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IN THE  
**Supreme Court of Virginia**

RECORD NO. 942189  
CONS. W/ 942192

**ANDRE L. GRAHAM,**

*Appellant,*

V.

**COMMONWEALTH OF VIRGINIA,**

*Appellee.*

JOINT APPENDIX  
Volume I

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Richmond, VA 23220  
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*Counsel for Appellant*

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(804) 786-4624

*Counsel for Appellee*



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Virginia:

In the Circuit Court of the City of Richmond

Manchester Courthouse

June 9, 1994

The GRAND JURY charges that: On or about October 8, 1993, in the City of Richmond,

ANDRE L. GRAHAM a/k/a ANDRE GRANT a/k/a LORENZO CROSS a/k/a  
LEWIS A. RIVAS  
(BM; 3/4/70; 094-60-4347)

did feloniously and unlawfully kill and murder one Sheryl L. Stack in a willful, deliberate and premeditated manner during the commission of a robbery of Edward Martinand while armed with a deadly weapon.

Virginia Code Section: 18.2-31

AND THE GRAND JURORS AFORESAID, on their oaths aforesaid do further present that

ANDRE L. GRAHAM a/k/a ANDRE GRANT a/k/a LORENZO CROSS a/k/a  
LEWIS A. RIVAS

on or about October 8, 1993, at the said City and within the jurisdiction of the said Circuit Court of the City of Richmond, Manchester Courthouse, did unlawfully and feloniously use or display in a threatening manner a firearm while, during and in the commission of the capital murder of Sheryl L. Stack.

Witnesses sworn and sent by  
the Court to the Grand Jury to  
give evidence.

Virginia Code Section: 18.2-53.1

✓ Steve Dalton \_\_\_\_\_

*Qua R. Pusby* Clerk

A TRUE BILL. ✓

*Carl H. Taylor*  
Foreman



Virginia:

In the Circuit Court of the City of Richmond, Manchester Courthouse

the 9th day of June 19 94

Commonwealth of Virginia plaintiff,

against

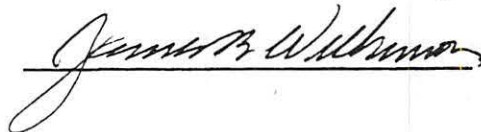
CAPIAS

Case No. 94-641-F,  
etc.

Andrew L. Graham, aka Andre defendant,  
Grant aka Lorenzo Cross aka Lewis A. Rivas,

The Grand Jury having this day returned Indictment as a True Bill against the above defendant, it is Ordered that a Capias be issued for the arrest of said defendant returnable to this Court on the first business day following arrest.

Enter this order,

 Judge

Virginia:

In the Circuit Court of the City of Richmond, Manchester Courthouse

the 9th day of June, 1994

Commonwealth of Virginia, plaintiff,

against

CAPIAS -  
Case No. 94-641-F,  
etc.

Andre L. Graham aka Andre Grant defendant,  
aka Lorenzo Cross aka Lewis A. Rivas  
B/M 3/4/70 094-60-4347

TO THE SHERIFF OF THE CITY OF RICHMOND, ANY POLICE  
OFFICER, SHERIFF, OR LAW ENFORCEMENT OFFICER OF THE  
COMMONWEALTH OF VIRGINIA:

You are commanded to take the defendant, if found in your  
bailiwick, and safely keep so that you produce said defendant before  
this Court at Tenth and Hull Streets of said City on the first business  
day following arrest at 9:00 o'clock, a.m., to answer the following  
Indictments : SEE ATTACHED

and have then there this writ.

Witness, IVA R. PURDY, Clerk of said Court, at the Court-  
house in said City, this 9th day of June, 1994,  
and in the 218th Year of Our Commonwealth.

IVA R. PURDY, Clerk

By:

*George C. Smeal*  
Deputy Clerk

ADDRESS:

*turned on person*  
*6-24-94*  
*SP-1 Dauter 969*  
*KPD*



Virginia:

In the Circuit Court of the City of Richmond

Manchester Courthouse

June 9, 1994

The GRAND JURY charges that:

On or about October 8, 1993, in the City of Richmond,

ANDRE L. GRAHAM a/k/a ANDRE GRANT a/k/a LORENZO CROSS a/k/a  
LEWIS A. RIVAS  
(BM; 3/4/70; 094-60-4347)

did feloniously and unlawfully kill and murder one Sheryl L. Stack in a willful, deliberate and premeditated manner during the commission of a robbery of Edward Martinand while armed with a deadly weapon.

Virginia Code Section: 18.2-31

AND THE GRAND JURORS AFORESAID, on their oaths aforesaid do further present that

ANDRE L. GRAHAM a/k/a ANDRE GRANT a/k/a LORENZO CROSS a/k/a  
LEWIS A. RIVAS

on or about October 8, 1993, at the said City and within the jurisdiction of the said Circuit Court of the City of Richmond, Manchester Courthouse, did unlawfully and feloniously use or display in a threatening manner a firearm while, during and in the commission of the capital murder of Sheryl L. Stack.

Witnesses sworn and sent by  
the Court to the Grand Jury to  
give evidence.

Virginia Code Section: 18.2-53.1

✓ Steve Dalton

*Lisa A. Puskey*

Clerk

A TRUE BILL ✓

*Carl H. Taylor*  
Foreman



Virginia:

## In the Circuit Court of the City of Richmond

Manchester Courthouse

June 9, 1994

The GRAND JURY charges that:

on or about October 8, 1993, in the

City of Richmond,

ANDRE L. GRAHAM a/k/a ANDRE GRANT a/k/a LORENZO CROSS a/k/a  
LEWIS A. RIVAS  
(BM; 3/4/70; 094-60-4347)

did feloniously and unlawfully attempt to rob one Sheryl L.  
Stack of United States currency.

Virginia Code Section: 18.2-26  
18.2-58

AND THE GRAND JURORS AFORESAID, on their oaths aforesaid do  
further present that

ANDRE L. GRAHAM a/k/a ANDRE GRANT a/k/a LORENZO CROSS a/k/a  
LEWIS A. RIVAS

on or about October 8, 1993, at the said City and within the  
jurisdiction of the said Circuit Court of the City of  
Richmond, Manchester Courthouse, did unlawfully and  
feloniously use and display in a threatening manner a  
firearm while, during and in the commission of the attempted  
robbery of Sheryl L. Stack.

Virginia Code Section: 18.2-53.1

Steve Dalton

Witnesses sworn and sent by  
the Court to the Grand Jury to  
give evidence.

*Lea S. Purdy* Clerk

A TRUE BILL

*Carl H. Taylor*  
Foreman



Virginia

## In the Circuit Court of the City of Richmond

Manchester Courthouse

June 9, 1994

The GRAND JURY charges that:

On or about October 8, 1993, in the City  
of Richmond,

ANDRE L. GRAHAM a/k/a ANDRE GRANT a/k/a LORENZO CROSS a/k/a  
LEWIS A. RIVAS  
(BM; 3/4/70; 094-60-4347)

did feloniously, unlawfully, willfully, deliberately and  
with premeditation attempt to kill and murder Edward Martin.

Virginia Code Section: 18.2-31  
18.2-25

AND THE GRAND JURORS AFORESAID, on their oaths aforesaid, do  
further present that

ANDRE L. GRAHAM a/k/a ANDRE GRANT a/k/a LORENZO CROSS a/k/a  
LEWIS A. RIVAS

on or about October 8, 1993, at the said City and within the  
jurisdiction of the said Circuit court of the City of  
Richmond, Manchester Courthouse, unlawfully and feloniously  
did use and display in a threatening manner a firearm while,  
during and in the commission of the attempted capital murder  
of Edward Martin.

Virginia Code Section: 18.2-53.1

Steve Dalton

Witnesses sworn and sent by  
the Court to the Grand Jury to  
give evidence.

*Qua R. Pusdy* Clerk

A TRUE BILL ✓

*Carl H. Taylor*  
Foreman



Virginia:

## In the Circuit Court of the City of Richmond

Manchester Courthouse

June 9, 1994

The GRAND JURY charges that:

On or about October 8, 1993, in the  
City of Richmond,

ANDRE L. GRAHAM A/K/A ANDRE GRANT A/K/A LORENZO CROSS A/K/A  
LEWIS A. RIVAS  
(BM; 3/4/70; 094-60-4347)

did feloniously, unlawfully and maliciously cause bodily  
injury to Edward Martin with the intent to maim, disfigure,  
disable or kill the said Edward Martin.

Virginia Code Section: 18.2-51

AND THE GRAND JURORS AFORESAID, on their oaths aforesaid, do  
further present that

ANDRE L. GRAHAM a/k/a ANDRE GRANT a/k/a LORENZO CROSS a/k/a  
LEWIS A. RIVAS

on or about October 8, 1994, at the said City and within the  
jurisdiction of the said Circuit Court of the City of  
Richmond, Manchester Courthouse, unlawfully and feloniously  
did use or display in a threatening manner a firearm while  
maliciously causing bodily injury to Edward Martin.

Virginia Code Section: 18.2-53.1

Steve Martin

Witnesses sworn and sent by  
the Court to the Grand Jury to  
give evidence.

*Iva R. Busby* Clerk

A TRUE BILL

*Carl H. Taylor*  
Foreman



Virginia:

## In the Circuit Court of the City of Richmond

Manchester Courthouse

June 9, 1994

The GRAND JURY charges that:

on or about October 8, 1993, in the  
City of Richmond,

ANDRE L. GRAHAM a/k/a ANDRE GRANT a/k/a LORENZO CROSS a/k/a  
LEWIS A. RIVAS  
(BM; 3/4/70; 094-60-4347)

did feloniously and unlawfully rob one Edward Martin of  
United States currency.

Virginia Code Section: 18.2-58

AND THE GRAND JURORS AFORESAID, on their oaths aforesaid, do  
further present that

ANDRE L. GRAHAM a/k/a ANDRE GRANT a/k/a LORENZO CROSS a/k/a  
LEWIS A. RIVAS

on or about October 8, 1993, at the said City and within the  
jurisdiction of the said Circuit Court of the City of  
Richmond, Manchester Courthouse, did unlawfully and  
feloniously use or display in a threatening manner a firearm  
while, during and in the commission of the robbery of Edward  
Martin.

Virginia Code Section: 18.2-53.1

Steve Dalton

Witnesses sworn and sent by  
the Court to the Grand Jury to  
give evidence.

*David S. Purdy* Clerk

A TRUE BILL

*Carl H. Jaffe*  
Foreman



Virginia:

## In the Circuit Court of the City of Richmond

Manchester Courthouse

June 9, 1994

The GRAND JURY charges that:

On or about October 5, 1993, in the  
City of Richmond,

ANDRE L. GRAHAM A/K/A ANDRE GRANT A/K/A LORENZO CROSS A/K/A  
LEWIS A. RIVAS  
(BM; 3/4/70; 094-60-4347)

did feloniously, unlawfully and maliciously cause bodily  
injury to Dennis Miller with the intent to maim, disfigure,  
disable or kill the said Dennis Miller.

Virginia Code Section: 18.2-51

AND THE GRAND JURORS AFORESAID, on their oaths aforesaid, do  
further present that

ANDRE L. GRAHAM a/k/a ANDRE GRANT a/k/a LORENZO CROSS a/k/a  
LEWIS A. RIVAS

on or about October 5, 1994, at the said City and within the  
jurisdiction of the said Circuit Court of the City of  
Richmond, Manchester Courthouse, unlawfully and feloniously  
did use or display in a threatening manner a firearm while  
maliciously causing bodily injury to Dennis Miller.

Virginia Code Section: 18.2-53.1

Steve Martin

Witnesses sworn and sent by  
the Court to the Grand Jury to  
give evidence.

*Joe R. Puddy* Clerk

A TRUE BILL

*Carl H. Taylor*  
Foreman



Virginia

## In the Circuit Court of the City of Richmond

Manchester Courthouse

June 9, 1994

The GRAND JURY charges that:

on or about October 5, 1993, in the

City of Richmond,

ANDRE L. GRAHAM a/k/a ANDRE GRANT a/k/a LORENZO CROSS a/k/a  
LEWIS A. RIVAS

(BM; 3/4/70; 094-60-4347)

did feloniously and unlawfully rob one Dennis Miller of  
United States currency and personal property.

Virginia Code Section: 18.2-58

AND THE GRAND JURORS AFORESAID, on their oaths aforesaid, do  
further present thatANDRE L. GRAHAM a/k/a ANDRE GRANT a/k/a LORENZO CROSS a/k/a  
LEWIS A. RIVASon or about October 8, 1993, at the said City and within the  
jurisdiction of the said Circuit Court of the City of  
Richmond, Manchester Courthouse, did unlawfully and  
feloniously use or display in a threatening manner a firearm  
while, during and in the commission of the robbery of Dennis  
Miller.

Virginia Code Section: 18.2-53.1

Steve Dalton

{ Witnesses sworn and sent by  
the Court to the Grand Jury to  
give evidence.

Lisa A. Purdy Clerk

A TRUE BILL ✓

Foreman



Virginia

## In the Circuit Court of the City of Richmond

Manchester Courthouse

June 9, 1994

The GRAND JURY charges that:

On or about October 5, 1993, in the  
City of Richmond,

ANDRE L. GRAHAM a/k/a ANDRE GRANT a/k/a LORENZO CROSS a/k/a  
LUIS A. RIVAS  
(BM; 3/4/70; 094-60-4347)

did feloniously and unlawfully by force, threat, or  
intimidation and without legal justification, abduct Dennis  
Miller with the intent to deprive him of his personal  
liberty.

Virginia Code Section: 18.2-48

AND THE GRAND JURORS AFORESAID, on their oaths aforesaid, do  
further present that

ANDRE L. GRAHAM a/k/a ANDRE GRANT a/k/a LORENZO CROSS a/k/a  
LUIS A. RIVAS,

on or about October 5, 1993, at the said City and within the  
jurisdiction of the said Circuit Court of the City of  
Richmond, Manchester Courthouse, did unlawfully and  
feloniously use and display in a threatening manner a  
firearm while, during and in the commission of the abduction  
of Dennis Miller.

Virginia Code Section: 18.2-53.1

Steve Dalton

Witnesses sworn and sent by  
the Court to the Grand Jury to  
give evidence.

*Law R. Pugh* Clerk

A TRUE BILL

*Carl H. Taylor*  
Foreman



VIRGINIA :

IN THE CIRCUIT COURT OF THE CITY OF RICHMOND  
Manchester Division

JUN 2 1994

*Joy C. Smith*

COMMONWEALTH OF VIRGINIA,

Plaintiff,

v.

ANDRE GRAHAM,

Defendant.

MOTION FOR DISCOVERY AND INSPECTION  
AND  
FOR EXCULPATORY EVIDENCE

COMES NOW the Defendant, Andre Graham, by counsel, and moves this Honorable Court to order disclosure to him by way of his counsel the following:

1. Pursuant to Brady v. Maryland, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963); United States v. Agurs, 427 U.S. 97, 96 S.Ct. 2392, 49 L.Ed.2d 342 (1976); Stover v. Commonwealth, 211 Va. 789, 180 S.E.2d 504 (1971); Dozier v. Commonwealth, 219 Va. 1113, 253 S.E.2d 655 (1979), all information of whatever form, substance, source or nature, which tends to exculpate the Defendant or to reduce the penalty which he might suffer should he be convicted in this indictment, through an indication of his innocence or through potential impeachment of any prosecution witness, be it by inconsistent statements or otherwise. This request includes all facts and information as described which is within the knowledge, custody, and/or control of the Commonwealth's Attorney and/or his assistants; as well as

FILED

*3/28/94*  
*Joy C. Smith*



all law enforcement agencies which have participated in an investigation of this case and/or who may otherwise testify as a witness in this matter;

2. Pursuant to Giglio v. United States, 405 U.S. 150, 92 S.Ct. 763, 31 L.Ed.2d 104 (1972), and Napue v. Illinois, 360 U.S. 264, 79 S.Ct. 1173, 3 L.Ed.2d 217 (1959), the Commonwealth to divulge all evidence affecting the credibility of any prosecution witness, including, but not to be limited to, the contents of any plea negotiation between the Commonwealth and such witness, any agreement to give assistance, compensation, or to suggest a possible benefit to be conferred upon any prosecution witness;

3. Any and all promises of leniency or other consideration offered to any witness;

4. Any and all records and/or information revealing any prior felony convictions or misdemeanor convictions involving moral turpitude which may be attributed to each prosecution witness, including, but not limited to, any and all parties and potential witnesses who may be called upon to testify;

5. The name or names of any informants who participated directly or indirectly in the alleged criminal acts or who were present at the scene of the alleged criminal act which is the subject of the pending proceeding;

6. The criminal record, including juvenile, of any such informant, including pending matters;



7. The dates, times, places, and kinds and amounts involved of any financial or other compensation paid or made to any informant;

8. The number of, dates and statute involved of any convictions which were initiated based upon information supplied, in whole or in part, by any informant;

9. The name and number of cases in which any informant involved in the pending proceedings has testified for the Commonwealth, and the number of convictions gained;

10. All uncharged criminal misconduct of any witness for the Commonwealth, known to any agent of the Commonwealth;

11. Whether any Commonwealth witness was taking or to any degree under the influence of alcohol or any other drug at or near the time of the event to which that witness is to testify, and if so, then what was the amount and/or type of the alcohol or drug;

12. Whether there were any wiretap and/or electronic surveillance involved and if so, a copy of (a) the application for the order, (b) the application for any extensions, (c) the contents, (d) the wire communication, (e) any evidence derived therefrom, (f) the names of officers involved in gathering the wire communication, and (g) an opportunity to inspect the device used to intercept and record the wire communication;

13. Pursuant to Rule 3A:11 of the Rules of the Supreme Court of Virginia, the contents of any confessions and/or statements of any kind



attributed to the Defendant, which are within the knowledge, custody, and/or control of the Commonwealth or any law enforcement agency which may have participated in an investigation of this case or which may otherwise be discovered by the Commonwealth in the exercise of reasonable diligence, said information to include, but not to be limited to, any statement or declaration attributed to any alleged co-conspirator; such material is requested to be divulged regardless of its potential use at trial by the Commonwealth;

14. Pursuant to Rule 3A:11, the opportunity to inspect, copy and/or photograph all books, papers, documents, tangible objects, buildings, or places, or copies of portions thereof that have been seized or a record made thereof as evidence against the Defendant or any alleged co-conspirator.

15. Pursuant to Rule 3A:11, the due process clause of the Fifth Amendment of the United States Constitution and Article I, Section 8 of the Virginia Constitution, the Commonwealth is requested to divulge:

- (a) all photographs, motion pictures, or any other pictorial or diagrammatic representation of the alleged crime scene;
- (b) any items of tangible or demonstrative evidence which the Commonwealth intends to introduce as exhibits at trial;
- (c) any scientific reports in possession of the Commonwealth or its agents;
- (d) any documents or other material containing the fingerprints or handwriting of the Defendant, along with any scientific reports pertaining to the identification of such fingerprints or handwriting.



16. The prior criminal record, if any, of the Defendant, including felonies and misdemeanors involving moral turpitude;

17. The Defendant moves for an order requiring the Commonwealth to secure and preserve any handwritten notes of any government agents or informers involved in this case, in order to assure their production in court, if and when ordered by the Court;

18. The Defendant asks that all orders for discovery and production requested herein direct that the duty of the Commonwealth regarding the divulging of the foregoing information and material continues until trial and shall not hinge upon further motions, and that the disclosure and production by the Commonwealth shall proceed with all reasonably possible speed; and

19. The Defendant moves for such other relief to which he may be entitled, including the establishment of dates for compliance with orders of the Court pursuant to these motions, if the Commonwealth fails to comply with the requests in these motions by agreement.

Respectfully submitted,

ANDRE GRAHAM

By: Jeffrey L. Everhart  
Counsel

Jeffrey L. Everhart, Esquire  
Virginia State Bar No. 22328  
201 North Boulevard  
Richmond, Virginia 23220

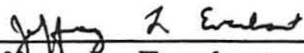
Robert P. Geary, Esquire  
Virginia State Bar No. 9165



2025 East Main Street  
Richmond, Virginia 23223

**CERTIFICATE OF SERVICE**

I hereby certify that a true and exact copy of the foregoing was mailed, postage prepaid, on this the 26<sup>th</sup> day of July, 1994, to David Hicks, Esquire, Commonwealth's Attorney for the City of Richmond, 800 East Marshall Street, Richmond, Virginia 23219.

  
\_\_\_\_\_  
Jeffrey L. Everhart



VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF RICHMOND  
Manchester Division

COMMONWEALTH OF VIRGINIA,

Plaintiff,

v.

ANDRE GRAHAM,

Defendant.

**MOTION TO PROHIBIT IMPOSITION  
OF  
THE DEATH PENALTY**

COMES NOW the Defendant, Andre Graham, by counsel, and moves this Honorable Court to prohibit the imposition of the death penalty against him on the grounds that the Virginia death penalty statute violates the Eighth Amendment's prohibition against cruel and unusual punishment, the Sixth Amendment's guarantee that no person shall be deprived of life, liberty, or property without due process of law, and the Fifth Amendment's protection against double jeopardy.

As grounds for this motion, Defendant states the following:

1. Failure to guide the jury's discretion in its consideration of the "vileness" and "future dangerousness" aggravating factors as required under Furman v. Georgia, Godfrey v. Georgia, and Maynard v. Cartwright.

2. Sections 19.2-264.2 through 19.2-264.5 of the Code of Virginia, 1950, as amended, allow the jury to use the evidence of prior convictions to impose the sentence of death, violating Defendant's protection against double jeopardy.

FILED

7/28/94  
TESTED: WA. R. FURMAN, CLERK



3. The death penalty, *per se*, constitutes cruel and unusual punishment under current standards of decency. See Trop v. Dulles, 356 U.S. 86, 101 (1958).

4. Failure to give the jury adequate instructions on mitigation, use of model jury instructions, and jury verdict forms inhibits the jury from giving independent weight to aspects of the Defendant's character and record and to the circumstances of the offense proffered in mitigation, in violation of Locket v. Ohio, and Mills v. Maryland.

5. Failure of Virginia to provide for meaningful appellate review deprives defendants of statutory rights and due process of law.

Respectfully submitted,

ANDRE GRAHAM

By: Jeffrey L. Everhart  
Counsel

Jeffrey L. Everhart, Esquire  
Virginia State Bar No. 22328  
201 North Boulevard  
Richmond, Virginia 23220

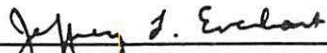
Robert P. Geary, Esquire  
Virginia State Bar No. 9165  
2025 East Main Street  
Richmond, Virginia 23223

#### CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing was mailed, postage prepaid, on this the 26<sup>th</sup> day of July, 1994, to David



Hicks, Esquire, Commonwealth's Attorney for the City of Richmond, John  
Marshall Courts Building, 800 East Marshall Street, Richmond, Virginia  
23219.

  
\_\_\_\_\_  
Jeffrey L. Everhart



V I R G I N I A:

IN THE CIRCUIT COURT OF THE CITY OF RICHMOND

Manchester Division

\* \* \* \* \*

COMMONWEALTH OF VIRGINIA

-vs-

ANDRE L. GRAHAM

\* \* \* \* \*

FILE NOS. 94-641F  
THROUGH 94-648F

Transcript of Motions in the above-styled  
matter, when heard on July 29, 1994, before the Honorable  
James B. Wilkinson.

APPEARANCES:

LEARNED D. BARRY, ESQ., Deputy Commonwealth's Attorney for  
the City of Richmond;

ROBERT P. GEARY, ESQ., 2025 E. Main Street, Richmond,  
Virginia 23223, and JEFFREY L. EVERHART, ESQ., 201 N.  
Boulevard, Richmond, Virginia 23220, counsel for the  
defendant;

The defendant, Andre L. Graham, present in person.



1 THE CLERK: The case of Commonwealth  
2 of Virginia against Andre Graham. Is counsel  
3 ready?

4 MR. BARRY: Yes, ma'am.

5 MR. EVERHART: Yes, ma'am.

6 MR. BARRY: Judge, you have three  
7 motions before the Court. One motion is that  
8 we ask that the Court's date in this case be  
9 set for the first week in October. We need  
10 approximately three days to try the matter. It  
11 will be set with a jury. I believe the dates  
12 have been agreed upon.

13 THE COURT: All right. The 3rd, 4th,  
14 and 5th?

15 MR. BARRY: Yes, sir. So, if you  
16 would set it for trial then we will start at  
17 9:00, if you would like, with jury selection.  
18 If you would then like we can start the case at  
19 1:00, assuming we have picked a jury by then.  
20 Judge, I would like to start jury selection on  
21 that day at 9:00, and in the event that we are  
22 successful in obtaining a jury be prepared to  
23 go forward with the case at 1:00 in the  
24 afternoon. Any chance of making that the 4th,  
25 5th, and 6th?

1 MR. EVERHART: That's fine with me,  
2 Judge.

3 THE COURT: Let's do it that way.

4 MR. BARRY: The 4th, 5th, and 6th of  
5 October. Judge, it's our intent to actually  
6 start this case that day in the afternoon  
7 unless either you or the defense have an  
8 objection to that.

9 THE COURT: Oh, no.

10 MR. BARRY: That's the first motion.  
11 The second motion the Commonwealth is moving to  
12 receive and take both hair and handwriting  
13 samples from the defendant in this case.

14 THE COURT: All right.

15 MR. EVERHART: Judge, we have no  
16 objection to that.

17 THE COURT: All right. I will order  
18 the handwriting.

19 MR. BARRY: Finally, Judge, the third  
20 motion that we have filed, the defense has  
21 filed a large number of motions that I think  
22 must be adjudicated prior to going to trial.  
23 If you would be kind enough to give us a date  
24 convenient to the defense to hear motions on  
25 this case and any other housekeeping matters



1 that have to be taken up prior to trial so we  
2 can start promptly on the 4th for trial.

3 THE COURT: How about July 29th, this  
4 Friday? That's today.

5 MR. BARRY: That's today.

6 THE COURT: I really don't see  
7 putting it off.

8 MR. BARRY: I think we ought to  
9 perhaps go another two weeks or so, Judge, so  
10 we, if we come up with any discovery problems  
11 we can get them ironed out at the same time.

12 THE COURT: The first two motions,  
13 motion for discovery and inspection, I will  
14 order you do that, and if you have any  
15 exculpatory evidence to give it to them.

16 MR. BARRY: Right. I am so advised  
17 and will heed that request.

18 THE COURT: That disposes of that  
19 one. Motion to Prohibit Imposition of the  
20 Death Penalty. I will overrule that because it  
21 has been decided time and time again. I don't  
22 know the facts of this case.

23 MR. BARRY: Well, this is going to  
24 be, the Commonwealth's theory is that this was  
25 a murder committed during the commission of a

1 robbery.

2 THE COURT: If it comes up to that  
3 then I will cover that, Mr. Everhart and Mr.  
4 Geary, when I get to it, but I'm not going to  
5 do that now. So, I will overrule that.  
6 Mitigation Specialist, now I don't know about  
7 that. I would like to hear a little bit about  
8 that. And you will get the Bill of  
9 Particulars. You will give that to them?

10 MR. BARRY: Yes, I will give them a  
11 Bill of Particulars.

12 THE COURT: That takes care of that  
13 one. Now, motion for Mitigation Specialist. I  
14 don't know what a Mitigation Specialist is. I  
15 thought mitigation was like aggravation, where  
16 facts existed. I really don't know. Would  
17 y'all enlighten me on that, Mr. Everhart?

18 MR. EVERHART: Judge, I would be  
19 happy to except Mr. Geary knows a little bit  
20 more about that than I do.

21 THE COURT: All right, Mr. Geary.

22 MR. GEARY: Judge, we have been  
23 allowed in both state and federal court to  
24 allow -- the courts have allowed defense to  
25 have someone who has a background in things



1 that we don't, such as psychiatric social work,  
2 psychological social work, and do the leg work  
3 necessary to get the kind of records that are  
4 useful. In the cases where it has been allowed  
5 the person has to submit a resume to the court,  
6 along with their per hour and cap on what those  
7 services will be. Often times that person  
8 winds up also being a witness if and when there  
9 is a penalty phase in the case.

10 THE COURT: Well, I will grant it  
11 subject to the Court reviewing who he is, what  
12 he does, and some of his credentials.

13 MR. BARRY: All right, Judge, could  
14 you still give us a date? Because I am  
15 anticipating that I am going to have a motion  
16 to have a victim impact statement admissible  
17 before the jury in the event that we get to the  
18 penalty phase of this trial, even though there  
19 is some problem in Virginia that the United  
20 States Supreme Court has ruled that a victim  
21 impact statement is appropriate in capital  
22 murder cases. So, because of that I think  
23 that's an issue that we need to set aside with  
24 some time to resolve that.

25 THE COURT: Would it be better that

1           you're prepared to do that and if it becomes  
2           necessary then the Court would rule on that?

3           MR. BARRY: All right. I don't have  
4           any problem with that. I just want to make  
5           sure everybody knows it's coming.

6           THE COURT: All right.

7           MR. GEARY: I don't have any problem,  
8           either, as long as it's timely filed and we  
9           have the opportunity to do the research if it's  
10          going to be offered at the time of trial.

11          THE COURT: Well, the Supreme Court  
12          of the United States once said you couldn't do  
13          it, then they changed their mind and said that  
14          you could do it.

15          MR. BARRY: That's correct.

16          THE COURT: Virginia, to my  
17          knowledge, probably hasn't, but I think they  
18          have something in the statutes now.

19          MR. BARRY: Yes, they do. They have  
20          it in the statute but the statute has not been  
21          amended to follow the law of the land. And, it  
22          says victim impact statements are not to be  
23          used in capital murder cases. I just want to  
24          have the Court hear my argument on that before  
25          the motion is summarily denied.



1 THE COURT: I don't see how you can  
2 get around that. That's in aggravation. But,  
3 I will tell you what, y'all can file a little  
4 memorandum.

5 MR. BARRY: All right. We will do  
6 that. When would you like to hear that, Judge?

7 THE COURT: File the memorandum then  
8 we will set a date.

9 MR. BARRY: All right.

10 THE COURT: I might rule on the  
11 memorandum.

12 MR. BARRY: All right.

13 MR. EVERHART: Judge, I don't know if  
14 the Court recalls, we had set aside the 7th,  
15 8th, and 9th of September for various matters.  
16 I don't know if you might want to just use one  
17 of those days to, since you already had them  
18 marked off. You may have filled them up since  
19 we did that.

20 THE COURT: Well, I will give you a  
21 date, an agreeable date. That's no problem.  
22 Y'all find out what you're going to file, we  
23 will get a date, no problem at all. What other  
24 things do we have?

25 MR. BARRY: That's all we have with

1 this defendant, Judge, unless the defense has  
2 anything else.

3 THE COURT: All right. Do y'all have  
4 anything?

5 MR. EVERHART: One more thing. Mr.  
6 Graham has been housed at the Richmond City  
7 Jail. He was transferred within the past  
8 several days to Chesterfield County. We would  
9 ask that the Court enter an order that he be  
10 transferred back to Richmond. The basis for  
11 the motion is very simple. Chesterfield has  
12 one room in which you can meet with a client.  
13 If you go there and somebody else has beaten  
14 you to it they only have certain times --

15 THE COURT: I don't think that is far  
16 enough for an inconvenience.

17 MR. EVERHART: I am sorry, Judge?

18 THE COURT: I am going to let the  
19 Sheriffs handle that. Our jails are  
20 overcrowded.

21 MR. EVERHART: It's very very  
22 difficult to meet with anybody in Chesterfield.  
23 They have, as I said, one room. If you go out  
24 there and somebody else is out there you can  
25 spend literally hours waiting, as opposed to



1 the City Jail where they have about six or  
2 seven rooms to meet with people. It's just  
3 much easier in a case of this type. I think  
4 the reason was that they brought the co-  
5 defendant over to the City Jail. They don't  
6 want them together. But, the co-defendant  
7 doesn't have a capital murder charge pending  
8 against him in the City of Richmond. So it  
9 seems it would be easier to have them the other  
10 way.

11 MR. BARRY: I understand the problem.  
12 Mr. VonSchuch and I are trying to keep these  
13 two fellows apart. I will talk to him today  
14 and see if I can resolve the problem.

15 THE COURT: All right. Housing  
16 prisoners is a matter for the Sheriff, not the  
17 Court.

CERTIFICATE OF COURT REPORTER

I, Theresa S. Griffith, hereby certify that I was the court reporter in the Circuit Court of the City of Richmond, Manchester Division, on July 29, 1994, at the time of the Motions herein.

I further certify that the foregoing transcript is true and accurate, to the best of my ability.

Given under my hand this 2nd day of December, 1994.

  
Theresa S. Griffith - Court Reporter



Virginia:

In the Circuit Court of the City of Richmond, Manchester Courthouse

the 29th day of July, 1994

Commonwealth of Virginia, plaintiff,

against

Order -  
Case No. 94-641-F,  
etc.

Andre L. Graham, a/k/a Andre  
Grant, a/k/a Lorenzo Cross,  
a/k/a Lewis A. Rivas, defendant,

This day the defendant was led to the bar in the custody of the Sheriff of this City, and also appeared Jeffrey Everhart and Robert Geary, counsel for the defendant, and Learned Barry, an Assistant Attorney for the Commonwealth.

Whereupon, these cases came on to be heard upon Motion of the Assistant Attorney for the Commonwealth to compel the defendant to give hair and handwriting samples, and the Court having heard the argument of counsel, doth Order that the defendant do give to Detective Dalton and Detective Mullin, from the Richmond Bureau of Police, hair and handwriting samples sufficient in number and amount for examination and comparison at the Virginia Consolidated Laboratories.

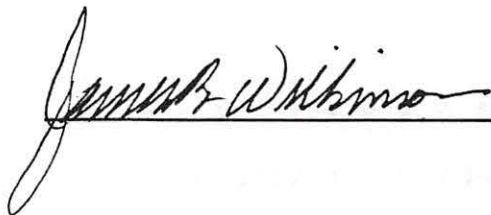
Thereupon, counsel for the defendant moved the Court for Motion for Discovery and Inspection and for Exculpatory Evidence, and Motion for Bill of Particulars, to which Motions the Commonwealth will comply; Motion to Prohibit Imposition of the Death Penalty, which motion the Court Overruled; and Motion for Mitigation Specialist, which Motion the Court granted subject to Court approval, and counsel are to submit briefs.

Thereupon, on the joint motion of counsel, it is

Ordered that the above cases be continued to October 4, 5 and 6, 1994 at 9:00 a.m.

Thereupon, the defendant was Ordered remanded to jail.

Enter this order,

 , Judge



V I R G I N I A:

IN THE CIRCUIT COURT OF THE CITY OF RICHMOND

Manchester Division

\* \* \* \* \*

COMMONWEALTH OF VIRGINIA

-vs-

ANDRE L. GRAHAM

\* \* \* \* \*

FILE NOS. 94-641F  
THROUGH 94-648F

Transcript of Motions in the above-styled  
matter, when heard on August 26, 1994, before the  
Honorable James B. Wilkinson.

APPEARANCES:

LEARNED D. BARRY, ESQ., Deputy Commonwealth's Attorney for  
the City of Richmond;

ROBERT P. GEARY, ESQ., 2025 E. Main Street, Richmond,  
Virginia 23223, and JEFFREY L. EVERHART, ESQ., 201 N.  
Boulevard, Richmond, Virginia 23220, counsel for the  
defendant;

The defendant, Andre L. Graham, present in person.

1 THE CLERK: Case of Commonwealth of  
2 Virginia against Andre L. Graham. Is the  
3 Commonwealth ready, Mr. Barry?

4 MR. BARRY: Yes, ma'am.

5 THE CLERK: Is the defendant ready,  
6 Mr. Geary and Mr. Everhart?

7 MR. GEARY: Yes.

8 MR. EVERHART: Yes, ma'am.

9 THE COURT: All right. What's this?

10 MR. GEARY: One of the reasons we are  
11 principally here is to get the defendant  
12 transferred from Chesterfield County to the  
13 jail in Henrico. He cannot be put in the City  
14 Jail because the co-defendant is still there.  
15 He was sentenced this week in Chesterfield on a  
16 conviction there so he is no longer,  
17 Chesterfield really no longer has jurisdiction  
18 over him. Mr. Everhart told you the last time  
19 we were here it is very difficult see him  
20 there. There is only one place for the lawyers  
21 to see their clients. It's crowded and often  
22 times you have to wait. We talked to Mr.  
23 Barry. He absolutely has no opposition to  
24 having him transferred to Henrico County.

25 THE COURT: Is the Sheriff of Henrico



1 going to take him?

2 MR. BARRY: He is a Richmond prisoner  
3 now. The only thing that's holding him is  
4 Richmond. And, we can't put him in Richmond  
5 because Sheppard is already there.

6 THE COURT: I know. He is being held  
7 under a life sentence, I understand, in  
8 Chesterfield. He is there held in the  
9 Department of Corrections.

10 MR. BARRY: Yes, but he is also our  
11 prisoner because he is coming up for trial on  
12 October 4th.

13 THE COURT: They can send him to the  
14 Department of Corrections.

15 MR. BARRY: Well, I am in agreement.  
16 I want them to have maximum access so there is  
17 no issue of inadequate representation of  
18 counsel. They have been working on this case  
19 now for a long time. They need to get to see  
20 him. I know it is difficult to talk to people  
21 in Chesterfield County. I can't put him in the  
22 City Jail. I'm just respectfully asking the  
23 Court to suggest to the jail that he be moved  
24 back to the jurisdiction of the City of  
25 Richmond and then sent to Henrico.

1 THE COURT: I really don't know if  
2 the Court has any jurisdiction to do that.

3 MR. BARRY: All right.

4 THE COURT: I can bring him down one  
5 day or two days early. I don't think the Court  
6 ought to be involved in the security of  
7 prisoners. I really don't. Chesterfield is  
8 not but a couple -- I don't know if it is any  
9 further than Henrico from the courthouse.

10 MR. BARRY: I don't think it is the  
11 distance that's the issue. But, anyway, I  
12 wanted to bring that to the Court's attention  
13 because they have come to me on several  
14 occasions and asked me to move the prisoner. I  
15 don't have authority. I know that. But, I do  
16 know he has been sentenced in Chesterfield  
17 County and at this point --

18 THE COURT: I think he stays in  
19 Chesterfield until we have an order to bring  
20 him to court here. Then if the Sheriffs want  
21 to work out some agreement that's all right.  
22 He is a prisoner of Chesterfield under a valid  
23 sentence.

24 MR. BARRY: All right.

25 THE COURT: The next step would be



1 for them to send him to the Department of  
2 Corrections. Probably the Department of  
3 Corrections would have sent for him had it not  
4 been for the Richmond charges.

5 MR. BARRY: That's correct.

6 THE COURT: We used to have the  
7 penitentiary in Richmond. We don't have the  
8 penitentiary anymore. I really don't know the  
9 closest correctional facility which is a  
10 maximum security unless it's Mecklenburg. I  
11 wouldn't say he would remain here in the  
12 Richmond area.

13 MR. BARRY: Maybe we can take this up  
14 with the Sheriff.

15 THE COURT: I can't even tell the  
16 director of the Department of Corrections where  
17 to put a prisoner.

18 MR. BARRY: Let me suggest to the  
19 Court the other reason for this motion is I  
20 wanted to put both the Court and the defense on  
21 notice, and I will follow this up with a  
22 written motion, that it is my intent in this  
23 case to bring victim impact evidence before the  
24 Court in the event that we get to the  
25 sentencing phase of the trial.

1 THE COURT: I imagine it's going to  
2 be a bifurcated trial?

3 MR. BARRY: Well, it will be. But, I  
4 am specifically speaking of victim impact in  
5 the event that there is a capital murder  
6 conviction. So I want the Court to be aware  
7 and I want the defense to be aware. And I have  
8 already filled out their Bill of Particulars as  
9 to what I intend to do. But victim impact  
10 until recently, obviously there is a statute  
11 dealing with it in Virginia that says that you  
12 can't use it. But the Virginia Supreme Court  
13 says -- excuse me, the United States Supreme  
14 Court says you can use victim impact. So, I  
15 just want the Court to be aware and I want the  
16 defense to be aware, and I will go ahead and  
17 follow it up with a memorandum, Payne v.  
18 Booker, that this is going to be the case. And  
19 I am going to have impact witnesses on both the  
20 impact on the family and impact on the  
21 community. And, I am not going to overdo it.  
22 I will have at least three people here that  
23 will testify specifically as to victim impact.

24 THE COURT: All right. Any other  
25 questions?



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MR. GEARY: No, sir.

MR. EVERHART: No, Judge.

THE COURT: Return the prisoner.

CERTIFICATE OF COURT REPORTER

I, Theresa S. Griffith, hereby certify that I was the court reporter in the Circuit Court of the City of Richmond, Manchester Division, on August 26, 1994, at the time of the Motions herein.

I further certify that the foregoing transcript is true and accurate, to the best of my ability.

Given under my hand this 2nd day of December, 1994.

  
Theresa S. Griffith - Court Reporter



V I R G I N I A:

IN THE CIRCUIT COURT OF THE CITY OF RICHMOND

Manchester Division

\* \* \* \* \*

COMMONWEALTH OF VIRGINIA

-VS-

ANDRE L. GRAHAM

\* \* \* \* \*

FILE NOS. 94-641F  
THROUGH 94-648F

Transcript of the First Day of Trial in the  
above-styled matter, when heard on October 4, 1994, before  
the Honorable James B. Wilkinson, Judge and jury.

APPEARANCES:

LEARNED D. BARRY, ESQ., Deputy Commonwealth's Attorney for  
the City of Richmond;

ROBERT P. GEARY, ESQ., 2025 E. Main Street, Richmond,  
Virginia 23223, and JEFFREY L. EVERHART, ESQ., 201 N.  
Boulevard, Richmond, Virginia 23220, counsel for the  
defendant ;

The defendant, Andre L. Graham, present in person.

## I N D E X

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Michael Ayers	261	265
James Jones	270	275
Harold Giles	281	283
Thomas Searles	287	294
Marilyn Stack	299	
Jack Daniel, M.D.	301	
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William Broadus, M.D.	317	
Gary McGregor	323	326
W. F. Showalter	328	331
Ann Jones	336	
Priscilla Booker	339	349
Steve A. Dalton	366	370
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1 MR. BARRY: We are all in favor of  
2 cameras in the courtroom. But, in a case such  
3 as this I think jurors can be intimidated, even  
4 though they are being advised that they are not  
5 being photographed. I think it is going to  
6 make it more difficult for us to get a jury.  
7 It also can have an intimidating affect on any  
8 witnesses. So, the Commonwealth would move to  
9 respectfully ask the cameras to exit the  
10 courtroom.

11 MR. GEARY: On behalf of the  
12 defendant I would join in the motion. I would  
13 like the Court to know that the information I  
14 have in the co-defendant's case in Chesterfield  
15 two weeks ago, the jurors asked Judge Sheldon  
16 to seal the files so no one would know who they  
17 were. I think in that type of case and the  
18 case that this is in terms of the defendant's  
19 right to a fair trial, the cameras should not  
20 be allowed in the courtroom.

21 THE COURT: Well, if that's the  
22 feelings of the attorneys the Court will grant  
23 it. I am sorry. The lawyers don't want the  
24 cameras in the courtroom. I am going to grant  
25 their motion. There's no sense in putting

1 error, so you cannot televise it.

2 NEWS REPORTER: Excuse me?

3 THE COURT: You cannot televise it  
4 because the lawyers object to it. I am sorry.  
5 I didn't object to it. They did. There's no  
6 sense in putting something else for them to  
7 argue about.

8 NEWS REPORTER: I heard you were in  
9 favor of it, Your Honor. And, I appreciate  
10 that.

11 THE COURT: Yes, sir. I am in favor  
12 of it. There is no sense in putting another  
13 matter in the record. All right. Are we ready  
14 for the defendant?

15 MR. BARRY: Yes, sir.

16 THE CLERK: Case of Commonwealth of  
17 Virginia against Andre L. Graham. Is the  
18 Commonwealth prepared, Mr. Barry?

19 MR. BARRY: Yes, ma'am.

20 THE CLERK: Is the defendant ready,  
21 Mr. Everhart and Mr. Geary?

22 MR. EVERHART: Yes, ma'am.

23 THE CLERK: Andre Graham, you stand  
24 charged that on or about October the 8th of  
25 1993, did feloniously and unlawfully kill and



1 murder one Sheryl L. Stack, in a willful,  
2 deliberate and premeditated manner during the  
3 commission of a robbery of Edward Martin and  
4 while armed with a deadly weapon. Do you plead  
5 guilty or not guilty?

6 THE DEFENDANT: Not guilty.

7 THE CLERK: You stand charged that on  
8 or about October the 8th of 1993, did  
9 feloniously and unlawfully use or display in a  
10 threatening manner a firearm while, during, and  
11 in the commission of the capital murder of  
12 Sheryl L. Stack. Do you plead guilty or not  
13 guilty?

14 THE DEFENDANT: Not guilty.

15 THE CLERK: You stand charged that on  
16 or about October the 8th 1993, did feloniously  
17 and unlawfully attempt to rob one Sheryl L.  
18 Stack of United States currency. Do you plead  
19 guilty or not guilty?

20 THE DEFENDANT: Not guilty.

21 THE CLERK: You stand charged that on  
22 or about October the 8th 1993, did feloniously  
23 and unlawfully use or display in a threatening  
24 manner a firearm while, during and in the  
25 commission of the attempted robbery of Sheryl

1 L. Stack. Do you plead guilty or not guilty?

2 THE DEFENDANT: Not guilty.

3 THE CLERK: You stand charged that on  
4 or about October the 8th, 1993, did  
5 feloniously, unlawfully and maliciously cause  
6 bodily injury to Edward Martin, with the intent  
7 to maim, disfigure, disable or kill the said  
8 Edward Martin. Do you plead guilty or not  
9 guilty?

10 THE DEFENDANT: Not guilty.

11 THE CLERK: You stand charged that on  
12 or about October the 8th, 1994, did unlawfully  
13 and feloniously use or display in a threatening  
14 manner a firearm while maliciously causing  
15 bodily injury to Edward Martin. Do you plead  
16 guilty or not guilty?

17 THE DEFENDANT: Not guilty.

18 THE CLERK: Gentlemen, that date  
19 should be '93, should it not?

20 MR. BARRY: Yes, Madam Clerk.

21 THE CLERK: You stand charged that on  
22 or about October the 8th, 1993, did feloniously  
23 and unlawfully rob one Edward Martin of United  
24 States currency. Do you plead guilty or not  
25 guilty?



1 THE DEFENDANT: Not guilty.

2 THE CLERK: You stand charged that on  
3 or about October the 8th, 1993, did feloniously  
4 and unlawfully use or display in a threatening  
5 manner a firearm while, during, and in the  
6 commission of the robbery of Edward Martin. Do  
7 you plead guilty or not guilty?

8 THE DEFENDANT: Not guilty.

9 THE CLERK: You stand charged that on  
10 or about October the 5th, 1993, did  
11 feloniously, unlawfully, and maliciously cause  
12 bodily injury to Dennis Miller with the intent  
13 to maim, disfigure, disable or kill the said  
14 Dennis Miller.

15 MR. BARRY: We are not going forward  
16 with that at this time.

17 THE CLERK: Put it aside?

18 MR. BARRY: Yes. Anything associated  
19 with Dennis Miller we are not proceeding on at  
20 this time.

21 THE CLERK: All right. That should  
22 conclude them. Do you agree?

23 MR. BARRY: Yes.

24 THE CLERK: By your pleas of not  
25 guilty you have a choice of trial by a Judge or

1 trial by a jury. Which do you prefer, sir?

2 THE DEFENDANT: Jury.

3 THE CLERK: Thank you.

4 THE COURT: All right, gentlemen,  
5 what the Court is going to do is just call each  
6 juror individually, place them there. I will  
7 ask them preliminary questions then you may ask  
8 them any questions you desire that are  
9 relevant. You may have your seat. After we  
10 get the first juror in here we will commence.  
11 How many charges are there?

12 THE CLERK: A total of eight, Judge.  
13 Juror number 848, Peter Naoroz. Do you  
14 solemnly swear the answers you shall give shall  
15 be the truth, the whole truth, and nothing but  
16 the truth, so help you God?

17 MR. NAOROS: I do.

18 THE CLERK: Thank you. You may be  
19 seated, sir.

20 THE COURT: I will ask you some  
21 questions, not to embarrass you but to find  
22 your impartiality in this case. Were you  
23 present in the Circuit Court of the City of  
24 Richmond on June the 9th, 1994, at the  
25 Manchester Courthouse at which time the grand



1 jury was instructed in this case? Did you  
2 report?

3 MR. NAOROZ: No, I wasn't.

4 THE COURT: Are you related by blood  
5 or marriage to Andre L. Graham or did you know  
6 Sheryl L. Stack?

7 MR. NAOROZ: No, sir, I don't.

8 THE COURT: Do you happen to know  
9 Edward, a person named Edward Martin?

10 MR. NAOROZ: No, I don't.

11 THE COURT: This is a capital murder  
12 case which means the death penalty could be  
13 imposed. Do you have any religious,  
14 conscientious scruples or other matters that  
15 would keep you from imposing the death penalty  
16 in the proper case?

17 MR. NAOROZ: No, I don't.

18 THE COURT: All right. Do you have  
19 any close members of your family such as  
20 mother, father, sister, brother, child or  
21 children that are involved in law enforcement,  
22 such as police officer?

23 MR. NAOROZ: No, sir, I don't.

24 THE COURT: This case will probably  
25 take three days. Do you have anything in those

1 three days that would keep you from giving your  
2 attention, full attention to the evidence and  
3 law in this matter?

