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Earl Clanton, after walking away from a previous trial for unlawful injury for which he was sentenced to four years in prison, moved into the apartment of Natalie Lawrence, on the same floor as Wilhemina Smith. In November, 1980, Smith was found dead in her apartment. Clanton was covered with blood, his fingerprints were found on Smith's purse, and blood-covered money was found in his pocket.

Clanton's testimony at trial was as follows: He and Lawrence heard Smith's screams; he went to help and was attacked by a fleeing introduer. He found Smith dead, tried to assist her, and was attacked by a second intruder who also fled. While looking for the address of a relative, Clanton got blood on Smith's purse. When the police arrived, he hid because he was a fugitive.

Lawrence, despite earlier statements to police incriminating Clanton and suggesting premeditation, corroborated Clanton's testimony at trial, and dismissed the earlier statements as products of police coercion.

Clanton rejected his trial lawyer's suggestion of a psychiatric evaluation, and indicated no problems at home during his childhood; therefore, the lawyer did not pursue the issue of evaluation. The only mitigating evidence produced was Clanton's attendance at Christian Bible Classes in jail while awaiting trial for Smith's murder. Clanton was found guilty of murder committed in the course of a robbery and sentenced to death. The Virginia Supreme Court affirmed Clanton's sentence. *Clanton v. Commonwealth,* 223 Va. 41, 286 S.E.2d 172 (1982).

Shortly before his federal hearing for habeas corpus relief, Clanton admitted to a history of child abuse that he had not disclosed to his trial lawyer. The United States District Court for the Eastern District of Virginia granted Clanton's writ upon the ground of inadequate preparation of the trial lawyer for the sentencing phase of the trial. *Clanton v. Commonwealth,* 638 F.Supp. 1090 (1986). The district court concluded that the psychiatric evaluation might have uncovered the child abuse which could have been used as mitigating evidence at trial, and therefore that the trial lawyer's preparation for sentencing was inadequate and insufficient. The court remanded for a new sentencing hearing.

HOLDING

a) Inadequate representation based on failure to pursue psychiatric evaluation.

The court of appeals reversed the district court's decision finding inadequate representation. Senior Circuit Judge Haynsworth stated "When a seemingly lucid and rational client rejects the suggestion of a psychiatric evaluation and there is no indication of a mental or emotional problem, a trial lawyer may reasonably forego insistence upon an examination. *See Proffit v. United States,* 582 F.2d 854, 858-59 (4th Cir. 1978) ". . . There is no constitutional basis for a rule that would require a psychiatric evaluation in every capital case . . ." *Clanton v. Bair,* 826 F.2d 1354, 1358 (4th Cir. 1987).

Judge Haynsworth reminded the court of the standard for assessment of a claim of ineffective assistance of counsel, and that the court must make a strong presumption that counsel was adequate. Citing *Strickland v. Washington,* 466 U.S. 668 (1984), he said, "To prevail, the claimant must show inadequate representation, as measured by a standard of reasonably effective assistance under the circumstances, resulting in prejudice to the claimant . . ." *Clanton* 826 F.2d at 1357.

APPLICATION TO VIRGINIA

Clanton v. Bair illustrated the difference between what is currently the constitutional requirement for adequate assistance of counsel at the sentencing phase and that which is required by good practice.

The court holds that psychiatric evaluation is **not** always required. But, psychiatric evaluation in a capital murder case is necessary to find mitigating evidence for the sentencing phase of the trial, and it is easily requested under Virginia statute. Virginia Code §19.2-264.3:1 allows all indigent defendants on capital murder charges, upon motion by the attorney, to receive expert assistance in preparation and presentation of information concerning the defendant's history, character, or mental condition in conjunction with the sentencing phase of the trial. *Va. Code Ann.,* §19.2-264.3:1(A) (1988). If such evaluation is not requested, pursuant to this case, it will probably not be reversible error on appeal. Also, good practice requires investigation of the background of the defendant and communication with his family and friends about his life. If something turns up after the trial that would have been a mitigating factor, this information likely will not serve as a basis for a successful ineffective assistance of counsel claim. More importantly, the mitigating evidence may never be considered.

The Court held in *Strickland v. Washington,* 466 U.S. 668 (1984), that adequate assistance of counsel requires reasonable effectiveness under all the circumstances, but with a presumption of adequacy. However, whatever reasonable effectiveness under all the circumstances means in a given case, the lawyer must have something more than attendance at bible class. A good starting point for the lawyer is to put himself in the place of the juror and ask what would be relevant. In effect, anything that is discovered through the investigation of the defendant's background and history could be helpful, and must be told. An effective lawyer will tell the story of the defendant's life from early childhood, and in some cases even before birth.

Defense of a person accused of a capital offense requires more than a cursory discussion with the client. Conscientious discovery may provide that information. (Helen Bishop)