is
10 also charged with robbery. The jury must decide wheth-
11 er or not the defendant is guilty or whether he's inno-
12 cent of that charge, and if he's guilty, they must fix
13 his punishment between five years in the penitentiary
14 and life imprisonment. Do either of you have any re-
15 ligious, moral or other beliefs that would prevent you
16 from passing judgment on the defendant on that charge
17 if he were proven guilty?
18 BOTH TWO: No.
19 THE COURT: And, lastly, do either of you have
20 any reason whatsoever to feel or believe that you can-
21 not give the defendant as well as the State a fair and
22 impartial trial and base any decision that you might
23 reach solely upon the law and the evidence presented to
24 you in this Courtroom? Do you have any problem or hes-

1 itation whatsoever?

2 BOTH TWO: No.

3 THE COURT: All right. Fine. Seat these two,

4 Mr. Parker. Does that give us 23? By the way, gentle-

5 men, you would be alternates in this case if you stay

6 on. So that's --

7 MR. PARKER: This way, gentlemen.

8 THE COURT: Is that 23?

9 MR. PARRISH: Yes, sir.

10

11

12

13

14 NOTE: At this time, the Court re-

15 cessed. Upon the Court reconvening, the hear-

16 ing continued on as follows:

17

18

19

20

21 THE COURT: All right, Mr. Welsh and Mr. Hauler,

22 in order to save time and not have the jury brought

23 back out at this point and have Mr. Clanton arraigned

24 and send them all back while I question him as to his

1 preparedness and bring them back again, your agreement
2 - I'll go ahead and just question him now as to his pre-
3 paredness for trial, then bring them out and have him
4 arraigned and ya'll can proceed with your strikes. Is
5 that agreeable?
6 MR. HAULER: Yes, sir.
7 MR. WELSH: Yes, sir.
8 THE COURT: All right.
9
10 VOIR DIRE OF DEFENDANT
11 BY THE COURT:
12 Q. All right, Mr. Clanton, what's your full name
13 and your present age?
14 A. Earl Clanton, Jr., 26.
15 Q. Twenty-six?
16 A. Yes, sir.
17 Q. All right, Mr. Clanton, do you fully understand
18 the two charges placed against you by the State?
19 A. I do.
20 Q. Have you had enough time to discuss each of
21 these cases with Mr. Hauler?
22 A. I have.
23 Q. Have you provided Mr. Hauler with the names of
24 any witnesses that you wish to have present today to testify in

1 your behalf?

2 A. I have.

3 Q. All right. Are those witnesses here?

4 A. I don't see her.

5 THE COURT: Mr. Hauler, who did you have that

6 you wanted here?

7 MR. HAULER: If it please the Court, Your Hon-

8 or, we had submitted a request that Natalie Mosley

9 Lawrence be brought here and I understand the Sheriff's

10 Department is making arrangements to have her brought

11 over.

12 THE COURT: Has that been taken care of?

13 MR. PARKER: Yes, sir.

14 THE COURT: All right. Anybody -- is that the

15 only one?

16 MR. HAULER: Yes, sir.

17 Q. All right, Mr. Clanton, assuming that you will

18 enter pleas of not guilty when the Clerk reads the indictments

19 to you, do you understand that on pleas of not guilty, you have

20 a right to a trial by jury but you also have the right to waive

21 trial by jury and be tried by the Court. Do you understand

22 that you have that choice?

23 A. I understand.

24 Q. Right. And with this in mind, do you wish to

be tried by a jury?

A. Yes, sir.

Q. All right. And are you satisfied with the services of Mr. Hauler as your attorney?

A. Yes, sir.

THE COURT: All right, bring the panel on back and, Mr. Parker, they're going to have to move.

MR. PARKER: All right. The students will sit back a couple of benches, please. (pause)

NOTE: At this time, there is discussion regarding the seating arrangements.

THE COURT: All right, Mr. Parrish, arraign the defendant on the two charges.

THE CLERK: The City of Petersburg, the Commonwealth of Virginia, to-wit: In the Circuit Court of the said City, the Grand Jurors for the Commonwealth of

1 Virginia in and for the body of the City of Petersburg
2 and now attending the said Court upon their oaths pre-
3 sent that Earl Clanton, Jr. on or about the 16th day of
4 November in the year 1980 in the said City and within
5 the jurisdiction of the said Court did commit capital
6 murder by the willful, deliberate and premeditated
7 killing of Wilhelmina Smith in the commission of rob-
8 bery while armed with a deadly weapon, against the peace
9 and dignity of the Commonwealth of Virginia, Virginia
10 Code Section 18.2-31, paragraph (d). How do you plead,
11 guilty or not guilty?
12 THE DEFENDANT: Not guilty.
13 THE CLERK: The City of Petersburg, the Common-
14 wealth of Virginia, to-wit: In the Circuit Court of
15 the said City, the Grand Jurors for the Commonwealth of
16 Virginia in and for the body of the City of Petersburg
17 and now attending the said Court upon their oaths pre-
18 sent that Earl Clanton, Jr. on or about the 16th day of
19 November in the year 1980 in the said City and within
20 the jurisdiction of the said Court did rob Wilhelmina
21 Smith of United States currency in the amount of eight
22 dollars ($8.00), against the peace and dignity of the
23 Commonwealth of Virginia, Virginia Code Section 18.2-
24 58. How do you plead, guilty or not guilty?

1 THE DEFENDANT: Not guilty.

2 THE COURT: Now, we've already selected the
3 panel. You can sit down, Mr. Clanton. We've already
4 selected the panel of 20 plus three for alternates.
5 Each side will have the right to strike four from the
6 panel of 20 and one from the three alternates, leaving
7 a jury of 12 and one alternate. I hand the list first
8 to the Commonwealth's Attorney for strikes and then to
9 defense counsel.
10
11
12
13
14 NOTE: At this time, counsel made
15 their strikes.
16
17
18
19
20 THE CLERK: Your Honor, do you want me to read
21 the strikes first or just those who are serving?
22 THE COURT: You can just read the names of the
23 12 jurors and the one alternate, and tell us which one
24 the alternate is. Just have them come up and take a

1 seat in the box.

2 THE CLERK: Willie Harold Brockwell, James

3 Louis Mizell, --

4 THE COURT: When your name is called, come up

5 and have a seat in the jury box.

6 THE CLERK: John Franklin Perkins, Henrietta

7 McCoy Dixon, David Harvey Turner, Raymond Marlin John-

8 son, Rosemary Lewis Jones, Fila Lopez DeBrezeni, Mary

9 Cooper Esnault, David Whistly Chiles, Ann Marie Lewis,

10 Charlie Freddie Rainey.

11 THE COURT: Which is the alternate?

12 THE CLERK: I haven't called his name yet.

13 THE COURT: Okay.

14 THE CLERK: The alternate is Timothy Eugene

15 Doughty.

16 THE COURT: Do we need the others back?

17 MR. PARKER: No, sir.

18 THE COURT: Mr. Parrish, now read each name

19 and have them answer and make sure we've got the right

20 12. And thirteen.

21 THE CLERK: Willie Harold Brockwell.

22 MR. BROCKWELL: Present.

23 THE CLERK: James Louis Mizell.

24 MR. MIZELL: Present.

1 THE CLERK: John Franklin Perkins.

2 MR. PERKINS: Here.

3 THE CLERK: Henrietta McCoy Dixon.

4 MS. DIXON: Here.

5 THE CLERK: David Harvey Turner.

6 MR. TURNER: Here.

7 THE CLERK: Raymond Marlin Johnson.

8 MR. JOHNSON: Here.

9 THE CLERK: Rosemary Lewis Jones.

10 MS. JONES: Here.

11 THE CLERK: Fila Lopez DeBrezeni.

12 MS. DeBrezeni: Here.

13 THE CLERK: Mary Cooper Esnault.

14 MS. ESNAULT: Here.

15 THE CLERK: David Whistly Chiles.

16 MR. CHILES: Here.

17 THE CLERK: Ann Marie Lewis.

18 MS. LEWIS: Here.

19 THE CLERK: Charlie Freddie Rainey.

20 MR. RAINEY: Here.

21 THE CLERK: Timothy Eugene Doughty.

22 MR. DOUGHTY: Here.

23 THE CLERK: You shall well and truly try and

24 true deliverance make between the Commonwealth and the

accused at the bar whom you shall have him charged and a true verdict render according to the law and evidence, so help you God? (Jurors answered in affirmative in unison.)

THE COURT: All right. Those of you who were not seated on this jury, you're excused. You'll not have to come back. Thank you. (pause) Mr. Parrish, call the names of the witnesses and have them sworn and separated.

NOTE: At this time, the witnesses were sworn and sequestered.

THE COURT: Members of the jury, in just a moment the attorneys will address you in what we refer to as the opening statement and the reason that the lawyers make a statement to you at this stage of the trial is to give you some idea of what the case is all about

1 on a total basis, the idea being that you will be in a
2 better position then to understand and appreciate the
3 witnesses' testimony as they appear before you on the
4 witness stand. I caution you that whatever the attorney
5 for the Commonwealth might say to you at this point or
6 whatever the defense attorney might say to you at this
7 point is not to be accepted by you as evidence, it's
8 merely the attorney's anticipation of what the evidence
9 is going to be. Now, the evidence that you'll base
10 your decision on will have to come from the witness
11 stand from the mouths of the witnesses that were sworn
12 to testify before you this morning together with any of
13 the exhibits that may be put into the evidence. Now,
14 following the statements to you by the attorneys, Mr.
15 Welsh and Mr. Barney from the Commonwealth's Attorney's
16 Office will call to the witness stand any witnesses
17 relied upon by the State to establish its case against
18 Mr. Clanton and they will question these witnesses and
19 you will hear their responses. Now, Mr. Hauler as
20 defense counsel has the right to cross examine. As
21 you all know, this means ask his own questions of these
22 witnesses. And after the presentation of the State's
23 case, the defense has the right, if it chooses to do
24 so, to present its own evidence. After all the evi-

1 dence is in, we will come in and read to you what we
2 call the Court's instructions. Now, these are simply
3 written statements of law that you will eventually need
4 in order to properly decide this case. Now, from this
5 point on until the time that we come in and read these
6 instructions to you, please do not be concerned about
7 the law - in other words, what is capital murder, what
8 is robbery - don't be concerned with these things at
9 this stage of the trial. Concentrate on the facts,
10 concentrate on what the witnesses are telling you,
11 what you think makes sense, or what you believe and
12 what you don't believe because your primary function
13 for being here is to listen to the witnesses and as a
14 group of 12 to decide what happened and what didn't
15 happen. That's your sole responsibility. We help you
16 with the law, we give you the law, and eventually
17 you'll have to apply those facts to the law, but the
18 facts are your sole area of consideration and you are
19 responsible to decide what happened. Now, we'll read
20 those instructions to you eventually. The attorneys
21 will argue their sides of the case to you and it will
22 then be your case to decide. Now, throughout the trial,
23 there will be objections made by one side or the other
24 to a question asked by the other side. The attorneys

are not trying to keep anything from you, they are trying merely to make sure that the case and the testimony presented is kept within the confines of the law. There are certain legal procedures that must be adhered to, there are certain rules of evidence that determine what is proper evidence and what is not. These rules are not always easily interpreted and there may come times when I have to send you from the room and discuss with the attorneys the point involved and whether or not it's proper or not proper. And the reason you have to leave, of course, should be obvious - if you hear the evidence and then it's ruled inadmissible, the damage is done and it's hard for you to get it out of your mind. So I'll apologize in advance for any times that we have to take you from the Courtroom. There will be recesses taken for various reasons. If you feel the need for any further recess, if you want to stretch, you're tired, please don't hesitate to put up your hand and tell me. In addition to that, I would ask that if you do not hear the questions being asked by the attorneys or if you do not hear the responses given by a witness, don't hesitate to put up your hand and tell me that you're having a problem. All right, Mr. Welsh, opening statement.

1 MR. WELSH: Good morning, ladies and gentlemen.
2 My name is Greg Welsh. I'm Deputy Commonwealth At-
3 torney for the City of Petersburg. I'd like to first
4 start by introducing you to the different people that
5 are here in the Courtroom so that you'll know who every-
6 one is. Of course, presiding over the trial today is
7 the Honorable Oliver A. Pollard, Jr., Judge Pollard.
8 The Clerk of Court is Mr. Walter Parrish. Seated at
9 counsel table with me is Mr. Sidney Barney who is the
10 Commonwealth Attorney for the City of Petersburg. And
11 you have already met Mr. Tim Hauler who is seated to my
12 right who is the attorney representing the defendant,
13 Clanton, and of course, Mr. Clanton is seated to the
14 right of Mr. Hauler. In addition, there are a number
15 of representatives from the Sheriff's Department here
16 to act as Courtroom security and as bailiffs. In
17 charge of the Courtroom security today is Mr. Robert
18 Parker and he is being assisted by I see Mr. Mason,
19 Mr. Hite, Mr. Hill and Mr. Rouf who are all here, also,
20 to help out if needed. Now, you've already heard a
21 lot this morning about law and it's a little unusual
22 that you hear so much about law before a trial starts.
23 The reason being that we have a capital murder charge
24 today, a charge that involves potentially the death

1 penalty. You have been asked a lot of questions. We
2 appreciate -- all of us appreciate your bearing with us
3 as these questions had to be asked. We have to be sure
4 that the jury that's seated each individually is a
5 proper juror to hear the evidence in a capital case.
6 As Judge Pollard just told you, though, put all of that
7 law aside for right now. Forget about for the time
8 being the death penalty, forget about what makes up
9 murder or what makes up robbery, forget about the pre-
10 sumption of innocence, the burden of proof, and all of
11 those legal terms you heard about because your main
12 duty, your main function for being here is to determine
13 what are the facts. That's why you're here. That's
14 what your attention over the next several hours is go-
15 ing to be directed to - what happened, what is each
16 witness telling us about what happened on November 16th
17 of 1980. Concentrate on the facts. Now, as each side
18 brings out the facts, there are going to be occasions
19 in which either Mr. Hauler or myself are going to have
20 an objection, as Judge Pollard has explained to you.
21 Very simply put, there are rules in the trial just like
22 in any other sort of competition. In games and all
23 throughout life, there are rules. Each side must live
24 by the rules. If one attorney or the other feels that

1 perhaps a certain piece of evidence or a certain ques-
2 tion goes beyond the rules, then it's his duty to stand
3 up and ask the Judge to rule. So all we really want
4 you to understand is that we're trying to be sure that
5 everything today is done by the rules and that the only
6 evidence you hear is the evidence that it is proper for
7 you to hear so that you can decide the guilt or inno-
8 cence of Mr. Clanton. As far as the case is concerned,
9 this happened on Sunday, the 16th day of November of
10 1980 and it happened at the Crater Square Apartments
11 which are on South Crater Road right near the crossover
12 of Interstate 95. Between the crossover and the Walnut
13 Mall area, the Crater Square Apartments are on your
14 left if you're going southbound towards Prince George.
15 They're right near the blinking light on Crater Road.
16 Many of you are familiar with that blinking light at
17 Claremont Street. What you're going to hear about to-
18 day is going to be a very brutal occurrence. This lady
19 was very viciously murdered. There was quite a bit of
20 blood involved in the apartment. She was strangled,
21 she was stabbed, and the thing started in the living
22 room and it ended up back in the bedroom so the whole
23 place is bloody. So we apologize to you for that but
24 that's the way the case is. The evidence that will

1 come from the Commonwealth, what I expect to prove to-
2 day, will come from a number of witnesses. Officers
3 Jerry Chandler and Mike Hess will testify that on this
4 Sunday that they were both working and that at about
5 12:32 P.M. they received a call from the dispatcher
6 over the radio to go to Apartment 14-H at Crater Square
7 Apartments. It just so happened that Officer Chandler
8 at the time the call came out was right about at the
9 blinking light on Crater Road headed towards the mall
10 area. He immediately put on his light and a siren, he
11 made a "U" turn at the next crossover he could make a
12 "U" turn, and he arrived at Building 14 approximately
13 30 to 45 seconds after the call was put out by the dis-
14 patcher. Officer Mike Hess was on Crater Road right
15 near the Holly Farms Chicken at the intersection of
16 Wythe Street. He proceeded immediately, did not have
17 to stop for any lights, had his lights and siren on,
18 and he arrived within a minute to a minute and a half
19 at Building 14. The two officers went to the second
20 floor to Apartment 14-H. The door to Apartment 14-H
21 was slightly ajar. The call that they were responding
22 to was a lady screaming. That was what was reported to
23 the police. That's what they were going there to in-
24 vestigate - there was a lady screaming. So the door to

1 Apartment H was slightly open. They very quickly
2 checked that apartment and found there was no one there.
3 They got back on the radio right away, called back the
4 dispatcher and they were told to check Apartment 14-E
5 which is also on the second floor right across the hall
6 from Apartment H. They knocked on the door for some
7 period of time, finally a female voice answered and
8 said something to the effect that, "I'm in the shower;
9 it's going to take me a minute to get dressed." The
10 evidence will show that that was Natalie Mosley Law-
11 rence who answered the door -- who answered verbally
12 at the door. Well, they were content to wait for a
13 second or two. Meanwhile, some of the neighbors had
14 come out of their apartments and gathered. They gave
15 some information to the officers and based on what the
16 officers heard from these witnesses, they started bang-
17 ing on the door again -- banging again on the door.
18 And, finally, Natalie Lawrence opened the door and the
19 officers got into the apartment. Officer Hess stayed
20 in the living room area of the apartment, which is
21 where you enter, into the living room, with Ms. Law-
22 rence. Officer Chandler very quickly looked through
23 the rest of the apartment and found Ms. Wilhelmina
24 Smith dead on the floor in her bedroom right next to

her bed. He went over to her to check to see if there were any vital signs but there was absolutely no movement at all and she was dead. The officers wanted to notify Headquarters so that all the detectives could be called and that the people that needed to be called would be and they very quickly checked the rest of the apartment, didn't find anything. Officer Chandler, when he came back to the apartment after calling Headquarters, he did a very specific search of the apartment and he found hiding under the bed in one of the other bedrooms, not the bedroom where Ms. Smith was but in one of the other bedrooms, he found Earl Clanton, Jr. hiding under the bed. Now, Mr. Clanton right now doesn't look anything like what Mr. Clanton looked like that Sunday as the officer will tell you because he was covered with blood. He was covered in blood. He had blood on his hands, his arms, his pants, his shoes, his socks. He did not have a shirt on but there was a bloody shirt, a T-shirt, under the bed full of blood also. Mr. Clanton was obviously placed under arrest, Ms. Lawrence was obviously placed under arrest, and the technicians were called to the scene to gather what evidence they could, to take pictures, and to see to it that things were properly taken care of. Sergeant

1 Eilert is the policeman who was in charge of the evi-
2 dence-gathering. He will have photographs for you of
3 the apartment, the scene. He will have certain items
4 that he recovered including the clothing that was worn
5 by Mr. Clanton that day. And he will also tell you
6 that the contents of Ms. Smith's pocketbook were strewn
7 about right in the area where her body was and that her
8 checkbook was there and when he went through the check-
9 book, he found a bloody fingerprint inside the check-
10 book. He will tell you that he is an expert in finger-
11 print comparison and that that fingerprint in blood in-
12 side Ms. Smith's checkbook is the fingerprint of Earl
13 Clanton, Jr., much to no one's surprise. The evidence
14 will also show that Mr. Clanton had eight dollars in
15 his pocket, a five and three ones, in his left front
16 pants pocket that was also full of blood and that there
17 was no money found anywhere in that lady's pocketbook
18 or in the vicinity of her belongings. You will hear
19 from a lady named Mary Jane Burton who works with the
20 State Lab and she is an expert in the analysis of
21 blood and fluids and hairs and fibers and things of
22 that nature. She will tell you that she examined all
23 of these items that Sergeant Eilert recovered and she
24 will give you the results and on some of the items she

1 will be able to tell you that the blood type that she
2 found on the item is similar to the blood type of Ms.
3 Smith and that it is not the blood of Earl Clanton. On
4 other items she will tell you that there wasn't enough
5 of a blood left on it for her to be able to give you
6 that much information but she'll tell you as much as
7 she can about each item that was found. Also, there
8 will be evidence from the people who lived there at the
9 apartment complex that they, of course, heard the
10 scream, and what they saw is they saw Ms. Smith, saw her
11 car pull up in front of the apartments at about 12:30
12 or so, she got out of her car and she was carrying a
13 grocery bag, that they heard her go up the steps be-
14 cause it's a concrete and cement and steel in between
15 the buildings. You'll see a photograph. They could
16 hear her walk up the steps. She got to the top of the
17 steps. They heard her say words to the effect, "What
18 are you doing this to me for? I haven't done anything
19 to you." Then they heard the apartment door slam, or
20 they heard a door slam shut, and that shortly after
21 that they heard a muffled scream, then they heard more
22 screams. Mr. Willie Acox will tell you that he went
23 to the door of his apartment, which is on the first
24 floor, and that he looked out, he had a view of both

1 stairwells coming down from upstairs, he also could
2 hear any sounds that were in that hallway or in that
3 breezeway, and that after that door slammed, nobody
4 came out of or went into Ms. Smith's apartment until
5 the police arrived. So at this point, my intention and
6 purpose was just to give you a general outline of what
7 the facts will be. At the close of all the evidence,
8 each attorney will get to argue to tie the facts to-
9 gether, to argue to you exactly what happened. We only
10 ask as Judge Pollard has asked that you listen closely
11 to the facts because you have to determine what hap-
12 pened. That is your primary job - exactly what hap-
13 pened that Sunday. If there comes a point when you
14 cannot hear or do not understand what a witness is say-
15 ing, please raise your hand because once that witness
16 is gone and you go back in the jury room, you're not
17 going to be able to clarify whatever it is that you
18 haven't heard, so as soon as you don't understand or
19 can't hear, raise your hand and let us know what the
20 problem is and we'll be sure to ask the person to ex-
21 plain it again to make sure that you get every piece of
22 evidence involved in the case. I thank you very much
23 for your attention.
24 MR. HAULER: If it please the Court, ladies and

1 gentlemen, good morning. As Mr. Welsh has already
2 advised you, my name is Tim Hauler, I'm an attorney in
3 Colonial Heights and I'm representing Earl Clanton, the
4 gentleman seated at the table with me,in this case.
5 Now, what Mr. Welsh has advised you for the most part
6 is true. We're dealing with a very heinous, very brut-
7 al crime but I don't believe in anything that he has
8 said to you this morning he has suggested he has the
9 ability to show you, to demonstrate to you, to prove
10 to you that it was Earl Clanton that committed this
11 crime. There is no dispute about the fact that this
12 woman was murdered and the majority of the evidence
13 that you're going to hear today is going to be from the
14 Commonwealth to try and establish different scientific
15 things. The case that the defense is going to present,
16 to be quite candid with you, is not designed to prove
17 anything. Mr. Clanton is not put to the burden of
18 having to prove his innocence. You've heard Judge
19 Pollard's admonitions to you and -- his questions,
20 rather, and you've agreed to accept that premise that
21 this defendant is presumed from this point forward to
22 be innocent of this crime and that that presumption
23 stays with him unless and until the Commonwealth of
24 Virginia can prove their case beyond a reasonable doubt.

1 Okay, now, that's a pretty heavy burden. You're going
2 to hear Mr. Clanton testify. Yes, he was in the apart-
3 ment. That is a given fact. And you're going to find
4 out why he was in that apartment. You're going to hear
5 testimony to the effect of hearing cries for assistance.
6 You're going to find out that Mr. Clanton was a neigh-
7 bor of Ms. Smith. He lived right across the hallway.
8 And you'll determine from that testimony and the testi-
9 mony of Natalie Lawrence, the young lady with whom he
10 resided across the hall, why he was in that apartment,
11 why both of them ultimately wound up in that apartment,
12 what they were doing. You're going to hear testimony
13 about intruders, of the struggle, and you will hear
14 why Mr. Clanton was found in the apartment where he
15 was. I'd ask you to remain openminded throughout the
16 entire course of this trial. You've all taken an oath
17 to do that and I'm sure you will. I want you to remem-
18 ber that Mr. Welsh was not there. I wasn't there. And
19 most certainly, none of you were there. None of the
20 witnesses were there at the time of the commission of
21 the offense. This is very important. We're dealing
22 with a circumstantial case. You must weigh and evalu-
23 ate the evidence, the testimony, the exhibits to try
24 and determine which of those circumstances you'll ac-

1 cept and which you will reject. This is a case to
2 which your utmost attention is required because it is
3 such a tremendously important case in terms of the con-
4 sequences of this trial to Mr. Clanton. This case will
5 probably go on for today most certainly, possibly into
6 tomorrow, which may be very taxing upon each and every
7 one of you. Nevertheless, I would ask you to do your
8 utmost to be attentive because what these witnesses
9 say I think is going to disclose to you, the jurors,
10 what really happened on that day and it certainly would
11 be dispositive of whether or not Mr. Clanton had any
12 involvement in the murder of Ms. Smith. You're going
13 to hear objections. I'm sure I'm going to make them
14 and Mr. Welsh will make them. I'm not trying to keep
15 anything from you, we just want to make sure that the
16 best quality of evidence gets before you and I hope
17 you'll keep that in mind and not hold that against any
18 of the parties to this trial because we may be inter-
19 rupting testimony and we may be interrupting you in
20 terms of a train of thought that you're trying to main-
21 tain or a sequence of events that you may be trying to
22 follow and I and Mr. Clanton would again ask you for
23 your attention and consideration of all the evidence
24 that's presented. Wait until both sides have rested

their case before you make a determination, a decision. Obviously, when you've heard the Commonwealth's side of the case, it's going to be slanted in favor of the Commonwealth, so please wait until all the evidence is before you. Thank you again. I ask for your time and your attention.

THE COURT: We'll take a recess and call the first witness at 12:05, Mr. Parker.

NOTE: At this time, the Court recessed. Upon the Court reconvening, the Clerk administered the oath to the first witness and then Mr. Welsh spoke as follows:

MR. WELSH: Your Honor -- Mr. Parker, before you get the jury, Mr. Hauler has advised me that he wishes to state some objections to parts of Exhibits one through 12 which will come in through Dr. Fierro

and I thought it might be a little bit easier if we marked exhibits and do it now and then --

THE COURT: All right.

MR. WELSH: -- we don't have to send the jury back out again. (pause)

MARCELLA FIERRO, introduced on behalf of the Commonwealth, after being first duly sworn, testified as follows:

EXAMINATION

BY MR. WELSH:

Q. Dr. Fierro, I show you some photographs that have been marked Exhibits 3 through and including 12 and ask you if you recognize those photographs?

A. These are photographs which I took at the time of my examination of Ms. Smith.

MR. WELSH: Your Honor, we intend, of course,

1 to offer these photographs into evidence when the jury
2 is in the Courtroom.
3 THE COURT: Are you objecting to a certain one
4 of them? Which ones --
5 MR. HAULER: Judge, I'm objecting to all of the
6 photographs which depict the deceased in various states
7 during the autopsy. There can be absolutely no other
8 purpose for introducing those exhibits than to inflame
9 and prejudice the jury in this matter. To be admissi-
10 ble, they've got to be both relevant and they've got to
11 be material. There is absolutely no dispute in this
12 trial that this woman met with an extremely violent
13 death, that she was strangled, and they have no materi-
14 ality. They don't directly --
15 THE COURT: Mr. Hauler, --
16 MR. HAULER: -- prove --
17 THE COURT: -- the Supreme Court of this state
18 has held on many, many occasions that photographs of a
19 victim are relevant to show the degree of atrociousness
20 of the crime or malice with which it's committed. It's
21 also held that they give a more accurate description of
22 the location, nature and appearance of wounds than a
23 mere verbal description would. Now, in some cases you
24 can add too much but I think the State is entitled to

show through its photographs the type of wounds, the extent of the wounds, the location of the wounds, and so forth to show exactly what happened.

MR. HAULER: Judge, that's why Mr. Welsh has a Medical Examiner here.

THE COURT: Was the Medical Examiner there?

MR. HAULER: No, sir, but she is going to provide testimony before this Court with regard to those precise issues - the cause of death, the placement of the wounds, --

THE COURT: I'll refer you to 204 Va. 208, 207 Va. 459, and various other cases, Mr. Hauler, if you'd like to read them.

MR. HAULER: Judge, I'm aware of the fact that this is a discretionary matter with the Court as to the introduction of those but I believe that before we get to that point --

THE COURT: Why should the jury -- why should the jury be deprived of the truth? (pause) This is a capital murder case. Why should the jury be deprived of visual evidence of the murder and the degree of atrocity that's involved? (pause) And --

MR. HAULER: Judge, this is --

THE COURT: -- have to rely on a strictly verb-

al description of the wounds?

MR. HAULER: Your Honor, if it please the Court, we have a bifurcated trial. If this jury makes a determination of the guilt of this defendant of capital murder, I would then suggest that the Court would be -- it would be proper for the introduction of those photographs with regard to the sentencing, the punishment phase, but at this point in time, there has been no showing of any relevance or any materiality by the Commonwealth. I think that's a prerequisite before those photographs may be offered and received by the Court.

THE COURT: Well, you've stated in your opening statement that the defendant is going to testify that he heard screams and that there were intruders in the apartment, the people downstairs, according to Mr. Welsh, are going to say she'd just come in the house, and I think the number of wounds is pertinent for the jury to observe to consider the time elements involved. I don't think all of these should be admitted, Mr. Hauler, at this part of the trial but certainly some of them the Commonwealth is entitled to present to this jury.

MR. HAULER: Judge, I'd submit again, these

1 photographs are purely cumulative to the Doctor's
2 testimony.
3 THE COURT: I disagree. The Doctor cannot
4 possibly describe what these photographs show.
5 MR. HAULER: Well, does the Court think it will
6 limit the testimony of the Doctor with regard to her
7 testimony regarding the injuries?
8 THE COURT: The Doctor will be able to testify
9 to the medical aspects of these injuries, in addition
10 to the photographs showing the visual location and so
11 forth of these injuries.
12 MR. HAULER: Well, Judge, there's no issue here
13 with regard to the fact that this woman was murdered.
14 I'll stipulate that for purposes of the record in this
15 trial. This woman was a victim of a strangulation
16 death and that there were multiple stab wounds on the
17 body. I don't see that that is an issue in this matter.
18 THE COURT: I understand what you're saying,
19 Mr. Hauler. Mr. Welsh, you may take what you want to
20 prove the points that I've discussed with you.
21 MR. WELSH: Your Honor, those photographs have
22 been selected from a much larger number and I would ask
23 that each of those photographs be admitted. They show
24 different views of the wounds involved.

1 THE COURT: I'll look at them one at a time
2 then and see. What's the purpose of this one?
3 MR. WELSH: Your Honor, the wound to the arm
4 in the area of the wrist.
5 MR. HAULER: Judge, that doesn't even show on
6 that.
7 THE COURT: What doesn't show?
8 MR. HAULER: (No audible reply)
9 THE COURT: What is this one for?
10 MR. WELSH: Your Honor, the issue of the amount
11 of blood on her hands is relevant to the question of
12 where her hands were at the time the wounds were in-
13 flicted upon her, and I think it's relevant to the
14 facts as to how the strangulation occurred.
15 MR. HAULER: Judge, that's not in issue in
16 this case.
17 MR. WELSH: Judge, it doesn't matter whether
18 it's in issue or not, we still have to prove it. (pause)
19 THE COURT: I'm going to allow those. (pause)
20 MR. HAULER: Your Honor, I'd submit to the Court
21 that everything depicted in Exhibits 3, 4, 8, 5, 7, 9
22 and 11 is amply demonstrated in Commonwealth's Exhibit
23 No. 3, and that --
24 THE COURT: And I disagree.

MR. HAULER: -- the others are nothing more than a repetition. (pause) I'd ask the Court to respectfully note my exception.

THE COURT: All right, bring the jury in.

NOTE: At this time, the jury entered the Courtroom.

Q. Please state your name and occupation.

A. Marcella F. Fierro, F-i-e-r-r-o. I am a Doctor of Medicine and I am the Deputy Chief Medical Examiner for the Central District, Commonwealth of Virginia.

Q. Would you tell us what is the purpose of the Chief Medical Examiner's Office?

A. The purpose of the Medical Examiner's Office is to examine patients who die sudden, unexpected or violent death in order to,one, determine the cause of death, assist in the determination of the manner of death, to collect medical

1 evidence or reconstruct how the patient received his injury.
2 Q. And what educational background do you have to
3 prepare you for this field?
4 A. I am a graduate of the State University of New
5 York at Buffalo School of Medicine from which I received a
6 Doctor of Medicine Degree in 1966. I completed an internship
7 and four years of specialty training in a branch of medicine
8 called pathology. Pathology is the specialized branch which
9 deals with the causes and nature of disease. In addition, I
10 have training in a subspecialty branch of pathology, specific-
11 ally forensic pathology which deals with the nature and causes
12 of injury and trauma.
13 Q. And how long have you been so employed?
14 A. Five years.
15 Q. And during that course of time, have you qual-
16 ified as an expert pathologist in courts of this Commonwealth?
17 A. Yes, sir.
18 MR. WELSH: Your Honor, Dr. Fierro has been
19 here before and we offer her as an expert witness.
20 THE COURT: Are there any questions you want to
21 ask before I accept her qualifications, Mr. Hauler?
22 MR. HAULER: Yes, sir.
23 THE COURT: All right.
24

1 CROSS EXAMINATION

2 BY MR. HAULER:

3 Q. Dr. Fierro, on how many occasions have you

4 testified in Court?

5 A. Several hundred.

6 Q. I'm sorry, ma'am?

7 A. Several hundred.

8 Q. And how long have you been employed by the

9 Commonwealth of Virginia?

10 A. I've been in the office of the Chief Medical

11 Examiner since 1973 and have been in my present position as

12 Deputy Chief since 1975.

13 MR. HAULER: I have no further questions.

14

15 REDIRECT EXAMINATION

16 BY MR. WELSH:

17 Q. Dr. Fierro, in the course of your duties, did

18 you have an occasion to see Wilhelmina Smith?

19 A. Yes, sir.

20 Q. And when was that?

21 A. I examined her at the Office of the Chief

22 Medical Examiner November 17th, 1980 at 3:30 in the afternoon.

23 Q. And as a part of your official duties, did you

24 prepare a report of your examination of Ms. Smith?

1 A. Yes, sir, I did.
2 Q. I show you a document containing eight pages
3 and ask you if you recognize that?
4 A. This is a copy of the final autopsy report
5 which I prepared at the time of my examination.
6 MR. WELSH: Your Honor, we would offer Exhibit
7 1 into evidence.
8 THE COURT: Have you shown it to Mr. Hauler?
9 (pause)
10 MR. HAULER: Your Honor, I'd respectfully ob-
11 ject to the admission of this. The Doctor's here to
12 testify. I don't see that this could add anything to
13 her testimony. In addition, there are certain dia-
14 grams which are a part of this exhibit which are cumu-
15 lative with other exhibits that the Court has just re-
16 cently ruled would be admitted.
17 MR. WELSH: Your Honor, the Medical Examiner's
18 Report, to my knowledge, has always been admissible in
19 its entirety in any case in this Commonwealth and I
20 don't --
21 THE COURT: I see no problem with it, Mr.
22 Hauler, unless there are any things contained in there
23 that you don't think are appropriate for the jury's
24 consideration. (pause) If you'd like to, we can have

1 it marked for identification and during a break, you can
2 take a better look at it.
3 MR. HAULER: I would ask the Court to follow
4 that course.
5 THE COURT: All right, let's do that then.
6 Q Dr. Fierro, would you summarize for us the in-
7 juries and wounds that you found when you examined Wilhelmina
8 Smith?
9 A At the time that I examined this woman, she had
10 three different groups of injuries. She had first of all cut-
11 ting wounds or stab wounds of the chin, four; one below the
12 left chin, one to the side of the left chin, one above the
13 right eye, and another one below the lip. A second cluster of
14 injuries were the injuries caused by the ligature which was
15 wound tightly about her neck. It was doubly wound in some
16 places and had three -- three pieces of ligature in another.
17 The ligature was very snug. I could not get a finger under-
18 neath it. Deep to the ligature were bruises of the soft tissues
19 of the neck, specifically to the right side of the hyoid bone
20 which is -- if you put your hand up underneath your chin, you
21 can move it back and forth. So she had deep injuries to those
22 tissues. Other injuries were bruises about the face.
23 Q Do you have an opinion as to the cause of death
24 of Wilhelmina Smith?

1 A. Yes, this lady died of ligature strangulation.
2 Q. And would you tell us how that process works
3 to cause death?
4 A. Well, when a ligature is placed snugly about
5 the neck, one of the first things it does is occlude the
6 blood supply or the blood flow from the head and neck to the
7 lungs and to the chest and this results in the little hemorr-
8 hages that were seen all over her face and the little hemorr-
9 hages that were about the eyes. When the blood flow is com-
10 pressed, then it's difficult, one, for blood to flow in to the
11 arterial side and, secondly, the pressure compresses the air-
12 way making it impossible or difficult for the patient to
13 breathe. The third thing that happens is that the compression
14 on the nerve structures which control breathing and control
15 consciousness also causes problems so the patient will lose
16 consciousness.
17 Q. Could you tell us whether or not the pressure
18 must be applied up to the moment of actual death?
19 A. Well, it depends how early the patient loses
20 consciousness. It can be (pause) -- you can have a situation
21 either where the ligature remains tightly and snugly about the
22 neck continually compressing the neck, or a situation where
23 the patient is just rendered unconscious where the tissues --
24 the bony tissues of the neck are fractured.

1 Q. Now, the stab wounds which you've described,
2 can you tell us a little bit about the depth of the stab wounds
3 and anything else about them?
4 A. The stab wounds were up to about one-half inch
5 deep and did not penetrate any vital structures of the face or
6 the neck.
7 Q. Have you seen wounds of this kind before?
8 A. Yes.
9 Q. And how are they generally inflicted?
10 A. They're generally inflicted by someone holding
11 the edge of a blade to you with your head back.
12 Q. Dr. Fierro, if you would, kindly come in front
13 of the jury. We'd like to look at some of the physical exhib-
14 its. (pause) You have referred, of course, to a ligature in
15 your testimony, and I show you an item that's been marked for
16 identification as Exhibit 2. Do you recognize that?
17 A. This is the ligature which I removed from the
18 neck of the decedent.
19 Q. All right. And, if you could, put it together
20 as best you can in the manner in which it was before you cut
21 it. I assume you cut it off, is that right?
22 A. Yes, sir. I cut it here at the cut edges so as
23 to retain the relative positions of the loops. The ligature
24 was snugly fixed about her neck so that these cut ends were

1 actually together. I can't quite get it snug enough here.
2 Q. Okay. And do you recall if the cut was made
3 in the front side or the back of her head?
4 A. Well, I can look at the pictures.
5 Q. Okay. We have photographs that have been
6 marked as Exhibits 3, 4, 5, 7, 8, 9 and 11. I ask you if you
7 recognize those photographs?
8 A. The photographs. The first photograph is la-
9 beled Exhibit No. 3 and shows the decedent as she was when she
10 arrived at our office. We take this photograph to show the
11 condition and placement of the clothes and to show the place-
12 ment and location of any weapons or injuries that are apparent.
13 Also, to show drip marks that will tell us whether the person
14 was upright when they got their injury or down on the ground.
15 So this first photograph shows that her clothing is buttoned
16 and that she has drip marks coming down from her face and that
17 the ligature, this ligature, is in place at the time. The
18 second photograph labeled Commonwealth's Exhibit No. 4 is a
19 photograph of the left side of her neck showing that the liga-
20 ture was placed over the clothing, the collar of her blouse
21 was caught in it, and that it was snug and that this wouldn't
22 pull out. It also shows a portion of the bruise of her left
23 chin. Exhibit No. 5, of the right side of the neck shows the
24 ligature twisted to show that there was no knot in it but that

it was twisted, and shows the bruises. Exhibit No. 7 shows the dripping and draining blood removed and it was taken to show the small little petechial hemorrhages or pinpoint hemorrhages of the face which occur when the blood supply from the neck is occluded by a ligature. These petechial or pinpoint hemorrhages are a sign of ligature strangulation. Also, it shows laceration of the forehead, a bruise of her left forehead, one cutting wound of her right brow, and an abrasion there. It shows a portion of the cutting wound of her left chin. Exhibit No. 8 is the neck with the ligature removed to show that the ligature bit into the neck tissues. In the front it shows one of the stab wounds of the right anterior upper neck, an abrasion below her left chin and a cutting wound of her left chin. It also shows the little hemorrhages of the base of her face. Exhibit No. 9 showing her right face cleaned with the ligature removed shows the placements of the cutting wound of her brow, the abrasion and little hemorrhages, and the ligature marks showing two tracks on the right side of the neck and then coalescing in the back. Exhibit No. 11 was taken - this is a photograph of her right hand - was taken to show a chip on her right fifth fingernail. (pause) It doesn't show very well.

Q The condition of the hand, the right hand, as shown in Exhibit 11, insofar as dried blood on it, was that in

the same condition as the left hand was, also? (pause) Insofar as blood?

A. I'll have to look. (pause) Yes, both hands were bloody.

Q. Okay. Thank you. (witness returns to seat) Dr. Fierro, as part of the regular course of your duties, did you have occasion to take a sample of blood and some other items from Ms. Smith and turn them over to Mary Jane Burton?

A. Yes, sir, I did.

Q. And I show you this paper bag here. I ask if you would open it and see if you recognize what's inside.

A. At the time of my examination, I removed from the dead person samples of all their different kinds of hair, plus combings that I take before I remove the known samples. I then submit those to Ms. Burton who mounts them on slides like this.

Q. The blood sample is not in that box, is it?

A. No, sir.

Q. All right. I've given you the wrong box. Excuse me. Did you have occasion to take a sample of the lady's blood and give it to Ms. Burton?

A. Yes.

Q. Okay.

MR. WELSH: I have no further questions at this

time.

RECROSS EXAMINATION

BY MR. HAULER:

Q Doctor, you've identified a number of these different photographs. Did you take them?

A Yes, sir.

Q And this was the appearance of the body as of the time that it came in to you?

A Yes, sir.

Q Okay. Did you go to the scene of the crime?

A No, sir.

Q Okay. How far after the time of death did you receive the body? (pause) Approximation of that.

A I received her (pause) November 17th at 9:45 A.M. and the estimated time of death was 11/16/80 at 12:30 P.M. (pause) That is (pause) 12:30 P.M. to 12:30 P.M., that's 24 (pause) -- 27 and a half hours.

Q What changes occur in the body during that time frame?

A Well, the body can lose some of its stiffness or develop some of its stiffness, depending on what condition it was at the time that the person died.

Q What other type of changes occur?

1 A What changes did you have in mind?
2 Q Well, that's what I'm asking you.
3 A Her livor could set, the settling of the blood
4 in her body.
5 Q And what effect would that produce?
6 A None.
7 Q What other type of changes? Visual changes.
8 A To this lady?
9 Q The appearance of the body, yes, ma'am.
10 A No appreciable difference.
11 Q Okay. But you did not see what the body
12 looked like at the scene, did you?
13 A No. (pause) She didn't develop her findings
14 in the interim.
15 MR. HAULER: I'd move that that be stricken as
16 not responsive to any question that I asked this Doc-
17 tor.
18 THE COURT: I don't think it does any harm, Mr.
19 Hauler. I agree with you it's not responsive to the
20 question but (pause) --
21 Q All right, Doctor, the stab wounds were not
22 a cause of death in this case, is that correct?
23 A That is correct.
24 Q And with regard to the manner in which the

stab wounds were inflicted, this is supposition on your part, is that correct?

A. This is the ordinary mechanism.

Q. Well, you did not observe these stab wounds being --

A. No, sir, I was not witness to the event.

MR. HAULER: I have no further questions.

SECOND REDIRECT EXAMINATION

BY MR. WELSH:

Q. Dr. Fierro, I think we've found what I was looking for earlier. This glass tubing, which will be marked as Exhibit 50, I ask you if you recognize that?

A. This is a glass tube which I labeled with the case number and the name of the decedent and which at one time contained blood and which I sent to Mary Jane Burton.

MR. WELSH: Your Honor, we would ask that this sample be marked as Exhibit 50.

THE COURT: Show it to Mr. --

MR. HAULER: May I see it, --

THE COURT: -- Hauler.

MR. HAULER: -- please?

MR. WELSH: That's all the questions I have.

SECOND RECROSS EXAMINATION

BY MR. HAULER:

Q Doctor, are your markings on this exhibit?

A Yes, sir.

Q How did you mark it?

A I marked it with her case number, with her name, and with my initials in my handwriting.

Q Where do your initials appear on here?

MR. WELSH: Maybe if Mr. Hauler would be so kind as to show it to her, she could answer the question.

MR. HAULER: I believe she's already looked at it.

A Right here, "M.F.F."

Q Okay. And after you -- did you draw the sample?

A Yes, sir.

Q And you placed it in the vial?

A Yes, sir.

Q Did you personally deliver this to Ms. Burton?

A I placed it in a locked dumbwaiter, which we use to transport samples to Mary Jane.

Q You did not personally deliver this to her?

A No, sir. We customarily place all our samples in the locked dumbwaiter system.

1 Q. How many individuals have access to that?
2 A. Mary Jane at the other end, and me.
3 Q. No one else has access to it?
4 A. The other doctors who would place samples in
5 there.
6 Q. How many doctors would that make?
7 A. Four.
8 MR. HAULER: I have no further questions.
9 I object to the reception of that.
10 THE COURT: Objection overruled. Next witness.
11
12
13
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16
17 WITNESS STOOD ASIDE.
18
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24

RANDOLPH SMITH, introduced on behalf of the Commonwealth, after being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. WELSH:

Q Please state your name, sir.

A My name is Randolph Smith.

Q Mr. Smith, were you any relation to Wilhelmina Smith?

A Yes, I am.

Q And what relation is that?

A Her brother.

Q How old was your sister?

A Thirty-eight years old.

Q And she lived in Crater Square Apartments in Petersburg?

A Yes.

Q Was she married?

A No, she wasn't.

Q And did she live by herself?

A Right.

1 Q What was her job?
2 A As a librarian.
3 Q How long had she been in that job?
4 A For about 14 years.
5 Q Okay. Mr. Smith, I show you Photograph No. 7.
6 It's been received into evidence and we have to have someone
7 identify the photograph, if you would. I believe you have seen
8 that before, haven't you?
9 A Yes, I have.
10 Q Is that your sister, Wilhelmina Smith?
11 A Yes.
12 Q I show you a photograph that's been marked for
13 identification as Exhibit 13 and ask you is that also a photo-
14 graph of your sister?
15 A Yes, it is.
16 Q Okay.
17 MR. WELSH: Your Honor, we would ask that
18 Exhibit 13 be received into evidence, and I have no
19 further questions.
20 MR. HAULER: Judge, I have no questions of this
21 witness but I must object to the admissibility of
22 Exhibit 13. I can't think of any possible purpose
23 that that has any probative value in this trial.
24 THE COURT: Well, what is it? I can't see it.

MR. WELSH: It's a photograph of the victim without the wounds and the blood and the cuts and all that.

THE COURT: I'll decide on that later. Hold that. Just mark it for identification and hold it until later.

MR. WELSH: Your Honor, may Mr. Smith be excused to remain in the Courtroom?

THE COURT: Certainly. (pause) Wait. Mr. Hauler, did you want to ask him any questions?

MR. HAULER: No, sir, I have no questions of the witness.

WITNESS STOOD ASIDE.

1 MR. HAULER: Your Honor, has the Court excused
2 the pathologist?
3 THE COURT: I think so.
4 MR. WELSH: I asked that she be excused.
5 MR. HAULER: Well, I would think until the
6 Court rules on the admissibility of prosecution Exhibit
7 1, she may have need to take the stand again.
8 THE COURT: What's one? I don't know what
9 that is.
10 MR. HAULER: It's the pathologist's report.
11 MR. WELSH: The Court has reserved ruling on
12 that.
13 THE COURT: On the question of contents. Wheth-
14 er the contents are all pertinent to the same. Why
15 would she have to come back for that?
16 MR. HAULER: Simply because the things she's
17 testified to, as I stated earlier, I think are repeti-
18 tiously set forth in there.
19 THE COURT: Still, we're not required to come
20 back to make the decision on whether it's admissible
21 in addition to her testimony. I don't think that's
22 necessary.
23
24

GARY J. CHANDLER, introduced on behalf of the Commonwealth, after being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. WELSH:

Q. Please state your name and occupation.

A. Gary J. Chandler, Patrol Officer, Petersburg Bureau of Police, Petersburg, Virginia.

Q. Officer Chandler, were you working on Sunday, November 16th of 1980?

A. Yes, sir, I was.

Q. And on that day, did you have occasion to receive a call to go to Crater Square Apartments?

A. Yes, sir, I did.

Q. And approximately what time did you receive the call?

A. Approximately 12:30 in the afternoon.

Q. And how did you receive it?

A. I was in a patrol car. I received it over the radio from Headquarters.

Q. Where were you when the call came out?

1 A. I was on South Crater Road in the vicinity of
2 the apartments.
3 Q. All right. And upon receiving the call, what
4 did you do?
5 A. I was southbound on South Crater Road. I went
6 to the street beyond the blinking light at Claremont. I think
7 it was Jacobs Street. Made a "U" turn, went straight to the
8 apartments to the apartment section in question.
9 Q. All right, and approximately how long did it
10 take you to get there?
11 A. Roughly, 30-40 seconds.
12 Q. Okay. And what did you do when you arrived
13 there?
14 A. I pulled up to the Building 14, got out of the
15 unit, was looking around to see if anybody was in the area, and
16 started up the steps to the second-floor landing.
17 Q. What apartment number were you going to?
18 A. 14-H.
19 Q. Prior to actually arriving at 14-H, were you
20 joined by another officer?
21 A. Yes, sir. A second unit rolled up, Officer
22 Michael Hess.
23 Q. What did you find when you got to the second
24 floor?

A. When we arrived, got to the second floor, we looked around and we found the door to 14-H slightly ajar.

Q. All right. What did you do?

A. We pushed the door open. We had gotten a report of a woman screaming. We pushed the door open and made a quick check of the apartment and found nobody in it. Came back out of the apartment, notified Headquarters. At that point, we were advised to check 14-E.

Q. All right, and did you do that?

A. Yes, sir. We went to Apartment 14-E which is directly across the breezeway from 14-H and started knocking on the door of 14-E.

Q. How many apartments are there on the first floor and on the second floor?

A. There's four apartments on each landing. There's two landings. First floor landing, second-level landing.

Q. Okay. And you say E was across from H?

A. Yes, sir, directly across.

Q. What happened when you knocked on the door to E?

A. We knocked on the door quite a few times, continually rapped on the door, and a female voice finally answered us.

1 Q. And what did she say?

2 A. We knocked on the door and she said, "What do

3 you want? Who are you? What do you want?" We said we were

4 the police. At that point, the voice said, "I'm in the shower.

5 It's going to take a few minutes to get dressed."

6 Q. All right. After that, did you receive infor-

7 mation from some of the people that had gathered there?

8 A. Yes, sir, we did.

9 Q. And after receiving that information, what did

10 you then do?

11 A. We continued to rap on the door until it was

12 opened.

13 Q. All right. And what happened then?

14 A. At that point, when the door was opened, there

15 was a young, black female in the doorway and I went into the

16 room, told her who we were and why we were there. At that

17 point, I noticed blood on a chair directly across the living

18 room from the door area. I (pause) --

19 Q. You recognized the lady that opened the door,

20 didn't you?

21 A. Yes, sir, I knew the lady that opened the door.

22 Q. What's her name?

23 A. Natalie Lawrence.

24 Q. Before we get any farther, just -- at the time

she opened the door, did you hear anything?

A. No, sir.

Q. To indicate whether the door was locked or not?

A. Yes, sir, before the door was opened, I rapped on it, I heard a chain slide which unlocked, a dead-bolt snap, and the door lock unsnap, and then the door handle rattle and then the door opened.

Q. Okay. So now at the point where you have entered the apartment, what did you do then?

A. I posted the officer that was with me - I was also in charge that day - I posted the officer that was with me at the door, informed him to have the young lady sit on the sofa to our left as we went in the apartment, and I saw the blood, realized that there was something wrong, the young lady didn't look injured, so I went straight back through the apartment. I noticed a TV in the back bedroom with blood on it off to the right. I stepped into the back bedroom. To my direct left was a black female lying on the floor with an excessive amount of blood on her and I went over to her, squatted down by her head. I noticed a brown cord-like around her throat with several marks on her throat, cuts. I checked as close as I could without touching her to determine if she was alive or dead. I made the determination that she was possibly dead. I immediately went back to the door and informed the

officer that I was going to radio it in and get the necessary people here. Informed him and another officer to check the apartment over rather quickly, see if there was anyone else in the apartment, and I went out, made the call to Headquarters, got the appropriate personnel in route, went back to the apartment, they informed me that they had gone through the apartment. I then released one officer back on duty, kept the other officer to help me. At that point, I was informed that there was a noise coming from the back. I then made a personal check of the apartment. In the bedroom, the small bedroom prior to the main bedroom, I found a black male underneath the bed and I ordered him out from under the bed, had him crawl out into the hallway where we handcuffed him. And that individual, I asked him his name and that individual was Earl Clanton, Jr.

Q. Is that the same Earl Clanton, Jr. that's in the Courtroom today?

A. Yes, sir, sitting there.

Q. Would you describe what he was wearing when you saw him?

A. I had him come out from under the bed. He was wearing a nylon stocking over his hair. He was wearing a pair of jeans, tennis shoes and socks.

Q. Did he have a shirt?

A. He had a shirt but he was not wearing it. He

had the shirt balled up in his hands. He left that under the bed.

Q Describe the condition of his clothing.

A His clothes were excessively bloody. His torso was bloody, his hands were bloody, the shirt was bloody. He had blood on both tennis shoes and his socks.

Q Other than Ms. Lawrence and Mr. Clanton, was there anyone else in that apartment?

A No, sir. Ex --

Q Ms. Smith was.

A Ms. Smith. There was just those three people.

Q Now, other than Mr. Clanton coming out from under the bed, did you or anyone else touch anything inside that apartment before Sergeant Eilert arrived?

A No, sir, that was the first thing I informed the officer, that we would not touch or move a thing until the crime scene technician arrived. And we made sure that absolutely nothing was moved.

Q Now, how many doors are there into or out of this apartment?

A Only the main door off the landing is the only door into the apartment.

Q Now, did you have occasion to examine the area around and about the door to determine if there was any blood

in that area?

A. Yes, sir, the door is white and the door frame is white and I checked the door, checked the framing to see if there was any blood on the door or on the framing and there was none. It was completely clean.

Q. Commonwealth's Exhibit 3, I ask you was that the lady that was there when you arrived?

A. Yes, sir.

Q. Now, Officer Chandler, did you have occasion to search Earl Clanton at the scene?

A. Yes, sir, once I had him -- brought him out into the hallway, had the other officer handcuff him, I then searched him for any possible weapons on him.

Q. What did you find?

A. In the left front pants pocket, I found a wad of money and I did not count it, I just brought the money out of his pocket.

Q. And what did you do with it?

A. I gave it to Sergeant Eilert who was the Crime Scene Technician in charge. He informed me to put it in a bag and mark it as such. I placed it in a bag.

Q. In what condition was the money?

A. The money was bloody, had quite a bit of blood on it.

1 Q Was it the left front pants pocket?
2 A Left front pants pocket.
3 Q Now, did you have occasion to notice whether or
4 not Mr. Clanton had any injuries or was bleeding from any place?
5 A I checked him over to make sure there was no
6 injury on him, to make sure that everything was all right. He
7 had a few marks on him but no bleeding.
8 Q No bleeding. And where were the marks that
9 you saw?
10 A They was mostly in this area, in the upper
11 torso area.
12 Q Did you have occasion to examine Natalie Law-
13 rence to determine if she had anything on her that appeared to
14 be blood?
15 A Yes, sir, when I first went into the apartment,
16 I noticed the blood and at that point, it's standard procedure
17 to check individuals in an area where there's possible violent
18 crime to make sure that there's no evidence on them. I had Ms.
19 Lawrence sit down, take her shoes off and hand them to me. I
20 checked the shoes, the bottom of the shoes. There was no blood
21 on them. I checked her all over. She was neatly dressed.
22 There was no blood on her.
23 Q Now, subsequently at Headquarters, did you have
24 occasion to take the fingerprints of Earl Clanton?

1 A. Yes, sir. I was the one that placed the orig-
2 inal charge, consequently, I was the one that processed him.
3 I processed him - fingerprint card, photograph.
4 Q. I show you this card which will be marked as
5 Exhibit 53-A and ask you whether you recognize it?
6 A. Yes, sir, this is the card that I took of Earl
7 Clanton's fingerprints. I signed it and dated it and had him
8 sign it, also.
9 Q. Okay. And these are his fingerprints?
10 A. Yes, sir.
11 Q. You took them yourself?
12 A. Yes, sir.
13 MR. WELSH: We would ask that this be received
14 into evidence as Exhibit 53-A.
15 MR. HAULER: (pause) No objection.
16 Q. Officer Chandler, as you drove to Apartment 14,
17 did you see anyone in the vicinity?
18 A. No, sir, I did not see anyone. It's standard
19 policy to check for anybody running from the scene. I was look-
20 ing, I saw no one leaving, no one on the landing.
21 Q. And this is 12:30 in the afternoon?
22 A. Yes, sir.
23 Q. What was the weather that day, do you recall?
24 A. I'm not sure. I think it was cloudy. It was

quite bright. There were some clouds in the sky.

Q It was not raining?

A No, sir.

MR. WELSH: I have no further questions at this time.

CROSS EXAMINATION

BY MR. HAULER:

Q Officer Chandler, when did you actually receive the call? Do you have a time out?

A I checked the log later. It said 12:32. I'm not sure offhand.

Q And you arrived at 12:33, (pause) --

A Somewhere in that --

Q -- 30 to 40 seconds later?

A -- vicinity. (pause) Yes, sir, about 25-30 seconds. Somewhere around that.

Q What kind of a call were you responding to?

A An unknown problem - woman screaming.

Q Do you have any independent knowledge as to when the police department had received that complaint?

A No, sir, I did not.

Q Do you know who received that complaint?

A I would not know personally. I would assume

the dispatcher did.

Q. You've indicated that in addition to having blood on him, Mr. Clanton had some marks on the upper part of his torso. I believe that was your testimony?

A. Yes, sir.

Q. Did you take any photographs?

A. I didn't, no, sir.

Q. Are you aware of photographs of Mr. Clanton having been taken?

A. Yes, sir.

Q. Do you know who took those photographs?

A. Sergeant Eilert.

Q. And what type of marks would these be that you observed?

A. Abrasions. Couple of -- like a scrape mark.

Q. Would they be consistent with a fight? A struggle?

A. Could, yes, sir.

Q. Did you personally search Mr. Clanton?

A. Yes, sir.

Q. Was he not in the hallway for a rather considerable period of time before this occurred?

A. No, sir, as soon as I handcuffed him, I searched him immediately -- or as soon as the officer handcuffed him, I

1 searched him immediately myself.

2 Q. I believe you indicated you had requested that

3 he crawl through the apartment and out into the hallway.

4 A. I had him crawl out from under the bed. It's

5 a very small bedroom, very little space. I then had him crawl

6 out into the hallway where both officers could maneuver.

7 Q. All right, now, when you say "hallway," and

8 help me to understand this, do you mean the hallway outside of

9 the bedroom or the hallway outside of the apartment?

10 A. The hallway outside the bedroom. There is a

11 breeze where a hallway runs from the living room to the back

12 bedroom, runs through the apartment.

13 Q. And that's where you handcuffed him?

14 A. Yes, sir, stopped him at that point.

15 Q. Okay. Do you remember how much money you found

16 on him?

17 A. I didn't count it.

18 Q. All right, now, you had indicated a -- I be-

19 lieve you said a wad of money.

20 A. Yes, sir.

21 Q. Well, what do you characterize as being a wad

22 of money?

23 A. I just reached in and took out a wad. I didn't

24 count the amount, it was just a bundle of money, and turned it

over to the Sergeant.

Q Did you later determine that it was eight dollars?

A I'm not sure. I think he did.

Q That's not a very big wad of money, is it?

MR. WELSH: The question's argumentative.

THE COURT: Comment by the attorney is not appropriate, Mr. Hauler.