4 MR. NAOROS: No, sir, not to a matter  
5 of this extent, no.

6 THE COURT: At the conclusion of the  
7 case I will instruct you as to the law  
8 involved. You might disagree with the law but  
9 would you follow it?

10 MR. NAOROS: I will.

11 THE COURT: All right. Do you know  
12 anything about the case or read anything about  
13 the case?

14 MR. NAOROS: (Shakes head no).

15 THE COURT: It is an alleged killing  
16 of a young lady at the Steak and Ale parking  
17 lot and another young man was wounded. Have  
18 you read anything? I just do that to refresh  
19 your memory.

20 MR. NAOROS: No, sir, I haven't.

21 THE COURT: Can you sit fairly and  
22 impartially in this matter?

23 MR. NAOROS: I believe so, Your  
24 Honor.

25 THE COURT: All right, gentlemen, the

1 Court is satisfied. If anyone wishes to ask  
2 questions commencing with the Commonwealth.

3 MR. BARRY: Sir, my name is Learned  
4 Barry. I represent the Commonwealth today.  
5 Just to be on the safe side, this was the young  
6 lady that was killed. Do you recognize her in  
7 any way?

8 MR. NAOROZ: No, I don't.

9 MR. BARRY: The family members of  
10 both victims are sitting right here in the  
11 courtroom to my right. Do you recognize them?

12 MR. NAOROZ: No.

13 MR. BARRY: All right. Thank you.  
14 Judge, I have no objection. This gentleman is  
15 fine. Thank you.

16 THE COURT: All right, Mr. Everhart,  
17 Mr. Geary, excuse me. All right, Mr. Geary.

18 MR. GEARY: Would you tell me how you  
19 pronounce your last name.

20 MR. NAOROZ: Naoroz. I believe it is  
21 misspelled. It's r-o-z.

22 MR. GEARY: r-o-z. As Judge  
23 Wilkinson told you, he is going to instruct you  
24 if you sit on this jury he is going to instruct  
25 you what the law is. One of the things that he



1 will tell you is in a criminal case in Virginia  
2 the person on trial is presumed to be innocent  
3 and that presumption goes with them unless and  
4 until the Commonwealth of Virginia proves him  
5 guilty beyond a reasonable doubt. Do you have  
6 any trouble accepting that instruction from  
7 Judge Wilkinson?

8 MR. NAOROS: Not at all.

9 MR. GEARY: He also told you this is  
10 a capital murder case. It is to be tried in  
11 two different phases. And the first phase the  
12 jury, 12 people, make a determination of guilt  
13 or innocence. If they find him guilty of  
14 capital murder there is a second phase which is  
15 called the penalty phase. In that penalty  
16 phase the jury has two options, they can return  
17 a judgment of the death penalty or one of life  
18 imprisonment. No matter what the facts of the  
19 case would be, would you feel inclined normally  
20 to vote in favor of the death penalty?

21 MR. NAOROS: No matter what the facts  
22 of the case are?

23 MR. GEARY: Yes. You always vote for  
24 the death penalty no matter what the facts are?

25 MR. NAOROS: No. Well, it depends on

1           what the law, how the facts come out based on  
2           the law.

3           MR. GEARY: So, would you be willing  
4           to decide this case, if it got to the second  
5           phase, knowing that there are two penalties  
6           that you could fairly determine whether it  
7           should be penalty A or penalty B, depending on  
8           what the law is?

9           MR. NAOROS: I guess I don't  
10          understand the question.

11          THE COURT: I think what the question  
12          really is, sir, would you consider both  
13          penalties in your deliberation in fixing the  
14          penalty should you reach that stage of the  
15          trial?

16          MR. NAOROS: I would consider  
17          everything, Your Honor.

18          MR. GEARY: Do you have any strong  
19          feelings in favor of or against the death  
20          penalty?

21          MR. NAOROS: At this present time I  
22          don't have any strong feelings for it or  
23          against it.

24          MR. GEARY: Judge, I intend to ask  
25          the juror at this point a couple questions that

1           Turner v. Murray, a U. S. Supreme Court case at  
2           Southampton where Judge Kulp argued before the  
3           Supreme Court on racial bias.

4           THE COURT: All right.

5           MR. GEARY: Mr. Naoroz, this is the  
6           defendant here, Andre Graham. He is black.  
7           You saw the picture of the young lady, Sheryl  
8           Stack. She is white. Edward Martin is white.  
9           Would the fact that she is of a different race  
10          from you, the fact that he is a different race  
11          from the victims in this case, make you more  
12          inclined to find him guilty or more inclined to  
13          give him the death penalty if we get to the  
14          second phase of the case?

15          MR. NAOROS: Absolutely not.

16          MR. GEARY: You would not let race of  
17          the parties in any way color or interfere with  
18          your judgment in this case?

19          MR. NAOROS: I would hope not.

20          MR. GEARY: Would you make a hundred  
21          percent effort to do that?

22          MR. NAOROS: Yes, I would.

23          MR. GEARY: Thank you, Judge. I have  
24          no further questions.

25          THE COURT: All right, sir. You can



1 seat this juror.

2 THE CLERK: Juror number 502, Edie  
3 Miles. Do you solemnly swear the answers you  
4 shall give shall be the truth, the whole truth,  
5 and nothing but the truth, so help you God?

6 MS. MILES: I do.

7 THE CLERK: You may be seated, ma'am.

8 THE COURT: Ms. Miles, I am going to  
9 ask you some questions, none of which are to  
10 embarrass you, but only to seek or find your  
11 impartiality in this matter. Were you present  
12 in the Circuit Court of the City of Richmond,  
13 at the Manchester Courthouse, on June 9th,  
14 1994, at which time the grand jury was charged  
15 in this case?

16 MS. MILES: Yes.

17 THE COURT: You were in the court?  
18 You weren't here on June the 9th, were you?

19 MS. MILES: I didn't hear what you  
20 said.

21 THE COURT: You weren't here on June  
22 the 9th, were you?

23 MS. MILES: No, I was not.

24 THE COURT: All right. Are you  
25 related by blood or marriage or do you know

1 Andre L. Graham or did you know Sheryl L.  
2 Stack, or do you know Edward Martin?

3 MS. MILES: No.

4 THE COURT: This is a capital murder  
5 case which means that the jury can give the  
6 death penalty. Do you have any religious,  
7 conscientious scruples or other matters that  
8 would keep you from imposing the death penalty  
9 in the proper case?

10 MS. MILES: No, I do not.

11 THE COURT: All right. This happened  
12 out at the Steak and Ale parking lot, where a  
13 young lady was killed and another man wounded.  
14 Do you know anything about the case? Have you  
15 read or heard anything about it?

16 MS. MILES: No, I have not.

17 THE COURT: All right. Are you  
18 sensible of -- let me ask you this. Do you  
19 have any close members of your family such as  
20 mother, father, sister or brother that are  
21 members, or children, that are a member of law  
22 enforcement such as police officer, deputy  
23 sheriff, DEA, FBI agent, anything like that?

24 MS. MILES: No, I do not.

25 THE COURT: At the conclusion of this

1 case I will instruct you as to the law. You  
2 might not agree with that law but would you  
3 follow it?

4 MS. MILES: Yes I will.

5 THE COURT: Are you sensible of any  
6 bias or prejudice whatsoever that would keep  
7 you from giving the Commonwealth and the  
8 accused a fair and impartial trial based on the  
9 law and the evidence?

10 MS. MILES: No, I am not.

11 THE COURT: All right, Mr. Barry, you  
12 may commence your questions.

13 MR. BARRY: Ms. Miles, my name is  
14 Learned Barry. I represent the Commonwealth  
15 here in south Richmond. It's my obligation to  
16 put on evidence in the case today. I don't  
17 believe I have ever met you, have I?

18 MS. MILES: Not to my knowledge.

19 MR. BARRY: Fine. Mr. Everhart and  
20 Mr. Geary are the defense attorneys. Mr.  
21 Graham is the defendant. Do you know any of  
22 those gentlemen?

23 MS. MILES: No, I do not.

24 MR. BARRY: Do you or have you ever  
25 had a son or a daughter killed while you were



1 living here in Richmond?

2 MS. MILES: No, I haven't.

3 MR. BARRY: Thank you. This lady is  
4 fine. Thank you very much, Judge.

5 THE COURT: All right, Mr. Geary.

6 MR. GEARY: If you sit on this jury  
7 Judge Wilkinson will tell you what the law is.  
8 And one of the things he is going to tell you  
9 is that Mr. Graham sitting here is presumed to  
10 be innocent, has a presumption of innocence.  
11 Would you be willing to follow that instruction  
12 for Judge Wilkinson?

13 MS. MILES: Yes, I would.

14 MR. GEARY: He is also going to tell  
15 you that the Commonwealth, Mr. Barry, and the  
16 Commonwealth of Virginia have the burden of  
17 proving Mr. Graham is guilty beyond a  
18 reasonable doubt. Would you follow that  
19 instruction?

20 MS. MILES: Yes, I will.

21 MR. GEARY: Do you have any strong  
22 feelings one way or another about the death  
23 penalty?

24 MS. MILES: No, I do not.

25 MR. GEARY: Do you know of any reason

1 at all why you couldn't serve in this case and  
2 follow the Judge's instructions and the oath of  
3 the jurors?

4 MS. MILES: No, I do not.

5 MR. GEARY: You can give a fair trial  
6 to the Commonwealth of Virginia and Andre  
7 Graham?

8 MS. MILES: Yes, I would.

9 MR. GEARY: Thank you. I have no  
10 further questions.

11 THE COURT: All right. She will be a  
12 proper juror. Please seat her in the jury  
13 room.

14 THE CLERK: Juror number 299, Dawn  
15 Hamlin. Do you solemnly swear the answers you  
16 shall give shall be the truth, the whole truth,  
17 and nothing but the truth, so help you God?

18 MS. HAMLIN: I do.

19 THE CLERK: You may be seated, ma'am.

20 THE COURT: All right, ma'am, we are  
21 going to ask you some questions, none of which  
22 are set to embarrass you, but only to find your  
23 impartiality in this case. Were you present in  
24 the Circuit Court of the City of Richmond on  
25 June 9th, 1994, at which time the grand jury

1 was charged?

2 MS. HAMLIN: No.

3 THE COURT: All right. Are you  
4 related by blood or marriage or do you know  
5 Andre L. Graham?

6 MS. HAMLIN: No.

7 THE COURT: Did you know Sheryl L.  
8 Stack?

9 MS. HAMLIN: No.

10 THE COURT: Do you know a person  
11 named Edward Martin?

12 MS. HAMLIN: No.

13 THE COURT: This was an alleged crime  
14 that took place at the Steak and Ale parking  
15 lot where a young lady was killed and a young  
16 man, young gentleman was wounded. Have you  
17 heard or read anything about the case?

18 MS. HAMLIN: No.

19 THE COURT: Do you have any  
20 religious, conscientious scruples or other  
21 things that would keep you from imposing the  
22 death penalty in the proper case?

23 MS. HAMLIN: No.

24 THE COURT: All right. At the  
25 conclusion of this case I will instruct you as



1 to the law. Would you follow that law,  
2 although you disagree with it?

3 MS. HAMLIN: Yes.

4 THE COURT: All right. Are you  
5 sensible of any bias or prejudice whatsoever  
6 that would keep you from giving the  
7 Commonwealth and the accused a fair and  
8 impartial trial based on the law and the  
9 evidence?

10 MS. HAMLIN: No.

11 THE COURT: All right, Mr. Barry, you  
12 may have your questions.

13 MR. BARRY: Ma'am, my name is Learned  
14 Barry and I am going to be representing the  
15 Commonwealth today. I am commonly called a  
16 prosecutor. These two gentlemen sitting over  
17 here are Mr. Geary and Mr. Everhart. They are  
18 commonly called defense attorneys. I don't  
19 think I've ever met you. Have you ever met  
20 either of those gentlemen?

21 MS. HAMLIN: No.

22 MR. BARRY: The defendant's name is  
23 Graham. Have you ever seen or heard of him,  
24 Andre Graham?

25 MS. HAMLIN: No.

1 MR. BARRY: The location that I have  
2 as his address is 4000 Midlothian Pike and 3400  
3 block of Walmsley Boulevard. Do you live in  
4 either of those areas?

5 MS. HAMLIN: No.

6 MR. BARRY: Now, the Judge asked you  
7 whether or not you have any particular feeling  
8 one way or the other about the death penalty.  
9 In this case quite frankly we may reach a point  
10 in the trial where I, as the Commonwealth's  
11 representative, will ask the jury to find the  
12 death penalty. You are telling me that you  
13 morally and religiously have no objection to me  
14 presenting that evidence to you and asking you  
15 to consider the death penalty?

16 MS. HAMLIN: No.

17 MR. BARRY: Well, that's fine. We  
18 just need to find these things out ahead of  
19 time. We are not here to embarrass you. This  
20 lady is fine, Judge. Thank you very much.

21 THE COURT: All right, Mr. Geary.

22 MR. GEARY: Thank you, Judge. Ma'am,  
23 I would like to ask you a couple of questions,  
24 too. I'm not, neither Mr. Barry nor I are not  
25 trying to embarrass you by anything that we

1 ask. You're listed on the information sheet  
2 that we have as 21 years old; is that correct?

3 MS. HAMLIN: Yes.

4 MR. GEARY: The young lady that was  
5 killed in this case was about the same age.  
6 Would that have any affect on how you decide  
7 the case because the victim was about the same  
8 age as you are?

9 MS. HAMLIN: No.

10 MR. GEARY: As Judge Wilkinson told  
11 you and Mr. Barry told you, this is called a  
12 capital murder case. We try the guilt or  
13 innocence case first, and if Mr. Graham is  
14 found guilty then we go to a second phase and  
15 that's what Mr. Barry was talking about where  
16 there is evidence about what punishment is. In  
17 Virginia, as Judge Wilkinson will tell you, if  
18 we get to the second phase, and we don't know  
19 whether we will or not. But, if we do there  
20 are only two punishments the jury can impose.  
21 One is the death penalty one is life  
22 imprisonment. Would you be willing to listen  
23 to all the evidence and decide what punishment  
24 to impose when you get there based on what you  
25 hear, what you see, what Judge Wilkinson tells



1                   you?

2                   MS. HAMLIN: Yes.

3                   MR. GEARY: Do you think that you  
4 would favor one over the other, life in prison  
5 over the death penalty or death penalty over  
6 life imprisonment?

7                   MS. HAMLIN: No.

8                   MR. GEARY: Another thing that the  
9 Judge will tell you is that Mr. Graham sits  
10 here, if you're on this jury during this trial,  
11 there is a presumption of innocence that he is  
12 presumed under Virginia law and the United  
13 States law that he is innocent, that the only  
14 time he can be found guilty is if the  
15 prosecution proves that beyond a reasonable  
16 doubt. Are you willing to accept that  
17 instruction from Judge Wilkinson and follow  
18 that instruction if you're on the jury?

19                   MS. HAMLIN: Yes.

20                   MR. GEARY: Thank you, Judge.

21                   THE COURT: All right. You may go to  
22 the jury room. Go this way, ma'am, please.

23                   THE CLERK: Juror number 714, Sherry  
24 Taylor. Ms. Taylor, would remain standing and  
25 raise your right hand? Do you solemnly swear

1 the answers you shall give shall be the truth,  
2 the whole truth, and nothing but the truth so  
3 help you God?

4 MS. TAYLOR: I do.

5 THE CLERK: You may be seated.

6 THE COURT: Ms. Taylor, we are going  
7 to ask you some questions, none of which are to  
8 embarrass you but to find out your impartiality  
9 in this matter. Were you in the Circuit Court  
10 of the City of Richmond, Manchester Courthouse,  
11 on June 9th, 1994, at which time the grand jury  
12 was charged?

13 MS. TAYLOR: No.

14 THE COURT: All right. Are you  
15 related by blood or marriage or do you know  
16 Andre L. Graham or did you know Sheryl L.  
17 Stack, or do you know a man, a person by the  
18 name of Edward Martin?

19 MS. TAYLOR: No.

20 THE COURT: This alleged crime took  
21 place on the parking lot of the Steak and Ale.  
22 Have you read or heard anything about the case?

23 MS. TAYLOR: Yes, I believe so.

24 THE COURT: Have you, from what you  
25 have read or heard have you expressed or formed

1 any opinion as to the guilt or innocence of the  
2 defendant?

3 MS. TAYLOR: No.

4 THE COURT: This is a capital murder  
5 case which means the death penalty may be  
6 imposed. Do you have any religious,  
7 conscientious scruples or other matters that  
8 would keep you from imposing the death penalty  
9 in the proper case?

10 MS. TAYLOR: It's hard to say.

11 THE COURT: Pardon?

12 MS. TAYLOR: Probably, yeah.

13 THE COURT: Well, let's put it this  
14 way, would it come to the point where you would  
15 hang the jury other than vote for guilty?

16 MS. TAYLOR: Maybe. That's hard to  
17 say.

18 THE COURT: Pardon?

19 MS. TAYLOR: No.

20 THE COURT: In the proper case you  
21 could impose the death penalty?

22 MS. TAYLOR: Yeah.

23 THE COURT: All right. At the  
24 conclusion of the case I will instruct you as  
25 to the law in the case. You might disagree



1 with this law but would you follow it?

2 MS. TAYLOR: Yes.

3 THE COURT: All right. Are you  
4 sensible -- oh, do you have any close members  
5 of your family such as mother, father, sister,  
6 brother, or child or children that are a member  
7 of a law enforcement agency such as a security  
8 officer, police officer, DEA, sheriff, anything  
9 like that?

10 MS. TAYLOR: No.

11 THE COURT: Are you sensible of any  
12 bias or prejudice whatsoever that would keep  
13 you from giving the Commonwealth and the  
14 accused a fair and impartial trial based on the  
15 law and the evidence?

16 MS. TAYLOR: No.

17 THE COURT: All right, Mr. Barry.

18 MR. BARRY: We bring you in here and  
19 the first thing we say is can you pull the  
20 switch and it kind of takes your breath away,  
21 doesn't it?

22 MS. TAYLOR: Yeah.

23 MR. BARRY: This is the young lady  
24 that was killed. Do you recognize her?

25 MS. TAYLOR: No.

1 MR. BARRY: Her name was Stack, S-t-  
2 a-c-k. She was from Bracey, Virginia. Her  
3 family is sitting right here in the courtroom.  
4 Do you recognize any of them?

5 MS. TAYLOR: No.

6 MR. BARRY: Okay. Help me just for a  
7 second. Let's explore the possibility a little  
8 bit more. This is a two phase trial. First  
9 guilt or innocence. And, in the event that he  
10 is found guilty of capital murder then we move  
11 into a second phase in which the decision is  
12 life or death. Do you really feel in your  
13 heart that if I give you the appropriate  
14 evidence that you can vote for a death penalty?

15 MS. TAYLOR: Can I say that  
16 definitely, no, I don't think so.

17 MR. BARRY: Because if you have any  
18 hesitation you really have to sit here and be  
19 able to say I will equally consider life or  
20 death and be able to make either decision.  
21 And, if you really can't consider death then we  
22 really can't let you sit.

23 MS. TAYLOR: All right.

24 THE COURT: That is not necessarily  
25 so.

1 MR. BARRY: She has to be able to at  
2 least consider it.

3 THE COURT: But, she has got to  
4 almost go so far as to say she would hang the  
5 jury and not vote for the death penalty under  
6 the rules in the case. Would you hang the jury  
7 before you would vote for capital murder, a  
8 conviction of capital murder?

9 MS. TAYLOR: Gosh, I would have to  
10 say yes because I can't definitely say no.  
11 I've never been in that situation before.

12 THE COURT: Nobody is going to bite  
13 you. Your feelings are your feelings. Can you  
14 or can't you?

15 MS. TAYLOR: I would say I probably  
16 would hang the jury other than cast the vote  
17 for the death penalty.

18 THE COURT: Your feelings are that  
19 strong?

20 MS. TAYLOR: Yes.

21 THE COURT: All right. Y'all want to  
22 ask any more questions?

23 MR. GEARY: Yes, Judge.

24 THE COURT: Mr. Geary.

25 MR. GEARY: Ms. Taylor, my name is



1 Bob Geary. I am one of the lawyers for Mr.  
2 Graham. The feelings that you have about the  
3 death penalty, as Mr. Barry indicated to you,  
4 it's kind of a shock to walk in here, like he  
5 said the first question you're asked is whether  
6 you can send somebody to the electric chair.  
7 What the law requires is that you be willing to  
8 consider in the penalty phase, if it gets  
9 there, there is no way of knowing whether it's  
10 going to get there. But, if it gets to that  
11 second phase the law requires that you be  
12 willing to consider two options, one under  
13 Virginia law is the death penalty. The other  
14 option under Virginia law is life imprisonment.  
15 What the Judge was asking you, what Mr. Barry  
16 was asking you, and what I am asking you is are  
17 you able as you sit there today, without  
18 knowing the facts in this case, without knowing  
19 what's going to happen in the first phase, not  
20 knowing if we get to the second phase what the  
21 evidence will be in the second phase, are you  
22 willing to sit as one of the 12 jurors and say  
23 I will honestly and fairly listen to the  
24 evidence and follow the Judge's instructions  
25 and decide whether or not punishment is the

1 death penalty, or whether punishment of life  
2 imprisonment is the proper form to return?  
3 Would you do that?

4 MS. TAYLOR: Honestly no, I don't  
5 think so.

6 MR. GEARY: No further questions.

7 THE COURT: I will excuse you.  
8 You're excused.

9 THE CLERK: Juror number 785, Nella  
10 Wilkerson. Would you raise your right hand?  
11 Do you solemnly swear the answers you shall  
12 give shall be the truth, the whole truth, and  
13 nothing but the truth, so help you God?

14 MS. WILKERSON: Yes.

15 THE CLERK: You may be seated.

16 THE COURT: Ms. Wilkerson, we are  
17 going to ask you some questions, none of which  
18 are to embarrass you, but only to find out your  
19 impartiality in this matter. Were you present  
20 in the Circuit Court of the City of Richmond at  
21 the Manchester Courthouse on June the 9th,  
22 1994, at which time the grand jury was charged?  
23 Were you here June 9th?

24 MS. WILKERSON: I didn't hear you.

25 THE COURT: Were you here on June

1 9th, 1994, when the grand jury was charged?

2 MS. WILKERSON: No.

3 THE COURT: All right. Do you know  
4 or are you related by blood or marriage or did  
5 you know Sheryl Stack or do you know Edward  
6 Martin?

7 MS. WILKERSON: No.

8 THE COURT: All right. This alleged  
9 crime took place at the Steak and Ale parking  
10 lot where a young lady was killed and young man  
11 was wounded. Have you read, heard or discussed  
12 the case in any way?

13 MS. WILKERSON: I read it in the  
14 newspapers but I haven't discussed it with  
15 anyone.

16 THE COURT: From what you have read,  
17 have you expressed or formed an opinion as to  
18 the guilt or innocence of the defendant?

19 MS. WILKERSON: No.

20 THE COURT: All right. This is a  
21 capital murder case which means the death  
22 penalty can be imposed. Do you have any  
23 religious, conscientious scruples or other  
24 matters that would keep you from imposing the  
25 death penalty or considering it in the proper



1 case?

2 MS. WILKERSON: No.

3 THE COURT: Do you have any close  
4 members of your family such as mother, father,  
5 sister, brother, child or children that are  
6 involved in law enforcement such as police,  
7 deputy sheriff and so forth?

8 MS. WILKERSON: No.

9 THE COURT: All right. At the  
10 conclusion of the evidence in this case I will  
11 instruct you as to the law. You might disagree  
12 with that law but would you follow it?

13 MS. WILKERSON: Yes.

14 THE COURT: Are you sensible of any  
15 bias or prejudice whatsoever that would keep  
16 you from giving the Commonwealth and the  
17 accused a fair and impartial trial based on the  
18 law and the evidence?

19 MS. WILKERSON: No.

20 THE COURT: All right, Mr. Barry, if  
21 you have any questions.

22 MR. BARRY: Ms. Wilkerson, my name is  
23 Learned Barry. I represent the Commonwealth  
24 and will be prosecuting the defendant today.  
25 This young lady's name is Sheryl Stack. Do you

1 recognize her?

2 MS. WILKERSON: No.

3 MR. BARRY: Her mother and father are  
4 sitting over here on the second row. The  
5 gentleman has a green shirt on. Do you  
6 recognize them?

7 MS. WILKERSON: No.

8 MR. BARRY: Have you ever come in  
9 contact with either Mr. Everhart or Mr. Geary?  
10 Those are the two white males sitting there in  
11 coats and ties.

12 MS. WILKERSON: No, sir.

13 MR. BARRY: And, the fellow next to  
14 them is Andre Graham. He is the defendant.  
15 Have you ever come in contact with him?

16 MS. WILKERSON No.

17 MR. BARRY: Thank you. This lady is  
18 acceptable to the Commonwealth.

19 THE COURT: All right, Mr. Geary.

20 MR. GEARY: Judge, with the Court's  
21 permission.

22 THE COURT: Excuse me, y'all are  
23 switching. All right.

24 MR. EVERHART: With the Court's  
25 permission.

1 THE COURT: All right.

2 MR. EVERHART: Good morning, Ms.  
3 Wilkerson. I am Jeff Everhart, as Mr. Barry  
4 said a moment ago. And, along with Bob Geary,  
5 the gentleman to my left, I represent Andre  
6 Graham. Have you ever sat on a criminal jury  
7 before?

8 MS. WILKERSON: One time.

9 MR. EVERHART: How long ago was that?

10 MS. WILKERSON: About four or five  
11 years ago.

12 MR. EVERHART: Do you recall what  
13 kind of case it was?

14 MS. WILKERSON: It was a drug case.

15 MR. EVERHART: Drug case. Was that  
16 in the City of Richmond or did you live  
17 somewhere else then?

18 MS. WILKERSON: Yes, the city.

19 MR. EVERHART: Do you recall whether  
20 you found, well, not you, whether the jury  
21 found the gentleman guilty or not guilty?

22 MS. WILKERSON: Not guilty.

23 MR. EVERHART: So, you understand  
24 that the burden in this case is on the  
25 Commonwealth to prove Andre Graham guilty



1 beyond a reasonable doubt?

2 MS. WILKERSON: Yes.

3 MR. EVERHART: And, you heard Judge  
4 Wilkinson a few minutes ago talk about the  
5 possibility of the imposition of the death  
6 penalty? You heard the Judge Wilkinson say  
7 that, correct?

8 MS. WILKERSON: Yes.

9 MR. EVERHART: Do you understand that  
10 in this type of case there are actually two  
11 stages. The first stage you and the fellow  
12 members of the jury would determine whether or  
13 not Mr. Graham were guilty or not guilty; do  
14 you understand that?

15 MS. WILKERSON: Yes, sir.

16 MR. EVERHART: And, do you understand  
17 if that you determine he were guilty of the  
18 crime of capital murder then there would be in  
19 essence a second trial, a trial within a trial,  
20 and in that trial the Commonwealth would  
21 produce evidence to attempt to convince you  
22 that this crime and Andre Graham's either  
23 background or whatever warranted the imposition  
24 of the death penalty; do you understand that?

25 MS. WILKERSON: Yes.

1 MR. EVERHART: Of course, you  
2 understand Mr. Geary and I would be trying to  
3 convince you otherwise; do you understand that?

4 MS. WILKERSON: Yes, sir.

5 MR. EVERHART: Now, as you -- I don't  
6 know if Mr. Barry showed you the picture of the  
7 young lady who was killed, Ms. Stack. Didn't  
8 he show you that?

9 MS. WILKERSON: Yes, sir.

10 MR. EVERHART: As you can see from  
11 the picture Ms. Stack was a white woman. Mr.  
12 Graham obviously is a black male. Does the  
13 fact that the victim and the accused are of  
14 different races, does that cause you any  
15 problem? Does that impose any sort of bias in  
16 your mind?

17 MS. WILKERSON: No.

18 MR. EVERHART: Have you or any  
19 members of your immediate family, by that I  
20 mean brothers, sisters, parents, children, been  
21 the victims of a violent crime?

22 MS. WILKERSON: Yes.

23 MR. EVERHART: Without naming that  
24 person what would that person's relationship to  
25 you be and what were they the victim of, what

1 kind of crime?

2 MS. WILKERSON: My son, gunshot  
3 wound.

4 MR. EVERHART: How long ago was that,  
5 please, ma'am?

6 MS. WILKERSON: It was in April of  
7 this year.

8 MR. EVERHART: The crimes that Mr.  
9 Graham is charged with, the crimes that he  
10 stands charged with include the malicious or  
11 felonious, the malicious wounding or felonious  
12 assault of a young man named Edward Martin.  
13 Obviously, he is charged with the murder of  
14 Sheryl Stack. The wounds that caused Ms.  
15 Stack's death and the injuries to Mr. Martin  
16 are by gunshot. Does the fact that your son  
17 has suffered gunshot wounds, would that affect  
18 your ability to give Mr. Graham and the  
19 Commonwealth a fair trial in this matter?

20 MS. WILKERSON: No.

21 MR. EVERHART: There would be  
22 predisposition in your heart or mind to punish  
23 more harshly because someone in your family  
24 suffered such an injury?

25 MS. WILKERSON: No.



1 MR. EVERHART: Okay. If I can have  
2 just one moment, please, Your Honor. I  
3 apologize ma'am. Was there ever someone  
4 charged in that crime involving your son?

5 MS. WILKERSON: I have never heard if  
6 they were.

7 MR. EVERHART: To the best of your  
8 knowledge no?

9 MS. WILKERSON: Yes.

10 MR. EVERHART: Okay. Thank you very  
11 much. No further questions. She is fine.

12 THE COURT: All right. She may go to  
13 the jury room, please.

14 THE CLERK: Juror number 753, Arzelle  
15 Walker. Do you solemnly swear the answers you  
16 shall give shall be the truth, the whole truth,  
17 and nothing but the truth, so help you God?

18 MR. WALKER: Yes, ma'am.

19 THE COURT: You may have your seat,  
20 Mr. Walker, please. We are going to ask you  
21 some questions, not to embarrass you but to  
22 find your impartiality in this case. Were you  
23 in the Circuit Court of the City of Richmond at  
24 the Manchester Courthouse on June the 9th,  
25 1994, at which time the grand jury was charged

1 in this case?

2 MR. WALKER: No, sir.

3 THE COURT: All right. Are you  
4 related by blood or marriage or do you know  
5 Andre L. Graham or did you know Sheryl L. Stack  
6 or do you know Edward Martin?

7 MR. WALKER: No, sir.

8 THE COURT: This is an alleged crime  
9 which took place at the Steak and Ale parking  
10 lot out on Midlothian Pike. Have you read or  
11 heard anything about the case?

12 MR. WALKER: No, sir.

13 THE COURT: All right. Do you have  
14 any close members of your family such as  
15 mother, father, sister, brother, child or  
16 children that are involved in law enforcement  
17 such as police officer, deputy sheriff?

18 MR. WALKER: No, sir.

19 THE COURT: All right. In the proper  
20 case and this is a capital murder case, if you  
21 convict of capital murder you have one or two  
22 choices, either death or life. Would you  
23 consider both of these penalties in your  
24 deliberations in the penalty phase of the case?

25 MR. WALKER: No, sir.

1 THE COURT: Well, do you have any  
2 religious, conscientious scruples or other  
3 things that would keep you from imposing the  
4 death penalty in the proper case?

5 MR. WALKER: I wouldn't want to send  
6 nobody to death.

7 THE COURT: Is your feeling so strong  
8 that you would hang the jury before you would  
9 vote for guilty?

10 MR. WALKER: Yes, sir.

11 THE COURT: You would? All right.  
12 Y'all want to ask some questions?

13 MR. BARRY: No. I just ask he be  
14 excused, Judge.

15 MR. EVERHART: Judge, if I could have  
16 a couple. Good morning, Mr. Walker. I am Jeff  
17 Everhart. Along with Bob Geary I represent  
18 Andre Graham, the young man who is charged with  
19 these crimes. The Judge has posed a question  
20 to you regarding the death penalty. You  
21 understand from his question that this is a  
22 capital murder case and if everything were to  
23 go, to fall into place so to speak, there would  
24 be the possibility that the jury could  
25 recommend a sentence of death. Do you



1 understand that?

2 MR. WALKER: Yes, sir.

3 MR. EVERHART: The law in the  
4 Commonwealth of Virginia, I am sure you know,  
5 allows the imposition of the death penalty.  
6 Are you aware of that?

7 MR. WALKER: Yes, sir.

8 MR. EVERHART: You have seen in the  
9 newspaper the death penalty has been imposed in  
10 the past, correct?

11 MR. WALKER: (Shakes head yes).

12 MR. EVERHART: If Judge Wilkinson  
13 were to instruct you that the law allowed you  
14 to make two decisions if you convicted Andre  
15 Graham of capital murder, you can impose a  
16 penalty of death or a penalty of life  
17 imprisonment. Could you at least sit, consider  
18 the evidence, consider the arguments by Mr.  
19 Barry, either myself or Mr. Geary and consider  
20 the arguments of your fellow jurors? In other  
21 words, could you consider both possibilities?

22 MR. WALKER: No, sir.

23 THE COURT: No matter how heinous the  
24 crime?

25 MR. WALKER: I wouldn't send nobody,

1 I wouldn't send nobody to get killed.

2 MR. EVERHART: You wouldn't be  
3 comfortable making that recommendation?

4 MR. WALKER: No, sir.

5 MR. EVERHART: Thank you very much.

6 THE COURT: You may be excused.

7 THE CLERK: Juror number 657, Charles  
8 Shores. Would you please raise your right  
9 hand? Sir, would you raise your right hand,  
10 Mr. Shores? Do you solemnly swear the answers  
11 you shall give shall be the truth, the whole  
12 truth, and nothing but the truth, so help you  
13 God?

14 THE COURT: Have a seat right there  
15 Mr. Shores. We are going to ask you some  
16 questions, not to embarrass you but to find  
17 your impartiality in this case. Were you in  
18 the Circuit Court of the City of Richmond, at  
19 the Manchester Courthouse on June the 9th,  
20 1994, at which time the grand jury was charged?

21 MR. SHORES: I don't remember.

22 THE COURT: June 9th, were you here  
23 June 9th?

24 MR. SHORES: Not the 9th.

25 THE COURT: What?

1 MR. SHORES: I wasn't here the 9th.

2 THE COURT: Okay. Do you know, are  
3 you related in any way to Andre L. Graham,  
4 Edward Martin, or did you know Sheryl Stack?

5 MR. SHORES: No, I don't.

6 THE COURT: This is an alleged crime  
7 which happened on the Steak and Ale parking  
8 lot. Have you read or heard anything about the  
9 case?

10 MR. SHORES: No.

11 THE COURT: Do you have any close  
12 members of your family such as mother, father,  
13 sister, brother, child or children, that are or  
14 have been involved in law enforcement such as a  
15 police officer, deputy sheriff?

16 MR. SHORES: My son-in-law is a state  
17 trooper.

18 THE COURT: All right. Your son-in-  
19 law being a state trooper, could you sit here  
20 fairly and impartially and listen to the law  
21 and the evidence and decide this case?

22 MR. SHORES: I wouldn't think so.

23 THE COURT: Huh?

24 MR. SHORES: I wouldn't think so.

25 THE COURT: You would have some



1 question about it?

2 MR. SHORES: I don't know. I don't  
3 know. I don't think so, that he knows anything  
4 about it.

5 THE COURT: I am not talking about  
6 your son-in-law. I am just talking about you.

7 MR. SHORES: Oh, no.

8 THE COURT: Could you sit here and  
9 try this case fairly?

10 MR. SHORES: Ut-huh.

11 THE COURT: You could not?

12 MR. SHORES: No.

13 THE COURT: Do you understand my  
14 question?

15 MR. SHORES: What do you mean?  
16 Explain it to me again.

17 THE COURT: Could you sit as a juror  
18 and try this case fairly and impartially?

19 MR. SHORES: Oh, yeah.

20 THE COURT: All right. Your son-in-  
21 law being a state trooper wouldn't bother you  
22 in any way?

23 MR. SHORES: No.

24 THE COURT: All right. Do you have  
25 any religious, conscientious scruples or other

1 matters that would keep you from imposing the  
2 death penalty in the proper case?

3 MR. SHORES: No.

4 THE COURT: You haven't heard or read  
5 anything about this case?

6 MR. SHORES: No.

7 THE COURT: At the conclusion of the  
8 case I will instruct you as to the law. You  
9 might disagree with that law but would you  
10 follow it?

11 MR. SHORES: Yes, sir.

12 THE COURT: Could you sit fairly --  
13 are you sensible of any bias or prejudice  
14 whatsoever that would keep you from giving the  
15 Commonwealth and the accused a fair and  
16 impartial trial?

17 MR. SHORES: No, sir.

18 THE COURT: All right, Mr. Barry.

19 MR. BARRY: Mr. Shores, my name is  
20 Learned Barry. I am going to be representing  
21 the Commonwealth in today's trial. These two  
22 gentlemen, Mr. Geary and Mr. Everhart, are  
23 representing the defendant. I take it you know  
24 neither of these gentlemen?

25 MR. SHORES: No, I don't.

1 MR. BARRY: All right. I'm just  
2 going to point some people out to you in the  
3 audience to see if you know them. See the  
4 gentleman in the green shirt on the second row?

5 MR. SHORES: Uh-huh. No. I don't  
6 know him.

7 MR. BARRY: You don't know him. That  
8 is Mr. Stack and his wife, Mrs. Stack. You've  
9 never met those folks before?

10 MR. SHORES: No.

11 MR. BARRY: They are the mother and  
12 father of the young girl that was killed in  
13 this case. So, no connection whatsoever?

14 MR. SHORES: No connection.

15 MR. BARRY: All right. I know the  
16 Judge went through this with you but this is a  
17 case in which I will be seeking the death  
18 penalty. You have no moral or religious  
19 scruples that would prevent you from doing  
20 that?

21 MR. SHORES: No, sir.

22 MR. BARRY: All right. This  
23 gentleman is fine, Judge. Thank you very much.

24 THE COURT: All right, Mr. Everhart.

25 MR. EVERHART: Thank you. Good



1 morning, Mr. Shores. Have you or any members  
2 of your immediate family ever been the victim  
3 of a violent crime?

4 MR. SHORES: No.

5 MR. EVERHART: No. Have you ever sat  
6 on a criminal jury before?

7 MR. SHORES: Yes.

8 MR. EVERHART: How long ago was that?

9 MR. SHORES: About four or five years  
10 ago.

11 MR. EVERHART: Four or five years  
12 ago. Was that here in the City of Richmond?

13 MR. SHORES: At the John Marshall.

14 MR. EVERHART: The John Marshall  
15 Courts Building across the river?

16 MR. SHORES: Right.

17 MR. EVERHART: Yes, sir. Do you  
18 happen to recall what the person was charged  
19 with in that case?

20 MR. SHORES: Murder.

21 MR. EVERHART: Do you recall what the  
22 verdict was in your case?

23 MR. SHORES: Guilty.

24 MR. EVERHART: So you know how a  
25 trial works, that the burden is on the

1 Commonwealth to prove beyond a reasonable  
2 doubt, et cetera?

3 MR. SHORES: Right.

4 MR. EVERHART: And, you can follow  
5 that law?

6 MR. SHORES: Yes, sir.

7 MR. EVERHART: Do you understand in a  
8 capital murder case, which is what we have here  
9 today, if you reach that decision, in other  
10 words, if you were part of the jury and you  
11 decided that Andre Graham were guilty of  
12 capital murder, we would have another part of  
13 the trial. Do you understand that?

14 MR. SHORES: Yes, sir.

15 MR. EVERHART: And, that the  
16 Commonwealth would try to convince you the  
17 appropriate punishment was death, and we  
18 obviously would try to convince you that in  
19 that case the appropriate punishment was life;  
20 do you understand that?

21 MR. SHORES: Yes, sir.

22 MR. EVERHART: You wouldn't have any  
23 problem following the law as Judge Wilkinson  
24 directed you it was?

25 MR. SHORES: No, sir.

1 MR. EVERHART: You don't have any  
2 predisposition, if you were to find Andre  
3 Graham guilty of this charge there is no  
4 predisposition in your mind or heart to say the  
5 old eye for an eye?

6 MR. SHORES: No.

7 MR. EVERHART: Does the fact that the  
8 young lady that was killed is white and the  
9 fact that Mr. Graham is black, does that  
10 influence you in any way?

11 MR. SHORES: No, sir.

12 MR. EVERHART: You don't have any  
13 belief that he ought to be punished, if you  
14 find him guilty he should be punished more  
15 harshly because he is black and she is white?

16 MR. SHORES: No, I do not.

17 MR. EVERHART: Okay. So, in other  
18 words, what you're telling me, Mr. Barry, and  
19 the Court, is you would be able to hear all the  
20 evidence and you would withhold making any  
21 decisions until you heard it all, right?

22 MR. SHORES: Yes, sir.

23 MR. EVERHART: Thank you very much.

24 THE COURT: All right. You may go to  
25 the jury room.



1 THE CLERK: Juror number 297, Larry  
2 Hall. Would you raise your right hand, Mr.  
3 Hall? Do you solemnly swear the answers you  
4 shall give shall be the truth, the whole truth,  
5 and nothing but the truth, so help you God?

6 MR. HALL: I do.

7 THE COURT: Mr. Hall, we are going to  
8 ask you some questions just to ascertain your  
9 impartiality in this matter. That's the only  
10 reason. Were you present in the Circuit Court  
11 of the City of Richmond on June the 9th, 1994,  
12 at which time the grand jury was charged in  
13 this case?

14 MR. HALL: No, I was not.

15 THE COURT: All right. Do you know  
16 or are you related in any way by blood or  
17 marriage to Andre L. Graham, Sheryl Stack, or  
18 Edward Martin?

19 MR. HALL: No.

20 THE COURT: This alleged crime took  
21 place on the Steak and Ale parking lot on  
22 Midlothian Pike. Have you read or heard  
23 anything about the case?

24 MR. HALL: I think I might have but I  
25 don't really remember it very well.

1 THE COURT: All right. Did you  
2 express or form any opinion as to the guilt or  
3 innocence of the accused at the time?

4 MR. HALL: Is that the Steak and Ale?

5 THE COURT: Yes.

6 MR. HALL: Can you tell me anymore  
7 about it, or --

8 THE COURT: Well, it was a young lady  
9 killed there, a young man was wounded. It took  
10 place on October the 8th, 1993. That's about  
11 all I can tell you about it.

12 MR. HALL: Okay. I don't really  
13 specifically remember it.

14 THE COURT: Then you have not  
15 expressed or formed an opinion as to guilt or  
16 innocence?

17 MR. HALL: I don't think so.

18 THE COURT: Would you be a little  
19 more definite? Have you or have you not?

20 MR. HALL: No. I work for the  
21 newspaper and I am a librarian there so I do  
22 follow some of the cases and I do form opinions  
23 when I read them. But, I don't specifically  
24 remember this one, so I guess no.

25 THE COURT: I am only interested in

1 this one. Have you expressed or formed an  
2 opinion?

3 MR. HALL: No, I have not.

4 THE COURT: This is a capital murder  
5 case where the death penalty may be imposed if  
6 the evidence justifies it. Do you have any  
7 religious, conscientious scruples or other  
8 matters that would keep you from imposing the  
9 death penalty in the proper case?

10 MR. HALL: I do.

11 THE COURT: You do?

12 MR. HALL: Yes.

13 THE COURT: Would that be so strong  
14 as to keep you from rendering a guilty verdict?

15 MR. HALL: It would be.

16 THE COURT: Under any circumstances  
17 you would not vote for the death penalty?

18 MR. HALL: No, I would not.

19 THE COURT: All right. Y'all want to  
20 ask him any questions?

21 MR. BARRY: No. He can be excused,  
22 Judge.

23 MR. GEARY: Judge, one question. Mr.  
24 Hall, what you're telling Judge Wilkinson in  
25 this case that no matter what the facts were,



1 at the penalty phase of the case you would  
2 absolutely not vote for the death penalty?

3 MR. HALL: I would not, no.

4 MR. GEARY: Nothing further.

5 THE COURT: All right. You may be  
6 excused.

7 THE CLERK: Juror number 324, Betty  
8 Heath. Do you solemnly swear the answers you  
9 shall give shall be the truth, the whole truth,  
10 and nothing but the truth, so help you God?

11 MS. HEATH: I do.

12 THE COURT: You may be seated, ma'am.  
13 Ms. Heath, we are going to ask you some  
14 questions to find your impartiality in this  
15 case. That's the only reason. Were you  
16 present in the Circuit Court of the City of  
17 Richmond, Manchester Courthouse, on June the  
18 9th, 1994, at which time the grand jury was  
19 charged?

20 MS. HEATH: No, sir.

21 THE COURT: All right. Are you  
22 related by blood or marriage or do you know  
23 Andre L. Graham, or did you know Sheryl Stack,  
24 or do you know Edward Martin?

25 MS. HEATH: No, I don't.

1 THE COURT: This is an alleged crime  
2 which took place on the Steak and Ale parking  
3 lot on October the 8th, 1993. Do you know  
4 anything about the case?

5 MS. HEATH: No, sir.

6 THE COURT: All right. This is a  
7 capital murder case where the death penalty  
8 might be imposed. Do you have any religious,  
9 conscientious scruples or other things that  
10 would keep you from imposing the death penalty  
11 in the proper case?

12 MS. HEATH: No, sir.

13 THE COURT: All right. At the  
14 conclusion of this case I will instruct you as  
15 to the law. You might not agree with that law  
16 but would you follow it?

17 MS. HEATH: Yes, sir.

18 THE COURT: Have you been represented  
19 by any of the counsel, Mr. Geary, Mr. Everhart  
20 or Mr. Barry?

21 MS. HEATH: No, sir.

22 THE COURT: Are you sensible of any  
23 bias or prejudice whatsoever that would keep  
24 you from giving the Commonwealth and the  
25 accused a fair and impartial trial based on the

1 law and the evidence?

2 MS. HEATH: No, sir.

3 THE COURT: All right. Y'all may ask  
4 some questions.

5 MR. BARRY: Ma'am, I just have a  
6 couple questions. I would like introduce  
7 myself. My name is Learned Barry and I am  
8 going to represent the Commonwealth in this  
9 case. I am putting on evidence for the  
10 Commonwealth. Have you ever actually been in a  
11 trial before?

12 MS. HEATH: No. This is my first  
13 time.

14 MR. BARRY: First case. That's a  
15 good one to start with. This young lady here  
16 is Sheryl Stack. She worked part-time at the  
17 Steak and Ale. She was a student here in  
18 Richmond. Do you recognize this lady?

19 MS. HEATH: No, I don't.

20 MR. BARRY: Okay. The defendant's  
21 name is Andre Graham. He lives over in the  
22 Walmsley Boulevard area of town. Have you ever  
23 seen that fellow before at all?

24 MS. HEATH: No, sir.

25 MR. BARRY: So, you don't really



1 recognize any of the parties at all?

2 MS. HEATH: No.

3 MR. BARRY: Okay. That's fine. I  
4 just want to ask you again. I have an  
5 obligation to present evidence to you beyond a  
6 reasonable doubt and if I do and he is  
7 convicted of capital murder then we go into a  
8 second phase of the trial. And during the  
9 second phase of the trial you have to wrestle  
10 with whether the defendant is to receive the  
11 death penalty or a life sentence. You have no  
12 moral or religious reasons why you can't for  
13 any reason think about the death penalty?

14 MS. HEATH: No.

15 MR. BARRY: Thank you very much.  
16 This lady is acceptable to the Commonwealth.

17 THE COURT: All right.

18 MR. EVERHART: Good morning, Ms.  
19 Heath. I am Jeff Everhart. Along with Bob  
20 Geary, the gentleman in the middle, I represent  
21 Mr. Andre Graham. Have you or any members of  
22 your immediate family ever been the victim of a  
23 violent crime?

24 MS. HEATH: Yes, sir.

25 MR. EVERHART: I don't want to know

1 the individual's name. What relation to you  
2 would that person have been, or persons? Son?  
3 Daughter? Cousin? Brother?

4 MS. HEATH: A friend.

5 MR. EVERHART: Just a close personal  
6 friend of yours?

7 MS. HEATH: Uh-huh.

8 MR. EVERHART: What happened to that  
9 person? Were they shot or robbed?

10 MS. HEATH: No, they were raped. She  
11 was raped.

12 MR. EVERHART: So, it was a young  
13 lady?

14 MS. HEATH: Yes.

15 MR. EVERHART: The fact -- do you  
16 know whether anyone was ever charged with that  
17 crime?

18 MS. HEATH: Yes.

19 MR. EVERHART: Was that person  
20 brought to trial?

21 MS. HEATH: Yes, sir.

22 MR. EVERHART: Do you recall whether  
23 or not that person was convicted?

24 MS. HEATH: Yes, he was convicted.

25 MR. EVERHART: Was he punished then?

1 MS. HEATH: Yes, they put him in  
2 jail.

3 MR. EVERHART: The fact that your  
4 good friend was the victim of a violent crime,  
5 would that affect your ability to give Mr.  
6 Graham or the Commonwealth a fair trial in this  
7 case?

8 MS. HEATH: No, sir.

9 MR. EVERHART: You don't have any  
10 vengeance in your heart or mind towards someone  
11 who you might find guilty of committing a  
12 violent crime?

13 MS. HEATH: No, I have nothing like  
14 that.

15 MR. EVERHART: You understand that  
16 obviously if the Commonwealth can prove their  
17 case beyond a reasonable doubt this involves a  
18 violent crime. You understand that, correct?

