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IN THE

SUPREME COURT OF VIRGINIA

At Richmond

CLERK
SUPREME COURT OF VIRGINIA
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RICHMOND, VIRGINIA

Record No. 811071

RICHARD LEE WHITLEY,

Appellant;

v.

COMMONWEALTH OF VIRGINIA,

Appellee.

On Appeal from the

Circuit Court of Fairfax County

JOINT APPENDIX

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Warrant of Arrest, executed 8/15/80

WARRANT OF ARREST

COMMONWEALTH OF VIRGINIA, COUNTY OF FAIRFAX:

To Any Law Enforcement Officer of the Commonwealth:

Whereas, Investigator J. C. Sutherland (COMPLAINANT) of Fairfax County Police Departme

has this day made proper complaint before me under oath, and

Whereas, on the grounds of said complaint I have found probable cause to believe that Richard Lee Whitley (DEFENDANT) a W (RACE) M (SEX) born 5/6/46 (BIRTHDATE) who can be located at 7720 Lisle Av. Falls Church (ADDRESS) Virginia did, in the County aforesaid, on or about the 25 day of July, 19 80, unlawfully and feloniously, in violation of State Code, Section 18.2-32 of the 1950 Code of Virginia as amended kill and murder Phebe C. Parsons

These, Therefore, are to command you in the name of the Commonwealth to forthwith apprehend and bring before the Fairfax County General District Court at Fairfax County, Virginia on the 19TH day of AUGUST, 19 80 at 8.30 o'clock A. M. the subject to answer the said complaint and to be further dealt with according to law and there have this warrant with your return.

Given under my hand this 29th day of July, 19 80.

Kenneth A. Frith

Special Magistrate

Kenneth A. Frith #88

F80- 06311

CTS-CTC-4C

THE FAIRFAX COUNTY GENERAL DISTRICT COURT — ORDERS OF THE COURT

THE WITHIN NAMED defendant on this _____ day of _____, 19 ____ ☐ forfeited collateral in the amount of $ _____, or ☐ was tried in his absence, or ☐ came before me, and, ☐ being represented by counsel, or ☐ not being represented by counsel and waiving his right to same, pleaded ☐ guilty ☐ not guilty, and upon hearing the evidence in this matter, I find him ☐ guilty ☐ not guilty and adjudge a fine of $ _____ and costs and order the defendant confined in jail for a period of _____ days _____ months, suspending $ _____ and _____ days _____ months on the following conditions: a) general good behavior for one year, b) that defendant violate no law of the Commonwealth for one year and, c) _____

80 09317

And it is further ordered that:

- ☐ The case be dismissed;
- ☐ The case be terminated Nolle Prosequi;
- ☐ The case be certified to the Grand Jury;
- ☐ Defendant's operators license be revoked for _____ days _____ months, until fine is paid
  - ☐ This disposition having been made upon recommendation of Commonwealth's Attorney _____

And that:

- ☐ Execution of the sentence be suspended until _____, 19 ____, at _____ o'clock P.M.
- ☐ Operators license accepted in lieu of bond
- ☐ A pre-sentence investigation is ordered returnable _____, 19 ____, at _____ o'clock P.M.
- ☐ Defendant be placed on active probation for one year.

_____
Judge

$100.00 8/18/80

WARRANT OF ARREST
COMMONWEALTH OF VIRGINIA
COUNTY OF FAIRFAX
Vs.
Robert Lee Whitley

Executed this, the 15 day of August, 19 80 by arresting the within named

J. Sutherland
Officer

COSTS

State Fine	$
Local Fine	$
Trial Fee	$
Mag. Bail Fee	$
Summons Fee	$
Criminal Filing Fee (Circuit)	$
CICF	$
Ct. Appt. Atty. (State)	$
Ct. Appt. Atty. (Local)	$
DMV Fee	$
Blood Test Fee	$
ASAP	$
Weighing Fee	$
Liquidated Damages	$
Witness Attendance	$
Total	$

COMMONWEALTH OF VIRGINIA
COUNTY OF FAIRFAX

To-wit: We, _____

and _____ do hereby severally and respectfully acknowledge ourselves to be indebted to the Commonwealth of Virginia, in the sum of $ _____ to be respectfully made and levied on our several goods and chattels, land and tenements, to the use of the Commonwealth, and we each waive all benefits under the homestead exemption laws of the State of Virginia as to this obligation, the conditions of this obligation being that _____ shall (1) personally appear before the Fairfax County General District Court on the _____ day of _____, 19 ____ at 9:30 o'clock A.M. and at any times thereafter when proceedings in this matter may be heard by any court or judge, (2) shall not depart hence without leave of said court, (3) shall refrain from violating any law of this Commonwealth during the pendancy of this recognizance, which remains in full force and effect until terminated by operation of the law; and that (4) nonappearance before any court in this matter shall be deemed a waiver of defendant's right to have counsel appointed for him and (5) nonappearance before any Circuit Court may be deemed a waiver of the right to a trial by jury.

Given under our hand and seal this the _____ day of _____, 19 ____.

_____ (SEAL) _____ (SEAL)

_____ (SEAL) _____ (SEAL)

Acknowledged before me, in the said County, the day and year last above written.

_____
Address of Surety

_____
Special Magistrate for Fairfax County, Virginia

-2-

Indictment, dated 11/17/80

V I R G I N I A :

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

November 17, 1980

COMMONWEALTH OF VIRGINIA	)	
	)	INDICTMENT FOR
vs.	)	
	)	CAPITAL MURDER
RICHARD LEE WHITLEY	)	

The Grand Jurors of the Commonwealth of Virginia, in and for the body of the County of Fairfax, and now attending the said Court at its November Term, 1980, charges that: On or about the 25th day of July, 1980, in the County of Fairfax, Richard Lee Whitley did willfully, deliberately, premeditatedly, and feloniously kill and murder Phebe C. Parsons while in the commission of a robbery while armed with a deadly weapon.

Va. Code Section 18.2-31(d)

A True Bill_____

No True Bill_____

_____

F O R E M A N

Witnesses subpoenaed, sworn and available to testify before the Grand Jury:

Off. A. P. Johnson, Fairfax County Police Dept.

Judgment and Commitment Order,
undated

FBB/kbb

V I R G I N I A:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

COMMONWEALTH OF VIRGINIA	)	CRIMINAL NUMBER 32737
VERSUS	)	INDICTMENT - Capital Murder
RICHARD LEE WHITLEY	)	

This 12th day of June, 1981, came the Commonwealth, by her Attorney, and the Defendant, RICHARD LEE WHITLEY, who stands convicted of a felony, to-wit: Capital Murder, being confined in jail was brought into Court and put to the bar of the Court in the custody of the Deputy Sheriff; also appeared Warren McLain and Ian Rodway, Co-Counsel for the Defendant.

Thereupon, the Court Reporter was sworn.

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, copies of which had previously been furnished to Counsel for the Defendant, Attorney for the Commonwealth and the Court. Counsel for the Defendant then advised the Court that he had discussed the report with the Defendant and the Defendant was fully advised of the contents thereof.

Whereupon, the accused and his Counsel were given the right to cross-examine the Probation Officer as to any matter contained in said report and to present any additional evidence as they desired to present. Whereupon, Counsel for the Defendant advised the Court of several corrections to be made to the report filed by the Probation Officer. The report of the Probation Officer, as amended, is filed herein and made a part of the record of this case.

Whereupon, the Attorney for the Commonwealth was given the opportunity to present evidence and elected not to do so.

Whereupon, the Court heard argument of Counsel.

Thereupon, it was demanded of him, RICHARD LEE WHITLEY, if anything he knew or had to say why the Court should not proceed to pass sentence and judgment upon him and nothing was offered or alleged in delay of judgment.

Whereupon, the Court, after presiding at both proceedings in this case and after independantly reviewing all of the evidence and hearing argument of Counsel, hereby finds that the sentence of death heretofore recommended by the Jury is appropriate and just.

It is therefore ADJUDGED and ORDERED that the Defendant, RICHARD LEE WHITLEY, die by electrocution in the electric chair within the confines of the State Penitentiary in Richmond, Virginia, on the 29th day of March, 1982.

Whereupon, the Court ORDERED that the Clerk of the Circuit Court cause the proceedings in this case to be transcribed and filed with the Clerk of the Circuit Court as expeditiously as practicable and further ORDERED that the Clerk of the Circuit Court compile the record in this case as provided in Rule 5:14 and transmit it to the Supreme Court of Virginia within ten (10) days of receipt of the said transcription for review by the Supreme Court of Virginia.

Warren McLain, Attorney at Law, is hereby appointed to represent the Defendant in the appeal of this case.

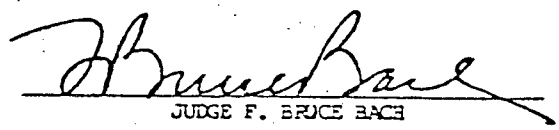
Warren McLain, Attorney at Law, who was heretofore appointed to represent the Defendant in this case is hereby allowed a fee of $ 2000.00

Ian Rodway, Attorney at Law, who was heretofore appointed to represent the Defendant in this case is hereby allowed a fee of $ 2000.00

The fee of the Court Reporter who recorded the evidence and incidents of trial in this case is hereby assessed as costs, as provided in Section 19.2-165 of the 1950 Code of Virginia, as amended.

The Court certifies that the Defendant was present during all stages of this trial.

The Defendant is hereby remanded to jail to await transportation to the Penitentiary.



JUDGE F. BRUCE BACH

Assignments of Error, filed July 31, 1981

IN THE SUPREME COURT OF VIRGINIA
AT RICHMOND

RICHARD LEE WHITLEY,	:	
Appellant;	:	
vs.	:	Record No. 811071
COMMONWEALTH OF VIRGINIA,	:	
Appellee.	:	

ASSIGNMENTS OF ERROR

1. The Virginia Capital Murder statute is unconstitutional on its face.

2. The Virginia Capital Murder statute is unconstitutional as applied to Mr. Whitley.

3. The trial court erred in permitting the introduction of, and comment upon, Commonwealth's photographic Exhibit #8.

4. The trial court erred in permitting comment by the Commonwealth upon the physical abuses inflicted upon the victim after her death.

5. The trial court erred in permitting the Commonwealth to reopen its direct examination of Officer Jackson without first seeking leave of court.

6. The trial court erred in admitting Mr. Whitley's statements.

7. The trial court erred in permitting the Commonwealth

to exceed the scope of cross-examination in its redirect examination of Investigator Sutherland.

8. The Commonwealth erred in asking redirect questions of Investigator Sutherland implying improprieties involving Mr. Whitley and his step-daughter.

9. The trial court erred by prejudging the merits of Mr. Whitley's motion to strike at the conclusion of the Commonwealth's case in chief, and in ruling on that motion without argument from the Commonwealth.

10. The trial court erred in denying Mr. Whitley's motion to strike on the issue of capital murder due to the total lack of evidence that Mr. Whitley formed an intent to steal prior to the killing.

11. The trial court erred in denying Mr. Whitley's motion to strike on the issue of capital murder due to a lack of evidence that the killing was premeditated.

12. The trial court erred in denying Mr. Whitley's proposed Instruction I.

13. The trial court erred in the manner in which it gave the instruction allocating the burden of proof.

14. The trial court erred in giving a confusing and inadequate instruction on the difference between capital and first degree murder.

15. The Commonwealth's Attorney erred in making improper and prejudicial closing arguments.

16. The Commonwealth's Attorney erred in arguing that all the jury needed to do was ask themselves, "could [Mr. Whitley] possibly have intended" to steal from the victim prior to killing her.

17. The Commonwealth's Attorney erred in arguing that he "waited in vain for counsel to give ... some reason that [Mr. Whitley] may have committed these brutalities, some reason he may have engaged in all of that violence before he stole this woman's property."

18. The trial court erred in submitting the case to the jury on the issue of capital murder insofar as the Commonwealth failed to prove that Mr. Whitley formed an intent to steal from the victim prior to killing her.

19. The trial court erred in submitting the case to the jury on the issue of capital murder insofar as the Commonwealth failed to prove that the killing was premeditated.

20. The trial court erred in failing to give an instruction that the Commonwealth must disprove all reasonable hypotheses of innocence.

21. The trial court erred in imposing the death penalty.

22. The trial court erred in refusing to set aside the sentence of death and impose a sentence of imprisonment for life.

23. The sentence of death was imposed under the influence of passion, prejudice and other arbitrary factors.

24. The sentence of death is excessive and disproportionate to the penalties imposed in similar cases.

16. The Commonwealth's Attorney erred in arguing that all the jury needed to do was ask themselves, "could [Mr. Whitley] possibly have intended" to steal from the victim prior to killing her.

17. The Commonwealth's Attorney erred in arguing that he "waited in vain for counsel to give ... some reason that [Mr. Whitley] may have committed these brutalities, some reason he may have engaged in all of that violence before he stole this woman's property."

18. The trial court erred in submitting the case to the jury on the issue of capital murder insofar as the Commonwealth failed to prove that Mr. Whitley formed an intent to steal from the victim prior to killing her.

19. The trial court erred in submitting the case to the jury on the issue of capital murder insofar as the Commonwealth failed to prove that the killing was premeditated.

20. The trial court erred in failing to give an instruction that the Commonwealth must disprove all reasonable hypotheses of innocence.

21. The trial court erred in imposing the death penalty.

22. The trial court erred in refusing to set aside the sentence of death and impose a sentence of imprisonment for life.

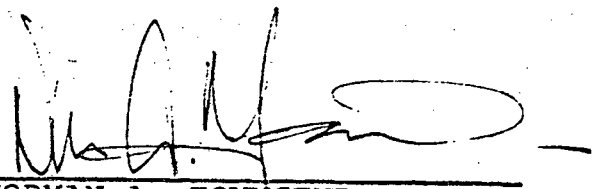
23. The sentence of death was imposed under the influence of passion, prejudice and other arbitrary factors.

24. The sentence of death is excessive and disproportionate to the penalties imposed in similar cases.

25. Imposition of the death penalty upon Mr. Whitley constitutes cruel and unusual punishment.

26. Any and all other errors which may appear to counsel upon a fuller reading of the transcripts and record of the case.

RICHARD LEE WHITLEY
By counsel



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KENDRICK, GEARHEART, AYLOR & LOCKOWANDT

By _____
WARREN W. McLAIN
Co-Counsel for Mr. Whitley

4015 Chain Bridge Road
P.O. Box 146
Fairfax, Virginia 22030

CERTIFICATE OF SERVICE

I hereby certify that one true copy of the foregoing Assignments Of Error was mailed, postage prepaid, to James E. Kulp, Esq., Deputy Assistant Attorney General, 830 East Main Street, 900 Fidelity Building, Richmond, Virginia, on this the _____ day of July, 1981.

_____
Co-Counsel for Mr. Whitley

Commonwealth's Exhibit #33, introduced 5/12/81

Fairfax County Police Department
Fairfax, Virginia
August 18, 1980

Case No. 02106689

This is a Statement of Facts taken from RICHARD LEE WHITLEY, whose address is 7720 Lisle Avenue, Falls Church, Virginia. The statement is taken reference to a murder which occurred on or about 7-25-80.

Interview Conducted by: Investigator J. C. Sutherland
Investigator A. P. Johnson
****

Q. For the record, would you give your name and date of birth, please?

A. Richard Lee Whitley. Date of birth is 5-6-46.

Q. Richard, do you understand the charges that have been placed against you?

A. Yes.

Q. Have your rights been explained to you, Richard?

A. Yes.

Q. Do you understand all your rights?

A. Yes.

Q. Do you voluntarily waive your rights now and give us statement to the murder that was committed on 7-25-80?

A. Yes.

Q. Rich, going back to the 25th day of July of 1980, can you give me a series of events that occurred, say from the time you got off work on that Friday on through to the following Sunday?

A. Well, I had been drinkin and went over next door and asked Miss Parsons if I could make a phone call, and got a hold of Gary Monahan the first time and he was suppose to come down and help me get my car back and he said he'd be there in about an hour or so, and when he didn't show up after two hours, I went over and tried again, and we were talkin about my wife and going to church and everything and the next thing I know she was dead.

Q. Okay, do you .... Where were you when you were talking to her about going to church and your wife and so forth?

A. In the living room by the front door.

Q. Okay, did you choke her?

A. Yes.

Q. What else happened?

A. Wound up cuttin her throat.

Q. Okay, before or after cutting her throat, did you put a rope around her neck also?

A. Yes.

Q. Okay, do you think she died right there on the living room floor?

A. Yes.

Q. Where did you cut her?

A. In the jugular vein.

Q. Cut her on the side of her neck?

A. Uh-huh.

Q. And what happened then?

A. I got scared and runned.

Q. Okay, before you ran though, what happened after you killed her in the living room? What happened in the house?

A. I ransacked it. I was lookin for a gun and stuck her in the bedroom, and I couldn't find a gun or anything. I found her car keys and went home and changed clothes and took the car and went.

Q. Whose car did you take?

A. Miss Parsons.

Q. When you took her from the living room over to the bedroom, how did you get her back there?

A. I picked her up under her arms and dragged her back there. I was tryin to put her on the bed. I just couldn't get her up there.

Q. So you left her on the floor?

A. Uh-huh.

Q. And when you left her, do you recall if she was on her back or stomach?

A. She was on her back as far as I know.

Q. Okay, did you ever turn any lights on in the room?

A. No.

Q. How could you see when you were ransacking the house?

A. I couldn't. I tripped over everything.

Q. What about her?

A. I tripped over her a few times, 'cause her house is identical to ours.

Q. Uh-huh.

A. Most of them are on that block. I didn't have too many troubles finding my way around.

Q. Do you know why you killed her?

A. No.

Q. Did you steal any money from her?

A. No.

Q. Richard, when we went back, we found a receipt where she had gone to the bank and cashed a $50.00 check. Do you recall if you took that money?

A. No, the only thing I remember taking was the credit cards and keys.

Q. Do you know which credit cards you took?

A. There was Master Charge and J. C. Penney. I think there was one for Wards or Sears and a VISA card. That's about it.

Q. Any gas credit cards?

A. An Exxon.

Q. Of all those credit cards, how many of them did you use?

A. Ah, Master Charge and Exxon.

Q. Did you use Ward's or Penney's or Hecht's?

A. No.

Q. Was there a Hecht's card in there also?

A. I don't think so.

Q. Okay, going back to when she was at the door, did you ever hit her?

A. No. I don't remember hittin her.

Q. All right, when you were choking her, did you choke her first?

A. Yes.

Q. What did you choke her with first - your hands or the rope or anything else?

A. I was using my hands.

Q. Did you fall all the way to the ground with - all the way to the floor with her still holding on to her.

A. I think so.

Q. Did she ever say anything to you?

A. I don't remember her sayin anything.

Q. Did you ever say anything to her?

A. I don't think so.

Q. Okay, when, she..., both of you fell to the floor, did you continue choking her?

A. Yeah.

Q. How long?

A. I'd say like a few minutes.

Q. Was she struggling with you, fighting with you, then?

A. No.

Q. Why didn't she fight back? Do you remember?

A. No.

Q. Did she wrestle with you at all?

A. I don't think so.

Q. Did she ever take her hands and try to push you off or grab you by the throat or by the hair?

A. No.

Q. None of that?

A. No.

Q. Okay, after you got her to the floor then, did you use the rope then or did you kind of choke her?

A. I used the rope.

Q. Okay and what...., did you have the knife in your hand or was it in your pocket?

A. It was in my pocket.

Q. Okay, so what happened?

A. I don't remember taking it out of my pocket but the first thing I know, I cut her throat.

Q. Was she alive then, Richard?

A. I don't think so.

Q. What kind of knife did you use?

A. Pocketknife.

Q. What kind was it?

A. Like a Boy's Scout knife.

Q. When the Tampa Police Department seized a knife from you, is that the knife you used?

A. Yeah.

Q. What did you do with the clothing and the rope?

A. I threw them off on a road, on a ramp.

Q. On the way to Florida?

A. Uh-huh.

Q. When you had her on the floor and cut her throat, do you remember removing her clothing?

A. No.

Q. Do you remember cutting her clothing or tearing them?

A. No.

Q. All right. Do you remember when you got her back to the bedroom, that she was clothed or unclothed? Do you remember that?

A. She didn't have anything on when she went to the back bedroom.

Q. That's after you took her back there?

A. Uh-huh.

Q. And do you remember if she was on her back?

A. Uh-huh.

Q. Or on her stomach. Do you remember that? Which one?

A. Pretty sure she was on her back.

Q. Did you have intercourse with her?

A. No.

Q. Either voluntary or unvoluntary?

A. No.

Q. Did you rape her?

A. No.

Q. Did you do anything else?

A. No.

Q. You don't remember an umbrella being there?

A. No.

Q. Did you beat her or anything with an umbrella that you remember?

A. No.

Q. Did you push an umbrella up her rectum?

A. No, I don't think so.

Q. After you ransacked the house, did you find anything else other than her car keys and credit cards?

A. No.

Q. How about the wallet? Did you take it?

A. No, I just took the credit cards out of it and put it back in her purse.

Q. What happened with the credit cards?

A. As far as I know, they were still in the car.

Q. Where is the car? Where did you abandon the car?

A. Okeechobee, Florida.

Q. Do you know what route you took to get to Okeechobee?

A. 95 to 41. 41 over to 24 and 24 down a side road. I think it was 70.

Q. When did you arrive in Florida?

A. 27th.

Q. Did you go directly to Tampa or did you stop anyplace in Florida before you stopped in Tampa?

A. Stopped at Tampa and used one credit card there and went on down into Okeechobee from there.

Q. Did you also use another credit card in Tampa on the way to Okeechobee?

A. One for gas.

Q. That's the only one you used?

A. Yeah.

Q. Okay, then you went to Okeechobee and abandoned the car down there? Where did you stay in Okeechobee?

A. I didn't. I left. I went back up to Tampa.

Q. So you left on the 27th, abandoned the car, and came back on the 27th.

A. Uh-huh.

Q. Okay, and after you got back to Okeechobee...., I mean back up to Tampa, did you use another credit card there?

A. No, I didn't have them then.

Q. All right. Master Charge or Visa, one of them called, a man said there was a charge on one of the cards for $118.00. Do you recall that charge?

A. It was for a stero and four cases of beer and two cartons of cigarettes.

Q. Where did you buy it at?

A. Albertsons.

Q. Was anyone with you then?

A. There was a hitchhiker with me.

Q. Male or female?

A. Male.

Q. Do you recall his name?

A. No.

Q. Did you give him the stero?

A. Yep.

Q. Did you have sex with him?

A. No.

Q. After you got back to Tampa then, the second trip, did you meet someone else there?

A. No.

Q. When did the Tampa Police Department arrest you?

A. On the 8th, I think.

Q. 8th of August?

A. Yeah.

Q. Did you give them any trouble?

A. No.

Q. Is there anything else that you can remember, Richard, that you haven't told us yet?

A. No.

Q. Did you kill Mrs. Parsons?

A. Yes.

Q. Do you know why?

A. No.

Q. Do you remember as you were killing her - did you feel grief? Did you feel sorry? Did you feel anything?

A. Felt terrible after I realized what happened.

Q. Did you ever attempt to call Rescue or the Police Department or anybody that you know?

A. No, I just got scared and runned.

Q. And took her car with you?

A. Yeah.

Q. Andy, do you want to ask some questions?

Q. Richard, why won't you tell us about the umbrella?

A. I don't know anything about it.

Q. What about the typewritter ribbon? What did you do with that?

A. As far as I know it's still in the house.

Q. Where did you get it at?

A. Beside the typewritter.

Q. Where did you take it to? What did you do with it?

A. It's still in the house as far as I know.

Q. Okay, after you took it out of the typewritter, where did you take it and what did you do with it before you left it in the house?

A. I don't remember taking it out of the bedroom. Think I threw it on the floor.

Q. Where on the floor?

A. Somewhere in the bedroom.

Q. Do you know which bedroom you left it in? The one Mrs. Parsons was in or the one in the back or the other one in the front?

A. The one with the typewritter in it. I think it was the second bedroom in front of the house.

Q. Did you pile all the clothes and boxes and so forth on Mrs. Parsons?

A. I remember throwin clothes out. I don't know where they went.

Q. Before you threw the clothes on top of her, do you remember doing anything to her?

A. I remember tripping over her a couple of times.

Q. When you took her in the bedroom and laid her on the floor, what did you do to her?

A. Nothin.

Q. Why did you take her to the bedroom then?

A. I don't know.

Q. How long were you in the house after you took her to the bedroom?

A. About ten minutes.

Q. How did you leave the house?

A. Back door.

Q. And then where did you go?

A. Over the fence to my house.

Q. What did you do after you got to your house?

A. Changed clothes, took a shower and left.

Q. And is this a true and correct statement to the best of your knowledge, Richard?

A. Yes.

Q. All right now. Has any threats or promises been made to you by me or Mr. Johnson?

A. No.

Q. All right, and you are giving this statement of your own freewill?

A. Yes.

RICHARD LEE WHITLEY

WITNESS:

WITNESS:

Statement Ended: 1405 hours, 8/16/80
Typist: Shirley Brahaney

Voir Dire Questioning: [T. 5/12/81
pp. 16,29-55.]

1 the jurors were satisfied during the deliberations
2 that the Defendant was guilty of capital murder,
3 and you were not, would you change your vote so
4 as not to be in the minority.
5 Would any of you change your vote merely
6 because the other members of the jury tended to feel
7 that the evidence supports the charge?
8 THE JURY: (No affirmative response.)
9 MR. MCLAIN: And, the Commonwealth Attorney,
10 during the trial of this case, will introduce
11 evidence, certain photographs of the victim, and an
12 autopsy report.
13 The fact that those items will come into
14 evidence, would that tend to sway your opinion one
15 way or another as to the actual commission or how
16 the technical question of how the murder was committed?
17 THE JURY: (No affirmative response.)
18 MR. MCLAIN: Would any of you have any
19 reasons, moral or philosophical why you would not sit
20 on the panel and review or see this evidence, and
21 evaluate it during your deliberations? Would
22 you have any initial objection to doing that for any
23 reason?

1 circumstances that might emerge during the course
2 of the proceedings?
3 MS. NOBLES: I think so.
4 THE COURT: Is there any objection to
5 excluding her?
6 MR. MCLAIN: No, Your Honor.
7 MR. HORAN: None, Your Honor.
8 THE COURT: Ms. Nobles, I appreciate your
9 answers. You're excused from this case, but you'll
10 have to report back to 219 and see if there are some
11 other cases. Don't discuss what went on in here.
12 (Whereupon, the juror was excused from the
13 panel.)
14 THE COURT: Hutchison.
15 Mr. Hutchison, as you heard, the charge
16 in this case is one of capital murder which if the
17 jury found beyond a reasonable doubt that the Defendant
18 was guilty of capital murder the punishment provided
19 by State Law is death or life imprisonment.
20 It would be up to the jury. Are you willing
21 to consider all of the penalties provided by State
22 Law?
23 MR. HUTCHISON: I know under my religious

1 conviction, an organization I belong to, we do not
2 believe in taking another life. Anything other
3 than that, yes.
4 THE COURT: Would you be irrevocably
5 committed before the trial has begun because of
6 your religious conviction or otherwise to vote
7 against the death penalty regardless of the facts
8 and circumstances that might emerge in the proceedings?
9 MR. HUTCHISON: As I stated, Your Honor,
10 I cannot take another life.
11 THE COURT: Are there any questions or
12 objections to excluding Mr. Hutchison?
13 MR. MCLAIN: No, Your Honor.
14 MR. HORAN: No objection.
15 THE COURT: I'll excuse you from this
16 case. Don't discuss with the other potential jurors
17 what went on.
18 If you go back to 219 there might be
19 another trial for you today.
20 (Whereupon, the juror was excused from the
21 panel.)
22 THE COURT: Brown.
23 Mr. Brown, as you know, being in here before,

1 the charge in this case is one of capital murder.

2 If the jury found the Defendant guilty

3 beyond a reasonable doubt of capital murder the

4 punishments provided by State Law are death or

5 life imprisonment. It would be up to the jury

6 to determine the punishment.

7 Are you willing to consider all of the

8 penalties provided by State Law?

9 MR. BROWN: I have problems with just

10 cutting of a life.

11 THE COURT: I want you to answer honestly.

12 MR. BROWN: I don't think I could consider

13 capital punishment.