Q Okay, now, the clothing that the defendant was wearing, at the time that you had initially asked him to come out from under the bed, the only clothing he had on was trousers?

A Had trousers, tennis shoes, socks, and a nylon stocking on his head.

Q And no shirt?

A No shirt. His shirt - he had it in his hands and when I ordered him out from under the bed, he dropped the shirt on the floor.

Q Were (pause) -- did you observe any noticeable blood stains on his pants?

A Yes, sir.

Q Was there a lot of blood on his pants or was it just spattered?

A There was -- his pants were quite soaked in the

groin area down the thigh, upper thigh area.

Q Okay. That would be in the area of the front pockets?

A Could be, yes, sir.

MR. HAULER: All right. Thank you. No further questions.

MR. WELSH: No further questions at this time.

WITNESS STOOD ASIDE.

M. J. HESS, introduced on behalf of the Commonwealth, after being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. WELSH:

Q. Please state your name and occupation.

A. Officer M. J. Hess, Police Department, Petersburg.

Q. Officer Hess, I direct your attention back to Sunday, November 16th of 1980. Were you working that day?

A. Yes, sir, I was.

Q. And in the afternoon, did you have occasion to go to the Crater Square Apartments?

A. Yes, sir, I did.

Q. Why is it that you went there?

A. I was dispatched on a lady screaming call, unknown problem.

Q. And where were you when you received the call?

A. Holly Farms, Crater and (inaudible)

Q. All right, and what did you do when you received the call?

1 A. I turned south onto Crater, turned my red lights
2 and siren on, and proceeded to Crater Square Apartments.
3 Q. All right, and approximately how long did it
4 take you to arrive there?
5 A. Forty-five seconds.
6 Q. Okay. And as you approached Crater Square
7 Apartments, did you see any people about?
8 A. No, sir, I didn't.
9 Q. Now, what did you do when you arrived?
10 A. I pulled up in front of Apartment 14 and
11 Officer Chandler was already on the second floor. I marked out
12 and then went upstairs with him.
13 Q. All right. And were you going to a particular
14 apartment?
15 A. Yes, sir, 14-H.
16 Q. And did you find anything there?
17 A. When I got to 14-H, the door was slightly
18 ajar so we checked again to make sure that was the apartment
19 we were given, went inside the apartment and there was nobody
20 there. So I then came back outside.
21 Q. And did you subsequently recontact the dis-
22 patcher?
23 A. Yes, sir, on my walkie-talkie, I contacted the
24 dispatcher and notified him if he was sure of that address

1 because there was nobody in the apartment. He then told us to
2 try 14-E.
3 Q And what happened when you tried 14-E?
4 A Officer Chandler went across to 14-E and start-
5 ed knocking on the door and couldn't get any answer at first.
6 After about (pause) it seemed like to me one or two minutes, a
7 voice came out from inside asking, "Who is it?" Officer Chand-
8 ler stated, "Police." The voice then told us, "Wait a minute.
9 I'm in the shower. I've got to get dressed."
10 Q And did you continue to knock?
11 A Yes, sir.
12 Q And who opened the door?
13 A Natalie Mosley Lawrence opened the door.
14 Q And was she dressed when she opened the door?
15 A Yes, sir, she was.
16 Q And did you hear anything at the time she
17 opened the door to indicate whether or not the door was locked?
18 A Yes, sir, she -- I heard a sliding lock chain
19 come off and a dead-bolt open and then the door unlocked.
20 Q All right. And what did you do when you
21 entered?
22 A As I -- Officer Chandler was the first one in
23 and he went to the back bedroom. I stood by the front door
24 with Ms. Lawrence until he came back out of the bedroom and

1 advised me to protect the scene as he went to advise the people
2 that he had to advise.
3 Q Okay. And did you have occasion to notice
4 whether Natalie Lawrence had anything on her that appeared to
5 be blood?
6 A I did know. She had nothing on her at all.
7 She was very calm and no signs of any kind of blood at all.
8 Q Now, did you have occasion to see the defendant,
9 Earl Clanton, that day?
10 A Yes, sir, I did.
11 Q Where was he when you first saw him?
12 A When I first saw him, I heard Officer Chandler
13 state, "Come out from underneath the bed." I then walked down
14 the hallway and I saw the defendant climbing out from under-
15 neath the bed and Officer Chandler bringing him out into the
16 hallway.
17 Q Did you notice anything about his clothing?
18 A He had no shirt on. He was covered with blood
19 from his hands and his chest, and his pants were soaked.
20 Q Other than Mr. Clanton coming out from under
21 the bed, was there anything touched or disturbed at the scene
22 before Sergeant Eilert arrived?
23 A No, sir, there was not.
24 MR. WELSH: Okay. I have no further questions

at this time.

CROSS EXAMINATION

BY MR. HAULER:

Q Officer Hess, was there a great deal of blood throughout the apartment?

A Yes, sir, there was.

Q Did you walk through the apartment?

A I walked down the hall to that back bedroom but didn't go any farther than there.

Q While you were there, did you have occasion to get any blood on yourself?

A No, sir, I did not.

Q Okay. (pause) Did you observe Mr. Clanton being searched?

A Yes, sir, I did.

Q Who performed that?

A Officer Chandler did.

Q Were you immediately there in the area or --

A Yes, sir. When he was laying -- when defendant was laying in the hallway, I asked Officer Chandler, I said, "Have you searched him yet?" And he said, "Not yet." At that point, he searched him as I was standing there.

Q Okay. Did Mr. Clanton have any blood stains

on his trousers?

A. Yes, sir, he did.

Q. In what area, sir?

A. It was down in the groin area and on his -- like by his stomach where his shirt would have been tucked in.

Q. Was there any in the area near the pockets? The front part of the pants?

A. Yes, sir, there was.

MR. HAULER: No further questions.

MR. WELSH: No further questions at this time.

WITNESS STOOD ASIDE.

NOTE: At this time, the Court recessed. Upon the Court reconvening, Mr. Welsh spoke as follows:

MR. WELSH: Your Honor, at this point, I think it will make things a lot easier, I have some 40 exhibits to introduce through Sergeant Eilert, Mr. Parrish and I have attached tags to them giving them each a number, and I'd like to go through them and if there are any objections, take care of them all at once, if we can.

THE COURT: All right.

STEVE EILERT, introduced on behalf of the Commonwealth, after being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. WELSH:

Q Sergeant Eilert, I'll start with the photographs that are in front of you. They've been marked Exhibits 14 through 33. I ask you first if they are photographs that you took?

A (pause to examine) Yes, sir, they are.

1 MR. WELSH: Your Honor, at this point, for the
2 purposes of what we're doing now, I'll move to intro-
3 duce these into evidence with the understanding that
4 I'll have to do it again in front of the jury. We do
5 move the introduction of Exhibits 14 through 33.
6 THE COURT: Has Mr. Hauler had a chance to see
7 all of them?
8 MR. WELSH: Yes.
9 MR. HAULER: I've just seen them now, Your
10 Honor. Mr. Welsh showed me these the other day. The
11 only objection that the defense would raise would be to
12 the admissibility of Exhibits 20, 21 and 22.
13 THE COURT: Let me see those then. (pause)
14 What's the purpose of all three of them, Mr. Welsh?
15 MR. WELSH: Your Honor, it's the -- the -- it's
16 very important in this case as to the location of other
17 items - of her pocketbook in relation to the location
18 of her body since we're trying to prove murder in the
19 commission of a robbery, and the Commonwealth feels
20 that each of the angles involved are appropriate to
21 show. One photograph is no worse or no better than the
22 other. And if they see one, I don't think they're
23 prejudiced by seeing the other two. So I think we're
24 helped by the angles.

1 THE COURT: Well, that may or may not be true,
2 but I think all three show the location of the purse.
3 I think one will do and if you want to select one of
4 them, I'll allow one of those. (pause) I think all
5 three show the relation of the body and the purse. I
6 think you're entitled to show that but not three times.
7 (pause)
8 MR. WELSH: Twenty-one would (pause) -- if I
9 need to choose between three, 21 would encompass more
10 things (pause) --
11 THE COURT: All right.
12 MR. WELSH: -- in that photograph.
13 MR. MAULER: Judge, I'd also voice the same
14 objection to 19. I'm sorry. I went through them too
15 rapidly. It's basically another --
16 MR. WELSH: Well, (pause) Your Honor, the
17 photo -- there are different photos showing different --
18 THE COURT: Let's keep the one in there that
19 we're not going to (pause) -- . All right, what does
20 this portray that the other doesn't?
21 MR. WELSH: Your Honor, the other photos show
22 smaller sections of the room and that has helped to
23 show the relationship of the whole different -- it
24 shows almost three complete sides of the room in that

one photo to help to explain where the relation of some of these other items are --

THE COURT: What would you rather have, that one or this one? It's the same thing. I think the relation of the pocketbook and everything else, unless it's some other thing in there that needs to be shown. I think one of the photographs will do.

MR. WELSH: Your Honor, I think the envelope, the bank envelope, shown in that photograph is important.

THE COURT: Where is that?

MR. WELSH: The (pause) --

THE COURT: It's not shown in the other one?

MR. WELSH: You really can't (pause) --

THE COURT: Uh huh.

MR. WELSH: -- you really can't see it.

THE COURT: Well, why won't this one do? What's in that one that's not shown in this one?

MR. WELSH: Okay.

THE COURT: All right, anything else?

MR. WELSH: Yes, sir, we might as well go on to these others.

Q Exhibit 34 which is up on the board, Sergeant Eilert, what is that?

1 A. That's a blow-up of a sketch I did at the
2 scene on the 16th of November.
3 Q. To be sure there's no misunderstanding, other
4 than the bedroom, is the rest of that to scale?
5 A. No, sir, none of it is really to scale, it's
6 all a rough sketch with the measurements placed up on there.
7 Q. And it's to show the interrelationship of the
8 rooms to the hallway, and you intend to mark on there where
9 each of these other items were picked up from, is that right?
10 A. Yes, sir, I did.
11 MR. WELSH: Now, the purpose of Exhibit 34
12 would be so that Sergeant Eilert can demonstrate the
13 area in the apartment from which he picked up each of
14 these other items that we have.
15 THE COURT: All right. The exact measurements
16 are not essential then?
17 MR. WELSH: No, sir. We do not intend to rely
18 on the exact measurements at all.
19 THE COURT: All right.
20 MR. HAULER: Judge, he's shown the same thing
21 with the photographs. I don't know how cumulative the
22 evidence has to be as to --
23 THE COURT: There, again, Mr. Hauler, if you
24 want him to have the other photographs to show more of

the room in relation, I'll give them. I thought your objection was to the (pause) --

MR. HAULER: Yes, sir.

THE COURT: -- body and so forth.

MR. HAULER: Your Honor, if it please the Court, what I'm suggesting to Your Honor is the fact that --

THE COURT: I don't think the jury, Mr. Hauler, can see the total layout of the apartment as easily as they can from that drawing and that has none of the other things that you're objecting to.

MR. HAULER: Well, my only point being that the other photographs that the Court -- I don't believe Your Honor has viewed show these same things, the relationships of the items --

THE COURT: Well, let me see them a minute. (pause) I don't see how any one photograph could show the relation of all the rooms -- the relationship of all the rooms. (pause to examine photographs) Mr. Welsh, unless there's some connection that you want to establish between one room and another that's essential to the Commonwealth's case that can't be shown in the others, I don't really see the necessity of the diagram. I personally would concede how it would make it easier

1 for the jury but --
2 MR. WELSH: Well, that's the whole purpose, --
3 THE COURT: I understand that.
4 MR. WELSH: -- so that the jury can understand
5 exactly what the Sergeant is telling them.
6 THE COURT: Right. I can't see where it's any
7 harm to the defense unless Mr. Hauler can tell me how
8 it is. You're not going to offer it as an exhibit, but
9 just a (pause) --
10 MR. WELSH: Just for demonstration as he's
11 describing these items to be shown here.
12 THE COURT: The problem with something like
13 that, the witnesses usually allude to the drawing too
14 much and the record doesn't pick up exactly what
15 they're saying is the problem I've found with it.
16 I'll allow you to use if you make sure the witnesses
17 describe enough as they go along to show exactly what
18 they're doing. Mr. Hauler, I really don't see how
19 it's prejudicial to you at all and I think it may aid
20 the jury.
21 MR. WELSH: Your Honor, we have marked a whole
22 series of other items of Exhibits 35 through 52 which
23 are the items of physical evidence that Sergeant Eilert
24 recovered, individual items he recovered from the

scene. All of those items between Exhibit Nos. 35 and 51 were submitted to Mary Jane Burton whose testimony will follow concerning the stains and they've been marked, they're still in the bag, and I think if there are any objections, it might be appropriate to take those at this time.

MR. HAULER: Judge, the only objection that I would voice to those is that they are many of the same items that are depicted in the photographs. I just don't see why the Commonwealth needs to have the double emphasis with the photographs and the items. I find nothing objectionable, per se, other than the cumulativeness of the evidence.

MR. WELSH: I've never heard of that being a reason for not admitting an item into evidence, Your Honor. I never have.

THE COURT: Mr. Hauler, I don't see any problem with it. I know what you're saying. It may be of value in examining a particular item and since the person who made the analysis - blood and fiber and so forth - had to rely on those items, I think they certainly should be present in Court and should be introduced. On the photographs, there's another person to depict visually for the jury what's involved. I'll

1 overrule your objection at this time.

2 MR. WELSH: Exhibits 53 and 54 are exhibits
3 prepared by Sergeant Eilert relating to his testimony
4 as to the fingerprint comparison. Exhibit 53 has five
5 photographs mounted on it, one showing an overall view
6 of the scene, the second showing a close-up of where
7 the checkbook is, the third showing the inside of the
8 checkbook where the print was, and the fourth and
9 fifth showing the color photo of the fingerprint along
10 with a same sized photo of the inked print. Then fol-
11 lowing Exhibit 54 is the black-and-white blow-up show-
12 ing the actual ten points of comparison. And we would
13 offer these, again, to illustrate the testimony Serge-
14 ant Eilert has as to where the print came from and how
15 he compares it to the print of Mr. Clanton.

16 THE COURT: All right. Anything else you want
17 to cover?

18 MR. WELSH: The only other thing would be Item
19 56 which is the pocketbook which was shown in the
20 photographs contained -- that was not sent to the Lab
21 but we have that here, also, and want to introduce that
22 into evidence.

23 THE COURT: All right. (pause) All right, Mr.
24 Parker, bring the jury back.

NOTE: At this time, the jury returned to the Courtroom. Mr. Welsh continued on with direct examination of Sergeant Eilert, as follows:

Q Please state your name and occupation.

A Detective Sergeant Steve Eilert, Petersburg Bureau of Police.

Q What is your job with the Police Department?

A I'm a Crime Scene Technician.

Q And tell us briefly what that means.

A We respond to major scenes, crime scenes, to collect physical evidence, to photograph, sketch, and what evidence we collect to properly package it and transport it to that laboratory which can give us an analysis on that particular evidence and keep custody of this property until it comes up for Court.

1 Q How long have you been a police officer?
2 A About ten years.
3 Q How long have you been doing this job as crime
4 scene technician?
5 A About eight years.
6 Q Sergeant Eilert, on Sunday, November 16th of
7 last year, did you have occasion to go to Crater Square Apart-
8 ments?
9 A Yes, sir, I did.
10 Q Is that located in the City of Petersburg?
11 A Yes, sir, it is.
12 Q And, specifically, did you go to Apartment
13 14-E?
14 A Yes, sir, I did.
15 Q All right, I show you a photograph that's been
16 marked for identification and ask you - they're numbered be-
17 tween 14 and 33 - I ask you whether you recognize those photo-
18 graphs?
19 A (pause to examine) Yes, sir.
20 Q And who took those photographs?
21 A I took these myself.
22 Q Do they truly and accurately depict the scene
23 as it existed when you photographed it?
24 A Yes, sir, the best way you can into a two-

1 dimensional object.

2 Q. All right. If you would come down, --

3 MR. WELSH: Your Honor, we offer those into

4 evidence.

5 Q. If you'd come down in front of the jury, please.

6 Referring to the exhibit number, would you please tell us a

7 little bit about each of the photographs?

8 A. Yes, sir, exhibit marked No. 14 is a photo-

9 graph of the front door showing a dead-bolt lock and the regular

10 knob lock which was on the door of the apartment.

11 Q. Does that show the inside or the outside of the

12 door?

13 A. This is the outside of the door.

14 Q. Okay.

15 A. Exhibit No. 15 is a photograph which was taken

16 just inside the doorway. There's only one door to the apart-

17 ment, it's the front door. This is taken just inside the door-

18 way showing the kitchen table and a Welch's grape drink on the

19 table, a package of pork chops, a set of keys, a Safeway sales

20 receipt, and one of those little Bingo coupons that the Safeway

21 was giving out.

22 Q. As you come in the door of the apartment, in

23 which direction is that table shown in Exhibit 15?

24 A. It's on the right.

1 Q. All right.
2 A. Exhibit marked No. 16 is taken from just a
3 little bit to the left of that table looking down the hallway
4 of the apartment to the back bedroom.
5 Q. And the bedroom in which Ms. Smith was found,
6 is -- which bedroom is shown in that photograph?
7 A. It's the very back bedroom. You can see the
8 reflection from the flash in the mirror at the very back.
9 (pause) Exhibit No. 16 -- or excuse me, Exhibit No. 17 is also
10 shown in Exhibit No. 16 which is a chair. It's sitting on the
11 left of the hallway there showing a red substance on the side
12 of the chair. Exhibit No. 18 is taken, this is the first bed-
13 room or the first room when you walk down the hallway to your
14 left, taken just inside that bedroom showing the underneath of
15 a bed with a white garment laying underneath the bed.
16 Q. If you would, while you're holding that, turn
17 that photograph around and indicate that garment you've re-
18 ferred to so the jurors can see it.
19 A. All right. This being the bed here, this
20 white garment which is laying, looks like it's right above the
21 leg here underneath the bed, the left front leg of the bed.
22 Q. When you say "garment," what type?
23 A. It was a sweatshirt, a gym-type shirt.
24 Okay, Exhibit No. 21 is taken inside the master bedroom which

is at the very end of the hallway. This is taken from the, would be the west corner of the room shooting towards -- back towards the middle of the room. Okay, Exhibit No. 23 is photograph taken at the foot of the victim's bed showing a brown leather coat and a knife with some red substance on it. Commonwealth's Exhibit No. 24 is taken just a little bit out further from that brown coat showing a set of earrings and a button which were laying on the rug. Exhibit No. 25 is taken at -- towards the feet of the victim towards the west wall showing a telephone off the hook and the little yellow plastic table that it was sitting on in disarray with books and other items laying on the floor. Exhibit No. 26 is also taken at the end of the bed which is up against the wall in the bedroom showing some red substance on the wall. Exhibit No. 27 is taken inside the victim's bedroom just inside the doorway showing a turned-over chair, a collapsed TV tray, an orange placemat and a blue checkbook. Okay, Item No. 28 is taken from inside the victim's bedroom towards the doorway which if you're walking down the hall and walked in the door, it's the right-hand side. Down there towards the baseboard is a red streak which was made by red substance and some other red splotches on the wall. Exhibit No. 29 is taken -- if you just walked in the doorway and turned to your left to the bedroom showing some red-stained palmprints on the wall, a TV set laying on the picture tube

with red substance all over that, a jewelry box in the middle of a counter open, and items also laying across the top of the dresser. Exhibit No. 30 is also taken by the doorway to the bedroom there also showing some more red splots on the wall. Exhibit No. 31 is a close-up of that TV set that you see laying on its picture tube in the bedroom. Exhibit No. 32 is taken in the closet of the victim in the bedroom, the victim's bedroom, showing clothes with some red substance on the garments just inside the closet door.

Q As you enter the bedroom, where would the closet be?

A If you walked in the front of the bedroom, you turn to your right, it's in the right-hand corner of the bedroom. Okay, Exhibit No. 33 is taken also inside the bedroom. This is if you walked in the bedroom door, the frame of the doorway, it's right just above the metal, the middle hinge of the bedroom door is red substance on the wall.

(very long pause)

Q Sergeant Eilert, this sketch has been marked as Exhibit 34. Would you tell us what that is, please?

A Yes, sir. This is a blow-up of the sketch I did at the scene showing what we call a bird's-eye view of what the apartment looked like if you were looking down from the ceiling of the apartment down into the apartment.

1 Q All right. And this drawing is not to scale?
2 A No, sir, it's not.
3 Q All right.
4 A It's just a rough sketch.
5 Q Now, if you would, indicate for us on there
6 where the front door is to the apartment.
7 A Okay, this -- at the very bottom of this
8 sketch, this is the front door, enters into the apartment.
9 I'll write "front door" on here for you. (pause) That's the
10 only entrance and exit to the apartment other than windows but
11 this particular apartment is on the second floor.
12 Q Now, where was Ms. Smith's body when you
13 arrived?
14 A Okay, if you come all the way down the hallway
15 here and turn to your left, come all the way to the bed, her
16 body was laying parallel to the bed. I'll go ahead and indi-
17 cate a rough sketch of approximately where the victim was
18 laying. (pause) Okay. She was approximately six foot,
19 seven inches from the north wall and approximately eight foot,
20 ten inches from the east wall to the center. That's where
21 she was laying, parallel to her bed in her bedroom.
22 Q Now, did you have occasion to recover other
23 items of physical evidence at the scene?
24 A Yes, sir, I did.

1 Q. All right. If we would start with an envelope
2 that's been marked Exhibit 35, would you tell us what that is?
3 A. Yes, sir, this is scrapings of dried blood
4 taken from the top of the TV table, the little TV tray, that
5 was laying right here in the doorway to the bedroom.
6 Q. Can you put a rectangle on the drawing and mark
7 it "TV tray?"
8 A. Right.
9 Q. And Exhibit 36?
10 A. Okay, Exhibit 36 is swabs from the blood which
11 appeared to be palmprints on the bedroom wall and they were
12 located on this wall over here. (pause)
13 Q. Okay. Put a -- mark Exhibit 36 on there so
14 we'll know what it is. (pause)
15 A. I've marked it on there as Exhibit No. 36.
16 Q. Exhibit No. 37, if you would, open that and
17 tell us what that is.
18 A. Exhibit 37 is a wooden spoon, those decorated
19 type that you can hang in your house. It's approximately two
20 foot long. It was broken when I found it. It was found laying
21 on the sofa in the living room. (pause) This is what was
22 found and that was laying right over here on this last cushion
23 of the sofa in the living room.
24 Q. All right. And then Exhibit 38, I believe, is

1 related to 37, is that correct?

2 A. Yes, sir, it is. It's the remaining parts of

3 the spoon. These were recovered laying underneath this cushion

4 which the handle -- or the handle was on top of.

5 Q. Exhibit 39?

6 A. This is a butcher knife which we recovered lay-

7 ing here at the foot of Ms. Smith's bed. It was covered in a

8 red substance which was laying -- in the photographs laying in

9 the coat.

10 THE COURT: Mr. Welsh, I'd comment that the

11 problem I mentioned about using the drawing is that the

12 witness relies on that totally and doesn't refer to the

13 locations may be a problem on the record.

14 Q. Now, Exhibit No. 40?

15 A. These were -- this was money which was taken

16 from Mr. Clanton's left front pocket of his clothing which he

17 was wearing.

18 Q. Who did you receive that from?

19 A. Officer Chandler.

20 Q. And what did you do with it after you received

21 it?

22 A. He took it out upon me at the scene and gave it

23 to me and I in turn placed it in this envelope. It was a five-

24 dollar bill and three one-dollar bills and they were covered

with -- the five-dollar bill was on the outside folded in half and they were covered with a red substance. (pause) And the red substance was on the five-dollar bill.

Q. And what was the condition of that substance when you saw that money?

A. It was still wet.

Q. Exhibit 41?

A. Forty-one is a gray, black and white gym shirt which was recovered under the bed in the first bedroom to the left when you walked into the apartment.

Q. And would you mark for us then on the drawing where you found Exhibit 41?

A. Yes, sir, that was (long pause) --

Q. You've noted under the bed in the first bedroom on the left as you go down the hall, is that correct?

A. Yes, sir.

Q. Forty-two.

A. This is a stainless steel kitchen knife which was found on the drainboard in the kitchen. It had red substance on it. It's on the very top of the knife where it joins -- where the knife blade joins the handle.

Q. And, if you would, mark where you found Exhibit 42 in the kitchen.

A. This being the sink, there is one of those

Kitchen-Aid drain-type trays. It was laying right on the back of that.

Q And the kitchen, of course, being the first separated room on the right-hand side of the apartment, is that right?

A Yes, sir.

Q Forty-three.

A This is a section of black electrical cord which had been broken away -- looked like it had been torn from an item and that was found laying just above the victim's head.

Q Exhibit 43 then, the cord, if you would, mark that also in the bedroom. (pause) Exhibit 44?

A Forty-four is the television which was covered with red substance laying on the picture tube in the bedroom. This is the back of the TV set and the cord on this was broken, the appliance cord.

Q Would you go ahead and -- I'll hold it. Would you go ahead and open that cord up so the jury can see that?

A Okay. (pause) Which was also covered with a red substance.

Q Would you go ahead and mark in the bedroom where Exhibit 44 was found?

A It was back here by the dresser. If you walked in the right -- if you walked in the bedroom door, it would be

just to your right.

Q Exhibit 45?

A These are the pants of Earl Clanton which were taken from him at Headquarters and given to me by Officer Chandler. These sections of the pants which are cut out as done by the State Laboratory for running the tests on them.

Q The pants were whole --

A Yes, sir.

Q -- when you received them, right? (pause) Exhibit 46?

A This was the stocking which Mr. Clanton had on his head which was also taken by Officer Chandler and given to me by Officer Chandler - a black stocking which had been torn and tied at the top to use as a sort of a cap.

Q And where was that when you first saw it?

A That was on Mr. Clanton when I was at the scene.

Q And Exhibits 47 and 48?

A These are Mr. Clanton's left and right shoes which were also taken from him. These were also covered with a red substance, not just on the sides but also on the bottoms on them.

Q Exhibit 49?

A This was a blue check book which was laying

1 inside the bedroom just inside the door by the TV tray. This
2 also had some red substance on it.
3 Q. Would you go ahead and mark Exhibit 49 then on
4 the (pause) -- . Exhibit 51?
5 A. Exhibit No. 51 are blood samples and head-hair
6 samples -- or hair samples of Mr. Clanton which I personally
7 took and took to the State Lab for analysis.
8 Q. I don't think we need to open that. That is a
9 vial of his blood in there?
10 A. Yes, sir.
11 Q. Okay. Thank you. Exhibit 52, would you go
12 ahead and remove the Safeway receipt and the Bingo on that and
13 we'll mark it as Exhibit 52? (pause)
14 A. This is the Sears sales receipt and a Bingo
15 coupon that you get from the Safeway Store.
16 Q. You said Sears sales --
17 A. Excuse me. Safeway sales receipt and Bingo
18 coupon.
19 Q. Now, the items that are noted, the prices of
20 the items noted on there, did you check the items on the table
21 to determine if they were the same?
22 A. Yes, sir, I did. The meat, which was the pork
23 chops, was $2.94, and the groceries it had listed was the
24 grape -- Welch's grape drink, which is $1.79. It's dated the

1 -- the sales receipt is dated the 16th of November.
2 Q And Exhibit 56?
3 A Exhibit No. 56 is the victim's tan pocketbook
4 which was laying right beside her body in the back bedroom.
5 Which also has some red substance on the sides of it and on the
6 inside.
7 Q Would you mark for us the location of No. 56,
8 the pocketbook?
9 A The pocketbook was laying near the body.
10 Q Fifty-six. And you've put in a square at the
11 left shoulder of the body, the drawing of the body, is that
12 right?
13 A Yes, sir.
14 Q Would you also then mark the point in the
15 front where you found the Safeway sales receipt?
16 A The Safeway sales receipt was on the floor by
17 the chair as soon as you come in the front door on the right-
18 hand side. And also the Bingo ticket was laying just beside
19 that.
20 Q And the items that you matched the prices to,
21 where were they?
22 A They were sitting on the kitchen table. (pause)
23 Q Sergeant Eilert, were there any telephones in
24 this apartment?

A. Yes, sir, there were two. One was located on this wall in the kitchen, (pause) this being a refrigerator with a divider and counter top, only one way into the kitchen which you'd have to go around this table to get into the kitchen. The other phone being all the way down the hall in the victim's bedroom all the way over here on the nightstand, a little yellow stand, and that phone was off the hook when I was there.

Q. It's the same phone that was shown in one of the photographs that you earlier identified?

A. Yes, sir.

Q. Sergeant Eilert, Exhibit 49, the checkbook, would you tell us what you did with that?

A. Yes, sir. I collected all this evidence to take to my office to chemically treat to attempt to lift latents which must be on it. On that same day on the 16th, I sprayed them with a chemical known as Ninhydrin which is a chemical which reacts to amino acids which are put out by your fingers, the sweat glands in your fingers. In turn, this Ninhydrin causes this amino acid to turn a purple color which will bring up the latents. It also will turn -- any other amino acids will show up, too. In this particular case, I sprayed it and I got very few latents to come up, but on further examination of the checkbook itself, this has a top-part

1 receipt and the checks are on the bottom. You tear the checks
2 off. While I was flipping through the receipts trying to see
3 if I could see anything of evidentiary value, I flipped it open
4 to Check No. 788 which is the next check to be written and on
5 this I found two prints which were later - blood prints -
6 which I later made a comparison from.
7 Q Now, the -- you just testified that you made a
8 comparison from fingerprints, first off tell me how long have
9 you been involved in making fingerprint comparisons?
10 A For approximately seven years.
11 Q And what training did you receive to make
12 fingerprint comparisons?
13 A I received from - both basic and advanced
14 fingerprint training - from the F.B.I. I went to Crime Scene
15 Technicians Course down in St. Petersburg, Florida in which
16 fingerprinting comparisons identification was taught. I also
17 went to the State Bureau of Forensic Science Course at the
18 State Lab up in Richmond and received extensive training in
19 fingerprinting.
20 Q Have you been, in fact, in charge of finger-
21 printing for the Petersburg Police Department?
22 A Yes, sir, I have.
23 Q And for how long have you been in charge of
24 that?

1 A. About six years.

2 Q. Okay. And you have testified previously as to
3 fingerprint comparisons in this and other courts, have you not?

4 A. Yes, sir, I have.

5 MR. WELSH: Your Honor, Sergeant Eilert, of
6 course, has been offered before as an expert witness.

7 THE COURT: Any questions, Mr. Hauler?

8 MR. HAULER: No, sir.

9 Q. Sergeant Eilert, were you able to make a com-
10 parison of either of those fingerprints with the known finger-
11 print of any person?

12 A. Yes, sir, I was. It was enough detail in this
13 print which is on the left to make a comparison.

14 Q. And with whose fingerprint did you compare it?

15 A. I made a comparison with the rolled ink
16 impressions of Earl Clanton's left middle finger.

17 Q. All right, now, when you say "the rolled ink
18 impressions," I show you Commonwealth's Exhibit 53-A and ask
19 you if you recognize that?

20 A. Yes, sir, this is a fingerprint card taken by
21 Officer Chandler of Earl Clanton on the 16th of November.

22 Q. And is it your testimony you are able to com-
23 pare this print with one of these prints, is that right?

24 A. Yes, sir.

1 Q. With which print?

2 A. The number eight finger which is the left

3 middle finger.

4 Q. Okay. Now, you prepared two exhibits to dem-

5 onstrate this fingerprint evidence, is that correct?

6 A. Yes, sir, I have.

7 Q. All right. Exhibit No. 53 contains five photo-

8 graphs. Starting at the left, tell us how these relate to the

9 fingerprint.

10 A. Yes, sir. The top left photograph shows an

11 overall picture of the scene in the bedroom. Almost to the

12 center and to the right of the photograph where the TV tray is,

13 the blue checkbook is laying right there next to it. And the

14 second picture is a close-up view showing that checkbook next

15 to the TV tray. Your third photograph is a photographic copy

16 of the checkbook showing the finger -- ah, the blood prints on

17 the check. And the Numbers 4 and 5 photographs are the finger-

18 prints themselves, No. 4 being a photographic copy of the

19 rolled ink impression which I made the comparison from, that

20 known prints of Earl Clanton to the unknown prints -- blood

21 prints which were located on the check.

22 Q. You have indicated ten points on each of those

23 bottom two photographs. Would you please tell the jury what

24 the purpose of that is.

A. Yes, sir. No two people in the world have the same fingerprints. They might have the same pattern or look similar but there's always dif -- you have differences which are called edge -- edge ridge endings where a ridge goes up and stops with the little lines in your finger, and you have other ones which are bifurcations where two ridges will run together. You have what they call islands, which is a ridge that has an opening in the middle, looks like an island, and you have other points like that which you use for comparison and on no two people will everything be exactly alike. So what I did was on these fingerprints, I compared known ridges and ending ridges and bifurcations with those on your unknown print. And what you do is you have to mark one, say, for instance, Point No. 1 is an ending ridge which ends up in about the two -- in about the 11:00 o'clock position, and Point No. 2 is another ending ridge which goes down to about the 4:00 o'clock position which was side by side on each other, and over here on the unknown print or the print from the checkbook you have the ending ridge which comes up in about the 11:00 o'clock position and one of them is the ending ridge down in the 4:00 o'clock position of -- of the (pause) -- on the latent. Okay, on No. 4, you have a bifurcation which is four ridges over from Point No. 3, bifurcation in a downward position, and also you have the same four ridges over, the bifurcation in a downward posi-

1 tion on the latent print.

2 Q. I would take it then that your testimony would

3 be that each of the corresponding numbers, the points match,

4 is that correct?

5 A. Yes, sir.

6 Q. Each of the number tens, nines, eights, etc.,

7 they each match on each print?

8 A. Yes, sir, they do.

9 Q. Now, is there a set number of points that you

10 have to have to match before you can say that a certain finger-

11 print belongs to a certain person?

12 A. No, there's no set number of points to say

13 that that's a particular person. It's whatever the examiner

14 feels in his own mind he's comfortable with that beyond (pause)

15 -- no other -- that no other person could have left that print.

16 Q. All right. And how does the Number 10 relate

17 to the number of points that you customarily find when you

18 determine that a fingerprint belongs to a certain person?

19 A. It's a good one to be in. It's more than your

20 average courses. I've only charted approximately ten prints

21 -- ten points on there. There are a couple of more but we only

22 chart the ones that are more visible to, you know, people that

23 could easily see it in a court.

24 Q. All right. And Exhibit 54, I believe, further

1 demonstrates those bottom two photographs on Exhibit 53, is
2 that right?
3 A. Yes, sir, it's a blow-up of the same two prints.
4 Q. And is this the type of work exhibit from which
5 you would actually make your comparison?
6 A. Yes, sir, it is.
7 Q. Now, Sergeant Eilert, did you check the other
8 items that were recovered at the scene to determine if there
9 were any other prints that could be compared to another per-
10 son's prints?
11 A. Yes, sir, I did.
12 Q. And were there any other prints that could be
13 compared that matched the prints of Mr. Clanton?
14 A. No, sir, none that matched Mr. Clanton.
15 Q. Now, did you check through the contents espec-
16 ially in the area surrounding the victim to determine if there
17 was any money there?
18 A. Yes, sir, I did.
19 Q. Did you find any money?
20 A. No, sir, I didn't.
21 Q. And what did you check?
22 A. I checked the contents of her pocketbook, her
23 driver's license which had a little slot in the back; it didn't
24 have any money in there. We checked around. The items that

were dropped off, there was a check or a bank envelope which was laying by the body. That was empty. I couldn't find any money at all in the pocketbook or any of its contents.

Q. Did you find any money anywhere in the apartment?

A. There was only a few coins up on the dresser in the bedroom.

MR. WELSH: I have no further questions at this time.

CROSS EXAMINATION

BY MR. HAULER:

Q. Sergeant Eilert, with regard to Commonwealth's Exhibit 49, did you find a check register?

A. A check register?

Q. Right.

A. What do you mean by check register, Mr. Hauler?

Q. Was there another piece of paper with this?

A. No, sir, that's the top -- the -- that -- that's your register right there, those receipts, those top things, if that's what you're referring to.

Q. Okay. What was the (pause) -- what was the total of the receipt, the Safeway receipt, do you recall that?

EXTRANEOUS FINGER PRINT

A. Ah, (pause) four dollars and something. I can't recall right offhand.

Q. Okay. Do you have any idea from that receipt how it was paid for? Would you be in a position to know that?

A. No, sir, I don't.

Q. You've indicated that there were no other prints that you found that matched Mr. Clanton's, is that correct, except this checkbook?

A. That's correct.

Q. Were there any other prints found that you could not identify?

A. There was one other print that I lifted that I couldn't identify.

Q. Was it a good print?

A. No, sir, not really. It was a smudge which was lifted off of a metal box which would be like a safety deposit box or a strong box which you would keep your insurance policies and things like that in.

Q. And that was (pause) --

A. I -- there wasn't anything I could compare it with, no, sir.

Q. Okay. Your inability to compare it was based on the fact that you didn't have an exemplar or a standard to compare it to, is that right?

A. That's correct. It would be hard to say without having an ink print to determine, you know, if I could make a comparison off of it.

Q. Okay. And was that the only other extraneous print that you found?

A. Yes, sir.

Q. Did you secure that particular safe deposit box or metal box?

A. No, sir, I didn't.

Q. Now, you've indicated that you've been involved in fingerprint analysis for (pause) I believe you said seven years, is that correct?

A. Yes, sir.

Q. How many times have you testified about prints in the seven years?

A. (pause) Quite a few times. I really couldn't tell you. It would be more than 20, more than 30, I guess. It's hard to say.

Q. Have you ever made a mistake?

A. No, sir, I wouldn't be in court if I made a mistake.

Q. You've never made a mistake at all with any analysis?

A. Not to my knowledge, no, sir.

1 Q. You've also given some testimony with regard to
2 these bills. I believe it's Commonwealth's Exhibit No. 40, the
3 currency. Did you receive that from Sergeant Chandler?
4 A. Yes, sir, Officer Chandler was there. He was
5 still at the scene when I was there and I secured them from him
6 at the scene.
7 Q. Were you there when he removed the money from
8 the defendant?
9 A. I didn't physically see him remove it but they
10 were there and I was working on something else at the time.
11 Q. All right. Now, how soon after the fact did
12 you arrive on the scene?
13 A. I guess I got there about 12:45.
14 Q. And did you do your processing at that time?
15 A. First of all, when we come to a scene, we do a
16 walk-through to determine what we have and what we need to do,
17 go back and get our equipment which we're going to need to do
18 it, and then first thing we usually do is photograph the scene,
19 and then we collect any evidence which is fragile, which in
20 this case would be blood, any other things like that. Then the
21 last thing we do is fingerprinting.
22 Q. And was this all done basically within what
23 time frame after you arrived?
24 A. I'd say between 12:45 and I guess about 4:30 or

1 5:00 o'clock, somewhere like that in the evening.
2 Q. Who else was present at that time?
3 A. Let's see. When I first arrived, it was
4 Officer Chandler and Officer Hess, and while I was there for
5 a while, Officer Staples.
6 Q. Were those all the people that were there dur-
7 ing the course of this period that you were present?
8 A. Police officials, yes, sir.
9 Q. Exhibit 46 was a stocking which you attribute
10 to Mr. Clanton. For purposes of clarification, was this a
11 hat?
12 A. It's a (pause) -- I don't know. He had it on
13 the top of his head. When I was there at the scene, it was
14 sitting on the top of his head, so I don't know if you would
15 call it -- whether it's a hat or a net, but that type of
16 fashion, yes, sir.
17 Q. Was there any blood on the floor?
18 A. (pause) Ah, --
19 Q. Other than where the victim was physically
20 lying prone?
21 A. Yes, sir.
22 Q. In what location would you testify to that
23 there was blood?
24 A. Well, it was a dark brown carpet, shag --

short shag. I guess it was about an inch-long shag-type rug. It was pretty well saturated in most of the bedroom.

Q. Now, outside the bedroom area, were there any other places where there was blood on the rugs or on the floor?

A. No, sir, just (pause) the first chair on the diagram there, there was some on the edge of that chair, and there was some on that knife in the kitchen, and under that -- that garment that was under the bed, the first bedroom. That's about basically the only other places where I recovered any blood substance from.

Q. Did you observe Mr. Clanton at the scene?

A. Yes, sir, I did.

Q. How was he dressed?

A. He was wearing a blue corduroy-type jean-type pants, white ankle-top tennis shoes, and that net cap on his head.

Q. Did he have a shirt on?

A. No, sir, he didn't.

Q. Did he have any marks on his body?

A. No, sir, he didn't.

Q. No marks at all?

A. No, sir, none that I could see.

MR. HAULER: Okay. I have no further questions.

NOTE: At this time, attorney for the Commonwealth asked if counsel could approach the bench. Court and counsel conferred privately. Afterwards, Mr. Welsh spoke as follows:

MR. WELSH: No further questions at this time.

WITNESS STOOD ASIDE.

NOTE: At this time, there was a recess. Upon the Court reconvening, the next witness was called to the stand.

1
2
3 MARY JANE BURTON, introduced on behalf
4 of the Commonwealth, after being first duly sworn, testified as
5 follows:
6
7 DIRECT EXAMINATION
8 BY MR. WELSH:
9 Q. Please state your name and occupation.
10 A. Mary Jane Burton. I'm a forensic scientist.
11 Q. And by whom are you employed?
12 A. I'm employed by the Bureau of Forensic Science
13 in Richmond.
14 Q. And what do you do there?
15 A. I'm Supervisor of the Serology Section for the
16 Forensic Laboratories in the state. I routinely examine items
17 submitted for blood, body secretions, hairs and fibers.
18 Q. How long have you been doing that?
19 A. Almost eight years.
20 Q. And what experience, if any, did you have prior
21 to coming with the Virginia lab?
22 A. Before I came to Virginia, I was with the
23 Charlotte-Mecklenburg Crime Laboratory in Charlotte, North
24 Carolina for two years. Before that, I was with the Crime

1 Laboratory in Cincinnati, Ohio for two and a half years.
2 Q. And what type of work did you do on those other
3 jobs?
4 A. Basically, the same. Examination of items for
5 blood, body secretions, hairs and fibers.
6 Q. And how long have you been employed by the
7 Commonwealth?
8 A. Almost eight years.
9 Q. And did you receive any education to prepare
10 you for this occupation?
11 A. I have a Bachelor of Science in Chemistry from
12 the University of Cincinnati. I've taken some graduate work at
13 both the University of Cincinnati and the University of Miami
14 in Oxford, Ohio.
15 Q. Did you have any other related experience
16 which helped prepare you, also?
17 A. After graduation, I was associated with the
18 Kettering Laboratory which is a research laboratory attached to
19 the College of Medicine of the University of Cincinnati. I
20 was there for eleven and a half years and about half of that
21 time, I was in charge of the Biology Section for a cancer re-
22 search project. Some of the projects we studied were immuno-
23 globulins in blood and some hair projects.
24 Q. And have you had other training besides formal

education which has helped prepare you for this?

A. I've gone to specialized schools, I've attended workshops on these particular subjects, particularly one given by Brian Colorford (? spelling) who is Supervisor of Serology for the Metropolitan Police Laboratory in London, England.

Q. And have you also been involved in training other persons for this occupation?

A. I've taught a college-level course in this area of forensic science, I'm on the faculty for the Academy of Forensic Science here in Virginia, I have assisted in the training of examiners from other county, state and federal laboratories, and I'm respons -- I have -- was responsible and am responsible for the training for some of the serologists here in the State of Virginia.

Q. And have you testified in this Court and other courts previous to today?

A. Yes, sir, I have.

Q. And in what varied locations?

A. Most of the places in Virginia, I think; all over the state.

MR. WELSH: Your Honor, of course, Ms. Burton has been here before and we would --

THE COURT: Any questions you'd like to ask, Mr. Hauler?

1 MR. HAULER: I'd just like to ask Ms. Burton
2 one question, if I may.
3 THE COURT: 'll right.
4
5 CROSS EXAMINATION
6 BY MR. HAULER:
7 Q. Ma'am, would you relate to us what degrees you
8 hold?
9 A. I have a Bachelor of Science in Chemistry from
10 the University of Cincinnati.
11 Q. Do you have any advanced degrees beyond that?
12 A. No. I've taken some graduate work. I have not
13 got a Master's Degree.
14 MR. HAULER: I have no further questions.
15 THE COURT: All right. Go ahead, Mr. Welsh.
16
17 REDIRECT EXAMINATION
18 BY MR. WELSH:
19 Q. Ms. Burton, did you have occasion to receive
20 certain items of evidence from Dr. Fierro and from Sergeant
21 Eilert relating to the case of Wilhelmina Smith?
22 A. Yes, sir, I did.
23 Q. And did you examine those items and prepare a
24 report of your examination?

A. Yes, I did.

Q. I show you a three-page document that's been marked as Exhibit 55 and ask if you recognize it?

A. (pause to examine) Yes, sir, this is a report I prepared.

Q. All right. What was your purpose in examining the items involved in this case? What were you looking for?

A. I was looking for blood on the various items from the scene I guess just to compare and be sure that it was the victim's blood or could have been the victim's blood; it was the same blood type as hers. And on the various items from the defendant, to see if there were any stains, blood stains, on his clothes and if they also matched the sample blood from the victim.

Q. So you had samples of blood from both the victim and the defendant?

A. That's correct.

Q. Okay. We would go ahead and start with Exhibit 35. I'll ask you if you've seen that before?

A. Yes, sir, it has my case number, item number, and initials on it.

Q. And what is that item?

A. It was submitted as a stain recovered from the TV table in the bedroom.

1 Q All right. And what can you tell us about that
2 stain?
3 A I identified the stain as human blood and I was
4 able to type it and say that the blood is Type O in the ABO
5 System, Type One in the Esterase D System and Type 2-1 in the
6 PGM System. And maybe I had better stop and explain these
7 various systems to them.
8 Q All right, please tell us.
9 A All right, first of all, I'm sure most of you
10 are familiar with the fact that your blood can be typed, and
11 if you've ever given blood or know of anyone that has, they
12 type your blood, and they type it in the ABO System, first of
13 all, and sometimes they'll even tell you what your type is in
14 the RH System. Now, those are two separate systems. For in-
15 stance, if they said your blood was Type A Positive, the A
16 would be a part of the ABO System, the positive would be a part
17 of the RH System. And they are two completely separate systems
18 by which your blood can be typed. For instance, I can say
19 your blood is RH Positive and that would be a perfectly good
20 type in the RH System but in addition to those two systems, we
21 can type dried blood stains and liquid blood in many systems.
22 Six of the systems that we can use or are sometimes used in
23 the laboratory are enzymes. Now, I know you've heard the
24 word "enzyme" already, maybe in digestion of food. Your body

uses enzymes to help your food digest. Well, your body has many, many, many enzymes for different purposes in your body. We have found that a number of these enzymes are polymorphic, they take a different form in different people. Just like the ABO System, your blood is either Type A or B or AB or O, so that takes a different form in different people. You may be an A and you may be an O and you may be an AB and you may be a B, or whichever one I missed. In other words, different people would have a different type. Well, in these enzymes, we've found that this is also true. A number of the enzymes in your body we can type. We can get a definite type. And so we use this to narrow down the possibility that any stain could be from someone else. In addition to that, there are a couple of proteins in your body that also take a different form in different people and one of these that I was able to use in this case was called Haptoglobin, HP, so you may be a Haptoglobin One and I may be a 2-1 and somebody else may be a 2. These are just different types and each of these systems is independent of the other one and the only reason we do as much as we can is so we can narrow down the possibility that this stain is from somebody else or how many people could have blood of this type.

Q. Perhaps an easier way as we go through these items to explain them would be if you would tell us what is the difference, in what systems is there a difference between the

1 blood of Wilhelmina Smith and the blood of Earl Clanton.

2 A. All right. There is a difference. For in-

3 stance, in the ABO System they both have the same type. They're

4 both Type O. In the EAP System, they are different. The vic-

5 tim's blood type is EAP-BA and the defendant's blood type is

6 EAP-B. In the Esterase D System, which was one system that I

7 mentioned in this first item that we talked about, they both are

8 the same. They are both One. In the PGM System, they are

9 different. The victim had a PGM-2-1 and the defendant is

10 PGM-1. In the ADA System and AK System, they are both the same.

11 They are both One. In the Glo System, the victim is Type 2-1;

12 the defendant is Type 1. I was not able to determine the

13 Haptoglobin Type of the defendant. My results came up zero

14 and this is a definite type but since it was not important

15 because there were other differences in their blood types, I

16 didn't pursue this particular system. All right, --

17 Q. Maybe what we'll do then, we'll go back to No.

18 35. Can you tell us whether it is consistent or inconsistent

19 with the blood of either?

20 A. It is inconsistent with the blood of the de-

21 fendant because of the PGM Type.

22 Q. And how about with the blood of the victim?

23 A. It is consistent with the blood of the victim.

24 Q. Okay. Exhibit 36.

1 A. All right, this also has my case number, item
2 number, and initials on it and it was submitted to me as a
3 stain recovered from the bedroom wall. And, again, I identi-
4 fied human blood and I found that the -- this is a stain from
5 the right print. There were two separate samples in here,
6 one was submitted as a stain from the right print and the other
7 was a stain from the left print. I identified human blood in
8 both stains. In the stain from the right print, I was able to
9 determine the blood is Type O. And the other from the left
10 print, the blood was -- there wasn't enough blood for me to
11 type it. All I could say was that it was human blood. And,
12 of course, Type O, both the victim and the defendant had Type
13 O blood.
14 Q. Exhibit No. 37. (pause) There's another bag
15 inside this bag.
16 A. Oh, okay. Well, this also has my case number,
17 item number, and initials on it. And it was submitted to me as
18 a broken wooden spoon containing stains. And I identified
19 human blood in a stain near the broken end of this wooden
20 spoon but the amount was not sufficient for me to type it.
21 Q. Would you show us on the spoon where you found
22 the blood?
23 A. (pause) I usually circle it. It was down
24 (pause) -- . Wait a minute. May I refer to my notes, please?

(pause) It was down near the broken end, which is all I have in my notes. And this is what I would consider the broken end, so it would be probably right down near this broken portion.

Q Okay. Exhibit No. 38.

A This also has my case number, item number and initials, and it was submitted as -- there were two pieces of a broken wooden spoon. And I found a small amount of blood on both pieces. I found that the blood was human in origin and it was Type O, Esterase D-1. Now, both -- that's two systems and they're both the same for both the victim and the defendant.

Q Exhibit No. 39.

A This also has my case number, item number and initials. It was submitted to me as a butcher knife. And I identified human blood on the knife and I was able to type it. In the ABO System, it was Type O, which is the same for both the victim and the defendant. In the EAP System, it was BA. This is consistent with the victim's blood and inconsistent - not the same - as the defendant's blood. Esterase D-1, which is the same as both the victim and the defendant; PGM-2-1, now this is the same as the victim but different than the defendant. And AK-1 and ADA-1, which is the same for both the victim and the defendant. So in two systems I was able to show that it's consistent with the victim and not consistent, or the same, as the defendant's blood.

1 Q Looking at the knife itself, there's a piece of
2 tape on the blade. Did you place that there?
3 A Yes, I did.
4 Q And does that indicate the area from which you
5 --
6 A The -- the whole area. Again, I'll refer to
7 my notes, but I believe the whole blade was (pause) bloody. I
8 found blood over all the whole blade, and you can still see
9 remnants all the way up to here.
10 Q Okay.
11 A That's right up near the junction of the blade
12 and the handle.
13 Q Exhibit No. 40.
14 A This also has my case number, item number and
15 initials, and it was -- it contained three one-dollar bills and
16 one five-dollar bill reported from the suspect's pocket. I
17 found -- I identified human blood in the stains on the bills
18 and I was able to determine that the blood was Type O, which is
19 in the ABO System which is the same for both the victim and the
20 defendant.
21 Q Exhibit 41.
22 A This also has my case number, item number and
23 initials and it was reported as a gym shirt found under the
24 bed. And I identified human blood on the shirt and I was able

to determine that the blood was Type O in the ABO System which is the same for both the victim and the defendant. It was Type BA in the EAP System. This is consistent with blood from the victim but it is not the same as blood from the suspect. Esterase D-1, which is the same for both the victim and the suspect, PGM-2-1 - this is consistent with the blood type of the victim and it is not the same as the blood type of the defendant. Haptoglobin 2-1 - well, I was not able to determine a type of the Haptoglobin in the defendant's blood but the 2-1 is consistent with the blood type of the victim. ADA-1 and AK-1 are the same for both the victim and the defendant. And Glo 2-1 is the same as the victim's blood type and not the same as the defendant's blood type.

Q. Can you therefore say that the blood on this shirt is not the blood of Mr. Clanton?

A. Yes, sir, I can.

Q. Exhibit 42.

A. Here again, my case number, item number and initials. This was submitted to me as a dinner knife with stains and I identified human blood and a small stain near the end of the handle of the knife but the amount was insufficient for me to type it.

Q. Exhibit 43.

A. This also has my case number, item number and

1 initials and it was submitted as an electric cord with stain.
2 And I did identify human blood on the cord but the amount was
3 not sufficient for typing.
4 Q. Exhibit 44 we've removed from the bags and all.
5 Do you recognize the television set?
6 A. I don't (pause) -- I recognize this initial
7 back here. I'm sure I marked it someplace but I don't know
8 exactly where. (pause)
9 Q. Okay, is that it?
10 A. Yeah, that's it. That's my case number, item
11 number and initials.
12 Q. Okay. What can you tell us about what's on the
13 television set?
14 A. I identified blood and there's still very much
15 left that you can see. I was able to type it. In the ABO
16 System, it was Type O, which is the same for both the victim and
17 the defendant. I was able to say it was Type B-A in the EAP
18 System, which is consistent with the victim's and not the same
19 as the defendant's. I was able to say it was Esterase D-1,
20 which is the same for both the victim and the defendant, PGM-2-1,
21 which is the same as the victim but not the same as the defend-
22 ant. I was able to say that it's ADA-1 and AK-1, which is the
23 same for both the victim and the defendant. And I was able to
24 say it was Glo-2-1, which is the same as the victim but not the

same as the defendant.

Q So, again, therefore, the blood on the TV is not Mr. Clanton's blood?

A That's correct.

Q Exhibit 45?

A It also has my case number, item number, and initials, and it was submitted as a pair of jeans from the suspect.

Q Tell us what you found.

A I found -- there were stains on the jeans and I was able to say that it was human blood. It was Type O in the ABO System, which is the same for both the victim and the defendant, that it was EAP-B-A, which is the same as the victim's but not the same as the defendant's, Esterase D-1, which is the same as both the victim and the defendant, PGM-2-1, which is the same as the victim but not the same as the defendant. Haptoglobin 2-1 - well, here, this is the same as the victim but I did not get a type on the defendant's blood. ADA-1 and AK-1 are the same for both the victim and the defendant, and Glo 2-1, which is the same as the blood from the victim but not the same as the blood from the defendant.

Q So, again, therefore, this is not Mr. Clanton's blood?

A That's correct.

Q. Now, would you show the jury the pockets on these jeans, if you would, please?

A. First of all, you can see the stain that I cut out. There is a rather large bloody area there and I cut this out for my testing.

Q. You're referring to right above the right knee, is that correct?

A. Right above the right knee, right. And this is the left front pocket. There was no blood at all on here. There was a small stain of blood back here. Right there.

Q. You're referring to the right rear pocket, is that correct?

A. Right, uh huh.

Q. Or the left rear pocket, I'm sorry.

A. Left rear pocket, right. And on the right front pocket, there also was no blood except for a real tiny little stain up here that did not go through.

Q. Did not go through to the inside of the -- or --

A. I mean it was on the inside. It did not go through enough that it, you know, went through to here. It was just a very small stain. There is blood from, you know, from this part of the pocket which did not go through to the back here.

Q. That's just inside the top of the right pocket?

1 A. The right pocket, yes, that's right.
2 Q. But on the inside which did not come through
3 from the corduroy material?
4 A. No, sir, it did not. It was put on from this
5 side of the material.
6 Q. Exhibit No. 46?
7 A. This also has my case number, item number, and
8 initials. It was submitted as a stocking cap from the defendant
9 and I found no hair or blood on the stocking cap.
10 Q. Exhibit No. 47?
11 A. This was submitted -- this has my case number,
12 item number and initials. It was submitted as a right tennis
13 shoe from the defendant.
14 Q. Was there also something else in there besides
15 the shoe?
16 A. A sock -- wait a minute. Let me (pause and
17 rustle of paper) -- . Yeah, and sock.
18 Q. Tell us what you found on the shoe and/or sock.
19 A. There was a stain at the bottom of the sock and
20 a smear at the ankle, a stain over all the front of the shoe
21 and the side. See, there's a large stain there. This cut-out
22 portion is what I cut out for my test. This is all blood here
23 and up here and there were stains on the sock, too.
24 Q. Okay.

1 A. I was able to type this. Did you want me to --
2 Q. Yes. If you would, tell us --
3 A. Okay.
4 Q. -- whether it is inconsistent with Mr. Clanton's
5 blood. I think it's --
6 A. It is inconsistent with Mr. Clanton's blood in
7 three systems.
8 Q. All right. And it is --
9 A. Wait a minute. Pardon me. One, two -- yeah,
10 three systems.
11 Q. And consistent with the decedent's blood in all
12 systems?
13 A. That's right.
14 Q. And the other shoe and sock, Exhibit 48?
15 A. All right. That's right. And I again found
16 blood and found that it was consistent with the victim in all
17 the systems and it was inconsistent with the defendant's blood
18 in three systems.
19 Q. Exhibit 49, the checkbook.
20 A. It has my case number, item number, and initials
21 on it. I also have this initialled here. And I was able to
22 identify blood on the stain on the inside of the checkbook and
23 I was able to say it was human in origin and it was Type O in
24 the ABO System, which is the same as both the victim and the

1 defendant.

2 Q. Now, the blood you're referring to would be the

3 two reddish-appearing stains --

4 A. Yes.

5 Q. -- on the front of Check No. --and the top of

6 Check No. 788, is that right?

7 A. Right, I used this portion up here.

8 Q. Okay. Which would --

9 A. And up here.

10 Q. -- be on the back of the preceding stub, right?

11 A. Right, uh huh.

12 Q. Now, Items 50 and 51, have you (pause) -- are

13 these the samples that you dealt with?

14 A. Yes, this is the sample of blood from the victim

15 and this is the sample of blood from the defendant.

16 Q. Referring to the blood of the victim, can you

17 tell us anything about the percentage or the recurrence of that

18 blood in the general population?

19 A. Yes. Approximately 1% of the population or one

20 person out of a hundred would have blood of that type in all

21 the systems that I typed it in.

22 Q. And that's of Ms. Smith's blood?

23 A. That's right.

24 MR. WELSH: Your Honor, we would move the intro-

1 duction into evidence of Exhibit 55, the lab report,
2 and I have no further questions.
3 THE COURT: Mr. Hauler?
4
5 RECROSS EXAMINATION
6 BY MR. HAULER:
7 Q Ms. Burton, what percentage of the general
8 population would have blood consistent with Mr. Clanton's?
9 A I'd have to figure it out. Can I have a minute?
10 I didn't -- I didn't have that figured out, I'm sorry.
11 Q Certainly.
12 A (pause) Approximately 2% of the population.
13 Q So that would be two out of a hundred?
14 A That's right, uh huh.
15 Q You have mentioned a number of different sub-
16 groupings that you utilized. Is that the total number of sub-
17 groupings that are available for analysis?
18 A No. It is possible to determine the RH type,
19 too, in dried stains in some cases. And there is another sys-
20 tem that is available to us that I have not used myself yet. I
21 have not had the experience to use it.
22 Q (pause) All right, so --
23 A We're talking about dried stains now?
24 Q Dried stains, --

1 A. Uh huh.

2 Q. -- right. So you used a protein system, an

3 enzyme system, --

4 A. I used one, two, three, four, five, six enzyme

5 systems and one protein system and one antigen system.

6 Q. Okay. Now, in the systems that you used where

7 you have drawn the conclusion that the victim's blood existed

8 on certain items, whichever they may have been, --

9 A. Uh huh.

10 Q. -- was your conclusion based upon all of the

11 blood-typing grouping systems that you used showing evidence of

12 the defendant's -- excuse me, the victim's blood or just certain

13 of those subgrouping systems yielding evidence of the victim?