19 MS. HEATH: Yes.

20 MR. EVERHART: You don't have any  
21 predisposition in either way?

22 MS. HEATH: No.

23 MR. EVERHART: I noticed from the --  
24 I noticed that you work as a cashier?

25 MS. HEATH: Yes.



1 MR. EVERHART: Has that establishment  
2 ever been robbed during your tenure there while  
3 you have been working there?

4 MS. HEATH: No, sir.

5 MR. EVERHART: That's all the  
6 questions I have. Thank you, ma'am.

7 THE COURT: All right. You may go to  
8 the jury room.

9 THE CLERK: Juror number 97, Carter  
10 Bryant. Would you raise your right hand, Mr.  
11 Bryant? Do you solemnly swear the answers you  
12 shall give shall be the truth, the whole truth,  
13 and nothing but the truth, so help you God?

14 MR. BRYANT: I do.

15 THE CLERK: You may be seated.

16 THE COURT: Mr. Bryant, we are going  
17 to ask you some questions to find your  
18 impartiality in the case. That's the only  
19 reason. Were you present in the Circuit Court  
20 at the Manchester Courthouse on June the 9th,  
21 1994, at which time the grand jury was charged  
22 in this case?

23 MR. BRYANT: No, sir.

24 THE COURT: Are you related by blood  
25 or marriage or do you know or did you know

1 Andre L. Graham, Edward Martin, or Sheryl  
2 Stack?

3 MR. BRYANT: No, sir.

4 THE COURT: This alleged crime took  
5 place on the Steak and Ale parking lot on  
6 Midlothian Pike. Have you read, heard, or  
7 talked about the matter?

8 MR. BRYANT: I have read about it.

9 THE COURT: From what you have read,  
10 have you expressed or formed an opinion as to  
11 the guilt or innocence of the accused?

12 MR. BRYANT: No, sir.

13 THE COURT: All right. This is a  
14 capital murder case where it is possible that  
15 the death penalty will be imposed. Do you have  
16 any religious, conscientious scruples or other  
17 matters that would keep you from considering  
18 both life and death if it goes to the penalty  
19 phase?

20 MR. BRYANT: No, sir.

21 THE COURT: You have no scruples  
22 against the imposition of capital murder?

23 MR. BRYANT: No, sir.

24 THE COURT: At the conclusion of this  
25 case I will instruct you as to the law. You

1 might not agree with it but would you follow  
2 that law?

3 MR. BRYANT: Yes, sir.

4 THE COURT: All right. Do you have  
5 any reason that you know of that you cannot sit  
6 fairly and impartially in this case?

7 MR. BRYANT: I have no reason.

8 THE COURT: All right. So, you're  
9 not sensible of any bias or prejudice one way  
10 or the other to do that?

11 MR. BRYANT: No, sir.

12 THE COURT: Mr. Barry, you may ask  
13 your questions.

14 MR. BARRY: No, Judge, Mr. Bryant is  
15 fine for the Commonwealth. I have no  
16 questions. Thank you, Judge.

17 THE COURT: All right, Mr. Geary.

18 MR. GEARY: Thank you, Judge. Mr.  
19 Bryant, my name is Bob Geary and I am one of  
20 two lawyers that represents Mr. Graham. On my  
21 left is Jeff Everhart. According to the  
22 information we have about you, you work for  
23 Palms Associates?

24 MR. BRYANT: Yes, sir.

25 MR. GEARY: Can you tell us what that



1 is?

2 MR. BRYANT: It's an apartment  
3 complex. We're a management firm that owns and  
4 manages the Palms Apartments. There are six  
5 properties over there on the southside.

6 MR. GEARY: You actually physically  
7 work there?

8 MR. BRYANT: Yes, sir.

9 MR. GEARY: How long have you worked  
10 over there?

11 MR. BRYANT: Four and a half years.

12 MR. GEARY: When, if you can tell us,  
13 when was the last time you think you read  
14 anything about this case in the newspapers?

15 MR. BRYANT: When it first happened.

16 MR. GEARY: The evidence in the case  
17 will be that the shootings took place October  
18 the 8th of 1993.

19 MR. BRYANT: Uh-huh.

20 MR. GEARY: The defendant's name is  
21 Andre Graham. Does the name Mark Sheppard mean  
22 anything to you?

23 MR. BRYANT: No, sir.

24 MR. GEARY: And, your best  
25 recollection would have, you last read about

1 the case would have been a year ago?

2 MR. BRYANT: When it first happened.

3 MR. GEARY: The Judge will tell you  
4 if you sit on the jury that in the beginning of  
5 the instructions, and he will tell you at the  
6 end of it, the first phase of the case, that  
7 under Virginia law and the United States  
8 Constitution that the defendant in this case,  
9 Andre Graham, is presumed to be innocent.  
10 Would you follow that instruction that says  
11 that a defendant in a criminal case is presumed  
12 to be innocent?

13 MR. BRYANT: Yes, sir.

14 THE COURT: He will also tell you  
15 that the Commonwealth of Virginia in the form  
16 of the Commonwealth Attorney's Office, as  
17 represented today by Mr. Barry, have the burden  
18 of proof and that proof must be beyond a  
19 reasonable doubt. Do you understand that?

20 MR. BRYANT: I understand that.

21 MR. GEARY: Are you willing to follow  
22 that instruction?

23 MR. BRYANT: Yes, sir.

24 MR. GEARY: A capital murder case is  
25 tried potentially in two phases. It is tried

1 first, the guilt or innocence stage is first.  
2 If the defendant is found not guilty that's the  
3 end of the case. If he is found guilty of  
4 capital murder then we will have a second phase  
5 of the case in which each side is allowed to  
6 put on additional testimony, additional  
7 witnesses, and additional exhibits. The Judge  
8 will instruct you if you're on this jury and if  
9 it goes to the second phase that after you  
10 listen to the evidence in the second phase,  
11 hear the witnesses and see the exhibits, and  
12 you go back and deliberate, the 12 people who  
13 are going to be on the jury, that the decision  
14 you must make is one of two things. You can  
15 either return a decision of the death penalty  
16 or you can return a decision of life  
17 imprisonment. Do you understand that's the way  
18 it operates?

19 MR. BRYANT: Yes, sir.

20 MR. GEARY: Do you have an  
21 inclination in favor of or against the death  
22 penalty?

23 MR. BRYANT: That's, to me that's a  
24 tough decision to make on anybody.

25 MR. GEARY: I assume you've never sat



1 on a jury before?

2 MR. BRYANT: I have never sat on a  
3 jury.

4 MR. GEARY: Have you thought about  
5 the death penalty in our society as you sit  
6 there? Have you thought about it before today?

7 MR. BRYANT: Yes, sir, I have.

8 MR. GEARY: Have you discussed it  
9 with any acquaintances and people you work  
10 with?

11 MR. BRYANT: Yes, I have.

12 MR. GEARY: Have you formed an  
13 opinion so that you would be, you think that  
14 you would be more inclined to give it than not  
15 to give it?

16 MR. BRYANT: My opinion and it's a  
17 lot of my co-workers and friends opinion, it's  
18 based on the evidence and then if the crime  
19 warrants it. I don't believe that every case  
20 should be a death penalty.

21 MR. GEARY: What you're telling us is  
22 that you would listen to what Judge Wilkinson  
23 tells you what the law is?

24 MR. BRYANT: Yes, sir.

25 MR. GEARY: You would listen to the

1 witnesses in the penalty phase if we get there  
2 and you would look at the exhibits and you  
3 would make up your mind as to how you're going  
4 to vote, and you could consider the death  
5 penalty and you could consider life  
6 imprisonment; is that correct?

7 MR. BRYANT: That's correct.

8 MR. GEARY: The victim, the death  
9 penalty victim in this case is a white female.  
10 The victim of the maiming or aggravated battery  
11 is a white male. Andre Graham, as you can see,  
12 is a black male. Would the fact that he is  
13 black and the victims are white make any  
14 difference to you in the first phase of the  
15 case in voting on guilt or innocence?

16 MR. BRYANT: No, sir.

17 MR. GEARY: Your answer is no; is  
18 that correct?

19 THE COURT: Race has nothing to do  
20 with it.

21 MR. GEARY: You would be willing to  
22 not hold the fact that he is of a different  
23 race than you and of a different race than the  
24 victim?

25 MR. BRYANT: Ut-huh.

1 MR. GEARY: You would take an oath to  
2 that and you would follow that oath?

3 MR. BRYANT: Yes, sir.

4 MR. GEARY: No doubt about it?

5 MR. BRYANT: No doubt about it.

6 MR. GEARY: All right. Thank you.

7 THE COURT: All right. You may go to  
8 the jury room.

9 THE CLERK: Juror number 791, Helen  
10 Williams. Would you raise your right hand,  
11 please? Do you solemnly swear the answers you  
12 shall give shall be the truth, the whole truth,  
13 and nothing but the truth, so help you God?

14 MS. WILLIAMS: Yes.

15 THE CLERK: Be seated please.

16 THE COURT: Ms. Williams, we are  
17 going to ask you some questions, not to  
18 embarrass you but to find your impartiality in  
19 this case. Were you present in the Circuit  
20 Court, City of Richmond, on June the 9th, 1994,  
21 when the grand jury was charged in this case?

22 MS. WILLIAMS: No.

23 THE COURT: Are you related by blood  
24 or marriage or do you know Andre L. Graham?

25 MS. WILLIAMS: No.



1 THE COURT: Edward Martin and Sheryl  
2 Stack?

3 MS. WILLIAMS: No.

4 THE COURT: This is an alleged crime  
5 which took place on the parking lot of the  
6 Steak and Ale. Have you read or heard anything  
7 about the case?

8 MS. WILLIAMS: No.

9 THE COURT: Do you have any  
10 religious, conscientious scruples or other  
11 things that would keep you from imposing the  
12 death penalty in the proper case?

13 MS. WILLIAMS: No.

14 THE COURT: All right. Do you have  
15 any close members of your family that are in  
16 law enforcement such as police officer, deputy  
17 sheriff, someone like that?

18 MS. WILLIAMS: No.

19 THE COURT: All right. At the  
20 conclusion of this case I will instruct you as  
21 to the law. You might not agree with it but  
22 would you follow it?

23 MS. WILLIAMS: Yes.

24 THE COURT: All right. Are you  
25 sensible of any bias or prejudice whatsoever

1 that would keep you from giving the  
2 Commonwealth and the accused a fair and  
3 impartial trial based upon the law and  
4 evidence?

5 MS. WILLIAMS: No.

6 THE COURT: All right, Mr. Barry.

7 MR. BARRY: Ms. Williams, my name is  
8 Learned Barry. I am going to represent the  
9 Commonwealth today. I don't think I've ever  
10 met you before; is that correct?

11 MS. WILLIAMS: Right.

12 MR. BARRY: All right. This is Mr.  
13 Everhart and Mr. Geary and Mr. Graham. Do you  
14 know any of those folks at all?

15 MS. WILLIAMS: No.

16 MR. BARRY: All right. I am going to  
17 show you some pictures of some people. I want  
18 you to tell me whether or not you recognize  
19 them. This was the young lady that was killed.  
20 Her name is Sheryl Stack. She worked at the  
21 Steak and Ale and went to VCU as a student. Do  
22 you know this lady at all?

23 MS. WILLIAMS: No, I don't.

24 MR. BARRY: This young man was shot  
25 and maimed. His name is Edward Martin. Do you

1 know this young man? Has he ever come across  
2 you?

3 MS. WILLIAMS: No.

4 MR. BARRY: Now, did you understand  
5 the Judge when he said do you have any bias  
6 that you can think of for or against the death  
7 penalty? Because in this case we actually may  
8 reach a point where your decision is either  
9 give this individual life or give him the death  
10 penalty. If there is something inside you that  
11 says no matter how horrible the crime is I am  
12 still not going to give somebody the death  
13 penalty, you kind of need to tell that to us  
14 now. It's a tough situation. You walk in here  
15 cold off the street and we hit you with these  
16 questions. But it is kind of important for you  
17 to do some quick soul-searching and let us know  
18 whether or not there is absolutely nothing I  
19 can do to ever convince you of the death  
20 penalty?

21 MS. WILLIAMS: I don't know.

22 MR. BARRY: Well, try to think just a  
23 little bit. Would you get to the point where  
24 no matter what evidence was heard you would  
25 simply not ever vote for the death penalty, or



1 would you consider the death penalty?

2 MS. WILLIAMS: I don't know. I just  
3 don't know.

4 MR. BARRY: All right, Judge, I would  
5 like to have her excused.

6 THE COURT: All right.

7 MR. GEARY: Ms. Williams, I am one of  
8 two lawyers for Mr. Graham. A death penalty  
9 case, if you get there, is a two part case. If  
10 he is found not guilty in the first phase we  
11 don't get to the death penalty phase. At that  
12 phase if you're on the jury there is two  
13 possible verdicts in the second phase, the  
14 death penalty and life imprisonment. And, what  
15 Mr. Barry was asking you was whether you would  
16 follow the Judge's law, Judge Wilkinson's  
17 instructions, listen to the evidence in the  
18 second part of the case, if we get there, and  
19 then would you be willing to consider either  
20 punishment, one of which is life imprisonment  
21 and the other is the death penalty. Would you  
22 be willing to do that?

23 MS. WILLIAMS: I think it would just  
24 be hard for me, you know, just give a death.

25 MR. GEARY: It would be hard for you?

1 MS. WILLIAMS: Yes.

2 MR. GEARY: Are there any  
3 circumstances you can think of which you would  
4 give the death penalty?

5 MS. WILLIAMS: I don't think so.

6 MR. GEARY: You've never had to think  
7 about a situation like this; is that correct?

8 MS. WILLIAMS: No.

9 MR. GEARY: That's all, Judge.

10 THE COURT: Let me ask you this. If  
11 the others voted guilty would you hang the jury  
12 before you would impose the death penalty?

13 MS. WILLIAMS: If I didn't, you know,  
14 if I just couldn't come to the conclusion, you  
15 know, that I thought they get the death penalty  
16 I couldn't vote it.

17 THE COURT: I don't understand. Are  
18 you saying if they didn't prove the case you  
19 wouldn't give the death penalty?

20 MS. WILLIAMS: I just not rather be,  
21 you know, in that situation.

22 THE COURT: Well, I wouldn't like to  
23 be in the situation either. But, we are in the  
24 situation. You have to answer the question.  
25 Would you hang the jury before you would vote

1 for the death penalty?

2 MS. WILLIAMS: I think so.

3 THE COURT: Huh?

4 MS. WILLIAMS: I think I would.

5 THE COURT: You think you would?

6 MS. WILLIAMS: (Shakes head yes).

7 THE COURT: You're pretty set in your  
8 way that you're against the death penalty?

9 MS. WILLIAMS: Yes.

10 THE COURT: And, would you hang the  
11 jury first?

12 MS. WILLIAMS: Yes.

13 THE COURT: All right. I will excuse  
14 you.

15 THE CLERK: Juror number 2, Mary  
16 Alexander. Would you raise your right hand,  
17 ma'am? Do you solemnly swear the answers you  
18 shall give shall be the truth, the whole truth,  
19 and nothing but the truth, so help you God?

20 MS. ALEXANDER: Yes.

21 THE COURT: Ms. Alexander, we are  
22 going to ask you some questions, not to  
23 embarrass you but to find your impartiality in  
24 this case. Were you present in the Circuit  
25 Court of the City of Richmond, on June the 9th,



1 1994, at which time the grand jury was charged  
2 in this case?

3 MS. ALEXANDER: No, I wasn't.

4 THE COURT: Do you know or are you  
5 related by blood or marriage to Andre L.  
6 Graham, Edward Martin, or Sheryl Stack?

7 MS. ALEXANDER: No.

8 THE COURT: There is the alleged  
9 crime took place at the Steak and Ale parking  
10 lot back last year, 1993. Have you read or  
11 heard anything about the case?

12 MS. ALEXANDER: No.

13 THE COURT: Do you have any close  
14 members of your family such as mother, father,  
15 sister, brother, child or children that are  
16 involved in law enforcement such as police  
17 officers, deputy sheriffs?

18 MS. ALEXANDER: Yes, I do.

19 THE COURT: You do?

20 MS. ALEXANDER: Yes.

21 THE COURT: All right. Who is it?

22 MS. ALEXANDER: I have a son.

23 THE COURT: What does he do?

24 MS. ALEXANDER: His name is Rodney.  
25 He is a deputy sheriff.

1 THE COURT: His being a deputy  
2 sheriff, would affect you in any way in this  
3 case that you would lean one way or the other?

4 MS. ALEXANDER: I don't think so.

5 THE COURT: Well, can you be a little  
6 more positive?

7 MS. ALEXANDER: No.

8 THE COURT: No, it wouldn't. Do you  
9 have any religious, conscientious scruples or  
10 other things that would keep you from imposing  
11 the death penalty in the proper case?

12 MS. ALEXANDER: No.

13 THE COURT: At the conclusion of this  
14 case I will instruct you as to the law. Would  
15 you follow those instructions?

16 MS. ALEXANDER: Yes, I would.

17 THE COURT: All right. Are you  
18 sensible of any bias or prejudice whatsoever  
19 that would keep you from giving the  
20 Commonwealth and the accused a fair and  
21 impartial trial based on the law and the  
22 evidence?

23 MS. ALEXANDER: No.

24 THE COURT: All right, Mr. Barry.

25 MR. BARRY: Ms. Alexander, I'm

1           Learned Barry. I am going to be prosecuting  
2           the case today. I have no questions for you.  
3           This lady is fine. Thank you very much.

4           THE COURT: Mr. Everhart.

5           MR. EVERHART: Thank you. Good  
6           morning, Ms. Alexander. I am Jeff Everhart,  
7           along with Bob Geary, the gentleman to my left,  
8           I represent Andre Graham. He is the young man  
9           charged with these crimes; do you understand  
10          that?

11          MS. ALEXANDER: Yes.

12          MR. EVERHART: Have either you or any  
13          members of your immediate family ever been the  
14          victim of a violent crime?

15          MS. ALEXANDER: No.

16          MR. EVERHART: Very good. Have you  
17          ever sat on a criminal jury before?

18          MS. ALEXANDER: No.

19          MR. EVERHART: You don't recall  
20          reading anything about this case?

21          MS. ALEXANDER: Ut-huh.

22          MR. EVERHART: You indicated that  
23          your son is a deputy sheriff. Is that here in  
24          the City of Richmond?

25          MS. ALEXANDER: Yes, it is.



1 MR. EVERHART: Is he employed down at  
2 the City Jail?

3 MS. ALEXANDER: No, ut-huh.

4 MR. EVERHART: Where does he work; do  
5 you recall?

6 MS. ALEXANDER: The John Marshall  
7 Courts Building.

8 MR. EVERHART: John Marshall Courts  
9 Building. Do you ever, does he, is he in a  
10 courtroom or is he in the building?

11 MS. ALEXANDER: He delivers warrants  
12 somewhere.

13 MR. EVERHART: Okay. He kind of  
14 works in the civil section delivering warrants,  
15 subpoenas, things like that?

16 MS. ALEXANDER: Uh-huh.

17 MR. EVERHART: You never talked with  
18 him about trials and cases, crime, things like  
19 that?

20 MS. ALEXANDER: Ut-huh.

21 MR. EVERHART: Okay. Thank you very  
22 much, ma'am.

23 THE COURT: She may go to the jury  
24 room.

25 THE CLERK: Juror number 836, Jeffrey

1 Stein. Would you raise your right hand, Mr.  
2 Stein? Do you solemnly swear the answers you  
3 shall give shall be the truth, the whole truth,  
4 and nothing but the truth, so help you God?

5 MR. STEIN: Yes, I do.

6 THE CLERK: You may be seated.

7 THE COURT: Mr. Stein, we are going  
8 to ask you some questions, not to embarrass you  
9 but to find your impartiality in this matter.  
10 Were you present in the Circuit Court of the  
11 City of Richmond, on June the 9th, 1994, at  
12 which time the grand jury was charged?

13 MR. STEIN: No.

14 THE COURT: All right. Are you  
15 related by blood or marriage or do you know  
16 Andre L. Graham, Edward Martin, or Sheryl  
17 Stack?

18 MR. STEIN: No, sir.

19 THE COURT: This is an alleged crime  
20 which took place at the Steak and Ale parking  
21 lot on Midlothian Pike. Have you read, heard,  
22 or know anything about this case?

23 MR. STEIN: No, sir.

24 THE COURT: All right. Do you have  
25 any religious, conscientious scruples or other

1 matter that would keep you from imposing the  
2 death penalty in the proper case?

3 MR. STEIN: No, sir.

4 THE COURT: All right. At the  
5 conclusion of this case I will instruct you as  
6 to the law. Would you follow that law although  
7 you didn't agree with it?

8 MR. STEIN: Yes, sir.

9 THE COURT: All right. Are you  
10 sensible of any bias or prejudice whatsoever  
11 that would keep you from giving the  
12 Commonwealth and the accused a fair and  
13 impartial trial based on the law and the  
14 evidence?

15 MR. STEIN: No.

16 THE COURT: All right, Mr. Barry.

17 MR. BARRY: Mr. Stein, my name is  
18 Learned Barry. I represent the Commonwealth.  
19 I noticed that you work for West End Rescue.  
20 Are you still working for them?

21 MR. STEIN: Yes.

22 MR. BARRY: Do you cover some of our  
23 murder cases here in the city?

24 MR. STEIN: We run just in the City  
25 so if there has been a crime then the police



1 handle that. We just handle the rescue part of  
2 it.

3 MR. BARRY: The October 8 killing of  
4 a young lady by the name of Sheryl Stack, was  
5 at the Steak and Ale. You per chance were not  
6 covering that I hope?

7 MR. STEIN: No.

8 MR. BARRY: Were you working on  
9 October 8th, and you just didn't have that run?

10 MR. STEIN: Actually I don't recall  
11 if we were or not. We work on a rotation  
12 schedule. There is a way I can go back to see  
13 if I was working that night.

14 MR. BARRY: But you would remember if  
15 you found two bodies down at the Steak and Ale  
16 parking lot?

17 MR. STEIN: Absolutely, sure.

18 MR. BARRY: This is Mr. Everhart and  
19 Mr. Geary. Have they ever represented you in  
20 any businesses at all?

21 MR. STEIN: No, sir.

22 MR. BARRY: The young lady that was  
23 killed is from Bracey, Virginia. Her mother  
24 and father are sitting here. He has on a green  
25 shirt. Do you recognize them at all?

1 MR. STEIN: No.

2 MR. BARRY: This is what she looks  
3 like. She worked at Steak and Ale and also was  
4 a VCU student.

5 MR. STEIN: No, sir.

6 MR. BARRY: All right. Thank you,  
7 Judge. This gentleman is fine.

8 THE COURT: All right, Mr. Geary.

9 MR. GEARY: Thank you, Judge. Mr.  
10 Stein, as Mr. Barry told you, my name is Bob  
11 Geary and I represent Mr. Andre Graham, as well  
12 as Mr. Everhart. The information that we have  
13 about you, sir, says you're a student. Where  
14 do you go to school?

15 MR. STEIN: VCU.

16 MR. GEARY: As Mr. Barry just told  
17 you that the lady that was killed in this case  
18 was a VCU student at the time. Would the fact  
19 that both of you go to the same school have any  
20 bearing on anything?

21 MR. STEIN: Well, there are a lot of  
22 people there.

23 MR. GEARY: About 20,000?

24 MR. STEIN: Right.

25 MR. GEARY: How long have you been a

1 volunteer for the West End Rescue Squad?

2 MR. STEIN: Approximately two years.

3 MR. GEARY: As Judge Wilkinson told  
4 you, the shooting in this case took place  
5 almost a year ago, October the 8th, in the  
6 early morning hours at the Steak and Ale on  
7 Midlothian Pike. Do you know where that is?

8 MR. STEIN: Not right off the top of  
9 my head.

10 MR. GEARY: Do you recall back at  
11 that time reading anything about the case?

12 MR. STEIN: No, sir, I don't.

13 MR. GEARY: Does the name Andre  
14 Graham, the fellow on my left, does the name  
15 Andre Graham mean anything to you?

16 MR. STEIN: No, sir.

17 MR. GEARY: Does the name Mark  
18 Sheppard mean anything to you?

19 MR. STEIN: No, sir.

20 MR. GEARY: Do you read the Times  
21 Dispatch, Richmond Times Dispatch?

22 MR. STEIN: Occasionally, yes, I do.

23 MR. GEARY: When you say  
24 occasionally, say in the last three or four  
25 months would you tell us how often you read it?



1 MR. STEIN: I pick up the Richmond  
2 Times approximately three or four days a week,  
3 mostly for the sports section.

4 MR. GEARY: You read about the  
5 baseball strike. This is, as the Judge  
6 indicated, a capital murder case. How it's  
7 tried in Virginia is that we try guilt or  
8 innocence phase first. If it gets to the  
9 second phase, if the Commonwealth has proved  
10 beyond a reasonable doubt the capital murder  
11 then we go to what they call the penalty phase.  
12 The Judge will instruct you as Andre Graham  
13 sits here he is presumed to be innocent. Would  
14 you be able to follow that instruction?

15 MR. STEIN: Sure, certainly.

16 MR. GEARY: Would you be able to  
17 follow the other instruction that goes along  
18 with it, that the Commonwealth of Virginia, the  
19 prosecution, must prove guilt beyond a  
20 reasonable doubt. Would you follow that?

21 MR. STEIN: Sure, yes.

22 MR. GEARY: If you sit on the jury  
23 and there is a finding in the first phase of  
24 the case of a conviction of capital murder only  
25 then do we get to what's called the second

1 phase. In the second phase the Judge will give  
2 you some instructions before we start, evidence  
3 is put on, lawyers argue the case, the Judge  
4 gives you instructions of law again and you go  
5 out and make a deliberation, and come to a  
6 verdict, a conclusion. At that time the Judge  
7 will tell you, Judge Wilkinson will tell you  
8 there's only two verdicts possible. One is the  
9 death penalty and one is life imprisonment. Do  
10 you have any strong feelings in favor of the  
11 death penalty?

12 MR. STEIN: In favor of the death  
13 penalty, no.

14 MR. GEARY: Do you have any strong  
15 feelings against the death penalty?

16 MR. STEIN: No, not strong.

17 MR. GEARY: Have you thought about  
18 the death penalty before you walked in here  
19 today?

20 MR. STEIN: Certainly.

21 MR. GEARY: Have you talked about it  
22 with friends and schoolmates and associates?

23 MR. STEIN: Sure.

24 MR. GEARY: Under the law if you sit  
25 as a juror your duty if you raise your hand and

1 the Judge swears you in or Mrs. Tapscott swears  
2 you in, that you must follow the law?

3 MR. STEIN: I understand that.

4 MR. GEARY: And, the law will tell  
5 you that again there are two verdicts. And,  
6 what we are trying to find out is that based on  
7 what the evidence is if we get to the second  
8 phase of the case will you fairly determine  
9 whether or not the penalty should be the death  
10 sentence or life imprisonment?

11 MR. STEIN: Could you repeat that?

12 MR. GEARY: Would you fairly  
13 determine, would you follow your oath as a  
14 juror and the instructions that Judge Wilkinson  
15 gives you and on the evidence that we hear, and  
16 consider fairly whether or not the penalty  
17 should be the death penalty or life  
18 imprisonment?

19 MR. STEIN: I think I could.

20 MR. GEARY: When you say you think  
21 you could, are you pretty sure you could?

22 MR. STEIN: I mean I assume I could.  
23 I mean, I believe in our judicial system so I  
24 would follow the instructions and try to use my  
25 best judgment.



1 MR. GEARY: As you can tell from the  
2 picture that you saw that Mr. Barry showed you,  
3 Ms. Stack was a white female. Mr. Graham is  
4 black. The person who was wounded is Edward  
5 Martin. He is white. You're white. Would  
6 that racial situation incline you to be more  
7 severe if you got to the second phase?

8 MR. STEIN: No.

9 MR. GEARY: Are you sure about that?

10 MR. STEIN: I am positive about that.

11 MR. GEARY: Would you let race  
12 interfere?

13 MR. STEIN: No, sir.

14 MR. GEARY: No further questions.

15 THE COURT: All right. You may go to  
16 the jury room.

17 THE CLERK: Juror number 618, Rutha  
18 Robinson. Would you raise your right hand  
19 please? Do you solemnly swear the answers you  
20 shall give shall be the truth, the whole truth,  
21 and nothing but the truth, so help you God?

22 THE COURT: You may be seated. All  
23 right, Ms. Robinson, we are going to ask you  
24 some questions, not to embarrass you but to  
25 find your impartiality in this cause. Were you

1 present in the Circuit Court of the City of  
2 Richmond, on June the 9th, 1994, at which time  
3 the grand jury was charged?

4 MS. ROBINSON: No.

5 THE COURT: All right. Are you  
6 related by blood or marriage or do you know  
7 Andre L. Graham, Edward Martin, or Sheryl  
8 Stack?

9 MS. ROBINSON: No.

10 THE COURT: This is an alleged crime  
11 which took place in the Steak and Ale parking  
12 lot back last year. Have you read or heard  
13 anything about the case? It was a murder. The  
14 person was wounded.

15 MS. ROBINSON: I can't -- I think  
16 vaguely.

17 THE COURT: Well --

18 MS. ROBINSON: The only thing that  
19 catches me is the Steak and Ale. I can't  
20 recall the details.

21 THE COURT: All right. From what you  
22 read or heard, would that affect you in any way  
23 from sitting as a juror?

24 MS. ROBINSON: No.

25 THE COURT: This is what is termed a

1 capital murder because the death penalty can be  
2 imposed if proper. Do you have any religious,  
3 conscientious scruples or other matters that  
4 would keep you from imposing the death penalty  
5 in the proper case?

6 MS. ROBINSON: No.

7 THE COURT: All right. At the  
8 conclusion of this case I will instruct you as  
9 to the law. You might not agree with it but  
10 would you follow it?

11 MS. ROBINSON: Yes, sir.

12 THE COURT: Would you try this case  
13 solely on the law and the evidence as presented  
14 in the courtroom?

15 MS. ROBINSON: Yes.

16 THE COURT: Are you sensible of any  
17 bias or prejudice whatsoever that would keep  
18 you from giving the Commonwealth and the  
19 accused a fair and impartial trial based on the  
20 law and evidence?

21 MS. ROBINSON: No.

22 THE COURT: All right, Mr. Barry.

23 MR. BARRY: Ms. Robinson, my name is  
24 Learned Barry. I am going to be representing  
25 the Commonwealth today. I put on the evidence.



1 Have you and I ever met before?

2 MS. ROBINSON: No, sir.

3 MR. BARRY: Have you ever sat in a  
4 jury trial of any criminal nature?

5 MS. ROBINSON: No.

6 MR. BARRY: This is your first trial?

7 MS. ROBINSON: Yes.

8 MR. BARRY: All right. I want to  
9 discuss some people with you here after I show  
10 you some pictures, and I want you to tell me if  
11 you know them. This was the young lady that  
12 was murdered. Her name is Sheryl M. Stack.

13 MS. ROBINSON: No.

14 MR. BARRY: This gentleman's name is  
15 Edward Martin. He was maimed in the shooting.  
16 Have you ever seen this gentleman?

17 MS. ROBINSON: No, sir.

18 MR. BARRY: All right. There sits  
19 the parents sitting right there on the second  
20 row. Her father has on a green shirt and his  
21 father has on a coat and tie. Do you recognize  
22 them? Have you ever seen them?

23 MS. ROBINSON: No, sir.

24 MR. BARRY: Thank you very much.  
25 This lady is fine.

1 THE COURT: All right, Mr. Geary, Mr.  
2 Everhart.

3 MR. EVERHART: Thank you, Your Honor.  
4 Good morning, Ms. Robinson.

5 MS. ROBINSON: Good morning.

6 MR. EVERHART: I'm Jeff Everhart and  
7 along with Bob Geary, the gentleman in the  
8 middle, I represent Andre Graham, who is the  
9 young man at the end. Have either you or any  
10 members of your immediate family ever been the  
11 victim of a violent crime?

12 MS. ROBINSON: Not seriously, nothing  
13 other than having my purse snatched, no.

14 MR. EVERHART: Someone snatched your  
15 purse?

16 MS. ROBINSON: Yes, some time ago.

17 MR. EVERHART: How long, some time  
18 ago?

19 MS. ROBINSON: Twelve, eleven years  
20 ago.

21 MR. EVERHART: Do you recall whether  
22 anyone was charged in that crime?

23 MS. ROBINSON: No, they weren't  
24 caught. They were not apprehended.

25 MR. EVERHART: They were not caught.

1 And, I understood you to say you've never sat  
2 on a criminal jury before?

3 MS. ROBINSON: That's correct.

4 MR. EVERHART: Have you ever sat on a  
5 civil jury?

6 MS. ROBINSON: No.

7 MR. EVERHART: The fact that the  
8 victim in this case, Ms. Stack, is a woman and  
9 obviously the alleged assailant is a man. That  
10 doesn't impact you in any way?

11 MS. ROBINSON: I mean I don't know  
12 anything technical concerning the case, you  
13 know.

14 MR. EVERHART: I understand.

15 MS. ROBINSON: I mean I, you know.

16 MR. EVERHART: Yes, ma'am. I  
17 understand. I'm just asking obviously you're a  
18 woman?

19 MS. ROBINSON: Yes.

20 MR. EVERHART: The fact that the  
21 victim in this crime was a woman, would that  
22 lead you to treat Mr. Graham more harshly or  
23 would it lead you to have any predisposition?  
24 I mean, we read all the time in the papers  
25 about violence against women. That's what I am



1 asking you.

2 MS. ROBINSON: Oh, well, I would have  
3 to hear anything to make any kind of judgment.

4 MR. EVERHART: Okay. You can hear  
5 the evidence, you don't have any predisposition  
6 coming in here today?

7 MS. ROBINSON: No.

8 MR. EVERHART: Okay. And, as Judge  
9 Wilkinson indicated, this is a capital murder  
10 trial.

11 MS. ROBINSON: Yes.

12 MR. EVERHART: Do you understand that  
13 the first phase of that trial deals strictly  
14 with whether or not the Commonwealth can  
15 convince you beyond a reasonable doubt that  
16 Andre Graham committed these crimes he is  
17 charged with; do you understand that?

18 MS. ROBINSON: Yes.

19 MR. EVERHART: And, do you understand  
20 that the burden is strictly on the  
21 Commonwealth, today represented by Mr. Barry,  
22 to convince you of that, to prove that?

23 MS. ROBINSON: Yes.

24 MR. EVERHART: You do not -- in other  
25 words you understand the premise of our

1 judicial system that there is no burden on me,  
2 Mr. Geary, or Mr. Graham?

3 MS. ROBINSON: Yes, I understand  
4 that.

5 MR. EVERHART: And, if, in fact, you  
6 and the fellow members of the jury determined  
7 that Mr. Graham were guilty of capital murder  
8 then we have a second part of the trial; you  
9 understand that?

10 MS. ROBINSON: I am now.

11 MR. EVERHART: Now you do, right?  
12 Okay. That's fine.

13 MR. BARRY: As of 20 seconds ago.

14 MR. EVERHART: As of me asking the  
15 question. In that part of the trial the  
16 Commonwealth would put on evidence to try to  
17 convince you this crime warrants the imposition  
18 of the death penalty. I and Mr. Geary would  
19 put on evidence to try to attempt to convince  
20 you that the appropriate punishment would be  
21 life imprisonment. Because, that's all we  
22 have. It's either the death penalty or life  
23 imprisonment; you understand that?

24 MS. ROBINSON: Yes, sir.

25 MR. EVERHART: Okay. And, your

1 responses to Judge Wilkinson indicate that you  
2 could give, you would listen to me, Mr. Barry,  
3 Mr. Geary, you would listen to the Judge and  
4 you could consider both possible punishments?

5 MS. ROBINSON: Yes.

6 MR. EVERHART: You have no  
7 predisposition at this time in favor of or  
8 against either?

9 MS. ROBINSON: Right.

10 MR. EVERHART: Thank you very much,  
11 ma'am.

12 THE COURT: All right. You can go to  
13 the jury room.

14 THE CLERK: Juror number 137, Bernice  
15 Clack. Ms. Clack, would you raise your right  
16 hand? Do you solemnly swear the answers you  
17 shall give shall be the truth, the whole truth,  
18 and nothing but the truth, so help you God?

19 MS. CLACK: I do.

20 THE CLERK: Ms. Clack, have a seat  
21 there, please.

22 THE COURT: Ms. Clack, we are going  
23 to ask you some questions, not to embarrass you  
24 but to find your impartiality in this matter.  
25 Were you present in the Circuit Court of the



1 City of Richmond on June the 9th, 1994, at  
2 which time the grand jury was charged?

3 MS. CLACK: No.

4 THE COURT: Are you related by blood  
5 or marriage or do you know Andre L. Graham,  
6 Sheryl Stack or Edward Martin?

7 MS. CLACK: No.

8 THE COURT: This is an alleged crime  
9 that took place on the Steak and Ale parking  
10 lot on Midlothian Pike. Have you read or heard  
11 anything about the case?

12 MS. CLACK: No, sir.

13 THE COURT: Do you have any close  
14 members of your family such as mother, father,  
15 sister, brother, child or children, that are  
16 involved in law enforcement like police  
17 officer, DEA agent, FBI agent, anything like  
18 that?

19 MS. CLACK: No, sir.

20 THE COURT: All right. This is a  
21 capital murder case which means the death  
22 penalty can be imposed, if proper. Do you have  
23 any religious, conscientious scruples or other  
24 matters that would keep you from imposing the  
25 death penalty in the proper case?

1 MS. CLACK: No.

2 THE COURT: All right. At the  
3 conclusion of this case I will instruct you as  
4 to the law. Would you follow that law although  
5 you disagree with it?

6 MS. CLACK: Yes.

7 THE COURT: Are you sensible of any  
8 bias or prejudice whatsoever that would keep  
9 you from giving the Commonwealth and the  
10 accused a fair and impartial trial based on the  
11 law and evidence?

12 MS. CLACK No.

13 THE COURT: All right, Mr. Barry, you  
14 can ask her questions.

15 MR. BARRY: Ms. Clack, have you ever  
16 sat in a criminal jury trial before?

17 MS. CLACK: No, sir.

18 MR. BARRY: So, this would be your  
19 first one?

20 MS. CLACK: Right.

21 MR. BARRY: We are starting off  
22 pretty serious because this is what's called a  
23 capital murder case. That means someone has  
24 been murdered and the Commonwealth is seeking  
25 the death penalty. You have already answered.

1 the Judge that you will fairly consider either  
2 life or death. I just want to go through with  
3 you real briefly to make sure we both  
4 understand each other. You're going to take an  
5 oath to follow the law. The law is in this  
6 case first you determine guilt or innocence and  
7 in the event that you consider the evidence and  
8 find the defendant guilty of capital murder you  
9 are then at a phase of the trial where you must  
10 consider either life imprisonment or the death  
11 penalty. What you are telling me now is that  
12 you have no moral or religious reason why you  
13 cannot sit in this case?

14 MS. CLACK: (Shakes head yes).

15 MR. BARRY: Let me just show you a  
16 couple pictures of some folks and make sure  
17 that we don't know too much about the case.  
18 This young lady's name was Sheryl Stack. She  
19 worked at the Steak and Ale Restaurant and she  
20 also went to VCU. Her parents are sitting  
21 right here on the second row. The gentleman,  
22 her father has on a green shirt. Her mother is  
23 sitting next to him on the right. Have you  
24 ever met these folks before? They are from  
25 Bracey, Virginia.



1 MS. CLACK: No, sir.

2 MR. BARRY: And, you really don't  
3 know anything about this case at all? So, you  
4 have an open mind as to what we are going to do  
5 today?

6 MS. CLACK: Right.

7 MR. BARRY: Thank you very much,  
8 ma'am. This lady will do fine, Judge. Thank  
9 you.

10 THE COURT: All right, Mr. Everhart.

11 MR. EVERHART: Thank you, Your Honor.  
12 Good morning, Ms. Clack. How do you do? My  
13 name is Jeff Everhart. Along with Mr. Geary,  
14 the gentleman in the middle, I represent Andre  
15 Graham. Have either you or any member of your  
16 family, immediate family, ever been the victim  
17 of a violent crime, Ms. Clack?

18 MS. CLACK: No.

19 MR. EVERHART: They have not?

20 MS. CLACK: (Shakes head no).

21 MR. EVERHART: Thank you very much.

22 THE COURT: All right. You may be  
23 seated. Put her in the jury room.

24 THE CLERK: Juror number 313, Robin  
25 Harris. Do you solemnly swear the answers you

1 shall give shall be the truth, the whole truth,  
2 and nothing but the truth, so help you God?

3 MS. HARRIS: I do.

4 THE CLERK: Please be seated, ma'am.

5 THE COURT: Ms. Harris, we are going  
6 to ask you some questions, to find your  
7 impartiality in the case. That's the only  
8 reason. Were you present in the Circuit Court  
9 of the City of Richmond on June the 9th, 1994,  
10 at which time the grand jury was charged?

11 MS. HARRIS: No.

12 THE COURT: All right. Do you have  
13 or are you related by blood or marriage to  
14 Andre L. Graham, Sheryl Stack or Edward Martin?

15 MS. HARRIS: No.

16 THE COURT: This is an allegation of  
17 a crime which took place on the Steak and Ale  
18 parking lot on Midlothian Pike. Do you know  
19 anything about the case? Have you read  
20 anything, heard anything?

21 MS. HARRIS: No.

22 THE COURT: This is a capital murder  
23 case where the Commonwealth could ask for the  
24 death penalty. Do you have any religious,  
25 conscientious scruples or other moral values

1 that would keep you from imposing the death  
2 penalty in the proper case?

3 MS. HARRIS Yes, I do.

4 THE COURT: You would. All right.  
5 Would those values, would you hang the jury  
6 before you would vote for the death penalty?

7 MS. HARRIS: Yes, I would.

8 THE COURT: You would? Under no  
9 circumstances would you vote for the death  
10 penalty?

11 MS. HARRIS: No.

12 THE COURT: All right. I will excuse  
13 you. You may be excused.

14 THE CLERK: Juror number 87, Charles  
15 Brown. Do you solemnly swear the answers you  
16 shall give shall be the truth, the whole truth,  
17 and nothing but the truth, so help you God?

18 MR. BROWN: Yes.

19 THE CLERK: Please be seated, sir.

20 THE COURT: Mr. Brown, have a seat  
21 and we will ask you some questions, not to  
22 embarrass you but to find your impartiality in  
23 this case. Were you present in the Circuit  
24 Court of the City of Richmond on June the 9th,  
25 1994, at which time the grand jury was charged?



1 MR. BROWN: No.

2 THE COURT: Are you related by blood  
3 or marriage to Andre L. Graham, I should say or  
4 do you know Andre L. Graham, Sheryl Stack or  
5 Edward Martin?

6 MR. BROWN: No.

7 THE COURT: This is an alleged crime  
8 which took place on the Steak and Ale parking  
9 lot on Midlothian Pike back last year. Have  
10 you read, heard or discussed the case in any  
11 way?

12 MR. BROWN: I read it. I haven't  
13 discussed it.

14 THE COURT: All right. From what you  
15 have read have you expressed or formed an  
16 opinion as to the guilt or innocence of the  
17 accused?

18 MR. BROWN: Guilty.

19 THE COURT: I will excuse you, sir.  
20 I don't guess you have any objections?

21 MR. EVERHART: Not from us.

22 THE CLERK: Juror number 339, Deborah  
23 Hinton. Do you solemnly swear the answers you  
24 shall give shall be the truth, the whole truth,  
25 and nothing but the truth, so help you God?

1 MS. HINTON: I do.

2 THE CLERK: Please be seated.

3 THE COURT: Ms. Hinton, we are going  
4 to ask you some questions, not to embarrass you  
5 but to find your impartiality in this case.

6 MS. HINTON: Okay.

7 THE COURT: Were you present in the  
8 Circuit Court of the City of Richmond, at the  
9 Manchester Courthouse, on June the 9th, 1994,  
10 at which time the grand jury was charged?

11 MS. HINTON: No.

12 THE COURT: All right. Are you  
13 related by blood or marriage or do you know  
14 Andre L. Graham, Sheryl Stack, or Edward  
15 Martin?

16 MS. HINTON: No.

17 THE COURT: This is an alleged crime  
18 which took place in the parking lot of the  
19 Steak and Ale on Midlothian Pike. Have you  
20 read, heard or discussed it?

21 MS. HINTON: No.

22 THE COURT: All right. It is also a  
23 capital murder case. Do you have any  
24 religious, conscientious scruples or other  
25 moral values that would keep you from imposing

1 the death penalty in the proper case?

2 MS. HINTON: No, sir.

3 THE COURT: All right. At the  
4 conclusion of this case I will instruct you as  
5 to the law. Would you follow that law although  
6 you disagree with it?

7 MS. HINTON: Yes, sir.

8 THE COURT: Are you sensible of any  
9 bias or prejudice whatsoever that would keep  
10 you from giving full attention to this case?

11 MS. HINTON: No, sir.

12 THE COURT: This case will probably  
13 take three days. You will be able to go home.  
14 Do you have anything in the next three days so  
15 urgent that would keep you from giving your  
16 full attention?

17 MS. HINTON: No, sir.

18 THE COURT: All right, Mr. Barry, you  
19 may ask her any questions.

20 MR. BARRY: Ms. Hinton, we are just  
21 asking these questions to make sure that once  
22 we get here and start it is no problems  
23 afterwards. I represent the Commonwealth.  
24 These two gentlemen represent the defendant. I  
25 don't believe I've ever met you. Have you ever



1 met those folks?

2 MS. HINTON: No, sir.

3 MR. BARRY: This involves capital  
4 murder. Two phase trial. First we deal with  
5 guilt or innocence. In the event someone is  
6 found guilty then we move on to the life or  
7 death issue. And, what you're telling the  
8 Judge is that you will consider both life or  
9 death, listen to the evidence, listen to the  
10 law and then make a decision?

11 MS. HINTON: Yes, sir.

12 MR. BARRY: Fine. Thank you.

13 THE COURT: All right, Mr. Geary or  
14 Mr. Everhart.

15 MR. GEARY: Good morning, Ms. Hinton.  
16 Have you ever sat on a jury before?

17 MS. HINTON: No, sir.

18 MR. GEARY: And, according to the  
19 information that we have about you you work for  
20 the City of Richmond?

21 MS. HINTON: Yes, sir.

22 MR. GEARY: You work at City Hall?

23 MS. HINTON: Social Services across  
24 from City Hall.

25 MR. GEARY: In the new building?

1 MS HINTON: It's probably about ten  
2 or eleven years old, I guess.

3 MR. GEARY: That's the one right  
4 across from the John Marshall Courts Building?

5 MS. HINTON: Uh-huh, 900 East  
6 Marshall.

7 MR. GEARY: Before you came in here  
8 today do you have a recollection of ever  
9 hearing the name Andre Graham before?

10 MS. HINTON: No, sir.

11 MR. GEARY: Have you ever heard of  
12 the name or read the name Mark Sheppard?

13 MS. HINTON: No, sir.

14 MR. GEARY: Do you daily read the  
15 Richmond Times Dispatch?

16 MS. HINTON: No, sir.

17 MR. GEARY: Have you had a chance  
18 before you walked in here a few moments ago to  
19 think about the death penalty?

20 MS. HINTON: I mean I guess on just a  
21 conversational level or, just on a, yes, I have  
22 thought about it.

23 MR. GEARY: Have you talked about it  
24 with co-workers, people you went to school with  
25 or friends?

1 MS. HINTON: Probably with family,  
2 yes.

3 MR. GEARY: Have you formed any  
4 strong opinions about the death penalty?

5 THE COURT: I don't exactly  
6 understand that question.

7 MR. GEARY: Well, sir, it is a  
8 neutral question. It doesn't ask which way.

9 THE COURT: People can have strong  
10 opinions about something, nevertheless they can  
11 still sit impartially. How do you mean do you  
12 have strong opinions?

13 MR. GEARY: Do you have an  
14 inclination to favor or disfavor the imposition  
15 of the death penalty in general?

16 MS. HINTON: In general I would say  
17 no. I would think it would depend on the  
18 circumstances.

19 MR. GEARY: Would you say you would  
20 not generally favor the death penalty?

21 MS. HINTON: I don't have a  
22 preference right now either way.

23 MR. GEARY: And, as Mr. Barry  
24 indicated to you, we are trying a criminal case  
25 and because part of that criminal case is a



1 capital murder, if 12 people sit here and say  
2 Andre Graham we find you guilty of capital  
3 murder, then we have a second trial or second  
4 phase.

5 MS. HINTON: Right.

6 MR. GEARY: And, in that phase you  
7 get instructions from the Judge, you hear  
8 testimony, you may get documents, whatever,  
9 then you 12 people who made the initial  
10 decision have to go back into the jury room and  
11 make a decision. That second decision in a  
12 capital murder conviction can only be one of  
13 two things. It is either death penalty or life  
14 imprisonment. What we are trying to get from  
15 you and I think you said before, but I want to  
16 make sure, is that you would follow Judge  
17 Wilkinson's instructions, you would listen to  
18 the evidence, seeing the witness, look at the  
19 documents, listen to your fellow jurors, and  
20 fairly decide whether following your oath,  
21 whether the death penalty, whether the death  
22 penalty should be imposed or life imprisonment?

23 MS. HINTON: Yes, sir.

24 MR. GEARY: That's what you're  
25 saying?

1 MS. HINTON: Yes, sir.

2 MR. GEARY: In this case the lady  
3 that was killed is a white female. She was  
4 about 21 years old. The person who is going to  
5 testify is Edward Martin, a white male. As you  
6 can see Mr. Graham is black. And, you are  
7 white. Would that racial makeup cause you any  
8 concern?