14 THE COURT: Would you be irrevocably

15 committed before the trial was begun to vote

16 against the death penalty regardless of the facts

17 and circumstances that might come out during the

18 proceedings?

19 MR. BROWN: I'm not sure if there is anything

20 that some would -- could do that, I'd have his life

21 cut off.

22 MR. RODWAY: I'm sorry, I did not hear that.

23 The voice trailed off.

1 MR. BROWN: I'm not sure if there is any-
2 thing that some would -- that I could have his
3 life cut off.
4 THE COURT: Can you conceive of any
5 circumstance where you would vote for the death
6 penalty? In this case, perhaps?
7 MR. BROWN: No, the only thing I could
8 conceive is just that if it was that personal to me,
9 one of my -- a member of my family was killed.
10 THE COURT: Mr. Horan, do you have any
11 questions?
12 MR. HORAN: Mr. Brown, just so I understand
13 you. If you wound up in a point in the trial where
14 you found the Defendant guilty, and you only had two
15 choices, one would be life imprisonment, and the
16 other would be death; do I understand you to say that
17 you would always vote for life imprisonment rather
18 than death?
19 MR. BROWN: Yes, sir.
20 MR. HORAN: And, that would be true in every
21 case where you didn't know the people, where they
22 weren't friends of yours?
23 MR. BROWN: Yes, sir.

1 MR. HORAN: In this case, where you don't
2 know anybody if you only had those --
3 MR. BROWN: It seems too distant to me,
4 yes.
5 MR. HORAN: I guess, really, what it comes
6 down to, is can you conceive yourself ever voting
7 for death in a case like this where you don't know
8 anybody who's in the case?
9 MR. BROWN: I don't think so.
10 MR. HORAN: You say, you don't think so,
11 you really think you couldn't?
12 MR. BROWN: That's true.
13 THE COURT: Do you have any quetions?
14 MR. MCLAIN: No, Your Honor.
15 THE COURT: Any objection to excusing
16 him?
17 MR. MCLAIN: No, Your Honor.
18 THE COURT: Mr. Brown, you are excused
19 as a juror in this case. Don't discuss with any
20 other potential jurors, and they're out in the hall,
21 and back at 219, what's going on in here so far.
22 If you'll go back to 219 there might be
23 another case for you to sit on.

1 (Whereupon, the juror was excused from the
2 panel.)
3 THE COURT: Formichella.
4 You heard me say before, Mr. Formichella,
5 the charge here is one of capital murder. If you
6 found the Defendant, or the jury found the Defendant
7 guilty of capital murder beyond a reasonable doubt,
8 then, the two potential punishments would be either
9 life imprisonment or death.
10 Could you or are you willing to consider
11 all of the penalties, both of these penalties, provided
12 by State Law?
13 MR. FORMICHELLA: No.
14 THE COURT: Are you irrevocably committed
15 before the trial has begun to vote against the
16 death penalty regardless of the facts and circumstances
17 that might emerge during the course of these
18 proceedings?
19 MR. FORMICHELLA: Yes.
20 THE COURT: Any objection to excluding Mr.
21 Formichella?
22 MR. MCLAIN: No, Your Honor.
23 MR. HORAN: No.

1 THE COURT: I'll excuse you for this case,
2 Mr. Formichella. Don't discuss what's gone on in
3 here with any other jurors.
4 I'm going to send you back to 219. There
5 are potential jurors back there, so, just don't
6 discuss it. There may be another case for you in 219.
7 (Whereupon, the juror was excused from the
8 panel.)
9 THE COURT: I need five more. I propose
10 to call them in as a group.
11 We'll ask them general questions first.
12 They've heard the general questions before sending
13 them back. If we have any problems bring them in
14 one at a time.
15 If you would call the names loud so we
16 can have them sit over here.
17 THE BAILIFF: Terryl Paiste,
18 Randy Peiffer.
19 Karen Peterson.
20 Corneilia Pura.
21 Richard Solar.
22 THE COURT: You all have heard most of
23 the questions before.

1 (Whereupon, the alternate jurors were
2 sworn by the Clerk of the Court.)
3 THE COURT: I'm going to ask you all the
4 same general questions that were previously
5 asked, and the attorneys may have questions to ask
6 as well.
7 Are any of you related by blood or marriage
8 to the accused or to the person against whom this
9 alleged offense was committed.
10 THE JURY: (No affirmative response.)
11 THE COURT: Do any of you have any interest
12 in this trial or the outcome of this case?
13 THE JURY: (No affirmative response.)
14 THE COURT: Have any of you acquired any
15 information about the alleged offense or the
16 accused from the news media or any other source?
17 THE JURY: (No affirmative response.)
18 THE COURT: Have any of you expressed
19 or formed any opinion as to the guilt or innocence
20 of the accused?
21 THE JURY: (No affirmative response.)
22 THE COURT: Are you aware of any bias or
23 prejudice against either the Commonwealth of Virginia

1 or the accused?

2 THE JURY: (No affirmative response.)

3 THE COURT: Do any of you know of any

4 reason, whatsoever, why you could not give a

5 fair and impartial trial to the Commonwealth and

6 to the accused based solely on the law and the

7 evidence?

8 THE JURY: (No affirmative response.)

9 THE COURT: Do any of you have any opinion

10 as would prevent your convicting anyone of an offense

11 punishable with death?

12 THE JURY: (No affirmative response.)

13 THE COURT: Is there any of you who would

14 never, who never could vote to impose the death

15 penalty or who would refuse to even consider its

16 imposition in this case?

17 THE JURY: (No affirmative response.)

18 THE COURT: Mr. Horan, do you have any

19 questions?

20 MR. HORAN: I'm sorry, I didn't catch the

21 name of this lady.

22 THE JUROR: Corneilia Pura, P-u-r-a.

23 MR. HORAN: Did I understand you're Ms.

1 Paiste?

2 MS. PAISTE: Paiste, as in glue.

3 MR. HORAN: Now, you heard the earlier

4 questions.

5 I would ask you the same as I asked the

6 other jurors.

7 Is there anyone of you who has any moral

8 or religious or philosophical beliefs that would

9 prevent you from personally sitting in a jury box

10 and voting for capital punishment in a given case?

11 THE JURY: (No affirmative response.)

12 MR. HORAN: You all believe you could

13 personally do it if the facts warranted it in the

14 case?

15 THE JURY: (No affirmative response.)

16 MR. HORAN: I notice Mr. Peiffer, you are

17 with the F.B.I.?

18 MR. PEIFFER: Yes.

19 MR. HORAN: Are you an agent?

20 MR. PEIFFER: No, I'm just a clerk.

21 MR. HORAN: In the course of this trial we

22 will have a F.B.I. fingerprint expert presented as a

23 witness.

1 Would the fact that that witness was from
2 the F.B.I., would that cause you to give his
3 testimony more weight than otherwise, than you might
4 give to some other witness?
5 MR. PEIFFER: No, sir.
6 MR. HORAN: Would that cause you to have
7 any prejudice against the Defendant?
8 MR. PEIFFER: No, sir.
9 MR. HORAN: Because the F.B.I. man was
10 testifying?
11 MR. PEIFFER: No, not at all.
12 MR. HORAN: I have no further questions.
13 THE COURT: Mr. McLain?
14 MR. MCLAIN: Mr. Peiffer, in regard to the
15 last questions that Mr. Horan asked you about working
16 for the F.B.I., what, specifically, are your duties?
17 It says that you're a fingerprint examiner?
18 MR. PEIFFER: Yes.
19 MR. MCLAIN: What, specifically, do you do?
20 MR. PEIFFER: We look at fingerprints and
21 class them up according to the patterns for filing
22 purposes.
23 MR. MCLAIN: The extent of your duties, then,

1 does not consist of testifying as to the results
2 of fingerprint examinations on criminal trials?
3 MR. PEIFFER: No.
4 MR. MCLAIN: Mr. Horan asked you the fact
5 that he has a F.B.I. fingerprint expert that would
6 testify, that would not have any influence on
7 your decision?
8 MR. PEIFFER: Not at all.
9 MR. MCLAIN: Just a general question for
10 all of the members of this panel that's here.
11 Did you hear the earlier questions that
12 were asked concerning whether you had relatives
13 that were members of law enforcement agencies and
14 so on?
15 A JUROR: I do.
16 MR. MCLAIN: What relative is it?
17 THE JUROR: My son-in-law is a County
18 Policeman.
19 MR. MCLAIN: With Fairfax County.
20 THE JUROR: Yes.
21 MR. MCLAIN: Your name?
22 THE JUROR: Ms. Pura, P-u-r-a.
23 MR. MCLAIN: The fact that your son is a

1 policeman in Fairfax County, would that have any
2 influence on your decisions and deliberations?
3 MS. PURA: No, I don't see why it should.
4 It does not relate to the case.
5 MR. MCLAIN: Ms. Pura, or anyone else have
6 relatives that are involved in law enforcement?
7 THE JURY: (No affirmative response.)
8 MR. MCLAIN: Have any of the members of
9 this panel ever been a victim of a violent crime or
10 close friends or relatives?
11 THE JURY: (No affirmative response.)
12 MR. MCLAIN: Now, the fact that you heard
13 the indictments read, and I've asked the other
14 members of the jury panel these questions.
15 The Defendant, in this indictment, is
16 charged with the crime of capital murder. Do you
17 all understand that the indictment is not evidence
18 against the Defendant, that it's only, merely an
19 allegation, and that it takes proof beyond a
20 reasonable doubt to convict him of that?
21 THE JURY: (No negative response.)
22 MR. MCLAIN: You also understand that he's
23 presumed to be innocent until proven guilty?

1 THE JURY: (No negative response.)

2 MR. MCLAIN: And, the presumption of

3 innocence follows him all the way through the case

4 until the very end when you make your deliberations.

5 THE JURY: (No negative response.)

6 MR. MCLAIN: Do any of the members of

7 the panel require the Defendant to testify to

8 prove his innocense?

9 THE JURY: (No affirmative response.)

10 MR. MCLAIN: You understand he has a con-

11 stitutional right that he can remain silent?

12 THE JURY: (No affirmative response.)

13 MR. MCLAIN: If the majority of you were

14 satisfied that the Defendant was guilty of capital

15 murder, and you were not, would that fact, the fact that

16 other members of the panel have any influence in

17 your decision?

18 THE JURY: (No affirmative response.)

19 MR. MCLAIN: If you believe he was innocent.

20 Would you vote for an acquittal if not all

21 of the elements were proved in the case after being

22 instructed on the law and the evidence?

23 THE JURY: (No affirmative response.)

1 A JUROR: Say that again?

2 MR. MCLAIN: Assuming that not all of the
3 elements at a later point in time of the trial,
4 you'll be advised as to what the elements of the
5 crime are in order to convict the Defendant, if
6 some of those items were missing, would you be able
7 to vote for an acquittal if not all -- say, if one
8 element was missing.

9 THE COURT: Do you understand what element
10 means?

11 Is your question, Mr. McLain, that if
12 the Commonwealth didn't prove the case beyond a
13 reasonable doubt would he be able to acquit? Is
14 that the question?

15 MR. MCLAIN: Yes, that's the question.

16 The element such as the fact that the
17 murder was committed, that he committed it, and so on.

18 Have any of you all heard about this case
19 through the media, newspapers or television or
20 any other source?

21 THE JURY: (No affirmative response.)

22 MR. MCLAIN: I don't believe I have any
23 further questions.

1 THE COURT: Are these five panel members
2 satisfactory?
3 MR. HORAN: Yes, Your Honor.
4 MR. MCLAIN: Yes, Your Honor.
5 THE COURT: Let me ask the attorneys, I'm
6 going to bring the others in. Is there any
7 particular way you want me to have these five sit
8 to assist you who they are?
9 MR. RODWAY: Could I ask the Court to
10 make individual inquiry of one further juror back
11 there?
12 THE COURT: I will.
13 MR. RODWAY: That would be Mrs. Louise
14 Page.
15 THE COURT: If you five jurors will go back
16 with the other jurors. Do not discuss this case
17 or anything that we have asked you with them.
18 MR. RODWAY: Louise Page, Your Honor.
19 THE COURT: What do you want me to inquire
20 about? The same question?
21 MR. RODWAY: Yes, Your HOnor.
22 THE COURT: Louise Page.
23 Mrs. Page, you heard me say earlier that

1 the charge in this case is capital murder.

2 If the Commonwealth proved this beyond

3 a reasonable doubt to the jury, then, there are

4 two possible penalties, life imprisonment or

5 death, and it would be up to the jury to pick or

6 decide which one was the appropriate one.

7 Are you willing to consider all the

8 penalties, each of these penalties provided by

9 State Law.

10 MRS. PAGE: It depends.

11 THE COURT: Pardon me?

12 MRS. PAGE: It depends on the evidence.

13 THE COURT: In other words, if the evidence

14 proves that, you would be willing to consider the

15 death penalty?

16 MRS. PAGE: Yes.

17 MR. HORAN: Mrs. Page, if you got to the

18 point where you were trying to sentence the Defendant,

19 if you already found him guilty, and you're trying

20 to sentence him and you only had two choices one

21 would be death or the other would be life imprisonment,

22 which one would you be inclined to vote for?

23 MRS. PAGE: Life imprisonment.

1 MR. HORAN: If you had two choices, again,
2 life or death, can you conceive of any situation
3 where you, you personally, where you would vote
4 for death rather than life?
5 MRS. PAGE: No.
6 MR. HORAN: Would you always vote for life
7 if that were your two choices?
8 MRS. PAGE: It depends -- I'd say it
9 depends on the evidence.
10 MRS. HORAN: Is there some particular
11 kind of case where you think you could vote for
12 death?
13 MRS. PAGE: If they're found guilty
14 and it's --
15 MR. HORAN: If they're found guilty?
16 MRS. PAGE: Yes, I mean if it's really -- if
17 they're guilty.
18 MR. HORAN: I'm sorry, I didn't understand
19 that, ma'am.
20 MRS. PAGE: I don't know.
21 MR. HORAN: Do I understand you to say that
22 there may be cases where, again, where you have two
23 choices, life or death, are you saying there may be

1 some cases where you would vote for death?

2 MRS. PAGE: I think so.

3 MR. HORAN: If you had the choice you would

4 vote for death?

5 MRS. PAGE: If I had to.

6 MR. HORAN: I have no further questions.

7 THE COURT: Mr. McLain?

8 MR. MCLAIN: Mrs. Page, taking the facts

9 in this case involved, the matter that a widow is

10 a victim of this crime, I understand that you're

11 a widow; is that correct?

12 MRS. PAGE: Yes, sir.

13 MR. MCLAIN: Would that have any influence

14 one way or another as to how you made up your mind?

15 MRS. PAGE: No.

16 MR. MCLAIN: The fact that, I believe,

17 you said you probably would consider a life sentence,

18 would you maintain that position if the other members

19 of the panel, for example, tried to persuade you

20 that the death penalty should be imposed or --

21 MRS. PAGE: I don't think I could be

22 persuaded.

23 MR. MCLAIN: You'd keep your own independent

1 decision?

2 MRS. PAGE: Yes.

3 MR. MCLAIN: I don't believe I have any

4 further questions.

5 THE COURT: What I will do if this is

6 satisfactory with the attorneys is just call the

7 jurors one at a time so you all can keep track of

8 them.

9 Mrs. Page, just have a seat on the back

10 row on the end.

11 MR. HORAN: Then, you're going to go to

12 one and go through all the way through to the alter-

13 nates?

14 THE COURT: (Nodding in the affirmative.)

15 THE BAILIFF: Ann Page.

16 Francis Greenwell.

17 Anna Greenway.

18 Oliver Norsworthy.

19 Marion Graham.

20 James Sutherland.

21 John Mullinax.

22 Charles Matheson.

23 Henrietta Flanders.

1 Lori Fisher.

2 Pamela Humphrey.

3 Eugene Clark.

4 Carol Stauffer.

5 Florence Callahan.

6 Terryl Paiste.

7 Randy Peiffer.

8 Karen Peterson.

9 Corneilia Pura.

10 Richard Solar.

11 THE COURT: Is the panel satisfactory to

12 the Commonwealth?

13 MR. HORAN: The panel is satisfactory to

14 the Commonwealth.

15 THE COURT: Is the panel satisfactory to

16 the Defendant?

17 MR. MCLAIN: Yes, Your Honor.

18 THE COURT: Strikes.

19 (Whereupon, the jury panel was selected.)

20 THE CLERK: When I call your name please

21 have a seat in the rear of the courtroom.

22 Corneilia Pura.

23 Florence Callahan.

1 Carol Stauffer.

2 Charles Matheson.

3 Marion Graham.

4 Francis Greenwell.

5 Louise Page.

6 Ann Page.

7 Please answer when I call you name.

8 Anna Greenway.

9 MS. GREENWAY: Here.

10 THE CLERK: Oliver Norsworthy.

11 MR. NORSWORTHY: Here.

12 THE CLERK: James Sutherland.

13 MR. SUTHERLAND: Here.

14 THE CLERK: John Mullinax.

15 MR. MULLINAX: Here.

16 THE CLERK: Henrietta Flanders.

17 MS. FLANDERS: Here.

18 THE CLERK: Lori Fisher.

19 MS. FISHER: Here.

20 THE CLERK: Pamela Humphrey.

21 MS. HUMPHREY: Here.

22 THE CLERK: Eugene Clark.

23 MR. CLARK: Here.

1 THE CLERK: Terryl Paiste.

2 MS. PAISTE: Here.

3 THE CLERK: Randy Peiffer.

4 MR. PEIFFER: Here.

5 THE CLERK: Karen Peterson.

6 MS. PETERSON: Here.

7 THE CLERK: Richard Solar.

8 MR. SOLAR: Here.

9 (Whereupon, the jury panel was sworn by

10 the Clerk of the Court.)

11 THE COURT: I'm going to give the jury the

12 preliminary instructions, and recess for 15 minutes.

13 Then, we'll do the opening statements.

14 MR. RODWAY: If Your Honor please, also,

15 during -- while the jury is out I would like to address

16 the Court.

17 THE COURT: Is there a motion for a rule

18 on witnesses?

19 MR. MCLAIN: Yes, Your Honor.

20 THE COURT: Any witnesses in this case I'm

21 going to ask you to go outside with the Sheriff.

22 He'll show you where to remain.

23 You're directed not to discuss your

1 testimony with one another or with anyone else.

2 The Sheriff will come get you when it's

3 your turn to testify.

4 I'll ask the attorneys that if any other

5 witnesses or potential witnesses come in the court-

6 room to let me know, and I'll exclude them as well.

7 Ladies and Gentlemen, most of you have

8 served on juries before. It's important that you

9 hear what goes on. If you don't understand me or

10 one of the lawyers or, particularly, a witness or

11 you can't hear what's going on just raise your hand

12 and I will have them raise their voice or repeat

13 what they said.

14 Faithful performance by you of your duties

15 is vital to the administration of justice. You

16 must not be influenced in any degree by any personal

17 feeling or sympathy for or prejudice against either

18 party to this suit, for each party, the Commonwealth

19 and the Defendant, are entitled to the same fair

20 and impartial consideration by you.

21 The law applicable to this suit is given

22 in these instructions that I'm now reading, and in

23 other instructions that you will receive at the

1 close of all the evidence in the case.

2 It's your duty to follow these instructions.

3 It's your duty to determine the facts and to determine

4 them from the evidence, and the reasonable inferences

5 arising from that evidence.

6 In doing so, you must not indulge in guess-

7 work or in speculation.

8 The evidence which you will consider will

9 consist of the testimony of witnesses and exhibits

10 admitted into evidence.

11 The term witness means anyone who testifies

12 in person. The admission of the evidence by the

13 Court is governed by rules of law.

14 From time to time it probably will be the

15 duty of the three attorneys, in this case, to make

16 certain objections to evidence.

17 My duty as the Judge is to rule on these

18 objections, and decide whether or not you can consider

19 evidence.

20 Don't concern yourself with these objections.

21 Don't consider evidence or exhibits to which an ob-

22 jection was sustained or which I've ordered stricken.

23 Now, shortly we'll hear the opening statements

1 and at the end of the case, the closing arguments of
2 the lawyers.
3 These are intended to help you in under-
4 standing the evidence, and in applying the law, but
5 these arguments are not, themselves, evidence in
6 this case.
7 No statement, ruling or remark which, I,
8 as the Judge, might make during the course of this
9 trial is intended, in any way, to indicate to you
10 what my opinion is as to what the facts are.
11 You, alone, are to determine the facts. In
12 this determination you, alone, must decide upon the
13 believability of the evidence, its weight and its
14 value.
15 In considering the weight and value of
16 the testimony of any witness you may take into
17 consideration the appearance, the attitude and behavior
18 of the witness. The interest of the witness in the
19 outcome of the suit, the relation of the witness to
20 any party to the suit, the inclination of the witness
21 to speak truthfully or not. The probability or im-
22 probability of the witness's statements, and any
23 other facts or circumstances that's in evidence.

1 Thus, you, the jury, may give the testimony
2 of any witness just such weight and value as you
3 believe the testimony of that witness is entitled
4 to receive.
5 Until the case is submitted to you for your
6 deliberations, after the close of all the evidence,
7 and you've been instructed don't discuss this case
8 with anyone. Don't remain within the hearing of
9 anyone discussing the case.
10 I don't intend to sequester you all in any
11 way. You'll be free to eat in the cafeteria or other
12 restaurants.
13 When you go home at night, if it takes more
14 than one day to try this case, be very careful
15 that if you're sitting in a restaurant or cafeteria
16 next to someone who may not know you're a juror.
17 If you hear any discussion of this case at all get up
18 and move somewhere else.
19 If you go home at night or during a luncheon
20 recess it's possible that there would be some publicity
21 about this case in the newspaper. It's possible it
22 might be on radio or television. Absolutely, avoid
23 any contact with all, with any newspaper, radio,

Jury Instruction I

INSTRUCTION NO. 1

The defendant is charged with the crime of grand larceny, The Commonwealth must prove beyond a reasonable doubt each of the following elements of that crime:

1. That the defendant took credit cards and automobile keys belonging to Phoebe Parsons and carried it away; and
2. That the taking was against the will and without the consent of the owner; and
3. That the taking was with the intent to steal; and
4. That the property taken was worth $200.00 or more.

If you find 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 and fix his punishment at:

1. A term of imprisonment of not less than one (1) nor more than twenty (20) years; or
2. Confinement in jail for a period not exceeding twelve (12) months; or
3. A fine of not more than $1,000.00; or
4. Confinement in jail for a period not exceeding twelve (12) months and a fine of not more than $1,000.00.

If you find that the Commonwealth has failed to prove beyond a reasonable doubt any one or more of the above elements of the offense, then you shall find the defendant not guilty of grand larceny.

Argument of Oral Defense Motion *In Limine*: [T. 5/12/81, pp. 59-61.]

1 in the sound discretion of the trial court and regardless
2 of what you call this offense, what kind of murder it is,
3 one of the issues in determining whether it is murder
4 is the issue of malice.
5 I submit to Your Honor that the brutality
6 involved in this case shows malice.
7 Now, Mr. Rodway, I wasn't clear; are you
8 objecting to that picture?
9 MR. RODWAY: No, sir.
10 MR. HORAN: So, it's just one picture we're
11 talking about. Do you have any objection to my showing
12 it to His Honor?
13 MR. RODWAY: No.
14 MR. HORAN: That's the photograph we're talking
15 about, this woman was found underneath a pile of blankets
16 and clothes and everything in the bedroom. When the
17 detective uncovered that pile he found the woman in that
18 position. That's the only photograph I would show. I
19 wouldn't get into the other photographs of this woman,
20 just that one.
21 THE COURT: Let me mark this as Commonwealth
22 Exhibit No. 1 so we'll know.
23 MR. HORAN: Your Honor, could you save the

1 numbering on that until we see what we do with it so
2 it will be in order. I was going to give --
3 THE COURT: I'll give it any number, but as
4 far as the record is concerned they have no way to know
5 in the event this case is appealed.
6 MR. HORAN: That would be No. 8, Your Honor.
7 THE COURT: Would you mark this as Commonwealth's
8 No. 8.
9 Go ahead, I'm sorry.
10 (The photograph referred to
11 above was marked Commonwealth
12 Exhibit No. 8, for identification.)
13 MR. HORAN: Your Honor, of course that is
14 malice and it's tied into malice. In addition, when the
15 pathologist finally testifies the pathologist is going
16 to testify to what he finds, what his physical findings
17 are with regard to this victim.
18 He's going to testify to them, and I submit
19 as rightly he should. It all bears on the issue of
20 what her physical condition is when he looks at her.
21 The Supreme Court has said many times and I'll
22 paraphrase them, that a defendant can't complain about
23 the fact that a jury is allowed to see his victim, the

Excerpts from testimony of Jean Durgan: [T. 5/12/81, pp. 70-1, 73, 76-8.]

1 way he left that victim. If it otherwise has some
2 probative value, and I submit in this case it has
3 probative value on the issue of malice.
4 MR. RODWAY: Your Honor please, it does not
5 because it in no way was a contributing factor to the
6 murder. It was, if Your Honor please, apparently based
7 upon the statement that the Defendant gave in after fact.
8 Her throat was cut and she was strangled to death and
9 those umbrellas had nothing to do with the maliciousness
10 that contributed to the murder, none whatsoever.
11 THE COURT: Objection overruled. Mr. Rodway,
12 I don't find the picture to be all inflammatory. It's
13 a black and white picture. It seems to me that it would
14 go towards his state of mind, but I will observe the
15 right after I hear all the evidence that if this happened
16 hours later or days later.
17 MR. RODWAY: No, sir, it didn't.
18 THE COURT: I, of course, would exclude it if
19 this happened contemporaneously to the murder. I think
20 it would go to the defendant's state of mind. It's
21 admissible.
22 MR. RODWAY: All right, note our exception.
23 (Brief recess.)

1 A Jean Durgan, 308 George Street, Vienna, Virginia.
2 Q Now, Mrs. Durgan, you'll have to keep your
3 voice up so the Jurors down at this end can hear you.
4 What was your relationship to Phebe Parsons?
5 A She's my mother.
6 Q Directing your attention to the 25th day of
7 July, Friday the 25th of July, 1980, did you have occasion
8 to be in her home at 7718 Lisle Avenue in Fairfax County?
9 A Yes, I did.
10 Q What was the reason for your being there on
11 that day?
12 A My family had dinner with her that evening.
13 Q Who was present at dinner?
14 A My husband, my son, and my daughter and my
15 mother, and myself.
16 Q What time did you arrive at the home?
17 A I think it was about 6:00 o'clock p.m.
18 Q You had dinner there with her?
19 A Yes.
20 Q Did anybody, at that time, on the 25th of July,
21 did anyone live in the home with her?
22 A No, sir.
23 Q How about your father?

1 A He is deceased.

2 Q Approximately, what time did you leave on the

3 night of the 25th?

4 A Approximately, 8:00 p.m.

5 Q Were you aware at this time of any plans she

6 might have had to be away for the weekend?

7 A No, sir.

8 Q Did you expect her to be there all weekend?

9 A Yes, sir.

10 Q Did you ever see your mother alive again after

11 the night of the 25th of July?

12 A No, sir.

13 Q Now, when you left on that night was anybody

14 there other than her, as far as you know?

15 A No, sir.

16 Q Did there come a time when you qualified to

17 administer your mother's estate?

18 A Yes.

19 Q It was one of your duties, the accumulation of

20 assets and payment of debts?

21 A That's correct.

22 Q I show you this document which has been marked

23 Commonwealth's Exhibit No. 1 for identification, and ask

1 (The item referred to above
2 was marked Commonwealth's Exhibit
3 No. 1, for identification and
4 received in evidence.)
5 THE COURT: Let me say to the Jurors, these
6 items of evidence, you'll have an opportunity to pass
7 around when you go to the jury room to consider your
8 verdict. You will have all of the items to study as long
9 as you want. It's also important that you listen to what's
10 going on. Go ahead and pass it around and look at them
11 now.
12 (The item referred to above
13 was marked Commonwealth's Exhibit
14 No. 2, for identification.)
15 BY MR. HORAN:
16 Q I show you this item that is marked Commonwealth's
17 No. 2 for identication, and ask you can you identify that?
18 A Yes, sir.
19 Q Would you tell the Jury what that is?
20 A This is my mother's checkbook.
21 Q When and where did you find that?
22 A In her purse on July 28, the day she was found.
23 MR. MCLAIN: I'm sorry, I didn't hear the last

1 wallet?