14 A. Well, in the cases where the types are the same,

15 for instance, on those items that I could only get an ABO type

16 and they were both Type O, I certainly could not draw any con-

17 clusion whether it was the victim's blood or defendant's blood.

18 The only items I could draw a conclusion were those items where

19 I was able to type the systems that differentiated between the

20 victim and the suspect.

21 Q. So only if you found a point of differentiation

22 (pause) --

23 A. That's correct.

24 Q. -- would you draw the conclusion that the blood

belonged to one or the other?

A. That's right. And, actually, I still did not say that it belonged to one or the other, I said that it was consistent with.

Q. Okay. In point of fact, it would be virtually impossible to say definitely, would it not?

A. That's right. Uh huh.

Q. Now, let's talk about this exhibit. I want you to -- it's Exhibit No. 40 --

A. All right.

Q. -- which is money.

A. Uh huh.

Q. Okay, now, on your direct examination, I believe you said that it had Type O, which was consistent with both the victim and the defendant?

A. That's right.

Q. How much further did you subgroup that or could you subgroup it any further?

A. No, I could not, and I'll explain to you why. If you'd look at this, you'll see a large area that's bloody but it's very difficult to remove blood from paper. Now, for instance, the television set is a hard surface and, well, you know from cleaning, you could wipe dirt off it very easily but if you tried to wipe dirt with a wet cloth on paper, it's not

as good. And the same -- we use the same method in removing blood from items. For instance, this five-dollar bill, you can see a very large red area, which is where I removed as much blood as I could. There is more on here but I could not get it off, so I could only type it in the ABO System and this is true of others. I have a little small area marked here that I was able to take a spot off of, and this is true of the other bills, too. I believe this area on the five-dollar bill was the largest blood-stained area that I found. Does that answer your question?

Q. Well, my question, which I had not asked you, is the fact that the blood stains that (pause) -- or stain that you found on here is just as consistent with the victim's blood as with Mr. Clanton's blood?

A. That's correct.

Q. And there is no way you can testify as to whose blood it is?

A. No. That's correct.

Q. All right. Now, with regard to Exhibits 38 -- 37 and 38, these were the large wooden spoons?

A. Uh huh. (pause)

Q. On 37, I believe you testified it could not be typed?

A. That's right. The amount was too small.

Q Okay, and on 38 was the spoon part which was broken in two, and that was consistent with both parties again?

A That's correct.

Q And you could not differentiate whose blood it was?

A No, sir. I believe in this, in that particular one -- now, in 3 it was a small stain on the polished surface which was easy to remove but I believe on the other one it was on the broken surface and wood absorbs just like, you know, paper. It's very difficult on raw wood to remove blood or any stain.

Q All right. Were you able to come across any extraneous blood samples that did not match either the victim or the defendant?

A All the blood I typed on all the items submitted was consistent with the blood of the victim. In some cases, it was also consistent with blood of the defendant in those cases that I could not type in every system.

Q All right, but my question was during the course of the analysis that you did, did you encounter any blood samples that were inconsistent with either the victim or the defendant?

A No, sir, I did not. They were all consistent.

Q With either one or the other?

A. With the victim, and in some cases also the defendant.

Q. Okay. What I'm -- maybe I'm not making myself clear in the question. For instance, we've got both of the parties with an O blood.

A. Uh huh.

Q. You did not encounter, as an example, any AB blood?

A. No, sir, I did not.

Q. Okay. That's what I was getting at.

MR. HAULER: I have no further questions of the witness at this time.

MR. WELSH: I have no further questions.

WITNESS STOOD ASIDE.

WILLIE L. ACOX, introduced on behalf of the Commonwealth, after being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. WELSH:

Q. Please tell us your name and occupation.

A. My name is Willie L. Acox. I'm a bus driver.

Q. Mr. Acox, on November 16th of 1980, where were you living?

A. Crater Square Apartments, 1025 South, 14-D.

Q. 14-D. And did you know Wilhelmina Smith?

A. As a neighbor, yes.

Q. And where was her apartment in relation to your apartment?

A. Upstairs to the right.

Q. Was it on the same side of the hall as yours?

A. No.

Q. Across the hall?

A. Across the hall on an angle upstairs.

Q. Okay. Directing your attention specifically to that Sunday, November 16th, were you at home in the early

1 afternoon hours?

2 A. Yes.

3 Q. And at approximately 12:30 or thereabouts, did

4 you have occasion to see Ms. Smith or her car?

5 A. Yes.

6 Q. Tell the jury in your own words what you saw.

7 A. Well, around 12:30 they had the NFL football

8 game on, so I usually watch the Highlights before the game is

9 started around 1:00 o'clock. The Highlights come on around

10 12:30. A car drove up and from my couch you can look out the

11 window as you park on the right-hand side of the entrance to

12 the apartment. She got out the car. I saw her. She was by

13 herself and she came into the apartment and went upstairs. As

14 she got to the top of the stairs, she mumbled something about,

15 "Why I done this," or "who done this to me," and the door

16 slammed. And about maybe a minute later, something like that,

17 that was a gasp and a scream like. It wasn't a cry for mercy,

18 it was just a scream like. So my son and I was watching the

19 game at the time, so I listened. It was Sunday afternoon, it

20 was pretty quiet, so it shouldn't be no disturbance in the

21 hallway, so I happened to open the door and I heard a second

22 scream, and by that time I guess another minute went by, or

23 two, a police officer came.

24 Q. Now, did you see Ms. Smith carry anything in

1 when she came out of the car?

2 A. She had a bag, something like a brown bag or

3 some container, something like it, but I didn't pay much atten-

4 tion to it. I knew it was her and I just glanced and saw it

5 was her and that was all I really did. I didn't, you know,

6 sit and stare to see what she had exactly in her hand but

7 (pause) --

8 Q. All right, and what was it again that you heard

9 her say at the top of the stairs?

10 A. She mumbled something like, "What have I ever

11 done to you? Why this?" And then I heard a door slam.

12 Q. Okay. And from the time you heard -- you say

13 you heard a scream after the door slammed?

14 A. After the door slammed, there was a scream.

15 Q. And you went to your door, is that right?

16 A. Well, I listened and then there was another

17 scream, a second scream, and that's when I opened my door.

18 Q. And how far did you keep your door open?

19 A. I guess about ten inches, 12 inches.

20 Q. And what were you doing while you were standing

21 there at the door?

22 A. I was listening, you know, to determine where

23 the noise was coming from and what was going on.

24 Q. All right. And were you also watching anything?

1 A. Well, you can see the stairwells from my door
2 because I wanted to see if -- you know, what was going on, who
3 was making the noise or what was happening.
4 Q. Now, how many stairwells are there that could
5 lead up to the landing where Apartment 14-E is?
6 A. There's two.
7 Q. All right. And from your door where you were
8 standing, could you see either or both of those?
9 A. When you open the door, there is a stairs di-
10 rectly to the left, immediately to the left, all the way flush
11 against the wall. That's one stairwell, that's to the left
12 going out on the front part. To the back, you can see the
13 stairwell on an angle. They're the only two stairwells we have.
14 Q. Now, you remained at the door, you say, until
15 the police arrived, is that right?
16 A. Yeah, because like I say, I was trying to de-
17 termine where the noise, the scream, what was going on.
18 Q. Now, did you see anyone or hear anyone on the
19 landing or the stairwell while you were waiting?
20 A. No.
21 Q. Now, when you're inside your apartment and the
22 door is closed, can you hear anyone on the landing or up the
23 steps?
24 A. With the door closed, you can hear people walk-

1 ing, going up the stairs, or you can hear voices in the hallway
2 or the stairwell. It's very thin (pause) (inaudible), you can
3 hear it very easy; it's not soundproof.
4 Q And that's when the door is closed?
5 A When the door is closed.
6 Q And at this time, you had the door open?
7 A Yes.
8 Q And you didn't hear anyone on the landing or
9 stairwell?
10 A No one came down or up stairs, no, until the
11 police got there.
12 Q And were you able to determine if any doors
13 opened or closed upstairs?
14 A Like I say, I heard the one door slam at the
15 time and no other doors open.
16 Q Okay. Could you see the door to Wilhelmina
17 Smith's apartment from where you were standing while you were
18 inside your apartment?
19 A The only way I can see the door is I have to
20 take my head and turn to the left and look up the stairwell on
21 an angle.
22 Q Okay. And you were not doing that while you
23 were waiting for the police?
24 A No.

1 Q. You were watching the stairwells themselves,
2 is that right?
3 A. Like I say, I had the door cracked about 10 to
4 12 inches and looking for someone or a noise of what was going
5 on, trying to determine what was going on. I didn't have no
6 intention of going up the stairs because, like I say, I wasn't
7 sure of where, you know, the commotion was coming from.
8 Q. Now, did you know who Natalie Lawrence was?
9 A. Yes.
10 Q. And where was her apartment in relation to your
11 apartment?
12 A. Directly upstairs above mine.
13 Q. And how about the door to her apartment in re-
14 lation to the door to yours, is that also directly above your
15 door?
16 A. The apartments are built the same, yes. My
17 door is directly with her door upstairs. If you would draw a
18 diagram line, it would be, you know, exactly, I mean.
19 Q. While you were at your door watching, did any-
20 one go in or out of her apartment that you know of?
21 A. No.
22 MR. WELSH: I have no further questions at this
23 time. Answer any questions Mr. Hauler might have.
24

CROSS EXAMINATION

BY MR. HAULER:

Q. Mr. Acox, how long had you been living in those apartments?

A. I moved there in '80, in February, the last week or so in February. I don't know exactly the date but it was in the later part of February.

Q. And did you know Mr. Clanton?

A. No.

Q. Had you ever seen him around there before?

A. I saw him once when I was going to work one night. It was -- well, I don't know if it was him or not but it was a male and it was Natalie, so I didn't know, really didn't recognize him, so I can't say for sure.

Q. All right, during the preliminary hearing on this matter, did you not testify that the door was cracked no more than five to six inches?

A. Well, five, ten inches, something like that. Well, it was big enough where my fist can go through and that's about four, and a little wider than that, so -- . I didn't measure at the time, but --

Q. Well, I understand, --

A. Yeah.

Q. -- but your estimate has doubled since the last

time.

A. Well, six or so inches, something like that.

Q. Okay. And --

MR. HAULER: Let me have these marked as Defendant's Exhibit. (pause)

Q. Mr. Acox, would you take a look at these photographs that have been marked as Defendant's Exhibit A collectively? Tell me if you recognize those.

A. This one here?

Q. Yes, sir.

A. That's my apartment. That's the stairways to the left. (pause) This here?

Q. Yes, sir.

A. The back entrance.

Q. Where would your apartment be in that photograph you're holding right now?

A. It would be in the corner right here (pause) where the stair was. (pause) This here?

Q. Yes, sir.

A. That's my apartment.

Q. Okay. And the last one?

A. That's the same. That's the entrance to the rear. Otherwise, take the -- otherwise, you'll go to the rear -- the stair -- this stairs would be my apartment door next to it.

1 Q Now, you were watching, I believe, the NFL
2 Today or --
3 A No, I said the Highlights came on at 12:30, --
4 Q Uh huh.
5 A -- and that's when the -- I turned it on to hear
6 who's playing and what team's going on.
7 Q Were you watching that?
8 A The Highlights were still on.
9 Q Okay. You were -- I mean is that what you were
10 doing at this time? You were watching the television set?
11 A At what time?
12 Q At 12:30.
13 A At 12:30 I had turned the TV on and, like I said,
14 the TV is - - well, the TV is against the wall here and my set
15 was here and the door is here. And I --
16 Q Did you --
17 A -- had -- well, I wasn't exactly set down in
18 front of the set. I had it on.
19 Q Was anybody else there?
20 A My son.
21 Q And you heard this scream?
22 A Yes.
23 Q All right. Now, you have indicated that after
24 you heard the scream, you cracked your door this five to six

1 inches?

2 A. There was a scream and, like I said, Sunday

3 afternoon it's quiet and the scream was questionable. So after

4 the second scream, I say, I opened the door.

5 Q. Did you ever stick your head out the door?

6 A. Physically, no.

7 Q. Okay. Unless you stuck your head out that

8 door, you would not be able to observe one stairwell at all,

9 would you?

10 A. If you cracked and the stairwell to the left, I

11 can't see the stairwell, because like I said, because my door is

12 here, the stairway is over here, the other stairway is on an

13 angle, so if the door is cracked far enough, you can see the

14 other stairwell. And by standing there, you're on an actual

15 angle.

16 Q. The only stairwell that you could see from

17 cracking the door would be the one furthest away from your apart-

18 ment, is that correct?

19 A. Physically, yes, but like I say, that's directly.

20 But like I say, standing next to them, my door was only an inch

21 away from the other stairway, so (pause) --

22 Q. Now, how much attention were you paying to what

23 was going on outside of the apartment?

24 A. You mean at the time of the scream?

Q. Yes, sir.

A. Well, I was curious to find out why the scream, who was screaming and where was it at.

Q. Why didn't you go out?

A. Why didn't I go out? I have a nine-year-old son there and, like I said, the scream wasn't a scream of mercy or a cry, it was like a gag scream of somebody horsing around.

Q. It concerned you enough, though, to open your door?

A. Yes, it did.

Q. And your television set was on this entire time?

A. Yes, the television was on.

Q. Was the volume turned up?

A. The volume was on where you could hear. It wasn't blasting.

Q. Okay. Were you dividing your attention between the television set and what you were trying --

A. Not during the --

Q. -- to listen to outside?

A. -- second scream, no, because I went to the door and my attention was on the door when I opened it and listening for any type disturbance that was going on, why was the scream taking place.

1 Q. All right.

2 A. So at that time, I wasn't paying much attention

3 to the TV.

4 Q. Did you stand by the door the entire time?

5 A. I was at the side -- when I opened the door, I

6 stood right there at the crack of the door.

7 Q. Do you have a security chain on your door?

8 A. Yes, it was not on.

9 Q. I believe you said you really didn't know Mr.

10 Clanton before this?

11 A. No.

12 Q. Do you remember talking with an investigator by

13 the name of Matthys?

14 A. (pause) I can't say by name. Maybe by sight

15 I might have seen someone, put it that way. (pause) I have --

16 Q. Did you --

17 A. Huh?

18 Q. You do recall having talked to someone other

19 than a police officer?

20 A. I have talked to a police officer only at the

21 -- well, say, about four or five days later, I had a note to

22 come down and I talked to him. I don't know which one it was

23 by name; I may know by sight.

24 Q. At that time, did you refuse to talk to him?

A. No.

MR. WELSH: Your Honor, I would (pause) --

THE COURT: What's that got to do with this case?

MR. WELSH: I'd object --

MR. HAULER: Judge, I believe I'm in a position to show some bias on the part of this witness based upon a statement he had made to another party.

MR. WELSH: I'd like to be heard out of the presence of the jury.

THE COURT: All right. Take the jury out.

NOTE: At this time, the jury retired to the jury room.

MR. WELSH: Judge, the Commonwealth objects to the relevancy of whether this man talked to Mr. Matthys or Mr. Smith or Mr. Jones or anybody. I can't see where

1 it has anything to do with this case.

2 THE COURT: The question was did he refuse to

3 talk to somebody (pause) --

4 MR. WELSH: Yes.

5 THE COURT: -- at that point. I don't see what

6 that's got to do with it. What are you trying to get

7 at, Mr. Hauler?

8 MR. HAULER: Judge, I'm trying to bring out

9 some bias on the part of this witness, specifically --

10 THE COURT: By refusing to talk to somebody?

11 MR. HAULER: No, sir. Based upon what he did

12 say. He said, "I refuse to talk and I hope they hang

13 him," referring to the defendant. I think that is

14 proper to bring out to show bias of this man.

15 THE COURT: Well, that could be interpreted in

16 so many ways, Mr. Hauler. Who does "him" mean? It

17 could mean whoever did it if he didn't know. I don't

18 grasp what you're really trying to say.

19 MR. HAULER: Judge, as of the date that this

20 gentleman was interviewed, which was the 24th of

21 November, Mr. Clanton had been arrested, there were

22 numerous news articles indicating his alleged complic-

23 ity in this particular crime, and I would submit to the

24 Court that when Mr. Acox made this statement he was re-

1 ferring specifically to the defendant. He was the only
2 one in custody at that time.
3 MR. WELSH: Your Honor, the Commonwealth --
4 THE COURT: I'm going to allow you to ask it
5 before the jury, Mr. Hauler, but the jury has a right
6 to accept that as meaning whoever did it or this man or
7 anybody else. I don't think it means what you're try-
8 ing to portray it as. If he made any such statement,
9 I'll let it be introduced to the jury then.
10 MR. WELSH: Your Honor, the Commonwealth ques-
11 tions whether he's going to be able to impeach this
12 witness by proving the statement. I notice that Mr.
13 Matthys, although he was not sworn as a witness, has
14 been in and about the witness rooms today --
15 THE COURT: Well, he's got a right to ask the
16 witness if he said it.
17 MR. WELSH: All right.
18 THE COURT: And he has the right to ask the
19 witness what he did say.
20 MR. HAULER: Would the Court be inclined to
21 have that taken care of before the jury comes back?
22 THE COURT: Have what taken care of?
23 MR. HAULER: Do you want me to make the inquiry
24 at this point?

1] THE COURT: If you want to find out, go ahead.

2 Q. All right, Mr. Acox, did you in fact make that

3 statement?

4 A. When?

5 Q. This would be on the 24th of November, 1980 to

6 Investigator Matthys, that you had nothing to say to him and

7 that you hoped that they hung the defendant?

8 A. Well, in the first place, I don't know Investi-

9 gator Matthys only by name or by sight who I talked to; secondly,

10 I don't recall making any statement like that.

11 MR. WELSH: Your Honor, then I question Mr.

12 Hauler's ability to ask his witness when the jury's in

13 if he is not prepared to prove his statement.

14 THE COURT: Well, there's nothing to contradict

15 him on because at this point he doesn't remember making

16 any statement period.

17 MR. WELSH: So I question his ability for him

18 to be able to ask him that under oath. I think it

19 would be prejudicial.

20 THE COURT: Mr. Hauler, along the lines we're

21 discussing, you'd be able to produce through the wit-

22 ness, if you had him, that such a statement was made if

23 you think it tends to show prejudice or bias against

24 the defendant.

1 MR. HAULER: Judge, I --

2 THE COURT: There's no inconsistence shown with
3 with witness since he doesn't remember saying anything.
4 (long pause)

5 MR. HAULER: Well, --

6 THE COURT: I can't allow you to ask a question
7 stating the -- what the question was and hearing the
8 witness say under oath now that he doesn't remember it
9 if you're not prepared to prove it to the jury that he
10 made such a statement; otherwise, you're testifying.

11 MR. HAULER: Is the Court going to permit me to
12 ask that question in front of the jury?

13 THE COURT: Ask him what?

14 MR. HAULER: If he made the statement?

15 THE COURT: Not if you're going to frame the
16 statement yourself because he's told you now under oath
17 that he doesn't remember making such a statement.

18 MR. HAULER: (pause) All right. Then the Court
19 will allow me to bring in an impeachment witness?

20 THE COURT: That's it. Well, not to impeach.
21 If you want to show through another witness that he
22 made a statement similar to that if you feel like and,
23 arguably, it would constitute -- possible to show bias
24 on his part, I would allow that to show bias, but I

can't allow you to ask this man if he made such a statement. He's already told you he doesn't remember making the statement.

MR. HAULER: I understand it. I understand it.

THE COURT: All right. Bring the jury back.

NOTE: At this time, the jury returned to the Courtroom.

Q. Mr. Acox, how much time elapsed from the moment you heard the first cry or the first scream until the police arrived?

A. The first scream?

Q. Yes, sir.

A. (pause) I don't know. Maybe (pause) five, six minutes. I don't know. It wasn't a long time. (pause)

Q. All right, and then other than hearing two cries for help or screams, you heard nothing else?

A. Other than the slam of the door, no.

Q. When you heard the door slam, did you close your door then?

A. My door was already closed at the time.

Q. Well, I understand, and -- but at one point, you cracked your door open.

A. After the second scream.

Q. After the second scream?

A. Yeah, a gag scream, right.

Q. And did you then allow the door to remain cracked open?

A. The door remained open and I stood there and, like I said, about -- a short (pause) -- well, maybe not a minute, I don't know, the police came. I don't know how much time. I didn't measure the time off or really look at no time clock or nothing, but it was shortly after that.

MR. HAULER: I have no further questions of the witness at this time.

MR. WELSH: No further questions at this time.

MR. HAULER: I ask that Defendant Exhibit A be received.

WITNESS STOOD ASIDE.

VANESSA HARRIS, introduced on behalf of the Commonwealth, after being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. WELSH:

Q. Please state your name.

A. Vanessa Harris.

Q. And how old are you, Miss Harris?

A. Eighteen.

Q. I direct your attention back to November 16th of 1980. Where were you living then?

A. Crater Square Apartments.

Q. And what was your apartment number?

A. 14-A.

Q. And who did you live there with?

A. My mother.

Q. Your mother?

A. Uh huh.

Q. Okay. Specifically, that Sunday afternoon, November 16th, were you at home around 12:30 or so in the afternoon?

1 A. Yes.

2 Q. Did you know Wilhelmina Smith?

3 A. Yes.

4 Q. Did you see her that day or her car?

5 A. Yes.

6 Q. Tell us what you saw.

7 A. I saw when she (pause) had left and then when

8 she had came home.

9 Q. So did you see her get out of the car?

10 A. No.

11 Q. But did you see her car pull in? I take it is

12 that what --

13 A. Yes.

14 Q. All right. Could you tell if she went upstairs?

15 A. Yes.

16 Q. How could you tell that?

17 A. I heard her sh -- you know.

18 Q. Okay, you'll have to speak up just a little bit

19 louder, okay? Because I'm having trouble hearing you. How

20 could you tell she went upstairs?

21 A. (pause) I heard her walking.

22 Q. Okay, you heard her walk up the stairs?

23 A. Uh huh.

24 Q. Did you hear anything right after that?

A. Yes.

Q. Tell the jury what you heard.

A. I heard her say, "What have I done to you?" And she started screaming.

Q. Okay. And did anything happen after that?

A. (pause) Yeah, she was still screaming.

Q. Did you hear anything coming from the apartment above you?

A. A lot of noise.

Q. All right, now, in what room of the apartment were you? In what room of your apartment were you at the very beginning of this?

A. I was (pause) -- I was in the back bedroom.

MR. HAULER: Judge, I'm sorry. I can't hear the witness.

THE COURT: Well, why don't you come on over, Mr. Hauler, over here by Welsh where you can hear?

Q. When you saw the car drive up, where were you then?

A. In the back bedroom.

Q. In the back bedroom?

A. Uh huh.

Q. And did there come a point in time when you could hear any noise in the apartment above you? (long pause)

1 Did you hear noise in the apartment above you after you heard
2 the lady scream?
3 A. Yes.
4 Q. All right. Now, where -- from what room did
5 that noise appear to be coming?
6 A. The living room.
7 Q. All right. And where were you when you heard
8 that?
9 A. I was in the living room.
10 Q. All right. Now, your apartment — where was
11 that in relation to Ms. Smith's apartment?
12 A. Right above.
13 Q. She was right above you?
14 A. Uh huh.
15 Q. Okay. What did you do after you heard the
16 noise inside the apartment and the screaming?
17 A. I called my grandmother's house.
18 Q. All right. Now, where is your telephone --
19 where was your telephone?
20 A. It's in the middle bedroom.
21 Q. All right, now, as you go down the hall, where
22 are the bedrooms located?
23 A. On the right (pause) side.
24 Q. On the (pause) -- as you go down the hall from

1 the front of the apartment to the back?
2 A. The left.
3 Q. Okay. Now, which of the bedrooms was it that
4 the telephone was in?
5 A. The middle bedroom.
6 Q. The middle bedroom. And you called your grand-
7 mother. What did you do -- what did you tell your grandmother?
8 A. I told her that the lady upstairs above us, the
9 one that had her house broked -- got her house broken into,
10 that someone was in her apartment, you know.
11 Q. All right. When you say she had her house
12 broken into, sometime prior to this Sunday that had happened,
13 is that right?
14 A. Right.
15 Q. Now, after you called your grandmother the
16 first time, what did you do after that?
17 A. I went back into the living room.
18 Q. Could you hear anything happening upstairs?
19 A. Yeah, she was still screaming.
20 Q. Could you tell from what room that was coming
21 from?
22 A. The living room.
23 Q. All right. What did you do after that?
24 A. I went back in the bedroom to call my grand-

1 mother back to see had she called the police yet and she said
2 she couldn't find the number. So I told her that I will call.
3 Q. So is that what you did next then - call the
4 police?
5 A. Uh huh.
6 Q. All right. And what did you tell them?
7 A. That the lady, that someone was in her apart-
8 ment, the one that had got her (pause) -- I had told the police
9 that the lady that had got her furniture -- I mean, well, you
10 know, (pause) her stuff stolen, that someone was in her apart-
11 ment.
12 Q. Okay. After you hung up from calling the police,
13 did you make another call?
14 A. Yes.
15 Q. Who did you call that time?
16 A. My mother.
17 Q. And where was your mother?
18 A. She was at church.
19 Q. Were you able to reach her?
20 A. Yes.
21 Q. All right. And I assume you told her to come
22 home or something like that?
23 A. Uh huh.
24 Q. After you finished talking to your mother, what

1 did you do then?
2 A. I went back into the living room and I looked
3 out the peephole to see could I see anyone, you know, --
4 Q. All right.
5 A. -- but I didn't.
6 Q. Did you ever hear any noise coming from over
7 the bedrooms?
8 A. Uh huh.
9 Q. Now, was that before or after you called the
10 police and your mother?
11 A. This was when I was on the phone because I had
12 moved the phone into the hall.
13 Q. Okay. And while you were on the phone, you
14 heard the noise in the back bedroom?
15 A. Uh huh.
16 Q. Was the noise still going on when you finished
17 talking to your mother?
18 A. (long pause) Yeah, I think so.
19 Q. All right. Then you say at that point you went
20 to the front door, is that right?
21 A. Yeah.
22 Q. And what did you do at the front door?
23 A. I looked out the peephole to see could I see
24 anyone.

1 Q. All right. Now, when you say "peephole," you
2 have something in your door that you can look out to see who's
3 outside, --
4 A. Uh huh.
5 Q. -- is that what you mean? Now, while you were
6 looking out, did you see anybody come down the steps that had
7 come from upstairs?
8 A. No.
9 Q. Could you see either of the set of steps from
10 the peephole in your door?
11 A. Yes.
12 Q. Which set of steps?
13 A. The ones from the entrance where you come in at.
14 Q. Sort of on the front of the building?
15 A. Uh huh.
16 Q. And did you see anyone come down those steps?
17 A. No.
18 Q. Now, when you're in your apartment and the door
19 is closed, can you hear people if they're on the landing or the
20 steps?
21 A. Yes.
22 Q. Did you hear anyone on the landing or the steps
23 after you started listening and watching at the door?
24 A. (long pause) Before, ah (pause) --

1 Q. Before the police arrived.
2 A. Ah, no.
3 MR. WELSH: I have no further questions.
4 Answer any questions Mr. Hauler might have.
5
6 CROSS EXAMINATION
7 BY MR. HAULER:
8 Q. Miss Harris, were you frightened by what you
9 heard?
10 A. Yes.
11 Q. At any time, did you go outside of your
12 apartment?
13 A. No.
14 Q. You didn't open the door at all?
15 A. No.
16 Q. How could you tell the difference between
17 sounds out in the hall or on the stairs or up above you? (pause)
18 You were at various places in your apartment, were you not?
19 A. Right.
20 Q. Are you certain that the sounds came from up
21 above you?
22 A. I'm sure.
23 Q. Why didn't you call the police yourself?
24 A. Because I was too scared.

1 Q. All right. How long did you look out the
2 peephole? Did you just glance out or did you look out for any
3 prolonged period?
4 A. I looked out for a long period.
5 Q. How long of a period?
6 A. About four minutes or (pause) -- I'm not sure.
7 Q. Did you ever go to the window of the apartment
8 to see if the police were coming?
9 A. Yes.
10 Q. How many times did you do that?
11 A. About twice.
12 Q. Did you spend more time looking out the window
13 looking for the police or looking out the door through the
14 peephole?
15 A. Through the peephole.
16 Q. Do you know Mr. Clanton?
17 A. No.
18 Q. Did you ever see him before?
19 A. About twice.
20 Q. Did you know that he lived at the apartments?
21 A. Yeah.
22 Q. Do you live right next door to Mr. Acox?
23 A. Across the hall.
24 Q. All right, so you'd be across the hall and one

1 apartment down from Mr. Acox? Or directly across the hall?
2 A. Stright across.
3 Q. All right. So you'd be at the same end of the
4 hall?
5 A. Yes.
6 Q. And as you would go out the door of your apart-
7 ment, there's a set of stairs there going up, is there not?
8 A. Uh huh.
9 Q. Is that the set of stairs that you could see?
10 A. Yes.
11 Q. Could you see the other set of stairs at the
12 other end of the building?
13 A. (pause) No. (pause) You can see the stairs
14 -- I mean, what you can -- if somebody were (pause) -- came
15 down from it, you could have seen someone.
16 Q. You mean looking out the peephole in your door,
17 you can see the stairs at the other end of the building which
18 are on the same side as your apartment?
19 A. Oh, no.
20 Q. It's impossible, isn't it?
21 A. (pause) Yeah.
22 MR. HAULER: I have no further questions.
23 MR. WELSH: No further questions.
24 WITNESS STOOD ASIDE.

MR. WELSH: Your Honor, we move the introduction of all the exhibits into evidence. I think there were reserved rulings on a few of them. And with that introduction of evidence, we would rest.

THE COURT: All right. I'll reserve ruling on those several. Are you ready to proceed or do you need a recess?

MR. HAULER: I'd ask the Court for a recess.

THE COURT: All right, take a recess.

NOTE: At this time, the Court recessed. Upon the Court reconvening, the jury was brought in and the first witness on behalf of the defense was called, Mr. Clanton.

EARL CLANTON, JR., the defendant, after being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. HAULER:

Q. State your full name for the record, please.

A. Earl Clanton, Jr.

Q. And, Mr. Clanton, you are the defendant in this matter, is that correct?

A. I am.

Q. Mr. Clanton, are you responsible for the murder of Wilhelmina Smith?

A. No, I'm not.

Q. Do you recall the events of November 16th, 1980?

A. Very vividly.

Q. Would you please relate to the members of the jury the events of that day as you recall them starting from the time that you got up?

A. I got up that morning, and being a martial artist, knowing something about the martial arts, I normally perform a certain amount of cotters (? spelling) every morning,

1 I got up, I did that, I performed those cotters. I took a
2 bath and I laid back down. The evening progressed. I heard a
3 scream. Prior to the scream, I heard a rumbling sound; I did-
4 n't pay it any mind. And I think what you must bear in mind,
5 too, is that I was a fugitive at the time and I didn't want to
6 pay anything any mind. I heard the scream. I was lying in the
7 bed beside Ms. Lawrence. I didn't respond. I lied there until
8 she woke up --
9 Q All right, now, let me just cut you off at that
10 point. Where were you when you say you were in the bed in an
11 apartment? Which apartment and where was it?
12 A I was in Ms. Lawrence's apartment, 14-H, and
13 it's --
14 Q Where is that in relation --
15 A -- directly across from Ms. Smith's apartment.
16 Q All right. What happened?
17 A Well, like I said, I heard the scream. I guess
18 like most people, I was apprehensive about going to do anything
19 but namely I would say different from what most people would,
20 the main reason I didn't want to get involved, like I say,
21 because I was a fugitive. The scream came. When Ms. Lawrence
22 finally heard the scream she awakened. She asked me what was
23 that. I asked her, I said, "What do it sound like?" She said,
24 "Well, I'm going to see what that is." I said, "Why don't you

1 just mind your business? It just may be a domestic squabble.
2 Leave peoples' business alone." She then got up, slipped on a
3 pair of my jeans and a pair of flip-flops; she slept in her
4 shirt; and she went to see what was wrong.
5 Q. Now, when you say she went to see what was
6 wrong, do you know where she went?
7 A. I had no idea where she was going when she
8 first left. I just thought perhaps she was going to the peep-
9 hole or something, you know. I relatively had no idea until I
10 heard the door open and I knew she had either gone out the door
11 or she was looking through the door.
12 Q. Did she ever return to the apartment?
13 A. Yes, she did.
14 Q. What, if anything, did you do at the time she
15 returned?
16 A. My first -- the first thing I noticed was a
17 very different kind of look on her face, something that I don't
18 see too much of in her. It was a different look. She then con-
19 veyed to me, she said, her words - to quote her, said, "Some-
20 thing's wrong over there." I said, "Over where?" She said,
21 "Over there," pointing to Ms. Smith's apartment. I then asked
22 her, I said, "What makes you think something's wrong?" and she
23 told me, she said, "The keys are in the door." Immediately, I
24 found that kind of strange, too, putting it together with what

I'd heard prior to everything happening. She told me would I go over there, having some knowledge that I could fight, having never seen me fight but pretty good idea of what I could do because of the way I train. She had seen me work out doing cotters.

Q. Did you leave the apartment?

A. Did I leave my apartment?

Q. Yes.

A. Yes, I did. Yes, I did.

Q. Where did you go?

A. I went over to Ms. Smith's apartment.

Q. All right. Did you notice anything at the door of her apartment?

A. Yes, sir.

Q. Tell the jury what you noticed, what you saw.

A. The keys were still in her lock, which, like I said, I really found strange. So I opened it. I said, "Yo? Are you all right?" Nobody said nothing, and then looking into the apartment, there was a blood stain on a little round chair with no back right in the front of me. When I saw the blood stain, I became even more suspicious. I stepped in the apartment. When I stepped into the apartment, I was attacked from behind the door with that spoon that's been on exhibit here. I blocked the spoon, I snatched the individual to the floor that

was trying to hit me with the spoon. He bust my finger. My finger was bleeding. The spoon broke in the fall. There were some books all on the floor - some composition books. And the covers of them, I presume with them being stacked on the floor like that, I fell on them. When I fell, I snatched the stick out of his hand and he fled. That's what happened.

Q. Where did this individual go?

A. He ran out the door.

Q. What did you hear when he left?

A. A couple of seconds passed and I heard like a thug, either a fall or a jump, one of the two. It's subjective. I don't know whether he fell or whether he jumped but I did hear a thugging sound.

Q. All right, now, at this precise point in time, where were you in the apartment?

A. At that time, I was sitting right in front of that chair where I had fell at and I seen the blood and I was sitting there about five seconds at the most and I was feeling the back of my head to see if it was me bleeding. Then I noticed my finger was busted. This finger here was bursted open by him trying to strike me. Then I got up, you know.

Q. How did the area look that you were in?

A. Materials were scattered all over the living room area and there was a ripped paper bag, some grocery items,

1 some composition tablets, and just that blood. That blood on
2 that cushion. That was in the living room area.
3 Q. Did you go any further into the apartment?
4 A. A. Yes, I did.
5 Q. Where did you go?
6 A. I went straight back into the last bedroom.
7 This is all the way in the back of Ms. Smith's apartment. All
8 the way in the back.
9 Q. And what, if anything, did you observe in that
10 location?
11 A. When I got up out the floor in the living room,
12 when I stood straight up and I turned around, making an evolu-
13 tion around in the floor, I could see from perhaps her (pause)
14 -- half of her stomach to about perhaps the end of her knees
15 lying this way in the back bedroom. And I walked on back in
16 the hallway, and when I got into the bedroom where I could see
17 the whole body, there was a knife in her throat. I hadn't seen
18 anything around her neck yet because her clothes were ruffled
19 or twisted about on her. I noticed some abrasions about her
20 face. It was -- and I noticed basically a blood bath. I
21 leaned down over Ms. Smith. I never touched the knife. I never
22 grabbed the knife. When I was reaching for it, it fell. It
23 just fell over. I never touched the knife. Never. Never had
24 it in my hand, it just fell over.

1 Q. What was Ms. Smith's condition? Was she alive?
2 A. I couldn't tell. I really couldn't say. I can
3 say that her eyes were open. There were some reflexes. There
4 were some physical reflexes from this body on this floor. She
5 was moving reflectually. I don't -- I couldn't honestly say to
6 you that she was living, deceased, or what at that point. I
7 don't know. And then me trying to make that assessment, I was
8 kicked in the back, the TV was thrown at me, which I slapped
9 away. I was lit -- I was being attacked by another individual.
10 I leaned across Ms. Smith with both my hands out like this.
11 The whole area was bloody. The whole area was bloody - with
12 whom's blood, I don't know, but it was bloody. There was no
13 way I could avoid any blood. My concern at that moment was
14 trying to help her and on the same hand try to ward off an
15 attack, and this is what I was trying to do, at both moments
16 trying to do one thing. It was difficult.
17 Q. Was this the same individual that you had seen
18 in the living area?
19 A. No, it was not. No, it was not.
20 Q. What happened after you were kicked?
21 A. I got up after I rolled off the TV, still try-
22 ing to avoid either stepping on Ms. Smith or having him step
23 on her. I rode off of him, I pushed off the wall, threw a
24 reverse-hook kick at this individual, which I missed at first.

I extended it and I hit him with it. I hit him with another kick. I hit him with a backhand to his face, an elbow to his solar plexus, I threw one punch down to his lower abdominal area. He folded over, snatched something from behind him - a very hard object, and he swung it with a certain determination that I personally didn't want to even be bothered with, so I just backed out of his way, automatically knowing that this man is trying to get out of here. My concern wasn't with trying to apprehend him. I feel that's a job for the police. My concern was trying to help Ms. Smith as much as I possibly could.

Q How long did this second involvement take?

A I would estimate it no more than -- (pause) no more than 15 (pause) -- 15 (pause) -- 15 to 25 seconds, in that type of framework. I really wasn't time-conscious.

Q All right, there have been some exhibits presented which showed some handprints on a wall of the apartment in the bedroom. Whose prints are those?

A They are my prints. They are my prints. I pushed off the wall to throw a kick. Let me explain that. I'm versed in jujitsu and I'm versed in karate. You learn in jujitsu as a principle that with leverage you get more thrust into what you're doing. It's a technique in the martial arts of balance and leverage. Too, you have northern and you have southern. Northern is with your feet. It gives you more ex-

1 tension and out of the way of anything that's trying to attack
2 you. Automatically, why should I put my whole body there when
3 I could just put my feet there and have more power as strong as
4 muscles are in the legs. My leg muscles are stronger than my
5 arm muscles, okay? So I'd use my arts to keep him away from
6 me and simultaneously from her. You have to picture in your
7 minds that -- you only have a subjective picture here. You have
8 to picture in your minds trying to save someone, fight someone,
9 and prevent the both of you from stepping on this individual
10 or any more harm coming to her than what has obviously been
11 done already. Okay? That's what I was faced with.
12 Q. Mr. Clanton, the testimony that has been pre-
13 sented indicated that you had blood all over you. Is that
14 true?
15 A. Yes, sir.
16 Q. How did that blood get all over you?
17 A. The individual, the last man, he was very
18 bloody. Too, when I was trying to get this thing from around
19 Ms. Smith's neck, which I managed to get one knot out of,
20 through all of that, I did manage to get one knot out of that
21 rope or whatever it was, blood was -- the whole place was bloody.
22 Blood was unavoidable and it wasn't blood that I was concerned
23 with, it was a life. It was a human life. Blood, getting
24 blood on me wasn't the issue for me. I raised her head. I

1 took my shirt off at another point, which I guess we allude to,
2 and when I picked her head up, you know, and I put it on my
3 knee to try to get that up under her head to get this off her
4 neck, this rope was tied very tight, extremely tight, if I may
5 add that. I mean tight. Not just the normal tie, it was tight
6 and it had two knots in it. Who took the other knot out, I
7 don't know. Perhaps whoever took it off of her.
8 Q. Did you have occasion to see Ms. Lawrence
9 again?
10 A. Yes, I did.
11 Q. When was that in relationship to the events you
12 have just testified to?
13 A. Well, after the last man fled, Ms. Lawrence
14 became impatient, obviously concerned about me, and she was
15 coming in the door, at which time I heard like an "Ugh," you
16 know, and "Get out of my way, b-i-t-c-h," okay? It dawned on
17 me that she had came in. I immediately got up and went to her
18 aid. Immediately. But when I was going down the hallway, she
19 stopped me, she said, "Let him go." I said, "Are you all
20 right?" She said, "Yes." I said, "Don't come into the bed-
21 room." And I hadn't seen her any time since I had told her
22 -- when I was going over there, I told her, "You stay in here.
23 You lock the door and you don't open it for nothing or nobody."
24 And at that point, that's the only other time I seen Ms. Law-

1 rence when she came over after the last guy was leaving. That's
2 when I saw Ms. Lawrence again.
3 Q. Did you attempt to render any further assistance
4 to Ms. Smith?
5 A. Yes, I did. Yes, I did. It was a pile of
6 things all on the floor. A pile of things scattered all on
7 the floor, predominantly to my sight papers. I'm caught be-
8 tween the dilemma of being a fugitive and calling the police
9 or calling someone who may be of some kin to her who can render
10 some help and I get the hell out of there. This is what I was
11 caught up between. But at the time, the obvious hideousness of
12 it, the atrocity was obvious, and it wasn't easy to talk about
13 it then as it is now, you would have had to have been there, so
14 I picked up -- the first thing I picked up , it was just some
15 papers but it didn't equal anything. I looked further on the
16 floor. I saw a blue book, which is manifested as a checkbook,
17 obviously. I picked that up and I opened it. When I opened
18 it, I saw it was a checkbook. I threw it back to the floor.
19 I thought perhaps it was an address book, someone I could call
20 to render some help. I had no intentions of calling anyone in
21 Crater Square, obviously, because they were all apprehensive.
22 No one was there but me. So, common sense, I kind of got a
23 feeling about how they felt about getting involved in things.
24 So getting -- trying to get help for Ms. Smith at that time,

you know, having an asset, you know.

Q. Did you know Ms. Smith?

A. No, I didn't.

Q. Had you ever seen her before?

A. Yes, I had.

Q. Had you ever talked to her or had any involvement with her?

A. Once, the apartments were sprayed. They came up and they sprayed the apartments. And I had awakened one evening and I went out on the terrace to get some air. I had awakened and I asked Natalie, I said, "What is that smell?" She said, "They sprayed the apartment." And when I went out on the terrace, when I was coming out, she was in her apartment and she had opened the window; she was opening windows. And she was offensive about it. She asked me, she said, "That stuff is terrible, isn't it?" And I turned and looked and it was Ms. Smith. I said, "Yes, it is." I said, "That's why I'm out here, you know." And I saw her one other occasion. She was with another female. I guess a friend of hers. And they were -- Natalie and myself were going out one evening and they were coming in. I spoke. Other than that, I don't have -- you know, I don't know the woman. She's to me practically a hermit. I never saw her in the couple of weeks that I was in that area.

1 Q. Mr. Clanton, how long had you in fact been
2 living with Ms. Lawrence?
3 A. Only about two and a half weeks, if that long.
4 Q. Would you explain to the jurors how you got
5 under the bed, why you got under the bed?
6 A. Well, at the time, I was -- I was in -- I was
7 on the floor on these pile of things and the knock came to the
8 door, and being moving around in there at that time, understand
9 me, please, I was basically -- everything was instinctual. I
10 was trying to figure out what to do, how to do it, asking Ms.
11 Lawrence to help me think. Let's do something. A knock came
12 to the door. It was the police. Ms. Lawrence told me it was
13 the police. I jumped up. I went -- I moved up to the front
14 of the apartment and I told her, I said, "Well, look, I'm going
15 to hide some place. Let them in." She said, "No." She said,
16 "Are you crazy?" I said, "What's more important right now -
17 me being a fugitive or what's back there?" She looked at me,
18 she agreed, she said, "Well, you're right." I said, "But wait
19 a minute." I said, "Tell them anything. Wait a minute. Let
20 me get my shirt." I went back into the back bedroom, got my
21 shirt from up under Ms. Smith's head, went into the next room
22 from where she was at and I got up under the bed. It was not
23 my concern to get caught either, you know, but it came to a
24 point of what was more important, me being a fugitive or --

you know, I mean I could have left. I could have left her there. I could have been as apprehensive about it as everybody else. I could have done that. A part of me couldn't do that, irregardless of my situation with the law. A part of me just couldn't leave her lying there. It was that -- it was just that simple. My being under the bed because I was a fugitive. I didn't want to get caught either. I don't think anyone would want to go to jail.

Q Did you take any of Ms. Smith's belongings?

A No, I did not.

Q Did you take any money from her?

A No, I did not.

Q Did you have any marks on your body?

A Yes, I did. I had a mark on my finger where the guy hit me when I blocked the spoon. My finger was busted. One of the expert witnesses for the Commonwealth, she testified that some blood was on the handle of the spoon consistent with my blood type, etc. Very consistent with mine and not so consistent with the victim's. The reason for that being when I took the stick from this individual, the first person I met when I came in the door, I had the spoon in my hand, when he fell to the floor, the spoon popped. Automatically, in a situation of instinct and warfare, you notice it's a sharp end. I snatched it from him, and me snatching that from him, that's

1 what I fell, and that's how he got away. And when I had this
2 in my hand, my blood was on it, my hand was bloody. My hand
3 was bloody. Initially, that's where the blood on my hand came.
4 Initially, that's where it came from.
5 Q. Where else did you have any other marks?
6 A. I had a mark on my back, the lower part of my
7 back, where he kicked me and threw the TV, and me rolling off
8 of it, my elbow was busted off, so the (pause) -- the officer
9 who testified here earlier that say he took all the pictures
10 and what have you, when I was arrested and taken to the Police
11 Headquarters, he had me stand certain ways and he took pictures
12 of my body, my upper body. He took pictures of me. He testi-
13 fied today that he had taken no other pictures. That is a lie.
14 He took pictures of me. And what I'm saying is that all cuts
15 and abrasions and bruises on me were in the back of me, con-
16 sistent, you know, with anything I'll say here today. But for
17 some reason, he did not take those pictures. He took them.
18 Q. How experienced are you in the martial arts?
19 A. I would say -- I would say that being -- being
20 taught from individuals and not any formal dojo training, but
21 being taught from persons who knew it very well, I would -- if
22 I had to give it a degree of a belt, which I try not to get
23 into categorize there but just give it a freestyle art, I would
24 say that I could defend myself with the average second degree

1 or third degree black belt.

2 Q. Why couldn't you subdue these individuals then?

3 A. It was not a matter of subduing them. What I

4 wanted to do I did very effectively. Very effectively. I was

5 -- when I went into her - Ms. Smith's - apartment, understand

6 I did not go in there with consciousness that someone was in

7 there, I went in there just (pause) something's going on by

8 seeing the blood on that cushion. When I stepped in, I was

9 attacked. Automatically, your fighting instincts come out. If

10 you're in any fight - if you watch boxing, martial arts, kick

11 box or anything, you see more instinct than you see actual

12 contact. I blocked, I protected myself, I deliberately -- I

13 wasn't there to hurt anyone. At the moment that you are at-

14 tacked, the spiritual discipline of the martial arts teaches

15 you you are just to defend yourself, if attacked. You are not

16 the aggressor. And I defended myself very well. My life is

17 -- you know, I'm still living, you know, and I warded off my

18 attackers, people who was trying to hurt me for the obvious

19 reason, I presume, they wanted to get away. If I wanted to

20 stop them or apprehend them, I could. I could have done that.

21 But like I say, in all honesty, you know, it's not my job. I

22 just wanted to protect my own life.

23 Q. Are you experienced at defending yourself in

24 any other way?

1 A. Boxing. I boxed light heavyweight for a little
2 while. I box very well.
3 MR. HAULER: Answer any questions Mr. Welsh
4 may have.
5
6 CROSS EXAMINATION
7 BY MR. WELSH:
8 Q. Mr. Clanton, how many times have you been con-
9 victed of a felony?
10 A. Three times.
11 Q. Three times?
12 A. Yeah.
13 Q. About three?
14 A. Three times.
15 Q. Three times?
16 A. Yes. Three times.
17 Q. Now, Mr. Clanton, these people that were in
18 the apartment, how would you describe them? For example,
19 describe the first person that you ran into.
20 A. Well, the first person, a good description of
21 him would have been my weight at that time, roughly 175 pounds.
22 He had on beige-colored pants, light colored jacket. He had
23 on a pair of sneakers with N-i-k-e written on them. He had on
24 a pair of surgical gloves. He was light-skinned in complexion,

about my height. And an accurate description of the second guy, give or take a few -- give or take some width and some length, Mr. Steve Batts. Detective Batts is a very good description of the individual that I'm talking about as the second person.

Q. This second person looks like Steve Batts?

A. Uh huh.

Q. How would you --

A. What do you mean, --

Q. -- what was he wearing?

A. -- "look like?"

Q. The one that you say his build is similar to that of Sergeant Batts, --

A. Yes.

Q. -- what was he wearing, this second person?

A. He was wearing a red leather jacket, a short-waist jacket, with black pants, regular pair of shoes. He had -- I noticed during the fight, he had one glove on and one glove off, and I can't explain that but that's what I saw.

Q. Now, you've indicated a number of times that you were a fugitive, etc. What are you a fugitive from?

A. Well, at the time -- I'm not a fugitive from anything now, but at the time I was a fugitive.

Q. From what?

1 A. The law.
2 Q. From the law?
3 A. Yeah.
4 Q. Had you escaped custody or was someone looking
5 for you to arrest you for something?
6 A. No, I hadn't escaped. You know, I had walked
7 out of the Courtroom in April.
8 Q. Oh.
9 A. I hadn't escaped. (pause)
10 Q. But you had walked out at a time when you
11 weren't really free to leave, is that what it is?
12 A. No. I was -- on the contrary, I was free to
13 leave.
14 Q. But you were supposed to come back?
15 A. Yeah.
16 Q. All right.
17 A. Yes, sir.
18 Q. And you didn't. That was back in April of
19 1980?
20 A. Yes, sir.
21 Q. Now, isn't it true, Mr. Clanton, that Natalie
22 Lawrence was here that day?
23 MR. HAULER: Objection, Your Honor. I don't
24 see that there's any relevancy to that.

1 MR. WELSH: I think there will be.
2 THE COURT: Do you want to discuss it out of
3 the presence of the jury?
4 MR. HAULER: Yes, sir.
5
6
7
8
9 NOTE: At this time, the jury retired
10 to the jury room.
11
12
13
14
15 MR. WELSH: Judge, it's been made very clear
16 by the defense they intend to call Natalie Lawrence
17 as a witness. It's come to my attention that Natalie
18 Lawrence was here the day that Mr. Clanton left Court.
19 If so, then she was knowingly harboring a fugitive from
20 this Court and I think it would certainly reflect on
21 her credibility as a witness. And I think I'm entitled
22 to ask Mr. Clanton if Ms. Lawrence was here.
23 MR. HAULER: Judge, this lady hasn't --
24 THE COURT: Well, she may not testify so I

don't know.

MR. HAULER: Nor has she ever been charged with that.

THE COURT: It doesn't make any difference. I'm not going to let you do it until we see that she testifies, Mr. Welsh.

MR. WELSH: All right.

THE COURT: Bring the jury back.

MR. HAULER: Judge, while the jury is out, I don't know if Mr. Welsh plans on pursuing anything further about any of his past matters but I think he seems to be circumventing.

MR. WELSH: Now, that's the point I was leading to, Judge. And if that's your ruling, I'll leave the point.

THE COURT: All right. Bring the jury back.

NOTE: At this time, the jury returned to the Courtroom.

Q Mr. Clanton, when you went in the door and the first man jumped you, as you say, or came at you with the spoon, you indicate that you were cut by that spoon?

A Yes, I was.

Q Where specifically were you cut?

A On my finger, on my right index finger.

Q On the outside? You're pointing to the outside of the back of the finger, --

A Yes.

Q -- is that where you were cut?

A Yes.

Q All right.

A And it was open.

Q Okay. Now, all the blood that was on both your hands, did that come from that cut --

A No, sir.

Q -- or was it a combination of both?

A It did not come from that specific cut.

Q It was a combination of blood from you and blood from Ms. Smith then?

A From rendering her aid, yes. When it got to that point, yes.

1 Q Uh huh. Now, you say that as you went down the
2 hall or as you approached the room that you saw the lower part
3 of her body, her legs, her feet, then you --
4 A No, I didn't say I saw her feet, I said I saw
5 from about her -- the bottom of her chest to about the end of
6 her knees. That's what I said I saw.
7 Q Well, why could you not see either above that
8 or below that?
9 A The extension of her body, perhaps. You know,
10 it's a doorway. It don't accomplish the whole body. You can
11 only see so much through a certain thing.
12 Q Which part of her body was closer to you?
13 A What do you --
14 Q As you entered the door?
15 A -- mean "closer?"
16 Q As you entered the door, which part of Ms.
17 Smith's body was closer to you?
18 A She was laying -- if I walk in -- if I'm walk-
19 ing in facing the jurors, she's laying this way.
20 Q Right. Now, which part of her body --
21 A All of her body --
22 Q -- would be towards your right hand?
23 A -- would be -- . Her body would be equal.
24 But it wasn't a matter of my right hand going in the door

first, --

Q Now, --

A -- I went in the door walking.

Q Mr. Clanton, if you'd stop trying to argue with me and --

A I wasn't --

Q -- just listen --

A -- arguing with you.

Q -- to the question. I'm not trying to put any words in your mouth but I'm trying to find out.

A I understand.

Q As you looked at her body, it was across?

A Yeah.

Q Which part was to the right and which part was to the left? That's all I want to know.

A Of her body?

Q Yes.

A This part of her body was to the right and that part of her body was to the left, obviously.

Q Well, now, that's not answering the question now, is it, Mr. Clanton? (pause) Let --

A You asked me --

Q -- me try it again. We'll try it again. As you looked at her body and it was crossways in front of you,

was the upper part of her body to the right or the lower part of her body to the right?

A. She was laying diagonal. I mean she was laying, you know.

Q. Okay, --

A. She was laying in the floor.

Q. -- if you don't want to answer the question, that's all right.

A. I'm answering the question as best I understand it, you know.

Q. Uh huh.

A. I mean she was laying in the floor.

Q. Now, you say the knife was sticking out of her throat --

A. Her body wasn't in parts. You know, she was still whole.

Q. Mr. Clanton, as you walk into the bedroom, there's a window over on the left, right?

A. Yes, sir.

Q. Which part of her body was closer to the window, her feet or her head?

A. Her head. Her head.

Q. Her head was closer to the window?

A. Than her feet.

1 Q. Than her feet?
2 A. Yes, sir.
3 Q. Okay. Now, at that point, I believe you testi-
4 fied that --
5 A. I believe. I believe. You know, what I just
6 told you, I think.
7 Q. Okay.
8 A. I think -- I think --
9 Q. You think it was (pause) her head --
10 A. I think.
11 Q. -- closer to the --
12 A. I think. I'm not certain now. It's been a
13 while.
14 Q. Uh huh. Now, as you entered the room, you saw
15 that she had a knife sticking out of her neck, you said? Right?
16 A. Yes.
17 Q. Can you tell which of the wounds,if we were
18 to show you the picture, which of the wounds that it was stick-
19 ing out of? Do you remember specifically?
20 A. I can't remember specifically but it was in
21 her neck.
22 Q. Suppose we show you a photo and maybe you can
23 tell us if you can or can't answer that?
24 A. Sure. (pause)

1 Q. How about Photograph No. 8, can you tell if
2 the wound you're referring to is shown on that photograph, the
3 one from which the knife was coming?
4 A. I -- I can't say.
5 Q. You don't know?
6 A. I can't say. But I remember those -- both of
7 those abrasions.
8 Q. Uh huh.
9 A. I remember those.
10 Q. And you say the knife just fell out?
11 A. Yes, sir.
12 Q. Before you got a chance to take it out?
13 A. I hit it. My hand hit it.
14 Q. All right.
15 A. I never grabbed it. I mean my prints are not
16 on it so I guess that speaks for itself.
17 Q. Uh huh. (pause) Now, what did you do with
18 the belt? I remember you were testifying you did something
19 with the belt. Tell us again --
20 A. I took one knot out of it, and after I took
21 that knot out of it, when this man was running out of the
22 apartment, I stooped right down and I started untying that
23 knot. And when I smelled a certain thing, I opened a window.
24 Q. Now, did you take that knot out before or

after the second man attacked you?

A. Well, I'd started on it before he attacked me and I finished it as he was leaving. (pause) He attacked me while I was trying to get the thing. You know, he attacked.

Q. Now, do you recall talking to Detective Lee Crowell on the night you were arrested at approximately 6:30 at Police Headquarters? I think Sergeant Batts and Detective Langford were there, too. Do you recall talking to Detective Lee Crowell?

A. The night I was arrested?

Q. Yeah, the same night you were arrested.

A. I don't know if it was the same night I was arrested but I recall talking to Lee Crowell at Police Headquarters in the office.

Q. Now, do you recall telling Mr. Crowell that when you entered the room the man attacked you first and then you attempted to assist by removing the --

A. That's not what I told --

Q. -- knot? That's not what --

A. -- Mr. Crowell.

Q. -- you told Mr. Crowell?

A. What I told Mr. Crowell is that I don't have anything to say to you. Mr. Crowell told me that he was not on at the time that this incident occurred so would I please

1 fill him in - quote, unquote. I told Mr. Crowell, "I have
2 nothing to say to you." He gave me his card which I still
3 have and said, "Well, call me if you want to talk."
4 Q You deny making a statement --
5 A Of course, I do.
6 Q -- to Detective Crowell then that would indi-
7 cate that you were attacked first before you attempted to aid
8 Ms. Smith? You deny that you made that statement to Detective
9 Crowell?
10 A To Detective Crowell, yes. Yes. Yes, I do.
11 Q Now, we've heard a lot about your training and
12 abilities in martial arts. You would consider yourself to be
13 a fairly strong person, is that right? (pause) Upper body
14 strength?
15 A At one point, maybe, but now I really couldn't
16 say;since I've been confined, I don't know.
17 Q But prior to being confined, you were in shape?
18 A I were in shape, yeah.
19 Q And these individuals that attacked you, they
20 did not attack you in any martial arts positions or stances,
21 did they?
22 A Not -- no.
23 Q No?
24 A No, they didn't.

Q And you fought them off using martial arts?

A Well, just basic fighting techniques. That's -- I wouldn't say martial arts.

Q Did you (pause) -- I didn't hear all your testimony. Did you indicate that you were a black belt in some particular martial art?

A No, I didn't. (pause) I said --

Q Are you --

A -- I believe I could defend myself against someone of that belt, --

Q Of that caliber?

A -- holding that belt. Yeah.

Q All right.

A I think I could.

Q You didn't injure either one of these people, did you?

A Yes, I did.

Q You did injure them?

A Yeah.

Q How did they get away if you injured them?

A Well, it wasn't anything finishing. The whole -- the whole value about martial arts, take karate, it means "empty hand," it means the efficiency of the blow. You know, you have certain ways. If (pause) -- I wish I could be

1 demonstrative for you. There are some ways to just attack and
2 there are other ways to be finishing.
3 Q. Uh huh.
4 A. To be finishing was not my -- it wasn't my
5 prerogative at that time, it was just merely to defend myself,
6 protect myself against someone else's onslaught. That's what
7 was in my head. I wasn't in there to hurt anybody.
8 Q. Well,you didn't have any trouble defending
9 yourself, did you?
10 A. Of course not.
11 Q. No. I mean you're pretty good --
12 A. Of course not.
13 Q. -- at what you were doing? (pause) You are
14 pretty good at defending yourself?
15 A. Yes, I am.
16 Q. But yet you're telling this jury you weren't
17 able to subdue either one of these people even though you
18 injured them?
19 A. I also told the jury that it was not my job to
20 subdue anyone, --
21 Q. Oh.
22 A. -- to bring anyone before the law. That's not
23 my job, sir. I had other factors, other things to look at, --
24 Q. Uh huh.