9 MS. HINTON: No, sir.

10 MR. GEARY: The fact that, if you sat  
11 on a jury and got to the penalty phase, the  
12 death penalty phase, the racial makeup would  
13 have no, no bearing whatsoever?

14 MS. HINTON: No, sir.

15 MR. GEARY: And, if the Judge told  
16 you that you could not take that into  
17 consideration and you swore an oath, you would  
18 not take that into consideration? You're  
19 telling us in open court you would not take  
20 race into consideration?

21 MS. HINTON: No, sir, I would not.

22 MR. GEARY: Thank you very much. No  
23 further questions.

24 THE COURT: She may go to the jury  
25 room.

1 THE CLERK: Juror number 450, Harold  
2 Lighty, Sr. Do you solemnly swear the answers  
3 you shall give shall be the truth, the whole  
4 truth, and nothing but the truth, so help you  
5 God?

6 MR. LIGHTY: I do.

7 THE CLERK: Have a seat in the front.

8 THE COURT: Mr. Lighty, we are going  
9 to ask you some questions, not to embarrass you  
10 but to find your impartiality in this case.  
11 Were you present in the Circuit Court, City of  
12 Richmond at the Manchester Courthouse, on June  
13 the 9th, 1994, when the grand jury was  
14 instructed? Were you here June the 9th?

15 MR. LIGHTY: No.

16 THE COURT: Are you related by blood  
17 or marriage or do you know Andre L. Graham,  
18 Sheryl Stack or Edward Martin?

19 MR. LIGHTY: No, I don't.

20 THE COURT: This is an allegation of  
21 a crime which occurred on the Steak and Ale  
22 parking lot on Midlothian Pike. Do you know  
23 anything about the case?

24 MR. LIGHTY: No, I know nothing about  
25 it.



1 THE COURT: Do you have any  
2 religious, conscientious scruples or other  
3 moral values that would keep you from imposing  
4 the death penalty in the proper case?

5 MR. LIGHTY: No.

6 THE COURT: At the conclusion of this  
7 case I will instruct you as to the law. You  
8 might not agree with it but would you follow  
9 it?

10 MR. LIGHTY: Yes.

11 THE COURT: Do you have any close  
12 members of your family such as mother, father,  
13 sister or brother that are involved in law  
14 enforcement such as police officer, deputy  
15 sheriff?

16 MR. LIGHTY: No.

17 THE COURT: Are you sensible of any  
18 bias or prejudice whatsoever that would keep  
19 you from giving the Commonwealth and the  
20 accused a fair and impartial trial based on the  
21 law and the evidence?

22 MR. LIGHTY: No.

23 THE COURT: All right. This is going  
24 to be probably a three day trial. Do you have  
25 anything in that time that would give you such

1 trouble you couldn't give your full attention  
2 to the case? You will go home at night.

3 MR. LIGHTY: Well, possibly. I am a  
4 substitute teacher and I have engagements at  
5 that time. In other words, when I got the  
6 notice to come here and I was under the  
7 impression that it was one day a week so I  
8 didn't make any provisions for more than one  
9 day.

10 THE COURT: Do y'all have any  
11 objection to excusing him?

12 MR. BARRY: (Shakes head no).

13 THE COURT: He is a substitute  
14 teacher. He's got some employment.

15 MR. EVERHART: Judge, I would prefer  
16 that he be allowed to remain only because it's  
17 the same situation with everybody else.

18 THE COURT: All right. That's all I  
19 want to know.

20 MR. EVERHART: Yes, sir. I  
21 understand.

22 THE COURT: Do you have employment  
23 during the next three days, sir?

24 MR. LIGHTY: Yes, I do.

25 THE COURT: What days are they?

1 MR. LIGHTY: Every day this week with  
2 the exception of today.

3 THE COURT: Well, all right, you may  
4 ask some questions, Mr. Barry. I don't know if  
5 school teachers are exempt or not.

6 THE JURY OFFICER: No, sir.

7 THE COURT: They are not. All right.

8 MR. BARRY: Mr. Lighty, my name is  
9 Learned Barry. I am going to represent the  
10 Commonwealth today. I will put on evidence as  
11 to the guilt or innocence and then the defense  
12 is allowed to do what they want. Have you ever  
13 actually sat on a criminal trial before?

14 MR. LIGHTY: No, I haven't.

15 MR. BARRY: This would be your first  
16 one?

17 MR. LIGHTY: First time.

18 MR. BARRY: This is a little bit  
19 different in that not only do you have to  
20 wrestle with guilt or innocence but that if you  
21 find him guilty then you have an option and I  
22 will be asking for the death penalty. So,  
23 you're dealing with not only guilt or innocence  
24 but life or death. And, you have already told  
25 us that you would listen to both sides before



1 you would make that decision. But, you don't  
2 have any moral or religious reasons why you  
3 can't hear me out as to the death penalty?

4 MR. LIGHTY: No.

5 MR. BARRY: Okay. Fine. Now, the  
6 folks in this particular case are two young  
7 adults. One was killed and one was maimed.  
8 Sheryl Stack was the name of the young lady  
9 that was killed. Edward Martin was the name of  
10 the young man that was maimed. Their parents  
11 are sitting here on the second row. Her father  
12 was the gentleman in the green shirt. His  
13 father, coat and tie, and the mother. I don't  
14 believe you ever met any of these gentlemen or  
15 ladies?

16 MR. LIGHTY: No.

17 MR. BARRY: Thank you for your time.  
18 I appreciate it. This gentleman is fine,  
19 Judge.

20 THE COURT: All right, Mr. Geary.

21 MR. GEARY: I am Bob Geary and I am  
22 one of two lawyers that represents Andre Graham  
23 on my left. What we are attempting to do here  
24 with each juror is we are trying to get people  
25 who are going to decide the case fairly and

1           impartially. That's all we are about. Nothing  
2           we say is meant to embarrass or inconvenience  
3           you in any way. I think you told Mr. Barry you  
4           had not heard about the Steak and Ale case from  
5           last year?

6                   MR. LIGHTY: No.

7                   MR. GEARY: Have you -- he also asked  
8           you if, in fact, if there was a capital murder  
9           case and if we ever got to that stage would you  
10          be willing to follow Judge Wilkinson's  
11          instructions about the punishment is either the  
12          death penalty or life imprisonment. Are you  
13          willing to do that?

14                   MR. LIGHTY: Yes.

15                   MR. GEARY: That's all the questions  
16          I have, Judge.

17                   THE COURT: All right. You may  
18          retire to the jury room.

19                   THE CLERK: Juror number 749, Twanna  
20          Venable.

21                   MR. EVERHART: Judge, before we,  
22          before you let this juror in, if we find  
23          ourselves in the circumstances again where  
24          someone poses the dilemma that this gentleman  
25          posed, would we ask that before we have to make

1 our decision maybe he could slip out of the  
2 room for a minute. It is tough to look like  
3 the bad guy, that we are the people that are  
4 making him stay, and I would prefer that the  
5 Court allow him not to be placed in that  
6 situation.

7 THE COURT: I will be glad to do that  
8 but I can't conceive that anyone would hold  
9 that against you in such a serious case. If we  
10 have faith in the system we have faith.

11 MR. EVERHART: I have faith.

12 THE COURT: It kind of bothers me  
13 when we talk about the system, the great jury  
14 system, and we constantly as lawyers and judges  
15 tear it down.

16 MR. EVERHART: I don't think it will  
17 happen again.

18 THE CLERK: Juror number 749, Twanna  
19 Venable. Do you solemnly swear the answers you  
20 shall give shall be the truth, the whole truth,  
21 and nothing but the truth, so help you God?

22 MS. VENABLE: I do.

23 THE CLERK: Please be seated, ma'am.

24 THE COURT: All right. I am going to  
25 ask you some questions and I assume your



1           answers will be correct unless you indicate to  
2           the contrary. Were you present in the Circuit  
3           Court of the City of Richmond, at the  
4           Manchester Courthouse, on June the 9th, 1994,  
5           at which time the grand jury was instructed?  
6           Were you here on June the 9th?

7           MS. VENABLE: No, sir.

8           THE COURT: All right. Are you  
9           related by blood or marriage or do you know  
10          Andre L. Graham, Sheryl Stack or Edward Martin?

11          MS. VENABLE: No, sir.

12          THE COURT: This crime allegedly took  
13          place on the parking lot of the Steak and Ale  
14          on Midlothian Turnpike. Have you heard, read,  
15          or seen anything about the case?

16          MS. VENABLE: Not that I can recall.

17          THE COURT: This is a capital murder  
18          case which means the death penalty can be  
19          imposed. Do you have any religious,  
20          conscientious scruples or moral values that  
21          would keep you from imposing the death penalty  
22          in the proper case?

23          MS. VENABLE: Excuse me?

24          THE COURT: Do you have any  
25          religious, conscientious scruples, or moral

1 values that would keep you from imposing the  
2 death penalty in the proper case?

3 MS. VENABLE: No, sir.

4 THE COURT: All right. Do you have  
5 any close members of your family such as  
6 mother, father, sister, brother, or children  
7 that are involved in law enforcement such as  
8 police officer, deputy sheriff, DEA and so  
9 forth?

10 MS. VENABLE: I have a brother that's  
11 a policeman in Prince Edward County.

12 THE COURT: Would that affect you in  
13 any way in this case?

14 MS. VENABLE: No, sir.

15 THE COURT: All right. At the  
16 conclusion of this case I will instruct you as  
17 to the law. You might not agree with it but  
18 would you follow it?

19 MS. VENABLE: Yes, I will.

20 THE COURT: All right. Are you  
21 sensible of any bias or prejudice whatsoever  
22 that would keep you from giving the  
23 Commonwealth and the accused a fair and  
24 impartial trial based on the law and the  
25 evidence?

1 MS. VENABLE: No, sir.

2 THE COURT: All right, Mr. Barry, you  
3 may proceed.

4 MR. BARRY: I want to tell the Court,  
5 Ms. Venable, do you still work for the  
6 Department of Military Affairs?

7 MS. VENABLE: Yes, sir.

8 MR. BARRY: Are you active in the  
9 National Guard?

10 MS. VENABLE: I am a civilian.

11 MR. BARRY: All right. I am in the  
12 National Guard. I work down at the Department  
13 of Military Affairs on the weekends. Judge, I  
14 want you to know that even if she is not in the  
15 military and I am that we work in the same  
16 building.

17 THE COURT: Would that affect you in  
18 any way because Mr. Barry works there?

19 MS. VENABLE: I have never seen him.

20 MR. BARRY: We have never met. I  
21 just noticed that you work there.

22 THE COURT: Would it have any affect  
23 on you because Mr. Barry works there?

24 MS. VENABLE: No, sir.

25 THE COURT: All right.



1 MR. BARRY: Okay. Now, is this the  
2 first time for you on a jury?

3 MS. VENABLE: Yes, sir.

4 MR. BARRY: All right. We're  
5 starting off with a big one for you, I am  
6 afraid. This unfortunately is a capital murder  
7 case, which means not only do you have to deal  
8 with guilt or innocence, but if you find him  
9 guilty then we move into a second phase, unlike  
10 other trials, where you actually have to decide  
11 between death or life. And, what you have told  
12 us and I want to make sure we are clear, is  
13 that you will listen to the evidence put in by  
14 both sides before you make your decision as to  
15 life or death?

16 MS. VENABLE: (Shakes head yes).

17 MR. BARRY: You're not telling me now  
18 there is nothing I can do to convince you for  
19 the death penalty? You're telling me that you  
20 will consider both sides before you make that  
21 decision?

22 MS. VENABLE: Yes, sir.

23 MR. BARRY: But, you have no  
24 religious reason why you can't sit here and  
25 consider the death penalty?

1 MS. VENABLE: No, sir.

2 MR. BARRY: All right, now, just real  
3 quick, you have two folks in this case. This  
4 young lady's name is Sheryl Stack and she was  
5 killed. And, she worked at Steak and Ale and  
6 she was a VCU student. Have you ever met this  
7 young lady?

8 MS. VENABLE: No, sir.

9 MR. BARRY: She was probably 21 years  
10 old at the time of her death. This young man  
11 is Edward Martin. He was the gentleman that  
12 was shot and maimed in the case. Now, he is  
13 still alive. Have you ever seen this gentleman  
14 before?

15 MS. VENABLE: No, sir.

16 MR. BARRY: All right. The families  
17 of both these parents, excuse me, of these  
18 children, are here in the courtroom today and  
19 they are sitting on the second row to my right.  
20 Her father has on a green shirt. His father  
21 has on a coat and tie. Have you ever come in  
22 contact with them, to your knowledge?

23 MS. VENABLE: No, sir.

24 MR. BARRY: So, you really don't know  
25 any of the players at all in this case?

1 MS. VENABLE: No, sir.

2 MR. BARRY: And, you're willing to  
3 give us all a level playing field?

4 MS. VENABLE: Yes, sir.

5 MR. BARRY: Do you understand the  
6 expression I use, impartial right now for  
7 either side?

8 MS. VENABLE: Yes, sir.

9 MR. BARRY: All right. Thank you.  
10 This lady is acceptable.

11 THE COURT: All right.

12 MR. EVERHART: Good morning, Ms.  
13 Venable. I'm Jeff Everhart, and along with Mr.  
14 Geary I represent Andre Graham. You mentioned  
15 a moment ago that your brother is a police  
16 officer in Prince Edward?

17 MS. VENABLE: Yes, sir.

18 MR. EVERHART: Have you ever  
19 discussed the death penalty with him?

20 MS. VENABLE: No, sir.

21 MR. EVERHART: Have you ever  
22 discussed crimes or punishment with him?

23 MS. VENABLE: No, sir.

24 MR. EVERHART: Have either you or any  
25 members of your immediate family ever been the

1 victim of a violent crime?

2 MS. VENABLE: Well, you mean a crime  
3 acted upon?

4 MR. EVERHART: Yes, ma'am. Has your  
5 home been burglarized? Have you been  
6 assaulted, shot?

7 MS. VENABLE: No, sir.

8 MR. EVERHART: Or any members of your  
9 immediate family?

10 MS. VENABLE: No, sir.

11 MR. EVERHART: Have you ever  
12 discussed the death penalty with any of your  
13 friends or co-workers?

14 MS. VENABLE: No, sir.

15 MR. EVERHART: You have no strong  
16 feelings either in favor of or against?

17 MS. VENABLE: No, sir.

18 MR. EVERHART: You can listen to the  
19 case and render your judgment or decision based  
20 on what you hear and the arguments of counsel  
21 and instructions of the law made by Judge  
22 Wilkinson?

23 MS. VENABLE: Yes, sir.

24 MR. EVERHART: Thank you very much.

25 THE COURT: This case is going to



1 take about three days. Do you have anything  
2 urgent for three days?

3 MS. VENABLE: No, sir.

4 THE COURT: All right. You may be  
5 seated in the jury room.

6 THE CLERK: Juror number 491, Sadie  
7 McKinney. Do you solemnly swear the answers  
8 you shall give shall be the truth, the whole  
9 truth, and nothing but the truth, so help you  
10 God?

11 MS. MCKINNEY: I do.

12 THE CLERK: Please be seated, ma'am.

13 THE COURT: All right, Ms. McKinney,  
14 we are going to ask you some questions, not to  
15 embarrass you but to find your impartiality in  
16 this case. Were you present in the Circuit  
17 Court of the City of Richmond, on June the 9th,  
18 1994, at which time the grand jury was charged?

19 MS. MCKINNEY: No.

20 THE COURT: All right. Are you  
21 related by blood or marriage or do you know  
22 Andre L. Graham, Sheryl Stack or Edward Martin?

23 MS. MCKINNEY: No, sir.

24 THE COURT: This is an alleged crime  
25 which took place in the parking lot of the

1 Steak and Ale on Midlothian Pike. Do you know  
2 anything about the case?

3 MS. MCKINNEY: No, sir.

4 THE COURT: All right. Do you have  
5 any religious, conscientious scruples or other  
6 moral values that would keep you from imposing  
7 the death penalty in the proper case?

8 MS. MCKINNEY: No, sir.

9 THE COURT: Do you have any close  
10 members of your family such as husband, mother,  
11 father, sister, brother, anything, that are  
12 involved in law enforcement?

13 MS. MCKINNEY: No, sir.

14 THE COURT: All right. At the  
15 conclusion of this case I will instruct you as  
16 to the law. You might not agree with it but  
17 would you follow it?

18 MS. MCKINNEY: Yes, sir.

19 THE COURT: Are you sensible of any  
20 bias or prejudice whatsoever that would keep  
21 you from giving the Commonwealth and the  
22 accused a fair and impartial trial based on the  
23 law and the evidence?

24 MS. MCKINNEY: No, sir.

25 THE COURT: All right, Mr. Barry, if

1           you have any questions.

2           MR. BARRY: Ms. McKinney, my name is  
3           Learned Barry. This gentleman is Detective  
4           Steve Dalton. We are going to be representing  
5           the Commonwealth today. The reason we are  
6           asking you these questions is to make sure that  
7           you don't know any of the people involved so  
8           that you will be basically impartial for both  
9           sides. The Judge just told you that this was a  
10          killing, a shooting that occurred on October  
11          8th at the Steak and Ale Restaurant here in  
12          south Richmond. Have you read or heard  
13          anything about the case?

14          MS. MCKINNEY: Not that I can  
15          remember.

16          MR. BARRY: Good. That's fine. And,  
17          he also asked the questions about the death  
18          penalty. I will tell you that this case is  
19          divided into two phases. First you as a juror  
20          determine guilt or innocence. And, if you find  
21          the defendant guilty of capital murder then you  
22          move into a second phase where you must decide  
23          either life or death. Are you telling us that  
24          you will sit faithfully and listen to the law  
25          and evidence and then make your decision when

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1 we reach that point whether it will be life or  
2 death?

3 MS. MCKINNEY: Yes, sir.

4 MR. BARRY: Thank you. Answer this  
5 gentleman's questions.

6 THE COURT: All right.

7 MR. GEARY: Ms. McKinney, my name is  
8 Bob Geary and as Mr. Barry said, Mr. Everhart  
9 and I represent Mr. Andre Graham on my left.  
10 Have you ever sat on a jury before?

11 MS. MCKINNEY: No, sir.

12 MR. GEARY: Have you ever been called  
13 for jury duty before?

14 MS. MCKINNEY: No, sir.

15 MR. GEARY: As Mr. Barry indicated to  
16 you and the Judge told you, one of the charges  
17 in this case is a charge of capital murder and  
18 the way the system operates is that we try the  
19 case on guilt or innocence first. If he is  
20 found not guilty of capital murder then there  
21 is no second phase about the capital murder.  
22 If the person is convicted of capital murder  
23 then we have a second trial at which time the  
24 jury will hear evidence, get instructions from  
25 the Judge, hear the arguments of the lawyers



1 and have to make a decision. And, that  
2 decision can only be one of two things. It can  
3 either be a verdict of capital murder, the  
4 death penalty, or capital murder, life  
5 imprisonment. You don't have any other  
6 alternative. Have you thought about the death  
7 penalty before you came in here today?

8 MS. MCKINNEY: No, not really.

9 MR. GEARY: Have you read about it or  
10 saw it on the television?

11 MS. MCKINNEY: Yes, I have.

12 MR. GEARY: You never had any  
13 extensive discussions about it or anything  
14 about it?

15 MS. MCKINNEY: No.

16 MR. GEARY: Judge Wilkinson will tell  
17 you if we get to the second phase, if the  
18 Commonwealth has proved capital murder in the  
19 first phase, that under Virginia law that  
20 certain standards have to be met in order for  
21 the death penalty to be imposed. And would you  
22 be willing to follow that instruction from the  
23 Judge?

24 MS. MCKINNEY: Yes, sir.

25 MR. GEARY: Would you be willing to

1 fairly consider both options if we got to the  
2 second phase, that is life imprisonment is one  
3 option and the death penalty is the other  
4 option?

5 MS. MCKINNEY: Yes, sir.

6 MR. GEARY: The victim in the capital  
7 murder is a white female. The victim in the  
8 maiming, the aggravated battery is a white  
9 male. As you can see Andre Graham is black.  
10 And the fact that he is black and the victims  
11 are white, would that cause you any problem?

12 MS. MCKINNEY: No, sir.

13 MR. GEARY: The oath that you take as  
14 a juror in this case would be that you would  
15 fairly and without bias decide the case. What  
16 that means is that race should not be a factor.  
17 Would you be able to follow that instruction  
18 from Judge Wilkinson?

19 MS. MCKINNEY: Yes, sir.

20 MR. GEARY: You have no doubt about  
21 that?

22 MS. MCKINNEY: No, sir.

23 MR. GEARY: Thank you very much.

24 THE COURT: All right. She may go to  
25 the jury room.

1 THE CLERK: Juror number 36, Brenda  
2 Barnett. Do you solemnly swear the answers you  
3 shall give shall be the truth, the whole truth,  
4 and nothing but the truth, so help you God?

5 MS. BARNETT: I do.

6 THE CLERK: Please be seated, Ms.  
7 Barnett.

8 THE COURT: All right. Were you  
9 present in the Circuit Court of the City of  
10 Richmond on June the 9th, 1994, at which time  
11 the grand jury was charged in this case?

12 MS. BARNETT: Sir?

13 THE COURT: Were you here June the  
14 9th?

15 MS. BARNETT: June the 9th, no, sir.

16 THE COURT: All right. Do you know  
17 or are you related by blood or marriage to  
18 Andre L. Graham, Sheryl Stack or Edward Martin?

19 MS. BARNETT: No, sir, I am not.

20 THE COURT: This is an allegation of  
21 a crime which was committed on the parking lot  
22 of the Steak and Ale on Midlothian Pike. Do  
23 you know anything about the case?

24 MS. BARNETT: No, sir.

25 THE COURT: All right. Do you have

1 any religious, conscientious or moral values  
2 that would keep you from imposing the death  
3 penalty in the proper case?

4 MS. BARNETT: No, sir.

5 THE COURT: All right. Do you know  
6 any of the lawyers, Mr. Barry, Mr. Everhart,  
7 Mr. Geary?

8 MS. BARNETT: No, sir.

9 THE COURT: At the conclusion of this  
10 case I will instruct you as to the law. You  
11 might not agree with it but would you follow  
12 it?

13 MS. BARNETT: Yes, sir.

14 THE COURT: Are you sensible of any  
15 bias or prejudice whatsoever that would keep  
16 you from giving a fair and impartial trial  
17 based on the law and the evidence in this case?

18 MS. BARNETT: No, sir.

19 THE COURT: I believe I asked you, do  
20 you have any close members of your family in  
21 law enforcement such as police officer,  
22 sheriff?

23 MS. BARNETT: No, I do not.

24 THE COURT: Mr. Barry, you may ask  
25 any questions.



1 MR. BARRY: Ms. Barnett, good  
2 morning.

3 MS. BARNETT: Good morning.

4 MR. BARRY: My name is Learned Barry.  
5 And, I will be representing the Commonwealth  
6 today. That means I put on evidence to try to  
7 convince you that the defendant is guilty of  
8 what he is charged with. Mr. Everhart and Mr.  
9 Geary will be representing the defendant.  
10 Their job is to defend him. You don't know any  
11 of us, do you?

12 MS. BARNETT: No, sir.

13 MR. BARRY: Now, let me ask you a  
14 couple of questions and introduce you to a  
15 couple of people. In this case the defendant  
16 is charged with killing this young lady. Her  
17 name was Sheryl Stack. She was 21 years old.  
18 Do you recognize this lady at all?

19 MS. BARNETT: No, I've never seen  
20 her.

21 MR. BARRY: Her mother and father are  
22 sitting in the courtroom right behind my  
23 detective. Mr. Stack has on a green shirt.  
24 Mrs. Stack has on a white outfit. Do you  
25 recognize them at all?

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1 MS. BARNETT: No, I don't.

2 MR. BARRY: One more question. This  
3 young man was shot at the same time. He is  
4 still alive. His name is Edward Martin. Do  
5 you recognize him?

6 MS. BARNETT: No.

7 MR. BARRY: His mother and father are  
8 also here in the courtroom sitting next to the  
9 Stacks. You don't know them either?

10 MS. BARNETT: No, sir.

11 MR. BARRY: Have you actually ever  
12 had an opportunity to sit on a jury trial  
13 before?

14 MS. BARNETT: Yes.

15 MR. BARRY: A long time ago?

16 MS. BARNETT: Uh-huh.

17 MR. BARRY: Okay. Well, you're back  
18 in action again. But, this is probably going  
19 to be a little different than anything you have  
20 ever done before.

21 MS. BARNETT: Right.

22 MR. BARRY: First we have to decide  
23 guilt or innocence. Then we move on into  
24 either life or death decision. You already  
25 told the Judge that you have no moral or

1 religious reasons why you cannot at least  
2 consider the death penalty; is that correct?

3 MS. BARNETT: Right.

4 MR. BARRY: Okay. Judge, this lady  
5 is fine. Thank you very much, ma'am. They get  
6 to ask you a couple more questions.

7 THE COURT: Mr. Everhart, Mr. Geary,  
8 whoever is going to do it.

9 MR. EVERHART: Good morning ma'am.  
10 I'm Jeff Everhart. As the Judge has indicated,  
11 along with Mr. Geary, I represent Andre Graham.  
12 Have either you or any members of your family  
13 been the victim of a violent crime?

14 MS. BARNETT: Yes.

15 MR. EVERHART: Who would that -- I  
16 don't want their names, but what relation to  
17 you is that person?

18 MS. BARNETT: My first three cousins.

19 MR. EVERHART: Three of them?

20 MS. BARNETT: Yes.

21 MR. EVERHART: What happened to them?

22 MS. BARNETT: One of them got killed  
23 in front of the apartments. He was knocking on  
24 the door and he and the guy must have had an  
25 argument.

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1 MR. EVERHART: He was shot?

2 MS. BARNETT: He shot him right  
3 there. And, the other one was coming from the  
4 night club and people had gone in the house,  
5 and somebody got them from there, too.

6 MR. EVERHART: Was he wounded or was  
7 he also killed?

8 MS. BARNETT: He was killed, too.

9 MR. EVERHART: I'm sorry.

10 MS. BARNETT: And, then the other one  
11 got killed, because he owed somebody some money  
12 and he must have wanted to collect the debt,  
13 and he shot him, too, and killed him.

14 MR. EVERHART: Yes, ma'am. I am  
15 sorry for all three. Were all of these young  
16 men or men?

17 MS. BARNETT: One was my age, well,  
18 let's say two of them really my age and the  
19 other one was a little older than I was.

20 MR. EVERHART: How recent was the  
21 most recent of the three?

22 MS. BARNETT: The recent one was '93.

23 MR. EVERHART: When were the other  
24 two, if you recall?

25 MS. BARNETT: Late 80's and early



1 90's.

2 MR. EVERHART: So, all within say the  
3 last say six years, '87 on?

4 MS. BARNETT: Uh-huh.

5 MR. EVERHART: Would the fact that  
6 you suffered that loss lead you first of all to  
7 be more predisposed to convict Andre Graham in  
8 this case?

9 MS. BARNETT: No. It's got an effect  
10 on me, though. I think I could still do my  
11 duty.

12 MR. EVERHART: Yes, ma'am. You  
13 understand that we are unfortunately going to  
14 be talking about the loss of a young woman's  
15 life in this case.

16 MS. BARNETT: Yes.

17 MR. EVERHART: Her family, as Mr.  
18 Barry said, is here.

19 MS. BARNETT: Uh-huh.

20 MR. EVERHART: Would the fact that  
21 you have suffered a similar loss cause you to  
22 more closely identify with them or could you  
23 step back and kind of -- could you take the  
24 passion out of it I guess is what I'm trying to  
25 ask you.

1 MS. BARNETT: Yes, I can.

2 MR. EVERHART: If, in fact, you and  
3 the fellow jurors were to be convinced beyond a  
4 reasonable doubt that Andre Graham were guilty  
5 of capital murder, you understand we would then  
6 have a second portion of this trial; do you not  
7 understand that?

8 MS. BARNETT: Uh-huh.

9 MR. EVERHART: Would you also be able  
10 to set aside your loss and compassion you might  
11 feel for the family in determining whether the  
12 appropriate punishment would be the death  
13 penalty or life imprisonment? Would you be  
14 able to do that?

15 MS. BARNETT: I could set it aside.

16 MR. EVERHART: You understand those  
17 are the only two choices if we get to that  
18 stage?

19 MS. BARNETT: Yes.

20 MR. EVERHART: Thank you very much.  
21 And, again, I hope I didn't embarrass you with  
22 the questions.

23 MS. BARNETT: No.

24 MR. EVERHART: Thank you.

25 THE COURT: All right. I will seat

1 her.

2 THE CLERK: Juror number 570, Jean  
3 Peyton. Do you solemnly swear the answers you  
4 shall give shall be the truth, the whole truth,  
5 and nothing but the truth, so help you God?

6 MS. PEYTON: I do.

7 THE CLERK: Please be seated, ma'am.

8 THE COURT: Ms. Peyton, we are going  
9 to ask you some questions, not to embarrass you  
10 but to find your impartiality in this cause.  
11 Were you present in the Circuit Court, City of  
12 Richmond, at the Manchester Courthouse on June  
13 the 9th, 1994? Were you here June 9?

14 MS. PEYTON: '94, no, I wasn't.

15 THE COURT: All right. Are you  
16 related by blood or marriage or do you know  
17 Andre L. Graham, Sheryl Stack or Edward Martin?

18 MS. PEYTON: No.

19 THE COURT: This is an alleged crime  
20 which took place on the parking lot of the  
21 Steak and Ale on Midlothian Pike. Have you  
22 read or heard anything about the case?

23 MS. PEYTON: I may recall it on the  
24 news or something.

25 THE COURT: Well, from what you have

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1 heard or what you've seen have you expressed or  
2 formed an opinion as to the guilt or innocence  
3 of the accused?

4 MS. PEYTON: I don't know.

5 THE COURT: You don't? All right.  
6 Then I assume that you can sit impartially in  
7 this case?

8 MS. PEYTON: Yes, sir.

9 THE COURT: All right. Do you have  
10 any religious, conscientious or moral scruples  
11 that would keep you from imposing the death  
12 penalty in the proper case?

13 MS. PEYTON: No, I don't.

14 THE COURT: All right. Do you know  
15 any of the parties, Mr. Geary, Mr. Everhart or  
16 Mr. Barry? They are the lawyers.

17 MS. PEYTON: No, I don't.

18 THE COURT: All right. Do you have  
19 any close members of your family that are  
20 involved in law enforcement?

21 MS. PEYTON: No.

22 THE COURT: At the conclusion of this  
23 case I will instruct you as to the law. You  
24 might not agree with it but would you follow  
25 it?



1 MS. PEYTON: I will try.

2 THE COURT: All right. Are you  
3 sensible of any bias or prejudice whatsoever  
4 that would keep you from giving the  
5 Commonwealth and the accused a fair and  
6 impartial trial?

7 MS. PEYTON: No, sir.

8 THE COURT: All right, Mr. Barry.

9 MR. BARRY: Ma'am, I am sorry. I  
10 didn't catch your name, it is?

11 MS. PEYTON: Jean Peyton.

12 MR. BARRY: Ma'am, I am Learned Barry  
13 and I represent the Commonwealth. I present  
14 evidence against the defendant. Have you ever  
15 sat on a jury trial before?

16 MS. PEYTON: No, I haven't.

17 MR. BARRY: This would be your first  
18 opportunity?

19 MS. PEYTON: Yes.

20 MR. BARRY: Okay. Let me just go  
21 through a couple of things real quick. You sit  
22 in the jury box with 12 other individuals. The  
23 reason we go through all these questions is to  
24 make sure that you don't have some hidden  
25 reason why you shouldn't be sitting on the

1 jury. We are looking for you to be impartial,  
2 impartial to my side and impartial to their  
3 side. We want you to be able to listen to the  
4 evidence and then make an intelligent decision  
5 based only on the facts. Now, in this case not  
6 only do you have to determine guilt or  
7 innocence, or in the event that you find the  
8 defendant guilty, then you have to go into a  
9 second phase dealing with punishment. The  
10 punishment for capital murder is either life or  
11 the death penalty. Are you telling us that you  
12 can honestly sit here today and listen to both  
13 sides fairly and then make a decision. Because  
14 we are dealing with the death penalty. And, if  
15 you really feel like there is nothing I can do  
16 to convince you that what he did warrants  
17 death, then you need to tell us. But, if  
18 you're at least willing to listen to me then  
19 your impartial. But, if you really feel for  
20 some moral or religious reason that you can't  
21 sit and even consider the death penalty then  
22 you need to tell the Judge that.

23 MS. PEYTON: Well, I am a little  
24 nervous.

25 MR. BARRY: Well, listen, you're not

1 the only one. We are all a little nervous.  
2 But nervousness we will get over. Because this  
3 is really a serious, serious case. My concern  
4 is can you really consider the death penalty or  
5 is there absolutely nothing I can say or show  
6 you that would ever allow you to consider the  
7 death penalty?

8 MS. PEYTON: According to what they  
9 have done? I mean they murdered?

10 MR. BARRY: That's right. That's  
11 exactly correct. So, what you're telling me is  
12 you can listen then make your decision?

13 MS. PEYTON: (Shakes head yes).

14 MR. BARRY: Okay. That's all we have  
15 you here for. Thank you, Judge.

16 THE COURT: All right.

17 MR. GEARY: Have you or any member of  
18 your family ever the victims of any violent  
19 crime?

20 MS. PEYTON: No.

21 MR. GEARY: And, the last question  
22 that Mr. Barry did I would like to follow up  
23 on. What you're telling us is that you will  
24 listen to all the evidence in the case and  
25 follow the Judge's instructions; is that

1 correct?

2 MS. PEYTON: Yes, sir.

3 MR. GEARY: And, Judge Wilkinson says  
4 that Mr. Graham is presumed to be innocent.  
5 You will give him that presumption? You will  
6 follow that law? You're shaking your head.  
7 Does that mean you guess you will? The Judge  
8 will tell you that somebody in a criminal case  
9 in Virginia, and in particular Andre Graham in  
10 this case, that there is a presumption by the  
11 law that he is innocent of the charge and that  
12 the jury may only find him guilty if the  
13 Commonwealth and Mr. Barry prove him guilty  
14 beyond a reasonable doubt. And, my question to  
15 you is are you willing to follow that and  
16 accept that as the law in Virginia?

17 MS. PEYTON: I can't answer that. I  
18 don't know. I'll be honest. I don't know.

19 MR. GEARY: Do you think the  
20 defendant has to prove anything in the case?  
21 Do you think he has to prove himself not  
22 guilty?

23 MS. PEYTON: Yes.

24 MR. GEARY: You think that?

25 MS. PEYTON: (Shakes head yes).



1 MR. GEARY: I have no further  
2 questions at this point.

3 THE COURT: I will excuse her.

4 THE CLERK: Juror number 350, Amanda  
5 Horsley. Do you solemnly swear the answers you  
6 shall give shall be the truth, the whole truth,  
7 and nothing but the truth, so help you God?

8 MS. HORSLEY: I do.

9 THE COURT: Ms. Horsley, were you in  
10 the Circuit Court of the City of Richmond at  
11 the Manchester Courthouse on June the 9th,  
12 1994?

13 MS. HORSLEY: No.

14 THE COURT: All right. Are you  
15 related by blood or marriage or do you know  
16 Andre L. Graham, Sheryl Stack or Edward Martin?

17 MS. HORSLEY: No.

18 THE COURT: Do you have any close  
19 members of your family involved in law  
20 enforcement?

21 MS. HORSLEY: No, sir.

22 THE COURT: Such as police officer?  
23 This alleged crime took place at the Steak and  
24 Ale parking lot on Midlothian Pike. Do you  
25 know anything about the case?

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1 MS. HORSLEY: Just hearing it on the  
2 news.

3 THE COURT: From what you have heard  
4 have you expressed or formed an opinion as to  
5 the guilt or innocence of the accused?

6 MS. HORSLEY: No.

7 THE COURT: Do you have any  
8 religious, conscientious scruples or other  
9 moral values that would keep you from imposing  
10 the death penalty in the proper case?

11 MS. HORSLEY: No, sir.

12 THE COURT: At the conclusion of this  
13 case I will instruct you as to the law. Will  
14 you follow that law?

15 MS. HORSLEY: Yes, sir.

16 THE COURT: Although you might  
17 disagree with it?

18 MS. HORSLEY: Yes, sir.

19 THE COURT: Do you have anything  
20 pressing in the next three days that would keep  
21 you from giving your full attention to this  
22 case?

23 MS. HORSLEY: No, sir.

24 THE COURT: All right. Are you  
25 sensible of any bias or prejudice whatsoever

1 that would keep you from giving a fair and  
2 impartial trial to the accused and the  
3 Commonwealth based on the law and facts of this  
4 case?

5 MS. HORSLEY: No, sir.

6 THE COURT: All right, Mr. Barry.

7 MR. BARRY: Ma'am, my name is Learned  
8 Barry and I represent the Commonwealth. And I  
9 am going to put on evidence against the  
10 defendant. Mr. Geary and Mr. Everhart  
11 represent the defendant. You don't know any of  
12 us, I take it?

13 MS. HORSLEY: No.

14 MR. BARRY: Okay. Have you ever sat  
15 on a jury case before at all?

16 MS. HORSLEY: In Middlesex County.

17 MR. BARRY: Was it a capital murder  
18 case, per chance?

19 MS. HORSLEY: No.

20 MR. BARRY: Let me just tell you to  
21 make sure you understand what's going on. In  
22 this case we are going to attempt to prove that  
23 the defendant committed the crime of capital  
24 murder. In the event that the jury determines  
25 he is guilty we will move into a second phase.

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1 The issue is does he get life or does he get  
2 death. You have already told the judge that  
3 you have no moral reason why you cannot  
4 consider the death penalty. I want you to just  
5 understand you have the option of both, life or  
6 death and the only commitment we need from you  
7 is that you will listen to both sides, then  
8 make that determination? Is that fair and  
9 reasonable?

10 MS. HORSLEY: Yes, sir.

11 MR. BARRY: Okay. This lady is fine.  
12 Thank you very much.

13 THE COURT: All right, Mr. Geary.

14 MR. GEARY: Ms. Horsley, I'm Bob  
15 Geary. I am one of two lawyers for Mr. Graham.  
16 We have been given some very limited  
17 information about all the jurors here,  
18 addresses, et cetera. The business that you  
19 work for, is that a retail business?

20 MS. HORSLEY: Yes, sir.

21 MR. GEARY: Where is it located?

22 MS. HORSLEY: In Cary Town, 3030 West  
23 Cary Street.

24 MR. GEARY: And, it lists you as a  
25 sales manager; is that correct?



1 MS. HORSLEY: Yes, sir.

2 MR. GEARY: Has that store ever been  
3 robbed?

4 MS. HORSLEY: No, sir.

5 MR. GEARY: How long have you worked  
6 there?

7 MS. HORSLEY: A little over two  
8 years.

9 MR. GEARY: Have any members of your  
10 immediate family or any of your close friends  
11 ever been the victim of a crime of violence?

12 MS. HORSLEY: No, sir.

13 MR. GEARY: You sat on a jury in  
14 Middlesex County. Do you recall if that was a  
15 civil or a criminal jury?

16 MS. HORSLEY: It was civil. I think  
17 it had something to do with some house  
18 contractors.

19 MR. GEARY: About how long ago was  
20 that?

21 MS. HORSLEY: Eight or nine years  
22 ago.

23 MR. GEARY: You also indicated in  
24 answer to the Judge's questions that you had  
25 heard something about the case. This case, the

1 shooting took place on October the 8th, 1993,  
2 almost a year ago.

3 MS. HORSLEY: Uh-huh.

4 MR. GEARY: It was at the Steak and  
5 Ale on Midlothian Turnpike. Do you know where  
6 that is?

7 MS. HORSLEY: Yes, sir.

8 MR. GEARY: When you say you heard  
9 about something, can you tell us if you recall  
10 approximately when the last time was you heard  
11 anything about this case?

12 MS. HORSLEY: Just right around the  
13 time that it happened, nothing since.

14 MR. GEARY: About a year ago?

15 MS. HORSLEY: Yes.

16 MR. GEARY: The normal case, the  
17 normal criminal case, that's called a one phase  
18 case. The jury hears the evidence and makes a  
19 decision on guilt or innocence. In this case  
20 that Mr. Barry told you and the Judge told you,  
21 that part of it is a capital murder. Mr.  
22 Graham is charged with capital murder during  
23 the commission of a robbery. There's twelve  
24 people here that they will have to make a  
25 decision on guilt or innocence. And the

1 question that we ask now because we don't get  
2 the chance to ask you later so we have to ask  
3 you now, assuming there is going to be a guilty  
4 verdict, we have to assume for purposes of  
5 asking questions that there may be. If there  
6 is a conviction of capital murder and you sit  
7 on the jury, you and the 11 other people are  
8 going to hear more evidence, more arguments  
9 from the lawyers and more instructions from  
10 Judge Wilkinson. He will tell you that what  
11 the standards are under Virginia law for the  
12 imposition of the death penalty and he will  
13 talk about the factors involved. And, you will  
14 have taken an oath if you're a juror that you  
15 will follow whatever the Judge tells you the  
16 law is. And, as Mr. Barry indicated to you,  
17 the verdict you must return at the conclusion  
18 of the second phase is only two, that is either  
19 the death penalty or life imprisonment. Based  
20 on the evidence that you hear are you telling  
21 us that you will fairly and fully consider both  
22 alternatives?

23 MS. HORSLEY: Yes, sir.

24 MR. GEARY: Before you came into the  
25 courtroom this morning have you ever discussed

1 with family, friends or associates the death  
2 penalty?

3 MS. HORSLEY: Not a whole lot, no.

4 MR. GEARY: The Judge will tell you  
5 in this case in the very beginning when you're  
6 sworn as a juror, that Andre Graham as he sits  
7 here is presumed to be innocent.

8 MS. HORSLEY: Uh-huh.

9 MR. GEARY: Would you follow that  
10 instruction?

11 MS. HORSLEY: Yes, sir.

12 MR. GEARY: Judge Wilkinson will tell  
13 you further that in that first phase of the  
14 case that you can only convict him if you find  
15 that the Commonwealth has proven each and every  
16 element of the crime beyond a reasonable doubt.  
17 Can you follow that instruction?

18 MS. HORSLEY: Yes, sir.

19 MR. GEARY: He will also tell you if  
20 you ever got to the second phase, the  
21 punishment phase of the capital murder case,  
22 that the burden is again on the Commonwealth,  
23 that they must prove everything beyond a  
24 reasonable doubt. Would you be willing to  
25 accept that?



1 MS. HORSLEY: Yes, sir.

2 MR. GEARY: Do you know of any reason  
3 why you could not sit as a fair and impartial  
4 juror in this case?

5 MS. HORSLEY: No, sir.

6 MR. GEARY: Andre Graham, as you can  
7 see, is a black male. The lady that died was  
8 white. The male who is going to testify who  
9 was shot was white. Would you allow race at  
10 all to enter into your deliberations?

11 MS. HORSLEY: No.

12 MR. GEARY: Not one bit?

13 MS. HORSLEY: No, sir.

14 MR. GEARY: You understand that if  
15 you're sworn as a juror, that you take an oath  
16 to follow the law, to reach a verdict based  
17 only on the law and evidence so that clearly  
18 race cannot be a consideration. Are you  
19 willing to follow that?

20 MS. HORSLEY: Yes, sir.

21 MR. GEARY: Thank you very much.

22 THE COURT: All right. She may be  
23 seated.

24 THE CLERK: Juror number 70, Carroll  
25 Boyd. Do you solemnly swear the answers you

1 shall give shall be the truth, the whole truth,  
2 and nothing but the truth, so help you God?

3 MS. BOYD: Yes.

4 THE CLERK: Please be seated, Ms.  
5 Boyd.

6 THE COURT: Ms. Boyd, we are going to  
7 ask you some questions, not to embarrass you  
8 but to find your impartiality in this matter.  
9 Were you here on June the 9th in this  
10 courthouse when the grand jury was instructed?

11 MS. BOYD: No, sir.

12 THE COURT: All right. Are you  
13 related by blood or marriage or do you know  
14 Andre L. Graham, Sheryl Stack or Edward Martin?

15 MS. BOYD: No.

16 THE COURT: This alleged crime took  
17 place on Midlothian Pike at the Steak and Ale  
18 Restaurant. Do you know anything about the  
19 case?

20 MS. BOYD: No, I don't.

21 THE COURT: Do you have any close  
22 members of your family that are involved in law  
23 enforcement such as police officer, deputy  
24 sheriff?

25 MS. BOYD: No.

1 THE COURT: Do you have any  
2 religious, conscientious scruples or moral  
3 values that would keep you from imposing the  
4 death penalty in the proper case?

5 MS. BOYD: No.

6 THE COURT: Do you know any of the  
7 lawyers, Mr. Barry, Mr. Everhart, Mr. Geary?

8 MR. BARRY: I'm Mr. Barry.

9 MS. BOYD: No.

10 THE COURT: At the conclusion of this  
11 case I will instruct you as to the law  
12 involved. You might not agree with it but  
13 would you follow those instructions?

14 MS. BOYD: Yes, sir.

15 THE COURT: Are you sensible of any  
16 bias or prejudice whatsoever that would keep  
17 you from giving the Commonwealth and the  
18 accused a fair and impartial trial based on the  
19 law and the evidence?

20 MS. BOYD: No.

21 THE COURT: All right, Mr. Barry.

22 MR. BARRY: Ma'am, I'm representing  
23 the Commonwealth. I am the one that puts on  
24 evidence against the defendant. And, he has  
25 two lawyers that represent him. Have you ever

1 sat on a jury trial before?

2 MS. BOYD: I have about two years  
3 ago, but the trial was dismissed.

4 MR. BARRY: Okay. Well, this trial  
5 is probably going to take two or three days and  
6 it is a criminal trial and it involves a  
7 murder. Actually a murder and a shooting.  
8 There is a possibility that in the event that  
9 the jury convicts the defendant of capital  
10 murder we will go into a second phase which  
11 requires you to consider either a death  
12 sentence or life sentence. All right. What we  
13 are looking for is jurors who will listen to  
14 both sides and then make a decision whether the  
15 defendant should get death or life. But, as  
16 you sit here now if your mind is already made  
17 up that you can't deal with the death penalty  
18 then you need to tell us. But, if you can, if  
19 you can tell us, yes, Mr. Geary, yes, Mr.  
20 Barry, I will listen to both sides and then I  
21 will make my decision, that's what we're really  
22 looking for. Do you have any problem with that  
23 at all?

24 MS. BOYD: No, I don't.

25 MR. BARRY: Okay, that's excellent.



1 You can answer this gentleman's questions.

2 This lady is fine. Thank you very much.

3 THE COURT: All right.

4 MR. EVERHART: Thank you. Good  
5 morning, Ms. Boyd. My name is Jeff Everhart  
6 and the gentleman to my left is Mr. Geary and  
7 the gentleman at the end is Andre Graham. Have  
8 either you or any members of your immediate  
9 family ever been the victims of a violent  
10 crime?

11 MS. BOYD: No.

12 MR. EVERHART: Have you ever  
13 discussed with your friends or family the death  
14 penalty and your feelings on the death penalty?

15 MS. BOYD: No.

16 MR. EVERHART: The young lady whom  
17 Mr. Barry mentioned is white and the young  
18 gentleman who he also mentioned is white.  
19 Obviously, Mr. Graham is black. The fact that  
20 Mr. Graham is black and the victims are white,  
21 would that in any way affect your deliberations  
22 or your feelings on the case?

23 MS. BOYD: No.

24 MR. EVERHART: If you were to  
25 determine, if the Commonwealth were to prove to

1           you beyond a reasonable doubt that Andre Graham  
2           were guilty of these crimes, would the fact  
3           that he is black and the victims are white lead  
4           you to sentence him more harshly than if it  
5           were the other way around?

6                   MS. BOYD: No.

7                   MR. EVERHART: Did I understand you  
8           to say you sat on a criminal jury about two  
9           years ago?

10                   MS. BOYD: Uh-huh, John Marshall  
11           Courts Building.

12                   MR. EVERHART: John Marshall Courts  
13           Building. Now, you said that case was  
14           dismissed. Was it dismissed by the jury or did  
15           the judge dismiss it?

16                   MS. BOYD: The judge.

17                   MR. EVERHART: The judge. Do you  
18           understand that in a criminal case the burden,  
19           the Commonwealth has to prove their case? Do  
20           you understand the defendant doesn't have to  
21           prove or disprove anything?

22                   MS. BOYD: (Shakes head yes).

23                   MR. EVERHART: And, you accept that  
24           and you're willing to follow that because  
25           that's the law Judge Wilkinson is going to

1 instruct you on?

2 MS. BOYD: Yes.

3 MR. EVERHART: And, you don't have  
4 any problem with that, correct, ma'am?

5 MS. BOYD: No.

6 MR. EVERHART: Thank you very much.

7 THE COURT: All right. She may go to  
8 the jury room.

9 MR. BARRY: May I approach the bench  
10 with counsel please?

11 NOTE: At this point a side bar  
12 conference is held, out of the presence of the  
13 Court Reporter.

14 THE CLERK: Juror number 361, Joann  
15 Irby. Do you solemnly swear the answers you  
16 shall give shall be the truth, the whole truth,  
17 and nothing but the truth, so help you God?

18 MS. IRBY: I do.

19 THE CLERK: Please be seated, ma'am.

20 THE COURT: Have a seat there, ma'am.  
21 We are waiting for one of the other lawyers  
22 that will be right back. All right. Ms. Irby,  
23 I believe, we are going to ask you some  
24 questions, not to embarrass you but to find  
25 your impartiality in this case. Were you

1 present in the Manchester Courthouse on June  
2 the 9th at which time the grand jury was  
3 instructed? Were you here on June the 9th?