2 A In her purse.

3 Q Was the purse in the house?

4 A Yes, sir.

5 Q You found that?

6 A Yes.

7 Q Did your mother have an automobile?

8 A Yes, sir, she did.

9 Q What kind of automobile was it?

10 A It was a '78 Volkswagen Rabbit, green.

11 MR. HORAN: I have no further questions, Your

12 Honor.

13 THE COURT: Cross examination.

14 CROSS EXAMINATION

15 BY MR. MCLAIN:

16 Q Miss Parsons,I know this is difficult for you,

17 had you met Mr. Whitley prior to the 25th of July?

18 A I never met Mr. Whitley.

19 Q You never met him before?

20 A No, sir.

21 Q But, I believe that you testified that you

22 were aware that Mr. Whitley had painted your mother's

23 house?

1 A That's correct.

2 Q That's with check stub number 804, that was

3 for the payment for him doing that?

4 A Yes, sir.

5 Q Were you aware of any other things that Mr.

6 Whitley had done around the house such as painting,

7 prior to the 25th of July that your mother may have told

8 you about?

9 A The painting job, and then there was a rotten

10 piece of wood on her back step, and I believe he may have

11 assisted in the repair of that.

12 Q So, you had never personally met Mr. Whitley

13 before that date?

14 A No, sir.

15 Q Have you ever met his wife or his child that

16 lived with him next door?

17 A No, sir.

18 Q Now, I believe you also testified on direct

19 examination when Mr. Horan asked you, that you were called

20 by your sister; is that correct?

21 A Yes, sir.

22 Q And, you said that was approximately 2:00 o'clock

23 on the 28th?

1 A That's right.

2 Q And that was a Monday?

3 A Yes.

4 Q I believe you also testified that you searched

5 for your mother's wallet?

6 A Yes.

7 Q Do you know what type of wallet it was?

8 A I believe it was a brown leather type.

9 Q Do you recall whether or not she carried this

10 wallet in her purse?

11 A Yes.

12 Q Usually when she left the house she would

13 carry it in her purse?

14 A Yes.

15 Q I believe you said you also searched the house

16 for the purse; is that correct?

17 A Yes.

18 Q And, where did you find the purse?

19 A On a hook in the kitchen where it was normally

20 kept.

21 A And, this hook that's in the kitchen, is it

22 near the rear door of the house in the kitchen, the back

23 door?

Excerpts from testimony of Susan Parsons: [T. 5/12/81, pp. 80-3, 87.]

1 Whereupon,

2 SUSAN PARSONS

3 a witness, was called for examination on behalf of the

4 Commonwealth, and, after having been duly sworn by the

5 Clerk of the Court, was examined and testified as follows:

6 DIRECT EXAMINATION

7 BY MR. HORAN:

8 Q State your full name, please?

9 A Susan Parsons.

10 Q Where do you live, Susan?

11 A Williamsburg, Virginia.

12 Q Directing your attention to the afternoon of

13 Monday, July 28, did you have occasion to go to 7718 Lisle

14 Avenue in Fairfax County?

15 A Yes, sir.

16 Q What was the reason for your going there on that

17 day?

18 A I was returning to my mother's house after

19 visiting in Williamsburg and intended to go live there

20 for a time with her.

21 Q Did your mother have an automobile?

22 A Yes, sir.

23 Q What kind of car was that?

1 A It's a '78 VW Rabbit.

2 Q What color was it?

3 A Light green.

4 Q When you arrived on the afternoon of the 28th,

5 was your mother's car there?

6 A No, sir.

7 Q Did that surprise you at all?

8 A Yes, sir, it did.

9 Q Why was that?

10 A Because she knew I was coming home that day, and

11 I would have expected her to have tried to have been there

12 when I got there.

13 Q Did you have a key to the house?

14 A Yes, sir.

15 Q Did you in fact enter the house on the afternoon

16 of the 28th?

17 A Yes, sir.

18 Q Will you tell the Jury, and keep your voice up,

19 so they can all hear you, would you tell the Jury what you

20 found when you first entered the home?

21 A Okay. After I opened the door I turned the

22 handle and tried to push the door open and the rug was

23 scuffed up or something. I had trouble getting the door

1 opened. So, I kind of squeezed in. I peered across
2 the room and there was papers all over the floor, and
3 there was a lamp that was kind of knocked over. Furniture
4 seemed to be slightly out of place. All sorts of stuff,
5 magazines and papers were on the floor across the room.
6 Do you want me to continue?
7 Q (Nodding in the affirmative.)
8 A So, I went into the living room, and I sat down
9 the suit cases, and the things that I was carrying, and
10 I walked on through the living room, through the dining
11 room to the kitchen and looked in there, came back through
12 the living room and went down the hallway, and I went
13 past the first room on the right in the hallway.
14 I noticed there was a lot of stains on the
15 rug and stuff. In the first room on the right I saw this
16 huge pile of junk on the floor. It was clothes and
17 boxes and all sorts of stuff, and I kind of looked at
18 that and went on.
19 I went to the bedroom at the end of the house
20 on the right, looked in there, since that had been my
21 mother's bedroom. I noticed a lot of clothing on the
22 floor and the bureau had been messed up, and there was
23 the bedspread was dragged on the floor part way. There was

1 a fan that was still blowing near the bed, and that was
2 still operating. So, I went to the other bedroom in the
3 house and looked in there again. There were a few things
4 knocked over. There was an iron on the floor and some
5 things like that that were just out of place. So, I
6 went back to the phone which was in the hallway and just
7 outside the doorway of the first bedroom and called my
8 sister to see if she knew what was going on over here,
9 and when she didn't I hung up with her. I figured by
10 then, I began to smell the odor from the body, and so
11 I headed back down the hall to my mother's room thinking
12 I should look there, but I noticed that the smell was
13 getting less, so I turned around and came back to the
14 place where the telephone was right in the doorway of the
15 room, stood there looking until I saw a foot or the lower
16 part of a leg from the knee down, kind of sticking up
17 out of the pile of stuff on the floor, and then I called
18 the police.
19 I was right next to the phone. I could pick
20 it up and dial a number on a little red tag that was on
21 there that said emergency, and stood there until the
22 police arrived out front, and I went back out to the
23 front step and met the police there.

1 Q It was your intention to live with your mother
2 for some time?
3 A Yes, sir.
4 Q Now, I believe you testified on direct
5 examination when Mr. Horan asked you, that you did have
6 a key to the house?
7 A Yes, sir.
8 Q And, I presume that you entered through the
9 front door of the house?
10 A Yes, sir.
11 Q And, I also presume that the door was locked?
12 A There was no way of knowing that, sir, for me
13 to know that.
14 Q But, you did stick the key in the door and
15 turn it and entered the house that way?
16 A Yes, sir.
17 Q At the time you were in the house had you seen
18 any evidence of a breaking and entering in any way? Had
19 the door appeared to be forced or split in any manner?
20 Did you see any broken windows or anything?
21 A No, sir.
22 Q And, I believe you testified that when you first
23 came in the house you walked from the front door through

Excerpts from testimony of Dr. James C. Beyer: [T. 5/12/81, pp. 90-7.]

1 MR. RODWAY: We'll stipulate as to the Doctor's
2 qualifications.
3 THE COURT: Thank you.
4 MR. HORAN: You're willing to stipulate he's
5 an expert in the field of pathology?
6 MR. RODWAY: There's no question about it.
7 BY MR. HORAN:
8 Q Dr. Beyer, directing your attention to the
9 29th day of July, 1980, did you have occasion to perform
10 an autopsy on one, Phebe C. Parsons?
11 A Yes, this was conducted on that date at 7:30
12 a.m. in my morgue in Fairfax County Hospital.
13 Q Who else was present at the autopsy?
14 A Investigator Sutherland and Officer Johnson
15 of the Fairfax County Police Department.
16 Q Will you tell the Jury what your physical
17 findings were with regard to the body of Mrs. Parsons?
18 A The body was unclothed. There was evidence of
19 advanced post-mortem decomposition with a greenish color
20 to the body, skin slipage, extensive gas formation.
21 There was also a one-half inch laceration or
22 tear in the skin above the right eyebrow. There were
23 some bruises or contusions on both the right and left

1 back of the chest.

2 In addition, there were small abrasions over

3 the right elbow area. In addition to these external

4 injuries, there was evidence of an incised or a slash

5 type wound which ran from, close to the mid line over

6 the left side of her neck all the way to the midline to

7 the back of her neck. (Indicating.)

8 This wound measured four and three quarter

9 inches in length. It gaped at two inches, and it involved

10 two of the major veins in the left side of her neck.

11 These were severed.

12 In addition to these injuries, there was

13 evidence of skin abrasions, typical of a ligature mark,

14 most marked on the right side of her neck.

15 Also, below this gash wound on the left side

16 of her neck, and there were ligature marks across the

17 back of her neck. These were the major injuries that

18 were present on the body.

19 Q Doctor, would you show the Jury where that

20 knife slash was on her neck?

21 A It was on the left side of her neck starting

22 one inch to the left of this anterior midline, and

23 extended backward to the midline in the back of her

1 neck. So, it occupied this area.

2 Q Did you consider that to be a deep wound or

3 shallow wound?

4 A This had deep penetration.

5 Q Now, you mention the ligature mark. Do you

6 have an opinion as to what can cause a ligature mark on

7 one's neck?

8 A Any object such as a rope, band placed around

9 the neck would produce such marks on the neck.

10 Q Was the ligature mark continuous around the

11 neck?

12 A It was not well identified on the left side of

13 her neck except below the wounds. However, it could have

14 been continuous because of the state of decomposition

15 I could not identify it as such.

16 Q Do you have an opinion, Doctor, based upon

17 reasonable medical certainty as to the cause of death

18 of Phebe Parsons?

19 A I concluded that there were two entities which

20 could have caused her death, one being the size of her

21 wounds of the left neck. The other being strangulation

22 of ligature.

23 MR. HORAN: Your Honor, I would like to offer

1 into evidence -- this number is out of sequence. It
2 would be after the 13, 14 pursuant to 19.2-188. I would
3 offer this into evidence, the report of investigation
4 by the Medical Examiner and report of autopsy.
5 THE COURT: Any objection?
6 MR. RODWAY: No objection.
7 THE COURT: I receive that as Commonwealth's
8 Exhibit No. 14.
9 (The document referred to above
10 was marked Commonwealth Exhibit
11 No. 14, for identification and
12 received in evidence.)
13 CROSS EXAMINATION
14 BY MR. RODWAY:
15 Q Dr. Beyer, was there any way, sir, for you to
16 tell which had occurred first, the strangulation?
17 A No, sir. There was no way that I could determine
18 which had been the first event.
19 Q And, Dr. Beyer, from a viewpoint of your
20 conducting an autopsy, was there any evidence in the
21 autopsy of the body as to the effect of the ligature,
22 strangulation?
23 A No, the state of decomposition had precluded

1 my making any identification of hemorrhage in the
2 underlying tissues, but many times mere compression of
3 the neck by ligature doesn't leave much in the way of
4 tissue damage. I did not identify in this case all
5 structures, such as a voice box were intact.
6 Q Dr. Beyer, I believe the autopsy report indicates
7 that you found on one of Mrs. Parsons' fingers a gold
8 band with white stones in it; is that right?
9 A On the fourth finger of her right hand there
10 was a thin gold band with white stones, yes, sir.
11 MR. RODWAY: Thank you, sir. No further
12 questions.
13 MR. HORAN: No further questions.
14 THE COURT: May he be excused as a witness?
15 MR. RODWAY: Yes, sir.
16 MR. HORAN: Yes.
17 THE COURT: Thank you for testifying, Doctor.
18 You are excused.
19 (Witness excused.)
20 MR. RODWAY: Your Honor, I'm sorry.
21 Dr. Beyer, with the Court's indulgence may I --
22 Dr. Beyer, I apologize, Members of the Jury, I see the
23 results of your autopsy that indicate you found two

1 umbrellas had been inserted in the body of Mrs. Parsons;
2 is that correct, sir?
3 A Yes, sir.
4 Q That's one in the vagina and one in the rectum?
5 A That is correct. There was.
6 Q Dr. Beyer, did those in any way contribute to
7 the death of Mrs. Parsons?
8 A It was my conclusion that despite the fact that
9 the umbrellas had penetrated the vagina and rectum, and
10 the internal structures, there was no evidence of
11 hemorrhage. Therefore, the individual had little, if any,
12 heartbeat at the time they were inserted or was dead.
13 REDIRECT EXAMINATION
14 BY MR. HORAN:
15 Q Doctor, would you describe for the Jury those
16 umbrellas?
17 A Within the vagina there was a standard type
18 umbrella which was red in color and the handle had been
19 broken off.
20 This umbrella had been inserted tip first into
21 the vagina. It perorated or passed the posterior wall
22 of the vagina and it struck the soft tissue supporting
23 the small intestine where there was a bruise, but very

1 little evidence of hemorrhage.

2 Passing through the anus and the rectum there

3 was a closed collapsible type of umbrella which had

4 passed through the wall of the rectum and had perorated

5 a vein near the right pelvic region.

6 Again, there was very little evidence of

7 hemorrhage even though the vein had been ruptured.

8 Q But, there was some evidence of hemorrhage?

9 A No more than one would expect from cutting the

10 wall and the blood flowing out.

11 Q Would you tell the Jury how big approximately

12 those two umbrellas were in length?

13 A I don't have the measurements. The one umbrella

14 was, what I would consider the standard type. The other

15 one was a collapsible type, probably measuring 15 inches

16 in length.

17 Q The umbrella in her anus, was that all completely

18 inside the body or was any of it showing?

19 A No, the handle portion of that umbrella was

20 projecting out through the anus and was evidenced between

21 the buttocks.

22 Q But, the rest of the umbrella was in the rectum?

23 A That's correct.

1 MR. HORAN: No further questions.

2 THE COURT: Any recross?

3 MR. RODWAY: No, sir.

4 THE COURT: Thank you for testifying.

5 (Witness excused.)

6 THE COURT: Call your next witness.

7 MR. HORAN: Sergeant Bowen.

8 Whereupon,

9 SERGEANT TIMOTHY J. BOWEN

10 a witness, was called for examination on behalf of the

11 Commonwealth, and, after having been duly sworn by the

12 Clerk of the Court, was examined and testified as follows:

13 DIRECT EXAMINATION

14 BY MR. HORAN:

15 Q State your full name, please, and occupation?

16 A Timothy J. Bowen, Sergeant with the Fairfax

17 County Police Department.

18 Q How long have you been a member of the Fairfax

19 County Police Department?

20 A Since October 1971.

21 Q Were you so employed on July 28, 1980?

22 A Yes, I was.

23 Q Were you on duty on that day?

Excerpts from testimony of Sgt. Timothy J. Bowen: [T. 5/12/81, p. 99.]

1 a Susan Parsons who came out towards the front of the
2 house as I pulled up.
3 She was hysterical. She identified to me that
4 this was her house that was broken into and her mother
5 was dead.
6 I entered the home with her. We found the home
7 in disarray. There was a lot of things thrown about the
8 home.
9 She showed me the room that she indicated her
10 mother was in. I observed the pile of clothes and the
11 left leg sticking out from the clothes in that room.
12 I had an officer escort Susan Parsons outside
13 the home. I then checked and found that it was, in fact,
14 a female -- appeared to be a female body underneath of
15 the clothing and it was, in fact, the body was dead.
16 I then went back outside of the home, stayed
17 at the front door, and ensured that no one entered or
18 exited the home until the arrival of the Investigator.
19 Q Was that Investigator Sutherland?
20 A Yes, sir.
21 Q Did, eventually, the identification person
22 come?
23 A Yes, sir.

Excerpts from testimony of Off.
Andrew Johnson: [T. 5/12/81,
pp. 108-9, 111-12, 120-37.]

1 day?

2 A I was advised to respond to that location, to

3 that location to a burglary, homicide.

4 Q Would you tell the Jury what you found when

5 you arrived?

6 A Upon my arrival at that location I found a

7 framed type structure in a subdivision. There were two

8 newspapers on the front doorstep. One was a Saturday

9 Washington Post, and the other was a Monday Washington

10 Post. The front door was slightly ajar. Upon walking

11 in to the front door I noticed that the house had been

12 ransacked. To my right, immediately in the front door

13 I noticed a large quantity of blood on the living room

14 floor.

15 At that location I also noticed a brassiere,

16 women's underpants, and a shoe and a shirt, all of them

17 blood soaked.

18 I noticed bloody footprints leading from the

19 living room area down a hallway towards bedrooms. Upon

20 walking down the hallway, following the bloody footprints

21 on the first bedroom on my right I noticed a large

22 quantity of clothing and other articles on the bedroom

23 floor.

1 From the right rear of the bedroom I noticed
2 a left foot of a human protruding from underneath the
3 property that was placed on the floor.
4 I photographed the entire crime scene and then
5 entered this room and removed the clothing and so forth
6 from over top of the body at which time I found a white
7 female who was deceased.
8 The white female was laying on her stomach.
9 She had a ligature mark around her neck. Her throat had
10 been cut and an umbrella had been inserted in her anus
11 and another umbrella had been inserted in her vagina.
12 I photographed, diagramed and collected the
13 evidence in that room, and upon collecting evidence I
14 found several items that had ink type fingerprints on
15 these items.
16 I also noticed on the bedroom door leading
17 into this room that there appeared to be a red type
18 palmprint that appeared to me to be a bloody type palmprint
19 on the door leading into the room.
20 I photographed and collected from this door also.
21 After I summonsed the ambulance crew to remove the body
22 to the Fairfax morgue I then collected and processed the
23 rest of the house and then proceeded to the morgue.

1 me whether or not those photographs accurately reflect
2 the scene as you saw it on the 28th day of July?
3 A Exhibit 4 is a true and accurate representation
4 of the location of the living room as I entered the
5 front door and immediately to my right I saw the large
6 blood stain, the women's clothing and a shoe all blood
7 soaked.
8 There were some magazines in this portion of
9 the photograph right here that had human hair on the
10 magazines soaked in blood.
11 I also found fingerprints on these magazines
12 and blood. These fingerprints belonged to the deceased,
13 Mrs. Parsons.
14 Exhibit 5 is a true and accurate representation
15 of the living room taken from the dining room area,
16 looking back towards the front door I had just come in.
17 You can see that the furniture and so forth had been
18 ransacked. Items had been gone through and there's
19 luggage and clothing that had been left by someone.
20 This photograph which is Exhibit No. 6 is
21 a true and accurate representation of the hallway. I
22 was standing at the bathroom taking the photograph back
23 towards the living room. The bloody footprints can be

1 seen coming down the carpeting, and there's blood also
2 here on the bookcase leading into the middle bedroom
3 which is the bedroom I found the decedent in.
4 Exhibit No. 7 is a black and white photograph
5 and a true and accurate representation of the middle
6 bedroom which is the location I found the deceased in.
7 Her left foot and leg can be seen in this portion of
8 the photograph right here.
9 The items and so forth I spoke about that were
10 on top of the body can be seen in the photograph here.
11 Item No. 8 is a true and accurate representation
12 of the way I found the body upon removing the boxes,
13 clothing and other items that were on top of her. The
14 photograph, you can see the two umbrellas, blood about
15 the body and there's a blood type footprint in the middle
16 of the deceased's back.
17 This is Exhibit No. 9. It's a true and accurate
18 representation of the bloody type footprint which I
19 found upon Mrs. Parsons' back. This foot in the photograph
20 is mine. I was standing on the bed when I took the
21 photograph.
22 Exhibit No. 10 is a black and white photograph,
23 it's a true and accurate representation of the scene of

1 (The document referred to above
2 was marked Commonwealth's
3 Exhibit Nos. 12 and 13, previously,
4 for identification, and received
5 in evidence.)
6 BY MR. HORAN:
7 Q What was the reason, Officer Johnson, that
8 you obtained those inked prints from this Defendant?
9 A For booking procedure. Upon the arrest of a
10 crime all individuals are photographed and printed for
11 identification purposes.
12 Q Did there come a time when you attempted to
13 compared those inked fingerprints and palmprints with
14 any other fingerprints that you had obtained in the course
15 of this investigation?
16 A Yes, that is correct.
17 Q Would you tell the Jury what latent prints you
18 had obtained, where you obtained them from and under what
19 circumstances?
20 A Near the body of the deceased in the middle
21 bedroom I found this spanish Bible. I noticed upon
22 searching for evidence a fingerprint which appears to be
23 an ink type transfer type print in this corner of the

1 book. I also noticed another type ink fingerprint over
2 this portion of the cover of the book.
3 I compared these prints to the inked prints
4 I have taken of Richard Whitley and found them to be the
5 right thumb of the Defendant.
6 Q And, what is the -- did you compare that to
7 the ink print that you had on Exhibit No. 13?
8 A Yes, I did.
9 MR. HORAN: Your Honor, I would offer this book
10 into evidence as Commonwealth's Exhibit No. 15.
11 MR. MCLAIN: No objection.
12 THE COURT: Without objection I'll receive it
13 into evidence as Commonwealth's No. 15.
14 (The item referred to above
15 was marked Commonwealth's
16 Exhibit No. 15, previously,
17 for identification, and received
18 in evidence.)
19 BY MR. HORAN:
20 Q Officer, Johnson, the inked fingerprints that
21 you found on the book, could you tell where they came from?
22 A Close to the body and the items I found these
23 ink type prints, I found a typewriter ribbon which there

1 was a typewriter in the next room, and it had no ribbon
2 in it. This ribbon was found underneath the left side
3 of the deceased. It is a black typewriter ribbon. When
4 I picked it up myself I got a lot of ink my fingers.
5 MR. HORAN: I would offer that into evidence as
6 Commonwealth's Exhibit No. 16.
7 MR. RODWAY: No objection.
8 THE COURT: I'll receive that as Commonwealth's
9 Exhibit No. 16.
10 (The item referred to above
11 was marked Commonwealth's
12 Exhibit No. 16, previously,
13 for identification, and received
14 in evidence.)
15 BY MR. HORAN:
16 Q Officer Johnson, were there any other comparisons
17 that you intended to make as a result of the fingerprints?
18 A Yes, sir, close to the feet of the deceased I
19 found a green address type book. It had two ink type
20 prints on them. I compared these to the inked prints
21 of Richard Lee Whitley and found them to be the number eight
22 and number 9 fingers on the ring finger of the left hand
23 and the middle finger of the left hand.

1 Q And, did you make a comparison between the
2 prints on that book with Commonwealth's Exhibit No. 13?
3 A That's correct.
4 MR. HORAN: Your Honor, I would offer that into
5 evidence as Commonwealth's Exhibit No. 17.
6 MR. RODWAY: No objection.
7 THE COURT: I'll receive this as Commonwealth's
8 Exhibit No. 17.
9 (The item referred to above
10 was marked Commonwealth's
11 Exhibit No. 17, previously,
12 for identification, and received
13 in evidence.)
14 BY MR. HORAN:
15 Q Officer Johnson, did you make any other
16 comparisons?
17 A Close to the address book and the feet area
18 of the deceased I found a box. It has chess type pieces
19 in it. In this portion of the back of the box I found
20 more fingerprints. These fingerprints I compared to the
21 inked card which is Exhibit 13 and found them to be the
22 number three and number four fingers of Richard Lee
23 Whitley. These are fingers from the right hand.

1 MR. HORAN: Your Honor, I would offer that
2 into evidence as Commonwealth's Exhibit No. 18.
3 MR. RODWAY: No objection.
4 THE COURT: Received as Commonwealth's Exhibit
5 No. 18.
6 (The item referred to above
7 was marked Commonwealth's
8 Exhibit No. 18, previously,
9 for identification, and received
10 in evidence.)
11 BY MR. HORAN:
12 Q Were there any other comparisons that you made?
13 A Yes, sir. I found an envelope. This is a
14 college entrance examination board from Princeton, New
15 Jersey. This portion, this location on the envelope I
16 found fingerprints. I compared these fingerprints to the
17 Exhibit 13 and found these fingerprints to be the number
18 nine finger of Richard Lee Whitley, which is the ring
19 finger on the left hand.
20 MR. HORAN: I would offer that into evidence as
21 Commonwealth's Exhibit No. 19.
22 MR. RODWAY: No objection.
23 THE COURT: Receive this as Commonwealth's

1 Exhibit No. 19.

2 (The item referred to above
3 was marked Commonwealth's
4 Exhibit No. 19, previously,
5 for identification, and received
6 in evidence.)

7 BY MR. HORAN:

8 Q Officer Johnson, did you make any other
9 comparisons?

10 A The bloody palmprints which I found on the
11 door leading to the room that the deceased was found in,
12 I compared the bloody palmprint,after removing the door and
13 photographing it, to the inked prints of Richard Lee
14 Whitley. I found them to be one in the same as with
15 his left palm which is Exhibit No. 12.

16 I have made a large blow-up of this left
17 palm comparing it to the inked I took from Richard Lee
18 Whitley on the 15th of August, 1980.

19 This is a photographic enlargement of the
20 palmprint on the door leading into the bedroom. I have
21 charted 12 points of identification on this chart
22 enlargement.

23 However, I had approximately 31 points of

1 identical comparisons.

2 Q How many points does one normally need before

3 one can realistically draw the conclusion that the prints

4 are a known person's prints?

5 A Each fingerprint must be taken on its own

6 merit. A set number of points the F.B.I. does not believe

7 should exist. Each fingerprint must be examined to the

8 known print of the defendant, and if the examiner can

9 find enough points to satisfy the examiner that the

10 latent print was made by the ink print of the defendant,

11 a successful identification can be made.

12 Q In the case of the bloody palm print were you

13 satisfied as to the number of points that you could

14 accurately identify the maker of those prints as Richard

15 Lee Whitley?

16 A The bloody palmprint was made by Richard Lee

17 Whitley.

18 MR. HORAN: Your Honor, I would offer this

19 comparison into evidence as Commonwealth's Exhibit No. 20.

20 MR. RODWAY: No objection, Your Honor.

21 THE COURT: I'll receive that as No. 20.

22

23

1 (The item referred to above
2 was marked Commonwealth's
3 Exhibit No. 20, previously,
4 for identification, and received
5 in evidence.)
6 BY MR. HORAN:
7 Q Officer Johnson, as to the fingerprints, do
8 you have any doubt as to whose fingerprints they were?
9 A The fingerprints were made by Richard Lee
10 Whitley.
11 Q One last question.
12 The bloody palmprint that you found,on which
13 door was that?
14 A On the entrance door to the bedroom where Mrs.
15 Parsons was found.
16 MR. HORAN: No further questions.
17 THE COURT: Would you all object to breaking
18 for lunch right now?
19 MR. MCLAIN: No, Your Honor, I don't have any
20 objection to that.
21 THE COURT: It's 1:00 o'clock. We'll break
22 for lunch. You all be back in the jury room at 2:00 o'clock.
23 We'll start right after 2:00 o'clock on cross examination.

1 (Whereupon, at 1:00 o'clock p.m., the Court
2 recessed to reconvene at 2:00 o'clock p.m. that same day.)
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1 AFTERNOON SESSION

2 (The Court reconvened at 2:00 o'clock p.m.)

3 MR. MCLAIN: Your Honor, may we approach the

4 bench?

5 THE COURT: Do you really need to?

6 MR. MCLAIN: Well, we can do it -- Dr. Gwaltney

7 is here from Central State Hospital. We dicussed it with

8 Mr. Horan. I don't believe he has any objection to

9 Dr. Gwaltney remaining in the courtroom despite the rule.

10 I don't think we're going to call Dr. Gwaltney in our

11 case in chief.

12 THE COURT: Do you both agree that the rule

13 does not apply to him?

14 MR. HORAN: Yes.

15 Your Honor, on Commonwealth's Exhibit No. 17

16 when Officer Johnson collected these and put them in the

17 bag included was this item here. It was included because

18 there was a blood print on it. He never could identify

19 the print. Counsel makes the point that the Jury won't

20 know what that is. I don't have any objection to that being

21 removed from Exhibit No. 17.

22 THE COURT: Why don't you remove it, Mr. Horan.

23 MR. MCLAIN: We have no objection, Your Honor.

1 THE COURT: Go ahead and bring the Jury down.

2 (The Jury returned to the courtroom and resumed

3 their place in the jury box.)