1 A -- in getting involved in these types of things.
2 I had other things to look at.
3 Q Now, tell us again why your fingerprint is in
4 the checkbook.
5 A I picked up the checkbook thinking it was an
6 address book, someone whom I could call, and at one point I
7 picked up the phone, I picked up that phone and I put it down
8 when the realization"I'm a fugitive" hit me, and that's where
9 I left it at.
10 Q How come there was no blood on the phone?
11 A Don't ask me.
12 Q You had blood on you. You admitted that.
13 A Okay, but I'm saying, don't -- I don't, you
14 know -- I can't explain that to you.
15 Q Oh.
16 A Probably for the same reason it wasn't no blood
17 on the knife. I don't know. It was handled, you know, (pause)
18 by your investigators. It was handled, you know.
19 Q Uh huh. Now, Mr. Clanton, you were concerned,
20 of course, as you testified, about calling the police because
21 of the fact that you were a fugitive, but yet you testified
22 that you were concerned about the lady, you wanted to help her
23 and so you were looking for somebody to call. Right? Is that
24 right?

1 A. That's correct.
2 Q. You didn't want to be caught in that apartment,
3 did you?
4 A. I mean that type of thinking, you know, what
5 I'm trying to get across to you, at that time all this rational
6 process that we can go through now looking back, I couldn't do
7 that then. It was instinctual, it was congested, it was --
8 it was (pause) -- it was a maze.
9 Q. You thought quick enough to not call the
10 police, right?
11 A. Of course.
12 Q. You thought of that right away?
13 A. Of course.
14 Q. Now, Ms. Lawrence was right there with you or
15 she had come in?
16 A. Yeah.
17 Q. She had come in?
18 A. Yeah.
19 Q. When you were attempting to find out some way
20 of helping Ms. Smith, as you testified to?
21 A. Yeah.
22 Q. She wasn't wanted by the police for anything,
23 was she?
24 A. At the point, Ms. Lawrence did mention calling

1 the police. She did mention that.

2 Q. Did she?

3 A. Yes, she did.

4 Q. At what --

5 A. At that point,--

6 Q. -- point was that?

7 A. -- the police was there. They was knocking

8 on that door.

9 Q. Then why did she try to delay them if she was

10 thinking about calling them, do you know?

11 A. I was a fugitive.

12 Q. That explains everything, huh?

13 A. Believe it or not. (pause) I was a fugitive.

14 (pause) If you cared about someone, would you just open the

15 door on them and --

16 Q. I'll ask the questions, Mr. Clanton, okay?

17 A. Okay. Yes, sir.

18 Q. Thank you. Now, you said you were injured in

19 your back, in your lower back?

20 A. Yes, sir. And my elbow and my finger.

21 Q. Do you recognize --

22 A. I was kicked, anyway.

23 Q. Do you recognize who's in this photo?

24 A. That's me.

1 Q. That's you?
2 A. Yes, sir.
3 MR. WELSH: Your Honor, we would ask that
4 these two photos be marked Commonwealth's Exhibits
5 57 and 58.
6 Q. When were those pictures taken, if you recall,
7 in relation to the day that this happened? The same day?
8 A. The same day. The same day.
9 Q. Mr. Clanton, did Ms. Lawrence come with you --
10 or go with you when you went into the apartment or do you know
11 where she was when you went into the apartment?
12 A. Initially?
13 Q. Yeah. When you first went in.
14 A. Initially, my instructions to her was to stay
15 in the apartment. When I went in, I went in by myself.
16 Q. Okay. So you left her over in H when you went
17 into E, and obviously, then, you don't know at what point she
18 entered, you only know at what point you saw her?
19 A. No, I know at what point she entered.
20 Q. Did you see her come in?
21 A. The door only opened at one other time after
22 the first man left, that's when the second man was leaving,
23 and at that point, Ms. Lawrence appeared so she had to enter
24 at that point.

1 Q. Now, when you went to the apartment, was the
2 door open or closed to E?
3 A. Closed.
4 Q. It was closed?
5 A. Yes.
6 Q. How did you get in?
7 A. I just opened it and walked in.
8 Q. It was unlocked?
9 A. Yes, it was.
10 Q. Did you close the door?
11 A. Yes, I did.
12 Q. The man hit you with the spoon or you hit the
13 man with the spoon?
14 A. He hit me.
15 Q. Do you have any idea how the pieces of spoon
16 got under the sofa?
17 A. (Pause and no reply)
18 Q. Sergeant Eilert testified they recovered the
19 pieces -- two pieces --
20 A. No, I don't.
21 Q. -- under the sofa.
22 A. I have no idea.
23 Q. You have no idea?
24 A. No.

1 Q You didn't put it there?
2 A No, sir.
3 Q And the man left right after you fought him
4 off, right? Number two man left?
5 A Yes, he did. Yes, he did.
6 Q And you saw the other man who was in the back
7 bedroom, you saw him run out of the apartment?
8 A Yes, I did.
9 Q So he didn't do it either?
10 A Yes, I did. (pause) I don't know.
11 Q So you know you didn't do it and you know that
12 neither of these two --
13 A I don't know. (pause) I don't know, to answer
14 the question.
15 Q Both of these men left through the front door
16 of the apartment?
17 A Yes, they did.
18 Q They left in a hurry?
19 A I would think so. (pause) Yeah.
20 MR. WELSH: I don't have any further questions.
21 THE SERGEANT: Any more questions, Mr. Hauler?
22 MR. HAULER: No, not at this time. Return
23 to your seat, please.
24 WITNESS STOOD ASIDE.

NATALIE LAWRENCE, introduced on behalf of the defense, after being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. HAULER:

Q. State your full name for the Court, please.

A. Natalie Mosley Lawrence.

Q. Ms. Lawrence, are you acquainted with the defendant in this case, Earl Clanton, Jr.?

A. Am I what?

Q. Are you acquainted with him?

A. Yes, I am.

Q. How long have you known him?

A. A year, four months.

Q. Have you lived with him?

A. Yes.

Q. Where did you live with him?

A. 1025 South Crater Road, Apartment 14-H.

Q. Did you know Wilhelmina Smith?

A. I knew of her, yes.

Q. Where did she live in relationship to your

1 apartment?

2 A. Across the hall.

3 Q. Directing your attention back to November 16th

4 of 1980, was Mr. Clanton in your presence on that day?

5 A. Yes, he was.

6 Q. Would you relate the events of that day start-

7 ing with the morning?

8 A. You mean from the time I got up?

9 Q. Yes. What time did you get up on that date?

10 A. Around 11:30.

11 Q. Is that the normal time you get up?

12 A. No. Sometimes I sleep later than normally on

13 the weekends.

14 Q. Did Mr. Clanton awaken you?

15 A. No, he --

16 MR. WELSH: Objection. That's leading, Your

17 Honor.

18 Q. What caused you to --

19 THE COURT: Go ahead.

20 Q. -- wake up, Ms. Lawrence?

21 A. I heard a noise.

22 Q. And where was that noise coming from?

23 A. At that time, I wasn't sure where the noise

24 was coming from.

1 Q As a result of what you heard, did you do
2 anything?
3 A I was in the bed, I was asleep, I got up, yes.
4 I went to my door.
5 Q Was Mr. Clanton in that vicinity?
6 A Mr. Clanton was still in the bedroom.
7 Q All right. Why did you go to the door?
8 A I heard a noise and I wanted to see what it was
9 that I heard.
10 Q When you got to the door, did you observe any-
11 thing further or hear anything further?
12 A When I got to the door, I heard a scream.
13 Q Did that cause you to take any other measures?
14 A Yeah, I knew at that time where the scream was
15 coming from.
16 Q Where did you believe it was coming from?
17 A From across the hall.
18 Q Did you go to that location?
19 A Yes, I did.
20 Q Describe the events of what you actually did
21 from the time you heard that scream. What actions you took.
22 A I went out of my door. I closed my door be-
23 hind me. I went across the hall. The woman's keys were in
24 her door. I cracked the door open. There was blood on the

1 woman's chair. There were items on the floor and there were
2 noises coming from the background -- back room of her apart-
3 ment.
4 Q. Did you see anyone inside of the apartment at
5 that time?
6 A. Not at that time, no, sir.
7 Q. Could you hear anyone in the apartment?
8 A. I just still heard some rumbling noises at
9 that time.
10 Q. All right. When you say "rumbling noises,"
11 are you talking about the sounds of movement, voices? Specif-
12 ically, what do you mean by you heard a rumbling?
13 A. Movement.
14 Q. Did you investigate that any further?
15 A. No, I closed the door and went back into my
16 apartment.
17 Q. All right, after you had returned to your own
18 apartment, did you take any further actions in regard to what
19 you had just seen or heard?
20 A. I went back and I told Mr. Clanton what I had
21 seen in the woman's apartment and I asked him to go over there
22 and check it out.
23 Q. All right, now, where was Mr. Clanton when you
24 returned?

1 A. Coming towards the living room as I was going
2 back in my door.
3 Q. How was he dressed?
4 A. Ah, he had on a shirt, a pair of pants and
5 tennis shoes.
6 Q. As a result of anything that you may have told
7 him, did you observe him do anything?
8 A. I don't understand your question.
9 Q. Well, when you got back to your apartment, did
10 you have a conversation with Mr. Clanton?
11 A. I told Mr. Clanton that I thought the woman
12 across the hall was in trouble because there was blood on her
13 chair and there was items on the floor and I asked him would
14 he go over there and assist her.
15 Q. All right, now, how did he react upon being
16 told this?
17 A. He looked at me like I was crazy.
18 Q. Did he give you any indication that he did or
19 did not wish to be involved?
20 A. He reminded me that he was on the run at that
21 time and he felt like he shouldn't get involved.
22 Q. Did he ultimately go?
23 A. Yeah, he went.
24 Q. Why did he go?

1 A. Because I kept begging him to go over there.
2 Q. Did you follow him after he left?
3 A. No, I did not. I stayed in my apartment.
4 Q. All right. From the time that Mr. Clanton
5 exited your apartment, how long of a period of time elapsed
6 until you saw Mr. Clanton again?
7 A. Maybe about two minutes.
8 Q. Where was the next place that you observed Mr.
9 Clanton?
10 A. In the apartment of Ms. Smith.
11 Q. All right, now, how is it that you got over
12 there?
13 A. I don't understand.
14 Q. Well, how -- why did you go over there?
15 A. I went over there after I saw a man run out of
16 the apartment.
17 Q. All right, the first time that you testified
18 you heard some screams and that as a result of that you took
19 certain actions, you went over to Ms. Smith's apartment. When
20 you walked up to her apartment, what did you observe?
21 A. Just keys in her apartment door.
22 Q. All right, now, regarding the second time that
23 you went to Ms. Smith's apartment, were the keys still in the
24 door?

1 A. Yes, they were.
2 Q. Did you do anything with those keys?
3 A. After I went over there when I went inside, I
4 took the keys out and set them on the kitchen table.
5 Q. And did you see Mr. Clanton inside of the
6 apartment?
7 A. Yes, I did.
8 Q. Where was he when you observed him in Ms.
9 Smith's apartment?
10 A. When I first observed him, he was running up
11 the hall towards where I was.
12 Q. Did he make any statements to you?
13 A. He told me to stay where I was.
14 Q. Did you do that?
15 A. No, I didn't.
16 Q. What action did you take?
17 A. After that, I went towards the woman's bed-
18 room and I was asking him from where I was what was wrong.
19 Q. All right, did you ever get back into the bed-
20 room?
21 A. I never went inside of the bedroom. I went to
22 the -- in between the hallway and the bedroom.
23 Q. Did you look into the bedroom?
24 A. Yes, I did.

1 Q. All right. Based upon your observations, what
2 did you see in the bedroom?
3 A. I saw Ms. Smith laying on the floor and Mr.
4 Clanton sitting on the edge of the bed.
5 Q. Did you have any conversations with Mr. Clanton
6 at that time?
7 A. Yes, I did. I asked him what happened.
8 Q. And what, if anything, were you told?
9 A. He told me that he had fought two guys and
10 that he was trying to assist the woman but he had did all he
11 could do to help her. He asked me what should he do and I
12 told him to (pause) -- that I would go and call the police and
13 for him to go back home and change clothes.
14 Q. Do you have any recollection of the police
15 coming upon the scene?
16 A. I remember when they knocked at the door,
17 (pause) or after I got to the door, they were at the door.
18 Q. Do you remember how long of a time period
19 passed from the time that you entered Ms. Smith's apartment
20 for the second time until the police were at the door?
21 A. About ten minutes.
22 Q. Did you have any conversations with the police
23 when they arrived?
24 A. Yes, I did.

Q. All right. Would you relate to the members of the jury what transpired when the police came to the door?

A. They knocked at the door. At that time, Mr. Clanton was telling me to open the door and to let them in, and I was going to let them in but at that time I realized that he was on the run and I had felt that he had done all that he could to save this woman's life and at that time he was the only thing that was on my mind, so I hesitated to let them in, so I simply told the police that I was in the shower and they had to wait.

Q. But you finally opened the door?

A. Yes, I did.

Q. What made you finally open the door? Why did you actually go ahead and let them in?

A. Because at that time I had told Mr. Clanton to hide because I knew that the police weren't going to believe what we were telling them and he kept telling me to still go ahead and let them in anyhow because the woman was more important than he was. So I continued to tell him that the woman was dead and there was nothing else that he could do for her so I just went ahead and let them in.

Q. Do you recall which policeman entered the premises first?

A. Officer Chandler.

Q. Did you have any conversation with him? Did

1 you say anything to him?
2 A. I told Officer Chandler that there was a dead
3 woman in the back and there had been a fight.
4 Q. Were you ever asked anything else by the police
5 at that time?
6 A. No, I wasn't -- yes, I'm sorry. Yes, I was.
7 They asked me was I alone.
8 Q. What did you tell them?
9 A. I told them yes.
10 Q. Were you given an opportunity to tell them any-
11 thing else at that time?
12 A. No, I wasn't. Mr. -- Officer Chandler, as soon
13 as I told him there was a dead woman in the back, he told me
14 to stay where I was and he headed straight back towards the
15 bedroom.
16 Q. What do you recall taking place after Officer
17 Chandler got there?
18 A. Officer Chandler went to the back. He came
19 back. He said he had to -- he came back into the living room.
20 He said he had to call the Vice Squad and some other detectives,
21 and he told two other officers that was there to check the
22 premises. They came back and they hadn't found Mr. Clanton at
23 that time. Then there was a noise and Chandler was not in the
24 apartment at that time, he had gone out, and when he came back

in, the other two officers had their guns out and they were looking through the house again. He asked them what was wrong and they said they had heard a noise, so they told me to sit on the couch and they would -- and for them to stay there where I was and he would check the house.

Q. Were you arrested at that time?

A. No, not at that time.

Q. When were you arrested, if at all?

A. After they pulled Mr. Clanton from up under the bed.

Q. Were you taken anywhere from there?

A. Not at that time, no.

Q. When did you finally leave Ms. Smith's apartment with the police?

A. After Sergeant Batts got there.

Q. Where were you taken?

A. Well, first, I went home to put on another sweater and to get my house keys and my coat, then I was taken to the Police Department.

Q. Were you taken down with Mr. Clanton in the same vehicle?

A. No, I was not.

Q. Have you had any personal contact with Mr. Clanton since November the 16th, 1980?

1 A. No, I haven't.
2 Q. As a result of your arrest, were you put into
3 jail?
4 A. No, I stayed at the Police Department for
5 approximately 45 hours, then I was taken to the Jail after I
6 was fingerprinted.
7 Q. Did you ever have occasion to give a statement
8 to any member of the Police Department regarding the events of
9 that particular day?
10 A. Yes.
11 Q. Do you recall the date that that statement was
12 given?
13 A. It was in December. Well, I had given them a
14 statement prior to my arrest but they didn't believe me, so
15 they never recorded it.
16 Q. The statement that you gave to the police in
17 December, is it the same as your testimony here today?
18 A. No, it's not.
19 Q. Why was a different statement given?
20 A. Because at that time, I was under harassment
21 and I simply told them what they wanted to know so they would
22 leave me alone.
23 Q. Was the statement ever transcribed? Made into
24 a written statement?

1 A. A written statement?
2 Q. Yes.
3 A. (pause) I -- I --
4 Q. Was it typed out? (pause)
5 A. Ah, --
6 Q. How did you give the statement? Who was there?
7 A. Mr. Spero, Detective Langford and Detective
8 Crowell and myself.
9 Q. Were they writing things down as you said them
10 or were they recording them?
11 A. They were recording it and Mr. Spero was writ-
12 ing.
13 Q. And was that recording ever transcribed or
14 typed up into a statment?
15 A. Yes, it was.
16 Q. Did you sign that statement?
17 A. No, I didn't.
18 Q. Why did you not sign the statement?
19 A. Because I knew I was lying and I knew I could
20 get a perjury charge so I refused to sign it.
21 Q. Is your testimony today true?
22 A. Yes, it is.
23 MR. HAULER: Answer any inquiries Mr. Welsh
24 may have.

1

2 CROSS EXAMINATION

3 BY MR. WELSH:

4 Q Ms. Lawrence, who's Mr. Spero?

5 A He was retained by my mother to represent me.

6 Q He was a lawyer of your own choosing, right?

7 A Not of my own choosing, no.

8 Q Oh, so now you're going to tell us that you

9 didn't like Mr. Spero, either, is that --

10 MR. HAULER: Objection, Your Honor. The witness

11 didn't say any such thing. She answered the question.

12 THE COURT: I agree.

13 Q Well, why are you making a distinction as to

14 he was a lawyer that your mother hired?

15 A Because I had --

16 MR. HAULER: Objection. Counsel is the one who

17 made the distinction.

18 THE COURT: Overruled.

19 Q Why are you making the distinction?

20 A Because my mother had the money to retain one

21 and I did not.

22 Q You let Mr. Spero represent you for a while,

23 right?

24 A Up until he wanted me to do something that I

1 did not want to do.
2 Q Uh huh. Now, you were with your lawyer when
3 you made your statement to the officers that was recorded on
4 tape, right?
5 A Yes, I was.
6 Q With your attorney? And there were how many
7 officers in the room?
8 A Two.
9 Q Do you recall who they were?
10 A Detective Crowell, Detective Langford.
11 Q Now, the statement that you gave on that day,
12 that's not the first time you told them that state -- that
13 story -- that statement, was it?
14 A No, it wasn't.
15 Q You had told them that some time prior to the
16 day on which they took it on tape, right?
17 A Yes.
18 Q As a matter of fact, two days after you were
19 arrested on the 18th of November, that was the first time that
20 you told them what was contained in the statement that you
21 gave, is that right?
22 A Yes and no.
23 Q You told them some of the things but not all
24 of the things, is that right?

1 A. I told them what they wanted to hear which was
2 based on the evidence that they said they had against Mr.
3 Clanton and myself.
4 Q. Okay, you told them what they wanted to hear.
5 They didn't put the words in your mouth, did they?
6 A. No.
7 Q. Certainly not with your lawyer present, they
8 didn't put --
9 A. My lawyer was not --
10 Q. -- any words into your mouth?
11 A. -- present at that time.
12 Q. Well, on the taped statement.
13 A. At (pause) on the taped statement?
14 Q. Now, on the taped statement, did they put words
15 in your mouth?
16 A. No, but I had already knew what to say before
17 I even made the statement.
18 Q. Oh. Uh huh. (pause) Now, Ms. Lawrence, in
19 the statement that you gave to the officers both on December
20 -- on -- two days after arrested on November the 18th and on
21 the day that you were in the presence of your lawyer, Mr.
22 Spero, did you not tell them that Earl Clanton, that defendant
23 seated right there, told you before he left your apartment
24 that he was going over to Ms. Smith's apartment and he was

1 going to choke her and he was going to rob her of her money?
2 A. Yeah, I told them that.
3 Q. You told them that, didn't you?
4 A. Uh huh.
5 Q. And you want this jury to believe that you
6 made that up, that you told them something like that about Mr.
7 Clanton because they wanted you to say that?
8 A. Yeah.
9 Q. Is that true or not?
10 A. Yes, that is true.
11 Q. How about what Mr. Clanton -- what you said
12 that he said about going over there and he was going to choke
13 her and he was going to take all her money?
14 A. That's not true.
15 Q. That's not true?
16 A. No, it's not.
17 Q. Why did you tell the police that?
18 A. Because at that time, they were harassing me,
19 they had threatened to take my child from me, and my child at
20 that time was more important than anything else.
21 Q. Uh huh.
22 A. And I was doing what I had to do to clear
23 Natalie first.
24 Q. You were living with Mr. Clanton, right?

1 A. Yes, I was -- no, he was living with me.
2 Q. Well, he was living with you. And he had been
3 for some time prior to the day that Ms. Smith was murdered,
4 had he not?
5 A. Uh huh.
6 Q. And you're telling the jury that just (pause)
7 -- that they were harassing you so you decided to tell them
8 that Mr. Clanton, who you were living with, made this state-
9 ment about going over to choke her and take her money?
10 A. Yes, I did.
11 Q. Okay. You testified earlier that you know what
12 perjury is, right?
13 A. Yeah, I know what it is.
14 Q. You're aware now, right now as you testify,
15 what perjury is, aren't you?
16 A. Uh huh.
17 Q. Uh huh. (pause) Now, in that statement, did
18 you not tell the police officers in the presence of your law-
19 yer that Mr. Clanton beckoned you to come over to the apart-
20 ment after he had been over there a little while?
21 A. I said that, too.
22 Q. All right. Is that true or not?
23 A. No, it's not true.
24 Q. You deny that, too. Did you tell the police

officers in that statement that she was screaming so loud that you went to the window to look and see if the police were coming because of how loud the lady was screaming?

A. I said that, too.

Q. Was that true or not?

A. No, it's not.

Q. She wasn't screaming loud?

A. She was screaming loud, yes, but I did not go to my window to look for any police.

Q. So you made that up, too?

A. Yes.

Q. Uh huh. Is that something that they made you say or was that something you just figured up yourself to make up?

A. Like I told you, I built my whole statement around the evidence that they said they had.

Q. Now, which was it? Was it the police officers or was it your lawyer that was making you say these things this day?

A. The police.

Q. It was the police?

A. Uh huh.

Q. And your lawyer let them do it?

A. My lawyer did not know anything about that at

1 that time.

2 Q. Well, you had consulted with him privately

3 prior to making this statement, hadn't you?

4 A. Yeah, but I also trusted those policemen, too.

5 Q. Wait a minute, now. Answer my question. You

6 had consulted privately with Mr. Spero --

7 A. Yes, I did.

8 Q. -- prior to giving this statement --

9 A. Yes, I did.

10 Q. -- and the police officers were nowhere around?

11 A. Yes, that's right.

12 Q. All right. (pause) Did you tell the police

13 officers in this statement that you looked through her purses

14 in the back room because Mr. Clanton told you to look for money?

15 A. Yeah, I told them that, too.

16 Q. You told them that. Was that true or not?

17 A. No, it's not.

18 Q. Do you know who looked through the purses?

19 A. I don't know if anyone looked through them at

20 all.

21 Q. Uh huh. (pause) Now, Mr. Hauler asked you

22 whether you'd had any personal contact with Mr. Clanton and

23 you said you -- no to that. Have you had any contact with Mr.

24 Clanton?

A. I have written him, yes.

Q. And he's written you?

A. Yes.

Q. And lawyers or other people have exchanged letters between you and he?

A. No.

Q. No? How have you gotten the letters? Through the regular mail?

A. Mail.

Q. All right. And in those letters, it has been discussed, has it not, what your testimony and his testimony would be?

A. No.

Q. You never discussed it?

A. No.

Q. You never once discussed the facts of the case?

A. No.

Q. In those letters?

A. No. Only I had written him one time and had told him what the police were trying to do to me and that was it.

Q. Ms. Lawrence, I show you an envelope and a letter and ask you if you would take a look at those? (pause)

A. I remember it.

1 Q. You wrote that letter, didn't you?
2 A. Yes, I did.
3 Q. Would you read that letter, please?
4 A. "To Detective Batts, Langford and Crowell:
5 Thanks so much for helping me come to my senses. I really do
6 appreciate all that you have done and are still trying to do.
7 To you, Batts, I am sorry for lying to you. I realize now that
8 you were only looking out for my best interests. I must admit
9 that I did love and care about Mr. Clanton but I also feel that
10 part of that love came from the fear of what he might do to me.
11 While I am waiting for this trial to be over with, I would ap-
12 preciate if all of you would keep in contact with me from time
13 to time. I have never been confined before. Being in here
14 gets to me sometimes. It would help if all of you would write
15 or come to see me so that I'll have something to do to keep my
16 mind off of looking at these bars. Happy Thanksgiving to all
17 of you. Natalie. P.S. By the time you get this, Thanksgiving
18 will be over."
19 Q. That letter was written after you had first
20 told them the contents of the statement you gave but before you
21 actually gave the statement, is that correct?
22 A. This letter was written after I had been
23 harassed.
24 Q. Now, wait a minute, now. Why don't you answer

1 my question? The letter was written after you had first told
2 them what was in this statement but before you actually gave
3 the statement in the presence of your lawyer, is that right?
4 Between the 18th of November --
5 A. Uh huh.
6 Q. -- and December when the statement was given?
7 You wrote that letter -- there was no one with you when you
8 wrote that letter, was there?
9 A. No, there was no one with me.
10 Q. The police officers were not with you?
11 A. No, they wasn't.
12 Q. Mr. Spero was not with you?
13 A. No, he wasn't.
14 MR. WELSH: Your Honor, we would ask that this
15 letter be marked as an exhibit.
16 Q. Ms. Lawrence, excuse me a second, you read
17 okay, don't you? (pause) Would you read --
18 A. (inaudible)
19 Q. -- the words that are written over your signa-
20 ture?
21 A. "Love you, Natalie."
22 Q. You left that out when you just read the let-
23 ter, didn't you?
24 A. Yeah, I left it out.

1 Q. And what does it say?
2 A. It says, "Love you, Natalie."
3 Q. And that's your handwriting, isn't it?
4 A. Yes, it is.
5 MR. HAULER: Your Honor, I'm going to object
6 to this. I think he's gone a little far with the
7 witness.
8 THE COURT: Objection overruled.
9 MR. HAULER: I object to the admissibility of
10 that. He's already had her read it to the jury.
11 THE COURT: Objection overruled.
12 Q. Now, to get back to the statement that you've
13 given today, (pause) when you went to the apartment for the
14 first time, was the door open or closed?
15 A. The door was closed.
16 Q. The keys were in the door?
17 A. Yes, they was.
18 Q. All right. How did you get into the apartment?
19 A. The apartment was -- the door was unlocked.
20 Q. It was unlocked. Did you have to turn the key
21 in order to open the door or just the handle?
22 A. Just the handle.
23 Q. All right. What did you do then?
24 A. I knocked on the door. As I was knocking on

1 the door, I opened the door, I looked in and I yelled in,
2 "Are you all right?"
3 Q Okay. How far into the apartment did you go?
4 A I never went inside the apartment. My body
5 never went in.
6 Q And so you went back to your apartment. You
7 didn't see anything at that point, did you?
8 A Yes, I did. There was blood on the chair and
9 items on the floor.
10 Q You saw that from the hallway as you looked
11 in. Could you hear anything at that point?
12 A Some rumbling noises from the back of her
13 apartment.
14 Q You went back to your apartment, and you say
15 Mr. Clanton - I believe you testified - was dressed in that he
16 had pants, shirt and his shoes on, is that correct?
17 A Correct.
18 Q Now, the night that you were arrested, you
19 gave a statement, as you testified to, similar to what you tes-
20 tified to today, to the police, right?
21 A I started giving them that statement and
22 Sergeant Batts looked at me and laughed and told me he didn't
23 believe me so I told him to just book me and send me to the
24 jail.

1 Q. All right. Which is exactly what he did, huh?
2 A. Yeah. Not right away, but yeah.
3 Q. Now, in that statement to Sergeant Batts, did
4 you not tell Sergeant Batts that when you went back to your
5 apartment that he didn't have his shoes on and he had to sit
6 and put -- and lace his shoes up?
7 A. No, I did not.
8 Q. You deny telling Sergeant Batts that?
9 A. Yes, I do.
10 Q. Now, Mr. Clanton left your apartment. Did he
11 close the door to your apartment when he left?
12 A. Yes, he did and I locked it.
13 Q. You locked it?
14 A. Uh huh.
15 Q. What was the next thing you saw or heard relat-
16 ing to the events over in the other apartment?
17 A. I saw a man run out of Ms. Smith's apartment.
18 Q. How did you see that?
19 A. Through my peephole.
20 Q. Now, describe the man you saw run out of the
21 apartment.
22 A. He had on light-colored clothing and he was
23 tall.
24 Q. White or black?

A. Black.

Q. Did he have anything in his hand?

A. I don't remember seeing anything in his hands, no.

Q. What did you do after that?

A. I opened my door to see where he was running to because after he passed my door, I couldn't see him any more.

Q. And where did he go?

A. He jumped over the railing of the apartment building.

Q. Jumped over the railing?

A. Jumped over the railing.

Q. Which way was he headed? Towards the front --

A. Towards --

Q. -- or the back of the apartments?

A. Towards the playground area. I assume that's the back.

Q. Did you see him hit the ground?

A. Did I see him hit the ground? No, I didn't see him. I couldn't have seen him hit the ground.

Q. Now, what did you do after that?

A. Went back inside my apartment and closed my door and still stood there looking out of the peephole.

Q. Then what happened after that?

1 A. Then I went across the hall.
2 Q. Okay. Go on.
3 A. After I went across the hall, as I was going
4 -- getting ready to go into Ms. Smith's apartment, another man
5 ran out of it.
6 Q. Uh huh. And what did he do?
7 A. What do you mean, what did he do?
8 Q. What did he do when you saw him?
9 A. He just ran past me and I jumped into the liv-
10 ing room area at that time.
11 Q. He didn't do anything to you?
12 A. No, he didn't do anything to me.
13 Q. And he passed right by you in the breezeway
14 hallway?
15 A. Right.
16 Q. It was not inside, you had not gone inside Ms.
17 Smith's apartment?
18 A. I was on my way inside Ms. Smith's apartment
19 at the time.
20 Q. Right. But you hadn't gone into it when the
21 man passed by you?
22 A. No.
23 Q. Because you say you jumped back into your
24 living room?

1 A. I jumped back into her living room, not mine.
2 Q. Her living room?
3 A. Yes.
4 Q. Then what did you do?
5 A. What did I do?
6 Q. Uh huh.
7 A. I went into the apartment. I took the keys
8 out of the door, I set her keys on the table, and I shut the
9 doors and locked all the doors -- the chains on her door.
10 Q. Uh huh. And then you went and called the
11 police?
12 A. No, I did not. At that time, when the man ran
13 out, Mr. Clanton was coming up the hall after him. I told Mr.
14 Clanton to let the man go.
15 Q. Uh huh. Why didn't you call the police?
16 A. I didn't think about to call the police at
17 that time. I didn't know at that time actually what was going
18 on.
19 Q. Uh huh. (pause) And what did you do after
20 that?
21 A. After what?
22 Q. After Mr. Clanton passed you in the hall or
23 came to you in the hall and told you to stay where you were.
24 A. You mean after Mr. Clanton came into the living

1 room?

2 Q. Okay.

3 A. I stood there for a few minutes, --

4 Q. Uh huh.

5 A. -- and then I walked towards the back of the

6 bedroom or --

7 Q. And what did you see?

8 A. I saw Mr. Clanton sitting on the edge of the

9 bed and Ms. Smith on the floor.

10 Q. Well, what was he doing? (pause) If anything.

11 A. He was just sitting there with his head down.

12 Q. Sitting there with his head down?

13 A. Sitting there with his head down.

14 Q. And now she wasn't doing anything, was she?

15 A. She was dead.

16 Q. She was dead then. (pause) Did Mr. Clanton

17 have his shirt on?

18 A. No, he didn't. His shirt was up under the

19 woman's head at that time.

20 Q. He wasn't trying to remove the thing from her

21 neck?

22 A. I didn't see it.

23 Q. What part of Ms. Smith was closer to the door

24 into the bedroom?

A. Her legs and her feet.

Q. Her legs and her feet. So her head would have been closer to the window on the left side of the room?

A. (No audible reply) (pause)

Q. Now, how was it that Mr. Clanton came to be under the bed?

A. It was my idea.

Q. It was your idea?

A. Yes.

Q. And when or why did you tell him to do that?

A. Because at that time I had told him that I was going to go and call the police and for him to go and change clothes and then at that time there was a knock at the door and when I found out it was the police, I had remembered that he was on the run.

Q. You knew he was on the run, right?

A. Yeah.

Q. You were in Circuit Court the day that he left the Courtroom that he was on the run from, were you not?

A. Yeah, I was in Court that day.

Q. You were a spectator sitting over on the benches over there, weren't you?

A. Yeah, I was here.

MR. HAULER: Objection. I don't follow the

1 relevance of that to this proceeding.

2 THE COURT: It causes no problem then, so I'm

3 overruling it.

4 Q. Now, how long after Mr. Clanton left Court that

5 day was it until you saw him next?

6 A. I don't remember.

7 Q. He was living with you then, wasn't he?

8 A. No, he was not living with me then. I was liv-

9 ing with his mother then.

10 Q. Where?

11 A. On Clinton Street.

12 Q. On Clinton Street?

13 A. Uh huh.

14 Q. You didn't see Mr. Clanton again until when?

15 A. I told you I don't remember how long it was

16 from the time he left the Courtroom until when I saw him.

17 Q. Summer time, fall? Do you have any guess at

18 all?

19 A. Maybe about a month.

20 Q. About a month?

21 A. Uh huh.

22 Q. And then he stayed with you after that?

23 A. No, he didn't.

24 Q. He didn't?

1 A. No.

2 Q. Uh huh. (pause) When you saw him, you knew

3 that he was wanted by the Court, didn't you?

4 A. Yes and no.

5 Q. You assumed he was?

6 A. I assumed.

7 Q. You didn't call the police when you saw him,

8 did you?

9 A. No.

10 Q. Now, you didn't have any money on you when the

11 police arrived, did you?

12 A. No, I didn't.

13 MR. WELSH: I have no further questions.

14 MR. HAULER: I'd ask that the Court mark these

15 collectively as Defense Exhibit B. (long pause)

16 MR. WELSH: Excuse me. I have another ques-

17 tion.

18 Q. Ms. Lawrence, you testified that you had no

19 contact with Mr. Clanton, right?

20 A. No personal contact.

21 Q. About the facts of the case?

22 A. I told you that I had wrote him a letter tel-

23 ling him that -- what the police were trying to get me to do

24 is what I told you.

1 Q. I mean from him to you.
2 A. From him to me?
3 Q. Yeah. You were just referring to a letter from
4 you to him. I'm asking whether you --
5 A. No.
6 Q. -- got a letter from him. In the interview
7 that you had with the police officers in the presence of your
8 attorney, did you not tell the police officers that at one time
9 when his mother was visiting that he wrote down what he wanted
10 -- what he had told his lawyer and that they gave it to you so
11 that you would know what he had said? Did you tell the police
12 that?
13 A. I told them something to that effect but I did
14 not say it exactly like that.
15 Q. All right, is that true or not?
16 A. No, it's not true.
17 Q. You deny that?
18 A. Yes, I deny that.
19 MR. WELSH: No further questions.
20
21 REDIRECT EXAMINATION
22 BY MR. HAULER:
23 Q. Ms. Lawrence, you have testified with regard
24 to the possibility of individuals who were in Ms. Smith's

1 apartment jumping a balcony?
2 A. Yes, sir.
3 Q. Can you identify these photographs that have
4 been marked as Defendant's Exhibit B?
5 A. This is the front of the building --
6 MR. WELSH: I haven't seen any of those photo-
7 graphs. They haven't been admitted into evidence and
8 they're being shown to the jury, Your Honor.
9 MR. HAULER: Well, I think you've seen them
10 but (pause) --
11 MR. WELSH: Thank you. (pause)
12 Q. What's depicted in this exhibit?
13 A. Sir?
14 Q. What are these pictures?
15 A. Crater Square Apartments.
16 Q. Is that your building?
17 A. Yes, it is.
18 Q. Does that show the balcony from the first and
19 the second level?
20 A. Yes, it does.
21 Q. Is that the area that the individual jumped
22 from?
23 A. (pause) Not from this one, no.
24 Q. That's the front of the building?

A. This is the front of the building.

Q. All right. (pause)

A. This is the back of the building.

Q. Is that the playground area that you're referring to?

A. Yes, sir. (pause) This is the back of the building. (pause) This also is the back of the building.

MR. HAULER: I'd ask that the Court receive these as Exhibit B.

Q. Ms. Lawrence, have you ever made any sworn statements or signed a written statement that differs from your testimony given in this Courtroom today?

A. No, sir.

Q. Is your testimony today before this Court the truth?

MR. WELSH: Objection. The question's been asked and answered.

THE COURT: It's already been done now. Go ahead.

A. Yes, it is.

MR. HAULER: I have no further questions.

RECROSS EXAMINATION

BY MR. WELSH:

1 Q Ms. Lawrence, after the officers arrived, did
2 you tell them about the other people that had been there?
3 A I didn't have time to tell them anything. They
4 didn't give me time to say anything to them.
5 Q You didn't say anything to the officers at the
6 scene about the two people that had been there?
7 A At that time, no, I did not.
8 Q Now, did there come a point in time while you
9 were waiting there and Mr. Clanton was laying in the hallway
10 that Mr. Clanton started a conversation about the "two guys
11 that were here?" Did you hear that?
12 A I heard him tell the officer that there were
13 two guys there that he had been fighting, yes.
14 Q And then is that the point at which you
15 started telling the officer about the two guys?
16 A No, I knew about the two guys before that.
17 Q But you hadn't told the officer anything at
18 all about the two guys --
19 A When the officers came in, all they said was,
20 "What happened?" I said there had been a fight and there was
21 a dead woman in the back. Chandler ran to the back and did
22 not give me time to say anything else to him.
23 Q All right, if you'll let me finish the ques-
24 tion, thank you.

1 A. Go ahead.

2 Q. All right. Prior to Mr. Clanton making the
3 statements about the two guys that had "been here," you had
4 not told the police anything about the two guys, --

5 A. No, I had not.

6 Q. -- had you? All right, and at the time Mr.
7 Clanton made the statement, you joined in with him in advising
8 the officers that there had been two men there, did you not?

9 A. No, I did not.

10 Q. You did not? And at that time, nobody was
11 being questioned, were they?

12 A. No.

13 Q. Mr. Clanton just offered and volunteered that
14 information, right? (pause) Is that correct?

15 A. Yeah, that's correct.

16 Q. All right. And the officers -- and you didn't
17 -- you didn't join in? You didn't have anything to do with
18 that?

19 A. No, I didn't have anything to do with that.

20 MR. WELSH: That's all.

21

22

23

24 WITNESS STOOD ASIDE.

NOTE: At this time, the Court recessed and the jury took a dinner break. Upon the Court reconvening, Mr. Hauler spoke as follows:

MR. HAULER: If Your Honor please, before calling the jury back in, the defense is going to rest its case in chief and for the record move that the Court strike the evidence.

THE COURT: Well, all right. I'll overrule your motion. Do you have rebuttal evidence?

MR. WELSH: Yes, sir.

THE COURT: All right, bring the jury back in.

MR. WELSH: Your Honor, before we --

THE COURT: Wait a minute, Mr. Parker.

MR. WELSH: -- do that, if the defense has rested, I would like to excuse one or two witnesses who I were holding just in case - Mr. Acox and Officer Chandler. Could we excuse them?

THE COURT: Yes.

MR. WELSH: Mr. Acox and Officer Chandler can

be excused.

THE COURT: And so can the other one go back to Richmond.

MR. PARKER: Okay.

THE COURT: Bring the jury on back.

NOTE: At this time, the jury returned to the Courtroom and Sergeant Batts was called to the witness stand.

STEVE A. BATTS, introduced on behalf of the Commonwealth, testified as follows:

DIRECT EXAMINATION

BY MR. WELSH:

Q Please state your name and occupation.

A I'm Sergeant Steve A. Batts. I'm a supervisor in the Detective Bureau in Petersburg.

Q And how long have you been a police officer, Sergeant Batts?

A Nine years.

Q Nine years. On November 16th of this year, did you have occasion to go to Crater Square Apartments?

A Yes, I did. I was at home that day. I was called by the Petersburg Police Department to respond to a homicide on South Crater Road.

Q Were you in overall charge of the investigation of this case?

A Yes, I was.

Q Now, Sergeant Batts, later that day, did you have occasion to talk to Natalie Lawrence at Police Headquarters about what had happened?

1 A. Yes, I did. Upon arrival at the scene, Detec-
2 tive Sergeant Eilert met with me. He held -- was in charge of
3 the crime scene search, and I in turn transported Natalie
4 Lawrence to Police Headquarters where I interviewed her.
5 Q. And, Sergeant Batts, referring specifically to
6 a particular part of her statement, did she tell you when she
7 returned to her apartment to get Mr. Clanton to assist, did she
8 tell you whether or not he had his shoes on at that time?
9 A. She stated that he was lying across the bed
10 and that he did not have his shoes on. He had on his pants
11 and a shirt but he did not have on any shoes at all.
12 Q. Now, Sergeant Batts, did you have occasion to
13 talk to Natalie Lawrence on any day other than this day that it
14 happened?
15 A. Yes, I did. I talked to her on the 18th of
16 November, 1980.
17 Q. And any other times in between?
18 A. I talked to her maybe two or three times.
19 Q. Did you in any way, shape or form put any
20 pressure on her or harass her in any way into making a state-
21 ment which she ultimately made to Detective Crowell?
22 A. No, I did not.
23 Q. As a matter of fact, who initiated the contacts
24 on most occasions between you and Ms. Lawrence?

A. I was receiving phone calls from the Sheriff's Department to get in contact with her. She wanted to talk to me. And on these occasions,this was after hours, I stayed at Headquarters to wait for her and she came over to Headquarters and talked to me on at least two occasions.

Q. Now, when she gave her original statement that first day, did you indicate to her that you were somewhat skeptical of what she was telling you?

A. Yes, I was.

Q. And you told her that, didn't you?

A. That's correct.

Q. And I show you a letter and envelope that have been marked as Commonwealth's Exhibit 59 and ask you if you recognize that?

A. Yes, I do.

Q. And that's a letter signed by Natalie Lawrence, is that right?

A. That's correct.

Q. And you received that letter at Police Headquarters?

A. Yes, I did.

MR. WELSH: Okay. I have no further questions of Sergeant Batts.

1 CROSS EXAMINATION

2 BY MR. HAULER:

3 Q Sergeant Batts, at the time that you had any
4 discussions with Ms. Lawrence, did the subject of her child
5 come up?

6 A Of her child?

7 Q Yes, sir.

8 A I don't recall.

9 Q All right, so you're not saying it didn't,
10 you just don't recall if it did?

11 A I've been knowing Natalie for a number of
12 years and a lot of the conversations that we had were on a
13 friendly basis rather than an investigative basis, so the sub-
14 ject of her child could have come up but it had nothing pert-
15 inent to the case itself so that's something I really wouldn't
16 remember.

17 Q Was she not given or were there not some prom-
18 ises made to her if she would cooperate with the police as far
19 as going easier on her (pause) --

20 A I don't have the --

21 Q -- in the --

22 A -- authority to make any promises to anyone.

23 Q All right, so you would not have said anything
24 about that?

A. That's correct.

Q. All right, now, ultimately there was a statement that was recorded by you, is that correct?

A. That's incorrect.

Q. All right, who recorded the statement?

A. Detective Crowell.

Q. To your knowledge, would Ms. Lawrence sign that statement?

A. To my knowledge, she did not sign it.

Q. Do you know why she didn't sign it?

A. I don't know if she did or did not. I really can't say.

MR. HAULER: I have no further questions.

WITNESS STOOD ASIDE.

LEE CROWELL, introduced on behalf of the Commonwealth, after being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. WELSH:

Q. Please state your name and occupation.

A. Lee Crowell, Detective, Petersburg Police Department.

Q. Detective Crowell, did you work along with Sergeant Batts and other officers in the investigation of the death of Wilhelmina Smith?

A. Yes, I did.

Q. And, specifically, did you have occasion to speak to the defendant, Earl Clanton, about his version of what happened on the 16th of November?

A. On one occasion, yes, I did.

Q. And, specifically, did you ask him or did he tell you, rather, what happened after he entered the bedroom?

A. Yes, he did.

Q. Would you tell us specifically what he told you after he entered the bedroom?

1 A Mr. Clanton stated that he went into the bed-
2 room where the victim was at and he was going to help the vic-
3 tim. A unknown suspect jumped him, he fought with the subject
4 and the subject threw a TV, knocking him down, and the subject
5 fled the scene. After that, Mr. Clanton tried to assist the
6 victim by removing the knife from her neck and --
7 Q Okay, that's (pause) -- that's the statement I
8 needed. Now, Detective Crowell, did you have occasion to also
9 talk to Natalie Lawrence?
10 A Yes, I did.
11 Q And, specifically, on the 18th day of November,
12 were you present when she first confessed to her and Mr. Clan-
13 ton's involvement in this?
14 A Yes.
15 Q All right. Tell us how that came about, to the
16 best of your recollection.
17 A We had brought both of them over to Headquart-
18 ers to talk to them. We asked Ms. Lawrence did she want to
19 talk to us. She said she did. And then she talked to Detec-
20 tive Langford and Sergeant Batts and then I was informed that
21 she wanted to talk to us again. We all went in there and she
22 did give us a statement.
23 Q So you and Langford and Batts were all together
24 and then you and Batts left the room for a while and then went

1 back in, is that --
2 A. Yes.
3 Q. All right. And the statement that she gave you
4 on the 18th, was that along the lines of the statement that
5 she gave you in the presence of her lawyer two weeks later?
6 A. Yes, it was.
7 Q. All right. Now, referring to the statement
8 that she gave in the presence of her attorney, let me first
9 ask you did you or Detective Langford or Mr. Spero in any way,
10 shape or form put any pressure on or harass or intimidate Nata-
11 lie Lawrence when she gave that statement?
12 A. No.
13 Q. I would like to refer you to several specific
14 portions of the statement and, specifically, turning to page
15 three. Would you relate the questions and answers concerning
16 what she said that Mr. Clanton told her before he went to Ms.
17 Smith's apartment?
18 A. Let's see.
19 MR. HAULER: Judge, I'm going to object to
20 this. I don't think Mr. Welsh has got the ability to
21 go through that statement with this witness. He had
22 Ms. Lawrence on the stand, he had the ability to bring
23 out every inconsistency he felt was relevant or materi-
24 al to this case. He is now seeking to do that with a

rebuttal witness.

THE COURT: Mr. Welsh, I think on this particular point you asked Natalie Lawrence whether or not she told the police about going over there. Since she admitted she did tell them that, I don't think you can introduce it to show a prior inconsistent statement.

Q Detective Crowell, between the 18th of November and the date of this statement, -- which date was this statement given on?

A This statement was given on the 3rd of December, 1980.

Q All right. Is there any particular reason why it took so long?

A Not from our aspect.

Q You had a scheduling problem with Mr. Spero?

A Yes, it was due to the lawyer.

Q Okay. And between the 18th of November and the 3rd of December, did you or did anyone in your presence intimidate, harass or threaten Ms. Lawrence in any way, shape or form to make the statements that are contained in this?

A No, sir.

MR. WELSH: I have no further questions of Detective Crowell.

CROSS EXAMINATION

BY MR. HAULER:

Q. Detective Crowell, during the course of any of your interviews that you may have had with Ms. Lawrence, was there any mention made of her child?

A. Of her child?

Q. Yes, sir.

A. Not by me.

Q. Was there any mention made by any of the other detectives?

A. Not that I know of.

Q. Now, the statement that was taken on December 3rd was reduced to writing, is that correct?

A. Yes, it was.

Q. Did Ms. Lawrence ever sign that statement?

A. Not that I know of.

MR. HAULER: No further questions.

MR. WELSH: Thank you, Detective Crowell.

WITNESS STOOD ASIDE.

C. E. LANGFORD, introduced on behalf of the Commonwealth, after being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. WELSH:

Q. Please state your name and occupation.

A. Detective C. E. Langford.

Q. Detective Langford, how long have you been a police officer?

A. Five years.

Q. I direct your attention to Tuesday, November the 18th of last year. Were you assisting Sergeant Batts and other officers in the investigation of the death of Wilhelmina Smith?

A. Yes, I was.

Q. And did you have occasion on that evening to speak to Natalie Lawrence?

A. Yes, I did.

Q. And did she give you a statement that evening admitting her involvement and Mr. Clanton's involvement in the murder of Ms. Smith?

A. Yes, she did.

Q. Did you or anyone in your presence make any threats or in any way put any pressure on or harass or intimidate Ms. Lawrence at the time those statements were made?

A. No, we did not.

Q. Were you also present when she gave a taped statement in the presence of her lawyer on December the 3rd, 1980?

A. Yes, I was.

Q. At that time, did you or did anyone in your presence intimidate or harass or put any pressure whatsoever on Ms. Lawrence to make those statements?

A. No.

Q. Between those two dates, do you know of anyone doing any of those things, that is intimidating or harassing her into making these statements?

A. No.

MR. WELSH: No further questions of Detective Langford.

CROSS EXAMINATION

BY MR. HAULER:

Q. Detective Langford, this statement of December 3rd was reduced to writing, was it not?

A. That's correct.

Q. Did Ms. Lawrence ever sign that statement after it was transcribed?

A. No, sir, she did not.

MR. HAULER: No further questions.

MR. WELSH: Thank you.

WITNESS STOOD ASIDE.

1 MR. WELSH: May I have a few seconds, Your
2 Honor?
3 THE COURT: Yes.
4 MR. WELSH: (long pause) Your Honor, the
5 Commonwealth rests.
6 THE COURT: All right. Members of the jury,
7 it's 8:00 o'clock. The evidence is over. I'll have to
8 meet with the attorneys for a few minutes to come up
9 with the written instructions to give you that will
10 give you the law in the case and then we'll come back
11 and argue the case to you and then it will be your case
12 to decide. Now, we can go ahead at this point and try
13 to get that much done tonight or if you would prefer,
14 we can stop at this point and start with the instruc-
15 tions and argument tomorrow morning. I'll first ask
16 for a show of hands as to who would like to go ahead
17 and get as much done tonight as we possibly can.
18 (pause) All right, who would rather take a -- go home
19 tonight and call it a day and start at 9:00 in the
20 morning? (pause) Most of you would rather go ahead.
21 All right, with that in mind, we'll call it quits for
22 tonight. I'll ask that you be back in the Courtroom
23 at 9:00 o'clock in the morning - be back in the jury
24 room. Now, there are two things I must insist upon -

1 do not discuss the case with anybody. Now, that in-
2 cludes members of your family. This is difficult not
3 to do, I realize. They'll probably want to talk to you,
4 they'll probably want to ask you what happened, and the
5 reason why we don't want you to do it, we don't want
6 you to discuss the case and get any input from anybody
7 else or be discussing it yourself out of the context of
8 the jury surroundings and the Court surroundings.
9 It's the wrong time to do it and I think they'll under-
10 stand if you just tell them, "I've been instructed not
11 to discuss the case." All right, do any of you think
12 you'll have any problem with that at all? (pause)
13 All right, the other thing is I'll ask that you not
14 go anywhere near the place where this is supposed to
15 have happened. Again, the reasoning for this is we
16 want you to make your decision based solely on what is
17 told to you in this Courtroom and not what you might
18 try to find out on your own. Now, as I've said, don't
19 let anybody talk to you. If anybody tries to bother
20 you, you can call the Police Department or the Sher-
21 iff's Department and get immediate help. Don't allow
22 anybody to call you or to talk to you or to approach
23 you in any way about this case. All right, with that,
24 --

1 MR. WELSH: Your Honor, there has been some
2 television coverage of this. Would you want to men-
3 tion that to them?
4 THE COURT: All right. The other situation is
5 there may be something on the news, there may be some-
6 thing in the newspaper, and again, I would ask that
7 you not watch anything on television about it, don't
8 let anybody tell you what's on television, and don't
9 read the newspaper. If you want to see it, just wait
10 until tomorrow afternoon and see it. The only other
11 choice I've got is to put you in a motel room over-
12 night and I know you'd rather go home. I've got a
13 right to let you go home but I want to make sure that
14 you can abide by the rules and not let anybody talk to
15 you about it and don't talk to anybody else about it.
16 All right, with that, good night. We'll see you in
17 the morning at 9:00 o'clock. If you need any help
18 getting home, see the Sheriff's people downstairs; if
19 you have any car tickets or anything like that. Mr.
20 Parker, don't let anybody leave until after the jury
21 has left the Court premises. (long pause) Mr. Parker,
22 make sure that the jury has left the Court premises
23 before anybody leaves the Courthouse.
24 MR. PARKER: Yes, sir.

THE COURT: All right, Mr. Hauler and Mr. Welsh, I'll meet with the two of you downstairs after we leave tonight and review the instructions so we'll be ready to go with that at 9:00 o'clock in the morning. I think we'll probably take care of it in ten or 15 minutes and if we have any retypes, they can be taken care of overnight. All right, Mr. Parker, adjourn Court with the exception that you don't let anybody leave until you're sure the jurors have left the premises.

NOTE: At this time, Court adjourned on Thursday, March 12, 1981. Upon the Court reconvening on Friday, March 13, 1981, at 9:08 A. M., the jury was brought in and seated in the jury box and they were individually polled for attendance by the Clerk. All jurors were present.

1 THE COURT: All right, members of the jury,
2 you heard the evidence in this case yesterday. I will
3 now read the instructions to you. As we previously
4 mentioned, these are intended to provide you with the
5 law applicable to this case. You will be able to take
6 these instructions with you to the jury room.
7 "The defendant is presumed to be innocent. You
8 should not assume that the defendant is guilty because
9 he has been indicted and is on trial. This presumption
10 of innocence remains with the defendant throughout the
11 trial and is enough to require you to find the defend-
12 ant not guilty unless and until the Commonwealth,
13 that's the same as the State of Virginia, proves each
14 and every element of the offenses beyond a reasonable
15 doubt. This does not require proof beyond all possible
16 doubt nor is the State required to disprove every con-
17 ceivable circumstance of innocence; however, suspicion
18 or probability of guilt is not enough for a conviction.
19 A reasonable doubt is a doubt based on your sound
20 judgment after a full and impartial consideration of
21 all the evidence in this case. As the jury, you're
22 the judges of the credibility of the witnesses and the
23 weight of the evidence. You may consider the appear-
24 ance and manner of the witnesses on the stand, their

1 intelligence, their opportunity for knowing the truth
2 and for having observed the things about which they
3 testified, their interest in the outcome of the case,
4 their bias, and if any has been shown, their prior in-
5 consistent statements. While you have no right to ar-
6 bitrarily disregard believable testimony of any wit-
7 ness, you do have a right to discard or accept in
8 whole or in part the testimony of any witnesses which
9 you think is proper to discard or accept when you con-
10 sider it in connection with the other evidence in this
11 case. You are entitled to use your common sense in
12 judging any testimony. From these things and all other
13 circumstances of this case, you may determine which
14 witnesses are more believable and weigh their testimony
15 accordingly. If you believe that any witness has know-
16 ingly testified untruthfully as to any material fact in
17 this case, you do not have to accept any of the testi-
18 mony of that witness or you may give that testimony
19 such weight as you feel it is entitled. The Court
20 instructs the jury that proof of the defendant's prior
21 convictions of felonies may be considered by the jury
22 as affecting his credibility but it does not render the
23 defendant incompetent to testify. It is not necessary
24 that facts be proved by direct evidence for they may

1 also be proved by circumstantial evidence. You may
2 convict the defendant on circumstantial evidence alone
3 or on circumstantial evidence combined with other evi-
4 dence if you believe from all the evidence that the
5 defendant is guilty beyond a reasonable doubt; however,
6 when the Commonwealth relies upon circumstantial evi-
7 dence, you should consider such evidence with great
8 care and caution. The circumstances proved must be
9 consistent with guilt and inconsistent with innocence.
10 It is not sufficient that the circumstances proved
11 create a suspicion of guilt, however strong, or even a
12 probability of guilt. The evidence as a whole must
13 exclude every reasonable theory of innocence. The
14 defendant is charged with the crime of capital murder.
15 The Commonwealth must prove beyond a reasonable doubt
16 each of the following elements of that crime: First,
17 that the defendant killed Wilhelmina Smith. And,
18 second, that the killing was willful, deliberate and
19 premeditated. And, third, that the killing occurred
20 during the commission of a robbery while the defendant
21 was armed with a deadly weapon. If you find from the
22 evidence in this case that the Commonwealth has proven
23 beyond a reasonable doubt each of the above elements
24 of the offense as charged, then you shall find the de-

1 fendant guilty of capital murder and you shall return
2 your verdict to the Court and receive further evidence
3 and instructions before fixing the punishment. If you
4 find that the Commonwealth has failed to prove any one
5 or more of the elements of capital murder beyond a
6 reasonable doubt, then you shall consider whether he's
7 guilty of first-degree murder. The Commonwealth must
8 prove beyond a reasonable doubt each of the following
9 elements of first-degree murder: First, that the de-
10 fendant killed Wilhelmina Smith. Second, that the kil-
11 ling was malicious. And, third, that the killing was
12 willful, deliberate and premeditated. If you find from
13 the evidence that the Commonwealth has proven beyond a
14 reasonable doubt each of the above elements, then you
15 shall find the defendant guilty of first-degree murder
16 and fix his punishment at imprisonment for life or a
17 term of imprisonment of not less than 20 years. If
18 you find that the Commonwealth has failed to prove
19 first-degree murder, then you shall consider whether
20 the defendant is guilty of first-degree felony murder.
21 The Commonwealth must prove beyond a reasonable doubt
22 each of the following elements of first-degree felony
23 murder: That the defendant killed Wilhelmina Smith,
24 that the killing was malicious, and that the killing

1 occurred in the commission of or attempt to commit
2 robbery. If you find from the evidence that the Com-
3 monwealth has proven beyond a reasonable doubt each of
4 the above elements, then you shall find the defendant
5 guilty or first-degree felony murder and fix his pun-
6 ishment at imprisonment for life or a term of imprison-
7 ment not less than 20 years. If you find that the
8 Commonwealth has failed to prove either capital murder,
9 first-degree murder, or first-degree felony murder,
10 then you shall find the defendant not guilty of murder.
11 Willful, deliberate and premeditated means the adoption
12 of a specific intent to kill. The intent to kill must
13 come into existence at some time before the killing
14 but need not exist for any particular length of time.
15 You may infer malice from the deliberate use of a
16 deadly weapon in the absence of evidence to the con-
17 trary. A deadly weapon is any object or instrument
18 not a part of the human body that is likely to cause
19 death or great bodily injury because of the manner and
20 under the circumstances in which it is used. Murder
21 during the commission of a robbery occurs where the
22 killing is so closely related to the robbery in time,
23 place and causal connection as to make it a part of
24 the same criminal enterprise. To prove the charge of

murder, the Commonwealth does not have to prove a motive for the killing. The presence or absence of a motive may be considered in arriving at your verdict. Maliciously means intentionally doing a wrongful act to another without legal excuse or justification. Malice implies that the mind of the actor is under the control of reason. It excludes heat of passion. Malice and heat of passion cannot co-exist. It includes not only anger, hatred or revenge but every unlawful or unjustifiable motive. The defendant is also charged with the crime of robbery. If you find the defendant guilty of capital murder or first-degree felony murder, then you must find him not guilty of robbery because robbery is one of the elements of those crimes. If you find the defendant guilty of first-degree murder or not guilty of murder, then you shall consider whether he's guilty of robbery. The Commonwealth must prove beyond a reasonable doubt each of the following elements of robbery: First, that the defendant intended to steal. Second, that United States currency was taken. Third, that the taking was from Wilhelmina Smith or in her presence. Fourth, that the taking was against the will of Wilhelmina Smith. And, fifth, that the taking was accomplished by violence to Wil-

helmina Smith. If you find from the evidence that the Commonwealth has proven beyond a reasonable doubt each of the above elements, then you shall find the defendant guilty of robbery and fix his punishment at imprisonment for life or for a term of imprisonment not less than five years. If you find that the Commonwealth has failed to prove robbery, then you shall consider whether he's guilty of attempted robbery. The Commonwealth must prove beyond a reasonable doubt each of the following elements of attempted robbery: First, that the defendant intended to commit robbery. That the defendant did a direct act toward the commission of the robbery which amounted to the beginning of the actual commission of the robbery. If you find from the evidence that the Commonwealth has proven beyond a reasonable doubt each of the above elements, then you shall find the defendant guilty of attempted robbery and fix his punishment at a term of imprisonment of not less than two nor more than ten years. If you find that the Commonwealth has failed to prove either robbery or attempted robbery, then you shall find the defendant not guilty of robbery. The intent required to be proven in an attempted crime is the specific intent in the person's mind to commit the par-

1 ticular crime for which the attempt is charged. In
2 determining whether the attempt has been proven, you
3 may consider the conduct of the person involved and
4 all the circumstances revealed by the evidence."
5 Now, those are the instructions in chief.
6 There is one additional instruction which simply pro-
7 vides you all of the alternative verdicts that are
8 available in this case. Now, first, insofar as the
9 murder charge, your alternative verdicts are as follows:
10 If you find the defendant guilty of capital murder as
11 defined by the previous instructions, then your ver-
12 dict would read, "We, the jury, find the defendant
13 guilty of capital murder as defined by Instruction
14 No. 6," and that would be returned on that with no
15 punishment fixed at that point. Or if you find that
16 he is not guilty of capital murder but he's guilty of
17 first-degree murder, your verdict would read: "We,
18 the jury, find the defendant guilty of first-degree
19 murder as defined by Instruction No. 6 and do ascer-
20 tain his punishment to be confinement in the peniten-
21 tiary for" and then you would have to decide within
22 the range of punishment that's set out in Instruction
23 6 for first-degree murder what you think to be an
24 appropriate sentence for first-degree murder. Or if

1 you don't find him guilty of the capital-degree
2 murder -- or capital murder, the first-degree murder,
3 then you would move on to consider whether you think
4 he's guilty of first-degree felony murder as again
5 defined by that Instruction 6. And if that is your
6 finding of guilt, for that your verdict would read,
7 "We, the jury, find the defendant guilty of first-
8 degree felony murder as defined by Instruction No. 6
9 and do ascertain his punishment to be confinement in
10 the penitentiary for," and again you would have to set
11 the appropriate sentence within the limits set by law
12 and that is fully set forth in Instruction 6 under the
13 discussion of first-degree felony murder. Now, if you
14 find that the evidence and the instructions of the
15 Court do not support any finding of guilt or murder,
16 then your verdict would read, of course, "We, the jury,
17 find the defendant not guilty of murder." Now, after
18 you've accomplished that, you move on to the considera-
19 tion of the robbery charge and your verdict, alterna-
20 tive verdicts, would be, "We, the jury, find the de-
21 fendant guilty of robbery as defined by Instruction
22 No. 12 and do ascertain his punishment to be confine-
23 ment in the penitentiary for," and then again you would
24 have to refer to that Instruction 12 which sets forth

the range of punishment for robbery and fix what you believe to be an appropriate sentence for that. Or your verdict would read, "We, the jury, find the defendant not guilty of robbery." Now, please attach no significance to the order in which we pose the alternative verdicts on this last instruction. Now, the verdicts must be unanimous, they must be agreed upon by all 12 and signed by the Foreman of the Jury. All right, Mr. Welsh, argument?