4 MS. IRBY: No, sir.

5 THE COURT: All right. Do you know  
6 or are you related to the following named  
7 persons in any way: Sheryl Stack; Edward  
8 Martin; or Andre L. Graham?

9 MS. IRBY: No, sir.

10 THE COURT: All right. This alleged  
11 crime took place on Midlothian Pike at the  
12 Steak and Ale. Do you know anything about the  
13 case or have you read anything about it?

14 MS. IRBY: Not offhand, I couldn't  
15 say.

16 THE COURT: I assume by that if you  
17 don't remember it you haven't expressed or  
18 formed an opinion as to the guilt or innocence  
19 of the accused?

20 MS. IRBY: No, I haven't.

21 THE COURT: All right. Do you have  
22 any religious, conscientious or moral scruples  
23 that would keep you from imposing the death  
24 penalty in the proper case?

25 MS. IRBY: No, if the crime fits, if



1 the punishment fits the crime.

2 THE COURT: I don't know if the  
3 punishment will fit the crime. Will you listen  
4 to the evidence and make up your mind from that  
5 and the law when I instruct you?

6 MS. IRBY: Yes.

7 THE COURT: All right. Do you have  
8 any close members of your family that are  
9 involved in law enforcement?

10 MS. IRBY: No, sir.

11 THE COURT: All right. At the  
12 conclusion of this case I will instruct you as  
13 to the law. You might not agree with it but  
14 would you follow it?

15 MS. IRBY: Yes, sir.

16 THE COURT: All right. This case is  
17 going to take three days we estimate. Do you  
18 have anything urgent in the next three days  
19 that would keep you from giving full attention  
20 to the case?

21 MS. IRBY: No, sir.

22 THE COURT: All right, Mr. Barry.

23 MR. BARRY: Ms. Irby, my name is  
24 Learned Barry I represent the Commonwealth.  
25 And, I am the one that has the obligation to

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1 put on the evidence to convince you beyond a  
2 reasonable doubt that the defendant is guilty.  
3 Have you ever sat on a jury trial before?

4 MS. IRBY: No, sir.

5 MR. BARRY: All right. So, this will  
6 be your first jury trial?

7 MS. IRBY: Yes, sir.

8 MR. BARRY: This is a criminal jury  
9 trial involving the murder of one individual  
10 and the shooting of another individual. The  
11 reason this is so different and the reason we  
12 are bringing you in one at a time and asking  
13 you these questions is because in the event  
14 that the defendant is found guilty we move into  
15 a second phase of the trial. And during that  
16 second phase of the trial all the jurors will  
17 hear additional information. And once they  
18 hear that information they have a decision to  
19 make. Either the individual who you found  
20 guilty of murder gets life or he gets death.  
21 No other choice. So, it's a fairly serious  
22 matter that we are dealing with here. So, what  
23 we are trying to do is just make sure that you  
24 will listen to both sides fairly and then make  
25 a decision one way or the other. I mean, if

1 you were to tell me now there is absolutely  
2 nothing I can do to convince you that someone  
3 warrants the death penalty then we would excuse  
4 you. Or if you would say, no, I am not going  
5 to listen to any evidence about the life  
6 punishment, then you would be excused. But, if  
7 you just simply say I will listen to both sides  
8 then make my decision, that's what we are  
9 looking for. Can you think of any reason why  
10 you can't sit here today and be a juror for us?

11 MS. IRBY: No, sir.

12 MR. BARRY: Good. Thank you. That's  
13 all we need to know. This lady is fine.

14 THE COURT: All right, Mr. Geary.

15 MR. GEARY: Ms. Irby, my name is Bob  
16 Geary and I am one of the lawyers representing  
17 Andre Graham to my left here. Have you ever  
18 sat on a jury before?

19 MS. IRBY: No, sir.

20 MR. GEARY: Have you ever been called  
21 to jury service before this term here at  
22 Manchester?

23 MS. IRBY: No, sir.

24 MR. GEARY: Have either you or any  
25 close members, close friends or close members

1 of your family been the victim of a violent  
2 crime, robbery or shooting?

3 MS. IRBY: No, sir.

4 MR. GEARY: Anything like that?

5 MS. IRBY: (Shakes head no).

6 MR. GEARY: When you answered Judge  
7 Wilkinson's questions in the beginning you said  
8 you didn't think you knew anything about this  
9 case. It happened at the Steak and Ale on  
10 Midlothian Turnpike. Do you know where that  
11 is?

12 MS. IRBY: Yeah, I mean I may have  
13 read it.

14 MR. GEARY: It happened about a year  
15 ago.

16 MS. IRBY: I can't remember.

17 MR. GEARY: Do you have any memory or  
18 know anything about the case?

19 MS. IRBY: Now that you mention it I  
20 remember something happening at the Steak and  
21 Ale a long time ago.

22 MR. GEARY: A long time ago. You  
23 haven't read anything or heard anything about  
24 it recently?

25 MS. IRBY: No, sir.



1 MR. GEARY: One of the instructions  
2 of law that Mr. Barry talked about that Judge  
3 Wilkinson will give you if you sit on the jury  
4 is that in criminal cases the defendant, in  
5 this case Andre Graham, he is presumed to be  
6 innocent. Can you follow that instruction?

7 MS. IRBY: Yes, sir.

8 MR. GEARY: Do you understand that  
9 instruction means the defendant doesn't have to  
10 prove anything? Do you understand that?

11 MS. IRBY: Yes, sir.

12 MR. GEARY: He will tell you that if  
13 you're on the jury that the Commonwealth of  
14 Virginia must prove the case beyond a  
15 reasonable doubt. Are you willing to follow  
16 that instruction?

17 MS. IRBY: Yes, sir.

18 MR. GEARY: Some of the charges here  
19 will be decided in the first phase of the case.  
20 If he is found not guilty of capital murder  
21 then we don't go into the second phase of  
22 capital murder. And Mr. Barry told you if he  
23 is found guilty of capital murder, that is that  
24 12 people say the Commonwealth has proved Andre  
25 Graham guilty of capital murder beyond a

1 reasonable doubt, then we have the second trial  
2 which there is going to be testimony and  
3 evidence and documents and maybe even argument  
4 from the lawyers. Judge Wilkinson will  
5 instruct you again. He is going to tell you  
6 what the standards are for the imposition of  
7 the death penalty. And, he is going to tell  
8 you that the final decision you have to make in  
9 a case would be to decide whether or not  
10 punishment should be death, the death penalty  
11 or life imprisonment. I understand from what  
12 you have told Judge Wilkinson and told Mr.  
13 Barry that you're willing to consider based on  
14 the law and the evidence fairly whether or not  
15 to impose the death penalty or life  
16 imprisonment; is that correct?

17 MS. IRBY: Yes.

18 MR. GEARY: You said before to the  
19 Judge, you answered one question by saying that  
20 the punishment should fit the crime. What did  
21 you mean by that?

22 MS. IRBY: It depends on how severe  
23 the crime was. To me, I think if it involves  
24 children, murdering children, that is really  
25 horrendous. They are defenseless.

1 MR. GEARY: He has indicated to you  
2 the people in this case, the ages, they were in  
3 their young twenties. Would that be considered  
4 children by you?

5 MS. IRBY: To me not as bad because  
6 they was, they weren't as defenseless. I don't  
7 know. I don't know about the case.

8 MR. GEARY: But, you're not telling  
9 the judge, are you, that you would  
10 automatically vote for the death penalty?

11 MS. IRBY: No, I wouldn't say that.

12 MR. GEARY: Do you have a belief, Ms.  
13 Irby, that if somebody killed somebody that  
14 that person should also die if convicted of the  
15 death penalty?

16 MS. IRBY: Not necessarily.

17 MR. GEARY: Thank you. Judge, I have  
18 no further questions.

19 THE COURT: All right. She may  
20 retire to the jury room.

21 THE CLERK: Juror number 626, Lois  
22 Ross. Do you solemnly swear the answers you  
23 shall give shall be the truth, the whole truth,  
24 and nothing but the truth, so help you God?

25 MS. ROSS: I do.

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1 THE CLERK: Please be seated.

2 THE COURT: Ms. Ross, we are going to  
3 ask you some questions, not to embarrass you  
4 but to find your impartiality in this matter.  
5 Were you here in the Circuit Court on June the  
6 9th, 1994, when the grand jury was charged?  
7 Were you here on June the 9th?

8 MS. ROSS: No.

9 THE COURT: Do you know or are you  
10 related in any way to Sheryl Stack, Edward  
11 Martin or Andre L. Graham?

12 MS. ROSS: No.

13 THE COURT: All right. This is a  
14 crime that allegedly occurred out on the  
15 parking lot of the Steak and Ale on Midlothian  
16 Turnpike. Have you read anything or heard  
17 anything about the case?

18 MS. ROSS: Steak and Ale. Is that  
19 the one where two people were shot?

20 THE COURT: Yes, ma'am.

21 MS. ROSS: I saw it in the newspaper  
22 about it.

23 THE COURT: Have you expressed or  
24 formed an opinion as to the guilt or innocence  
25 of the accused?



1 MS. ROSS: I don't know anything  
2 about the people.

3 THE COURT: So, you haven't expressed  
4 or formed an opinion; is that correct?

5 MS. ROSS: No, I guess I haven't  
6 really. I don't know any of the persons.

7 THE COURT: All right. This is a  
8 capital murder case. Do you have any  
9 religious, conscientious or moral scruples that  
10 would keep you from imposing the death penalty?

11 MS. ROSS: No.

12 THE COURT: Do you have any close  
13 members of your family that are involved in law  
14 enforcement such as police officer, deputy  
15 sheriff?

16 MS. ROSS: No.

17 THE COURT: At the conclusion of this  
18 case I will instruct you as to the law. Would  
19 you follow that law although you might disagree  
20 with it?

21 MS. ROSS: Yes.

22 THE COURT: This is a two part trial  
23 perhaps, perhaps. If the defendant is found  
24 guilty of capital murder you will hear other  
25 evidence as to what punishment. There are only

1 one or two punishments, death or life  
2 imprisonment. Would you consider both of those  
3 punishments equally based on the law and the  
4 evidence?

5 MS. ROSS: Yes.

6 THE COURT: All right, Mr. Barry, if  
7 you have any questions you can ask them.

8 MR. BARRY: Ms. Ross, how are you  
9 today?

10 MS. ROSS: Fine.

11 MR. BARRY: Besides very nervous?

12 MS. ROSS: Yes.

13 MR. BARRY: I take it you've never  
14 even been called to sit on a jury before, have  
15 you?

16 MS. ROSS: No.

17 MR. BARRY: This is your first one?

18 MS. ROSS: Right.

19 MR. BARRY: Well, don't feel alone.  
20 About 90% of the jurors are in the same boat.  
21 But, the reason this is a little more serious  
22 and because we are doing you one at a time, we  
23 are trying to make sure that you don't have any  
24 preconceived notions about the case. Now,  
25 obviously you've read something about it, but

1 the truth of the matter is you really don't  
2 know about this case at all; is that correct?

3 MS. ROSS: Well, I don't recall. It  
4 happened a while back and I don't remember a  
5 whole lot.

6 MR. BARRY: Okay.

7 MS. ROSS: Just whatever I saw in  
8 the newspaper.

9 MR. BARRY: I am going to be putting  
10 on evidence today for the Commonwealth. What  
11 we are asking you is we want you to make sure  
12 when you sit as a juror the only evidence that  
13 you consider is the evidence that is presented  
14 before you. You don't have any difficulty with  
15 that theory, do you?

16 MS. ROSS: No.

17 MR. BARRY: Okay. You have to  
18 exclude whatever else that you may know. The  
19 next thing, two phase trial. If the defendant  
20 is found guilty then we move into a second  
21 phase. During the second phase you will hear  
22 evidence pro and con. I am going to be  
23 recommending the death penalty. The defense is  
24 going to be trying to talk about a life  
25 sentence. All we are asking is that you listen

1 to both sides and then make a decision. Do you  
2 have any problem with that at all?

3 MS. ROSS: No.

4 MR. BARRY: Okay. Now, I just want  
5 to make sure in this case, this was the young  
6 lady that was killed, Sheryl Stack. Have you  
7 ever run across her here at Richmond? She  
8 worked at Steak and Ale. She was a VCU  
9 student.

10 MS. ROSS: No.

11 MR. BARRY: Her mother and father are  
12 sitting in the audience. He has on a green  
13 shirt. She has on a white jacket. They are  
14 sitting in the second row. They are from  
15 Bracey, Virginia. Have you ever met them  
16 before?

17 MS. ROSS: No.

18 MR. BARRY: Thank you, Judge. This  
19 lady is fine. Thank you very much.

20 THE COURT: All right, Mr. Everhart.

21 MR. EVERHART: Thank you. Good  
22 morning, Ms. Ross. I'm Jeff Everhart, and  
23 along with Bob Geary, the gentleman in the  
24 middle of the table, I represent Andre Graham.  
25 He is the young man charged with the offenses



1 which Mr. Barry has just mentioned. I  
2 understood you to say you never sat on a jury  
3 before?

4 MS. ROSS: No.

5 MR. EVERHART: Either criminal or  
6 civil?

7 MS. ROSS: Ut-huh.

8 MR. EVERHART: Have either you or any  
9 members of your immediate family ever been the  
10 victims of a violent crime?

11 MS. ROSS: My son was going to ODU,  
12 and he was held up but he wasn't injured.

13 MR. EVERHART: He was robbed?

14 MS. ROSS: Yes.

15 MR. EVERHART: Do you recall whether  
16 or not anyone was ever charged with that crime?

17 MS. ROSS: I don't think so.

18 MR. EVERHART: Was anyone ever  
19 caught?

20 MS. ROSS: No.

21 MR. EVERHART: How long ago was that,  
22 please, ma'am?

23 MS. ROSS: It was in January about a  
24 year ago.

25 MR. EVERHART: January of '93

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1 perhaps?

2 MS. ROSS: Yes.

3 MR. EVERHART: Do you recall whether  
4 the assailant was black or white, male or  
5 female?

6 MS. ROSS: He was a black person that  
7 held my son up.

8 MR. EVERHART: As you can see Mr.  
9 Graham is a black young man. As you saw from  
10 the photograph which Mr. Barry showed you, the  
11 young lady who was killed in this incident was  
12 a white young woman. The gentleman, Edward  
13 Martin, was a, is a white man. Would the fact  
14 that we have a white victim and black  
15 defendant, would that in any way enter into  
16 your deliberations or predisposition of the  
17 case?

18 MS. ROSS: I don't think so because I  
19 work for the state. I associate with a lot of  
20 black people there.

21 MR. EVERHART: Okay. You have no  
22 predisposition then to believe that because Mr.  
23 Graham is black that he is guilty?

24 MS. ROSS: No.

25 MR. EVERHART: Obviously not. If you

1 were to be part of the jury and if the jury  
2 were to find beyond a reasonable doubt that  
3 Andre Graham were guilty of these charges you  
4 understand that then there would be a second  
5 part of this case; do you understand that?

6 MS. ROSS: Yes.

7 MR. EVERHART: And, as Mr. Barry  
8 said, then the Commonwealth would have the  
9 opportunity to put on evidence, Mr. Geary and I  
10 on behalf of Mr. Graham, would have the  
11 opportunity to put on evidence. And, then you,  
12 the jury would have to reach a decision; do you  
13 understand that?

14 MS. ROSS: Yes.

15 MR. EVERHART: Would the fact that  
16 the victims are white and the defendant is  
17 black and the fact that your son has been, was  
18 robbed by a black person, would that in any way  
19 make you want to punish Mr. Graham more harshly  
20 if you were placed in that circumstance?

21 MS. ROSS: No. I think the severity  
22 of the crime would be --

23 MR. EVERHART: Would be -- you lost  
24 me there for a minute. I'm sorry.

25 MS. ROSS: The severity of the crime

1 would be what I would be --

2 MR. EVERHART: Would be what you  
3 would be focused on?

4 MS. ROSS: Right.

5 MR. EVERHART: You understand that  
6 Mr. Graham is charged with murder?

7 MS. ROSS: Yes.

8 MR. EVERHART: If you were to  
9 determine Mr. Graham were guilty of that murder  
10 and if you were to determine that that murder  
11 were during the course of the robbery of Mr.  
12 Martin, that would be capital murder; do you  
13 understand that?

14 MS. ROSS: Yes.

15 MR. EVERHART: You understand because  
16 I am telling you, correct?

17 MS. ROSS: Uh-huh.

18 MR. EVERHART: Do you mean when you  
19 say you would look at the severity of the  
20 crime, do you mean that if you found Mr. Graham  
21 guilty of capital murder that you would  
22 therefore be more inclined to impose the death  
23 penalty?

24 MS. ROSS: I wouldn't think so.

25 MR. EVERHART: You would be inclined



1 to? It's kind of the eye for the eye; is that  
2 what you're saying?

3 MS. ROSS: Yes, I suppose so, because  
4 I know if my child had been hurt in that by  
5 that I would be very hurt myself.

6 MR. EVERHART: Yes, ma'am, obviously.

7 MS. ROSS: I don't really believe if  
8 someone who is really guilty of something to be  
9 kept alive to perhaps in the future get out and  
10 do it again.

11 MR. EVERHART: So, I glean from your  
12 comments that you are predisposed if you found  
13 someone guilty of capital murder you would be  
14 predisposed therefore to impose the death  
15 penalty?

16 MS. ROSS: I would think so if it  
17 wasn't an accidental death.

18 MR. EVERHART: Yes, ma'am. And, I am  
19 not trying to pressure you. Please don't  
20 misunderstand, but you understand --

21 THE COURT: Do you understand you  
22 will hear evidence?

23 MS. ROSS: Pardon me?

24 THE COURT: Do you understand you  
25 will hear evidence on punishment?

1 MS. ROSS: That I will hear evidence?

2 THE COURT: On the punishment phase  
3 you will hear evidence.

4 MS. ROSS: As to what?

5 THE COURT: As to what punishment to  
6 impose?

7 MS. ROSS: Oh, it would be like you  
8 would have a choice?

9 THE COURT: Yes, ma'am, you would  
10 have a choice.

11 MS. ROSS: Okay.

12 THE COURT: Would you consider both  
13 of those choices after hearing the evidence and  
14 I instruct you as to the law?

15 MS. ROSS: Yes, I would consider  
16 both.

17 MR. EVERHART: May I, Your Honor?

18 THE COURT: Yes.

19 MR. EVERHART: Ms. Ross, I am not  
20 trying to press you. I am not trying to  
21 embarrass you. I understand the difficulty  
22 this is. Do you understand that in order to  
23 convict Mr. Graham of murder that the  
24 Commonwealth of Virginia, today represented by  
25 Mr. Barry, would have to convince you that the

1 killing was not accidental, it was an  
2 intentional volitional act on behalf of Mr.  
3 Graham; do you understand that?

4 MS. ROSS: Yes.

5 MR. EVERHART: Murder is by  
6 definition a premeditated killing; do you  
7 understand that?

8 MS. ROSS: Right.

9 MR. EVERHART: If Mr. Barry and the  
10 Commonwealth were able to convince you that  
11 Andre Graham killed Sheryl Stack and that that  
12 killing were in the commission of the robbery  
13 of Edward Martin, the young man that was with  
14 her, do you understand that that is what makes  
15 it capital murder?

16 MS. ROSS: Yeah.

17 MR. EVERHART: Do you understand that  
18 capital murder means you may impose the death  
19 penalty?

20 MS. ROSS: Yes.

21 MR. EVERHART: If in fact you were on  
22 the jury and if the jury convicted Andre Graham  
23 of capital murder there would only be two  
24 choices, the death penalty or life  
25 imprisonment; do you understand that?

1 MS. ROSS: (Shakes head yes).

2 MR. EVERHART: You understand because  
3 I am telling you. I know you have not been  
4 through this before.

5 MS. ROSS: Yeah.

6 MR. EVERHART: I am not trying to  
7 press you. You do understand what I am saying,  
8 though?

9 MS. ROSS: Yes.

10 MR. EVERHART: A few moments ago you  
11 indicated to me, or in response to my  
12 questions, that if Mr. Barry convinced you  
13 beyond a reasonable doubt that Andre Graham  
14 killed Sheryl Stack in the commission of the  
15 robbery of Edward Martin, that you would be  
16 predisposed, in other words going into it if he  
17 convinced you of that, you would be predisposed  
18 to impose the death penalty because you believe  
19 the death penalty would be the appropriate  
20 punishment for someone who had killed the young  
21 lady; am I right?

22 MS. ROSS: That's how I felt, yes.

23 MR. EVERHART: That's how you feel.  
24 Yes, ma'am. Thank you very much.

25 THE COURT: I will go on and excuse



1 her. There's no sense in going on. All right.

2 THE CLERK: Juror number 115, Barbara  
3 Cannady. Do you solemnly swear the answers you  
4 shall give shall be the truth, the whole truth,  
5 and nothing but the truth, so help you God?

6 MS. CANNADY: I do.

7 THE CLERK: Please have a seat.

8 THE COURT: Ms. Cannady, were you in  
9 the Circuit Court of the City of Richmond on  
10 June the 9th of this year when the grand jury  
11 was charged in this case?

12 MS. CANNADY: No, sir.

13 THE COURT: Do you know or are you  
14 related by blood or marriage in any way to  
15 Sheryl Stack, Edward Martin, or Andre Graham?

16 MS. CANNADY: No, sir.

17 THE COURT: This was a case that  
18 arose out of a parking lot of the Steak and Ale  
19 on Midlothian Pike. Have you read or heard  
20 anything about the case?

21 MS. CANNADY: No, sir.

22 THE COURT: So you have not formed or  
23 expressed any opinion as to the guilt or  
24 innocence of the accused?

25 MS. CANNADY: No, sir.

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1 THE COURT: All right. Do you have  
2 any religious, conscientious, or moral scruples  
3 that would keep you from imposing the death  
4 penalty in the proper case?

5 MS. CANNADY: No, sir.

6 THE COURT: Do you have any close  
7 members of your family that are involved in law  
8 enforcement?

9 MS. CANNADY: Yes, sir. Not law  
10 enforcement. He is a lawyer.

11 THE COURT: Lawyers are not law  
12 enforcement.

13 MS. CANNADY: It would be a lawyer.

14 THE COURT: What relation?

15 MS. CANNADY: He is my brother-in-  
16 law.

17 THE COURT: He is your brother-in-  
18 law. Does he practice criminal law or do you  
19 know?

20 MS. CANNADY: I don't believe, not  
21 criminal law, no, sir.

22 THE COURT: Would that affect you in  
23 any way?

24 MS. CANNADY: No, sir.

25 THE COURT: All right. I ask you

1 further, I will instruct you as to the law at  
2 the conclusion of this case. You might not  
3 agree with it but would you follow it?

4 MS. CANNADY: No.

5 THE COURT: You would not?

6 MS. CANNADY: I mean I have my own  
7 opinion.

8 THE COURT: I know. I didn't say  
9 your opinion. The law.

10 MS. CANNADY: I am sorry. Could you  
11 repeat that?

12 THE COURT: At the conclusion of this  
13 case I will instruct you as to the law in this  
14 case. Would you follow that?

15 MS. CANNADY: Yes, sir.

16 THE COURT: Are you sensible or any  
17 bias or prejudice whatsoever that would keep  
18 you from giving the Commonwealth and the  
19 accused a fair and impartial trial based on the  
20 law and evidence?

21 MS. CANNADY: No, sir.

22 THE COURT: All right. Would you try  
23 this case strictly on the law and the evidence  
24 as presented in this courtroom?

25 MS. CANNADY: Yes, sir.

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1 THE COURT: All right. Mr. Barry,  
2 you may ask your questions.

3 MR. BARRY: Have you ever had the  
4 opportunity to sit on a jury trial before?

5 MS. CANNADY: No, sir.

6 MR. BARRY: Okay. Well, let me just  
7 give you a couple of things so we can get these  
8 questions to you fairly quickly. You have been  
9 called in here as a juror. We are asking you  
10 questions to make sure that you are impartial.  
11 Both myself representing the Commonwealth and  
12 these gentlemen representing the defense want  
13 an impartial jury willing to listen to both  
14 sides, no preconceived notions. In this case  
15 because it is a capital murder case, first I am  
16 going to put on evidence that this defendant  
17 killed someone. In the event that the jury  
18 convicts, then we move into a second phase in  
19 which you have to determine whether he should  
20 get life or death. The only real question that  
21 I have and I think that they will have is can  
22 you remain impartial to both phases of the  
23 trial? Can you listen to both sides before you  
24 make a decision, both on guilt or innocence and  
25 on life or death? Because if you have some



1 moral reason why you can't even consider the  
2 death penalty then you are not impartial. Or  
3 if you have some moral reason why you can't  
4 consider a life sentence then you are not  
5 impartial. We're just looking to try to make  
6 sure that you will listen to both sides  
7 throughout this entire situation and if you can  
8 do that you're a good juror. Do you have any  
9 problems that you can think of on those issues?

10 MS. CANNADY: No, sir.

11 MR. BARRY: This lady is fine.

12 THE COURT: All right, Mr. Geary.

13 MR. GEARY: Ms. Cannady, my name is  
14 Bob Geary and as Mr. Barry said, I and Mr. Jeff  
15 Everhart represent Andre Graham that is on my  
16 left. I didn't hear your answer when the Judge  
17 asked you do you know anything about the case?

18 MS. CANNADY: No, sir, I don't, I  
19 haven't.

20 MR. GEARY: This shooting took place  
21 just about a year ago, October 8, 1993, at the  
22 Steak and Ale on Midlothian Turnpike. Do you  
23 know where the Steak and Ale on Midlothian is?

24 MS. CANNADY: Yes, sir.

25 MR. GEARY: Does that jog your

1 recollection about whether or not you've heard  
2 about this case?

3 MS. CANNADY: I haven't. I don't  
4 even read the newspaper.

5 MR. GEARY: You say don't know?

6 MS. CANNADY: No, I don't.

7 MR. GEARY: The procedure that Mr.  
8 Barry talked to you about, a capital murder  
9 case is unlike any other case in Virginia  
10 because it requires a rather substantial second  
11 phase if there is a conviction of capital  
12 murder. Before July 1st in Virginia in a  
13 regular criminal trial, if the accused was  
14 found not guilty it was over, he was not guilty  
15 and the jury was finished at that point. Now,  
16 we've changed the law in a murder case, in a  
17 capital murder case if you find the defendant  
18 not guilty of capital murder there is no second  
19 phase for the capital murder. If 12 people  
20 feel that the Commonwealth has proved beyond a  
21 reasonable doubt capital murder then we do have  
22 a second phase. In this case Mr. Barry told  
23 you the predicate, what we call the predicate,  
24 the underlying charge is robbery. And what  
25 makes it a capital murder is a murder

1 premeditated and murder during the course of a  
2 robbery. So, if 12 jurors found that Andre  
3 Graham was guilty of capital murder we have a  
4 second phase. In that second phase the  
5 procedure would be very much like the first  
6 phase in terms of the Judge offering some  
7 instructions to you at the beginning, the Judge  
8 giving you instructions at the end, and you  
9 hear evidence, the lawyers argue, and you have  
10 to go back out and make a second decision. The  
11 options at that time are limited to the two  
12 that Mr. Barry told you, either the death  
13 penalty or life imprisonment. What we are  
14 trying to find out is to make sure that we have  
15 12 fair and impartial jurors on all the issues  
16 but also on the issue of the death penalty  
17 versus life imprisonment. Before you came in  
18 here today had you formed any strong opinions  
19 about the death penalty?

20 MS. CANNADY: No, sir.

21 MR. GEARY: Have you had occasion to  
22 talk about it considerably with family friends  
23 or associates?

24 MS. CANNADY: Yes, sir.

25 MR. GEARY: And, despite all,

1           whatever that talking was, you formed no  
2           opinion about the death penalty in particular?

3           MS. CANNADY: No, sir.

4           MR. GEARY: Under Virginia law, as we  
5           get to the second phase, and we keep talking  
6           because if we get to the second phase means  
7           exactly that, if we get there. The Judge will  
8           give you additional jury instructions about  
9           what the standards are in the imposition of the  
10          death penalty and we will talk to you about the  
11          various factors that are involved in what you  
12          have to do. And, we will tell you that the  
13          alternative if you don't reach the death  
14          penalty is life imprisonment. I take it from  
15          what you told Mr. Barry that you're telling the  
16          defense also as well as the Court that you can  
17          listen to the evidence and make a fair  
18          decision, consider both the death penalty and  
19          life imprisonment based on what you hear, what  
20          the evidence is, and what the jury instructions  
21          are; is that correct?

22          MS. CANNADY: Yes, sir.

23          MR. GEARY: Andre Graham is, as you  
24          can see, is African American or black. The  
25          victim in this case, Sheryl Stack, was white.



1 And, Edward Martin is white. Does that cause  
2 you any concern in this case?

3 MS. CANNADY: No, sir.

4 MR. GEARY: The oath that you take as  
5 a juror will be that I will exclude everybody's  
6 race in this case and that I will try this case  
7 without regard to race in this case. Are you  
8 able to do that?

9 MS. CANNADY: Yes, sir.

10 MR. GEARY: Do you have any problem  
11 with that, any doubt at all about that?

12 MS. CANNADY: No, sir.

13 MR. GEARY: Thank you very much.

14 THE COURT: All right. She may be  
15 seated. No one is to be informed who the  
16 alternate juror is but you are not to tell  
17 anyone who it is.

18 MR. GEARY: Judge, would you allow  
19 Mr. Everhart and I have to a break so we can  
20 discuss the strikes before they come back?

21 THE COURT: Yeah. I have to get them  
22 all together. All right. We are continuing  
23 on. We will get three more. We will put them  
24 in the jury box, then we put all the names in  
25 the box. I will draw three out. They will be

1 additional jurors. I will tell y'all the  
2 statute doesn't say whether you have to strike  
3 one of those or not, it just says you get an  
4 additional, one additional peremptory challenge  
5 for every two additional jurors. So, I don't  
6 know, you get a strike. If I get two  
7 additional jurors I have to bring in six people  
8 but I am not going to get but one.

9 MR. GEARY: So the eight strikes of  
10 the 20 and then we will do the additional  
11 jurors?

12 THE COURT: No. We will do them all  
13 together.

14 MR. GEARY: All together.

15 THE COURT: Because if I separate  
16 they will know who is the alternate. And, my  
17 understanding of the theory behind the statute  
18 is not to let the alternate know so they will  
19 watch the case just like they are a juror.  
20 When we go into the deliberations I will strike  
21 that one extra additional juror.

22 MR. EVERHART: Just so I am clear,  
23 because right now I am not. It seems at first  
24 blush that we would, that our eight strikes  
25 would be confined to our first 20.

1 THE COURT: That's the way I would  
2 see it.

3 MR. EVERHART: And, we each have to  
4 strike one of the three. We will know who the  
5 alternate is but the jurors will not.

6 THE COURT: Just because we take them  
7 they are not alternates. They are not  
8 alternates until I draw them out of the box.  
9 Then they become alternates. Then I will tell  
10 you who the three are.

11 MR. EVERHART: That's what I mean  
12 when you -- maybe that's not what I mean.  
13 You're going to draw three names out of the hat  
14 sometime in a little while.

15 THE COURT: Just so we get three more  
16 jurors.

17 MR. EVERHART: You said a moment ago  
18 you weren't sure if the Commonwealth got to  
19 strike one of those and we got to strike one.  
20 That certainly makes more sense. I mean if you  
21 draw --

22 THE COURT: It says, "these  
23 additional jurors shall have the same  
24 qualifications and be considered and treated in  
25 every respect as regular jurors and be subject

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1 to examination and challenge as such jurors.  
2 There shall be drawn two more veniremen than  
3 the number of additional jurors desired."

4 MR. EVERHART: What section is that  
5 Judge, it is 19.2?

6 THE COURT: No, it's 8.01-360. "The  
7 plaintiff and defendant in a civil case of the  
8 Commonwealth and accused in a criminal case  
9 shall each be allowed one additional peremptory  
10 challenge for every two additional jurors. The  
11 Court shall select by lot those jurors to be  
12 designated additional jurors." The plaintiff  
13 and defendant in and so forth shall be advised  
14 by the court which jurors are additional jurors  
15 at the time the jury is impaneled. And then it  
16 goes on to say, however, in no event shall any  
17 juror be made aware of his status as a regular  
18 or additional juror until he is excused as a  
19 juror. So, what I really don't know, they  
20 don't know. Y'all don't have to strike them.  
21 The way I read that statute y'all don't have to  
22 strike the additional one. I am going to tell  
23 you who they are. Then you might want to  
24 strike them. You won't know it until I pull  
25 them out of the hat. I have to pull them out



1 of the hat then I will tell you. One of those  
2 20 might be an additional juror. They will get  
3 the, we will give the same voir dire to the  
4 next three.

5 THE CLERK: Juror number 475, Irvin  
6 Mason. Do you solemnly swear the answers you  
7 shall give shall be the truth, the whole truth,  
8 and nothing but the truth, so help you God?

9 MR. MASON: I do.

10 THE COURT: Mr. Mason, we are going  
11 to ask you some questions, not to embarrass you  
12 but to find your impartiality in this case.  
13 Were you present in the Circuit Court of the  
14 City of Richmond on June the 9th, 1994, at  
15 which time the grand jury was charged in this  
16 case?

17 MR. MASON: Excuse me?

18 THE COURT: Were you here on June the  
19 9th?

20 MR. MASON: No, sir.

21 THE COURT: Do you know or are you  
22 related in any way to the following three named  
23 persons, the first of which is Sheryl Stack,  
24 Edward Martin or Andre L. Graham?

25 MR. MASON: No, sir.

1 THE COURT: This case involved a  
2 crime out at the Steak and Ale on Midlothian  
3 Pike. One person was killed, one was shot. Do  
4 you know anything about the case or read  
5 anything about it?

6 MR. MASON: I have heard it in the  
7 newspapers.

8 THE COURT: You don't know nothing  
9 about the case?

10 MR. MASON: No, sir.

11 THE COURT: All right. Do you have  
12 any religious, conscientious or moral scruples  
13 that would keep you from imposing the death  
14 penalty in the proper case?

15 MR. MASON: No, sir.

16 THE COURT: All right. I will  
17 instruct you as to the law at the conclusion of  
18 this case. You might not agree with it but  
19 would you follow it? I said I will instruct  
20 you as to the law at the conclusion of the  
21 case. You might not agree with it but would  
22 you follow it?

23 MR. MASON: Yes, sir.

24 THE COURT: All right. Are you  
25 sensible of any bias or prejudice whatsoever

1 that would keep you from giving the accused and  
2 the Commonwealth a fair and impartial trial  
3 based on the law and the evidence?

4 MR. MASON: No, sir.

5 THE COURT: All right. Do you have  
6 any close members of your family that are  
7 involved in law enforcement such as police  
8 officer, sheriff?

9 MR. MASON: No, sir.

10 THE COURT: All right. I am  
11 satisfied. Mr. Barry?

12 MR. BARRY: No questions.

13 THE COURT: All right.

14 MR. EVERHART: We have no questions.

15 THE COURT: All right. You may be  
16 seated in the jury room.

17 THE CLERK: Juror number 566,  
18 Ingeborg Pershing. Do you solemnly swear the  
19 answers you shall give shall be the truth, the  
20 whole truth, and nothing but the truth, so help  
21 you God?

22 MS. PERSHING: I do.

23 THE CLERK: Please be seated.

24 THE COURT: Ms. Pershing, we are  
25 going to ask you some questions, not to

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1                   embarrass you but to find your impartiality in  
2                   this case. Were you in this courthouse on June  
3                   the 9th, 1994, at which time the grand jury was  
4                   charged? Were you here on June the 9th?

5                   MS. PERSHING: Pardon me?

6                   THE COURT: Were you here in this  
7                   courthouse on June the 9th?

8                   MS. PERSHING: No.

9                   THE COURT: Are you related by blood  
10                  or marriage or do you know --

11                  MS. PERSHING: I was here one time in  
12                  court for a traffic ticket. I don't remember  
13                  the date.

14                  THE COURT: You didn't hear the grand  
15                  jury charged, did you?

16                  MS. PERSHING: No.

17                  THE COURT: All right. Are you  
18                  related by blood or marriage or do you know  
19                  Sheryl Stack, Edward Martin or Andre L. Graham?

20                  MS. PERSHING: No.

21                  THE COURT: This is a crime which  
22                  allegedly involved a killing and a wounding out  
23                  at the Steak and Ale on Midlothian Pike. Do  
24                  you know anything about the case?

25                  MS. PERSHING: I read something about



1 it a long time ago about something happening in  
2 the parking lot.

3 THE COURT: All right. Did you  
4 express or form an opinion as to the guilt or  
5 innocence of the accused?

6 MS. PERSHING: No, sir.

7 THE COURT: Do you have any religious

8 --

9 MS. PERSHING: Yes.

10 THE COURT: -- moral, or  
11 conscientious scruples against the imposition  
12 of the death penalty?

13 MS. PERSHING: No.

14 THE COURT: At the conclusion of this  
15 case I will instruct you as to the law. You  
16 might not agree with it but would you follow  
17 that law?

18 MS. PERSHING: I will.

19 THE COURT: Do you have any close  
20 members of your family that are police officers  
21 or sheriffs or anything like that?

22 MS. PERSHING: No, sir.

23 THE COURT: All right. Are you  
24 sensible of any bias or prejudice whatsoever  
25 that would keep you from giving the

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1 Commonwealth and the accused a fair and  
2 impartial trial based on the law and evidence?

3 MS. PERSHING: No, sir.

4 THE COURT: All right. Any  
5 questions, Mr. Barry?

6 MR. BARRY: Ms. Pershing, good  
7 morning.

8 MS. PERSHING: Good morning, sir.

9 MR. BARRY: My name is Learned Barry.  
10 I will be representing the Commonwealth.

11 MS. PERSHING: Yes, sir.

12 MR. BARRY: These two gentlemen will  
13 be representing the defendant.

14 MS. PERSHING: Yes, sir.

15 MR. BARRY: Have you ever had the  
16 opportunity to sit on a trial before?

17 MS. PERSHING: No, sir.

18 MR. BARRY: Okay. Well, you're going  
19 to start off with a pretty serious trial. This  
20 involves both murder and maiming, which is very  
21 bad. And, there may become the possibility  
22 during this trial where you as a juror will  
23 have to consider whether the defendant gets  
24 life or he gets the death sentence. The only  
25 thing we want you to do now is to be able to

1 tell us honestly that you will consider the  
2 evidence from both sides, both the prosecution  
3 and the defense, before you arrive at any  
4 decision on what to do with this case. We  
5 don't want you to already have your mind made  
6 up. You want you to be willing to listen to  
7 both sides. Do you have any problem with that  
8 at all?

9 MS. PERSHING: No, sir, none  
10 whatsoever.

11 MR. BARRY: Very good. This lady is  
12 fine, Judge. Thank you.

13 THE COURT: All right, Mr. Everhart.

14 MR. EVERHART: Thank you, Your Honor.  
15 Good morning Ms. Pershing. I am Jeff Everhart.

16 MS. PERSHING: Good morning.

17 MR. EVERHART: How are you today?

18 MS. PERSHING: Fantastic.

19 MR. EVERHART: Good. Along with Mr.  
20 Geary, the gentleman at the center of the  
21 table, we represent Andre Graham, the gentleman  
22 at the end. Do you know Mr. Geary or Mr.  
23 Graham by any chance?

24 MS. PERSHING: No, no.

25 MR. EVERHART: As Mr. Barry just

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1 indicated, Mr. Graham is charged with an  
2 offense which if he is convicted there is the  
3 possibility that the jury might impose a death  
4 penalty; do you understand that?

5 MS. PERSHING: Yes, sir.

6 MR. EVERHART: Do you also understand  
7 that the trial is held possibly in two parts.  
8 In the first part the Commonwealth would try to  
9 convince you beyond a reasonable doubt that  
10 Andre Graham committed these crimes; do you  
11 understand that?

12 MS. PERSHING: Yes, sir.

13 MR. EVERHART: You are not under any  
14 predisposition that Mr. Graham has to prove he  
15 is innocent, are you?

16 MS. PERSHING: No, presumed innocent  
17 until proven guilty.

18 MR. EVERHART: Until proven right.  
19 And, you know that it's Mr. Barry's, not only  
20 his job, but basically Mr. Geary and I can sit  
21 there and not ask any questions and it is up to  
22 Mr. Barry to carry the day; do you understand  
23 that?

24 MS. PERSHING: Yes, sir.

25 MR. EVERHART: Now, if Mr. Barry



1 convinces you and your fellow jurors beyond a  
2 reasonable doubt that Mr. Graham is guilty of  
3 capital murder, then there is the second part  
4 of the hearing. And that's where the  
5 Commonwealth tries to convince you that the  
6 appropriate punishment is death and we try to  
7 convince you that life is the more, not  
8 appropriate but at least a better alternative  
9 to death; do you understand that?

10 MS. PERSHING: Yes, sir.

11 MR. EVERHART: Now, the two victims  
12 in this case, the young lady, Sheryl Stack and  
13 Mr. Edward Martin are both white. Andre Graham  
14 is black. Does the fact that he is black and  
15 they are white, does that affect you in any way  
16 as far as listening to the evidence?

17 MS. PERSHING: None.

18 MR. EVERHART: If you were to  
19 determine that Mr. Graham were guilty of the  
20 charges, would the difference in the races lead  
21 you to punish or to be inclined to punish Mr.  
22 Graham more harshly or more severely?

23 MS. PERSHING: No, sir, none.

24 MR. EVERHART: Have either you or any  
25 members of your family ever been the victim of

1 a violent crime?

2 MS. PERSHING: I was one time robbed  
3 at work.

4 MR. EVERHART: At work?

5 MS. PERSHING: Yes. I work on the  
6 toll booth.

7 MR. EVERHART: Yes, ma'am. I saw  
8 that on the information. How long ago was  
9 that, Ms. Pershing?

10 MR. EVERHART: It's going to be three  
11 years I think in November, yeah, three years.

12 MR. EVERHART: Three years this  
13 November?

14 MS. PERSHING: Yes, sir.

15 MR. EVERHART: Was the individual  
16 that robbed you, was it a young man or a young  
17 woman?

18 MS. PERSHING: Young man.

19 MR. EVERHART: Was the man black or  
20 white?

21 MS. PERSHING: He was black, but it  
22 didn't make no difference.

23 MR. EVERHART: It makes no  
24 difference, you were robbed, right?

25 MS. PERSHING: Yes.

1 MR. EVERHART: Did he use a firearm?

2 MS. PERSHING: No.

3 MR. EVERHART: No firearm involved?

4 MS. PERSHING: I didn't see none, no.

5 MR. EVERHART: Okay. The fact that,  
6 would the fact that you were once robbed affect  
7 your ability in any way to give both Mr. Graham  
8 and the Commonwealth a fair trial?

9 MS. PERSHING: (Shakes head no).

10 MR. EVERHART: You're shaking your  
11 head no.

12 MS. PERSHING: No.

13 THE COURT: You may be seated. You  
14 may be seated in the jury room.

15 THE CLERK: Juror number 743, Wendy  
16 Turner. Do you solemnly swear the answers you  
17 shall give shall be the truth, the whole truth,  
18 and nothing but the truth, so help you God?

19 MS. TURNER: I do.

20 THE COURT: Ms. Turner, we are going  
21 to ask you some questions, not to embarrass you  
22 but to find your impartiality in this case.  
23 Were you present in the Circuit Court here on  
24 June the 9th of this year?

25 MS. TURNER: No.

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1 THE COURT: Are you related by blood  
2 or marriage or do you know Sheryl Stack, Edward  
3 Martin, or Andre L. Graham?

4 MS. TURNER: No.

5 THE COURT: This crime allegedly took  
6 place on the parking lot of the Steak and Ale  
7 on Midlothian Pike. Do you know anything about  
8 it?

9 MS. TURNER: No, I don't.

10 THE COURT: Do you have any  
11 religious, conscientious or moral values that  
12 would keep you from imposing the death penalty  
13 in the proper case?

14 MS. TURNER: No.

15 THE COURT: All right. Do you have  
16 any close members of your family that are  
17 involved in law enforcement such as police  
18 officer, DEA?

19 MS. TURNER: No.

20 THE COURT: All right. At the  
21 conclusion of the case I will instruct you as  
22 to the law. You might not agree with the law  
23 but would you follow it?

24 MS. TURNER: Yes.

25 THE COURT: Are you sensible of any



1 bias or prejudice whatsoever that would keep  
2 you from giving the Commonwealth and the  
3 accused a fair and impartial trial based on the  
4 law and the evidence?

5 MS. TURNER: No.

6 THE COURT: So, you're saying you  
7 will try this case on the law and the evidence  
8 as presented here?

9 MS. TURNER: Yes, sir.

10 THE COURT: All right, Mr. Barry, if  
11 you have any questions.

12 MR. BARRY: Ms. Turner, just briefly.  
13 This case is a capital murder case which means  
14 there is the potential of a life or death  
15 sentence. The only thing I am looking for as  
16 the Commonwealth's representative is a  
17 commitment from you that if we get to the stage  
18 where you have to consider life or death that  
19 you will listen to both sides. I am obviously  
20 going to be seeking the death penalty. They  
21 are obviously going to be asking for life. Can  
22 you listen to both sides fairly and impartially  
23 before your make your decision?

24 MS. TURNER: Yes.

25 MR. BARRY: Okay. That's great.

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1 Thank you. This lady is fine, Judge. Thank  
2 you.

3 THE COURT: All right, Mr. Geary, Mr.  
4 Everhart.

5 MR. EVERHART: Thank you. Good  
6 afternoon, Ms. Turner. I'm Jeff Everhart.  
7 Along with Bob Geary, the gentleman seated at  
8 counsel table, we represent Andre Graham, the  
9 gentleman at the end. Do you know Mr. Geary or  
10 Mr. Graham?

11 MS. TURNER: No, I don't.

12 MR. EVERHART: As far as I know you  
13 and I have never met, correct?

14 MS. TURNER: No.

15 MR. EVERHART: Have you or any  
16 members of your immediate family ever been the  
17 victims of a violent crime?

18 MS. TURNER: No.

19 MR. EVERHART: Have you ever  
20 discussed with your friends or family your  
21 feelings on the death penalty?

22 MS. TURNER: Yes.

23 MR. EVERHART: And, do you have  
24 strong feelings either in favor of or against  
25 the imposition of the death penalty?

1 MS. TURNER: No. I think that pretty  
2 much depends on the crime.

3 MR. EVERHART: When you say that do  
4 you have any thought or predisposition that if  
5 one were convicted of capital murder that, I  
6 guess what I am saying is the old eye for an  
7 eye. If I am convicted of capital murder do I  
8 therefore then deserve to have death imposed on  
9 me?

10 MS. TURNER: No.

11 MR. EVERHART: I believe what you're  
12 telling me is that you're going to listen to  
13 all the evidence first to determine whether or  
14 not Mr. Graham is guilty?

15 MS. TURNER: Yes.

16 MR. EVERHART: And, if the  
17 Commonwealth can't convince you beyond a  
18 reasonable doubt, you're going to find him not  
19 guilty, correct?

20 MS. TURNER: That's correct.

21 THE COURT: But, if they convince you  
22 beyond a reasonable doubt, we're going to have  
23 a separate hearing, not really a separate  
24 hearing but another part of this trial, and as  
25 Mr. Barry said he is going to try to present

1 evidence to you to convince you that the death  
2 penalty is warranted, and we will try to  
3 present evidence to you to convince you that is  
4 not the appropriate punishment; do you  
5 understand that?

6 MS. TURNER: Yes.

7 MR. EVERHART: And, you're telling  
8 me, the Commonwealth, and the Court that you  
9 would listen to all that evidence and formulate  
10 an opinion or decision based strictly on the  
11 evidence?

12 MS. TURNER: That's correct.

13 MR. EVERHART: Thank you very much.

14 THE COURT: All right. She may go to  
15 the jury room. Draw the names. I will tell  
16 you gentlemen so you know, it comes from the  
17 lot of 23, the additional jurors.

18 MR. GEARY: The three you're taking  
19 out of the hat now come from the 23?

20 THE COURT: They are the additional  
21 jurors.

22 MR. GEARY: So, what we do we bring  
23 20 in and strike eight?

24 THE COURT: No. We will bring 23 in.  
25 You strike five apiece.



1 THE CLERK: Judge, there are 23 names  
2 in this box.

3 MR. GEARY: Judge, you're going to  
4 bring them in and let us at least look at them  
5 and take a short break?

6 THE COURT: No. We are going to take  
7 a short break before I bring them in.

8 THE CLERK: Juror number 848.

9 THE COURT: Well, wait a minute.  
10 Just give me those.

11 NOTE: Recess.

12 THE COURT: All right. Who is this  
13 one juror? One juror said somebody brought him  
14 some pictures. I don't know anything about  
15 this.

16 NOTE: At this point juror number 97,  
17 Carter Bryant, is brought into the courtroom.

18 THE COURT: All right. The jury  
19 officer reports to me that you've seen some  
20 pictures? Do you know anything about the case?

21 MR. BRYANT: The pictures that were  
22 brought into my place of employment, brought in  
23 by the police department after what had  
24 happened. I remembered this when I was sitting  
25 in the jury room.

1 THE COURT: Based on that have you  
2 expressed or formed an opinion as to the guilt  
3 or innocence --

4 MR. BRYANT: It was a picture, if we  
5 had seen, I think it was one of the victims. I  
6 believe one of the vehicles was found on our  
7 property. But none of us had seen anything or  
8 knew anything, no.