4 MR. HORAN: Could we let the Jury look at

5 these photographs and the autopsy before we proceed with

6 Officer Johnson. They're sitting there in the dark as

7 to what the evidence is at this point.

8 THE COURT: That's fine with me.

9 As part of the autopsy I don't want them to

10 take the time to read it right now.

11 MR. HORAN: Just to look at the pictures, Your

12 Honor.

13 Your Honor, I wonder could the Jury just look

14 at these items before we continue.

15 THE COURT: Certainly.

16 Officer Johnson, why don't you return to the

17 stand when the Jury is done reviewing the pictures and

18 we can continue the cross examination.

19 Perhaps the best thing to do with the pictures

20 is look at one and then pass it down.

21

22

23

1 Whereupon,

2 OFFICER ANDREW JOHNSON

3 a witness, was recalled for examination on behalf of the

4 Commonwealth, and, after having been previously duly sworn

5 by the Clerk of the Court, was further examined and

6 testified as follows:

7 DIRECT EXAMINATION (resumed)

8 BY MR. HORAN:

9 Q Officer Johnson, just to finish up here, I

10 wonder if you would come down here.

11 On Exhibit No. 11 which is the diagram you

12 drew I wonder if you would put in the number of the

13 fingerprint, put the location of that fingerprint in

14 accordance with the Exhibit number starting with 15,

15 which is the Bible.

16 If you will put the number 15 on the chart

17 where that Bible was found.

18 A This Bible was found on top of the clothes

19 which were on top of the victim, item 15 right there.

20 Q And, item 16, which is the typewriter tape?

21 A Sixteen was laying underneath the deceased right

22 in this area. It was strung out a little bit. It wasn't

23 compact like this. It was strung out.

1 Q Commonwealth Exhibit No. 17, another book.

2 A Next to the victim's head on the left side.

3 Q No. 18?

4 A This had been knocked off of the table here.

5 This is item 18. It was between her feet.

6 Q And No. 19?

7 A It was also near item 15.

8 Q Now, item 20 is your comparison of the bloody

9 palmprint?

10 A The bloody palmprint came off of the bedroom

11 door that's pushed open with the left hand and left

12 the bloody print on it.

13 Q And that was item 20?

14 A Yes, sir.

15 MR. HORAN: I have no further questions, Your

16 Honor.

17 CROSS EXAMINATION

18 BY MR. MCLAIN:

19 Q Investigator Johnson, approximately, what time

20 was it that you said that you arrived at Mrs. Parsons'

21 residence on 5/28?

22 A 2:39 in the afternoon.

23 Q I believe your testimony was that when you arrived

1 the front door was ajar; is that correct?

2 A That's correct.

3 Q But, prior to the time of your arriving there

4 Mrs. Parsons' daughter, who you met when you arrived, and

5 the other uniform officers, had already been in that house;

6 is that correct?

7 A I did not meet with Miss Parsons. I did, however,

8 meet several uniformed officers.

9 Q They'd already been in the house?

10 A Sergeant Bowen advised me he checked the body

11 and then he stood at the front door and allowed no one

12 else to enter the home.

13 Q During your course of investigation and gathering

14 the evidence at the crime scene, did you, yourself, make

15 any determination as to whether or not there had been a

16 breaking and entering?

17 A In my crime scene search I looked for pry marks,

18 broken glass, other similar types of evidence that a

19 burglar would leave. However, I did not find any broken

20 glass or pry mark.

21 MR. MCLAIN: May I have Exhibit No. 4.

22 I'm showing you what's been marked into evidence

23 as Commonwealth's Exhibit No. 4, which I believe you

1 testified was the large quantity of blood that you found
2 upon entering the house, is that what that particular
3 picture portrays?
4 THE WITNESS: This is a black and white photograph of
5 the house. As soon as I walked through the front door I
6 immediately turned to my right and found a large blood
7 stain. I also found human hair. I found a brassiere, a
8 pair of women's panties that had been cut up, a shirt that
9 was saturated in blood. I found several buttons that had
10 been ripped off the shirt. I found a watchband link that
11 was laying over in the corner that was right inside the
12 front door as I entered the house.
13 BY MR. MCLAIN:
14 Q And, this photograph here, Commonwealth's Exhibit
15 No. 6, I believe you testified shows footprints that led down
16 the hall. This is taken towards the front of the house
17 where this picture was taken?
18 A This is a photograph taken in the hallway looking
19 back towards the living room The bloody footprints can be
20 seen coming down the carpeting. There are also some blood
21 sprays on the bookcase leading into the room where the deceased was found.
22 Q Now, during your gathering of the evidence, and
23 of course, in your investigation did you find a

1 purse in the house?

2 A I found a purse in the kitchen area of the

3 house. It was hanging on a nail next to the refrigerator,

4 if I recall correctly.

5 Q I believe you testified that you obtained the

6 fingerprint with a card one consisting of the palmprint

7 which I believe it Commonwealth's No. 12, and the

8 fingerprint card No. 13, is that correct, from the

9 Defendant on the 15th of August?

10 A That is correct.

11 Q Where were these fingerprints obtained? Were

12 they obtained here in Fairfax or were they obtained in

13 Florida?

14 A I rolled them myself upon returning from

15 Tampa, Florida in our Identification Section located at

16 Police Headquarters.

17 Q And, you brought Mr. Whitley back along with

18 Investigator Sutherland the night before?

19 A He flew back with us on the 15th of August from

20 Tampa to National Airport.

21 Q Now, the direction that shows footprints that

22 are shown in that photograph, which way do they lead

23 from the front of the house where you come in the front

1 door of the house, which way do they lead?

2 A Several of them appear to be going down the

3 hallway towards the bedroom area. There was a large quantity

4 or pool of blood, a quantity of blood entering the

5 room.

6 There was also footprints that possibly could

7 be leading out, but they were partial, and there was

8 an earth type shoe pattern and I couldn't tell whether

9 they were coming back out or not.

10 MR. MCLAIN: I believe that's all the questions

11 I have. Thank you.

12 REDIRECT EXAMINATION

13 BY MR. HORAN:

14 Q Now, the footprints you see heading down the

15 hall which is, is if someone is walking in that direction?

16 A Yes, sir.

17 Q Did you ever find a wallet of Mrs. Parsons?

18 A No, I did not.

19 Q Did you search for one?

20 A Yes, sir, I did.

21 Q The shirt with the buttons off that, you saw

22 in the living room; was that a male's shirt or female's

23 shirt?

1 A It had the sleeves removed from it. So, at
2 the time, I could not tell, but Detective Sutherland
3 discovered that it was Mrs. Parsons' shirt.
4 Q The watch chain link that you found on the
5 living room floor, did you ever match that up with
6 anything?
7 A It was an expandable band type link. It was
8 the jewelry type pattern. Not the spring assembly itself.
9 I collected it into evidence and upon extraditing Mr.
10 Whitley from Florida, when the Sheriff's Department gave
11 his personal effects at the Tampa jail, they gave us a
12 watch. The link appears to be similar to a missing link
13 which is on his watch.
14 Q At the time you rolled his prints on August
15 15, 1980, in Fairfax County, how many sets did you actually
16 roll?
17 A I rolled one set of fingerprints for Fairfax
18 County Police Department. A set of palmprints for the
19 Fairfax County Police Department. I rolled a set of
20 fingerprints for the Virginia State Police Department and
21 a set of fingerprints for the Federal Bureau of Investigation.
22 Q And, did you, in fact, send those prints to the
23 Federal Bureau?

Excerpts from Testimony of Det. Eugene O'Neill: [T. 5/12/81, pp. 145-47.]

1 you have you ever seen these before?

2 A May I review my notes and check the numbers on

3 these?

4 Q Yes.

5 A Yes.

6 Q How do you identify those as being the receipts

7 that you took out of the vehicle that night?

8 A These were initially sealed by myself with

9 these tags on the bottom and I checked the numbers because

10 they were opened by the laboratory for examination to

11 verify. They were, in fact, the ones that I put in there.

12 Q When you're talking about the numbers, what

13 numbers are you talking about?

14 A The ticket number, the credit card number, and

15 the address and dates that are listed on them.

16 Q As to item No. 28, specifically, what is item

17 No. 28?

18 A Item No. 28 is a Exxon gas station receipt in

19 which a credit card was imprinted on it.

20 Q Whose credit card was that?

21 A This was in the name of Phebe Parsons.

22 Q What numbers are on there, specifically, that

23 satisfy you that that is the one that you took out of the

car that night?

A The ticket number is 884303 which was the number I wrote down. The amount $6.80.

The card number from the credit card which was imprinted on the top.

Q How about item No. 29?

A The same. It's a Chevron gas station receipt with a credit card imprinted on it.

Q And, are the numbers on that also that tie into your notes?

A That's correct.

MR. HORAN: Your Honor, I would offer these two gas receipts in evidence as Commonwealth's Exhibit Nos. 28 and 29.

MR. MCLAIN: No objection.

THE COURT: I'll receive those as Commonwealth's Exhibit Nos. 28 and 29.

(The items referred to above were marked Commonwealth's Exhibit Nos. 28 and 29, previously, for identification, and received in evidence.)

1 BY MR. HORAN:

2 Q I show you the photograph No. Exhibit 27, tell

3 the Jury what that is a photograph of?

4 A This was a photograph of the inside of the

5 vehicle, the interior, the rear passenger side.

6 Q What is the paper item in there?

7 A That's one of the receipts.

8 Q I show you Commonwealth's Exhibit No. 25,and ask

9 you what that is a photograph of?

10 A That is also a photograph of the interior of

11 the vehicle. It is the -- primarily the front passenger

12 side.

13 Q Now, is there something on the seat on the front

14 there, can you tell the Jury what that is?

15 A That is a road atlas.

16 Q I show you this item, and ask you can you identify

17 it, Commonwealth Exhibit No. 31?

18 A Yes, this is the item I took from the front

19 seat of the vehicle.

20 Q Are you the one that put it in that bag?

21 A Yes, sir.

22 Q What is the purpose of putting it into the bag?

23 A For security purposes for shipment to the F.B.I.

Excerpts from testimony of Inv. Jessie C. Sutherland: [T. 5/12/81, pp. 151-79, 187-91.]

1 Q When and where did that occur?

2 A I met him in the Tampa City jail, Tampa, Florida

3 on August 14, 1980.

4 Q Did you know what he was doing in the Tampa

5 jail at that time?

6 A Yes, sir. He had been arrested in Tampa on

7 fugitive charges from the State of Virginia where he stood

8 charged with murder.

9 Q These were fugitive charges that you had placed?

10 A Yes, sir.

11 Q Where was it that you saw him in the Tampa jail

12 on the 14th of August?

13 A The deputies at Tampa City jail provided me

14 with a room. It was actually a cell within the jail

15 complex itself, and told me that could be my interview

16 room.

17 Q And, did you, in fact, conduct an interview with

18 Richard Lee Whitley?

19 A Yes, I did.

20 Q Who was present during that interview?

21 A Myself and Officer A. P. Johnson and Mr. Whitley.

22 Q Prior to conducting an interview with him, did

23 you advise him of any constitutional rights?

1 A Yes, I did.

2 Q Would you tell the Judge and Jury how that was

3 done?

4 A I took with me from Virginia a standard rights

5 form that the police department supplies to the investigators,

6 and from this form I read him his constitutional rights.

7 Q I show you this form that's been marked

8 Commonwealth's Exhibit No. 32 for identification, and ask

9 if you can identify that?

10 A Yes, sir, this is the form. It's the warning

11 and consent form signed by me and witnessed by Andy

12 Johnson.

13 Q Are there some signatures on that form?

14 A My signature and Officer Johnson's signatures

15 are on the form, yes, sir.

16 Q Now, will you tell the Jury and His Honor what

17 rights it was that you did explain to him, and how that

18 was done?

19 A Yes, sir. The rights are there. Five of them

20 are there.

21 I have the right to remain silent. I'm not

22 required to say anything to anyone at any time or to

23 answer any questions.

1 Number two is, anything I do or say can and will
2 be used against me in a court of law.
3 Number three, I have the right to talk to a
4 lawyer before being questioned and I also have the right
5 to have the lawyer with me while being questioned.
6 Number four, if I cannot afford a lawyer and
7 want one, one will be provided for me, and the fifth,
8 if I want to answer questions now without a lawyer present
9 I still have the right to stop answering at any time.
10 I also have the right to stop answering any
11 questions at any time if I want to talk to a lawyer.
12 Q Did you ask him whether or not he understood
13 all of those rights?
14 A Yes, sir, I did. I asked him after I read
15 each of his rights, I asked if he understood the rights
16 and he answered yes.
17 Q Now, around Right number four, you have some
18 markings?
19 A Yes, sir.
20 Q What is the significance of those markings?
21 A I asked him, could he read and write and he
22 answered yes, and I asked him to read back to me the
23 Right number four which is, if I cannot afford a lawyer

1 and want one, one will be provided for me.

2 Q Was he able to read that back to you?

3 A Yes, sir, he did.

4 Q Did you read to him the consent to speak?

5 A Yes, sir, I did. It reads, I know what my

6 rights are. I am willing to make a statement and answer

7 questions. I do not want a lawyer. I understand and

8 know what I'm doing and no promises or threats have

9 been made to me by anyone, and there's a place for the

10 person to be interviewed to sign his name.

11 Q Did you ask him if he understood all of that?

12 A Yes, sir, I did, and he said he understood

13 all of that.

14 Q Did you ask him was he willing to sign that

15 form?

16 A Yes, sir, I did.

17 Q What was his response?

18 A He told me that he didn't want to sign the

19 form, but he would talk to me.

20 Q Did you ask him whether or not he wanted a

21 lawyer present before he talked to you?

22 A Yes, sir.

23 Q What was his indication to you?

1 A He told me that there was no need for a lawyer
2 to be present while he talked to me.
3 Q Now, subsequent, prior to him making any
4 statement to you, did you threaten him in any way?
5 A No, sir, I did not.
6 Q Did you physically abuse him?
7 A No, sir.
8 Q Did he appear to be in control of his faculties
9 when you were talking to him?
10 A Yes, sir.
11 Q Was he under the influence of drugs or alcohol
12 as far as you could tell?
13 A No, sir.
14 Q Did you promise anything in return for his
15 statement?
16 A No promises.
17 Q Did you do anything to induce him to give you
18 a statement?
19 A No, sir.
20 Q Subsequent to that did he, in fact, give you
21 an oral statement?
22 A Yes, he did.
23 Q And, would you tell His Honor and the Jury what

1 the essence of that oral statement was?

2 A Yes, sir.

3 He told me that he had gone to Mrs. Parsons'

4 home for the purpose of using a telephone to call his

5 boss, Garry Monahan, somthing about a car that had

6 been broken down and Mr. Monahan was supposed to meet

7 him there in about an hour.

8 At the end of two hours when Mr. Monahan didn't

9 show up he decided to go back to Mrs. Parsons' and call

10 Mr. Monahan to find out why he didn't show up. He had

11 gone back into the house, Mrs. Parsons let him come in,

12 and went to the hallway to use the telephone and made

13 the phone call to Monahan, but couldn't get an answer, and

14 he was on the way back out when he and Mrs. Parsons begun

15 a conversation right by the front door.

16 The conversation was about church and his wife

17 and his stepdaughter, and he said the next thing he

18 remembered she was dead.

19 So, I asked him how she died and he said that

20 he had strangled her and that he had cut her throat and

21 dragged her back to a spare bedroom in the house.

22 Q Did you have further conversation with him on

23 that afternoon?

1 A There was other conversation that was general
2 conversation. I was certain to myself that he indeed
3 waived his right to extradition and voluntarily follow me
4 back or come with me back to Virginia.
5 Basically, that's the context of our conversation.
6 Q Did he indicate he was willing to waive and come
7 back to Virginia with you?
8 A Yes, he was.
9 Q After that, that is, on Thursday the 14th of
10 August?
11 A Yes, sir.
12 Q Did you see him on Friday the 15th of August?
13 A Yes, sir, I did.
14 Q What time of day and where was he when you saw
15 him on the 15th?
16 A It was the early p.m. Again,at the Tampa
17 City jail when we were preparing to bring him back to
18 the State of Virginia.
19 Q Did you, in fact, take him out of the jail and
20 fly back to Virginia with him?
21 A Yes.
22 Q Is that commercial air?
23 A Commercial air, yes.

1 Q What, if anything, did you do when you arrived
2 back in Virginia?
3 A We executed our warrants, took him to the
4 Special Magistrate's office for arraignment.
5 Q What was done in the Special Magistrate's office?
6 A He was again advised of the charges that had
7 been placed against him and the Magistrate asked him was
8 there any questions and also asked him had his rights
9 been advised to him.
10 Q Keep your voice up so the Jurors down here
11 can hear you.
12 A Then, a bond was set and he was transferred back
13 into my custody again.
14 Q What did you do then?
15 A Johnson was still with me at this time, Officer
16 Johnson, and we took him to my office which is over in
17 the Fairfax Building right behind the jail.
18 Q Would you tell the Jury what happened when you
19 got to your office?
20 A Yeah, after we got to the office I again
21 advised Mr. Whitley that the rights that were explained
22 to him in Florida were the same rights that now exist, and
23 told him that he didn't have to make any statement to us,

1 and that any statements that he did make would be used
2 against him in a court of law, and again, this was about
3 6:50 p.m.
4 Again, he advised me that there was no need
5 for a lawyer to be present, that he would talk to me.
6 So, we asked him again about the homicide,and
7 basically, he told the same story, that he had gone over
8 to use the telephone and that he killed her with a red
9 knife, that it was a red-handled pocket knife that was in
10 the possession of the Tampa Police Department.
11 Q Was that his knife?
12 A Yes, sir.
13 Q Now, did there come a time when you left the
14 police station to take him anywhere on the night of
15 the 15th?
16 A Yes, sir. He voluntarily took us to an area
17 that he discarded the clothing that he was wearing the
18 night of the homicide.
19 He stated he had gone to his house, changed
20 clothing and taken a shower, and took Mrs. Parsons' car on
21 south of 95, threw the clothing out, but he didn't know
22 exactly where, but he would show us.
23 We spent some two hours along 95, along the

1 Woodbridge exit because he felt that's where the clothing
2 were.
3 We were not able to find the clothing on that
4 night and we brought him back to Virginia, and put him
5 in the jail and he stated to us then that he would go
6 with us on the next day, which was Saturday, in the daytime
7 to help us try to find the clothing.
8 Q Did you, in fact, do that on Saturday?
9 A Yes, sir. We picked him up a little after
10 1:00 p.m. Saturday, and again in plain terms I told him,
11 I said, you know, you don't have to do this, and he said
12 that's okay, I've already hung myself I might as well go
13 all the way, and again, I told him anything that he did
14 or said would be used against him in court, and again
15 advised him of his rights.
16 Q What did you do then?
17 A Then, we went back south on 95. He had told
18 us that the ramp was -- it was a left-hand exit off of
19 95 which is the Woodbridge ramp off of 95, but we walked
20 the entire area and we were unable to locate the clothing.
21 So, we went north on 95 which the next exit off
22 of 95 is the Lorton Road exit, and it was at that location
23 that Officer Johnson located the clothing just over a

1 guard rail right off the ramp of 95 at the Lorton exit.
2 Q What kind of clothing was that?
3 A It consisted of a pair of Levis, white T-shirt.
4 There were other clothing. There was a pair of white
5 underwear, and women's panty hose were also there.
6 Q Were there any marking visible on any of the
7 clothing?
8 A There were stains on both his shirt, the white
9 underwear, and the Levi trousers. Yes, sir, there were
10 stains which to us appeared to be blood.
11 Q It appeared to be blood to you?
12 A Yes, sir.
13 Q Did there come a time when you returned to
14 the Fairfax Police Department on the 16th?
15 A Yes, sir. It was prior to his taking us down
16 off 95. I asked Mr. Whitley would he submit to a taped
17 interview, a taped statement from him, and he stated
18 to me at that time that he would.
19 Q Did you,in fact, tape an interview with him?
20 A Yes, sir, I did.
21 Q I show you this document. It's 14 pages in
22 length marked Commonwealth's Exhibit No. 33 and ask you,
23 can you identify that?

1 A That is the statement of facts that I took. I
2 and Officer Johnson took from Mr. Richard Whitley.
3 Q Have you read over that statement?
4 A Yes, sir, I have.
5 Q Is that, in fact, the statement that he gave
6 to you on the 16th of August?
7 A Yes, sir.
8 Q Did he actually ever sign that?
9 A No, sir, he didn't sign it.
10 Q But you compared that statement to the tape
11 and that's the right statement?
12 A Yes, sir, that's the right statement.
13 MR. HORAN: Your Honor, I would offer this
14 into evidence as Commonwealth's Exhibit 32 and 33.
15 MR. RODWAY: No objection.
16 MR. MCLAIN: No objection.
17 THE COURT: I'll receive those as Commonwealth's
18 Exhibits 32 and 33.
19 (The documents referred to above
20 were marked Commonwealth's
21 Exhibit Nos. 32 and 33, previously,
22 for identification and received
23 in evidence.)

1 MR. HORAN: Your Honor, in the interest of time
2 I wonder, could we have the officer read the statement,
3 the 14 pages?
4 THE COURT: (Nodding in the affirmative.)
5 THE WITNESS: This is the statement of facts
6 taken from Richard Lee Whitley, whose address is
7 7720 Lisle Avenue, Falls Church, Virginia. The
8 statement is taken in reference to a murder that
9 occurred on or about 7/25/80.
10 Our interview was conducted by myself, Investigator
11 Sutherland, and Officer A. P. Johnson, and it started
12 out, for the record, would you give me your name
13 and date of birth, please?
14 Answer: Richard Whitley. Date of birth 5/6/46.
15 Question: Richard, do you understand the
16 charges that have been placed against you?
17 Answer: Yes.
18 Question: Have your rights been explained to you,
19 Richard?
20 Answer: Yes.
21 Question: Do you understand all your rights?
22 Answer: Yes.
23 Question: Do you voluntarily waive your rights

1 now and give us a statement to the murder that was
2 committed on 7/25/80?
3 Answer: He answered, yes.
4 Question: Rich, going back to the 25th day
5 of July of 1980, can you give me a series of events
6 that occurred, say, from the time you got off work
7 on Friday on through the following Sunday?
8 Answer: Well, I had been drinking and went over
9 next door and asked Mrs. Parsons if I could make
10 a phone call, and got ahold of Garry Monahan the
11 first time. He was supposed to come down and get
12 my car back and he said he'd be there in an hour or
13 so. When he didn't show up after two hours I went
14 over and tried again, and we were talking about my
15 wife and going to church and everything, and the next
16 thing I know she was dead.
17 Question: Okay, where were you when you were
18 talking to her about going to church and your wife,
19 and so forth?
20 Answer: He stated that he was in the living
21 room by the front door.
22 Question: Okay, did you choke her?
23 Answer: He answered, yes.

1 Question: I said, what happened? What else
2 happened?
3 Answer: And his answer, wound up cutting her
4 throat.
5 Question: Okay, before or after cutting her
6 throat did you put a rope around her neck also?
7 Answer: And his answer was, yes.
8 Question: Okay, do you think she died right
9 there on the living room floor?
10 Answer: Yes.
11 Question: Where did you cut her?
12 Answer: In the jugular vein.
13 Question: Cut her on the side of her neck?
14 Answer: He answered, uh-huh.
15 Question: What happened then?
16 Answer: His statement, I got scared and runned.
17 Question: Okay, before you ran, though, what
18 happened after you killed her in the living room?
19 What happened in the house?
20 Answer: His answer, I ransacked it. I was
21 looking for a gun and stuck her in the bedroom, and
22 I couldn't find a gun or anything. I found her
23 car keys and went home and changed clothes and took

1 her car and went.

2 Question: Whose car did you take?

3 Answer: Mrs. Parsons'.

4 Question: When you took her from the living

5 room over to the bedroom, how did you get her back

6 there?

7 Answer: I picked her up under the arms and

8 dragged her there. I was trying to put her on the

9 bed. I just couldn't get her up there.

10 Question: So, you left her on the floor?

11 Answer: Uh-huh.

12 Question: When you left her, do you recall if

13 she was on her back or stomach?

14 Answer: She was on her back, as far as I know.

15 Question: Did you ever turn any lights on in

16 that room?

17 Answer: His answer, no.

18 Question: How could you see when you were

19 ransacking the house?

20 Answer: He stated, I couldn't, I tripped over

21 everything.

22 Question: I said, what about her?

23 Answer: I tripped over her a few times because her

house is identical to ours.

Question: Uh-huh.

Answer: He went on, most of the houses on that block, most of them are on that block. I didn't have too much troubles finding my way around.

Question: Do you know why you killed her?

Answer: No.

Question: Did you steal any money from her?

Answer: No.

Question: Richard, when we went back we found a receipt where she had gone to the bank and cashed a check for $50? Do you recall if you took that money?

Answer: No, the only thing I remember taking were the credit cards and keys.

Question: Do you know which credit cards you took?

Answer: There was a Master Charge, a J. C. Penney. I think there was one from Wards or Sears and a Visa Card. That's about it.

Question: And, I asked him, were there any gas credit cards?

Answer: He said, an Exxon.

1 Question: Of all those cards, how many of them
2 did you use?
3 Answer: His answer was, Mastercharge and Exxon.
4 Question: Did you use Wards or Penneys or
5 Hechts?
6 Answer: His answer was, no.
7 Question: I asked him, was there a Hecht card
8 there also?
9 Answer: He said, I don't think so.
10 Question: Going back to when she was still
11 at the door, did you ever hit her?
12 Answer: His answer, no, I don't remember
13 hitting her.
14 Question: I said, all right. Now, when you
15 were choking her, did you choke her first?
16 Answer: He said, yes.
17 Question: I said, what did you choke her with
18 first, your hands or the rope or anything else?
19 Answer: His answer was, I was using my hands.
20 Question: I said, did you fall all the way to
21 the ground with -- and then all the way to the floor
22 with her, still holding onto her?
23 Answer: His answer, I think so.

1 Question: Did she ever say anything to you?

2 Answer: I don't remember her saying anything.

3 Question: Did you ever say anything to her?

4 Answer: I don't think so.

5 Question: I asked, I said, okay when she --

6 both of you fell to the floor. Did you continue

7 choking her?

8 Answer: He said, yes.

9 Question: I asked, how long?

10 Answer: He said, I'd say a few minutes.

11 Question: Was she struggling with you, fighting

12 with you then?

13 Answer: He answered, no.

14 Question: Why didn't she fight back, do you

15 remember?

16 Answer: No.

17 Question: Did she wrestle with you at all?

18 Answer: I don't think so.

19 Question: Did she ever take her hands and try

20 to push you off or grab you by the throat or by the

21 hair?

22 Answer: No.

23 Question: I said, none of that?

1 Answer: And he said, no.

2 Question: I said, after you got her on the

3 floor, did you use the rope then, did you use the

4 rope then or did you kind of choke her?

5 Answer: He stated that, I used the rope.

6 Question: I said, okay and what -- did you

7 have the knife in your hands or was it in your

8 pocket?

9 Answer: He said it was in his pocket.

10 Question: I said, okay, so what happened?

11 Answer: He said, I don't remember taking it

12 out of my pocket, but the first thing I know, I

13 cut her throat.

14 Question: I said, was she alive then, Richard?

15 Answer: He said, I don't think so.

16 Question: What kind of knife did you use?

17 Answer: He stated, a pocket knife.

18 Question: What kind was it?

19 Answer: Like a Boy's Scout knife.

20 Question: I said, when the Tampa Police

21 Department seized a knife from you, was that the

22 knife you used?

23 Answer: He answered, yes.

1 Question: What did you do with the clothing
2 and the rope?
3 Answer: He stated, that he threw them off of
4 the road, on a ramp.
5 Question: I said, on the way to Florida?
6 Answer: And he says, uh-huh.
7 Question: When you had her on the floor and
8 cut her throat, do you remember removing her clothing?
9 Answer: He answered, no.
10 Question: Do you remember cutting her clothing
11 or tearing them?
12 Answer: He stated, no.
13 Question: I said, all right. Do you remember
14 when you got back to the bedroom, that she was
15 clothed or unclothed? Do you remember that?
16 Answer: He told me, she didn't have anything
17 on when she went to the back bedroom.
18 Question: I stated, that's after you took
19 her back there?
20 Answer: He stated to me, uh-huh.
21 Question: Do you remember if she was on her
22 back?
23 Answer: Again, uh-huh, meaning yes.