MR. WELSH: Good morning again, ladies and gentlemen. Let me start by thanking and I'm sure Mr. Hauler and the Court would join me for your participation and your attention during this trial. Obviously, there is a burden placed on all of you, on all of us when a very brutal and vicious murder is committed and we share different portions of the burden. It's my job to present the facts to you, it's your job to rule on those facts and return a just verdict. We both apologize for the interruptions that perhaps occurred during the trial yesterday. There were times when each of us needed to object to certain questions or pieces of evidence. And as I explained yesterday, we're just trying to make sure that everything that's presented to you is within the rules that we've been given

1 for having murder trials. This, obviously, is an im-
2 portant day for the defendant and I'm sure that Mr.
3 Hauler will cover that with you how important a day it
4 is for him, but don't forget how important a day it is
5 for all the people of Petersburg and Virginia and how
6 important a day it is for the memory of Wilhelmina
7 Smith because Mr. Clanton is not the only person in-
8 volved in this case. The community at large is in-
9 volved whenever a brutal and vicious murder has oc-
10 curred and certainly the memory of the deceased is
11 involved so don't forget about them when Mr. Hauler
12 begs you to consider how important it is on his cli-
13 ent. It's important on everyone. Your main duty, as
14 we both took pains to explain to you yesterday, is to
15 determine the facts. That is what your main job is,
16 any jury's main job is, to determine the facts. What
17 happened. What witnesses that testified told us the
18 truth and what witnesses that testified did not tell
19 us the truth. You are guided in your determination of
20 the facts by several instructions that the Court gave
21 and you certainly should read over all of the instruc-
22 tions again when you retire to the jury room to delib-
23 erate. I want to highlight certain portions of certain
24 instructions. That doesn't mean that the rest are not

1 important, too, but I only want to highlight certain
2 parts. Please read all of them over when ya'll go back
3 into the jury room again. Instruction No. 2 tells you
4 about credibility of the witnesses, for in order to
5 determine the facts in this case, you have to decide
6 who is telling the truth because quite obviously, as
7 I'll argue in a little while, Earl Clanton and Natalie
8 Lawrence or Willie Acox and Vanessa Harris and all the
9 other Commonwealth evidence are telling the truth and
10 not both. They cannot all be telling the truth because
11 they're telling opposite things. So you have to decide
12 who is telling the truth. What are some of your guide-
13 lines? You may consider the appearance and manner of
14 the witnesses on the stand, their intelligence, their
15 opportunity for knowing the truth and for having ob-
16 served the things about which they testified, their
17 interest in the outcome of the case, their bias, and
18 if any has been shown their prior inconsistent state-
19 ments. In other words, if someone gets on the stand
20 and says something very different from what they said
21 before, you certainly should consider that when you
22 consider whether they're telling the truth. While you
23 have no right to arbitrarily disregard believable tes-
24 timony of any witness, you do have a right to discard

1 or accept in whole or in part the testimony of any
2 witness which you think is proper to discard or accept
3 when you consider that evidence in connection with all
4 the other evidence in the case. And probably the most
5 important part of this instruction, you are entitled
6 to use your common sense in judging the testimony.
7 That is why you are here. If it were simply a matter
8 of adding up the number of witnesses here, the number
9 of witnesses here and see which one is heavier, a jury
10 wouldn't be needed. You'd just add it up and put it on
11 the scale. But that's not how we judge whether people
12 are telling the truth. Each of you do it every day of
13 your life just about - someone will tell you something
14 and in your mind you will judge whether or not that's
15 true. You will judge it by looking at the person when
16 they tell you, by considering what they're telling
17 you in relation to everything else that you know about
18 the world. That is what you're to do back in that
19 jury room, you are to please take your common sense
20 with you because, as I'm going to argue shortly, your
21 common sense is certainly going to show you and tell
22 you that two people sat right on this stand yesterday
23 and lied to you. They certainly did. Now, Instruc-
24 tion No. 3 talks about that situation and says if you

1 believe that any witness has knowingly testified un-
2 truthfully as to any material fact in this case, you
3 do not have to accept any of the testimony of that
4 witness or you may give that testimony such weight as
5 you feel it is entitled. That states the obvious. If
6 you don't think somebody's telling the truth about
7 something, you don't have to believe them if you don't
8 want to, or you can only place so much emphasis on it
9 depending on how you feel about what they're telling
10 you. And the third instruction, which is Instruction
11 4, also deals with the credibility of witnesses and it
12 says that proof of the defendant's prior convictions
13 of felonies may be considered by you as affecting his
14 credibility. Again, this is part of common sense.
15 You have a person who has been convicted three times
16 before of a felony, certainly anything he tells you
17 should be very suspect in your mind. Very suspect.
18 And this instruction just tells you that, yes, it is
19 proper for you to view those prior felony convictions
20 as making his testimony very suspect. You have to rely
21 on hard facts. You have to rely on hard facts. And
22 what are the hard facts? I'd like to review with you
23 in summary fashion the testimony of each of the wit-
24 nesses yesterday. I do not intend to go through the

1 entire testimony of each witness because we'd be here
2 again until 8:00 o'clock tonight. I don't think it's
3 necessary to do that. I do want to highlight certain
4 portions of the testimony of each of the witnesses,
5 those portions of the testimony that are important to
6 the decisions you have to make. Dr. Fierro testified;
7 if you came away with any one thing out of her testi-
8 mony, I'm sure it was that this was just a horrible,
9 inhuman, savage killing, absolutely. In fact, Mr.
10 Hauler even alluded to words along those lines himself
11 in his opening statement yesterday, "It's a horrible
12 crime." This woman was -- a knife was held to her
13 neck, she was strangled, strangled so tight; you heard
14 about all this moving around in the apartment and all
15 - the fight started in the front and led to the back.
16 If you came away with anything, you came away with how
17 savage it was. Right here is what caused the death of
18 Wilhelmina Smith, this belt, Commonwealth's Exhibit No.
19 2, wrapped around twice in some places, three times in
20 other places. Dr. Fierro couldn't even get a finger
21 between the belt and the lady's neck, that's how
22 tightly wrapped it was. And if you look at the photo-
23 graphs - I don't mean to be offensive at all - but if
24 you look at the photographs, you will see what an in-

1 dentation this belt made in this lady's neck. You will
2 see the marks of the belt still on there after the belt
3 was removed. Obviously the cause of death. What else
4 did Dr. Fierro find? There were hemorrhages on the
5 face and the neck because of the interruption of the
6 blood supply. Obviously the blood supply was inter-
7 ruped, all those hemorrhaging things that are shown
8 on the Commonwealth's exhibits. Multiple stab wounds
9 of the face and neck. Especially Commonwealth's Exhib-
10 it 7, there's a stab wound or abrasion wound to the
11 left eyebrow, to the forehead, to the left side of the
12 chin, to the right side of the chin, to the right side
13 of the neck. All of those wounds are shown. You can
14 see the indentations that this Commonwealth Exhibit 2
15 made in the lady's neck. She told you, to the best of
16 my recollection, that the stab wounds were less than
17 one-half inch deep, each of them. It's important to
18 remember that. She described to you the manner in
19 which that type of wound would be inflicted and that
20 would be by holding a knife to a neck with pushing it
21 back like that. It's important to remember that.
22 There were more bruises to her neck, there were bruises
23 to her tongue. Obviously. She's being choked. She
24 would have damaged and bruised her tongue. Her finger-

1 nails were chipped. The decedent's brother, Randolph
2 Smith, testified and, of course, his testimony was
3 fairly perfunctory and it's certainly not contested by
4 the defense but he did tell you one or two important
5 things. This lady was 38 years old, she was single,
6 she lived by herself, she'd been a librarian for over
7 14 years. Officers Chandler and -- Jerry Chandler and
8 Mike Hess testified. Now, at about 12:32 P.M. on that
9 fateful Sunday, November 16th, the call was put out
10 over the police radio that there was a lady screaming
11 at Apartment 14-H at Crater Square Apartments. Officer
12 Chandler arrived within 30 to 40 seconds, Officer
13 Hess arrived within 45 seconds to a minute, I believe
14 was his testimony. But you know they told you where
15 they were and you know that if they are going with
16 their sirens on they can get there certainly in at
17 least that time. Officer Chandler was right there at
18 the blinking light by the apartments. Officer Hess
19 was right by the Holly Farms headed in that direction.
20 He didn't hit any lights in between. They were coming
21 from two different directions. One's coming from the
22 mall area towards the apartment - Officer Chandler who
23 made the U-turn and came back. Officer Hess is coming
24 up from the other direction as if he's coming from

town. Neither one saw anybody at all in the vicinity because there wasn't anybody in the vicinity. There was nobody running away from the scene of this crime. There was nobody else around and about as they were arriving because the murderer was still in the apartment. So they knock on the door -- . Well, you know, -- you know, they went to 14-H and there was nothing going on there. They went to 14-E, finally, and knocked on the door and Natalie Lawrence came and gave them this story that she was in the shower and she needed time to get dressed. Finally, the three locks came across, the door opened, and she was there. She let them in and Wilhelmina Smith was already dead in the bedroom, in her own bedroom in her own apartment. Where was the defendant, Earl Clanton? Hiding under the bed. In what condition was Earl Clanton? He was full of blood. He had taken his shirt off and he was doing -- putting his shirt in his hands. Commonwealth's Exhibit No. 41, defendant's shirt. He had eight dollars in his pocket, blood on the money. There was nobody else there and there was only one way in or out of that apartment and that was through the front door. There was no blood anywhere near the front door. Not at all. White door, white frame,

1 white walls, no blood anywhere near the front door.
2 Very important. The defendant, Earl Clanton, was not
3 bleeding according to the testimony of these officers.
4 He was not bleeding. They secured the scene until
5 Sergeant Eilert could arrive. Now, Sergeant Eilert's
6 testimony was somewhat technical and the main purpose
7 of his testimony was for you to see these different
8 exhibits that he found and so that they would be here
9 so Mary Jane Burton could explain to you what she
10 found on them when she examined these different exhib-
11 its. What did he find? Among other things, and
12 you'll have all those things in the jury room to look
13 through, if you'd like, Commonwealth's Exhibit 39, the
14 knife, full of blood. Full of blood. And you'll re-
15 member how Dr. Fierro said the wounds to the neck were
16 in this type of upward motion. Blood runs down the
17 knife. There was blood all over the knife. The money,
18 Sergeant Eilert said the blood was still wet. Some of
19 the blood was wet on the money when he received it
20 when he arrived. You have the shirt, Exhibit 41. You
21 can examine it yourself. The television and the
22 cord - very interesting. The television is full of
23 blood but the cord's broken off. Exhibits 44, and the
24 piece of cord, we have that, too, Exhibit 43 - blood

on both of those. Very interesting. You have to ask yourself, "How did that cord get ripped?" I'll come back to that in a little while. The jeans, the defendant's pants - you've seen the pants, blood all down the front of the legs, thigh area, on his jeans. The checkbook - blood in the checkbook. We know that the lady had just come back from the store. She was carrying a grocery bag. There was grape juice and pork chops sitting on the table and the receipt, the prices on the receipt from Safeway with the Bingo ticket matched the prices of the two items that were on the table, so we know she had just come back from the store when this happened. Exhibit 56, the pocketbook - blood inside the pocketbook as well as outside. The inside as well. Was there any money in the apartment? No, ladies and gentlemen, other than the money on Mr. Clanton and some change that was up in some sort of something on the dresser. No money at all, at all, in or about the wallet. Not a penny in or about the pocketbook. You'll recall from the photographs that spread around the pocketbook on the floor were different items - the checkbook, an empty envelope from the bank, and all those other items that were shown in the pictures. I'm sure you will examine

1 those pictures. Sergeant Eilert's testimony, also -
2 he's an expert at fingerprint comparison and it's
3 uncontradicted evidence, of course, that that finger-
4 print in blood is the fingerprint of Earl Clanton, Jr.
5 inside that checkbook. Mary Jane Burton testified.
6 Now, some of you may have found some of her testimony
7 a little bit confusing because you are not used to
8 dealing with comparison of blood and serology and
9 blood types and things of that nature. Try to summar-
10 ize the important things of what she said. All the
11 blood that was found was consistent with the blood of
12 the victim. Now, she told you that it's impossible to
13 say that any stain of blood definitely belongs to some
14 particular person because your blood type, there are
15 other people in the world that have your blood type,
16 your blood type and your blood type, so no one can say
17 that a particular specimen of blood definitely belongs
18 to one person but they can say that all the systems in
19 which they could determine the type of the blood are
20 consistent with your blood or your blood. By the same
21 token, if there's enough of a stain recovered to get
22 the type of blood in enough systems, certain people's
23 blood can be eliminated as being a certain stain be-
24 cause it will be different types in different systems.

1 As she went through, she had enzymes and antigens and
2 all that that she talked about. The net result of her
3 testimony where she's able to tell the difference be-
4 tween the blood of the decedent and the blood of the
5 defendant, to the best of my recollection, was that on
6 Exhibit 35, the stains that came off the TV tray that
7 was right by that checkbook, was not the blood of Mr.
8 Clanton. Obviously, all these bloods are consistent
9 with Wilhelmina Smith. The knife, Exhibit 39, is not
10 the blood of Mr. Clanton. The gym shirt, Exhibit 41,
11 is not the blood of Mr. Clanton. Exhibit 44, the TV,
12 is not the blood of Mr. Clanton. Exhibit 45, the jeans,
13 not the blood of Mr. Clanton. Exhibit 47-48, the
14 shoes, not the blood of Mr. Clanton. Now, the other
15 items, they're all human blood, as much as she could
16 determine, it was consistent with the blood of the
17 victim but she was unable to get the type of blood in
18 those systems where she could have told the difference.
19 So it's somewhat inconclusive. The important thing
20 about Exhibit 43, which is the broken piece of the
21 cord, is that there is human blood on that piece of
22 cord. She told you that the decedent's blood is
23 shared by about -- type of blood is shared by about
24 1% of the population and that the defendant's blood is

1 shared by about 2% of the population. Getting right
2 down to the heart of the matter would be the testimony
3 of Willie Acox. Now, perhaps you were struck by Mr.
4 Acox as being what you would call a regular guy.
5 Here's a man who works for a living, lives at home,
6 wife and son, he saw something that happened, he came
7 in, he told you what he knew about it. Just a regular
8 person doing his duty. I'm sure he would rather have
9 been somewhere else yesterday just like probably --
10 possibly each of you would have rather been somewhere
11 else yesterday, but he had a duty to do just as you
12 have a duty to do and I have a duty to do and he was
13 here and he did it. He told you what he knew about
14 what happened that Sunday. He was home with his son.
15 They were going to watch the football game, so they
16 turned on the Highlights at 12:30, saw Wilhelmina
17 Smith come up with some sort of a bag, which we know
18 was the grocery bag. He heard her go up the stairs.
19 That's what he testified to. When we get into some
20 of this later, recall that. He's in the door in his
21 apartment, the door's shut, the television's on,
22 they're watching the television, but he could hear her
23 go up the stairs. He could. It's all concrete in
24 between that breezeway like an echo chamber. He heard

her say something to the effect, "Why are you doing this to me? I haven't done anything to you." Something along those lines is the best recollection of his testimony. He heard the door slam shut. The only time he heard any door open or close. He heard two screams which he described as being a "gagging-type scream." "Gagging-type scream." Well, we know that's true - she's being choked. We know what happened to her inside. At that point, he went to his door and he stayed there and he told you that his concentration at that point was no longer on television but was on whatever was going on somewhere in the apartment building. He knows where because he knows Ms. Smith went into her place and the screams came. From where he stood, all right, suppose this space between your jury box and the bench here is the breezeway and that's the front of the apartment, his apartment is downstairs in the front and then there's a door, then there's the door to the next apartment, and then the back. The same way on the other side. He has a stairwell that comes right down along the wall of his apartment and ends right at his front door. Also, then, on the other side coming down from your side is another stairwell from the other end which ends just next to the

1 door that's catercornered to his door across the
2 breezeway. So he opens his door like this and he's
3 looking out. He's right next to these stairs and he's
4 looking right at those stairs. A hundred percent
5 concentration on both what he was seeing and what he
6 was hearing. That's what he told you. You can see
7 from one of the photographs from Defense Exhibit A
8 that the stairwell ends right next to his door. It's
9 right there. In fact, the railing practically runs
10 into his doorjamb. And the bottom step is right at
11 the entrance to his apartment. The photograph in
12 Defense Exhibit A. Sight and sound - two of his prim-
13 ary senses. He relying on both of those senses. What
14 did he tell you about sight? Obviously, he's watching.
15 Nobody came down. Nobody. Sound. He told you and
16 so did Vanessa Harris tell you that inside -- when
17 you're inside those apartments with the door closed,
18 you can hear people - anybody on the steps, on the
19 landing. It's a very typical situation in apartment
20 buildings where there's nothing but concrete. It's
21 just like an echo chamber - anything that happens in
22 there, you've got metal and concrete, it echoes.
23 You're going to hear anything that happens. And he
24 told you that he could hear anything that could have

1 happened. Natalie Lawrence's door to his apartment is
2 right there. Right there. And you saw how tall a man
3 Mr. Acox was. Right there. Right above him. He
4 probably could have reached up to the door of her
5 apartment. Nobody came into or out of either 14-E or
6 14-H. He said that as he started watching at the door,
7 he didn't remember the exact time but it was about a
8 minute or so, to my recollection, when the police came
9 and that the whole thing took approximately four to five
10 minutes is my recollection of his testimony. Willie
11 Acox - no reason to lie. None whatsoever. What dif-
12 ference does it make to him? What possible difference
13 could it make to him how many times the door to the
14 apartment was opened or closed? He has no reason to
15 tell you anything but the truth. He was there, he saw
16 what happened, he came here and he sat right on this
17 stand and told you in a very forthright and honest man-
18 ner what he saw. Vanessa Harris - the young girl lived
19 across the hall, the front apartment downstairs right
20 below Wilhelmina Smith's apartment. Now, you may have
21 gotten an impression from her when she testified yes-
22 terday that she was frightened and she testified that
23 on this day she was frightened and it's no wonder, is
24 it, that she was frightened? She knew that she was

1 witnessing something pretty bad. She knew it. What
2 did she see? She saw Ms. Smith's car arrive, she heard
3 her go up the stairs. That's what she testified. She
4 heard a scream along the lines of, "What have I done
5 to you?" She heard continued screaming and bumping
6 in the room right above her. She was in her living
7 room. In the living room right above her, screaming
8 and bumping continued. She goes to the phone to call
9 her grandmother - she's frightened. Her mother is not
10 home; her mother is at church. Calls her grandmother
11 to call the police. She gets off the phone, she comes
12 back to the front and it's still going on. She goes
13 back to the phone, "When are the police coming?" Her
14 grandmother said she couldn't find the number. She
15 hung up, she called the police, then she called her
16 mother after she called the police. She's in the
17 hallway. She told you she brought the phone from the
18 second bedroom into the hallway. Meanwhile, the strug-
19 gle is moved. She can hear it right above her. It's
20 right above her. The struggle has moved into the back
21 bedroom. We know that's true because we know that's
22 where the main part of the violence happened - in the
23 back bedroom. She finished her phone call to her
24 mother, she went back to the front, she looked out the

1 window, most of the time, she said, she looked out of
2 the door. She went to the window to see if the police
3 were coming. She said she did that twice. The rest of
4 the time, she's looking out the door. Now, where is
5 she looking? Okay, she's opposite to Mr. Acox, she
6 would be here looking this way. She's looking right at
7 the stairwell that comes down the side of Mr. Acox's
8 apartment. She can't see that stairwell but she said
9 she could see the hallway but not that actual stairwell
10 there. Mr. Acox is watching that stairwell, she's
11 watching this stairwell. He was watching both, actual-
12 ly, because it was right outside his door. Nobody came
13 down. Nobody came down those steps, nobody jumped over
14 the rail, nobody flew away from the second floor of a --
15 building 14. She also said anytime she's in her apart-
16 ment, you can hear anything that happens on that stair-
17 well. Again, it's an echo chamber. She was fright-
18 ened but does her being frightened mean that she didn't
19 see or hear what she said she saw or heard? Any reason-
20 able person under her circumstances would have been
21 frightened. Here's a young girl who's home alone and
22 something very terrible is happening just as close to
23 her as it can possibly be. Again, she's forthright.
24 She has no reason to tell you anything that is not true.

1 Now, I'd like to turn to the defense evidence. I want
2 to remind you of two instructions when we talk about
3 the defense evidence. Instruction 3: "If you believe
4 that any witness has knowingly testified untruthfully
5 as to any material facts in this case, you do not have
6 to accept any of the testimony of that witness or you
7 may give that testimony such weight as you feel it is
8 entitled." Instruction 4: "Proof of the defendant's
9 prior convictions of felonies"- three of them - "may
10 be considered by the jury as affecting his credibility."
11 And, finally, "You are entitled to use your common
12 sense in judging the testimony." Ladies and gentlemen,
13 perhaps some of you were taken aback a little bit or
14 shocked a little bit or surprised a little bit to have
15 Mr. Clanton and Ms. Lawrence sit right on that stand
16 and tell you something that there's no way in the world
17 it can be true. Now, to those of us that are around
18 the Courthouse, that happens more often than we'd like
19 to admit. It happens fairly frequently. But to the
20 12 or 13 of you, it's perhaps an unusual occurrence.
21 We all know that people tell things that aren't true
22 in everyday life but here it happened in the solemnity
23 of this Courtroom. They sat right on that stand and
24 they told you something that just can't be true. I'm

1 going to tell you why it can't be true. I'm going to
2 tell you why there's no way in the world that you should
3 believe anything that either one of them told you when
4 they testified. Earl Clanton, Jr. - I asked him about
5 being convicted of felonies. First he said, "About
6 three," and then he remembered, "Yeah, well, it was
7 three." What did they tell you? Put quotes around
8 this - "That two-other-guys-did-it story." That's what
9 you heard. "I didn't do it; two other guys did it,"
10 and they took off and flew or jumped or ran off the
11 balcony. "Somebody else did it; I didn't do it." A
12 fairly typical story. What else did Mr. Clanton tell
13 you? He told you he was a fugitive from this Court
14 from last April, been living with Natalie Lawrence,
15 that they heard some screaming coming, she got up and
16 went over there, she came back, she wanted him to go
17 over there and he didn't want to go. They had a dis-
18 cussion about it. She finally begged him - begged him
19 - to go over there and he decided he'd go over and
20 help. A calculating thought process, according to him.
21 He's sitting there reasoning out whether or not he
22 should go help this lady who's being brutally and
23 savagely murdered in the adjoining apartment. He went
24 in and he was hit over the head with a wooden spoon.

1 Now, at this point, we get into all this martial arts
2 testimony of his. He knows all about these different
3 kinds of things and defenses and offenses and he told
4 you at that time he was in shape, strong, upper-body
5 strength, and he told you that he was able to -- obvi-
6 ously able to fight this person off because he's so
7 good at these martial arts but wasn't able to do any-
8 thing else. He wasn't able to -- he had injured him
9 but the man ran away. Mr. Clanton has a hard time de-
10 ciding how good he wants to be at martial arts. He
11 wants to be real good so that he didn't have any
12 trouble, he could fight these people off, but yet he
13 didn't hurt them or anything, and he's telling you
14 about all these moves he's putting on them. These
15 people were not fighting back in that manner. All
16 right, he said that when he went into that apartment,
17 he closed the door and the man attacked him, then the
18 man went out the door, so you've got the door opening
19 and closing several times there. Remember, there's no
20 blood anywhere near that door. None. Nobody went out
21 that door. Nobody did, except according to him this
22 Man No. 1. He goes into the back bedroom, the knife is
23 sticking out of her neck. That just absolutely cannot
24 be true. No more than one-half inch did this knife -

here is the knife - stuck in, and according to him, she's laying there and it's just -- it's hanging out of her neck. It certainly was not. It certainly was not. It couldn't have been. And as he went to get it, the knife fell out, as he was reaching for it, but yet it had been sitting there sticking out of her neck. Now, a big part of his explanation to you of why he was covered with blood, which is basically all his testimony is is to try to explain to you how all this happened, was that he went over to the lady and he's reaching down to help with the knife and he's attacked from behind. He's kicked in the back and a television set is thrown at him and he's knocked -- thrown at him hard enough to knock him to the ground. He gets back up and they get into a fight and he puts his hands on the wall and kicks off and does all this stuff that he was testifying to. Commonwealth's Exhibits 57 and 58 - he got on that stand and he made a real big deal, a real big deal, about how all these pictures were taken of him and they would show these injuries and he knew they were taken and we didn't introduce the pictures and he had these injuries to his back. Exhibits 57 and 58. Look at them very closely when you go back there. Not a scratch on his back. Not a scratch on

his back. I caught him on that. Caught him right in the middle of the lie. (pause) Now, at that point, he compares himself with being equal in skill to a black belt karate expert. He's fighting a man - Man No. 2, now - Man No. 2 - he's fighting this man, he's been able to get off a flying leap by throwing himself against the wall and throwing his feet back against the man. The man, according to him, was not fighting back at all in this manner and yet he was just able to run away. Again, Mr. Clanton's not sure how good he wants to be when he describes his prowess in the martial arts. Now, at this point, and this is very important, what does he say happened? He says that after this man ran out that he saw the man run out and push or hit or something Natalie Lawrence as she was coming in. He says what he did is he went immediately to the victim, tried to help her. He was trying to -- took off his shirt, put it under her head. Of course, he's at the bed there and what's on the bed? Pillows. He took his shirt off, though, according to him, to put it under her head. He tried to untie the knot from the belt, Exhibit 2. His blood - how does he explain his blood all over this and all over the checkbook? He's looking for an address book so that he can call some

1 relatives. The lady is laying there dying or dead and
2 he's looking for a telephone number of her relatives,
3 according to him. Picked up the phone, picked up the
4 phone - there's blood all over him, there's no blood on
5 the phone. When you look at that photograph that shows
6 the lady laying near the phone, you'll know exactly
7 how that phone came off the hook. It came off the hook
8 when somebody hit up against the table. The table was
9 moved out of the way and the phone fell off the hook.
10 All those things he said happened right after the man
11 ran out and brushed into or hit or something Natalie
12 Lawrence. He's doing all these things back in the
13 bedroom. Mr. Clanton didn't want to answer a question
14 that I asked, I had to ask it a number of times, about
15 which way the body was facing. Apparently, for what-
16 ever reason, he couldn't remember either what he saw or
17 what he had said or which way she fell when he choked
18 her to death. He said he didn't take any money. Now,
19 he told Detective Crowell a different version at Police
20 Headquarters shortly after this happened of the events
21 after he entered the room. He told Detective Crowell
22 that he went into the room and was immediately attacked
23 by this man, whereas he's trying to testify yesterday
24 that he was going over to attempt assistance, bent over,

1 the knife fell, and then the man came through. It's
2 important now, when someone's making up a story, telling
3 a lie, they don't remember all the details from one
4 time to the next, whereas a person who's telling the
5 truth, they always remember exactly what they saw.
6 It's a very easy way to tell people who are not telling
7 the truth - one, the ridiculous nature of what they
8 say; and, two, the fact they have a hard time keeping
9 the details straight from one time they tell a story
10 to the next time they tell the story. Then we arrive
11 at the piece de resistance of the defense, the sole
12 witness, the only witness who's going to corroborate
13 this incredible story of Mr. Clanton's is the even more
14 incredible Natalie Lawrence, even more incredible for a
15 whole number of reasons. What's her story? What did
16 she say in the Courtroom happened? She said she heard
17 the noise, went over, she opened the door, she went in
18 -- or she looked in. She opened the door, looked in,
19 heard what was going on, saw some blood, closed the
20 door, went back to her apartment. She said yesterday
21 that he was already dressed, including his shoes, but
22 the night she was arrested, she said he didn't have his
23 shoes when she gave this made-up story. She's begging
24 him to go. They're having this discussion about going

1 back and forth. This has to consume time. It has to
2 consume time. She'd already heard the scream. She
3 was in bed, got out of bed after she heard the screams,
4 went over there. What has happened by this point?
5 Willie Acox is down watching at his door, that's what's
6 happened by this point. He wasn't in bed. He didn't
7 have to get up and go over there. He was right there
8 in his living room, went right to the door. Begging
9 her to go. So, finally, he went over, Clanton went
10 over. Clanton opened the door and went in, closed the
11 door, then the door opens again and No. 1 Man comes in
12 and takes the flying leap off the balcony. The door
13 closes again. She watches at her door and then she
14 decides to go over and as she goes over, the door opens
15 again and she's going in, No. 2 Man is coming out, she
16 goes in, the door closes again. That's what they want
17 you to believe. That's what they'd have you believe
18 happened. She went in, she took the keys out of the
19 door and she locked all three locks. We've got two
20 men that have taken flying leaps off the balcony and
21 she's locking all three locks, according to her. Now,
22 what did she say happened when she entered that apart-
23 ment? She said Earl Clanton came right down the hall
24 behind No. 2, came up, talked to her, told her to stay

1 where she was. What was Mr. Clanton, according to him,
2 doing at the time? He was back there going through
3 looking for relatives to make a phone call to, accord-
4 ing to him. They haven't got their act completely
5 together, have they? So he goes back in the bedroom,
6 she goes back into the bedroom. What is he doing?
7 Is he propping the lady's head up? Is he looking for a
8 telephone number? Is he trying to make a phone call?
9 What did she say he was doing? Maybe the only truth-
10 ful thing she said yesterday - he was sitting on the
11 edge of the bed with his head in his hands. Maybe the
12 only truthful thing she said. What's he thinking,
13 "My God, look what I did. They got me now." The police
14 come. The police are there. What are they going to do
15 now? What are they going to do now? They told you,
16 they both told you that they talked about it. They
17 sat there and talked about it, "Well, what are we go-
18 ing to do? How are we going to do this?" They had
19 time to try to get a little scheme together, a little
20 plan together. So they decided she's going to go out,
21 she's going to tell them that she's in the shower and
22 that he's going to go hide someplace, hide under the
23 bed. Now, you also heard yesterday that that is not
24 exactly the statement that Ms. Lawrence made first on

1 November 18th and then again on December 3rd in the
2 presence of a lawyer. That (pause) -- what she said
3 yesterday is not quite what she said to the police in
4 the presence of a lawyer of her own choosing. What did
5 she tell the police? Maybe your blood ran cold when I
6 read you some of the statements that she made. Maybe
7 it should have. That man right there said - Earl
8 Clanton said - that he was going to go over and choke
9 the lady and he was going to steal her money. Natalie
10 Lawrence would never make something like that up if it
11 wasn't true. Never. And that's the man she's living
12 with. No way. She said that she was a lookout. She
13 heard some screaming, she went to the door, and that
14 (pause) -- also important, in that statement she said
15 that she had gotten from Clanton in writing the version
16 that he had given to his lawyer. What do you think
17 that version was? Just what she sat here on the stand
18 and announced yesterday. Now, her statement to the
19 police, I don't think I need to argue that it was not
20 made under duress or harassment. You saw those three
21 police officers parade in here yesterday. They cer-
22 tainly didn't force her to make any kind of a statement.
23 She had her own lawyer. She made the statement with
24 the advice and in the presence of her lawyer. Serge-

1 ant Batts, Detective Crowell, Detective Langford -
2 those men have no reason whatsoever to do anything
3 like that. But Exhibit 59, (pause) Exhibit 59 in the
4 handwriting of Natalie Lawrence to "Detectives Batts,
5 Langford and Crowell: Thanks so much for helping me
6 come to my senses. I really do appreciate all that you
7 have done and are still trying to do." These men are
8 harassing her and intimidating her? "To you, Batts, I
9 am so sorry for lying to you." What's she referring
10 to? She's referring to that nonsense she gave him the
11 night that she was arrested and he flat out told her,
12 "I don't believe what you're telling me, Natalie, so
13 we might as well not talk any further." "To you,
14 Batts, I am so sorry for lying to you. I realize now
15 that you were only looking out for my best interests.
16 I must admit that I did love and care about Mr. Clanton
17 but I also feel that part of that love came from fear
18 of what he might do to me." She knew all about Earl
19 Clanton. She was afraid of him. "While I'm waiting
20 for this trial to be over with, I would appreciate if
21 all of you would keep in contact with me from time to
22 time. I have never been confined before. Being in
23 here gets to me sometime. It would help if all of you
24 would write or come to see me so I'll have something to

1 do to keep my mind off of looking at these bars.
2 Happy Thanksgiving to all of you." I'm going to stop
3 right here. When she read the statement yesterday, she
4 read, "Happy Thanksgiving to all of you. Natalie."
5 That's not what the letter said. It says, "Love ya,
6 Natalie." She's being intimidated and harassed by
7 these gentlemen? "P.S. By the time you get this,
8 Thanksgiving will be over but I was thinking of all of
9 you." I think that pretty much answers Ms. Lawrence.
10 It answers it quite decisively. You have to decide the
11 credibility, of course, of Earl Clanton and Natalie
12 Lawrence, and let me just review with you again some
13 of the things that I think are important. First off,
14 the whole thing is just completely untrustworthy and
15 unbelievable. It could not have happened. One of the
16 points about the door opening and closing, according to
17 their version of the facts, after the screams, after
18 Natalie Lawrence got out of bed, the door to Ms. Smith's
19 apartment opened and closed four different times, and
20 the door to Ms. Lawrence's apartment opened and closed
21 three different times. According to them, that's seven
22 door openings and closings, plus all this traffic across
23 the hall. All right. She said she left her apartment,
24 went over, opened the door, looked in, came back, went

1 back in her apartment. That's one at each. She says
2 Clanton left her apartment, opened and shut. That's
3 two there. He went in over there, shut the door, that's
4 two on both. Then Man No. 1 comes out so he can fly
5 off the balcony. That's number three over there. She
6 leaves her apartment. That's three at hers. And then
7 she goes in over there while No. 2 is coming out -
8 that's four over there. Seven times. It wasn't even
9 once. You know that from Mr. Acox and Miss Harris. It
10 wasn't even once. Now, the difference between what
11 happened in their versions from when the second man
12 left: Clanton said he was trying to untie the knot.
13 Dr. Fierro told you that this is the way that it was.
14 This is the way that it was. There were no other knots
15 in this. That's how it was. She had to cut it off
16 with a knife. She couldn't even loosen it, get her
17 fingers under it. She had to cut it with a knife to
18 get it off, that's how tight it was. He was finding
19 the, ah, relatives' phone numbers, he was trying to
20 find relatives' phone numbers. The lady's laying
21 there dying - does he call the ambulance? No. Call
22 a doctor? No. Trying to find a relative's phone
23 number. He says that he picked up the phone. Well, he
24 didn't pick up the phone, the phone got knocked over

1 in the scuffle. He said he put his shirt under her
2 head. Took his shirt off to put it under her head.
3 So that's how he's going to explain how her blood's on
4 there. He's in the bedroom. If he wants to put some-
5 thing under her head, if that's what he were doing,
6 there are plenty of things to put under her head. He
7 said the second man hit or bumped or ran into Natalie
8 when they were running out the door - Natalie Lawrence.
9 Natalie Lawrence - what did she say? No, that's not
10 what happened. She said that she passed right by the
11 second man. "He came out the door, I jumped out the
12 way, he ran by." She said Clanton came to him, went
13 back in the room, she went back in the room behind
14 Clanton, he's sitting on the bed with his head in his
15 hands. What else? According to them, both of these
16 men who had committed this brutal, vicious murder,
17 blood all over the place, went out the door of Natalie
18 Lawrence's apartment. They had to open the door to get
19 out of it because the door was closed each time they
20 came out. They had to be full of blood. There was no
21 blood anywhere near the door. None at all. That's be-
22 cause there wasn't anybody coming out that door.
23 There couldn't have been. Natalie Lawrence makes a
24 statement on the 18th of November. They have a sched-

1 uling problem getting ahold of Mr. Spero and getting
2 the schedules together, she writes the letter on
3 Thanksgiving, the 27th, and finally, the following
4 week, on the 3rd of December, she again makes the
5 statement in the presence of her attorney. Yesterday,
6 she left out the words "Love ya" in that letter be-
7 cause, frankly, she was a little embarrassed by it.
8 She knew -- she knew what that was going to tell you
9 about whether her testimony, her statement, was true.
10 She knew that was going to tell you that her state-
11 ment to the police was true. She left it out. She
12 tried to hide it but it didn't work. Earl Clanton -
13 three times convicted of a felony. Three times now.
14 He sat on this stand yesterday, he was very cool.
15 Very cool. He had all the answers for most of the
16 things that happened. He was able to explain many of
17 the items here - the blood here, the bloody finger-
18 print and all that sort of thing. But think in your
19 mind, is not a cold-blooded killer also quite capable
20 of being a cold-blooded liar? Certainly. Anybody who
21 could commit any kind of a crime like this would cer-
22 tainly have the guts to come into a court and just sit
23 there and very calmly tell you; he has a little expla-
24 nation for everything about it. An explanation that

1 just doesn't wash. It's just not true. Now, what is
2 the law of this case? You have to take these facts
3 that we've gone over and apply them to the law in-
4 volved in the case. You're guided in that by a propo-
5 sition of law contained in Instruction 1 which says,
6 "The defendant is presumed to be innocent." Well,
7 every defendant in every case, everybody that's ever
8 been convicted of anything has been presumed to be in-
9 nocent when the trial started. That's the whole idea
10 of a trial, you start out they're innocent, the Common-
11 wealth puts on the witnesses and proves they're guilty.
12 "The presumption of innocence remains with the defend-
13 ant throughout the trial" - it's enough to find him
14 guilty -- find him not guilty unless and until the
15 Commonwealth proves each and every element of the of-
16 fense beyond a reasonable doubt. This does not require
17 proof beyond all possible doubt, nor is the Commonwealth
18 required to disprove every conceivable circumstance of
19 innocence. Reasonable - that's the key word; reason-
20 able doubt. That's why you are here, to determine what
21 is reasonable. The crime of capital murder, Instruc-
22 tion 6, let me go over -- very brief overview of that
23 first to make sure that you understand. You'll have
24 it with you back in the jury room. "The crime of cap-

1 ital murder has three elements to it. The first is
2 that the defendant killed Wilhelmina Smith. The second
3 is that the killing was willful, deliberate and pre-
4 meditated. And the third is that the killing occurred
5 during the commission of robbery while the defendant
6 was armed with a deadly weapon." Now, let's go through
7 each of those and I'll highlight some of the facts
8 which prove overwhelmingly that this charge has been
9 proven. The defendant killed Wilhelmina Smith. You'll
10 hear the expression about "getting caught red-handed."
11 I'm sure you've all heard that before. That is so very
12 painfully and tragically true in this case. Mr. Clan-
13 ton was caught red-handed, red in the blood of his
14 victim. No one went in or out of Apartment 14-E after
15 those screams started when Mr. Acox went to the door.
16 All the reason in the world for Mr. Clanton and his
17 girlfriend, Natalie Lawrence, to lie. No reason what-
18 soever for Willie Acox or Vanessa Harris to say any-
19 thing that's not true. There's blood all over, all
20 over. Money in the pocket, his pocket. No money any-
21 where in the lady's belongings that were with her -
22 pocketbook spread out, the contents are strewed about.
23 He's hiding under the bed. All he explains, he's a
24 fugitive when he's hiding under the bed. He has an

1 incredible story that he depends on, he relies on
2 Natalie Lawrence to back that up and she has totally
3 and completely impeached in her testimony by the con-
4 fession that she gave to the officers in the presence
5 of her attorney. The bloody fingerprint in the check-
6 book - we know Earl Clanton was looking through for
7 the money. Blood inside here, blood in the checkbook.
8 They are some of the facts that prove that the defendant
9 killed Wilhelmina Smith. The second element: "That
10 the killing was willful, deliberate and premeditated."
11 Instruction 7 tells you a little bit more about what
12 that means. "Willful, deliberate and premeditated means
13 the adoption of a specific intent to kill. The intent
14 to kill must come into existence at some time before
15 the killing but it need not exist for any particular
16 length of time." This doesn't mean that you have to -
17 that you have to - sit down and say, "Okay, I'm going
18 to go kill so and so and this is how I'm going to do
19 it," because all it means is that at the time that the
20 act is done intentionally and deliberately to cause
21 death. Willful, deliberate and premeditated. Premedi-
22 tation can occur one second or a millioneth of a second
23 or three years before the act. It does not -- the
24 length of time does not matter, it's just that it must

1 occur before the act. What is the evidence of that?
2 There is no accident here. This killing is not acci-
3 dental and I don't expect Mr. Hauler to stand up here
4 and try to tell you that. But what are the different
5 parts of the scene of violence that day? The lady's
6 hit with the spoon in the living room area. The
7 spoon's broken. Somehow there was blood on the knife
8 that was in the kitchen, a drop of blood out there.
9 She's cut with the butcher knife by holding it up to
10 her neck to keep her from resisting. The belt's
11 wrapped around several times. Where did the belt come
12 from? The belt came off of her coat. The coat's lay-
13 ing as you see in the picture, laying on the ground.
14 He had to take the belt off the coat, take the belt,
15 wrap it around her neck a couple of times. Now, the
16 television. The television - very interesting. How
17 did the cord get broken? The cord could have gotten
18 broken when the TV was knocked over and was pulled out
19 of the wall but that's unlikely. The plug itself would
20 have pulled out of the wall when the TV fell over. Did
21 he try to choke her first with her TV cord before he
22 got the belt off the coat? Maybe he did, maybe he
23 didn't, but somehow, somewhere, that cord got blood
24 all over it and the TV and it broke. And it broke.

1 You know she put up a valiant struggle for her life.
2 Maybe she was able to keep that from being the thing
3 that caused her death but she was unable when he got to
4 the belt. And also on the question of willful, delib-
5 erate and premeditated, remember how much time it took
6 for the actual murder to occur once the event started.
7 To Vanessa Harris, it probably seemed like it was an
8 hour because anytime you're in a situation like that,
9 time just seems that it takes forever. But we do know
10 that the violence started in the living room, she went
11 to the phone, called her grandmother, came back, they
12 were still struggling in the living room, she goes
13 back to the phone, she's making three phone calls.
14 The violence moves to the back room. There's still
15 more bumping going on in the back room. All this
16 length of time, more than enough time for him to decide
17 that he was going to kill her, which he did. Which he
18 did. Willful, deliberate and premeditated. This mur-
19 der is certainly that. Now, the third element has two
20 parts. The first is that it's during the commission of
21 robbery. And if you look at Instruction 9, it tells
22 you that murder during the commission of robbery occurs
23 where the killing is so closely related in time, place
24 and causal connection as to make it a part of the same

1 criminal enterprise. Well, in this case, the same
2 criminal enterprise. The murder and the robbery are
3 all part of the same act, whoever did it. And I think
4 Mr. Hauler intends to argue that this is a separate
5 thing. He's arguing that his client didn't do it, but
6 it's all part of the same thing. Went over, choke her
7 and take her money. What happened? He choked her and
8 took her money. All part of the same criminal enter-
9 prise. Whether a robbery occurred - we'll go over
10 robbery here in a short while when we get to the rob-
11 bery instruction. Now, the second part of this third
12 element says that "while the defendant was armed with
13 a deadly weapon." And, again, the Court has given you
14 Instruction No. 8 which tells you about a deadly wea-
15 pon. Deadly weapon, the legal definition of a deadly
16 weapon, is any object or instrument not a part of the
17 human body that is likely to cause death or great
18 bodily injury because of the manner and under the
19 circumstances in which it is used. Okay. There are
20 obvious deadly weapons - a knife, a gun. They are
21 obvious deadly weapons but the instruction tells you
22 that the legal definition includes more than that. It
23 includes any object or instrument not a part of the
24 human body that is likely to cause death or great bodily

1 injury because of the manner and under the circum-
2 stances in which it is used. The belt and the knife.
3 Both of these are deadly weapons. Now, Mr. Hauler may
4 argue to you, "But the knife didn't cause death."
5 Does this definition tell you that the deadly weapon
6 has to cause death? All it says is that it was during
7 the commission of a robbery while the defendant was
8 armed with a deadly weapon. It doesn't say while the
9 defendant was armed with a deadly weapon that caused
10 the death because the law doesn't require it to go that
11 far. What the law is trying to prevent is people
12 carrying around deadly weapons. Number one deadly
13 weapon, the knife. The second deadly weapon is the
14 belt. Again, there's a good reason for this. The law
15 is trying to prevent people or is looking after people
16 using any kind of an object or instrument as an instru-
17 ment of death. Certainly, this kind of a belt, any
18 kind of a belt or a rope could very easily be used to
19 strangle. What's even more important is that the in-
20 struction tells you that to consider whether it's a
21 deadly weapon or not, you consider the manner and under
22 the circumstances in which it's used. Well, obviously,
23 this is a deadly weapon - it caused death. I mean
24 it's sort of an obvious thing. Excuse me for stating

1 the obvious but I think we need to. They are the ele-
2 ments of capital murder. Do not concern yourselves
3 at this point in time with death sentence or life im-
4 prisonment. All right? When you were questioned by
5 the Judge, you told him that you could - each of you
6 could - consider either sentence in a particular case.
7 The Judge has told you that before you have to make
8 that decision - before you have to make that decision -
9 you will be given extra evidence and instructions. So
10 do not be concerned at this point in the trial with
11 whether or not death is the appropriate sentence or
12 whether it should be life in prison. Your only func-
13 tion on the capital murder charge right now is to
14 determine just as I've gone through whether we've prov-
15 en each of the elements of the crime. And it's cer-
16 tainly the Commonwealth's position that the evidence of
17 each of these elements is just simply overwhelming that
18 he is guilty of the crime of capital murder. You will
19 have other things from which to make the other deci-
20 sion so don't be concerned about that decision right
21 yet. The only thing you have to determine right now
22 is whether or not we've proven the elements of capital
23 murder. Now, there are two other options that you have
24 under Instruction 6. They are two different kinds of

first-degree murder. They include different elements of the charge of capital murder. It's the Commonwealth's position that, obviously, since capital murder has been proven, both of these crimes have also incidentally been proven, but I want to go through those, also, to make sure that we understand. The first is regular first-degree murder. Three elements: The first, that the defendant killed Wilhelmina Smith. Second, that the killing was malicious. And, third, that it was willful, deliberate and premeditated. You can see, there are parts of the capital murder in that. I already went over the evidence that the defendant is the person who killed Wilhelmina Smith. That is absolutely overwhelming. The second is malicious. You look at Instructions 11 and 8 and it tells you what maliciously means in a legal sense. It says, "Maliciously means intentionally doing a wrongful act to another without legal excuse or justification." That's what malice is, you intentionally do something to somebody else for no good reason. It implies that the mind of the actor is under the control of reason and it includes not only anger, hatred or revenge but every unlawful or unjustifiable motive, and it also says that you can infer that a person has malice in

1 their mind by the deliberate use of a deadly weapon.
2 Exhibit 39 and Exhibit 2. There's malice there. And
3 the third, that the killing was willful, deliberate
4 and premeditated. I just went over that during the
5 capital murder. Obviously, there was plenty of time.
6 It was an intentional act, it was not an accident. It
7 was done to cause death. The acts were done to cause
8 death. Just wrapping this around two and three times,
9 that's all you need to know. That's all you need to
10 know. Now, the other kind of first-degree murder is
11 what's called first-degree felony murder and the ele-
12 ments of that are a little different from the elements
13 of what we just went over. They are: First, that the
14 defendant killed Wilhelmina Smith. Well, we've been
15 over that. Second, that it was malicious. Again, no
16 question about it. There couldn't be anything any
17 more malicious than this crime. There couldn't possi-
18 bly be anything more malicious. And the third is that
19 killing occurred in the commission of or attempt to
20 commit robbery. Obviously, this occurred during the
21 commission of or attempt to commit robbery. It was all
22 part of one enterprise - choke the lady and take her
23 money; that's exactly what happened. So we've proven
24 all of these crimes - capital murder, first-degree

murder, first-degree felony murder. Obviously, the Commonwealth asks that you return the verdict of the highest offense, the capital murder, and then consider the evidence and the other instructions as to whether or not you should give the death penalty. Now, the charge of robbery - make sure you read closely the beginning of Instruction 12 on robbery because if you find the defendant guilty of capital murder or of this first-degree felony murder where we have to prove it occurred during the commission of robbery, then you have to find him not guilty of robbery. This is what the law calls double jeopardy. Double jeopardy, right? Robbery is part of capital murder and robbery is part of this first-degree felony murder, so if it is an element of each crime, you can't convict him of both the murder and a robbery because the robbery is sort of contained inside the murder. So the Judge tells you that if on the murder indictment, you have found guilty of capital murder or you have found guilty of first-degree felony murder then you automatically write "Not guilty" on the robbery. But if you find guilty of first-degree murder, which is the willful, deliberate and premeditated malicious killing, if you find that then you consider the robbery indictment, or if you

find the defendant not guilty of murder, of course, you would consider the robbery indictment. Five elements of robbery - I'll go over these quickly: The defendant intended to steal. Obviously, intended to steal. That's obvious. Intent is a state of mind, a condition of mind. You can't judge what's in another person's mind other than by what they do. You can tell what they're thinking by what they do, all right? So you look at what happened to decide what the defendant had in mind. What did he do? He choked the lady and took her money. He intended to steal. Obvious. It's obvious. The second part of that, the whole place was ransacked. He didn't leave any money so he intended to steal. He didn't leave her any money, took all the money out of there. The only money found is in his pocket other than some coin change that was up on the dresser. The second element of robbery is the U. S. currency was taken. Well, Exhibit 40, the eight dollars. Now, it's important to point out to you here that robbery does not require that any specific amount of money be taken, just that money be taken. Why? Well, that's very simple and it stands to reason. The robbery of eight dollars is just as bad as the robbery of eighty dollars or eight hundred dollars or eight

1 thousand dollars or eight million dollars as far as the
2 victim is concerned. They are being robbed of some-
3 thing that belongs to them so whether you take a
4 dollar or a billion dollars, robbery is still robbery.
5 It does not depend on the amount of money involved.
6 The third element of robbery is that the taking was
7 from Wilhelmina Smith or in her presence. That's ob-
8 vious again. You'll see in the photographs that there's
9 the bag laying right by her. Right by her. Blood all
10 over it. Fourth, that it was against her will, and
11 again, you know, these things are fairly obvious.
12 Please excuse me for going over them. She made a val-
13 iant struggle for her life. It was certainly against
14 her will. She did the best that she could to thwart
15 this person's attempts to kill her and to rob her.
16 And, fifth, that it was accomplished by violence.
17 Again, that, you know, -- that's what this whole trial,
18 this whole two days, is about is this violence. Now,
19 in your verdicts, if for some reason you do not find
20 the defendant guilty of capital murder but you do find
21 him guilty of first-degree murder, you can find him
22 guilty of both first-degree murder and robbery and you
23 can give him up to life in prison on both of those.
24 In other words, give him two life sentences in prison.

1 Now, when you decide the sentence, if you are going to
2 be sentencing on the first-degree murder and the rob-
3 bery, this man has already been convicted of three
4 felonies and he's committed this -- these horrible acts
5 after being convicted of three felonies already, and if
6 you convict him of the murder and robbery that will be
7 five, don't let him ever do it again. Don't let him
8 ever hurt anybody again. Give him the maximum that you
9 can possibly give him, double life; two life sentences.
10 Don't sentence anyone else to the fate of Wilhelmina
11 Smith. Sentence Earl Clanton to pay attention for the
12 rest of his natural life if that is your decision to go
13 with the first-degree murder and robbery. Now, the
14 attempted robbery is also in this instruction and is
15 there for you to consider if for any reason you feel
16 that the crime of robbery itself has not been proven
17 but it's certainly the Commonwealth's position that the
18 robbery has definitely been proven. Ladies and gentle-
19 men, on November 16th of 1980, Earl Clanton took the
20 law into his own hands, he sealed his own fate that
21 day by what he did. What did he do? He was arresting
22 officer, he was magistrate, he was prosecutor, he was
23 judge, he was sheriff and he was executioner. What did
24 he do? He sentenced Wilhelmina Smith to death. He

took the law into his own hands. That is no one's fault but his. He sealed his own fate. It is your duty,your sworn duty, to return a verdict of justice. Justice requires that he be convicted of capital murder and that you come back into the Courtroom to consider whether to give him the death sentence or the life sentence. If for some reason you don't do that, and I urge you to do that, if you do not do that, find him guilty of first-degree murder and robbery and give him a double life, and make sure that he never hurts anyone again, anyone at all for as long as he lives. Nothing less than the maximum penalty can be justice in this case because he extracted nothing less than the maximum penalty when he decided to sentence Wilhelmina Smith to death. Now, I will have an opportunity to respond to Mr. Hauler's comments. I appreciate very much your attention during this part of my argument.

MR. HAULER: May it please the Court, good morning, ladies and gentlemen. I've been sitting here for the last hour or so listening to Mr. Welsh's recitation of the facts, the circumstances, his dogmatic portrayal of all these different items which he believes are indicative of Mr. Clanton's direct involvement and his guilt. I think it needs to be indicated

1 to the members of the jury that what Mr. Welsh has to
2 say are matters of his opinion just as what I'm going
3 to say to you are matters of my opinion.
4 MR. WELSH: Your Honor, I hate to interrupt,
5 but that's not proper. My argument was argument on
6 behalf of the Commonwealth and not my opinion, just as
7 his argument is not going to be his opinion but argu-
8 ment on behalf of the defendant.
9 THE COURT: Personal opinion is not properly
10 injected into it, Mr. Hauler.
11 MR. HAULER: Judge, I believe Mr. Welsh was
12 giving his opinion of what the evidence showed.
13 THE COURT: What you mean to say is that he
14 made comments on the evidence.
15 MR. HAULER: On the evidence.
16 THE COURT: The jury will have to decide what
17 the evidence is and not the --
18 MR. HAULER: Exactly.
19 THE COURT: Well, go ahead. No harm done.
20 MR. HAULER: Exactly, and that's my whole
21 point. He has given you his opinion of what the evi-
22 dence has demonstrated, what he believes he has proved
23 by various items of physical evidence and by various
24 pieces of testimony that were presented. Now, you are

the ones that heard that testimony. It really serves no valid purpose to go through the "A" to "Z" of every syllable of what was said in this Courtroom by these witnesses simply because you must evaluate these witnesses. Mr. Welsh went to great pains to point out several instructions which he wanted to draw your attention to and which he asked you to follow. I ask you to follow all of the instructions. The Court has not indicated to you any preference as to which instructions are more important, which are less important. The Court has charged this jury, has instructed this jury, and I think you must assume and must accept the fact that each instruction that you are given by the Court is of equal importance in the eyes of the Court, and as an equally valid proposition of law which you must follow you cannot depart from the instructions in your assessment of this case. Mr. Welsh made just a passing reference to "reasonable doubt." He made a passing reference to the "burden of proof." I'd suggest it would be helpful for each of you to be familiar with those two concepts when you go into your closed deliberations and to concentrate on what it means, what this "burden of proof" is beyond a reasonable doubt. You have the instruction, and my opinion as to

1 what reasonable doubt is as to whether or not the evi-
2 dence has shown reasonable doubt, that really doesn't
3 matter, nor does Mr. Welsh's opinion as to what he
4 believes his evidence shows, that doesn't really matter.
5 You've seen the witnesses. You and you alone have the
6 authority, the province to evaluate them, to decide
7 who you're going to believe. Because Mr. Welsh does
8 not believe Mr. Clanton or Ms. Lawrence is of no conse-
9 quence, it's what you individually feel is appropriate
10 in terms of the weight, the importance, that testimony
11 is to be given. If we were to accept everything that
12 Mr. Welsh has presented to you today, I was sitting
13 there and I was thinking to myself why has it taken us
14 two days to get through this trial, it was just such an
15 absolutely cut and dried matter. We spent a full day
16 hearing evidence from both the prosecution and from
17 Mr. Clanton and there was quite a bit of evidence, much
18 of it was circumstantial, and there is an instruction
19 on circumstantial evidence and you need to familiarize
20 yourself with that. You know, the fact remains that
21 if Mr. Clanton were not in that apartment when the
22 police arrived, what would the Commonwealth have? What
23 type of a case could they present to you to demonstrate
24 the culpability, the responsibility, the guilt of Mr.