9 THE COURT: Well, have you expressed  
10 or formed an opinion as to that?

11 MR. BRYANT: No, sir.

12 THE COURT: You just saw a picture?

13 MR. BRYANT: I just saw a picture. I  
14 was reading in my pamphlet and I just wanted to  
15 bring that up.

16 THE COURT: You don't know anything  
17 about the crime, just the picture in the  
18 apartment complex?

19 MR. BRYANT: Yes.

20 THE COURT: The one that you manage?

21 MR. BRYANT: Where I work at.

22 THE COURT: All right. You did not  
23 express or form an opinion?

24 MR. BRYANT: No, sir.

25 THE COURT: All right. Y'all want to

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1 ask him any questions?

2 MR. BARRY: I don't have any  
3 questions. Thank you, sir.

4 MR. GEARY: Judge, if I may. Are you  
5 saying, sir, that somebody showed you a picture  
6 at some point in the past?

7 MR. BRYANT: Of one of the victims I  
8 believe.

9 MR. GEARY: Do you recall how long  
10 ago that was?

11 MR. BRYANT: That was right after the  
12 crime.

13 MR. GEARY: Was it a uniformed  
14 officer?

15 MR. BRYANT: No, it was a detective.

16 MR. GEARY: You're saying that  
17 detective, Detective Dalton sitting right here?

18 MR. BRYANT: No, I don't believe so.  
19 It was a detective. He just said I am a  
20 detective, and have you seen this person?

21 MR. GEARY: That's the sum and  
22 substance of what it was?

23 MR. BRYANT: Yes.

24 MR. GEARY: Thank you very much.

25 THE COURT: All right. You may go

1 back. All right, gentlemen, we are at the  
2 point now where we bring the jurors in, in the  
3 line in which they were picked. Wait just a  
4 minute, please, Sheriff.

5 NOTE: At this point the prospective  
6 jury is brought into the courtroom, and counsel  
7 take their strikes.

8 THE CLERK: Ladies and gentlemen, as  
9 I call your names please stand to the left side  
10 of the jury box. Edie Miles; Dawn Hamlin;  
11 Nella Wilkerson; Charles Shores; Brenda  
12 Barnett; Joann Irby; Barbara Cannady; Irvin  
13 Mason; Ingeborg Pershing; and Wendy Turner.  
14 Counsel at the bar agree with the strikes?

15 MR. BARRY: Yes, ma'am, the  
16 Commonwealth does.

17 THE CLERK: Mr. Everhart and Mr.  
18 Geary?

19 MR. EVERHART: Yes, ma'am.

20 THE CLERK: Those jurors just  
21 stricken from the jury panel are excused at  
22 this time. Please see the jury officer before  
23 leaving the building and thank you for  
24 attending this morning.

25 MR. GEARY: Judge, may we approach



1 the bench with Mr. Barry?

2 THE COURT: Not about this case, no.  
3 All right. Those that are chosen I am going to  
4 ask you to retire. The Court has to take up  
5 some business with counsel.

6 JURY OUT

7 MR. GEARY: Judge, I have a motion to  
8 make in regard to the Commonwealth's strikes  
9 under Batson v. Kentucky. My observations were  
10 that the final 23 persons were 11 blacks and 12  
11 whites. The Commonwealth has struck, from my  
12 observations, five strikes, four were black  
13 persons. On the basis of that criteria in  
14 Batson I think we have established a prima  
15 facie claim under the statute.

16 THE COURT: Well, how many did you  
17 strike? What did you strike?

18 MR. GEARY: We had five strikes. We  
19 struck four blacks and one white.

20 THE COURT: So, it's like it's equal  
21 there. All right, Mr. Barry.

22 MR. BARRY: Judge, in each case,  
23 except for the white person that I struck, I  
24 was just seeking to get off the youngest  
25 individuals that I could find that might feel

1 some sympathy for the defendant because their  
2 age is comparable to his age.

3 THE COURT: Were any younger whites  
4 left on there? I don't know.

5 MR. BARRY: Not that I can, not that  
6 I can tell. Most of the blacks that I thought  
7 I struck off were either late teens or early  
8 twenties. And the white lady that I struck off  
9 was simply because she had some question, we  
10 were rushing there at the end and I had some  
11 question in my mind as to whether or not she  
12 was fully committed to the death penalty.

13 THE COURT: Who was that?

14 MR. BARRY: The toll lady, Ingeborg  
15 Pershing. She was the only one that was not a  
16 factor of age. The four that I struck off were  
17 not only the youngest but in each case I think  
18 the Court will note that when we were  
19 discussing the death penalty none in my mind  
20 appeared to be extremely strong. They would  
21 just say yes, that they would listen to the  
22 evidence. But, in my mind viewing each of  
23 their testimony both through defense counsel's  
24 and myself.

25 THE COURT: Who did you strike, Mr.

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Barry? I really don't know.

MR. BARRY: I struck Edie Miles.

THE COURT: Wait just a minute. Okay.

MR. BARRY: She was the second one in. She appeared to be hesitant on the death penalty. She was a young black female. Dawn Hamlin, young black female. And I think the next two are whites that were struck by the defense. So, they struck two whites next to the two blacks. Irvin Mason gave us no responses and he was also, appeared to me to be the same age as the defendant. Wendy Turner was also young. So, those were my strikes, Irvin Mason, Wendy Turner, Dawn Hamlin, Edie Miles, and Ms. Pershing, who was white.

THE COURT: Wait a minute. You struck Edie Miles?

MR. BARRY: Right.

THE COURT: Dawn Hamlin?

MR. BARRY: That's correct.

THE COURT: Who else?

MR. BARRY: I also struck Irvin Mason, a young black male.

THE COURT: All right. Irvin Mason.

MR. BARRY: And, Wendy Turner and

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1 Ingeborg Pershing. So, the last three I  
2 struck, one white, two blacks.

3 THE COURT: Well, I don't know the  
4 age of the present jurors. I don't know the  
5 age of these three. I am supposed to inquire.

6 MR. EVERHART: Judge, just in looking  
7 at the sheet I will just point out this. The  
8 Commonwealth's strikes in order, number one was  
9 Dawn Hamlin. The record reflects, or the  
10 information reflects she is 21 years old. The  
11 second strike the Commonwealth made was Irvin  
12 Mason. The information sheet reflects that he  
13 is 32 years of age. The third strike is Wendy  
14 Turner, 24 years of age.

15 THE COURT: Wait a minute.

16 MR. EVERHART: I'm sorry.

17 THE COURT: Well, that's one of the  
18 last ones. How old is she?

19 MR. EVERHART: Twenty-four. She is  
20 24.

21 THE COURT: She didn't look it. She  
22 didn't look it, but, anyway.

23 MR. EVERHART: Ingeborg Pershing's  
24 age is 59. And, Edie Miles, who was the  
25 Commonwealth's last strike, is 29.



1 THE COURT: What was the last strike?

2 MR. EVERHART: Edie Miles.

3 THE COURT: How old is she?

4 MR. EVERHART: Twenty-nine years of  
5 age.

6 MR. GEARY: Judge, in regard to Mr.  
7 Barry's response, the prima facie claim, I  
8 think the argument might hold water until we  
9 get to Mr. Mason. Mr. Mason, the 32 year old  
10 black male, was not asked any questions. He is  
11 older than two white males that are still on  
12 the jury. He is older than Mr. Stein, who is  
13 25. He is older than Mr. Bryant. Mr. Bryant  
14 was the juror that came back in who testified  
15 he had seen a picture last year. I don't think  
16 the age argument for the Commonwealth holds  
17 water with regard to Mr. Mason.

18 THE COURT: I don't know about Mr.  
19 Mason. He didn't look 23, I mean 32 to me.

20 MR. GEARY: Judge, I would ask that  
21 the master list for today and yesterday be made  
22 a part of the record.

23 MR. BARRY: Unfortunately I was not  
24 looking at the master list. I was using my  
25 common observation. I do not have access and

1 did not use the information that they have.  
2 The only thing I have is a document showing  
3 whether or not these people had criminal  
4 records, none of which had criminal records. I  
5 have all the criminal records of the jurors  
6 that were not selected. It is my opinion that  
7 that fellow that you say is 32 looked the same  
8 age as the defendant. That's what I based my  
9 decision on.

10 MR. GEARY: Judge, I don't think the  
11 prosecution can argue to the Court on a Batson  
12 motion that they used age and all of us have  
13 the ages right here if we choose to use them.  
14 And I think we should be forced to use them.  
15 We have the information, the address so we know  
16 where these people live. We have their age,  
17 their occupation and the kind of work they do.  
18 And, it's clear, at least when you look at the  
19 master list, when the prosecutor says I didn't  
20 strike the whites because they were older, I  
21 struck the blacks because they were younger.  
22 Irvin Mason, according to the data provided to  
23 us by the Clerk's Office and Sheriff's  
24 Department, Mr. Mason was the same age or  
25 perhaps a little bit older than Mr. Bryant and

1 seven years older than Mr. Stein. So, if age  
2 is a factor, the reason for it I think arguably  
3 the Commonwealth cannot hide behind the fact  
4 they choose not to use this information that we  
5 share, because it is here for all of us. We  
6 use it in every case, every jury case we have.

7 MR. BARRY: Well, if the only issue  
8 is now that we're down to Irvin Mason, Judge, I  
9 will tell the Court he was asked no questions  
10 by either side and I was not prepared to leave  
11 him on the jury not knowing what he believed  
12 one way or the other. The defense chose not to  
13 ask him any questions. I chose not to ask him  
14 any questions. It wasn't enough information  
15 for me to make a decision on him. So, in  
16 addition to the age factor, it's a fact that  
17 nothing else was asked of him.

18 MR. GEARY: Judge, I would suggest to  
19 you that that shows there was a predeter-  
20 mination to strike him. And, that's why the  
21 prosecution --

22 THE COURT: Well, he can do that as  
23 long as it is not based on race or sex.

24 MR. GEARY: The problem is when they  
25 say it is based on the age.

1 THE COURT: I've never known Mr.  
2 Barry to show any kind of prejudice in my years  
3 of knowing him.

4 MR. GEARY: Well, I am not accusing  
5 him of that, Judge.

6 THE COURT: You are accusing him.

7 MR. GEARY: I'm accusing him of the  
8 fact that we are claiming in this capital  
9 murder case that he did not comply with Batson  
10 v. Kentucky.

11 THE COURT: Well, let me put it this  
12 way. Mr. Barry been a member of this Court,  
13 the Bar of this Court for a long time. Mr.  
14 Barry, were any of your strikes made on the  
15 basis of race or sex?

16 MR. BARRY: None. That's the reason  
17 I took a white woman off the jury also because  
18 it was not based upon race, sex, or gender?

19 THE COURT: You give me your word on  
20 that as an attorney?

21 MR. BARRY: Yes, sir.

22 THE COURT: Well, I am not in a  
23 position -- now Mr. Everhart or Mr. Geary you  
24 may explain your strikes.

25 MR. EVERHART: Judge.



1 THE COURT: The right belongs to the  
2 juror. Not to you and not to him.

3 MR. EVERHART: Judge, I --

4 THE COURT: Now, who did you strike?

5 MR. EVERHART: Judge, we struck --

6 MR. GEARY: Judge, I don't think the  
7 Commonwealth has filed a reverse Batson at this  
8 point.

9 THE COURT: Well, the Court has.  
10 This Court thinks everybody's constitutional  
11 rights --

12 MR. EVERHART: Judge, I will be glad  
13 to tell you who I struck if you will just let  
14 me say one thing first. We are not accusing  
15 Learned Barry of being a racist. And, that's  
16 not what Batson is all about. Batson has been  
17 used, there is a recent case coming out of  
18 Virginia Beach where the prosecutor who was a  
19 black man, a case was reversed based on his  
20 strikes on Batson. So, the Courts, and not  
21 just Your Honor, the Courts tend to say well,  
22 you know, I know this lawyer, certainly he is  
23 not a racist, therefore his strikes must not  
24 have been racially motivated. But, that's not  
25 what we're looking at. And obviously you would

1 think that a young man, if memory serves me, an  
2 Assistant Commonwealth's Attorney at the beach  
3 was a young black man. And yet the Virginia  
4 Court of Appeals overturned that case based on  
5 Batson.

6 THE COURT: Let move along. Let's  
7 go. That will probably be en banc and  
8 reversed.

9 MR. EVERHART: It may well be. I  
10 don't know. But, nonetheless, I just want you  
11 to understand we are basing our objection on  
12 the fact that of the strikes and we are  
13 suggesting to the Court that the reasons are  
14 not racially neutral.

15 THE COURT: Are you saying -- I  
16 really don't understand that. You can't strike  
17 a black person; is that what you're saying?

18 MR. EVERHART: No. That's not what  
19 we're saying at all. What we're saying is  
20 this.

21 THE COURT: He has given reasons why  
22 he has done it in his observations. You don't  
23 believe him?

24 MR. EVERHART: It doesn't matter  
25 whether I believe him or not.

1 THE COURT: That's right.

2 MR. EVERHART: No, it is not. If it  
3 was just whether I made the decision or not I  
4 would rule in my favor. So, I mean what I --  
5 that's not a, unfortunately for me that's not a  
6 fair question. The Court obviously will  
7 disagree. I am just saying what I think is not  
8 the most important thing. What we are saying  
9 is this, Judge, Mr. Geary made the motion.

10 THE COURT: That's right.

11 MR. EVERHART: The Commonwealth  
12 responded. The Commonwealth's initial response  
13 was I struck the youthful people because I  
14 thought they most closely approximate the age  
15 of Andre Graham, I thought they might be more  
16 sympathetic. When you look at the record, and  
17 the record is, Mr. Barry says he didn't rely on  
18 the record, nonetheless the record is there.  
19 And, what it shows is that for whatever reason  
20 there is a young white man 25 years old, that's  
21 Jeffrey Stein, who remains on the jury. The  
22 Commonwealth was not impressed enough with his  
23 age to feel it necessary to strike him. There  
24 is also another young white man 32 years of  
25 age, the same age as Mr. Mason. So that what

1 we are saying is it doesn't -- like Mr. Geary  
2 said, it doesn't hold water. If the Court  
3 rules against us please note our exception.

4 THE COURT: What you're saying is I  
5 have to call Mr. Barry a liar.

6 MR. EVERHART: No. That's not what  
7 I'm saying at all.

8 THE COURT: Give me the reason why  
9 you struck four whites.

10 MR. EVERHART: Yes, sir. Judge, we  
11 struck, first we struck Brenda Barnett, a black  
12 woman. The record reflects she is 34 years of  
13 age. We struck her because, the Court will  
14 recall that on voir dire she indicated she had  
15 three cousins who had been killed, all since  
16 1987. Next we struck Charles Shores. Mr.  
17 Shores was a 54 year old white gentleman. My  
18 notes reflect that Mr. Shores appeared to have  
19 difficulty understanding the questions, his  
20 son-in-law is employed by the Virginia State  
21 Police. He sat on a previous murder trial in  
22 which they found the defendant guilty. All  
23 those things gave me considerable concern. The  
24 next strike we made was Joann Irby. Let me  
25 find her. My notes reflect Ms. Irby was a



1 white female, 53 years of age, unemployed. My  
2 notes reflect that she's never been on a jury  
3 before. She was, had a very hard affect about  
4 her. She was generally unresponsive both to  
5 the questions of the Court, Mr. Barry and  
6 counsel. She recalls something happening at  
7 the Steak and Ale. And, Mr. Geary's notes  
8 reflect that at some point during voir dire she  
9 made the comment that the punishment should fit  
10 the crime. We interpreted that the eye for an  
11 eye which I think I have asked about that on  
12 voir dire with several other jurors. I don't  
13 recall if I asked her. That is the reason we  
14 struck her. Those are the reasons that we  
15 struck her. The next strike, Barbara Cannady.  
16 My notes reflect Ms. Cannady is 35 years of  
17 age, white female, she is an account  
18 representative, this is her first jury. Quite  
19 frankly I did not get good vibrations from her,  
20 for lack of a better description. I don't know  
21 what else to tell you. Some of the responses  
22 she gave me, I didn't get good vibrations from  
23 her, Judge. The last strike we had was Nella  
24 Wilkerson. Ms. Wilkerson was a white female,  
25 57 years of age. The Court will recall on voir

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1           dire she indicated that her son had been shot  
2           in 1993 and that concerned us. That's why we  
3           struck her.

4           THE COURT: All right. What do you  
5           propose to do?

6           MR. BARRY: Judge, do you know the  
7           current makeup of the jury? Because I remember  
8           Batson was a case in which there was a black  
9           defendant. They had 12 white jurors. And I  
10          don't think I have 12 white jurors. What is  
11          the makeup?

12          THE COURT: Well, I think Batson goes  
13          further. In fact, if anything it is based on  
14          race or sex. You can't do that. It certainly  
15          is true if you have one or two people --

16          MR. BARRY: I think we need to put on  
17          the record, Judge, as to the makeup of the jury  
18          so the Court will know what we have.

19          THE COURT: We have five blacks and  
20          seven whites.

21          MR. BARRY: I've got six blacks,  
22          seven whites.

23          MR. EVERHART: I have six blacks,  
24          seven whites. I have four men, nine women.  
25          The male makeup is three white, one black. The

1 women, four white, five black.

2 THE COURT: I don't know how you can  
3 get more of a proportionately populated jury  
4 than this. What do you propose? You want to  
5 start all over again?

6 MR. GEARY: Can I talk to Mr. Barry,  
7 please?

8 THE COURT: Yes.

9 NOTE: At this point a side bar  
10 conference is held, out of the presence of the  
11 Court Reporter.

12 THE COURT: All right. Is y'all's  
13 conclusion agreeable?

14 MR. GEARY: Yes, sir, Judge. Can we  
15 have half a minute?

16 THE COURT: I might add the Court has  
17 concluded that Mr. Barry did not make any of  
18 his strikes based on race nor gender.

19 MR. EVERHART: Judge, can I have one  
20 moment? I just want to explain to Mr. Graham.

21 THE COURT: All right you will  
22 withdraw your motion?

23 MR. GEARY: After this recess I  
24 talked to Mr. Barry. We reached a compromise  
25 on it which I withdraw the motion in exchange.

1 for what Mr. Barry and I have done.

2 THE COURT: Is that agreeable Mr.  
3 Barry?

4 MR. BARRY: Yes, it is, Judge.

5 THE COURT: All right. We have one  
6 other motion. Since all this has been going on  
7 the press has been pounding my door. And I  
8 don't know, I have heard different rumors that  
9 you changed your mind. I don't know if you  
10 have or not. You can address that now and tell  
11 me whether or not you have. They can block out  
12 the faces of all the witnesses. They cannot  
13 take the jurors pictures.

14 MR. BARRY: I understand. The  
15 Commonwealth understands. They told me going  
16 in they would not take the pictures of the  
17 jurors. I appreciate that. I have two  
18 witnesses that I do not want cameras in the  
19 courtroom on. One is because of the family's  
20 request, one because of the tactical decision  
21 on my part. I don't want the cameras in the  
22 courtroom on Priscilla Booker, nor do I want  
23 the cameras in the courtroom for Edward Martin.  
24 Other than that they are fine.

25 THE COURT: I assume that I will make



1           them not take the pictures of those two.

2           MR. BARRY: Well, it's the camera  
3           that causes the problem.

4           THE COURT: Well, I will tell them to  
5           take the cameras back.

6           MR. BARRY: That's, those are my two  
7           objections.

8           THE COURT: See, the problem is this,  
9           we might as well not have the statute. That's  
10          the problem. All right.

11          MR. GEARY: Judge, on behalf of my  
12          client and myself we do not wish the cameras in  
13          the courtroom at all.

14          THE COURT: Pardon?

15          MR. GEARY: We do not wish to have  
16          the cameras in under any circumstances.

17          THE COURT: Well, what reason? You  
18          just don't want to?

19          MR. GEARY: Well, one of the reasons,  
20          Judge, in my talking to the prosecutors and the  
21          defense lawyers in Chesterfield, about the  
22          feeling of the jury there, the fact that they  
23          wanted their names sealed, I think that says it  
24          all. My client has a right to a public trial  
25          but that public trial doesn't extend to the

1 right of the media to come in here and publish  
2 that case. If it's a question of whether or  
3 not any cameras in the courtroom, it's the  
4 Commonwealth and the defendant have the right,  
5 and the defendant is of the opinion he just  
6 doesn't want the cameras in the courtroom.

7 THE COURT: Well, if he gives me some  
8 reason other than the fact he just doesn't want  
9 them. The idea of the statute is, it says  
10 reason for good cause shown. I could, now with  
11 Mr. Barry, I'm going to tell them to take them  
12 out for those two witnesses.

13 MR. GEARY: Judge, I can give you  
14 argument that has been made for years about not  
15 having cameras in the courtroom. I think that  
16 in certain respects, with certain witnesses,  
17 things change. Things change with other people  
18 that are involved. My client has been through  
19 one trial already in Chesterfield. There has  
20 been a lot of publicity about him and the co-  
21 defendant. That's the reason specifically we  
22 don't want the cameras in the courtroom.

23 THE COURT: You have no other reason  
24 than that?

25 MR. GEARY: Judge, there is also the

1 problem in terms of the amount of the publicity  
2 in terms of between Mr. Graham and his co-  
3 defendant. There were threats made from the  
4 co-defendant to Mr. Graham as a result of the  
5 Chesterfield trial because he testified in that  
6 case. That is also a factor.

7 THE COURT: I don't understand the  
8 factor. What's the factor? I don't  
9 understand.

10 MR. GEARY: Judge, in the  
11 Chesterfield case the testimony there, Mark  
12 Sheppard was the perpetrator of that crime.  
13 After that Mr. Graham was threatened both in  
14 the Chesterfield Jail and the City Jail. Part  
15 of that was the fact there was a lot of  
16 publicity, including televised portions of the  
17 trial in Chesterfield, and we feel that the  
18 same thing can happen here.

19 THE COURT: He feels his life is in  
20 jeopardy?

21 MR. GEARY: Well, to give you an  
22 example, Judge, we had a problem at the City  
23 Jail in terms of where Sheppard was on the tier  
24 down there. And when Mr. Graham came back from  
25 Chesterfield he had immediate problems in the

1 building where the people with Sheppard had  
2 previously been housed and because he had a lot  
3 of friends there. There were threats made  
4 against him when he came back. I mean that's a  
5 real problem which you can verify through the  
6 Sheriff's Department down at the jail.

7 THE COURT: Well, if it's some  
8 question of security and safety, I will stand  
9 by my earlier ruling. Y'all both seem to want  
10 it. There's no sense in me changing it. All  
11 right. We will call the jury in, get the  
12 opening statements, endeavor to get the opening  
13 statements. Lunch is going to be awhile.

14 MR. BARRY: Judge, I am fully  
15 prepared to make an opening statement and begin  
16 the case whenever you want to feed the jury.

17 THE COURT: All right. I will wait  
18 until the food comes. All right. Return the  
19 jury. Y'all have to tell me the name of the  
20 alternate.

21 MR. GEARY: You want that now?

22 THE COURT: Yes.

23 JURY IN

24 THE CLERK: Members of the jury,  
25 please stand and raise your right hand. You



1 shall well and truly try and try deliverance  
2 make between the Commonwealth of Virginia and  
3 Andre L. Graham, the defendant at the bar, and  
4 a true verdict render, according to the law and  
5 the evidence, so help you God? Thank you. You  
6 may be seated.

7 Ladies and gentlemen of the jury, the  
8 defendant at the bar stands indicted with eight  
9 felonies to which he has pled not guilty.  
10 Should you find him guilty or not guilty say so  
11 and no more, so harken to the evidence.

12 THE COURT: All right, any motions?

13 MR. EVERHART: Judge, we have a  
14 motion to separate the witnesses except for  
15 those who are allowed to remain by statute.

16 THE COURT: All right. All who will  
17 testify please retire to the hall. Do not  
18 discuss your testimony until the conclusion of  
19 the trial.

20 MR. BARRY: Judge, all my witnesses  
21 have left the room.

22 MR. GEARY: Can I just have one  
23 minute, Judge?

24 MR. BARRY: Are you all set, Judge?

25 THE COURT: Yes.

1 MR. BARRY: All right. Let me tell  
2 you why you're here. On October 8 of last year  
3 two young kids, Sheryl Stack and Edward Martin  
4 were working at the Steak and Ale Restaurant.  
5 They were both going to school and they were  
6 working at night. One of them got off at 8:00,  
7 the other one got off at 10:00. They both went  
8 out because they were friends, they were good  
9 friends. They had a late breakfast, they came  
10 back to the parking lot at Steak and Ale at  
11 approximately 2:30, 3:30 in the morning. And,  
12 they commenced to kiss. And they stayed inside  
13 her car until the defendant came up to the side  
14 that Edward Martin was sitting in and with a  
15 loaded gun told them to get out of the car. He  
16 told them to come around the car and give them  
17 their wallets and their money. He then told  
18 them to lay on the ground. He told them to  
19 close their eyes and if they cooperated they  
20 would not be hurt. They were both shot in the  
21 face and head. He was shot while he was laying  
22 on his back staring up. She was shot in the  
23 back of the head while she was staring down.  
24 This man, the defendant present today in Court,  
25 will be identified by Edward Martin, who

1 survived the shooting, as the man who had the  
2 gun, the man that robbed him and the man that  
3 had the gun in his hand prior to the shooting.  
4 Believe it or not, a short distance away a man  
5 by the name of James Jones was working at the  
6 Red Roof Inn, and he will come forward and tell  
7 you that he was there that night, he was  
8 working, and while he was working he heard two  
9 sounds that sounded like shots or cars  
10 backfiring, boom, boom, in that exact manner.  
11 And, he got someone else who was working at the  
12 place with him and they walked out and they  
13 found the two individuals lying there in their  
14 own blood. He immediately went and got the  
15 police. The police came. They took both the  
16 individuals to MCV. The, what I call the squad  
17 that deals with the homicides came and they  
18 took pictures of the scene and they found two  
19 bullets that had passed through the heads of  
20 the individuals lying side by side. So, at  
21 that point we knew they had been shot. We knew  
22 that it had been fired by a .45. The other end  
23 you have them working in the individuals at the  
24 hospital. I have two doctors, the neurologist  
25 who initially tried to save both of these

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1 children, and then, of course, the medical  
2 examiner who finally had to deal with Sheryl  
3 Stack's death. The neurologist, excellent,  
4 excellent, man. He will testify and tell you  
5 what happened. He will tell you that Edward  
6 Martin suffered an absolutely devastating  
7 wound. The gun appeared to have been put into  
8 his mouth, came up through, destroyed his eye  
9 and blew out this portion of his brain.  
10 Sheryl, on the other hand, suffered an injury  
11 that was so traumatic through the back of her  
12 head that they were unable to save her. All  
13 right. At this point the police investigation  
14 is at a standstill. We know we had this  
15 killing occur. I have presented evidence to  
16 you now of witnesses to a certain point. But,  
17 the next step is we get a break. And the break  
18 is this man is arrested. He is placed in a  
19 confinement facility. And, while he is in the  
20 confinement facility he makes a phonecall to a  
21 known party on a known phone number. And we  
22 have a Chesterfield County Sheriff who is on  
23 the ball, and he listens to the conversation  
24 and the conversation is between this man and  
25 his girlfriend. And, he says get rid of it,



1 get rid of it. Well, Deputy McGregor will  
2 testify that when he heard that and the manner  
3 in which it was being spoken by this man  
4 several weeks after the killing, he immediately  
5 went to his counterpart, Detective Showalter,  
6 and said you better look into this because this  
7 prisoner, Andre Graham, is calling his  
8 girlfriend telling her to get rid of it. So,  
9 immediately the Chesterfield County Detectives  
10 went to the home of his girlfriend, Priscilla  
11 Booker, and low and behold they found, and I  
12 will introduce this later, this weapon. And,  
13 this weapon was tested and it matched the  
14 bullets that were shot through both bodies.  
15 And, then in addition to that, Priscilla Booker  
16 then commenced to tell the police that her  
17 boyfriend, Andre Graham, came back on the  
18 night, early morning of October 8, came back  
19 with one, a car that she had never seen before,  
20 a red sportscar. And, we know that that's the  
21 red sportscar that was missing from the scene,  
22 and that they had all these CD's. And, of  
23 course, the police say well, where are all  
24 these CD's? These CD's are missing from the  
25 back of Edward Martin's car. And, she took us

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1 to a storage facility here in Richmond and we  
2 got all the CD's and they were identified by  
3 the Martin family as having been belonging to  
4 Martin, Edward Martin. And, then on the CD's,  
5 we printed them, and out of hundreds of CD's  
6 almost 30 of the CD's had his fingerprints on  
7 them. So, the case, the case that I bring  
8 before you is that of capital murder. It's the  
9 killing of a human being during a robbery, in  
10 which the defendant is the triggerman. We have  
11 other charges that go along with it. But, if  
12 you will just understand the first part of the  
13 case is Edward Martin telling you what he can  
14 remember of the incident, and the second part  
15 of the case is the police and the witnesses  
16 corroborating everything that Edward Martin  
17 tells you in the first part of the case. I  
18 anticipate that my case will perhaps take four  
19 hours. It is one of the most important four  
20 hours of your life. Please listen to it.

21 THE COURT: All right, whichever.

22 MR. GEARY: Thank you, Judge. May it  
23 please the Court, one of the things that Judge  
24 Wilkinson is going to tell you, and it may be  
25 twice, maybe three times, is that when either I

1 or Mr. Barry or Mr. Everhart stand here that  
2 what we say is not evidence. We are simply on  
3 one side or the other and we try to persuade  
4 you to one side or another. Obviously you can  
5 tell after hearing Mr. Barry for awhile that he  
6 is a very good persuader. What he told you was  
7 what he expects, hopes, and anticipates the  
8 facts in this case are going to be. And, what  
9 you have to do in terms of the evidence that  
10 you get in this case, both from the testimony  
11 and from the documents and from the exhibits  
12 that the Commonwealth is going to offer, is a  
13 framework when you look at these things is  
14 whether or not at the end of the day, end of  
15 tomorrow, whenever it is, has the Commonwealth  
16 of Virginia proven to you the charges beyond a  
17 reasonable doubt. And, there are eight  
18 charges. In addition to the capital murder  
19 charge there is a charge of robbery of Edward  
20 Martin, attempted robbery of Ms. Stack, the  
21 aggravated wounding of Mr. Martin, and four gun  
22 charges. So, there are eight charges all  
23 together. You will hear today and tomorrow and  
24 from the witness in terms of what did happen  
25 almost a year ago. Mr. Barry told you that the



1 shooting took place in the, what the newspapers  
2 would say the early morning hours. This was a  
3 Thursday night, Friday morning, October 8, 7  
4 and 8 really of last year. And it will be, I  
5 am not sure about it maybe 2:00, 3:00, 4:00,  
6 sometime in there. You can imagine this is off  
7 Midlothian Turnpike behind the Steak and Ale  
8 building on Midlothian Turnpike. This is a  
9 fairly big parking lot behind the Steak and Ale  
10 and where Mr. Jones worked, and Mr. Barry  
11 talked to you about it, the Red Roof Inn. You  
12 all come into those two places from a street  
13 that has a cul-de-sac. I think the name is  
14 Gresham Woods Road, or something like that.  
15 You just pull in there and it's only about a  
16 block and a half long. You have the Steak and  
17 Ale, as you pull in on your right and a big  
18 parking lot. Chippenham Parkway is just on the  
19 right behind the Steak and Ale. The off-ramp  
20 of Chippenham northbound coming onto Midlothian  
21 Turnpike is right, it's almost in the parking  
22 lot of the Steak and Ale. And, on the left  
23 hand side across from the Red Roof Inn you have  
24 another restaurant. Then you have two parking  
25 lots which is the K-Mart. And I would suggest

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1 to you when you listen to all the testimony in  
2 this case, for instance with Mr. Jones when he  
3 testifies about what he was able to see, 2:00  
4 or 2:30 or 3:00, or whenever it was in the  
5 morning that Mr. Barry told you, just pay  
6 careful attention, whether it's four hours he  
7 puts the case on or six hours that we are all  
8 here together, listen very carefully because  
9 you're going to have to make that big decision  
10 in this case. And that decision is based on  
11 what the Commonwealth puts on here today in  
12 terms of their case and as to whether or not  
13 they have proven the case beyond a reasonable  
14 doubt. Obviously the charges and the evidence  
15 are horrendous. The young girl is dead. The  
16 young man is maimed and wounded. There is no  
17 doubt about that. But, the question you have  
18 to decide is whether they have proved this man  
19 sitting over there a seat away from Mr.  
20 Everhart did it beyond a reasonable doubt.  
21 It's never a contest between, well, I think he  
22 did it, you know, the evidence looks like he  
23 did it. It's got to be beyond a reasonable  
24 doubt. As you hear these witnesses testify, as  
25 you see the exhibits that the Commonwealth is

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1           going to offer, that's the framework you have  
2           to use in this case. Thank you very much.

3                   MR. BARRY: Michael Ayers is my first  
4           witness.

5  
6                   MICHAEL AYERS, a witness called on  
7   behalf of the Commonwealth, having first been sworn,  
8   testified as follows:

9                   DIRECT EXAMINATION

10   BY MR. BARRY:

11                   Q           Good afternoon, sir. Would you  
12   introduce yourself please to these ladies and gentlemen.

13                   A           My name is Michael Ayers.

14                   Q           And, sir, back on October 7th, going  
15   over to the early morning hours of October 8th of last  
16   year, where were you working, sir?

17                   A           Steak and Ale Restaurant.

18                   Q           You, in effect, were the manager at  
19   that time; is that correct?

20                   A           Yes, I was.

21                   Q           And, you had two employees working  
22   for you at that time; is that correct? Actually you had  
23   many.

24                   A           Yes, exactly.

25                   Q           Did you have a young lady by the name

Michael Ayers - Direct

1 of Sheryl Stack working for you?

2 A Yes, I did.

3 Q When did you hire her?

4 A Approximately two months prior. I  
5 can't remember the exact date but it had been two to three  
6 months prior to.

7 Q Do you remember on the evening of  
8 October 7th of what her duties were and what time she was  
9 to get off?

10 A She was my opening hostess. She was  
11 gone at, when we closed at 10:00.

12 Q Ten o'clock in the evening. Okay.  
13 Are your employees allowed to park in the area around  
14 where they work there at the Steak and Ale?

15 A Yes, they are.

16 Q All right. Had she done so that  
17 evening?

18 A Yes, she did.

19 Q How about Edward Martin, was he also  
20 an employee of your restaurant at that time?

21 A Yes, he was.

22 Q Was he working that evening the same  
23 shift or a comparable shift?

24 A Yes. He worked the same shift except  
25 he had gotten off a bit earlier.

Michael Ayers - Direct

1 Q Had he also parked outside the  
2 business that evening?

3 A Yes.

4 Q When you were called back to that  
5 scene much later in the early morning hours of October 8;  
6 is that correct?

7 A Well, I really wasn't called to the  
8 scene. I was scheduled to open the restaurant at 8:00 in  
9 the morning. That's when I showed up there.

10 Q All right. The police at that point  
11 interviewed you and you were able to determine that the  
12 cars that had been parked the previous night, one of them  
13 was still there; is that correct?

14 A Yes.

15 Q What car was that, sir?

16 A It was Sheryl's.

17 Q She had what sort of car?

18 A A blue Volvo.

19 Q All right. Now, was Edward's car  
20 there, sir?

21 A No.

22 Q It had been removed?

23 A Yes.

24 Q Both these individuals were working  
25 for you that previously evening?



1 A Yes.

2 Q If you will come out of your witness  
3 box just for a second. Come over here with me next to  
4 these jurors. I am going to show you what's going to be  
5 marked Commonwealth's exhibit number 1. I want you to  
6 take a look at that. Ladies and gentlemen, this is, I  
7 know it's a little difficult but you will have a chance to  
8 see it later. But, when I say you're the manager of the  
9 Steak and Ale, could you point to that and show me just  
10 exactly where the Steak and Ale Restaurant was?

11 A Inside this building right here.

12 Q All right. He has put his finger on  
13 that building, the Steak and Ale. All right. And, the  
14 red area behind there is what, sir?

15 A The Red Roof Inn.

16 Q All right. Red Roof Inn is over  
17 here. And, now, there is a circled area that you can see.  
18 What is that? Is there any significance to the circled  
19 area?

20 A That's where Sheryl had her car  
21 parked.

22 Q That's not, what, more than a hundred  
23 feet from your business?

24 A Yes.

25 MR. BARRY: Fine. Thank you, sir.

1 Commonwealth's exhibit one.

2 THE COURT: All right.

3 MR. BARRY: I would like to have the  
4 jury look at it.

5 NOTE: Received and so marked by the  
6 Clerk as Commonwealth's Exhibit Number 1.

7 MR. GEARY: Judge, can I ask Mr.  
8 Ayers to stand here and I will get the exhibit,  
9 if I could.

10 THE COURT: Are you through with it,  
11 Mr. Barry?

12 MR. BARRY: Yes, I am, sir.

13 THE COURT: All right. Yes, you can  
14 do that, Mr. Geary.

15  
16 CROSS EXAMINATION

17 BY MR. GEARY:

18 Q Mr. Ayers, just for identification  
19 purposes, that road is an off-ramp from Chippenham?

20 A Yes, it is.

21 Q And, this would be northbound this  
22 way?

23 A Northbound is over on this side.

24 Q This is Midlothian Turnpike here  
25 going back into the city?

1                   A            Yes, that's east, that's west.

2                   Q            All right. And, these are pine trees  
3 right here; are they not?

4                   A            They sure are.

5                   Q            And, they are very, would you say  
6 they are eight or ten feet wide?

7                   A            I would say so.

8                   Q            The lighting that you have from the  
9 Steak and Ale parking lot, they are all eight to ten feet  
10 high, sort of like colonial lights?

11                  A            Uh-huh.

12                  Q            They have a yellow tint?

13                  A            Yes.

14                  Q            And, you have three light poles over  
15 on this side; is that correct?

16                  A            I would say so.

17                  Q            Do you see them in the picture?

18                  A            They are hard to see in the picture  
19 but if you can there is one there, there, and there, is a  
20 fourth one there.

21                  Q            Would you say they are separated by  
22 eight or nine parking spaces, each of the lights?

23                  A            Yes.

24                  Q            And, you have one over this side,  
25 too, don't you?

1                   A           Yes, one over here, one here, and  
2 there's a row of them going on the back along there.

3                   Q           The row on the back, the lights, the  
4 big lights back here are on the Red Roof Inn parking lot?

5                   A           We have some that are, the colonial  
6 ones here and the Red Roof ones shining here.

7                   Q           And, the Red Roof ones are the ones  
8 that are high, their back is to your restaurant and they  
9 shine on the Red Roof parking lot; is that correct?

10                  A           Yes.

11                  Q           And, the Red Roof parking lot,  
12 because this is not three dimensional, their lot goes  
13 down; does it not?

14                  A           Yes.

15                  Q           You go down, it's a little hill here?

16                  A           Yes.

17                  Q           You also have two or three lights on  
18 the back of your restaurant, yellow lights near the doors?

19                  A           Actually at that time we have, we  
20 didn't have, we have, now have flood lights there but they  
21 weren't there at that time.

22                  Q           Back on October 7th and 8th of last  
23 year you did not have the three flood lights like you have  
24 now; is that correct?

25                  A           No. They were recently. We had



1 lanterns that had hundred watt bulbs in them.

2 Q You had spotlights or flat white  
3 lights over here where your garbage is; is that correct?

4 A Uh-huh.

5 Q You have two in the back of the  
6 building?

7 A Yes.

8 Q And, they shoot out into the parking  
9 lot?

10 A Well, just kind of shines under that,  
11 the dumpster area.

12 Q You didn't have them back in October  
13 of 1993?

14 A The two on the corner that are  
15 standing up, they were there. The ones that are here,  
16 there is one that shines into that corner, and shines onto  
17 the restaurant.

18 Q There are no spotlights that shine  
19 into this area here where the tree is?

20 A No.

21 Q And, the tree itself is about 30 or  
22 40 feet high, isn't it?

23 A Uh-huh.

24 Q And, these, you've got two different  
25 branches shooting up in the air, it has substantial leaves

1 on it right up to this time of the year, doesn't it?

2 A Yes.

3 Q And, there are four parking spaces  
4 right here?

5 A Yes.

6 Q When you got there on the morning of  
7 the 8th was the Volvo the only car that was in any of  
8 those four spots?

9 A Yes.

10 Q Did the police still have the crime  
11 scene --

12 A Blocked off?

13 Q Yes.

14 A They were over from the side, just  
15 all around the back.

16 MR. GEARY: Those are all the  
17 questions I have, Judge.

18 THE COURT: All right. Are y'all  
19 through with the witness?

20 MR. BARRY: Yes, sir.

21 THE COURT: You may be excused.

22 MR. BARRY: Thank you, Mr. Ayers, for  
23 coming in.

24 THE COURT: Next witness?

25 MR. BARRY: James Jones.

1                                JAMES JONES, a witness called on  
2 behalf of the Commonwealth, having first been sworn,  
3 testified as follows:

4                                DIRECT EXAMINATION

5 BY MR. BARRY:

6                                Q                    Good afternoon, sir.

7                                A                    Hello.

8                                Q                    Would you introduce yourself please  
9 to these folks.

10                              A                    I'm James Jones.

11                              Q                    Mr. Jones, how old are you, sir?

12                              A                    I am 25.

13                              Q                    Did you have occasion back in October  
14 of last year around the 7th, leading over to the early  
15 morning hours of the 8th of October, to be working at the  
16 Red Roof Inn here in south Richmond?

17                              A                    Yes, I did.

18                              Q                    What was your job on that particular  
19 evening?

20                              A                    I am night auditor, or I was night  
21 auditor there.

22                              Q                    Did there come a time that evening in  
23 addition to your duties you came out of your inside job to  
24 take a smoke?

25                              A                    Yes, I did, at about I guess a little

James Jones - Direct

1 bit after 2:00. Myself and the night laundry woman came  
2 out and she met me up at the front desk and we were  
3 standing around talking, smoking.

4 Q Did you have occasion when you were  
5 outside that evening to look over into the area known as  
6 the parking lot of the Steak and Ale?

7 A Initially it was vacant, and then two  
8 cars drove around and parked side by side. And a guy and  
9 a girl got out and were talking and started kissing.

10 Q Can you describe the cars to us, sir.

11 A One was a little sportscar, red or  
12 dark orange or maroon, or something and one was a Volvo.

13 Q All right. Now, would it have been a  
14 blue Volvo?

15 A I don't remember.

16 Q You don't remember. Now, the two  
17 that got out, can you give us any sort of description?

18 A The girl was blond and the guy had  
19 dark hair.

20 Q Okay.

21 A And, they were just about the same  
22 size, same height.

23 Q Did you have an opportunity to  
24 observe very long before you went back inside?

25 A Yeah, for probably about, they stood



1 there for about half an hour while we stood outside, for  
2 about half an hour.

3 Q So, at the point you observed them  
4 they were just standing out there kissing?

5 A Well, they were talking, too, but  
6 they stood there as long as we did.

7 Q Did you ever see them go into the  
8 car?

9 A No. I saw them get out of the car.  
10 They were leaning up against one of the cars at that  
11 point.

12 Q When you went back inside can you  
13 tell the ladies and gentlemen of the jury how long you  
14 were inside before you heard something unusual?

15 A I went back in at about 3:15 and  
16 about 25 minutes later, 20, 25 minutes later we heard, I  
17 heard two loud noises. It was like I couldn't tell if  
18 somebody smashed some windows with a club or -- I never  
19 actually heard a gunshot in person. So we had some  
20 problems with people smashing cars.

21 Q Can you approximate the noise for the  
22 jury. I know that is not easy.

23 A It just like one after the other,  
24 real quick.

25 Q Loud noises?

1                   A           Yeah.

2                   Q           What was the time space between both  
3 of the noises?

4                   A           It couldn't have been more than like  
5 two or three seconds, maybe up to ten seconds. They were  
6 both pretty quick.

7                   Q           After you heard the noises what did  
8 you do?

9                   A           The woman and I started walking  
10 towards the window just to see if I could see anybody  
11 smashing the car. I saw a car driving away and I looked  
12 over in our parking lot to see if I saw anybody smashing  
13 windows because I had problems with that before, as I  
14 said. And I saw this one car driving away. I figured  
15 that if somebody was smashing windows that's who it was.  
16 And it had, it was a large looking old Thunderbird, large  
17 car, with those horizontal lights that those cars have.  
18 And then I got on the walkie-talkie with Cheryl and she  
19 asked me if I had heard the noises and I said yes. And  
20 she asked me if I wanted to meet her out in the breezeway  
21 and check and see if any of the cars had been broken into.  
22 And, like an idiot I said yes. And, so we met out in the  
23 breezeway and we looked at the front of the hotel and we  
24 look at the back of the hotel. And then we noticed the  
25 Volvo with its lights on and it was running. And, the

1 other car wasn't there.

2 Q So, the red car was now gone?

3 A Uh-huh.

4 Q All right. Did you go over to see  
5 what was going on?

6 A We waited about a minute or two. We  
7 were talking, deciding whether we should go over there or  
8 not. We decided we would both go over there, walk over  
9 there. And, as we were walking over there we saw a body  
10 laying on the ground. She started, not screaming, but she  
11 got all upset and we both got all upset and ran back to  
12 the front desk.

13 Q At that point you called the police?

14 A Right.

15 Q Is that the same exact location that  
16 you had seen the two people before, except now they are in  
17 a different position?

18 A Excuse me?

19 Q Same location that you had observed  
20 before, the two people kissing?

21 A Well, the Volvo had been moved. It  
22 was turned around I think, but I don't know how. It was  
23 pushed up or something. They had been leaning against the  
24 car when they were kissing. They were lying on the  
25 ground. She was lying on the ground and it was the white

1 shiny blond hair that I saw. I didn't see the guy.

2 Q I understand, sir. At that point you  
3 observed her, you didn't have a chance to see him?

4 A Yes.

5 Q The same individuals that you had  
6 seen earlier kissing?

7 A Right.

8 MR. BARRY: This gentleman's name is  
9 Mr. Geary. Would you answer his questions.

10 MR. GEARY: Can I ask Mr. Jones to  
11 approach the jury and show exhibit number one.

12 THE COURT: Yes.

13

14 CROSS EXAMINATION

15 BY MR. GEARY:

16 Q Mr. Jones, would you take a look at  
17 this aerial photograph. Do you recognize it?

18 A It's the Red Roof Inn.

19 Q Just hold this right here. That's  
20 the Red Roof Inn; is that correct?

21 A That's correct.

22 Q That's where you worked?

23 A Right, yes.

24 Q How long before October the 8th last  
25 year had you worked at the Red Roof Inn?



1                   A           Four years. I've worked there five  
2 years now, sir.

3                   Q           You're still there now?

4                   A           That's correct.

5                   Q           That's the street that comes in off  
6 of Midlothian?

7                   A           That's correct.

8                   Q           There's no outlet right here?

9                   A           Right.

10                  Q           Is this the Red Lobster?

11                  A           Red Lobster there.

12                  Q           Here is the K-Mart?

13                  A           Uh-huh.

14                  Q           The K-Mart has real high lights with  
15 lights on both poles?

16                  A           Uh-huh.

17                  Q           Very well lit parking lot?

18                  A           Uh-huh.

19                  Q           Your lot here has four overhead  
20 poles; is that correct?

21                  A           (Shakes head yes).

22                  Q           Right down this road here?

23                  A           They didn't at the time of the --  
24 right.

25                  Q           So, back on October 8th you didn't

1 have those lights?

2 A No.

3 Q Those lights today, each of them  
4 would be about 25 or 30 feet high?

5 A Yes, it's a well lit parking lot.

6 Q It's well lit now?

7 A Yes, it wasn't, I mean the Steak and  
8 Ale had lights that shown on ours.

9 Q I am talking about your lights today,  
10 those lights are real high?

11 A They have high ones. We had some, I  
12 don't know exactly, they were lower.

13 Q The parking lot is really down grade  
14 from Steak and Ale in your lot and your four high poles  
15 are placed along these strips down here; are they not?

16 A (Shakes head yes).

17 Q The Steak and Ale lights are the  
18 eight or ten feet high colonial lights that don't have a,  
19 they are not 25 or 30 feet high?

20 A I never really paid that much  
21 attention to the lights.

22 Q Did they have a yellow tint to those  
23 lights?

24 A I don't know.

25 Q Tell the jury when you took this

1 smoke break back whatever time it was, 2:00 you say, where  
2 are you at that point?

3 A Right here.

4 Q Are you outside the building?

5 A (Shakes head yes).

6 Q This is a two floor motel?

7 A Yes. This is two floors. This is  
8 where the front desk is right here.

9 Q Other person was named Cheryl?

10 A Uh-huh.

11 Q And, you came out there and you think  
12 it was about 2:00?

13 A No. When we went out it was sometime  
14 after 2:00. We came in around 2:15. I don't know exactly  
15 the time we went out, at least half an hour, 45 minutes.

16 Q How long do you think you were  
17 outside before you saw two cars pulls up?

18 A Not long.

19 Q They would have had to come in on  
20 this street and made make a right hand turn in here to the  
21 driveway into the Steak and Ale?

22 A Probably. Yes. I didn't see them  
23 come in on the street. I just noticed them pull around in  
24 that parking lot.

25 Q Show the jury with your finger where

1 the two cars were when you saw them the first time.