1 Question: Or on her stomach. Do you remember
2 that? Which one?
3 Answer: His answer, pretty sure she was on
4 her back.
5 Question: I said, did you have intercourse
6 with her?
7 Answer: He answered, no.
8 Question: Either voluntarily or involuntarily?
9 Answer: He answered, no.
10 Question: Did you rape her?
11 Answer: No.
12 Question: Did you do anything else?
13 Answer: No.
14 Question: I said, you don't remember an
15 umbrella being there?
16 Answer: He stated, no.
17 Question: Did you beat her or anything with
18 that umbrella that you remember?
19 Answer: His answer, no.
20 Question: I said, did you push the umbrella
21 up her rectum?
22 Answer: No, I don't think so.
23 Question: After you ransacked the house, did

1 you find anything else other than the car keys and
2 the credit cards?
3 Answer: No.
4 Question: How about the wallet, did you take it?
5 Answer: No, I just took the credit cards out
6 of it and put it back in the purse.
7 Question: What happened to the credit cards?
8 Answer: His answer, as far as I know they're
9 still in the car.
10 Question: I said, where is the car? Where did
11 you abandon the car?
12 Answer: Okeechobee, Florida.
13 Question: Do you know what road you took to
14 Okeechobee?
15 Answer: His answer, 95 to 41. Forty-one to
16 24 down a side road. I think it was 70.
17 Question: I asked, when did you arrive in
18 Florida?
19 Answer: He answered, on the 27th.
20 Question: Did you go directly to Tampa or
21 did you stop in any place in Florida before you
22 stopped in Tampa?
23 Answer: His answer, stopped in Tampa and used

1 one credit card there and went down to Okeechobee
2 from there.
3 Question: Did you also use another credit card
4 in Tampa on the way to Okeechobee?
5 Answer: He stated, one for gas.
6 Question: I asked him, I said, that's the
7 only one you used?
8 Answer: He said, yes.
9 Question: I said, okay. When you went to
10 Okeechobee and abandoned the car down there, where
11 did you stay in Okeechobee?
12 Answer: His answer, I didn't. I left. I went
13 back up to Tampa.
14 Question: My question, so, you left on the 27th,
15 abandoned the car and came back on the 27th?
16 Answer: His answer, yes.
17 Question: Okay, and after you got back to
18 Okeechobee, I mean, to Tampa, did you use another
19 credit card there?
20 Answer: His answer, no, I didn't have them.
21 Question: My question, Master Charge or Visa,
22 one of them called, and a man said there was a charge
23 for $118. I said, do you recall that charge?

1 Answer: His answer, it was a stereo and four
2 cases of beer and two cartons of cigarettes.
3 Question: I asked him, where did you buy all
4 that? Where did you buy it at?
5 Answer: His answer, Albertsons.
6 Question: Was anyone with you then?
7 Answer: There was a hitchhiker with me.
8 Question: I asked, male or female?
9 Answer: His answer, male.
10 Question: I said, do you recall his name?
11 Answer: He said, no.
12 Question: I said, did you give him the stereo?
13 Answer: He said, yep.
14 Question: Did you have sex with him?
15 Answer: He said, no.
16 Question: After you got back from Tampa, the
17 second trip, did you meet someone else there?
18 Answer: No.
19 Question: When did the Tampa Police Department
20 arrest you?
21 Answer: On the 8th, I think.
22 Question: 8th of August?
23 Answer: Yes.

1 Question: Did you give them any trouble?

2 Answer: No.

3 Question: Is there anything else that you

4 can remember, Richard, that you haven't told us?

5 Answer: No.

6 Question: Did you kill Mrs. Parsons?

7 Answer: His answer, yes.

8 Question: Do you know why?

9 Answer: No.

10 Question: Do you remember as you were killing

11 her, did you feel grief? Did you feel sorry? Did

12 you feel anything?

13 Answer: I felt terrible after I realized what

14 happened.

15 Question: Did you ever attempt to call rescue

16 or the police department or anyone that you knew of?

17 Answer: No, I got scared and runned.

18 Question: And, you took her car with you?

19 Answer: His answer, yes.

20 THE WITNESS: And then, some questions were

21 asked by Officer Johnson, shall I read those?

22 MR. HORAN: (Nodding in the affirmative.)

23 THE WITNESS: I said, Andy, do you want to ask

1 some questions, and Officer Johnson asked Richard, why
2 don't you tell us about the umbrella?
3 Answer: He answered, I don't know anything
4 about it.
5 Question: And, he said, what about the
6 typewriter ribbon and what did you do with that?
7 Answer: He stated, as far as I know it's still
8 in the house.
9 Question: Where did you get it at?
10 Answer: Beside the typewriter.
11 Question: Where did you take it to? What did
12 you do with it?
13 Answer: It's still in the house as far as I
14 know.
15 Question: Okay, after you took it out of the
16 typewriter, where did you take it and what did you
17 do with it before you left it in the house?
18 Answer: His answer, I don't remember taking
19 it out of the bedroom. I think I threw it on the
20 floor.
21 Question: And, the question was, where on the
22 floor?
23 Answer: He said, somewhere in the bedroom.

1 Question: Do you know which bedroom you left
2 it in? The one Mrs. Parsons was in or the one in
3 the back or the one in the front?
4 Answer: The answer was, the one with the
5 typewriter in it. I think it was the second bedroom
6 in front of the house.
7 Question: Did you pile all the clothing and
8 boxes and so forth on Mrs. Parsons?
9 Answer: I remember throwing clothes out. I
10 don't know where they went.
11 Question: Before you threw the clothing on top
12 of her, do you remember doing anything to her?
13 Answer: I remember tripping over her a couple
14 of times.
15 Question: When you took her to the bedroom and
16 laid her on the floor, what did you do to her?
17 Answer: His answer, nothing.
18 Question: Why did you take her to the bedroom,
19 then?
20 Answer: His answer, I don't know.
21 Question: How long were you in the house after
22 you took her to the bedroom?
23 Answer: His answer, about ten minutes.

1 Question: How did you leave the house then?

2 Answer: He answered, by the back door.

3 Question: And then, where did you go?

4 Answer: Over the fence to my house.

5 Question: What did you do after you got to

6 your house?

7 Answer: Changed clothes, took a shower and left.

8 Question: Is this a true and correct statement

9 to the best of your knowledge, Richard?

10 Answer: Yes.

11 Question: All right, now. Has any threats

12 or promises been made to you by me or Mr. Johnson?

13 Answer: His answer, no.

14 Question: All right, and, you are giving

15 this statement of your own free will?

16 Answer: His answer, yes.

17 MR. HORAN: I have no further questions, Your

18 Honor.

19 THE COURT: Cross examine?

20 - CROSS EXAMINATION

21 BY MR. MCLAIN:

22 Q Investigator Sutherland, the statement that

23 Mr. Whitley gave you, which you just read into evidence

1 wall in the kitchen, did you ever look at it personally?

2 A Yes, sir, I did.

3 Q Was there a wallet in it?

4 A None that we found.

5 Q Did Mr. Whitley tell you why he changed clothing

6 before he went to Florida?

7 A The question was never asked in that form, but

8 he stated that he went home, took a shower and changed

9 clothing.

10 Q You never asked him why?

11 A No, sir, I don't think that question was ever

12 asked.

13 Q When you found the clothing down there along

14 Shirley Highway, did you find any of Mrs. Parsons'

15 possessions with that clothing?

16 A Yes, sir, in the trouser pockets in the left

17 pocket there was a small medallion. It was a piece of

18 metal with the name of Robert C. Parsons.

19 Q And, who was Robert Parsons?

20 A It was the deceased's husband who was already

21 deceased, and in the other pocket there was a little

22 piece of metal with the name of Susie Parsons on it.

23 Q Did you examine that clothing?

1 A Yes, sir, I did.

2 Q What did you observe about the clothing?

3 A The clothing was stained. We could see

4 definite stains on it. Again, Friday night it rained

5 really hard so it washed away most of anything else, but

6 it appeared to have stains of blood on it.

7 Q What was the color of the stain?

8 A Dark against dark.

9 Q Now, Mr. McLain asked you whether Whitley told

10 you that his wife had left him?

11 A Yes, sir.

12 Q And, he asked you, did you find out if it was

13 true that his wife had left him?

14 A Yes, sir.

15 Q Did he tell you why his wife had left him?

16 A Yes, sir. He stated that there had been some

17 trouble with his daughter and that she took the daughter.

18 The daughter left and then about the 4th of July or 5th

19 of July she left.

20 Q Did you find out that that was true?

21 A Yes, sir, that was true.

22 Q Did you find whether or not the reason he gave

23 you was true?

1 A Yes, sir, that's true too.

2 Q Who did you obtain that information from?

3 A From the Arlington County Police Department.

4 Q Did you later talk to Mrs. Whitley?

5 A I have spoken with Mrs. Whitley by phone.

6 Q The daughter involved, was that his daughter?

7 A No, sir, it was Mrs. Whitley's daughter, his

8 stepdaughter.

9 Q Did he tell you whether or not he had done

10 anything with that daughter?

11 MR. MCLAIN: Your Honor, I would object to this

12 line of questioning. I don't think this has any relevance

13 as far as maybe beyond the scope of the question.

14 MR. HORAN: I'll withdraw that questions,

15 Your Honor.

16 BY MR. HORAN:

17 Q Did he tell you what happened with the daughter?

18 Why the daughter left?

19 A He would not discuss --

20 MR. MCLAIN: I object, along the same lines

21 of questioning. I don't think it's relevant at this

22 point.

23 MR. HORAN: He brought it up on the question of

1 whether Whitley was telling him the truth.

2 MR. MCLAIN: I didn't ask him if he related

3 specifics of why they left, just the fact that the wife

4 and the child had left. I don't think we need to go into

5 this.

6 THE COURT: He asked him was it discussed,

7 was that it?

8 BY MR. HORAN:

9 Q Was it discussed?

10 A Yes, sir.

11 Q He never told you why the daughter had left?

12 A No, sir.

13 Q He just told you that the daughter had left?

14 A Yes, sir.

15 Q And, you verified the daughter had left?

16 A Yes, sir.

17 Q Now, do you know how old that daughter was?

18 A Nine years old.

19 Q And, that's his stepdaughter?

20 A Yes, sir.

21 Q When the stepdaughter left, did the mother ever

22 leave too?

23 A The mother followed a few days behind, but she

1 left too.

2 MR. HORAN: That's all.

3 THE COURT: Do you have any questions?

4 MR. MCLAIN: No, Your Honor.

5 THE COURT: Do you want him to remain as a witness

6 or do you want him excused?

7 MR. HORAN: Your Honor, it's possible he might

8 be recalled.

9 THE COURT: You're still under the rule. Don't

10 discuss your testimony with any of the other witnesses.

11 You may be called back to testify again.

12 (Witness excused.)

13 (Brief recess.)

14 THE COURT: Who's your next witness?

15 MR. HORAN: Agent Hyatt of the F.B.I.

16 Your Honor, please, for the record the Clerk

17 has marked this fingerprint card as Commonwealth's Exhibit

18 No. 34. Counsel is going to stipulate that this is the

19 other set of rolled prints that Officer Johnson testified

20 to that he rolled on August 15 and sent to the F.B.I.

21 THE COURT: Is that your stipulation?

22 MR. MCLAIN: That's correct, Your Honor.

23 MR. RODWAY: Yes.

Excerpts from testimony of Joe Hyatt: [T. 5/12/81, pp. 195-96.]

1 Q Would you explain to the Jury what latent
2 prints you found on Commonwealth's Exhibit No. 12 and
3 Commonwealth's Exhibit No. 31?
4 A Commonwealth's Exhibit No. 31, which is the
5 Rand McNally Road Atlas, I found actually developed by
6 a chemical means, twelve latent fingerprints, nine latent
7 palmprints and two latent impressions which I could not
8 tell whether they were fingerprints or palmprints, but
9 they were of value to make my identification with.
10 Q Did you in fact compare the latent print on
11 the Rand McNally Atlas with the inked fingerprint card
12 that you received from the Fairfax Police?
13 A Yes, sir, I did.
14 Q Will you tell the Jury what the results of
15 that comparison was?
16 A On the Rand McNally Road Atlas of the latent
17 prints that I developed, eight of the fingerprints I
18 identified as being made by the same individual who made
19 this fingerprint, the inked impressions on this fingerprint
20 card bearing the name Robert Lee --
21 Q Is that Robert Lee or Richard Lee?
22 A I'm sorry, Richard Lee Whitley, and there were
23 also two palmprints on the atlas which I identified as

1 being made by the palmprints bearing the name of Richard
2 Lee Whitley.
3 I do not have the palmprint card with me today.
4 Q Did you also compare the latent print on the
5 Exxon credit card, Commonwealth's Exhibit No. 12, with
6 the inked fingerprint card, Commonwealth's Exhibit No. 34?
7 A Yes, I did. On the Exxon receipt I developed
8 one palmprint and I compared that with a palmprint card
9 bearing the name Richard Lee Whitley, and I identified
10 that as being made by the same, the right palm as was the
11 right palm on the palmprint card.
12 Q Now, did you do any charted enlargements for
13 comparison purposes?
14 A Yes, sir, I did.
15 Q I wonder, could you come down in front of the
16 Jury and show them that enlargement and explain it to
17 them?
18 A What I have here is actually two photographic
19 enlargements.
20 On your right you'll see a photograph which is
21 marked latent fingerprints. This photograph is a
22 photographic enlargement of one of the fingerprints that
23 I developed on this road atlas in the lower portion of

Bench Conference:[T. 5/12/81,
pp. 199-200.]

1 MR. HORAN: I have nothing further.

2 THE COURT: Anything, Mr. McLain?

3 MR. MCLAIN: No questions, Your Honor.

4 THE COURT: May the witness be excused?

5 MR. HORAN: Yes, Your Honor, he may.

6 THE COURT: Thank you for testifying.

7 (Witness excused.)

8 THE COURT: Was 34 admitted? It was stipulated

9 to.

10 MR. HORAN: Thirty-four was stipulated to.

11 If Your Honor please, that's the Commonwealth's

12 evidence.

13 MR. MCLAIN: Your Honor, I have a motion.

14 (Whereupon, the following was heard at the

15 bench outside the hearing of the Jury.)

16 THE COURT: Assume your motion is denied, are

17 you going, are you all going with your evidence and how

18 many witnesses do you have? I'm trying to decide --

19 MR. MCLAIN: We have one witness that will take --

20 I only have four or five questions.

21 THE COURT: So, we'll be able to conclude the

22 evidence today?

23 MR. MCLAIN: Yes, sir.

1 THE COURT: I really am not -- I'm probably
2 not going to put this to a Jury today.
3 Do you all want me to send it to the Jury today?
4 MR. RODWAY: No, sir.
5 THE COURT: I'd rather come back and do the
6 instructions in the morning. Frankly, I have meeting
7 at 4:30.
8 MR. RODWAY: That's fine.
9 THE COURT: Let's get all the evidence done
10 today.
11 Do you want to go ahead and make your motion
12 right here?
13 MR. MCLAIN: Well, Your Honor, it will probably
14 take me 10 minutes. I'd like to have an opportunity to
15 be near my papers.
16 MR. HORAN: It's five after 4:00. Why don't
17 we let the Jury go and put that witness on in the
18 morning.
19 MR. MCLAIN: I hate to have him come back
20 tomorrow because he's been here all day.
21 I don't think I can get him to come back tomorrow.
22 (Whereupon, the following was heard within the
23 hearing of the Jury.)

Argument on Motion to Strike:
(T. 5/12/81, pp. 202, 205,
& 212.]

1 and I believe Investigator Sutherland testified that
2 Mr. Whitley's statements to him throughout were consistent.
3 The Defense's position is that this did not
4 occur during the course of the murder, the commission of
5 a robbery.
6 I also believe that the photographs which have
7 been introduced into evidence, specifically, the Exhibits,
8 Commonwealth Exhibit No. 4 and Commonwealth Exhibit, I
9 believe Nos. 5 and 6 which show, first of all, the fact
10 that the large concentration of blood was in the living
11 room, and that a path of footsteps, footprints lead down
12 the hallway, and I believe Mr. Rodway had stated in
13 opening statement that the robbery was more or less an
14 afterthought as Mr. Whitley left the back door of the house
15 We also know that the purse in this case, which
16 we believe the wallet and the credit cards were obtained,
17 was in the kitchen. We believe that Mrs. Parsons' daughter
18 testified that that's where it was kept, on a hook, and
19 I believe that's where it was found.
20 Your Honor, the Commonwealth has the burden of
21 proving, I know not at this stage necessarily, beyond a
22 reasonable doubt that it's capital muder, but we would
23 submit, and the evidence in the light that it is at this

1 to adduce evidence that the killing occurred in the
2 commission of a robbery the Court would have erred in
3 overruling it."
4 Of course, it's our position, Your Honor, that
5 like I mentioned a moment ago, that after the killing,
6 as Mr. Rodway I believe said, and it's the Defense's
7 position, there was a larceny after the death.
8 There are other cases involving 18.2-231-D, and
9 death penalty sentences for murder during the commission
10 of a robbery in Virginia.
11 As I mentioned a moment ago it's interesting
12 and important to note that the common characteristics
13 that are not present in this case. One, the common
14 plan or scheme which was present in Cappola versus
15 Commonwealth where there were four people that were
16 involved.
17 There was a plan and scheme to go rob a woman
18 and her husband in the Newport News area. There were
19 three co-defendants. There were witnesses to the crime
20 including the husband of the victim where the victim was
21 beaten severely by the defendant, and one of the other
22 co-defendants. A large quantity of cash was taken. There
23 were witnesses to that, and I believe, that the robbery

1 indicates due to Mr. Whitley's statements and a number
2 of statements that he gave, that at the time that this
3 took place he had gone over to make the call, that the
4 victim supposedly or allegedly maintained and had no
5 other reason not to maintain, that Mrs. Parsons asked
6 him about his wife and his child and that was it, and
7 Mr. Whitley, apparently, the next thing he knew,in his
8 statements, at least, or what he told Investigator
9 Sutherland, the next thing he knew she was dead.
10 He admitted that he choked her and admitted
11 that he stabbed her.
12 It's more or less our position that he became
13 temporarily insane at that point.
14 The photographs, again, introduced, again
15 substantiate our case. The fact that the killing did
16 take place at the time and place where Mr. Whitley said
17 that it did in the statement that he gave, and the
18 footprints and so on that lead down the hall in the house
19 show that, and that the purse was in the kitchen and at
20 a later point in time that it was taken out of the house.
21 It's more or less our position that there was
22 a larceny that took place after the murder.
23 In all of the cases cited above that I mentioned

Ruling on Motion To Strike: [T. 5/12/81, p. 214.]

1 THE COURT: Thank you, Mr. McLain. The motion
2 to strike is denied.
3 MR. MCLAIN: Would you note our exception.
4 THE COURT: Viewing all the evidence that has
5 been submitted it is my opinion that his intent and motive
6 is entirely a Jury question.
7 MR. MCLAIN: Your Honor, we would call Mr.
8 Monahan.
9 Whereupon,
10 GARRY MONAHAN
11 a witness, was called for examination on behalf of the
12 Defendant, and, after having been duly sworn by the Clerk
13 of the Court, was examined and testified as follows:
14 DIRECT EXAMINATION
15 BY MR. MCLAIN:
16 Q Mr. Monahan, would you please state your name
17 for the Jury?
18 A Garry Monahan.
19 Q Where do you live, Garry?
20 A In Falls Church.
21 Q And, how are you employed?
22 A I'm self-employed. I'm a contractor.
23 Q What's the name of your business?

Excerpts of testimony of Garry Monahan: [T. 5/12/81, pp. 215,217.]

1 A Monahan Painting Company.

2 Q Drawing your attention to the 25th day of July,

3 1980, was an individual by the name of Richard Lee Whitley

4 employed by you on that date?

5 A Yes.

6 Q Do you see him in the courtroom?

7 A Yes.

8 Q Would you identify him?

9 A Right over there in the white shirt.

10 Q And, what were Mr. Whitley's duties as far as

11 your employment was concerned?

12 A He was a painter.

13 Q I show you what's been marked as Defendant's

14 Exhibit No. 1 for identification; can you describe that

15 document, please, and tell the Jury what it is?

16 A It's a check for $112.45. It's a payroll check.

17 Q And, that was issued by you to Mr. Whitley on

18 what date?

19 A July 25, 1980.

20 Q On the reverse side of that check, do you see

21 a signature on there?

22 A Yes, Richard Whitley.

23 Q Have you seen his signature before?

1 A I would say about 3:00 p.m.

2 Q Was he finished work at that time?

3 A Yes.

4 Q What was he doing the last time you saw him?

5 A He was climbing a tree.

6 Q Climbing a tree?

7 A He was going to cut a tree down.

8 Q Where was that?

9 A It was in the yard next door to where I live.

10 Q Where do you live with relation to Lisle Avenue?

11 A I would say approximately four miles.

12 Q So, what time on that day would have been the

13 last time you saw him?

14 A 3:30 p.m.

15 Q Did he work for you at all that day?

16 A No. He wasn't on the time clock.

17 Q How about the next day?

18 A No, that was the last time I saw him.

19 Q Was he scheduled to work for you the next day,

20 on Saturday?

21 A No.

22 MR. HORAN: No further questions.

23 THE COURT: Anything further?

Discussion of Jury Instructions:
[T. 5/13/81, pp. 2-6, 9-13.]

1 P R O C E E D I N G S

2 THE COURT: Have you all agreed on all of

3 your instructions?

4 MR. HORAN: No, Your Honor, not all of them.

5 Your Honor, I would withdraw one, eight, and

6 nine in favor of their instructions.

7 THE COURT: Let's go through them one at a time.

8 I'll mark number one as withdrawn.

9 Number two, is there any objection to two?

10 MR. RODWAY: No, sir, Your Honor.

11 THE COURT: I'll grant two.

12 Any objection to three?

13 MR. RODWAY: No, sir.

14 THE COURT: I'll grant three.

15 Any objection to four?

16 MR. RODWAY: Your Honor, could we pass that one

17 over, please, sir?

18 THE COURT: I'll pass it over.

19 Five?

20 MR. RODWAY: No, sir, Your Honor.

21 THE COURT: I'll grant five.

22 Six, any objection to six?

23 MR. RODWAY: No, sir.

1 THE COURT: I'll grant six.

2 Any objection to seven?

3 MR. RODWAY: No, sir.

4 THE COURT: I'll grant seven.

5 Eight?

6 MR. HORAN: I withdraw that, Your Honor.

7 THE COURT: Withdrawn.

8 Nine?

9 MR. HORAN: I move to withdraw that, Your Honor.

10 THE COURT: Ten?

11 MR. RODWAY: Could we pass that one over, too,

12 Your Honor?

13 THE COURT: A, any objection to A?

14 MR. HORAN: No objection, Your Honor.

15 THE COURT: I'll grant A. B?

16 MR. HORAN: No objection.

17 THE COURT: I'll grant B. C?

18 MR. HORAN: No objection.

19 THE COURT: I'll grant C. D?

20 MR. HORAN: I object to that, Your Honor.

21 MR. RODWAY: Your Honor, the reason I asked for

22 that one, and Mr. Horan and myself talked about this,

23 maybe I'm mistaken, but I was always under the assumption

1 of murder in the Commonwealth was presumed to be second
2 degree that it was up to the Commonwealth that every unlawful
3 killing, as is stated, is murder in the second degree.
4 It's up to the Commonwealth to raise it to whatever they
5 want to, and that's the reason I asked for that instruction,
6 Your Honor, I could be wrong.
7 THE COURT: Does it come from anywhere?
8 MR. RODWAY: It's a standard instruction out of
9 the models, Your Honor, which a doubles instruction, I'm
10 sure, is the same thing.
11 MR. HORAN: There's no question. I don't
12 quarrel that that is the law, but as with all instructions
13 it's got to be read in the context of the case, and I
14 submit to Your Honor, there is no evidence of second
15 degree murder in this case, and this is no different from
16 a case where the Court instructs the jury that you've
17 only got two possible findings, first degree murder or
18 not guilty.
19 THE COURT: Why do you say that? You may be
20 absolutely right, but let me -- why don't I hear from
21 Mr. Rodway, why he thinks it might be second degree.
22 MR. RODWAY: Your Honor, the reason I think it
23 might be second degree is this, because I think the Jury

1 could, number one, find that it was not done in the
2 commission of a robbery. Therefore, that leaves them
3 the choice of, is it premeditated or not, and Your Honor,
4 I think that it is, it would be -- I would think that it
5 might be reasonable for them to find that the murder was
6 not premeditated, that it was, you know, of course, I
7 understand what the instruction on premeditated is,
8 Your Honor, but I think there is a glimmer of hope if
9 I put it that way, Your Honor, that they could find it
10 was murder in the second degree, that it was willful,
11 deliberate, but unpremeditated.
12 MR. HORAN: Your Honor, I submit there is ample
13 evidence of premeditation here.
14 THE COURT: I agree. There's ample evidence of
15 premeditation for the finding. I think there is ample
16 evidence for finding capital murder. I wouldn't let it go
17 to the Jury if not. I'm trying to think of the evidence
18 of second degree, the Defendant said he doesn't know why
19 he did it, it just suddenly happened. In his statement
20 that doesn't raise an issue of a second degree possibility,
21 there was no premeditation.
22 MR. HORAN: Your Honor, I don't have any real
23 serious objection to the giving of the second degree

1 instruction. It is just that in the course of all the
2 instructions they submitted they don't submit a definition
3 of second degree murder.
4 THE COURT: We can take care of that. We can
5 get one, I just don't want --
6 MR. HORAN: I don't have any problem with
7 giving one, but they didn't submit you one, and I didn't
8 submit you one. If they want to submit --
9 MR. RODWAY: I'll do that.
10 MR. HORAN: If they want to submit a definition
11 to second degree, I don't have any objection.
12 THE COURT: I agree. There is very little
13 evidence to second degree murder in this case, but a
14 jury could conceivably decide there was no premeditation
15 or deliberation.
16 If you'll submit one I'll give you second degree
17 in that context.
18 What about this one, what about D?
19 MR. HORAN: If there's a second degree murder
20 instruction I don't have any objection to D.
21 THE COURT: I'll give D. I believe what
22 Mr. Rodway's recollection of the law is is what my
23 recollection of the law is as well.

1 MR. RODWAY: Your Honor, I don't have any
2 problem with that, that's fine, and, I also think if we're
3 going to give that instruction we've got to give the whole
4 definition and --
5 THE COURT: I think in five it has to be accom-
6 plished by violence to a person while armed with a deadly weapon.
7 MR. RODWAY: That's fine, Your Honor, this came
8 out of the model instruction for robbery. Obviously, due
9 to the circumstances -- what I'm driving at is, I know the
10 Jury has to be instructed on what robbery is, what the
11 elements are.
12 THE COURT: Doesn't he have a definition of
13 robbery?
14 MR. RODWAY: He doesn't. I don't like that
15 instruction as much as mine. It spells it out a little
16 bit more clearly, but I don't have any objection inserting
17 that word, while armed with a deadly weapon.
18 THE COURT: It now reads, the Defendant is
19 charged with capital murder. Then, on down to the last
20 line, number five, I added as an appendix, while armed
21 with a deadly weapon.
22 Is that satisfactory to both counsel?
23 MR. RODWAY: Yes, sir.

1 MR. MCLAIN: (Nodding in the affirmative.)

2 THE COURT: Is that agreeable, Mr. Horan?

3 MR. HORAN: Yes, Your Honor.

4 THE COURT: I'll grant it as amended then.

5 We're back to four.

6 MR. RODWAY: Yes, sir, Your Honor. Well,

7 Your Honor, if the Court -- I really have no objection

8 if the Court feels that in light of K that four is also

9 necessary.

10 THE COURT: Do you feel four is also necessary?

11 MR. HORAN: I would have no objection if we

12 take the second sentence out of four. I really think the

13 Jury ought to be instructed that K is in the nature of

14 a finding instruction. Four is a definition instruction.

15 THE COURT: Let me do this --

16 MR. HORAN: Really, the last sentence of four

17 should be in K.

18 THE COURT: Rather than mark all of these up

19 we've got to do a second degree murder instruction.