1 Clanton in these very heinous crimes? And I agree
2 100% with Mr. Welsh it was a horrible crime. You've
3 heard an explanation from Mr. Clanton why he was under
4 a bed. He was a fugitive. Now, is it reasonable? Is
5 what you heard reasonable? Not whether Mr. Welsh par-
6 ticularly likes it or believes it. That is inconse-
7 quential. Is it reasonable? What would a fugitive do
8 in those circumstances? Is his recitation of the facts
9 consistent with being a fugitive in terms of why he
10 hid? I submit to you that it is. Sure, he's a felon.
11 He admitted that on the stand. Was it reasonable for
12 him to assume, having been convicted prior to this,
13 that he would be believed, especially when he was on
14 the run, when he was being sought at that very time by
15 the police? Now, is that totally beyond comprehension
16 and belief that he would be subject to being disbelieved
17 as to what his true intentions were? Is it unreason-
18 able in light of that that he would try to hide himself?
19 I think that's what you need to determine. You know,
20 Mr. Welsh has been showing you knives, cords, and he's
21 earmarked each piece of this evidence and he has dem-
22 onstrated to you how they fit into the Commonwealth's
23 theory of this case. Now, he didn't go through, for-
24 tunately, all the pieces of evidence because we certain-

1 ly would be here all day, but there are a number of
2 pieces of evidence he just kind of did not mention I'm
3 sure because he felt they were not important, and
4 perhaps true, not important from the Commonwealth's
5 view, from the Commonwealth's, the State's, case against
6 Mr. Clanton. The testimony of Sergeant Eilert - Mr.
7 Clanton's prints in the apartment? Certainly. They
8 were there. They were on the checkbook but nowhere
9 else. Murder is committed with this knife. No prints
10 on it. One place and in only one place was his print
11 found - in that checkbook. And you'll see it. It's
12 the blue checkbook. And take a look at it and think
13 back to Mr. Clanton's explanation of looking into that
14 checkbook. He thought it was an address book. Well,
15 you look at it closed and you make your own determina-
16 tion of its appearance and whether again that was
17 reasonable for him to want to call someone. He found
18 out it was not an address book, saw it was a checkbook,
19 threw it back down. He had blood all over him. Does
20 that prove that he killed Wilhelmina Smith? I submit
21 that in and of itself does not prove his responsibility
22 for Ms. Smith's death. If that is, then God help any
23 one of us who finds ourselves in a position where we
24 are in the wrong place at the wrong time. And if mere

1 presence is going to be sufficient, I submit anyone
2 here in this room could be convicted. There's more
3 that's been presented by the defense case than as Mr.
4 Welsh has suggested to you the perjured testimony of
5 the defendant and the lies of Ms. Lawrence. Before we
6 get into that, let's look again at the fingerprint
7 situation. I ask each of you to reflect back onto
8 Sergeant Eilert's testimony. I asked him a question,
9 I said, "Were there any extraneous fingerprints that
10 were found in the apartment that could not be matched?"
11 and he said, "Yes, there were." "Where?" "On a metal
12 box?" "What kind of a box?" "The kind that you use
13 to keep insurance papers and other important documents
14 in." "Could you match the print?" "No." This woman,
15 Ms. Smith, lived alone. Why would there be extraneous
16 prints on a metal box in her apartment when she lived
17 alone, the type of box, safety-deposit type box where
18 you keep important documents? It would seem logical
19 that only her prints would be on that or Mr. Clanton's
20 prints if he was there to rob her, to kill her. No
21 explanation. When you get into your deliberations,
22 this television set has got a very nice print, a
23 fingerprint --
24 MR. WELSH: Your Honor, I think at this point

1 Mr. Hauler is about to testify to something that's
2 not in evidence.
3 THE COURT: Mr. Hauler, I don't think you're
4 qualified as a fingerprint expert.
5 MR. HAULER: No, sir. I think I can suggest to
6 them what is plainly visible on the back side of that
7 set.
8 THE COURT: If you can suggest what's plainly
9 visible, go ahead.
10 MR. HAULER: Yes, sir. I'm not going to tes-
11 tify/to as anything other than there is a very visible
12 marking on the back side of that television set and I
13 suggest that you look at that. We've heard no testi-
14 mony from Sergeant Eilert that there was a define-
15 able print that could be ascertained and related to
16 the victim or to the defendant. But you can use your
17 common sense. Now, Mr. Welsh asked you to do that and
18 I'm asking you to do the same thing. And you look at
19 the back side of that television set when you get into
20 your deliberation room and you see what you can see on
21 it. Look at the print that's in the checkbook and see
22 how clear that is and draw your conclusions with regard
23 to what is on the back side of that, what appears to
24 be blood stains, most certainly. No explanation as to

1 why that was not analyzed. None whatsoever. But we do
2 know there were extraneous prints that could not be
3 matched. I submit to you that that is a piece of cir-
4 cumstantial evidence which does support Mr. Clanton,
5 excluding, totally putting aside, the testimony of Ms.
6 Lawrence. There was blood all over that apartment. Is
7 it reasonable to assume that if Mr. Clanton in fact was
8 warding off assailants, or the two assailants, of Ms.
9 Smith, was in a fight, as he testified to, that he was
10 on the floor in the bedroom, isn't it reasonable to
11 assume that he would have blood on him when the police
12 officers themselves testified there was blood all over
13 the apartment? Is that so inconsistent with his posi-
14 tion as to what he did, why he was there? I submit to
15 you, it is not inconsistent, it is as consistent with
16 Mr. Clanton's defense as it is with Mr. Welsh's propo-
17 sition that the blood was all over him because he was
18 the murderer. What about the money? Let's concentrate
19 on this robbery charge for a few minutes. There was
20 eight dollars, and you'll see it, it's Commonwealth's
21 Exhibit No. 40. You'll get to look at it. Now, there's
22 blood stain on it. That blood stain could not be
23 typed to be conclusively found to be either the vic-
24 tim's or the defendant's blood. It's not a situation

where the Commonwealth can say, "Well, we know it was her money because it's got her blood stains all over it." Ms. Burton testified before you that the stains on the five-dollar bill were equally consistent with the blood grouping of the defendant and with the blood grouping of the victim as far as it could be cross-typed. You've heard Mr. Clanton testify that he was cut when he was hit with the wooden spoon. Is it so unreasonable that that blood on that money was his own? I don't think so, not when the Commonwealth's own expert is indicating that that is a very logical and reasonable proposition. And the eight dollars, what proof is there that it was Ms. Smith's money? I mean assuming that this jury is going to accept the guilt of Mr. Clanton and assuming further that it is your opinion that he was committing a robbery, where is the evidence that this money was Ms. Smith's? They have premised their indictment on a robbery of eight dollars of United States currency. There's no evidence of that. And for the obvious reason, it's virtually impossible for anyone to say where that money came from other than it was the defendant's. Now, my whole point to you, is this proof beyond a reasonable doubt? The instructions you have indicate we're not talking

about 100% certainty. That's not the standard. But we are talking about reasonable doubt. But are you convinced to a moral certainty? Mr. Clanton is on trial today for his life. That comes as no secret to you. Mr. Welsh has spent a considerable period of time asking you to make sure that Mr. Clanton is put into a situation where his life will be taken away from him. This is a terrible crime, there's no question about that. And it is an important day for the Commonwealth, it's an important day for this community, for the defendant, and he asked you to remember that it was an important day for the memory of Ms. Smith. Well, it was a tragic crime. There are some very gruesome and horrible pictures that if you have not seen you will have the opportunity to view when you go into your deliberations. At the beginning of this trial, each of you took a solemn oath and you agreed with the Court that your verdict in this case would not be based on prejudice or sympathy and it must not be. You speak as the conscience of this community. What happened to Ms. Smith is a terrible thing but can you convict Mr. Clanton based upon his presence? I mean what has the Commonwealth shown? That he was present in that apartment, that he hid under a bed, that there

1 was blood all over the apartment, that there was blood
2 on him. Have they made the necessary nexus, the con-
3 nection, to allow you to say to yourself, "I am con-
4 vinced beyond a reasonable doubt as defined by the
5 Court's instruction, I personally am convinced beyond
6 a reasonable doubt that Earl Clanton, Jr. committed
7 these crimes?" Now, that's just the Commonwealth's
8 evidence, that's not considering any of the testimony
9 presented on behalf of the defendant, that's just
10 purely considering the Commonwealth's evidence. That's
11 all that's there. If we're going to put it in terms of
12 what type of evidence, the only direct evidence is the
13 fact of his presence there and the fact of the victim's
14 blood stains on him. That's direct evidence. But
15 direct evidence of what? Obviously, there was no eye-
16 witness. If there was an eyewitness, we wouldn't be
17 spending as much time with this case as we have had to.
18 Officer Chandler during the course of his testimony -
19 if you remember, he was the first officer on the
20 scene - and he testified that Mr. Clanton had marks and
21 abrasions on his back and his upper torso. I don't
22 know what these photographs are suggestive of. That's
23 for you to determine. But the Commonwealth's own wit-
24 ness corroborated the testimony of Mr. Clanton that he

had abrasions and marks on his upper torso, specifically in the back. Now, Mr. Welsh is trying to suggest, "Now, you look at these pictures," which I urge you to do. I don't think they are items of evidence which actually disprove what Mr. Clanton has testified to during the course of his case. Officer Chandler has supported that. He's a Commonwealth witness, he's not a defense witness. And they're consistent with the fact of a struggle. Now, Mr. Welsh is going to re-address you in a few minutes and say, "Sure, they are, but that struggle is just as consistent with a struggle with Ms. Smith." Certainly. This defendant has to prove nothing in this case. He's presumed innocent. He does not have to marshall one piece of evidence. The burden lies solely and exclusively with the State. He has presented evidence to you today. He has presented you with a very realistic and logical sequence of events. He has given testimony indicative of two intruders. Mr. Welsh has gone through all this. I'm not going to go through it again. You know what he said. Furthermore, it's what your recollection is that counts. That testimony was corroborated by Ms. Lawrence. Now, Mr. Welsh has gone to great pains to again characterize Ms. Lawrence as a liar and a person

1 whom you as the members of this jury should not believe.
2 I would suggest to you, initially, if you choose not to
3 believe her, it's because you have a firm conviction on
4 your own that you choose not to believe her as opposed
5 to Mr. Welsh's suggestion to you that she is lying.
6 She acknowledged making an inconsistent statement. You
7 know, it wasn't as though at the eleventh hour Mr.
8 Welsh confronts her with this statement and says,
9 "Aha, you made an inconsistent statement. You said
10 something different at a time previous to your testi-
11 mony here today." That was brought out by Natalie
12 Lawrence herself. Mr. Welsh says, "Well, you've
13 heard the testimony of three police officers on this
14 stand who said, 'We did not harass her.'" Well, ha-
15 rassment is kind of a subjective concept. What a
16 person perceives is perhaps as equally important as
17 what is actually happening to that person. Ms. Law-
18 rence's perception of those interviews, of those
19 interrogations, was that she was being harassed. She
20 indicated to you unequivocally that there was more than
21 one suggestion made that she'd never see her child
22 again. What greater harassment? What greater coer-
23 cion can be put upon a mother than that? If the state-
24 ment was true, why didn't she sign it? We're talking

about the December 3rd statement which was the written version of what she supposedly had related to the different police officers on November the 18th. You've heard her explanation. And I think that the fact that she didn't sign it is indicative of the fact that she knew it wasn't true and that she realized that upon signing it she would have committed herself.

THE COURT: I don't recall the witness testifying anything of that sort, Mr. Hauler. Now, this is pure speculation on your part and personal opinion. The witness was on the stand and never made those statements.

MR. HAULER: Judge, I've got it in my notes that she had indicated that she didn't sign it because it wasn't true.

THE COURT: Well, you can tell the jury that and nothing more.

MR. HAULER: The three police officers also indicated that she did not sign the statement. Perhaps that is a matter for the jury to determine why. I would suggest to you that it is a very important matter in this case. You must judge her credibility in view of an obviously inconsistent statement. You must also consider the fact Ms. Lawrence and Mr. Clanton had no

1 opportunity to get together to get their facts in
2 perfect synchronization. They haven't seen each other
3 since the 16th of November so it's rather coincidental
4 that the testimony in fact came out as it did. You've
5 heard the testimony to the effect that this is not the
6 very first point in time that the scenario of two in-
7 truders has been related to anyone. It's been heard
8 before. It hasn't been believed by the police but it
9 is certainly not a new concept to them as far as what
10 happened on November the 16th. Mr. Welsh has gone to
11 extremes with the testimony of Mr. Acox and Miss Harris.
12 I'm sure Mr. Acox is just as -- a concerned citizen as
13 anyone else but the fact remains he never went outside
14 his apartment. I'd ask you when you get into your
15 deliberations to take a look at Defense Exhibits A and
16 B and draw your own conclusions as to how much he could
17 see with the door cracked five to six inches with the
18 television going. He was watching the NFL Highlights.
19 He obviously wasn't concerned enough to walk outside.
20 He testified he didn't go out of the apartment, didn't
21 stick his head out the door, cracked the door, watch-
22 ing television, looking down the hall. How much
23 could he see? How much attention was he paying to the
24 hall versus the football game? You heard his testi-

mony. You judge how much he saw and could see. Miss Harris looking through a peephole in an apartment directly across from Mr. Acox's apartment. Directly across the way looking out a peephole. She might have seen this set of stairs but as Mr. Welsh has so correctly shown you, there are two sets of stairs. Opening and slamming of doors, it would seem to me that with the amount of commotion that was going on that that does not become a very significant fact. Were they paying that close attention? You heard the testimony. Ladies and gentlemen, I ask you to evaluate all of this evidence and then ask yourself the question, "Am I convinced beyond a reasonable doubt as that term is defined by the Court's instruction?" I would suggest that the evidence does not prove the guilt of Mr. Clanton beyond a reasonable doubt, that there are holes in the case, that there is room for speculation, that there is room for debate, and that you may not convict unless you are convinced beyond a reasonable doubt. I respectfully submit that the evidence marshaled by the Commonwealth does not satisfy that burden and based upon that, I would ask you, ladies and gentlemen, to acquit Earl Clanton of this crime. Thank you very much.

1 MR. WELSH: Ladies and gentlemen, I'd like to
2 briefly respond to some of the arguments of defense.
3 Again, another procedure in Court is that the lawyers
4 take sort of shots at each other's arguments. He took
5 a couple of shots at mine and I think I'll return the
6 favor right now and take a couple of shots at his ar-
7 gument. I'd like to try to respond to some of the
8 points in the order that he gave them. It was started
9 off by being stated, "It serves no purpose to review
10 all the facts in the case." Well, from the defense
11 point of view, it certainly doesn't serve them any
12 purpose to go back over these facts. Why? Because
13 what do the facts add up to? They add up to the over-
14 whelming guilt of Earl Clanton. Certainly the defense
15 doesn't want to dwell on facts which show his guilt.
16 There was a complaint made that the Commonwealth took
17 all this time to introduce all this evidence. Well,
18 please excuse me if I tried to help you understand
19 exactly what happened at that apartment that day be-
20 cause that's the only purpose in introducing this
21 evidence. Mr. Hauler wants you to believe Earl Clanton
22 because it's reasonable for a fugitive to hide under
23 the bed. That's why he wants you to believe Earl
24 Clanton. He doesn't talk about the fact that all that

1 Earl Clanton says is rebutted by all the other wit-
2 nesses -- by the other witnesses in the case, and that
3 what Natalie Lawrence says is rebutted by the other
4 witnesses in the case. Forget about the fact that what
5 they say is rebutted by other facts, but he thinks you
6 should believe him because it's reasonable for a fug-
7 itive to hide under the bed, for what that's worth.
8 Then we get to the litany of what's missing, what's
9 not here - "All right, I don't want to talk about
10 what's here, so how about if we start talking about
11 what's not here?" "Well, there's a fingerprint, and
12 here's another fingerprint," and all this. Ladies and
13 gentlemen, this evidence is overwhelming. Don't let
14 your intelligence be insulted. The facts are all
15 here. You don't need any more facts. We could have
16 spent, you know, three years taking fingerprints out
17 of that apartment. Sure, they could have found some
18 of her fingerprints and what have you. Now, the
19 prints that could not be matched on the box - he made
20 a big deal of the cash box - there's no evidence that
21 Mr. Clanton went anywhere near the cash box so we don't
22 allege that his prints should be on the cash box. He
23 robbed the lady, he went through her pocketbook right
24 there in her presence, and then hid under the bed.

1 That cash box doesn't have anything to do with this
2 case. It doesn't matter whose prints are on it. And
3 another thing, the evidence was not - was not - that
4 the fingerprint on the cash box didn't belong to the
5 victim. That was never asked of Sergeant Eilert. He
6 never asked him, "Did you compare the fingerprint on
7 the cash box to that of the victim?" All he asked was,
8 "Did you compare with that of the defendant?" So it
9 could have been her fingerprint. What difference does
10 it make? The cash box isn't involved in this case.
11 Now, blood stain on the money. The blood was wet.
12 That's in evidence, uncontraverted evidence. Wilhel-
13 mina Smith was bleeding, Earl Clanton was not accord-
14 ing to the police officers. When they arrived there,
15 he was not bleeding but he had the blood on him. Now,
16 the expert did not state - did not tell you - that it
17 was logical and reasonable to assume that the blood
18 was Clanton's. That is not what she stated. What she
19 stated was that it was possible because there wasn't
20 enough blood there to make the determination in the
21 systems where the blood was different. You know who
22 that blood belonged to. You know who the blood be-
23 longed to - Wilhelmina Smith. She was the only one who
24 was bleeding all over the place. Where did that money

1 come from? Right out the pocket. Now, Mr. Hauler
2 goes on to say "assuming that you believe he's guilty,"
3 then he makes an argument there about robbery, and I
4 think that probably, you know, you should consider
5 that, assuming that you believe he's guilty. Well,
6 there's a good reason for him to argue "assuming that
7 you find he's guilty," that he did it, because that's
8 what the overwhelming evidence is. He says we haven't
9 proven robbery of money. How did wet, bloody money
10 get into Mr. Clanton's pocket unless it came right from
11 the scene of this robbery? There is no other explana-
12 tion. That's where it came from. It was stated that
13 all the Commonwealth has proven is that Mr. Clanton
14 was there and was hiding under the bed. Well, that's
15 not exactly what the Commonwealth has proven, have
16 we? We have proven beyond any doubt whatsoever that
17 Earl Clanton and Natalie Lawrence were inside that
18 apartment when the murder was committed and we have
19 proven that Natalie Lawrence did not commit the murder
20 and we have proven that Earl Clanton did. Once that
21 door slammed and those screams were heard, nobody -
22 nobody - came in or out of Apartment H or E. Nobody
23 at all. They were there when it happened. That's
24 why her blood is all over. He said we don't have an

1 eyewitness. Well, Mr. Acox is an eyewitness. Certain-
2 ly not inside the apartment but he's an eyewitness to
3 the fact that they were inside that apartment because
4 they were there when the police arrived, the struggle
5 was still going on when he went to the door, and no-
6 body came out. There it is. Now, about these pic-
7 tures about the defendant's back. He said he was
8 kicked in the back and the television was thrown at
9 him. Well, if there were other marks on him, certain-
10 ly we know the victim struggled. She struggled all
11 over the place and I'm sure that there were marks on
12 the chest they talked about and whatever marks that
13 might have been on his back. He said he was kicked
14 hard enough to be knocked over and the television was
15 thrown at him. He sure doesn't look it from those
16 photographs. The presumption of innocence - ladies
17 and gentlemen, the presumption of innocence is gone.
18 The presumption of innocence is gone when we put those
19 witnesses on that stand and prove that he committed
20 the murder, so don't -- you know, it's there in the
21 law, he's entitled to it, everybody's entitled to it
22 that's tried in this Court, everybody that's ever been
23 convicted of anything had that presumption of inno-
24 cence but it's gone once the evidence is in. Now, he

1 made a big deal that Ms. Lawrence brought out her
2 prior inconsistent statement to the police, you know,
3 and therefore, you know, she wasn't hiding anything.
4 Well, she had to. She had to admit it. She knew we
5 had the statement. She knew we were ready to ask her
6 about it. She had to admit that she had made this
7 prior statement to the police. She said that she was
8 being harassed and that the subject of her child was
9 brought up. That was disproven by those three police
10 officers, Sergeant Batts, Detective Crowell, Detective
11 Langford; they did not harass her. She had her own
12 lawyer, she had two weeks, and in between she wrote
13 them this letter. She wasn't being harassed. Not in
14 any way, shape or form was she being harassed. And
15 even if she was, how could she make up those state-
16 ments against somebody she was living with unless they
17 were true - he was going to go over and choke her and
18 take her money? You know human nature. You know
19 human nature. She decided to tell the truth, she did
20 tell the truth. It's a horrible truth that she told
21 and now she's decided that she just can't come into
22 this Courtroom and say that truth against Mr. Clanton.
23 She's going to deny that it is true but it's over-
24 whelming that it is. And we get into why didn't she

1 sign the statement. Big deal. The statement doesn't
2 depend on her signing it or not. Whether she signs it
3 or not doesn't mean that she didn't make it. They told
4 you it was recorded on tape and the tape was reduced
5 to a transcript. That's what she said. It doesn't
6 matter whether she signed it or not. Absolutely no
7 requirement whatsoever. He said that there was no
8 opportunity for them to get together. Well, what did
9 she tell the police officers in the presence of her
10 attorney? That they had gotten together. She had
11 gotten a written version of what Mr. Clanton intended
12 to tell. They had gotten together. She knew what was
13 going to happen to an extent. Now, it was pointed out
14 by Mr. Hauler that the story of the two intruders was
15 not believed by the police. Well, it ought to be com-
16 forting to the community to know that our police offi-
17 cers are certainly intelligent enough to not believe a
18 pack of lies like that. It certainly ought to be com-
19 forting to the community. Next, we turn and we're
20 going to place fault on Mr. Acox, "Oh, he couldn't have
21 seen, he couldn't have heard. How do we know he's
22 telling the truth?" All that sort of thing. You saw
23 the man testify on the stand. That man is just as
24 honest and forthright as anybody that ever testified on

that witness stand. You know he's telling the truth. He's got no business -- no reason to say anything other than what he saw. What does he care whether 14 people went out of the apartment or nobody went out of the apartment? It doesn't make any difference to him so he has no reason to say anything that isn't true. Ladies and gentlemen, in order to do what Mr. Hauler asked you to do, you've got to say, "Sergeant Batts, you're lying. Detective Crowell, you're lying. Detective --

MR. HAULER: Judge, I object --

MR. WELSH: -- Langford, you're lying."

MR. HAULER: -- to that. That's obviously not true.

THE COURT: Mr. Welsh, I don't think it's necessary to put it in that perspective exactly.

MR. WELSH: (pause) Well, all right.

THE COURT: I take it you mean as to the harassment situation?

MR. WELSH: Yes.

THE COURT: All right.

MR. WELSH: You would have to say to these officers, "We don't believe your answers." You would have to --

MR. HAULER: Judge, that's absolutely incor-

1 rect.

2 THE COURT: Why?

3 MR. HAULER: What Mr. Welsh is arguing to the
4 jury is for them to acquit this defendant, they have
5 to disbelieve the police or to interpret their testi-
6 mony as being untrue. That is not true.

7 THE COURT: Mr. Hauler, when it comes to Ms.
8 Lawrence's testimony, it has to be true when she says
9 that those three individuals harassed her and they say
10 they didn't, then it comes to a question of who's tel-
11 ling the truth, doesn't it?

12 MR. HAULER: Judge, that's not the tenor of
13 his argument. He saying to do what I ask to acquit
14 this defendant, they have to believe --

15 THE COURT: I agree with you in part - that's
16 not the only evidence in the case and --

17 MR. HAULER: Yes, sir.

18 THE COURT: -- I'll instruct Mr. Welsh not to
19 portray it in that fashion to the jury but, certainly,
20 as to that limited sense, he's correct. Go ahead, Mr.
21 Welsh.

22 MR. WELSH: To believe the testimony of Natalie
23 Lawrence, to believe her testimony, first of all, you
24 have to believe in fairy tales and, second of all, you

have to tell those three gentlemen that, "I'm sorry, we just don't believe you're telling the truth." To believe the testimony of Earl Clanton and Natalie Lawrence, you've got to tell Mr. Willie Acox and Miss Vanessa Harris, "We're sorry, we just don't believe what you say." They say they didn't see or hear anybody come of there. Ladies and gentlemen, the case is there. You have a duty to do. It's an unpleasant duty but nonetheless you are here to do it. The Commonwealth has proven the charge of capital murder beyond any doubt whatsoever. We have proven both of the different kinds of first-degree murder and the robbery. We ask that you return the verdict of capital murder, return to the Court so that you can get further evidence and instructions on the issue of whether to give a death sentence or a sentence of life imprisonment. I thank you very much for your attention throughout both days of this trial.

MR. HAULER: Your Honor, may counsel approach the bench?

THE COURT: Certainly.

NOTE: At this time, counsel approached the bench and there was a private discussion among Court and counsel. The alternate juror was excused at this time. Judge Pollard instructed the jury as to procedure. The jury retired to the jury room to consider their verdict.

MR. HAULER: Your Honor, if it please the Court, now that the jury has removed itself from the Courtroom, I'd ask that the record reflect that at the conclusion of the remarks of the Commonwealth Attorney's rebuttal that counsel for the defendant approached the bench and asked Your Honor to give a cautionary instruction that the Commonwealth's Attorney was not stating a correct proposition of law with regard to the matters that he mentioned in his argument in that the request was felt by the Court not to be necessary.

THE COURT: All right.

MR. WELSH: Your Honor, so that the record is

clear, would you mark that photograph "refused", that it did not go to the jury, so that there's no confusion?

THE COURT: This may be admissible if you get to the other stage.

MR. WELSH: Yes, sir.

THE COURT: Because I think for comparative purposes, it then becomes important.

MR. WELSH: Yes, sir.

THE COURT: If you can establish it's fairly recent.

MR. WELSH: Yes, sir.

THE COURT: Recess, Mr. Parker.

NOTE: At this time, the Court recessed. Upon the Court reconvening, the Jury Foreman asked the following question, as follows:

THE COURT: All right, do you have a question?

JURY FOREMAN: Yes, Your Honor. The jury would like to know if capital murder charge is brought in and he is given life, would he be eligible for parole?

THE COURT: I can't answer your question. The reason why is this, the legislature and the Court feels it is best that that sort of thing is left to the parole authorities, this sort of thing, and not left to the judges or juries. In other words, you should sentence on what you think is proper and not be concerned with what happens later. Leave that to whoever other than the Judge or the jury to decide that based on what happens later. Of course, at this stage, you understand, if you find the capital murder, you would come back in for further information before you have to decide that, but does this answer your question at this point?

JURY FOREMAN: Yes, Your Honor.

THE COURT: Now, don't worry about coming out. That's what we're here for.

JURY FOREMAN: Okay.

MR. PARKER: Anytime you want something, knock on the door so I can hear you.

NOTE: At this time, the jury retired to the jury room. The Court recessed. Upon the jury reaching a verdict, Court reconvened and the Jury Foreman read the verdict as follows:

JURY FOREMAN: We, the jury, find the capital murder -- the defendant guilty of capital murder.

THE COURT: All right, now, the law requires that at this stage we poll each of you to make sure there's no misunderstanding. The Clerk will simply read out your name. If that is your understanding of the verdict, all you do is say, "Yes." If it's not for any reason, say, "No." Mr. Parrish?

NOTE: At this time, the Clerk polled each juror individually as to the verdict and each answered in the affirmative.

THE COURT: All right, gentlemen, are you ready to proceed on the sentence hearing on the capital --

MR. WELSH: Your Honor, may we approach the bench?

THE COURT: Certainly.

NOTE: At this time, counsel approached the bench for a private conference. The jury then retired to the jury room for a luncheon recess. The Court recessed. Upon the Court reconvening, Mr. Welsh spoke as follows:

MR. WELSH: Your Honor, we've asked the Clerk to pre-mark certain exhibits. Just a second, Captain Dunn. And maybe the Court would want to look at those and check them first before we bring the jury in. Commonwealth's Exhibits 60 and 61 would be conviction orders from the Court in New Jersey and from this Court, and Mr. Hauler has had some group of certificates marked as Defense Exhibit C.

THE COURT: (pause) Have you all agreed on this one?

MR. WELSH: Your Honor, it --

THE COURT: What is it?

MR. WELSH: I don't know specifically, Judge, but it's a series of certificates relating to some Bible studies since he's been incarcerated.

THE COURT: All right. (long pause) All right.

MR. HAULER: Your Honor, if it please the Court, prior to the jury being brought in, since this is a bifurcated trial, I respectfully move on behalf of the defendant that the verdict of guilty to capital murder be set aside as being contrary to the law and the evidence.

THE COURT: Overruled. Bring the jury back.

NOTE: At this time, the jury returned to the Courtroom.

THE COURT: All right, Mr. Welsh?

MR. WELSH: Your Honor, we would have no opening statement and would move on to the evidence, with the Court's permission.

THE COURT: All right.

MR. WELSH: Initially, we've asked that Exhibits 60 and 61 be marked as evidence and I would ask that the Clerk would read those exhibits to the jury at this time, please.

THE CLERK: "The State of New Jersey v. Earl Clanton indicted with others for murder. The defendant on February the 29th, 1972, having entered a plea of not guilty to Indictment No. 308-72 for the crime of

murder and the defendant having on October the 13th, 1972 retracted a plea of not guilty and entered a plea of non vult, it is therefore, on January 3rd, 1973, ordered and adjudged that the defendant be and he is sentenced to be confined to the New Jersey State Prison for the minimum term of 26 years and the maximum term of 28 years, jail time credit 343 days." It looks like George C. Roane as Judge. (pause) This indictment is Commonwealth's Exhibit 61: "In the Circuit Court of the City of Petersburg, April the 18th, 1980, the Commonwealth v. Earl Clanton, alias Hessie (?) Clanton, the defendant. This day came the Attorney for the Commonwealth and Earl Clanton, alias Hessie (?) Clanton, who stands indicted for a felony, to-wit: unlawfully and feloniously did cause bodily injury to Bruce Brown with the intent to maim, disfigure, disable or kill, the said Bruce Brown appearing according to the condition of his recognizance and came also Robert Hill, his attorney heretofore appointed, whereupon the accused was arraigned and after private consultation with the said attorney pleaded not guilty to the indictment which plea was tendered by the accused in person, whereupon the Attorney for the Commonwealth moved the Court to allow an amendment to the indictment

1 to reflect the charge to be unlawfully, feloniously
2 and maliciously causing bodily injury to Bruce Brown
3 with the intent to maim, disfigure, disable or kill,
4 which motion was taken under advisement and later
5 during the trial overruled. The Court then impaneled
6 20 qualified jurors (inaudible) for the trial of the
7 defendant in the manner provided by law, whereupon the
8 Attorney for the Commonwealth and the Attorney for the
9 Defendant exercised their rights to strike names from
10 the panel as provided by law and the remaining 12 jur-
11 ors constituting the jury for the trial of the defend-
12 ant were duly sworn. After opening statements, the
13 Court and the jury heard the evidence presented by the
14 Commonwealth and the defendant. At the conclusion of
15 the evidence on behalf of the Commonwealth, the at-
16 torney for the defendant moved the Court to strike the
17 Commonwealth's evidence on the grounds stated in the
18 record, which motion was overruled. After hearing the
19 evidence and the instructions of the Court and argu-
20 ment of counsel, the jurors were sent to the jury room
21 to consider their verdict. They subsequently returned
22 their verdict and open Court reads: 'We, the jury,
23 find the accused guilty of unlawful injury of Bruce
24 Brown as defined in Instruction 4 and do ascertain his

1 punishment to be confinement in the penitentiary for
2 four years. Roland (inaudible) K. Brooks, Jr., Fore-
3 man.' The Clerk polled each juror who stated his
4 or her verdict. Thereupon, the jury was discharged.
5 And after the lunch recess, the defendant failed to
6 return to the Courtroom and the jury, having heard all
7 the evidence in the case, were gone. Whereupon, a
8 capias order for the defendant will be entered and this
9 case is continued until further order of this Court.
10 The Court certifies that at all times during the trial
11 of this case, but not during closing arguments or
12 instructions, of course, the defendant was personally
13 present and at all times during the trial of this case,
14 closing arguments and instructions, his attorney was
15 present and capably represented the defendant.
16 Entered April 18, 1980, Oliver A. Pollard, Jr., Judge."
17 And in the Circuit Court of the City of Petersburg,
18 December the 8th, 1980 - and I'm going to exclude read-
19 ing the preliminaries - and say that the Court then
20 asked the defendant whether he desired to make a state-
21 ment or to advance any reason why judgment should not
22 be pronounced against him. "The Court having heard and
23 considered the defendant's statement did find the de-
24 fendant guilty of unlawful injury of Bruce Brown and

1 sentenced the defendant to confinement in the peniten-
2 tiary of this Commonwealth for a term of four years.
3 And it is further ordered that as soon as possible
4 after the entry of this order that the defendant be
5 removed and safely conveyed in accordance with law from
6 the jail of this Court to the said penitentiary therein
7 to be kept, confined and treated in the manner provided
8 by law. At all times during the trial of this case,
9 the defendant and his counsel were present. The Court
10 orders that the defendant be allowed credit for the
11 time spent in jail awaiting trial. It is adjudged
12 that the Commonwealth recover from the defendant the
13 costs assessed in this proceeding. The defendant is
14 remanded to jail to await further transfer to the pen-
15 itentiary. Entered December 8, 1980, Oliver A. Pol-
16 lard, Jr., Judge."
17 MR. WELSH: We call Bruce Brown.
18
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20
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24

BRUCE BROWN, introduced on behalf of the Commonwealth, after being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. WELSH:

Q. Please tell the jury your name.

A. Bruce Brown.

Q. And how old are you, Mr. Brown?

A. Eighteen.

Q. Directing your attention back to February 22nd of 1980, how old were you at that time?

A. Seventeen.

Q. And on that day, Friday, February 22nd, 1980, did you have occasion to see the defendant, Earl Clanton, at some time that day?

A. Yes, sir.

Q. All right. Tell the jury under what circumstances you saw Earl Clanton.

A. I went up to the house to see a cousin or whatever he was of his, Tony Jefferson. He was involved with a little ordeal with my little brother so I went to see what was

1 happening and I got up there, me and Tony got into it, and then
2 everybody else came up and it was a big commotion out there.
3 Q. All right. And so you had an argument or dis-
4 agreement with Tony Jefferson. Did anyone else join into this?
5 A. Yes, sir.
6 Q. Who did?
7 A. Earl Clanton, Gary and a few more people that
8 were there. I can't remember their names.
9 Q. What's Gary's last name?
10 A. Clanton.
11 Q. What did Mr. Clanton do to you?
12 A. Hit me in my face with some shiny object
13 across his fingers, looked like brass knuckles. And I broke
14 my wrist and I had a few broken bones in my face.
15 Q. How many times did he hit you?
16 A. Several times. I'm not sure of the number.
17 Q. You had no argument or disagreement with him
18 before he struck you, did you?
19 A. No, sir.
20 Q. Did you receive hospital treatment for your
21 injuries?
22 A. Yeah, I was in the hospital for five days,
23 I think.
24 Q. Have you fully recovered now from your injuries?

A. I still have a little trouble right around my face from it.

MR. WELSH: Thank you, Mr. Brown. Answer any questions Mr. Hauler might have.

CROSS EXAMINATION

BY MR. HAULER:

Q. Mr. Brown, at the time that this particular situation developed, how many individuals were present?

A. Counting me and the rest of them?

Q. Yes.

A. Counting Earl and -- . Earl was present, Gary, Tony and a few more people that was in the house. I'm not sure of the number.

Q. Okay. And were you struck by anyone else?

A. Tony and Gary.

Q. Would it be fair to say that you were kind of jumped by all of them?

A. Yes, sir.

MR. HAULER: Nothing further.

REDIRECT EXAMINATION

BY MR. WELSH:

Q. Did anyone other than Mr. Clanton strike you

with anything other than a fist?

A. No, sir.

MR. WELSH: Thank you, Mr. Brown.

THE SERGEANT: Is he excused?

MR. WELSH: Yes.

THE SERGEANT: If you want to, you may leave the building.

WITNESS STOOD ASIDE.

1 MR. WELSH: The Commonwealth rests during this
2 portion of the evidence.
3 THE COURT: All right. Mr. Hauler?
4 MR. HAULER: If it please the Court, Your Honor,
5 we'd call the defendant back to the stand.
6
7
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11
12 EARL CLANTON, the defendant, recalled
13 to the stand, testified as follows:
14
15 DIRECT EXAMINATION
16 BY MR. HAULER:
17 Q Mr. Clanton, the Commonwealth of Virginia has
18 offered into evidence Commonwealth's Exhibit 60 which is
19 basically a certified extract of a previous conviction in New
20 Jersey. What were the circumstances surrounding that? First
21 of all, how old were you at the time?
22 A Seventeen.
23 Q All right. Make sure you address --
24 A Seventeen.

1 Q. How old are you right now?
2 A. Twenty-six.
3 Q. What were the circumstances surrounding this
4 previous conviction?
5 A. Well, during that time, I was young, you know,
6 and I was in a pool hall. Some other people at that time who
7 were my co-defendants who were adults, they suggested something
8 to me, you know, and I think anyone at that age would have went
9 for. And they told me that they wanted me to stand outside
10 with another one of our co-defendants who was also a juvenile,
11 said, "Just stand here, play chickie," which is a term used to
12 watch for the police. That's what I did. Subsequent to all
13 of that, one of the guys, one of the adults, was arrested.
14 Went down Headquarters, he gave everybody's name that was in-
15 volved. They came, they picked me up, they gave me a murder.
16 I went to Court. They gave me an attorney. He told me to
17 plead non vult. At that time, I didn't have no knowledge of
18 nothing, you know, as far as law. I did what he told me to do
19 as my attorney. I entered a plea of non vult and I was sen-
20 tenced to prison for 26-28 years.
21 Q. How much time did you actually serve on that?
22 A. About eight years of it.
23 Q. To the best of your knowledge, do you have
24 suspended time as a result of that particular conviction?

1 A. Yes. Yes.
2 Q. Have you received any notification that that
3 suspended time would be revoked?
4 A. No, I haven't.
5 Q. How big a family do you have, Mr. Clanton?
6 A. I have a daughter that was born the day this
7 incident occurred that I'm presently being tried for. I have
8 three sisters, I have two brothers, my mother. My father died
9 while I was in prison. There isn't anyone else to call family,
10 it's just relatives - grandmother, grandfather, cousins,
11 uncles, aunts. Other than that, I have no one.
12 Q. Is your mother here today?
13 A. No, she isn't.
14 Q. Why is your mother not here?
15 A. I asked her not to be here. I don't want her
16 to go through this.
17 Q. How long have you been incarcerated as a re-
18 sult of your arrest on this charge?
19 A. Since November the 16th.
20 Q. And since you've been in prison, what have you
21 been doing with your time?
22 A. Anytime I'm incarcerated for anything or any
23 position to be positive, I involve myself in some Bible study
24 courses offered by Father -- by Chaplain Davenport over at the

jail which is all they have. I just try to stay occupied with that.

Q. Is that what you've been doing?

A. Yes. I completed the course.

Q. Take a look at Defendant's Exhibit C and identify that for the jurors. Tell them what that is.

A. These are certificates that I received at the completion of the course.

Q. What were those certificates for? What did they --

A. They were -- it was a course and each chapter, each verse of the Bible, you have to interpret it, fill out those other forms that you have and they are graded according to your interpretation of them, and when you complete them, you get those certificates.

Q. Have you ever done any Bible study in prison before?

A. No, I haven't because at that particular period when I was in prison then, I was busy finishing my education. I got my high school diploma, I went to college. I stayed pretty involved in vocational skills. I exhausted a course in graphic arts. Barbering. I ran an educational program, did some tutoring. Lot of group -- counseling groups, counter-reaction groups, one-on-one therapy, group therapy, things of

1 that nature. But at that specific time, my ideological ad-
2 herence, you know, wasn't Christianity, I was into Islam, as I
3 am now.
4 Q Is there anything else you would like to tell
5 the members of the jury at this time?
6 A Yes, I would. I would like for the -- I
7 would like to say to each one of you that at some point in
8 every person's life, you know, you've all had -- you've, just
9 as I have -- some people misplace it at some point at some
10 period in their lives. That's the growing-up process. At
11 other points in your life, you make up your mind about things
12 - that you're going to do things this way as opposed to that
13 way because of what you've gotten so far consequentially to
14 what you've done or what someone has said that you've done.
15 I looked at the obvious things in my life, I looked at things
16 that wasn't so obvious and I had to make a comparison. When
17 you're young, oftentimes you're led by what's suggested to
18 your mind. You don't know. And that's innocent ignorance. I
19 had an opportunity in my life while in prison to make that
20 turn-around and I'm sure that anything that I'm saying to you
21 now can be indicated, you know, in a recording of some sort
22 that I did these things, that I involved myself to turn my
23 life around. I can say to you also that some things that I've
24 done since I've been in Petersburg, okay, I notice that it was

1 mentioned that I was -- I was fugitive. Okay. There was a
2 woman who was pregnant by me at the time. A small girl, like
3 I said, was born on this -- the date of my arrest and I had
4 promised her, after giving her a verbal commitment, that
5 nothing would keep me from being with that child until it was
6 born. And on that same thing Mr. Brown just testified to, I
7 turned myself in because I was tired of running, because, like
8 I said, I made the decision to turn around and I wasn't going
9 about it the right way. I realized that on my own. I called
10 the police officer. They came to my house and they made the
11 arrest at my beckoning, not them having to catch me because
12 I'm sincere in my motivations. Some people understand, other
13 people don't. Some people have to wait until it happens to
14 them before they understand. Fortunately for me, it's not that
15 case. I'm not ignorant. I understand and I've tried to apply
16 myself as positively as possible. Some circumstances lead to
17 other things. I was in a situation; I had to deal with it.
18 And I'm trying to deal with my life. That's basically it.
19 MR. HAULER: Answer any inquiries Mr. Welsh
20 may have.
21
22 CROSS EXAMINATION
23 BY MR. WELSH:
24 Q Mr. Clanton, I'm sorry to ask you this again

1 but I honestly did not hear all that you said about what hap-
2 pened at the pool room. Could you please repeat it a little
3 louder so I could hear?
4 A. Sure, I could. I was in the pool room shooting
5 pool at the time.
6 Q. Uh huh.
7 A. I was approached by one of my co-defendants at
8 that time and he said that he knew where some money was. He
9 said we didn't have to go no further than to the oven. I
10 said, "Well, I'm not going inside." It was raining at that
11 time.
12 Q. Was he referring to money inside the place
13 where you were?
14 A. The money was -- as soon as you open the door,
15 it's in the -- he said it was in the oven. This is what he
16 said.
17 Q. Uh huh.
18 A. This is what he told me at that time.
19 Q. Uh huh.
20 A. And, you know, I didn't know no better. You --
21 Q. Then what happened?
22 A. -- know, it sounded good to me, so I, you know
23 --
24 Q. What happened after that?

1 A. -- we -- I just went with him. He told me to
2 play "chicken" and that's what I did. But by the time he was
3 arrested and questioned, etc., you know, I was in -- I was an
4 active participant with him, which is not true.
5 Q. There were only two of you involved?
6 A. No, sir, --
7 Q. How many --
8 A. -- there was five people involved in that.
9 Q. And this person that asked you to go with him,
10 is that the person that you claim actually killed the man --
11 or the woman that was killed?
12 A. No, I didn't make that claim.
13 Q. Who --
14 A. I never made that claim.
15 Q. Who killed the person that died?
16 A. I don't -- I don't know.
17 Q. You don't know?
18 A. No.
19 Q. And you're telling the jury that your only
20 involvement was standing outside the door?
21 A. If I was inside, I'd know, you know, who did it
22 but I wasn't in there so I don't know. I couldn't honestly say
23 that.
24 Q. And you had initially plead not guilty, then

you retracted that plea, --

A. I --

Q. -- you plead non vult and the Judge gave you 26 to 28 years, --

A. Well, --

Q. -- is that correct? (pause) Is that correct?

A. My plea was not guilty. My attorney at that time, Herb Alterman, suggested to me to enter a plea of non vult.

Q. All right.

A. I did what he told me and that was it.

MR. WELSH: All right. I have no further questions.

WITNESS STOOD ASIDE.

THE COURT: Anything further in the form of evidence?

MR. WELSH: No, sir.

MR. HAULER: Nothing further for the defense.

THE COURT: All right. Members of the jury, I'll read you your instructions now related to the sentence part of this hearing. You have convicted the defendant of an offense which may be punished by death. You must now decide whether the defendant shall be sentenced to death or to life imprisonment. Before the penalty can be fixed at death, the Commonwealth must prove beyond a reasonable doubt at least one of the two following alternatives. First, that after consideration of his past criminal record there is a probability that he would commit criminal acts of violence that would constitute a continuing serious threat to society or, two, that his conduct in committing the offense was outrageously or wantonly vile, horrible or inhuman in that it involved torture, depravity of mind or aggravated battery to the victim beyond the minimum necessary to accomplish the act of murder. If you find from the evidence that the Commonwealth has proven beyond a reasonable doubt either of the two alternatives then you may fix the punish-

1 ment of the defendant at death, or if you believe from
2 all the evidence that the death penalty is not justi-
3 fied, then you shall fix the punishment of the defend-
4 ant at life imprisonment. If the Commonwealth has
5 failed to prove either alternative beyond a reason-
6 able doubt, then you shall fix the punishment of the
7 defendant at life imprisonment. Depravity of mind is
8 a degree of moral turpitude which surpasses that found
9 in the definition of malice and premeditation given to
10 you in the other instructions of the Court. Moral
11 turpitude implies an act of baseness or deficiency in
12 the duties which one person owes to another or to
13 society in general which is contrary to the usual ac-
14 cepted and customary rule of right and duty which a
15 person should follow. A battery is any bodily hurt,
16 however slight, done to another in an angry, rude or
17 vengeful manner. An aggravated battery is a battery
18 which qualitatively and quantitatively is more than
19 the minimum necessary to accomplish an act of murder.
20 Now, those were the instructions in chief and as we
21 did at the previous hearing, we have one additional
22 instruction which provides you with the potential ver-
23 dicts and I will read through the entire instruction.
24 I think it will be clear to you. Now, you keep in

1 mind that you would cross out any paragraph, word or
2 phrase which you do not find to be a part of your ver-
3 dict beyond a reasonable doubt.
4 "We, the jury, on the issue joined, having
5 found the defendant guilty of the willful, deliberate
6 and premeditated murder of Wilhelmina Smith in the com-
7 mission of robbery while armed with a deadly weapon and
8 having found that after consideration of his past
9 criminal record that there is a probability that he
10 would commit criminal acts of violence that would con-
11 stitute a continuing serious threat to society and/or
12 that his conduct in committing the offense is outrage-
13 ously or wantonly vile, horrible or inhuman in that it
14 involved torture, depravity of mind or aggravated bat-
15 tery to the victim beyond the minimum necessary to ac-
16 complish the act of murder, and having considered the
17 evidence in mitigation of the offense, unanimously fix
18 his punishment at death." Or, "We, the jury, on the
19 issue joined, having found the defendant guilty of the
20 willful, deliberate and premeditated murder of Wilhel-
21 mina Smith during the commission of robbery while
22 armed with a deadly weapon and having considered all of
23 the evidence and aggravation in mitigation of such
24 offense, fix his punishment at imprisonment for life."

1 All right, Mr. Welsh, argument?

2 MR. WELSH: Ladies and gentlemen of the jury,
3 we'll conduct the argument the same way we did the ar-
4 gument on the facts. I will make my argument, Mr.
5 Hauler will make his, and then I will be able to respond
6 to what he tells you. At this point in the trial, the
7 ultimate burden placed on the jury is placed upon your
8 shoulders. You assured the Court that you would give
9 due consideration to both possible verdicts and that
10 is, of course, what you must now decide, the verdict of
11 death or the verdict of life imprisonment. To assist
12 your determination, you get to learn a little bit more
13 about the defendant than you knew when you went in to
14 deliberate the first time and perhaps those revela-
15 tions were stunning or shocking to you. Well, you
16 see, this is not the first time that Earl Clanton has
17 been involved in murder. This is not the first time.
18 Now, the Judgment Order which you will have there from
19 the Court in New Jersey indicates that he withdrew his
20 plea of not guilty and was found guilty of murder and
21 he was sentenced to a sentence of 26 to 28 years in
22 the penitentiary in New Jersey. Mr. Clanton tells you
23 that his only involvement in that murder was to stand
24 by a door. I suggest to you strongly that, again, Mr.

1 Clanton's credibility is very much in doubt. Very much
2 in doubt for did a judge sentence him, a 16 or 17-year-
3 old youth, as he described himself, to 26 years in
4 prison for standing outside a door? The answer to
5 that is not known. The answer will not be known to
6 you but you must consider Mr. Clanton's credibility
7 before you accept his full explanation of what hap-
8 pened in this prior murder case. What does he do?
9 He spends, he said, about eight years in prison.
10 You'll see by that conviction order that it happened
11 back in 1972 which would put him out of prison just
12 prior to February of 1980 by his own accounting of
13 his time. From the time of that first murder, he's in
14 prison until just prior to February of 1980. And on
15 February 22nd, 1980, violence again strikes from the
16 hands of Earl Clanton. He gets involved in a situa-
17 tion in which other people are having an argument or a
18 fight or whatever you want to call it - a disagreement,
19 he proceeds to beat up Bruce Brown with a pair of
20 brass knuckles causing him serious injury to his face,
21 to his wrist, injury from which he has yet to fully
22 recover well over a year later. Violence strikes from
23 the hand of Earl Clanton. During his trial on that
24 case last April, which you already heard about last

night, he left the Courthouse during a recess, did not return and remained a fugitive from justice until he was hiding under the bed, having murdered Wilhelmina Smith. That is the life of Earl Clanton. It is a life of violence. Mr. Clanton tells you that he has found religion since he's been in the jail, and I don't mean to belittle it, but again, that's something that you hear quite frequently. Quite frequently. He knew he was facing a possible death sentence. He knew that at some point in time he might have to sit in front of a jury and ask them to spare his life.

MR. HAULER: Judge, I'm going to object to that. That's rank speculation by the Commonwealth.

THE COURT: You can suggest. It's argument, Mr. Hauler. He can suggest what may have happened. The jury doesn't have to accept that.

MR. WELSH: Mr. Clanton tells you about the turn-arounds that he makes, the turn-around he's made since he's been in prison. Well, he's been in prison pretty much consistently since 1972. He must been dizzy from all those turn-arounds - he's turned around about this, that and the other thing. Again, Mr. Clanton's credibility - you must judge the man by what he does, not by what he says, as you I know have al-

1 ready decided in your original verdict. You cannot
2 judge Mr. Clanton by what he says, you must judge him
3 by what he does. Instruction 8 tells you there are
4 two separate grounds on which the death penalty can be
5 imposed. You can find either one or the other or both.
6 It's the Commonwealth's position that they are both
7 proven beyond a reasonable doubt. The first condition
8 is that after consideration of his prior criminal rec-
9 ord there is a probability that he would commit crim-
10 inal acts of violence that would constitute a continu-
11 ing serious threat to society. Ladies and gentlemen,
12 in this case that certainly exists, for what did he do
13 after he was paroled? He committed an act of violence.
14 What did he do while he was on the run, a fugitive
15 from that act of violence? He committed the ultimate
16 act of violence. The second criteria or ground would
17 be the offense itself. This offense today that we're
18 dealing with. And that language is that his conduct in
19 committing the offense was outrageously or wantonly
20 vile, horrible or inhuman in that - in other words,
21 explaining what that means - it involved torture, de-
22 pravity of mind or aggravated battery to the victim
23 beyond the minimum necessary to accomplish the act of
24 murder. Again, one of the most vicious and brutal

1 murders. No one but with a depraved mind could commit
2 a murder like what happened to Wilhelmina Smith - no
3 one. It's even hard to say that a human being in the
4 true sense could commit an act like that, a person with
5 a heart and a soul and a conscience. Very hard to put
6 Mr. Clanton in that category after what he did to Ms.
7 Smith. It's our position that both of those have been
8 proven. After you reach that point, then you still
9 decide on your own whether or not the death penalty is
10 appropriate. It is not automatic because these facts,
11 these criteria, are proven. A sentence of life impris-
12 onment would be a gift to Mr. Clanton, the Commonwealth
13 suggests, under these circumstances. It would be a
14 gift that he did not see fit to give to Wilhelmina
15 Smith. He did not see fit to give her the gift of
16 life. He took it from her in the most horrible way.
17 He asks you to give him a gift which he was unwilling
18 or incapable of giving on November 16th of 1980. A
19 lot of precedent for the fact that a person that com-
20 mits a murder, you know, should be considered to have
21 their life taken. In the Old Testament, we read that
22 whoever strikes a man a mortal blow must be put to
23 death. Again, at another point, "Who so sheddeth
24 man's blood,by man shall his blood be shed." And,

again, "When a man kills another after maliciously scheming to do so, you must take him from my altar and put him to death." There are a lot of reasons that the Commonwealth asks for the death of Earl Clanton. You must first deter anyone else in this community or in any other community who would commit a horrible act like this by telling them that if they do, they will forfeit their life just as they have forfeited the life of their victim. And, secondly, you must deter Earl Clanton from ever doing anything like this again. Now, you may say or Mr. Hauler may say, "Send him to life in prison, he won't do an act like this again." Ladies and gentlemen, do not sentence -- do not sentence -- the other inmates of the Virginia State Prison to death at the hands of Earl Clanton. Don't give him the chance to take somebody else's life. Just because he's in prison --

MR. HAULER: I object, Your Honor. That's improper argument.

THE COURT: It's questionable. I would refrain from that type of argument, Mr. Welsh.

MR. WELSH: There's a probability that the defendant would continue to commit criminal acts of violence that would constitute a continuing serious

1 threat to society. Society does not just include those
2 on the outside, it includes those that are in prison.
3 Consider that when you consider your verdict. What
4 about this act? I'm not going to dwell on it. All the
5 adjectives have been used up - cold-blooded, vicious,
6 brutal, heartless, consciousless, inhuman. There can
7 be no more horrible crime. A depraved mind. Depravity
8 of mind is a degree of moral turpitude which surpasses
9 that that you had to find to find malice or premedita-
10 tion. Moral turpitude means that -- an act which a
11 person -- it's an act of baseness or deficiency in the
12 duties that people owe to each other. Well, Mr. Clan-
13 ton so violates any standards of moral turpitude by
14 what he's done, by what he did that day, depravity of
15 mind is just written all over this crime. Aggravated
16 battery - more than the amount needed to accomplish the
17 act of murder. Far more. The criterion of torture -
18 do you think for one second that Wilhelmina Smith was
19 not tortured during those last brutal moments of her
20 life? Do you think it was not torture for her from the
21 moment that attack began - the choking, the wrapping
22 of the belt, her own belt around her neck? Do you
23 think that was not torture? Ladies and gentlemen, it
24 certainly was. They are all there - torture, depravity

of mind, aggravated battery; all the factors in this case are there. His prior record is horrible. You have nothing to expect but continuing violence from Mr. Clanton. He was caught on November 16th, 1980 with the life blood of Wilhelmina Smith all over him. He sentenced himself that day to the same sentence that he carried out on Wilhelmina Smith. I respectfully urge you to consider imposing the ultimate penalty on Mr. Clanton to be sure that he causes no one else harm in the future and in repayment for what he did to Wilhelmina Smith. Thank you.

THE COURT: Mr. Hauler?

MR. HAULER: May it please the Court. Ladies and gentlemen, it is a very difficult task for me to address you on this issue of an appropriate disposition in Mr. Clanton's case. The crime involved was a tragic, unfortunate set of circumstances and situation and you have found Mr. Clanton guilty of that. I am not here to question that. The Commonwealth has offered to you reasons for encouraging you to assess the death penalty against Mr. Clanton. The primary of these are the previous convictions. The Commonwealth is approaching each and every one of you on the basis that a man's actions speak louder than his words. Sometimes

it's true, sometimes it's not. We know he has a previous conviction for murder in 1972. There is no evidence before you to suggest that the circumstances surrounding the commission of that offense eight or nine years ago were any other than those circumstances related to you by Mr. Clanton. I think you must accept that evidence since it is not contradicted. Again, you're the judges of the credibility of the witnesses. But I would urge upon you that the situation developed at a time when he was a juvenile, 17 years of age, and was involved with a group. That doesn't justify it and I don't submit it to you, the members of this jury, as justification but I do submit it to you as an indication that this man does not have a criminal disposition, a depraved mind, as the Commonwealth has suggested. The age of the defendant at the time that this offense occurred I think should give this jury food for thought if we are talking about a deliberate, premeditated murder. We don't know what degree. And you've heard the defendant indicate to you that he was not a primary actor in that offense as far as the death was concerned. I would submit to you that the second offense which the Commonwealth offers in aggravation of the present case involved Mr. Brown and the defendant was convicted

of that. But I would also ask you to evaluate that charge in light of the fact that, again, Mr. Clanton was not the prime movant. He didn't create the confrontation. That confrontation was created between Mr. Brown and another member of Mr. Clanton's family. It's not a situation, as the Commonwealth would suggest or want you to believe, that Mr. Clanton has been released from prison and the moment he was released from prison he is out on the prowl, he's looking for criminal conduct, he's looking to hurt people. Both of the circumstances, the circumstances of each offense, has been explained. It's for you to ferret through the explanation and to accept what you feel you desire to accept or reject that which you desire to reject, but they are not unexplained crimes of violence that have no rhyme or reason to them. The explanations given do not justify the offenses but hopefully they serve to put Mr. Clanton in a little better light. He has indicated,and you will see the exhibits, Defendant's Exhibit C, since the time of his incarceration he has gotten into Bible study. Mr. Welsh, although indicating he does not want to make light of that, does not feel that that is a genuine indication of any turnaround. You heard Mr. Clanton testify that at no other

1 time that he has been incarcerated has he done this.
2 I think the certificates which you will view during the
3 course of your deliberations certainly by the sheer
4 number of them are indicative of the fact that he has
5 had more than purely a passing interest in this type of
6 pursuit. There's no indication, as suggested by Mr.
7 Welsh, that this was in preparation for the trial today.
8 There's no evidence of that whatsoever. I think you
9 must accept the testimony of Mr. Clanton with regard to
10 the basis for getting into these studies. He's indica-
11 ted that he's tried to turn his life around and he be-
12 lieves that he is doing that. Mr. Welsh has quoted
13 from the Bible giving you all of the justifications for
14 imposition of the death penalty. The Commonwealth of
15 Virginia gives you the authority to impose the death
16 penalty. There's also a phrase from the Bible that
17 says, "Judge not lest ye be judged." I'd ask you to
18 think of that in terms of is it necessary to take Mr.
19 Clanton's life. Is that absolutely necessary? You
20 must give him life imprisonment or death but is it
21 absolutely necessary in terms of what is going to be
22 gained? We have a long time ago gotten away from the
23 premise of "an eye for an eye." I'd leave you by ask-
24 ing for mercy and by suggesting to you that justice,

1 if it is to be truly justice, if it's not to be just a
2 phrase to which we merely pay lip service justice must
3 be tempered with mercy and I stand here at this point
4 and I ask you for mercy on behalf of Earl Clanton, Jr.
5 Thank you very much.
6 MR. WELSH: It's very sad and unfortunate that
7 Mr. Hauler was not present in Apartment 14-E on Novem-
8 ber 16th of 1980 for he might then have so eloquently
9 begged for mercy for the life of Wilhelmina Smith. He
10 wasn't there. It probably would have fallen on deaf
11 ears based on what we know about Mr. Clanton. He tells
12 you to believe Mr. Clanton's version of the prior
13 crime and his version of his religious affairs in the
14 jail but as you have already decided, he's a cold-
15 blooded murderer and a cold-blooded liar so anything
16 he says has to be scrutinized very carefully. Very
17 carefully. He said that on the offense of Bruce Brown
18 that he wasn't the prime movant. Well, no, he wasn't
19 the prime movant, there was a fight going on, but he's
20 the one who jumped into it with a pair of brass knuck-
21 les and proceeded to beat this young man up causing
22 him the serious injuries you've heard about. What does
23 that tell you? Is he the kind of a person to go in
24 and break up the fight? No, he went in to inflict the

maximum punishment that he could inflict on Bruce Brown. And what did he do on November the 16th? He went in to inflict the maximum punishment that he could inflict on Wilhelmina Smith. Again, as to the conviction in New Jersey, if Mr. Clanton is to be believed for standing outside of the door, a Court gave him 26 years in prison based on a murder, if he's to be believed. Mr. Hauler asks you is it necessary to take his life and then asks you for mercy. The Commonwealth asks you for justice. That is why we are all here and that is for justice. The criteria are before you. Mr. Clanton will always be a threat of violence and this offense is just horrible in and of itself on either or both grounds. We ask that you impose the maximum penalty on Mr. Clanton. "Whoever strikes a man a mortal blow must be put to death."

THE COURT: All right, members of the jury, it's time to retire to the jury room to consider your final verdict. Your foreman remains your foreman, the other exhibits are still there for you, and you have these additional instructions.

NOTE: At this time, the jury retired to consider its verdict. Upon the jury reaching a verdict, Court reconvened and there was discussion as to the wording of the verdict, as follows:

THE CLERK: Your Honor, I think you'd better check this verdict before I read it.

THE COURT: All right. (pause) All right, Mr. Welsh and Mr. Hauler, come up here. I don't think there's a problem but there may be. (pause) They didn't take out the "and" or the "or." (Mr. Welsh and Mr. Hauler spoke privately with Judge Pollard.) All right, Mr. Dunn, take this back over to the Foreman and tell him he will have to take out the word "or" or take out whichever of the ones which is not applicable on there.