2 A Right about at, they were in front of  
3 this bush I think.

4 Q Now, do you recall this is a fairly  
5 large tree right there?

6 A I think they were in the back of the  
7 parking lot. I'm not sure if they parked all the way back  
8 here.

9 Q They were parked facing the off-ramp  
10 from Chippenham?

11 A Yes. They were somewhere in this  
12 vicinity where they have the circle.

13 Q Okay. When you saw the car, when you  
14 saw the cars in the parking spaces were the engines at  
15 some point turned off? Were the lights off?

16 A The lights were off.

17 Q And did you see them, were they  
18 standing between the two cars?

19 A Yes. When they were sitting there,  
20 they were leaning on one of the cars. They were parked,  
21 they parked side by side and they were leaning on one of  
22 the cars.

23 Q And, do you recall whether the cars  
24 were both facing you or one was facing the other way? Do  
25 you recall how they were, the two cars?



1 A They were both facing us.

2 Q And, how long were they out there  
3 before you went back in? Was it 15 minutes, half an hour?

4 A I would say about half an hour.

5 Q And, how long were you inside before  
6 you heard the two noises?

7 A I would say about 20, 25 minutes.

8 MR. GEARY: Judge, I ask he return to  
9 the witness stand.

10 THE COURT: All right.

11 MR. GEARY: Can I have a second,  
12 Judge?

13 THE COURT: All right.

14 MR. GEARY: No further questions,  
15 Judge.

16 THE COURT: All right. You may be  
17 excused, sir. All right, ladies and gentlemen  
18 of the jury, the lunch has arrived. Sheriff,  
19 take charge of the jury.

20 THE COURT: Gentlemen, we will take  
21 about half an hour for lunch.

22 NOTE: Lunch recess.

23 THE COURT: All right, Mr. Barry, you  
24 want to call your next witness?

25 MR. BARRY: Yes, sir. Officer Harold

1                   Giles.

2  
3                   HAROLD GILES, a witness called on  
4                   behalf of the Commonwealth, having first been sworn,  
5                   testified as follows:

6                   DIRECT EXAMINATION

7                   BY MR. BARRY:

8                   Q           Good afternoon, sir. Would you  
9                   introduce yourself please to these ladies and gentlemen.

10                  A           My name is Harold Giles. I work for  
11                  the City of Richmond, Police Department.

12                  Q           Sir, how long have you been a police  
13                  officer here in the City of Richmond?

14                  A           Approximately 18 months.

15                  Q           Have you had occasion to be assigned  
16                  to the area here in south Richmond back in October of last  
17                  year; is that correct?

18                  A           Yes, sir.

19                  Q           During the course of your normal  
20                  patrol did you receive a phonecall some time in the early  
21                  morning hours of October 8?

22                  A           Yes, sir.

23                  Q           Would you be kind enough to tell  
24                  these folks exactly what occurred from the point that you  
25                  received some sort of radio communication?

1                   A           I received a call of a man down in  
2 the 6800 block of Midlothian Turnpike behind the Steak and  
3 Ale. When I arrived I found a white female and a white  
4 male lying face down in a pool of blood. Both appeared to  
5 have been shot in the head. There was several personal  
6 items of the victims scattered about the area. Their  
7 hands were touching and they were trying to communicate to  
8 each other, but I couldn't make out what they were saying.

9                   Q           Their hands were actually touching?

10                  A           Yes, sir.

11                  Q           Were they facing down or facing up?

12                  A           They were facing down.

13                  Q           Both of them?

14                  A           Yes, sir.

15                  Q           What did you do after obviously --

16                  A           I immediately called for the  
17 ambulance who was staged outside the area, secured the  
18 area and let them take over.

19                  Q           Did you protect the crime scene until  
20 the detectives arrived at the scene?

21                  A           Yes, sir.

22                  Q           Was there one car there or was there  
23 two cars there?

24                  A           There was one car there.

25                  Q           Was that car on or off?

1                   A           It was on. The lights were on. The  
2 left door was opened.

3                   Q           And, you saw no red car there  
4 whatsoever?

5                   A           No, sir.

6                   MR. BARRY: Thank you. Answer this  
7 gentleman's questions, please.

8                   THE COURT: Any questions?

9                   MR. GEARY: Yes, Judge.

10

11                   CROSS EXAMINATION

12 BY MR. GEARY:

13                   Q           Mr. Giles, have you been shown any of  
14 the photographs, the aerial photographs in this case?

15                   A           Not here, sir.

16                   Q           When you got the call do you recall  
17 approximately what time in the morning it was?

18                   A           About 3:59, sir.

19                   Q           Three what?

20                   A           About 3:59, sir.

21                   Q           And, approximately what time was it  
22 when you pulled into the Steak and Ale parking lot?

23                   A           It couldn't have been more than a  
24 minute or so, sir. I was in the immediate area.

25                   Q           Do you recall when you pulled in did



1 you go in on that street, I understand there are two  
2 entrances to the Steak and Ale? There is one in front of  
3 the --

4 A I took the second entrance, sir.

5 Q The one behind it?

6 A Yes, sir.

7 Q When you pull into that second  
8 entrance to the Steak and Ale behind the building where do  
9 you see the car?

10 A When I pulled in there is a little  
11 median strip that separates the two parking lots.

12 Q When you say two parking lots, which  
13 other one are you talking about?

14 A Well, I saw the one parking lot but  
15 there is a median strip in between the grass. I pulled up  
16 as far as the car would go. Their car was on the other  
17 side of the median strip.

18 Q Do you recall whether it was parked  
19 near where the tree is?

20 A It was close to the tree. It was  
21 eight, ten feet away.

22 MR. GEARY: Judge, may I ask the  
23 officer to approach the jury with exhibit  
24 number one, the aerial.

25 THE COURT: Yes.

1 BY MR. GEARY: (Continuing)

2 Q Officer Giles, would you take a look  
3 at what has been identified as Commonwealth's exhibit  
4 number one, please?

5 A Yes, sir.

6 Q Do you recognize that as an aerial  
7 view of the Steak and Ale?

8 A Yes, sir.

9 Q And, if you would -- let me have it  
10 up this way so the jury can see it. Is that the Red Roof  
11 Inn there?

12 A Yes, sir.

13 Q And, you would have pulled in this  
14 little street right here; is that correct?

15 A Yes, sir.

16 Q And, this is the entrance you would  
17 have gone through?

18 A Yes, sir.

19 Q And, the median you're talking about,  
20 were is that?

21 A Right here, sir.

22 Q And, the area that is circled is that  
23 the area that the car was in?

24 A Yes, approximate area, sir.

25 Q Was the car facing towards the

1 entrance or facing towards Chippenham?

2 A It was facing this way.

3 Q And, were any lights on, either the  
4 outside lights or inside lights?

5 A The headlights were on the car.

6 Q Were the doors, either door opened or  
7 closed?

8 A The passenger door was open.

9 Q So, the passenger would have been on  
10 this side or here?

11 A Yes, sir.

12 Q The driver's door was closed?

13 A Yes, sir.

14 Q And, this is Chippenham, the ramp on  
15 Chippenham; is it not?

16 A Yes, sir.

17 Q And, did you see anyone else in the  
18 area over at the Red Roof Inn when you pulled in with your  
19 police car?

20 A Not there, sir. After I secured the  
21 crime scene I went over to two witnesses over in the area.

22 MR. GEARY: Thank you. Those are all  
23 the questions I have.

24 THE COURT: All right. Thank you.  
25 Do you have anymore Mr. Barry?

1 MR. BARRY: No, sir.

2 THE COURT: You may be excused.

3 MR. BARRY: Detective Searles please,  
4 Sheriff.

5  
6 THOMAS R. SEARLES, a witness called  
7 on behalf of the Commonwealth, having first been sworn,  
8 testified as follows:

9 DIRECT EXAMINATION

10 BY MR. BARRY:

11 Q Good morning, actually good  
12 afternoon, sir. Would you introduce yourself please to  
13 these ladies and gentlemen.

14 A Thomas R. Searles.

15 Q And, tell them what your specific  
16 assignment is here for the Richmond Police Department.

17 A I am a detective assigned to the  
18 Forensic Science Unit of the Richmond Police Department.

19 Q Most of these folks have never seen a  
20 murder case, much less sat on a jury. Could you tell them  
21 what a forensic detective does?

22 A One of my official duties is to  
23 respond to crime scenes, take photographs and collect  
24 physical evidence of that crime scene, if there is any  
25 there.



Thomas Searles - Direct

1 Q Do you record the items as you find  
2 them?

3 A Yes, sir, we do.

4 Q You don't tamper with anything?

5 A No, sir.

6 Q If you would be kind enough to come  
7 out of the box. I am going to hand you some pictures and  
8 I've shown that to defense counsel. And, I would ask you  
9 starting with this lady on the left, I am going to hand  
10 you a photograph. As you describe the photograph I want  
11 you to walk along here so each of these individuals can  
12 see what you're talking about. Commonwealth's exhibit 2-  
13 A.

14 A This is a photograph taken of the  
15 parking area where the vehicle and the crime allegedly  
16 occurred in the parking lot. This building here is the  
17 Red Roof Inn.

18 Q 2-B?

19 A This is a photograph of the same area  
20 of the crime scene with the Steak and Ale building on  
21 Midlothian Pike and the area of the crime scene occurred  
22 beside the vehicles.

23 Q Now, both of the young people had  
24 been removed from the scene by the time you got there?

25 A That is correct, sir.

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THERESA S. GRIFFITH  
COURT REPORTER  
(804) 755-7377

1 Q All right. So, this is the same  
2 scene absent the two children?

3 A This is a photograph taken of the, a  
4 closer area of the area as it was when I arrived there at  
5 the scene.

6 Q 2-D?

7 A This is another photograph of the  
8 same scene here. Right there where my finger is, is the  
9 cartridge case that was recovered from the crime scene,  
10 .45 caliber.

11 Q 2-E?

12 A This is a photograph of some articles  
13 that were lying on the ground, some miscellaneous papers,  
14 change, and what not that were on the ground from the  
15 crime scene.

16 Q They all belong to Sheryl Stack; is  
17 that right?

18 A It was, some of the items in there  
19 had Sheryl Stack's information on it.

20 Q And, finally 2-F?

21 A This is a photograph taken of the  
22 victim's car, Sheryl Stack's car, at the crime scene, the  
23 condition it was in.

24 Q All right, now, you didn't create all  
25 that fuss and bother and mess in there, that's exactly how

1 you found it?

2 A Correct. I just opened the door and  
3 took the photographs of the inside of the vehicle.

4 MR. BARRY: All right, Sheriff, 2-A  
5 through 2-F to the clerk, please,  
6 Commonwealth's exhibit number 2.

7 NOTE: Received and so marked by the  
8 Clerk as Commonwealth's Exhibit Number 2.

9 BY MR. BARRY: (Continuing)

10 Q Now, I'm going to take you on to  
11 Commonwealth three. Take some time and explain to them  
12 what this is a picture of? Start with this lady on the  
13 left, again left to right.

14 A This is a photograph taken of the two  
15 bullets that were recovered at the crime scene beside each  
16 other. The bullets are there and there.

17 Q When you say bullets, differentiate  
18 that from cartridge casings.

19 A A cartridge case is a complete bullet  
20 type thing. The bullet part is the lead part that comes  
21 out of the cartridge and the cartridge case is the case  
22 that the bullet came out of. So, this is the lead part of  
23 the cartridge.

24 Q That's actually part of the bullet  
25 that has been fired; is that correct?

1                   A           That's correct.

2                   Q           All right, now, the distance between  
3 these two bullets. You were actually there before you  
4 removed them. Give them an estimate as far as actual  
5 distance.

6                   A           They were approximately about a foot  
7 apart.

8                   Q           One foot apart.

9                               MR. BARRY: Commonwealth's exhibit  
10 three.

11                              NOTE: Received and so marked by the  
12 Clerk as Commonwealth's Exhibit Number 3.

13 BY MR. BARRY: (Continuing)

14                   Q           Now, did you have occasion after  
15 taking the photographs to physically take those bullets  
16 and recover them?

17                   A           Yes, sir, I did.

18                   Q           I am going to show you Commonwealth's  
19 exhibit number 4-A, B, and C. Tell them exactly what that  
20 is after you open the top and identify it.

21                   A           This is the .45 caliber cartridge  
22 casing recovered at the crime scene here.

23                   Q           That's what was pictured in the items  
24 that you've already shown them; is that correct?

25                   A           That's correct. These two are the



1 bullets that came out of the crime scene and they are  
2 packed in tissue because they had fluid on them. And the  
3 casing, it's two of them recovered from the crime scene.

4 Q These are the two bullets pictured in  
5 Commonwealth's exhibit number three?

6 A That's correct.

7 Q Okay. You can go ahead and take your  
8 seat. Then what did you do that those?

9 A I took the bullets, recorded them and  
10 sent them to the forensic state lab for examination and  
11 turned them over to Ann Jones, Forensic Scientist, for the  
12 Division.

13 NOTE: Received and so marked by the  
14 Clerk as Commonwealth's Exhibit Number 4.

15 BY MR. BARRY: (Continuing)

16 Q Now, at that point you did not have a  
17 gun; is that correct?

18 A That is correct.

19 Q All right. Now, you were also called  
20 at a later time to look at a red sportscar; is that  
21 correct?

22 A That's correct.

23 Q Do you remember when you did that and  
24 where you were?

25 MR. BARRY: I am showing him

313

1 Commonwealth's exhibit number five. Is that  
2 correct, Madam Clerk?

3 THE CLERK: Yes, sir.

4 A This was a vehicle towed to our  
5 substation that was recovered for processing.

6 Q When you say processing tell them  
7 exactly what processing is.

8 A The vehicle is examined for  
9 fingerprints and any other physical evidence that might be  
10 present there.

11 Q Do you know who that car belonged to?

12 A This car belonged to Edward Martin.

13 Q All right. And, were we or were we  
14 not successful in finding any fingerprints on that  
15 vehicle?

16 A There were no fingerprints of any  
17 value found on the vehicle.

18 MR. BARRY: That would be, would give  
19 to the Sheriff, please. Judge, that will be  
20 Commonwealth's exhibit number five, published  
21 to the jury.

22 THE COURT: All right.

23 NOTE: Received and so marked by the  
24 Clerk as Commonwealth's Exhibit Number 5.

25 MR. BARRY: Thank you, Detective

1 Searles. If you would answer this gentleman's  
2 questions, please.

3 MR. GEARY: Can I have the photograph  
4 which has been marked as Commonwealth's  
5 exhibit number one and 2-A and 2-B?

6 THE COURT: All right.

7  
8 CROSS EXAMINATION

9 BY MR. GEARY:

10 Q Detective Searles, can you take a  
11 look at this aerial photograph which has been marked as  
12 Commonwealth's exhibit number one.

13 A Okay.

14 Q Can you identify the building in the  
15 foreground as the Steak and Ale on Midlothian Turnpike?

16 A This is the building here. That's  
17 correct.

18 Q And, is this the Red Roof Inn?

19 A This is the Red Roof Inn.

20 Q You have identified Commonwealth's  
21 exhibit 2-A, which is a picture, and if you can hold these  
22 two up to show the jury where 2-A would be in the aerial  
23 shot.

24 A This is the photograph taken across  
25 Red Roof Inn. This is the area here that the crime scene

1 occurred right here, and in this area here the parking  
2 area. And this is the Red Roof Inn over here.

3 Q So, this picture 2-A would have been  
4 -- the person who took these pictures would have had their  
5 back to the off-ramp at Chippenham; is that correct?

6 A That's correct. The ramp is around  
7 the area to the back.

8 Q Were these pictures, 2-A and 2-B were  
9 they taken on October the 8th?

10 A This photograph was taken October the  
11 8th.

12 Q What time of day was it?

13 A It was taken early in the morning. I  
14 arrived approximately 6:00 a.m. in the morning.

15 Q 6:00 a.m.?

16 A 6:00 a.m. in the morning, yes, sir.

17 Q What time did it get light that  
18 morning, do you remember?

19 A I'm just estimating, approximately  
20 around 5:30, somewhere in that area along in there.

21 Q When do you think these two pictures  
22 were taken, 2-A and 2-B?

23 A They were taken after 7:00.

24 Q Okay. Did you take the pictures?

25 A Yes, sir, I did.



1 Q 2-B, Midlothian Turnpike would be out  
2 here; is that correct?

3 A That's correct. It would be running  
4 into the front of the building.

5 Q And, 2-B, the person that took that  
6 would have been standing somewhere over here; isn't that  
7 correct?

8 A Standing back there in this area back  
9 there looking in this direction.

10 Q You were not at the scene when it was  
11 dark that night; is that correct?

12 A Sir?

13 Q You weren't there on the scene when  
14 it was dark?

15 A I arrived approximately 6:00 a.m. in  
16 the morning, that's correct.

17 MR. GEARY: Sheriff, if you can take  
18 these back. I ask you to take the stand,  
19 please.

20 BY MR. GEARY: (Continuing)

21 Q The vehicle that you have identified  
22 in Commonwealth's exhibit number five, the car, do your  
23 records indicate the date to where it was towed, to where  
24 this substation is that you mentioned?

25 A No, sir. I don't have the exact date

1 the vehicle was towed.

2 Q Were you the person who processed the  
3 car when it got to the substation?

4 A That's correct.

5 Q What substation, what location are  
6 you talking about?

7 A It's 7th and Duvall Street. It's a  
8 secured area that we have for processing for vehicles.

9 Q On J. Sargeant Reynolds?

10 A Yes, sir, that's correct.

11 Q And, you told Mr. Barry that one of  
12 the things you did was look and see if you could find any  
13 latent fingerprints; is that correct?

14 A That's correct.

15 Q You couldn't find any fingerprints?

16 A That's correct. I didn't find any of  
17 any value.

18 Q What else did you do? What were you  
19 looking for in the car?

20 A What we were looking for, we were  
21 processing fingerprints in the vehicle.

22 Q If you were at the scene of the Steak  
23 and Ale on October 8th, can you give the jury any estimate  
24 of when this car that's in Commonwealth's exhibit number  
25 five was processed?

1           A           I believe I processed it on a day  
2 later, which was on a weekend. I don't recall the exact  
3 date.

4           Q           If October 7th is a Thursday and  
5 October 8th of last year, '93, was a Friday, do you think  
6 you did it October the 9th or 10th?

7           A           I am not correct on the date, sir. I  
8 think it was on the weekend when I processed the car.

9           Q           Do you know where -- had the police  
10 or one of the towing companies towed the car from one  
11 location to another?

12          A           That's correct. They towed it from  
13 wherever it was they towed it to the substation.

14          Q           Do you know what police officer  
15 recovered the car?

16          A           No, sir, I do not.

17          Q           Do you know where it was towed from,  
18 to Seventh and Duvall?

19          A           No, sir, I do not.

20                   MR. GEARY: That's all I have, Judge.

21                   THE COURT: Thank you, sir. You may  
22 step down.

23                   MR. BARRY: Mrs. Stack is my next  
24 witness.  
25

1                    MARILYN STACK, a witness called on  
2    behalf of the Commonwealth, having first been sworn,  
3    testified as follows:

4                    DIRECT EXAMINATION

5    BY MR. BARRY:

6                    Q            Would you introduce yourself please.

7                    A            My name is Marilyn Stack.

8                    Q            Mrs. Stack, your daughter is the  
9    victim in this case?

10                   A            Yes.

11                   Q            Would you tell us how old was she at  
12    the time of her death?

13                   A            She had just turned 20.

14                   MR. BARRY:   Sheriff, I am going to  
15    ask you for identification purposes show her  
16    this picture so she can identify her daughter  
17    for the ladies and gentlemen of the jury.

18                   A            Yes, that's my daughter.

19                   MR. BARRY:   That will be  
20    Commonwealth's exhibit number six offered at  
21    this time.

22                   THE COURT:   All right.

23                   NOTE:   Received and so marked by the  
24    Clerk as Commonwealth's Exhibit Number 6.

25    BY MR. BARRY:   (Continuing)



1 Q Ma'am, you were notified that she had  
2 been shot and you and your husband came to Richmond. Some  
3 items that were in the car need to be also identified.

4 MR. BARRY: This is Commonwealth's  
5 exhibit number seven.

6 NOTE: Received and so marked by the  
7 Clerk as Commonwealth's Exhibit Number 7.

8 BY MR. BARRY: (Continuing)

9 Q Can you just tell us whose purse that  
10 was?

11 A My daughter's purse.

12 Q What was she doing up here at this  
13 particular time of her life?

14 A She was a junior at VCU studying  
15 education.

16 Q And, she had, I take it, was working  
17 at the Steak and Ale in the evening?

18 A She was working part-time for  
19 expenses.

20 Q And, then she was going to school  
21 during the day?

22 A Yes.

23 MR. BARRY: All right. Thank you. I  
24 am sorry you have to testify. I appreciate  
25 your being here.

Jack Daniel, M.D. - Direct

1 THE COURT: Any questions?

2 MR. GEARY: No, Your Honor.

3 THE COURT: All right. Thank you,  
4 ma'am. You may be excused.

5 MR. BARRY: Can I have her stay in  
6 the courtroom? The statute allows that.

7 THE COURT: Yes, you may stay in the  
8 courtroom.

9 MR. BARRY: Dr. Daniel, please.

10

11 JACK DANIEL, M.D., a witness called  
12 on behalf of the Commonwealth, having first been sworn,  
13 testified as follows:

14 DIRECT EXAMINATION

15 BY MR. BARRY:

16 Q Good afternoon, sir. Would you  
17 introduce yourself to the folks of the jury.

18 A Good afternoon. My name is Dr. Jack  
19 Daniel. I am the Assistant Chief Medical Examiner for the  
20 Central District here in Richmond.

21 Q Now, these folks have not had an  
22 opportunity to sit on a murder case. Could you tell them  
23 just exactly what a medical examiner does for us here in  
24 the Commonwealth?

25 A As Assistant Chief Medical Examiner

Jack Daniel, M.D. - Direct

1 my job is to perform autopsies on people who have died to  
2 determine what the cause of death may have been.

3 Q Did you have occasion to perform an  
4 autopsy on Sheryl Stack, the deceased named in the  
5 indictment before the jury today?

6 A Yes, sir, I did.

7 Q All right. I am holding up a yellow  
8 piece of paper which is going to be marked as  
9 Commonwealth's number eight. Would you just examine it  
10 just briefly and tell the ladies and gentlemen of the jury  
11 just exactly what that document is.

12 A This is a copy of my final autopsy  
13 report in this case. It consists of two pages of text and  
14 two diagrams which I prepared and attached is a copy of  
15 the toxicology report, that is, the testing that was done  
16 on her blood to look for alcohol or drugs of any kind.

17 Q All right, now, in this particular  
18 case that is really a written version of what you did when  
19 you performed the autopsy?

20 A Yes, sir, it is.

21 MR. BARRY: All right, Judge, this is  
22 going to be Commonwealth's exhibit number  
23 eight.

24 THE COURT: All right.

25 MR. BARRY: I am handing it to the

1 Clerk at this time and ask it be admitted into  
2 evidence.

3 NOTE: Received and so marked by the  
4 Clerk as Commonwealth's Exhibit Number 8.

5 BY MR. BARRY: (Continuing)

6 Q Dr. Daniel, can you tell the ladies  
7 and gentlemen of the jury, what was the cause of death in  
8 the case of Sheryl Stack?

9 A Yes, sir. She died of a gunshot  
10 wound to her head.

11 Q Can you tell us the direction of the  
12 bullet and what was actually occurring to her body as the  
13 bullet went through her head.

14 A The bullet entered her head in the  
15 back of her head and passed through her brain and exited  
16 in the area over her left eyebrow. So, it went in this  
17 area, went through her brain and came out in this area.

18 Q What was the actual effect, how long  
19 can you live from circumstances such as that?

20 A Well, in this particular case the  
21 wound was not one that killed her immediately. In fact,  
22 she survived for nearly three days in the hospital at MCV.

23 Q All right, but ultimately it was  
24 traumatic, they were not able to repair the damage?

25 A That's correct. She would have lost



1 consciousness very quickly after the gunshot occurred and  
2 would not have been able to move about and remained in a  
3 coma while the physicians at MCV were trying to revive  
4 her.

5 Q All right. You also mentioned the  
6 blood chemistry. Could you explain that to the ladies and  
7 gentlemen a little bit.

8 A At the time of autopsy we take blood  
9 that we then submit to a specialized laboratory to see  
10 whether or not there was any alcohol or drugs on board at  
11 the time the, at the time that the person died.

12 Q And, in this case the results?

13 A Well, the blood that we drew at the  
14 time of autopsy showed no alcohol. It showed some drugs  
15 that were given to her as therapy. Of course, that blood  
16 that we tested was the blood, was two days greater, two  
17 days after she had died.

18 Q So, you have no indication she was  
19 under the influence of any drugs or alcohol at the time of  
20 her death?

21 A There was absolutely no such  
22 indication. In fact, there was testing done on her blood  
23 when she came into the hospital and a comprehensive screen  
24 was done on her urine to look for drug abuse. So, when  
25 she came in not only was there no evidence at the time of

1 autopsy but there also was no evidence that she had any  
2 alcohol or drugs on board when she was, at the time that  
3 she initially got to the hospital.

4 MR. BARRY: All right. Fine. You  
5 know these gentlemen. Answer their questions,  
6 please.

7 MR. GEARY: No questions.

8 THE COURT: All right. Thank you,  
9 doctor. You may be excused.

10  
11 EDWARD MARTIN, a witness called on  
12 behalf of the Commonwealth, having first been sworn,  
13 testified as follows:

14 DIRECT EXAMINATION

15 BY MR. BARRY:

16 Q Young man, would you introduce  
17 yourself please to these ladies and gentlemen.

18 A Edward Martin.

19 Q And, Edward, how old are you, sir?

20 A Twenty-four.

21 Q Edward, was there a time back in  
22 October of last year that you and Sheryl Stack were  
23 working at the Steak and Ale?

24 A Yes.

25 Q Did there come a time on the evening

1 of the 7th of October, leading over to the 8th of October,  
2 that you two left work and went out to get something to  
3 eat?

4 A Yes.

5 Q Did there come a time that the two of  
6 you came back to the parking lot at Steak and Ale?

7 A Yes.

8 Q Now, Edward, I am going to show you a  
9 picture. The Sheriff is going to show you a picture of a  
10 car. Can you identify that for us?

11 A Yes.

12 Q Whose car is this?

13 A That is my car.

14 Q Were you driving that car that night?

15 A Uh-huh.

16 MR. BARRY: Okay, Sheriff, bring that  
17 back.

18 BY MR. BARRY: (Continuing)

19 Q Was Sheryl driving her blue Volvo  
20 that night?

21 A Yes.

22 Q Did you and Sheryl come back to the  
23 parking lot together?

24 A Yes.

25 Q When you were together in the cars

1 did you get out of your car and go into her car?

2 A Yes.

3 Q What were you doing in your car when  
4 someone came up to the car?

5 A We were no, no, he had the gun.

6 Q Okay. Let me start over again. I  
7 confused you. Were you and Sheryl in her car together?

8 A Yes.

9 Q What were you and Sheryl doing  
10 together?

11 A Kissing.

12 Q Did there come a time that a man came  
13 up to your car?

14 A Yes.

15 Q What did he have with him?

16 A Gun.

17 Q How many men came up to the car?

18 A Two.

19 Q Do you see any of those men in the  
20 courtroom today?

21 A Yes.

22 Q You're pointing to this man?

23 A Uh-huh.

24 Q Do you know him as, what is his name?

25 A Graham.



- 1 Q What did he say to you?
- 2 A Get out of the car.
- 3 Q Did he still have the gun?
- 4 A Yes.
- 5 Q Did you both get out of the car?
- 6 A Yes.
- 7 Q Where did you and Sheryl go?
- 8 A Around, around, around my car.
- 9 Q When you got around your car what did  
10 the man Graham say to you?
- 11 A Hand over your wallet and hand over  
12 the car keys.
- 13 Q Did you hand your wallet and your car  
14 keys to that man?
- 15 A No.
- 16 Q Which man? What did you do?
- 17 A Sheppard.
- 18 Q You handed them to Sheppard?
- 19 A Uh-huh.
- 20 Q Did Sheppard have a gun?
- 21 A No.
- 22 Q Just this man had a gun?
- 23 A Uh-huh.
- 24 Q After you handed the keys and the  
25 wallet over to Sheppard where did Sheppard go?

1                   A           My, no, Sheryl's car and started it  
2 and my car and saw the CD's.

3                   Q           Now, did you have a lot of CD's in  
4 your car?

5                   A           Yes.

6                   Q           Did you have them in a box?

7                   A           Uh-huh.

8                               MR. BARRY: Commonwealth's exhibit  
9 number 9-A and B. Show those first to defense  
10 counsel then to Mr. Martin.

11                  A           Yes.

12                  Q           Those are your CD's?

13                  A           Yes.

14                  Q           And, that box was in your car?

15                  A           Uh-huh.

16                               MR. BARRY: Commonwealth's exhibit  
17 number 9.

18                               NOTE: Received and so marked by the  
19 Clerk as Commonwealth's Exhibit Number 9.

20 BY MR. BARRY: (Continuing)

21                  Q           Which man was in your car with the  
22 CD's?

23                  A           Sheppard.

24                  Q           What was Graham doing?

25                  A           Holding the gun on us.

Edward Martin - Direct

1 Q What did Sheppard say to you while --  
2 excuse me, what did Graham say to you while Sheppard was  
3 in your car?

4 A Lay down and close your eyes.

5 Q Did you both do that?

6 A Yes.

7 Q And, why did you do that? What did  
8 he say to you to make you do that?

9 A Well, he had the gun.

10 Q Did he say anything else to you,  
11 Edward? If you lay down and close your eyes and  
12 cooperate, what did he say?

13 A He said he wasn't going to hurt us.

14 Q Now, which way did Sheryl lay down?  
15 On her front or on her back? Edward, did Sheryl lay on  
16 her stomach?

17 A Yes.

18 Q Now, did you lay on your stomach?

19 A No.

20 Q What did you lay on?

21 A Back.

22 Q Did you close your eyes?

23 A Uh-huh.

24 Q Edward, can you tell the jury what  
25 happened after you closed your eyes?

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THERESA S. GRIFFITH  
COURT REPORTER  
(804) 755-7377

1                   A           Well, the car, my car was being  
2 started and the car was coming at me, so I quickly rolled  
3 over to get out of the way of the car.

4                   Q           Edward, do you remember when you were  
5 shot?

6                   A           (Shakes head no).

7                   Q           You just don't remember when you were  
8 shot?

9                   A           No, no.

10                  Q           Edward, when you rolled over did you  
11 roll over to your stomach?

12                  A           Yes.

13                  Q           Had you been shot at that point?

14                  A           Yes.

15                  Q           Edward, who was the last person you  
16 saw with a gun before you closed your eyes?

17                  A           Graham.

18                  Q           Edward, after the car started to come  
19 towards you and you rolled over, could you do anything  
20 else? Do you remember anything else?

21                  A           Yeah, Sheryl and I were holding  
22 hands.

23                  Q           Were you trying to talk with her?

24                  A           Yeah.

25                  Q           Did you know that she had been shot,



Edward Martin - Direct

1 too?

2 A No.

3 Q All right, Edward, let me show you  
4 one last thing. This is Commonwealth's exhibit number 10.  
5 Is this what you used to look like?

6 A Yes.

7 MR. BARRY: That's Commonwealth's 10.

8 NOTE: Received and so marked by the  
9 Clerk as Commonwealth's Exhibit Number 10.

10 BY MR. BARRY: (Continuing)

11 Q Edward, I am just going to bring you  
12 over here to the jury box, just for a second, okay?

13 A Okay.

14 Q You'll just be a second and I'll  
15 bring you back. Edward, he put the gun right about here?

16 A Uh-huh.

17 Q And, went through here?

18 A Yes.

19 Q It came out your head right here?

20 A Uh-huh.

21 Q This is not your eye anymore; is that  
22 correct?

23 A No.

24 Q Are you blind in that eye now?

25 A Yeah.

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THERESA S. GRIFFITH  
COURT REPORTER  
(804) 755-7377

Edward Martin - Cross

1 MR. BARRY: Come on and have a seat.

2 MR. EVERHART: No questions.

3 MR. GEARY: I would like to have one.

4

5 CROSS EXAMINATION

6 BY MR. GEARY:

7 Q Mr. Martin, my name is Bob Geary.

8 A Okay.

9 Q You and I have never talked to each  
10 other, have we?

11 A No.

12 Q When Mr. Barry asked you a question  
13 about a second man you came out with the name Sheppard?

14 A Yes.

15 Q Who told you the name Sheppard; do  
16 you remember?

17 A I don't.

18 Q Were you ever able to look at any  
19 pictures of anybody else and identify somebody as  
20 Sheppard?

21 A No.

22 Q So, somebody told you that the second  
23 person was named Sheppard; is that correct?

24 A Uh-huh.

25 Q Do you remember what time it was that

1 you got back to the Steak and Ale parking lot that night?

2 A 2:00 or 3:00.

3 Q And, you and Ms. Stack had been over  
4 at the Third Street Diner?

5 A Yes.

6 Q How long do you think you were in the  
7 parking lot of the Steak and Ale that night before the man  
8 showed up with the gun?

9 A Five minutes.

10 Q And, was Sheryl's car, was it facing  
11 in to where the tree is in the back there?

12 A Yes.

13 Q Was your car on her right?

14 A No, one space over.

15 Q So, it was her car, space, then your  
16 car?

17 A Uh-huh.

18 Q The tree was right in front of you?

19 A Yes.

20 Q Did you see the headlights of the car  
21 when it came into the Steak and Ale parking lot, the other  
22 car, the third car?

23 A No.

24 Q Did you ever see another car that  
25 night?

1 A No.

2 Q So, you don't know if the two men  
3 came on foot or whether they had a car?

4 A (Shakes head no).

5 Q Were you ever taken to the Richmond  
6 Bureau of Police or anywhere else and asked to look at a  
7 line up with men standing in a line up?

8 A Yes.

9 Q I am not talking about pictures. I  
10 am talking about Mr. Martin, people like standing all  
11 together.

12 A No.

13 Q Six or seven people?

14 A No.

15 Q You did see some pictures; is that  
16 correct?

17 A Uh-huh.

18 Q And, do you remember when it was?  
19 Was it about back in June when you saw the pictures or  
20 May?

21 A I don't know.

22 Q How long were you in the hospital; do  
23 you remember?

24 A October -- three months.

25 Q Three months. How long had you



1 worked at Steak and Ale before October 8th of last year?

2 A Two years.

3 Q Two years. Were you a waiter?

4 A Yeah.

5 Q Sheryl was a hostess?

6 A Uh-huh.

7 Q What time did the Steak and Ale  
8 usually close at night? What time did everybody leave at  
9 night?

10 A 11:00.

11 Q 11:00?

12 A (Shakes head yes).

13 Q Do you know Detective Dalton,  
14 Richmond Police Department?

15 A Uh-huh.

16 Q You know him, Steve Dalton?

17 A Yes.

18 MR. GEARY: Judge, may I have a  
19 minute. Thank you, Judge. Thank you, Mr.  
20 Martin.

21 THE WITNESS: Thank you.

22 THE COURT: Is that all?

23 MR. GEARY: Yes.

24 THE COURT: All right. You may be  
25 excused.

William Broaddus, M.D. - Direct

1                    WILLIAM BROADDUS, M.D., a witness  
2 called on behalf of the Commonwealth, having first been  
3 sworn, testified as follows:

4                    DIRECT EXAMINATION

5 BY MR. BARRY:

6                    Q            Good afternoon, sir. Would you  
7 introduce yourself please to these ladies and gentlemen of  
8 the jury.

9                    A            My name is William Broaddus.

10                  Q            Sir, what do you here for the  
11 Commonwealth of Virginia?

12                  A            I am a neurosurgeon at the Medical  
13 College of Virginia.

14                  Q            And, all right, as such you had the  
15 opportunity back in October of last year in the early  
16 morning hours to have two patients; is that correct?

17                  A            That's correct.

18                  Q            Sheryl Stack and the young man,  
19 Edward Martin, who just walked out of here?

20                  A            That's correct.

21                  Q            All right. Briefly tell them what  
22 you do in your profession, what is your specialty?

23                  A            A neurosurgeon takes care of  
24 neurosurgical problems that involve the brain and spinal  
25 cord.

1 MR. BARRY: Do you gentlemen have any  
2 question as to his expertise?

3 MR. EVERHART: No objections to his  
4 qualifications, Judge.

5 THE COURT: All right. It is  
6 stipulated he is qualified as a neurologist.

7 BY MR. BARRY: (Continuing)

8 Q Tell these ladies and gentlemen in  
9 layman's language first about Sheryl Stack, what did you  
10 attempt to do and why it did not work.

11 A Ms. Stack came in very sick. She was  
12 deeply comatose, had bullet wound in the left area of the  
13 head with an entrance in the forehead. I am sorry. With  
14 bullet wounds in the forehead and also in the back of the  
15 top of the head. It was clear from the appearance and  
16 from a CAT scan that we had taken emergently that there  
17 was extensive injury to what is normally the most  
18 important side of the brain, the left side. We took her  
19 quickly to the operating room from the CAT scan and tried  
20 to minimize the damage, stop the bleeding and make room  
21 for swelling that we knew would occur. It was a very  
22 difficult operation. The bleeding was extensive. When  
23 the brain is injured the bleeding becomes almost  
24 uncontrollable. It took several hours to get things under  
25 control enough to transfer her back to the intensive care

1 unit for monitoring. At that point we, after allowing  
2 time for recovery from anesthetic and so forth, it became  
3 apparent that things were very very bad and she went on to  
4 die within I think 12 hours or so.

5 Q All right. Would you talk to us a  
6 little bit about Edward Martin.

7 A Mr. Martin had an injury, another  
8 gunshot wound, also on the left side. That injury  
9 involved a wounds, entrance and exit wounds in the face  
10 area and the top of the head. So, the same side of the  
11 head, the very important left side. But, the projectory  
12 was such that it's more in front of the brain and this was  
13 unfortunate because it involved extensive injury to the  
14 brain and also loss of the function of the left eye which  
15 subsequently had to be removed. The injuries extended far  
16 enough back into the brain that it began to involve  
17 movement or injured movement on the right side of the body  
18 and also impairment of language. Again, he was taken  
19 quickly to the operating room and similar efforts were  
20 carried out to expose the injuries, stop bleeding,  
21 minimize damage and close to favor improvement after the  
22 maximum recovery. Within hours we saw that there was  
23 evidence of extensive swelling as we had feared and after  
24 another CAT scan we had to take him back to the operating  
25 room to open the wound again and remove the bone and



1 actually remove extra bone.

2 Q You actually had to take bone from  
3 his head out?

4 A That's right. It was stored in the  
5 freezer sterile so it could be put back later but this was  
6 a technique that allowed for swelling to occur. Because  
7 normally the brain can swell inside the closed box of the  
8 head and that can basically starve the brain from blood  
9 flow and the brain can die. The person can die because of  
10 the swelling. So by going back and making the extra room  
11 by removing the skull we were able to minimize further  
12 injury caused by that swelling. And we were over the next  
13 days able to stabilize him with a lot of intensive care  
14 effort.

15 Q All right, now, he walks with a limp  
16 and his arm seems to be paralyzed?

17 A That's correct.

18 Q Is that from this injury also?

19 A Yes. As many people already know,  
20 the left side of the brain controls the right side of the  
21 body and so injuries to this area of the brain on the left  
22 side will cause paralysis of the right side. And, in his  
23 particular case there is more involvement, more impairment  
24 of movement of the arm than the leg, but there is also  
25 impairment of his leg.

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1                   Q           And, now, he speaks but he speaks  
2 very haltingly. Why is that?

3                   A           The area that controls generation of  
4 speech, generation of language is also very nearby, and  
5 that was injured. Fortunately, it was not so badly  
6 injured that he is unable, it was very close, and I am  
7 very pleased to see he is able to communicate although it  
8 is quite difficult for him. He has worked very hard to  
9 get back what he has.

10                  Q           Does he understand what we are saying  
11 to him?

12                  A           I believe he understands perfectly  
13 well.

14                  Q           So, there is no comprehension damage  
15 because that part of the brain is not controlling?

16                  A           That's correct.

17                  Q           So, really what is controlling is  
18 part of his speech center?

19                  A           That's correct.

20                  Q           So, no amnesia, no loss of  
21 intelligence?

22                  A           That's correct.

23                  Q           He is perfectly normal, he just can't  
24 talk?

25                  A           His ability to think and reason are I

William Broaddus, M.D. - Direct

1 believe perfectly normal. The ability to express what he  
2 is thinking is impaired. So, in fact, he has the ability  
3 to hear himself so that he is able to express himself. It  
4 just takes him a lot longer and with a lot more effort.

5 Q Obviously the loss of the eye is a  
6 permanent injury?

7 A That's correct.

8 Q Is he ever going to regain full use  
9 of his arm and leg?

10 A I would like to say that he will.  
11 The probability is that he won't.

12 Q And, his speech loss, would that ever  
13 return to normal; is that also permanent?

14 A There will always be a permanent  
15 impairment of his speech.

16 MR. BARRY: Doctor, again, I  
17 appreciate you coming in here and testifying.  
18 Answer these gentlemen's questions, if any.

19 MR. GEARY: No questions, Judge.

20 THE COURT: Thank you, doctor. You  
21 may be excused.

22  
23  
24  
25

Gary McGregor - Direct

1                    GARY MCGREGOR, a witness called on  
2 behalf of the Commonwealth, having first been sworn,  
3 testified as follows:

4                    DIRECT EXAMINATION

5 BY MR. BARRY:

6                    Q                    Good morning, sir. Good afternoon.  
7 Would you introduce yourself please to these ladies and  
8 gentlemen.

9                    A                    Deputy Gary McGregor.

10                   Q                   All right, sir, tell them what is  
11 your occupation.

12                   A                   Deputy Sheriff in Chesterfield  
13 County. I work in the jail.

14                   Q                   Okay. Now, bear with me. I am going  
15 to lead you into a certain timeframe. You work in the  
16 Chesterfield County Jail; is that correct?

17                   A                   Yes, I do.

18                   Q                   You had occasion several months ago  
19 to be working in the Chesterfield County Jail?

20                   A                   Yes, I did.

21                   Q                   Did there come a time, in fact, I  
22 will give you the approximate date, around December 2nd or  
23 December 3rd, that while working as a Sheriff in the  
24 Chesterfield County Jail you came in contact with the  
25 defendant, Graham?



1 A Yes, I did.

2 Q Did there come a time after doing  
3 whatever necessary paperwork was being done with Graham at  
4 the time that he was taken to a location where he could  
5 make a phonecall?

6 A Yes.

7 Q Now, when making phonecalls and  
8 you're a prisoner in Chesterfield County, what procedures  
9 were used, sir?

10 A That's a log we use and we log in the  
11 inmates name, the person he is calling, relationship, the  
12 number, the date, the time of the call and he initials it  
13 and the Deputy initials it.

14 MR. GEARY: May I approach Mr. Barry,  
15 please?

16 BY MR. BARRY: (Continuing)

17 Q Did this man, Andre Graham, fill out  
18 a log book on 12-3-93 in your presence?

19 A He initialed it.

20 Q That was it done in 7:25 in the  
21 morning and a call to his girlfriend?

22 A Yes.

23 Q Was that number 232-8948?

24 A Yes, it was.

25 Q Now, when he made that phonecall how

1 far away from you was he seated?

2 A A little bit more than arm's length.

3 Q Literally arm's length?

4 A A little bit more than that. We  
5 have a little desk. He's sitting on the other side of the  
6 desk.

7 Q Now, you may look at your notes if  
8 you like. I am. What did he say when he got on the  
9 phone?

10 A He talked for approximately 12  
11 minutes. I don't recall the whole conversation but I did  
12 hear him tell her to go into the closet, get the bag with  
13 the contents and get rid of it.

14 Q All right, now, why did this peak  
15 your curiosity?

16 A He repeated it several times to her  
17 in a very persistent manner. He was telling her get rid  
18 of the bag and everything inside the bag. That's what  
19 caught my ear.

20 Q Fine. At that point after he  
21 finished the conversation you reported that to the  
22 Chesterfield Police?

23 A Yes, I did.

24 MR. BARRY: All right. Answer this  
25 gentleman's questions, please.

1 CROSS EXAMINATION

2 BY MR. GEARY:

3 Q Officer McGregor, your notes also  
4 indicate that he made a phonecall at 7:37 that morning?

5 A Yes, he did.

6 Q And, the number was 271-4427?

7 A Yes, it was.

8 Q The second, or the third column on  
9 your note indicates the relationship of the caller to the  
10 person being called; is that correct?

11 A Yes, it does.

12 Q And, do you write that or does the  
13 inmate write that?

14 A I do.

15 Q And, you wrote down mother?

16 A Yes, I did.

17 Q How do you determine how long a call  
18 last? Is there some way of knowing from the notes or is  
19 it something you remember?

20 A What do you mean exactly, sir?

21 Q Well, you said in regard to the first  
22 phonecall, the 7:25 a.m. phonecall to the girlfriend, and  
23 you said he was on the phone for about 12 minutes, was  
24 that because the second phonecall started at 7:37?

25 A Yes, it does.

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1 Q And, your testimony was on that first  
2 phonecall, and then he made the second phonecall?

3 A About, not exactly the whole time but  
4 approximately 12 minutes.

5 Q At some point in the conversation you  
6 testified that he said get something out of the closet and  
7 get rid of it?

8 A Get the bag out of the closet and all  
9 of its contents.

10 Q Is that the beginning, middle, or end  
11 of the conversation?

12 A I don't recall.

13 Q And, you and he are in the same room  
14 at that time?

15 A Yes, it was.

16 MR. GEARY: That's all I have.

17 MR. BARRY: Thank you very much.

18 THE COURT: All right. Thank you,  
19 sir. You may be excused.

20 MR. BARRY: Detective Showalter from  
21 Chesterfield County.

22

23

24

25



1                    W. F. SHOWALTER, a witness called on  
2        behalf of the Commonwealth, having first been sworn,  
3        testified as follows:

4                    DIRECT EXAMINATION

5        BY MR. BARRY:

6                    Q            Sir, would you introduce yourself  
7        please to these ladies and gentlemen of the jury.

8                    A            Detective W. F. Showalter,  
9        Chesterfield County Police Department, Crimes Against  
10       Persons Unit.

11                   Q            All right, if you would, I am going  
12        to lead you to a specific point in time in your testimony  
13        and ask you to testify from there. Did you have occasion  
14        to be notified by Sheriff McGregor as to a phonecall that  
15        had gone out from a prisoner Graham to his girlfriend?

16                   A            Yes, sir.

17                   Q            All right. Based on that information  
18        and the phone number did you and other detectives go to a  
19        location here in the City of Richmond?

20                   A            Correct.

21                   Q            Sir, would you be kind enough to tell  
22        us just exactly what procedure you followed?

23                   A            On December 3rd, approximately 7:30  
24        a.m., I responded to 4012 Midlothian Pike, Apartment  
25        number 102, where at that apartment I was met at the door

1 by a Priscilla Booker. I advised her why I was there,  
2 asked for an item, which in turn she told me where that  
3 item was at.

4 Q All right. Now, it -- all right, go  
5 ahead and tell us exactly what you asked for.

6 A My basic statement to her was,  
7 Priscilla, you know why we are here, don't you? She  
8 nodded acknowledging --

9 MR. GEARY: Your Honor, I object to  
10 the hearsay at this point.

11 MR. BARRY: Well, it is not for the  
12 truth of the matter.

13 THE COURT: He saw it, he is here.  
14 He said she just nodded.

15 BY MR. BARRY: (Continuing)

16 Q She nodded. What did you do next?

17 A I asked her where the items in the  
18 bag was at.

19 Q All right.

20 A She led me to what she identified as  
21 her bedroom, which was in the rear of the apartment. I  
22 said where is it at? At that point in time she pointed  
23 behind her to a linen closet at which time an individual  
24 who was her mother started to open the closet at which  
25 time I said no, I would like to get it myself. She

1 pointed to it. I picked up a white plastic bag, was able  
2 to feel something that appeared to be metal and of  
3 considerable weight.

4 Q All right.

5 A It was taken from the apartment. I  
6 took it to police headquarters where I opened the bag in  
7 the forensic division and found a .45 caliber weapon in  
8 that bag.

9 MR. BARRY: All right, Sheriff, the  
10 weapon is empty. Would you check it and have  
11 him identify it, please.

12 A Yes, sir. This is the weapon I  
13 retrieved.

14 Q All right, now, was it packaged  
15 somewhat unusual?

16 A It was a towel wrapped around a white  
17 plastic bag. Inside that bag was this weapon, the white  
18 plastic bag. The weapon was heavily coated in oil. The  
19 clip was out of the weapon laying loose with the pistol.

20 Q The thing was heavily oiled?

21 A Yes.

22 Q Did you make any effort to get prints  
23 off of it?

24 A It was done by the forensic people.  
25 I do not -- I never received a report of any latents being

1 removed.

2 Q Unsuccessful?

3 A Correct.

4 MR. BARRY: Sir, if you would hand  
5 that gun to the Sheriff. That will be  
6 Commonwealth's number 11.

7 THE COURT: All right.

8 NOTE: Received and so marked by the  
9 Clerk as Commonwealth's Exhibit Number 11.

10 MR. BARRY: All right. Detective  
11 Showalter, I appreciate your coming in. If you  
12 would answer these gentlemen's questions?