20 Let me give you all K and four and I think

21 you're in agreement with what we need. See if you can't

22 combine them into one instruction that defines it and

23 lists specific things concerning this case. In other words,

1 one that contains the element that you both agree on.
2 So, I'll put four and K right here.
3 MR. RODWAY: Your Honor, on number ten the only
4 thing now in light of Your Honor's ruling, I think there
5 should be a three, that is, murder in the second degree
6 and four should be not guilty.
7 THE COURT: I'll put ten here as well and you
8 can change ten.
9 Now, there's only one other one that I'm
10 concerned about.
11 Do any of these instructions say, do they give
12 the punishment for first degree and second degree?
13 MR. HORAN: For first degree,and the finding
14 instruction should give the punishment for second, and
15 in the Court's charge the Court should be telling, at
16 least, this is the way it's been done in other capital
17 cases, the Court tells them if you find him guilty of
18 capital murder you just come back and tell us.
19 THE COURT: Is that in there?
20 MR. HORAN: Well, capital murder says you shall
21 find him guilty and shall not fix the punishment until
22 your verdict has been returned and further evidence is
23 heard by you, that's instruction number five.

1 THE COURT: In the instructions, okay, I wanted
2 to be certain of that.
3 Then, I'll recess for just a few minutes to
4 give you a chance to redo ten, combine four and K, and
5 do a second degree instruction and we'll come back and
6 take those up very briefly.
7 See if you can agree to them and put it to
8 the Jury.
9 (Brief recess.)
10 THE COURT: Have you all agreed to ten?
11 MR. HORAN: Yes, Your Honor. I withdraw ten
12 and replace it with that other one.
13 THE COURT: I'll grant ten and it's replacement.
14 K is the robbery?
15 MR. RODWAY: Yes, sir.
16 THE COURT: Do you agree to K?
17 MR. HORAN: Yes, Your Honor.
18 THE COURT: Second degree, L?
19 MR. RODWAY: Yes, sir.
20 THE COURT: And C?
21 MR. RODWAY: Yes, sir. Mr. Horan and I discussed
22 it. We inserted another thing having to do with a felony
23 murder.

1 THE COURT: Do you agree to C?

2 MR. RODWAY: Yes, sir.

3 THE COURT: The only question I have is,you

4 all can make it clear in your argument to the Jury when

5 I read the first and second degree instruction. They're

6 going to read, the Defendant was charged with the crime

7 of -- he's not really charged with that crime. So, make

8 that clear, that it's a lesser included offense.

9 MR. RODWAY: Yes, sir.

10 THE COURT: See what I'm saying, the second

11 degree instruction, say the Defendant is charged with

12 the crime, he's not charged with that crime, he's charged

13 with the crime of capital murder. If they find him not

14 guilty of capital murder you can find him guilty of

15 first degree.

16 If you can't find him guilty of capital and first,

17 you find him guilty of second.

18 MR. HORAN: Doesn't that cover that ultimately

19 when you say you may find in this case X number of

20 verdicts under this indictment?

21 THE COURT: I do, but I think it's a little

22 bit confusing, is all I'm saying. I'm going to go ahead

23 and do it, but I think it will cover it, but he's not

Jury Instructions; Guilt Phase:
[T. 5/13/81, pp. 14-21.]

1 charged with second and not charged with first, but he
2 may be convicted of it.
3 (The Jury returned to the courtroom and resumed
4 their place in the jury box.)
5 THE COURT: Good morning. I'm going to read
6 the instructions to you. Now, you'll have these instructions
7 to take to the jury room with you and review if you miss
8 a word or don't understand something that I say.
9 After these, the attorneys will argue the case.
10 The Court instructs the Jury that in this case
11 you may find one of the following verdicts, that the
12 Defendant is gulity of capital murder; that the Defendant
13 is guilty in the first degree; that the Defendant is
14 guilty of murder in the second degree; that the Defendant
15 is not guilty.
16 The Court instructs the Jury that you are the
17 sole judges of the credibility of the witnesses and
18 in determining the weight to be given to the testimony
19 of the witness the Jury may consider their appearance
20 and demeanor on the witness stand, their manner of
21 testifying, their apparent intellegence or lack of it,
22 their interest or lack of it in the outcome of the case,
23 their temper, feeling or bias if any has been shown. Their

1 opportunity for knowing the truth and having observed the
2 things concerning which they testify, and from all these
3 and all other surrounding circumstances at the trial the
4 Jury are to determine which witnesses are more worthy of
5 credit and give credit accordingly.
6 The Court instructs the Jury that the burden
7 resting upon the Commonwealth to prove -- excuse me, the
8 Court instructs the Jury that the Defendant is presumed
9 to be innocent. You should not assume the Defendant is
10 guilty because he's been indicted and is on trial.
11 This presumption of innocence remains with
12 the Defendant throughout the trial and it is enough to
13 require you to find the Defendant not guilty unless and
14 until the Commonwealth proves each and every element of
15 the offense beyond a reasonable doubt.
16 This does not require proof beyond all possible
17 doubt, nor, is the Commonwealth required to disprove
18 every conceivable circumstance of innocence.
19 However, suspicion or probability of guilt is
20 not enough for a conviction.
21 There's no burden on the Defendant to produce
22 any evidence.
23 A reasonable doubt it a doubt based on your

1 sound judgment after a full and impartial consideration of
2 all the evidence in the case.
3 The Court instructs the Jury that the burden
4 resting upon the Commonwealth to prove guilt of the
5 Defendant beyond a reasonable doubt does not require that
6 such guilt be proven beyond every imaginable, conceivable
7 or possible doubt, only beyond a reasonable doubt.
8 The Jury must limit its consideration to the
9 evidence introduced and you are not to go outside of
10 the evidence to hunt up doubts, nor, must you entertain
11 doubts which are speculative or conjectural and if upon
12 a consideration of all the evidence you're satisfied of
13 the guilt of the Defendant beyond a reasonable doubt
14 then you shall find him guilty.
15 The Defendant does not have to testify and
16 his failure to do so can not be considered by you.
17 The fact that the Defendant has been indicted
18 by a Grand Jury is not evidence against him and you should
19 not consider it.
20 The Court instructs the Jury that the Defendant
21 is charged with the crime of capital murder. The
22 Commonwealth must prove beyond a reasonable doubt each of
23 the following elements of that crime.

1 That the Defendant killed Phebe C. Parsons.
2 That the killing was willful, deliberate, malicious, and
3 premeditated.
4 That the killing occurred during the commission
5 of a robbery while the Defendant was armed with a deadly
6 weapon.
7 If you find from the evidence that the Commonwealth
8 has proven beyond a reasonable doubt each of the above
9 elements of the offense charged then you shall find the
10 Defendant guilty and shall not fix his punishment until
11 your verdict has been returned and further evidence is
12 heard by you.
13 If you find the Commonwealth has failed to
14 prove any one or more of the elements of the offense
15 beyond a reasonable doubt then you may not find the
16 Defendant guilty of capital murder.
17 The Court instructs the Jury that the Defendant
18 is charged with capital murder during the commission of
19 a robbery.
20 To convict of capital murder the Commonwealth
21 must prove beyond a reasonable doubt each of the following
22 elements of the crime of robbery.
23 That the Defendant intended to steal, that credit

1 cards and automobile keys were taken, that the taking
2 was from Phebe Parsons or in her presence, that the
3 taking was against her will, that the taking was accomplished
4 by violence to the person while armed with a deadly
5 weapon; and that the violence preceded or was concomitant
6 with the taking.
7 The Defendant is charged with the crime of
8 first degree murder.
9 The Commonwealth must prove beyond a reasonable
10 doubt each of the following elements of that crime.
11 That the Defendant killed Phebe C. Parsons.
12 That the killing was malicious, and that the killing
13 was willful, deliberate, and premeditated, or, that the
14 killing occurred in the commission of or an attempt to
15 commit robbery.
16 If you find from the evidence that the Commonwealth
17 has proven beyond a reasonable doubt each of the above
18 elements of the offense as charged then you shall find
19 the Defendant guilty and fix his punishment at life,
20 or imprisonment for life, or a term of imprisonment not
21 less than twenty (20) years.
22 If you find the Commonwealth has failed to
23 prove any one or more of the elements of the offense

1 beyond a reasonable doubt then you shall find the Defendant
2 not guilty.
3 Willful, deliberate, and premeditated means
4 the adoption of a specific plan to kill.
5 The intent to kill must come into existence
6 at some time before the killing, but need not exist for
7 any particular length of time.
8 The Court instructs the Jury that the Defendant
9 is charged with the crime of second degree murder.
10 The Commonwealth must prove beyond a reasonable
11 doubt each of the following elements of that crime.
12 That the Defendant killed Phebe Parsons, and
13 that the killing was malicious.
14 If you find from the evidence that the
15 Commonwealth has proven beyond a reasonable doubt each of
16 the above elements of the offense charged then you shall
17 find the Defendant guilty and fix his punishment at a term
18 of imprisonment not less than five (5) nor more than
19 twenty (20) years.
20 If you find the Commonwealth has failed to
21 prove any one or more of the elements of the offense
22 beyond a reasonable doubt then you shall find the Defendant
23 not guilty.

1 The Court instructs the Jury that the malice
2 necessary to constitute the crime of muder may be either
3 expressed or impiled.
4 The word malice in the foregoing definition of
5 murder is used in a technical sense. It includes not
6 only anger, hatred and revenge, but every unlawful or
7 unjustifiable motive.
8 It is not confined to ill will to anyone or
9 more particular persons, but is intended to denote an
10 action flowing from a wicked or corrupt motive where the
11 act has been attended with such circumstances as to
12 carry in them the plain indication of a heart deliberately
13 bent on mischief, therefore, malice implied by law from
14 any willful, deliberate, and cruel act against another
15 however sudden.
16 The Court instructs the Jury that in the
17 absence of proof to the contrary malice may be implied
18 from the deliberate use of a deadly weapon when used in
19 the manner calculated to take the life of another human
20 being.
21 Once the Commonwealth has proved there was
22 an unlawful killing then you're entitled to infer there
23 was malice and that the act was murder in the second

1 degree, unless, other evidence raises a reasonable
2 doubt as to other malice existed.
3 You've bee instructed on more than one grade of
4 homicide, and if you have a reasonable doubt as to the
5 grade of the offense then you must resolve that doubt
6 in favor of the Defendant, and find him guilty of the
7 lesser offense.
8 For example, if you have a reasonable doubt
9 as to whether he's guilty of capital murder or first
10 degree murder then you shall find him guilty of first
11 degree murder.
12 If you have a reasonable doubt as to whether he's
13 guilty of first degree murder or second degree murder
14 then you shall find him guilty of second degree murder.
15 If you have a reasonable doubt as to whether
16 he's guilty of anything then you shall find him not
17 guilty.
18 Mr. Horan.
19 MR. HORAN: Your Honor, Members of the Jury,
20 I know I speak for the Defense counsel when I thank you
21 for your kind attention to this case.
22 We are now at a juncture that is particularly
23 your providence. You are the trier of the facts. It is

Closing and Rebuttal Argument;
Guilt Phase: [T. 5/13/81,
pp. 21-48.]

1 degree, unless, other evidence raises a reasonable
2 doubt as to other malice existed.
3 You've bee instructed on more than one grade of
4 homicide, and if you have a reasonable doubt as to the
5 grade of the offense then you must resolve that doubt
6 in favor of the Defendant, and find him guilty of the
7 lesser offense.
8 For example, if you have a reasonable doubt
9 as to whether he's guilty of capital murder or first
10 degree murder then you shall find him guilty of first
11 degree murder.
12 If you have a reasonable doubt as to whether he's
13 guilty of first degree murder or second degree murder
14 then you shall find him guilty of second degree murder.
15 If you have a reasonable doubt as to whether
16 he's guilty of anything then you shall find him not
17 guilty.
18 Mr. Horan.
19 MR. HORAN: Your Honor, Members of the Jury,
20 I know I speak for the Defense counsel when I thank you
21 for your kind attention to this case.
22 We are now at a juncture that is particularly
23 your providence. You are the trier of the facts. It is

1 your collective recollection that determines what the
2 facts are. It's not mine. It's not counsel for the
3 Defense. It's not even His Honor. It is your collective
4 judgment that determines what the facts are.
5 In addition to that, it is your collective
6 judgment as to what are the reasonable conclusions one
7 can draw from those facts. What reasonable inferences
8 can you give to the facts that you determine are present
9 in this case.
10 Now, one of the few luxuries, and it is very
11 possibly the only luxury you have as a juror, it is the
12 luxury that the law does not require you to leave your
13 common sense out in that parking lot before you come in
14 here.
15 You are allowed to determine these facts and
16 the inferences drawn from these facts in the light of
17 the common ordinary human experience, common ordinary
18 judgment as to what things mean, in a word, you're to
19 look at the facts in a common sense fashion.
20 We tend in law for better or for worse, you
21 get carried away with heavy concepts of what different
22 things mean as jurors. You are to look at these facts
23 in a common sense fashion, and tell us what they mean.

1 Now, I will review those facts from the point
2 of view of the Prosecution and I will suggest to you
3 what those facts do mean.
4 This case differs from many in that the issues
5 before you are rather narrow issues. You don't have a
6 lot of truely complicated judgments to make for the reason
7 that first and foremost there is no question in God's
8 world, but that the killer of Mrs. Parsons is this
9 Defendant. No matter what possible inference you want
10 to draw from the facts, he killed her, and I will not
11 insult your intelligence by going through all of those
12 factors that show that he killed her.
13 We started from the bloody palmprint of his
14 on the wall in the bedroom she's found in. The palmprint
15 that's found on the Exxon credit card in the car that
16 he stole and took to Florida, the car that belonged to
17 her. Through his statement itself, we know he is the
18 killer. There is no doubt reasonable or otherwise that
19 he is the killer.
20 The issue before you and the narrow issue before
21 you what kind of killer is he? You are to determine what
22 kind of killer he is, what price is reasonable by way of
23 sentence for him for that killing.

1 Now, His Honor gave you a whole series of
2 instructions defining those different offenses, the
3 different possibilities of verdicts, and there are
4 really a few things to keep clearly in mind. First, and
5 foremost any unlawful killing done with malice is murder,
6 that's the starting point.
7 If you kill somebody you do it maliciously,
8 that's murder.
9 Now, in this case you don't have to worry
10 yourselves with that by any conceivable standard mankind
11 wants to develop. This killing was with malice. I mean,
12 all one has to do is look at the picture of that tortured
13 woman and we know that's done with malice.
14 Once you determine that murder is in the equation,
15 then, you're in the question, the secondary question,
16 what kind of murder.
17 Now, once you're in murder there are three
18 possibilities. Possibility one is second degree murder.
19 Second degree murder is a killing with malice, but no
20 premeditation, that's second degree murder. I submit to
21 you on the evidence here there is no real doubt that he
22 deliberately killed that woman and he did it intentionally.
23 He did it with premeditation. There is a tendency to

1 think in terms of the Perry Mason idea of what premeditation
2 is.
3 Some people think that premeditation is sitting
4 home and deciding what you're going to do, and how you're
5 going to do it. That's not what premeditation is at
6 all.
7 As a matter of fact, His Honor tells you in
8 the instruction that willful, deliberate, and premeditated
9 means the adoption of a specific intent to kill. The
10 intent to kill must come into existence at some time
11 before the killing, but need not exist for any particular
12 length of time.
13 I would submit to you, Members of the Jury, on
14 this evidence this killing is with premeditation. He
15 did it deliberately. He did it willfully. It is more
16 than second degree murder.
17 Now, we come to the two points of first degree
18 murder. First degree murder occurs if he killed maliciously
19 with premeditation or you kill somebody in the course
20 of a robbery without premeditation. There's two ways
21 he can be guilty of first degree murder. The willful,
22 deliberate, and premeditated killing of Mrs. Parsons, that's
23 one way.

1 The other way is if he killed her maliciously
2 in the course of a robbery. If in the course of that
3 robbery he kills her, that's first degree murder regardless
4 of whether he premeditated.
5 The last stage, and the last possibility of
6 murder under our law is what the law calls capital murder.
7 Capital murder occurs in the context of this case where
8 one kills willfully, deliberately, premeditatedly, in
9 the course of the commission of a robbery while armed with
10 a deadly weapon.
11 If those factors exist this Defendant is guilty
12 of capital murder. If it was willful. If it was
13 deliberate. If it was premeditated. If he was doing
14 a robbery and if at the time of that robbery he was armed
15 with a deadly weapon, of course, the deadly weapon comes
16 out of the equation right away. We know he had a deadly
17 weapon. We know he cut her throat with that deadly weapon.
18 He was armed with that weapon. It was in his pocket by
19 his own admission at the time he went to Mrs. Parsons'
20 house for the second time that night.
21 He killed her willfully, and deliberately. It
22 was no accident. It was by design. It was by intent,
23 and as I said before the narrow issue before you is whether

1 or not this was done in the course of a robbery.

2 I submit to you, Members of the Jury, that's

3 all you have to decide. Did he do it in the course of

4 a robbery, on this evidence reasonable, by any space,

5 it was willful and deliberate.

6 The question is, was there a robbery in progress

7 when he did it? Do you have that robbery sometime before

8 he went to the point where he killed her he has to intend

9 to steal when he finishes his violence. If at any moment

10 before he kills her he intends to steal what she owns

11 he is guilty of capital murder, that's the law.

12 Now, Members of the Jury, to decide that issue

13 you have to determine what his intent was from the facts

14 in front of you. You have to decide what his intent was

15 from all of the things you learned in the evidence and

16 the questions is, what reasonable inferences can be

17 drawn from the evidence?

18 Now, there is no question he stole her property.

19 He stole her car, he stole her car keys, he stole her

20 credit cards, and unless some guardian angel from heaven,

21 he stole her wallet. There is no question that theft was

22 an aftereffect of the violence that preceded it. He

23 killed her, he stole from her. All we have to do is

1 look at those facts and we say, could he possibly have
2 intended that. Is that what he had in mind?
3 Members of the Jury, if that's what he had
4 in mind this is a capital murder case nothing less.
5 Bearing on the question of intent in opening statement
6 counsel suggests to you that maybe what we have here is
7 a killing for some other reason, and for an afterthought
8 we decide to take what she has, too.
9 Now, boiled down to it, in essence, that's
10 the Defense's claim. That's right, fellows, he killed
11 her but the stealing was kind of afterwards. He really
12 didn't think about that. Well, let's see what he says
13 about that.
14 Commonwealth's Exhibit No. 33 is his statement
15 and Investigator Sutherland said, what happened after
16 that, Page 3, top of Page 3, what happened after that,
17 referring to what happened after he killed her. He said,
18 I got scared and runned.
19 Question: Okay, before you ran though, what
20 happened after you killed her in the living room, what
21 happened in the house?
22 Answer: I ransacked it. I was looking for a
23 gun and stuck her in the bedroom and I couldn't find the

1 gun or anything. I found her car keys. I went home,
2 changed clothes, took the car and went.
3 Later on, he makes admissions about the credit
4 cards. He makes the admission about using the credit
5 cards, but you notice he talks about being scared and
6 runned after he kills this poor woman, but he sure didn't
7 get scared and run enough, so he has to get out of there
8 right away.
9 The very first thing he does after he kills her
10 is ransack that house. Now, he said he was looking for
11 a gun. There's nothing in this evidence that would
12 suggest that there was a gun in her house, that he's
13 looking for. If he was looking to steal a gun it was
14 going to be her gun, and by his own admission immediately
15 after the killing, that's what he's doing, and if there
16 are any doubts about whether that house is ransacked
17 those pictures make it amply clear that he tore that place
18 apart. He tore that place apart looking for things.
19 Now, the interesting question is this is a
20 case of a man who kills a woman and got scared about it,
21 sits around and thinks about it. Decides well, boy,
22 I'm in trouble. I might as well take what she's got.
23 Is that the kind of case we have or is it the case of a

1 man who kills, ransacks, steals and leaves.

2 Well, on Page 10 of his statement Investigator

3 Sutherland asked him how long he was there. Investigator

4 Sutherland asked him what the total time was from the

5 time he put her in the bedroom until the time he left.

6 Do you know what he said? He said ten minutes. He killed

7 her, he ransacked that house and he was gone to his place,

8 stealing her car keys, stealing her credit cards, her

9 money, taking a shower and splitting for Florida, but he

10 leaves her house within ten minutes after he does all

11 this. Does that sound like an afterthought? Does that

12 sound like somebody didn't intend to steal and just came

13 later on, he thought was a good idea.

14 Members of the Jury, I do not confuse the

15 possibility that this man had some other brutalities

16 in mind when he went there. He doesn't have to have

17 just a sole isolated intent to steal, that doesn't have

18 to be it only. He may have had some other things in mind,

19 but if at any time, in addition to some other brutalities

20 he's also going to take what she's got, he's a capital

21 killer. He is a capital murderer. That's what he intended.

22 Any moment prior to the theft, any moment prior

23 to the killing if he knows he's going to take what she's

1 got when he finishes the crime is capital murder. Of
2 course, one might say isn't it a coincidence, here's
3 a man that didn't intend any of this, it's just a
4 coincidence. Coincidently he happens to kill her.
5 Coincidently he happens to steal her property. Conicidently
6 the violence to her occurs prior to the taking.
7 Members of the Jury, that's no coincidence.
8 That's capital murder. That's what he did. So, we ask
9 you to convict him of it.
10 THE COURT: Mr. McLain.
11 MR. MCLAIN: May it please the Court, and
12 Members of the Jury, Mr. Horan, when he made his first
13 statement about drilling you with the Defense, and thanking
14 your for your attention, and patience, and cooperation
15 throughout the length of this trial; your attentiveness
16 in listening to the evidence that came from the witness
17 stand and the arguments that were made concerning some
18 of the evidence, and of course, your opportunity to
19 view the evidence, and again, I believe, we said to you
20 in opening statement that whatever statements are made
21 by the attorneys is not evidence in this case. The only
22 evidence in this case comes from the witness stand. Other
23 evidence, it comes to you throughout the course of this

1 case. It also includes a confession. It includes a
2 statement of 14 pages which you heard Investigator
3 Sutherland read yesterday. It set forth pretty much in
4 detail what happened on the 25th of July.
5 Let's go back a little bit through the evidence.
6 Mr. Horan has painted a very grim picture making your
7 decision, your difficult decisions, so, nobody here in
8 envies you. The decision you're going to have to make
9 when you deliberate in trying to decide the narrow issue
10 that Mr. Horan called, that we call punishment or which
11 is your function as he did, say you are the sole credibility,
12 the judges of the credibility of the testimony of the
13 evidence. It's your provence uniquely to decide what
14 type of punishment is to be imposed in this case.
15 First of all, I believe he said that the narrow
16 issue to decide is whether or not Richard Whitley was
17 a killer or whether he was the killer in this case. I
18 don't think from the very beginning of this trial there's
19 been any dispute about that. At the very beginning of this
20 case in opening statement Mr. Rodway eluded to that fact
21 when he told you that we're not coming in here today
22 and saying that Richard Whitley is innocent because we've
23 never said that. We said that he's guilty, that he

1 admitted to killing Mrs. Parsons. We don't know why he
2 did it. He said he didn't know why he did it. When
3 you get in the jury room to decide what his fate will be I
4 would submit to you that in order to elevate this case
5 from second or first degree murder, which instructions
6 you received from Judge Bach, that a robbery has to be
7 proved.
8 In other instructions of the Court you're
9 instructed that you're not to speculate or surmise
10 or conjecture about what might have happened.
11 I don't think that there is any evidence which
12 would tend to limit or debilitate or reduce in any way
13 the facts that were given in the statement by Mr. Whitley
14 concerning what happend on that night. It's an important
15 thing to look at, a very important thing to look at as
16 far as whether a robbery was committed in this case, and
17 it's one thing that I think that Mr. Horan neglected to
18 mention was the fact that there had to be some kind of
19 motive for Mr. Whitley to rob Mrs. Parsons.
20 Of course, as you also know, and as Mr. Horan
21 has stated to you, we conted that there is more or less
22 a larceny after the fact, after the murder, after the
23 killing. He got scared and he runned, as he said in his

1 statement, and he admitted taking the car. He admitted
2 taking the keys, and he admitted taking the credit cards,
3 but let's look at where those things came from.
4 They didn't take place in the front hall where
5 Mrs. Parsons was murdered. Items were not taken from
6 Mrs. Parsons in the back in the bedroom where he subsequently
7 took her and where her body was found. Where were those
8 items taken from? They were taken from a purse that was
9 hanging on a hook in the kitchen.
10 I think this is critical in your decision as
11 to whether or not a robbery took place.
12 Let's go back to the motive for a second. Mr.
13 Monahan testified yesterday that Mr. Whitley was one of
14 his employees, that he worked for Garry Monahan in a
15 painting and contracting business and that on the 25th of
16 July, which was the day of the murder, Mr. Monahan gave
17 Mr. Whitley a check for his pay which I don't believe
18 you got to see yesterday, and what did Mr. Monahan say
19 when he testified on the stand yesterday about this check,
20 about Richard Whitley being one of his employees other than
21 the fact that he said the last time he saw him he was
22 climbing a tree? What was he doing? I don't think anybody
23 heard the rest of it. He was helping somebody cut down

1 a tree, but let's look at this check and determine whether
2 or not this killing was motivated in any way by the
3 fact that a robbery was to be committed on Mrs. Parsons.
4 He was paid $112.45. Mr. Monahan identified
5 the signature on the back of that check as belonging to
6 Richard Whitley and it also shows the bank's own stamp,
7 it also shows, which I think certainly is credible
8 evidence, that that check was cashed on the 25th of July,
9 and let's look at another important point. The fact that
10 the Parsons were over having dinner with their mother
11 and that they left at 8:00 o'clock that night. So,
12 we know that the murder had to have taken place after
13 8:00 o'clock. I think these are important things to
14 consider when you're looking at whether the motive was
15 robbery and whether it substantiates our position that
16 this is not a capital murder case, and that it is one
17 of first degree murder or second degree murder.
18 I think that the evidence is abundant. Let's
19 look at some more of the Commonwealth's evidence. Let's
20 look at the testimony of Investigator Johnson. There's
21 no question he is probably one of the best prepared
22 witnesses, not that Mr. Horan has sat down and gone over
23 the evidence with him. He's done it on his own. He's

1 had a lot of experience. He testified he's done these
2 types of cases for many years as part of the investigation
3 in his job. He arrived on the scene sometime after 2:00
4 o'clock on Monday the 28th of July. He photographed
5 the entire scene.
6 The first thing he saw when he came in the door
7 besides the fact that the house had been ransacked was
8 a large quantity of blood right inside the front door
9 of the house, and what else did he say? He also said
10 that the footprints which were in the house and what you
11 saw in the pictures in evidence, in all of the pictures
12 that he did take, that the footprints led all the way
13 down the hall towards the end of the hall, down towards
14 the bedrooms.
15 We know that no property was taken. I believe
16 the evidence supports this right where the killing took
17 place which we submit was right inside the front door
18 after the discussion about where is your wife, and where
19 is your daughter or how are your wife and how are your
20 daughter. We don't know what was said. The next thing
21 Mr. Whitley said, at least in his statements, the next
22 thing I knew she was dead.
23 Let's look at what Investigator Sutherland said.