MR. DUNN: All right.

THE COURT: If there are any questions on it, (pause) -- . Foreman, what it is, you've got an alter-

1 native finding. If you've found both of those situa-
2 tions, you should say, "So and so and," and take out
3 the "or." If you've just found one of them, then you
4 should take out the one that you didn't rely on. Does
5 that make sense?
6 JURY FOREMAN: (Inaudible)
7 THE COURT: Mr. Welsh and Mr. Hauler, go up to
8 the rail, if you will. Let them come up there and
9 make sure.
10
11
12
13
14 NOTE: At this time, there was a con-
15 ference regarding the wording of the verdict.
16
17
18
19
20 MR. DUNN: Do you want to check it?
21 THE COURT: All right. Now give it to the
22 Clerk to read.
23 THE CLERK: "We, the jury, on the issue
24 joined, having found the defendant guilty of the will-

1 ful, deliberate and premeditated murder of Wilhelmina
2 Smith in the commission of robbery while armed with a
3 deadly weapon as we found that after consideration of
4 his past criminal record that there is a possibility --
5 a probability that he would commit criminal acts of
6 violence and would constitute a continuing serious
7 threat to society and his conduct in committing the
8 offense is outrageously or wantonly vile, horrible or
9 inhuman in that it involved torture, depravity of mind
10 or aggravated battery to the victim beyond the minimum
11 necessary to accomplish the act of murder, and having
12 considered the evidence in mitigation of the offense
13 unanimously fix his punishment at death. James L.
14 Mizell, Foreman."
15 THE COURT: All right, the law again requires
16 that you be polled to make sure this is the verdict.
17 Read the name of each juror and ask is that their
18 verdict.
19
20
21
22
23 NOTE: At this time, the Clerk polled
24 each juror individually as to the verdict and

all answered in the affirmative.

THE COURT: All right, members of the jury, we thank you very much for your time. It was a very difficult case. You're excused at this point. You will not have to come back. Mr. Dunn, don't let anybody leave the Courtroom until the jury's left.

MR. DUNN: All right.

THE COURT: All right.

NOTE: At this time, the jury left the Courtroom.

THE COURT: All right, Mr. Hauler?

MR. HAULER: Your Honor, if it please the Court, on behalf of the defendant, I respectfully move the Court to set aside the verdict of the jury as being contrary to the law and the evidence in this matter.

THE COURT: I'd overrule your motion. All right, Mr. Clanton, the jury has found you guilty of capital murder and fixed your punishment at death in accordance with the laws of this state. And Section 19.2-264.5 requires at this point that I postpone sentencing in your case and ask that the probation officer prepare a full post-sentence report in order that this Court may be fully advised as to whether or not the sentence of death is appropriate and just in your case, so final sentencing will be delayed until I have that post-sentence report and the case will be continued for that report. All right, adjourn Court, Mr. Dunn.

HEARING CONCLUDED.

NOTE: Hearing on post-sentence report on the 1st day of May, 1981 before the Honorable Oliver A. Pollard, Jr., Judge.

PRESENT: Gregory Welsh,
Attorney for the Commonwealth

Timothy J. Hauler,
Attorney for the Defendant

Earl Clanton, Jr.,
Defendant

THE COURT: All right, Mr. Hauler, have you had a chance to review this post-sentence report with Mr. Clanton?

MR. HAULER: Yes, sir, I have.

THE COURT: Do you wish to examine Mr. Halley concerning the contents of his report?

MR. HAULER: No, sir, I do not.

THE COURT: All right. Any additional evidence that you would like to offer at this point?

MR. HAULER: The defense has nothing further

to present to the Court at this time.

THE COURT: All right.

MR. WELSH: I'll waive initial statement.

THE COURT: All right, Mr. Hauler?

MR. HAULER: Your Honor, if it please the Court, we, of course, have been through several days of trial in this matter and I feel that anything that I might say at this juncture might be somewhat anti-climactic in view of the fact that it's been said already and the Court has heard it already. I would like to emphasize the fact that the presentence report is indicative of rehabilitative potential on the part of Mr. Clanton. He's had some rough times in the past but there seems to be folks that believe that he can make it as a productive citizen. I'd ask Your Honor in considering this very weighty matter regarding the imposition of sentence to consider tempering justice with mercy in this case based upon his rehabilitative potential and based upon the factors that were brought out during the sentencing phase of the trial in this case. And I'd ask that this Court impose a sentence of life imprisonment as opposed to the death penalty.

THE COURT: All right. Thank you, Mr. Hauler.

MR. WELSH: Very briefly, the Commonwealth, of

course, takes issue with the defense position that there is rehabilitative potential shown here. His prior record and his involvement with the law after being placed on parole are overwhelming evidence of a lack of that. We would note, of course, that the jury found the death sentence based on both of the factors, both his prior record indicating that he would probably commit acts of violence in the future, and his conduct in committing the instant offense was outrageously or wantonly vile, horrible or inhuman. It's our position that on both of those factors or either of those factors that the defendant should receive the sentence of death as imposed by the jury.

THE COURT: All right, Mr. Clanton, is there anything you want to say before judgment is pronounced against you?

THE DEFENDANT: No, sir, I have nothing to say.

THE COURT: The jury returned a verdict finding you guilty of capital murder and have sentenced you to death. The Court has taken into consideration the evidence in this case, the report prepared by the probation officer and the comments made by counsel this morning and deems the jury sentence to be appropriate and just. It is therefore considered by the Court and

the judgment of this Court that you are guilty of capital murder and you are hereby sentenced to death and it is hereby ordered that you be remanded to the custody of the Director of the Department of Corrections and that on the 5th day of August, 1981 at 7:00 A.M. you be put to death in the manner prescribed by law unless the sentence is stayed or modified according to law. It is also ordered that the transcript be made a part of the record in this case and that the record of these proceedings include the transcript of the evidence and the incidents of trial be transmitted to the Supreme Court of Virginia for review within ten days after receiving the said transcript. Now, Mr. Hauler, you're instructed to consult with the defendant and advise him both as to his review of this sentence by the Supreme Court and any possible appeal that he wishes to take of the decision by the jury in this case. All right, the Court will stand adjourned.

HEARING CONCLUDED.

CERTIFICATE

The foregoing, which was phonographically recorded out of the presence of the transcriber, has been faithfully and accurately transcribed to the best ability of the transcriber under my supervision and direction and is this 8th day of June, 1981 certified by me to be a true and correct transcript of the proceeding.

James T. Hendrick

James T. Hendrick

I, _____,
Clerk of the Circuit Court of the City of Petersburg, Virginia, do hereby certify that the following transcript in the case of The Commonwealth v. Earl Clanton, Jr. was delivered to me this _____ day of June, 1981.

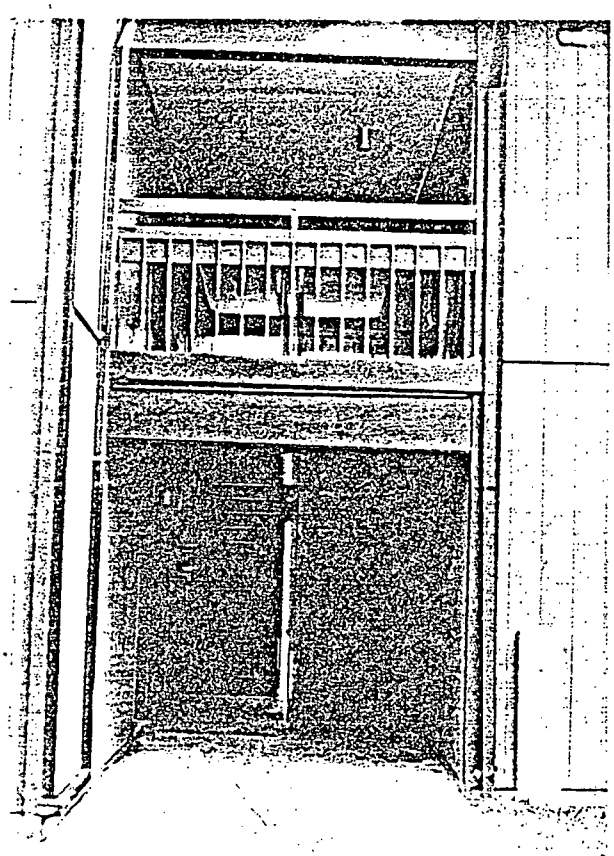
_____
Clerk of the Circuit Court of the
City of Petersburg, Virginia

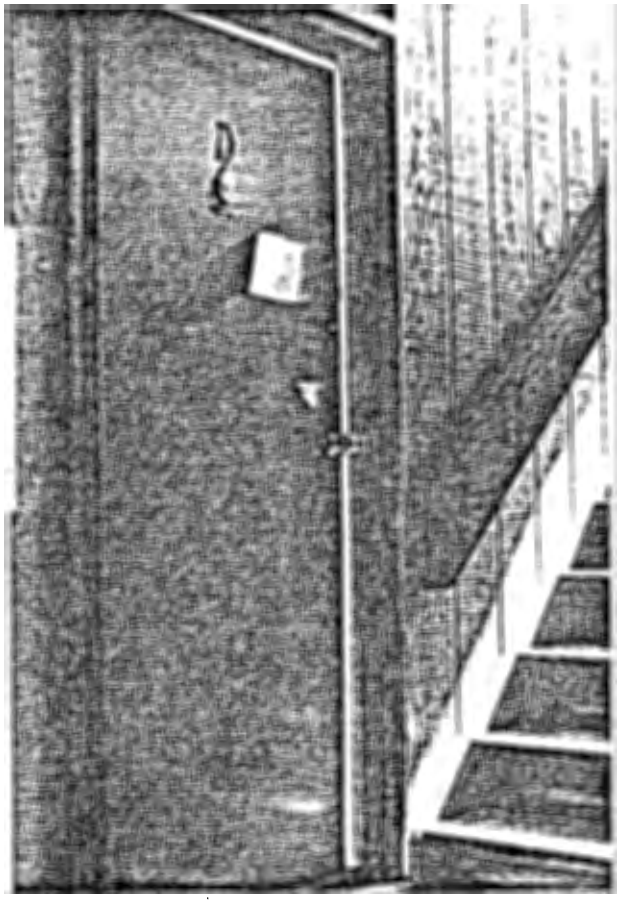
(F315 & F316-80)

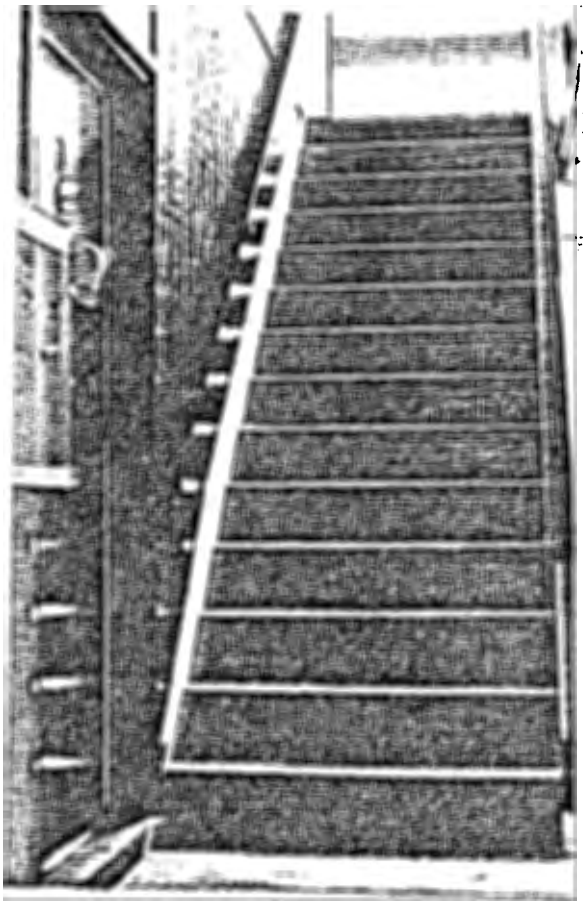
Defendant's Exhibit No. A

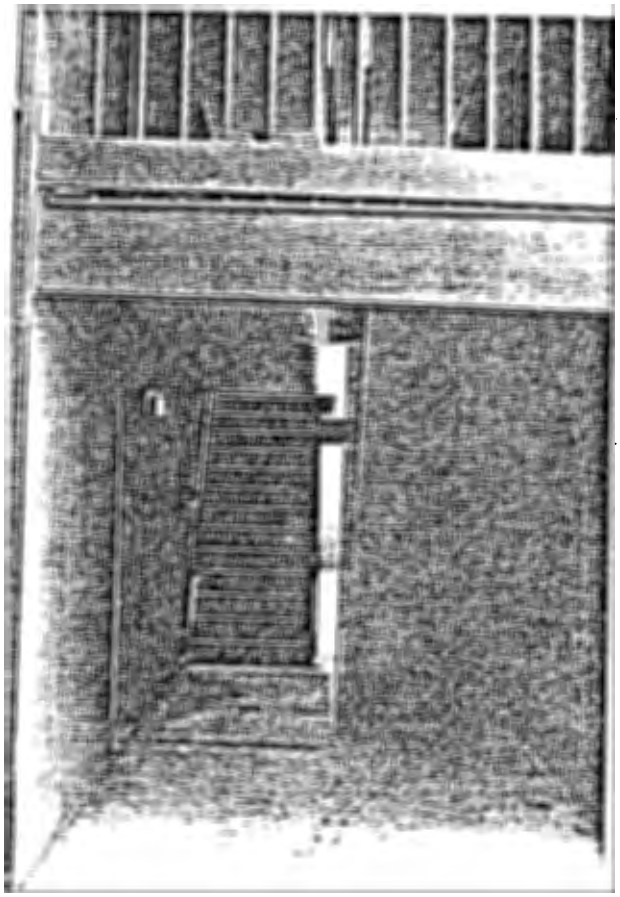
Filed March 12, 1981

, Judge









(F315 & F316-80)

Defendant's Exhibit No. B

Filed March 12, 1981

, Judge

(F315 & F316-80)

Defendant's Exhibit No. C

Filed March 13, 1981

, Judge

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Bible Correspondence Course

This certifies that

EARL CLANTON, JR.

has successfully completed
Unit I of IV Units

THE GOSPEL OF JOHN

December 5, 1980
Date

Director of Communications John R. Marks

President Dr. W. L. Simmer

Secretary

GOOD NEWS MISSION
They received the Word with all readiness of mind and searched the Scriptures daily. Acts 17:11
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January 5, 1981
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3/9/79

1036 South Highland Street, Arlington, Virginia 22204

COMMONWEALTH'S EXHIBIT 1

THIS IS A COPY OF THE FINAL AUTOPSY REPORT

Autopsy No. 600-80
Date 11-17-80
Time 3:30 PM

COMMONWEALTH OF VIRGINIA
DEPARTMENT OF HEALTH
OFFICE OF THE CHIEF MEDICAL EXAMINER
CENTRAL DISTRICT
9 NORTH 14TH STREET
RICHMOND, VIRGINIA 23219
PHONE: (804) 786-3174

REPORT OF AUTOPSY

NOV 1980 Office of Chief Medical Examiner Richmond, Va.

DECEDENT Wilhelmina (First) Smith (Middle) (Last)

Autopsy Authorized by: T. B. Pope, M. D., M. E. - Petersburg

Body Identified by: Michael Winfried Tucker's Funeral Home

Persons Present at Autopsy: Deputy Sheriff B.L. Brewer (Albemarle Co.). R. Smith E. Washington

Rigor: complete x jaw ____ neck ____ arms ____ legs ____
Livor: color purple distribution: posterior
Age 30's Race B Sex F Length 67&1/2" Weight 167 lbs. Eyes brown Pupils: R ____ L ____
Hair black Mustache no Beard no Circumcised n/a Body Heat cold

Clothing, Personal Effects; External wounds, scars, tattoos, other identifying features:

Clothed in: tan print blouse with 6 buttons, the 4th and 6th buttons are buttoned; brown sla which are buttoned; no shoes or stockings; brassiere.
External examination: blood splatters on seat, bloody drip marks between breasts and tan sy thetic belt ligature wrapped tightly about neck (will not admit a finger under it). Hands bagged. Wrist watch on left wrist, slight depression mark with adherent fuzzy hair and ques tionable shiny secretion dorsum of left wrist; right 5th fifth long fingernail chipped and superficial cutting wound of right 4th finger, dorsal surface.

Pathologic Diagnoses:

Ligature. doubly wound, tight about neck (belt).
  Marginal abrasion.
  Petechial hemorrhages and subpetechial hemorrhages and subconjunctival hemorrhages of eye
  Focal hemorrhage posterior aspect right wing of hyoid bone.
Multiple stab wounds, neck and face.
Contusions of left lateral neck.
  No hyoid fracture; no thyroid cartilage fracture.
Recent meal in stomach, brown granular meat and thin narrow fragmented white food resembling fragmented french fries.
Contusions of lateral margins of tongue (bite).
Chip of right 5th fingernail.
Gold tie earring fastener recovered from right labia majora.
Oral/anal/vaginal/tracheal swabs and smears: Negative for seminal fluid.
Toxicology: Blood: Negative for alcohols and ketones. Bile: Drug Screen - none detected.
Blood Group: O, EAP BA, EsD 1, PGM 2-1, Hp 2-1, ADA 1, AK 1, Glo 2-1. Hemoglobin Genotype:

Cause of Death:

LIGATURE STRANGULATION

THIS IS A COPY OF THE FINAL AUTOPSY REPORT

Pathologist-of Record x
1-23-81

The facts stated herein are true and correct to the best of my knowledge and belief.

11-17-80	O.C.M.E. - Richmond	
Date Signed	Place of Autopsy	Signature of Pathologist

A COPY TESTE: JAN 26 1981

Assistant Chief Medical Examiner

M. F. Fierro, M. D.

CME FORM NO. 15, REVISED 1/74

GROSS DESCRIPTION

SKIN:	- Face shows freckles with a few petechial hemorrhages and marked suffusion a ligature.
PLEURA:	- Interlobar petechiae all lobes.
PERITONEUM:	- Within normal limits.
PERICARDIUM:	- Within normal limits.
Serous Cavities:	- Within normal limits.
Heart:	- Coronary arteries, valves and myocardium are within normal limits. The hear weighs 280 gs.
AORTA:	- Within normal limits.
LUNGS:	- 790 gs. Slight marginal emphysema, congestion.
LIVER:	- 1100 gs. Congestion.
GALLBLADDER:	- 2 ml of amber bile. No stones.
SPLEEN:	- 90 gs. Within normal limits.
PANCREAS:	- Within normal limits.
ADRENAL GLANDS:	- Within normal limits.
G. I. TRACT:	- Esophagus, no contusions; stomach contains 200 ml of undigested gastric cont with granular brown meat and whitish, firm, linear julienne food resembling fragmented french fries present. Small and large bowels within normal limits The appendix is present; no pickle identified.
Kidneys:	- Right and left, each 100 gs and within normal limits.
BLADDER:	- Contracted, small and no injuries. No urine.
INTERNAL GENITALIA:	- Blooded cervical os, ovaries and tubes are within normal limits. No injury t vault. Myometrium within normal limits. The endometrium appears menstrual.
NECK ORGANS:	- Hyoid intact with a single area of focal hemorrhage to the right posterior w of the hyoid, no thyroid cartilage fractures. No injuries to strap muscles. single area of hemorrhage measuring 1&1/2 x 5/8" underlying the 1/2" deep by 1/4" long stab wound of the anterior neck. Marked abrasion along the ligatur
rain & Meninges:	- 1190 gs. Focal subarachnoid hemorrhage 2 x 2 cm of the right frontal floor.
SKULL:	- No fracture of jaw. Hemorrhage below the alveolar ridge on the left along th canine and first tooth. Lips free of abrasion and lacerations. The tongue sh 1 x 1/2" contusion of the lateral margin on the right and left corresponding teeth contusions. Moderate temporal bone hemorrhages, bilateral.
VERTEBRAE:	- No fractures.
RIBS:	- No fractures.
[illegible]	- No fractures.
[illegible]	- Chip of right 5th fingernail. Splash marks on bare feet. Toenails painted.

OTHER LABORATORY PROCEDURES: TOXICOLOGY ☒ BACTERIOLOGY ☐ PHOTOGRAPHY ☒ SEROLOGY ☒ DENTAL CHART ☐ X RAY ☐ FINGER PRINT FORENSIC SCIENCE ☒ PERK and Trace

DISPOSITION OF EVIDENCE

TYPE (Clothing, Bullets, Etc.)	NAME OF RECIPIENT	ADDRESS	OFFICIAL TITLE	DATE
Clothing	O.C.M.E.			11-17-8
PERK	D.C.L.B.F.S.			11-17-8

JAN 1981
RECEIVED
CHIEF MEDICAL EXAMINER
Richmond, Va.

MICROSCOPIC DESCRIPTION AND CASE SUMMARY

Tissue	Description
CORONARY ARTERIES:	Within normal limits.
THYROID:	Focal hemorrhage in perithyroidal areolar soft tissue and muscle.
TONGUE:	Disruption along one margin and hemorrhage deep in the musc
MYOCARDIUM:	Within normal limits.
LUNGS:	Marked congestion and edema. Dilatation of alveolar spaces.
KIDNEY:	Congestion. A few old subcapsular scars.
LIVER:	A few lymphocytes in the portal areas.
UTERUS AND ENDOMETRIUM:	Nonpregnant; a few supranuclear vacuoles.
BRAIN:	Acute congestion; focal subarachnoid hemorrhage (frontal floor petechial hemorrhages).

Case Summary and Comment:

This 39 year-old black female school librarian was found dead in her apartment. She was found with her clothes in disarray and a belt ligature doubly wrapped tightly about her neck.

Postmortem examination revealed the tight ligature associated with contusions of the left lateral neck, petechial hemorrhages and subconjunctival hemorrhages of the eyes and brain. A gold earring fastener was recovered from the skin of the right perineum. There were multiple stab wounds of the face and neck and a 1&1/8" abrasion laceration of the forehead.

Swabs for seminal fluid were negative. Postmortem blood grouped as O, with multiple subgroups typings performed for comparison purposes.

Cause of Death: LIGATURE STRANGULATION

Pathologist M. F. Fierro, M. D.

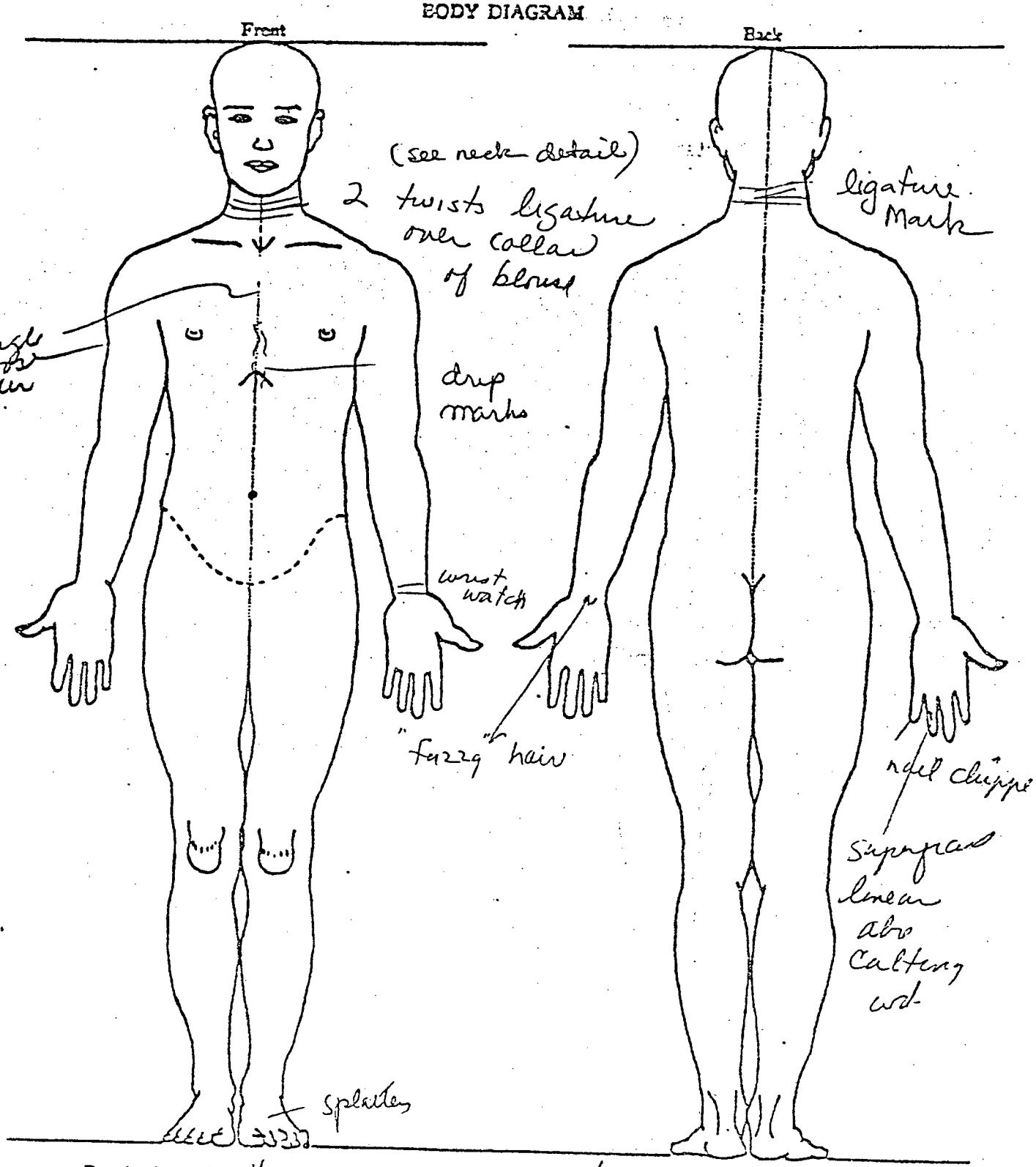
Date Completed 1-23-81

Autopsy No. 600-80

Decedent Wilhelmina Smith

CME FORM NO. 10A-REVISED 1/73

BODY DIAGRAM



Decedent's Height 67½ inches

Name Wilhelmina Smith

Examined By [illegible] Date 11/17/80

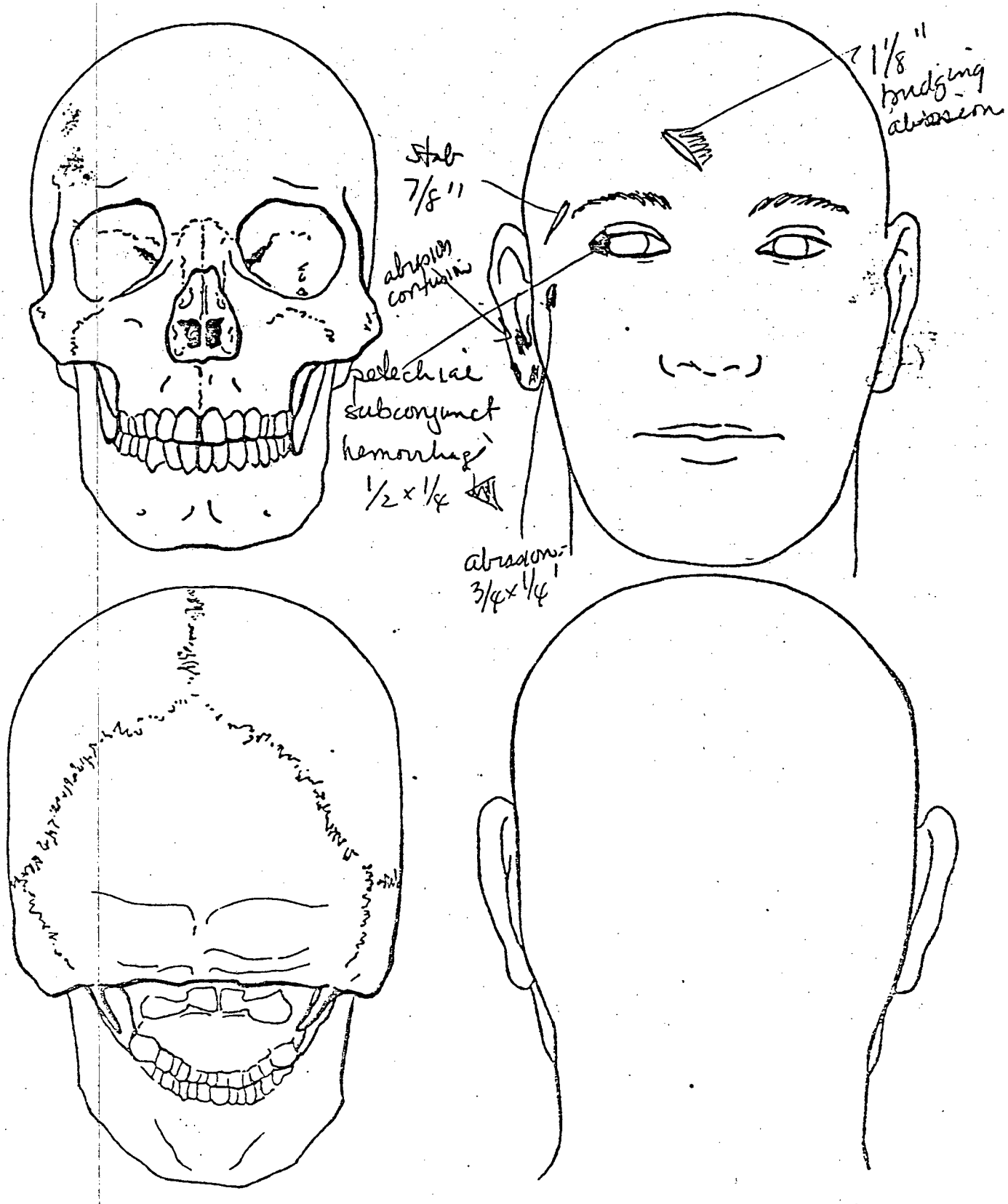
600-80

COMMONWEALTH OF VIRGINIA
OFFICE OF THE CHIEF MEDICAL EXAMINER
CME Form 131

Head, surface and skeletal anatomy, anterior and posterior views.

Name Wilhelmina Smith Autopsy No. 600-80

Age 30's Race B Sex F Date 11/17/80

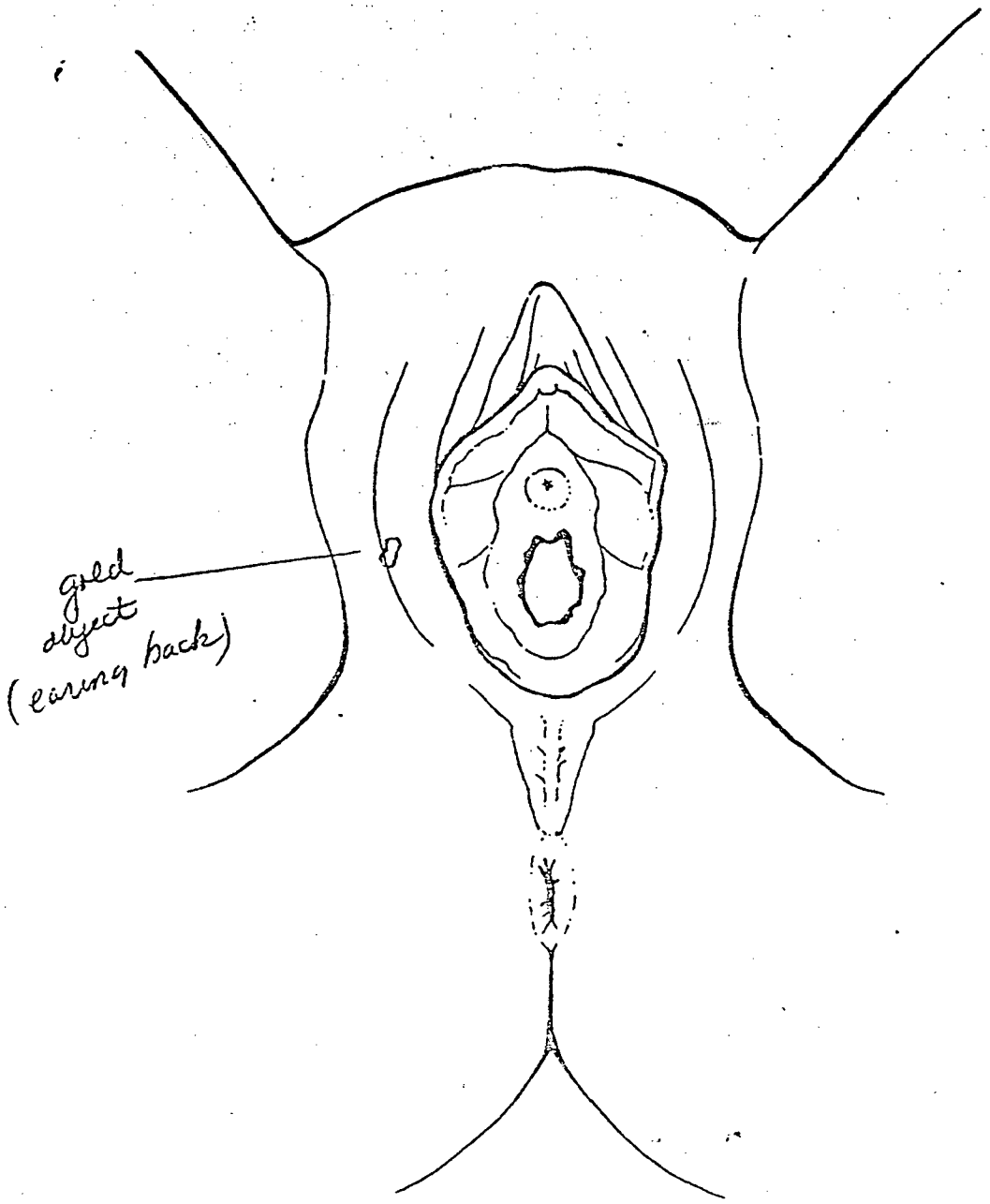


Cat. No. 44-1-014-00

Perineum, female.

Name Wilhelmina Smith Autopsy No. 600-80

Age 30's Race B Sex F Date 11/17/80



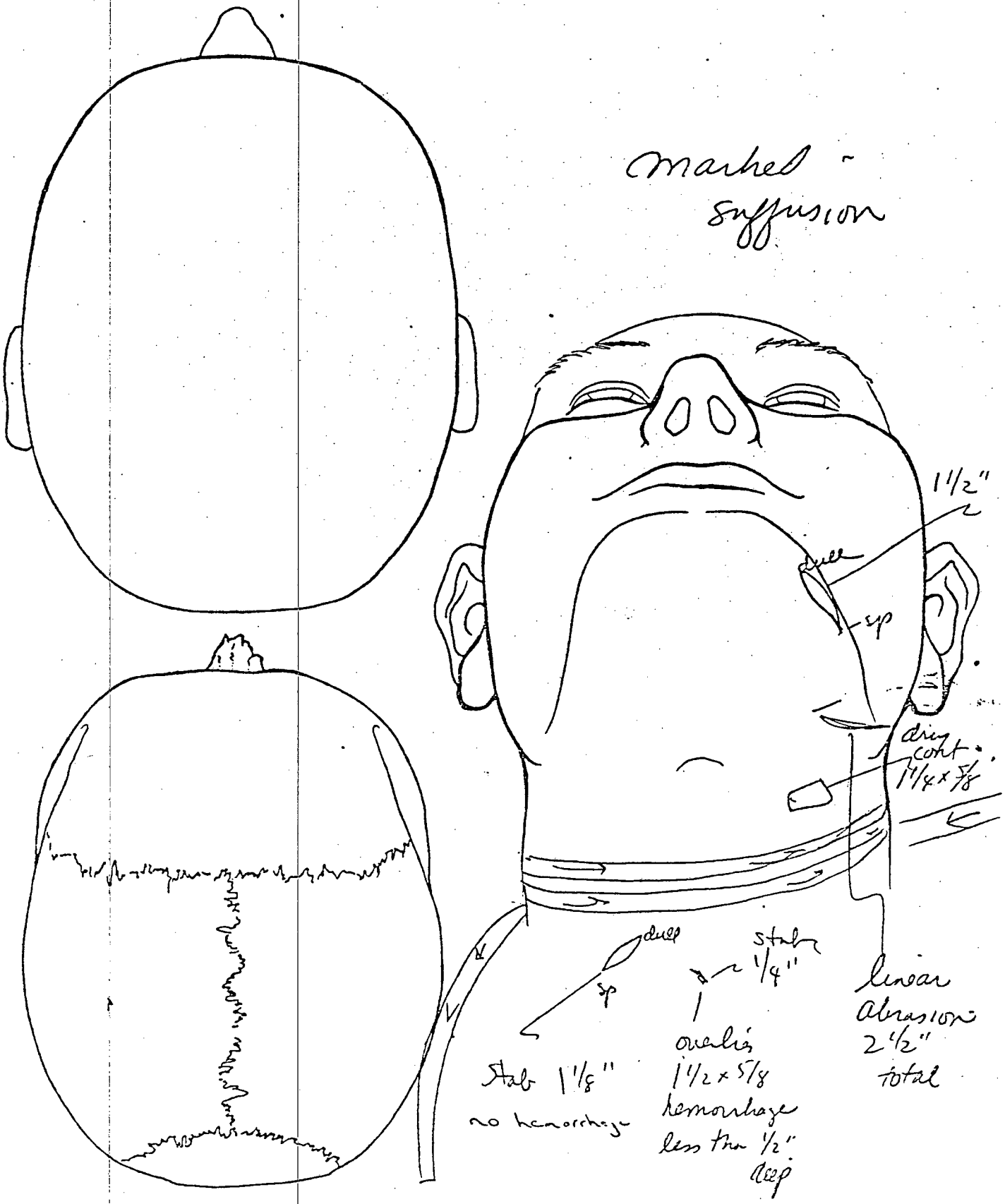
Cat. No. 44-1-004-00

600-80

Head, surface and skeletal anatomy, superior view. Inferior view of neck.

Name Wilhelmina Smith Autopsy No. 600-80

Age 30's Race B Sex F Date 11/12/80



Cat. No. 44-1-016-00

Commonwealth of Virginia
Department of General Services
Division of Consolidated Laboratory Services
BUREAU OF FORENSIC SCIENCE

December 23, 1980

CERTIFICATE OF ANALYSIS

JAN 1981 RECEIVED OFFICE OF CHIEF MEDICAL EXAMINER Richmond, Va.

Central Laboratory
P. O. Box 999
Richmond, Virginia 23208
Tel. No. (804) 786-4707

TO: Dr. M. F. Fierro
Office of the Chief Medical Examiner
9 North 14th Street
Richmond, VA 23219

Your Case # 600-80

FS Lab # 80-4242

Victim(s): SMITH, Willalmina

Examiner: J. C. Valentour, Ph. D.

Suspect(s): ----

Date Received 11-17-80

Evidence Submitted By: Dr. M. F. Fierro

2 vials of blood, 1 bottle of bile.

RESULTS OF EXAMINATION:

BLOOD: Negative for ethanol, methanol, isopropanol and ketones.

BILE: Drug screen - none detected.
(Narcotics, stimulants and tranquilizers).

A COPY TESTED JAN 26 1981

Toxicologist

CC: Dr. T. E. Pope
JCV:da

Assistant Chief Medical Examiner

576

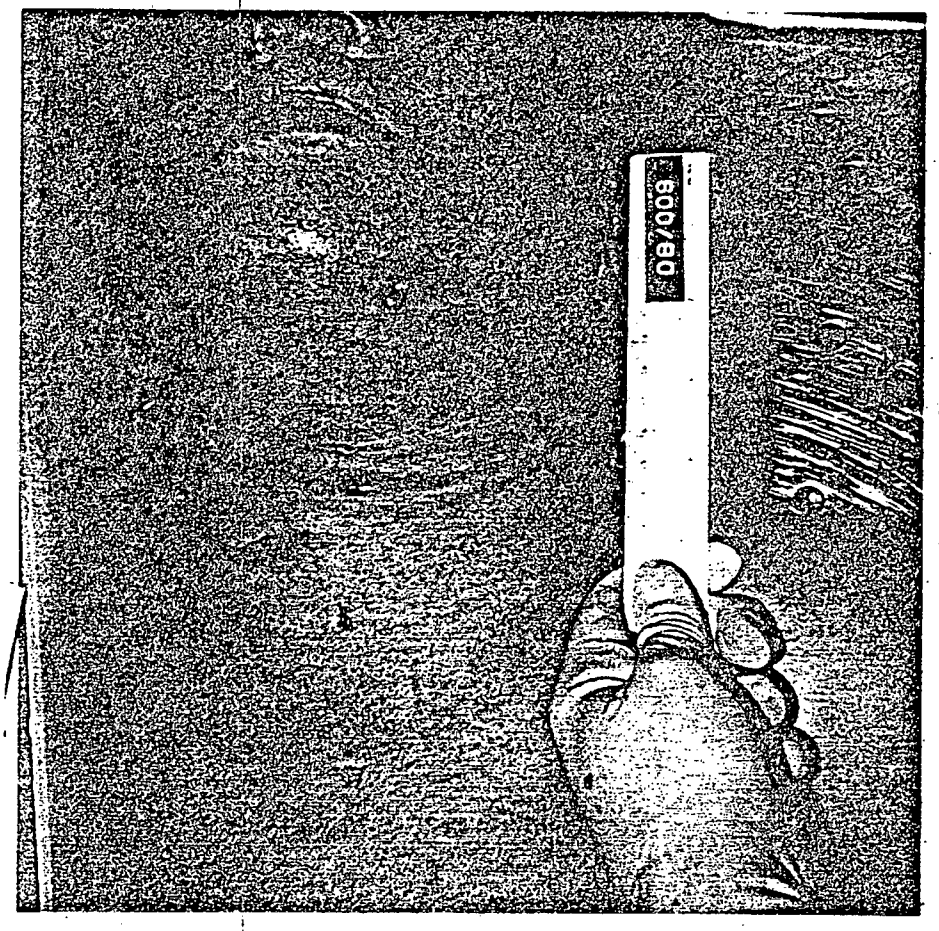
COMMONWEALTH'S EXHIBIT 3

COMMONWEALTH'S EXHIBIT 4

COMMONWEALTH'S EXHIBIT 5

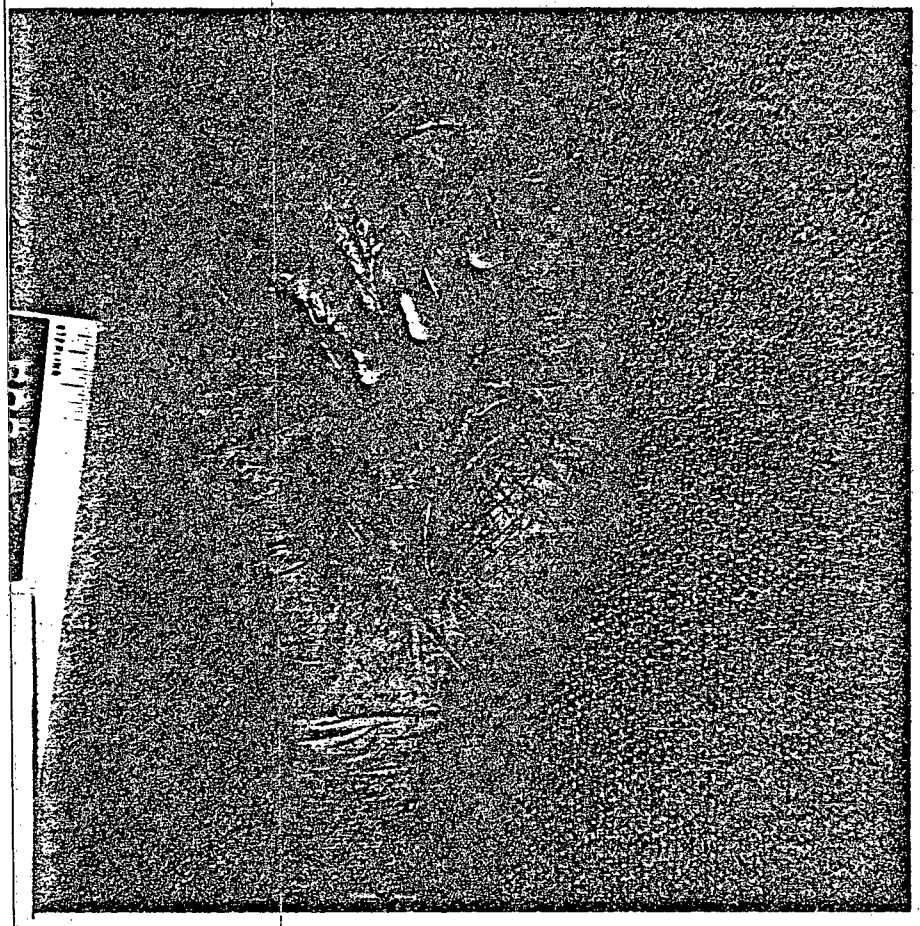
COMMONWEALTH'S EXHIBIT 7

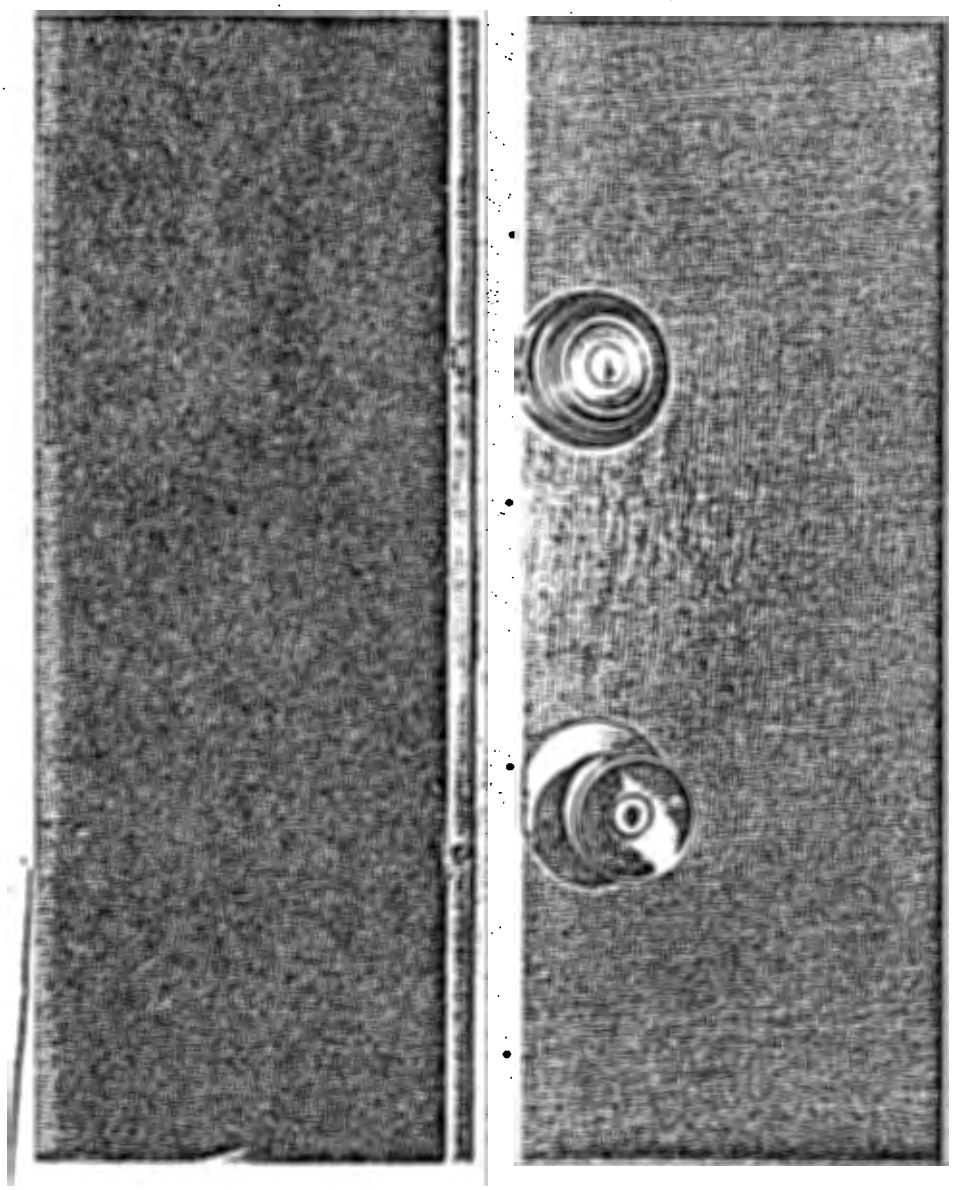
COMMONWEALTH'S EXHIBIT 8



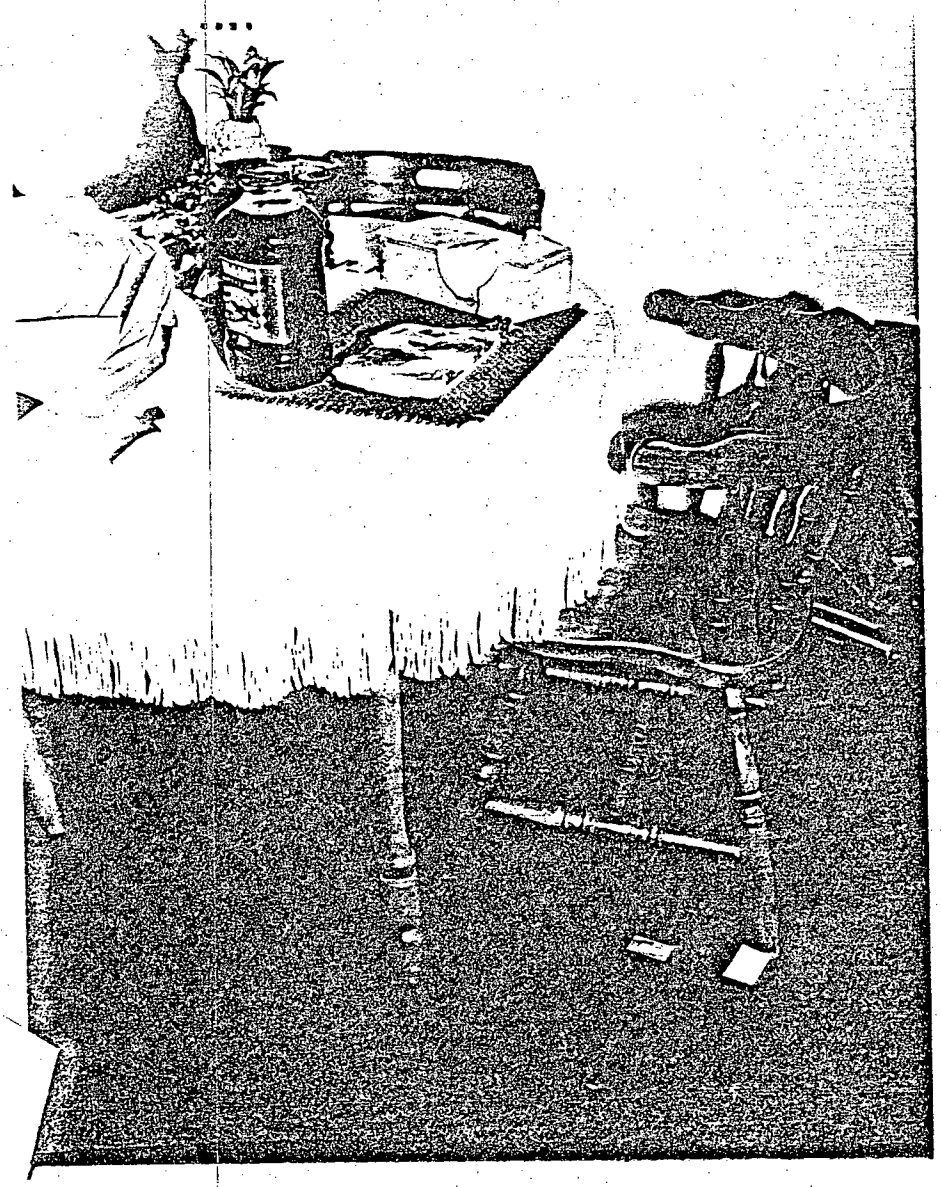
COMMONWEALTH'S EXHIBIT 9

COMMONWEALTH'S EXHIBIT 11





COMMONWEALTH'S EXHIBIT 15



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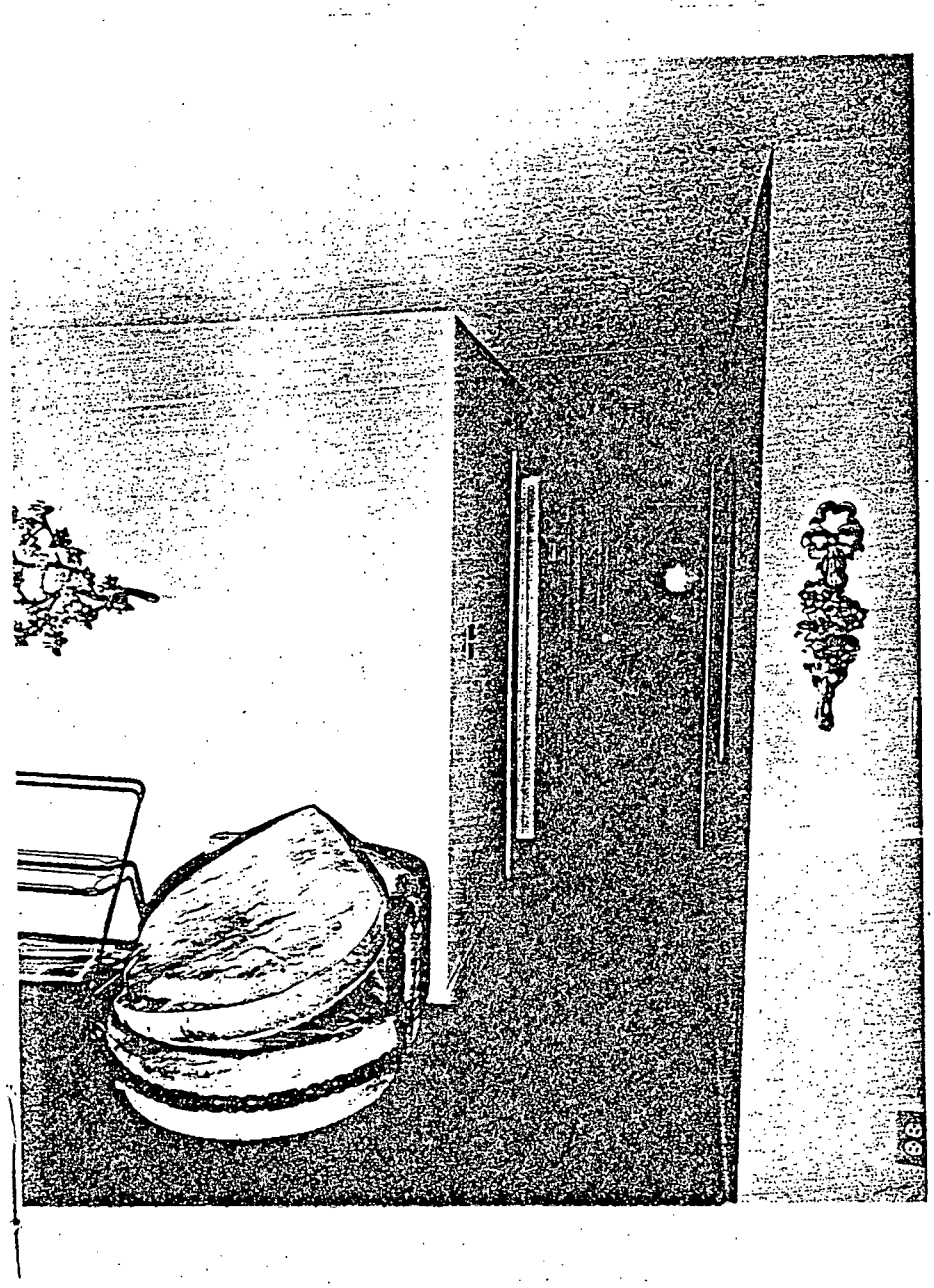

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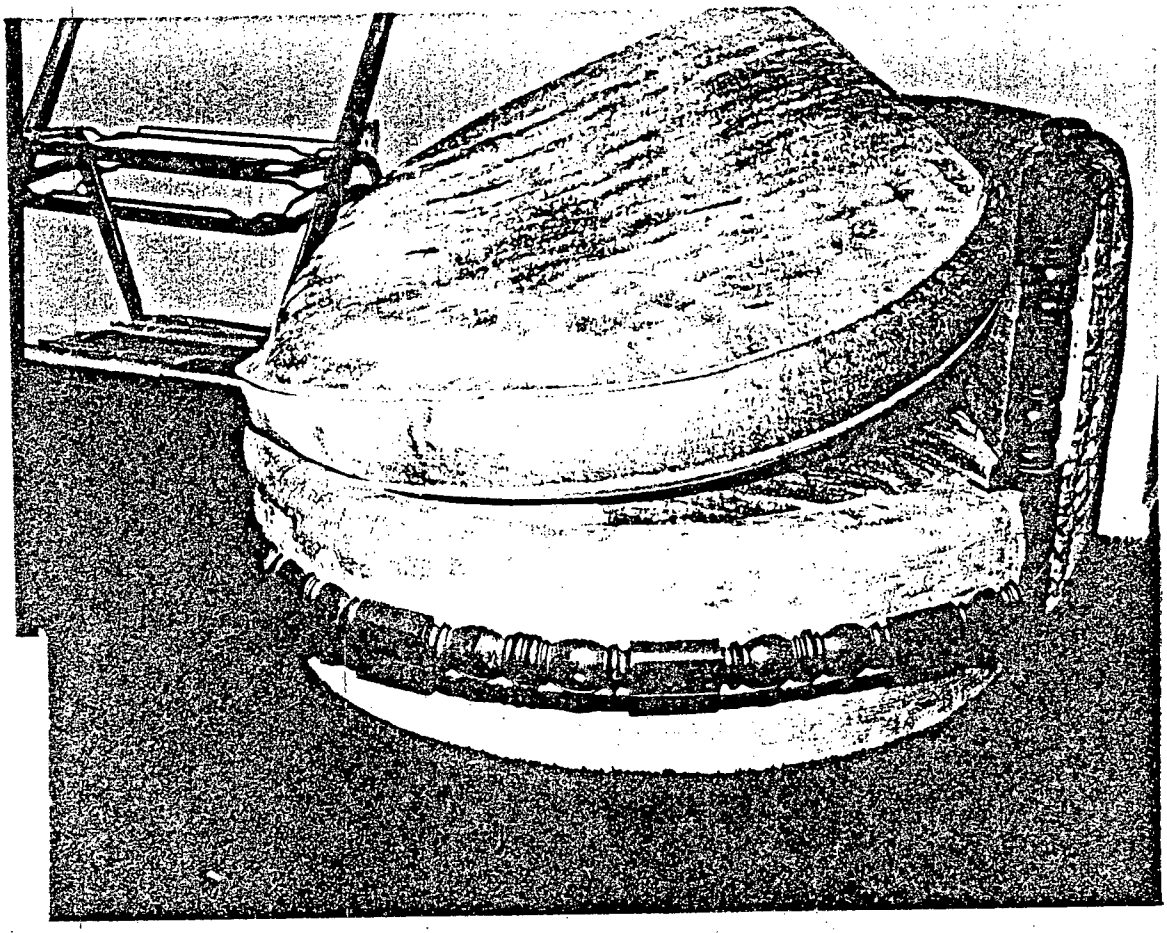