13  
14 CROSS EXAMINATION

15 BY MR. GEARY:

16 Q Detective Showalter, are you a  
17 detective or investigator?

18 A Detective.

19 Q It was approximately 7:30 on December  
20 3rd when you arrived?

21 A Approximately 7:30, correct.

22 Q And, are you using the notes you have  
23 in front of you to refresh your recollection?

24 A No, sir. I just used that note for  
25 the serial number on the weapon.



1 Q When you got there how many other  
2 officers were with you?

3 A I had Sgt. Scruggs and Detective Otto  
4 accompany me.

5 Q The address your gave is in  
6 Midlothian Village?

7 A Correct.

8 Q The apartment that you went to was it  
9 on the ground floor or first floor?

10 A Ground floor.

11 Q When you went into the, what was  
12 identified to you as Priscilla Booker's bedroom?

13 A Correct, sir.

14 Q Where would that be in relation to  
15 the front door? How would you get there from the front  
16 door?

17 A Basically, it's going straight,  
18 you've got a partial wall coming out which is an  
19 efficiency type kitchen. But, when you're standing in the  
20 front doorway you're facing the bedroom completely. Hers  
21 is at the end.

22 Q When you get to the bedroom where do  
23 you go to, which way do you go to get to the closet?

24 A You actually pass the closet. Using  
25 you as an example, you would be the closet door, which

1 would be approximately the same distance to the corner of  
2 Mr. Barry's desk, exactly where you're standing, from her  
3 bedroom.

4 Q How high is the frame, is it from  
5 floor to ceiling?

6 A Yes, sir.

7 Q Is it open from both doors? Do you  
8 use one door to open?

9 A If I'm not mistaken, sir, it is like  
10 a bi-fold.

11 Q Is it a clothes closet?

12 A It was closed.

13 Q Are there clothes in it?

14 A Linens.

15 Q It had shelves?

16 A Correct, sir.

17 Q And, were you able to see this bag  
18 when you opened the door?

19 A As I stated, sir, Ms. Booker's  
20 mother, Julia Green, initially started opening it and  
21 reached for an item that was wrapped in a towel. At that  
22 point in time I stopped her and said let me get it.

23 Q Could you see it at that point?

24 A Correct, sir.

25 Q How high up from the floor was the

W. F. Showalter - Cross

1 gun?

2 A Probably, I would estimate this high  
3 to me, sir.

4 Q Describe again, if you would, the  
5 packaging. When you saw it the first time what was on the  
6 outside?

7 A On the shelf, as I initially saw it,  
8 there was a white linen type terrycloth type towel. When  
9 I opened the towel that is when I saw a white plastic bag  
10 that had an object inside of it.

11 Q Can you tell the jury when you're  
12 referring to a white plastic type bag, are you talking  
13 about a plastic type bag? Are you talking about a  
14 shopping bag? What kind of bag?

15 A Something would be like the plastic  
16 bag like you may get shoes in. It didn't have a draw  
17 string but that type of plastic, not like a grocery store  
18 plastic bag.

19 Q Was there any writing or any words or  
20 anything on the plastic bag?

21 A Not that I saw, sir.

22 Q Did the other officers also go into  
23 that bedroom with you when you recovered the gun?

24 A They went into the bedroom. I am the  
25 one that actually recovered the gun. They observed me

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1 recovering it.

2 Q Then you took the gun from there to  
3 the forensic unit of the Chesterfield Police. That's the  
4 first time that you opened it?

5 A The bag was not opened until we got  
6 to the forensic unit at the Chesterfield Police  
7 Department.

8 Q Was there anything in the bag besides  
9 the gun?

10 A As I stated earlier, sir, when we  
11 opened the bag the gun was there. The clip was out of the  
12 gun. It was in the bag.

13 Q Anything else besides those items?

14 A Not that I saw, sir.

15 MR. GEARY: Can I have just a minute,  
16 Judge?

17 THE COURT: Anything further, Mr.  
18 Barry?

19 MR. BARRY: No, sir.

20 THE COURT: All right. You may be  
21 excused.

22

23

24

25



1                    ANN JONES, a witness called on behalf  
2 of the Commonwealth, having first been sworn, testified as  
3 follows:

4                    DIRECT EXAMINATION

5 BY MR. BARRY:

6                    Q            Ma'am, would you be kind enough to  
7 please introduce yourself please to these folks.

8                    A            My name is Ann Davis Jones. I am a  
9 Forensic Scientist in the field of firearms identification  
10 for the Division of Forensic Science here in Richmond.

11                   Q            And, as such could you give them in  
12 layman's just exactly what your actual professional  
13 expertise is? Tell us exactly what you do.

14                   A            As a firearms examiner I examine  
15 firearms submitted by law enforcement agencies from  
16 throughout the state. And I examine fired and unfired  
17 ammunition to see if I can determine if they are somehow  
18 connected to the particular firearms.

19                   MR. BARRY: All right, gentlemen, do  
20 you have any questions as to her expertise?

21                   MR. GEARY: We stipulate her  
22 expertise, Your Honor.

23                   THE COURT: All right. She will be  
24 an expert in firearms.

25 BY MR. BARRY: (Continuing)

Ann Jones - Direct

1                   Q           If you would come out of the witness  
2 box, please. As my expert I am going to hand you some  
3 exhibits and I am going to ask that you identify them.  
4 First I'm going to give you what's been marked as  
5 Commonwealth's exhibit number 11. If you will take it,  
6 stand here in the middle, and explain to these ladies and  
7 gentlemen just exactly what it is and how it works.

8                   A           This firearm is a Llama, caliber .45  
9 auto. This portion here is called the magazine. The  
10 ammunition is loaded into the magazine, the magazine is  
11 then placed into the butt of the weapon, slide it forward.  
12 At this point in time the upper most cartridge from the  
13 magazine has been chambered into the chamber of the  
14 firearm. By pulling the trigger that cartridge is fired,  
15 automatically the slide moves rearward, the cartridge case  
16 that's left over would be extracted and ejected from the  
17 firearm, kicked out, and automatically this firearm would  
18 go forward again. And this process would take place as  
19 long as there are cartridges in the magazine of the  
20 firearm. If the magazine was empty, the slide would stay  
21 rearward. And, the person shooting or using the firearm  
22 would know there is no more ammunition in the magazine.  
23 At that point in time the magazine can drop, be loaded, be  
24 put back to the firearm and the process continues.

25                   Q           Okay. You had an opportunity, I take

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1 it, to examine this. We also gave some other items to  
2 take a look at. I'm going to show you what has been  
3 marked as Commonwealth's exhibit 4-A, B, and C. And, I  
4 would like for you to take a look at these and tell if  
5 you've ever examined those two bullets and one cartridge  
6 and perhaps explain to them what they consist of.

7 A What I just examined is this. This  
8 container is a fired auto full metal jacketed bullet,  
9 caliber .45 auto, just damaged at the end and on one side.  
10 This container is also a caliber .45, auto full metal  
11 jacket bullet, Remington brand fired cartridge case.

12 Q Now, these three items I asked you a  
13 long time ago to compare them to this weapon. What  
14 conclusion did you reach as to these three items and this  
15 weapon, Commonwealth's exhibit 11?

16 A I reached the conclusion that the  
17 three bullets were fired from that particular pistol.

18 Q All right. To the exclusion of any  
19 other weapon?

20 A That's correct.

21 Q This is the weapon that fired these  
22 bullets?

23 A That's correct, and cartridge  
24 casings.

25 Q And cartridge casings.



1 MR. BARRY: If you can have your  
2 seat. Your witness.

3 MR. GEARY: We have no questions,  
4 Judge.

5 THE COURT: Thank you. You may step  
6 down.

7 MR. EVERHART: Judge, may I speak to  
8 Mr. Barry for a second?

9  
10 PRISCILLA BOOKER, a witness called on  
11 behalf of the Commonwealth, having first been sworn,  
12 testified as follows:

13 DIRECT EXAMINATION

14 BY MR. BARRY:

15 Q Ms. Booker, would you introduce  
16 yourself please to these ladies and gentlemen.

17 A Priscilla Booker.

18 Q How old are you, young lady?

19 A Twenty-eight.

20 Q Now, Priscilla, you know Andre Graham  
21 who is present today in Court; is that correct?

22 A Yes, sir.

23 Q At one time you and he were very  
24 close friends; would that be a fair assessment of your  
25 relationship?



Priscilla Booker - Direct

1 A Yes, sir.

2 Q Can you remember when you and he  
3 actually started staying together?

4 A We met July 9th.

5 Q Of last year?

6 A Yes, sir.

7 Q All right. And, did you start  
8 staying together some time after that period?

9 A I would say about two days after.

10 Q All right. Now, I would like to  
11 direct your attention, if I may, back to October of last  
12 year. In fact, actually to October 7th or 8th. Did you  
13 have occasion to see Andre Graham and another man with him  
14 named Mark Sheppard on the morning of the 8th of October?

15 A Yes, sir.

16 Q Can you tell the ladies and gentlemen  
17 what you remember about those two on that morning.

18 A I saw them in a car.

19 Q Whose car?

20 A A red car.

21 Q A red car. All right. If I show you  
22 a photograph, I would like for you to be able to identify  
23 for the ladies and gentlemen of the jury.

24 MR. BARRY: I am showing her  
25 Commonwealth's exhibit number five.

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1 BY MR. BARRY: (Continuing)

2 Q Did you just tell me if you have ever  
3 seen this particular car before?

4 A Yes, sir.

5 Q When did you see it, ma'am?

6 A Andre had it.

7 Q All right. Did he have it on the  
8 morning of October 8th of last year?

9 A Yes, sir.

10 Q When they came back were they  
11 together or were they separate?

12 A Together.

13 Q Together. Were they in that car?

14 A Yes, sir.

15 Q When they came back did Andre say  
16 anything to you as to where they had been?

17 A No, sir.

18 Q Did there come a time that you began  
19 watching television that morning?

20 A Yes, sir.

21 Q Did you and he have any discussion  
22 about what was on television?

23 A I was watching the news and it was  
24 something about somebody had got shot in the Steak and Ale  
25 parking lot. And I mentioned it to him and he asked me

1       why do I worry about other people.

2                   Q           All right. Now, did you from that  
3 point on did he say anything else about the Steak and Ale  
4 shooting?

5                   A           He asked me to stop looking at the  
6 news.

7                   Q           Did you do so?

8                   A           No, sir.

9                   Q           All right. What did you do?

10                  A           I continued looking at the news. For  
11 some reason I was concerned about that because a friend of  
12 mine's sister got shot around that same time.

13                  Q           All right. Did you have any more  
14 conversations with Mr. Graham while this was going on?

15                  A           He just got kind of upset because I  
16 continued looking at the news. He asked me not to and I  
17 asked him why and he stated that he knew who did it but he  
18 didn't.

19                  Q           But he didn't? You didn't finish  
20 your sentences.

21                  A           He said he knew who did it but he  
22 didn't.

23                  Q           But, he didn't?

24                  A           He didn't.

25                  Q           Now, did you finally have an argument

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1 and you left?

2 A Yes, sir.

3 Q Where did you go?

4 A To Blackstone.

5 Q Did you call back from Blackstone?

6 A Yes, sir.

7 Q What was your phone number at that  
8 time?

9 A I can't remember.

10 Q All right. Do you remember though  
11 receiving a bill from the phone company indicating you had  
12 called from Blackstone, Virginia, to your home here in  
13 Richmond?

14 A Yes, sir.

15 Q The Sheriff is going to show you  
16 Commonwealth's exhibit number 12. Is that the time period  
17 that says October 8 in the evening, is that when you  
18 called back?

19 A Yes, sir.

20 Q During that phone conversation is  
21 that when you made peace and came back to Richmond?

22 A Yes, sir.

23 MR. BARRY: If you would, Sheriff,  
24 that's Commonwealth's exhibit number 12.

25 THE COURT: All right. It will be



1 admitted.

2 NOTE: Received and so marked by the  
3 Clerk as Commonwealth's Exhibit Number 12.

4 BY MR. BARRY: (Continuing)

5 Q All right, ma'am, after that you came  
6 back to Richmond, you were with Mr. Graham and you folks  
7 lived together?

8 A Yes, sir.

9 Q Did there come a time when you saw  
10 one evening some tapes, a large number of CD's, I would  
11 call them?

12 A Yes, sir.

13 Q Do you remember, tell the jury a  
14 little bit about that?

15 A They were in the back of my trunk of  
16 my car.

17 Q And, if I show you a picture do you  
18 think you can identify the box they were in and the large  
19 number of CD's?

20 A Yes, sir.

21 MR. BARRY: Commonwealth's exhibit  
22 number 2-A and B. Show that to the witness,  
23 please.

24 BY MR. BARRY: (Continuing)

25 Q Have you ever seen that box before?

1 A Yes, sir.

2 Q Where was the contents of that box?

3 A It was in my car, and from my car  
4 Andre took it out and put into my apartment.

5 MR. BARRY: Thank you, Sheriff. If  
6 you will take that out of her hand and put it  
7 back.

8 BY MR. BARRY: (Continuing)

9 Q How many days after you had your  
10 argument about the Steak and Ale thing did you actually  
11 see these CD's in Andre's possession?

12 A Between the 10th and 11th.

13 Q All right. So, it would have been  
14 two to three days after the actual incident we are  
15 discussing?

16 A Yes, sir.

17 Q Did he say anything about the tapes  
18 or what did you do with the tapes?

19 A I had the tapes in between my kitchen  
20 and my dining room and it was in my way and I asked my  
21 mother to take them and put them in her storage for me.

22 Q Did he ever tell you where they had  
23 come from or what he was doing with them?

24 A No, sir. The only thing that I  
25 recall when I asked him about it he said he bought it from

1 somebody for ten dollars.

2 Q Now, those tapes in that box were  
3 then later carried to some sort of place where you stored  
4 them?

5 A Storage. Yes, sir.

6 MR. BARRY: Now, Sheriff, if you  
7 would show her the gun and just simply hold it  
8 though.

9 BY MR. BARRY: (Continuing)

10 Q The Sheriff is showing you a weapon.  
11 That's close enough. Do you recognize that weapon?

12 A Yes, sir.

13 Q Where did that weapon come from?

14 A It was Andre's.

15 Q How long had Andre had that weapon?

16 A Since September.

17 Q Did he ever let it out of his sight  
18 to your knowledge?

19 A No, sir.

20 Q What did he do with that gun? What  
21 would he do with it? Would he leave it lying about or did  
22 he keep it?

23 A He kept it with him. He slept with  
24 it. He had it on him.

25 Q Where would he keep it on him, ma'am?

1 A Tucked inside his pants.

2 Q All right. Now, you said he had it  
3 in September?

4 A Yes, sir.

5 Q Are you positive that he had the  
6 weapon in September?

7 A Yes, sir.

8 Q Did he have it in October?

9 A Yes, sir.

10 Q Did he have it in November?

11 A Yes, sir.

12 Q Did there come a time though that he  
13 no longer had it?

14 A Yes, sir.

15 Q At what point in time did you receive  
16 communication from him about this gun?

17 A I think it was on Friday morning.

18 Q Would it have been early morning  
19 around 7:30 per chance?

20 A Around that time, yes, sir.

21 Q And, what communication did you  
22 receive from him?

23 A I told him that I had found a piece  
24 of metal.

25 Q Okay. Did you get a phonecall from



- 1 him?
- 2 A Yes, sir.
- 3 Q What did he ask you to do?
- 4 A To get rid of it.
- 5 Q And, you were talking back to him in
- 6 code?
- 7 A Saying a piece of metal, yes, sir.
- 8 Q All right. Did you know what he was
- 9 talking about?
- 10 A Not at the time.
- 11 Q After he told you -- what did he tell
- 12 you to do with it?
- 13 A Get rid of it.
- 14 Q Did you know exactly what he was
- 15 talking about?
- 16 A After I had found it, yes, sir.
- 17 Q All right. Where did you find the
- 18 weapon?
- 19 A In my mattress in my bedroom.
- 20 Q After you, did you actually take it
- 21 out from the mattress?
- 22 A I pulled it out, yes, sir.
- 23 Q What did you do with it, ma'am?
- 24 A Laid it on my bed.
- 25 Q And, then what did you do?

1                   A           My mother got a towel and wrapped it  
2 up.

3                   Q           When the police came the first time  
4 did they find the weapon?

5                   A           No, sir.

6                   Q           What were you going to do with the  
7 weapon? Be honest.

8                   A           I was going to get rid of it.

9                   Q           When they came back the second time  
10 what did you do? When Showalter came back?

11                  A           He came back to get it, the gun.

12                  Q           All right. At that point you gave it  
13 to him, right?

14                  A           It was in the closet. He got it from  
15 the closet.

16                  Q           Priscilla, there is no question in  
17 your mind this is Andre's gun?

18                  A           It's his.

19                               MR. BARRY: I have no further  
20 questions. Answer these gentlemen's questions,  
21 please.

22  
23 CROSS EXAMINATION

24 BY MR. EVERHART:

25                  Q           Good afternoon, Ms. Booker.

1 A Hi.

2 Q What about that firearm is so unique  
3 that you can tell the ladies and gentlemen of the jury  
4 it's Andre Graham's?

5 A He had it on him all the time. He  
6 used to sleep with the gun.

7 Q I noticed that, I noticed that that  
8 firearm is all black; am I correct?

9 A Yes, sir.

10 Q Didn't you tell the police at one  
11 time the gun that Andre had was black and silver?

12 A It was. I have seen him with a gun  
13 like that before.

14 Q A different gun?

15 A Yes, sir.

16 Q How do you know then that he had this  
17 weapon in September of last year?

18 A He got it from a guy named Poochie.  
19 I knew he had the gun.

20 Q You knew that he had it and he got it  
21 from Poochie?

22 A Yes, sir.

23 Q Are you sure that he didn't get that  
24 gun from Poochie some time in late October or early  
25 November?

1 A No, sir.

2 Q Were you present when Poochie gave  
3 him that gun?

4 A I saw it out of my window, yes, sir.

5 Q Now, your testimony here today is  
6 that at some point in time you found that gun in your  
7 mattress; am I right?

8 A Yes, sir.

9 Q The police had been to your apartment  
10 at some time around 3:00 or 3:30 that Friday morning,  
11 correct?

12 A Yes, sir.

13 Q And, it was after that that you found  
14 the gun, correct?

15 A Could you repeat that again, please?

16 Q The police came to your apartment  
17 some time between 3:00 and 3:30 on Friday morning; am I  
18 correct?

19 A Yes, sir.

20 Q At that time you did not have the  
21 weapon in your possession, correct?

22 A No, sir.

23 Q Because at that time you had not yet  
24 found it in the mattress, correct?

25 A Yes, sir.



1 Q No, sir, you had not found it?

2 A I didn't find it then.

3 Q It was later during that morning that  
4 you found the gun in the mattress, correct?

5 A It was another day that I found it.

6 Q Well, weren't the police there at  
7 3:30 in the morning, the morning that you're telling the  
8 ladies and gentlemen that Andre called you?

9 A No, sir.

10 Q On the phone?

11 A No, sir.

12 Q You're sure of that?

13 A Yes, sir.

14 Q So, the conversation that you just  
15 recounted for Mr. Barry about you said you found a piece  
16 of metal. Do you remember that, do you remember telling  
17 Mr. Barry that a minute ago?

18 A Could you repeat that? I don't  
19 understand.

20 Q A few moments ago Mr. Barry asked you  
21 about that gun.

22 A Yes, sir.

23 Q You told him you found that gun in  
24 the mattress; is that accurate?

25 A Yes, sir.

1                   Q            You said that on Friday morning you  
2 had a phone conversation with Andre Graham; is that  
3 correct?

4                   A            Yes, sir.

5                   Q            You said that during that phone  
6 conversation you told Andre Graham you had found some  
7 metal, correct?

8                   A            Not at that time, no, sir.

9                   Q            Not at that time?

10                  A            No, sir. It was a different  
11 phonecall, a different conversation.

12                  Q            Was it a different phone conversation  
13 on a different day?

14                  A            He called me Friday morning to let me  
15 know he had got locked up.

16                  Q            He was calling you from the  
17 Chesterfield Jail?

18                  A            Yes, sir.

19                  Q            Was it during that conversation that  
20 you told him you had found the gun?

21                  A            No, sir.

22                  Q            What time of day or night or morning  
23 was that call?

24                  A            The first phonecall was about 7:00,  
25 7:30.

1 Q Between 7:00, 7:30 a.m.?

2 A Yes, sir.

3 Q And, the police had been there about  
4 four hours before, right?

5 A Yes, sir.

6 Q When the police were there you hadn't  
7 found that gun, correct?

8 A No, sir.

9 Q Sometime between the police leaving  
10 and Andre calling you found that gun?

11 A Yes, sir.

12 Q But, when Andre called you didn't  
13 talk about that gun?

14 A He told me to get rid of it. At the  
15 time I didn't know what he was talking about.

16 Q And, in actuality he told you to get  
17 rid of what was in the bag, in the closet, didn't he?

18 A No, sir.

19 Q You're sure of that?

20 A No, sir. He didn't say get rid of  
21 nothing in the bag in the closet.

22 Q In fact, he didn't mention, didn't  
23 say the word closet --

24 A No, sir.

25 Q -- anywhere when he said the words

1 get rid of it?

2 A No, sir.

3 Q So, your testimony is that he called  
4 you between 7:00 and 7:30 and just told you to get rid of  
5 it?

6 A Yes, sir.

7 Q He didn't tell you what it was?

8 A No, sir.

9 Q And, you didn't say Andre, I found  
10 the metal?

11 A On the second phonecall, yes, I told  
12 him I found the piece of metal.

13 Q What time was the second phonecall?

14 A I don't know.

15 Q Was it say maybe two hours later?

16 A It wasn't late and it wasn't that  
17 early in the morning.

18 Q Well, I am confused. Some time  
19 between 7:00 and 7:30 Andre called you?

20 A Yes, sir.

21 Q You're telling the ladies and  
22 gentlemen of the jury he said get rid of it?

23 A Yes, sir.

24 Q But, he didn't mention the word  
25 closet?



1 A No, sir.

2 Q And, at that time to the best of your  
3 knowledge he had no way of knowing that that gun was in  
4 your linen closet, did he?

5 A It wasn't in the closet. I found  
6 the gun in my mattress.

7 Q Well, did you find your gun in the  
8 mattress before 7:00 or 7:30 in the morning?

9 A It wasn't my gun.

10 Q I didn't say your gun. I said did  
11 you find the gun in your mattress prior to that phonecall  
12 or after that phonecall?

13 A It was after the phonecall.

14 Q So, at 7:00 in the morning between  
15 7:00 and 7:30 when he called you from Chesterfield County  
16 Jail you hadn't found that gun?

17 A No, sir.

18 Q And, it was during that phone  
19 conversation that he told you get rid of it?

20 A Yes.

21 Q But, you didn't know what it was?

22 A No, sir.

23 Q And, he didn't say anything about  
24 closet, or plastic bags or anything?

25 A No, sir.

1 Q Or bags or anything?

2 A No, sir.

3 Q The police arrived at your house  
4 about 45 minutes to an hour later, didn't they?

5 A I don't think so. It was a different  
6 morning.

7 Q You're saying the police arrived at  
8 your house on a different morning?

9 A Yes, sir.

10 Q How many days later did the police  
11 come?

12 A They came at between 3:00 and 3:30 I  
13 guess it was Thursday, Thursday night. Andre called me  
14 Friday. The police came out that Thursday night and they  
15 came out that Friday.

16 Q Okay.

17 THE COURT: What Thursday or Friday  
18 are we talking about?

19 MR. EVERHART: I -- if the Court will  
20 allow me?

21 THE COURT: All right.

22 BY MR. EVERHART: (Continuing)

23 Q The police came to your house at 3:30  
24 in the morning, really on Friday morning. When you say  
25 Thursday night you really mean 3:30 a.m., correct?

1 A Yes, sir.

2 Q So, at midnight it changes from  
3 Thursday to Friday, right?

4 A Yes, sir.

5 Q The police came to your house,  
6 correct?

7 A Yes, sir.

8 Q And, about four hours later Andre  
9 calls you from the jail, correct?

10 A Yes, sir.

11 Q He doesn't say anything about a  
12 closet. He just says get rid of it and you don't know  
13 what it is, correct?

14 A Me and Andre had a conversation to  
15 where he said get rid of it. At that time I knew what he  
16 was talking about because I had found the gun.

17 Q Do you remember what time you found  
18 the gun?

19 A No, sir.

20 Q But, now you're saying it was before  
21 Andre called you at 7:00 to 7:30 in the morning?

22 A No, sir.

23 Q So, at 7:00 or 7:30 in the morning,  
24 Friday morning, Andre Graham calls you?

25 THE COURT: Again, what Friday are we

1                   talking about?

2                   MR. EVERHART: I don't know. I think  
3 we are talking about Friday, December 3rd or  
4 December 2nd. I will be glad to look back at a  
5 calendar.

6                   MR. BARRY: That's the correct date.

7 BY MR. EVERHART: (Continuing)

8                   Q           On Friday morning, December 3rd,  
9 1993, Andre Graham calls you from the Chesterfield County  
10 Jail sometime between 7:00 and 7:30. Do we agree on that?

11                  A           Yes, sir.

12                  Q           Prior to that phonecall you're  
13 telling me now you had not found that gun?

14                  A           No, sir.

15                  Q           During that phonecall you're telling  
16 me Andre said get rid of it?

17                  A           The second phonecall, it was the  
18 second phonecall.

19                  Q           I asked you a few moments ago how  
20 much later in the morning was the second phonecall and you  
21 told me it wasn't that day. My question to you is what  
22 day was that call?

23                  A           It was either Friday or Saturday. It  
24 was another phonecall that he told me to get rid of it. I  
25 knew what he was talking about because I had found the



1 gun.

2 Q So, just so I am clear.

3 MR. BARRY: Judge, we have been over  
4 this point seven times now. It's not a matter  
5 of getting clear. He's trying to confuse her.  
6 She's answered the question three or four  
7 times. Asked and answered. That's my  
8 objection.

9 THE COURT: Well, I think they're  
10 talking about different dates. That's the  
11 difference. It is confusing, Mr. Everhart.  
12 They're talking about different dates.

13 BY MR. EVERHART: (Continuing)

14 Q So, the phonecall after you found the  
15 gun was the next day, to the best of your recollection it  
16 -- was it the next day?

17 A It could have been.

18 Q Didn't Andre say anything during that  
19 second phonecall about getting rid of anything?

20 A All I recall him telling me was to  
21 get rid of it.

22 Q Now, at some point in time the police  
23 came back to your house, correct?

24 A Yes, sir.

25 Q Didn't you tell Detective Showalter

1 at that time that you had never seen that gun before you  
2 found it in your mattress?

3 A I could have.

4 Q You could have?

5 A Yes, sir.

6 Q Do you recall in fact saying just  
7 that?

8 A I could have.

9 Q You just don't remember?

10 A I don't.

11 Q So, I need to ask Detective Showalter  
12 if you said that?

13 A Yes, you can.

14 Q Do you deny making that statement?

15 A No, sir.

16 Q You just decline to admit it?

17 MR. BARRY: No, she said she doesn't  
18 remember.

19 THE WITNESS: And, I don't remember.

20 MR. EVERHART: Thank you, Mr. Barry.

21 BY MR. EVERHART: (Continuing)

22 Q Did you wrap the gun up and put it in  
23 the closet?

24 A No, sir.

25 Q Your mother did?

1 A Yes, sir.

2 Q What, if anything, was the gun in  
3 when you found it?

4 A It was like in a clear plastic bag.

5 Q Is that the plastic that your mom put  
6 it in?

7 A No, sir.

8 Q You changed it from one container to  
9 another?

10 A No, sir. I found it that way and my  
11 mother wrapped it up in a towel and put it in the closet.

12 Q She took it out of the one plastic  
13 bag and put it in another one?

14 A No, she didn't.

15 Q No, she didn't? She left it in that  
16 plastic bag?

17 A Whatever it was wrapped in, yes, she  
18 did.

19 Q Is that how you turned it over to  
20 Detective Showalter?

21 A My mother wrapped it up in a towel.

22 Q I understand that. What I am asking  
23 very simply is this, was it in the same condition when you  
24 turned it over to Detective Showalter?

25 A Detective Showalter got it out of the

1 closet.

2 Q When he pulled it out of the closet  
3 did you see it?

4 A No, sir, I didn't.

5 Q Where were you?

6 A In my bedroom.

7 Q Wasn't he in your bedroom?

8 A He was in the closet, in the closet  
9 in the hallway.

10 Q The linen closet in the hallway?

11 A Yes, sir.

12 Q So, did you take him to that closet?

13 A No, sir.

14 Q Did your mom take him to the closet?

15 A Yes, she did.

16 Q Did you answer the door that morning?

17 A I don't remember who answered the  
18 door. I was in my bedroom.

19 Q Do you remember talking to Detective  
20 Showalter that morning?

21 A Yes, sir.

22 Q You just don't really remember what  
23 you said, right?

24 A Not everything, no, sir.

25 MR. EVERHART: May I have one moment,



1 Judge?

2 THE COURT: Yes.

3 BY MR. EVERHART: (Continuing)

4 Q Ms. Booker, Mr. Barry asked you  
5 something about seeing someone in a red car? Do you  
6 recall him asking you that?

7 A Yes, sir.

8 Q Who did you say you saw in the red  
9 car?

10 A Andre and Mark Sheppard.

11 Q Andre Graham?

12 A Yes.

13 Q And Mark Sheppard. Can you say for  
14 certain it's the red car that Mr. Barry showed you the  
15 photo of?

16 A Yes, sir. I seen it.

17 Q Are you sure that wasn't a different  
18 car?

19 A Yes, sir. I am sure.

20 Q You didn't see the CD's in that car  
21 that night?

22 A No, sir.

23 Q The first time you saw the CD's they  
24 were in your car?

25 A Yes, sir.

1 Q And, that -- was it that morning you  
2 were watching TV?

3 A What morning?

4 Q The morning that you saw the red car?

5 A Yes, sir.

6 Q And, that was when they had the  
7 report on the news about the Steak and Ale?

8 A Yes, sir.

9 Q And, Mr. Graham said that he knew who  
10 did it but that he didn't do it?

11 A Yes, sir.

12 Q Did he, in fact, tell you who did it?

13 A No, sir.

14 Q He just said he didn't?

15 A Yes, sir.

16 MR. EVERHART: That's all I have.

17 Thank you.

18 MR. BARRY: Thank you. No further  
19 questions.

20 THE COURT: All right. You may step  
21 down.

22 MR. BARRY: Detective Dalton, please.  
23  
24  
25

1                    STEVE DALTON, a witness called on  
2 behalf of the Commonwealth, having first been sworn,  
3 testified as follows:

4                    DIRECT EXAMINATION

5 BY MR. BARRY:

6                    Q            Detective Dalton, would you introduce  
7 yourself please to these ladies and gentlemen.

8                    A            Steve A. Dalton, Richmond Police  
9 Department, Detective, assigned to the Homicide Unit.

10                   Q            And, you have been in my homicide  
11 unit for many many years, have you not?

12                   A            In and out of it, yes, sir.

13                   Q            Let me just ask you a question. Did  
14 you have occasion working with the Chesterfield County  
15 Police to come in contact with, if I could show you a  
16 photograph of some tapes in a box?

17                   A            Yes, sir.

18                   Q            All right, now, you tell the ladies  
19 and gentlemen of the jury how you came about finding that  
20 box, and where you found it?

21                   A            After interviewing Priscilla Booker  
22 and Julia Green, we went to 351 East Belt Boulevard, a U-  
23 Haul storage center. We went to the locker that Ms. Green  
24 identified as being her locker. The door was opened and  
25 the box was sitting on the floor with the CD's inside of

1 it.

2 Q All right, now, that's already  
3 previously been identified as tapes belonging to Edward  
4 Martin. What did you do with those tapes after you took  
5 them out of the storage locker?

6 A I took them to the police property  
7 section and on December 6 I took them to the State  
8 Forensic's Unit to be processed.

9 Q Now, in addition to those box of  
10 tapes, did you take other items to the forensic unit to be  
11 evaluated?

12 A Yes. Fingerprints cards, a copy of  
13 the fingerprints cards, rather, of Andre Graham also known  
14 as Andre Grant.

15 MR. BARRY: All right, Judge,  
16 Commonwealth's exhibit 13-A and 13-B, are  
17 photocopies of Mr. Graham's fingerprints,  
18 stipulated by the defense as the fingerprints  
19 of Mr. Graham.

20 MR. EVERHART: That's correct.

21 THE COURT: All right. Y'all  
22 understand that, ladies and gentlemen of the  
23 jury?

24 NOTE: Received and so marked by the  
25 Clerk as Commonwealth's Exhibit Number 13.



1 BY MR. BARRY: (Continuing)

2 Q Now, just run through this again with  
3 the ladies and gentlemen of the jury so they know what  
4 we're talking about. What did you do with the cards?  
5 What did you do with the tapes?

6 A The cards and tapes were taken to the  
7 State Forensic Unit for Leland Kennedy, an expert in  
8 fingerprints, to compare prints taken off of the CD tapes  
9 to the prints of Mr. Graham.

10 MR. BARRY: All right. I'll bring  
11 him in next. If you would, Sheriff, take that  
12 Commonwealth's exhibit 13, the fingerprint  
13 cards and photograph.

14 BY MR. BARRY: (Continuing)

15 Q Now in addition to doing the leg work  
16 on the CD's and the fingerprints, you had occasion to work  
17 with Edward Martin?

18 A Yes, I did.

19 Q Now after he got out of the hospital  
20 you had occasion to go to his home?

21 A Yes, I did.

22 MR. GEARY: Your Honor, I'm going to  
23 object. We have an experienced detective and  
24 an experienced prosecutor. We don't need the  
25 leading questions at this point.

1 MR. BARRY: We are just trying to get  
2 to the meat of the thing, but.

3 BY MR. BARRY: (Continuing)

4 Q Tell us what happened next.

5 A On May the 22nd of this year, 1994, I  
6 went to the home of Edward Martin and presented a  
7 photospread to him. I asked him if he recognized anyone  
8 in the photospread being present during the shooting of  
9 him and Sheryl Stack.

10 Q All right.

11 A He looked at the spread and went to  
12 the lower level center picture and pointed out the  
13 photographs stating something to the effect of he was  
14 there. I said do you know who, who was there?

15 A And, he repeated again he was there.

16 Q Come out of the box.

17 A And, then he identified the  
18 photograph, which is the photograph of Andre Graham.

19 Q I am going to show you Commonwealth's  
20 exhibit number 14. I would like for you to take it over  
21 to the jury box and show them just exactly what this is,  
22 after they have marked that photograph.

23 A I handed him the photograph and asked  
24 him if he recognized anyone from the night he and Ms.  
25 Stack were shot. He took the photographs. He looked at

1 it. He gave it back to me. He said he was there, he was  
2 there, pointing to this bottom photograph where my finger  
3 is.

4 Q All right. Who is that a photograph  
5 of?

6 A Andre Graham.

7 MR. BARRY: All right. If you would  
8 give that to the Sheriff. That will be  
9 Commonwealth's exhibit number 14, the  
10 photospread.

11 NOTE: Received and so marked by the  
12 Clerk as Commonwealth's Exhibit Number 14.

13 MR. BARRY: If you would be kind  
14 enough to answer these gentlemen's questions.

15  
16 CROSS EXAMINATION

17 BY MR. GEARY:

18 Q Detective Dalton, how many years  
19 would you estimate you have worked in the homicide  
20 division of the police?

21 A Just in the homicide unit it would be  
22 about four years.

23 Q And, you have been a detective for  
24 approximately how many years?

25 A I have been a detective 21 years.

1 Q And, as part of the trial preparation  
2 in this case you and I have spent some time together, have  
3 we not?

4 A Yes, sir, we have.

5 Q In fact, you drove me to the Steak  
6 and Ale one day last week?

7 A Yes, sir.

8 Q You also showed me the photospread  
9 that has been introduced into evidence; is that correct?

10 A That's correct.

11 Q Your testimony today is that the  
12 photospread that was shown to Edward Martin on May 22nd;  
13 is that correct?

14 A That's correct.

15 Q And, the shooting took place October  
16 the 8th of 1993?

17 A That's correct.

18 Q When you showed him the photospread,  
19 did you say you went to his house?

20 A Yes, sir.

21 Q Was there anyone else present in the  
22 room besides you and Mr. Martin when you showed him the  
23 photospread?

24 A Yes, sir, there was.

25 Q Who was present?



1 A William Parcell, who was the  
2 Assistant Commonwealth's Attorney and Mr. and Mrs. Martin.

3 Q During that exchange approximately  
4 how long did it take when you were there at the Martin  
5 residence?

6 A You're talking about the whole length  
7 of time there or just during the photosession?

8 Q Your meeting on May 22nd?

9 A I would estimate 30, 45 minutes was  
10 as long as we were there.

11 Q How long of that 45 minutes would you  
12 say the exhibition of the photospread took place?

13 A Five, ten minutes at the most.

14 Q Was he shown any other pictures  
15 besides the six pictures that are in the photospread that  
16 has been introduced into evidence?

17 A Yes, sir, he was.

18 Q Was he shown photospreads of the way  
19 you have it there with six photographs per spread?

20 A Yes, sir, he was.

21 Q Where did those other photospreads  
22 come from, those pictures?

23 A The other six photographs?

24 Q Yes, sir.

25 A They were of another possible suspect

1 in the case.

2 Q So, he was shown, Mr. Martin was  
3 shown 12 photographs?

4 A Yes, sir.

5 Q And, in regard to the other  
6 photospread what did you or Mr. Parcell do before he  
7 looked at the photospread?

8 A Basically the same thing. I  
9 explained to him I was going to show him two sets of  
10 photos and asked him to look and see if he could determine  
11 if anybody else being there.

12 Q As far as you know in that  
13 conversation in the 45 minutes you were there, did either  
14 you or Mr. Parcell or anyone else say to Mr. Martin the  
15 words Sheppard?

16 A I can't recall whether the name was  
17 mentioned or not.

18 Q One of the people in the other  
19 photospread was Mark Sheppard, one of the other  
20 photospreads?

21 A Yes, sir, he was.

22 Q And, are you telling us that Mr.  
23 Martin looked at that photospread and wasn't able to give  
24 you anything?

25 A He picked out another picture.

1 Q He picked out somebody other than  
2 Mark Sheppard?

3 A That's correct.

4 Q Do you know who he picked out?

5 A No, sir. If you mean by name?

6 Q Yes.

7 A No, I don't know by name.

8 Q The people whose photographs appear  
9 in there, are those people who have either been arrested  
10 by the Richmond Department of Police or Sheriff's Deputies  
11 got pictures?

12 A That would be police photographs.

13 Q All right. After May 22nd after he  
14 picked somebody else out and then picked out Andre Graham  
15 in the second photospread, did, was there ever a line-up  
16 conducted?

17 A No, sir. On the photospread he  
18 picked out Andre Graham first, then went to the Sheppard  
19 photographs.

20 Q Then he picked out somebody other  
21 than Mark Sheppard?

22 A Yes, sir.

23 Q After that day on May 22nd did either  
24 the police or the Commonwealth Attorney's Office have a  
25 line-up?

1 A No, sir.

2 Q For Mr. Martin?

3 A No, sir.

4 Q And, you have the facilities to have  
5 a line-up, do you not?

6 A No, sir.

7 Q In fact, you have them every morning  
8 when you call the roll call?

9 A Not anymore.

10 Q Not anymore?

11 A No, sir.

12 Q Just in the old days when you and I  
13 were around. Did you respond to the Steak and Ale back on  
14 October the 8th? Were you there?

15 A Yes, sir, I did.

16 Q Do you recall what time it was?

17 A It was after the incident, about an  
18 hour later.

19 Q Daylight hours?

20 A Close to daylight hours, if not  
21 daylights hour.

22 MR. GEARY: If I may have a second,  
23 Judge. No further questions.

24 THE COURT: Any further questions?

25 MR. BARRY: No, sir.



1 THE COURT: All right. Thank you.

2 MR. BARRY: Judge, my last witness is

3 Leland Kennedy.

4  
5 LELAND W. KENNEDY, a witness called  
6 on behalf of the Commonwealth, having first been sworn,  
7 testified as follows:

8 DIRECT EXAMINATION

9 BY MR. BARRY:

10 Q Sir, would you introduce yourself  
11 please to these ladies and gentlemen of the jury.

12 A My name is Leland W. Kennedy. I am  
13 employed by the Commonwealth of Virginia, Division of  
14 Forensic Science, as a Fingerprint Examiner.

15 Q Now, in 2,000 words or less tell us a  
16 little about fingerprints.

17 A On the ridges of your hands and feet  
18 you notice ridges and on those ridges are minute pores  
19 that excrete perspiration. You know, when you touch  
20 something, such as a drinking glass or when I touch this  
21 piece of wood here the sweat forms on those ridges and  
22 then when you touch something it reappears on the item  
23 that you have touched. In the fingerprint you will notice  
24 the ridges do not carry from one side all the way over to  
25 the other. They will stop or they bifurcate, which means

1 one will split into two or they will appear as dots.  
2 These are the kinds of characteristics that we look for in  
3 a latent fingerprint which is recovered from a crime  
4 scene. Now, an ink fingerprint is a controlled  
5 fingerprint where the ridges of the finger are rolled with  
6 black ink such as when at a booking station or police  
7 station you roll them in ink, put them down on a white  
8 fingerprint card. Those are known as known or controlled  
9 ink fingerprints.

10 Q All right, now, the jury has already  
11 seen Commonwealth's exhibit number 13. They know these  
12 are the fingerprints of Andre Graham. You have examined  
13 these, I take it?

14 A Yes, I have. They have the case  
15 number they are assigned and those are my initials on both  
16 copies.

17 Q All right, now, Mr. Kennedy, in  
18 addition to those fingerprints you also had occasion to  
19 receive from the detectives a large box that had an  
20 unusually large number of CD's, perhaps in excess of a  
21 hundred; is that correct?

22 A 218 CD's were in that box.

23 Q All right, now, you went through each  
24 and every one of those CD's. Tell the ladies and  
25 gentlemen of the jury what you found.

1           A           Okay. What I did was I took each of  
2 those CD's and processed them with fingerprint powder to  
3 try to develop latent fingerprints, the fingerprints that  
4 are left by chance on an item when it is touched. Of  
5 those 218 compact disks I was able to develop 48 latent  
6 fingerprints of value for identification purposes. That  
7 means there were enough characteristics in those latent  
8 prints to say, yes, they can be compared or no, they  
9 cannot be compared with a known ink compression of  
10 somebody else. So, of those 48, 31 latent fingerprints  
11 were identified with Andre Graham.

12           Q           Now, when you say were identified  
13 does that mean is there anyone else in the world that has  
14 fingerprints like Andre Graham?

15           A           No two fingerprints in the world have  
16 ever been found to be the same.

17           Q           So, you found 31 fingerprints of the  
18 defendant on those CD's?

19           A           Yes, I did.

20                   MR. BARRY: If you would be kind  
21 enough to hand those to the Sheriff. That's  
22 all the questions I have. Thank you.

23                   MR. GEARY: No questions, sir.

24                   THE COURT: All right. Thank you,  
25 sir. You may be excused. Commonwealth's case.

1 THE COURT: Commonwealth rests its  
2 evidence in chief.

3 MR. GEARY: Can we approach?

4 THE COURT: What?

5 MR. GEARY: Can we approach?

6 THE COURT: All right. I'm going to  
7 let the jury be excused.

8 JURY OUT

9 THE COURT: Ladies and gentlemen of  
10 the jury, I'm going to let you go home and come  
11 back at 9:00 in the morning. Counsel will get  
12 the instructions together so we will be ready  
13 at 9:00. But, I expect to finish this case by  
14 maybe 1:00 tomorrow because I have another jury  
15 at 2:00.

16 JURY OUT

17 MR. BARRY: Well, the Commonwealth  
18 has rested. I have requested to have Detective  
19 Showalter and Detective Dalton back here  
20 tomorrow, but it's out of my hands at this  
21 point. It is now up to the defense what they  
22 do.

23 THE COURT: Y'all rest?

24 MR. GEARY: We were going to. That's  
25 why I came up. We were going to make the



1 motion in the morning and we were going to put  
2 on evidence in the morning.

3 THE COURT: What witness you got in  
4 the morning?

5 MR. GEARY: At least two and maybe  
6 three.

7 THE COURT: Where are they now?

8 MR. GEARY: They're in the building.

9 THE COURT: Well, we will take them  
10 up now. It's only 4:30.

11 MR. GEARY: Can we approach the bench  
12 again?

13 THE COURT: I just have a busy  
14 schedule. I'm working. I can't help it.  
15 Justice delayed is justice denied.

16 MR. EVERHART: Judge, may we reserve  
17 our right to argue?

18 THE COURT: Just a minute. If you  
19 want to make any motions make them now.

20 MR. GEARY: Judge, can I make it in  
21 the morning?

22 THE COURT: No. Make it now.

23 MR. GEARY: Judge, on all the charges  
24 but particularly in regard to the capital  
25 murder charge under Virginia law without a

1 doubt the Commonwealth has got to establish the  
2 triggerman. In this case the evidence from Mr.  
3 Jones was that --

4 THE COURT: Well, I wouldn't waste  
5 much time. The evidence is he had the gun and  
6 the young man testified the last person that  
7 had the gun before he shot him was him. I  
8 think that's a question or fact for the jury.  
9 It is no evidence to the contrary. I'm fully  
10 aware he must be the triggerman. In fact, I  
11 really do think the motion is a waste of our  
12 time at this point.

13 MR. GEARY: Well, I will make the  
14 motion anyway.

15 THE COURT: All right. This is the  
16 motion. If you want to make a motion he has  
17 rested. I haven't heard your case. So, at  
18 this point we have the evidence here that the  
19 young man, young lady were out there at Steak  
20 and Ale, had been working, had something to  
21 eat, came back, were getting in the car,  
22 apparently to go home and standing there  
23 talking like young people do and then comes up  
24 to the car with a gun and says get out, if you  
25 listen and close your eyes I am not going to

1 hurt you. Shoots the young lady, kills her.  
2 Shoots the young man and permanently disables  
3 him for life. He recognizes him. He said he  
4 had the gun. He didn't say the other man. He  
5 said he had the gun, then he turns up with the  
6 car the next morning, he's got possession of  
7 the gun. They have proved that. And you've  
8 also got the young man's tapes and 48  
9 fingerprints, I think. At this point, I am  
10 only saying at this point, it is my opinion  
11 there is overwhelming evidence, but I haven't  
12 heard your evidence. I am not deciding the  
13 case. This is just on a motion to strike.

14 MR. EVERHART: Yes, sir, Judge. Just  
15 to be sure that we are where we think we are, I  
16 guess we have made our motion to strike. The  
17 basis of the motion to strike is essentially  
18 sufficiency of the evidence. I would suggest  
19 to the Court, as Mr. Geary said and Your Honor  
20 made some comments about what the evidence was.  
21 I just ask the Court to recall what the young  
22 man said, that, yes, Mr. Graham was the person  
23 he saw with the gun before he closed his eyes.  
24 Just so we are getting on the record is all the  
25 reason I want to make sure.

1 THE COURT: I said before when he  
2 closed his eyes he was the man with the gun and  
3 went bang, bang.

4 MR. EVERHART: I just want to make  
5 sure we have our motion to strike on the  
6 record.

7 THE COURT: I am fully cognitive of  
8 the record.

9 MR. EVERHART: Thank you.

10 THE COURT: You may return the jury.

11 JURY IN

12 THE COURT: All right. Counsel at  
13 the bar waive the poll of the jury?

14 MR. BARRY: Commonwealth does.

15 MR. EVERHART: Yes, Your Honor,  
16 defense waives.

17 THE COURT: All right, ladies and  
18 gentlemen of the jury, it is now 20 minutes to  
19 5:00. The case hasn't got much longer to go.  
20 But, I don't want to overwork you today. I  
21 will bring you back at 8:30 in the morning  
22 which I hope to conclude the case probably in  
23 the early afternoon for your deliberations. I  
24 don't know how long you will deliberate.  
25 That's up to you. I have no control over that.



1 But, I admonish you do not listen to anything  
2 on the radio about this case. Do not look at  
3 anything on television and do not read anything  
4 in the newspaper about this case. Often times  
5 reporters get the evidence confused. So, if  
6 you violate the admonition of the Court you  
7 will be in serious trouble yourself because it  
8 means that the case would have, the Court will  
9 have to grant a mistrial and it will have to be  
10 tried over again. So, I admonish you do not  
11 talk to your girlfriend, boyfriend, husband,  
12 wife, children, grandchildren, anybody about  
13 this case. If they ask you where you have been  
14 all day tell them we have been down at Judge  
15 Wilkinson's, we have been working hard, and I  
16 can't talk about it, I'm too tired tonight to  
17 talk about it, I hope tomorrow I will be fully  
18 refreshed and I can tell you all about it. Do  
19 not allow anyone to talk about it. If they  
20 come up to you and say are you down there on  
21 the Andre Graham case say I really don't know  
22 the defendant's name. But, anyway, don't talk  
23 to anyone about it. Don't let any influence  
24 come to you other than what's in the courtroom.  
25 If you will do that I will greatly appreciate

405

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1           it. Thank you kindly. You're excused for the  
2           evening, remember 8:30 in the morning.

3       JURY DISMISSED

4           THE COURT: Counsel, we will meet in  
5           chambers to go over the instructions tomorrow.  
6           I assume you will put on some evidence,  
7           whatever that evidence is, I don't know whether  
8           it is alibi or whatever. If you can just have  
9           the instructions ready whenever we get to your  
10          theory of the case. Sheriff, would you remove  
11          the defendant.

CERTIFICATE OF COURT REPORTER

I, Theresa S. Griffith, hereby certify that I was the court reporter in the Circuit Court of the City of Richmond, Manchester Division, on October 4, 1994, at the first day of the trial herein.

I further certify that the foregoing transcript is true and accurate, to the best of my ability.

Given under my hand this 2nd day of December, 1994.

  
Theresa S. Griffith - Court Reporter