1 Investigator Sutherland said almost exactly the same thing,
2 a large concentration of blood was right inside the front
3 door of the house. The footsteps leading down the hallway
4 towards the bedroom which substantiates, I believe, our
5 position in addition to where the purse was found, and
6 I believe both investigators testified that the purse
7 was found hanging on the hook just as Mrs. Parsons'
8 daughter said that's where it always was. Where is it?
9 It's near the back door of the house. Does that look
10 like an afterthought, possibly, to you? I submit that it
11 should. Especially, when you have to decide whether or
12 not capital punishment is to imposed in this case.
13 I think that that is a serious thing for you
14 to consider. What does the Commonwealth's own evidence
15 show? I think that that's very important. Let's take
16 a look at some more of the evidence. We've talked about
17 the paycheck. We've talked about the quantity of blood
18 and where it was found. We've talked about the footprints.
19 We've talked about the location of the purse. You all have
20 heard this evidence and you all have to decide for
21 yourselves, not necessarily which statement or anything is
22 more credible because Mr. Whitley gave approximately
23 three statements to Investigator Sutherland in the presence

1 of Officer Johnson, and Investigator Sutherland said
2 yesterday that every one of those statements, all three
3 of them, or every one that he was given were consistent
4 in what he said concerning what happened and did he take
5 money? No.
6 Well, we know one thing, that's also been
7 established by the Commonwealth's evidence, and also it
8 came out in cross examination from the Commonwealth's
9 witnesses in this case.
10 One, Mr. Whitley and his wife and his daughter
11 lived next door to Mrs. Parsons. We also know from the
12 Commonwealth's case, and the piece of evidence that came
13 in, I can't remember what number it is because there is
14 about 35 Exhibits, Mrs. Parsons' checkbook, and what was
15 in Mrs. Parsons' checkbook? A check stub, number 804,
16 a check to Richard Whitley for $20 for painting her house,
17 and the fact that her daughter who testified was aware
18 that at one time Richard had come over to her house and
19 fixed a step or loose boards on her porch, I believe was
20 her testimony, and that his stepdaughter or his little
21 daughter went with him, consider this daughter.
22 We get into semantics about children sometimes,
23 but he considered this daughter, this child to be his

1 daughter and I think she knew a couple of occasions,
2 maybe one, where Mr. Whitley's daughter, who he considered
3 to be his daughter, took care of Mrs. Parsons' dog. She
4 knew that July the 25th was not the first time that
5 Richard Whitley had ever been over to 7718 Lisle Avenue,
6 something else that Mr. Horan neglected to mention. He's
7 probably saving it for the end, after what I'm going
8 to say, and that's when Richard Whitley talked to
9 Investigator Sutherland when he gave that taped statement,
10 and afterwards when he went out and showed him where
11 his clothes were from the murder, and Investigator
12 Sutherland, I believe, truthfully testified that Mr.
13 Whitley was cooperative with him in his investigation of
14 this case.
15 He says, I don't want a lawyer. I've hung
16 myself. I'm guilty, I did it. I killed her. He takes
17 him out and shows him where the clothes are. He gives
18 him three statements which are all pretty much, for the
19 most part, consistent as he admitted on the stand yesterday.
20 I believe that these things are very important.
21 There's one thing that was left out that I was going to
22 mention, and that is this, Investigator Sutherland asked
23 him, he said, well, how did you feel after it was over,

1 after you killed her? He said, I felt terrible after
2 I realized what I had done.
3 So, here's a man who has confessed his guilt
4 to you and he's putting his life in your hands. He's
5 coming into this courthouse and prior to doing so he's
6 admitted his guilt.
7 He's telling you, he's telling the community,
8 he's telling everybody, I'm guilty. I'm admitting it.
9 It's a question of whether or not one can be
10 forgiven. Can you forgive somebody, this is the choice
11 that you have to make, and I would submit to you that
12 based on the evidence as to whether or not a robbery
13 took place that there is a reasonable doubt, and that
14 you can find him guilty of a lesser offense, and I don't
15 think that there should be any question in your mind.
16 I initially promised more or less that you
17 would adhere to several important basic fundumental
18 concepts of criminal law and constitutional law. One,
19 that you believe an individual is presumed to be innocent
20 until proven guilty, another important principle and
21 pretext concept of criminal law. Constitutional law is
22 that the Commonwealth has the burden of proving his guilt
23 beyond a reasonable doubt and this doesn't mean that you

1 can surmise what happened on July the 25th. It doesn't
2 mean that you can engage in conjecture about what happened
3 on July the 25th, and I think that's what you would have
4 to do in order to find him guilty of capital murder. I
5 don't think there is any question about that.
6 I ask you again to look at the motive as to
7 whether there was a robbery. I think you could give
8 total credibility, a lot of weight to Garry Monahan's
9 testimony concerning what happened, another event that
10 occurred on the 25th besides the terrible murder that
11 took place that day.
12 There's two more things that I would like to
13 say to you before I close. This will be my last opportunity
14 to talk with you.
15 Mr. Horan, since the Commonwealth has the burden
16 of proof beyond a reasonable doubt, he'll get to talk
17 to you again and he'll try and explain away whatever he
18 can to try and negate whatever I have told you. Several
19 of the instructions of the Court which you're going to
20 take back to the jury room with you along with all the
21 evidence, all the fingerprint evidence and all the evidence
22 that was used in this case, which a lot came in without
23 objection because we admitted that Richard Whitley, at

1 the very beginning of this case, was the one who was
2 involved in this crime.
3 You're going to have the instructions back
4 there, and you'll have the opportunity to read them, and
5 you will see that there are lesser included offenses
6 that you could conceivably, and I submit, should find
7 something less than capital murder.
8 You'll see that in the instructions, and if
9 you have a doubt as to whether he's guilty of capital
10 murder, one instruction says and the Judge read it to you,
11 that you have to resolve that doubt in favor of the
12 Defendant. That's the law, and it has to be done upon
13 your collective decisions.
14 I'm not asking you to abandon your common sense
15 either. I'm asking you to use your common sense just
16 like Mr. Horan is, and I'm asking you to look at the
17 evidence and what does the evidence show? Do you have
18 to guess about it, and I submit to a certain extent you
19 might, and if you have a doubt, and if you have a doubt
20 you have to go with something less than capital murder.
21 I don't think that Mr. Horan has proven that
22 Richard Whitley is a capital killer. He would like for
23 you to think that he is a capital killer, but I submit

1 to you that he is not, and the last thing I'll say,
2 Ladies and Gentlemen, is that another instruction, since
3 we've talked about the presumption of innocence and
4 reasonable doubt, it goes with every stage of the proceed-
5 ings even into the jury room.
6 He's presumed to be innocent of capital murder
7 and again I would submit to you that he is innocent of
8 capital murder. He's not innocent of murder, but he
9 is not a capital killer.
10 Thank you for your attention and I trust that
11 you'll return a favorable verdict for my client. Thank
12 you.
13 MR. HORAN: Members of the Jury, I waited in
14 vain for counsel to give you some reason that this
15 Defendant may have committed these brutalities, some
16 reason he may have engaged in all of that violence before
17 he stole this woman's property.
18 As I say, I waited in vain. He reads from
19 Commonwealth Exhibit No. 33 talking about a number of
20 things that Whitley in the spirit of cooperation told
21 Investigator Sutherland.
22 Members of the Jury, I don't feel you are
23 convinced with everything this Defendant told somebody.

1 Anyone's common sense can tell him there's an awful lot
2 in that statement that is not true. It is quite clear
3 that Whitley, at times, is saying those things he thinks
4 may benefit himself.
5 One of the interesting lies in there in the
6 course of his statement on Page 4, he's talking about
7 tripping over this woman once he drags her body to the
8 bedroom, he's tripping over her. If they aren't full
9 square footprints right in the middle of her back, I
10 don't know what is. I don't know how you get those
11 treads on her by tripping over her. We do know he lied
12 about that. Commonwealth's Exhibit 9 indicates that he
13 lied.
14 He says in the course of the statement that he
15 didn't steal any money, Page 4, he didn't steal anything
16 like that. Well, if he didn't steal it who took that
17 wallet? That's lie number two.
18 Lie number three is when he tells the police
19 officer he doesn't know why he killed her. Here's
20 a man who killed and brutalized a 63-year-old woman
21 and he says he doesn't know why he killed her.
22 Members of the Jury, you can bet your life he
23 knows why. Page 12 of the statement, he denies any

1 knowledge of those umbrellas. One of his bigger lies.
2 I guess it's tough to admit those, though. It's kind
3 of macho to say you cut the woman's throat. There's
4 nothing macho about that form of perversion, that form
5 of brutality. So, he has to lie about that, but he
6 doesn't know anything about the umbrellas. Probably the
7 biggest lie of all comes when he says I got scared and
8 ran.

9 Members of the Jury, he did an awful lot when
10 he was scared and running, if, as counsel says, he cut
11 her throat in the living room somehow he got all those
12 clothes off. I'm sure she didn't meet him at the door
13 with no clothes on. He says he doesn't know how those
14 clothes got off, that's another lie.

15 He drags her to the bedroom. I guess this is
16 while he's scared and running. He ransacks that home.
17 I guess that's while he's scared and running. Counsel
18 seems to suggest to you that the fact that he had $100
19 from Monahan destroys any possibility he intended to
20 steal.

21 Members of the Jury, we submit to you that
22 just doesn't make any sense. He did steal. I guess,
23 maybe it's the worst theft if he already had a hundred

1 bucks in his pocket. The fact that he had a hundred
2 bucks in his pocket didn't stop him from taking the
3 credit cards and the car, didn't stop him from taking
4 a wallet.
5 Members of the Jury, I submit to you the
6 check is a red herring and we come back to the issue,
7 did he intend to take her property before he killed her?
8 Members of the Jury, why in heaven's name
9 would you ransack somebody's house after you kill them.
10 Now, we know he didn't ransack the house before he
11 killed her. He ransacked the house after he killed her.
12 He had to intend to steal. There is no other reasonable
13 conclusion from these facts. He may, as I say, have had
14 some other brutalities in mind in addition to the theft,
15 but he surely intended the theft.
16 We could get misled by some of this evidence.
17 There is no question that he tore this woman's clothes
18 off. There's no question that he's the one that put the
19 umbrellas into her. The autopsy report shows that there
20 is no evidence, the microscopic examination smears from
21 the oral cavity, anal canal, and vagina are negative
22 for sperm, but you would think that it does have some
23 sexual overtones, don't let that confuse you, in addition

1 to whatever that was, did he also have in mind that he
2 was going to steal her property. If that's what he had
3 in mind, Members of the Jury, all the semantics in the
4 world won't change the fact that he committed capital
5 murder.
6 If he didn't intend to steal why does he
7 ransack the house immediately after the killing.
8 On Page 13 of the statement Investigator
9 Sutherland says, question, how long were you in the house
10 after you took her to the bedroom? Answer, about ten
11 minutes. Hardly an afterthought.
12 Counsel says that he told Investigator Sutherland
13 that afterwards he felt terrible about the killing. He
14 felt so terrible that he rammed those umbrellas into her
15 rectum and vagina, that's how terrible he felt. He felt
16 so terrible that he drags her to the back bedroom and
17 steps all over her body while he was ransacking that room.
18 He felt so terrible that in addition to removing her
19 from the face of the earth, he stole her property. He
20 felt so terrible that he takes her car to Florida, uses
21 her credit cards until he finally abandons it in
22 Okeechobee.
23 He is a capital murderer, with a capital 'C'.

1 We ask you to convict him of it. Thank you.

2 THE COURT: Ladies and Gentlemen of the Jury,

3 the Court prepared the four possible verdict forms in

4 this case. The first one finding the Defendant guilty

5 of capital murder.

6 The second one finding the Defendant guilty

7 of first degree murder, with a place for you all to fix

8 a punishment.

9 The third one finding the Defendant guilty of

10 second degree murder, if that's your verdict and a place

11 to fix the punishment.

12 And, the fourth one finding the Defendant not

13 guilty.

14 You'll have these verdict forms, the instructions

15 that I read to you, and all the evidence to take to the

16 jury room with you.

17 I suggest that the first thing you do is

18 select a foreman to conduct your deliberations and sign

19 the verdict forms.

20 You may go now and consider your verdict.

21 (Whereupon, the Jury retired at 11:30 o'clock

22 a.m. to consider their verdict.)

23 (Whereupon, the Jury returned at 12:45 o'clock

Jury Verdict and Polling the Jury:
[T. 5/13/81, pp. 48-50.]

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18 select a foreman to conduct your deliberations and sign

19 the verdict forms.

20 You may go now and consider your verdict.

21 (Whereupon, the Jury retired at 11:30 o'clock

22 a.m. to consider their verdict.)

23 (Whereupon, the Jury returned at 12:45 o'clock

1 p.m. with a verdict.)

2 THE CLERK: Members of the Jury, have you

3 reached a verdict?

4 THE FOREMAN: We have.

5 THE CLERK: Is your verdict unanimous?

6 THE FOREMAN: Yes.

7 THE CLERK: "We the Jury on the issued joined

8 in the case of The Commonwealth of Virginia versus

9 Richard Lee Whitley, Defendant, find the Defendant guilty

10 of capital murder as charged in the indictment."

11 THE COURT: Any objection to the form of the

12 verdict?

13 MR. MCLAIN: No, Your Honor. I asked that the

14 Jury be polled.

15 THE CLERK: If that was your verdict answer in

16 the affirmative when I call your name.

17 Anna Greenway.

18 MS. GREENWAY: Yes.

19 THE CLERK: Oliver Norsworthy.

20 MR. NORSWORTHY: Yes.

21 THE CLERK: James Sutherland.

22 MR. SUTHERLAND: Yes.

23 THE CLERK: John Mullinax.

1 MR. MULLINAX: Yes.

2 THE CLERK: Henrietta Flanders.

3 MS. FLANDERS: Yes.

4 THE CLERK: Lori Fisher?

5 MS. FISHER: Yes.

6 THE CLERK: Pamela Humphrey.

7 MS. HUMPHREY: Yes.

8 THE CLERK: Eugene Clark.

9 MR. CLARK: Yes.

10 THE CLERK: Terryl Paiste.

11 MS. PAISTE: Yes.

12 THE CLERK: Randy Peiffer.

13 MR. PEIFFER: Yes.

14 THE CLERK: Karen Peterson.

15 MS. PETERSON: Yes.

16 THE CLERK: Richard Solar.

17 MR. SOLAR: Yes.

18 THE COURT: Ladies and Gentlemen of the Jury,

19 we'll now go into the sentencing phase of the trial.

20 I won't do it right this minute. We'll break for lunch.

21 First I'll ask and direct you again to speak to no one

22 about this case. I won't sequester you for lunch.

23 Do not discuss any aspect of the case with

Excerpts from testimony of Sgt. Jerry Feltman: [T. 5/13/81, pp. 54-8, 62-3.]

1 Whereupon,

2 SERGEANT JERRY FELTMAN

3 a witness, was called for examination on behalf of the

4 Commonwealth, and, after having been duly sworn by the

5 Clerk of the Court, was examined and testified as follows:

6 DIRECT EXAMINATION

7 BY MR. HORAN:

8 Q State your full name, please, and your occupation?

9 A Sergeant Jerry Feltman, Tampa Police Department,

10 Detective, Sergeant.

11 Q How long have you been a police officer?

12 A Twenty years.

13 Q How long have you been a detective?

14 A Total of six years.

15 Q Directing your attention to the 8th day of

16 August of 1980, did you have occasion to interview the

17 Defendant in this case, Richard Lee Whitley?

18 A Yes, sir, I did.

19 Q When and where did that interview take place?

20 A At approximately 9:30 p.m. in the homicide

21 squad room of the Detective Division of the Tampa Police

22 Department.

23 Q Prior to engaging in any discussion with him,

1 did you advise him of any constitutional right?

2 A Yes, sir, I did.

3 Q And, explain to the Jury the procedure that

4 you followed to explain those rights?

5 A The Tampa Police Department has a preprinted

6 form which outlines the Miranda Warnings which we use

7 to advise any person we're talking to, we use to advise

8 them of those particular rights prior to them being

9 interviewed.

10 Q Now, Sergeant Feltman, I show you this form

11 that's been marked Commonwealth's Exhibit No. 36 for

12 identification, and I ask if you can identify that form?

13 A Yes, sir, I can.

14 Q Is that the form you used on the night of

15 August 8, to advise this Defendant of his rights?

16 A Yes, sir.

17 Q Who was present when you did that?

18 A Mr. Whitley, myself, Sergeant Flint from Manatee

19 County Sheriff's Office, and Mr. Foy who is the investigator

20 for the State Attorney's Office.

21 Q Did all of these three of those individuals,

22 those two and yourself, sign the form?

23 A Yes, sir. I signed it, dated it and put the time

1 and the other two men signed it underneath my name.

2 Q Would you tell the Jury what rights you had

3 advised the Jury of?

4 A Yes, sir, I will.

5 At the time Mr. Whitley was advised of his

6 rights he was given a form identical to this one and

7 instructed to read along with me, read his form as I

8 read this one to him, and I read the form to him in its

9 entirety.

10 I filled in the blanks, the first one with his

11 name. It says, "I Richard Lee Whitley do hereby consent

12 to being interviewed by Sergeant J. T. Feltman, Mr. James

13 Flint, Mr. Yem Foy concerning the offense of homicide.

14 I understand I need not consent to being interviewed nor

15 am I required to make any statement whatsoever; that I

16 have the right to remain silent, and not answer any

17 questions asked of me relative to this crime.

18 I further understand that if I do make a

19 statement or answer any questions that such statement

20 whether written or oral could and will be used against

21 me if I am prosecuted for this offense.

22 I further understand that prior to or during

23 this interview I have the right to have an attorney present

1 I further understand that if I am unable to
2 hire an attoney and I desire to consult with an attorney
3 or have one present during this interview that I may
4 do so, and this interview will terminate until such
5 time as one can be appointed for me by the Court.
6 I further understand that at any time that I
7 desire I can have this interview stopped.
8 Knowing my rights, I hereby prior to being
9 interviewed waive my rights to consult with an attorney
10 or have one present during this interview.
11 Any and all statements I make will be freely
12 and vlountarily made, no promises, no threats or inducements
13 of any kind or nature whatsoever has been promised to
14 me in order to consent to this interview.
15 Prior to my signature being affixed hereto
16 this statement has been read to me in its entirety and
17 I fully understand the same."
18 Q Did he, in fact, sign that form after you
19 advised him of all those rights?
20 A Yes, sir.
21 Q Did he indicate to you that he understood those
22 rights?
23 A Yes, sir, he did.

1 MR. HORAN: Your Honor, I would offer this
2 into evidence as Commonwealth's Exhibit No. 36. I
3 already provided counsel with a copy of it.
4 MR. MCLAIN: No objection.
5 THE COURT: I'll receive this as Commonwealth's
6 Exhibit No. 36.
7 (The document referred to above
8 was marked Commonwealth's
9 Exhibit No. 36, previously
10 for identification, and received
11 in evidence.)
12 BY MR. HORAN:
13 Q After you advised him of those rights,did you
14 discuss with him a killing that occurred in Virginia?
15 A Yes, sir, I did.
16 Q Did you ask him whether or not that he killed
17 the lady in Virginia?
18 A Yes, sir, I did.
19 Q What was his response to that?
20 A His first response was, I guess so. I then
21 asked him yes or no, and he responded yes.
22 Q Did you ask him what he killed the lady with?
23 A Yes, sir, I did.

1 was and the answer, and the second question and the
2 answer?
3 A Excuse me, where to you want me to start?
4 Q Start there and down to here.
5 A All right, sir.
6 I asked him, why did you kill her? His response
7 was, I don't know.
8 Sergeant Flint then asked, where did you cut
9 her? His response to that was, in the throat.
10 Mr. Foy then asked, where did you cut or stab
11 her? Mr. Whitley's response to that was, I cut her
12 jugular vein, they die quicker when you cut them there.
13 Q Now, does that appear to be the questions and
14 the answers of the conversation that you had with him
15 that night?
16 A Yes, sir, it does.
17 Q Does that comport with your recollection of
18 the conversation that night?
19 A Yes, sir, it does.
20 Q Did there come a time in the course of that
21 conversation, and use your notes, Sergeant Feltman, if
22 you feel those notes are accurate, in the course of that
23 conversation, did there ever come a time when you asked

1 him what she was doing when he killed her?

2 A Yes, sir.

3 Q Tell me what the question was and what the

4 answer was?

5 A What was the last thing the old lady was doing?

6 Mr. Whitley's response was, praying.

7 Q Did he ask him anything after that?

8 A Yes, sir.

9 He was asked another question, was she praying

10 for you not to kill her? Mr. Whitley's response to that

11 was, yeah, I guess.

12 MR. HORAN: I have no further questions, Your

13 Honor.

14 THE COURT: Cross examination.

15 CROSS EXAMINATION

16 BY MR. MCLAIN:

17 Q Sergeant Feltman, I believe you testified that

18 the questioning of Mr. Whitley began at 9:30 on the day

19 of his arrest?

20 A 9:31 according to my notes, yes, sir.

21 Q That was on the 8th of August, that was the day

22 of the arrest?

23 A That's correct.

Excerpts from testimony of Dr.
Henry O. Gwaltney, Jr.:
[T. 5/13/81, pp. 75-86.]

1 Whereupon,

2 DR. HENRY GWALTNEY

3 a witness, was called for examination on behalf of the

4 Defendant, and, after having been duly sworn by the

5 Clerk of the Court, was examined and testified as follows:

6 DIRECT EXAMINATION

7 BY MR. MCLAIN:

8 Q Dr. Gwaltney, would you state your name, please,

9 for the Jury?

10 A Henry O. Gwaltney, Jr., that's spelled

11 G-w-a-l-t-n-e-y.

12 Q How are you employed, sir?

13 A I'm employed at the Forensic Unit at Central

14 State Hospital. I'm a Forensic Clinical Psychologist.

15 Q Dr. Gwaltney, during the course of your

16 employment with the Commonwealth of Virginia and with

17 Central State Hospital, did you have occasion to observe

18 and examine Mr. Whitley?

19 A Yes, we did. We examined Mr. Whitley on the

20 order of this Court.

21 Q Dr. Gwaltney, if you would relate to the Jury

22 the date or the time of the examination and what the

23 results of your observation and examination revealed?

1 A May I refer to my notes?

2 Q Yes, please.

3 A Mr. Whitley was admitted to Central State

4 Hospital on March the 10th of 1981 for examination on

5 order of this Court, as I indicated. I'll go into in

6 a few minutes the specific request for the nature of

7 the examination.

8 Q Dr. Gwaltney, before you do that, would you tell

9 the Jury a little bit about yourself as to your qualifications?

10 MR. HORAN: I'll stipulate to the Doctor's

11 qualifications.

12 MR. MCLAIN: You'll stipulate to the fact that

13 he's qualified as an expert in the field of psychology?

14 MR. HORAN: Psychology.

15 THE COURT: Thank you.

16 BY MR. MCLAIN:

17 Q Go ahead.

18 A Mr. Whitley was with us from March the 10th

19 until April the 1st of this year as an in-patient in

20 the Forensic Unit which is the unit in the Commonwealth

21 that examines patients on requests of the various courts

22 to advise the courts on their competency to stand trial

23 on a mental condition, defendants at that time of alleged

1 crimes and for other examinations that may be legally
2 relevant.
3 We were requested by the Court on a motion
4 of the Defense attorney to advise them as to our opinion
5 of Mr. Whitley's mental condition at the time he was
6 admitted to the hospital, and at the time of the alleged
7 offense.
8 We were asked to evaluate whether he had
9 sufficient capacity to appreciate the criminality of the
10 alleged conduct. We were asked to evaluate and express
11 an opinion of whether, at the time of the alleged offense,
12 his capacity to conform his conduct to the requirements
13 of the law was significantly impaired.
14 We were asked to express our opinion whether
15 at the time of the alleged offense he was under the
16 influence of extreme, emotional or mental disturbances,
17 and our examination was oriented towards expressing our
18 opinion on these requests.
19 Q Now, during the course of your examination and
20 observation of Mr. Whitley, if I may see the statement,
21 did you indicate in your report that Mr. Whitley was
22 under some sort of emotional disturbance because of the
23 disappearance of his wife at the time of the incident in

1 this case?

2 A Yes. We have submitted a letter to the Court,
3 to the attorneys involved answering those questions to
4 the question related to the emotional disturbance due
5 to whether he was under severe emotional or mental
6 disturbance.

7 We concluded that he was under emotional
8 disturbance due to the disappearance of his wife, and
9 this was reportedly complicated by the -- by excessive
10 drinking and use of drugs prior to the offense.

11 Q Can you give an opinion based on your
12 investigation and examination and observation of this
13 Defendant involving what the effects of alcohol and drug
14 abuse are?

15 A As we indicated in the letter we reached a
16 conclusion that based on fairly well established facts
17 that I think that we can agree upon that the use of
18 alcohol and various kinds of psycho-stimulants, drugs,
19 can decrease and depress inhabitions in an individual
20 and these can facilitate to a greater or lesser extent
21 the externalization, the coming out or aggressive or
22 distructive impulses.

23 We're only stating here, I should add for

1 clarity, that this is the assumption that Mr. Whitley
2 was under, the effect of drugs and alcohol.
3 Q One further question, during the course of
4 your examination and observation of Mr. Whitley, did you
5 on any occasion inquire of him the circumstances
6 surrounding the murder, specifically, relating to the
7 use of the umbrellas, and would you relate to the Jury
8 how that took place and what the results of that was?
9 A We interviewed Mr. Whitley on a number of
10 occasions. I and my colleague, Dr. Dimitris, who signed
11 the report, is a co-signer with me. We interviewed
12 Mr. Whitley on, I might say numerous occasions both
13 individually and jointly.
14 I spent approximately five hours either jointly
15 or individually with Mr. Whitley. Some of these
16 interviews are recorded and I reviewed those carefully
17 to recall my memory as part of our evaluation procedures,
18 as part of the information we use to reach our conclusory
19 statement. We attempt to carry out a reconstructive
20 interview with the patient or individual being evaluated,
21 and this is merely to give us information concerning his
22 report, what went on at the time of the offense that we
23 may use with other information available such as statements

1 made to investigators, and statements or arresting
2 officers, et cetera, to give some opinion of our
3 evaluation of his mental status at the time of the
4 alleged offense.
5 Mr. Whitley, in our evaluations, essentially
6 related to us the statements that you have heard from
7 the investigating officer here from Fairfax.
8 I've been asked to reply to the notion of the
9 umbrellas. Mr. Whitley following admission of the other
10 behavior denied throughout his stay to us any knowledge
11 of the umbrellas, that he was questioned very extensively
12 about this.
13 Q During the course of your observation and
14 examination of Mr. Whitley at any particular time did
15 you have Mr. Whitley submit to a sodium --
16 MR. HORAN: I object. Counsel knows it is
17 not allowed under the Virginia Law to go into sodium
18 pentothal, the voo-doo of science today, he knows that
19 is not admissible under Virginia Law. The so-called
20 sodium pentothal is only used in the Soviet Union.
21 MR. MCLAIN: If I had known that I wouldn't have
22 asked it.
23 THE COURT: Do you want to withdraw the question?

1 Do you want to be heard at the bench or do you want
2 to withdraw that line of questioning?
3 MR. RODWAY: We'll withdraw the line of
4 questioning, but I ask the Court to instruct the Jury
5 to disregard what Mr. Horan said, that is inappropriate.
6 THE COURT: Disregard Mr. Horan's remarks about
7 the Soviet Union.
8 MR. MCLAIN: I believe that's all the questions
9 I have. Thank you.
10 CROSS EXAMINATION
11 BY MR. HORAN:
12 Q Doctor, in your opinion you have no way of
13 knowing whether this Defendant was under an emotional
14 stress or not, do you?
15 A We have no way other than his statement.
16 Q In order to form some opinion that he was
17 even under emotional stress you necessarily have to
18 believe what he tells you?
19 A Yes, sir.
20 Q And, if he's lying to you about whether or not
21 his wife left him under stress then you really don't have
22 an opinion that has a basis?
23 A Well, we only have an opinion based on the

1 statements made to us. If those statements are -- if
2 there are other statements, then, we would have an
3 alternative opinion.
4 Q So, what you're really saying is, if he told
5 us the truth and was under stress, we can form some
6 conclusions?
7 A That is true.
8 Q If he's not telling us the truth, then, these
9 conclusions are necessarily of less value?
10 A That's correct.
11 Q Now, in the course of your examination of this
12 Defendant it was your conclusion that he's not mentally
13 ill?
14 A Yes, sir, that he was not mentally ill, not
15 insane.
16 Q Not insane?
17 A Yes.
18 Q Not feebleminded?
19 A Yes.
20 Q It was your conclusion then and now that at
21 the time of this act, even if he was under stress, he
22 maintained sufficient capacity to appreciate the criminality
23 of his conduct?

1 A That is our opinion expressed to the Court in
2 a letter that you have that I believe that you're
3 quoting from.
4 Q The letter of April 27th. I want to make
5 sure that's still your opinion?
6 A We maintain that opinion. We have no additional
7 information other than the opinions I expressed in that
8 letter.
9 Q So, in other words, if he was under stress
10 he still had the capacity to appreciate that his conduct
11 was criminal?
12 A We believe that is true.
13 Q Assuming, once again, that he was under stress,
14 it was your opinion that he maintained sufficient
15 capacity to conform his conduct to the requirements of
16 the law?
17 A That is our conclusion.
18 Q Another way of saying that is he knew killing
19 her was wrong and he could have stopped from killing her
20 if he wanted to; isn't that true?
21 A Yes.
22 Q Is there any doubt about that, Doctor?
23 A No doubt. I wanted to make sure I was responding

1 to the question as you asked it.