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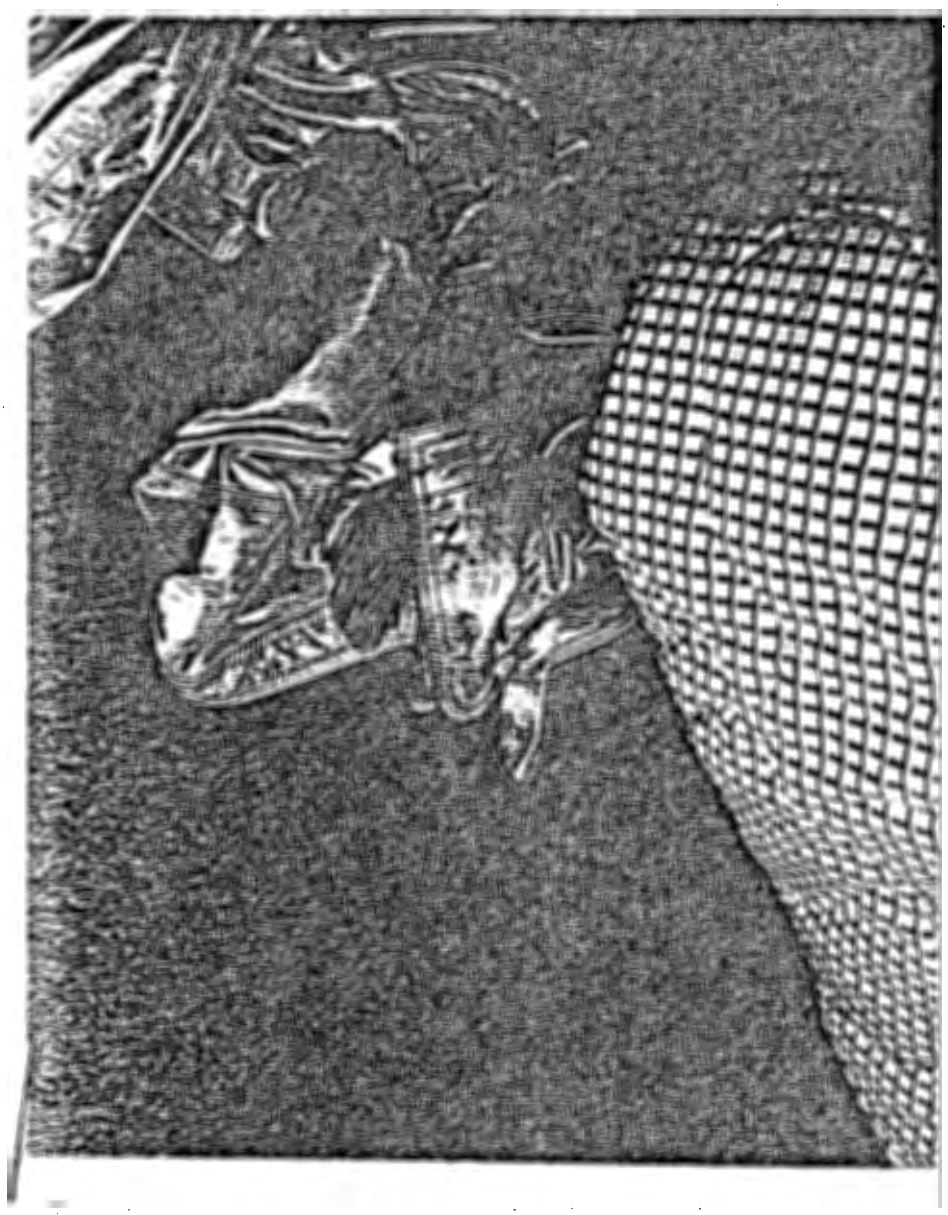

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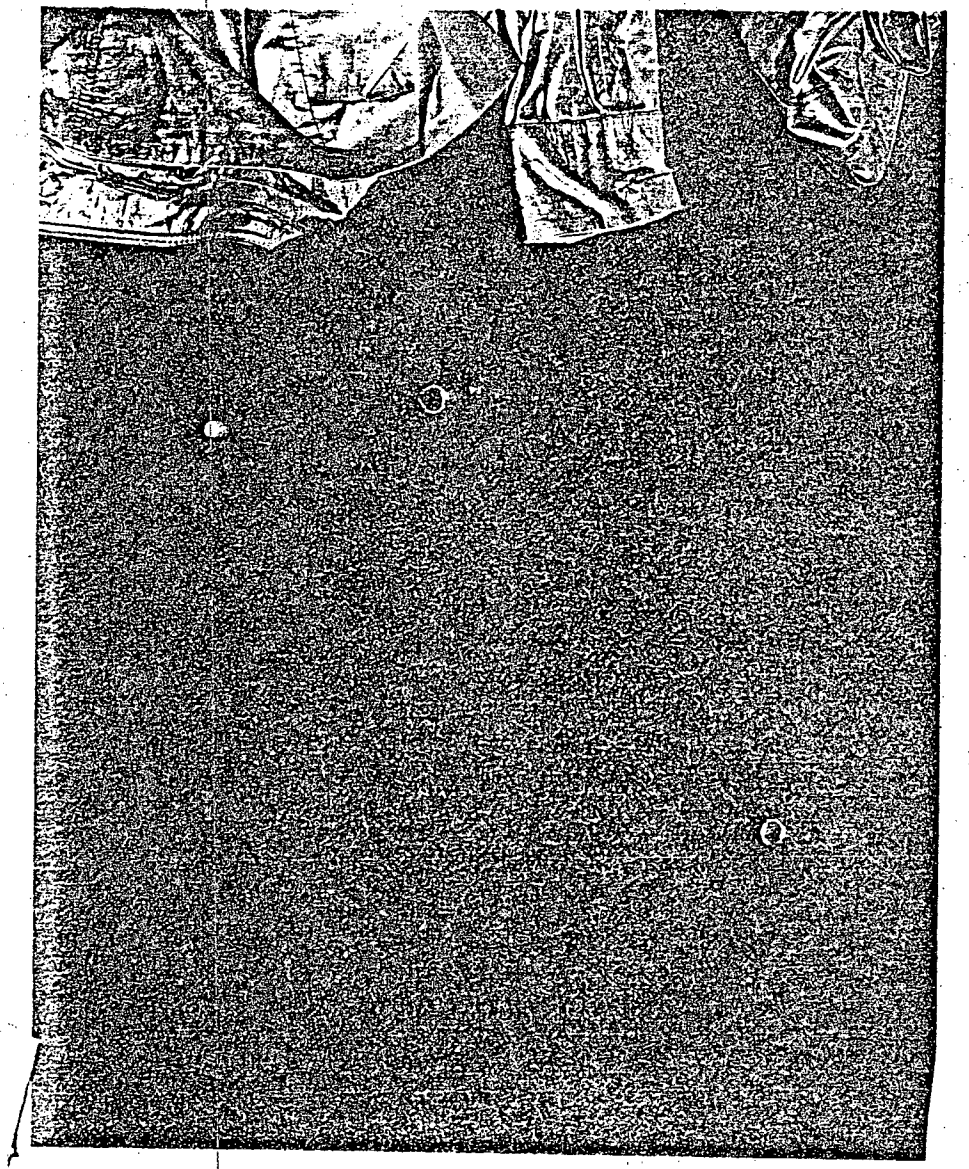
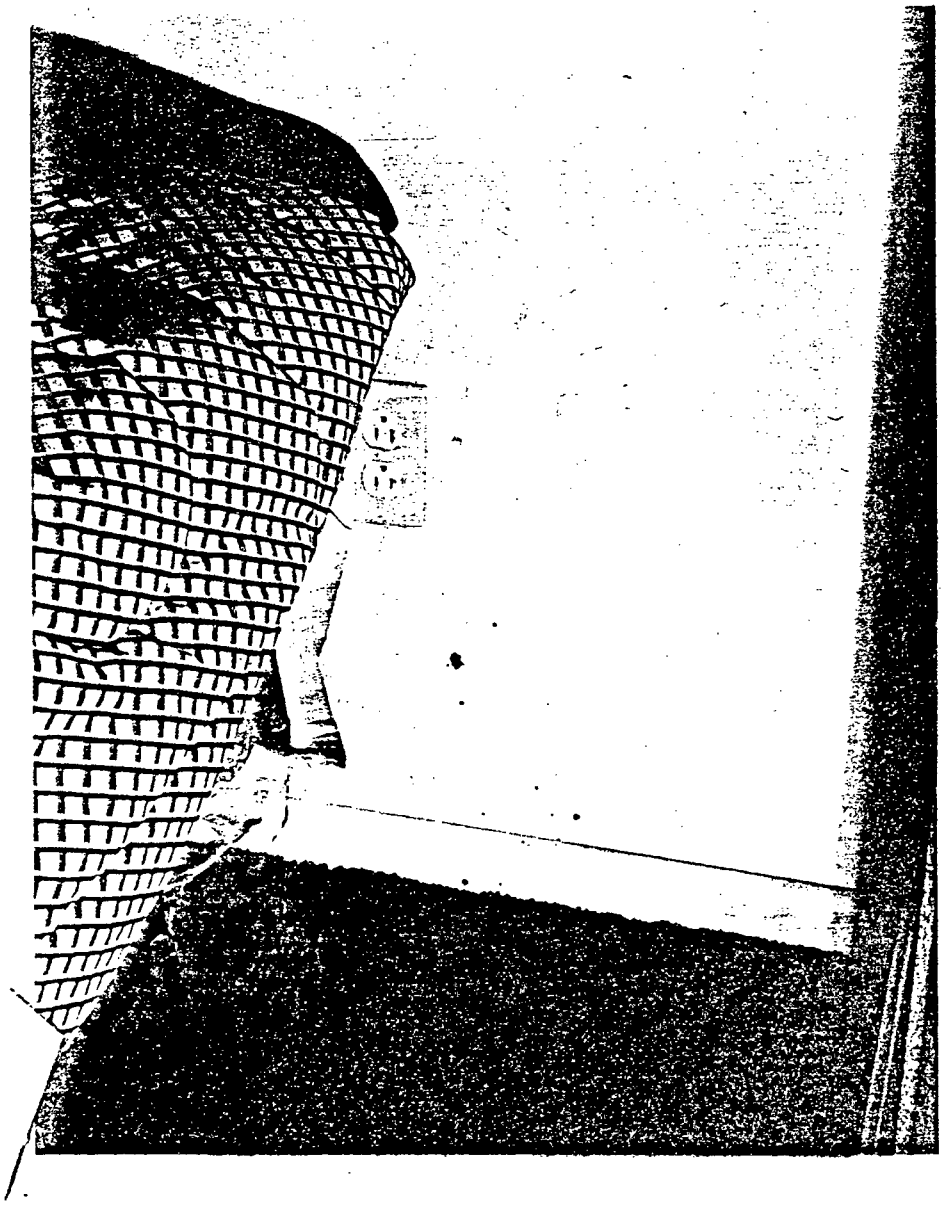


COMMONWEALTH'S EXHIBIT 25

COMMONWEALTH'S EXHIBIT 26



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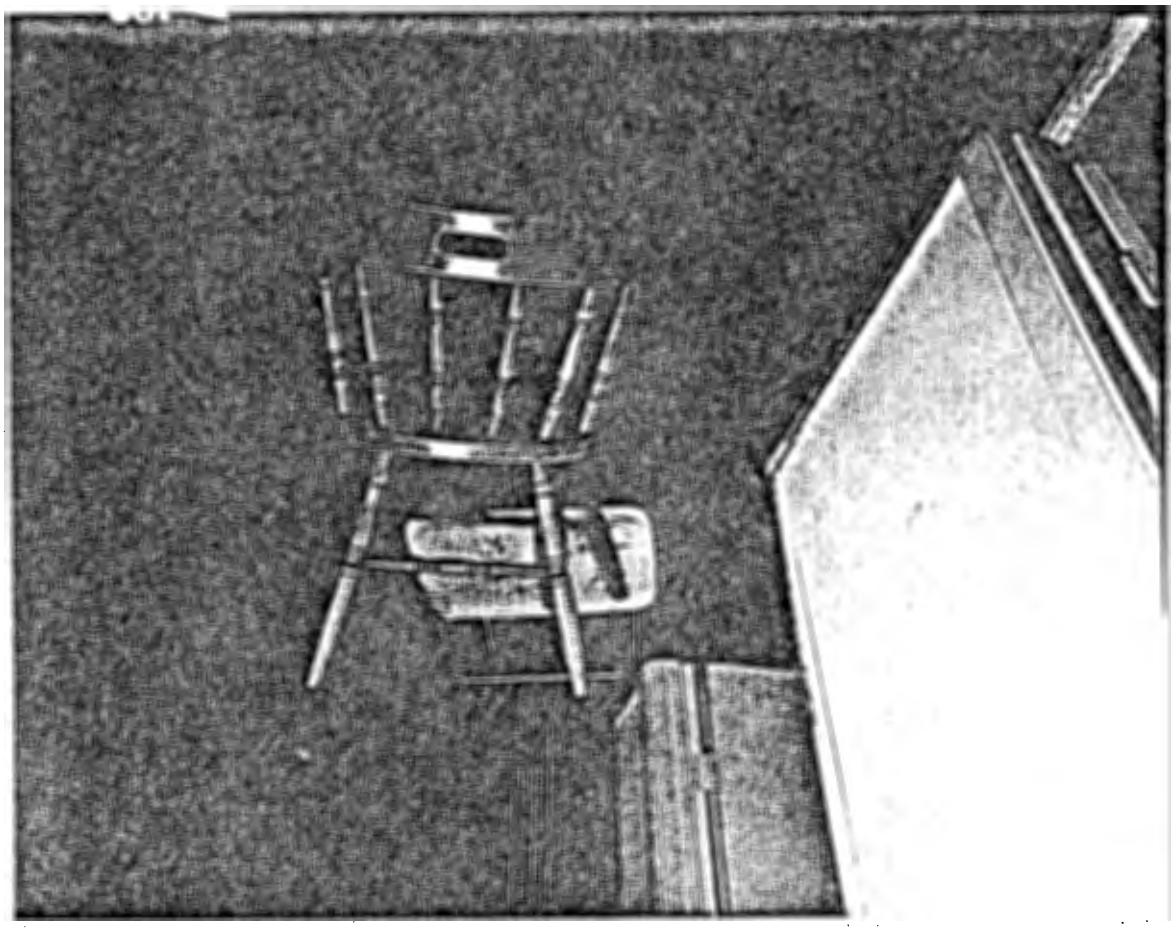

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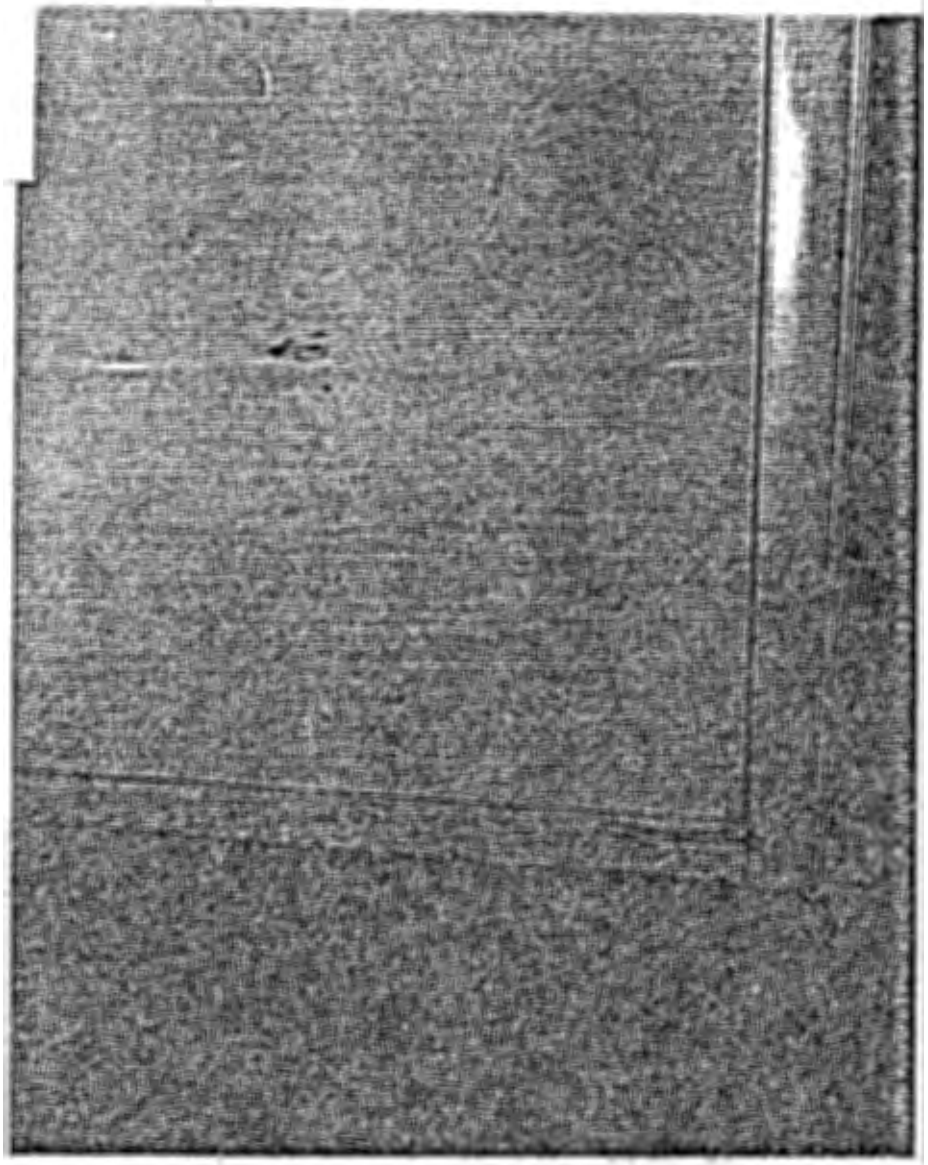

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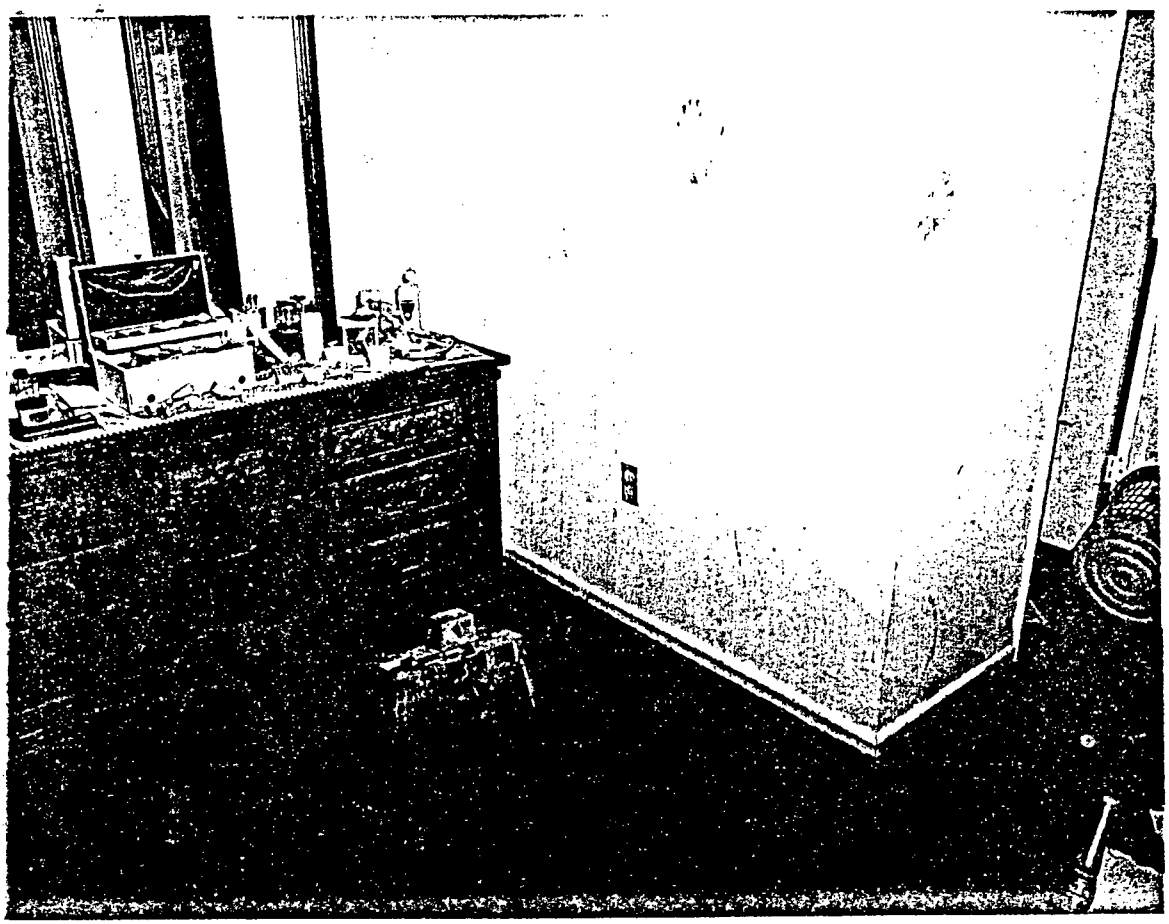

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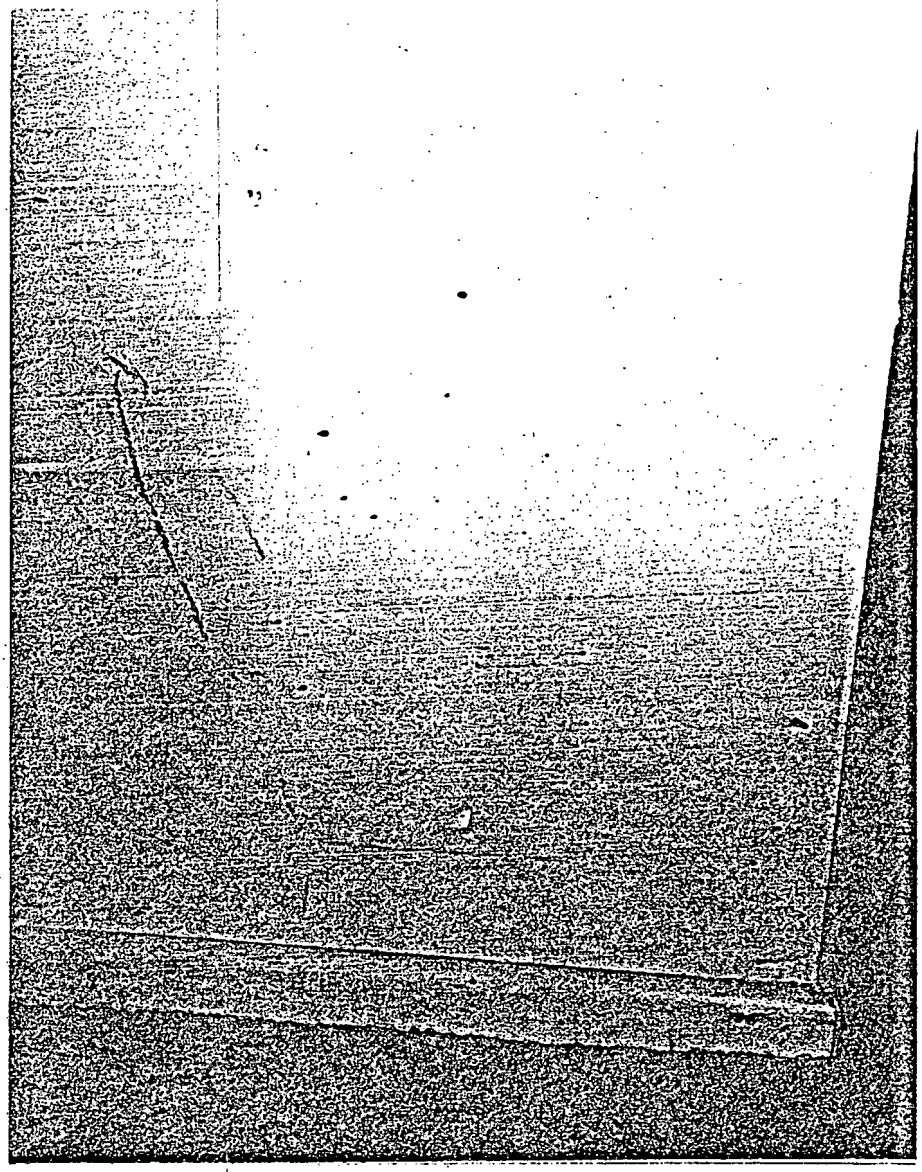

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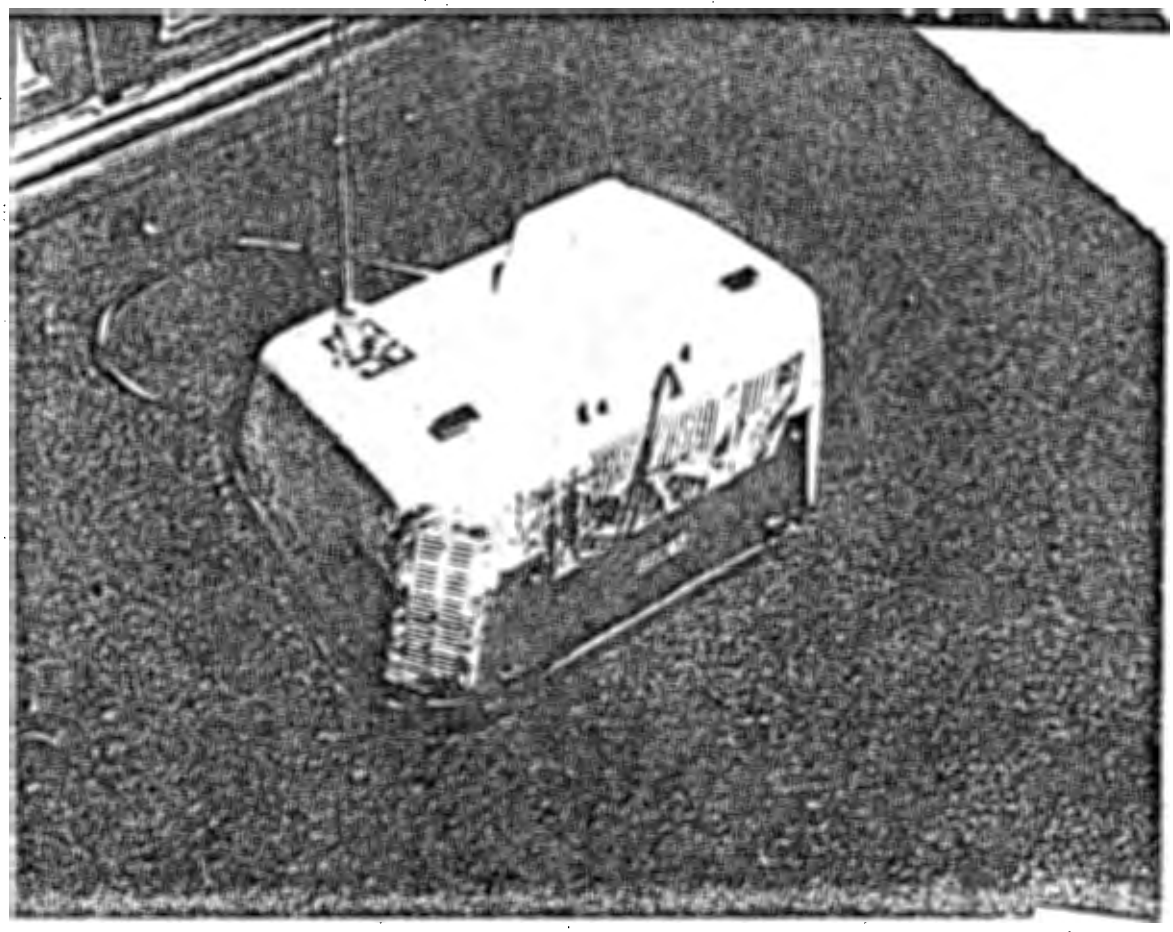

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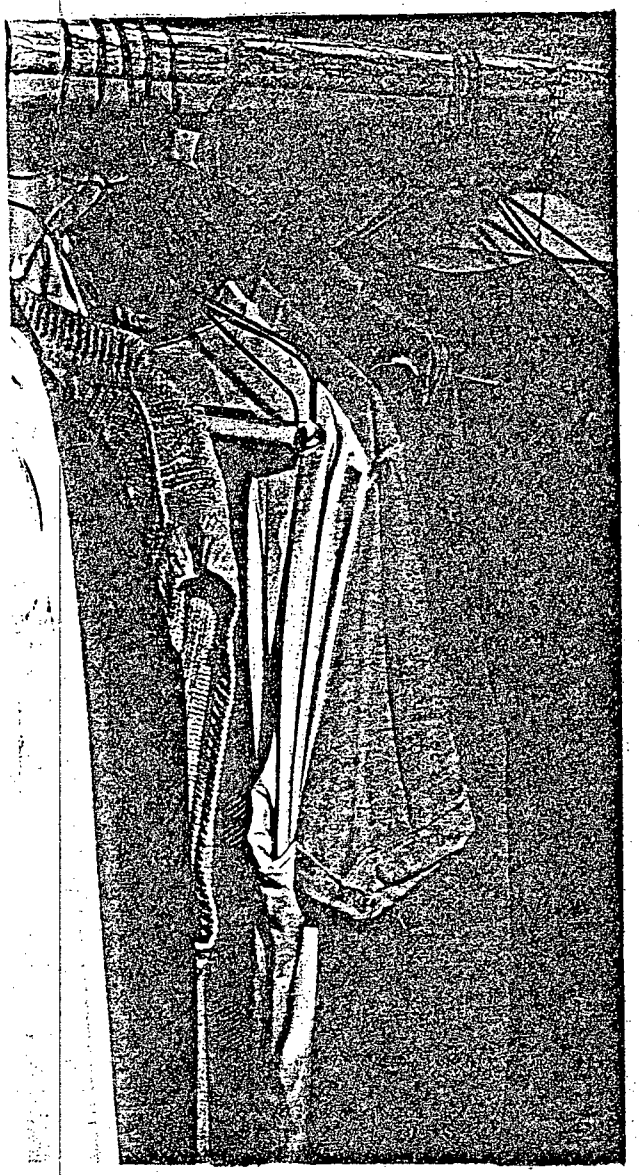

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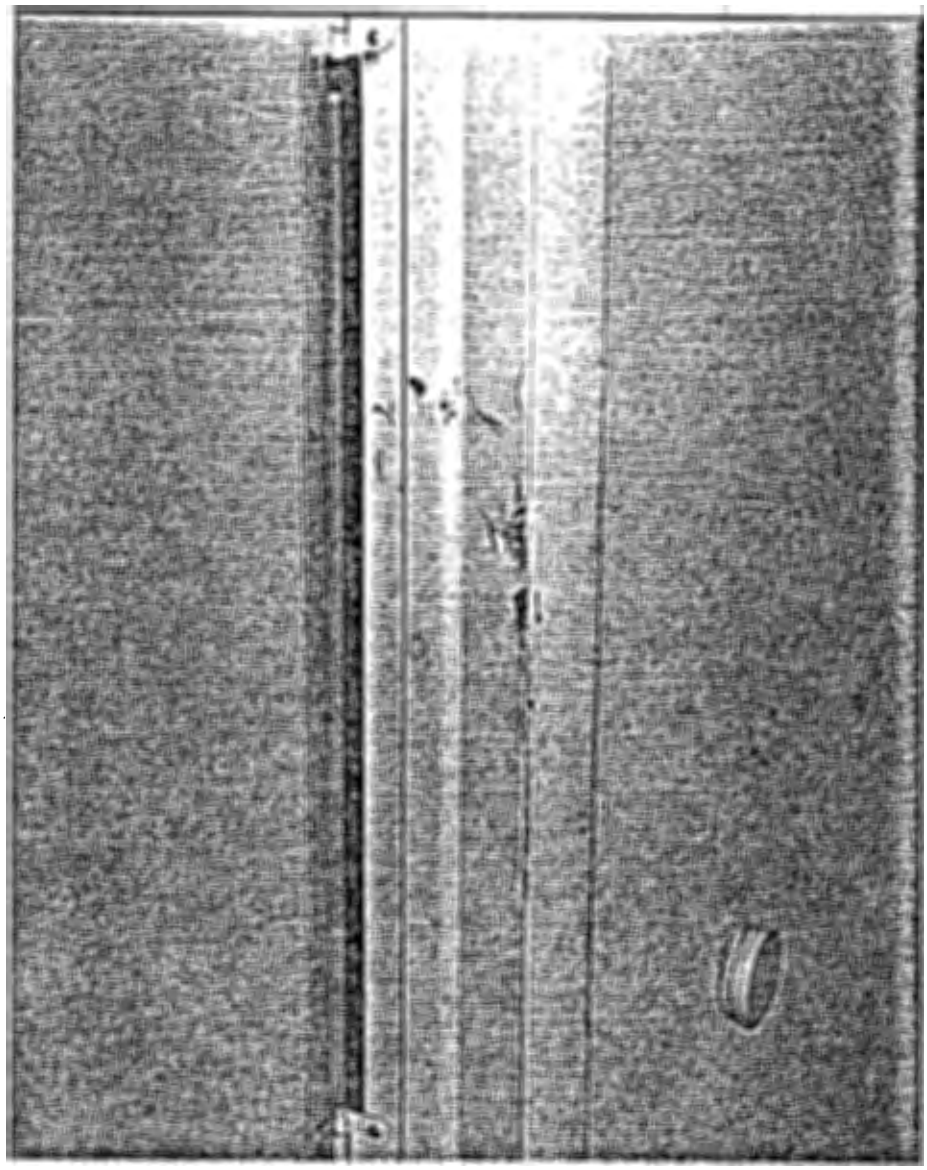


PRINT OR TYPE NAME OF PERSON FINGERPRINTED
LAST NAME FIRST MIDDLE

Clanton, Earl nmn Jr.

C.C.R.E. NUMBER

F.B.I. NUMBER

LEAVE THIS SPACE BLANK

ALIAS/NICKNAME (LAST NAME, FIRST, MIDDLE)

Hasson

CONTRIBUTOR'S NUMBER

24125

C.2153

RACE: b

SEX: m

CHIEF
POLICE DEPT. PETERSBURG
37 EAST TABB STREET
PETERSBURG, VA. 23803

DATE OF BIRTH
MO. DAY YEAR
6/1/54

PLACE OF BIRTH

Dinwiddie, VA

PHOTO AVAILABLE THIS ARREST?
YES ☒ NO ☐

SIGNATURE OF OFFICIAL TAKING FINGERPRINTS

DATE

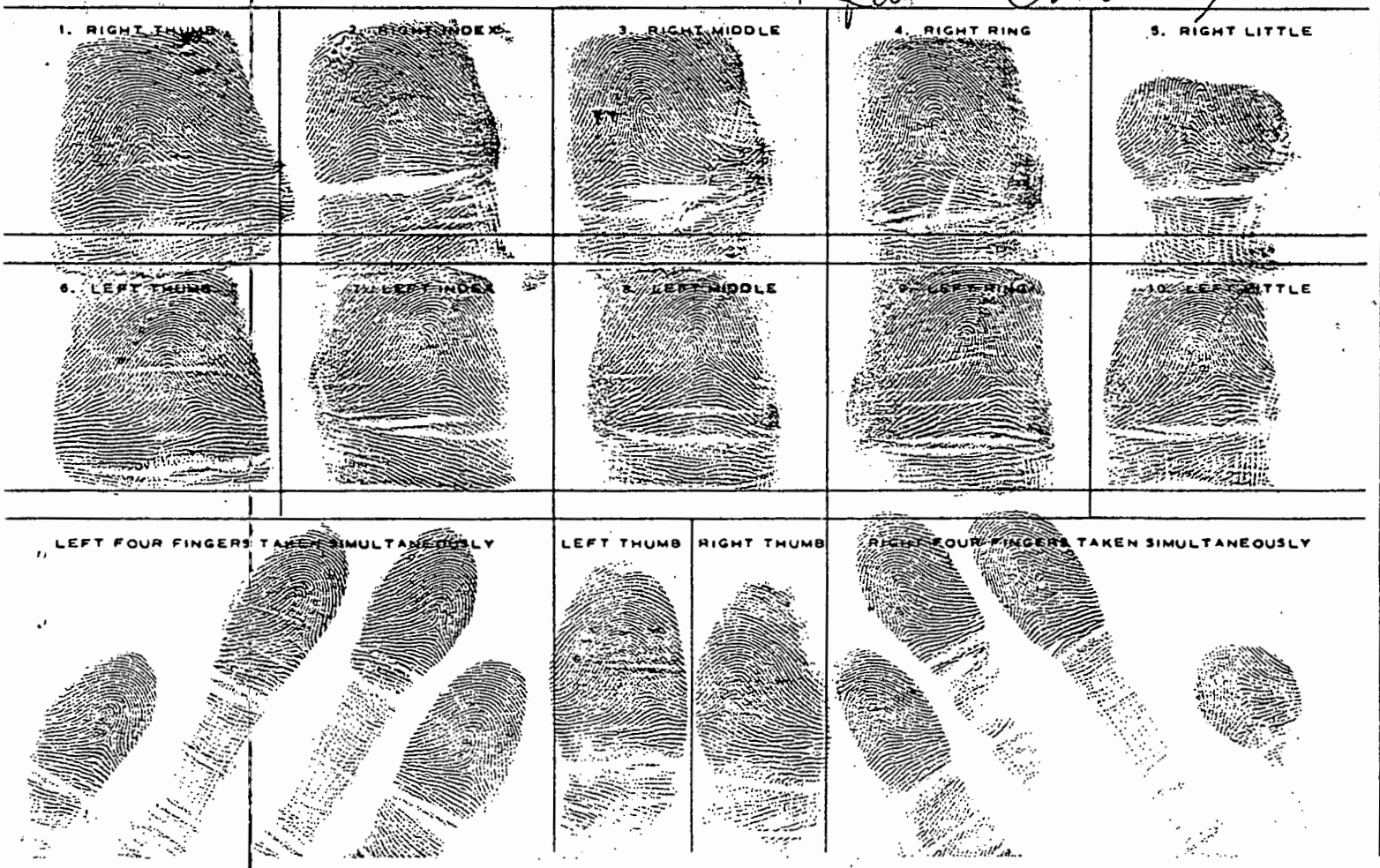
11-16-80

CIRCLE AMPUTATION AND NOTE OTHER FINGER DEFECTS BY NUMBER

1 2 3 4 5 6 7 8 9 10

SIGNATURE OF PERSON FINGERPRINTED

x Earl Clanton Jr



Commonwealth's EXHIBIT No. 53A

SP 85 Revised 1-1-77

DEPARTMENT OF STATE POLICE
CENTRAL CRIMINAL RECORDS EXCHANGE

P. O. BOX 27472
RICHMOND, VA. 23261

RESIDENCE OF PERSON FINGERPRINTED — STREET — NO. — CITY — TOWN — COUNTY — STATE

City Jail or 172 McKeever St., Petg., VA

OCCUPATION (BE SPECIFIC)	NAME OF PLACE OF EMPLOYMENT	ADDRESS
none		

DATE ARRESTED OR RECV.	CHARGE		SENTENCE IMPOSED (IF KNOWN)
11/16/80	Murder	MISD. ☐ FELONY ☒	1.2154
	CHARGE	MISD. ☐ FELONY ☐	
	CHARGE	MISD. ☐ FELONY ☐	
	CHARGE	MISD. ☐ FELONY ☐	
	CHARGE	MISD. ☐ FELONY ☐	
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	CHARGE	MISD. ☐ FELONY ☐	
	CHARGE	MISD. ☐ FELONY ☐	
	CHARGE	MISD. ☐ FELONY ☐	

REPLY DESIRED? YES ☐

SEND ADDITIONAL COPY OF RECORD TO: (GIVE COMPLETE NAME AND ADDRESS OF AGENCY)

INSTRUCTIONS

1. FORWARD THIS CARD AND ARREST REPORT TO C.C.R.E. ON DATE OF ARREST.
2. TYPE OR PRINT ALL INFORMATION.
3. SUPPLY C.C.R.E. NUMBER WHEN AVAILABLE.
4. NOTE AMPUTATIONS.

Commonwealth of Virginia
Department of General Services
Division of Consolidated Laboratory Services
BUREAU OF FORENSIC SCIENCE

January 22, 1981

CERTIFICATE OF ANALYSIS

Central Laboratory
P. O. Box 999
Richmond, Virginia 23208

Tel. No. (804) 786-4707

TO: Chief
Petersburg Bureau of Police
P. O. Box 2109
Petersburg, VA 23803

Attention: Detective Sgt. S. A. Batts

Your Case # 37082 80-495

FS Lab # 80-4242

Victim(s): SMITH, Wilhelmina

Examiner: Mary Jane Burton

Suspect(s): CLANTON, Earl, Jr.

Date Received 11-18-80

Evidence Submitted By: Detective S. T. Eilert

Item #1 - Red substance from TV table in bedroom.
Item #2 - Stains recovered from bedroom wall.
Item #3 - Broken wooden spoon with red stains.
Item #4 - Two (2) pieces of wooden spoon.
Item #5 - Butcher knife with stains.
Item #6 - Three (3) one dollar bills and one (1) five dollar bill from suspect's pocket.
Item #7 - Gym shirt found under bed.
Item #8 - Dinner knife with stain.
Item #9 - Electric cord with stain.
Item #10- TV containing stain.
Item #11- Pair of jeans from suspect.
Item #12- Stocking cap from suspect.
Item #13- Right tennis shoe from suspect.
Item #14- Left tennis shoe from suspect.
Item #15- Checkbook of victim.

Evidence Submitted By: Dr. M. F. Fierro

Date Received: 11-18-80

Item #16- Sample of blood and Physical Evidence Recovery Kit from victim.

IN FUTURE CORRESPONDENCE REFERENCE THIS MATTER PLEASE REFER TO THE FS LAB # ABOVE

DCLS FS 006-C (REV. 5-78)

Comm EXHIBIT # 55

Petersburg Bureau of Police

Evidence Submitted By: Detective Sgt. S. T. Eilert Date Received: 12-12-80

Item #17- Hair samples and blood sample from suspect.

RESULTS OF EXAMINATION:

Item #1 - Human blood was identified in the sample. Further tests indicate the blood is type O, EsD 1, PGM 2-1. It was not possible to determine the type in the other systems.

Item #2 - Human blood was identified in the stain from the right print. Further tests indicate the type is O. The amount was insufficient for further typing. Human blood was identified in the stain from the left print. The amount was insufficient for typing.

Item #3 - Human blood was identified in a stain near the broken end of the wooden spoon. The amount was insufficient for typing.

Item #4 - A small amount of blood was noted on both pieces. This blood was human in origin, type O, EsD 1. The amount was insufficient for further typing.

Item #5 - Human blood was identified in stains on the knife. Further tests indicate the blood is type O, EAP BA, EsD 1, PGM 2-1, ADA 1, AK 1. It was not possible to determine the type in the other systems.

Item #6 - Human blood was identified in stains from each of the bills. Further tests indicate the blood is type O. The amount was insufficient for further typing.

Item #7 - Human blood was identified in stains on the shirt. Further tests indicate the blood is type O, EAP BA, EsD 1, PGM 2-1, Hp 2-1, ADA 1, AK 1, Glo 2-1. In addition, two (2) pubic hairs consistent with samples from the victim and a head hair not consistent with samples from the victim or the suspect were recovered from the shirt.

Item #8 - Human blood was identified in a small stain near the end of the handle of the knife. The amount was insufficient for typing.

Item #9 - Human blood was identified in a stain on the electrical cord. The amount was insufficient for typing.

Item #10- Human blood was identified in stains on the TV. Further tests on the blood indicate the type is O, EAP BA, EsD 1, PGM 2-1, ADA 1, AK 1, Glo 2-1. It was not possible to determine the type in the Hp system.

RESULTS OF EXAMINATION: (continued)

Item #11- Human blood was identified in stains on the jeans. Further tests on the blood indicate the type is O, EAP BA, EsD 1, PGM 2-1, Hp2-1, ADA 1, AK 1, Glo 2-1.

Item #12- No hair or blood were noted on the stocking cap.

Item #13- Human blood was identified on both the shoe and the sock. Further tests on stains from the shoe indicate the type is O, EAP BA, EsD 1, PGM 2-1, ADA 1, AK 1, Glo 2-1. It was not possible to determine the type in the Hp system.

Item #14- Human blood was identified in stains on both the sock and the shoe. Further tests on stains from the shoe indicate the type O, EAP BA, EsD 1, PGM 2-1, ADA 1, AK 1, Glo 2-1. It was not possible to determine the type in the Hp system.

Item #15- Human blood was identified in a stain inside the checkbook. Further tests indicate the type is O. The amount was insufficient for further typing.

Item #16- The blood type of the victim is O, EAP BA, EsD 1, PGM 2-1, Hp 2-1, ADA 1, AK 1, Glo 2-1. No evidence of seminal fluid was found on any of the swabs or smears.or on stains from the panties. No foreign hairs were found in any of the samples submitted.

Item #17- The blood type of the suspect is O, EAP B, EsD 1, PGM 1, ADA 1, AK 1, Glo 1. It was not possible to determine the type in the Hp system.

The other requested examination is the subject of another report.

The evidence was released to Detective Sgt. S. T. Eilert on the 11-25-80.

The stains recovered from the above items and used for testing are being enclosed herewith.

MJB:smp

Mary Jane Burton
Forensic Scientist

STATE OF VIRGINIA
CITY/~~COUNTY~~ OF Richmond, to-wit:

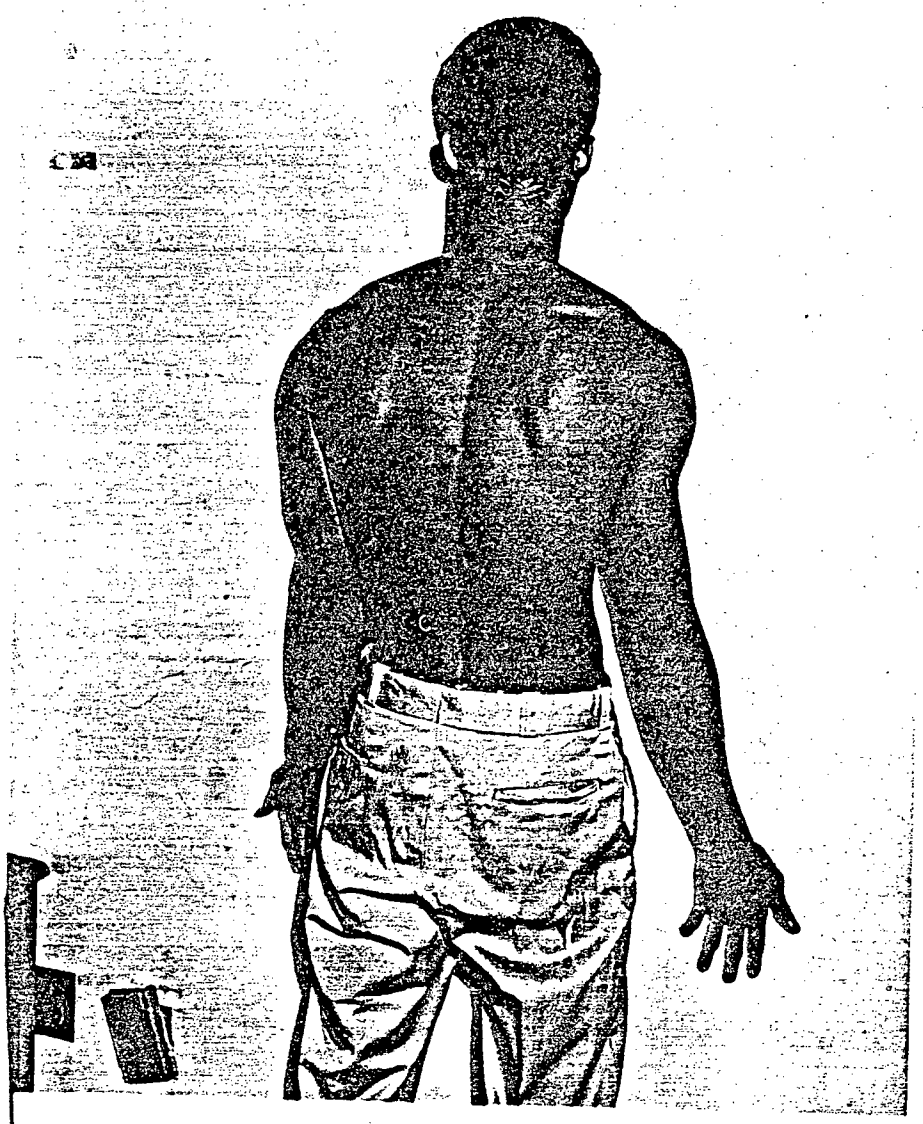
THIS day personally appeared before me, Shirley M. Patterson, a notary public, in and for said city/county in the Commonwealth of Virginia, Mary Jane Burton, who signed the foregoing Certificate of Analysis, before me, and after being duly sworn, made oath (1) that he performed the analysis and/or examination the results of which are herein contained, (2) that said analysis and/or examination was performed in a laboratory operated by the Division of Consolidated Laboratory Services of the Commonwealth or authorized by such Division to conduct such analysis and/or examination and (3) that this Certificate of Analysis is true and correct.

Given under my hand this 22nd day of January, 1981.

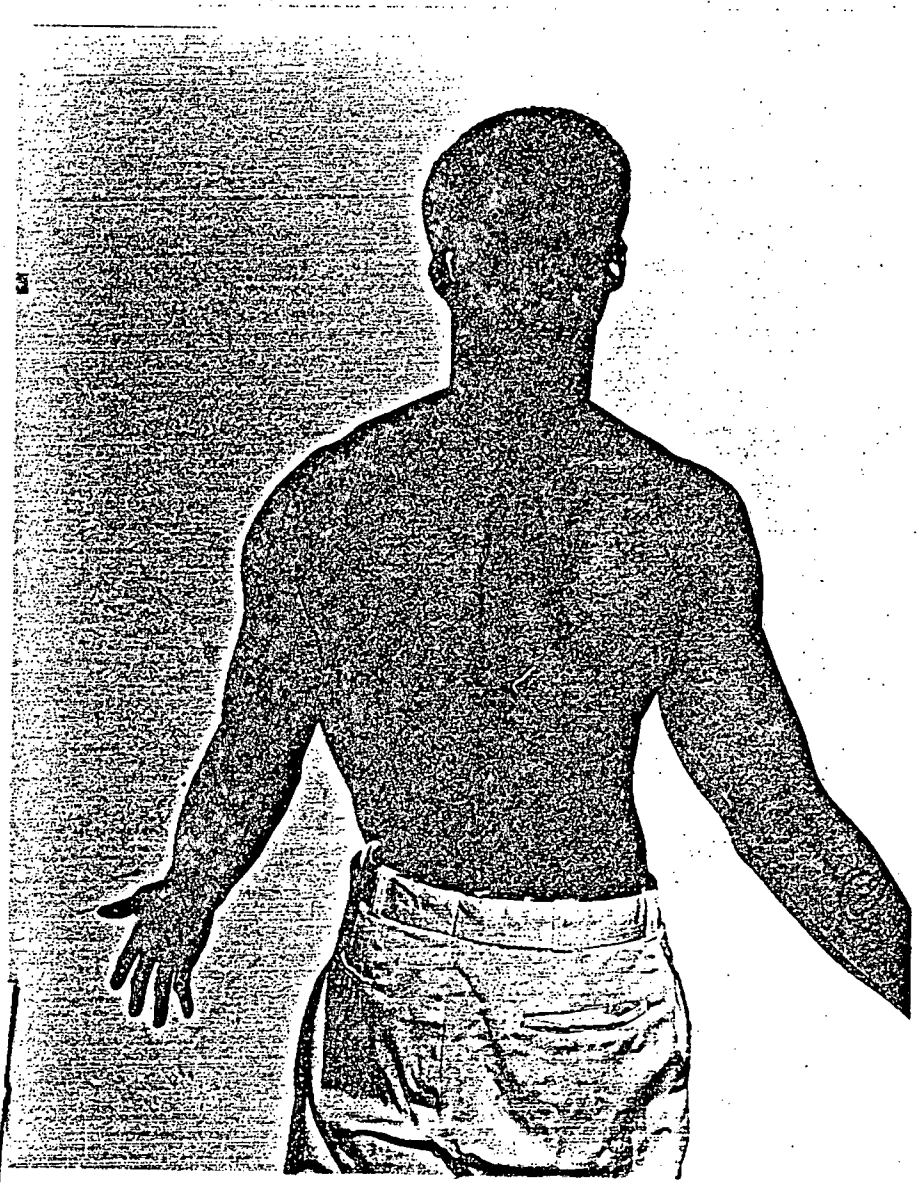
Shirley M. Patterson Notary Public

My commission expires September 4, 1983

COMMONWEALTH'S EXHIBIT 57



COMMONWEALTH'S EXHIBIT 58



COMMONWEALTH'S EXHIBIT 59

Natalie Laurence
P.O. Box 2209
Petersburg, Va 23803
11-27-80

To Dect. Batts, Langford & Crowell,

Thanks so much for helping me come to my senses. I really do appreciate all that you have done and are still trying to do.

To you Batts, I am so sorry for lying to you. I realize now that you were only looking out for my best interest.

I must admit that I did love & cared about Mr. Clanton. But I also feel that part of that love came from fear of what he might do to me.

While I'm waiting for this trial to be over with, I would appreciate if all of you would keep in contact with me from time to time.

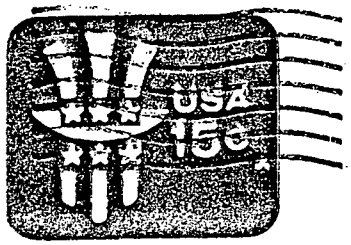
I have never been confined before. Being in here gets to me sometime. It would help if all of you would write or come to see me, so that I'll have something to do to keep my mind off of looking at these bars.

Happy Thanksgiving, to all of you.

Love ya,
Natalie

P.S. By the time you get this Thanksgiving will be over, but I was thinking of all of you

P.O. Box 2209
Petersburg, Virginia
23803



Dect. Betts, Langford & Crowell
C/o Petersburg Police Dept.
Petersburg, Virginia - 23803

COMMONWEALTH'S EXHIBIT 60

LAW DIVISION — CRIMINAL

The State of New Jersey)
vs.)
EARL CLANTON)
Indicted with Others)
) MURDER
Defendant)

Indictment ~~or Accusation~~ No. 308-72

JUDGMENT

The defendant on February 29, 1972 (Date) having entered a plea of Not Guilty to Indictment ~~Accusation~~ No. 308-72 for the crime of Murder

and the defendant having on October 13, 1972 (Date)

RETRACTED PLEA OF NOT GUILTY AND ENTERED PLEA OF NON VULT ~~XXXXXX~~

~~BEEN TRIED~~ with ~~without~~ ~~A JURY AND A~~ verdict ~~finding~~ ~~OF~~

~~having been~~ rendered ~~made~~ ~~on~~ (Date)

It is, therefore, on January 3, 1973 (Date)

Ordered and Adjudged that the defendant be and is ~~discharged~~ sentenced to

Be confined in N.J. State Prison for the minimum term of twenty-six (26) years and the amximum term of twenty-eight (28) years. Jail time credit - Three hundred forty-three (343) days.

J.S.C.

Entered

Merryn R. Montgomery asst

Clerk

January 3, 1973

Date

THIS COPY MAY BE REPRODUCED AS A
THE COPY OF AN ORIGINAL FILED IN THE
OFFICE OF THE CLERK OF THE SUPREME COURT

William R. Rand

Date 12/27/72

Florence Vascard

SPECIAL DEPUTY

VIRGINIA: IN THE CIRCUIT COURT OF THE CITY OF PETERSBURG,

APRIL 18, 1980.

Commonwealth

v. Felony - Malicious Injury - Convicted Unlawful Injury (F73-80)

Earl Clanton, alias Hasson Clanton (DOB 6/1/54), Defendant

This day came the Attorney for the Commonwealth and Earl Clanton, alias Hasson Clanton, who stands indicted for a felony, to-wit: unlawfully and feloniously did cause bodily injury to Bruce Brown with the intent to maim, disfigure, disable or kill said Bruce Brown, appeared according to the condition of his recognizance, and came also Robert Hill, his attorney heretofore appointed.

Whereupon the accused was arraigned and after private consultation with his said attorney, pleaded not guilty to the indictment, which plea was tendered by the accused in person. Whereupon, the Attorney for the Commonwealth moved the Court to allow an amendment to the indictment to reflect the charge to be "unlawfully, feloniously and maliciously causing bodily injury to Bruce Brown, with the intent to maim, disfigure, disable or kill" which motion was taken under advisement and later during the trial overruled.

The Court then impanelled twenty qualified jurors, free from exception for the trial of the defendant, in the manner provided by law. Whereupon the Attorney for the Commonwealth and the attorney for the defendant exercised their rights to strike names from the panel, as provided by law, and the remaining twelve jurors, constituting the jury for the trial of the defendant, were duly sworn.

SUPERIOR COURT OF NEW JERSEY

COUNTY OF PASSAIC

I, Peter Ciolino, Assignment Judge of the Superior Court of New Jersey, do hereby certify that the attached Judgment in Indictment No. 308-72 dated January 3, 1973, is a true copy of the original Judgment entered in the aforesaid case, and I further Certify that William L. Kattak is now, and was on December 17, 1980, Clerk of the said Court, and that Florence Vaccaro is now and was on December 17, 1980, Special Deputy Clerk of said Court.

Given under my hand this 9th day of March, 1981.

Assignment Judge of the
Court Aforesaid

After opening statements, the Court and jury heard the evidence presented by the Commonwealth and the defendant. At the conclusion of the evidence presented on behalf of the Commonwealth, the attorney for the defendant moved the Court to strike the Commonwealth's evidence, on grounds stated in the record, which motion was overruled.

After hearing the evidence, the instructions of the Court and argument of counsel, the jurors were sent to the jury room to consider their verdict. They subsequently returned their verdict in open court, reading:

"We, the Jury, find the accused guilty of unlawful injury of Bruce Brown, as defined by instruction 4, and do ascertain his punishment to be:

(a) confinement in the penitentiary for 4 years

ROLAND ST. J. BROOKS, JR.
FOREMAN"

The Clerk polled each juror who stated that was his/her verdict. Thereupon, the jury was discharged.

And after the lunch recess, the defendant failed to return to the courtroom, and the jury, having heard all of the evidence in the case, was so informed. Whereupon a capias order for the defendant will be entered, and this case is continued until further order of this Court.

The Court certifies that all times during the trial of this case, but not during closing arguments and instructions of court, the defendant was personally present, and at all times during the trial of this case, closing arguments and instructions, his attorney was present and capably represented the defendant.

* * * *

Enter this:

April 18, 1980

Judge

A Copy, Teste:
WALTER L. PARRISH, CLERK
By:
Deputy Clerk

Entered: Common Law Order Book

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VIRGINIA: IN THE CIRCUIT COURT OF THE CITY OF PETERSBURG,

DECEMBER 8, 1980.

Commonwealth

v. Felony - Malicious Injury - Convicted Unlawful Injury (F73-80)

Earl Clanton, alias Hasson Clanton (DOB 6/1/54), Defendant

This day came the Attorney for the Commonwealth and Earl Clanton, alias Hasson Clanton, who stands indicted for a felony, to-wit: unlawfully, feloniously and maliciously causing bodily injury to Bruce Brown with the intent to maim, disfigure, disable or kill said Bruce Brown, was led to the bar in the custody of the jailer of this Court, and came also Robert Hill, his attorney heretofore appointed.

And the defendant having been found guilty of the unlawful injury of Bruce Brown by a jury verdict rendered on April 18, 1980, and judgment in this case having been deferred until this date;

The Court then asked the defendant whether he desired to make a statement or to advance any reason why judgment should not be pronounced against him. The Court having heard and considered the defendant's statement doth find the defendant guilty of unlawful injury of Bruce Brown, and sentences the defendant to confinement in the penitentiary of this Commonwealth for the term of four (4) years.

And it is further ordered that as soon as possible after the entry of this order the defendant be removed and safely conveyed according to law from the jail of this Court to the

1/7/81 TR & Copy S.P.

said penitentiary, therein to be kept, confined and treated in the manner provided by law.

At all times during the trial of this case the defendant and his counsel were present.

The Court orders that the defendant be allowed credit for the time spent in jail awaiting trial.

It is adjudged that the Commonwealth recover from the defendant the costs assessed in this proceeding.
the penitentiary.

* * * *

Enter this:

December 8, 1980

Judge

A Copy, Teste:
WALTER L. PARRISH, CLERK
By: Eleanor S. Clarke
Deputy Clerk

Entered: Common Law Order Book

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