2 Q And, once more under the most favorable

3 consideration of his stress, it was your opinion that

4 the emotional and mental disturbance was not so severe

5 or extreme to provide the Defendant of a goal oriented

6 type of activity which assisted him to collect favorable

7 items of the house of the victim and then drive methodically

8 and safely many hundred miles away from the scene of the

9 alleged crime.

10 That's your opinion on April 27th and that's

11 still your opinion now?

12 A That's my statement today.

13 Q And, that's not another way of saying, even

14 if he was under stress, it wasn't extreme stress?

15 A It did not interfere with logical behavior as

16 the statement I think implies.

17 Q And, Doctor, I show you this letter that is

18 dated April 27, 1981, and ask is that the letter of

19 yourself and Dr. Dimitris?

20 A Yes, it is.

21 Q And, that opinion is still a valid opinion

22 today?

23 A Yes, it is.

1 MR. HORAN: Your Honor, I would offer this
2 into evidence as Commonwealth's Exhibit No. 37 as
3 being the psychiatric report of the Central State
4 Hospital.
5 MR. MCLAIN: No objection.
6 THE COURT: I'll receive this as Commonwealth's
7 Exhibit No. 37.
8 (The letter referred to above
9 was marked Commonwealth's
10 Exhibit No. 37, previously,
11 for identification, and received
12 in evidence.)
13 MR. HORAN: No further questions.
14 REDIRECT EXAMINATION
15 BY MR. MCLAIN:
16 Q Dr. Gwaltney, before you had received Mr.
17 Whitley's confession from the Fairfax Police, you had
18 a statement from him, however, more or less or interviewed
19 him about this offense, had you not?
20 A Yes, sir.
21 Q And, then at the subsequent point in time you
22 received a statement that he had given to the Fairfax
23 Police; isn't that correct?

Jury Instructions; Penalty Phase:
[T. 5/13/81, pp. 87-90.]

1 A Yes, sir.

2 Q How did the two statements compare?

3 A I have not examined them in terms for lying,

4 but I can say with confidence that they were amazingly

5 similar. The results of the transcripts of my interviews

6 with Mr. Whitley were very congruent with the statements

7 that I later received that were carried out by the Fairfax

8 Investigators.

9 MR. MCLAIN: Thank you.

10 RECROSS EXAMINATION

11 BY MR. HORAN:

12 Q Did he ever tell you that she was praying

13 when he killed her?

14 A No, sir.

15 FURTHER REDIRECT EXAMINATION

16 BY MR. MCLAIN:

17 Q Did the statement that you read from the

18 Fairfax Police say that she was praying when he killed her?

19 A I don't believe so.

20 MR. MCLAIN: That's all.

21 THE COURT: May this witness be excused?

22 MR. MCLAIN: Yes, sir.

23 THE COURT: Thank you for testifying.

1 (Witness excused.)

2 THE COURT: Mr. McLain?

3 MR. MCLAIN: Your Honor, may we have a moment?

4 THE COURT: Take your time.

5 MR. MCLAIN: The Defense rests, Your Honor.

6 THE COURT: Would you all approach the bench.

7 (Whereupon, the following was heard at the

8 bench outside the hearing of the Jury.)

9 THE COURT: Are you going to have any other

10 evidence?

11 MR. HORAN: No further evidence.

12 THE COURT: Knowing you and Mr. Rodway, I'm

13 sure I know the answer to this question already, but

14 you all have thoroughly discussed with the Defendant

15 his right to testify at this stage. He knows what this

16 Jury is going to do, and he doesn't want to testify;

17 is that correct?

18 MR. MCLAIN: It's our understanding.

19 THE COURT: Is that right, Mr. Whitley, you

20 don't want to testify?

21 THE DEFENDANT: No.

22 THE COURT: You understand you can?

23 THE DEFENDANT: Yes.

1 (Whereupon, the following was had within the
2 hearing of the Jury.)
3 THE COURT: I'm going to read further
4 instructions to you at this time. You'll have these
5 to take back to the jury room as well.
6 The Court instructs the Jury that the penalty
7 of death shall not be imposed unless you find that the
8 Commonwealth has proven beyond a reasonable doubt that
9 the Defendant's conduct in committing the offense was
10 outrageously or wantonly vile, horrible or inhumane in
11 that it involved depravity of mind or aggravated battery
12 to the victim.
13 If you find that the Commonwealth has proven
14 the above beyond a reasonable doubt you may fix a
15 punishment of death.
16 If you find that the Commonwealth has failed
17 to prove the above beyond a reasonable doubt or if you
18 find that other mitigating circumstances do not justify
19 a sentence of death you shall fix the Defendant's
20 punishment at life imprisonment.
21 The Court instructs the Jury that the Commonwealth
22 must prove its case beyond all reasonable doubt. It is
23 not sufficient the Jury may believe it is probable that

1 the Defendant's conduct in committing the offense was
2 outrageously or wantonly vile, horrible or inhumane in
3 that it involved depravity of mind or aggravated battery
4 to the victim or that it is more probable that it was
5 than it was not.
6 Suspicion or probability about the nature of
7 the Defendant's conduct however strong will not authorize
8 imposition of the dealth penalty, but the evidence must
9 prove the nature of the Defendant's conduct beyond a
10 reasonable doubt.
11 The Jury shall not speculate or go outside
12 the evidence to consider what they think might have taken
13 place, but you are to confine your consideration to the
14 evidence introduced by the Commonwealth and the Defense,
15 and unless you believe upon the consideration of all the
16 evidence before you beyond a reasonable doubt that the
17 Defendant's conduct in committing the offense was
18 outrageously or wantonly vile, horrible or inhumane
19 in that it involved depravity of mind or aggravated
20 battery to the victim then you shall not impose the death
21 penalty.
22 The burden resting upon the Commonwealth to
23 prove the nature of the Defendant's conduct beyond a

1 reasonable doubt does not require that such conduct be
2 proven beyond every imaginable, conceivable or possible
3 doubt, but only beyond a reasonable doubt.
4 The Jury must limit its consideration to the
5 evidence introduced and you're not to go outside of the
6 evidence to hunt up doubts or you must not entertain
7 doubts which are speculative or conjectural, and if
8 upon consideration of all the evidence you're satisified
9 beyond a reasonable doubt that the Defendant's conduct
10 in committing the offense was outrageously or wantonly
11 vile, horrible or inhumane in that it involved depravity
12 of mind or aggravated battery to the victim, then, you
13 may impose the death penalty.
14 The Court instructs the Jury that you may
15 consider any and all facts in evidence in mitigation of
16 the offense including, but not limited to the circumstances
17 surrounding the offense, the history and background of
18 the Defendant, the age of the Defendant at the time of the
19 commission of the offense.
20 Mr. Horan.
21 MR. HORAN: Members of the Jury, at this juncture
22 in the case, of course, you must consider all the evidence
23 that you already heard in the trial phase, plus, any

Closing and Rebuttal Arguments;
Penalty Phase: [T. 5/13/81,
pp. 90-6.]

1 reasonable doubt does not require that such conduct be
2 proven beyond every imaginable, conceivable or possible
3 doubt, but only beyond a reasonable doubt.
4 The Jury must limit its consideration to the
5 evidence introduced and you're not to go outside of the
6 evidence to hunt up doubts or you must not entertain
7 doubts which are speculative or conjectural, and if
8 upon consideration of all the evidence you're satisified
9 beyond a reasonable doubt that the Defendant's conduct
10 in committing the offense was outrageously or wantonly
11 vile, horrible or inhumane in that it involved depravity
12 of mind or aggravated battery to the victim, then, you
13 may impose the death penalty.
14 The Court instructs the Jury that you may
15 consider any and all facts in evidence in mitigation of
16 the offense including, but not limited to the circumstances
17 surrounding the offense, the history and background of
18 the Defendant, the age of the Defendant at the time of the
19 commission of the offense.
20 Mr. Horan.
21 MR. HORAN: Members of the Jury, at this juncture
22 in the case, of course, you must consider all the evidence
23 that you already heard in the trial phase, plus, any

1 evidence which you just heard and the evidence from the
2 sergeant from Tampa, and the doctor from the hospital
3 as His Honor said to you.
4 The test is whether or not the conduct is
5 outrageously horrible or inhumane in that it involves
6 deprivity of mind or aggravated battery to the victim.
7 I will not belabor the obvious.
8 He cut her throat. He strangled her. He
9 stripped her naked. He violated her with those umbrellas.
10 If that is not depravity of mind, there is no
11 depravity of mind within man's possibility. That conduct
12 amounts to aggravated battery of that woman, and what
13 I'm really saying is, I'm asking you a question considering
14 what you have heard, can one conceivably have anything
15 more inhumane, more totally lacking in humane compassion,
16 more totally lacking in humane decency, more totally
17 lacking in just basic human virture, and to butcher that
18 63-year-old defenseless woman as this Defendant did, I
19 guess, if there's anything in the world worse than the
20 basic depravity of what he did, is the basic depravity
21 of killing somebody while they're praying for their life.
22 Members of the Jury, we ask that you sentence
23 this Defendant to death for the absolutely outrageous

1 crime that he committed.

2 THE COURT: Mr. McLain.

3 MR. MCLAIN: Ladies and Gentlemen, a while ago

4 back before the luncheon recess we asked you, in fact,

5 both of us told you, Mr. Horan and I, that it's your

6 burden, and your duty is not an easy thing, that we didn't

7 envy you; I know I don't in the decision that you're

8 about to make.

9 You've decided that Mr. Whitley is guilty of

10 capital murder, and that's the obvious, and the part

11 that's not so obvious is whether or not you're going to

12 sentence him to the chair, and that's a decision that

13 you're going to have to make.

14 As far as the way you tried to mitigating

15 factors I'd be less than candid if I said that there were

16 a few.

17 I think you have to take a look at a couple of

18 things, and a couple of those things are -- I'll start

19 with one of the things that you can't consider, all

20 the circumstances, the strangal crime, the history of

21 the Defendant, taking his age into consideration, the

22 fact that he's 34. The fact that he lived next door to

23 Mrs. Parsons with his wife and daughter and over a period of

1 time, as I have established and re-established, and the
2 Commonwealth's own evidence established the fact that
3 he had done things for her during her lifetime.
4 Unfortunate, which lasted, which that he admitted freely and
5 voluntarily to you, everybody else, that he was the one
6 that killed her. I think those are some things that you
7 can consider, go back and look at what we've already
8 argued.
9 I think there are some things that I think
10 you can consider in trying to decide whether or not you're
11 going to send Mr. Whitley to the chair and give him the
12 death penalty in this case.
13 Let's look at the fact of what evidence was
14 presented by the Commonwealth in this portion of the case.
15 On their own free will three people in Florida, three
16 investigators took it upon themselves to go talk to
17 Mr. Whitley and get a statement out of him. I think
18 it's pretty clear that by their own case and by their
19 own evidence the investigator, Sergeant Feltman,
20 Detective Feltmen, and two other fellows spent two
21 hours with Mr. Whitley until 10 minutes until 1:00 in
22 the morning, and we have the conveniently typed up
23 portions, what they'd like for you to hear.

1 I don't think Mr. Whitley suggested to these
2 detectives and to these investigators that Mrs. Parsons
3 was praying. I think that whole portion of that evidence
4 obviously, something along those lines was said, but I
5 wonder at whose suggestion and how it got in there.
6 I don't believe he asked Mr. Whitley like
7 Investigator Sutherland after he did when he took a
8 statement from Mr. Whitley, how did you feel afterwards,
9 and Mr. Horan, again, will get the opportunity to address
10 you and he's going to say well, if he felt so terrible
11 after he realized what had happened then why didn't he
12 call the police or why didn't he call the ambulance,
13 and then got scared and he runned.
14 I submit to you that is what happened that
15 is, he got scared and runned. There's a 10 minute gap.
16 We don't know, we weren't there. Did Mr. Whitley sit
17 down in that house and say, good God, you know, what have
18 I done. Maybe he did. Maybe he didn't. Again, we're
19 guessing. We don't know. We don't know how it happened,
20 but Mr. Whitley has said not only once, but maybe three
21 or four times, and no telling how long when he was in
22 Florida that he didn't know how it happened and I submit
23 to you that's reasonable, that's not totally incredible,

1 and it's certainly something to consider when you're
2 looking at the difference between life and death.
3 As I stated, and I may be redundant at this
4 point, Mr. Whitley has never denied to anyone, any witness
5 that the Commonwealth has called out of 10 or 11 that
6 Whitley denied killing Mrs. Parsons or that Whitley
7 ever denied that he cut her throat, or that Whitley ever
8 denied that he choked her.
9 His consistency, I think, is clear all the way
10 throughout this case. I believe Investigator Sutherland
11 stated that it was fair to say that Mr. Whitley had
12 been cooperative and we say to a certain extent, of course,
13 and that's what Mr. Horan is going to say, but at this
14 point in the trial we're begging you for Mr. Whitley's
15 life. We maintained unsuccessfully and you all are the
16 judges of the facts that it was not a robbery,that that
17 point is over with. But, there's so many unclear things.
18 I would submit to you that to go ahead and pull the
19 switch and put Mr. Whitley in the chair under these
20 facts considering that you have a choice between life
21 and death, that the choice of life would be the better
22 choice to make. Thank you for your attention.
23 THE COURT: Rebuttal?

1 MR. HORAN: Members of the Jury, the question
2 is not so much if he felt so bad about this thing. Why
3 didn't he call the police and the rescue squad. The
4 question is if he felt so bad about this thing why did
5 he ravage her afterwards; that's the question.
6 It doesn't have anything to do with calling the
7 police. It has to do with the totally inhumane conduct
8 in the course of that whole event. I would say this to
9 you, it's a tough judgment that you must make. You have
10 to make a judgment based on the factors that you have
11 heard in this courtroom, no speculation what really
12 happened in this case.
13 I submit to you there's no doubt, reasonable
14 or otherwise, that this was a totally outrageous inhumane
15 killing. There's no other words to describe it.
16 The language of the statutory capital punishment
17 provision fit this case to a tea. Outrageous and
18 inhumane conduct characterized by depravity of mind and
19 aggravated battery of the victim, that's this case to a
20 tea, and in asking you for a verdict of death we do not
21 ask you for retribution. We don't ask you for vengeance.
22 We ask you for justice. Justice for that dead woman
23 who simply didn't deserve to die. Thank you, Members of

Jury Verdict: [T. 5/13/81, pp. 97-8.]

1 the Jury.

2 THE COURT: Ladies and Gentlemen of the Jury,

3 you've already selected a foreman. I have the instructions

4 that I previously read to you. I've prepared two verdict

5 forms, two punishment forms; one fixing the Defendant's

6 punishment at death and one fixing his punishment at

7 life imprisonment and with a spot for your foreman to

8 sign.

9 I'll send the instructions, the verdict forms

10 and all the evidence back up with you.

11 You may retire now and consider your finding.

12 (The Jury retired at 3:00 o'clock p.m. to

13 consider their verdict.)

14 (The Jury returned at 3:30 o'clock p.m. with

15 a verdict.)

16 THE CLERK: Members of the Jury, have you

17 reached a verdict?

18 THE FOREMAN: Yes, we have.

19 THE CLERK: Is your verdict unanimous?

20 THE FOREMAN: Yes.

21 THE CLERK: "We the Jury on the issue joined

22 having found the Defendant guilty of capital murder during

23 the willful, deliberate and premeditated killing of

1 Phebe Parsons in the commission of a robbery while armed
2 with a deadly weapon, and that his conduct in committing
3 the offense as outrageously and wantonly vile, horrible
4 or inhumane in that it involved depravity of mind or
5 aggravated battery of Phebe Parsons, and having considered
6 the evidence and mitigation of the offense unanimously
7 fix his punishment at death.
8 THE COURT: Is there any objection to the form
9 of the verdict?
10 MR. HORAN: No, Your Honor.
11 MR. MCLAIN: None, Your Honor.
12 THE COURT: Do you want the Jury poled?
13 MR. MCLAIN: No, Your Honor.
14 THE COURT: Thank you very much for your service.
15 You are under no obligation to talk to anyone
16 about this case and the reason for your decision. You
17 all are excused.
18 (The Jury was excused.)
19 THE COURT: Are there any motions?
20 MR. MCLAIN: Yes, Your Honor. Pursuant to
21 19.2-264.5 I would ask the Court to order a postsentence
22 report in this case.
23 THE COURT: Okay, I order a postsentence report

Motion and Court Order for Pre-Sentence Report: [T. 5/13/81, pp. 98-9.]

1 Phebe Parsons in the commission of a robbery while armed
2 with a deadly weapon, and that his conduct in committing
3 the offense as outrageously and wantonly vile, horrible
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5 aggravated battery of Phebe Parsons, and having considered
6 the evidence and mitigation of the offense unanimously
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14 THE COURT: Thank you very much for your service.
15 You are under no obligation to talk to anyone
16 about this case and the reason for your decision. You
17 all are excused.
18 (The Jury was excused.)
19 THE COURT: Are there any motions?
20 MR. MCLAIN: Yes, Your Honor. Pursuant to
21 19.2-264.5 I would ask the Court to order a postsentence
22 report in this case.
23 THE COURT: Okay, I order a postsentence report

1 pursuant to that code section. I'll set sentencing for
2 June the 12th, 1981 at 2:00 p.m. I want all, any and
3 all motions to be filed at least five days prior to that
4 time. I'll hear and decide any and all motions at 2:00
5 p.m. on June the 12th.
6 I likewise find the Defendant guilty of capital
7 murder and sentence him on that date.
8 The Defendant is committed to the custody of
9 the Sheriff.
10 - - -
11 (Whereupon, at 3:45 o'clock, the hearing in
12 the above matter was concluded.)
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Defense Allocution: [T. 6/12/81, pp. 2-10.]

1 P R O C E E D I N G S

2 (Whereupon, the Court Reporter was sworn by the
3 Clerk of the Court.)

4 THE COURT: This is the case of the Commonwealth
5 of Virginia vs. Richard Lee Whitley, Criminal Number
6 32737. Commonwealth is present by her attorney. The
7 Defendant is here personally and with both of his attorneys.

8 Laurie Hunt is the probation officer who has
9 prepared the presentence report. She is, likewise, present.
10 All parties have been present during both stages of the
11 trial including the Defendant.

12 Have you reviewed the report with your client,
13 Mr. Rodway and Mr. McLain?

14 MR. McLAIN: Yes, sir.

15 MR. RODWAY: I have, Your Honor.

16 THE COURT: You've had ample time to review it?

17 MR. McLAIN: Yes, Your Honor.

18 THE COURT: Do you have any questions of the
19 probation officer?

20 MR. McLAIN: I have no questions of the probation
21 officer, no, Your Honor.

22 THE COURT: Mr. Horan, do you have any questions
23 of the probation officer?

1 MR. HORAN: No, Your Honor.

2 THE COURT: Does the Defendant have any evidence?

3 MR. McLAIN: No, Your Honor, we have no evidence.

4 THE COURT: Do you have any evidence?

5 MR. HORAN: No, Your Honor.

6 THE COURT: Do you have any argument?

7 MR. McLAIN: Yes, Your Honor. Your Honor, I just

8 have a couple of comments about the presentence report

9 itself. There are a couple of things that are in there

10 that Mr. Whitley has gone over the report with the question

11 of being factual.

12 One, I believe, the most serious probably of which

13 is on Page 4 in the fourth paragraph right before the

14 section on marital history. Mr. Whitley denies specifically

15 the allegations made apparently by his sister, Patricia

16 Whitley Silvert, that there was a sexual assualt perpetrated

17 upon his mother sometime in 1975.

18 I believe the record is fairly clear that

19 Mr. Whitley was incarcerated at that time during the year

20 of 1975. So, he specifically denies that.

21 Another matter which I believe is somewhat in

22 conflict concerns a minor thing that Mr. Whitley would like

23 to see straightened out concerning his father. He has not

1 seen his father since he was six months old. His father
2 died, apparently, sometime in 1960 when Mr. Whitley was
3 older. He said he had not seen his father since he was
4 six months old.
5 I believe that's really the only thing in the
6 report. Otherwise, the report is very thorough and very
7 well done.
8 THE COURT: With those corrections, then, I'll
9 order that the presentence report be made a part of the
10 record in this case.
11 MR. MCLAIN: As far as argument is concerned, the
12 Court knows that Mr. Whitley was first arrested and charged
13 with first degree murder and was later indicted for capital
14 murder.
15 The defense took the position that the murder
16 did not take place during the commission of a robbery and
17 offered to plead guilty to first degree murder and give up
18 a life sentence.
19 The Commonwealth refused this offer and went
20 through an orderly two-day trial. The defense maintains
21 that the evidence introduced at trial and during
22 we still maintain that position that the evidence introduced
23 at trial does not prove that the murder took place during

1 the commission of a robbery.

2 We believe that the physical evidence showed that
3 the murder took place right inside the front door of the
4 house; which the Commonwealth's evidence showed that there
5 was a large concentration of blood which was made ample by
6 the photographs of an investigation that was done by the
7 police department in this case.

8 The evidence showed that the trail of blood went
9 down the hallway towards the bedrooms inside the house;
10 which, also, I believe tends to support our contention
11 concerning the actual facts surrounding the murder and how
12 it took place.

13 The evidence also showed that the pocketbook or
14 purse was in the kitchen hanging on the hook where it
15 always was, apparently. The testimony that was educed
16 at trial, the evidence showed that Mr. Whitley had been
17 paid the afternoon of the murder and the check had been
18 cashed that afternoon; which we also believe will tend to
19 negate to show the intent of robbery.

20 We don't believe, and I think this is a major
21 point in our argument, that the jury, given the time that
22 they had, could sufficiently sort out the legal arguments
23 and issues that were involved in the case.

1 I believe it's a technical type of defense which
2 the jury could potentially have a hard time understanding
3 the difference between murder, first degree murder, the
4 felony murder rule and capital murder; whether there is
5 actually a murder occuring during the commission of a
6 robbery.
7 I don't believe, also, that they deliberated with
8 enough time and consideration concerning not only the
9 question of whether or not it's capital murder or first
10 degree murder, but also whether or not the death sentence
11 should be imposed or whether life in prison should be
12 imposed. We still feel strongly about that.
13 In addition, I think with the factors I've
14 mentioned already, I believe that the Court should consider
15 the fact that Mr. Whitley cooperated with the police. Not
16 only Fairfax police but the Florida police in regard to
17 his involvement in this offense.
18 He gave a number of statements, I believe three
19 or four is the best estimate, all of which were consistent
20 throughout.
21 I believe that in addition to giving the confession
22 that he gave to Investigator Stone and Investigator Johnson,
23 he also showed the police where his clothing was, where the

1 victim's clothing or items were after he had returned
2 voluntarily from Florida where he agreed to waive extra-
3 dition to come back up here.
4 I believe that is something that the Court can
5 consider. In addition to the fact that at the very outset
6 of the trial, the defense admitted to the jury that this
7 was no mystery murder type of case where we are looking to
8 see who done it. That's not the way the case went.
9 There is a very technical question, and the jury
10 has to decide between whether or not this murder occurred
11 during the commission of a robbery; and second of all,
12 whether or not the jury is going to impose a life sentence
13 or the death penalty.
14 We note in the presentence report, this is another
15 thing I think the Court should consider, that under the --
16 approximately the next to the last page or so -- involving
17 the Defendant's prior record, we note that approximately
18 every one of those charges which are on there beginning with
19 his first offense as a juvenile in 1963 shows that these
20 are primarily property offenses; that they are non-violent
21 crimes. They are trespassing, theft of cars, burglary, and
22 a couple trespassing charges.
23 I don't believe that there is any history, really,

1 of violents up until the point when this particular crime
2 was committed.
3 There is something else that is favorable, it's
4 in the report, a statement made by Mr. Lonihan concerning
5 the Defendant's employment; the fact that he was a good
6 worker, he didn't exhibit any violent behavior and the
7 fact that he was surprised and shocked, I believe were his
8 words, when learning of the facts of this particular case.
9 For all of the reasons that we've stated, Your
10 Honor, we respectfully ask the Court, pursuant to statute
11 the authority granted to the Court in 19.2-264.5 to set aside
12 the sentence of death in this case.
13 If the Court has any question in its mind, I'd
14 ask the Court to impose a sentence of imprisonment for
15 life in the case based on all of the factors that are
16 involved in this case. The Court is very familiar with
17 this case, sat through the trial, heard the evidence, has
18 heard the argument of counsel, and we would ask the Court
19 to do that pursuant to statute.
20 THE COURT: Thank you, Mr. McLain.
21 MR. HORAN: Your Honor, please. The issue right
22 now, of course, a very narrow issue under the statute, the
23 Court must determine in language of the statute the death

1 penalty rendered by the jury is appropriate and just.

2 If the Court finds that it is appropriate and

3 just, then the sentence of death should be ordered in an

4 execution. Of course, there are two considerations to

5 determine whether we ever should use the ultimate penalty.

6 Those two considerations are 1) the crime and

7 2) the criminal. The particular crime is no better today

8 than it was when that jury went out and in 20 minutues

9 decided that this crime was worth death.

10 It is a horrible criminal offense by any standard

11 that one wants to use to make. Your Honor heard all the

12 evidence, and I won't go in to what the crime was.

13 The second part of the equation is what the

14 criminal is. I've got some language in obsenity cases where

15 they talk about whether something has redeeming social

16 value. I defy anyone to read that probation report from

17 front to end and find me a paragraph that offers any

18 redeeming social value.

19 This jury had no idea just how bad Richard Lee

20 Whitley is. They were not aware of his criminal record.

21 They were not aware of a wide variety of things about him.

22 He suggests, as opposed to what his sister said, he didn't

23 rape his mother. Counsel said he couldn't have because he

1 was in jail in 1975. Of course, that's not true. The
2 probation report itself shows that he was arrested in
3 Woodstock, Illinois in March, 1975, for trespassing; and
4 in the end of that year, November of 1975, he was arrested
5 in Nellisville, Wisconsin, for burglary. He wasn't in
6 jail in 1975; above and beyond the question of whether he
7 raped his mother and she was in her sixties.
8 The report does indicate a chronic career
9 criminal, a burglar, a thief, who graduated to other crimes
10 as he got older. He sexually abused his 10-year-old
11 stepdaughter. The jury didn't know that.
12 His sodomized by force a 19-year-old male
13 hitchhiker in Arlington in the summer of 1980. The jury
14 didn't know that.
15 The jury didn't know just how bad this man was.
16 The jury knew that he had committed a totally horrible
17 crime. They didn't also know that he is a consummate
18 criminal as vicious as they come.
19 I would submit to the Court that only one
20 penalty is just and appropriate for what he is and for what
21 he has done. I would ask the Court pursuant to Section
22 53-316 of the 1950 Code of Virginia to set a date of
23 execution for Richard Lee Whitley.

Sentence of the Court: [T. 6/12/81, p. 11.]

1 THE COURT: Do you all have anything else you'd
2 like to say?
3 MR. McLAIN: No, I don't.
4 THE COURT: Mr. Whitley, is there anything you'd
5 like to now say or any reason why I should not now impose
6 judgment on you?
7 THE DEFENDANT: No, I have nothing to say.
8 THE COURT: Well, I have sat as judge in both
9 stages of the trial and, of course, in this proceeding here
10 today; and as Mr. McLain said, I am familiar with all the
11 facts of the case.
12 I have independently reviewed the jury's verdict,
13 based on the evidence in both phases of the trial, I have
14 independently reviewed the presentence report. I can find
15 no fault, whatsoever, in the jury's verdicts in any of the
16 phases.
17 I can find nothing to mitigate the crime, and I
18 do find a sentence of death to be appropriate and just.
19 Mr. Whitley, I sentence you to death by electro-
20 cution. The date of your execution shall be March 29, 1982.
21 There will be an automatic appeal. A record will be pre-
22 pared of this proceeding at the earliest possible date and
23 transmitted to Richmond. Mr. Rodway and Mr. McLain, do you